MEMORANDUM

TO:

Portsmouth Zoning Board of Adjustment ("ZBA")

FROM:

Monica F. Kieser, Esquire

DATE:

August 31, 2022

RE:

Natan Aviezri Revocable Trust, Natan Aviezri & Debra Klein, Trustees

75 Monroe Street Tax Map 168/Lot 27

Zoning District General Residence A ("GRA")

Dear Chairman Parrott and Zoning Board Members:

On behalf of the Natan Aviezri Revocable Trust, Natan Aviezri & Debra Klein Trustees, ("Aviezri"), we are pleased to submit this supplemental memorandum and attached exhibits in support of the variance application submitted by Debra Klein to allow expansion of the nonconforming structure for consideration by the Portsmouth Zoning Board of Adjustment ("ZBA") at its September 20, 2022 meeting.

I. <u>EXHIBITS</u>

- A. 2016 Variance Plan issued by Millennium Engineering, Inc.
- B. <u>Email & Proposed Conditions Sketch</u> issued by Millennium Engineering, Inc.
- C. <u>Photographs.</u>
 - Satellite view
 - Front/rear view
 - Sketch of expansion
- D. <u>Tax Map 168.</u>

II. PROPERTY/PROJECT

75 Monroe Street is a 16,964 s.f. lot located at the corner of Monroe and Ward Place which contains an apartment building, paved parking lot, and another dwelling accessible from Ward Place (the "Property"). (Exhibit A). The Property derives from a larger lot of involuntarily merged parcels which were unmerged and consolidated pursuant plans approved by the City in 2016. Today's application relates to the small (approximately 32 ft. by 20 ft.) 1 ¾ story dwelling accessed from Ward Place behind the apartment building. The dwelling dates back to 1920, is outdated and in need of renovations. Aviezri intends to renovate the home, expand the existing front and rear shed dormers by approximately 76" inches on either side to match the existing wall and roof lines (the "Project"). Because the existing dwelling is located within the existing side and rear yard setback, relief from the Portsmouth Zoning Ordinance ("PZO") is required to expand the nonconforming structure within the applicable yard setbacks.

Orientation of the small dwelling is toward Ward Place so its right side is the rear lot line and its left side is a side lot line.

III. RELIEF REQUIRED

- 1. <u>PZO §10.321, Expansion of a Nonconforming Structure</u> to allow expansion of the existing front and rear second floor dormers within the side and rear yard setbacks.
- 2. PZO §10.520, Dimensional Standards, §10.521, Table
 - Rear lot line to allow expansion of front and back shed dormers on right side of home to match existing roof/wall line at and 11.97 ft./13.22 ft. (front) and 11.87 ft./13.02 ft. (back) from the rear lot line where 20 ft. is required.
 - <u>Side lot line</u> to allow expansion of front and back shed dormers on left side of home to match existing roof/wall line at 5.7 ft./7.00 where 10 ft. is required.

IV. VARIANCE REQUIREMENTS

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

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

The purpose of the Portsmouth Zoning Ordinance as set forth in PZO §10.121 is "to promote the health, safety and the general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan... [by] regulating":

- 1. The use of land, buildings and structures for business, industrial, residential and other purposes The Project renovates and slightly expands the second floor of an existing residence.
- 2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space Building footprint, coverage, height will remain unchanged by the slight expansion of the dormers on the second floor.
- 3. The design of facilities for vehicular access, circulation, parking and loading No changes are proposed.
- 4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding The structure exists now. The slight second floor expansion will have no negative effect on abutters compared to existing conditions.

- 5. The preservation and enhancement of the visual environment The Project will renovate the existing dwelling on the Property improving its appearance. The minimal expansion of dormers will not undermine these purposes of the Ordinance.
- 6. The preservation of historic districts, and buildings and structures of historic or architectural interest The Property is outside the Historic District.
- 7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality Renovating the existing dwelling in place and slightly expanding the second floor dormers has no impact compared to existing conditions.

The Project meets the intent of the GRA Zone by permitting the improvement of an existing residence and maintaining the existing density on the Property. Like many in the neighborhood, the Property is nonconforming with respect to the left side setback and rear yard setback. The Project on the second floor simply matches the existing dimensions below representing a very slight increase in the nonconformity. Given these factors, granting the requested variances will not conflict with the basic zoning objectives of the PZO.

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

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

There will be no threat to the public health, safety, or welfare by granting the requested variances, which will merely permit additional livable space within an existing home. They will allow Aviezri to improve a small, dated residence with renovations bringing it up to code and slightly expanding the second floor. The requested dimensional relief is within the existing footprint and represents a *de minimus* effect. Clearly, the requested variances neither alter the essential character of the locality nor threaten the public health safety or welfare. Accordingly, none of the requested variances are contrary to the public interest and all observe the spirit of the ordinance.

3. Granting the variance will not diminish surrounding property values.

The proposal will renovate the exiting older structure while maintaining consistency with the surrounding area. If anything, the addition will improve the value of the Property, and thus, the values of the surrounding properties. Given the overall improvements to the building and limited scope of the requests, the variances will not diminish surrounding property values.

4. Denial of the variances results in an unnecessary hardship.

a. Special conditions distinguish the property from others in the area.

The Property is over twice the size of the required minimum lot size but oddly shaped with a long existing dwelling nestled in one corner close to rear and side lot lines. These circumstances combine to create special conditions such that no upward expansion is possible without relief.

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

All of Aviezri's requested relief relates to the rear and side yard setbacks. Yard requirements promote adequate air, light, space between neighbors and separation for stormwater treatment. None of these purposes are impaired by granting the requested variances. The building exists and is already non-conforming with the rear and side lot line. Moreover, the neighborhood overall is similarly densely developed with multiple nearby parcels non-conforming for setbacks. See Walker v. City of Manchester, 107 N.H. 382, 386 (1966) (Hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use will have no adverse effect on the neighborhood). See also Belanger v. City of Nashua, 121 N.H. 389 (1981) (Variance proper where ordinance no longer reflects the current character of neighborhood). Accordingly, there is no fair and substantial relationship between the purposes of the ordinance and its application in this instance.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. <u>Vigeant v. Hudson</u>, 151 N.H. 747 (2005). Residential use is permitted in the GRA Zone; this Property includes an apartment building with this small residence. Aviezri proposes simply to renovate the long existing nonconforming residence on the Property and expanding the second floor dormers upstairs to create more livable space. Accordingly, the proposed use is reasonable and denial of the variances creates an unnecessary hardship.

5. Substantial justice will be done by granting the variance.

If "there is no benefit to the public that would outweigh the hardship to the applicant" this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508

(2011). That is, "any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice." Malachy Glen, supra at 109. "The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions." N.H. CONST. pt. I. arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that "no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people." Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). "Property" in the constitutional sense has been interpreted to mean not the tangible property itself, but rather the right to possess, use, enjoy and dispose of it. Burrows v. City of Keene, 121 N.H. 590, 597 (1981). (emphasis added). The Supreme Court has held that zoning ordinances must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of the regulation. Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001); Chesterfield at 69.

Granting the requested variance allows for a slight expansion on the second floor of an existing residence on the Property in a manner consistent the purposes of the zoning district and surrounding area. Given that the only change to the Property is the slight upward expansion to accommodate expanded dormers, there is no benefit to the public from denial. Conversely, Aviezri will be greatly harmed by denial as they will lose the opportunity improve an aging structure and bring it to code. Accordingly, there is no benefit to the public that outweighs the harm to the owner from denial.

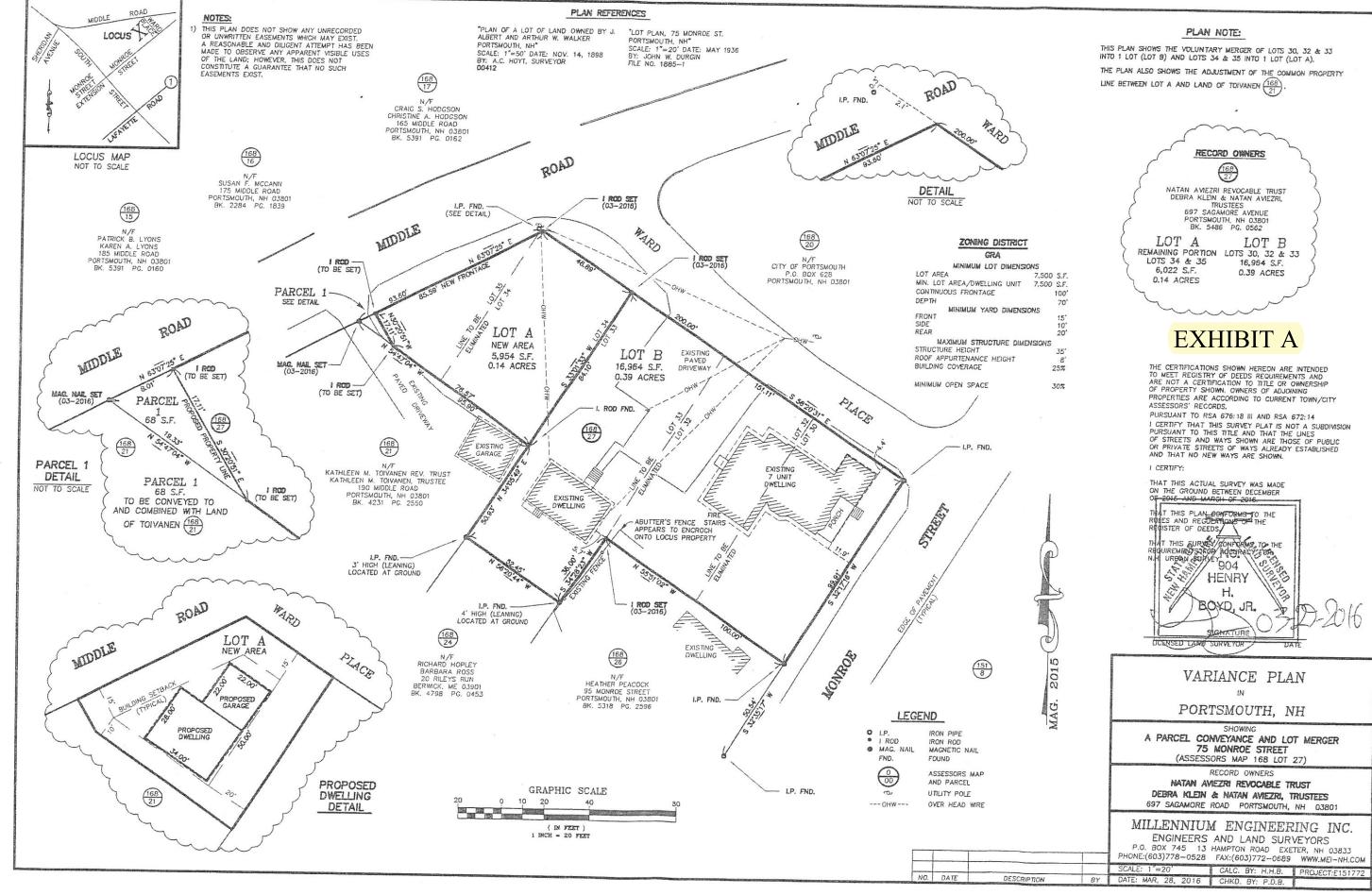
VI. **CONCLUSION**

For all of the reasons stated, Aviezri respectfully requests that the Portsmouth Zoning Board of Adjustment grant the requested variances.

Respectfully submitted,

NATAN AVIEZRI REVOCABLE TRUST/ Natan Aviezri & Debra Klein, Trustees

By: Monica F. Kieser, Esq.





Monica Kieser

From: Henry Boyd <hboyd@mei-nh.com>
Sent: Monday, August 29, 2022 9:14 AM

To: Monica Kieser

Subject: RE: 75 Monroe

Attachments: NATANMONROE.pdf

Hi Monica,

Here is a sketch showing the setback form the existing roof and building lines.

Hope this helps.

Н

From: Monica Kieser < MKieser@hpgrlaw.com>
Sent: Sunday, August 28, 2022 11:17 AM
To: Henry Boyd < hboyd@mei-nh.com>

Subject: 75 Monroe

Henry,

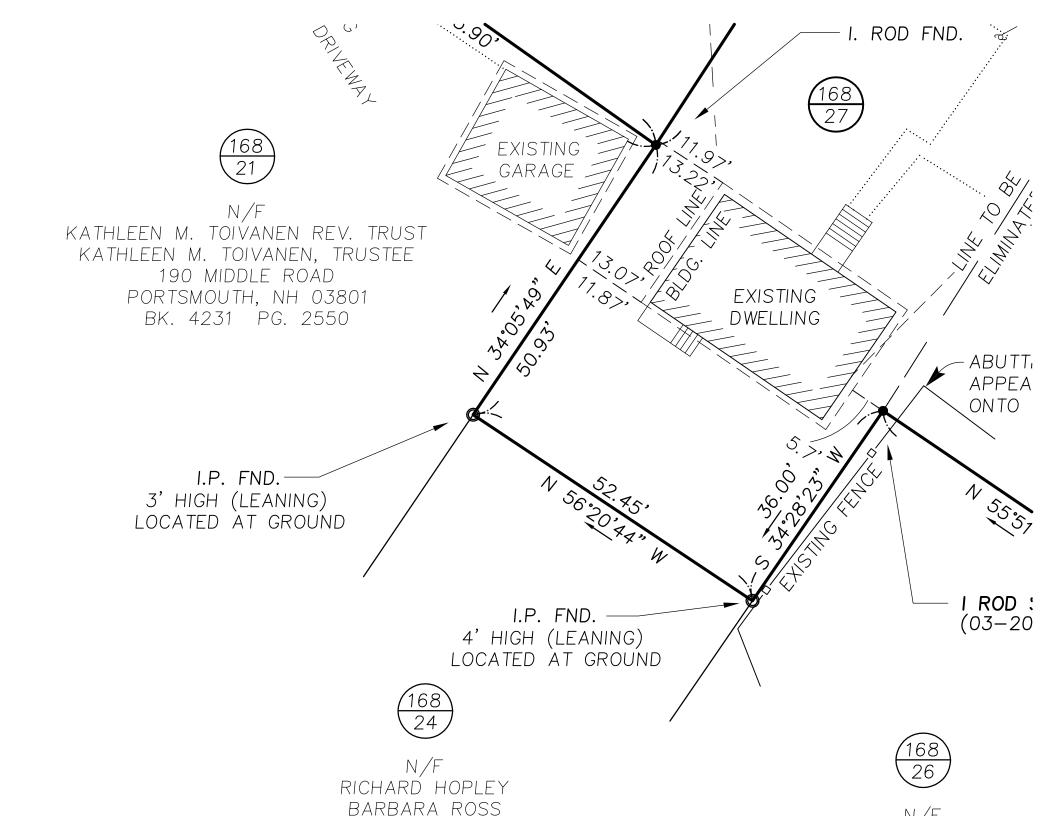
Nathan Aviezri and Debra Klein are expanding the small house at 75 Monroe by expanding the dormer the second floor. Portsmouth requires a new variance for expansion of a non-conforming home and the town says I need a dimension from the rear? side? Setback. From the small house to the boundary line between it and lot 21.

Debra filed this on her own and then contact me, the city wants me to check the dimension.

I'm not sure whether the plan the city sent me is a proper half-size plan that would allow me to enlarge it and properly scale it.

Do you have a version of this plan with the dimension or is your plan is still in your computer can you tell me the dimension?

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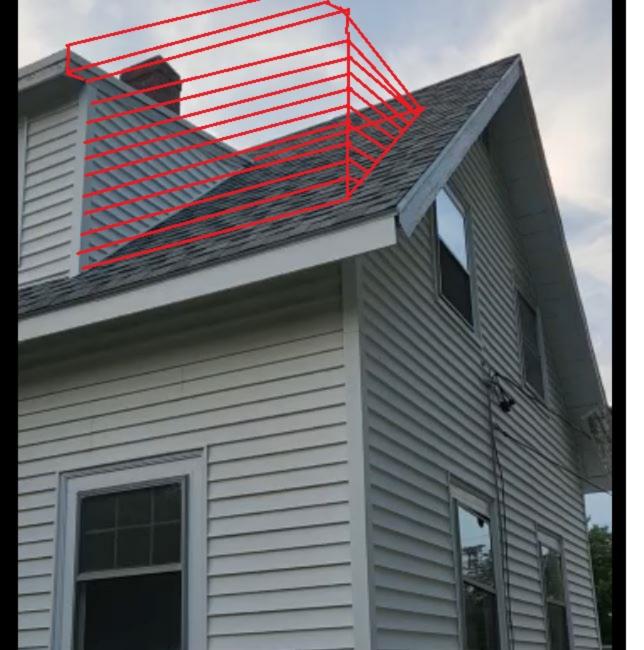




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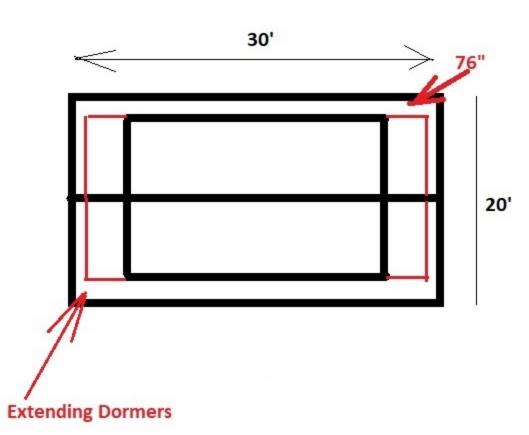


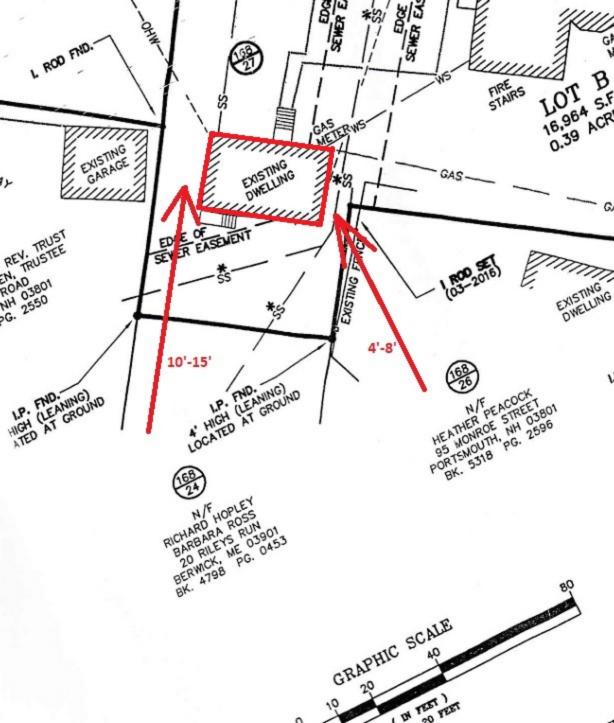


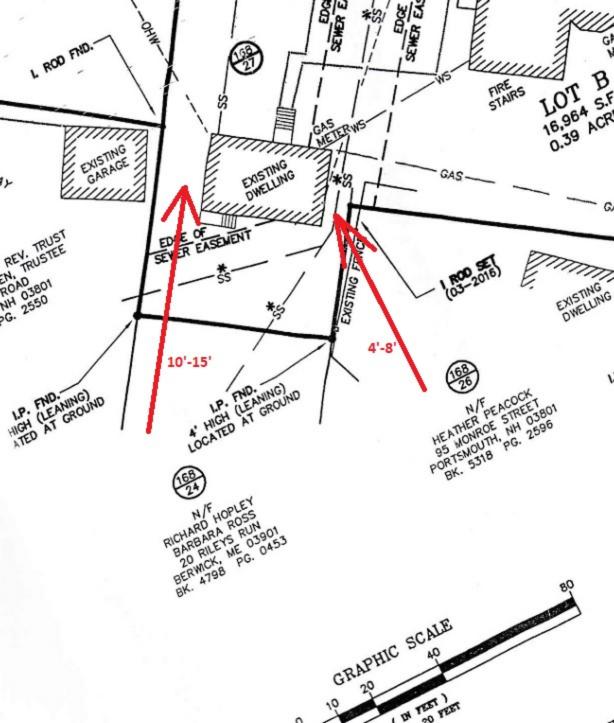


















Triple 1-3/4" x 9-1/2" VERSA-LAM® LVL 2.1E 3100 SP

FB02 (Drop Beam)

Dry | 1 span | No cant.

July 20, 2022 12:22:07

PASSED

Build 8435

Job name: WARD

BC CALC® Member Report

Address: 6 WARD PLACE
City, State, Zip: PORTSMOUTH, NH

Customer: DK ASSOCIATES

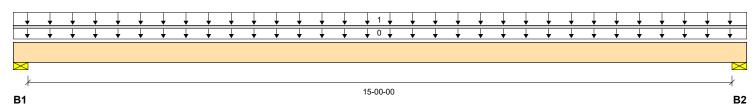
Code reports: ESR-1040

File name:

Description:
Specifier: MARK WEBB

Designer:

Company: RICCI LUMBER



Total Horizontal Product Length = 15-07-00

Reaction Summary (Down / Uplift) (lbs)

 Bearing
 Live
 Dead
 Snow
 Wind
 Roof Live

 B1, 3-1/2"
 2338 / 0
 892 / 0

 B2, 3-1/2"
 2338 / 0
 892 / 0

Loa	ad Summary						Live	Dead	Snow	Wind	Roof Live	Tributary
Tag	Description	Load Type	Ref.	Start	End	Loc.	100%	90%	115%	160%	125%	
0	Self-Weight	Unf. Lin. (lb/ft)	L	00-00-00	15-07-00	Тор		14				00-00-00
1		Unf. Area (lb/ft²)	L	00-00-00	15-07-00	Back	30	10				10-00-00

Controls Summary	Value	% Allowable	Duration	Case	Location
Pos. Moment	11851 ft-lbs	56.6%	100%	1	07-09-08
End Shear	2780 lbs	29.3%	100%	1	01-01-00
Total Load Deflection	L/281 (0.646")	85.4%	n\a	1	07-09-08
Live Load Deflection	L/388 (0.467")	92.7%	n∖a	2	07-09-08
Max Defl.	0.646"	64.6%	n∖a	1	07-09-08
Span / Depth	19.1				

Bear	ing Supports	Dim. (LxW)	Value	% Allow Support	% Allow Member	Material
B1	Wall/Plate	3-1/2" x 5-1/4"	3229 lbs	n∖a	23.4%	Unspecified
B2	Wall/Plate	3-1/2" x 5-1/4"	3229 lbs	n∖a	23.4%	Unspecified

Notes

Design meets Code minimum (L/240) Total load deflection criteria.

Design meets Code minimum (L/360) Live load deflection criteria.

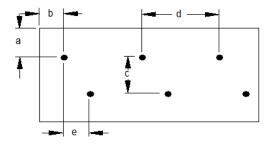
Design meets arbitrary (1") Maximum Total load deflection criteria.

Design based on Dry Service Condition.

BC CALC® analysis is based on IBC 2009.

Calculations assume member is fully braced.

Connection Diagram: Full Length of Member





Triple 1-3/4" x 9-1/2" VERSA-LAM® LVL 2.1E 3100 SP

PASSED

FB02 (Drop Beam)

BC CALC® Member Report Dry | 1 span | No cant. July 20, 2022 12:22:07

Build 8435

Job name: WARD File name: Address: 6 WARD PLACE Description:

City, State, Zip: PORTSMOUTH, NH Specifier: MARK WEBB

Customer: DK ASSOCIATES Designer:

Code reports: ESR-1040 Company: RICCI LUMBER

Connection Diagram: Full Length of Member

e minimum = 1"

Calculated Side Load = 200.0 lb/ft

Install screws from both sides, staggering screws by half of the spacing to avoid splitting.

Connectors are: SDS 1/4 x 3-1/2

Disclosure

Use of the Boise Cascade Software is subject to the terms of the End User License Agreement (EULA). Completeness and accuracy of input must be reviewed and verified by a qualified engineer or other appropriate expert to assure its adequacy, prior to anyone relying on such output as evidence of suitability for a particular application. The output here is based on building code-accepted design properties and analysis methods. Installation of Boise Cascade engineered wood products must be in accordance with current Installation Guide and applicable building codes. To obtain Installation Guide or ask questions, please call (800)232-0788 before installation.

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