

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

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August 30, 2023

HAND DELIVERED

Peter Stith, Principal Planner
Portsmouth Planning Board
City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Conditional Use Permit - DADU
Applicant/Owner: Marcella Hoekstra
Property: 35 Whipple Court
Tax Map 260, Lot 98
Single Residence B Zone

Dear Mr. Stith, Chair Chellman and Board Members:

On behalf of Applicant, Marcella Hoekstra enclosed please find the following:

- See Viewpoint Land Use Application uploaded today.
- Owner's Authorization
- 07/26/23 Memorandum in Support of Variance

We look forward to presenting this Application to the Zoning Board of Adjustment at its September 21, meeting.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Encl.

cc: Marcella Hoekstra

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

Monica Kieser

From: Marcella Hoekstra - Heirloom Pictures <marcella@heirloompictures.com>
Sent: Monday, May 24, 2021 7:20 PM
To: Monica Kieser
Subject: Authorization email.

I authorize Hoefle, Phoenix, Gormley & Roberts, PLLC to execute all applications before Portsmouth Land Use Boards and to take any and all actions necessary throughout the application and permitting process related to my property at 35 Whipple Court (Tax Map 260, Lot 98) including but not limited to attendance and presentation at public hearings.

Marcella Hoekstra

MEMORANDUM

TO: Portsmouth Planning Board
FROM: Monica F. Kieser, Esquire
DATE: August 30, 2023
Re: Marcella Hoekstra, Owner/Applicant
Project Location: 35 Whipple Court
Tax Map 260/Lot 98
SRB Zone

Dear Chair Chellman and Planning Board Members:

On behalf of Marcella Hoekstra (“Hoekstra”), we are pleased to submit this application for Conditional Use Permit (“CUP”) to allow a Detached Accessory Dwelling Unit (“DADU”) in an existing detached accessory structure, to be considered by the Planning Board at its September 21, 2023 meeting.

I. EXHIBITS

- A. DADU Plan.
 - Floor Plan
 - Elevations with height
- B. Site Photographs.
- C. Tax Map 260.

II. PROPERTY/PROJECT

35 Whipple Court is an 8,324 s.f. lot in Pannaway Manner which contains a modest 1,543 s.f. one story single family home (1,143 s.f. living area) and 615 s.f. garage/shed outbuilding (the “Property”) (**Exhibits A, C**). The home dates back to 1940. In 1968, a 22 ft. by 18 ft. one car garage was approved with a 10 ft. right side yard and a 17 ft. rear yard. Hoekstra intends to convert a portion of the existing garage/shed outbuilding to a one bedroom, one bathroom Detached Accessory Dwelling Unit (“DADU”) (the “Project”).

Hoekstra has applied for an equitable waiver, or alternatively a variance from the ZBA because the existing accessory structure on the lot is larger than 22 ft. by 18 ft., and closer to both lots lines than what was previously approved in 1968. Pending approval by the ZBA of the existing accessory structure and its conversion to an DADU, as well relief from parking requirements, Hoekstra requests modification from parking requirements and certain DADU standards from the Planning Board pursuant to PZO §10.814.63 to accommodate the design of the DADU in the existing nonconforming structure within the yard setbacks and within 5 ft. of the existing home.

III. Relief Required

After meeting with the City Planning Department staff, it has been determined that a Conditional Use Permit under PZO 10.814 is required:

A. PZO Section 10.814 Standards for all Accessory Dwelling Units

1. 10.814.13 Except as provided elsewhere in this Section 10.814, in order for a lot to be eligible for an accessory dwelling unit, the lot and all proposed structures and additions to existing structures shall conform to all zoning regulations as follows:

- 10.814.131 Any municipal regulation applicable to single-family dwellings shall also apply to the combination of a principal dwelling unit and an accessory dwelling unit. However, an accessory dwelling unit shall be allowed without additional requirements for lot area, lot area per dwelling unit, or frontage beyond those required for a single-family dwelling without an ADU in the same zoning district.

Response: Hoekstra has requested variances to permit the DADU on a developed single-family lot which fails to conform to the SRB requirements.

- 10.814.132 An attached accessory dwelling unit is permitted on existing nonconforming lots and within an existing nonconforming building provided no increased or new nonconformity is created.

Response: Not applicable. The DADU proposed is in an existing detached accessory structure.

- 10.814.133 Newly constructed detached accessory dwelling units shall be governed by the provisions of this Ordinance and the side and rear yard requirements for the applicable zoning or Character District.

Response: While DADU is to be newly constructed, it will be placed within an existing detached accessory structure. The existing structure is a product of a 1968 variance, but appears to have been constructed larger and closer to the lots lines than previously approved. Hoekstra applied for relief to permit the accessory structure in its current location.

2. 10.814.14 Notwithstanding all of the above provisions, an accessory building existing on the effective date of this ordinance may be converted to a detached accessory dwelling unit as provided in this Ordinance.

Response: Pursuant to this provision, we request a Conditional Use Permit for a DADU in a portion of the existing garage.

3. 10.814.21 The principal dwelling unit and the accessory dwelling unit shall not be separated in ownership (including by condominium ownership).

Response: Hoekstra understands and accepts this requirement.

4. 10.814.22 Either the principal dwelling unit or the accessory dwelling unit shall be occupied by the owner's principal place of residence. The owner shall provide documentation demonstrating compliance with this provision to the satisfaction of the City.

Response: Hoekstra understands and accepts this requirement.

5. 10.814.23 Accessory dwelling units shall not have more than two bedrooms.

Response: Hoekstra proposes a 353 s.f. 1-Bedroom DADU.

6. 10.814.24 Neither the principal dwelling unit nor the accessory dwelling unit shall be used for any business, except that the property owner may have a home occupation use in the unit that he or she occupies as allowed or permitted elsewhere in this Ordinance.

Response: Hoekstra understands and accepts this requirement.

7. 10.814.25 Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.

Response: Municipal sewer service is available.

8. 10.814.26 1 off-street parking space shall be provided for an ADU in addition to the spaces that are required for the principal single-family dwelling.

Response: Given the very small size of the home and DADU proposed, Hoekstra has requested a variance from the parking requirements to permit two spaces where 3 are required.¹ Accordingly, she requests a waiver from this provision in accordance with PZO §10.814.63.

B. 10.814.40 Additional Standards for Detached Accessory Dwelling Units

The following standards are intended to ensure proportionality and aesthetic continuity between the DADU and the principal dwelling unit. A detached accessory dwelling unit (DADU)

¹ As calculated, 2.3 spaces are required (1.3 for the home and 1 for the DADU), which is rounded up to three spaces in accordance with 10.1112.22.

shall comply with the following additional standards:

1. 10.814.41 The DADU shall not be larger than 750 sq. ft. in gross living area.

Response: The proposed DADU is located in a portion of the garage structure and provides approximately 353 s.f. of living space.

- 10.814.411 A DADU that is created from an existing accessory building that does not comply with its minimum yard requirements shall not exceed 750 sq. ft. in gross living area.

Response: The proposed DADU, at approximately 353 s.f., is far below 750 s.f.

2. 10.814.42 A DADU that is created from an existing accessory building that does not comply with its minimum yard requirements shall comply with the following additional requirements:

- 10.815.421 The existing accessory building shall not be expanded either vertically or horizontally, other than through the addition of a front entry not to exceed 50 sq. ft., or a side or rear deck not to exceed 300 sq. ft.; except that the Planning Board may grant a conditional use permit to allow the gross living area of the accessory building to be expanded up to a total of 600 sq. ft. as provided in this Ordinance.

Response: The existing accessory building will not be expanded and the proposed DADU is only 353 s.f.

- 10.815.422 A DADU that is within a required side yard or rear yard setback for the zoning district shall not have any windows, balconies, or doors higher than eight feet above grade facing adjacent property.

Response: The existing accessory building was constructed after a 1968 variance was obtained to permit an 18 ft. by 22 ft. garage approximately 10 ft. from the side lot line and 17 ft. from the rear lot line. The existing garage is larger than that (approximately 18 ft. by 30 ft.); 1.5 ft. closer to the right side lot line and +/- 9 feet closer to the rear lot line; only a portion of it will contain the 353 s.f. DADU. Hoekstra has requested variances to permit the existing structure in its current location and requests a waiver from this requirement pursuant to PZO §10.814.63.

3. 10.814.43 The DADU shall be subordinate to the principal single-family dwelling in scale, height and appearance as follows:

- 10.814.431 The front wall of a DADU that is not created within an existing accessory building shall be set back at least 10 feet further from the front lot line than the existing front wall of the principal dwelling unit.

Response: The Project complies with this requirement.

- 10.814.432 The building height of the building containing the DADU shall be no greater than 22 feet.

Response: The existing accessory structure is 10.92 ft. to the mid-point of the pitched roof, so this factor is satisfied.

- 10.814.433 When the building containing the DADU is taller than the principal building, its required setback from all property lines shall be increased by the difference in building height between the DADU and the principal building.

Response: Not applicable.

- 10.814.434 The building footprint of the building containing the DADU shall be no greater than 750 sq. ft.

Response: The footprint of the existing structure is less than 750 s.f.

- 10.814.435 The gross floor area of the building containing the DADU shall be no greater than 1,600 sq. ft. gross floor area or 75 percent of the gross floor area of the principal dwelling unit, whichever is less.

Response: The Project satisfies this requirement.

- 10.814.436 The DADU may include roof dormers provided they are located outside the required setbacks from all property lines and occupy no greater than 33% of any individual roof plane.

Response: The Project does not propose a dormered roof.

- 10.814.437 The DADU shall comply with the drainage requirements of this Ordinance.

Response: The Project proposes no new structures. A small amount of asphalt will be removed, slightly reducing impervious lot coverage.

- 10.814.438 The DADU shall comply with the lighting requirements of this Ordinance.

Response: Hoekstra understands and agrees to these requirements.

4. 10.814.44 A newly constructed DADU shall be separated no less than 5 feet from the principal structure or as required by the Building Code, whichever is greater.

Response: Given the size and shape of the lot and the configuration of the existing structures, Hoekstra requests a waiver from this requirement in accordance with PZO §10.814.63.

III. **CONCLUSION**

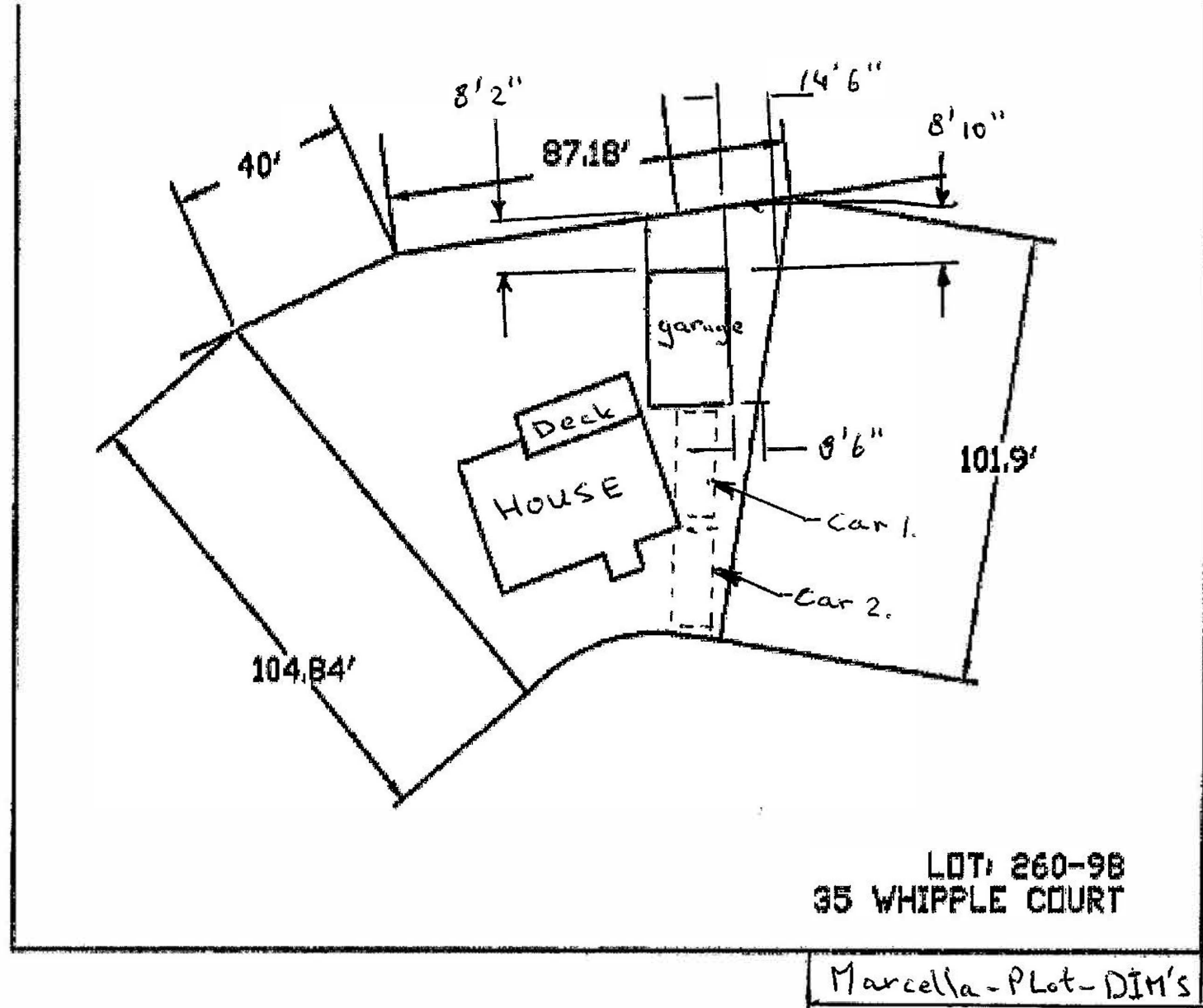
The New Hampshire Accessory Dwelling Unit statute is designed to increase affordable housing opportunities by tapping into under-utilized opportunities in existing single-family homes. The law increases housing stock for single and couples living in ADUs and allows property owners to defray housing expenses, age in place, or provide housing for an elderly parent, as proposed here. The City, through implementation of standards for DADUs has also identified a need to increase housing through utilization of existing structures. This proposal meets that need in the sought-after downtown area. Granting a Conditional Use Permit for a new code-compliant DADU in an existing garage structure fulfills the purposes of State law and the City's Ordinance. For all of the reasons stated, Hoekstra respectfully requests that with the requested modifications, all of the requirements for issuance of a Conditional Use Permit are met. We look forward to presenting this Project at the September 21, 2023 Meeting.

Respectfully submitted,

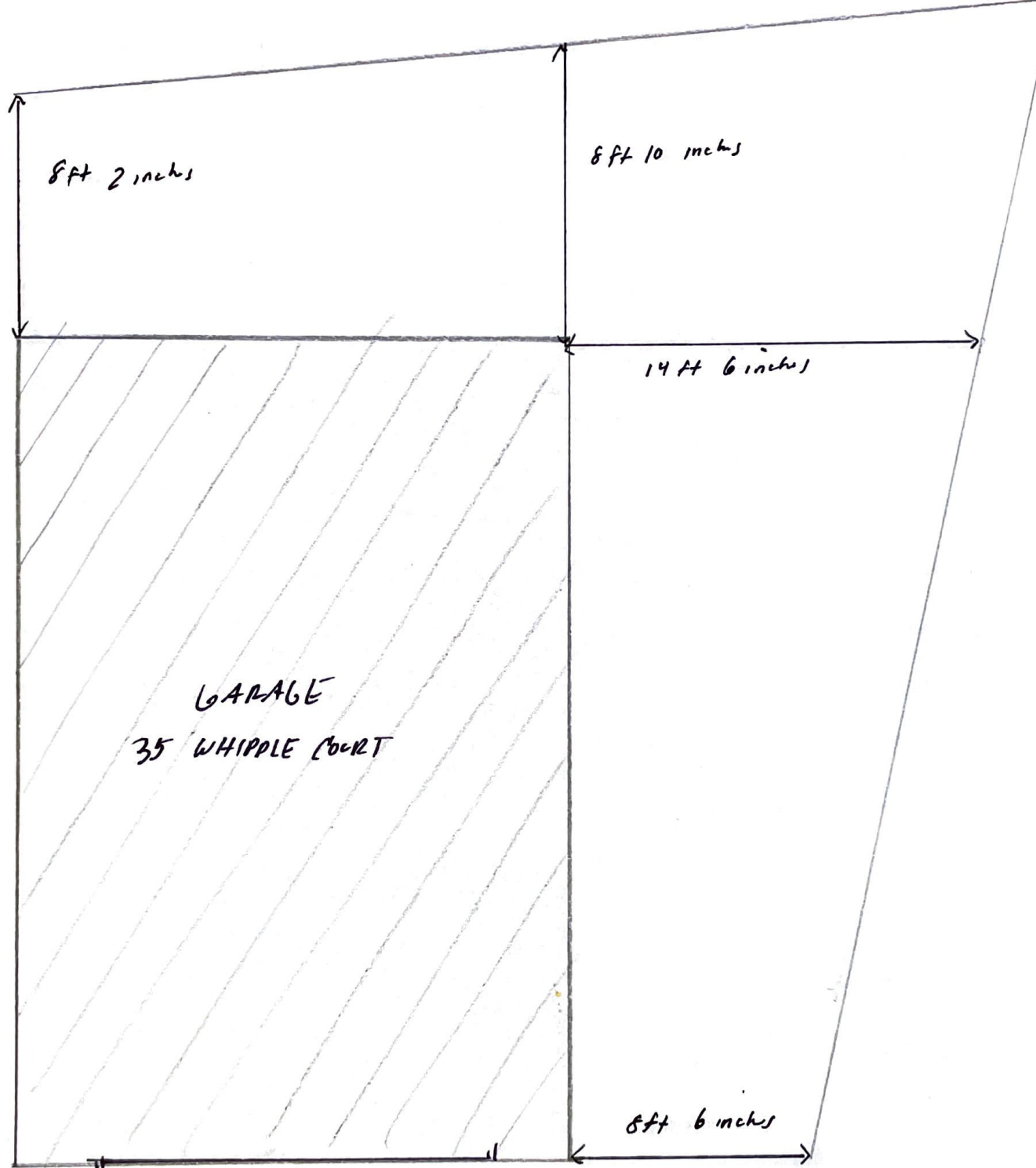
Marcella Hoekstra



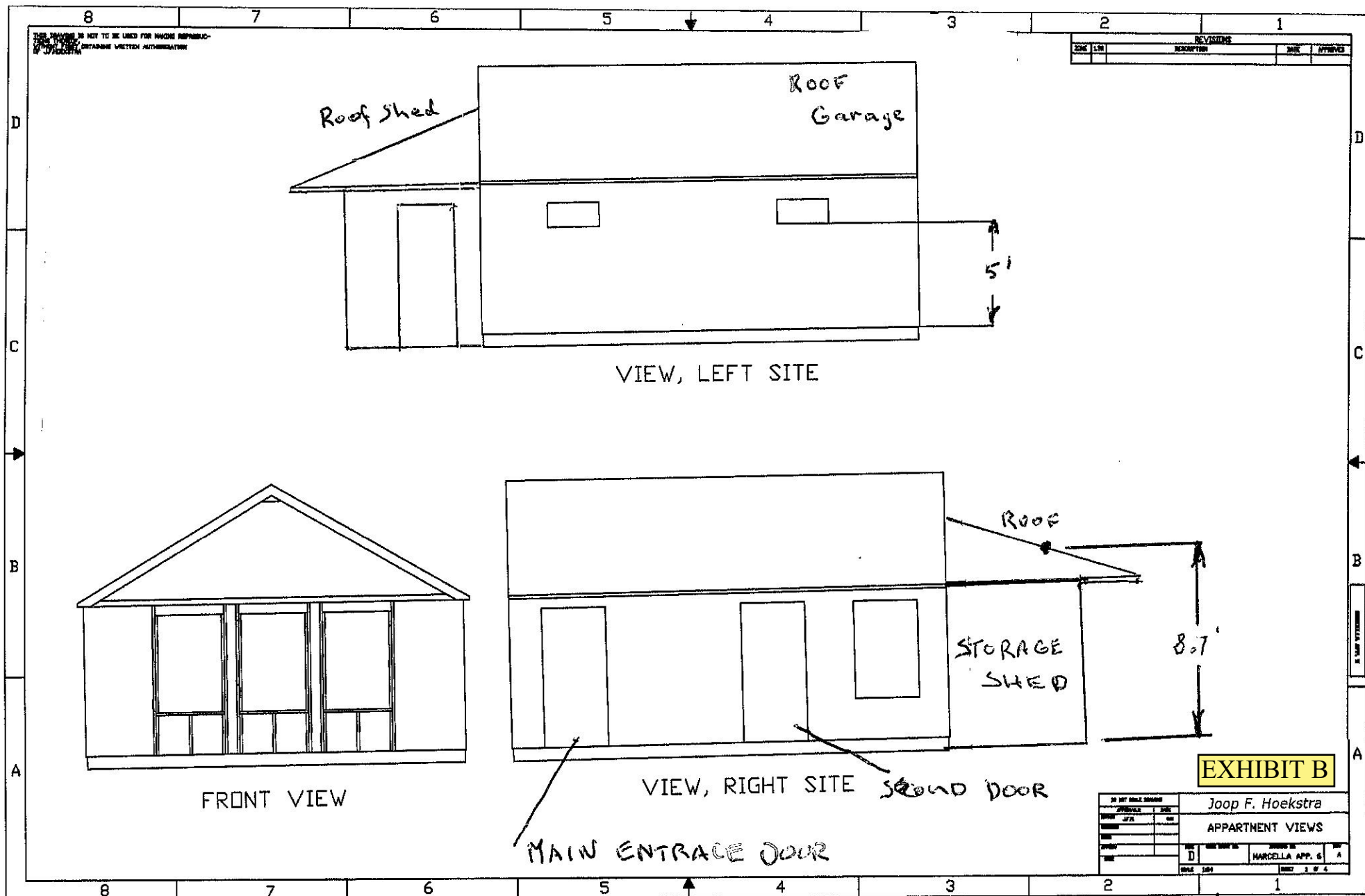
By: Monica F. Kieser



Existing and proposed dimensions from
existing garage to side and rear lot lines &
illustration of parking placement.



Zoomed in existing and proposed dimensions
from garage to
side and rear lot lines



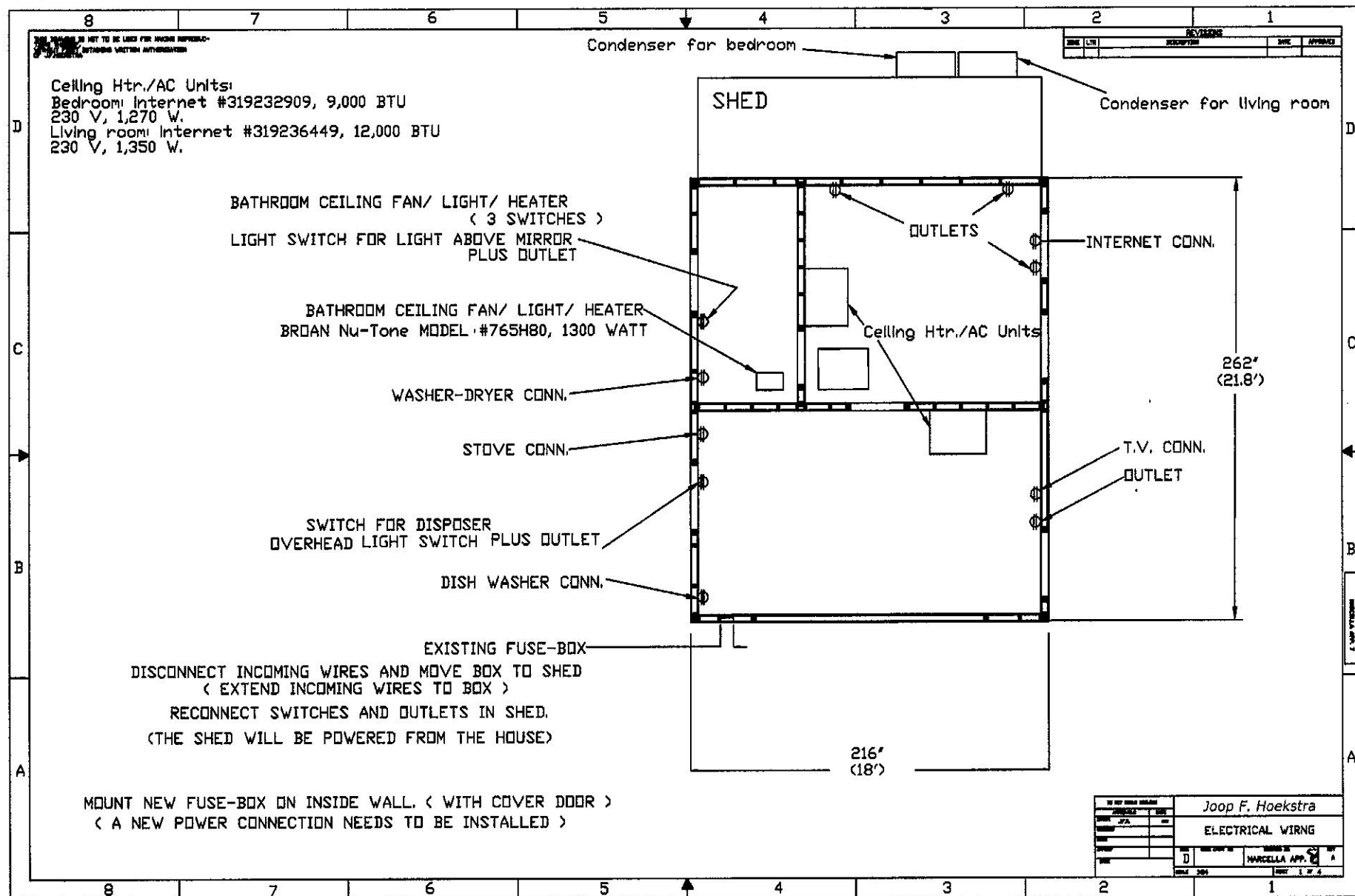
THIS DRAWING IS NOT TO BE USED FOR ANY OTHER REPRESENTATION WITHOUT WRITTEN AUTHORIZATION

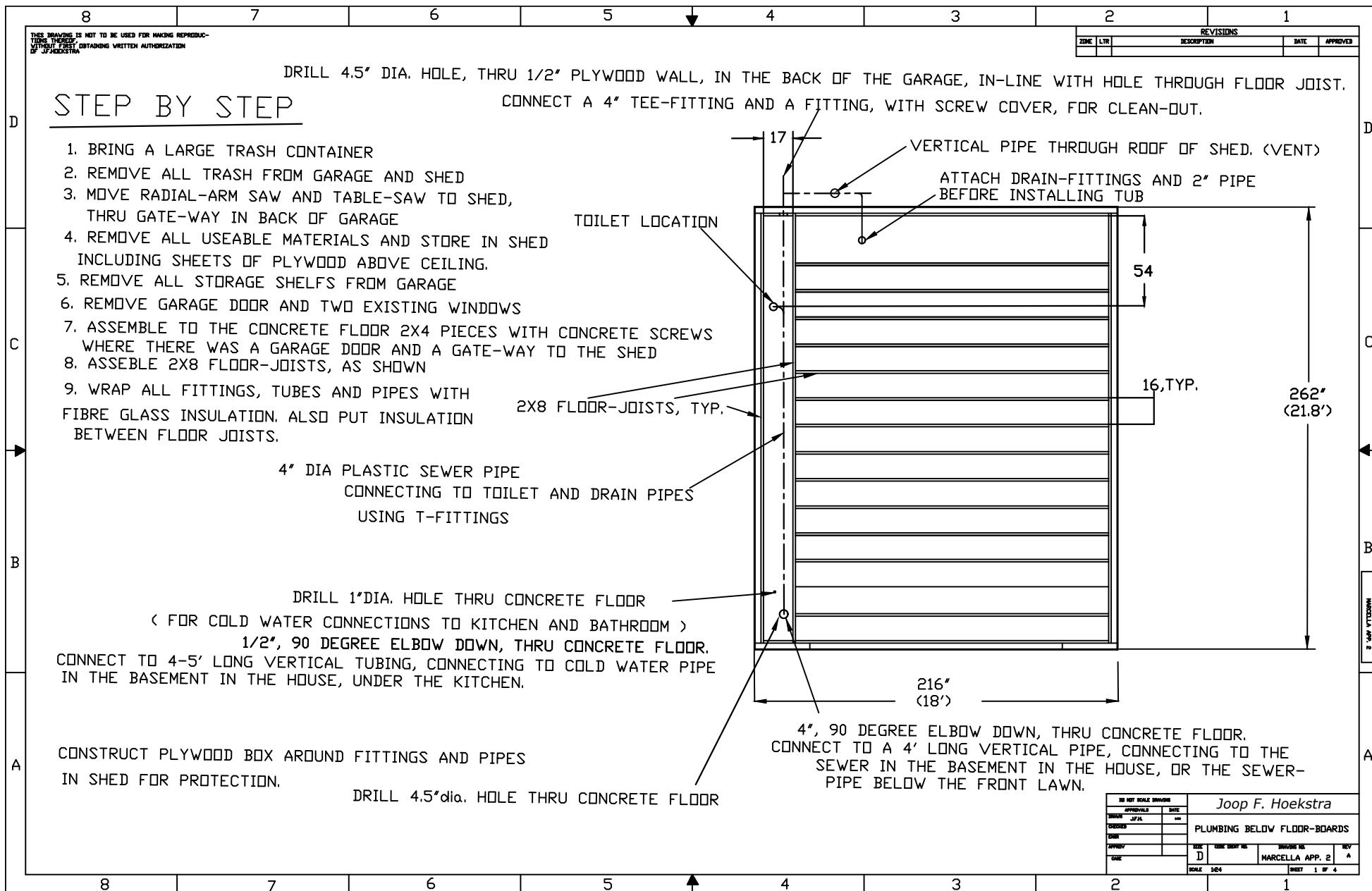
REVISIONS			
DATE	BY	DESCRIPTION	APPROVED

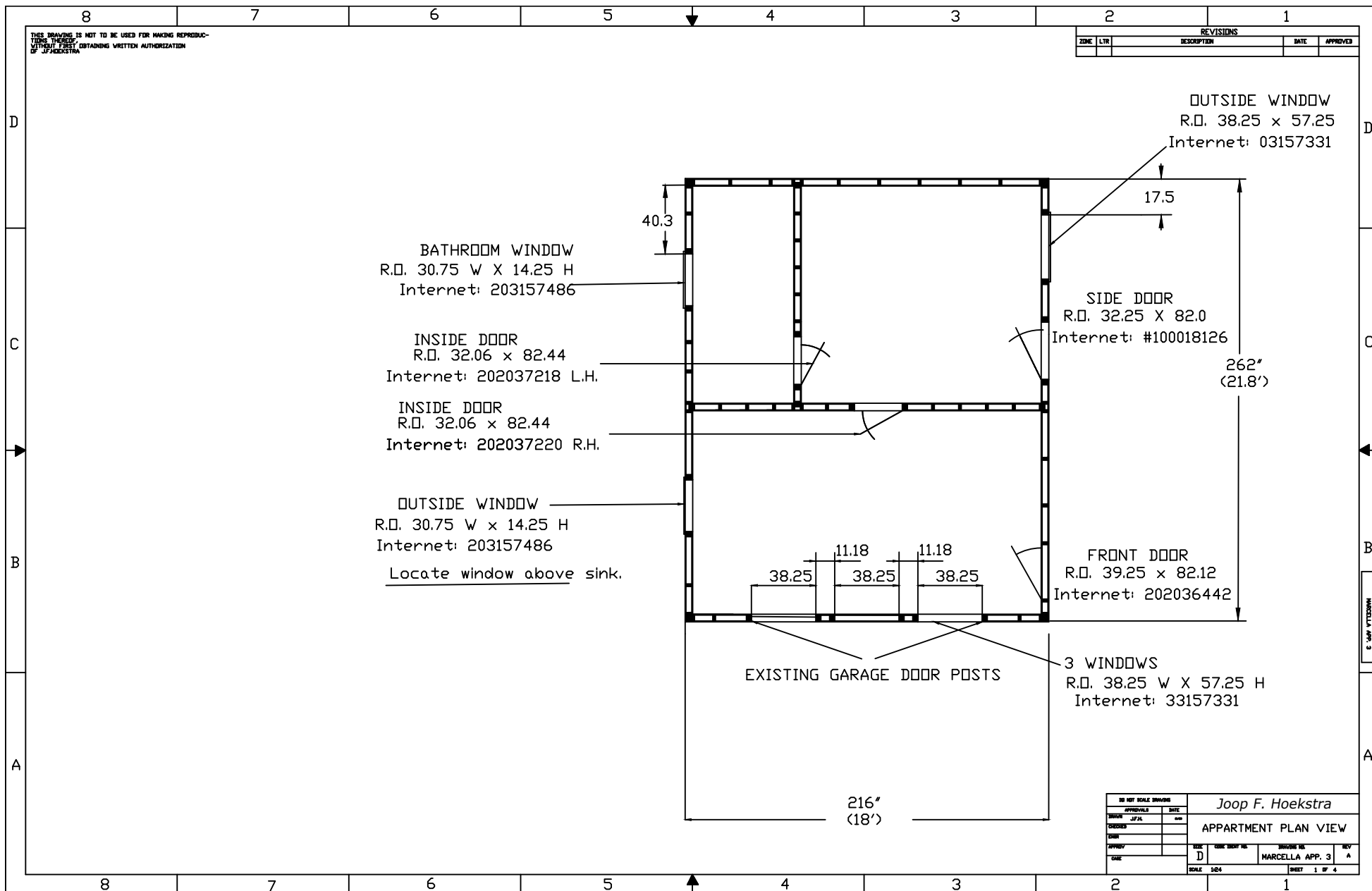
EXHIBIT B

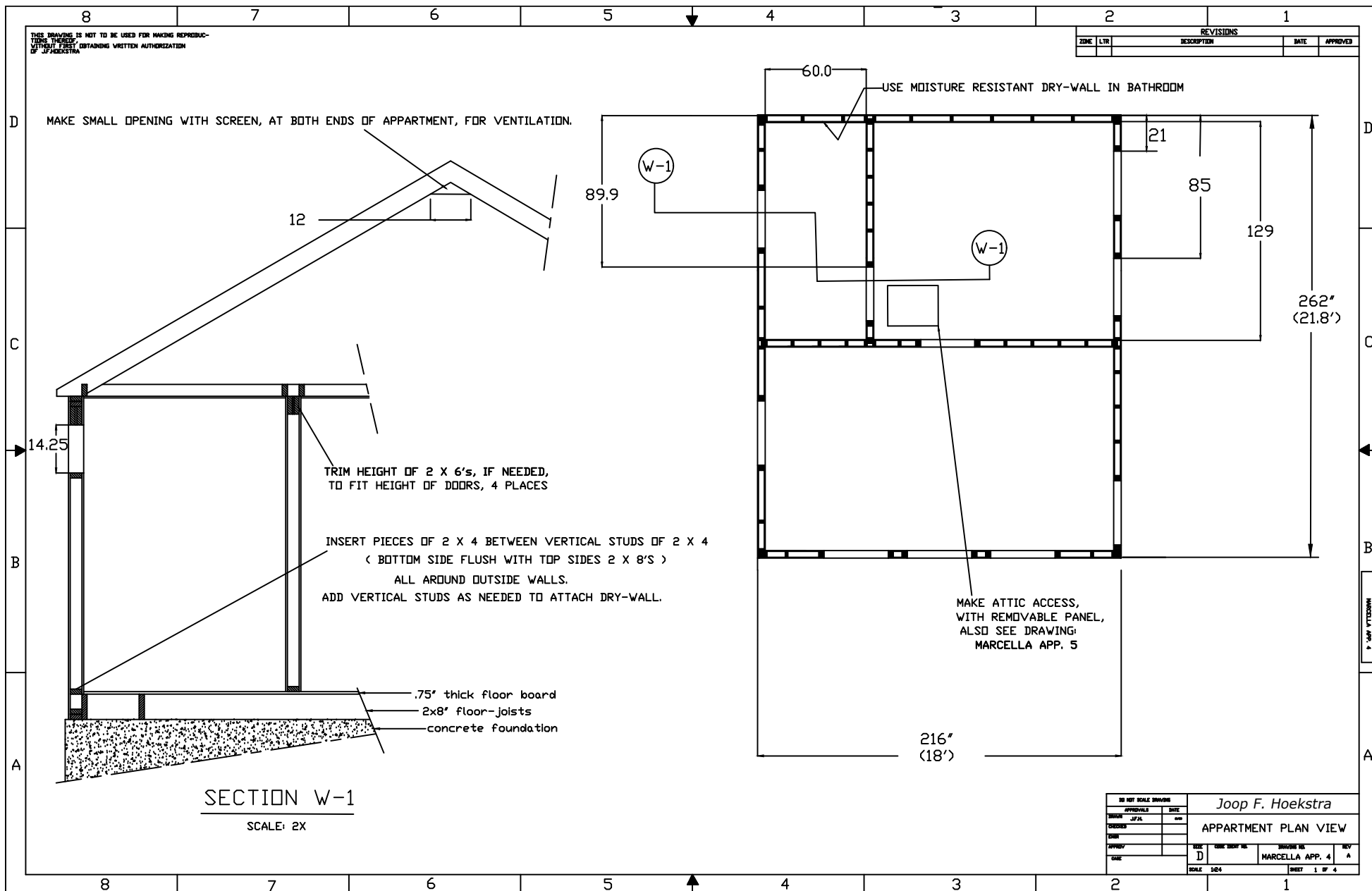
JOOP F. HOEKSTRA			
APARTMENT VIEWS			
DATE	BY	DATE	BY
10/1/84	J.F.H.	10/1/84	J.F.H.
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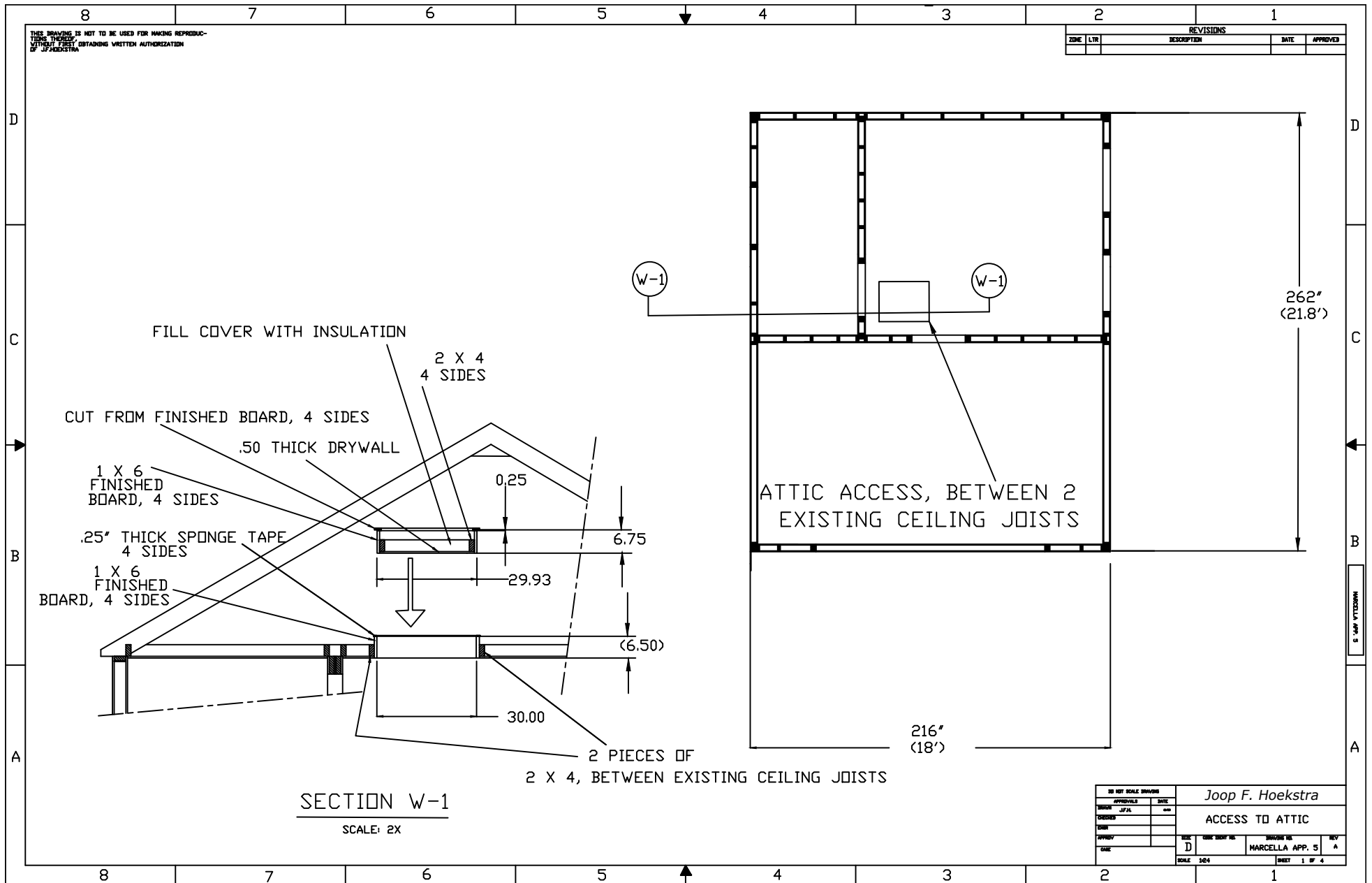
MARCELLA APP. 6-1











REVISIONS			
ZONE	LTR	DESCRIPTION	DATE

TO NOT SCALE DRAWING			
DESIGNER	JFH	DATE	10/10/10
CHECKED			
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DATE			
SCALE 1/8" = 1'-0"		SHEET 1 OF 4	

Joop F. Hoekstra

ACCESS TO ATTIC

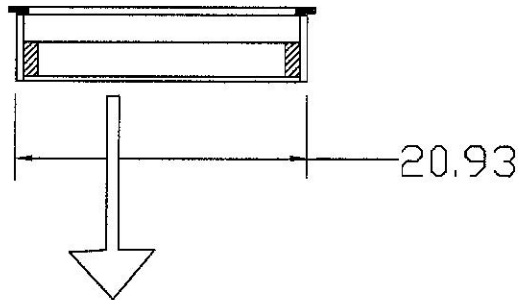
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THIS DRAWING IS NOT TO BE USED FOR MAKING REPRODUCTIONS WITHOUT THE WRITTEN AUTHORIZATION OF JOOP F. HOEKSTRA

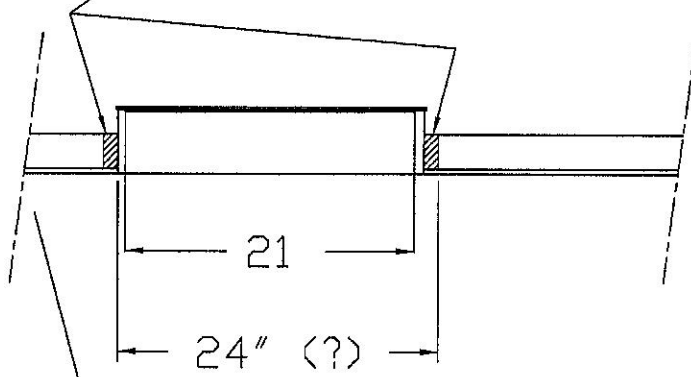
REVISIONS			
DATE	DESCRIPTION	DATE	APPROVED

ATTIC ACCESS, BETWEEN 2
EXISTING CEILING JOISTS

REMOVABLE COVER

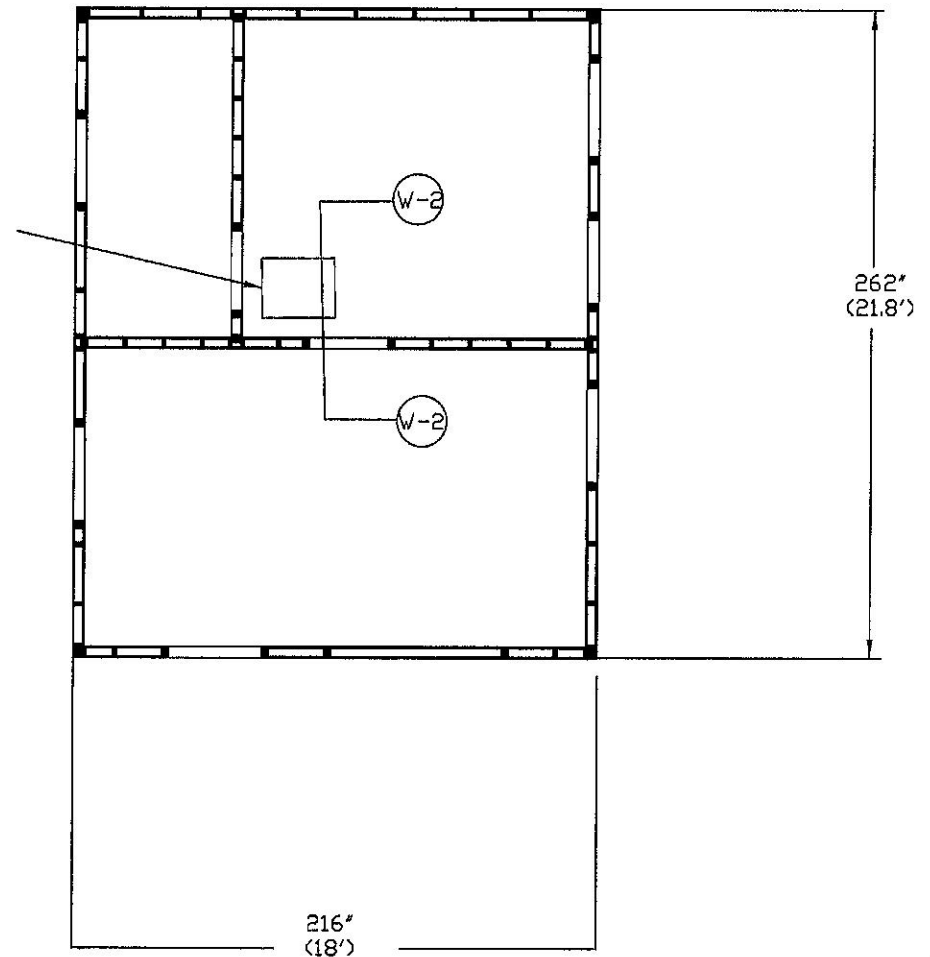


EXISTING CEILING JOISTS
CHECK EXACT DISTANCE BETWEEN CEILING JOISTS
BEFORE CONSTRUCTING BOXES.



SECTION W-2

SCALE: 4X



DO NOT SCALE DRAWING			
DESIGNER	JOOP F. HOEKSTRA	DATE	10/10/10
PROJECT	ACCESS TO ATTIC		
CLIENT	MARCELLA APP. G		
SCALE	1/8" = 1'-0"	SHEET	1 OF 4

6

Clean-out cover for sewer

Vertical vent-pipe, through roof of shed

Existing vertical sewer pipe in basement

Shed

Note: Raise shower base, as needed,
to gain space for fittings

shower drain/trap

toilet

vanity

washer/dryer

Kitchen sink

Dish washer

5' dia. hole
through
concrete
floor

Existing straight sewer connection from
vertical sewer vent pipe on center island
of traffic circle to vertical sewer pipe
in basement.
(According to Clean-out crew a few years
ago).

This spot on front-lawn,
Next to asphalt foot-path

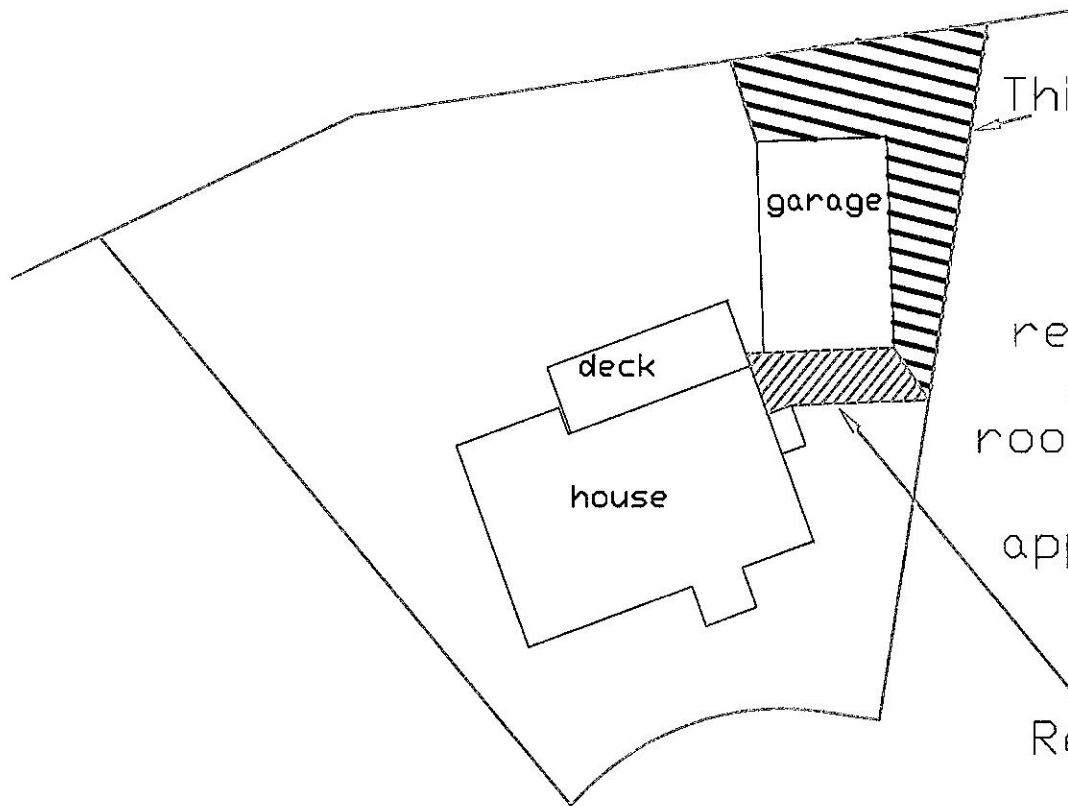
Drain/Sewer plan 2
35 WHIPPLE COURT

P/s

2.

✓

Rework hatched
areas around
garage



This area to be
cleaned and
leveled.

Cut tall grass,
remove branches,
bushes, including
roots. Add top-soil,
if needed and
apply grass seeds.

Remove asphalt in
this area.

LOT: 260-98
35 WHIPPLE COURT

PLOT DETAILS

Google Maps 35 Whipple Ct

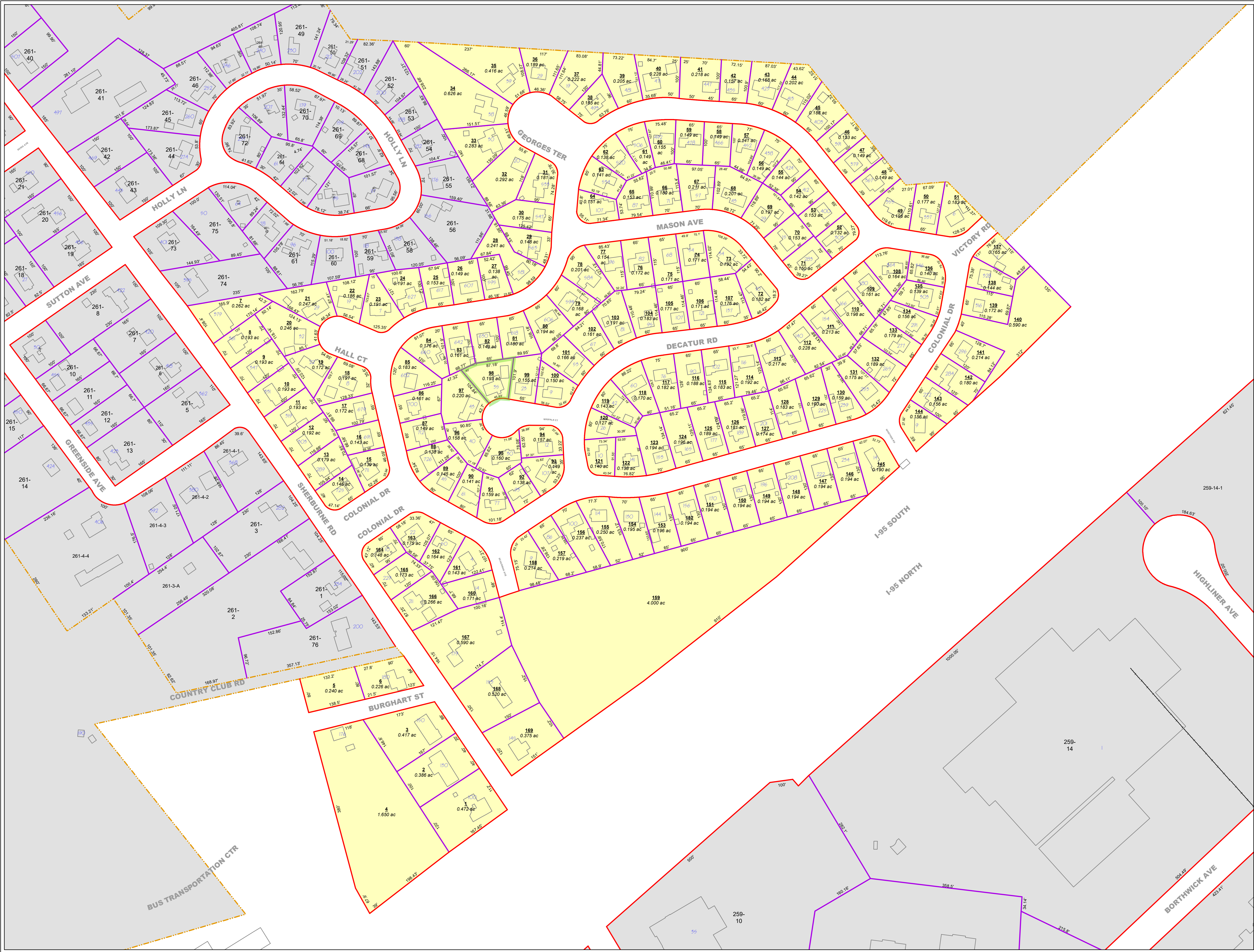


Imagery ©2021 Google, Imagery ©2021 Maine GeoLibrary, U.S. Geological Survey, Map data ©2021 20 ft

EXHIBIT C







Partial Legend

See the cover sheet for the complete legend.

7-5A Lot or lot-unit number
2.56 ac Parcel area in acres (ac) or square feet (sf)
23 Address number
233-137 Parcel number from a neighboring map
68' Parcel line dimension
Street name

SIMS AVE Street name

Parcel/Parcel boundary
Parcel/ROW boundary
Water boundary
Structure (1994 data)

Parcel covered by this map
Parcel from a neighboring map (see other map for current status)

EXHIBIT D

0 50 100 200 300 Feet
0 20 40 80 Meters

This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.

