Findings of Fact | Detached Accessory Dwelling Unit City of Portsmouth Planning Board

Date: <u>August 15, 2024</u>

Property Address: 252 Wibird Street

Application #: LU-24-137

Decision: ☐ Approve ☐ Deny ☐ Approve with Conditions

Findings of Fact:

Per RSA 676:3, I: 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.

Zoning Ordinance -10.814.60: Before granting a conditional use permit for a detached ADU, the Planning Board shall make the following findings:

	Section 10.814.62	Finding (Meets Requirement/ Criteria)	Supporting Information
1	10.814.621 The ADU complies with all applicable standards of this Section 10.814 or as may be modified by the conditional use permit.	Meets Does Not Meet	The DADU meets the requirements in Section 10.814, with the exception of 2 requested modifications.
2	10.814.622 The exterior design of the ADU is architecturally consistent with or similar	Meets	The proposed changes to the existing structure are architecturally
	in appearance to the existing principal dwelling on a lot.	Does Not Meet	consistent with the principal structure.
3	10.814.623 The site plan provides adequate and appropriate open space and landscaping for both the ADU and the principal dwelling unit and complies with the off-street parking requirements of	Meets Does Not Meet	There are no changes to the existing open space or landscaping and the property contains 4 off-street parking spaces which exceeds the requirement for the DADU and SFD.
4	10.814.26. 10.814.624 The ADU will maintain a compatible relationship with the character of adjacent and neighborhood properties in terms of location, design, and off-street parking layout, and will not significantly reduce the privacy of adjacent properties.	Meets Does Not Meet	The DADU will maintain a compatible relationship with the character of the neighborhood through the proposed design of the DADU in an existing structure. There is adequate off-street parking and
5	Other Board Findings:		

COLBY T. GAMESTER

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July 24, 2024

SUBMITTED VIA VIEWPOINT

City of Portsmouth
Planning Board
Attn: Rick Chellman, Chair
1 Junkins Avenue
Portsmouth, NH 03801

Re: Conditional Use Application

252 Wibird Street, Portsmouth, NH (Tax Map 149, Lot 12)

Dear Chair Chellman:

My office represents Andrea Fershtman and Matt Baker Ball, the owners of property located at 252 Wibird Street, Portsmouth. Enclosed herewith are the following materials for submission to the Planning Board for consideration at the next regularly scheduled meeting:

- 1. Landowner Letter of Authorization
- 2. Narrative to Application for Conditional Use Permit
- 3. Standard Property Survey of 244 Wibird Street
- 4. Photographs of the Property
- 5. Proposed Site Plan
- 6. Existing Exterior Elevations and Demolition Elevations
- 7. Proposed Floor Plan
- 8. Proposed Exterior Elevations (without false gable trim)
- 9. Proposed Exterior Elevations (with false gable trim)

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

Kindest Regards,

Colby T. Gamester, Esq.

Enclosures

Cc: file; Clients; Jason Lajeunesse; Justin Knowlton

LANDOWNER LETTER OF AUTHORIZATION

We, the Undersigned, Andrea Fershtman and Matt Baker Ball, the record owners of real property located at 252 Wibird Street, Portsmouth, New Hampshire 03801, identified on Portsmouth Tax Map 149 as Lot 12 (the "Property"), hereby authorize Gamester Law Office, and its attorneys and representatives, Design Worth Calling Home LLC, and its representatives, and River Birch Builders LLC, and its 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.

Andrea Fershtman

Matt Baker Ball

7/24/24

Date

7/24/24 Date

CITY OF PORTSMOUTH PLANNING BOARD NARRATIVE TO APPLICATION FOR CONDITIONAL USE PERMIT

Andrew Fershtman and Matt Baker Ball 252 Wibird Street Portsmouth, NH 03801 Owners and Applicant

Introduction and Relevant Property & Proposal Information

Andrea Fershtman and Matt Baker Ball ("Owners" or "Applicant") are the owners of real property located at 252 Wibird Street, identified on Portsmouth Tax Map 149 as Lot 12 (the "Property"). The Property is located in the General Residence A ("GRA") zoning district, is approximately 0.11 acres, or approximately 4,791 square feet, and contains a modest two-story, three bedroom, 2.5 bathroom, wood framed New Englander style home which includes a front porch, small rear deck, as well as one (1) two-car detached garage, resulting in an overall footprint of approximately 1,466 square feet (residence = 890 square feet, garage = 576 square feet), and approximately 1,646 square feet of living area.

The Property has zero frontage on Wibird Street. The Owners are the twelfth record owners of the Property. The residence was constructed in 1903 per the City's inspection and assessor records. In June of 1923, the then owners of the Property, which at that time consisted of 244 and 252 Wibird Street, conveyed a back lot thus creating the Property. In that conveyance deed a 12 foot wide right-of-way was granted over 244 Wibird Street for access to the Property.

In 2005, this right-of-way was formalized with an exact location, to also note the placement of utilities, in the form of an easement deed which was drafted from a plan entitled "Standard Property Survey, for property at, 244 Wibird Street, Portsmouth, Rockingham County, New Hampshire," dated May 13, 2005, revised through September 22, 2005, prepared by Easterly Surveying, Inc., and recorded with the Rockingham County Registry of Deeds as Plan# D-33078, which is enclosed herewith as **Exhibit A.**

The garage is the subject accessory structure, or accessory building, of this application ("Garage" or "Accessory Building"). As previously noted, the Garage has a gross footprint of 576 square feet. The Garage was constructed in 2001 after the then owners of the Property obtained variance relief from the Board of Adjustment, namely for the encroachment into the side and rear yard setbacks of the Property, to replace an existing dilapidated and even more non-conforming garage. The first or ground floor of the Garage contains two (2) usable parking bays. The second floor has historically been used as storage. Enclosed herewith as **Exhibit B** are pictures of the Property and Garage.

The Owners desire to construct a Detached Accessory Dwelling Unit ("DADU") on, upon and within the second story of the Garage generally pursuant to, and consistent with, Section 10.814 of the City's Zoning Ordinance (the "Ordinance"). The Owners specifically desire to adaptively reuse the Accessory Building on the Property to increase housing stock given that there is currently only one single family dwelling unit on the Property and, by right, the Owners can construct a DADU subject to further provisions imposed by the Ordinance.

Enclosed herewith as <u>Exhibit C</u> are the design plans created by Design Worth Calling Home LLC, the Owner's architect. The design plans include: (1) the proposed site plan, (2) the existing exterior elevations and demolition elevations, (3) the proposed floor plan, (4) the proposed exterior elevations without false gable trim (more on this below), and (5) the proposed exterior elevations with false gable trim (generally and collectively the "Design Plans").

The proposed DADU is a studio dwelling unit containing 576 square feet of conditioned gross living area, which includes the stairwell since there is no door at the top of stairs. People will access the DADU from an exterior door located at the back right of the Accessory Building. There is a proposed stair and raised exterior landing at the main entrance, all of which is less than 18 inches in height. The interior of the DADU is comprised of a full galley kitchen, kitchen island, three-quarter bathroom which will also house a stackable washer and drier, two (2) closets, and a living area which contains the living room and sleeping area.

The front wall of the proposed DADU contains two (2) double hung windows and two (2) smaller windows. The right wall has four (4) double hung windows. The existing rear wall of Garage has an off-center double hung window which is being relocated to the center of the wall to provide natural light for the stairwell. Finally, the left wall of the DADU will not have any exterior wall windows, but the left side of the roof will contain three (3) skylights to provide natural light for the kitchen.

Currently, there are four (4) parking spaces on the Property: two (2) spaces in the Garage and two (2) spaces in the driveway. As such, the Owners will be able to dedicate at least one (1) parking space for the DADU and otherwise meet all off-street parking requirements for the Property.

DADU Criteria and Conditional Use Permit

Ideally, an accessory dwelling unit would be administratively approved if it satisfies all the criteria and standards in Section 10.814.42; however, this proposal requires a conditional use permit from the Planning Board for the following three (3) reasons:

1. Section 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....10.815.421¹ – 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.; except that the Planning Board may grants a conditional permit to allow the gross living area of the accessory building to be expanded up to a total of 600 sq. ft. as providing in this Ordinance.

As previously noted, in 2001 this Property received zoning relief to construct the Garage within the side and rear yard setbacks. There is no proposal to move the Garage, nor is there the ability to do so, as such the Garage is and will remain within the side and rear yard setbacks as defined by the GRA District.

In order to create a useable and efficient DADU, the Owners will need to remove the roof and walls of the second floor of the Garage to vertically expand the structure. Four (4) new walls will be constructed on top of the existing first floor walls. The footprint of the DADU is 576 square feet and the gross living area is the same; therefore, the proposed DADU is less than the maximum of 600 square feet of gross living area per Section 10.815.421.

2. Section 10.815.422 — a modification of and to the following — 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.

As previously noted, the rear wall of the Garage currently has one (1) off-center double hung window which will be relocated to the center of the wall. This rear wall faces adjacent property and the relocated window will be more than eight feet above grade. In order to create a code compliant set of stairs leading to the second floor, and without wasting important gross living area, the stairs and stairwell will be reconstructed. The purpose of relocating the window is to provide natural light for the stairwell. As seen in the Design Plans, the relocated window will not look directly into the DADU and its living space nor will those in the DADU be able to easily look out of the window onto adjacent property.

3. <u>Section 10.814.436</u> – a modification of and to the following – 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 the roof plane.

After productive discussion with the Planning Staff, it was recommended that the Owners request a modification to this Section and, in an overabundance of caution, the Owners have agreed to do so.

The proposed design of the Accessory Building is one that mimics traditional cape cod architecture with two (2) large shed dormers on either side of the structure. In reality, the entire second floor is being removed. The second story walls are being built directly on top of, and in

 $^{^1}$ Sections 10.81 $\underline{5}$.421 and 10.81 $\underline{5}$.422 are incorrectly numbered as they are subsections of 10.81 $\underline{4}$.42

line with, the first story walls. The ridge of the roof to the edge of the roof line (soffit/facia) is one continual plane. The features that make the structure look like a cape cod design is the *added* false gable trim. If the false gable trim were not constructed, then there be no effect on the roof size or plane, nor on the square footage or the functionality of the DADU as proposed. The "dormers" are, in fact, the entire roof plane and, as such, we do not consider them to be dormers and subject to this Section.

Having said that, should the Planning Board also feel like a modification to this Section is necessary, then we feel that the modification is not only appropriate but also necessary. The difference in the look and feel of the Accessory Building is best depicted by the fourth and fifth sheets of the Design Plans; the fourth sheet depicting the Accessory Building without the false gable trim, and the fifth sheet depicting the Accessory Building with the false gable trim.

The design that includes the false gable trim is much more architecturally pleasing and consistent with the surrounding properties in the neighborhood that boast a variety of architectural designs and styles that provide character to the area; it is also the Owners' preferred design and the one that they are putting forward by way of this application. Furthermore, the added false gable trim algins nicely with, and relates to, the existing roof line and ridge of the New Englander home. All of this speaks to the architectural design standards of Section 10.814.50 which apply since the accessory dwelling unit involves an addition to or expansion of an existing building.

Otherwise, the proposed DADU meets the requirements of the general standards for accessory dwelling units and the additional standards for detached accessory dwelling, namely:

- 1. 10.814.21 The single-family residence and the DADU will not be separated in ownership.
- 2. 10.814.22 The single-family residence or the DADU will remain the principal residence of the Owners at all times.
- 3. 10.814.23 The proposed DADU is a studio and, therefore, will not have more than two (2) bedrooms.
- 4. 10.814.24 The Owners will not maintain a business in the single-family residence or the DADU that is not permitted under the Ordinance, such as a home occupation.
- 5. 10.814.25 The Property is currently serviced by municipal water and sewer.
- 6. 10.814.26 There are currently four (4) off-street parking spaces on the Property, one of which will be dedicated for the DADU.
- 7. 10.814.41 The proposed DADU has a footprint and gross living area of 576 square feet and is therefore less than the maximum of 750 square feet of gross living area.
- 8. 10.814.411 The proposed DADU is being created within and upon an existing accessory building and it is less than 750 square feet of gross living area.
- 9. 10.814.42 addressed above.
- 10. 10.814.431 not applicable.
- 11. 10.814.432 The building height of the proposed DADU/structure is 21 feet 7 inches as shown on the proposed exterior elevations.

- 12. 10.814.433 The DADU/structure is not taller than the single-family residence.
- 13. 10.814.434 The building footprint is less than 750 square feet.
- 14. 10.814.435 The gross floor area of the building is less than 1,600 square feet, and the gross floor area of the Accessory Building is less than 75% of the gross living area of the single-family residence.
- 15. 10.814.436 addressed above.
- 16. 10.814.437 There are no proposed changes to the existing grade of the Property and the proposed new roof slope will be less than the existing roof slope, therefore the changes being made will not negatively affect current drainage and it will not otherwise cause substantial or avoidable erosion, create a nuisance, or alter existing patterns of natural water floor onto any adjacent property.
- 17. 10.814.438 The proposed DADU and the Accessory Building shall have dark sky compliant and low voltage lighting and the lighting shall not otherwise create a nuisance for any adjacent properties.

The Planning Board may grant the conditional use permit if:

A. 10.814.621 - The ADU complies with all applicable standards of Section 10.814 or as may be modified by the conditional use permit.

As outlined above, the proposed DADU meets the vast majority of all the required standards in the Ordinance. The modifications being sought are due to the Garage already existing within the side yard and rear yard setbacks, the relocation of an existing window on the rear of the Garage that will not impact the privacy of the DADU nor the adjacent property, and the possibility that the proposed design creates a shed dormer that would be more than 33% of the roof plane which would be appropriate as it adds character to the design of the DADU.

B. 10.814.622 - The exterior design of the ADU is architecturally consistent with or similar in appearance to the existing principal dwelling on the lot.

It would be difficult to create a mini version of a New Englander home given the fact that New Englanders are typically taller than they are wide, while at the same time creating a floor plan that could work as a studio dwelling unit. However, the addition of the false gable trim described above gives the allusion of the cape cod style home which ties into the roof line (the A shape) of the New Englander creating a harmony between the single-family residence and the DADU.

C. 10.814.623 - The site plan provides adequate and appropriate open space and landscaping for both the ADU and the principal dwelling unit and complies with the off-street parking requirements of Section 10.814.26.

There are no proposed changes to the layout/footprint of the single-family residence or the Garage other than the addition of the step and landing at the right rear corner of the Accessory

Building. Therefore, this proposal is not affecting the existing open space and landscaping of the Property.

The Property currently provides four (4) off-street parking spaces which meets and exceeds the required number of off-street parking for a single-family residence, as such at least one (1) parking space can be dedicated to the DADU.

D. 10.814.624 - The ADU will maintain a compatible relationship with the character of adjacent and neighborhood properties in terms of location, design, and off-street parking layout, and will not significantly reduce the privacy of adjacent properties.

The proposed DADU will be constructed on, upon and within an already existing accessory structure, so with respect to the location there are no changes being proposed and the location is otherwise appropriate because a structure in similar height and the same footprint has existed on the Property in that location since 2001.

The design, as discussed in detail throughout this narrative, is different than the existing design of the Garage, but that is being driven by the need to maximize the usability and efficiency of the footprint of this DADU (razing the existing roof and flattening the new roof line), and to allow for and enable better design and architecture that will be more consistent and compatible with the existing single-family residence, adjacent properties and the neighborhood at large. Finally, off-street parking will not be an issue whatsoever.

This proposal minimizes any potential negative effects of privacy. The majority of the windows do not run afoul of the standards of the Ordinance, the modification related to the relocation of the rear window is positioned in a fashion that does not create site lines into the living area of the DADU nor out to the adjacent property, and finally the skylights providing much needed natural light in the kitchen face the sky and not the adjacent property.

Last but not least, the creation of this DADU will not result in excessive noise, traffic or parking congestion. The existence of the DADU is predicted to add one or two people to the Property and the neighborhood. It is a requirement that the Owners of any accessory dwelling unit maintain their residency in the DADU or the single-family residence, as such the Owners will be able to police, for lack of a better word, any issues pertaining to noise. The impact on traffic is negligible, and there are no anticipated challenges related to any type of parking congestion.

In conclusion, the Owners have demonstrated that its application meets the vast majority of the required standards in the Ordinance for a DADU, and otherwise satisfies the criteria for this DADU to be within the side and rear yard setbacks, as well as the modifications requested regarding the window location and the design of the roof. The Owners therefore respectively request that this conditional use permit be approved as presented.

Respectfully submitted, Andrea Fershtman and Matt Baker Ball

By and through their Attorney,

Colby T. Gamester, Esquire

144 Washington Street Portsmouth, NH 03801

Dated: July 24, 2024

603-427-0000, colby@gamesterlaw.com

EXHIBIT A

Survey of 244 Wibird Street Showing 252 Wibird Street and Access Easement

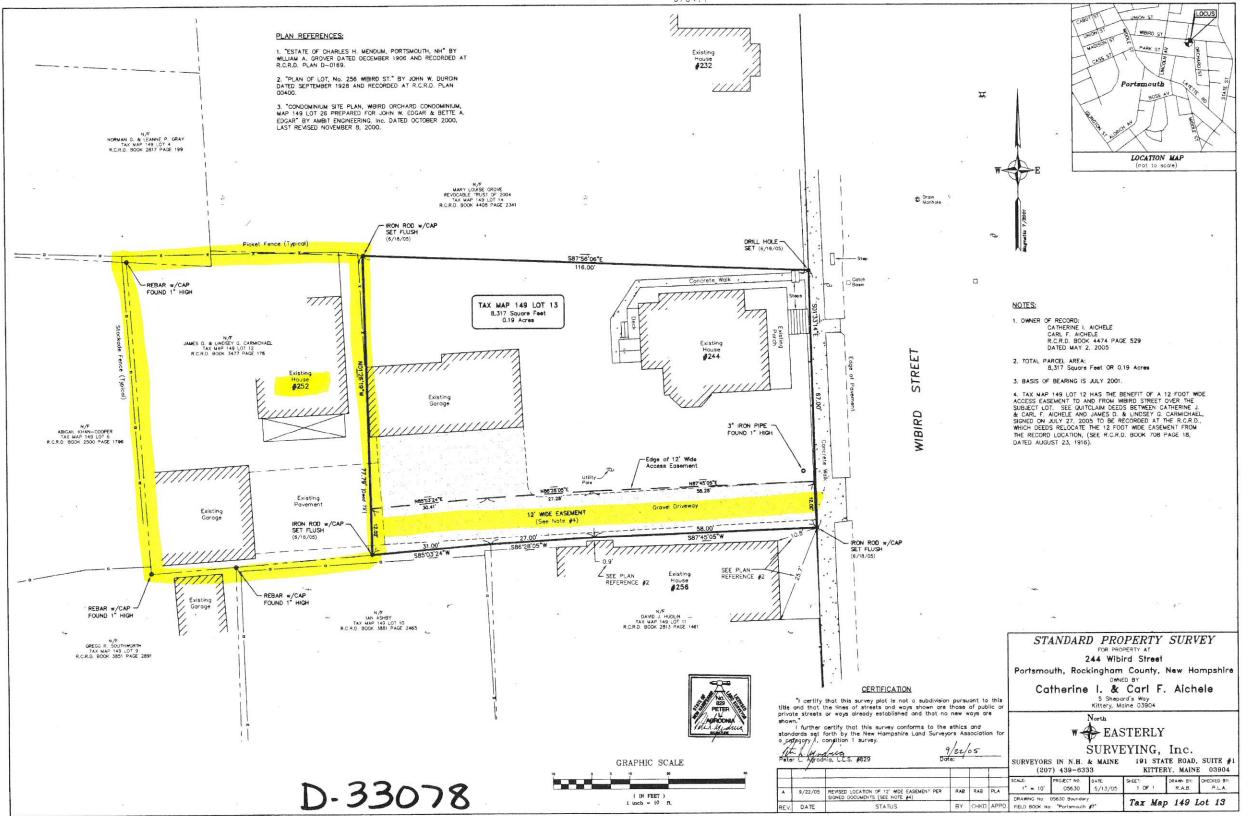


EXHIBIT BPictures of 252 Wibird Street

Exhibit B-1 Front of Property



Exhibit B-2 Residence & Garage Respective roof ridges, lines, slopes and height





Exhibit B-3 Garage from front porch

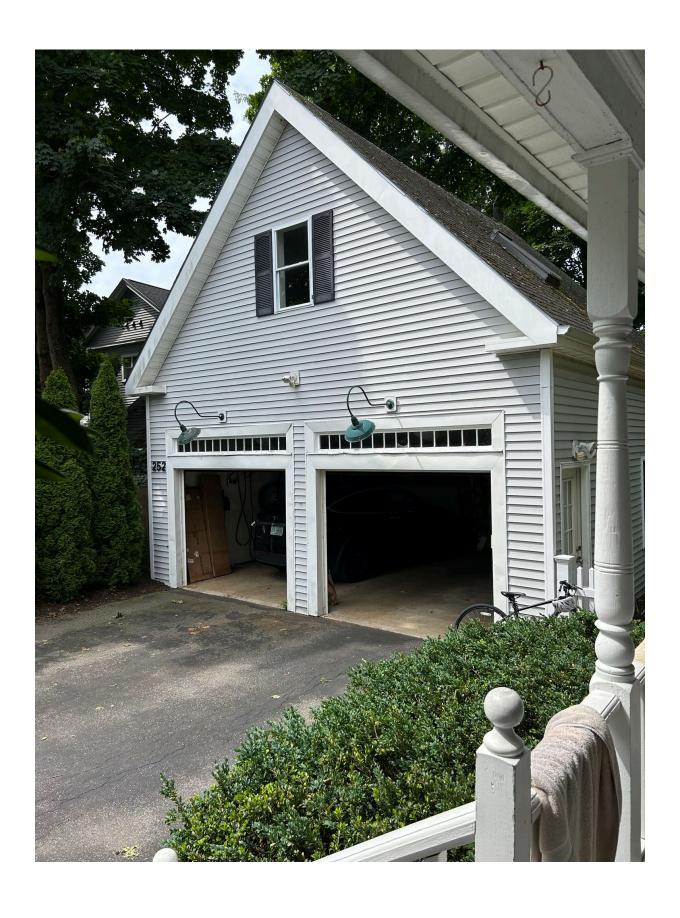


Exhibit B-4 Right side / North elevation of the Garage



Exhibit B-5 Rear / West elevation of Garage (difficult to capture)

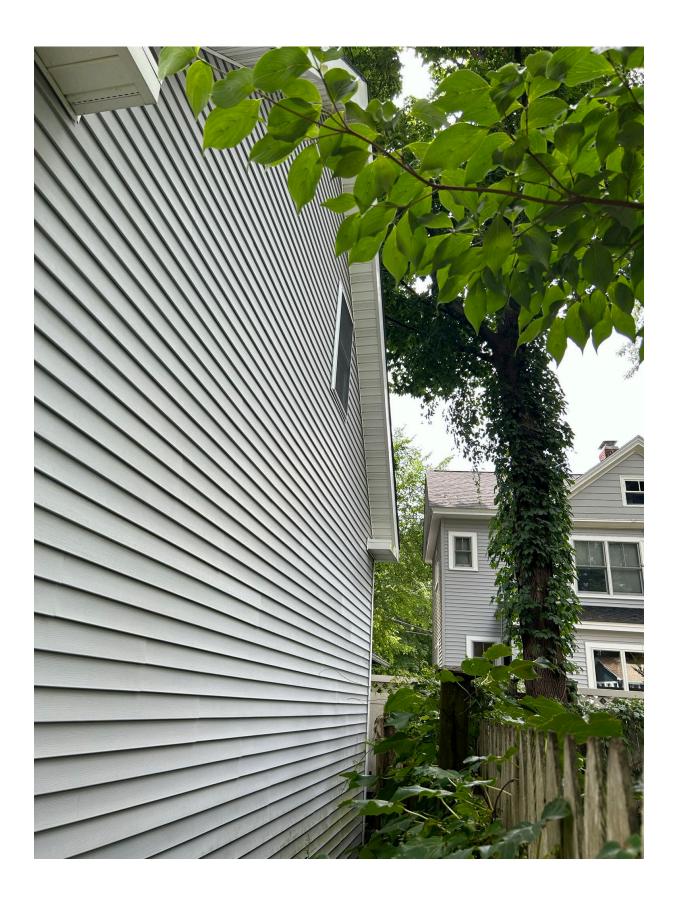


Exhibit B-6 Left side / South elevation of Garage

(difficult to capture)

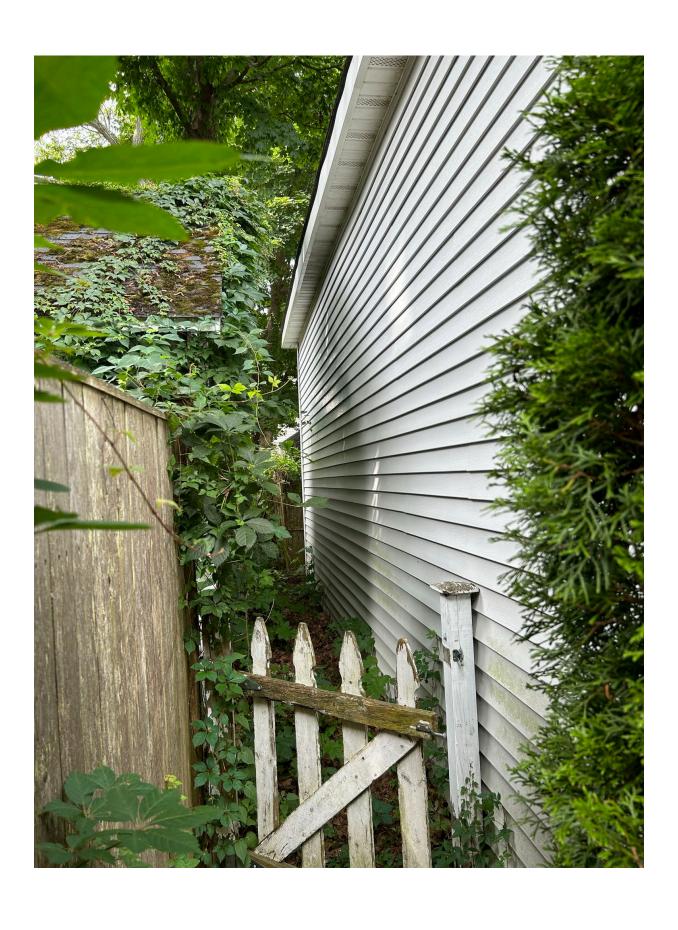
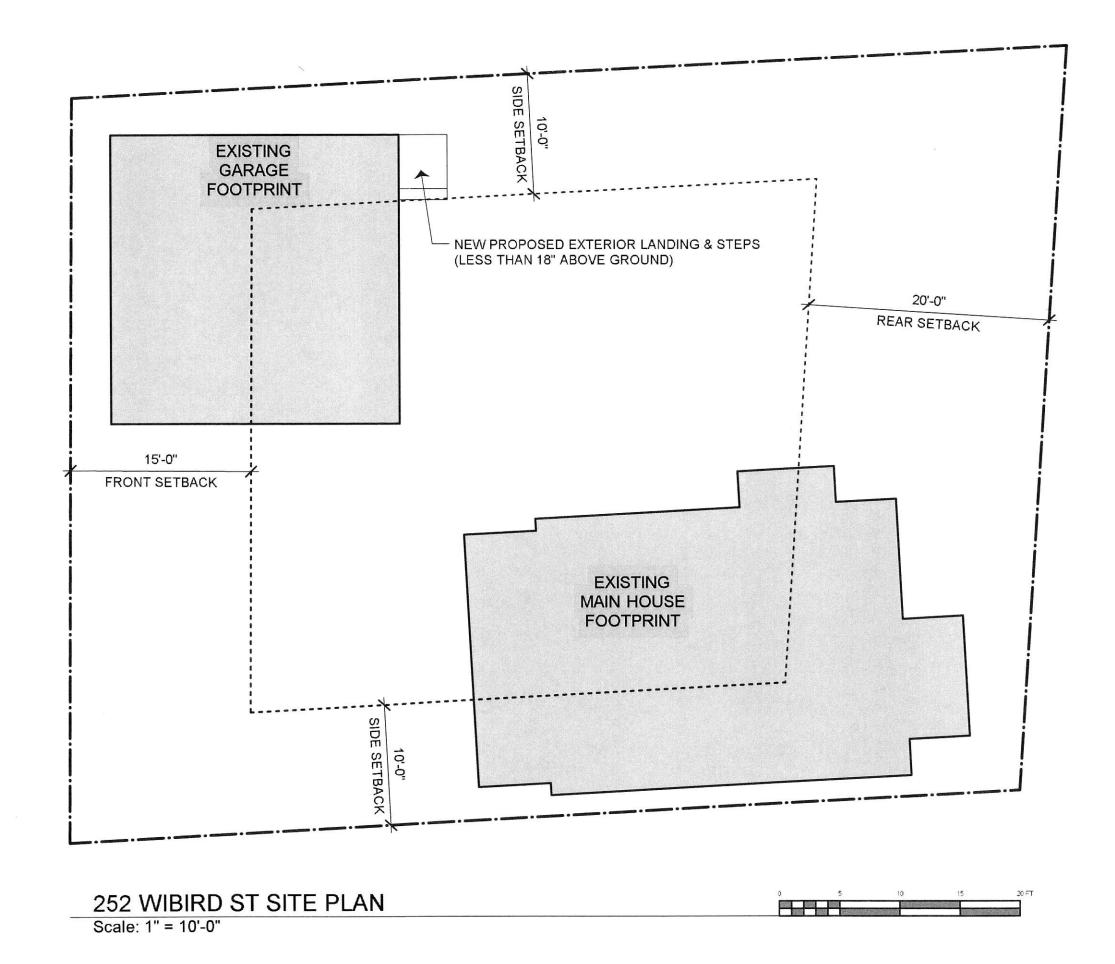


EXHIBIT C

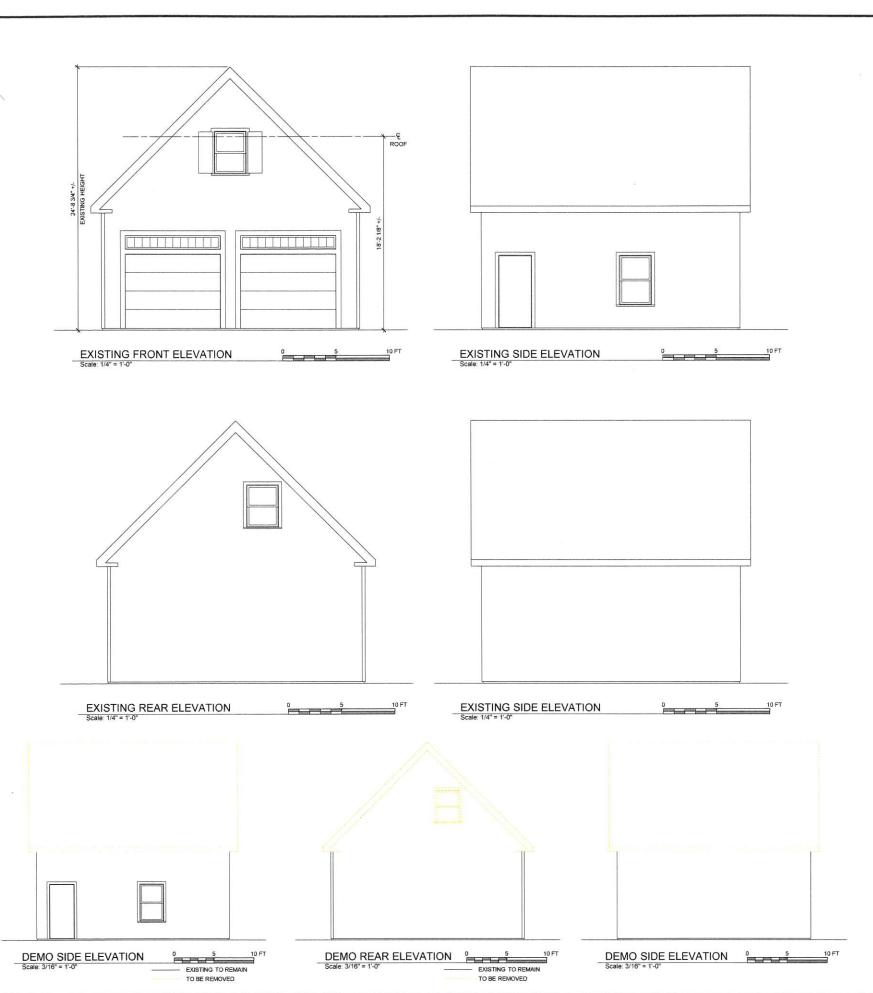
Design Plans of 252 Wibird Street

- 1. Proposed Site Plan
- 2. Existing Exterior Elevations and Demolition Elevations
- 3. Proposed Floor Plan
- 4. Proposed Exterior Elevations without false gable trim
- 5. Proposed Exterior Elevations with false gable trim





EXISTING CONDITIONS

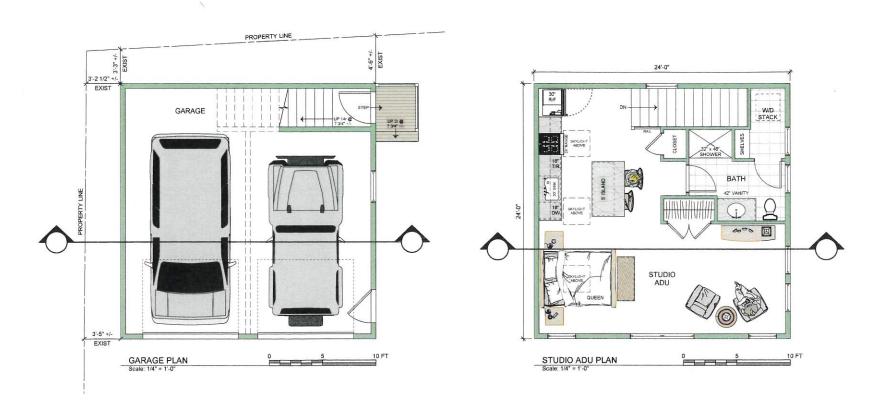


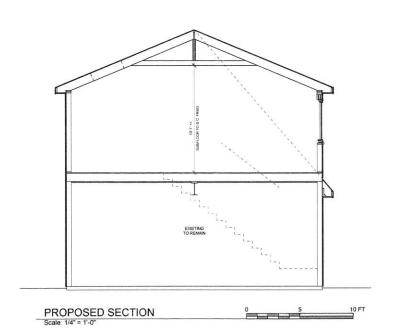


NOT FOR CONSTRUCTION
7.23.2024
EXISTING CONDITIONS

BALL GARAGE/ADU
Portsmouth, New Hampshire
Design Worth Calling Home

EX1.0





Oesign
WORTHCALLING
HOME 3
www.designworthcallinghome.com
803,767,3232

BALL GARAGE/ADU
Portsmouth, New Hampshire
Design Worth Calling Home

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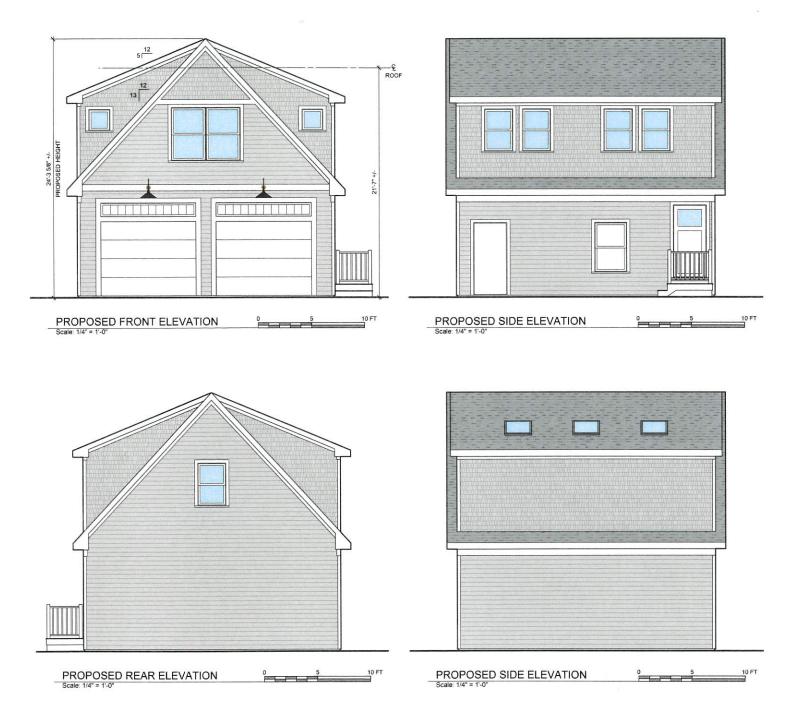
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PROPOSED FRONT ELEVATION
Scale: 1/4" = 1'-0" PROPOSED SIDE ELEVATION
Scale: 1/4" = 1'-0"

PROPOSED SIDE ELEVATION
Scale: 1/4" = 1'-0"

0 5 10 FT

PROPOSED REAR ELEVATION
Scale: 1/4" = 1'-0"



Design worthcalling HOME w designworthcallinghome of 603,767,3232

ISSUED FOR APPROVAL
NOT FOR CONSTRUCTION
7.23 2024
EXTERIOR ELEVATIONS

BALL GARAGE/ADU
Portsmouth, New Hampshire
Design Worth Calling Home

A2.0b

ELEVATIONS WITH FALSE GABLE TRIM