

**JAMES N. WITKOWIAK**  
ALDERMAN, 12TH DISTRICT

September 22, 2005

To the Honorable, the Common Council

Dear Members:

Re: Common Council File 050369

Attached are written objections to the recommendation of denial of the request by Erick Uecke for a permanent extension of the Class "B" Tavern premises to include extension of premises 12' on the north side of the current premises, reconfiguring the bar, kitchen and restroom areas and providing handicapped access for the premises at 2496 S. Wentworth Ave. ("Cactus Club") in the 14<sup>th</sup> Aldermanic District.

This matter will be heard by the full Council at its September 27, 2005 meeting. Pursuant to City Ordinances, a roll call vote will be taken to confirm that all members have read the attached objections.

Respectfully,

A handwritten signature in black ink that reads "JAMES N. WITKOWIAK". The signature is written in a cursive style and is enclosed within a hand-drawn circle.

James N. Witkowiak, Chair  
Utilities and Licenses Committee

cc: All Council Members  
City Attorney's Office  
Common Council/City Clerk – License Division  
CCF 050369

LAW OFFICES OF  
**MICHAEL A. I. WHITCOMB**

633 W. Wisconsin Avenue, Suite 510  
Milwaukee, Wisconsin 53203-1918

Telephone 414-277-8384  
Facsimile 414-277-8002

September 21, 2005

The Honorable Common Council  
of the City of Milwaukee  
Room 205, City Hall  
200 E. Wells Street  
Milwaukee, WI 53202

CITY OF MILWAUKEE  
2005 SEP 22 AM 11:56  
RONALD D. LEONHARDT  
CITY CLERK

Re: Alteration of Class "B" Tavern Premise  
Property Owner: Eric J. Uecke  
Trade Name: Cactus Club  
Location: 2496 S. Wentworth Avenue

Honorable Members of the Common Council:

Please be advised that this office represents the above-referenced property owner who seeks remodeling building permits (hereinafter "Permits") from the Department of Neighborhood Services (hereinafter "DNS") to renovate the first floor and the exterior of his property located at 2496 S. Wentworth Avenue (hereinafter "Property"). A Plan Examiner for the City of Milwaukee (hereinafter "City") refused to process architectural plans (copies attached – 8 pages) to secure the necessary Permits without approval of the Utilities and Licenses Committee (hereafter "Committee").

It must be noted that the approval by the Committee was purportedly mandated by Milwaukee Code of Ordinances (MCO) 90-13, and not by the recently enacted MCO 90-5-13 that requires Common Council approval for a licensee to "substantially deviate" from a previously submitted floor plan or plan of operation. The licensee at the Property has not yet filed a license renewal application that required the newly required submission of a floor plan and plan of operation.

Pursuant to MCO 90-13, a permit applicant whose permit application has been denied by the Committee "may appeal the decision to the common council." Without waiving Mr. Uecke's objections to the Committee's jurisdiction and authority to regulate real estate

improvements and to this appeal process, this communication is submitted as Mr. Uecke's written objections to the September 16, 2005, Report of the Committee that "recommended" that the Permits be denied (hereinafter "Report"). According to MCO 90-13, the Committee's action of denying the Permits is not a "recommendation." It is a final decision now being "appealed" to the Common Council.

The applicant requests that these "written objections" be considered at the Common Council meeting of Tuesday, September 27, 2005, at which time the Committee's decision denying the Permits will be appealed.

### **Process**

The Report presents findings of fact, conclusions of law and a recommendation. This Report mirrors the requirements of the Milwaukee Code of Ordinances (hereinafter "Code") for liquor license suspensions or renewal denials according to articulated legal standards set forth in the Code. There are no standards set forth in the Code for which building permits may be denied by the Committee. The only standards set forth in the Code for the issuance of building permits is set forth in the Building and Zoning Code. It is submitted respectfully that it is arbitrary and capricious to deny a property right to improve real estate according to the Building and Zoning Code merely because a portion of the real estate is licensed to sell alcohol without setting forth legal standards upon which building permits may or may not be approved by the Committee.

So to, how is this Honorable Body to consider this purported appeal? It is not explained in the Code. How is this Honorable Body to determine whether to affirm or reverse the decision of the Committee denying approval for the Permits? Does this Honorable Body review the transcript of the Committee proceedings, as it does when liquor licenses are suspended or renewal is denied? If so, how does Mr. Uecke prosecute an appeal without benefit of the transcript? Or, must this Honorable Body conduct its own evidentiary hearing in order to determine the merits of the appeal? It is submitted respectfully that it would be a constitutional deprivation of procedural and substantive due process for this Honorable Body to affirm the decision of the Committee in the total absence of any meaningful standards and procedures for the denial of the valuable property right to improve real estate according to the Building and Zoning Code.

### **Jurisdiction**

It is submitted respectfully that the Committee has no authority or jurisdiction to regulate otherwise lawful building improvements. The sale of alcohol beverages in Wisconsin is a matter of statewide concern, and municipalities therefore may not regulate the sale of alcohol in a manner that conflicts with state law. *See Wis. Stat. § 125.01.* There is not any statutory authority for municipal liquor licensing bodies to engage in regulating otherwise legitimate modifications of privately owned real estate. The Committee is authorized under state law to regulate sale of alcoholic beverages in a particular area of building, but it is certainly is not authorized to prohibit lawful building improvements in that particular area. Neither the Committee nor this Honorable Body is permitted under to state law to act as a mini plan commission or Department of Neighborhood Services (hereinafter "DNS") for licensed premises.

State law specifically states that Chapter 123 of the state statutes regulating the statewide concern of the sale of alcoholic beverages "does not affect the power of municipalities to enact or enforce zoning regulations." *See Wis. Stat. § 125.10(3).* It is clear therefore that the Committee cannot affect or limit the power of the DNS to issue building permits. The issuance of a liquor license may be withheld pending issuance of an Occupancy Permit by DNS, but a building permit cannot not be denied by DNS pending the Committee's approval. It is submitted respectfully that Mr. Uecke is entitled as a matter of law to the issuance of the Permits, notwithstanding the Committee's refusal to approve the Permits.

### **Committee Hearing**

The Committee hearing on this matter was noticed to commence at 3:00 p.m. However, it did not commence until 5:30 p.m. The hearing ended at 9:40 p.m. with 42 witnesses testifying, including Mr. Uecke and the local alderman, with 19 expressing reservations or objections, and 23 expressing support of the Permits. Testimony from the opposition was not restricted to the merits of the requested Permits, and it was exclusively related to the licensed activity at the Property, as is, without any consideration of the building improvements that would be authorized by the Permits. It was only the supporters of the Permits who stressed the necessity and desire to modernize this nearly 100-year old Property.

The Property has been “grandfathered” for decades from complying with modern building codes. However, to make any alterations to the Property today, the Property in total must be brought into conformance with modern building codes. Mr. Uecke is willing to do so at a cost of \$150,000 to \$200,000, depending upon plan approvals. Mr. Uecke cannot under the Code alter or change only select portions of his Property without being required to bring the entire Property into compliance with the present building codes. *See* MCO 200-10. It is all or nothing, and with nothing, the Property is but a few paces from being like so many abandoned and aged properties in the City.

As the Committee was informed, the first floor improvements for which the Permits are sought are extensive:

- 1) Demolish and replace all existing floors.
- 2) Demolish and replace existing bar service area.
- 3) Demolish and replace men’s and women’s bathrooms with ADA approved stalls, toilets, urinals, with new tiling, fixtures, and flooring.
- 4) Replace and augment air conditioning/purification/ventilation systems.
- 5) Replace and/or augment existing lighting fixtures.
- 6) Provide ADA approved wheelchair ramp.
- 7) Replacement/augment entrances/exits to comply with present building codes.
- 8) Provide increased soundproofing with cement block insulation, and façade replacement.
- 9) Complete replacement of existing aluminum façade with hardy board, an aesthetically pleasing high quality material known for its soundproofing qualities that will blend with the neighborhood aesthetic.
- 10) Replace/augment external signage that will blend with the neighborhood aesthetic.

- 11) Enclose external trash receptacles.

As the Committee was informed, the benefits from the improvements are substantial:

- 1) Beautification of exterior enhances beauty of neighborhood.
- 2) Replacement of floors, lighting, and fixtures and bar service area substantially enhances the ambiance of the Cactus Club.
- 3) Additional larger and modern bathrooms enhance and improve patron comfort.
- 4) Air filtering system will reduce smoke discomfort and greatly increase air purification.
- 5) Air conditioning minimizes noise and outside loitering.
- 6) New exterior cinder block wall construction and installation of hardy board façade to cover the existing aluminum siding exterior will render Property nearly sound proof.
- 8) Reconfiguration and design of the front entrance will substantially reduce noise emanating from the front entrance.

There are two unassailable affects from the improvements. First, the Cactus Club will attract young professional patrons on a regular basis, other than during the weekends, which will provide the additional revenue to warrant the improvements. Second, the improvements will increase the lawful capacity of the first floor by operation of present building codes.

According to the Report, the improvements will increase floor space by 460 square feet. This additional square footage does not and cannot increase the capacity from 80 to 200. As the Report surmises, the increased capacity of the first floor, yet to be calibrated, would be attributable for the most part to the improvements to the Property unrelated to the additional floor space.

The Committee was split two-to-two on the first vote. Thereafter, an alderman in support of approving the Permits changed his vote in order to resolve the matter at Committee that evening for subsequent consideration by your Honorable Body.

### Argument

This matter is an unprecedented anomaly. Historically, Committee approvals under MCO 90-13 for "expansion of licensed premises" related to expanding the licensed area to adjacent unlicensed outdoor areas for cafes, patios, volley ball courts, etc., or to unlicensed areas on other interior floors. MCO 90-13 has not been applied to a situation as we have here where the purported "expansion of a licensed premise" relates to the area of a licensed premise already licensed. The Property has, and has had for decades, a liquor license for the "first floor." It is respectfully submitted that MCO 90-13 only applies where the "expansion of the licensed premises" includes an area that is not contained in the description of the licensed premises "where alcohol beverages are to be sold or stored" as found in an alcohol beverage license application. As Mr. Uecke is not seeking to expand his licensed first floor premise, MCO 90-13 does not apply, and DNS should issue the requested permits notwithstanding disapproval thereof by the Committee.

Moreover, the Committee hearing was conducted as a plebiscite on the Cactus Club itself. The hearing as noticed transformed the application for approval of the Permits into an alcohol beverage license hearing. The time for a hearing on the license is at renewal, not at a hearing for approval of building permits. To allow Mr. Uecke to improve his Property by issuance of the Permits, in no way affects the ability of the Committee and this Honorable Body to annually oversee licensed activity at the Cactus Club at renewal time. Certainly, subsequent to the completion of the improvements, the risk of the loss of the liquor license would be substantially increased causing a practical licensee and businessman to be especially vigilant in maintaining an acceptable and proper operation of the licensed premise.


The Report of the Committee focused almost exclusively on objections common to license renewal hearings. Such objections have no relevance as to whether the proposed improvements to the Property are meritorious. Nevertheless, the Property is not an island in an otherwise sleepy residential neighborhood. There are six other licensed establishments within a few blocks of the Property: The Palomino Bar, Club Gerabaldi, At Random, Puddler's Hall, Mama Demarinis, and Phil & Dom's Demarinis. In addition, the Committee, at the same hearing, recommended that G. Groppis market, kitty-corner from the Property, be granted a **new** Class B liquor license without objection whatsoever.

This neighborhood enclave has had numerous taverns and restaurants for years. It is the gateway to Bayview and the near Southside from the Hoan Bridge. Traffic and parking have always been problematical, but are considered acceptable positive ambiance for an older city neighborhood, not unlike the Brady Street neighborhood, Brewers Hill and the projected gentrification of Bronzeville. These vehicular neighborhood deficiencies should not be accepted positive neighbor characteristics in one instance, and cause for concern or Permit rejection in another.

Mr. Uecke resides at the Property with his child. The previous owner resides there as well. The Report of the Committee suggests that the voices of the supporters should not be heard as they are young professionals who do not reside close to the Property, are not otherwise disinterested in the Cactus Club. It is submitted respectfully that these supporters were not disingenuous in their testimony but sincere. Most if not all of them are Bayview residents and most knowledgeable of the neighborhood. Their desire to be heard and their strong estimable support of having Mr. Uecke improve his property is evidenced by their willingness to wait nearly seven hours to testify and await the decision of the Committee.

Mr. Uecke has a right to improve his Property. He is not expanding his licensed premise. He is licensed on the first floor of his Property. He is but renovating the first floor of his Property all according to modern building codes. MCO § 90-13 does not apply. Moreover, the Committee is not empowered to deny the issuance of building permits that otherwise would be issued forthwith by DNS. Any municipal decisions regarding the improvement of property in the City should be best left with DNS. To deny Mr. Uecke his right to improve his property under these circumstances would not only be totally inequitable but unconstitutional as well. It is submitted respectfully that you Honorable Body reverse the Committee, and direct the proper DNS officials to process Mr. Uecke's Permit requests forthwith.

Sincerely,



Michael A.I. Whitcomb

Encs.

c: Mr. Eric J. Uecke





**Cactus Club**  
 3496 S. Wentworth Ave.  
 Milwaukee-WI 53207

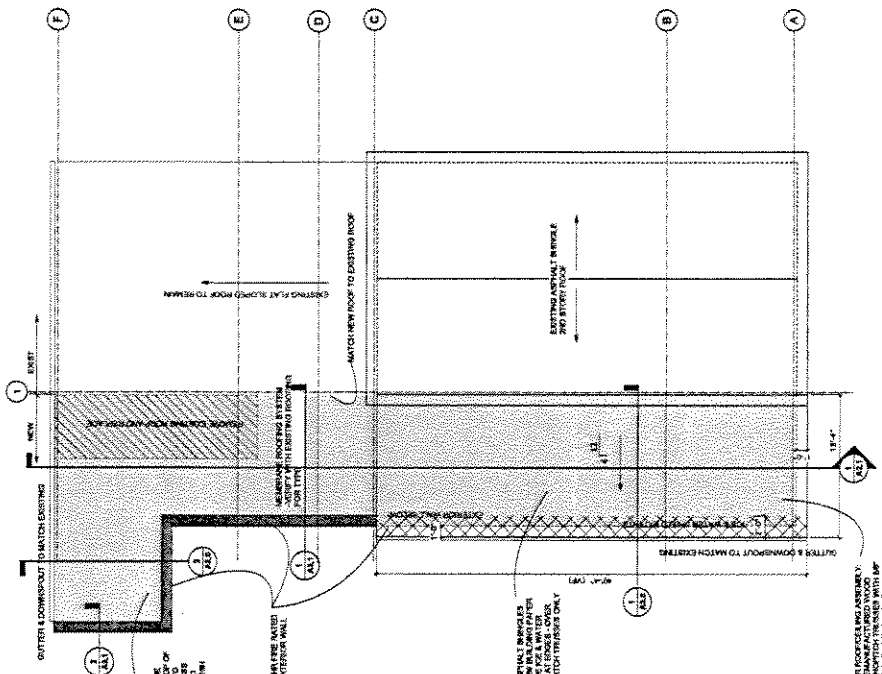
**Erik Uecker**

**STRUCTURAL**  
 1000 W. WISCONSIN STREET  
 MILWAUKEE, WI 53233  
 TEL: 414-224-2200

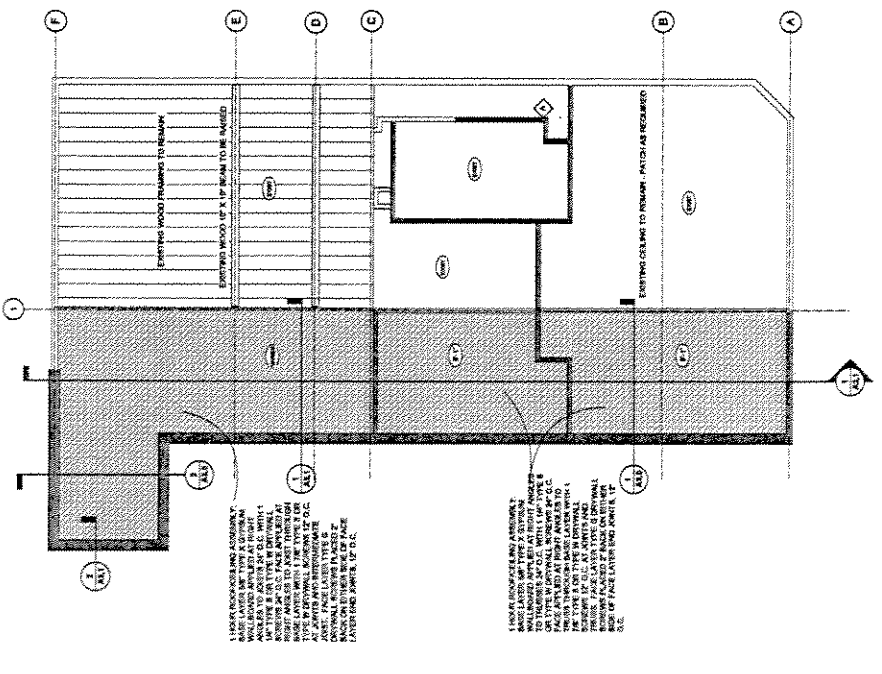
**JULY 7, 2005**

**REFLECTED CEILING PLAN**

**A.I.I.**



**1. Roof Plan**  
 Scale: 3/16" = 1'-0"



**1. Reflected Ceiling Plan**  
 Scale: 3/16" = 1'-0"

**Cactus Club**  
 4408 S. Wentworth Ave.  
 Phoenix, AZ 85007

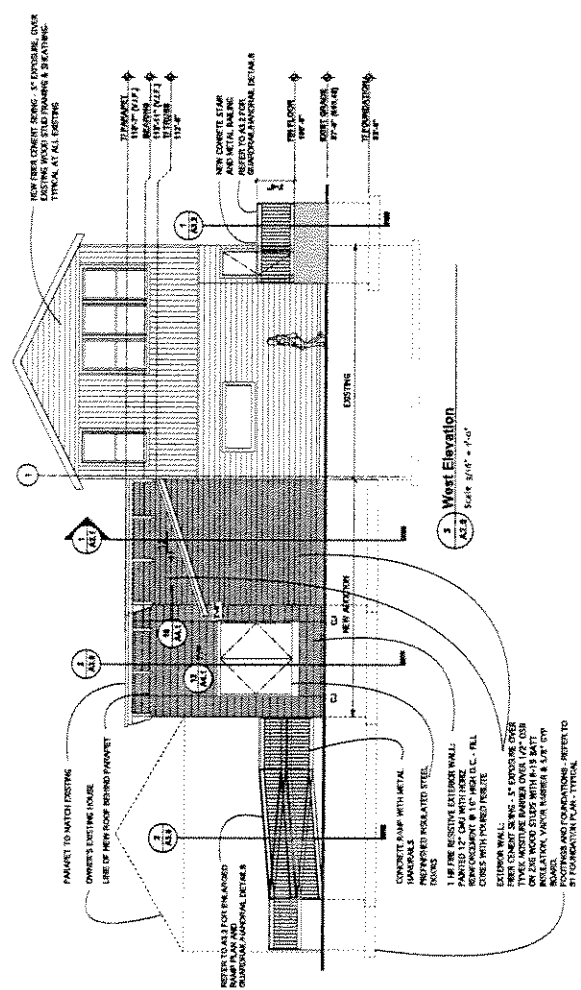
**Eric Ueckle**

**STRUCTURAL**  
 PROFESSIONAL ENGINEER  
 LICENSE NO. 12157  
 EXPIRES 12/31/2011  
 1001 N. 19TH AVENUE  
 PHOENIX, AZ 85016  
 TEL: 602.998.9999

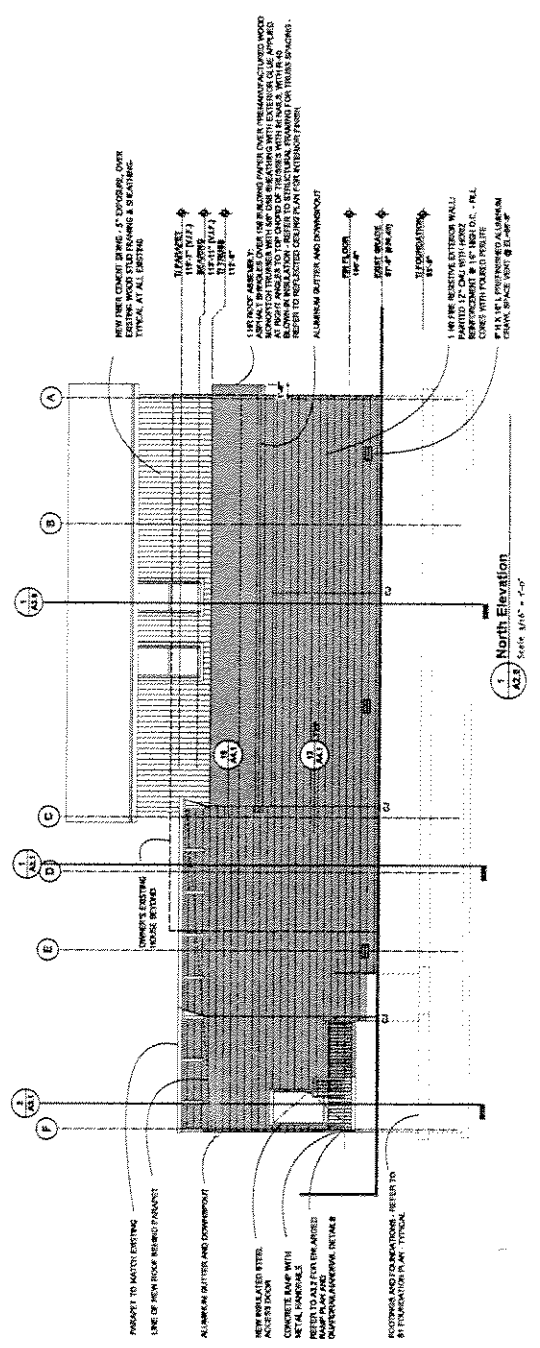
July 7, 2009

**ELEVATIONS/  
 BUILDING SECTION**

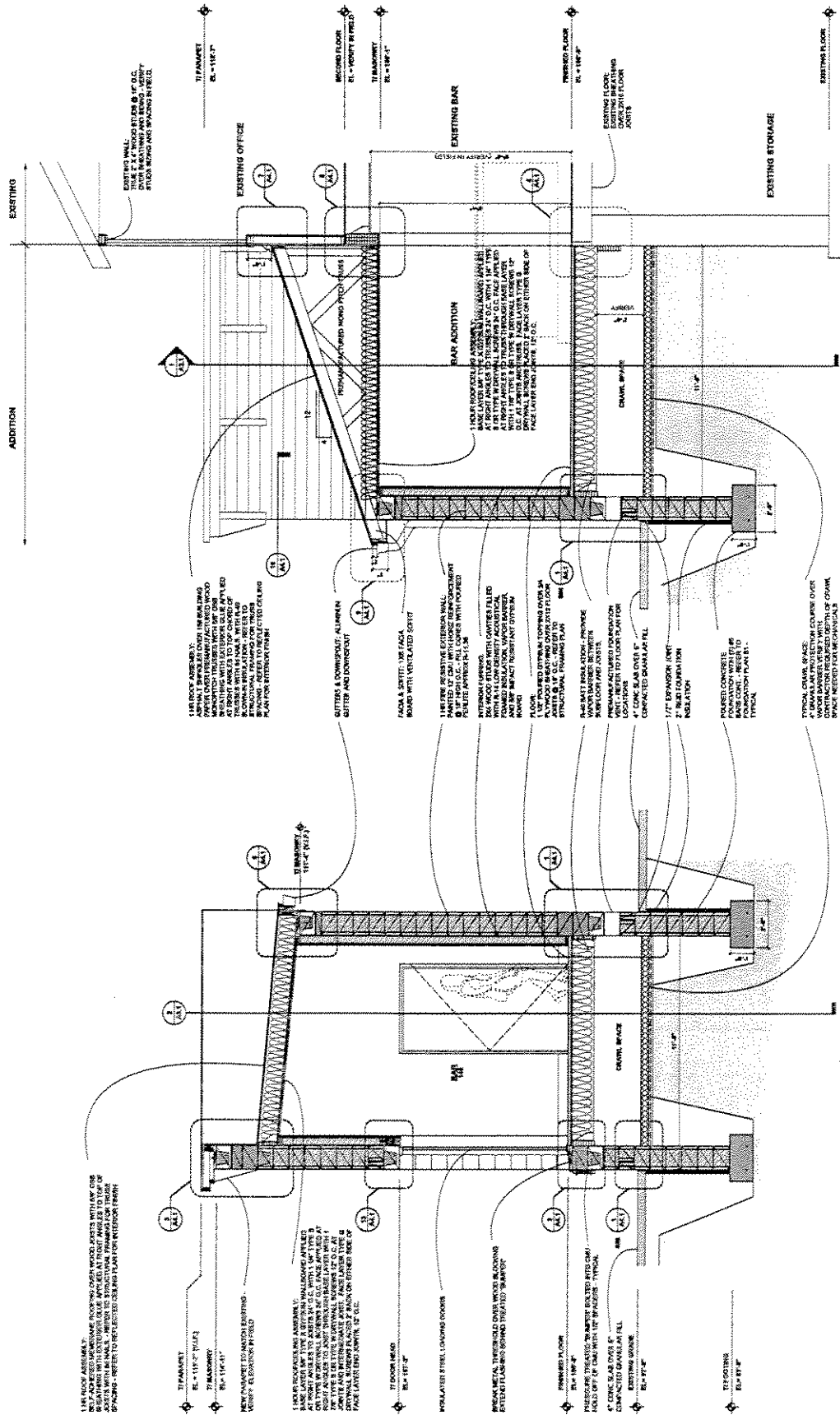
**A2.0**



**West Elevation**  
 Scale 1/8" = 1'-0"



**North Elevation**  
 Scale 1/8" = 1'-0"



1. INSULATION ASSEMBLY:  
 1.5" RIGID POLYSTYRENE INSULATION BOARD WITH 1/2" DENSIFIED FIBERGLASS FLEECE UNDERLAYMENT WITH 1/2" DENSIFIED FIBERGLASS FLEECE UNDERLAYMENT AT RIGHT ANGLES TO THE CHANGING OF DIRECTION OF INSULATION BOARD. INSULATION BOARD SHALL BE PROTECTED BY 1/2" DENSIFIED FIBERGLASS FLEECE UNDERLAYMENT WITH 1/2" DENSIFIED FIBERGLASS FLEECE UNDERLAYMENT AT RIGHT ANGLES TO THE CHANGING OF DIRECTION OF INSULATION BOARD. INSULATION BOARD SHALL BE PROTECTED BY 1/2" DENSIFIED FIBERGLASS FLEECE UNDERLAYMENT WITH 1/2" DENSIFIED FIBERGLASS FLEECE UNDERLAYMENT AT RIGHT ANGLES TO THE CHANGING OF DIRECTION OF INSULATION BOARD.

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Section A3.1  
 Scale 1/2" = 1'-0"

Section A3.2  
 Scale 1/2" = 1'-0"

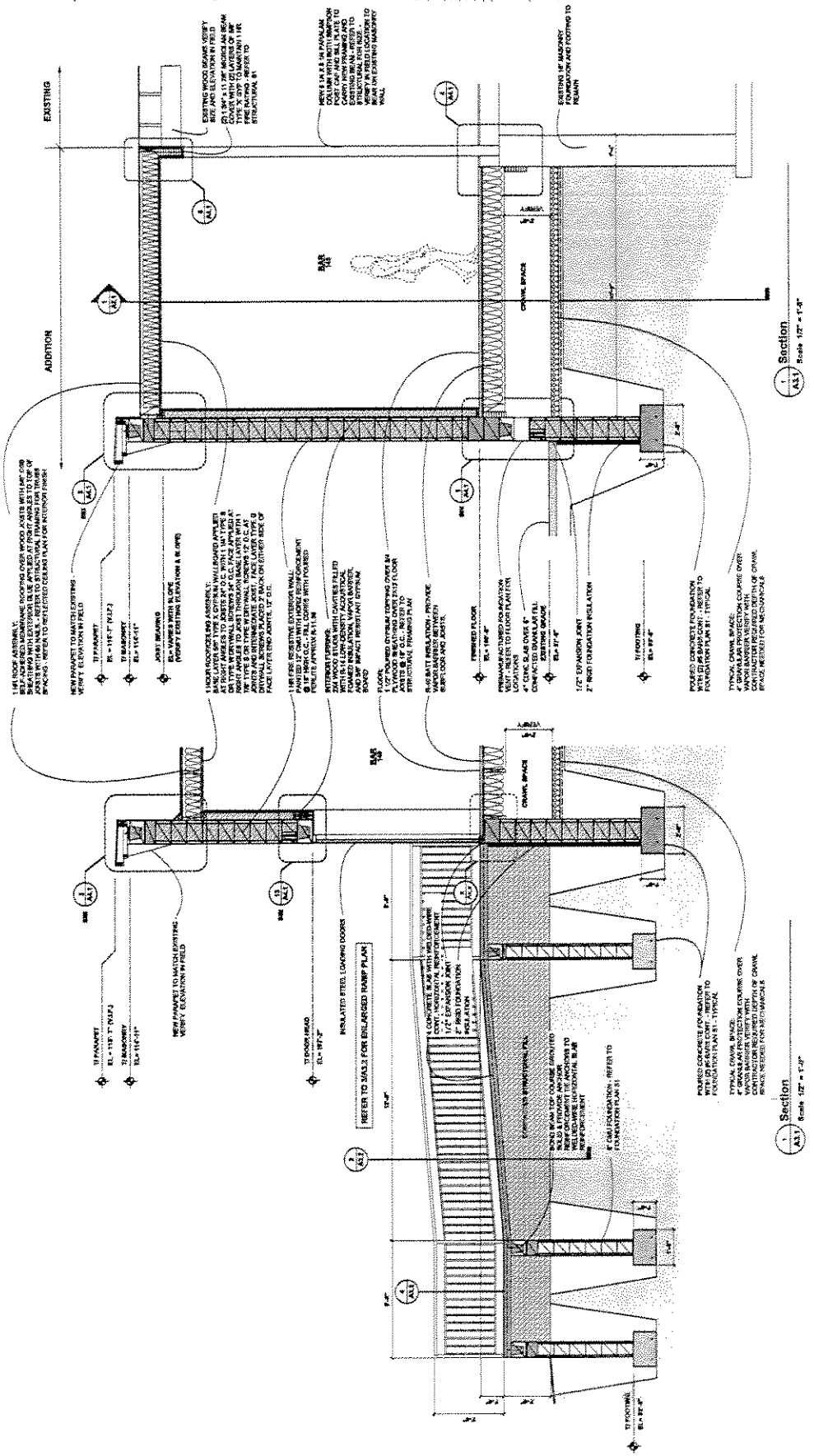


**Erik Ueckle**

July 7, 2008

**SECTIONS**

**A3.1**



**A3.1** Section  
 Scale: 1/2" = 1'-0"

**A3.2** Section  
 Scale: 1/2" = 1'-0"

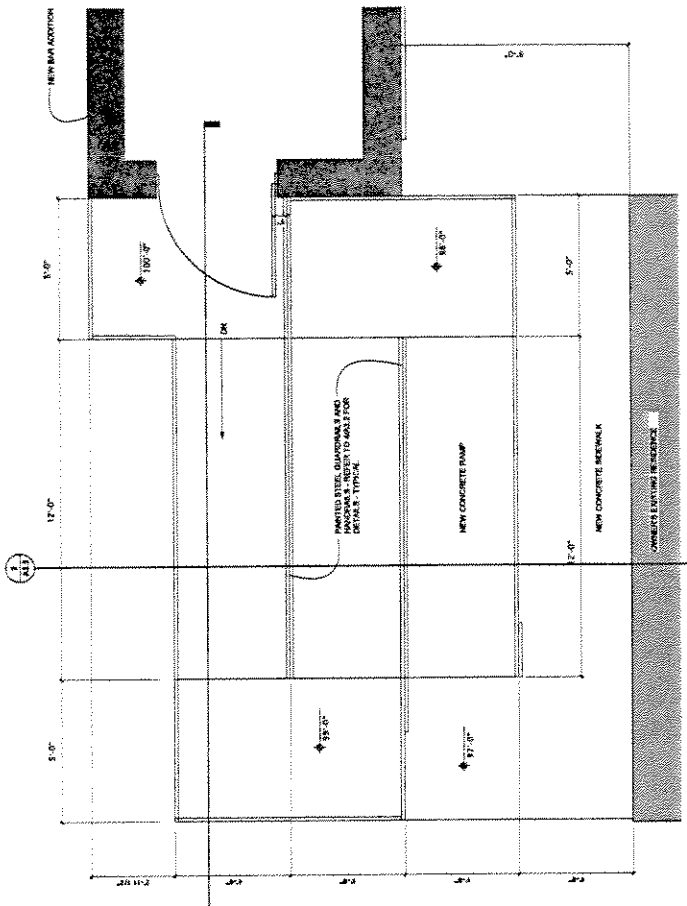
Cactus Club  
 4496 S. Westworth Ave.  
 Allen, Texas 75013

Eric Uecker

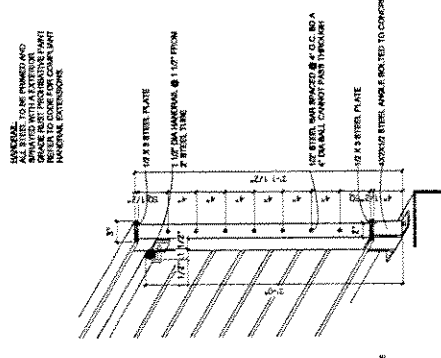
July 7, 2005

SECTIONS

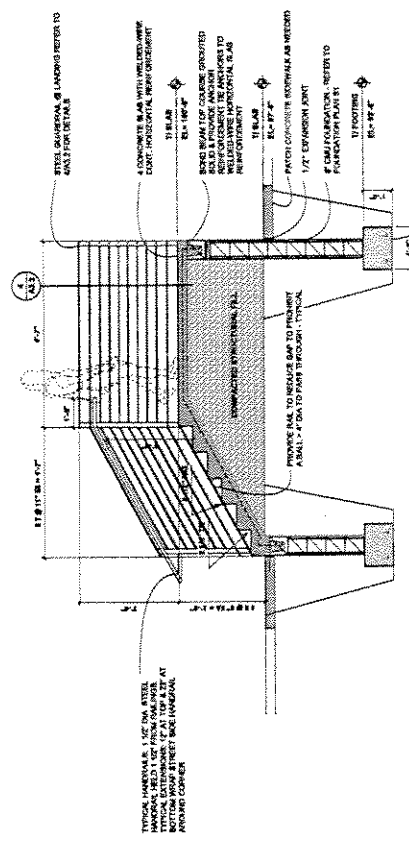
A3.2



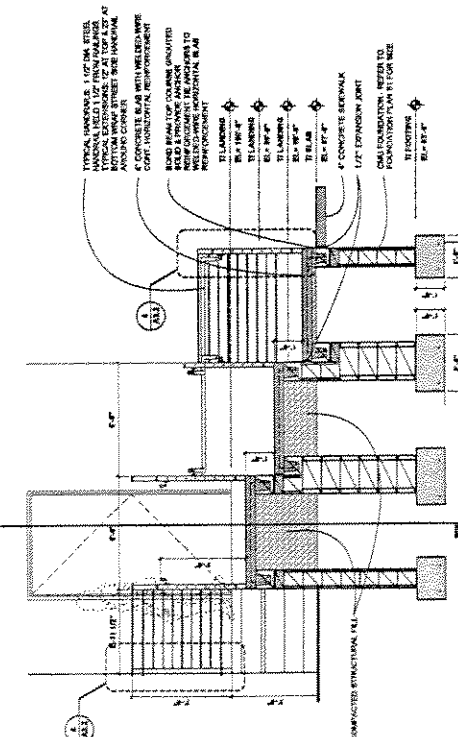
1 A.3.3 Enlarged Ramp Plan  
 Scale 1/2" = 1'-0"



1 A.3.3 Handrail/Guardrail Details  
 Scale 1/2" = 1'-0"



2 A.3.3 Ramp Section  
 Scale 1/2" = 1'-0"



3 A.3.3 Stair Section  
 Scale 1/2" = 1'-0"

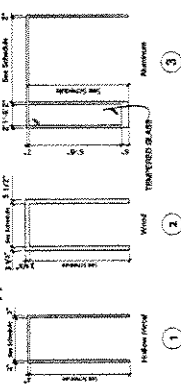
### Hardware Groups

Group	Hardware	Notes
H01	Frameless LCA Door	See Schedule 1
H02	Frameless LCA Door	See Schedule 1
H03	Frameless LCA Door	See Schedule 1
H04	Frameless LCA Door	See Schedule 1
H05	Frameless LCA Door	See Schedule 1
H06	Frameless LCA Door	See Schedule 1

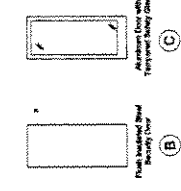
### Door Schedule

Group	Frame	Panel	Finish	Notes
H01	Frameless	LCA	Clear	See Schedule 1
H02	Frameless	LCA	Clear	See Schedule 1
H03	Frameless	LCA	Clear	See Schedule 1
H04	Frameless	LCA	Clear	See Schedule 1
H05	Frameless	LCA	Clear	See Schedule 1
H06	Frameless	LCA	Clear	See Schedule 1

### Frame Types

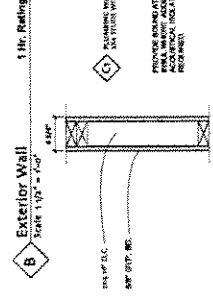
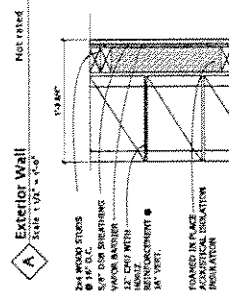


### Door Types

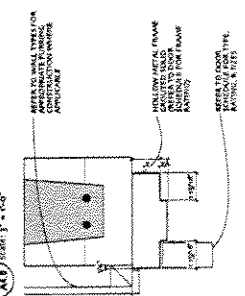
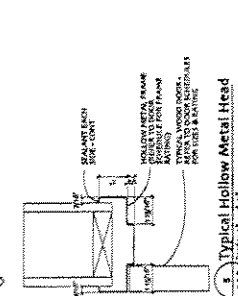


**INSTALLATION**  
 A. Verify hardware is accordance with manufacturer's instructions.  
 B. Mounting height for hardware from finished floor to center line of hardware face:  
 1. Lockset, 48 in.  
 2. Deadbolt, 54 in.  
 3. Kick plate, 42 in.  
 4. LCA hardware, 48 in.  
 5. LCA hardware, 48 in.

**NOTES**  
 1. Glass is optional hardware BANK.



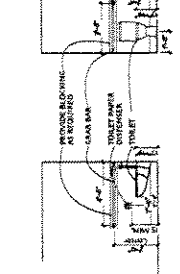
### Interior Partition Wall



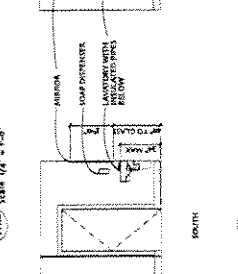
### Typical Hollow Metal Head @ CMU



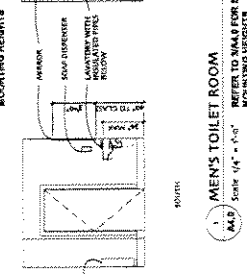
### STANDARD BARRIER FREE MOUNTING HEIGHTS



### WOMEN'S TOILET ROOM



### MEN'S TOILET ROOM



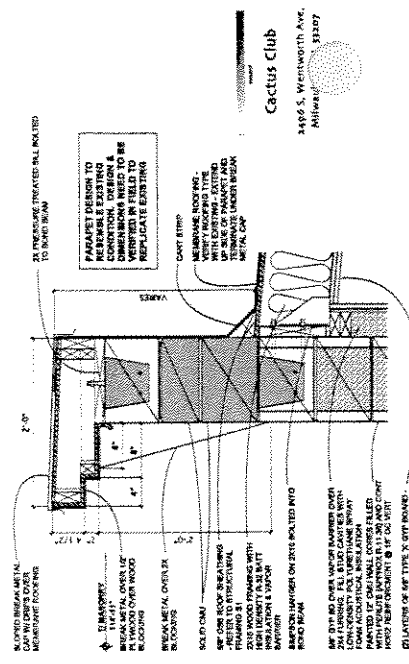
**Cactus Club**  
 3465 S. Wentworth Ave.  
 Milwaukee, WI 53207

**Eric Uecker**

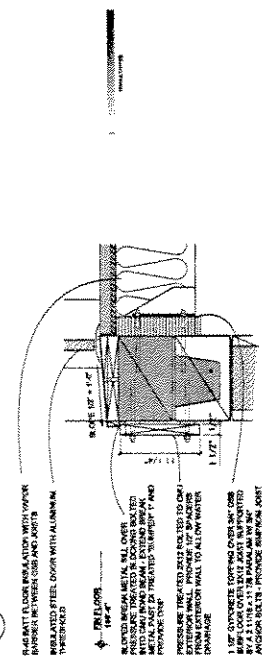
**A4.0**

**SECTIONS**

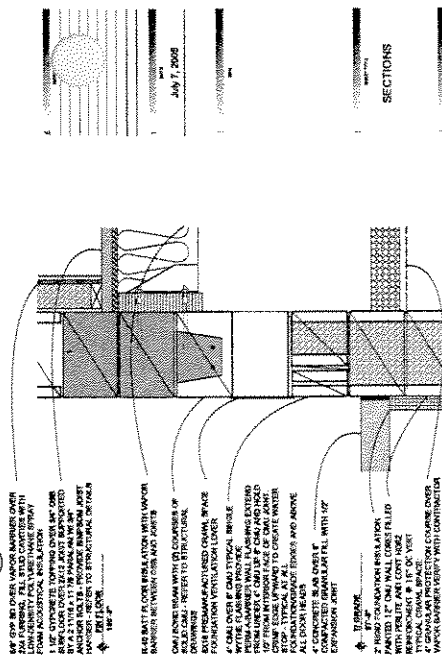
July 22, 2010



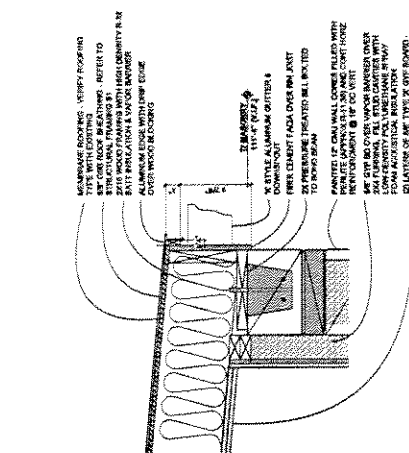
**1 Typical Parapet Detail**  
 A4.1 Scale: 1/2" = 1'-0"



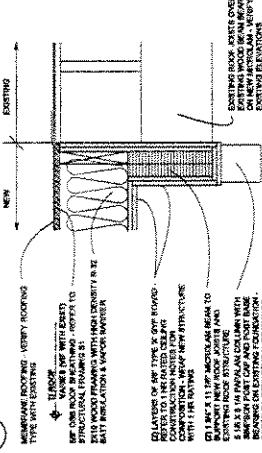
**1 Door Threshhold @ Landing Area**  
 A4.1 Scale: 1/2" = 1'-0"



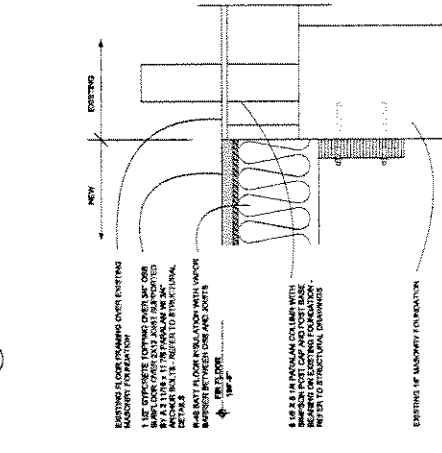
**1 Typical Grade Detail**  
 A4.1 Scale: 1/2" = 1'-0"



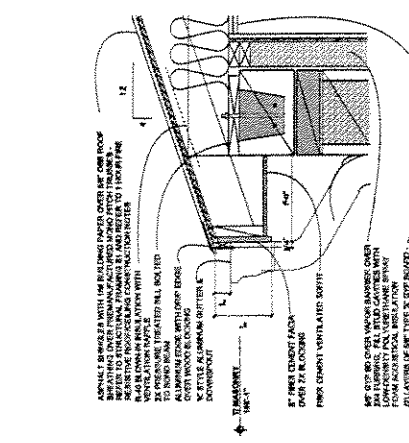
**1 Roof Edge @ Gutter**  
 A4.1 Scale: 1/2" = 1'-0"



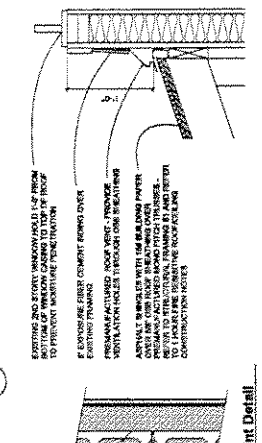
**1 New/Existing Roof Transition**  
 A4.1 Scale: 1/2" = 1'-0"



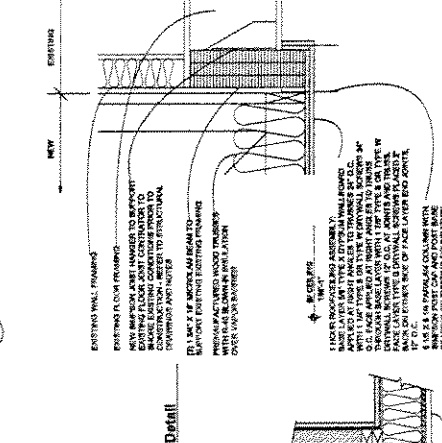
**1 New/Existing Floor Framing @ Existing Foundation**  
 A4.1 Scale: 1/2" = 1'-0"



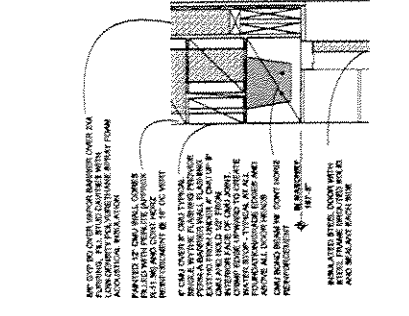
**1 Roof Edge @ Gutter**  
 A4.1 Scale: 1/2" = 1'-0"



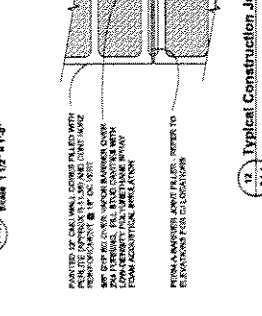
**1 Monopitch Roof Truss @ Existing Framing**  
 A4.1 Scale: 1/2" = 1'-0"



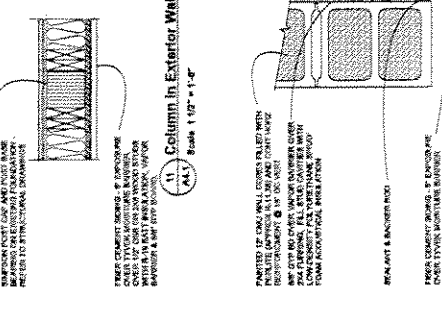
**1 Monopitch Truss @ Existing Floor Framing**  
 A4.1 Scale: 1/2" = 1'-0"



**1 Door Head Detail**  
 A4.1 Scale: 1/2" = 1'-0"



**1 Typical Construction Joint Detail**  
 A4.1 Scale: 1/2" = 1'-0"



**1 Column in Exterior Wall Detail**  
 A4.1 Scale: 1/2" = 1'-0"



**1 CMU Wood Framing Transition Detail**  
 A4.1 Scale: 1/2" = 1'-0"

**1 CMU Wood Framing Transition Detail**  
 A4.1 Scale: 1/2" = 1'-0"