

REGULAR MEETING*
BOARD OF ADJUSTMENT
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE

*Members of the public also have the option to join the meeting over Zoom
(See below for more details)**

7:00 P.M.

February 22, 2023

AGENDA

<p><u>PLEASE NOTE:</u> ITEMS (III.) E. THROUGH J. WILL BE HEARD AT THE FEBRUARY 28, 2023 BOARD OF ADJUSTMENT MEETING.</p>
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I. APPROVAL OF MINUTES

A. Approval of the January 17, 2023 meeting minutes.

II. OLD BUSINESS

A. Request for Rehearing – **32 Boss Avenue.** (LU-22-217)

B. Request for Reconsideration of Rehearing Request – **67 Ridges Court.** (LU-22-199)

C. POSTPONED TO MARCH The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. (LU-22-209) **POSTPONED TO MARCH**

- D.** The request of **Nissley LLC (Owner)**, for property located at **915 Sagamore Avenue** whereas relief is needed to demolish the existing building and construct new mixed-use building which requires the following: 1) A Variance from Section 10.440 to allow a mixed-use building where residential and office uses are not permitted. 2) A Variance from Section 10.1113.20 to allow parking to be located in the front yard and in front of the principal building. 3) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only one is allowed. Said property is located on Assessor Map 223 Lot 31 and lies within the Waterfront Business (WB) District. (LU-22-229)

III. NEW BUSINESS

- A.** The request of **Valway Living Trust and William P and Elizabeth Valway Trustees (Owners)**, for property located at **51 Spinney Road** whereas relief is needed to construct a new detached garage which requires the following: 1) Variance from Section 10.573.20 to allow a) 4 foot side yard setback where 10 feet is required; and b) 4 foot rear yard setback where 10 feet is required. 2) Variance from Section 10.521 to allow 27% building coverage where 20% is required. Said property is located on Assessor Map 171 Lot 9 and lies within the Single Residence B (SRB) District. (LU-22-235)
- B.** The request of **Paulsen Family Revocable Trust 2017 Christian Paulsen and Anja Paulsen Trustees (Owners)**, for property located at **55 Thornton Street** whereas relief is needed to construct a second story addition over the existing first floor which requires the following: 1) Variance from Section 10.521 to allow an 8.5 foot front yard setback where 15 feet is required. 2) Variance from Section 10.321 to allow the extension and enlargement of a non-conforming structure. Said property is located on Assessor Map 143 Lot 19 and lies within the General Residence A (GRA) District. (LU-23-2)
- C.** The request of **Michiyo Bardong and Shawn Bardong (Owners)**, for property located at **39 Dearborn Street** whereas relief is needed to construct a second story over the existing 1.5 story building, remove and expand the front porch, and remove and expand the existing mudroom on the eastern side of the structure which requires the following: 1) Variance from Section 10.521 to allow a) 2 foot rear yard where 20 feet is required; and b) 9 foot side yard where 10 feet is required. 2) Variance from Section 10.321 to allow the extension and enlargement of a non-conforming structure. Said property is located on Assessor Map 140 Lot 3 and lies within the General Residence A (GRA) and Historic District. (LU-23-5)
- D.** The request of **Sean Morin (Owner)**, for property located at **67 Madison Street** whereas relief is needed to construct a 122 square foot covered front porch which requires the following: 1) Variance from Section 10.521 to allow a) 3 foot front yard setback where 5 feet is required; and b) 36% building coverage where 35% is maximum allowed. 2)

Variance from Section 10.321 to allow the extension and enlargement of a non-conforming structure. Said property is located on Assessor Map 135 Lot 36 and lies within the General Residence C (GRC) District. (LU-23-4)

THE FOLLOWING ITEMS WILL BE HEARD ON TUESDAY, FEBRUARY 28, 2023

- E.** The request of **The Griffin Family Corporation (Owners), and LoveWell Veterinary Services, LLC (Applicant)**, for property located at **800 Islington Street Unit 1B** whereas relief is needed to allow a veterinary clinic which requires the following: 1) Special Exception from Section 10.440, Use #7.50 to allow a veterinary clinic where the use is permitted by Special Exception. Said property is located on Assessor Map 154 Lot 1 and lies within the Character District 4-W (CD4W) District. (LU-23-8)
- F.** The request of **Cate Street Development LLC (Owner), and Rarebreed Veterinary Partners (Applicant)**, for property located at **350 US Route 1 Bypass** whereas relief is needed to allow an urgent care veterinary clinic which requires the following: 1) Special Exception from Section 10.440, Use #7.50 to allow a veterinary clinic where the use is permitted by Special Exception. Said property is located on Assessor Map 172 Lot 2 and lies within the Gateway Corridor (G1) and Transportation Corridor (TC) District. (LU-23-9)
- G.** The request of **Aviation Avenue Group, LLC (Applicant), and Pease Development Authority (Owners)**, for property located at **80 Rochester Avenue** whereas relief is needed for the construction of an advanced manufacturing facility which requires the following: 1) Variance from Article 304.03 (e) to allow a 28 foot rear yard where 50 feet is required. Said property is located on Assessor Map 308 Lot 1 and lies within the Pease Industrial District (PI). (LU-22-210)
- H.** The request of **Andrea Hurwitz (Srebnik) (Owner)**, for property located at **129 Aldrich Road** whereas relief is needed for the installation of a mechanical unit which requires the following: 1) Variance from Section 10.515.14 to allow a 4 foot side yard where 10 feet is required Said property is located on Assessor Map 153 Lot 35 and lies within the Single Residence B (SRB) District. (LU-23-10)
- I.** The request of the **RTM Trust and Ryan T Mullen and Heidi E K Trustees (Owners)**, for property located at **253 Odiorne Point Road** whereas relief is needed for the installation of a mechanical unit which requires the following: 1) Variance from Section 10.515.14 to allow the mechanical unit to be located closer to a street than the principal structure. Said property is located on Assessor Map 224 Lot 10-19 and lies within the Single Residence A (SRA) District. (LU-23-11)
- J.** The request of the **Black Heritage Trail of New Hampshire (Owner)**, for property located at **222 Court Street** whereas relief is needed to install one 24 by 28 foot mural

and one 3 by 2 foot sign which requires the following: 1) Variance from Section 10.1251.10 to allow max aggregate sign area of 686 square feet where 36 square feet is allowed; 2) Variance from Section 10.1251.20 to allow max area for individual sign of 678 where 16 square feet is allowed; and 3) Variance from Section 10.1242 to allow more than one sign on building facing the street; and 4) Variance from Section 10.1271 to allow a sign on the side of the building that is not facing a street. Said property is located on Assessor Map 116 Lot 33 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-23-12)

IV. OTHER BUSINESS

V. ADJOURNMENT

**Members of the public also have the option to join this meeting over Zoom, a unique meeting ID and password will be provided once you register. To register, click on the link below or copy and paste this into your web browser:*

https://us06web.zoom.us/webinar/register/WN_meLR_UrNSbaeChW-kRO8nA

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

January 17, 2023

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Paul Mannle, Thomas Rossi, David MacDonald, David Rheaume, Alternate Jeffrey Mattson

MEMBERS EXCUSED: None.

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge called the meeting to order at 7:00 P.M. She asked that New Business Items E through I on the agenda be postponed due to the large volume of agenda items scheduled for that evening's meeting and that they would be heard at the January 24 meeting.

*Mr. Mannle moved to **postpone** New Business Items E through I to the January 24 meeting, seconded by Mr. MacDonald. The motion **passed** by unanimous vote, 7-0.*

She said the applicant for Old Business, Item C, 635 Sagamore Avenue requested to postpone to the March 21 meeting and asked that it be taken out of order to vote on.

*Mr. Rheaume moved to take the item out of order, seconded by Vice-Chair Margeson. The motion **passed** by unanimous vote, 7-0.*

*Mr. Mannle moved to **grant** the request to postpone 635 Sagamore Avenue to the March 21 meeting, seconded by Mr. MacDonald. (Mr. Rossi and Mr. Rheaume recused).*

Mr. Mannle said the board got requests to postpone all the time and they were routinely granted because it was the applicant's request and it was up to the applicant if they weren't ready to have the hearing and needed to delay it. Mr. MacDonald concurred.

*The motion **passed** by unanimous vote, 5-0.*

I. APPROVAL OF MINUTES

A. Approval of the December 20, 2022 minutes.

*The minutes were **approved** as amended by unanimous vote, 7-0.*

The amendments were as follows:

Page 1: The sentence ‘Former Chairman Jim Lee left the board’ was changed to ‘Former Chairman Jim Lee was not reappointed’.

Page 2: The vote on the postponement of 635 Sagamore Avenue was changed from 6-0 to 5-0 because Mr. Rossi abstained from the vote.

Page 7: The following phrase in the second paragraph was changed to replace the phrase ‘it went back to the ordinance’ with ‘it went through the City Council and the Planning Board’.

Page 14: In the first paragraph under the section Discussion and Decision of the Board, the word ‘board’ was changed to ‘ordinance’ so that the sentence now reads: ‘Mr. Rheume said there used to be nothing in the zoning ordinance about fence heights.’

II. OLD BUSINESS

- A. Cherie Holmes and Yvonne Goldsberry - **45 Richmond Street** request a **1-year extension** to the variances granted on January 19, 2021. (LU-20-249)

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the 1-year extension request, seconded by Mr. Mattson.*

Mr. Rossi said they were routine requests the board received when people had difficulties securing a contractor or completing the work and the applicant was within their rights to get an extension because it was a timely submission within the one year of the original approval and they were entitled to a one-year extension. He said the board should approve the request. Mr. Mattson concurred. Mr. Rheume said he would support the motion but cautioned the board, noting that there used to be a one-year timeframe after approval from the board where the applicant was required to get a building permit, but that was extended by NH State Law to be two years with a potential one-year extension. He said he wouldn’t call the extension automatic and thought it was something the board should consider carefully before allowing additional time. He said he understood the effects of Covid and thought 2020 was still a timeframe for those concerns, so he thought it was fair of the board to grant the extension for the 45 Richmond Street applicant, but he still advised caution because the applicant had been given an extra year by law, and giving the third year was to him a little bit more extraordinary. Chair Eldridge agreed, noting that neighbors and other things change, especially in two years as opposed to just one.

*The motion **passed** by unanimous vote, 7-0.*

- B. **67 Ridges Court - Request for Rehearing (LU-22-199)**

DISCUSSION OF THE BOARD

Mr. Rossi said he voted to proceed with the hearing when it came before the board the first time and that he didn't believe at that time that it represented a Fisher v. Dover problem. He said he still didn't believe so. He said he thought it was an unfortunate by-product of the City Council's lack of appointing additional board members, resulting in the board ending up in situations where they have a 2-3 split, so it wasn't a clear and decisive answer one way or another. He said he didn't think the applicant should suffer for that and that it put applicants at a disadvantage. He said he hoped that the City Council corrected it and appointed additional board members, but in the meantime he was inclined to support the request for rehearing. Mr. Rheume said he reviewed the tape of the first and second times the applicant came before the board and thought there were a few irregularities to caution the board about. He said the reason for granting the applicant's request was that the motion was not to invoke Fisher v. Dover, which was unusual because the assumption was that Fisher v. Dover would only be invoked by a motion of the board. As a result, he said some of the discussion got skewed in the opposite direction in terms of why Fisher v. Dover should not be invoked and to why it should be invoked. He said comments by Mr. Lee and Mr. Mannle were somewhat limited and the deciding vote by the acting chair at the time was really no explanation as to why the feeling of the board was that Fisher v. Dover should be invoked by the acting chair. He said if it were to go to a court decision, the board could be vulnerable by not having a lot of detailed information as to some of the thoughts behind the Fisher v. Dover invocation. To prevent that, he thought the easiest way was for the board to grant the request for rehearing, and that rehearing could have a more detailed discussion about Fisher v. Dover or decide that it didn't apply, but it wouldn't mean that the applicant's new design still wouldn't fail. He said it would give the applicant a fuller understanding of the board's concerns. He summarized that the prior decision had a five-member board and there was limited participation, so he thought it was in the board's best interest from a legal standpoint to reconsider the application at the next meeting.

Mr. Mannle said he originally stated that, even though the size of the project has reduced, none of the objections that the board found with the original denial were changed but were all still in place. He said his objection had been about surrounding property values, and another board member's objection was to hardship, and another member said the entire project was within the wetlands boundary. He said none of those objections had changed with the new project, and that was the reason he voted the way he did. Vice-Chair Margeson said she thought the standard for a motion for a rehearing was whether or not the board would like to correct their own error of if there had been a mistake of law. She said she wasn't at that hearing but watched the tape, and she believed that the board came to the right decision. She said it was barred by Fisher v. Dover, so she would not support a rehearing. Mr. Rheume said it was mentioned late by the applicant's attorney that the criteria had changed from the original application, where there was 30 feet required, and the applicant's representative indicated that through the averaging method, the actual requirement was 19 feet. He said that wasn't technically a change in the ordinance but it was a substantial change in the applicant's recognition of the relief necessary to be granted by the board. He said the applicant changed his design and had a different standard or requirement for the actual relief that was

necessary. He said the board could simply decide that Fisher v. Dover was applicable, but he thought they would be better served to rehear it and if necessary re-decide whether or not Fisher v. Dover applied. Mr. Mattson said his position had not changed and that he would vote in favor of the rehearing. Chair Eldridge said her position had not changed either because she did not believe the board erred last time, so she would not vote for a rehearing.

DECISION OF THE BOARD

*Mr. Mannle moved to **deny** the request for rehearing, seconded by Vice-Chair Margeson.*

Mr. Mannle said he did not believe that the material changes would have altered the Board's original decision or the second decision because all the objections that the Board found in the application were still in play. Vice-Chair Margeson said she did not believe that the Board erred in reaching its decision.

*The motion to deny **passed** by a vote of 4-3, with Mr. Rheaume, Mr. Rossi, and Mr. Mattson voting in opposition.*

- C. REQUEST TO POSTPONE** The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. **REQUEST TO POSTPONE (LU-22-209)**

DECISION OF THE BOARD

*The petition was **postponed** to the March 21, 2023 meeting by unanimous vote, 5-0.*

Mr. Rossi recused himself from the following petition.

- D.** The request of **Nissley LLC (Owner)**, for property located at **915 Sagamore Avenue** whereas relief is needed to demolish the existing building and construct new mixed-use building which requires the following: 1) A Variance from Section 10.440 to allow a mixed-use building where residential and office uses are not permitted. 2) A Variance from Section 10.1113.20 to allow parking to be located in the front yard and in front of the principal building. 3) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only one is allowed. Said property is located on Assessor Map 223 Lot 31 and lies within the Waterfront Business (WB) District. (LU-22-229)

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant, with project engineer Corey Caldwell. Attorney Durbin reviewed the petition. He said the property was unique because it was situated in a mixture of different zoning and that it was an inlet off Sagamore Creek that made it a waterfront property. Mr. Caldwell said the site contained a lot of wetlands. He discussed what the uses could be, noting that two of them were not feasible and others required access to the water, which the property did not provide. Attorney Durbin said they proposed a 3-story mixed-use building with office space and 12 residential units, and off-street parking spaces. He said the combination of residential and office space would lend itself to a future live/work environment. He reviewed the criteria. (See recording time stamp 23.37 for full presentation).

Mr. Rheume said Attorney Durbin included a tax map that indicated that the property was unfairly burdened by being in the Waterfront Business District because its waterfront was not useful. He named other properties that were truly landlocked that had no access to the waterfront at all yet were considered part of the Waterfront Business District. He said if those properties were considered by the City Council to be appropriate for the Waterfront District, then why did the applicant's representative feel that his property was still wrongly included in the Waterfront Business District. Attorney Durbin said most of the surrounding properties identified were used for residential purposes, especially the landlocked properties referred to, in addition to at least one or two other properties that had direct access on the Sagamore Creek. He said he wasn't sure that some of the other uses were identified with three of the eight properties, but he thought the applicant's proposal did fit with a few properties. He said there was a Supreme Court case where the city has an obligation to have the zoning reflect the prevailing character of the area. In this case, he said five out of eight properties zoned Waterfront Business were used for residential purposes, and that didn't identify what the other three properties were utilized for. He said the prevailing character was something other than waterfront businesses. Mr. Rheume asked if the client was the property owner. Attorney Durbin said the application was submitted on behalf of the property owner and his client was someone interested in purchasing the property.

Mr. Rheume said Attorney Durbin said he hoped that the building could be a work/live or office/residential combination. He asked what the client was doing to promote that vision of a work/live complex and if there were plans for workforce housing. Attorney Durbin said there was no plan to create workforce housing and noted that the plan was still conceptual as to how the residential units and future office space would interact. He said it would depend on the market over the next year or so. He said the units would be small and would fall into a lower rent price bracket. Mr. Rheume said the conceptual building plans could be for a building anywhere in the city, and he asked what attempts were made to honor the waterfront business area by creating something in the industrial spaces that could tie it into the waterfront business. He also noted that it was a unique property and the applicant was asking for exceptional relief from the ordinance. Attorney Durbin said he didn't believe there was a uniform design or appearance that they would identify with the waterfront businesses due to the nature of them. He said the property didn't have the ability to have traditional marine uses and that the project was designed to be in keeping with the surrounding properties but not designed to cater to a fish market or retail type of business on the ground.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

Vice-Chair Margeson said it was a use variance, so it was a hard bar. She said in that area, there were already areas zoned mixed residential/office and mixed residential/business. She said she wasn't in favor of the petition because she didn't find the arguments that compelling for such a substantial change in use variance. She said it was a property that did have access to the creek, much more so than other landlocked property lots that Mr. Rheume pointed out. She said the City Council was the board that should really be looking at whether it should be waterfront business, but given that it did have access to water, they were the uses that could be made with this. She said the City Council was intentional about how they zoned the area and there were waterfront businesses and mixed residential/office and mixed residential/businesses across the creek. Mr. Mattson said he agreed in terms of how not useful this would be as a waterfront business, and the potential alternative of mixed use residential/office was feasible and desirable, but he struggled with the fact that the variance request was for a use and there was no lot-area-per-dwelling for waterfront business. He said if there was, it would be quite an aggressive ask for that density due to the three stories from the Sagamore side and the four stories on the other side. He said all that combined would potentially put it out of character with the neighborhood. Mr. Mannle said the board granted variances to the property behind the applicant's in June since it was a residence, even though it was in the Waterfront District. It was further discussed.

Mr. Rheume said he had concerns about the application, including the density and the fact that the applicant was proposing a substantial footprint structure. He said the Waterfront Business District was created by many forums and one of the common things heard was a desire for the City to maintain its waterfront business presence because it added a character to the City that was highly identifiable to what the City wanted to be for the future. He said the board needed to tread carefully. It was further discussed. Chair Eldridge said she was also torn. She said having residences in that location and office space was more appropriate for the neighborhood than anything else because it reflected what was across the street and around it, but she was concerned about the number of units. She said she'd have a hard time supporting it. She said the board could ask the applicant to work on the design and return. Vice-Chair Margeson said it was a use variance, and design was not within the purview of the board, so she said the board had to vote it up or down. Mr. Rheume disagreed, saying that it could give the applicant an opportunity to consider the board's comments about the project's intensity and perhaps tie it to waterfront businesses.

DECISION OF THE BOARD

*Mr. Rheume moved to **table** the application to the February 22 meeting to give the applicant time to take the board's comments under consideration. Mr. Mattson **seconded** the motion.*

Mr. Rheaume said his motion wasn't something the board would normally do but he believed that it was an unusual set of circumstances. He said if the board denied it, the applicant could potentially come back, but he also thought there was an opportunity for the applicant to better understand the board's concerns. He said it was a use variance and denying it would set the applicant up for a high bar for Fisher v. Dover. He said there was a potential for compromise and it was the applicant's choice, but he was willing to give the applicant that opportunity.

Attorney Durbin said the option to table would give them the opportunity to reconsider and potential withdraw. It was further discussed. Vice-Chair Margeson said the motion was inappropriate because it would give the applicant a benefit that wasn't given to other applicants, whereby the applicant got to take the temperature of the board and decided to fashion an application that would be acceptable.

*The motion **passed** by a vote of 4-2, with Mr. Mannle and Vice-Chair Margeson voting in opposition.*

III. NEW BUSINESS

Mr. Rossi resumed his voting seat.

- A.** The request of **Sarah M Gardent Revocable Trust (Owner)**, for property located at **47 Howard Street** whereas relief is needed for the installation of a mechanical heat pump which requires the following 1) Variance from section 10.515.14 to allow an 8 foot setback where 10 feet is required. Said property is located on Assessor Map 103 Lot 84 and lies within the General Residence B (GRB) and Historic District. (LU-22-242)

SPEAKING TO THE PETITION

Justin Zeimetz was present on behalf of his wife the applicant. He reviewed the petition, noting that he submitted an addendum. He explained why the chosen location for the heat pump was the best and most appropriate one and said he had 19 signatures of neighbors and abutters.

Mr. Rheaume said the photo showed a larger heating unit than the board normally saw. The applicant said it was 41-1/2 inches tall, 38-1/2 inches wide, and 27 inches deep. Mr. MacDonald asked what the uses would be. Mr. Zeimetz said it would be primarily for cooling but could provide heating. In response to further questions from Mr. MacDonald, Mr. Zeimetz said he currently had a hot water heater and the mechanical heat pump would be more efficient than that.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Barba Sobol of 58 Manning Street said she was in favor and didn't think the pump would affect her, even though there was an 8-ft setback. She said they had a fence and wouldn't see the unit.

SPEAKING IN OPPOSITION TO OR SPEAKING TO, FOR, OR AGAINST THE PETITION

No one else spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variance for the application as submitted, seconded by Mr. Rheaume.*

Mr. Rossi said granting the variance would observe the spirit of the ordinance. He said the board had come across those variances often in the Historic District and he didn't believe that the ordinance was designed to prevent the upgrade and modernization of HVAC units within the Historic District, and to do so required a variance, so he did believe that the application was consistent with the spirit of the ordinance. He said substantial justice would be achieved because there would be no loss to the public that would outweigh the benefit to the applicant. He said granting the variance would not diminish the values of the surrounding properties, which was supported by the advocacy of the abutters and in particular Ms. Sobol, who was the most directly affected abutter. He saw her support of the project as solid evidence that there would be no negative impact on her property values. In terms of hardship of the property, he said it was a very densely packed-in location and thought the applicant did a good job of reviewing all the alternatives. He said when he looked at the site plan, he had thought there was a potential for Site D along the driveway to locate the condenser, but upon visual inspection he found that it would be detrimental to the neighborhood in terms of the overall appearance of that historic area. He said he believed that it was a special condition that mitigated toward locating the unit within eight feet of the property line as proposed. Mr. Rheaume concurred and said it would observe the spirit of the ordinance. He said the setback was a recognition of the tight neighborhoods in Portsmouth, and the potential noise from that type of condenser was minimal, noting that he had one and he could barely hear it running. He said eight feet vs. 10 feet, with how quiet the unit was, would not make a difference in terms of what the ordinance was trying to do. In regard to special conditions of the property, he said the existing house had exit ways through large sliding doors to the backyard and multiple locations that made it such that there was no other feasible location to put the unit and not have it be visible to the public. He said he supported approving it. Mr. MacDonald said he would support it, noting that it was the best example he had seen for an unnecessary hardship that was avoidable. He said if the board denied the variance request, the applicant would end up with an old, ineffective system that would place an unnecessary hardship on him.

*The motion **passed** by unanimous vote, 7-0.*

- B.** The request of **Antonio Salema**, Trustee of Salema Realty Trust (Owner), for property located at **199 Constitution Avenue** whereas relief is needed to build a climbing, yoga, and general and specialty fitness studio in an existing building which requires the following 1) Special Exception from Section 10.440 Use #4.42 to allow a health club, yoga studio, martial arts school, or similar use that is greater than 2,000 GFA. Said property is located on Assessor Map 285 Lot 16-301 and lies within the Industrial District. (LU-22-249)

SPEAKING TO THE PETITION

Taki Miyamoto, Owner of Portsmouth LLC was present to speak to the petition. He said he was the tenant. He reviewed the special exception criteria and said they would be met.

In response to Mr. Rheume's questions, Mr. Miyamoto explained the building orientation and said customers would most likely enter the building from Constitution Avenue. He said the current building had two handicap spots and curb cuts to get into the building. As designed, their primary entry would be where the bulk of the parking was but would also have two entries on the south side. Mr. Rheume said his concern was from a customer confusion perspective and asked if there would be signage pointing the way into the business. Mr. Miyamoto said he hoped so. Mr. Rheume noted that most of the parking spots were on the back side of the building and asked if there was an alternative entrance on the back side. Mr. Miyamoto said there would also be entrances on that side. Mr. Rheume asked about the truck turnaround and backup shown on the diagram. Mr. Miyamoto said there was a truck loading zone there and although he wanted as many parking spaces in the back as possible, he wanted to be sure the trucks could back out without a problem. Mr. Rheume noted that 58 parking spaces were required by the ordinance and asked the applicant if he thought he would have that many customers. Mr. Miyamoto said he hoped so. Mr. Rheume asked if any analysis was done on trips per hours that were related to traffic criteria. Mr. Miyamoto said he had not. Mr. Rheume asked how long the applicant anticipated customers being in the building. Mr. Miyamoto said generally an hour and a half, but youth and adult programs would run 45 minutes.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Vice-Chair Margeson moved to **grant** the special exception for the application as presented and advertised, seconded by Mr. Rossi.*

Vice-Chair Margeson said if an applicant demonstrated that they met all the special exceptions, the board was compelled to grant them. She said the standards as provided for the particular use was permitted by special exception and that the zoning ordinance allows for a business like this to be located in an industrial zone. She said the special exception is to allow a health club, yoga studio, martial arts studio, or similar use that is greater than 2,000 square feet, so the applicant's use is permitted by special exception in that zone and it meets the criteria. She said the second section, Section 10.233.22 stated that there be no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials. She said it was a yoga and general/specialty fitness studio and a climbing wall, so none of those conditions would be present. She said Section 10.233.23 stated that there would be no detriment to property values in the vicinity or change in the essential characteristics of any area, including residential neighborhoods, business or industrial

districts on account of the location or scale of the buildings or other structures, parking areas, accessway, odor, smoke, gas, dust or other pollutants, noise, glare, heat, vibration, unsightly outside storage of equipment, vehicles or other materials. She said the applicant met this criteria because his business would be in an industrial area, and the climbing, yoga, general and special fitness studios would not have any outdoor odor, gas, dust, or other pollutant, noise, heat, vibration, unsightly storage of equipment or vehicles. She referred to Section 10.233.24, no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity, and said the applicant took into account all the turning radius and ways to avoid having any kind of safety hazard. She also noted that the applicant didn't have to go to the Technical Advisory Committee (TAC), where such issues would be dealt with. Relating to Section 10.233.25, no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and schools, she said a facility that had climbing, yoga, and general/special fitness would not create excessive demand on any of those city services. Referring to Section 10.233.26, no significant increase in stormwater runoff onto adjacent properties or street, she said the applicant's type of use would not create any kind of increase in stormwater runoff. For those reasons, she said she moved to grant the special exception. Mr. Rossi concurred. He noted that, relating to Section 10.233.24 for traffic congestion, Constitution Avenue was a very broad thoroughway and hoped the applicant's business was successful enough to create a traffic jam on that avenue. He said it would never happen because the avenue was too wide. He said he saw no problem with the special use.

Mr. Rheume said he was torn because the entryway was proposed to be on Constitution Avenue and people cutting through the Walmart's parking lot could create a headache in that area. He said it could be stipulated that the Parking, Traffic, and Safety Committee take a look at the application but that he could probably live with the idea that the applicant's business would not negatively affect the area, although he wasn't convinced it was cut and dry.

*The motion **passed** by unanimous vote, 7-0.*

- C. The request of **Jesse M Lynch and Sarah L Lynch (Owners)**, for property located at **19 Sunset Road** whereas relief is needed to construct a connector structure from primary structure to the garage which requires the following: 1) Variance from Section 10.521 to allow a) 27 foot setback where 30 feet is required; and b) 22 % building coverage where 20% is required. 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 153 Lot 19 and lies within the Single Residence B (SRB) District. (LU-22-250)

SPEAKING TO THE PETITION

Architect Arelda Dench was present on behalf of the applicants, along with the owner Sarah Lynch. She said that all the neighbors were in favor of the proposal. She said the applicant wanted to connect the garage to the house. She reviewed the petition and reviewed the criteria and said it would be met.

Mr. Rheume said a connection between the main house and an outbuilding in New England was a common occurrence and made sense, but his concern was that years ago the client came before the board for relief to reconstruct the garage, and he asked why the connection wasn't included in the application then. Ms. Lynch explained that a flat roof that was falling in was involved before as well as three retaining walls and that they didn't have the finances to do the connection then. Mr. Rheume said a $\frac{3}{4}$ bath in the ell was in an odd spot because it was backed up to a half-bath, and he asked what if the plan was for a future bedroom or an ADU. Ms. Dench said it would not be an ADU. She said the storage space might be used as a bedroom for a short time. She said the house only had one bathroom and three girls and another bath with a shower was needed, and there was no other place to put it. She said the storage place might be used for a few years as a master bedroom until the girls went to college. Mr. Rheume said it would potentially be another bedroom for the house, and Ms. Dench agreed.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

Mr. Rossi said he would support the variance request because it would be in keeping with the character of the neighborhood. Chair Eldridge agreed.

*Mr. Rheume moved to **grant** the variances for the project as presented and advertised, seconded by Mr. Mattson.*

Mr. Rheume said the applicant satisfactorily answered his questions about the intended use and thought the applicant was allowed to use a space as a bedroom. He said granting the variances would not be contrary to the public interest because a slight increase in the overall footprint of the property was being asked for and was extremely minimal. He said the intent was not to create overcrowding and to fill in space between two structures. He said it wouldn't be impactful to the abutters and neighbors or the public. He said granting the variances would observe the spirit of the ordinance because minimal impact was being requested by keeping light and air between buildings, keeping open spaces, and infilling between two buildings. He said it was a very minor increase in overall density on the property, and no one would really notice the slight impact to the setback requirement. He noted that there were already other portions of the building that were far closer to the edges of the lot. He said substantial justice would be done because it was a balancing test between what the applicant was trying to do and what the public interest was. He said the applicant won that balancing test because they were asking for very minimal relief that provided a lot of benefit to them in terms to connecting this odd garage with their main house, securing it for the winter, and creating an extra bathroom in a small home. He said the public had no outweighing concerns that would what the applicant was looking for was unjust. He said granting the variances would not diminish the values of surrounding properties because it would be a minor change that

would not affect the character of the neighborhood. As far as unnecessary hardship, he said the applicant made a good argument for relief, noting that the unique topography of their lot where a garage had been built many years before and the fact that they were able to remedy that situation and recreate the garage and were now doing a logical connection between the two structures that they couldn't do before because it was a financial hardship at the time. He said he recommended approval for all those reasons. Mr. Mattson concurred and said granting the variances would not be contrary to the public interest and that it was a good-faith measure to address stormwater management as well.

*The motion **passed** by unanimous vote, 7-0.*

- D.** The request of **Patrick and Nicole Mullaly (Owners)**, for property located at **36 Hunters Hill Avenue** whereas relief is needed to construct an addition with a second living unit which requires the following: 1) Variance from Section 10.440 Use #1.30 to allow a two-family dwelling unit in the Business District. 2) Variance from Section 10.531 to allow a 5 foot setback where 10 feet is required. Said property is located on Assessor Map 160 Lot 38 and lies within the Business (B) District. (LU-22-243)

SPEAKING TO THE PETITION

The owner/applicant Patrick Mullaly was present and said he wanted the unit as an apartment for his mother to live in and that he wouldn't rent it out. He noted that the surrounding properties were mixed use. He reviewed the criteria and said they would be met.

Mr. Rheume asked if the current garage would be torn down. Mr. Mullaly agreed and said the main house would not be affected but the roofs on the back had to be changed. He said the addition would have a garage underneath and a living space above it. Mr. Rheume noted that the advertised relief read into the record was a 5-ft setback where 10 feet was required but was actually 15 feet per the zoning ordinance. He said his concern was with the advertisement and the verbiage not being correct, and he asked if the board had to decide if it was an error or a de minimis error. Ms. Casella said it was 15 feet and that she believed it was okay to move forward as long as it was stated and there was a stipulation noting that it was 5 feet where fifteen feet is required, otherwise the alternative would be to readvertise.

Mr. Rossi asked if the addition was being considered as an attached accessory dwelling unit. Mr. Mullaly said it was not. Ms. Casella said neither an ADU nor a two-unit was allowed in that district. She said the City Staff's reasoning was that more than two units was allowed, so having it be two units would be in more in conformance with what was allowed in that district. It was further discussed. Vice-Chair Margeson said the Staff Memo stated that two-family units were not permitted but higher density residential uses including 3-4 family units were permitted by right. Ms. Casella said 3 or 4 was under the residential section but was commercial use in other respects. The board discussed whether the Planning Staff would also allow an ADU by right in the future. Ms. Casella said she didn't believe so but that it had not been fully vetted.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR

John Hollowell of 361 Dennett Street said he was an abutter and was in approval of the project.

Tony Coviello of 341 Dennett Street said he was also an abutter and supported the project but had concerns about the zoning currently allowed on the property. He said it would be inappropriate for the property to have a 4-unit apartment because the street was ten feet higher than Route One at the end and there was no way to get access to Route One. He said the area was zoned improperly and feared that someone would try to do something with those properties.

SPEAKING IN OPPOSITION TO OR SPEAKING TO, FOR, OR AGAINST THE PETITION

No one else spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

Mr. Rossi clarified that he was merely trying to understand what the zoning ordinance as written allowed and did not allow and that he was not suggesting that someone build it out to the maximum.

*Mr. Rheume moved to **grant** the variances for the project as presented and advertised, with the following **stipulation**:*

- 1. The board recognizes the de minimis error in the advertisement for the application as 10 feet versus 15 feet.*

Mr. Mattson seconded the motion.

Mr. Rheume said the application had a lot of little quirks to it. He said the Route 1 Bypass created a lot of disruption to a lot of the streets when it was constructed, and the fact that the area was zoned business was unusual. He said there were substantial elevation differences between the applicant's property and the one across the street from it and it probably wasn't realistic that they would be turned into businesses. (See recording time stamp 2:31 for more explanation). Mr. Rheume said granting the variances would not be contrary to the public interest. He said the public interest here was the zoning connection that should not negatively affect the ability of this residential use that was already an existing nonconformity in the Business District from being slightly expanded from one dwelling unit to another. He said it was in the public interest for the property to remain in the hands of the current owners and not be transferred to some other owner who could take advantage of the allowances in the Business District and provide something that would be negative to the public interest. He said granting the variances would observe the spirit of the ordinance because a small amount of relief was asked for and the property was up against the bypass and wouldn't affect the light and air of abutting properties. He said the elevation difference between the property and the bypass further negated that concern. He said granting the variances would do substantial justice because the public's interest in not only allowing the applicant to do what he requested but in

keeping it from being rebuilt in some other fashion tipped the balance scale in favor of the applicant. He said granting the variances would not diminish the values of surrounding properties because he did not believe that the businesses in the lower elevation would be negatively impacted and there would be no impact on neighboring properties because the applicant's property was on the opposite side of the residential properties that could be negatively impacted. He said the hardship was that the current situation was set up by something that was imposed on the property circa 1940 when a public roadway was built and the property was reorientated and elements on it were moved around. He said the applicant wasn't creating any worse of an encroachment than what was currently there. He said the property was somewhat more elevated in height but not so much that it would be detrimental to becoming a reasonable use of the property. He said the elevation change between it and the bypass created a situation such that a more normal business use of the property was unlikely and not logical for the way the property was accessed through Hunter Hill Avenue. With those hardships, he said he believed that it was a reasonable use and recommended approval.

Mr. Mattson concurred and said it was interesting that instead of the lot being an unusual shape, it's an unusual zoning situation that led to the hardship. Vice-Chair Margeson said normally the number of dwellings on a lot was something she took seriously. She said the City was usually very intentional about that, but in this instance it was hard to square because the zoning seemed a bit off, and if the zoning was a bit off, she generally gave the benefit to the applicant. It was further discussed.

*The motion **passed** by unanimous vote, 7-0.*

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting adjourned at 9:42 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

II. OLD BUSINESS

- A. The request to rehear the request of **Karen and Rick Rosania (Owners)**, of the December 20, 2022 decision of the Zoning Board of Adjustment for property located at **32 Boss Avenue**. Said property is located on Assessor Map 153 Lot 5 and lies within the Single Residence B (SRB) District. (LU-22-217)

Project Background

On Tuesday, December 20, 2022 the Board of Adjustment considered the request of Karen and Rick Rosania (Owners), for property located at 32 Boss Avenue whereas relief is needed to allow an art studio for classes up to 8 people which requires the following: 1) A Variance from Section 10.440 to allow an art studio where the use is not permitted. A motion to deny the application because the spirit of the ordinance was not observed and literal enforcement of the provisions of the Ordinance would not result in unnecessary hardship passed, therefore the petition was denied.

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, a hearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

"When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan." Fisher v. Dover, 120 N.H. 187, (1980).

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment
FROM: Karen Rosania
DATE: January 20, 2023
RE: Request for Rehearing
Karen and Rick Rosania, Owners/Applicants
Property Location: 32 Boss Ave Portsmouth, NH. 03801
Assessor Map 153 Lot 5 and Single Residence B (SRB) district

Dear Chair Eldridge and Zoning Board Members:

I am respectfully requesting a rehearing of my application number LU-22-217 (to allow children and adults to partake in small art classes) for the following reasons:

- I am eliminating any concerns of street congestion by **only** utilizing my driveway for parking. I have included new, detailed pictures with measurements of parking spaces in our driveway (see attached Exhibit A)
- I am willing to reduce my proposed hours for art classes and number of students per class. Proposed number of classes per day 1-2.
 - Current proposed hours for art classes: M-F 11-5pm, 1-2 evenings a week 6-9pm and one day on the weekend 11-1pm.
 - Current proposed number of students per class: 7 (including me would be 8)
- One of the Relevant Facts outlined in my Zoning Board of Adjustment Denial letter dated 1/3/23 states: No businesses are allowed in the district or most adjacent district – however, several other types of businesses are **currently permitted by right (P) or Special Exception (S) in zoning SRB that have equal or greater intensity vs. my proposed small art classes** including: Group Day Care facility including Private preschool and kindergarten (S), Family Day care Facility (P), Assisted Living Home (S), Residential Care Facility - 5 or fewer residents (S), Religious Place of Assembly (S), Historic Preservation building (S), Recreational Uses Religious, sectarian or private non-profit recreational use (S). Many of these businesses have regular art instruction as part of their daily operations. (see attached Exhibit B – for brevity, only relevant sections included) Other businesses have operated successfully in my immediate neighborhood for many years offering classes to the community.
Unnecessary hardship exists for my art studio because **other like businesses are allowed by right or special exception to operate in SRB zoning.**
My initial application was seeking a Special Exception. Portsmouth Zoning city staff changed to Variance prior to 12/20/22 hearing.
- The most current *Portsmouth Cultural Plan* (a product of the Mayor's Blue Ribbon Committee on the Arts and Culture) references **zoning barriers for artists** and proposed solutions. "Portsmouth has experienced an exodus of its artisans and musicians. This exodus was largely due to rising rents and general lack of affordable living spaces". Some of the proposed solutions include: "Examine zoning regulations impacting the arts

and develop a pro-culture approach to land and building use". "Address zoning issues and building codes that are barriers for artists, including limitations on combining living and working space, need for higher density and smaller living spaces, and provision for signage in areas zoned residential." (See attached Exhibit C – for brevity only relevant sections included). I believe by denying my application, these issues are only being perpetuated.



CITY OF PORTSMOUTH

Planning Department
1 Junkins Avenue
Portsmouth, New
Hampshire 03801
(603) 610-7216

ZONING BOARD OF ADJUSTMENT

January 3, 2023

Karen and Rick Rosania
32 Boss Avenue
Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 32 Boss Avenue (LU-22-217)

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **December 20, 2022**, considered your application for allowing an art studio for classes up to 8 people which requires the following: 1) A Variance from Section 10.440 to allow an art studio where the use is not permitted. Said property is shown on Assessor Map 153 Lot 5 and lies within the Single Residence B (SRB) District. As a result of said consideration, the Board voted to **deny** the petition because the spirit of the ordinance was not observed and literal enforcement of the provisions of the Ordinance would not result in an unnecessary hardship.

Use as an Art Studio is not an established use in the Zoning Ordinance and Commercial uses are not permitted in the SRB zoning district.

The Board's decision may be appealed up to thirty (30) days after the vote. Please contact the Planning Department for more details about the appeals process.

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

Beth Margeson, Acting Chair of the Zoning Board of Adjustment

cc:

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: December 20, 2022

Property Address: 32 Boss Avenue

Application #: LU-22-217

Decision: **Denied**

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

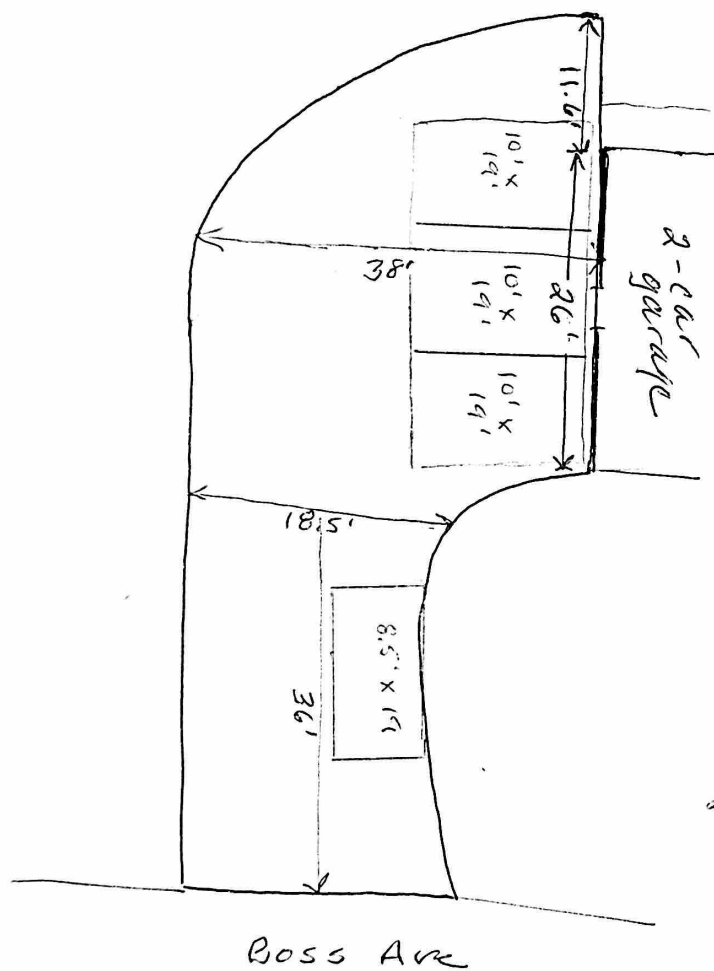
The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.		
10.233.22 Granting the variance would observe the spirit of the Ordinance.	NO	<ul style="list-style-type: none">• Art Studios are not recognized in the Zoning Ordinance.• No businesses are allowed in the district or most adjacent district.
10.233.23 Granting the variance would do substantial justice.		

10.233.24 Granting the variance would not diminish the values of surrounding properties.		
<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(a)The property has special Conditions that distinguish it from other properties in the area. AND (b)Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. OR Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.</p>	NO	<ul style="list-style-type: none"> The property does not have anything unique about it as opposed to anyone else's property in the same district and would qualify it to have a business use placed on it.

Stipulations
1.
2.
3.
4.

Exhibit A



32 Boss Ave

= proposed parking
4 spots in
driveway



Exhibit A



Sufficient room for another car to pass

Exhibit B

P = Permitted S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	W1	Supplemental Regulations
6.20 Medical offices and clinics (outpatient only)	N	N	N	N	N	S	S	S	P	P	P	P	P	N	P	N	N	
6.30 Clinics with inpatient care	N	N	N	N	N	N	N	N	N	S	S	N	S	N	S	N	N	
6.40 Ambulatory surgical center	N	N	N	N	N	N	N	N	N	S	S	N	S	N	S	N	N	
6.50 Substance abuse treatment facility	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
6.60 Psychiatric hospital for the criminally insane	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
7. Services, Other Than Health Care																		
7.10 Day Care																		
7.11 Family day care facility	P	P	P	N	N	P	P	P	N	N	P	P	N	N	N	N	N	10.824 (group day care facilities) 10.860 (hours of operation)
7.12 Group day care facility including private preschool and kindergarten	S	S	S	S	N	S	S	P	P	P	S	S	P	N	N	N	N	
7.20 Personal services	N	N	N	N	N	N	S	S	P	P	P	S	P	N	N	N	N	
7.30 Consumer services such as copy shop, bicycle repair, and pet grooming	N	N	N	N	N	N	S	S	P	P	P	S	P	N	N	N	N	
7.40 Trade, craft and general service establishments, such as shops for plumbers, electricians, painters, paper hangers, upholsterers, sign painters and printers	N	N	N	N	N	N	N	S	P	P	P	S	P	N	P	P	P	All storage of materials and equipment shall be located within a building

Exhibit B

P = Permitted S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	WI	Supplemental Regulations
1.62 To 3 or 4 dwelling units	N	N	S	S	N	P	P	P	S	N	N	N	N	N	N	N	N	
1.63 To 5 to 8 dwelling units	N	N	N	S	N	S	S	S	S	N	N	N	N	N	N	N	N	
1.64 To more than 8 dwelling units	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
1.70 Live/work unit	N	N	N	N	N	P	P	P	P	N	P	P	P	N	N	N	N	
1.80 Manufactured housing park	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N	N	N	10.816 (Manufactured Housing Park Dimensional Standards)
1.90 Planned unit development (PUD)																		10.720 (Planned Unit Developments)
1.91 Open space PUD	CU	CU	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
1.92 Residential density incentive PUD	N	N	CU	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
2. Institutional Residence or Care Facilities																		
2.10 Assisted living facility																		
2.11 Assisted living center	N	N	N	N	N	N	N	N	P	P	S	S	P	N	N	N	N	
2.12 Assisted living home	S	(S)	S	S	S	S	S	S	N	N	S	S	N	N	N	N	N	
2.20 Residential care facility																		
2.21 5 or fewer residents	S	(S)	S	S	S	S	S	S	N	N	S	S	S	N	N	N	N	
2.22 More than 5 residents	N	N	N	N	N	S	S	S	P	S	S	S	S	N	S	N	N	

Exhibit B

P = Permitted S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	W1	Supplemental Regulations
3. Educational, Religious, Charitable, Cultural and Public Uses																		
3.10 Place of assembly																		
3.11 Religious	S	(S)	S	N	N	S	S	S	S	S	S	S	S	N	N	N	N	
3.12 Other nonprofit	N	N	N	N	N	S	S	S	S	S	S	S	S	N	N	N	N	
3.20 School																		
3.21 Primary or secondary	N	N	N	N	N	S	S	P	P	P	S	S	P	P	N	N	N	
3.30 Post-secondary	N	N	N	N	N	S	S	P	P	P	S	S	P	N	P	P	N	
3.30 Historic preservation building	S	(S)	S	S	S	P	P	P	P	P	P	P	P	N	P	N	N	10.821 (Historic Preservation Buildings and Museums)
3.40 Museum	N	N	N	N	N	P	P	N	P	P	S	S	P	N	P	N	N	10.821 (Historic Preservation Buildings and Museums)
3.50 Performance facility																		
3.51 Indoor performance facility																		10.592 (location)
3.511 Occupancy up to 500 persons	N	N	N	N	N	N	N	N	P	P	S	S	S	N	N	N	N	10.860 (hours of operation)
3.512 Occupancy more than 500	N	N	N	N	N	N	N	N	S	P	N	N	N	N	N	N	N	
3.52 Outdoor performance facility																		10.592 (location)
3.521 Occupancy up to 500 persons	N	N	N	N	N	N	N	N	S	S	S	S	N	N	N	N	N	10.822 (yards)
3.522 Occupancy more than 500	N	N	N	N	N	N	N	N	S	S	N	N	N	N	N	N	N	10.860 (hours of operation)

Exhibit B

P = Permitted S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	WI	Supplemental Regulations
3.60 Cemetery	S	S	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
3.70 Club, fraternal or service organization	N	N	N	N	N	N	S	S	P	S	S	S	S	N	N	N	N	
3.80 Municipally operated park and related activities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	For other municipal uses see Section 10.460 (Municipal districts)
4. Recreational Uses																		
4.10 Religious, sectarian or private non-profit recreational use	N	(S)	N	N	N	S	S	N	P	P	S	S	P	N	N	N	N	
4.20 Cinema or similar indoor amusement use with no live performance	N	N	N	N	N	N	N	N	P	P	S	S	P	N	N	N	N	10.825 (noise) 10.860 (hours of operation)
4.30 Indoor recreation use, such as bowling alley or arcade	N	N	N	N	N	N	N	N	P	P	S	S	P	N	N	N	N	10.825 (noise) 10.860 (hours of operation)
4.40 Health club, yoga studio, martial arts school, or similar use																		
4.41 Up to 2,000 sq. ft. GFA*	N	N	N	N	N	S	S	P	P	P	P	P	P	N	N	S	N	
4.42 More than 2,000 sq. ft. GFA	N	N	N	N	N	N	N	N	S	P	S	S	S	N	N	S	N	
4.50 Outdoor recreation use	N	N	N	N	N	N	N	N	N	S	P	P	N	N	N	N	N	10.592 (location) 10.860 (hours of operation)
4.60 Amusement park, water park or theme park	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	

*GFA = gross floor area.

As Amended Through January 11, 2021

4-10

Exhibit C

PORTSMOUTH, NEW HAMPSHIRE CULTURAL PLAN

A PRODUCT OF THE MAYOR'S BLUE RIBBON
COMMITTEE ON ARTS AND CULTURE

Approved by City Council, December 2001

Adopted into the Portsmouth City Master Plan, January 2002

Report Published, May 2002

Funding provided by Greater Piscataqua Community Foundation

Exhibit C

began the process of quantifying just how important arts and culture are to the City. The Americans for the Arts surveys were handed out to audience members of various concerts, plays, and other cultural events during the past year. This information will eventually be used to compile what will amount to an economic portrait: how much do the arts contribute to the fiscal health of the City? This information will be a useful tool in aiding the city toward its cultural and preservation goals.

During the time the Committee was engaged in its work, the economy of the nation, region, and state was strong, but, as the group's task was nearing completion, showed signs of faltering. The Committee was also cognizant of the fact that Portsmouth, while seeing the number of artistic and cultural productions and events remain virtually unchanged throughout the two-year existence of the group, experienced an exodus of its artisans and musicians. This exodus was largely due to rising rents and general lack of affordable living spaces.

The Committee was conscious of its duty to reverse the loss of artistic talent, and to maintain the places where artists are able to ply their craft, i.e., working space for rehearsals, gallery space, and studios.

It is in this context that the Committee wishes to formally recognize the continued commitment of both City government and the ongoing efforts of City residents to maintain a cultural life that is exciting, healthy and highly original.

And it is the hope of the Committee, with the following section added to the City's Master Plan as a guide, that the City continues on as a vibrant, diversified City, a City teeming with talent and cultural life; and a place with identifiable neighborhoods, all of which add to the distinct, rich flavor of Portsmouth.

The Mayor's Blue Ribbon Committee
on Arts and Culture
December 2001

IDENTIFY AND PRESERVE BUILDINGS AND OPEN SPACES CONTRIBUTING TO THE UNIQUE CHARACTER AND CULTURAL ASSETS OF PORTSMOUTH

Portsmouth's character and appeal depend, in large part, on the city's architecture and landscape. Past preservation efforts have spawned a tourism industry that includes tours of historic homes and sites on the Portsmouth Black Heritage Trail and the Portsmouth Harbour Trail, walks through local burial grounds, lectures, cruises on Portsmouth Harbor, and the establishment of the 40-acre outdoor history museum, Strawberry Banke.

The need to preserve buildings and open spaces received the most votes in an arts survey of Portsmouth citizens conducted as part of the cultural planning process. And, in the cultural planning focus groups, this goal was consistently the topic of great concern. Much of the concern is on the fate of publicly-owned buildings. Other comments noted the need to improve awareness of the cultural and economic benefits derived from Portsmouth's historic architecture and the preservation of the City's open spaces. Still others believed there was a need to review the City's regulations and policies within the context of arts, promotion, and historic and open space preservation. The interest shown by citizens in historic preservation suggests that there is now an opportunity to broaden the involvement of organizations and residents in decision making regarding city buildings, neighborhoods, streetscape improvements, and regulatory changes.

Engage the community in preservation and cultural issues

- Inventory buildings and open spaces that define the unique character and culture of Portsmouth.
- Leverage funds for preservation or acquisition of buildings and open spaces using grants and other sources, e.g., NH Land and Community Heritage Investment Program, SOS!, Land and Water Conservation Funds (LAWCON), Community Development Block Grants.
- Develop training programs on preservation and make them available to all people involved in local decision making, such as members of local boards and neighborhood groups.
- Publish information about the location of public art and cemeteries.
- Create and promote the use of non-traditional performing spaces.
- Create a task force to identify new spaces for public art - both permanent and temporary - and develop criteria for its creation, funding, and selection.
- Nominate eligible sites for the National Register of Historic Places.
- Explore the designation of a National Park district similar to that of Salem, MA and Lowell, MA.

- Provide opportunities to create neighborhood overlay districts that will preserve community character.
- Inventory and preserve the community's visual/photographic heritage.
- Collaborate with cultural organizations to design standardized signage and to develop a "way-finding" system to locate cultural venues and points of interest in the city. Support with an easy-to-read map.

Commit to preserve the City's cultural assets

- Examine zoning regulations impacting the arts and develop a pro-culture approach to land and building use.
- Hire a municipal preservation planner.
- Provide incentives to developers for allowing public access to property along the waterfront and property with a scenic or culturally significant view.
- Fund and build a Riverwalk along the Piscataqua River behind Bow Street. Link it to the Portsmouth Harbour Trail and Prescott Park.
- Establish a revolving loan fund with program guidelines for owners to preserve their property. Update loan eligibility criteria to reflect evolving historic significance.
- Continue the municipal practice of not taxing nonprofit cultural entities.

EXPAND AND SUPPORT SPACES FOR CULTURAL ACTIVITIES AND EVENTS, INCLUDING AFFORDABLE SPACE FOR ARTISTS, AND VENUES AND SPACE FOR PERFORMANCES, EXHIBITIONS, MEETINGS, STORAGE, REHEARSAL, AND EDUCATION

The severe shortage of affordable space in Portsmouth is the greatest challenge facing artists and cultural organizations. Focus group participants were concerned about the ability of individual artists and cultural organizations to maintain their places in Portsmouth. Most existing facilities are operating at, or near their capacity, yet the demand for additional activities is growing. The high rental and real estate purchase prices are limiting the growth of cultural entities and, in some cases, resulting in an exodus to more affordable space outside the City. In order for the cultural community to continue to develop and for Portsmouth to maintain the economic vitality derived from this sector of the economy, we need to think creatively about the opportunities available in the community for cultural development and expansion.

We propose learning from and building on existing public-private partnerships that have provided creative space solutions, such as the Player's Ring, Children's Museum, and Ballet New England's use of the Connie Bean Center. The City's arts agency will create an inventory of potentially usable spaces.

Create new and support existing partnerships to develop space for cultural uses

- Using the City's consolidated planning process, create neighborhood arts centers that serve the needs of specific areas of the City, similar to the approach to parks and recreational facilities; an example would be the Rock Street Park facility.
- Provide incentives for the business community, schools, and the nonprofit community (arts and non-arts) to provide meeting, display, performance, and storage spaces to the cultural community and young artists as a donation or at low cost.
- Encourage permanent and temporary cultural activities in natural settings; examples could be an outdoor sculpture park at the Pease Tradeport or an arts center at Creek Farm.

Extend public properties for cultural uses

- Create a centralized cultural arts center in a facility owned by the City; possibilities could be expansion of the Connie Bean Center or re-use of the library.

- Integrate cultural facilities into all new municipal building projects, such as the library, as well as renovations of existing spaces, such as the high school; examples include theatre space and visual arts studio space at the high school that could be used by the public or foundry space at City Yard.
- Enhance and increase the pedestrian-friendly areas in the City.
- Link transportation to cultural facilities, working with COAST and the school department.

Provide affordable living and working space for artists

- Address zoning issues and building codes that are barriers for artists, including limitations on combining living and working space, need for higher density and smaller living spaces, and provision of signage in areas zoned residential. *
- Address housing for artists, using appropriate funds and partnerships, including working with Portsmouth Housing Authority to provide subsidies.

II. OLD BUSINESS

- B. The request for reconsideration of rehearing request of **Jeffrey M. and Melissa Foy (Owners)**, of the November 15, 2022 decision of the Zoning Board of Adjustment for property located at **67 Ridges Court**. Said property is located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District. (LU-22-199)

Project Background

On Tuesday, November 15, 2022, the Board considered the application of Jeffery M. and Melissa Foy (owners) for property located at 67 Ridges Court whereas relief is needed for construction of a 518 square foot garage addition which requires the following: 1) A Variance from Section 10.521 to allow a 15.5 foot front yard where 19 feet is required per Section 10.516.10. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. A motion to determine that the petition does not fall under Fisher v. Dover failed, therefore the request was not heard.

On Tuesday, January 17, the Board considered the request of Jeffery M. and Melissa Foy (owners) for property located at 67 Ridges Court to rehear the request considered by the Board at the November 15, 2022 meeting. A motion to deny the request of rehearing because the material changes would not have altered the Board's original decision, or their second decision as all the objections that the Board found in the application were still in play and the Board did not error in making its decision passed. Therefore the request was denied.

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, a hearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

"When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened,

and an undue burden would be placed on property owners seeking to uphold the zoning plan.” Fisher v. Dover, 120 N.H. 187, (1980).

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801
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January 31, 2023

HAND DELIVERED & VIA EMAIL

Phyllis Eldridge, Chair
Portsmouth Zoning Board of Adjustment ("ZBA")
1 Junkins Ave
Portsmouth, NH 03801

Re: Jeffrey and Melissa Foy
67 Ridges Ct.
Tax Map 207 Lot 59
LU-22-199
SR B/Wetland Conservation District

Dear Ms. Eldridge and Zoning Board Members:

On behalf of Jeff and Melissa Foy ("Foy") please accept this letter as a request for reconsideration of the January 17, 2022 vote by the ZBA denying 4-3 our Request For Rehearing of the earlier denial of a revised zoning application, considered by the ZBA and denied on November 15, 2022.

I. EXHIBITS

1. 8/16/22 ZBA Meeting Minutes.
2. 11/15/22 ZBA Meeting Minutes.
3. 01/17/23 ZBA Action Sheet.¹

II. HISTORY/REQUEST FOR RECONSIDERATION

Briefly, the history of this matter is that Foy, through the undersigned, appeared before the ZBA on August 16, 2022 seeking relief for an addition consisting of two garage bays with

¹ Minutes are not yet online.

DANIEL C. HOEFLE	R. PETER TAYLOR	GREGORY D. ROBBINS	STEPHANIE J. JOHNSON
R. TIMOTHY PHOENIX	ALEC L. MCEACHERN	PETER V. DOYLE	OF COUNSEL:
LAWRENCE B. GORMLEY	KEVIN M. BAUM	MONICA F. KIESER	SAMUEL R. REID
STEPHEN H. ROBERTS	JACOB J.B. MARVELLEY	DUNCAN A. EDGAR	JOHN AHLGREN

living space above, requiring relief primarily from the front setback requirement. Proposed was 15.5 feet due to the location of the existing home, which does not meet the front setback requirement, where the required setback was then understood to be 30 feet, Member MacDonald recused himself. **(Exhibit 1)** The application was denied 5-0 *id.* Rather than seeking a rehearing or appealing that decision, Foy redesigned the project, proposing a much smaller addition, eliminating one of the garage bays and reflecting reduced relief due to the discovery that based upon the average setbacks of nearby homes, the setback required was 19 feet rather than 30 feet. *Id.*

On November 15, 2022, the ZBA considered the reduced-scope project. Member MacDonald again recused himself. **(Exhibit 2)** The ZBA first considered Fisher v. Dover. Member Rossi moved that the petition does not fall under Fisher v. Dover and that it be heard. The motion failed, with 2 votes in favor (Rossi, Mattson) and 3 votes against (Mannle, Lee, Eldridge).

Foy submitted a request for rehearing on December 14, 2022, considered by the ZBA on January 17, 2023. After considering the December 14, 2022 request for rehearing, which upon information and belief faced no opposition/objection from abutters or neighbors, Member Mannle moved to deny the rehearing. **(Exhibit 3)** After discussion, the motion passed, with four members (Mannle, MacDonald, Margeson, Eldridge) supporting the motion to deny, and three members (Rheaume, Rossi, Mattson) voting against the motion to deny after having expressed reasons that the request for rehearing should be granted.

The question we respectfully submit is the propriety of member MacDonald voting on the Request for Rehearing. Member MacDonald, on information and belief, lives at 24 Ball Street. He had recused himself from consideration/voting on both the original ZBA application for the larger, two garage bay addition, and the smaller one garage bay addition.

We respectfully submit that if member MacDonald recused himself from voting on the merits of the two variance applications, then, unless there was a change of circumstances rendering the recusal moot, in which case the change should have been explained, member MacDonald should have recused himself from voting on the request for rehearing. Thus, member

MacDonald's vote should not be counted. Pursuant to Portsmouth Board of Adjustment Rules and Regulations Section VI.5:

Granting a request for rehearing of a Variance or Special Exception requires a majority vote of members present and voting or in the case of a tie vote three (3) affirmative votes shall be required. (emphasis added)

In the instant case, elimination of member MacDonald's vote to deny rehearing results in a 3-3 tie, in which case rehearing is deemed granted. We respectfully request that the ZBA so find.

Respectfully submitted,



R. Timothy Phoenix

RTP/msw
Encl.

cc: Client

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

August 16, 2022

MEMBERS PRESENT: Arthur Parrott, Chair; Jim Lee, Vice Chair; Beth Margeson; Paul Mannle; Phyllis Eldridge; David MacDonald

MEMBERS EXCUSED: Thomas Rossi

ALSO PRESENT: Peter Stith, Planning Department

Chairman Parrott called the meeting to order at 7:00 p.m.

~~I. APPROVAL OF MINUTES~~

A) Approval of the minutes of the meeting of July 19, 2022.

The following amendments to the minutes were requested by Ms. Margeson:

On page 2, first paragraph: "Ms. Margeson said the abutter Pike Industries submitted an option for rehearing that was very comprehensive." The word 'option' was changed to 'motion'. On page 4, first paragraph after Discussion of the Board: "She said the fact that the building was in the District was an extra purpose when the board entertained a variance." The word District was changed to Historic District, and the phrase 'when the board entertained a variance' was changed to 'that the board needed to consider when it entertained a variance.'

Mr. MacDonald moved to **approve** the minutes as amended, and Vice-Chair Lee seconded. The motion **passed** by unanimous vote, 5-0.

II. OLD BUSINESS

- A. POSTPONED TO SEPTEMBER** The request of **Joel St. Jean and Mariele Chambers (Owners)**, for property located at **108 Burkitt Street** whereas relief is needed to demolish existing garage and construct new 13' x 30' garage which requires the following: 1) A Variance from Section 10.573.20 to allow a 1 foot left side yard where 10 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 159 Lot 30 and

~~lies within the General Residence A (GRA) District. (LU-22-89) POSTPONED TO
SEPTEMBER~~

DECISION OF THE BOARD

Mr. Mannle moved to **postpone** the petition to the September meeting, seconded by Vice-Chair Lee. The motion **passed** by unanimous vote, 5-0.

~~Mr. Mannle said postponement of a petition was a common request and he had no problem postponing it to the September meeting. Vice-Chair Lee concurred.~~

Mr. MacDonald recused himself from the following petition. The applicant said he would proceed even though there were only five voting board members.

- B.** The request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed to construct a 718 square foot garage addition with living space and deck above which requires the following: 1) A Variance from Section 10.521 to allow a 15.5' front yard where 30' is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 207 Lot 59 and is located within the single residence B (SRB) District. (LU-22-139)

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant and introduced his team, project engineer John Chagnon, realtor Robin Valeri, owners Melissa and Jeff Foss, and property appraiser Peter Stanhope (via Zoom). He reviewed the proposal and the criteria in detail. In response to Ms. Margeson's questions, Attorney Phoenix said 100 percent of the project was within the tidal buffer zone and a very small corner of the house was also in the buffer zone.

Realtor Robin Valeri noted that one of the opposing neighbors said their property would lose over a million dollars in value but said she did an amortization calculation that disproved it. She said just because neighbors could see a property owner's water view didn't mean they had a right to that property view. She said the applicant paid \$26,000 in yearly taxes whereas the neighbor paid \$11,000. She said there was no market evidence to suggest that a partial loss of water view would result in a huge diminution of value. She noted that the neighbors could walk to the beach.

Ms. Margeson asked if the dock was part of the beach. Mr. Chagnon agreed, noting that it was a public beach. Vice-Chair Lee said there was a similar situation involving a view a few years ago, and he had contacted an appraisal expert who opined that the value of a view was between 5-30 percent of the property's value. Ms. Valeri said it would just be a partial loss of view. Ms. Margeson said the subject lot had a water view and was taxed for it, and she asked about Lots 62 and 63 across the street. Ms. Valeri said their property taxes were about \$11,000 but didn't know

if those taxes included a water view, and that neither lot could be marketed with water view easements although they could be taxed with water views.

Peter Stanhope (via Zoom) said he was a certified general appraiser in New Hampshire. He explained that the views extended all the way to the end of Ridge Court, so the project would only result in a partial loss of view. He said he interviewed several realtors, appraisers, and municipal assessors about whether an unowned, uneased view contributed value to a property and was told that it was between 1-30 percent. He explained the definition of market value and reviewed different types of views that included partial, panoramic, and territorial views. He said the issue was a territorial view and the project would remove a very modest part of that greater view. He concluded that there would be no diminution of value in surrounding properties if the variances were granted since there would be no loss of view. He said he found no evidence that the neighbor's 2.3 million-dollar property would have a probability of a million dollar loss and assumed that the realtor wasn't aware that there was a view preserved.

Property owner Jeff Foy said he researched assessed land values in the neighborhood as to whether the current tax assessment was reflective of the view. He said the neighbor Cathy Thomson's assessment for her land was the lowest assessment on a square-footage basis for land for any property on Ridges Court. He said there were much smaller lots on the street and there wasn't a current view assessment going on. Ms. Margeson asked if there was an actual verification of a water view tax assessment on those two properties, and Mr. Foy said he didn't see one. Mr. Mannle asked if Mr. Foy went online or spoke to the city's tax assessor. Mr. Foy said he looked at the figures online and that they were not reflective of anything substantial.

Mr. Parrott opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Attorney Darcy Peyser said she was present on behalf of Kathleen Thomson of 56 Ridges Court, who objected to the project because it failed most of the criteria, especially the hardship one. She said the structure would have a huge detrimental effect on Ms. Thomson's property and that it could be moved back so that it complied with the 30 percent buffer setback. Vice-Chair Lee asked if there would be a different view if one walked ten feet down the street. Attorney Peyser agreed there would be more of the view of Little Harbor.

Robin Hackett of 46 Ridges Court said she lived across the street from the applicant. She read the letter she submitted to the board saying how the addition would negatively impact the neighbors' enjoyment of their properties and water views. She said there wasn't a hardship for adding another porch and living space on top of the garage. She said the property couldn't support that and also maintain environmentally protected setbacks. She said the addition would increase neighboring properties for sale purposes and property taxes would rise.

Mark Hepp of 28 Ridges Court said the variance request would place a 30' high, 3-story building right in the middle of the setback and would not only affect the water view but also the birds and nature. He said the applicant could find another creative way to build an addition without encroaching on the setback. He distributed a drawing that was submitted by the applicant that he marked up to show how it would look if the setbacks were complied with.

Kathleen Thomson of 56 Ridges Court said the project would adversely affect her property value and water views as well as those of nearby property owners. She said it would cause a hardship and significant changes to the neighborhood's quality of life.

Marta Rubinek of 40 Ridges Court said the project would detract from the most-affected neighbors' beautiful views and quality of life and hoped their little corner would be protected.

Nancy Andrews of 161 Sagamore Avenue said that, as a member of the general public, she was harmed when a south end property in a quaint community was having huge pieces of buildings added very close to the street so that the street would soon look like the downtown hotel area.

Warren Wilson of 40 Ridges Court said the addition would be out of scale for the area.

Mike Rainboth said he lived at the end of Ridges Court and had enjoyed the views from Mr. Thomson's deck many nights. He said the addition would block that view.

Dylan Hackett of 46 Ridges Court said the view was a nice one to have.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Owner Jeff Foy stated that a few inaccurate things were said by some of the opposition. He said the addition would return the structure to a garage and would not block 100 percent of anyone's view. He said he actually scaled down his original larger plan to fit entirely on the existing asphalt area. He said the 30' setback was on his lawn and not on the side of the road, and he had worked with that as much as he could. He said the addition would be back from the current house and further from the street than any of the homes that were supposedly impacted.

Attorney Phoenix said the marked-up plan handed in by Mr. Hepp was originally prepared by Ambit engineer John Chagnon and that it was improper for Mr. Hepp to mark up the plan and use it without Ambit's permission, so he asked that it not be taken into evidence. He said the front yard setback purposes did not intend to protect someone's views past their properties but intended to protect air and light. He said some of the existing views would be limited by the project but there would still be views. He said Mr. Stanhope said there would be no diminution of property values and that the concerns about environmental impacts were not within the board's purview. He said the applicant met all the requirements for the variance request and there was no demonstration that there would be any loss of value for surrounding neighbors. Evan Mullen of 82 Austin Street said he was a building designer and the code of ethics for architects indicated that they had an obligation to the public and environment. He asked that the applicant come up with better alternatives.

No one else spoke, and Chairman Parrott closed the public hearing.

DISCUSSION OF THE BOARD

Ms. Eldridge said she could not support the variance request because she didn't see a hardship. She said the addition could be built anywhere on the property. Mr. Mannle said the addition was proposed to be fully in the wetlands buffer and if the setback were complied with, it wouldn't need a variance. He said if the Conservation Commission granted approval for a difference of another 10 or 15 feet, he didn't see how it would make a difference because the project was fully in the wetlands buffer. Vice-Chair Lee said back in the 1960s when he was stationed in the Air Force in Florida, one could drive along the miles of dunes and the views of the Gulf of Mexico were the territorial views, but now there were 10-story condos which were the new territorial view. Ms. Margeson said the board did not have any jurisdiction over the views and were tasked with the applicant's request for a front yard setback. She said she shared everyone's concern about building within the wetland buffer and that it was clearly delineated in the ordinance under the environmental protection standards, but the board could not take that into consideration. She said if the tidal buffer zone were pushing the project closer to the main building, she'd have a different view of it, but anything built on the property had to be built within the tidal buffer zone, so she couldn't say it was really a hardship.

DECISION OF THE BOARD

Ms. Eldridge moved to **deny** the request for variances, seconded by Mr. Mannle.

Ms. Eldridge said the hardship just wasn't there. She said the applicant stated that they needed to avoid the buffer zone but were not avoiding it, and they were within the setback where they could be anywhere else within the buffer zone. Mr. Mannle concurred. He said the property was problematic as far as the wetland buffer and the applicant knew the hardship going in yet was asking the board to grant something that was fully in the buffer when it could be moved back and eliminate all the emotional responses from the neighbors.

Chairman Parrott said he wrestled with the hardship aspect, especially the conditions of the property that distinguished it from others in the area, because there were other properties in the area that were similarly situated. He said the structure was already in the setback so it wasn't a unique feature, and there were opportunities to deal with the neighbors' concerns.

The motion **passed** by unanimous vote, 5-0.

III. — NEW BUSINESS —

- A. **REQUEST TO POSTPONE** The request of **Jeffrey C. Christensen (Attorney for the Appellants)**, for property located at **225 Banfield Road** for a rehearing of the May 24, ~~2022~~ decision of the Zoning Board of Adjustment's granting of a request for variances to

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

November 15, 2022

MEMBERS PRESENT: Jim Lee, Vice Chair (via Zoom); David MacDonald; Paul Mannle; Phyllis Eldridge; Thomas Rossi; Jeffrey Mattson, Alternate

MEMBERS EXCUSED: Beth Margeson

ALSO PRESENT: Peter Stith, Planning Department

Vice-Chair Lee was present via Zoom. Ms. Eldridge was Acting-Chair.

I. APPROVAL OF MINUTES

Approval of the minutes of the meetings of October 18, 2022 and October 25, 2022.

The October 18 minutes were **approved** as presented by unanimous vote, 6-0.

For the October 25 minutes, Mr. Rossi asked that the word 'provision' after the phrase 'does not provide' be deleted from the following motion on page 12 to read as follows:

Mr. Rossi **moved** that the board finds an error in the enforcement of the zoning ordinance in the July 15 decision of the Planning Board for the following reasons: the north end overlay incentive district does not extend into the 100-ft setback and therefore does not provide for the increased building lot coverage, size, square footage, and height.

The minutes were **approved** as amended by unanimous vote, 6-0.

Acting-Chair Eldridge asked the Board to elect a new Chair and Vice-Chair.

*Mr. Rossi moved to add the election of officers to the agenda, seconded by Mr. Mannle. The motion **passed** unanimously, 6-0.*

*Mr. Rossi moved to elect Vice-Chair Lee as Chairman and Ms. Margeson as Vice-Chair, seconded by Mr. Mannle. The motion **passed** unanimously, 6-0.*

II. OLD BUSINESS

- A. The request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for construction of a 518 square foot garage addition which requires the following: 1) A Variance from Section 10.521 to allow a 15.5 foot front yard where 19 feet is required per Section 10.516.10. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District. (LU-22-199)

Mr. MacDonald recused himself from the petition, which left five voting members. The applicant's representative said they would proceed.

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant, including the project team and applicants. He stated that they were previously denied by the Board and were now proposing a smaller project due to the concerns of the neighbors. He reviewed the Fisher v. Dover doctrine and explained why they met the requirements by removing one of the previously-proposed garages in addition to other changes.

Mr. Rossi asked if the front yard setback was always 15.5 feet. He noted that the thing that changed was the reference point of 19 ft vs. 30 ft, so he felt that had not really changed. Attorney Phoenix said the location of the front of the building has not changed, but the degree of the ask was different because they only needed 19 feet. He said the problem with 19 feet is that the back of the building would be pushed more into the wetland buffer, and the new building has to line up architecturally.

Mr. Rossi asked Mr. Stith if Fisher v. Dover required that the substantive change be impactful on the variance itself or if a major change in the project without changing the variance could be considered. Mr. Stith said the variance could be the same but it was the material change that mattered, and he didn't think the setback had to change for it to be different. It was further discussed. Mr. Mannle said all the reasons the application was denied before were still in place so it had not materially changed, and even though it was a small building, the setbacks had changed a bit. Chairman Lee agreed and said it was basically the same horse pulling a different buggy, so he did not think the application would be able to be heard. Mr. Rossi disagreed and said he felt it did pass the standard for Fisher v. Dover. He said the neighborhood's main concern previously had to do with the sight line to the waterfront and the impaired views, and the new proposal made a diligent and good-faith effort to address that concern, so he therefore believed it was a substantive difference in a material way that affects it fitting into the neighborhood. Mr. Mattson said he also wasn't at the previous meeting, but he felt that the broad definition of a garage is 'a garage is a garage', so that wouldn't be different, but applying it that broadly, he thought that no matter what addition was proposed, the Board would say that it was the same, so a two-car garage vs a one-car garage is a difference, even if it's still a garage.

DECISION OF THE BOARD

Mr. Rossi said the petition passed the Fisher v. Dover criteria of substantive change that would allow the Board to hear the new proposal.

*Mr. Rossi moved that the Board determine that the petition does not fall under Fisher v. Dover and that it be heard. Mr. Mattson seconded. The motion **failed** by a vote of 2-3, with Mr. Mannle, Chairman Lee, and Acting-Chair Eldridge voting in opposition.*

III. NEW BUSINESS

Mr. MacDonald resumed his voting seat.

- ~~A. The request of **Emily-Anne Boon (Applicant)** and **Jeanne L. Wescott Revocable Trust (Owner)**, for property located at **118 Maplewood Avenue, Unit C4** whereas relief is needed to allow a medical office which requires the following: 1) A Special Exception from Section 10.440, Use #6.20 to allow a medical office where the use is permitted by Special Exception. Said property is located on Assessor Map 124 Lot 5-C4 and lies within the Character District 4-L1 (CD4-L) and the Historic District. (LU-22-205)~~

SPEAKING TO THE PETITION

The applicant Doctor Emily-Anne Boon stated that she wanted to expand her medical office and would see patients only by appointment for medically aesthetic procedures. Her husband Drew Boon was also present. He reviewed the criteria for special exception and said they would be met.

Mr. Rossi asked if emergency vehicles would go in and out of the facility, and Doctor Boon said they would not. There were no further questions from the Board. Acting-Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Mannle moved to **grant** the special exception for the petition as presented, seconded by Mr. Rossi.*

Mr. Mannle said the petition met the standards in Section 10.232.21 of the ordinance for that particular use of a special exception. He referred to Section 10.232.22 and said there would be no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials. Referring to Section 10.232.23, he said the project would pose no detriment to property values in the vicinity or change in the essential character of any area including residential or

**BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

January 17, 2023

ACTION SHEET

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Paul Mannle; Thomas Rossi; David MacDonald; David Rheaume; Jeffrey Mattson, Alternate

MEMBERS EXCUSED:

ALSO PRESENT: Stefanie Casella, Planning Department

PLEASE NOTE: DUE TO THE LARGE VOLUME OF AGENDA ITEMS SCHEDULED FOR JANUARY 17, 2023, THE BOARD WILL BE VOTING TO POSTPONE CONSIDERATION OF NEW BUSINESS ITEMS E. THROUGH I. TO THE JANUARY 24, 2023 BOARD OF ADJUSTMENT MEETING.

The Board voted to split the agenda and hear New Business items E through I on Tuesday, January 24, 2023.

Motion: P. Mannle, D. Macdonald. Passed all in favor.

I. APPROVAL OF MINUTES

A. Approval of the December 20, 2022 minutes.

*The Board voted to **approve** the December Minutes as amended.*

II. OLD BUSINESS

A. Cherie Holmes and Yvonne Goldsberry - 45 Richmond Street request a 1-year extension to the variances granted on January 19, 2021. (LU-20-249)

*The Board voted to **grant** the 1-Year extension as requested.*

Motion: T. Rossi, J. Mattson. Passed by unanimous vote.

B. 67 Ridges Court - Request for Rehearing (LU-22-199)

*The Board voted to **deny** the request for a Rehearing because the material changes would not have altered the Board's original decision, or their second decision as all the objections that the Board found in the application were still in play and the Board did not error in making its decision.*

Motion: P. Mannle, B Margeson. Passed by a vote of 4-3, with Mr. Rheume, Mr. Rossi, and Mr. Mattson voting in opposition.

~~**C. REQUEST TO POSTPONE** The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. (LU-22-209) **REQUEST TO POSTPONE**~~

The Board voted to take Old Business item C. out of order.

Motion: D. Rheume, B. Margeson. Passed all in favor.

*The Board voted to grant the request to **postpone** consideration to the **March 21, 2023** Board of Adjustment meeting.*

Motion: P. Mannle, D. Macdonald. Passed 5-0 in favor, D. Rheume and T. Rossi recused from the vote.

D. The request of Nissley LLC (Owner), for property located at 915 Sagamore Avenue whereas relief is needed to demolish the existing building and construct new mixed-use building which requires the following: 1) A Variance from Section 10.440 to allow a mixed-use building where residential and office uses are not permitted. 2) A Variance from Section 10.1113.20 to allow parking to be located in the front yard and in front of the principal building. 3) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only one is allowed. Said property is located on Assessor Map 223 Lot 31 and lies within the Waterfront Business (WB) District. (LU-22-229)

*The Board voted to **postpone** to the **February 22, 2023** meeting.*

Motion: D. Rheume, J. Mattson. Passed by a vote of 4-2, Mr. Mannle and Vice-Chair Margeson voted in opposition, T. Rossi recused from the vote.

III. NEW BUSINESS

A. The request of Sarah M Gardent Revocable Trust (Owner), for property located at 47 Howard Street whereas relief is needed for the installation of a mechanical heat pump which

II. OLD BUSINESS

- C. **POSTPONED TO MARCH** The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. (LU-22-209) **POSTPONED TO MARCH**

Planning Department Comments

This item was postponed to the March 21, 2023 meeting. No action from the Board is required at this time.

II. OLD BUSINESS

- D. The request of **Nissley LLC (Owner)**, for property located at **915 Sagamore Avenue** whereas relief is needed to demolish the existing building and construct new mixed-use building which requires the following: 1) A Variance from Section 10.440 to allow a mixed-use building where residential and office uses are not permitted. 2) A Variance from Section 10.1113.20 to allow parking to be located in the front yard and in front of the principal building. 3) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only one is allowed. Said property is located on Assessor Map 223 Lot 31 and lies within the Waterfront Business (WB) District. (LU-22-229)

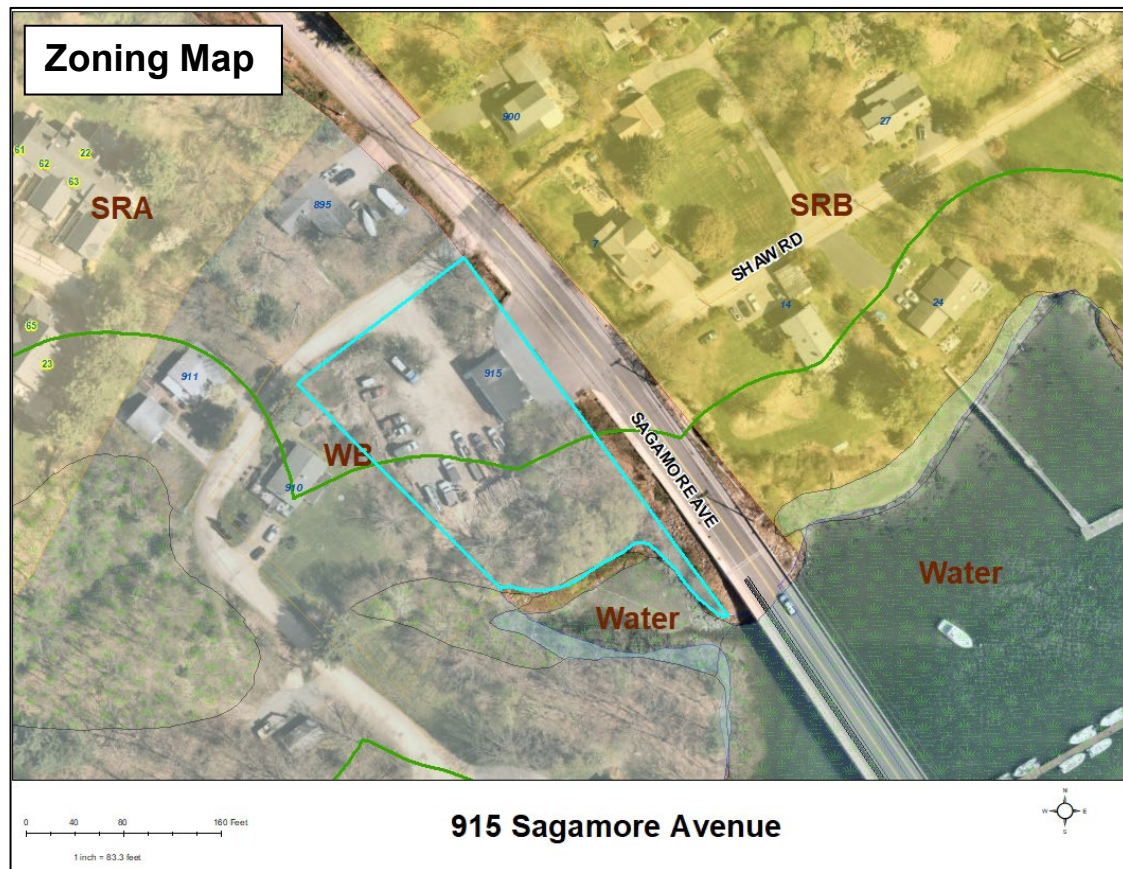
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Demo existing building	Construct mixed use building	Primarily water dependent uses
<u>Lot area (sq. ft.):</u>	44,431	44,431	20,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	3,702	NR min.
<u>Street Frontage (ft.):</u>	440	440	100 min.
<u>Lot depth (ft.):</u>	145	145	100 min.
<u>Front Yard (ft.):</u>	20	30	30 min.
<u>Left Yard (ft.):</u>	145	>100	30 min.
<u>Secondary Front Yard (ft.):</u>	74	30	30 min.
<u>Rear Yard (ft.):</u>	99	70	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	3.5	18	30 max.
<u>Open Space Coverage (%):</u>	>20	>20	20 min.
<u>Parking</u>		34	34 (shared parking)
<u>Estimated Age of Structure:</u>	1970	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Conservation Commission/Planning Board – Wetland CUP
- TAC/Planning Board – Site Review

Neighborhood Context



Previous Board of Adjustment Actions

September 19, 1995 – The Board voted to grant the request as presented and advertised.

1. Variance from Article II, Section 10-206(20) is requested to allow use of cellar space for fish processing (frozen west coast cod and haddock, fresh cod, haddock and flounder) and sale to local wholesale of fish and lobsters to local markets and distributed to NY and PA.

Planning Department Comments

Please reference the memo as provided in the meeting packet for procedural guidance from City staff.

The applicant is proposing to demolish the existing scuba shop and construct a three-story mixed use building consisting of office space and 12 residential units. The property is located in the Waterfront Business (WB) district where uses other than water dependent uses, are not permitted. The proposal includes parking in the front of the building and a second driveway, both of which need relief variances. Five out of the eight parcels zoned WB in this area contain residential uses. If the variances are granted, the project will need review by the Conservation Commission and the Technical Advisory Committee prior to going before the Planning Board for a Wetland CUP and Site Plan approval. If granted approval, staff recommends the Board consider the following stipulation:

- 1. The design and location may change as a result of Planning Board review and approval.**

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*
 - AND**
 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*
 - OR**
 - Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.



City of Portsmouth
Planning Department
1 Junkins Ave, 3rd Floor
Portsmouth, NH
(603)610-7216

Memorandum

To: Zoning Board of Adjustment
From: Stefanie Casella, Planner
Date: February 16, 2023
Re: Meeting procedure recommendations for continued applications

At the January 17, 2023 Zoning Board of Adjustment meeting, the Board voted to “table the application to the February 22, 2023 meeting” after closing the public hearing. Staff have applied the Rules of Order and interpreted this motion to take the same effect as a postponed application. The Board of Adjustment Rules and Regulations state the following in *Section VIII. Procedure for Public Hearings*:

4. If the public hearing is closed and the application is postponed for more information, the Board may vote to reopen the public hearing and may consider additional information from the public. If the public hearing is closed and the application is postponed for further discussion by the Board, no additional public comment, written or otherwise, will be considered by the Board.

The below guidance is provided subsequent to discussing the postponed case of 915 Sagamore with the City’s Legal team. The below options are possible ways for the Board of Adjustment to move forward given the concerns expressed to City staff and actions taken by the Board at the January 17, 2023 meeting.

1. Reopen the public hearing: To hear new information or evidence on the pending application, the Board could vote to reopen the hearing. Note the reopened public hearing would require a vote to suspend the rules and the hearing would be scheduled for a date certain in order to provide adequate notice to the public of the opportunity to speak.
2. Make a decision on the information presented at the January 17, 2023 meeting: If the Board does not wish to receive new information or evidence on the pending application, it should vote to approve, approve with stipulations, or deny application.
3. Deny without prejudice: NH RSA 674:33 VIII states the following, *“If a zoning board of adjustment determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension, the board may, in its discretion, deny the application without prejudice, in which case the applicant may submit a new application for the same or substantially similar request for relief.”* Should the Board act to deny without prejudice, it must make a finding that the application lacks sufficient information to take action.

BY: VIEWPOINT & HAND DELIVERY

November 21, 2022

City of Portsmouth
Attn: Peter Stith, Planner
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application of Nissley LLC
915 Sagamore Avenue, Tax Map 223, Lot 31**

Dear Peter,

Enclosed for submission to the ZBA for its December 20th meeting, please find the following materials relative to the proposed improvements for property located at 915 Sagamore Avenue.

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

A copy of the application submission is being delivered 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.

LANDOWNER LETTER OF AUTHORIZATION

Nissley LLC, record owner of property located at 915 Sagamore Avenue, Portsmouth, NH 03801, Tax Map 223, Lot 31 (the "Property"), hereby authorizes **Durbin Law Offices, PLLC** to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.



Sign Name

GINGRICH, JAY

Print Name (Member, Duly Authorized)

November 14, 2022

VARIANCE APPLICATION NARRATIVE

915 Sagamore Avenue
Tax 223, Lot 31
Portsmouth, NH 03801

Nissley LLC
(Owner / Applicant)

Introduction

Nissley LLC is the owner of property located at 915 Sagamore Avenue, identified on Portsmouth Tax Map 223 as Lot 31 (the "Property"). The Property is located in the Waterfront Business ("WB") Zoning District. The Property is 1.02 acres in size and has approximately 270' of street frontage on Sagamore Avenue. It is also accessed via a 25' wide unpaved right-of-way (ROW) off of Sagamore Avenue, thus it has two access points and parking areas. As a result of the recent improvements to Sagamore Avenue, the Property is now served by municipal water and sewer.

The Property has a significant grade drop from Sagamore Avenue from east to west and from north to south towards Sagamore Creek. The Property contains wetlands along the western boundary, of which an area of approximately 3,603 square feet has been disturbed. A vast majority of the Property is within the regulated buffer. The southern portion of the Property that drops down to Sagamore Creek contains ledge and is wooded with a mixture of deciduous and evergreen trees.

There is a two (2) floor building on the Property that previously served as the business location for Portsmouth Scuba and retains its branding on the front. There is a mooring and/or machine shop business located on the first floor of the building which is accessed in the rear from the dirt/gravel parking area off of the 25' ROW. The second floor of the building contains some type of forestry-related commercial business which is accessed from the front paved parking area directly off of Sagamore Avenue.

There are inoperable vehicles, equipment, lobster traps and debris scattered throughout the Property. The Property as a whole has been neglected and is an "eyesore" in its current condition.

As shown on the map attached as Exhibit A, the Property is zoned WB but is surrounded by a mixture of residential and commercial uses and zoning districts. To the north, east and west, many of the properties are zoned for residential uses. To the south, many of the properties are zoned for business or municipal (public) uses. The mixtures of uses and zoning districts that the Property is surrounded by is reflective of the character of the area which cannot be defined by one particular use.

Proposed Improvements

The Applicant is proposing a three-story mixed-use building on the Property. The building would contain office space on all three floors and twelve residential units of equal dimension (780 sf) in total (4 on each floor). Each residential unit would contain one bedroom and a bathroom. The majority of off-street parking spaces would be located under or to the rear of the proposed building. There would be two ADA compliant parking spaces for the front of the building accessed by Sagamore Avenue. As part of the proposed improvement of the Property, the junk vehicles, equipment and debris will be removed. The approximately 3,602 square foot area of disturbed wetlands would also be restored.

The exact use of the office space has yet to be determined, but it is anticipated that the Applicant will locate his business operations in at least a portion of the space. The combination of residential units and office space in one building lends itself naturally to a future live-work environment. While the Property is “waterfront” per se and has a decent amount of legal frontage on “Sagamore Creek”, the water is essentially inaccessible due to the topography of the land. It is anticipated that the southern, forested quadrant of the Property will remain much as it is seen now.

If the variance request being sought by the Applicant is approved, he will also need site plan and conditional use permit approvals from the Planning Board. The improvements proposed for the Property will undergo review and scrutiny from the Conservation Commission in addition to the Planning Board. The Applicant will also need DES approvals for impacts within the wetland and shoreland buffers. The plans for the Property remain conceptual given the various hurdles the Applicant must overcome to develop the land but provide a realistic vision of how the Property would be built upon and utilized in the future.

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 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.'" 152 N.H. 577. The Court observed that “[t]here 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.” 152 N.H. 577.

The Property is located within a very small pocket of properties zoned WB. The properties within this area are predominantly used for residential purposes. The properties in the adjacent zoning districts are used for a combination of residential and business-related purposes. The Property directly across Sagamore Creek is used for professional office space (Seacoast Mental Health). There is not one particular use that defines the area; however, it can be fairly said that it consists of a mixture of office, business, and residential uses. In the case of *Belanger v. Nashua*, the NH Supreme Court opined: “[w]hile we recognize the desired interrelationship between the establishment of a plan for community development and zoning, we believe that municipalities must also have their zoning ordinances reflect the current character of neighborhoods.” 121 N.H. 389 (1981).

It can be fairly argued that the Property and those that immediately surround it are improperly zoned given the mixture of surrounding residential and non-marine business uses. There are very few marine-related uses in the area. The use that is proposed for the Property is consistent with the uses being made of surrounding properties. The size of the residential units and their location will make them inherently affordable to rent in the context of the Portsmouth market. The combination of office space and apartments within the same building lends itself to a future live-work environment. It is in the public’s interest to see that more housing opportunities are created within the City of Portsmouth, particularly those that are more affordable in nature. Opportunities such as this in Portsmouth remain scarce.

The topography of the Property and its location makes it inconducive to permitted waterfront business uses. Sagamore Creek is essentially inaccessible from the upland portion of the Property. Without easy access to Sagamore Creek, and the ability to dock boats on the Property, it has limited “waterfront” value. The limited amount of usable upland area also limits the potential marine-related uses that could be made of the Property. Even if the Property could be easily used for a marine-related purpose, that does not mean that it would be compatible to the surrounding area, which is predominantly residential with some business uses mixed in.

The overall conditions of the Property will be improved and the proposed use will be consistent with the character of the area. Access and parking on the Property will be improved beyond what exists and will allow for safe ingress and egress for emergency vehicles. For the foregoing reasons, granting the variance will not alter the essential character of the neighborhood or threaten public health, safety or welfare.

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).

Because of how it is presently zoned, there are limited uses that can be made of the Property. Most of the uses that are permitted for the Property under the Ordinance are not feasible given its challenging topography and its inaccessibility to Sagamore Creek. Granting the variance relief sought would allow the owner to make reasonable use of the land at little to no cost to the public. In the present case, the equitable balancing test for determining whether substantial justice is done weighs in favor of the Applicant.

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

The Property is an eyesore in its existing condition. Any improvement and clean-up of the Property should only increase surrounding property values not diminish them. The building concept for the Property is tastefully designed and would be an aesthetic improvement over what exists.

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

The Property has several special conditions that distinguish it from surrounding properties, most notably its topography and location. The Property is “waterfront” by definition and land use designation, but not in reality. The reality is that Sagamore Creek cannot be easily accessed from the Property. To access Sagamore Creek, you have to descend a steep hill comprised primarily of trees and ledge. If the tide is low, you would then have to cross a mudflat to reach the water. This severely restricts what permitted uses can be made of the Property since it is located in the WB Zoning District. The Property itself is quite large when considered in the context of the surrounding area but is almost entirely encumbered by wetland buffers which further restricts what uses can be made of it. The Property is also located in an area that consists primarily of residential and business related uses, including office space. For these reasons, there is no fair and substantial relationship between the general purposes of the Ordinance and its application to the Property.

Finally, the proposed use is reasonable. As stated above, the use is consistent and compatible with the uses of surrounding properties.

Conclusion

In conclusion, the Applicant submits that it has demonstrated that its application meets the five (5) criteria for granting the variance requested. Accordingly, it respectfully requests the Board’s approval.

Dated: November 21, 2022

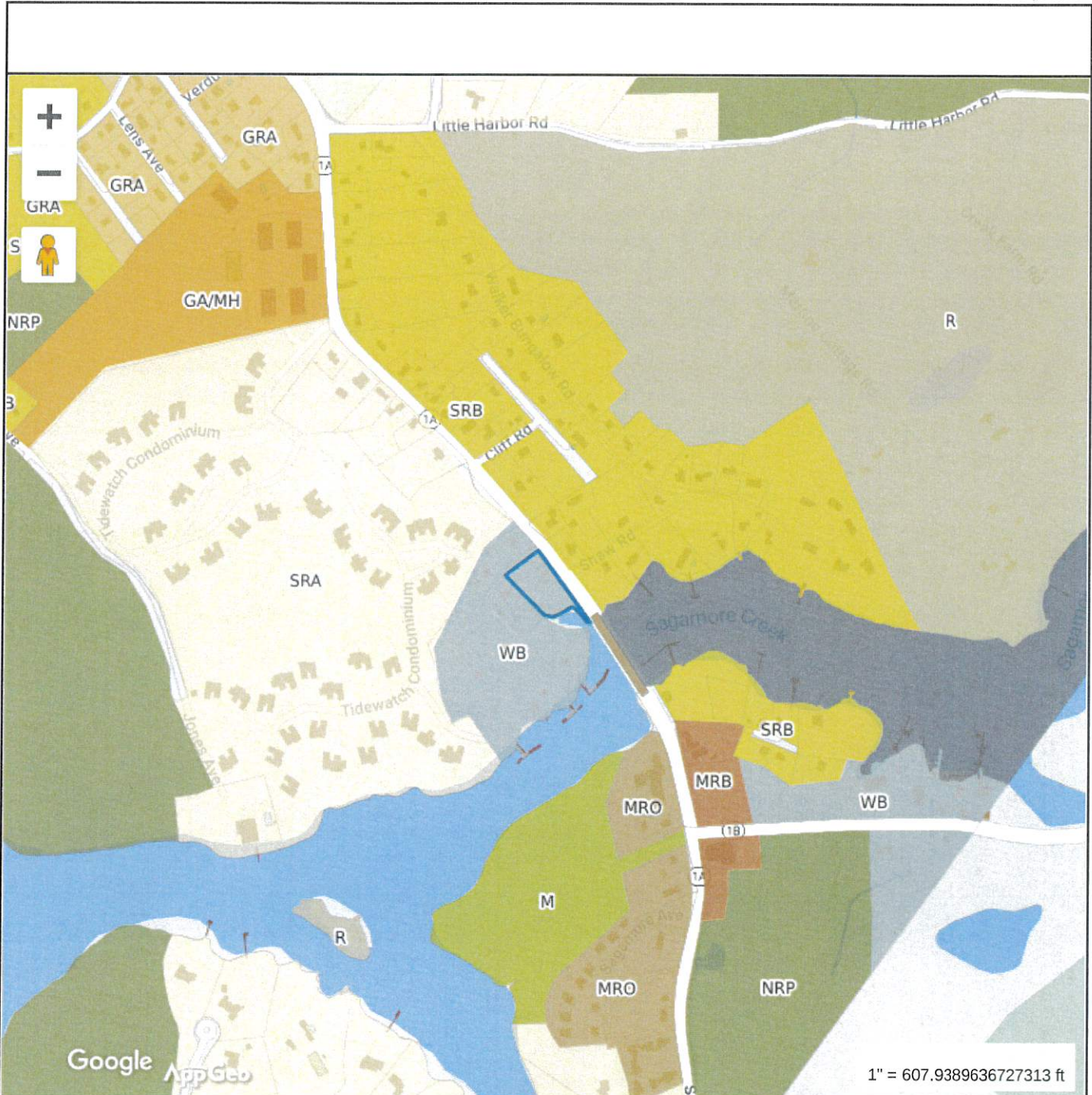
Respectfully Submitted,

Nissley LLC

By and Through,
Durbin Law Offices PLLC



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



Property Information

Property ID 0223-0031-0000
 Location 915 SAGAMORE AVE
 Owner NISSLEY LLC



**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 09/21/2022
 Data updated 3/9/2022

Print map scale is approximate.
 Critical layout or measurement activities should not be done using this resource.

Map Theme Legends

Zoning

Residential Districts

R	Rural
SRA	Single Residence A
SRB	Single Residence B
GRA	General Residence A
GRB	General Residence B
GRC	General Residence C
GA/MH	Garden Apartment/Mobile Home Park

Mixed Residential Districts

MRO	Mixed Residential Office
MRB	Mixed Residential Business
G1	Gateway Corridor
G2	Gateway Center

Business Districts

GB	General Business
B	Business
WB	Waterfront Business

Industrial Districts

OR	Office Research
I	Industrial
WI	Waterfront Industrial

Airport Districts

AIR	Airport
AI	Airport Industrial
PI	Pease Industrial
ABC	Airport Business Commercial

Conservation Districts

M	Municipal
NRP	Natural Resource Protection

Character Districts

CD5	Character District 5
CD4	Character District 4
CD4W	Character District 4-W
CD4-L1	Character District 4-L1
CD4-L2	Character District 4-L2

Civic District

Civic District	
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Municipal District

Municipal District	
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Overlay Districts

OLOD	Osprey Landing Overlay District
DOWNTOWN	Downtown Overlay District
HISTORIC	Historic District

City of Portsmouth

WETLANDS NOTE:

WETLANDS DEPICTED ON THIS PLAN WERE DELINEATED ON SEPTEMBER 27, 2022 BY JASON P. JAMES, L.S. 8073. THE WETLANDS WERE DELINEATED ACCORDING TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL, LATEST EDITION AND THE REGIONAL SUPPLEMENT TO THE U.S. CORPS OF ENGINEERS WETLAND DELINEATION MANUAL, NORTH-CENTRAL AND NORTHEAST REGION, VERSION 2.0 (JANUARY 2012).

SHORELAND NOTE:

THE HIGHEST OBSERVABLE TIDE LINE (NOT) DEPICTED ON THIS PLAN WAS DETERMINED ON SEPTEMBER 27, 2022, BY COASTAL PROFESSIONAL, JASON P. JAMES, L.S. 8073. THE HIGHEST OBSERVABLE TIDE LINE WAS DETERMINED IN ACCORDANCE WITH THE WETLANDS BUREAU ADMINISTRATIVE RULES, UNDER 33 CFR 320.2-3. HIGHEST OBSERVABLE TIDE LINE MEANS A LINE OFFSHORE THE FURTHEST LANDWARD LIMIT OF TIDE FLUX, NOT INCLUDING STORM EVENTS, THAT CAN BE RECOGNIZED BY INDICATORS SUCH AS THE PRESENCE OF A STRAIGHT LINE OF PLUETUM AND STIPES, THE LANDWARD BARRIERS OF SALT-TOLERANT VEGETATION, OR A PHYSICAL SHARPER TIDE BULLET PLAND FROM OF THE TIDE.

PLAN REFERENCES:

1. "PROPOSED ADDITION PORTSMOUTH SCUBA 915 SAGAMORE AVENUE PORTSMOUTH, NH" BY AMST ENGINEERING, INC. DATED FEBRUARY 2022, WITH REVISIONS (PLAN NOT RECEIVED).

PROPOSED THREE STORY
MULTI-USE BUILDINGS WITH PARKING UNDER
-1ST FL. 8,000 SF OFFICE
(USE VARIANCE REQUIRED)
-2ND/3RD FL. APARTMENTS
(USE VARIANCE REQUIRED)
12 APARTMENTS ON UPPER FLOORS
(10 UNITS AT 1,000 SF)
(2 UNIT AT 750 SF)
-34 SPACES

APPROXIMATE
BOUNDARY LINE
(SEE NOTE 1)

SAGAMORE AVENUE
PUBLIC ROAD (15' WIDE)

NOTES:

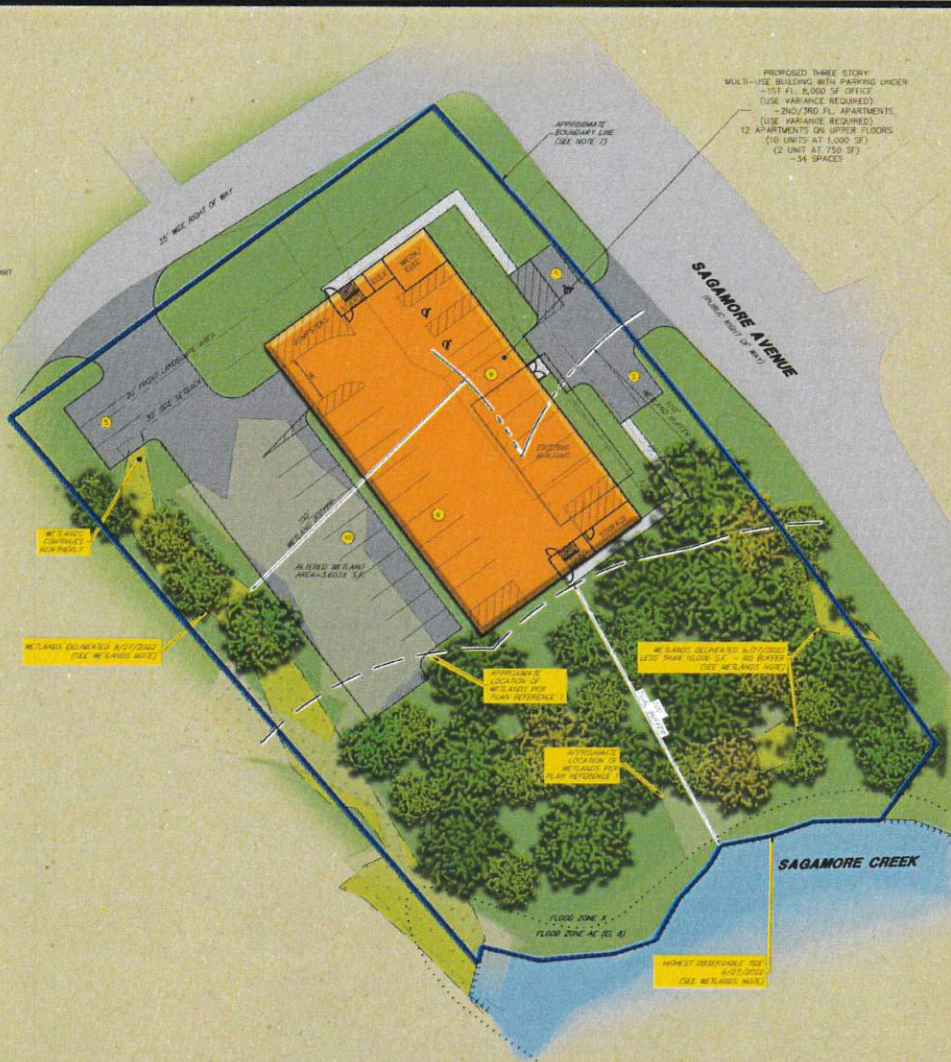
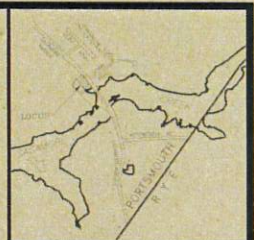
1. THE PARCEL IS LOCATED IN THE WATERFRONT BUSINESS (WB) ZONING DISTRICT.
2. THE PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH MAP 223 AS LOT 31.
3. THE PARCEL IS LOCATED IN ZONES AC (S) & ZONE X, PER NAVD83, AS SHOWN ON NATIONAL FLOOD INSURANCE PROGRAM (NFIP) FLOOD INSURANCE RATE MAPS (FIRM) ROCKINGHAM COUNTY, NEW HAMPSHIRE, PANELS 270F & 280F OF 651, MAP NUMBER 33505G, WITH AN EFFECTIVE DATE OF JANUARY 28, 2021.
4. DIMENSIONAL REQUIREMENTS:

MINIMUM LOT DIMENSIONS:	20,000 S.F.
LOT AREA:	N/A
MINIMUM LOT DIMENSIONS:	100'
CONTINUOUS STREET FRONTAGE:	100'
MINIMUM YARD DIMENSIONS:	30'
MINIMUM YARD DIMENSIONS:	30'
5. MAXIMUM STRUCTURE DIMENSIONS:

BUILDING HEIGHT:	35'
ROOF RISE/STAIRCASE HEIGHT:	10'
BUILDING COVERAGE:	30%
FLOOR AREA RATIO:	N/A
MINIMUM OPEN SPACE:	20%
6. PARKING CALCULATIONS:

OFFICE: 7,750 SF (1,000 SF) = 23 SPACES	
MULTI-FAMILY:	
0.5 SP/UNIT (500 SF) (1,000 SF) = 10 SPACES	
1.0 SP/UNIT (1,000 SF) (2,000 SF) = 2 SPACES	
1.5 SP/UNIT (2,000 SF) (3,000 SF) = 3 SPACES	
PLUS 1.0 SP/5 UNITS (1,000 SF) (5 UNITS) = 3 SPACES	
TOTAL OF 19 SPACES	
7. DUTY OF CARE: PARKING OFFICE AT 1,000 SF = 23 SPACES
MULTI-FAMILY AT 500 SF = 10 SPACES
REQUIRED: 34 SPACES
PROPOSED: 34 SPACES
8. OWNER OF RECORD: MAP 223 LOT 31, ROCKINGHAM COUNTY, NEW HAMPSHIRE, 915 SAGAMORE AVENUE, PORTSMOUTH, NH 02871, ROAD ON ADJACENT PLOT 222
9. PARCEL AREA: MAP 223 LOT 31, 1.02 ACRES (PER PLAN REFERENCE 1).
10. THE INTENT OF THIS PLAN IS TO SHOW THE APPROXIMATE LOCATION OF TAX MAP 223 LOT 31, THE APPROXIMATE LOCATION OF THE MAP 223 LOT 31, AS DERIVED ON THIS PLAN HAS BEEN COMPILED FROM RECORDED AND UNRECORDED SOURCES, AND SOME FIELD EVIDENCE, IT IS NOT THE RESULT OF A COMPLETE BOUNDARY SURVEY AND IT IS NOT AN ATTEMPT TO DEFINE THE EXTENT OF OWNERSHIP OR DEFINE THE LIMITS OF TITLE.

LOCATION PLAN



WETLANDS DELINEATED 8/27/2022
(SEE WETLANDS NOTE)

WETLANDS DELINEATED 8/27/2022
(SEE WETLANDS NOTE)

APPROXIMATE
BOUNDARY LINE
(SEE NOTE 1)

WETLANDS DELINEATED 8/27/2022
(SEE WETLANDS NOTE)

WETLANDS DELINEATED 8/27/2022
(SEE WETLANDS NOTE)

SAGAMORE CREEK

FLOOD ZONE A
FLOOD ZONE AC (S) 41

THIS PLAN IS A PRELIMINARY CONCEPTUAL DESIGN FOR SITE LOCATION FEASIBILITY AND DISCUSSION PURPOSES ONLY. ADDITIONAL PERMITS, WAIVERS, AND VARIANCE MAY BE REQUIRED UPON FURTHER DESIGN, REVIEW, AND COORDINATION WITH THE TOWN.



REV	DATE	DESCRIPTION	DR	CP

TAX MAP 223 LOT 31
CONCEPT SITE PLAN
PORTSMOUTH SCUBA
915 SAGAMORE AVENUE
PORTSMOUTH, NEW HAMPSHIRE
COUNTY OF ROCKINGHAM
OWNED BY
NISSLEY, LLC

SCALE: 1" = 20' (22x34)
1" = 40' (11x17)

NOVEMBER 08, 2022

Seacoast Division



Chief Engineer
Structural Engineers
Traffic Engineers
Land Surveyors
Landscape Architects
Scientists

1700 Portsmouth Hwy, Suite 100
Portsmouth, NH 02871
Phone (603) 431-2022
Fax (603) 431-0810
www.tfmeng.com

47092-30

DR: JPM
CP: JPM
DATE: 11/08/22
PROJECT: 47092-30

This plan is for informational purposes only. It is not a warranty of the result of a complete site survey, nor is it intended to constitute an offer. The location of boundaries and wetlands are approximate and not necessarily correct or accurate. Compliance with current regulations must be verified.
Copyright 2022 © Thomas J. Nissley, Inc.
All rights reserved. These plans and wetlands may not be copied, reproduced, modified or otherwise reproduced in any form without the prior written permission of Thomas J. Nissley, Inc.
This plan is not effective unless signed by a duly authorized officer of Thomas J. Nissley, Inc.
CONTACT: DICK SAFF, 72 BUSINESS HOURS PRIOR TO CONSTRUCTION

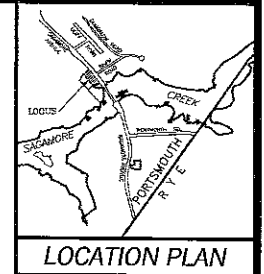
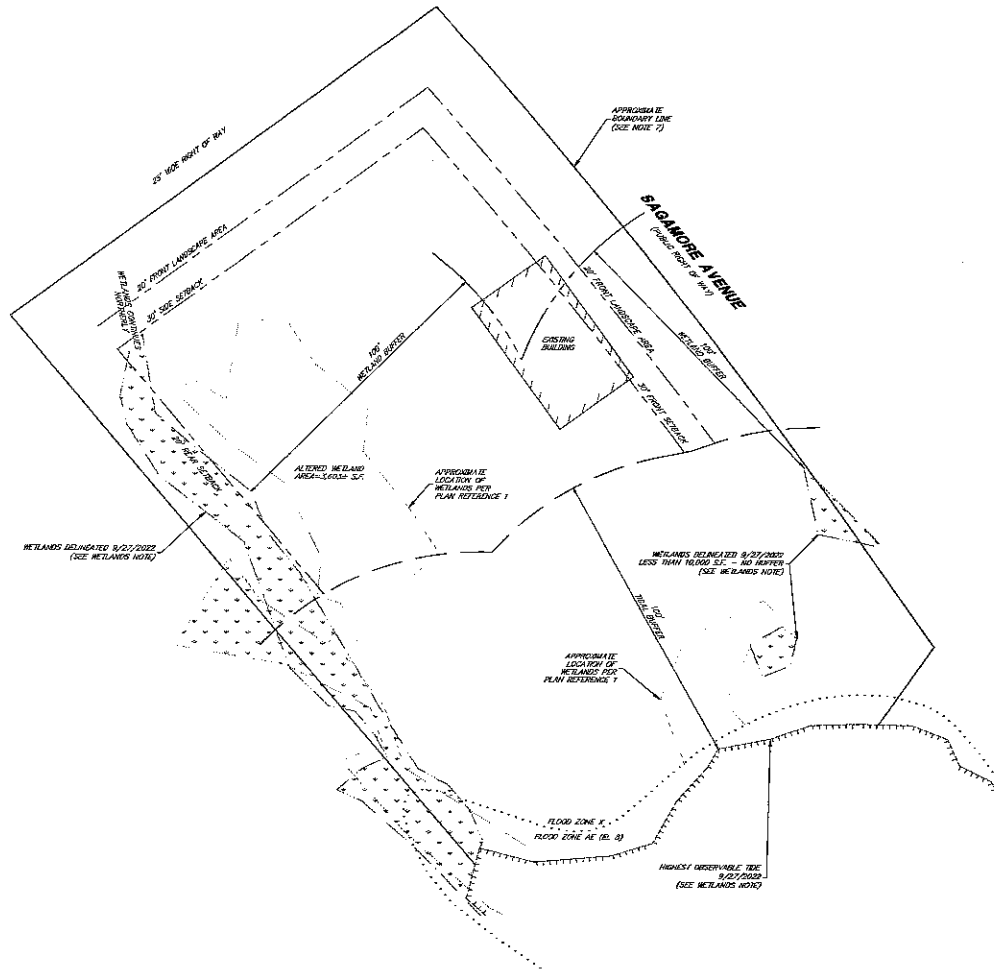


WETLANDS NOTE:

WETLANDS DEPICTED ON THIS PLAN WERE DELINEATED ON SEPTEMBER 27, 2022 BY JASON R. ALBRECHT, P.E. THE WETLANDS WERE DELINEATED ACCORDING TO THE CORPS OF ENGINEERS WETLAND Delineation Manual (January 1987) AND THE REGIONAL SUPPLEMENT TO THE U.S. CORPS OF ENGINEERS WETLAND Delineation Manual (Northcentral and Northeast Region, Version 2.0 (January 2012)).

SHORELAND NOTE:

THE HIGHEST OBSERVABLE TIDE LINE (NOTE) DEPICTED ON THIS PLAN WAS DETERMINED ON SEPTEMBER 27, 2022 BY COASTAL PROFESSIONAL JASON R. ALBRECHT, P.E. THE HIGHEST OBSERVABLE TIDE LINE WAS DETERMINED IN ACCORDANCE WITH THE MARINE WETLANDS BUREAU ADMINISTRATION RULES UNDER 33CFR 320.2-3. HIGHEST OBSERVABLE TIDE LINE MEANS A LINE DEFINING THE FARTHEST LANDWARD LIMIT OF TIDAL FLOW NOT INCLUDING STORM SURGES THAT CAN BE RECOGNIZED BY INDICATORS SUCH AS THE PRESENCE OF A STRAND LINE OF FLOTTING AND DEBRIS, THE LANDWARD MARGIN OF SALT-TOLERANT VEGETATION, OR A PHYSICAL BARRIER THAT BLOCKS INLAND FLOW OF THE TIDE.



NOTES:

1. THE PARCEL IS LOCATED IN THE WAREHOUSE BUSINESS (WB) ZONING DISTRICT.
2. THE PARCEL IS SHOWN ON THE CITY OF ASSESSOR'S MAP 223 AS LOT 31.
3. THE PARCEL IS LOCATED IN ZONES AE (0.01) & ZONE X PER WABO, AS SHOWN ON NATIONAL FLOOD INSURANCE PROGRAM (NFIP) FLOOD INSURANCE RATE MAPS (FIRM) ROCKINGHAM COUNTY, NEW HAMPSHIRE, PAVELS 2707 & 2807 OF 501, MAP NUMBER 32022L, WITH AN EFFECTIVE DATE OF JANUARY 20, 2022.
4.

THIRDSIDEAL REQUIREMENTS:	REQUIREMENTS:
MINIMUM LOT DIMENSIONS:	20,000 S.F.
LOT AREA:	100'
CONTIGUOUS SELECT FRONTAGE:	100'
DEPTH:	100'
MINIMUM YARD DIMENSIONS:	
FRONT:	30'
SIDE:	30'
REAR:	30'
MINIMUM STRUCTURE DIMENSIONS:	
BUILDING HEIGHT:	10'
ROOF PITCH/SHED HEIGHT:	10'
BUILDING COVERAGE:	10%
FLOOR AREA RATIO:	NR
MINIMUM OPEN SPACE:	20%
5. OWNER OF RECORD:
MAP 223 LOT 31
NISSELY, LLC
513 MARCY STREET
PORTSMOUTH, NH 03801
R000 004001 P042301
6. PARCEL AREA:
MAP 223 LOT 31
1.02 ACRES (PER PLAN REFERENCE 1).
7. THE INTENT OF THIS PLAN IS TO SHOW THE APPROXIMATE LOCATION OF TAX MAP 223 LOT 31. THE APPROXIMATE LOCATION OF TAX MAP 223 LOT 31 AS DEPICTED ON THIS PLAN HAS BEEN COMPILED FROM RECORDED AND UNRECORDED SOURCES AND SOME FIELD EVIDENCE. IT IS NOT THE RESULT OF A COMPLETE SURVEY AND IT IS NOT AN ATTEMPT TO DETERMINE THE EXACT LOCATION OF THE PROPERTY OR DETERMINE THE LIMITS OF TITLE.
8. THE PURPOSE OF THIS PLAN IS TO SHOW THE APPROXIMATE BOUNDARY LINES, LIMITED SITE CONDITIONS, AND A COMPARISON OF THE WETLANDS PER PLAN REFERENCE ONE AND THE WETLANDS DELINEATED ON SEPTEMBER 27, 2022 ON MAP 223 LOT 31.
9. FIELD SURVEY COMPLETED BY TCE & BUE IN OCTOBER, 2022 USING A LOMA TS-16, A TOPCON HYPER-V LINE COLLIMATOR DATA COLLECTION SOFTWARE.
10. HORIZONTAL DATUM IS NAD83 (2011) PER NETWORK RIN GPS OBSERVATIONS.
11. EASEMENTS, RIGHTS, AND RESTRICTIONS SHOWN OR OTHERWISE ARE THOSE WHICH WERE FOUND DURING RESEARCH PERFORMED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS. OTHER RIGHTS, EASEMENTS, OR RESTRICTIONS MAY EXIST WHICH A TITLE EXAMINATION OF SUBJECT PARCELS(W) WOULD DETERMINE.
12. THE LOCATION OF ANY UNDERGROUND UTILITY INFORMATION SHOWN ON THIS PLAN IS APPROXIMATE. TCE & BUE MAKES NO CLAIM TO THE ACCURACY OR COMPLETENESS OF UNDERGROUND UTILITIES SHOWN PRIOR TO ANY EXCAVATION ON SITE THE CONTRACTOR SHALL CONTACT DIG SAFE.

PLAN REFERENCES:

1. "PROPOSED ADDITION PORTSMOUTH SCUBA 915 SAGAMORE AVENUE PORTSMOUTH, N.H." BY AMET ENGINEERING, INC. DATED FEBRUARY 2022, WITH REVISIONS (PLAN NOT RECORDED).

TAX MAP 223 LOT 31
WETLANDS COMPARISON PLAN
PORTSMOUTH SCUBA
915 SAGAMORE AVENUE
PORTSMOUTH, NEW HAMPSHIRE
COUNTY OF ROCKINGHAM
OWNED BY
NISSELY, LLC

SCALE: 1" = 20' (22x34)
1" = 40' (11x27)

OCTOBER 19, 2022

Geospatial Division

TCE & BUE

Civil Engineers
Geotechnical Engineers
Traffic Engineers
Land Surveyors
Landscape Architects
Scientists

170 Commerce Way, Suite 102
Portsmouth, NH 03801
Phone (603) 431-2222
Fax (603) 431-0810
www.tceandbue.com

47092-30
SFI MAP
CH BRX
FR
SRI
SEE MAP(S)

20 10 0 20
Graphic Scale in Feet

REV	DATE	DESCRIPTION	BY	CHK

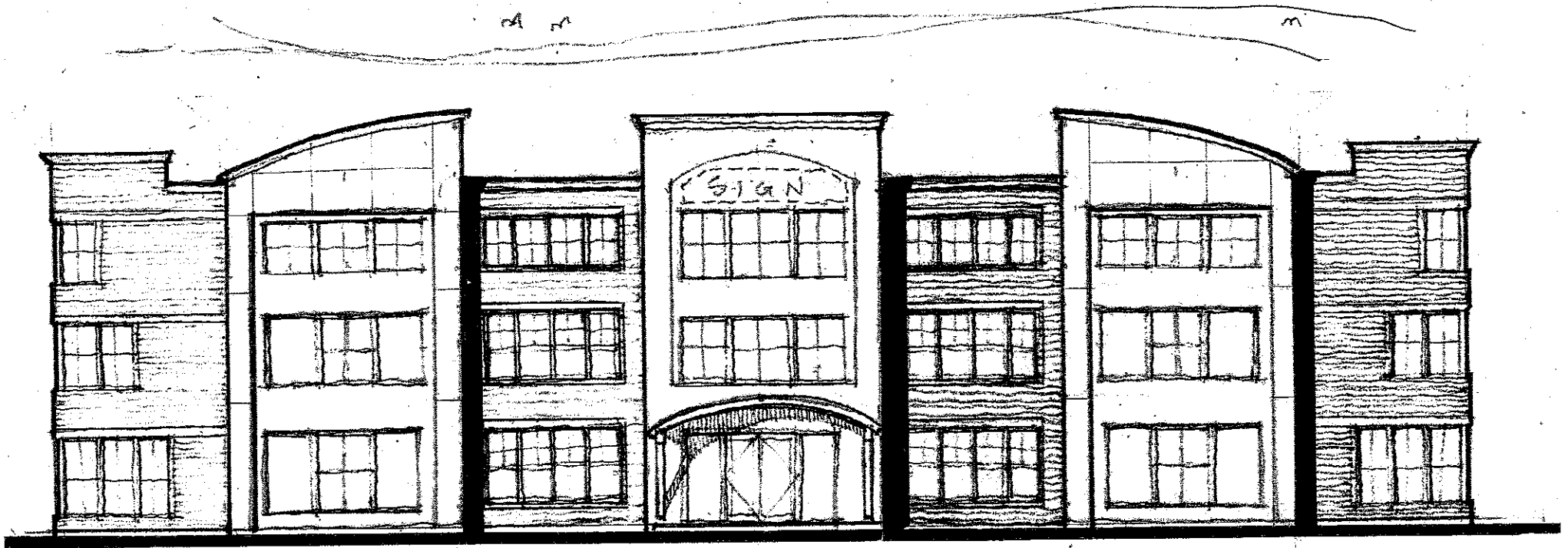
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48 Constitution Drive, Bedford, NH 03110

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This plan is not effective unless signed by a duly authorized officer of TCE & BUE, Inc.



CONTACT DIG SAFE 72 HOURS PRIOR TO CONSTRUCTION



SAGAMORE AVENUE ELEVATION

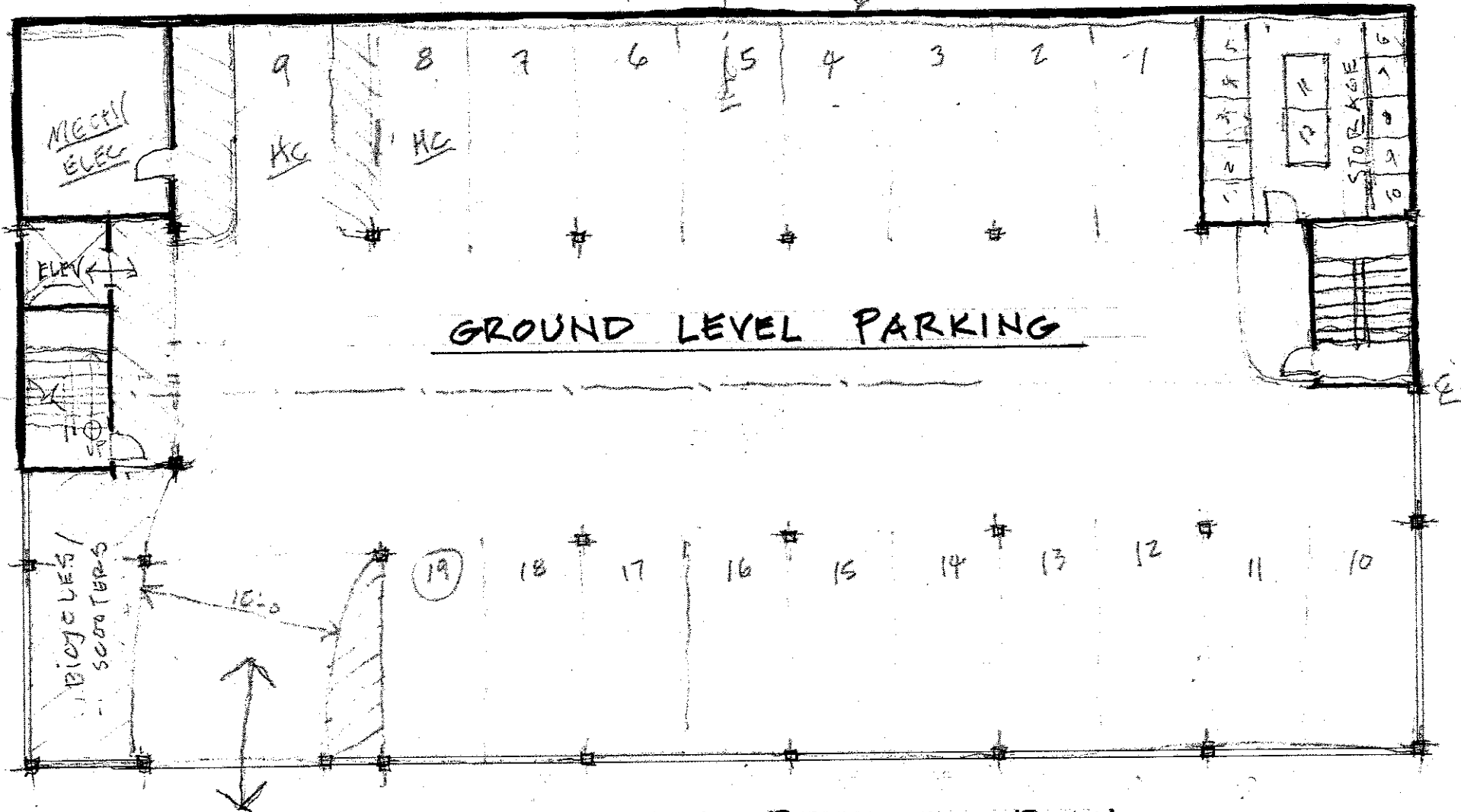
CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVENUE

OWNER: NISSLEY LLC

DATE: 17 NOV. 2022

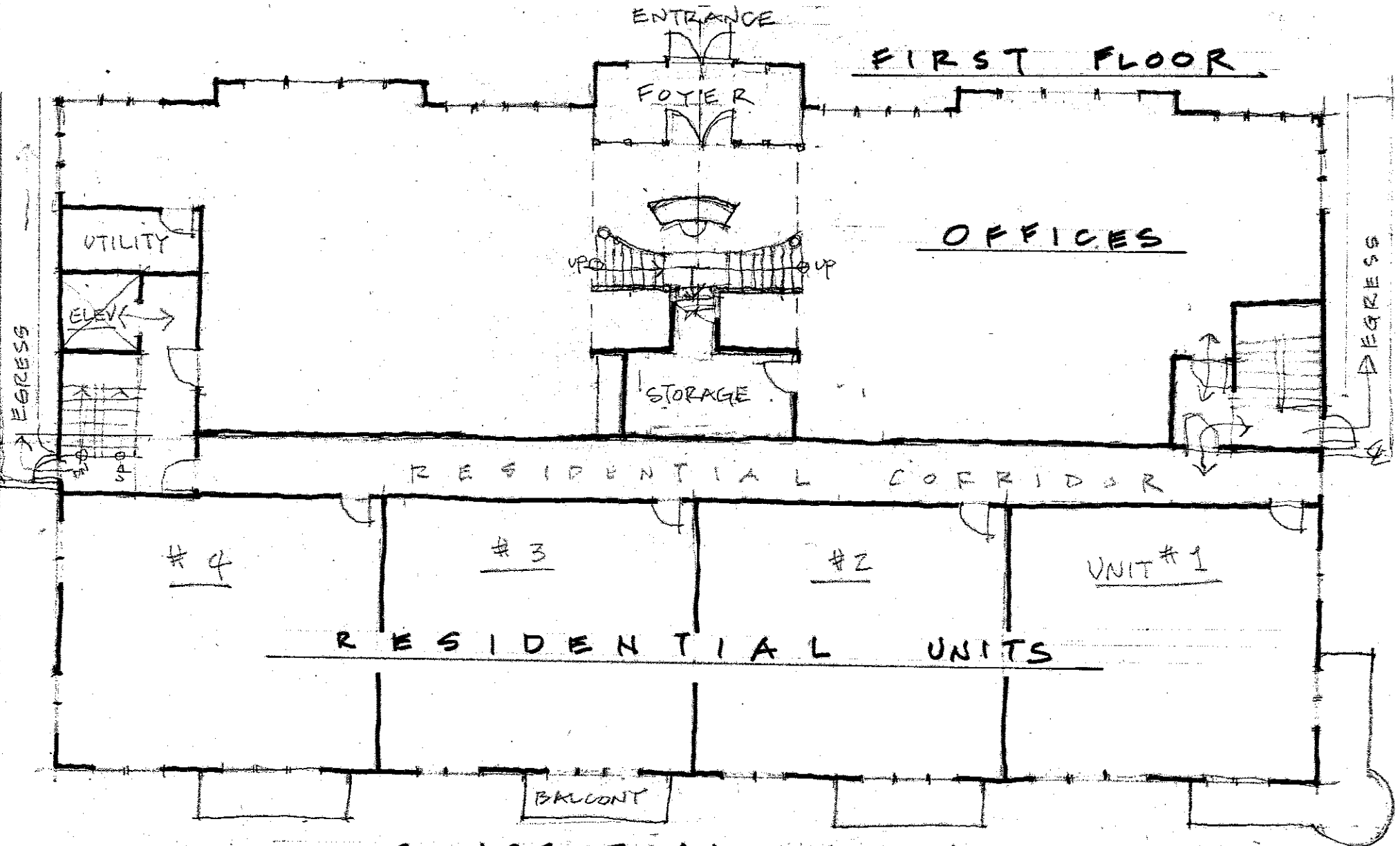
RETAINING WALL 7



CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVENUE

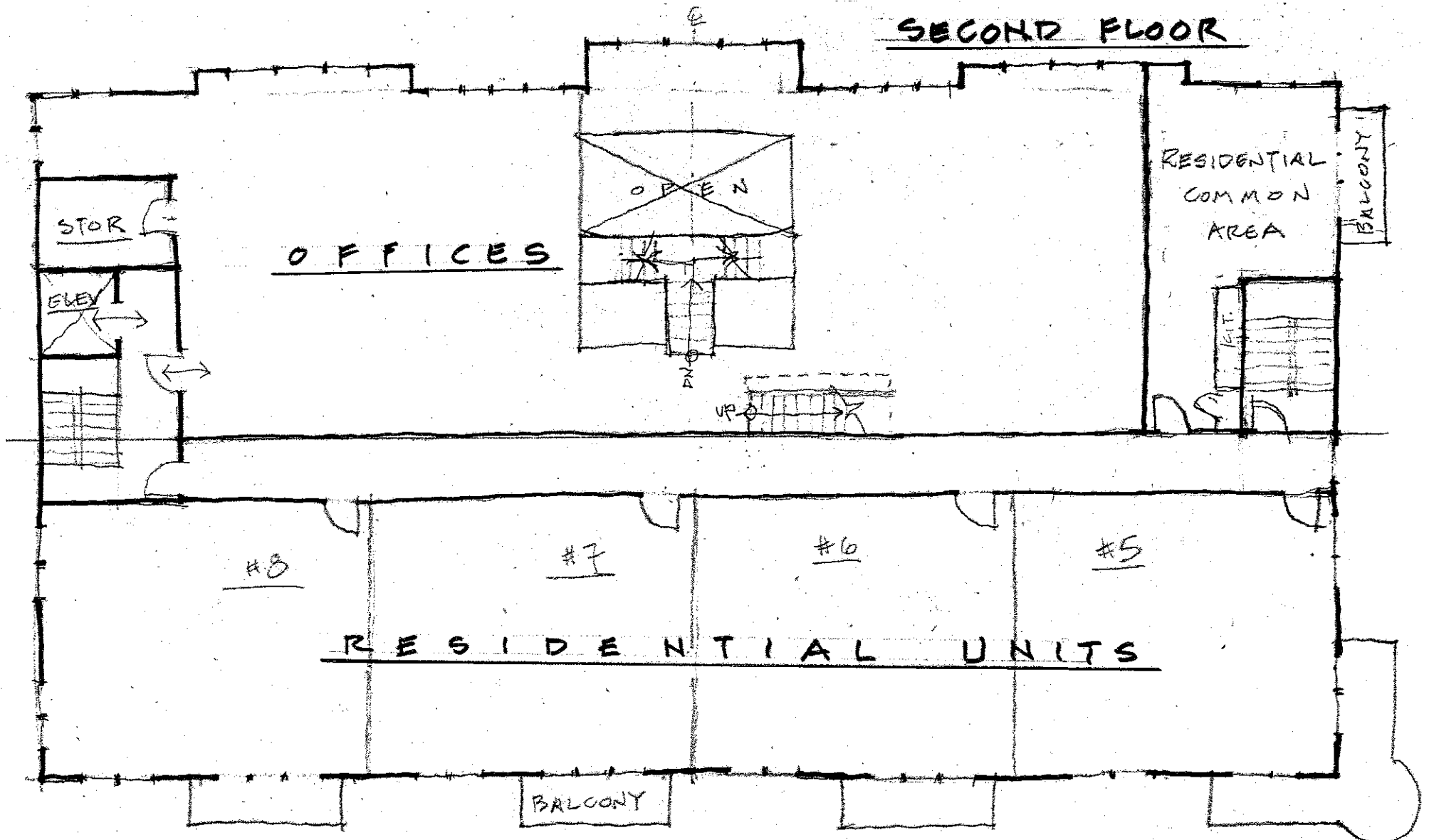
OWNER: NISSLEY LLC 17 NOV 2022



CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVE

17 NOV. 2022

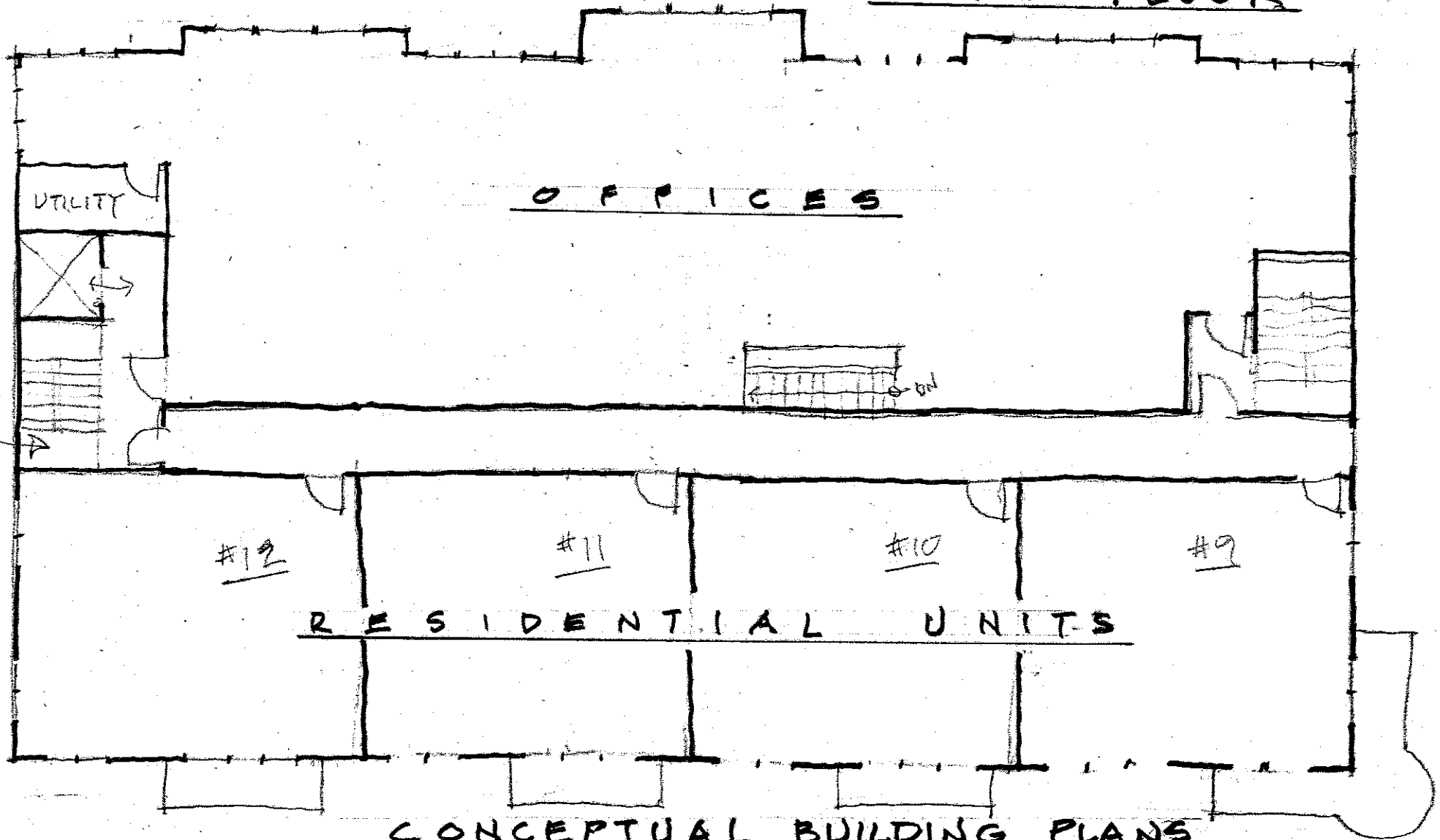


CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVE

17 NOV 2022

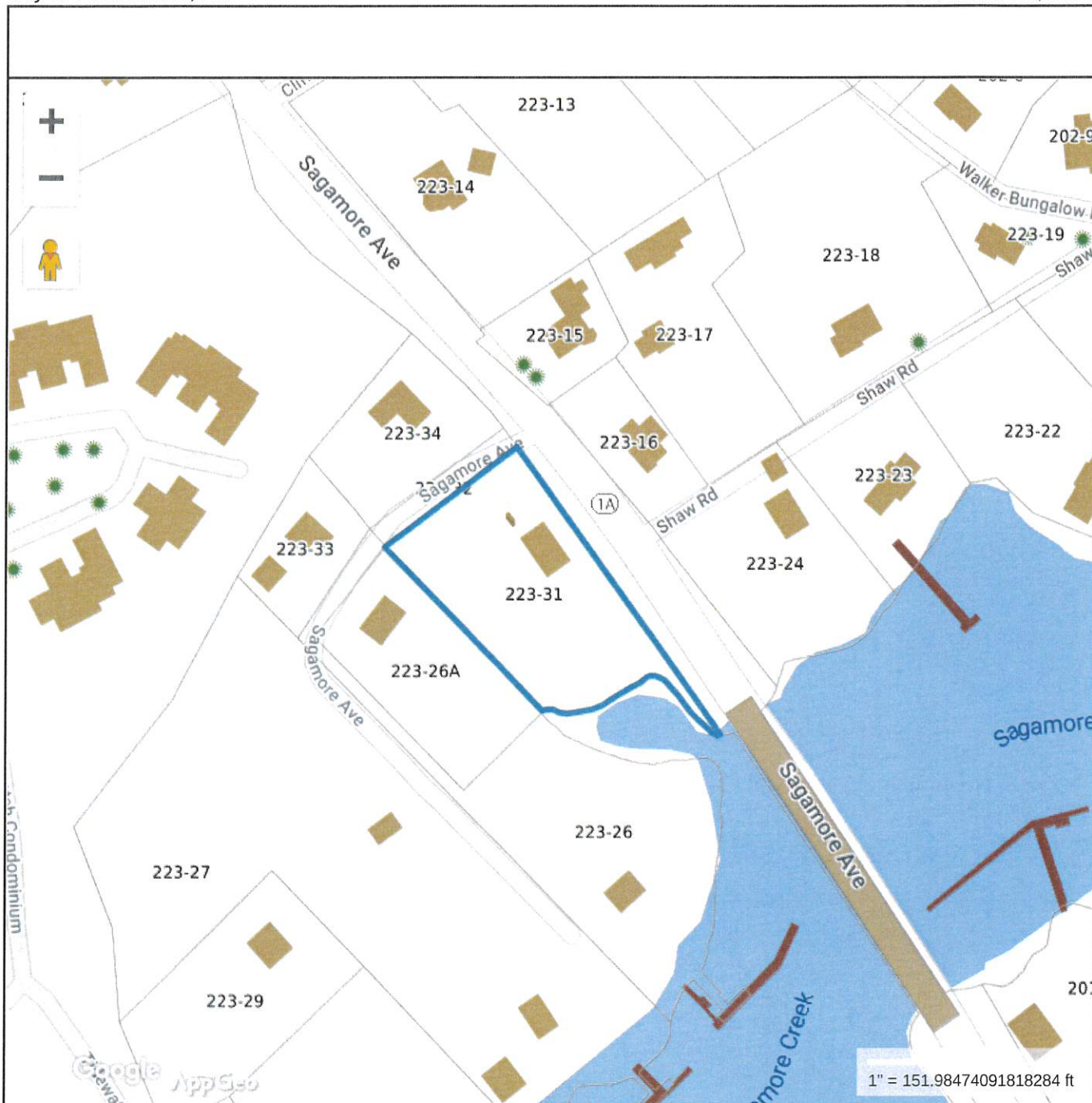
THIRD FLOOR



CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVE

17 NOV 2022

**Property Information**

Property ID 0223-0031-0000
Location 915 SAGAMORE AVE
Owner NISSLEY LLC

**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 09/21/2022
Data updated 3/9/2022

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.



Front Elevation View



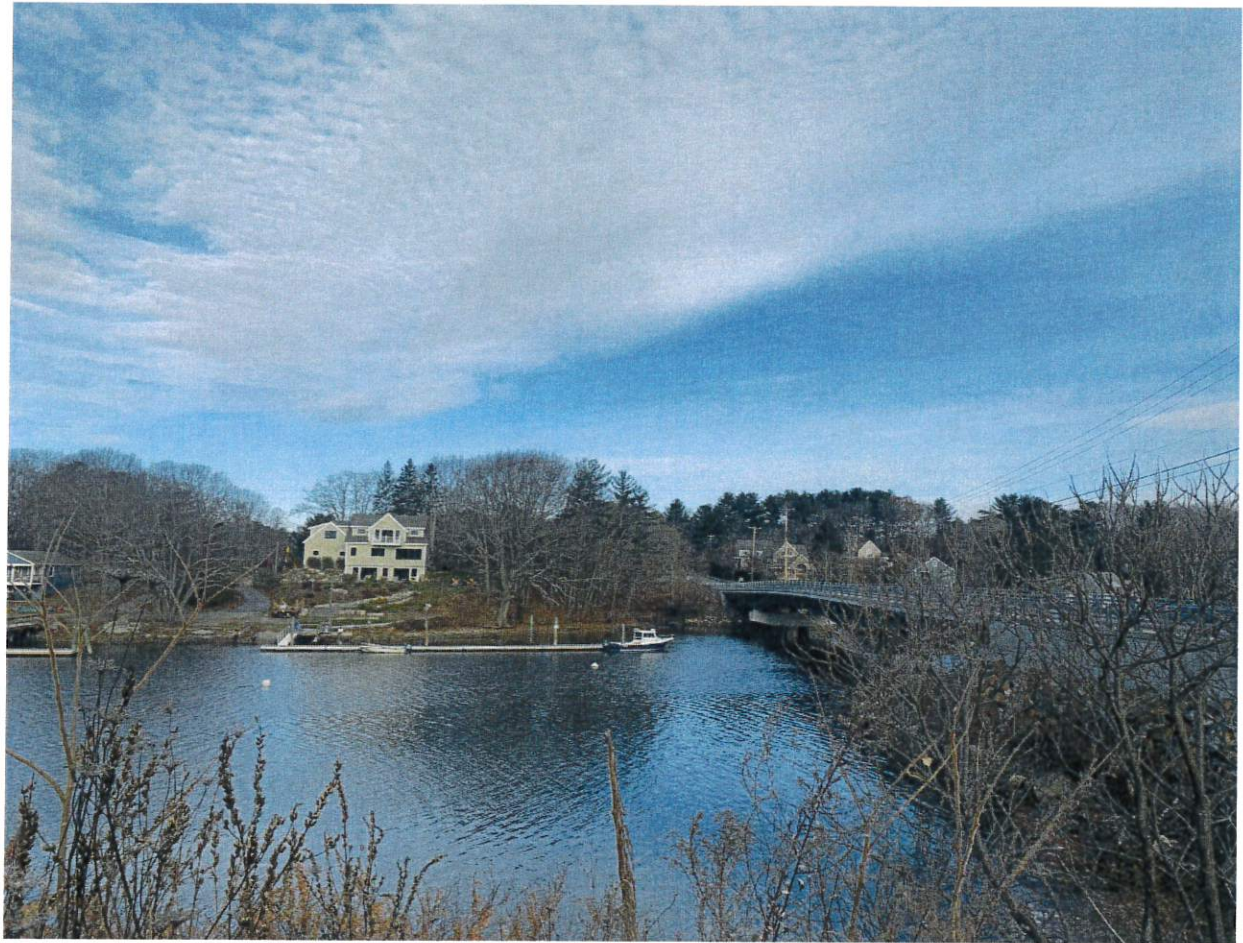
Rear Elevation View



Right Elevation View



Right Elevation View



Left Elevation View (Across Water)



View from Sagamore Road

III. NEW BUSINESS

- A.** The request of **Valway Living Trust and William P and Elizabeth Valway Trustees (Owners)**, for property located at **51 Spinney Road** whereas relief is needed to construct a new detached garage which requires the following: 1) Variance from Section 10.573.20 to allow a) 4 foot side yard setback where 10 feet is required; and b) 4 foot rear yard setback where 10 feet is required. 2) Variance from Section 10.521 to allow 27% building coverage where 20% is required. Said property is located on Assessor Map 171 Lot 9 and lies within the Single Residence B (SRB) District. (LU-22-235)

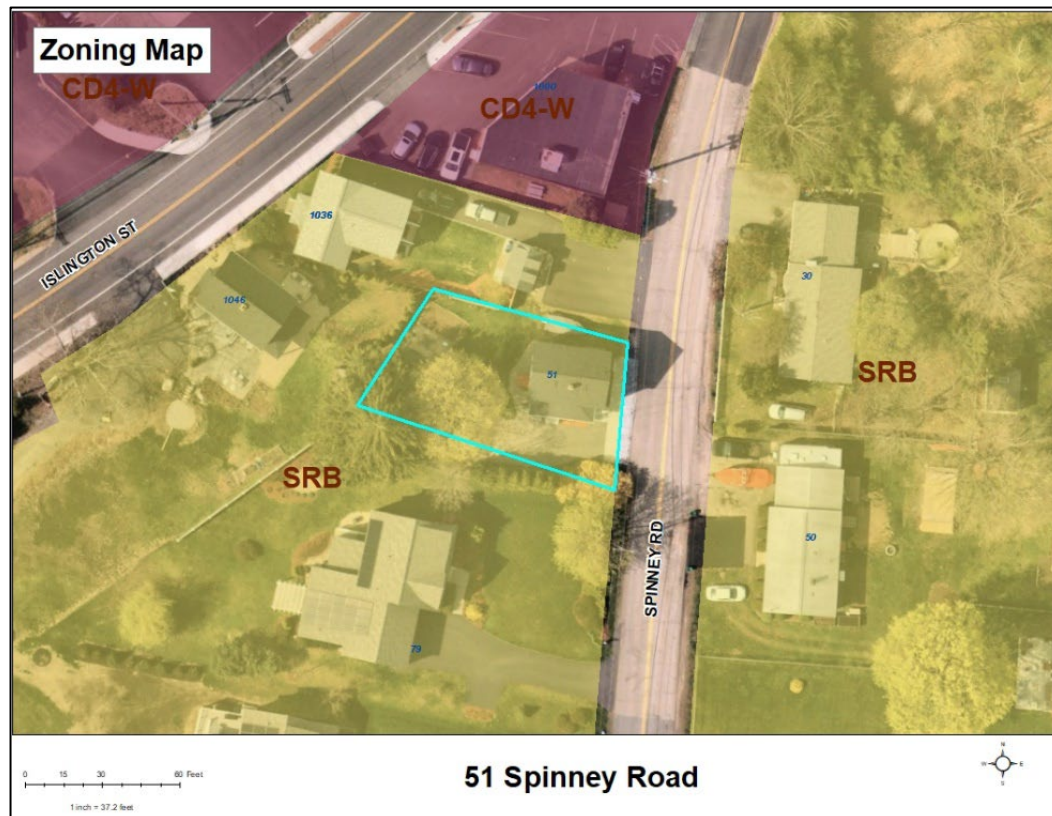
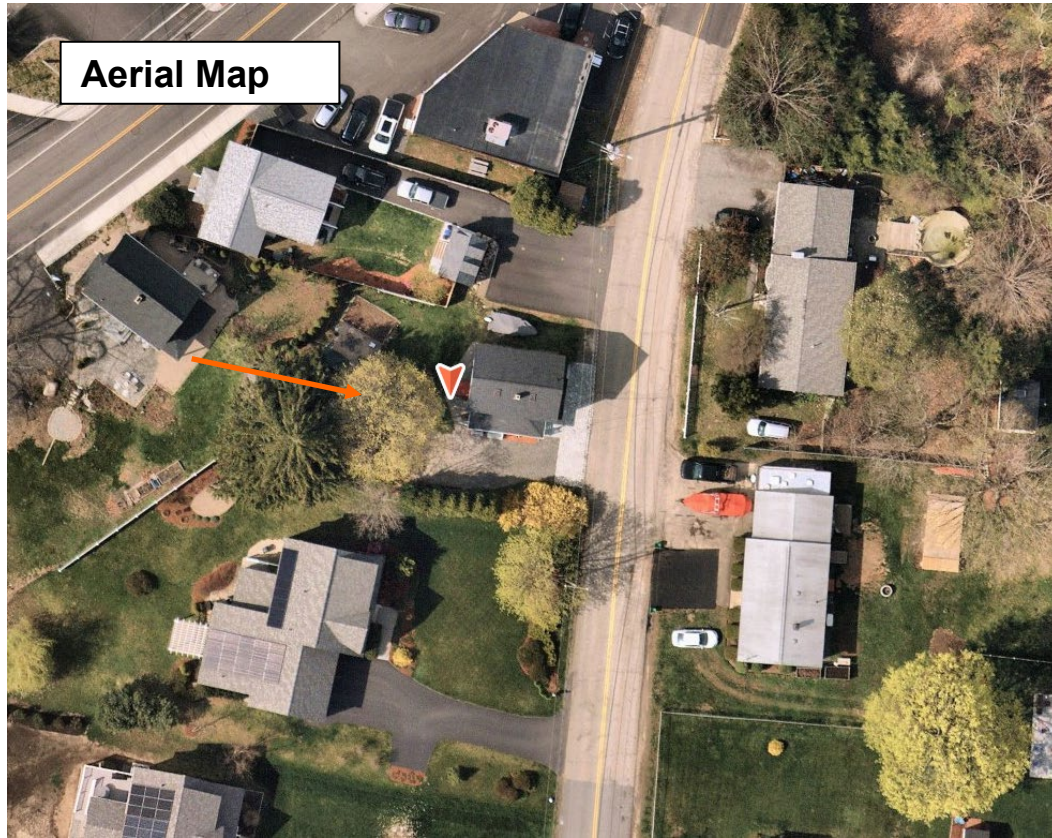
Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Single Family w/ Detached Garage	Primarily residential uses
<u>Lot area (sq. ft.):</u>	4365	4365	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4365	4365	15,000 min.
<u>Street Frontage (ft.):</u>	56.15	56.15	100 min.
<u>Lot depth (ft.):</u>	77.74	77.74	100 min.
<u>Primary Front Yard (ft.):</u>	7	7	30 min.
<u>Left Side Yard (ft.):</u>	22	4	10 min.
<u>Right Side Yard (ft.):</u>	7	7	10 min.
<u>Rear Yard (ft.):</u>	52	4	10 (with accessory structure setback per Section 10.573.20) min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	19	27	20 max.
<u>Open Space Coverage (%):</u>	>53	53	40 min.
<u>Parking:</u>	Ok	Ok	1.3
<u>Estimated Age of Structure:</u>	2007	Variance request shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is requesting relief to allow for the removal of a 48 square foot shed and the construction of a 384 square foot detached garage. The proposed garage location is within the 10 foot side yard and rear yard requirement (Section 10.573.20 of the [Zoning Ordinance](#)) and increases the building coverage from 19% to 27% (Section 10.521 of the [Zoning Ordinance](#)).

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

- (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Section 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

William Valway

51 Spinney Road
Portsmouth NH 03801

Portsmouth Planning Board,

I bought my house at 51 Spinney Road in 1993. It's a small New Englander at only 1500 square feet. The cellar is damp, not ideal for storage and there's only a small 6' x 8' shed in the yard. Hardly enough space for storing anything other than yard tools and lawn furniture.

Now, 30 years later, I can finally afford to replace the shed with a 16' x 24' single stall, single story garage. Just big enough to have some dry storage space and coverage for a small car.

I'd like to place the garage exactly where my shed is located at the southwest corner of my lot. There are natural barriers on the south and west property lines that will camouflage the structure from direct view by south and west abutters.

I do plan to build a structure that esthetically looks like it belongs on the property and blends well with neighboring properties. At only 13 feet tall with a shallow roof line and a single garage door. The structure will have white vinyl siding and white trim—same as the house.

Thank you for considering this project.

Sincerely,

William Valway

New 16' x 24' nonattached garage

William Valway

51 Spinney Road

Portsmouth, NH 03801

Construction of a new garage. Located in the southwest corner of lot at 51 Spinney Road, Portsmouth, NH 03801. 4' setback from south and west lot lines. Slab single story construction. 2x4x8' studs @ 2' on center. 24' roof trusses @ 2' on center. Total height of 13'. Uninsulated walls and ceiling. Exterior walls finished with D4 white vinyl siding. Roof finished with charcoal metal roofing. 100 amp service located at northeast corner.

-10.233.21 The variance will not be contrary to the public interest;

The proposed garage will be replacing a smaller shed already located in the southwest corner of the lot. The existing shed is only 48 sq. ft. and is not an adequate size for storage of basic yard equipment nor provides any shelter for a single vehicle. The abutting properties already have natural barriers.

-10.233.22 The spirit of the Ordinance will be observed;

Adequate light, air, and space between properties will be observed as the garage is a single-story structure with a shallow roof line of only 13 feet at its highest point to maintain a low profile.

-10.233.23 Substantial justice will be done;

The property already has a shed in this location and its size no longer can support its needs. Compared to other properties of similar lot size a single stall garage of only 384 sq. ft. is minimally adequate for a single family residence.

-10.233.24 The values of surrounding properties will not be diminished;

Abutters to the south and west both have natural bushes and trees along both lot lines. Abutter to the west also has a large shed providing privacy to both properties. The new garage will not have any windows or doors on the south, west and north sides allowing all abutters privacy.

-10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

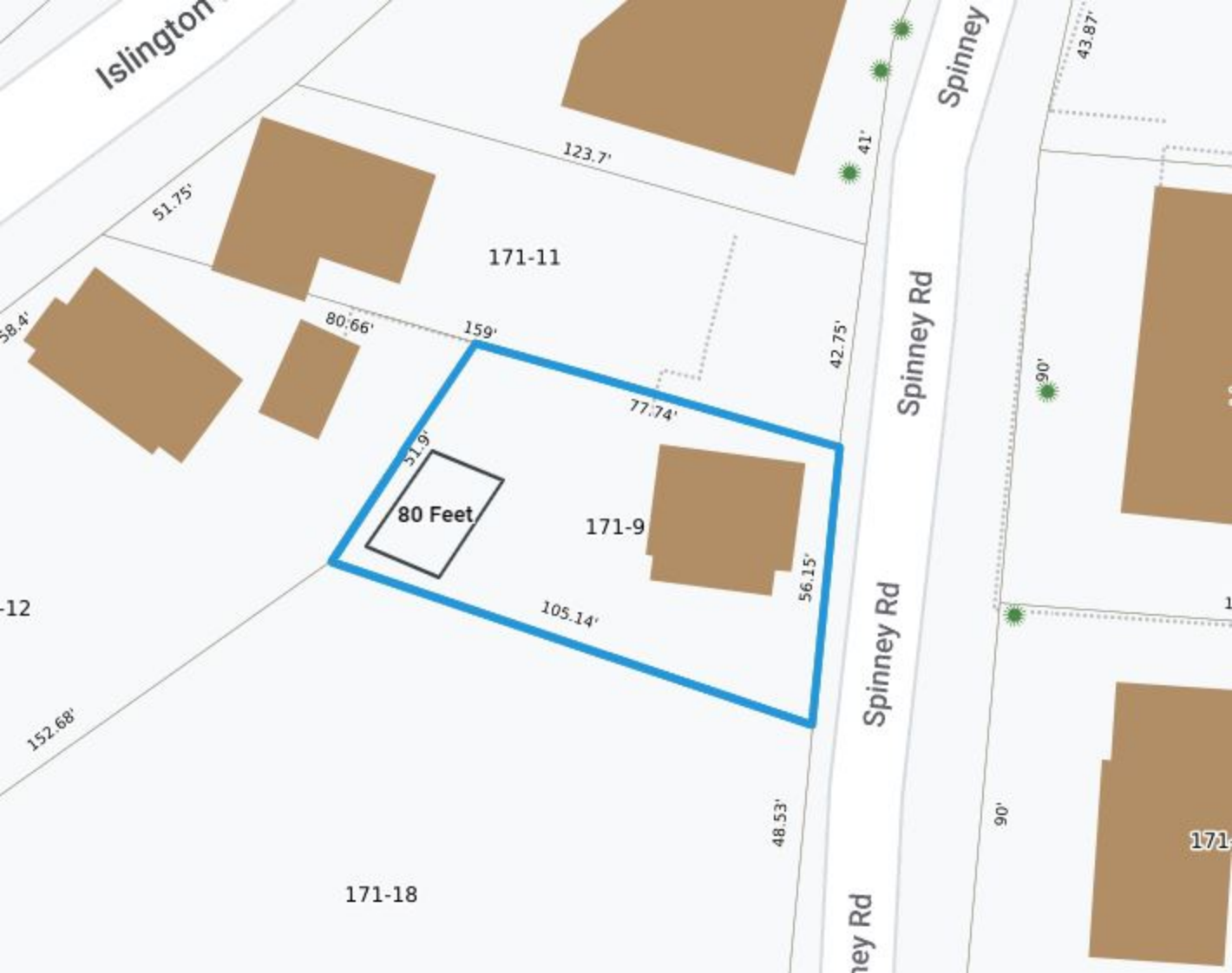
a. Special conditions distinguish the property/project from others in the area. Because of the small lot size, existing coverage and required setback. These factors combine to create special conditions.

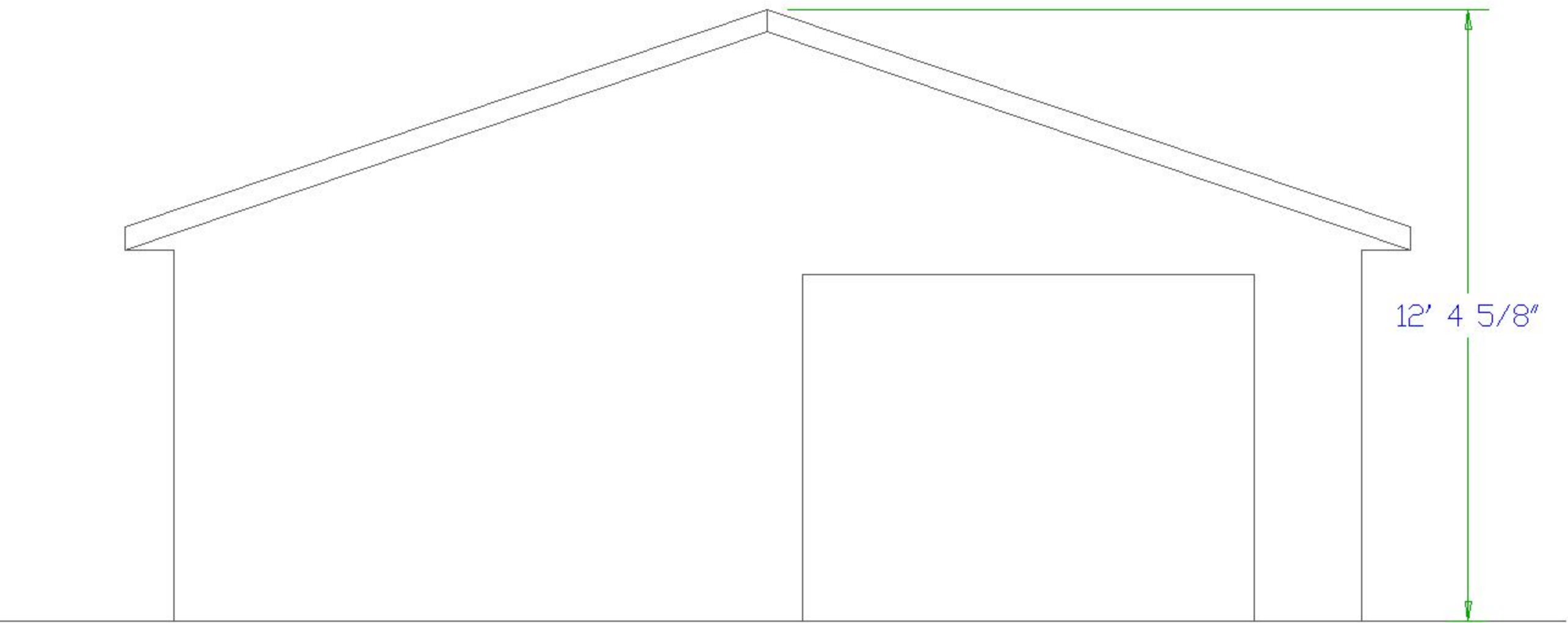
b. No fair and substantial relationship exists between the public purposes of the ordinance and its specific application in this instance. The proposed one-story garage requires minimal coverage and provides adequate access, sight-lines, air, light, and space between neighbors.

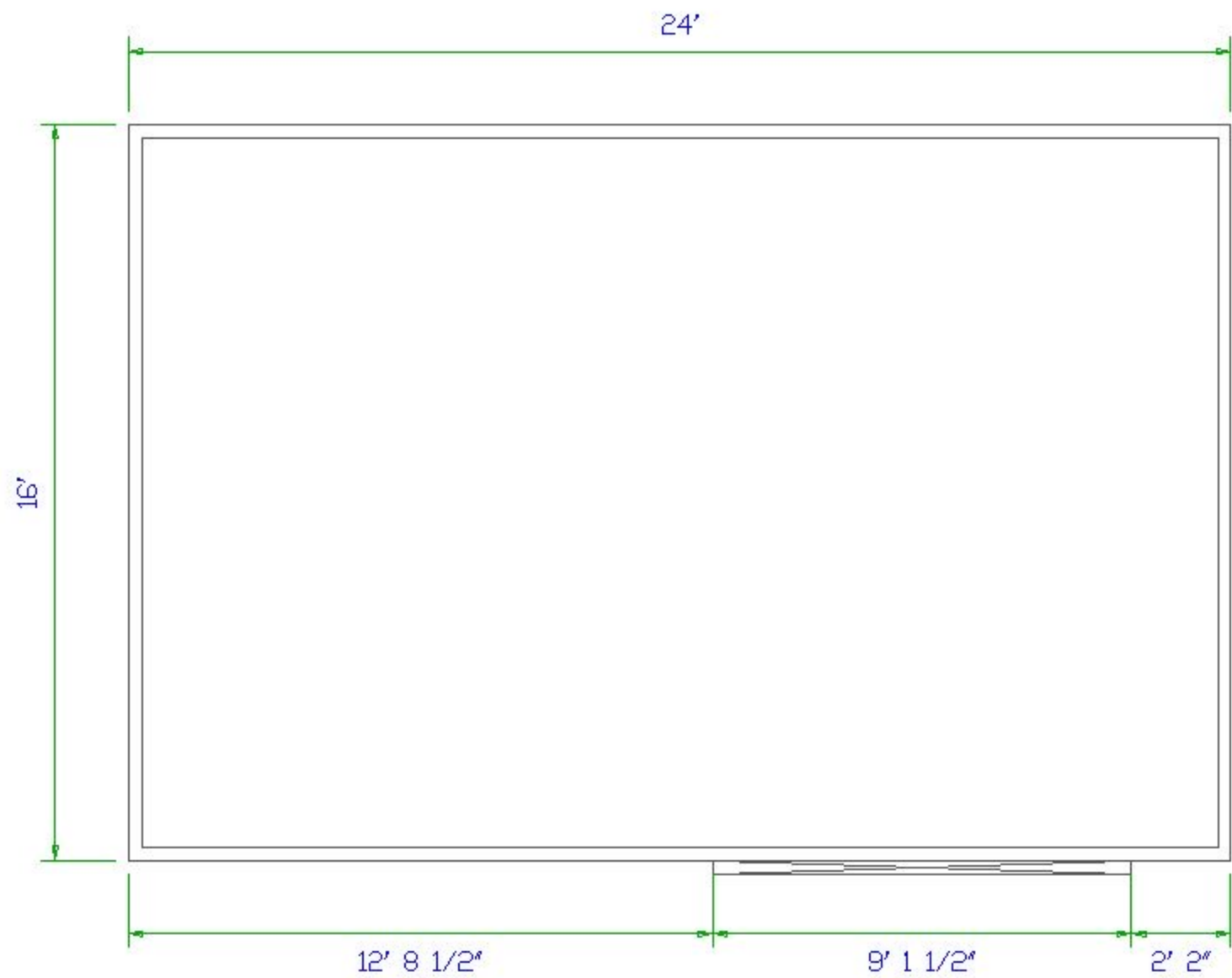
c. The proposed use is reasonable. A garage for storage and covered parking is a reasonable accessory use to a permitted single-family home.

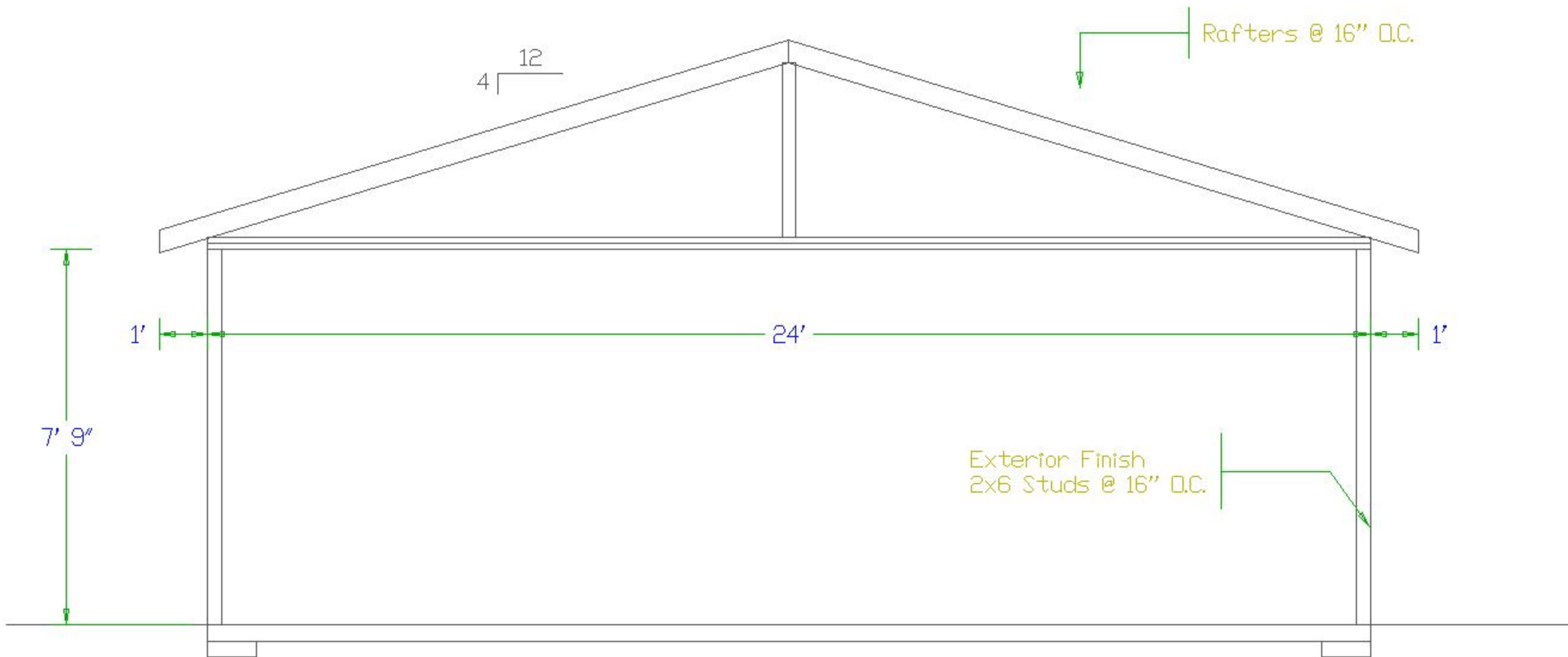




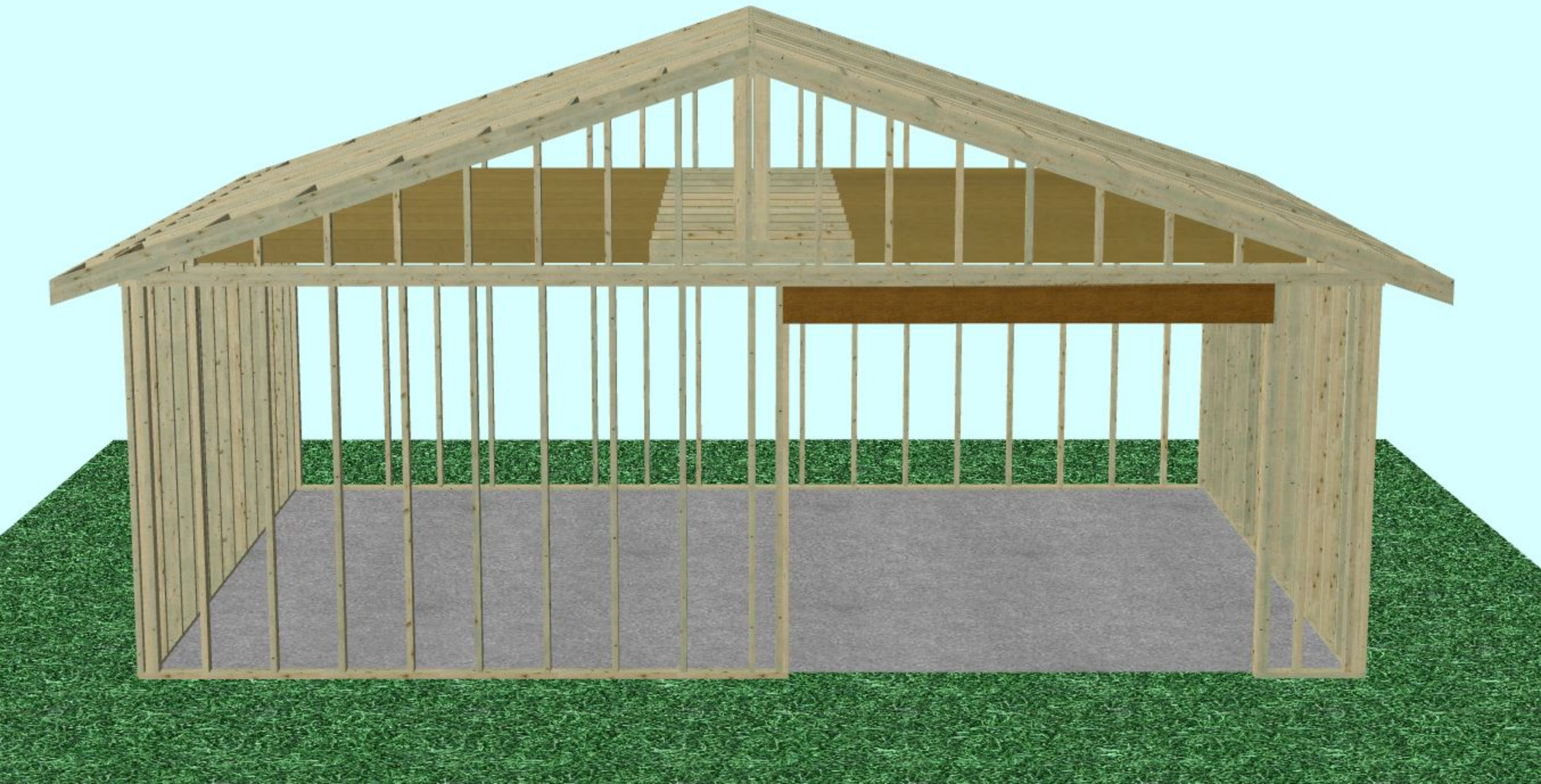












From: Bill Valway wvalway@comcast.net
Subject: New 16' x 24' nonattached garage
Date: December 6, 2022 at 5:05 PM
To: Bill Valway wvalway@comcast.net, wvalway@riccilumber.com

BV

New 16' x 24' nonattached garage

William Valway
51 Spinney Road
Portsmouth NH 03801

Construction of a new garage. Located in the south west corner of lot at 51 Spinney Road Portsmouth NH 03801. 4' setback from south and west lot lines. Slab single story construction. 2x4x8' studs @ 2' on center. 24' roof trusses @ 2' on center. Total high of 13'. Uninsulated walls and ceiling. Exterior walls finished with D4 white vinyl siding. Roof finished with charcoal metal roofing. 100 amp service located at north east corner.

Open Space Threshold

Threshold for open space is a minimum of 40 %.

Lot size: 4365 square feet

Open space = ([current lot area of 5 foot wide impervious surface] –
([proposed building footprint] + 160) / 4365

Open space = 2876 square feet

$2876 - (384 + 160) / 4365 = 53\%$

III. NEW BUSINESS

- B. The request of **Paulsen Family Revocable Trust 2017 Christian Paulsen and Anja Paulsen Trustees (Owners)**, for property located at **55 Thornton Street** whereas relief is needed to construct a second story addition over the existing first floor which requires the following: 1) Variance from Section 10.521 to allow an 8.5 foot front yard setback where 15 feet is required. 2) Variance from Section 10.321 to allow the extension and enlargement of a non-conforming structure. Said property is located on Assessor Map 143 Lot 19 and lies within the General Residence A (GRA) District. (LU-23-2)

Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Dwelling	Single Family Dwelling	Primarily residential uses
<u>Lot area (sq. ft.):</u>	10,100	10,100	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,100	10,100	7,500 min.
<u>Street Frontage (ft.):</u>	101	101	100 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Primary Front Yard (ft.):</u>	5	5 for existing first floor to remain 8.5 for second floor addition	15 min.
<u>Left Side Yard (ft.):</u>	13	13	10 min.
<u>Secondary Front (Right Side Yard) (ft.):</u>	>30	>30	15 min.
<u>Rear Yard (ft.):</u>	>30	>30	20 min.
<u>Height (ft.):</u>	29	29	35 max.
<u>Building Coverage (%):</u>	19%	21% (with deck expansion)	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	Ok	Ok	1.3
<u>Estimated Age of Structure:</u>	1863	Variance request shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposing an addition to the second story of the building where the proposed expansion will extend over the existing first floor. As the vertical expansion is within the front setback area, the project requires relief from Sections 10.521 and 10.321 of the [Zoning Ordinance](#). The applicant is also proposing a deck expansion at the rear of the existing structure which has been included in application. However, the deck portion of the project does not require a variance as it meets setback and building coverage requirements.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*
 - AND**
 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*
 - OR**
 - Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Section 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

Christian and Anja Paulsen
55 Thornton St
Portsmouth, NH 03801

City of Portsmouth
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

Re: Variance Application
55 Thornton St
Portsmouth, NH 03801

To Whom It May Concern:

We are pleased to submit this memo and the attached documents in support of Zoning Relief for the construction of a 2nd floor addition to our house at 55 Thornton Street within the front setback ordinance to be considered by the ZBA at the February 2023 meeting.

Property/Project

55 Thornton St is a single family home with street frontage on Monteith St and Thornton St constructed around the year 1863. We are proposing to add a 2nd floor addition above an existing 1 story part of the house. The project is seeking a variance due to the fact that the existing footprint, and thus the addition, of the house is within the 10' front setback required by the town.

Variance Criteria

The variances will not be contrary to the public interest and the spirit of the ordinance is observed.

The existing property, built in 1863, is currently non-conforming with respect to the front setback. The construction proposed will not further encroach on the front setback in relation to the existing footprint of the home as only the volume of the home is being proposed to be expanded upon within the setback. The proposed 2nd floor addition has been sensitively designed in stepping the addition back as much as possible from the front setback while still gaining the much needed additional space to the home.

Substantial justice will be done

There would be no harm done to the public by granting this variance.

The values of surrounding properties will not be diminished

The values of the surrounding properties will not be diminished by granting the variance. The project is in keeping with the character of the neighborhood and of the existing house.

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

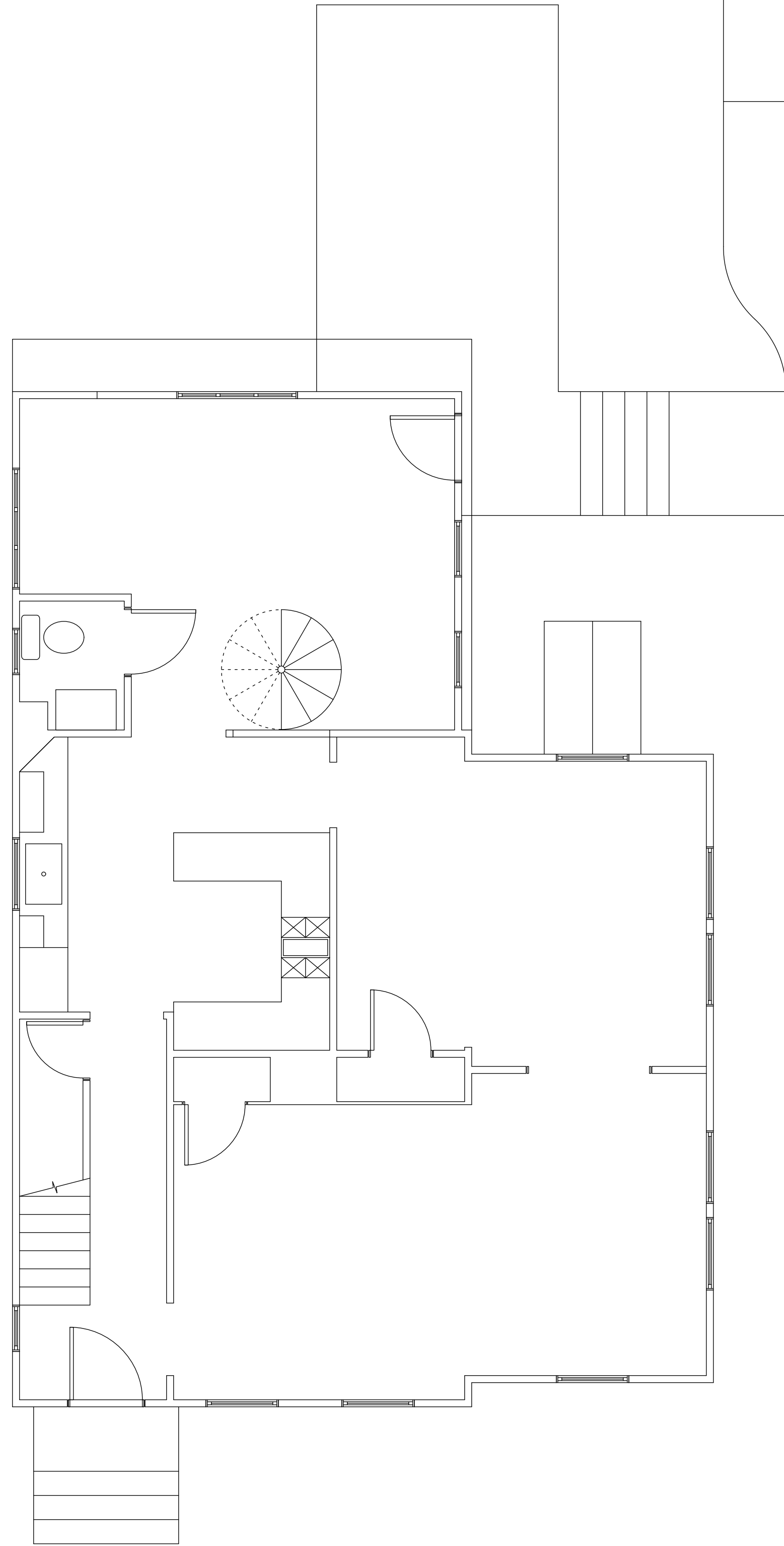
As noted above, the proposed addition would be within the existing footprint of the house and by not granting this variance we would not be able to reside in the house given our needs for additional living space for our family.

For the reasons described above, we respectfully request the Board grant this variance.

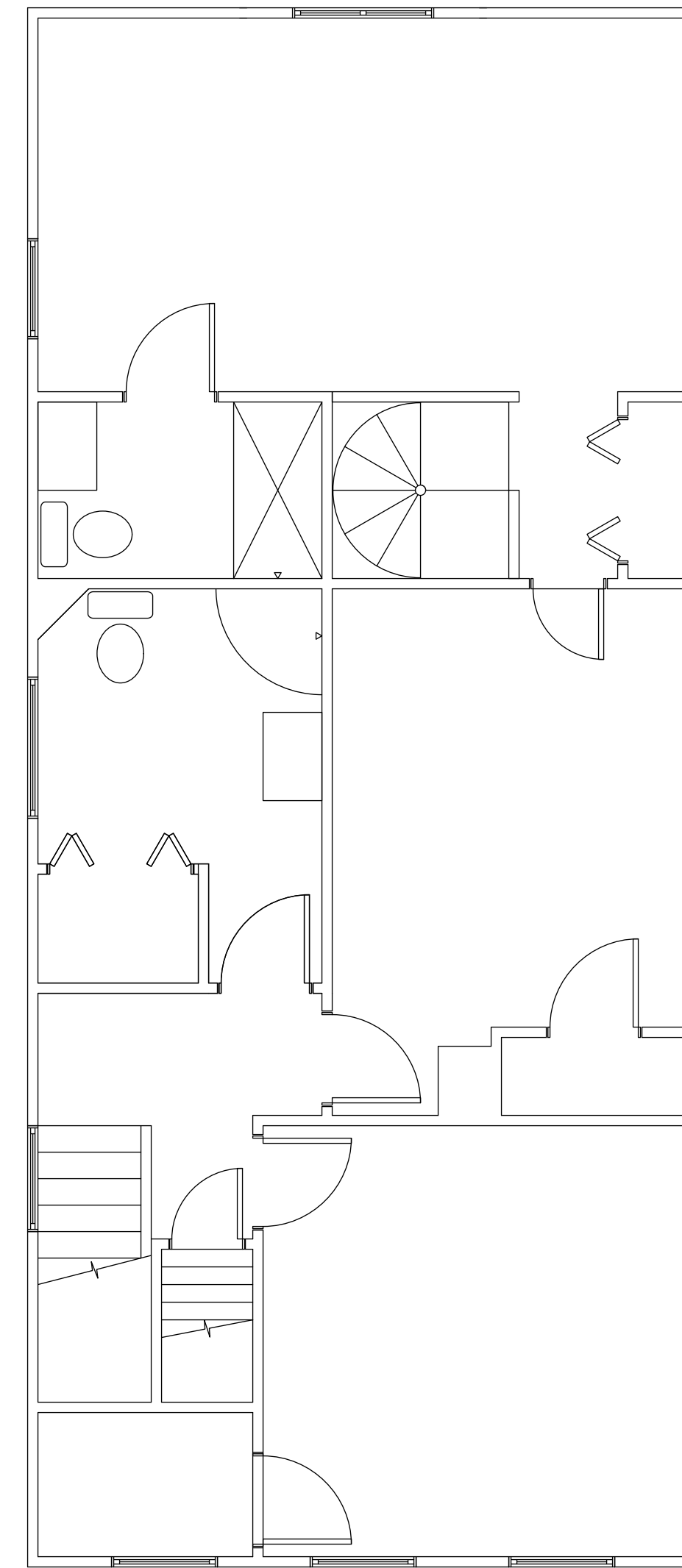
Respectfully,

Christian and Anja Paulsen

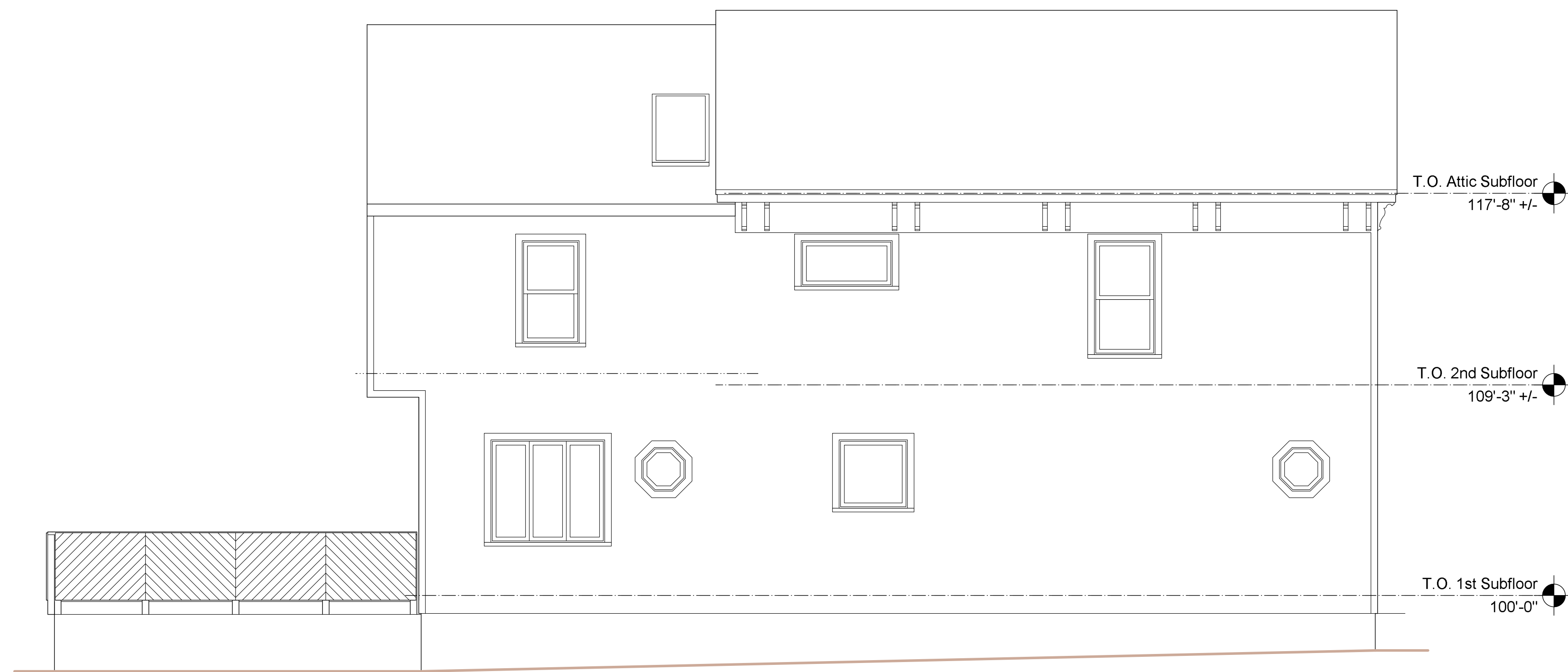
x
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EXISTING FIRST FLOOR PLAN
Scale: 1/4" = 1'-0"



EXISTING SECOND FLOOR PLAN
Scale: 1/4" = 1'-0"



EXISTING SIDE ELEVATION



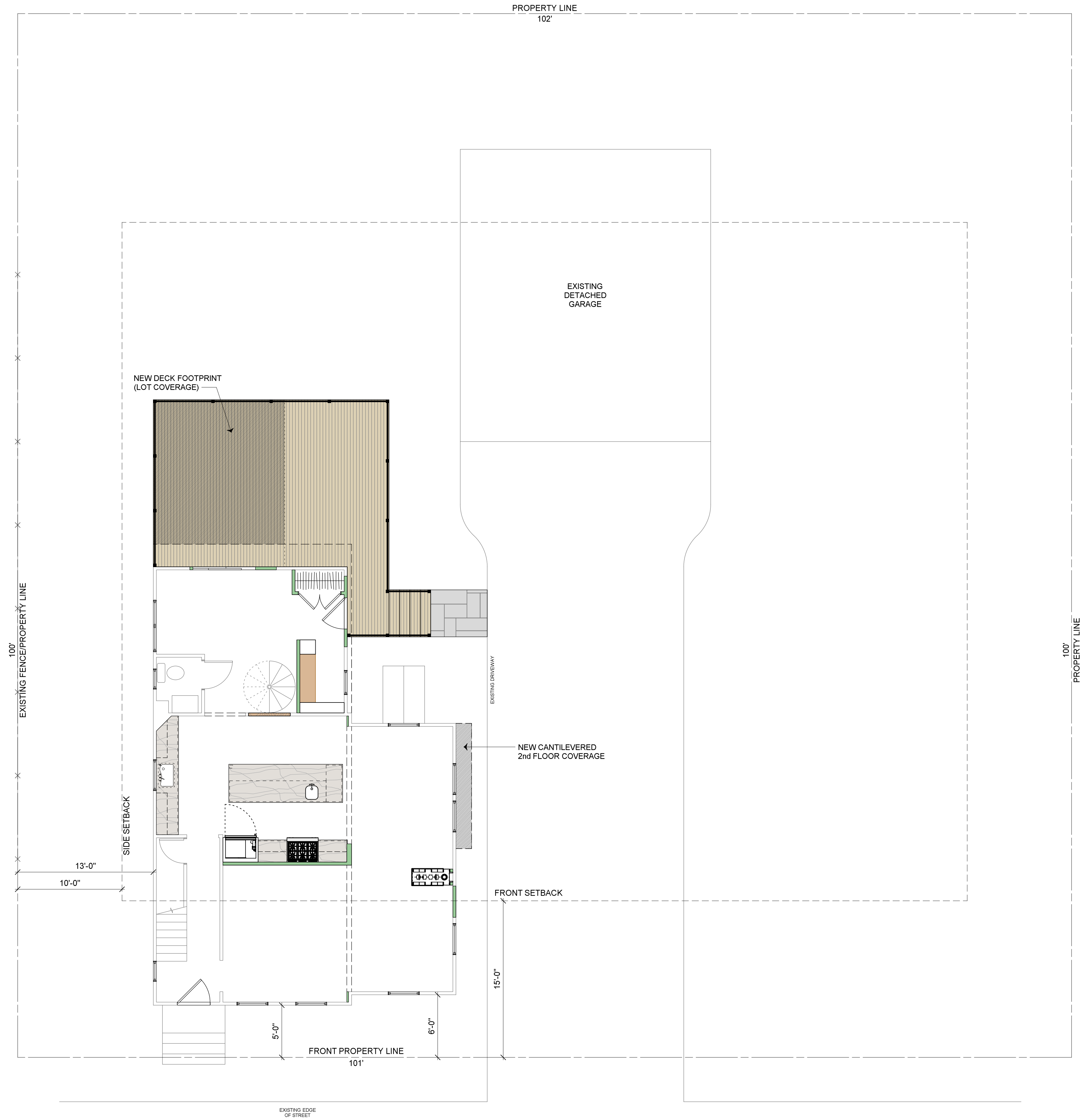
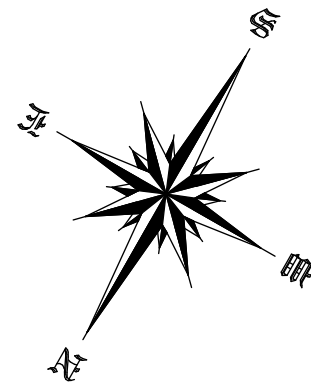
EXISTING FRONT ELEVATION



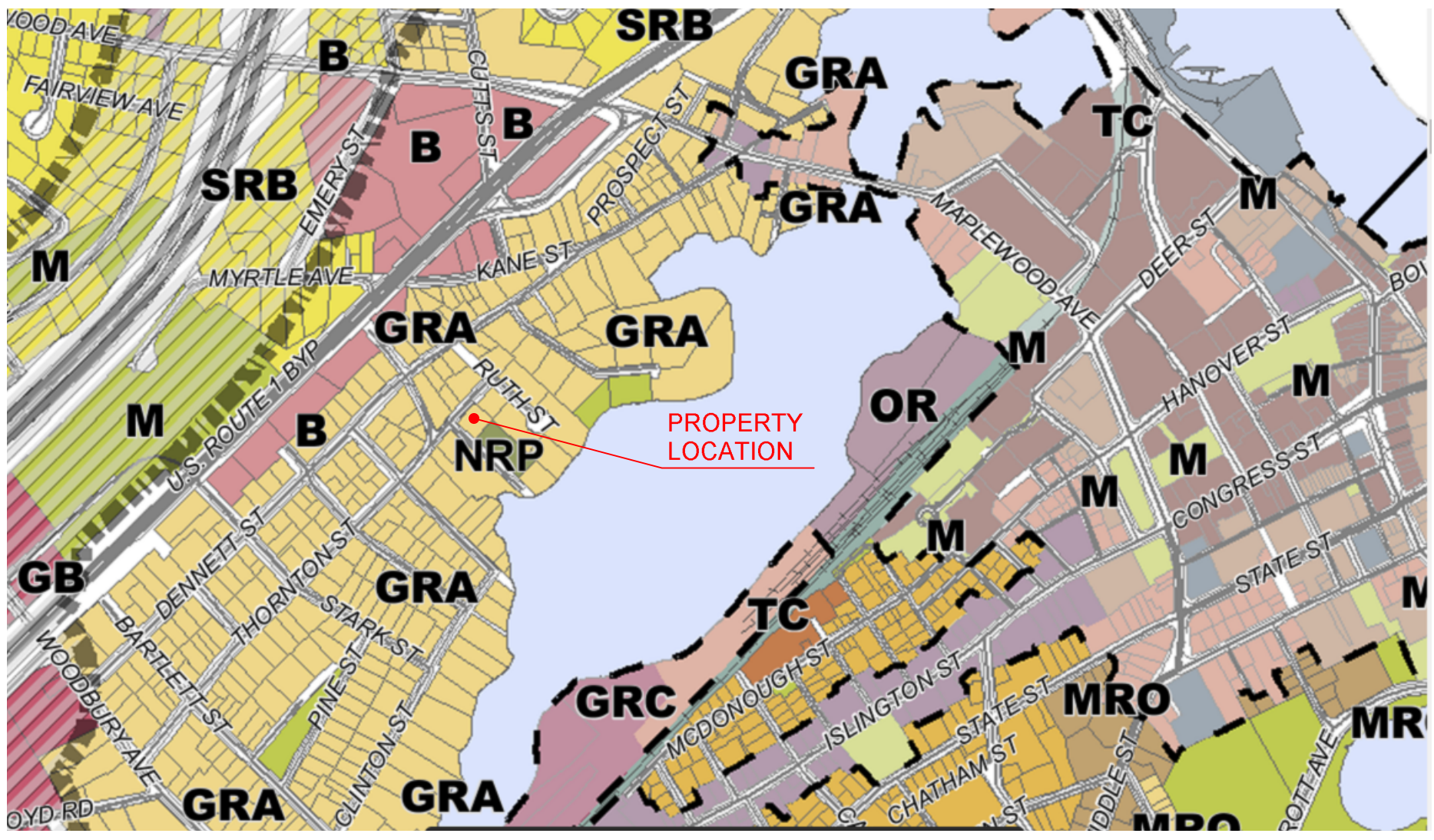
EXISTING BACK ELEVATION



EXISTING SIDE ELEVATION



PROPOSED SITE PLAN
Scale: 3/16" = 1'-0"



ZONING MAP

- Residential Districts**
- R Rural
 - SRA Single Residence A
 - SRB Single Residence B
 - GRA General Residence A
 - GRB General Residence B
 - GRC General Residence C
 - GA/MH Garden Apartment/Mobile Home Park

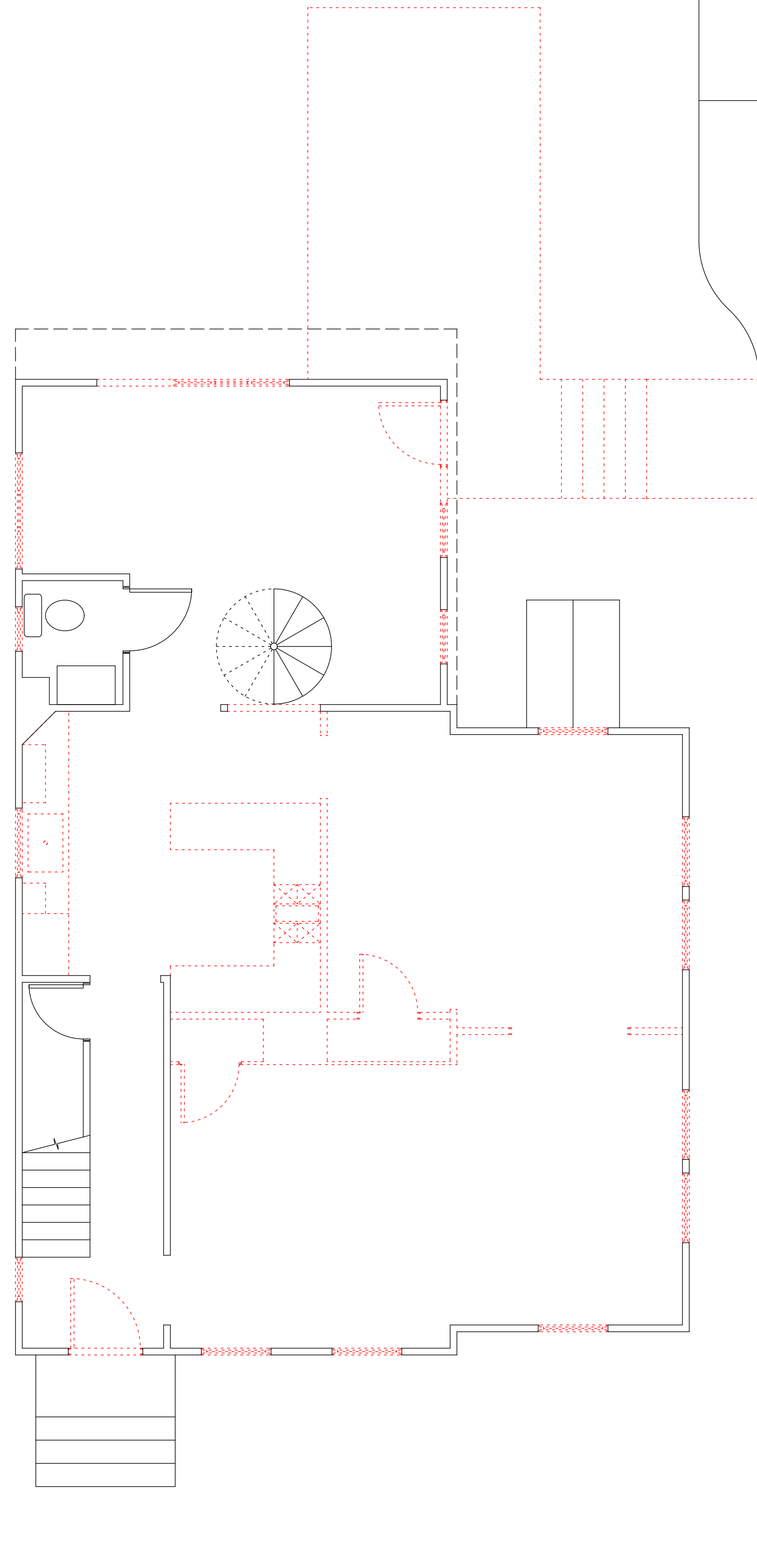
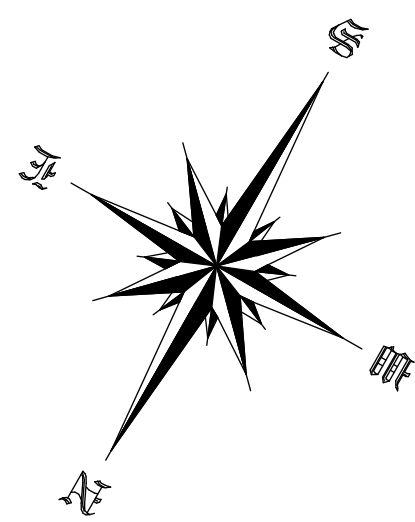
ZONE	GENERAL RESIDENCE A		
	DIMENSION	EXISTING	PROPOSED
BUILDING SETBACKS:			
FRONT:	15 FT		
SIDE:	10 FT		
REAR:	20 FT		
MAX. BUILDING HEIGHT	35 FT	29'-0"	29'-0"
MAX. BUILDING COVERAGE	LOT - 10,100 SF x 25% = 2,525 SF	1,929 SF (19.09%)	2,148 SF (21.27%)



ISSUED
11.6.2023
SITE PLAN

55 THORTON STREET
Portsmouth, New Hampshire
Design Worth Calling Home

A0

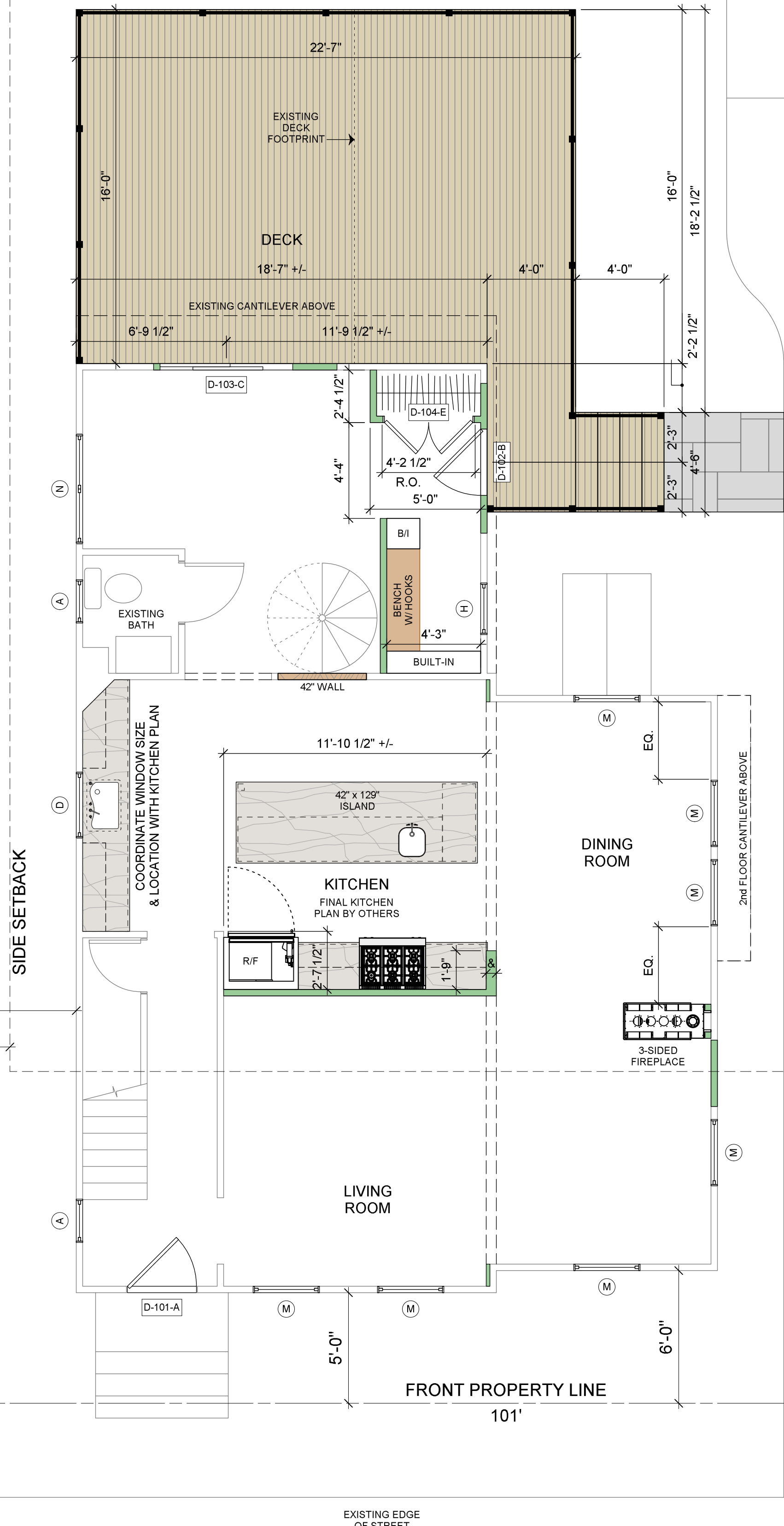


PROPOSED FIRST FLOOR DEMO PLAN

Scale: 1/4" = 1'-0"

EXISTING WALL TO REMAIN
EXISTING TO BE REMOVED

100'
EXISTING FENCE/PROPERTY LINE



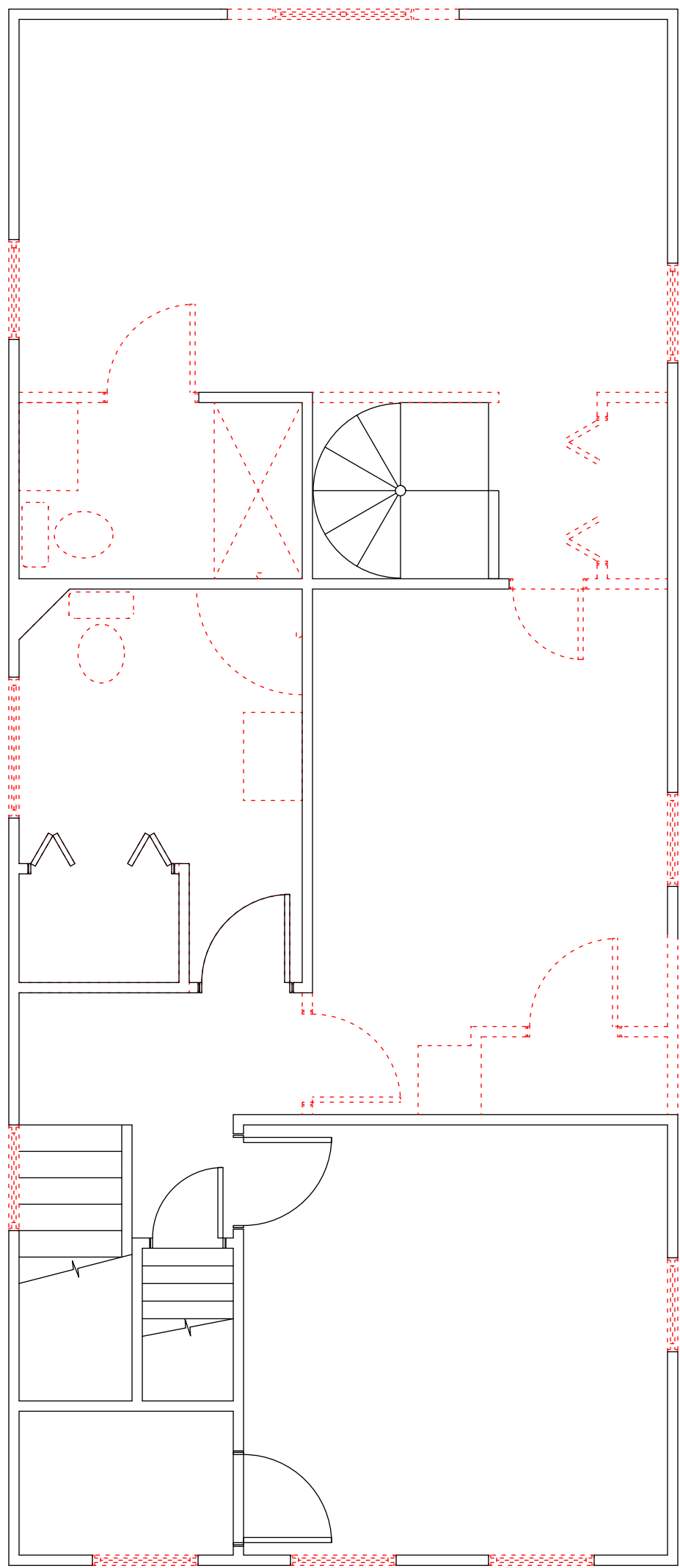
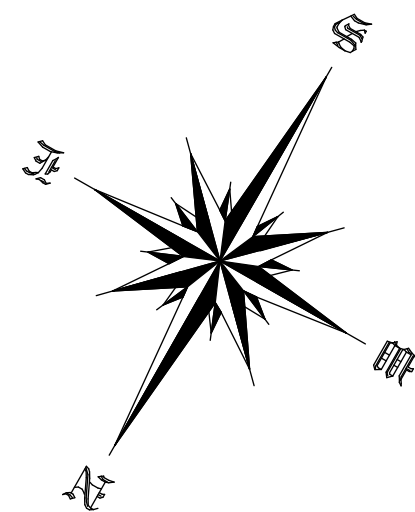
PROPOSED FIRST FLOOR PLAN

Scale: 1/4" = 1'-0"

EXISTING WALL TO REMAIN
NEW PROPOSED STUD WALL

- NOTES:
ARCHITECTURAL 100'-0" EQUAL TO
EXISTING FIRST SUBFLOOR ELEV.
- GENERAL NOTES:
1. DIMENSIONS LOCATE FACE OF STUDS U.N.O.
WINDOW & DOOR DIMENSIONS SHOW R.O. U.N.O.
REFER TO STRUCTURAL DRAWINGS FOR
ADDITIONAL FRAMING INFORMATION & DETAILS (TYP).
2. ASSUMED 3 1/2" INTERIOR STUD WALLS TYPICAL U.N.O.
ASSUMED 5 1/2" EXTERIOR STUD WALLS TYPICAL U.N.O.
*5" = 2x6 STUD WALL
*6" = 2x8 STUD WALL
*8" = 2x10 STUD WALL
3. INTERIOR DOOR R.O.'s TO BE HELD OFF ADJACENT
WALLS 3" (SEE DETAIL -/A-/) U.N.O. OR CENTERED ON
PROMINENT WALL PLANE IF LESS THAN 12" TO EITHER
SIDE OF DOOR. REFER TO SCHEDULE FOR DOOR SIZES.
4. CLOSET DEPTHS ASSUMED @ 2'-1" FRAMING U.N.O.
5. COLUMNS SHOWN ON PLANS ARE FOR GRAPHICAL
REPRESENTATION ONLY. REFER TO STRUCTURAL
PLANS FOR ALL CONNECTION DETAILS, SIZES, NOTES
& REQUIREMENTS FOR FRAMING.

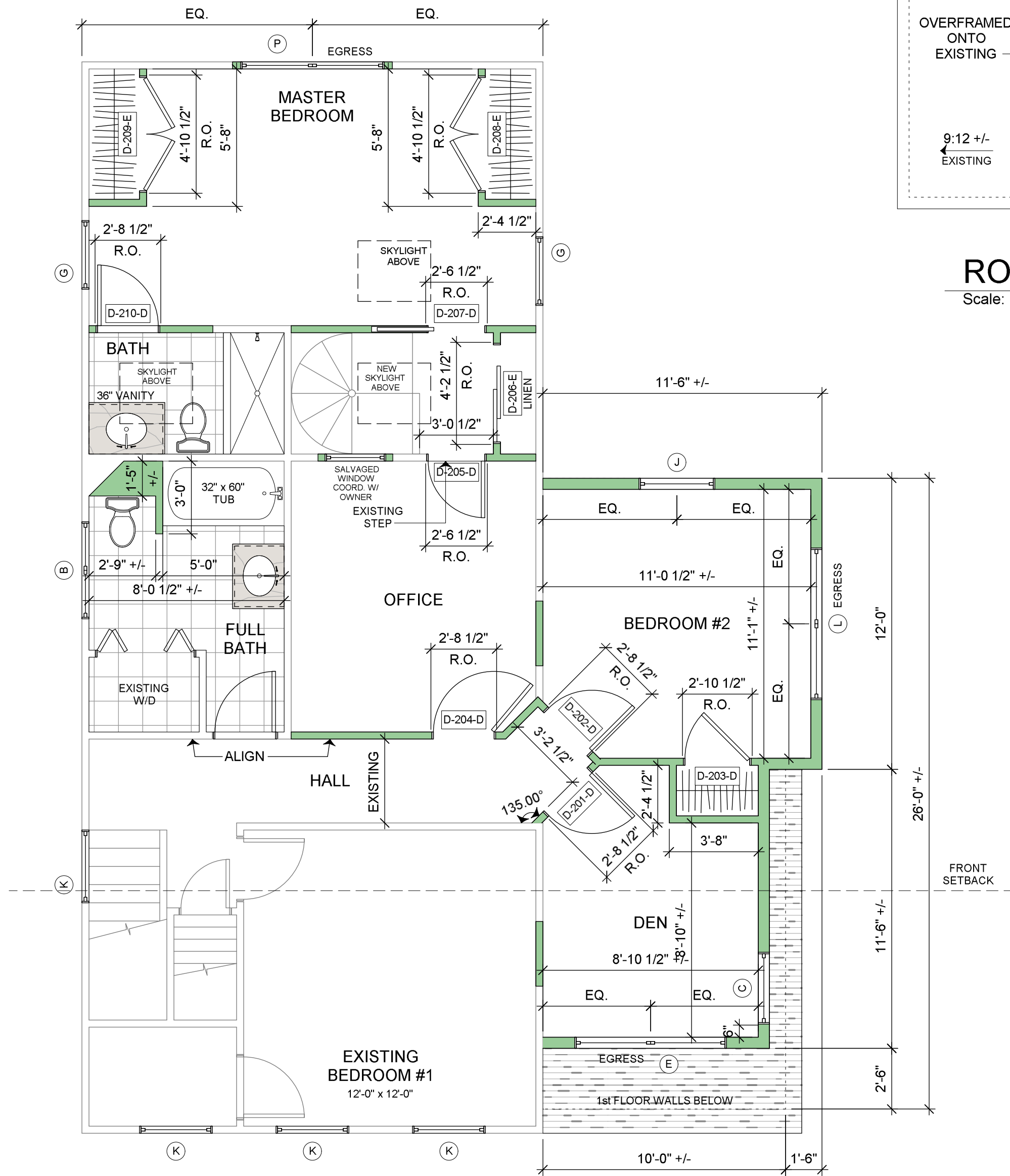
AREA TAKEOFFS	
EXISTING FIRST FLOOR	1052 SQ. FT.
DECK	406 SQ. FT.



PROPOSED SECOND FLOOR DEMO PLAN

Scale: 1/4" = 1'-0"

— EXISTING WALL TO REMAIN
- - - EXISTING TO BE REMOVED



PROPOSED SECOND FLOOR PLAN

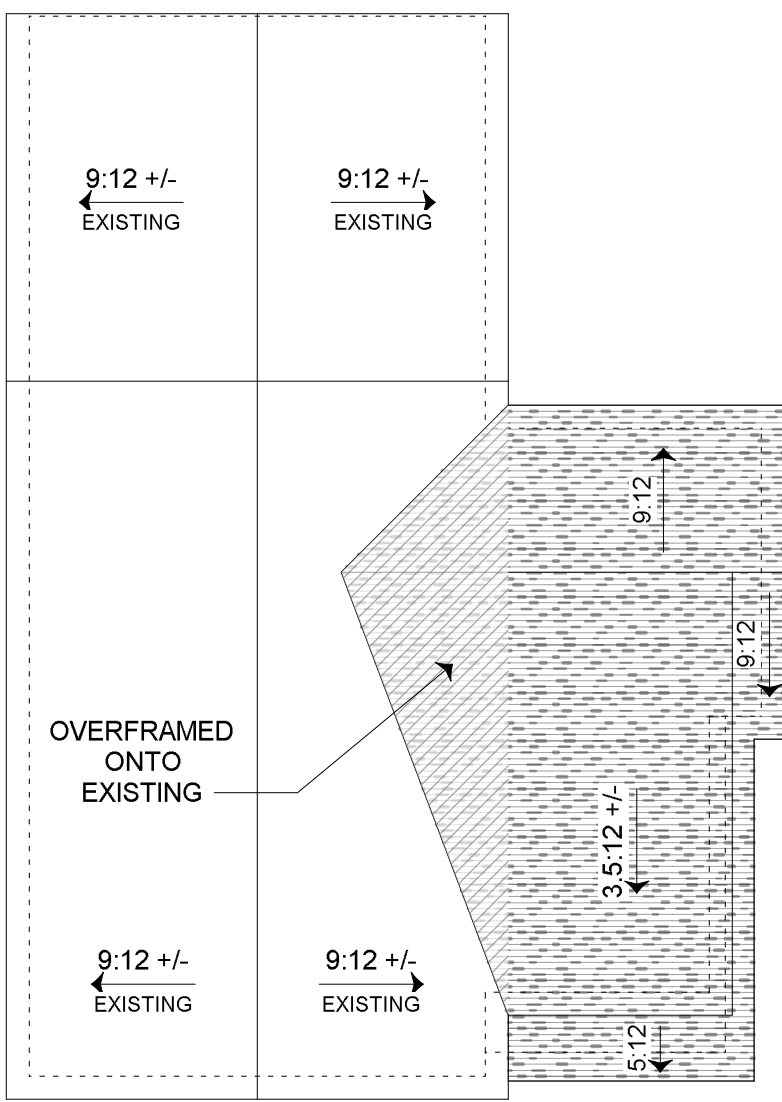
Scale: 1/4" = 1'-0"

— EXISTING WALL TO REMAIN
— NEW PROPOSED STUD WALL

NOTES:
ARCHITECTURAL 100'-0" EQUAL TO
EXISTING FIRST SUBFLOOR ELEV.

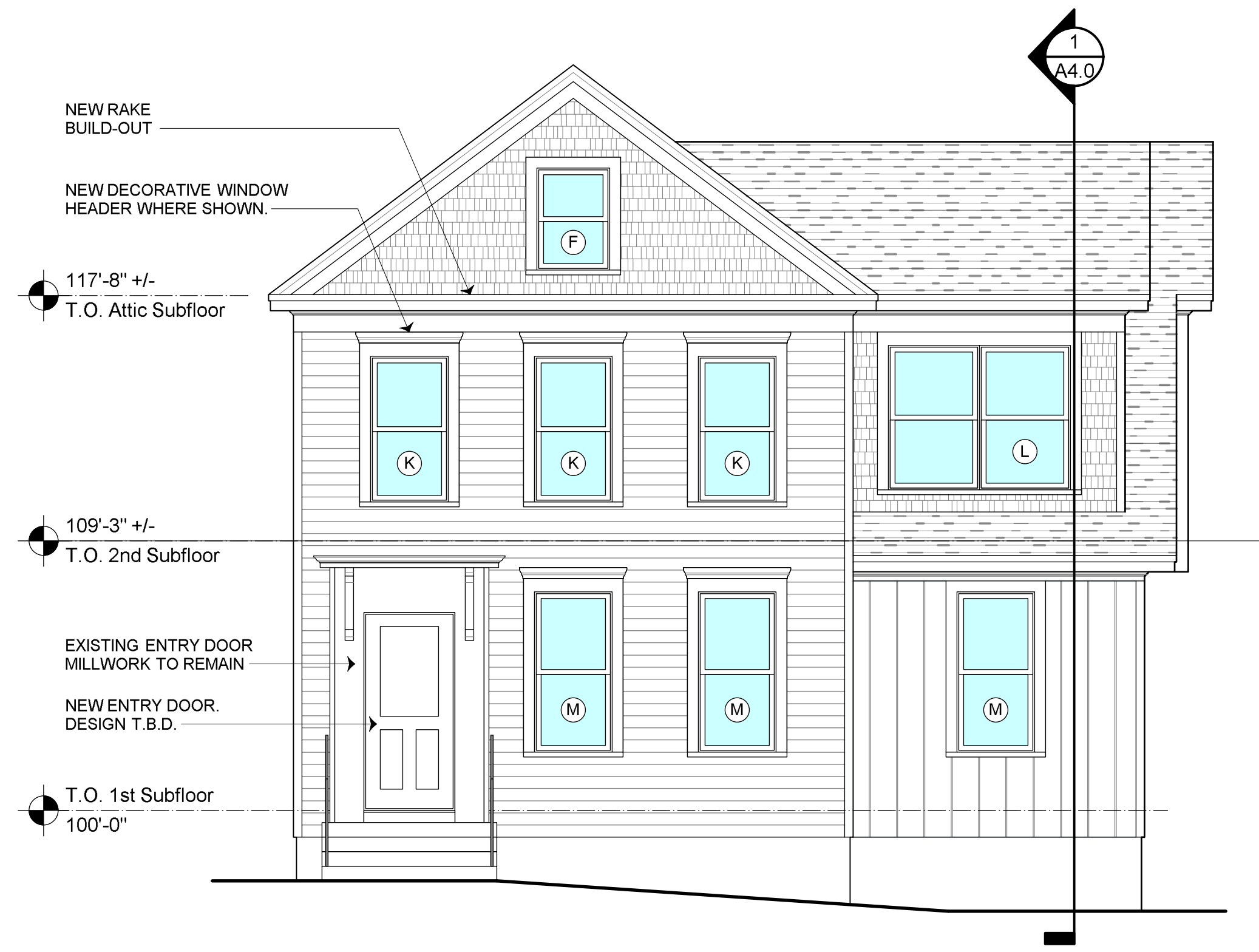
- GENERAL NOTES:
- DIMENSIONS LOCATE FACE OF STUDS U.N.O. WINDOW & DOOR DIMENSIONS SHOW R.O. U.N.O. REFER TO STRUCTURAL DRAWINGS FOR ADDITIONAL FRAMING INFORMATION & DETAILS (TYP).
 - ASSUMED 3 1/2" INTERIOR STUD WALLS TYPICAL U.N.O. ASSUMED 5 1/2" EXTERIOR STUD WALLS TYPICAL U.N.O.
"5" = 2x6 STUD WALL
"8" = 2x8 STUD WALL
"10" = 2x10 STUD WALL
 - INTERIOR DOOR R.O.'s TO BE HELD OFF ADJACENT WALLS 3" (SEE DETAIL -/A-/) U.N.O. OR CENTERED ON PROMINENT WALL PLANE IF LESS THAN 12" TO EITHER SIDE OF DOOR. REFER TO SCHEDULE FOR DOOR SIZES.
 - CLOSET DEPTHS ASSUMED @ 2'-1" FRAMING U.N.O.
 - COLUMNS SHOWN ON PLANS ARE FOR GRAPHICAL REPRESENTATION ONLY. REFER TO STRUCTURAL PLANS FOR ALL CONNECTION DETAILS, SIZES, NOTES & REQUIREMENTS FOR FRAMING.

AREA TAKEOFFS	
EXISTING SECOND FLOOR	839 SQ. FT.
ADDITIONAL SECOND FLOOR	245 SQ. FT.



ROOF PLAN

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



PROPOSED FRONT ELEVATION

Scale: 1/4" = 1'-0"

0 5 10 FT



PROPOSED SIDE ELEVATION

Scale: 1/4" = 1'-0"

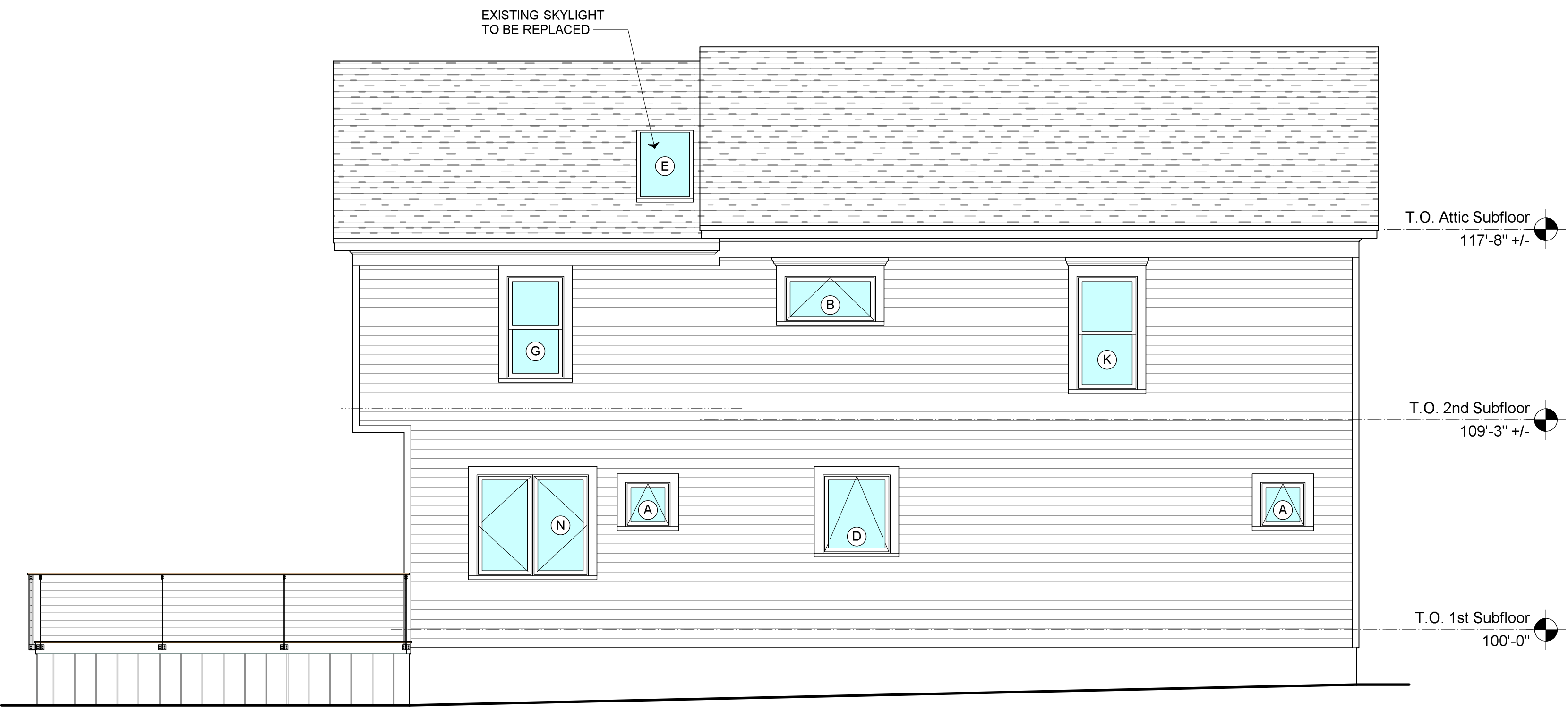
0 5 10 FT



PROPOSED REAR ELEVATION

Scale: 1/4" = 1'-0"

0 5 10 FT



PROPOSED SIDE ELEVATION

Scale: 1/4" = 1'-0"

0 5 10 FT

From: [Christian Paulsen](#)
To: [Justin Marone](#)
Cc: [Anja Paulsen](#)
Subject: Authorization for Variance Submission
Date: Friday, January 6, 2023 3:31:16 PM

Hello,

Justin Marone has authorization to submit an application for a variance for a volume increase for our property at 55 Thornton Street Portsmouth, NH 03801.

Regards,

Christian Paulsen, Trustee
Anja Paulsen, Trustee
Paulsen Family Revocable Trust of 2017

Letter of support

From: Tim Andrews (tim.andrews.86@gmail.com)

To: anjawpaulsen@gmail.com; cepaulsen@yahoo.com

Date: Tuesday, January 10, 2023 at 03:25 PM EST

To Whom it may concern-

As direct neighbors to the Paulsen's, we support their request for a variance to allow them to expand and improve their house. Their new design looks great, will enhance the character of the neighborhood and will allow them to stay and raise their children in a very family friendly neighborhood. Should you have any questions, please do not hesitate to reach out.

Thank you,

Tim and Sarah Andrews
56 Thornton St
Portsmouth, NH

Fw: Support for Variance at 55 Thornton St

From: christian paulsen (cepaulsen@yahoo.com)

To: cepaulsen@yahoo.com

Date: Thursday, January 12, 2023 at 09:58 AM EST

----- Forwarded Message -----

From: Ann C. Bliss <anncbliss@gmail.com>

To: christian paulsen <cepaulsen@yahoo.com>

Cc: Anja Paulsen <anjawpaulsen@gmail.com>

Sent: Tuesday, January 10, 2023 at 03:56:17 PM EST

Subject: Re: Support for Variance at 55 Thornton St

Hi Christian and Anja,

Glad to see the plans and to get a tour of your house. I will see you on the other side of India. I'm sure I'll have stories! Good luck with the construction. Having lived with a contractor for a gazillion years, I know that often the time frame is prolonged for this or that issue. I hope it goes smoothly and I'm glad to hear you won't have to live there while the demo and building is happening.

Best,
ann

To Whom it may concern:

As a 28 year resident on Thornton St, I am very excited with the proposed design and improvements to the Paulsen's house at 55 Thornton. I fully support the variance being requested which will not only improve the neighborhood but also allow the Paulsen's to raise their family in a great neighborhood as I did with my family. If you have any questions please feel free to reach out to me.

Thanks,
Ann C. Bliss
48 Thornton St
Portsmouth, NH
603-781-4058

Sent from my iPad

55 Thornton Variance Support

From: Chuck Dudas (cdudas@gmail.com)

To: cepaulsen@yahoo.com; anjawpaulsen@gmail.com

Cc: willsoal@gmail.com

Date: Wednesday, January 11, 2023 at 09:18 AM EST

To Whom it may concern-

As neighbors to the Paulsen's, we support their request for a variance to allow them to expand and improve their house. Their new design looks great and fits the character of the neighborhood. It also gives them space for their family and allows them to stay and raise their children in a very family friendly neighborhood. Should you have any questions, please do not hesitate to reach out.

Thank you,

Chuck and Allison Dudas
32 Monteith St
Portsmouth, NH

III. NEW BUSINESS

- C. The request of **Michiyo Bardong and Shawn Bardong (Owners)**, for property located at **39 Dearborn Street** whereas relief is needed to construct a second story over the existing 1.5 story building, remove and expand the front porch, and remove and expand the existing mudroom on the eastern side of the structure which requires the following: 1) Variance from Section 10.521 to allow a) 2 foot rear yard where 20 feet is required; and b) 9 foot side yard where 10 feet is required. 2) Variance from Section 10.321 to allow the extension and enlargement of a non-conforming structure. Said property is located on Assessor Map 140 Lot 3 and lies within the General Residence A (GRA) and Historic District. (LU-23-5)

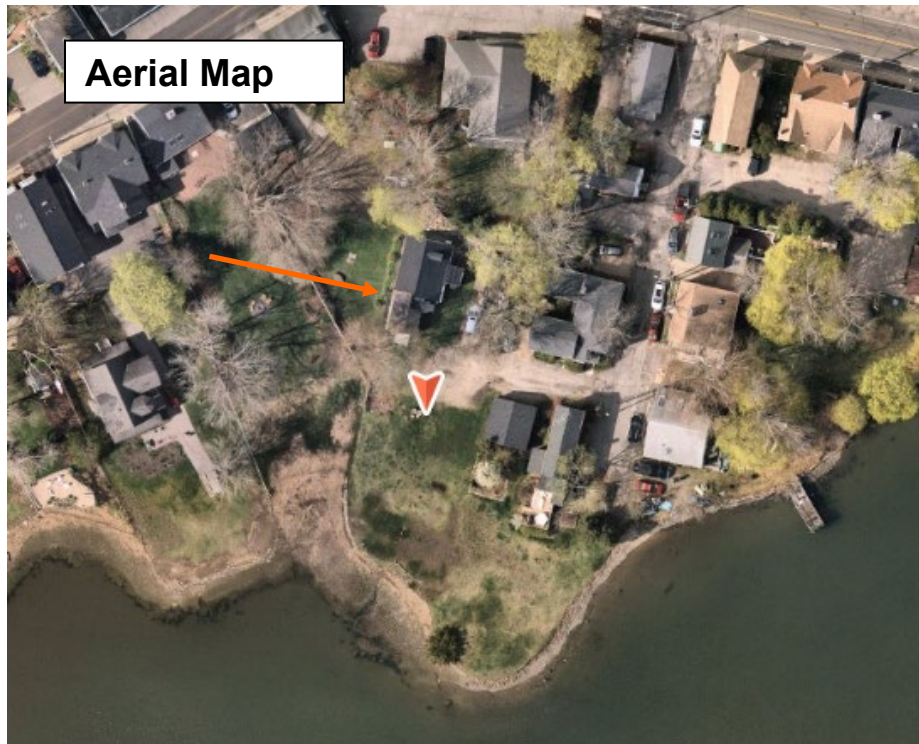
Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted/Required</u>
<u>Land Use:</u>	Single Family w/ detached garage	Expansion of livable space	Primarily residential uses
<u>Lot area (sq. ft.):</u>	11,236	11,236	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	11,236	11,236	7,500 min.
<u>Street Frontage (ft.):</u>	19	19	100 min.
<u>Lot depth (ft.):</u>	60	60	70 min.
<u>Primary Front Yard (ft.):</u>	5	5	15 min.
<u>Left Side Yard (ft.):</u>	114	114	10 min.
<u>Right Side Yard (ft.):</u>	2	2 – Addition of 2nd floor 9 – Expansion of mudroom/ family room area	10 min.
<u>Rear Yard (ft.):</u>	2	2 – Addition of the second floor	20 min.
<u>Height (ft.):</u>	22.5	30	35 max.
<u>Building Coverage (%):</u>	13	16	25 max.
<u>Open Space Coverage (%):</u>	>50	>50	30 min.
<u>Parking</u>	Ok	Ok	1.3
<u>Estimated Age of Structure:</u>	1700	Variance request shown in red.	

Other Permits/Approvals Required

- Building Permit
- Wetland Conditional Use Permit
- Historic District Commission Approval

Neighborhood Context



Previous Board of Adjustment Actions

August 26, 2008 – The Board **postponed** to September the request to construct a 7'10" by 13'9" shed which required the following relief:

- 1) 4'± left side yard setback where 10' was required; and
- 2) 65'± setback to salt water marsh or mean high water line where 100' was required.

September 16, 2008 – the above petition was **postponed** to October.

October 21, 2008 – The above petition was **amended** as follows and **postponed** to the November 18, 2008 meeting:

- 1) 5'± front setback where 15' was required was added

November 18, 2008 – The above petition was **withdrawn** by the applicant.

March 17, 2015 – The Board **postponed** the petition to construct a 100 s.f. shed in the front yard and an 8' x 13' single story addition, as well as adding shed dormers was to the April meeting.

April 21, 2015 – The Board **granted** variances for the above petition, with the shed reduced to 12' x 18'. Which required the following relief

- 1) a 5' front yard where 15' was required;
- 2) a 5' right side yard where 10' was required;
- 3) a 3' rear yard where 20' was required and
- 4) an accessory structure to be located in a required front yard.

The variances were **granted with stipulations** regarding the following:

- a) the dimensions, construction and uses of the granted accessory structure;
- b) no flood lights on the accessory structure;
- c) the creation of an approximate 2,018 s.f. View Easement Area with specified components, rules regarding trees and vegetation, and removal of a utility trailer; and
- d) the review of the Planning Department, prior to issuance of a building permit, of the final building and site plans and determination that the plans and elevations were in compliance with the stipulations.

August 27, 2019 – The Board voted to **granted** the following variance for the installation of a wall mounted outdoor AC condenser:

- 1) To allow a 2'6" right side setback where 10' is required

Planning Department Comments

The Applicant is proposing to remove the existing front porch and mudroom and construct a new entry, a new living area, and a second story above the existing first story. The extended living area is proposed to be constructed within the space between the existing structure and the shed but will not create a passable connection between the two structures.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

- (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Section 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

Portsmouth, NH - Board of Adjustment
Variance Statement for: 39 Dearborn Ext.

Date: 01.19.23

Chairman of the Board of Adjustment
C/O Planning Department City of Portsmouth
1 Junkins Ave.
Portsmouth, NH 03801

To The Chairman of the Board of Adjustment,

Please find this statement as addressing the requirements for a variance on the proposed project located at 39 Dearborn Ext.

Overview: The existing single-family structure was purchased by the current owners, Shawn and Michiyo Bardong as a home in our community with their three children. The renovated home will remain single-family with some much-needed additional square footage and upgrades to create a more functional home. The proposed renovation would include removing the existing second floor original failed roof system dating roughly to 1800 and replace it with a Dutch Colonial roof system. The second floor will become a primary suite, two small bedroom and a half-bath. There is a poorly built unconditioned mudroom off the front of the house and we are proposing the removal of this structure to be replaced by a conditioned, larger square footage family room. Lastly, we are proposing an extension off the existing kitchen to create a functional mudroom.

Per Section 10.233.21 – The variance will not be contrary to public interest. The house is very difficult to see from any public roadways. (I have included images for reference.) Only the direct neighbors can see the home and we will not be interrupting any views or sunlight to their structures.

Per Section 10.233.22 - The spirit of the Ordinance will be observed. With this addition / renovation we will be able to create a lovely courtyard with granite landing / steps between the driveway and house. This will finish a great deal of what has already been approved and bringing it to fruition.

Per Section 10.233.23 – Substantial Justice will be done. The existing home is already a non-conforming lot with the back setback 2'-6" and the right-side setback 2'-2". We will not be encroaching closer on any other property lines. No harm will be done to the neighborhood or community should this application be granted.

Per Section 10.233.24 - The values of the surrounding properties will not be diminished. The neighborhood is a lovely mix of historic homes, primarily colonials with additions. We believe a Dutch Colonial fits in nicely and is more in

keeping with the neighborhood. We are proposing that the roofline will raise up 7'-0" from the cape to Dutch Colonial and provide the mass needed for the additions to blend into. Instead of many little parts and shapes, we are creating a more consistent design with a nod to history.

Per Section 10.233.25 – Literal enforcement of the provisions of the ordinance would result in hardship.

- a. The current roof system does not have knee walls and with a center ridge of 11' from second floor this leaves very little functional space on the second floor which is currently two small bedroom. By no means could we reach the IRC 2018 building code with the current roof system – especially the energy code.
- b. The existing structure was barged over in roughly 1800 and was viewed as a "camp" of sorts. All other structures in the area are taller than this home.
- c. We are proposing that the family room and mudroom additions stay within the building structures already on the property so as not to encroach any closer to other properties or the water. With the house already tucked into the top left corner of the property, there were very few options of locating these spaces.
- d. The existing structure is not large enough for a family of five with both Shawn and Michiyo working from home. With the housing prices and lack of inventory in Portsmouth, they are willing to invest in the home and "love it back to life".

We encourage the Portsmouth Board of Adjustment to grant the variance to the Bardong Residence.

Submitted respectfully,

Amy Dutton
Amy Dutton Home
9 Walker Street
Kittery, Maine 03904
amy@amyduttonhome.com
207-337-2020

PHOTOS OF EXISTING PROPERTY:



FRONT VIEW



RIGHT SIDE VIEW



LEFT SIDE VIEW



BACK VIEW



VIEW FROM DENNET STREET

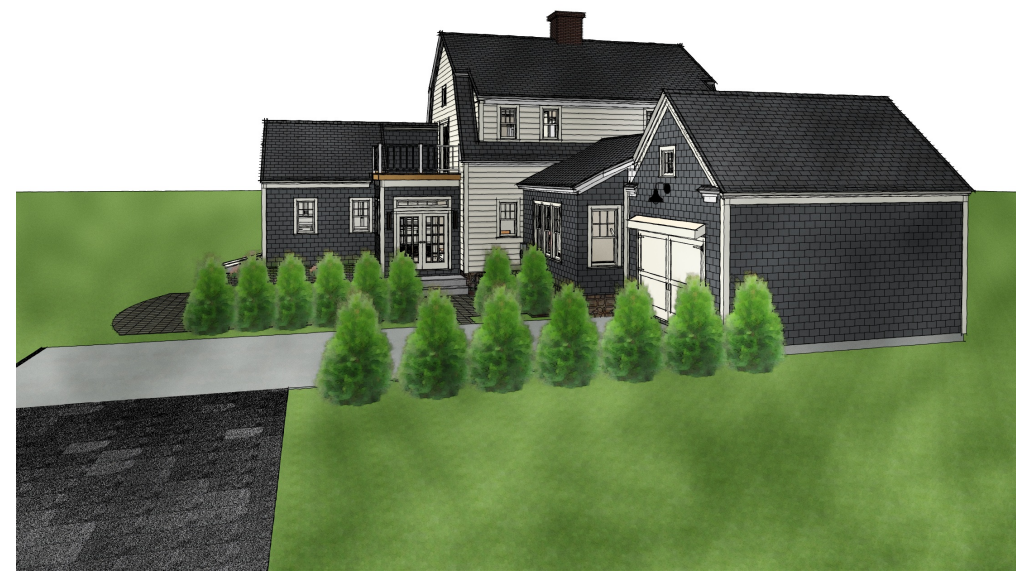


VIEW FROM DEARBORN STREET

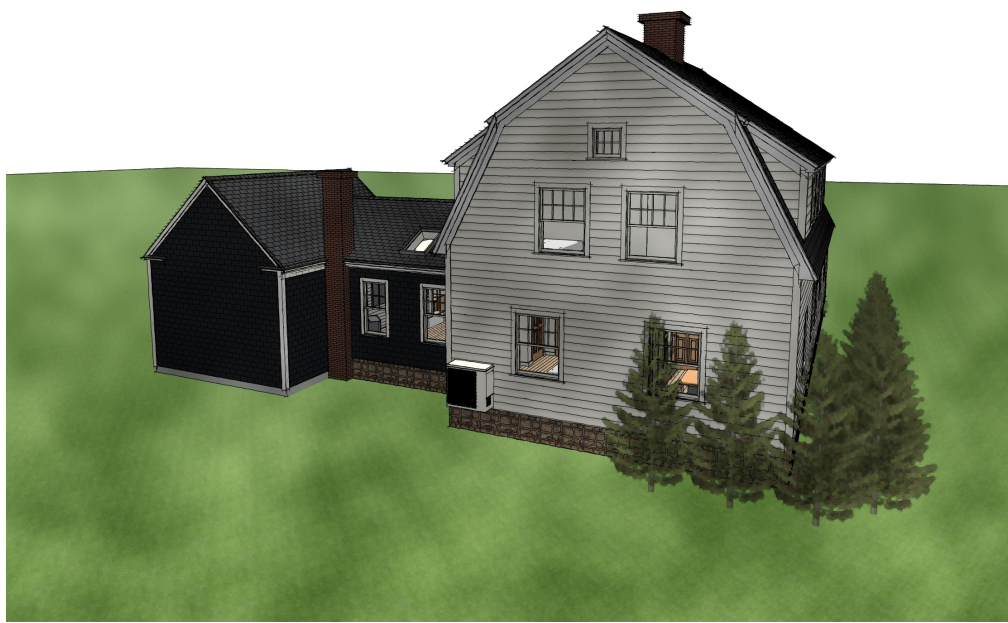


VIEW FROM MAPLEWOOD

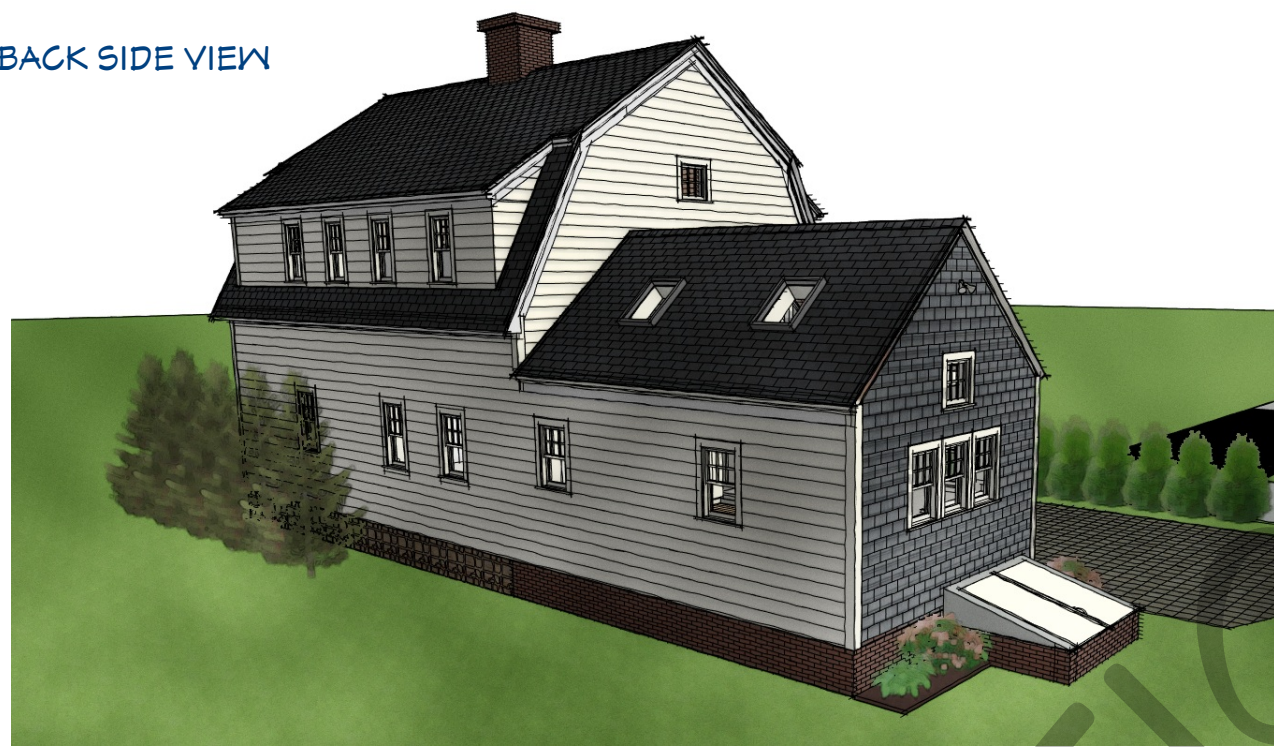
FRONT VIEW



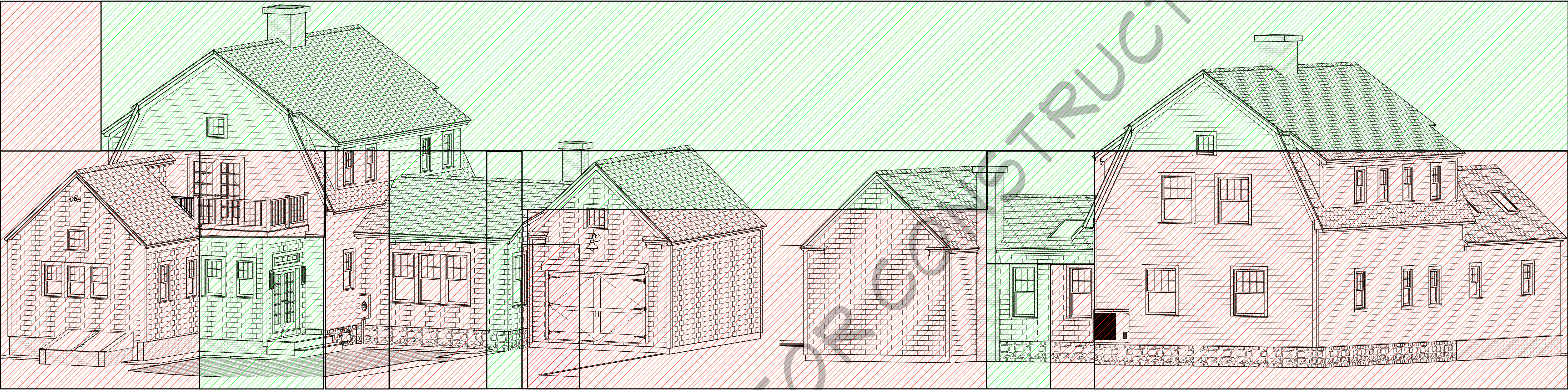
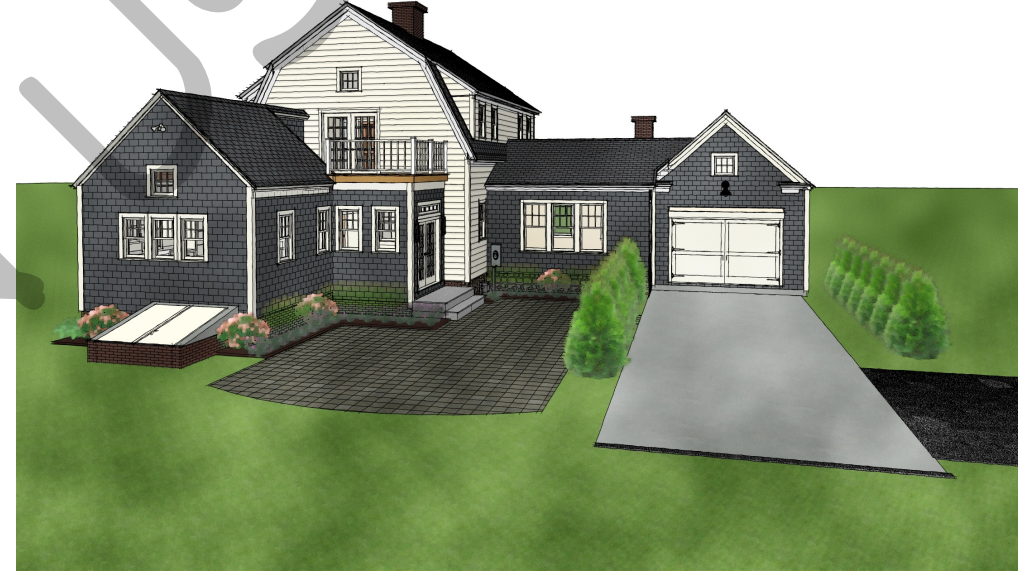
RIGHT SIDE VIEW



BACK SIDE VIEW



SIDE REAR VIEW



OVERVIEW

SCALE: NTS

SPECIFICATIONS + NOTES

- *ROOFING MATERIAL:
*ALL TRIM PACKAGE: PVC OR BORAL
*SIDING:
*BRACKETS: ProWood Market - Bracket 02T9 - P 32", H:42", T: 5.5" (Ptd: WHITE)
*COLUMNS:
*STAIR SYSTEM:
 _EXTERIOR:
 *BROSCO: Liberty Extruded Rail System
 *RISER: AZEG- WHITE
 *TREAD: SELECTWOOD, ZURI "Weathered Grey"
 _INTERIOR:
 *NEWEL
 *HANDRAIL
 *BALUSTERS
 *RISER FINISH
 *TREAD
*WINDOWS:
 _MANUFACTURER:
 _EXT. FINISH:
 _INT. FINISH:
*DOORS:
 _MANUFACTURER:
 _EXT. FINISH:
 _INT. FINISH:
*BATHROOMS:
 _FLOORING
 _TUB DESIGN
 _SHOWER FLOOR
 _SHOWER WALLS
 _SHOWER HEADS
 _SHOWER NICHE VS. SHELVES
 _SHOWER DOOR
 _NOTE: MAJOR PLUMBING CHANGES
- *FLOORING:
 _1ST FLOOR:
 _2ND FLOOR:
 _HEATED FLOOR:
 _REFINISH AREAS:
*KITCHEN:
 _CABINETRY NOTES: Specs to be prepared on 11 x 17 doc.
 _BUILT-IN NOTES:
 _APPLIANCES
*MANTLE:
*FIREPLACE:
 _GAS
 _WOOD: INT. FIREBOX: RED BRICK VS. YELLOW BRICK
 _HEARTH: RAISED VS. FLUSH
 *MATERIAL:
NOTES:
*CEILING HEIGHTS: 1ST FLOOR: _____ 2ND FLOOR: _____
*CORNER BOARDS: 6" TYP
*WATER TABLE: 10" W/ COPPER FLASHING TYP.
*RAKE BOARD: 8" TYP. PVC OR BORAL. (FILLED & PAINTED)
*SOFFIT - BEADBOARD AZEG OR EQ.
*ROOF VENT - RIDGE VENT VS. BROSCO LOUVERED VENT VS. SOFFIT VENT
*ARCHITECTURAL DETAIL:
*WINDOW TRIM: 4-1/2" TYP. PVC
TOTAL SQUARE FOOTAGE:
 _NEW
 _RENOVATED SF
 _TOTAL

@ABRIGO HOME
DRAWINGS USED EXPRESSIVELY FOR
DESIGN ONLY FOR NOTED CLIENT. ALL
STRUCTURAL ENGINEERING PROVIDED BY
OTHER.

Building contractor / home owner to review and verify all
dimensions, specs and connections before construction
begins.
ELECTRICAL SYSTEM CODE: IEC 2017
MECHANICAL SYSTEM CODE: IMC 2015
PLUMBING SYSTEM CODE: 2021 Uniform Plumbing Code

FINAL CD SET DATE: 01.09.23

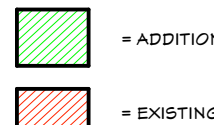
LIVING AREA

MAIN FLOOR	1342sqft
2ND FLOOR	744sqft
TOTAL	2086sqft

DIM DISCLAIMER

BUILDING CONTRACTOR/HOME OWNER
TO REVIEW AND VERIFY ALL DIMENSIONS,
SPECS, AND CONNECTIONS BEFORE
CONSTRUCTION BEGINS.

WALL LEGEND



Layout Page Table

Label	Title
O-1	OVERVIEW
O-2	OVERVIEW
A1	PLOT PLAN
A2	PLOT PLAN
A3	DEMOLITION PLAN
A4	RENOVATION PLAN
G-1	GENERAL NOTES
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G-3	GENERAL NOTES
A-1	FOUNDATION
A-2	FIRST FLOOR
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A-7	ROOFS
A-8	WINDOW AND DOOR SCHEDULE
A-9	ELEVATIONS
A-10	ELEVATIONS
A-11	ELEVATIONS
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A-16	SAMPLE IMAGES
L-1	LANDSCAPE PLAN
F-1	FRAMING
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D-1	DETAILS
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P-1	PLUMBING
C-1	KITCHEN CABINETRY
C-2	BATH CABINETRY
C-3	CABINETRY
C-4	COUNTERTOP & TILE PLAN
C-5	COUNTERTOP & TILE QUANTITIES
C-6	CABINET SCHEDULE
FP-1	FURNITURE PLAN
FP-2	FURNITURE SCHEDULE

OVERVIEW

CLIENT:

ABRIGO HOME
39 DEARBORN EXT
PORTSMOUTH, NH

CONTACT:

ABRIGO HOME
PO BOX 1564
PORTSMOUTH, NH 03801
207.345.6050

DATE:

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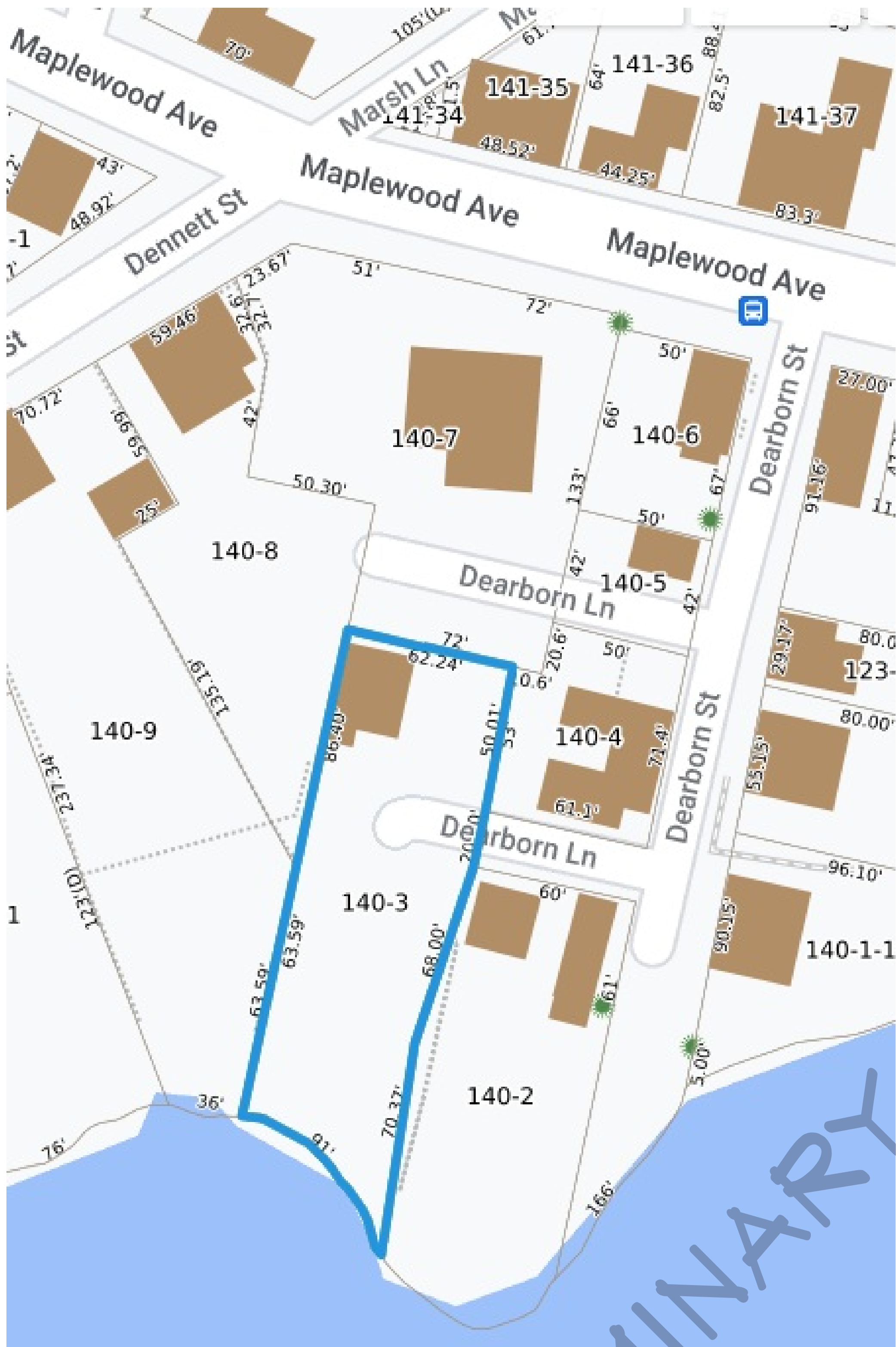
SCALED FOR:
24" X 36"

SCALE:

SEE SCALE
ON DRAWINGS

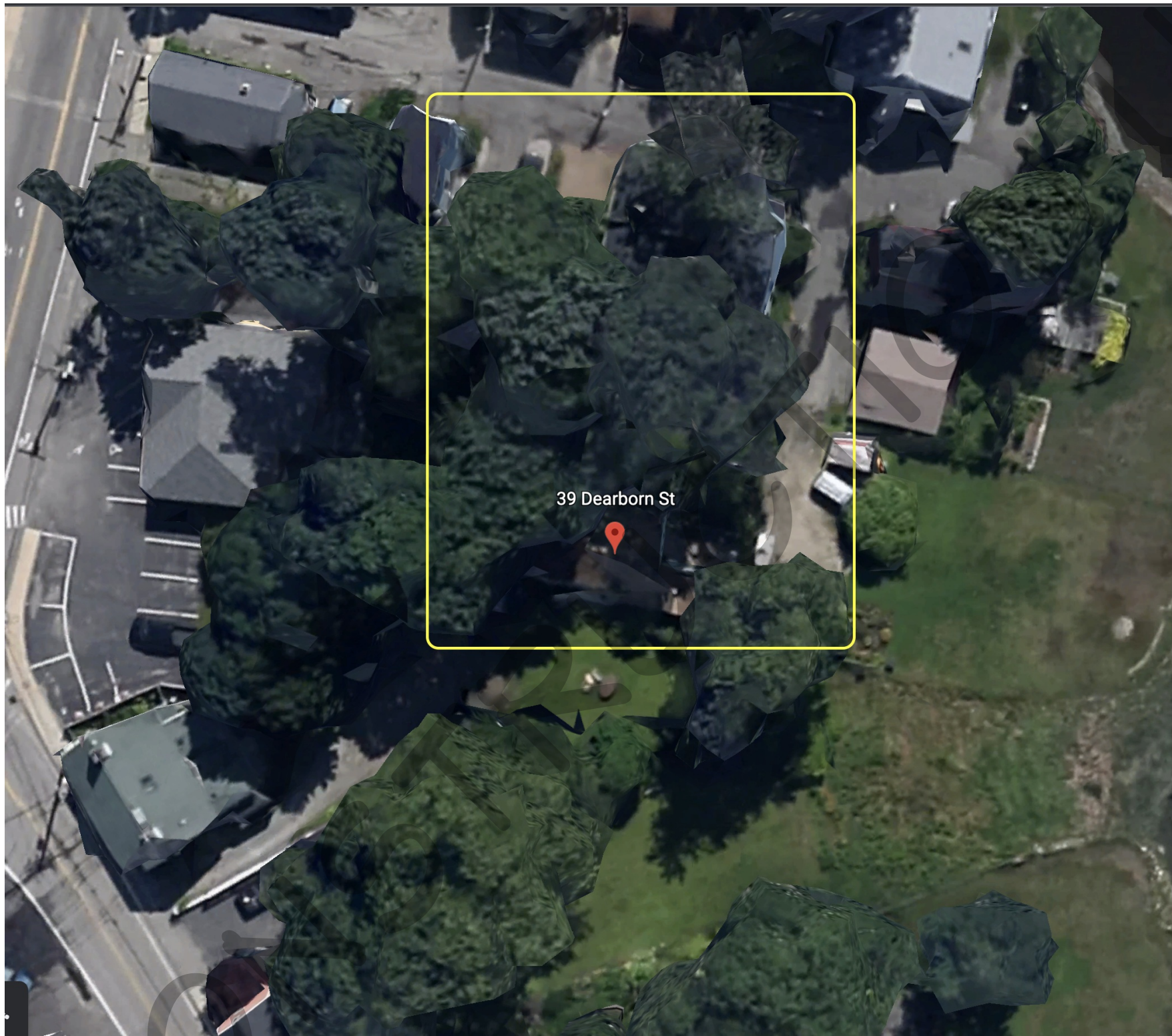
SHEET:

0-1

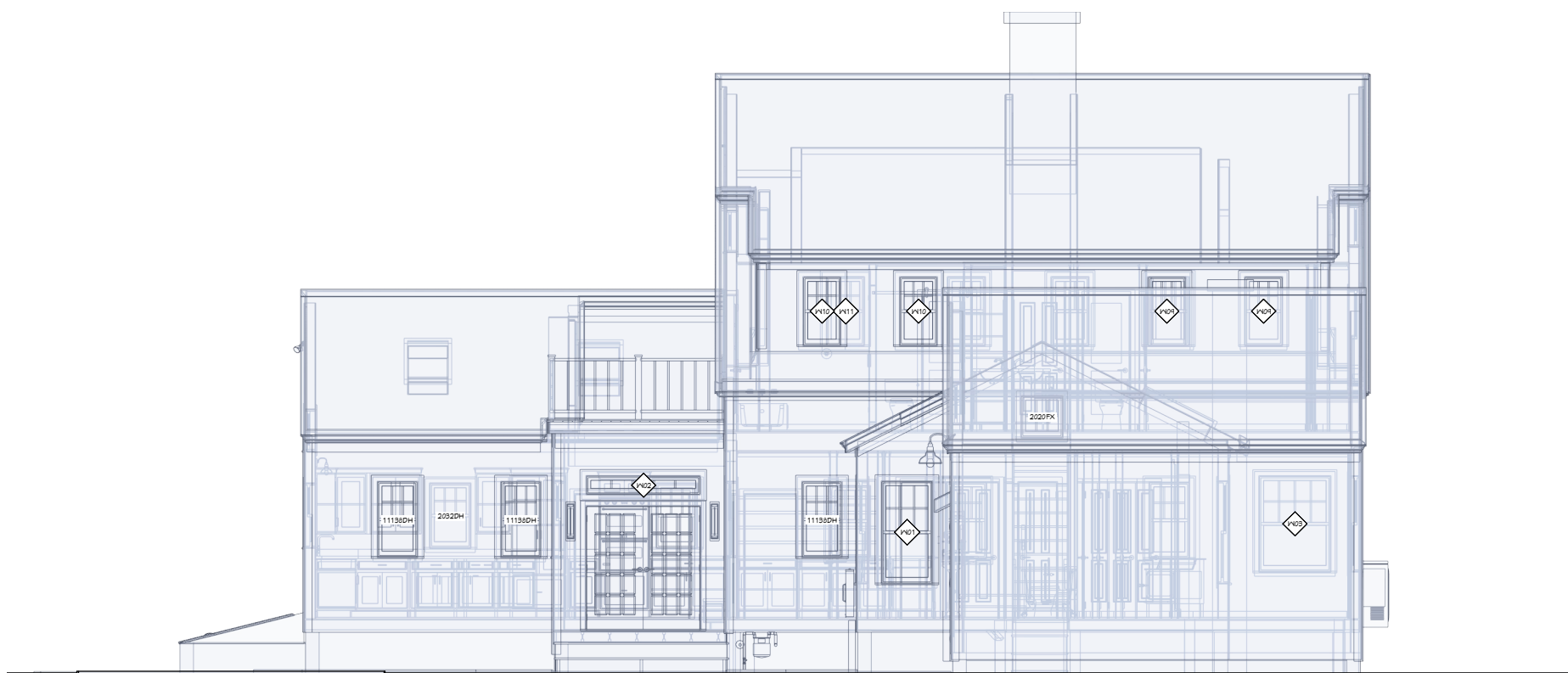


CITY OF PORTSMOUTH - MAP GEO GIS

SITE PLAN

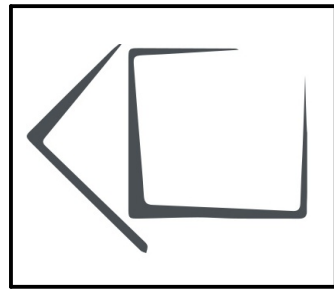


GOOGLE SATELITE SITE



GLASS HOUSE ELEVATION FROM EAST

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



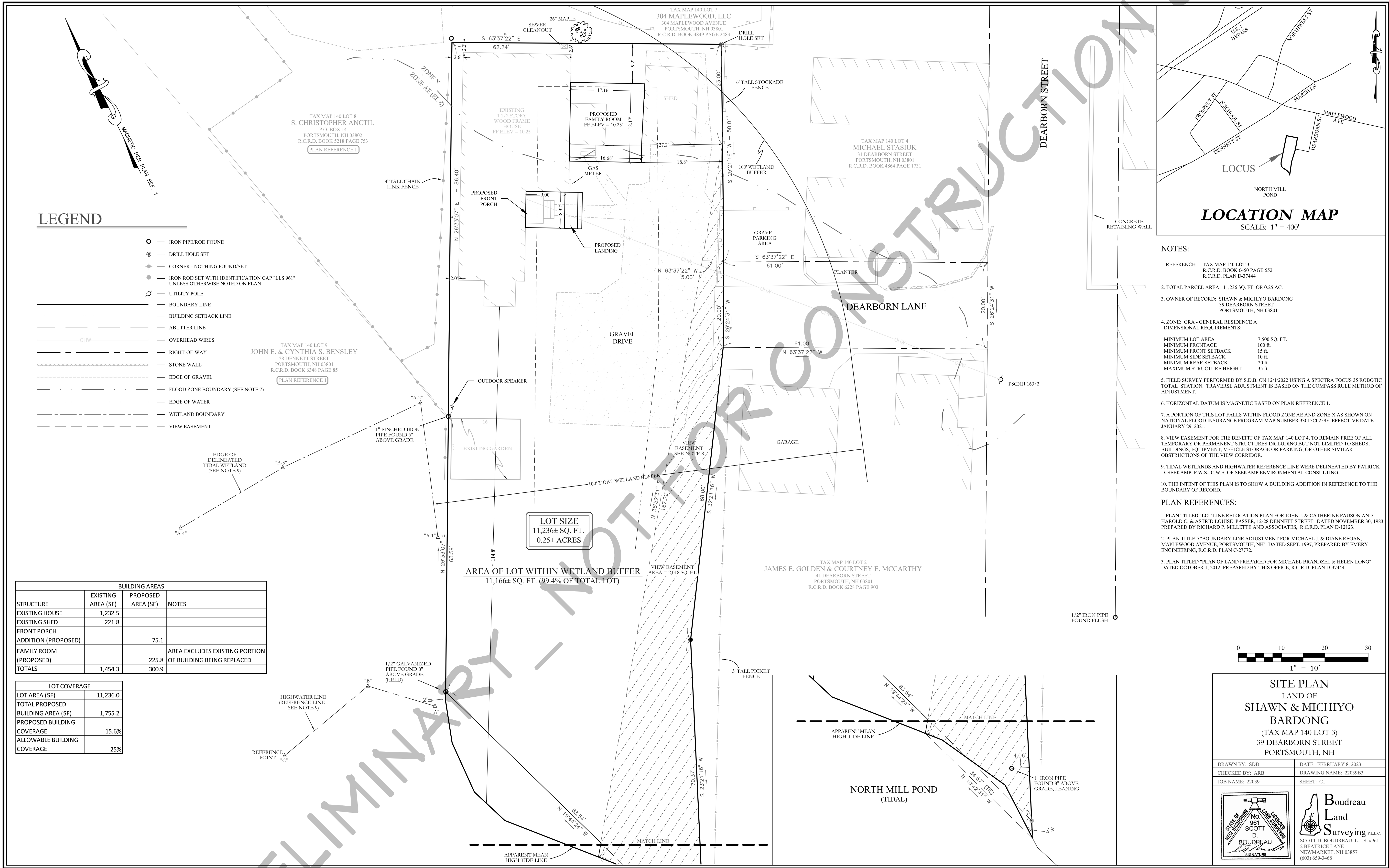
Revision Table	
Number	Description

PLOT PLAN

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PORTSMOUTH, NH

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SHEET:
A1



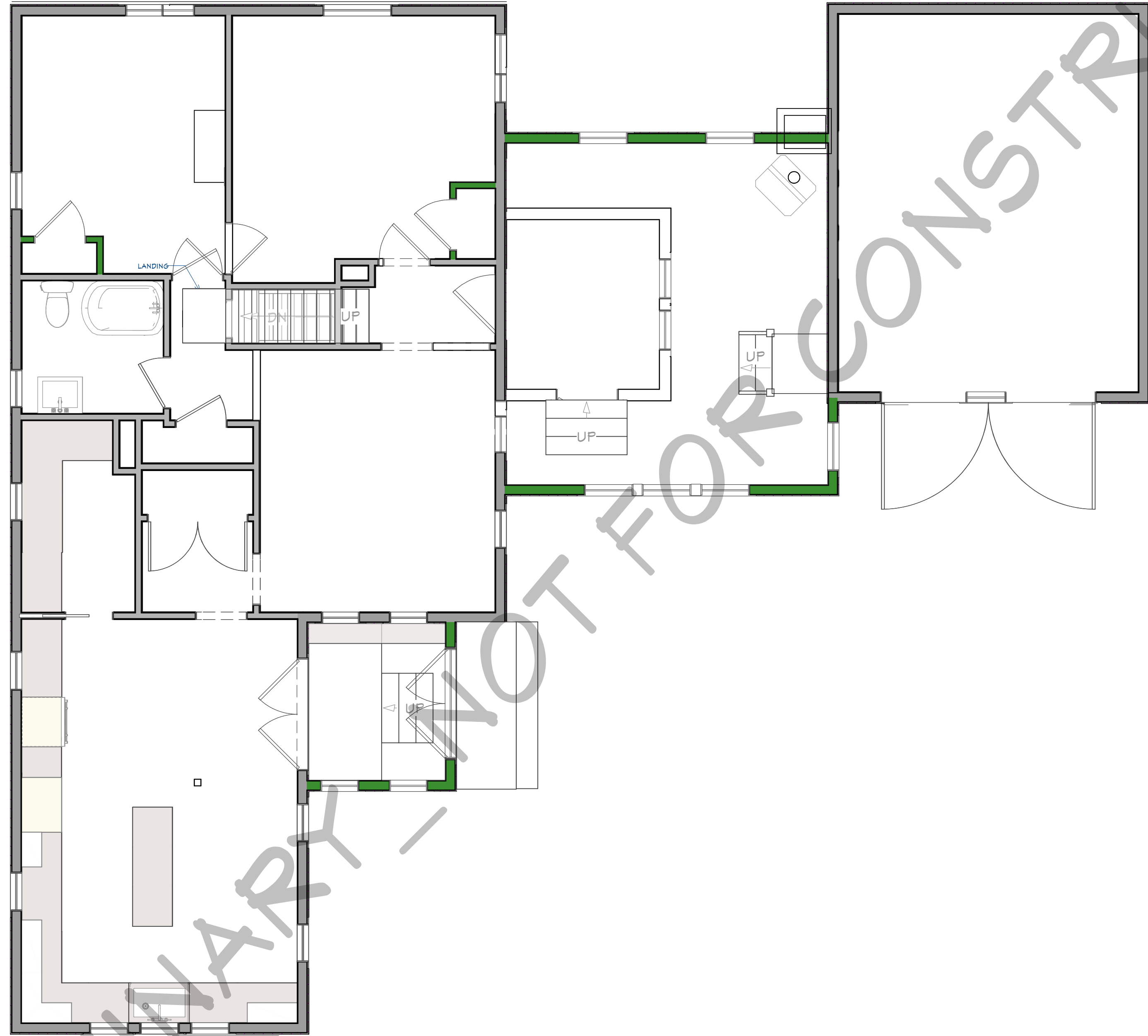
DEMOLITION NOTES

GENERAL NOTES

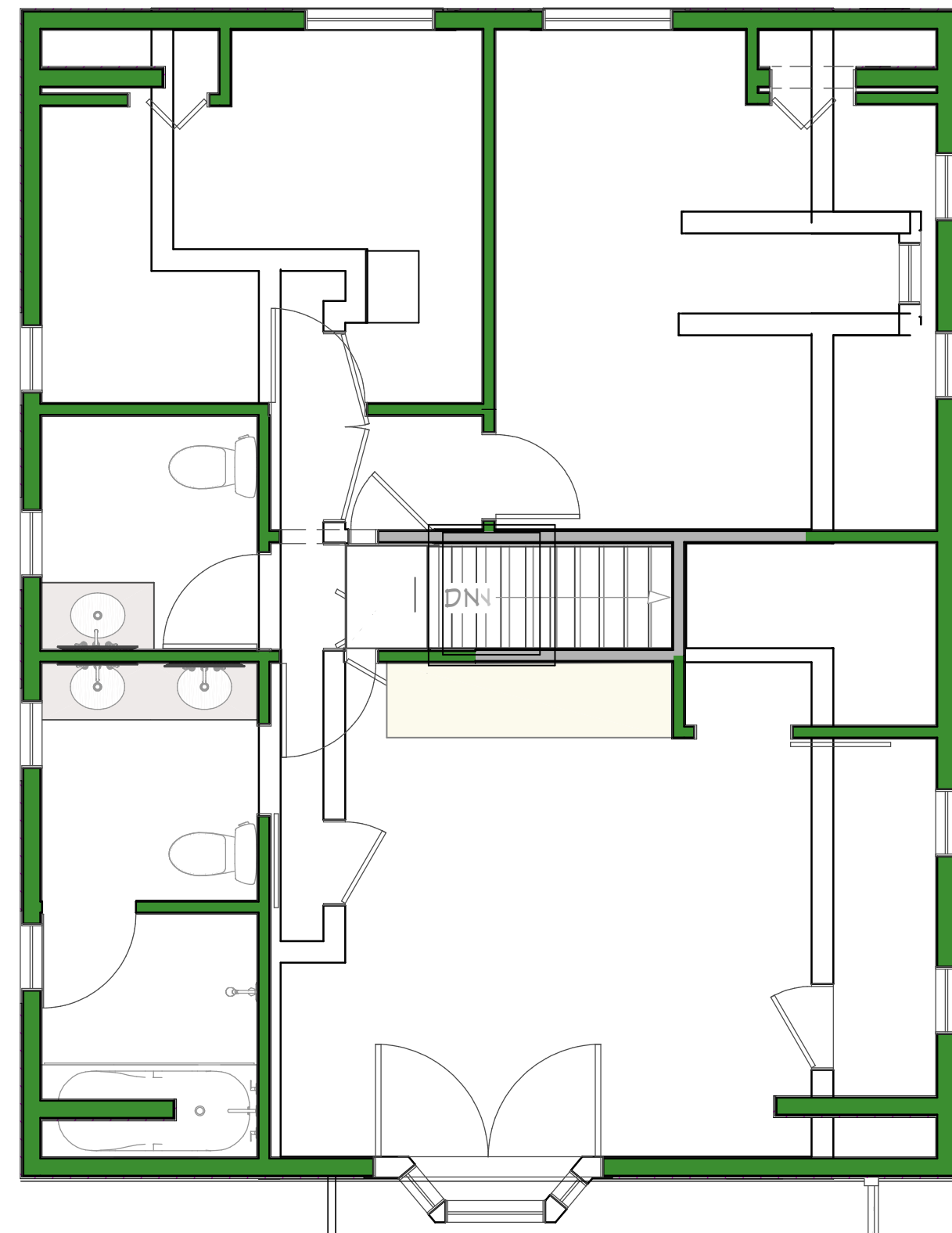
1. PROVIDE SELECTIVE DEMOLITION TO REMOVE EX. FLOOR, WALLS, CEILING, WINDOWS AND ROOF SYSTEMS IDENTIFIED. CONFIRM EXACT LOCATION W/ DESIGNER AND CIVIL ENGINEER PRIOR TO SELECTIVE DEMOLITION COMMENCEMENT. CONSULT WITH DESIGN PROFESSIONAL FOR ALL REQUIRED TEMPORARY SHORING AND SUPPORTS.
2. CUT EXISTING FOUNDATION TO LOCATION IDENTIFIED AND PREPARE FOR NEW FOUNDATION WALL.
3. EXISTING FOUNDATION WALL TO BE CUT AND REMAIN IN PLACE. REMOVE SILL PLATES OR OTHER LUMBER AND CUT BACK ANCHOR BOLTS TO TOP OF WALL. FILL VOID WITH SAND AND/ OR SOILS CONSISTENT WITH SURROUNDING MATERIALS.

WALL LEGEND

- █ = EXTERIOR WALL
- ▤ = INTERIOR 6
- ▥ = INTERIOR 4
- █ = NEW WALL
- ▨ = DEMO WALL
- ▩ = GLASS TOP TILE BOTTOM PONY WALL
- ▬ = GLASS SHOWER WALL



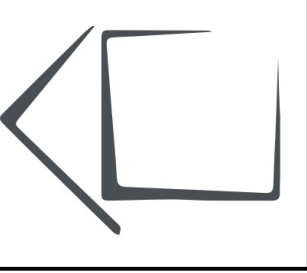
FIRST FLOOR



SECOND FLOOR

DEMOLITION PLAN

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



Revision Table	
Number	Description

DEMOLITION PLAN

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BARDONG
39 DEARBORN EXT
PORTSMOUTH, NH

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207.345.6050

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2/9/2023

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SCALE:

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ON DRAWINGS

SHEET:

A3

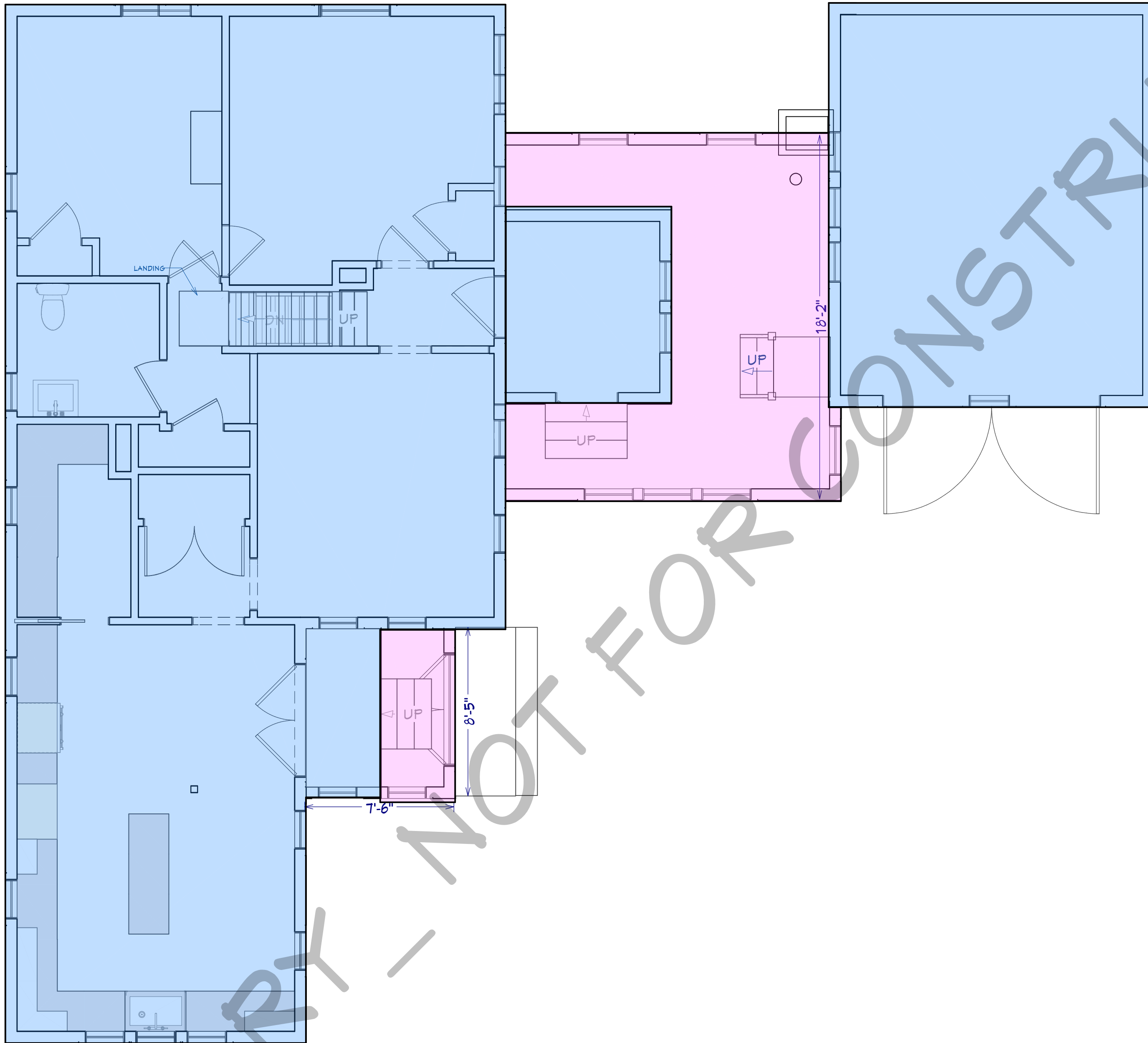
DEMOLITION NOTES

GENERAL NOTES

1. PROVIDE SELECTIVE DEMOLITION TO REMOVE EX. FLOOR, WALLS, CEILING, WINDOWS AND ROOF SYSTEMS IDENTIFIED. CONFIRM EXACT LOCATION W/ DESIGNER AND CIVIL ENGINEER PRIOR TO SELECTIVE DEMOLITION COMMENCEMENT. CONSULT WITH DESIGN PROFESSIONAL FOR ALL REQUIRED TEMPORARY SHORING AND SUPPORTS.
2. CUT EXISTING FOUNDATION TO LOCATION IDENTIFIED AND PREPARE FOR NEW FOUNDATION WALL.
3. EXISTING FOUNDATION WALL TO BE CUT AND REMAIN IN PLACE. REMOVE SILL PLATES OR OTHER LUMBER AND CUT BACK ANCHOR BOLTS TO TOP OF WALL. FILL VOID WITH SAND AND/ OR SOILS CONSISTENT WITH SURROUNDING MATERIALS.

CAD BLOCK GUIDE

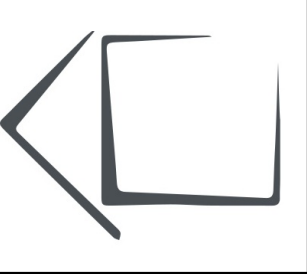
<div></div>	EXISTING FOOTPRINT (1609 SQFT)
<div></div>	PROPOSED ADDITION (1161 SQFT)
<div></div>	PROPOSED DECK (439 SQFT)



FIRST FLOOR

RENOVATION PLAN

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



Revision Table

Number	Date	Description

RENOVATION PLAN

CLIENT:

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39 DEARBORN EXT
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SCALE:








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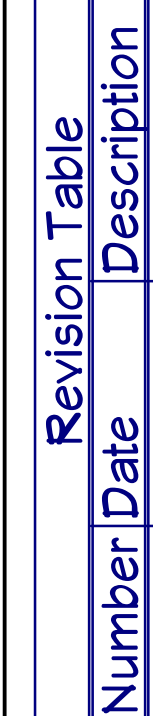
SHEET:

A4



WALL LEGEND

	= EXTERIOR WALL
	= INTERIOR 6
	= INTERIOR 4
	= NEW WALL
	= DEMO WALL
	= GLASS TOP TILE BOTTOM PONY WALL
	= GLASS SHOWER WALL



FOUNDATION

CLIENT:
BARDONG
339 DEARBORN EXT
PORTSMOUTH, NH

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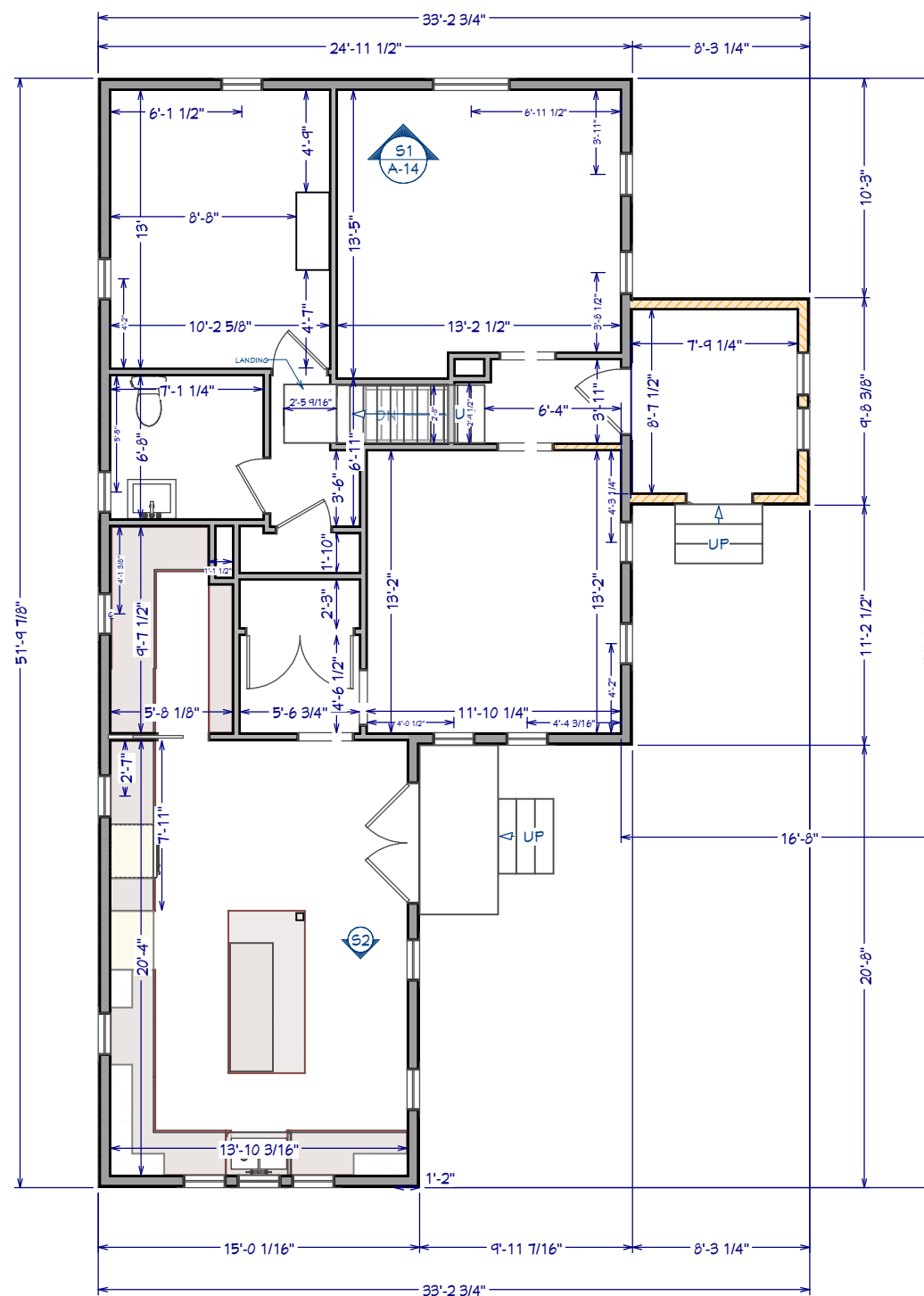
SCALED FOR:

SCALE:

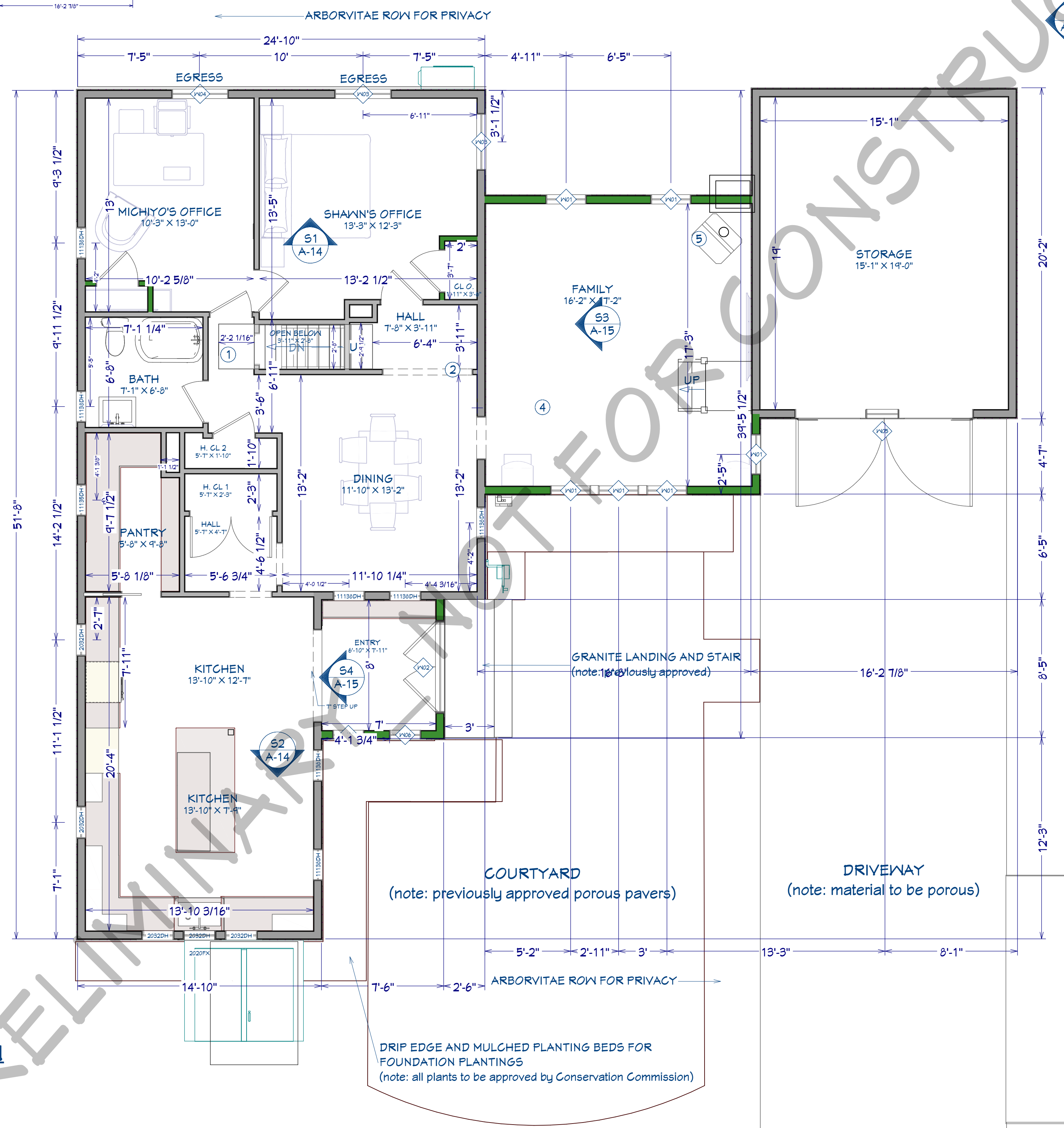
SEE SCALE
ON DRAWINGS

SHEET:

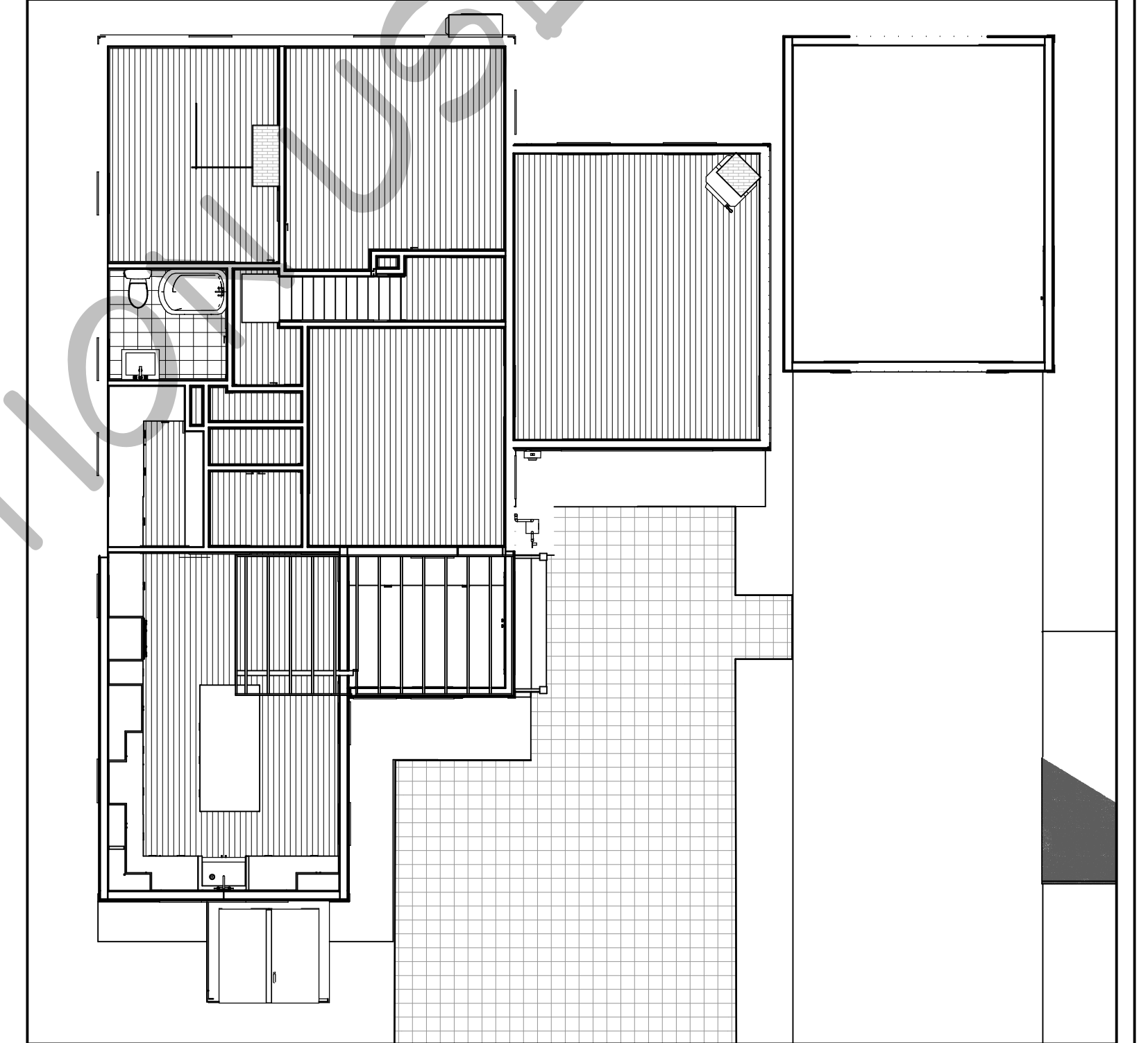
A-4



EXISTING FIRST FLOOR PLAN
SCALE: 1/8" = 1'-0"



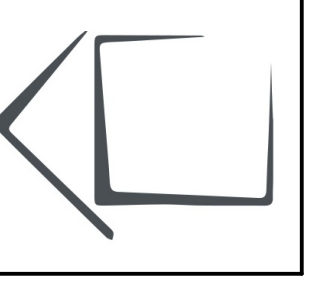
PROPOSED FIRST FLOOR PLAN
SCALE: 1/4" = 1'-0"



PERSPECTIVE VIEW
SCALE: NTS

NOTE SCHEDULE	
①	LANDING
②	OPEN KIDER
④	DOOR TO BE MOVED
⑤	WOOD STOVE

WALL LEGEND	
	= EXTERIOR WALL
	= INTERIOR 6
	= INTERIOR 4
	= NEW WALL
	= DEMO WALL
	= GLASS TOP TILE BOTTOM PONY WALL
	= GLASS SHOWER WALL



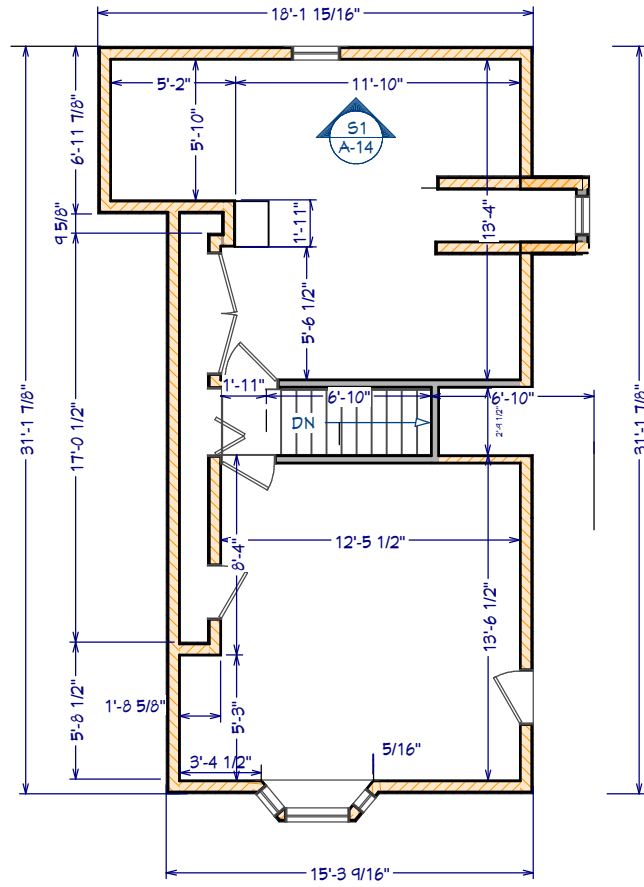
Revision Table	
Number	Date

FIRST FLOOR

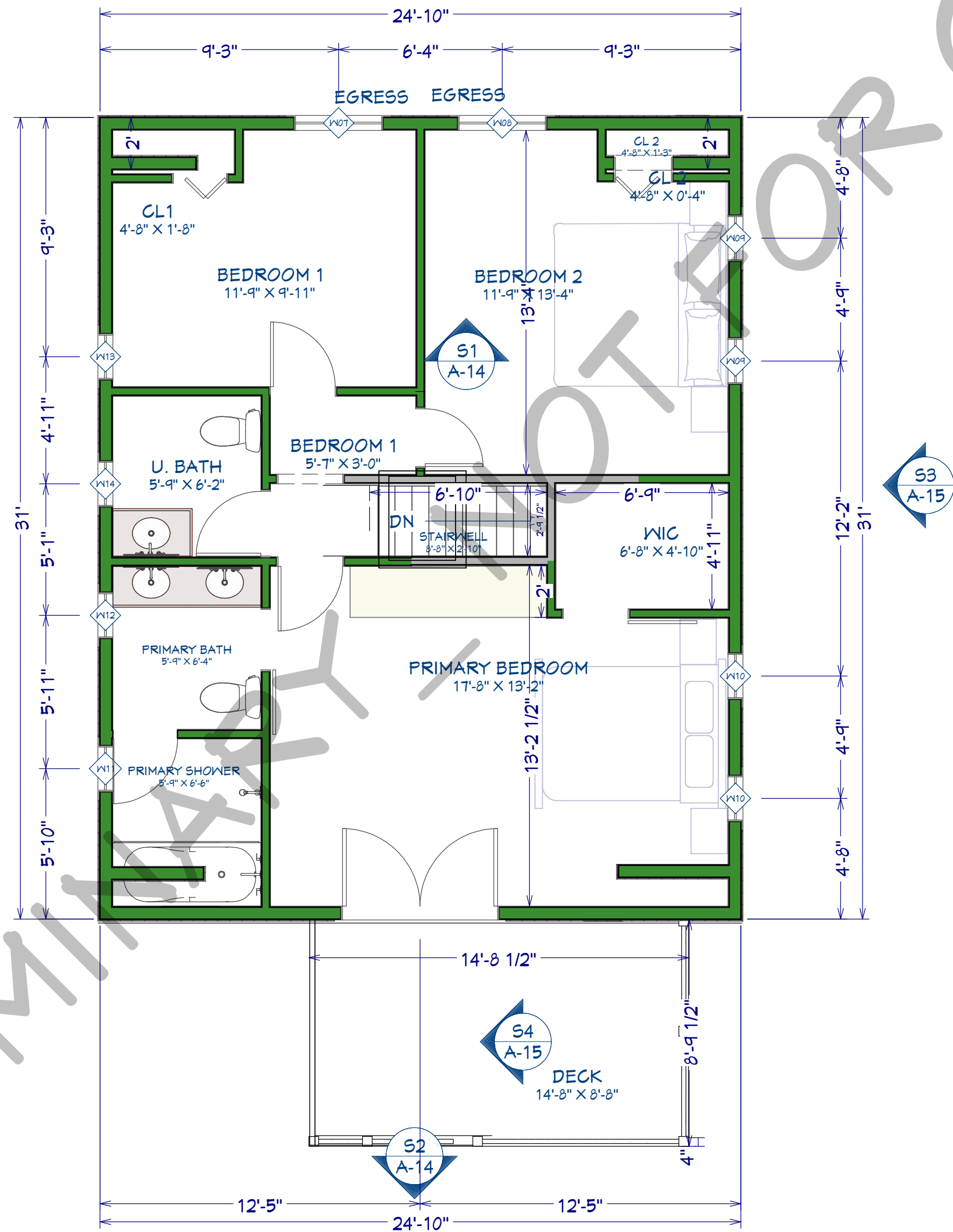
CLIENT:
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PORTSMOUTH, NH

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207.345.6050

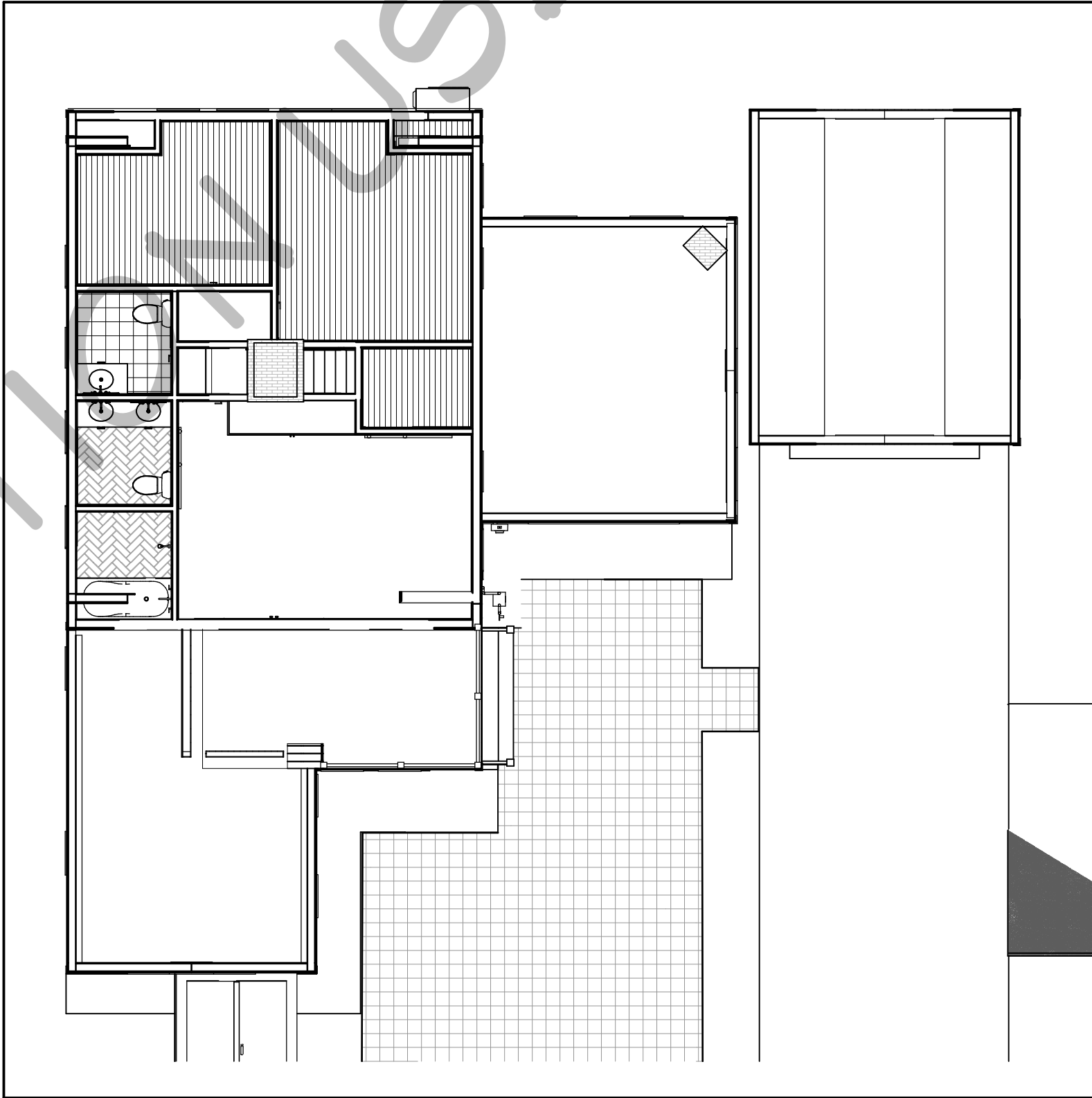
DATE:
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SCALED FOR: 24" X 36"
SCALE:
SEE SCALE ON DRAWINGS
SHEET:
A-5



EXISTING SECOND FLOOR PLAN
SCALE: 1/8" = 1'-0"



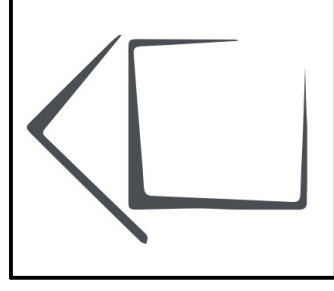
PROPOSED SECOND FLOOR PLAN
SCALE: 1/4" = 1'-0"



PERSPECTIVE VIEW
SCALE: NTS

NOTE SCHEDULE	
①	LANDING
②	OPEN WIDER
④	DOOR TO BE MOVED
⑤	WOOD STOVE

WALL LEGEND	
	= EXTERIOR WALL
	= INTERIOR 6
	= INTERIOR 4
	= NEW WALL
	= DEMO WALL
	= GLASS TOP TILE BOTTOM PONY WALL
	= GLASS SHOWER WALL



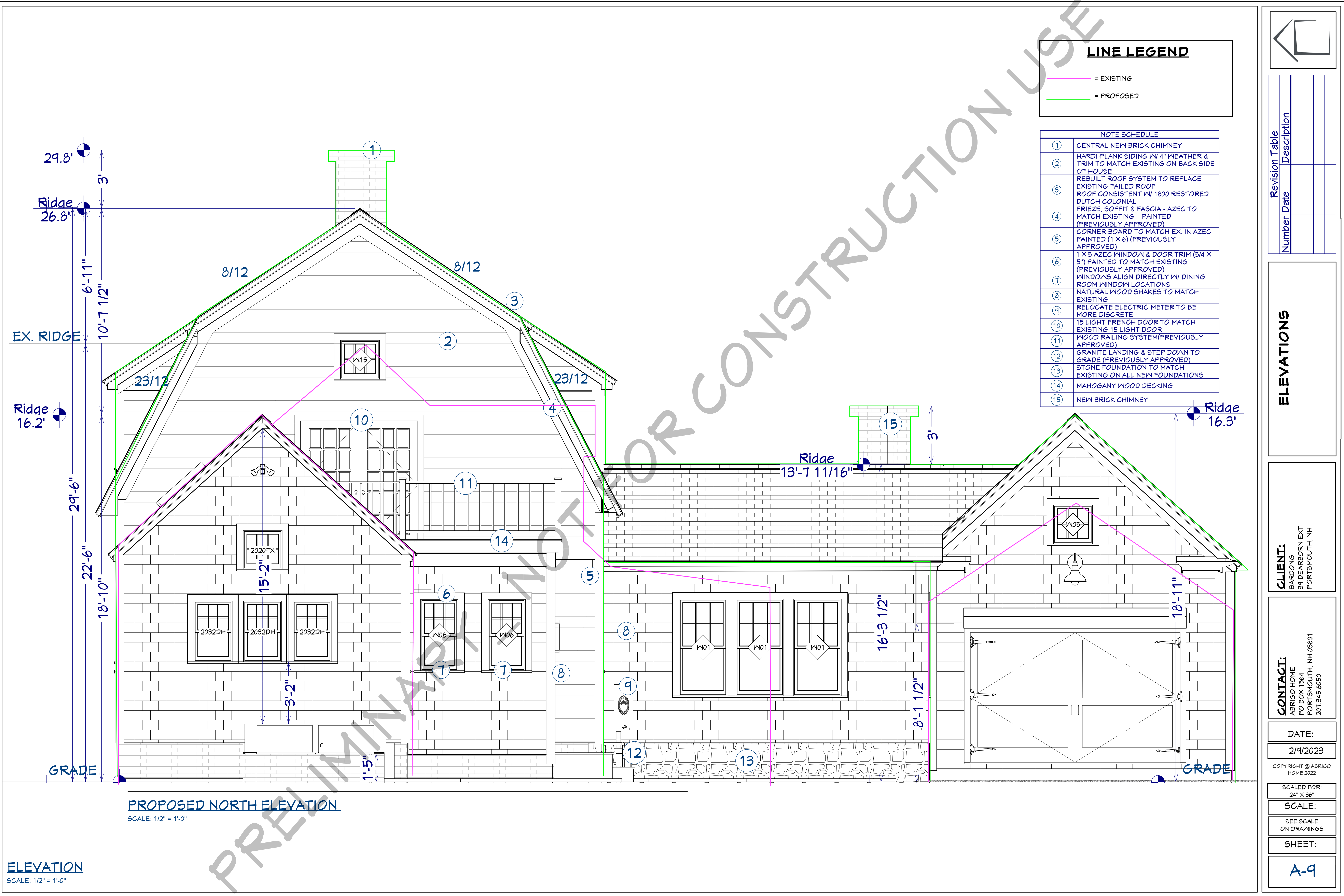
Revision Table	
Number	Date

SECOND FLOOR

CLIENT:
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PORTSMOUTH, NH

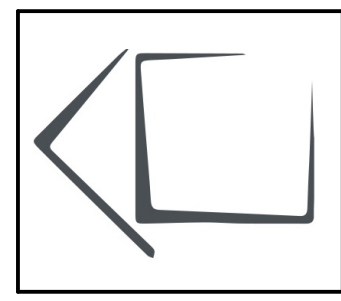
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SCALED FOR: 24" X 36"
SCALE:
SEE SCALE ON DRAWINGS
SHEET:
A-6



LINE LEGEND	
—	= EXISTING
—	= PROPOSED

NOTE SCHEDULE	
①	CENTRAL NEW BRICK CHIMNEY
②	HARDI-PLANK SIDING W/ 4" WEATHER & TRIM TO MATCH EXISTING ON BACK SIDE OF HOUSE
③	REBUILT ROOF SYSTEM TO REPLACE EXISTING FAILED ROOF. ROOF CONSISTENT W/ 1800 RESTORED DUTCH COLONIAL
④	FRIEZE, SOFFIT & FASCIA - AZEC TO MATCH EXISTING. PAINTED (PREVIOUSLY APPROVED)
⑤	CORNER BOARD TO MATCH EX. IN AZEC PAINTED (1 X 6) (PREVIOUSLY APPROVED)
⑥	1 X 5 AZEC WINDOW & DOOR TRIM (5/4 X 5") PAINTED TO MATCH EXISTING (PREVIOUSLY APPROVED)
⑦	WINDOWS ALIGN DIRECTLY W/ DINING ROOM WINDOW LOCATIONS
⑧	NATURAL WOOD SHAKES TO MATCH EXISTING
⑨	RELOCATE ELECTRIC METER TO BE MORE DISCRETE
⑩	15 LIGHT FRENCH DOOR TO MATCH EXISTING 15 LIGHT DOOR
⑪	WOOD RAILING SYSTEM (PREVIOUSLY APPROVED)
⑫	GRANITE LANDING & STEP DOWN TO GRADE (PREVIOUSLY APPROVED)
⑬	STONE FOUNDATION TO MATCH EXISTING ON ALL NEW FOUNDATIONS
⑭	MAHOGANY WOOD DECKING
⑮	NEW BRICK CHIMNEY



Revision Table	
Number	Description

ELEVATIONS

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BARDONG
39 DEARBORN EXT
PORTSMOUTH, NH

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SCALE:
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SHEET:
A-9



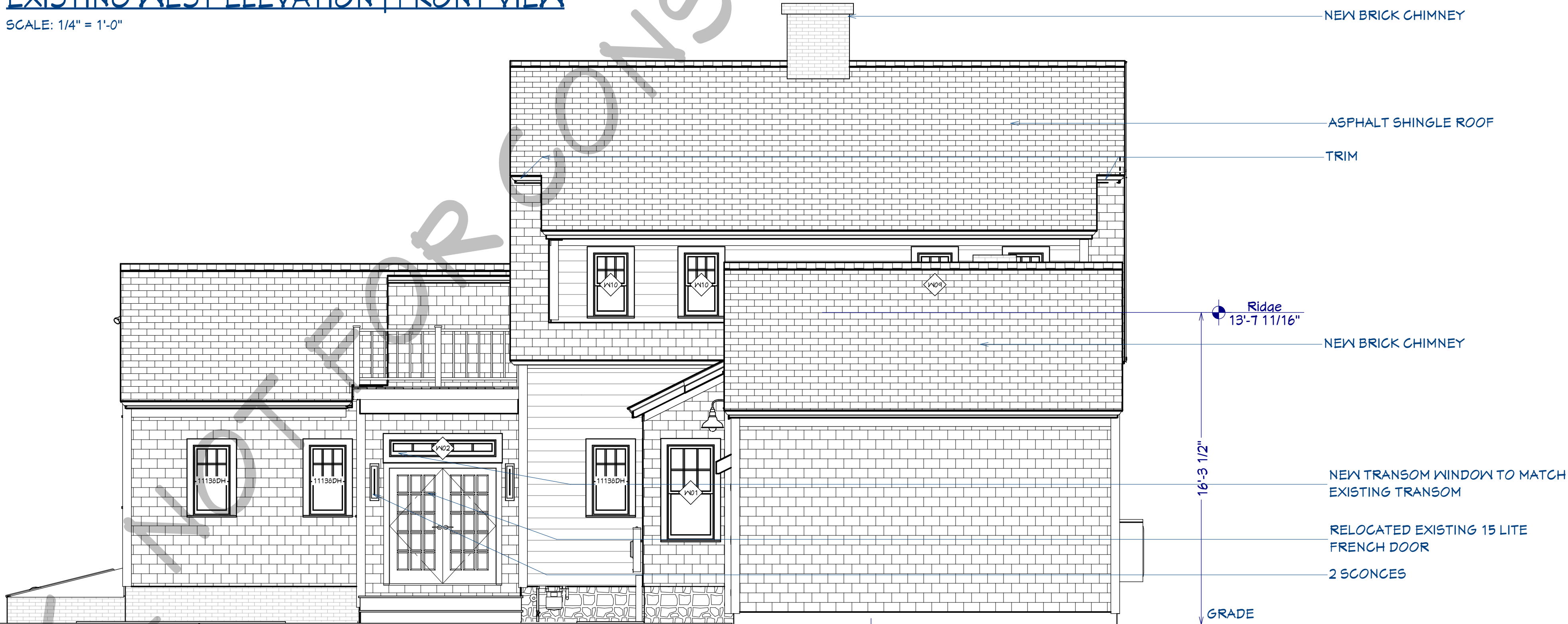
EXISTING FRONT HOUSE



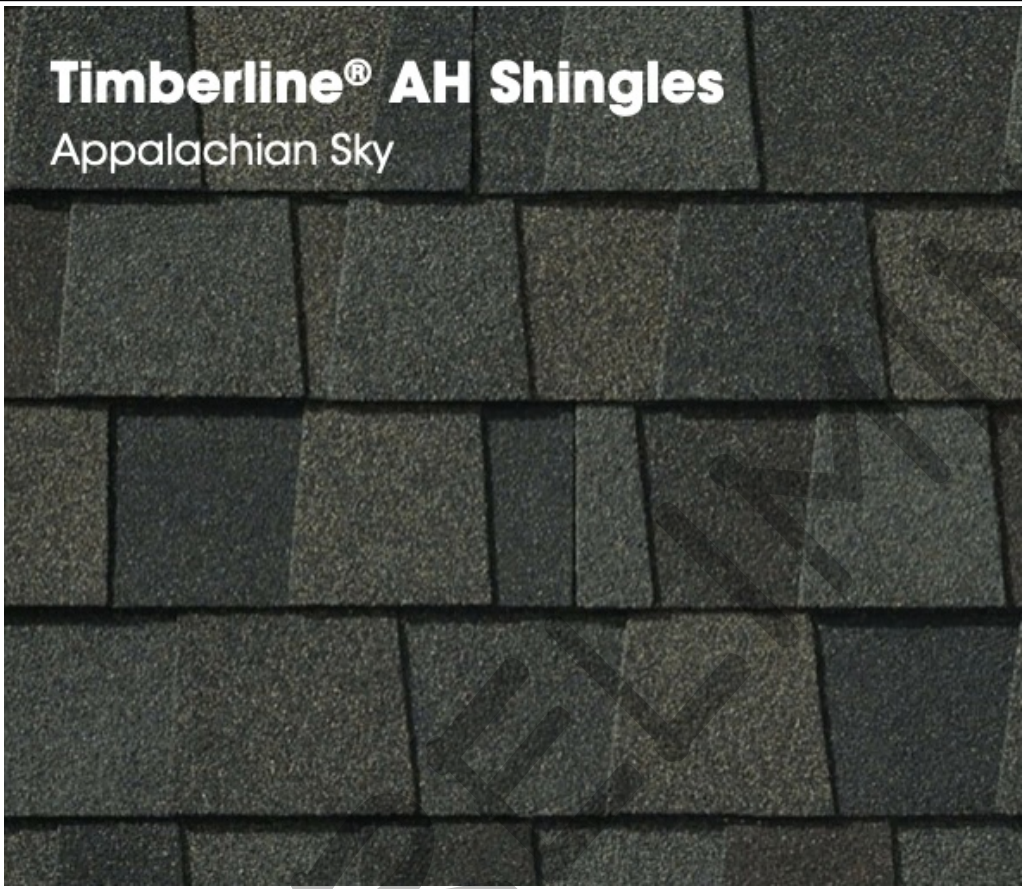
EXISTING VIEW OF ENTRY AND MUDROOM AREA



EXISTING WEST ELEVATION | FRONT VIEW
SCALE: 1/4" = 1'-0"



PROPOSED WEST ELEVATION | FRONT VIEW
SCALE: 1/4" = 1'-0"



ASPHALT ROOF
GAF TIMBERLINE



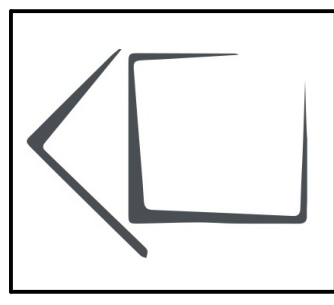
EXISTING FRONT DOOR



EXISTING 15-LITE FRENCH DOOR
PROPOSED 15 LITE DOOR TO MATCH IN PRIMARY
PROPOSED TRANSOM INSTALLED OVER THIS RELOCATED 15-LITE DOOR



INCANDESCENT BULB_40W
NIGHT SKY COMPLIANT
BRONZE FINISH



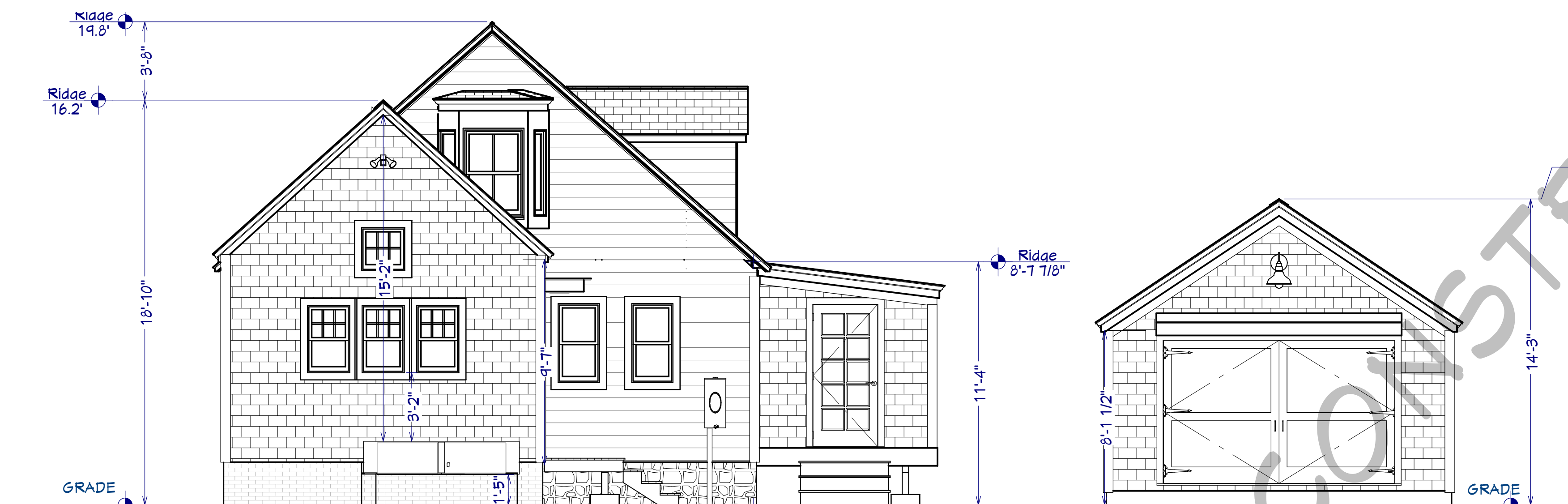
Revision Table	
Number	Description

ELEVATIONS

CLIENT:
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39 DEARBORN EXT
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SCALED FOR: 24" X 36"
SCALE:
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SHEET:
A-10 ELEVATIONS



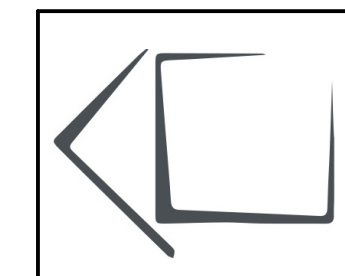
EXISTING NORTH ELEVATION
SCALE: 1/4" = 1'-0"



EXISTING VIEW FROM WATER



PROPOSED NORTH ELEVATION
SCALE: 1/4" = 1'-0"



Revision Table	
Number	Description

ELEVATIONS

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SHEET:

A-11

EXISTING PHOTOS



SOUTH SIDE VIEW

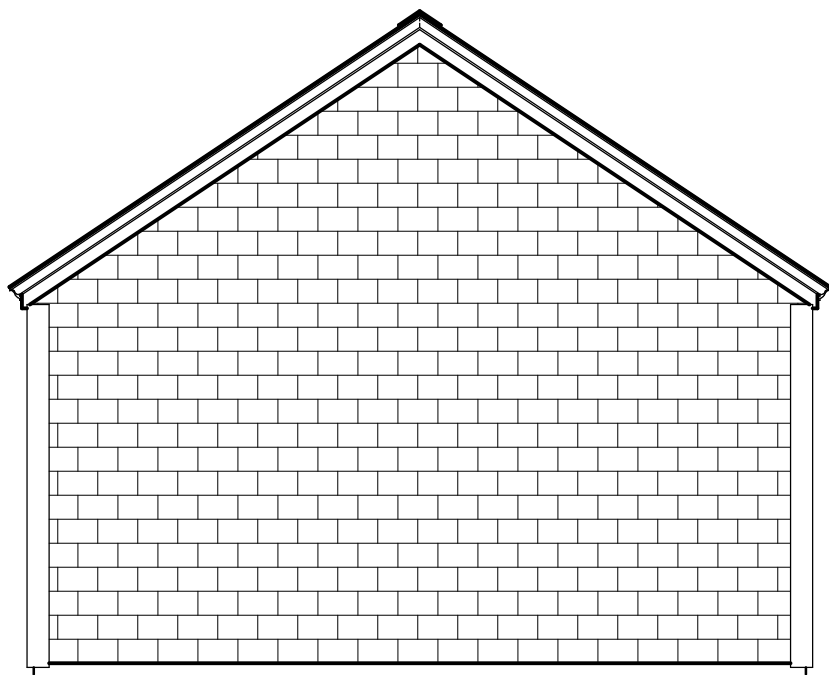


REAR VIEW

BACK | SIDE ROOF, SIDING & PROPERTY LINE

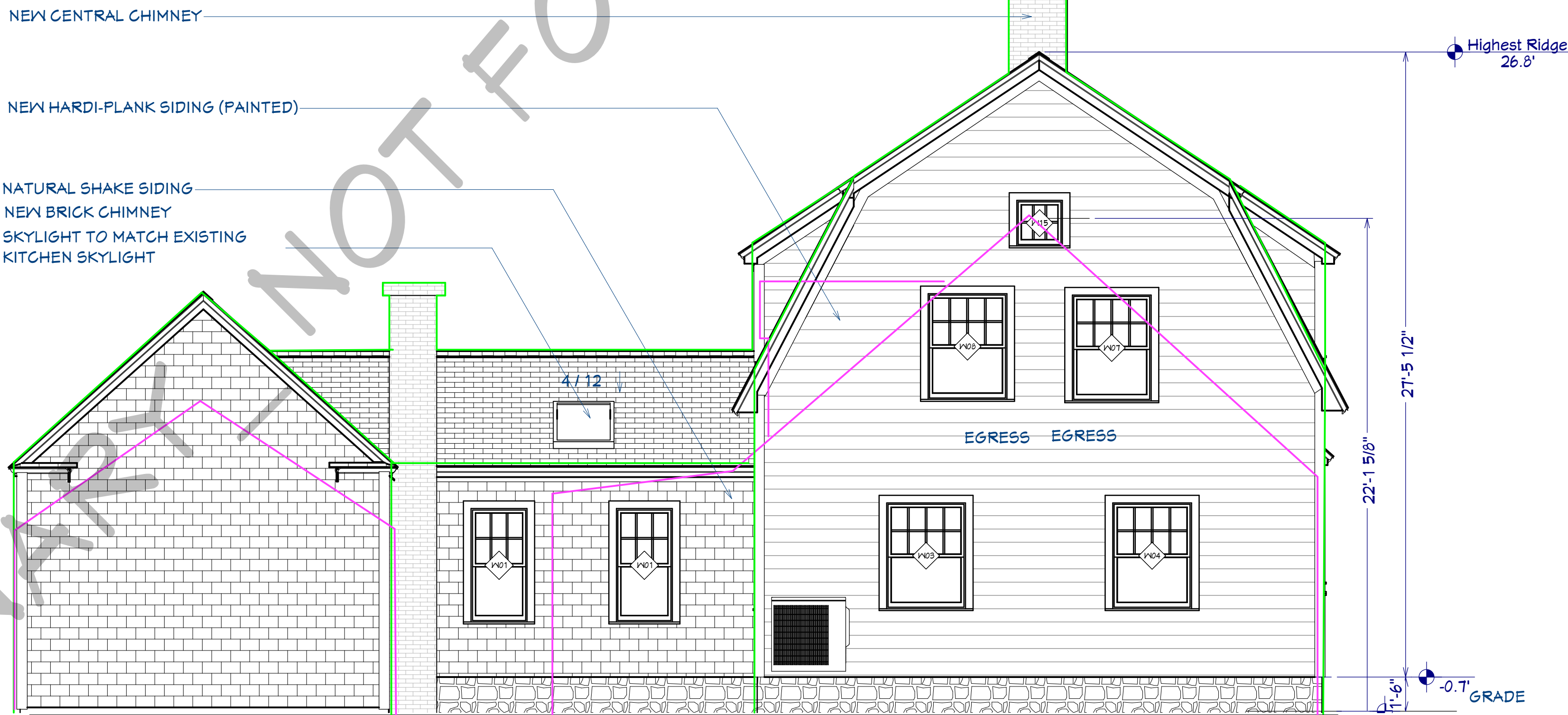
ELEVATIONS

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



EXISTING SOUTH ELEVATION | REAR VIEW

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

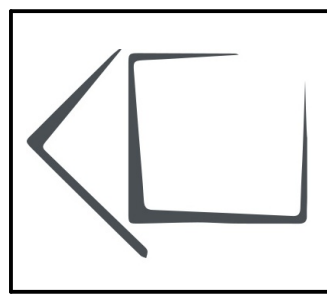


PROPOSED SOUTH ELEVATION | REAR VIEW

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

LINE LEGEND

- = EXISTING
- = PROPOSED



Revision Table	
Number	Description

ELEVATIONS

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PORTSMOUTH, NH

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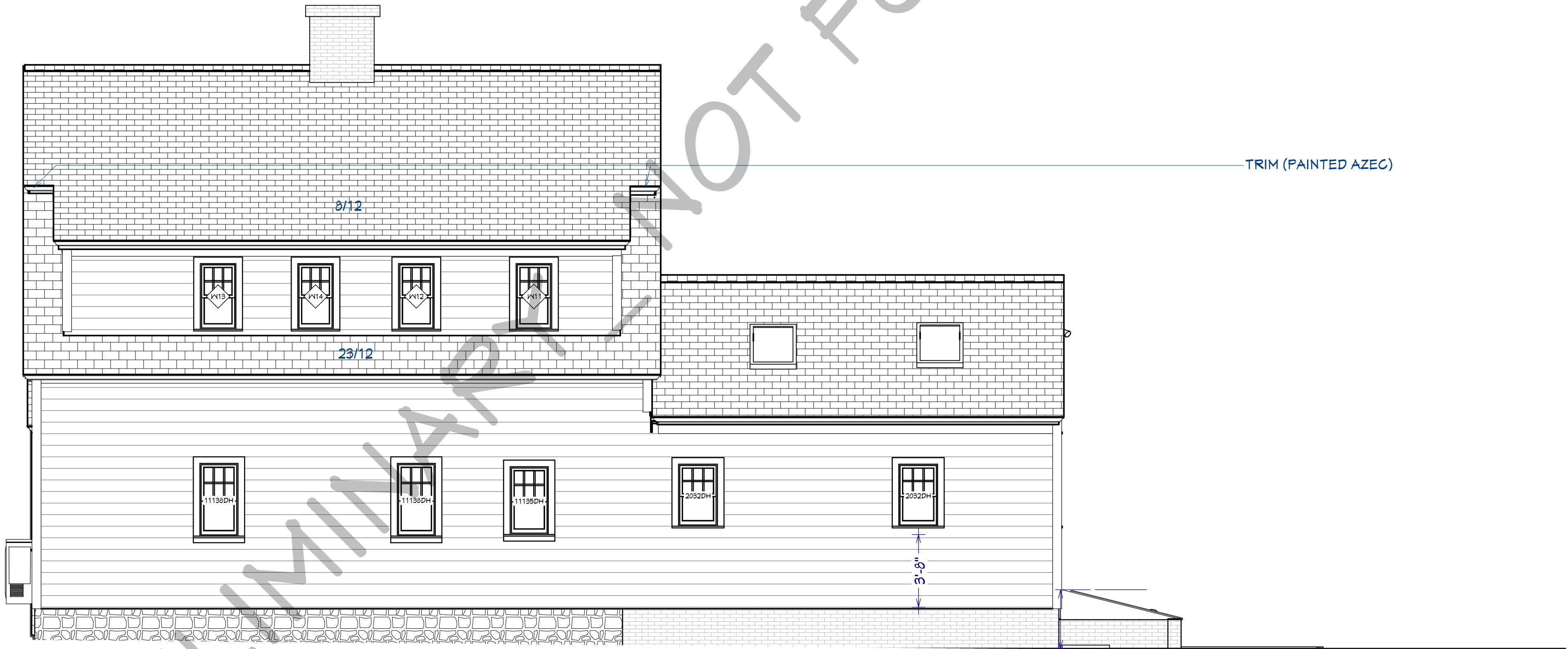
A-12



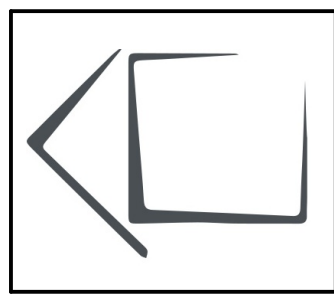
EXISTING EAST ELEVATION | SIDEVIEW
SCALE: 1/4" = 1'-0"



EXISTING PHOTO
SCALE: NTS



PROPOSED EAST ELEVATION | SIDEVIEW
SCALE: 1/4" = 1'-0"



Revision Table	
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ELEVATIONS

CLIENT:
BARDONG
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PORTSMOUTH, NH

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SCALE:

SEE SCALE
ON DRAWINGS

SHEET:

A-13
ELEVATIONS

LEGEND

- — IRON PIPE/ROD FOUND
- — DRILL HOLE SET
- ✦ — CORNER - NOTHING FOUND/SET
- — IRON ROD SET WITH IDENTIFICATION CAP "LLS 961" UNLESS OTHERWISE NOTED ON PLAN
- ⦶ — UTILITY POLE
- — BOUNDARY LINE
- - - - BUILDING SETBACK LINE
- - - - ABUTTER LINE
- - - - OVERHEAD WIRES
- - - - RIGHT-OF-WAY
- — STONE WALL
- - - - EDGE OF GRAVEL
- - - - FLOOD ZONE BOUNDARY (SEE NOTE 7)
- - - - EDGE OF WATER
- - - - WETLAND BOUNDARY
- - - - VIEW EASEMENT

BUILDING AREAS			
STRUCTURE	EXISTING AREA (SF)	PROPOSED AREA (SF)	NOTES
EXISTING HOUSE	1,232.5		
EXISTING SHED	221.8		
FRONT PORCH			
ADDITION (PROPOSED)		75.1	
FAMILY ROOM (PROPOSED)		225.8	AREA EXCLUDES EXISTING PORTION OF BUILDING BEING REPLACED
TOTALS	1,454.3	300.9	

LOT COVERAGE	
LOT AREA (SF)	11,236.0
TOTAL PROPOSED BUILDING AREA (SF)	1,755.2
PROPOSED BUILDING COVERAGE	15.6%
ALLOWABLE BUILDING COVERAGE	25%

HIGHWATER LINE (REFERENCE LINE - SEE NOTE 9)

REFERENCE POINT "C"

"B"

"A"

2'±

1/2" GALVANIZED PIPE FOUND 8" ABOVE GRADE (HELD)

AREA OF LOT WITHIN WETLAND BUFFER
11,166± SQ. FT. (99.4% OF TOTAL LOT)

LOT SIZE
11,236± SQ. FT.
0.25± ACRES

VIEW EASEMENT
AREA = 2,018 SQ. FT.

TAX MAP 140 LOT 2
JAMES E. GOLDEN & COURTNEY E. MCCARTHY
41 DEARBORN STREET
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 6228 PAGE 903

TAX MAP 140 LOT 9
JOHN E. & CYNTHIA S. BENSLEY
28 DENNETT STREET
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 6348 PAGE 85
(PLAN REFERENCE 1)

TAX MAP 140 LOT 8
S. CHRISTOPHER ANCTIL
P.O. BOX 14
PORTSMOUTH, NH 03802
R.C.R.D. BOOK 5218 PAGE 753
(PLAN REFERENCE 1)

TAX MAP 140 LOT 7
304 MAPLEWOOD, LLC
304 MAPLEWOOD AVENUE
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 4849 PAGE 2483

TAX MAP 140 LOT 4
MICHAEL STASIUK
31 DEARBORN STREET
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 4864 PAGE 1731

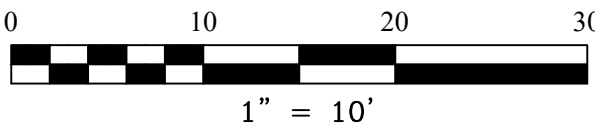
LOCATION MAP
SCALE: 1" = 400'

NOTES:

- REFERENCE: TAX MAP 140 LOT 3
R.C.R.D. BOOK 6450 PAGE 552
R.C.R.D. PLAN D-37444
- TOTAL PARCEL AREA: 11,236 SQ. FT. OR 0.25 AC.
- OWNER OF RECORD: SHAWN & MICHIO BARDONG
39 DEARBORN STREET
PORTSMOUTH, NH 03801
- ZONE: GRA - GENERAL RESIDENCE A
DIMENSIONAL REQUIREMENTS:
MINIMUM LOT AREA 7,500 SQ. FT.
MINIMUM FRONTAGE 100 ft.
MINIMUM FRONT SETBACK 15 ft.
MINIMUM SIDE SETBACK 10 ft.
MINIMUM REAR SETBACK 20 ft.
MAXIMUM STRUCTURE HEIGHT 35 ft.
- FIELD SURVEY PERFORMED BY S.D.B. ON 12/1/2022 USING A SPECTRA FOCUS 35 ROBOTIC TOTAL STATION. TRAVERSE ADJUSTMENT IS BASED ON THE COMPASS RULE METHOD OF ADJUSTMENT.
- HORIZONTAL DATUM IS MAGNETIC BASED ON PLAN REFERENCE 1.
- A PORTION OF THIS LOT FALLS WITHIN FLOOD ZONE AE AND ZONE X AS SHOWN ON NATIONAL FLOOD INSURANCE PROGRAM MAP NUMBER 33015C0259F, EFFECTIVE DATE JANUARY 29, 2021.
- VIEW EASEMENT FOR THE BENEFIT OF TAX MAP 140 LOT 4, TO REMAIN FREE OF ALL TEMPORARY OR PERMANENT STRUCTURES INCLUDING BUT NOT LIMITED TO SHEDS, BUILDINGS, EQUIPMENT, VEHICLE STORAGE OR PARKING, OR OTHER SIMILAR OBSTRUCTIONS OF THE VIEW CORRIDOR.
- TIDAL WETLANDS AND HIGHWATER REFERENCE LINE WERE DELINEATED BY PATRICK D. SEEKAMP, P.W.S., C.W.S. OF SEEKAMP ENVIRONMENTAL CONSULTING.
- THE INTENT OF THIS PLAN IS TO SHOW A BUILDING ADDITION IN REFERENCE TO THE BOUNDARY OF RECORD.

PLAN REFERENCES:

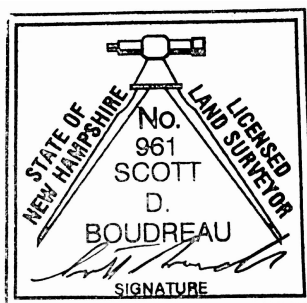
- PLAN TITLED "LOT LINE RELOCATION PLAN FOR JOHN J. & CATHERINE PAUSON AND HAROLD C. & ASTRID LOUISE PASSER, 12-28 DENNETT STREET" DATED NOVEMBER 30, 1983, PREPARED BY RICHARD P. MILLETTE AND ASSOCIATES, R.C.R.D. PLAN D-12123.
- PLAN TITLED "BOUNDARY LINE ADJUSTMENT FOR MICHAEL J. & DIANE REGAN, MAPLEWOOD AVENUE, PORTSMOUTH, NH" DATED SEPT. 1997, PREPARED BY EMERY ENGINEERING, R.C.R.D. PLAN C-27772.
- PLAN TITLED "PLAN OF LAND PREPARED FOR MICHAEL BRANDZEL & HELEN LONG" DATED OCTOBER 1, 2012, PREPARED BY THIS OFFICE, R.C.R.D. PLAN D-37444.



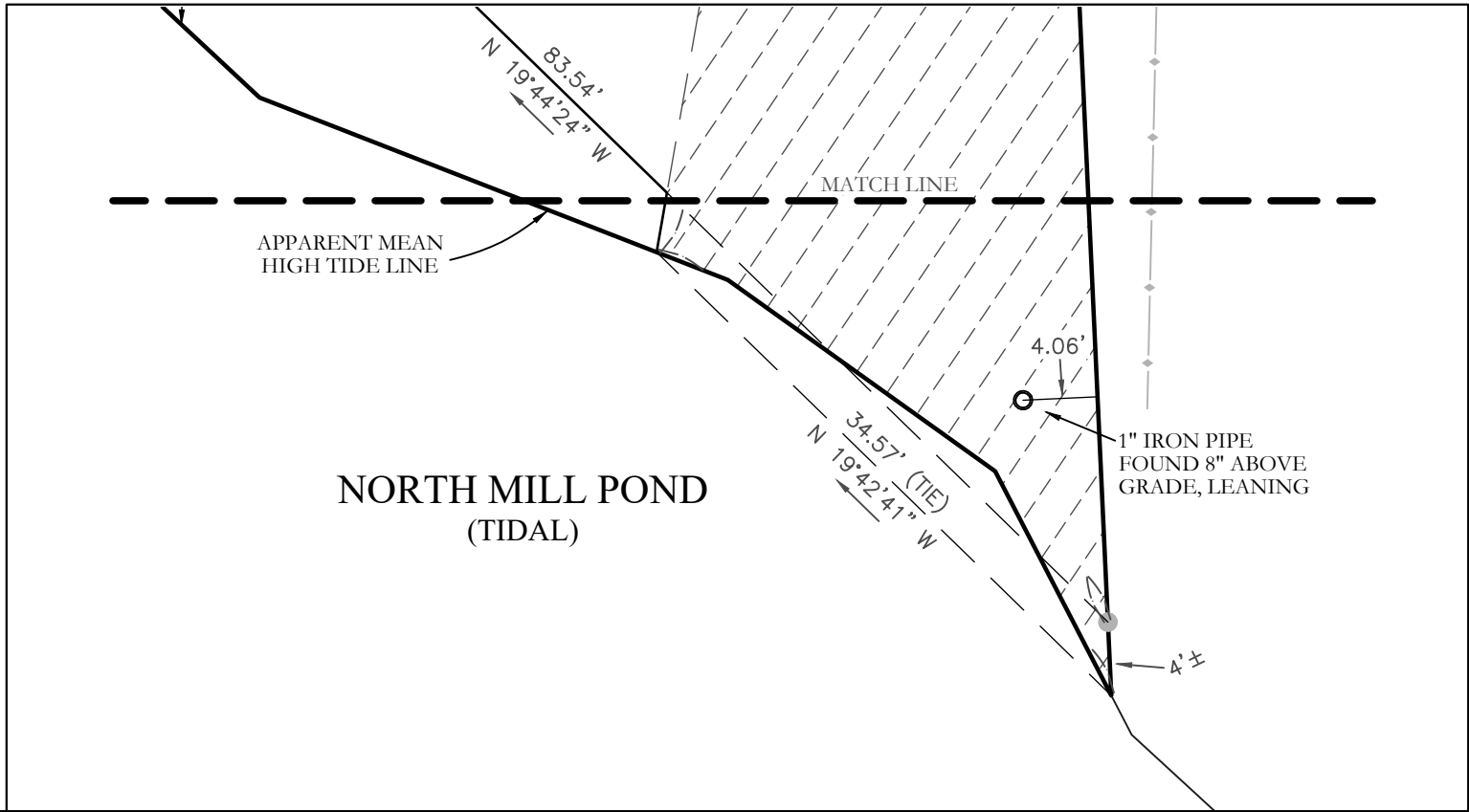
SITE PLAN
LAND OF
SHAWN & MICHIO
BARDONG
(TAX MAP 140 LOT 3)
39 DEARBORN STREET
PORTSMOUTH, NH

DRAWN BY: SDB
CHECKED BY: ARB
JOB NAME: 22039

DATE: FEBRUARY 8, 2023
DRAWING NAME: 22039B3
SHEET: C1



Boudreau
Land
Surveying P.L.L.C.
SCOTT D. BOUDREAU, L.L.S. #961
2 BEATRICE LANE
NEWMARKET, NH 03857
(603) 659-3468



III. NEW BUSINESS

- D. The request of **Sean Morin (Owner)**, for property located at **67 Madison Street** whereas relief is needed to construct a 122 square foot covered front porch which requires the following: 1) Variance from Section 10.521 to allow a) 3 foot front yard setback where 5 feet is required; and b) 36% building coverage where 35% is maximum allowed. 2) Variance from Section 10.321 to allow the extension and enlargement of a non-conforming structure. Said property is located on Assessor Map 135 Lot 36 and lies within the General Residence C (GRC) District. (LU-23-4)

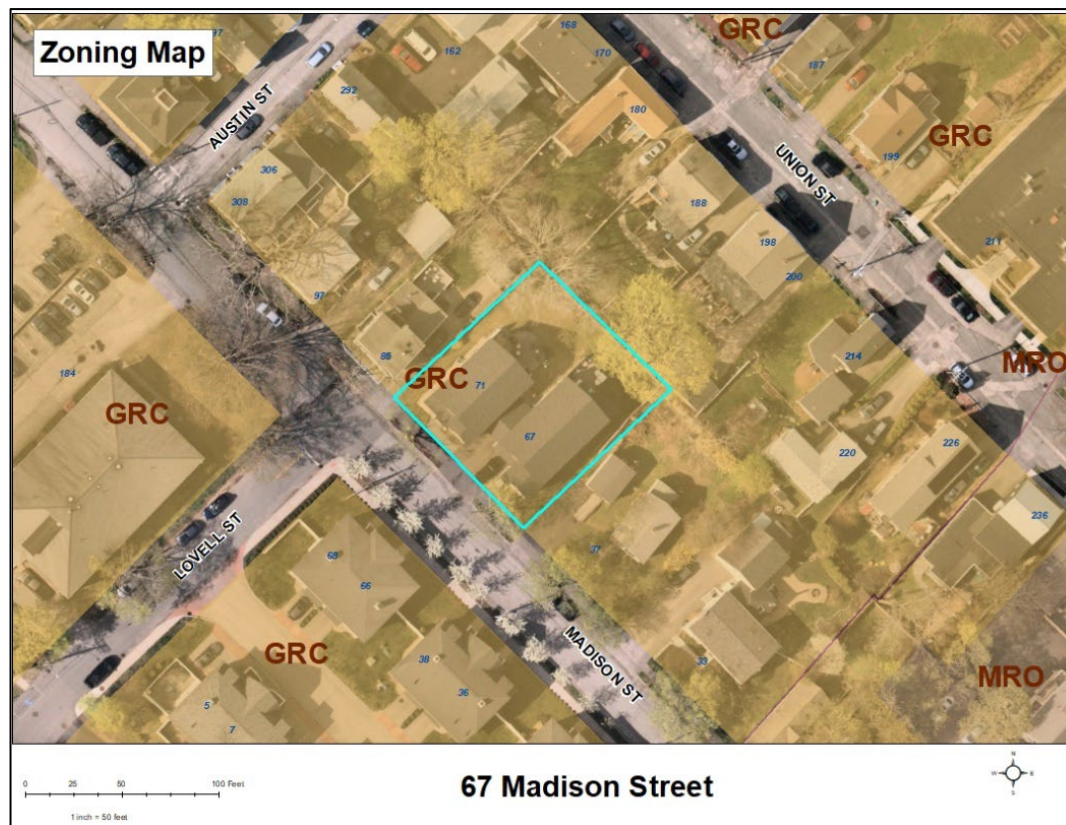
Existing and Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Addition of front porch	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	10,048	10,048	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,024	5,024	3,500 min.
<u>Street Frontage (ft.):</u>	97.75	97.75	70 min.
<u>Lot depth (ft.):</u>	105	105	50 min.
<u>Front Yard (ft.):</u>	5	3	5 min.
<u>Left Side Yard (ft.):</u>	>10	>10	10 min.
<u>Right Side Yard (ft.):</u>	10	10	10 min.
<u>Rear Yard (ft.):</u>	27	27	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	35	36	35 max.
<u>Open Space Coverage (%):</u>	>20	>20	20 min.
<u>Parking</u>	Ok	Ok	3
<u>Estimated Age of Structure:</u>	2020	Variance request shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposed to construct a new 122 square foot porch area which will extend 2 feet into the front yard area, leaving 3 feet of front yard where 5 feet is the minimum. Please note that the legal notice has an error stating that the existing structure is currently non-conforming. In fact, the existing structure is conforming in all aspects. Should the board vote to grant the request please consider adding the following language as a condition of approval.

- 1) The board acknowledges that error in the legal add and recognizes the existing structure as conforming, therefore the second variance as stated in the agenda and notice materials is not required and is not included in this motion for approval.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

- (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

- Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

Section 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

Request for a Variance

January 18, 2023

Dear Members of the Board

Sean and Stacie Morin are requesting a variance from the Zoning Ordinance for their property at 67 Madison Street, Tax Map 135, Lot #36, for a proposed a covered porch in the front of their property. They are requesting a variance from Section 10.521 to allow for a 3' front yard where a 5' setback is required, and building coverage of 35.87% instead of the allowed 35%.

The Morins enjoy spending time in and on their front yard, including putting up seasonal decorations. The proposed front porch is intended to allow them to significantly improve the use of their outdoor space, and to create positive memories with their granddaughters Molly & Briar. The proposed front porch would also fit in seamlessly with the character of the neighborhood, as many similar porches are present in the area.

Five Criteria Summary

- **The variance will not be contrary to the public interest.**

The proposed front porch will not alter the essential character of the neighborhood. The proposed exterior improvements will actually enhance the character of the neighborhood.

- **The spirit of the ordinance will be observed.**

The proposed front porch will improve the performance and look of the property.

- **Substantial Justice will be done.**

A front porch encourages casual and spontaneous interactions with neighbors and passers by alike, thereby contributing to the overall quality of life of the neighborhood. The proposed porch will allow the owners to fully enjoy and engage in neighborhood life.

- **The values of surrounding properties will not be diminished.**

The proposed front porch addition will add value to the property and thereby increase the value of the surrounding homes.

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

Literal enforcement would prevent the owners from fully engaging with their neighborhood from the comfort of a front porch.

Location Map

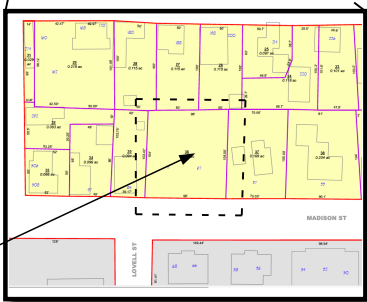
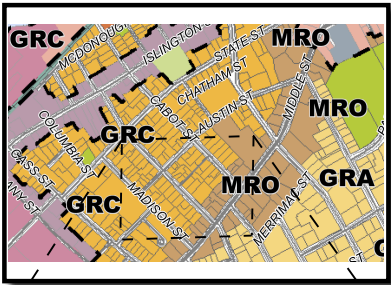
Application for a Variance to permit the following:

The construction of a 122 sq ft covered front porch.

Variances requested:

Section 10.521, to allow the following:

- a. A front setback of 3' where 5' is required.
- b. Building coverage of 35.87 % where 35 % is allowed.



List of Drawings

- AD-01 COVER SHEET & LOCATION MAP
- AD-02 EXISTING PLOT PLAN
- AD-03 PROPOSED PLOT PLAN
- AD-04 FIRST FLOOR PLAN - EXISTING
- AD-05 FIRST FLOOR PLAN - EPROPOSED
- AD-06 PROPOSED EXTERIOR FRONT ELEVATION
- AD-07 PROPOSED EXTERIOR SIDE ELEVATIONS
- AD-08 SUMMARY

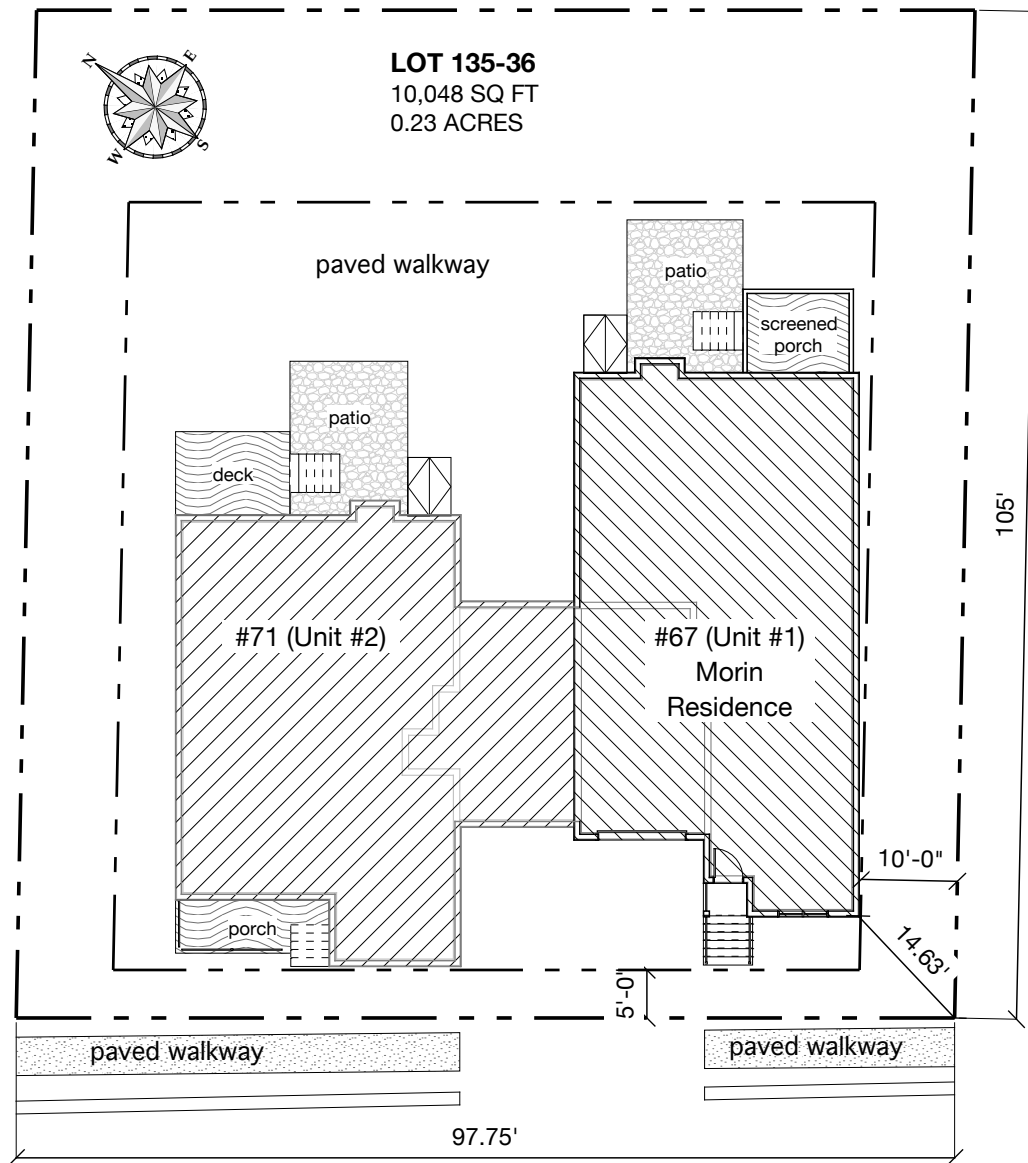
Location of property
67 Madison Street,
Portsmouth NH 03801,
Tax Map 135, Lot 36.



The Morin Residence
67 Madison Street, Portsmouth NH 03801
Variance Submittal for a Front Porch

Cover Sheet		
Issue date:	January 16, 2023	Scale: n/a
Revision dates:		

AD-01



Madison Street

LOT 135-36

EXISTING LOT SIZE: 10,048 SQ FT
EXISTING FOOTPRINT: 3,508 SQ FT
EXISTING LOT COVERAGE: 34.91 %

GRC ZONING REQUIREMENTS

MIN LOT SIZE: 3,500 SQ FT
FRONT YARD : 5'
SIDE YARD : 10'
REAR YARD: 20'
BUILDING COVERAGE 35%
MINIMUM OPEN SPACE 20%



The Morin Residence

67 Madison Street, Portsmouth NH 03801

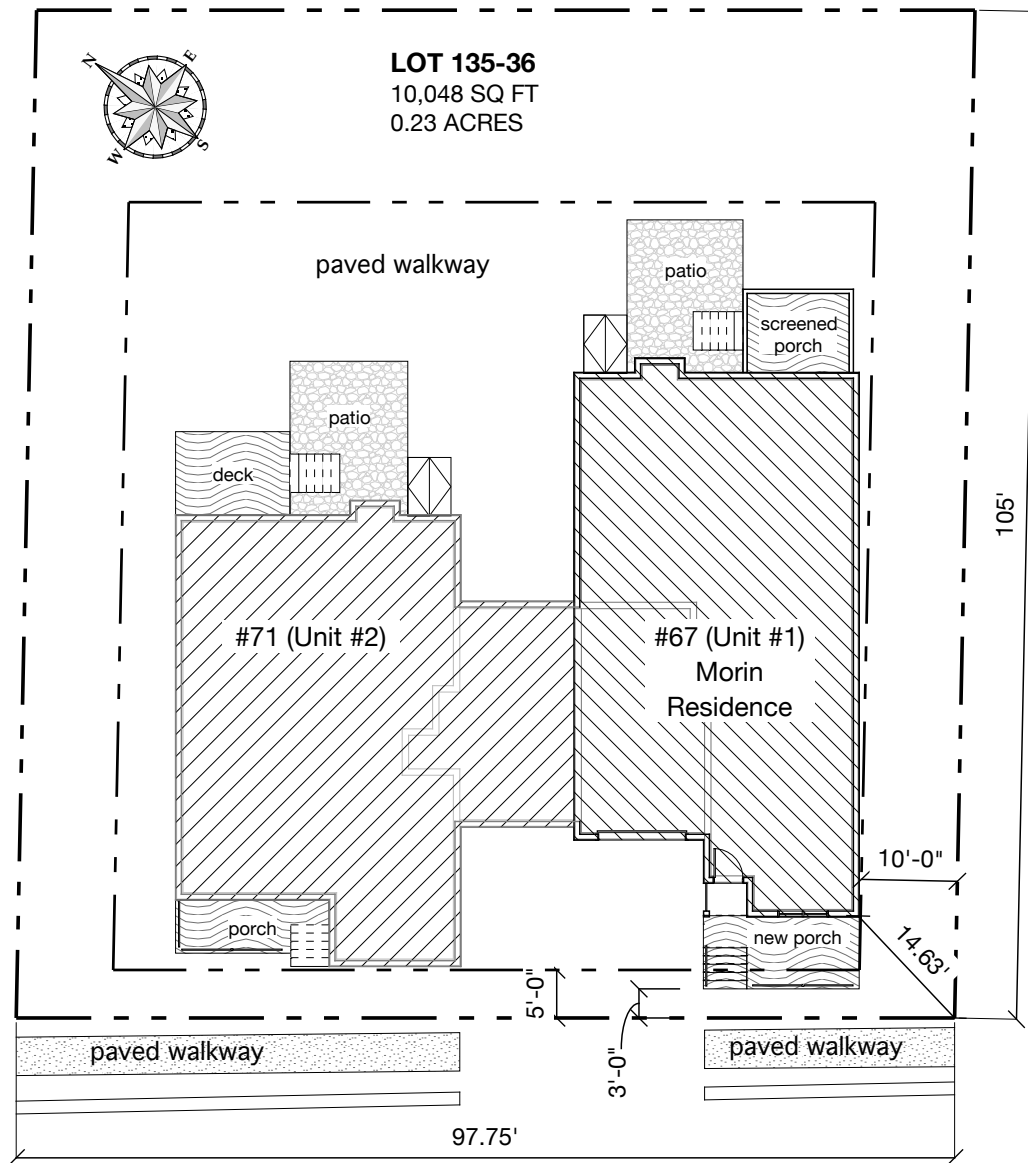
Variance Submittal for a Front Porch

Existing Plot Plan

Issue date: January 16, 2023 Scale: 1" = 20'-0"

Revision dates:

AD-02



LOT 135-36

EXISTING LOT SIZE:	10,048 SQ FT
EXISTING FOOTPRINT:	3,508 SQ FT
PROPOSED FOOTPRINT:	3,604 SQ FT
EXISTING LOT COVERAGE:	34.91 %
PROPOSED LOT COVERAGE:	35.87 %

GRC ZONING REQUIREMENTS

MIN LOT SIZE:	3,500 SQ FT
FRONT YARD :	5'
SIDE YARD :	10'
REAR YARD:	20'
BUILDING COVERAGE	35%
MINIMUM OPEN SPACE	20%



The Morin Residence

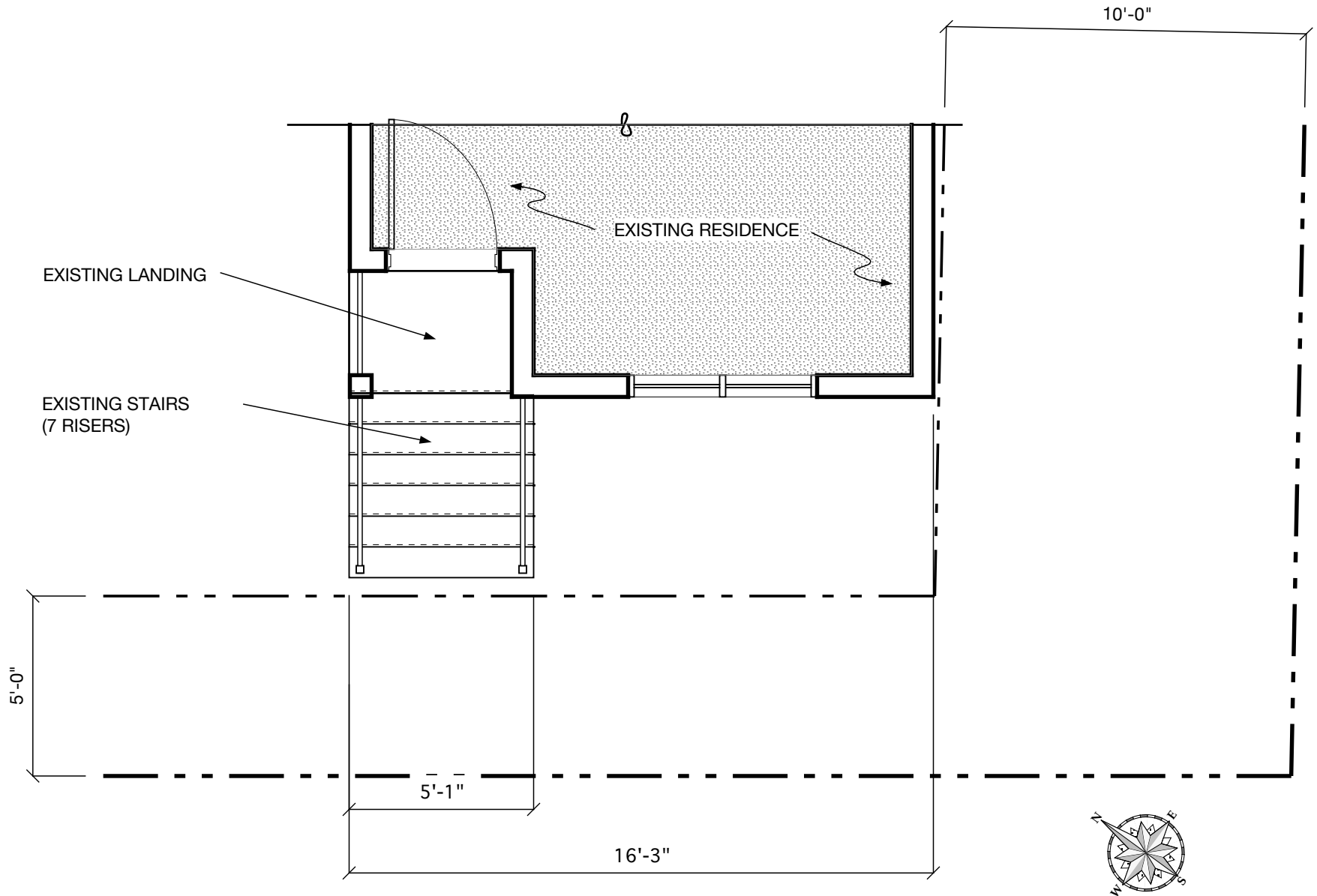
67 Madison Street, Portsmouth NH 03801

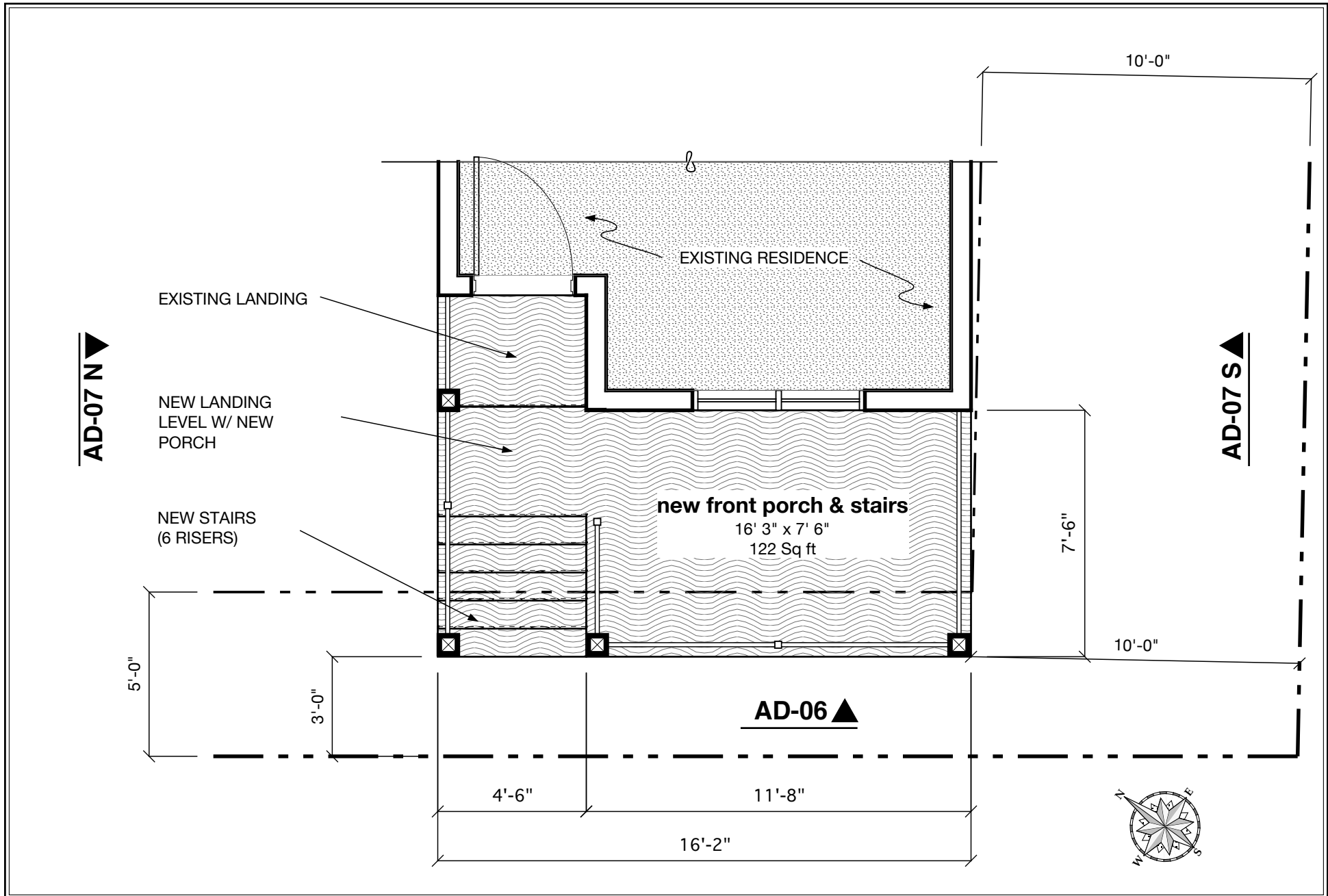
Variance Submittal for a Front Porch

Proposed Plot Plan

Issue date:	January 16, 2023	Scale: 1" = 20'-0"
Revision dates:		

AD-03







EXISTING RESIDENCE
FRONT VIEW

PORTIONS OF EXISTING RESIDENCE
SHOWN SHADED

NEW FRONT PORCH,
ALL TRIM, DETAILING & MATERIALS TO
MATCH EXISTING

METAL RAILING
TO MATCH EXISTING

11'-8 1/2" +/-
11 1/4"
1ST FLOOR LEVEL
PORCH LEVEL
3'-10 1/2"
GRADE LEVEL @
STAIR LANDING



The Morin Residence

67 Madison Street, Portsmouth NH 03801

Variance Submittal for a Front Porch

Proposed Exterior Front Elevation

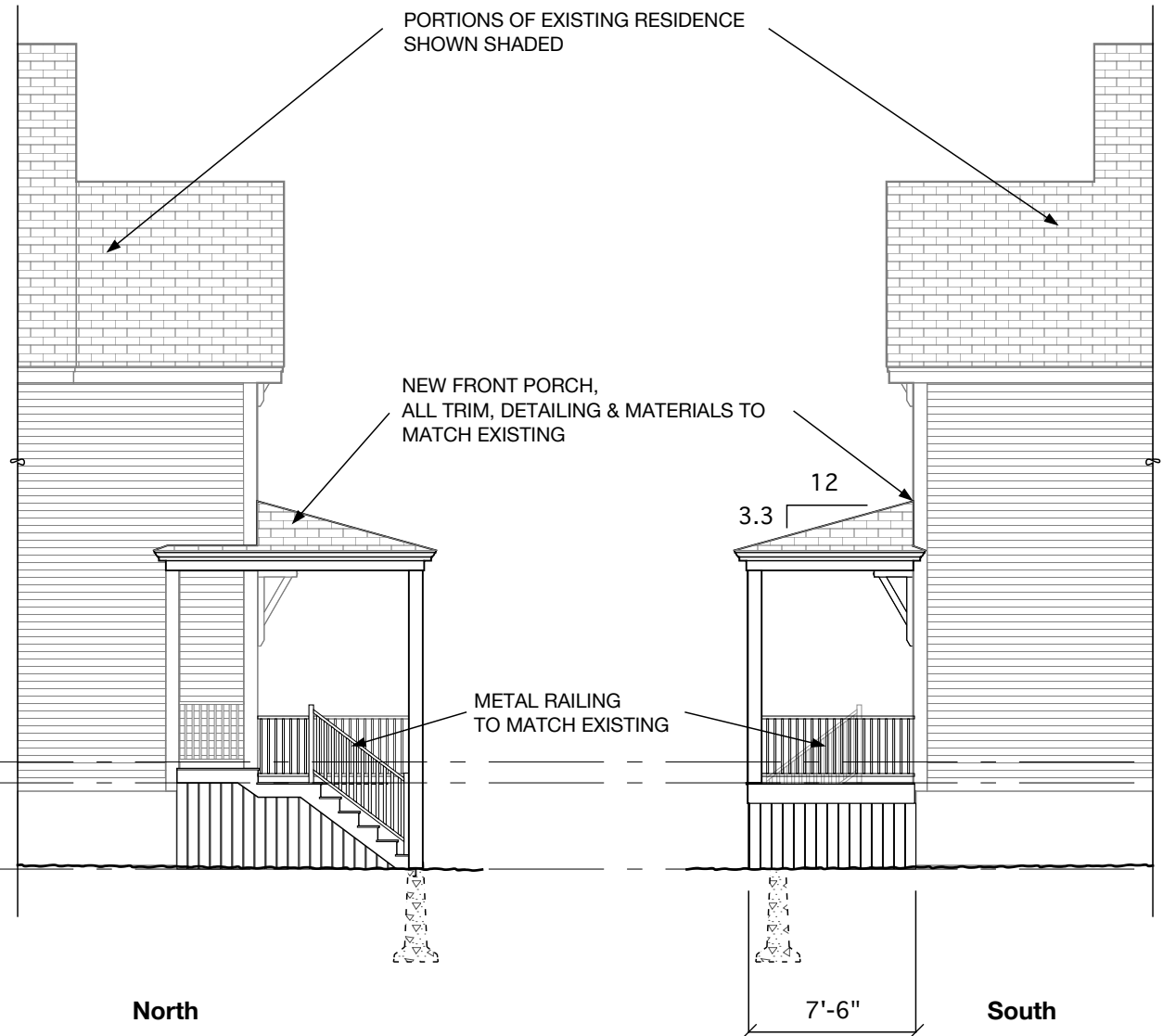
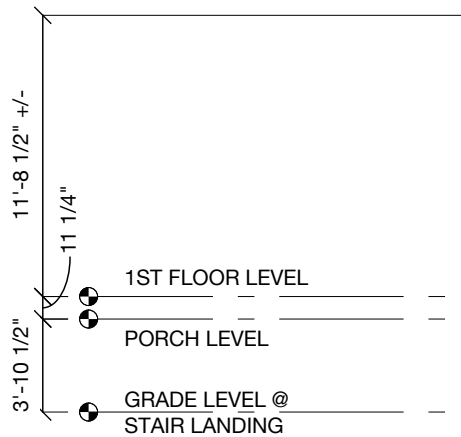
Issue date: January 16, 2023 Scale: 1/8" = 1'-0"

Revision dates:

AD-06



EXISTING RESIDENCE - NORTH



Five Criteria Summary

- **The variance will not be contrary to the public interest.**

The proposed front porch will not alter the essential character of the neighborhood. The proposed exterior improvements will actually enhance the character of the neighborhood.

- **The spirit of the ordinance will be observed.**

The proposed front porch will improve the performance and look of the property.

- **Substantial Justice will be done.**

A front porch encourages casual and spontaneous interactions with neighbors and passers by alike, thereby contributing to the overall quality of life of the neighborhood. The proposed porch will allow the owners to fully enjoy and engage in neighborhood life.

- **The values of surrounding properties will not be diminished.**

The proposed front porch addition will add value to the property and thereby increase the value of the surrounding homes.

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

Literal enforcement would prevent the owners from fully engaging with their neighborhood from the comfort of a front porch.



The Morin Residence

67 Madison Street, Portsmouth NH 03801

Variance Submittal for a Front Porch

Summary

Issue date:	January 16, 2023	Scale: n/a
Revision dates:		

AD-08