

**City Council
Agenda Memo**



**City Council
Meeting Date: 9/12/2013**

TO: Larry D. Gilley, City Manager

**FROM: Jon C. James, AICP
Director of Planning and Development Services**

SUBJECT: Appeal of a denial of a sidewalk waiver for Mad Coffee, located at 8049 Hwy 83-84.

GENERAL INFORMATION

The Mad Coffee business, located at 8409 Hwy 83-84, is the nearing completion of their development. The approved site plan showed the provision of sidewalks along the street frontages of the property. Section 3.2.13.5 (a) of the Land Development Code (LDC) requires for the provision of sidewalks along arterial streets as part of a site plan. The applicant is requesting a waiver of the sidewalk requirement for this development.

The City's ordinance recognizes that major streets, like Beltway S. & the frontage road for Hwy 83-84, provide connectivity for a larger area and thus are expected to provide sidewalks. The intersection of these two roads is part of a Gateway/Mixed Use area identified on the City's Future Land Use Plan. The intersection will be a major retail/commercial node in the future and will generate pedestrian traffic.

Regarding Beltway S., a sidewalk would create and begin an important sidewalk connection leading in both directions. A portion of the sidewalk currently exists within the TxDOT right-of-way, to which the sidewalk on this site would connect. It appears that adequate space exists for proper installation of a sidewalk, even with the noted topography issues.

Regarding Hwy 83-84, it would be similar to Beltway S. The City Engineer met with the TxDOT Area Engineer on the site to review the situation on the ground and both agreed that a sidewalk on the site is buildable and can be constructed in the TxDOT right-of-way or drainage easement with a minimal amount of grading work.

This request was reviewed by both the Planning Director and City Engineer. They determined that there was not reasonable justification for granting the waiver. Several justifications were provided in the applicant's letter; however, the justifications lacked sufficient substance to grant the waiver request.

STAFF RECOMMENDATION

Based on the information provided by the applicant, staff continues to recommend denial of the waiver of the sidewalks in the neighborhood.

ATTACHMENTS

- Request for sidewalk waiver (August 1, 2013)
- Staff response to request (August 30, 2013)
- Appeal of denial of sidewalk waiver request (August 30, 2013)
- Exhibit

Prepared by:

Name: Jon James

Title: Planning Director

September 3, 2013

Item No. 7.13

Disposition by City Council

- Approved Ord/Res# _____
- Denied _____
- Other _____

City Secretary

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811 Warehouse Rd. • Phone: (325) 655-7292 • Fax: (325) 655-7897 • San Angelo, Texas 76903

AUG 1 PM 5:04

City of Abilene, Texas
Attn: Mr. Chad Carter
City Engineer (P.E.)
555 Walnut Street
P.O. Box 60
Abilene, Texas

August 1, 2013

RE: Sidewalks on Project Mad Coffee at US83-84 & FM 707

City Engineering Dept.,

Harris Acoustics wishes to address in more depth our petition to Planning & Zoning/City Engineering Departments for a sidewalk waiver at the Mad Coffee Project, 8049 Hwy. 83-84. We wish to address in order the comments by P&Z requesting Harris Acoustics identify more precisely our cause for requesting a sidewalk waiver/deferral for this project.

We will begin with the comments on Pg. 3 of 4 of Planning & Zoning's Response to draft of amended Site Plan & request for waiver from sidewalk requirements. Harris Acoustics submits that there is a presence of severe topography or other natural constraints that will constrain proper implementation of The Sidewalk Master Plan.

Exploring the installation of sidewalks inside the boundaries of this site creates basically a mirror image of the unsuitable situation this site presents in the marginal right-of-way of this site. Acute drop off (slope) toward drainage ditches would make standard sidewalk installation per City Sidewalk Construction Standards unattainable. Harris Acoustics has determined an engineered retaining wall would be necessary to sustain the sidewalks in place inside or along the project's boundary. Thus, pointing to the City's Land Development Code Division 13, Ch.3, Article 2, Section 3.2.13.6 Exceptions & Waivers (a)1, addressing the creation of disproportionate costs of sidewalks in this case.

In response to Mr. Hufstutler of TxDOT's Abilene Area Office opinion, "It is possible to construct sidewalk on the TxDOT right-of-way adjacent to and following the property boundaries from the east property line around to the south boundary of the TxDOT drainage easement on U.S. 83. The sidewalk could not proceed any further north along 83, unless it was on private property." Even sidewalks installed on private property at this specific location, would also have to terminate northward at the beginning of TxDOT's 50' Drainage Easement. Going any farther northward would lead a sidewalk into a City Engineering Dept. required detention pond. Sidewalks installed from the southeast to southwest boundaries of the site would terminate at the property line of a residential property that has no pedestrian infrastructure in place, such as sidewalks or accessible ramps. Leading us to point to City's Land Development Code Division13, Ch.3, Article 2, Section 3.2.13.3(b),(c) Exceptions & Waivers, which is another premise on which Harris Acoustics requested a waiver/deferral of sidewalk construction for this project. Section 3.2.13.3(b) reinforces the attached letter to our original request for waiver/deferral from P.E. Bob Lindley, concerning the timing of sidewalk construction being brought to an alternative time agreement between Harris Acoustics and The City for construction. And Section 3.2.13.3(c) states, "Sidewalks, or other accessible pedestrian routes, shall be installed to connect all buildings to one another and to parking areas and to connect the development to the public street system.

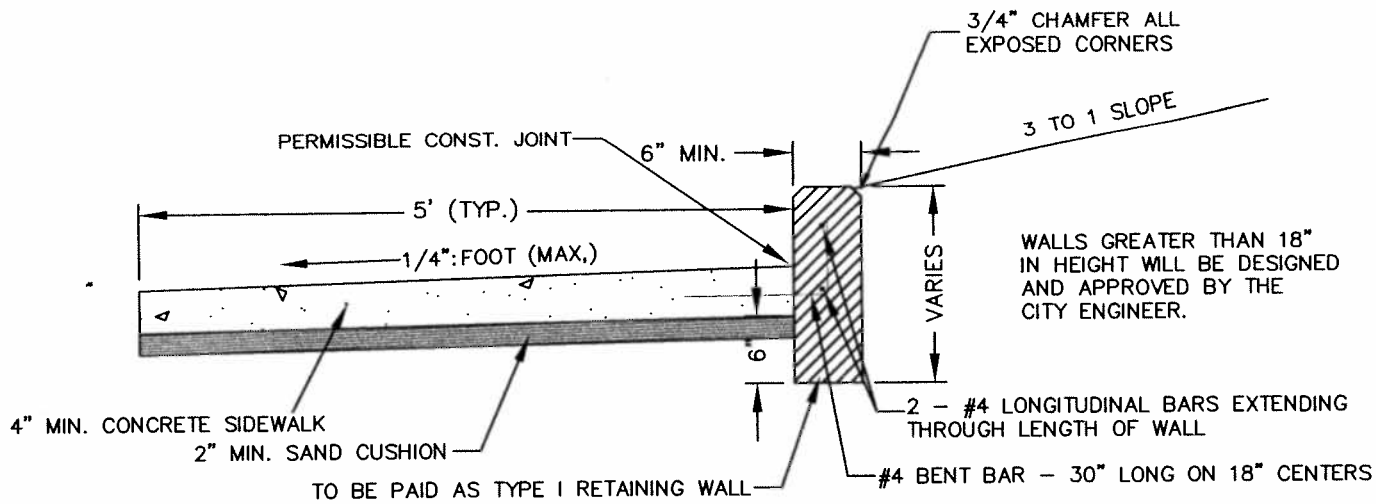
Unlike our 15th & Barrow St. project, where pedestrian accessible infrastructure is, and has been in place, the City's Land Development Code Division13, Ch.3, Article 2, Section3.2.13.6(a)3 Exceptions & Waivers states, "situations inherently adverse to pedestrian activity....." ascribes to the existing conditions at this particular project site.

Finally, concluding from all that has been stated thus far, the conditions at this project site, Harris acoustics believes is not conducive to the City's Land Development Code Division13, Ch.3, Article 2, Section3.2.13.1 Purpose & Applicability in its entirety. Leaving Harris Acoustics to petition The City to grant a waiver/and or deferral indefinitely as to such a time where land development may support reason to have a pedestrian accessible infrastructure.

Thank you,

Claudie Brown
Harris Acoustics
Abilene, Texas

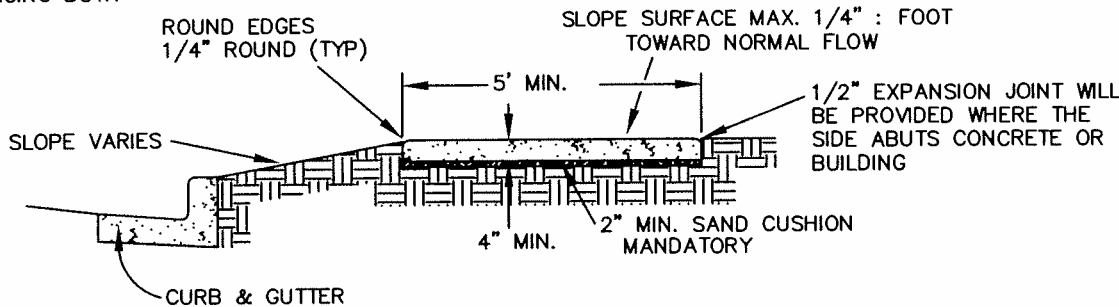
AUG 1 PM 5:05



WALLS GREATER THAN 18" IN HEIGHT WILL BE DESIGNED AND APPROVED BY THE CITY ENGINEER.

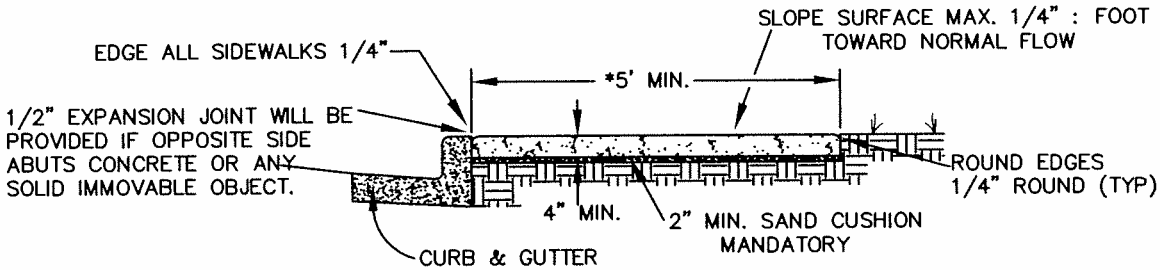
TYPICAL TYPE 1 RETAINING WALL

NOTE:
ALL SIDEWALK SHALL BE A MIN OF 3000 PSI CONCRETE AND REINFORCED WITH:
6"x6" #6 WIRE MESH OR #3 BARS ON 24" SPACING BOTH DIRECTIONS



5' WIDE SIDEWALK
SAWED OR GROOVED CONTRACTION JOINTS EVERY 5' AND EXPANSION JOINTS EVERY 40'

* CONSIDER 6' SIDEWALK IN LOCATIONS OF HEAVY PEDESTRIAN TRAFFIC.



5' WIDE SIDEWALK
SAWED OR GROOVED CONTRACTION JOINTS EVERY 5' AND EXPANSION JOINTS EVERY 40'

TYPICAL SIDEWALK SECTIONS

NOTE:

1. ALL SUBGRADE SHALL BE COMPACTED TO AN EQUIVALENT OF 95% PROCTOR DENSITY.
2. A ROUGH BROOM FINISH IS PREFERRED.
3. CROSS SLOPE NOT TO EXCEED 1/4" / 1' MAX. HORIZONTAL SLOPE NOT TO EXCEED 1" / 1' MAX.
4. ALL SIDEWALKS ACROSS DRIVEWAYS WILL BE 6" REINF. CONCRETE. (SEE CONCRETE APPROACH)
5. IN NARROW RIGHT OF WAY SITUATIONS, THE MINIMUM WIDTH OF CLEAR SIDEWALK TO BE 36 INCHES.

AUG 1 PM 5:05

CITY OF ABILENE, TEXAS ENGINEERING DIVISION	
SIDEWALK DESIGN	
DESIGNED BY: B. LINDLEY	APPROVED _____
DRAWN BY: B. BAKER	CITY ENGINEER
CHECKED BY: C. MARSHALL	DATE _____

Planning Director and the City Engineer to be granted and their decision shall be documented with supporting data that states the basis for the decision. However, in the event of a split decision, the City Manager or designee shall also make a determination as to whether or not the waiver should be granted, and document that determination with supporting data that states the basis for the decision. Unusual factors include:

- (1) projects where the cost of establishing sidewalks or walkways would be unreasonably disproportionate to the cost of the associated roadway construction or overall project costs (however a partial waiver may be granted in lieu of a full waiver to reduce the cost of required sidewalks such that the costs will not be unreasonably disproportionate) ,
- (2) areas with severe topography or other natural constraints that will constrain proper implementation of this plan,
- (3) situations inherently adverse to pedestrian activity, such as harmful noise, dust creation, and high volume truck traffic, in certain areas, such as agricultural, heavy commercial, and industrial developments, or
- (4) situations where an applicant can show other factors or circumstances amounting to reasonably justifiable good cause to support such waiver.

(b) Deviations from these requirements and the city's Sidewalk Design Standards may be allowed when necessary due to the physical circumstance of the street or when necessary to accomplish adopted development goals of the City or in situations where an applicant can show other factors or circumstances amounting to reasonably justifiable good cause to support such a deviation.

- (1) The specific nature and justification for any deviation must be documented and authorized in writing by both the Planning Director and the City Engineer.
- (2) Deviations should be minimal and consist primarily of changes to required width of clear path or alignment within the right-of-way.
- (3) Deviations shall not allow a minimum clear path width of less than 3 feet.

(c) A denial of a request for a waiver or deviation of these requirements may be appealed to the City Council.

- (1) A written appeal must be filed with the Planning Director within 10 days of the denial of the waiver or deviation.
- (2) The appeal must provide justification for the requested waiver or deviations based on the criteria described in (a) and (b) above.
- (3) The Council must make findings based on these criteria in order to approve a waiver or deviation.

(d) Sidewalks shall not be required when specifically exempted in a neighborhood plan, corridor plan, or other small area plan adopted by the City Council.

Section 3.2.13.7 Definitions

Division 13 – Sidewalks

Section 3.2.13.1 Purpose & Applicability

- (a) **Purpose.** The purpose of this Division is to promote the health, safety, and welfare of the residents, property owners, and visitors to the City of Abilene and to implement objectives and strategies of the Abilene Comprehensive Plan. This Division shall also be known as the "Sidewalk Master Plan of the City of Abilene".
- (b) **The Sidewalk Master Plan will:**

- (1) Improve the safety of walking by providing separation from motorized transportation and improving travel surfaces for pedestrians.
- (2) Improve public welfare by providing an alternative means of access to transportation and social interaction, especially for children, other citizens without personal vehicles, or those with disabilities.
- (3) Facilitate walking as a means of physical activity recognized as an important provider of health benefits.
- (4) Establish minimum criteria for the development of sidewalks as a part of the pedestrian element of the transportation system within the City and its extraterritorial jurisdiction (ETJ).

Section 3.2.13.2 Policy Statements

- (a) Walking is a primary form of transportation that should be accommodated in the design of public roadways and transportation systems. In addition, sidewalks are an integral part of the street system and should not be of secondary consideration.
- (b) A continuous pedestrian system is critical to achieve the benefits of a functional multi-modal transportation system.
- (c) Where this document is silent, the design of pedestrian facilities shall follow the City's Sidewalk Design Standards and applicable State and Federal laws and regulations.
- (d) All sidewalks, sidewalk amenities, and landscaping in the external right-of-way shall be maintained by the adjoining property owner unless otherwise specifically provided for by public policy.
- (e) These requirements are intended to apply within the City and its ETJ, but is not intended to apply to existing single-family residential neighborhoods where sidewalks are not present and have not historically been provided. These requirements are intended to apply to both public and private streets.

Section 3.2.13.3 General Requirements

August 30, 2013

Harris Acoustics
Attn: Claudie Brown
4266 S. Treadaway Blvd
Abilene, TX 79608

Re: Sidewalk Waiver Request for Mad Coffee, located at 8049 Hwy 83-84

Dear Mr. Brown:

We are **denying** your request for a sidewalk waiver. The City's ordinance recognizes that major streets, like Beltway S. & the frontage road for Hwy 83-84, provide connectivity for a larger area and thus are expected to provide sidewalks. The intersection of these two roads is part of a Gateway/Mixed Use area identified on the City's Future Land Use Plan. The intersection will be a major retail/commercial node in the future and will generate pedestrian traffic.

Regarding Beltway S., a sidewalk would create and begin an important sidewalk connection leading in both directions. A portion of the sidewalk currently exists within the TxDOT right-of-way, to which the sidewalk on your site would connect. It appears that adequate space exists for proper installation of a sidewalk, even with the noted topography issues.

Regarding Hwy 83-84, it would be similar to Beltway S. The City Engineer met with the TxDOT Area Engineer on the site to review the situation on the ground and both agreed that a sidewalk on the site is buildable and can be constructed in the TxDOT right-of-way or drainage easement with a minimal amount of grading work.

If you have any questions about this decision, please contact Jon James at 676-6237 or Chad Carter at 676-6281. If you are not satisfied with this decision, you have the option of appealing this denial to the City Council. Such written appeal must be submitted to the Planning Director within 10 days of this denial and the appeal must provide justification for the requested waiver based on criteria described in Section 3.2.13.6 of the City's LDC. In addition, an application fee of \$250 is required for an appeal to the City Council.

Sincerely,

Jon C. James, AICP
Planning Director

Chad Carter, P.E.
City Engineer

Harris | Acoustics



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August 30, 2013

ATTN: Bradley Stone
City of Abilene
Planning and Zoning
P O Box 60
Abilene, TX 79604

Re: Sidewalk Deferral for MAD Coffee
8049 Hwy 83-84
Abilene, TX 79602

Mr. Stone:

We would like to Appeal to the City of Abilene City Counsel the decision of the Sidewalk Deferral for MAD Coffee located at 8049 Hwy. 83-84. There are several factors that need to be considered in the decision regarding sidewalks in this area. We have attached the check in the amount of \$250.00 for the appeal fee.

We would like to be place on the agenda for the next City Council meeting.

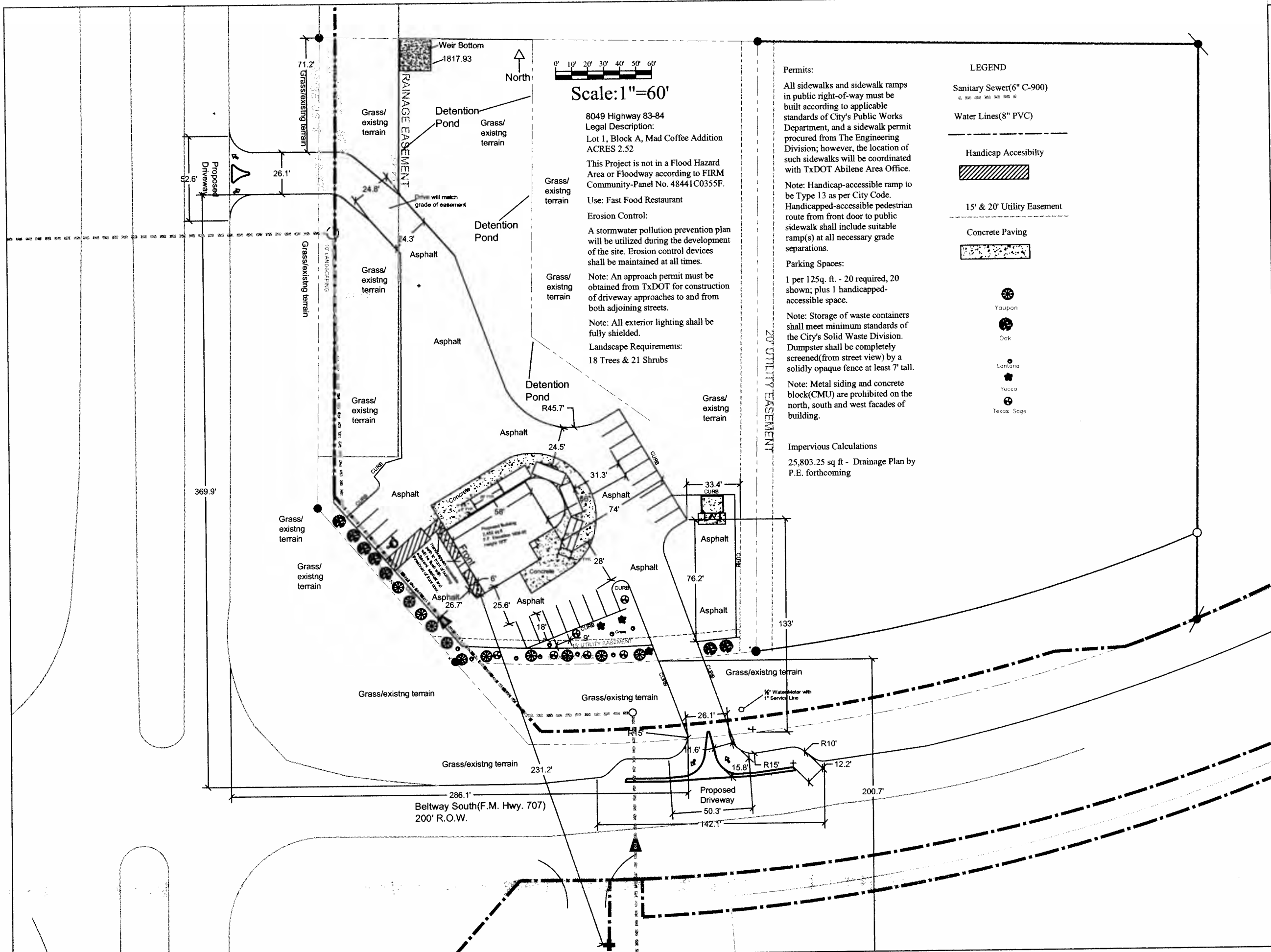
Thanks,

Harris Acoustics, Inc.

Kevin Phillips.

KP/lb

cc: file



Scale: 1"=60'

8049 Highway 83-84
 Legal Description:
 Lot 1, Block A, Mad Coffee Addition
 ACRES 2.52

This Project is not in a Flood Hazard Area or Floodway according to FIRM Community-Panel No. 48441C0355F.

Use: Fast Food Restaurant

Erosion Control:

A stormwater pollution prevention plan will be utilized during the development of the site. Erosion control devices shall be maintained at all times.

Note: An approach permit must be obtained from TxDOT for construction of driveway approaches to and from both adjoining streets.

Note: All exterior lighting shall be fully shielded.

Landscape Requirements:

18 Trees & 21 Shrubs

Permits:

All sidewalks and sidewalk ramps in public right-of-way must be built according to applicable standards of City's Public Works Department, and a sidewalk permit procured from The Engineering Division; however, the location of such sidewalks will be coordinated with TxDOT Abilene Area Office.

Note: Handicap-accessible ramp to be Type 13 as per City Code. Handicapped-accessible pedestrian route from front door to public sidewalk shall include suitable ramp(s) at all necessary grade separations.

Parking Spaces:

1 per 125 sq. ft. - 20 required, 20 shown; plus 1 handicap-accessible space.

Note: Storage of waste containers shall meet minimum standards of the City's Solid Waste Division. Dumpster shall be completely screened (from street view) by a solidly opaque fence at least 7' tall.

Note: Metal siding and concrete block (CMU) are prohibited on the north, south and west facades of building.

Impervious Calculations

25,803.25 sq ft - Drainage Plan by P.E. forthcoming

LEGEND

Sanitary Sewer (6" C-900)

Water Lines (8" PVC)

Handicap Accessibility

15' & 20' Utility Easement

Concrete Paving

Yaupon

Oak

Lantana

Yucca

Texas Sage

General Notes

No.	Revision/Issue	Date

Plan Name and Address
Harris | Acoustics
 Abilene, TX 79602
 PH. (325) 692-1347
 Fax (325) 692-1366

Project Name and Address
Mad Coffee Site Plan

Project	Sheet
Date 7-23-13 Constr.cb	C1
Scale 1" = 60'	