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Durbin Law Offices, P.L.L.C.

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**Also admitted in MA*

VIA VIEWPOINT

October 27, 2020

City of Portsmouth
Zoning Board of Adjustment
Attn: David Rheame, Chairman
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application of Thomas J. Murphy
95 Dodge Avenue, Portsmouth (Tax Map 258, Lot 39)**

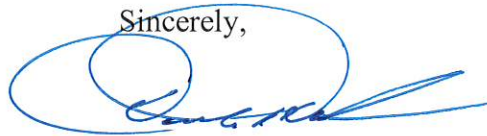
Dear Chairman Rheame,

Our Office represents Thomas J. Murphy, owner of property located at 95 Dodge Avenue in Portsmouth. Attached herewith, please find the following materials for submission to the Zoning Board of Adjustment for consideration at its next regularly scheduled meeting:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Site Plan;
- 4) Architectural Plans (Floor Plans and Elevations);
- 5) Design Memorandum;
- 6) Tax Map; and
- 7) Photographs of the Property.

We have also delivered twelve (12) copies of the submission materials to the Planning Department. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

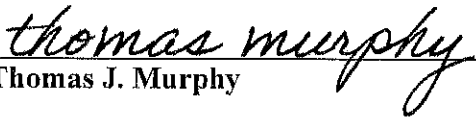
Sincerely,



Derek R. Durbin, Esq.

LETTER OF AUTHORIZATION

Thomas J. Murphy, owner of property located at 95 Dodge Avenue, identified on Portsmouth Tax as Map 258, as Lot 39 (the "Property"), hereby authorizes Durbin Law Offices PLLC, of 144 Washington Street, Portsmouth, New Hampshire 03801, to act as its agent and representative in connection with the filing of any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property. This Letter of Authorization shall be valid until expressly revoked in writing.


Thomas J. Murphy

October 19, 2020

**CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT
APPLICATION NARRATIVE**

Thomas J. Murphy
95 Dodge Avenue
Portsmouth, NH 03801
Tax Map 258, Lot 39
(Owner/Applicant)

INTRODUCTORY STATEMENT

Thomas J. Murphy is the owner of the property located at 95 Dodge Avenue, identified on Portsmouth Tax Map 258 as Lot 39 (the “Property” or the “Applicant’s Property”). The Property is zoned Single Residence B (“SRB”). It is a 1,538 square foot lot that contains the Applicant’s home, which is a single-family residence. As depicted on the Tax Map, the Property is bounded on two sides by Dodge Avenue, so in essence it is a corner lot, which makes it a unique property in the context of the larger neighborhood. There is only one other lot, the abutting Property to the immediate south, that shares this condition.

The Applicant is proposing to demolish the existing home and construct a new one in its place. In conjunction with the proposed home, the Applicant intends to construct an attached accessory dwelling unit (“ADU”). The existing home is antiquated, and it is cost prohibitive for the Applicant to try to renovate and improve it in conjunction with constructing an attached ADU and meeting current building and life safety requirements. The Applicant has phased the proposed construction such that he may remain living at the Property throughout the build-out. The proposed home and attached ADU is designed as an energy efficient “net zero” structure.

There is a relatively short driveway in front of the Applicant’s existing residence. Due to natural and other existing conditions associated with the Property, the Applicant desires to construct a separate driveway to the proposed ADU on the other side of the Property that is abutted by Dodge Avenue. Because Section 3.3.2(3) of the City’s Site Plan Regulations prohibit more than one driveway on a lot and this standard is incorporated by reference into the Zoning Ordinance, variance relief is necessary in order to construct a separate driveway to the proposed garage and ADU. The proposed home and ADU will comply in all other respects with the Zoning Ordinance.

SUMMARY OF ZONING RELIEF

The Applicant seeks the following variance from the Zoning Ordinance:

1. A variance from Section 10.1114.30 to allow two (2) driveways on a lot where only one (1) driveway is permitted.

VARIANCE CRITERIA

Granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court observed that the requirements that a variance not be "contrary to the public interest" or "injure the public rights of others" are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. 152 N.H. 577 (2005). The Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, "the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives.'" Id. "There are two methods of ascertaining whether granting a variance would violate an ordinance's basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare." *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

It appears that Section 3.2.2(3) of the Site Plan Regulations was primarily intended to limit the number of driveways accessing individual lots for safety, aesthetic, and environmental reasons (i.e. to limit impervious surface coverage). With respect to the Applicant's Property, there are existing site conditions which limit where and how a driveway may be constructed or expanded. The only way to avoid the variance relief being requested would be to significantly widen the existing driveway to the north and/or extend the existing driveway from east to west on the Property so that it can provide sufficient access to the garage below the proposed ADU. Aside from the fact that this would effectively eliminate much of the Property's open space, usable yard area and area for a septic system, it would involve having to relocate an existing fire hydrant and utility pole. In addition, any widening of the existing driveway would be towards a "blind corner" of Dodge Avenue, thus creating site line concerns for vehicles approaching and exiting the Property. The grade of the Property, which slopes down rather substantially from the east to the west, would also create the need for costly site work and increased impervious surface coverage resulting in a sea of pavement across the Property. In essence, most of the usable yard area would become a parking lot.

By creating a separate driveway to access the Garage and ADU rather than expanding the existing driveway, the Applicant will be able to maintain the single-family residential appearance and character of the Property. It will also keep the frontage of the Property more pedestrian-friendly. For these reasons it is fair to conclude that denying the variance is far more likely to threaten the public health, safety and welfare and alter the essential character of the neighborhood than approving it. The proposed plan for the Property is consistent with the spirit of the ordinance.

Substantial justice will be done by granting the variance relief.

Any loss to the individual that is not outweighed by a gain to the general public is an injustice. *New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials* (1997); *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102 (2007).

The costs to the Applicant and overall effect (public safety, environmental impact, etc.) that denying the variance would have outweighs any possible gain to the public. Arguably, the effect of denying the variance to the public represents a loss versus a gain. Accordingly, the equitable balancing test tips overwhelmingly in favor of granting the variance.

The values of surrounding properties will not be diminished by granting the variance relief.

The value of surrounding properties will only be enhanced by the demolition of the existing home and the construction of a new single-family residence with attached garage and ADU. Having a second driveway access to the attached garage/ADU as opposed to a large continuous driveway will only benefit the value of the Property. Similar redevelopment on residential properties in Portsmouth has only increased the values of the properties that surround them.

Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

The Property has special conditions that distinguish it from surrounding properties. It is bounded on two sides by Dodge Avenue. Thus, it has the same characteristics that a corner lot has, although rather than having primary and second frontage on two different streets, it has one continuous street frontage that wraps around two sides of the Property. As a result, more stringent setback standards apply to the Applicant's Property than would apply to a lot that is not bounded on two sides by a street. This limits the available building envelope on the Property, despite there being sufficient lot area to build a new single-family home and attached ADU by right. Rather than having two 10' side yard setbacks, the Property has only one 10' side yard setback and two 19' front yard setbacks. The more restrictive setbacks, coupled with the east-to-west sloping topography of the lot, limit the siting and orientation of structures and associated appurtenances on the Property. These conditions dictate the location and configuration of the proposed home, usable yard/open space, stormwater management, septic and utility service. To build a new home on the Property and attached ADU that complies with the setback requirements, the Applicant must either create a separate driveway entrance or expand upon and extend the existing driveway. However, as a result the Property's special conditions, expansion of the existing driveway is impractical and creates a greater impact upon the Property than creating a second driveway. If the Applicant were to enlarge the existing driveway on the Property, it would result in a significant increase in impervious surface coverage, less safe access, reduced open space and usable yard area, a less attractive appearance, and the re-siting of an existing utility pole and fire hydrant. It would also affect the proposed stormwater management plan for the Property and would further limit where the septic system could be located.

In addition, the Property has 241' of continuous street frontage on Dodge Avenue. While the Property is not subdividable due to the Ordinance's lot area requirements, it has more than sufficient frontage to support two lots which makes the Property suitable for two access points.

Owing to the special conditions of the Property described above, having driveways on separate sides of Dodge Avenue is more consistent with the spirit of the Ordinance than expanding the existing driveway and parking area. Therefore, there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

Finally, the proposed use of the Property is also reasonable. The use of the Property will remain single-family residential, which is permitted by right in the SRB Zoning District, and will comply with the dimensional requirements of the Ordinance. The two driveways are a safer more practical alternative for the Property than an enlarged single driveway.

CONCLUSION

In conclusion, the Applicant has demonstrated that his application meets the five (5) criteria for granting the variance and respectfully requests that the Board approve his application.

Respectfully Submitted,

Dated: October 28, 2020

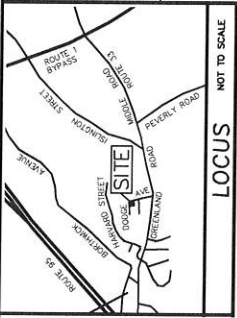
Thomas J. Murphy

By and Through His Attorneys,
Durbin Law Offices PLLC



By: Derek R. Durbin, Esq.
144 Washington Street
Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com

FRONT SETBACK CALCULATION	
INCLUDE ABUTTING BUILDINGS WITHIN 200' OF PROPERTY ON SAME SIDE OF STREET	
TAX MAP LOT	DISTANCE FROM PROPERTY LINE
258 / 41	30' (ESTIMATE)
258 / 36	40' (PER MAP 030)
258 / 36	11' (PER MAP 030)
258 / 36	57' / 3 = 19'



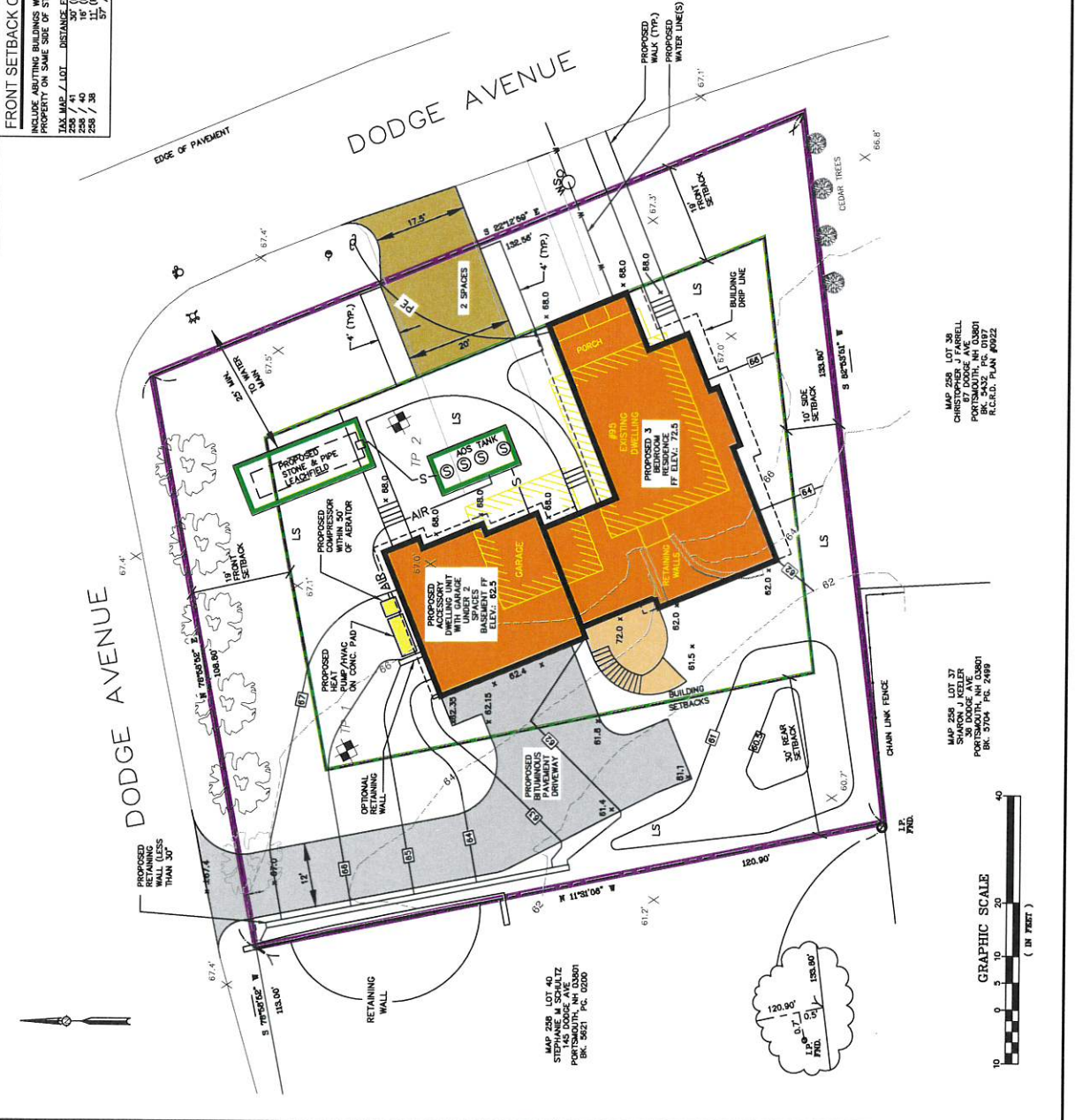
SITE NOTES

- DESIGN INTENT - THIS PLAN IS INTENDED TO DEPICT THE REDVELOPMENT OF THE EXISTING LOT WITH AN ACCESSORY DWELLING UNIT (ADU) WITH AN ACCESSORY DWELLING UNIT (ADU).
- APPROXIMATE LOT AREA: 15,139 S.F. (0.35 AC±)
- ZONE: SINGLE RESIDENCE B (SRB)
- DIMENSIONAL REQUIREMENTS:
 - MIN. LOT AREA: 15,139 S.F.
 - MIN. LOT DEPTH: 100' (19')
 - MIN. STREET FRONTAGE: 100' (19')
 - MIN. SETBACK: 30' (SURVEY) 19' (SURVEY)
 - REAR SETBACK: 30' (SURVEY) 31' (SURVEY)
 - MAX. BUILDING HEIGHT: 35' (SURVEY) 35' (SURVEY)
 - MAX. BUILDING AREA: 4,000 S.F. (SURVEY) 4,000 S.F. (SURVEY)
 - MIN. OPEN SPACE: 400' (SURVEY) 400' (SURVEY)
 - * AVERAGE OF ABUTTING BUILDINGS WITHIN 200' EITHER SIDE OF PROPERTY (67' & 145 DODGE AVENUE)
- OVERALL AREA OF DISTURBANCE UNDER 10,000 S.F., MAKES ALTERATION OF TERRAIN PERMIT NOT REQUIRED.
- AREA OF DISTURBANCE UNDER 43,560 S.F. COVERAGE UNDER EPA NPDES PHASE II CONSTRUCTION GENERAL PERMIT NOT REQUIRED.
- DRIVEWAY PERMITS REQUIRED.
- THE FOLLOWING VARIANCES FROM THE PORTSMOUTH ZONING ORDINANCE ARE REQUESTED:
 - SECTION 10.114.30 - TO ALLOW TWO DRIVEWAYS ON A SINGLE LOT.
 - THE FOLLOWING CONDITIONAL USE PERMIT FROM THE PORTSMOUTH PLANNING BOARD IS REQUESTED:
 - ATTACHED ACCESSORY DWELLING UNIT (10.84)
- ALL BONDS AND FEES SHALL BE PAID/POSTED PRIOR TO INITIATING CONSTRUCTION.
- THE CONTRACTOR SHALL VERIFY ALL BENCHMARKS AND TOPOGRAPHY IN THE FIELD PRIOR TO CONSTRUCTION.
- THE CONTRACTOR SHALL VERIFY ALL BUILDING DIMENSIONS WITH THE ARCHITECTURAL AND STRUCTURAL PLANS PRIOR TO CONSTRUCTION. ALL DIMENSIONS SHALL BE MEASURED TO THE CENTERLINE OF THE BUILDING. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS TO THE ATTENTION OF THE ARCHITECT AND ENGINEER FOR RESOLUTION.
- BUILDING AREA SHOWN IS BASED ON FOOTPRINT MEASURED TO THE EDGE OF FOUNDATIONS AND/OR SLABS. ACTUAL INTERIOR SPACE WILL DIFFER.
- OWNER CAN INSTALL LANDSCAPE RETAINING WALLS AROUND HOUSE TO CREATE FLATTER GRADES WHILE MEETING THE OVERALL GRADING DESIGN INTENT.

LEGEND

- IRON PIPE FOUND
- EXISTING HYDRANT/WATER SHUT OFF
- EXISTING UTILITY POLE / BUY WIRE
- EXISTING SPOT GRADE ELEVATION
- PROPOSED SPOT GRADE ELEVATION
- EXISTING CONTOUR
- EXISTING STRUCTURE (TBR)
- PROPERTY LINE
- BUILDING SETBACK LINE
- PROPOSED RESIDENCE
- PROPOSED DECK/PATIO
- PROPOSED HVAC/MECHANICALS
- PROPOSED PERMEABLE DRIVEWAY/MULK
- PROPOSED BITUMINOUS PAVEMENT
- PROPOSED LANDSCAPING

LS



ALTUS ENGINEERING, INC.

1155 West Street
Portsmouth, NH 03801
www.altuseng.com

NOT FOR CONSTRUCTION	ISSUED FOR:
APPROVAL	ISSUE DATE:
OCTOBER 27, 2020	REVISIONS:
BY DATE	NO. DESCRIPTION
EDW 10/27/20	0 DISCUSSION
DRWING BY:	SCALE:
EDW	22' x 34' - 1" = 10'
3/12/20	11' x 17' - 1" = 20'
OWNER/APPLICANT:	OWNER:
THOMAS J. MURPHY	83 DODGE AVENUE
PORTSMOUTH, NH 03801	BOOK 5919, PAGE 2045
RCRD PLAN #0922	
PROJECT:	PROPOSED RESIDENCE & A.D.U.
TAX MAP 258, LOT 39	95 DODGE AVENUE
PORTSMOUTH, NH	
TITLE:	SITE PLAN
SHEET NUMBER:	C-1

22152

95 DODGE AVE

PORTSMOUTH, NEW HAMPSHIRE

DRAWING INDEX:

T1.1 TITLE SHEET

ARCHITECTURAL DRAWINGS

- A1 BASEMENT & GARAGE FLOOR PLANS
- A2 FIRST & SECOND FLOOR PLANS
- A3 ROOF PLAN
- A4 WEST & EAST ELEVATIONS
- A5 NORTH & SOUTH ELEVATIONS
- A6 3D MODEL VIEWS



LEGEND:

- REVISION - TRIANGLE
- NEW WORK KEYNOTE - SQUARE
- DEMO WORK KEYNOTE - HEXAGON (NOTE NUMBERS NOT LETTERS)
- DOOR TYPES - DIAMOND
- WINDOW TYPES - DIAMOND
- WALL TYPE - SQUARE
- ROOM NAME AND NUMBER
- DOOR NUMBER

	DETAIL INDICATOR	
	DETAIL SECTION CUT	
	WALL/PARTIAL BUILDING SECTION INDICATOR	
	ELEVATION MARK	

95 Dodge Ave
PORTSMOUTH, NH

TITLE SHEET

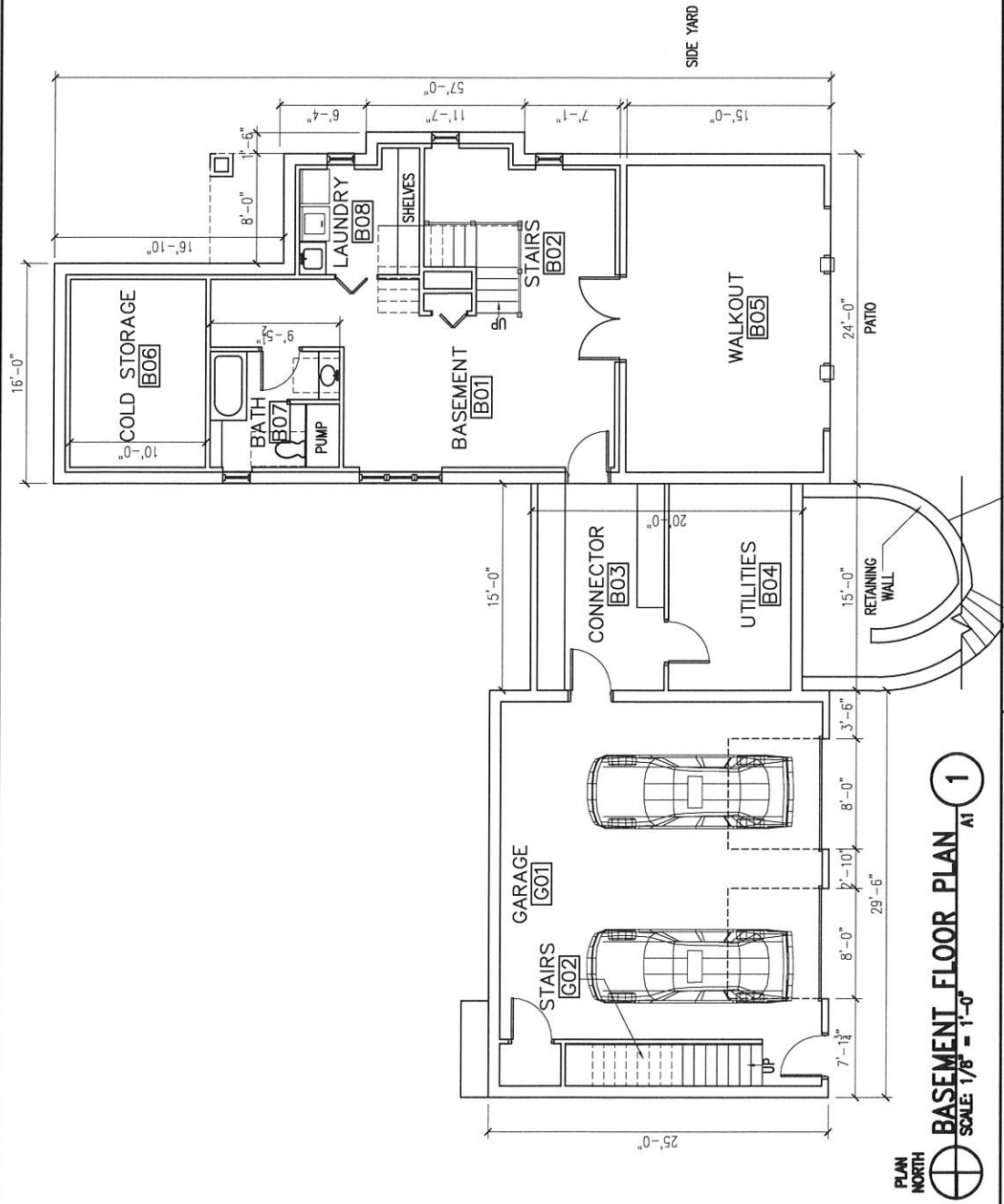
7 WALLINGFORD SQUARE
UNIT 2099
KITTERY, ME 03944
207.954.3304

**WINTER
HOLBEN**
architecture + design

270072020
WINTER HOLBEN:GR/BMH
SCALE: AS NOTED
PROJECT NO: 20081

T1

DRAWING NO.

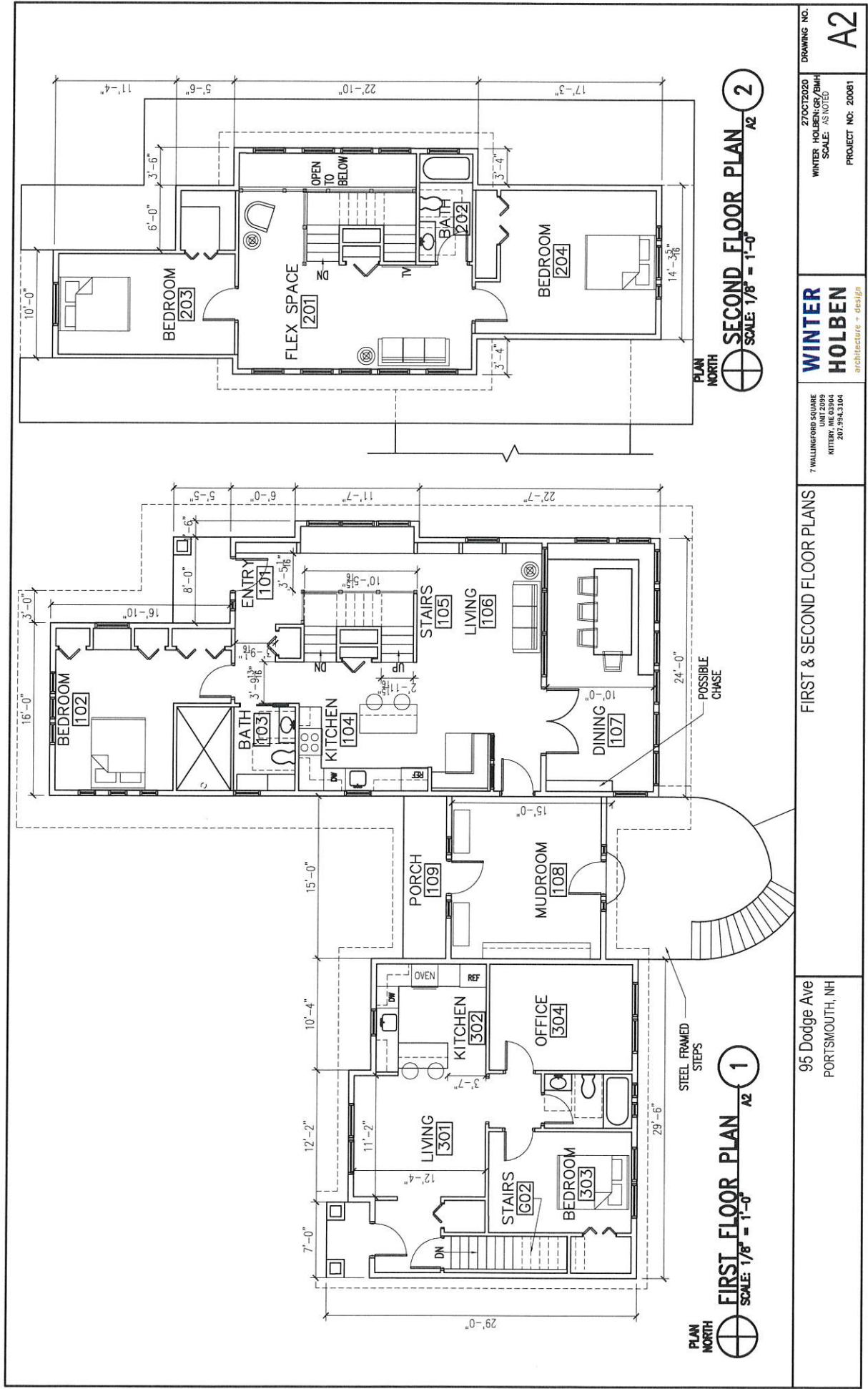


PLAN NORTH

BASEMENT FLOOR PLAN **1**

SCALE: 1/8" = 1'-0"

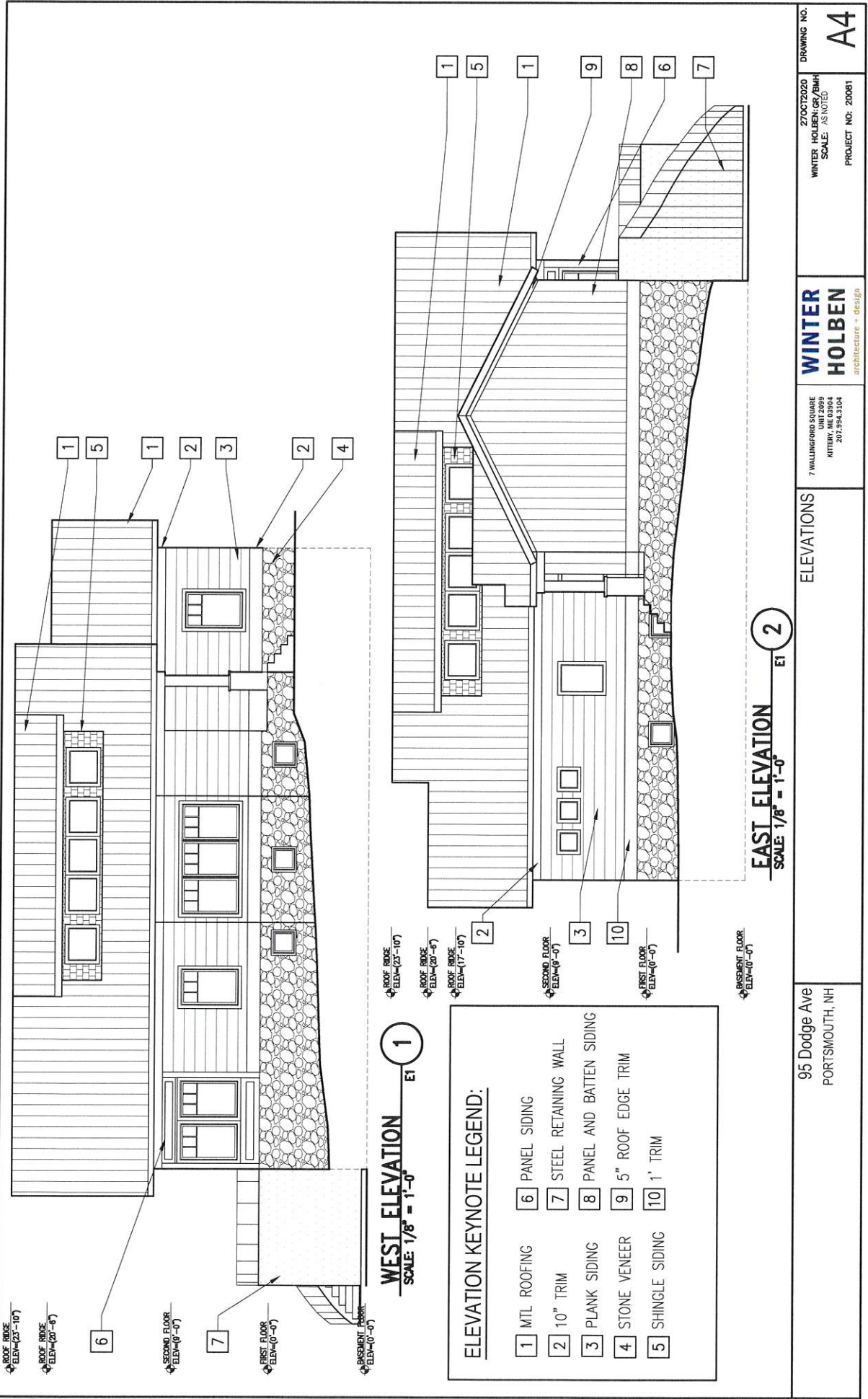
<p>7 WALLINGFORD SQUARE UNIT 2009 KITTSY, PORTSMOUTH, NH 207.954.3104</p>	<p>BASEMENT & GARAGE FLOOR PLANS</p>	<p>95 Dodge Ave PORTSMOUTH, NH</p>
<p>WINTER HOLBEN GR/BMH SCALE: AS NOTED PROJECT NO: 20081</p>	<p>WINTER HOLBEN architecture + design</p>	<p>270072020 WINTER HOLBEN GR/BMH SCALE: AS NOTED PROJECT NO: 20081</p>
<p>DRAWING NO.</p>	<p>A1</p>	<p></p>

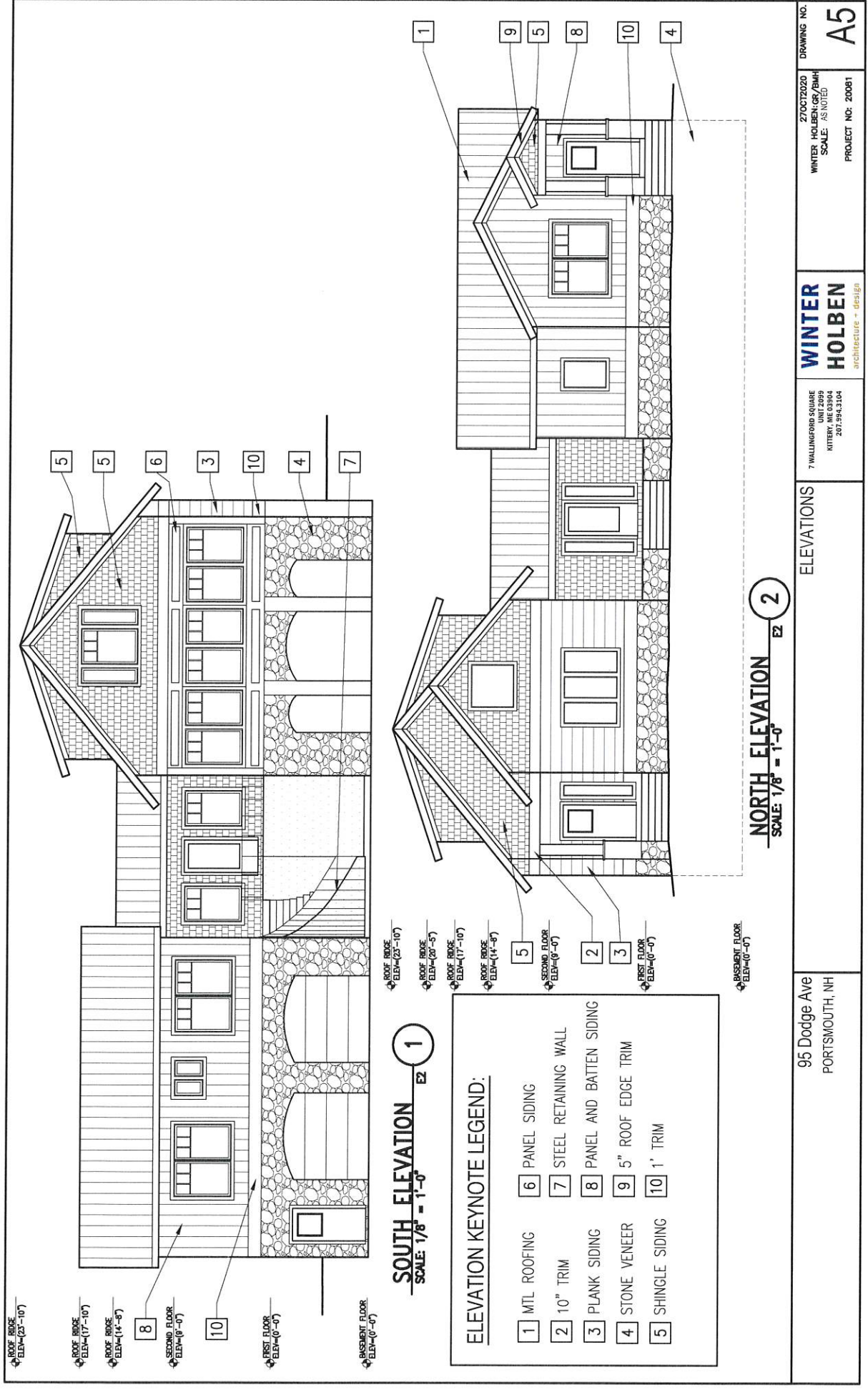


<p>7 WALLINGFORD SQUARE UNIT 2099 KITTSY, PORTSMOUTH, NH 207.954.3104</p>	<p>WINTER HOLBEN architecture + design</p>	<p>27OCT2020 WINTER HOLBEN:GR/BMH SCALE: AS NOTED PROJECT NO: 20081</p>
<p>95 Dodge Ave PORTSMOUTH, NH</p>	<p>FIRST & SECOND FLOOR PLANS</p>	<p>DRAWING NO. A2</p>



27OCT2020
WINTER HOLBEN: GR/BMH
SCALE: AS NOTED
PROJECT NO: 20081







95 Dodge Ave
PORTSMOUTH, NH

MODEL VIEWS

7 WALLINGFORD SQUARE
UNIT 2099
KITTEY, ME 03904
207.994.3104

**WINTER
HOLBEN**
architecture + design

27OCT2020
WINTER HOLBEN:GR/BMH
SCALE: AS NOTED

DRAWING NO.

SCALE: AS NOTED
PROJECT NO: 20081

A6

WINTER HOLBEN architecture + design

MEMORANDUM

Date: 28OCT2020

To:

Subject: 95 Dodge Ave

CC to:

95 Dodge Ave is a unique lot with an existing 1-1/2 story bungalow and garage. Improvements to the property would increase the property value and benefit the neighborhood's overall aesthetic appeal. The owner is looking to build a new 1-1/2 story bungalow with a walkout basement level and an attached accessory dwelling unit in place of the existing structures. The construction would be phased to allow the owner to remain living on site throughout the project. The phasing plan would follow as listed:

1. Demo existing garage
2. Building new accessory dwelling unit
3. Demo existing house
4. Build new primary dwelling unit

The proposed bungalow and complementary accessory dwelling unit is in keeping with the size of other homes in the area. The accessory dwelling unit is designed in a scale and style that compliments the main house. The interior program of spaces is designed to be efficient and functional for the owner.

The materials used are a mixture of panel siding, board and batten, stone and natural shingle. All the exterior materials used pay homage to a traditional new England home with a contemporary twist. The siding materials on the main home break up the vertical floors and add visual interest. The accessory dwelling unit is finished with a board and batten siding in the same color as the main house panel siding.

Thank You,

Brandon Holben, AIA, LEED AP
Principal Architect
WINTER HOLBEN





East - Front of House



North (Corner of Dodge Avenue)

Left Side Yard (Southeast)





Left Side Yard (South)



Utility Pole (North)