

144 Washington Street
P.O. Box 1222
Portsmouth, NH 03802
www.durbinlawoffices.com



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

Derek R. Durbin, Esq.
603.287.4764
derek@durbinlawoffices.com
**Also admitted in MA*

VIA VIEWPOINT

September 22, 2020

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

**RE: Variance Application of Amanda J. Telford, Trustee of the Amanda J. Telford
Revocable Trust
322 Lincoln Avenue, Portsmouth**

Dear Chairman Rheume,

Our Office represents Amanda J. Telford, owner of property located at 322 Lincoln 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) Plan Set (Site Plan, Floor Plans and Elevations); and
- 4) Photographs of the Property;

Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Derek R. Durbin', with a large, stylized flourish at the end.

Derek R. Durbin, Esq.

LETTER OF AUTHORIZATION

Amanda J. Telford, Trustee of the Amanda J. Telford Revocable Trust, owner of property located at 322 Lincoln Avenue, identified on Portsmouth Tax as Map 130, Lot 26 (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.


Amanda Telford

September 21, 2020

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

Amanda J. Telford, Trustee
Amanda J. Telford Revocable Trust
322 Lincoln Avenue
Portsmouth, NH 03801
(Owner/Applicant)

INTRODUCTORY STATEMENT

Amanda Telford is the owner of the property located at 322 Lincoln Avenue, identified on Portsmouth Tax Map 130 as Lot 26 (the "Property"). The Property is zoned General Residence A ("GRA"). It is a 5,378 square foot lot with two structures on it – the Applicant's home and a small two-story outbuilding that most people refer to as a "carriage house" based on its design.

The carriage house, which is located to the rear of the Applicant's residence, was constructed in the early part of the 20th century based on the age of the wood comprising the structure, which is over 100 years old. The carriage house is structurally compromised. The wood sill is completely rotted and much of the foundation has caved in. This has created a convenient habitat for animals (i.e. racoons, skunks, etc.) which have taken up residence in the structure. The second floor of the structure has no structural support and as noted by the Applicant's architect in the design narrative submitted herewith, is "in imminent danger of catastrophic failure." Exhibit A. The Applicant currently uses the first floor of the carriage house to store personal belongings, including a motorcycle and yard equipment. The second floor is unused due to its condition.

It would be impractical and cost prohibitive for the Applicant to try to salvage the existing carriage house through a renovation. Because saving the structure is infeasible, the Applicant is proposing to demolish it and replace it with a new building that retains the carriage house style and has a similar, but improved appearance. The new carriage house would be slightly relocated to improve the existing right yard setback encroachment by 1', from 2'6" to 3'6", which will fall into line with the right side of the existing residence when viewed from Lincoln Street. The height of the new building will be the same as the former. The building footprint would increase negligibly by 9 square feet (0.03%) over what exists (35%). The existing carriage house has an irregular footprint as a result of a "jog" in one corner of the building that the Applicant desires to square off with the replacement structure.

The Applicant intends to use the first floor of the new carriage house for storage of personal belongings, as she has always done. The second floor of the carriage house would contain a home office. The Applicant has worked remotely from her home for several years, which has been challenging for her having two children that reside with her and not having a dedicated office space. The current covid-19 crisis has further exacerbated her need for a workspace outside of her residence, particularly with two children attending school remotely from home.

SUMMARY OF ZONING RELIEF

The Applicant seeks the following variance from the Zoning Ordinance:

1. A variance from Section 10.521 (Table of Dimensional Requirements) to allow for 35.3% (+/-) building coverage where 35% exists and 25% is the maximum allowed;
2. A variance from Section 10.521 to allow a right yard setback of 3'6" where 2'6" exists and 10' is the minimum required;
3. A variance from Section 10.521 to allow a rear yard setback variance of 13' where 13' exists and 20' is the minimum required; and
4. To allow a variance from Section 10.321 permitting a non-conforming structure to be reconstructed and enlarged without complying with the terms of the Ordinance.

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).

The primary purpose behind boundary setback requirements is to maintain light, air and space between buildings on adjacent properties. The primary purpose of building coverage limitations is to prevent the overcrowding of land.

In the current instance, the right yard setback will be improved with the new carriage house, thus creating more light, air and space between it and the outbuilding on the abutting property over what exists. The carriage house will be relocated so that it falls in line with the Applicant's residence, which also encroaches into the right yard setback. The rear yard setback will remain the same. The 9 square foot increase associated with squaring off the structure will improve the appearance and functionality of the carriage house without creating an additional impact upon abutters. From a building density perspective, there will be no noticeable impact associated with

the 0.03% increase in lot coverage. There are many examples of outbuildings on properties throughout the Applicant's neighborhood that encroach upon one or more of the boundary setbacks. Moreover, many of the properties exceed the maximum lot coverage requirement. These are common characteristics of the properties in the neighborhood. Accordingly, the essential character of the neighborhood will not be negatively impacted by granting the variance relief sought.

In addition, there will be no negative impact to the public health, safety or welfare by granting the variance relief. To the contrary, it is in the public's interest to see that the existing carriage house, which is structurally unsound, be torn down and replaced with a structure that complies with all current building and life safety codes and has greater separation from the outbuilding on the abutting property.

The impact of the proposed carriage house is mitigated by the fact that there is an outbuilding of similar size located in close proximity on the adjacent property at 332 Lincoln Avenue (Tax Map 130, Lot 27). That structure is located approximately 1' from the right (west) boundary of the Applicant's property. Overall, the demolition of the existing carriage house and its reconstruction in the proposed location will represent an improvement to the property.

It is important to note that the most directly impacted abutters residing at 312 Lincoln Avenue (to the left), 332 Lincoln Avenue (to the right) and 29 Spring Street (to the rear) have all signed a letter of support, which is submitted herewith as Exhibit B.

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).

There is no public benefit that would be realized by denying the variance. The carriage house has existed in its present location for over 100 years. It is unsafe in its current condition and represents a liability for Applicant. It is infeasible to salvage the existing structure, which serves as critical storage space for the Applicant. If the variance relief were denied, the Applicant would be unable to re-build the carriage house in-kind and would thus lose important storage space that she relies upon. In addition, she would be unable to create a home office on the Property apart from her residence. Finally, the carriage house is a unique and defining feature of the Property that gives it its current character. Losing this feature of the Property or forcing the Applicant to re-locate it or downsize it would create a hardship on the Applicant that is not outweighed by any corresponding benefit to the public.

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

If the variances are approved, the proposed carriage house should only have a positive impact on surrounding property values. It will retain many characteristics of the existing carriage house design while improving upon its appearance and functionality and creating a code-compliant structure. This will positively impact the value of the Applicant's property, which should improve the values of those properties that surround it.

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. The existing non-conforming carriage house on the Property pre-dates the adoption of the Zoning Ordinance. The Property is narrower and deeper than most of the surrounding properties. The narrowness of the Property makes it difficult, if not impossible, to build any new or replacement structure on the Property without violating the setback regulations. Moreover, the existing residence itself has a building footprint of approximately 1,335 square feet, which is only 9.5 square feet shy of reaching the building coverage limitation (25%). Outside of the existing residence, there is no room to expand upon the home or create a reasonably sized outbuilding without having to apply for setback and lot coverage relief under the Ordinance. Given the special conditions of the Property, 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 unchanged if the variance relief is granted. The existing carriage house has always been primarily used as storage space. The Applicant's residence provides minimal storage space and lacks a dedicated home office, which are critical to her daily life. The re-constructed carriage house will fulfill these needs while improving the right yard setback by 1' and maintaining the limited back yard space that the Applicant currently has and enjoys.

CONCLUSION

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

Dated: September 22, 2020

Respectfully Submitted,

Amanda Telford

By and Through His Attorneys,
Durbin Law Offices PLLC

A handwritten signature in blue ink, appearing to read "Derek R. Durbin", with a large, stylized initial "D" and a long horizontal flourish extending to the right.

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

Placework

September 16, 2020
RE: 322 Lincoln Avenue

Dear Portsmouth Board of Adjustment Members:

I am writing to describe why we believe it is necessary to replace the the existing outbuilding on the 322 Lincoln Avenue lot, rather than repair it. The building was likely constructed in the early part of the 20th century; the existing wood structure and wood siding is likely over 100 years old. As such, the wood sill has rotted away around much of the foundation has caved in, crating large areas inhabited by neighborhood animals beneath the first floor. The structure has been altered several times on the interior of the building, to the point where beams meant to carry the second story are not longer bearing on anything below. Although the first floor is viable for storage, the second story is unsafe and the whole structure is rotted, listing, and in imminent danger of catastrophic failure.

Because merely repairing the structure is not technically feasible at this point, the owner wishes to replace the structure with a similar building in its place. The current building is used for storage and a motorcycle garage on the first floor; the second floor is not feasible for use even as storage due to the state of the structure. The building is colloquially referred to as a "carriage house", although the function of the original building is debatable. It has likely always been used as some form of lawn and garden storage. The proposed replacement building retains the footprint of the original, although straightens out a "bite" out of one corner for the sake of creating a more regular structure. The new building retains the original New England carriage house style, including a replication of the existing cupola, at the existing height. The eave height is raised in order to allow for a new home office within the building. The original dormer has been eliminated and additional windows added on the third floor to make it a more pleasant space to work during the day. (Note that the owner has worked from home for several years; the need for a home office is not purely tied to the Covid crisis, but is exacerbated by the need for a home-school area within the main house).

The design is consistent with other carriage house style buildings in the wider neighborhood, although it is also characteristic of these buildings to have unique features based on their site. Because this building is sited very close to a neighbor's garage, also within two feet of the property line, the owner has chosen to both move the structure one foot away from the west property line and to eliminate any windows on the west side. The windows on the south side of the building are also minimized, although they face a blank wall on the neighbor's property. The existing open space and yard is maintained between the south property line and the existing house, and only slightly diminished on the east side. The cupola is a characteristic feature that is appreciated by neighbors and this neighborhood landmark will be recreated atop the new building.

Sincerely,



Alyssa Manypenny Murphy, AIA

September 11, 2020

To whom it may concern:

We understand that Amanda Telford is requesting a variance in order to rebuild the carriage house on her property. As an abutter, we support the removal and rebuilding of the structure and do not oppose the request for the variance.

Rita Weathersby
Signature

RITA WEATHERSBY
Printed Name

312 LINCOLN AVE
Address

PORTSMOUTH

Dani Rooney
Signature

Dani Rooney
Printed Name

29 Spring St., Portsmouth
Address

Tom Rooney
Signature

TOM ROONEY
Printed Name

29 SPRING ST., PORTSMOUTH
Address

September 11, 2020

To whom it may concern:

We understand that Amanda Telford is requesting a variance in order to rebuild the carriage house on her property. As an abutter, we support the removal and rebuilding of the structure and do not oppose the request for the variance.



Signature

Theresa Fisher

Printed Name

332 Lincoln Ave Portsmouth NH 03804

Address

Signature

Printed Name

Address

Signature

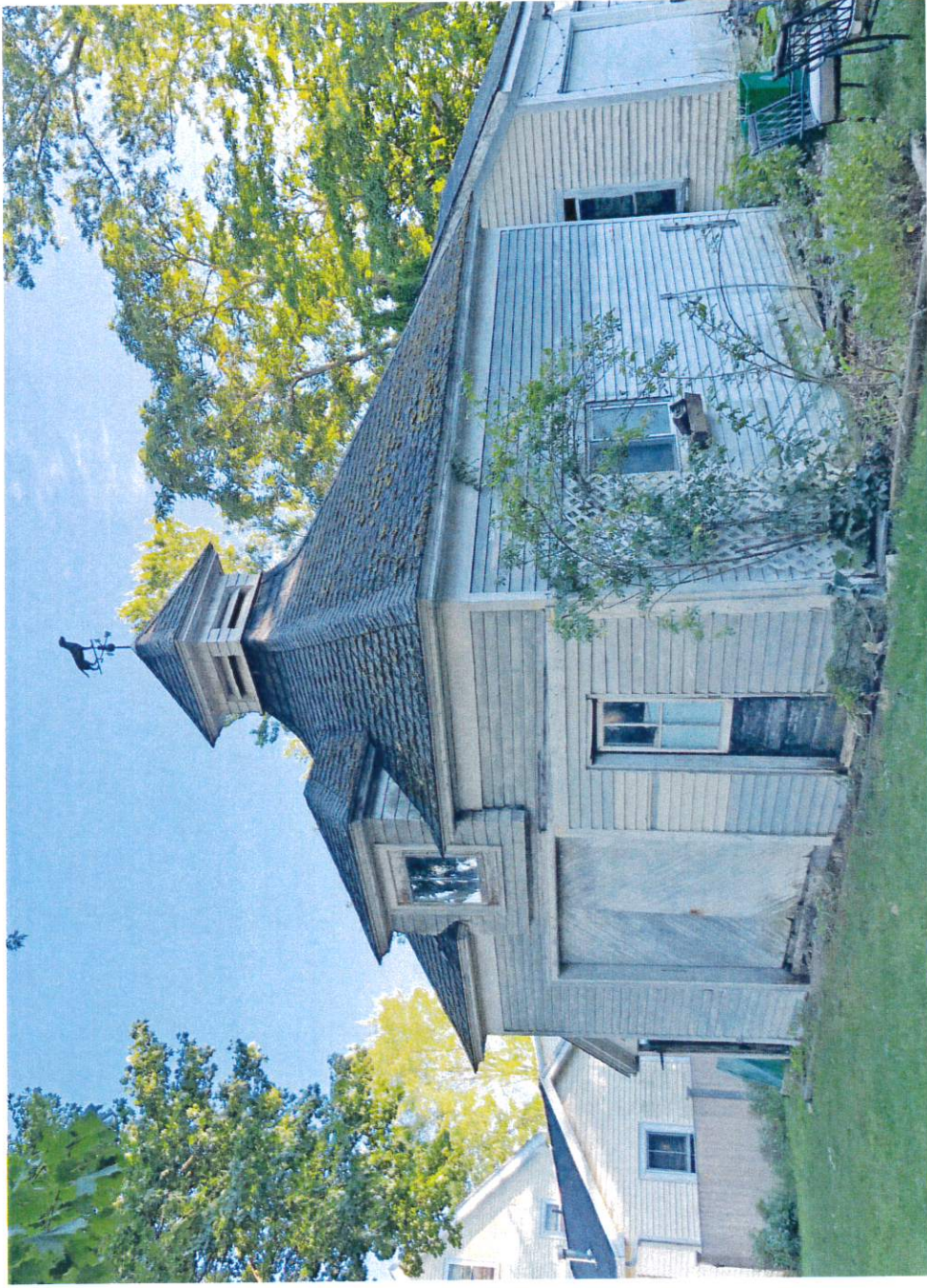
Printed Name

Address

322 LINCOLN AVENUE

1 OF 11

CITY OF PORTSMOUTH
Board of Adjustment
Public Hearing
October 20, 2020



BOA PUBLIC HEARING
PORTSMOUTH, NH

Placework
ARCHITECTURE • PLANNING

NOTES FOR VARIANCE REQUEST

1. Site plan by Placework Architecture based on City of Portsmouth Tax map and site observations.
2. Project parcel: Tax Map 130 Lot 26; +/-5,378 sf
3. Zone: GRA - General Residence A

4. Dimensional requirements:

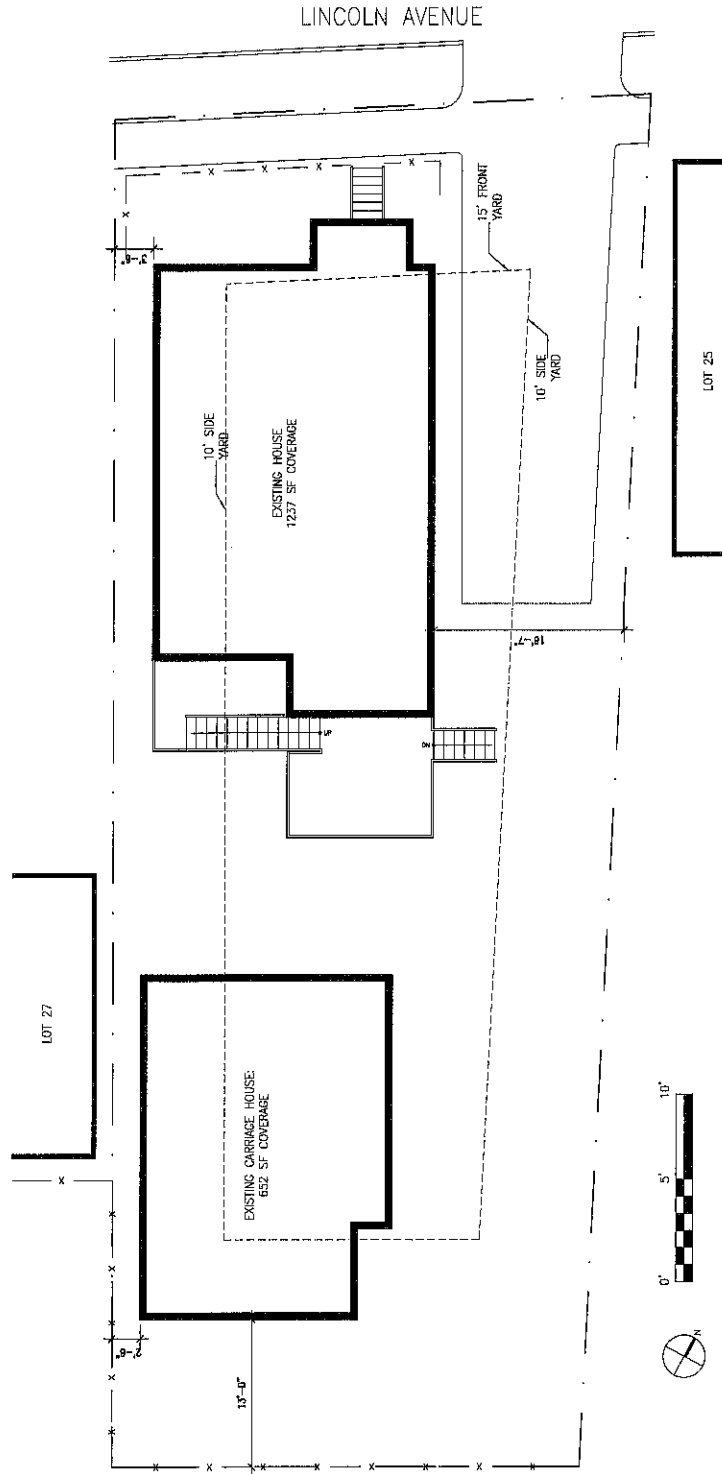
	Required	Existing	Proposed	Notes
Minimum lot area:	7,500	5,378	N/A	Conforming
Lot area/dwelling unit:	7,500	5,378	N/A	Conforming
Min street frontage:	100'	48'	N/A	Existing non-conforming
Min lot depth:	70'	119'	N/A	Conforming
Front yard:	15'	6'-10"	No change	Existing non-conforming
Left (East) yard: 10'	10'-0"	(Carriage House)	No Change	Conforming
Right (West) yard:	10'	2'-6" (Carriage House)	3'-6" to new construction	Increase conformance
Rear yard:	20'	16'-7" (House)	No Change	Conforming
Max. building height:	35'	13'-0" (Carriage House)	No change	Conforming
Max. building coverage:	25%	55'-6" (House)	No change	Conforming
		+/- 26'	No Change	Increase to Existing
		35.0%	35.3%	Non-Conforming
Minimum open space:	30%	2,779 - 51.6%	2,770 - 51.5%	Conforming



EXISTING SITE PLAN

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

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KEY
 ——— PROPERTY LINE
 - - - - - SETBACK
 — X — EXISTING FENCE

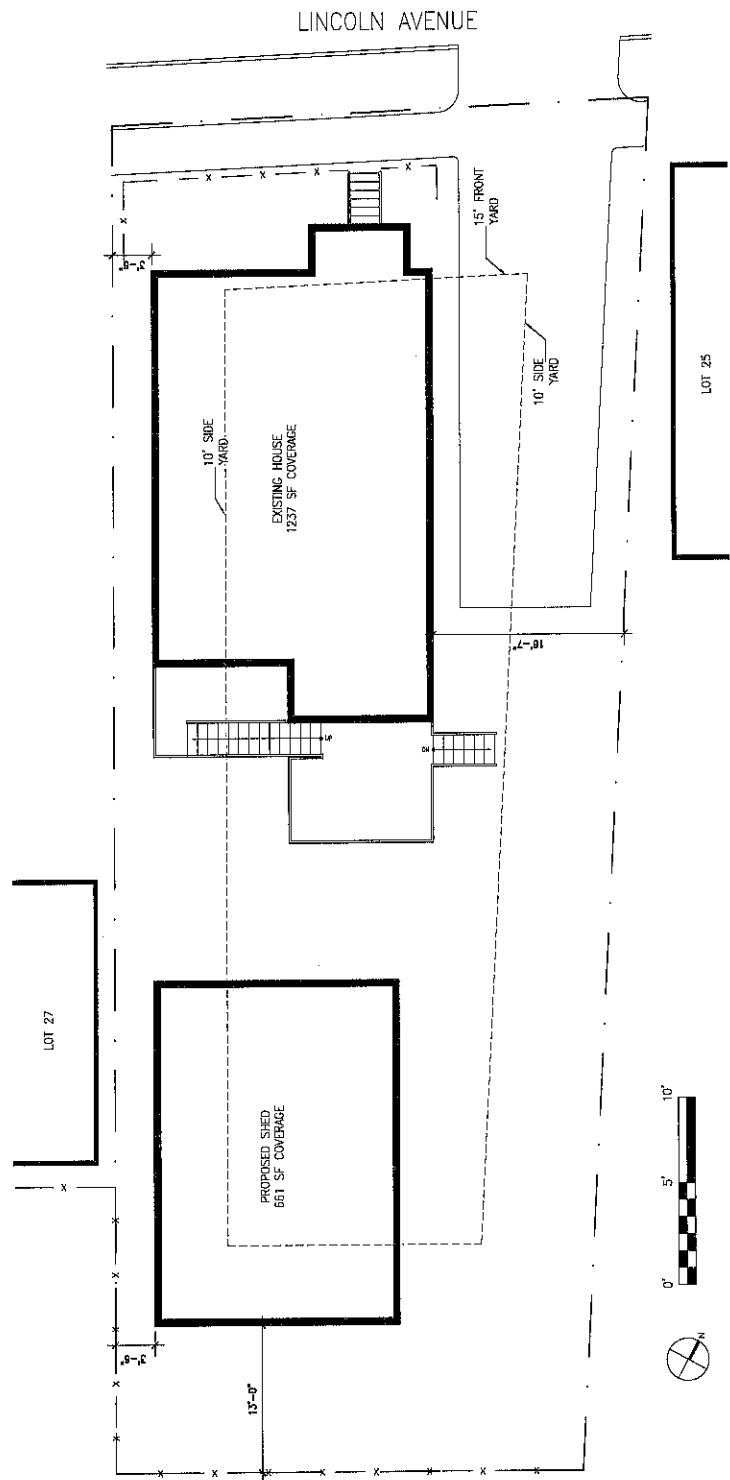
EXISTING LOT COVERAGE:		1,237
HOUSE:		652
CARRIAGE HOUSE:		1,898
TOTAL:		
EXISTING OPEN SPACE:		5,378
SITE:		
HOUSE:		-1,237
CARRIAGE HOUSE:		-652
WALKWAY:		-135
DRIVE:		-573
TOTAL:		2,779
PROPOSED LOT COVERAGE:		1,637
HOUSE:		1,661
CARRIAGE HOUSE:		1,898
TOTAL:		
PROPOSED OPEN SPACE:		5,378
SITE:		
HOUSE:		-1,237
CARRIAGE HOUSE:		-661
WALKWAY:		-135
DRIVE:		-573
TOTAL:		2,778

322 LINCOLN AVENUE
 PORTSMOUTH, NH

Placework
 ARCHITECTURE • PLANNING

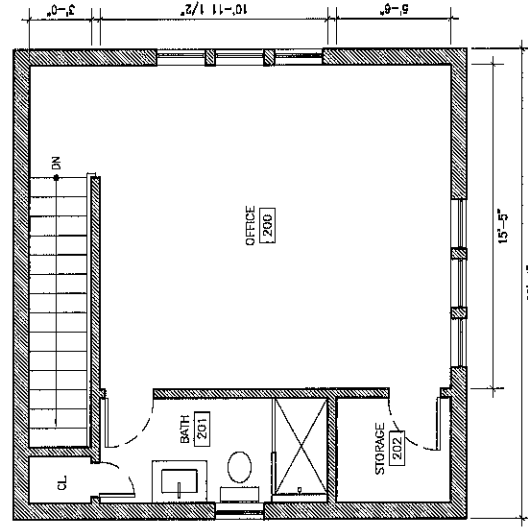
PROPOSED SITE PLAN

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

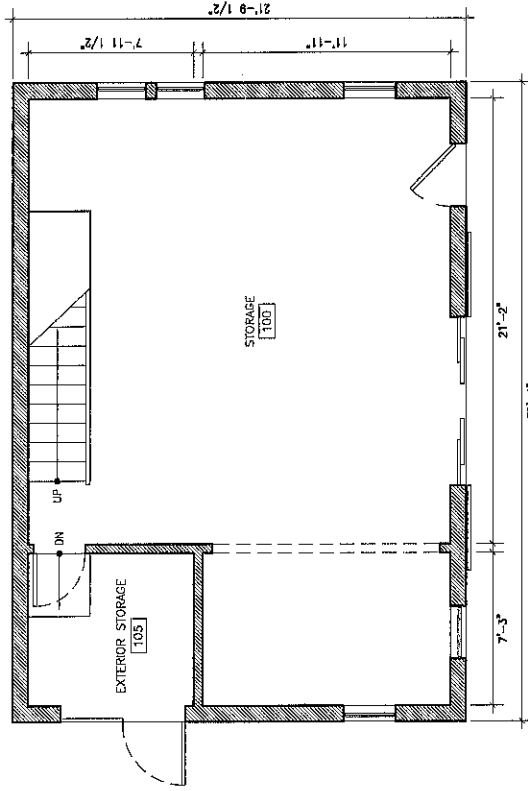


KEY
 --- PROPERTY LINE
 - - - SETBACK
 - - - EXISTING FENCE
 x x x EXISTING FENCE

EXISTING LOT COVERAGE:	1,237
HOUSE:	652
CARRIAGE HOUSE:	1,889
TOTAL:	1,889
EXISTING OPEN SPACE:	5,378
SITE:	5,378
HOUSE:	-1,237
CARRIAGE HOUSE:	-652
PAVING:	-135
DRIVEWAY:	-575
TOTAL:	2,779
PROPOSED LOT COVERAGE:	1,237
HOUSE:	661
CARRIAGE HOUSE:	1,889
TOTAL:	1,889
PROPOSED OPEN SPACE:	5,378
SITE:	5,378
HOUSE:	-1,237
CARRIAGE HOUSE:	-661
PAVING:	-135
DRIVEWAY:	-575
TOTAL:	2,779



SECOND FLOOR PLAN

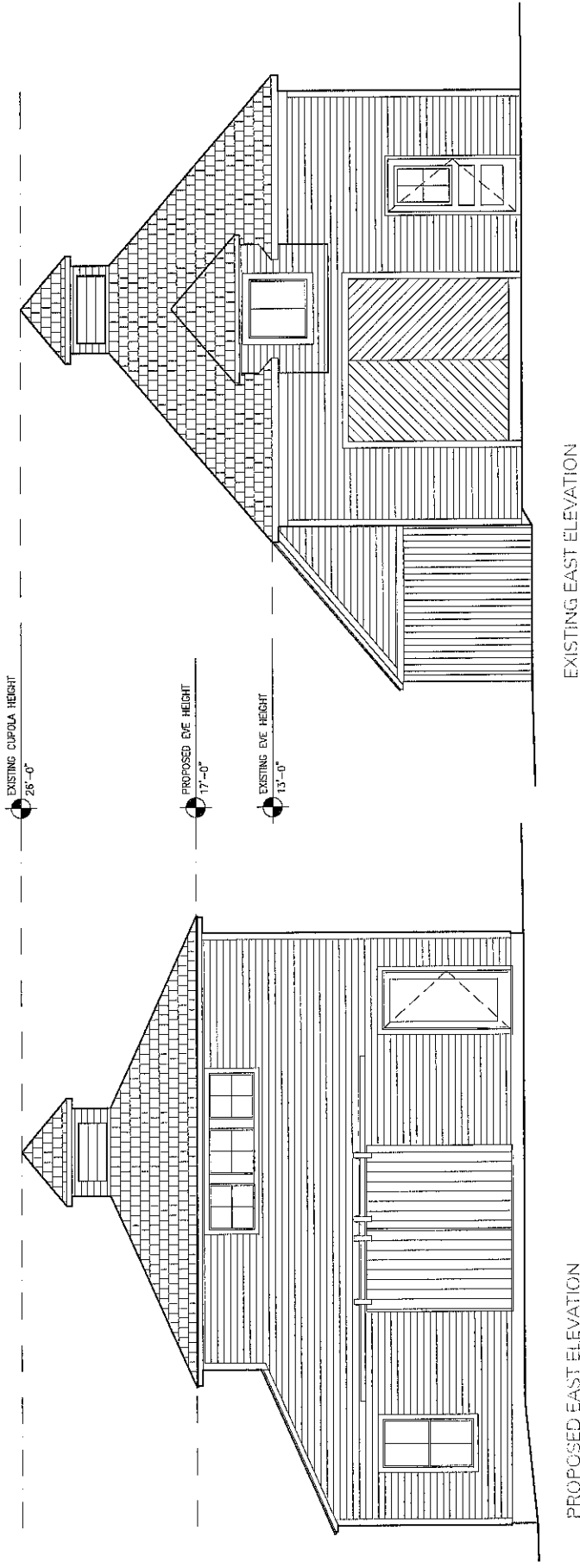


FIRST FLOOR PLAN

ELEVATIONS

SCALE: 3/16"=1'-0"

60111



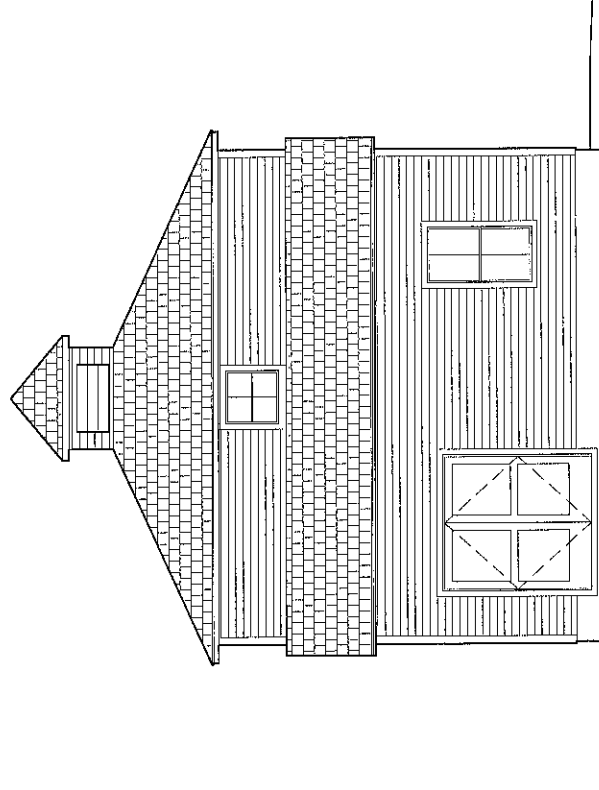
322 LINCOLN AVENUE
PORTSMOUTH, NH

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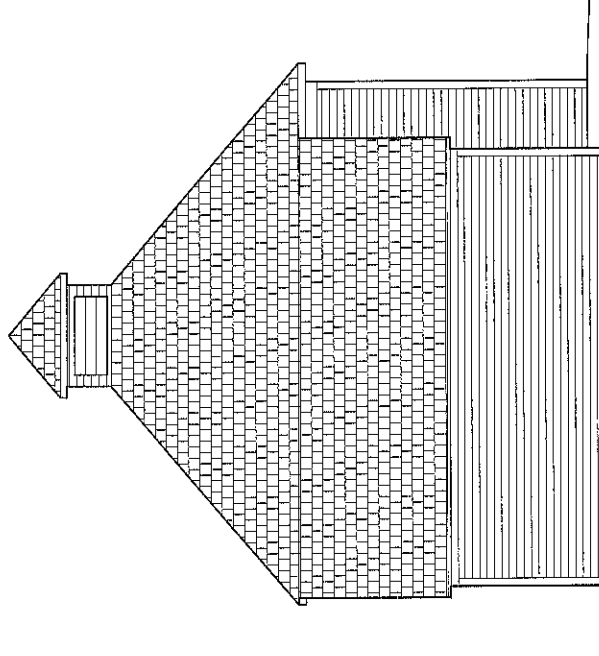
ELEVATIONS

SCALE: 3/16" = 1'-0"

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PROPOSED SOUTH ELEVATION



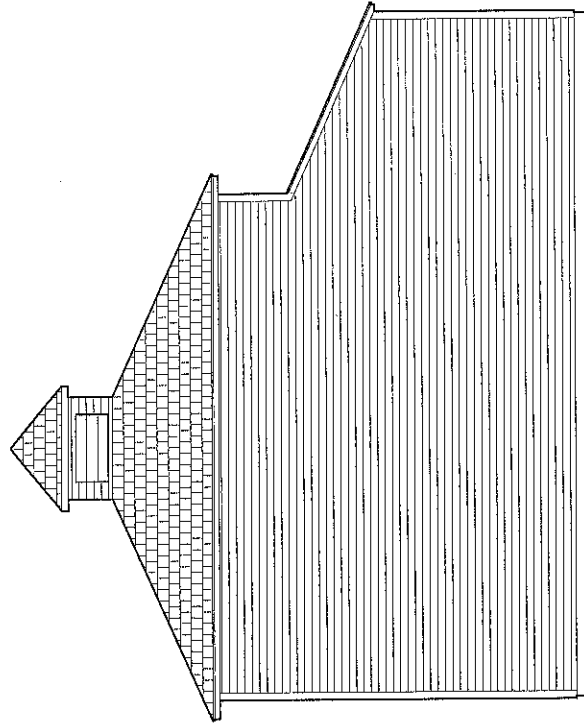
EXISTING SOUTH ELEVATION

322 LINCOLN AVENUE
PORTSMOUTH, NH

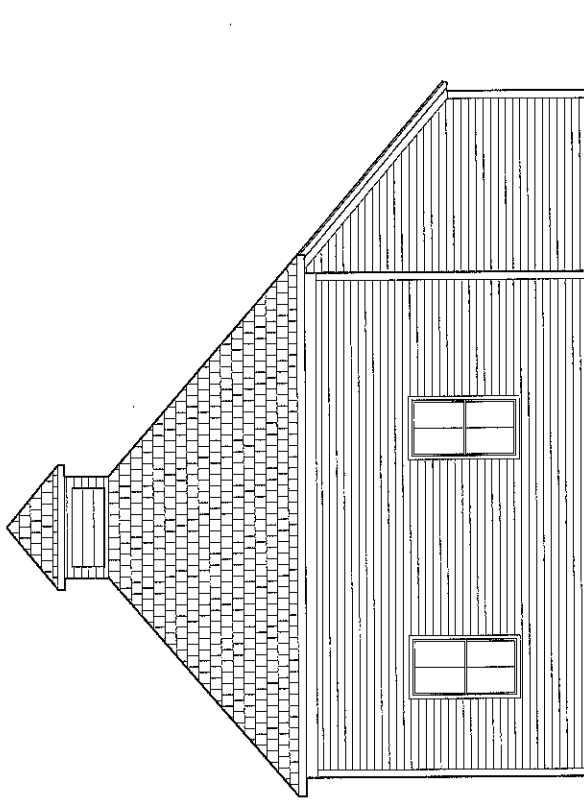
Placework
ARCHITECTURE • PLANNING

ELEVATIONS

SCALE 3/16" = 1'-0"



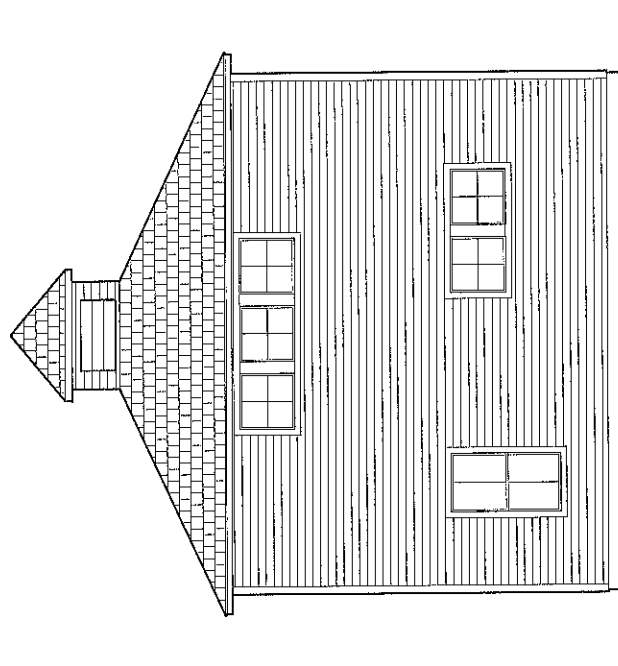
PROPOSED WEST ELEVATION



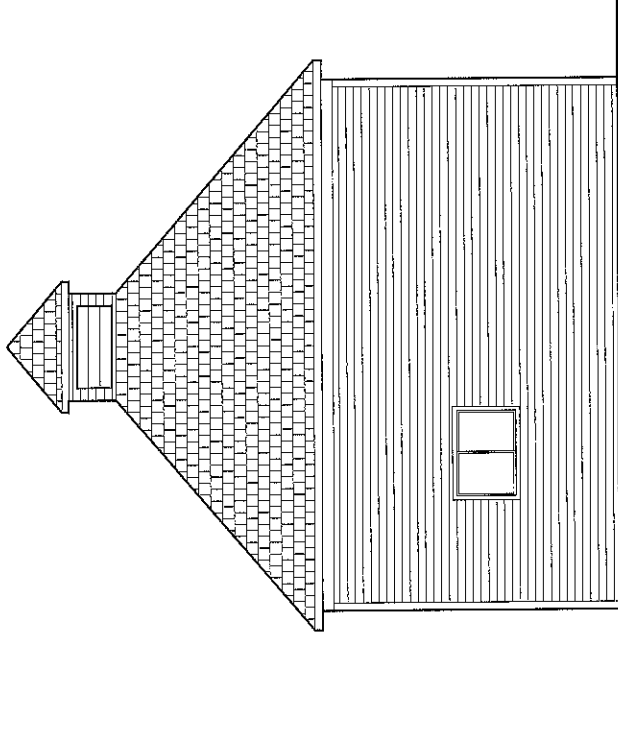
EXISTING WEST ELEVATION

322 LINCOLN AVENUE
PORTSMOUTH, NH

ELEVATIONS
SCALE: 1/4" = 1'-0"

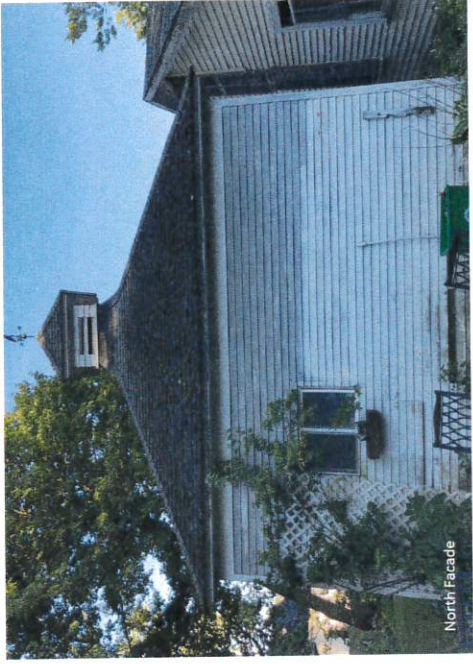
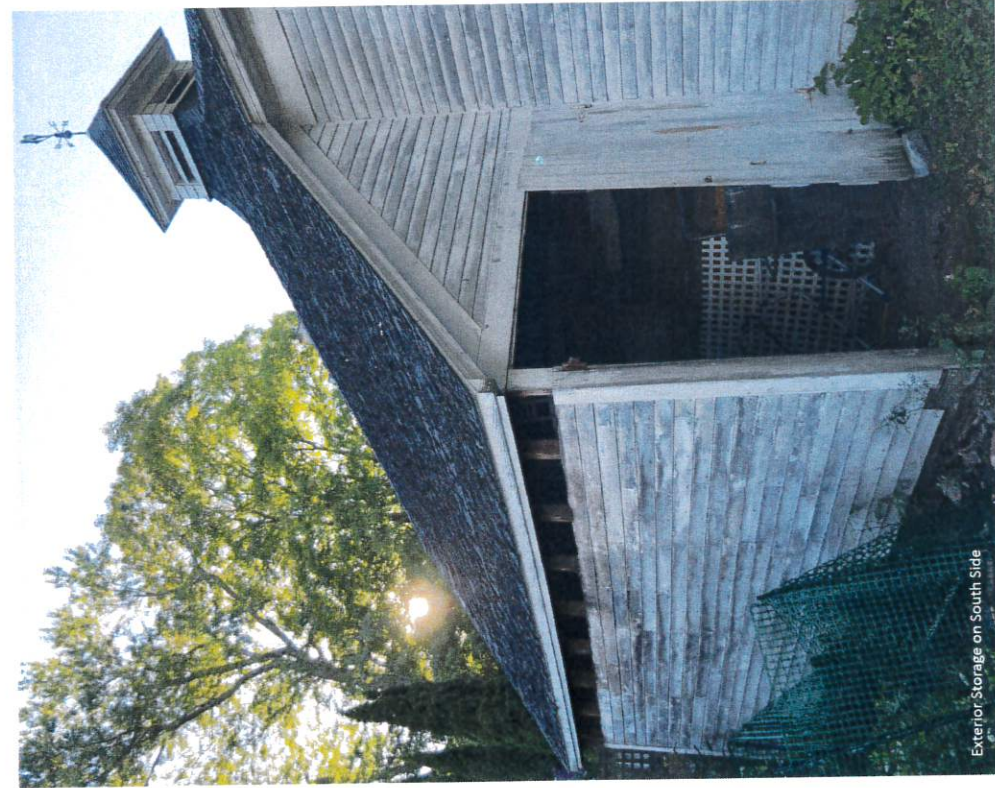


PROPOSED NORTH ELEVATION



EXISTING NORTH ELEVATION

PHOTOGRAPHS



322 LINCOLN AVENUE
PORTSMOUTH, NH

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