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**Also admitted in MA*

BY: VIEWPOINT & HAND DELIVERY

June 1, 2022

City of Portsmouth
c/o Peter Stith
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application of Peter Ward
15 Central Avenue, Tax Map 209, Lot 5**

Dear Peter,

Our Office represents Peter Ward, owner of the property located at 15 Central Avenue in Portsmouth. Enclosed herewith, please find the following materials for submission to the Zoning Board of Adjustment for consideration at its next regularly scheduled meeting:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Site Plan;
- 4) Floor Plans and Elevations;
- 5) GIS Map; and
- 6) Photographs of the Property.

One (1) copy of the application submission is being hand-delivered to the Planning Department contemporaneously with the electronic filing through Viewpoint. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,



Derek R. Durbin, Esq.

LANDOWNER LETTER OF AUTHORIZATION

Peter Ward, record owner of property located at **15 Central Avenue, Portsmouth, NH**, identified on Portsmouth **Tax Map 209, as Lot 4** (the "Property"), hereby authorizes **Durbin Law Offices PLLC** and **Matthew Beebe** and their agents and representatives, to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.



Peter Ward

May 26, 2022

**CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT
APPLICATION NARRATIVE**

Peter Ward
(Owner/Applicant)
Tax Map 209, Lot 5
15 Central Avenue
Portsmouth, NH 03801

INTRODUCTORY STATEMENT

Peter Ward (the “Applicant”) is the owner of the property located at 15 Central Avenue (the “Property”) The Property is in the Single-Family Residence B (“SRB”) Zoning District. It is approximately 0.36 acres in size (15,476 square feet) and has a single-family home on it in which the Applicant resides.

The Property is uniquely situated. It is directly abutted to the north (right) by a paper street that was never constructed. It is the Applicant’s belief that ownership of this land reverted back to the abutting property owner(s) some time ago by operation of law as a result of the City never having made use of it. However, for purposes of the foregoing zoning application, the Applicant has shown this land as still being owned by the municipality in his Site Plan and calculated the yard setback(s) accordingly since the City has never expressly released its interest in it. The Applicant currently maintains the land now or formerly owned by the City, which is fenced in and incorporated into his property. The Property to the right of the paper street is an unimproved parcel that is also owned by the Applicant (Tax Map 209, Lot 5). To the west (rear), the Property is abutted by I-95.

The existing single-family home with attached garage is non-conforming with respect to the front and side yard setbacks. As a result of how the home and garage are situated on the Property, little can be done to improve the structures without requiring one or more setback variances.

The Applicant is proposing several improvements to the Property. He would like to like to add living space above the existing home and garage. The finished space above the garage would serve an accessory dwelling unit. In order to improve the home and garage as proposed, the Applicant needs the following variances:

- 1) Section 10.521 – a right yard setback of 4’+/- where 10 is required;
- 2) Section 10.521 – a front yard setback of 6’+/-where 30’ is required; and
- 3) Section 10.321 – expansion of a non-conforming structure.

VARIANCE CRITERIA

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

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court observed that “There are two methods of ascertaining whether granting a variance would violate an ordinance’s basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare.”

The primary purpose behind imposing building setbacks is to ensure that adequate light, air and space is maintained between structures on abutting properties. The proposed vertical expansion of the house and garage will have no impact upon the light, air and space of structures on abutting properties. The structures on the abutting properties to the south (left) and across Central Avenue to the east (front) are a considerable distance away and are not affected in any way by a vertical expansion of the Applicant’s home. There are no structures on the land to the north, closest to where the second floor ADU will be located. Moreover, it is fair to assume that the land to the north can never be built upon in the future. The new staircase and deck that will access the ADU above the garage will only minimally encroach further into the right yard setback than the existing garage.

The proposed additions are designed to improve the appearance of the existing home while providing additional living space for the Applicant and an ADU. Many other homes in the neighborhood are more than one story in height. For these reasons, the vertical expansion of the home and garage to accommodate additional living space and an ADU will not alter the essential character of the neighborhood. There are really no public health, safety or welfare concerns implicated by a project of the nature proposed.

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).

Denying the variances would have no public benefit. The home and attached garage on the Property are already non-conforming with respect to the front and side yard setbacks, which is a common characteristic in the neighborhood. There are very few ways, if any, in which these structures could be improved without requiring variance relief. The most reasonable and realistic way to improve upon and add living space to these structures given their orientation on the Property is to expand upon them vertically within the height limits of the Zoning Ordinance. There are many examples of similarly situated properties in the neighborhood with structures greater than one story in height. The vertical expansion of the structures will have minimal to no impact upon

abutting properties. Therefore, the loss to the Applicant in denying the variances outweighs any potential gain to the public.

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

The proposed design for the vertical expansion of the home and garage is architecturally compatible with other structures in the neighborhood. The re-design of these structures will improve the appearance of the Property from the street and abutting properties. If anything, the values of surrounding properties may be increased as a result of granting the variances.

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

There are conditions of the Property that make it unique within the context of the neighborhood. The Property is bordered to the west by I-95. The abutting land constituting the paper street to the north of the Property has been, for all intents and purposes, abandoned by the City. It is arguably owned by the Applicant by operation of law. This land is fenced in and incorporated into the Applicant's yard. It has existed this way and been maintained by the Applicant throughout his ownership of the Property. Even if the City does still claim an interest in the paper street, it cannot be built upon. The land on the other side of it is also owned by the Applicant and cannot be built upon. Therefore, the Property is buffered to the north by unbuildable green space and a relatively dense tree buffer.

In addition, the Property is one of the few in the neighborhood that meets the 15,000 square foot land area requirement yet many of the other properties have homes, garage and other structures that encroach into one or more setbacks. The nearest structures to the Applicant's home and garage are a considerable distance away and would not be affected by any vertical expansion of these structures. As a result of these special conditions of the Property, there is no fair and substantial relationship between the setback provisions of the Ordinance and their application to what is proposed.

The proposed use is reasonable.

Single-family homes with accessory dwelling units are permitted and encouraged within the SRB Zoning District. The Property has sufficient land area to sustain the proposed use. The proposed ADU will be located on the north side of the Property which is abutted by unbuildable land. Therefore, the new AUD use of the Property is reasonable in light of the right yard setback variance requested.

CONCLUSION

In conclusion, the Applicant has demonstrated that he has met the five (5) criteria for granting the variances requested. Accordingly, he respectfully requests that the Board approve his requests.

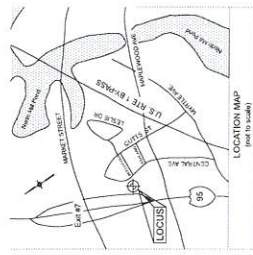
Respectfully Submitted,

Dated: June 1, 2022

Peter Ward



By: Derek R. Durbin, Esq.
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(603)-287-4764
derek@durbinlawoffices.com

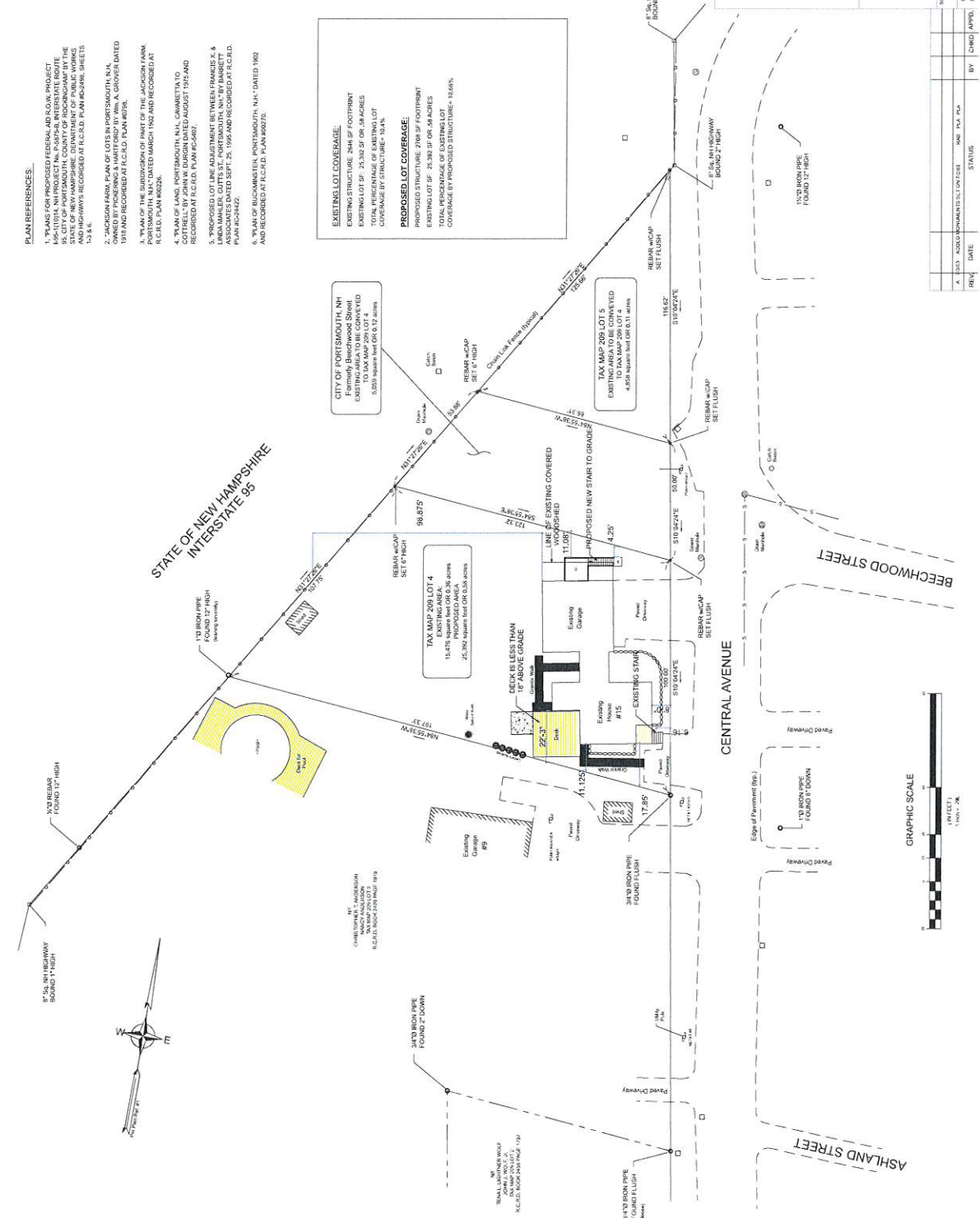


PLAN REFERENCES:

1. "PLAN FOR PROPOSED FEDERAL AND STATE PROJECT" FOR THE NEW HAMPSHIRE DEPARTMENT OF PUBLIC WORKS, CITY OF PORTSMOUTH, COUNTY OF ROCKINGHAM BY THE STATE OF NEW HAMPSHIRE DEPARTMENT OF PUBLIC WORKS, CITY OF PORTSMOUTH, COUNTY OF ROCKINGHAM, SHEETS 1-3 & 4.
2. "JACKSON FARM PLAN OF LOTS IN PORTSMOUTH, N.H. OWNED BY PICKERING & HART CO. BY Wm. A. GROVER DATED 1918 AND RECORDED AT F.C.D. PLAN #209.
3. "PLAN OF THE SUBDIVISION OF PART OF THE JACKSON FARM, PORTSMOUTH, N.H. DATED MARCH 1902 AND RECORDED AT F.C.D. PLAN #209.
4. "PLAN OF THE SUBDIVISION OF PART OF THE JACKSON FARM, PORTSMOUTH, N.H. DATED MARCH 1902 AND RECORDED AT F.C.D. PLAN #209.
5. "PROPOSED LOT LINE ADJUSTMENT BETWEEN FRANCES S. & LINDA MAHER CUTTS ST., PORTSMOUTH, N.H. BY BARRETT & LINDA MAHER DATED SEPTEMBER 15, 1999 AND RECORDED AT F.C.D. PLAN #2442.
6. "PLAN OF RECONSTRUCTION, PORTSMOUTH, N.H. DATED 1992 AND RECORDED AT F.C.D. PLAN #2075.

NOTES:

1. OWNER OF RECORD: PETER V. WARD TAX MAP 209 LOT 4 DATED APRIL 27, 1990
2. TAX MAP 209 LOT 5: STATE OF NEW HAMPSHIRE DATED APRIL 27, 1990
3. TAX MAP 209 LOT 4: 15,475 square feet OR 0.36 acres
4. TAX MAP 209 LOT 5: 25,292 square feet OR 0.58 acres
5. BASIS OF BEARING IS PER PLAN REFERENCE #1
6. SEE LETTER TO LUCY E. TILMAN, CITY OF PORTSMOUTH, NEW HAMPSHIRE, DATED SEPTEMBER 15, 1999, TO REAU OF RECORDATION, DATED MAY 19, 2000, FOR THE ACQUISITION OF THE PAPER STREET FORMERLY BEECHWOOD STREET BY PETER WARD.
7. SEE LETTER TO ATTORNEY CHARLES A. MEADE, MEADE & ASSOCIATES, 1000 HIGHWAY 1, DATED SEPTEMBER 14, 2000, REGARDING THE ACQUISITION OF THE STATE OWNED PROPERTY 1 TAX MAP 209 LOT 15 BY PETER WARD.



15 CENTRAL ST SITE PLAN

SCALE: 1" = 20'

REV.	DATE	STATUS	BY	CHKD.	APPD.	FILED	BOOK	NO.	DATE	REMARKS
A	2003	ASBUILT	MONUMENTAL	ILL	ON	FILED	MAP	FILED	NO.	DATE

PROJECT NO.	DATE	PROJECT NAME	PROJECT LOCATION	PROJECT OWNER	PROJECT ENGINEER	PROJECT SURVEYOR	PROJECT DRAFTER	PROJECT CHECKER	PROJECT APPROVER
15 CENTRAL ST	2003	15 CENTRAL ST	PORTSMOUTH, N.H.	PETER WARD	PETER WARD	PETER WARD	PETER WARD	PETER WARD	PETER WARD

MDB DESIGN/BUILD LLC
Construction Consulting
Residential Design
81 Lincoln Ave. Portsmouth, N.H. 03801
603-234-7388
603-460-6684 FAX

CONSULTANTS

ADDITION AND RENOVATION TO

WARD RESIDENCE
15 Central Ave
Portsmouth, NH 03801

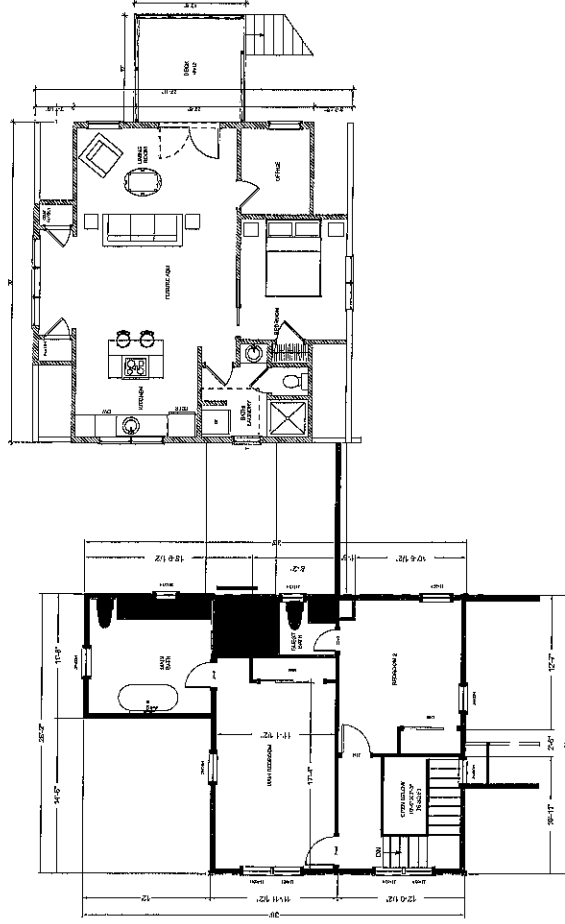
MARK	DATE	DESCRIPTION
3/26/22		PRELIMINARY PLANS

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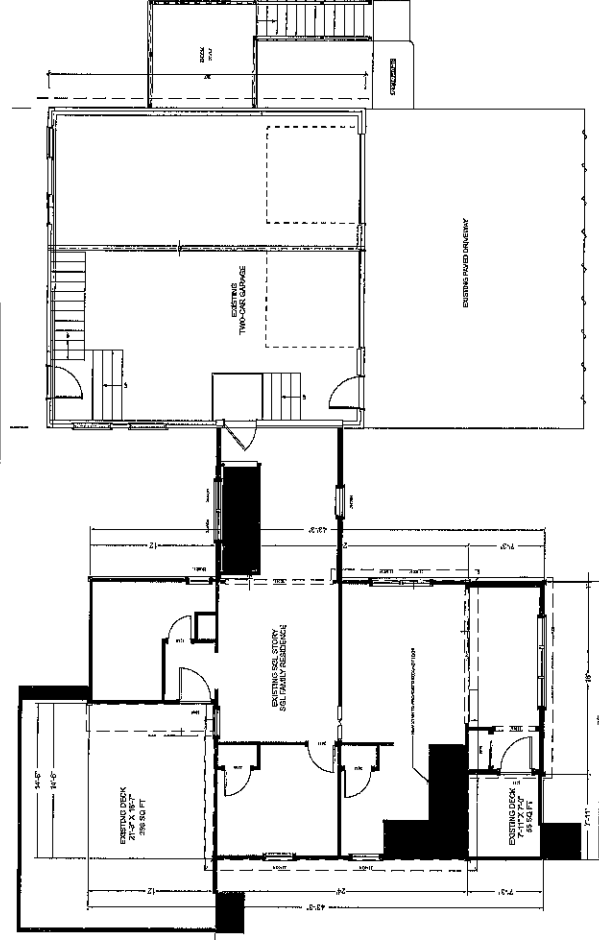
Garage Floor Plans

A1



SECOND FLOOR PLAN

3/2/22 = 1/8"



FIRST FLOOR PLAN

3/2/22 = 1/8"

MDB DESIGN/BUILD LLC
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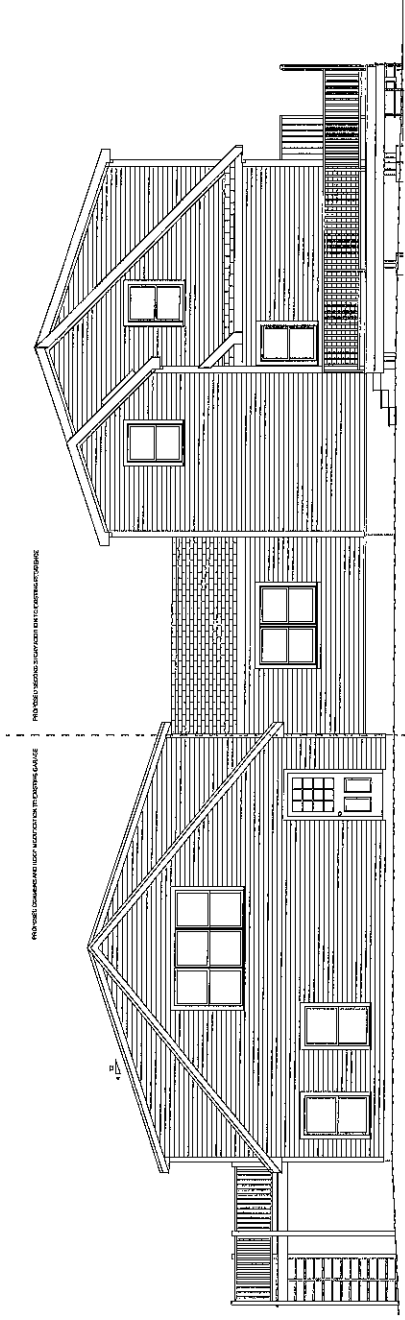
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Elevations

A2



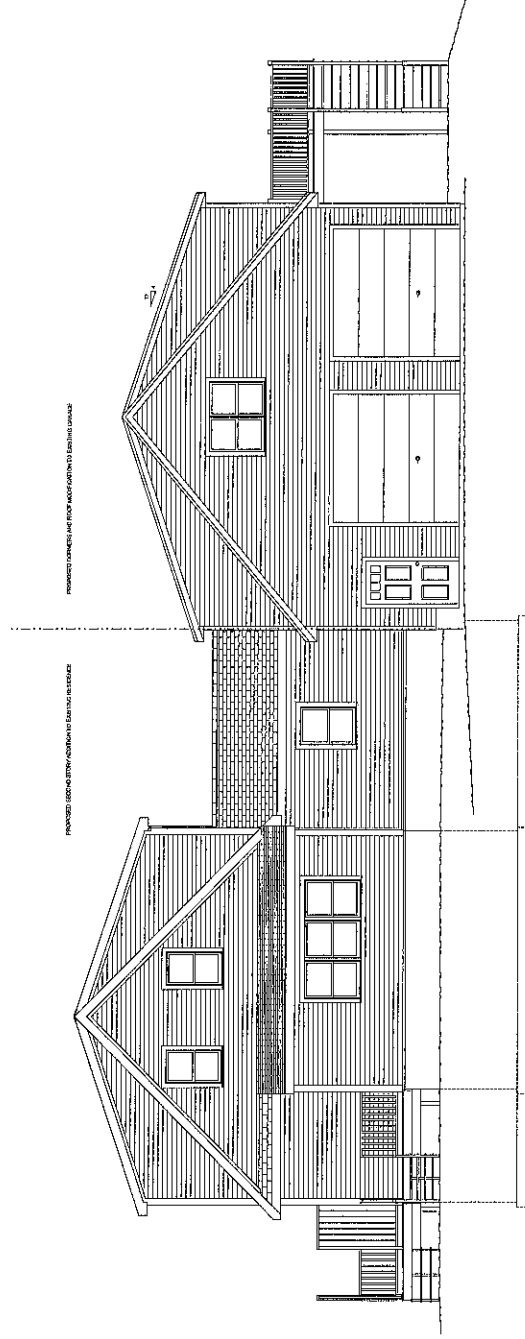
FINISHES: EXTERIOR SIDING, INTERIOR SIDING, INTERIOR SIDING

FINISHES: EXTERIOR SIDING, INTERIOR SIDING, INTERIOR SIDING

REAR ELEVATION

1/4" = 1'-0"

2



FINISHES: EXTERIOR SIDING, INTERIOR SIDING, INTERIOR SIDING

FINISHES: EXTERIOR SIDING, INTERIOR SIDING, INTERIOR SIDING

FRONT ELEVATION

1/4" = 1'-0"

1

MDB DESIGN/BUILD LLC
Construction Consulting
Residential Design
81 Lincoln Ave., Portsmouth, N.H. 03801
603-234-7388
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CONSULTANTS

ADDITION AND RENOVATION TO

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12 Canal Ave
Portsmouth, NH 03801

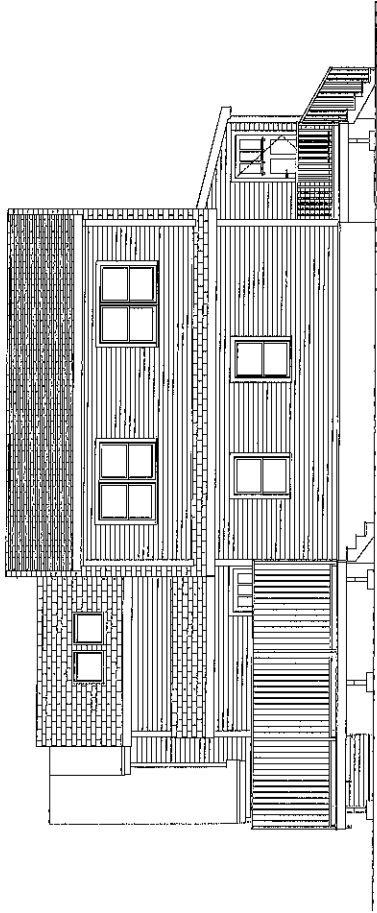
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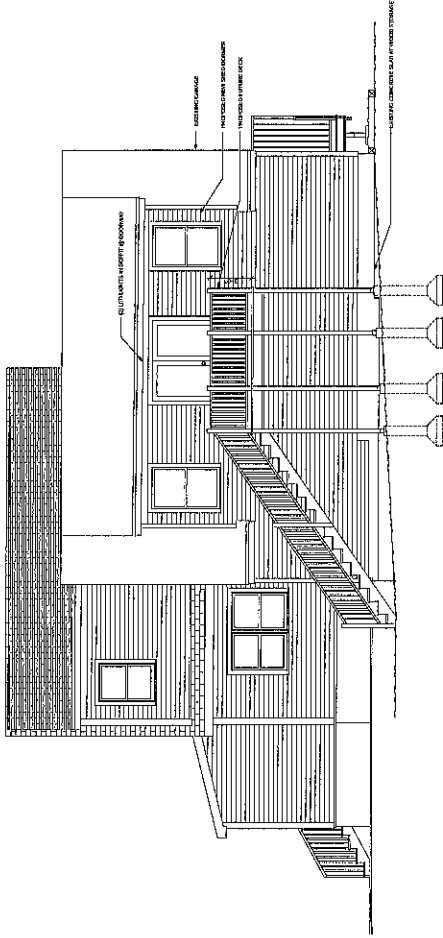
Elevations

A3



SIDE ELEVATION

2



SIDE ELEVATION

3



Geometry updated 3/9/2022
Data updated 3/9/2022

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



Front (East) Elevation from Central Avenue



West (Rear) Elevation



Right Side (North) Elevation



South (Left) Side Elevation from Central Street



View of Right Side Yard and Paper Street Land (North)



Right Side Yard View (North)