

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
Monica F. Kieser, Esquire
DATE: May 25, 2021
RE: Marcella Hoekstra
Project Location: 35 Whipple Court
Tax Map 260/Lot 98
SRB Zone

Dear Chairman Rheaume and Zoning Board Members:

On behalf of Marcella Hoekstra (“Hoekstra”), we are pleased to submit this memorandum and attached exhibits in support of Zoning Relief to be considered by the Zoning Board of Adjustment (“ZBA”) at its June 15, 2021 meeting.

I. Exhibits

- A. Lot Coverage Plan – issued by Steven C. Luger, LLA.
- B. Plot Plan.
- C. Site Photographs.
- D. Elevations.
- E. Tax Map 260.

II. Property/Project

35 Whipple Court is an 8,324 s.f. lot in Pannaway Manner which contains a modest 1,475 s.f. one story single family home occupying and 615 s.f. garage (the “Property”) (**Exhibits A-C**). The existing home and garage on the small lot results in total existing building coverage of 2,090 s.f. or 25.11 % where 20% is required. Hoekstra intends a tiny 68 s.f. addition to the rear of the home to renovate and increase the size of the bedroom and bath. The 4 ft. by 17 ft. addition results in a *de minimis* increase in building coverage to 25.93%¹ requiring relief from the Portsmouth Zoning Ordinance (“PZO”).

III. Relief Required

After conferring with the City Planning Department staff, it has been determined that the following is required:

- 1. PZO §10.321 – Non-conforming Structures – To permit the expansion of a nonconforming structure resulting in 26% of building coverage where 20% is required.
- 2. PZO §10.521 – Table of Dimensional Standards – To permit 68 s.f. addition resulting in 26% of building coverage where 20% is required.

¹ Rounded to 26%.

IV. Variance Requirements

- 1. The variances will not be contrary to the public interest.**
- 2. The spirit of the ordinance is observed.**

The first step in the ZBA's analysis is to determine whether granting a variance is not contrary to the public interest and is consistent with the spirit and intent of the ordinance, considered together pursuant to Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102 (2007) and its progeny. Upon examination, it must be determined whether granting a variance "would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives". Id. "Mere conflict with the zoning ordinance is not enough". Id.

In considering whether variances "in a marked degree conflict with the ordinance such that they violate the ordinance's basic zoning objectives". Malachy Glen, supra, also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality. . . . Another approach to [determine] whether granting the variance violates basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare. (emphasis added)

Here a modest one-story home and garage exists on lot that is slightly more than half the required lot size of the SRB Zone. Proposed is a very small, one-story, unseen addition that complies with yard setbacks in an area of similarly developed lots; the 68 s.f. increase is an .82% increase. The slight increase in coverage will neither "alter the essential character of the locality nor threaten the public health, safety or welfare."

- 3. Granting the variance will not diminish surrounding property values.**

The proposed minor, one-story, rear addition will comply with yard setbacks and be unseen from the street. Under these circumstances, it is clear that granting a variance for a very slight increase in building coverage will not diminish surrounding property values.

- 4. Denial of the variances results in an unnecessary hardship.**

- a. Special conditions distinguish the property/project from others in the area.

At 8,324 s.f., the Property is just over half the size of the required lot size for the SRB Zone, yet already developed with a modest home and garage. These circumstances combine to

create special conditions. Were the existing home and garage constructed today, relief would be required, so even a tiny addition of 68 s.f. (.82%) requires identical relief.

- b. No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance.

The purpose of restrictions on expansion of nonconforming structures is to govern nonconformities and provide for expansions only upon review by the ZBA, while Building coverage restrictions exist to prevent overcrowding of land and to maintain air, light, space for abutters and separation for stormwater treatment. Because the proposed one-story addition is just 68 s.f. and complies with all yard setbacks, the purposes of these regulations are met, so there is no reason to apply the strict frontage requirements of the zoning ordinance.

- c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Proposed is a very minor addition to improve live-ability of a modest one-story single-family home in the single-residence district. Accordingly, the use is reasonable.

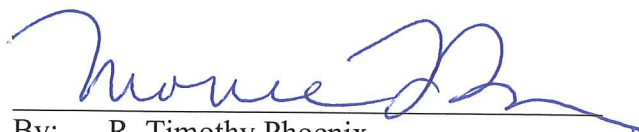
5. Substantial justice will be done by granting the variance.

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, L.L.C., 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice”. Malachy Glen, supra at 109. Because the proposed addition is so small and complies with the yard setback requirements, there is no benefit to the public from denying the variances. In comparison, Hoekstra will suffer great harm she will be unable to complete a minor expansion that improves the live-ability of the home. Clearly, there is no benefit to public outweighing the hardship to the applicant if the variances are denied.

V. Conclusion

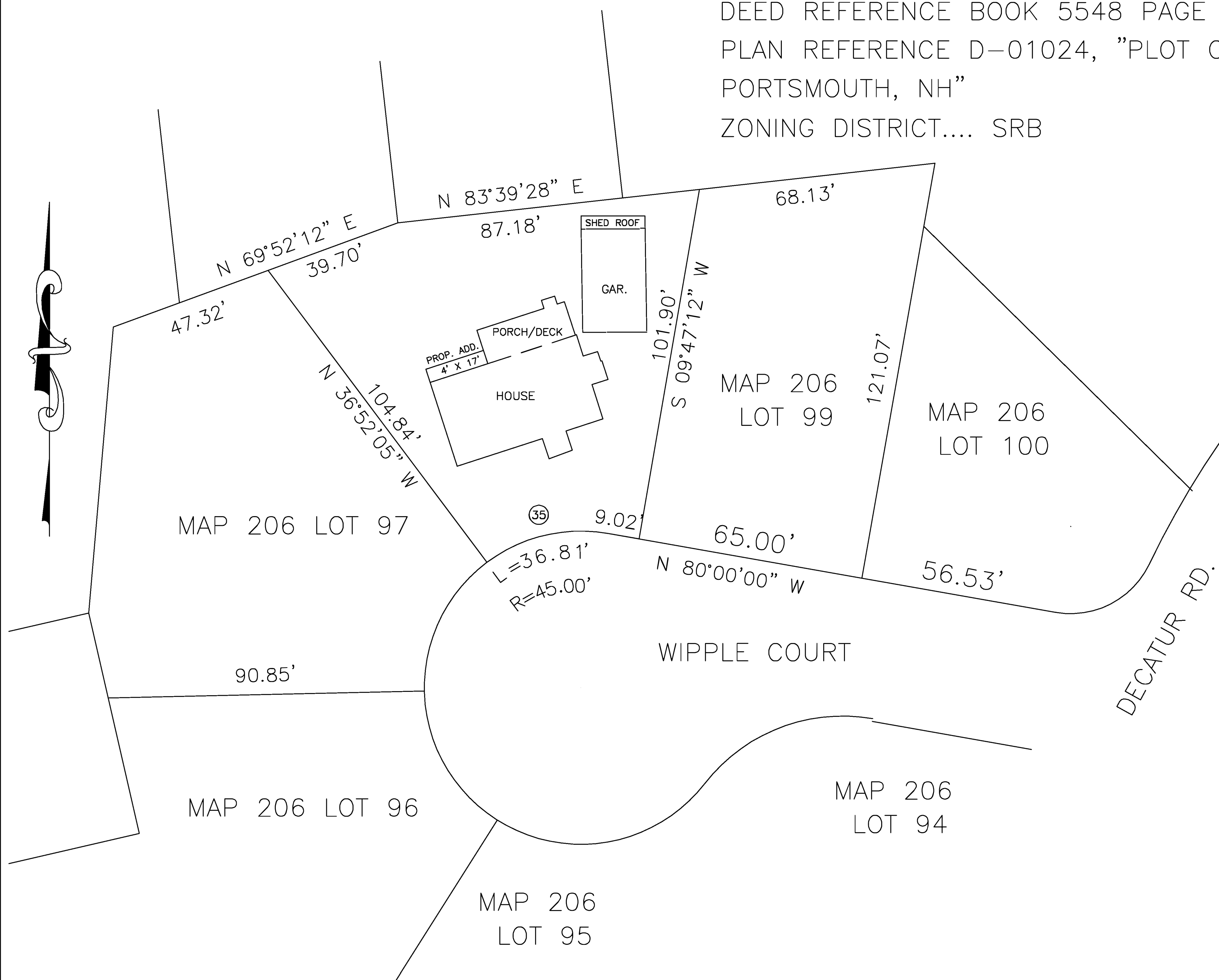
For all of the reasons stated, Hoekstra respectfully requests that the Portsmouth Zoning Board of Adjustment grant the submitted variance requests.

Respectfully submitted,
Marcella Hoekstra



By: R. Timothy Phoenix
Monica F. Kieser

NOTE; THIS IS NOT A SURVEY OF PROPERTY LINES. FIELD LOCATION OF BUILDINGS ARE FOR BUILDING COVERAGE ONLY AND WERE PLACED ON LOT BY OCCUPATION LINES
 DEED REFERENCE BOOK 5548 PAGE 0840
 PLAN REFERENCE D-01024, "PLOT OF PANNAWAY MANOR, PORTSMOUTH, NH"
 ZONING DISTRICT.... SRB

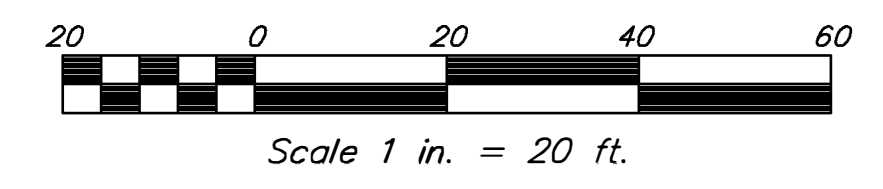


MAP 206 LOT 98
 8,324 SQ. FT.
 0.19 ACRES
 PER ZONING 20% COVERAGE IS 1,665 SQ. FT.

HOUSE WITH EXISTING PORCHES... 1,475 SQ. FT.
 GARAGE WITH SHED ROOF..... 615 SQ. FT.
 EXISTING COVERAGE... 2,090 SQ. FT.
 AREA OF LOT..... 8,324 SQ. FT.
 PERCENT COVERAGE.... 25.11%

EXISTING COVERAGE.... 2,090 SQ. FT.
 WITH PROPOSED ADDITION.... 68 SQ. FT.
 TOTAL COVERAGE.... 2,158 SQ. FT.
 AREA OF LOT.... 8,324 SQ. FT.
 PERCENT COVERAGE.... 25.93%

EXHIBIT A



"I CERTIFY THAT THIS PLAN IS BASED ON AN ACTUAL FIELD SURVEY AND HAS A MAXIMUM ERROR OF CLOSURE OF 1:10,000 ON ALL PROPERTY LINES WITHIN AND BORDERING THE SUBJECT PROPERTY."
 STEVEN C. LUGER LLS

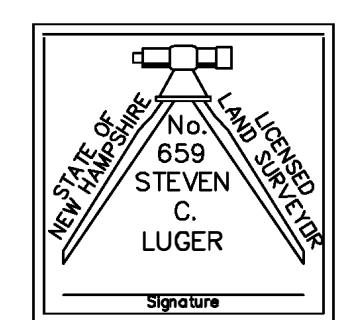
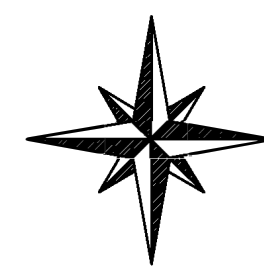
REV	DATE	NOTE	INIT.

LEGEND

● Iron Pipe/Steel Pin Fnd	— Boundary
⊙ Iron Rod Set	— Bldg Setbacks
⊙ Iron Rod Fnd	— Edge of Tar
■ Granite/Concrete Bnd Fnd	— Culvert
⊙ Drill Hole Set	— Stonewall
⊙ Drill Hole Fnd	— Wetland Flagging
⊙ Utility Pole	— Wetland Setback

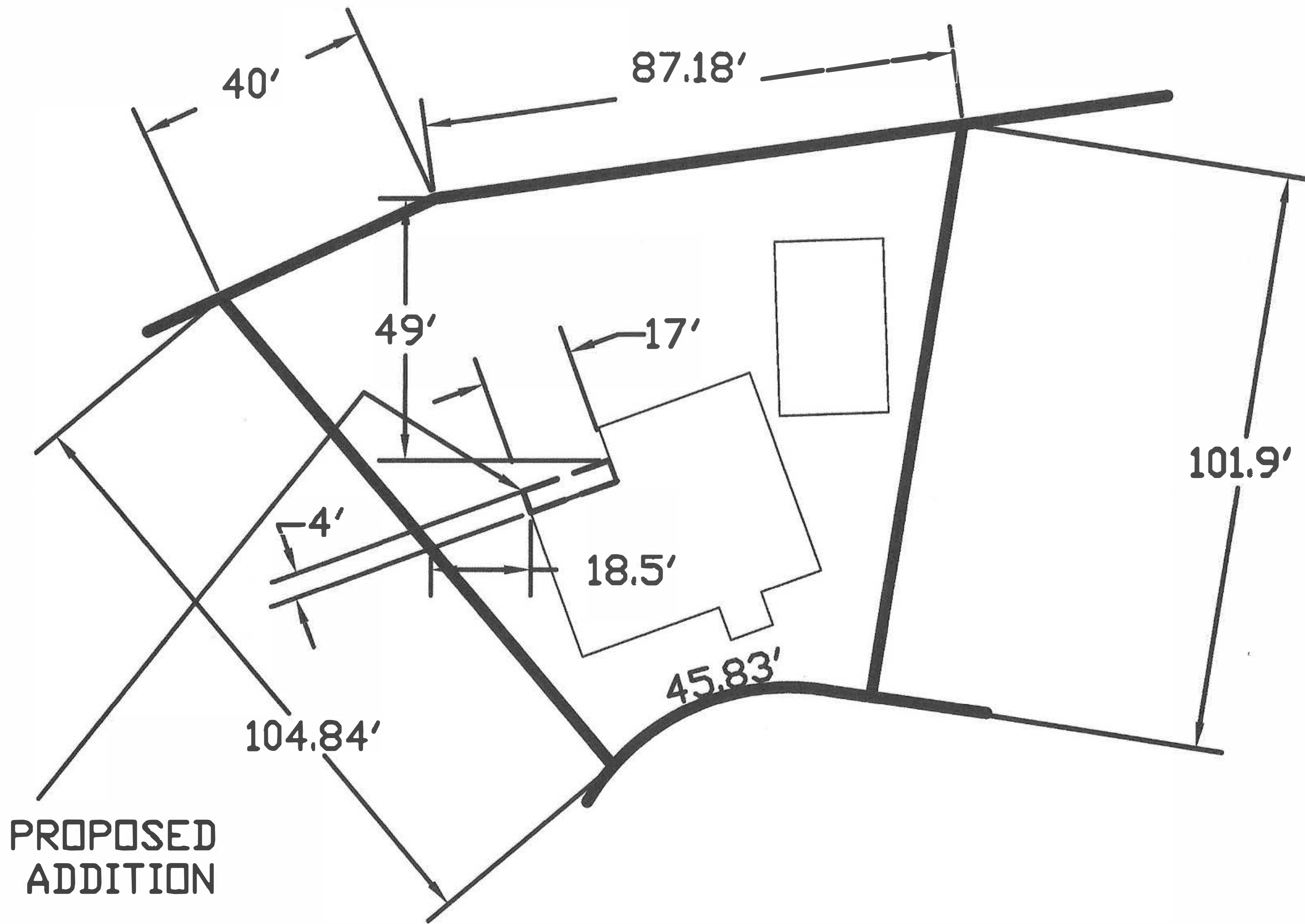
Prepared by
STEVEN C. LUGER
 LAND SURVEYOR
 SHEET 2 OF 5

PO BOX 1791
 HILLSBOROUGH, NH 03244
 TEL. (603) 892-4806
 JOB NO: 2020002



PREPARED FOR:
 Marcella Hoekstra
 35 Whipple Court
 Portsmouth, NH

LOT COVERAGE PLAN
 TAX MAP 260 LOT 98
 35 WHIPPLE COURT
 PORTSMOUTH, NH
 SCALE: 1" = 20' DATE: MAY 9, 2021



PROPOSED
ADDITION

LOT: 260-98
35 WHIPPLE COURT

EXHIBIT B

Google Maps 35 Whipple Ct



Imagery ©2021 Google, Imagery ©2021 Maine GeoLibrary, U.S. Geological Survey, Map data ©2021 20 ft

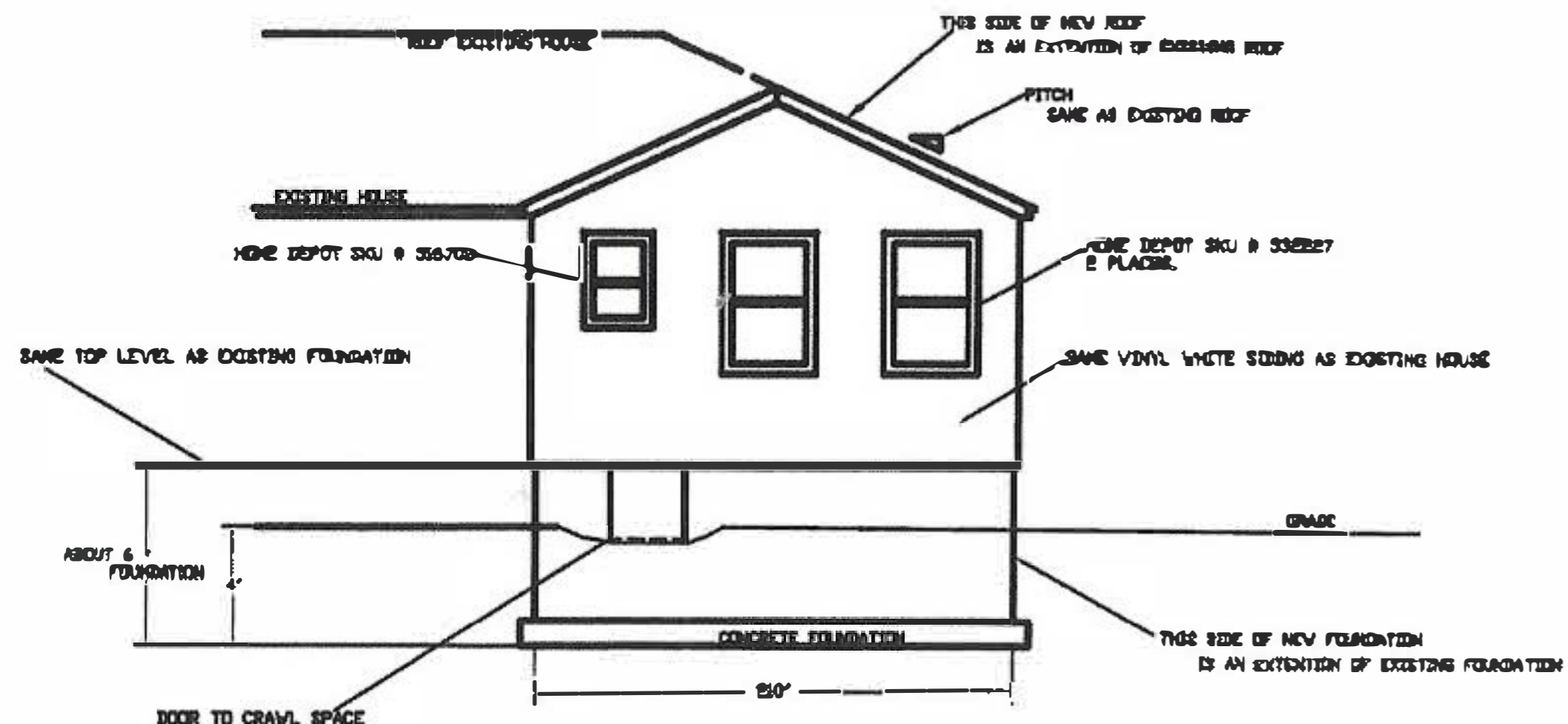
EXHIBIT C



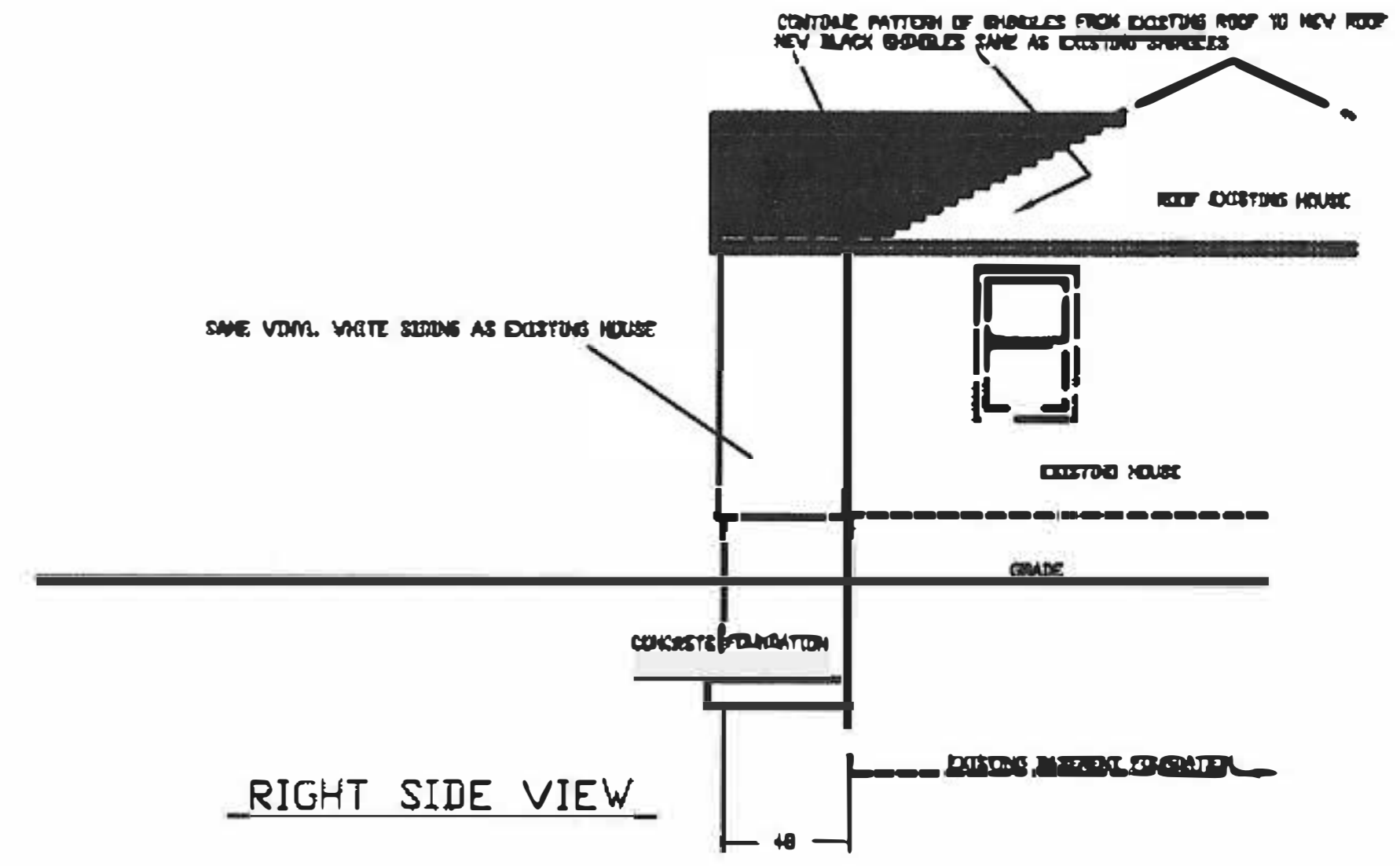


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 ANY REVISIONS MUST BE OBTAINED BY OBTAINING WRITTEN AUTHORIZATION
 OF THE ARCHITECT.

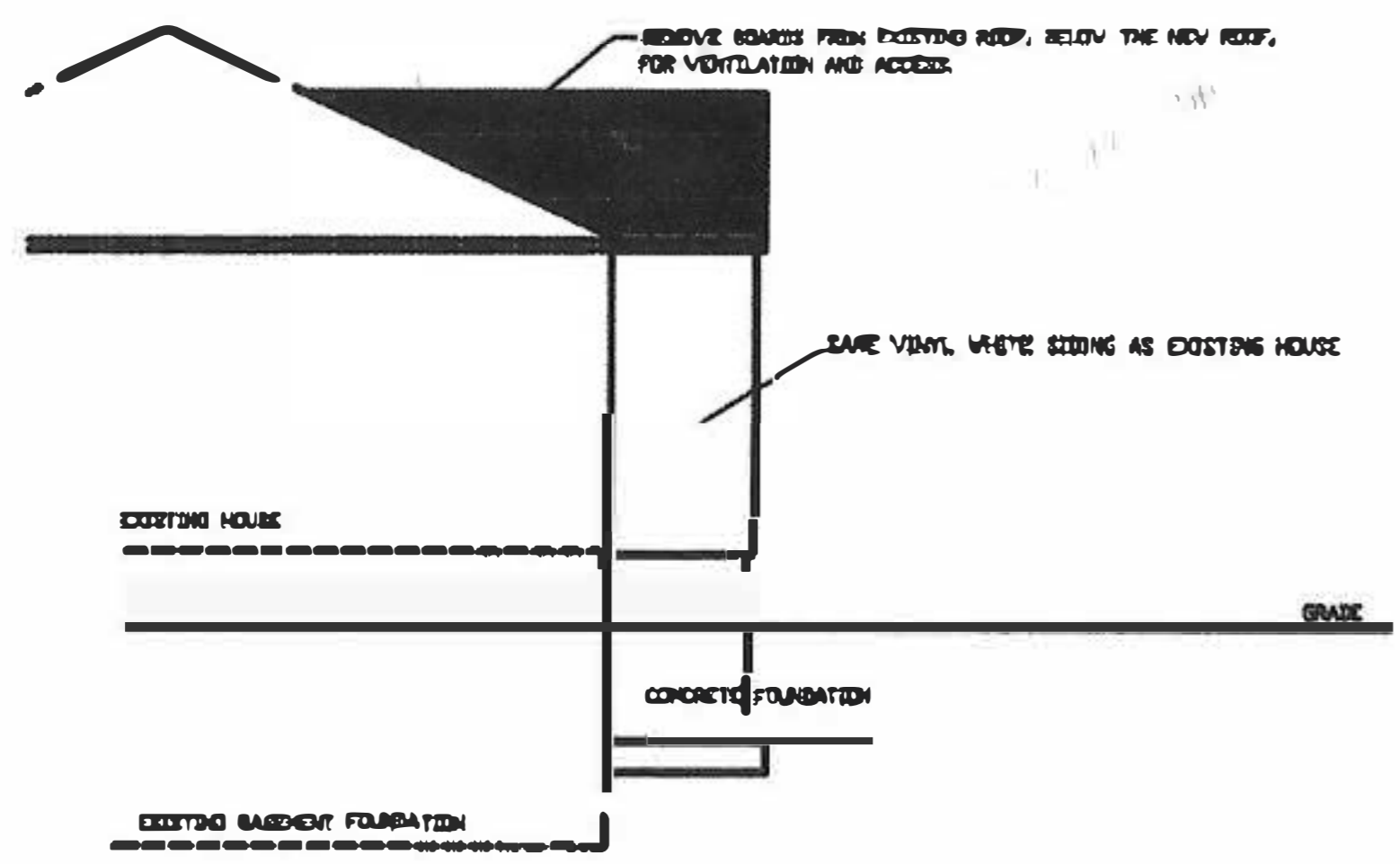
REVISIONS			
NO.	DATE	DESCRIPTION	APPROVED



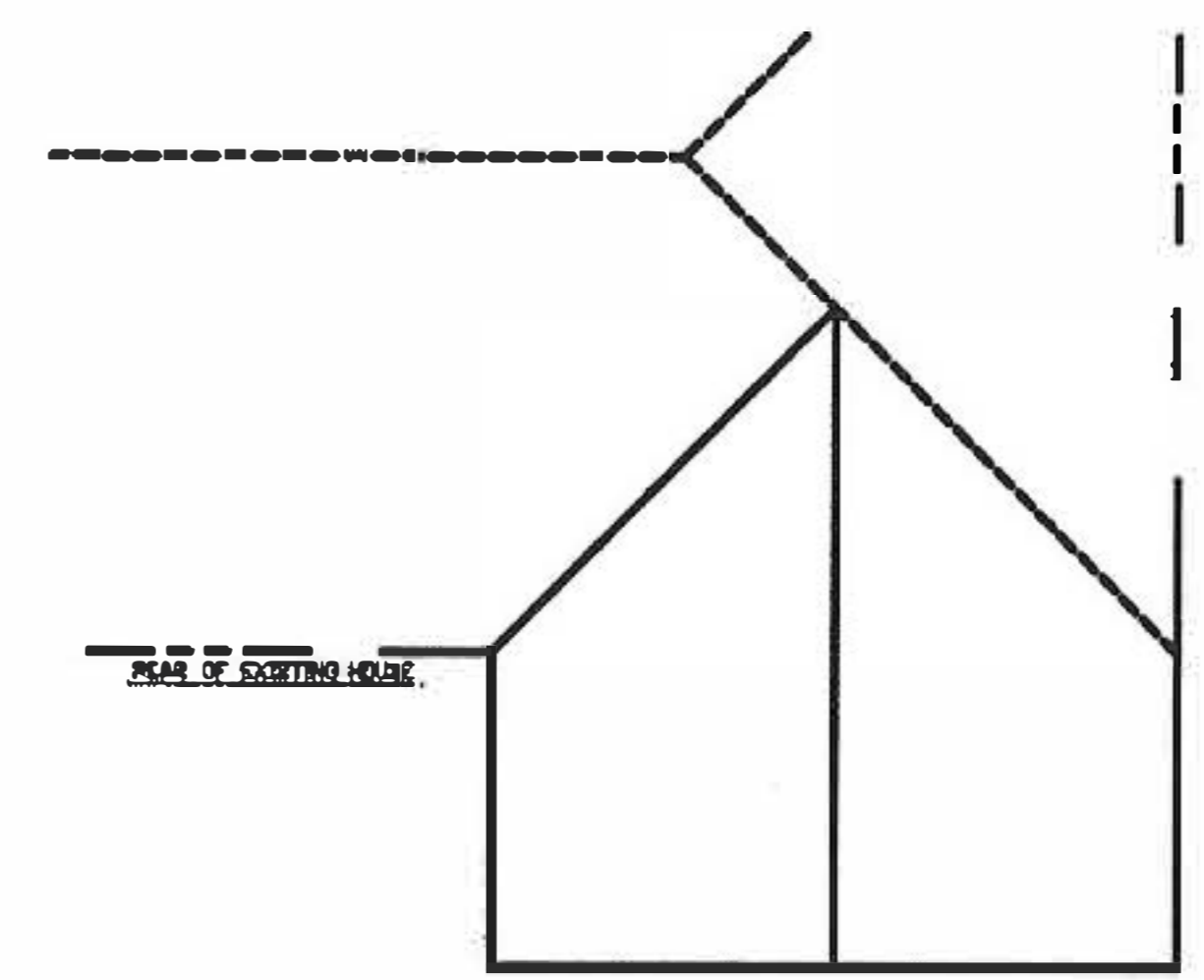
REAR VIEW



RIGHT SIDE VIEW



LEFT SIDE VIEW



PLAN VIEW OF ROOF

EXHIBIT D

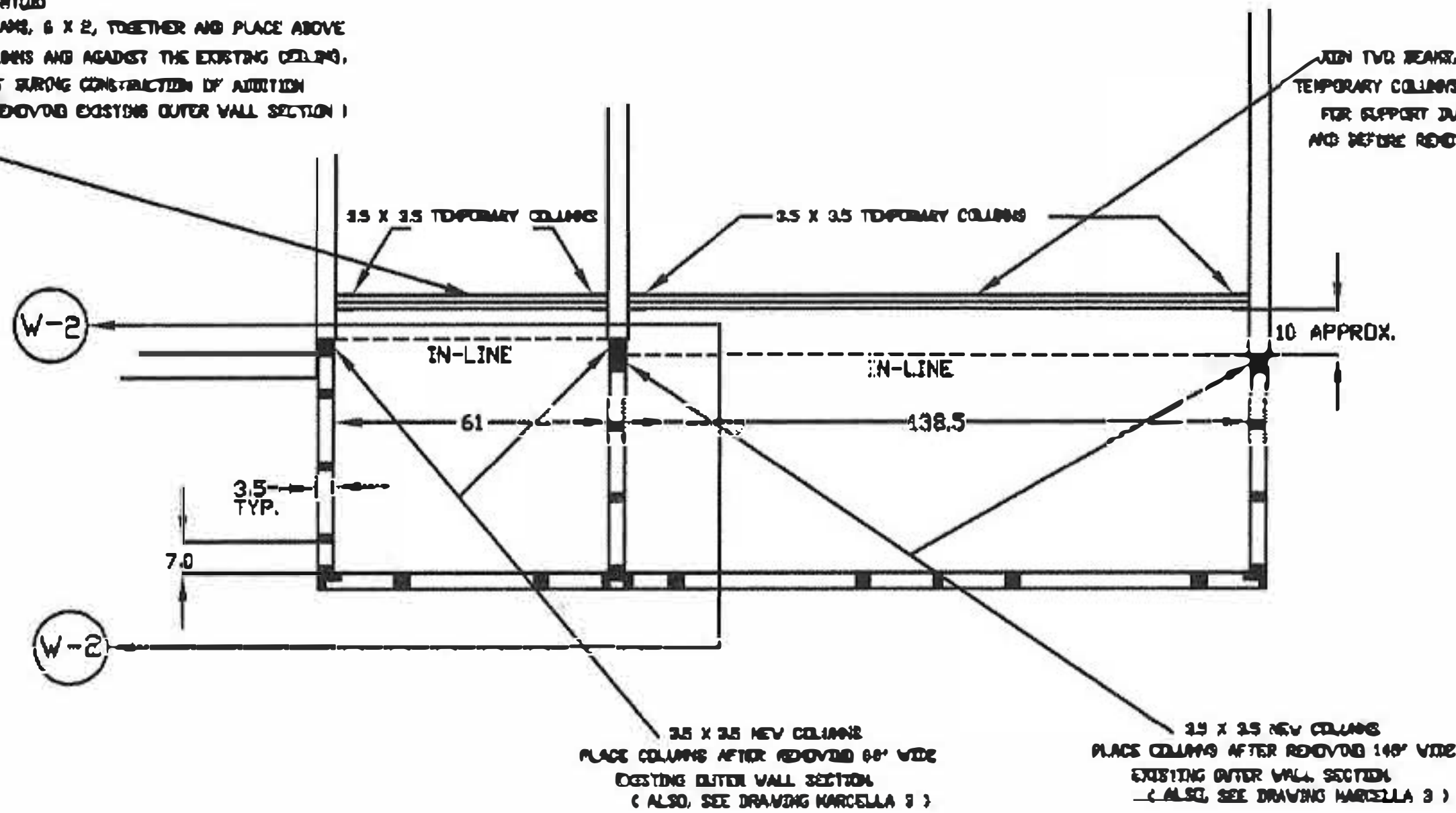
IN NEW SCALE DRAWING APPROVALS: DATE:		Joop F. Hoekstra	
DESIGN: JFH CHECK:	DATE:	ATTENTION to 25 Virginia Court	
APPROVED:	DATE:	SHEET NO: D	SHEET NO: Marcella 1
SCALE: 1/4" = 1'-0"		SHEET 1 OF 4	

THIS DRAWING IS NOT TO BE USED FOR MAKING REPRODUCTIONS WITHOUT OBTAINING WRITTEN AUTHORIZATION OF THE ARCHITECT.

REVISIONS				
ZONE	LTR	DESCRIPTION	DATE	APPROV

SECTION W-1
SCALE .5" = 1'

REMOVE EXISTING JOIST TWO BEAMS, 6 X 2, TOGETHER AND PLACE ABOVE TEMPORARY COLUMNS AND AGAINST THE EXISTING CEILING, FOR SUPPORT DURING CONSTRUCTION OF ADDITION AND BEFORE REMOVING EXISTING OUTER WALL SECTION I

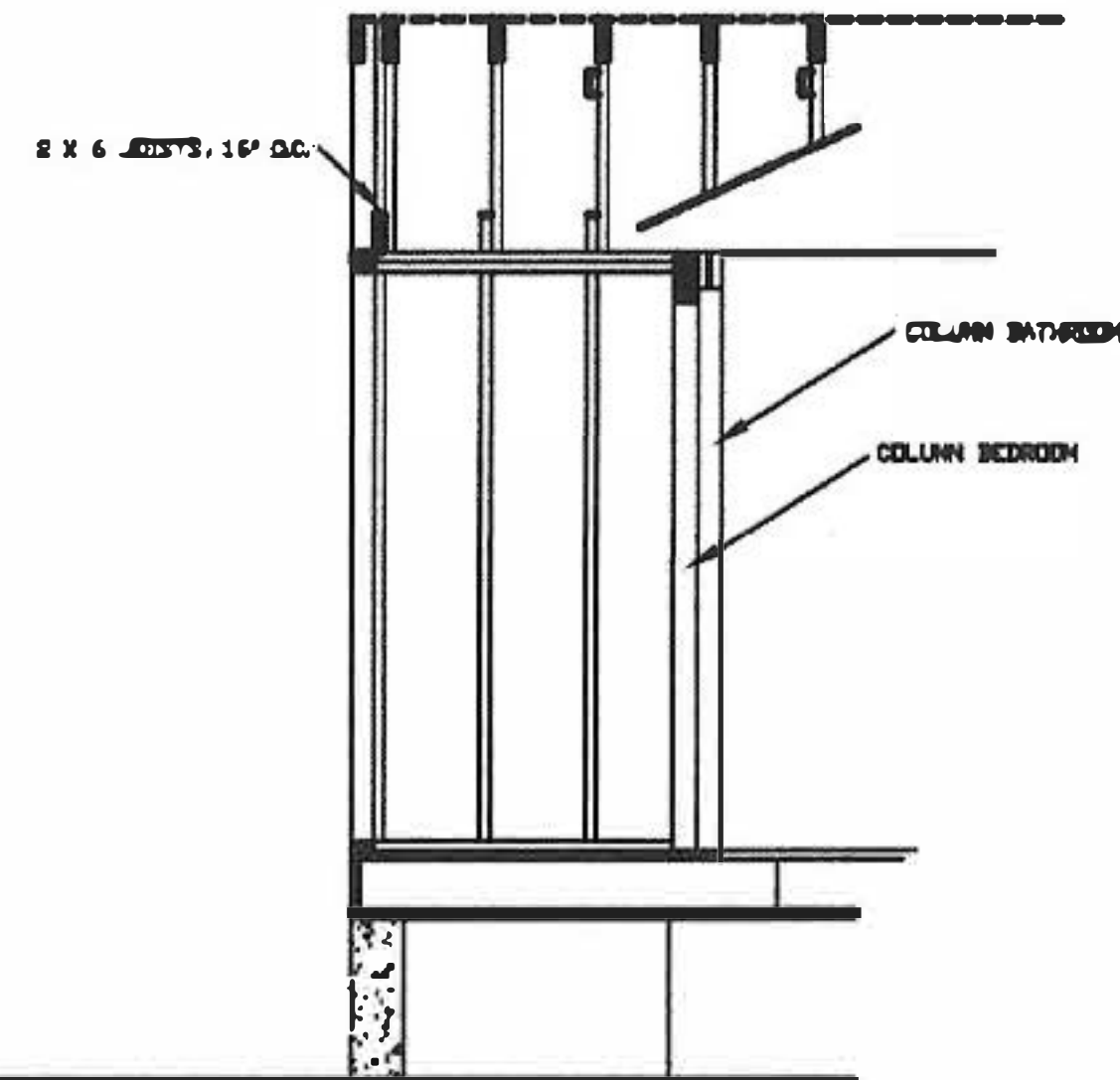


JOIN TWO BEAMS, 6 X 2, TOGETHER AND PLACE ABOVE TEMPORARY COLUMNS AND AGAINST THE EXISTING CEILING, FOR SUPPORT DURING CONSTRUCTION OF ADDITION AND BEFORE REMOVING EXISTING OUTER WALL SECTION I

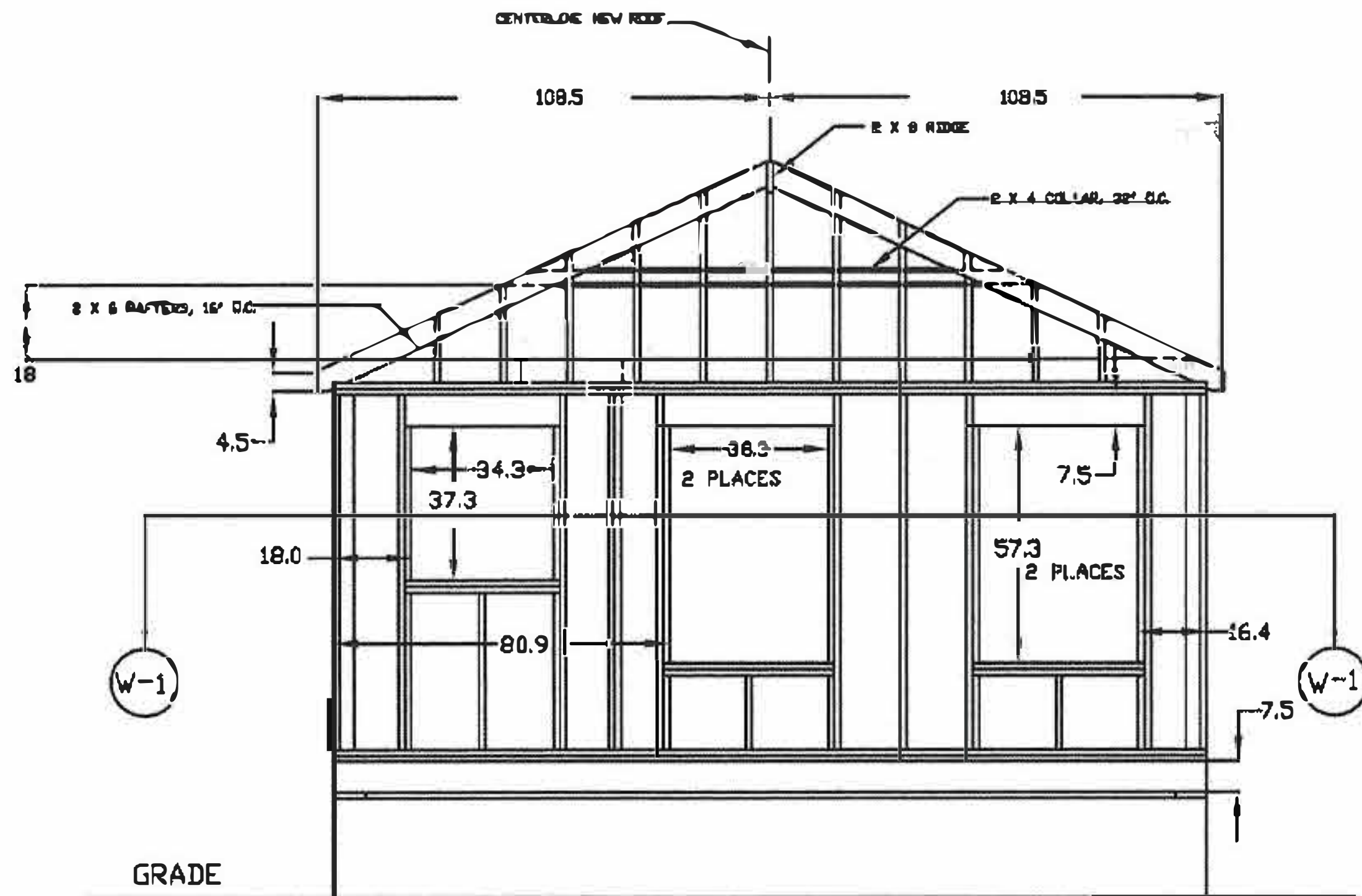
3.5 X 3.5 NEW COLUMNS PLACE COLUMNS AFTER REMOVING 84" WIDE EXISTING OUTER WALL SECTION (ALSO, SEE DRAWING MARCELLA 2)

3.5 X 3.5 NEW COLUMNS PLACE COLUMNS AFTER REMOVING 140" WIDE EXISTING OUTER WALL SECTION (ALSO, SEE DRAWING MARCELLA 3)

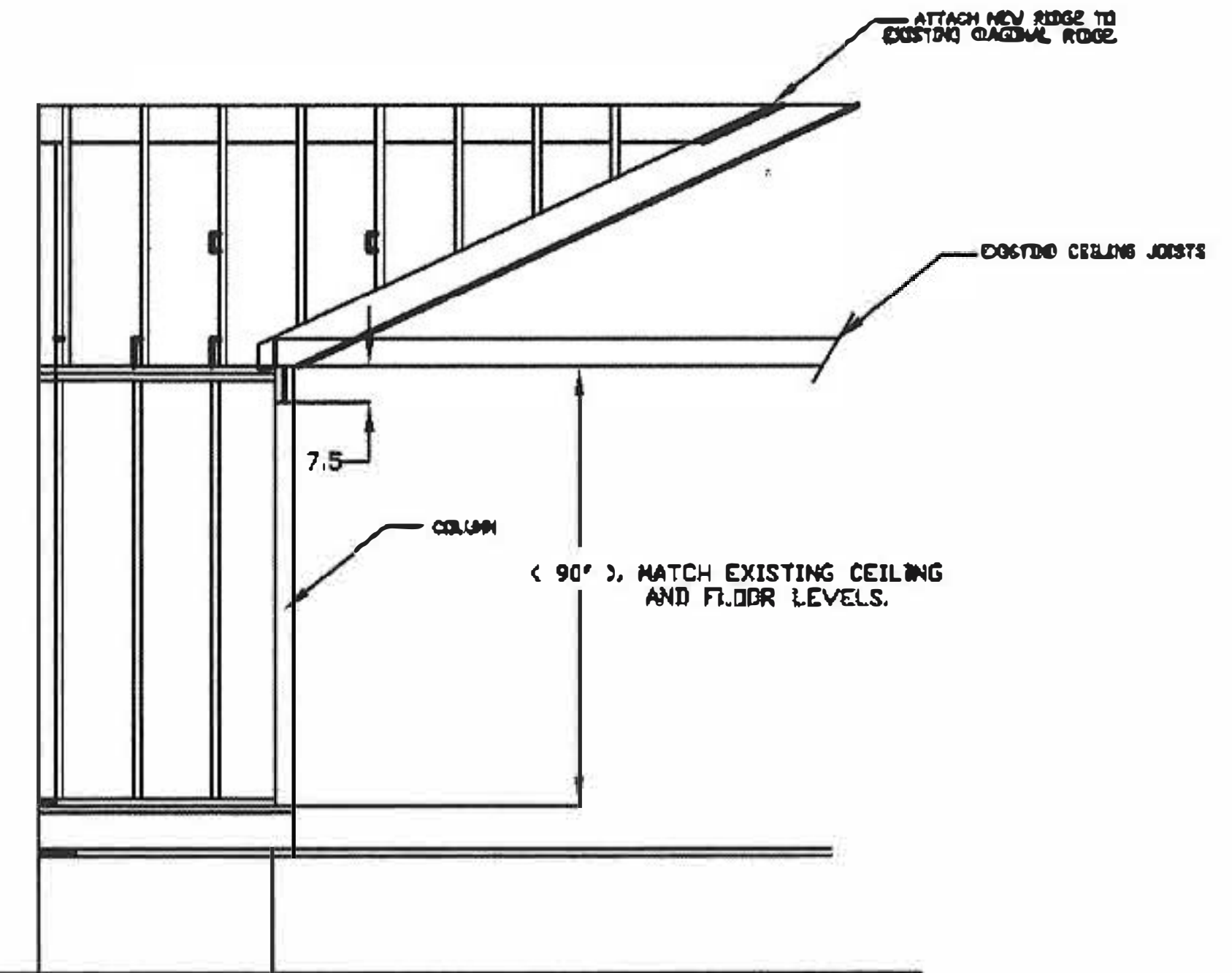
SECTION W-2
SCALE .5" = 1'



CENTERSLINE NEW ROOF



REAR VIEW

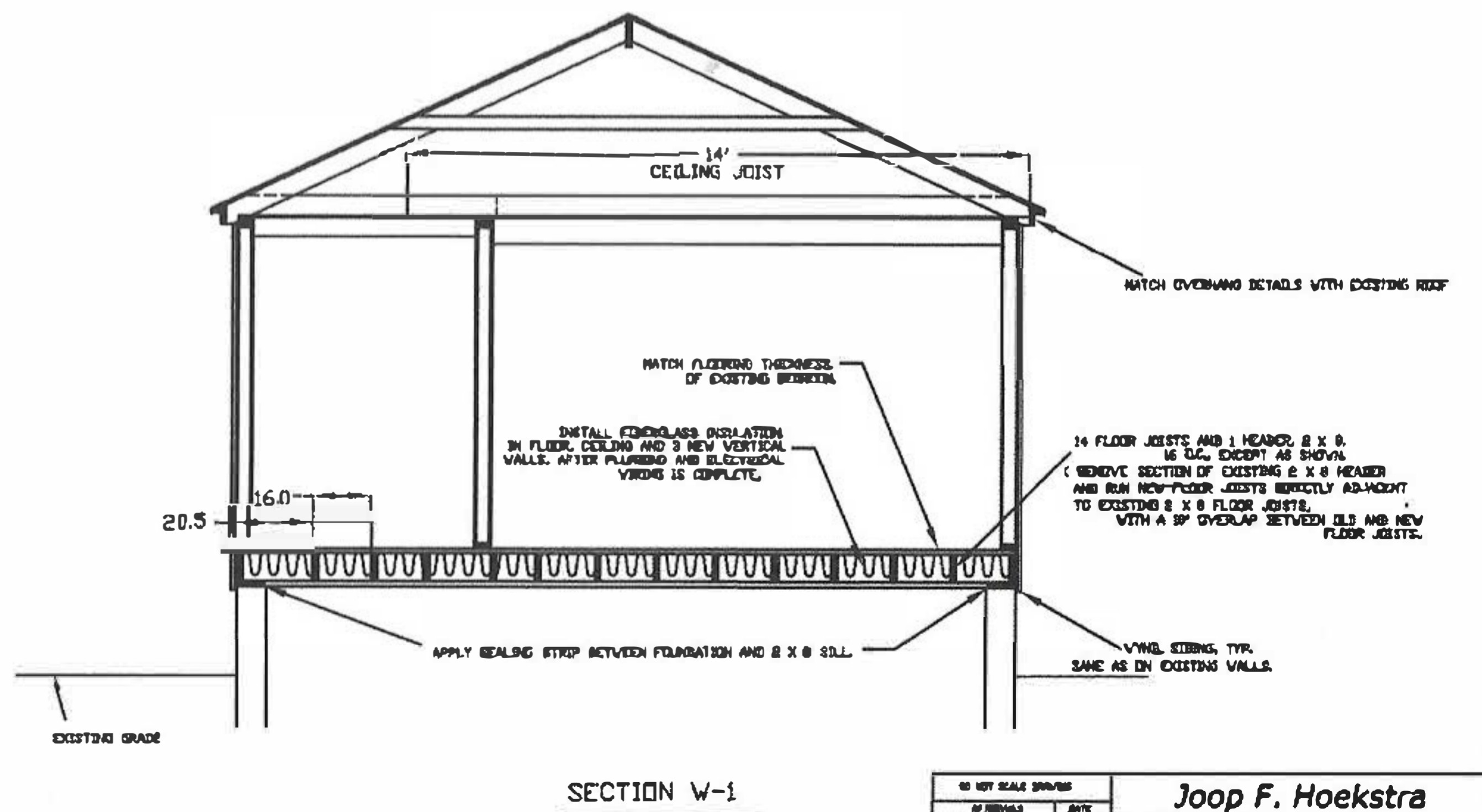
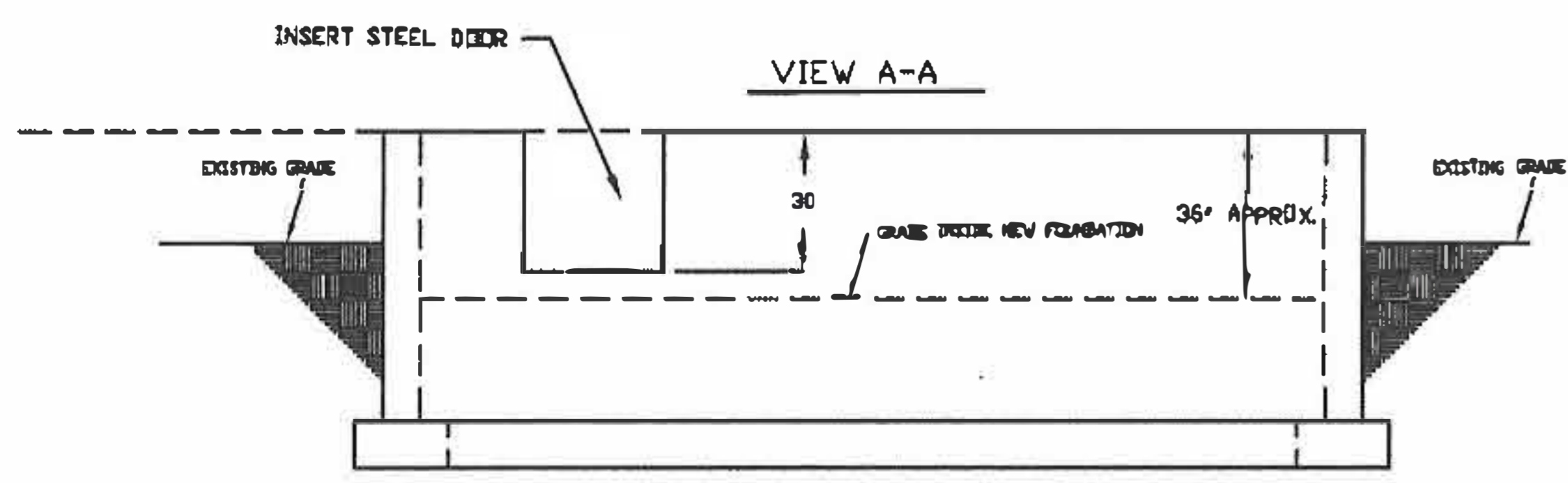
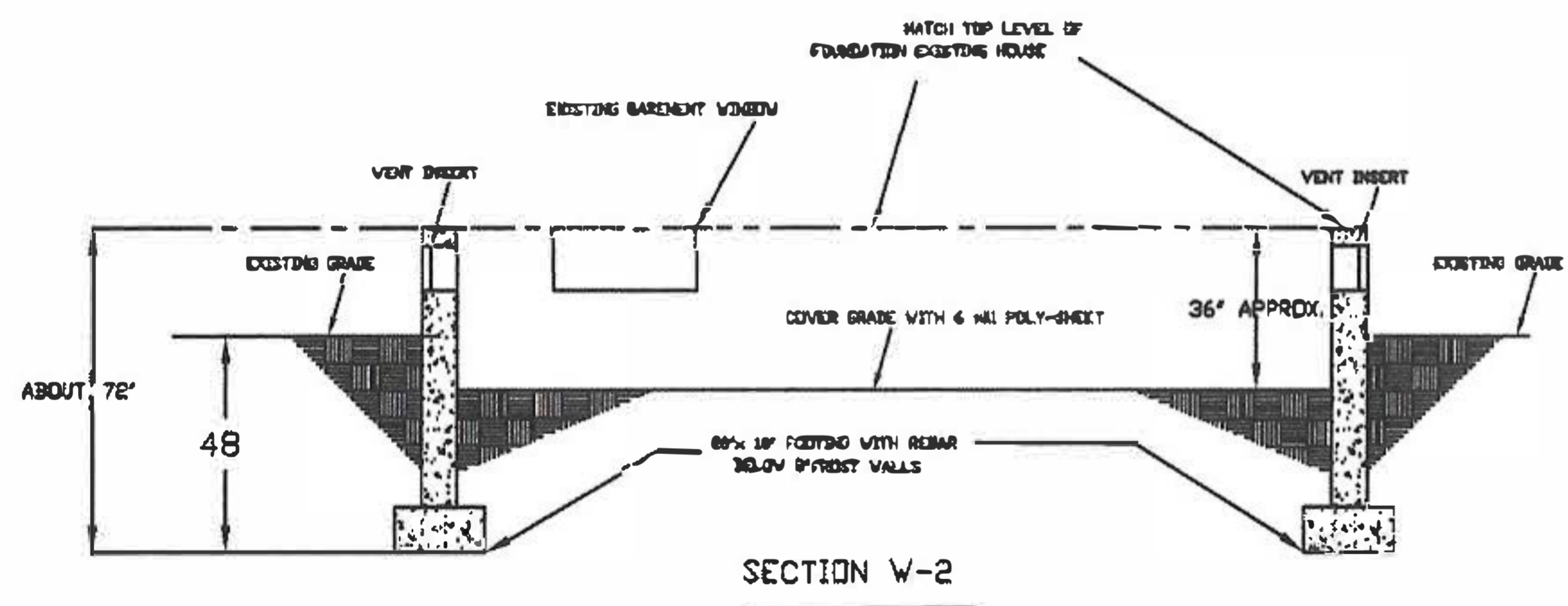
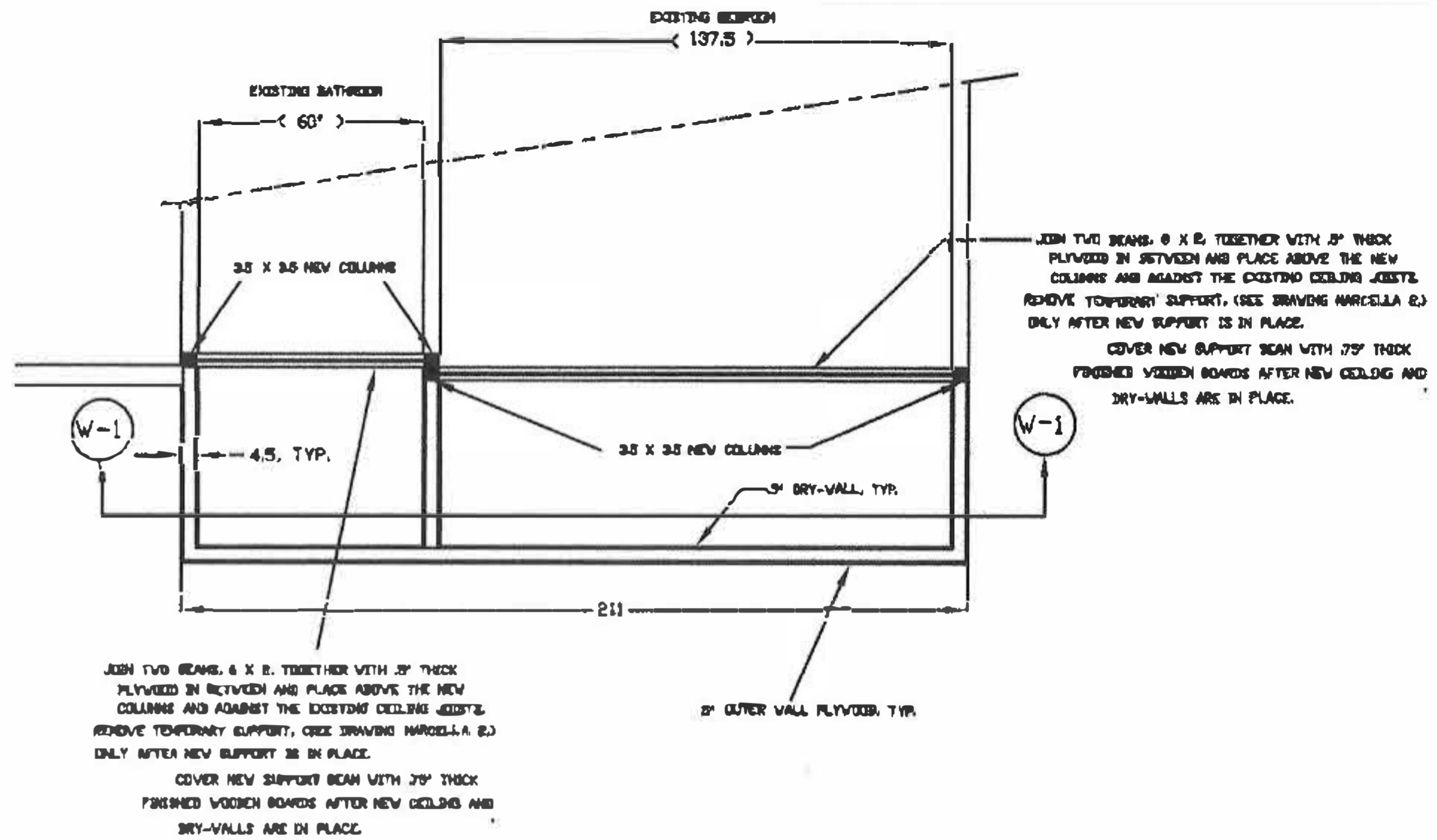
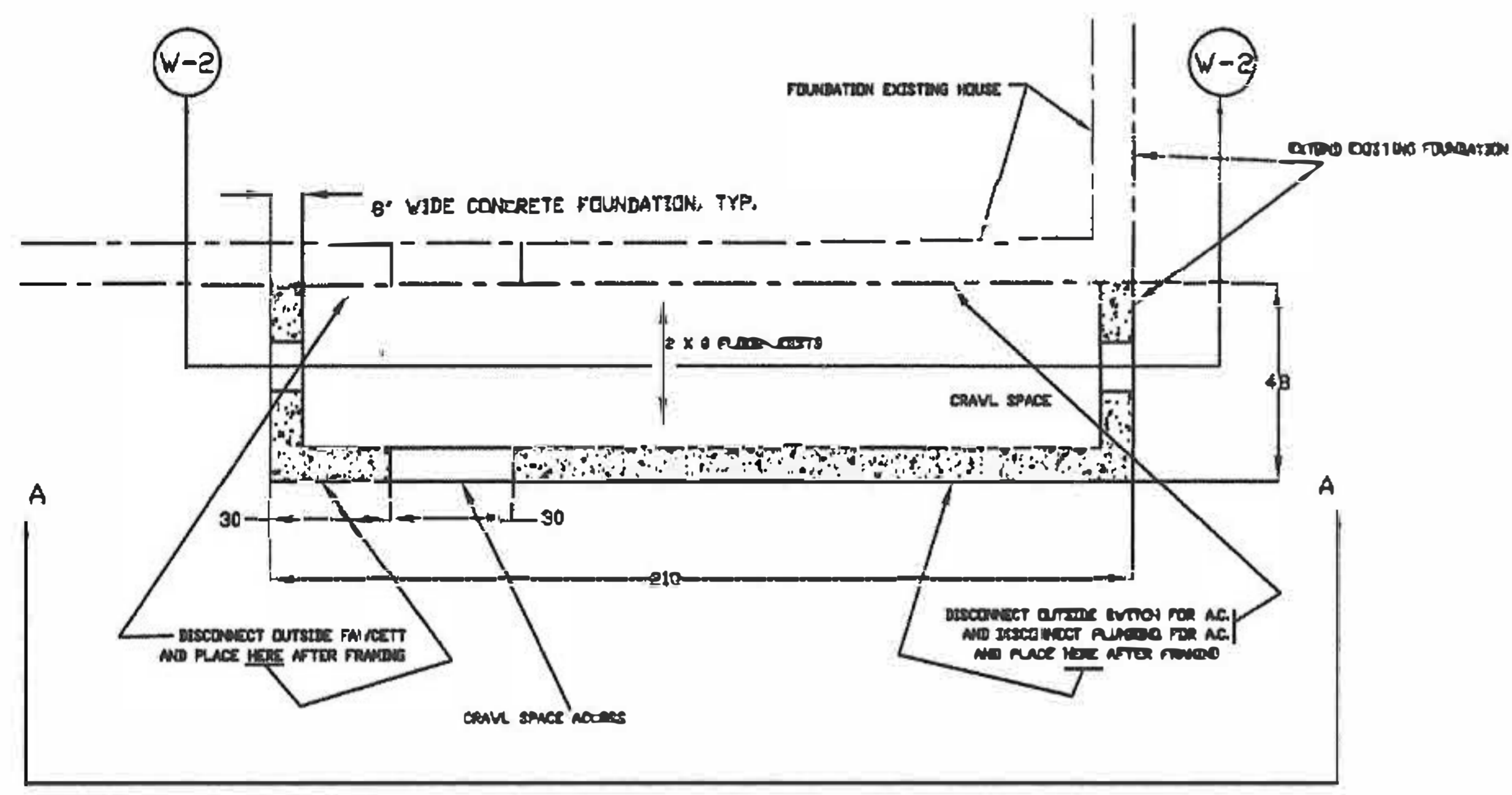


RIGHT SIDE VIEW

NO NET SCALE DRAWING		Joop F. Hoekstra	
DESIGNED	DATE	DETAILS OF ADDITION	
DRAWN	NO	30 Winslow Court,	
CHECKED			
APPROVED		SCALE 1/4"	REV 3
DATE		SHEET 2 OF 4	

THIS DRAWING IS NOT TO BE USED FOR MAKING REPRODUCTIONS WITHOUT OBTAINING WRITTEN AUTHORIZATION

REVISIONS			
ZONE	LTR	DESCRIPTION	DATE

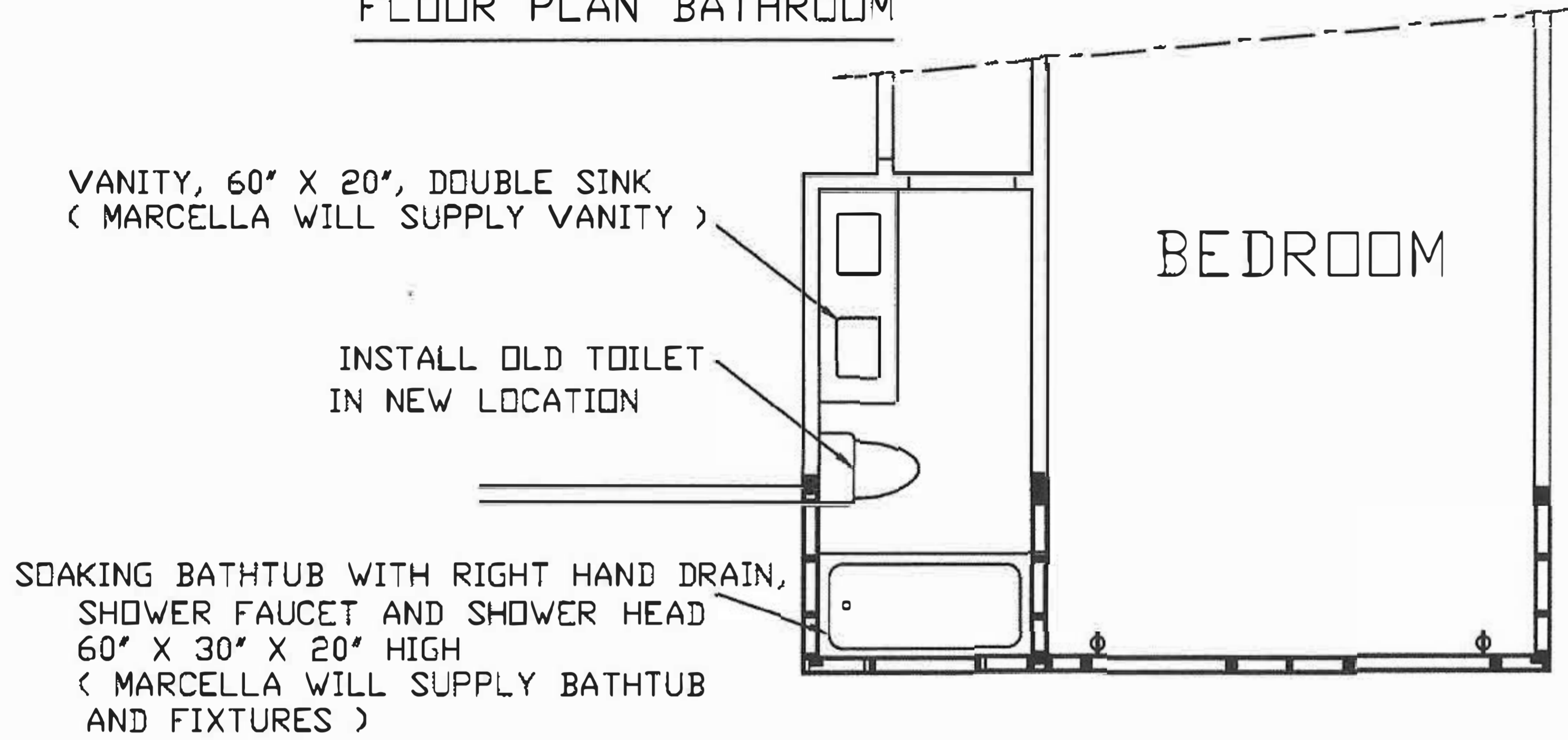


DO NOT SCALE DIMENSIONS		Joop F. Hoekstra		
NO. REVISIONS	DATE			
DRAWN	JFH	DETAILS OF ADDITION 30 W Apple Court,		
CHECKED				
DATE				
APPROVED				
DATE		SHEET NO. D	DRAWING NO. Marcella 3	REV. A
SCALE 1/8" = 1'-0"		SHEET 2 OF 4		

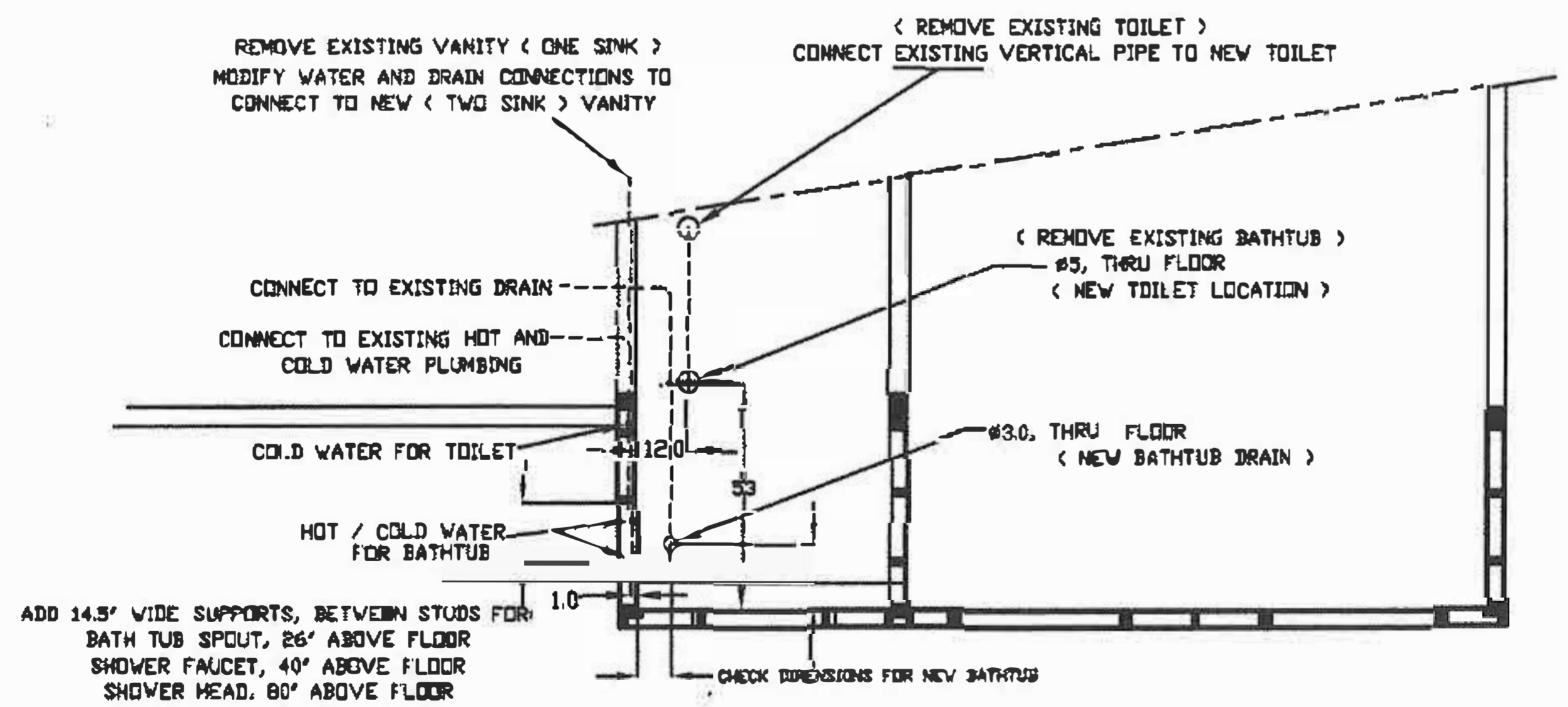
THIS DRAWING IS NOT TO BE USED FOR MAKING REVISIONS UNLESS IT FIRST CONTAINS WRITTEN AUTHORIZATION OF J. HOEKSTRA

REVISIONS		DATE	APPROVED
ZONE	LTR		

FLOOR PLAN BATHROOM

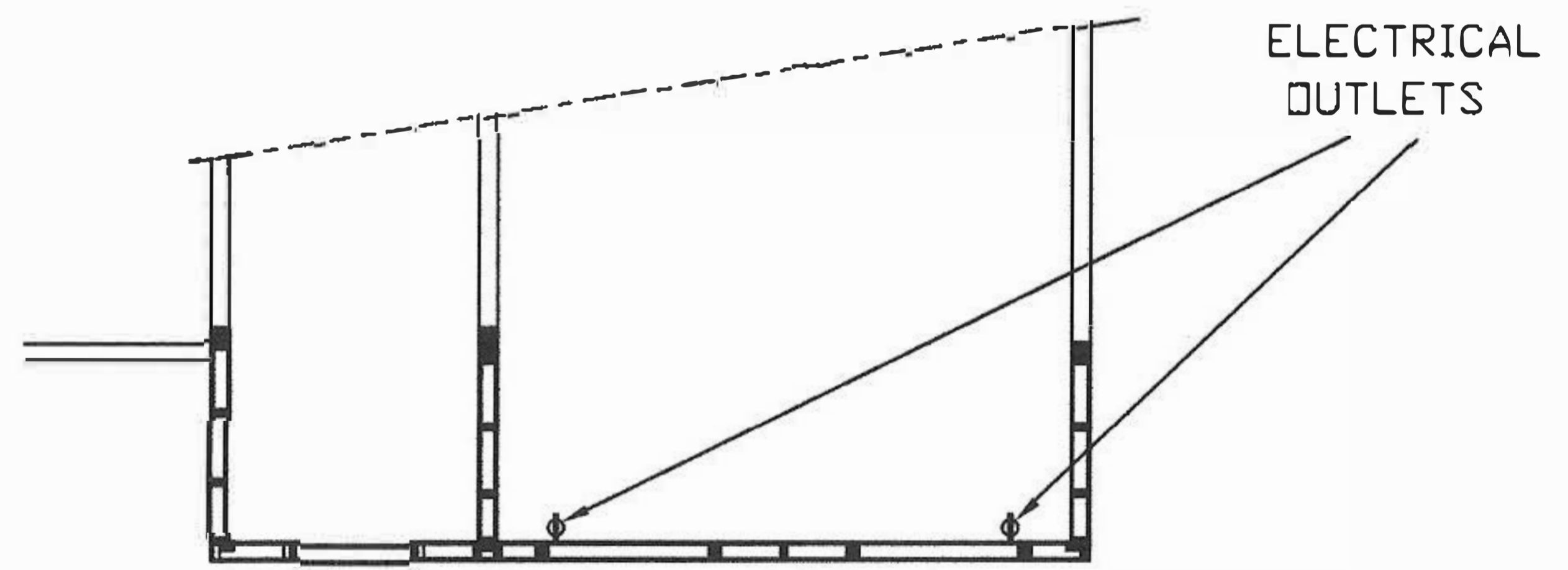


PLUMBING PLAN

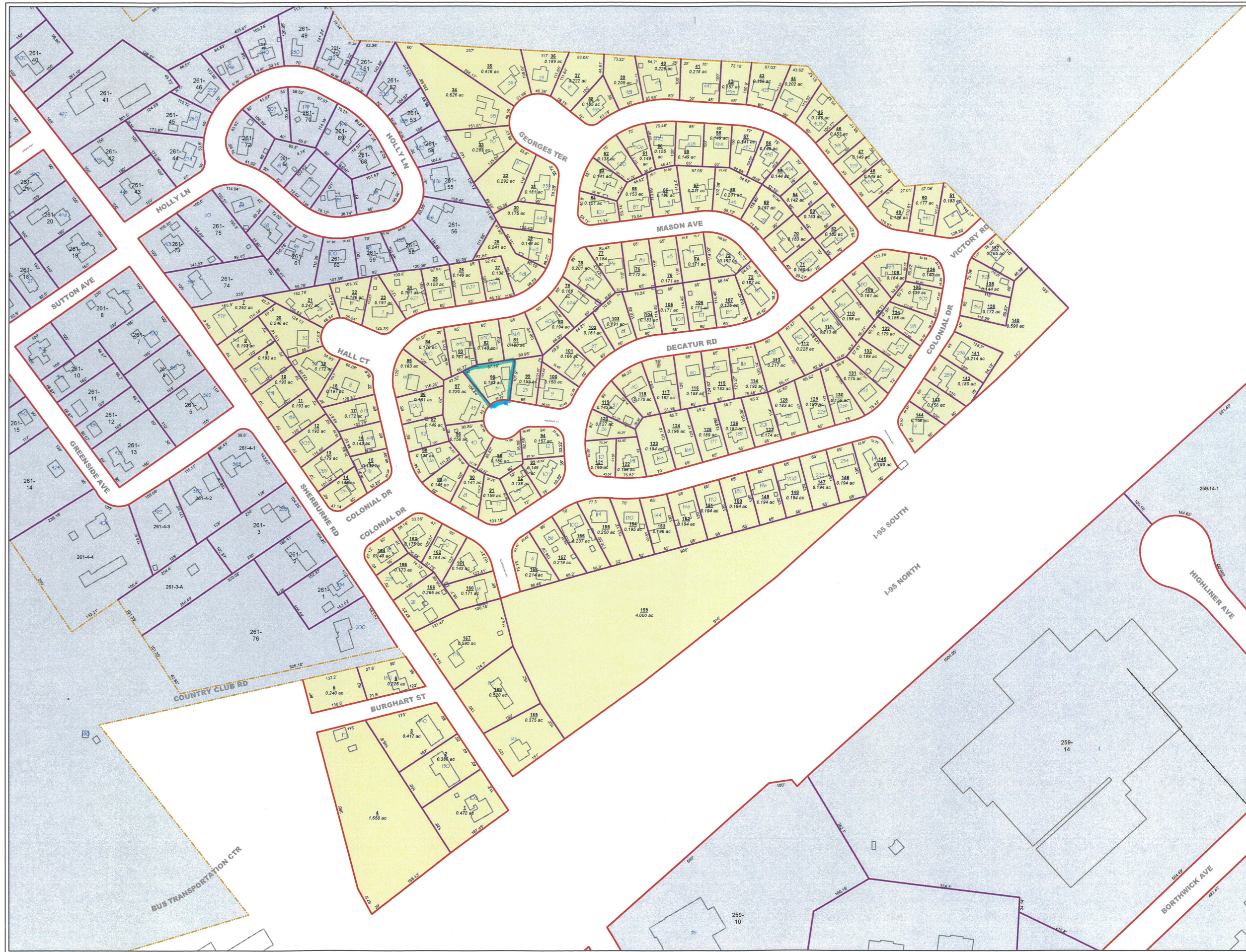


ELECTRICAL PLAN

CONNECT 2 NEW OUTLETS TO EXISTING OUTLET



DO NOT SCALE DRAWING		Joop F. Hoekstra	
DESIGNED	DATE	DETAILS OF ADDITION 30 Maple Court	
DRAWN			
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DATE		REVISED BY D	REVISION NO. Marcella 4
			REV A
			DATE 8/8/4

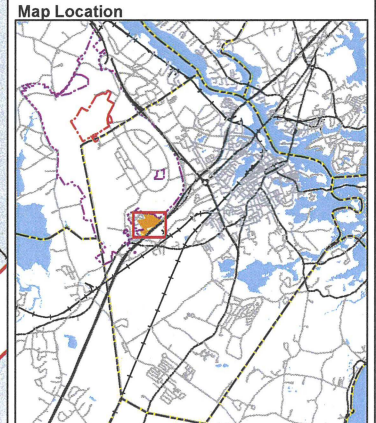
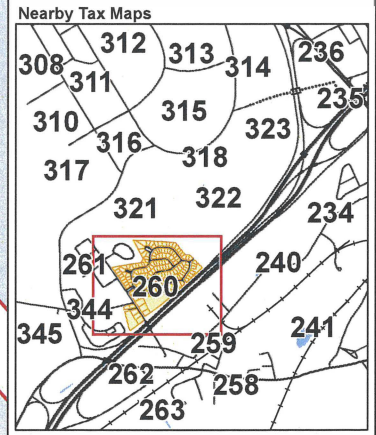


- Partial Legend**
See the cover sheet for the complete legend.
- 7-5A** Lot or lot-unit number
 - 2.56 ac** Parcel area in acres (ac) or square feet (sf)
 - 25** Address number
 - 233-137** Parcel number from a neighboring map
 - 68** Parcel line dimension
 - SIMS AVE** Street name
 - Parcel/Parcel boundary
 - Parcel/ROW boundary
 - Water boundary
 - Structure (1994 data)
 - Parcel covered by this map
 - Parcel from a neighboring map (see other map for current status)

EXHIBIT E



This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.



Portsmouth, New Hampshire
2020
Tax Map 260