

144 Washington Street
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Durbin Law Offices, P.L.L.C.

Derek R. Durbin, Esq.
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derek@durbinlawoffices.com
**Also admitted in MA*

BY: HAND DELIVERY & VIEWPOINT

January 2, 2020

City of Portsmouth
Zoning Board of Adjustment
Attn: David Rheume, Chairman
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application of Perley Lane LLC
95 Brewster Street and 49 Sudbury Street**

Dear Chairman Rheume,

Please find twelve (12) copies of Perley Lane LLC's revised variance application materials. As the Board is aware, this application was continued at the December meeting to allow the Applicant to explore alternatives for reducing the variance relief sought. The Applicant was ultimately able to reduce its two prior requests for relief without making the redevelopment of the properties infeasible. Of importance, the Applicant reduced the building coverage request from 45% (+/-) to 42% (+/-) where 41% (+/-) presently exists. In addition, the Applicant was able to increase the rear yard setback from 5' to 6' where 2.4' presently exists. The Applicant did add one additional request for setback relief to address an abutter's concern about driveway alignment, as more specifically discussed in the Narrative enclosed with the copies.

Rather than submit only those documents that have been revised, I have included an entirely new packet of materials to avoid confusion when the members are reviewing their packets. The following are included in the revised package:

- 1) Landowner Letter of Authorization;
- 2) Applicant Letter of Authorization
- 3) Narrative to Variance Application (**revised**);
- 4) ZBA Site Plan of Proposed Conditions (**revised**);
- 5) Sketch showing setbacks on Property;
- 6) Existing Conditions Plan;
- 7) Elevations;
- 8) Tax Map Image of Property; and
- 9) Photographs of Property.

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Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.


Sincerely,

A handwritten signature in black ink, appearing to read 'Derek R. Durbin', written in a cursive style.

Derek R. Durbin, Esq.

LETTER OF AUTHORIZATION

James S. Remick, Trustee of the James S. Remick Revocable Trust of 2000 u/d/t 6/28/2001 and Linette S. Remick, Trustee of the Linette S. Remick Revocable Trust of 2000 u/d/t 6/28/2001, owners of property located at 49 Sudbury Street, Portsmouth, New Hampshire 03801, identified on Tax Map 138, as Lot 58 (the "Property"), hereby authorize **Perley Lane LLC**, of 18 Perley Lane, Durham, New Hampshire 03824, and its representatives, to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property. This Letter of Authorization shall be valid until expressly revoked in writing.


Printed Name: James S. Remick, Trustee

11-25-19
Date:

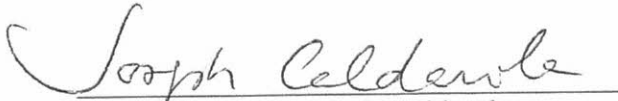

Printed Name: Linette S. Remick, Trustee

11-25-19
Date:

LETTER OF AUTHORIZATION

Perley Lane LLC, of 18 Perley Lane, Durham, New Hampshire 03824, hereby authorizes **Durbin Law Offices PLLC**, of 144 Washington Street, Portsmouth, New Hampshire 03801, to act as its agent and representative in connection with the filing of any building, zoning, planning or other municipal permit applications with the City of Portsmouth for properties located at 49 Sudbury Street, Portsmouth, New Hampshire 03801 (Tax Map 138 Lot 58) and 95 Brewster Street, Portsmouth, New Hampshire 03801 (Tax Map 138, Lot 57) (the "Properties"). This Letter of Authorization shall be valid until expressly revoked in writing.

Perley Lane LLC



Printed Name: Joseph S. Caldarola
Member, Duly Authorized

11/26/19
Date:

**CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT
APPLICATION NARRATIVE
(Revised 12/31/2019)**

95 Brewster Street
Tax Map 138, Lot 57
Nickerson Home Improvement Co.
(Owner)

49 Sudbury Street
Tax Map 138, Lot 58
James S. Remick, Trustee of the James S. Remick Rev. Trust of 2000
Linette S. Remick, Trustee of the Linette S. Remick Rev. Trust of 2000
(Owner)

Perley Lane LLC
(Applicant)

INTRODUCTORY STATEMENT

The Applicant, Perley Lane LLC, is proposing to merge the properties at 95 Brewster Street and 49 Sudbury Street for the purpose of constructing three (3) condominium units of similar architecture and appearance to other homes in this area of Portsmouth. To accomplish this, the Applicant must demolish the existing structures on both properties.

The property at 95 Brewster Street is an odd-shaped lot with frontage on both Brewster and Sudbury Streets. For lack of better words, the property is shaped like a squared-off “P”. The northern half of the property along Brewster Street is almost a perfect square. The southern half of the property which runs along Brewster Street and contains frontage on Sudbury Street, is narrow and rectangular in shape. It is the “panhandle” of the property.

Nickerson Home Improvement Company historically operated its insulation business at 95 Brewster Street. The commercial building on the property that housed its business operations encompasses the entire northern (square) portion property. In fact, the building encroaches upon the property at 49 Sudbury Street. A parking lot encompasses the panhandle of the property. The property is almost entirely covered by impervious surface. Lot coverage is currently at 90%. The abutting city-owned land which contains the Rock Street Park borders the property on two (2) sides.

The property at 49 Sudbury Street contains a small single-family home that appears to encroach upon the City right-of-way. This property is bordered to the rear 95 Brewster Street and the Rock Street Park.

SUMMARY OF ZONING RELIEF

Section 10.521 (Table of Dimensional Requirements)

- 1) To allow a 6' (+/-) rear yard setback where 2.4' (+/-) exists and 20' is the minimum required;¹ and
- 2) To allow a 17' (+/-) rear yard setback where 21' exists and 20' is the minimum required.²
- 3) To allow 42% (+/-) building coverage where 41% (+/-) exists and 35% is the maximum allowed.

VARIANCE CRITERIA

Granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.

The General Residence C (“GRC”) Zoning District is intended “to provide areas for **single-family, two family and multifamily dwellings**, with appropriate **accessory uses**, at moderate to high densities[.]” The Brewster Street/Sudbury Street area is characterized by a mixture of residential uses and is densely developed when compared to other residential areas of Portsmouth. It is a quintessential downtown residential neighborhood. A majority of the properties in this area of Portsmouth exceed the maximum building coverage requirement, have setback encroachments, and exceed the lot area per dwelling unit requirements. Many of these properties also exceed the open space requirement set forth in the Ordinance.

The proposed merged property will have 10,747 square feet (+/-) of lot area where 10,500 square feet is required by the Ordinance for three (3) dwelling units. The merged property will meet the Ordinance’s open space requirement and will reduce the overall impervious surface coverage on the properties from 83.4% to 56.8%, thus providing environmental and aesthetic benefits to the area. Building coverage on the merged property will increase by only 162 square feet over what exists, a change which will not negatively impact the neighborhood.

The Applicant will be slightly improving the rear yard setback (opposite Sudbury Street) from 2.4' (+/-) to 6' (+/-). The proposed building will also achieve compliance with the side yard setback. The existing commercial building is located only 2.3' from the side boundary. By improving the rear yard setback and achieving compliance with the side yard setback, the proposed buildings will increase light, air and space with the abutting property owned by the City. With

¹ Because it is not yet known which front yard will be considered the “principle front yard” of the merged property, the Applicant has applied for the greatest amount of relief that could be required by treating the lot line opposite Sudbury Street as a “rear” lot line as opposed to a “side” lot line. Only 10' of setback is required for a side yard in the GRC Zoning District whereas 20' is required for a rear yard setback.

² The additional rear yard setback relief sought is for the lot line opposite Brewster Street as opposed to Sudbury Street. See footnote #1 above.

the merger and redevelopment of the properties, the encroachment of the commercial building over the lot line of 49 Sudbury Street will also be eliminated, adding an additional benefit.

The non-conforming commercial use of the property at 95 Brewster Street will be eliminated, which is in the public's interest. Not only will the use of the property be brought into compliance with the Ordinance, but its redevelopment will generate higher tax revenue for the City. The proposed use of the merged property as three (3) dwelling units will be consistent with the spirit and intent of the Ordinance, which promotes a mixture of residential uses at moderate to high densities. In the present case, what the Applicant is proposing for the merged property will be less dense than what exists on most of the surrounding properties.

The Applicant has applied for an additional rear yard setback for the placement of the garage associated with proposed Unit #3, which will be accessed from Sudbury Street. After the Applicant submitted its original variance application in November, he met with Matthew Wirth, owner of 439 Hanover Street (Tax Map 138, Lot 28). Mr. Wirth's property is located directly across the street from 49 Sudbury Street and proposed Unit #3. The only concern expressed by Mr. Wirth concerning the redevelopment of the properties was related to the alignment of his existing driveway with the proposed driveway accessing the garage for proposed Unit #3. In the original site plan submitted by the Applicant, the driveway associated with proposed Unit #3 would have been offset from Mr. Wirth's driveway by 3' (+/-) in order to achieve compliance with the Ordinance. Mr. Wirth expressed a legitimate concern that this would result in a situation where it would be difficult to pull into and out of the proposed driveway for Unit #3 due to where vehicles currently park along Sudbury Street. Sudbury Street is quite narrow and parking is only permitted on the side of the street abutting Mr. Wirth's property. If a vehicle were to be parked in front of the proposed driveway for Unit #3, it would make it challenging to easily pull into and out of the driveway, which would likely result in complaints from the future owner(s). To address this concern, the Applicant revised its plans to align the driveways. However, this resulted in an additional variance request for a 17' rear yard setback where 20' is required. Eliminating vehicle congestion and improving ingress/egress to a property is in the public's interest and consistent with the spirit and intent of the Ordinance.

Substantial justice will be done by granting the variance relief.

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

In the instant case, the public will not be injured in any way by granting the variances. To the contrary, the public will greatly benefit from the proposed merger and redevelopment of the properties.

The 1% increase in building coverage over what exists will be unnoticeable to the public. The Applicant is compensating for the building coverage variance by eliminating the existing non-conforming use of 95 Brewster Street, improving overall setback compliance, and significantly reducing total impervious surface coverage. Despite the minimal increase in building coverage

over what exists, the area will look and feel like it has more “green space”. It will also take on a more residential appearance.

Due in large part to the commercial use of 95 Brewster Street, this area of the neighborhood looks congested. The creation of three (3) tastefully designed dwellings that are architecturally consistent with other structures in the neighborhood will represent a significant improvement over what exists now. If the variances are denied, the properties will remain with their existing non-conformities. As such, substantial justice is done by granting the variances.

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

The merger and redevelopment of the properties at 95 Brewster and 49 Sudbury Streets can only benefit surrounding property values. Overall, the Applicant is improving the conditions of the properties by eliminating an existing non-conforming business use which does not fit with the character of the neighborhood and by reducing certain dimensional non-conformities and impervious surface coverage.

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

There are several obvious special conditions associated with the property at 95 Brewster Street. It is abutted on two (2) sides by the Rock Street Park, which is on city-owned land. This is land that will not be developed. Therefore, there is no abutter on two (2) sides of the property. The odd shape of the property with its narrow panhandle coupled with the fact that it is a corner lot with frontage on two (2) streets make it a challenging property to develop without setback relief. It is also significantly larger than most surrounding properties even without its proposed merger with the property at 49 Sudbury Street. Moreover, the property is almost entirely covered in impervious surface and contains a commercial use which is not permitted within the GRC Zoning District. This use will be eliminated as part of the redevelopment plan associated with the proposed merger of 95 Brewster and 49 Sudbury Streets. With the merger of the two (2) properties, the Applicant will be able to improve the overall condition of the properties and redevelop them in a manner that is more consistent in design and character with the rest of the neighborhood.

The proposed use is reasonable.

The use of the Property for three (3) dwelling units is permitted by right under the Ordinance. As more specifically articulated above, the Applicant is improving the overall condition of the properties. Therefore, it is fair to conclude that the use is reasonable.

CONCLUSION

In conclusion, the Applicant has demonstrated that it has satisfied the five (5) criteria for Property granting each of the variance. The Applicant respectfully requests that the Board approve its application.

Respectfully Submitted,

Dated: November 27, 2019
(revised 1/2/2020)

Perley Lane LLC
By Its Member: Joseph S. Caldarola



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

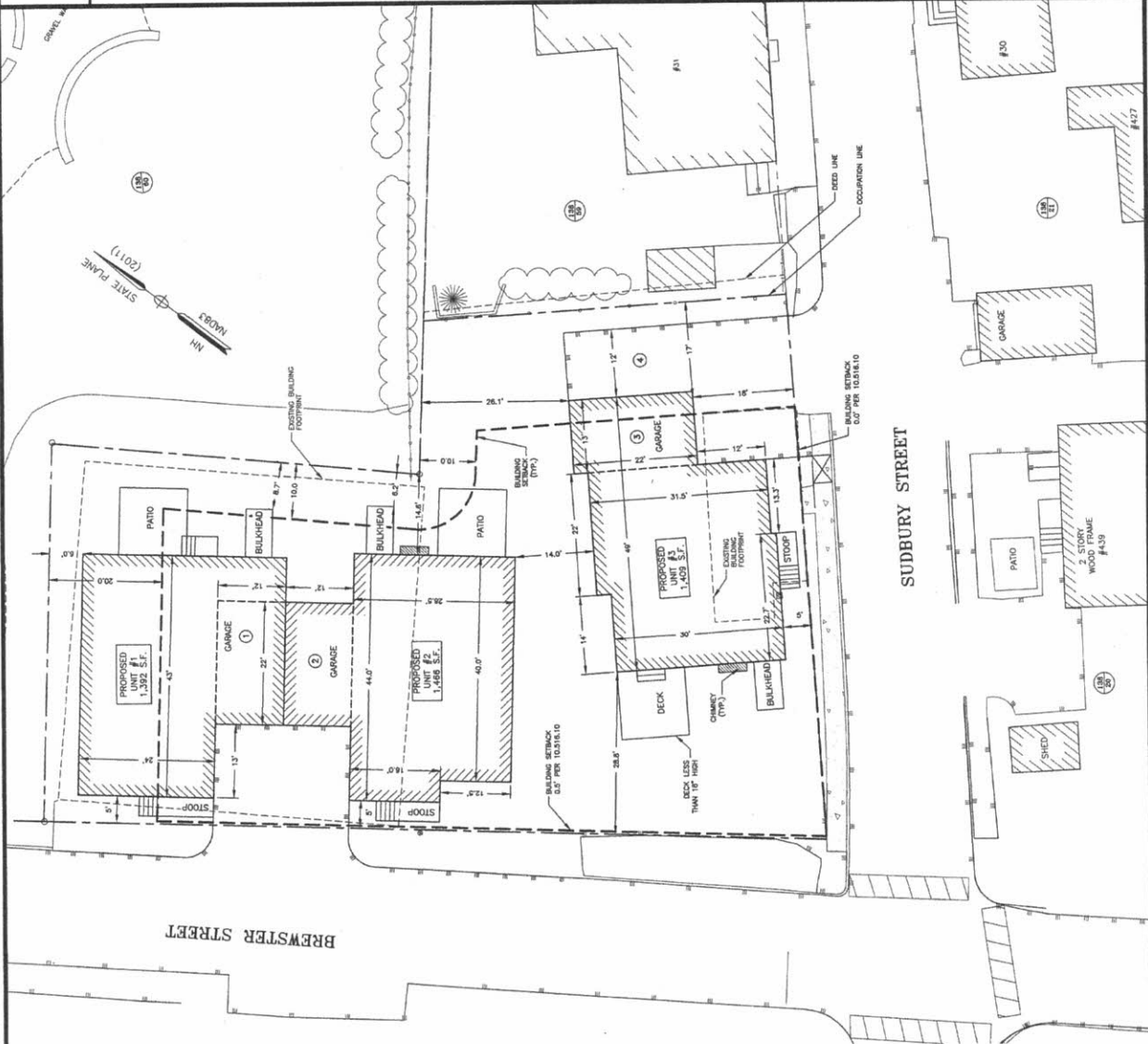
NOTES:
1) THIS PLAN IS SUBMITTED TO THE BOARD OF ZONING APPEALS OF THE CITY OF PORTSMOUTH ASSESSOR'S MAP 136 AS LOTS 57 & 58.
2) OWNER OF RECORD:
LOT 57: JAMES S. REMICK, TRUSTEE
80 BREWSTER STREET
PORTSMOUTH, N.H. 03801
2529 / 0507
LOT 58: JAMES S. REMICK, TRUSTEE
80 BREWSTER STREET
PORTSMOUTH, N.H. 03801
2529 / 0507
3) JAMES S. REMICK, REVOCABLE TRUST OF 2000
JAMES S. REMICK, TRUSTEE
LINETTE S. REMICK, TRUSTEE
RTE. NH 03870
3610 / 2679 & 3610 / 2677
APPLICANT: AMY, LLC
PO BOX 209
PORTSMOUTH, NH 03802
4) EXISTING LOT AREA:
MERGED LOT AREA:
0.2467 ACRES
5) ZONING DISTRICT:
GENERAL RESIDENCE C (GRC).
SEE PORTSMOUTH NH ORDINANCES.
6) DIMENSIONS FOR DIMENSIONS:
MIN. LOT AREA: 3,500 S.F.
FRONTAGE: 70 FEET
DEPTHS:
SIDE: 5 FEET
REAR: 20 FEET
MAXIMUM STRUCTURE HEIGHT: 35 FEET
MAXIMUM BUILDING COVERAGE: 20%
MINIMUM OPEN SPACE: 10%
7) THE CONSTRUCTION OF THIS PLAN IS TO SHOW THE PROPOSED DEVELOPMENT OF THE MARKED PARCEL.

**THE RESIDENCES AT
95 BREWSTER STREET
PORTSMOUTH, N.H.**

NO.	REVISIONS	DATE
1	ISSUED FOR APPROVAL	12/30/19
0	ISSUED FOR COMMENT	11/27/19

VARIANCE PLAN
SCALE: 1" = 10'
NOVEMBER 2019

C2
FB 302 PG 02 3178

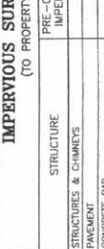


BUILDING COVERAGE AREA	
RESIDENCE	4,289
STOOP/PORCH	0
BULKHEAD	0
STAIRS	34
TOTAL (S.F.)	4,323
LOT AREA (S.F.)	10,747
BUILDING COVERAGE (%)	40.2%

(EXCLUDES: PATIOS & STRUCTURES BELOW 18" HEIGHT)

LEGEND:
NON OR FORMERLY
R/C RD
REGISTRY OF DEEDS
RAILROAD SPIKE
MAP 11/LOT 21
IRON ROD FOUND
PINE FOUND
DRILL HOLE FOUND
DRILL HOLE SET
CONCRETE FOUND
TOWN BOUND
BOUND WITH DRILL HOLE
STONE BOUND WITH DRILL HOLE
PARKING SPACE NUMBER
EDGE OF PAVEMENT
EXISTING BUILDING FOOTPRINT

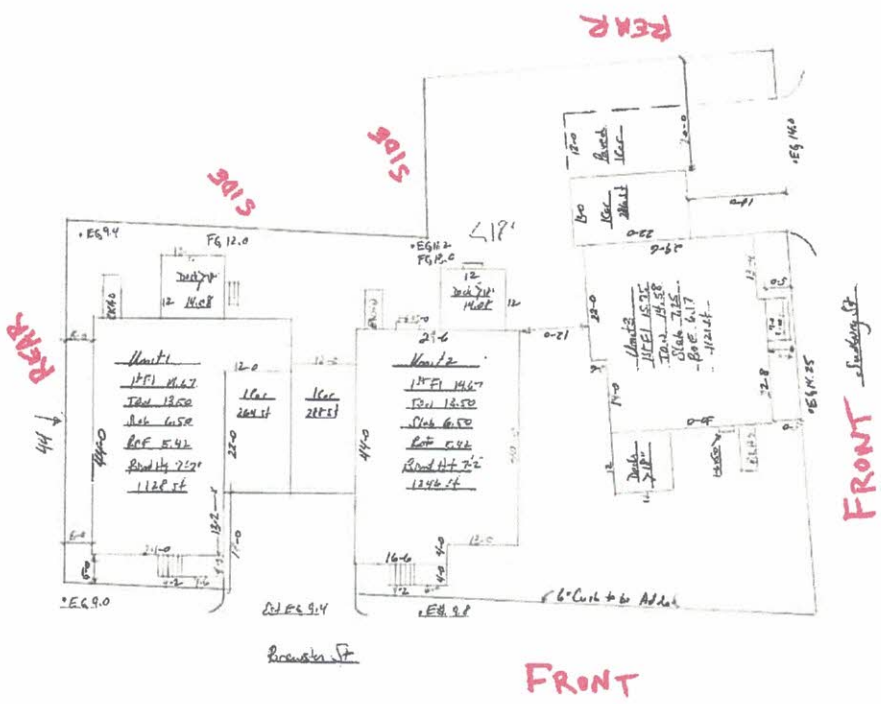
STRUCTURE	IMPERVIOUS SURFACE AREAS (TO PROPERTY LINE)	
	PRE-CONSTRUCTION IMPERVIOUS (S.F.)	POST-CONSTRUCTION IMPERVIOUS (S.F.)
STRUCTURES & CHIMNEYS	4,244	4,289
PAVEMENT	4,365	1,144
CONCRETE PAD	237	0
STAIRS, PORCH & PATIOS (2)	11	35
DECKS, STOOPS & BULKHEADS	65	316
CURB	45	0
TOTAL	8,967	6,102
LOT SIZE	10,747	10,747
% LOT COVERAGE	83.4%	56.8%



APPROVED BY THE PORTSMOUTH ZONING BOARD
CHAIRMAN _____ DATE _____

Bag. 2nd floor Deck 445331
 Document 452 st
 Leads Deck 4221
 Total Blps 44214
 Total Paperwork Cost
 Summary 44214

15	15	15	15
15	15	15	15
15	15	15	15
15	15	15	15



REAR

SIDE

SIDE

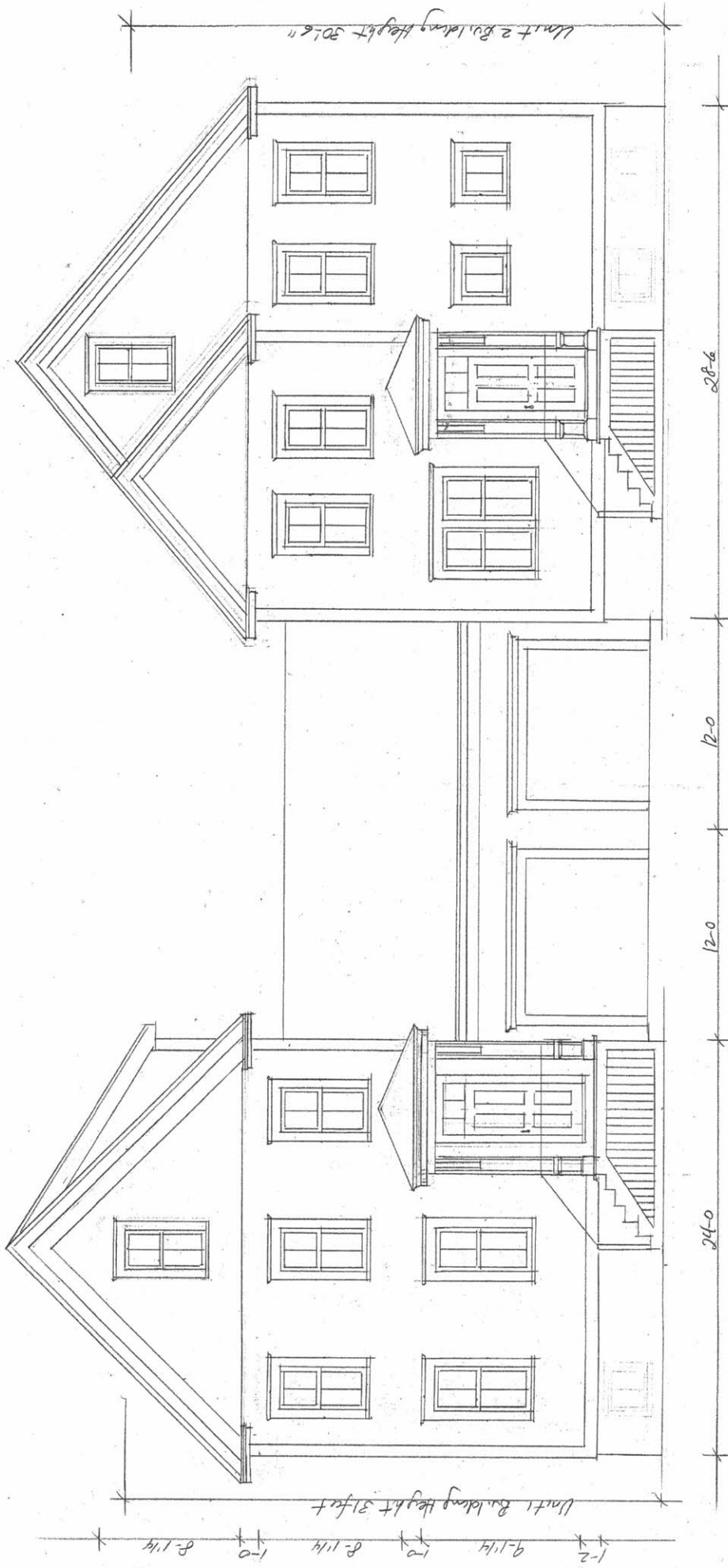
REAR

FRONT

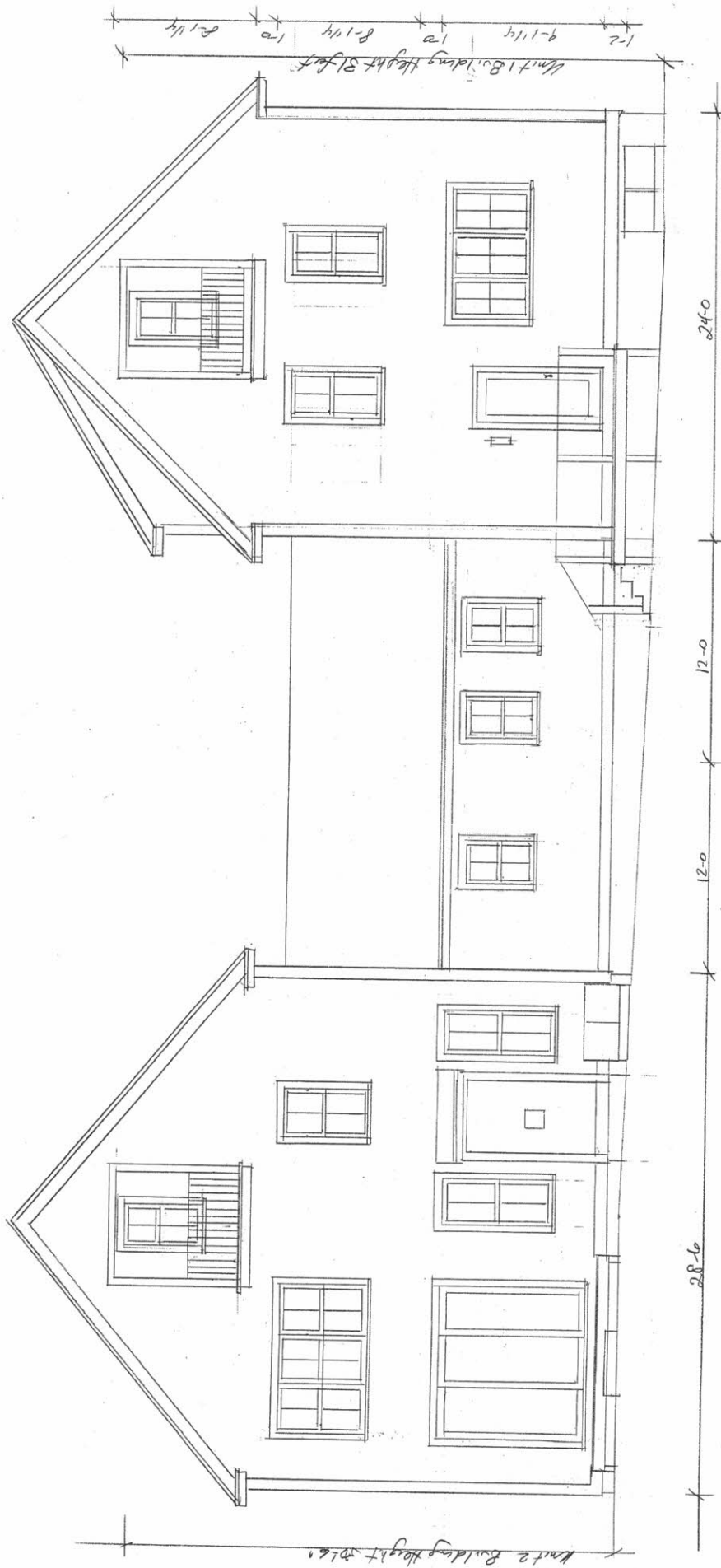
FRONT

Brownstone

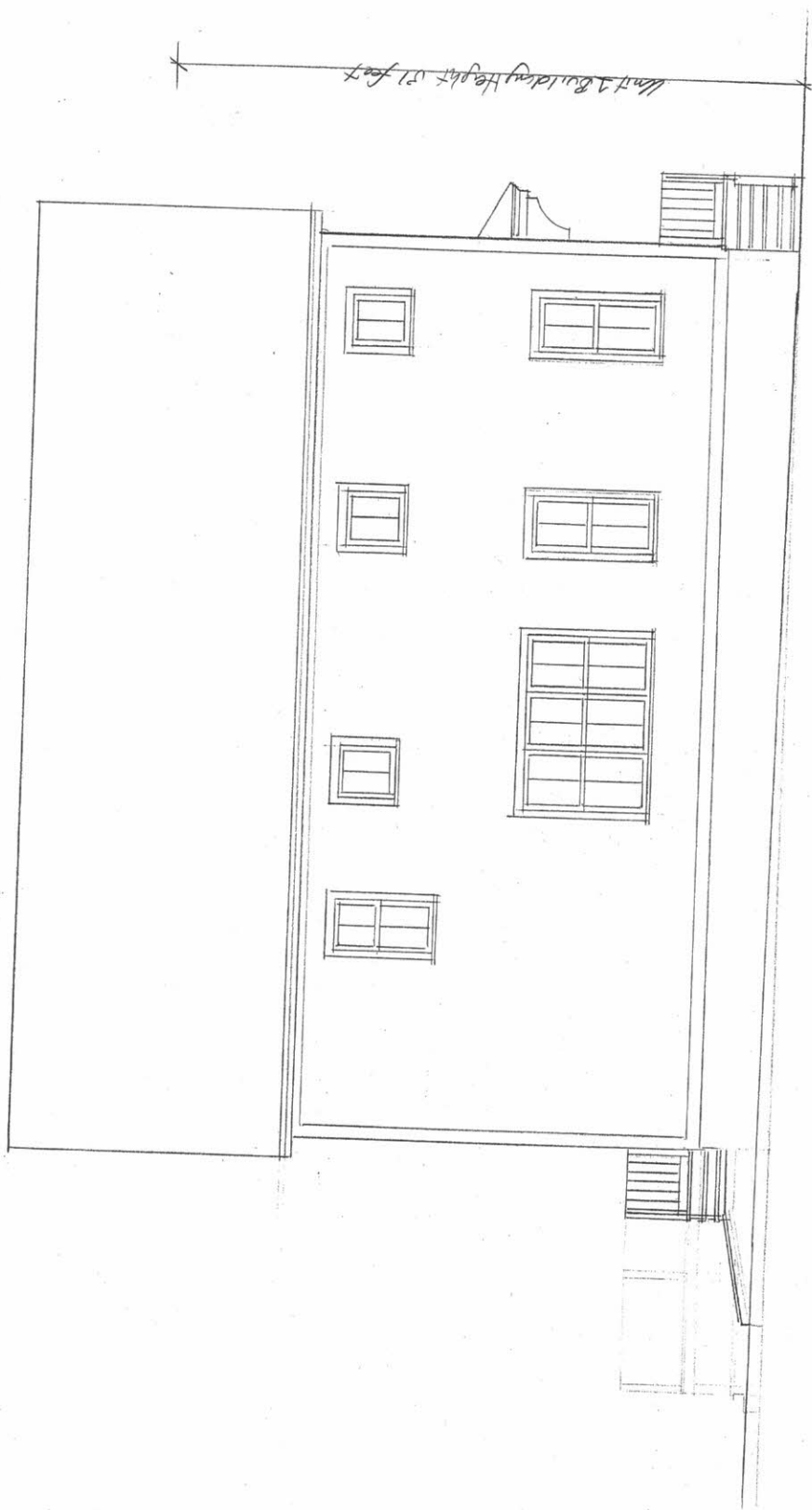
6\"/>



Units 1 & 2
 APPROVED BY: *Beauster Architects*
 SCALE: 1/4"
 DATE: 12/16/19
 DRAWN BY: *Beauster Architects*
 REVISED: 12/16
 APPROVED BY: *Jim McField Construction*
 DATE: *12/16/19*
 DRAWING NUMBER: *1*
 Project: *East Elevation*



Unit 1+2 Brewster St. d.s.v.	
SCALE: 1/4" = 1'-0"	DRAWN BY: [Signature]
DATE: 12/16/19	APPROVED BY: [Signature]
	REVISED: 12/16
Smithfield Construction	
Rear Elevation	
DRAWING NUMBER	2



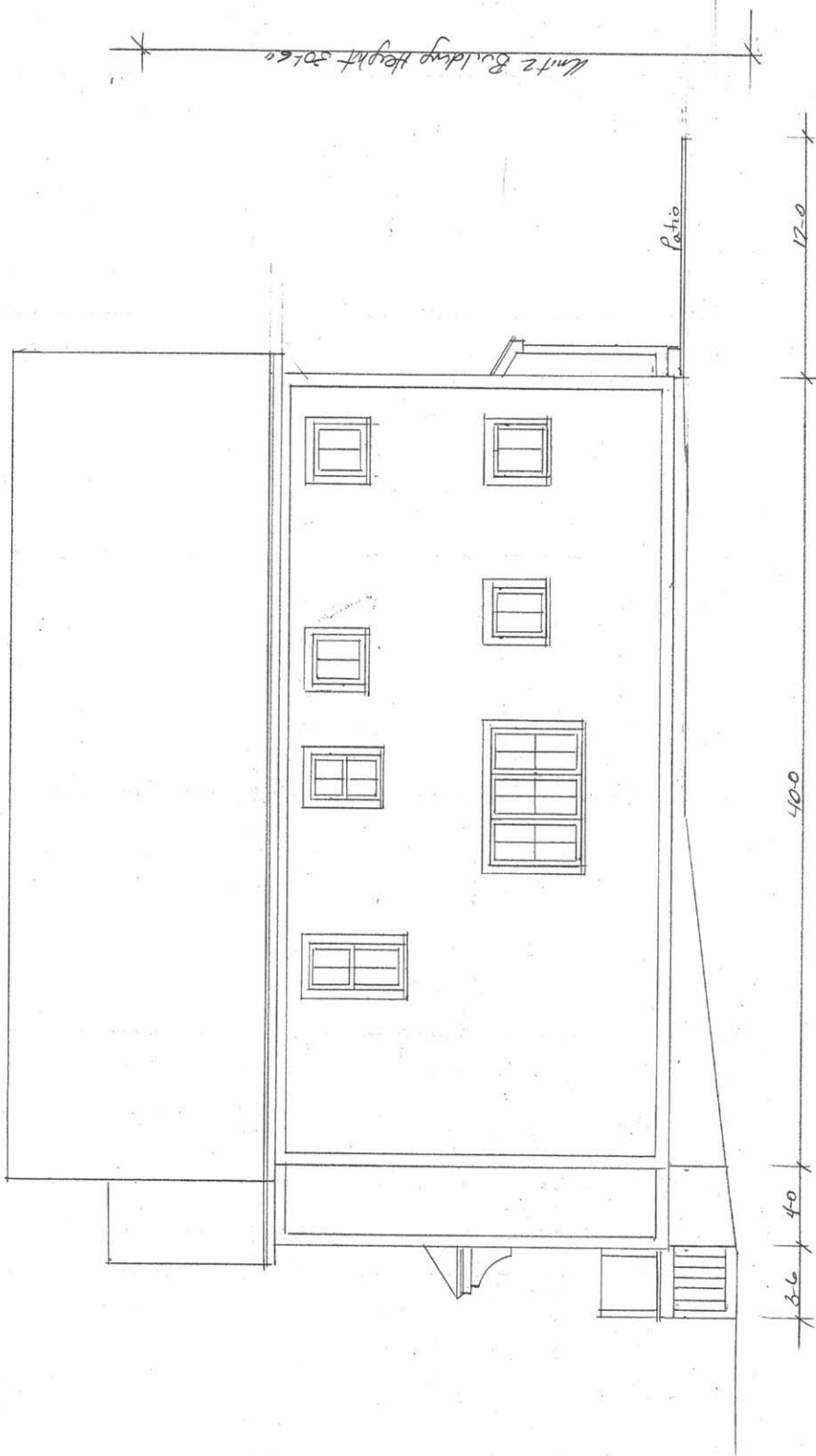
← 37 feet ←
 Unit 1 Building Height 37 feet

← 12' ←
 ← less than 18" High ←

430

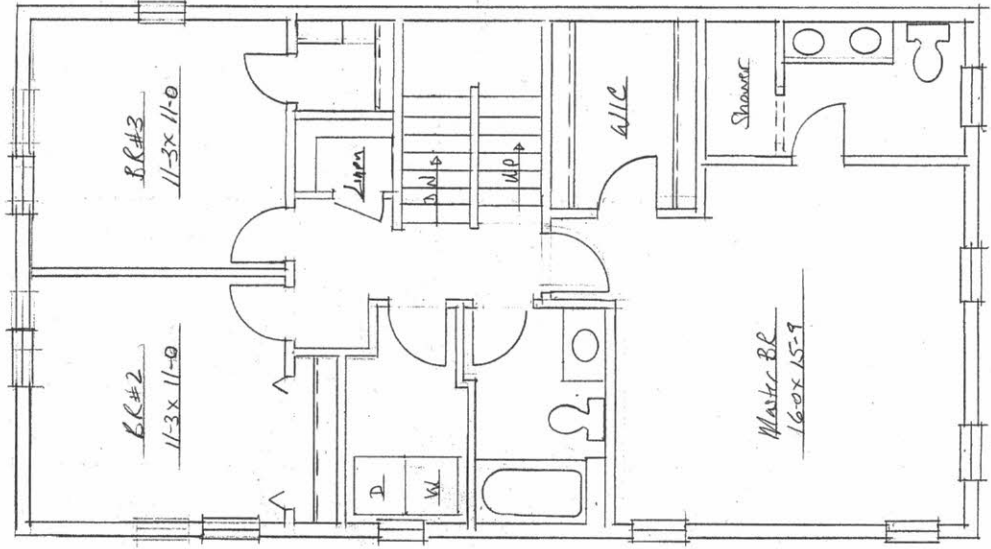
3-6

Unit 172 Brewster/Sadberry APPROVED BY:	
SCALE: 1/4"	DRAWN BY:
DATE: 12/06/19	REVISED 12/16
Smithfield Construction Left Elevation	
DRAWING NUMBER 3	



Unit 1 + 2 SCALE: 1/4" = 1'-0" DATE: 12/16/15		DRAWN BY: BREWER/BLADSKY	REVISED: 12/16
Smithfield Construction Right Elevation		DRAWING NUMBER: 4	

24'-0"

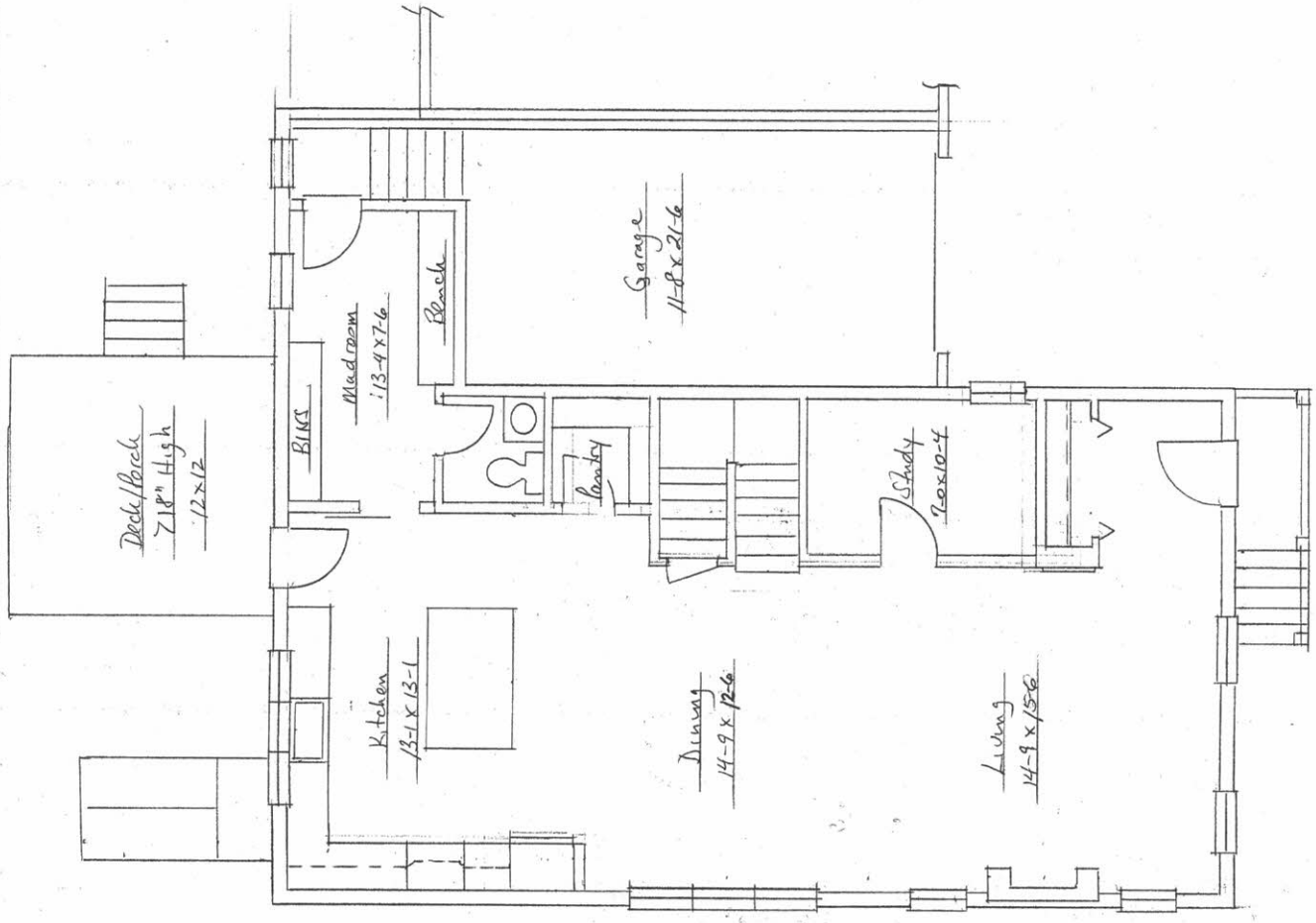


15751 1128 St 2nd Fl 1032 sf
 Headed Area

15751 1128 St 2nd Fl 1032 sf	
DRAWN BY: UNIT 1 Brewster/Sadbury	APPROVED BY:
SCALE: 1/4"	DATE: 12/16/19
REVISED	DRAWING NUMBER 5

Smithfield Construction
 1st + 2nd Floor Plans

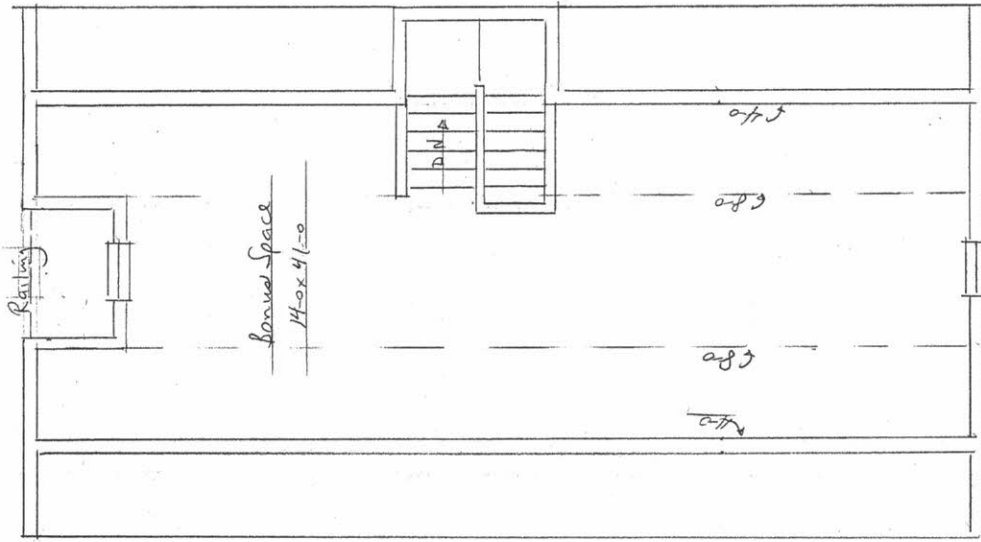
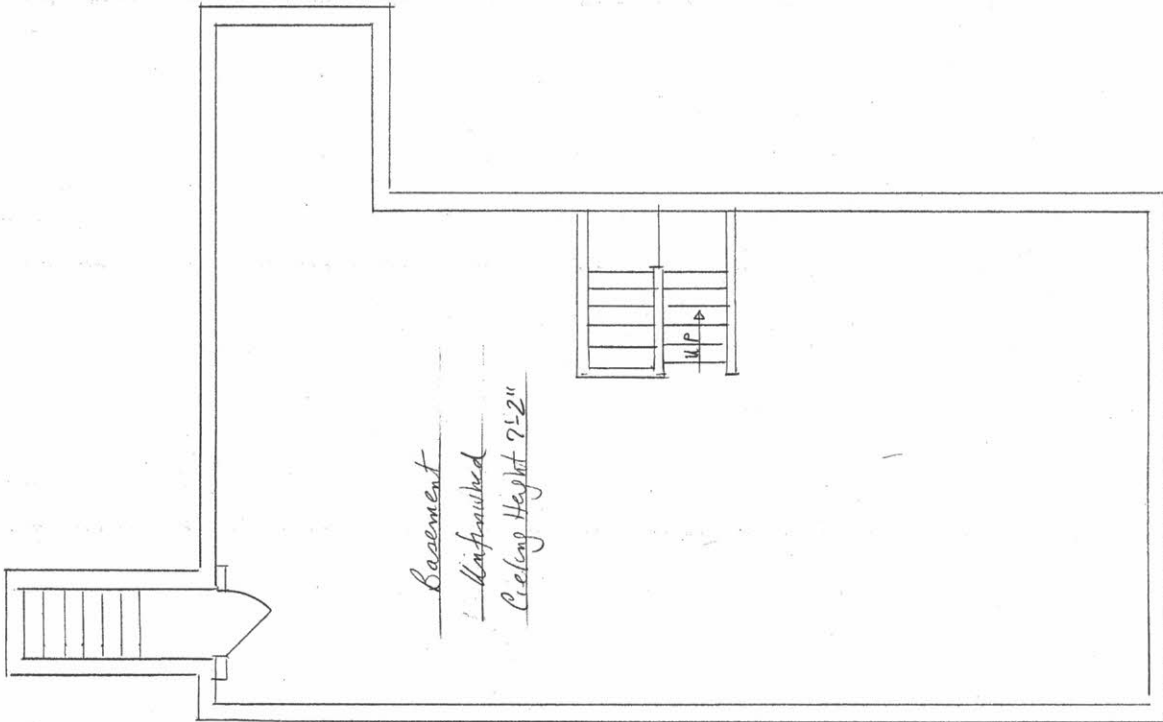
12'-0"



12'-0"

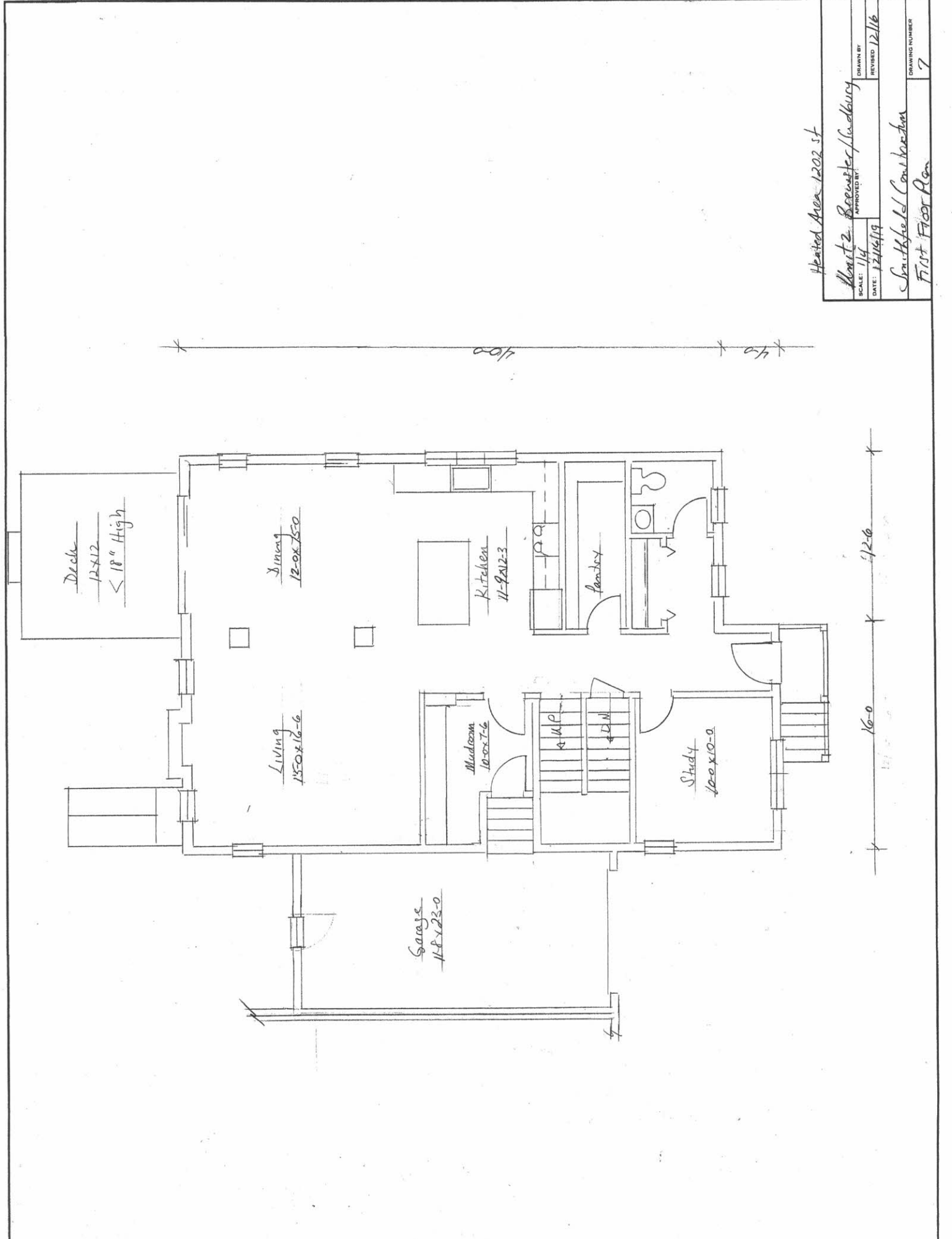
24'-0"

13'-0"



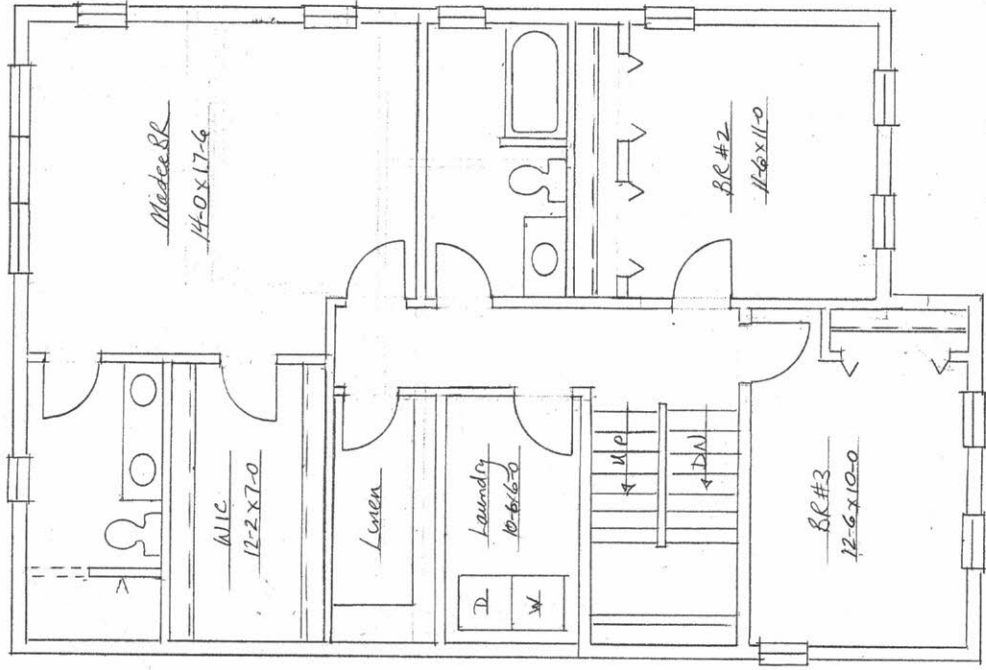
Bonus 420 st

UNIT: 1/4 APPROVED BY: <i>Wm. J. Brewster-Budbury</i>		DRAWN BY: <i>Wm. J. Brewster-Budbury</i>
DATE: 1/21/68		REVISED:
Smithfield Construction Basement + Attic Plans		DRAWING NUMBER 6



Heated Area 1202 st

Drawn By: <i>Kent Z. Brewster/Sadbury</i> Approved By:	
SCALE: 1/4" = 1'-0"	DATE: 12/16/19
REVISION: 12/16	DRAWING NUMBER: 7
Smithfield Construction First Floor Plan	

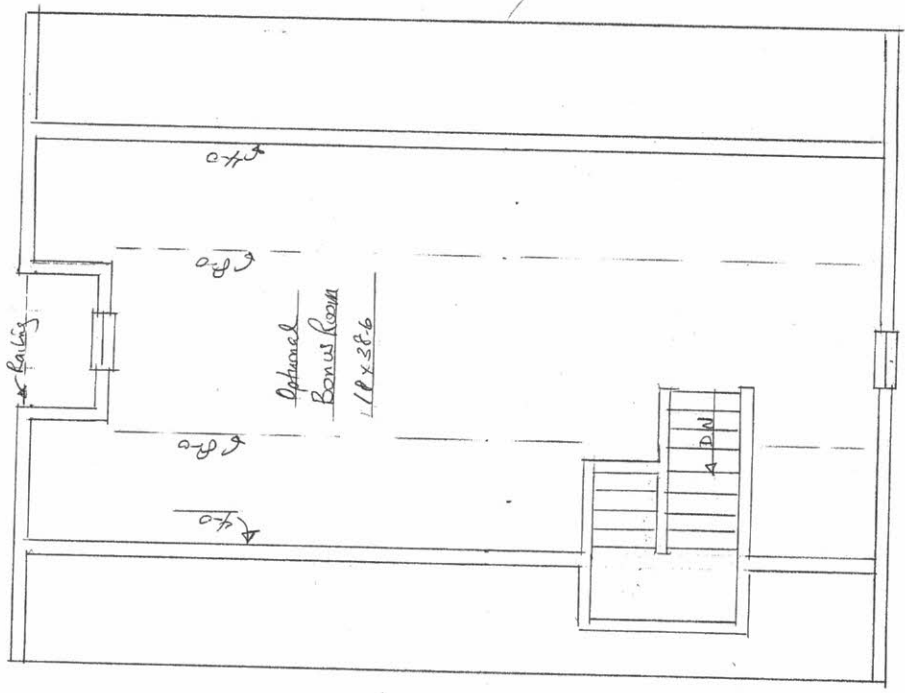
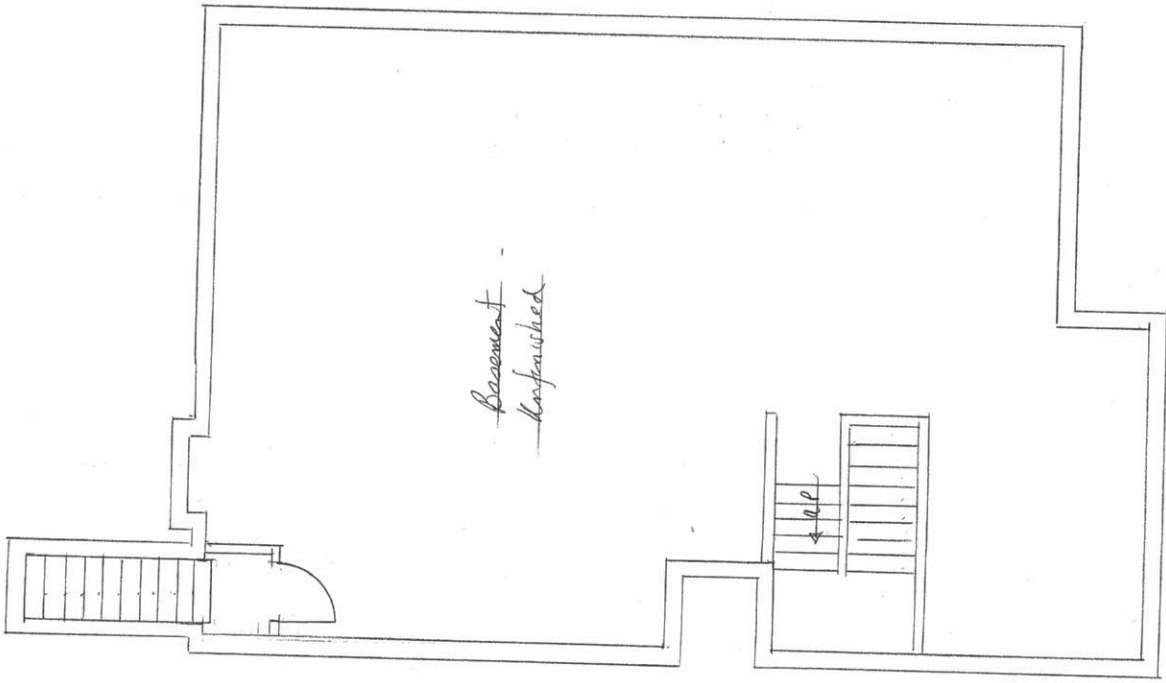


1400 Ave 1202 st

Unit 2 Brewster Sidbury

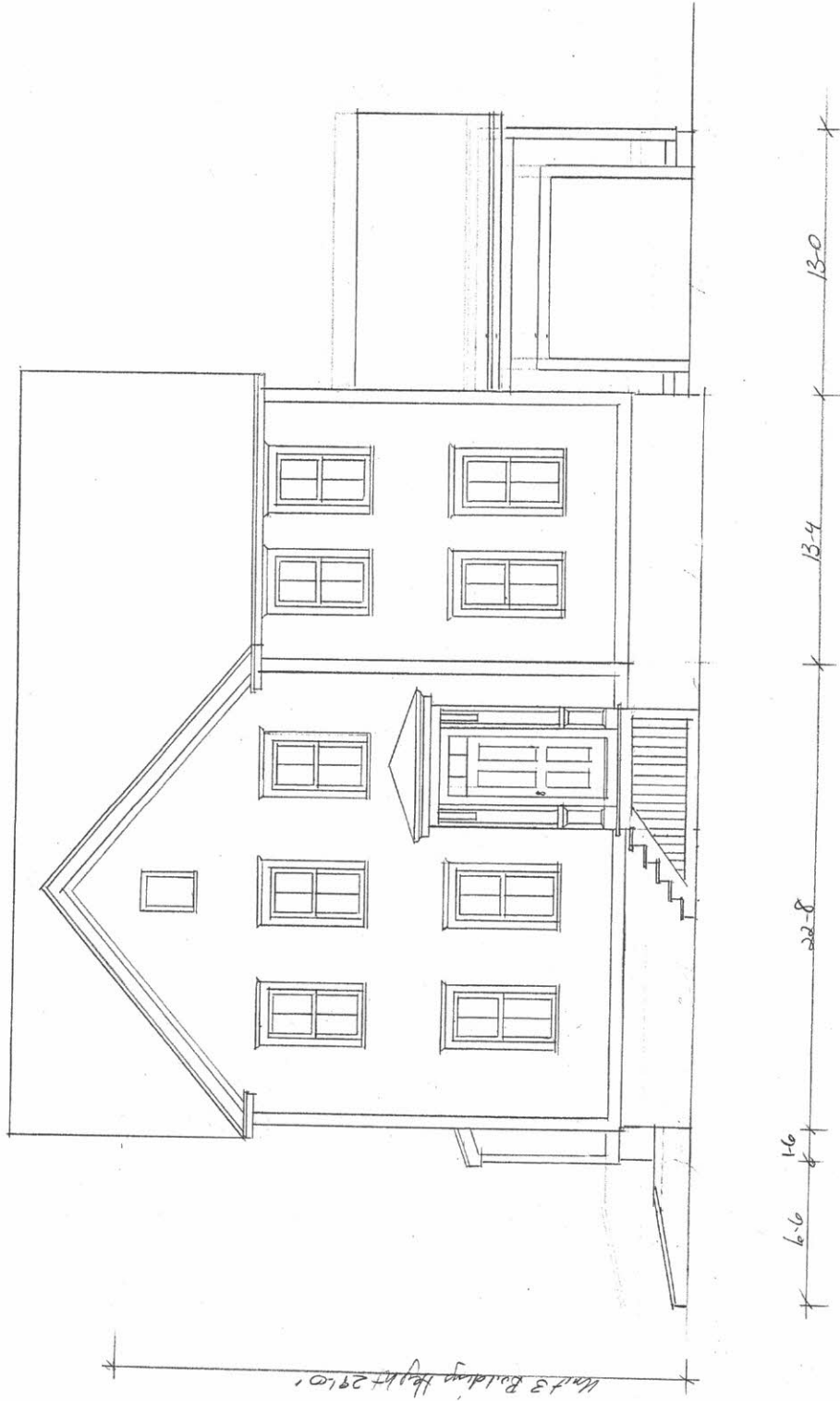
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 DATE: 12/16/19
 DRAWN BY: [Signature]
 REVISED 12/16

San Gabriel Construction
 Second Floor Plan
 DRAWING NUMBER: 8



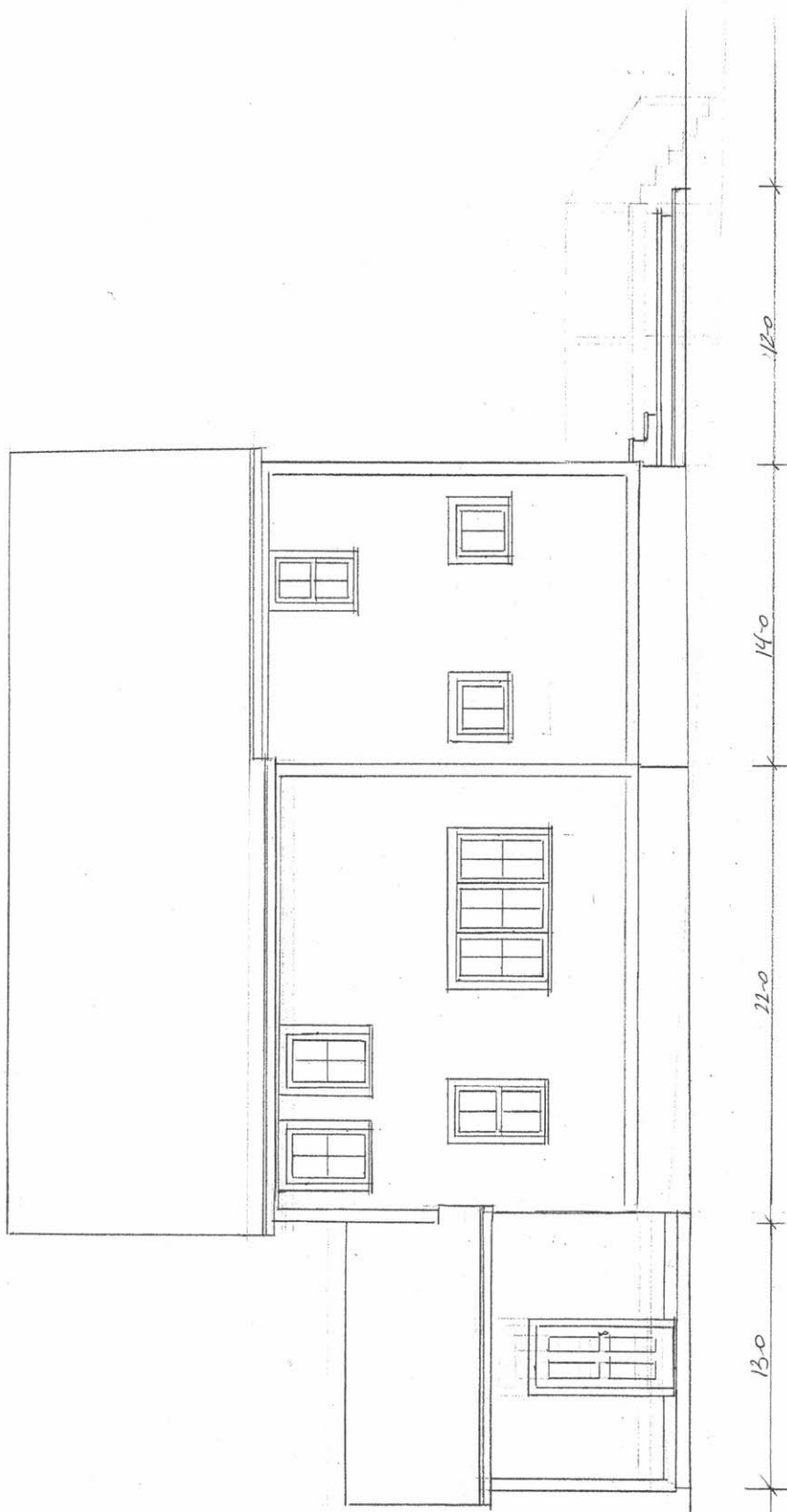
Bonus 492-01

Unit 2 Riverside/Clackburg		DRAWN BY
SCALE: 1/4"	APPROVED BY:	REVISED 12/10
DATE: 11/26/19		
Sh. Kfield Construction		DRAWING NUMBER
Basement + Attic Plans		9



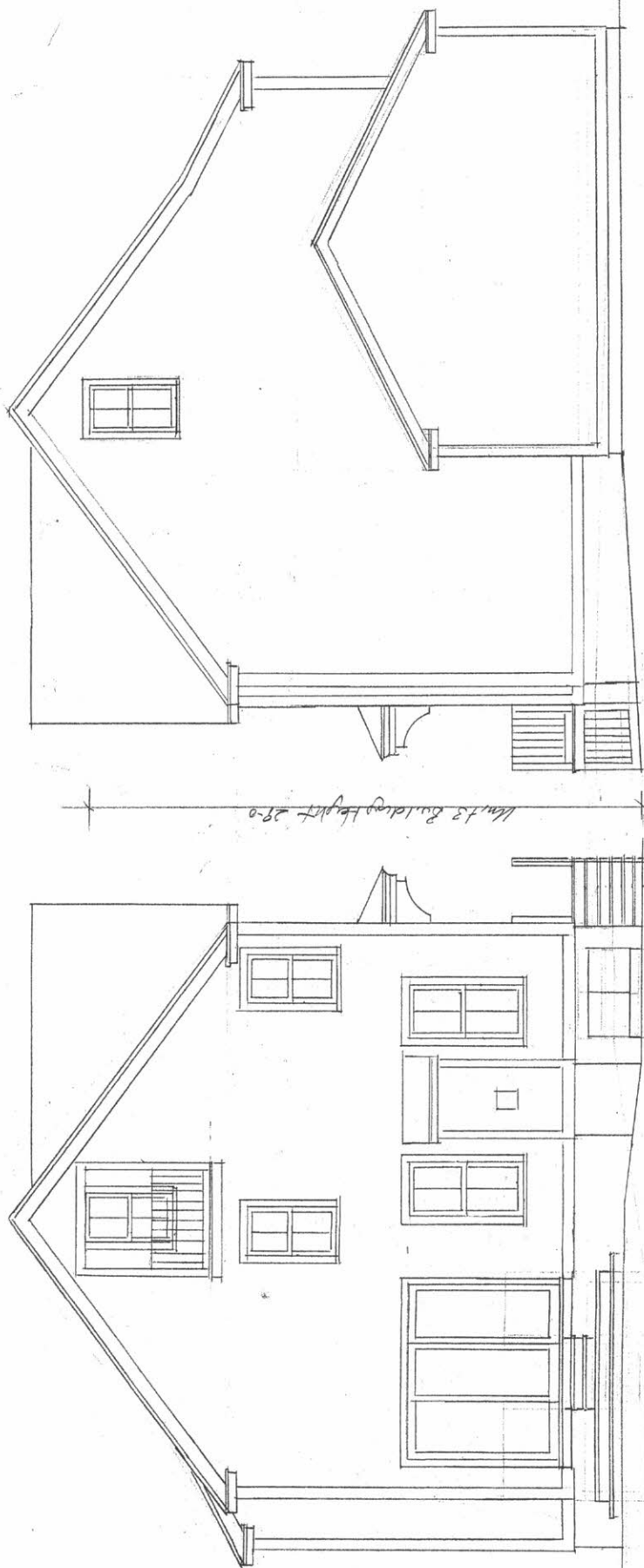
Unit 3 Building Height 29'-0"

<i>Unit 3 Brewster Academy</i>		DRAWN BY
SCALE: 1/4"	APPROVED BY	REVISED 12/16
DATE: 12/16/19		
<i>Smithfield Construction</i>		DRAWING NUMBER
<i>Front Elevation</i>		10



Unit 3 Building Height 29.0

Unit 3 Rear Elevation		DRAWN BY	REVISOR
SCALE: 1/4"	DATE: 12/12/19	APPROVED BY:	REVISION: 12/16
S. H. Feld Construction		DRAWING NUMBER	
Rear Elevation		11	



Left Elevation

Right Elevation

12'-6" | 30'-0"

3'-6" |

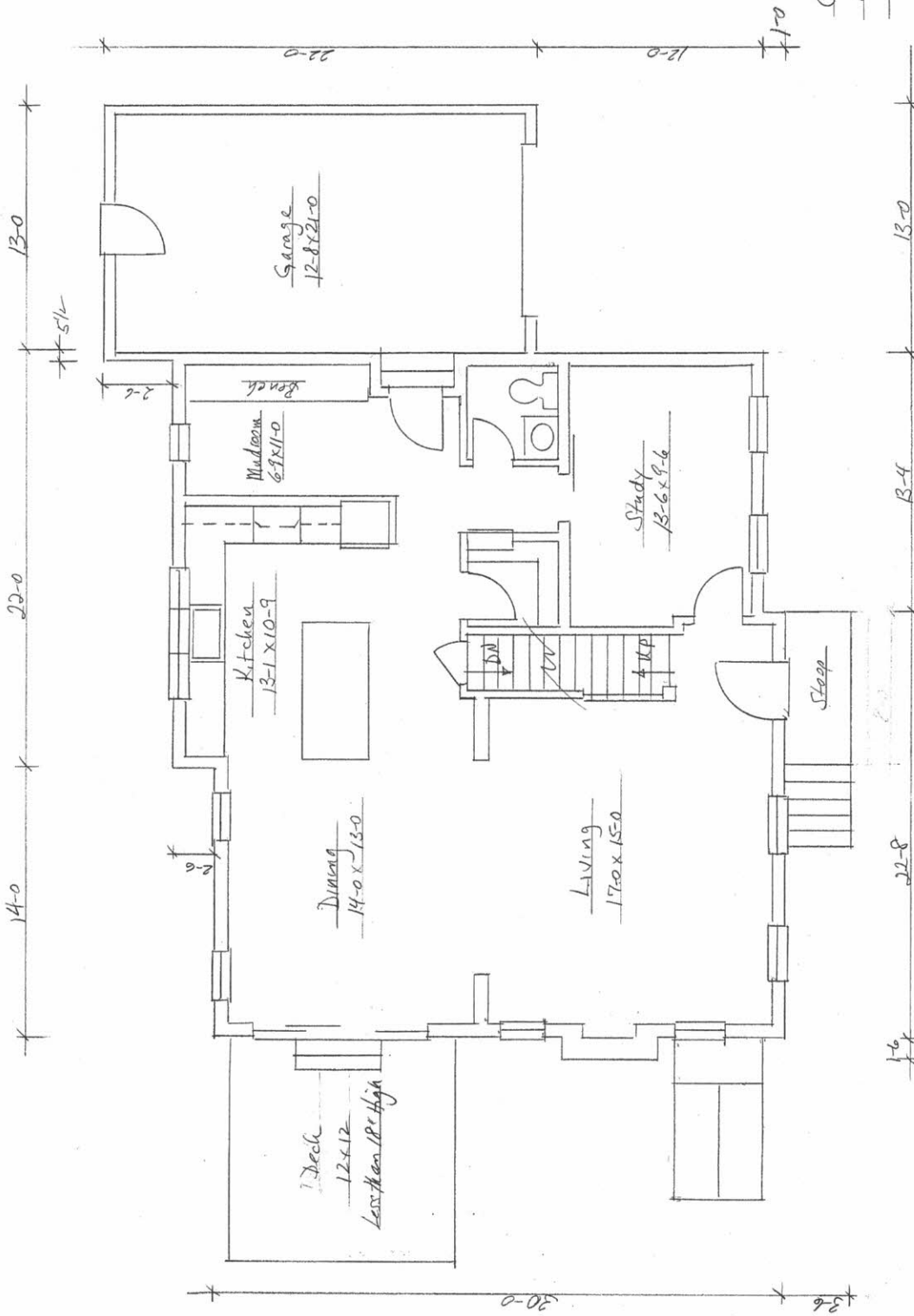
3'-6" | 12'-0"

19'-6" |

2'-6" |

Mt's Building height 28'-0"

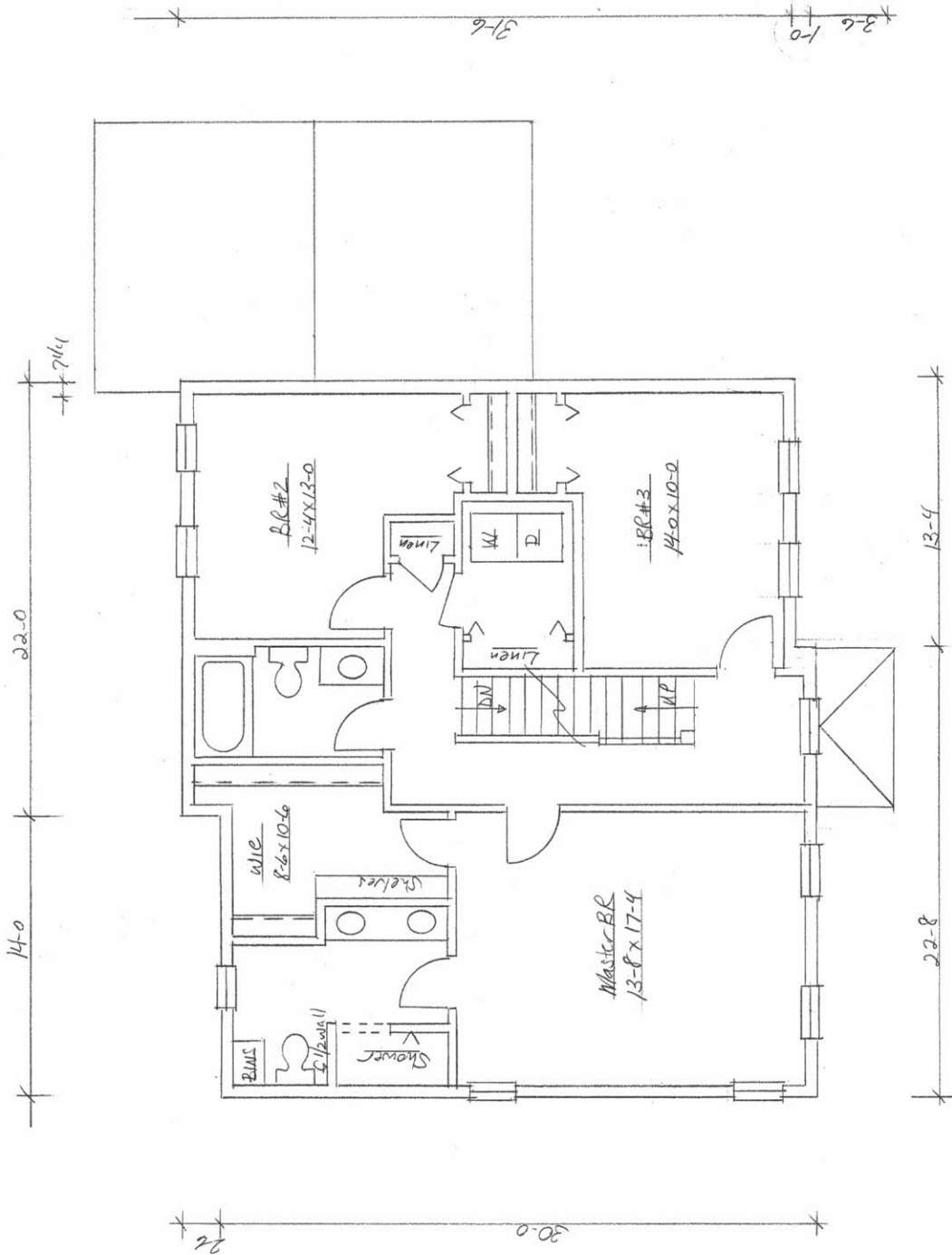
Drawn by <i>Hearts Beaming Sudbury</i>		DRAWN BY REVISIONS 12/16
Approved by <i>Smartfield Construction</i>		APPROVED BY DATE: 12/16/19
Right + Left Elevation		DRAWING NUMBER 12



Ceiling Height 8-7/14
 15 Feet @ 7-11/16

Heated Area 1623 sq ft

Unit 3 Brewster/Sudbury	
SCALE: 1/4"	DRAWN BY
DATE: 12/16/19	REVISED 12/16
San Myjeld Construction	
First Floor Plan	
DRAWING NUMBER 13	



Heated Area 1133sf

Unit 3 Brewster Sudbury

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

DATE: 12/16/18

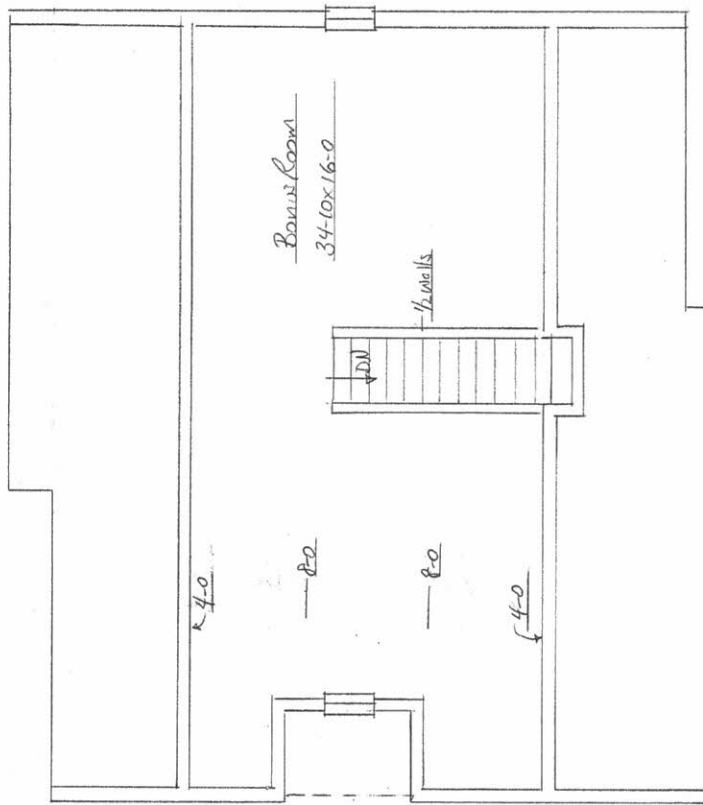
APPROVED BY: [Signature]

REVISOR: 12/16

Drawn by: [Signature]

Second Floor Plan

DRAWING NUMBER: 14



Unit 3 Brewster/Ladbury	
SCALE: 1/4"	APPROVED BY:
DATE: 11/2/19	DRAWN BY:
	REVISED:
Sanity Field Construction	
Alic Floor Plan	
DRAWING NUMBER	
15	

95 Brewster St & 49 Sudbury St.



Property Information

Property ID 0138-0057-0000
Location 95 BREWSTER ST
Owner NICKERSON HOME IMPRVMT CO INC



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 4/1/2019
Data updated 7/17/2019



95 Brewster Front



49 Sudbury



95 Brewster and Side of 49 Sudbury



95 Brewster -Left Side



95 Brewster-Rear



95 Brewster -Right Side