

BY: VIEWPOINT & HAND DELIVERY

July 24, 2024

City of Portsmouth
Attn: Stefanie Casella, Planner
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application of JP and Allison Majcher
84 Thaxter Road, Portsmouth (Tax Map 166, Lot 34)**

Dear Stefanie,

Please find a copy of the following submission materials in connection with the variance application filed on behalf of JP and Allison Majcher for property located at 84 Thaxter Road:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Plans (Site Plan and Architectural Plans);
- 4) Photographs of Property.

A copy of the above application materials is being delivered to the Planning Department today. 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.

CITY OF PORTSMOUTH

**NARRATIVE
TO VARIANCE APPLICATION**

**JP Majcher and Allison Majcher
("Applicants")**

**84 Thaxter Road
Tax Map 166, Lot 34**

INTRODUCTION

JP Majcher and Allison Majcher own the property located at 84 Thaxter Road (the "Property" or the "Applicants' Property"). The Property is 0.17 acre in size. There is a one and a half story single-family home on the Property that the Applicants reside in. It is zoned Single Family Residence B ("SRB"). The home on the Property was built in 1935.

The Property consists of one lot and a portion of another. **Exhibit A**. The land is described in the current deed as "the whole of Lot No. 58...and the Northwesterly half of Lot No. 57" on a plan prepared by John W. Durgin, dated July 24, 1924, titled, "Plan of Westfield Park, Portsmouth, N.H.". **Exhibit B**. The Property has been conveyed with the current land description since at least 1929. The properties on Thaxter Road consisted primarily of 50' x 100' lots when the subdivision was created. It was not unusual at the time for lots to be merged or lot lines to be adjusted unilaterally by deed conveyance. There were no subdivision regulations or Planning Board to regulate land subdivisions in 1929. Many properties on Thaxter Road remain in their original configurations, including the four lots across the street from the Applicants' Property: Tax 166, Lots 41-44. There are no properties on Thaxter Road that comply with the 15,000 square foot lot size requirement applicable to the SRB Zoning District.

Existing Nonconformities

Non-Conformity	Requirement	Existing Condition	Feature/
Rear Setback	30'	7.5' (+/-)	Detached Garage
Right Yard Setback		2.5' (+/-)	Detached Garage
Front Setback	20'	15.5' (+/-)	House Steps

Proposed Conditions

Garage and Front Porch Additions

The Applicants, who are expecting a baby, would like to construct a one and a half story addition onto the left side of their home to accommodate a single-car garage with living space above. The addition would match the existing roofline and design of the existing home. As part of the exterior renovation of the home, they would also like to add a small porch area onto the front of the home.

ZONING RELIEF SUMMARY

The Applicants seek the following variances from the Portsmouth Zoning Ordinance (the “Ordinance”):

Article 10.521: To allow 22% (+/-) building coverage where 17% (+/-) exists and 20% is allowed.

Article 10.521: To allow a 15.5' (+/-) front yard setback where 15.5 (+/-) exists and 30' is required.

Section 10.321: To allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

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 observed that the requirements that a variance not be "contrary to the public interest" or "injure the public rights of others" are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. 152 N.H. 577 (2005). 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.'" Id. “There are two methods of ascertaining whether granting a variance would violate an ordinance’s basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare.” *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

The primary purpose of the building coverage limitation set forth in the Ordinance is to prevent the overcrowding of structures on land. In the present instance, the Applicants are seeking a 2% deviation from what is allowed by the Ordinance. In the context of the Applicants' Property, this amounts to 150 square feet of building coverage above what the Ordinance allows for, which is the equivalent to a small deck or patio area. The Property itself only has 50% of the lot area that the Ordinance requires. The Applicants have made a conscious effort to reduce the footprint and size of the addition to the minimum necessary to allow for a functional one-car garage and to accommodate the 2nd floor living space they need to continue residing in the home long-term, which is their goal. The home is very small for a modern family, particularly when you consider the fact that one of the Applicants primarily works remotely from the house.

While it could be said that the Applicants are creating a new non-conformity on the Property with the requested increase in building coverage, this is arguably offset by the elimination of the existing non-conforming detached garage. The detached garage on the Property has a rear setback of 7.5' (+/-) and a right yard setback of 2.5' (+/-). The entirety of the garage encroaches into the rear and right yard setbacks. The garage itself has little function and acts as a glorified shed for the Applicants. By allowing a single car attached garage, the Applicants will have functional storage space for a car and their personal belongings.

What the Applicants have proposed is consistent with the prevailing character of the neighborhood. The properties that comply with the SRB Zone building coverage limitation in this area of Thaxter Road are the outliers. The few that do comply with the building coverage limitation, such as the abutting property at 64 Thaxter Road (Lot 166-35), are significantly larger. **Exhibit C.**

The neighborhood itself is characterized by substandard single-family home lots that exceed the building coverage requirement and have structures that encroach into one or more setbacks. **Exhibit D.** There are also numerous examples in the surrounding neighborhood of homes with attached garage additions of a similar design to that proposed by the Applicants, including: 145 Thaxter Rd. (Lot 166-16), 175 Thaxter Rd. (Lot 166-17) and 176 Thaxter Road (Lot 166-20).

The proposed additions will not extend further into the front yard setback than the existing home. The additions will have no negative impact upon the light, air and space of any abutting property, consistent with the objectives of the Ordinance, and will eliminate an existing setback non-conformity.

For the foregoing reasons, granting the variances will not alter the essential character of the neighborhood or otherwise have any negative impact upon the public's health, safety or welfare.

Substantial justice will be done by granting the variances.

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

The public would not realize any gain by denying the variances. The additions to the home are reasonable and in keeping with the character of the neighborhood. The increase in building coverage above what is permitted by the Ordinance is minimal and will not overcrowd or otherwise overburden the Property. To the contrary, the demolition of the detached non-conforming garage in the rear and the improved appearance of the home with the additions should only benefit the neighbors and the public. Denying the variances would constitute a loss to the Applicants, who have a very small single-family home and need additional living and storage space for their growing family.

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

As stated above, what is proposed is in keeping with the character of the neighborhood and other homes within it. The additions are tasteful and will integrate naturally with the existing design of the home. The improved appearance of the home and the elimination of the non-conforming detached garage in the rear should only add value to surrounding properties. Granting the variances will certainly not take value away from surrounding properties.

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

Current zoning does not reflect the character of the neighborhood, which consists primarily of small lots that exceed the SRB District 20% building coverage limitation. Municipalities have an obligation to have their zoning ordinances reflect the current character of neighborhoods. *Belanger v. Nashua*, 121 N.H. 389 (1981). Absent this, the Board must consider the prevailing character of a neighborhood as part of its hardship analysis.

The Property has special conditions that distinguish it from surrounding properties. It is one of the only properties that has under 20% building coverage. Of the others that have less than 20% building coverage, all are larger lots.

The Applicants' Property was created and developed long before the enactment of current SRB zoning standards. The home and detached garage are quite small by modern standards. Notwithstanding, these structures account for 17% (1,238 sf.) in building coverage. The Applicants cannot reasonably expand upon either structure on the Property without exceeding the 20% coverage threshold.

In the present case, the Applicants are seeking a trade-off in non-conformities by eliminating the detached garage that violates the rear and right yard setbacks and constructing an attached garage with living space above that improves the functionality of their home. The 22% building coverage proposed is consistent with other similarly situated properties in the neighborhood. For these reasons, there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

Finally, the proposed use is reasonable. The Applicants will continue to use the Property as a single-family residence which is encouraged and permitted by right in the SRB Zoning District.

CONCLUSION

In conclusion, the Applicants have demonstrated why their application meets the criteria for granting the variances requested and respectfully request that the Board's approval of the same.

Respectfully Submitted,

Dated: July 24, 2024

JP and Allison Majcher

By and Through Their Attorneys,
Durbin Law Offices PLLC



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

Return To:



LCHIP	ROA654550	25.00
TRANSFER TAX	RO124026	16,350.00
RECORDING		14.00
SURCHARGE		2.00

WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS: That Daniel T. Marchibroda of 84 Thaxter Road, Portsmouth, NH 03801, for consideration paid, grants to Jared Paul Majcher and Allison Mary Moloney Majcher of 84 Thaxter Rd, Portsmouth, NH 03801, as joint tenants with rights of survivorship with WARRANTY COVENANTS:

A certain lot of land, together with the sewer, cement side-walks, grading and buildings therein and/or thereon, situate on the Southeasterly side of Islington Street in said Portsmouth and known as Thaxter Road on a plan entitled "Plan of Westfield Park, Portsmouth, NH and drawn by John W. Durgin, C.E. and recorded in Rockingham Registry of Deeds as Plan #0643. Said parcel is bounded and described as follows, viz:

Beginning at the Northwesterly corner of lot No. 58 at lot No. 59 as shown on said plan, the same being the property now or formerly of Ralph Badger and thence running in a Southeasterly direction by said Thaxter Road, seventy-five (75) feet; thence turning and running in a Southwesterly direction one hundred (100) feet to the Northwesterly side line of lot No. 74 as shown on said plan; thence turning and running in a Northwesterly direction by the side line of said lot No. 74 and lot No. 73 as shown on said plan to lot No. 59 as shown on said plan, the land of said Badger; thence turning and running in a Northeasterly direction one hundred (100) feet to Thaxter Road at the point of beginning.

Meaning and intending hereby to convey the whole of lot No. 58 as shown on said plan and the Northwesterly half of lot No. 57 as shown on said Plan.

Subject to the reservations, conditions and restrictions contained in deeds of R. Clyde Margeson et als. Dated August 27, 1929, and recorded in Rockingham County Registry of Deeds, Book 855, Page 474, and Edward L. Paterson dated August 27, 1929, recorded in said Rockingham County Registry of Deeds in Book 853, Page 164.

Being the same property as conveyed from Alan L. Fleischman, Trustee of the Fleischman Revocable Trust u/t/a dated May 24, 1996, as amended to Daniel T. Marchibroda, a single man, dated December 01, 2016 and recorded on December 09, 2016 in Book 5781 at Page 0292, Rockingham County records.

WARRANTY DEED

(continued)

For informational purposes only: 84 Thaxter Rd, Portsmouth, NH 03801.

Tax Parcel # 0166/ 0034/ 0000/ /

TOGETHER WITH and subject to any and all covenants, easements, conditions, stipulations, and restrictions of record, insofar as the same are enforceable and in effect.

The Grantor hereby releases all rights in homestead.

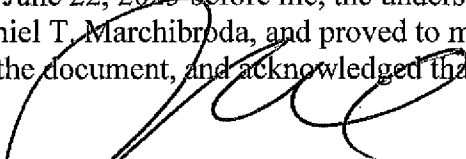
IN WITNESS WHEREOF, the undersigned have executed this document on this 22nd day of June, 2023.



Daniel T. Marchibroda

State of NEW HAMPSHIRE
County of Rockingham

On June 22, 2023 before me, the undersigned notary public, personally appeared the above Daniel T. Marchibroda, and proved to me by license to be the persons whose names are signed on the document, and acknowledged that they did it voluntarily for their its stated purpose.



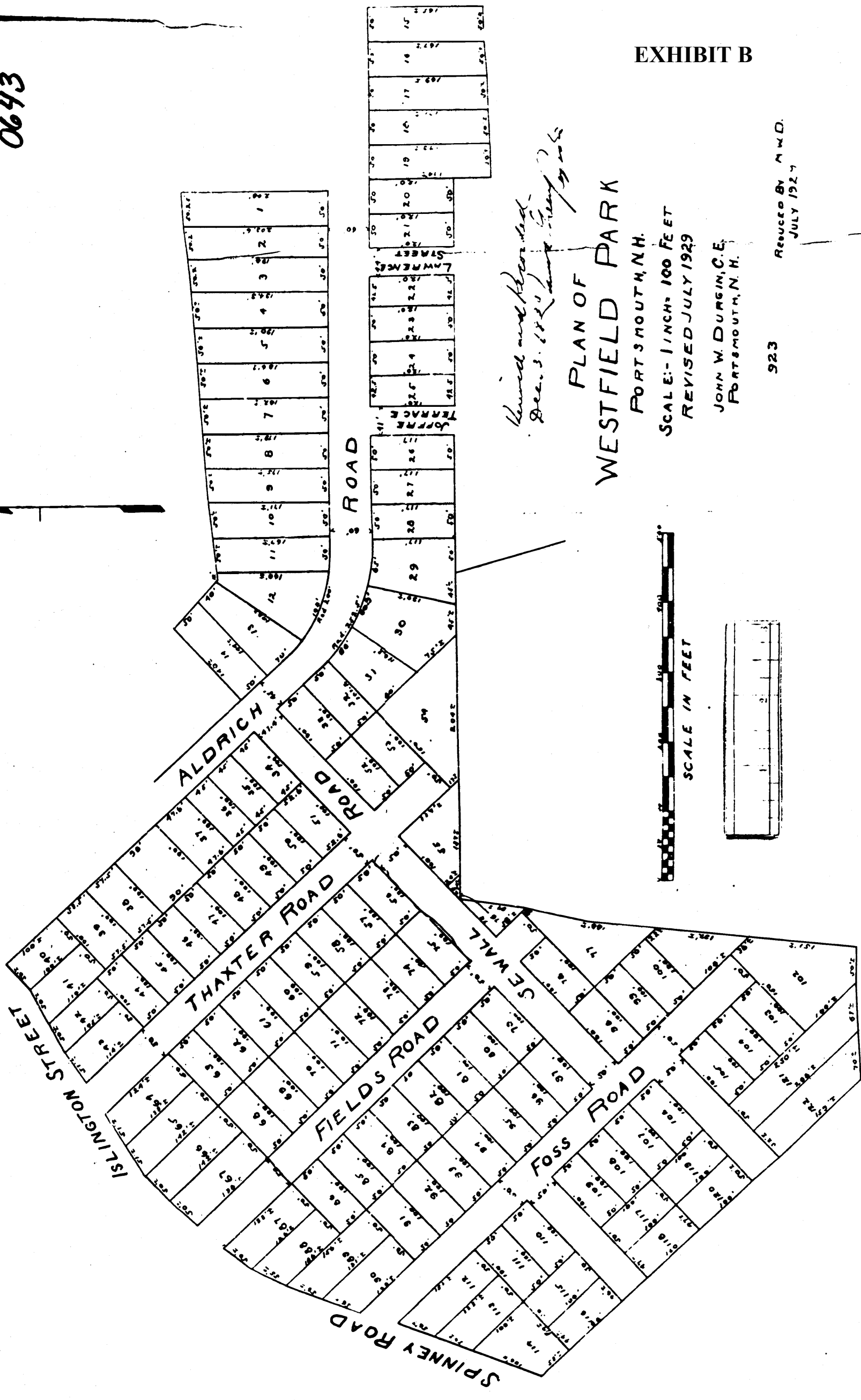
Notary Public
My Commission Expires:

[SEAL]



0643

EXHIBIT B



*Revised and altered
Dec. 3. 1929*

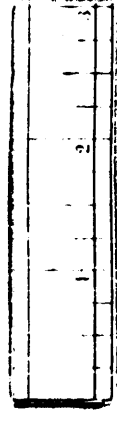
PLAN OF
WESTFIELD PARK
PORTSMOUTH, N.H.

SCALE: - 1 INCH = 100 FEET
REVISED JULY 1929

JOHN W. DURGIN, C.E.
PORTSMOUTH, N.H.

923

Revised By A.M.D.
JULY 1929



See Book 80 Plat 4

EXHIBIT C

Location to Majcher House	Street #	Street	Owner	Lot Number	Acres	Land Square Footage	Building Coverage	Building Coverage %
same side of Thaxter	98	Thaxter	Steven Katona/Marie Wood	166-33	0.17	7405.0	2321	31.3
right side abutter	64	Thaxter	Jim & Mary Nocas	166-35	0.28	12197.0	1858	15.2
across Thaxter Road	105	Thaxter	James & Regina Flynn	166-44	0.12	5227.0	1134	21.7
across Thaxter Road	93	Thaxter	Kevin Edge & Cindy Bradeen	166-43	0.11	4792.0	1348	28.1
across Thaxter Road	83	Thaxter	Peter & Jean Ward	166-42	0.11	4792.0	1250	26.1
across Thaxter Road	73	Thaxter	Joanne Samuels Revocable Trust	166-41	0.11	4792.0	971	20.3
Behind Property-Fields Road	120	Fields	Nancy Tulois	166-32	0.16	6970.0	1160	16.6
Behind Property-Fields Road	110	Fields	David Caldwell	166-30	0.32	13939.0	1492	10.7
Behind Property-Fields Road	100	Fields	Richard & Janice Trafton	166-29	0.16	6970.0	1488	21.3
same side of thaxter	38	Thaxter	Madison Tidwell & Brendan Barker	166-36	0.17	7405.2	1352	18.3
same side of thaxter	26	Thaxter	Linda & John Leland	166-37	0.14	6098.4	1848	30.3
same side of thaxter (corner of Islington)	954	Islington	Amy Averback	166-38	0.18	7840.8	1766	22.5
same side of thaxter	122	Thaxter	James & Sarah Holly	166-26	0.16	6969.6	1301	18.7
same side of Thaxter	218	Thaxter	Barbara Levenson Revocable Trust	167-12	0.22	9583.2	2632	27.4
							Avg Coverage	22.0
Majcher House (current)	84	Thaxter	Jared & Allison Majcher	166-34	0.17	7405.0	1262	17.0

145 Thaxter Road	House with similar attached garage on the side of the house
175 Thaxter Road	House with similar attached garage on the side of the house
176 Thaxter Road	House with similar attached garage on the side of the house

EXHIBIT D



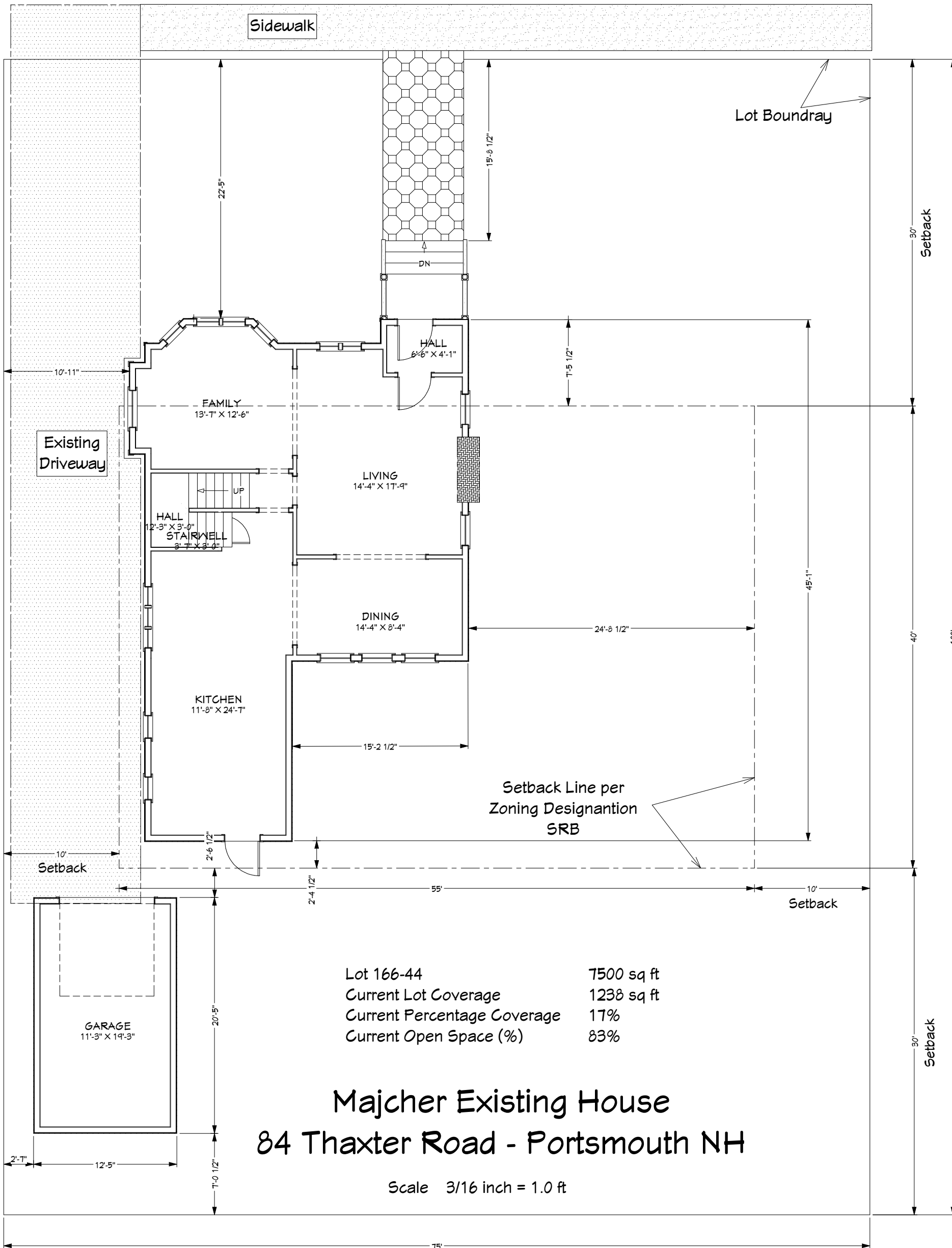
**MAP FOR REFERENCE ONLY
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Geometry updated 08/24/2023
Data updated 3/9/2022

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

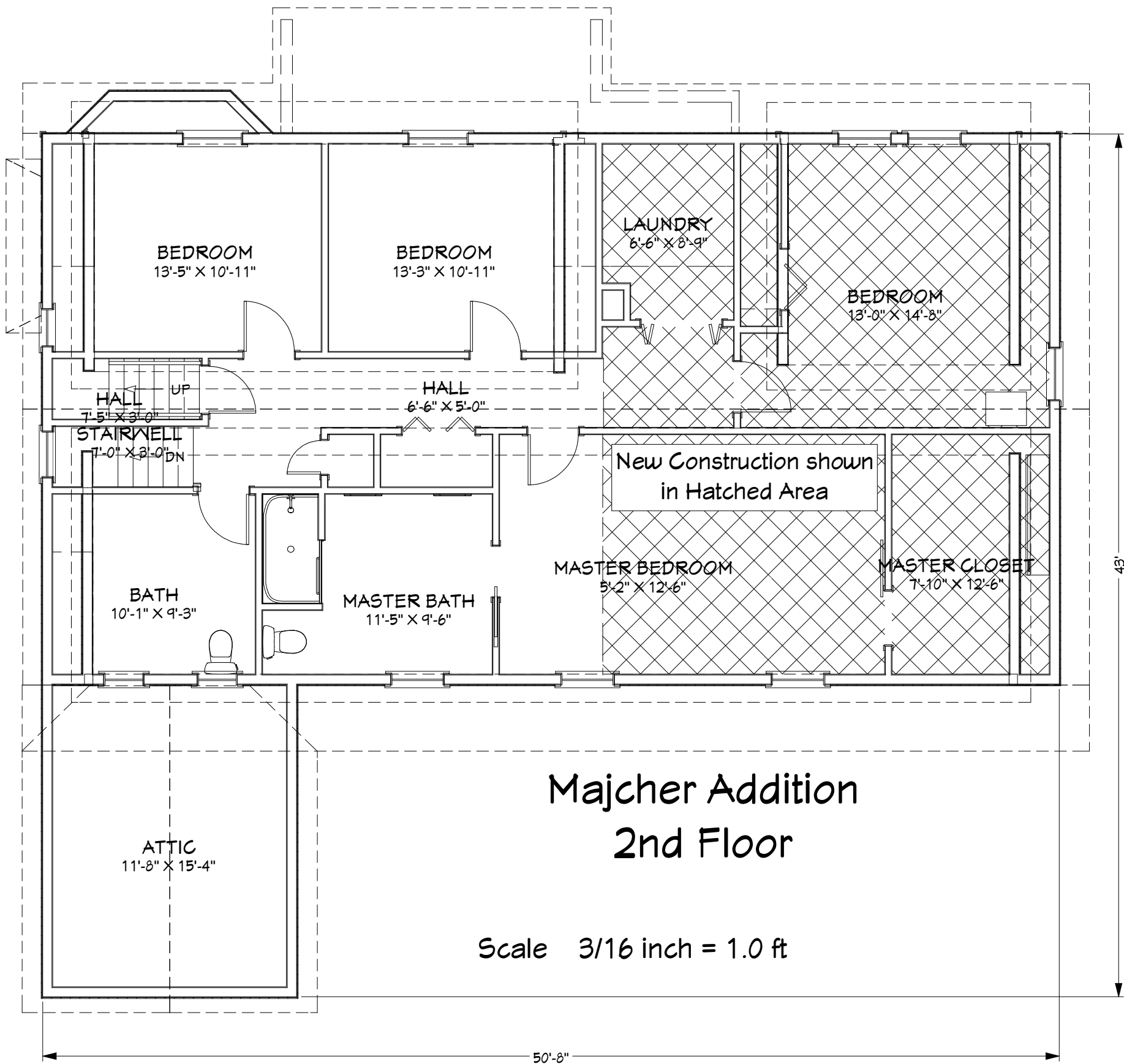
Thaxter Road



Lot 166-44 7500 sq ft
 Current Lot Coverage 1238 sq ft
 Current Percentage Coverage 17%
 Current Open Space (%) 83%

Majcher Existing House 84 Thaxter Road - Portsmouth NH

Scale 3/16 inch = 1.0 ft





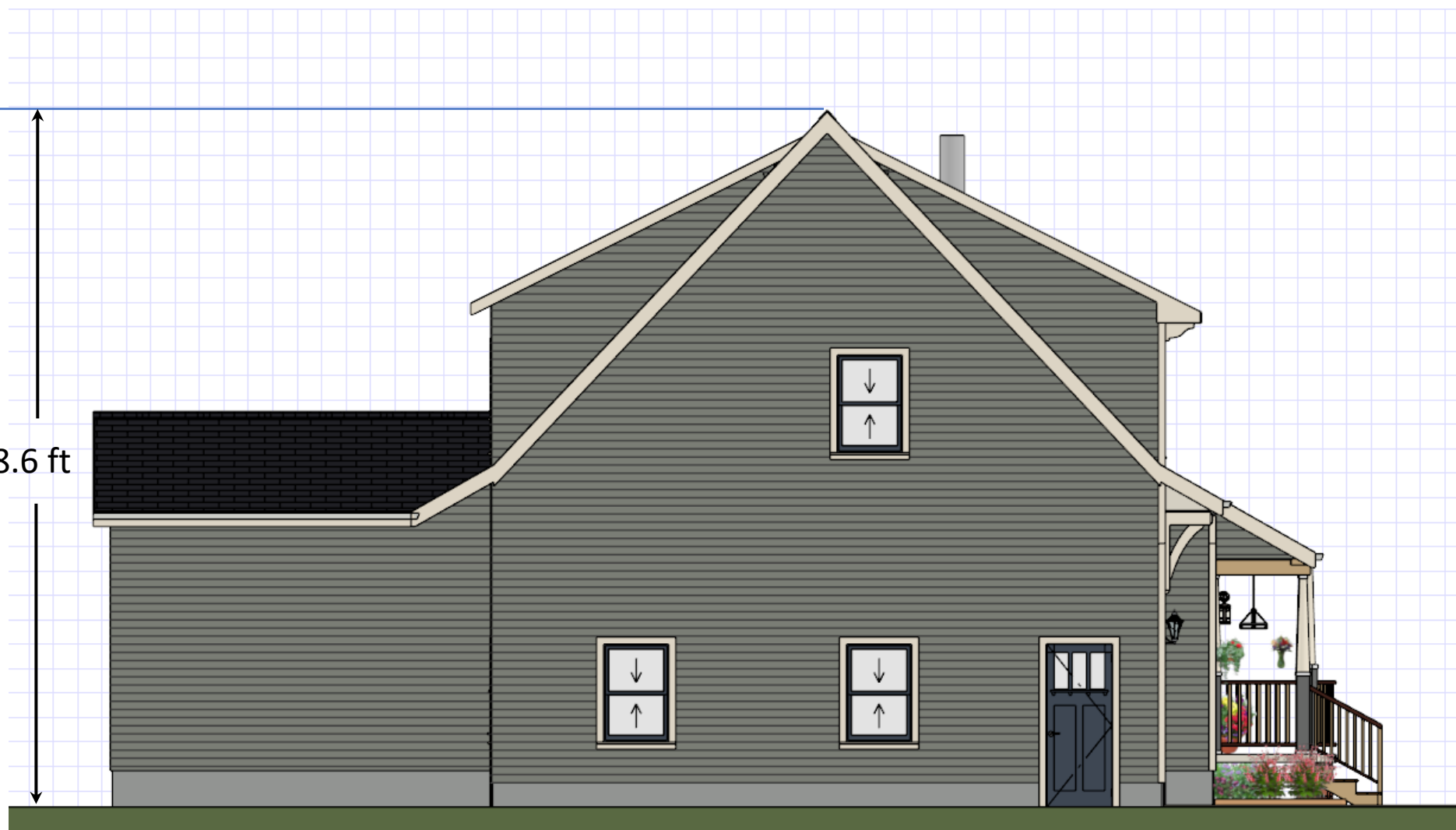






28.6 ft

28.6 ft





Left – Front View of House



Left –Rear View of House



Right Side View of House



Front View of House



Rear Yard / Garage View



Property Information

Property ID 0166-0043-0000
Location 93 THAXTER RD
Owner EDGE KEVIN



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