

BY: VIEWPOINT & HAND DELIVERY

November 28, 2023

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 (NH) (Nov 28, 2023 10:32 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 and their two teenage children, reside in. 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 is located. There is a detached two car garage at the end of the driveway in the southwest corner of the Property which is situated right along the shared boundaries with the property at 180 Lincoln Avenue (Tax Map 113, Lot 7) and 116 Sherburne Avenue (Tax Map 112, Lot 37). **Exhibit A.**

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

- Garage: <1' right yard setback where 10' is required.
 <1' rear yard setback where 20' is required.

- House: 8'-10" right yard setback where 10' is required.
(dining room)

- House: 7'-6" primary front yard setback where 15' is required.
(front porch)

- Deck: 9'-0" right yard setback where 10' is required.

- Building Coverage:
 33.4% where 25% is allowed.

Mark and Julie have two teenage children and work part-time from home. In order to make the home more functional and flexible for their family, the Franklins are seeking the zoning relief necessary to construct a 684 sf. two-car garage addition with living space above. In addition, they are seeking the relief necessary to construct a new 127 sf. covered front entryway to their home that would replace the existing porch, which is 200 sf., not code-compliant and in poor structural condition. The garage addition will meet the rear and side yard setback requirements. However, a 7'-4" right yard setback variance is needed for a bulkhead entry into the basement that does not presently exist. There is a bump out in the house associated with the dining room that already

encroaches into the right yard setback by 1'-2" (8'-10" setback). The proposed front entryway needs setback relief due to the location of the existing home but would be contained entirely within the footprint of the existing front porch. To make way for the proposed improvements, the Franklins would demolish the non-conforming two-car garage, rear deck and front porch, and relocate the driveway.

Zoning Relief Summary

The Applicant seeks the following variance approvals from the Board:

1. Section 10.51

a) To allow 8'-7" primary front yard setback for the construction of a new front entryway where 15'-0" is required and 7'-6" exists.

b) To allow a 7'-4" right yard setback for the construction of a bulkhead where 10'-0" is required and 8'-10" exists.

c) To allow 32.9% building coverage where 25% is allowed and 33.4% exists.

2. Section 10.321

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

Prior Application (March 2023)

On March 29, 2023, the Board voted to deny a variance application submitted by the Franklins seeking to demolish the existing detached two-car garage and front porch and construct a new attached two-car garage with living space above and wraparound front porch on the Property. **Exhibit B.** The Board voted to deny the variance requests as a group on the basis that approving them would result in a diminution of surrounding property values and a violation of the spirit and intent of the Ordinance, which was to prevent the "overcrowding" and "overbulking" of land. The variances denied were as follows:

1. Section 10.521

a) To allow a 7'-6" front yard where 15'-0" is required and 7'-6" exists.

b) To allow a 9'-0" secondary front yard where 15'-0" is required and 16'-2" exists.

c) To allow 38% (37.6%) building coverage where 25% is allowed and 33% exists.

2. Section 10.321

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

The plans submitted to the Board with the application denied in March included a larger two car garage addition with living space above (775 sf. v. 684 sf.) and wraparound front porch (382 sf. v. 127' sf.) than is currently proposed. The lot coverage proposed in March was 37.6% versus the 32.9% currently proposed. In addition, the front porch proposed in March would have encroached into both front yard setbacks whereas the front entryway that is currently proposed would only encroach into the primary yard setback and would be more conforming than the existing front porch.

In the case of Fisher v. City of Dover, the New Hampshire Supreme Court found that unless a “material change of circumstances affecting the merits of the application has [] occurred” or the application is “materially differs in nature and degree from its predecessor,” the Board may not reach the merits of a subsequent application. 120 N.H. 187, 190 (1980).

The Franklins’ current plans meet the standard(s) set forth by the Court in Fisher v. City of Dover. The Franklins have significantly scaled back their addition and front entryway plans from what was previously proposed and denied in March, such that the plans are *materially different in nature and degree*. To that end, the Board must consider the merits of the Franklins’ current application.

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.

The Franklins plans for the Property will result in a 0.5% reduction in total building coverage from what exists. The total building coverage is consistent with surrounding properties, almost all of which exceed the 25% limitation. Exhibit C. The properties that do not exceed the

limitation are outliers. In the case of *Belanger v. Nashua*, the NH Supreme Court opined: “[w]hile we recognize the desired interrelationship between the establishment of a plan for community development and zoning, we believe that municipalities must also have their zoning ordinances reflect the current character of neighborhoods.” 121 N.H. 389 (1981). In the present case, the GRA building coverage limitation does not reflect the character of the surrounding neighborhood.

The new garage addition will be contained entirely within the applicable building setbacks and the height (27’-1”) is almost 8’ below what is permitted in the GRA Zoning District. The proposed renovations and addition to the home will result in a code-compliant building and significant energy efficiency improvements related to the new windows, doors, solar panels and heating system that will be installed.

The replacement of the front porch and improvement in the primary front yard setback will only help to increase the light, air and space of the nearest abutting properties. The new setback encroachment related to the proposed bulkhead is a benign request that will have no impact upon the light, air, space or privacy of the nearest abutting property at 180 Lincoln Avenue. The new bulkhead will allow for better basement access to the home. The proposed improvements to the Property will bring it into greater compliance with the Ordinance and are more in keeping with the spirit and intent of the Ordinance than what exists. Therefore, they will not alter the essential character of the neighborhood or negatively affect public health, safety or welfare.

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).

It represents a loss to the Franklins to deny them the opportunity to improve their home to make it more functional for their family, particularly when you consider the fact that they will be bringing the Property into greater compliance with the Ordinance and keeping the proposed addition entirely within the applicable building setbacks and well below the height restriction. The proposed bulkhead, which represents the only new setback encroachment, will have no negative impact on any abutting property. It will only be utilized for access to the basement of the home when it is needed and is approximately 36” above grade at its highest elevation. The proposed bulkhead will replace an existing set of sunken stairs that were used for coal deliveries in the days of old. 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 in any sense by improvements to the Property that will only bring it into greater compliance with the Ordinance. The architecture associated with the proposed addition and front

porch will be in keeping with the existing design of the residence and many surrounding homes and structures. The removal of the existing non-conforming garage, which sits along the southerly and westerly boundaries, will create a greater sense of open space for the abutters at 180 Lincoln and 116 Sherburne Avenues. 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 other properties surrounding it 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 two-car garage significantly encroaches into the rear and right yard setbacks. Existing building coverage is approximately 33%. The proposed improvements will result in more compliant primary front, rear and right yard setbacks and less total building coverage than what exists. As a result of the foregoing special conditions, there is no fair and substantial relationship between the general purposes of the Ordinance provisions pertaining to setbacks and 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

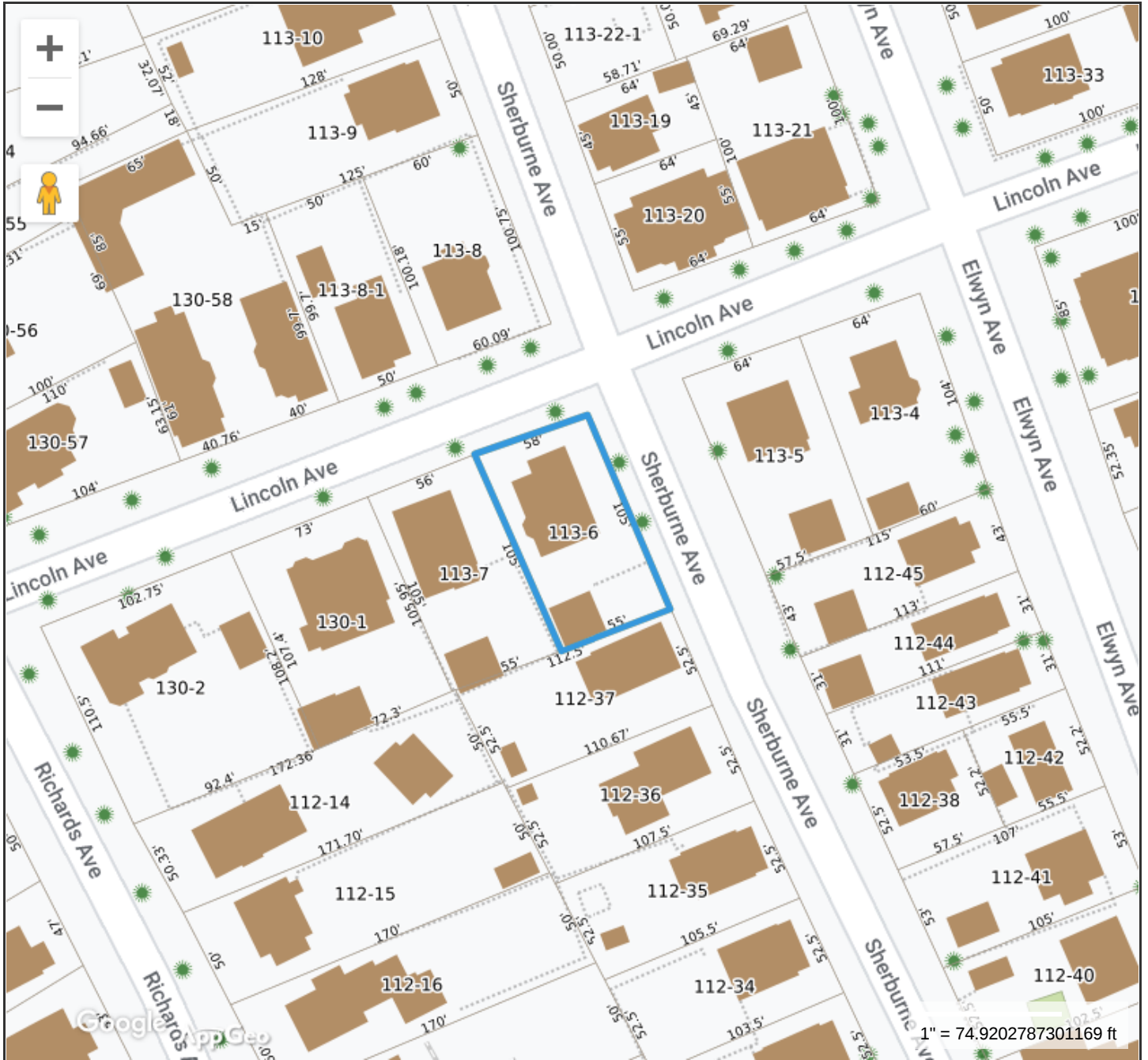
The Franklins thank you for your time and consideration of their application and respectfully request your approval of the variances being requested.

November 28, 2023

Respectfully Submitted,
Mark and Julie Franklin



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



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

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

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CITY OF PORTSMOUTH

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

ZONING BOARD OF ADJUSTMENT

April 4, 2023

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

RE: Board of Adjustment request for property located at 168 Lincoln Avenue (LU-23-25)

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Wednesday, March 29, 2023**, considered your application for demolishing the existing detached garage and porch and constructing a new attached garage and wrap-around porch which requires the following: 1) Variances from Section 10.521 to allow a) a 7.5 foot front yard where 15 feet is required; b) a 9 foot secondary front yard where 15 feet is required; c) 38% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure 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 deny the request because it failed to meet the criteria set forth in 10.233.22 as the spirit and intent of the ordinance was to avoid overcrowding and overbulking of lots; and failed to meet criteria set forth in 10.233.24 as there was evidence submitted from A Land Realty saying the proposal would have a negative impact on the value of the abutting property.

The Board's decision may be appealed up to thirty (30) days after the vote. Please contact the Planning Department for more details about the appeals process.

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

Very truly yours,

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc:

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: March 29, 2023

Property Address: 168 Lincoln Avenue

Application #: LU-23-25

Decision: **Deny**

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I 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 the 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.		
10.233.22 Granting the variance would observe the spirit of the Ordinance.	NO	<ul style="list-style-type: none"> Granting the variance will not observe the spirit of the ordinance because the spirit and intent of the ordinance is to avoid overcrowding and overbulking of the lot.
10.233.23 Granting the variance would do substantial justice.		
10.233.24 Granting the variance would not diminish the values of surrounding properties.	NO	<ul style="list-style-type: none"> Granting the variance will diminish the values of surrounding properties, noting that the board had evidence submitted in the form of a letter from A land realtor saying that the proposal will have a negative impact on the abutting property at 180 Lincoln Avenue.

<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</p> <p>(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</p> <p>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>		
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Application for a Variance to permit the following:

- The removal of an existing detached 2-car garage (412 sq ft), located within both side yard setbacks, and the removal of an existing deck (274 sq ft, 24" above grade), partially located within the side yard setback
- The construction of a new attached 2-car garage (684 sq ft) with two stories of living space above.
- 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 (127 sq ft) partially located in the front yard setback in it's place;
- The construction of a 13'-4" wide and 2'-2" deep 2-story extension at the first floor kitchen and second floor laundry and bath;
- The construction of one new dormer on the third floor;
- The construction of a new roof on the south-west corner to allow for a connection to the third story of the new garage addition.
- The construction of a new bulkhead to access the basement

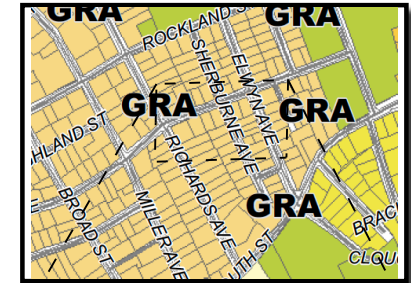
Variences requested:

- 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 8'-7" 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 32.9% 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: November 18, 2023 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

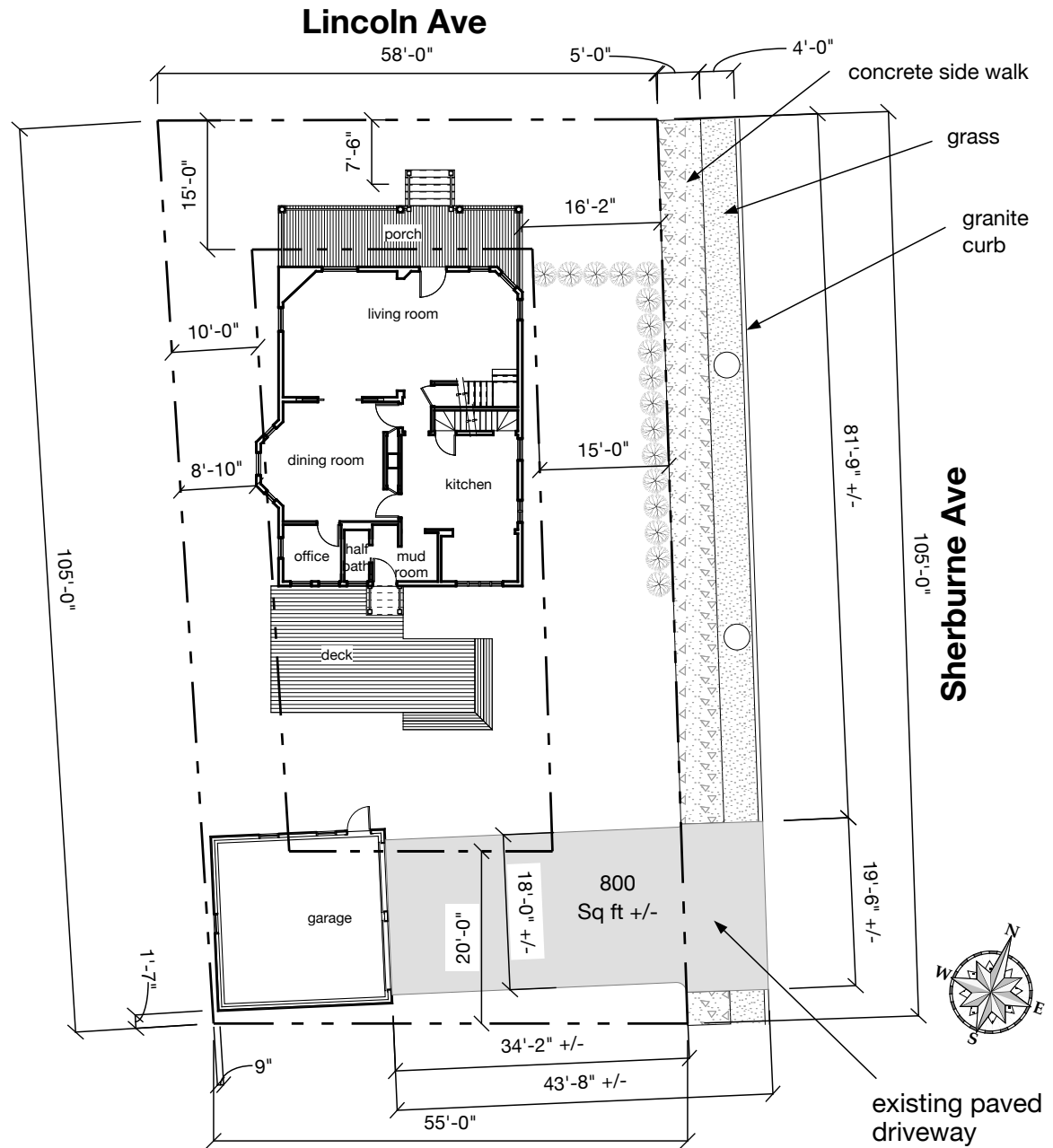
existing lot coverage: 33.4 %

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: November 18, 2023 | Scale: 1" = 20'-0"
Revision dates:

AD-02

lot 113-6: 5,925 sq ft

existing residence footprint: 1,068 sq ft

proposed front porch footprint: 127 sq ft

proposed front bay footprint: 17 sq ft

proposed kitchen bay footprint: 30 sq ft

proposed bulkhead footprint: 22 sq ft

addition footprint: 684 sq ft

proposed o.a. footprint: 1,948 sq ft

proposed lot coverage: 32.9 %

proposed lot coverage if lot were 7,500 sq ft: 26.0 %

GRA zoning requirements:

min lot size: 7,500 sq ft

front yard : 15'

side yard : 10'

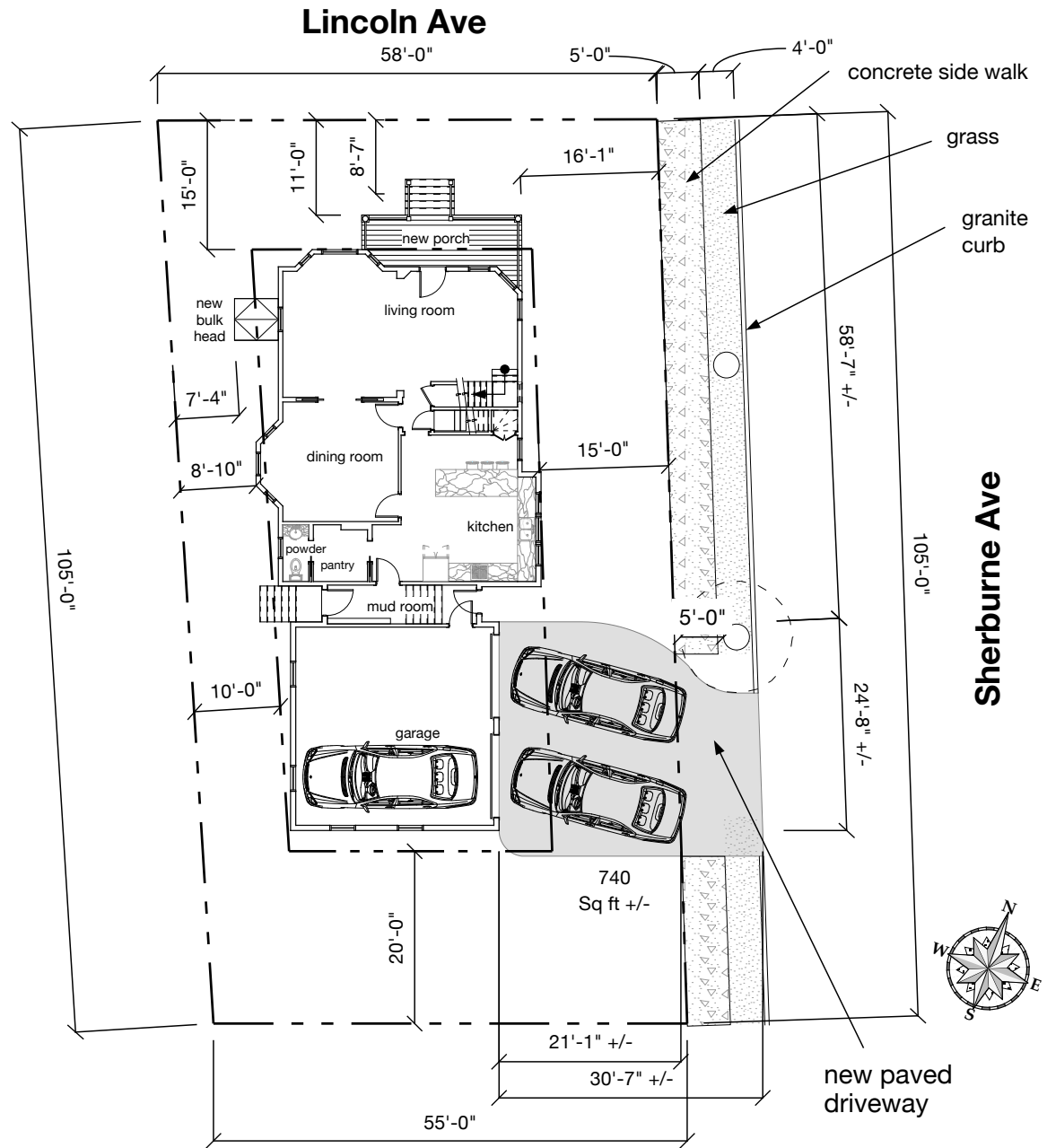
rear yard: 20'

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.

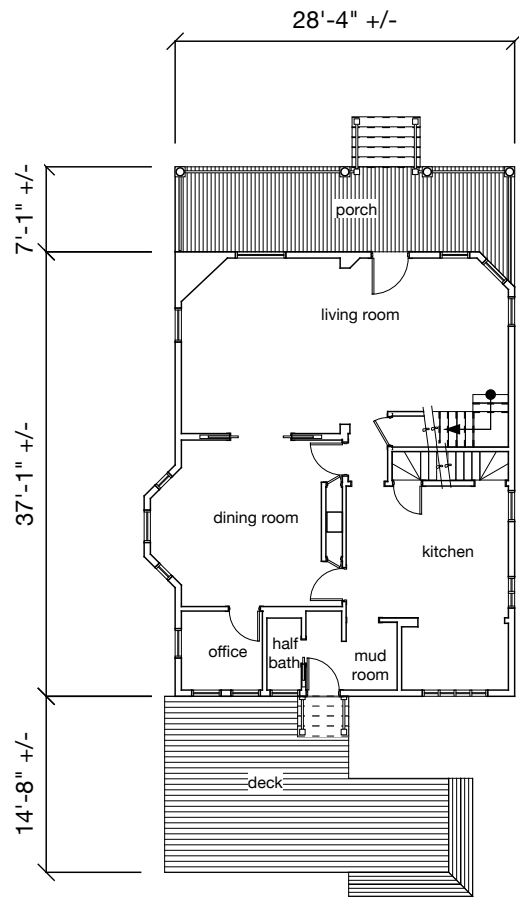


Variance Submittal for an Addition to
The Franklin Residence
 168 Lincoln Ave, Portsmouth NH 03801

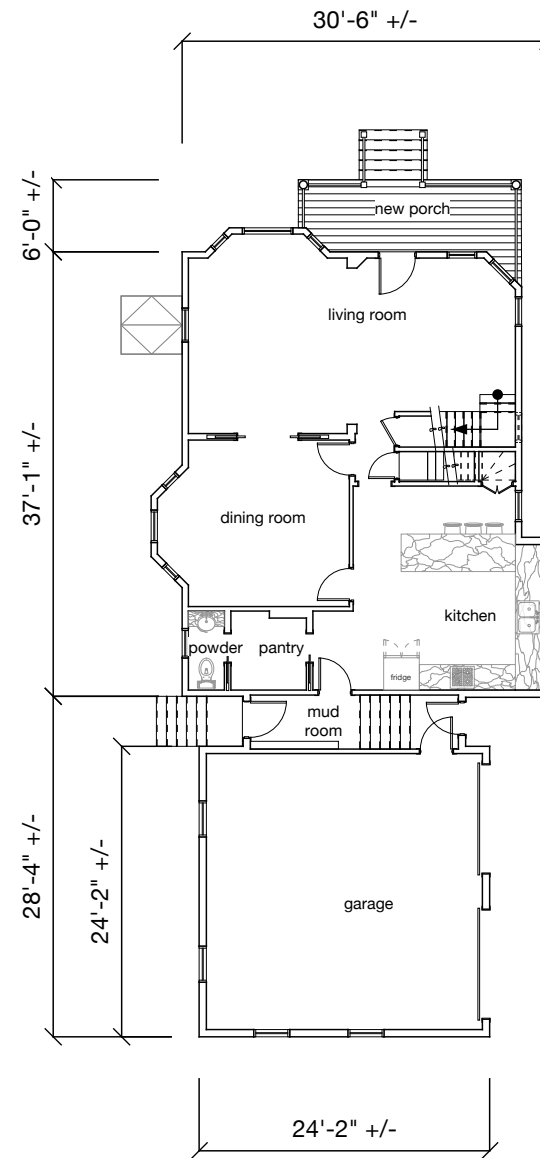
Proposed Plot Plan

Issue date: November 18, 2023 | Scale: 1" = 20'-0"
 Revision dates:

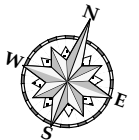
AD-03



existing



proposed

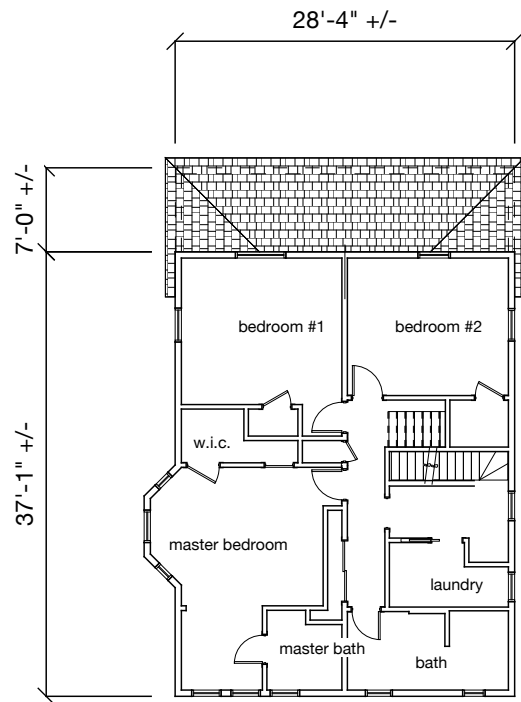


Variance Submittal for an Addition to
The Franklin Residence
 168 Lincoln Ave, Portsmouth NH 03801

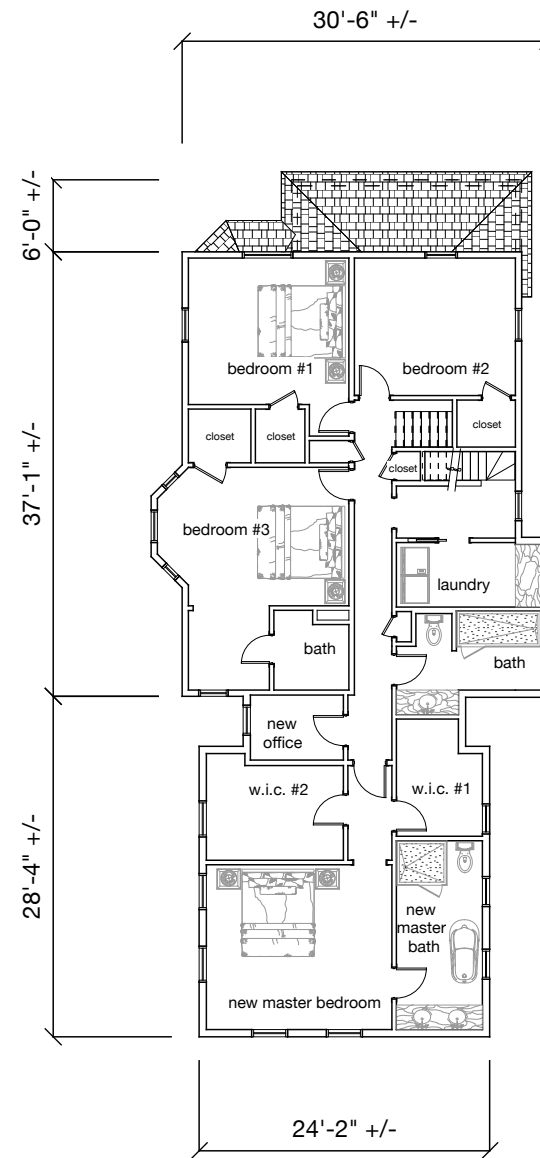
First Floor Plans

Issue date: November 18, 2023 | Scale: 1/16" = 1'-0"
 Revision dates:

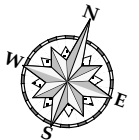
AD-04



existing



proposed



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

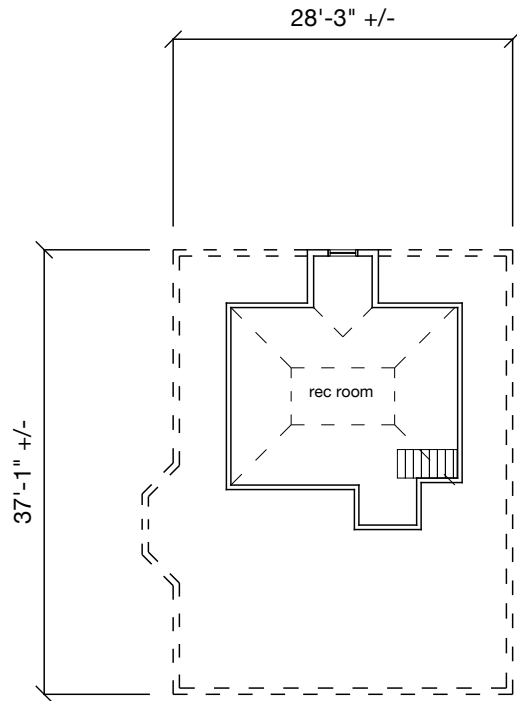
Second Floor Plans

Issue date: November 18, 2023

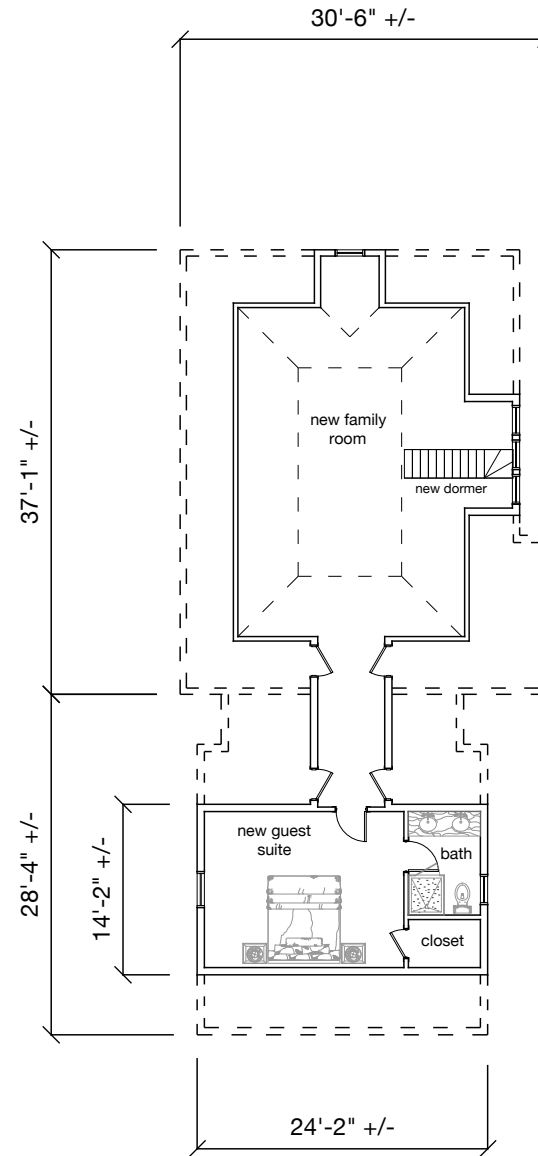
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Revision dates:

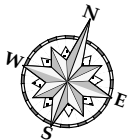
AD-05



existing



proposed



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

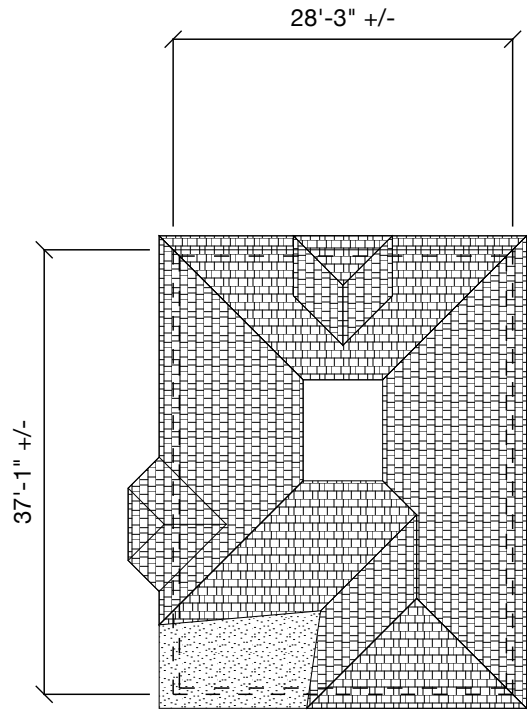
Third Floor Plans

Issue date: November 18, 2023

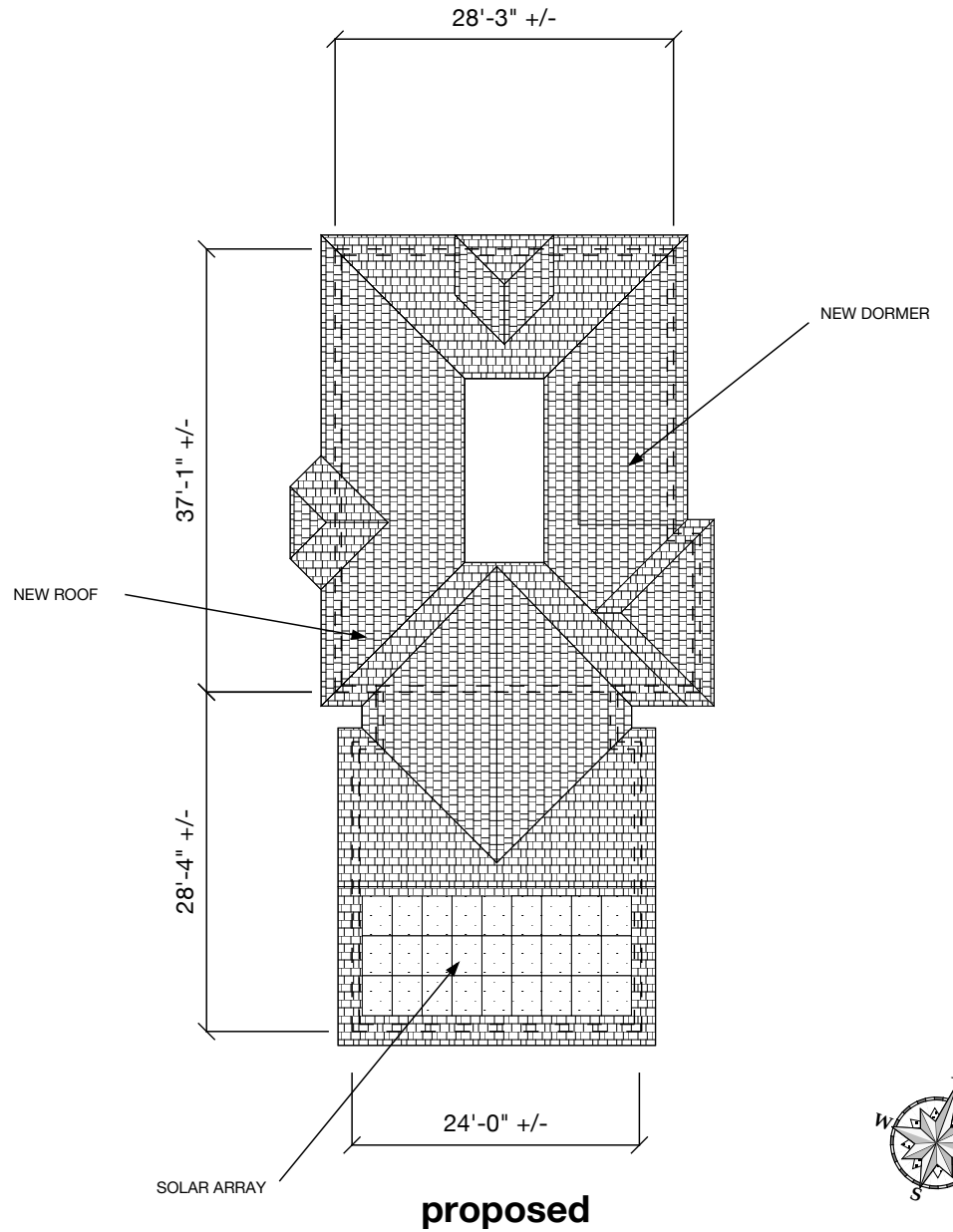
Scale: 1/16" = 1'-0"

Revision dates:

AD-06



existing



proposed



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

Roof Plans

Issue date: November 18, 2023 | Scale: 1/16" = 1'-0"
 Revision dates:

AD-07



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

Exterior Elevation North

Issue date: November 18, 2023 Scale: 1/8" = 1'-0"
 Revision dates:

AD-08



NEW PORCH



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

Exterior Elevation East

Issue date: November 18, 2023

Scale: 1/8" = 1'-0"

Revision dates:

AD-09

27'-1" +/- HEIGHT PER ZONING ORDINANCE



SOLAR ARRAY

NEW KITCHEN EXTENSION

31'-8" +/- EXISTING RESIDENCE

32'-8" +/- ADDITION



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

Exterior Elevation North

Issue date: November 18, 2023

Scale: 1/8" = 1'-0"

Revision dates:

AD-10



NEW PORCH

NEW FRONT BAY

NEW BULK HEAD



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

Exterior Elevation East

Issue date: November 18, 2023 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