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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

April 28, 2020

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

**RE: Variance Application of Barry and Martha White
83 Rockingham Avenue, Portsmouth (Tax Map 236, Lot 20)**

Dear Chairman Rheame,

Our Office represents Barry and Martha White, owners of property located at 83 Rockingham Avenue, 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 with Exhibits;
- 3) Variance Site Plan;
- 4) Floor Plans and Elevations;
- 5) Tax Map Image of Property and Surrounding Area;
- 6) 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, consisting of a large, stylized 'D' followed by a series of loops and a long horizontal stroke extending to the right.

Derek R. Durbin, Esq.

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

Barry and Martha White
(Owners/Applicants)
Tax Map 236, Lot 20
83 Rockingham Avenue
Portsmouth, NH 03801

INTRODUCTORY STATEMENT

Barry and Martha White (the “Applicants” or the “Whites”) own property located at 83 Rockingham Avenue, identified on Portsmouth Tax Map 236 as Lot 20 (the “Property”). The Property is 0.33 acres in size (14,258 sf) and contains a small single-family home with a detached garage. It is located in the Single Family Residence B (“SRB”) Zoning District.

The Property served as Barry’s parents’ residence until the passing of his father. The Whites subsequently purchased the Property from Barry’s father’s estate in 2001. The Whites, who live on Opal Avenue, have since rented the Property, with the intent of later improving it and making it their primary residence once they retired.

The Whites seek to demolish the existing single-family home and 1-story garage on the Property and construct a new home that they would move into and make their primary residence. The Property is lawfully non-conforming with respect to lot area and lot area per dwelling unit. The existing 1-story garage on the Property encroaches into the rear yard setback by 3.8’. Because the Whites would be demolishing the existing home as part of their proposed plans for the Property and the lot fails to conform to the 15,000 square foot lot area requirement in the SRB District, zoning relief is required for any new construction. The Whites are proposing a new home for the Property that would comply with the minimum setback requirements, thus representing an improvement over what exists.

SUMMARY OF VARIANCE RELIEF

The Applicant seeks the following variances from Section 10.521 (Table of Dimensional Requirements) of the Zoning Ordinance:

1. To allow 14,258 square feet (+/-) of lot area where 15,000 square feet is the minimum required in the SRB Zoning District; and
2. To allow 14,258 square feet (+/-) of lot area per dwelling unit where 15,000 square feet is the minimum required in the SRB Zoning District.

VARIANCE CRITERIA

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

“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 neighborhood where the Property is located is characterized by single-family homes with lot dimensions of similar or lesser size. While there are properties in the surrounding area that meet the 15,000 square foot lot area requirement for the SRB Zoning District, the majority do not. Accordingly, the proposed redevelopment of the Property will not alter the essential character of the neighborhood.

In the case of *Belanger v. Nashua*, the New Hampshire Supreme Court recognized that municipalities have an obligation to have their zoning ordinances reflect current characteristics of the neighborhood. 121 N.H. 389 (1981). In the present instance, the dimensional standards applicable to the SRB District do not reflect the characteristics of the area in which the Property is located.

There will be no undue demand upon municipal services or other aspects of the proposed redevelopment of the Property that will threaten public health safety or welfare. There is already a single-family home on the Property. By constructing a new single-family home on the Property that is more aesthetically appealing and provides greater amenities than what exists, the Property will be assessed at a higher value and will generate additional tax revenue to the City without creating any additional impact or demand upon services. Furthermore, the Applicants will be eliminating the rear yard setback encroachment, thus providing a benefit to the abutter at 580 Woodbury Avenue (Lot 236-1) by increasing light, air and space between the properties. The property at 580 Woodbury Avenue has a shed located in close proximity to the rear boundary of 83 Rockingham Avenue.

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 loss to the Applicants in the present case is the inability to construct a new home on the Property which meets their retirement needs and enables them to sell their existing home, which no longer meets their needs. There is no gain to the public in denying the relief sought by the Applicants. To the contrary, there is a benefit. There is no realistic way to change the square footage of the Property. However, by granting the variance relief sought, the Applicants will be

able to construct a new home on the Property that complies with the rear building setback, which represents an improvement.

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

Surrounding properties will not be negatively impacted by the construction of a new single-family home on the Property. To the contrary, the construction of new, tastefully designed home on the Property that complies with all building setbacks will represent a significant improvement over what exists.

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

The Property has special conditions that make it distinguishable from surrounding properties. The Property was a conforming lot by current zoning standards in its original layout. Exhibit A¹. The southeast corner of the Property was conveyed in 1967 to the State in conjunction with a roadway improvement project. Exhibit B². As part of this conveyance, the house on the Property, which was located in the area being conveyed to the State, had to be moved north on the lot, thus creating the conditions that presently exist. Owing to these special conditions there is no fair and substantial relationship between the general purposes of the Ordinance provision(s) and their application to the Property. If the variance relief were denied, the home could continue in its existing location. By granting the variance relief, the Applicants will be achieving greater compliance with the Ordinance than what exists by eliminating the rear yard setback encroachment. It is also important to point out that the Property cannot be used in strict compliance with the Ordinance given the deficiency in lot area.

The proposed use is reasonable.

The Property will continue to be used for single-family residential purposes, thus meeting the spirit and intent of SRB Zoning. The proposed use is also consistent with the use(s) of surrounding properties.

CONCLUSION

In conclusion, the Whites have demonstrated that their application meets the five (5) criteria for granting the variances sought pursuant to Section 10.521 of the Ordinance. Accordingly, they respectfully request that the Board approve their Variance Application.

¹ Exhibit A is a cross-section of Plan 01885 recorded in 1938 in the Rockingham County Registry of Deeds showing the Property in its original dimension.

² Exhibit B is the cover sheet and a cross-section of NH DOT Plan 3875-D, which shows the area of the Property conveyed to the State.

Dated: April 28, 2020

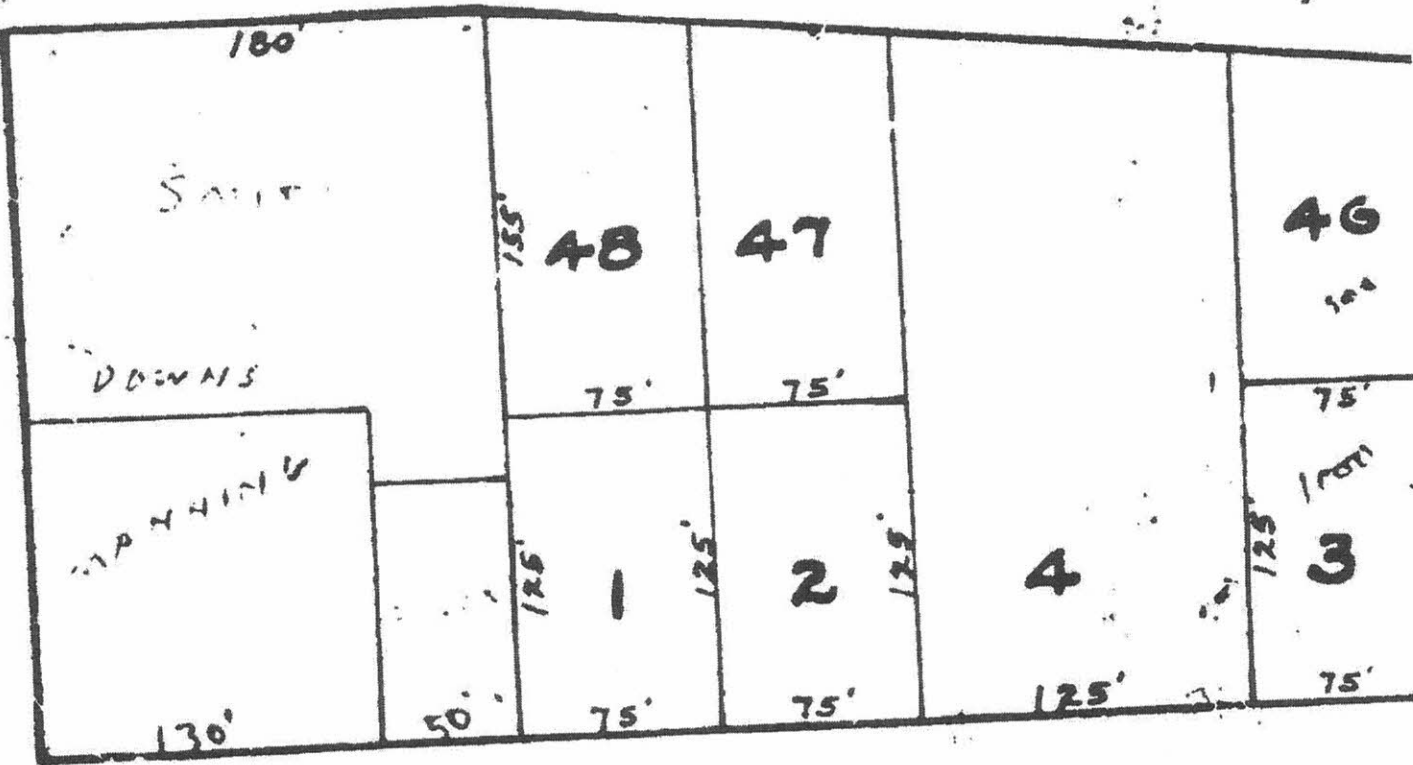
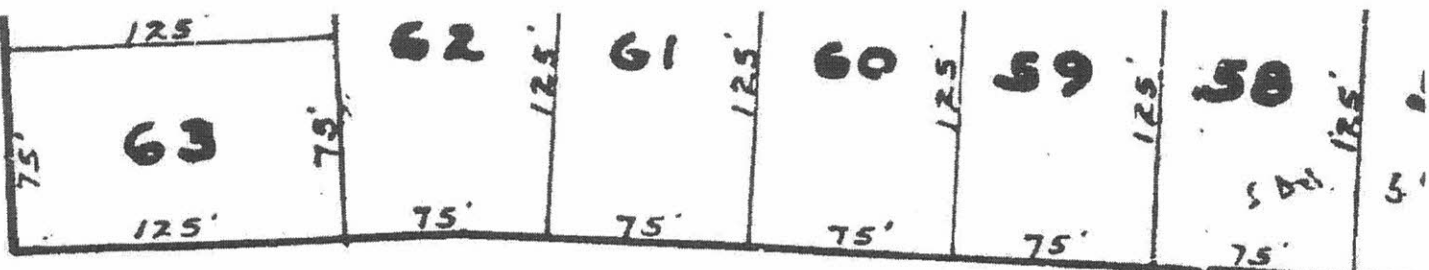
Respectfully Submitted,

Barry and Martha White
By and Through Their Attorneys,
Durbin Law Offices, PLLC



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

ROCKINGHAM AVENUE



STATE

01885
1930

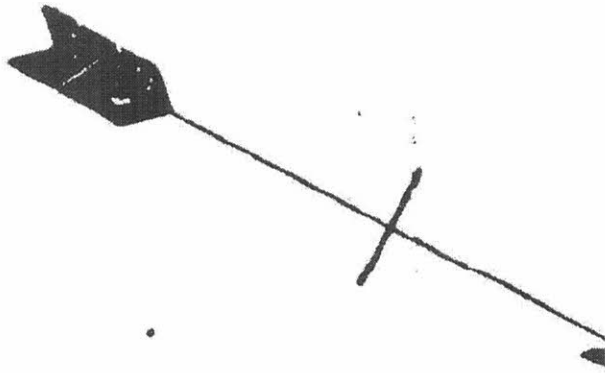


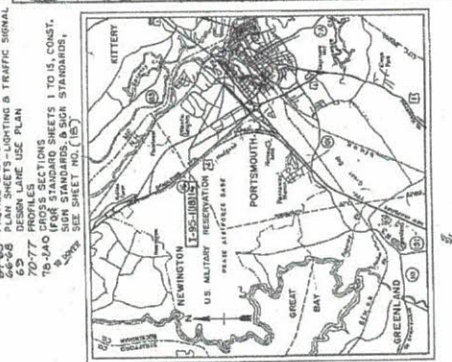
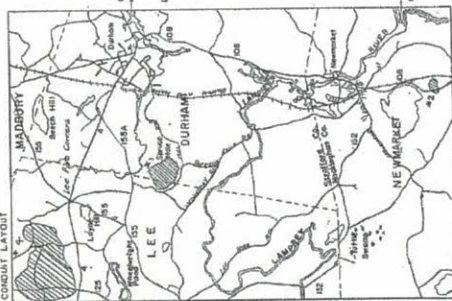
EXHIBIT D

REVISION AFTER PROPOSAL NO. 1
 STATE OF NEW HAMPSHIRE
 DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS

**PLANS OF PROPOSED
 FEDERAL AID PROJECT**

I-95-1(18)14
 INTERSTATE ROUTE 95
 N.H. PROJECT NO. P-3875-D

INDEX OF SHEETS
 TITLE PAGE
 SUMMARY OF IMPROVEMENTS
 SUMMARY OF QUANTITIES
 SPECIAL MANHOLE DETAILS
 SPECIAL MANHOLE & HEADER DETAILS-ORIGINE
 BROGE PLANS
 PLAN SHEETS-MANHOLE, CURBS & DRAINAGE LAYOUT
 PLAN SHEETS-WATER PIPE LAYOUT
 PROFILE SHEETS-SIGNALS & TRAFFIC SIGNAL CONDUIT LAYOUT
 DESIGN LANE USE PLAN
 70-77 PROFILES
 78-JAO FOR STANDARD SHEETS 1 TO 15, COAST.
 SIGN STANDARDS & SIGN STANDARDS,
 SEE SHEET NO. (15)



DESIGN DATA
 AVERAGE DAILY TRAFFIC 9500
 DESIGN DAILY TRAFFIC 1888
 DESIGN CLASSIFICATION N
 DESIGN SPEED 70
 MAXIMUM CURVATURE 1.00/R
 MAXIMUM SIGHT DISTANCE 1000
 K FACTOR - CREST 100
 LENGTH OF PROJECT 0.668 MILES

STA 473+00 NB & SB
 BEGINNING OF 1-95-1(18)14
 STA 505+00 MS
 END OF 1-95-1(18)14
 STA 505+00 RS & LS
 BEGINNING OF 1-75-1(18)15

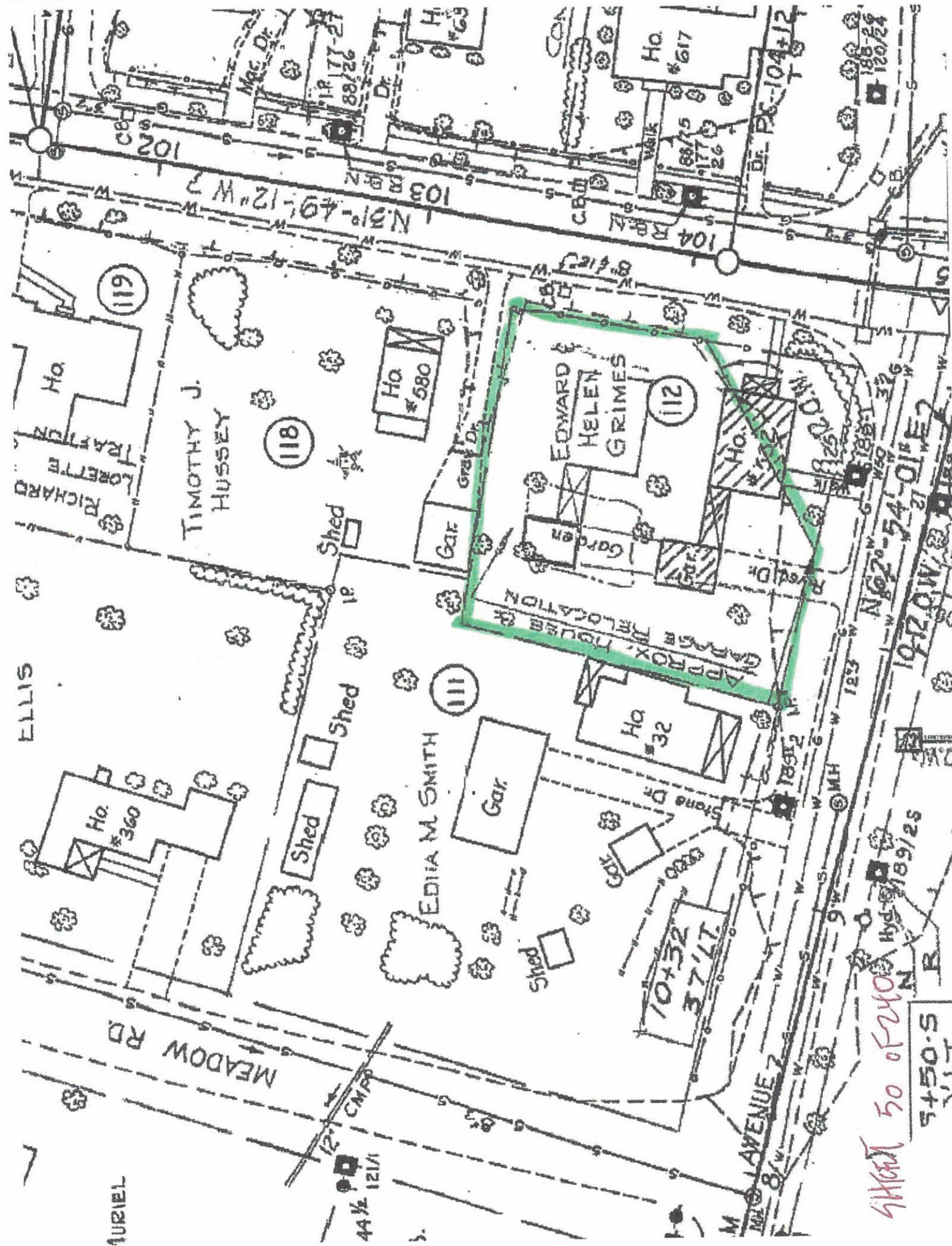
THIS PROJECT TO BE CONSTRUCTED IN ACCORDANCE WITH STANDARD SPECIFICATIONS FOR PUBLIC WORKS AND HIGHWAYS OF THE STATE OF NEW HAMPSHIRE AS AMENDED FROM TIME TO TIME BY THE BUREAU OF PUBLIC WORKS AND SPECIAL PROVISIONS ATTACHED TO PROPOSAL.

SCALES
 PLAN 1" = 50'
 PROFILE VERT. 1" = 3.0'
 CROSS SECTION VERT. 1" = 10'
 HOR. 1" = 50'
 VERT. 1" = 10'

RECOMMENDED FOR APPROVAL DATE 7-2-68
 APPROVED: *Robert M. Hickey*
 CHIEF ENGINEER AND CHIEF ENGINEER
 DEPARTMENT OF TRANSPORTATION
 BUREAU OF PUBLIC ROADS

APPROVED: _____
 DIVISION ENGINEER
 DATE _____

H14 P-3875-D ORIGINAL HOUSE MOVED AND ROTATED 90°



MURIEL

MEADOW RD

44 1/2' 121/1'

12' CMP

EDITH M SMITH

113

Gar

Shed

70x32
37x17

Gar

Shed

Gar

Ha #32

APPROX. HOUSE & GARAGE RELOCATION

EDWARD & HELEN GRIMES

112

Garden

Gar

Gar

Ha #580

118

TIMOTHY J. HUSSEY

Shed

Shed

Shed

RICHARD LORETTE

Ha

119

N 51° 49' 12" W 2'

103 RBN

104 RBN

Dr. PC-104+12

Ho #617

88/75

177

26

188-24

180/24

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Handwritten notes:
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 1920 W 21
 12
 12
 12

LETTER OF AUTHORIZATION

Barry White and Martha White, owners of property located at 83 Rockingham Avenue, Portsmouth, New Hampshire, identified on Tax Map 236, as Lot 20 (the "Property"), hereby authorize Durbin Law Offices PLLC, of 144 Washington Street, Portsmouth, New Hampshire 03801, to act as their 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.

Barry White

Printed Name: Barry White

4/27/20

Date:

Martha White

Printed Name: Martha White

4-27-20

Date:

GENERAL NOTES:

- THE PLANS ARE CREATED BY THE CITY OF PORTSMOUTH AND THE ZONING REGULATIONS AND DISTING ARE AS FOLLOWS:

REQUIRED	EXISTING	PROPOSED
LOT AREA	14,200 SQ. FT.	14,200 SQ. FT.
CONTIGUOUS STREET FRONTAGE	100 FEET	222'30"
LOT DEPTH	100 FEET	132'
FRONT SETBACK	18 FEET ROCKINGHAM AVE. 28.5'±	NO CHANGE
50% SETBACK	25 FEET ROCKINGHAM AVE. 28.5'±	NO CHANGE
REAR SETBACK	20 FEET	28.2'±
WALK OPEN SPACE	400	700
- THE EXISTING SITE CONDITIONS DETAILS SHOWN ARE THE RESULTS OF AN ON THE GROUND INSTRUMENT FIELD SURVEY PERFORMED BY KNIGHT HILL LAND SURVEYING, INC. IN JUNE 2020.
- THE PROPERTY DOES NOT LIE IN A HAZARDOUS FLOOD ZONE AS INDICATED ON THE FLOOD INSURANCE RATE MAP (FIRM) FOR ROCKINGHAM COUNTY, PORTSMOUTH, N. H. WITH AN EFFECTIVE DATE OF MAY 17, 2020. PROPERTY LIES IN ZONE "X".
- SUBJECT LOT IS SERVED BY MUNICIPAL SEWER AND WATER AND OVERHEAD ELECTRIC BY OVERHEAD.
- BEARINGS SHOWN ARE BASED UPON THE MEAN REFERENCE MERIDIAN FROM OBSERVATIONS IN JUNE 2020.
- THE PROPERTY DOES NOT LIE IN A HAZARDOUS FLOOD ZONE AS INDICATED ON THE FLOOD INSURANCE RATE MAP (FIRM) FOR ROCKINGHAM COUNTY, PORTSMOUTH, N. H. WITH AN EFFECTIVE DATE OF MAY 17, 2020. PROPERTY LIES IN ZONE "X".
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- BEARINGS SHOWN ARE BASED UPON THE MEAN REFERENCE MERIDIAN FROM OBSERVATIONS IN JUNE 2020.

PLAN REFERENCES:

- PLAN OF LOTS OWNED BY WIS. CONSUMERS & BANKERS 5-28-16 RECORDED AT RECORD VOL. 3085, PL. 100A, AMENDED 10/12/16
- PLAN OF LOTS, PORTSMOUTH, N.H., FOR PAUL C. & OWEN L. BLOTT, PORTSMOUTH, N.H., BY TOWN PLANNING AND ZONING DEPARTMENT, PORTSMOUTH, N.H., BY TOWN PLANNING AND ZONING DEPARTMENT, PORTSMOUTH, N.H., DATED JAN. 1977, RECD PLAN # 1370
- LOT LINE REVISION 73 ROCKINGHAM AVENUE & 370 MEADOW ROAD, PORTSMOUTH, N.H., ASSESSOR'S CORRECTION MAP # 19A DATED 2-24-2020, RECD PLAN # 35970
- LOT LINE REVISION 73 ROCKINGHAM AVENUE & 370 MEADOW ROAD, PORTSMOUTH, N.H., ASSESSOR'S CORRECTION MAP # 19A DATED 2-24-2020, RECD PLAN # 35970
- PLANS OF PROPOSED FEDERAL JO BLDG. PROJECT # 05-10714, PORTSMOUTH, N.H., ASSESSOR'S CORRECTION MAP # 19A DATED 2-24-2020, RECD PLAN # 35970
- TAX MAP 236 LOT 2, SUBDIVISION PLAN ROCKINGHAM ESTATES FOR THE STATE OF NEW HAMPSHIRE, COUNTY OF ROCKINGHAM, PORTSMOUTH, N.H., BY TOWN PLANNING AND ZONING DEPARTMENT, PORTSMOUTH, N.H., DATED JAN. 1977, RECD PLAN # 1370
- TAX MAP 236 LOT 2, SUBDIVISION PLAN ROCKINGHAM ESTATES FOR THE STATE OF NEW HAMPSHIRE, COUNTY OF ROCKINGHAM, PORTSMOUTH, N.H., BY TOWN PLANNING AND ZONING DEPARTMENT, PORTSMOUTH, N.H., DATED JAN. 1977, RECD PLAN # 1370
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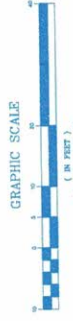
SITE DATA
 TAX MAP 236 LOT 20
 RECORD OWNERS: BARRY A. WHITE, SR.
 MARTHA J. WHITE
 RECORD DEED: R.C.D. BK. 3540 PL. 2884
 AREA: EXISTING AREA = 14,200 SQ.FT./0.33 AC.

VARIANCE PLAN
 for
PROPOSED HOUSE

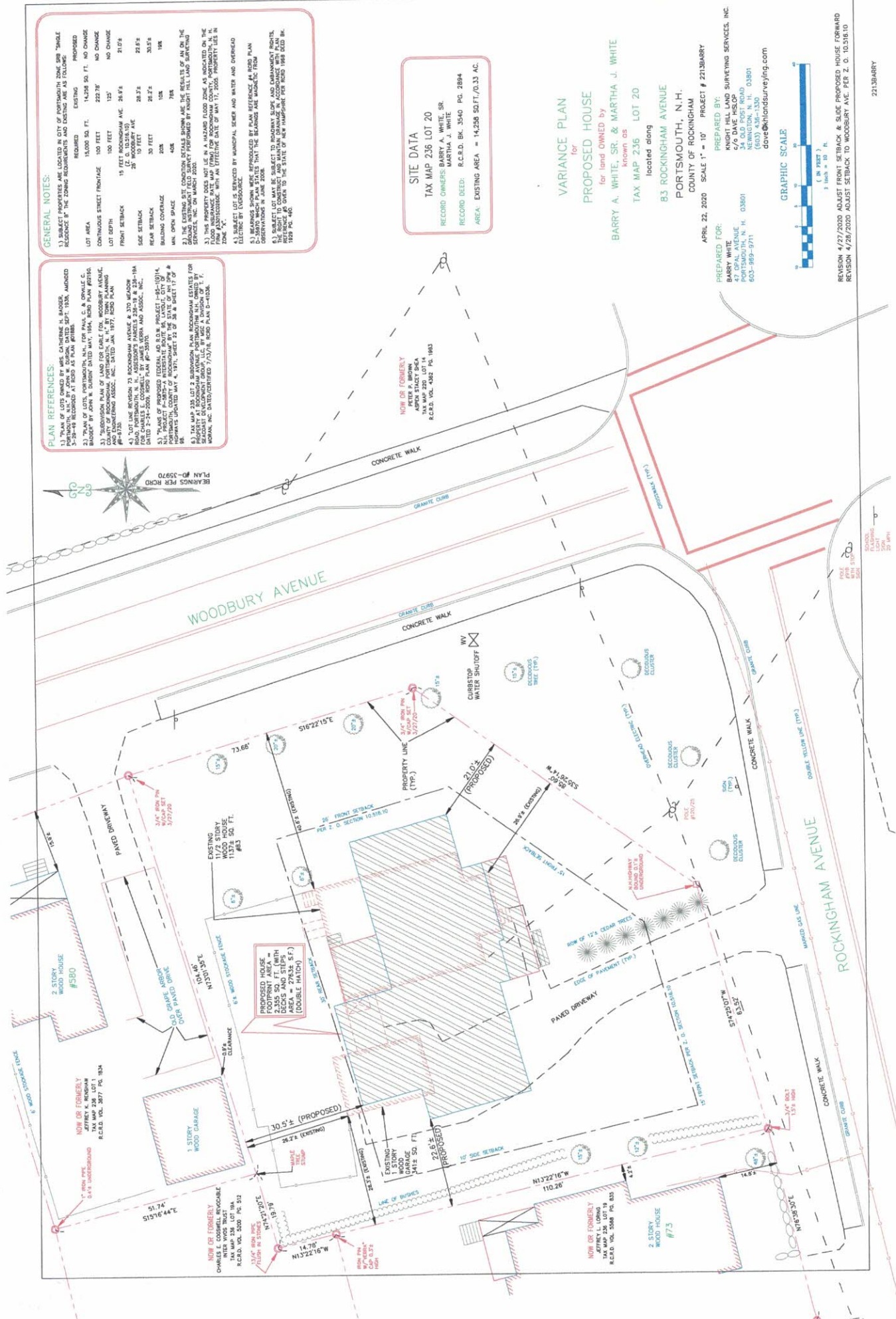
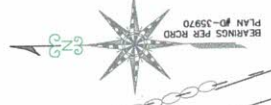
for land owned by
BARRY A. WHITE, SR. & MARTHA J. WHITE
 known as
 located along
83 ROCKINGHAM AVENUE
PORTSMOUTH, N.H.
 COUNTY OF ROCKINGHAM

APRIL 22, 2020 SCALE 1" = 10'
 PROJECT # 2213BARRY

PREPARED BY:
 KNIGHT HILL LAND SURVEYING SERVICES, INC.
 C/O DAVID HICKS
 NEWINGTON, N.H. 03301
 (603) 436-1300
 dove@khillandsurveying.com



REVISION 4/22/2020 ADJUST FRONT SETBACK & SLICE PROPOSED HOUSE FORWARD
 REVISION 7/20/2020 ADJUST SETBACK TO WOODBURY AVE. PER Z. 10.516.10



Emerald Sea Deluxe

320.130.v5 GL (3/6/2020)

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603-431-9559

Dear Builders and Home Buyers,

In addition to our Terms and Conditions (the "Terms", available on ArtformHomePlans.com), please be aware of the following:

As defined in the Terms, this is a Design Drawing and may not yet have Construction Drawings (CDs) or the CDs may not reflect design changes. During the conversion of a Design Drawing to Construction Drawings, changes may be necessary including, but not limited to, dimensional changes or changes to the framing and structural supports.

We require that our designs be built substantially as shown in the Drawings. Markups agreed to by Builder and Home Buyer must still be approved by Artform, and may require additional changes, such as structural updates. While we attempt to accommodate requested changes where possible and reasonable, including considerations of design integrity, any and all changes to Drawings must be approved in writing by Artform. It is recommended that you have your Design Drawings updated by Artform prior to attaching any Drawing to any builder agreement. Artform shall not be responsible for the misuse of or unauthorized alterations to any of its Drawings.

• To maintain design integrity, we pay particular attention to features on the front facade, including but not limited to door surrounds, window casings, finished porch column sizes, and roof friezes. While we may allow builders to add their own flare to aesthetic elements, we don't allow our designs to be stripped of critical details. Any such alterations require the express written consent of Artform.

• Increasing or decreasing ceiling heights requires adjustments to window sizes and other exterior elements.

We are not responsible for typographical errors. Home Buyer shall give thoughtful consideration to all drawings and documents provided to them and shall be solely responsible for ensuring that they understand features in the home that are important to them.



Emerald Sea Deluxe 320.130.v5 GL (3/6/2020)

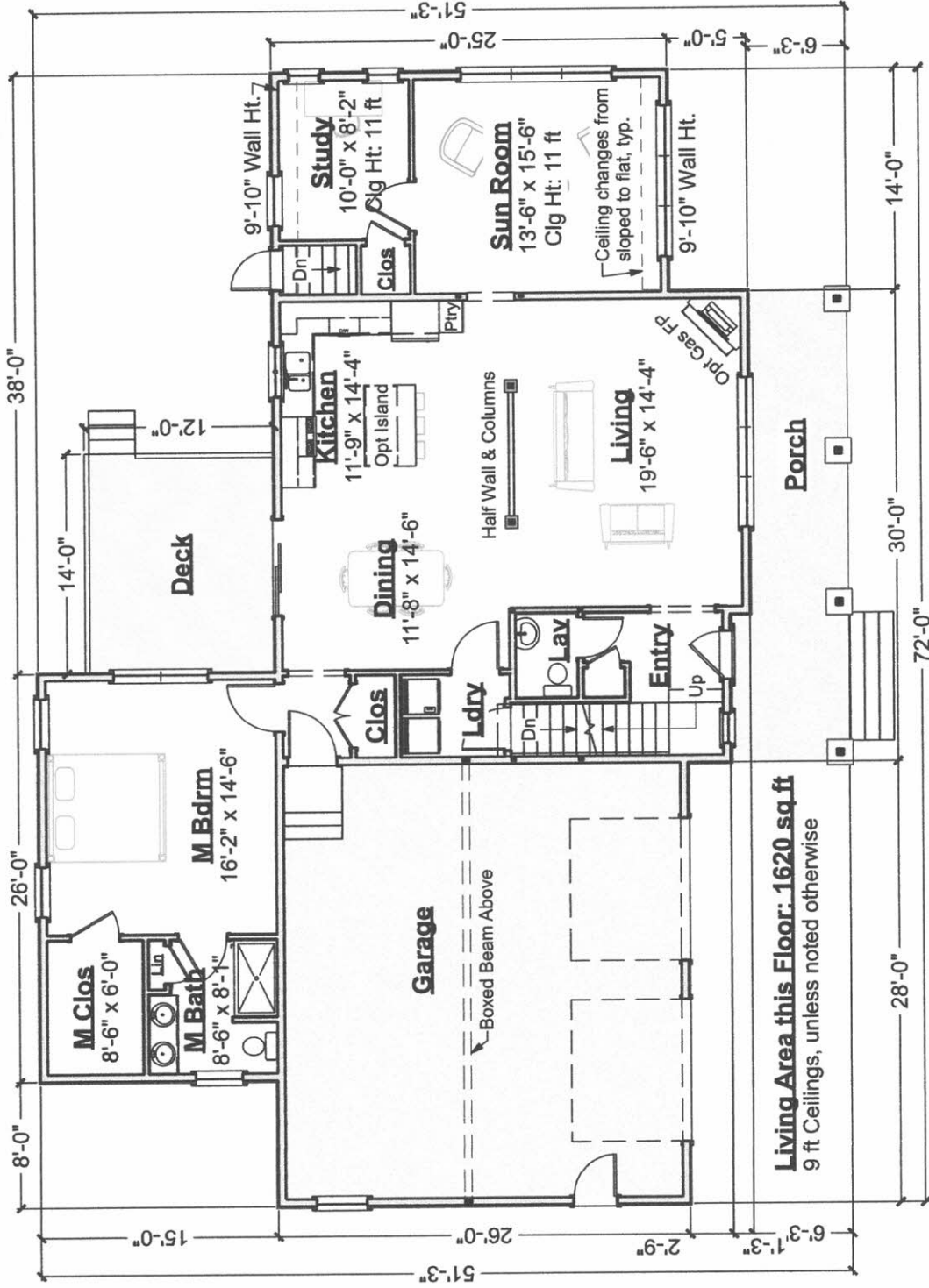
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Emerald Sea Deluxe

320.130.v5 GL (3/6/2020)

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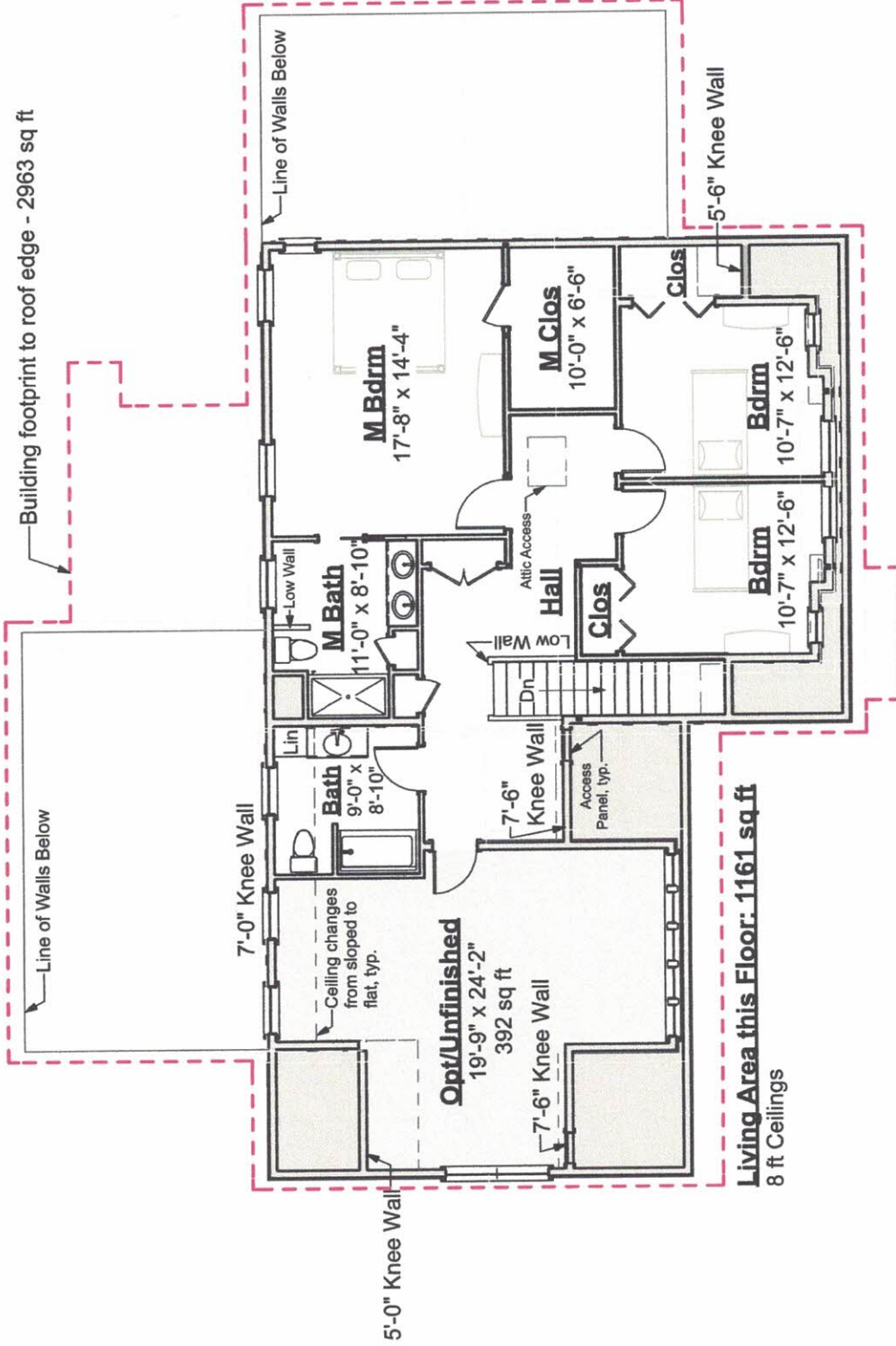
First Floor Plan

Scale: 3/32" = 1'-0"

Emerald Sea Deluxe

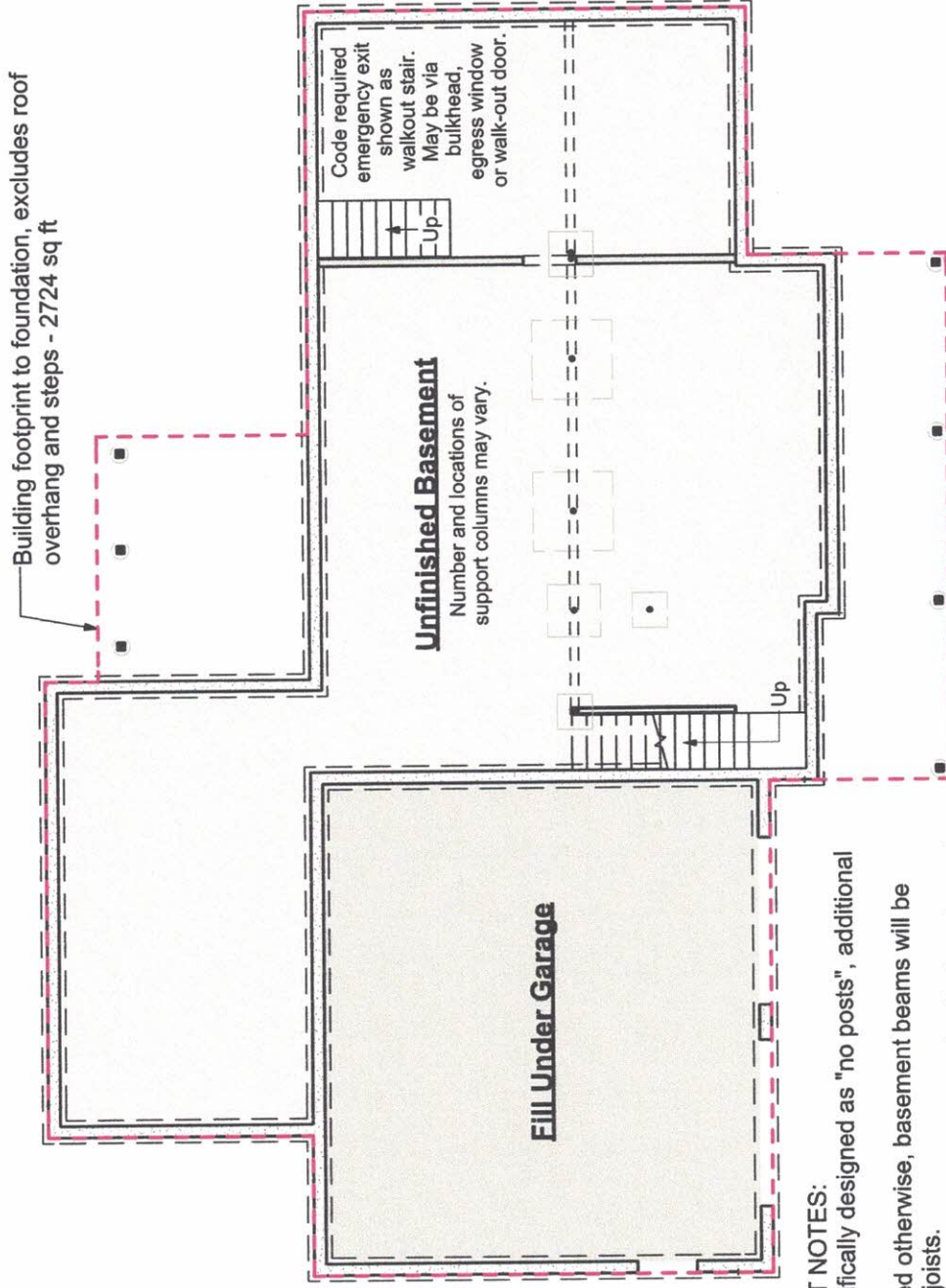
320.130.v5 GL (3/6/2020)

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Second Floor Plan

Scale: 3/32" = 1'-0"



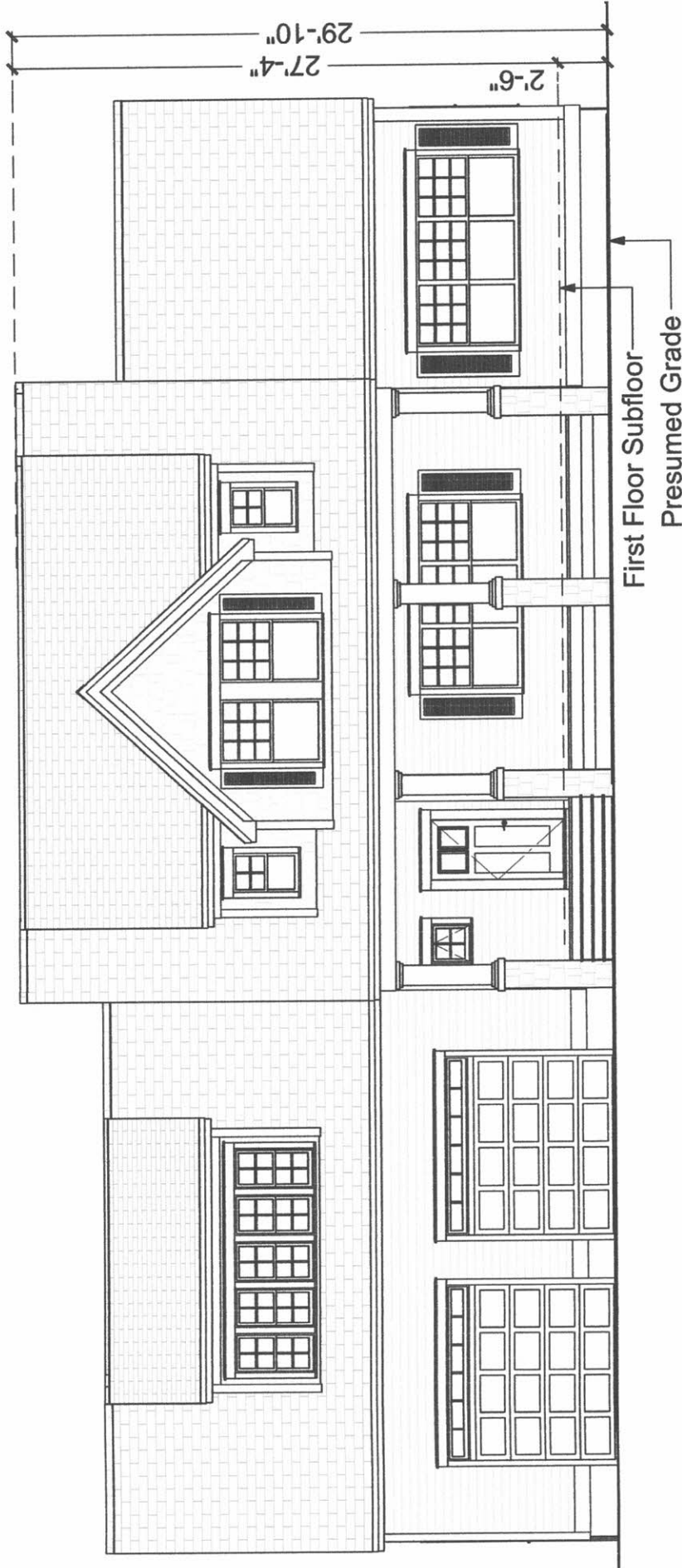
IMPORTANT BASEMENT NOTES:

- Unless an area is specifically designed as "no posts", additional posts may be required.
- Unless specifically noted otherwise, basement beams will be framed below the floor joists.
- Basement spaces accommodate utilities, mechanical equipment and the horizontal movement of plumbing pipes, electrical wires and heating ducts. Both as part of any Construction Drawings produced based on this design and as future decisions made by the builder, changes to accommodate these items must be expected.
- Basement window locations are dependent on site conditions and utility locations. Clarify number and location with your builder.

Emerald Sea Deluxe
320.130.v5 GL (3/6/2020)

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Artform Home Plans
603-431-9559



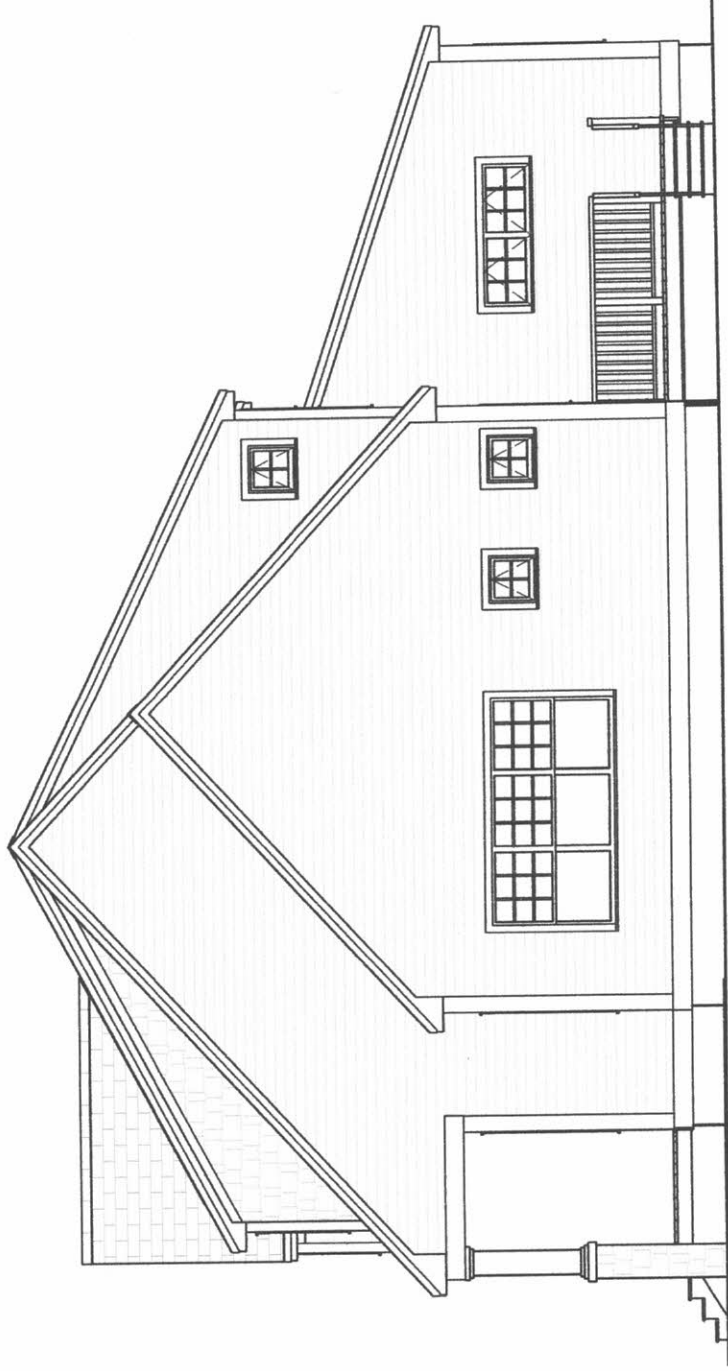
Front Elevation
Scale: 3/32" = 1'-0"

Artform Home Plans

Emerald Sea Delux
320.130.v5 GL (3/6/2020)

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Artform Home Plans
603-431-9559



Right Elevation
Scale: 1/8" = 1'-0"

Emerald Sea Deluxe
320.130.v5 GL (3/6/2020)

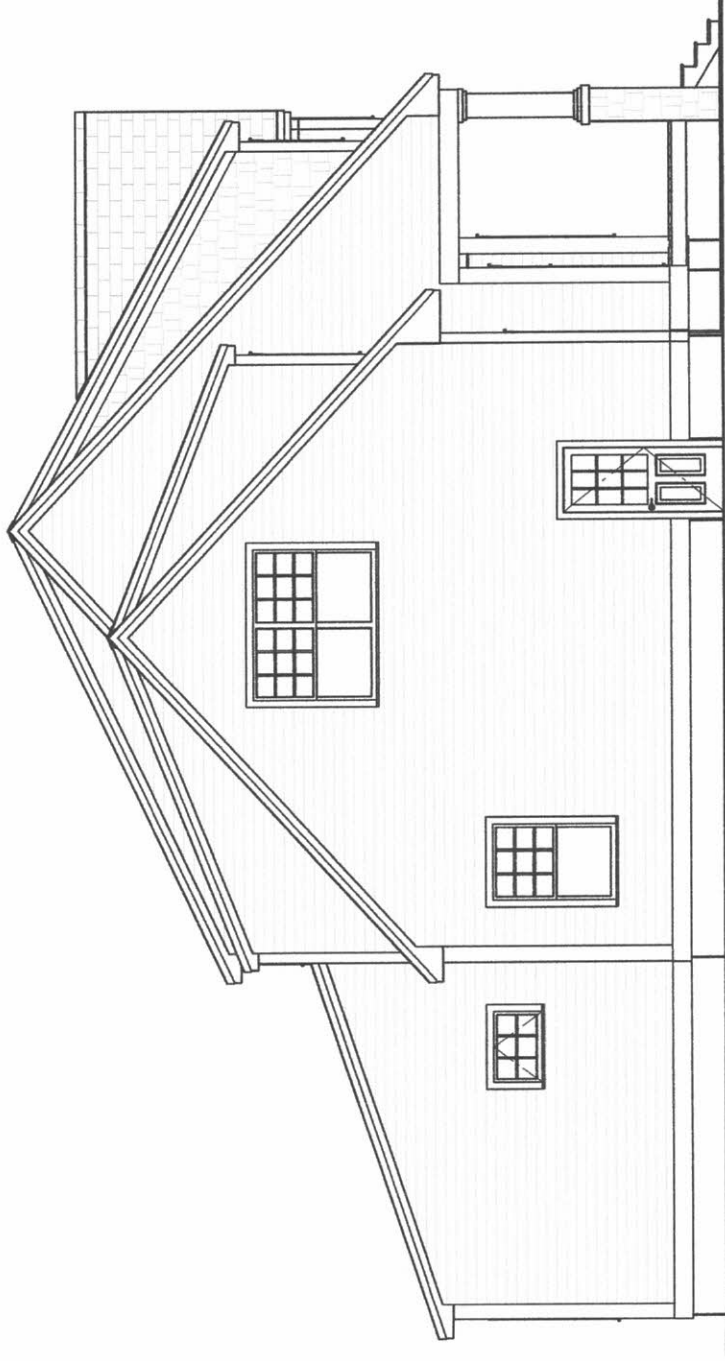
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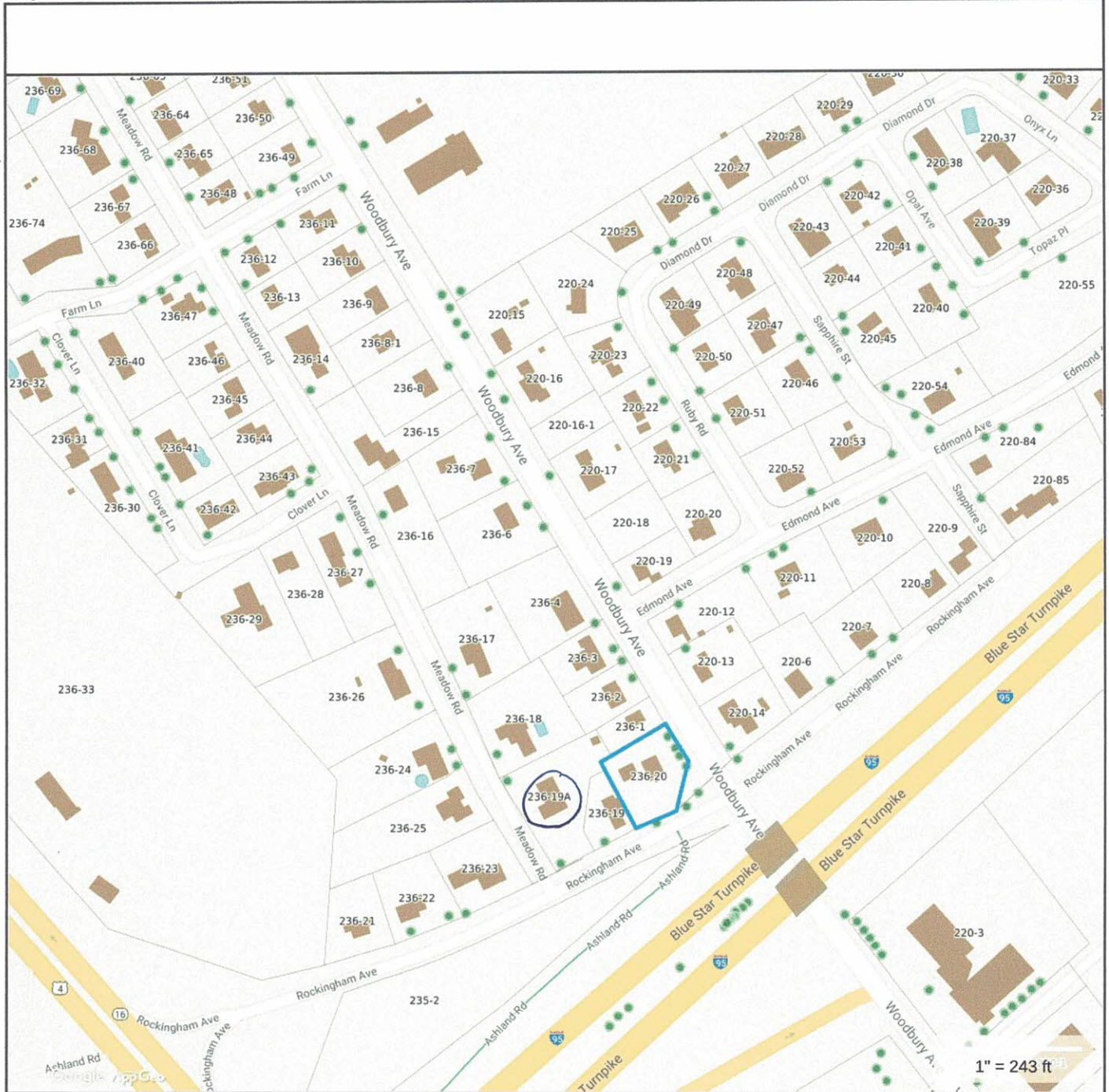
Rear Elevation
Scale: 1/8" = 1'-0"

Emerald Sea Deluxe
320.130.v5 GL (3/6/2020)

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Left Elevation
Scale: 1/8" = 1'-0"



Property Information

Property ID 0236-0020-0000
Location 83 ROCKINGHAM AVE
Owner WHITE BARRY A SR



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 4/1/2019
 Data updated 7/17/2019



Front of Property from Corner of Rockingham Ave. and Woodbury Ave.



View of Front of House from Sidewalk on Rockingham Ave.



View of Detached Garage from Front of Property on Rockingham Avenue



Side View of House and Detached Garage from Left Side Yard



Rear Yard View of House and Detached Garage



Side of Property from Woodbury Avenue