

REGULAR MEETING*
BOARD OF ADJUSTMENT
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE

*Members of the public also have the option to join the meeting over Zoom
(See below for more details)**

7:00 P.M.

June 21, 2023

AGENDA

<p><u>PLEASE NOTE:</u> DUE TO THE LARGE VOLUME OF REQUESTS FOR JUNE, ITEMS (III.) D. THROUGH (III.) J. WILL BE HEARD AT THE JUNE 27, 2023 BOARD OF ADJUSTMENT MEETING.</p>

I. APPROVAL OF MINUTES

- A. Approval of the May 16, 2023 minutes.
- B. Approval of the May 23, 2023 minutes.

II. OLD BUSINESS

- A. Request for 1-year extension - **420 Pleasant Street** (LU-21-126)
- B. Request for **rehearing on the appeal of 1 Raynes Avenue** - As ordered by the Superior Court on February 2, 2023, the Board will “determine, in the first instance, whether it has jurisdiction over the issues presented” by Duncan MacCallum (Attorney for the Appellants) in the January 14, 2022 appeal of the December 16, 2021 decision of the Planning Board for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** which granted the following: a) site plan approval b) wetlands conditional use permit; and c) certain other, miscellaneous approvals, including an approval related to valet parking. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)

- C. Request for Rehearing - **170 Aldrich Road** (LU-23-47)
- D. Request for Rehearing - **635 Sagamore Avenue** (LU-22-209)
- E. The request of **The Islamic Society of the Seacoast Area ISSA (Owner)**, and **Chinburg Development, LLC (Applicant)**, for property located at **686 Maplewood Avenue** whereas relief is needed to construct four (4) duplexes and one (1) single living unit to create a total of nine (9) living units which requires the following: 1) Variance from Section 10.440, Use # 1.30 to permit four (4) two-family unit structures where they are not permitted, 2) Variance from Section 10.513 to permit five (5) free standing buildings with dwellings where not more than one is permitted, 3) Variance from Section 10.520 to allow a) 6,975 square feet of lot area per dwelling unit where 15,000 square feet is required; and b) 47 feet of frontage where 100 feet is required. Said property is located on Assessor Map 220 Lot 90 and lies within the Single Residence B (SRB) District and the Highway Noise Overlay District. (LU-23-57)

III. NEW BUSINESS

- A. The request of **Charles Silva Jr and Margaret Moran (Owners)**, for property located at **434 Marcy Street** whereas relief is needed to construct an addition to the rear of the existing structure, remove the existing shed, and construct a new shed which requires the following: 1) Variance from Section 10.521 to allow: a) 8 foot left yard setback where 10 feet is required; and b) 43% building coverage where 30% is allowed. 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance. 3) Variance from Section 10.573.20 to allow a) 1 foot rear yard where 11 feet is required; and b) 1 foot right side yard where 11 feet is required. Said property is located on Assessor Map 102 Lot 41 and lies within the General Residence B (GRB) and Historic District. (LU-23-53)
- B. The request of **David Hugh Mason and Lisa Ann Mason (Owners)**, for property located at **239 Cass Street** whereas relief is needed to Demolish single story addition on the rear of the primary structure, construct a two (2) story rear addition to the primary structure, and demolish and enlarge existing garage which requires the following: Variance from Section 10.521 to allow: a) 1 foot right yard where 10 is required for the primary structure; b) 3 foot left yard where 10 is required for the accessory structure; c) 4 foot rear yard where 20 is required for the accessory structure; d) 37% building coverage where 30% is allowed on the lot. Said property is located on Assessor Map 147 Lot 4 and lies within the General Residence C (GRC) District. (LU-23-69)

- C. The request of **Danielle Okula, Dennis Okula, and Irinia Okula (Owners)**, for property located at **2 Sewall Road** whereas relief is needed to Install a 6 foot fence where along the front of the property which requires a Variance from Section 10.515.13 to allow a 6 foot fence where 4 feet is allowed. Said property is located on Assessor Map 170 Lot 22 and lies within the Single Residence B (SRB) District. (LU-23-71)

THE FOLLOWING ITEMS WILL BE HEARD ON TUESDAY, JUNE 27, 2023

- D. The request of **JJCM Realty LLC and Topnotch Properties (Owners)**, for property located at **232 South Street** whereas relief is needed to construct a 12' x 20' garage which requires the following: 1) A Variance from Section 10.521 to a) permit a building coverage of 26% where 20% is permitted, and b) permit a side setback of 1.5 feet where 10 feet is required; and 2) A Variance from Section 10.571 to permit an accessory structure in the front yard. Said property is located on Assessor Map 111 Lot 2 and lies within the Single Residence B (SRB) and Historic District. (LU-23-80)
- E. The request of **Sarnia Properties Inc. C/O CP Management Inc. (Owners)**, for property located at **933 US Route 1 BYP** whereas Special Exception is needed to allow a health club greater than 2,000 square feet GFA which requires the following: 1) Special Exception from Section 10.440, Use #4.42 to allow a health club where the use is permitted by Special Exception. Said property is located on Assessor Map 142 Lot 37 and lies within the Business and Highway Noise Overlay District. (LU-23-76)
- F. The request of **Ashley J Brown and Lisa F Brown Living Trust (Owners)**, for property located at **176 Orchard Street** whereas relief is needed to construct an addition and deck to the rear of the existing structure and rebuild the existing rear staircase which requires the following: 1) Variance from Section 10.521 to allow 27% building coverage where 25% is allowed. 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the ordinance. Said property is located on Assessor Map 149 Lot 41 and lies within the General Residence A (GRA) District. (LU-23-82)
- G. The request of **Point of View Condominium (Owner)**, for property located at **75 Salter Street #1** whereas relief is needed to relocate the existing residential structure landward of the highwater mark which requires the following: 1) Variance from Section 10.211 and Section 10.531 to allow the following: a) a 2' front yard where 30' is required, b) a 2' side yard where 30' is required; 2) Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance; 3) Variance from Section 10.516.40 to allow a heating vent to project 1' into the required side yard. Said property is located on Assessor Map 102 Lot 32-1 and lies within the Waterfront Business (WB) and Historic District. (LU-23-83)

- H.** The request of **Eric J. Gregg Revocable Trust (Owner)**, for property located at **112 Mechanic Street** whereas relief is needed to install a mechanical unit to the side of the primary structure which requires the following: 1) Variance from Section 10.515.14 to allow a 2' rear setback where 10 feet is required. Said property is located on Assessor Map 103 Lot 25 and lies within the General Residence B (GRB) and Historic District. (LU-23-73)
- I.** The request of **Karyn S. Denicola Revocable Trust (Owner)**, for property located at **281 Cabot Street** whereas relief is needed to demolish the existing single-family dwelling and detached one-story garage/shed and construct a new single family dwelling with attached garage which requires the following: 1) Variance from Section 10.521 to allow a) 3' front yard setback where 5' is required; b) a 5' south side yard setback where 10' is required; c) a 3.5' north side yard setback where 10' is required; and d) a 43% building coverage where 35% is allowed. Said property is located on Assessor Map 144 Lot 20 and lies within the General Residence C (GRC) District. (LU-23-84)
- J.** The request of **Sureya M Ennabe Revocable Living Trust (Owner)**, for property located at **800 Lafayette Road** whereas relief is needed to increase the height of the existing sign which requires the following: 1) Variance from Section 10.1281 to alter a nonconforming sign without bringing it into conformity; and 2) Variance from Section 10.1253.10 to increase the height to 20 feet and 1 inch where 20 feet is allowed. Said property is located on Assessor Map 244 lot 5 and lies within the Gateway Corridor (G1) District and Sign District 5. (LU-23-66)

IV. OTHER BUSINESS

V. ADJOURNMENT

**Members of the public also have the option to join this meeting over Zoom, a unique meeting ID and password will be provided once you register. To register, click on the link below or copy and paste this into your web browser:*

https://us06web.zoom.us/webinar/register/WN_jxcP2wivTB-gW-kxoy6QUw

**The dMINUTES OF THE
BOARD OF ADJUSTMENT MEETING
CONFERENCE ROOM A
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

May 16, 2023

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Paul Mannle; Thomas Rossi; David Rheaume; Jeffrey Mattson; Jody Record, Alternate; ML Geffert, Alternate

MEMBERS EXCUSED: None.

ALSO PRESENT: Stefanie Casella, Planning Department

The meeting was called to order at 7:05 p.m.

*Mr. Rossi moved to take the postponed petitions out of order to vote on, seconded by Ms. Geffert. The motion **passed** unanimously, 7-0.*

Chair Eldridge read the postponed items into the record. The motions were made and passed as noted under each postponed petition.

I. APPROVAL OF MINUTES

A. Approval of the April 18, 2023 Minutes.

Ms. Geffert noted that on page 12, the 15 Lafayette Road petition, the property was not 40 acres and that the sentence should read: Attorney Pasay reviewed the petition and noted that the property currently had a single-family dwelling but that it had two public roads of frontage.

Under Discussion and Decision of the Board on page 13, Ms. Geffert asked that the phrase ‘comply with the lot’ be changed to ‘comply with the law’ so that the sentence reads as follows: Ms. Geffert said they didn’t need a condition stating that the applicant would comply with the law because the applicant had to.

Mr. Rheaume asked that a change be made for purposes of clarification to the end of the first paragraph on page 13 under Discussion and Decision of the Board to read as follows: He said that a stipulation requiring this would unduly restrict future property owners, which could be a source of a possible lawsuit against the city.

In the last paragraph on page 13, Mr. Rheume requested that, for purposes of clarification, the sentence read as follows: He said that the 100-ft frontage requirement not being met had not stuck out since 1942 when the house was built, and allowing it to continue that way would meet the expectations of the neighborhood.

*Mr. Mannle moved to **approve** the April 18 minutes as amended, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

B. Approval of the May 2, 2023 Minutes.

Vice-Chair Margeson abstained from the vote.

*Mr. Rossi moved to **approve** the May 2 minutes as submitted, seconded by Mr. Mannle. The motion **passed** unanimously, 7-0.*

II. OLD BUSINESS

- A.** The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. (LU-22-209)

Mr. Rheume and Mr. Rossi recused themselves from the petition, and Alternates Ms. Record and Ms. Geffert took voting seats.

*Mr. Mannle moved to allow extra time for Attorney Phoenix's presentation, seconded by Vice-Chair Margeson. The motion **passed** by unanimous vote, 7-0.*

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant, along with Mike Garrepy. Attorney Phoenix reviewed the petition. He compared the project's density to other developments around it and said the four condo units would fit in well. He read part of a letter from a real estate appraiser stating that the project would not result in diminution of values of surrounding properties or change the characteristics of the neighborhood. He reviewed the criteria and said they would be met.

Vice-Chair Margeson asked Attorney Phoenix why he thought the project's area was improperly zoned. Attorney Phoenix said that even though it was a planned unit requirement, in terms of density they didn't meet the RSA requirements and the other properties around it didn't meet them either. He said he believed the project's density was fair and noted that they reduced it from five

units to four. Vice-Chair Margeson said it seemed that 576 Sagamore Avenue was 1.7 acres and 650 Sagamore Avenue was 1.51 acres but were zoned SRB, which was a little anomalous. She referred to the Walker vs City of Manchester case about nonconforming uses and thought it stood for the fact of whether or not the nonconforming uses are created by variances. Attorney Phoenix said in that case, there were other variances for funeral homes permitted, but the hardship was demonstrated if the applicant's project fit into the neighborhood and the others did not. He said he interpreted that case as relating to uses in the zone that also got variances. He said the nature of the lot, being in an SRB zone where no one complies with density requirements, and its shape, size and location also contributed to the hardship.

In response to Mr. Mannle's questions, Attorney Phoenix said the condos would be single-family ones and part of a condominium association and that the applicant would have to go before the Planning Board and TAC for final approvals.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Tim McNamara of 579 Sagamore Avenue, Tidewatch Unit 19, said he was representing a small committee from Tidewatch. He said over 90 percent of the community as well as other neighbors opposed the project. He said the ordinance stated that one house would be built per acre and one dwelling per lot. He said significant amounts of ledge would be blasted, the elevations were considerable, nearby houses would be blocked from light and space, and there would be drainage issues as well as density and traffic safety issues and alteration of natural space.

Anne Hartman of Tidewatch Unit 3 said the project would have a deep impact on the community in terms of height, light and drainage. She said the current drainage struggles would be made worse by crowding the property's higher ground with a house, garage, patio, roadway and turnaround.

Harry Stow of Tidewatch Unit 22 noted that Tidewatch had 117 and not 122 units. He said the units were housed in 44 buildings on 53 acres, so they had more than one acre per building.

Hal Cail of Tidewatch Unit 122 asked the board to comply with the zoning law of one unit per acre.

Peter Weisel (via Zoom) of Tidewatch Unit 75 said he objected to the project primarily as a cyclist and explained the reasons why, including that having four units made the risk for cyclists four times greater than a single unit due to increased traffic from delivery vehicles, landscaping equipment and so on. He suggested that the board consult with the Parking and Traffic Safety Committee.

Anne Walsh, Tidewatch Unit 7 trustee (via Zoom) said the requested variances didn't meet the criteria. She said the proposal would create a gateway neighborhood that would encourage mixed-use development and would set a precedent.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix said the proposed buildings would barely be seen through the wooded area. He said he didn't think the light and air would be negatively affected, and the ledge and drainage were not zoning board issues and would be vetted by the Planning Board and TAC. He said the stormwater runoff issues would be improved by the project. He said it seemed incongruous to allow more units per square foot at Tidewatch than what the applicant was requesting. He noted that their real estate appraiser said surrounding property values would not be diminished. He said a landscape buffer would be provided behind the houses.

Peter Wiesel via (Zoom) said the four units would generate four times more traffic than one unit that the property was currently zoned for.

Attorney Phoenix asked about the document that Mr. McNamara submitted to the board. Mr. McNamara said it was a petition signed by nearly all the neighbors, and some were emails that were consolidated into it. Attorney Phoenix said he should have seen it beforehand.

Susan (last name indecipherable) of Tidewatch Unit 42 said it hadn't been made clear how many trees would be cut down. She said it would have an impact on wildlife.

No one else spoke, and Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Mannle said he didn't think the project was feasible at first. He said someone thought a precedent would be set, but he felt that the precedent had already been set by Tidewatch, which had 122 units on 54 acres and was clearly nonconforming. He said the applicant was asking for four single condo units on 1.89 acres, and if Tidewatch wasn't already there, it wouldn't fly. He said the drainage, light and air were TAC concerns. Vice-Chair Margeson said the proposal wasn't eligible for a planned unit development because it was less than ten acres, but she thought there would be real benefits, like bringing the use more in conformance with the land. She said the lot was quite large but was in keeping with the character of the area in a lot of ways. She said she struggled with the hardship a bit because a reasonable use could be made of the property by having one house on it and perhaps a variance for a second house, but there would still be the one dwelling unit per lot. She said the project would fit into the neighborhood, in terms of density. Ms. Record said she didn't see the hardship. Mr. Mattson said if the project were in the SRB District, it would be more compelling. He said the proposed four units were more density than the SRA District, but the ordinance listed SRA and SRB together and indicated 1-3 dwellings per acre. He said the reduced curb cut for a single driveway entrance would be an improvement as opposed to the current impervious area that was there for the commercial property. Ms. Geffert said the criteria involved all Portsmouth

citizens, not only the neighbors, and she hadn't seen a lot of input from anyone other than Tidewatch residents.

DECISION OF THE BOARD

*Ms. Geffert moved to **deny** the variances, seconded by Ms. Record.*

Ms. Geffert said the hardship criteria was the reason for denying. She said she had concern for four units on the property, and she didn't think granting a variance for the property would be contrary to the public interest and did not believe that it would not observe the spirit of the ordinance, especially with Tidewatch behind it. She said she didn't think it would diminish the values of surrounding properties. She said literal enforcement of the provisions of the ordinance, however, would not result in an unnecessary hardship to the property owner, based on the plan for the four units. She said a reasonable use for the property could still be achieved without four single residences on the property. Ms. Record concurred and had nothing to add.

Vice-Chair Margeson said she felt that the four units would be too dense for the lot and that the public would not be served. She wasn't sure that the sloped wooded lot could support four individual dwelling units and thought one less unit would be better. Mr. Mattson said the hardship was with the property and not the owner or their financial condition. He said Tidewatch was similar to the Walker vs City of Manchester case in terms of density. He said three units would be better than four, but that wasn't the board's call. He said the residential use would not have an adverse effect on the residential area. Ms. Geffert and Ms. Record said they did not see a hardship. Chair Eldridge said she would not support the motion because she thought the property would be improved and that she believed in the Walker vs City of Manchester case.

*The motion to deny **failed** by a vote of 5-1.*

*Mr. Mannle moved to **grant** the variances for the project as presented, seconded by Mr. Mattson.*

Mr. Mannle said it was a unique parcel of nearly two acres on a street with a similar development behind it, and due to the lot's location and what surrounded it, he said it was a density request that was less than the density Tidewatch or Sagamore Court. He said granting the variances would not be contrary to the public interest by having more conforming structures on the parcel that were much better than the existing condition. He said it would observe the spirit of the ordinance because the SRA zone limits one dwelling unit per acre, and the applicant was asking for four units on nearly two acres, which would be directly across the street, the SRB zone. He compared the four dwelling units at 21,200 square feet per unit to Tidewatch's 122 units at 19,300 square feet per unit and said the project would be less dense. He said substantial justice would be done and surrounding property values would not be diminished. He said the project would have no effect on anything across the street or at Tidewatch because one wouldn't even see the properties. He said literal enforcement of the ordinance would result in an unnecessary hardship because the property had special conditions of being an oversized lot for the area as well as an angled and elevated one, and only so much of it was usable. He said limiting the lot to a single-family home would be a hardship

and thought that four single-family units on nearly two acres was a more than reasonable use and a huge improvement for the existing property.

Mr. Mattson concurred and said the project would not alter the essential characteristics of the neighborhood because the large lot could not reasonably be subdivided based on its irregular shape and street frontage. In terms of hardship, he said the purpose of the ordinance was to prohibit overcrowding and provide for air, light, and separation. He noted that there was a decent tree buffer in the back portion of the property and the proposed development would push the four homes toward Sagamore Avenue, with a shorter driveway.

*Mr. Mannle **amended** his motion and moved to **grant** the variances for the project with the following **stipulation**:*

- 1) The design and location of the dwellings may change as a result of Planning Board review and approval.*

*Mr. Mattson concurred. The motion **passed** by unanimous vote, 6-0.*

Mr. Rheaume and Mr. Rossi took their voting seats, and Alternate Ms. Geffert took a voting seat.

- B.** The request of **Jared J Saulnier (Owner)**, for property located at **4 Sylvester Street** whereas relief is needed to subdivide one lot into two lots which requires the following: Proposed Lot 1: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 9,645 square feet where 15,000 is required for each; b) 80 feet of lot depth where 100 feet is required; and c) a 9 foot right side yard where 10 feet is required. Proposed Lot 2: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 6,421 square feet where 15,000 is required for each; b) 40 feet of street frontage where 100 feet is required; and c) 80 feet of lot depth where 100 feet is required. Said property is located on Assessor Map 232 Lot 36 and lies within the Single Residence B (SRB) District. (LU-23-27)

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant, along with the owner Jared Saulnier and the project engineer Erik Saari. Attorney Phoenix reviewed the petition and history of the area. He noted that a mistake was made in their submission and that the frontage for the newly created lot was 40 feet and because half of the lot 80-ft lot was on a paper street. He reviewed the criteria.

Vice-Chair Margeson asked how big the house on Lot 2 would have to be in order not to request the variances. Mr. Saari said it would be 1,212 square feet and that there would be no issues with the ledge. Mr. Mannle said if the applicant wanted to build a house on Lot 2, they would have to come back for a variance because it would be a nonconforming use on a nonconforming lot. Attorney Phoenix said that allowing the lot to be created would make it a lawful lot. It was further discussed. Mr. Rheaume asked who was responsible for the plan to extend the paper street. Attorney Phoenix said they met with City Staff and discussed it. He said the paved portion of the driveway ended where the two lots met, so they would continue it for 40 feet on the side of the lower lot to get

access through it. He said he would have to further discuss it with City Staff or the Department of Public Works to see if the extension of a street was a private or city issue. Mr. Rheume said the city would potentially be on the hook. He said a reason why some of the streets didn't get developed was because of the wetlands, and he asked if the applicant had concerns with wetlands. Mr. Saari said there was no evidence of wetlands within a hundred feet of the lot.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING AGAINST THE PETITION

Taylor Andrews of One Sylvester Street said there would be residual effects on surrounding properties and the intensity of land use in the immediate area would increase.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix said the street extension would be at the owner's expense. He said the lot was 80 percent clear of trees. He noted that the lots across the street were subdivided a while back. He said the project would not harm anyone and made sense, given the nature of the neighborhood.

Vice-Chair Margeson asked which lot was subdivided. Attorney Phoenix said Lots 23243 and 23243-1 were subdivided by the owner and approved by the Planning Board. In response to Mr. Rossi's question, he said the square footage on the 23243-1 lot was 18,000 square feet.

No one else spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

Vice-Chair Margeson said she was concerned that if they granted the variance, they'd create a very small lot and that there could be future requests for variance relief on that lot. Mr. Rossi said that taking what was largely a conforming lot and creating two nonconforming lots almost guaranteed the future need for additional relief on the nonconforming lot.

*Mr. Mannle moved to **deny** the request for variances as presented, seconded by Mr. Rossi.*

Mr. Mannle said granting the variances would not observe the spirit of the ordinance by changing a conforming single-family lot into two nonconforming lots. He noted that the first lot was two-thirds the size with appropriate street frontage and the second lot was a third with less than half of the street frontage. He said the spirit of the ordinance was to have the lots be as conforming as possible or to get them in conformance. Mr. Rossi concurred. He also said he didn't think that comparing the characteristics of the neighborhood to Marjorie Street was appropriate because Marjorie Street had

different density and lot sizes. He said the properties on Sylvester Street were the appropriate comparators. It was further discussed. (Timestamp 2:24:53).

*The motion **passed** by a vote of 4-3, with Ms. Geffert, Mr. Rheaume, and Chair Eldridge voting in opposition.*

Alternate Ms. Record took a voting seat.

- C.** The request of **Cynthia Austin Smith and Peter (Owners)**, for property located at **9 Kent Street** whereas relief is needed to demolish the existing two-family and construct a single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 5,000 square feet where 7,500 square feet is required for each; b) 53% building coverage where 25% is the maximum allowed; c) a 4.5 foot rear yard where 20' is required; d) a 0.5 foot side yard where 10 feet is required; e) a 0 foot front yard where 11 feet is allowed under Section 10.516.10; and f) a 9.5 foot secondary front yard where 13 feet is allowed under Section 10.516.10. 2) A Variance from Section 10.515.14 to allow a 1.5 foot setback for a mechanical unit where 10 feet is required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. (LU-23-28)

SPEAKING TO THE PETITION

Attorney Tim Phoenix was present on behalf of the applicant with the owners, the project engineer John Chagnon, project designer Jennifer Ramsey, and landscape architect Robbie Woodburn. He reviewed the petition and said they wanted to replace the existing duplex with a single-family home and an underground garage. He said the existing building coverage was 35 percent and the proposed was 53 percent. He said the backyard would be raised by 24 inches and have pervious pavers for better drainage, which he said was included in the coverage but was sort of an artificial component. He said several issues drove the plan, including the driveway, pervious pavement, topography, and so on. Mr. Chagnon addressed the drainage issues.

Mr. Rossi asked if the right yard setback was due to the overhangs. Attorney Phoenix said it was due to the cantilever that was over by three feet. Mr. Rossi asked what the hardship of the property was that required a cantilever in the house and bringing it right up to the lot line. Attorney Phoenix said many houses in the area had small lots and were close to the lot line. Mr. Rossi asked how close the external walls in the structure would be to the neighboring property. Mr. Chagnon said the house was pulled to the south due to the desire to park at that basement level. He said in order to get the cars off the street and under the structure with enough clearance, they were forced to push the house in the same location as it is now. Mr. Rossi concluded that the current condition of the house's right side was about .7 feet from the lot line. Attorney Phoenix said the existing was .5 feet.

Mr. Rheaume said the applicant stated that the project proposes a permitted single-family home where a duplex is now, so redevelopment is more than conforming compared to existing conditions.

He said he was confused by that statement and asked how it would make it more nonconforming because two-family homes were permitted in the GRA zone. Attorney Phoenix said he misstated it and that he should have said that it was less density but fewer units. Mr. Rheaume said the packet stated that the project would replace an aging duplex but didn't mention any rotting and so on. He asked if there were similar concerns with the structure. Mr. Smith said he was one of the owners and that he wasn't qualified to say whether the house was ready to fall down. Mr. Rheaume referred to the proposed cantilever and asked what the gap would be between the ground and the first floor. Mr. Chagnon said the cantilever had more to do with the structurability of the replacement home and the existing foundation wall would be used as the sheet pile. Ms. Ramsey said the original foundation floor would not change.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Dean Baltulonis of 159 Richards Avenue said his home was adjacent to the park and thought the project would be a nice upgrade to the backdrop of the park.

Jessica Kaiser (no address given) said the architectural elements showed modern components but pulled elements from the existing house and surrounding houses as well. She said the garage would sit underground and would not affect the mass.

Alex Greiner of 88 Lincoln Street said the project would be a great addition to the neighborhood.

SPEAKING IN OPPOSITION TO THE PETITION

Dave McGlass (no address given) said he was the abutter and thought the project would not meet the criteria. He said the stormwater impact would increase on his property and the metal roof oriented NS instead of EW would cause the snow to slide off onto their property. He said the overhang would go onto their property and the concrete foundation would be six inches from his property line. He said the stormwater treatment would require the owner to use his property. He said the front porch would be more forward than any other house on Kent Street and would impact the visual environment. He said there were no special conditions of the lot to create a hardship.

Bill Arakelian of 18 Kent Street said the existing property was structurally sound and did not present any undue hardships. He said the proposed design was inappropriate and there was no reason to drive all the setbacks further out of compliance.

Cliff Hodgson of 10 Kent Street said the setbacks would negatively affect the neighborhood and the size and appearance of the new home would alter the essential characteristics of the area. He said there was no hardship and that the owners seemed to think the rules didn't apply to them.

Jim Lee of 520 Sagamore Avenue said the project would alter the essential character of the neighborhood. He also noted that the board was always reluctant to grant a zero lot line.

Barbara Adams of 75 Kent Street said the project would double the size of the dwelling unit to 5,000 square feet and that a patio raised 24 inches with a special surface seemed like building coverage. She noted that the houses on Kent Street were all built in the 1900s and were traditional in size, shape and style, but the applicant wanted a larger 4-story modern California-style building with vertical siding and a metal roof and 300 feet of surrounding retaining cement walls. She said the building would be out of proportion and not compatible with the neighborhood and would alter the essential character of Kent Street. She said there was no hardship.

Matt Beebe of 81 Lincoln Avenue said there was no hardship and thought the design team should find a way to make the house more conforming and get it further away from the lot lines.

Sue Polidura of Middle Street said the proposed house was a very modern structure in a very old neighborhood and was more appropriate for a modern development.

Esther Kennedy of 41 Pickering Avenue read an excerpt from a note from Attorney Duncan MacCallum stating that it was difficult to draw the line between a person's property rights and the neighbor's property rights, but that was what zoning was and did and it required buildings to be a certain number of feet from the neighbor's boundaries for property air, light, and space between buildings. She said the applicant did not meet any of the criteria.

Petra Huda of 280 South Street said she couldn't fathom how the applicant would get all that 'stuff' into that spot. She said there was no hardship and that the petition should be denied.

Katherine Arakelian of 18 Kent Street said eight out of twelve houses on Kent Street were in opposition.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Phoenix said 53 percent was an artificial number because the house was 35 percent where 39 percent was the limit. He said the existing house was the same distance from the common lot line as the proposed house. He said stormwater and snow would be captured and the driveway and garage would free up street parking. He said the larger porch would not affect neighbors' views. He said the applicant was required to do a stormwater plan to document pre- and post-construction. He said the existing home was 2,700 square feet and the proposed home was 39,000 square feet.

Barbara Jenny of 81 Lincoln Avenue (via Zoom) said the project would affect her sense of light and view and also her view of the pond and park. She said she took issue with Attorney Phoenix using the term 'essentially' several times. She said measurements mattered.

No one else spoke, and Chair Eldridge closed the public hearing.

*At this point in the meeting, Mr. Mannle moved to **extend** the meeting beyond 10:00, seconded by Ms. Record. The motion **passed** unanimously.*

DISCUSSION OF THE BOARD

Mr. Rossi said he liked the design and thought the house would improve the area and didn't think it would be out of keeping with the character of the neighborhood. He said housing styles were different from property to property and people didn't build the way they did years ago. He said he didn't think it would be contrary to the spirit of the ordinance and saw no loss to the public or diminishment of surrounding property values. He said he did have difficulty with the hardship of the land forcing the need for the variances. He thought most of the variances, especially the lot line clearance on the right side, were driven by the desire to have a garage under the residence, which caused everything to be raised and necessitated more drains, retaining walls, and so on. He said he did not think the property offered a hardship that required a subterranean garage and the resulting placement of the house six inches from the right side property line, so on that basis, he could not support it. Vice-Chair Margeson said she would not support it and that she wasn't persuaded that there was a hardship of special conditions that made the property exempt from the ordinance's requirements. She said a particular concern was the elimination of the primary front yard setback from 7 feet to zero, which affected the streetscape. She said the building coverage was also a hard one because it wasn't essentially open space but a structure. She said open space had to be free of structures, and it significantly increased the building coverage and made the property more nonconforming. Mr. Rheume said he could not approve it. He said the applicant was asking for more relief than what was needed for the existing structure in every way. He said the city wasn't getting much from the applicant per the balancing test. He said the applicant's term 'as desired' drove a lot of what was being requested for relief. He said the applicant argued that the 53 percent coverage wasn't a real number but was all the stuff they wanted to create in the backyard, and that just because it was made up of earth and stone didn't make it less impactful. He thought it would be more impactful because the rolling hill topography on the back of the property that contributed to the park had a positive effect that could be negatively impacted. He said the underground garage would be right along the neighbor's wall, and the roof pitch being oriented into a front gable would be more impactful because all the rain and snow would come down on the neighbor's property. He said the project failed several criteria and did not support the balancing test.

DECISION OF THE BOARD

*Mr. Rheume moved to **deny** the petition, seconded by Mr. Mannle.*

Mr. Rheume said the application only had to fail one criterion, and he thought it failed a few. He said a lot of relief was being asked for and neighboring properties would be negatively affected from a light and air standpoint as well as a water runoff standpoint and complexity of design. He said the maintainability of that design would cause the neighbor future issues. He said the structure was in a prominent location and some of the things asked for would negatively impact some of what the public would look for in that location. As for the hardship, he said it was brand new construction and that the applicant could build a new structure in full compliance or require less relief than requested. He said all the characteristics he saw were negative hardships that made the request relief even more egregious. Mr. Mannle concurred. He said the applicant was asking for seven variances for brand new construction, and that two of them couldn't change but five of them could get better. He said it didn't make sense on new construction.

*The motion **passed** by unanimous vote, 7-0.*

III. NEW BUSINESS

Alternate Ms. Geffert took a voting seat.

- A. The request of **Angela Davis** and **Katherine Nolte (Owners)**, for property located at **276 Aldrich Road** whereas relief is needed to construct a 5 foot by 4 foot landing which requires the following: 1) Variance from Section 10.521 to allow a) 3 foot secondary front yard where 30 feet is required; and b) 35% building coverage where 20% is allowed. 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 116 Lot 14 and lies within the Single Residence B (SRB) District. (LU-23-29)

SPEAKING TO THE PETITION

The owner Katherine Nolte was present to review the petition. She said the reason for the variance requests was to increase the landing and attach the support beams to the existing foundation wall. She reviewed the criteria and said they would be met.

Mr. Rheume asked if Ms. Nolte was doing a major renovation project. Ms. Nolte said it wasn't major because she only eliminated the stairwell that went between the kitchen and living areas and decided to make a 36'x36' landing to go to the patio. She said it had to be expanded by one foot in one direction and two feet in the other direction so that the support beams could go into the foundation. She said the external staircase wasn't originally part of the plan. Mr. Rheume said Ms. Nolte talked about an easement but it was just a city-owned right-of-way. Ms. Nolte agreed and said she had maintained it over the last five years.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variances for the project as presented and advertised, seconded by Mr. Mattson.*

Mr. Rossi said granting the variances would observe the spirit of the ordinance and would not be contrary to the public interest because there was no public interest that militated against the construction of the landing. He said it would do substantial justice because there would be no loss to the public by the construction of the landing that would outweigh the benefit to the property owner. He said granting the variances would not diminish the values of surrounding properties because the landing was hard to see from the road due to the shrubbery and location. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said

when the landing was completed, it would be consistent with the character of surrounding properties. He said denying the request for variances would be pointless.

Mr. Mattson concurred and said the unusually large right-of-way on the side of the street was a unique condition of the property and also lessened the effect of the amount of relief being asked for.

The motion passed unanimously, 7-0.

Alternate Ms. Record took a voting seat.

- B. Petition of Salem Manufactured Homes, LLC, for Appeal of an Administrative Decision to require a variance for the expansion of a non-conforming structure in accordance with Section 10.321 of the Zoning Ordinance for property located at 210 Oriental Gardens. Said property is located on Assessor Map 215 Lot 9-21 and lies within the Gateway Corridor (G1) District. (LU-23-43)**

SPEAKING TO THE APPEAL

Attorney John Kuzinevich was present on behalf of the applicant to review the appeal and explain why the mobile home park should be allowed to replace an existing mobile home with a new one without requiring a variance. He reviewed the petition in detail (timestamp 4:13:00).

Vice-Chair Margeson said Section 10.321 of the ordinance was clear in stating that a lawful nonconforming structure may continue and be maintained or repaired but may not be extended, reconstructed, or enlarged unless such extension, reconstruction, or enlargement conforms to all the regulations of the district it's located in. She said the mobile home park is a lawful nonconforming use. She said the zoning itself has changed the Office/Research district, so therefore anything that happens within the mobile park needs to have a variance because it's nonconforming to the current zoning. She cited RSA 674.19, noting that it's in a manner that's substantially different from the use to which it was put before alteration. She said the case law cited was dependent on that part, but the part before it said 'it shall apply to any alteration of a building for use for a purpose', so that State law itself says that the zoning ordinance does apply to the alteration of a building, and that alteration is reflected in Section 10.321. Attorney Kuzinevich said it doesn't apply if it is not substantial. It was further discussed. Attorney Kuzinevich said the use of the mobile home park being there is grandfathered, which means mobile homes within the park can be considered conforming. He said mobile homes were components of the mobile park and not separate structures. Vice-Chair Margeson said there was no grandfathering in zoning ordinances.

Mr. Mattson asked if Attorney Kuzinevich meant that all the structures in the mobile home park could be changed without the need for a variance. Attorney Kuzinevich agreed. He said they focused on the park as a whole and whether or not the use of the park was expanded. Mr. Rossi said Attorney Kuzinevich referred to Section 10.816 for dimensional standards in manufacturing housing park areas. He asked if Attorney Kuzinevich was contending that if a structure would be replaced with a new structure that would not meet the standards, it wouldn't be a concern to the board. Attorney Kuzinevich disagreed and said it would be a valid concern and would require a

variance. He said the new structure was in full compliance with Section 10.826. He said separation between units would be a different issue and concern.

Ms. Geffert verified that Attorney Kuzinevich's argument was that the current Statute permits a modest change to a nonconforming use as long as it's not substantial without seeking a variance, and that the appellant was challenging the action of the Planning Director because he felt it was an error for him to conclude that the change of 148 feet was substantial. Attorney Kuzinevich agreed. Ms. Geffert said she thought the argument that not everything was permitted but some things were was a muddy argument. Mr. Mannle asked what the dimensions of the replacement mobile home were and was told that they were 20'Wx30'L and that the previous structure was 10'Wx50'L.

Chair Eldridge said she didn't understand why Section 10.321 applied to other structures in town but not to mobile homes. She said when a structure was close to a lot line, the issue had to be brought before the board for a variance. Attorney Kuzinevich said the mobile homes could be considered conforming because the mobile park existed. He said it was a grandfathered use of an overall structure, and if one couldn't have changes to the components of that use, one would be denying the fact that it exists as a mobile home park. It was further discussed (timestamp 5:39:55).

Planning Director Peter Britz was present to explain his decision. He said he denied the expansion of a mobile home that expanded by 148 feet because the zone is an Office/Research district and mobile homes are a prohibited use, so those nonconforming uses may not be enlarged or extended. He said the larger mobile home will create a larger footprint, reduce the open space, and increase the coverage of the mobile home part. He said his rationale was if the homes are expanded, the use is expanded. He said the proposed expansion if allowed might not create a noticeable change but there's no stopping the next one that could be bigger, and there's no notice that happens when there's an expansion in the park and that it could impact the residents. He said the size, look, feel, and operation of the mobile park will change if there are no restrictions or controls. He said that was a potential scenario that he considered in his decision. He said the amount of stormwater on the site will change due to more impervious surface. He said his approach was to require a variance request when a mobile home is expanded in this zone, and then a notice will be sent out and residents will be aware of it. He said he also discovered that the city did allow replacement of mobile homes in kind with a building permit in 2019, but in 2007 a variance was required for an in-kind replacement of mobile homes, and three variances for increase in size were required in 2004, 2008, and 2015. He said the record wasn't clear or consistent but he thought a conclusion of this issue would help.

Mr. Rheume asked if the property was zoned Garden Apartment Mobile Home, whether an increase in the size of any of the units would have to come before anyone. Mr. Britz said the city looked at it occasionally to make sure the coverage and the area didn't get exceeded, but he said the applicant was far from that. Mr. Rheume said every other mobile home park that was zoned Garden Apartment Mobile Home and complied with dimensional standards and Section 10.816 would not have to come before the city for one replacement. Mr. Britz agreed. Mr. Rheume said the argument was that because the use is nonconforming, that now applies to the structure. He asked why the ordinance would separate those two out. Mr. Britz said the use is actually changing because the mobile home's size is changing. He said it's a component of a use and if the mobile homes are there and get bigger, the use changes. He said if a one-bedroom becomes two bedrooms the use is

different. Mr. Rheume asked if the city would have control over it if it was denoted as Garden Apartment Mobile Home. Mr. Britz said the lot would be the issue but the use wouldn't change. Ms. Geffert asked if Mr. Britz was saying that it's a nonconforming use, which is the whole park, and any change to a dwelling within that park is substantial. Mr. Britz said any change that's involved in an expansion is substantial but he didn't know if a shape of square footage change would require a variance. It was further discussed.

Attorney Kuzinevich said a single unit was before the Planning Director and the board. He said Mr. Britz admitted that his thinking was all about what may happen with other expansions. Attorney Kuzinevich said the mobile home had two bedrooms and would stay two bedrooms and there was no substantial change. He asked what would happen if a pair of steps was added, if the Planning Department's position was that any change was substantial.

There was no public hearing.

DISCUSSION OF THE BOARD

Mr. Rossi said the Planning Department was looking for some consistent rubric with which to make those sorts of judgments and that it seemed straightforward to him as long as a new structure within the mobile home park, which was a nonconforming use in the zone, complied with Section 10.186. He said there should be no need for further action from the board. Mr. Rheume agreed but thought the board was getting mixed up with the concepts of uses and structures which he further explained. He said there was a fairness issue and thought that anyone who now has a nonconforming use in the city will have all these additional concerns about their structure imposed upon them. He said there were hundreds of uses not allowed by the ordinance that were approved by the board or were grandfathered in because they were an existing use that may remain in place. He said the board could run into legal issues if they went down that path. He said they didn't have that control over Garden Apartment Mobile Home properties and asked why the appellant's property was being unfairly penalized when every other similar property wasn't subject to it within the Garden Apartment Mobile Home zoning. Mr. Mattson said a nonconforming structure is something within the setback, and because it was a mobile home park, the setback issue was different.

Vice-Chair Margeson said almost every one of the applications that the board got triggered Section 10.321. She said she recognized that the manufacturing housing park was situated in the Office/Research district and was nonconforming, and anything that happened to it had to come before the board for a variance because it was not in a district that permitted it. Mr. Rheume said it would create a lot more work for the board and impose on homeowners who are in the area where the zoning doesn't match what they're doing. He said someone would take it to court, and he didn't see how that unfairness would survive through a court challenge. He said the board had to separate those two concepts because by mashing them together, it was creating an unfairness to property owners in the city. When the board said that Section 10.321 was being invoked, it was always a dimensional issue associated with expanding a building in a nonconforming way, and he thought that should be separated from the use requirements of the ordinance because they were two separate concepts. Vice-Chair Margeson said the board had applications for the Waterfront district, where there are single homes and they're not supported to be expanded unless they become a waterfront

business. She said she saw this application as being similar and didn't see the use and dimensional requirements differently based on case law. It was further discussed.

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the appeal, seconded by Ms. Record.*

Mr. Rossi said the basis of his motion was rooted in practicality. He said this particular mobile home park has a grandfathered use for being a mobile home park. He said within the park there are mobile homes, and as long as any replacement homes comply with Section 10.816, they're complying with the same requirements that other mobile homes would need to comply with in any other mobile park. He said he thought the appellant was correct.

*The motion **passed** by a vote of 5-2, with Chair Eldridge and Vice-Chair Margeson voting in opposition.*

THE BOARD VOTED TO POSTPONE CONSIDERATION OF THE FOLLOWING ITEMS TO THE MAY 23, 2023 BOARD OF ADJUSTMENT MEETING.

- A.** The request of **Peter Gamble (Owner)**, for property located at **170 Aldrich Road** whereas relief is needed to demolish the existing garage and construct a new garage which requires the following: 1) Variance from Section 10.521 to allow a) 7 foot right side yard where 10 feet is required; and b) 23% building coverage where 20% is allowed. Said property is located on Assessor Map 153 Lot 21 and lies within the Single Residence B (SRB) District. (LU-23-47)

*Vice-Chair Margeson moved to **postpone** the petition to the May 23 meeting, seconded by Mr. Mannle. The motion **passed** unanimously.*

- B.** The request of **Shawn Bardong and Michiyo Bardong (Owner)**, for property located at **39 Dearborn Street** whereas relief is needed to demolish the existing shed and construct a two-story addition which requires the following: 1) Variance from Section 10.521 to allow a) 5 foot front yard where 15 feet is required; and b) 2 foot right side yard where 10 feet is required. 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 140 Lot 3 and lies within the General Residence A (GRA) and Historic District. (LU-23-5)

*Mr. Mannle moved to **postpone** the petition to the May 23 meeting, seconded by Ms. Geffert. The motion **passed** unanimously.*

- C.** The request of **Thomas Rooney (Owner)**, for property located at **29 Spring Street** whereas relief is needed to install two mechanical units in the rear of the primary

structure which require the following 1) Variance from Section 10.515.14 to allow a) 7-foot side yard where 10 feet is required; and b) 4 foot rear yard where 10 is required. Said property is located on Assessor Map 130 Lot 21 and lies within the General Residence A (GRA) District. (LU-23-55)

*Mr. Mannle moved to **postpone** the petition to the May 23 meeting, seconded by Vice-Chair Margeson. The motion **passed** unanimously.*

- D.** The request of **Scott Day and Marta Day (Owners)**, for property located at **18 Walden Street** whereas relief is needed to install a mechanical unit which requires a variance from Section 10.515.14 to allow a) 4 foot side yard where 10 feet is required; and b) 2 foot front yard where 10 feet is required. Said property is located on Assessor Map 101 Lot 20 and lies within the General Residence B (GRB) and Historic District. (LU-23-52)

*Mr. Mannle moved to **postpone** the petition to the May 23 meeting, seconded by Mr. Mattson. The motion **passed** unanimously.*

- E.** The request of **The Islamic Society of the Seacoast Area ASSA (Owner)**, and **Chinburg Development, LLC (Applicant)**, for property located at **686 Maplewood Avenue** whereas relief is needed to construct four (4) duplexes and one (1) single living unit to create a total of nine (9) living units which requires the following: 1) Variance from Section 10.440, Use # 1.30 to permit four (4) two-family unit structures where they are not permitted, 2) Variance from Section 10.513 to permit five (5) free standing buildings with dwellings where not more than one is permitted, 3) Variance from Section 10.520 to allow a) 6,975 square feet of lot area per dwelling unit where 15,000 square feet is required; and b) 47 feet of frontage where 100 feet is required. Said property is located on Assessor Map 220 Lot 90 and lies within the Single Residence B (SRB) District and the Highway Noise Overlay District. (LU-23-57)

Mr. Mattson recused himself from the vote.

*Mr. Mannle moved to **postpone** the petition to the May 23 meeting, seconded by Vice-Chair Margeson. The motion **passed** unanimously.*

- F.** The request of **Carl Krukoff (Owner)**, for property located at **3360 Lafayette Road** whereas relief is needed to convert a two bay garage into a third living unit which requires the following: 1) Variance from 10.521 to allow 8,002.5 square feet per dwelling unit where 15,000 square feet is required, 2) Variance from 10.331 to allow a non-conforming use to be extended or enlarged without conforming to the requirements of the Zoning Ordinance, 3) Variance from section 10.440 Use #1.51 to allow three (3) dwelling units where one (1) is permitted. Said property is located on Assessor Map 297 Lot 12 and lies within the Single Residence B (SRB) District. (LU-23-59)

*Vice-Chair Margeson moved to **postpone** the petition to the May 23 meeting, seconded by Mr. Mannle. The motion **passed** unanimously.*

- G.** The request of **John Heath** and **Michael Meserve (Owner)**, for property located at **955 Woodbury Avenue** whereas relief is needed to construct a shed which requires a Variance from Section 10.571 to allow an accessory structure to be located closer to a street than the principal building. Said property is located on Assessor Map 219 Lot 33 and lies within the Single Residence B (SRB) District. (LU-23-56)

*Mr. Mannle moved to **postpone** the petition to the May 23 meeting, seconded by Mr. Mattson. The motion **passed** unanimously.*

- H.** The request of **Shantar Zuidema** and **Abby Zuidema (Owners)**, for property located at **126 Burkitt Street** whereas relief is needed to demolish the existing 10 foot by 16 foot deck and replace with a 6 foot by 4 foot enclosed porch which requires the following: 1) Variance from Section 10.521 to allow a 6 foot right side yard where 10 feet is required, and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 159 Lot 28 and lies within the General Residence A (GRA) District. (LU-23-61)

*Mr. Mannle moved to **postpone** the petition to the May 23 meeting, seconded by Mr. Rossi. The motion **passed** unanimously.*

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting was adjourned at 12:08 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
CONFERENCE ROOM A
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

May 23, 2023

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Paul Mannle; Thomas Rossi; Jeffrey Mattson; Jody Record, Alternate; ML Geffert, Alternate

MEMBERS EXCUSED: David Rheaume

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m.

*Mr. Rossi moved to take Item E for Petition 686 Maplewood Avenue out of order, seconded by Mr. Mannle. The motion **passed** unanimously, 7-0.*

*Mr. Ross moved to **postpone** Item G until the June 20 meeting, seconded by Mr. Mannle. The motion **passed** by a unanimous vote of 6-1, with Mr. Mattson recused.*

Alternates Ms. Geffert and Ms. Record took voting seats for all petitions.

I. NEW BUSINESS *(Continued from May 16, 2023)*

- A.** The request of **Peter Gamble (Owner)**, for property located at **170 Aldrich Road** whereas relief is needed to demolish the existing garage and construct a new garage which requires the following: 1) Variance from Section 10.521 to allow a) 7 foot right side yard where 10 feet is required; and b) 23% building coverage where 20% is allowed. Said property is located on Assessor Map 153 Lot 21 and lies within the Single Residence B (SRB) District. (LU-23-47)

SPEAKING TO THE PETITION

Applicant Peter Gamble was present via Zoom to review the petition. He said he wanted to demolish the existing garage and build a larger one with a second floor. He said the city inspector said the current garage had to be demolished to do what was necessary for the foundation around the building. He said he had no intention of creating another living unit over the garage. He said the property was unique because it was a corner lot and had a city right-of-way on the fronts and sides that he maintained. He reviewed the criteria and said they would be met. [Timestamp 9:25]

Mr. Rossi asked why the garage footprint was being slightly widened but the right yard setback from the property line would remain at seven feet. Ms. Casella explained that there was an error in the plan and that it was actually becoming two feet wider.

Note: At this point in the meeting, there was a problem with Zoom and the Board couldn't hear the applicant.

*Mr. Rossi moved to take the petition out of order and move it further down the agenda, and Mr. Mannle seconded. The motion **passed** unanimously, 7-0.*

[Timestamp 52:25] The Zoom difficulties were fixed, and the Board re-addressed the petition.

Vice-Chair Margeson asked how the upstairs would be heated. Mr. Gamble said the downstairs and upstairs would each have a mini split unit. Mr. Rossi asked if the units would require further variances. Mr. Gamble said they would not because they would hook into the house.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Attorney John McGee was present on behalf of the neighbors Adrian and Andrew DeGraffe at 25 Boss Avenue. He said the applicant didn't meet any of the criteria because it was a single-family residence that Mr. Gamble used as a duplex. Attorney McGee said the applicant already got relief for that nonconformity. He said the applicant already had a garage and the addition would be huge and directly in his clients' view. He said there was no hardship that necessitated having a workout area with a bath facility, especially when no one else in the neighborhood had one. He said there was also a boundary dispute in the area that had to be resolved and would reduce the applicant's lot area. He said he thought there was a new variance that stated that if a person already has a nonconforming use, the person had to get a variance for that before seeking another variance, which might be an issue. He noted the case he read about in the Portsmouth Herald.

In response to Mr. Rossi's questions, Attorney McGee said his client's house was to the immediate left on Boss Avenue and was side-by-side with the applicant's house and that his client's lot was a lot higher. Mr. Mannle noted that Attorney McGee indicated that what the applicant wanted to do was not a hardship because it wasn't modern living. He asked whether a workout space and a bath would be considered modern living. Attorney McGee said the applicant wanted to put up a much larger building and make it a workout space. He said it wasn't a deck or something that would make the building a modern amenity that would be expected to exist in that neighborhood. Chair Margeson said the applicant's building was still 11 feet below the maximum height allowed under zoning. Attorney McGee said it was bigger than what was there now, which was a two-car garage. Mr. Rossi asked how the requested variance affected the alleged property border dispute, since the

rear yard setback wasn't changing. Attorney McGee said it was lot coverage and would be a significant reduction in Area 170. Vice-Chair Margeson asked if the boundary dispute was being settled at the time. Attorney McGee said the dispute was unresolved.

The applicant Adrian DeGraffe said the applicant spoke to them a year ago because he thought there was a differential between the property lines and he wanted to put up a garage. She said he claimed that he owned almost 12 feet in that went right beside their house. She said that was the reason they were in dispute. She said the proposed garage was huge and would be as big as his current home if not bigger. She said the upstairs room would even have a balcony off one side, which most garages didn't have, never mind a full room upstairs and a bath and counters and storage. She thought the intent was to use the upstairs space for something else.

Chair Eldridge noted that the Board received letters from other neighbors in opposition. No one else spoke, and she closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Mattson said one of the first things he thought of was that it would be living space above, but his concerns were alleviated by the fact that anything constructed there with a work permit would trigger requiring the applicant to come back before the Board if there was an attempt to make it a living space. Mr. Rossi said he felt that it was too similar to living space and could be utilized that way. Vice-Chair Margeson said she agreed and would not support the application because she was concerned about the possibility of converting living space on the second floor and also concerned about the building coverage if there was a possible boundary dispute.

DECISION OF THE BOARD

*Mr. Rossi moved to **deny** the variance, seconded by Ms. Record.*

Mr. Rossi referred to Sections 10.233.21 and .22 of the ordinance and said the petition failed the test for observing the spirit of the ordinance because the home was in an area of single-family dwellings and the design wasn't consistent with continuing to use the property as a single-family dwelling one. Ms. Record concurred and had nothing to add.

There was further discussion. Chair Eldridge said she would support the variance request because what was asked for was minor and she wasn't willing to presuppose that the applicant wouldn't follow through on what he told the Board. Mr. Mannle agreed said it was a minor request on face value but he could not support it because there were two property lines in dispute. Vice-Chair Margeson said she felt that the garage was more than an accessory building or structure and didn't meet the ordinance's requirements. Mr. Rossi said Attorney McGee referenced the trailer home case heard by the Board the previous week and noted that it specifically addressed that property and wasn't a general comment on how to apply the zoning ordinance. He said it wasn't a precedent that carried over to the applicant's case.

*The motion to deny **passed** by a vote of 4-3, with Mr. Mattson, Chair Eldridge, and Ms. Geffert voting in opposition.*

- B.** The request of **Shawn Bardong and Michiyo Bardong (Owner)**, for property located at **39 Dearborn Street** whereas relief is needed to demolish the existing shed and construct a two-story addition which requires the following: 1) Variance from Section 10.521 to allow a) 5 foot front yard where 15 feet is required; and b) 2 foot right side yard where 10 feet is required. 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 140 Lot 3 and lies within the General Residence A (GRA) and Historic District. (LU-23-5)

SPEAKING TO THE PETITION

Attorney Amy Dutton was present on behalf of the applicants. She said two items were removed off the plan, and she passed out a printed version to the Board. She said the HDC didn't like the idea of converting the historic Cape into a gambrel but she was now confident that the applicant had come up with a good compromise by creating a glass connector from the Cape to an addition of a Colonial that would house the living room and a primary suite on the second floor, with a small addition off the kitchen. She reviewed the criteria and said they would be met. She said the two items that were different were the chimney that would be removed because it was within the 5-ft setback and the window well was expanded by two feet.

In response to Vice-Chair Margeson's questions, Attorney Dutton said the land near the applicant's lot belonged to Lot 140-7 and they were requesting the easement because they needed five feet for fire code and to get windows. She said the new structure would not intrude on the view area between the abutters.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Michael Stasiuk of 31 Dearborn Street said he was the abutter. He explained why the current plan was at his expense and said he had protection for a 15-ft setback. He said his backyard was small and like a secret garden, but with a 20-1/2' building looming five feet away, it would no longer be a secret. He said the addition would block the sky and light in that direction and would produce light and noise pollution as well as invade his privacy. He asked that the Board's decision be tabled until they could visit his property.

Chair Eldridge said a variance was granted in 2015 for a 5-ft front yard setback. Mr. Stasiuk agreed but said that was for an accessory building. Ms. Geffert asked if the view easement was being granted to Mr. Stasiuk. Mr. Stasiuk agreed.

SPEAKING TO, FOR, OR AGAINST

Attorney Dutton showed how tall Mr. Stasiuk's property was related to the applicant's home. She said the challenge was that the applicant needed to do something on the property to make it a more livable and modern home. She said they were at about 25 percent of lot coverage and would not add to the claustrophobia that Mr. Stasiuk said he would have. Chairman Eldridge asked if the main difference between the current application and the previous one that was approved was the connection between the Cape and the new building. Attorney Dutton agreed.

No one else spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

Vice-Chair Margeson said she voted against the application in February because she thought the Cape would have been destroyed and the HDC wanted to preserve the Cape. She said it was now a new application and that she would be in favor of it. Mr. Rossi said the variances proposed in 2015 with regard to the shed had a number of stipulations, but in 2023 a further variance was issued that did not contain those stipulations, so now that variance was allowed without those stipulations.

*Vice-Chair Margeson moved to **grant** the variances for the application as presented and advertised, seconded by Mr. Mannle.*

Vice-Chair Margeson said that granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, according to Sections 10.233.21 and .22. She said the proposed use does not expressly or implicitly conflict with the ordinance's provisions, in which case there are setback requirements for the movement of light and air around the structures. She said it was a small yard and the structure would still have space in the back and on the side for light, air and emergency egress. She noted that Section 10.121.6 of the ordinance was for the preservation of historic districts and buildings and structures of historic and architectural interest. She said the variance request was driven by the requirements of the HDC to preserve the 1700's Cape. She referred to Section 10.233.23 of the ordinance and said granting the variances would do substantial justice because the benefit to the applicant would not be outweighed by any harm to the general public. She said the preservation of the 1700s Cape would be a benefit to the applicant and public. Referring to Section 10.233.24, she said granting the variances would not diminish the values of surrounding properties, noting that the Board had testimony from the abutter that the City does not allow for view easements on properties. She said she didn't find that it would diminish the property. She also found that any improvement to a property in general does raise the values of surrounding properties for all those reasons. Referring to Section 10.233.25, she said literal enforcement of the ordinance would result in an unnecessary hardship. She said the board had to show that the property had special conditions that distinguish it from others in the area, and owing to those special

conditions a fair and substantial relationship does not exist between the general public purpose of the ordinance and the specific application of that provision to the property. She said the proposed use is a reasonable one because the property does have special conditions, and part of that is the view easement, which restricts where a structure can be placed on the property. She said putting it more toward the back of the property would be an appropriate placement for it. She said it was an expansion of a house, which was an allowed use in the GRA District. Mr. Mannle concurred and had nothing to add.

*The motion **passed** unanimously, 7-0.*

Note: At this point, the Zoom problem for Petition A was fixed. [51:53]

*Mr. Mannle moved to **re-open** the public hearing for Petition A, seconded by Mr. Mannle. The motion **passed** anonymously, 7-0.*

- C. The request of **Thomas Rooney (Owner)**, for property located at **29 Spring Street** whereas relief is needed to install two mechanical units in the rear of the primary structure which require the following 1) Variance from Section 10.515.14 to allow a) 7-foot side yard where 10 feet is required; and b) 4 foot rear yard where 10 is required. Said property is located on Assessor Map 130 Lot 21 and lies within the General Residence A (GRA) District. (LU-23-55)

The original notice had an error. The mechanical units are proposed to be located in the rear of the primary structure and not the garage as previously advertised.

SPEAKING TO THE PETITION

The owner/applicant Thomas Rooney was present and reviewed the petition. He discussed the setbacks and said he would put the units on the right side of the property that was adjacent to the patio. He said it would not be seen by the abutters and would be out of public view. He reviewed the criteria and said they would be met. Ms. Casella noted that there was an error in the notice sent to the newspaper and abutters that should be stipulated in the motion.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Mannle moved to **approve** the requested variance for the application as presented with the following **stipulation**:*

1. *Both mechanical units shall be located in the rear of the primary structure as indicated in the applicant's submission materials.*

Mr. Mattson seconded the motion.

Mr. Mannle said it was a small request and that the hardship existed due to the current location of the primary unit. He said the variances were for one foot and two feet from the side yard, and the house was already placed in a nonconforming spot on the lot. Referring to Sections 10.233.21 and .22, he said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the public wouldn't even be aware of the variance being granted because everything would be hidden behind the primary structure. Referring to Section 10.233.23, he said granting the variance would do substantial justice, noting that the Board had gotten 20-30 requests for heating units on small lots where the lot was nonconforming and they needed that extra foot. Referring to Section 10.233.24, he said granting the variance would not diminish the values of surrounding properties. Referring to Section 10.233.25, he said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the proposed use was a reasonable one. He said the property was already nonconforming, especially where the house was located on the lot. For those reasons, he moved that the petition be approved. Mr. Mattson concurred and said the benefit to the applicant would not be outweighed by any harm to the public. He said another unique condition of the property was that it was an undersized lot and the purpose of preserving air, light, and space was being maintained.

The motion passed unanimously, 7-0.

Chair Eldridge noted that the next petition had a request to be heard at the end of the meeting, but the applicant was present.

Mr. Mattson moved to continue the agenda in order, seconded by Mr. Mannle. The motion passed unanimously, 7-0.

- D. REQUEST TO BE HEARD AT END OF MEETING** The request of **Scott Day and Marta Day (Owners)**, for property located at **18 Walden Street** whereas relief is needed to install a mechanical unit which requires a variance from Section 10.515.14 to allow a) 4 foot side yard where 10 feet is required; and b) 2 foot front yard where 10 feet is required. Said property is located on Assessor Map 101 Lot 20 and lies within the General Residence B (GRB) and Historic District. **REQUEST TO BE HEARD AT END OF MEETING (LU-23-52)**

SPEAKING TO THE PETITION

The owner/applicant Scott Day was present and reviewed the petition. He said the summers were hot and the house sat in the sun all day, which was the main reason for wanting the condenser. He said he proposed to place it on the side of the house because it couldn't be placed under the deck

due to king tides. He said his neighbors approved the location and that it would not affect their views. He reviewed the criteria and said they would be met.

The Board had no questions, and Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

Mr. Rossi moved to grant the requested variance for the application as presented and advertised, and Ms. Geffert seconded.

Mr. Rossi said granting the variance would not be contrary to the public spirit and would observe the spirit of the ordinance. He said the use of the property as a residential one would not change and it would not be contrary to preserving the historic character of the property. He said granting the variance would do substantial justice because there would be no loss to the public in allowing the units to be placed in the proposed location and it would be a great benefit to the owner to be able to enjoy the property with contemporary standards of comfort. He said granting the variance would not diminish the values of surrounding properties because the unit would not be visible in a substantial way from any of the surrounding areas and would not impact the general feel and look of the community. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the special conditions of the property and on that street in general was that the properties were closely packed because it was a densely settled area, and any upgrade to the HVAC system to meet contemporary standards would require a variance. He said he looked at the property and saw that there was an overhang of a deck where any place the units could go, so a variance was required.

Mr. Geffert concurred and had nothing to add.

The motion passed unanimously, 7-0.

- E. REQUEST TO POSTPONE** The request of **The Islamic Society of the Seacoast Area ASSA (Owner)**, and **Chinburg Development, LLC (Applicant)**, for property located at **686 Maplewood Avenue** whereas relief is needed to construct four (4) duplexes and one (1) single living unit to create a total of nine (9) living units which requires the following: 1) Variance from Section 10.440, Use # 1.30 to permit four (4) two-family unit structures where they are not permitted, 2) Variance from Section 10.513 to permit five (5) free standing buildings with dwellings where not more than one is permitted, 3) Variance from Section 10.520 to allow a) 6,975 square feet of lot area per dwelling unit where 15,000 square feet is required; and b) 47 feet of frontage where 100 feet is required. Said property is located on Assessor Map 220 Lot 90 and lies within the Single

Residence B (SRB) District and the Highway Noise Overlay District. **REQUEST TO POSTPONE** (LU-23-57)

DECISION OF THE BOARD

The petition was postponed to the June 20 meeting.

- F. The request of **Carl Krukoff (Owner)**, for property located at **3360 Lafayette Road** whereas relief is needed to convert a two bay garage into a third living unit which requires the following: 1) Variance from 10.521 to allow 8,002.5 square feet per dwelling unit where 15,000 square feet is required, 2) Variance from 10.331 to allow a non-conforming use to be extended or enlarged without conforming to the requirements of the Zoning Ordinance, 3) Variance from section 10.440 Use #1.51 to allow three (3) dwelling units where one (1) is permitted. Said property is located on Assessor Map 297 Lot 12 and lies within the Single Residence B (SRB) District. (LU-23-59)

SPEAKING TO THE PETITION

The owner/applicant Carl Krukoff was present and reviewed the petition. He said they would not change the footprint but just convert the garage doors in the front to a double window and single window. He said the left side of the garage would have an entryway and a rear entrance into the backyard. He said they would install a kitchen, two bedrooms, and a bath and update the utilities. He reviewed the criteria and said they would be met.

In response to Vice-Chair Margeson's questions, Mr. Krukoff said he could not walk from the house into the current garage. He said his parking plan was to create four spaces that were required by the ordinance. To maneuver the cars, he said the first car nearest to the building would back out and pull into Lafayette Road. Vice-Chair Margeson said the applicant's support for making the multi-family home was the Hillcrest Estates, but that was already zoned General Apartment Mobile Home and Juniper Commons was the Gateway District. Mr. Krukoff said he based it on the color coding on the map. He said there were single-family homes on the other side of his abutter.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Mattson said the Board was normally careful in adhering to the single-family districts and the ADU statewide criteria. He said adding some density to the applicant's lot would not change the actual structure or the footprint or size. He said by the nature of the size of the dwelling, it would be in the spirit of the ordinance in terms of providing much-needed housing types. He noted that

another direct abutter in the SRA zone was the 20-condo unit behind the applicant. Ms. Casella said the Juniper Commons plot was a split zone and was half Natural Resource Protection and half G1, so the portion of where the buildings are is G1. The surrounding zoning areas were further discussed. Mr. Rossi said regardless of the different types of zoning in the area, Juniper Collins was visible from the applicant's property and the Weatherstone Condos were in the same zone. He said it seemed that the strict application of the ordinance would not serve a purpose because the area was developed in that matter anyway. Vice-Chair Margeson asked if the Weatherstone Condos were in the SRB zone. Ms. Casella agreed and said she'd have to see if it was a planned unit development. Vice-Chair Margeson said she would not support the application because of the third dwelling unit on the property. She said she thought it was problematic and didn't find any hardship. She said having more than one dwelling unit on the property was taken seriously by the Board.

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variances for the application as presented and advertised, seconded by Mr. Mattson.*

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the public interest would be served by expanding the moderately priced housing stock in Portsmouth. He said substantial justice would be done because he didn't see anything that would outweigh the benefit to the homeowner. He said granting the variances would not diminish the values of surrounding properties. He said it was hard to make a case that they would have any impact on the surrounding properties, which were a high-density development, and condo units in the same zone or the Juniper Commons plot next door and clearly visible from the applicant's lot. He said there would be no change in the external structure, so granting the variance would not have a visible impact on the surrounding properties. As for the hardship, due to where the lot was located in close proximity to both the condos and the other high-density development right next to it, he said he did not see the project altering the basic character of the surrounding area.

Mr. Mattson concurred. He said the proposed use would not conflict with the implicit purpose of the ordinance or threaten the public's health, safety or welfare or otherwise injure public rights. He said the benefit to the applicant would not be outweighed by any potential harm to the public. He said the air, light, and space would be preserved and maintained. He also noted that a precedent for hardship was whether other similarly situated properties in the area, regardless of the district, are in proximity to a property and have similar nonconforming uses that could be a hardship on the property, and he said that would apply here.

*The motion **passed** by a vote of 5-2, with Mr. Mannle and Vice-Chair Margeson voting in opposition.*

- G.** The request of **John Heath** and **Michael Meserve (Owner)**, for property located at **955 Woodbury Avenue** whereas relief is needed to construct a shed which requires a Variance from Section 10.571 to allow an accessory structure to be located closer to a street than the principal building. Said property is located on Assessor Map 219 Lot 33 and lies within the Single Residence B (SRB) District. (LU-23-56)

SPEAKING TO THE PETITION

The owner/applicant John Heath was present and said they needed the shed for large outdoor furniture. He noted that the distance from Fairview Drive to the shed would be 45 feet and that arborvitae would hide it from the road. He said the only neighbor who would see the shed was in approval. He said the shed would be 9'8" high in white vinyl to match the house and would sit on concrete blocks. He reviewed the criteria and said they would be met.

Mr. Rossi said putting the shed closer to Woodbury Avenue would be more compliant, noting that the shed could be placed almost parallel to the house. Mr. Heath said there was already a second shed there that contained a lawnmower, kayaks and so on and that the new shed would be next to it. Mr. Rossi said the new shed could go on the front side of the old shed and still be compliant. Mr. Heath said he was told by the Planning Department that there was no compliant location because the shed had to go behind the house and the frontage on both sides of the street was an issue. Ms. Casella said there could not be an accessory structure closer to the road than to the main building. She said the shed could be moved closer to Woodbury Avenue but that was the reason the applicant was asking for a variance. Mr. Heath noted that there was a line of huge trees on both sides of the property that he would not want to remove. Vice-Chair Margeson asked what the other structure in the back shown on the plan was. Mr. Heath said was a shed that didn't exist anymore. He said the chain link fence belonged to the neighbor who had the frontage on Fairview Drive.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Mannle moved to **grant** the variance for the application as presented and advertised, seconded by Mr. Mattson.*

Mr. Mannle said putting a shed in his backyard that had plenty of room and coverage was a small ask. He said the hardship was that Fairview Drive was considered to be the applicant's front yard, so unlike most people, the applicant's front yard was the back and front of the house. He said granting the variance would not be contrary to Sections 10.233.21 and .22 of the ordinance. He said it would do substantial justice because the shed would still be 45 feet from the road. Referring to Section 10.233.24, he said granting the variance would not diminish the values of surrounding properties. Referring to Section 10.233.25, he said literal enforcement of the ordinance would result in an unnecessary hardship because the property had special conditions of having two streets. He said the proposed use was reasonable to put the shed back in the front of the house for a lot that size and that the variance should be granted. Mr. Mattson concurred. He said the intent of the ordinance was to not have people putting sheds in their front yards, and the applicant was putting it in the

backyard but the ordinance didn't anticipate that most properties don't have a street in their backyard also.

The motion passed unanimously, 7-0.

- H.** The request of **Shantar Zuidema** and **Abby Zuidema (Owners)**, for property located at **126 Burkitt Street** whereas relief is needed to demolish the existing 10 foot by 16 foot deck and replace with a 6 foot by 4 foot enclosed porch which requires the following: 1) Variance from Section 10.521 to allow a 6 foot right side yard where 10 feet is required, and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 159 Lot 28 and lies within the General Residence A (GRA) District. (LU-23-61)

SPEAKING TO THE PETITION

Owner/applicant Abby Zuidema was present and said the deck had to be replaced because it was failing. She said they wanted to increase the air flow in the area and bring in trees and landscaping. She said the porch would not expand the footprint and that proper footings would be put in to support the roof and the door into the backyard. She said the neighbors approved the project. She reviewed the criteria and said they would be met.

The Board had no questions, and Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variances for the application as presented and advertised, seconded by Mr. Mannle.*

Mr. Rossi said it was a logical variance request that would improve the structure and its soundness and would not increase the degree of noncompliance with the side yard setback and not change the use of the property. He said it would be consistent with the spirit of the ordinance for that zoning district. He said it would do substantial justice because there would be no loss to the public based on the improvement of the property. He said the unit would be visible from the street but that it would be a visual improvement and would actually be a gain to the public. He said granting the variance would not diminish the values of surrounding properties because having a well maintained structure in the neighborhood would enhance the values of surrounding properties. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the hardship was that the property could not continue to be used the way it presently was because the side exit and the decking were structurally unsound and presented a safety hazard, so literal

enforcement of the provisions of the ordinance would fly against Section 10.233.25. Mr. Mannle concurred. He said it was a nonconforming lot and people rarely took things down without putting something big up, so if anything, it was making the property less nonconforming.

*The motion **passed** unanimously, 7-0.*

II. OTHER BUSINESS

There was no other business.

III. ADJOURNMENT

The meeting adjourned at 9:25 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

II. OLD BUSINESS

- A. 420 Pleasant Street – Request for 1-year extension (LU-21-126)

Planning Department Comments

The applicant has requested a 1-year extension to the variance approval granted on Tuesday, September 28, 2021. Enclosed is the meeting packet please find the request as submitted and the September 28, 2021 letter of decision.

For your convenience, Section 10.236 of the Zoning Ordinance is provided below.

10.236 Expiration of Approvals

Variances and special exceptions shall expire unless a building permit is obtained within a period of two year from the date granted. The Board may, for good cause shown, extend such period by as much as one years if such extension is requested and acted upon prior to the expiration date. No other extensions may be requested.

June 6, 2023

Planning Department

1 Junkins Avenue

Portsmouth, NH 03801

ATTN: Stefanie Casella, Planner

RE: Request for extension of current variance

Stefanie,

I am asking for an extension of the current variance on my property at 420 Pleasant Street, Portsmouth, NH. The variance expires on September 28, 2023.

The need for a variance extension has occurred a few reasons, mainly due to the pandemic.

Please let me know if I can supply any additional information.

Thank you,

Charles S. Neal, Owner

Neal Pleasant Street Properties, LLC

420 Pleasant Street

Apt. 5

Portsmouth, NH 03801

603-380-8459



CITY OF PORTSMOUTH

Planning Department
1 Junkins Avenue
Portsmouth, New
Hampshire 03801
(603) 610-7216

ZONING BOARD OF ADJUSTMENT

October 4, 2021

Neal Pleasant Street Properties, LLC
420 pleasant Street, Apt. #5
Portsmouth, NH 03801

RE: Board of Adjustment requests for property located at 420 Pleasant Street (LU-21-126)

Dear Owner:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday September 28, 2021**, considered your application for remove a rear entry and addition and replace with new three story addition with code compliant stairs and rear porch which requires the following: 1) A Variance from Section 10.521 to allow a 1' left side yard where 10' is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 102, Lot 56 and lies within the General Residence B (GRB) and Historic Districts. As a result of said consideration, the Board voted to grant the request as presented and advertised.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

David Rheame, Chairman of the Zoning Board of Adjustment

cc: Paul Garand, Interim Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Richard Desjardins, McHenry Architecture

II. OLD BUSINESS

C. Request for Rehearing - **170 Aldrich Road** (LU-23-47)

Planning Department Comments

On Tuesday, May 23, 2023 the Board of Adjustment considered the request of Peter Gamble (Owner), for demolishing the existing garage and constructing a new garage which requires the following: 1) Variance from Section 10.521 to allow a) 7 foot right side yard where 10 feet is required; and b) 23% building coverage where 20% is allowed. A motion was made to deny the application because the proposal failed to observe the spirit of the ordinance and would be contrary to the public interest because the home is in an area of single-family dwellings and the design isn't consistent with continuing to use the property as a single-family dwelling one. The motion passed and the request was denied.

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, a hearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

To: Portsmouth Board of Adjustment
 From: Peter Gamble
 Date: June 12, 2023
 Ref: Request for Rehearing Application LU-23-47

Dear Madam Chair and members of the Zoning Board of Adjustment,

I am respectfully requesting a rehearing of my application LU-23-47 for property located at 170 Aldrich Road, Tax Map 153-21. There are four areas I would like to address from the May 23rd public hearing and findings of fact for denial. They are:

1. The lawful nonconforming use as a two-family dwelling relating to an accessory structure.
2. Property Boundary and lot size.
3. Zoom call technical issues and inability to respond to the sole abutter opposed.
4. Several neighbors' emails supporting my proposal.

The lawful nonconforming use as a two-family dwelling relating to an accessory structure.

My property at 170 Aldrich Road has been in lawful nonconforming use for over 60 years as a two-family home. It is and has been my primary residence for 17 years. RSA 674:19 specifically protects lawful nonconforming uses and prevents new zoning ordinances from impacting all lawfully existing uses. Nonconformity protections apply both to principal and accessory uses of property. This provision does two things. It protects my request to update my accessory building consistent with the Single Residence B (SRB) district and prevents any additional living space under Section 10.440 which prohibits 3 family dwelling units in SRB district and no Accessory Dwelling Units as per Section 10.814.12 of the Portsmouth Zoning Ordinance.

The finding of facts for denial were:

“The home was in an area of single-family dwellings and the design wasn’t consistent with continuing to use the property as a single-family dwelling one.”

“The petition failed the test for observing the spirit of the ordinance because the home was in an area of single-family dwellings and the design wasn’t consistent with continuing to use the property as a single-family dwelling one.”

My request was not for additional living space, which is **prohibited** by current zoning and the lawful nonconforming use. The request is consistent with properties to update existing accessory structures as permitted in the SRB district. Two specific properties within 300 feet of mine got relief by the ZBA to construct a second floor and update an existing accessory structure to include bathroom facilities. One is 19 Sunset Road, Tax Map 153-19(ZBA 4/18/17 and 1/17/2023) and the other is 161 Aldrich Road, Tax Map 153-32(ZBA 2016). Other properties with similar increased size and updates are 55 Aldrich Road (Tax Map 153-44 Built 2022), 196 Aldrich Road (Tax Map 153-25 ZBA 4/18/2023), 124 Kensington Road (Tax Map 152-20 Under construction), and 2 Monroe Street (Tax Map 152-8 ZBA 3/16/2021). I will point out the property expansion at 19 Sunset Road is directly abutting property at 25 Boss Ave, (the sole abutter opposed to my request), yet that abutter voiced no concerns for that relief.

As a condition to this variance, I suggest the Board state that living space in this accessory building is prohibited.

Property Boundary and Lot Size.

The boundary lines and lot size are clearly delineated by several sources. The first and most recent is the signed/stamped survey from Ambit Engineering. This survey was requested to accurately show the side setback for my request. This setback varied from data on the tax map, geo mapping, and previous building request. I felt the best and most accurate source was through a licensed survey company. For lot size, the survey was also consistent with my deed, the tax map, geo mapping, and rear boundary line. The lot size according to my deed, the Westfield Park Plot Plan, the Tax Map, and Geo Mapping, are all consistent at 92.5 X 120 feet. The signed/stamped survey, copy of deed, Westfield Park Plot Plan, and tax map delineation are attached. There has been no challenge legal or other wise to the signed and stamped survey showing my property boundary lines.

Zoom Call.

With the postponement of this public hearing to May 23rd I was unable to attend in person and requested to connect via Zoom. While a Zoom call can be a useful tool for conducting a meeting, it also has its limitations. For whatever reason, the audio of the Board was not being heard by me at the completion of my presentation. While a connection was reestablished, I was unable to address the concerns of the board as well the sole abutter objecting to my request during the public hearing. I did raise my hand via zoom several times, but it was not acknowledged.

Neighbors Support.

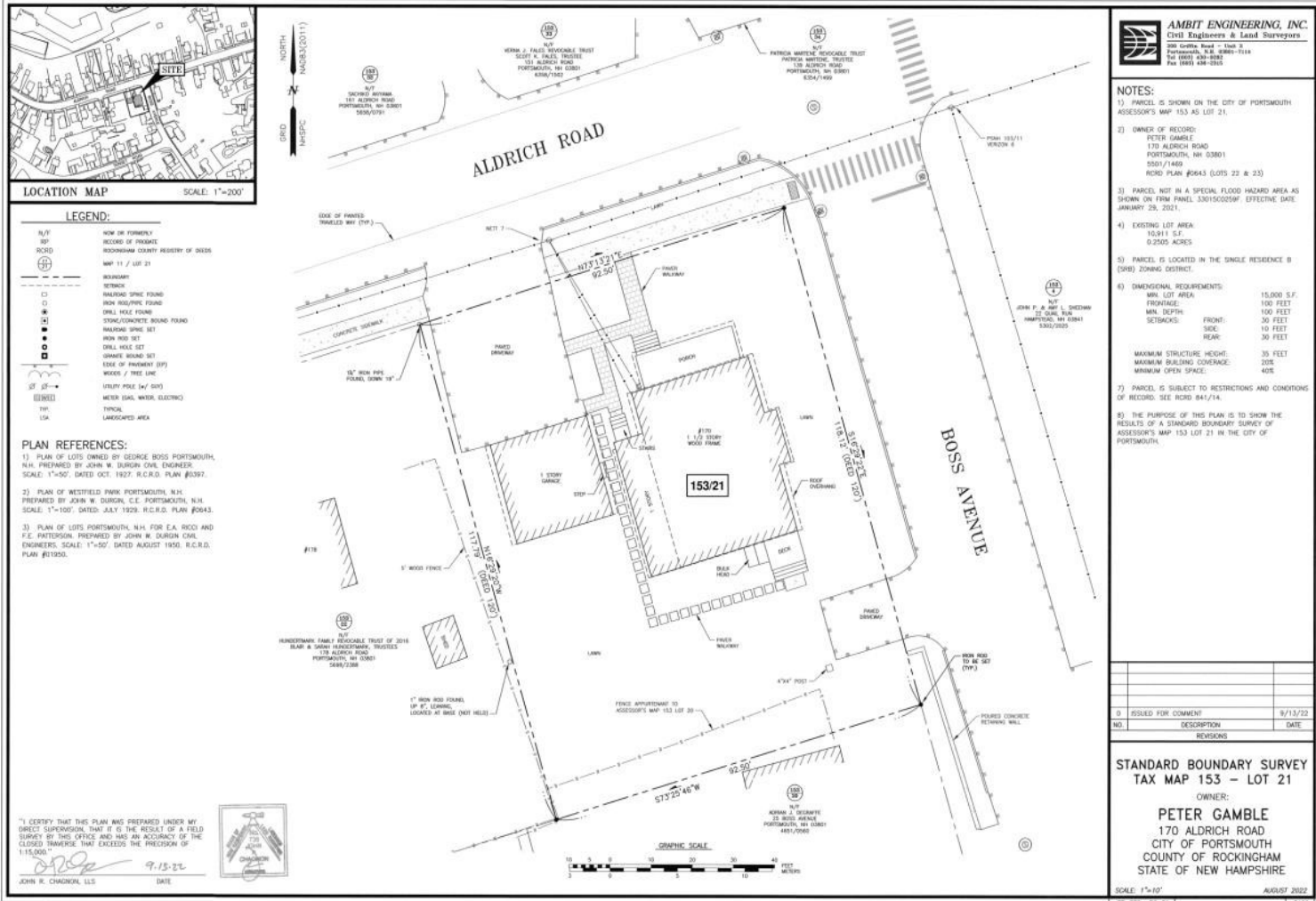
Several of my neighbors expressed support for my request via email to the Board. Their support reflects the sentiment that my request is in line with the neighborhood, zoning for accessory use, consistent with single-family dwellings and consistent with improvements both for primary and accessory structures currently on going in my immediate vicinity.

For the above reasons I am requesting a rehearing for my application LU-23-47. I will update my application file on the website to reflect the additional information and attachments mentioned in this request for rehearing. Thank you for taking the time to consider my request.

Respectfully submitted,

Peter Gamble

Signed and Stamped Licensed Survey 9/13/2022



LOCATION MAP SCALE: 1"=200'

- LEGEND:**
- NUT: NEW OR FORMERLY
 - RD: RECORD OF RECORD
 - RD: ROCKINGHAM COUNTY REDEVELOPMENT OF RECORD
 - MAP 11 / LOT 21
 - BOUNDARY
 - REMARK
 - HALLOWAY SPIKE FOUND
 - IRON ROD/SPRING FOUND
 - DRILL HOLE FOUND
 - STONE/CONCRETE BOUND FOUND
 - HALLOWAY SPIKE SET
 - IRON ROD SET
 - DRILL HOLE SET
 - SHAWNEE BOUND SET
 - EDGE OF FURNACE (EP)
 - WOOD / TREE LINE
 - UTILITY POLE (w/ COIL)
 - WATER (GAS, WATER, ELECTRIC)
 - TYPICAL
 - USA
 - LANDSCAPED AREA

- PLAN REFERENCES:**
- 1) PLAN OF LOTS OWNED BY GEORGE ROSS PORTSMOUTH, N.H. PREPARED BY JOHN W. BURGON CIVIL ENGINEER. SCALE: 1"=50'. DATED OCT. 1927. R.C.R.D. PLAN #0397.
 - 2) PLAN OF WESTFIELD PARK PORTSMOUTH, N.H. PREPARED BY JOHN W. BURGON, C.E. PORTSMOUTH, N.H. SCALE: 1"=100'. DATED JULY 1929. R.C.R.D. PLAN #0843.
 - 3) PLAN OF LOTS PORTSMOUTH, N.H. FOR E.A. ROO AND F.E. PATTERSON. PREPARED BY JOHN W. BURGON CIVIL ENGINEER. SCALE: 1"=50'. DATED AUGUST 1950. R.C.R.D. PLAN #1350.

"I, CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRIANGLE THAT EXCEEDS THE PRECISION OF 1:15,000."

[Signature] 9-13-22
 JOHN R. CHAZDON, L.L.S. DATE



- NOTES:**
- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 153 AS LOT 21.
 - 2) OWNER OF RECORD: PETER GAMBLE, 170 ALDRICH ROAD, PORTSMOUTH, NH 03801, 5501/1460, R/C/D PLAN #0843 (LOTS 22 & 23)
 - 3) PARCEL NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FEMA PANEL 53015C0209P, EFFECTIVE DATE JANUARY 29, 2021.
 - 4) EXISTING LOT AREA: 10,911 S.F. (0.2505 ACRES)
 - 5) PARCEL IS LOCATED IN THE SINGLE RESIDENCE B (SRB) ZONING DISTRICT.
 - 6) DIMENSIONAL REQUIREMENTS:

MIN. LOT AREA	15,000 S.F.
FRONTAGE	100 FEET
MIN. DEPTH	100 FEET
SETBACKS:	FRONT: 30 FEET
	SIDE: 10 FEET
	REAR: 30 FEET
MAXIMUM STRUCTURE HEIGHT:	35 FEET
MAXIMUM BUILDING COVERAGE:	20%
MINIMUM OPEN SPACE:	40%
 - 7) PARCEL IS SUBJECT TO RESTRICTIONS AND CONDITIONS OF RECORD. SEE R/D #41/14.
 - 8) THE PURPOSE OF THIS PLAN IS TO SHOW THE RESULTS OF A STANDARD BOUNDARY SURVEY OF ASSESSOR'S MAP 153 LOT 21 IN THE CITY OF PORTSMOUTH.

ISSUED FOR COMMENT	9/13/22	
NO.	DESCRIPTION	DATE
REVISIONS		

STANDARD BOUNDARY SURVEY
TAX MAP 153 - LOT 21

OWNER:
PETER GAMBLE
 170 ALDRICH ROAD
 CITY OF PORTSMOUTH
 COUNTY OF ROCKINGHAM
 STATE OF NEW HAMPSHIRE

Deed 170 Aldrich Road. 92.5 X 120 feet

After Recording Return To:
PETER GAMBLE
170 ALDRICH RD
PORTSMOUTH, NH 03801-4906
APN# 0153-0021-0000

Return To:
TIMIOS, INC.
5716 Corsa Avenue
Suite 102
Westlake Village, CA 91362

Warranty Deed

KNOW ALL MEN BY THESE PRESENTS THAT I, SARA HOLLAND MACCORKLE, TRUSTEE OF THE NORTHSTAR REVOCABLE TRUST U/T/D JUNE 18, 2002, of 42 SUNNYSIDE DR, GREENLAND, NH 03840, County of ROCKINGHAM, State of New Hampshire, for consideration paid, grant to PETER GAMBLE, single man of 170 ALDRICH RD, PORTSMOUTH, NH 03801-4906, County of ROCKINGHAM, State of New Hampshire

With warranty covenants

All that certain property situated in the county of ROCKINGHAM, and State of NEW HAMPSHIRE, being described as follows: TWO CERTAIN LOTS OR PARCELS OF LAND, WITH THE BUILDINGS THEREON, SITUATE IN SAID PORTSMOUTH, ROCKINGHAM COUNTY, NEW HAMPSHIRE AND BOUNDED AND DESCRIBED AS FOLLOWS: BOUNDED NORTHERLY BY ALDRICH ROAD, NINETY-TWO AND FIVE TENTHS (92.5) FEET, MORE OR LESS, EASTERLY BY BOSS AVENUE, FORMERLY KNOWN AS AN EXTENSION OF LAWRENCE STREET, ONE HUNDRED TWENTY (120) FEET, MORE, OR LESS; SOUTHERLY BY LAND OF EARNEST WEEKS (FORMERLY OWNED BY KATHERINE G. NEAL) NINETY TWO AND FIVE TENTHS (92.5) FEET, MORE OR LESS; AND WESTERLY BY LAND OF ALEX MUNTON (FORMERLY OF ONE AUSTIN) ONE HUNDRED AND TWENTY (120) FEET, MORE OR LESS, SAID PREMISES ARE CONVEYED UNDER AND SUBJECT TO CERTAIN CONDITIONS AND RESERVATIONS INsofar AS THEY, SAME ARE NOW APPLICABLE, VIZ: NO DWELLING HOUSE TO BE ERECTED ON SAID LAND TO COST LESS THAN \$3000; NO DWELLING HOUSE OR OTHER BUILDINGS SHALL BE ERECTED NEARER THAN THIRTY (30) FEET TO SAID ALDRICH ROAD; ANY GARAGE OR OTHER OUT BUILDINGS SHALL BE ERECTED IN FRONT OF THE REAR LINE OF ANY DWELLING HOUSE ERECTED ON THE LOT. BEING THE SAME PROPERTY CONVEYED TO SARA HOLLAND MACCORKLE, TRUSTEE OF THE NORTHSTAR REVOCABLE TRUST U/T/D JUNE 18, 2002 BY DEED FROM SARA COOK HOLLAND, TRUSTEE OF THE SARA COOK HOLLAND REVOCABLE TRUST U/T/D JUNE 18, 2002 RECORDED 11/28/2011 IN DEED BOOK 5265 PAGE 255, IN THE REGISTER'S OFFICE OF ROCKINGHAM COUNTY, NEW HAMPSHIRE.

REGISTERED

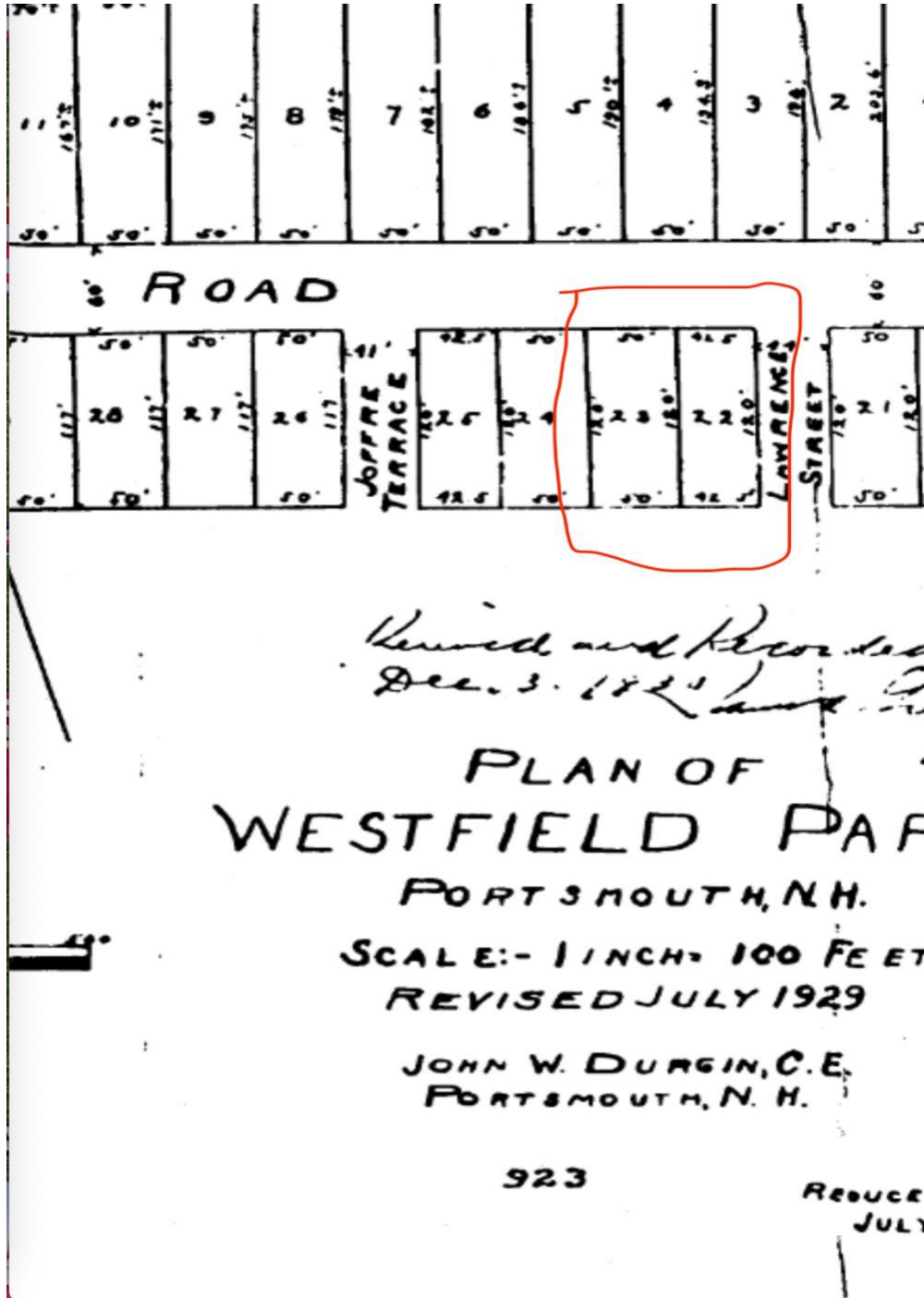
Meaning and intending to describe and convey the same premises conveyed to

I/We, SARA COOK HOLLAND, TRUSTEE OF THE SARA COOK, release to said grantee(s) all rights of homestead and other interests therein.

Current Tax Map
Green is 170 Aldrich
Yellow 19 Sunset, 161 Aldrich, and 196 Aldrich



Westfield Park Plan Lots 23 and 22. 92.5 X 120 feet



19 Sunset Road



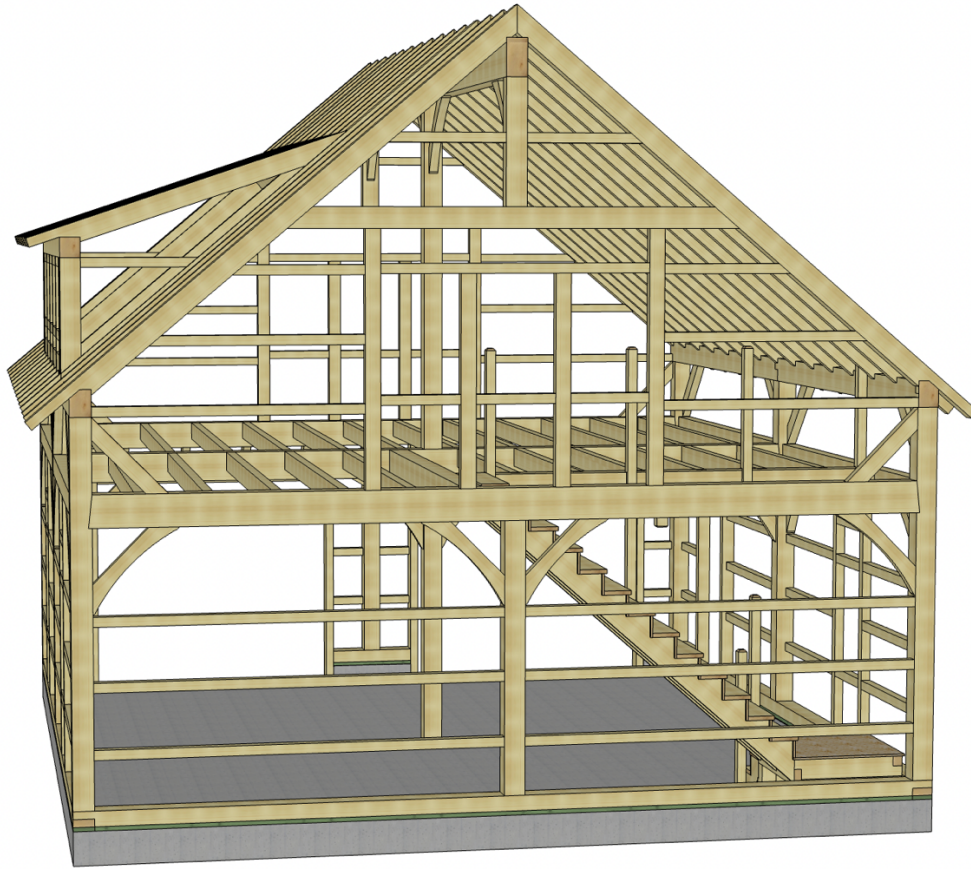
161 Aldrich Road



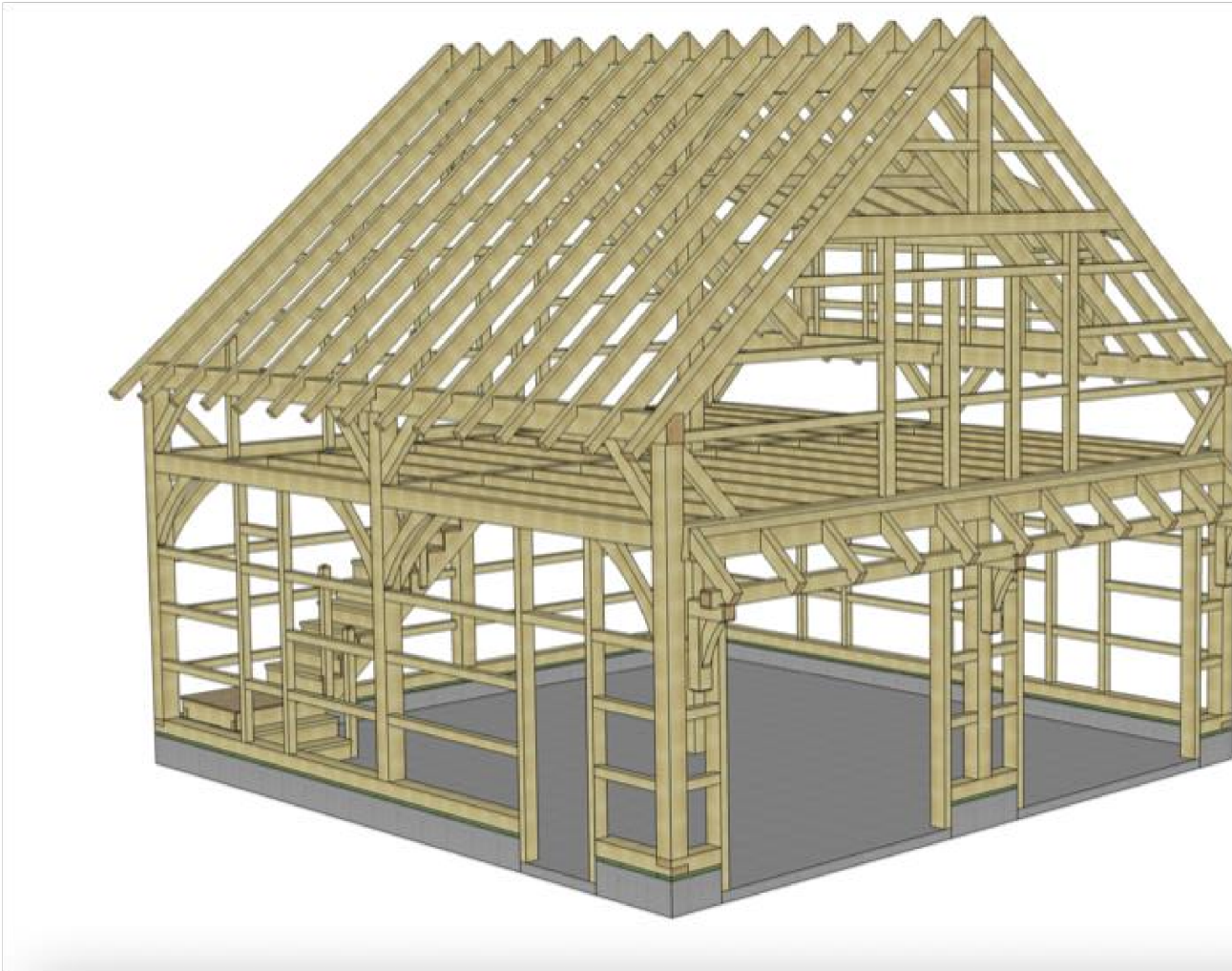
55 Aldrich Road



Frame for 1/1/2 story request



Frame for 1/1/2 story request





CITY OF PORTSMOUTH

Planning Department
1 Junkins Avenue
Portsmouth, New
Hampshire 03801
(603) 610-7216

ZONING BOARD OF ADJUSTMENT

May 30, 2023

Peter Gamble
170 Aldrich Road
Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 170 Aldrich Road (LU-23-47)

Dear Property Owner:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, May 23, 2023**, considered your application for demolishing the existing garage and constructing a new garage which requires the following: 1) Variance from Section 10.521 to allow a) 7 foot right side yard where 10 feet is required; and b) 23% building coverage where 20% is allowed. Said property is shown on Assessor Map 153 Lot 21 and lies within the Single Residence B (SRB) District. As a result of said consideration, the Board voted to **deny** the request because the proposal failed to observe the spirit of the ordinance and would be contrary to the public interest because the home is in an area of single-family dwellings and the design isn't consistent with continuing to use the property as a single-family dwelling one.

The Board's decision may be appealed up to thirty (30) days after the vote. Please contact the Planning Department for more details about the appeals process.

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc:

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: 5-23-2023

Property Address: 170 Aldrich Rd

Application #: LU-23-47

Decision: **Deny**

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: 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.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	NO	<ul style="list-style-type: none"> The petition failed the test for observing the spirit of the ordinance because the home was in an area of single-family dwellings and the design wasn't consistent with continuing to use the property as a single-family dwelling one.
10.233.22 Granting the variance would observe the spirit of the Ordinance.	NO	<ul style="list-style-type: none"> The petition failed the test for observing the spirit of the ordinance because the home was in an area of single-family dwellings and the design wasn't consistent with continuing to use the property as a single-family dwelling one.
10.233.23 Granting the variance would do substantial justice.		

<p>10.233.24 Granting the variance would not diminish the values of surrounding properties.</p>		
<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(a)The property has special Conditions that distinguish it from other properties in the area. AND</p> <p>(b)Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. OR</p> <p>Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.</p>		

III. NEW BUSINESS

- C. The request of **Peter Gamble (Owner)**, for property located at **170 Aldrich Road** whereas relief is needed to demolish the existing garage and construct a new garage which requires the following: 1) Variance from Section 10.521 to allow a) 7 foot right side yard where 10 feet is required; and b) 23% building coverage where 20% is allowed. Said property is located on Assessor Map 153 Lot 21 and lies within the Single Residence B (SRB) District. (LU-23-47)

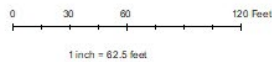
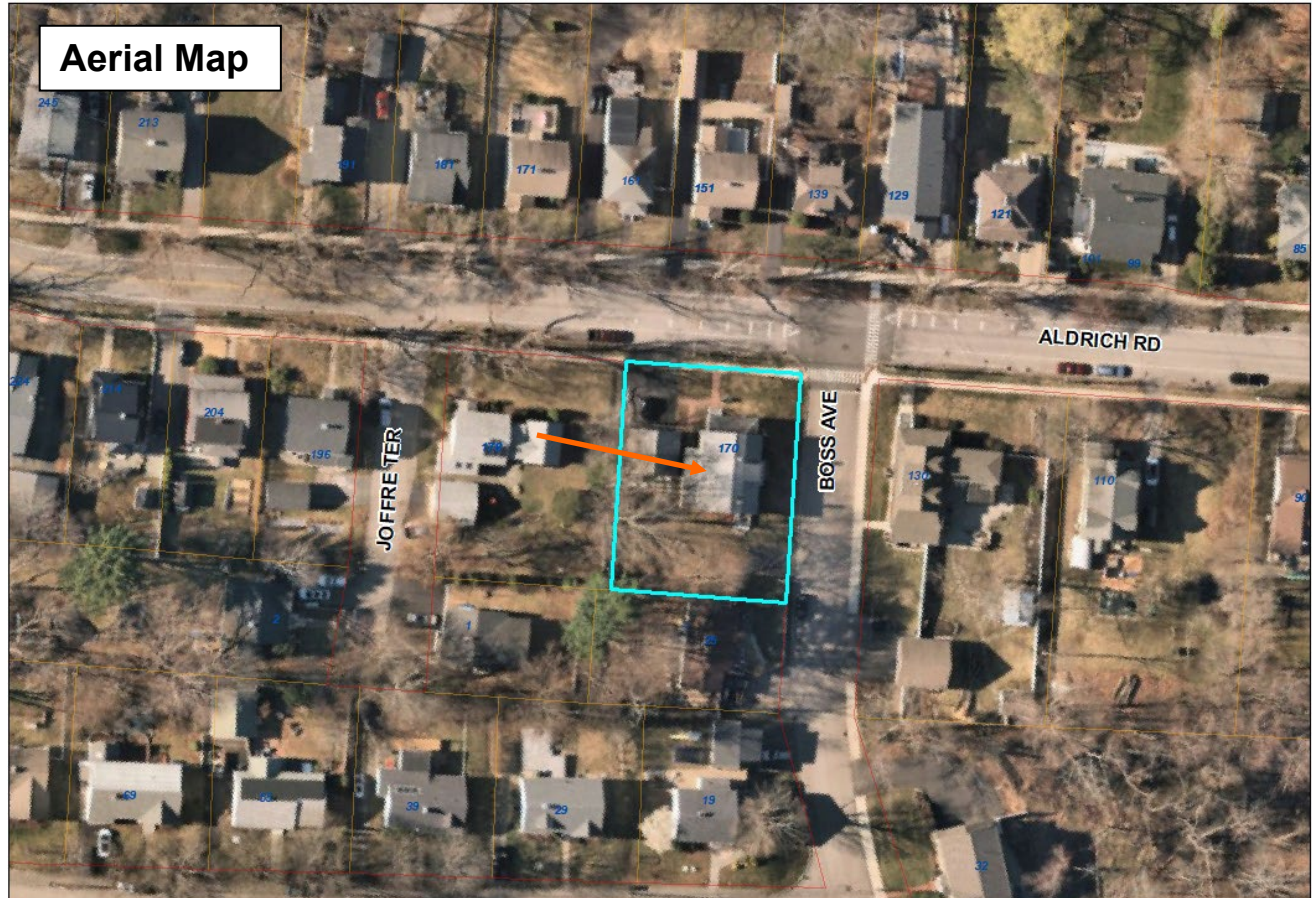
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two-family	Demo garage and construct new	Primarily residential
<u>Lot area (sq. ft.):</u>	10,912.5	10,912.5	1,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,912.5	10,912.5	1,500 min.
<u>Lot depth (ft.):</u>	120	120	100 min.
<u>Street Frontage (ft.)</u>	215	215	100 min.
<u>Primary Front Yard (ft.):</u>	22	22	30) min.
<u>Left Yard (ft.):</u>	15	15	10 min.
<u>Right Yard (ft.):</u>	7	7	10 min.
<u>Rear Yard (ft.):</u>	46	46	30 min.
<u>Height (ft.):</u>	<24	24	35 max.
<u>Building Coverage (%):</u>	20.6	23	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1930	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



170 Aldrich Road



Previous Board of Adjustment Actions

September 5, 1978 – The Board of Adjustment granted the application to construct a garage on a lot whose frontage is 50' where 100' is required and whose area is 6,000 s.f. where 20,000 s.f. is required.

Planning Department Comments

The applicant is requesting relief to demolish the existing garage and construct a new garage with a slightly larger footprint. The existing garage received variances for construction in 1978 when there were two separate lots. The properties have since been merged to create one lot which explains the discrepancy in the sought dimensional relief.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*

3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*
AND
 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*
OR
Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

Dear Board of Adjustment members,

My name is Peter Gamble and have resided at 170 Aldrich Road Portsmouth, NH for 15 years. I come before you to seek relief to expand my existing 24 X 24 garage. My proposal is to construct a 26 X 30 garage with a second floor for the purpose of creating more useable space for storage, garage parking, workshop space, and workout/recreational space. The current garage was permitted on August 4, 1978, showing a 12' side setback requiring no variance yet with the advent of geo mapping the tax map, as of last year, was showing a 4' side setback. Through my research and the hiring of Ambit Engineering to conduct a property survey the side setback is now showing 9'. I have shared this information with James Mccarty (GEO Mapping) to help adjust tax map discrepancies and provide more accurate GEO Mapping. I also discussed this project with Paul Garand, Asst Building Inspector. He noted that to ensure proper foundation and footings for the new structure, the best course of action may be to demo and reconstruct around the outside of the existing footprint which is part of this proposal. I am including a shower/bathroom on the garage second floor as part of the workout/recreational room with no intentions of creating a living space. My property is already a two-family dwelling with the second dwelling unit reserved for my children and their families.

I am seeking a variance from Section 10.521 to allow a side setback of 7 feet where 10 is required and 22.4% building coverage where 20% is the maximum allowed.

With respect to the 5 guiding criteria:

1. The variance will not be contrary to the public interest; The project is inline with the public interest as the structure was permitted in accordance with the ordinance in 1978 and this new proposal improves upon the current structure as well as shows accurate side setbacks.
2. The spirit of the Ordinance will be observed; The spirit of the Ordinance will be observed as this project is in line with the current use of the property and consistent with surrounding properties.
3. Substantial justice will be done; Substantial justice will be done as this proposal will improve upon the existing permitted garage and allow for needed space parking, workshop, storage, and workout/recreational area.
4. The values of surrounding properties will not be diminished; This project will increase the values of surrounding properties.
5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship; Because this was a permitted garage already, in line with neighborhood improvements and in the spirit of the ordinance, not granting relief would results in a hardship.

I thank you all for taking the time to review my application and I look forward to meeting you all in person.

Sincerely,
Peter Gamble



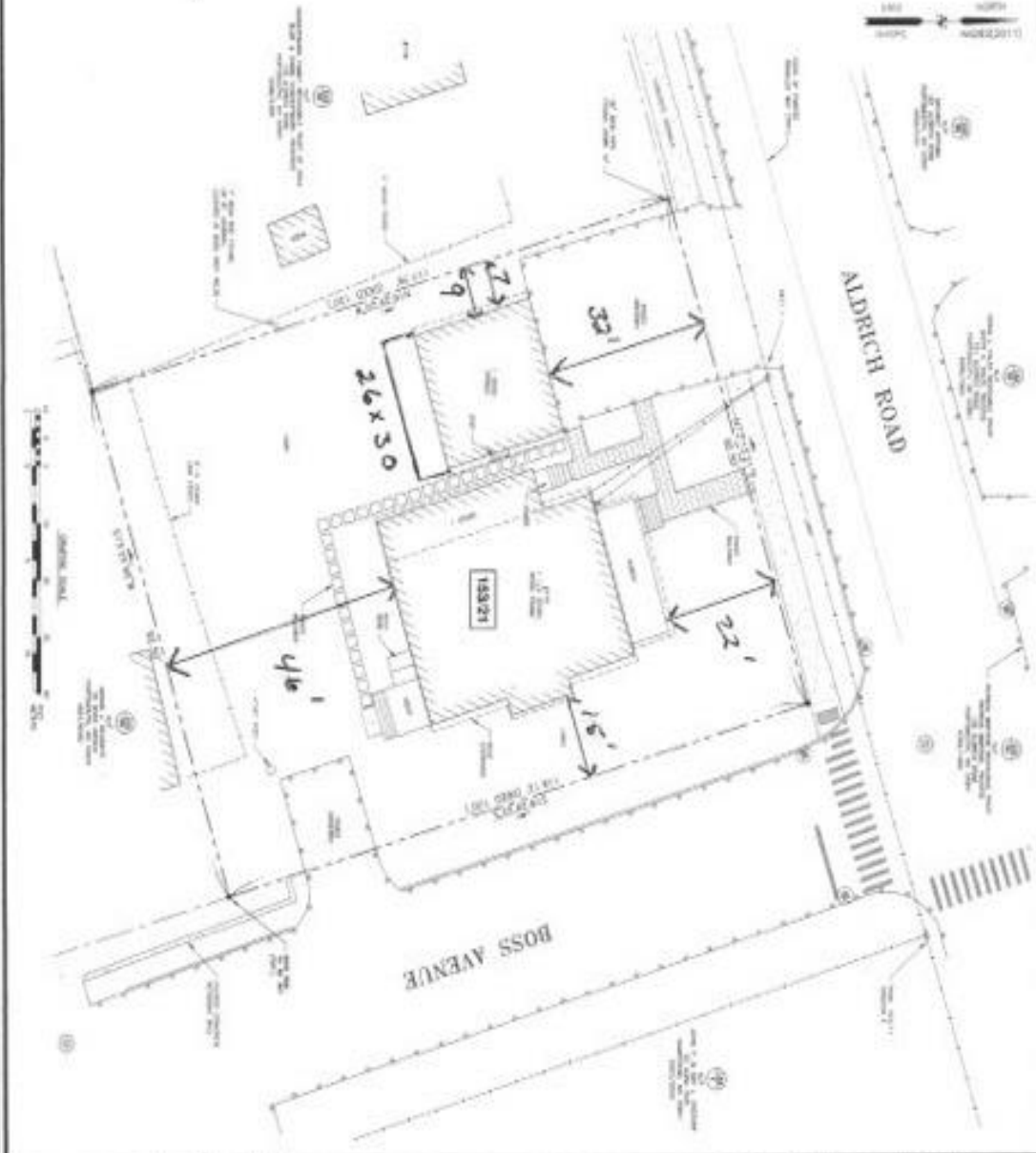
LEGEND:

- 1. LOT CORNER
- 2. EXISTING CURB
- 3. EXISTING SIDEWALK
- 4. EXISTING DRIVE
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- 49. EXISTING DRIVE
- 50. EXISTING DRIVE

PLAN REFERENCES:

1. PLAN OF LOT 21, TAX MAP 133 - LOT 21, STANDARD BOUNDARY SURVEY, DATED 11/17/11, BY PETER GAMBLE, SURVEYOR.
2. PLAN OF LOT 21, TAX MAP 133 - LOT 21, STANDARD BOUNDARY SURVEY, DATED 11/17/11, BY PETER GAMBLE, SURVEYOR.
3. PLAN OF LOT 21, TAX MAP 133 - LOT 21, STANDARD BOUNDARY SURVEY, DATED 11/17/11, BY PETER GAMBLE, SURVEYOR.
4. PLAN OF LOT 21, TAX MAP 133 - LOT 21, STANDARD BOUNDARY SURVEY, DATED 11/17/11, BY PETER GAMBLE, SURVEYOR.
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6. PLAN OF LOT 21, TAX MAP 133 - LOT 21, STANDARD BOUNDARY SURVEY, DATED 11/17/11, BY PETER GAMBLE, SURVEYOR.
7. PLAN OF LOT 21, TAX MAP 133 - LOT 21, STANDARD BOUNDARY SURVEY, DATED 11/17/11, BY PETER GAMBLE, SURVEYOR.
8. PLAN OF LOT 21, TAX MAP 133 - LOT 21, STANDARD BOUNDARY SURVEY, DATED 11/17/11, BY PETER GAMBLE, SURVEYOR.
9. PLAN OF LOT 21, TAX MAP 133 - LOT 21, STANDARD BOUNDARY SURVEY, DATED 11/17/11, BY PETER GAMBLE, SURVEYOR.
10. PLAN OF LOT 21, TAX MAP 133 - LOT 21, STANDARD BOUNDARY SURVEY, DATED 11/17/11, BY PETER GAMBLE, SURVEYOR.

7' WHERE 10' SIDE IS NEEDED
LOT COVERAGE 82.4% WHERE 80% IS NEEDED
PRELIMINARY



ABILITY ENGINEERING, INC.
 1770 ALDRICH ROAD
 CITY OF PORTSMOUTH
 COUNTY OF ROCKINGHAM
 STATE OF NEW HAMPSHIRE
 03801-1000
 TEL: 603.883.1111
 FAX: 603.883.1112
 www.abilityeng.com

NOTES:

1. ALL DIMENSIONS ARE IN FEET AND INCHES.
2. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE DRIVE OR SIDEWALK UNLESS OTHERWISE NOTED.
3. ALL DIMENSIONS ARE TO THE CENTERLINE OF THE DRIVE OR SIDEWALK UNLESS OTHERWISE NOTED.
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PRELIMINARY

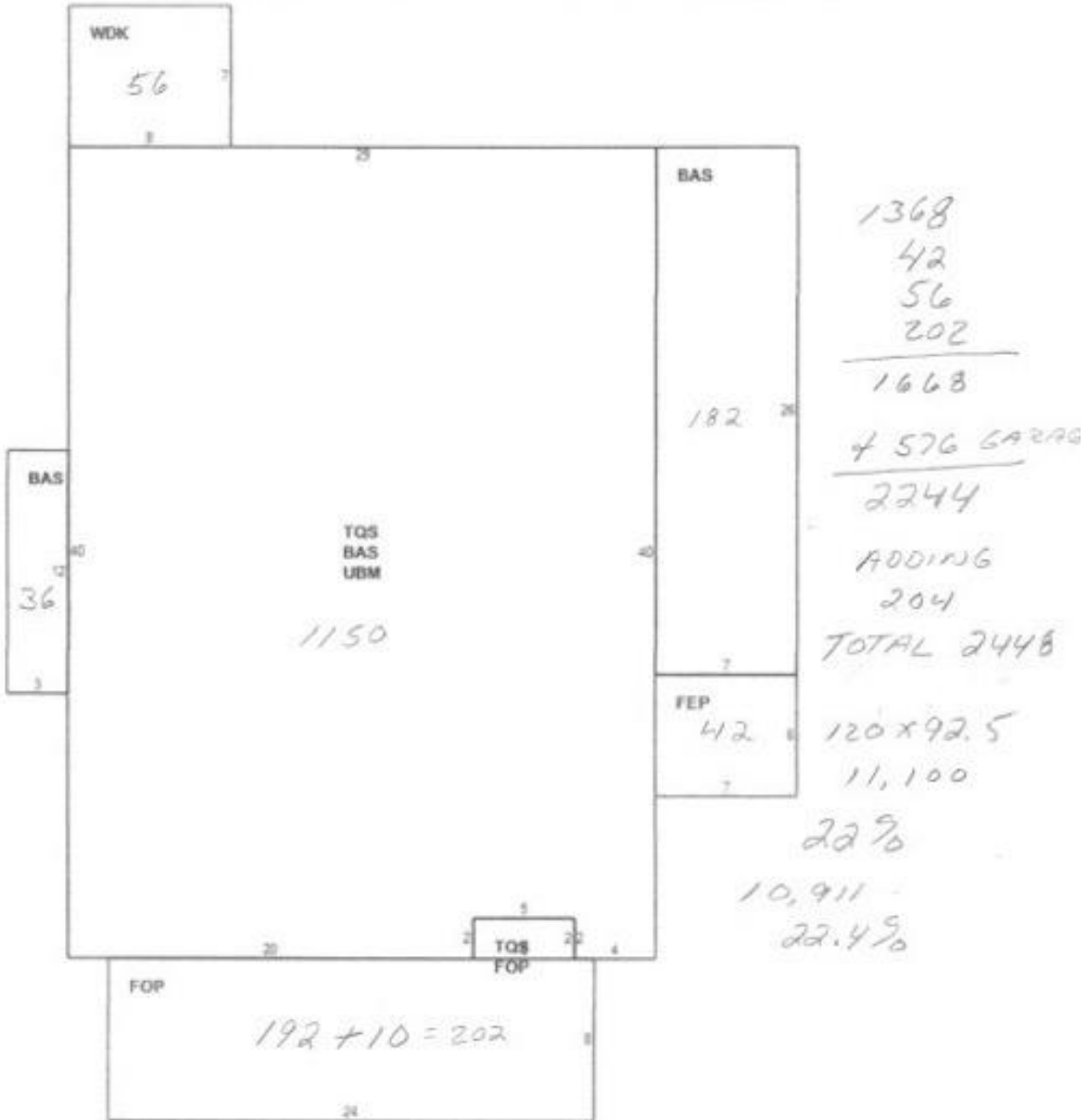
STANDARD BOUNDARY SURVEY
TAX MAP 133 - LOT 21

PETER GAMBLE
 1770 ALDRICH ROAD
 CITY OF PORTSMOUTH
 COUNTY OF ROCKINGHAM
 STATE OF NEW HAMPSHIRE
 03801-1000
 TEL: 603.883.1111
 FAX: 603.883.1112
 www.abilityeng.com





Building Layout



CITY OF PORTSMOUTH

APPLICATION FOR BUILDING PERMIT
OR CHANGE IN LAND USE

DATE Aug 4 1978
EST COST 1 5,700
FEE 18,000
PAID check - CA

OWNER MURRAY D LEVY PHONE 436-4517 8/4/78

ADDRESS 170 ALDRICH RD

Location of Work 170 ALDRICH RD Plan # 46A Lot # 23
Size of Lot Frontage 92' Depth 120 Zone SR II

Present Use of Land or Building LAWN
Number of Units on Property 1-2 car garage
Proposed Use of Land or Building New 2 car garage
Number of Units to be Utilized _____

Contractor's Name ART SPAINA Address Greenland RD
Business Phone 436-0631

Size of Present Bldg. _____ x _____ No. of stories _____
Size of Proposed Bldg. 24' x 24' No. of stories 1

Front Setback 35' Right Side Setback 12'
Left Side Setback 80' Rear Setback 61'

Construction _____

General Information I'm building a 2 car garage
since the one I had on Boss Ave will
have to be torn down in a year or two.

I certify that the information given is true and correct to the best of my knowledge. No change from the above information will be made without approval of the Building Inspector. Construction will not begin until Building Permit is issued.

SUBJECT TO CODE REQUIREMENTS

Murray Levy
Signature of Applicant

If not Owner, state relationship _____

Date 8/8/78
1. Variance _____ Zoning
2. Spec. Exc. _____ Disapproved RVI
3. Historic District _____ Approved
4. Bldg. Code Bd. of Appeals _____
5. Site Review _____

Reason Lot does not meet requirement of Art III Sec 10-301(2)
Fire Department Approval _____ K. Hutchinson

age - 18' x 18' - Boss Ave side of lot garage going on other lot
39' x 30' present Building
Signed Paul Sampson
Chief Building Inspector



BOARD OF ADJUSTMENT
CITY HALL
PORTSMOUTH, NEW HAMPSHIRE

September 19, 1978

Morris D. Levy
170 Aldrich Road
Portsmouth, N. H. 03801

RE: 170 Aldrich Road

The Board of Adjustment at its regular meeting of September 19, 1978, and after due public hearing completed its consideration of your application wherein you requested to be allowed to: construct a garage on a lot whose frontage is 50' where 100' is required and whose area is 6,000 s.f. where 20,000 s.f. is required. Said property is shown on Assessor Plan 46A as Lot 23 and lies within a Single Residence II District.

As a result of such consideration, it was voted that your request be granted with the following stipulations: N/A.

If your request of above has been acted upon favorably, it is necessary that you contact the Building Inspector prior to construction or change of use.

Respectfully submitted,

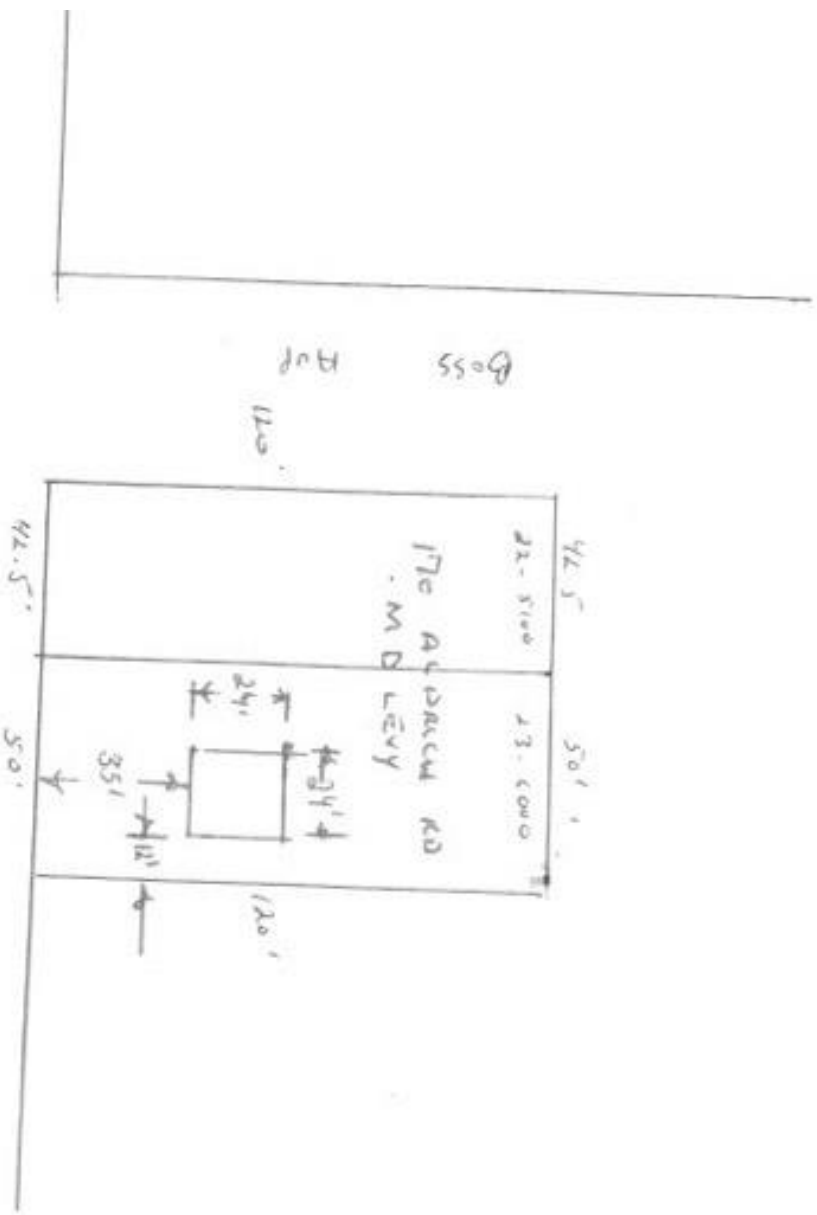
Nancy Carey
CHAIRMAN, BOARD OF ADJUSTMENT

cc: Building Inspector

NOTE: Please be advised that under N.H. RSA 31:74 any person or party to the action or proceeding of the Board of Adjustment may ask for a re-hearing within twenty days of the decision or order of the Board of Adjustment.

Planning Department
Portsmouth, N.H.
(431-5421)

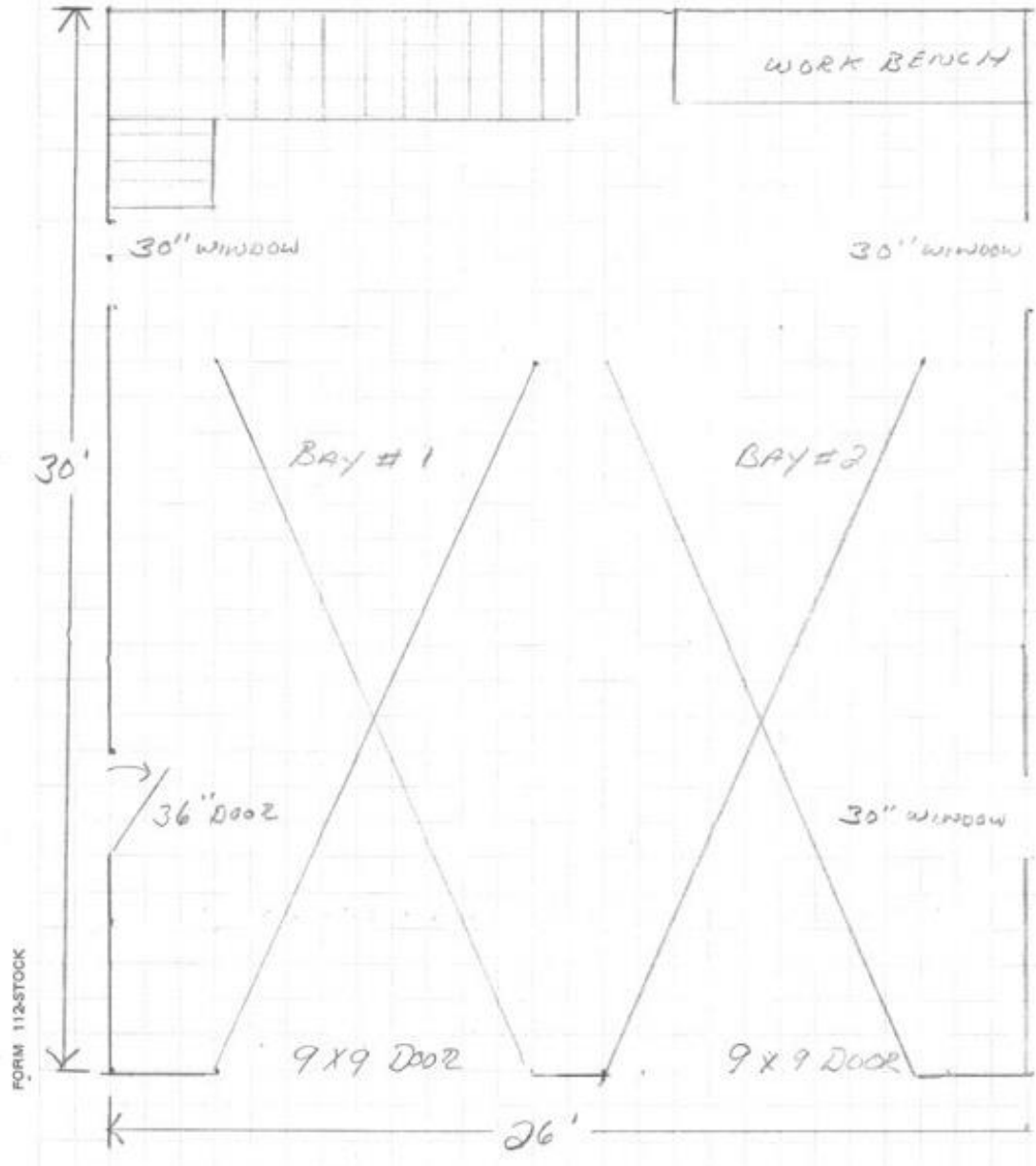
bjs



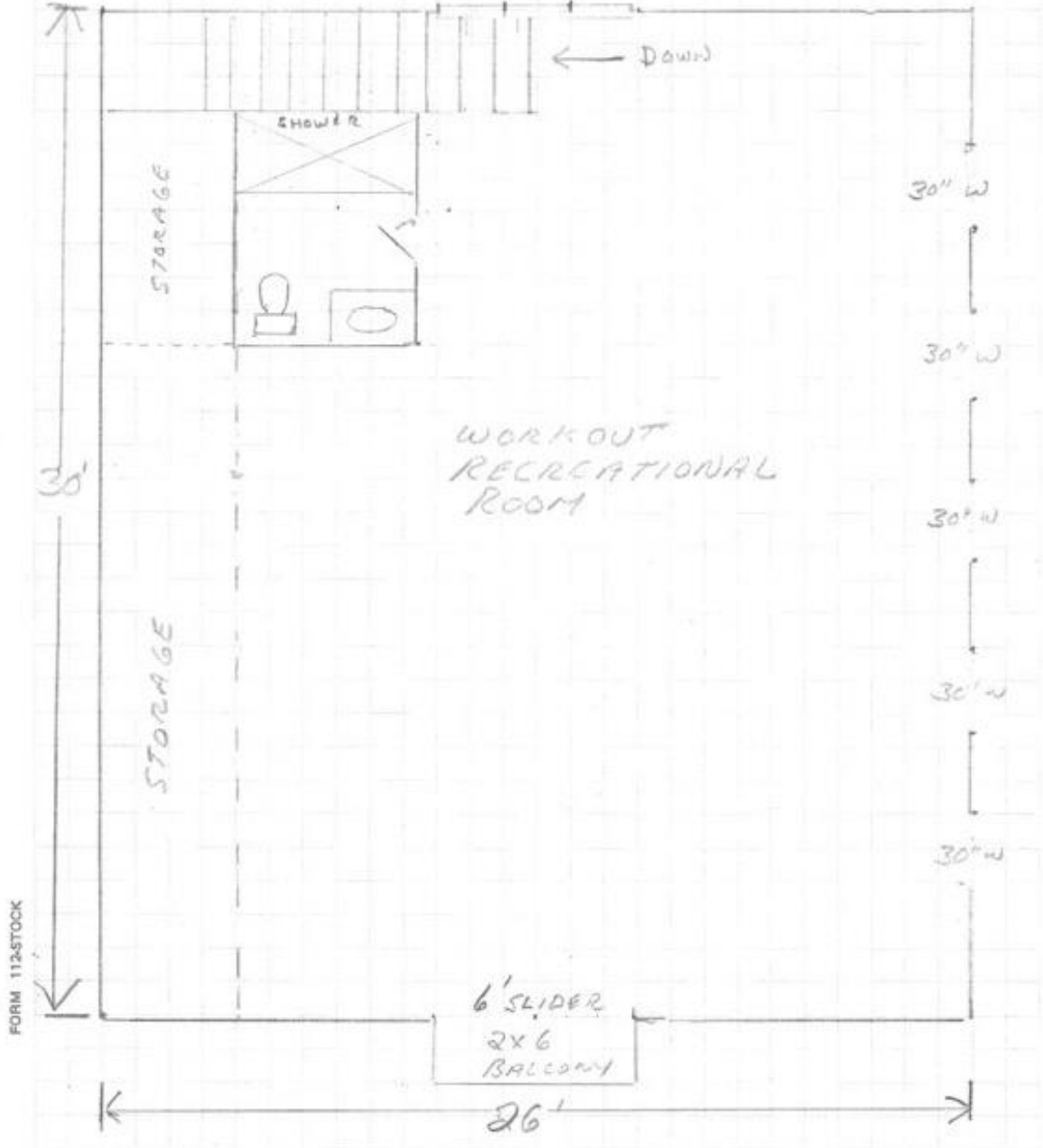
House	1170 SF
Garage	324
Proposed	576
	<hr/>
	2070 / 1100 = 1.88

6/10 avg year
 600 per 35x16

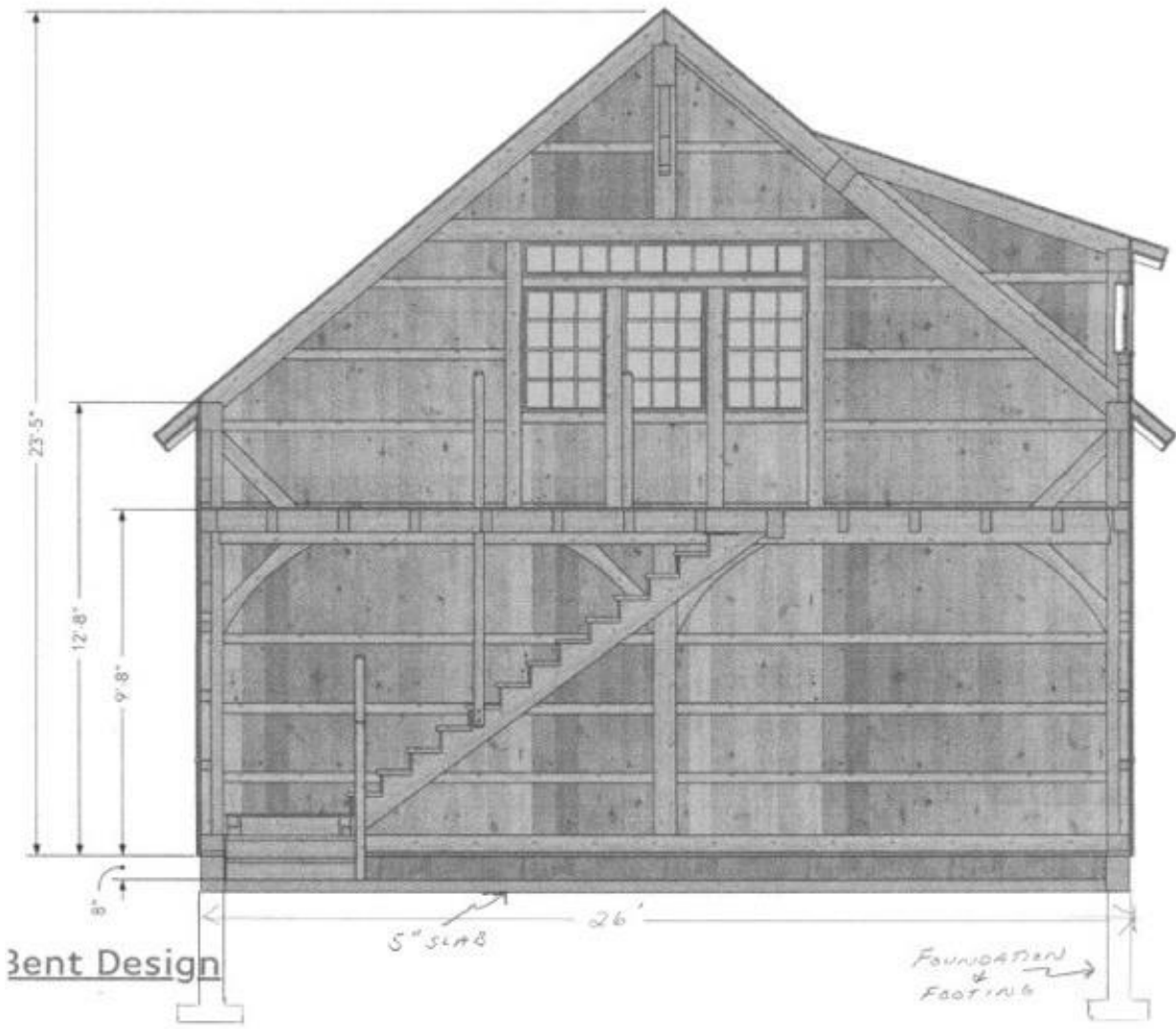
1ST FLOOR GARAGE

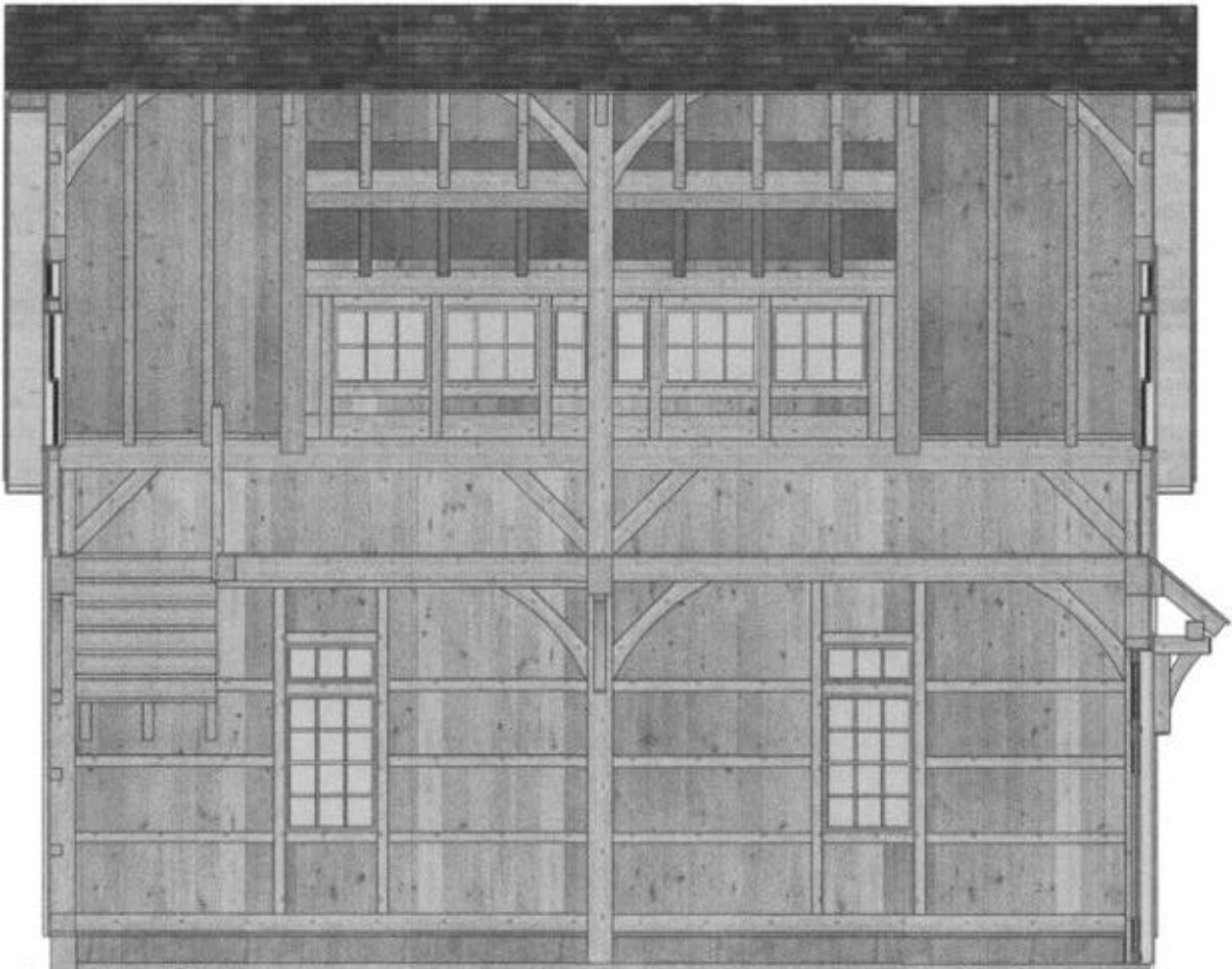


2ND FLOOR GARAGE









Bent Design

30'

5" SLAB

FOUND
&
FOOT





II. OLD BUSINESS

D. Request for Rehearing - **635 Sagamore Avenue (LU-22-209)**

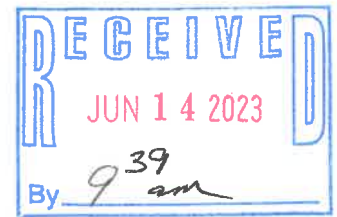
Project Background

On Tuesday, May 16, 2023 the Board of Adjustment considered the request of 635 Sagamore Development, LLC (Owners), for property located at 635 Sagamore Avenue whereas relief is needed for the removal of existing structures and constructing 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. A motion to deny the application failed. The Board then voted to approve the application and the request was granted.

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, a hearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

June 14, 2023



HAND DELIVERED & VIA EMAIL

Phyllis Eldridge, Chair
Portsmouth Zoning Board of Adjustment ("ZBA")
1 Junkins Ave
Portsmouth, NH 03801

Re: 635 Sagamore Development, LLC, Owner/Applicant "635"
Project Location: 635 Sagamore Avenue
Tax Map 222, Lot 19
General Residence A (GRA Zone)

Dear Ms. Eldridge and Zoning Board Members:

On behalf of the abutters of 635 Sagamore Ave. ("Abutters") please accept this letter as a request for reconsideration of the May 16th 2023 vote by the ZBA approving (6-0) the Applicant's Request for variance. Request For Rehearing of the earlier approval to be considered by the ZBA for the following reasons:

- The current application does not meet the Unnecessary Hardship criteria in the applicant's proposal of 4 single family homes where one is permitted. The claimed Unnecessary Hardship is not achieved based on the applicant's arguments. See relevant rationale below.
- The applicant and the ZBA were using inaccurate numbers in their calculations regarding comparative projects. Tax records and association documentation clearly state the difference. (Exhibit 1.).
- The Spirit of the Ordinance is Not Observed, and it is Contrary to the public interest most especially for the direct Sagamore Ave abutters. See reasons below.

EXHIBITS

Portsmouth tax record data and association documents

HISTORY/REQUEST FOR RECONSIDERATION

Briefly, the history of this matter is that 635, has been on and off the ZBA's agenda for more than a year. Initially with a very unreasonable request for five freestanding houses on 1.94 acres. They withdrew the original application and reapplied stating they reduced the project 20% which is true only in building count. The two homes that replace three of five in the original plan are larger in size – hence not a 20% reduction. 635 held an onsite meeting with Sagamore Ave residents including Tidewatch (TW) residents. In that meeting, no one denied that a residential use (more conforming use) of the property would not be good for abutters as well as the general public. Only one attendee did not leave with major concerns regarding the placement, density, and safety of the project.

In the May 16th meeting all the variance criteria were duly considered and we respect and appreciate the board's efforts. Again, we respectfully request the board reconsider their decision on 635 regarding;

The Spirit of the Ordinance and Public Interest. If the ZBA were to consider this application from the perspective of the Sagamore Ave abutters only and not the TW neighbors, Mr. Mannel's statements would be very relevant. I paraphrase 'Looking at the project when I first saw it, I did not think it was feasible.' and 'If TideWatch wasn't there this would not fly at all'. For the immediate abutters on Sagamore Ave, three of which are in the opposition documentation and two of whom were at the May 16th meeting, this project clearly flies in the face of the Spirit of the Ordinance and for sure changes the Essential Character of the Locality.

The Proposed Development Offends the Spirit of the Ordinance and Is Not Consonant with the Public Interest.

These factors are generally considered jointly. *See Farrar v. City of Keene*, 158 N.H.

684, 691 (2009). A project violates these tests if it "alters the essential character of the neighborhood" or "would threaten the public health, safety, or welfare." *Id.* The instant petition does both.

The density and layout of the Proposed Development clash with the neighborhood's character. Although Applicant contends otherwise, Tidewatch and the Sagamore Court apartment buildings are not suitable comparators. They are too dissimilar from the Proposed Development. To start, Sagamore Court is in the Garden Apartment/ Mobile Home Park zone, which is significantly more density tolerant than the SRA zone. *See Ordinance*, § 10.410.

Additionally, apartment buildings and condominiums have a rich density per building, which results in a site layout materially different from Applicant's *de facto* cluster development. Tidewatch may have 117 units on ± 59.53 acres, but it only has 44 residential buildings. This creates an open, uncrowded layout with one freestanding building per ±1.35 acres, which is commensurate with the spirit of §§ 10.513 and 10.521 and the objectives of a single residence zone. The Proposed Development, on the other hand, seeks to establish one freestanding building per 21,198 square feet or approximately 1/4 acre (of note, the buildings will be more dense in actuality). While it is true that the Property borders the more lenient SRB zone, proximity to another zoning district does not provide license to flaunt the density requirements of the SRA zone. Indeed, if border properties could regularly partake in the privileges of neighboring zones, zoning boundaries would become illusory. Slowly, the benefits of the favorable zone would spread and alter the essential character of each neighborhood.

Perhaps most significantly, none of the properties across Sagamore Ave., which begins the SRB zone, have density comparable to the Proposed Development.

The spacing between each unit is equally problematic. Applicant heralds the distances between buildings as "voluntary setbacks" like those imposed by the Ordinance but, in reality, the setbacks are significantly shorter than what the SRA zone imposes. The SRA zone requires 20 feet of side yard (or setback) on each lot. *See Ordinance*, § 10.521. This results in each freestanding building having at least 40 feet of space between them. Applicant's proposal is half that distance. All of the freestanding buildings will be closely clustered, negating the benefit and promise of a single-family residence zone, like SRA. No other structures in the area are so closely grouped.

Simply put, squeezing four single-family homes onto a ± 1.94-acre lot is antithetical to the neighborhood's character and is generally bad for the quality of life enjoyed in the area.

Regarding Unnecessary Hardship, there were several members of the board that stated they either did not see the hardship or were struggling with seeing an unnecessary hardship with the current proposal. The applicant did not present a clear argument for Unnecessary Hardship for the board to consider nor did they meet the criteria required to demonstrate unnecessary hardship. As an example, when Vice Chair Margeson asked attorney Phoenix '...is Walker your main argument' his reply was "Whatever you guys are convinced by is my main argument". Importantly, Walker vs City of Manchester was overturned. Further, the applicant is not exactly accurate regarding the unique characteristics of the property related to surrounding properties. There are in fact similar properties in the zone and nearby as Vice Chair Margeson pointed out in the meeting and is documented below. Related to several members of the board discussing hardship – it could clearly be removed by constructing one or two freestanding dwellings. See other related reasons below. Related to the term "reasonable" in the variance criteria, one or two free standing dwellings could be considered reasonable. Four, placed on such a small portion of the lot (required by the lot's make up) standing very close to the road and neighbors is unreasonable.

Applicant Has Not Demonstrated an Unnecessary Hardship.

A nonconforming use is not the type of special feature that justifies a variance.

Nonconforming uses are largely seen as a benefit, not a burden, to landowners. Additionally, Applicant can abandon its nonconforming use at any time and alleviate the alleged encumbrance. Something which can so easily be dispensed with hardly qualifies as a hardship. A nonconforming use qualifies as a hardship only when the applicant requests a variance integral to the nonconforming use. A nonconforming landscape depot, for example, may use its nonconformity when seeking relief from residential restrictions. Here, Applicant's nonconformity of being a business in a residential zone is immaterial to the proposed residential development. It does not inhibit Applicant from developing a residential home in conformance with the Ordinance or render the Ordinance's purpose inapposite. RSA 674:33, I(l)(b)(l).

Applicant's reliance on other densely developed parcels in the area fares no better. A condition that affects an entire area is not a "special condition" on the property but rather a common denominator for every property. The case cited by Applicant, *Walker v. City of Manchester*, 107 N.H. 382 (1966), was overturned when the legislature amended the unnecessary hardship standard in RSA 674:33. The statute unequivocally provides that the subject property's special conditions must "distinguish it from other properties in the area." See RSA 674:33, I(E) (b)(l). A feature that affects every property in the area hardly qualifies. Additionally, Applicant, when assessing the density of other properties, is comparing apples and oranges. See *infra* § ii.

Applicant also relies on the size of its Property. However, the Property is not so disproportionately large that it creates an unnecessary hardship. Applicant pins the Property at

± 1.94 acres. Property sizes in the area vary, but many are comparable to the Property. For example, Tax Map 222, Lot 17 is ±.86 acres; Tax Map 222, Lot 14-1 is ±1.51 acres; Tax Map 222, Lot 12 is ±1.7 acres; Tax Map 222, Lot 11 is ±1.48 acres; Tax Map 223, Lot 36 is ±1.310 acres; Tax Map 223, Lot 13 is ±1.030 acres; Tax Map 223, Lot 18 is ±1.170 acres; Tax Map 223,

Lot 21 is ±1.490 acres; Tax Map 223, Lot 26 is ±1.200 acres; Tax Map 223, Lot at 27 is ±3.320 acres; Tax Map 2. Some properties are as small as .267 acres (Tax Map 223, Lot 15). While the Property is one of the larger parcels, it is not so large that application of the density ordinance no longer has a fair or reasonable use. See RSA 674:33. Density promotes open space, alleviates municipal resource burdens, limits crowds, and prevents the intensive use of real property.

Those objectives still apply to Applicant's only marginally larger parcel. All real property is unique, and all property has special features. See *DeLucca v. DeLucca*, 152 N.H. 100, 104 (2005) (noting that all real property is unique). But the hardship standard asks whether the ordinance uniquely burdens the subject property compared to other properties in the area. This Property is not so burdened. *Garrison v. Town of Henniker*, 154 N.H. 26, 33 (2006) ("There is no evidence in the record that the property at issue is different from other property zoned rural residential. While its size may make it uniquely appropriate for GME's business, that does not make it unique for zoning purposes.")

Finally, the Proposed Development is simply not reasonable. Applicant is attempting to squeeze four three-bedroom homes, each with a two-car garage, on a ± 1.94-acre parcel. A more reasonable proposal would be two similarly sized homes. A variance cannot be issued because the Proposed Development does not meet the unnecessary hardship test under RSA 674:33.

Madam Chair, on behalf of all the abutters, we greatly appreciate the ZBA's work and your consideration of this request. As you bring this to the board for consideration and a vote, I assume only those that voted on 635 on May 16th would vote on this request.

Respectfully,

Timothy A. McNamara

RECEIVED
JUN 14 2023
By 939



 **AMBIT ENGINEERING, INC.**
Civil Engineers & Land Surveyors
390 Safford Road, Unit 2
Portsmouth, N.H. 03801-7214
Tel: 603/231-9292
Fax: 603/231-7312

**TIDEWATCH
CONDOMINIUMS
579 SAGAMORE AVENUE
PORTSMOUTH, N.H.**

SCALE: 1" = 100' MARCH 2008

**PAVEMENT MAINTENANCE
SITE PLAN**

C1

EXHIBIT 1

Appendix A, including land, all buildings and other improvements and structures now or hereafter thereon, all easements, rights and appurtenances belonging thereto, and all personal property now or hereafter used in connection therewith, which have been or are intended to be submitted to the provisions of the Act.

16. "Unit" means a part of the Condominium intended for independent ownership, all as more particularly described in Article II, Paragraph 4 hereof.

ARTICLE II **STATUTORILY REQUIRED INFORMATION**

1. Name. The name of the Condominium is and shall be Tidewatch Condominiums.
2. Location. The Condominium is located off of Sagamore Avenue in the City of Portsmouth, County of Rockingham and State of New Hampshire and is comprised of 117 Units in 44 buildings in addition to a Maintenance/Meeting Building and a Mail House.
3. Legal Description by Metes and Bounds. A legal description of the land submitted to the Act is described in Appendix A and made a part hereof.
4. Unit Boundaries and Maintenance Responsibilities. A description of the boundaries of the Units is in accordance with the provisions of RSA 356-B: 12 which boundaries are further detailed as follows:

A. Horizontal Boundaries:

- i. Lower Boundary: The top surface of the unfinished concrete skin in the crawl space; the top surface of any finished flooring for the first and second floors and lofts, attics and garage storage areas or finished rooms within the garages; and the upper surface of the concrete floor of garages; and
- ii. Upper Boundary: The upper boundary of the crawl space is the plane formed by lower surface of the floor joists above the crawl spaces; the upper boundary of the first and second floors and lofts and attic areas is the horizontal plane of the finished surface of any ceiling and where applicable, beams, rafters, and closed fireplace dampers, extended to an intersection with the vertical perimeter boundaries; the upper horizontal boundaries of any garage shall be plane formed by the roof rafters, unless the upper portion of a garage contains a finished room in which case the upper horizontal boundary shall be the plane formed by the ceiling joists.

EXHIBIT 1

APPENDIX A

See, Book 5222, Pages 2514-15 in the Rockingham County Registry of Deeds for a description of the Property, along with a site plan entitled, "Amended Site Plan - Phase III - Tidewatch Condominium Portsmouth, N.N. Prepared for TWC of Portsmouth, L.L.C." dated April 21, 1997 recorded in the Rockingham County Registry of Deeds as Plan D-27541, which descriptions and document are incorporated herein by reference.

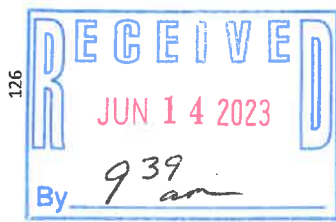
EXHIBIT 1

2019 Preliminary Residential Values by Address

MAP/LOT	OWNER NAME 1	OWNER NAME 2	STREET NAME	DIST	LAND USE	NBHD	PRIOR VALUE	PRELIMINARY VALUE
0222/0021/0107//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 120,300.00	\$ 123,200.00
0222/0021/0108//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 120,100.00	\$ 123,000.00
0222/0021/0111//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 138,300.00	\$ 141,700.00
0222/0021/0112//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 138,300.00	\$ 141,700.00
0222/0021/0113//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 138,500.00	\$ 141,800.00
0222/0021/0114//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 138,300.00	\$ 141,700.00
0222/0021/0115//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 120,100.00	\$ 123,000.00
0222/0021/0116//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 120,000.00	\$ 122,900.00
0222/0021/0117//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 155,500.00	\$ 159,300.00
0222/0021/0119//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 138,600.00	\$ 142,000.00
0222/0021/0120//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 138,600.00	\$ 142,000.00
0222/0021/0097//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 129,800.00	\$ 133,000.00
0222/0021/0098//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 130,000.00	\$ 133,200.00
0222/0021/0099//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 130,100.00	\$ 133,200.00
0222/0021/0104//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 155,500.00	\$ 159,300.00
0222/0021/0134//	GUNYA CORP		SAGAMORE AVE	R	1020	221	\$ 81,400.00	\$ 83,400.00
0222/0021/0130//	IWASECZKO TATIANA		SAGAMORE AVE	R	1020	221	\$ 138,000.00	\$ 141,400.00
0222/0021/0141//	PARKS ELISSA REVOCABLE TRUST		SAGAMORE AVE	R	1020	221	\$ 156,200.00	\$ 160,000.00
0222/0021/0144//	SAGAMORE COURT LIMITED PARTNSHP		SAGAMORE AVE	R	1020	221	\$ 138,600.00	\$ 142,000.00
0222/0021/0121//	SAGAMORE COURT LIMITED PARTNSHP	PARKS ELISSA TRUSTEE	SAGAMORE AVE	R	1020	221	\$ 129,800.00	\$ 133,000.00
0222/0021/0122//	SAGAMORE COURT LIMITED PARTNSHP		SAGAMORE AVE	R	1020	221	\$ 129,800.00	\$ 133,000.00
0222/0021/0123//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 81,800.00	\$ 83,800.00
0222/0021/0124//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 122,100.00	\$ 125,100.00
0222/0021/0125//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 146,900.00	\$ 150,500.00
0222/0021/0127//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 146,900.00	\$ 150,500.00
0222/0021/0126//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 146,500.00	\$ 150,100.00
0222/0021/0129//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 130,100.00	\$ 133,200.00
0222/0021/0128//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 129,700.00	\$ 132,900.00
0222/0021/0129//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 138,300.00	\$ 141,700.00
0222/0021/0131//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 119,800.00	\$ 122,700.00
0222/0021/0132//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 119,800.00	\$ 122,700.00
0222/0021/0133//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 155,800.00	\$ 159,600.00
0222/0021/0135//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 138,300.00	\$ 141,700.00
0222/0021/0136//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 138,200.00	\$ 141,600.00
0222/0021/0137//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 138,800.00	\$ 142,200.00
0222/0021/0138//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 138,800.00	\$ 142,200.00
0222/0021/0139//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 120,100.00	\$ 123,000.00
0222/0021/0142//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 156,300.00	\$ 160,100.00
0222/0021/0143//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 138,200.00	\$ 141,600.00
0222/0021/0140//	SAGAMORE COURT LIMITED PARTNSHP	C/O FOREST PROPERTIES MGMT INC	SAGAMORE AVE	R	1020	221	\$ 120,100.00	\$ 123,000.00
0222/0012/0000//	CHRISTY JOAN F REVOCABLE TRUST	CHRISTY JOAN F TRUSTEE	SAGAMORE AVE	R	1010	112	\$ 427,600.00	\$ 474,800.00

7/12/2019

Source: Portsmouth Tax Assessor. Verifies there are 117 Units in Tidewatch / 579 Sagamore Ave.



This page (126) is included to verify the sequencing of recorded page numbers. The 117 Units in Tidewatch located at 579 Sagamore Ave are listed on pages 127 - 129 and 131.

MAP/LOT	OWNER NAME 1	OWNER NAME 2	STREET NAME	DIST	LAND USE	NBHD	PRIOR VALUE	PRELIMINARY VALUE
0223/0030/0088//	ABBRECHT MARCI K REVO TRUST	ABBRECHT MARCI K TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 843,500.00	\$ 883,700.00
0223/0030/0057//	ADAMS LIVING TRUST	ADAMS JOHN H AND JOANN G TRUSTEES	SAGAMORE AVE	R	1020	219	\$ 589,800.00	\$ 646,400.00
0223/0030/0103//	ADE BARBARA E		SAGAMORE AVE	R	1020	219	\$ 805,700.00	\$ 855,300.00
0223/0030/0047//	AHN AMANDA L		SAGAMORE AVE	R	1020	219	\$ 470,700.00	\$ 568,400.00
0223/0030/0016//	ALEXANDER NANCY H REVO TRUST	ALEXANDER NANCY H TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 616,600.00	\$ 654,500.00
0223/0030/0037//	BAKER POLLOCK REVOCABLE TRUST OF 2013	POLLOCK STEVEN & BAKER POLLOCK LEE	SAGAMORE AVE	R	1020	219	\$ 715,100.00	\$ 749,400.00
0223/0030/0054//	BARLEVI FAMILY TRUST (99.5%)	BARLEVI VICKY A T TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 449,400.00	\$ 522,400.00
0223/0030/0092//	BARRETTE VICKY A T REVO TRUST 2010	BARRETTE VICKY A T TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 797,600.00	\$ 837,100.00
0223/0030/0053//	BARRON M TRUST 1998	BARRON MARION/BARRON THOMAS J TRUSTEES	SAGAMORE AVE	R	1020	219	\$ 606,600.00	\$ 690,900.00
0223/0030/0098//	BARTKO PENELOPE A REVO TRUST	BARTKO PENELOPE & MAXIM BARTKO TRUSTEES	SAGAMORE AVE	R	1020	219	\$ 859,800.00	\$ 902,800.00
0223/0030/0109//	BARZYK PATRICIA T	BARZYK PETER P III	SAGAMORE AVE	R	1020	219	\$ 865,300.00	\$ 1,060,400.00
0223/0030/0079//	BILLER RONALD T	LAMB CAROL E	SAGAMORE AVE	R	1020	219	\$ 768,000.00	\$ 796,500.00
0223/0030/0029//	BLODGETT VICTORIA F 2009 REVO TRUST	BLODGETT VICTORIA F TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 668,000.00	\$ 708,600.00
0223/0030/0078//	BOSCKETTI CARL M	BOSCKETTI SANDRA A	SAGAMORE AVE	R	1020	219	\$ 778,100.00	\$ 824,400.00
0223/0030/0027//	BOWLBY RITA L REVO TRUST 06	BOWLBY RITA L TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 513,300.00	\$ 577,000.00
0223/0030/0046//	BURDETTE RODNEY E 2009 TRUST	BURDETTE RODNEY E TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 621,600.00	\$ 705,900.00
0223/0030/0024//	BURNHAM JOHN K	BURNHAM HELEN F	SAGAMORE AVE	R	1020	219	\$ 520,219	\$ 586,500.00
0223/0030/0122//	CAIL SHEILA CURTIN REVO TRUST 2002	CAIL SHEILA C TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 687,300.00	\$ 728,600.00
0223/0030/0062//	CHRISTIANSEN BIRGIT S	MALLOY PATRICK E	SAGAMORE AVE	R	1020	219	\$ 454,900.00	\$ 528,800.00
0223/0030/0089//	CORMACK JANETTE DECLARATION OF TRUST	CORMACK JANETTE TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 789,900.00	\$ 978,200.00
0223/0030/0118//	CUNNINGHAM LINDA R IRREVOCABLE TRUST	CUNNINGHAM LINDA R TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 571,800.00	\$ 762,100.00
0223/0030/0080//	D ADAMO CHRISTINA M 2008 REVOCABLE TR	D ADAMO CHRISTINA M TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 853,400.00	\$ 876,700.00
0223/0030/0117//	DAVIS JUDITH A REVO TRUST	DAVIS JUDITH A TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 626,800.00	\$ 738,800.00
0223/0030/0052//	DENNIS EVELYN J REVO TRUST	DENNIS EVELYN J TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 579,600.00	\$ 682,800.00
0223/0030/0048//	DESMOND PHILIP	DESMOND JANETTE	SAGAMORE AVE	R	1020	219	\$ 512,200.00	\$ 641,500.00
0223/0030/0021//	DIAMOND JAMES W REVO TRUST -1990	DIAMOND JAMES W TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 521,400.00	\$ 574,400.00
0223/0030/0068//	DIMATTEO T&L FAM REV TRUST OF 2017	DIMATTEO THOMAS R & LAUREL D TTEES	SAGAMORE AVE	R	1020	219	\$ 473,300.00	\$ 571,600.00
0223/0030/0020//	DRAKE JR LAWRENCE C LIV TRUST (50% INT)	DRAKE JR LAWRENCE C TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 620,900.00	\$ 677,100.00
0223/0030/0086//	FESSENDEN PAMELA		SAGAMORE AVE	R	1020	219	\$ 588,700.00	\$ 654,300.00
0223/0030/0082//	FITZGERALD GEOFFREY 1997 TRUST	FITZGERALD GEOFFREY TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 560,000.00	\$ 693,500.00
0223/0030/0116//	FORMAN MARIANNE I 1989 REVO TRUST	FORMAN MARIANNE TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 575,300.00	\$ 678,000.00
0223/0030/0033//	FRANTZ SUSAN M REVO TRUST	FRANTZ SUSAN M TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 590,100.00	\$ 688,700.00
0223/0030/0049//	FRANZOSO BARBARA DUNFEY	D S	SAGAMORE AVE	R	1020	219	\$ 566,600.00	\$ 560,000.00
0223/0030/0100//	GRAY JANICE C REVO TRUST	GRAY JANICE C TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 868,000.00	\$ 919,800.00
0223/0030/0055//	GRIFFIN MICHAEL J REVO TRUST O7	GRIFFIN MICHAEL J TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 470,700.00	\$ 568,400.00
0223/0030/0099//	HAMBLETT SUZANNE S REVO TRUST 1997	HAMBLETT SUZANNE S TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 862,500.00	\$ 905,100.00
0223/0030/0028//	HAMMOND FAMILY TRUST	HAMMOND GLENN K & HAMMOND JOAN E TTEES	SAGAMORE AVE	R	1020	219	\$ 622,700.00	\$ 709,800.00
0223/0030/0003//	HARTMAN FAMILY REVO TR OF 2018	HARTMAN JOHN E & ANN O'D TRUSTEES	SAGAMORE AVE	R	1020	219	\$ 673,600.00	\$ 741,200.00
0223/0030/0083//	HARVELL CYNTHIA H 1991 TRUST	HARVELL CYNTHIA H TRUSTEE	SAGAMORE AVE	R	1020	219	\$ 741,600.00	\$ 786,700.00
0223/0030/0035//	HINDLE JOHANNA TRUST		SAGAMORE AVE	R	1020	219	\$ 524,300.00	\$ 590,200.00

40 Units

Note: The 117 Units in 44 Buildings that comprise Tidewatch begin with Units 1-110, then there is a gap, and Units 116-122 comprise the remainder. Units 111-115 DO NOT exist.

MAP/LOT	OWNER NAME 1	OWNER NAME 2	STREET NUM	STREET NAME	DIST	LAND USE	NBHD	PRIOR VALUE	PRELIMINARY VALUE
0223/ 0030/ 0051/ /	HINES LARRY L	HINES SONA J	579	SAGAMORE AVE	R	1020	219	\$ 532,800.00	\$ 627,500.00
0223/ 0030/ 0058/ /	HITCHCOCK E F & MCCABE C M REVOC TRUST	HITCHCOCK E F & MCCABE C M TRUSTEES	579	SAGAMORE AVE	R	1020	219	\$ 453,600.00	\$ 565,400.00
0223/ 0030/ 0004/ /	HOBBSON MARYLAINIE REALTY TRUST		579	SAGAMORE AVE	R	1020	219	\$ 641,800.00	\$ 742,300.00
0223/ 0030/ 0066/ /	HOWARD JOHN R REVOCABLE TRUST	HOWARD JOHN R TRUSTEE	579	SAGAMORE AVE	R	1020	219	\$ 574,100.00	\$ 687,100.00
0223/ 0030/ 0121/ /	HURST RODNEY	HURST LINDA J	579	SAGAMORE AVE	R	1020	219	\$ 547,500.00	\$ 640,500.00
0223/ 0030/ 0045/ /	HUSZAR ROBERT J	HUSZAR JEAN R	579	SAGAMORE AVE	R	1020	219	\$ 526,500.00	\$ 620,100.00
0223/ 0030/ 0107/ /	JACKSON HOLE RANCH 2 LLC		579	SAGAMORE AVE	R	1020	219	\$ 861,800.00	\$ 904,900.00
0223/ 0030/ 0001/ /	JACOBSEN GEORGE W JR	JACOBSEN SUSAN W	579	SAGAMORE AVE	R	1020	219	\$ 562,000.00	\$ 536,700.00
0223/ 0030/ 0070/ /	JONES LEONARD S	MORNER CLAUDIA J	579	SAGAMORE AVE	R	1020	219	\$ 648,200.00	\$ 738,400.00
0223/ 0030/ 0043/ /	KANE JOHN	ALDEN MELISSA	579	SAGAMORE AVE	R	1020	219	\$ 450,800.00	\$ 579,300.00
0223/ 0030/ 0044/ /	KANIN ERIC D	KANIN KAREN	579	SAGAMORE AVE	R	1020	219	\$ 462,500.00	\$ 577,200.00
0223/ 0030/ 0104/ /	LALOS KATHERINE T REVOC TRUST	LALOS KATHERINE T TRUSTEE	579	SAGAMORE AVE	R	1020	219	\$ 899,900.00	\$ 957,200.00
0223/ 0030/ 0059/ /	LAMB VICCI A	LAMB CAROL E	579	SAGAMORE AVE	R	1020	219	\$ 452,200.00	\$ 526,300.00
0223/ 0030/ 0030/ /	LANNON MICHAEL J REV TRUST (50% INT)	LANNON GEORGINA REV TRUST (50% INT)	579	SAGAMORE AVE	R	1020	219	\$ 649,500.00	\$ 800,100.00
0223/ 0030/ 0074/ /	LEWIS KATHERINE H	ALANDYDY PATRICIA J REVOC TRUST	579	SAGAMORE AVE	R	1020	219	\$ 577,300.00	\$ 586,900.00
0223/ 0030/ 0038/ /	LOOSER KEVIN G REVOCABLE TRUST	MCCARTHY R B & S I TRUSTEES	579	SAGAMORE AVE	R	1020	219	\$ 740,400.00	\$ 772,000.00
0223/ 0030/ 0031/ /	MCCARTHY R B & S I REVOC TRUST	MCCOOL JANICE M	579	SAGAMORE AVE	R	1020	219	\$ 676,500.00	\$ 738,900.00
0223/ 0030/ 0105/ /	MCCOOL PAUL J	MCCOOL JANICE M	579	SAGAMORE AVE	R	1020	219	\$ 608,700.00	\$ 759,500.00
0223/ 0030/ 0019/ /	MCSNAMARA TIMOTHY A	MCSNAMARA MARY ELLEN	579	SAGAMORE AVE	R	1020	219	\$ 693,000.00	\$ 822,000.00
0223/ 0030/ 0032/ /	MELITA JOHN F & THOMAS J &	TIMOTHY J & MELITA-JOHNSON LINDA J	579	SAGAMORE AVE	R	1020	219	\$ 484,500.00	\$ 544,500.00
0223/ 0030/ 0034/ /	MELLIN FAMILY TRUST	MELLIN S R & J H TRUSTEES	579	SAGAMORE AVE	R	1020	219	\$ 625,600.00	\$ 696,400.00
0223/ 0030/ 0097/ /	MEUSE JAMES DAVID	MEUSE KIMBERLY RAE	579	SAGAMORE AVE	R	1020	219	\$ 902,000.00	\$ 946,800.00
0223/ 0030/ 0025/ /	MILLER ALICE T REVOCABLE TRUST	MILLER ALICE T TRUSTEE	579	SAGAMORE AVE	R	1020	219	\$ 676,600.00	\$ 718,600.00
0223/ 0030/ 0071/ /	MINICH GEORGE MARSHALL	MINICH IRENE BULLINGER	579	SAGAMORE AVE	R	1020	219	\$ 644,400.00	\$ 724,600.00
0223/ 0030/ 0067/ /	MORE BROTHER INVESTMENTS LLC	C/O GENE FISK & ASSOCIATES LLC	579	SAGAMORE AVE	R	1020	219	\$ 536,500.00	\$ 632,000.00
0223/ 0030/ 0096/ /	MORIN JOHN & MIMI FAMILY TRUST	MORIN JOHN E TRUSTEE	579	SAGAMORE AVE	R	1020	219	\$ 868,600.00	\$ 912,200.00
0223/ 0030/ 0061/ /	MORLEY FAMILY LIVING TRUST	MORLEY JOHN J & SHAWNNA M CO-TRUSTEES	579	SAGAMORE AVE	R	1020	219	\$ 532,100.00	\$ 626,800.00
0223/ 0030/ 0072/ /	MORRIS JAFFE NANCY REVOC TRUST	MORRIS JAFFE NANCY TRUSTEE	579	SAGAMORE AVE	R	1020	219	\$ 622,100.00	\$ 708,300.00
0223/ 0030/ 0040/ /	MURPHY KENNETH D REVOC TRUST	SPAHR ALLISON M REVOC TRUST	579	SAGAMORE AVE	R	1020	219	\$ 527,700.00	\$ 593,300.00
0223/ 0030/ 0102/ /	NEWELL BARBARA A REVOCABLE TRUST	NEWELL BARBARA A TRUSTEE	579	SAGAMORE AVE	R	1020	219	\$ 838,000.00	\$ 889,000.00
0223/ 0030/ 0002/ /	OBRIEN EDWARD J REVOCABLE TRUST 1998	OBRIEN EDWARD J SUSAN B TRUSTEES	579	SAGAMORE AVE	R	1020	219	\$ 452,600.00	\$ 566,300.00
0223/ 0030/ 0036/ /	OJA SHARON NODIE		579	SAGAMORE AVE	R	1020	219	\$ 667,000.00	\$ 708,300.00
0223/ 0030/ 0095/ /	O'LEARY KEVIN J	O'LEARY SUSAN W	579	SAGAMORE AVE	R	1020	219	\$ 1,071,500.00	\$ 1,062,900.00
0223/ 0030/ 0017/ /	PATERSON JOYCE M		579	SAGAMORE AVE	R	1020	219	\$ 645,100.00	\$ 691,800.00
0223/ 0030/ 0005/ /	PONTRELO MARY E	PRAATT JANE REVOLDS TRUSTEE	579	SAGAMORE AVE	R	1020	219	\$ 420,700.00	\$ 525,700.00
0223/ 0030/ 0084/ /	PRAATT JANE REVOLDS REVOC TRUST		579	SAGAMORE AVE	R	1020	219	\$ 789,800.00	\$ 838,200.00
0223/ 0030/ 0012/ /	RICHARD ANNE A		579	SAGAMORE AVE	R	1020	219	\$ 536,700.00	\$ 616,700.00
0223/ 0030/ 0094/ /	ROALSVIG JEAN	ROALSVIG KNUI	579	SAGAMORE AVE	R	1020	219	\$ 610,700.00	\$ 699,300.00
0223/ 0030/ 0008/ /	ROGERS-SZULC REVOCABLE TRUST OF 2014	ROGERS KS & ROGERS SZULC AM TRUSTEES	579	SAGAMORE AVE	R	1020	219	\$ 615,200.00	\$ 692,700.00
0223/ 0030/ 0013/ /	ROSS KATHLEEN M 1992 TRUST	ROSS KATHLEEN M TRUSTEE	579	SAGAMORE AVE	R	1020	219	\$ 594,700.00	\$ 692,600.00

40 Units



CITY OF PORTSMOUTH

Planning Department
1 Junkins Avenue
Portsmouth, New
Hampshire 03801
(603) 610-7216

ZONING BOARD OF ADJUSTMENT

May 23, 2023

635 Sagamore Development, LLC
3612 Lafayette Rd Dept 4
Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 635 Sagamore Avenue (LU-22-209)

Dear Property Owner:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, May 16, 2023**, considered your application for the removal of existing structures and constructing 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is shown on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. As a result of said consideration, the Board voted to **deny** the request initially because the proposed plan did not meet the hardship criteria. This motion failed. The Board then voted to **approve** the variances for the project as presented with the following **condition**:

The Board's decision may be appealed up to thirty (30) days after the vote. Please contact the Planning Department for more details about the appeals process.

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc:

Joseph Coronati, Jones & Beach
R. Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, PLLC

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: 5-16-2023

Property Address: 635 Sagamore Avenue

Application #: LU-22-209

Decision: **Grant**

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: 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.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	YES	<ul style="list-style-type: none"> Having more conforming structures on the parcel is much better than the existing condition.
10.233.22 Granting the variance would observe the spirit of the Ordinance.	YES	<ul style="list-style-type: none"> The SRA zone limits one dwelling unit per acre, and the applicant is asking for four units on nearly two acres, which would be directly across the street, the SRB zone. Comparing the four dwelling units at 21,200 square feet per unit to Tidewatch's 122 units at 19,300 square feet per unit, the project would be less dense.
10.233.23 Granting the variance would do substantial justice.	YES	<ul style="list-style-type: none"> The project would have no effect on anything across the street or at Tidewatch because one wouldn't even see the properties.

<p>10.233.24 Granting the variance would not diminish the values of surrounding properties.</p>	<p>YES</p>	<ul style="list-style-type: none"> • The project would have no effect on anything across the street or at Tidewatch because one wouldn't even see the properties. • The project would not alter the essential characteristics of the neighborhood because the large lot could not reasonably be subdivided based on its irregular shape and street frontage.
<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(a)The property has special Conditions that distinguish it from other properties in the area. AND (b)Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. OR Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.</p>	<p>YES</p>	<ul style="list-style-type: none"> • The property has special conditions of being an oversized lot for the area as well as an angled and elevated one, and only so much of it is usable. • Limiting the lot to a single-family home would be a hardship and four single-family units on nearly two acres was a more than reasonable use and a huge improvement to the existing property.

<p>Stipulations</p>
<p>1. <i>The design and location of the dwellings may change as a result of Planning Board review and approval.</i></p>

II. OLD BUSINESS

- B. Request for **rehearing on the appeal of 1 Raynes Avenue** - As ordered by the Superior Court on February 2, 2023, the Board will “determine, in the first instance, whether it has jurisdiction over the issues presented” by Duncan MacCallum (Attorney for the Appellants) in the January 14, 2022 appeal of the December 16, 2021 decision of the Planning Board for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** which granted the following: a) site plan approval b) wetlands conditional use permit; and c) certain other, miscellaneous approvals, including an approval related to valet parking. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)

Planning Department Comments

The Planning Board decision of December 16, 2021 was appealed to the Zoning Board and a separate request for a rehearing to the Planning Board was filed by the appellants. The Planning Board granted the request for rehearing. In February 2022, both matters were taken to Superior Court where a stay was issued on February 15, 2022 and just recently issued an Order, which is included in the packet. The Order states the Court will not determine what matters are properly before the Board of Adjustment but has sent the January 14th appeal back to the Board to determine if it has any jurisdiction over any of the counts raised in the appeal. At this time, that is the only decision the Board should make with respect to this appeal. The counts raised in the appeal include the following:

- 1) Granting site plan approval.
- 2) Granting a Wetlands Conditional Use Permit; and
- 3) Granting certain other, miscellaneous approvals including an approval related to valet parking.

The Board should vote on the three counts above, further outlined in the appeal, and decide if the Board has jurisdiction over any or all of the counts. A memo from the Legal Department has been provided outlining the Board’s jurisdiction.

On March 21, 2023 the Board of adjustment voted to find that the Board had no jurisdiction over the counts raised in the appeal. The appellants are requesting reconsideration of the March 21, 2023 determination.

DUNCAN J. MACCALLUM

ATTORNEY AT LAW

536 STATE STREET
PORTSMOUTH, NEW HAMPSHIRE 03801-4327
(603) 431-1230
TELECOPIER: (603) 431-1308

ALSO ADMITTED IN NY, PA, OHIO & MA

April 20, 2023

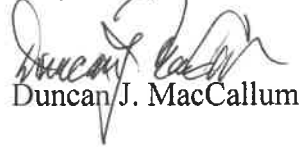
Peter Britz, Planning Director
City of Portsmouth
One Junkins Avenue
Portsmouth, New Hampshire 03801

Re: One Raynes Avenue

Dear Peter:

Enclosed is the appellants' Motion for Rehearing in connection with the above-reference project.

Very truly yours



Duncan J. MacCallum

DJM/eap

Enclosure

cc. Courtney H. G. Herz, Esquire
Brian Bouchard,, Esquire

HAND DELIVERED TO ADDRESSEE ONLY



THE STATE OF NEW HAMPSHIRE

ZONING BOARD OF ADJUSTMENT
OF THE CITY OF PORTSMOUTH

**In re Application of North Mill Pond Holdings, LLC,
One Raynes Ave, LLC, 31 Raynes Ave, LLC, and
203 Maplewood Ave, LLC, regarding the properties
located at 1 Raynes Avenue, 203 Maplewood Avenue,
and 31 Raynes Avenue, and known familiarly as**

The Raynes Avenue Project

MOTION FOR REHEARING

The appellants, James A. Beal, Fintan (“Finn”) Connell, Joseph R. Famularo, Jr., Philippe Favet, Charlotte Gindele, Julia Gindele, Linda Griebisch, Catherine L. (“Kate”) Harris, Roy W. Helsel, Elizabeth Jefferson, and Donna Pantelakos, respectfully move that this Board reconsider its decision of March 21, 2023 in connection with the above-referenced application, in which the Board declined to find that it had jurisdiction over the appellants’ appeal of the December 16, 2021 decision of the Portsmouth Planning Board, and that this Zoning Board of Adjustment conduct a rehearing thereon, on the grounds that this Board’s decision of March 21, 2023 was infected with procedural error and was erroneous on its merits. As facts in support of their motion, the appellants state the following:

1. One of the members of this Board, David Rheaume, improperly participated in the March 21, 2023 hearing and improperly participated in this Board’s vote to decline to find jurisdiction, doing so in circumstances in which he had a clear and obvious conflict of interest which

disqualified him from participating in the proceedings. Mr. Rheume's wife, Elizabeth Moreau, is both a Portsmouth city councilor and an ex officio member of the Planning Board. Not only did she participate in the Planning Board's December 16, 2021 proceedings and in its decision of that date to grant the applicants a wetlands conditional use permit, a parking conditional use permit, and site plan approval, all of which are the subjects of the appellants' complaints before this Board and before the Superior Court, but she was also one of the members of the latter Planning Board who voted in favor of granting all three of those forms of relief and, in fact, spoke in favor of it at the Planning Board hearing.

2. By virtue of the foregoing, Mr. Rheume was in a position of clear and obvious conflict for interest and was disqualified from sitting on the appellants' appeal and participating in this Board's decision thereon. Mr. Rheume, like the rest of the members of this Board and, more generally, the members of all other land use boards, is governed by the "juror standard." Although Mr. Rheume protested that the issue before this Board at the March 21, 2023 hearing was different from what the issues are in the usual case, and although he felt that he could segregate those issues in his mind and render an impartial decision on the issue of whether this Board has appellate jurisdiction over the issues raised in the appellants' appeal, the simple fact of the matter is that a vote to decline to exercise jurisdiction had the practical effect of upholding both the Planning Board's December 16, 2021 and his wife's vote in support thereof.

3. Although Mr. Rheume went through the charade of asking the other members of this Board for their input, seeking what amounted to a "vote of confidence" to validate his contention that he could remain impartial, this exercise was insufficient to vitiate the conflict of interest or to render his participation legitimate. Mr. Rheume stated at the very outset that he wished to participate in the hearing and that he believed that he could be impartial, and by asking for the

aforementioned “vote of confidence” he put the other members of the Board in an awkward and compromising position. Mr. Rheume and the other members of the ZBA work with one another on an ongoing basis and naturally have developed a certain rapport with one another and have established working, interpersonal relationships and mutual cooperation. Thus, the only way that the other members of the Board could object to his participation in the hearing and vote against his doing so was by potentially offending him and/or by impliedly impugning his judgment and his professed ability to be impartial, potentially damaging those interpersonal relationships. Despite this, two of the members of this Board were perspicacious enough to recognize the obviousness of the situation and voted “no” in the vote of confidence, anyway; and a third member, though ultimately giving his blessing to Mr. Rheume’s participation, was perceptive enough to raise concerns over the “appearance of impropriety” standard. See N.H. Supreme Ct. R. 38, Canon 1, R. 1.2 (judicial canons of ethics) (a judge should recuse himself in circumstances where, though he is personally convinced that he can remain unbiased and impartial, those circumstances are such that a detached, objective observer might view it differently and might reasonably question his impartiality).

4. The appellants also consider it to be highly unlikely that in the year and 3-4 months since the Planning Board’s December 16, 2021 decision was issued and the appellants took their appeal thereof, Mr. Rheume and his wife Ms. Moreau have not discussed the Planning Board’s December 16, 2021 decision between themselves, and even discussed the appellants’ appeal, whether during dinner table conversation or otherwise.

5. By virtue of all of the foregoing circumstances, Mr. Rheume improperly and illegally participated in the March 21, 2023 hearing on the appellants’ appeal before this Board and in the ensuing vote to decline to find that this Board had jurisdiction over the issues raised therein.

6. Further, the appellants, in the person of their undersigned counsel, immediately voiced their objection to Mr. Rheaume's participation in the proceedings at the very earliest opportunity, doing so just as soon as their counsel took the podium to speak, only moments after Mr. Rheaume had announced his decision not to recuse himself following the "vote of confidence" by the other members. Their undersigned counsel explicitly stated at the outset that Mr. Rheaume should have recused himself and that, further, "I do not consider it to be a close case." (Viz., that the fact that Mr. Rheaume should have recused himself was obvious.)

7. Finally, Mr. Rheaume was no mere, passive participant in the ensuing hearing and vote. He was active in the questioning of the parties' respective counsel, and he made forceful, substantive arguments in favor of a finding that this Board had no jurisdiction over the issues raised in the appellants' appeal. The practical effect of this was to support his wife's vote in favor of the Planning Board's December 16, 2021 decision granting the applicants two conditional use permits and site plan approval. Another effect of same was to deprive the appellants of one tier of appeal in a forum which they preferred, a forum whose members are actually familiar with the property which is the subject of the developers' application and with that property's setting, and who are reasonably familiar with the local Zoning Ordinance's provisions--unlike a Superior Court judge, who may or may not be familiar with that property, with its setting and surroundings, or with Portsmouth's Zoning Ordinance.

8. For all of these reasons, the proceedings were infected with procedural error from the very outset. Given his marital relationship with Ms. Moreau, Mr. Rheaume was required to recuse himself, and he participated in the proceedings unlawfully.

9. Under the teachings of the New Hampshire Supreme Court's decision in the familiar case of Winslow v. Town of Holderness Planning Bd., 125 N.H. 262, 480 A.2d 114 (1984), Mr.

Rheume's participation in this Board's proceedings and decision of March 21, 2023 in the above-captioned matter renders that decision absolutely void, and this Board is required to conduct a rehearing. In the Winslow case, the court ruled that the participation of an ineligible member in a land use board's deliberations and vote voids its decision entirely, and this is so even though there may have been more than enough members voting in favor of the decision even after disregarding the ineligible member's vote. In the Winslow case, the court ruled that the participation of a single ineligible member in a land use board's decision invalidates the entire decision because "it [is] impossible to estimate the influence one member might have on his associates". 125 N.H. at 268, 480 A.2d at 117. Therefore, even though in this instance this Board's vote to render a finding of no jurisdiction over the appellants' appeal was unanimous, its finding and decision are absolutely void, and a rehearing is required.

10. Other errors in the proceedings included the following:

11. This Board erred in finding that it lacked jurisdiction to void the Planning Board's decision of December 16, 2021 because of the unlawful participation and vote by an ineligible member, Raymond Pezzullo, in the Planning Board's decision of that date. It is to be remembered that except for a small handful of narrow exceptions (such as the granting or denial of conditional use permits), the ZBA's appellate review of Planning Board decisions is de novo. Ouellette v. Town of Kingston, 157 N.H. 604, 608-12, 956 A.2d 286, 290-93 (2008); 15 Peter J. Loughlin, New Hampshire Practice: Land Use Planning & Zoning § 33.02 n.10 (4th ed. 2010 & Supp. 2020). The Zoning Board of Adjustment has plenary appellate authority over all administrative decisions pertaining to zoning. It may overturn decisions and orders of the Planning Board, the Historic District Commission, Conservation Commission, the building inspector, the code enforcement officer, and even the city manager, if the order or decision in question relates

to zoning. Pursuant to its power of de novo review, it may on its own initiative correct any irregularity error or misapplication of the provisions of the Zoning Ordinance, and it may void any approval or determination which is in conflict with one of its own prior decisions (as was done by this Board in the case of the 105 Bartlett Street project), even if the error or conflict is not brought to its attention by one of the parties. It would be incongruous in the utmost if, pursuant to its power of de novo review, this Zoning Board of Adjustment could regularly overturn decisions of all other land use boards and administrative officials for misinterpretation and/or misapplication of the Ordinance's provisions, but could not entertain the question of whether a putative land use board member who regularly interprets and applies those provisions was lawfully appointed to such a board and was sitting on it legally. It would be even more incongruous if the ZBA could not overturn a land use board decision that was illegally made because an ineligible member helped make it.

12. For the reasons amply set forth in the appellants' appeal document (but which this Board did not reach on the merits), Mr. Pezzullo was not properly or lawfully appointed as a member of the Portsmouth Planning Board, for he was appointed pursuant to a provision in Portsmouth's local Administrative Code which directly conflicts with a New Hampshire state statute. Therefore, the pertinent provision of the local Administrative Code is void, and he was ineligible to sit on that board. Moreover, as the appellants pointed out in their original appeal document, the manner of appointing the ex officio member to the Planning Board seat formerly held by Mr. Pezzullo (who has now resigned from that board) creates an obvious conflict of interest, in that as a practical matter it effectively gives the city manager two votes on that board, whereas the members properly appointed by the mayor and confirmed by the City Council each only have one. The ex officio member appointed by the city manager is a city employee, who is

beholden to the city manager for his or her job. The city manager has the power of hiring and firing over him or her, and therefore the appointee is unlikely to exercise independent judgment and, in particular, is highly unlikely to vote in a manner which is likely to displease the city manager or is at variance with the city manager's vote.

13. As the appellants have already pointed out in connection with the disability of ZBA member David Rheume to serve with respect to this particular application, the participation of an ineligible or unlawfully appointed member to the Planning Board or other land use board renders that board's decision absolutely void under the New Hampshire Supreme Court's holding in Winslow v. Town of Holderness Planning Bd., 125 N.H. 262, 480 A.2d 114 (1984). This Board of Adjustment should have overturned the Planning Board's decision of December 16, 2021 because of Mr. Pezzullo's unlawful involvement, and it has jurisdiction to entertain the appellants' appeal now.

14. This Board erred in failing to accept jurisdiction over the appellants' appeal of the Planning Board's decision to grant site plan approval, particularly in connection with the developers' parking plan. Sections 10.1112.30, -.40, and -.50 of the Zoning Ordinance set forth the minimum requirements for both on-site and other off-street parking. It was and is undisputed that given the huge number of residential units which the applicants' buildings would comprise, the total number total of on-site parking spaces would be grossly inadequate to meet the Zoning Ordinance's requirements, and that the other off-street parking spaces would be inadequate to make up the difference. Section 10.1112.40 of the Zoning Ordinance provides for the establishment of "reserve parking areas". It states:

When Section 10.1112.30 requires the provision of 20 or more **off-street parking** spaces, the Planning Board may approve the construc-

tion of fewer **off-street parking** spaces than required, subject to the following:

- 10.1112.41 A "Reserve Parking Area" shall be designated that is sufficient to accommodate the difference between the number of spaces required and the lesser number actually provided.
- 10.1112.42 The site plan shall clearly delineate the Reserve Parking Area and shall demonstrate that it is sufficient to accommodate the additional parking spaces in accordance with the requirements of this Section.
- 10.1112.43 The Reserve Parking Area shall be landscaped with grass, ground covers and/or other plant materials, but shall not be counted toward any minimum **open space** requirement.
- 10.1112.44 The Reserve Parking Area shall not be used as snow storage area and shall not contain any **structure** or mechanical equipment.

15. The applicants' plan did not meet these requirements. In lieu of the lack of a "reserve parking area," the applicants proposed to make up the difference by providing valet parking. However, their plan for valet parking was unsupported by documentation and plainly inadequate, and it left many unanswered questions. Chief among these was that in the event that the property or properties were sold to some third party in the future, it was never settled who was going to be responsible for paying for valet parking in perpetuity and who was going to be responsible for enforcing the stipulation that such valet parking be provided. The developers' plan being lacking in adequate documentation, it was also clear how many off-site valet parking spaces had been reserved, and for how long. This Board had jurisdiction to address these questions, and it should have done so.

16. Another unanswered question (though not mentioned by the appellants until now) relates to the fact that one or more of the sites composing the applicants' project is believed to be

contaminated with hazardous waste, and the New Hampshire Department of Environmental Services has not yet evaluated them with a comprehensive public risk assessment. Whether these sites are safe for human occupation is an open question. It is the appellants view, shared by least one or more members of this Board, that the developers' application was rushed through to approval in the Planning Board, and site plan approval should not have been given until that assessment was done and these questions were answered.

WHEREFORE, the appellants respectfully pray that the Board conduct a rehearing on the question(s) committed to it by the Superior Court of Rockingham County, namely, whether this Board has jurisdiction to entertain any of the issues raised by the appellants in their appeal of the December 16, 2021 decision of the Portsmouth Planning Board.



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Attorney for Appellants

Dated: April 20, 2023

STATE OF NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT
OF THE CITY OF PORTSMOUTH

**In re Application of North Mill Pond Holdings, LLC;
One Raynes Ave, LLC; 31 Raynes Ave, LLC; and 203 Maplewood Ave, LLC,
regarding the properties located at 1 Raynes Avenue, 203 Maplewood Avenue,
and 31 Raynes Avenue, and known familiarly as The Raynes Avenue Project**

OBJECTION TO MOTION FOR REHEARING

The Appellants' Motion for Rehearing should be denied for two reasons. First, the Appellants are incorrect when they argue that Board Member David Rheume should have recused himself. Second, the Board properly determined that it lacks jurisdiction over the issues appealed—and Appellants' Motion offers no compelling argument to the contrary.

Mr. Rheume Was Not Required to Recuse Himself

As Mr. Rheume properly noted prior to the Board's consideration of the instant appeal, the issue before the Board on March 21, 2023, was not the correctness of any decision of the Planning Board, but rather whether the issues brought on appeal were properly before the Board (as dictated by statute). Appellants' only articulated reason for arguing that Mr. Rheume should have recused himself is that his wife was a member of the Planning Board that issued the decision being appealed. However, the Board was not considering the *propriety* of the Planning Board's actions. Mr. Rheume noted at the meeting that, if the Board were undertaking a substantive consideration of the appeal, he would recuse himself. But, given that the only issue before the Board was whether the Board had jurisdiction over the issues raised in the appeal, Mr. Rheume's familial relationship with a Planning Board member is of no moment.

New Hampshire law provides clearly that Mr. Rheume needed only to have recused himself if he "would be disqualified for any cause to act as a juror upon the trial of the same

matter in any action at law.” RSA 673:14, I.¹ Jurors, in turn, are ineligible to sit in trial of a matter if they are “not indifferent.” RSA 500-A:12, II; see also Taylor v. Town of Wakefield, 158 N.H. 35, 39 (2008) (explaining that the statute does not even require the automatic recusal of employees [or relatives] of *parties* in a case; rather recusal is necessary only if the jurors are “not indifferent”). Here, not only is Mr. Rheume not even a relative of a party, Appellants have offered no “evidence” that his relationship with a Planning Board member should result in recusal on the procedural issue considered by the Board other than to speculate that the couple may have discussed this particular matter “during dinner table conversation or otherwise.” Motion at ¶4. Such unsupported speculation certainly does not establish that Mr. Rheume is “not indifferent.”

The Winslow case does not support Appellants’ position. Rather, in that case, the planning board member at issue, prior to becoming a member of the board, had spoken at a planning board meeting in favor of the very project that was at issue. Winslow v. Holderness Planning Bd., 125 N.H. 262, 265 (1984). In fact, *each party* in that case acknowledged that the member should have been disqualified because it was undisputed that he “had prejudged the facts of the case before joining the board.” Id. at 267. Here, by contrast, there is no evidence that Mr. Rheume had prejudged even the substantive issues raised by Appellants’ appeal, let alone the jurisdictional issue that had nothing to do with the Planning Board’s actions and concerned only the jurisdiction of the Board as established by statute.

Appellants additionally complain that Mr. Rheume requested that the Board take an advisory vote as to whether he should recuse himself. See Motion at ¶3. Yet, that is exactly the procedure dictated by statute. RSA 673:14, II (“When uncertainty arises as to the application of

¹ Appellants do not argue that the other portion of the statute (concerning members with a “direct or pecuniary interest in the outcome which differs from the interest of other citizens”) applies to Mr. Rheume.

paragraph I to a board member in particular circumstances, the board shall, upon the request of that member or another member of the board, vote on the question of whether that member should be disqualified. Any such request and vote shall be made prior to or at the commencement of any required public hearing. Such a vote shall be advisory and non-binding, and may not be requested by persons other than board members, except as provided by local ordinance or by a procedural rule adopted under RSA 676:1.”).

Appellants are grasping at straws in their argument that Mr. Rheume should have recused himself, and the Board should not grant a rehearing based on such a deficient argument.

The Board Properly Determined that it Lacked Jurisdiction Over the Appeal

RSA 676:5, III, articulates which decisions of planning boards must be appealed to the Zoning Board of Adjustment:

If, in the exercise of subdivision or site plan review, the planning board makes any decision or determination ***which is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance, which would be appealable to the board of adjustment if it had been made by the administrative officer, then such decision may be appealed to the board of adjustment under this section; provided,*** however, that if the zoning ordinance contains an innovative land use control adopted pursuant to RSA 674:21 which delegates administration, including the granting of conditional or special use permits, to the planning board, then the planning board’s decision made pursuant to that delegation cannot be appealed to the board of adjustment, but may be appealed to the superior court as provided by RSA 677:15.

(emphasis supplied). Contrary to comments made during the March 21, 2023 hearing, the Board does not have general jurisdiction over all site plans approved by the Planning Board. To the contrary, this Board is vested with appellate jurisdiction *only when* the issue being appealed from the Planning Board involved a determination based upon the terms of the Zoning Ordinance or the interpretation of the Zoning Ordinance. See id. All other appeals from the Planning Board are taken directly to the Superior Court. RSA 677:15, I. The only issue before this Board on

March 21 was whether any of the questions raised by Appellants' appeal were of the type required by RSA 676:5, III to be appealed to the Zoning Board of Adjustment (i.e., those questions that involved interpretation of the Zoning Ordinance, and other than certain innovative land use controls). The Board correctly determined that none of the issues raised by Appellants did so.

While the Appellants raised six issues in their Appeal, and the Board voted separately on each of those issues, Appellants' Motion for Rehearing only alleges that two of those votes were in error (plus an additional issue that they acknowledge they had "not mentioned ... until now" (Motion for Rehearing at ¶16)). The Motion for Rehearing does not claim that the Board erred when it concluded that it lacked jurisdiction over the issues raised in paragraphs 8 through 10 of Appellants' January 14, 2022, Appeal of Decision of Portsmouth Planning Board (the "Appeal") (regarding Wetlands Conditional Use Permits), paragraph 11 of the Appeal (regarding the Historic District Commission), paragraph 12 of the Appeal (regarding the Conservation Law Foundation), and paragraph 13 (regarding the Conservation Commission). As detailed below, the Appellants are incorrect when they argue that the Board incorrectly determined that it lacked jurisdiction over the Appellants' other arguments as well.

First, the Board correctly determined that the issue raised in paragraphs 1 through 7 of the Appeal, related to whether an ineligible person participated in the Planning Board's deliberations and votes, was not appealable to the Board. The composition of the Planning Board is a matter of state law and Portsmouth's Administrative Code, and is not governed in any way by the Zoning Ordinance. This fact is reinforced by the fact that the portion of Appellants' Motion for Rehearing dealing with this issue does not cite a single provision of the Zoning Ordinance.

Motion for Rehearing at ¶¶11-13. The Board properly determined that it lacked jurisdiction over Appellants’ arguments on this issue.

Next, the Motion for Rehearing challenges the Board’s decision that the parking issues raised in paragraph 11 of the Appeal were not within the Board’s jurisdiction. The *full* text of the Appeal related to parking stated:

More generally, there were many other unanswered questions which came to light during the December 16, 2021 hearing, and the Planning Board should have waited until they were resolved. For example, it was never settled who was going to be responsible for paying for valet parking in perpetuity and who was going to be responsible for enforcing the stipulation that such value parking be provided, as the existing on-site parking provided-for by the developers’ plan was and is admittedly inadequate.

Appeal at ¶11. The Appeal cited no provision of the Zoning Ordinance that required such “unanswered questions” to be answered and, indeed there is none. Nor did Appellants’ attorney cite any provision of the Zoning Ordinance during his presentation to the Board on March 21, 2023. Now, *for the first time*, in the Motion for Rehearing, Appellants cite a section of the Zoning Ordinance concerning “reserve parking areas.” See Motion for Rehearing at ¶14. As an initial matter, even the Ordinance section cited by the Motion for Rehearing (Section 10.1112.40) is completely incongruent with what Appellants appealed back in January 2022. Section 10.112.40 regulates “reserve parking areas” when fewer than the required off-street parking spaces are provided. It does not require information about who will pay for valet parking or who will enforce a stipulation regarding valet parking, which were the only issues raised by the Appeal. Appellants cannot rewrite their Appeal a year and a half after it was filed.

More fundamentally, however, questions about Section 10.112.40 are beyond this Board’s purview. The applicants sought and obtained a Conditional Use Permit from the Planning Board pursuant to Section 10.1112.14 to allow a project to have fewer than the

minimum number of off-street parking spaces otherwise required. As RSA 676:5, III makes plain (and as Appellants have admitted), this Board does not have jurisdiction over appeals related to Conditional Use Permits over which the Planning Board has exclusive jurisdiction. In short, to the extent the Ordinance's parking provisions were appealed at all, the applicable provisions relate to Conditional Use Permits, which are not appealable to this Board.

Finally, the Appeal raises the brand-new argument that the Appellants "believe[]" the site may be contaminated with hazardous waste and they are unsure whether it is "safe for human occupation." Appeal at ¶16. Not only is this an issue never before raised, but Appellants do not even make an effort to connect their argument to the Zoning Ordinance. Thus, even if the issue were properly preserved, it is not one that is appealable to this Board. It certainly does not provide any proper justification for a rehearing of the Appeal.

WHEREFORE, the Applicants respectfully request that the Portsmouth Zoning Board of Adjustment deny Appellants' Motion for Rehearing.

Respectfully submitted,

**North Mill Pond Holdings, LLC;
One Raynes Ave, LLC;
31 Raynes Ave, LLC, and
203 Maplewood Ave., LLC**

By their counsel,

Sheehan Phinney Bass & Green, PA

Dated: May 31, 2023

By: /s/ Brian J. Bouchard
Courtney H.G. Herz (Bar No. 17114)
Brian J. Bouchard (Bar No. No. 20913)
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bbouchard@sheehan.com

CERTIFICATE OF SERVICE

I certify that on the above-referenced date, the foregoing was forwarded via email to Assistant City Attorney Trevor McCourt and Attorney Duncan MacCallum.

By: /s/ Brian J. Bouchard
Brian J. Bouchard

II. OLD BUSINESS

- E. The request of **The Islamic Society of the Seacoast Area ISSA (Owner)**, and **Chinburg Development, LLC (Applicant)**, for property located at **686 Maplewood Avenue** whereas relief is needed to construct four (4) duplexes and one (1) single living unit to create a total of nine (9) living units which requires the following: 1) Variance from Section 10.440, Use # 1.30 to permit four (4) two-family unit structures where they are not permitted, 2) Variance from Section 10.513 to permit five (5) free standing buildings with dwellings where not more than one is permitted, 3) Variance from Section 10.520 to allow a) 6,975 square feet of lot area per dwelling unit where 15,000 square feet is required; and b) 47 feet of frontage where 100 feet is required. Said property is located on Assessor Map 220 Lot 90 and lies within the Single Residence B (SRB) District and the Highway Noise Overlay District. (LU-23-57)

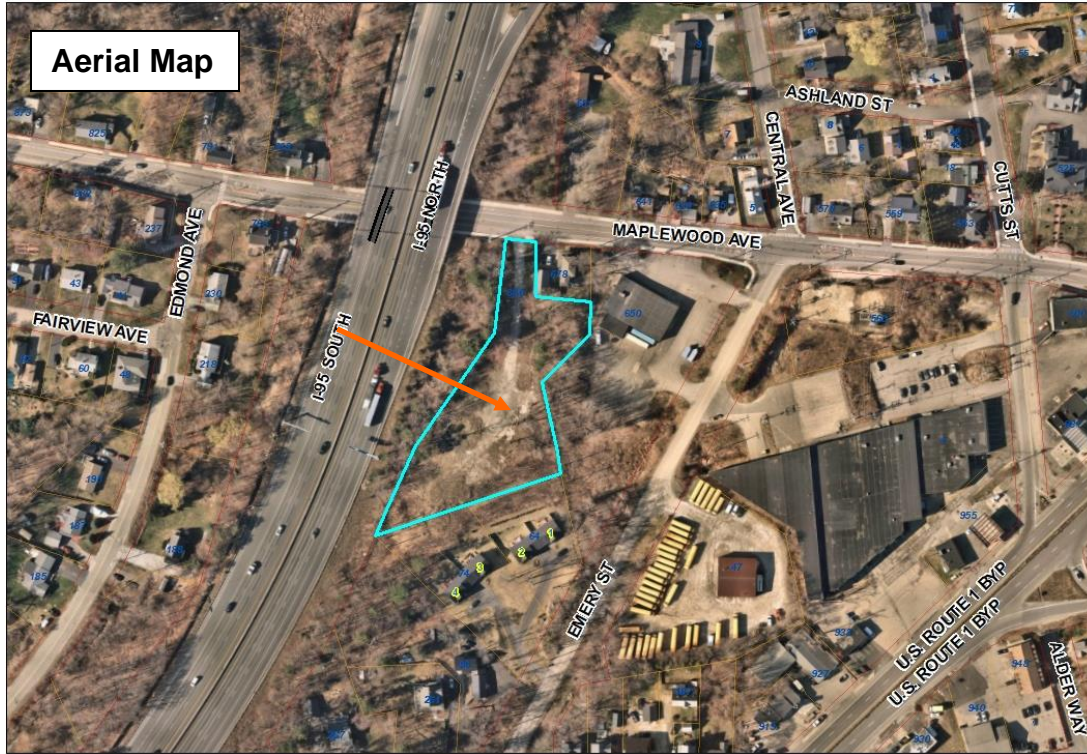
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Vacant	4 Duplexes and 1 Single Unit (9 total units)	Primarily residential
<u>Lot area (sq. ft.):</u>	62,776	62,776	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	N/A	6,975	15,000 min.
<u>Street Frontage (ft.):</u>	47	47	100 min.
<u>Lot depth (ft.):</u>	>200	>200	100 min.
<u>Front Yard (ft.):</u>	N/A	>60	30 min.
<u>Right Yard (ft.):</u>	N/A	12.5	10 min.
<u>Left Yard (ft.):</u>	N/A	12	10 min.
<u>Rear Yard (ft.):</u>	N/A	49	30 min.
<u>Height (ft.):</u>	N/A	<35	35 max.
<u>Building Coverage (%)</u> :	0	12.3	20 max.
<u>Open Space Coverage (%)</u> :	100	60.5	40 min.
<u>Parking:</u>	N/A	20	14
<u>Estimated Age of Structure:</u>	N/A	Variance request(s) shown in red.	

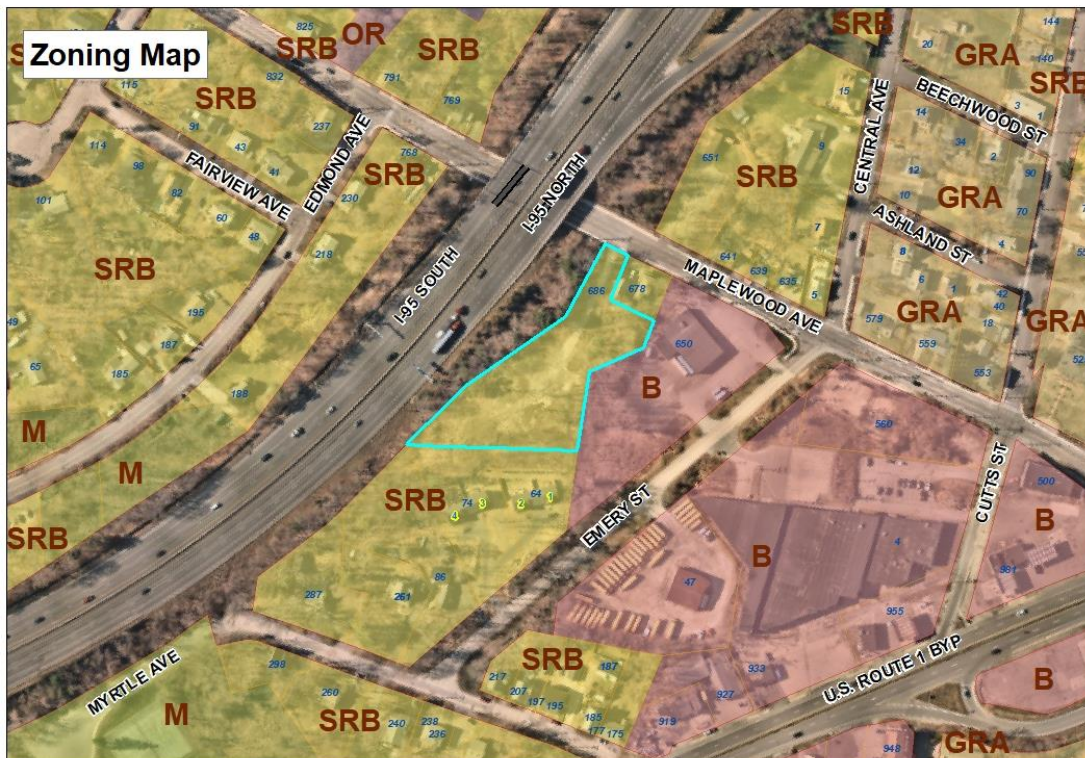
Other Permits/Approvals Required

- Site Plan Approval – TAC and Planning Board
- Highway Noise Overlay Conditional Use Permit – Planning Board
- Building Permit

Neighborhood Context



686 Maplewood Avenue



686 Maplewood Avenue

Previous Board of Adjustment Actions

February 21, 2017 – The Board **granted** a special exception and a variance to allow the following:

- 1) a Special Exception from Section 10.440 to allow a religious place of assembly in a district where the use is only allowed by special exception.
- 2) a Variance from Section 10.521 to allow 47'± of continuous street frontage where 100' is required.

February 25, 2019 – The Board **granted** a 1-year extension of the variance and special exception, to expire on February 21, 2020.

April 7, 2020 – The Board **postponed** the request (*to the April 21, 2020 meeting*) for relief needed from the Zoning Ordinance to construct a 4,000± s.f. building to house a religious place of assembly which includes the following:

- 1) A Special Exception under Section 10.440, Use #3.11 to allow a religious place of assembly in a district where the use is only allowed by Special Exception; and
- 2) A Variance from Section 10.521 to allow 47'± of continuous street frontage where 100' is required.

April 21, 2020 – The Board voted to **grant** the variance and special criteria as presented.

Planning Department Comments

The applicant is requesting relief for the construction of 5 total buildings on the existing vacant parcel. The buildings will include four (4) two-unit structures and one (1) single-unit structure.

The parcel is located within the Highway Noise Overlay District (HNOD), making development subject to a Conditional Use Permit and additional site review requirements per section 10.670 of the [Zoning Ordinance](#).

The applicants have proposed “1 unit to be affordable according to the City’s Zoning Ordinance”. The Board could consider adding this as stipulation of approval.

If granted approval, staff recommends the following stipulation for consideration:

- 1. The design and location of the dwellings may change as a result of Planning Board review and approval.**
- 2. As proposed in the application materials, one living unit will be affordable according to the standards defined in the Zoning Ordinance.**

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*

5. The “unnecessary hardship” test:

(a) The property has special conditions that distinguish it from other properties in the area.

AND

(b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.

OR

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.



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MICHAEL J. DONAHUE
CHARLES F. TUCKER
ROBERT D. CIANDELLA
NICHOLAS R. AESCHLIMAN

April 26, 2023

Phyllis Eldridge, Chair
Zoning Board of Adjustment
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: 686 Maplewood Avenue, Map 220, Lot 90
Chinburg Development, LLC

Dear Chair Eldridge and Board Members:

Enclosed please find supporting materials to accompany the information submitted via the City's on-line permitting system for variance relief regarding the above referenced property.

We respectfully request that this matter be placed on the Board's May 16, 2023 agenda. In the meantime, if you have any questions or require additional information do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Justin L. Pasay
JLP/sac
Enclosures

cc: Chinburg Development, LLC
John Chagnon

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DONAHUE, TUCKER & CIANDELLA, PLLC
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253
83 Clinton Street, Concord, NH 03301

VARIANCE APPLICATION OF

Chinburg Development, LLC (the “Applicant”) for property located at 686 Maplewood Avenue, Portsmouth, NH 03801, which is further identified as City Assessor Map 220, Lot 90 (the “Property”). The Property is located within City’s Single Residence B District (the “SRB District”) and the Highway Noise Overlay District.

A. Introduction and Factual Context

i. Development Team and Application Materials

The Applicant’s development team consists of John Chagnon, PE, LLS, of Ambit Engineering, Inc. (“Ambit”), Carla Goodknight, AIA, NCARB of CJ Architects, and The Gove Group Real Estate, LLC (“Gove”). Included herewith are the following enclosures:

- Aerial Photograph, Zoning Map and Assessor Map 220. See Enclosure 1.
- Proposed Site Plan, Residential Development, 686 Maplewood Avenue, Portsmouth, New Hampshire, Permit Plans, from Ambit, dated 13 April 2023, to include an Existing Conditions Plan on C1 (the “**Existing Conditions Plan**”), and a Variance Plan on C2 (the “**Variance Plan**”). See Enclosure 2.
- Duplex Unit and Single Unit Plans, with renderings, from CJ Architects, dated 29 March 2023 (the “**Duplex Unit Plans**” and the “**Single Unit Plans**”). See Enclosure 3.
- Landscaping and Screening Plan from Chinburg Development, LLC dated 21 April 2023 (the “**Landscape and Screening Plan**”). See Enclosure 4.
- Neighborhood Density Calculation from Gove (the “**Density Calculation**”). See Enclosure 5.
- Trip Generation Memorandum from Ambit, dated 23 April 2023 (the “**Trip Generation Memo**”). See Enclosure 6.
- Property Value Impact Letter from Gove, dated 18 April 2023. See Enclosure 7.

ii. Property Description, Existing Conditions and Applicable Zoning Regulations

As depicted in **Enclosure 1**, at 62,776 sf (1.4411 acres) in size, the Property is unique due to its size, which is larger than all other SRB District Properties in the surrounding area, and its awkward configuration. See id; **Enclosure 2**. More specifically, presumably due to the expansion, overtime, of Route 95, the Property enjoys only 47.31 ft of frontage. Id. The Property is bound to the north by Route 95, to the east by Maplewood Avenue, to the south by the property located at 650 Maplewood Avenue (City Assessor Map 220, Lot 88) which is located within the City’s Business Zoning District and is improved by a wholesale/retail business use, and to the south by 64 and 74 Emery Street (City Assessor Map 220, Lots 87-2 and 87-3), both of which are improved with two-family duplexes. See Enclosures 1 and 2; See also pictures of Property filed with application. The Property is unimproved and largely cleared in the central portion of same, though there exists a mature vegetative buffer along the northern boundary and the majority of the western and southern boundaries as well. Id. A 100 ft easement (45 ft of which is located on the Property) to accommodate a public electric utility and its overhead electrical wires, is located on the southern portion of the Property. See Enclosure 2, Existing Conditions Plan.

The Property is among the first lots situated to the west of the Business District Area along the Route 1 By-Pass to be zoned within the SRB District, the purpose of which is to “provide areas for single-family dwellings at low to medium densities (approximately 1 to 3 dwellings per acres) and appropriate accessory uses.” See Zoning Ordinance, Section 10.410. As such, the Property is uniquely situated as a transition between the more densely situated downtown area with its associated mixed uses, and less dense residential areas to the west. The grade and topography of the Property also presents unique circumstances, as depicted on the **Existing Conditions Plan**. See **Enclosure 2**. More specifically, the Property rises from a 40 ft elevation at the Maplewood Avenue level, to 60 feet at the back (south) portion of the Property before it slopes down to the surrounding properties.

The SRB District has the following dimensional requirements:

- Lot area: 15,000 sf
- Lot area per dwelling unit: 15,000 sf
- Continuance street frontage: 100 ft
- Depth: 100 ft
- Minimum front yard: 30 ft
- Minimum side yard: 10 ft
- Minimum rear yard: 30 ft
- Max Structure Height: 35 ft
- Max roof appurtenance: 8 ft
- Max Building Coverage: 20%
- Minimum open space: 40%

See Zoning Ordinance, Section 10.520. Additionally, within the SRB District, two-family dwellings are not permitted. See Zoning Ordinance, Section 10.440, 1.30.

iii. **Project Proposal**

The Applicant proposes to develop the Property into a multi-family condominium consisting of four (4) two-family dwellings, and one (1) single family dwelling, with associated site improvements (the “Project”). See **Variance Plan**. One (1) of the proposed units will be affordable, as that term is defined by the City’s Zoning Ordinance.¹ The aesthetic of the Project will be traditional / colonial to complement the existing historic character of the City. See **Enclosure 3**. Both the two-family units and the single-family unit are proposed to include a single-car garage, bonus room, bonus bath and mechanical storage on the first floor; living room, dining room, kitchen and bathroom on the second floor; and a master bedroom/bathroom and additional bedroom on the third floor. Id. Additional design features include covered porch areas, doghouse dormers, exterior decks, and the use of Hardie Board siding. See **Enclosures 2, 3**.

¹ The Applicant’s intention with regard to this unit is to ensure that the combined mortgage loan debt service, property taxes and required insurance do not exceed 30% of a household’s gross income and which is intended for sale to a household with an income of no more than 100% of the median income for a 4-person household for the Portsmouth-Rochester HUD Metropolitan Fair Market Area published by HUD.

The Project will be served by a single driveway from Maplewood Avenue which will be complemented by a 5 ft sidewalk to facilitate pedestrian foot-traffic to/from the proposed dwelling units. The Project will comply with all setback requirements, building coverage requirements and open space requirements. See Enclosure 2, Variance Plan. Further, the Project satisfies the off-street parking requirement of 14 spaces via the provision of 20 spaces. Id.

The Project proposes a robust landscaping and screening program as depicted on the Landscape and Screening Plan. See Enclosure 4. More specifically, the Applicant proposes the planting of 37 *pinus thunbergiana* (“Thunderheads”) along the Property’s southern and eastern boundaries, the planting of eight (8) *plantanus x acerifolia* trees (“Bloodgoods”) along the western boundary and on either side of the entrance to the Property, as well as several ornamental Chinese *astilbes* and Japanese *spirea* which will adorn the entrance from Maplewood Avenue area. The Thunderheads are medium-sized evergreen conifers which will grow to a height of up to 10 ft, and a width of up to 8 ft. The Bloodgoods, which are also called London Planetrees, are a hybrid cross between the American Sycamore and the Oriental Planetree. The Bloodgoods will grow to a height of up to 75 – 100 ft and have a spread of 60 – 75 ft. Collectively, the proposed landscaping plan will provide tasteful screening of the Property from abutting properties and Maplewood Avenue alike, and it will provide insulation barrier from the noise of Route 95.

Finally, the Project incorporates a 6,500 sf recreation area as depicted on the **Variance Plan**, which area will serve as an amenity to residents of the neighborhood. This area will provide green space, dog walking and additional passive recreational opportunities for residents.

iv. Requested Relief

The Applicant requests the following variance relief to accommodate the Project:

- **Two-Family Dwelling Relief:** The Applicant requests variance relief from Article 4, Section 10.440, 1.30 of the Zoning Ordinance to permit four (4) two-family dwellings on the Property where two-family dwellings are not permitted in the SRB District.
- **One Dwelling Per Lot:** The Applicant requests variance relief from Article 5, Section 10.513 of the Zoning Ordinance to permit five (5) free-standing buildings with dwellings, as depicted on the plans, where no more than one free-standing dwelling is permitted in the SRB District.
- **Density Relief:** The Applicant requests variance relief from Article 5, Section 10.520 of the Zoning Ordinance to permit 6,975 sf of lot area per each of the nine (9) dwelling units, where 15,000 sf of lot area per dwelling unit is required in the SRB District.
- By way of additional context, the Applicant conducted a density calculation of the immediate and expanded neighborhoods around the Property and determined the following foundational facts regarding density in this area of Portsmouth:

- Of the 14 residential properties in the immediate neighborhood, which is located to the east of Route 95, four (4) include two-family dwellings, to include 64 and 74 Emery Street which are immediate abutters to the Project, and one (1), which abuts the Property to the east and is located at 678 Maplewood Avenue, includes a 3-unit multi-family dwelling. See Enclosure 5.
- The average square footage of lot area per dwelling unit in the immediate neighborhood is 7,361 sf. Id.
- The proposed square footage of lot area per dwelling unit in the Project is a consistent 6,975 sf, a negligible difference of 386 sf from the average square footage of lot area per dwelling unit in the immediate neighborhood. Id.
- As you head west on Maplewood Ave, the average square footage of lot area per dwelling unit in the extended neighborhood on the southern side of Maplewood is 7,995 sf. Id.
- The average square footage of lot area per dwelling unit in the extended neighborhood on the northern side of Maplewood is 9,359 sf.
- **Frontage Relief:** The Applicant requests variance relief from Article 5, Section 10.520 of the Zoning Ordinance to permit development of the Project with 47.31 ft of frontage where 100 ft is required in the SRB District.

v. Previous Proposals and Additional Permitting

In February of 2017, the Property received a Special Exception to construct a religious place of assembly (the Islamic Society of the Seacoast Area) and a variance from the above referenced frontage requirement. Thereafter, in April of 2019, the City’s Planning Board granted a corresponding Site Plan Review Application for the proposal, which was ultimately abandoned by the owner of the Property. Of note, and as detailed in Ambit’s Trip Generation Memo, the Mosque proposal contemplated considerably more traffic than this Project. See Enclosure 6.

Prior to that, we understand that a 28-unit multi-family proposal and a 6,000 sf warehouse proposal were unsuccessful in obtaining necessary entitlements to be developed.

Finally, to the extent that the Applicant receives the variance relief it seeks by this application, it will pursue Site Plan Review and a Highway Noise Overlay District Conditional use Permit from the City’s Planning Board.

vi. Statutory Variance Criteria

Pursuant to Article 2, Section 10.233 of the City’s Zoning Ordinance and RSA 674:33, to obtain a variance in Portsmouth, an applicant must show that: (1) the variance will not be

contrary to the public interest; (2) the spirit of the ordinance is observed; (3) substantial justice is done; (4) the values of surrounding properties are not diminished; and (5) literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, where said term means that, owing to special conditions of the property that distinguish it from other properties in the area: no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and the Proposed use is a reasonable one; or if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. See RSA 674:33, I (b).

Because the Applicant's Project will be consistent with the essential character of the surrounding area, will not compromise the public health in any way, will provide substantial justice, will not compromise the property values of surrounding properties, and because there is no rational connection between the intent of the underlying ordinance provisions and their application to the Property under the unique circumstances of this case, as outlined below, we respectfully request that the requested variance be granted.

vii. Analysis

1. The variances will not be contrary to the public interest.

The New Hampshire Supreme Court has indicated that the requirement that a variance not be "contrary to the public interest" is coextensive and related to the requirement that a variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577, 580 (2005); Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 105-06 (2007); and Farrar v. City of Keene, 158 N.H. 684, 691 (2009). A variance is contrary to the public interest only if it "unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives." Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. See also Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011) ("[m]ere conflict with the terms of the ordinance is insufficient.") Moreover, these cases instruct boards of adjustment to make the determination as to whether a variance application "unduly" conflicts with the zoning objectives of the ordinance "to a marked degree" by analyzing whether granting the variance would "alter the essential character of the neighborhood" or "threaten the public health, safety or welfare" and to make that determination by examining, where possible, the language of the Zoning Ordinance. See supra.

As indicated above, all of the requested variances derive either from Article 4, Section 10.440 of the Zoning Ordinance (the Table of Uses – Residential, Mixed Residential, Business and Industrial Districts), or Article 5, Sections 10.513 or 10.520 (the Table of Dimensional Standards – Residential and Mixed Residential Districts), all of which pertain, in this case, to the intended aesthetic of the SRB District. The specific purpose of the SRB District is to "provide areas for single-family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre), and appropriate accessory uses." Zoning Ordinance, Article 4, Section 10.410. The general purpose of the Zoning Ordinance as a whole is to "promote the health, safety and the

general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan” via the regulation of, among other things, the intensity of land use and the preservation and enhancement of the visual environment. Zoning Ordinance, Article 1, Section 10.121. To summarize, the objectives of the SRB District and the dimensional and use restrictions inherent to same which are implicated by this application, are to provide medium density and aesthetically consistent development in the area between downtown and the commercial Gateway Corridor along Woodbury Avenue.

Here, as a foundational point, the Applicant’s proposal does not create any marked conflict with the underlying provisions of the Zoning Ordinance because, on the contrary, and due to the Property’s unique configuration, physical characteristics, and the existing built environment that surrounds the Property, the Project is consistent with the existing neighborhood and ultimately advances the purpose of the ordinance to provide medium density in a transitional area that already incorporates two-family and multi-family development.

More specifically, the Project proposes two-family dwellings on the Property which abuts to the north two (2) distinct lots which are each improved with a two-family dwelling (64 and 74 Emery Street), and to the west, a three (3) unit multi-family dwelling located at 678 Maplewood Avenue. See Enclosure 1. Further, the density in the immediate neighborhood is 7,361 sf of lot area per dwelling unit, where the Project proposes a substantially similar 6,975 sf of lot area per dwelling unit. See Enclosure 5. The Project contemplates the perfect transitional compromise between the more densely settled downtown area, and the less dense SRB District area located to the west of the Property and proposes less traffic than previously approved proposals for the Property. See Enclosure 6. For these reasons, there is no “marked conflict” between the Project proposal, and the objectives of the zoning ordinances in question.

For the same reasons, the Project also plainly satisfies the case law requirements because the essential character of the neighborhood will not be affected for the reasons explained throughout this narrative. The density and two-family variances will not alter the essential character of the neighborhood because the Property is abutted on two sides by properties with either two or three-family dwellings on them. Further, the 386 sf difference between the proposed density of the Project (6,975 sf of lot area per dwelling unit) and the existing density of the immediate neighborhood (7,361 sf of lot area per dwelling unit), is small enough to be effectively indiscernible. In other words, the Project will be consistent with the character of the surrounding neighborhood. See Enclosures 1 – 6.

Additionally, the Project will complement the City’s most recent Master Plan initiatives which repeatedly focus on the need for affordable housing in the City, and region beyond. More specifically, the Portsmouth 2025 Master Plan (the “Master Plan”) states that:

The scarcity of appropriately zoned land, combined with the high cost of land in Portsmouth generally, has been a major obstacle to the construction of affordable housing ... Despite these efforts, very little new affordable or moderately-priced housing has been created, and much new housing development in the City has been targeted for the luxury market.

Master Plan, pg. 62.

This Project would add an affordable housing unit to the housing stock in Portsmouth that is within walking distance to the downtown area, public recreational areas, and public transportation. In other words, the Project would help to move the City of Portsmouth towards its goals of having diverse affordable housing by providing one (1) restricted affordable unit in this community.

As the Applicant's Project will be consistent with the intent of the SRB District and the general purposes of the Zoning Ordinance, the express intent of the Master Plan, and because the Project will not alter the essential character of the neighborhood or threaten the public health or safety, it would be reasonable and appropriate for the Board of Adjustment to conclude that granting the Applicant's variance requests will satisfy the public interest prong of the variance criteria.

2. The spirit of the Ordinance is observed.

As referenced above, the requested variances observe the spirit of the Zoning Ordinance and New Hampshire jurisprudence regarding the "public interest" prong of the variance criteria because the Applicant's Project will be consistent with the general and implied purposes of the Zoning Ordinance provisions at issue in this case. Further, the Project will not compromise the character of the neighborhood or threaten the public health, safety, or welfare. As the New Hampshire Supreme Court has indicated in both Chester Rod & Gun Club and in Malachy Glen, the requirement that the variance not be "contrary to the public interest" is coextensive and is related to the requirement that the variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club, 152 N.H. at 580. A variance is contrary to the spirit of the ordinance only if it "unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives." Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. As discussed above, the requested variances are consistent with the general spirit of the Ordinances in question as well as the Master Plan. As a result, for the reasons stated above, the Applicant respectfully asserts that it would be reasonable and appropriate for the Board of Adjustment to conclude that the requested variance will observe the spirit of the Zoning Ordinance.

3. Substantial justice is done.

As noted in Malachy Glen, *supra*, "perhaps the only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." Malachy Glen, *supra*, citing 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 24.11, at 308 (2000) (quoting New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997)). In short, there must be some gain to the general public from denying the variance that outweighs the loss to the applicant from its denial.

In this case, the public does not gain anything by denying the requested variance. The Property has been the site of several development proposals, none of which have materialized.

The Project contemplates the perfect transitional development between the downtown area and the SRB District to the west of the Property and proposes residential density which is substantially similar to the surrounding neighborhood, all in an aesthetic which compliments the historic charm of the greater Portsmouth area. Further, the Project incorporates an affordable housing unit which advances the express intent of the Master Plan. The public benefits from a Project which will create housing, advance the essential character of the area, generate additional tax revenue and fulfill goals of the newly adopted Master Plan.

On the contrary, if the variances are denied, the Project will not be developed, will not add an affordable unit to the housing stock in Portsmouth, and will not generate additional tax revenue. Further, the Applicant will not be able to reasonably use property it intends to purchase for a use which is consistent with the surrounding area and which will have a *de minimis* impact on the neighborhood.

Certainly, the Applicant will benefit from the variance, if granted, as they will facilitate the reasonable use of the Property in furtherance of the Applicant's goals, which has been encouraged by the New Hampshire Supreme Court.

As the requested variances benefit the Applicant and do not detriment the public, there is no gain to the general public from denying the request that outweighs the loss to the Applicant from its denial, and this prong of the variance criteria is satisfied.

4. The proposal will not diminish surrounding property values.

Given the nature of the proposed conditions of the Property and the surrounding area, as discussed above and depicted in the Enclosures, the Applicant's proposal will not diminish surrounding property values. The proposed residential development will be substantially consistent with the surrounding area and will otherwise be situated on a hill adjacent to Route 95. See Enclosure 7. The Applicant's Project will obviously enhance the value of the Property, thereby enhancing the value of surrounding properties in turn. Certainly, there is no evidence in the record that could reasonably support the conclusion that the proposed Project will diminish surrounding property values. As the weight of the evidence supports the conclusion that the Project will not diminish the value of surrounding properties, it would be reasonable for the Board of Adjustment to conclude that this prong of the variance criteria is satisfied.

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

a. Legal Standard

As set forth in the provisions of RSA 674:33, I, there are two options by which the Board of Adjustment can find that an unnecessary hardship exists:

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The Proposed use is a reasonable one.

(the “First Hardship Test”)

or,

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. (the “Section Hardship Test”).

The Applicant respectfully reminds the Board of Adjustment that the mere fact that the Applicant is seeking a variance from the express provisions of the Zoning Ordinance is not a valid reason for denying the variance. See Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 107 (2007); see also Harborside Associates, 162 N.H. at 2011 (“mere conflict with the terms of the ordinance is insufficient”).

b. Summary of Applicable Legal Standard

The first prong of the First Hardship Test requires the Board to determine whether there are special conditions on the underlying property which is the subject of a variance request. This requirement finds its origins in the Standard State Zoning Enabling Act of the 1920s “since it is the existence of those ‘special conditions’ which causes the application of the zoning ordinance to apply unfairly to a particular property, requiring that variance relief be available to prevent a taking.”² The Supreme Court has determined that the physical improvements on a property can constitute the “special conditions” which are the subject of the first prong of the First Hardship Test. Harborside, 162 N.H. at 518 (the size and scale of the buildings on the lot could be considered special conditions); *Cf* Farrar, 158, N.H. 689 (where variance sought to convert large, historical single use residence to mixed use of two residence and office space, size of residence was relevant to determining whether property was unique in its environment).

The second prong of the First Hardship Test analysis, pertaining to the relationship between the public purpose of the ordinance provision in question, and its application to the specific property in question, is the codified vestige of a New Hampshire Supreme Court case called Simplex Technologies, Inc. v. Town of Newington (“Simplex”).³ To summarize, the Board’s obligation in this portion of its hardship analysis is to determine the purpose of the regulation from which relief is being sought and if there is no specific purpose identified in the regulation, then to consider the general-purpose statements of the ordinance as a whole, so that the Board may determine whether the purpose of said ordinance is advanced by applying it to the property in question.

² 15 Loughlin, New Hampshire Practice, Land Use Planning and Zoning, §24.20 (4th Ed.) citing The Standard State Zoning Enabling Act.

³ 145 N.H. 727 (2001).

The final prong of the First Hardship Test analysis is whether the proposed use is “reasonable.”

The Applicant respectfully reminds the Board of Adjustment of the New Hampshire Supreme Court’s substantive pivot in Simplex. The Simplex case constituted a “sharp change in the New Hampshire Supreme Court’s treatment of the unnecessary hardship requirement.” The Simplex Court noted that under the unnecessary hardship standard, as it had been developed by the Court up until that time, variances were very difficult to obtain unless the evidence established that the property owner could not use his or her property in any reasonable manner.”⁴ This standard is no longer the required standard in New Hampshire. The Applicant does not have an obligation to affirmatively prove that the underlying Property cannot be reasonably used without the requested variance modification. Rather, the critical question under the First Hardship Test is whether the purpose of the Zoning Ordinance is fairly and substantially advanced by applying it to the Applicant’s Property considering the Property’s unique setting and environment. This approach is consistent with the Supreme Court’s pivot away from the overly restrictive pre-Simplex hardship analysis “to be more considerate of the constitutional right to enjoy property”.⁵

The Second Hardship Test, which we will not focus on in this narrative, is satisfied by establishing that owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

c. Analysis

The first prong of the First Hardship Test requires the Board to determine whether there are special conditions on the underlying Property which distinguish it from others in the area. Here, as discussed at length in Section A above, which is incorporated herewith by reference, the Property does have special conditions that distinguish it from others in the area to specifically include the fact that it is substantially larger than all other residential properties in the area within the SRB District, the Property’s configuration which creates only 47.31 ft of frontage, the Property’s existence immediately adjacent to Route 95, and the grade and topography of the Property which slopes up from Maplewood Avenue and makes the Property difficult to observe from Maplewood Avenue. Through these unique characteristics, the Property is uniquely situated to accommodate the proposed Project which will constitute the highest and best use for this parcel.

As there are special conditions of the Property, the first prong of the First Hardship Test is satisfied.

The second prong of the First Hardship Test pertains to the relationship between the public purpose of the ordinance provisions in question, and their application to the specific property in question. To summarize, the Board of Adjustment must determine whether the purpose of the underlying ordinances are advanced by applying them to the property in question.

⁴ 15 Loughlin, 24.16.

⁵ Id. citing Simplex, 145 N.H. at 731.

Here, as discussed above, the requested variances derive either from the Table of Uses – Residential or the dimensional requirements of Article 5, to include the Table of Dimensional Standards – Residential and Mixed Residential Districts, and they pertain to the intended aesthetic of the SRB District, which was designed to “provide areas for single-family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre), and appropriate accessory uses.” Zoning Ordinance, Article 4, Section 10.410. Further, the general purpose of the Zoning Ordinance is to “promote the health, safety and the general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan” via the regulation of, among other things, the intensity of land use and the preservation and enhancement of the visual environment. Zoning Ordinance, Article 1, Section 10.121. To summarize, the objective of the SRB District and the dimensional and use restrictions inherent to same which are implicated by this application, are to provide medium density and aesthetically consistent development in the area between downtown and the commercial Gateway Corridor along Woodbury Avenue.

In this case, denying the variance will not advance the purposes of these ordinances because the opposite is true: granting the requested variances will facilitate development of the Property in a way that is consistent with the surrounding neighborhood and advances the core objectives of the SRB District and the general purposes of the Zoning Ordinance and Master Plan by enabling reasonable development of land in a manner that advances the aesthetic of the neighborhood and the zoning district, and providing an affordable unit to increase the stock of below-market rate housing in the City.

The Applicant’s proposal would advance the general and implied purposes of the Zoning Ordinances in question for all the reasons detailed in this narrative and denying the requested variance would only serve to frustrate the same. As such, the second prong of the hardship criteria is satisfied in this case.

The final analysis under the First Hardship Test is to determine whether the proposed use is reasonable. Here, the proposed Project is reasonable because it constitutes residential development that is substantially similar to the surrounding neighborhood and which provides an affordable housing unit. As explained above, the essential character of the neighborhood will remain the same. As such, the Applicant’s proposal is reasonable.

On these facts, the Applicant respectfully submits that its variance request satisfies the final prong of the statutory variance criteria.

viii. Conclusion

The Applicant respectfully submits that they have satisfied the statutory variance criteria in this matter and its Application should be approved.





City of Portsmouth, NH
Property

Zoom To Share Print 686 maplewood



Themes

transparency

Residential Districts

- R Rural
- SRA Single Residence A
- SRB Single Residence B
- GRA General Residence A
- GRB General Residence B
- GRC General Residence C
- GA/MH Garden Apartment/Mobile Home Park

Mixed Residential Districts

- MRO Mixed Residential Office
- MRB Mixed Residential Business
- G1 Gateway Corridor
- G2 Gateway Center

Business Districts

- GB General Business
- B Business
- WB Waterfront Business

Industrial Districts

- OR Office Research
- I Industrial
- WI Waterfront Industrial

Airport Districts

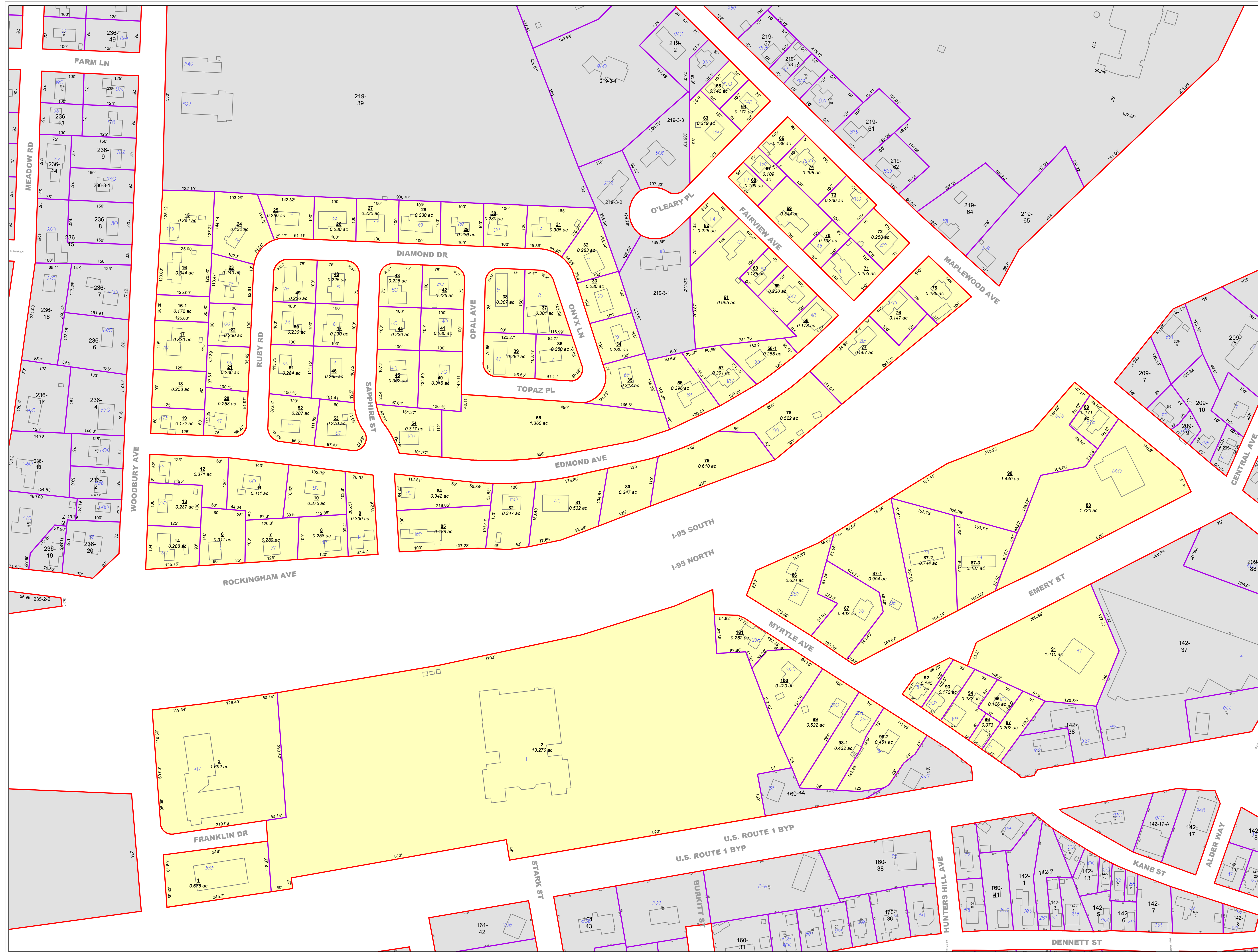
- AIR Airport
- AI Airport Industrial
- PI Pease Industrial
- ABC Airport Business Commercial

Conservation Districts

- M Municipal
- NRP Natural Resource Protection

Character Districts

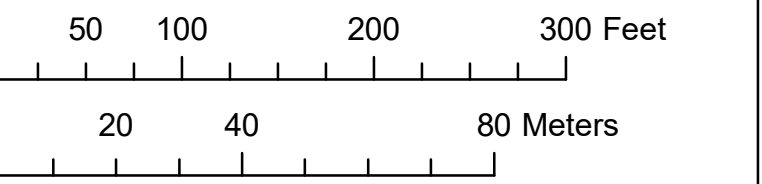
- CD5 Character District 5
- CD4 Character District 4
- CD4W Character District 4-W
- CD4-L1 Character District 4-L1
- CD4-L2 Character District 4-L2



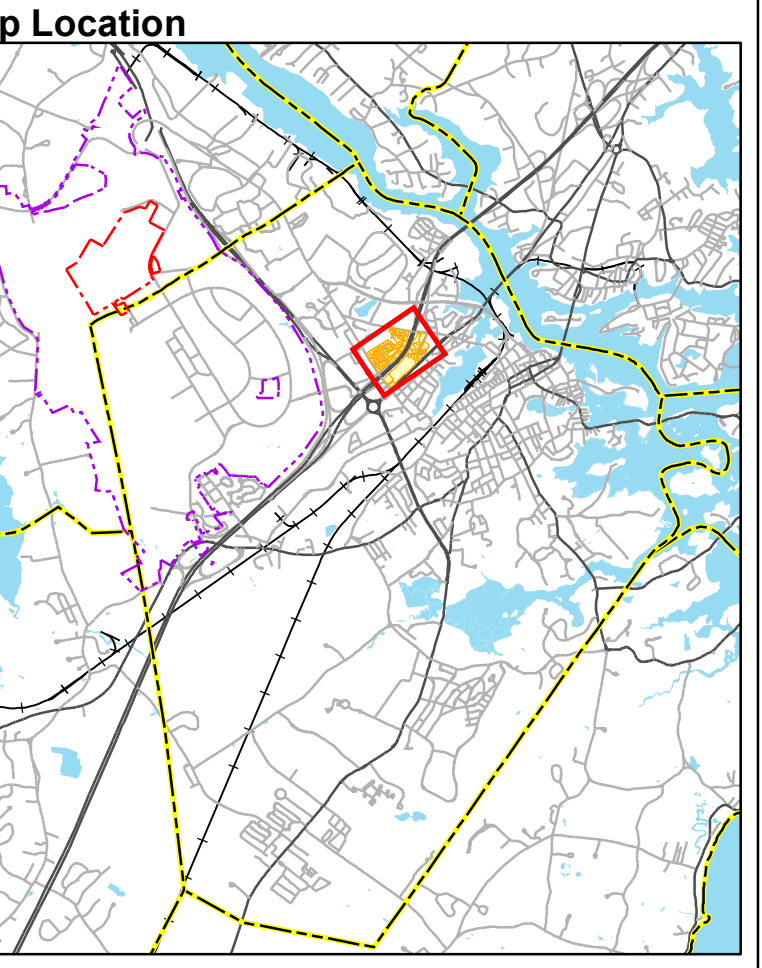
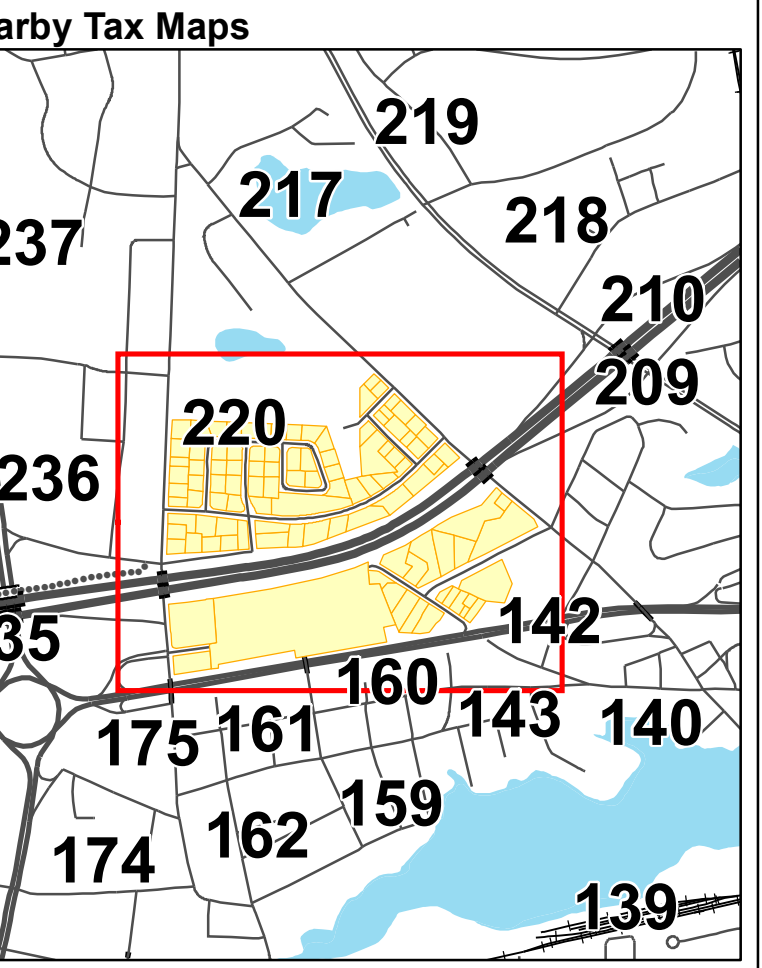
Partial Legend
 See the cover sheet for the complete legend.

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



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.



Portsmouth, New Hampshire
 2022
Tax Map 220

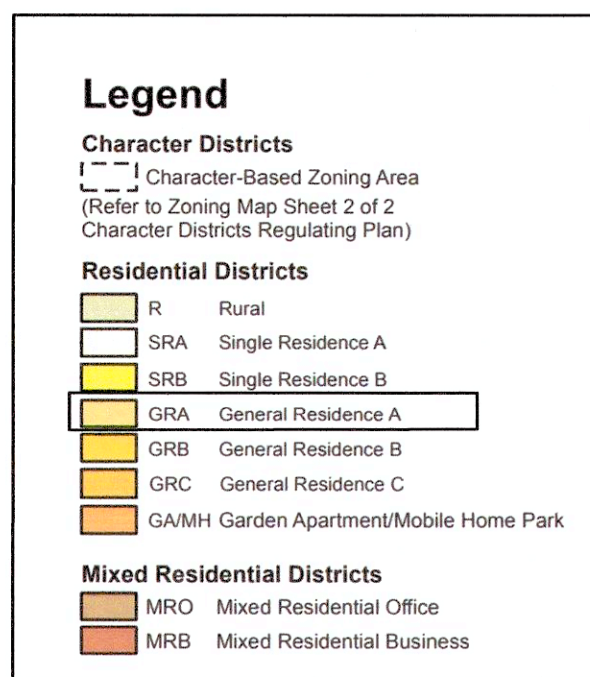
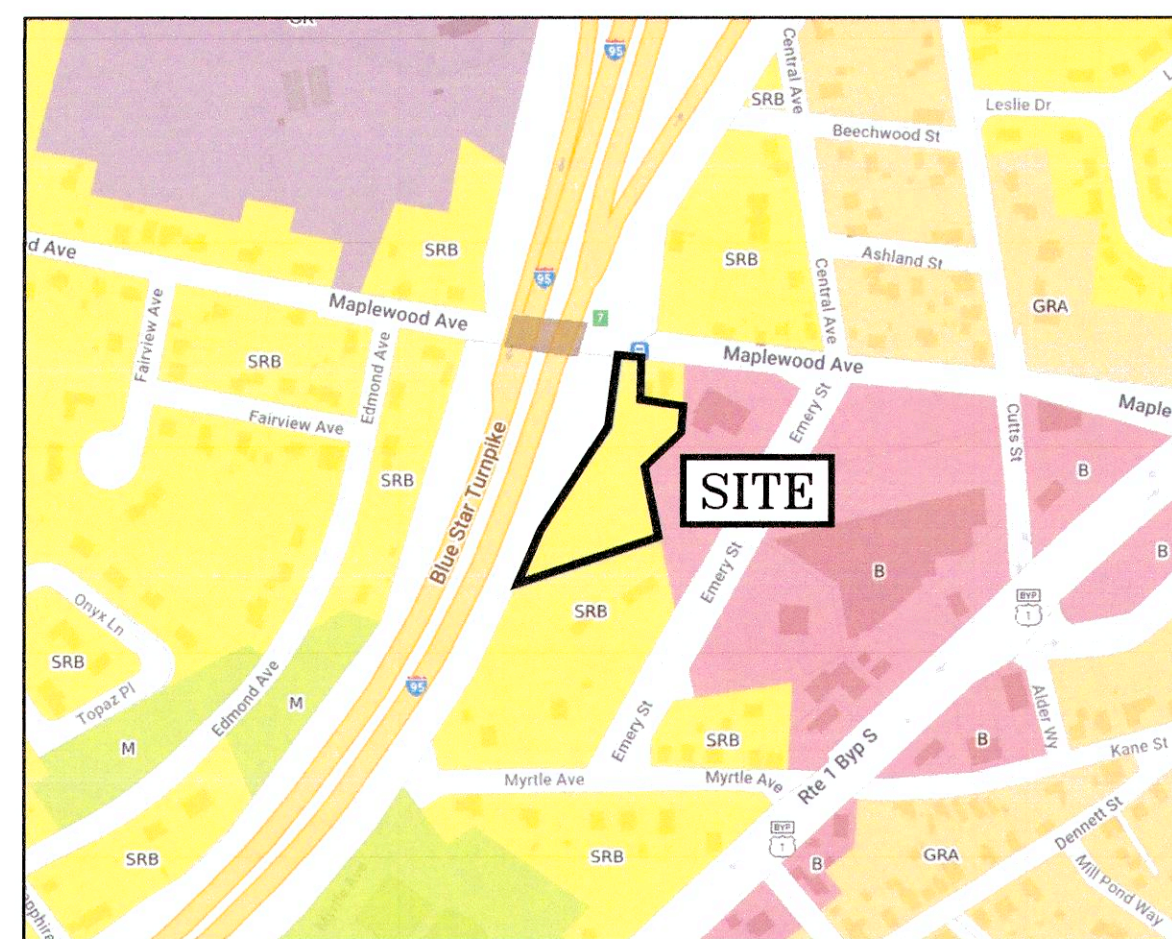
APPLICANT:
 CHINBURG DEVELOPMENT, LLC
 3 PENSTOCK WAY
 NEWMARKET, NH 03857
 Tel. (603) 868-5995

OWNER:
 ISLAMIC SOCIETY OF
 THE SEACOAST AREA
 42N DOVER POINT ROAD
 DOVER, NH 03820

CIVIL ENGINEER & LAND SURVEYOR:
 AMBIT ENGINEERING, INC.
 A DIVISION OF HALEY WARD, INC.
 200 GRIFFIN ROAD, UNIT 3
 PORTSMOUTH, N.H. 03801
 Tel. (603) 430-9282
 Fax (603) 436-2315

ARCHITECT:
 CJ ARCHITECTS
 233 VAUGHAN STREET, SUITE 101
 PORTSMOUTH, NH, 03801
 Tel. (603) 431-2808

LEGAL REPRESENTATION:
 DONAHUE, TUCKER & CIANELLA, PLLC
 111 MAPLEWOOD AVE., SUITE D
 PORTSMOUTH, NH, 03801
 Tel. (603) 766-1686



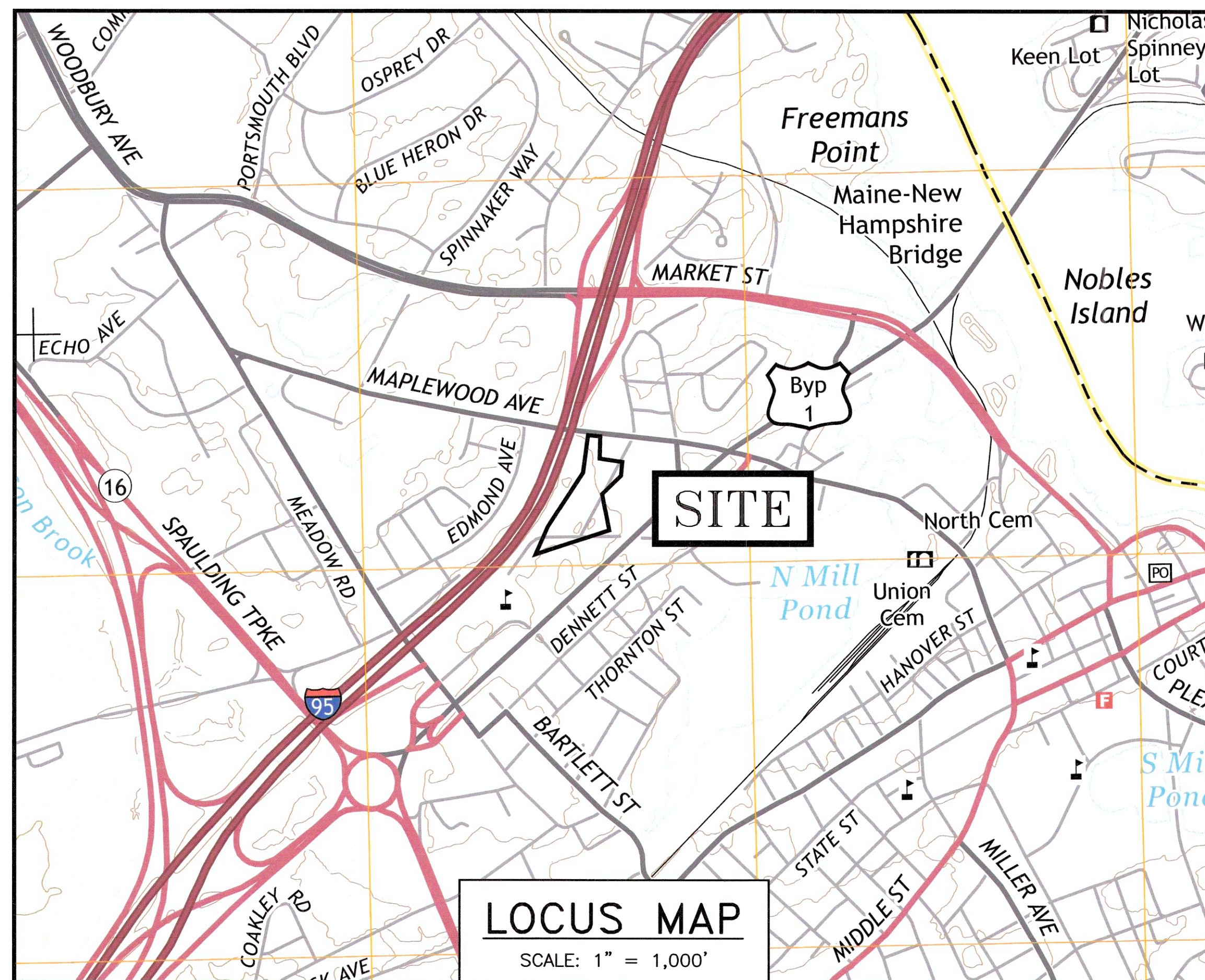
PROPOSED SITE PLAN RESIDENTIAL DEVELOPMENT 686 MAPLEWOOD AVENUE PORTSMOUTH, NEW HAMPSHIRE PERMIT PLANS

REQUIRED PERMITS:
 PORTSMOUTH BOA: PENDING

Enclosure 2

LEGEND:

EXISTING	PROPOSED	
---	---	PROPERTY LINE
---	---	SETBACK
S	S	SEWER PIPE
SL	SL	SEWER LATERAL
G	G	GAS LINE
D	D	STORM DRAIN
W	W	WATER LINE
WS	WS	WATER SERVICE
UGE	UGE	UNDERGROUND ELECTRIC
OHW	OHW	OVERHEAD ELECTRIC/WIRES
---	UD	FOUNDATION DRAIN
100	100	EDGE OF PAVEMENT (EP)
97x3	98x0	CONTOUR
○	○	SPOT ELEVATION
○	○	UTILITY POLE
⊙	⊙	WALL MOUNTED EXTERIOR LIGHTS
⊙	⊙	TRANSFORMER ON CONCRETE PAD
⊙	⊙	ELECTRIC HANDHOLD
⊙	⊙	SHUT OFFS (WATER/GAS)
⊙	⊙	GATE VALVE
⊙	⊙	HYDRANT
⊙	⊙	CATCH BASIN
⊙	⊙	SEWER MANHOLE
⊙	⊙	DRAIN MANHOLE
⊙	⊙	TELEPHONE MANHOLE
⊙	⊙	PARKING SPACE COUNT
⊙	⊙	PARKING METER
LSA	LSA	LANDSCAPED AREA
TBD	TBD	TO BE DETERMINED
CI	CI	CAST IRON PIPE
COP	COP	COPPER PIPE
DI	DI	DUCTILE IRON PIPE
PVC	PVC	POLYVINYL CHLORIDE PIPE
RCP	RCP	REINFORCED CONCRETE PIPE
AC	AC	ASBESTOS CEMENT PIPE
VC	VC	VITRIFIED CLAY PIPE
EP	EP	EDGE OF PAVEMENT
EL	EL	ELEVATION
FF	FF	FINISHED FLOOR
INV	INV	INVERT
S =	S =	SLOPE FT/FT
TBM	TBM	TEMPORARY BENCH MARK
TYP	TYP	TYPICAL



INDEX OF SHEETS

DWG No.	Description
C1	EXISTING CONDITIONS PLAN
C2	VARIANCE SITE PLAN

UTILITY CONTACTS

ELECTRIC:
 EVERSOURCE
 1700 LAFAYETTE ROAD
 PORTSMOUTH, N.H. 03801
 Tel. (603) 436-7708, Ext. 555.5678
 ATTN: MICHAEL BUSBY, P.E. (MANAGER)

NATURAL GAS:
 UNITIL
 325 WEST ROAD
 PORTSMOUTH, N.H. 03801
 Tel. (603) 294-5144
 ATTN: DAVE BEAULIEU

CABLE:
 COMCAST
 155 COMMERCE WAY
 PORTSMOUTH, N.H. 03801
 Tel. (603) 679-5695 (X1037)
 ATTN: MIKE COLLINS

SEWER & WATER:
 PORTSMOUTH DEPARTMENT OF PUBLIC WORKS
 680 PEVERLY HILL ROAD
 PORTSMOUTH, N.H. 03801
 Tel. (603) 766-1438 ATTN: JIM TOW

COMMUNICATIONS:
 FAIRPOINT COMMUNICATIONS
 JOE CONSIDINE
 1575 GREENLAND ROAD
 GREENLAND, N.H. 03840
 Tel. (603) 427-5525

PORTSMOUTH APPROVAL CONDITIONS NOTE:
 ALL CONDITIONS ON THIS PLAN SET SHALL REMAIN IN EFFECT IN PERPETUITY PURSUANT TO THE REQUIREMENTS OF THE CITY OF PORTSMOUTH SITE PLAN REVIEW REGULATIONS.

APPROVED BY THE PORTSMOUTH ZONING BOARD

CHAIRMAN _____ DATE _____

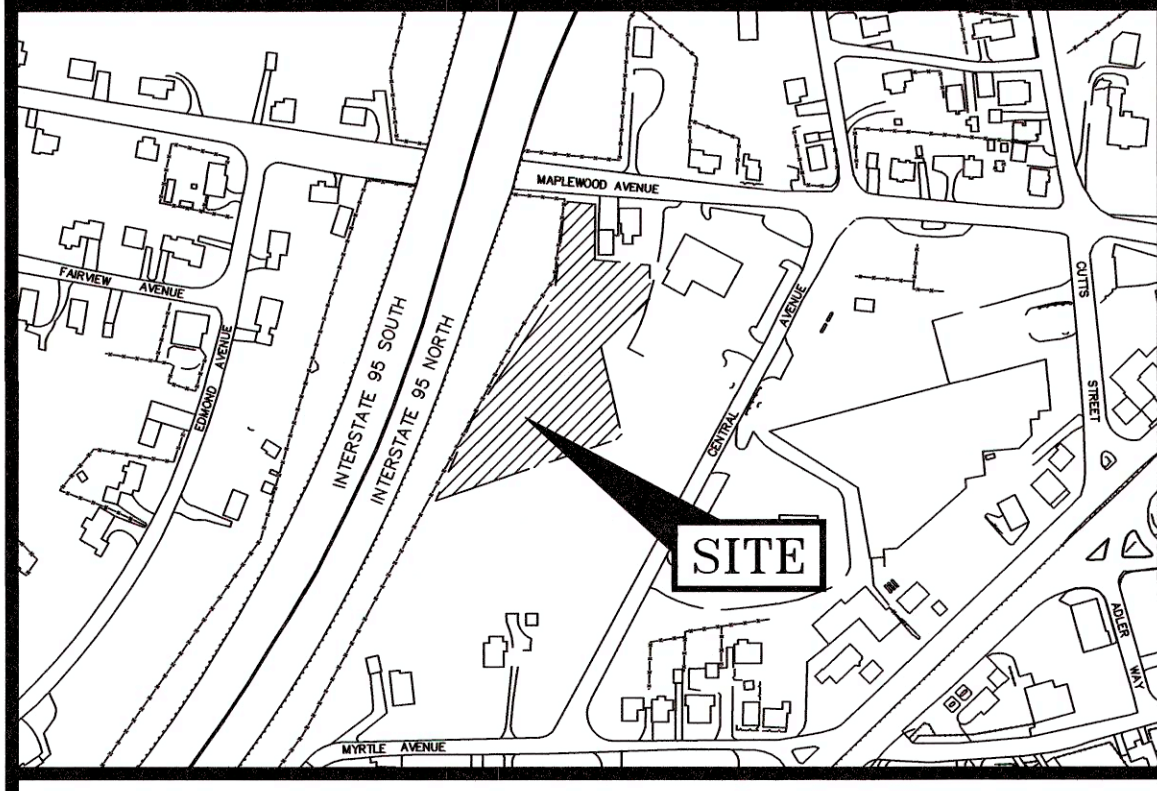
PROPOSED SITE PLAN
 RESIDENTIAL DEVELOPMENT
 686 MAPLEWOOD AVENUE
 PORTSMOUTH, N.H.

AMBIT ENGINEERING, INC.
 A DIVISION OF HALEY WARD, INC.

200 Griffin Road, Unit 3
 Portsmouth, NH 03801
 603.430.9282

WWW.HALEYWARD.COM

PLAN SET SUBMITTAL DATE: 20 APRIL 2023



LOCATION MAP SCALE 1"=300'

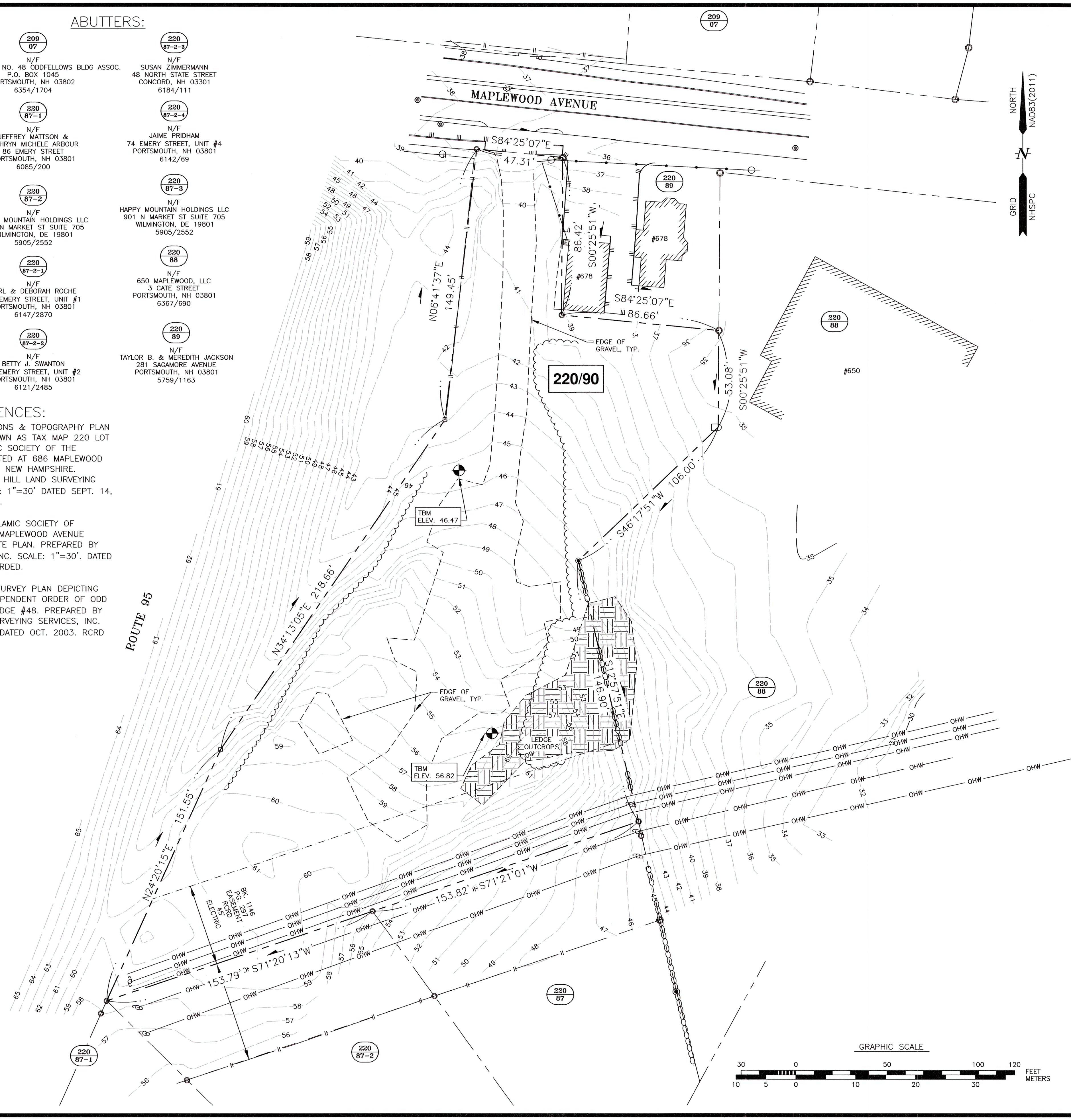
LEGEND

- | EXISTING | DESCRIPTION |
|------------|---------------------------------------|
| (124/21) | MAP 124 / LOT 21 |
| N/F | NOW OR FORMERLY |
| RP | RECORD OF PROBATE |
| RCRD | ROCKINGHAM COUNTY REGISTRY OF DEEDS |
| --- | BOUNDARY LINE |
| --- | SETBACK LINE |
| RR SPK FND | RAILROAD SPIKE FOUND |
| IR FND | IRON ROD FOUND |
| IP FND | IRON PIPE FOUND |
| DH FND | DRILL HOLE FOUND |
| BND w/ DH | BOUND w/ DRILL HOLE |
| FM | FORCE MAIN |
| S | SEWER LINE |
| G | GAS LINE |
| D | STORM DRAIN |
| W | POTABLE WATER LINE |
| --- | UNDERGROUND ELECTRIC |
| --- | OVERHEAD WIRES |
| 100 | CONTOUR LINE |
| 97x3 | SPOT ELEVATION |
| --- | EDGE OF PAVEMENT |
| --- | WOODS / TREE LINE |
| U-Pole | UTILITY POLE (w/ GUY) (w/ LIGHT) |
| * | LIGHT POLE |
| Shutoff | SHUTOFF/CURB STOP (WATER, GAS, SEWER) |
| GV | GATE VALVE |
| Hyd. | HYDRANT |
| CB | CATCH BASIN |
| TM | TELEPHONE MANHOLE |
| SM | SEWER MANHOLE |
| DM | DRAIN MANHOLE |
| FF | FINISHED FLOOR |
| INV. | INVERT |
| TBM | TEMPORARY BENCHMARK |
| TYP. | TYPICAL |

- PLAN REFERENCES:**
- EXISTING CONDITIONS & TOPOGRAPHY PLAN FOR VACANT LOT KNOWN AS TAX MAP 220 LOT 90 OWNED BY ISLAMIC SOCIETY OF THE SEACOAST AREA LOCATED AT 686 MAPLEWOOD AVENUE PORTSMOUTH, NEW HAMPSHIRE. PREPARED BY KNIGHT HILL LAND SURVEYING SERVICES, INC. SCALE: 1"=30' DATED SEPT. 14, 2017. NOT RECORDED.
 - SITE PLAN FOR ISLAMIC SOCIETY OF SEACOAST AREA 686 MAPLEWOOD AVENUE PORTSMOUTH, N.H. SITE PLAN. PREPARED BY AMBIT ENGINEERING, INC. SCALE: 1"=30'. DATED MAY 2019. NOT RECORDED.
 - LAND BOUNDARY SURVEY PLAN DEPICTING LAND OWNED BY INDEPENDENT ORDER OF ODD FELLOWS, OSGOOD LODGE #48. PREPARED BY KNIGHT HILL LAND SURVEYING SERVICES, INC. SCALE: 1" = 40 FT. DATED OCT. 2003. RCRD D-31278.

ABUTTERS:

- | | |
|---|---|
| <p>209 07 N/F OSGOOD LODGE NO. 48 ODDFELLOWS BLDG ASSOC. P.O. BOX 1045 PORTSMOUTH, NH 03802 6354/1704</p> <p>220 87-1 N/F JEFFREY MATTSON & KATHRYN MICHELE ARBOUR 86 EMERY STREET PORTSMOUTH, NH 03801 6085/200</p> <p>220 87-2 N/F HAPPY MOUNTAIN HOLDINGS LLC 901 N MARKET ST SUITE 705 WILMINGTON, DE 19801 5905/2552</p> <p>220 87-2-1 N/F CARL & DEBORAH ROCHE 64 EMERY STREET, UNIT #1 PORTSMOUTH, NH 03801 6147/2870</p> <p>220 87-2-2 N/F BETTY J. SWANTON 64 EMERY STREET, UNIT #2 PORTSMOUTH, NH 03801 6121/2485</p> | <p>220 87-2-3 N/F SUSAN ZIMMERMANN 48 NORTH STATE STREET CONCORD, NH 03301 6184/111</p> <p>220 87-2-4 N/F JAIME PRIDHAM 74 EMERY STREET, UNIT #4 PORTSMOUTH, NH 03801 6142/69</p> <p>220 87-3 N/F HAPPY MOUNTAIN HOLDINGS LLC 901 N MARKET ST SUITE 705 WILMINGTON, DE 19801 5905/2552</p> <p>220 88 N/F 650 MAPLEWOOD, LLC 3 CATE STREET PORTSMOUTH, NH 03801 6367/690</p> <p>220 89 N/F TAYLOR B. & MEREDITH JACKSON 281 SAGAMORE AVENUE PORTSMOUTH, NH 03801 5759/1163</p> |
|---|---|



AMBIT ENGINEERING, INC.
A DIVISION OF HALEY WARD, INC.

200 Griffin Road, Unit 3
Portsmouth, NH 03801
603-430-9282

WWW.HALEYWARD.COM

- NOTES:**
- PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 220 AS LOT 90.
 - OWNERS OF RECORD:
ISLAMIC SOCIETY OF THE SEACOAST AREA
42N DOVER POINT ROAD
DOVER, NH 03820
5806/2816
 - APPLICANT:
CHINBURG DEVELOPMENT, LLC
3 PENSTOCK WAY
NEWMARKET, NH 03857
 - PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259F. EFFECTIVE JANUARY 29, 2021.
 - EXISTING LOT AREA:
62,776 S.F.
1.4411 ACRES
 - PARCEL IS LOCATED IN SINGLE RESIDENCE B (SRB) DISTRICT.
 - DIMENSIONAL REQUIREMENTS:
MIN. LOT AREA: 15,000 S.F.
FRONTAGE: 100 FEET
SETBACKS: FRONT 30 FEET
SIDE 10 FEET
REAR 30 FEET
MAXIMUM STRUCTURE HEIGHT: 35 FEET
MAXIMUM BUILDING COVERAGE: 20%
MINIMUM OPEN SPACE: 40%
 - THE PURPOSE OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS ON ASSESSOR'S MAP 220 LOT 90 IN THE CITY OF PORTSMOUTH.
 - RCRD 5759/1160 PLACED A BURDEN ON TAX MAP 220 LOT 90. THE EASEMENT DESCRIBED IN RCRD 5759/1160 HAS BEEN EXTINGUISHED DUE TO THE REMOVAL OF THE DECKS AND THE NON-REPLACEMENT WITHIN THE SIX (6) MONTHS ALLOWED BY THE EASEMENT DEED.

**RESIDENTIAL DEVELOPMENT
CHINBURG DEVELOPMENT
686 MAPLEWOOD AVE.
PORTSMOUTH, N.H.**

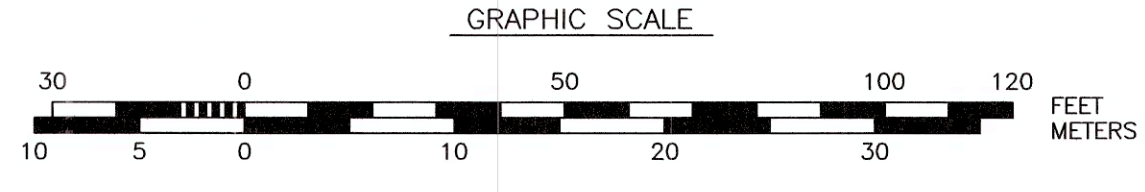
NO.	DESCRIPTION	DATE
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0	ISSUED FOR COMMENT	4/13/23
REVISIONS		

SCALE: 1"=30' FEBRUARY 2023

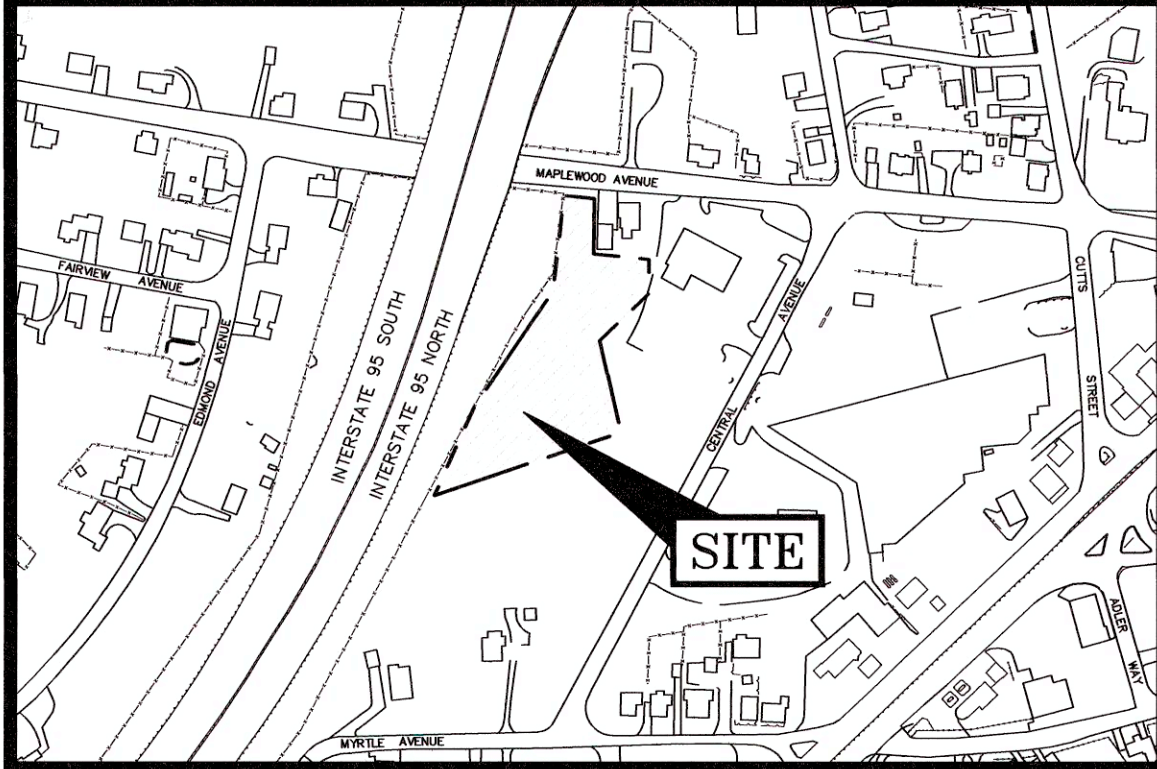
EXISTING CONDITIONS PLAN **C1**

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

JRC 4.20.23
JOHN R. CHAGNON, LLS DATE



PIN: 15102023-Chinburg-Residential-Development-686-Maplewood-Ave-Portsmouth-NH-03801-4/20/23-135587-NH



LOCATION MAP SCALE 1"=300'

LEGEND:

- N/F NOW OR FORMERLY
- RP RECORD OF PROBATE
- RCRD ROCKINGHAM COUNTY REGISTRY OF DEEDS
- MAP 11 / LOT 21
- IRON ROD/IRON PIPE FOUND
- APPROXIMATE BOUNDARY
- 100' CONTOUR
- 97x3 SPOT ELEVATION
- EDGE OF PAVEMENT (EP)
- WOODS / TREE LINE
- ELEVATION
- FINISHED FLOOR
- INV. INVERT
- TBM TEMPORARY BENCHMARK
- TYP. TYPICAL
- LSA LANDSCAPED AREA
- 1 PARKING SPACE

IMPERVIOUS SURFACE AREAS (TO PROPERTY LINE)

STRUCTURE	PRE-CONSTRUCTION IMPERVIOUS (S.F.)	POST-CONSTRUCTION IMPERVIOUS (S.F.)
MAIN STRUCTURES	0	6,480
DECKS	0	864
COVERED PORCHES	0	360
PAVEMENT	0	11,625
SIDEWALKS	0	2,157
LEDGE	3,291	3,291
GRAVEL	12,999	0
CURBING	0	178
RETAINING WALL	0	211
TOTAL	16,290	25,166
LOT SIZE	62,776	62,776
% LOT COVERAGE	25.9%	40.1%

PROPOSED BUILDING COVERAGE: 7,704 S.F./62,776 S.F. = 12.3%
 PROPOSED OPEN SPACE: 37,999 S.F./62,776 S.F. = 60.5%
 BUILDING HEIGHT TO CONFORM TO ORDINANCE.

VARIANCE APPLICATION:

- ARTICLE #5, SECTION 10.520 TO PERMIT FRONTAGE OF 47.31 FEET WHERE 100 FEET IS REQUIRED.
- ARTICLE #4, SECTION 10.440-1.30 TO PERMIT 2 FAMILY DWELLINGS WHERE ONLY SINGLE FAMILY ARE ALLOWED.
- ARTICLE #5, SECTION 10.520 TO PERMIT 6,975 S.F. OF LOT AREA PER DWELLING UNIT WHERE 15,000 S.F. OF LOT AREA PER DWELLING UNIT IS REQUIRED.
- ARTICLE #5, SECTION 10.513 TO PERMIT 5 FREE STANDING BUILDINGS WITH DWELLINGS WHERE NO MORE THAN ONE FREE STANDING DWELLING IS PERMITTED.

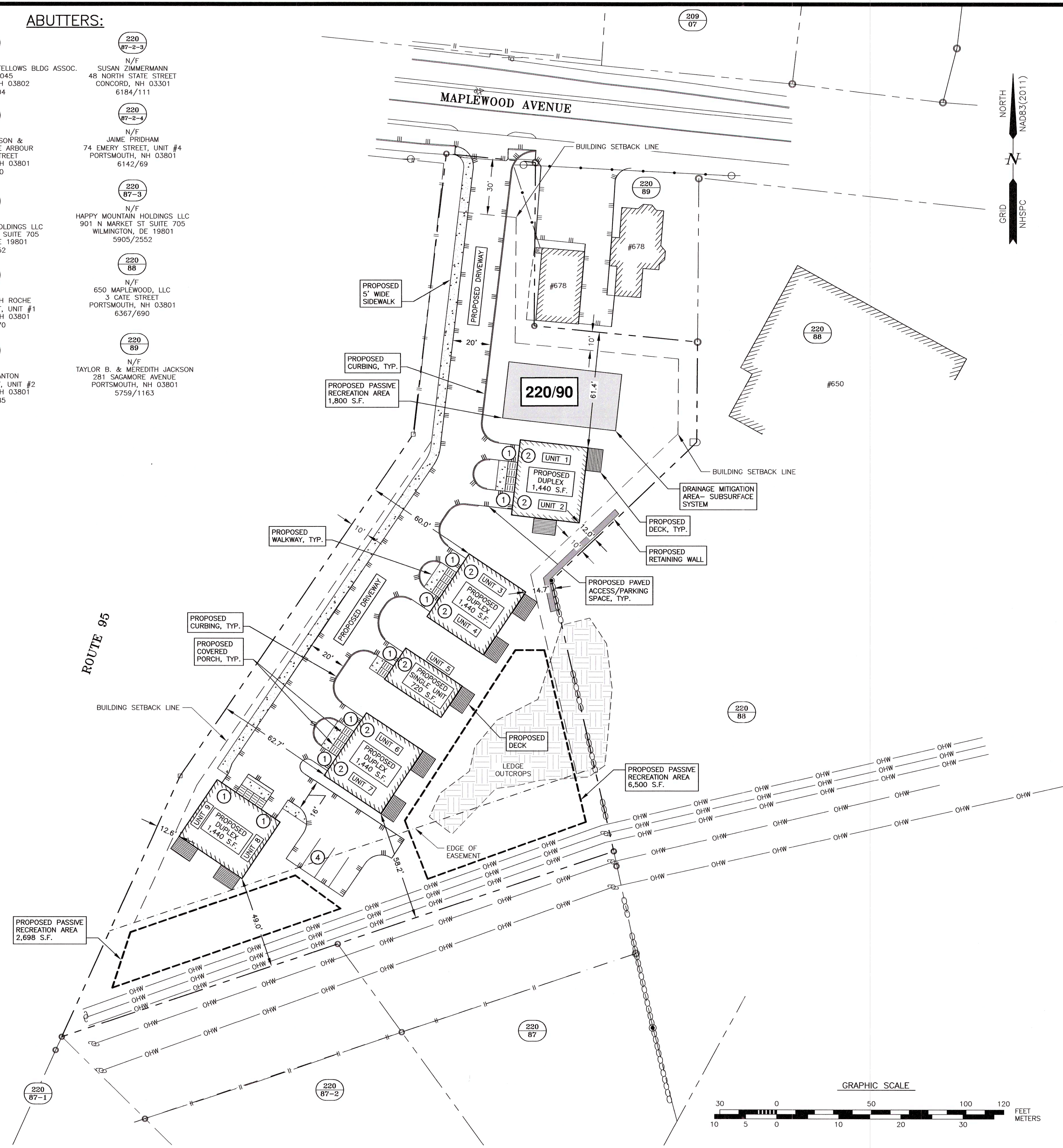
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JOHN R. CHAGNON, LLS DATE 4.20.23

ABUTTERS:

- 209 07 N/F OSGOOD LODGE NO. 48 ODDFELLOWS BLDG ASSOC. P.O. BOX 1045 PORTSMOUTH, NH 03802 6354/1704
- 220 87-1 N/F JEFFREY MATTSON & KATHRYN MICHELE ARBOUR 86 EMERY STREET PORTSMOUTH, NH 03801 6085/200
- 220 87-2 N/F HAPPY MOUNTAIN HOLDINGS LLC 901 N MARKET ST SUITE 705 WILMINGTON, DE 19801 5905/2552
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- 220 87-2-3 N/F SUSAN ZIMMERMANN 48 NORTH STATE STREET CONCORD, NH 03301 6184/111
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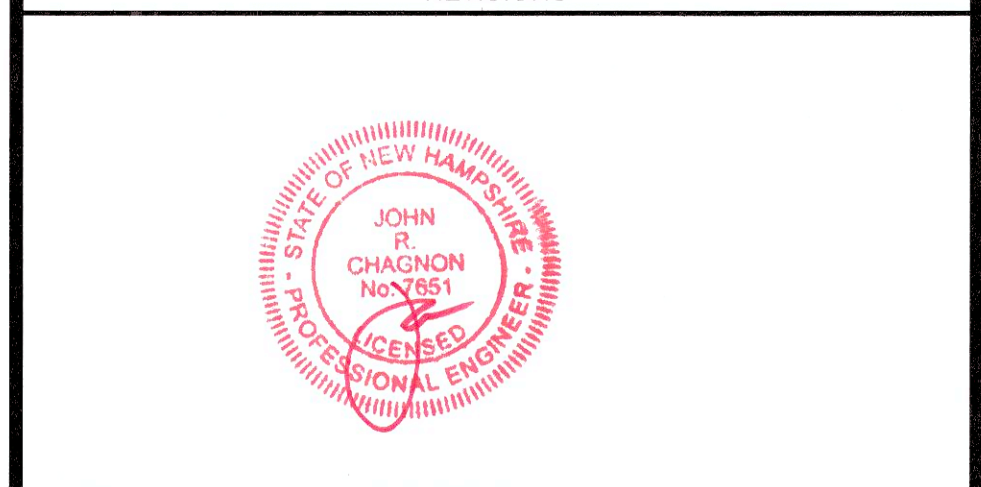


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 200 Griffin Road, Unit 3
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- NOTES:
- PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 220 AS LOT 90.
 - OWNERS OF RECORD:
 ISLAMIC SOCIETY OF THE SEACOAST AREA
 42N DOVER POINT ROAD
 DOVER, NH 03820
 5806/2816
 APPLICANT:
 CHINBURG DEVELOPMENT, LLC
 3 PENSTOCK WAY
 NEWMARKET, NH 03857
 - PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259F. EFFECTIVE JANUARY 29, 2021.
 - EXISTING LOT AREA:
 62,776 S.F.
 1.4411 ACRES
 - PARCEL IS LOCATED IN SINGLE RESIDENCE B (SRB) DISTRICT.
- DIMENSIONAL REQUIREMENTS:
- | | |
|----------------------------|---------------|
| MIN. LOT AREA: | 15,000 S.F. |
| FRONTAGE: | 100 FEET |
| SETBACKS: | FRONT 30 FEET |
| | SIDE 10 FEET |
| | REAR 30 FEET |
| MAXIMUM STRUCTURE HEIGHT: | 35 FEET |
| MAXIMUM BUILDING COVERAGE: | 20% |
| MINIMUM OPEN SPACE: | 40% |
- THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED DEVELOPMENT ON ASSESSOR'S MAP 220 LOT 90 IN THE CITY OF PORTSMOUTH.
 - VERTICAL DATUM IS NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GPS OBSERVATIONS.
 - BUILDINGS FROM PLANS BY CJ ARCHITECTS DATED 3-27-23.
 - PARKING CALCULATION:
 REQUIRED: 1.3 PER UNIT
 9 UNITS X 1.3 = 12 SPACES
 GUEST REQUIRED: 1 PER 5 UNITS = 2 SPACES
 TOTAL SPACES REQUIRED = 14
 PROVIDED PARKING: 20 SPACES

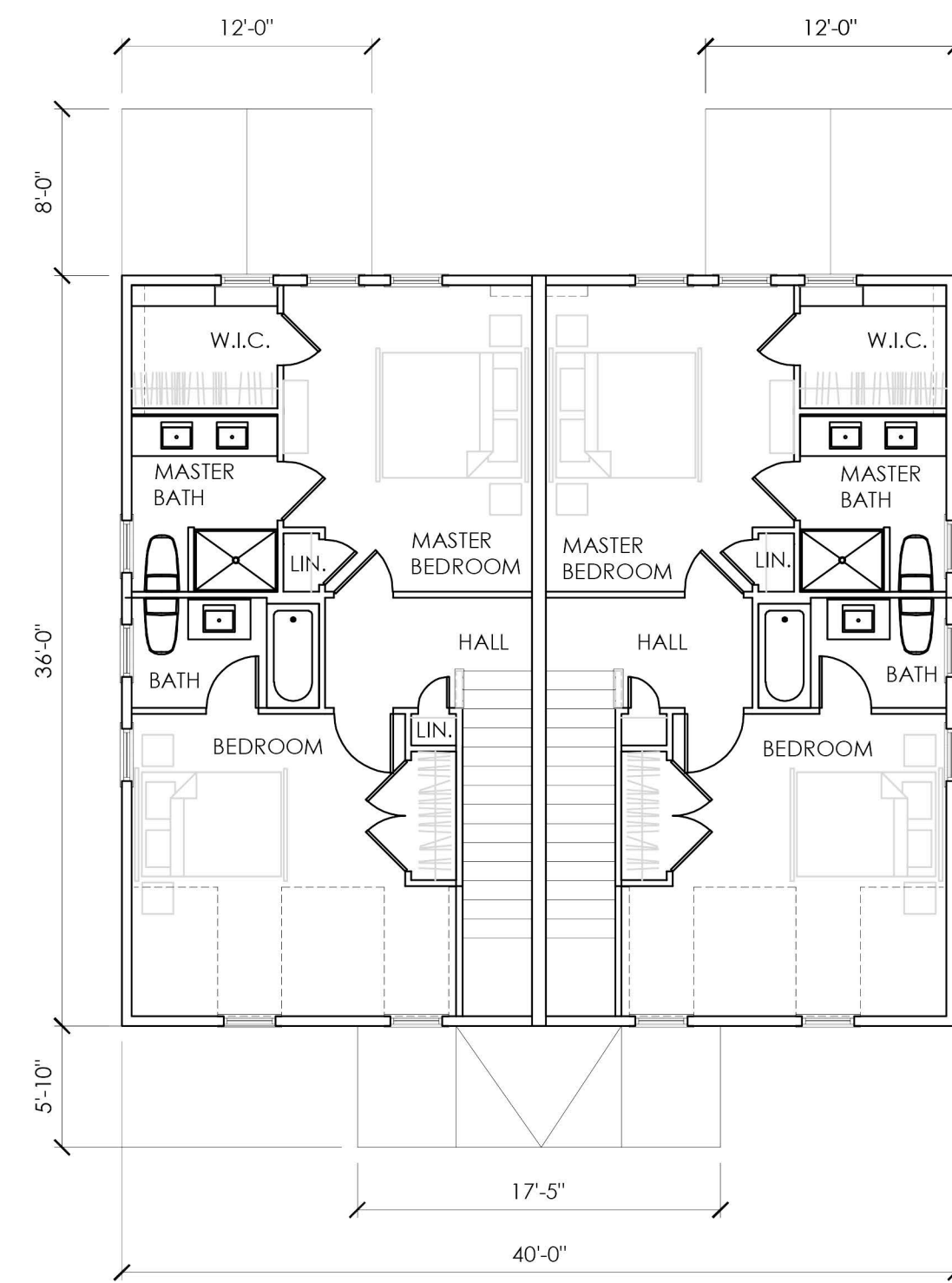
RESIDENTIAL DEVELOPMENT
 CHINBURG DEVELOPMENT
 686 MAPLEWOOD AVE.
 PORTSMOUTH, N.H.

NO.	DESCRIPTION	DATE
1	ISSUED FOR APPROVAL	4/20/23
0	ISSUED FOR COMMENT	4/13/23

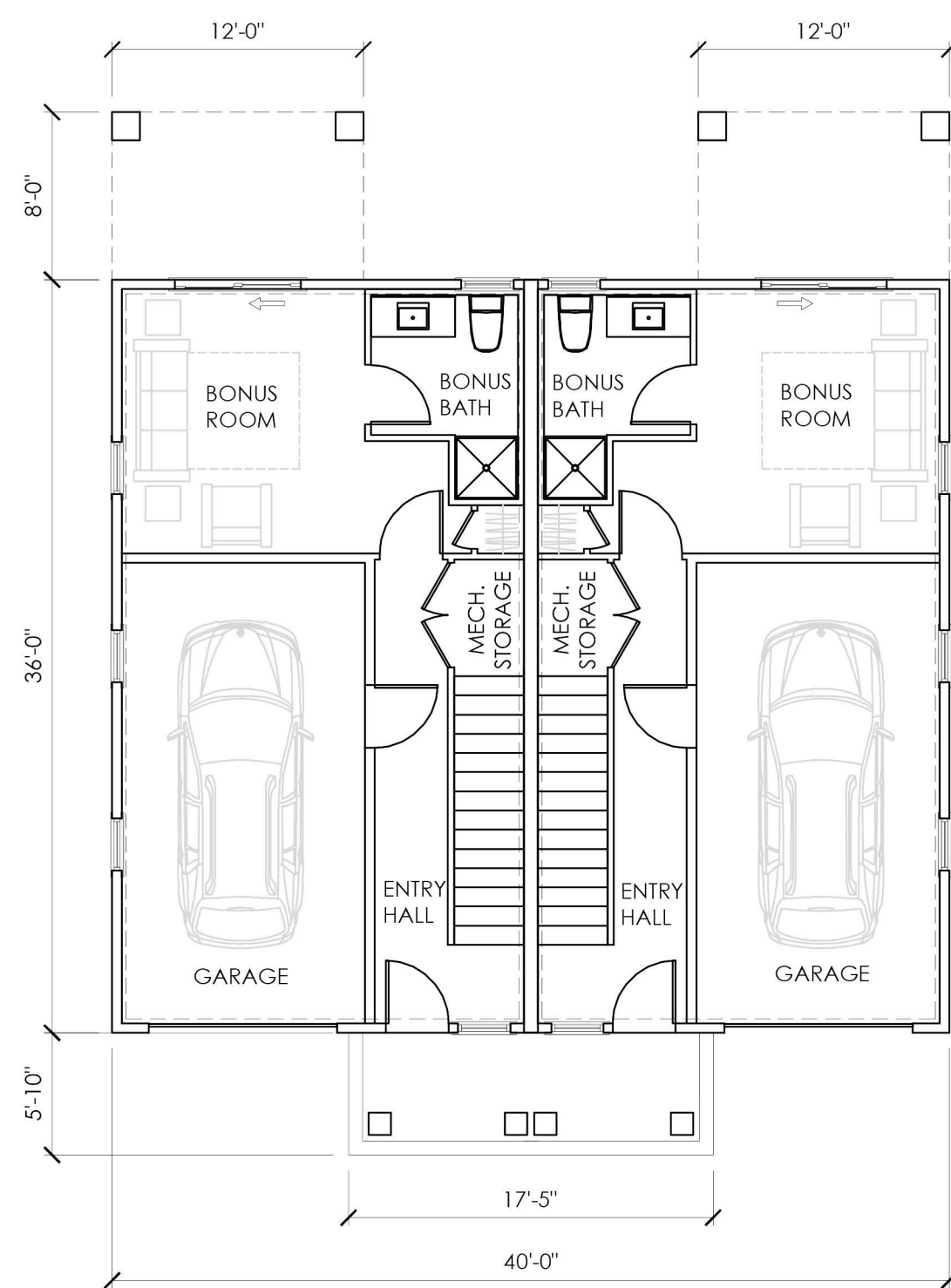


SCALE: 1"=30' FEBRUARY 2023

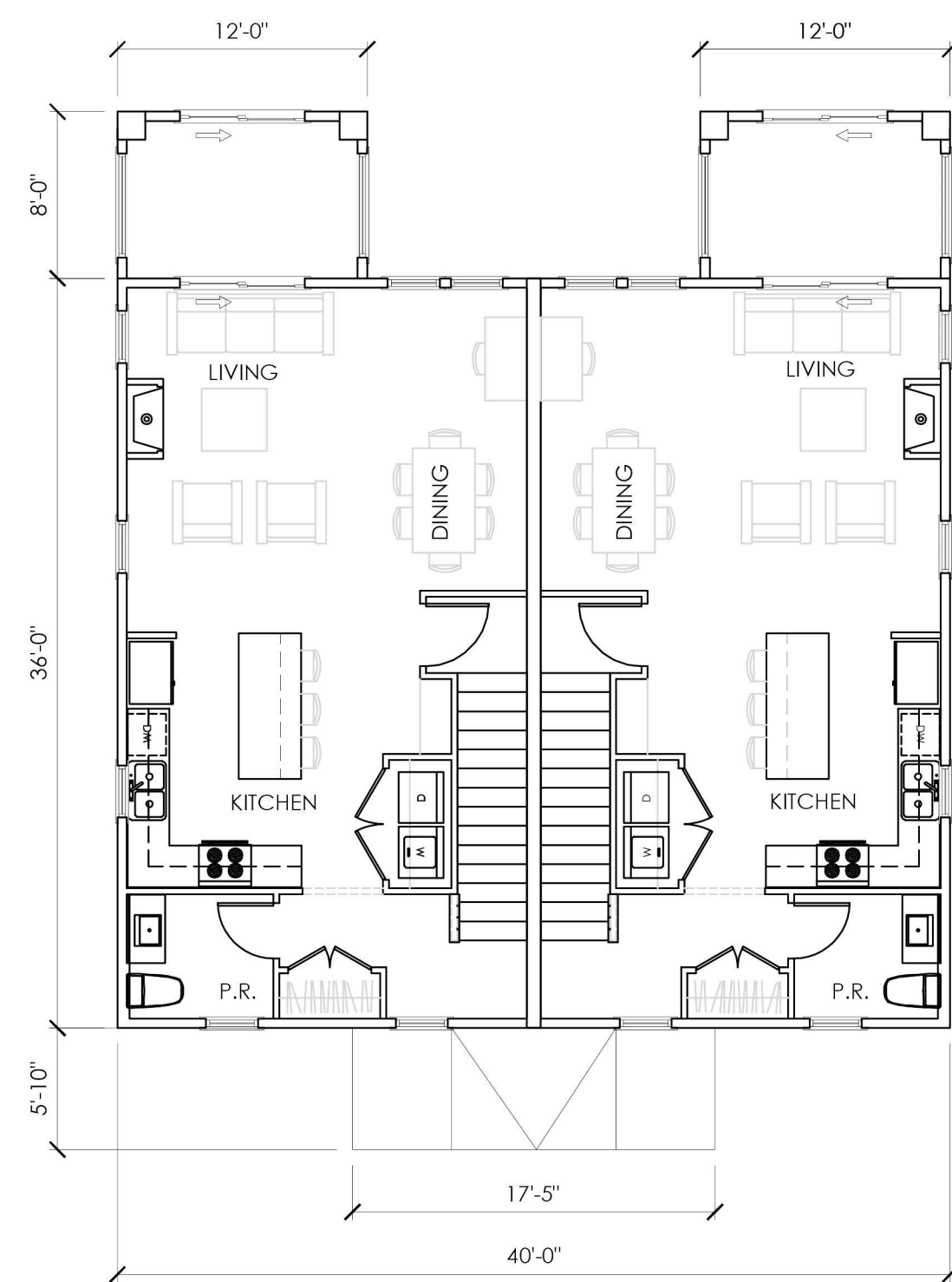
VARIANCE SITE PLAN C2



SECOND FLOOR PLAN
1/8" = 1'-0"



LOWER LEVEL FLOOR PLAN
1/8" = 1'-0"



FIRST FLOOR PLAN
1/8" = 1'-0"

DUPLEX UNITS



FRONT ELEVATION
1/8" = 1'-0"



RIGHT ELEVATION
1/8" = 1'-0"



BACK ELEVATION
1/8" = 1'-0"



LEFT ELEVATION
1/8" = 1'-0"

NOT FOR CONSTRUCTION

REVISIONS:

CHINBURG PROPERTIES, INC.
686 MAPLEWOOD AVENUE
PORTSMOUTH, NH

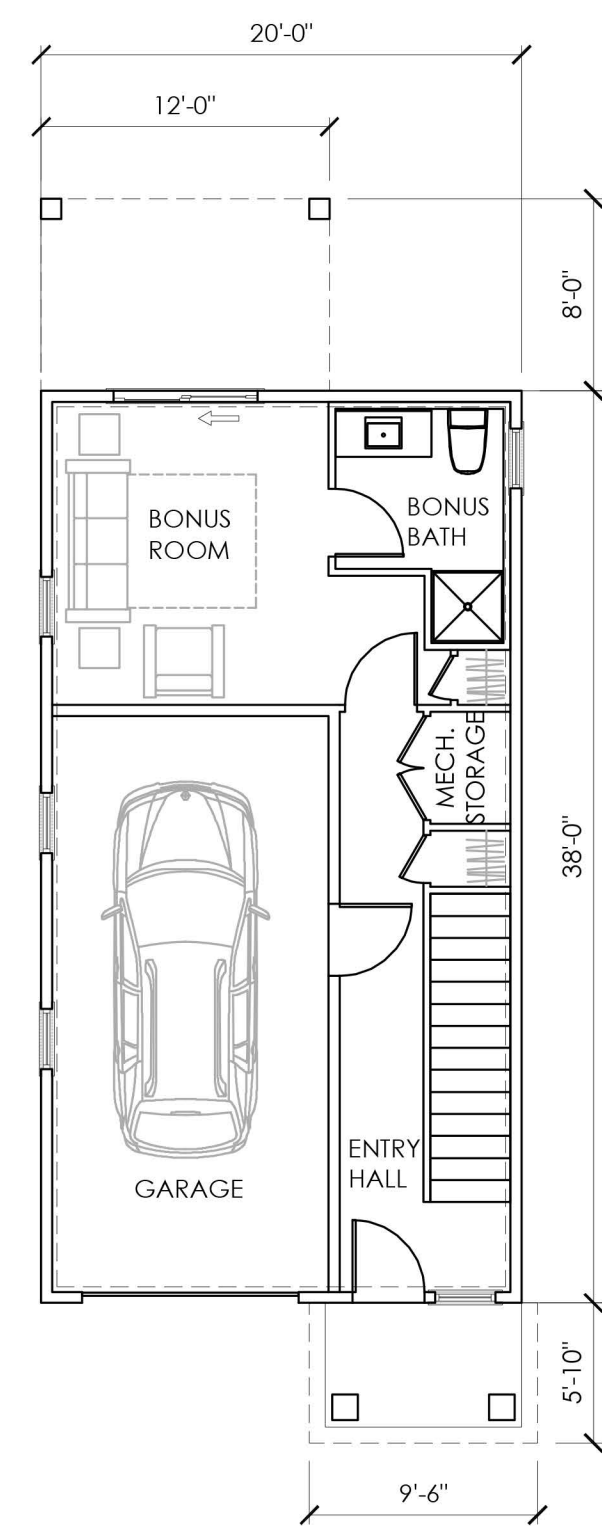


CJ ARCHITECTS
233 VAUGHAN STREET
SUITE 101
PORTSMOUTH, NH 03801
(603) 431-2808
www.cjarchitects.net

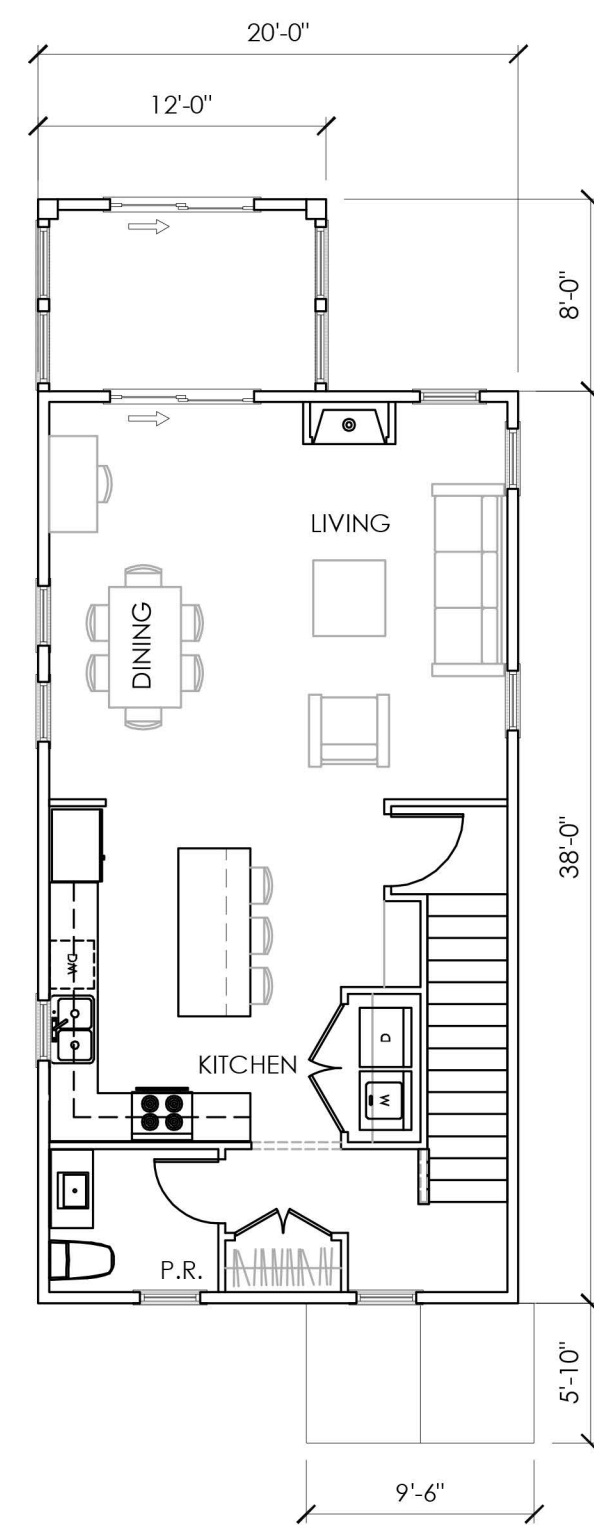
DUPLEX UNITS
FLOOR
PLANS
&
ELEVATIONS

DATE: 04/20/23
DRAWN BY: RDL
APPROVED BY: CJG
SCALE: 1/8" = 1'-0"
JOB NUMBER: 22303

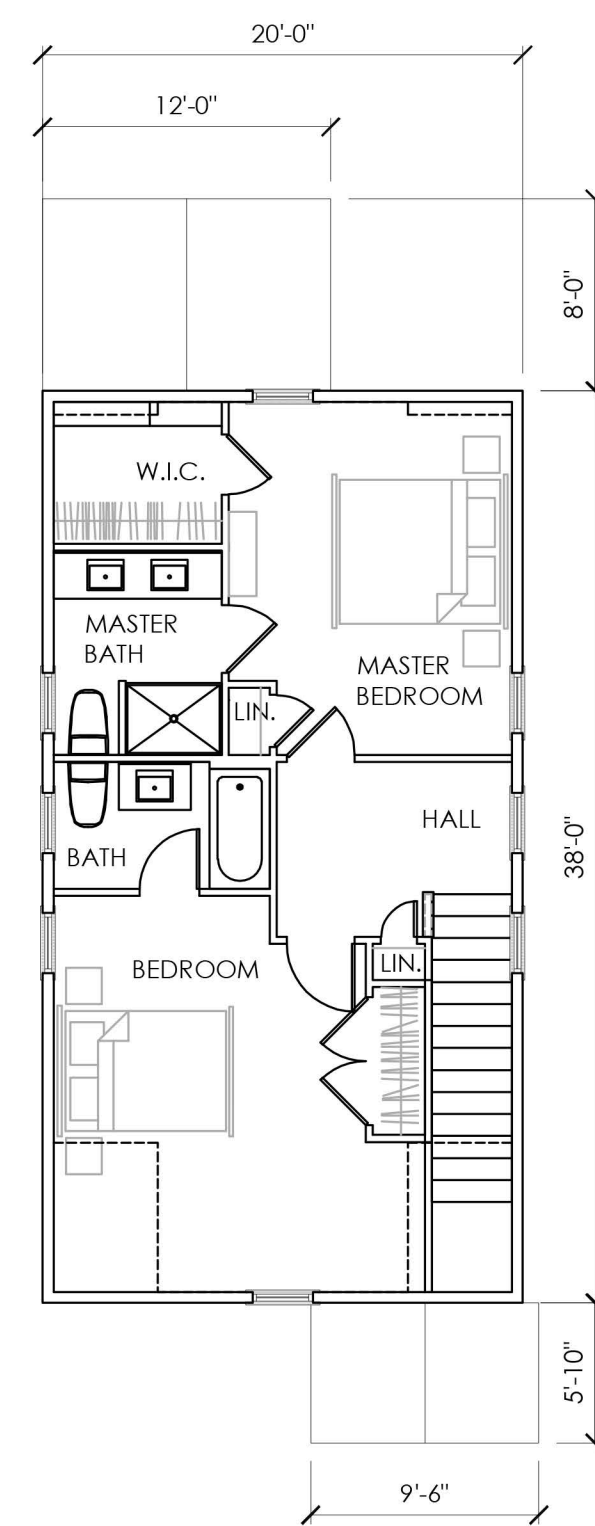
A1



LOWER LEVEL FLOOR PLAN
1/8" = 1'-0"



FIRST FLOOR PLAN
1/8" = 1'-0"



SECOND FLOOR PLAN
1/8" = 1'-0"

SINGLE UNIT



FRONT ELEVATION
1/8" = 1'-0"



RIGHT ELEVATION
1/8" = 1'-0"



BACK ELEVATION
1/8" = 1'-0"



LEFT ELEVATION
1/8" = 1'-0"

NOT FOR CONSTRUCTION

REVISIONS:

CHINBURG PROPERTIES, INC.
686 MAPLEWOOD AVENUE
PORTSMOUTH, NH

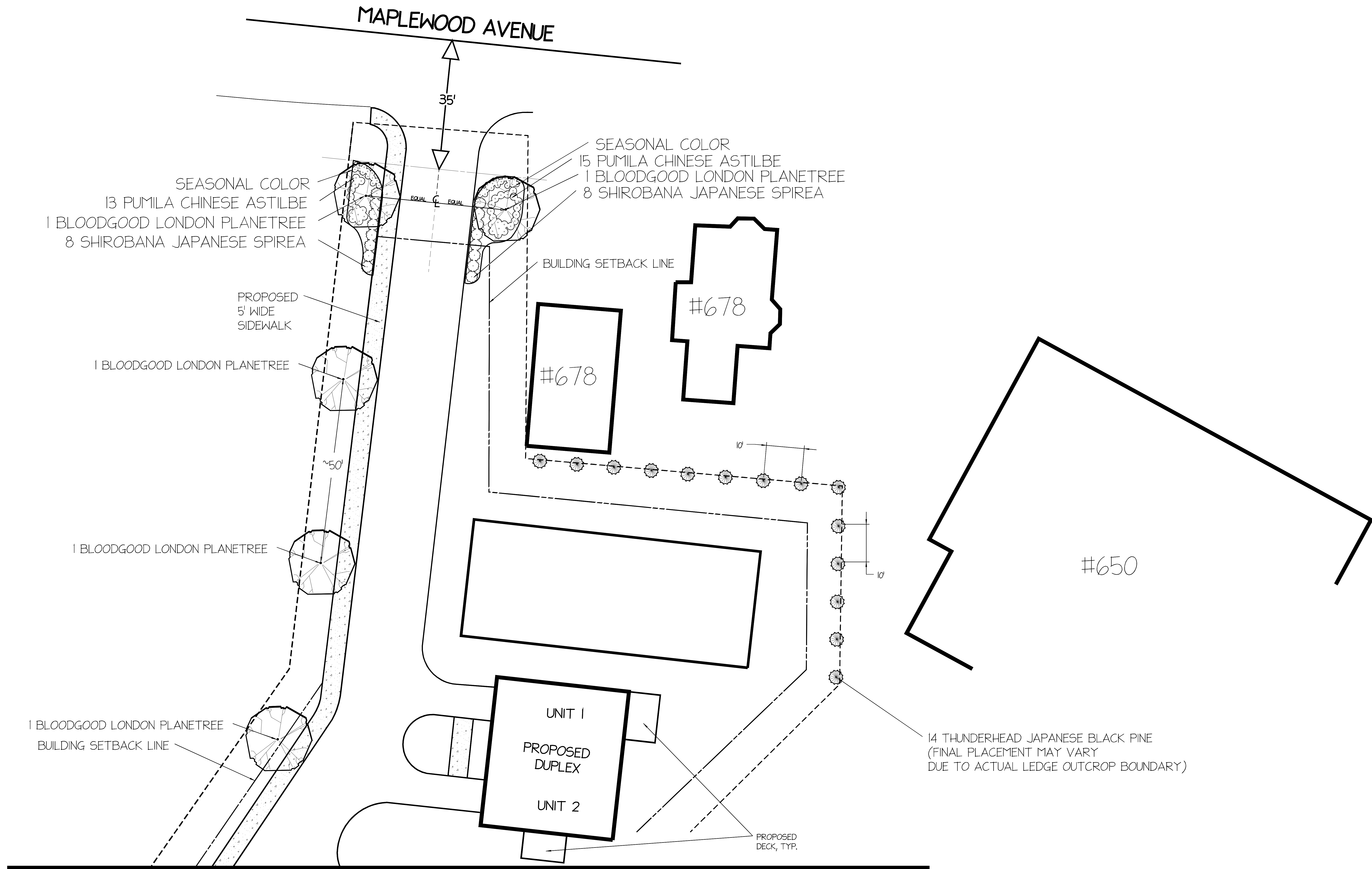


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SINGLE UNIT
FLOOR
PLANS
&
ELEVATIONS

DATE: 04/20/23
DRAWN BY: RDL
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SCALE: 1/8" = 1'-0"
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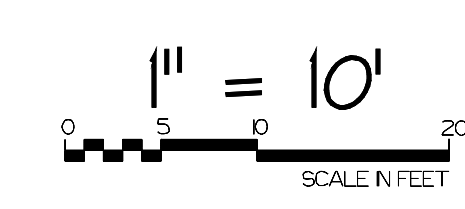
A2



No.	Date	Description

**686 MAPLEWOOD
CONCEPT PLAN
LANDSCAPE**

HEIGHT: 10'-12'
WIDTH: 10'-12'
PINUS thunbergiana 'Thunderhead'

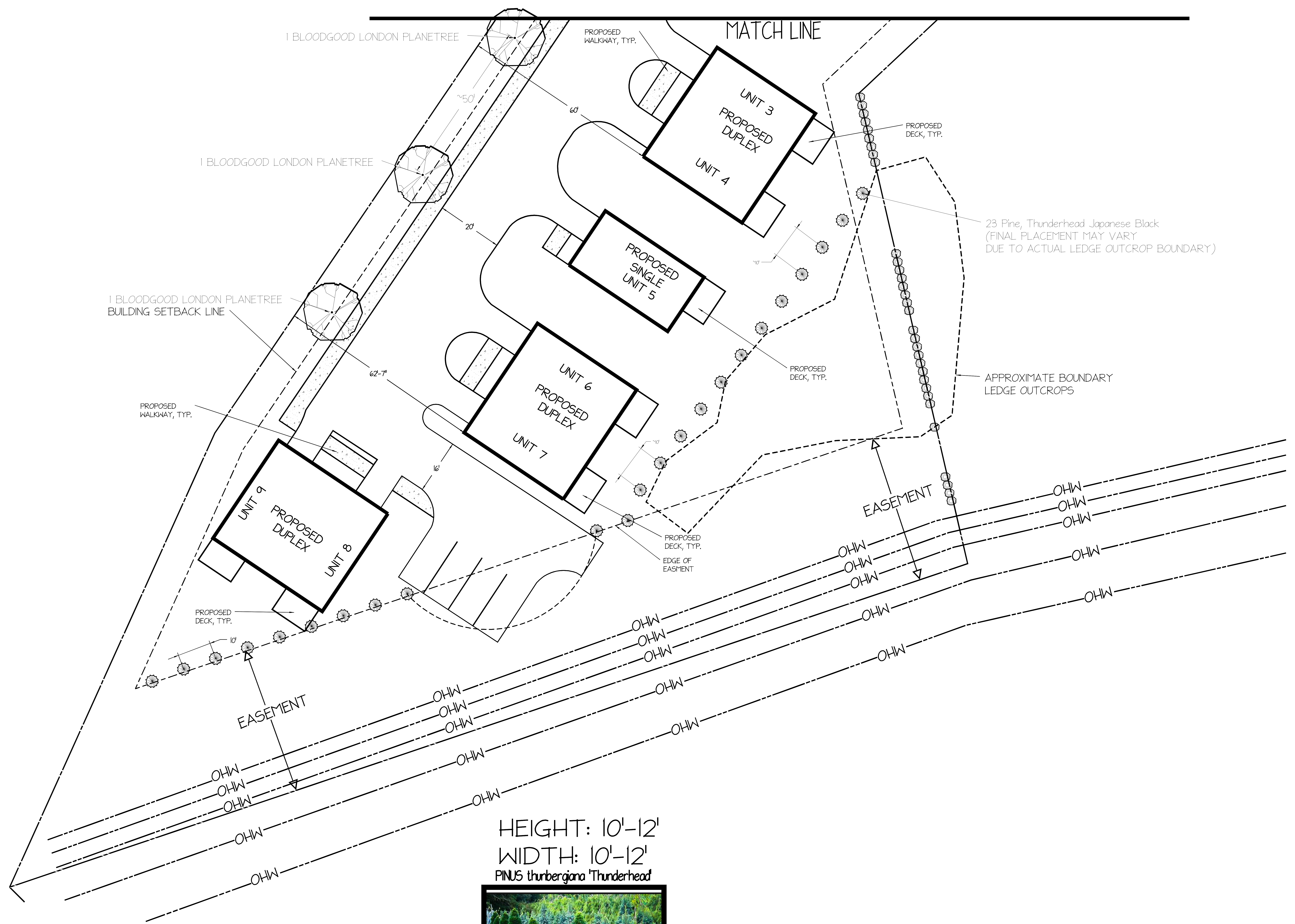


PLANT LEGEND

Qty	Common Name	Remarks
Trees		
5	BLOODGOOD LONDON PLANETREE	2" - 2.5" cal.
14	THUNDERHEAD JAPANESE BLACK PINE	36" - 42"
Shrubs		
16	SHIROBANA JAPANESE SPIREA	#3
Perennials		
28	PUMILA CHINESE ASTILBE	#1

SCALE	1" = 10'
DRAWN BY	MIC
CHECKED BY	ES
DATE	04.21.23
DATE OF PRINT	

PROJECT NO.	
SHEET NO.	L-1



1 BLOODGOOD LONDON PLANETREE

1 BLOODGOOD LONDON PLANETREE

1 BLOODGOOD LONDON PLANETREE
BUILDING SETBACK LINE

PROPOSED WALKWAY, TYP.

PROPOSED DECK, TYP.

EASEMENT

MATCH LINE

UNIT 3
PROPOSED DUPLEX
UNIT 4

PROPOSED DECK, TYP.

PROPOSED SINGLE UNIT 5

23 Pine, Thunderhead Japanese Black
(FINAL PLACEMENT MAY VARY DUE TO ACTUAL LEDGE OUTCROP BOUNDARY)

UNIT 6
PROPOSED DUPLEX
UNIT 7

PROPOSED DECK, TYP.

APPROXIMATE BOUNDARY LEDGE OUTCROPS

UNIT 8
PROPOSED DUPLEX
UNIT 9

PROPOSED DECK, TYP.
EDGE OF EASEMENT

EASEMENT

OHW
OHW
OHW

OHW
OHW

OHW
OHW
OHW

OHW
OHW

OHW
OHW
OHW

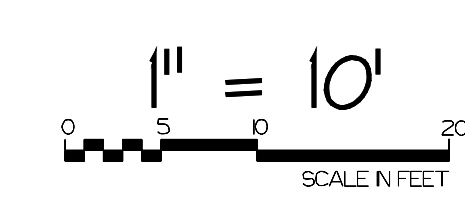
OHW
OHW

OHW
OHW
OHW

OHW
OHW

OHW
OHW

HEIGHT: 10'-12'
WIDTH: 10'-12'
PINUS thunbergiana 'Thunderhead'



PLANT LEGEND

Qty	Common Name	Remarks
Trees		
3	BLOODGOOD LONDON PLANETREE	2" - 2.5" cal.
23	Pine, Thunderhead Japanese Black	36" - 42"

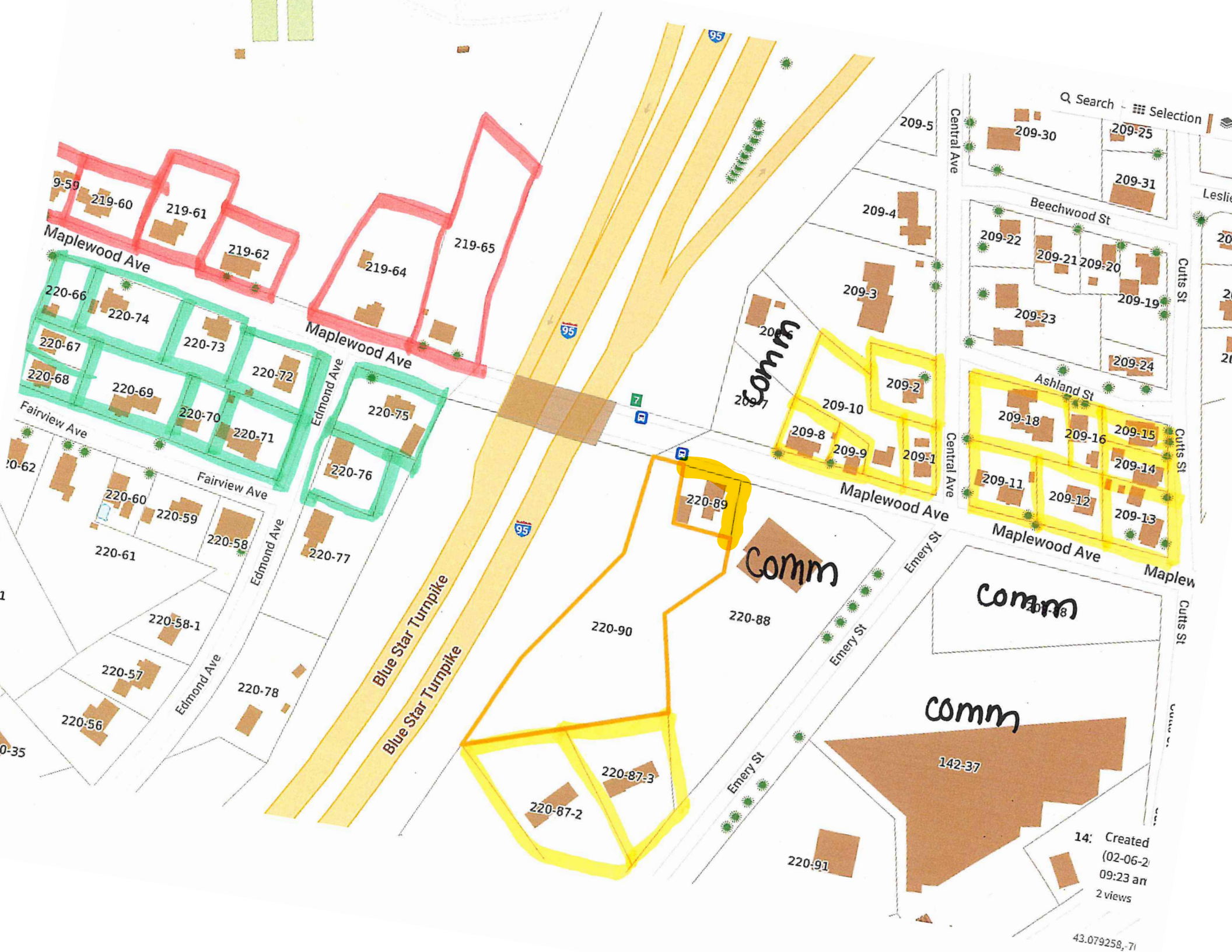
686 MAPLEWOOD
CONCEPT PLAN
LANDSCAPE

SCALE	1" = 10'
DRAWN BY	MIC
CHECKED BY	ES
DATE	04.21.23
DATE OF PRINT	

PROJECT NO.	
SHEET NO.	L-2

Address	Map	Lot	Unit(s)	Lot Size		
Immediate Neighborhood						
553 Maplewood Ave		209	13	1	0.22	For Immediate Only
18 Cutts St		209	14	1	0.11	AVERAGE OF ABOVE
42 Cutts St		209	15	2	0.11	7361 Sq Ft per unit
1 Ashland St		209	16	1	0.11	0.168 acres per unit
8 Central Ave		209	18	2	0.33	
579 Maplewood Ave		209	11	1	0.22	
5 Central Ave		209	1	1	0.11	
7 Central Ave		209	2	1	0.22	
635 Maplewood		209	10	1	0.37	
639 Maplewood		209	9	1	0.06	
641 Maplewood		209	8	1	0.12	
678 Maplewood		220	89	3	0.17	
64 Emery Street		220 87-3		2	0.49	
74 Emery Street		220 87-2		2	0.74	
Expanded Neighborhood 1						
768 Maplewood Ave		220	75	1	0.29	For Immed & Exp 1
230 Edmond Ave		220	76	1	0.15	AVERAGE OF ABOVE
237 Edmond Ave		220	72	1	0.25	7,995 sq ft per unit
41 Fairview Ave		220	71	1	0.25	0.18 Acres per unit
832 Maplewood Ave		220	73	1	0.23	
43 Fariview Ave		220	70	1	0.14	
860 Maplewood Ave		220	74	1	0.3	
139 Fairview Ave		220	66	1	0.14	currently vacant prev 1
139 Fairview Ave		220	67	1	0.11	
115 Fairview Ave		220	68	1	0.11	
91 Fairview Ave		220	69	1	0.34	
Expanded Neighborhood 2						
769 Maplewood		219	65	1	0.73	For Immed, Exp 1&2
791 Maplewood		219	64	1	0.54	AVERAGE OF ABOVE
825 Maplewood		219	62	1	0.26	9,359 sq ft per unit
873 Maplewood		219	61	1	0.37	0.21 Acres per unit
897 Maplewood		219	60	1	0.25	
899 Maplewood		219	59	1	0.11	
				37	7.95	

Our proposed density is 9 units in 1.44 Acres
 6,975 Sq Ft per unit
 0.16 Acres Per Unit



Q Search Selection

14: Created
(02-06-2009) 09:23 am
2 views

43.079258,-71



200 Griffin Road, Unit 3, Portsmouth, NH 03801
Phone (603) 430-9282 Fax 436-2315

23 April, 2023

**Trip Generation
Proposed Residential Development
686 Maplewood Avenue
Portsmouth, NH**

On behalf of Chinburg Development, LLC, we hereby submit this Trip Generation in support of the applicant's filing with the Portsmouth Zoning Board for a Variance, as allowed in the Portsmouth Zoning Ordinance. The Variance seeks to develop the property into 9 residential dwelling units. The site has been vacant for some time but previously approvals were granted to construct a Mosque, which had a proposed peak trip generation of 76 trips in the PM peak hour.

The base trip generation for the proposed 9-unit development is based on a review of the Institute of Transportation Engineers (ITE), *Trip Generation Manual*, 11th Edition. The land use code (LUC) that best resembles the proposed use is LUC 270 – Planned Unit Development. Using that description, the proposed use the site generates the following peak hour trips:

Weekday Morning Peak Hour: 6 Trips (23% entering; 77% exiting)

Weekday Evening Peak Hour: 7 Trips (64% entering; 36% exiting)

The applicant believes that the added trip generation from the site is not excessive, will not impact the adjacent street networks, and represents a significant decrease from the previous approval.

Please feel free to call if you have any questions or comments about this application.

Sincerely,

John R. Chagnon, PE
Ambit Engineering, Inc. – Haley Ward

Land Use: 270

Residential Planned Unit Development

Description

A residential planned unit development (PUD), for the purposes of trip generation, is defined as containing any combination of residential land uses. These developments might also contain supporting services such as limited retail and recreational facilities.

Additional Data

Caution—The description of a PUD is general in nature because these developments vary by density and type of dwelling. It is therefore recommended that when information on the number and type of dwellings is known, trip generation should be calculated on the basis of the known type of dwellings rather than on the basis of Land Use 270. Data for this land use are provided as general information and would be applicable only when the number of dwellings is known.

The sites were surveyed in the 1980s, and the 1990s, and the 2000s in Minnesota, South Dakota, and Virginia.

Source Numbers

111, 119, 165, 169, 357

Residential Planned Unit Development (270)

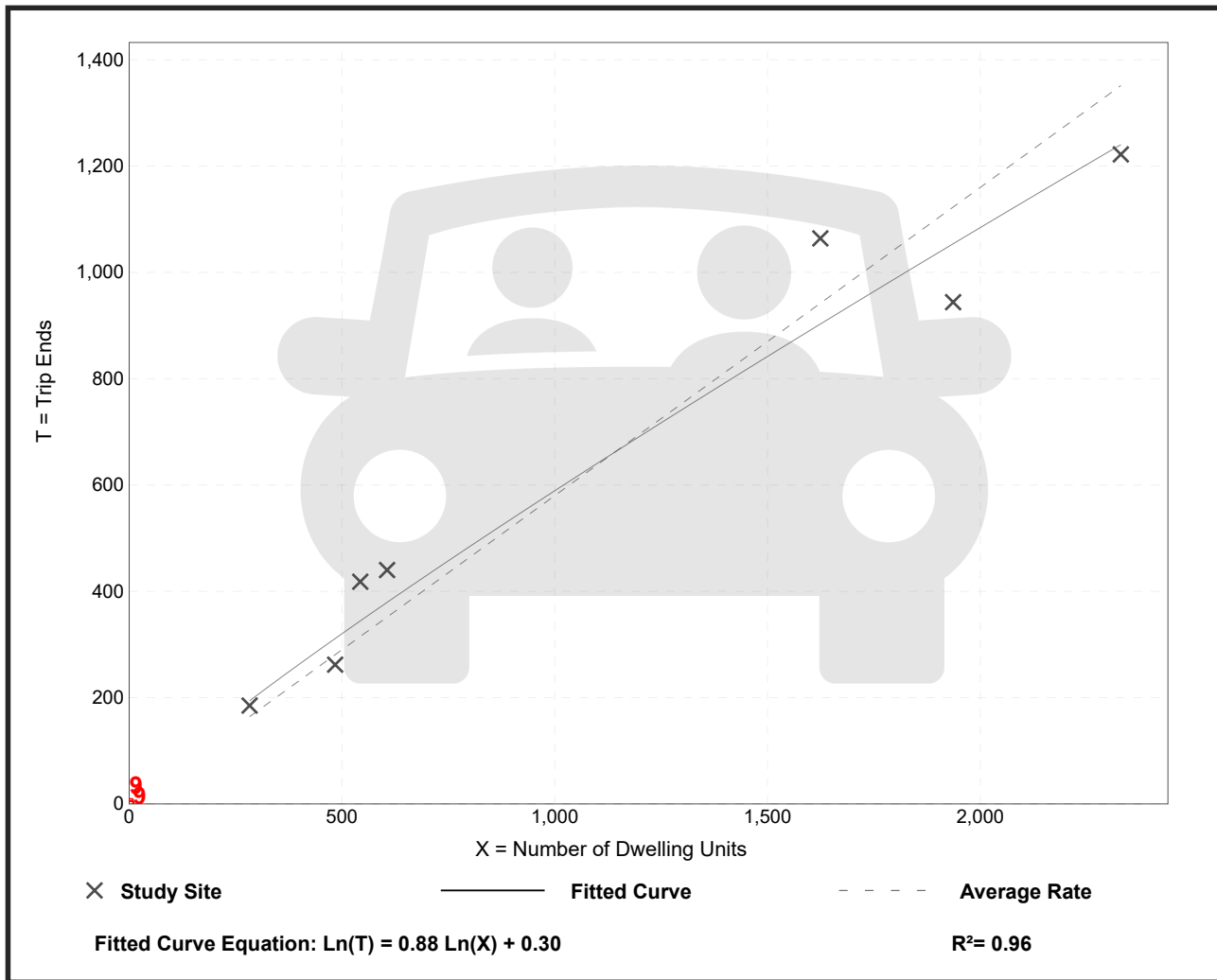
Vehicle Trip Ends vs: Dwelling Units
On a: Weekday,
AM Peak Hour of Generator

Setting/Location: General Urban/Suburban
 Number of Studies: 7
 Avg. Num. of Dwelling Units: 1115
 Directional Distribution: 23% entering, 77% exiting

Vehicle Trip Generation per Dwelling Unit

Average Rate	Range of Rates	Standard Deviation
0.58	0.49 - 0.77	0.10

Data Plot and Equation



Residential Planned Unit Development (270)

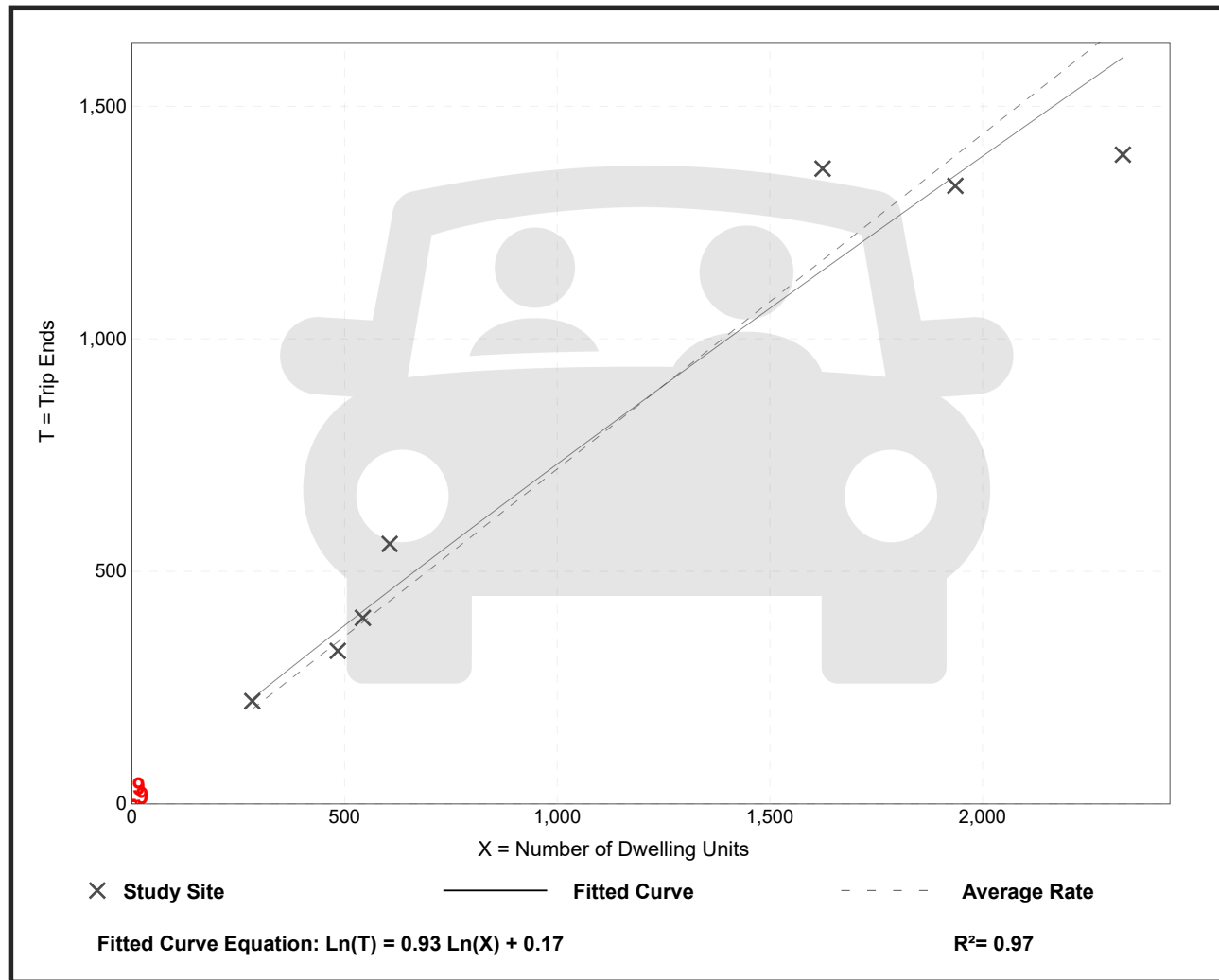
Vehicle Trip Ends vs: Dwelling Units
On a: Weekday,
PM Peak Hour of Generator

Setting/Location: General Urban/Suburban
 Number of Studies: 7
 Avg. Num. of Dwelling Units: 1115
 Directional Distribution: 64% entering, 36% exiting

Vehicle Trip Generation per Dwelling Unit

Average Rate	Range of Rates	Standard Deviation
0.72	0.60 - 0.92	0.11

Data Plot and Equation





April 2023

Members of the Portsmouth Zoning Board,

In regard to the impact this project will have on surrounding property values it is our opinion that it will cause no decrease but will instead only increase the value of the surrounding properties.

In general, we have found that new construction lifts the values of surrounding properties by creating a desirable neighborhood setting. In many cases, the existing construction homes reap the benefits of new construction in their neighborhood as people invest in the existing home stock and update them continuing to raise values.

We think this would be especially true at this site which is walking distance to downtown and has a mix of existing construction and new construction. Specifically, this site is currently a cleared gravel lot that has been most recently used as a staging area for construction and is bounded by Interstate 95, a three-unit property, a large commercial lot with an industrial building and two newer duplexes. Transforming this vacant gravel lot into a residential development will blend with the surrounding properties and bring a more cohesive feel to the area.

Sincerely,

Colton Gove

Director of Land Development

The Gove Group Real Estate, LLC | Licensed in NH & ME

Cell: 603-686-3188

Office: 603-778-6400

Email: cgove@thegovegroup.com

70 Portsmouth Avenue, Stratham, NH 03885

www.thegovegroup.com

Site Photograph #1

February 2023



Site Photograph #2

February 2023



Site Photograph #3

February 2023



Site Photograph #4

February 2023



Site Photograph #5

February 2023



Site Photograph #6

February 2023



Site Photograph #7

February 2023



Site Photograph #8

February 2023



III. NEW BUSINESS

- A. The request of **Charles Silva Jr and Margaret Moran (Owners)**, for property located at **434 Marcy Street** whereas relief is needed to construct an addition to the rear of the existing structure, remove the existing shed, and construct a new shed which requires the following: 1) Variance from Section 10.521 to allow: a) 8 foot left yard setback where 10 feet is required; and b) 43% building coverage where 30% is allowed. 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance. 3) Variance from Section 10.573.20 to allow a) 1 foot rear yard where 11 feet is required; and b) 1 foot right side yard where 11 feet is required. Said property is located on Assessor Map 102 Lot 41 and lies within the General Residence B (GRB) and Historic District. (LU-23-53)

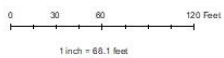
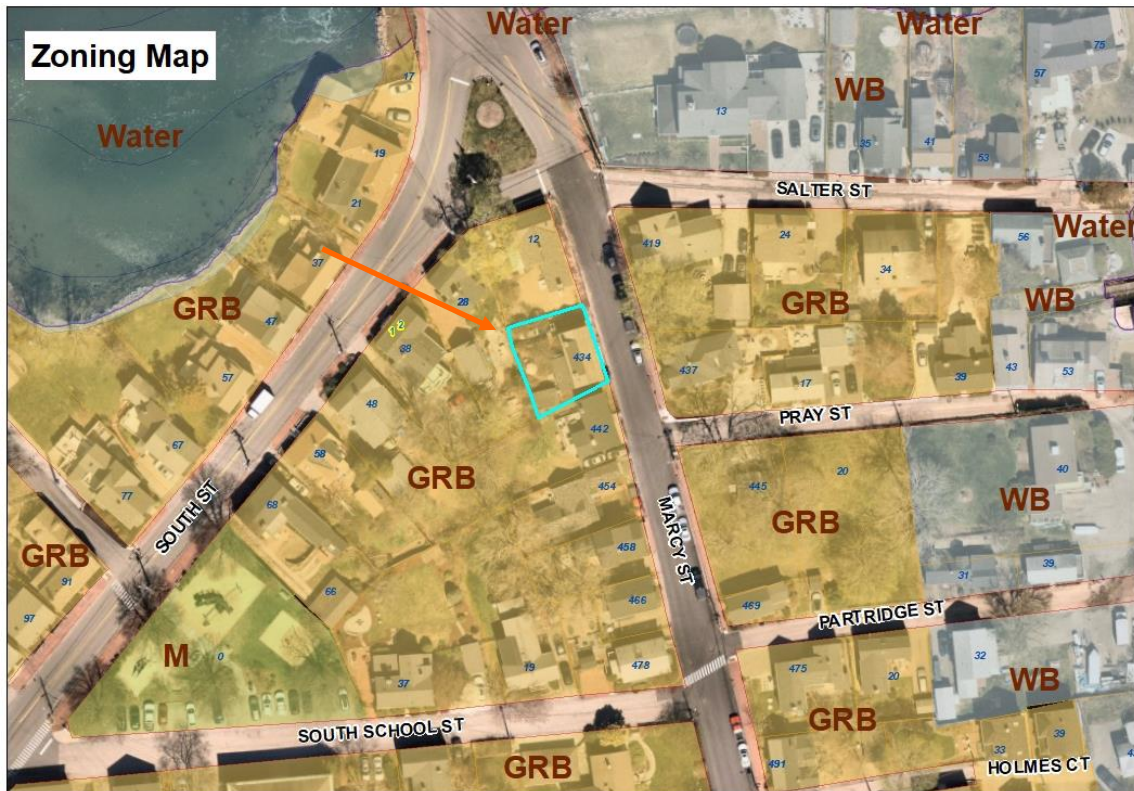
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single Dwelling Unit	Single Dwelling Unit	Primarily residential
<u>Lot area (sq. ft.):</u>	2,619	2,619	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,619	2,619	5,000 min.
<u>Street Frontage (ft.):</u>	54	54	80 min.
<u>Lot depth (ft.):</u>	50	50	60 min.
<u>Front Yard (ft.):</u>	1	1	5 min.
<u>Right Yard (ft.):</u>	11.5	1 (Shed)	11 (Accessory structure setback) min.
<u>Left Yard (ft.):</u>	4	8	10 min.
<u>Rear Yard (ft.):</u>	21	1 (Shed)	11 (Accessory structure setback) min.
<u>Height (ft.):</u>	24	24	35 max.
<u>Building Coverage (%)</u>	42	43	30 max.
<u>Open Space Coverage (%)</u>	>25	>25	25 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1798	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit
- Historic District Commission Approval

Neighborhood Context



434 Marcy Street



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

Applicant is proposing to construct an addition to the existing primary structure and to remove the existing shed and construct a new shed on the opposite side of the property.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

 - Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

**434 Marcy Street
Map 102 Lot 41**

Addition at Rear of Residence

To permit the following:

1. Building Coverage of 42.7% where 41.6% is existing & 30% is allowed.
2. Left Side Yard Setback of +/-8' where 10' is required
3. Rear Yard Setback of +/- 16' where 25' is required
4. Expansion of a non-conforming structure
5. A new Shed with a 1.5' Rear & Right Side Yard Setback

The undersigned agrees that the following circumstances exist.....

1. The Proposed 2nd Floor & Attic Addition will be built over the Existing Rear 1-Story EII, with a 2' 4" Cantilever. A, 1-Story Rear Entry Addition will provide Mudroom Space and the Exist Bay will be slightly enlarged & rebuilt. The Existing 160sf Shed in the Left Side Yard will be removed and a New 8'x14' (112sf) Shed will be located at the Right Side. These changes will result in a net 30 sf increase in Building Coverage.
2. Locating the Shed close to the Rear & Right Side will allow 2 cars to park in the driveway and maximize the use of the rear yard.
3. The Existing Residence is non-conforming to Building Coverage (40.9%) and on the Front, Rear & Left Side Setbacks The Proposed Additions continue the non-conformity at the Rear & Left Side Yards.

Criteria for the Variance:

1. The Variances are not contrary to the public interest in that many properties in this neighborhood are non-conforming to Building Area & Setbacks. The Addition is primarily built over the existing footprint. The Rear of this property is minimally visible from South Street.
2. The Variances are consistent with the spirit of the ordinance in that it will allow this small footprint change, which will add needed living space without adversely affecting the abutters & neighborhood.
3. Substantial justice will be done, as the Variances will allow expansion of the Living Space with minimal changes to Building Coverage & Setbacks.
4. These Variances will not diminish the value of surrounding properties.
5. The special condition of this property is the non-conformity of the Existing Residence and Lot. The Lot at 2700sf is just over half of the required 5000sf in this Zone.

ADDITIONS & RENOVATIONS

434 MARCY STREET PORTSMOUTH, NH
FOR: CHARLES SILVA & MARGARET MORAN

MAP 102 LOT 41
GENERAL RESIDENCE B (GRB)

LOT AREA = 0.062 ACRE, 2700 SF

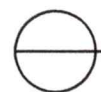
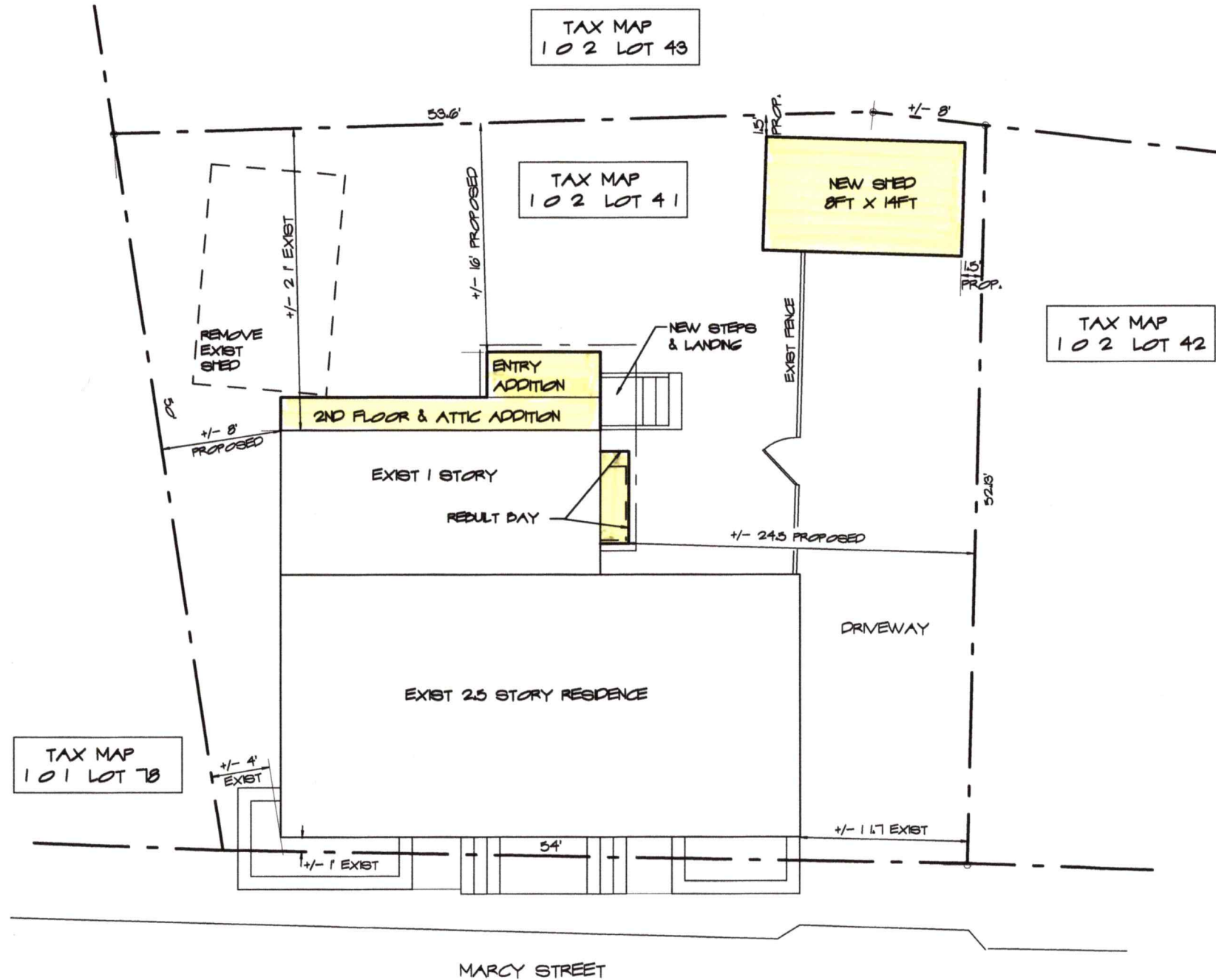
ALLOW. BUILDING COVERAGE 30%

EXISTING BUILDING COVERAGE

2 1/2 STORY RESIDENCE	666 SF
1 STORY BACK ELL	230 SF
BOX BAY	10 SF
ENTRY LANDING & STEPS OVER 18"	35 SF
REAR LANDING & STEPS OVER 18"	24 SF
SHED	160 SF
TOTAL	1125 SF (41.6%)

PROPOSED BUILDING COVERAGE

EXIST. 2 1/2 STORY RESIDENCE	666 SF
EXISTING 1 STORY BACK ELL	230 SF
EXIST FRONT ENTRY LANDING & STEPS OVER 18"	36 SF
ADDED COVERAGE FOR 2ND FLOOR/ATTIC & REAR ENTRY ADDITION OVER EXIST. ELL	78 SF
NEW BOX BAY	13 SF
NEW REAR LANDING & STEPS OVER 18"	20 SF
NEW 8FT X 14FT SHED RELOCATED	112 SF
TOTAL	1155 SF (42.7%)
(A NET INCREASE OF 30 SF)	



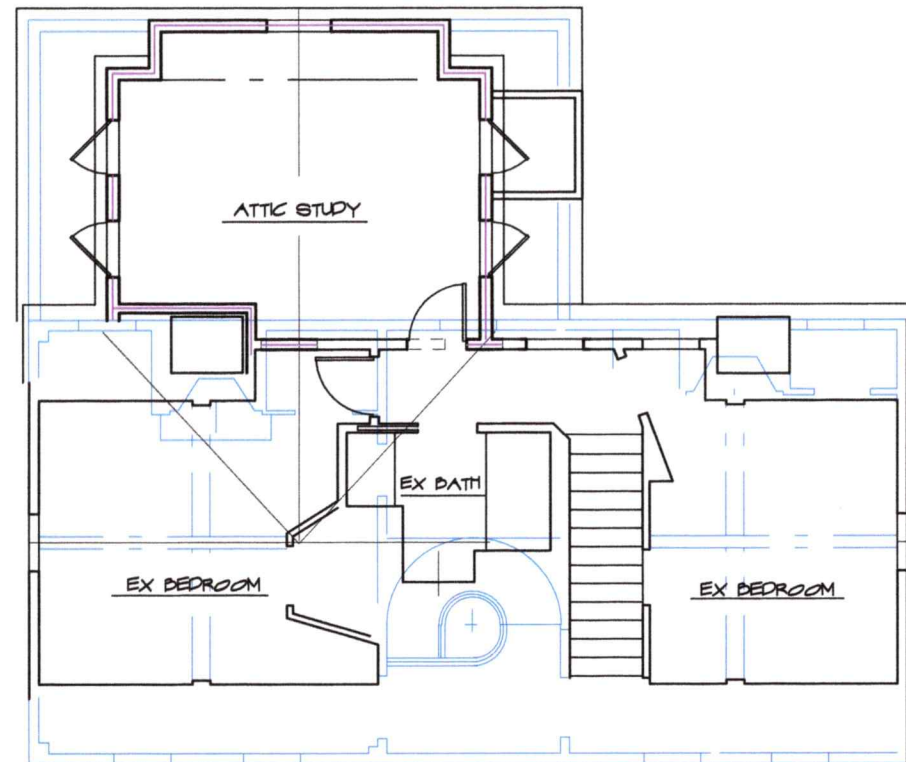
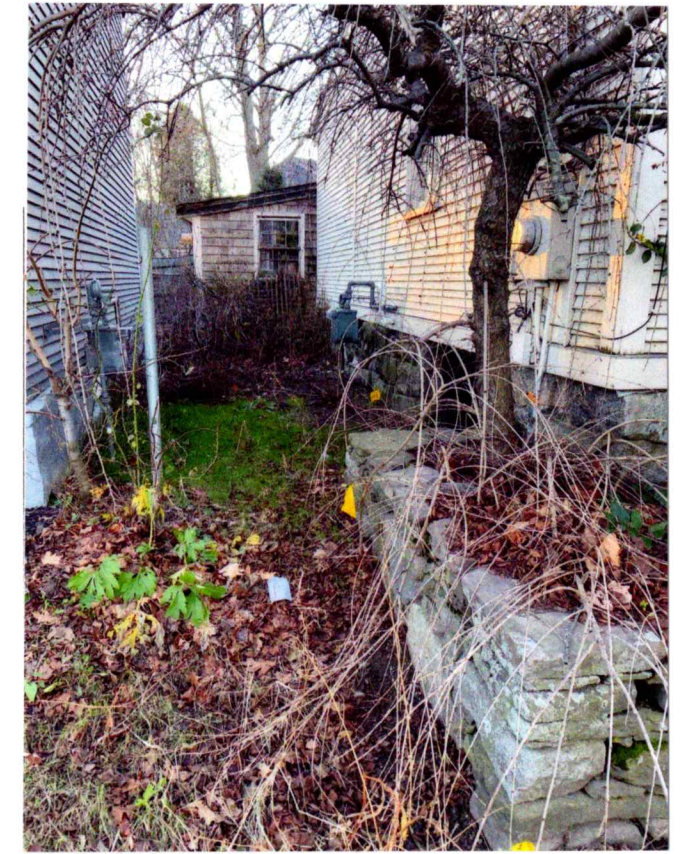
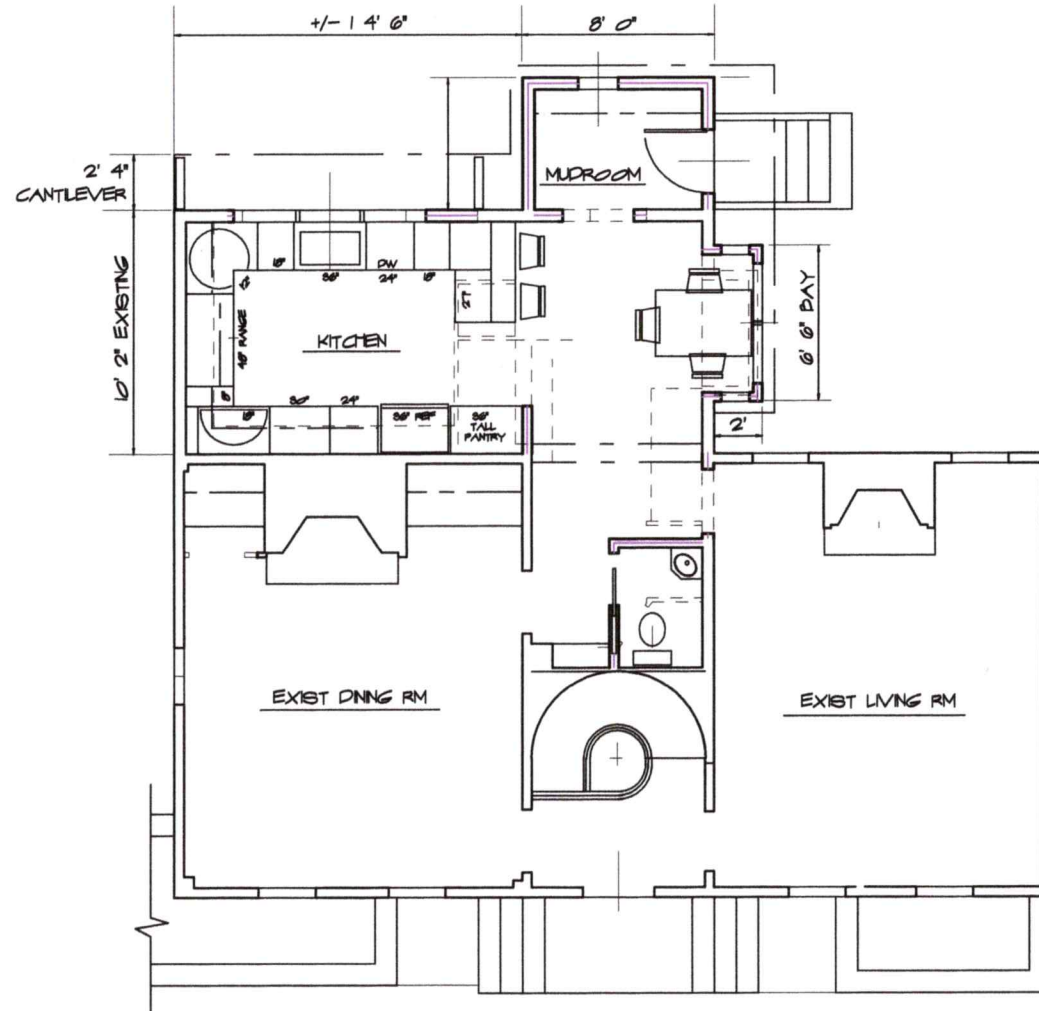
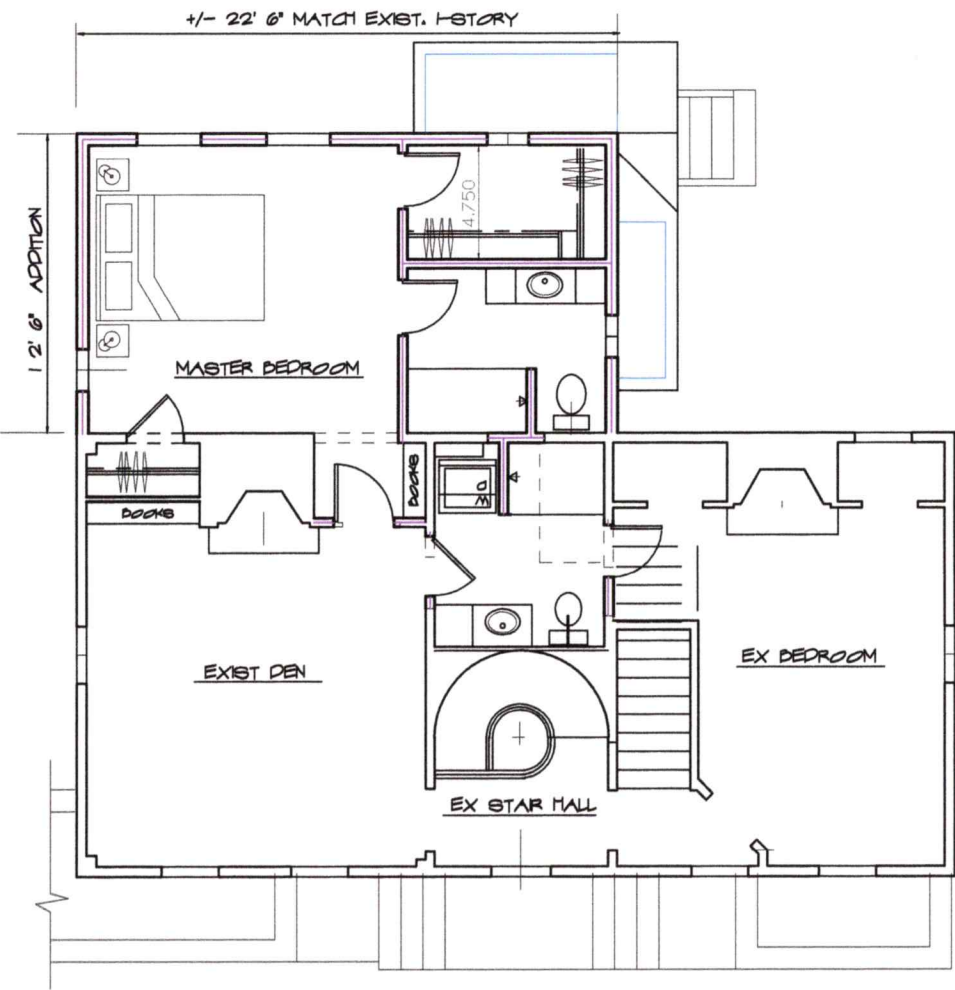
PROPOSED LOT PLAN

SCALE: 1" = 10'-0"

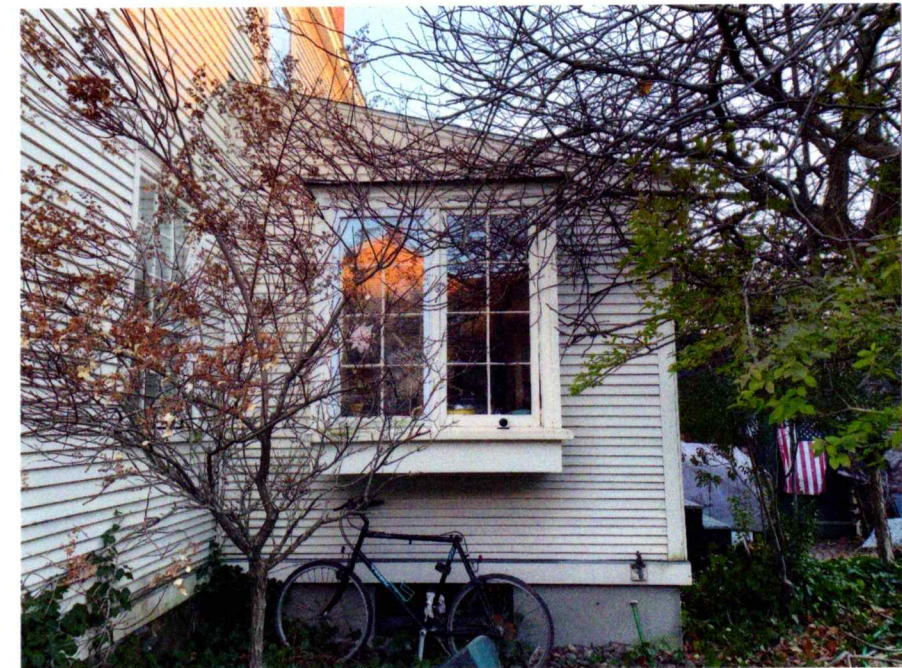
NOTE: LOT PLAN GENERATED FROM TAX MAP, 12 & 28 SOUTH STREET PROPERTY SURVEYS BY AMDIT ENGINEERING AND BY FIELD MEASUREMENTS BY ANNE WHITNEY ARCHITECT



<p>PROPOSED LOT PLAN</p> <p>NERBONNE RESIDENCE</p> <p>189 GATES STREET PORTSMOUTH, NH</p>	<p>801 Islington St, suite 32 Portsmouth, NH 03801 603-502-4387 archwhit@aol.com</p> <p>AW</p> <p>ANNE WHITNEY ARCHITECT</p>	<p>Project: 2202</p>	<p>Date: 4/20/23</p>
		<p>Revisions:</p>	<p>1 OF 4</p>



SCHEMATIC DESIGN ADDITIONS & RENOVATIONS, SLIVA-MORAN RESIDENCE 434 MARCY STREET PORTSMOUTH, NH	801 Islington St, Suite 32 Portsmouth NH 03801 603-502-4387 archwhit@aol.com	Project: 2209 Revisions:	Date: 4/20/23 2 OF 4
	ANNE WHITNEY ARCHITECT		



VIEW OF EXIST REAR 1-STORY & BAY



VIEW FROM DRIVEWAY OF 28 SOUTH STREET

REAR ELEVATION
SCALE: 3/16" = 1'-0"

SCHEMATIC DESIGN ADDITIONS & RENOVATIONS, SLIVA-MORAN RESIDENCE 434 MARCY STREET	801 Islington St, Suite 32 Portsmouth NH 03801 603-502-4387 archwhit@aol.com	Project: 2209 Revisions:	Date: 4/20/23
	ANNE WHITNEY ARCHITECT		3 OF 4



RIGHT SIDE ELEVATION
SCALE: 3/16" = 1'-0"



LEFT SIDE ELEVATION
SCALE: 3/16" = 1'-0"

SCHEMATIC DESIGN ADDITIONS & RENOVATIONS, SLIVA-MORAN RESIDENCE 434 MARCY STREET PORTSMOUTH, NH	 ANNE WHITNEY ARCHITECT	Project: 2209	Date: 4/20/23
		Revisions:	4 OF 4

801 Islington St, Suite 32
Portsmouth NH 03801
603-502-4367
archwhit@aol.com

III. NEW BUSINESS

- B. The request of **David Hugh Mason and Lisa Ann Mason (Owners)**, for property located at **239 Cass Street** whereas relief is needed to Demolish single story addition on the rear of the primary structure, construct a two (2) story rear addition to the primary structure, and demolish and enlarge existing garage which requires the following: Variance from Section 10.521 to allow: a) 1 foot right yard where 10 is required for the primary structure; b) 3 foot left yard where 10 is required for the accessory structure; c) 4 foot rear yard where 20 is required for the accessory structure; d) 37% building coverage where 30% is allowed on the lot. Said property is located on Assessor Map 147 Lot 4 and lies within the General Residence C (GRC) District. (LU-23-69)

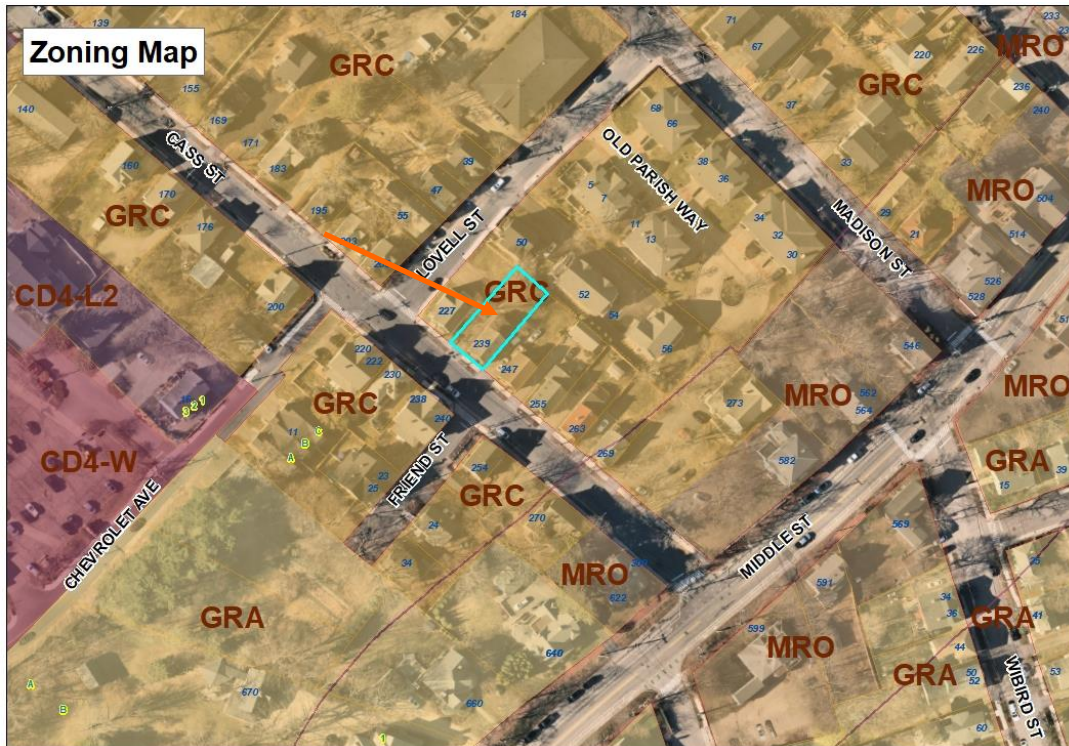
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single Dwelling Unit	Single Dwelling Unit	Primarily residential
<u>Lot area (sq. ft.):</u>	3,920	3,920	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,920	3,920	3,500 min.
<u>Street Frontage (ft.):</u>	40	40	70 min.
<u>Lot depth (ft.):</u>	100	100	50 min.
<u>Front Yard (ft.):</u>	5	5	5 min.
<u>Right Yard (ft.):</u>	0 – Primary Structure 25 – Garage	1 – Primary Structure 14 – Garage	10 min.
<u>Left Yard (ft.):</u>	14 – Primary Structure 2 – Garage	14 – Primary Structure 3 – Garage	10 min.
<u>Rear Yard (ft.):</u>	48 – Primary Structure 3 – Garage	48 – Primary Structure 4 – Garage	20 min.
<u>Height (ft.):</u>	24	29	35 max.
<u>Building Coverage (%):</u>	30	37	35 max.
<u>Open Space Coverage (%):</u>	>20	>20	20 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1880	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



239 Cass Street

Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicant is requesting relief for the construction an addition to the rear of the existing primary structure and to demolish existing garage and replace it with a slightly larger garage.

Please note that staff has identified an error in the notice. The notice indicated that 30% building coverage is the maximum for the GRC district. The correct building coverage is a 35% maximum which brings the requested relief further towards the conforming limit than advertised.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

 - (c) *Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

Portsmouth, NH - Board of Adjustment
Variance Statement for: 239 Cass Street

Date: 05.09.23

Chairman of the Board of Adjustment
C/O Planning Department City of Portsmouth
1 Junkins Ave.
Portsmouth, NH 03801

To The Chairman of the Board of Adjustment,

Please find this narrative as addressing the requirements for a variance on the proposed project located at 239 Cass Street.

Overview: The existing single-family structure was purchased by the current owners, David and Lisa Mason in 2018. The renovated home will remain a single-family structure. We are proposing the removal of the existing single-story addition off the back of the house that was poorly built and does not have a full foundation. We would like to reuse this exact footprint (minus the strange bay wall in the kitchen encroaching on the neighbor's property) and create a two-story addition off the back of the house in order to increase much needed living square footage primarily on the second floor. Additionally, we are proposing the removal of an old, dilapidated and unusable garage to be removed and replaced with a larger garage and roof overhang that will step back off the property line to make it less non-conforming.

Per Section 10.233.21 – The variance will not be contrary to public interest. Cass Street is slowly renovating, and the proposed improvements will not be contrary to any public interest.

Per Section 10.233.22 - The spirit of the Ordinance will be observed. The lot size and home / garage leave very few options for renovating.

Per Section 10.233.23 – Substantial Justice will be done. The existing home is already a non-conforming lot with the back setback 2'+/- at the garage and roughly 12" on the right setback of the house. We are proposing pulling the garage 1 foot away from each property line and continuing the side of the existing home to continue straight back on the right property line. We will not be encroaching closer on any other property lines. No harm will be done to the neighborhood or community should this application be granted.

Per Section 10.233.24 - The values of the surrounding properties will not be diminished. The neighborhood is a lovely mix of historic homes, primarily New Englanders as well as multi-family. We feel that this renovation will improve neighboring property values.

Per Section 10.233.25 – Literal enforcement of the provisions of the ordinance would result in hardship.

- a. We are proposing that we can create a more conforming project although we are not able to meet all setbacks regardless of effort due to existing conditions. With the house sitting so close to the property line on the right and a much-needed driveway on the left side for off-street parking, there is no other option besides replacing a failed existing addition.
- b. We tried to make the garage as conforming as possible while still maintaining a small yard and reasonable access to the garage from Cass Street.
- c. The front steps are literally right on the sidewalk, and we will be replacing them with a granite landing and try to improve code with the stairs until reach the public sidewalk.

We encourage the Portsmouth Board of Adjustment to grant the variance to the Mason Residence and watch this interesting home be loved back to life.

Submitted respectfully,

Amy Dutton
Amy Dutton Home
9 Walker Street
Kittery, Maine 03904
amy@amyduttonhome.com
207-337-2020

PHOTOS OF EXISTING PROPERTY:



FRONT VIEW



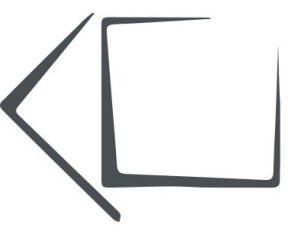
RIGHT SIDE VIEW



LEFT SIDE VIEW



BACK VIEW



Number	Date	Description

OVERVIEW

CLIENT:
MASON

CONTACT:
AMY DUTTON HOME
9 WALKER STREET | KITTERY, ME
amy@amyduttonhome.com
207.537.2020

DATE:

5/9/2023

COPYRIGHT © ABRIGO HOME 2022

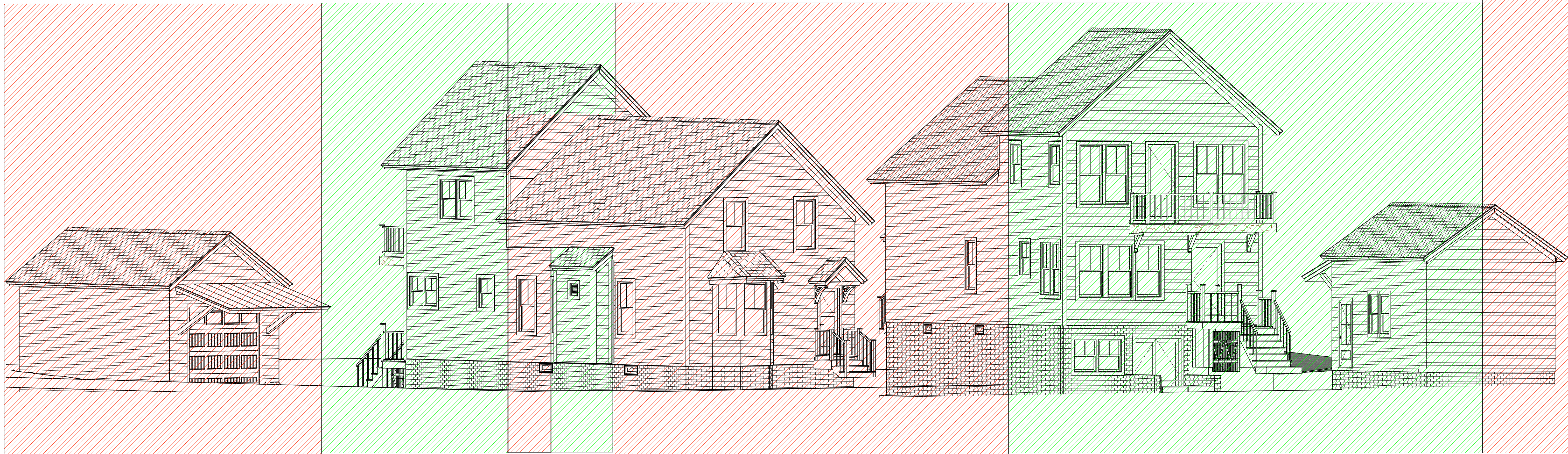
SCALED FOR:
24" X 36"

SCALE:

SEE SCALE ON DRAWINGS

SHEET:

0-1



WALL LEGEND

= ADDITION

= EXISTING

SPECIFICATIONS + NOTES

- *ROOFING MATERIAL - ASPHALT
- *ALL TRIM PACKAGE: PVC OR BORAL
- *SIDING: HARDIE
- *BRACKETS: ProWood Market - Bracket 02T9 - P 32", H:42", T: 5.5" (Ptd: WHITE)
- *STAIR SYSTEM:
 - _EXTERIOR:
 - *BROSCO: Liberty Extruded Rail System
 - *RISER: AZEC- WHITE
 - *TREAD: AZEC TIMBERTEC
 - _INTERIOR: NEW-TBD
 - *NEWEL
 - *HANDRAIL
 - *BALUSTERS
 - *RISER FINISH
 - *TREAD
- *WINDOWS:
 - _MANUFACTURER: MARVIN ELEVATE
 - _EXT. FINISH: WHITE
 - _INT. FINISH: WHITE
- *DOORS:
 - _MANUFACTURER: BROSCO TO MATCH EX. DOOR
 - _EXT. FINISH: WHITE
 - _INT. FINISH: WHITE
- *BATHROOMS:
 - _FLOORING - TILE
 - _TUB DESIGN - FREE STANDING
 - _SHOWER FLOOR - TILE
 - _SHOWER WALLS - TILE
 - _SHOWER HEADS - STANDARD W/ HANDHELD
 - _SHOWER NICHE
 - _SHOWER DOOR - GLASS 1/2" NON-LEAD

- *FLOORING:
 - _1ST FLOOR: WOOD TO PATCH & MATCH EX. REFINISH
 - _2ND FLOOR: WOOD TO PATCH & MATCH EX. REFINISH
 - _HEATED FLOOR: PRIMARY BATH & MUDROOM
- *KITCHEN:
 - _CABINETS: INSET, FRAMED
 - _BUILT-IN NOTES: INSET
 - _APPLIANCES: (SEE LIST)
 - *MANTLE: SEE IMAGE AS INSPO
 - *FIREPLACE:
 - _GAS
 - _HEARTH: FLUSH
 - *MATERIAL: TBD
- NOTES:
 - *CORNER BOARDS: 6" TYP
 - *RAKE BOARD: 8" TYP. PVC OR BORAL. (FILLED & PAINTED)
 - *SOFFIT - BEADBOARD AZEC OR EQ.
 - *ROOF VENT - SOFFIT VENT
 - *WINDOW TRIM: 4-1/2" TYP. PVC
 - *ROOF: TRUSS

© AMY DUTTON HOME
DRAWINGS USED EXPRESSIVELY FOR
DESIGN ONLY FOR NOTED CLIENT. ALL
STRUCTURAL ENGINEERING PROVIDED BY
OTHER.

Building contractor / home owner to review and verify all dimensions, specs
and connections before construction begins.
ELECTRICAL SYSTEM CODE: IEC 2017
MECHANICAL SYSTEM CODE: IMC 2015
PLUMBING SYSTEM CODE: 2021 Uniform Plumbing Code IECC 2018

FINAL CD SET DATE: 05.07.23

LIVING AREA

BASEMENT	1014 sqft
FIRST FLOOR	1013 sqft
SECOND FLOOR	985 sqft
TOTAL	3012 sqft
GARAGE	416 sqft
DECK	142 sqft

DIM DISCLAIMER

**BUILDING CONTRACTOR/HOME OWNER
TO REVIEW AND VERIFY ALL DIMENSIONS,
SPECS, AND CONNECTIONS BEFORE
CONSTRUCTION BEGINS.**

OVERVIEW

SCALE: NTS

Label	Title
Q-1	OVERVIEW
A-1	PLOT PLAN
A-2	DEMOLITION PLAN
A-3	DEMOLITION PLAN
A-4	RENOVATION PLAN
A-5	RENOVATION PLAN
G-1	GENERAL NOTES
G-2	GENERAL NOTES
G-3	GENERAL NOTES
A-6	FOUNDATION
A-7	FIRST FLOOR
A-8	SECOND FLOOR
A-9	ROOFS
A-10	WINDOW SCHEDULE
A-11	DOOR SCHEDULE
A-12	ELEVATIONS
A-13	ELEVATIONS
A-14	ELEVATIONS
A-15	ELEVATIONS
A-16	SECTION
A-17	SECTION
A-18	SECTION
F-1	FRAMING
F-2	FRAMING OVERVIEW
D-1	DETAILS
E-1	ELECTRICAL
P-1	PLUMBING
C-1	KITCHEN CABINETRY
C-2	BATH CABINETRY
C-3	CABINETRY
C-4	COUNTERTOP & TILE PLAN
C-5	COUNTERTOP & TILE QUANTITIES
C-6	CABINET SCHEDULE
L-1	LANDSCAPE PLAN
FP-1	FURNITURE PLAN
FP-2	FURNITURE SCHEDULE

CALCULATIONS

ZONING MAXIMUMS: GRC

front setback: 5'
 rear setback: 10'
 side setbacks: 20'
 lot coverage: 30%

EXISTING CONDITIONS:
 LOT SIZE: .09 AC (3,920.4 SF)

EXISTING RIDGE HT FROM GRADE: 23.7'

LIVABLE SF: 1396 SF
 FIRST FLOOR 917 SF
 3/4 STORY 479 SF
 BASEMENT 0

GROSS SF: 2756 SF
 FIRST FLOOR 917 SF
 3/4 STORY 638 SF
 PORCH (front/back) 96 SF
 BASEMENT 905 SF
 GARAGE 200 SF

AREA OF FOOTPRINT: 1213

EXISTING SETBACKS:
 FRONT: 5'
 REAR: 48'
 Garage: 3.0
 LEFT: 14'
 Garage: 2.0.0
 RIGHT: 0'
 Garage: 25'

EXISTING LOT COVERAGE: 30%

PROPOSED CONDITIONS:

PROPOSED RIDGE HT. FROM GRADE: 28.8'

LIVABLE SF: 1834 SF
 FIRST FLOOR 917 SF
 SECOND FLOOR 917 SF
 BASEMENT 0
 DECK 0

GROSS SF: 3246 SF
 FIRST FLOOR 917 SF
 SECOND FLOOR 917 SF
 BASEMENT 917 SF
 DECK (FRONT) 11 SF
 PORCH & STAIRS 76 SF
 GARAGE 453 SF

AREA OF FOOTPRINT: 1451 SF

PROPOSED SETBACKS:
 FRONT: 5'
 REAR: 48'
 Garage: 4'
 LEFT: 14'
 Garage: 3'
 RIGHT: 0'
 Garage: 14.4"

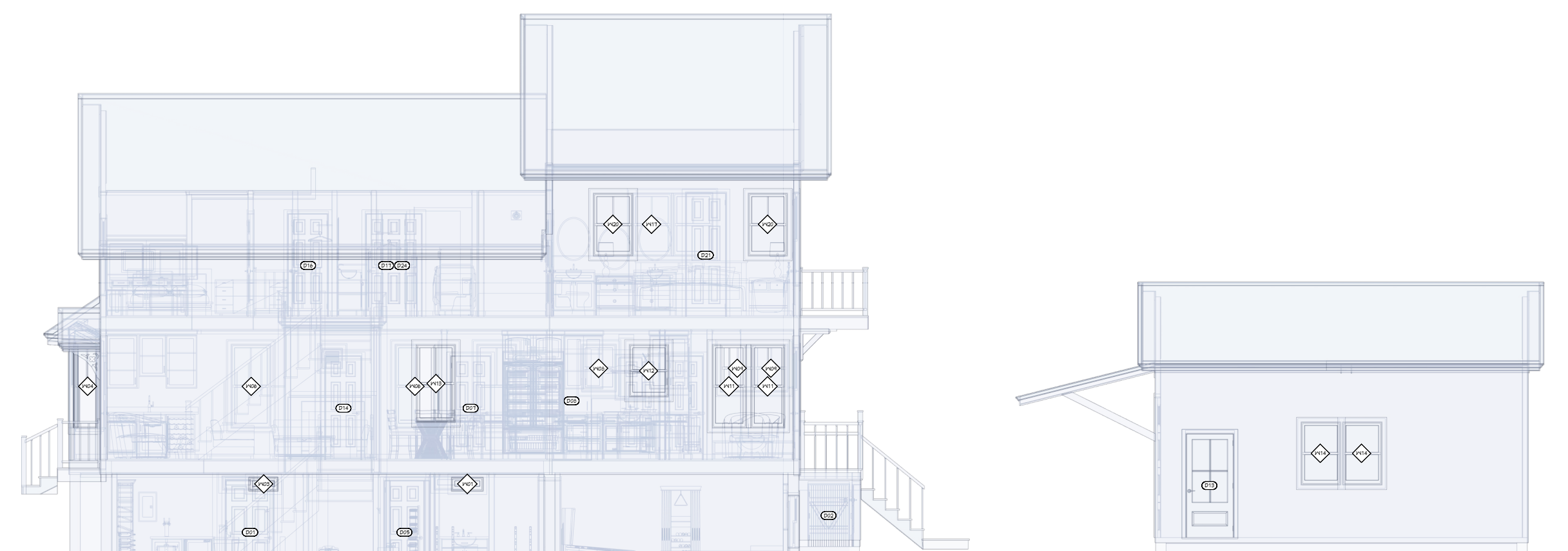
EXISTING LOT COVERAGE: 37%



CITY OF PORTSMOUTH - MAP GEO GIS



GOOGLE SATELITE SITE



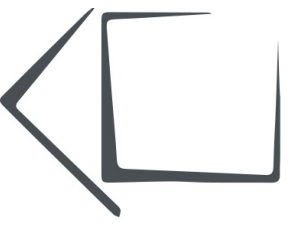
GLASS HOUSE ELEVATION FROM EAST

SCALE: 1/8" = 1'-0"

1200 GAL SEPTIC TANK
 LEACH FIELD BASED ON INFO FROM WASHOE COUNTY
 LEACH FIELD SHALL BE AN INFILTRATOR SYSTEM
 40 CHAMBERS REQUIRED (ARC 36)
 2 LINES 3' WIDE X 3' DEEP X 100 FEET LONG
 40 CHAMBERS EACH
 10' MIN. BETWEEN LINES
 SEPTIC TANK 10' FROM HOUSE

NOTES:
 SLOPE FINISH GRADE AWAY FROM THE HOUSE @ 5% FOR 10' MIN
 LEAVE NATURAL DRAINAGE UNDISTURBED
 APN #
 27 ROHANDA DR.

SITE PLAN



Revision Table	
Number	Date

PLOT PLAN

CLIENT:
 MASON

CONTACT:
 AMY DUTTON HOME
 9 WALKER STREET | KITTERY, ME
 amy@amyduttonhome.com
 207.537.2020

DATE:
 5/9/2023

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SCALED FOR:
 24" X 36"

SCALE:

SEE SCALE ON DRAWINGS

SHEET:
 A-1

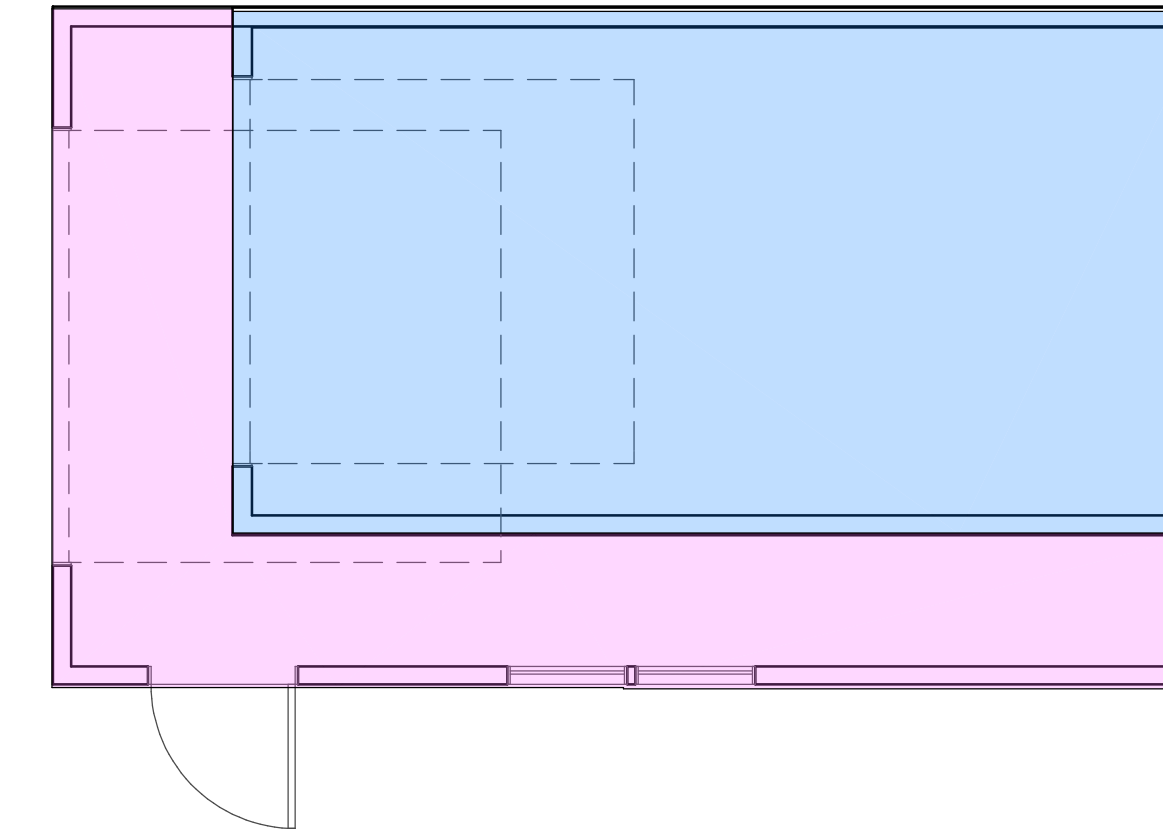
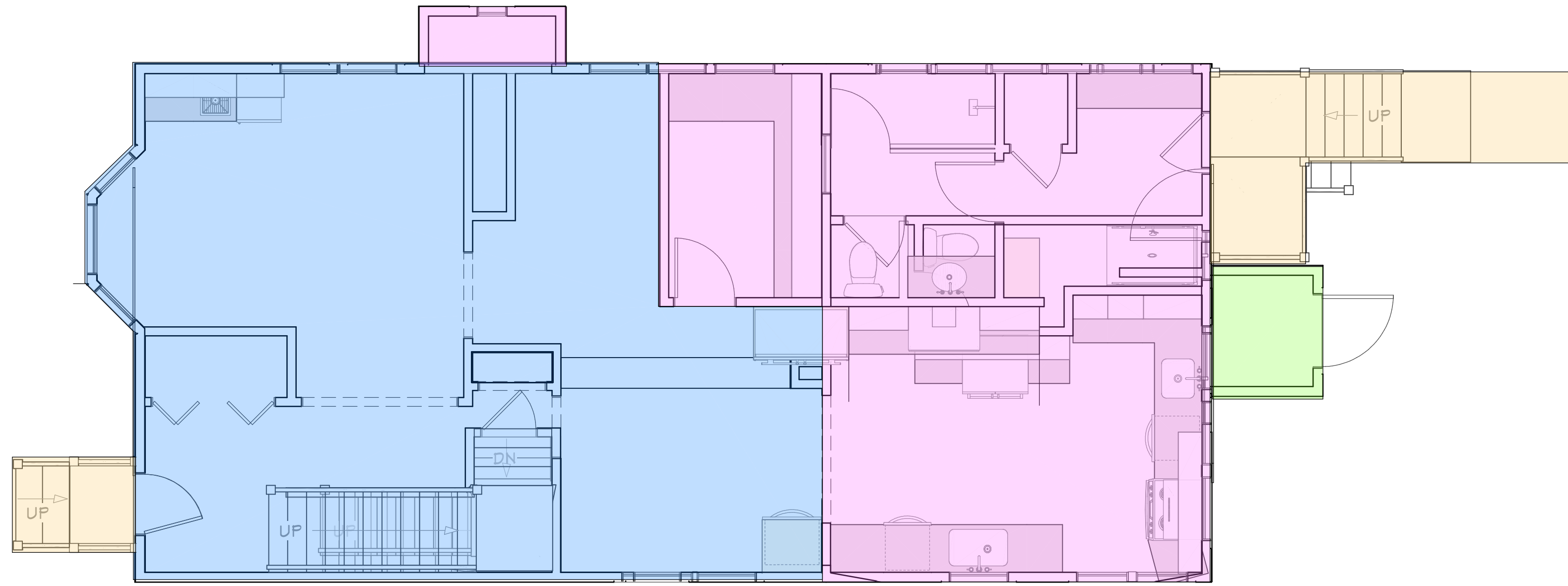
DEMOLITION NOTES

GENERAL NOTES

1. PROVIDE SELECTIVE DEMOLITION TO REMOVE EX. FLOOR, WALLS, CEILING, WINDOWS AND ROOF SYSTEMS IDENTIFIED. CONFIRM EXACT LOCATION W/ DESIGNER AND CIVIL ENGINEER PRIOR TO SELECTIVE DEMOLITION COMMENCEMENT. CONSULT WITH DESIGN PROFESSIONAL FOR ALL REQUIRED TEMPORARY SHORING AND SUPPORTS.
2. CUT EXISTING FOUNDATION TO LOCATION IDENTIFIED AND PREPARE FOR NEW FOUNDATION WALL.
3. EXISTING FOUNDATION WALL TO BE CUT AND REMAIN IN PLACE. REMOVE SILL PLATES OR OTHER LUMBER AND CUT BACK ANCHOR BOLTS TO TOP OF WALL. FILL VOID WITH SAND AND/ OR SOILS CONSISTENT WITH SURROUNDING MATERIALS.

CAD BLOCK GUIDE

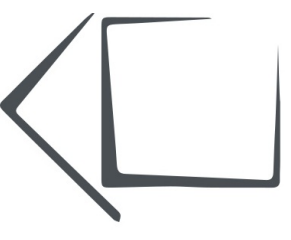
- EXISTING FOOTPRINT (805 SQFT)
- PROPOSED ADDITION (551 SQFT)
- PROPOSED DECK (95 SQFT)
- EXISTING TO BE REMOVED (26 SQFT)



FIRST FLOOR

RENOVATION PLAN

SCALE: 1/4" = 1'-0"



Revision Table	
Number	Date

RENOVATION PLAN

CLIENT:
MASON

CONTACT:
AMY DUTTON HOME
9 WALKER STREET | KITTERY, ME
amy@amyduttonhome.com
207.537.2020

DATE:

5/9/2023

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SCALED FOR:
24" X 36"

SCALE:

SEE SCALE ON DRAWINGS

SHEET:

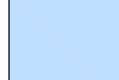


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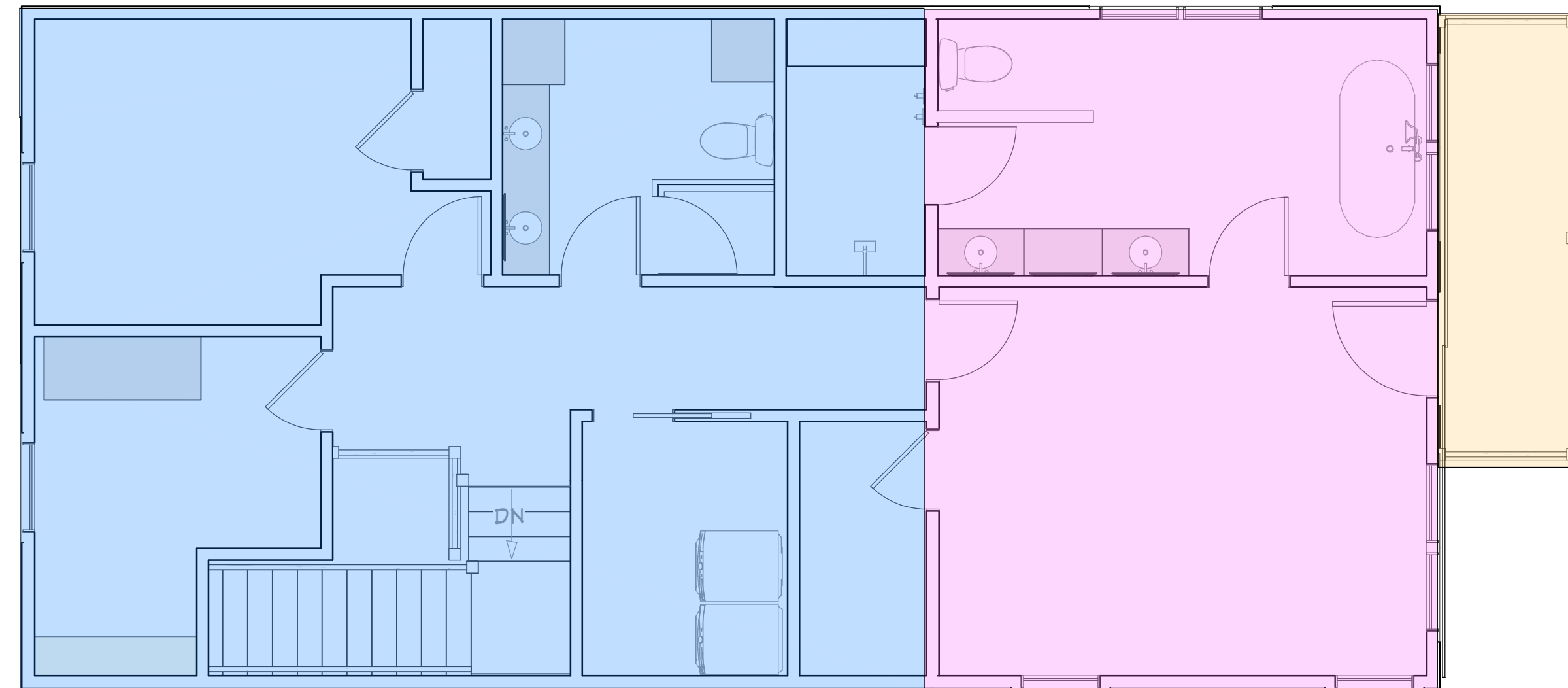
DEMOLITION NOTES

GENERAL NOTES

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2. CUT EXISTING FOUNDATION TO LOCATION IDENTIFIED AND PREPARE FOR NEW FOUNDATION WALL.
3. EXISTING FOUNDATION WALL TO BE CUT AND REMAIN IN PLACE. REMOVE SILL PLATES OR OTHER LUMBER AND CUT BACK ANCHOR BOLTS TO TOP OF WALL. FILL VOID WITH SAND AND/ OR SOILS CONSISTENT WITH SURROUNDING MATERIALS.

CAD BLOCK GUIDE

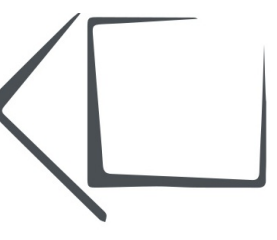
-  EXISTING FOOTPRINT (628 SQFT)
-  PROPOSED ADDITION (358 SQFT)
-  PROPOSED DECK (59 SQFT)



SECOND FLOOR

RENOVATION PLAN

SCALE: 1/4" = 1'-0"



Revision Table	
Number	Date

RENOVATION PLAN

CLIENT:
MASON

CONTACT:
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207.537.2020

DATE:

5/9/2023

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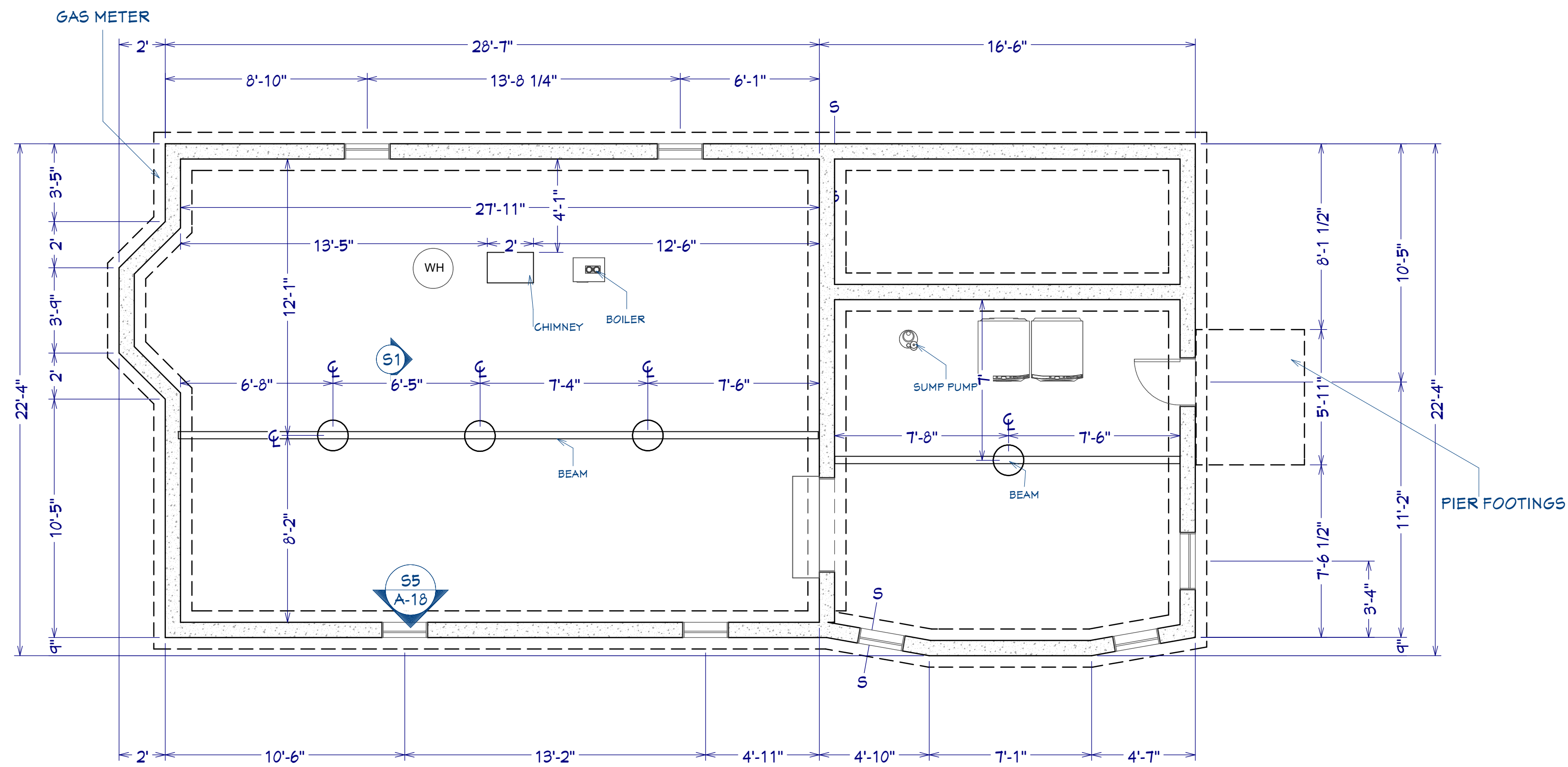
SCALED FOR:
24" X 36"

SCALE:

SEE SCALE ON DRAWINGS

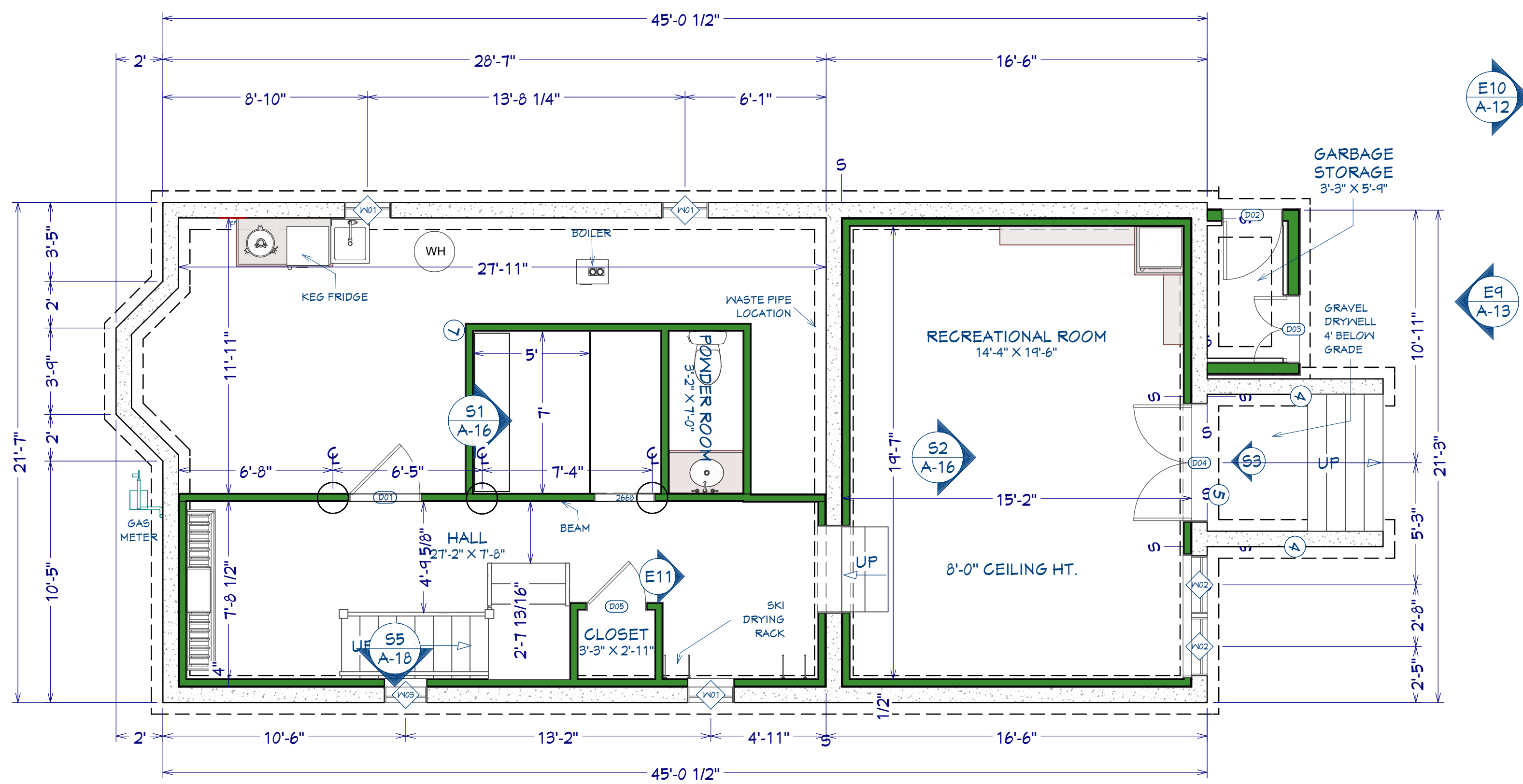
SHEET:

A-5



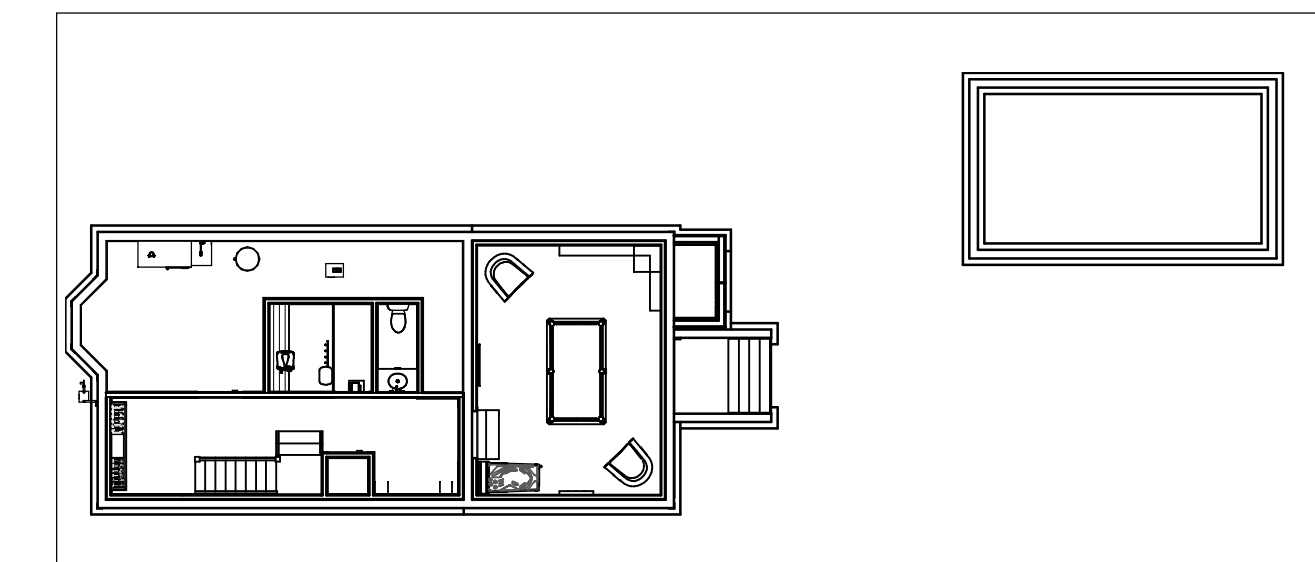
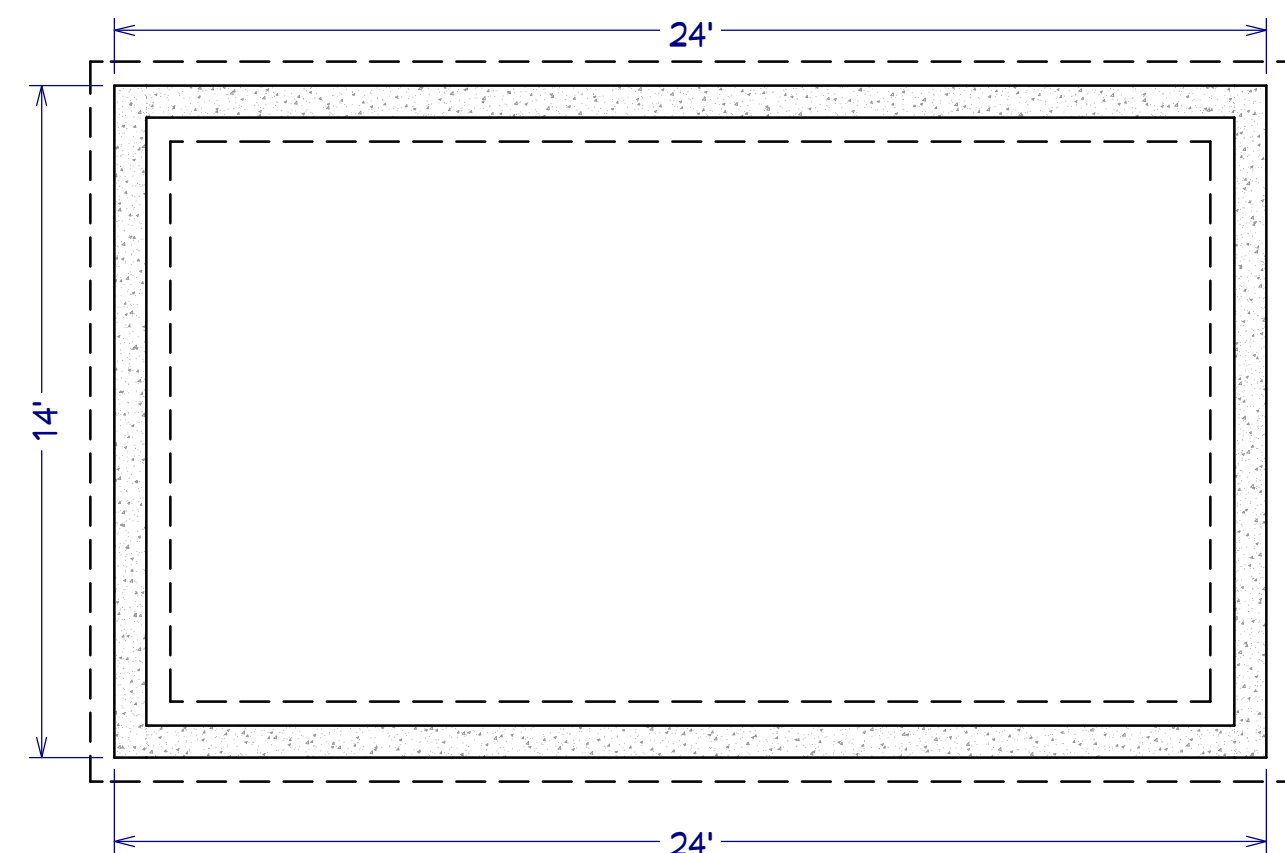
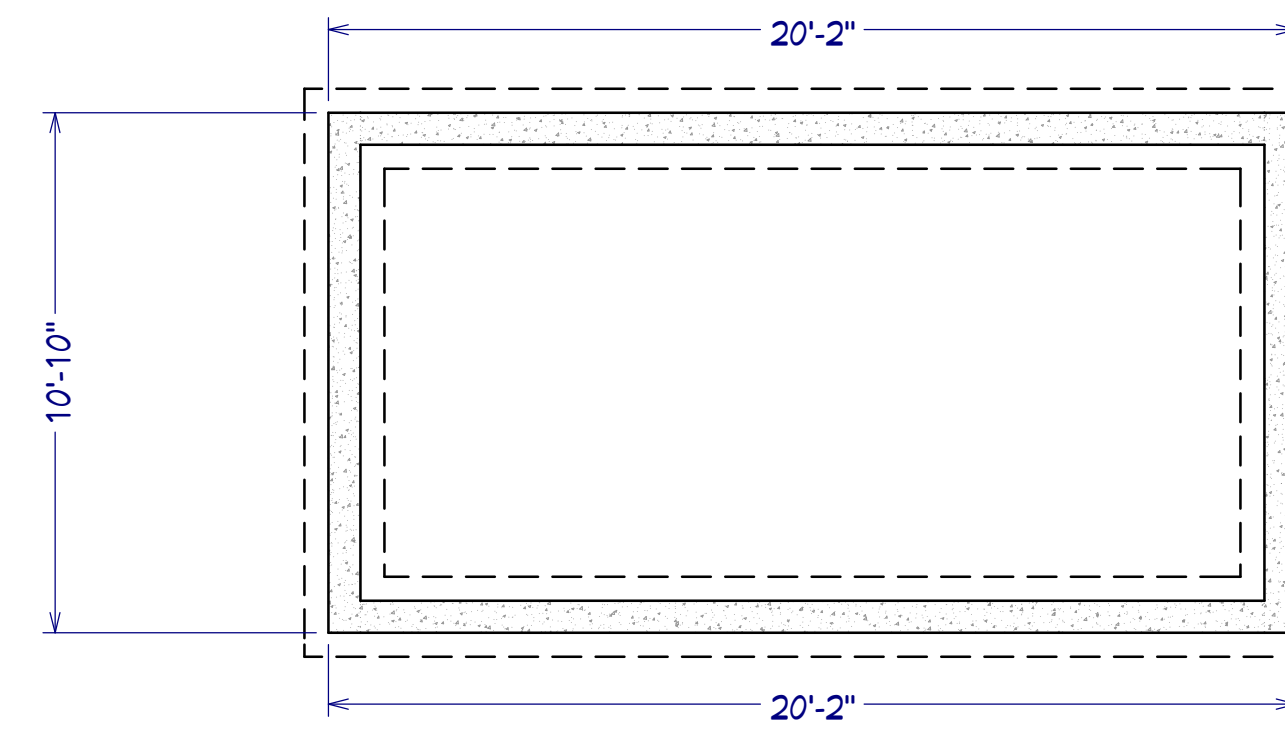
EXISTING FOUNDATION PLAN

SCALE: 1/4" = 1'-0"



PROPOSED FOUNDATION PLAN

SCALE: 1/4" = 1'-0"



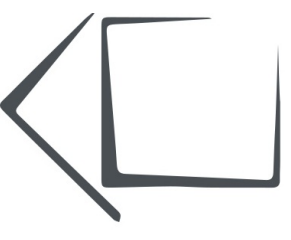
PERSPECTIVE VIEW (PROPOSED)

SCALE: NTS

NOTE SCHEDULE	
①	REMOVED EXISTING WINDOW
②	CURBLESS SHOWER
③	48" HT WALL
④	RETAINING WALL
⑤	1" STEP DOWN
⑥	EXISTING BEAM TO BE REMOVED
⑦	EXISTING CHIMENEY REMOVED
⑧	FIREPLACE GAS EXHAUST
⑨	REMOVED EXISTING WINDOW - EX. EXTERIOR WALL

WALL LEGEND

- = EXTERIOR WALL
- = INTERIOR 6
- = INTERIOR 4
- = NEW WALL
- = DEMO WALL
- = GLASS TOP TILE BOTTOM PONY WALL
- = GLASS SHOWER WALL



Revision Table
Number | Date | Description

FOUNDATION

CLIENT:
MASON

CONTACT:
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amy@amyduttonhome.com
207.537.2020

DATE:

5/9/2023

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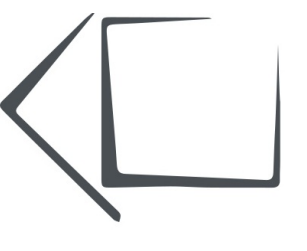
SCALED FOR:
24" X 36"

SCALE:

SEE SCALE ON DRAWINGS

SHEET:

A-6



Revision Table
Number Date Description

FIRST FLOOR

CLIENT:
MASON

CONTACT:
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amy@amyduttonhome.com
207.537.2020

DATE:

5/9/2023

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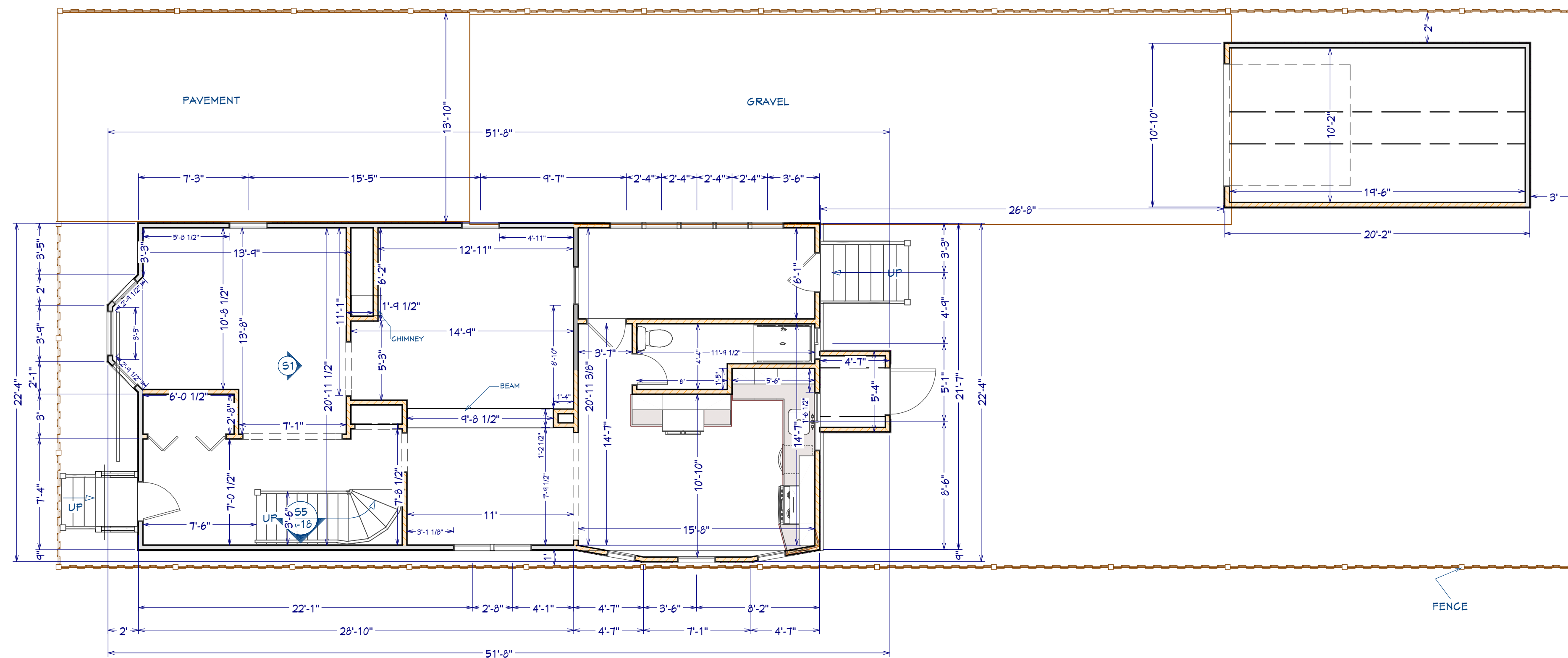
SCALED FOR:
24" X 36"

SCALE:

SEE SCALE ON DRAWINGS

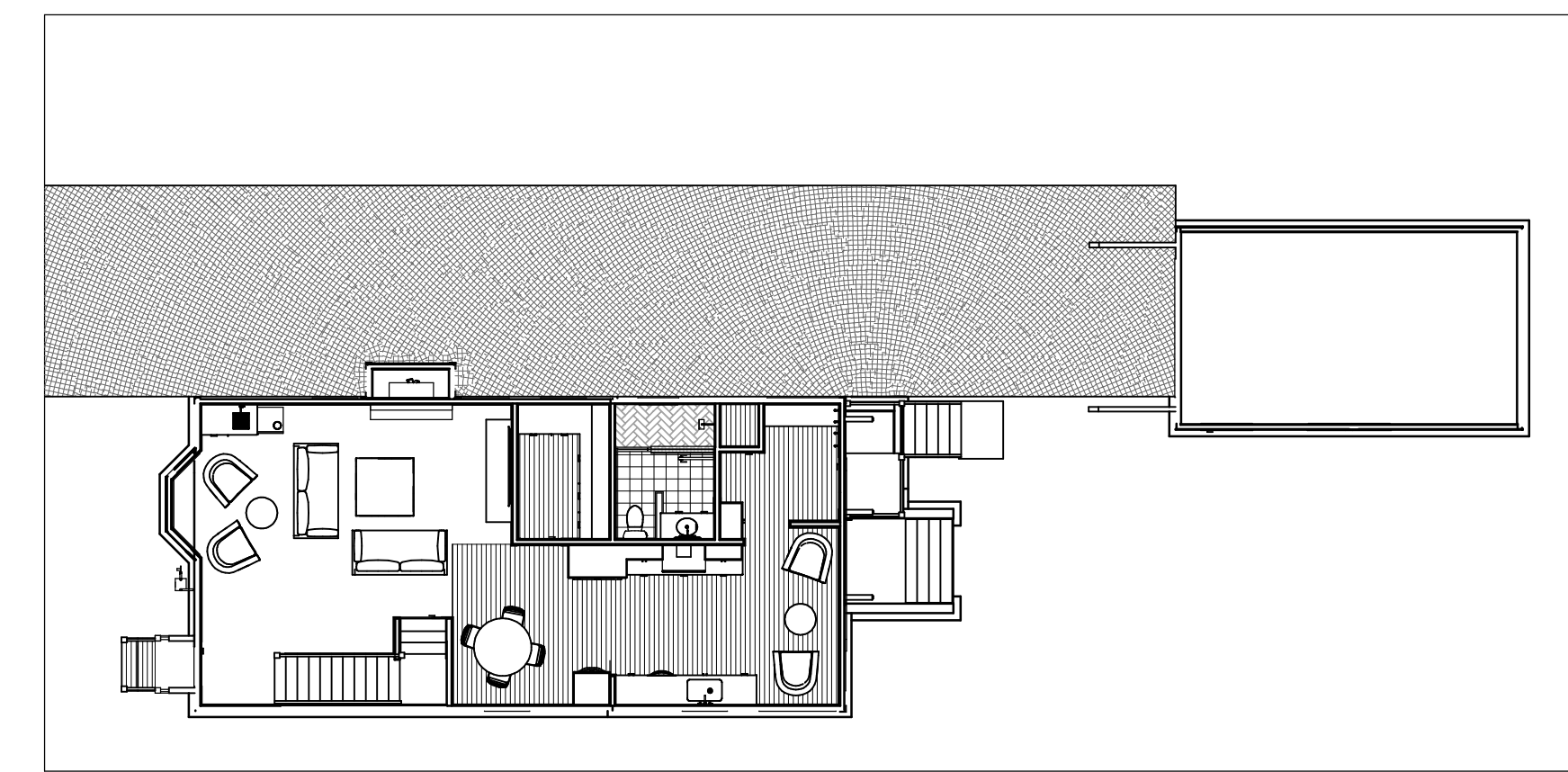
SHEET:

A-7



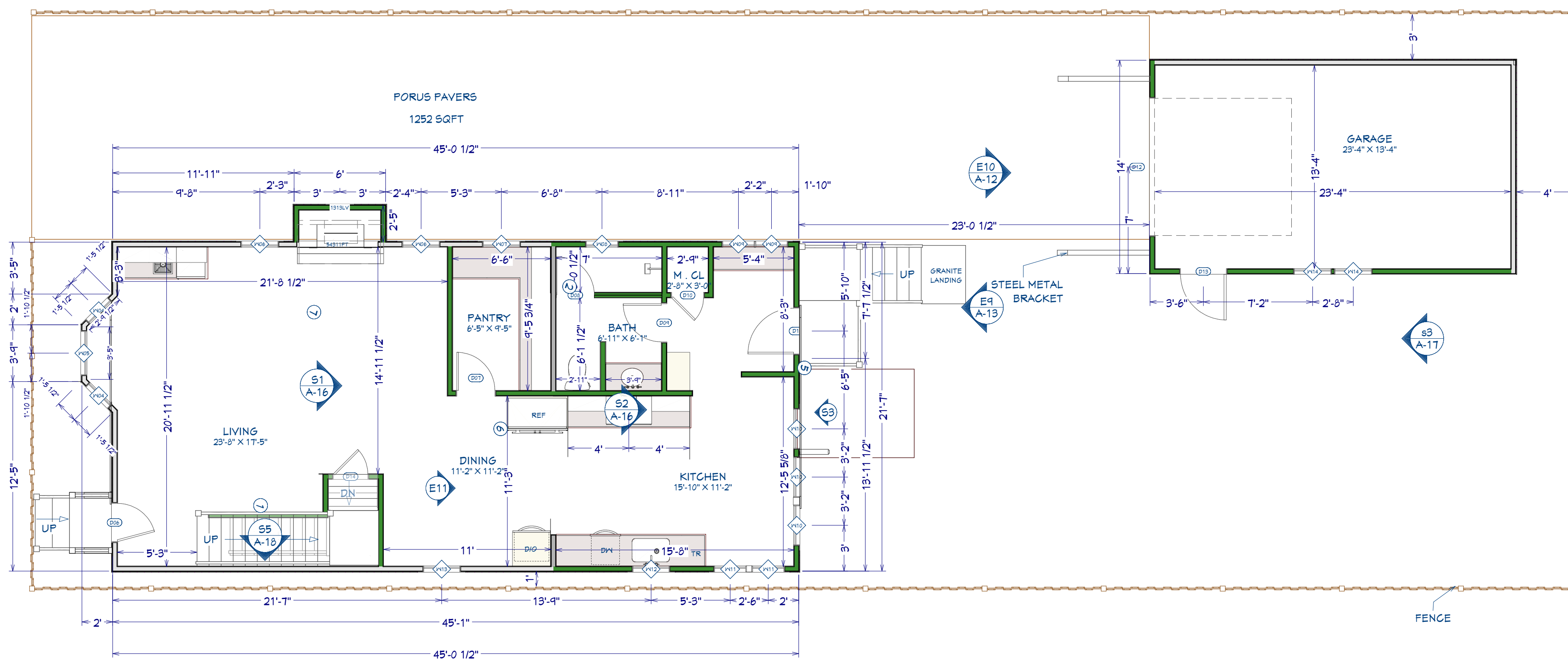
EXISTING FIRST FLOOR PLAN

SCALE: 3/16" = 1'-0"



PERSPECTIVE VIEW (PROPOSED)

SCALE: NTS



PROPOSED FIRST FLOOR PLAN

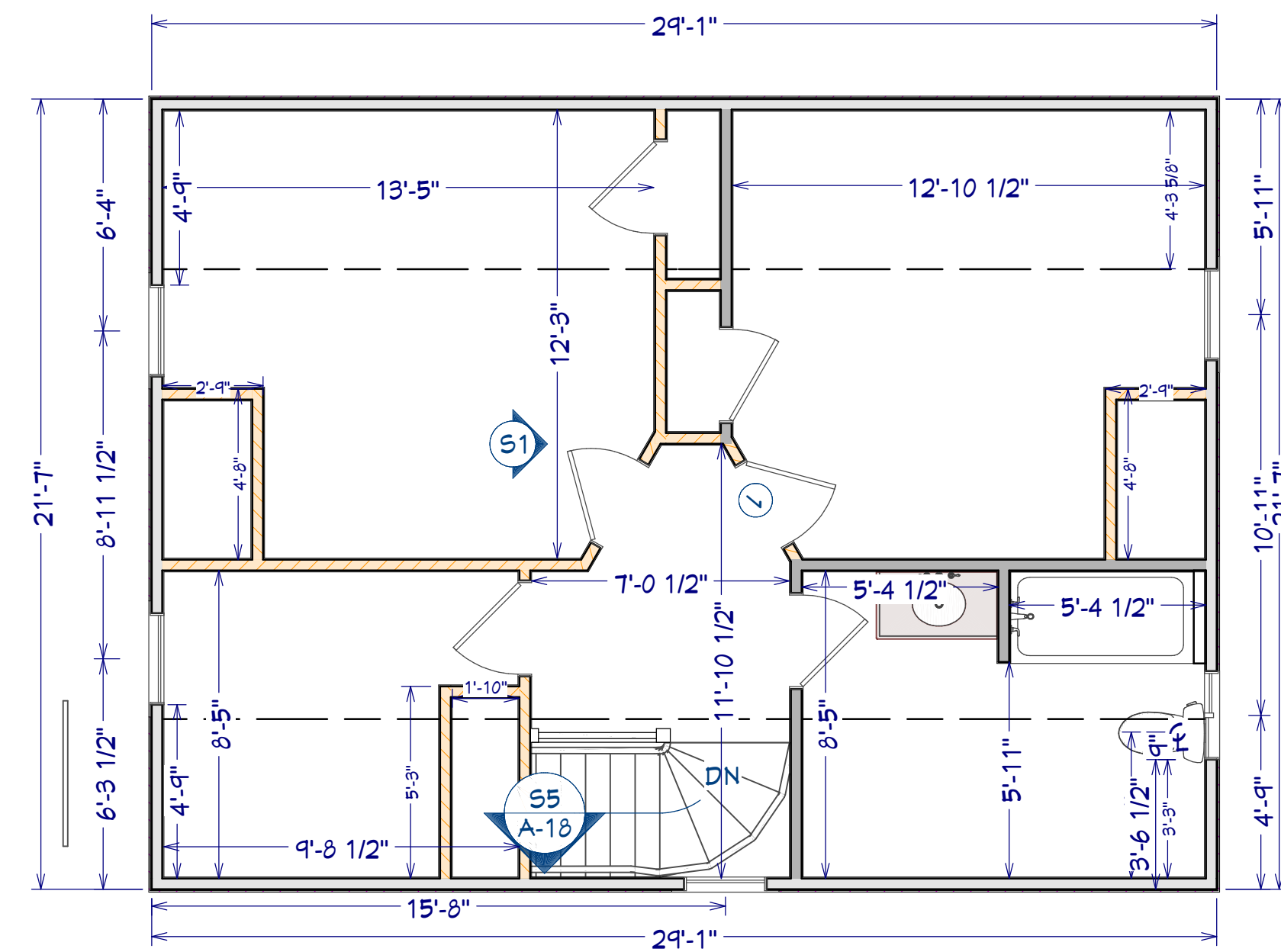
SCALE: 3/16" = 1'-0"

NOTE SCHEDULE

1	REMOVED EXISTING WINDOW
2	CURBLESS SHOWER
3	48" HT WALL
4	RETAINING WALL
5	1" STEP DOWN
6	EXISTING BEAM TO BE REMOVED
7	EXISTING CHIMENEY REMOVED
8	FIREPLACE GAS EXHAUST
9	REMOVED EXISTING WINDOW - EX. EXTERIOR WALL

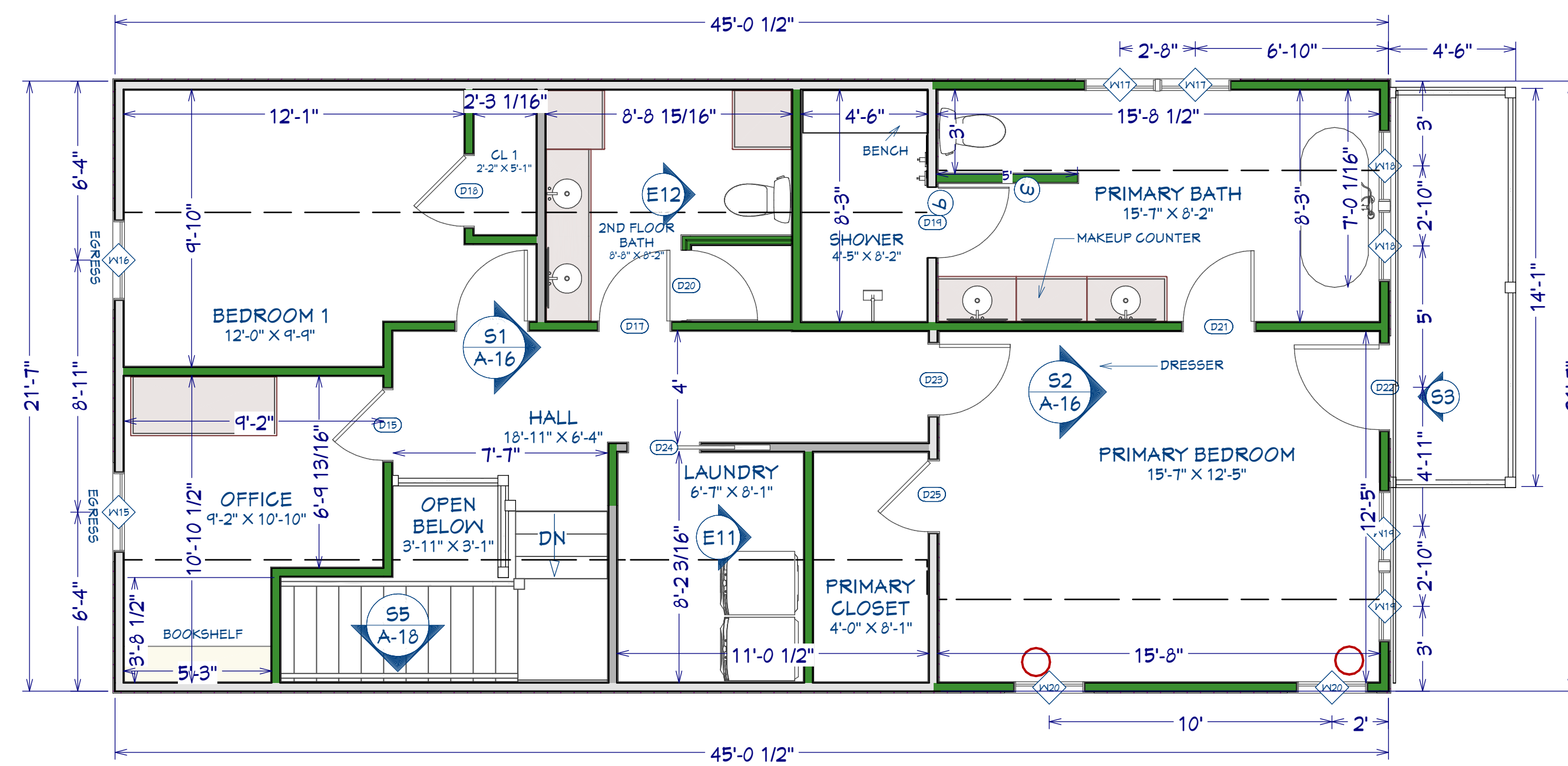
WALL LEGEND

	= EXTERIOR WALL
	= INTERIOR 6
	= INTERIOR 4
	= NEW WALL
	= DEMO WALL
	= GLASS TOP TILE BOTTOM PONY WALL
	= GLASS SHOWER WALL



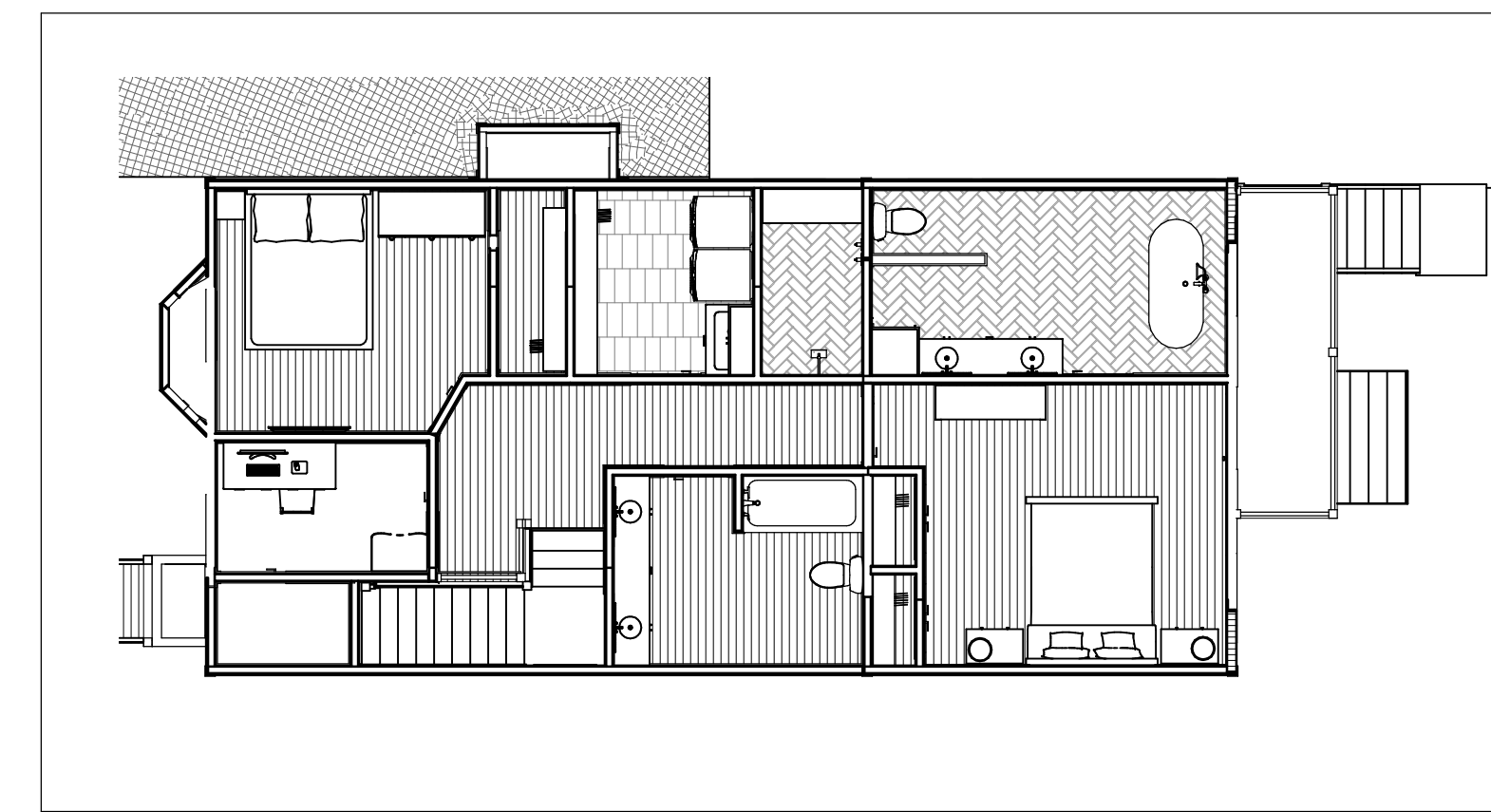
EXISTING SECOND FLOOR PLAN

SCALE: 1/4" = 1'-0"



PROPOSED SECOND FLOOR PLAN

SCALE: 1/4" = 1'-0"

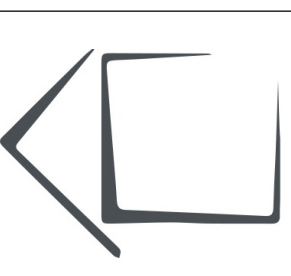


PERSPECTIVE VIEW (PROPOSED)

SCALE: NTS

NOTE SCHEDULE	
①	REMOVED EXISTING WINDOW
②	CURBLESS SHOWER
③	48" HT WALL
④	RETAINING WALL
⑤	T" STEP DOWN
⑥	EXISTING BEAM TO BE REMOVED
⑦	EXISTING CHIMNEY REMOVED
⑧	FIREPLACE GAS EXHAUST
⑨	REMOVED EXISTING WINDOW - EX. EXTERIOR WALL

WALL LEGEND	
	= EXTERIOR WALL
	= INTERIOR 6
	= INTERIOR 4
	= NEW WALL
	= DEMO WALL
	= GLASS TOP TILE BOTTOM PONY WALL
	= GLASS SHOWER WALL



Revision Table		
Number	Date	Description

SECOND FLOOR

CLIENT:
MASON

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amy@amyduttonhome.com
207.537.2020

DATE:

5/9/2023

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SCALED FOR:
24" X 36"

SCALE:

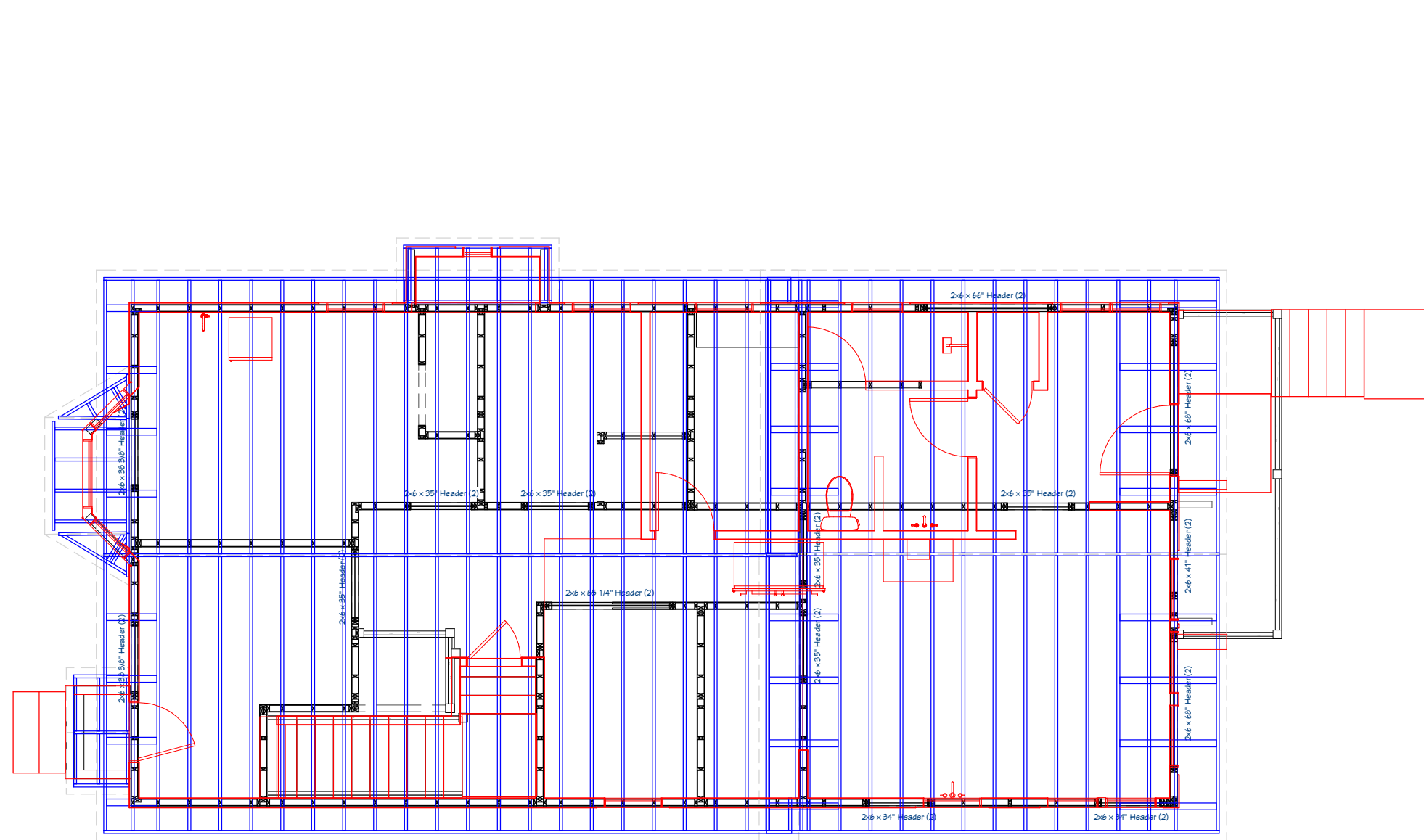
SEE SCALE ON DRAWINGS

SHEET:

A-8

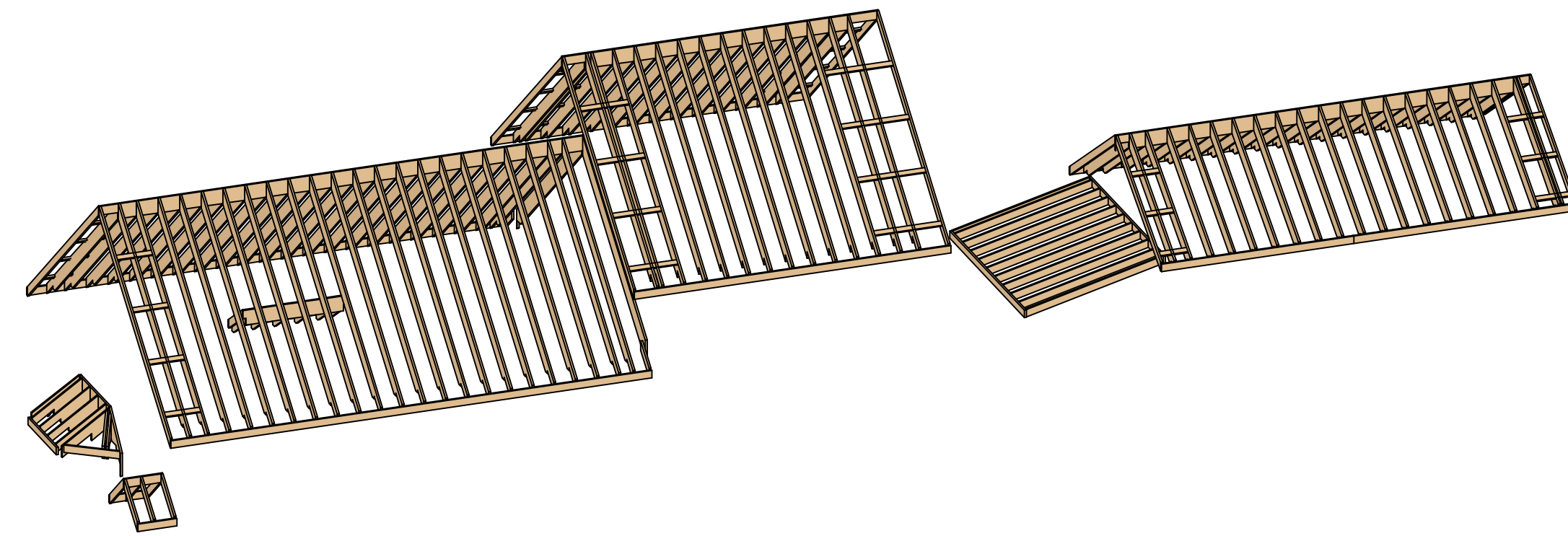
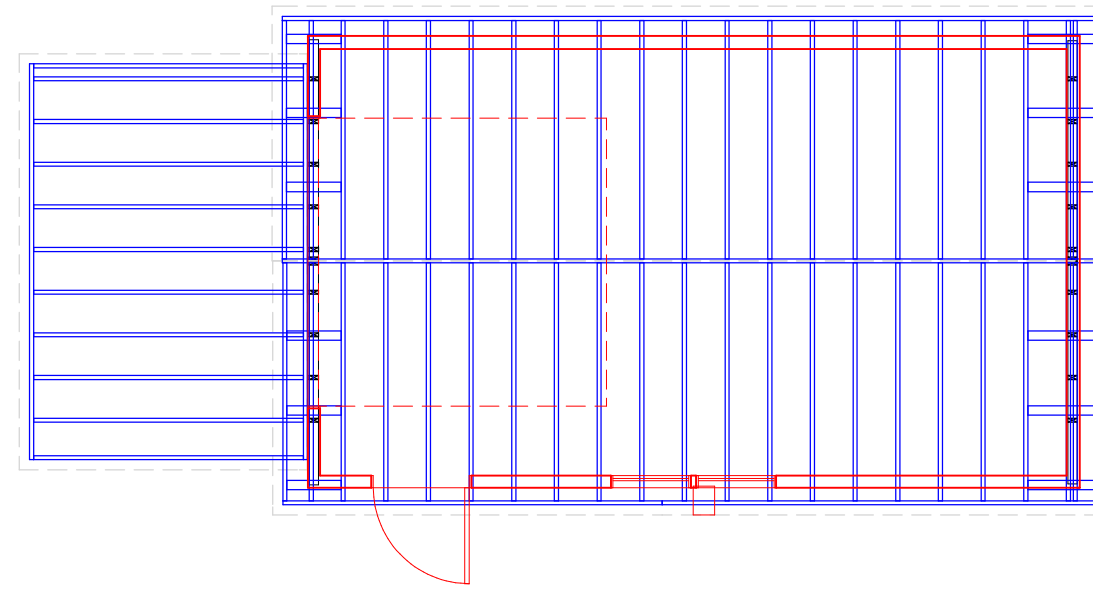
NOTES:

1. PROVE 2 X 10 FLOOR JOISTS AT 16" o.c. TYPICAL
2. INTERIOR NON-BEARING STUD WALLS ARE 2 X 4 AT 16" o.c.
3. INTERIOR BEARING WALLS ARE 2 X 6 AT 16" o.c. #5-2 OR BETTER
4. HEADERS FOR DOORS AND WINDOWS UP TO 6 FEET ARE (2) 2 X 10's
5. ENGINEERED FLOOR BEAM TO BE DESIGNED AND SUBMITTED PRIOR TO CONSTRUCTION BY STRUCTURAL ENGINEER.
6. CEILING JOISTS FOR THE SECOND FLOOR ARE 2X6.
7. ROOF PLANES ARE GREEN
8. FIRST FLOOR WALLS ARE RED
9. 2ND FLOOR WALLS ARE GREY



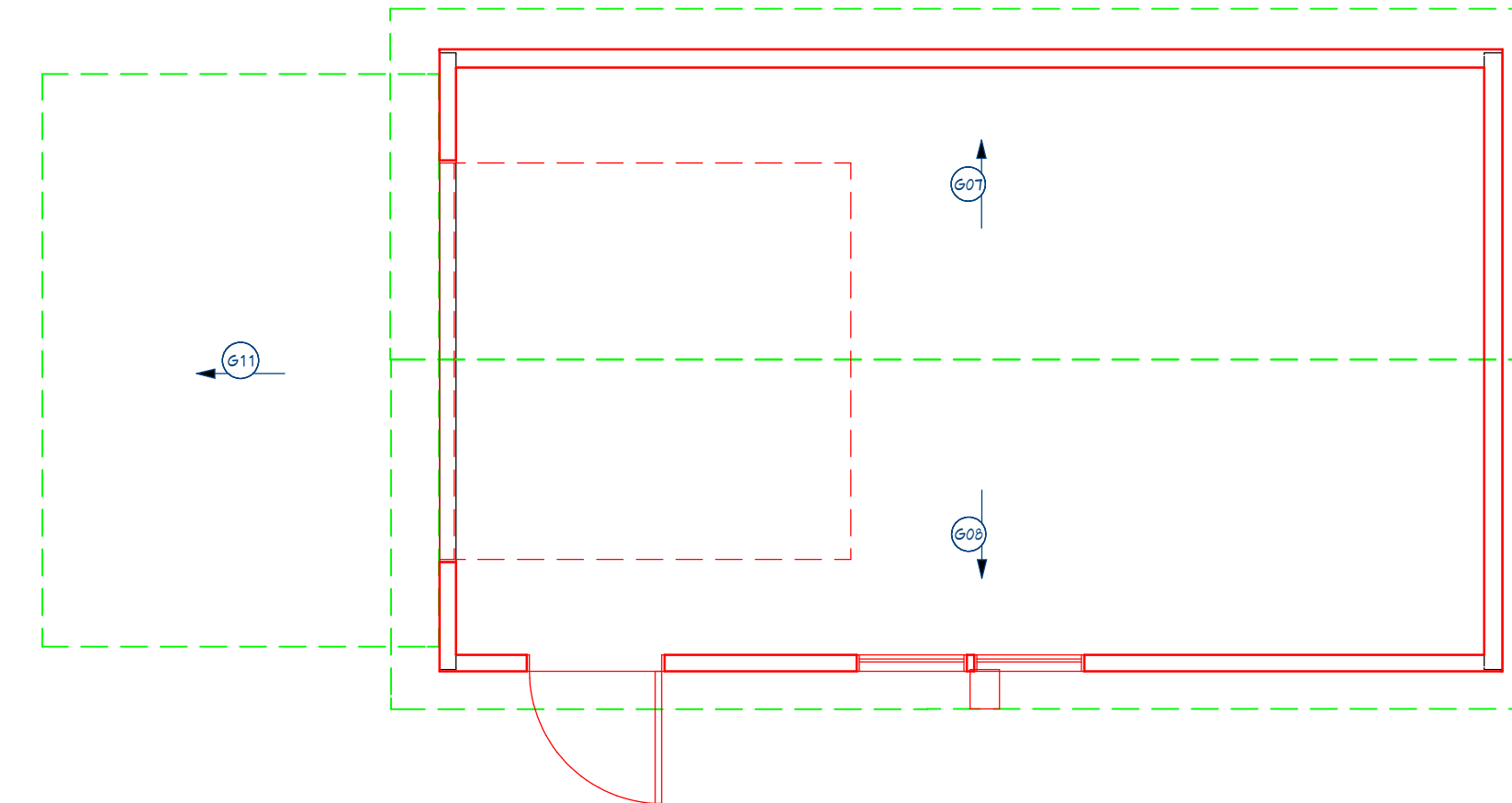
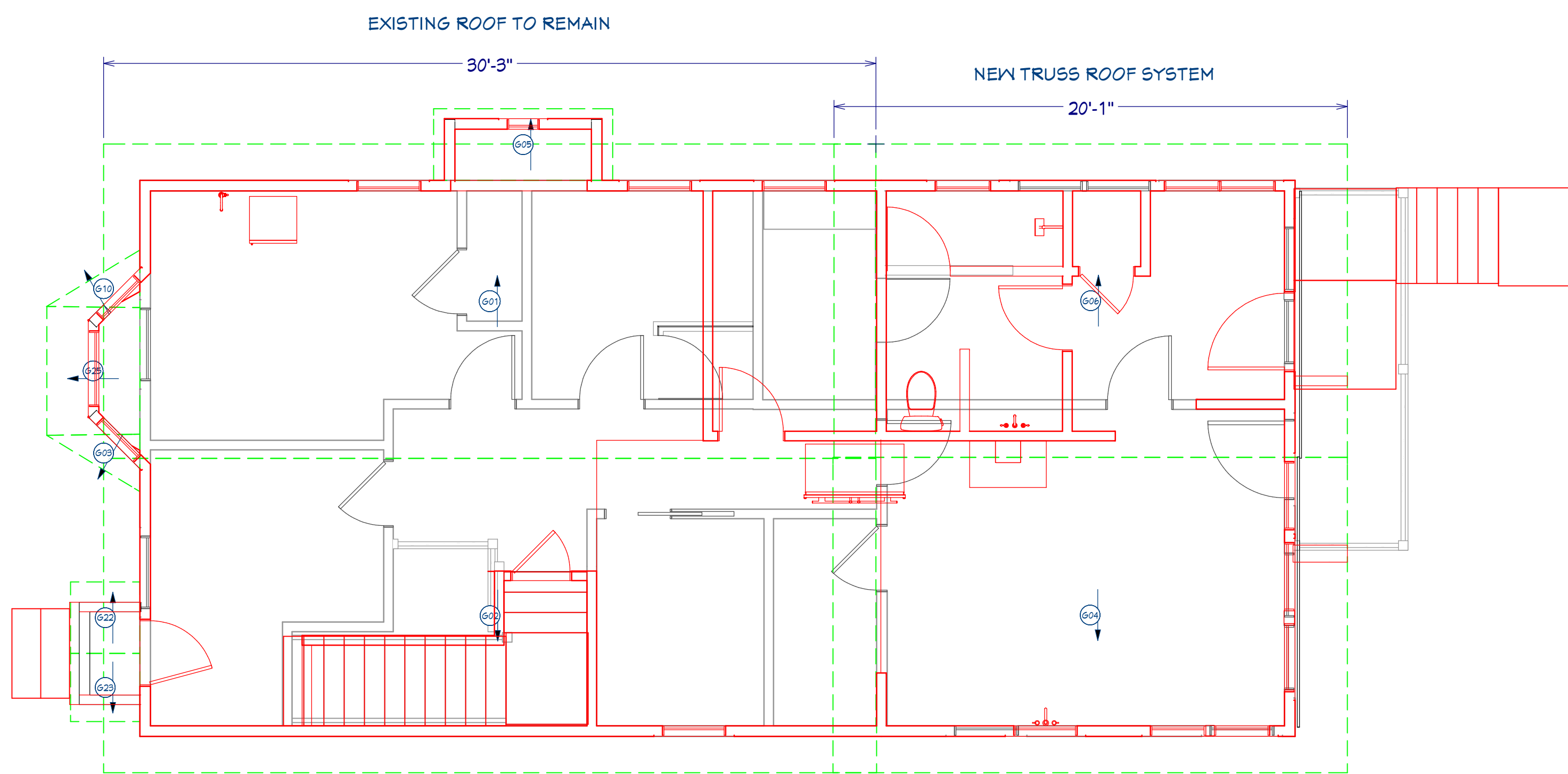
ROOF FRAMING

SCALE: NTS



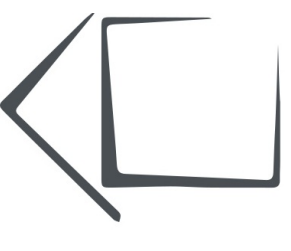
ROOF PERSPECTIVE

SCALE: NTS



ROOF PLAN

SCALE: 1/4" = 1'-0"



Revision Number	Date	Description

ROOFS

CLIENT:
MASON

CONTACT:
AMY DUTTON HOME
9 WALKER STREET | KITTERY, ME
amy@amyduttonhome.com
207.537.2020

DATE:

5/9/2023

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SCALED FOR:
24" X 36"

SCALE:

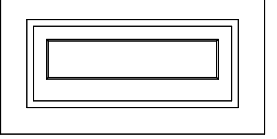
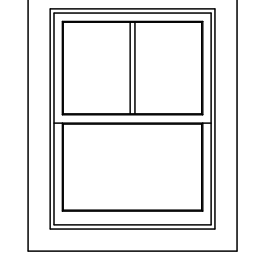
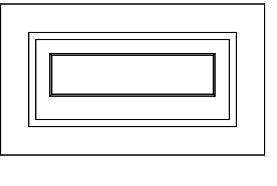
SEE SCALE ON DRAWINGS

SHEET:

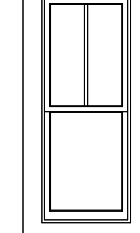
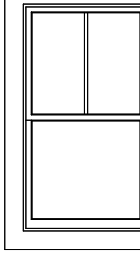
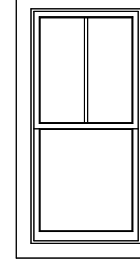
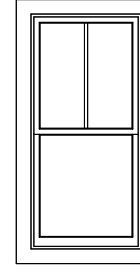

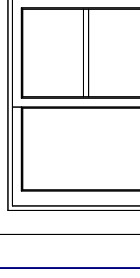
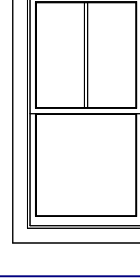
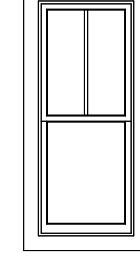
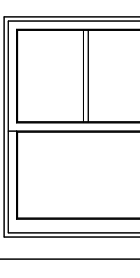
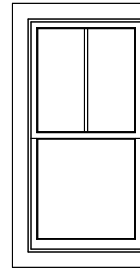
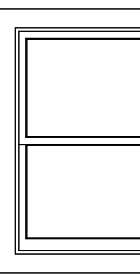
A-9

WINDOW SCHEDULE:
MFG: MARVIN ELEVATE

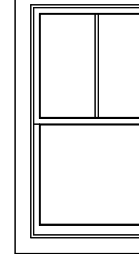
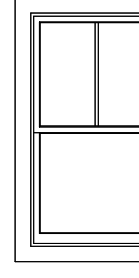
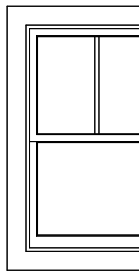
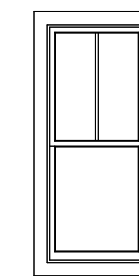
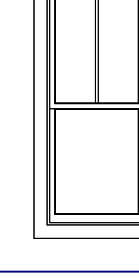
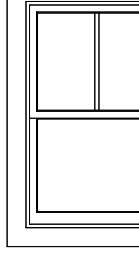
BASEMENT

WINDOW SCHEDULE									
3D EXTERIOR ELEVATION	NUMBER	QTY	R/O	WIDTH	HEIGHT	ROOM NAME	DESCRIPTION	FLOOR	
	W01	3	25"X11"	24"	10"	HALL	SINGLE AWNING	0	
	W02	2	31"X41"	30"	40"	UNSPECIFIED	DOUBLE HUNG	0	
	W03	1	23"X11"	22"	10"	HALL	SINGLE AWNING	0	

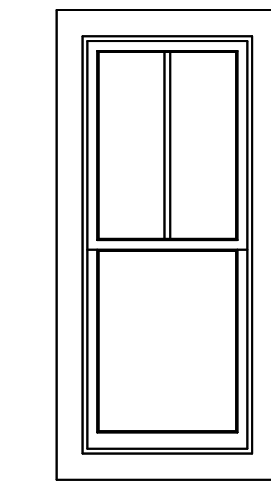
FIRST FLOOR

WINDOW SCHEDULE									
3D EXTERIOR ELEVATION	NUMBER	QTY	R/O	WIDTH	HEIGHT	ROOM NAME	DESCRIPTION	FLOOR	
	W04	2	26"X65"	25"	64"	LIVING	DOUBLE HUNG	1	
	W05	1	36 3/8"X65"	35 3/8"	64"	LIVING	DOUBLE HUNG	1	
	W06	2	31"X65"	30"	64"	LIVING	DOUBLE HUNG	1	
	W07	1	31"X65"	30"	64"	PANTRY	DOUBLE HUNG	1	
	W08	1	21"X31"	26"	36"	SHOWER 1	DOUBLE HUNG	1	
	W09	2	21"X31"	26"	36"	KITCHEN	DOUBLE HUNG	1	
	W10	3	33"X65"	32"	64"	KITCHEN	DOUBLE HUNG	1	
	W11	2	27"X65"	26"	64"	KITCHEN	DOUBLE HUNG (EXISTING WINDOW OPENING ON SOUTH ABUTTER WALL)	1	
	W12	1	30 3/4"X41"	29 3/4"	40"	KITCHEN	CASEMENT W/ CHECKRAIL (EXISTING WINDOW OPENING ON SOUTH ABUTTER WALL)	1	
	W13	1	30 3/4"X60 3/4"	29 3/4"	59 3/4"	DINING	DOUBLE HUNG (EXISTING WINDOW OPENING ON SOUTH ABUTTER WALL)	1	
	W14	2	31"X49"	30"	48"	GARAGE	DOUBLE HUNG	1	

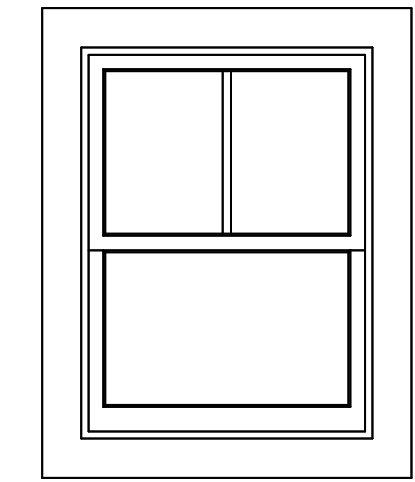
SECOND FLOOR

WINDOW SCHEDULE									
3D EXTERIOR ELEVATION	NUMBER	QTY	R/O	WIDTH	HEIGHT	ROOM NAME	DESCRIPTION	FLOOR	
	W15	1	35"X61"	34"	60"	OFFICE	DOUBLE HUNG EGRESS TEMPERED	2	
	W16	1	35"X61"	34"	60"	BEDROOM 1	CASEMENT W/ CHECKRAIL EGRESS TEMPERED	2	
	W17	2	31"X49"	30"	48"	PRIMARY BATH	DOUBLE HUNG	2	
	W18	2	31"X73"	30"	72"	PRIMARY BATH/ UNSPECIFIED	DOUBLE HUNG EGRESS	2	
	W19	2	31"X73"	30"	72"	PRIMARY BEDROOM	DOUBLE HUNG EGRESS	2	
	W20	2	31"X49"	30"	48"	PRIMARY BEDROOM	DOUBLE HUNG	2	

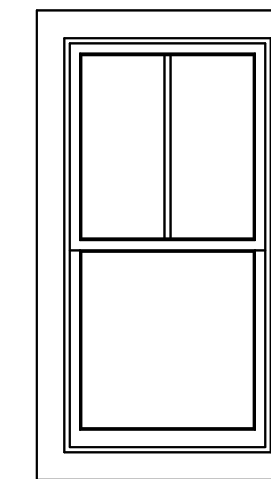
EXISTING WINDOW OPENING ON SOUTH ABUTTER WALL



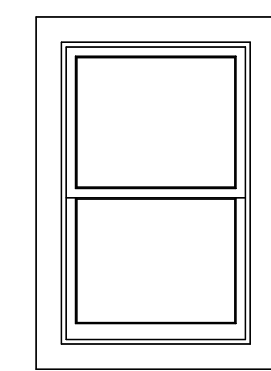
KITCHEN
(2) 22 1/2" X 63 1/2" = 9.9
X 2 = 19.8 SQFT



KITCHEN
29 3/4" X 63 1/2" =
14 SQFT



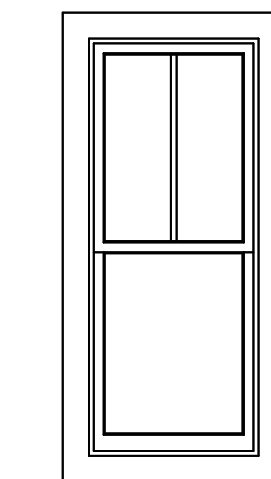
DINING
(2) 29 3/4" X 59 3/4" =
12.33 X 2 = 24.66 SQFT



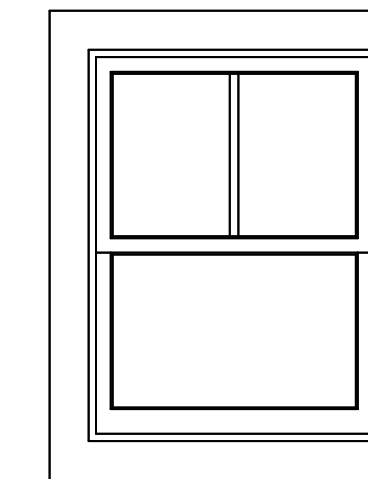
STAIRWELL
27 1/8" X 37 1/8" = 7 SQFT

TOTAL: 65.46 SQFT

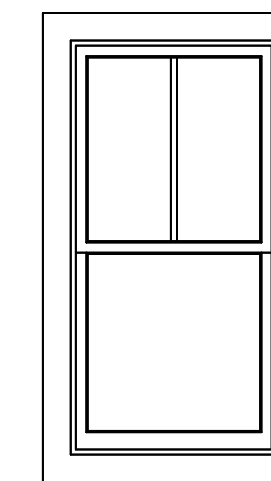
PROPOSED WINDOW OPENING ON SOUTH ABUTTER WALL



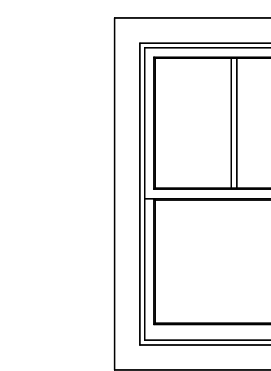
KITCHEN (OASIS)
(2) 26" X 65" =
11.7 sf X 2 = 23.4 SQFT



KITCHEN
29 3/4" X 63 1/2" =
8.3 SQFT
CASEMENT W/
CHECKRAIL



DINING
29 3/4" X 59 3/4" = 12.3 SQFT



PRIMARY
(2) 30" X 48" = 10 SF
10sf X 2 = 20 SQFT

TOTAL: 64 SQFT

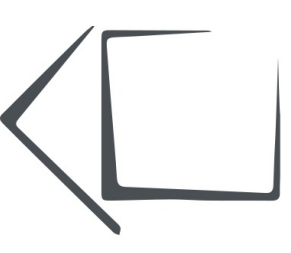
WINDOW NOTES:

- 1 WOOD INTERIOR WITH CLAD EXTERIOR
- 2 FULL SCREENS ON ALL WINDOWS
- 3 INTERIOR WINDOW COLOR: WHITE
- 4 EXTERIOR WINDOW COLOR: WHITE
- 5 HARDWARE MATERIAL: WHITE
- 6 MANUFACTURER: MARVIN ELEVATE
- 7 WINDOW ROUGH OPENING: 1/2" FOR TOP/BOTTOM & 1/2" FOR SIDES
- 8 EGRESS: BEDROOM WINDOWS SILL FINISHED MUST BE WITHIN 44" OF THE FLOOR AND PROVIDE MINIMUM CLEAR OPENINGS OF 5.7 SQFT WITH HEIGHT DIMENSION NOT LESS THAN 24" AND WIDTH DIMENSION NOT LESS THAN 20" AS TO MEET EGRESS. SECOND FLOOR SILLS MIN. 24" A.F.F. PROVIDE MIN. ONE DOOR OR WINDOW MEETING EGRESS REQ. IN BASEMENT, IN EACH SLEEPING ROOM, IN EACH POTENTIAL SLEEPING ROOM, AND OTHER LOCATIONS REQUIRED BY LOCAL CODE, IN SIZES REQUIRED BY LOCAL CODE. NOTE THAT CASMENT WINDOWS CODED BY MANUFACTURER AS MEETING EGRESS REQUIREMENTS TYPICALLY NEED TO BE ORDERED WITH SPECIFIC HARDWARE.
- 9 WINDOW TEMPERING: PROVIDE TEMPERED WINDOWS WHERE REQUIRED BY LOCAL CODES OR LOCAL AUTHORITIES.
- 10 WINDOW RO's: 1/4" or 1/2" on each OF THE (4) SIDES ALLOWED FOR WINDOW RO, TYPICAL. REVIEW FRAMING SIZE VS. RO SIZE. ADJUST PER MANUF. REQUIREMENT AND/ OR BUILDER PREFERENCE.
- 11 BASEMENT WINDOWS: ADD BASEMENT WINDOWS AS REQUIRED TO MEET STATE AND LOCAL CODE REQUIREMENTS, INCLUDING BUT NOT LIMITED TO EGRESS AND LIGHT / VENTILATION.

****MULL WINDOWS TOGETHER WHEN APPROPRIATE**

***EGRESS = SIGNIFIES EGRESS (see window notes for specs)**

WINDOW SCHEDULE



Revision Table	
Number	Description

WINDOW SCHEDULE

CLIENT:
MASON

CONTACT:
AMY DUTTON HOME
9 WALKER STREET | KITTERY, ME
amy@amyduttonhome.com
207.537.2020

DATE:

5/9/2023

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SCALED FOR:
24" X 36"

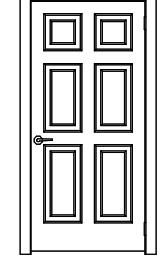
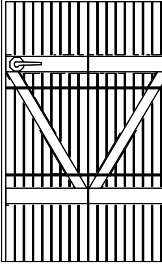
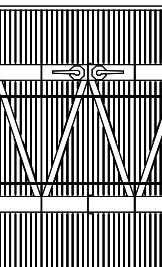
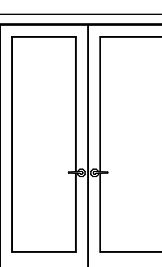
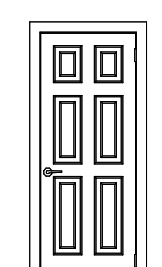
SCALE:

SEE SCALE ON DRAWINGS

SHEET:

A-10

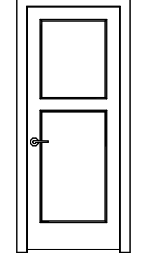
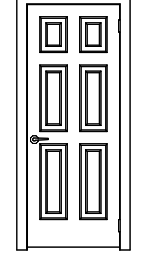
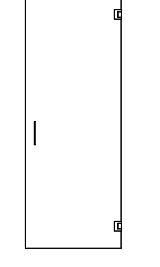
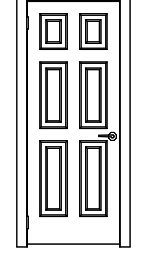
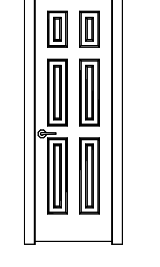
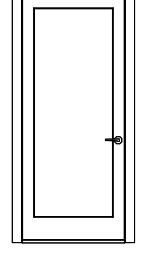
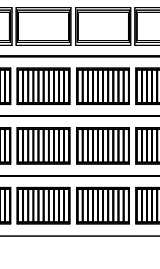
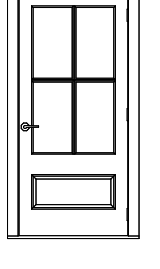
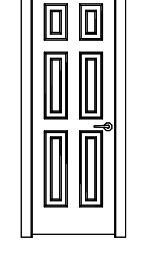
DOOR SCHEDULE:
MFG: BROSCO
BASEMENT

DOOR SCHEDULE								
3D EXTERIOR ELEVATION	NUMBER	QTY	SIZE	WIDTH	HEIGHT	ROOM NAME	DESCRIPTION	FLOOR
	D01	1	3068 L IN	36"	80"	HALL/HALL	HINGED-DOOR P09	0
	D02	1	26811 R EX	30"	47 7/16"	GARBAGE STORAGE	EXT. HINGED-GARAGE DOOR CHD22	0
	D03	1	210311 L/R EX	34"	47 7/16"	GARBAGE STORAGE	EXT. DOUBLE HINGED-GARAGE DOOR CHD22	0
	D04	1	5073 L/R IN	60"	86 1/2"	UNSPECIFIED/UNSPECIFIED	DOUBLE HINGED-GLASS PANEL	0
	D05	1	2668 L IN	30"	80"	CLOSET/HALL	HINGED-DOOR P09	0

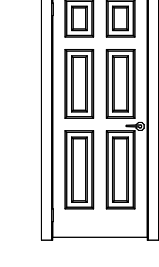

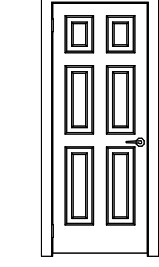
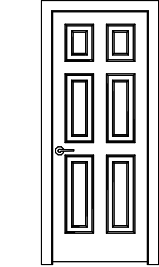
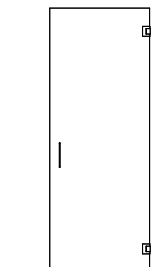
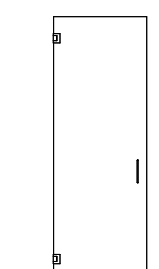
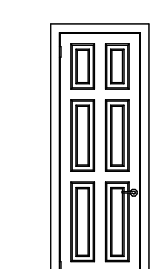
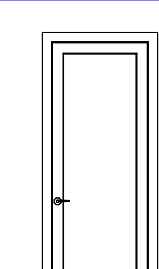
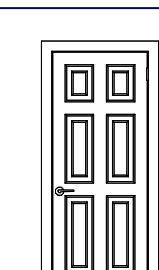
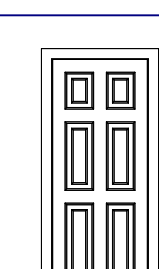
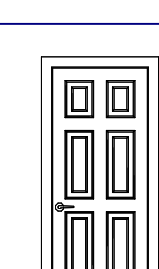
DOOR NOTES:

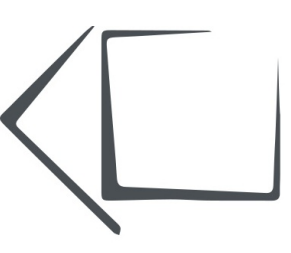
- 1 DOORS SHALL BE 80"
- 2 ALL DOORS SHALL BE SOLID CORE 1-3/4" THICK
- 3 INTERIOR DOORS SHALL BE PTD. OR STAINED, VERIFY WITH DESIGNER
- 4 DOORS BETWEEN GARAGE AND LIVING AREA SHOULD BE 1-3/4" TIGHT FITTING SOLID CORE DOORS
- 5 EXTERIOR EXIT DOORS SHALL BE 36" MIN. NET CLEAR DOORWAY SHALL BE 32" MIN. DOOR SHALL BE OPENABLE FROM INSIDE
- 6 GARAGE DOORS TO BE SECTIONAL INSULATED, OVERHEAD DOORS. GLASS PANELS TO BE INSULATED
- 7 ALL GLAZING WITHIN 18IN. OF THE FLOOR AND/OR WITHIN 24 IN. OF ANY DOOR ARE TO HAVE SAFETY GLAZING
- 8 ALL TUB AND SHOWER ENCLOSURES ARE TO BE GLAZED WITH SAFETY GLASS
- 9 BARN DOORS, MEASURE TO FIT OPENING. ALL HARDWARE TO BE STAINLESS
- 10 PROVIDE FIRE-RATED AND / OR SELF-CLOSING DOORS WHERE REQUIRED BY LOCAL CODES OR LOCAL AUTHORITIES.

FIRST FLOOR

DOOR SCHEDULE								
3D EXTERIOR ELEVATION	NUMBER	QTY	SIZE	WIDTH	HEIGHT	ROOM NAME	DESCRIPTION	FLOOR
	D06	1	2668 R IN	30"	80"	LIVING/UNSPECIFIED	HINGED-1/4 LITE DOOR	1
	D07	1	2668 L IN	30"	80"	DINING/PANTRY	HINGED-DOOR P09	1
	D08	1	2668 L	30"	80"	BATH/SHOWER	SHOWER-GLASS SLAB	1
	D09	1	2668 R IN	30"	80"	KITCHEN/BATH	HINGED-DOOR P09	1
	D10	1	2168 R IN	25"	80"	KITCHEN/M. CL	HINGED-DOOR P09	1
	D11	1	3073 L IN	36"	86 1/2"	KITCHEN	HINGED-GLASS PANEL	1
	D12	1	9090	108"	108"	GARAGE	GARAGE-SONOMA RANCH STYLELINE IV 8'	1
	D13	1	3068 L EX	36"	80"	GARAGE	EXT. HINGED-504 SASH	1
	D14	1	2368 L IN	27"	80"	LIVING/OPEN BELOW	HINGED-DOOR P09	1

SECOND FLOOR

DOOR SCHEDULE								
3D EXTERIOR ELEVATION	NUMBER	QTY	SIZE	WIDTH	HEIGHT	ROOM NAME	DESCRIPTION	FLOOR
	D15	1	2668 R IN	30"	80"	HALL/OFFICE	HINGED-DOOR P09	2
	D16	1	2668 R IN	30"	80"	HALL/BEDROOM	HINGED-DOOR P09	2
	D17	1	2668 R IN	30"	80"	HALL/2ND FLOOR BATH	HINGED-DOOR P09	2
	D18	1	2668 R IN	30"	80"	BEDROOM 1/CL	HINGED-DOOR P09	2
	D19	1	2668 L	30"	80"	SHOWER/PRIMARY BATH	SHOWER-GLASS SLAB	2
	D20	1	2672 R	30"	85 11/16"	2ND FLOOR BATH/2ND FLOOR SHOWER	SHOWER-GLASS SLAB	2
	D21	1	2680 R IN	30"	96"	PRIMARY BEDROOM/PRIMARY BATH	HINGED-DOOR P09	2
	D22	1	3080 R EX	36"	96"	PRIMARY BEDROOM/UNSPECIFIED EGRESS	EXT. HINGED-GLASS PANEL	2
	D23	1	2668 L IN	30"	80"	HALL/PRIMARY BEDROOM	HINGED-DOOR P09	2
	D24	1	2668 R	30"	80"	LAUNDRY/HALL	POCKET-DOOR P09	2
	D25	1	2668 R IN	30"	80"	PRIMARY CLOSET/PRIMARY BEDROOM	HINGED-DOOR P09	2



Revision Table	
Number	Date

DOOR SCHEDULE

CLIENT:
MASON

CONTACT:
AMY DUTTON HOME
9 WALKER STREET | KITTERY, ME
amy@amyduttonhome.com
207.537.2020

DATE:

5/9/2023

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SCALED FOR:
24" X 36"

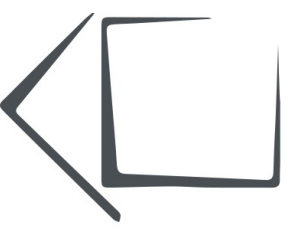
SCALE:

SEE SCALE ON DRAWINGS

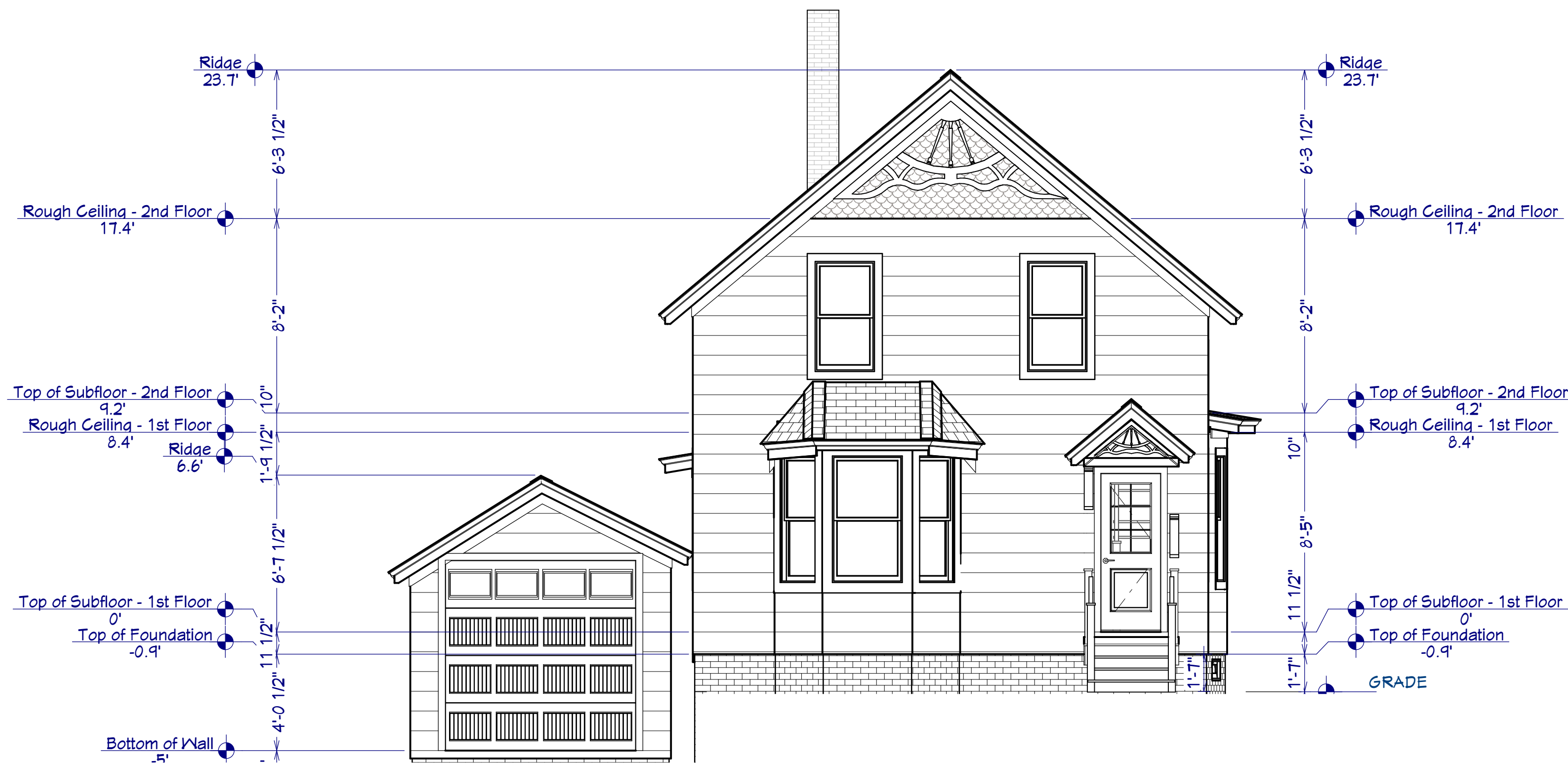
SHEET:

A-11

NOTE SCHEDULE	
①	REMOVED EXISTING WINDOW
②	CURBLESS SHOWER
③	48" HT WALL
④	RETAINING WALL
⑤	7" STEP DOWN
⑥	EXISTING BEAM TO BE REMOVED
⑦	EXISTING CHIMENEY REMOVED
⑧	FIREPLACE GAS EXHAUST
⑨	REMOVED EXISTING WINDOW - EX. EXTERIOR WALL

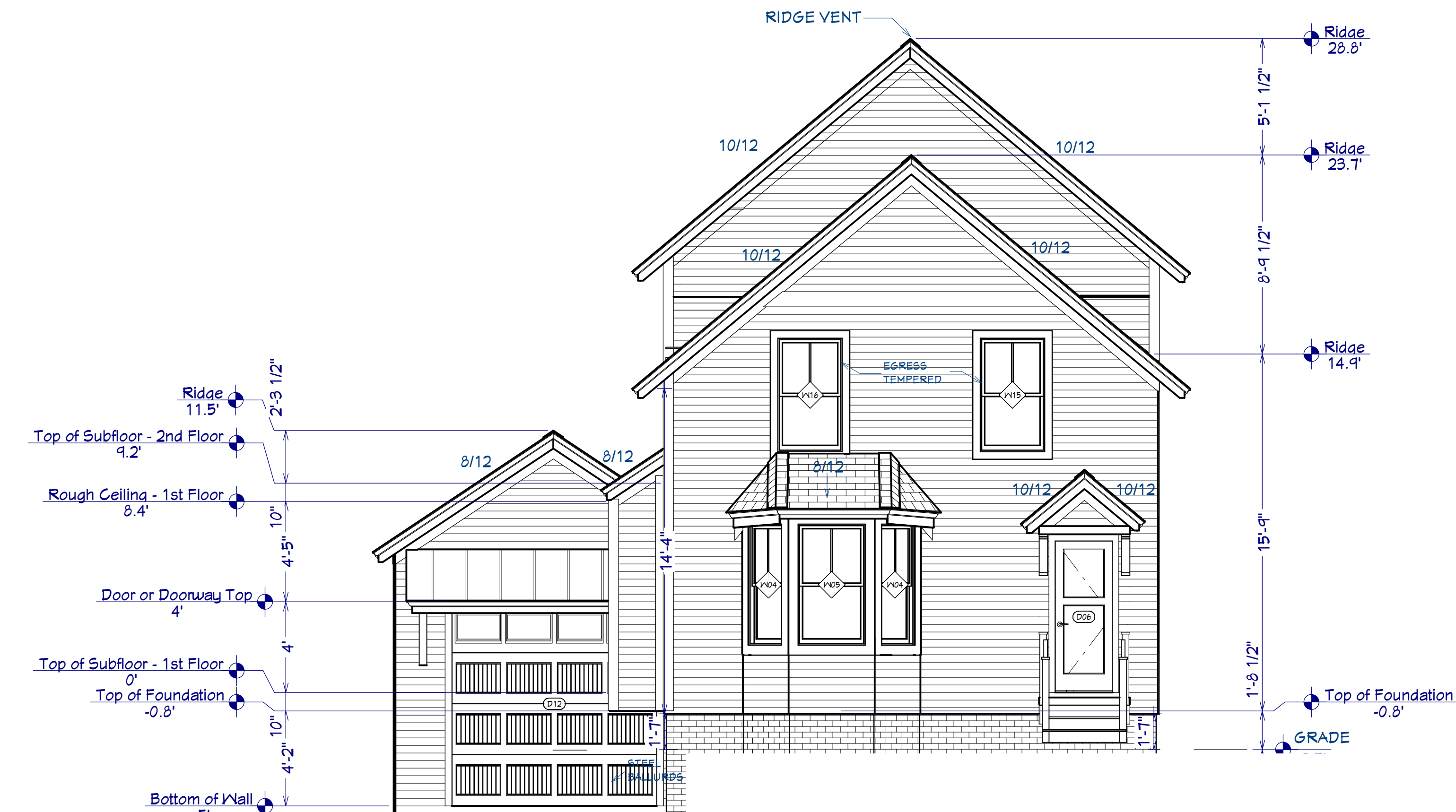


Revision Table		
Number	Date	Description



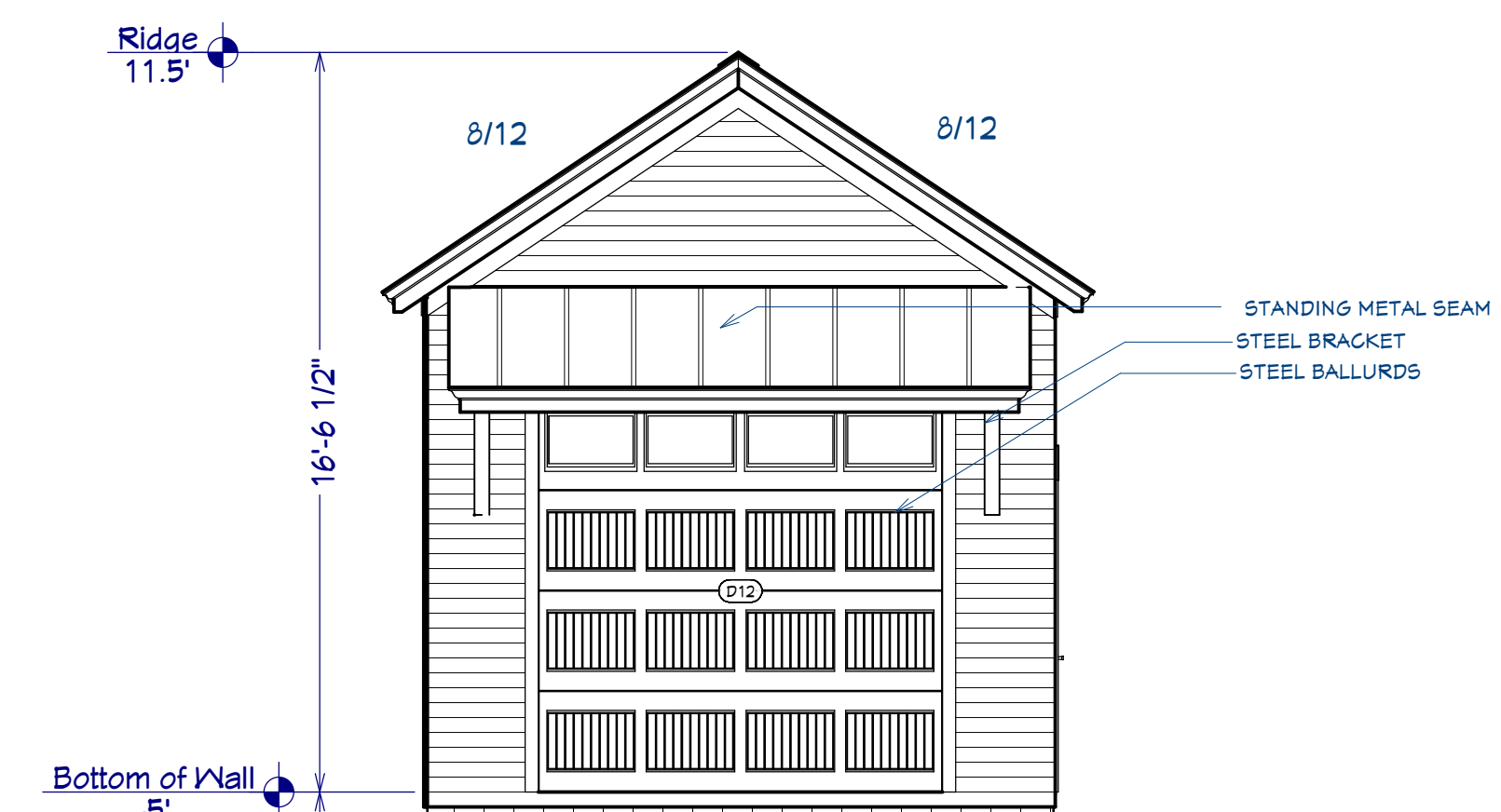
EXISTING NORTH ELEVATION | FRONT VIEW

SCALE: 1/4" = 1'-0"



PROPOSED NORTH ELEVATION | FRONT VIEW

SCALE: 1/4" = 1'-0"



PROPOSED NORTH ELEVATION (GARAGE)

SCALE: 1/4" = 1'-0"

ELEVATIONS

CLIENT:
MASON

CONTACT:
AMY DUTTON HOME
9 WALKER STREET | KITTERY, ME
amy@amyduttonhome.com
207.537.2020

DATE:

5/9/2023

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SCALED FOR:
24" X 36"

SCALE:

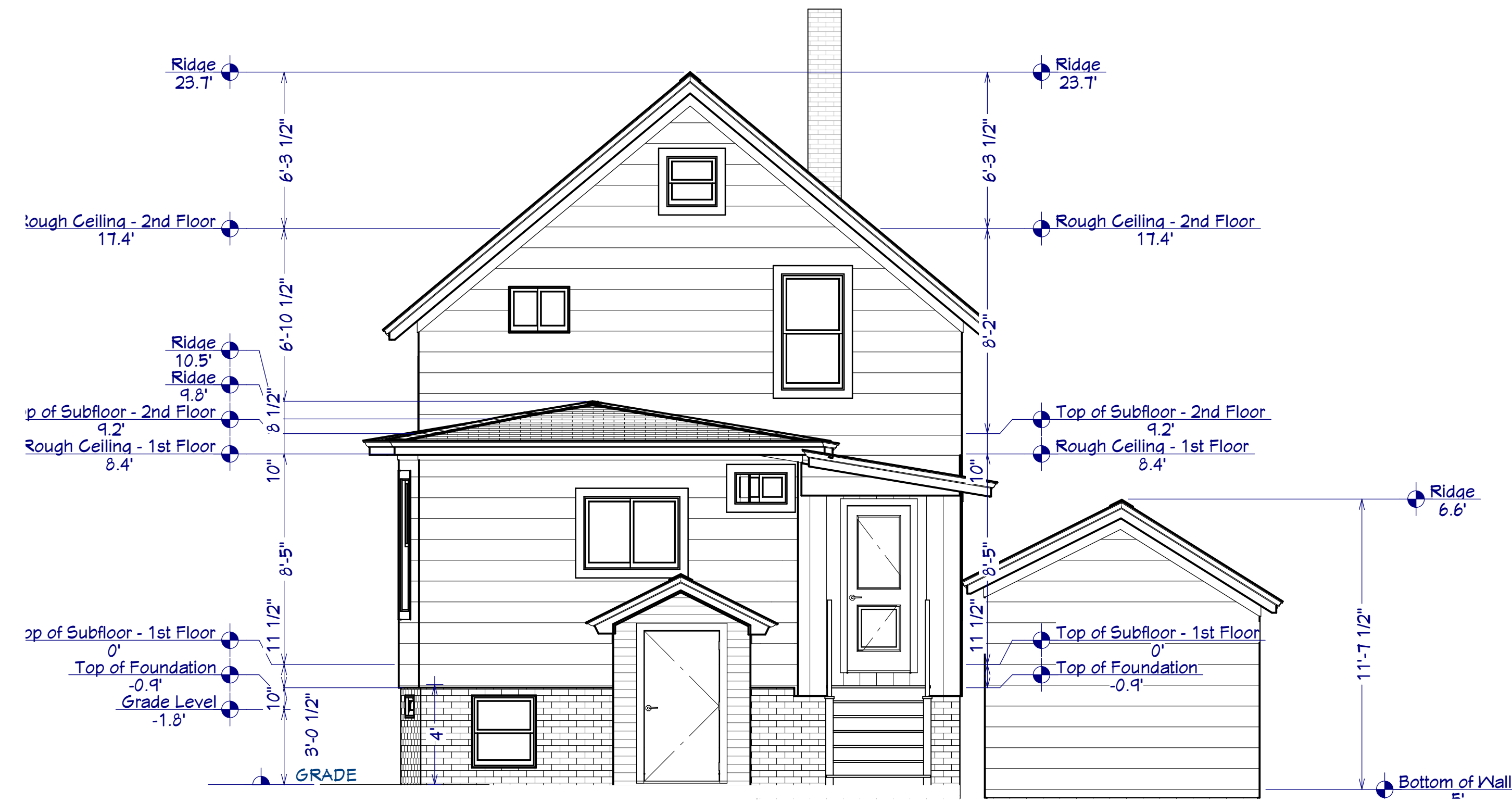
SEE SCALE ON DRAWINGS

SHEET:

A-12

ELEVATIONS

SCALE: 1/4" = 1'-0"



EXISTING SOUTH ELEVATION | REAR VIEW

SCALE: 1/4" = 1'-0"



PROPOSED SOUTH ELEVATION | REAR VIEW

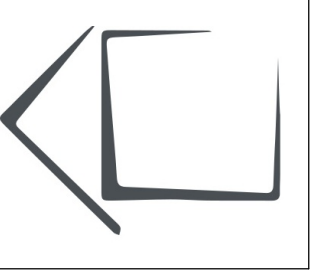
SCALE: 1/4" = 1'-0"



PROPOSED SOUTH ELEVATION (ADDITION)

SCALE: 1/4" = 1'-0"

NOTE SCHEDULE	
①	REMOVED EXISTING WINDOW
②	CURBLESS SHOWER
③	48" HT WALL
④	RETAINING WALL
⑤	7" STEP DOWN
⑥	EXISTING BEAM TO BE REMOVED
⑦	EXISTING CHIMENEY REMOVED
⑧	FIREPLACE GAS EXHAUST
⑨	REMOVED EXISTING WINDOW - EX. EXTERIOR WALL



Revision Table		
Number	Date	Description

ELEVATIONS

CLIENT:
MASON

CONTACT:
AMY DUTTON HOME
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amy@amyduttonhome.com
207.537.2020

DATE:

5/9/2023

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SCALED FOR:
24" X 36"

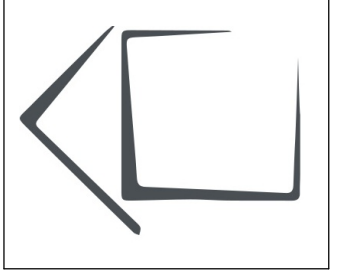
SCALE:

SEE SCALE ON DRAWINGS

SHEET:

A-13

NOTE SCHEDULE	
①	REMOVED EXISTING WINDOW
②	CURBLESS SHOWER
③	48" HT WALL
④	RETAINING WALL
⑤	7" STEP DOWN
⑥	EXISTING BEAM TO BE REMOVED
⑦	EXISTING CHIMENEY REMOVED
⑧	FIREPLACE GAS EXHAUST
⑨	REMOVED EXISTING WINDOW - EX. EXTERIOR WALL



Revision Table		
Number	Date	Description

ELEVATIONS

CLIENT:
MASON

CONTACT:
AMY DUTTON HOME
9 WALKER STREET | KITTERY, ME
amy@amyduttonhome.com
207.537.2020

DATE:

5/9/2023

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SCALED FOR:
24" X 36"

SCALE:

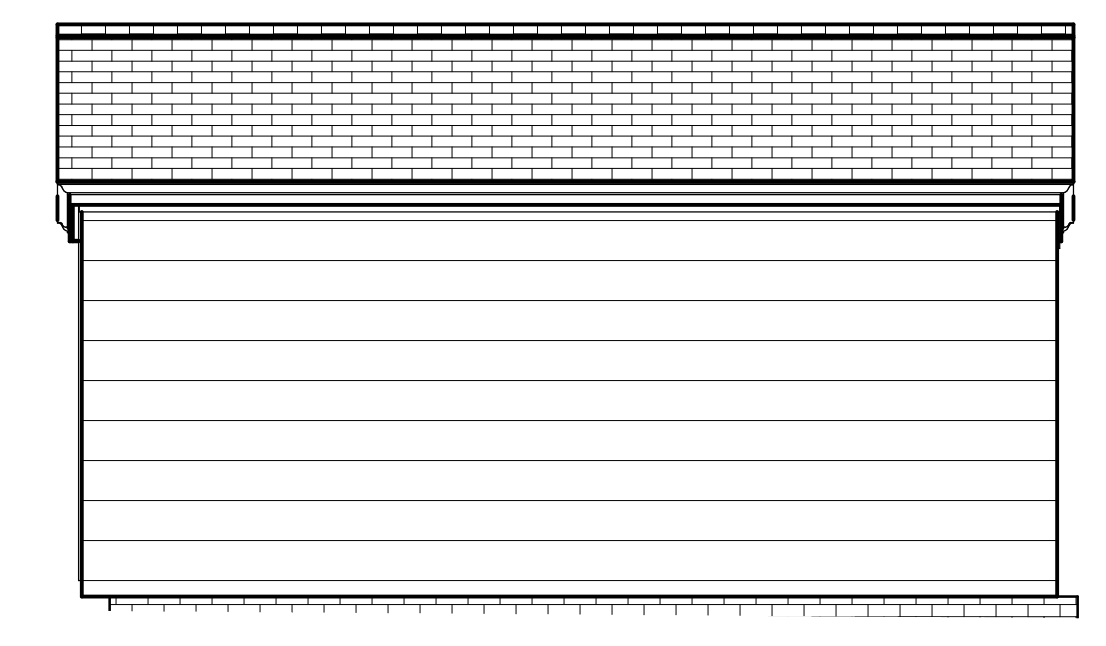
SEE SCALE ON DRAWINGS

SHEET:

A-14
ELEVATIONS

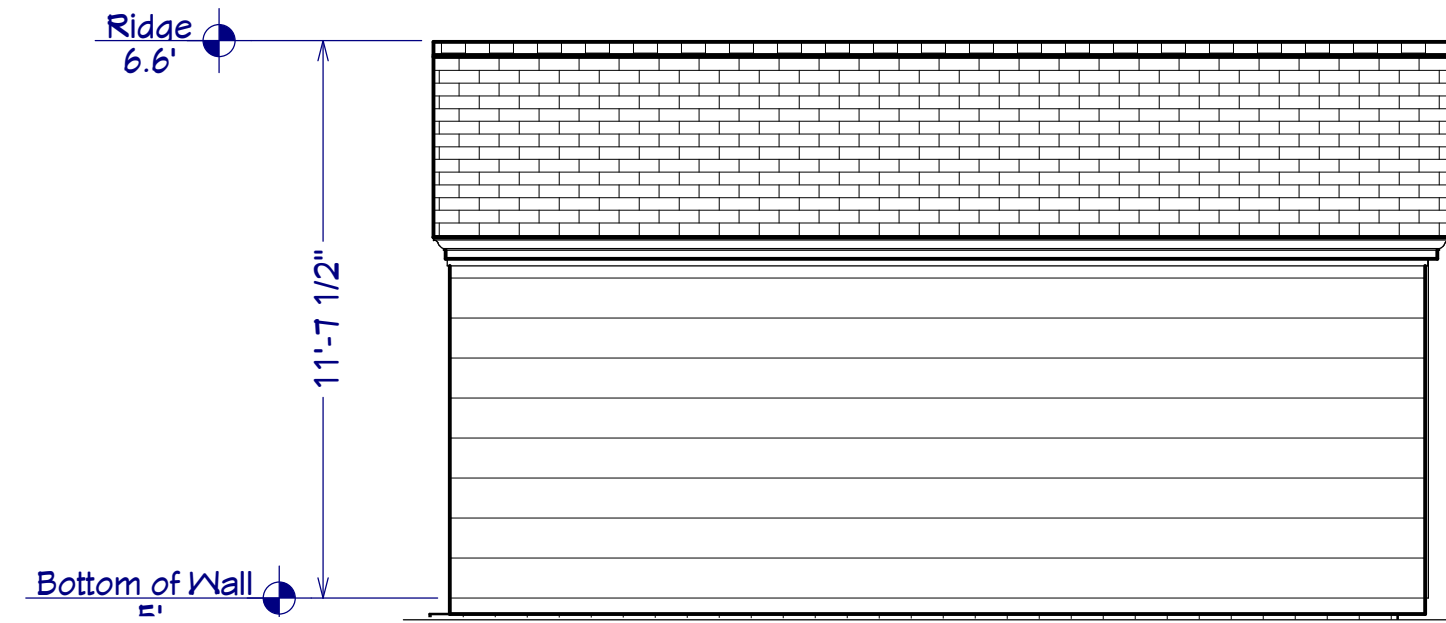


EXISTING EAST ELEVATION | SIDEVIEW
SCALE: 1/4" = 1'-0"



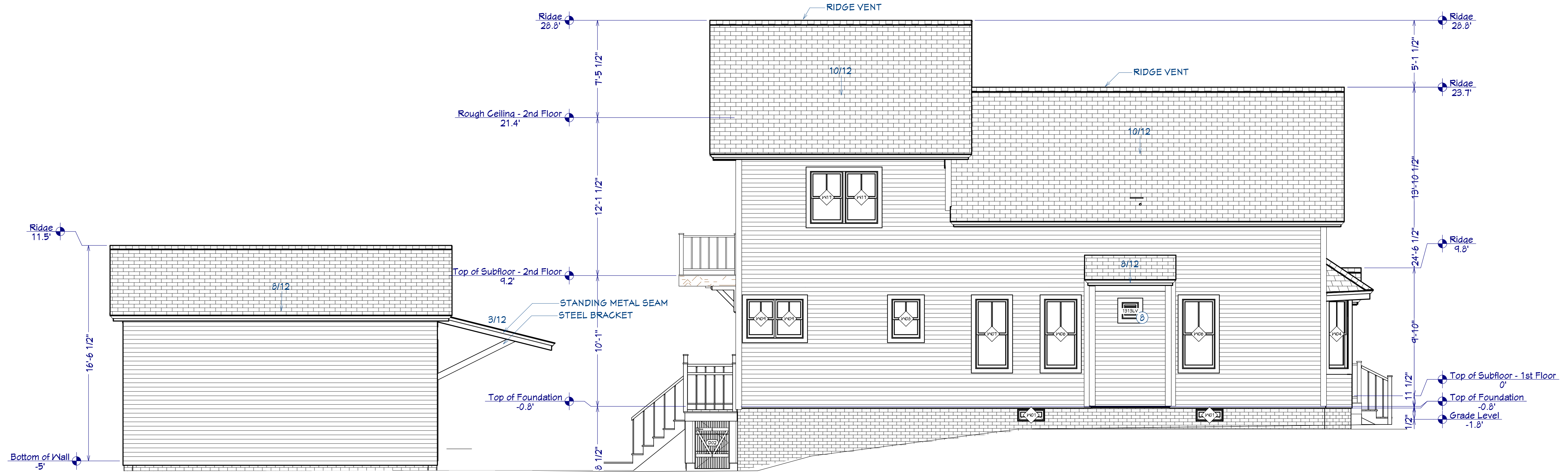
PROPOSED EAST ELEVATION | SIDEVIEW
SCALE: 1/4" = 1'-0"

NOTE SCHEDULE	
①	REMOVED EXISTING WINDOW
②	CURBLESS SHOWER
③	48" HT WALL
④	RETAINING WALL
⑤	7" STEP DOWN
⑥	EXISTING BEAM TO BE REMOVED
⑦	EXISTING CHIMENEY REMOVED
⑧	FIREPLACE GAS EXHAUST
⑨	REMOVED EXISTING WINDOW - EX. EXTERIOR WALL



EXISTING WEST ELEVATION | SIDEVIEW

SCALE: 1/4" = 1'-0"

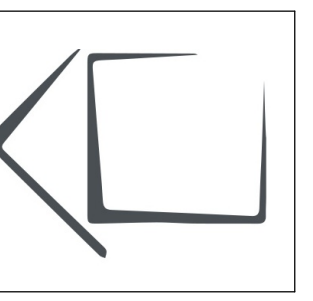


PROPOSED WEST ELEVATION | SIDEVIEW

SCALE: 1/4" = 1'-0"

ELEVATIONS

SCALE: 1/4" = 1'-0"



Revision Table		
Number	Date	Description

ELEVATIONS

CLIENT:
MASON

CONTACT:
AMY DUTTON HOME
9 WALKER STREET | KITTERY, ME
amy@amyduttonhome.com
207.537.2020

DATE:

5/9/2023

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SCALED FOR:
24" X 36"

SCALE:

SEE SCALE ON DRAWINGS

SHEET:

A-15
ELEVATIONS

III. NEW BUSINESS

- C. The request of **Danielle Okula, Dennis Okula, and Irinia Okula (Owners)**, for property located at **2 Sewall Road** whereas relief is needed to Install a 6 foot fence where along the front of the property which requires a Variance from Section 10.515.13 to allow a 6 foot fence where 4 feet is allowed. Said property is located on Assessor Map 170 Lot 22 and lies within the Single Residence B (SRB) District. (LU-23-71)

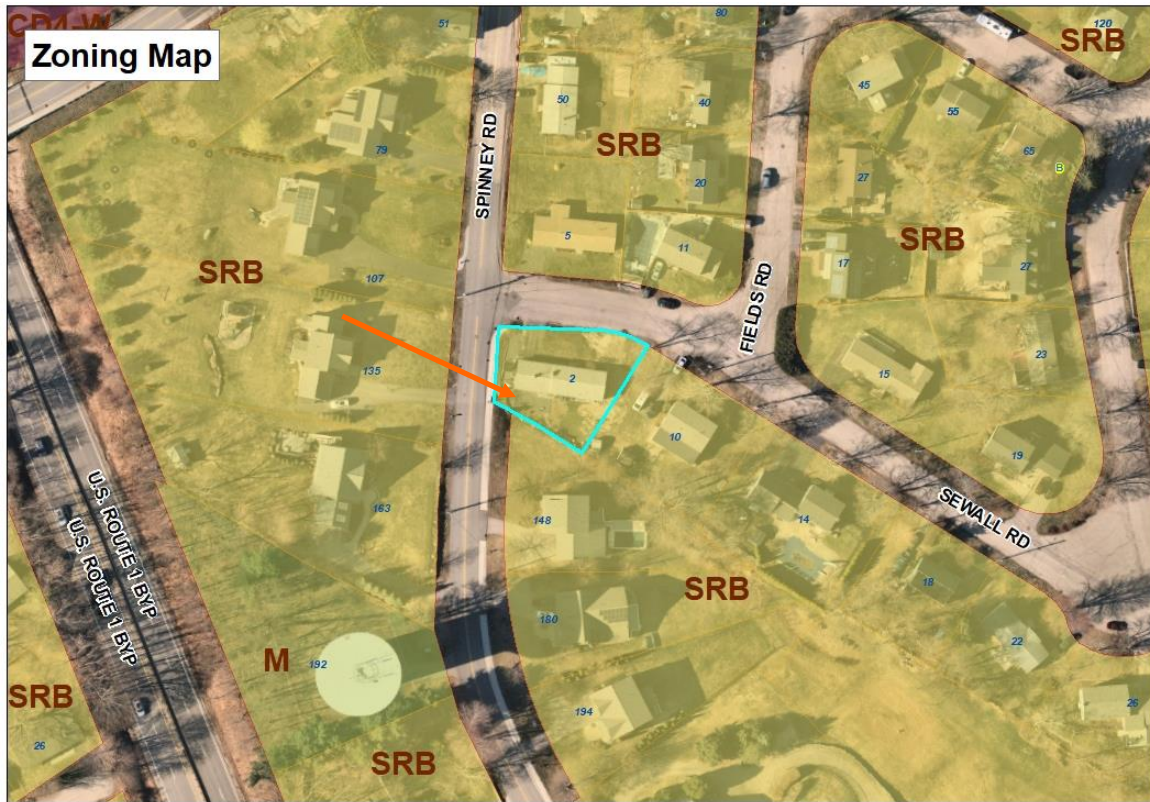
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u>	Single Living Unit	6 Foot Fence	Primarily residential
<u>Lot area (sq. ft.):</u>	9,603	9,603	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,603	9,603	15,000 min.
<u>Street Frontage (ft.):</u>	>100	>100	100 min.
<u>Lot depth (ft.):</u>	60	60	100 min.
<u>Primary Front Yard Sewall Rd (ft.):</u>	20	20	30 min.
<u>Secondary Front Yard (Spinney Rd) (ft.):</u>	15	0 - Fence	30 min.
<u>Left Yard (ft.):</u>	10	10/0 - Fence	10 min.
<u>Rear Yard (ft.):</u>	15	15/0 - Fence	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	21.6	21.6	20 max.
<u>Open Space Coverage (%):</u>	40	40	40 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1960	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



2 Sewall Road

Previous Board of Adjustment Actions

September 27, 1966 – **Granted** the variance to allow construction of an addition to an existing dwelling that affects the maximum percentage of building coverage for the lot as allowed within the SR II District relative to the proposed structure.

Planning Department Comments

Applicant is requesting a variance to install a 6 foot fence within the secondary front yard setback area where a maximum height of 4 feet is allowed.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

 - (c) *Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.*

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

Danielle Okula
2 Sewall Rd
Portsmouth, NH

Dear Members of the Zoning Board fo Appeals,

I would like to request a variance to erect a 6 foot fence instead of a four foot fence along my property line and Spinney Road, which would continue along the 30 ft setback from the Spinney along the property line between 2 Sewall Rd and 148 Spinney Road. This would continue around the back side of the property.

There are three reasons I would like a variance.

1. Privacy.

My bedroom is the room that is closest to Spinney, with an approximate 15ft setback. People frequently walk this stretch of sidewalk, and have direct views into my bedroom. Because my property is significantly lower than the street, a four foot fence would not provide a decent amount of coverage.

Likewise my back deck has the same setback. People walking down the street look down into my deck.

The limited size of my lot, and the house and decks positioning close to Spinney Road makes using hedges as an alternative ineffective.

2. Dogs.

People frequently walk their dogs along Spinney Road. My dog, while she was sitting on my deck, has already been bit by a dog that got loose from its owner. I am concerned that a 4 foot fence would not be sufficient to keep another dog out and my dog in.

3. Noise

Since my bedroom is along Spinney Road that has a significant traffic, a six foot vinyl fence should improve the noise pollution, particularly at night.

I have spoken with my abutters, and they do not object to a 6 ft privacy fence.

This request respects the five principles variance enforcement as follows:

Section 10.233.20:10.233.21 The variance will not be contrary to the public interest;

As the map shows, the proposed fence would not limit light or circulating air to the abutters on 148 Spinney Street, since their house is set back 30 feet and is on the hill. The sidewalk along Spinney is fairly new, wide and the fence would not prevent anyone from coming down the street.

Other houses on Spinney towards Islington have 6ft fences, so this fence would not be "overly tall or obstruct views.

10.233.22 The spirit of the Ordinance will be observed;

The spirit of the Ordinance, to prevent unsightly, tall, fences will be respected. The uniqueness of the plot being so low in comparison with the street and the abutters, makes a four foot fence seem as tall as a 6 foot fence on a non-sunken. The intent is to provide similar privacy that an orthodox plot would benefit from a 4 foot fence and improve the lives of neighbors and pedestrians by providing sufficient separation between domestic animals.

10.233.23 Substantial justice will be done;

This request is substantiated by the lack of setback of 2 Sewall Rd and its low lying nature, not by the special need of the owner or disagreement with the ordinance in itself.

10.233.24 The values of surrounding properties will not be diminished;

The values of the surrounding properties will be improved by looking at a nice new fence rather than a neighbor's personal effects, that would typically be in a back yard. Likewise they will no longer need to be worried about my dog slipping their collar and coming into their yard, which occurred with the previous owner. The heat pump and air conditioning unit are along the sidewalk, and not seeing that would be an improvement to the pedestrians as well.

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

The literal enforcement of the ordinance would not provide the privacy and security intended by a four foot fence, because of the lack of setback between the house and the sidewalk, the sunken nature of the property (approximately 4 feet below grade) and the fact it is down the hill from the top of Spinney Road.

Finally due to the orientation of the house facing Sewall Road and the placement of the doors, there is no other way to create a backyard with a six foot fence that would respect the setback.

Thank you for your time,
Danielle

Proposed Complete Fence site:



Proposed Fence Type



Views from the inside of my bedroom windows.





Views walking down Spinney sidewalk.

