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November 29, 2023

<u>SUBMITTED VIA VIEWPOINT</u> City of Portsmouth Zoning Board of Adjustment Attn: Phyllis Eldridge, Chairwoman 1 Junkins Avenue Portsmouth, NH 03801

Re: Variance Application of The William C. Giles Revocable Trust of 2011 375 Coolidge Drive, Portsmouth (Tax Map 268, Lot 41)

Dear Chairwoman Eldridge:

My office represents William C. Giles, trustee of the Williams C. Giles Revocable Trust of 2011, the owner of property located at 375 Coolidge Drive, Portsmouth. Enclosed herewith are the following materials for submission to the Zoning Board of Adjustment for consideration at the next regularly scheduled meeting:

- 1. Landowner Letter of Authorization
- 2. Narrative to Variance Application
- 3. Existing Conditions Plan
- 4. Proposed Conditions Plan
- 5. Photographs of the Property
- 6. Mapgeo screenshot of the Property/Neighborhood
- 7. 1947 Subdivision Plan

Should there be any questions, comments or concerns regarding the enclosed application materials then please do not hesitate to contact me.

Kindest Regards,

T.Gamester, Esq.

Enclosures Cc: file

LANDOWNER LETTER OF AUTHORIZATION

I, the Undersigned, William C. Giles, as trustee of The William C. Giles Revocable Trust of 20211, the record owner of property located at 375 Coolidge Drive, Portsmouth, New Hampshire 03801, identified on Portsmouth Tax Map 268 as Lot 41 (the "Property"), hereby authorize Gamester Law Office, and its attorneys and representatives, to file any document with the City of Portsmouth (the "City"), communicate and correspond with City staff and officials, and submit applications with and appear before the City's land use boards all regarding the Property. This Letter of Authorization shall be valid until expressly revoked in writing.

William C. Giles, Trustee

11/29/2023

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CITY OF PORTSMOUTH ZONING BOARD OF ADJUSTMENT NARRATIVE TO APPLICATION

The William C. Giles Revocable Trust of 2011 Trustee, William C. Giles 375 Coolidge Drive Portsmouth, NH 03801 Owner and Applicant

Introduction and Relevant Historical Information

William C. Giles, as Trustee, is the owner of real property located at 375 Coolidge Drive, identified on Portsmouth Tax Map 268 as Lot 41 (the "Property"). The Property is located in the Single Residence B ("SRB") zoning district, is 0.2872 acres or 12,511 square feet, and contains a modest ranch style home containing approximately 1,902 square feet of living area including a two-story addition containing living space and a two-car garage. The Property has 125.03 feet of frontage solely on Coolidge Drive.

Currently, the total building coverage on the Property is approximately 26.7% where only 20.00% is allowed. This consists of the primary residence, a utility shed, a front deck, a rear deck and a partially constructed side deck. Prior to the construction of the rear deck and the partially constructed side deck, the total building coverage on the Property was approximately 20.2%.

The two-story addition, containing the two-car garage, currently encroaches into the Property's 30' front yard setback which was permitted pursuant to zoning relief a prior owner received from the Board of Adjustment in 2002.

A small rear bump-out, as well as a sliver of the rear of the principal structure, are currently located within the 30' rear setback. These features of the Property were original to the construction of the house which was built in 1953 per the City of Portsmouth's ("City") assessing records and predates the current SRB dimensional standards in the City's Zoning Ordinance (the "Zoning Ordinance"). Furthermore, the entirety of the rear deck and a portion of the partially constructed side deck are located within the rear setback.

These existing conditions can be seen on a plan entitled "Tax Map 268 Lot 41, Existing Conditions Plan, Giles Residence, 375 Coolidge Drive, Portsmouth, New Hampshire, County of Rockingham" drawn by TF Moran, Inc., which is enclosed herewith as <u>Exhibit A</u>.

Mr. Giles purchased the Property in November 2009. At the time of the purchase, the Property was heavily wooded and one of the first projects Mr. Giles undertook was to remove more than a dozen large trees that rendered the Property too shady and the yard useless, especially with having two small children at the time. Feeling as though the front of the Property needed

"something," Mr. Giles constructed the approximately 400 square foot front deck. Mr. Giles unfortunately later observed that he rarely used the front deck as it provided no privacy, and he did not want to display items such as a grill in the front of his house.

Mr. Giles longed for a rear deck that he could use regularly, and which could house his deck furniture, his grill and other similar items, and all in a private manner. The Property's backyard slopes down and away from the residence and toward his rear property line and is still relatively shaded due to mature shrubs and trees at and around the rear property line; these features made it very difficult to grow grass which Mr. Giles found out after many attempts to do so (See Exhibit C-10). In order to fulfill this desire, Mr. Giles finally contacted a contractor to build a rear deck in the Spring of 2023. The meeting with the contractor went well, the price was acceptable, and the timeline almost too perfect.

The contractor began the construction of the rear deck almost immediately and failed to file the related building permit. Mr. Giles loved the end result of the rear deck so much that he asked the contractor to begin the construction of a side deck, as well. During the construction of the side deck the City became aware of the construction.

After looking into the Property and the construction, the Inspection Department issued a Notice of Violation notifying Mr. Giles that the rear deck was constructed, and the side deck was partially constructed, without a building permit and that this construction appeared to exceed that maximum allowable building coverage. Had the contractor filed a building permit then he would have discovered that not only would this construction exceed the maximum allowable building coverage, but that the construction would also encroach into the rear setback.

All work was stopped, and Mr. Giles turned his efforts toward compliance. After much thought and consideration, aided by a full survey, Mr. Giles is abandoning and removing the construction of the side deck, and he will be demolishing the vast majority of the existing front deck, leaving only enough of the deck to service the front door of the residence. The proposed conditions can be seen on a plan entitled "Tax Map 268 Lot 41, Proposed Conditions Plan, Giles Residence, 375 Coolidge Drive, Portsmouth, New Hampshire, County of Rockingham" drawn by TF Moran, Inc., which is enclosed herewith as **Exhibit B**.

Mr. Giles would like to retain the constructed rear deck, and this <u>after-the-fact</u> variance application and narrative are in support of the same.

Zoning Relief Requested

The Applicant seeks the following after-the-fact variances from the Zoning Ordinance:

1. A variance from Article 10.521-Table of Dimensional Standards in the SRB Zoning District to allow Building Coverage of 22.2% (+/-) where 20.00% is the maximum allowable building coverage.

- 2. A variance from Article 10.521-Table of Dimensional Standards in the SRB Zoning District to allow a rear yard setback of 17' (+/-) where 17' (+/-) currently exists and 30' is required.
- 3. A variance from Section 10.321 to allow for the enlargement of a lawful nonconforming structure.

Variance Criteria

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

"There are two methods of ascertaining whether granting a variance would violate an ordinance's basic zoning objectives: 1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative, 2) examining whether granting the variance would threaten the public health, safety, or welfare." *Harborside Assoc. v. Parade Residence Hotel*, <u>162 N.H. 508, 514</u> (2011).

The zoning relief requested herein will not alter the essential character of the neighborhood, nor will it create any negative impact to public health, safety, or welfare. The construction of a deck, generally and regardless of location on the Property, is a common and customary item related to a single-family residence and the use thereof; therefore, allowing the Applicant to maintain the existence of the rear deck would not alter the essential character of the neighborhood.

Though the building coverage has been altered by the construction of the rear deck and the side deck, the increase in coverage is being offset by the removal of the side deck and the drastic reduction of the front deck, which is unsightly and rarely used. Regarding the rear setback, the Property already contains an existing nonconformity due to the previously existing rear bump-out from the primary residence. The rear deck could be more aptly described as "in-fill" since it does not encroach any farther into the rear set back than the rear bump-out.

Enclosed herewith as <u>Exhibit C</u> are several pictures of and around the Property. The rear deck is barely visible, if at all, from all perspectives around the Property, such as, but not necessarily limited to:

- Coolidge Avenue, directly in front of the Property, the rear deck cannot be seen. See Exhibit C-1, C-2, C-3.
- 5 Hoover Drive is located to the right of the Property. The rear bump-out completely shields the view of the rear deck from this property. See Exhibit C-4.
- 315 Coolidge Drive is located to the left of the Property. Mature trees and underbrush are at and around the shared property line. During the spring, summer and fall, the rear deck can barely be seen from this property, during the winter the rear deck is more visible. See Exhibit C-5. Furthermore, the siting of the house on 315 Coolidge Drive

is on the opposite side of its property and, as such, is the farthest house from the Property directly surrounding it. Enclosed herewith as <u>**Exhibit D**</u> is the Portsmouth Mapgeo Tax Map of the Property and surrounding properties.

- 394, 412, and 420 Grant Avenue are respectively located to the back left, directly behind, and to the back right of the Property. The deck is shielded by mature shrubs, bushes and trees making it almost impossible to see the deck during the spring, summer and fall, and the rear deck is a little more visible in the winter. See Exhibit C-6, C-7, C-8.

Due to the reduction in size of the front deck and the fact that the rear deck is not seen by the general public, and barely visible by direct abutters, these proposed changes will only serve to enhance the look of the home, achieve greater consistency with the look of the surrounding homes and, therefore, add to the essential character of the neighborhood. Furthermore, the purpose of setbacks and building coverage standards, among other dimensional standards, is to create uniform lots, when possible, create uniform building envelopes, and to prevent overcrowding on lots that could affect surrounding properties by disturbing abutters' light, air and space. The existence of the rear deck, though it increases the building coverage and is within the rear setback, still speaks to and preserves the interests that the Zoning Ordinance seeks to protect.

B. Substantial justice will be done by granting the variance relief.

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

In this instance, the loss to the Applicant is clear if the variance relief sought is denied. The Applicant would be forced to remove a well-built, structurally sound, and aesthetically pleasing rear deck which is currently located in a rear yard that is otherwise unfit for use and enjoyment due to its grade and inability to maintain a good, consistent catch of healthy grass (See Exhibit C-10). The rear deck provides the Applicant, and the child who is still at home with him, the ability to enjoy the outside in a private space, unlike the front deck which, again, is rarely used. The proposed reduction of the front deck and new landscaping will only enhance the appearance of the Property. There is no gain to be achieved by the public in denying the requested relief. The equitable balance test weighs overwhelmingly in favor of granting the variances.

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

Granting the requested relief will not diminish the value of surrounding properties. As previously stated, the rear deck is not visible from the street, and it is either not visible, or barely visible, by direct abutting properties. Even when the rear deck is visible it is a well-built, structurally sound, and aesthetically pleasing deck. Unlike a traditional variance application, this

deck was built without the benefit of a building permit more than 6 months ago, and it can be reported to the Board that the Applicant has not received any complaints regarding its location, its appearance or the Applicant's use thereof. Furthermore, the granting of the requested relief would also bring about the demolition of the majority of the front deck and addition of new landscaping, which will only enhance the Property.

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

1. There are special conditions that distinguish the Property from surrounding properties.

The Property has special conditions that distinguish it from surrounding properties. When examining the Property in the context of the neighborhood, as shown on **Exhibit D**, it can be seen that the Applicant's house is set farther back into the lot as compared to the properties across the street on Coolidge Drive, as well as the surrounding properties on either side of Grant Avenue behind it. It appears that the construction of a modest rear deck on these other properties would not require relief from the rear setback, as well as from the maximum allowable building coverage.

The grade of the backyard, as well as the amount of shade that is present, makes it difficult to use the area as a traditional yard, which only further lends itself as a space that is prime for a deck which can be, and has been, well-constructed regardless of grading, and which can be maintained far more easily than landscaping.

The previously existing non-conforming rear bump-out already protrudes approximately 13' into the rear set back and the construction of the rear deck is not creating an entirely new use or structure that is incompatible with the existing structure.

2. There is no fair and substantial relationship between the general purposes of the ordinance and their specific application to the Property.

The Property was created by the recording of a subdivision plan entitled "Plan of Lots, Part of Elwyn Park, Portsmouth, N.H.," which was drawn by John W. Durgin and recorded in the Rockingham County Registry of Deeds as Plan #01321 in November 1947. The Property is lot 77 on said plan which is enclosed herewith as **Exhibit E**. The creation of the Property predates the Zoning Ordinance, generally, and specifically the dimensional standards of the SRB zoning district as they are today.

As previously stated, the purpose of setbacks and building coverage standards, among other dimensional standards, is to create uniform lots, when possible, create uniform building envelopes, and to prevent overcrowding on lots that could affect surrounding properties. In this instance, the construction of any type of rear deck, let alone the one that is currently constructed, would run afoul of the Zoning Ordinance, however, the constructed rear deck does not affect surrounding

properties and, therefore, is consistent with the objectives and spirit of the Zoning Ordinance by not frustrating the interests of direct abutters which the Zoning Ordinance seeks to protect. Strictly applying the current zoning standards to the Property that pre-date the adoption of current zoning standard is impractical in relation to the requested relief.

3. The Proposed Use is Reasonable.

The Property is used as a residence and this use will remain the same. The Applicant is requesting relief in order to maintain the constructed rear deck, and as part of its request is proposing the demolition of the majority of the front deck. The construction and use of a rear deck is reasonable as it is a feature that is commonly associated with residential structures.

Proposed Stipulations

The Applicant proposes the following stipulations if the Board is inclined to grant the zoning relief sought: (1) the partially constructed side deck shall be deconstructed and replaced with landscaping, and (2) the front deck shall be reduced in size to accommodate only a modest and code compliant landing and stairs for the front door and shall be no larger than what is proposed on the proposed conditions plan.

In conclusion, the Applicant has demonstrated that its application meets the five (5) criteria for each of the variances ought and respectfully requests that the Board approves this application.

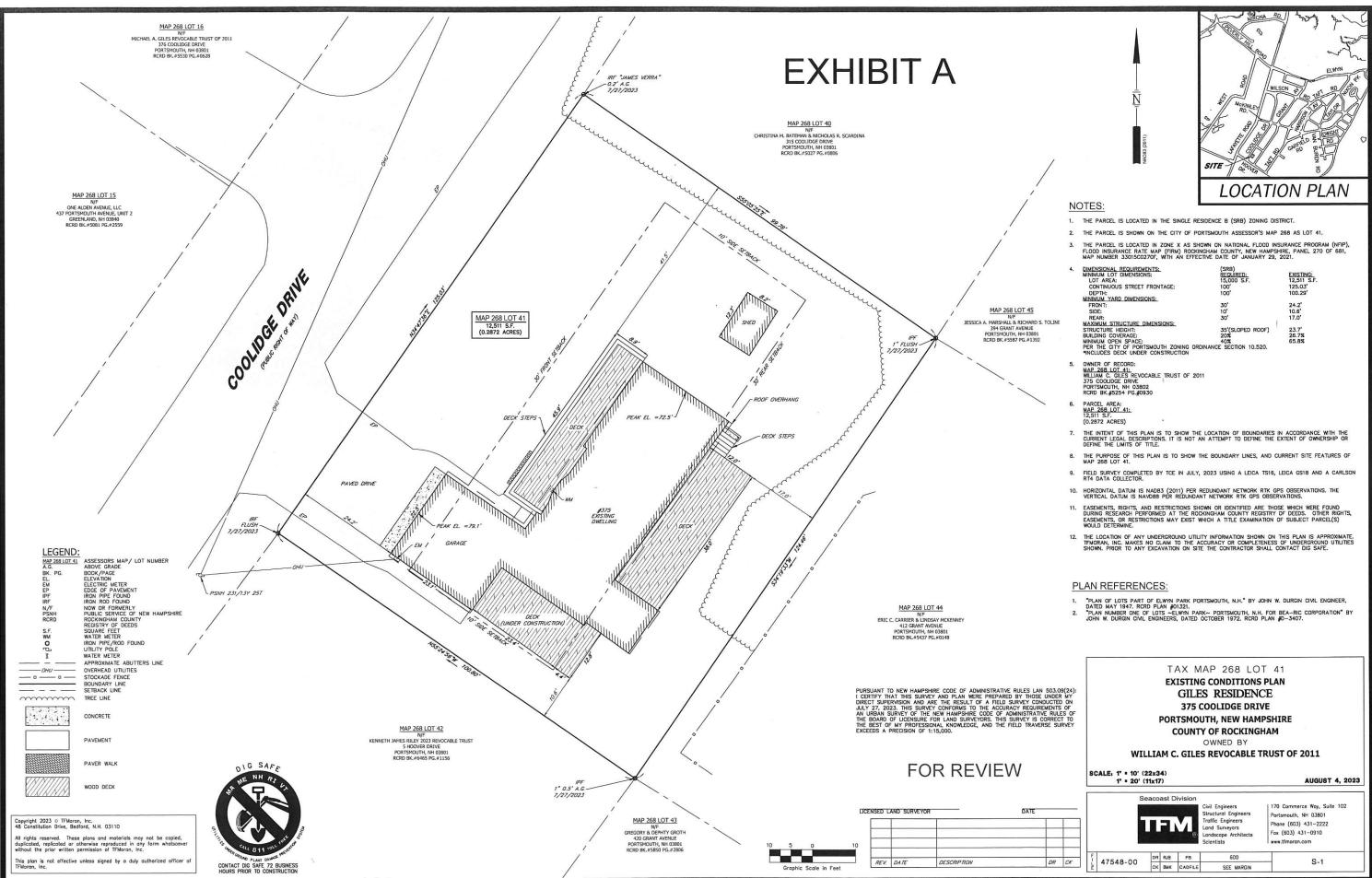
Respectfully submitted,

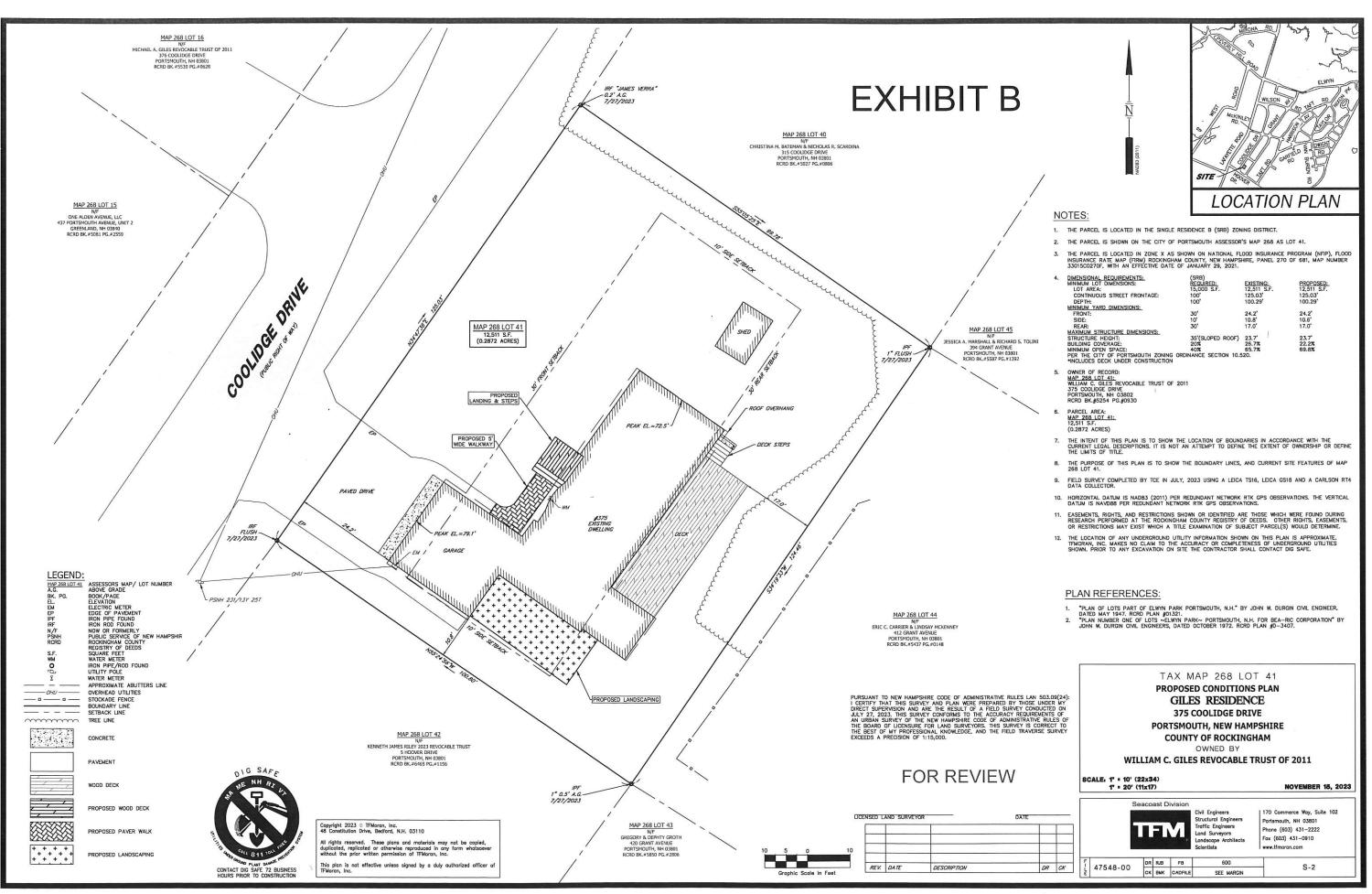
William C. Giles, Trustee of the William C. Giles Revocable Trust of 2011

By and through its Attorney,

Colby T. Gamester, Esquire Gamester Law Office 144 Washington Street Portsmouth, NH 03801 603-427-0000 colby@gamesterlaw.com

Dated: November 29, 2023





Nov 16, 2023 - 1.06pm F.WSC Projects47548 - Coolidge St, Portsmouth,NH47548.00 - Giles-375 Coolidge St. Portsmouth/Carlson Survey/Dwgs/M7548-00 Surv

Exhibit C - Photographs

C-1 Front of House



C-2 – Front from Left



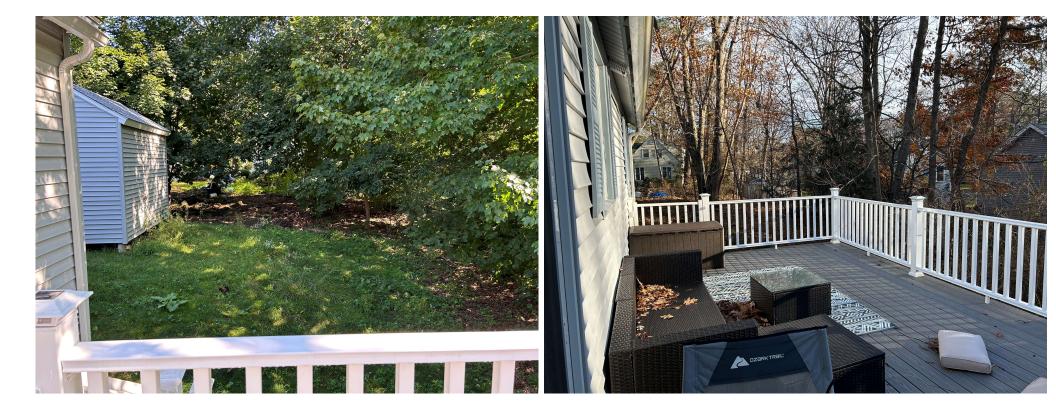
C-3 – Front from Right



C-4 – From 5 Hoover Drive



C-5 – To 315 Coolidge – Summer/Winter



C-6 – To/From 394 Grant



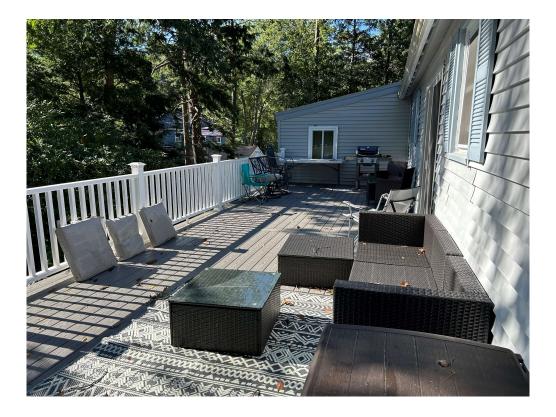
C-7 – To 412 Grant – Summer/Winter



C-8 – From/to 420 Grant



C-9 – Deck Generally



C-10 - Back Yard Grade





