

In order for a variance to be granted, the Board must find that the meets all of the following criteria.

- 1. The variances will not be contrary to the public interest.**
- 2. The spirit of the ordinance is observed.**

The first step in the ZBA's analysis is to determine whether granting a variance is not contrary to the public interest and is consistent with the spirit and intent of the ordinance, considered together pursuant to Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102 (2007) and its progeny. Upon examination, it must be determined whether granting a variance "would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives". Id. "Mere conflict with the zoning ordinance is not enough". Id.

The general purposes of the ordinance pursuant to PZO§10.121 is "to promote the health, safety and the general welfare of Portsmouth and its region in accordance with the city's Master Plan...by regulating:

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The reconstruction of a deteriorating three-bay, one-story hipped-roof garage with a slightly larger, code compliant, two-bay hipped roof garage will not change the underly use of the property, which will remain that of a single-family home with a detached garage. The slight expansion in size will accommodate two-cars and storage.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The 10,047 s.f. lot meets the lot size and density requirements of the GRA Zone and currently supports a single-family home and detached garage. The side yard setbacks will be improved. The increase in coverage is minimal and is accompanied by stone drip edges on three sides of the proposed garage and continued use of rain barrels for stormwater collection. Open space is twice the required percentage.
3. The design of facilities for vehicular access, circulation, parking and loading – The slight expansion of the garage will easily accommodate two cars and storage. It is sited in the most appropriate location connecting to the existing driveway off Lawrence. The slight shift in parking spaces will improve vehicular circulation.
4. The impact on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – The proposed garage will be more aesthetically pleasing than the deteriorated structure. Side setbacks are slightly improved. Impacts from stormwater runoff will be eliminated by three stone drip edges and continued use of seasonal rain collection barrels. Accordingly, there will be no negative impact on surrounding properties.
5. The preservation and enhancement of the visual environment – The appearance of the existing home Middle Road will be unaffected, while the appearance from Lawrence

Street will be improved with a new garage that complements the existing home and fits in with the neighborhood.

6. The preservation of historic districts and buildings and structures of historic or architectural interest – The proposal does not undermine these purposes of the Ordinance. The lot is not within the Historic District.
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – Open space requirements are twice the required 30%, while the de minimis increase in building coverage is offset by measures that will ensure stormwater is collected by a stone drip edge and rainwater collection barrels and therefore treated on the lot.

The purpose of the GRA District is "to provide for areas of single-family, two-family and multifamily dwellings with appropriate accessory uses, at moderate to high densities (ranging from approximately 5 to 12 dwelling units per acre), together with appropriate accessory uses and limited services. " PZO§10.440 Residential District Purposes. A garage reasonable accessory structure to the principal dwelling unit on this 10,047 s.f. lot. The shape of the lot and location of the existing home limit the location of the reconstructed garage, which is sited in the most appropriate location.

In considering whether variances "in a marked degree conflict with the ordinance such that they violate the ordinance's basic zoning objectives". Malachy Glen, *supra*, also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality.... . Another approach to [determine] whether granting the variance violates basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare. (emphasis added)

Here, the existing neighborhood includes homes and/or accessory buildings located very close to side or rear lot lines. Because the proposed one-story hipped roof garage will be more aesthetically pleasing than the deteriorated structure and will be shifted slightly further from the lot lines than the existing garage. Accordingly, the proposed garage will neither "alter the essential character of the locality nor threaten the public health, safety or welfare."

The variance will not be contrary to the public interest.

The first step in the Board of Adjustment's analysis is to determine if granting the variance is not contrary to the public interest and is consistent with the spirit and intent of the ordinance. These

factors are considered together through the decision of *Malachy Glen v. the Town of Chichester*. The BOA must determine whether granting the variance “would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” “Mere conflict with the zoning ordinance is not enough.”

The proposed reconstructed garage will be sited further from the abutting property lines than the existing structure. The garage can remain in this location in perpetuity. The existing structure is in decay due to age and poor construction practices. It has outlived its expected life cycle. Significant resources could be invested to renovate the structure, but it would still have insufficient roof clearance for a vehicle or space to allow a passenger door to open in the interior.

Due to the configuration of the lot and the location of the existing dwelling unit, moving the proposed garage into a compliant location would not allow for vehicular access into the bays.

The existing 3 bay garage does not function as a 3-bay due to the angle of the driveway and the width of the bays. Even if a driver could access the left most bay, he/she would not be able to open the door to exit the vehicle. As such, the current third bay is utilized as storage for recreational equipment. The proposed garage is a 2-bay with the extra space to allow for passengers to exit in the garage and to continue to provide storage for the recreational equipment.

The construction of the garage provides for a modest increase building coverage, 170 SF (1.7%). This change puts the total building coverage 26.6% which is over the maximum 25% allowed. In 2018, we obtained a variance to allow the reconstruction and expansion of our deck. Because of the natural grade of the land, the deck is greater than 18-inches above grade. While the deck for most other homes would not exceed 18-inches and would not be considered building coverage, due to the topography of our lot, approximately 170 SF of our deck is over 18-inches above grade. Thus, if the deck was not considered part of the building, we would be compliant with the ordinance.

The encroachment will not diminish the public’s enjoyment of the adequate light and air. It will not create overcrowding of the land. The total impervious coverage on the lot will increase by

approximately 140 SF. The lot will remain code compliant in regards to the open space. To mitigate the increase in runoff associated with the project, we propose to install stone drip edges on 3 sides of the structure and utilize (as we do now) seasonal rain barrels.

The spirit of the Ordinance will be observed.

The spirit of the ordinance is to ensure that there is adequate light, air and space between the properties. In this case, we are increasing the distance between the property and the structure. In regards to the building coverage, the spirit of the ordinance is to ensure that lots are not overcrowded and congested. The garage is a single-story structure with a hip roof to maintain a low profile.

Substantial justice will be done.

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, L.L.C., 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice”. Malachy Glen, *supra* at 109. The property already has a deteriorated garage in this location. Because the proposed single-story garage is in a more conforming location and improves stormwater management compared to existing conditions, there is no gain to the public from granting the requested variances. However, denial of the variances will prevent us from replacing an deteriorating garage structure resulting in a substantial injustice..

The values of the surrounding properties will not be diminished;

Both abutters that we are reducing the encroachment will no longer have to look at a decaying and unsightly structure. The abutter to the east already has a structure in the setback that appears to be within 5-feet of the property. No doors or windows will be on the sides where the relief is sought allowing the abutter, privacy.

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

- a. Special conditions distinguish the property/project from others in the area.

The large lot is subject to two front yard setbacks, sloping topography and already contains a home and nonconforming deteriorated garage and an existing driveway to the lesser traveled street. Any reconstruction of the existing garage will require setback relief, while coverage relief related to the deck which counts as a structure due to its height over the sloping existing grade. These factors combine to create special conditions.

- b. No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance.

Setback and coverage requirements exist to preserve adequate access, sightlines, air, light, and space between neighbors and to ensure land is not overburdened. The proposed one-story garage improves setbacks, requires minimal coverage relief and improves stormwater management compared to existing conditions. Accordingly, there is no reason to apply the strict requirements of the zoning ordinance.

- c. The proposed use is reasonable.

A garage for storage and covered parking is a reasonable accessory use to a permitted single-family home. Accordingly, the use is reasonable. Vigeant v. Town of Hudson, 151 N.H. 747 (2005).



May 30, 2021

Rear of garage, looking north



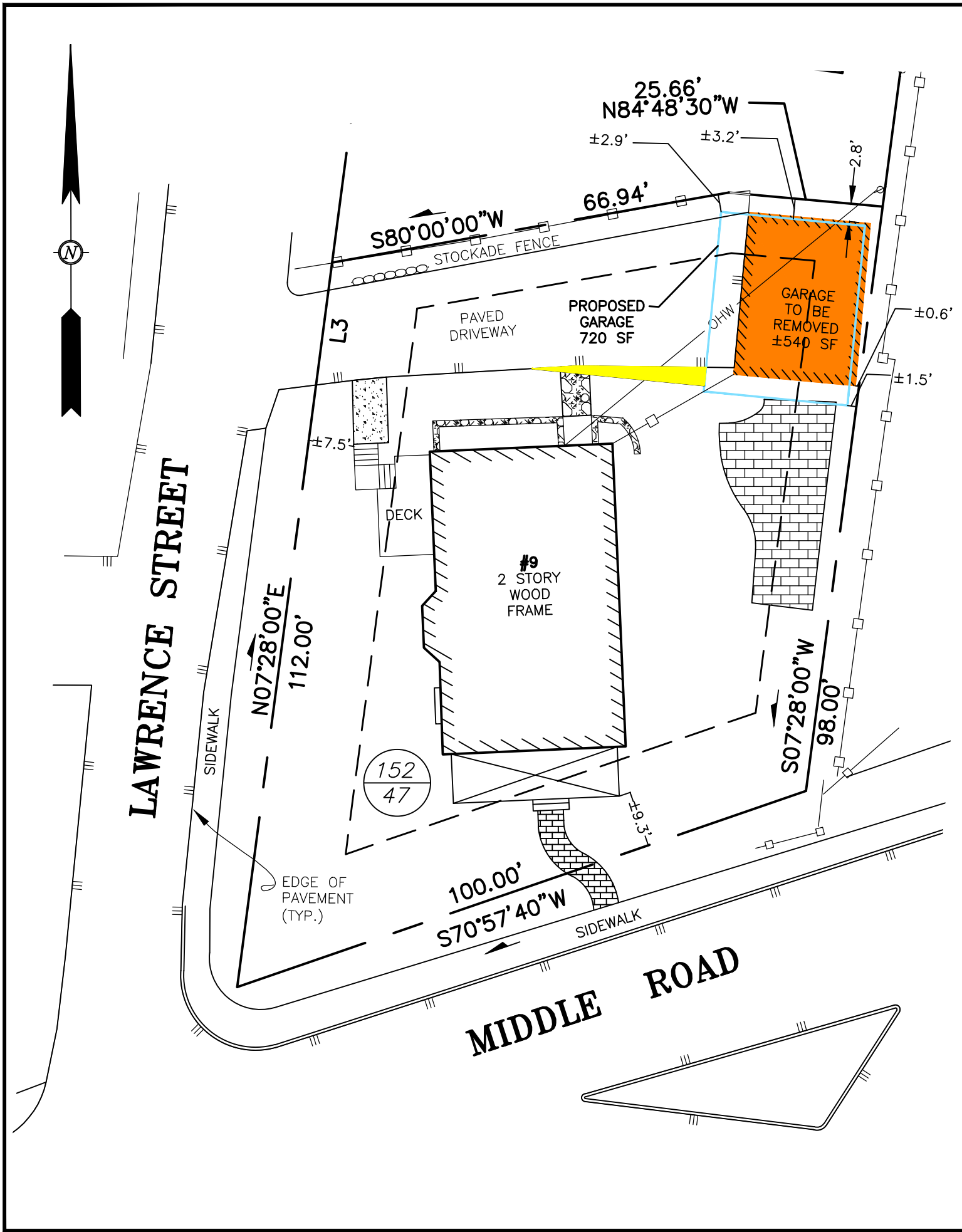
May 30, 2021

Rear of garage from Middle Street looking across abutter's property to garage



May 30, 2021

Front of garage



SITE NOTES

DESIGN INTENT – THIS PLAN IS INTENDED TO DEPICT PROPOSED GARAGE TO REPLACE THE EXISTING DILAPIDATED STRUCTURE WITH A FUNCTIONAL AND CODE COMPLIANT STRUCTURE.

ZONING SUMMARY

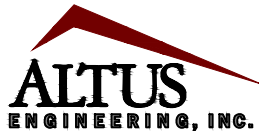
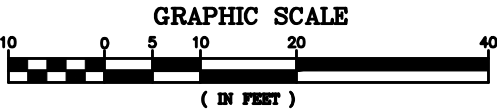
DISTRICT: GRA
EXISTING USE: SINGLE FAMILY RESIDENCE WITH DETACHED GARAGE
PROPOSED USE: SINGLE FAMILY RESIDENCE WITH DETACHED GARAGE

DIMENSIONAL REQUIREMENTS	REQUIRED	EXISTING	PROVIDED
MIN. LOT AREA:	7,500 SF	10,047 SF	
MIN. STREET FRONTAGE:	100 FT	212 FT	
FRONT YARD SETBACK:	15 FT	±9.3 FT (EX. MIDDLE ROAD) ±7.5 FT (EX. LAWRENCE STREET)	
SIDE YARD SETBACK:	10 FT	±2.8 FT (EX. TO LOT 152-46) ±0.6 FT (EX. TO LOT 152-48)	±2.9 FT* ±1.5 FT*
MAX. STRUCTURE HEIGHT:	35 FT	< 35 FT	
MAX. BUILDING COVERAGE:	25%	±24.9% (EX.) ±26.6% (PROPOSED – 170 SF ADDITIONAL)	
MINIMUM OPEN SPACE	30%	±61.6% (EXISTING) ±60.2% (PROPOSED) (± 4,000 SF TOTAL)	

* REQUEST THAT PLUS OR MINUS BE DEFINED IN APPLICATION AND APPROVAL AS PLUS OR MINUS 0.5'

PLAN REFERENCES

- "LOT LINE RELOCATION PLAN MAP 152, LOTS 46 & 47, 76 & 78 LAWRENCE STREET AND 9 MIDDLE ROAD FOR PETER AND MEG MIDDLETON & DANIEL & LISA SCHWARZ" BY AMBIT ENGINEERING, INC., REV. 1 DATED 9/28/01.
- SITE OBSERVATIONS BY OWNER MAY 2021.



133 Court Street
(603) 433-2335
Portsmouth, NH 03801
www.altus-eng.com

ISSUED FOR:
BOARD OF ADJUSTMENT
ISSUE DATE:
JUNE 7, 2021

REVISIONS
NO. DESCRIPTION BY DATE
0 INITIAL SUBMISSION EDW 06/07/21

DRAWN BY: EDW
APPROVED BY: EDW
DRAWING FILE: GARAGE PROJECT.dwg

SCALE:
11" x 17" – 1" = 10'

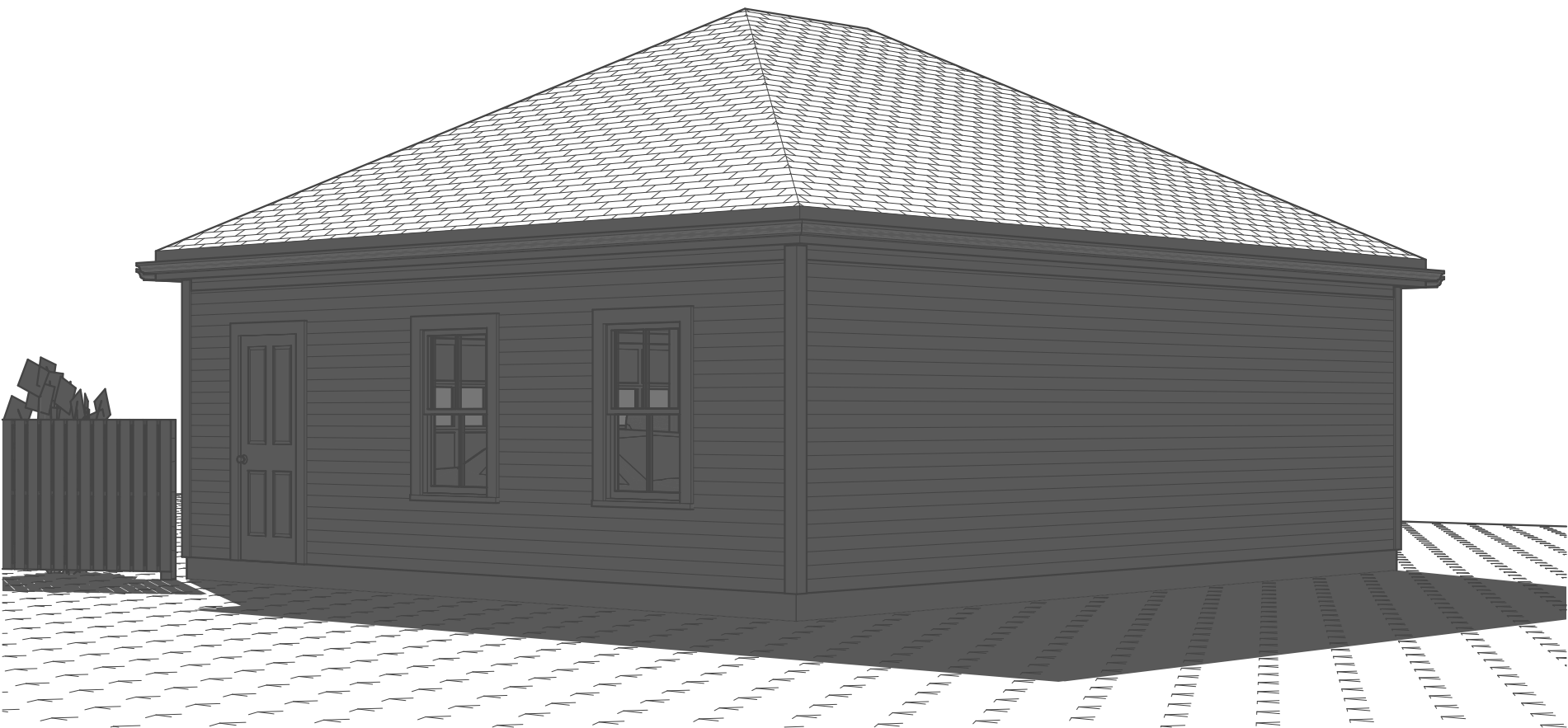
OWNER/APPLICANT:
RACHEL L. HOPKINS
ERIC D. WEINRIEB
9 MIDDLE ROAD
PORTSMOUTH NH 03801
(603) 427-5105

PROJECT:
GARAGE
RECONSTRUCTION

TAX MAP 152, LOT 47
9 MIDDLE ROAD
PORTSMOUTH, NH

TITLE:
BOARD OF
ADJUSTMENT
SITE PLAN

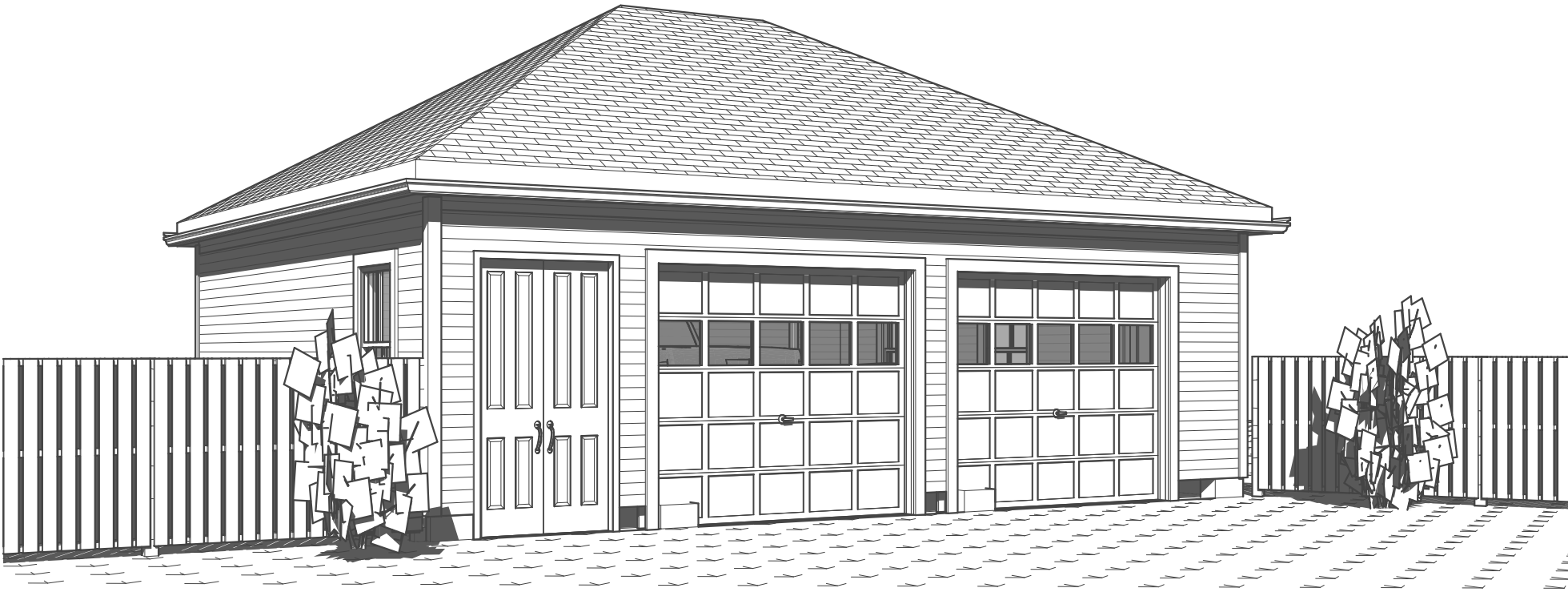
SHEET NUMBER:
1 of 1



3 BACK VIEW 3/8" = 1'-0"



2 SIDE VIEW (OWNER'S YARD) 3/8" = 1'-0"



1 FRONT VIEW 1/4" = 1'-0"

MDB DESIGN/BUILD LLC
Construction Consulting
Residential Design

81 Lincoln Ave. Portsmouth, N.H. 03801
603•234•7398

CONSULTANTS

REPLACE EXISTING GARAGE AT

WEINRIEB/HOPKINS
RESIDENCE
9 MIDDLE ROAD
PORTSMOUTH, NH 03801

	5/25/21	CITY PRESENTATION
	3/16/20	PRELIMINARY DRAWINGS
MARK	DATE	DESCRIPTION

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SHEET TITLE

PROPOSED
GARAGE
PERSPECTIVES

A1

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Residential Design

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REPLACE EXISTING GARAGE AT

WEINRIEB/HOPKINS
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9 MIDDLE ROAD
PORTSMOUTH, NH 03801

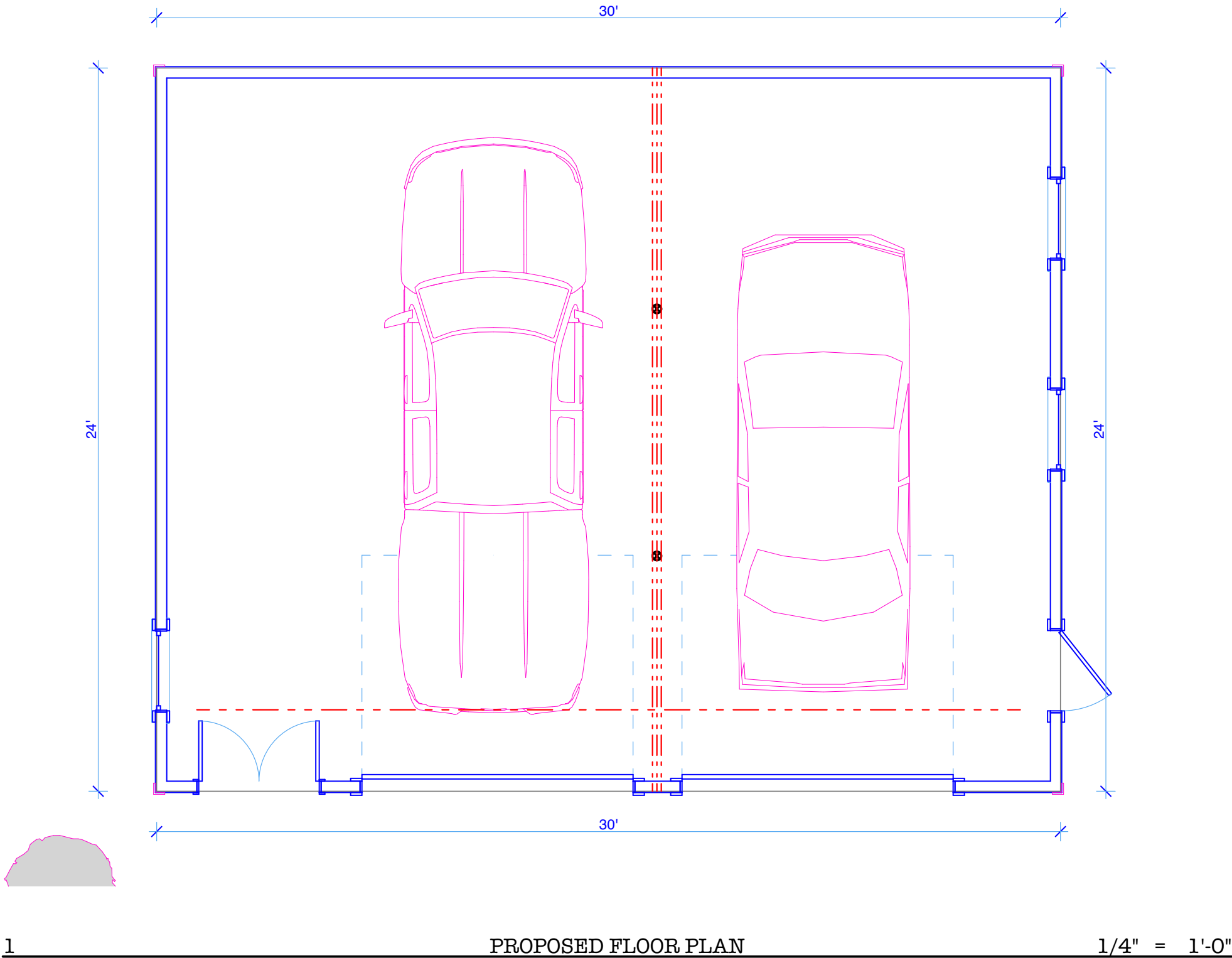
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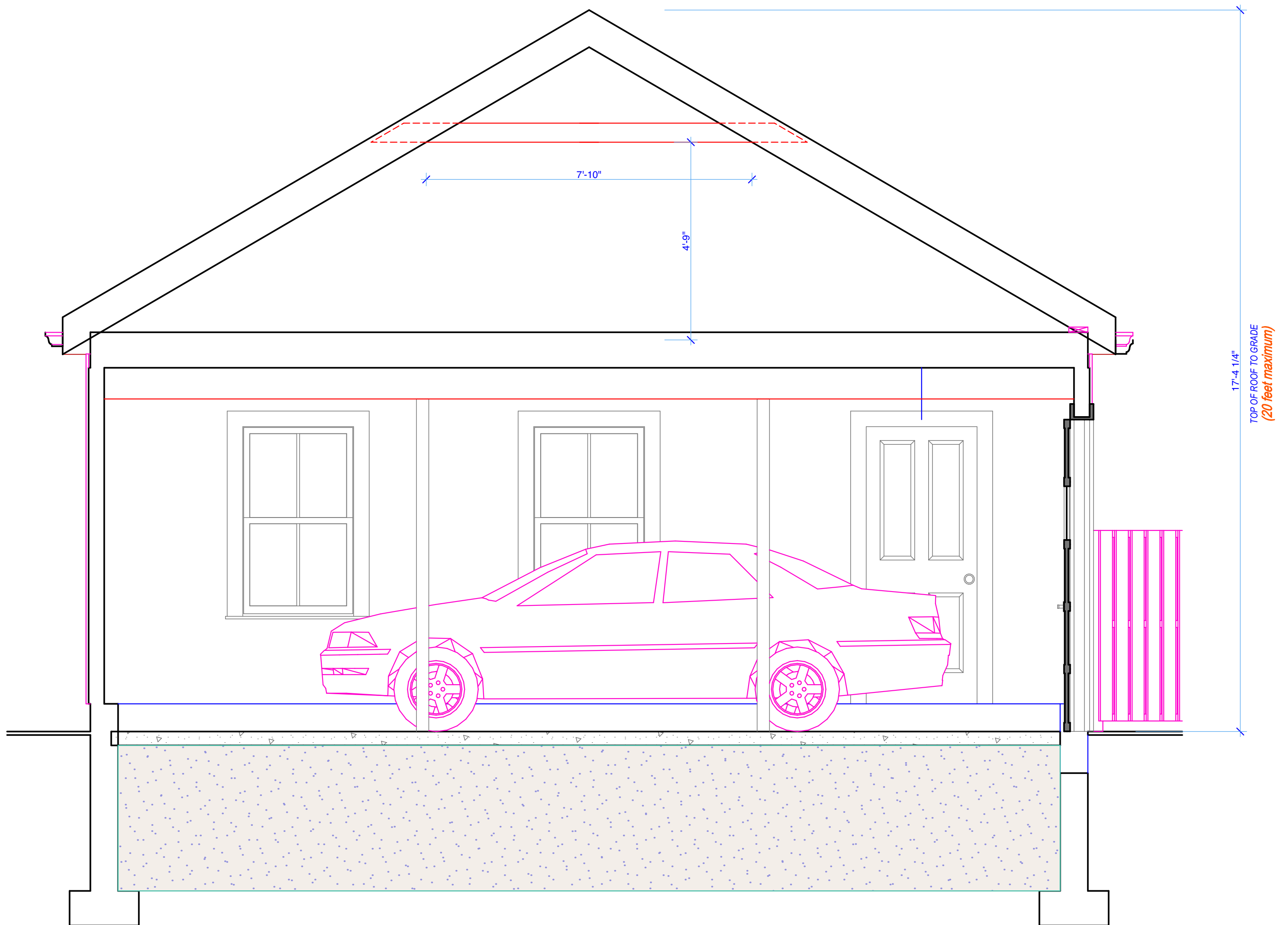
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SHEET TITLE

FLOOR PLAN

A2





1

SECTION THROUGH GARAGE

1/8" = 1'-0"

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REPLACE EXISTING GARAGE AT

WEINRIEB/HOPKINS
RESIDENCE
9 MIDDLE ROAD
PORTSMOUTH, NH 03801

	5/25/21	CITY PRESENTATION
	3/16/20	PRELIMINARY DRAWINGS
MARK	DATE	DESCRIPTION

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GARAGE
SECTION

A3