

**APPLICATION OF MDM RODGERS FAMILY LIMITED PARTNERSHIP**  
**53 TANNER STREET, PORTSMOUTH**  
**Map 126, Lot 46**

**APPLICANT'S NARRATIVE**

I. **THE PROPERTY:**

The applicant, MDM Rodgers Family Limited Partnership, owns the single family residence located at 53 Tanner Street, where it proposes to add shed dormers within the existing footprint and replace and expand a rear addition to the dwelling. The Applicant plans to modernize this circa 1900 home as a single-family dwelling. The dwelling will consist of a basement with first, second and third floor living areas. The basement will become more functional with laundry and storage. The new addition will feature a rear outside entrance with a modern stairway to the first floor.

As the Board will recall, last year the applicant unsuccessfully sought relief to convert the dwelling into a two-family dwelling with similar improvements. The present proposal eliminates the request for an additional dwelling unit and the property will remain a single family dwelling.

According to city tax records, the home was constructed in 1900. The property is in the CD4-L1 zone and is non-conforming as to lot area, lot area per dwelling and left side yard setback. The dwelling is in need of substantial updating and upgrades, as the electric, plumbing, insulation and access are all substandard. All existing stairways are narrow, steep and non-compliant with current code. The primary entrance to the home is five feet from the Tanner Street right of way, but the "front yard" is essentially pavement and indistinguishable from the right of way, thus the desirability of the new access in the rear addition.

The third floor as configured contains little if any useful living space and is problematic in a number of respects. The steep pitch of the roofline limits headspace, a condition the dormers will alleviate, opening up useful living space. Existing stairway access is not code compliant nor safe, a condition the new rear addition will correct.

The first floor bathroom in the existing rear addition was built without any foundation and is poorly insulated, raising the risk of freezing pipes. The proposed new rear addition will correct this deficiency.

The dwelling's existing left side yard setback at its closest point is 3 feet. The applicant proposes a vertical expansion over the existing footprint to accommodate the dormer on the left side, as well as an extension of the structure by approximately two feet to the rear to accommodate the proposed rear addition. The rear addition previously had a footprint of 6' x 12', the proposed will have a footprint of 8' x 16'.

The applicants therefore need relief from Section 10.5A41.10A to permit a side yard setback of 3 feet where 5 feet is the minimum required.

## II. CRITERIA:

The applicant believes the within Application meets the criteria necessary for the Board to grant the requested variances.

**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.

The essentially residential characteristics of the neighborhood would not be altered by this project. The existing structure and lot are already non-compliant with the side yard setback and a vertical and horizontal expansion of these non-conformities is reasonable given the need to mitigate the issues with the dwelling’s third floor and bathroom.

Were the variances 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.

**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. It is substantially just to allow a property owner the reasonable use of his or her property. The project will drastically improve the safety, comfort and utility of the property.

In this case, there is no benefit to the public in denying the variances that is not outweighed by the hardship upon the owner. The proposed dormer is within the existing non-conforming footprint and does not increase the non-conforming setback at all. The side yard encroachment associated with the rear addition is consistent with the existing footprint of the main dwelling structure. Accordingly, the loss to the applicants clearly outweighs any gain to the public if the applicants were required to conform to the ordinance.

**The values of surrounding properties will not be diminished by granting the variance.** The proposal will greatly enhance the safe, livable space within the structure and will increase the value of the applicants' property. The relief requested is consistent with the pre-existing non-conforming setback encroachment. New, code-compliant improvements will add value to the community. The values of 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 existing structure dates to well before the implementation of zoning in Portsmouth. The property is a small lot that is non-conforming as to lot area, lot area per dwelling, and left side yard setback. Substantial physical upgrades to the home are needed to bring it into code compliance and to improve the overall safety, comfort and utility of the home, and practically any such improvements would require relief from this Board.

**The use is a reasonable use.** The proposal is a residential use in a residential zone.

**There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property.** The purpose of the setback requirements is to provide sufficient access, light, air and privacy, and physical separation between properties. None of these purposes are frustrated by this proposal. The dormers will be entirely within the existing footprint and will not negatively affect the neighboring property on the left side of the lot. The amount of additional building coverage proposed, 56 square feet (representing the rear addition), is minimal and not out of character for this neighborhood.

Accordingly, the relief requested here would not in any way frustrate the purpose of the ordinance and there is no fair and substantial relationship between the purpose of the setback requirements and their application to this property.

### **III. Conclusion.**

For the foregoing reasons, the applicant respectfully requests the Board grant the variances as requested and advertised.

Respectfully submitted,

Dated: 12/24/2020

By: *John K. Bosen*  
John K. Bosen, Esquire

## **Details of Proposed Renovation**

The building has unique character.

Our goal is to improve the building from the inside out.

We want to improve structural integrity while getting rid of outdated materials.

We will bring electric, plumbing, HVAC and overall building efficiency up to code.

This will improve the overall safety and quality of the building for future inhabitants.

The current heating system will be converted to hot air with air conditioning.

All electric will be brought up to code.

Old insulation will be removed and updated to meet today's energy efficiency standards.

Plumbing in kitchens and bathrooms will be modernized to meet needs of professionals.



**Tanner Street Side View**



- The home has steep and narrow internal stairways with poor egress. The proposed renovation would include the building of a new stairway between the basement and first floor, a new stairway between first and second floors and a new stairway between the second and third floors. This will improve the quality of access and bring the stairways up to code.

**Current stairway from first to second floor**



The existing stairway above would be torn down and rebuilt to meet code. The basement stairs under the current first to second floor stairway would be removed.



**Old stairway to third floor**

Old stairway from second to third floor was steep, narrow and dangerous. These stairs were removed and structural improvements were made to the building to support new development.

- The bathroom on the first floor was built as an add-on with no foundation. The roof and walls of the current structure measuring 6ft x 12ft, was removed to prepare for the new construction.
- New construction will allow for a new stairway from the basement to the first floor. Plus, a new foundation with full basement to support a new entry from the backyard.



**No foundation under bathroom**



**Existing stairway to basement**

- The proposed renovation would allow for a new main entryway and mudroom with 2 x 6 exterior framing.



**Current First Floor Bathroom/Entry Add-On**

The new three floor structure in the back with full basement and 8ft x 16ft foundation.

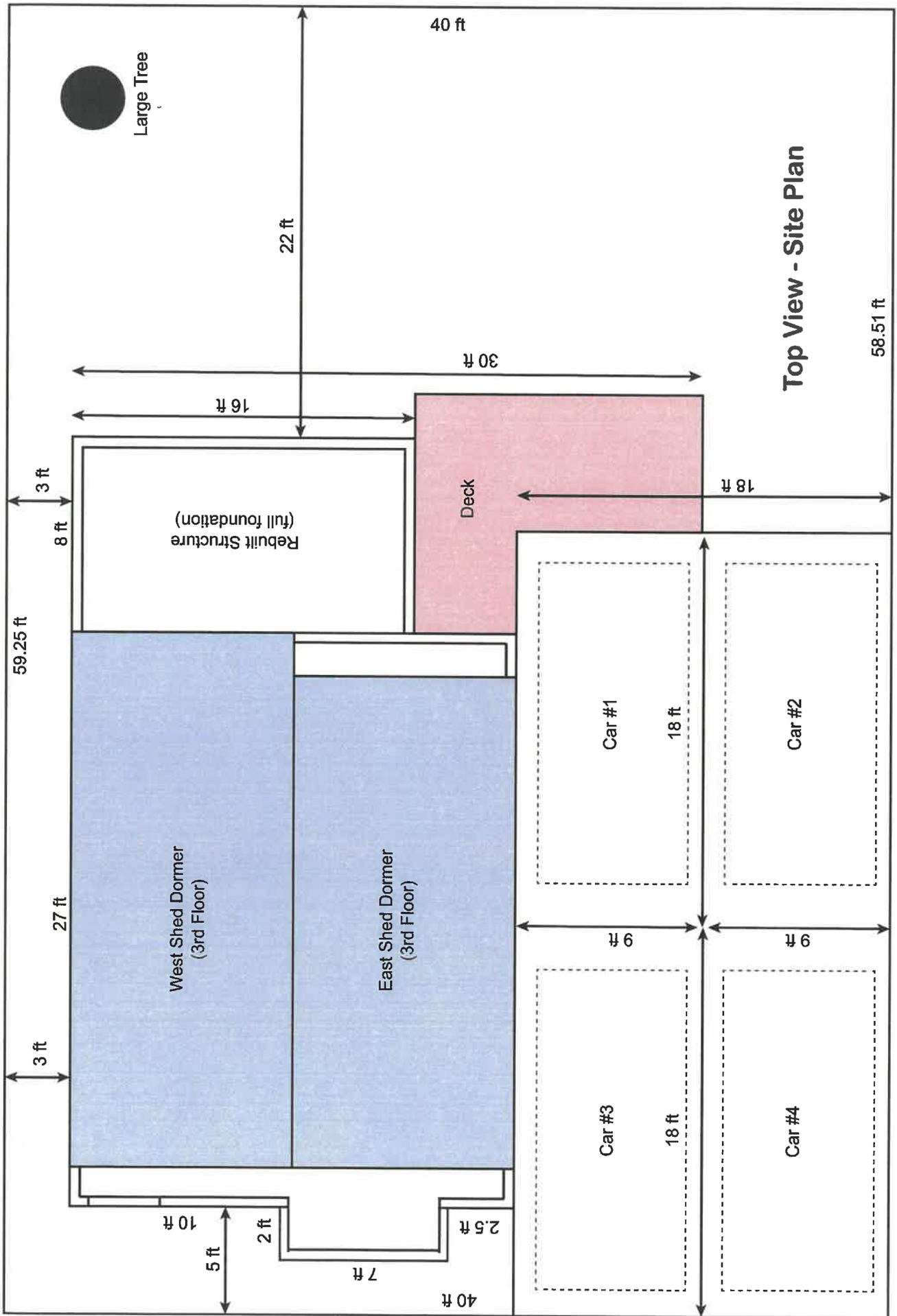
The back deck would be removed and rebuilt according to the new site plan.

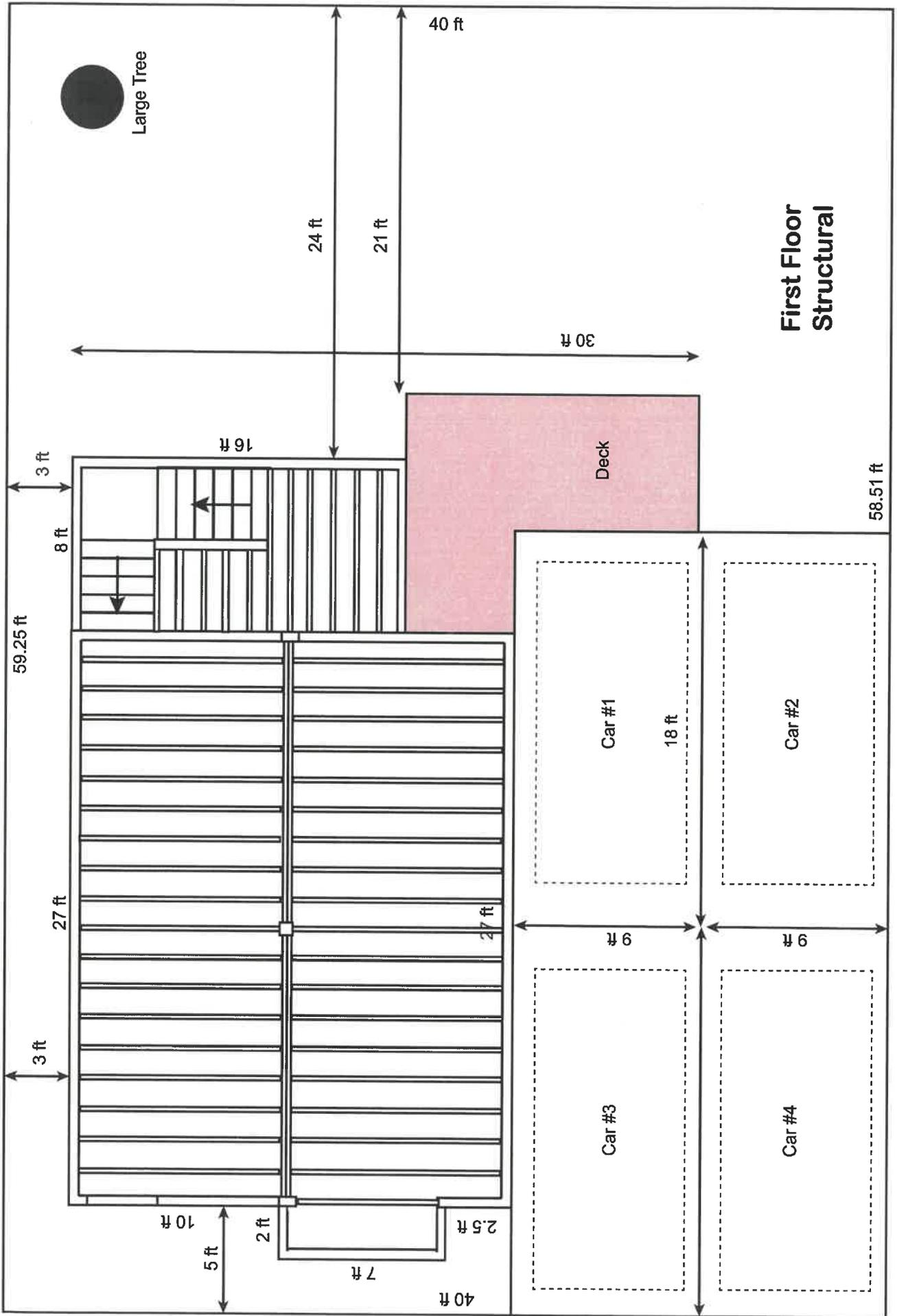
The backyard will be nicely landscaped.

The new construction will drastically improve building safety and create modern egress for 2<sup>nd</sup> and 3<sup>rd</sup> floors.

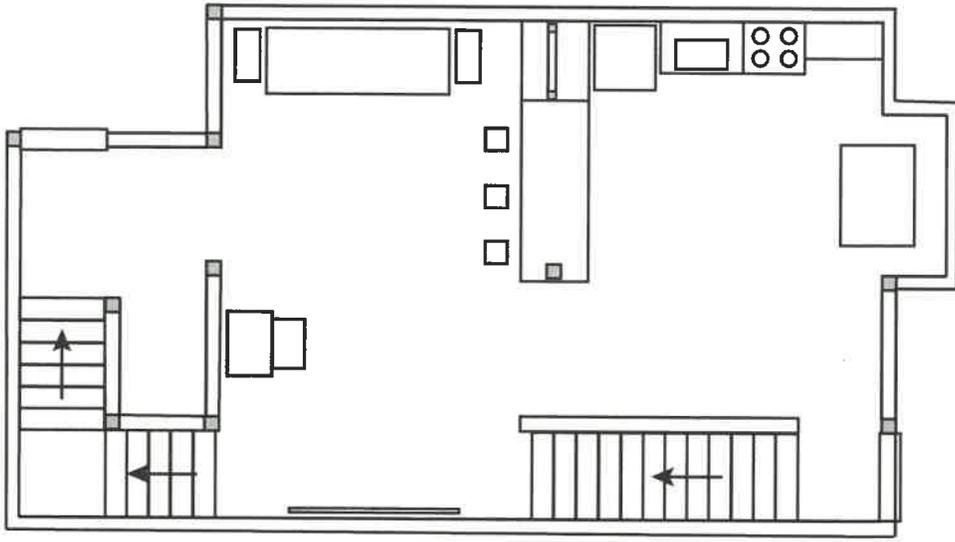
The renovation will improve the structural condition of the building while bringing entry and egress up to code.



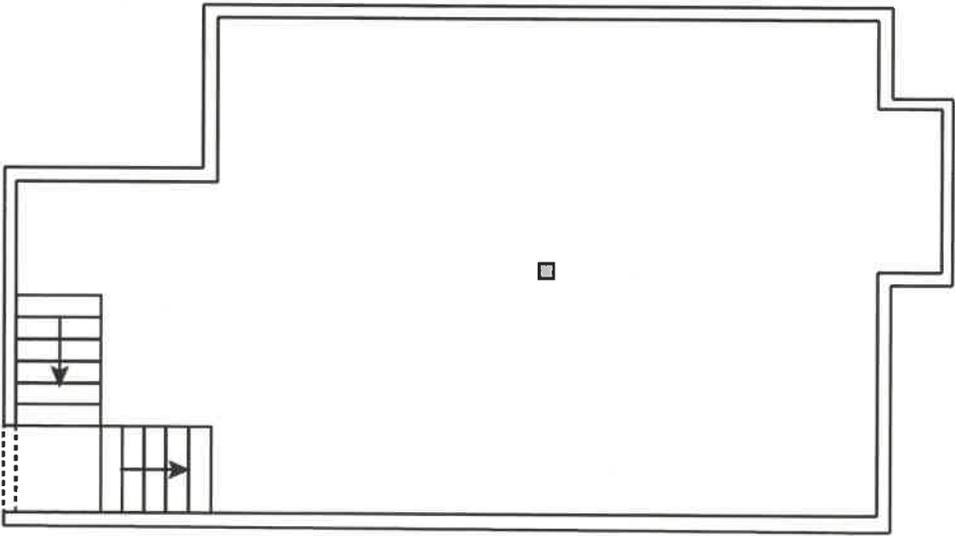




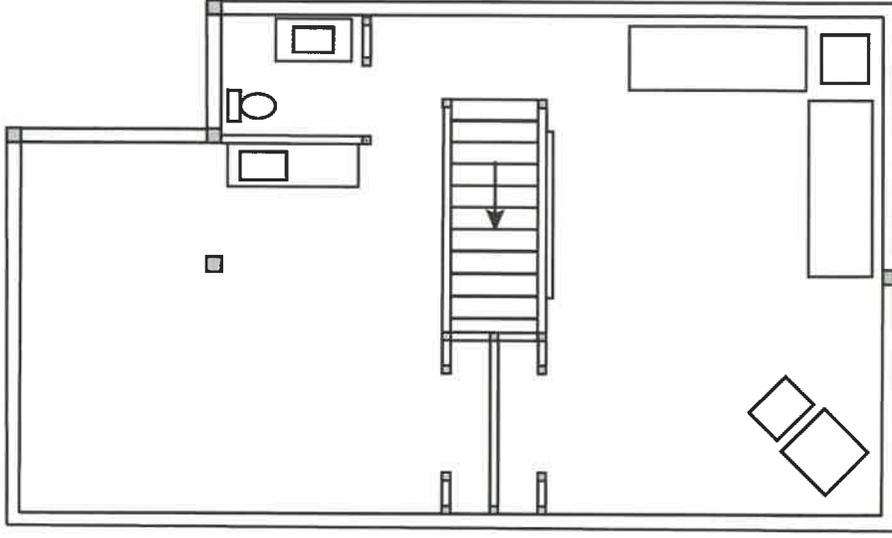
1st Floor



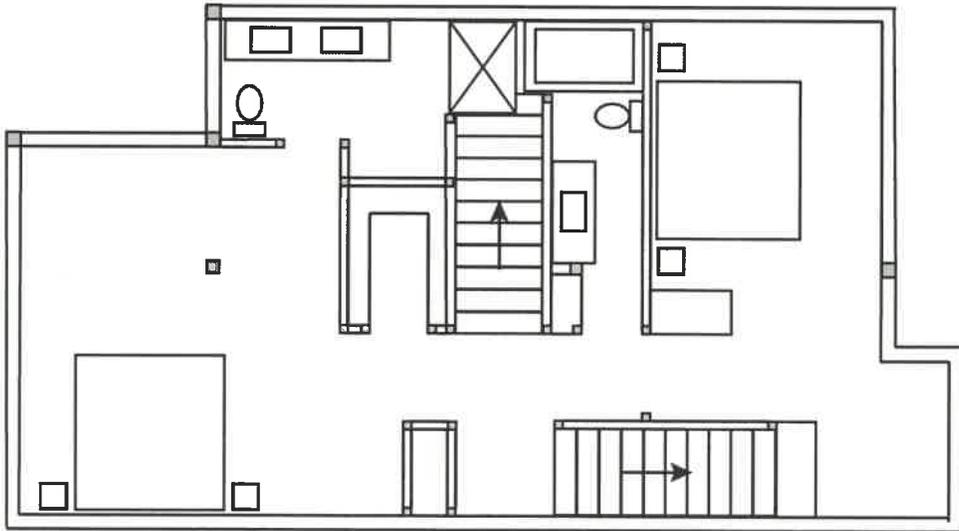
Basement



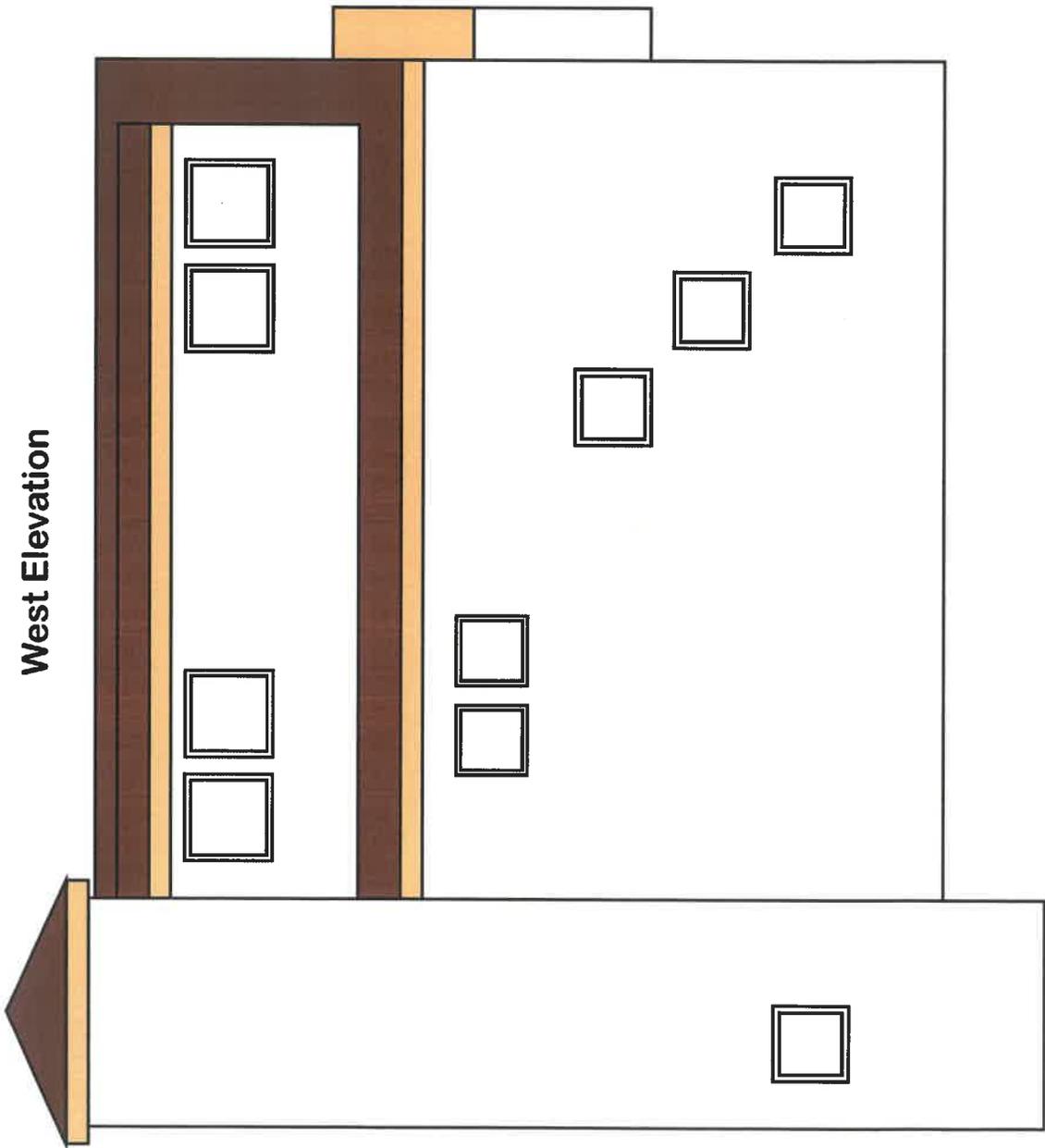
3rd Floor



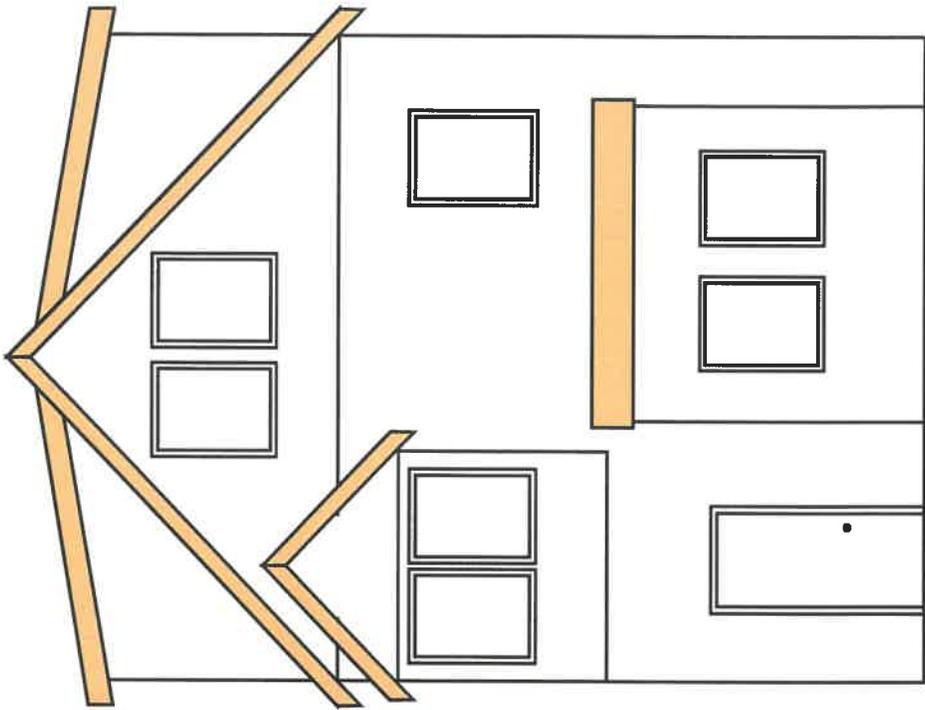
2nd Floor



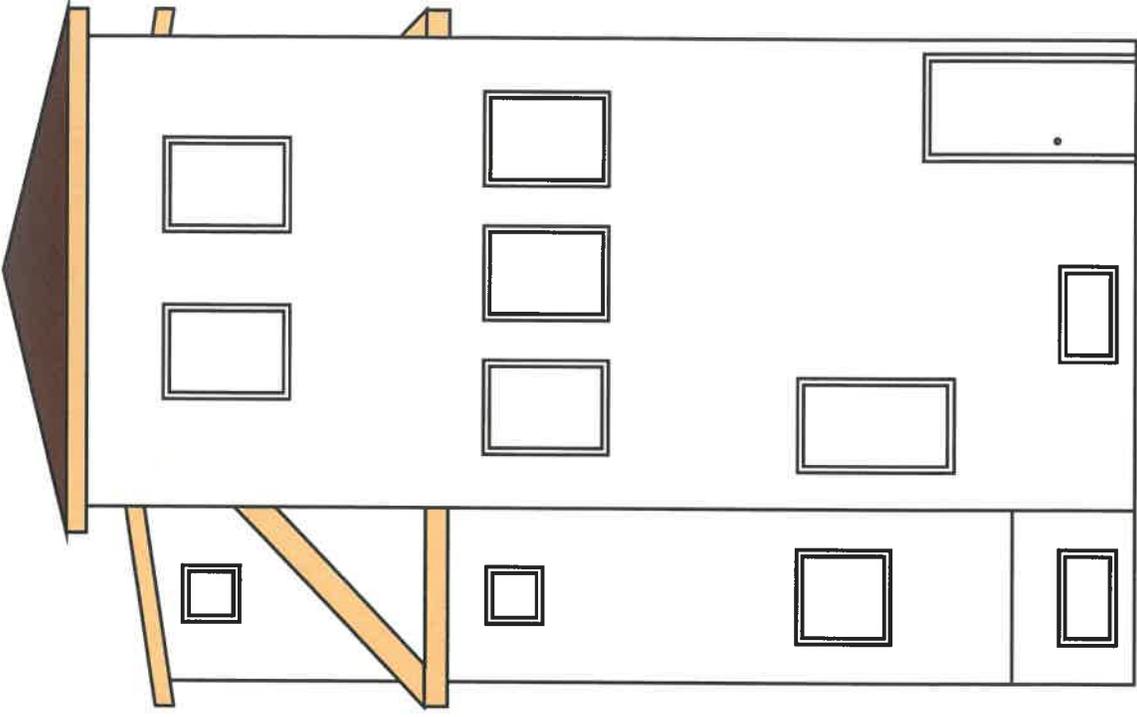
West Elevation



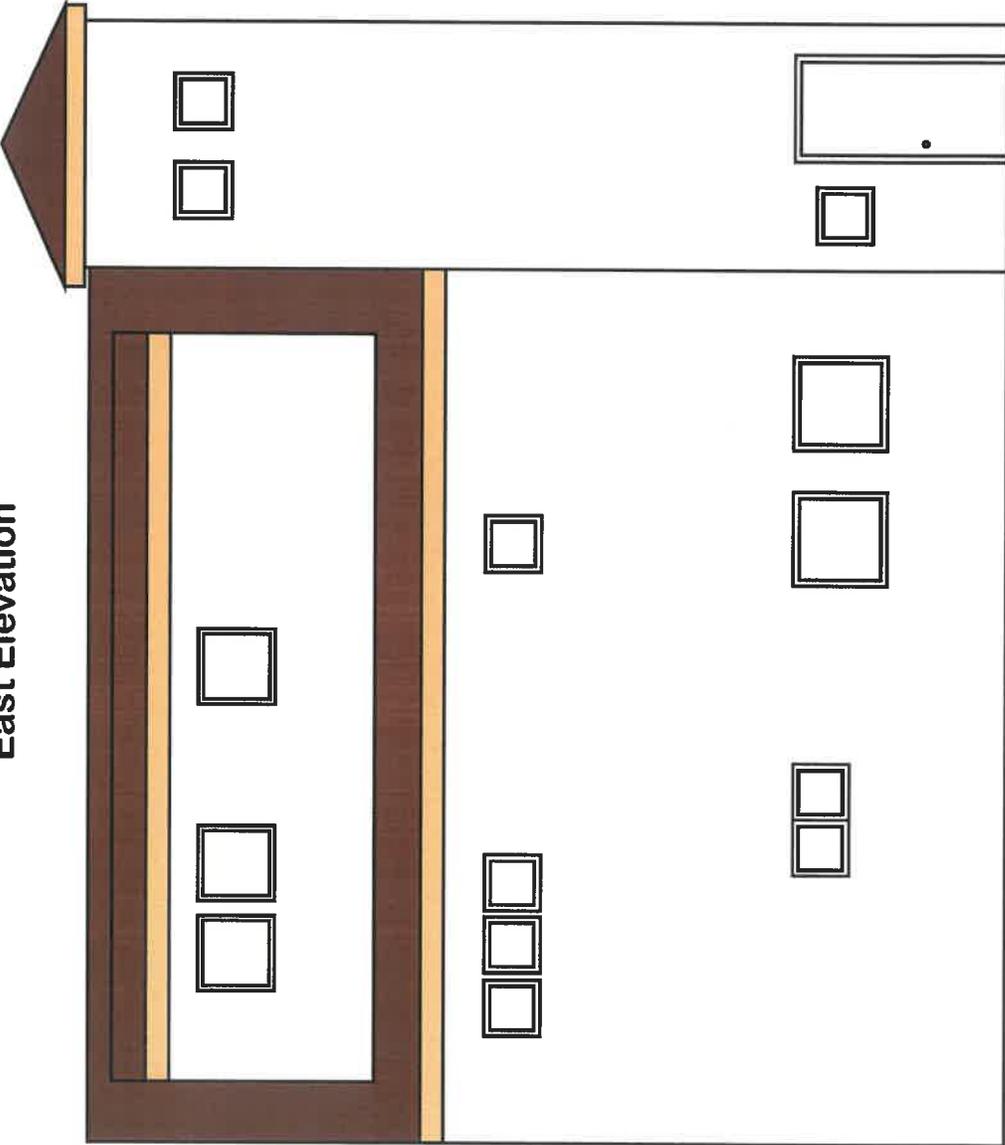
South Elevation



North Elevation



East Elevation





**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 4/1/2019  
Data updated 7/17/2019

**BOSEN & ASSOCIATES, P.L.L.C.**  
ATTORNEYS AT LAW

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December 29, 2020

***VIA HAND DELIVERY***

David Rheame, Chair  
Zoning Board of Adjustment  
1 Junkins Ave.  
Portsmouth, NH 03801

***RE: 53 Tanner Street, Portsmouth, New Hampshire  
Tax Map 126, Lot 46  
MDM Rodgers Family Limited Partnership  
#LU-20-252***

Dear Mr. Rheame:

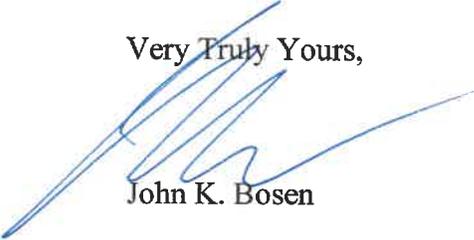
Enclosed please find twelve (12) copies of updated plans relative to the variance application referenced above.

After some consideration, the applicant has decided to proceed with the proposed revised project, which breaks up the dormer on the western side of the dwelling into two smaller dormers. This was done to alleviate any perceived concerns regarding the massing of the project relative to the neighboring properties.

The three foot side yard setback relief is still required as the proposed dormers still represent a vertical expansion of the existing non conformity.

Thank you for your attention.

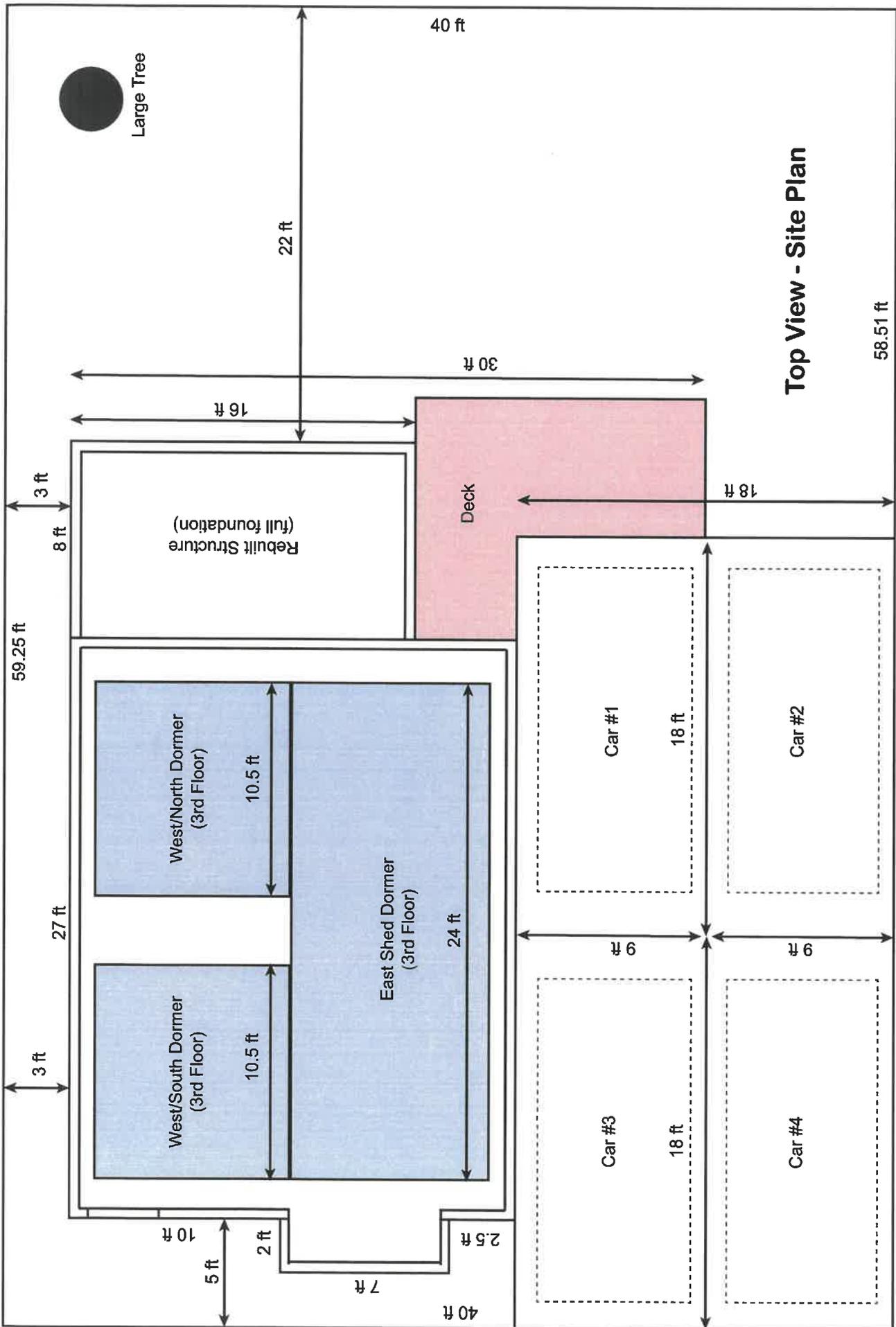
Very Truly Yours,

  
John K. Bosen

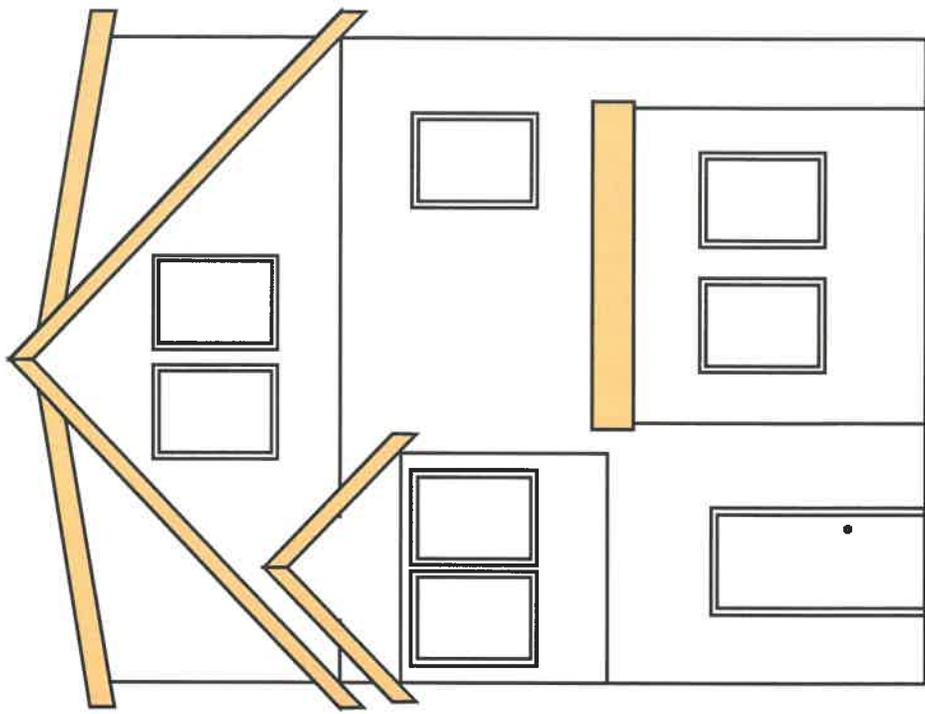
JKB/

Enclosures

cc: MDM Rodgers Family LP



South Elevation



West Elevation

