



# CITY OF MADISON ZONING BOARD OF APPEALS VARIANCE APPLICATION

**\$300 Filing Fee**

Ensure all information is typed or legibly printed using blue or black ink.

Address of Subject Property: 161 Division Street, Madison, WI 53704

Name of Owner: \_\_\_\_\_

Address of Owner (if different than above): \_\_\_\_\_

Daytime Phone: \_\_\_\_\_ Evening Phone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Name of Applicant (Owner's Representative): Kevin Burow; Knothe & Bruce Architects

Address of Applicant: 7601 University Ave; Suite 201  
Middleton, WI 53562

Daytime Phone: 608-836-3690 Evening Phone: 608-575-3123

Email Address: kburow@knothebruce.com

Description of Requested Variance: We would like to preserve the mature oak tree located on the east side of the lot. This will maintain the area's aesthetic and help the new development fit into the surrounding environment. The tree provides shade for the area and many other environmental benefits. In order to preserve the tree we need to locate the garage where it is less than 3 ft from the side lot line, 1'-0" to be exact. We also need to locate the new 2 unit building closer than the front yard setback, with the front porch located 5' back from the property line and face of the building at 12' back from the property line . We are requesting a side yard setback and front yard setback to preserve the tree.

*(See reverse side for more instructions)*

FOR OFFICE USE ONLY	
Amount Paid: <u>\$300.00</u>	Hearing Date: <u>1-20-22</u>
Receipt: <u>115182-0003</u>	Published Date: <u>1-13-22</u>
Filing Date: <u>12-22-21</u>	Appeal Number: <u>LNDVAR-2022-00001</u>
Received By: <u>NJK</u>	GQ: _____
Parcel Number: <u>0710-064-0410-8</u>	Code Section(s): <u>28.171 (E) Ped-GRACE</u>
Zoning District: <u>TR-V1</u>	<u>28.047(2) - Dwelling</u>
Alder District: <u>15 - Foster</u>	_____

## Standards for Variance

**The Zoning Board of Appeals shall not grant a variance unless it finds that the applicant has shown the following standards are met:**

1. There are conditions unique to the property of the applicant that do not apply generally to other properties in the district.

The existing 52" diameter white oak tree located on the east side of the lot creates  
a unique condition.

2. The variance is not contrary to the spirit, purpose, and intent of the regulations in the zoning district and is not contrary to the public interest.

The requested placement of the garage will match the neighboring property's garage placements  
for this block by being at the back of the lots and next to the side yard property line. The location  
of the front of the home is similar to the property to the south with their front porch placement.

3. For an area (setbacks, etc) variance, compliance with the strict letter of the ordinance would unreasonably prevent use of the property for a permitted purpose or would render compliance with the ordinance unnecessarily burdensome.

Compliance would require removal of this very large and very old oak tree. Even if we rotated  
the garage 90 degrees counterclockwise, moved it north of the driveway, and decrease it's  
size there is only 11.5 ft to back out of the garage (see C.1.1.a), which will not function.

4. The alleged difficulty or hardship is created by the terms of the ordinance rather than by a person who has a present interest in the property.

The tree is historic and mature, it has been in this area for an estimated 400 years. The  
property was purchased recently, so we do not want to ruin the historic land features when  
providing additional housing. Keeping the tree helps preserve the aesthetics of the area.

5. The proposed variance shall not create substantial detriment to adjacent property.

This new development will be in harmony with the adjacent properties per (2) above.

6. The proposed variance shall be compatible with the character of the immediate neighborhood.

The tree we are preserving has been around for centuries, so it has become a characteristic of  
the neighborhood. To preserve the tree, the garage and home can only work in a specific  
location where it requires the side yard and front yard setback variances.

## Application Requirements

**Please provide the following information: Incomplete applications could result in referral or denial by the Zoning Board of Appeals.** (Maximum size for all drawings is 11" x 17".)

<input checked="" type="checkbox"/>	<b>Pre-application meeting with staff:</b> Prior to submittal of this application, the applicant has met to discuss the proposed project and submittal material with the Zoning Administrator.
<input checked="" type="checkbox"/>	<b>Site plan</b> , drawn to scale. A registered survey is recommended, but not required. Show the following: <ul style="list-style-type: none"> <li><input type="checkbox"/> Lot lines</li> <li><input type="checkbox"/> Existing and proposed structures, with dimensions and setback distances to all property lines</li> <li><input type="checkbox"/> Approximate location of structures on neighboring properties adjacent to variance</li> <li><input type="checkbox"/> Major landscape elements, fencing, retaining walls or other relevant site features</li> <li><input type="checkbox"/> Scale (1" = 20' or 1' = 30' preferred)</li> <li><input type="checkbox"/> North arrow</li> </ul>
<input checked="" type="checkbox"/>	<b>Elevations</b> from all relevant directions showing existing and proposed views, with notation showing the existing structure and proposed addition(s).
<input checked="" type="checkbox"/>	<b>Interior floor plan of existing and proposed structure</b> , when relevant to the variance request and required by Zoning Staff (Most additions and expansions will require floor plans).
<input checked="" type="checkbox"/>	<b>Front yard variance requests only.</b> Show the building location (front setback) of adjacent properties on each side of the subject property to determine front setback average.
<input type="checkbox"/>	<b>Lakefront setback variance requests only.</b> Provide a survey prepared by a registered land surveyor showing existing setbacks of buildings on adjacent lots, per MGO 28.138.
<input checked="" type="checkbox"/>	<b>Variance requests specifically involving slope, grade, or trees.</b> Approximate location and amount of slope, direction of drainage, location, species and size of trees.
<input checked="" type="checkbox"/>	<b>Digital</b> copies of all plans and drawings should be emailed to: zoning@cityofmadison.com
<input checked="" type="checkbox"/>	<b>CHECK HERE.</b> I understand that in order to process my variance application, City Staff will need access to my property so that they can take photographs and conduct a pre-hearing inspection of the property. I therefore give City Staff my permission to enter my property for the purpose of conducting a pre-hearing inspection and taking photographs.
<input checked="" type="checkbox"/>	<b>CHECK HERE.</b> I acknowledge any statements implied as fact require supporting evidence.
<input checked="" type="checkbox"/>	<b>CHECK HERE.</b> I have been given a copy of and have reviewed the standards that the Zoning Board of Appeals will use when reviewing applications for variances.

**Owner's Signature:** 
DocuSigned by:  
  
0145DA1ECB84E5...
**Date:** 12/20/2021

------(For Office Use Only)-----

<b><u>DECISION</u></b>	
The Board, in accordance with its findings of fact, hereby determines that the requested variance for _____ <b>(is) (is not)</b> in compliance with all of the standards for a variance. Further findings of fact are stated in the minutes of this public hearing.	
<b>The Zoning Board of Appeals:</b> <input type="checkbox"/> <b>Approved</b> <input type="checkbox"/> <b>Denied</b> <input type="checkbox"/> <b>Conditionally Approved</b>	
<b>Zoning Board of Appeals Chair:</b>	<b>Date:</b>

On Tue, Dec 21, 2021 at 1:11 PM Mark Richardson <[mark@unfinishedbusinessconsulting.com](mailto:mark@unfinishedbusinessconsulting.com)> wrote:

Good Afternoon Tyler,

My name is Mark Richardson. My wife Natalie and I live at 158 Dunning Street. We've been here for almost 16 years.

Our lot backs up directly to 161 Division Street. We are in full support of your requested variance in order to preserve the mature oak tree located on the East side of the lot.

In fact, when we built our garage (as couple years after buying the house), we delay the build a calendar year so that we could spike/fortify the tree's root system. That step was suggested to us by an Arborist we called-in for an assessment.

Like you, it was our intent to make sure that this beautiful tree remains healthy for years and years to come.

Ben Anderson and Jim Hansen (neighbors of mine) told me that support for your variance might be needed.

You have mine. Please share with whomever necessary.

Sincerely,

Mark

**Mark Richardson**

President – **Unfinished Business LLC**

[mark@unfinishedbusinessconsulting.com](mailto:mark@unfinishedbusinessconsulting.com).

[unfinishedbusinessconsulting.com](http://unfinishedbusinessconsulting.com)



Where Talent & Opportunity Cross Paths

**MAINTENANCE ACCESS EASEMENT  
AGREEMENT**

This Maintenance Access Easement Agreement (hereinafter the "Agreement") is made effective this 5 day of November, 2021, (the "Effective Date") by and between Donald E. Gilbertson ("Grantor") and 161 Division Street, LLC, a Wisconsin limited liability company ("Grantee").

Name and Return Address:

John W. Van Note  
Mohs Widder Paradise LLC  
20 North Carroll Street  
Madison, WI 53703

PIN: 251-0710-064-0411-6 and  
251-0710-064-0410-8

**RECITALS**

**WHEREAS**, Grantor owns the real property located at 165 Division Street, Madison, Wisconsin (the "Grantor Parcel"), which Grantor Parcel is legally described as **Lot Eleven (11), Block Three (3), Fair Oaks, City of Madison, Dane County, Wisconsin**; and

**WHEREAS**, Grantee owns the real property located at 161 Division Street, Madison, Wisconsin (the "Grantor Parcel"), which Grantor Parcel is legally described as **Lot Ten (10), Block Three (3), Fair Oaks, City of Madison, Dane County, Wisconsin**; and

**WHEREAS**, the improvements on the Grantee Parcel abut the common property line between the Grantor Parcel and Grantee Parcel and Grantee requires access over and across the Grantor Parcel to conduct periodic maintenance on the improvements located on the Grantee Parcel; and

**WHEREAS**, Grantor is willing to provide Grantee and the Grantee Parcel with a permanent easement for periodic access over and across the Grantor Parcel to undertake maintenance of the improvements located on the Grantee Parcel.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Access Easement for Maintenance.** Grantor hereby grants a permanent easement to Grantee, its successors, assigns, contractors, licensees and invitees over and across the Grantor Parcel for the purpose of placing ladders, scaffolding and other items of equipment or vehicles which may be reasonably necessary or reasonably appropriate for the construction, repair and maintenance of the improvements located on the Grantee Parcel. Grantee shall restore, at its sole expense, the Grantor Parcel to a condition at least equal to the condition of said area prior to the commencement of the construction, repair or maintenance work.

2. **Indemnity.** Grantee shall indemnify and defend Grantor and its members, managers, officers, agents, and employees from all liability, suits, actions, claims, costs, damages, and expenses of every kind and description, including court costs and legal fees, for claims of any character, including liability and expenses in connection with the loss of life, personal injury, or damage to property, brought because of any injuries or damages received or sustained by any person, persons, or property on account of or arising out of the use of the easements hereunder by Grantee or its members, tenants, agents, contractors, subcontractors, invitees, or employees.

3. **Insurance.** Grantee shall maintain, or cause its contractors to maintain, in effect at all times during the use of this Agreement a policy of commercial general liability insurance naming Grantor and any other party designated by Grantor as the insured, to insure against injury to property, person, or loss of life arising out of Grantee's use or occupancy of the Grantor Parcel with limits of coverage that are at levels customarily maintained by businesses in the community in which the Grantor Parcel is located.

4. **Covenants Run with Land.** All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by Grantor and Grantee and their respective successors and assigns for so long as the current building remains on the Grantee Parcel. The easement granted under Section 1 of this Agreement is an easement appurtenant to the Grantee Parcel and may not be transferred separately from, or severed from, title to the Grantee Parcel. Furthermore, the benefits of the easements granted under this Agreement shall not be extended to any properties other than the Grantee Parcel without the consent of Grantor.

5. **Governing Law.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

6. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Agreement and duly recorded in the office of the Register of Deeds of Dane County, Wisconsin.

7. **Notices.** All notices to either party to this Agreement shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party at that party's last known address. If the other party's address is not known to the party desiring to send a notice, the party sending

the notice may use the address to which the other party's property tax bills are sent. Either party may change its address for notice by providing written notice to the other party.

**8. Invalidity.** If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

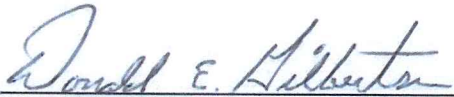
**9. Waiver.** No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

**10. Enforcement.** Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief. If a suit is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the non-prevailing party.

**11. No Public Dedication.** Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the easement granted under this Agreement to the general public or for any public purpose whatsoever.

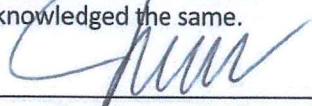
**IN WITNESS WHEREOF,** Grantor and Grantee have caused this Agreement to be executed, as of the Effective Date, by persons duly authorized.

**GRANTOR:**

  
Donald E. Gilbertson

STATE OF WISCONSIN )  
 ) SS.  
COUNTY OF DANE )

Personally came before me this 5 day of November, 2021, the above-named Donald E. Gilbertson, to me known to be the person who executed the foregoing instrument in such capacity and acknowledged the same.

  
Name: JOHN VAN NITZ  
Notary Public, Wisconsin  
My Commission: 15 permanent

**JOHN W. VAN NOTE  
NOTARY PUBLIC  
STATE OF WISCONSIN**

GRANTEE:

161 Division Street, LLC

By: Joseph D. Krupp  
Joseph D. Krupp

STATE OF WISCONSIN)

) SS.

COUNTY OF DANE )

Personally came before me this 5 day of November, 2021, the above-named Joseph D. Krupp as agent for 161 Division Street, LLC, to me known to be the person who executed the foregoing instrument in such capacity and acknowledged the same.

John W. Van Note  
Name: John W. Van Note  
Notary Public, Wisconsin  
My Commission: is permanent

JOHN W. VAN NOTE  
NOTARY PUBLIC  
STATE OF WISCONSIN

DOCUMENT DRAFTED BY: Attorney John W. Van Note





161 Division Street  
Existing 52" diameter White Oak Tree



161 Division Street  
Existing 52" diameter White Oak Tree

2-Story two family Two-unit, Detached Garage

Residential Building  
Front Yard

Dwelling

15.5' Required  
5.0' Provided

10.5' VARIANCE

Open Porch/Deck (NOA)

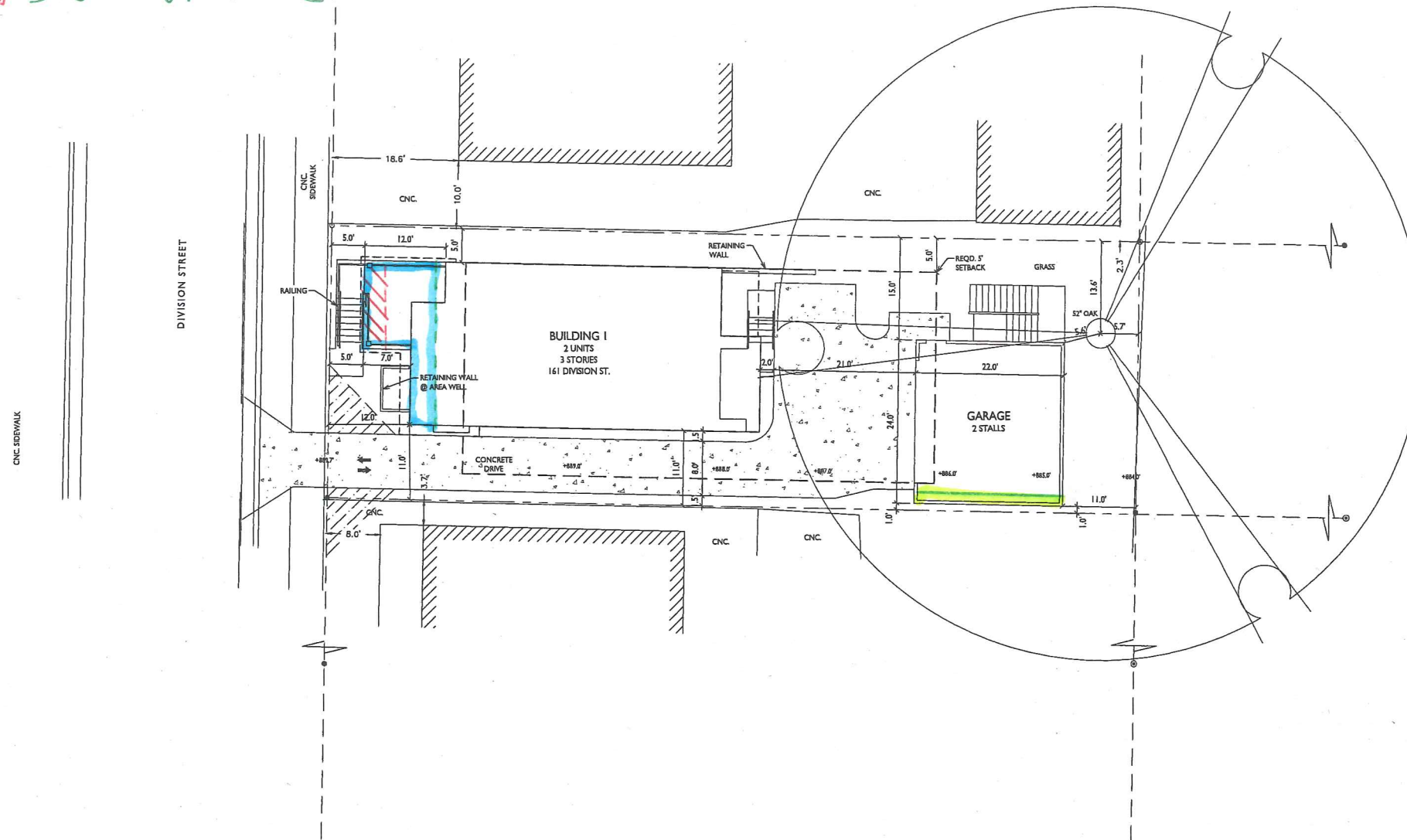
8.5' Required  
5.0' Provided

3.5' VARIANCE

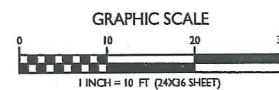
Detached Garage

3.0' Required  
1.0' Provided

2.0' VARIANCE



1 SITE PLAN  
C-1.1 1" = 10'-0"



SHEET INDEX

SITE  
C-1.1 SITE PLAN  
C-1.1a ALTERNATIVE SITE PLAN

ARCHITECTURAL

A-1.1 BASEMENT & FIRST FLOOR PLANS  
A-1.2 SECOND FLOOR & ROOF PLAN  
A-1.3 GARAGE PLAN & ELEVATIONS  
A-2.1 EXTERIOR ELEVATIONS

Site Development Data:

Densities:	Permitted Use
Lot Area	4,802 S.F./0.11 acres
Dwelling Units	2 units
Lot Area / D.U.	2,401 S.F./unit
Density	18 units/acre
Usable Open Space	1,271 S.F. (635.5 S.F./unit)
Lot Coverage	3,074 S.F. (64%)
Building Height	2 stories
Dwelling Unit Mix:	
Two bedroom	1
Three Bedroom	1
Total Dwelling Units	2
Vehicle Parking Stalls:	
Detached Garage	2
Surfaces	0
Total	2
Parking Ratio	1.0 stalls/unit



ISSUED  
Issued for ZBA Application - December 22, 2021

PROJECT TITLE  
161 Division St

Madison, Wisconsin  
SHEET TITLE  
Site Plan

SHEET NUMBER

C-1.1

PROJECT NO. 2141  
© Knothe + Bruce Architects, LLC



**knothe • bruce**  
ARCHITECTS

Phone: 7601 University Ave., Ste 201  
608.836.3690 Middleton, WI 53562

ISSUED  
Issued for ZBA Application - December 22, 2021

PROJECT TITLE  
**161 Division St**

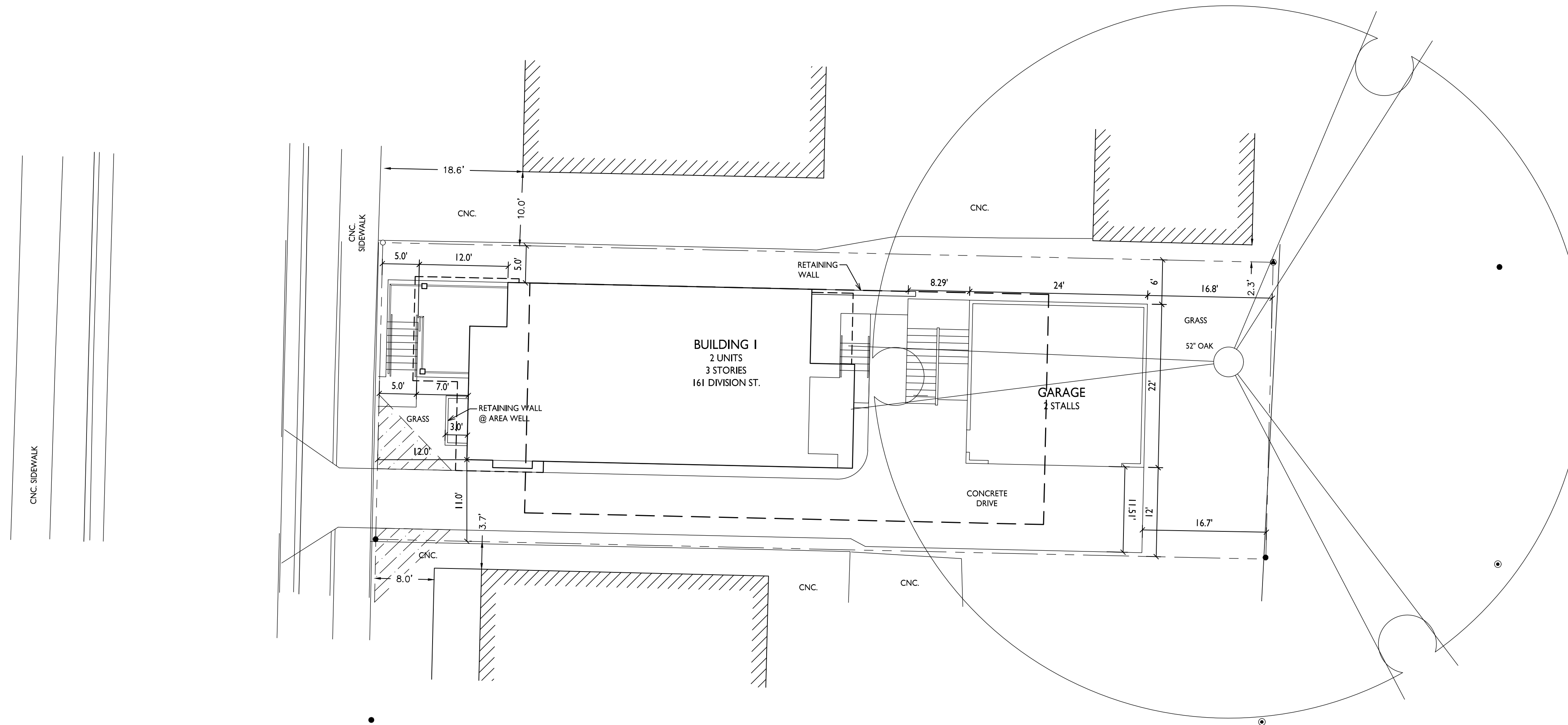
Madison, Wisconsin  
SHEET TITLE  
**Alternative Site  
Plan**

SHEET NUMBER

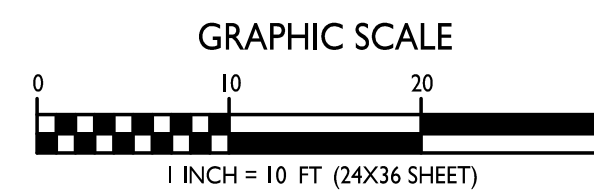
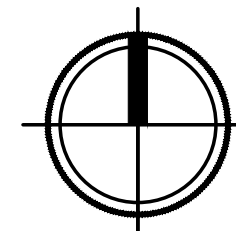
**C-1.1.a**

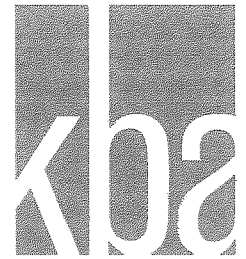
PROJECT NO. **2141**

© Knothe & Bruce Architects, LLC



**1**  
C-1.1.a  
**ALTERNATIVE SITE PLAN**  
1" = 10'-0"

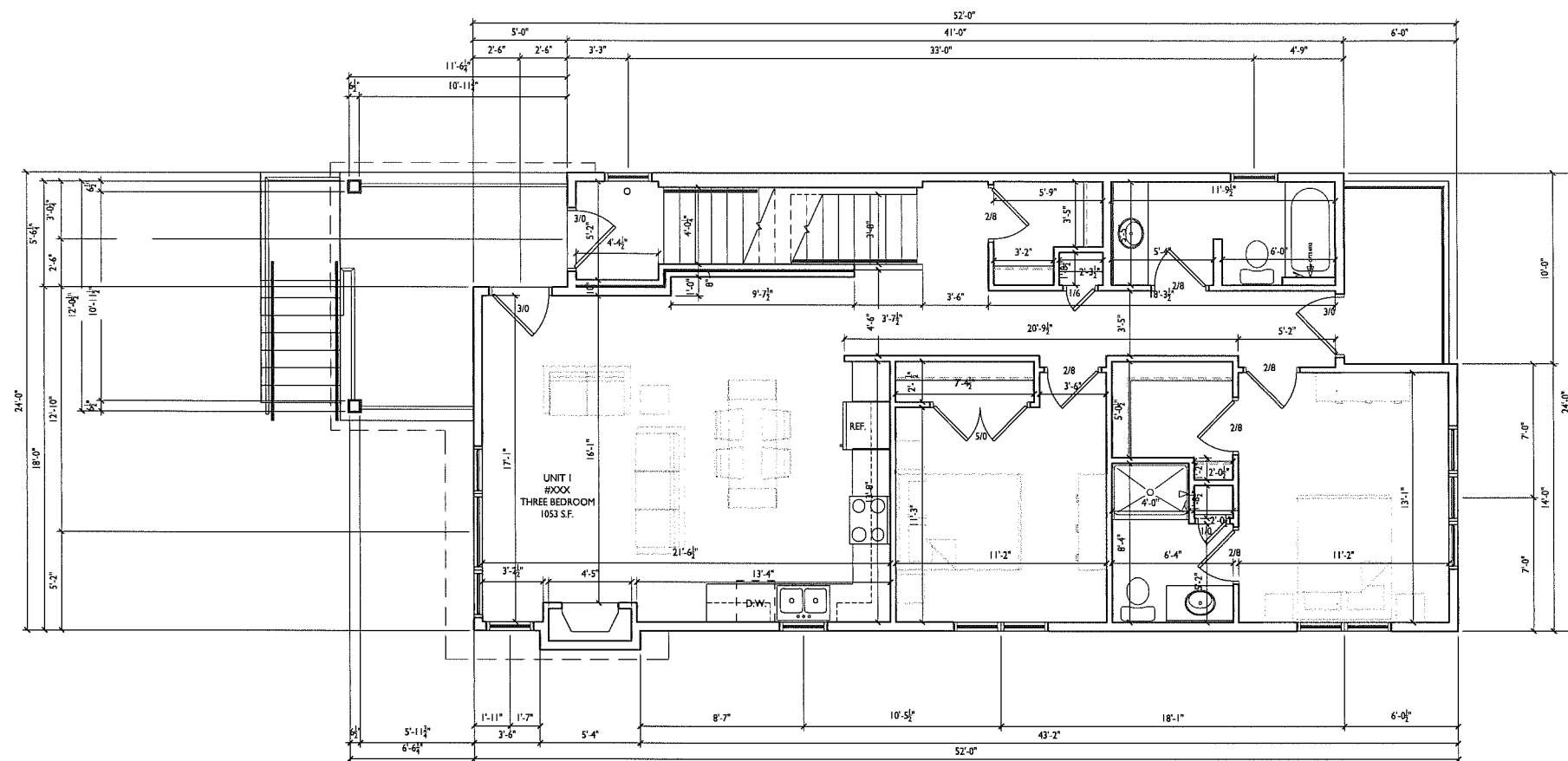




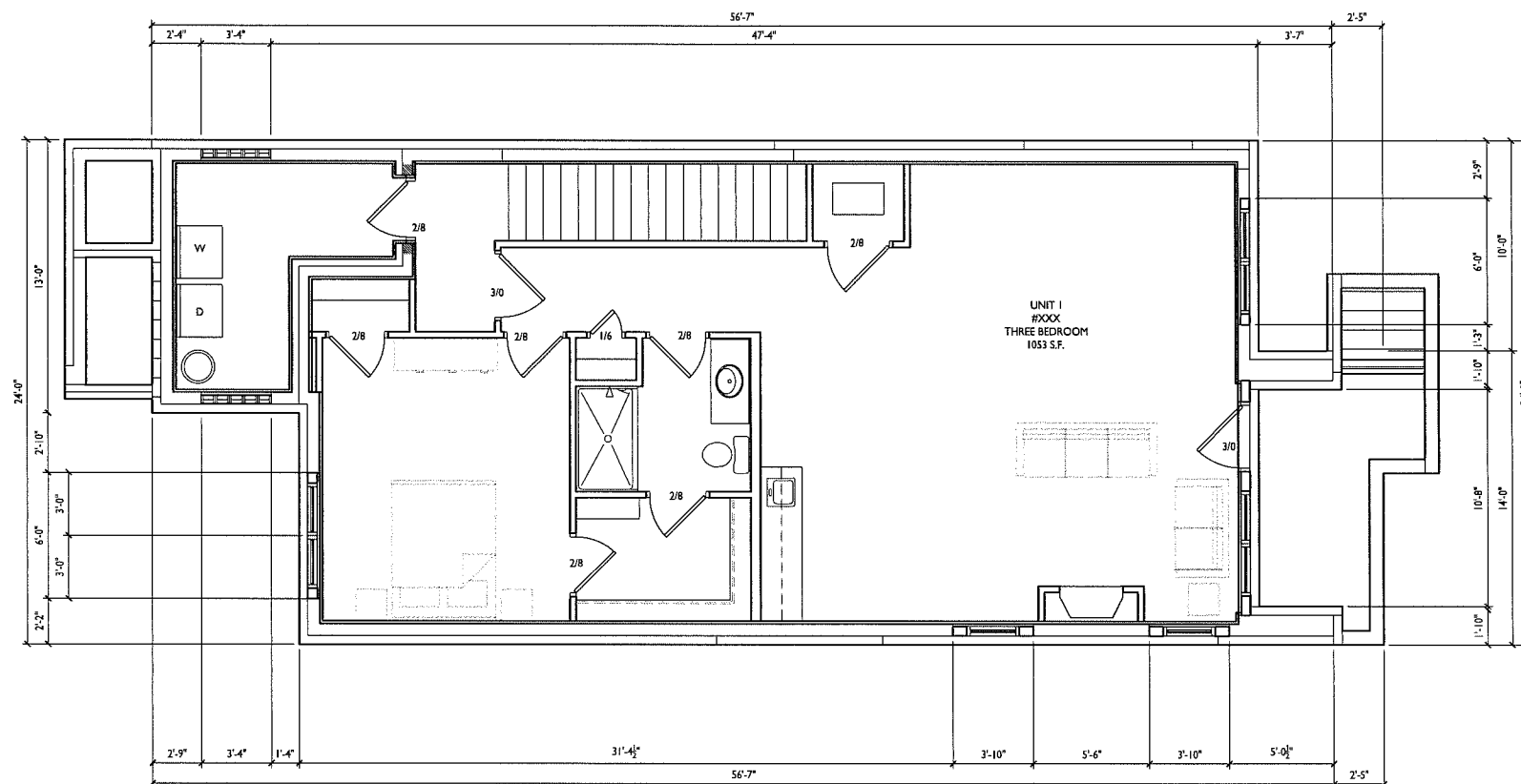
knothe bruce  
ARCHITECTS

Phone: 7601 University Ave., Ste 201  
608.266.2610 Middleton, WI 53562

ISSUED  
Issued for ZBA Application - December 22, 2021



1 FIRST FLOOR PLAN  
A-1.1 1/4" = 1'-0"



2 BASEMENT PLAN  
A-1.1 1/4" = 1'-0"



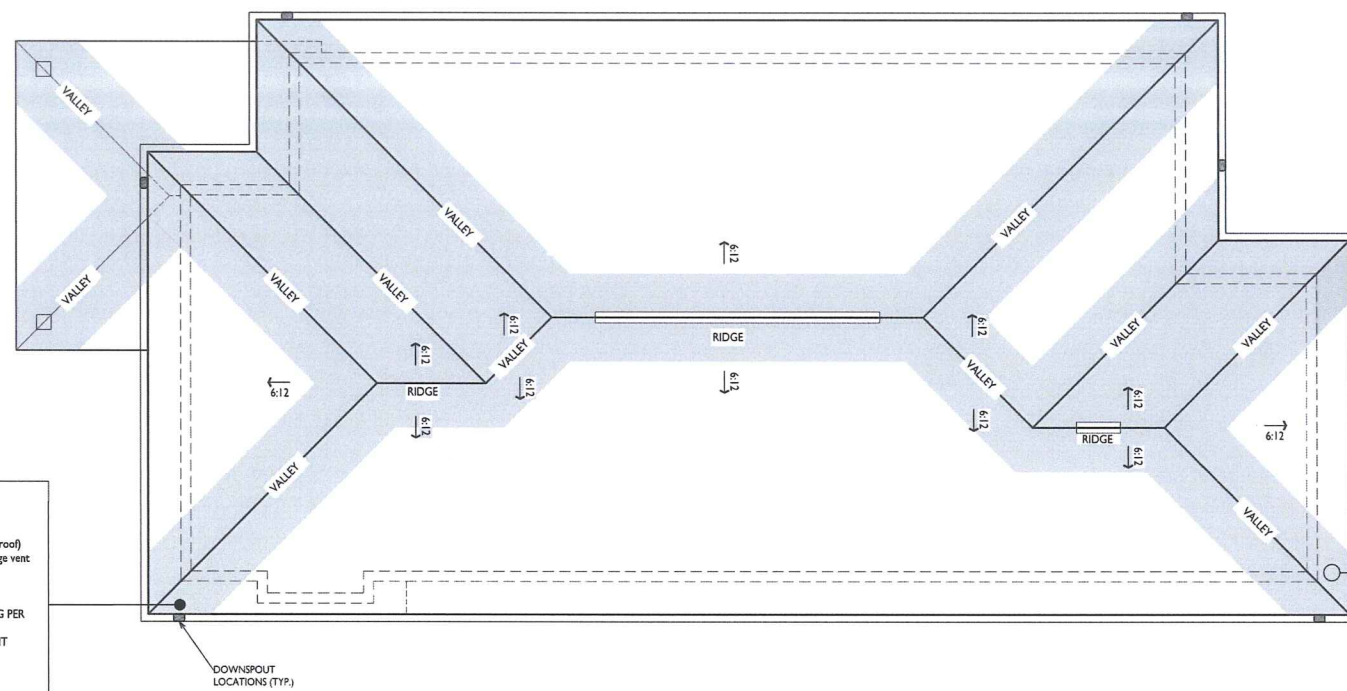
PROJECT TITLE  
161 Division St

Madison, Wisconsin  
SHEET TITLE  
Basement & First  
Floor Plans

SHEET NUMBER

A-1.1

PROJECT NO. 2141  
© Knothe & Bruce Architects, LLC

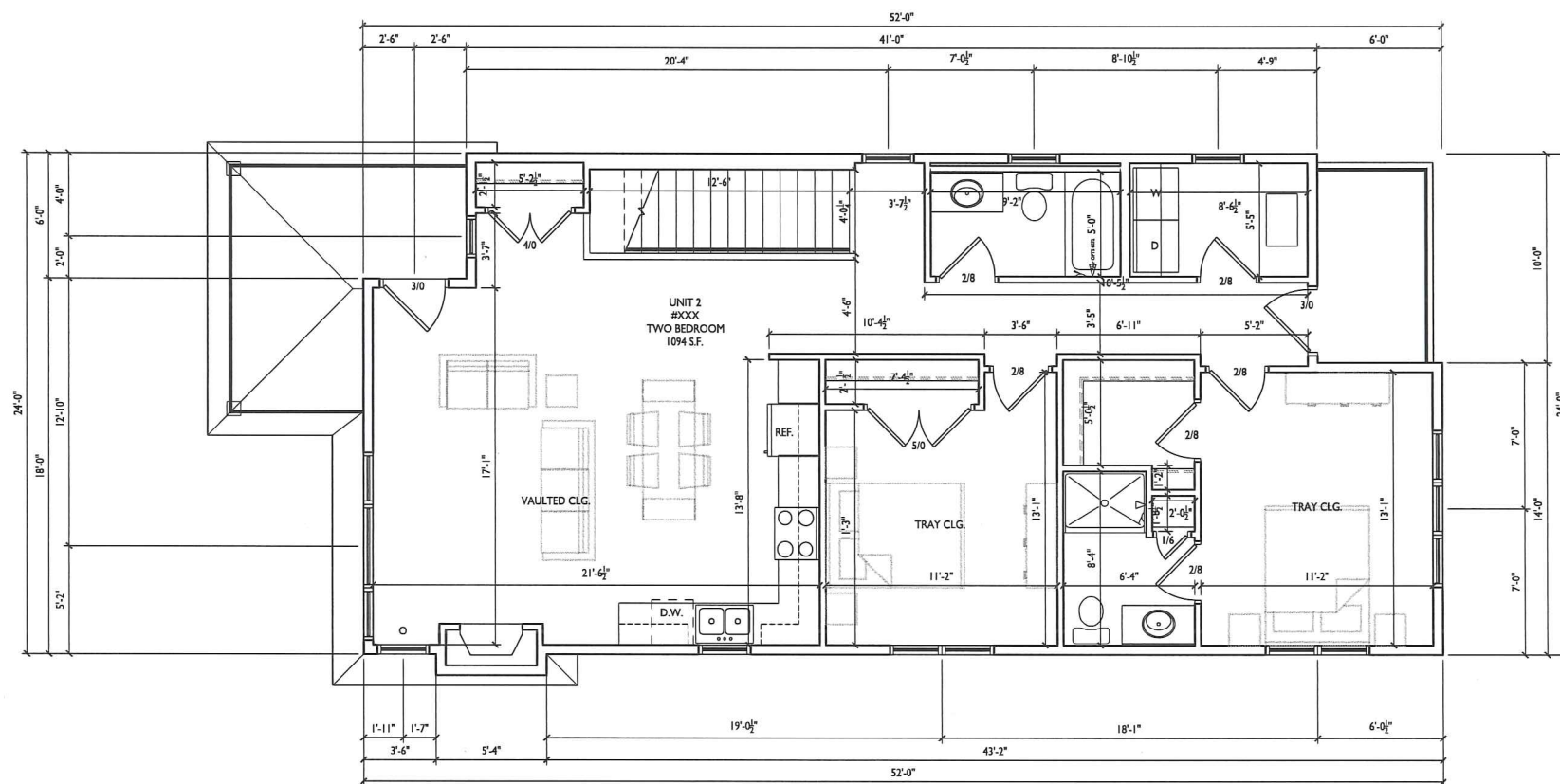


ATTIC AREA = 1164 S.F.  
 $1164 / 300 = 3.88$  (sq ft of venting req.)  
 $3.88 / 2 = 1.94$  S.F. (1/2 from eave & 1/2 from upper roof)  
 $1.94 \times 144 = 279.36$  (sq in of venting required @ ridge vent and @ eave)

214 SQ. IN. REQUIRED UPPER ROOF  
 15 L.F. OF RIDGE VENT @ 16 SQ. IN. OF VENTING PER L.F. FOOT = 240 SQ. IN.  
 TOTAL VENTILATION PROVIDED BY RIDGE VENT

214 SQ. IN. REQUIRED @ EAVE VENTILATION  
 EAVE AREA = 328 S.F.  
 $328$  S.F. OF EAVE  $\times$  6 SQ. IN. PER SF. OF EAVE = 1968 SQ. IN. PROVIDED

**1 ROOF PLAN**  
A-1.2 1/4" = 1'-0"



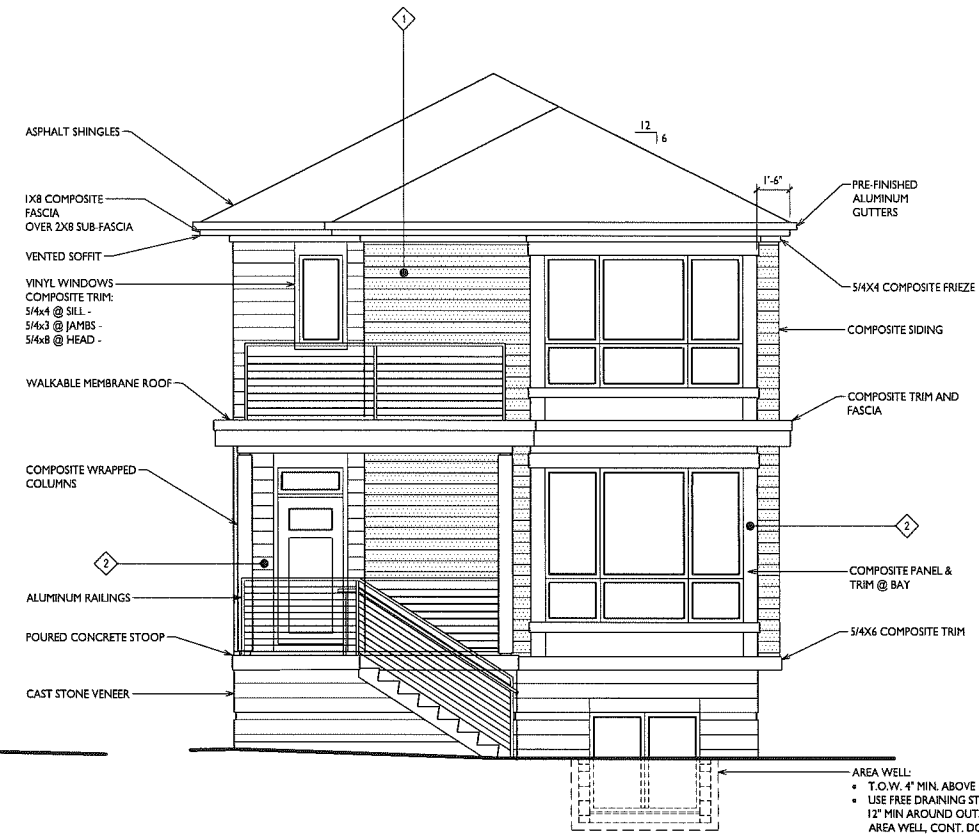
**2 SECOND FLOOR PLAN**  
A-1.2 1/4" = 1'-0"







**3** NORTH ELEVATION  
 A-2.1 1/4" = 1'-0"



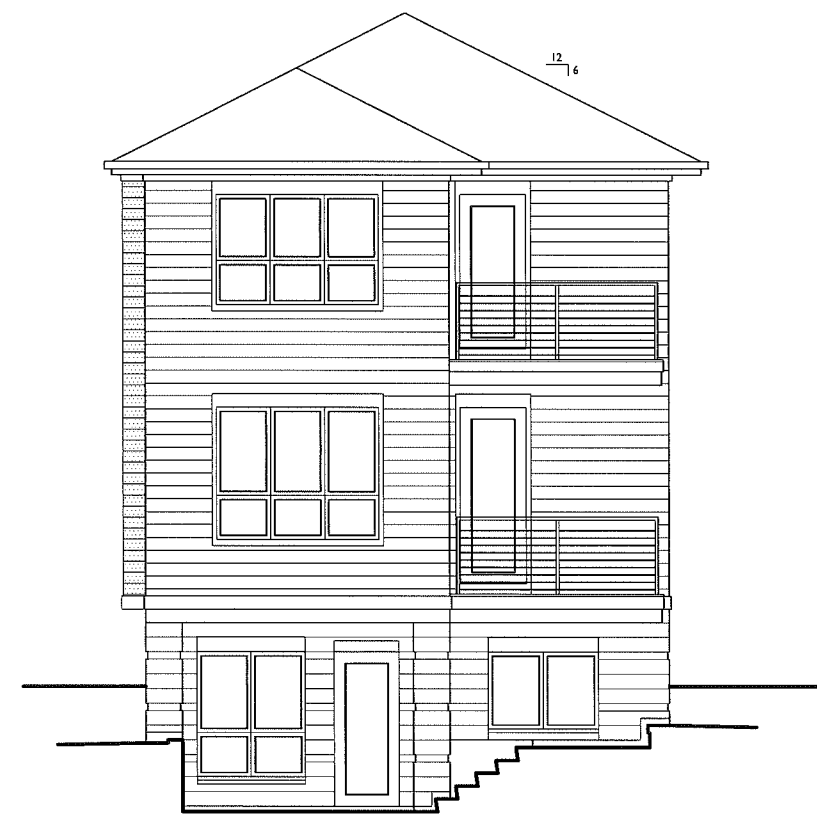
**1** WEST ELEVATION  
 A-2.1 1/4" = 1'-0"

- AREA WELL:
- T.O.W. 4" MIN. ABOVE GRADE
  - USE FREE DRAINING STONE FILL 12" MIN AROUND OUTSIDE OF AREA WELL, CONT. DOWN TO FOOTING AND TIE INTO PERIMETER DRAIN TILE
  - TOP OF INSIDE STONE FILL 4" BELOW MASONRY LEDGE

ISSUED  
 Issued for ZBA Application - December 22, 2021



**4** SOUTH ELEVATION  
 A-2.1 1/4" = 1'-0"



**2** EAST ELEVATION  
 A-2.1 1/4" = 1'-0"

PROJECT TITLE  
**161 Division St**

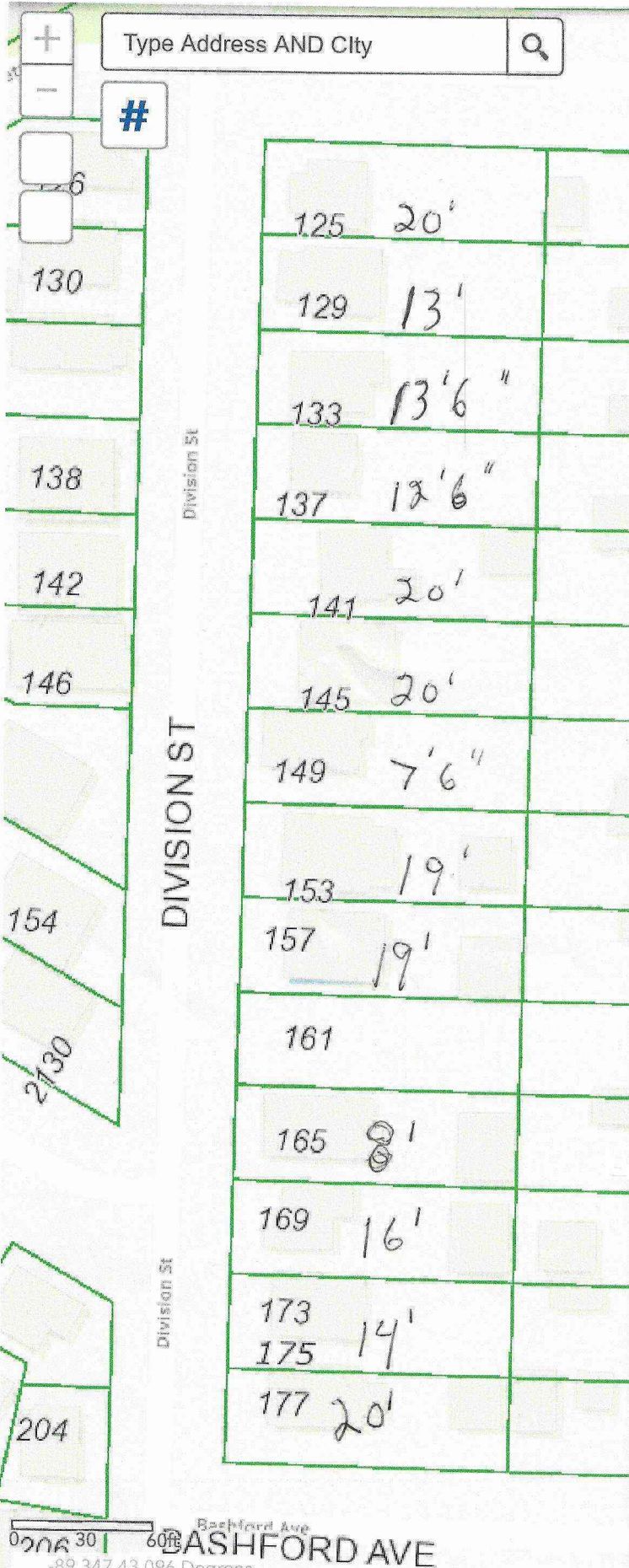
Madison, Wisconsin  
 SHEET TITLE  
**Exterior Elevations**

SHEET NUMBER

**A-2.1**

PROJECT NO. **2141**  
 © Knothe & Bruce Architects, LLC





Instructions

Tips for using the Property Look-up Application

\* Zoom in until you see the green parcel lines, then click on a parcel to bring up a pop-up of basic information. Click on the parcel link to see the City Assessor's Property Details for the selected parcel.

\* When Searching by PIN, do not include dashes in the parcel number.

\* When locating a specific address, you must include the city name "Madison" at the end of the address input. Example: 1 W Wilson St, Madison.

[Link to Open Data Site](#)

Average is 15.5



## Tim Andrews Horticulturist LLC

12/30/21

To whom it may concern,

I was contacted in October of this year by Joe Krupp and Kevin Burrow. They requested that I evaluate a tree and building proposal at 161 Division St. Madison, WI.

I found a 50" DBH White Oak tree in remarkably healthy condition growing near the rear lot-line. The tree was vibrant, in very good condition with medium sized healthy dark green leaves. There was very little dead wood within the crown, a good growth rate and no visible sign of decay anywhere in the tree. Surrounded by houses and utilities, this tree has obviously adapted to many changing conditions during the last few hundred years including an exploding gas line within its root zone which destroyed 2 houses some years ago.

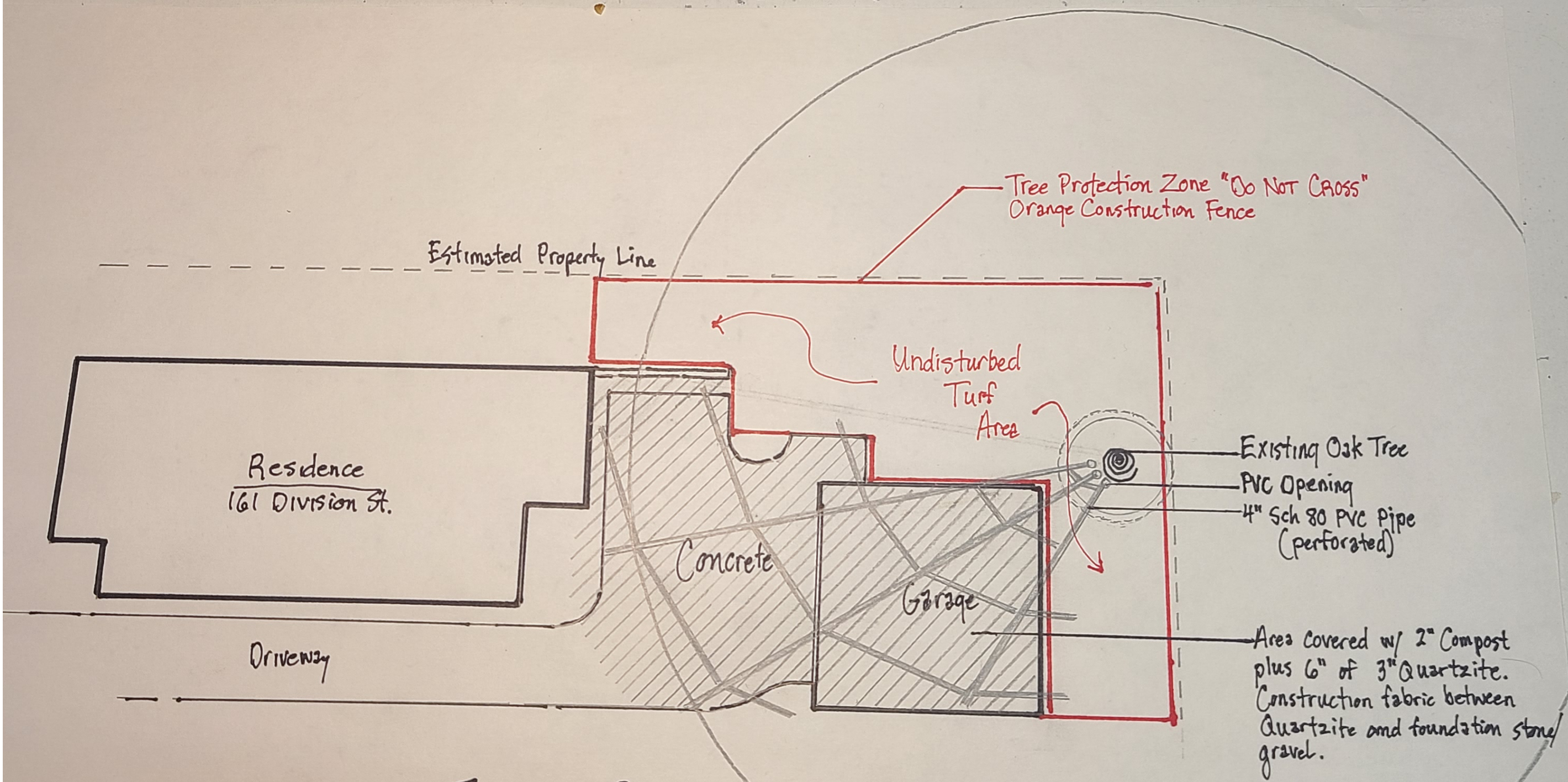
The proposed building of a garage and driveway over a portion of the critical root zone presents a challenge if the tree is to be protected from root destruction and decline. This will require 5 protective measures.

- 1) The building must be set back from the trunk towards the street as much as possible to protect the critical roots near the trunk and root flair.
- 2) Fertilization with a fertilizer blend that promotes root growth.
- 3) Pruning with crown reduction to maintain root to shoot balance.
- 4) A protective fence with signage must be erected to protect the remaining root zone from construction damage and compaction. The turf in this area should be left undisturbed.
- 5) A system of drainage pipes covered with 6" of coarse rock to provide oxygen, water and nutrients to the area covered with new impervious surface must be constructed and the new garage and drive built over the top of this system. (See sketch).

This tree has exhibited a superior ability in adapting to change. The hope is that these measures of protecting it during construction will allow it time to adapt once again. Without all five of the above measures the chances for survival into the future are poor for this historic tree.

Respectfully submitted,

Tim Andrews  
Certified Arborist # WI0345-A



# TREE PROTECTION DETAIL

161 Division St.