

BY: VIEWPOINT & HAND DELIVERY

July 22, 2025

City of Portsmouth
Attn: Stefanie Casella, Planner
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application of Mark and Julie Franklin
168 Lincoln Avenue, Tax Map 113, Lot 6**

Dear Stefanie,

Please find a copy of the following materials relative to the above referenced variance application filed through Viewpoint for property located at 168 Lincoln Avenue, Portsmouth:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Plan Set (Existing Conditions Plan, Proposed Conditions Plan, Floor Plans, Elevations and Photographs of Property);
- 4) Additional Photographs of Property.

A copy of the above application materials is being delivered to the Planning Department. 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



Julie Franklin (Nov 28, 2023 10:33 EST)

Mark and Julie Franklin, record owners of the property located at 168 Lincoln Avenue, Tax Map 113, Lot 6, Portsmouth, NH (the “Property”), hereby authorize **Durbin Law Offices, PLLC and its attorneys and Hubert Krah**, to file any 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.


Mark Franklin (Nov 28, 2023 18:32 EST)

Mark Franklin

November 28, 2023


Julie Franklin (Nov 28, 2023 20:33 EST)

Julie Franklin

November 28, 2023

Mark Franklin

**NARRATIVE
VARIANCE APPLICATION**

**168 Lincoln Avenue
Tax Map 113, Lot 6**

Mark and Julie Franklin

Introduction / Property

The Property at 168 Lincoln Avenue is a 5,925 square foot developed lot situated at the intersection of Lincoln and Sherburne Avenues. It is located in the GRA Zoning District. The Property contains a single-family home built in 1900 that the Applicants, Mark and Julie Franklin reside in with their two children. The primary frontage for the home is on Lincoln Avenue, as evidenced by its postal address; however, the home is accessed from Sherburne Avenue where the existing driveway and a detached garage are located. **Exhibit A** (Tax Map).

The existing home and structures on the Property are non-conforming in the following respects:

Non-Conformity	Requirement	Existing Condition
Front Porch	15' (front yard setback)	7.5'
Rear Deck	10' (right yard setback)	9'
Detached Garage	10' (right yard setback)	1.6
	20' (rear yard setback)	0.8'
House	10' (right yard setback)	8.8'
	25% (building coverage)	33.4%

Proposed Renovation and Addition

The Franklins intend to do a renovation of their home order to make it more functional for their family as a work-from-home space, that would include the following modifications:

- Demolition of rear deck (274 sf.) to be replaced with smaller one-story addition (147 sf.) that will serve as mudroom and office space (South Elevation).
- Reconstruction of the structurally unsound front porch within the same building footprint (North Elevation).
- Small kitchen addition (East Elevation).
- Construction of bulkhead for basement access (West Elevation).
- Reconstruction of roof with addition of dormers to add some additional headroom and living space.

Prior Zoning Approval

On December 19, 2023, the Board approved multiple variances for the Property that called for the demotion of the existing detached garage (412 sf.) and rear deck (274 sf.) and the construction of an attached garage addition (684 sf.) with two stories of living space above and smaller front porch (127 sf.) than what exists (200 sf.). **Exhibit B** (NOD/FOF). The proposed renovation and re-design of the home proved to be too costly and structurally challenging to accomplish. Accordingly, they have modified and scaled back their plans. The re-design results in significantly less living space associated with the rear addition and less massing overall.

Zoning Relief Summary

The Applicant seeks the following variance approvals from the Board:

Section 10.521

- (a) To allow 7.5' (+/-) primary front yard setback for the construction of a new front porch and entryway where 15' is required and 7.5' (+/-) exists.
- (b) To allow a 7' (+/-) right yard setback for the construction of a bulkhead where 10' is required and 8.8' (+/-) exists.
- (c) To allow 31.7% (+/-) building coverage where 25% is allowed and 33.4% (+/-) exists.

Section 10.321

To allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Variance Criteria

Granting the variances will not be contrary to the spirit and intent of the Zoning Ordinance or the public interest.

In the case of Chester Rod & Gun Club, Inc. v. Town of Chester, the Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, "the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives.'" Id. The Court observed that "[t]here 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." Id.

The primary purpose of minimum setback standards is to ensure that there is adequate light, air and space between abutting properties and the structures thereon. The primary purpose of a maximum building coverage standard is to protect against the overcrowding of structures on land.

Building Coverage Variance

The Franklins plans for the Property will result in a 1.7% reduction in building coverage from what exists. What is proposed will not result in the overcrowding of structures on the Property and will conform more closely to the building coverage requirement than what was previously approved by the Board in December 2023. The total building coverage aligns with surrounding properties almost all of which exceed the 25% limitation. **Exhibit C**¹. The properties that do not exceed the limitation are outliers. In the case of *Belanger v. Nashua*, the NH Supreme Court determined that municipalities have an obligation to have their zoning ordinances reflect the current character of neighborhoods. *Belanger v. Nashua*, 121 N.H. 389 (1981). Absent this, the Board must consider the prevailing character of a neighborhood as part of its analysis. In the present case, the GRA building coverage limitation does not reflect the character of the neighborhood.

Setback Variance(s) / Expansion of a Non-Conforming Structure

The only new setback encroachment proposed for the Property relates to the construction of a bulkhead within the right side yard to allow for improved access to the basement of the home. The proposed bulkhead will only be 36” above grade at its highest elevation and will replace an existing set of sunken stairs that were used for coal deliveries in the days of old. The variance for the bulkhead is a *de minimis* request when you consider the size, height and overall impact of what is proposed. It will not negatively impact the light, air and space of the nearest abutting property at 180 Lincoln Avenue. It is important to note that the Franklins are removing the rear deck, a portion of which encroaches into the right side yard and replacing it with an addition that conforms to the building setbacks.

The proposed improvements to the Property are in keeping with the spirit and intent of the Ordinance. Granting the requested variances will not alter the essential character of the neighborhood or negatively affect public health, safety or welfare. To the contrary, granting the variances will result in a safer, code-compliant building that more closely conforms to the building coverage requirement of the Ordinance.

Substantial Justice will be done in granting the variances.

To determine whether substantial justice is done, the Board must balance the equities between the rights of a private landowner and the public interest in deciding whether to grant or deny a variance request. The “only guiding rule is that 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 \(2007\)](#).

¹ Data taken from City assessing records in November 2023 as part of previous Zoning Application.

It represents a loss to the Franklins to deny them the opportunity to improve their home in a reasonable manner to make it more functional for their family, particularly when you consider that the proposed improvements more closely to the requirements of the Ordinance than what exists or was previously approved by the Board in December 2023. There is no public interest served by denying the requested variances. Therefore, it would constitute an injustice to deny the application in whole or in part.

Surrounding property values will not be diminished by granting the variance.

It would be illogical to conclude that surrounding property values would be negatively affected by the proposed improvements to the Property. The architecture and improvements associated with the renovation will be in keeping with the existing design of the residence and many surrounding homes and structures. The proposed improvements will only improve the appearance of the Property and in turn, enhance the values of surrounding properties.

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

The Property has a number of special conditions that distinguish it from surrounding properties. It is a corner lot and subject to two 15' front yard setbacks rather than one front yard setback and two 10' side yard setbacks. It is also an undersized lot for the GRA Zoning District, having a total lot area of 5,925 sf. where 7,500 sf. is the minimum lot size. Therefore, the Property has a smaller building envelope and is more constrained than many of the surrounding properties such that strict application of the Ordinance's setback and building coverage provisions creates an unreasonable burden upon the Property. As outlined above, the existing home, including the front porch, dining room bump-out and deck, already encroaches into the primary front and right yard setbacks. The Property exceeds allowable building coverage by 8.4%. What is proposed results in less building coverage and is consistent with the prevailing character of the neighborhood, a factor that the Board must consider in determining whether an unnecessary hardship exists. *See Belanger*, 121 N.H. 389.

As a result of the foregoing special conditions, there is no fair and substantial relationship between the general purposes of the Ordinance provisions (i.e. setback, building coverage) and their application to the Property. The use of the Property is also reasonable. The Property will continue to be used for single-family residential purposes, a use which is permitted and encouraged within the GRA Zoning District.

Conclusion

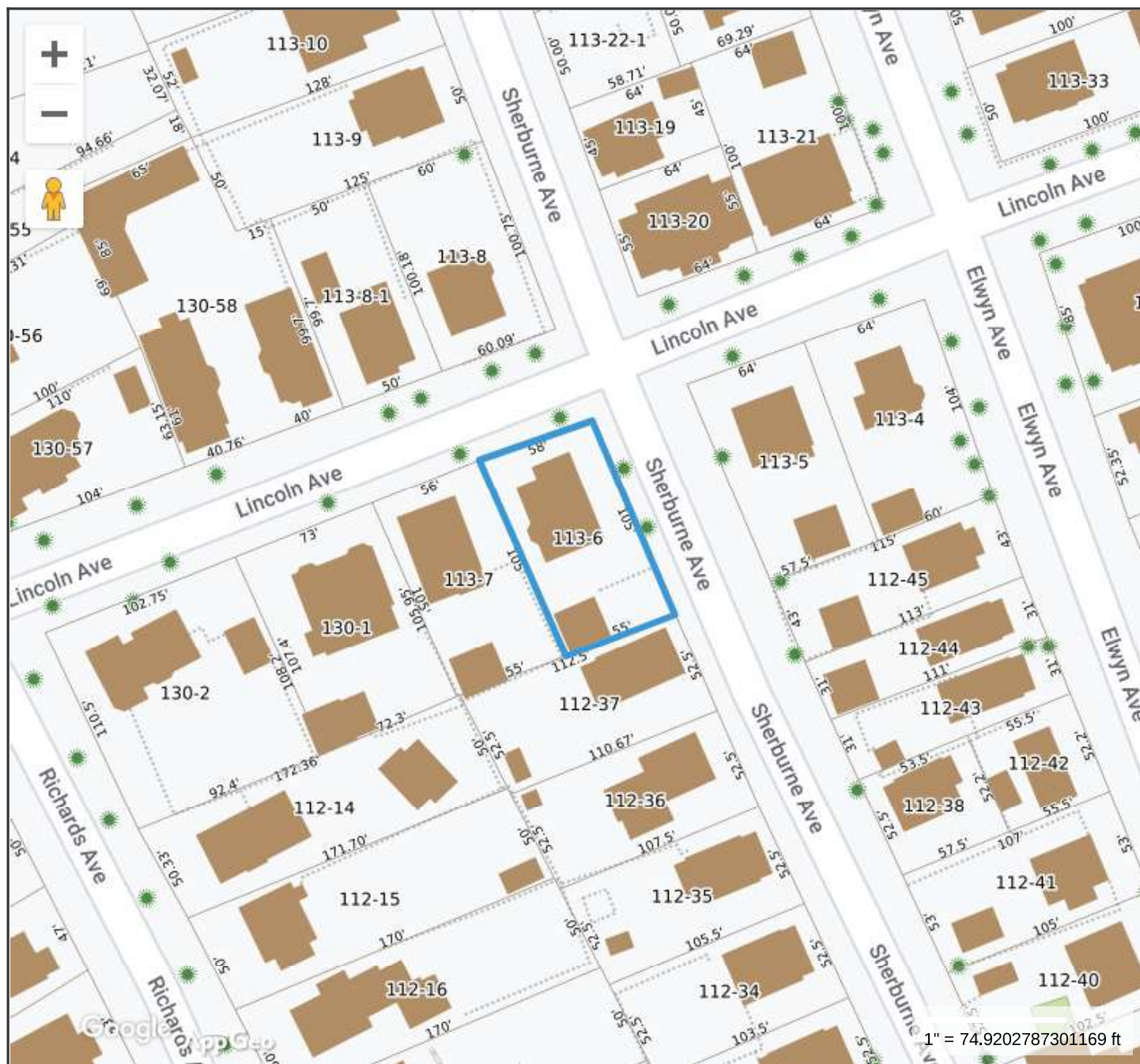
The Franklins thank you for your time and consideration of their application and respectfully request your approval of the variances being requested.

July 22, 2024

Respectfully Submitted,
Mark and Julie Franklin

A handwritten signature in black ink, appearing to read "Derek R. Durbin". The signature is fluid and cursive, with a large, stylized initial "D" and "R".

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

**Property Information**

Property ID 0113-0006-0000
Location 168 LINCOLN AVE
Owner FRANKLIN MARK N & JULIE S



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 09/21/2022
 Data updated 3/9/2022

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



CITY OF PORTSMOUTH

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

ZONING BOARD OF ADJUSTMENT

December 26, 2023

Mark N Franklin and Julie S Franklin
168 Lincoln Avenue
Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 168 Lincoln Avenue (LU-23-196)

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, December 19, 2023**, considered your application for demolishing the detached garage and constructing an addition to the primary structure that includes an attached garage which requires the following: 1) Variance from Section 10.521 to allow a) eight and a half (8.5) foot front yard where 15 is required, b) seven (7) foot right yard where ten (10) feet is required, and c) 33% building coverage where 25% is the maximum allowed; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 113 Lot 6 and lies within the General Residence A (GRA) District. As a result of said consideration, the Board voted to **approve** 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 Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Zoning Board of Adjustment Meeting website:

<https://www.cityofportsmouth.com/planportsmouth/zoning-board-adjustment/zoning-board-adjustment-archived-meetings-and-material>

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

Very truly yours,

A handwritten signature in cursive script that reads "Phyllis Eldridge". The signature is written in dark ink and is positioned above the printed name.

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Derek Durbin, Attorney, Durbin Law Offices PLLC

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: 12-19-2023

Property Address: 168 Lincoln Avenue

Application #: LU-23-196

Decision: **Grant**

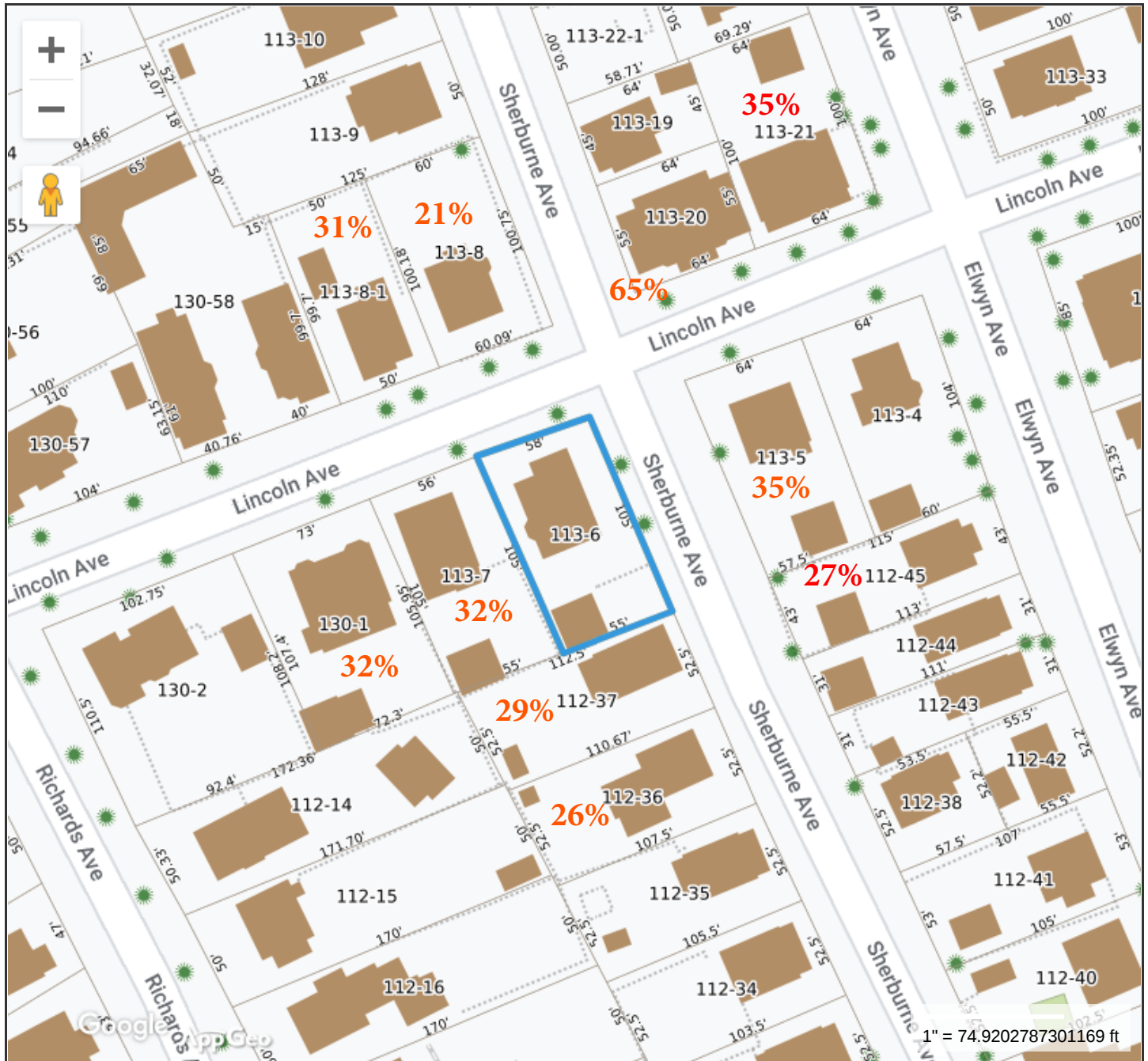
Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, It 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 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">The requested variances are not contrary to the public interest because the public interest does not manifest and the zoning ordinance doesn't deal with the bulky issue, and the public interest allowed for small dimensional setback items.
10.233.22 Granting the variance would observe the spirit of the Ordinance.	YES	<ul style="list-style-type: none">The requested variances are not contrary to the public interest because the public interest does not manifest and the zoning ordinance doesn't deal with the bulky issue, and the public interest allowed for small dimensional setback items.

10.233.23 Granting the variance would do substantial justice.	YES	<ul style="list-style-type: none"> It is difficult to find a new house, so justice is serviced by allowing the applicant to continue to reside in his house and to make necessary changes to support his family.
10.233.24 Granting the variance would not diminish the values of surrounding properties.	YES	<ul style="list-style-type: none"> There are competing assessments from a realtor and her spouse and from a neighbor, so since the Board has evidence from both sides, it came down in favor of a neutral.
<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>	YES	<ul style="list-style-type: none"> It is hard in the current real estate market to find a larger home to accommodate a family. The zoning ordinance is only minimally different from what is being asked for, and special circumstances existed and the purpose is a reasonable one. The actual yard setback is for the one-story porch and the hardship was the undersized lot. It is also a corner lot, so that creates special conditions where there is no fair and substantial relationship to the property.

**Property Information**

Property ID 0113-0006-0000
 Location 168 LINCOLN AVE
 Owner FRANKLIN MARK N & JULIE S



**MAP FOR REFERENCE ONLY
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Geometry updated 09/21/2022
 Data updated 3/9/2022

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

Application for a Variance to permit the following:

- The removal of an existing deck (274 sq ft, 24" above grade), partially located within the side yard setback
- The construction of a 20'-0" wide and 6'-0" deep 1-story extension at the south elevation.
- The removal of an existing covered front porch (200 sq ft) partially located in the front yard setback and the construction of a new covered porch (200 sq ft to match the existing in dimension and footprint) partially located in the front yard setback in it's place.
- The construction of a 13'-3" wide and 2'-2" deep 2-story extension to the first floor kitchen at the east elevation
- The removal of the entire roof structure on the third floor.
- The construction of a new roof with two gabled ends and two shed dormers on the third floor.
- The construction of a new bulkhead to access the basement

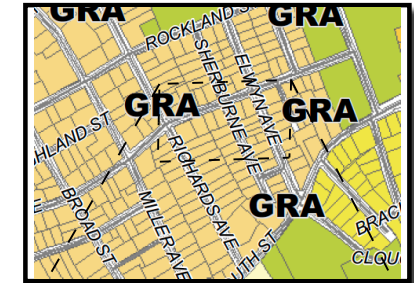
Variances requested:

- 1) Section 10.321 (Nonconforming Buildings and Structures) to
 - a. Allow a lawful nonconforming building (residence) to be extended and enlarged.
- 2) A variance from Section 10.521 (Table of Dimensional Relief Standards) to allow construction with the following parameters:
 - a. A front yard setback of approximately 7'-6" where 15' is required and 7'-6" is existing.
 - b. A side yard setback of approximately 7'-4" where 10' is required and 8'-10" is existing.
 - c. Building coverage of 31.7% where 25% is allowed and 33% is existing

List of Drawings

- AD-01 COVER SHEET & LOCATION MAP
- AD-02 EXISTING PLOT PLAN
- AD-03 PROPOSED PLOT PLAN
- AD-04 EXISTING & PROPOSED FLOOR PLANS @ FIRST FLOOR
- AD-05 EXISTING & PROPOSED FLOOR PLANS @ SECOND FLOOR
- AD-06 EXISTING & PROPOSED FLOOR PLANS @ THIRD FLOOR
- AD-07 EXISTING & PROPOSED ROOF PLANS
- AD-08 PROPOSED ELEVATION NORTH
- AD-09 PROPOSED ELEVATION EAST
- AD-10 PROPOSED ELEVATION SOUTH
- AD-11 PROPOSED ELEVATION WEST

Location Map



Location of property
168 Lincoln Ave,
Portsmouth NH 03801,
Tax Map 113, Lot 6.



Variance Submittal for an Addition to
The Franklin Residence
168 Lincoln Ave, Portsmouth NH 03801

Cover Sheet

Issue date: July 21, 2025 Scale: n/a
Revision dates:

AD-01

lot 113-6:**5,925 sq ft**

existing residence footprint: 1,068 sq ft

existing front porch footprint: 200 sq ft

existing garage footprint: 412 sq ft

existing deck footprint: 296 sq ft

existing o.a. footprint: 1,976 sq ft

existing lot coverage: 33.4 %

existing lot coverage
if lot were 7,500 sq ft: 26.3%

GRA zoning requirements:

min lot size: 7,500 sq ft

front yard : 15'

side yard : 10'

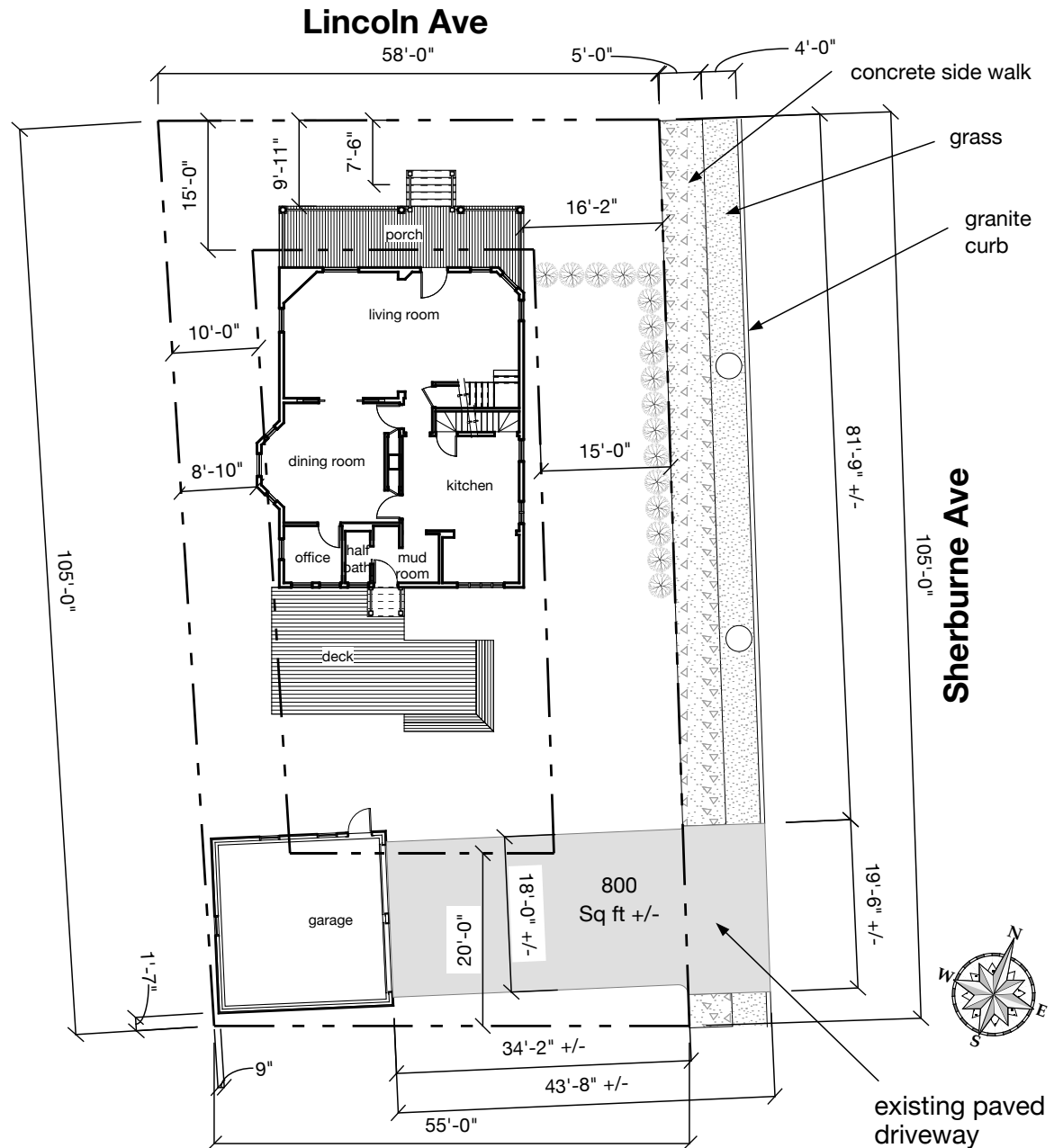
rear yard: 20'

building coverage 25%

minimum open space 30%

NOTE:

THIS PLOT PLAN WAS DRAWN FROM INFORMATION GATHERED
OFF THE OFFICIAL TAX MAP & MAPGEO INFORMATION.
ALL DIMENSIONS TO BE VERIFIED IN FIELD.



Variance Submittal for an Addition to
The Franklin Residence
168 Lincoln Ave, Portsmouth NH 03801

Existing Plot Plan

Issue date: July 21, 2025 Scale: 1" = 20'-0"
Revision dates:

AD-02

lot 113-6: 5,925 sq ft

existing residence footprint: 1,068 sq ft
 existing front porch footprint: 200 sq ft
 existing garage footprint: 412 sq ft
 proposed kitchen bay footprint: 30 sq ft
 proposed bulkhead footprint: 22 sq ft
 proposed addition footprint: 147 sq ft
 proposed o.a. footprint: 1,879 sq ft
 proposed lot coverage: 31.7 %
 proposed lot coverage if lot were 7,500 sq ft: 25.3 %

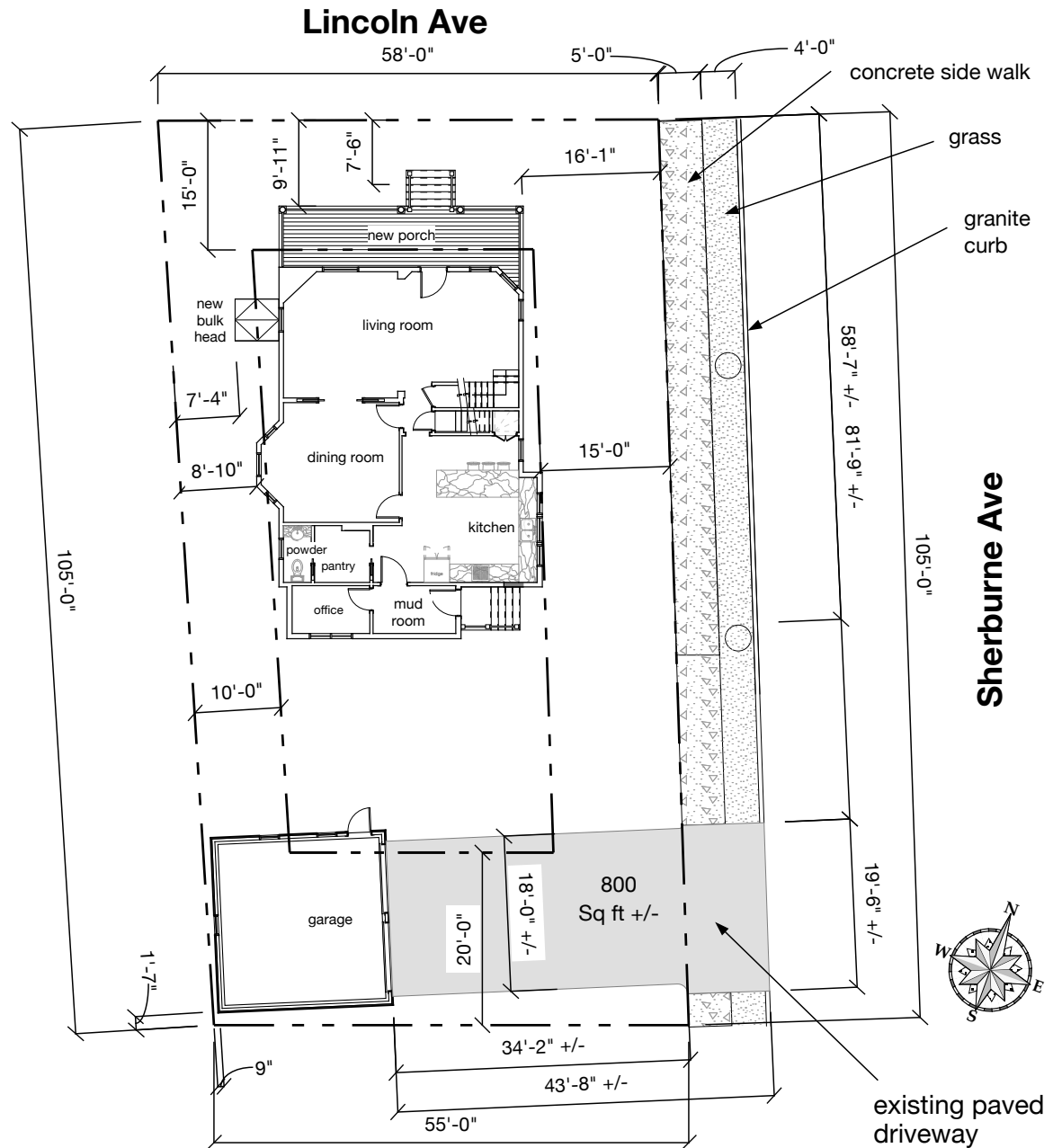
GRA zoning requirements:

min lot size: 7,500 sq ft

front yard : 15'
 side yard : 10'
 rear yard: 20'
 building coverage 25%
 minimum open space 30%

NOTE:

THIS PLOT PLAN WAS DRAWN FROM INFORMATION GATHERED OFF THE OFFICIAL TAX MAP & MAPGEO INFORMATION. ALL DIMENSIONS TO BE VERIFIED IN FIELD.

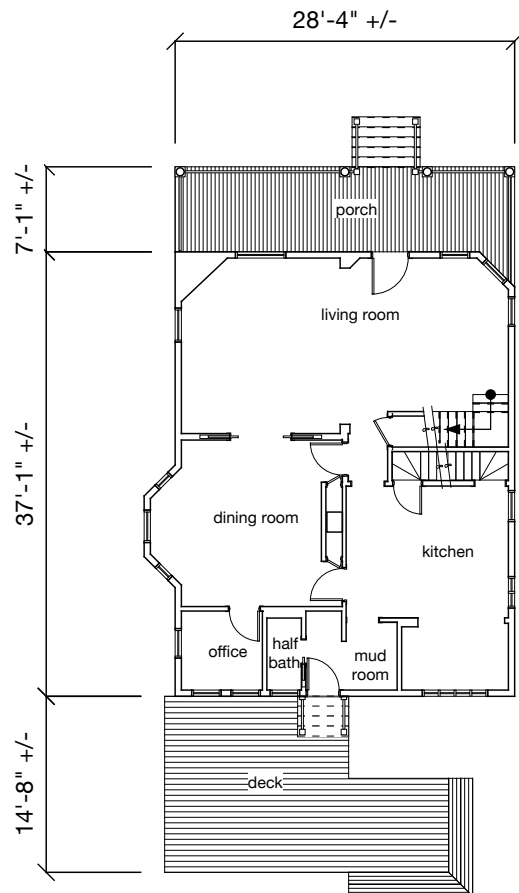


Variance Submittal for an Addition to
The Franklin Residence
 168 Lincoln Ave, Portsmouth NH 03801

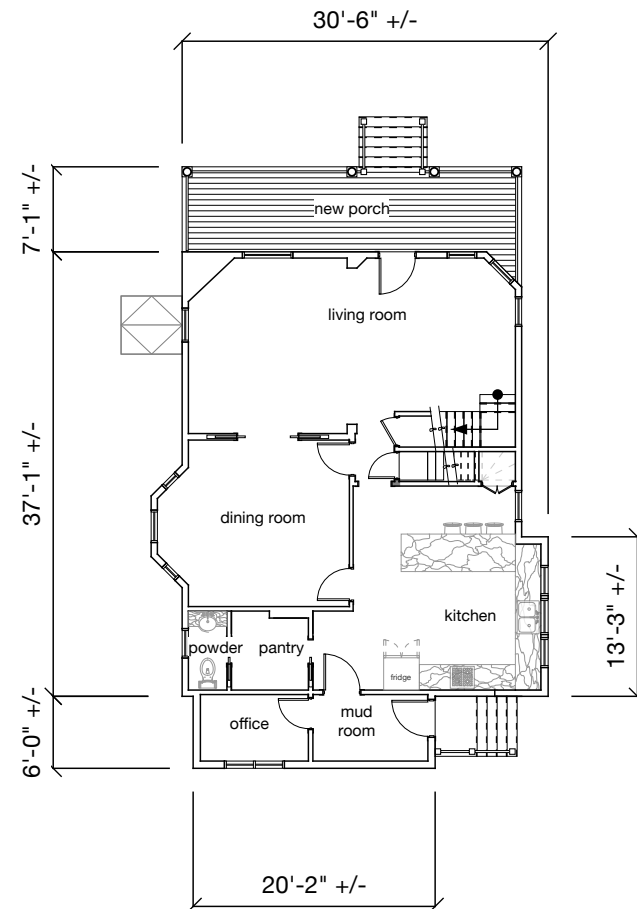
Proposed Plot Plan

Issue date: July 21, 2025 Scale: 1" = 20'-0"
 Revision dates:

AD-03

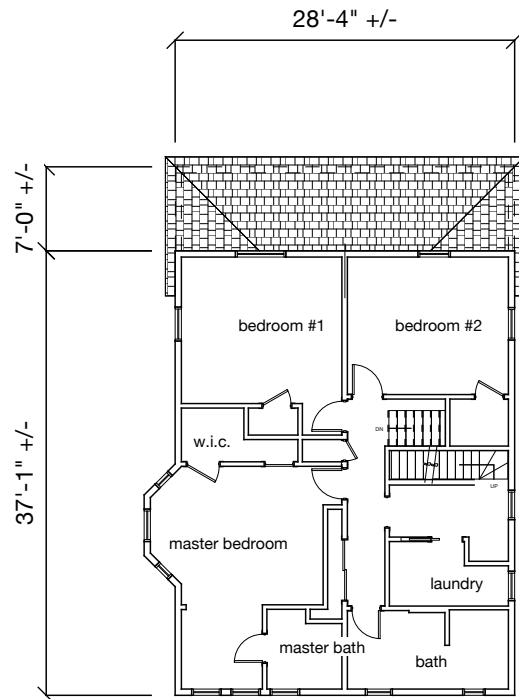


existing

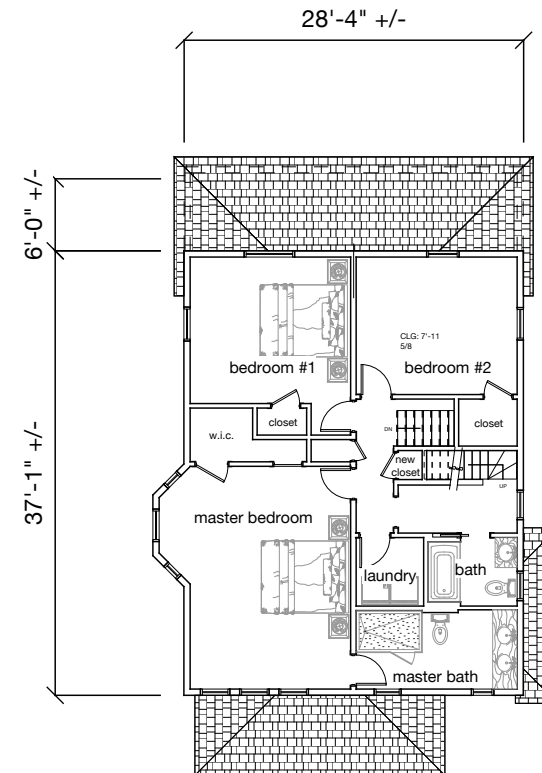


proposed

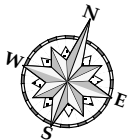


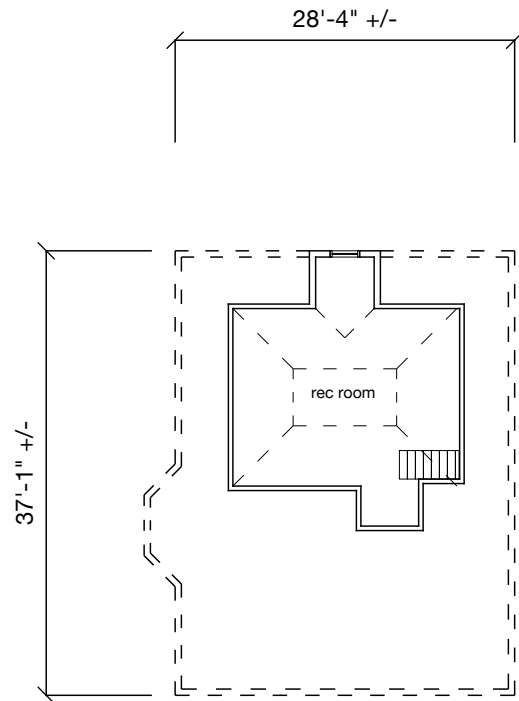


existing

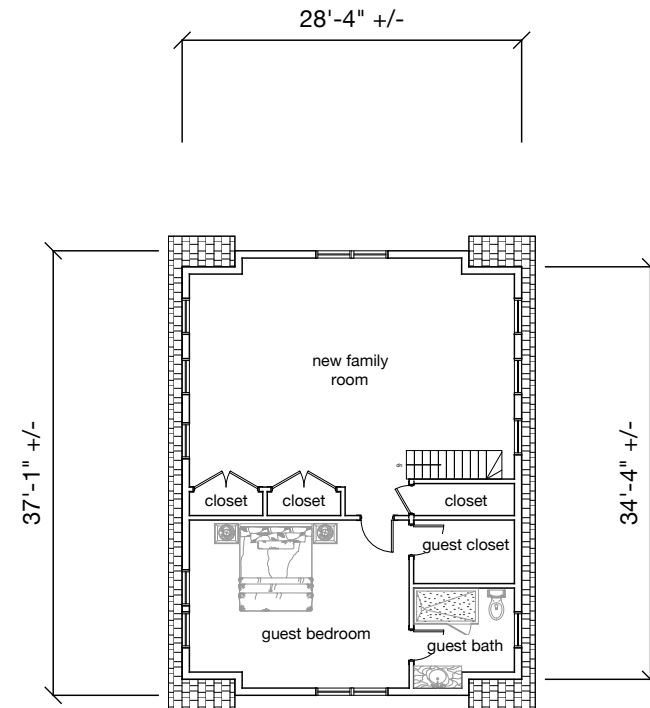


proposed

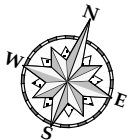


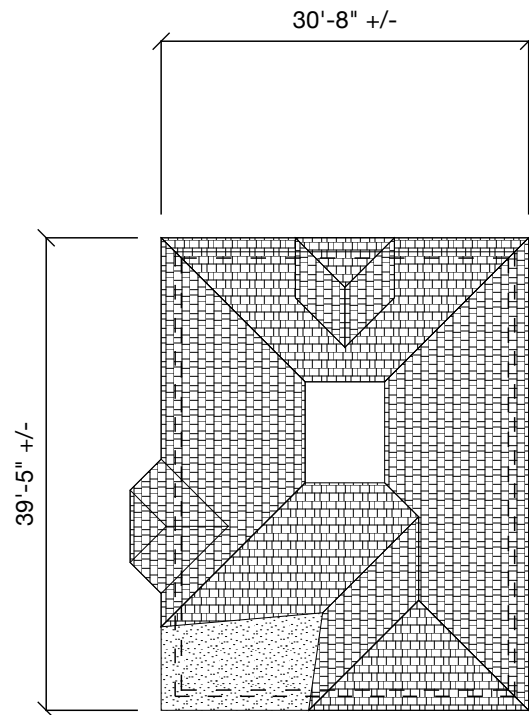


existing

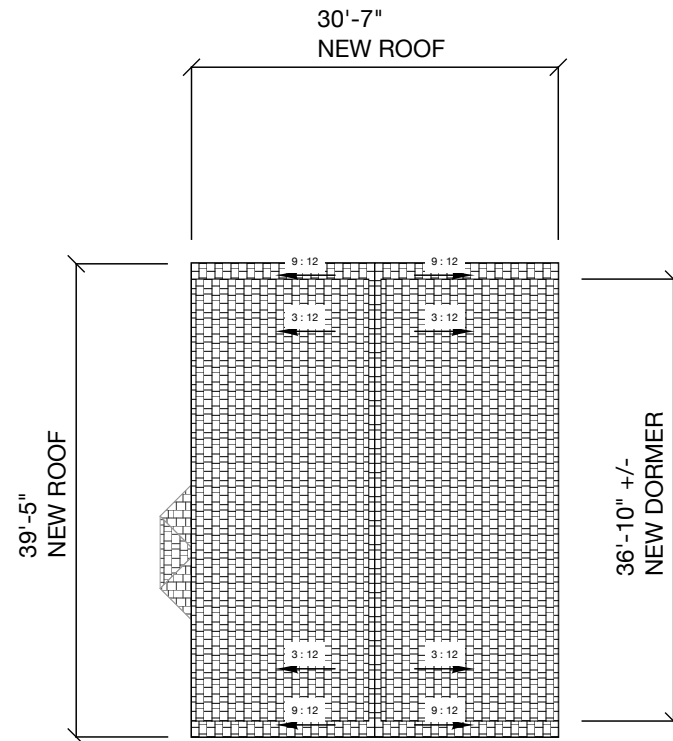


proposed





existing



proposed





NEW SHED
DORMER

NEW ROOF

NEW KITCHEN
EXTENSION

NEW
MUDROOM
ADDITION

NEW PORCH
TO MATCH
EXISTING

32'-6" +/- PER ZONING ORDINANCE
34'-8" +/- NEW ROOF



Variance Submittal for an Addition to
The Franklin Residence
168 Lincoln Ave, Portsmouth NH 03801

Exterior Elevation East

Issue date: July 21, 2025 Scale: 1/8" = 1'-0"
Revision dates:

AD-09





Variance Submittal for an Addition to
The Franklin Residence
 168 Lincoln Ave, Portsmouth NH 03801

Exterior Elevation East

Issue date: July 21, 2025 Scale: 1/8" = 1'-0"

Revision dates:

AD-11

Additional Images of Property



Front View of Sherburne Ave Side of Home



Front Right Side View of Property



Non-Conforming Garage / Rear View of Property



Rear View of Home and Attached Deck