

# Before the City of Portsmouth Zoning Board of Adjustment

## Petition of Tobias Lear House Historic Inn, LLC, 49 Hunking Street Request for a Variance Regarding Front Fence Height

### The Property

The subject property at 49 Hunking Street is known as the Tobias Lear House, a 1730's dwelling expanded to its present Georgian configuration in the 1760's. The house is noted for its association with George Washington; Tobias Lear V, who was born in this house, was personal secretary to George Washington for some 14 years. But the house is important also for its architecture and its well preserved structure and historic fabric. From 1940 to 2019, the Tobias Lear House, together with the adjacent Wentworth-Gardner House, was part of a two-house museum complex. In April 2019, this Board granted a variance for the operation of a small, two-bedroom inn on this property. In July 2019 Petitioner purchased the property and began a rehabilitation of the house and grounds now nearing completion. The house is located within the Historic District, in the GRB zoning district and can be found on Tax Map 103 as lot 39.

### The Proposal

As part of an overall perimeter fencing plan, petitioner seeks to build historically appropriate fencing along the 85-foot boundary fronting on Hunking Street. This petition is a request for a variance from code section 10.515.13, which requires front yard fencing not to exceed four feet in height. As illustrated in the attached Owner's Sketches, the proposed street front fence will be in two sections: (1) a 51-foot decorative, capped picket fence along the eastern half of the street frontage, roughly coextensive with the front façade of the house, varying in height from 4'6" to 5'6"; and (2) a 34-foot vertical board privacy fence varying in height from 5'0" to 6'0" along the remainder of the street frontage. This street front fencing was part of a comprehensive perimeter fencing plan approved by the Historic District Commission ("HDC") on March 3, 2021 (copy of application attached). Historic New England, a non-profit historic preservation organization which holds a preservation easement on both the dwelling and surrounding grounds, subsequently approved the plan by letter dated March 11, 2021 (copy of request and approval attached).

### Factual Discussion

Petitioner has sought to design fencing for the Tobias Lear House which: (1) resonates with historic fencing in the City of Portsmouth for a house of its size, character, and period; (2) complements the architecture of the house and its physical setting in the community; and (3) meets the special characteristics of the lot itself, which includes a substantial side yard with Hunking Street frontage and a ten-foot front yard, both of which are somewhat unusual for this neighborhood.

*The Decorative Fence.* Petitioner believes that a decorative fence along the front of the house is a necessary complement to this historically important property. Architecturally, the fence sets the stage and provides context for the house. As noted in the attached HDC application, the form and design of the proposed decorative fence is intended to mark the importance of the house but in a measured and restrained way. Additionally, the size and placement of the fence should harmonize with the structure. The front yard of the property measures approximately 10 feet on average from the front façade of the house to the property line just short of the street curb. The fence will sit three feet from the property line, allowing for low plantings and, in winter, room for snow to accumulate from plowing (there are no sidewalks along Hunking Street and no city-owned

buffer between curb and property line). That leaves a seven foot space for an enclosed front yard for circulation within the fencing, for additional plantings, and a sitting area along the front entrance.

Petitioner views the height of the decorative fence, which, as measured at the top of each post, begins at 4'6" and increases to 5'6," as appropriate and necessary from an aesthetic view point in light of the size of the house. Not only is this a large, two-story 1760 Georgian house, but it has an unusually steep hipped roof with three dormers, and rises slightly over 35 feet from grade to chimney top. The house, thus, calls out for a fence of some stature. That said, the proposed decorative fence height is only marginally in excess of the four-foot ordinance limit, particularly if measured from the capped rail, which will be about nine inches below the post tops; the cap height will average only about 4'3" above grade. There will be no gate or fencing, it should be noted, at the front entrance. (It also bears noting that while moving the proposed fencing two feet closer to the house might obviate the need for the variance requested here, in Petitioner's view this would be an unhappy result aesthetically; the size of the house, and its height, in particular, argue for as much breathing room as feasible between façade and fence, and a fence of the same height as proposed here but placed closer to the house would look out of scale. The placement of the fence three feet from the curb and seven feet from the front façade strikes the proper aesthetic and utilitarian balance.)

*The Privacy Fence.* The privacy portion of the front fencing plan responds in part to the criterion of appropriate historic fencing for the house. As further described in the fencing plan presented to the HDC, the city abounds with examples of street front historic fencing which combines both decorative and privacy fencing, the decorative portion typically coextensive with the façade and the privacy fencing flanking it on one or both sides. Thus, the privacy portion *in combination with the decorative portion* strikes an important note of historical resonance. Additionally, the vertical board privacy fencing also serves a real 21<sup>st</sup> century need for privacy. There is a substantial side yard on the property, measuring roughly 34 x 42 feet – substantial relative to most other properties in this neighborhood of small lots and tightly-packed-together houses. This side yard would typically be used for off-street parking for the property, but such a use would significantly detract from the structure's historic stature. Petitioner has opted instead to use this space for a side garden and sitting area to enhance the historical structure and property. The fence is thus needed for some privacy in the side garden, but the face of the fence to the street is not unfriendly; it has character, detail and variety in its vertical planks, rails, cap, and double-door gate entrance to the garden. Moreover, while the maximum fence height as measured from the fence post top at the terminus will be 6'0", the average fence height, measured at the running cap, will be about nine inches less, at 5'3". The fence size will also be softened visually by plantings between it and the curb.

### **Application of Standards for Granting a Variance**

Petitioner submits that the proposed design and placement of the street front fencing for the Tobias Lear House, as summarized above and as further described in the attached HDC application, amply satisfies the requirements for the requested variance relief.

None of the applicable policies underlying the fence height provisions would be undermined by allowing the modest increase in front fence height sought herein. As regards the proposed decorative fencing portions directly in front of the house, ease of access by fire and other emergency vehicles would not be compromised by the proposed fencing. The absence of a gate or fencing at the front entrance to the house further eases access. With its picket fencing, the 3-foot setback from the curb and the additional seven feet between fence and front façade, there is ample space for flow of air and light. For passers-by and neighbors, moreover, this is not a fence that attempts to intimidate

or block out public view. Quite to the contrary, the fence is there to properly frame and highlight, not restrict the view of this historic property from the street.

The smaller privacy fence stands on a somewhat different footing, of course; one of its principal functions is privacy. But this fence is more akin to a side yard fence. It, too, is set back three feet from the curb, and, while providing necessary privacy for the garden and sitting area, the fence has significant detail designed to invite visual inspection and to pique interest, with its double garden doors, in what lies behind it. Rather than a detriment to the neighborhood, the privacy fence would clearly be an enhancement of the visual environment, especially when compared to what would be a more typical use in the neighborhood, a parking space for two or more cars.

In sum, it seems more than fair to conclude that granting the requested variance will not be contrary to the public interest nor will it undermine the spirit of the Ordinance. The spirit of the Ordinance will be observed.

The values of surrounding properties will not be diminished by the proposed fencing. It is already apparent to neighbors, Petitioner submits, that the substantial rehabilitation underway, and nearly completed on the exterior of the house, has already transformed what for years has been a neighborhood eyesore into a key point of visual interest and community pride, giving a boost to spirits as well as neighboring property values. The proposed fencing is an integral component of the ongoing rehabilitation of the property and it, too, will enhance both the house, and with it, surrounding property values.

By much the same token, substantial justice will be done in granting the requested variance. Petitioner has devoted substantial resources, above and beyond normal construction and renovation costs, to rehabilitate this property using best historical-preservation practices. This has been done, moreover, under the watchful eye of not only the HDC but also Historic New England, the preservation easement holder. To be sure, Petitioner undertook this project knowing full well the nature and extent of the burdens such easement restrictions entail, but it should be noted that these burdens on the property, and on the Petitioner, translate, into a substantial, enduring benefit to the public at large. It would be unfair, and unjust, to deny petitioner the latitude he requests to carry out his carefully considered fencing plan, now approved by both the HDC and Historic New England, when this can be done without any detriment to the surrounding community.

The combination of special characteristics inherent in this property which distinguish it from most other properties in the neighborhood –its historic importance, its physical size and architecture, its unusually steep hipped roof, the existence of an historic preservation agreement burdening the property, the ample size of the front and side yards – is such that literal enforcement of the fence height limitation provision would result in hardship to Petitioner, restricting his ability to provide historical and architecturally appropriate street front fencing, an important component of maintaining the property’s historic integrity and of presenting the property to the public. And it would be an absolutely unnecessary hardship as there would be no detriment to the surrounding community if the variance is granted.

No fair and substantial relationship, therefore, could be said to exist between the general purposes of the Ordinance and specifically, section 10.515.13 – among them, public safety, ample air and light, neighbor-friendly fencing -- and its specific application here to the subject property. At the same time, several important ordinance objectives such as the preservation and enhancement of the visual environment and the preservation of structures of historic and architectural interest would clearly be advanced, Petitioner submits, by granting the requested relief.

;

Finally, the use proposed here by Petitioner is a reasonable one since, as demonstrated in the foregoing discussion, it will not adversely affect the surrounding neighborhood area in any manner.

**Conclusion**

For all the foregoing reasons, petitioner respectfully submits that the variance be granted as requested.

/s/ Stephen M. Foster

Stephen M. Foster

Owner, Manager

Tobias Lear House Historic Inn, LLC

March 31, 2021

Attachments:

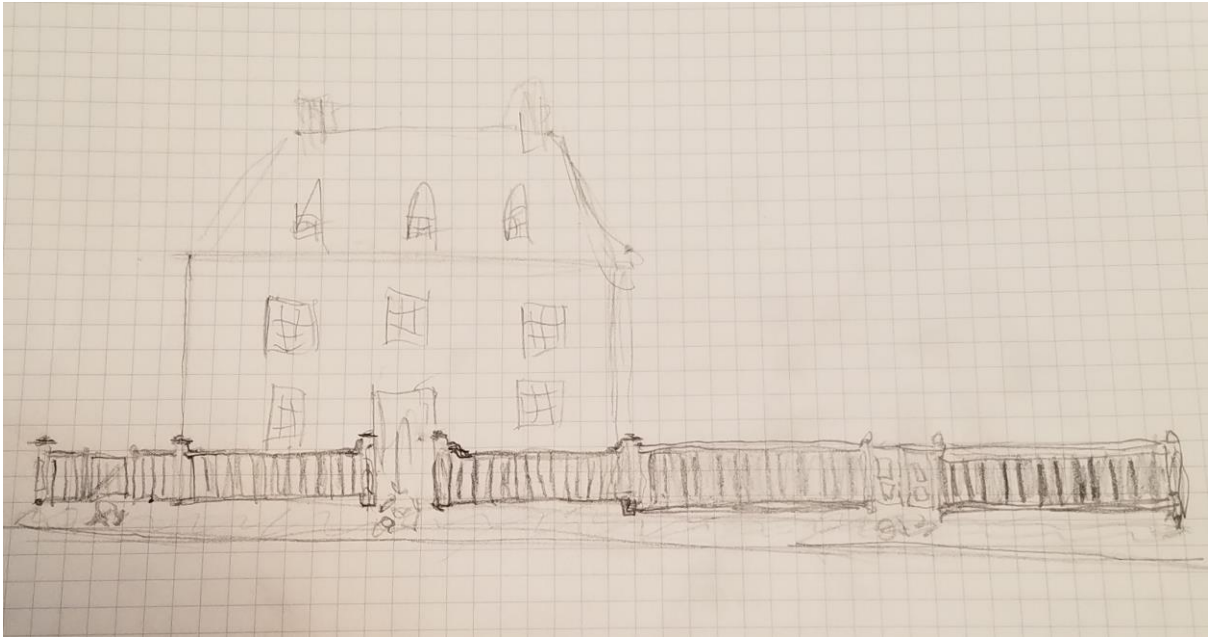
Owner's Sketches: Street Front Fencing

Letter of Historic New England dated March 11, 2021/Request to HNE for Approval of Fencing

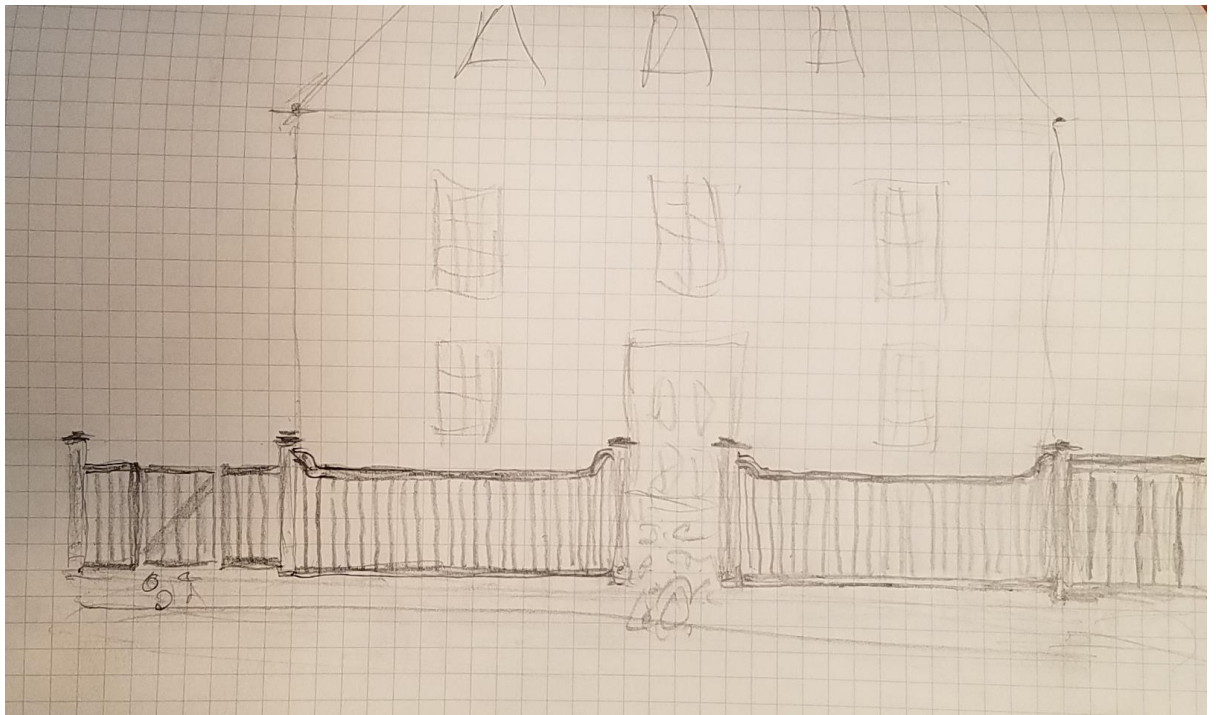
Application for Approval of Fencing Plan to the Historic District Commission

## Owner's Sketches: Street Front Fencing, Tobias Lear House, 49 Hunking

### Overview, Street Front Fencing

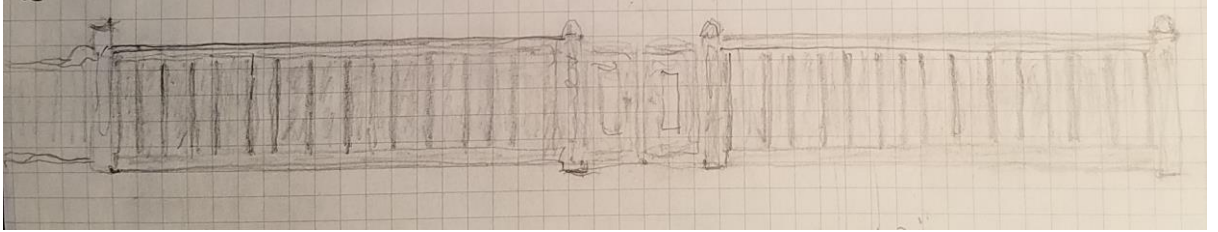


### Decorative Portion of Street Front Fencing



Fence post height, from left to right: 4'6", 4'9", 5'0", 5'0", and 5'6" allow for a level fence top, notwithstanding 12" drop in grade level along Hunking Street.

### Privacy Portion of Street Front Fencing



The fence rail is 5'0" in height at the left and 5'6" at its completion to the right, with a level top, the height difference compensating for an additional 6" drop in grade along Hunking Street. Fence post tops at gate and terminus add a maximum of 6".

## **Request for Historic District Commission Administrative Approval for Fencing**

Stephen Foster, Manager/Owner  
Tobias Lear House Historic Inn, LLC  
49 Hunking Street, Portsmouth NH 03801

February 14, 2021

### **Introduction**

This is a request to approve fencing for the Tobias Lear House at 49 Hunking Street. There are three sections of proposed fencing. These are:

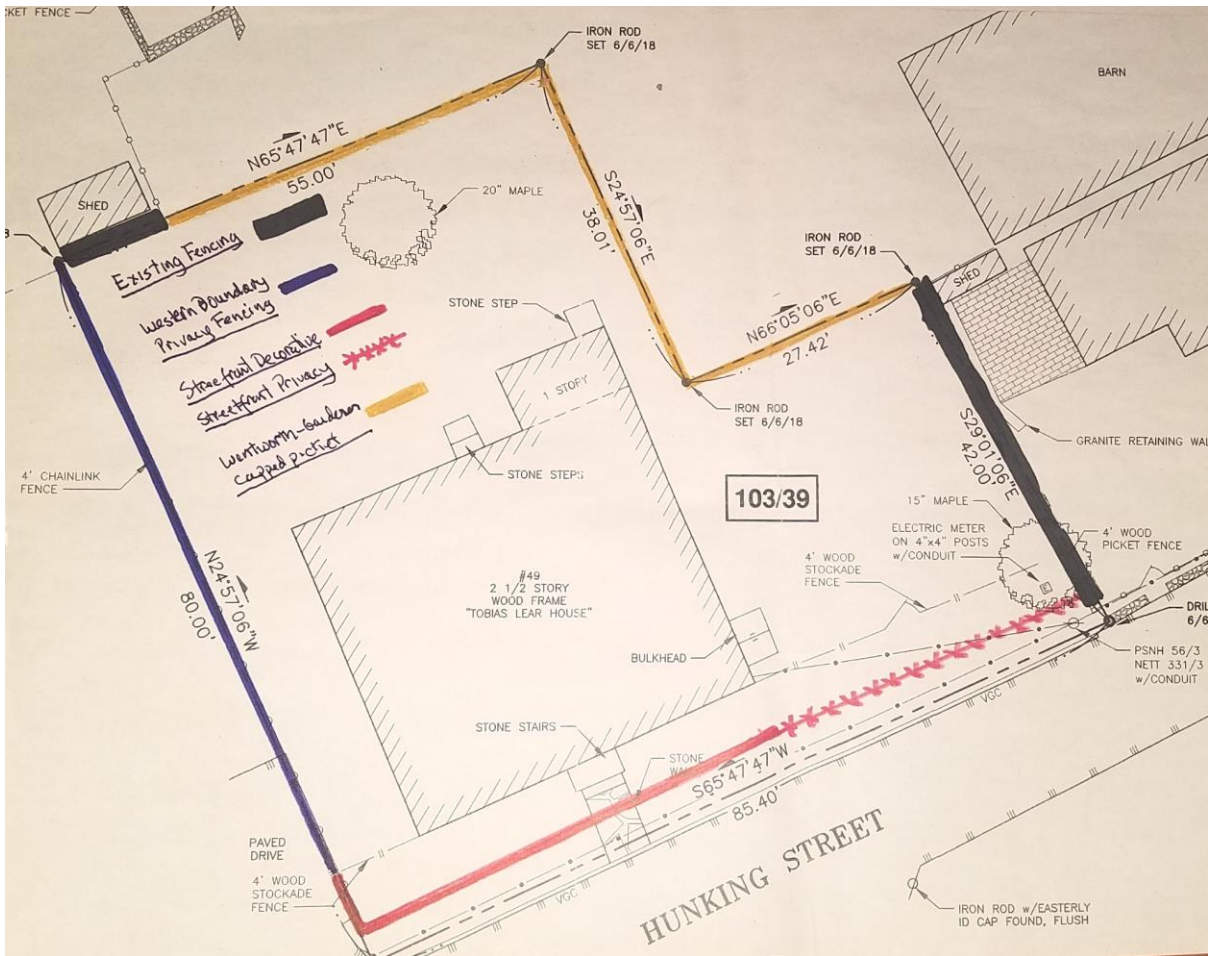
(1) historically resonant decorative and privacy board fencing along the front of the property facing Hunking Street (marked in red in the plan below);

(2) vertical-board privacy fencing along the western property line abutting 33 Hunking Street (blue in the sketch below); and

(3) capped picket fencing replicating the neighbor's fencing along the northern (rear) property line with the Wentworth-Gardner House (ochre in the sketch below).

Existing neighbor fencing in the plan is shown in black.

### **Tobias Lear House, Schematic Plan of Existing and Proposed Fencing**



### 1. Street Front Fencing

The property has 85 feet of frontage along Hunking Street, with a drop in elevation, west to east of about 18 inches. The proposed fencing divides the street front roughly equally into two types of fencing, the one a decorative fence beginning at the western boundary and continuing along the front façade of the house, the other a vertical-board privacy fence. Both fences will be set back three feet from the Hunking Street curb, with plantings planned for the space between the fence and the curb

#### Existing Conditions, Hunking Street Front (view 1)





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Existing Conditions, Hunking Street front (view 2)



*Location of fancy solid board fence Lear S. East Corner Huntings St.*

The proposed street front fencing seeks to strike an appropriate historical chord for the mid-18<sup>th</sup> century Tobias Lear House. The use of two distinct fence types follows a pattern well documented among prominent Portsmouth houses of the 18<sup>th</sup> and early 19<sup>th</sup> centuries. This pattern calls for formal, often elaborate, decorative fencing co-extensive with the front façade of the house, and vertical-board privacy fencing along the remainder of the street front. The street front fencing at the Rundlett-May house, pictured below, is just one of many existing examples that reflect this historic precedent. (See, Howells, “The Architectural Heritage of the Piscataqua,” p. 179 fig. 238, Jeremiah Mason House, 1808; p. 174, fig. 229, William Haven House, ca. 1800; Size-Leighton House, p. 174, fig. 228; Austin-Lyman House, p. 159, fig. 199; Moffatt-Ladd House, p. 33, fig. 35; Rev. Samuel Langdon House, p. 121, fig. 143.)

### Rundlett-May House Street front Fencing



### Owner's Sketch, Proposed Street Front Fencing



**Street Front Fencing: Decorative Portion.** The decorative part of the proposed front-façade fencing is simpler than that seen on grand houses such as Rundlett-May. This is consistent with the character of the Tobias Lear House, which could perhaps be described as grand in size but otherwise straightforward. Accordingly, the proposed fencing, which has 12" square posts, a capped rail over simple pickets, and no elaborate finials, seeks to strike a restrained but dignified note. The one decorative embellishment is the initial curve to the cap where it

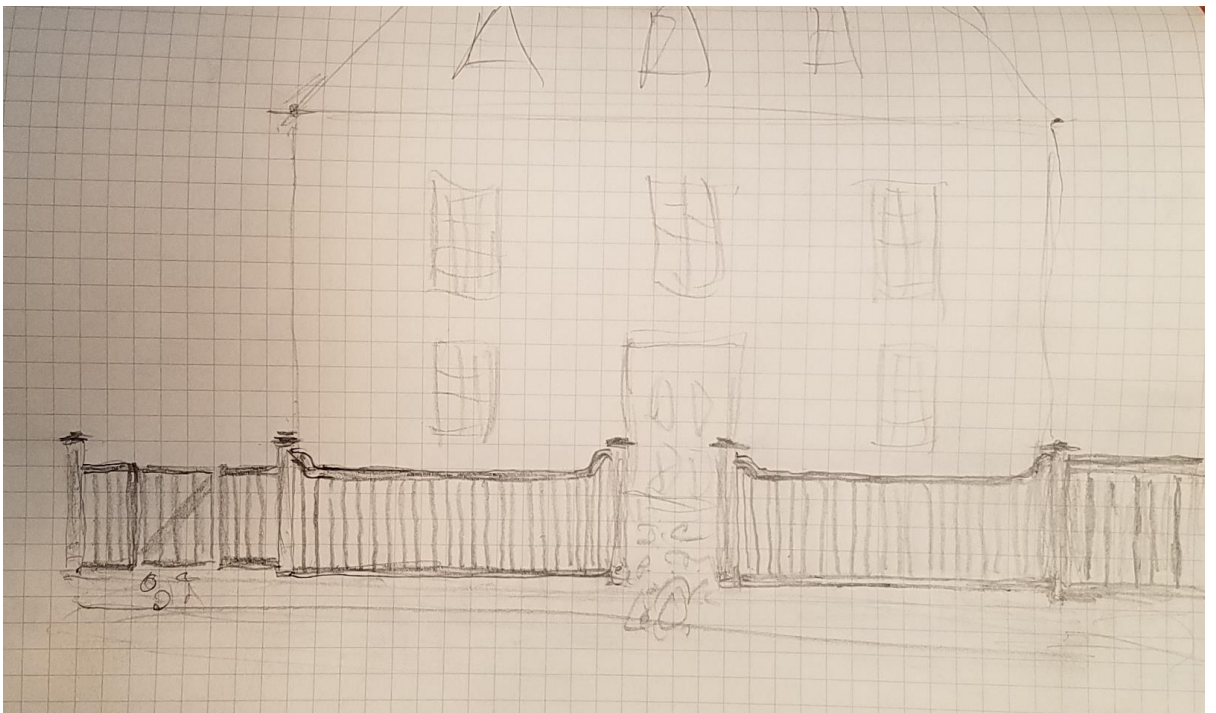
joins the four main posts, a cue taken from the Colonial Revival fence of the Lady Peperell house in Kittery (pictured below).

#### **Lady Peperell Fence, Decorative Rail Detail**



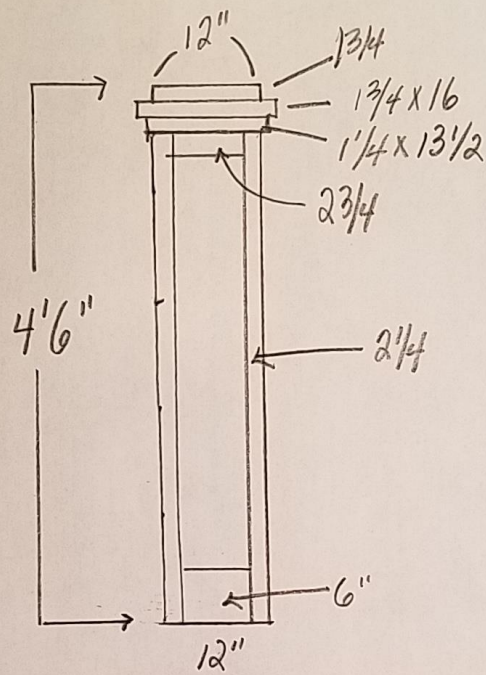
Fence post tops start at 4'6" at the western, upstreet end and reach 5'6" at the terminus, maintaining a level top and capped rail along this 42-foot section. The fence will be set back three feet from the Hunking Street curb. A sketch of this portion of the fence and a detailed builder's drawing follow.

#### **Owner's Sketch, Street Front Fencing, Decorative Section**

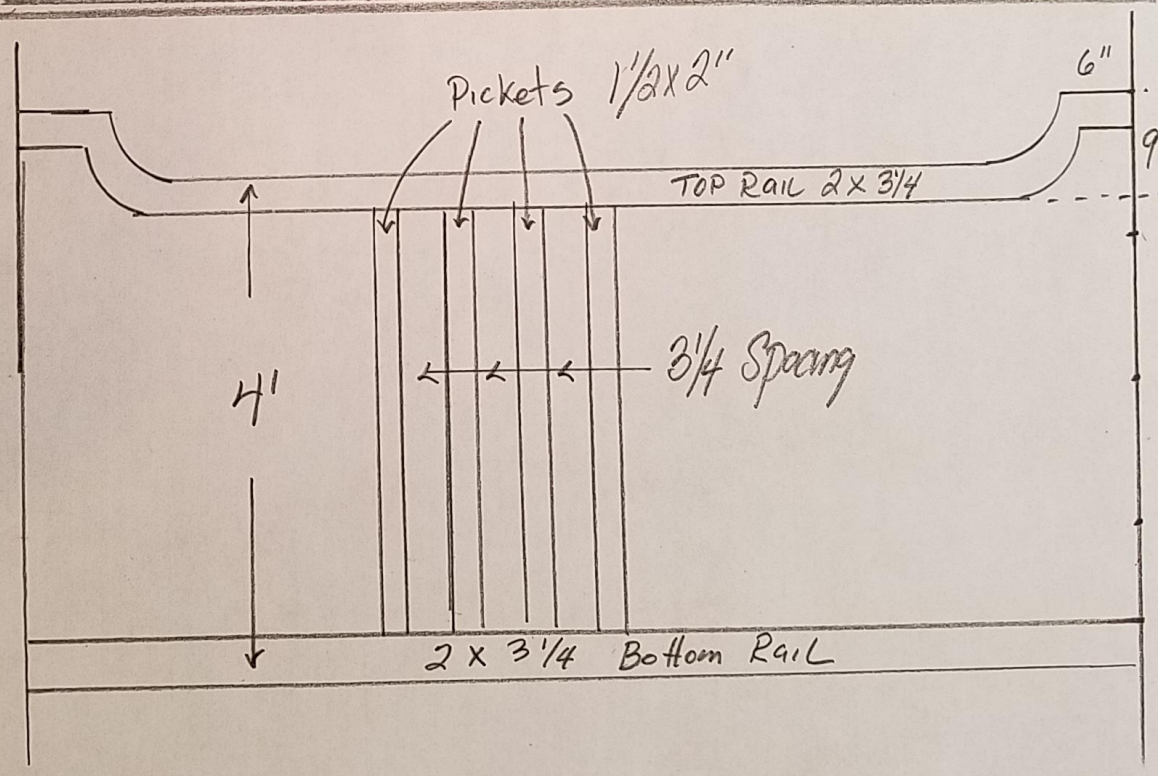


**Builder's Detail, Street Front Fencing, Decorative Portion**

5



Lady Peppercorn  
Fence Post  
& Rail with  
Pickets



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Appropriate plantings will screen utility and HVAC mechanicals, otherwise visible from the street, in the passage between the house and the western boundary fencing.

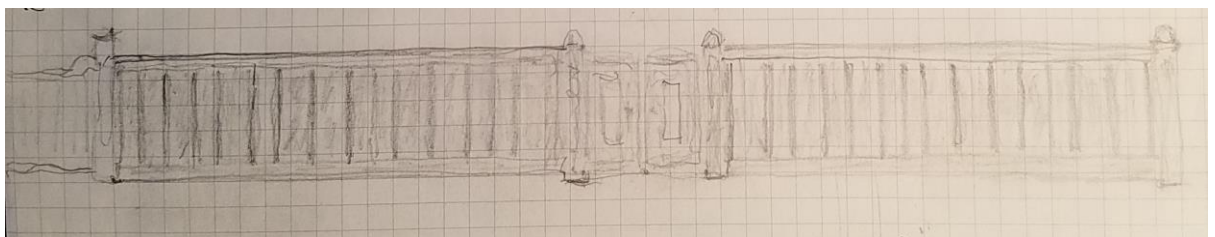
**Street Front Fencing, Privacy Portion.** The vertical-board privacy fence portion along the remaining street front is modeled after the privacy fence at the Walsh House, a ca. 1796 Strawberry Banke property on Washington Street (pictured below). The Walsh fence is a modest embellishment of a simple vertical-board fence; it has random width planks set behind 4" vertical boards with top and bottom rails and a cap profile of some size and detail.

**Walsh House**

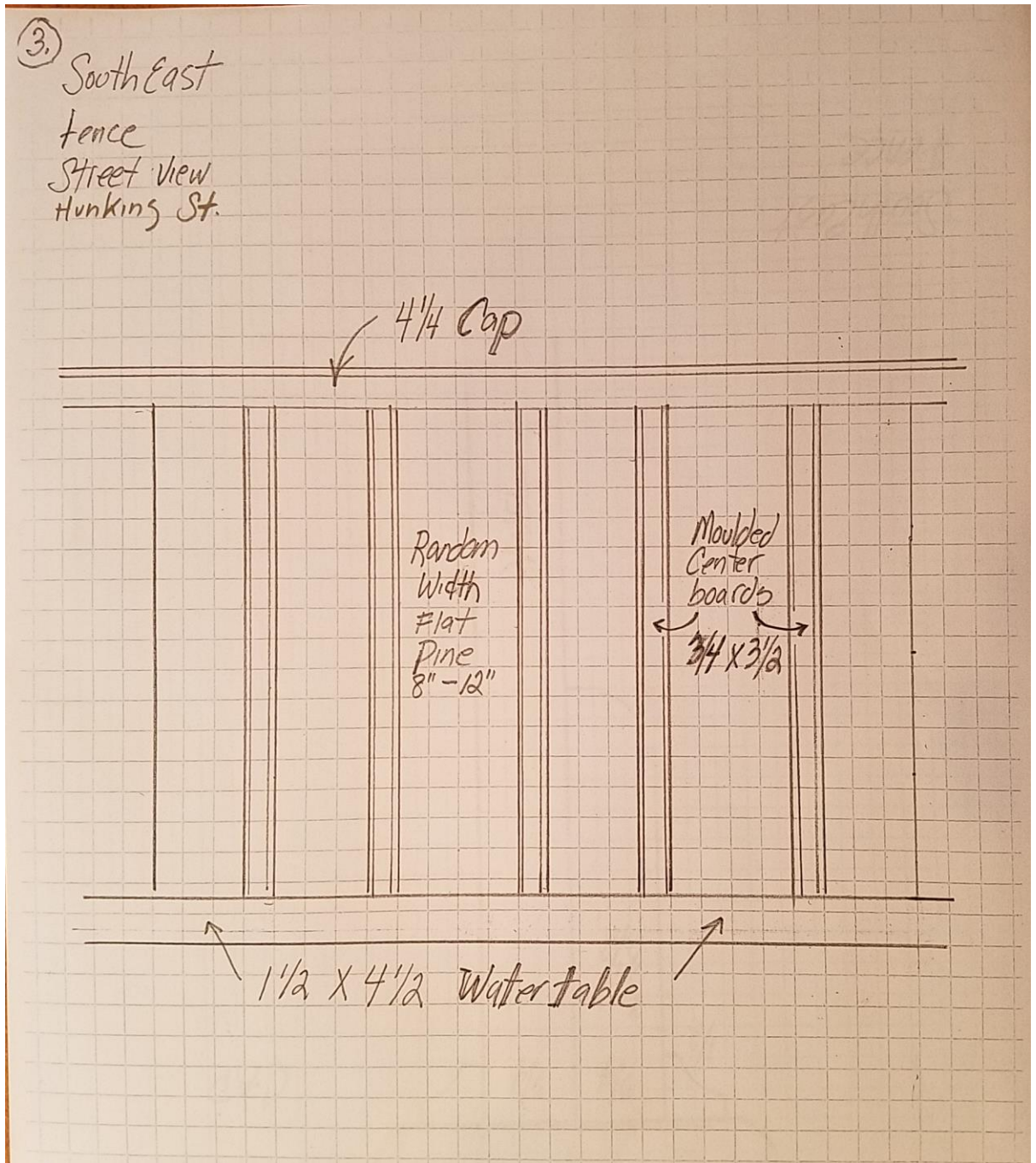


At the Tobias Lear House, the height of this fence will be 5'6" at the western, upstreet end and 6'0" at its terminus, maintaining a level top over its entire 40-foot plus length. In addition to being historically appropriate, privacy is in order here as behind the fence will be a garden and patio area. An owner's sketch and two builder's drawings follow.

**Owner's Sketch, Street front, Privacy Fence Section,**

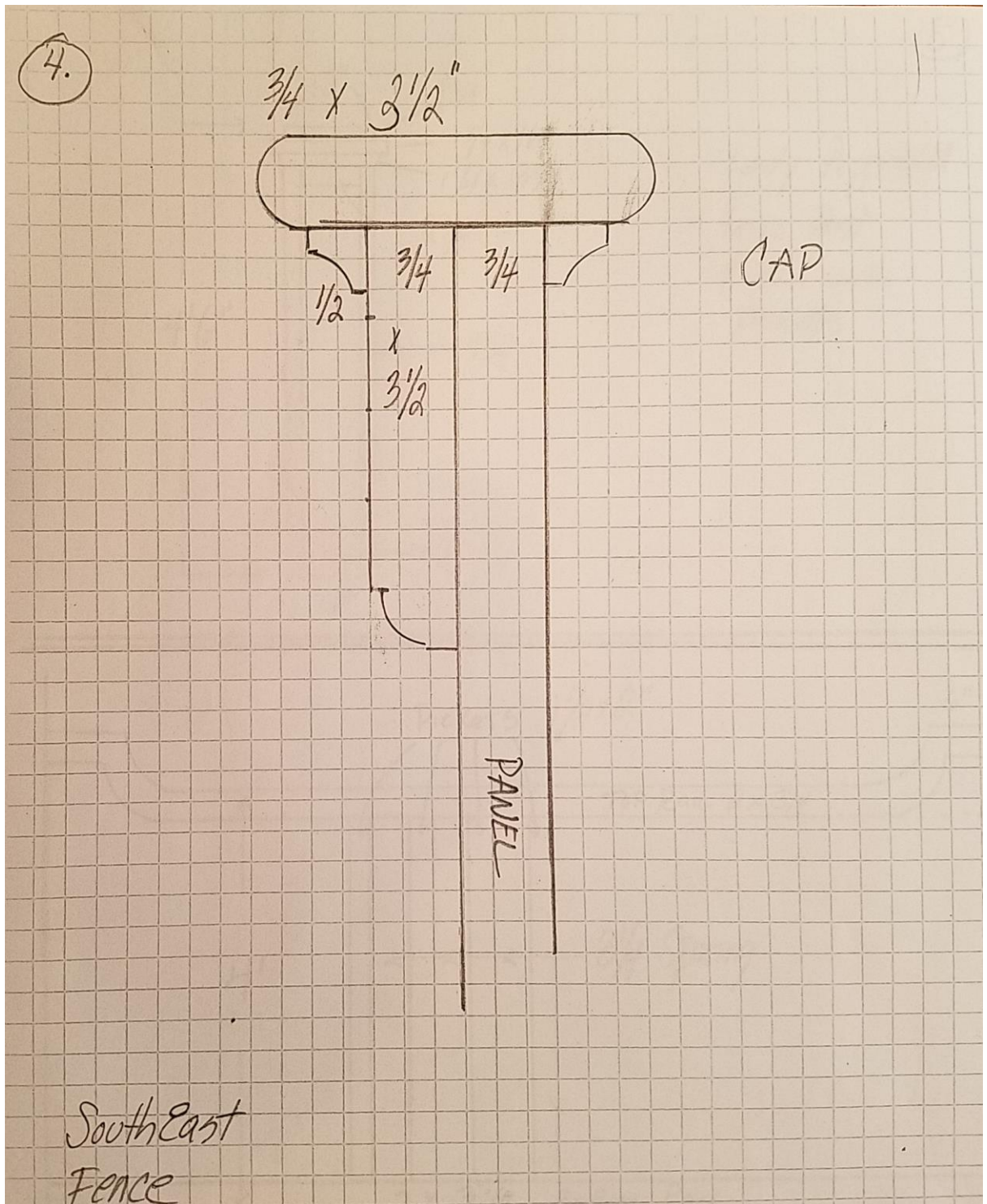


Builder's Detail, Street Front, Privacy Fence Section





Builder's Detail, Cap, Privacy Fence, Street Front



## 2. Fencing Along the Western Property Line Abutting 33 Hunking Street, Neighbor to the West.

A chain link fence was removed along the western property line in the summer of 2020 to allow for the construction of an approved low stone wall, approximately 45 feet in length. HDC subsequently approved an additional 16 +/- feet of low stone wall running to the rear (north) property line, scheduled to be built in the Spring of 2021.

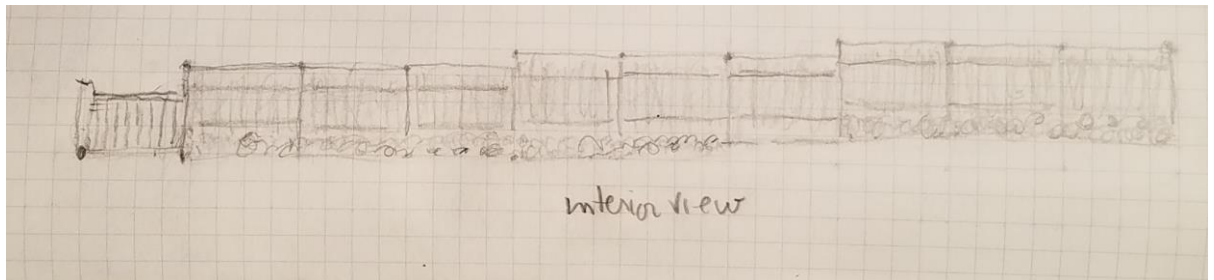
### Existing Conditions, Western Boundary Line



This fence will be made up of ten 8-foot sections. The first 8-foot section, the one closest to Hunking Street (left, in the owner's sketch below), follows the form of the formal

decorative picket fence along the front of the house described in fencing section 1 above. It serves as a transition to the street front fence. It is also lower in height (4'6" post, 4' capped rail) than the adjacent section of the vertical-board fence (about 5'3" above grade). The lower height and pickets give the neighbors better visibility for entering and exiting their parking area, which is directly adjacent to this section of proposed fencing.

**Owner's Sketch: Schematic View, Elevations, Western Boundary Privacy Fencing**



The remaining nine 8-foot sections of this fence are vertical-board privacy fencing sitting atop the low stone wall (but for the one 8-foot section mid-fence where there will be no stone wall). As seen in the sketch above, these nine sections are divided into three groups of three sections each, with ascending absolute heights for each group. The top of the fence of the second group of three sections is 9 inches higher than the first, and the third group is another 9 inches higher than the second. These increasing absolute heights reflect the gentle rise of the grade along this property line toward the rear. But, the actual fence height, as measured from the grade level on the neighboring property and including any elevation provided by the low stone wall, is lowest at the rear. Thus, the fence heights of each of these three sections will be, on average, 4'6", 5' 0", and 4'0," respectively. (The corresponding heights of the wood fencing from the top of the stone wall will be 3'9," 4'6," and 4'0".) This fencing plan allows the neighbors continuing easterly views to the back channel of the Piscataqua from their porch and from various points in their yard and garden.

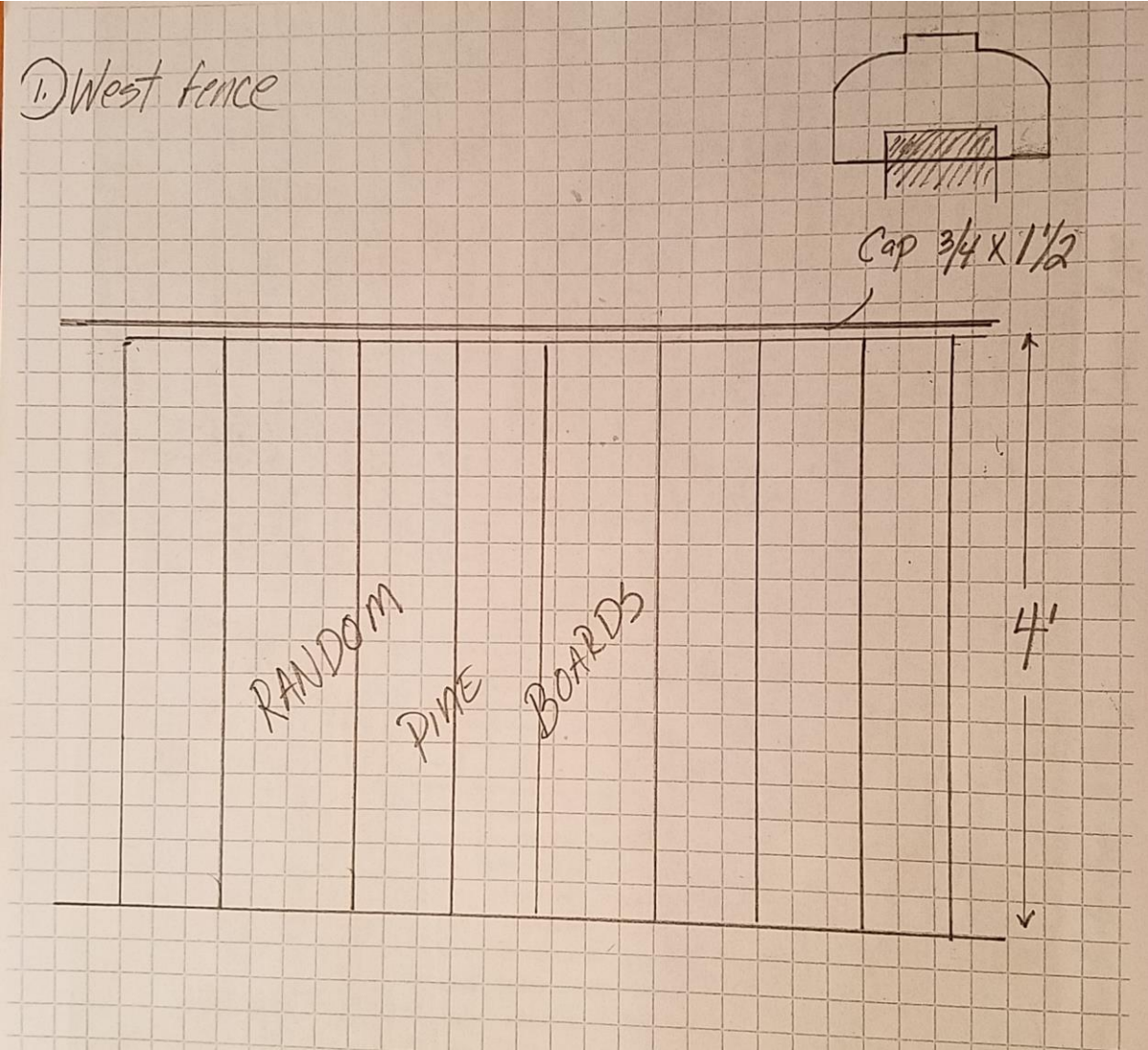
The photo below is an example of the proposed fencing (interior view) and the following builder's drawing shows an exterior view with detail for the fence cap.

**Builder's Example, Proposed Vertical Board Fencing, Western Boundary**



*Example of solid board fence      Clear West fence      (S. Banke location)*

Builder's Detail, Proposed Vertical Board Privacy Fencing, Western Boundary (exterior view).



**3. Northern Boundary with the Wentworth Gardner House.**

The 125' property line between the Tobias Lear House and the Wentworth Gardner House makes up the rear (northern) boundary of the property and is currently unfenced.

**Existing Conditions, Northern Boundary with Wentworth-Gardner House.**

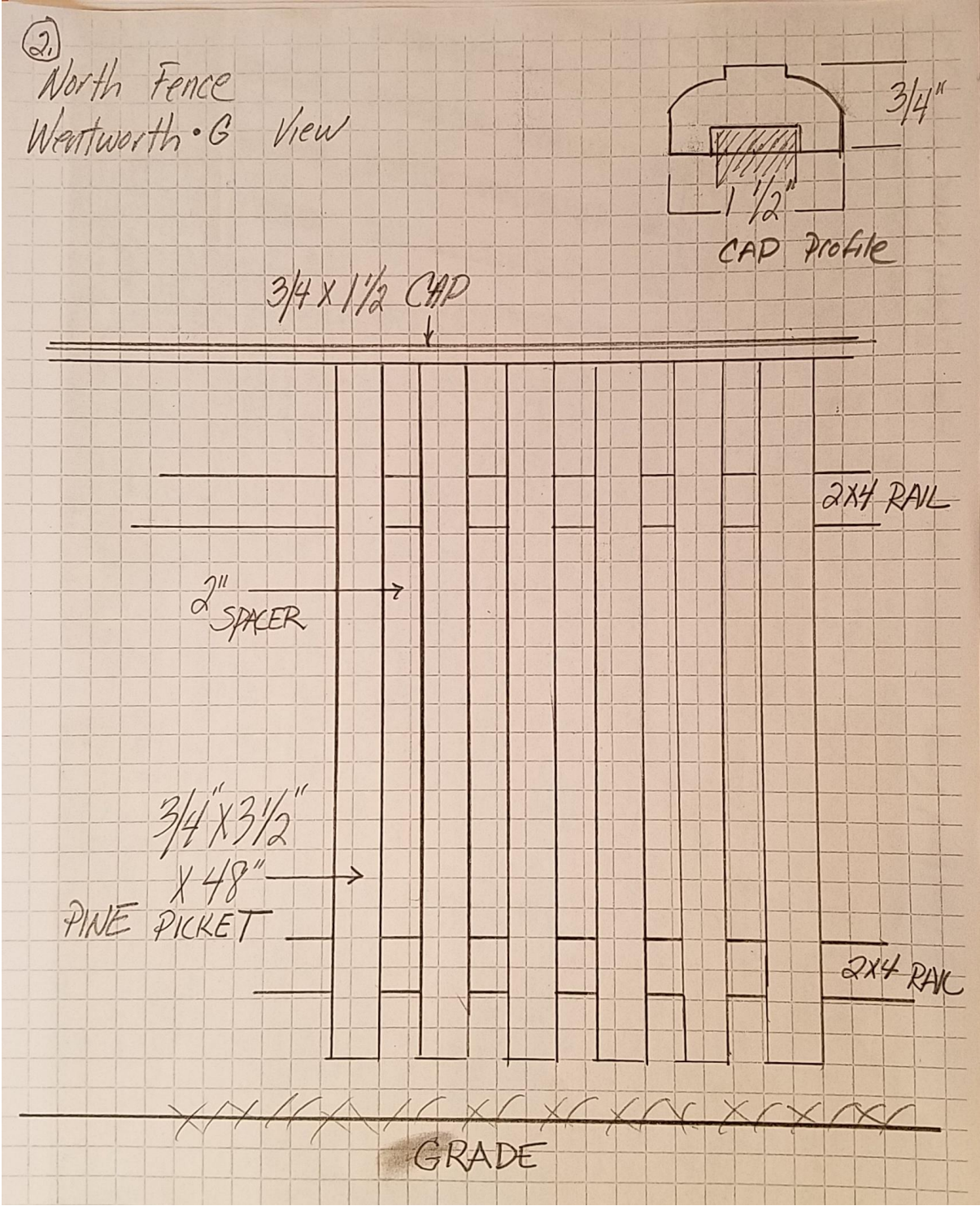


The proposed fence for this boundary line is a replication of the existing Wentworth Gardner fence, pictured below, facing Mechanic Street. A detailed builder's drawing follows.

Wentworth-Gardner House Existing Fencing (view from Mechanic Street)



Builder's Detail, Replication of Wentworth-Gardner Fence



End of submission.