

**APPLICATION OF TIMOTHY J BERKY JR**

**121 EASTWOOD DRIVE, PORTSMOUTH, MAP – LOT 0288-0003-0017**

**NARRATIVE**

**I. THE PROPERTY:**

I, Timothy Berky, seek a variance from Section 10.573.20 to permit the construction of an accessory storage structure within the rear yard setback.

Eastwood Drive is a private road located in Portsmouth, New Hampshire. The City of Portsmouth does not maintain Eastwood Drive, as it is not a public right-of-way. The neighborhood is for all intent and purposes a single house lot with 21 individual residential lots. As such, the road and all associated infrastructure are privately owned and maintained by the residents, without municipal support or services related to road upkeep.

Because of the unique layout and history of the subdivision, some of the lots on Eastwood Drive—my property included—face spatial constraints that do not align well with the city's current setback requirements. In my case, the shape and size of the lot, along with the placement of the primary residence and existing features, present a practical hardship when it comes to siting an accessory storage structure.

The property has been my primary residence since 2014. It is in the SRB zone and consists of single-family dwelling. The proposal is to construct an accessory storage structure with a second story gym space. Electricity will be installed; however, this will not be a residential structure, and no plumbing will be going to the structure. This structure will never be turned into a residential structure which is prohibited by Eastwood Drive bylaws.

As a homeowner with a growing family, I am finding it increasingly difficult to manage the storage needs of our household. With two young and growing children, the amount of equipment, seasonal items, outdoor toys, and general household belongings has expanded significantly. Our current living space and existing storage options within the primary residence can no longer accommodate these necessities in an organized or safe manner.

The lot is fairly small in comparison to most of the lots in the vicinity, and sits land locked between the two abutting properties. The two abutting properties abut behind the property leaving for a small backyard section. Section 10.573.20 provides that an accessory building or structure more than 10 feet in height or more than 100 square feet in area shall be set back from any lot line at least the height of the building or the applicable

yard requirement, whichever is less. As proposed, the height of the structure is 21 feet to the ridge. The applicable rear yard setback in the SRB zone is 30 feet or the height of the building which would be 21 feet. As proposed, the accessory structure would be 5 feet from the rear lot line.

Compliance with the required rear yard setback would prevent this structure from being built. The property most affected by this proposal, 111 Eastwood Drive, has two smaller plastic sheds in a similar location on their property. The other abutting property 131 Eastwood also has a wooden shed in a similar location on the property. The sheds, the abutting properties have, will not be negatively affected in any way. The structure has been designed without windows on the abutting sides so there will be no privacy issues. The project and the property otherwise fully comply with all dimensional and land use requirements in the SRB zone.

## **II. CRITERIA:**

I believe the within application meets the criteria necessary for the Board to grant the requested variance.

**Granting the requested variance will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest.** The “public interest” and “spirit and intent” requirements are considered together pursuant to *Malachy Glen Associates v. Chichester*, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

In this case, were the variance to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. A proposed accessory storage structure on this property is entirely appropriate and consistent with the existing residential neighborhood in which it sits. The essentially residential character of the neighborhood would remain unchanged. Additionally, the proposed use would not create any threat to the public health, safety and welfare. There remains adequate light, air, access and distance between structures.

**Substantial justice would be done by granting the variance.** Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. The project could not be constructed in compliance with the 21-foot rear yard setback. The only other option would be a large addition onto the existing structure. This



addition would be within all setbacks and city requirements but would cause the abutting property at 111 Eastwood to stare directly at the rear corner of the addition as they exit their residence. This loss to me far outweighs any gain to the public if the variance is denied.

**The values of surrounding properties will not be diminished by granting the variance.** The project meets all dimensional requirements in this zone except for the rear yard setback requirement. The immediate abutter has an accessory plastic storage shed in almost the exact same adjacent location on their lot which has caused no negative impacts on property values in the neighborhood. This structure will be completed with the same detail and character as my existing home. The values of the surrounding properties will not be negatively affected in any way.

**There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship.** The property is a smaller lot, with two abutting properties which also abut behind this property. An accessory structure can not be built in the front of the residence where most of the yard space is. The back yard is much smaller which limits the building envelope available to me. The pre-existing build environment on the lot prevents building the proposed accessory structure in compliance with the rear yard setback requirement.

**The use is a reasonable use.** The proposed accessory use is similar in character with the existing residential structure and is consistent with the existing use of the adjacent and abutting properties and those within the neighborhood. Accessory uses are permitted by right.

**There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property.** The purpose of setback requirements is to assure properties are developed with adequate light, air, access and building separation. Many, if not all, of those concerns would be frustrated if I were forced to comply with the ordinance and build an addition off the primary residence. The proposed project also would be under approximately seven large trees which dictate adequate light, air, access and building separation already. There is no fair and substantial relationship between the purposes of the rear yard setback requirements and its application to this property.

### **III. Conclusion.**

For the foregoing reasons, I, Timothy Berky, respectfully requests the Board grant the variance as requested and advertised.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Timothy Berky Jr.", with a stylized, cursive script.

Timothy J. Berky Jr

Dated: June 18, 2025





**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 09/26/2024

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





**Property ID** 0288-0003-0017  
**Location** 121 EASTWOOD DR  
**Owner** BERKY TIMOTHY JOHN JR

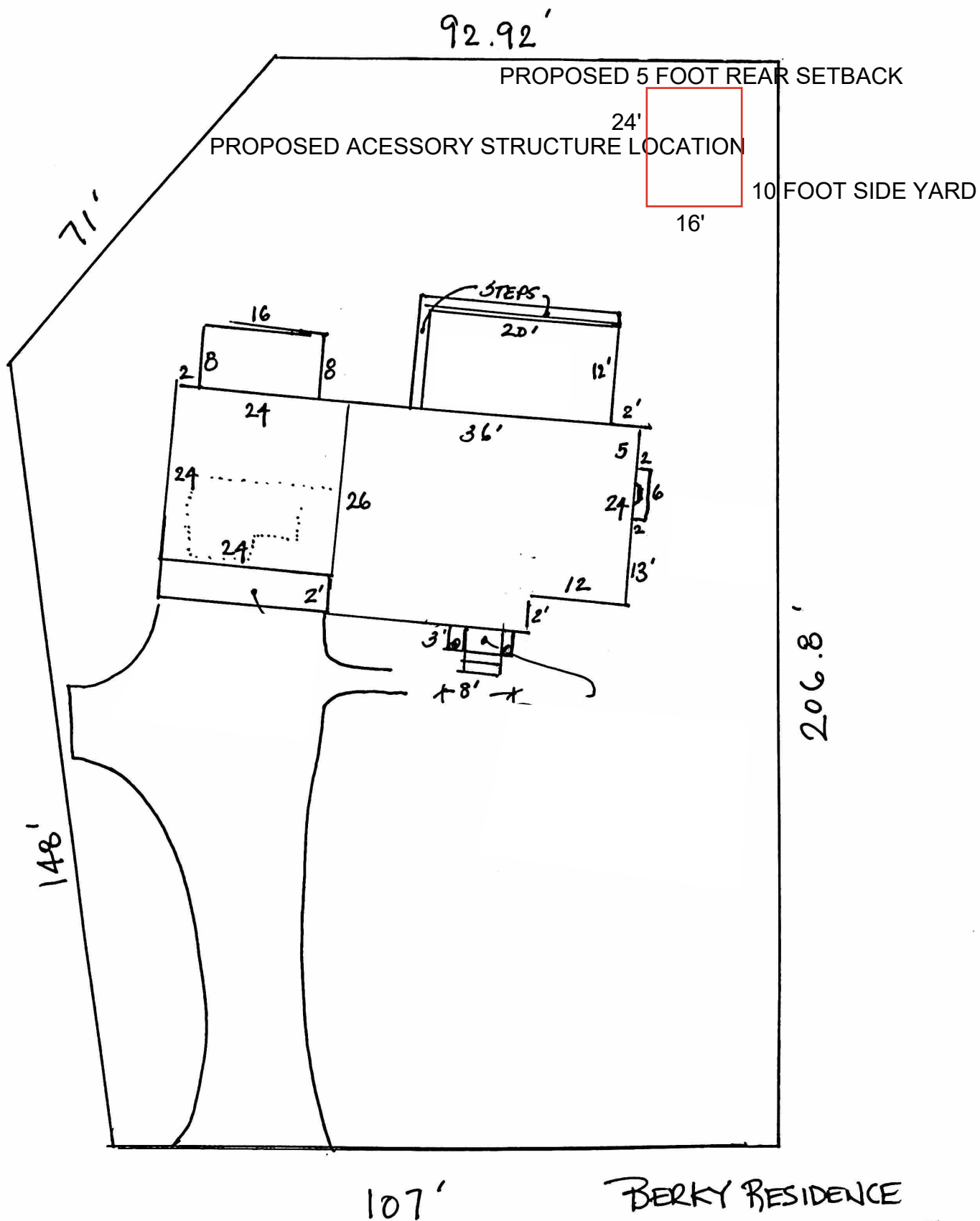


MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT

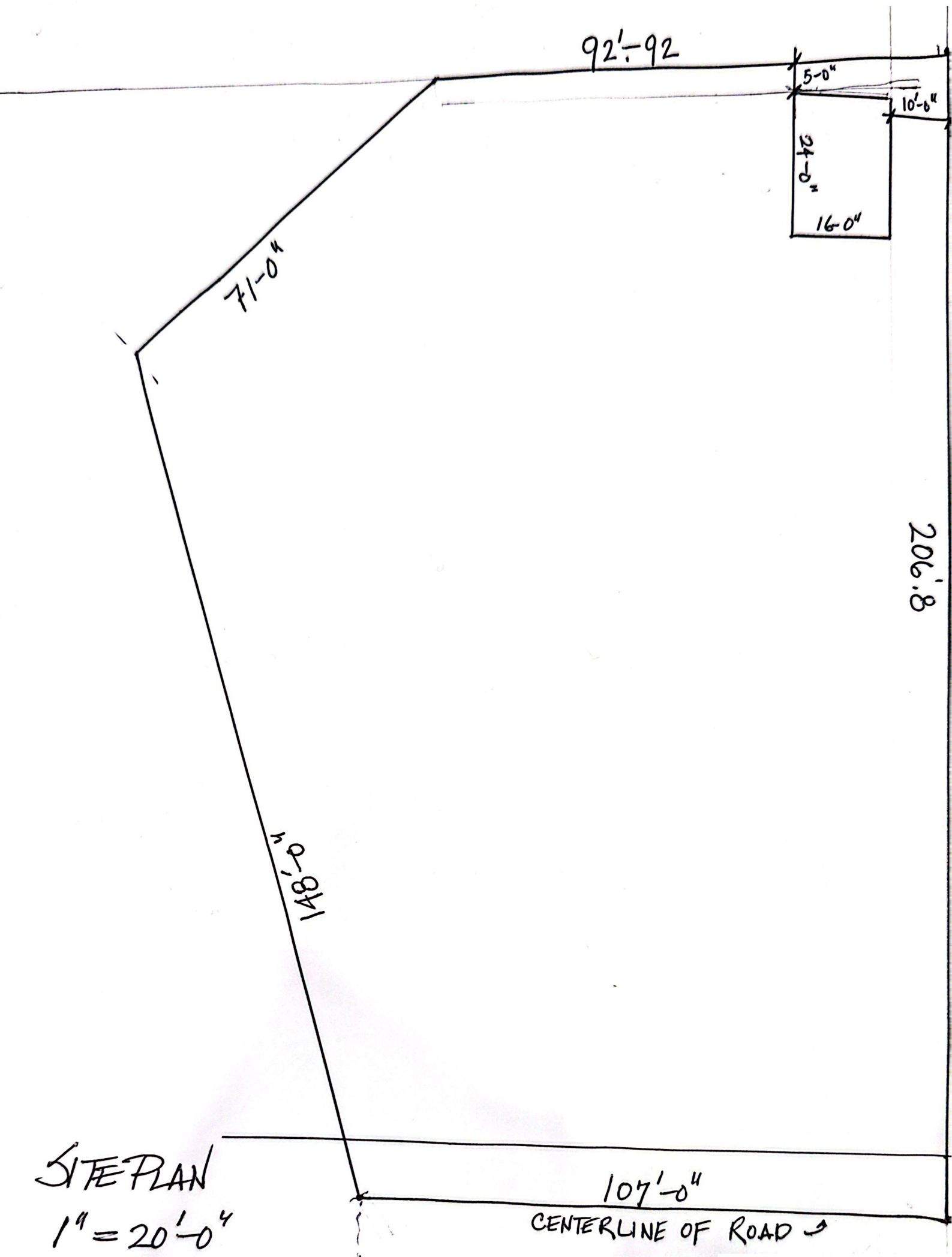
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 09/26/2024

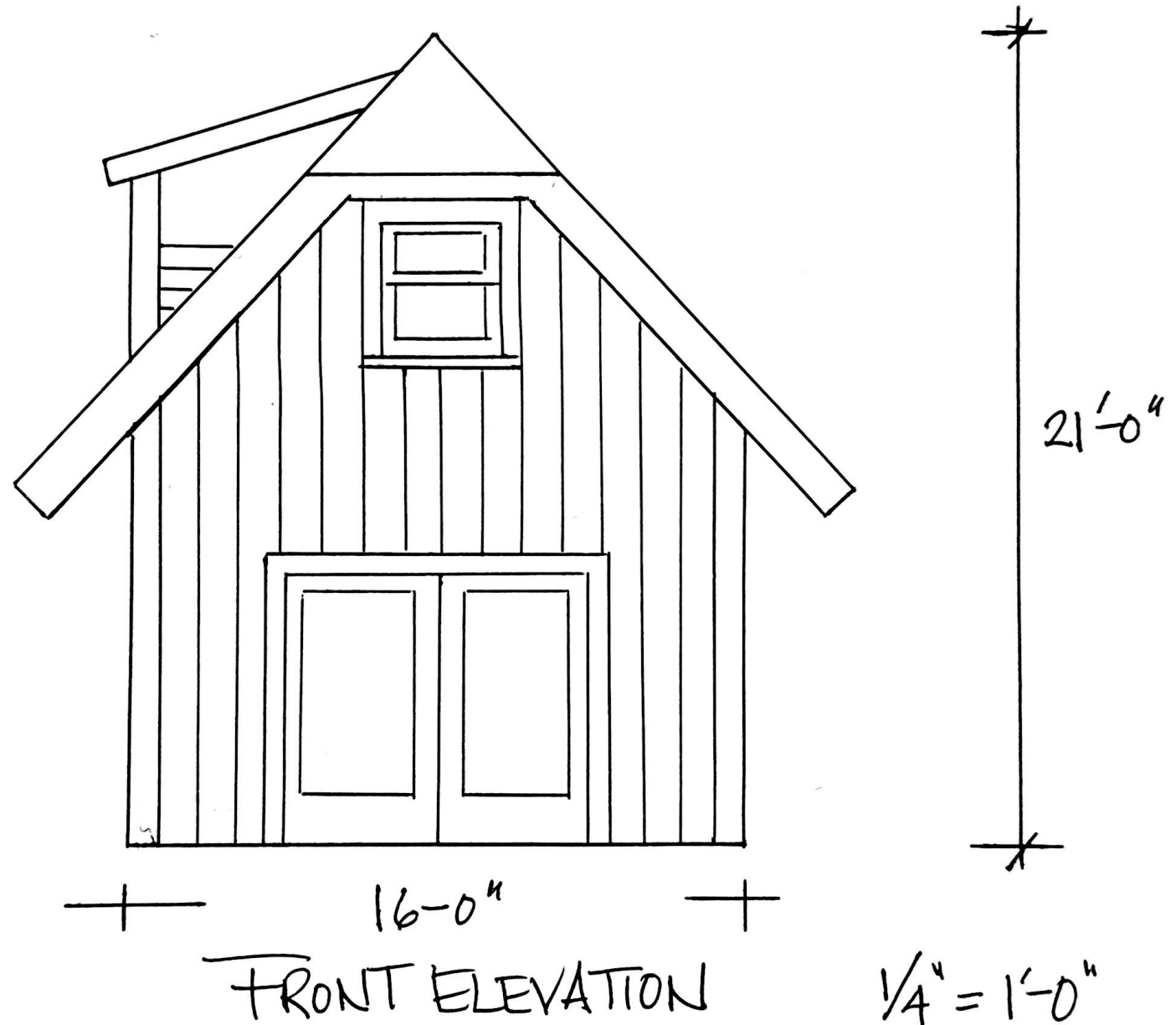
Print map scale is approximate.  
Critical layout or measurement  
activities should not be done using  
this resource.

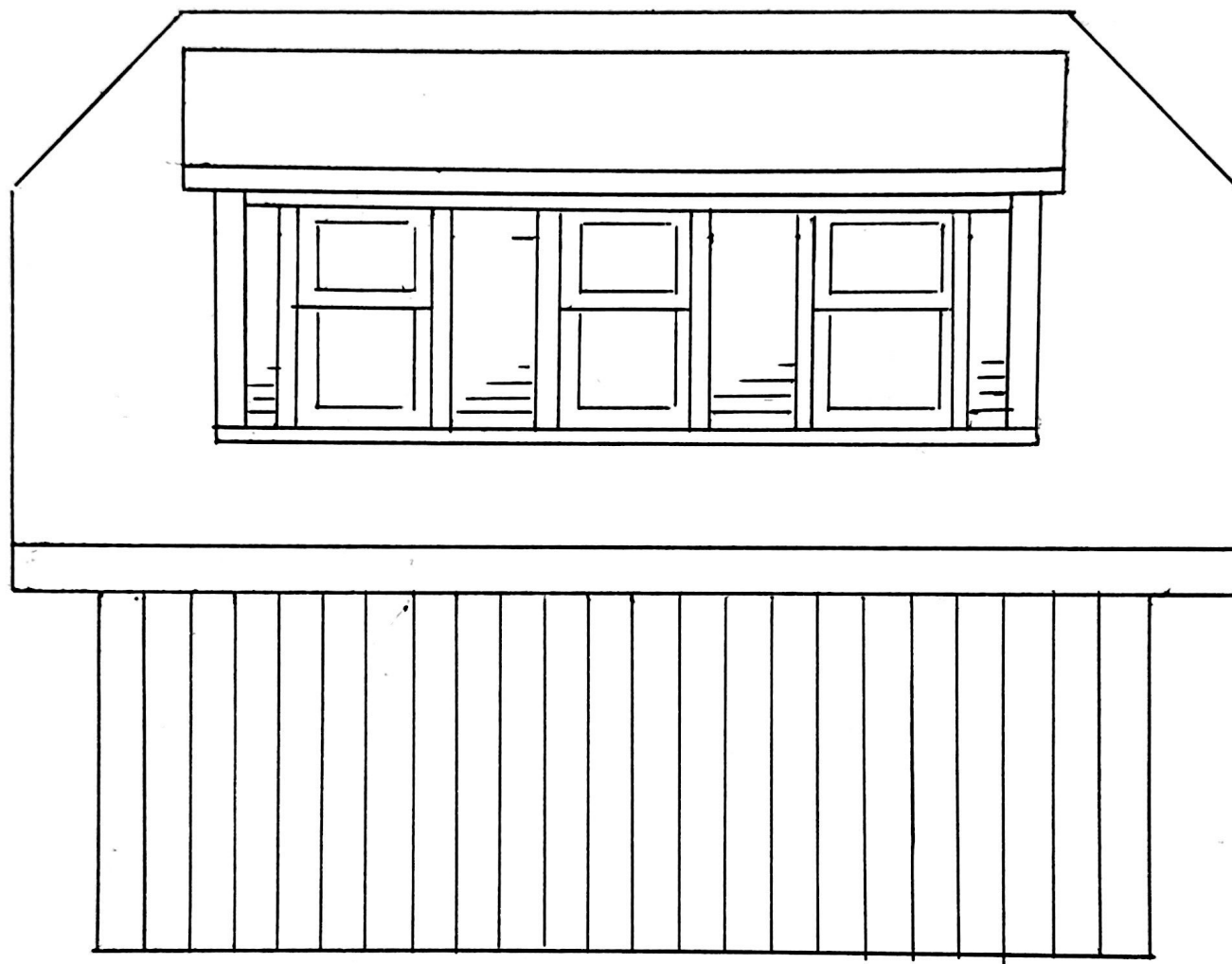


BERKLY RESIDENCE  
121 EASTWOOD DRIVE



BERKY RESIDENCE / STORAGE STRUCTURE  
121 EASTWOOD DRIVE

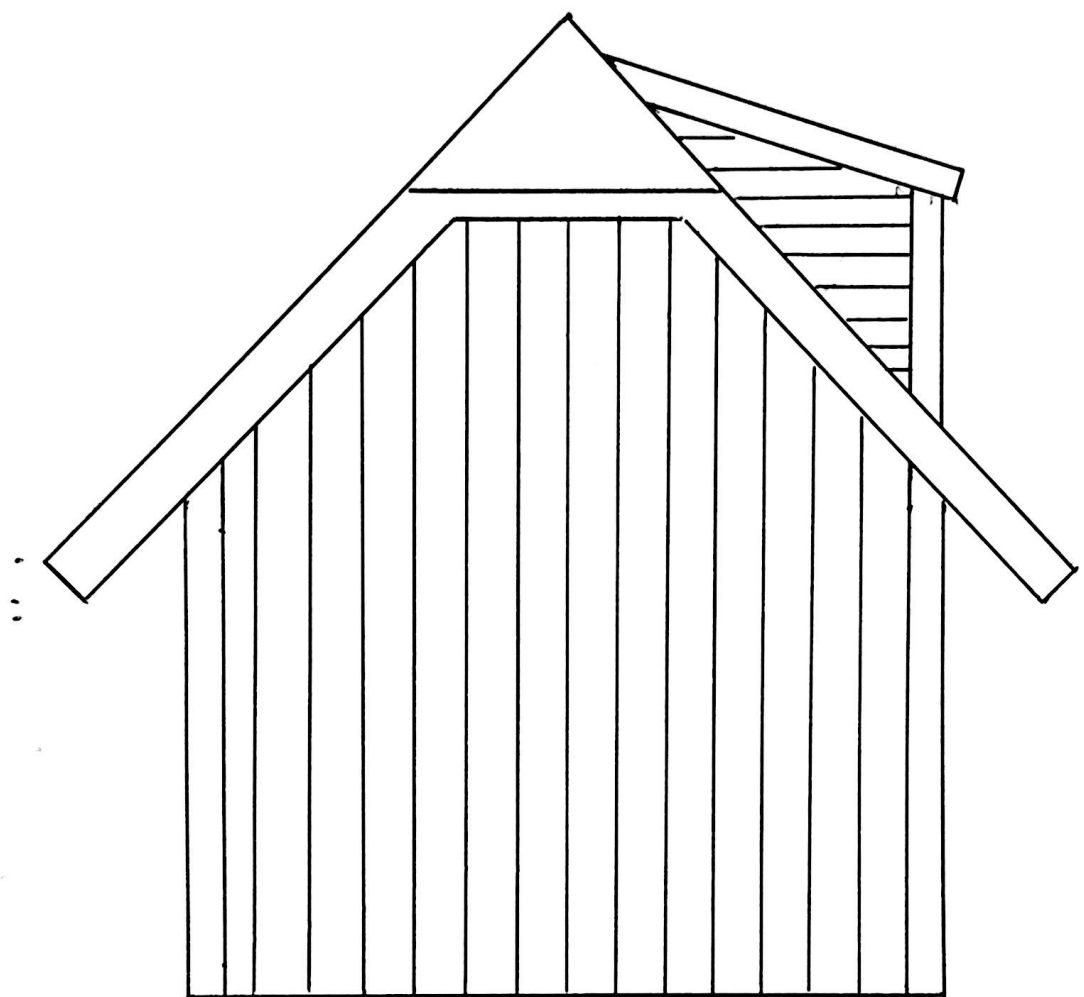




24'-0"

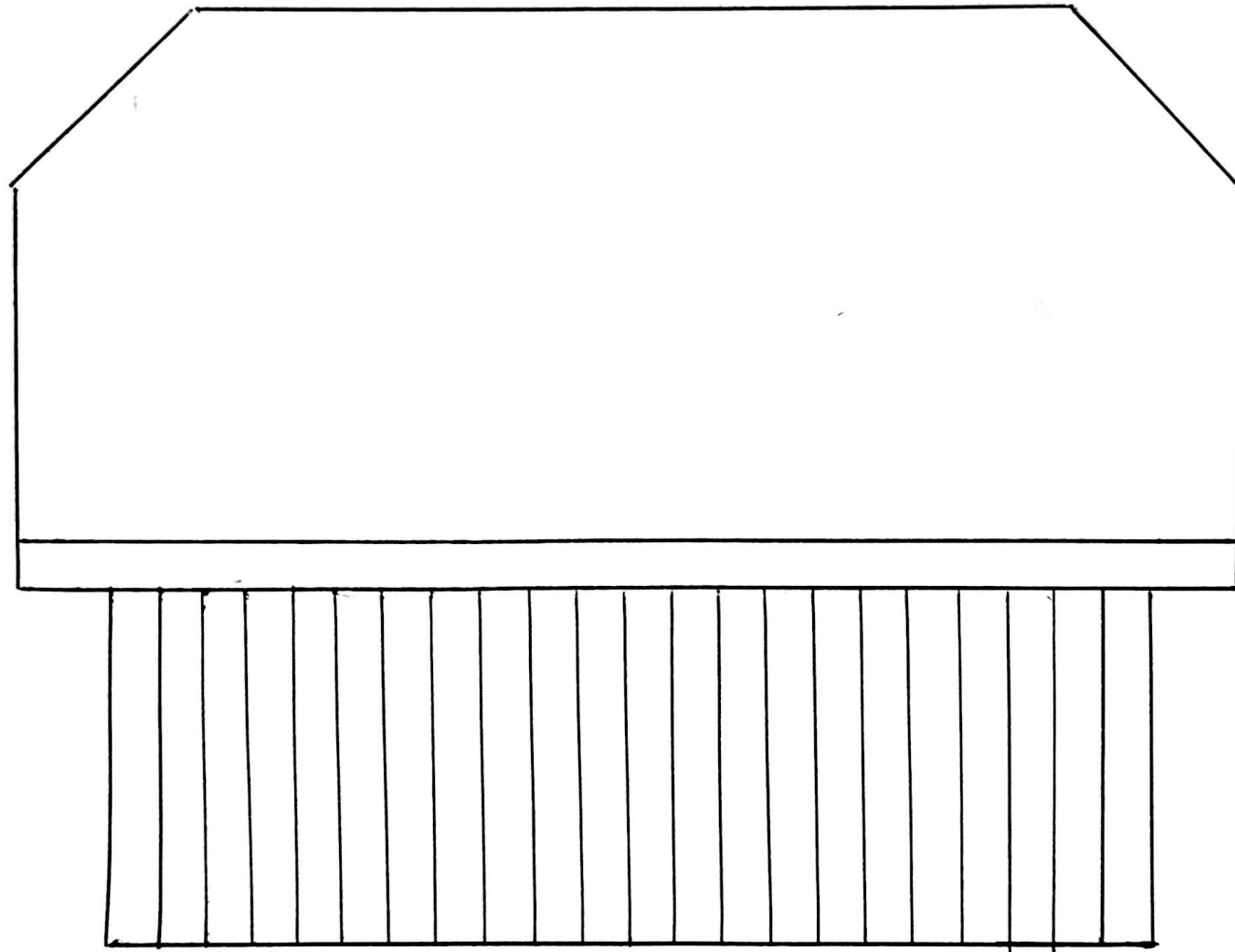
LEFT SIDE ELEVATION  $\frac{1}{4}" = 1'-0"$





REAR ELEVATION

$\frac{1}{4}'' = 1'-0''$



RIGHT SIDE ELEVATION  $\frac{1}{4}'' = 1'-0''$



















111 EASTWOOD DRIVE



















131 EASTWOOD

141 EASTWOOD

PROPOSED ACCESSORY STRUCTURE LOCATION













11 EASTWOOD SHEDS

EASTWOOD SHED

10 FOOT SIDE YARD

PROPOSED 5 FOOT REAR SETBACK



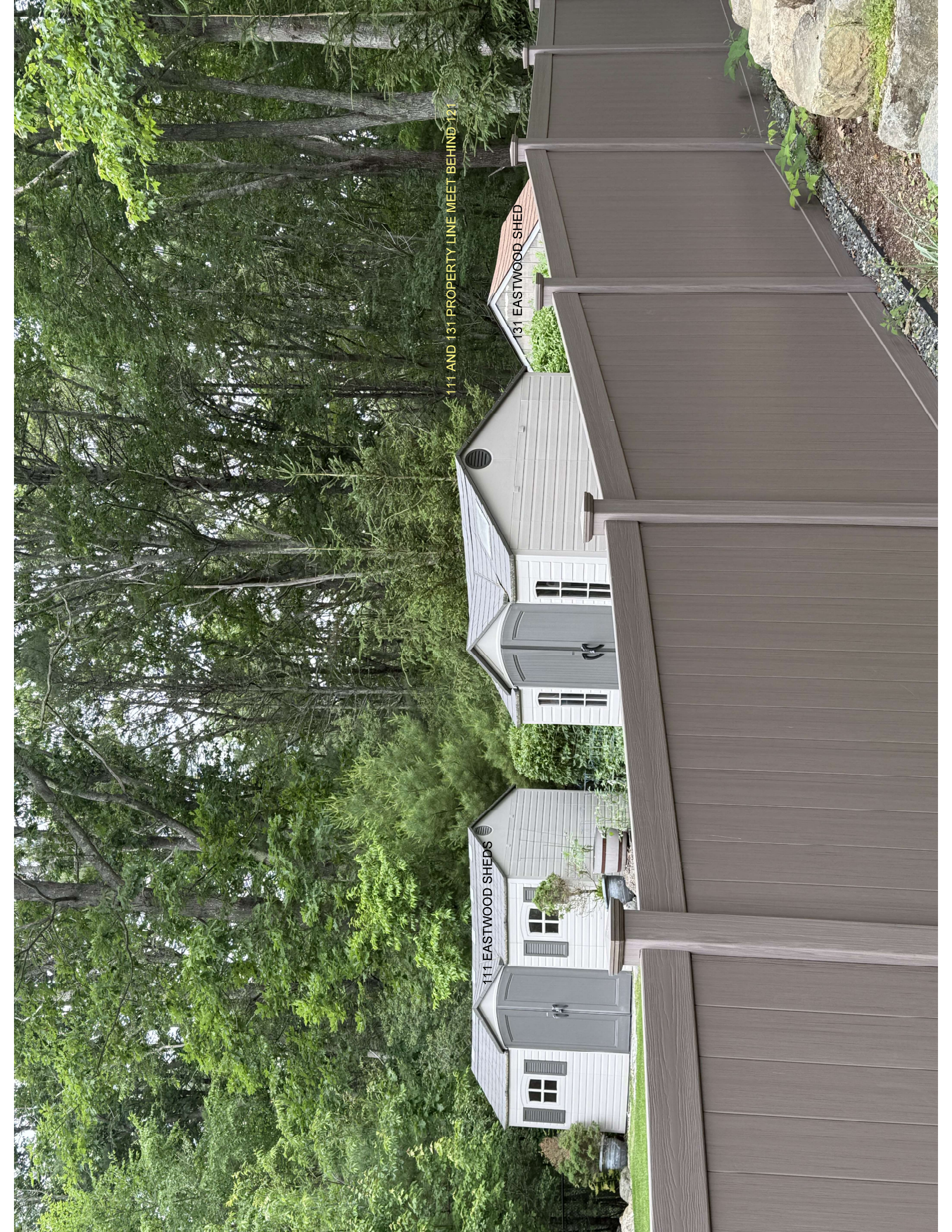


REAR PROPERTY LINE FOR 111 AND 121 EASTWOOD

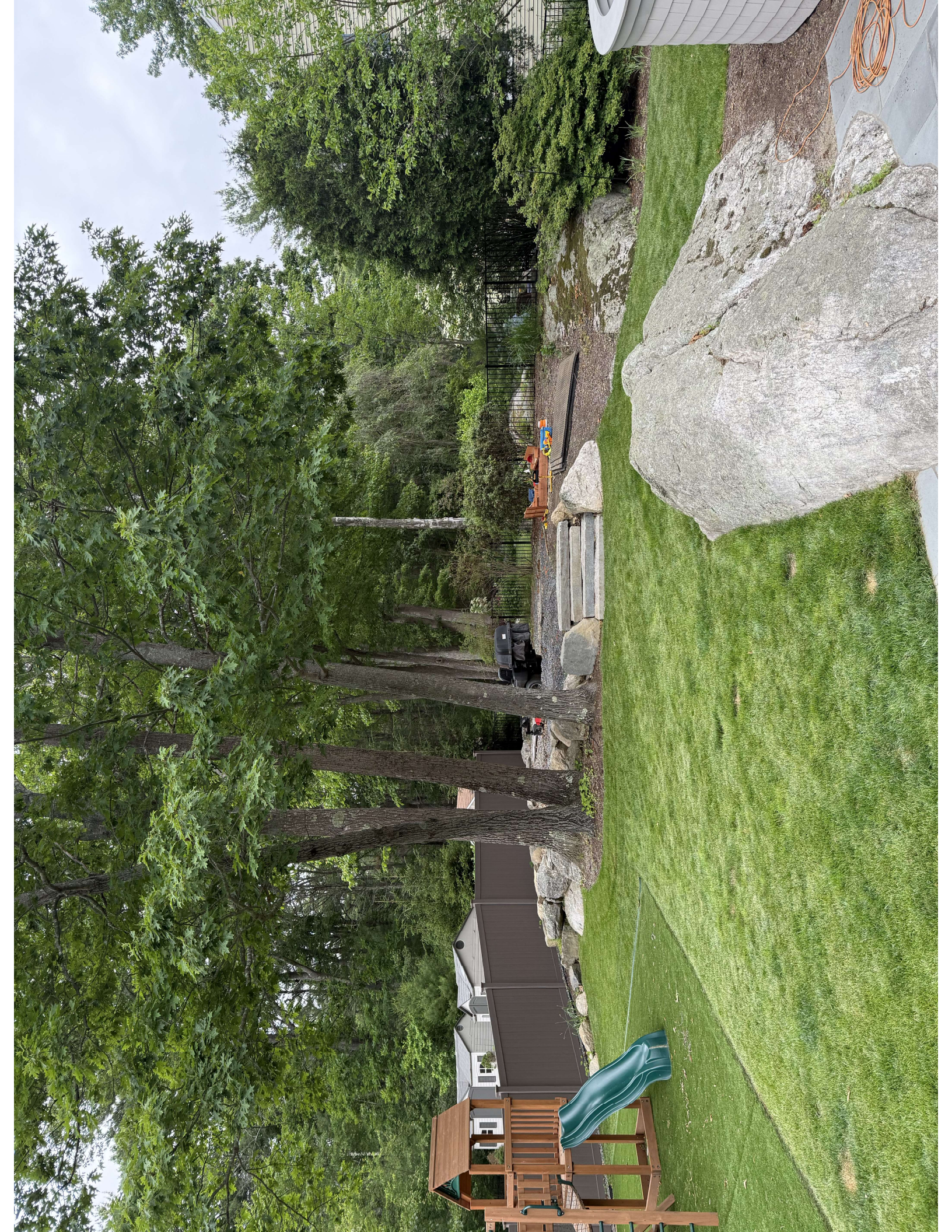








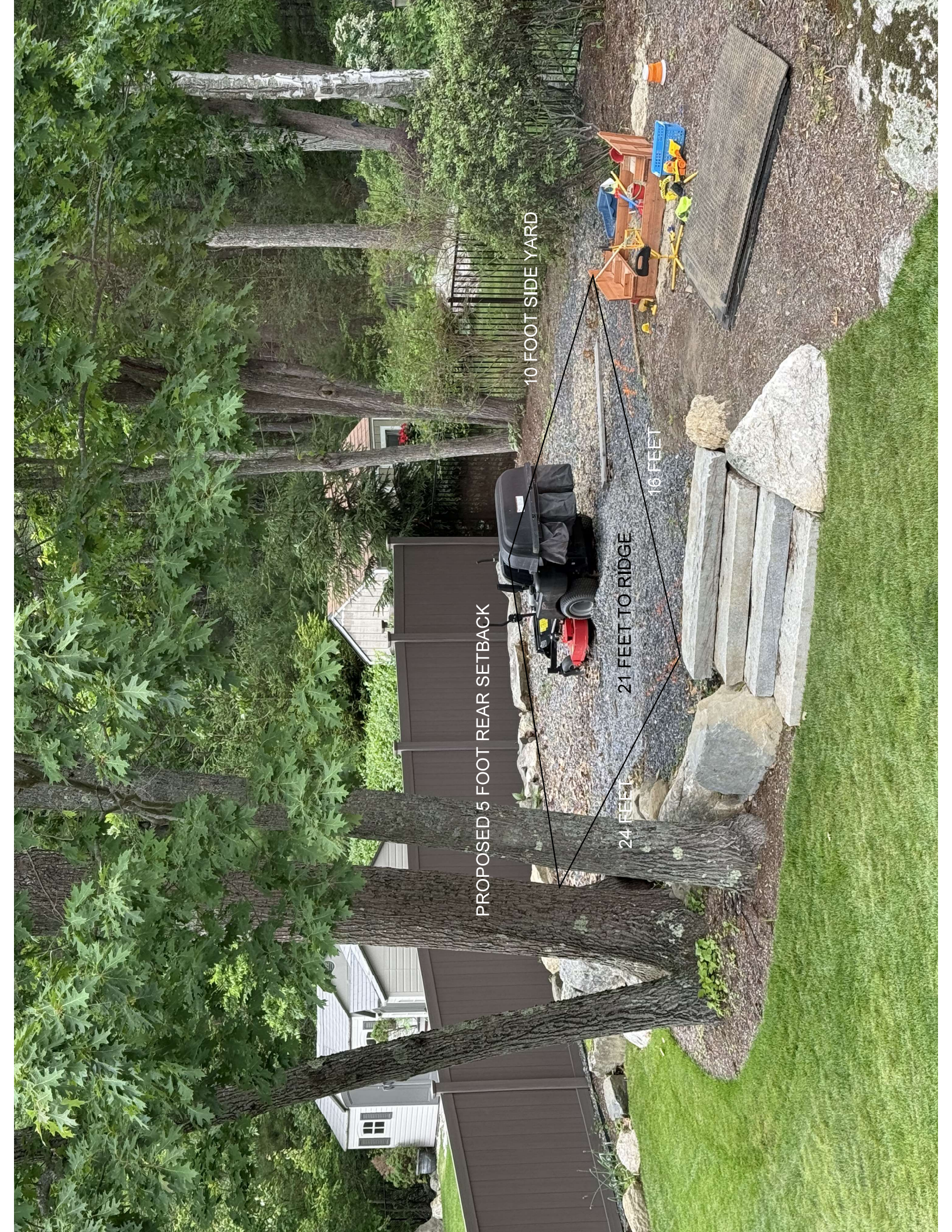












PROPOSED 5 FOOT REAR SETBACK

24 FEET

21 FEET TO RIDGE

16 FEET

10 FOOT SIDE YARD