

ORDINANCE NO. 1904

**AN ORDINANCE TO REZONE A CERTAIN PARCEL
OF LAND IN THE CITY OF MOUNTAIN BROOK, ALABAMA
FROM RESIDENCE C DISTRICT TO LOCAL BUSINESS DISTRICT**

WHEREAS, after due consideration, the City Council has determined that the zoning classification of the real estate owned by Mangina & Levio, LLC which is located at 2117 Cahaba Road, as more particularly described below, should be zoned Local Business District such property being presently zoned Residence C District.

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

Section 1. The zoning map of the City of Mountain Brook, as referred to in Chapter 129, Article XII of the Mountain Brook City Code, as amended from time to time, is hereby further amended by zoning to Local Business District the following described real property said property currently zoned Residence C District:

LOT 11 IN BLOCK 9, FIRST ADDITION TO SOUTH HIGHLANDS, AS RECORDED IN MAP BOOK 7 PAGE 105 IN THE OFFICE OF THE JUDGE OF PROBATE OF JEFFERSON COUNTY, ALABAMA.

Section 2. The provisions of this ordinance are severable. If any provision of this ordinance is held by a court of competent jurisdiction to be invalid, such invalidity shall in no way affect the remaining provisions of this ordinance.

Section 3. This ordinance shall become effective when published by posting the same as required by law.

ADOPTED: This 12th day of May, 2014.



Council Resident

APPROVED: This 12th day of May, 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 May 12, 2014, as same appears in the minutes of record of said meeting, and published by posting copies thereof on May 13, 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

1904

1904

Council Memo - May 12, 2014

Park Lane/Little Hardware - Rezoning from Res-C to Local Business

Petition Summary

Request to rezone a portion of the Park Lane property in English Village from Residence-C to Local Business.

Background

The subject lot (highlighted in yellow on attached survey) is owned by the same entity that owns the Park Lane banquet facility property and has historically been used for parking for Arman's and Park Lane. As may be seen on the attached zoning map and survey, there is a "paper" alley that separates the lot which contains the Park Lane building and the subject lot. This paper alley was most likely paved by the property owner and has historically been used as a part of the Arman's/Park Lane parking lot and ingress/egress from the Park Lane right-of-way to the south.

The survey also indicates a fence on the subject lot that essentially bisects the lot, running north-south just to the right of the proposed "red building outline" shown on the survey. The topography on the westerly side of the fence is relatively flat, and is utilized for Park Lane parking. The topography on the easterly side of the fence is sloping and is utilized as a vegetative buffer (per an agreement originating with the Arman's development, for the benefit of the residential property to the immediate east of the subject lot).

Analysis

The request for rezoning stems from a current lease proposal to relocate Little Hardware from Mountain Brook Village to the Park Lane building in English Village. The proposed hardware tenant will have a need for a detached dry-storage building, and that building is proposed on the subject Res-C lot. The proposed building is shown in red on the attached survey, site plan and elevation, but is indicated for illustrative purposes only (the actual size, location, setbacks and other development factors have yet to be formally proposed), and any approval of this rezoning request would not give implicit permission to construct the building indicated on the survey.

The purpose for the rezoning is to allow commercial use of "Parcel #2" on attached Exhibit Map, which is not permitted under the current Res-C zoning. As proposed, the portion of the subject lot which is to the east of the existing fence ("Parcel #1" on attached Exhibit Map) would be deed-restricted to remain as a vegetative buffer. See attached "Commitment to Restrict Usage of Lot 11;" these deed restrictions have been drafted in cooperation with the property owner to the immediate east of the subject lot and are subject to revision and approval by the City Attorney.

Planning Commission Recommendation on Rezoning

On May 5, 2014, the Planning Commission recommended approval of the rezoning. Many residents of the neighborhood were in attendance and were in support of the rezoning and the project. No one spoke in opposition to the project, but concerns were expressed about limiting the commercial vehicular use of Park Lane and not allowing a

third entrance to the proposed Little Hardware building from Park Lane. The Planning Commission's favorable recommendation to approve the rezoning included the following suggestions:

Applicant:

1. Modify deed restriction language as "covenants" that run with the land, rather than "deed restrictions." (*revisions in progress*)
2. Delete covenant reference to the unrestricted portion of Lot 11 remaining undeveloped unless developed in its entirety as a single family dwelling site. (*revisions in progress*)
3. Depict, in an exhibit attached to proposed deed restrictions, the areas referred to in the covenants as "restricted" and "unrestricted." (*attached*)

City Staff/Council:

1. Have Police Department forward any recommendations to the Council regarding circulation/delivery truck ingress egress to subject site. (*Police Department will make recommendations at hearing*)
2. City Attorney to review and approve covenant language. (*in progress*)

Subject Property and Surrounding Land Uses

The subject parcel is utilized partially for commercial parking and partially for a vegetative buffer. Properties to the north contain public parking lots and one single family dwelling. To the east and south are single family dwellings, and to the west is the Park Lane banquet facility.

Affected Regulation

Article V, Residence C District; Section 129-61, Permitted Uses

Article VII, Local Business District

Appends

LOCATION: 2117 Cahaba Road

ZONING DISTRICT: Residence-C

OWNER: Mangina & Levio, LLC

AGENT: Mike Mouron

EXHIBIT MAP

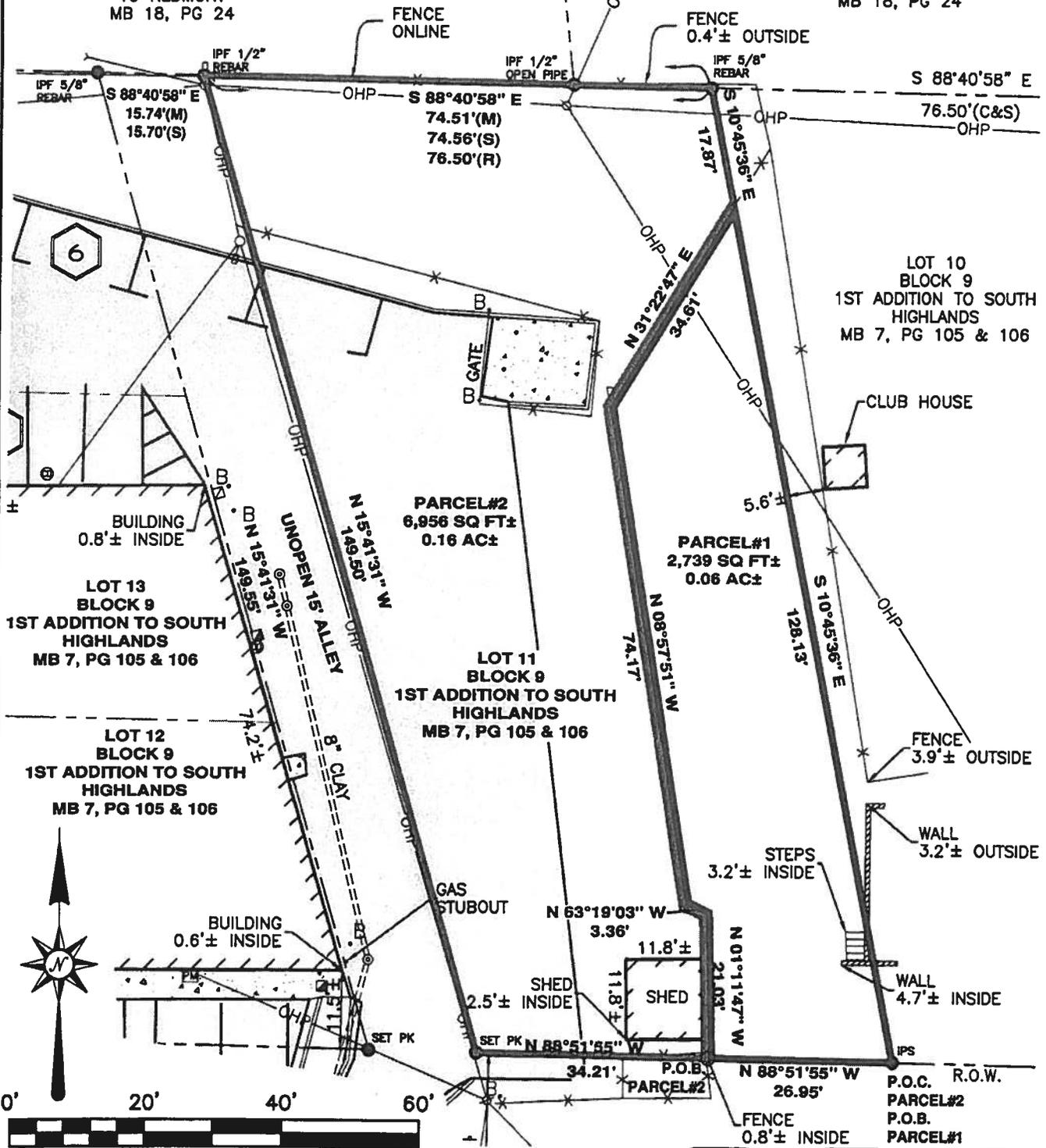
DRAWING: #27526

SE 1/4 OF THE SE 1/4 OF SECTION 8, TOWNSHIP 18 SOUTH, RANGE 2 WEST
JEFFERSON COUNTY, ALABAMA

LOT 2 & EAST 50' OF LOT 1
ANNIE H COULBOURNS ADDITION
TO REDMONT
MB 18, PG 24

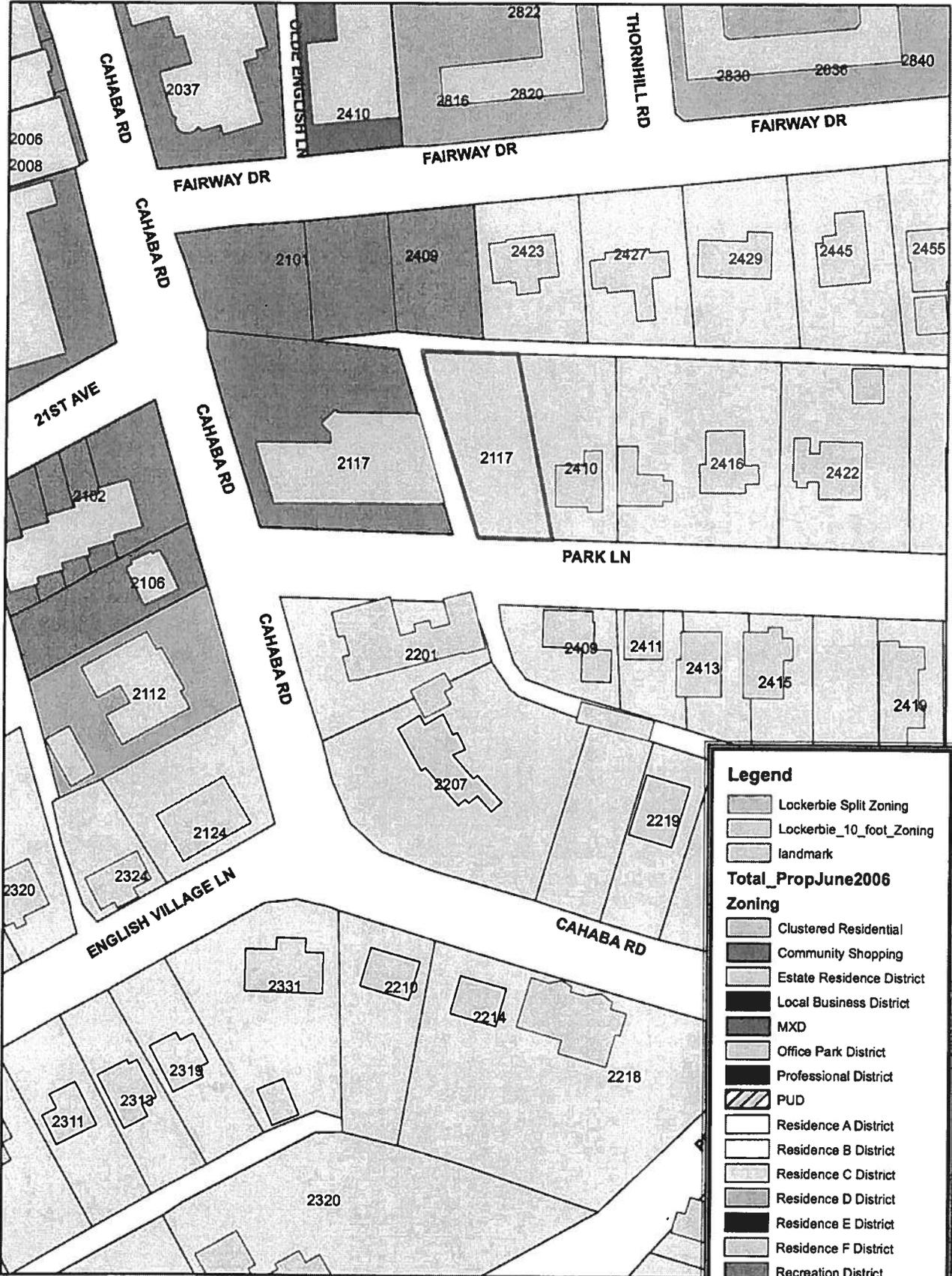
LOT 3
ANNIE H COULBOURNS ADDITION
TO REDMONT
MB 18, PG 24

LOT 10
BLOCK 9
1ST ADDITION TO SOUTH
HIGHLANDS
MB 7, PG 105 & 106



ABBREVIATION	
P.O.C.	POINT OF COMMENCEMENT
P.O.B.	POINT OF BEGINNING

GONZALEZ - STRENGTH & ASSOCIATES, INC.
ENGINEERING, LAND PLANNING, & SURVEYING
2178 PARKWAY LAKE DRIVE
HOOVER, ALABAMA 35226
PHONE: (205) 942-3400
FAX: (205) 942-3033
www.Gonzalez-Strength.com



Legend

- Lockerbie Split Zoning
- Lockerbie_10_foot_Zoning
- landmark

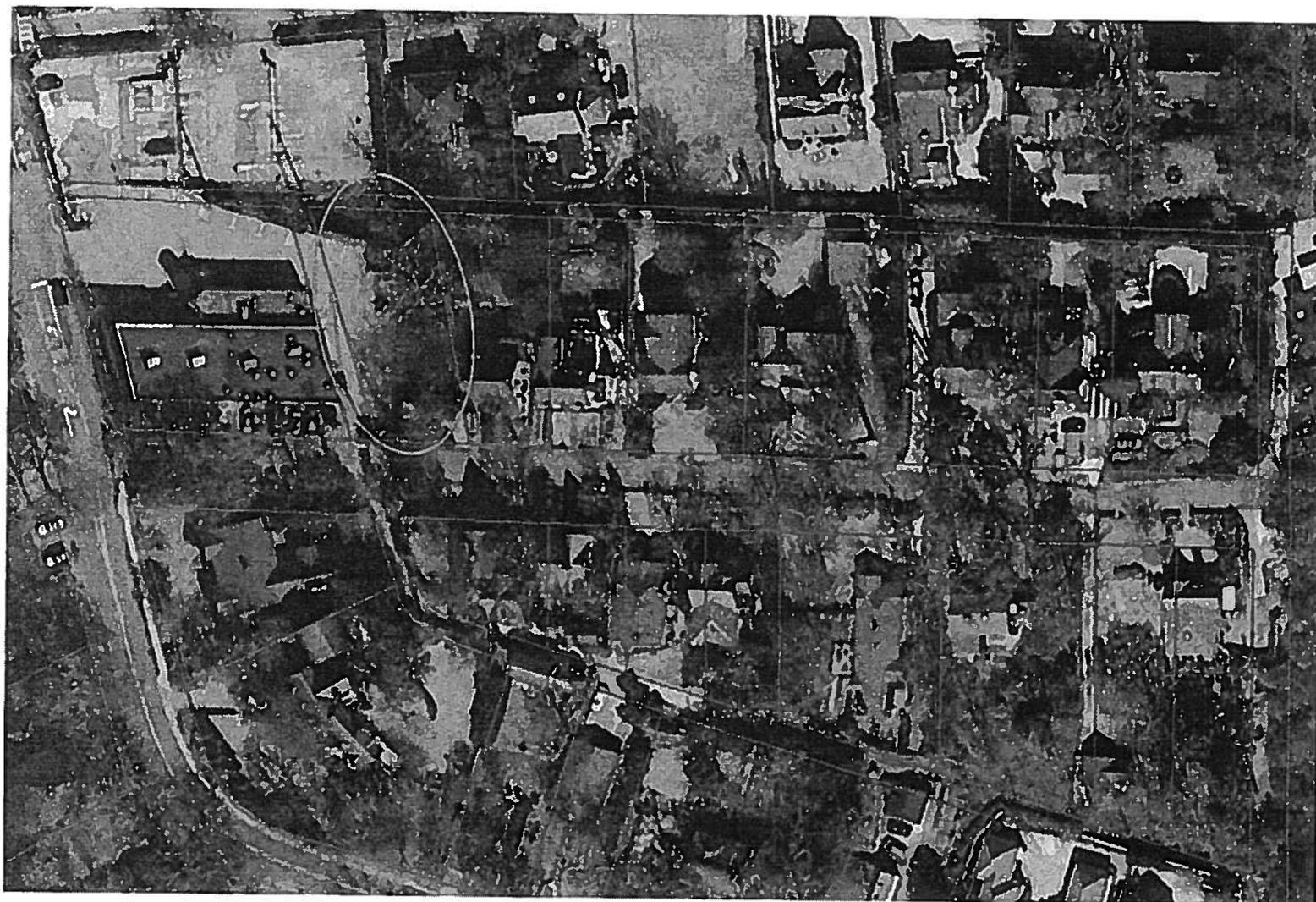
Total_PropJune2006

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



1908



COMMITMENT TO RESTRICT USAGE OF:

**LOT 11, BLOCK 9, 1ST ADDITION TO SOUTH HIGHLANDS, JEFFERSON COUNTY,
ALABAMA**

THIS COMMITMENT is made this ____ day of _____, 2014, by MICHAEL A. MOURON, 402 Office Park Drive, Suite 150, Birmingham, Jefferson County, Alabama 35223, (hereinafter referred to as the "Grantor", which includes the plural of the word where the context requires, and shall, unless the context clearly indicates otherwise, include the Grantor's heirs, administrators, legal representatives, devisees, successors, and assigns) and hereby imposes the following restrictions on that portion of the lot specified herein and as follows (hereinafter referred to as the "Restricted Portion"):

A parcel of land being part of Lot 11, Block 9, 1st Addition to South Highlands as recorded in Map Book 7, Pages 105 and 106 in the Office of the Judge of Probate of Jefferson County, Alabama and being situated in the Southeast one-quarter of the Southeast one-quarter of Section 6, Township 18 South, Range 2 West, Jefferson County, Alabama being more particularly described as follows: Beginning at a set 5/8 inch capped rebar stamped GSA CA-560LS marking the Southeast corner of said Lot 11 said point also lying on the Northerly right of way of Park Lane (50' R.O.W.); thence run North 88 degrees 51 minutes 55 seconds West along said Northerly right of way and along the South lot line of said Lot 11 for a distance of 26.95 feet; thence leaving said Northerly right of way and South lot line run North 01 degrees 11 minutes 47 seconds West for a distance of 21.03 feet; thence run North 63 degrees 19 minutes 03 seconds West for a distance of 3.36 feet; thence run North 08 degrees 57 minutes 51 seconds West for a distance of 74.17 feet; thence run North 31 degrees 22 minutes 47 seconds East for a distance of 34.61 feet to a point on the East lot line of said Lot 11 ; thence run South 10 degrees 45 minutes 36 seconds East along said East lot line for a distance of 128.13 feet to the POINT OF BEGINNING. Said parcel contains 2, 739 square feet, or 0.06 acres more or less.

Lot 11 less Restricted Portion is hereinafter referred to as the "Unrestricted Portion".

The following restrictions shall apply:

The Restricted Portion shall remain a natural buffer and open space area for the benefit of neighboring landowners, including, but not limited to, Maxwell H. and Teresa T. Pulliam, (the "Neighbors") their heirs, administrators, legal representatives, devisees, successors, and assigns, which Neighbors are the current owners of Lot 10, Block 9, 1st Addition to South Highlands as recorded in Map Book 7, Pages 105 and 106 in the Office of the Judge of Probate of Jefferson County, Alabama.

Removal of vegetation from the Restricted Portion is prohibited, except for the removal of dead, diseased, or invasive species. The Grantor shall not remove any tree, shrub, lawn or ornamental planting without first consulting with and reaching an agreement with the Neighbors. The Neighbors are granted express permission to enter and remain upon the Restricted Portion for the purpose of maintaining beds and plantings and for removing dead, diseased, or invasive species.

The Grantor shall not remove any existing wall or fence from the Restricted Portion without first consulting with and reaching an agreement with the Neighbors.

The Grantor agrees to maintain and keep in good repair at its expense the existing wooden privacy fences which currently exist on the Restricted Portion and which mark or form the Western and Northern boundaries of the Restricted Portion.

This commitment shall run with the land and shall be binding upon the Grantor, tenants and any subsequent owners and tenants, their successors, heirs or assigns. Any lease of the said specific parcel shall be subject to this restriction.

This commitment is made with the intent and understanding between Grantor and the Neighbors that the immediate future use of the building currently existing on Lot 12 and Lot 13, Block 9, 1st Addition to South Highlands as recorded in Map Book 7, Pages 105 and 106 in the Office of the Judge of Probate of Jefferson County, Alabama, is anticipated to be a hardware store and the Unrestricted Portion of Lot 11 shall serve the parking and dry-storage needs of the operation of

a hardware store, as permitted by Alabama law and the City of Mountain Brook Code, its zoning and land use regulations.

Should the building currently existing on said Lot 12 and Lot 13 cease to be used as a hardware store for whatever reason or on account of any cause, Grantor expressly agrees that the use of the Unrestricted Portion of said Lot 11 shall remain as parking and/or storage for the future owners or tenants of Lot 12 and Lot 13.

The Restricted Portion of Lot 11 will remain undeveloped unless and until the entirety of Lot 11 is developed as a single family home.

The above restrictions are intended to represent enforceable conditions under Alabama law and the City of Mountain Brook Code. These conditions are intended to be complied with in perpetuity.

If any portion of this Deed Restriction document is deemed unenforceable, the unenforceable portion shall not affect the validity or enforceability the remaining portions of this document.

IN ORDER FOR THIS COMMITMENT TO BE BINDING ON GRANTOR, GRANTOR MUST FIRST PURCHASE THE SUBJECT PARCEL.

IN WITNESS WHEREOF, I hereby set my hand this _____ day of date _____, _____.

GRANTOR: _____

By: _____

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that _____ whose name is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, being informed of the contents of the document, he executed the same voluntarily on the day the same bears date. Given under my hand and official seal this _____ day of _____, 2014.

Notary Public

Parcel 1
Legal Description

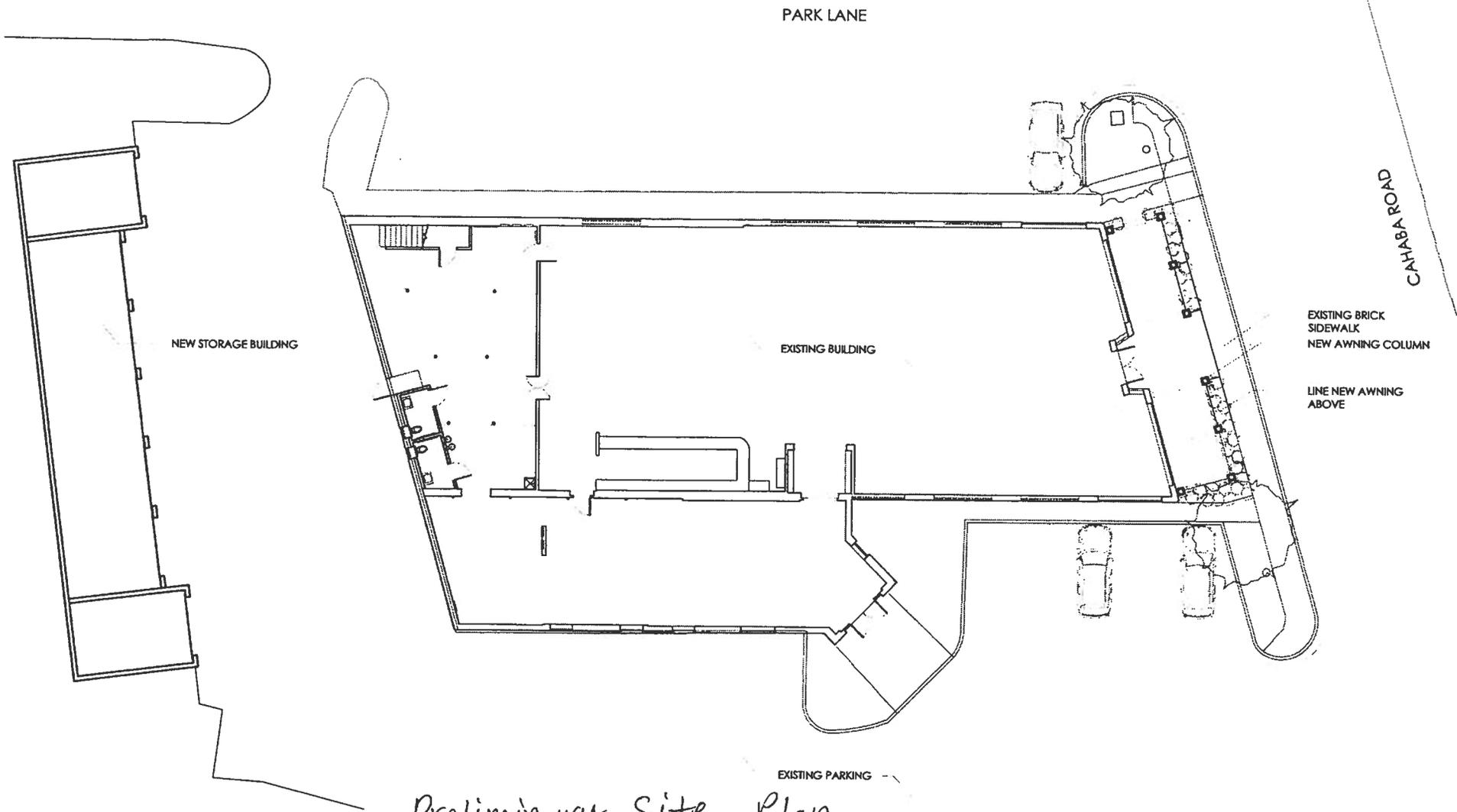
A parcel of land being part of Lot 11, Block 9, 1st Addition to South Highlands as recorded in Map Book 7, Pages 105 and 106 in the Office of the Judge of Probate of Jefferson County, Alabama and being situated in the Southeast one-quarter of the Southeast one-quarter of Section 6, Township 18 South, Range 2 West, Jefferson County, Alabama being more particularly described as follows:

Beginning at a set 5/8 inch capped rebar stamped GSA CA-560LS marking the Southeast corner of said Lot 11 said point also lying on the Northerly right of way of Park Lane (50' R.O.W.); thence run North 88 degrees 51 minutes 55 seconds West along said Northerly right of way and along the South lot line of said Lot 11 for a distance of 26.95 feet; thence leaving said Northerly right of way and South lot line run North 01 degrees 11 minutes 47 seconds West for a distance of 21.03 feet; thence run North 63 degrees 19 minutes 03 seconds West for a distance of 3.36 feet; thence run North 08 degrees 57 minutes 51 seconds West for a distance of 74.17 feet; thence run North 31 degrees 22 minutes 47 seconds East for a distance of 34.61 feet to a point on the East lot line of said Lot 11; thence run South 10 degrees 45 minutes 36 seconds East along said East lot line for a distance of 128.13 feet to the POINT OF BEGINNING. Said parcel contains 2,739 square feet, or 0.06 acres more or less.

Parcel#2
Legal Description

A parcel of land being part of Lot 11, Block 9 1st Addition to South Highlands as recorded in Map Book 7, Pages 105 and 106 in the Office of the Judge of Probate of Jefferson County, Alabama and being situated in the Southeast one-quarter of the Southeast one-quarter of Section 6, Township 18 South, Range 2 West, Jefferson County, Alabama being more particularly described as follows:

Commencing at a set 5/8 inch capped rebar stamped GSA CA-560LS marking the Southeast corner of said Lot 11 said point also lying on the Northerly right of way of Park Lane (50' R.O.W.); thence run North 88 degrees 51 minutes 55 seconds West along said Northerly right of way and along the South lot line of said Lot 11 for a distance of 26.95 feet to the POINT OF BEGINNING of the parcel herein described; thence run North 88 degrees 51 minutes 55 seconds West along said Northerly right of way for a distance of 34.21 feet to a set nail marking the intersection of said Northerly right of way and the Easterly right of way of a 15 foot Alley said point also being the Southwest corner of said Lot 11; thence leaving said Northerly right of way run North 15 degrees 45 minutes 11 seconds West along said Easterly right of way and along the West lot line of said Lot 11 for a distance of 149.55 feet to a found 5/8 inch rebar marking the Northwest corner of said Lot 11; thence leaving said Easterly right of way run South 88 degrees 40 minutes 58 seconds East along the North lot line of said Lot 11 for a distance of 74.51 feet to a found 5/8 inch rebar marking the Northeast corner of said Lot 11; thence leaving said North line run South 10 degrees 45 minutes 36 seconds East along the East lot line of said Lot 11 for a distance of 17.87 feet; thence leaving said East line run South 31 degrees 22 minutes 47 seconds West for a distance of 34.61 feet; thence run South 08 degrees 57 minutes 51 seconds East for a distance of 74.17 feet; thence run South 63 degrees 19 minutes 03 seconds East for a distance of 3.36 feet; thence run South 01 degrees 11 minutes 47 seconds East for a distance of 21.03 feet to the POINT OF BEGINNING. Said parcel contains 6,956 square feet, or 0.16 acres more or less.



Preliminary Site Plan

Plan

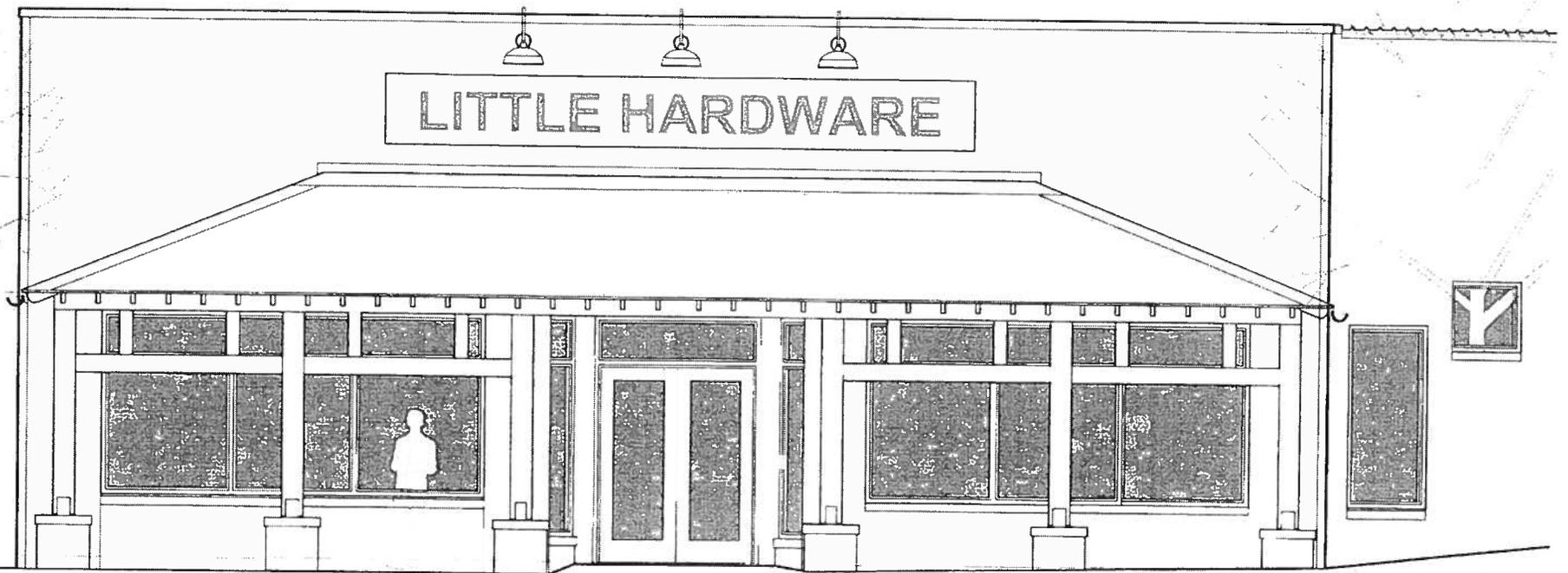
2117 Cahaba Road, Mt. Brook, AL 35223
 scale: 1/16"=1'-0"
 04-18-14



PER PRICHARD ARCHITECTS INC.



Cahaba Elevation
- preliminary



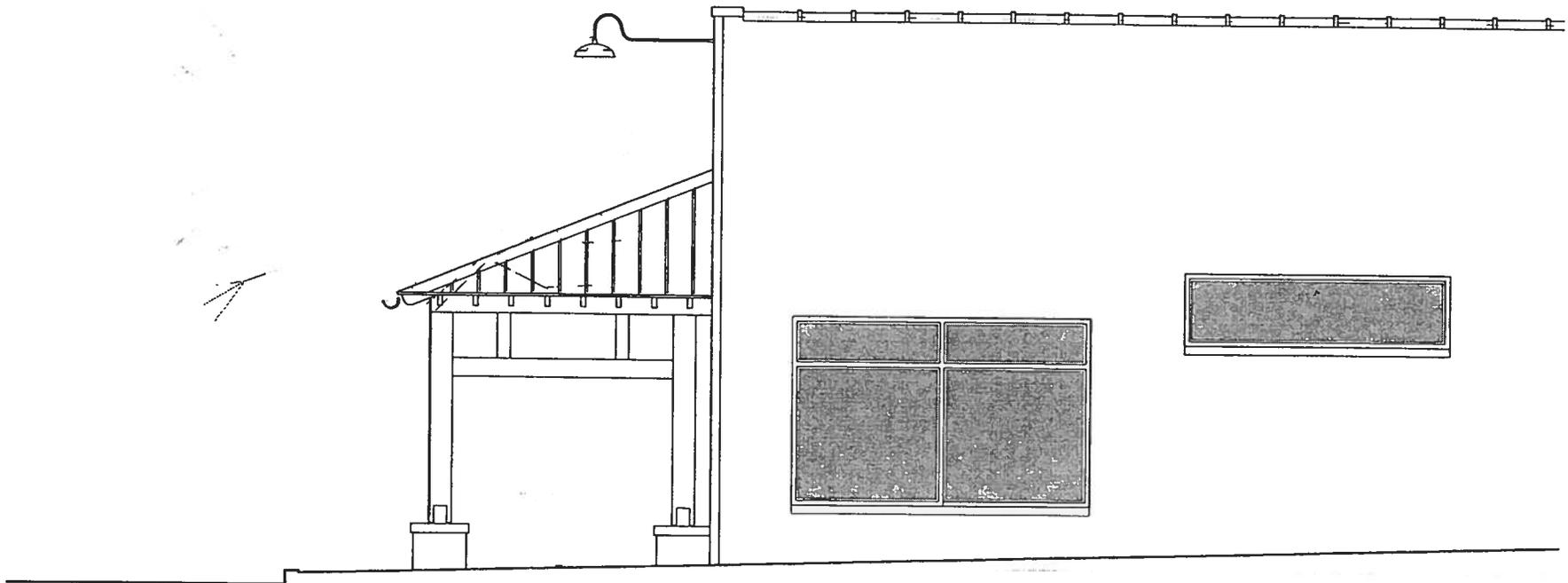
Cahaba Elevation - preliminary - main bldg.

Elevation

2117 Cahaba Road, Mt. Brook, AL 35223



PETER PITCHARD ARCHITECTS INC.



Park Lane Partial Elevation - Preliminary - main bldg

Elevation

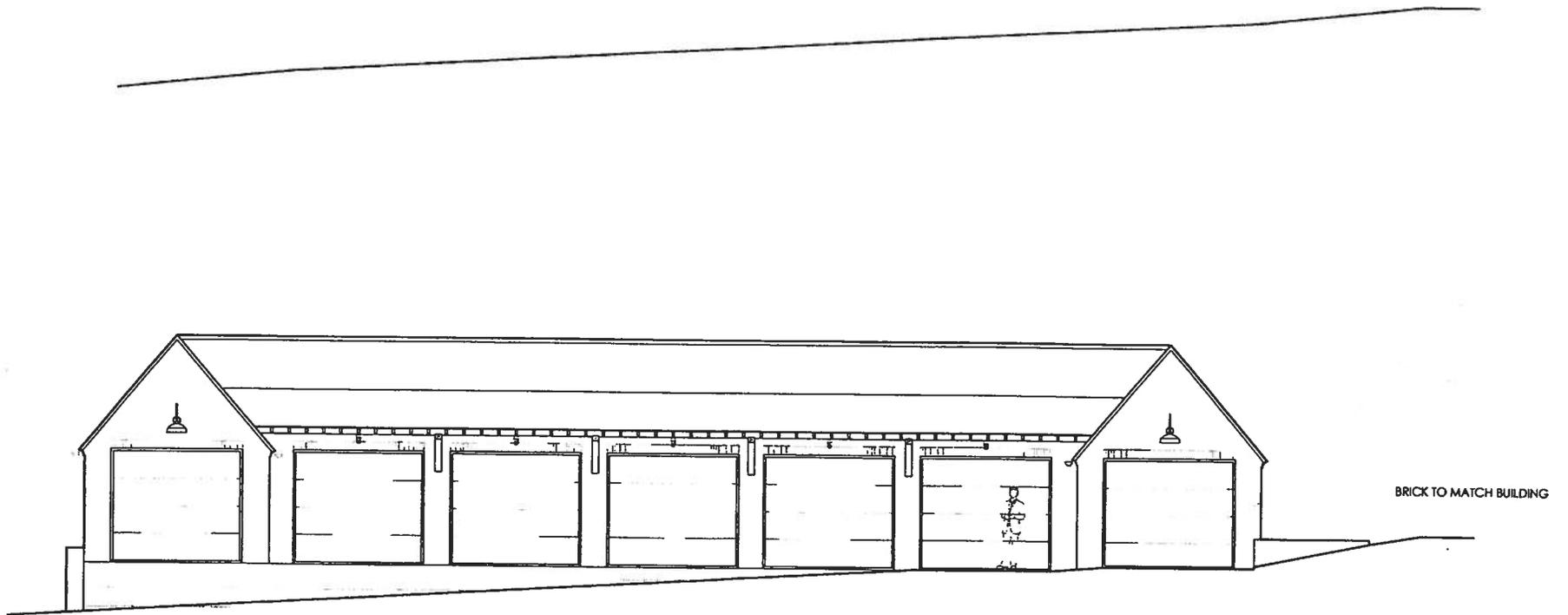
2117 Cahaba Road, Mt. Brook, AL 35223
04.12.14



PEE PRITCHARD ARCHITECTS INC



proposed dry storage accessory bldg -
preliminary



proposed dry storage accessory bldg -
preliminary

Elevation - Storage Building

2117 Cahaba Road, Mt. Brook, AL 35223



PETE RICHARD ARCHITECTS INC.