

ORDINANCE NO. 1919

AN ORDINANCE TO AMEND THE PILGRIM PLACE DEVELOPMENT
PLAN PREVIOUSLY APPROVED BY ORDINANCE 1747

BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, as follows:

1. Development Standards. The Master Development Plan and the materials submitted by the applicant, as required by Section 129-265 of the Mountain Brook City Code, as approved upon the adoption of Ordinance 1747 dated October 9, 2007 are hereby amended to include the changes as follows:

- a. Widen the entry road (private road) from 40 feet to 60 feet in order to accommodate an entry gate and walls, and a turn-around area for automobiles;
- b. Adjust the lot lines for Lots 3 and 4 in order to widen the entry road "right-of-way;"
- c. Re-plat the drainage easement and landscape easement along the sides of Lots 3 and 4 in order to accommodate the change in right-of-way width and new lot lines for these two lots;
- d. Reorient the lot lines between Lots 1-3 in order to widen the visual appeal of the shared driveway for these three lots (keeping the same number of lots);
- e. Change angle of lot line between Lots 5 and 6;
- f. Change all side yards setbacks for Lots 1-15 from 12.5 feet to 10 feet;
- g. Change the name of the subdivision from "Pilgrim Place" to "Village Place;"
- h. Change the name of the private road to "Village Place."

2. Description of Affected Property. The property that is the subject of the rezoning approved by this ordinance is described as follows:

Lots 1 – 15 Pilgrim Place as recorded in Map Volume 227, Page 66, in the office of the Judge of Probate, Jefferson County, Alabama.

Said Parcel contains 6.58 acres more or less.

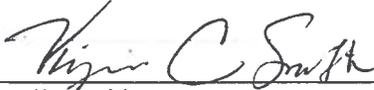
3. Repealer. All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.

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4. **Severability.** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

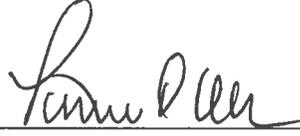
5. **Effective Date.** This ordinance shall become effective immediately upon adoption and publication as provided by law.

ADOPTED: This 13th day of October, 2014.



Council President

APPROVED: This 13th day of October, 2014.



Mayor

CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on October 13, 2014, as same appears in the minutes of record of said meeting, and published by posting copies thereof on October ¹⁴, 2014, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street
Gilchrist Pharmacy, 2850 Cahaba Road

Overton Park 3020 Overton Road
The Invitation Place, 3150 Overton Road



City Clerk

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The following changes are proposed for the Pilgrim Place PUD and are detailed in the attached letter from the applicant:

1. Widen the entry road (private road) from 40 feet to 60 feet in order to accommodate an entry gate and walls, and a turn-around area for automobiles;
2. Adjust the lot lines for Lots 3 and 4 in order to widen the entry road "right-of-way;"
3. Re-plat the drainage easement and landscape easement along the sides of Lots 3 and 4 in order to accommodate the change in right-of-way width and new lot lines for these two lots;
4. Reorient the lot lines between Lots 1-3 in order to widen the visual appeal of the shared driveway for these three lots (keeping the same number of lots);
5. Change angle of lot line between Lots 5 and 6;
6. Change all side yards setbacks for Lots 1-15 from 12.5 feet to 10 feet;
7. Change the name of the subdivision from "Pilgrim Place" to "Village Place;"
8. Change the name of the private road to "Village Place."

Landscape Buffer

The original approval of the PUD required the subsequent development of a landscape plan, to be drafted by the developer's landscape architect and the City Arborist. The requirement also stated that if an agreement could not be reached by these two parties, then the matter of the landscape plan could be taken up at the council level; but not that a PUD amendment would be necessary for the initial drafting of or any changes to the landscape plan. In the seven years since the PUD approval no such landscape plan had been developed and no eradicating of evasive or non-native plants has been executed.

Over the past few months, the new owner/developer has worked with the surrounding residents and the City to formulate a landscape plan which includes how it is to be implemented (stages) and how (and by whom) it is to be maintained in the future. During the development of this landscape plan, the residents circulated and signed a petition that spelled out what they wanted in the landscape plan. This petition is attached, but as indicated in a letter from neighboring resident, Mike Byrne, the revised landscape plan incorporates the concerns addressed in the petition. So, it appears that surrounding neighborhood is satisfied with the attached Dedicated Green Space and Development

Plan Guidelines, which are not a part of the amended PUD plan, but are provided to the council as a matter of record.

Additionally, although this PUD amendment does not propose to change any previously approved requirements or recorded covenants related to the landscape buffer along the south and east of the property, *by way of reference* attachments include:

- Council minutes from October 9, 2007;
- City Attorney memo summarizing buffer improvements as approved by Council;
- Recorded covenants.

Background

On September 2, 2014, the Planning Commission approved a resurvey which reflects the changes outlined above (said approval was conditioned upon the approval of the amended development plan by the City Council).

On October 6, 2014, the Planning Commission recommended approval of the amended master development plan for the Pilgrim Place PUD.

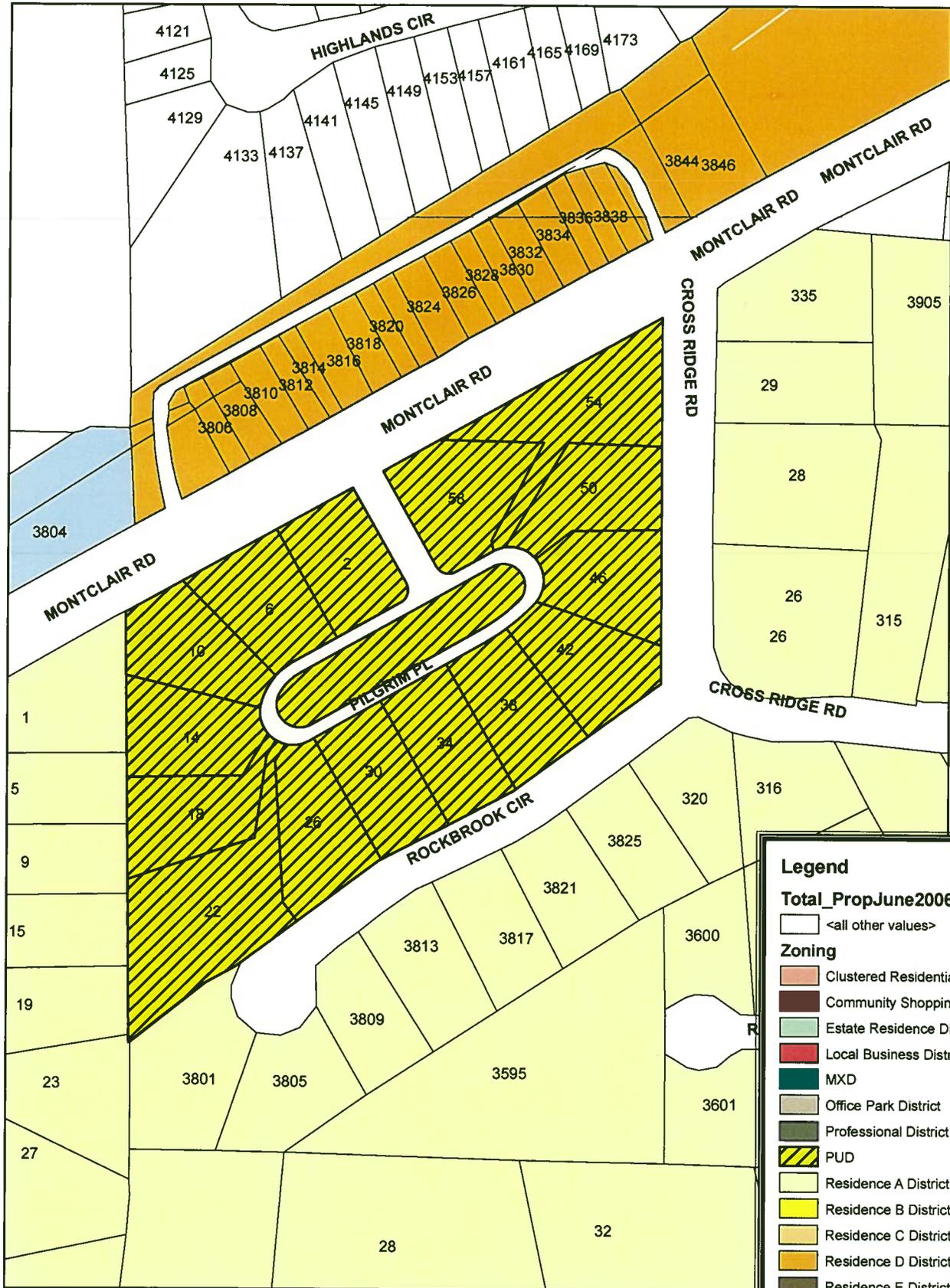
Project Data:

NAME: Village Place

CURRENT ZONING: PUD (Planned Unit Development)

OWNER: Wedgeworth Construction Company, Inc.

LOCATION: 1-15 Pilgrim Place



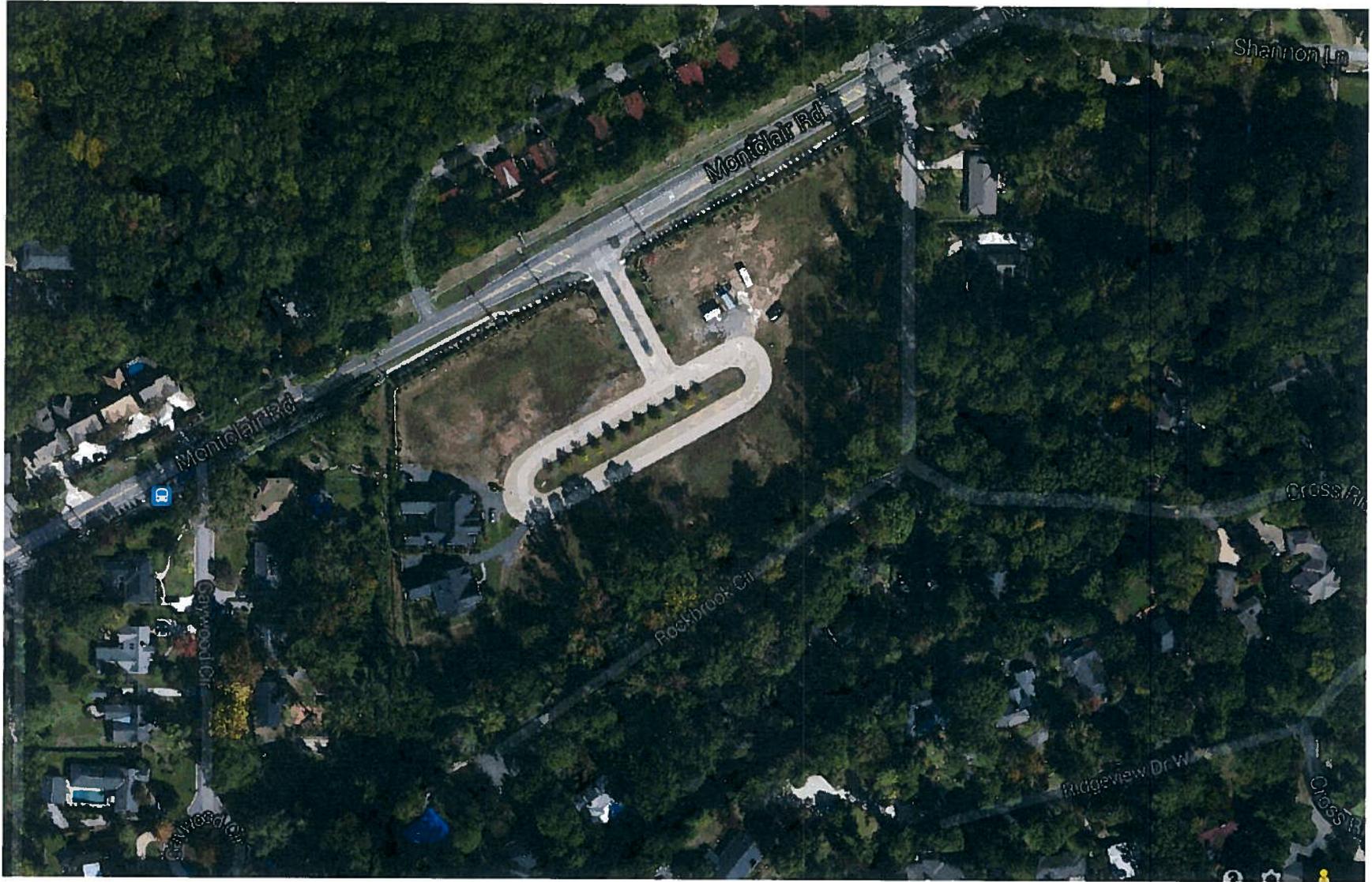
Legend

Total_PropJune2006

<all other values>

Zoning

- Clustered Residential
- Community Shopping
- Estate Residence District
- Local Business District
- MXD
- Office Park District
- Professional District
- PUD
- Residence A District
- Residence B District
- Residence C District
- Residence D District
- Residence E District
- Residence F District
- Recreation District
- RID
- Rec-2



1922

Applicant Request

9-2-14

Summary of Work planned for Pilgrim Place:

My company has acquired the Pilgrim Place Development on Montclair Road from Bruce McClary. We are requesting changes to the plat and record map.

Owner: Wedgworth Construction Co., Inc
4154 Cross haven Drive
Birmingham, Alabama 35243
Michael W. Wedgworth, President

Legal

Lots 1 – 15 Pilgrim Place as recorded in Map Volume 227, Page 66, in the office of the Judge of Probate, Jefferson County, Alabama.

Survey attached

Overall size of parcel

6.58 Acres

Development Schedule

We expect the other to be built out within a 3 year period.

Artist rendering of buildings

The 2 renderings attached are representative of the styles we will build. They will be consistent with 2 existing homes constructed.

Planning and zoning items for approval

1. Change Name of subdivision to Village Place. Change street name to Village Place
2. Add gate to entry. This will include providing space to turn around. This requires a 60.0 right of way in lieu of the required 40.0 right of way.
3. Roadway increased from 40.0 feet to 60.0 feet reducing SF of Lots 3 and 4
4. Add 11.0 landscape easement to lots 3 and 4
5. Add 10.0 drainage easement to lots 3 and 4
6. See property lines shown on lots 1, 2 and 3 for new property lines. This will change lot area enabling us to do a better of the planting and acclimation of each home.
7. Move front corner of lot 6 8.0 feet toward lot 5. Rear corner between lots 6 and 5 will remain the same.

PUD Changes for City Council

1. Subdivision amenities
 - a. Extend entry wall along each side of lots 3 and 4 with brick to match existing wall.
 - b. Construct a center median
 - c. Redo roadway between gate and Montclair road with asphalt in lieu of pavers to withstand heavy trucks braking downhill. Roadway at entry has not held up well
2. Change all side yard requirements to 10.0 in lieu of 12.5
3. Be sure to note 20.0 water line easement. This is important since it effectively makes the front setbacks 16.5. This increase green areas for front and back yards.
4. Rendering of proposed plan style to be consistent with outer homes.

Page 6 of Restrictive Covenants*(no changes)*

grounds of such Lot which shall tend to decrease the beauty and aesthetics of the Property or the neighborhood as a whole. No Lot Owner shall permit a garage or other type of public or private sale or auction on the Lot Owner's Lot or in the Green Space.

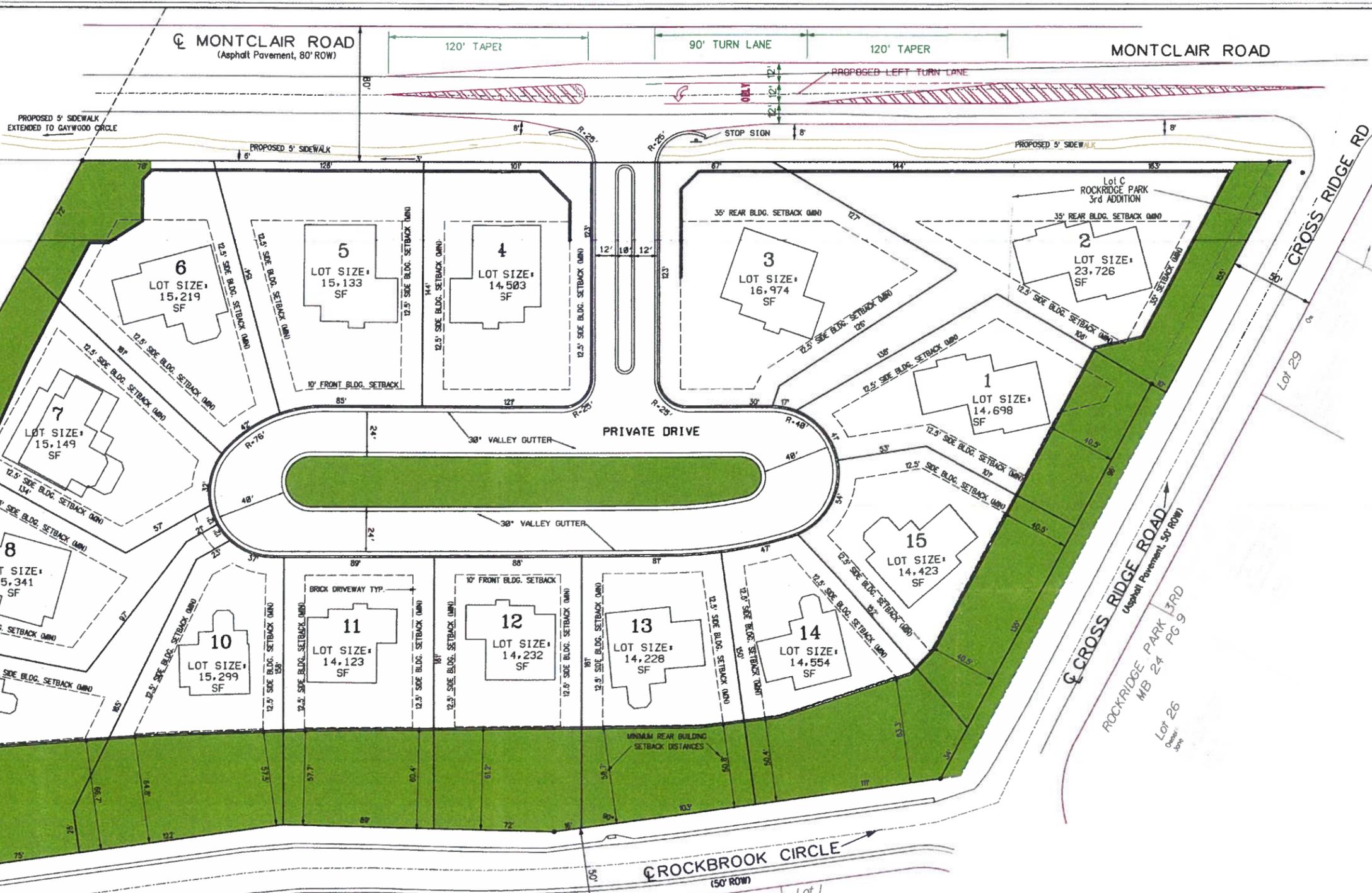
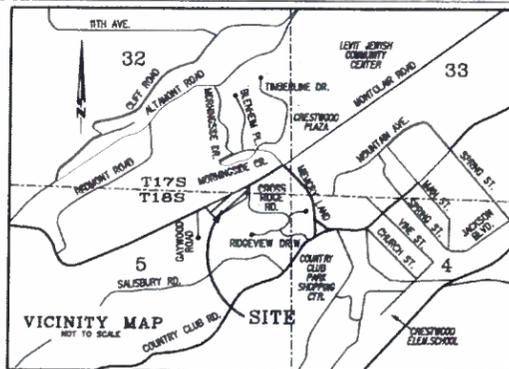
11. **Green Space Areas.** The green space surrounded by the circular private drive (the "Private Drive") and the green space located within the median at the entrance into the Property from Montclair Road, as shown on the Development Plan (the "Green Space Areas") are for the use and enjoyment of all Lot Owners. Developer will plant in the Green Space Areas, and the Association will maintain, the plants, and trees and grass within the Green Space Areas.

12. **Buffer Area.** Except as provided in paragraph 13 of this ARTICLE II, the buffer area (the "Buffer Area") shown on the Development Plan along the east, west and south perimeters of the Property shall be left in its natural condition, including the plants and trees which currently exist within the Buffer Area. The exact placement of the retaining wall along the interior boundary of the Buffer Area shall be determined by the Developer in cooperation and consultation with the City's arborist, in an effort to protect any large trees which are within the Buffer Area and also immediately adjacent to the retaining wall. The Association shall have the authority to prune or remove any diseased, dying or dead trees, or trees which are leaning or are in a condition which poses a risk of falling, within the Buffer Area.

13. **Restrictions Within Green Space Areas and Buffer Area.** No personal property of any Lot Owner shall be placed or stored on the Green Space Areas or the Buffer Area, except that automobiles may park in the spaces adjacent to the Green Space Area within the circular drive, as shown on the Development Plan. No alterations, additions, or improvements of any kind whatsoever shall be made to the Green Space Areas or the Buffer Area except as shown on the Development Plan or as permitted herein. Any Lot Owner who is responsible for any damage, defacement, or destruction to the Green Space Areas or the Buffer Area will be responsible for the repair, clean up, replanting or reconstruction thereof, the cost of which may be expended by the Association and assessed against the Lot Owner as an additional assessment. Provided, within the Buffer Area, Developer will perform selective cutting of any privet, mimosa, ivy, or other such non-native or invasive plants not located within the banks of the creek (which meanders through the Buffer Area) and the replanting of additional shrubs and trees which are native to the area. All such selective cutting and replanting shall be accomplished in accordance with a landscape plan which has been approved by both the City's arborist and the Developer's landscape architect. The said landscape plan shall include the standards by which the Buffer Area shall be maintained. The Buffer Area shall be maintained by and at the expense of the Association in accordance with said plan. If the City's arborist and the Developer's landscape architect cannot agree upon the landscape plan, then the landscape plan shall be submitted to the City Council for its determination and approval at a hearing about which notice has been given as provided in Section 3 of Article VII hereof.

ARTICLE III
PILGRIM PLACE HOME OWNERS' ASSOCIATION

1. **Establishment.** Operation and administration of the Property shall be performed by Pilgrim Place Home Owners' Association, an unincorporated association (the "Association"). The powers and duties of the Association shall include the following:



Paragon Engineering
A Division of Hatch Mott MacDonald
Engineer
2320 Highland Avenue
Suite 175
Birmingham, Alabama 35205
Phone 205-939-1119
Fax 205-939-1382

Owner
Pilgrim
Congregational
Church
3701 Montclair Road
Mountain Brook, AL 35213

Developer
Bruce MacClary
P.O. Box 530502
Birmingham, AL 35253

Located in the NE 1/4 of Section 5 Township 18 South, Range 2
West and SE 1/4 of Section 32, Township 17 South, Range 2 West
Jefferson County, Alabama

- Notes:
1. Total impervious area per lot shall not exceed 40% of lot size.
 2. Houses will not exceed one and a half stories and 35 feet in height.
 3. House footprints shown on this plan represent typical layouts built by the owner. Each home will custom designed to meet individual requirements and the zoning restrictions

Master Development Plan
Pilgrim Place
3701 Montclair Road
Mountain Brook, Alabama

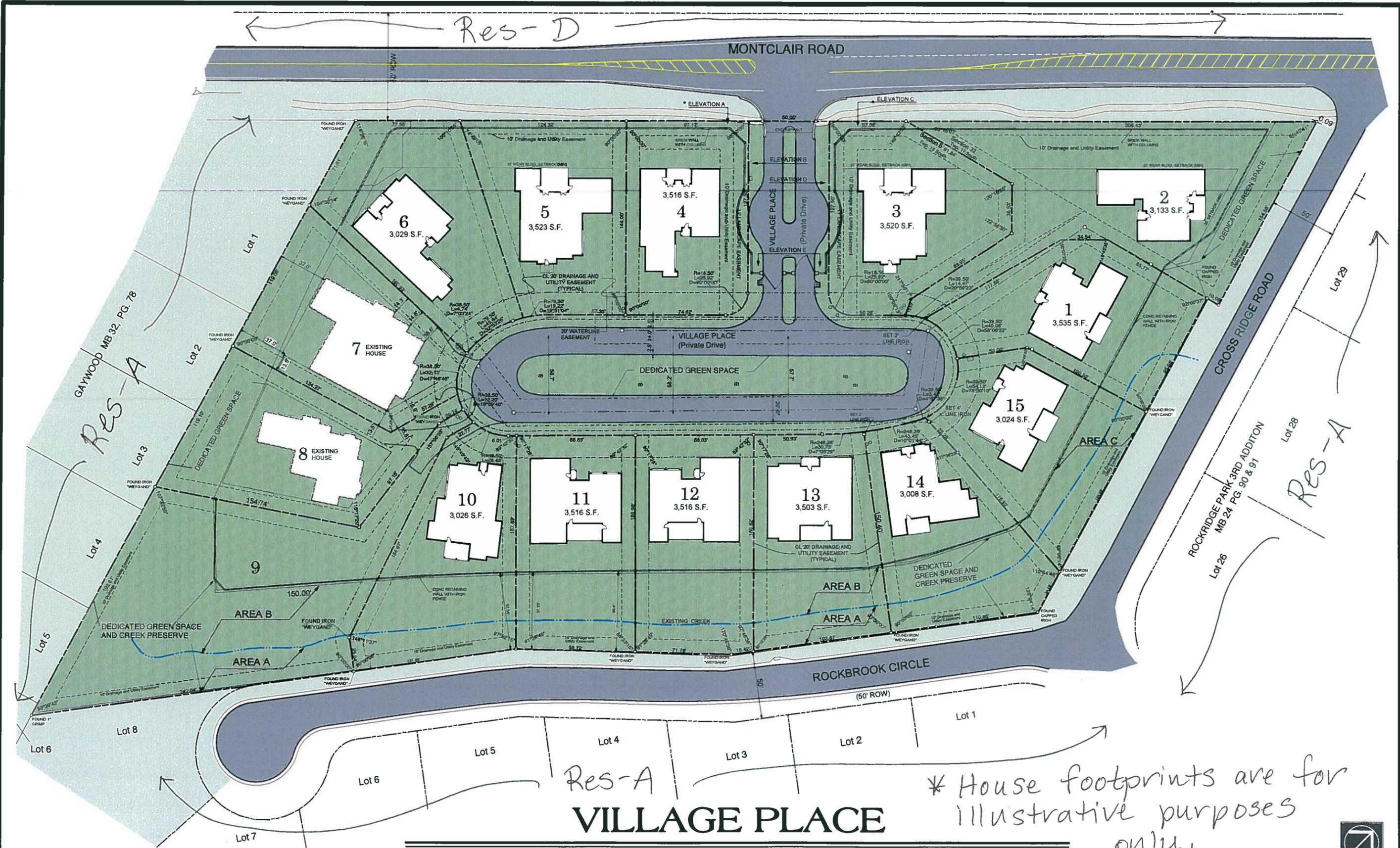
Parcel ID*: 23-00-32-4-011-001.000

Current Zoning Classification: R-A
Proposed Zoning Classification: Residence B, PUD
Total Area - 6.58 Ac., Total Lots- 15, 2.3 Units/Ac.
Total Dedicated Green Space - 1.92 Ac.

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10/9/07 APPROVED PUD PLAN 10

1972

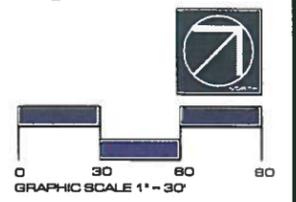


VILLAGE PLACE

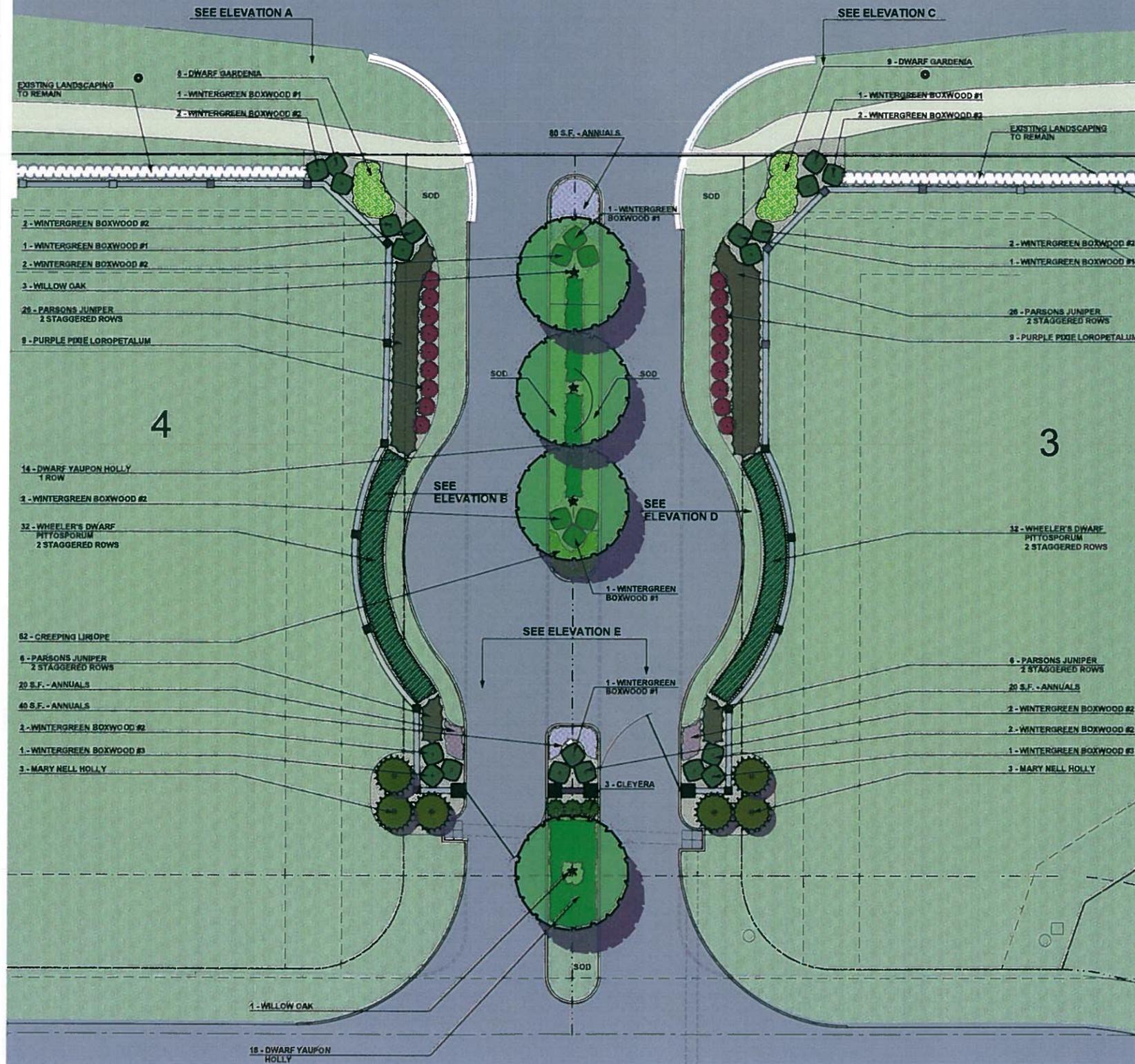
MASTER RE-DEVELOPMENT PLAN WEDGWORTH CONSTRUCTION

OCTOBER 6, 2014

* House footprints are for illustrative purposes only.



MONTCLAIR ROAD



PLANT MATERIAL SCHEDULE

QTY.	BOTANICAL NAME	COMMON NAME	SIZE	ROOT	REMARKS
4	TREES <i>Quercus phellos</i>	Willow Oak	3"-3 1/2" c.	B&B	Strong Central Leader
7	SHRUBS <i>Buxus microphylla koreana</i> 'Wintergreen' #1	Wintergreen Boxwood #1	24" x 24"	B&B	As Shown
18	<i>Buxus microphylla koreana</i> 'Wintergreen' #2	Wintergreen Boxwood #2	30" x 30"	B&B	As Shown
2	<i>Buxus microphylla koreana</i> 'Wintergreen' #3	Wintergreen Boxwood #3	36" x 36"	B&B	As Shown
3	<i>Cleyera japonica</i>	Cleyera	30"-36" ht.	Cont.	3" O.C.
17	<i>Gardenia jasminoides</i> 'Radicans'	Dwarf Gardenia	15"-18" sp.	Cont.	As Shown
32	<i>Ilex vomitoria</i> 'Nana'	Dwarf Yaupon Holly	15"-18" sp.	Cont.	3" O.C.
6	<i>Ilex</i> x 'Mary Nell'	Mary Nell Holly	7"-8" ht.	Cont.	As Shown
64	<i>Juniperus davurica</i> 'Parsonii'	Parsons Juniper	15"-18" sp.	Cont.	3" O.C.
18	<i>Loropetalum chinensis</i> 'Purple Pixie'	Purple Pixie Loropetalum	12"-15" sp.	Cont.	3" O.C.
64	<i>Pittosporum tobira</i> 'Wheeler's Dwarf'	Wheeler's Dwarf Pittosporum	15"-18" sp.	Cont.	3" O.C.
160 S.F.	GROUNDCOVER Annuals		Flats	Flats	6" O.C.
62	<i>Liriope spicata</i>	Creeping Liriope	2 1/4" pot	Cont.	12" O.C.
As Req'd.	GRASSES <i>Cynodon dactylon</i>	Common Bermuda	Seed		
As Req'd.	<i>Zoysia emerald</i>	Emerald Zoysia	Sod		

PLANTING NOTES:

- CONTRACTOR TO VERIFY ALL PLANT MATERIAL QUANTITIES AND PLANTING AREA DIMENSIONS PRIOR TO BEGINNING PLANTING. PROVIDE QUANTITIES AS REQUIRED TO MEET DESIGN INTENT.
- GRAFFED PLANT MATERIAL IS NOT ACCEPTABLE.
- DUE TO MODIFICATIONS MADE DURING CONSTRUCTION, SITE CONDITIONS MAY VARY FROM THOSE SHOWN. CONTRACTOR TO VERIFY ALL SUCH CONDITIONS TO HIS SATISFACTION. NO CHANGE IN CONTRACT PRICE WILL BE GRANTED FOR FAILURE TO OBSERVE THIS REQUIREMENT.
- THE CONTRACTOR SHALL, FOR HIS OWN PROTECTION, VERIFY THE PRESENCE AND LOCATION OF ALL UTILITIES PRIOR TO COMMENCING ANY CONSTRUCTION.
- FLAG ALL TREE LOCATIONS AND PAINT ALL BEDLINES FOR LANDSCAPE ARCHITECT'S ON-SITE REVIEW AND APPROVAL PRIOR TO BEGINNING PLANTING OPERATIONS.
- ALL PLANTED AREAS SHALL RECEIVE SHREDDED PINE BARK MULCH TO A DEPTH OF 3" AFTER SETTLEMENT.
- PLANTED SLOPES GREATER THAN 3:1 TO RECEIVE PINE STRAW MULCH TO 3" DEPTH AFTER SETTLEMENT.
- ALL SHRUB AREAS SHALL RECEIVE TOPSOIL TO A MINIMUM DEPTH OF 8". ALL SODDED AREAS SHALL RECEIVE TOPSOIL TO A MINIMUM DEPTH OF 4", UNLESS DIRECTED OTHERWISE.
- FERTILIZATION SCHEDULE: AMEND PLANTING MIX OF EACH PLANT WITH FERTILIZER AS FOLLOWS:

PLANTING	AMOUNT PER PLANT	TYPE
#1 POT	1/4 CUP	6-12-12 OR 5-10-10
#2 POT	1/2 CUP	6-12-12 OR 5-10-10
#3 POT	3/4 CUP	6-12-12 OR 5-10-10
FLOWERING/ SHADE TREE	1 CUP PER 1/2" CAL.	6-12-12 OR 5-10-10
- REMOVE BASE MATERIAL FROM PLANTING AREAS BEFORE PLANTING OPERATIONS BEGIN.
- NO PLANT MATERIAL WILL BE SET WITH ROOT CROWN LOWER THAN SURROUNDING GRADE. SET TREES WITH ROOT CROWN 2" TO 4" ABOVE SURROUNDING GRADE; SET SHRUBS WITH ROOT CROWN 1"-2" ABOVE SURROUND GRADE.
- DE-WEED ALL EXISTING BED AREAS TO REMAIN ALONG MONTCLAIR ROAD AND ADD SHREDDED MULCH AS REQUIRED.
- BACKFILL NEW ISLAND AREAS WITH TOPSOIL. MOUND TOPSOIL TO A HT. OF 1/12" FT. (MEASURED FROM CENTER OF ISLAND TO BACK OF CURB). ADD TOPSOIL AS REQUIRED TO ALL EXISTING ISLAND AREAS TO REMAIN TO CREATE A MOUND OF MATCHING HEIGHT.

VILLAGE PLACE RENOVATION
WEDGWORTH CONSTRUCTION
BIRMINGHAM, AL



REVISIONS:
ISSUED: OCTOBER 6, 2014
SHEET TITLE: PLANTING PLAN
DRAWN: CMP CHECKED: TRH SHEET L-6
SEQUENCE: 5 OF 6 PROJECT No. C14638

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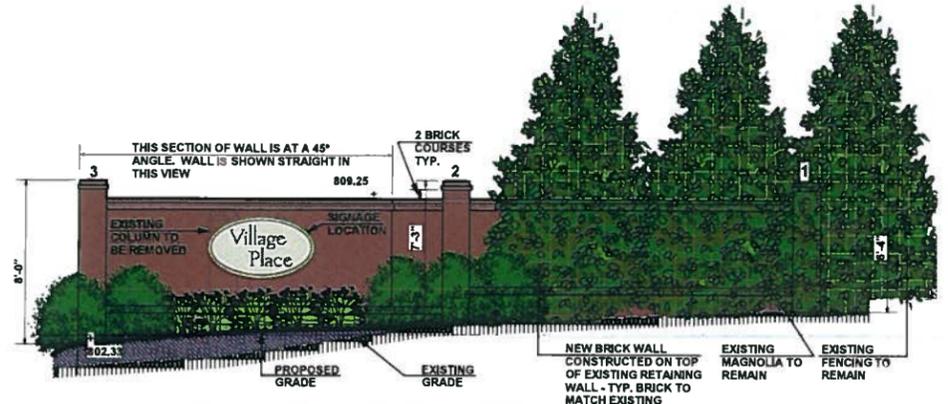
HNP
landscape architecture
1814 28th Avenue South
Birmingham, Alabama 35208
phone 205.870.8838
fax 205.871.8874

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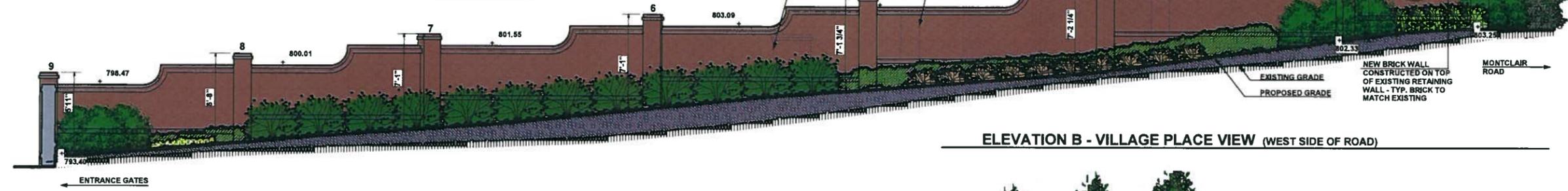
VILLAGE PLACE RENOVATION
WEDGWORTH CONSTRUCTION
BIRMINGHAM, AL



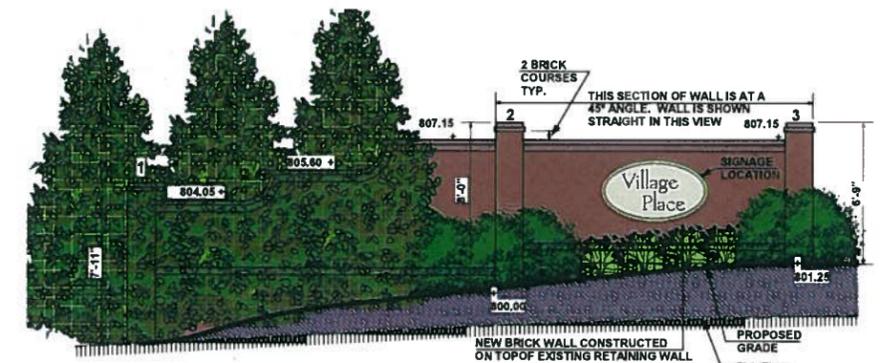
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ISSUED: OCTOBER 6, 2014
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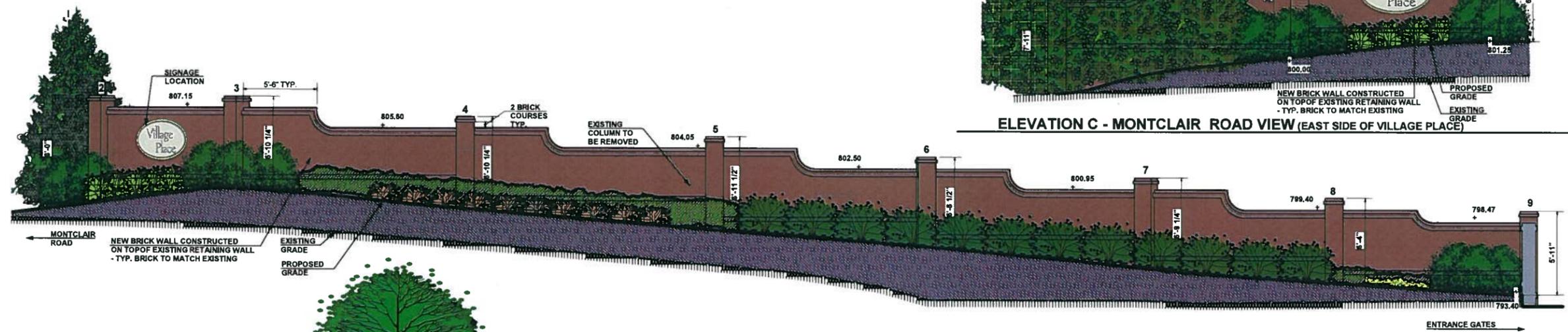
ELEVATION A - MONTCLAIR ROAD VIEW (WEST SIDE OF VILLAGE PLACE)



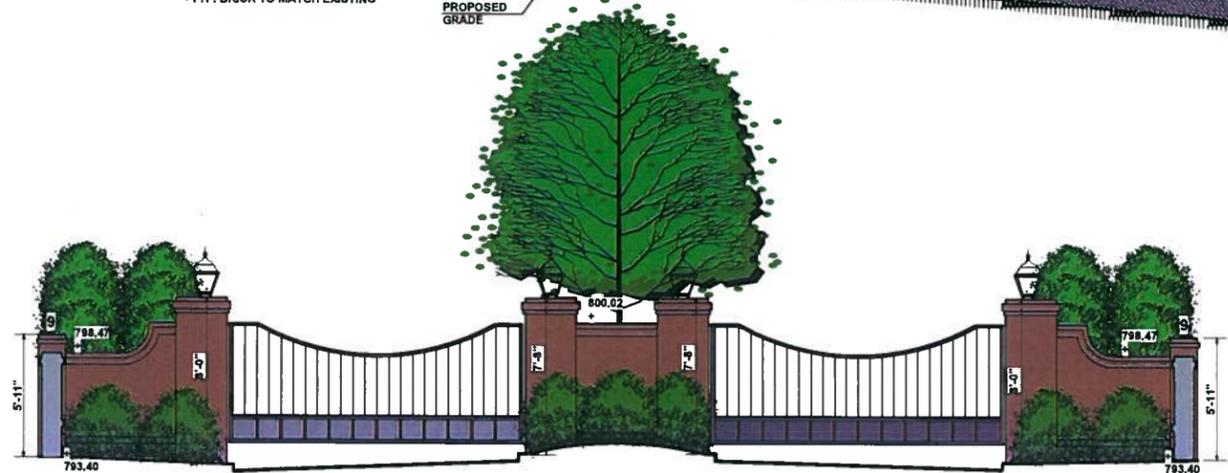
ELEVATION B - VILLAGE PLACE VIEW (WEST SIDE OF ROAD)



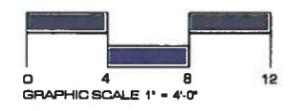
ELEVATION C - MONTCLAIR ROAD VIEW (EAST SIDE OF VILLAGE PLACE)



ELEVATION D - VILLAGE PLACE VIEW (EAST SIDE OF ROAD)

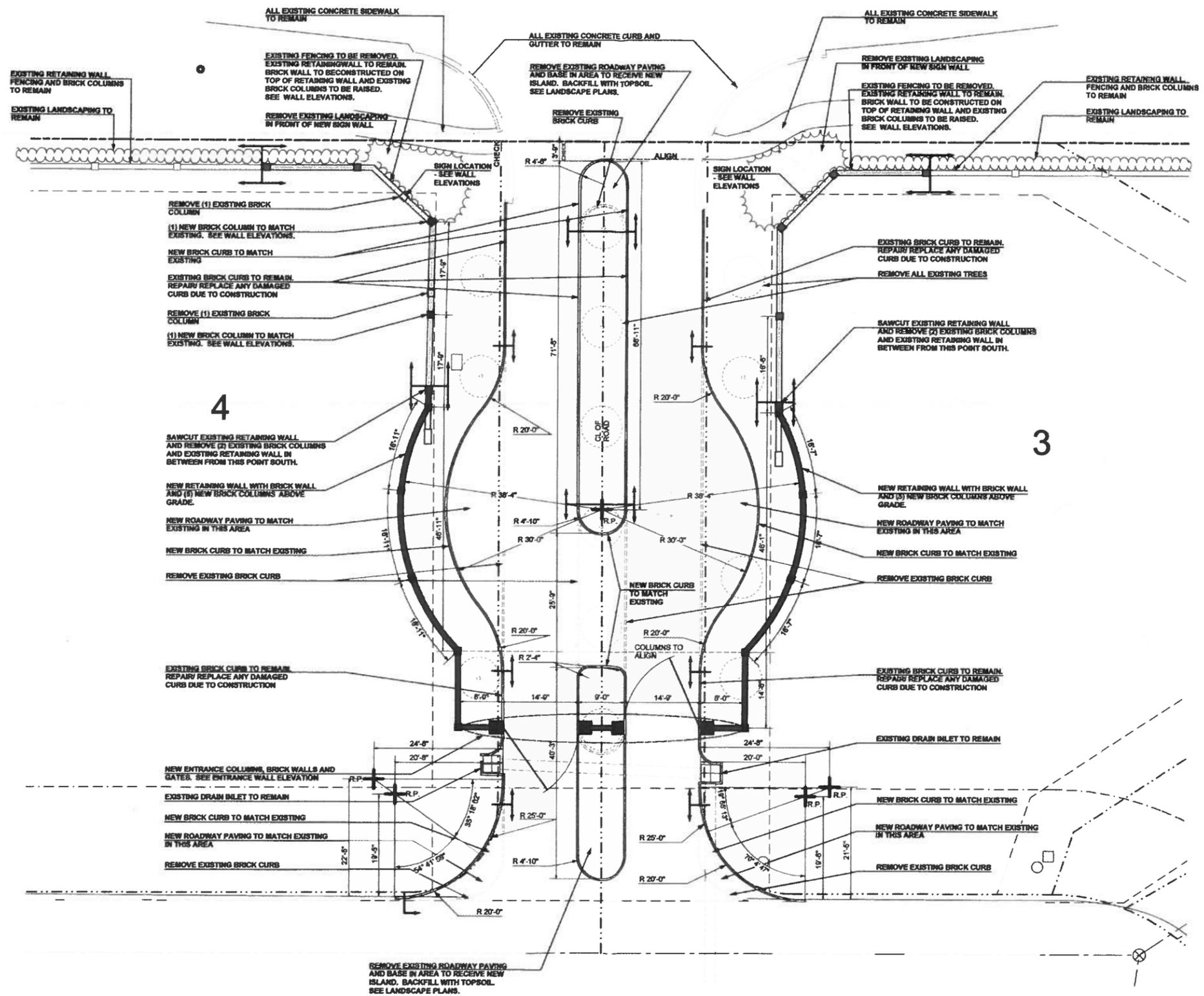


ELEVATION E - ENTRANCE GATES (BOTTOM OF ENTRANCE ROAD)



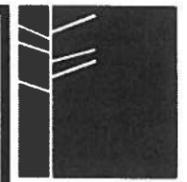
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MONTCLAIR ROAD



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HNP
landscape architecture
1814 28th Avenue South
Birmingham, Alabama 35209
PHONE 205.870.8836
FAX 205.871.8874

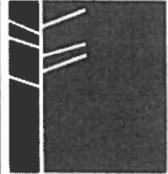
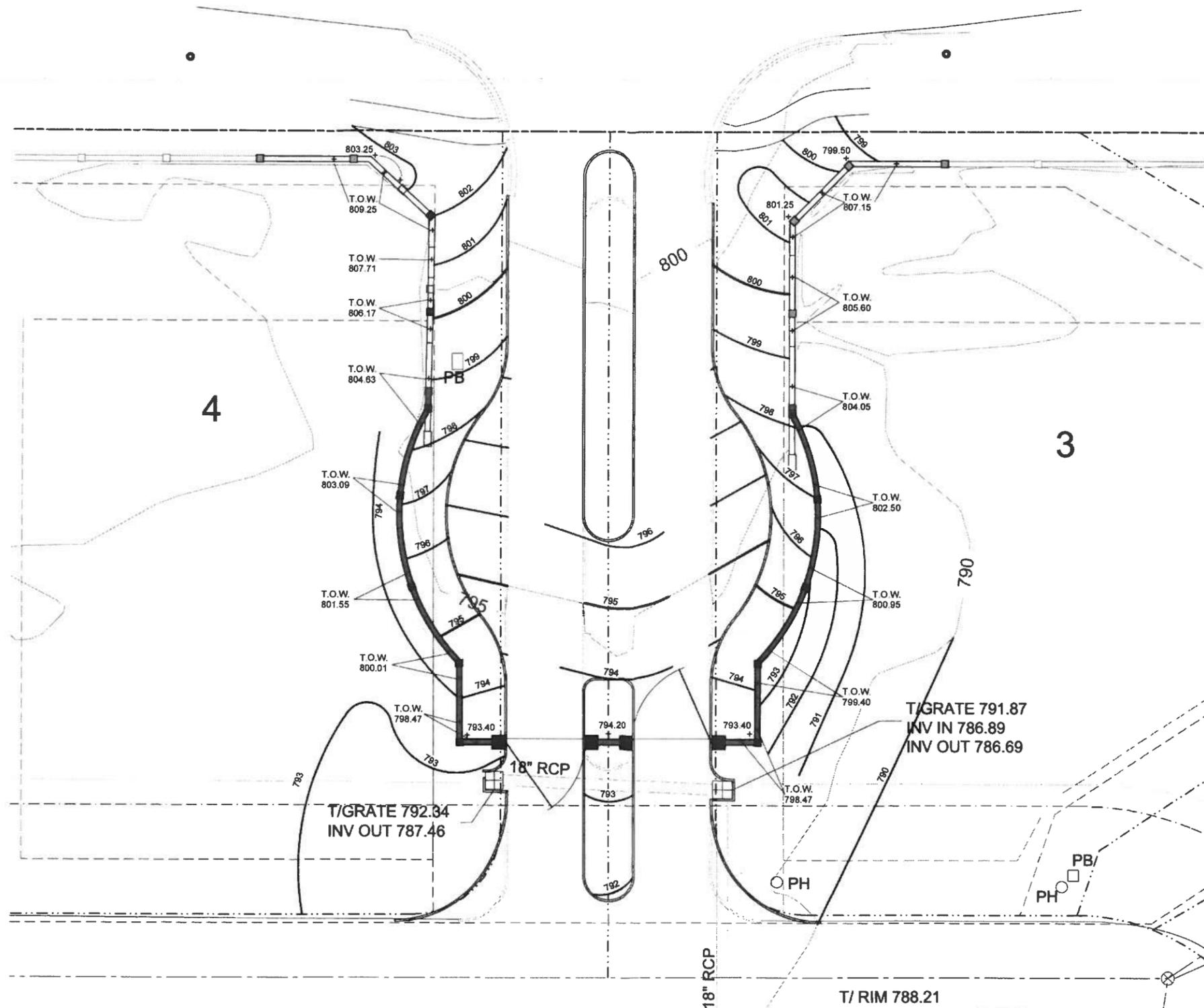
PILGRIM PLACE RENOVATION
WEDGWORTH CONSTRUCTION
BIRMINGHAM, AL



REVISIONS:
ISSUED: JULY 01, 2014
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DRAWN: CAP CHECKED: TRH
SHEET
L-1
SEQUENCE: 1 OF 5
PROJECT No: C1406

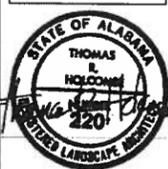
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MONTCLAIR ROAD



HNP
landscape architecture
1814 28th Avenue South
Birmingham, Alabama 35209
tel 205.870.8638
fax 205.871.8974

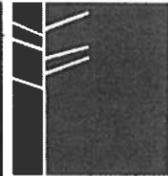
PILGRIM PLACE RENOVATION
WEDGWORTH CONSTRUCTION
BIRMINGHAM, AL



REVISIONS:
ISSUED: JULY 01, 2014
SHEET TITLE: GRADING PLAN
DRAWN: CMP CHECKED: TRH SHEET L-2
SEQUENCE: 2 OF 5 PROJECT No: C14036

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landscape architecture
1814 25th Avenue South
Birmingham, Alabama 35209
205.670.6939
205.671.6974

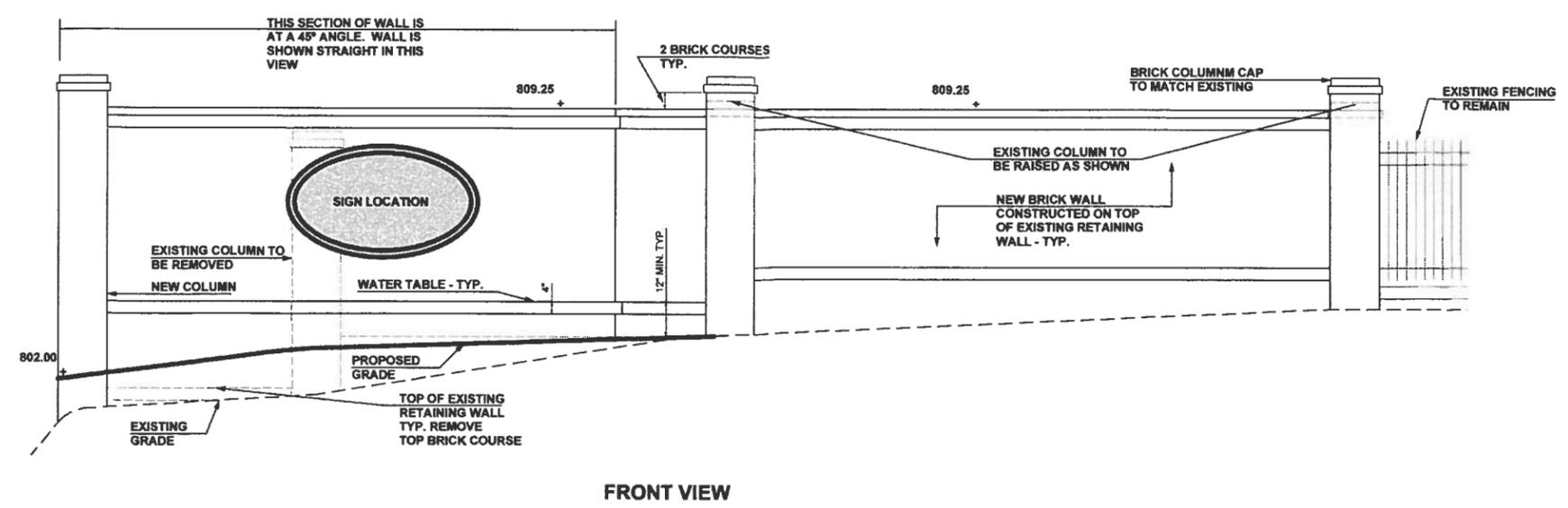
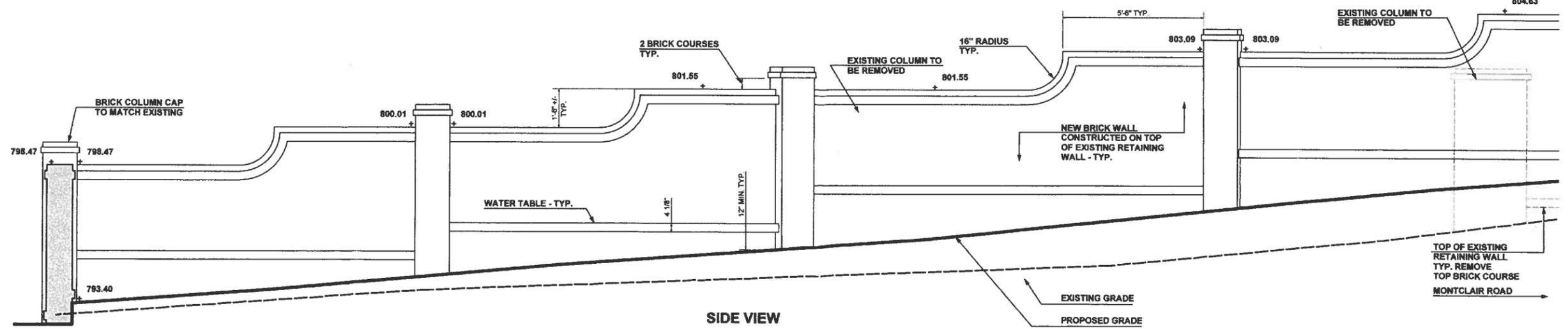
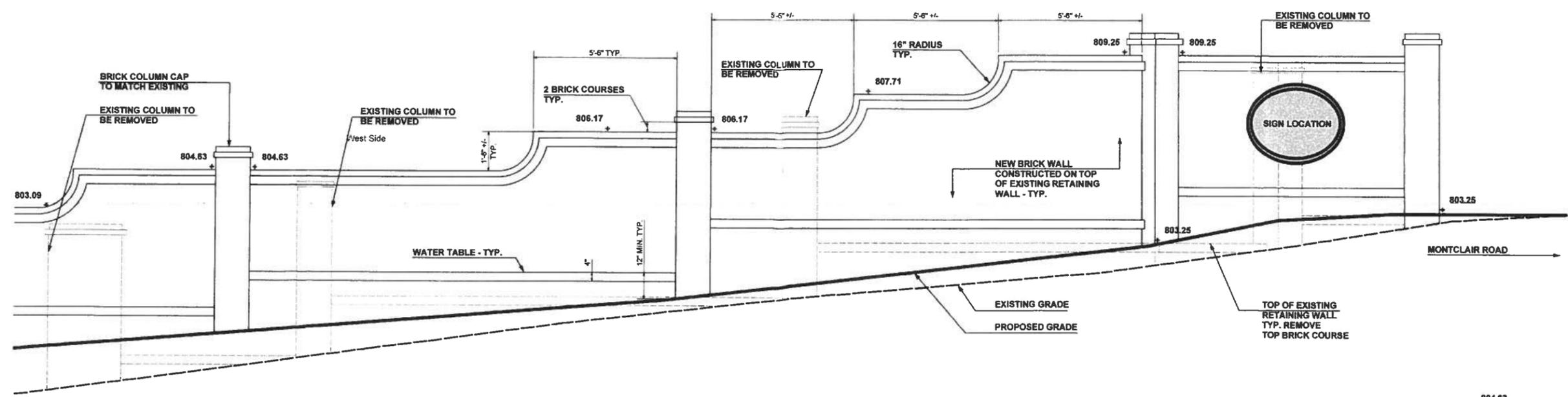
PILGRIM PLACE RENOVATION
WEDGWORTH CONSTRUCTION
BIRMINGHAM, AL

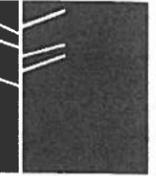


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ISSUED: JULY 01, 2014
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SEQUENCE: 3 OF 5 PROJECT No C14036

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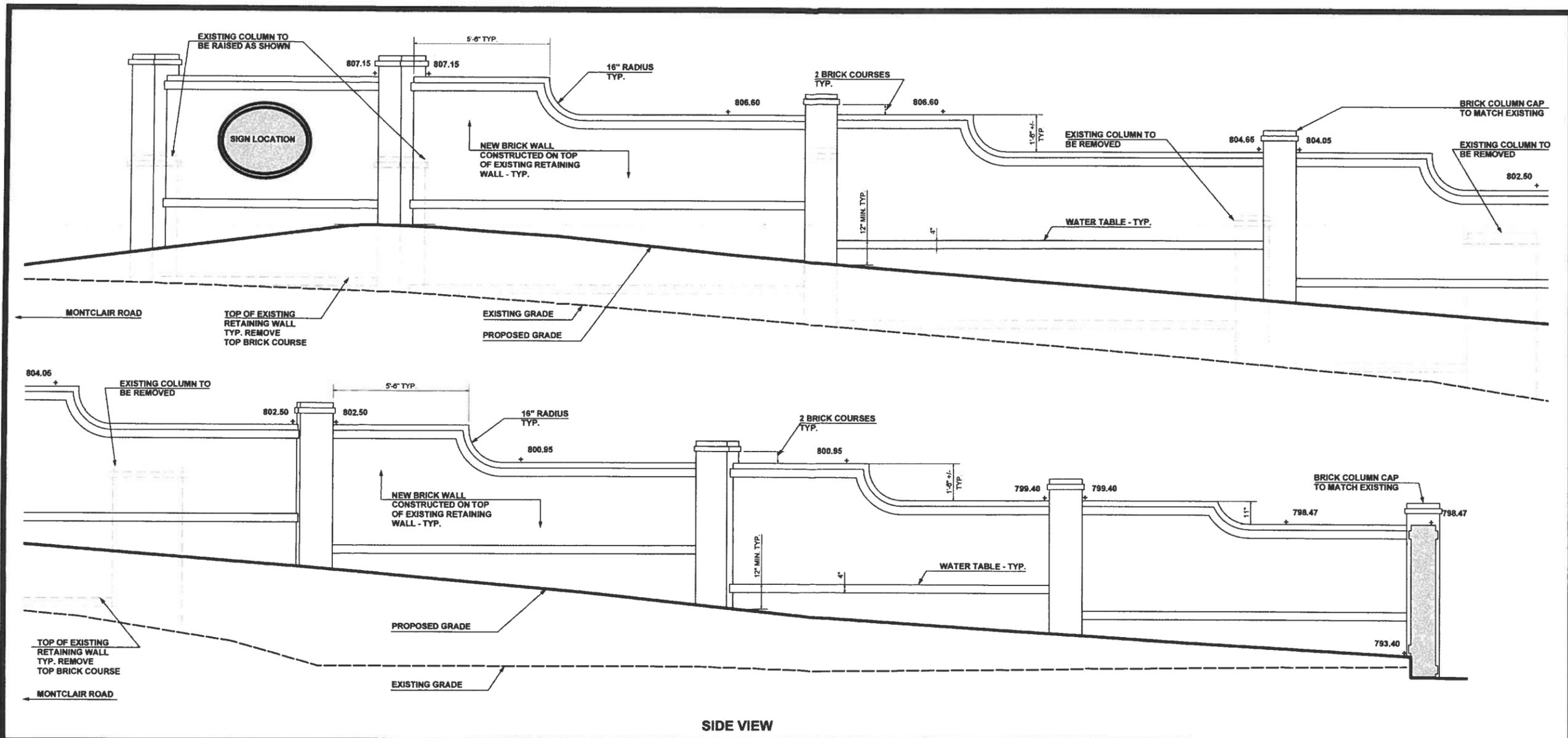
HNP
landscape architecture
1914 28th Avenue South
Birmingham, Alabama 35209
Phone 205.873.9939
Fax 205.871.8974

PILGRIM PLACE RENOVATION
WEDGORTH CONSTRUCTION
BIRMINGHAM, AL

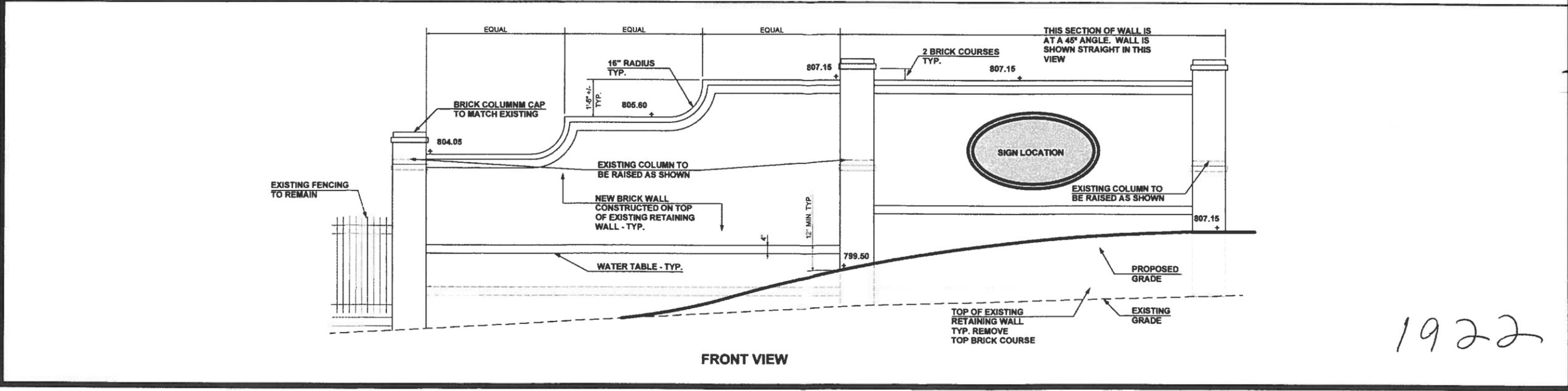


REVISIONS:
ISSUED: JULY 01, 2014
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L-4
SEQUENCE: 4 OF 5 PROJECT No: C14006

18



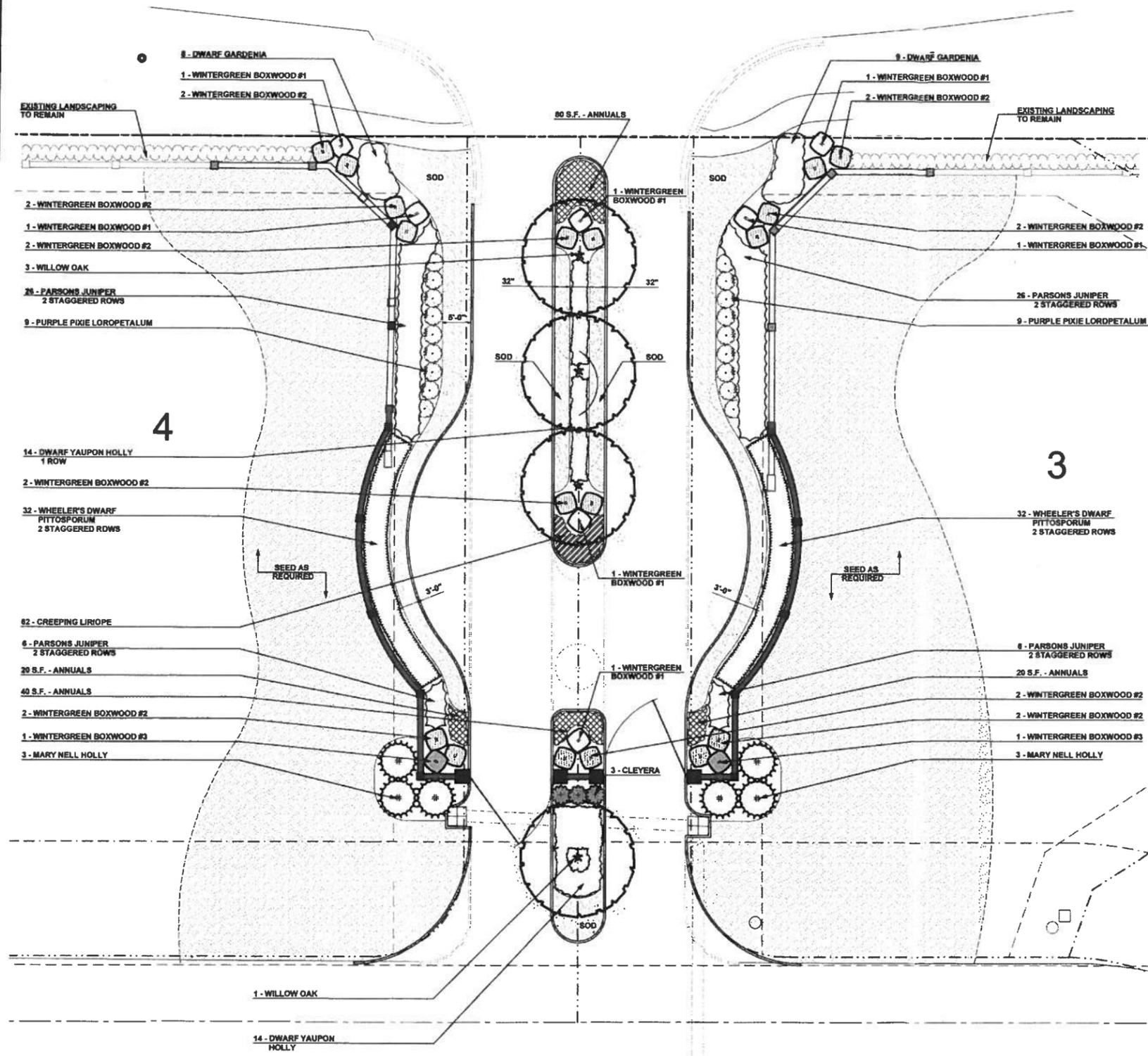
SIDE VIEW



FRONT VIEW

1922

MONTCLAIR ROAD



PLANT MATERIAL SCHEDULE

QTY.	BOTANICAL NAME	COMMON NAME	SIZE	ROOT	REMARKS
4	TREES <i>Quercus phellos</i>	Willow Oak	3'-3 1/2" c.	B&B	Strong Central Leader
7	SHRUBS <i>Buxus microphylla koreana</i> 'Wintergreen' #1	Wintergreen Boxwood #1	24" x 24"	B&B	As Shown
18	<i>Buxus microphylla koreana</i> 'Wintergreen' #2	Wintergreen Boxwood #2	30" x 30"	B&B	As Shown
2	<i>Buxus microphylla koreana</i> 'Wintergreen' #3	Wintergreen Boxwood #3	36" x 36"	B&B	As Shown
3	<i>Cleyera japonica</i>	Cleyera	15"-18" ht.	Cont.	As Shown
17	<i>Gardenia jasminoides</i> 'Radicans'	Dwarf Gardenia	15"-18" sp.	Cont.	3' O.C.
49	<i>Ilex vomitoria</i> 'Nana'	Dwarf Yaupon Holly	15"-18" sp.	Cont.	3' O.C.
6	<i>Ilex</i> x 'Mary Nell'	Mary Nell Holly	7'-8" ht.	Cont.	As Shown
6	<i>Juniperus davurica</i> 'Parsonii'	Parsons Juniper	15"-18" sp.	Cont.	3' O.C.
12	<i>Loropetalum chinensis</i> 'Purple Pixie'	Purple Pixie Loropetalum	12"-15" sp.	Cont.	3' O.C.
64	<i>Pittosporum tobira</i> 'Wheeler's Dwarf'	Wheeler's Dwarf Pittosporum	15"-18" sp.	Cont.	3' O.C.
180 S.F.	GROUND COVER Annuals		Flats	Flats	8" O.C.
62	<i>Liriope spicata</i>	Creeping Liriope	2 1/4" pot	Cont.	12" O.C.
As Req'd.	GRASSES <i>Cynodon dactylon</i>	Common Bermuda	Seed		
As Req'd.	<i>Zoysia emerald</i>	Emerald Zoysia	Seed		

PLANTING NOTES:

- CONTRACTOR TO VERIFY ALL PLANT MATERIAL QUANTITIES AND PLANTING AREA DIMENSIONS PRIOR TO BEGINNING PLANTING. PROVIDE QUANTITIES AS REQUIRED TO MEET DESIGN INTENT.
- GRAFTED PLANT MATERIAL IS NOT ACCEPTABLE.
- DUE TO MODIFICATIONS MADE DURING CONSTRUCTION, SITE CONDITIONS MAY VARY FROM THOSE SHOWN. CONTRACTOR TO VERIFY ALL SUCH CONDITIONS TO HIS SATISFACTION. NO CHANGE IN CONTRACT PRICE WILL BE GRANTED FOR FAILURE TO OBSERVE THIS REQUIREMENT.
- THE CONTRACTOR SHALL, FOR HIS OWN PROTECTION, VERIFY THE PRESENCE AND LOCATION OF ALL UTILITIES PRIOR TO COMMENCING ANY CONSTRUCTION.
- FLAG ALL TREE LOCATIONS AND PAINT ALL BEDLINES FOR LANDSCAPE ARCHITECT'S ON-SITE REVIEW AND APPROVAL PRIOR TO BEGINNING PLANTING OPERATIONS.
- ALL PLANTED AREAS SHALL RECEIVE SHREDDED PINE BARK MULCH TO A DEPTH OF 3" AFTER SETTLEMENT.
- PLANTED SLOPES GREATER THAN 3:1 TO RECEIVE PINE STRAW MULCH TO 3" DEPTH AFTER SETTLEMENT.
- ALL SHRUB AREAS SHALL RECEIVE TOPSOIL TO A MINIMUM DEPTH OF 8". ALL SODDED AREAS SHALL RECEIVE TOPSOIL TO A MINIMUM DEPTH OF 4", UNLESS DIRECTED OTHERWISE.
- FERTILIZATION SCHEDULE: AMEND PLANTING MIX OF EACH PLANT WITH FERTILIZER AS FOLLOWS:

PLANTING TYPE	AMOUNT PER PLANT	TYPE
#1 POT	1/4 CUP	6-12-12 OR 5-10-10
#2 POT	1/2 CUP	6-12-12 OR 5-10-10
#3 POT	3/4 CUP	6-12-12 OR 5-10-10
FLOWERING/ SHADE TREE	1 CUP PER 1/2" CAL.	6-12-12 OR 5-10-10
- REMOVE BASE MATERIAL FROM PLANTING AREAS BEFORE PLANTING OPERATIONS BEGIN.
- NO PLANT MATERIAL WILL BE SET WITH ROOT CROWN LOWER THAN SURROUNDING GRADE. SET TREES WITH ROOT CROWN 2" TO 4" ABOVE SURROUNDING GRADE; SET SHRUBS WITH ROOT CROWN 1"-2" ABOVE SURROUNDING GRADE.
- DE-WEED ALL EXISTING BED AREAS TO REMAIN ALONG MONTCLAIR ROAD AND ADD SHREDDED MULCH AS REQUIRED.
- BACKFILL NEW ISLAND AREAS WITH TOPSOIL. MOUND TOPSOIL TO A HT. OF 1 1/2" FT. (MEASURED FROM CENTER OF ISLAND TO BACK OF CURB). ADD TOPSOIL AS REQUIRED TO ALL EXISTING ISLAND AREAS TO REMAIN TO CREATE A MOUND OF MATCHING HEIGHT.

HNP
landscape architecture
1914 28th Avenue South
Birmingham, Alabama 35206
Phone: 205.970.8938
Fax: 205.871.8674

PILGRIM PLACE RENOVATION
WEDGORTH CONSTRUCTION
BIRMINGHAM, AL



REVISIONS:
ISSUED: JULY 01, 2014
SHEET TITLE: PLANTING PLAN
DRAWN: CMP CHECKED: TRH SHEET
L-5
SEQUENCE: 3 OF 5 PROJECT NO: C14038

1922

Letter from Mike Byrne

Letter To The Mountain Brook City Council and Mayor
October 8, 2014

In 2007, the Pilgrim Place PUD was approved. In Article II, Paragraph 13 of Pilgrim Place's Covenants, which were approved during the PUD process, the developer was required to selectively remove the invasive plants in the buffer areas (those areas outside of the walls other than along Montclair Road) and replant using native trees and shrubs. Article II, Paragraph 13 also said, "All such selective cutting and replanting shall be accomplished in accordance with a landscape plan which has been approved by both the City's arborist and the Developer's landscape architect. The said landscape plan shall include the standards by which the Buffer Area shall be maintained." Unfortunately, seven years later, no such landscape plan was ever agreed upon and, at least along Cross Ridge Road and Rockbrook Circle with which I am very familiar, not a single invasive plant has been removed nor native plant planted, other than by one of the neighbors who, growing weary of the trashy appearance of Pilgrim Place and at her own expense, had the folks that work in her yard go plant some shrubs along Cross Ridge Road. The buffer areas along Cross Ridge Road and Rockbrook Circle now resemble a jungle and are an unsightly mess. It is exactly the kind of neglect of property maintenance outside of Pilgrim Place's walls that the neighbors feared when the PUD was approved.

Now, however, is a new day. When Mr. Wedgworth purchased Pilgrim Place's unsold properties, he set out immediately to work with the neighbors to address their concerns. The neighbors have met on-site with Mr. Wedgworth and have had numerous emails and phone calls with him. While we didn't initially agree upon everything, and still have minor differences, Mr. Wedgworth has accommodated our major issues. Not insignificantly, as part of his request to the City Council, he is submitting the landscape plan long ago called for under the Covenants.

During the first weekend of this month, a petition was circulated among the neighbors of Pilgrim Place stating their position regarding maintenance of the buffer areas. As of the date of this writing, almost 40 neighbors have signed the petition, including my wife and me. Our goal was to present this petition to the City Council to assist in the formulation of a landscape plan, which was not yet in a form acceptable to many of the neighbors as of that first weekend.

While I cannot, and do not, speak for all of my neighbors, my wife and I wish to thank Mr. Wedgworth for continuing to work through our differences. Based upon the landscape plan he emailed me and several of my neighbors on the morning of October 8, a copy of which is attached, my wife and I fully support his request to the City Council. We wish him success in his development of what he is now calling Village Place.

While we are impressed by Mr. Wedgworth's willingness to listen to our needs

and find common ground, we are still uncertain as to the enforcement mechanism should the landscape plan not be followed. Our concern is not with Mr. Wedgworth, but years down the road when he has built all of the homes in Village Place and is no longer actively engaged. What is the enforcement mechanism against an HOA that has the responsibility under their Covenants, which were agreed upon as part of a PUD, to maintain the area? Our strong preference, given the last seven years, is for the City to have the authority to enforce the obligation to maintain the buffer area. What we would like to avoid is for an individual citizen near the buffer area having to personally sue the HOA should the landscape plan not be followed.

Thank you for your consideration.

Sincerely,

Mike and Gayle Byrne
308 Cross Ridge Road

Attachment: Mr. Wedgworth's landscape plan as of October 8, 2014

Landscape Plan

October 8, 2014

Dedicated Green Space and Development Plan Guidelines

The dedicated green space and development plan is the landscape plan standards as set out in Article II, paragraph 13 of the declaration of protective covenants, restrictions, easements and agreements for Pilgrim Place recorded on 1-15-2008 in map book LR200801, page 18027. Prepared by Landscape Architect, Tommy Holcombe (Holcombe Norton Partners) and Mike Wedgworth, Developer. Reviewed by Don Cafaro, Mountain Brook City Arborist.

Winter 2014-2015

See Master Re-Development Plan which denotes Areas "A," "B" & "C."

Area A: Southeast side of Property located between the existing creek and Rockbrook Circle. This area is bordered by Cross Ridge Road to the east and end of cul-de-sac on Rockbrook Circle.

Perform selective cutting of privet, mimosa, ivy, bamboo and other non-native, invasive plants. The intent and goal is the removal of non-native and invasive plants. The work of cutting and removing the non-native and invasive plants will be mostly performed by hand and will avoid the removal of native and otherwise desirable plant material.

Area B: Area bordered by Cross Ridge Road to the east and end of cul-de-sac on Rockbrook Circle to the west located between the creek and existing retaining wall.

The majority of the area between the creek and the existing retaining wall has experienced explosive growth of mostly brushy understory plants. This is due to the increase in sunlight reaching the ground when the area was cleared for the construction of the wall. This brushy understory growth is predominantly non-native and invasive plant material with a density that makes it impractical to remove these species selectively and by hand in all cases. In the most of this area, a mechanical brush cutter will be employed to mulch the existing plant material into an organic layer of chips and shavings to be left on site. This layer of mulch will reduce the ability of the plant material to regenerate itself. Where possible, the area on the Village Place side of the creek and closer to the creek will be selectively cut of any privet, mimosa, ivy and other invasive plants. No excavation or disturbance of the earth will be performed. The brush cutter will convert the brush to mulch to be used for ground cover. Once the non-native and invasive plants are removed, in the spring of 2015, the area will be treated with herbicide. This treatment will be repeated as necessary to eradicate the non-desirable material. Once the non-native and invasive species are under control (which should be in the fall of 2015) the remaining native trees will be augmented with additional plantings of a mix of native tree species such as red maple, oaks, poplars and spruce pine. These native species will be planted based on a standard reforestation density, with an overall density based on a 10'x10' spacing. The new plantings will occur throughout the areas where the undesirable material has been removed and where no native trees remain. The replacement trees will be 4 to 5 feet in height.

Area C: Area located between creek and existing retaining wall along Cross Ridge Road. This area has fewer large native trees due to the presence of an overhead power line. The density of the non-native and invasive plants is greater and the concrete retaining wall is considerably taller. The concern is that the concrete retaining wall will look worse than the invasive plants.

This area is so thick and out of control, removal of the undesirables will require use of the brush cutter, which will expose much of the concrete wall. To the greatest extent possible, the few larger native trees will be saved as well as smaller native trees. The intent will be to eliminate the non-native and invasive plants in the back portion of the area nearest the retaining wall leaving the front portion of the area immediately adjacent to the creek vegetated more or less as-is to serve as a visual buffer between Village Place and the existing homes along Cross Ridge Road. The area where the non-native and invasive plants are removed will be revegetated with a mix of native tree species such as red maple, oaks, poplars and spruce pine once the herbicide has effectively eradicated the undesirable plants. The remaining portion of this area will be cleared of non-native and invasive plants and revegetated with a mix of native shrubs and, to the extent that they would not interfere with power lines, a mix of native trees as described above in this Area C. This remaining portion will be completed in stages. Wedgworth will meet with the 4 residents directly across the street, and one representative of the remainder of the Cross Ridge neighborhood (to be selected by the 4 residents directly across the street), to review the staging options, and the area will be cleared and revegetated consistent with the staging preferences expressed by the 4 residents and the representative.

Spring/Summer 2015

Spray all areas with herbicide or other chemicals to selectively kill invasive plants emerging from the mulch layer. This spraying will continue as required until the non-native, invasive species are under control.

Winter 2015-2016

Plant native trees as described above, in areas where the undesirable species were removed to restore the woodland look between the creek and retaining walls. These trees will eventually provide the shade that will discourage the return of the non-native, invasive species and restore a sustainable wooded area.

Maintenance

Continue with selective removal of invasive plants and treatment with herbicide as required to maintain natural woodland.

General and clarifications

See Declaration of Protected Covenants Recorded on 1-18-08 in Jefferson County Map Book LR200801 Page 18027. Page 6 paragraph 11, 12 and 13 are attached hereto.

Wedgworth will meet with residents and be available to residents to be sure all understand.

We are also concerned about the safety of our workers selectively pruning the extremely thick brush area on the Village Place side of the retaining wall. It would be impossible to avoid snakes that do like this type of environment.

Additionally the winter months will have less foliage so will be more accessible and less volume mulch.

Mulch left on site will help the soil condition as well as to kill smaller weeds off.

"MAINTENANCE OF GREEN SPACES OUTSIDE THE PERIMETER WALL BY VILLAGE PLACE HOA - Upon completion of the initial eradication of unwanted, invasive vegetation, and planting of desirable plants and trees in the green spaces on the exterior of the Village Place perimeter wall (as described in the landscaping plan herein), the subject green spaces shall be maintained by Village Place HOA in a manner which reasonably will control and further eradicate non-native, invasive vegetation (e.g., privet, bamboo, ivy, climbing vines, mimosas, weeds, etc.) and conform to City laws, ordinances, and regulations in a reasonably attractive state consistent with neighborhood standards."

Neighborhood Petition

Petition From The Neighbors Of Pilgrim/Village Place
October 6, 2014

Background

In 2007, the Mountain Brook City Council approved a PUD application for the Pilgrim Place development bordering on Montclair Road, Cross Ridge Road, Rockbrook Circle, and Gaywood Circle. There is a wall around the development with the planned houses inside the development facing inward, i.e., away from the wall and the surrounding neighbors. On all of the roads except Montclair, the wall is above ground level, i.e., is visible from the neighbors' yards. Furthermore, the walls were not constructed on the perimeter of the Pilgrim Place property. Thus, the owners of lots in Pilgrim Place bordering Cross Ridge Road and Rockbrook Circle will have title to land on both sides of the walls. The neighbors of the development expressed concern that since the property outside of the raised walls would not be visible to the homeowners within the development that the maintenance of those areas would not be up to standard. Furthermore, during the time when the developer first purchased the land and the construction of the walls, the Pilgrim Place property outside of the walls had started to become overgrown with invasive plants. Based upon much input from the neighbors of Pilgrim Place, the PUD required the developer to work with the City's Arborist to develop a plan to eradicate the invasive plants and to plant and maintain native shrubs and trees in a manner to generally hide the raised walls from the view of the neighbors. The plan was to be provided to the neighbors for review and input before work commenced.

To our knowledge, the developer never presented a plan to the Arborist or the neighbors, nor was any effort made to eradicate the invasive plants or plant native shrubs and trees. The situation now is exactly what the neighbors feared at the time—as they look out their front yards and drive or walk through the area, they face an unkempt jungle of invasive plants and weeds.

Current Situation

Mike Wedgworth recently purchased Pilgrim Place from the prior developer. He and his landscape architect met on-site with some of the neighbors to hear our concerns and our objectives. We have also had a significant amount of email communication with him. Mr. Wedgworth seems to understand our concerns, and has expressed a willingness to work with us. We thank him for that. And, from our perspective, a successful Pilgrim/Village Place development is in our best interest. Thus, we wish him well.

To clarify our position to the Planning Commission and the City Council regarding the upkeep of the property outside of the walls, we request the following be included in some form within the amended PUD. We believe each of these points is consistent with our discussions with Mr. Wedgworth. Furthermore, with the inclusion of the items below in the amended PUD, we fully support and endorse the amended PUD application.

- The Pilgrim/Village Place developer and subsequently the HOA has the obligation to clear invasives from areas between the walls and Cross Ridge Road and Rockbrook Circle and from areas between the walls and private property on Gaywood Circle. This obligation
 - Applies to property directly owned by lot owners of Pilgrim Place as well as the public rights of way that extend from those property lines to Cross Ridge Road and Rockbrook Circle
 - Includes property both inside of and outside of the creek that borders Cross Ridge Road and Rockbrook Circle

- Is to be satisfied with selective removal by hand. In the instances in which the invasives are so large and well established as to not be feasible to remove by hand, they shall be cut followed by painting of the stem(s) with a herbicide, not large scale mechanical removal
 - Within and along the banks of the streams (and in those places where storm water comes over the top of the walls), invasives must be cut, and not pulled, and the herbicide should be suitable for wetland or streamside application. Further the person applying the herbicide should be certified for herbicide or pesticide application.
- Must be begun as soon as possible, but no later than November 1, 2014 and end no later than September 30, 2017
 - The goal is to remove small areas at a time with native shrubs and trees planted in their stead
- The Pilgrim/Village Place developer and subsequently the HOA has the obligation to plant native trees and shrubs to, over time, generally shield the view of the raised wall from the neighbors on Cross Ridge Road and Rockbrook Circle. We expect new plantings to be not mature trees or shrubs, but to be smaller plantings that will grow over time.
- The Pilgrim/Village Place HOA has the on-going obligation to keep invasive plants to a minimum and have native trees and shrubs generally shield the view of the raised walls from the neighbors on Cross Ridge Road and Rockbrook Circle.
 - This is to be accomplished with periodic pulling, and where appropriate cutting, and planting at a frequency not less than 3 times per year

4. CONSIDERATION OF AN ORDINANCE (NO. 1748) LOWERING THE SPEED LIMIT ON SIMS AVENUE TO 15 MILES PER HOUR AND PROVIDE FOR PUNISHMENT FOR SPEEDING VIOLATIONS THEREOF (EXHIBIT 12)

Council President Smith introduced the ordinance in writing and invited questions and comments. There being none, she invited a motion.

Motion for the unanimous consent for the immediate consideration of the ordinance made by: Council member Clark.

Motion seconded by: Council member Pritchard.

Council President Smith then called for a vote on the motion with the following results:

Those who voted in favor of the motion: Thomas C. Clark, Jr., Bob Moody, William S. Pritchard, III, Virginia C. Smith, and Jesse S. Vogtle, Jr.

Those who voted against the motion: None.

Council President Smith thereupon declared that the motion carried by a vote of 5—0 and called for a motion regarding the ordinance.

Motion for approval made by: Council member Clark.

Motion seconded by: Council member Pritchard.

Council President Smith then called for a vote on the motion with the following results:

Those who voted in favor of the motion: Thomas C. Clark, Jr., Bob Moody, William S. Pritchard, III, Virginia C. Smith, and Jesse S. Vogtle, Jr.

Those who voted against the motion: None.

Council President Smith thereupon declared that the ordinance is hereby approved by a vote of 5—0.

5. CONTINUATION OF PUBLIC HEARING(S) TO CONSIDER ORDINANCE(S) (NOS. 1746 AND 1747) TO REZONE THE REAL PROPERTY LOCATED AT 3701 MONTCLAIR ROAD (PILGRIM CHURCH) FROM 1) RESIDENCE A DISTRICT TO RESIDENCE B DISTRICT AND 2) RESIDENCE B DISTRICT TO PLANNED UNIT DEVELOPMENT (PUD) DISTRICT (EXHIBITS 13 AND 14, APPENDIX 11)

Council President Smith introduced the ordinance(s) in writing and asked that participants in the public hearing refrain from repeating comments in the interest of time. She then called on representatives of the applicant to make their opening remarks.

Charlie Beavers, legal counsel for Bruce MacClary, applicant:

- Two (2) revised plans/drawings were distributed to the Mayor and City Council which reflect changes in the proposed development plan since the that last public hearing.
- The landscape architectural plans have yet to be revised to incorporate the most recent changes.
- Lots 1, 2, and 3 have been reconfigured in order to comply with a restrictive covenant imposed in a deed in 1952. This matter was addressed during the previous hearings before the Planning Commission and City Council. The applicant thought that the matter had been appropriately resolved, however, it was determined since the last hearing before the City Council that the parcel in question was in fact subdivided. Therefore, the reconfiguration of Lots 1, 2, and 3 is necessary in order to leave the parcel in question in tact wholly within Lot 1. A letter from Tom Crawford with the title insurer has been obtained and delivered to the City Attorney which affirms that the new plan does not violate the covenant and that his firm will underwrite the title insurance. There are some arguments as to whether these [11] covenants are even enforceable, however, the developer thought it easier and best to comply with the covenants.
- The number of lots within the development and the average size of the lots within the

development have not changed as a result of this reconfiguration.

- While Lots 1 and 9 are larger than the other lots within the development, none of the lots are less than 14,000 square feet in area and most are above 15,000 square feet in area.
- All of the changes being presented tonight are in response to issues raised by Mike and Gayle Byrne.
- The retaining wall at Lot 1 has been closed where previously some drainage flowed directly into the creek. By closing the retaining wall, all drainage from the development and beyond is now directed toward the center of the development where the storm drainage management system is located.
- The width of the buffer was slightly under 25 feet at one section. The buffer has been adjusted so that it is at least 25 feet wide (as measured from the bank of the creek) all of the way around the development [with the exception of the Montclair Road frontage area].
- The west perimeter wall extended toward the creek a little at two locations to add style and curve. At the request of the Byrnes, the developer will straighten the wall in order to stay off of the creek as far as possible.
- These are all of the changes to the plan itself. All other changes involve provisions of the covenants which, at present, are recorded in the form of handwritten notes. Accordingly, these changes must be formalized and will be delivered to the City Attorney for final review. These changes include:

1. The covenants have always run with the land. This provision has been bolded in the covenants to make it more apparent to the reader.
2. Paragraph 11 of Article 2 has been revised to make it clear that the green space area includes the center area of the development where the storm water management system is located.
3. All green areas are common areas and will be maintained by the Association.
4. Homeowners may not alter these areas except for maintenance in their natural states and for some parking as illustrated in the plans.
5. A buffer area paragraph was added to:
 - a) specifically identify the green buffer area,
 - b) that it will be left in its natural condition except as provided in another section that will be discussed later,
 - c) the buffer area cannot be used by the homeowners for personal use,
 - d) the wall placement will be determined at the time of construction in consultation with the City's Arborist as there are a number of trees within the buffer that are close to the wall that must be considered if they are to be saved,
 - e) the Association will have authority and responsibility to remove dead or diseased trees within the buffer area,
 - f) [at the request of the Byrne's] within the buffer area, the developer will perform selective cutting of any privet, mimosa, ivy or other such non-native, invasive plants (including bamboo) within the buffer area but not within the banks of the creek and the replanting of native trees and shrubs all [cutting and replanting] shall be accomplished in consultation with the City's Arborist and the developer's landscape architect. The re-plantings of native species shall be maintained by the property owners that about the area where such plants have been installed. If a homeowner fails to perform such maintenance, the Association has the authority to perform the maintenance and then assess the homeowner for the costs of such maintenance.

[In response to an inquiry by Council member Vogtle, Mr. Beavers stated that a specific budget for buffer plantings has not been established. The developer believes that the request will be reasonable and fair and has committed that he will comply with the requests. In addition, a bond as required by the City's ordinance, will be provided to the City in an amount to determined by the City's Building Inspection Superintendent based on the landscape plan prepared upon the completion of the consultation with the City's Arborist and the developer's landscape architect].

6. An irrigation system at the entrance way has been added in the provision of common areas to be maintained by the Association.
7. The wall is also to be maintained by the Association.
8. The entrance including lighting, planting and irrigation shall be maintained by the Association.

9. The pruning of dead and/or diseased trees within the buffer area shall be a responsibility of the Association.
 10. Regarding the amendment provision, the amendment provision cannot be amended without approval of the City Council.
 11. The general maintenance obligations of the Association have been expanded to include the right-of-way along Montclair Road (Article 9).
- The discussion last meeting about the possible need for a chain link fence, the developer will install silt fencing and hay bails, then construct the retaining wall, then backfill. There is no need for a chain link fence as the wall will provide all of the protection necessary.
 - Regarding the request last meeting about the need for another 10 foot buffer in addition to the 25 foot buffer, there was some misunderstanding about the storm water run-off. The Arborist misunderstood that there would be sheet run-off over the development. This is not the case as all run-off will be diverted to the center of the development making the additional buffer unnecessary.
 - The request for best management practices is already a requirement of local law.
 - If the Council sees fit to vote in favor of this application, Mr. Beavers requests that it do so under the condition that the final, recorded covenants be subject to review and approval by the City Attorney for compliance with representations made tonight as well as any other changes that may be deemed appropriate as the project goes back before the Planning Commission for the subdivision map approval and the final engineering plans approval by the Building Inspections Superintendent.

Council President Smith then invited questions and comments from proponents of the proposed rezoning and development plan. There being none, the floor was opened for opponents of the project.

Howard Downey of 3805 Rockbrook Circle:

- Regarding the buffer, it affects 12 of the 15 lots, it does not make sense to make individual property owners maintain their portions.
- Up until 6 or 7 years ago, someone maintained the grassy areas along Rockbrook Circle and Cross Ridge Road. Over the last 5 years, this area has not been maintained and as a result it has become overgrown.
- Suggests that maintenance of the buffer be assigned to the Association as has been done with the right-of-way along Montclair Road.

In response to an inquiry by Council President Smith, Mr. Beavers stated that the idea was for individual property owners to maintain native plantings installed pursuant the Arborist's recommendation as those property owners would have a vested interest in seeing those plantings survive.

Mr. Downy:

- With regard to the wall, wants to be sure everyone understands that the wall will be at least 25 feet from the inner creek bank.
- The building materials and design (poured concrete with brick veneer columns and stone cap) is also very important to the neighborhood.
- Regarding removal of undergrowth and the replanting of native species, wants the neighbors to be part of the discussions between the developer, Arborist and landscape architect.

Council member Vogtle:

- Is concerned about everyone's understanding of exactly what this buffer is expected to become.
- Believes that a budget should be established in order to gain a better understanding of what work will be done in the buffer and what can be expected in return.

Con Cafaro, City Arborist:

- Once the decision is made as to how the buffer will be constructed, the issue involves more of a matter of time and maintenance as opposed to money. Time for the native species to grow in and maintenance to prevent the invasive species from overtaking the planted natives plants.
- On the other hand, if a more heavily landscaped plan is pursued, then dollars for larger plant materials does become an issue.

Council President Smith:

- Expressed concern that the plan of leaving the buffer as is as was discussed at the last meeting has now changed so that the buffer will be cleaned-out and replanted.

Mr. Beavers:

- His understanding at the last meeting was that the neighbors wanted the buffer to be left as is. Since then, it appears that they want the buffer to be selectively cleaned and replanted with the expectation that the buffer will ultimately remain natural but without the invasive plants that are there now.

Council member Pritchard:

- Understood that the Association was going to maintain the common areas.
- Asked whether the developer or the Association would be responsible for trees that die as a result of construction. Mr. Beavers responded that the developer would take care of trees lost due to construction and that the Association would be responsible for the removal of trees in the buffer area once the development is complete.
- Believes that the Association should be responsible for the limited maintenance within the buffer area including the native plantings introduced as this is common area that cannot be used by the individual homeowners.

Mr. Beavers stated that the maintenance issues can be changed.

Council member Vogtle restated his concern that a planting budget should be developed in order for everyone to determine just how dense the buffer is going to be.

Council member Clark stated that it will be difficult to determine just how much planting will be necessary until after the wall is constructed.

Mr. Beavers:

- Agreed that developing a planting budget at this time would be difficult.
- Wants to make sure that everyone understands that the developer is not going to install a thick green wall around the development.
- Neighbors will see through the buffer inside the development.
- The view now is a big blue roof and a tin building. Once developed, the neighbors will see the backs of high-end, single-family dwellings.

Mr. Vare, landscape architect:

- The wall will be located roughly where the mowed area is located at present which should give some perspective of the depth of the buffer [before the wall is installed].
- In response to an inquiry from Council President Smith, the cleaning and replanting will be done immediately after the wall is constructed.

Council member Vogtle recounted an experience in his neighborhood where the budget for planting a buffer was woefully inadequate and, as a result, this neighborhood can now see houses where they could not before. With this in mind, feels a budget should be developed so everyone understands what is expected of the buffer.

Council member Pritchard stated that this will be the first project approved that will require a bond. Because a complete plan is not available right now, the budget cannot readily be determined. With a bond in place, there is some protection for the area.

Mr. Beavers:

- The bond will be required to pull the permit.
- To pull the permit, the landscape plans will have to be finalized which will be done after consultation with the City Arborist and landscape architect.
- The bond amount can be determined from the final landscape plan.

Mr. Vare:

- The landscape plan has not been done because the issue of whether to leave the buffer alone or to make improvements has been in flux.

Mr. Beavers:

- Knows of few homes where property owners do not see their neighbors' homes.

Council member Vogtle:

- The plans with respect to the buffer are 180° different from what was discussed at the last

- council meeting.
- Expressed concern that there may be some misunderstandings of what the buffer is going to look like.
- Once this plan is approved, sorting out misunderstandings about the buffer will become a more complicated issue.

Mr. Beavers:

- The wall will be sited in consultation with the City Arborist.
- At that time, it will also be determined what invasive plants are to be cut, poisoned, and removed and the type and location of replacement native plants.
- After that work has been done, a final landscape plan will be developed which will be presented to the Building Inspection Superintendent as a condition of pulling the permit.
- If agreement cannot be reached between the neighbors and developer as to the landscape plan, then the matter will likely come back before the City Council for review and instructions.
- The feeling is that the parties will be able to work this matter out.

Council President Smith confirmed with Mr. Beavers that the buffer is 25 feet in width as measured from the inner bank of the creek and the construction design and materials of the wall [issues raised by Mr. Downey]. After Mr. Beavers read from the covenants the description of the wall which included planting of ivy, a question arose why plant ivy along the wall if ivy is to be removed from the buffer area.

Mr. Beavers said the language about planting ivy along the wall can be deleted from the covenants.

Mr. Vare:

- There is a lot of ivy in the buffer.
- The vast majority of the creek bed is being held in place by ivy and should therefore not be removed.

Mr. Beavers:

- Originally, there was not going to be any removal of vegetation in the buffer.
- The language to clean-up the buffer was added only today.

Mr. Vare:

- Probably, some other material besides ivy should be planted along the wall and no ivy shall be removed from the buffer area.

Mr. Cafaro:

- A ground cover is not as big of an issue to the native plants as are a mid-level plants such as privet which will shade out the native plants that are to be introduced.
- If privet and other mid-level plants are to be replaced over time, the sooner the conversion can start, the more time the new native plants will have to establish themselves.

Mr. Beavers stated that he will remove the language referring to the removal of ivy.

Mr. Downey:

- If the houses were facing the neighborhood, the buffer would not be such an important issue.
- In his meeting with Mr. Cafaro, he believes that Mr. Cafaro's ideas about the buffer are consistent with what the neighborhood has expressed.
- Regarding the covenants, he wants there to be provision that the adjacent homeowners should receive notice of any meeting before the City Council where changes to the covenants are to be considered.
- None of the neighbors expect the buffer to be regularly pruned and maintained by the Association, however, it is important that what maintenance is required be the responsibility of the Association.

Laura Cotlin of 28 Cross Ridge Road:

- Still does not understand how the property can be re-zoned from A to B and then from B to PUD when this development does not conform to the requirements of Residence B.
- Would prefer to see the number of homes reduced.
- Would prefer to be facing houses. Because this is not the case, the buffer is critical and is concerned with the language proposed in the revise covenants which describes "selective cutting".
- Wants the buffer to be left in tact, especially during the construction phase.
- If cleaning is to occur, thinks that it should be done after the development is complete.

Mr. Cafaro:

- Thinks that any cutting would be done by hand and drug out as opposed to heavy equipment.

Mr. Beavers:

- Recognizes that some folks don't want anything done and others want the buffer cleaned-up.
- The developer is pleased to handle the buffer either way.
- Mr. Cafaro is correct in that any clearing will be done by hand.

Council member Clark:

- Thinks the Arborist will be looking out for the best interests of the City and is comfortable with his recommendations with respect to selective cleaning and re-planting.

Council member Vogtle:

- Asked whether the City Council will see the final landscaping plan to which Mr. Beavers said likely not unless there are some disagreements that cannot be resolved.

Gayle Byrne of 308 Cross Ridge Road:

- Is a member of the Cahaba River Society and asked them to comment on the plans when they were originally proposed.
- Mr. Cafaro's ideas are in sync with those of the Cahaba River Society which is to carefully cut back non-native invasives without disturbing their roots, paint with a herbicide, wait to see if the plants are dead, and then re-introduce natives—the area can be improved. She and her husband have been calling for this type of plan all along.

Council President asked whether the Council was prepared to vote on this matter now.

Council member Vogtle stated that he was ready to vote and noted that this application was debated at length by the Planning Commission.

Council member Pritchard:

- Agrees with Council member Vogtle.
- Commends the efforts of Mr. Beavers and his client in their efforts over the past two weeks to accommodate the neighbors' requests.
- Questions whether everything that has been agreed to is written down and whether the Council is clear on exactly what is being voted on.

City Attorney Colvin:

- Wants to be sure that the Council understands everything that is being voted on considering the numerous changes made tonight.
- Wants any action to be contingent upon a final review by the City Attorney of the final documents.

Mr. Beavers:

- The changes were read from my [Mr. Beavers'] notes.
- Feels comfortable that all of the changes have been clearly articulated during this meeting.
- Is okay for the approval to be conditioned upon final review and approval by the City Attorney.

Council member Clark:

- Wants the City Attorney to report back at the next meeting of the City Council and, if everything is not in order, the ordinances can be repealed.

There being no further discussion, Council President Smith called for a motion regarding the proposed ordinance rezoning the property from Residence A District to Residence B District.

Motion for approval: Council member Clark.

Motion seconded by: Council member Vogtle.

After inviting questions or comments, Mr. Downey requested that he be allowed to review the final documents as well. It was determined that the final documents would be e-mailed to Mr. Downey by the City Attorney and that Mr. Downey would be welcome to attend the next Council meeting to hear the City

Attorney's report on his review of said documents. There being no further discussion, Council President Smith then called for a vote on the motion with the following results:

Those who voted in favor of the motion: Thomas C. Clark, Jr., Bob Moody, William S. Pritchard, III, Virginia C. Smith, and Jesse S. Vogtle, Jr.

Those who voted against the motion: None.

Council President Smith thereupon declared that the Ordinance rezoning the property from Residence A District to Residence B District is hereby adopted by a vote of 5—0.

Council President Smith then called for a motion regarding the proposed ordinance rezoning the property from Residence B District to Planned Unit Development (PUD) District.

Council member Clark made a motion for approval subject to a review and approval by the City Attorney of the final documents which shall include the various changes discussed at this meeting and, if the City Attorney is not satisfied with said documents, a report shall be made to the City Council on October 22, 2007, at which time the City Council shall take appropriate action to ensure the changes are recorded development plan documents.

Motion seconded by: Council member Pritchard.

Mayor Oden asked of Mr. Beavers whether 15 homes could be situated on this parcel in accordance with the Residence B District zoning requirements.

Mr. Beavers:

- The PUD requirement is that the density cannot exceed that which would have been allowed in the zoning immediately prior to the PUD rezoning.
- These lots all exceed 10,000 square foot minimums which is the Residence B District lot size requirement.
- Believes that more homes could be situated on the parcel under the Residence B regulations.

Mayor Oden:

- The Building Inspection Superintendent, who is not in attendance, told the Mayor that this configuration would not meet the Residence B regulations.
- Requests that this matter be continued until Mr. Weems gets back in town to confirm this statement.
- If 15 houses cannot fit in this area under the Residence B regulations, then the request is in direct violation of the PUD density requirement.
- In response to questions as to whether the PUD restriction was in the aggregate, the Mayor stated that the City Code does not say in the aggregate and read aloud from the PUD section of the zoning ordinance [emphasis on "other requirements" (aside from density) of the zoning district immediately prior to the PUD rezoning].

Mr. Beavers:

- Residence B regulations call for a minimum lot size of 10,000 square feet.
- This particular configuration would not meet all of the technical requirements of Residence B which is one of the reasons the applicant is requesting a PUD zoning. Another reason for requesting the PUD zoning is to lock in the development plan and prohibit future subdividing of lots.
- These lots are much larger than the 10,000 square feet Residence B requirements.
- The City Council has the authority to make a determination to approve this application.
- Is confident that this application meets the requirement of the City's ordinance.
- Understands the Mayor's question.

City Attorney Colvin stated that while the configuration would certainly be different if this development were proposed in a Residence B District, he is comfortable that the application meets the PUD requirements.

There being no further comments, Council President Smith then called for a vote on the motion with the following results:

Those who voted in favor of the motion: Thomas C. Clark, Jr., Bob Moody, William S. Pritchard, III.

Virginia C. Smith, and Jesse S. Vogtle, Jr.

Those who voted against the motion: None.

Council President Smith thereupon declared that the Ordinance rezoning the property from Residence B District to Planned Unite Development (PUD) District is hereby adopted by a vote of 5—0.

6. ADJOURNMENT

There being no further business to come before the City Council at this time, Council President Smith adjourned the meeting. The next meeting of the City Council will be Monday, October 22, 2007.

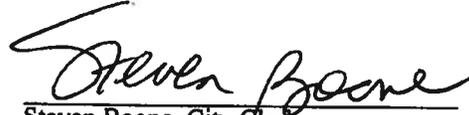

Steven Boone, City Clerk

EXHIBIT 1

RESOLUTION 07-144

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the Mayor or City Manager are hereby authorized and directed, for and on behalf of the City, to execute the purchase agreement between the City and The Stewart Organization, in the form as attached hereto as Exhibit 1, with respect to the purchase of a color copier for the Fire Department.

[See Appendix 2]

EXHIBIT 2

RESOLUTION 07-145

BE IT RESOLVED by the City Council of the City of Mountain Brook, Alabama, that the City Council hereby recommends to the State of Alabama, Alcoholic Beverage Control Board, the issuance of an 040 - Retail Beer - (On or Off Premises) and an 060 - Retail Table Wine - (On or Off Premises) licenses to CKJ Eateries, LLC (dba Newk's Express Cafe) located at 2800 Cahaba Village Plaza, Suite 130, 35243.

BE IT FURTHER RESOLVED that the City Clerk is hereby instructed to forward a copy of this resolution to the State of Alabama, Alcoholic Beverage Control Board.

[See Appendix 3]

EXHIBIT 3

RESOLUTION NO. 07-146

WHEREAS, the Fire Department of the City of Mountain Brook, Alabama has certain personal property which is no longer needed for public or municipal purposes, specifically, a 1986 Pierce Fire Pumper; and

WHEREAS, Section 11-43-56 of the Code of Alabama of 1975 implicitly authorizes the municipal governing body to dispose of unneeded personal property; and

MEMORANDUM

To: Lawrence T. "Terry" Oden Mayor
Ms. Virginia Carruthers Smith
Mr. Jesse S. Vogtle
Mr. Thomas C. Clark, Jr.
Mr. William S. Pritchard, III
Mr. Bob Moody

From: Whit Colvin

Date: November 8, 2007

Subject: Pilgrim Place

Over the last several weeks, I have been working toward finalizing the covenants relating to Pilgrim Place, primarily to ensure they comport with the Council's action of October 9, 2007, approving the Planned Unit Development application. The applicant has made a number of changes as requested, and I attach a copy of the latest version of the covenants and the Development Plan narrative for your review. I have also attached a "blackline" copy of page 9 of the covenants showing the most significant changes to the covenants, and a "blackline" copy of one minor change to the narrative included in the application.

My efforts have been focused on the buffer area and what exactly will be expected of the Developer and then the Association in terms of initial clearing, replanting and the maintenance. After a number of drafts, I am satisfied that the current covenants capture the letter and spirit of the Council's approval. Under the covenants, the Developer has agreed to develop a landscape plan with the input and participation of the City's Arborist. The plan will address the conditions in the Buffer Area, the material to be removed, the areas and details concerning planting of new vegetation and the plans for maintenance. If an understanding cannot be reached between the Developer and the Arborist, the matter will be resolved by the Council. I believe this provision will protect the City and the neighbors without unduly or arbitrarily restricting discretion to review site conditions and make reasonable adjustments accordingly.

There is one remaining issue I feel necessary to bring to the Council's attention, and enclose the latest correspondence from Howard Downey to illuminate the issue. There is an area outside the buffer area on the south side of the property which lies in the right-of-way of Rockbrook Circle and Cross Ridge Road and outside the church property line. The Development Plan submitted does not include that strip of right-of-way in the

Buffer Area, and I cannot recall a discussion with the Council about the Developer maintaining that strip. Accordingly, there is nothing in the documents which requires maintenance on that strip of right-of-way. I believe this to be consistent with the Plan that was presented and approved.

I have discussed this with Mr. Downey, and he understands the situation. He has asked that, as the landscape plan is developed, some consideration be given to planting screening trees or shrubs (i.e., wax myrtles) within the area on the neighborhood side of the creek. By copy of this memorandum to Mr. Cafaro, Charlie Beavers, and to Mr. Downey, I would respectfully ask that Mr. Downey's request be given appropriate consideration as the landscape plan is developed.

If you have any questions, please do not hesitate to contact my office.

cc : Mr. Sam Gaston, City Manager gastons@mtnbrook.org
Mr. Steve Boone, City Clerk boones@mtnbrook.org
Mr. Don Cafaro
Mr. Howard Downey
Charles A. J. Beavers, Esq.

Covenants

**DECLARATION OF PROTECTIVE COVENANTS,
RESTRICTIONS, EASEMENTS AND AGREEMENTS
FOR
PILGRIM PLACE**

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RESTRICTIONS AND AGREEMENTS FOR
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STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

**DECLARATION OF PROTECTIVE
COVENANTS, RESTRICTIONS, EASEMENTS
AND AGREEMENTS FOR
PILGRIM PLACE**

This Declaration is made this _____ day of _____, 20____, by **D. BRUCE MACCLARY**, an individual (“Developer”), for the purpose of establishing certain easements, covenants, restrictions, and limitations to run with the land.

WITNESSETH

WHEREAS, Developer has acquired fee simple title to certain real property situated in Jefferson County, Alabama, and has subdivided said property into fifteen (15) lots (the “Lots”), as shown and described on the Map and Survey of Pilgrim Place, as recorded in Map Book _____, Page _____, in the Office of the Judge of Probate of Jefferson County, Alabama (the “Property”); and

WHEREAS, Developer desires to develop the Property into a residential subdivision to be known as Pilgrim Place, subject to the protective covenants, restrictions, easements, agreements and limitations forth in this Declaration of Protective Covenants, Restrictions, Easements and Agreements for Pilgrim Place (“this Declaration”).

NOW, THEREFORE, upon the recording of this Declaration, Developer does declare and make the Property and each of the Lots included in the Property subject to the covenants, easements, restrictions, conditions, uses, limitations, and affirmative obligations set forth in this Declaration, all of which are declared to be in furtherance of a plan for the improvement of the Property in a desirable and uniform manner, and all of which shall run with the land and shall be binding upon all parties having or acquiring right, title or interest in the Property, and shall inure to the benefit of and shall be binding upon each successor in interest and to the owners thereof.

**ARTICLE I
LAND USE AND BUILDING TYPE; DRAINAGE SYSTEM**

1. Development Plan. The Property shall be developed in substantial compliance with the Master Development Plan, the Landscape Plan and the Grading and Utility Plan (collectively the “Development Plan”) approved by the City of Mountain Brook, Alabama (the “City”), a reduced copy of which is attached hereto as cumulative *Exhibit A*.

2. Land Use. All Lots in the Property will be used for residential purposes only, and no trade or business use will be permitted on the Property. No building or structure other than a one-family dwelling house shall be erected on the Property except as otherwise permitted herein. Further, no building, structure, or improvement shall be erected on any Lot in the Property other than the building situated on the Property at the time of purchase, if any, without

the prior written approval of the Committee (as hereinafter defined) and without compliance with the requirements of zoning (the "Zoning") of the Property by the City.

3. Exterior Design. The original exterior design, and any change in the exterior design, of the structure on any Lot shall be subject to final approval by the Committee. All structures on the Lots shall be designed so as to be aesthetically pleasing and compatible with the surrounding properties and shall be subject to the following:

(a) The exterior materials on the sides of the residential dwellings shall be primarily brick and wood. Other outside materials may be used, provided that they are expressly approved by the Committee.

(b) Exterior painting will be compatible and will blend aesthetically with other colors used on the structures located on the Lots in the Property.

(c) Roofs on all structures must have a minimum 6/12 pitch on the front portion of the structure. No gambrel or mansard roofs will be permitted. Shingles or roof tiles must be of a natural or slate color. No white roofing materials of any kind will be permitted.

(d) All stack pipes, exhaust fans, and other roof projections, including permitted satellite dishes, shall be located on the building roofs in such a way as to be hidden from sight, to the extent possible, from properties surrounding the Property, unless prior written consent is obtained from the Committee and is in compliance with the Zoning requirements.

4. Temporary Structures. No mobile home, motor home, trailer, tent, shack, or barn shall be placed or erected on any Lot within the Property. This provision shall not prohibit a construction trailer or portable building during the development of the Property, provided that Developer has approved the same.

5. Other Building Structures. No servant house, garage, carport, or other building shall be erected on any Lot without the prior written consent of the Committee.

6. Garage Enclosure. No Lot Owner (as hereinafter defined) shall enclose and finish as living area any garage on any Lot in the Property without the prior written consent of the Committee.

7. Fences, Walls, and Hedges. No fences or walls shall be constructed on any Lot in the Property unless first approved in writing by the Committee. The approval of the Committee shall be governed by the following:

(a) No fences or walls may protrude beyond the front edge of the structure located on the Lot.

(b) No chain link, wire, or metal fencing of any kind may be used in construction. (wrought iron or materials which have the appearance of wrought iron, such as aluminum, may be allowed).

(c) No fence or hedge which is visible from the front of the residential structure may exceed six (6) feet in height, unless approved officially by the Committee.

(d) If built as a part of the exterior wall around the Property, such fence or wall must be made of wrought iron or made to have the appearance of wrought iron.

8. Utilities, Wiring and Antennas.

(a) No facilities, including poles or wires for the transmission of electricity, telephone messages, and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas of any kind shall be allowed other than satellite dishes approved by the Committee and placed in accordance with Section 3(d) above.

(b) No Lot Owner will cause to be erected or grant to any person, firm, or corporation a right, license, or privilege to erect or permit the use of overhead wires or overhead facilities of any kind for electrical or telephone service on the Property (except such poles and overhead facility as may be required at those places where distribution facilities enter and leave the particular area) without the prior written consent of the Committee.

(c) All Lot Owners agree to connect utility service lines (including, but not limited to gas, water, sewer, cable television and electricity) at points designated by Developer or as approved by the Committee.

9. Mailboxes and Lamp Posts. All mailboxes, lamp posts, street lighting, and posts must be constructed and located according to Developer's specifications or as approved by the Committee.

10. Landscaping.

(a) All front and side yards will be landscaped with solid sod and shall be attractively maintained. The front yard of each Lot shall have at least one (1) tree with a minimum caliper of four inches (4"), preferably of native Alabama origin. Should any Lot Owner desire to develop any natural areas, such proposal must be approved by the Committee and any approved natural areas must be regularly and attractively maintained.

(b) Individual homeowners' landscaping shall incorporate buffering in such a way as to reduce the visibility of the residence from surrounding property. Such buffering shall consist of a mix of large deciduous and evergreen trees and shrubs such as (but not limited to): Leyland cypress, cherry laurel, eastern red cedar, crape myrtle, magnolia, American, Nellie Stevens, and Foster's holly. Each yard oriented toward the exterior shall consist of at least two (2) permanent large trees such as oak, maple, and/or magnolia. The trees shall be placed no further than 30 feet apart, measuring four (4) calipers each.

11. Lighting. Yard lighting shall be such that it is not directed toward other Lot Owners or surrounding properties. All exterior lighting of houses shall be of said same character. Seasonal or holiday lighting that is out of character with the general subdivision or becomes a nuisance as determined by the Committee shall be removed within two (2) days' notice of the Committee's finding.

12. Air Conditioning Units. Outside air conditioning units may not be located so as to be visible from the street in front of any home, and no window or through the wall air conditioning units will be permitted on any Lot in the Property.

13. Subdivision. No Lot may be subdivided or reduced in size by voluntary alienation, judicial sale, or other proceeding except with written consent of Developer or the Committee.

14. Drainage and Detention System. Developer and its successors, assigns, and/or transferees shall construct, enclose, and permanently maintain at their sole expense a storm water control, drainage, and detention system ("the System") on the Property that conforms to the System and specifications therefor approved by the City in conjunction with re-zoning of the Property to its Residence B and Planned Unit Development ("PUD") classification. The System shall comply with all applicable federal, state, and local laws, ordinances, regulations, conditions, standards, and requirements applicable thereto. No modification to the System shall be permitted or installed unless said modification is approved by the City and City Engineer and unless the modification is shown to meet or exceed then applicable legal or regulatory requirements applicable to the Property. Upon the completion of the installation of the System by Developer and the establishment of the Association, the maintenance of the System shall be by and at the expense of the Association. At a minimum, system maintenance shall include the following:

(a) Care of grass and landscaping above the System as part of the normal landscape maintenance, said care and maintenance to include regular mowing and trash and debris removal;

(b) Regular inspection, repair, clearance, and maintenance of control structures and other inlets to the System and removal of sediment deposits and other debris that may accumulate in the control structure and other inlets;

(c) Control, stabilization, or correction of erosion that may occur at the inlet or exit point for discharges to and from the System; and

(d) Repair, replacement, or restoration of deteriorated, defective, worn, non-operative, or non-functioning components, elements, or features of the System.

The City may inspect the System from time to time, at its discretion, and may require the Association to take such actions as are necessary to cause the System to be in compliance with the provisions of this Section 14.

ARTICLE II USE OF THE PROPERTY

1. Signs. No sign of any kind shall be displayed to the public view except signs of not more than five (5) square feet to advertise a home for sale and builder's signs during construction and prior to the sale of the Lots by Developer. Nothing contained herein shall be construed to prevent the erection or maintenance by Developer or its duly authorized agents or

assigns of structures, improvements, or signs necessary or convenient to the development, sale, operation, or other disposition of the Lots.

2. Animals. No animals, birds, livestock, or insects shall be kept or maintained on any Lot of the Property, except that each Lot Owner may keep not more than two (2) dogs and two (2) cats as domestic pets on any Lot, provided that such domestic pets are confined to the Lot of the owner of such pets and provided that such pets do not constitute a disturbance and nuisance to surrounding Lot Owners. It shall be within the sole authority of the Committee to determine what constitutes a "disturbance and nuisance." No animal shall be allowed to roam the Property, other than its owner's Lot, without a leash, cord, or chain held by the animal's owner, possessor, or keeper or an agent, servant, or member of the immediate family thereof (the "Keeper"). Additionally, the Keeper shall immediately remove the animal's excrement from the Property, including the Keeper's Lot.

3. Garbage and Refuse. No lumber, metal, or bulk materials shall be kept, stored, or allowed to accumulate on any Lot within the Property, except building materials during the course of construction of any approved structure or improvement. No refuse or trash shall be kept, stored, or allowed to accumulate. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, such trash or refuse must be placed in sanitary containers. Such sanitary containers should be placed in the open only on the day that a pickup is to be made at such place on the Lot as to provide access to the person making such pickup. At all other times, such containers shall be stored in such manner so they cannot be seen from other Lots or the street.

4. Outside Burning. Burning of trash, refuse, or other materials on any Lot within the Property, except during construction of the structures, is prohibited.

5. Pipes. No water pipes, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained above the surface of the ground of any Lot within the Property except for hoses and movable irrigation pipes.

6. Oil and Mining. No Lot within the Property shall be used for the purpose of boring, mining, quarrying, or exploring for or removing oil or other hydrocarbons, minerals, gravel, or earth.

7. Nuisance. No obnoxious, offensive, or illegal activity shall be carried on upon any Lot within the Property nor shall anything be done on any Lot within the Property which may become an annoyance or nuisance to other Lot Owners or which may cause any increase in the cost of insurance obtained by the Association.

8. Storage of Boats and Trailers. Storage of boats, boat trailers, campers, recreational vehicles, or other similar equipment or vehicles in the open on any Lot is prohibited.

9. Clothes Lines. No clothes lines of any kind will be permitted on any Lot in the Property.

10. General; Garage Sales. It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly, or unkempt conditions of structures on

grounds of such Lot which shall tend to decrease the beauty and aesthetics of the Property or the neighborhood as a whole. No Lot Owner shall permit a garage or other type of public or private sale or auction on the Lot Owner's Lot or in the Green Space.

11. Green Space Areas. The green space surrounded by the circular private drive (the "Private Drive") and the green space located within the median at the entrance into the Property from Montclair Road, as shown on the Development Plan (the "Green Space Areas") are for the use and enjoyment of all Lot Owners. Developer will plant in the Green Space Areas, and the Association will maintain, the plants, and trees and grass within the Green Space Areas.

12. Buffer Area. Except as provided in paragraph 13 of this ARTICLE II, the buffer area (the "Buffer Area") shown on the Development Plan along the east, west and south perimeters of the Property shall be left in its natural condition, including the plants and trees which currently exist within the Buffer Area. The exact placement of the retaining wall along the interior boundary of the Buffer Area shall be determined by the Developer in cooperation and consultation with the City's arborist, in an effort to protect any large trees which are within the Buffer Area and also immediately adjacent to the retaining wall. The Association shall have the authority to prune or remove any diseased, dying or dead trees, or trees which are leaning or are in a condition which poses a risk of falling, within the Buffer Area.

13. Restrictions Within Green Space Areas and Buffer Area. No personal property of any Lot Owner shall be placed or stored on the Green Space Areas or the Buffer Area, except that automobiles may park in the spaces adjacent to the Green Space Area within the circular drive, as shown on the Development Plan. No alterations, additions, or improvements of any kind whatsoever shall be made to the Green Space Areas or the Buffer Area except as shown on the Development Plan or as permitted herein. Any Lot Owner who is responsible for any damage, defacement, or destruction to the Green Space Areas or the Buffer Area will be responsible for the repair, clean up, replanting or reconstruction thereof, the cost of which may be expended by the Association and assessed against the Lot Owner as an additional assessment. Provided, within the Buffer Area, Developer will perform selective cutting of any privet, mimosa, ivy, or other such non-native or invasive plants not located within the banks of the creek (which meanders through the Buffer Area) and the replanting of additional shrubs and trees which are native to the area. All such selective cutting and replanting shall be accomplished in accordance with a landscape plan which has been approved by both the City's arborist and the Developer's landscape architect. The said landscape plan shall include the standards by which the Buffer Area shall be maintained. The Buffer Area shall be maintained by and at the expense of the Association in accordance with said plan. If the City's arborist and the Developer's landscape architect cannot agree upon the landscape plan, then the landscape plan shall be submitted to the City Council for its determination and approval at a hearing about which notice has been given as provided in Section 3 of Article VII hereof.

ARTICLE III PILGRIM PLACE HOME OWNERS' ASSOCIATION

1. Establishment. Operation and administration of the Property shall be performed by Pilgrim Place Home Owners' Association, an unincorporated association (the "Association"). The powers and duties of the Association shall include the following:

(a) The Association shall have the right to make assessments against the Lot Owners.

(b) The Association shall have the right and authority to place liens against the Lot of any Lot Owner who fails to pay any annual or additional assessment or any amount owed pursuant to any provision hereof, together with penalties, interest or attorneys' fees assessed.

(c) The Association shall have the authority to borrow funds to pay for such expenditures as may be authorized by the provisions of this Declaration upon written approval of the majority of the Lot Owners.

(d) The Association shall have the authority to appoint the Committee which will consider and approve, if acceptable, in its sole discretion, changes, modifications, additions, and improvements to the Property.

(e) The Association shall have the authority to enforce the covenants and restrictions contained herein in any manner available in law or equity.

(f) The Association shall have any other authority granted to it by a vote of the majority of the Lot Owners.

2. Members. The members of the Association shall consist of all record owners of the Lots (the "Lot Owners"). Change in membership in the Association shall be established by recording the deed or other instrument establishing record title to a Lot in the public records of Jefferson County, Alabama, the owner designated by such instrument thereby becoming a record owner and a member of the Association. Membership of the prior owner shall thereby be terminated. The vote of a member for a Lot shall be cast by the record owner thereof or the duly authorized proxy of the record Lot Owner. Each Lot Owner shall be entitled to one (1) vote for each Lot owned, and Developer shall retain one (1) vote for each unsold Lot.

3. Government of the Association.

(a) The business and affairs of the Association shall be managed by or under the direction of its Board of Directors. The number of directors of the Association shall consist of not less than three (3) or more than five (5) directors with the exact number to be fixed from time to time by the members holding a majority of the votes of the Association. The initial Board of Directors shall consist of three (3) directors. The directors shall serve for a period of two (2) years and shall be replaced by calling and holding a meeting for such purpose at the end of such two-year term. A majority of the members of the Association shall constitute a quorum.

(b) Notwithstanding the provisions set forth above, Developer, its successors and assigns, shall elect the members of the Board of Directors of the Association until such time as all Lots in the Property are sold to Lot Owners. This period shall be known as "Developer Control." Developer may, at its option, however, elect to terminate control of the Association prior to the sale of all Lots in the Property.

(c) A regular meeting of the Board of Directors shall be held at least annually, at which time the Board of Directors shall determine the amount of the annual assessment to be paid by the Lot Owners to the Association. Any vacancy occurring in the Board of Directors may be filled by a majority of the remaining directors until the next meeting regularly scheduled to elect a new board of directors.

(d) The Board of Directors shall appoint at least three (3) members of the membership to serve on the Committee after the period of Developer Control terminates. Any member of the Board of Directors may also serve on the Committee, provided the other members of the board of directors agree to such appointment. During the period of Developer Control, Developer shall serve as the Committee.

4. Right to Use. Every Lot Owner shall have a right and easement of enjoyment in and to the Common Property (hereinafter defined) which shall be appurtenant to pass with the title to each Lot, subject to the following:

(a) The right of the Association to suspend the voting rights and right to use of the Common Property by any Lot Owner for any period during which any assessment against such Lot Owner's Lot remains unpaid, and for a period not to exceed thirty (30) days for the violation of any rule or regulation respecting the right to use the Common Property which may be now or hereinafter adopted by the Association.

(b) Such other reasonable rules and regulations respecting the use and enjoyment of the Common Property as may be adopted by the Association.

ARTICLE IV ARCHITECTURAL CONTROL

1. Approval by Architectural Control Committee. No structure, building, or fence shall be commenced, erected, placed, moved onto, or permitted to remain on any Lot within the Property, nor shall any existing structure upon any Lot within the Property be altered in any way which changes the exterior appearance thereof, unless plans and specifications thereof shall have first been submitted to and approved by the Architectural Control Committee (the "Committee"). Such plans and specifications shall be in such form and shall contain such information as may be required by the Committee and shall include, but not necessarily be limited to, a site plan of the Lot showing the location, height, and exterior design (including a summary of all proposed materials together with samples of exterior materials and paint colors) of all building and improvements proposed to be constructed or altered on the Lot. The plans shall be submitted to the Committee at least thirty (30) days prior to the date of the proposed construction, rehabilitation, or alteration of the structure on the Property. All plans and construction shall be controlled by Developer during the period of Developer Control.

2. Appointment of Architectural Control Committee. The Committee shall be composed of Developer during the period of Developer Control or three (3) individuals designated from time to time by the board of directors after the period of Developer Control terminates. The affirmative vote of a majority of the members of the Committee shall be

required in order to issue any permit, authorization, or approval pursuant to the directives or authorization set forth herein.

3. Basis for Disapproval of Proposed Plans.

(a) The scope of review by the Committee shall be limited to appearance only. The Committee does not assume or accept any responsibility or authority to review plans and specifications for structural soundness, compliance with building or zoning codes or standards, or any other factors.

(b) The Committee shall have the right to disapprove any plans and specifications submitted for approval for any reason it deems appropriate, including but not limited to, the following:

- (1) failure to comply with the Development Plan or any other of the covenants and restrictions set forth herein;
- (2) objection to exterior design, appearance, color scheme, finish, proportions, or materials of any proposed structure or improvement;
- (3) objection to the site plan, clearing plan, or drainage plan for any Lot;
- (4) incompatibility of any proposed structure or improvement or use thereof with the existing structures or uses upon other Lots in the Property;
- (5) any other matter which in the judgment of the Committee would render the proposed structure, improvement, or use inharmonious with the general plan and improvements of the Property or with structures, improvements, or uses located upon other Lots in the Property.

4. Failure to Obtain Approval. If any structure or improvement shall be altered, erected, placed, or maintained upon any Lot or any new use commenced on any Lot otherwise than in accordance with plans and specifications approved by the Committee pursuant to provisions of this Article, such alteration, erection, maintenance, or use shall be deemed to have been undertaken in violation of this covenant and without the approval required herein and, upon written notice from the Committee, any structure or improvement so altered, erected, placed, or maintained upon any Lot in violation hereof shall be removed or re-altered and any such use shall be terminated so as to extinguish such violation.

If, within fifteen (15) days after the notice of such violation, the Lot Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward removal or termination of the same, Developer or the Association shall have the right to enter upon such Lot and to take such steps as may be necessary to extinguish such violations, and the cost thereof shall be a binding, personal obligation of such Lot Owner as well as a lien (enforceable in the

same manner as a mortgage) upon the Lot in question. The lien provided herein shall not be valid as against a bona fide purchaser (or bona fide mortgagee) of the Lot in question unless a suit to enforce said lien shall have been filed in a court in Jefferson County, Alabama, prior to the recordation in the Office of the Judge of Probate of Jefferson County, Alabama, of the deed (or mortgage) conveying the Lot in question to such purchaser (or subjecting the same to such mortgage).

5. Waiver of Liability. Neither the Committee nor any architect or agent thereof, nor Developer, nor any partner, agent or employee of any of the foregoing shall be responsible in any way for any failure of structures or improvements to comply with the requirements of this Declaration, any defects in any plans and specifications submitted, revised, or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications. All persons submitting any such plans and specifications and all persons relying thereon shall be deemed to have agreed not to sue or claim against the Committee nor any architect or agent thereof, nor Developer nor any partner, agent, or employee thereof, for any cause arising out of the matters referred to, and further shall be deemed to and do hereby agree to and do hereby release said entities and persons from any and every such cause.

ARTICLE V COMMON PROPERTY

1. Common Property. "Common Property" shall mean and refer to all real property (including any improvements thereon and appurtenances thereto) owned by or conveyed to the Association for the common use and enjoyment of the Lots or to be managed by the Association, including but not limited to the following:

- (a) The Private Drive and the Green Space Areas.
- (b) All installations for the furnishing of electricity, telephone, natural gas, sanitary sewer, water service and television cable not immediately appurtenant to any dwelling house.
- (c) All outdoor and exterior lighting not situated within the boundaries of any Lot.
- (d) Landscaping, trees, irrigation systems and walkways not situated within the boundaries of any Lot.
- (e) The System, as more particularly defined elsewhere in this Declaration.
- (f) The entrance walls at the entrance into the Property from Montclair Road, including any landscaping, lighting, irrigation systems and other such improvements related thereto.
- (g) Any and all other property deeded to the Association.

ARTICLE VI ASSESSMENTS

1. **Agreement to Pay.** Developer, for each Lot owned with the Property, hereby covenants, and each Lot Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments of charges, and (ii) special assessments for capital improvements, such assessments to be established and collocated as hereinafter provided. The annual and additional assessments shall be fixed at a uniform rate for all Lots. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be made, and shall further be a personal obligation of the person or persons who were the owner or owners of such Lot at the time such assessments were made. The personal obligation is for delinquent assessment and shall not pass to the successor in title of any Lot Owner unless expressly assumed by such successor, although the lien for such assessment shall be an encumbrance upon the title to the Lot, as hereinafter provided.

2. **Annual Assessment.** The annual assessment shall commence as to any Lot at the time of closing the sale of such Lot, which annual assessment will be prorated for the year in which the closing occurs. Until _____, the maximum annual assessment shall be \$_____ per Lot. Thereafter, the board of directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of the due date of each annual assessment. Written notice of the annual assessment shall be sent to every Lot Owner subject thereto, and the due dates thereof shall be established by the board of directors.

3. **Additional Assessments.** In addition to the annual assessments authorized herein, the Association may impose additional assessments for the purpose of deferring or funding in whole or in part any cost incurred or to be incurred for the common benefit of all Lot Owners provided that such additional assessment shall first have been approved by the vote of two-thirds (2/3rds) of the Lot Owners entitled to vote at the time in person or by proxy, at any regular or special meeting called for the purpose of voting on such assessment and approval in accordance with the terms of the Bylaws.

4. **Payment.** The annual assessment shall be made January 1st of each year and shall be paid in advance. The annual assessment may be paid in such installments as determined by the board of directors and shall be delinquent if not paid within fifteen (15) days of the date the assessment is due. Delinquent assessments will accrue interest at the rate of twelve percent (12%) per annum, and penalties may be imposed by the Association if the assessment is over ninety (90) days delinquent.

5. **Certificate.** The Association shall, upon demand, for a reasonable fee or charge, furnish a certificate signed by an officer of the Association, setting forth whether the assessments on a specified Lot have been paid or the amount due thereon at any given time. Any such certificate, when properly executed by an officer of the Association as to the status of or amounts of the assessments on a Lot, shall be binding upon the Association as of the date of the issuance of such certificate.

6. Enforcement/Lien. The Association may bring an action at law against any Lot Owner or person obligated to pay the same or may foreclose its lien against the Lot by the commencement of a civil litigation. No Lot Owner may waive or otherwise avoid or escape liability for the assessment provided herein by non-use of the Common Property or abandonment of such Lot Owner's Lot. The lien of the assessment provided for herein shall be subordinate to the lien of any first mortgage. Any conveyance, whether voluntarily, involuntarily, or by operation of law, shall not affect the lien of assessment; provided, however, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any judicial proceeding in lieu thereof shall extinguish the lien of such assessment as to any assessment or part thereof which became due prior to such sale or transfer. In any event, no sale or transfer will relieve any Lot Owner from personal liability for any assessments becoming due prior to such sale or transfer.

7. Purposes. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Lot Owners and shall cover the following:

- (a) Maintenance of sanitary sewer system;
- (b) Maintenance of the System;
- (c) Any fees incurred for the employment of an engineer licensed by the State of Alabama and selected by the Association to inspect any of the aforesaid devices and systems at such times as may be determined by the Association;
- (d) Maintenance of the Common Property;
- (e) Maintenance of the retaining wall, as constructed by Developer, which extends around or parallel to the perimeter boundaries of the Property as shown by the Plan;
- (f) Any electrical cost to run all common lighting, sewer pump, and any other electrical device necessary to the Common Property;
- (g) Water bills and sprinkler systems for use on the Common Property;
- (h) Any common insurance required;
- (i) Any management fees, accounting fees, and legal expenses incurred by the Association;
- (j) The pruning or removal of diseased, dying or dead trees, or trees which are leaning or are in a condition which poses a risk of falling, within the Buffer Area and the maintenance of the Buffer Area; and;
- (k) Such other matters which involve the Common Property as determined by the Association.

**ARTICLE VII
GENERAL**

1. Grantee's Acceptance. The grantee of any Lot subject to the coverage of this Declaration, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of such Lot, shall accept such deed or other contract upon and subject to each and all of the restrictions herein contained.

2. Severability. Every one of the provisions and restrictions is hereby declared to be independent of and severable from the rest of the provision and restrictions and of and from every combination of the provisions and restrictions. Invalidation by any court of any provision or restriction in this Declaration shall in no way affect any of the other provisions or restrictions which shall remain in full force and effect.

3. Amendment/Right of Developer to Modify Restrictions. Until Developer has sold all of the Lots, Developer may, without the consent of any Lot Owner, amend or modify this Declaration in Developer's discretion by recording an amendment hereto in the Office of the Judge of Probate of Jefferson County. After Developer has sold all of the Lots, this Declaration may not be amended in any respect except by the execution of an instrument signed by not less than two-thirds (2/3rds) of the Lot Owners, which instrument shall be filed in the Office of the Judge of Probate of Jefferson County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument. Other provisions herein notwithstanding, the provisions of ARTICLE I, Sections 1 and 14, ARTICLE II, Sections 11, 12 and 13, ARTICLE IX, and ARTICLE X of this Declaration, and of this Section 3 of ARTICLE VII, shall not be amended without the approval thereof by the City Council of the City, except with respect to amendments that would be deemed minor under the provisions of the Planned Unit Development District under the City's Zoning Ordinance. No such approval by the City Council shall be requested until at least fifteen (15) days prior written notice of the request has been given by the Association to the owners of lands within five hundred (500) feet of the Property, which notices shall be deemed to have been received when placed in the United States mail, postage prepaid, addressed to the owners of said lands as indicated by the then current tax assessments for said lands in the office of the Jefferson County Tax Assessor.

4. Captions. The captions preceding the various paragraphs and subparagraphs of this Declaration are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of this Declaration. Whenever and wherever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

5. Effects of Violations on Mortgage Liens. No violation of any of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee in actual possession or any purchaser at any mortgagee's or foreclosure sale shall be bound by and subject to this Declaration as fully as any other Lot Owner of any portion of the Property.

6. **No Reverter.** No restriction herein is intended to be or shall constitute a condition subsequent or to create a possibility of reverter.

7. **Duration.** The covenants and restrictions contained in the Declaration shall **run with the land** and bind the Property and shall inure to the benefit of and shall be enforceable by Developer, the Association, the Committee, the City and any Lot Owner, their respective legal representatives, heirs, successors and assigns.

8. **Enforcement.** In the event of a violation or breach of any of these restrictions or any amendments hereto by any Lot Owner or family member, guest employee, agent, or lessee of such Lot Owner, any other Lot Owner, Developer, the Association, the City, the Committee, their successors or assigns or any party to whose benefit these covenants and restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said restrictions, to sue for and recover damages or other amounts, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate including undertaking to have a violation corrected, with the cost thereof being considered an additional assessment against the violating Lot Owner. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

Any party to a proceeding who succeeds in enforcing a restriction or enjoining the violation of a restriction against a violating Lot Owner may be awarded a reasonable attorney's fee and costs of such action against such violating Lot Owner, which may be considered an additional assessment against the violating Lot Owner which may be secured by a lien against his Lot.

9. **No Waiver.** The failure of any party entitled to enforce any of the covenants and restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to ARTICLE IV shall be binding on any and all parties as a conclusive determination that such plans are in conformity with these covenants and restrictions.

ARTICLE VIII EASEMENTS

1. **Street Easements.** The Private Drive shall be subject to cross easements for the benefit of all other Lot Owners in the Property. The Private Drive, the Green Space, the landscaping in and around the Green Space and any other public areas constituting a part of the Property, whether or not property over which the City, Jefferson County, or any utility company

has an easement, drainage facilities, and ditches shall be maintained and repaired as needed by the Association, and the costs thereof shall be paid from the annual or additional assessments collected from all Lot Owners. It is hereby agreed and understood that the Private Drive is a private road owned by the respective Lot Owners with cross easements in favor of all other Lot Owners and which will be maintained by the Association. It is further understood that the City is in no way responsible or obligated for maintaining or repairing the Private Drive.

2. Utility Easements. Utility easements are reserved throughout the whole of the Property, including Lots, as may be required for utility services (including, without limitation, water, sewer, gas, electricity, telephone, and cable television) in order to adequately serve the Lots and the Green Space.

ARTICLE IX GENERAL MAINTENANCE

1. General Maintenance Obligations. Anything in these covenants to the contrary notwithstanding, the Association, shall assume full and sole responsibility for the repair, replacement, or maintenance of all Common Property or improvements installed or constructed on any Common Property, including, but not limited to, roads, streets, sidewalks, lighting, landscaping (including, but not limited to, the removal and replacement of dead or diseased plants and trees), drainage, detention, and like installations, utilities, or other infrastructure designed to serve and benefit the Property. Said obligation shall extend to and include maintenance and replacement of landscaping within the portion of the right-of-way of Montclair Road which is immediately adjacent to the Property, notwithstanding the fact that said area is outside the boundary of the Property itself. It is understood and agreed that these covenants are and shall be enforceable by the City in order to ensure compliance with its zoning requirements, laws, ordinances, and regulations, or for any other purpose authorized by law.

2. No Obligation of Municipal Zoning Authority. Nothing herein and no amendment hereof shall be construed or applied to defeat, impair, or destroy the authority of the City to enforce these covenants as they existed on the date of rezoning approval, or the terms, limitations, and conditions imposed by the City through its authority to rezone the Property.

ARTICLE X CITY RESPONSIBILITY

1. City Responsibility. The City of Mountain Brook will not maintain the Private Drive now or in the future and will not be obligated to honor any request to perform such maintenance.

IN WITNESS WHEREOF, Developer has executed this Declaration on the date written above.

D. Bruce MacClary

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State hereby certify that D. Bruce MacClary, whose name is signed to the foregoing Declaration and who is known to me, acknowledged before me on this day that, being informed of the contents of the Declaration, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this _____ day of _____ 20_____

Notary Public

[NOTARIAL SEAL]

My commission expires: _____

Development Plan Narrative

DEVELOPMENT PLAN NARRATIVE
FOR
PILGRIM PLACE

The following is submitted to the City of Mountain Brook as a part of the request for the rezoning of the Pilgrim Place development to the Planned Unit Development classification for a residential PUD. The following are hereby incorporated into the request for rezoning and shall be deemed part of any such rezoning approval by the City of Mountain Brook:

1. The Master Development Plan for Pilgrim Place, prepared by Paragon Engineering, a division of Hatch Mott McDonald, dated 10/9/07, is hereby acknowledged to be the Master Development Plan to which the rezoning to PUD will be subject;
2. The Preliminary Grading and Utility Plan for Pilgrim Place prepared by Paragon Engineering, a division of Hatch Mott McDonald, dated 10/9/07, is hereby acknowledged to be the Preliminary Grading and Utility Plan to which the rezoning to PUD will be subject;
3. The Site Landscape Plan for Pilgrim Place prepared by Alexander Vare, Landscape Architect, dated 10/9/07, is hereby acknowledged to be the Site Landscape Plan to which the rezoning to PUD will be subject;
4. The Declaration of Protective Covenants, Restrictions, Easements and Agreements for Pilgrim Place (the "Declaration"), is presented as a part of the application for the rezoning of Pilgrim Place to the PUD classification;
5. The Grasscrete Parking Spaces depicted on the Site Landscape Plan referenced above shall be installed as a part of the development;
6. The residential dwellings to be constructed within Pilgrim Place shall be limited to thirty-five (35) feet in height and one and one-half (1 ½) stories;
7. The total of impervious area as the result of the development of each lot shall not exceed forty (40) percent of the size of the lot;
8. The first floor footprints of the residential dwellings shown on the Master Development Plan, Preliminary Grading and Utility Plan, and Site Landscape Plan, are for illustration purposes only and may vary in configuration, location and size; the calculated square footages of the footprints as presently shown on said plans range from 1,340 square feet on Lot 9; 2,035 square feet on Lot 12; 2,264 square feet on Lot 13; 2,420 square feet on Lot 3; to 2,700 square feet on Lots 4 and 5;
9. The sidewalks along Montclair Road, as shown on the Master Development Plan, shall be installed prior to the issuance of any certificate

of occupancy with respect to Pilgrim Place or the residences constructed therein, and said sidewalks shall be installed with the approval and supervision of the Mountain Brook Public Works Department;

10. A Reclamation Bond as required by the applicable ordinances of the City of Mountain Brook shall be secured, and the costs of land disturbance and the costs of the installation of the landscaping shall be provided to the City of Mountain Brook Building Inspector, in order to calculate the amount of said bond;
11. The private drive within Pilgrim Place shall be paved with asphalt and the private driveways serving each residence shall be mortarless brick;
12. The construction of the turn lane and other improvements within the right-of-way of Montclair Road, as shown on the Preliminary Grading and Utility Plan, shall be installed and constructed in accordance with the requirements of the City of Mountain Brook or such other governmental authorities which have jurisdiction over the improvements within Montclair Road, including the type of paving and the specifications therefor;
13. Requirements with respect to landscaping (including landscaping requirements along the exterior boundaries of each lot) and lighting of the individual residences within Pilgrim Place shall be as specified in the Declaration;
14. There shall be no common area street lamps within Pilgrim Place;
15. The retaining walls shown on the Preliminary Grading and Utility Plan shall be either (a) poured concrete walls, beige or other earth-tone color, with brick columns spaced every ten (10) to twelve (12) feet as determined by the engineering design for the walls, capped with brick or stone, or (b) stone walls with stone caps and stone columns. Evergreen planting shall be planted at the base of the portion of said walls which is parallel to Rockbrook Circle and trained or positioned to attach to or grow along said portion of the walls;
16. There shall be a forty-two (42) inch tall rail of wrought iron or wrought iron appearing constructed along the top of the retaining wall along Montclair Road;
17. Any walls or fences constructed on any lot within Pilgrim Place shall be subject to the restrictions set forth in the Declaration; no chain link, wire or metal fencing of any kind may be used;
18. The underground storm water detention system shown on the Preliminary Grading and Utility Plan shall be installed in accordance with such plans and specifications as are required by the City of Mountain Brook, which shall include the six (6) foot by four (4) foot reinforced concrete box culvert designated on said plan or as otherwise required by the City of Mountain Brook; the maintenance of said system, once installed, shall be by and at the expense of the owner's association established pursuant to

the Declaration in accordance with the terms and provisions of the Declaration;

19. The interior boundary of the Dedicated Green Space and Creek Preserve, as shown on the Master Development Plan, shall be marked with silt fencing and a brightly colored (such as orange) fencing, which shall be installed prior to the commencement of the site work and which shall remain in place until the completion of the site work, in order to protect said area from intrusion during development;
20. The developer of Pilgrim Place shall instruct its contractors that, during the development of Pilgrim Place, none of the materialmen, laborers, suppliers or other personnel involved in the development of Pilgrim Place shall park their vehicles on Rock Brook Circle or Cross Ridge Road;
21. The anticipated schedule of the completion of development of Pilgrim Place is anticipated to extend for between two and three years from the date of commencement; the commencement of construction is expected to occur during the first month in the year 2008;
22. The construction of improvements within Pilgrim Place shall not occur prior to 7 A.M. on any given day;
23. The drainage calculations with respect to the development of Pilgrim Place are as set forth in the Detention Study for Pilgrim Place prepared by Paragon Engineering, a division of Hatch Mott McDonald, dated 7-16-2007, and included in the materials filed in support of the application for rezoning of the subject property;
24. The Declaration (including the exhibits thereto) is in draft form; any revisions which are included in the final form of the Declaration shall be subject to review and approval by legal counsel to the City of Mountain Brook prior to the recordation thereof.

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grounds of such Lot which shall tend to decrease the beauty and aesthetics of the Property or the neighborhood as a whole. No Lot Owner shall permit a garage or other type of public or private sale or auction on the Lot Owner's Lot or in the Green Space.

11. Green Space Areas. The green space surrounded by the circular private drive (the "Private Drive") and the green space located within the median at the entrance into the Property from Montclair Road, as shown on the Development Plan (the "Green Space Areas") are for the use and enjoyment of all Lot Owners. Developer will plant in the Green Space Areas, and the Association will maintain, the plants, and trees and grass within the Green Space Areas.

12. Buffer Area. Except as provided in paragraph 13 of this ARTICLE II, the buffer area (the "Buffer Area") shown on the Development Plan along the east, west and south perimeters of the Property shall be left in its natural condition, including the plants and trees which currently exist within the Buffer Area. The exact placement of the retaining wall along the interior boundary of the Buffer Area shall be determined by the Developer in cooperation and consultation with the City's arborist, in an effort to protect any large trees which are within the Buffer Area and also immediately adjacent to the retaining wall. The Association shall have the authority to prune or remove any diseased, dying or dead trees, or trees which are leaning or are in a condition which poses a risk of falling, within the Buffer Area.

13. Restrictions Within Green Space Areas and Buffer Area. No personal property of any Lot Owner shall be placed or stored on the Green Space Areas or the Buffer Area, except that automobiles may park in the spaces adjacent to the Green Space Area within the circular drive, as shown on the Development Plan. No alterations, additions, or improvements of any kind whatsoever shall be made to the Green Space Areas or the Buffer Area except as shown on the Development Plan or as permitted herein. Any Lot Owner who is responsible for any damage, defacement, or destruction to the Green Space Areas or the Buffer Area will be responsible for the repair, clean up, replanting or reconstruction thereof, the cost of which may be expended by the Association and assessed against the Lot Owner as an additional assessment. Provided, within the Buffer Area, Developer will perform selective cutting of any privet, mimosa, ivy, or other such non-native or invasive plants not located within the banks of the creek (which meanders through the Buffer Area) and the replanting of additional shrubs and trees which are native to the area. All such selective cutting and replanting shall be accomplished in ~~consultation with~~ accordance with a landscape plan which has been approved by both the City's arborist and the Developer's landscape architect. The said landscape plan shall include the standards by which the Buffer Area shall be maintained. The Buffer Area shall be maintained by and at the expense of the Association— in accordance with said plan. If the City's arborist and the Developer's landscape architect cannot agree upon the landscape plan, then the landscape plan shall be submitted to the City Council for its determination and approval at a hearing about which notice has been given as provided in Section 3 of Article VII hereof.

ARTICLE III PILGRIM PLACE HOME OWNERS' ASSOCIATION

1. Establishment. Operation and administration of the Property shall be performed by Pilgrim Place Home Owners' Association, an unincorporated association (the "Association"). The powers and duties of the Association shall include the following:

“Blackline” of Development Plan Narrative

9. The sidewalks along Montclair Road, as shown on the Master Development Plan, shall be installed prior to the issuance of any certificate of occupancy with respect to Pilgrim Place or the residences constructed therein, and said sidewalks shall be installed with the approval and supervision of the Mountain Brook Public Works Department;
10. A Reclamation Bond as required by the applicable ordinances of the City of Mountain Brook shall be secured, and the costs of land disturbance and the costs of the installation of the landscaping shall be provided to the City of Mountain Brook Building Inspector, in order to calculate the amount of said bond;
11. The private drive within Pilgrim Place shall be paved with asphalt and the private driveways serving each residence shall be mortarless brick;
12. The construction of the turn lane and other improvements within the right-of-way of Montclair Road, as shown on the Preliminary Grading and Utility Plan, shall be installed and constructed in accordance with the requirements of the City of Mountain Brook or such other governmental authorities which have jurisdiction over the improvements within Montclair Road, including the type of paving and the specifications therefor;
13. Requirements with respect to landscaping (including landscaping requirements along the exterior boundaries of each lot) and lighting of the individual residences within Pilgrim Place shall be as specified in the Declaration;
14. There shall be no common area street lamps within Pilgrim Place;
15. The retaining walls shown on the Preliminary Grading and Utility Plan shall be either (a) poured concrete walls, beige or other earth-tone color, with brick columns spaced every ten (10) to twelve (12) feet as determined by the engineering design for the walls, capped with brick or stone, and evergreen or (b) stone walls with stone caps and stone columns. Evergreen planting shall be planted at the base of the portion of said walls which is parallel to Rockbrook Circle and trained or positioned to attach to or grow along said portion of the walls;
16. There shall be a forty-two (42) inch tall rail of wrought iron or wrought iron appearing constructed along the top of the retaining wall along Montclair Road;
17. Any walls or fences constructed on any lot within Pilgrim Place shall be subject to the restrictions set forth in the Declaration; no chain link, wire or metal fencing of any kind may be used;
18. The underground storm water detention system shown on the Preliminary Grading and Utility Plan shall be installed in accordance with such plans and specifications as are required by the City of Mountain Brook, which shall include the six (6) foot by four (4) foot reinforced concrete box

Correspondence from Mr. Downey

LLOYD, GRAY & WHITEHEAD, P.C.

JAMES S. LLOYD
JAMES C. GRAY III
STEPHEN E. WHITEHEAD
LAURA C. NETTLES *
E. BRITTON MONROE **
THOMAS J. SKINNER IV
HOWARD Y. DOWNEY
JOHN C. WEBB V
JENNA M. BEDSOLE
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** ALSO ADMITTED IN CALIFORNIA
*** ALSO ADMITTED IN FLORIDA
**** ALSO ADMITTED IN GEORGIA
***** ALSO ADMITTED IN INDIANA

ATTORNEYS AT LAW
COLONIAL BANK BUILDING
2501 TWENTIETH PLACE SOUTH
SUITE 300

BIRMINGHAM, ALABAMA 35223

TELEPHONE (205) 967-8822

FACSIMILE (205) 967-2380

WWW.LGWPC.COM

FIRM ADMINISTRATOR
JAMES B. BROOKS

KAREN M. ROSS
TAFFI S. STEWART
CARL K. DOWDEY III
*** DAVID A. POTE
J. RICK WALLIS
*****CARRIE J. DUNN
BRIAN M. MCCLENDON
* JENNIFER S. PRECISE
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*** ** FRENCH A. MCMILLAN
* GRAHAM R. PULVERE
LAURA A. MONCRIEF
*** RANDALL W. HALL
DUSTIN J. KITTLE

October 29, 2007

VIA E-MAIL TRANSMISSION

Charles A.J. Beavers, Jr., Esquire
Bradley Arant
One Federal Place
1819 5th Avenue North
Birmingham, Alabama 35203

Re: Proposed rezoning of Pilgrim Congregational Church property

Dear Charlie:

I received and thank you for the drafts of the development documents over the past week or so. Many neighbors and I remain concerned about the buffer area, the definition of its boundaries, its being "cleaned up" and replanted, and ongoing maintenance of it. With regard to the boundaries of the buffer, it repeatedly was represented to the City and neighbors that the buffer would include the area from the edges of the streets (Rockbrook Circle and Cross Ridge Road), across the creek bed and to a boundary twenty-five (25) inward (to the property to be developed) from the inner bank of the creek. One of your e-mails indicates that the boundary referenced above is confirmed in the drawings submitted with the proposal. I may be mistaken but I do not recall seeing the boundaries of the buffer being defined as described above on those drawings. In any event, please let me know if there is any intention of the developer to decrease the size of the buffer from what I have described above.

The second issue relating to the buffer is what is going to be done with it as the development is completed. Specifically, there was lengthy discussion at the last Council meeting that I attended regarding cleaning out the undesirable plants and weeds from that area and replanting it. To my understanding, the only "specific" provision regarding this issue is that it is to be completed "in consultation" with the City's Arborist. I was of the understanding that Mr. Cafaro was to be consulted and must approve the plan in that regard.

We are concerned regarding the buffer issue in that the developer has little or no motivation to invest resources in that area in that the development is walled off from the buffer and the houses in the development will not face it. We are concerned that the cleaning out and replanting of the buffer area may not be completed in an aesthetically pleasing manner based on

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financial considerations of the developer. Based on my communications with property owners adjacent to the development behind Western Supermarket in Mountain Brook Village previously completed by the developer, I understand this to be a valid concern. I would appreciate your advising me as to what the developer's working plan is with regard to the cleaning up and replanting of the buffer area. In my opinion, the PUD documents, as drafted, do not provide reasonable protection for the neighborhood regarding the buffer area consistent with the comments of Council members.

I am available to discuss this matter with you at your convenience. I trust that you understand and appreciate my concerns in that the buffer area is what the residents of Cross Ridge Road and Rockbrook Circle look at every day. Confirming what will be done in that area is extremely important to us.

Thank you in advance for your anticipated cooperation.

Sincerely yours,

Howard Yeilding Downey

Howard Yeilding Downey

HYD\kc

cc: Whit Colvin, Esquire (*via e-mail*)
Mr. Don Cafaro (*via e-mail*)
Neighbors (*via e-mail*)

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FIRM ADMINISTRATOR
JAMES B. BROOKS

November 2, 2007

VIA E-MAIL TRANSMISSION

Charles A.J. Beavers, Jr., Esquire
Bradley Arant
One Federal Place
1819 5th Avenue North
Birmingham, Alabama 35203

Re: Proposed rezoning of Pilgrim Congregational Church property

Dear Charlie:

I know that you have been extremely busy and not in your office much of late. However, I would appreciate your responding to my recent correspondence as soon as possible. Essentially, my concerns relate to the buffer area. Specifically, neighbors adjacent to the property are concerned about specification of the dimensions of the buffer along Cross Ridge Road and Rockbrook Circle, the plan with regard to cleaning that area up and replanting it, and written provisions concerning these issues. If possible, I would like to avoid having to appear before the Council on November 13, 2007.

I look forward to hearing from you soon and thank you in advance for your anticipated cooperation.

Sincerely yours,

Howard Yeilding Downey

Howard Yeilding Downey

HYD\kc

cc: Whit Colvin, Esquire (*via e-mail*)
Neighbors (*via e-mail*)

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*** RANDALL W. HALL
DUSTIN J. KITTLE

November 5, 2007

VIA E-MAIL TRANSMISSION

Charles A.J. Beavers, Jr., Esquire
Bradley Arant
One Federal Place
1819 5th Avenue North
Birmingham, Alabama 35203

Re: Proposed rezoning of Pilgrim Congregational Church property

Dear Charlie:

I received and thank you for the most recent draft of the Pilgrim Place documents. Please let me know if and when the buffer area landscape plan to be submitted to Mr. Cafaro will be available for review by residents of the neighborhood.

Thank you in advance for your anticipated cooperation.

Sincerely yours,

Howard Yeilding Downey

Howard Yeilding Downey

HYD\kc

cc: Whit Colvin, Esquire (*via e-mail*)
Mr. Don Cafaro (*via e-mail*)
Neighbors (*via e-mail*)