

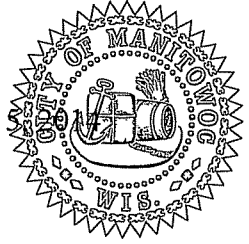
LP1  
9-15-14

14-1869

# CITY OF MANITOWOC

WISCONSIN, USA  
[www.manitowoc.org](http://www.manitowoc.org)

September



**MANITOWOC**  
CITY OF MANITOWOC  
WISCONSIN, USA

To: Mayor and Common Council

From: Manitowoc City Plan Commission

Subject: **PC22-2014: J&T REI, LLC; Request for Exception to 2,500' Separation and Density Requirement Pursuant to Wis. Stat. § 62.23(7)(i)1. and 62.23(7)(i)2. for Establishment of an 8-person Community Based Residential Facility (CBRF) at 2233 Cappaert Road**

Dear Mayor and Common Council:

At the regular September 3, 2014 meeting of the Manitowoc City Plan Commission, the Commission held a public informational hearing regarding a request from Tim Frey as President of TLC Homes, Inc., which is a provider of group homes and associated services for disabled individuals. They are requesting that the City grant an exception to the 2,500' spacing requirement under the Community Living Arrangement (CLA) statute at Wis. Stat. § 62.23(7)(i)1. to operate a Community Based Residential Facility (CBRF) for a maximum of 8-persons at 2233 Cappaert Road. In addition to the 2,500' spacing requirement TLC is requesting an exception to the density requirement under Wis. Stat. § 62.23(7)(i)2.

The property is owned by J&T REI, LLC but TLC Homes, Inc will be the tenant and will be pursuing all the required licensure.

The underlying zoning at the .35-acre parcel is "B-1" Office Residential. The subject property is a vacant, rectangular shaped parcel of land on the east side of Cappaert Road and is further identified as Tract 4 of a Certified Survey recorded in Volume 10, Page 81. (Tax Parcel # 811-403-250).

As of January 1, 2014, there were 24 CBRF's and 7 AFH's dispersed throughout the City. TLC Homes, Inc. operates 3 CBRF's and 3 Adult Family Homes in the City. They are also in the process of constructing a fourth CBRF on Paul Road.

The petitioner plans to construct a single story, residential structure meeting the dimensional and setback requirements of the "B-1" zoning district, that would be fully wheel chair accessible and sprinklered. The structure is proposed to: (i) be a total square footage of 4,016sf, which includes the porch area; (ii) have 8 bedrooms (ranging from 118sf to 142sf), storage and bathroom facilities, along with a living room, kitchen and dining areas; and (iii) include on-site parking for 6 vehicles. The Commission notes that there are no overnight or winter parking ban restrictions on either side of Cappaert Road.

The proposed 8-person CBRF would house individuals working at Holiday House. Individuals at facility would be both male and female adults, who are developmentally disabled or suffer from traumatic brain injuries.

The Commission notes that CLA's are regulated under Wis. Stat. § 62.23(7)(i) which includes the following provisions: (i) Section (7)(i)1. regarding the 2,500' separation requirements for CLA's and that an agent of a CLA may apply for an exception to this requirement, and the exception may be granted at the discretion of the City; (ii) Section (7)(i)2. which details population density requirements; and (iii) Section (7)(i)3. which states that a CLA is entitled to locate in any residential zone without restriction as to the number of CLA's and may locate in any residential zone, without being required to obtain "special zoning permission", except for the annual review provision under Section (7)(i)9. of the statute.

The Commission notes further that CBRF's are regulated by the WI Department of Health Services (DHS), and are further required to meet the certification requirements under WI Administrative Code DHS 83. The Division of Supportive Living is responsible for the licensing of all CBRF's in Wisconsin, and no CBRF's can operate unless they have been certified to do so by DHS.

The Commission notes further that prior to the informational hearing, notices were mailed to property owners within 200' of the subject property. Several property owners from the area either contacted the Planning Department or were present at the informational hearing, and expressed concerns ranging from on-street parking to site drainage.

As an additional comment on the legal issues surrounding these facilities, the Commission notes that WI courts have found that the spacing requirement and the variance procedure, as well as other siting and density criteria in the statute, to be inconsistent with the legislative histories of both the Federal Fair Housing Act Amendments of 1988 (which explicitly prohibits discrimination in housing because of a handicap and prohibits a refusal to make reasonable accommodations in rules, policies, practices or services when such an accommodation may be necessary to afford such person equal opportunity to use and enjoy a dwelling), and the American with Disabilities

Act (ADA), and as a result, were pre-empted by both laws. So, the Commission notes in closing that while a municipality may not intentionally discriminate against the disabled, it may be unlawfully discriminating by failing or refusing to make a reasonable accommodation, which means that it would have to demonstrate and prove that the accommodation was infeasible or impractical, or would impose undue financial or administrative burdens.

In closing, the Commission unanimously recommends to Council that it grant the exception to the 2,500' spacing requirement and density requirements pursuant to Wis. Stat. § 62.23(7)(i)1. and 2., as requested to J&T REI, LLC d/b/a TLC Homes, Inc. (together "TLC"), with the understanding that if TLC does not secure all required licenses from the State by September 30, 2015, this exception is void and terminates effective October 1, 2015.

Respectfully Submitted,

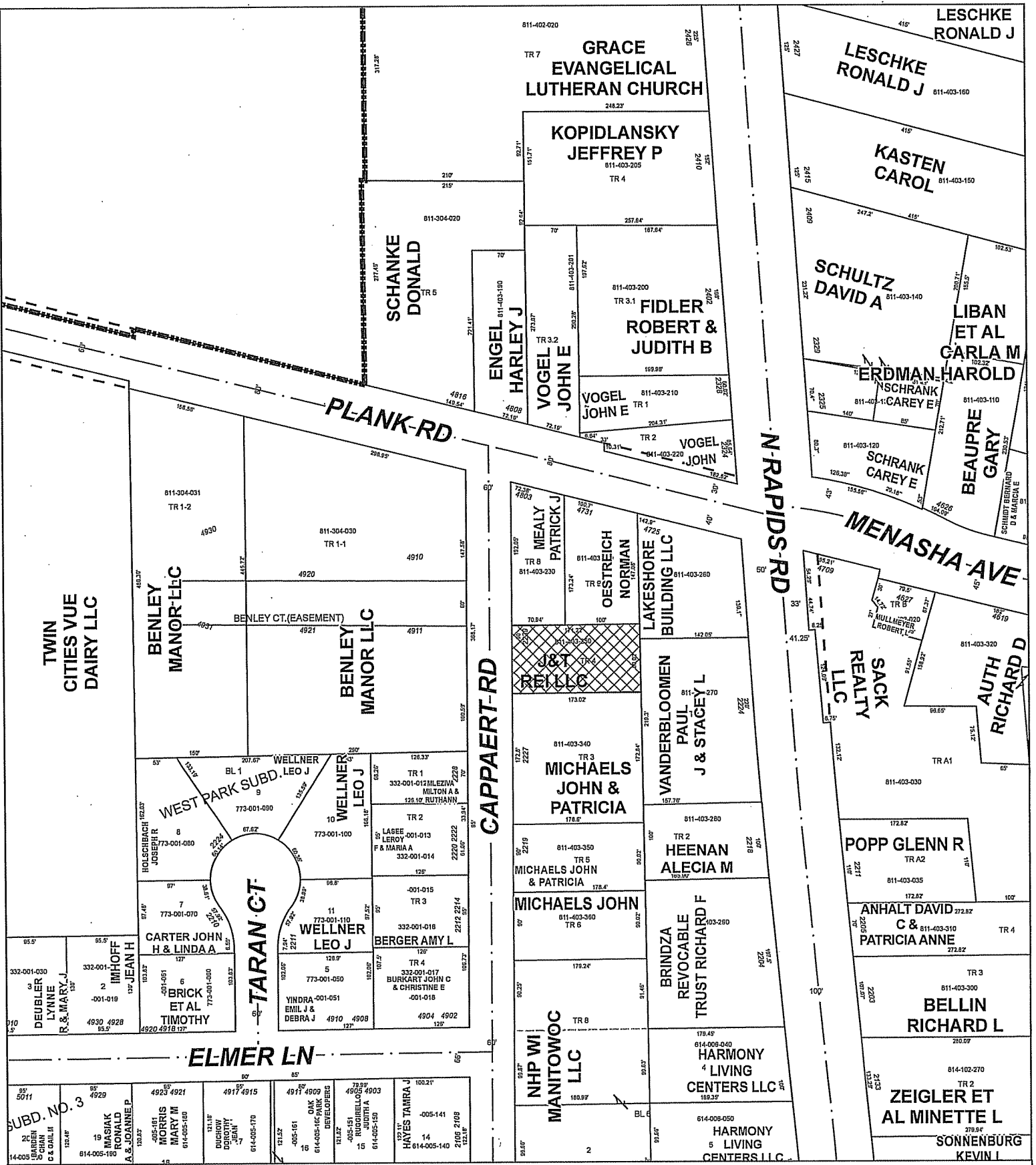


Paul Braun

City Planner

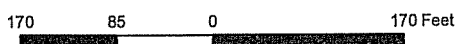
Attachments

Re: Granicus #14-1630



**2500' Rule Exception**

City of Manitowoc, WI



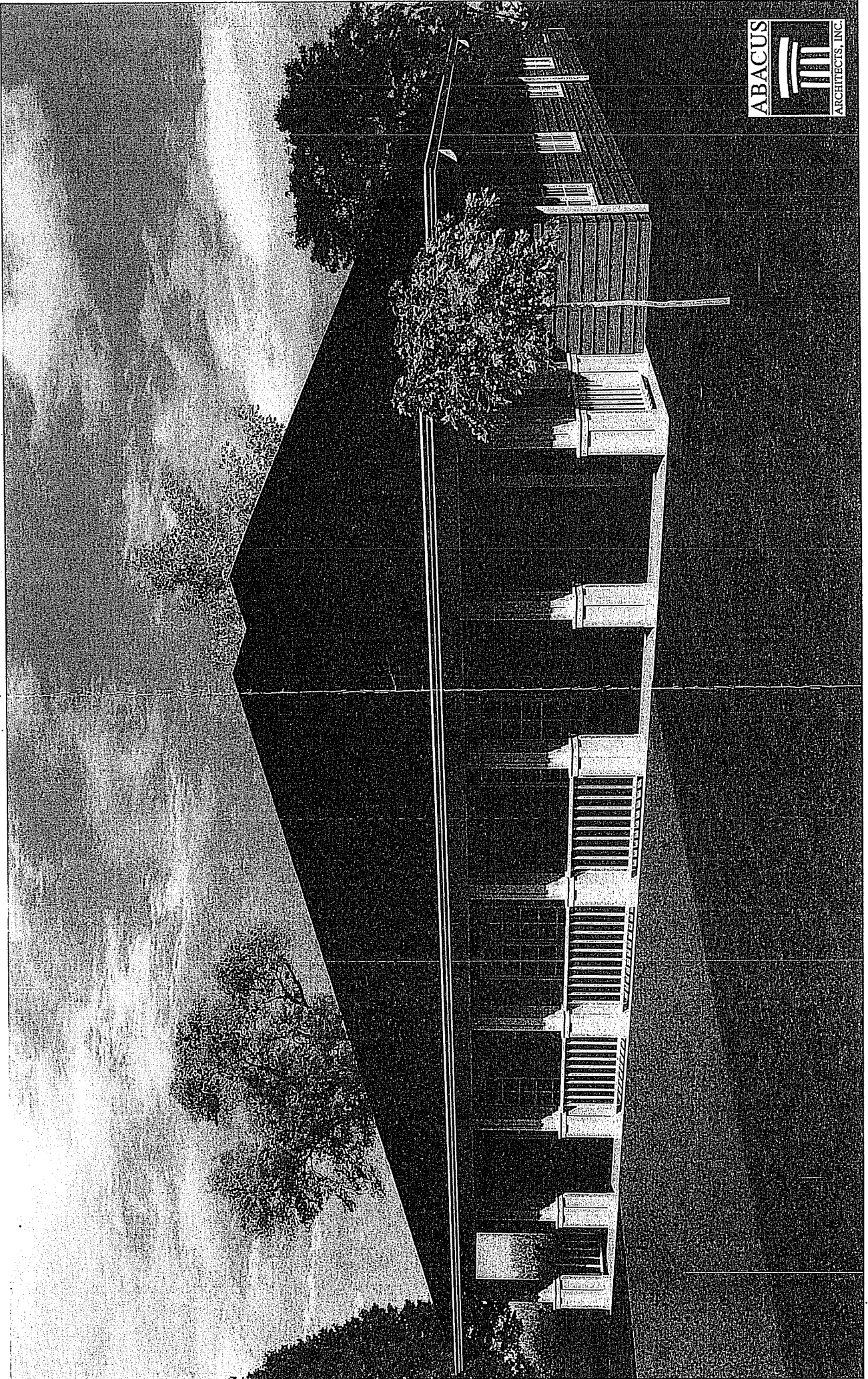
Prepared by City of Manitowoc  
 Engineering Department  
 www.manitowoc.org  
 Aerial Photo: 4/11/2010  
 Map Printed: 8/26/2014  
 X:\Maps\Plan\_Commission\Conditional\_use\PC22-2014\_2233\_Cappaert\_CBRF\_smallmap.mxd

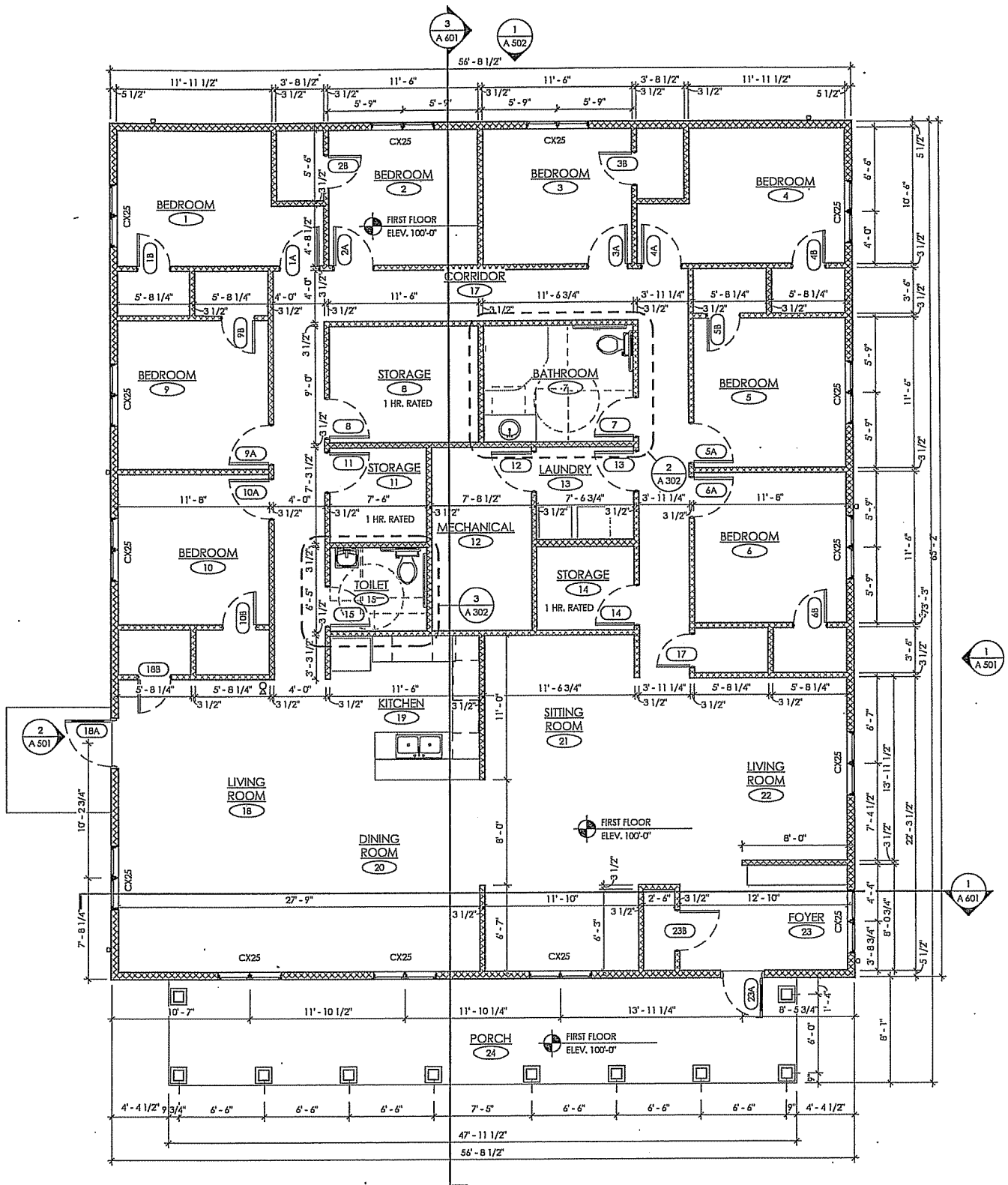


Area for Proposed Community Living Arrangement for Community Based Residential Facility at 2233 Cappaert Road



DISCLAIMER: Maps and associated data are believed to be accurate, but are not warranted. This information is not intended for legal, survey, or other related uses. Please obtain the original recorded documents for legal or survey information.





NOTE: WINDOW TAGS BASED ON ANDERSEN WINDOWS.