

ORDINANCE NO. O-2025-27

AN ORDINANCE GRANTING A FRONT YARD SETBACK VARIATION, A PARKING VARIATION AND A PARKING LOT USE AGREEMENT TO ALLOW THE CONSTRUCTION AND USE OF AN 8,400-SF ADDITION, ON A CERTAIN PIECE OF PROPERTY COMMONLY KNOWN AS FRANKLIN MIDDLE SCHOOL - 211 E. FRANKLIN STREET - DISTRICT 200

WHEREAS, written application has been made requesting a variation to Article 10.2.5 of the Wheaton Zoning Ordinance to allow the construction and use of an 8,400-sf addition onto the east side of Franklin Middle School with a front yard setback of 28 feet in lieu of the required 30 feet and a variation to Article 22.5.5 of the Wheaton Zoning Ordinance to allow a reduction of 15 on-site parking spaces resulting in a total of 11 on-site parking spaces, all on property commonly known as Franklin Middle School – 211 E. Franklin Street; and

WHEREAS, pursuant to notice as required by the Illinois Municipal Code and the Wheaton Zoning Ordinance, a public hearing was conducted by the Wheaton Planning and Zoning Board on April 22, 2025, to consider the variations; and the Planning and Zoning Board has recommended approval of the variations.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, Du Page County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The following described property has been and continues to be zoned and classified in the R-4 Residential District zoning classification:

BLOCK 11 and 12 OF DE WOLF AND TRACY'S ADDITION TO THE TOWN OF WHEATON, TOGETHER WITH THE VACATED PORTION OF CROSS STREET BETWEEN LINCOLN AVENUE AND FRANKLIN STREET, ALL IN DUPAGE COUNTY, ILLINOIS.

P.I.N.: 05-16-117-007

The subject property is commonly known as Franklin Middle School, 211 E. Franklin Street, Wheaton, IL 60187.

Section 2: Pursuant to the Findings of Fact made and determined by the Wheaton Planning and Zoning Board, a variation to Article 10.2.5 of the Wheaton Zoning Ordinance to allow the construction and use of an 8,400-sf addition onto the east side of Franklin Middle School with a front yard setback of 28 feet in lieu of the required 30 feet and a variation to Article 22.5.5 of the Wheaton Zoning Ordinance to allow a reduction of 15 on-site parking spaces resulting in a total of 11 on-site parking spaces are hereby approved, in full compliance with the following plans: "Proposed Site Plan (Overall)", "Proposed Site Plan (Enlarged)", "Proposed Floor Plan", "Proposed Elevations", and "Proposed Rendering (East Elevation)", prepared by Perkins & Will, dated January 31, 2025, sheets 1-5; subject to the condition that the preliminary engineering plan shall be subject to further staff review prior to the issuance of a site development permit.

Section 3: The "Parking Lot Use Agreement" prepared pursuant to Article 22.2.10 of the Wheaton Zoning Ordinance, a draft of which is attached hereto, between the Board of Education of Community Consolidated School District No. 200 and St. John Lutheran Church is hereby approved,

substantially in the form herein submitted, together with such changes that may be reasonably requested by either party to the agreement and subject to the approval of the City Attorney.

Section 4: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Section 5: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.



Philip J. Suess

Mayor

ATTEST:



Andrea Rose Dall

City Clerk

Roll Call Vote:

Ayes: Councilman Weller
Councilman Brown
Mayor Suess
Councilman Clousing
Councilwoman Robbins

Nays: None

Absent: Councilwoman Bray-Parker
Councilwoman Brice

Motion Carried Unanimously

Passed: June 2, 2025

Published: June 3, 2025

Parking Lot Use Agreement

This agreement (the "Agreement") is executed on the date last written below, by and between the Board of Education of Community Consolidated School District No. 200, an Illinois school district the ("School District") and St. John Evangelical Lutheran Church of Wheaton, IL an Illinois non-profit corporation ("St. John", and together with the School District, the "Parties"). Unless otherwise defined, all capitalized terms have the meaning set out in the Agreement.

WHEREAS, St. John is the owner of certain property located at 410 N Cross Street in Wheaton, Illinois, including parking lots more fully described in Exhibit A (the "Parking Lot");

WHEREAS, the School District is the owner of certain real property, Franklin Middle School, situated adjacent to the St. John's property described in Exhibit A;

WHEREAS, Article 22.2.10 of the City of Wheaton Zoning Ordinance provides for the approval of certain shared parking agreements:

Credit for parking spaces which are the subject of a Shared Parking Agreement shall be applicable only when the parties to the Agreement are property owners whose property uses have parking demands which are inconsistent with each other (i.e., daytime v. evening, weekdays v. Saturday and/or Sunday, and the like). The total off-street parking requirements of the parties to the Shared Parking Agreement may exceed the total number of off-street parking spaces available. The Shared Parking Agreement shall be subject to the reasonable approval of the City Council (pursuant to the advice of the Planning and Zoning Board, if requested by the City Council) and the following conditions are requirements: (I) signed by the owners of each use included in the Agreement, (ii) termination shall require written notice to the non-terminating party or parties and the City Manager, (iii) termination shall not become effective sooner than six (6) months following the date of the written termination notice.

WHEREAS, the School District utilizes parking lots and street parking during the standard school day and, due to construction of a planned addition, anticipates a parking demand of additional spaces to replace those lost during said construction;

WHEREAS, St. John's utilizes parking lots primarily on Sundays and at other times when school is not in session; and

WHEREAS, the Parties had parking demands which are inconsistent with each other and St. John desires to grant the School District a license to use the thirty-two (32) Parking Spaces (the "Parking Spaces") located in the Parking Lot, highlighted in Exhibit A, in accordance with the terms and conditions contained herein.

NOW THEREFORE, the School District and St. John, in consideration of these recitals which are incorporated herein by reference, and the promises and covenants set forth herein, the sufficiency of which is acknowledged by the Parties, hereby agree as follows:

1. **Grant of License.** St. John hereby grants the School District a license to use the Parking Spaces during the Term of this Agreement for purposes reasonably related to educational and/or recreational activities conducted by the School District and/or which occur on the School District's school premises ("the License"). The School District shall have the right to use up to thirty-two (32) spaces in the Parking

Lot as designated by Exhibit A. The School District shall also have the right to use cameras to monitor the Parking Lot during school hours. The Parties agree that this grant of the License under this Agreement is not intended to confer any rights upon any third person or entity, or to vest any property interest in any third person or entity. Neither party shall record this Agreement.

2. **Term of License.** The License shall commence on July 1, 2025, and shall expire on June 30, 2030 (the "Term") unless sooner terminated in accordance with this Agreement. This Agreement may be renewed by written agreement of both Parties.

3. **Termination of Agreement.** Either Party may, for any reason in its sole discretion, terminate the License and this Agreement at any time upon one (1) year's prior written notice to the other Party and to the City of Wheaton, care of the City Manager. The date that is one (1) year from such notice of termination shall be known as the "Effective Termination Date." This Agreement shall not "run with the land" and will terminate, unless the City of Wheaton agrees otherwise, upon a change in ownership of the Parking Lot or the School District property.

4. **Priority of Use.** The Parties shall cooperate in good faith to avoid any scheduling conflicts with respect to use of the Parking Lot. At all times during weekends, St. John's Sunday Services, and with respect to scheduled weddings, funerals, and other events, St. John shall, if practicable, provide the School District with written notice at least one (1) month in advance of such events, and upon such notice St. John's attendees shall have first priority to use the Parking Lot to the extent of any conflict with the School District's activities. The School District will provide St. John with the scheduled date of any event requiring the use of the Parking Lot that anticipates usage of the Parking Spaces outside of the normal school day. The School District will provide St. John with contact information (cell phone and email) of those personnel responsible for scheduling and/or overseeing the parking of said events.

5. **Maintenance Duties.** The maintenance and repair of the parking space surfaces described in this Agreement shall remain the obligation of St. John as owner of the Parking Lot, in accordance with City of Wheaton ordinances. St. John shall exercise ordinary care to maintain and repair the Parking Lot in good and safe condition for all normal business uses. Nothing in this Agreement shall place any duty or obligation on the City of Wheaton to perform maintenance or repair in the Parking Lot.

6. **The School District's Reservation of Immunities and Defenses.** No term or condition of this Agreement is intended to or shall be deemed to waive any common law or statutory immunity or defense available to the School District in connection with the School District's use of the Parking Lot pursuant to the Agreement, and the School District expressly reserves all such applicable Immunities and defenses.

7. **Insurance.** At all times during the Term of the License, each Party shall maintain comprehensive general liability, automobile liability, and umbrella/excess insurance coverage through an Illinois insurer or risk pool, with limits as specified below, and shall cause the other Party, its governing board, board members, administrators, employees, agents, and representatives to be included as additional insured by endorsement. Upon execution of this Agreement, and on January 1 of each year during the Term of the License, each Party shall furnish to the other certificates of insurance reflecting insurance coverage as required by this Section 8.

Comprehensive General Liability:	\$1,000,000 per occurrence; \$2,000,000 aggregate
Automobile Liability:	\$1,000,000
Umbrella / Excess Coverage:	\$2,000,000

8. **Indemnification.** Each Party (the "Indemnitor") hereby respectively agrees to indemnify, defend

and hold harmless the other Party, its board, board members, administrators, directors, managers, members, associates, employees, volunteers, agents and all of its representatives (collectively the "Indemnitees"), from and against any claims, demands, causes of action, liabilities, losses, costs, expenses, and damages, including attorney fees and court costs, related to or arising from the indemnitor's duties under this Agreement and/or applicable law and related to or arising from the indemnitor's negligent or willful act or omission, except to extent caused by the indemnitee's own conduct. This mutual indemnification provision shall survive expiration or termination of the Agreement.

9. **Enforcement.** This Agreement may be enforced either in law or equity by any non-breaching party through injunctive relief of by the City of Wheaton by any legal means. The City of Wheaton's enforcement rights shall not be a duty but in its discretionary determination. Enforcement shall be conducted diligently by the Parties to satisfy the intent of the City's shared parking ordinance and this Agreement. In the event either Party commences any litigation for other proceeding to enforce any right arising under this Agreement and/or to recover for any damages incurred in connection with this Agreement, and that Party prevails in such proceeding, the non-prevailing Party shall pay all reasonable costs and expenses, including reasonable attorney's fees and court costs, incurred by the prevailing Party in connection with such proceeding. In the event of a dispute, the Parties may, by subsequent written agreement, decide to mediate such dispute.

10. **Notice.** All notices and documents required or permitted to be given or transmitted under this Agreement shall be transmitted in writing, shall be deemed received when sent, and shall be sent by electronic mail, certified mail, or hand delivery as follows:

If to the School District:

Dr. Brian O'Keeffe, Assistant Superintendent for Business Operations/CSBO
Community Unity School District No. 200
130 West Park Avenue
Wheaton, IL 60189
brian.okeeffe@cusd200.org

If to St. John:

Mr. John Crowe, Parish Administrator
St. John Lutheran Church
410 N. Cross St.
Wheaton, IL 60187
jcrowe@stjohnwheaton.org

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Illinois, without regard to its conflict of laws rules. Jurisdiction and venue for all litigation arising out of this Agreement shall be in the Circuit Court located in DuPage County, Illinois. The effectiveness of this agreement shall be subject to the legislative authority of the corporate authorities of the City of Wheaton, except to the extent that any amendment to shared parking provisions of the City ordinance which in any way repeals, reduces, or limits the extent of the shared parking authorization shall not become effective until six (6) months after the adoption of the amendment unless the amendment is the result of an attempt to protect against immediate threats of bodily injury or property damage.

12. **Remedies.** Any notice of alleged breach must be presented in writing by one Party to the other Party. Except as otherwise provided in this Agreement, any Party shall have twenty (20) days to cure an alleged breach of this Agreement.

13. **Amendment.** This Agreement may be modified or amended only by written instrument executed by all Parties.

14. **No Waiver.** No waiver by any party of any default or breach or series of breaches or violation of a term, covenant or condition of this Agreement shall constitute a waiver of any subsequent breach, default, or waiver of the terms of this Agreement, condition, or covenant.

15. **Severability.** If any clause, sentence or other portion of the terms, conditions, covenants and restrictions herein becomes illegal, null or void, for any reason, or is held by any court of competent jurisdiction to be so, the remaining portions of this Agreement shall remain in full force and effect.

16. **Authority.** Each signatory to this Agreement represents and warrants to the other that the execution and delivery of this Agreement has been duly authorized and delivered by such Party and that such Agreement is binding upon such party in accordance with its terms.

17. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

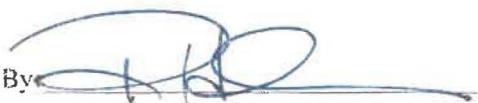
18. **Complete Agreement.** The terms and conditions contained in this Agreement, together with any attachments and exhibits, constitute the complete and integrated agreement between the Parties with respect to the subject matter contained herein. All prior agreements, negotiations, and understandings with respect to the subject matter of this Agreement are hereby deemed void and of no further effect. This Agreement may only be modified or cancelled by the written agreement of both Parties, and may not be modified or cancelled orally.

[Signature page follows. Remainder of page is intentionally blank.]

Executed on the date last written below by duly authorized agents of the Parties:

**Board of Education of the
Community Unit School District No. 200**

By:

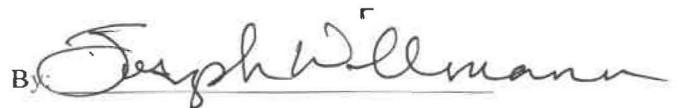


Its: Board President

Date: 6-11-25

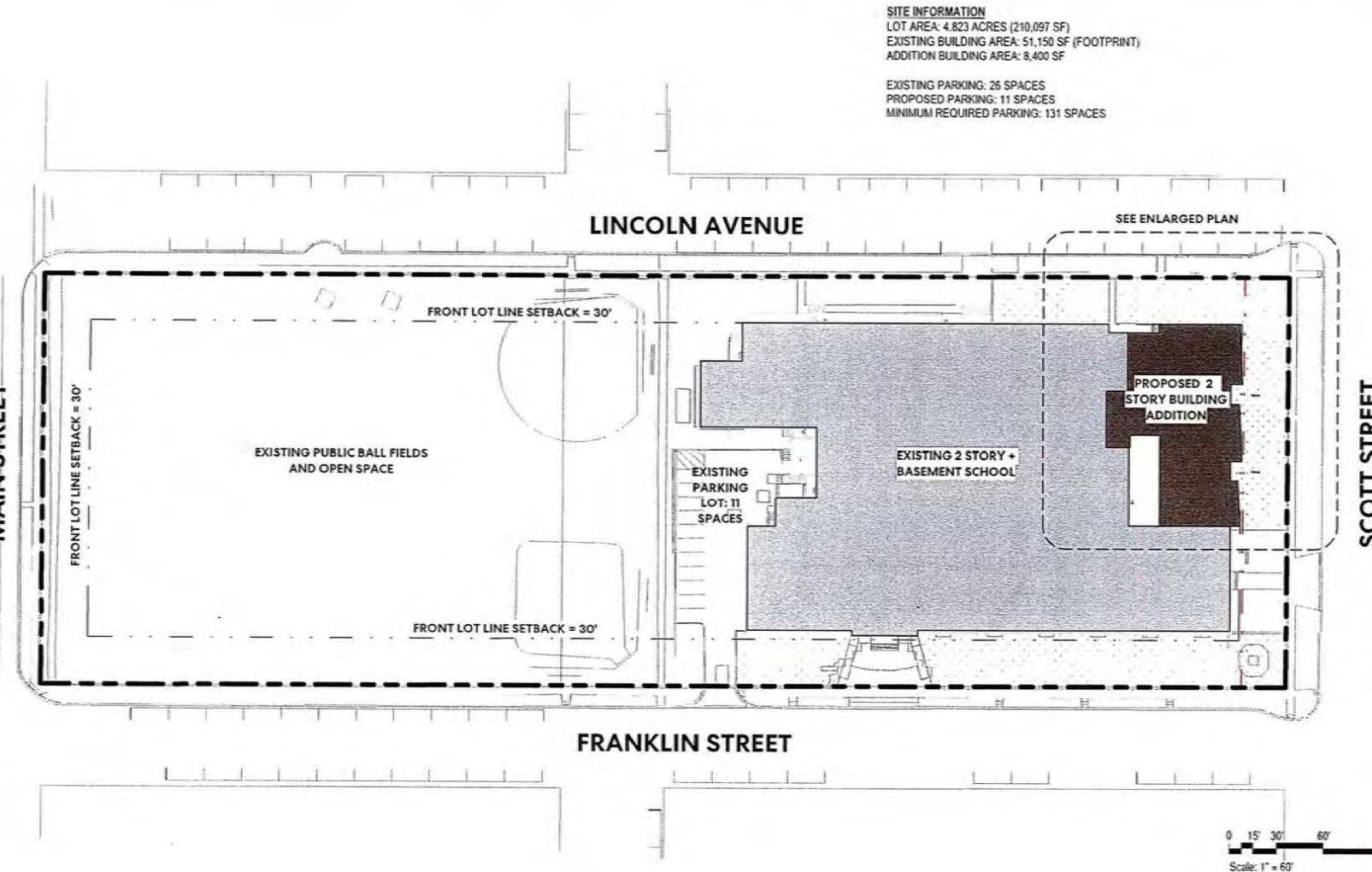
St. John Lutheran Church

By:



Its: Board President

Date: 6-15-25

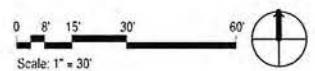
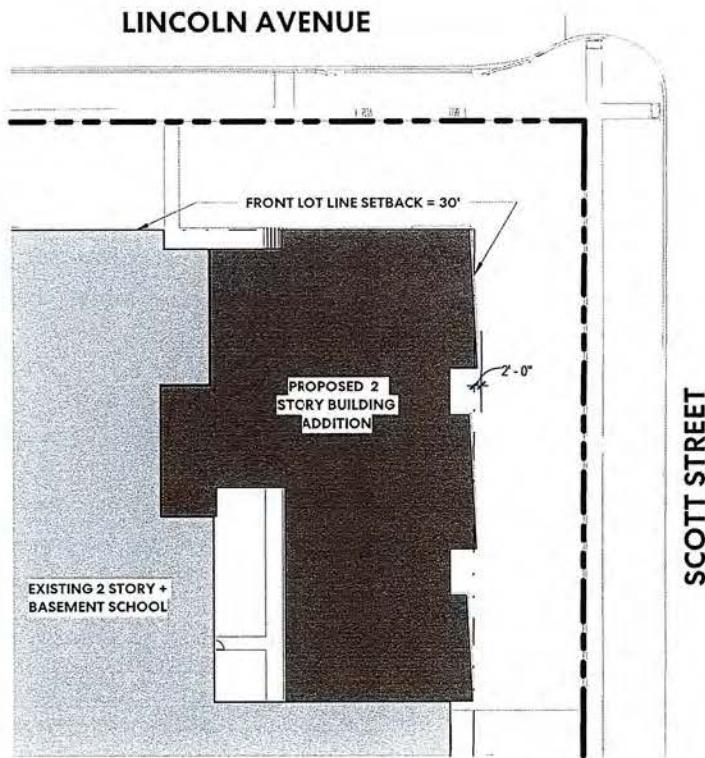


FRANKLIN MIDDLE SCHOOL
 CUSD 200
 01/31/25

**PROPOSED SITE PLAN
 (OVERALL)**

211 EAST FRANKLIN AVENUE WHEATON, ILLINOIS

Perkins & Will

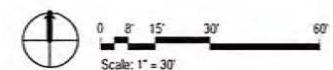
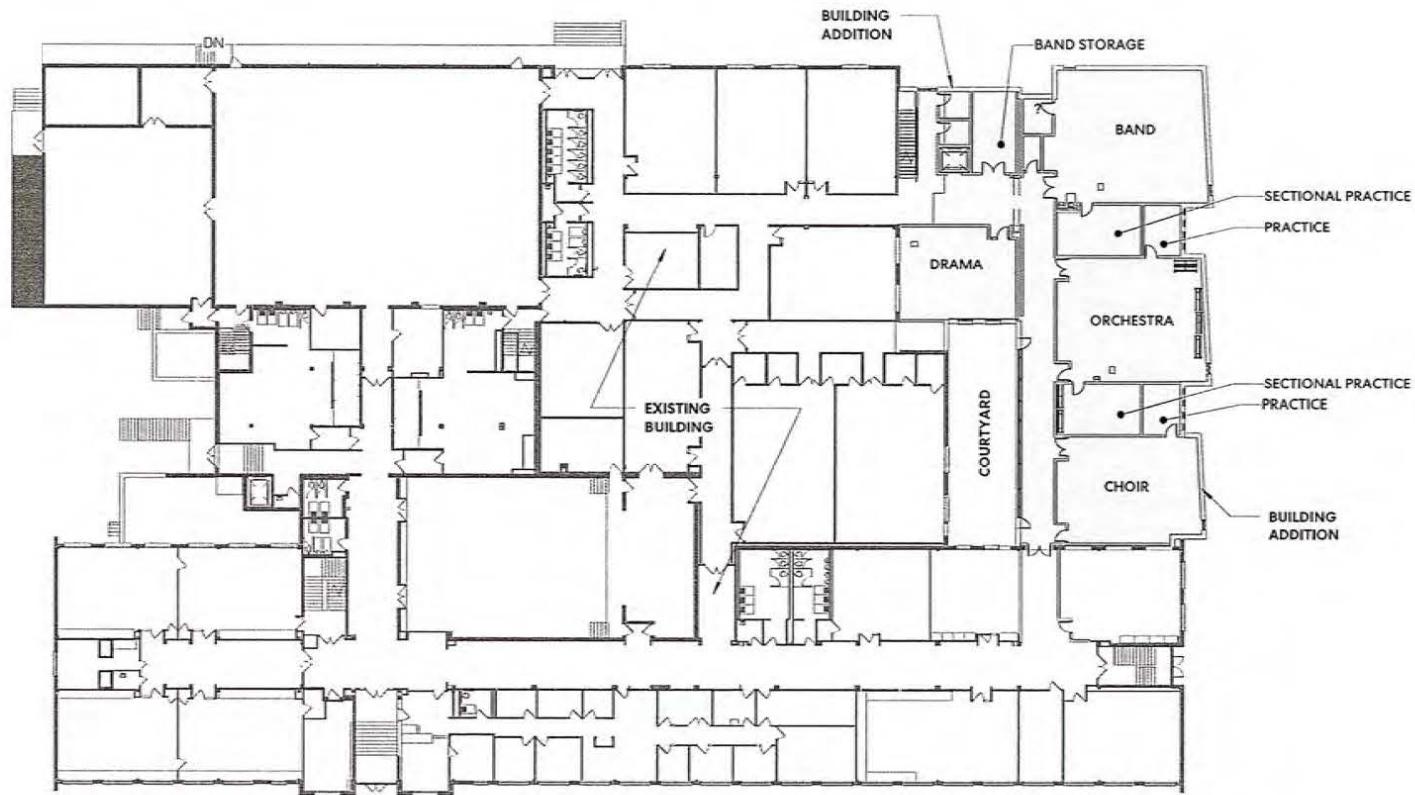


FRANKLIN MIDDLE SCHOOL
CUSD 200
01/31/25

**PROPOSED SITE PLAN
(ENLARGED)**

211 EAST FRANKLIN AVENUE WHEATON, ILLINOIS

Perkins & Will

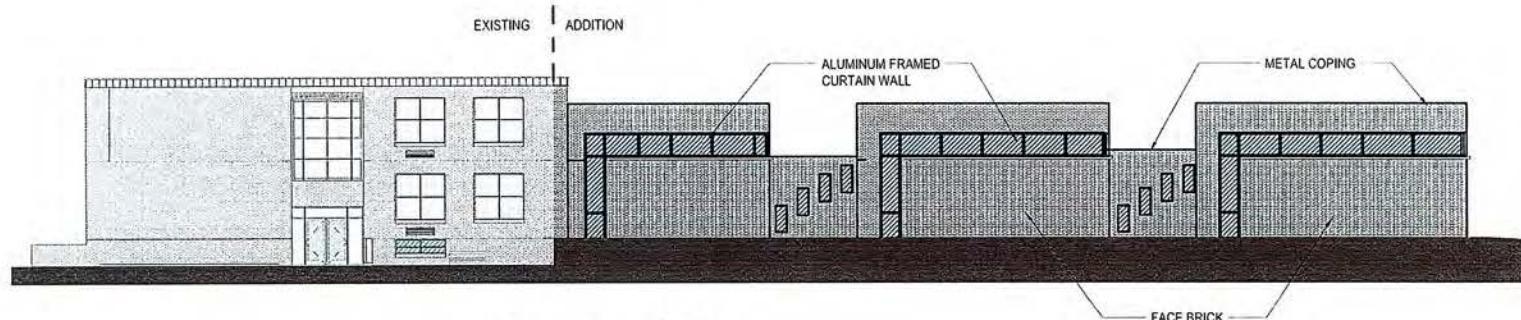


FRANKLIN MIDDLE SCHOOL
CUSD 200
01/31/2025

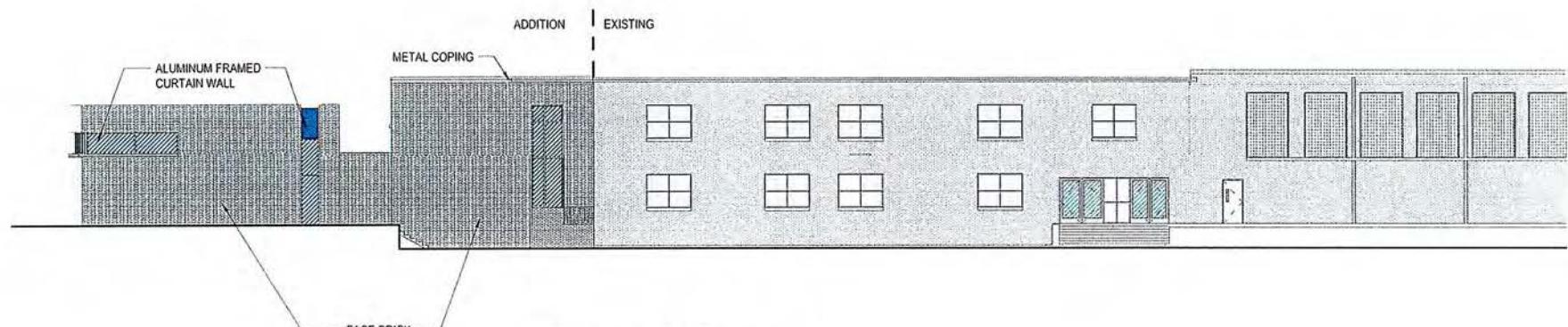
PROPOSED FLOOR PLAN

211 EAST FRANKLIN AVENUE WHEATON, ILLINOIS

Perkins & Will



② EAST ELEVATION
1/16" = 1'-0"



① NORTH ELEVATION
1/16" = 1'-0"



FRANKLIN MIDDLE SCHOOL
CUSD 200
01/31/25

PROPOSED ELEVATIONS

211 EAST FRANKLIN AVENUE WHEATON, ILLINOIS

Perkins & Will



FRANKLIN MIDDLE SCHOOL
CUSD 200
01/31/25

**PROPOSED RENDERING
(EAST ELEVATION)**

211 EAST FRANKLIN AVENUE WHEATON, ILLINOIS

Perkins & Will