

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC
ATTORNEYS AT LAW

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December 28, 2021

HAND DELIVERED

Peter Stith, Principal Planner
Kimberli Kienia, Administrative Assistant
Portsmouth Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

Re: Owner/Applicant: Camellie Development, LLC
Project Location: 232 Wibird Street
Tax Map 149, Lot 14
GRA Zone

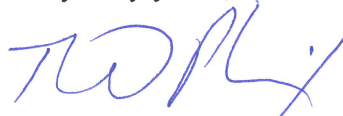
Dear Mr. Stith, Ms. Kienia & Zoning Board Members:

On behalf of Charles Seefried, we are pleased to submit the following documents in support of a request for zoning relief:

- Portsmouth Land Use Application - uploaded today.
- 12/28/21 – Memorandum and Exhibits in support of zoning relief (original and eleven (11) copies).

We look forward to presenting this application to the zoning Board of adjustment at its January 18, 2022 meeting

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

RTP/msw

Encl.

cc: Charles Seefried
Market Square Architects
Altus Engineering

| | | | |
|---------------------|----------------------------|----------------------|-----------------|
| DANIEL C. HOEFLE | R. PETER TAYLOR | GREGORY D. ROBBINS | DUNCAN A. EDGAR |
| R. TIMOTHY PHOENIX | JOHN AHLGREN | MONICA F. KIESER | OF COUNSEL: |
| LAWRENCE B. GORMLEY | KIMBERLY J.H. MEMMESHEIMER | SAMUEL HARKINSON | SAMUEL R. REID |
| STEPHEN H. ROBERTS | KEVIN M. BAUM | JACOB J.B. MARVELLEY | |

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
Monica F. Kieser, Esquire
DATE: December 28, 2021
RE: Owner/Applicant: Camellie Development, LLC
Project Location: 232 Wibird Street
Tax Map 149, Lot 14
GRA Zone

Dear Zoning Board Members:

On behalf of Camellie Development, LLC (“Camellie” or “Applicant”), 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 January 18, 2022 meeting.

I. Exhibits

- A. 11/2/21 Architectural Plan Set – by Market Square Architects
 - 1. Existing Conditions Plans
 - AE1.01 Basement/Level 1 Floorplan
 - AE1.02 Level2/Attic Floorplan
 - AE2.01 Elevations 4 Sides
 - 2. Proposed Conditions
 - A1.00 Level 1
 - A1.01 Level 2
 - A1.03 Roof Plan
 - A1.04 Site (new superimposed over old)
 - A2.00 Elevations Left/Right
 - A2.01 Elevations Front/Rear
- B. Rendering/Site Photos.
- C. Tax Assessors Card.
- D. Tax Map 149.

II. Property/Project

232 Wibird Street is an 11,785.5 square foot lot holding a small 2-3 bedroom single-family home with a detached garage. The existing home violates the front and right side setbacks. The detached garage behind the home significantly violates the right side setback.

Camellie proposes to remove the significantly encroaching detached garage, and construct a two-story addition to the rear, to include an attached garage. The right side setback will be improved. The existing front setback will not change. Left side setback is and will remain compliant.

Relief is required because a small portion (785 s.f.) of the new addition and expanded second floor, where it attaches to the existing home, slightly violates the right side setback, albeit less area than the existing structure (1273 s.f.) The right side setback at its closest point will be increased from 1 foot (garage) to 6 feet, also about 3 feet further from the lot line than the existing home.

III. Relief Required

PZO §10.521 – to permit 785 square feet of new structure and expanded second floor six (6) feet from the right side line where 1273 s.f. presently exists, one (1) foot from the right side line (garage) at its closest point. (See Exhibit A.2, p. A1.04, 2.00)

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.

The Portsmouth Zoning Ordinance was enacted for the general purpose of promoting the health, safety, and welfare in accordance with the Master Plan by regulating:

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The existing small home with a significantly encroaching detached garage will be renovated to include a tasteful two-story addition and attached garage. The use and size, shape and dimensions of the structure is in keeping with the area.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – A single-family home exists and will remain. It is compliant with lot size and open space, and renders the lot less nonconforming than existing conditions with respect to right side setback.
3. The design of facilities for vehicular access, circulation, parking and loading – The proposal reduces the intensity of use within the setbacks and otherwise complies with this purpose. The design allows for vehicular access/circulation.
4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – No adverse impacts will exist. The impact upon the right side neighbor will be improved.

5. The preservation and enhancement of the visual environment – The entire home will be renovated. The home and grounds will be improved aesthetically and with an improved right side setback, thus preserving and enhancing the visual environment.
6. The preservation of historic districts, and buildings and structures of historic or architectural interest – The home is not in the Historic District
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat, and air quality – The renovation will not adversely affect natural resources.

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)

The proposal maintains the primary existing home on the site, adding a tasteful two-story rear addition and attached garage. Only a small portion of the proposed addition is within the right side setback, significantly improved over existing conditions. Most of the addition will not be seen from the street. A home on Hawthorne Street has recently been replaced. Clearly, this *de minimis* request for side setback relief neither alters the essential character of the locality nor threatens the public health, safety or welfare. To the contrary, the character of the locality is improved by removal of significant structure close to the right side lot line, and will result in an entire rehabilitation, bringing the entire home to present code.

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

Removal of significant portions of the existing structures very close to the common lot line, and the construction of the addition and attached garage requiring only a minor right side variance, together with the overall rehabilitation of the home and lot will improve the value of this property, thus will not harm 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.

While the lot meets the 7500 s.f. minimum lot size requirement, it has only 65 feet of frontage. Moreover, the existing home and detached garage are within the front and right

setbacks, respectively. There is no way to construct an addition without connecting to the existing home, noting that the very small portion of the new addition within the setback will remain more distant than existing conditions. These factors combine to create special conditions.

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 side setback requirements is to maintain space between neighbors, provide for air and light, sightlines, and stormwater treatment. In the instant case, significant area of encroaching structure will be removed, replaced by an addition very slightly within the right side setback, and more distant than the existing home and attached garage. Thus, the proposal improves a significant nonconformity. Resulting open space at 68% is significantly greater than the 30% requirement, and slightly better than the 64% existing condition. It follows that there simply is no reason to apply the strict requirements of the ordinance given these improvements.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). The proposal maintains residential uses on the Property, which are permitted in the GRA Zone. 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.

“The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). “Property” in the constitutional sense has been interpreted to

mean not the tangible property itself, but rather the right to possess, use, enjoy and dispose of it. Burrows v. City of Keene, 121 N.H. 590, 597 (1981). (emphasis added).

The Supreme Court has held that zoning ordinances must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of the regulation. Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001); Chesterfield at 69. To “determine whether an ordinance is arbitrary and unreasonable, the injury or loss to the landowner must be balanced against the gain to the public.” Metzger v. Town of Brentwood, 117 N.H. 497, 501 (1977). In other words, [w]hen the restriction as applied to a particular piece of land is unnecessary to accomplish a legitimate public purpose or the gain to the public is slight but the harm to the citizen and his [or her] property is great, the exercise of the police power becomes arbitrary and unreasonable and this court will afford relief under the constitution of this state. Id. at 503.

Since the setback from the right side neighbor will be significantly improved with all but a slight portion of the new construction within the building envelope, the improvements to existing conditions and the requested minor variance will have no negative effect upon the general public. Conversely, denial of the slight variance will harm Camellie as it will be unable to proceed with the reasonable and tasteful addition designed by Market Square Architects as well as the overall renovation of the home and site. Clearly, substantial justice will be achieved by granting the variance while a substantial injustice will result from denial.

V. Conclusion

For all of the reasons stated, Camellie respectfully requests that the Portsmouth Zoning Board of Adjustment grant the requested variances.

Respectfully submitted,
Camellie Development, LLC

By:



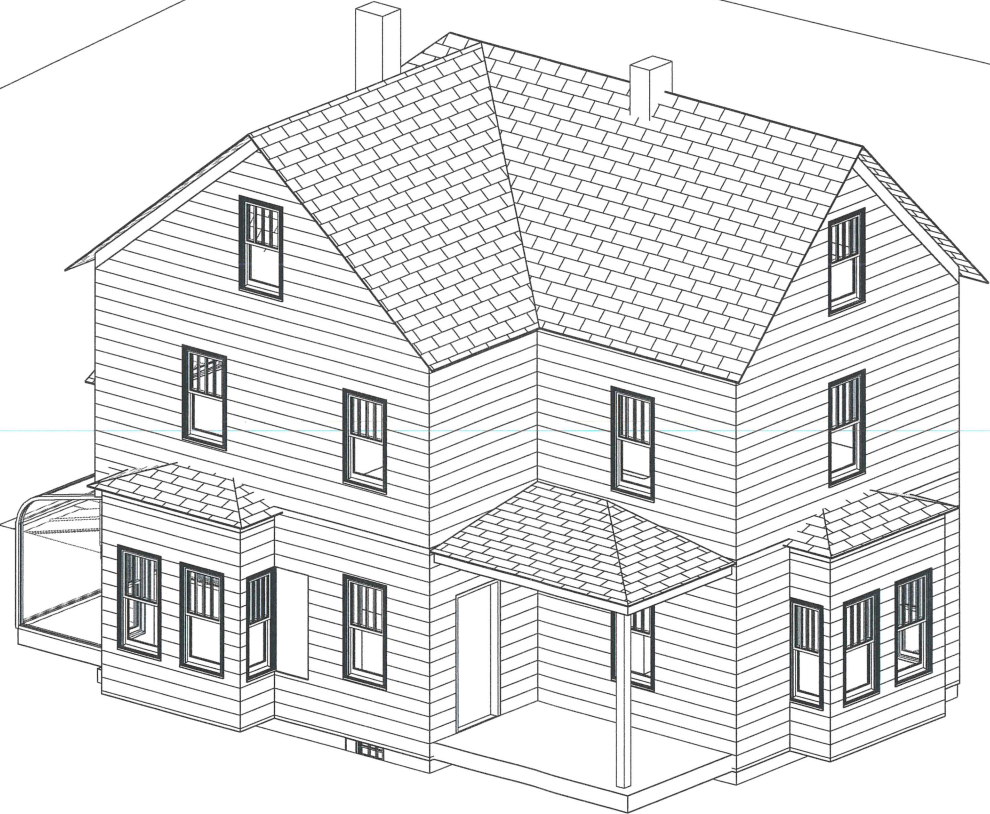
R. Timothy Phoenix
Monica F. Kieser

232 WIBIRD

EXHIBIT
A.1

232 WIBIRD STREET

PERSPECTIVE VIEW



ARCHITECTS

Market Square Architects
104 Congress St., STE 205
Portsmouth, NH 03801
PH: 603.501.0202
www.MarketSquareArchitects.com

Charlie Seefried O

O

O

O

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OWNER

GENERAL CONTRACTOR

CIVIL ENGINEER

ARCHITECT

STRUCTURAL ENGINEER

MEP/FP ENGINEER

EXISTING CONDITION

11/02/21

EXISTING CONDITIONS GENERAL NOTES

1. EXISTING CONDITIONS ARE GENERAL IN NATURE AND SHOULD BE VERIFIED IN FIELD WITH BUILDER.



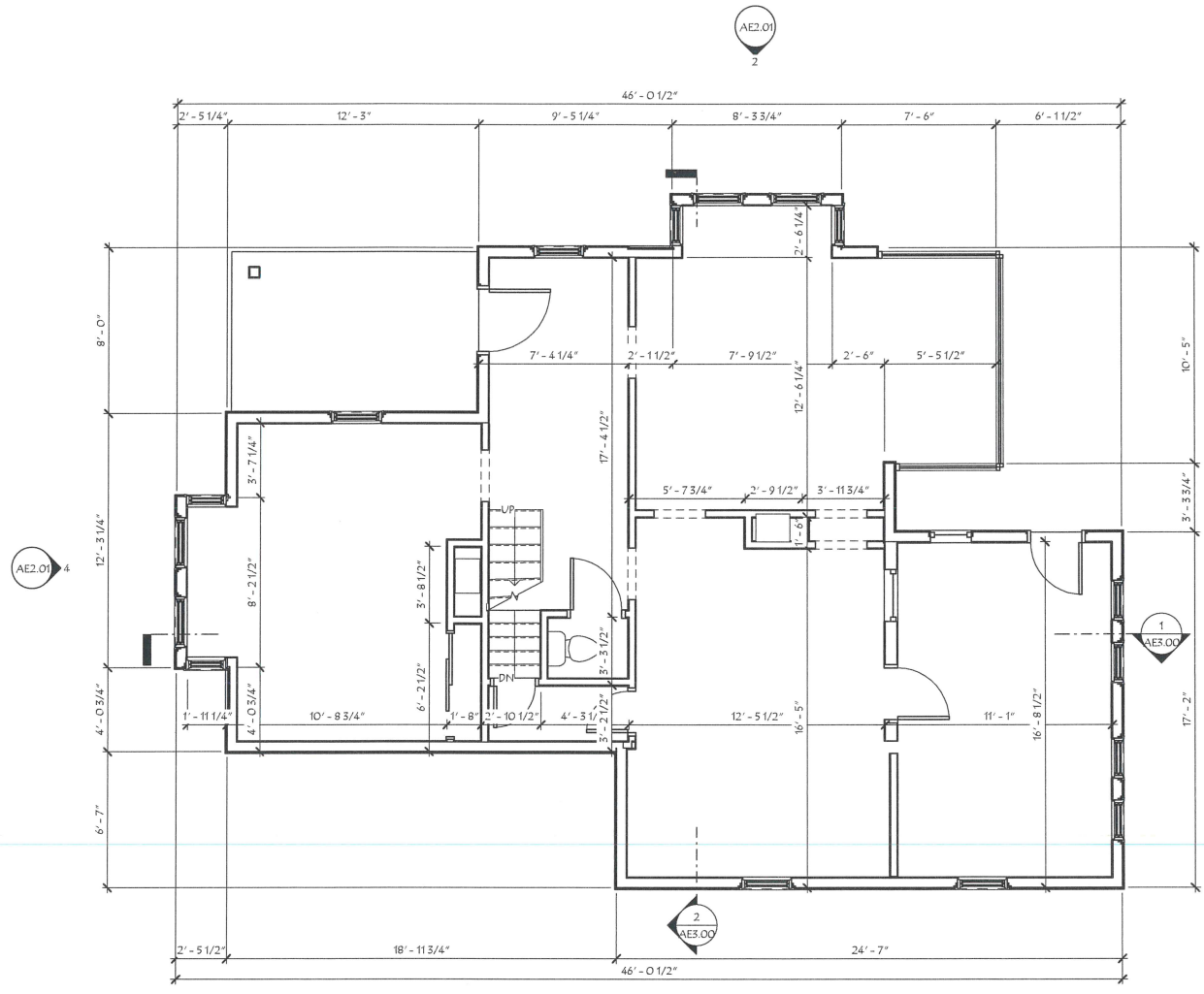
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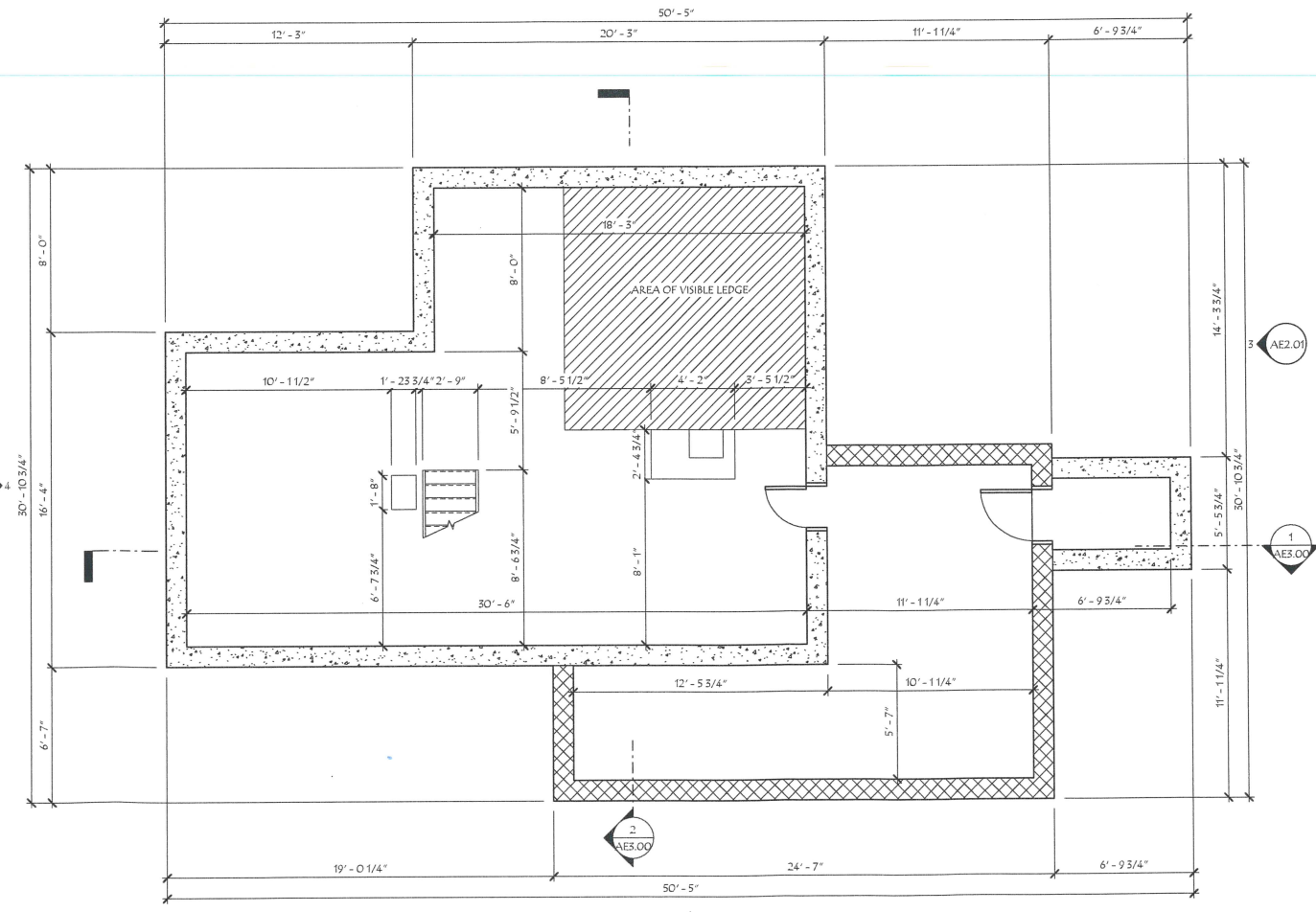
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1 BASEMENT EXISTING
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EXISTING CONDITIONS GENERAL NOTES
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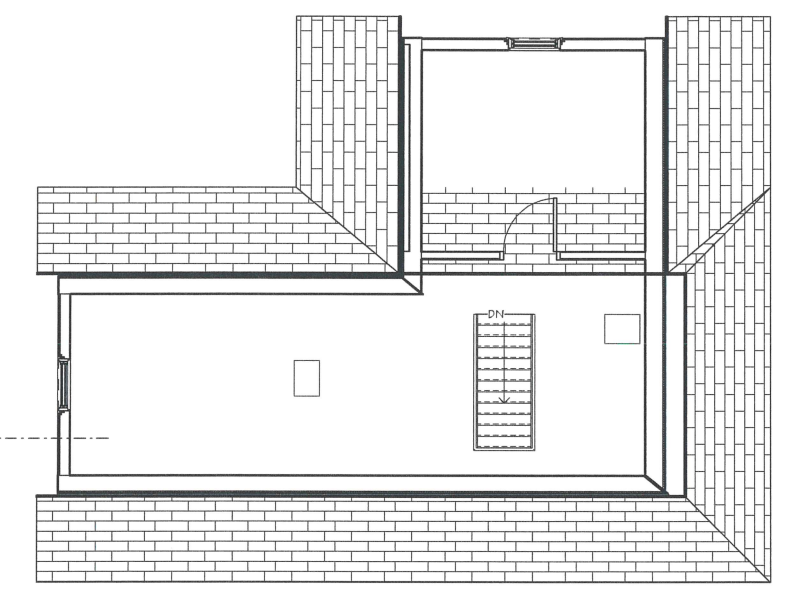
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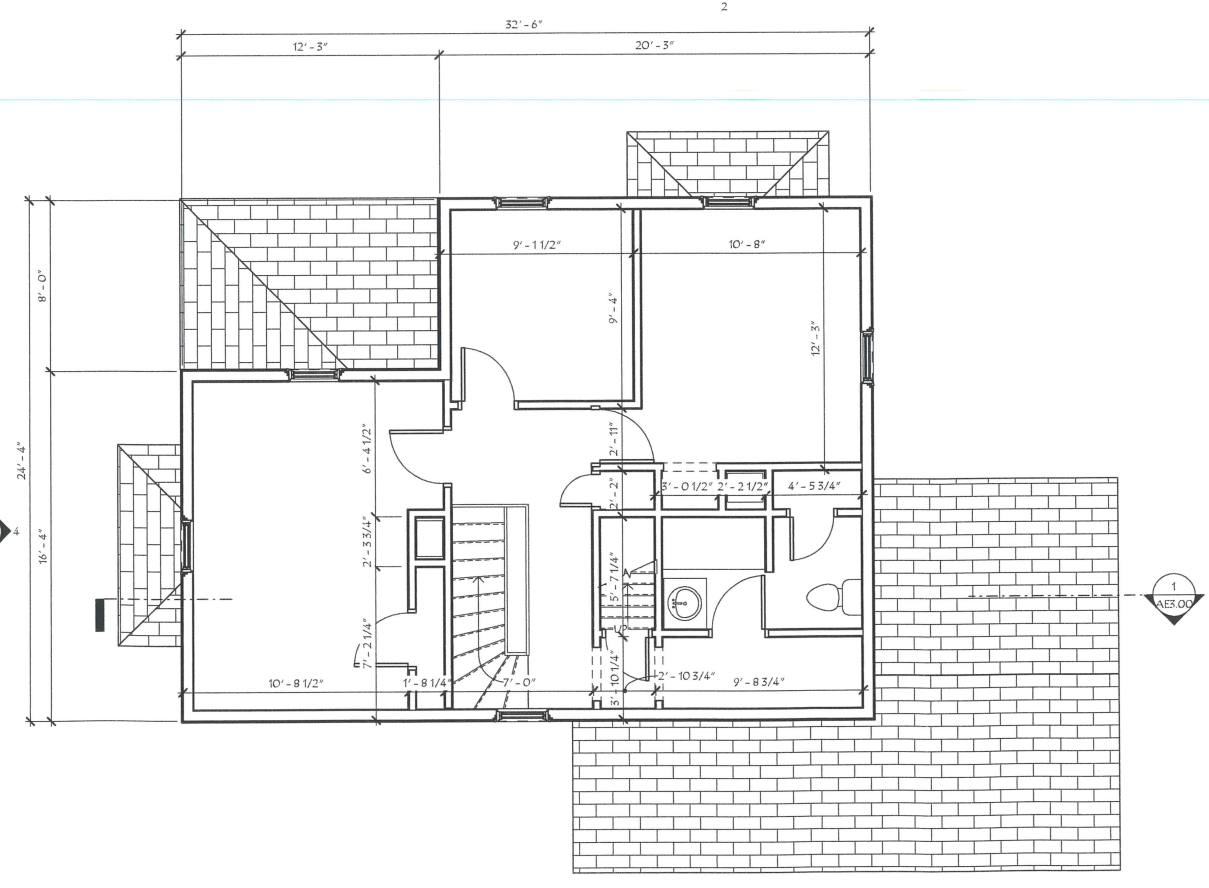
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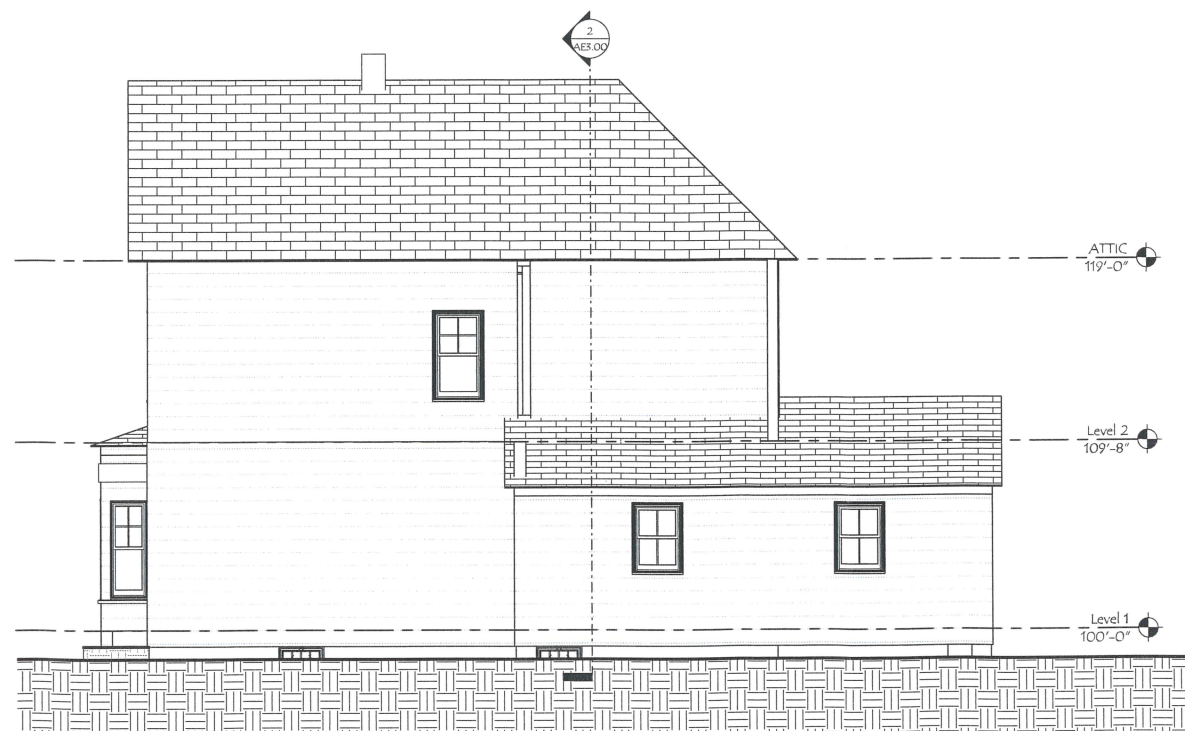
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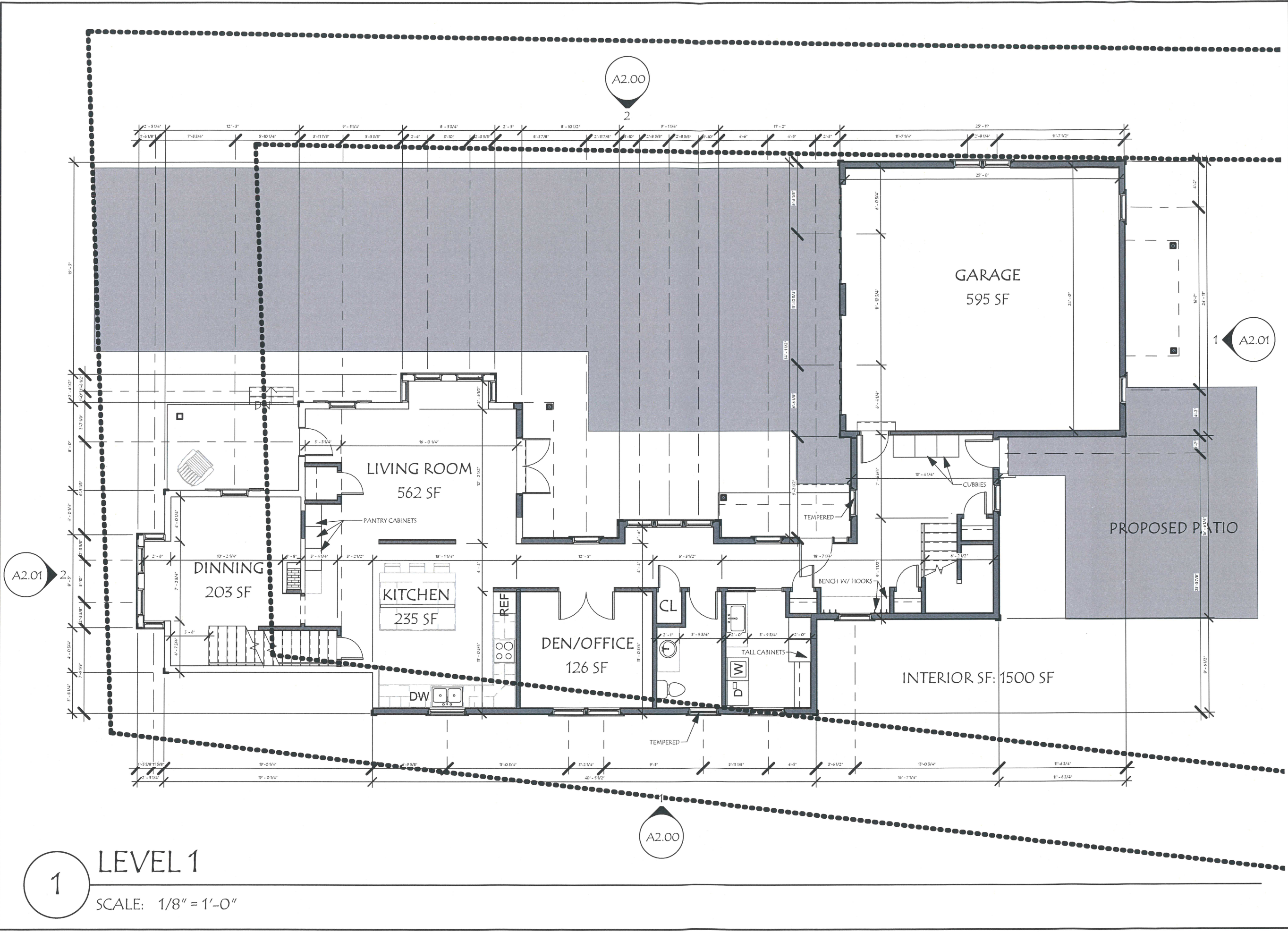
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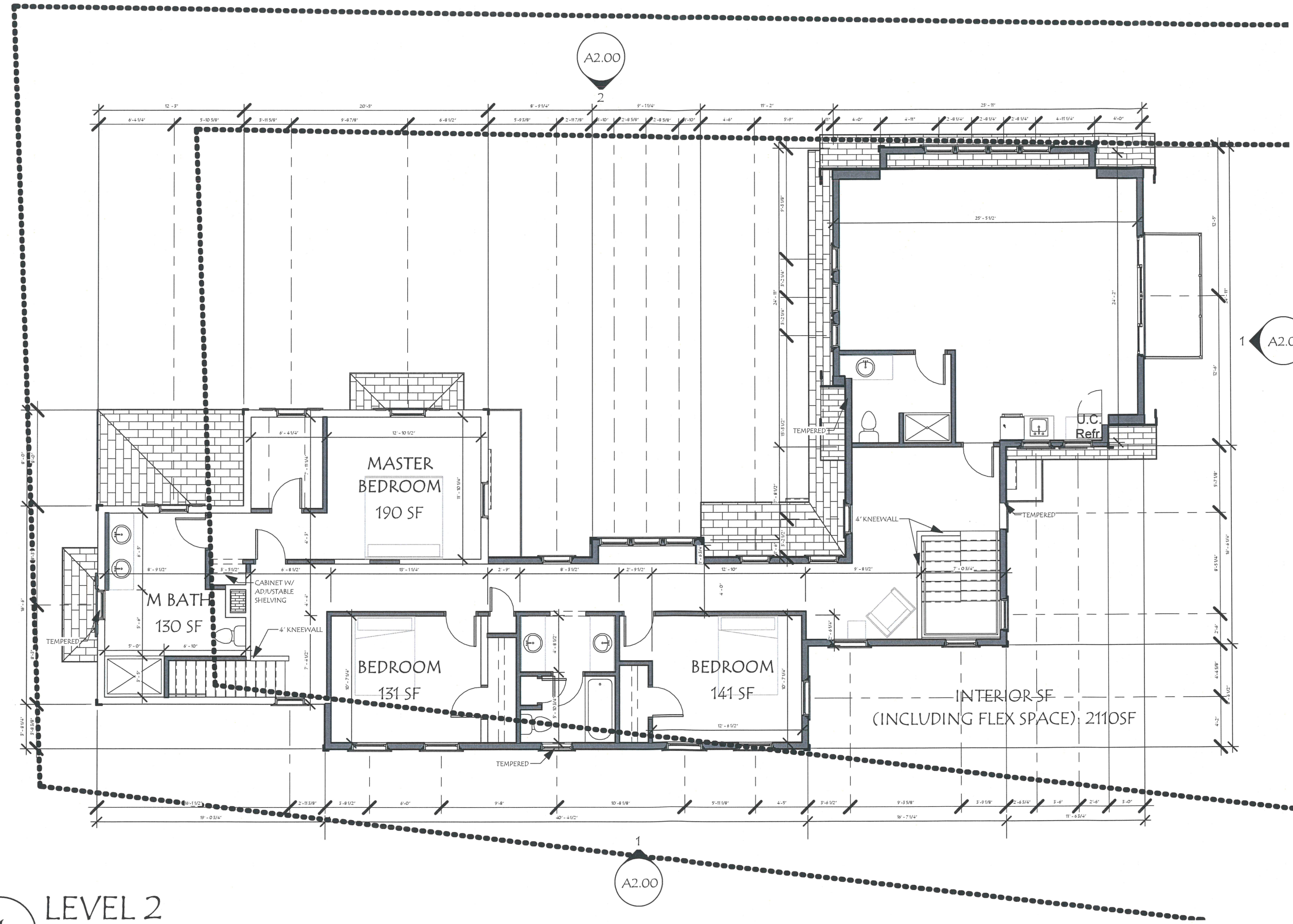
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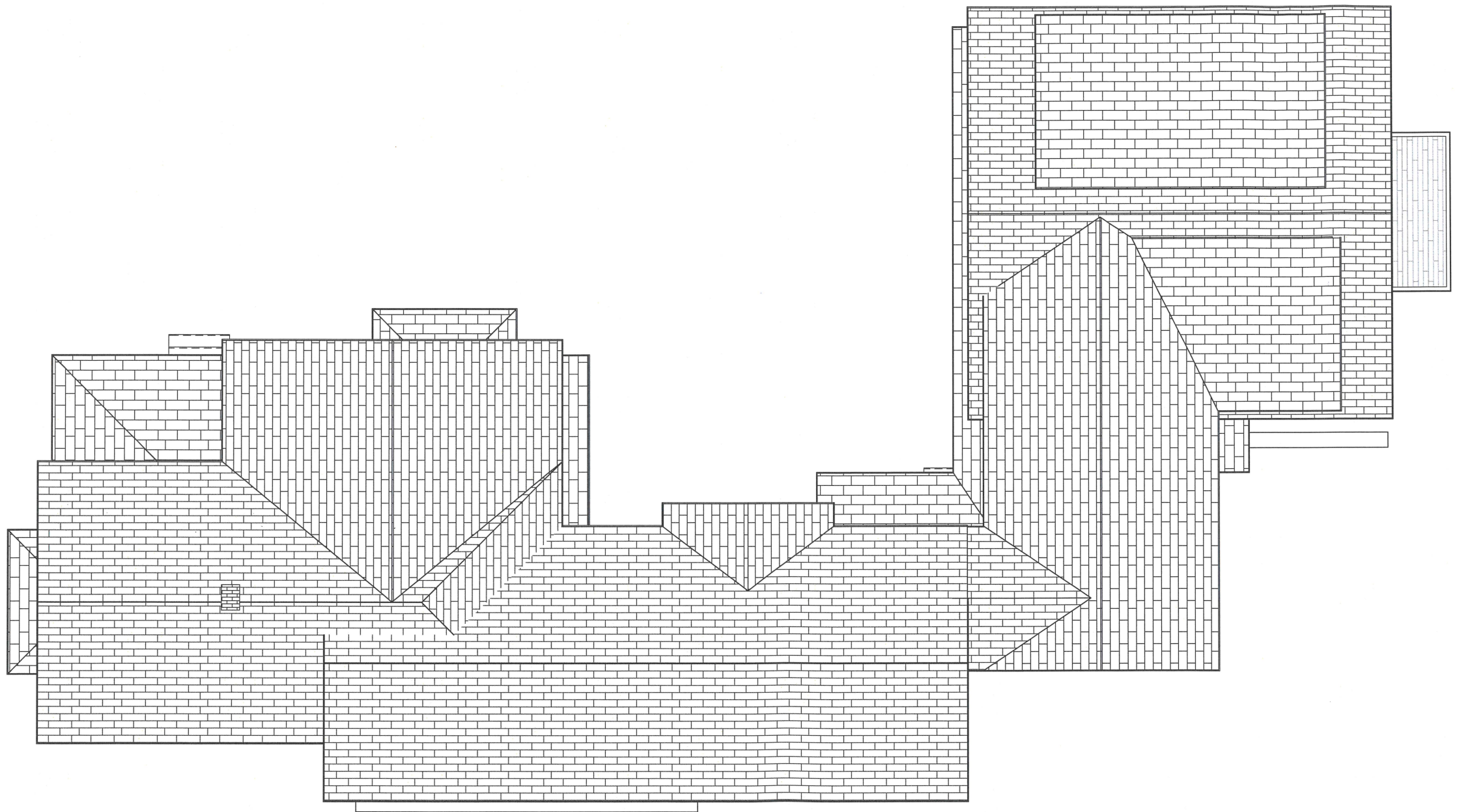
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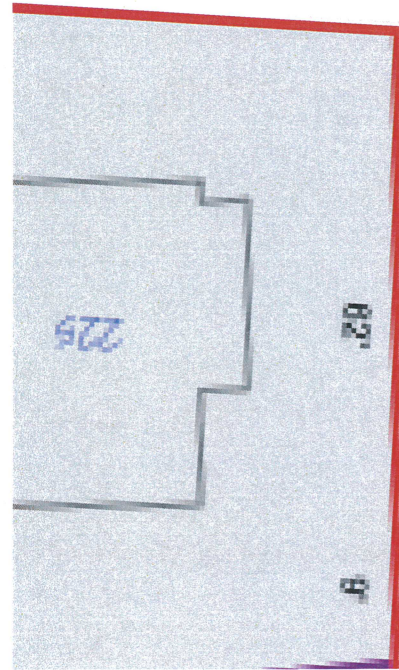
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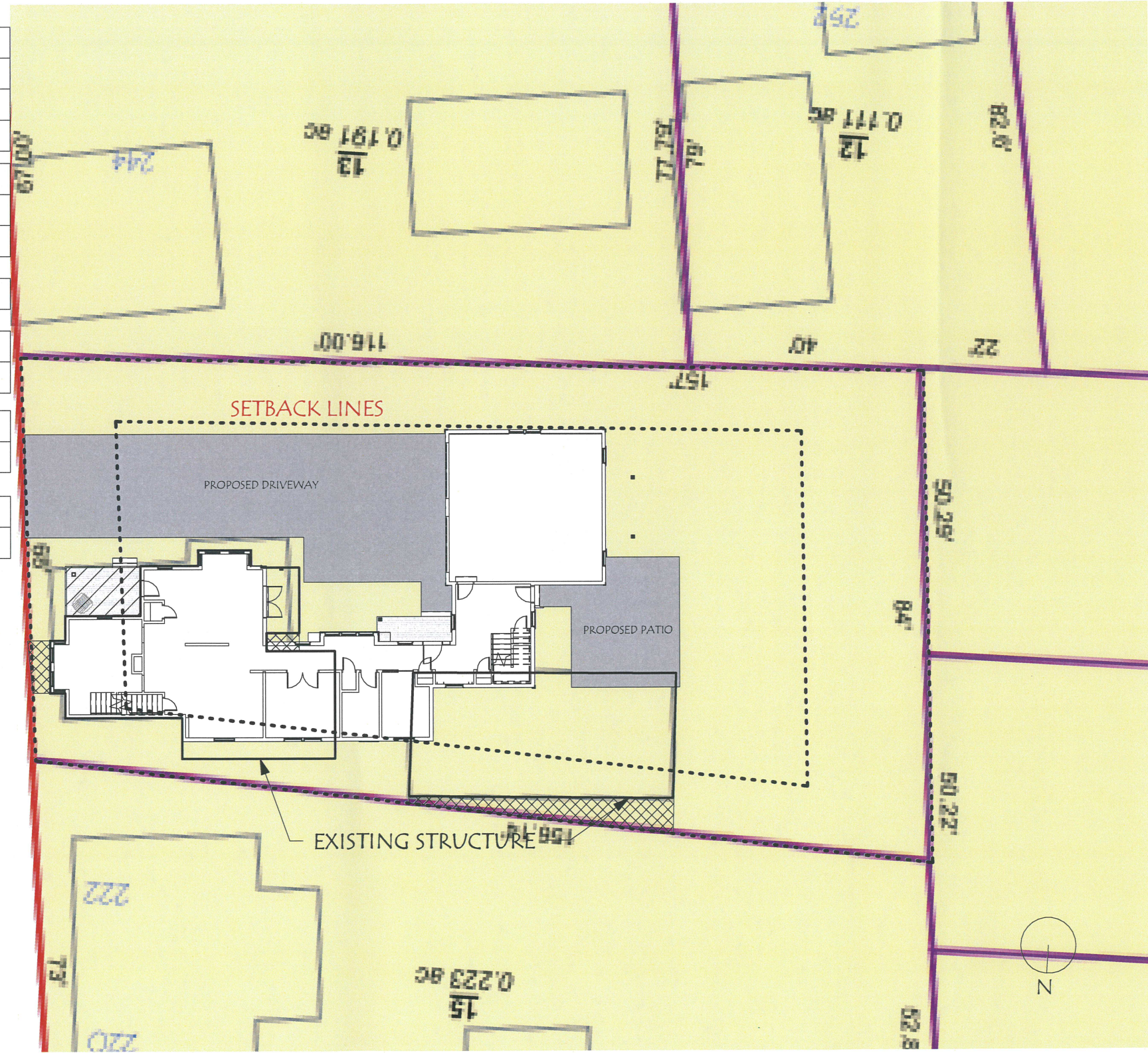
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| | REQUIRED | EXISTING | PROPOSED |
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| LOT SIZE | 7500 SQ FT | 11785.5 SQ FT | _____ |
| FRONTAGE | 100 FT | 65 FT | _____ |
| DEPTH | 70 FT | 156 FT | _____ |
| FRONT YARD DEPTH | 15 FT | 3 FT | 3 FT |
| NORTH SIDE | 10 FT | 1 FT | 6 FT |
| REAR | 20 FT | 96 FT | 50 FT |
| OPEN SPACE | 30% | 64% | 68% |
| AREA OF NONCONFORMING | _____ | 1,273 SF | 785 SF |
| VOLUME OF NONCONFORMING | _____ | 7135 CF | 2935 CF |
| TOTAL GROSS FLOOR AREA | _____ | 1,787 SF | 3,610 SF |
| AREA OF BUILDING FOOTPRINT | _____ | 1,085 SF | 2,147SF |
| AREA OF PARKING | _____ | SF | 1225 SF |
| AREA OF OTHER IMPERVIOUS SURFACES | _____ | SF | 360 SF |



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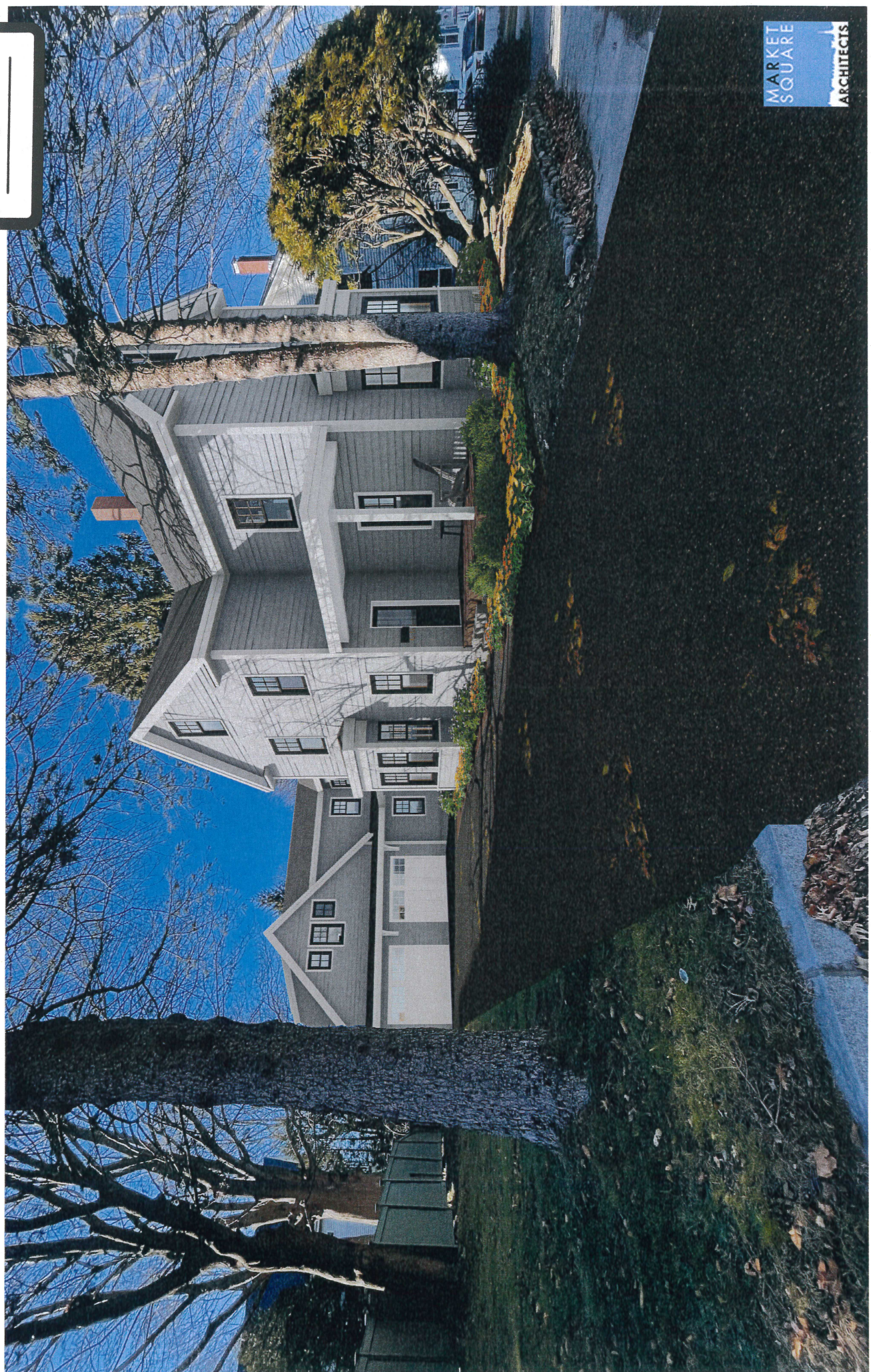
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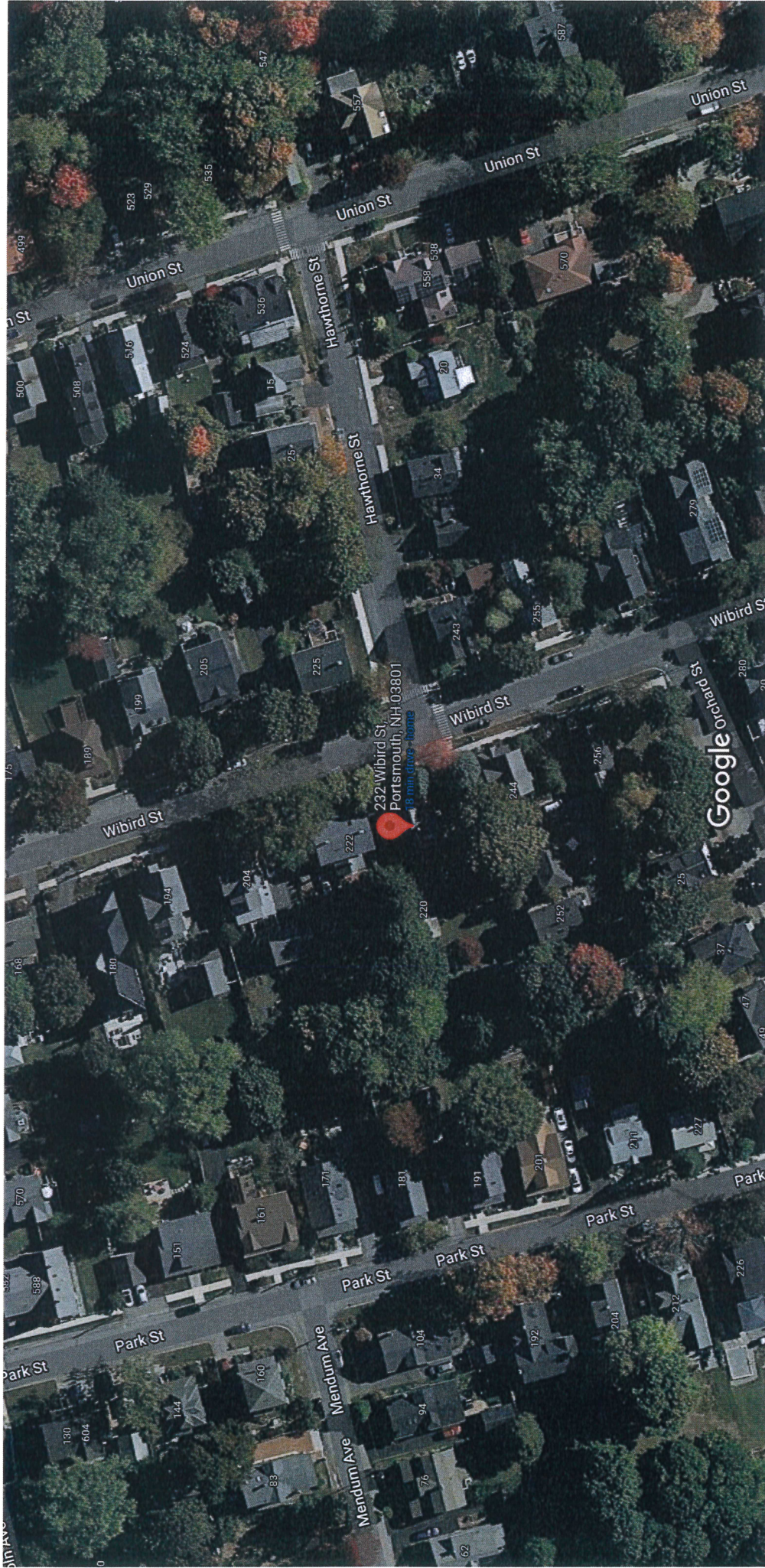
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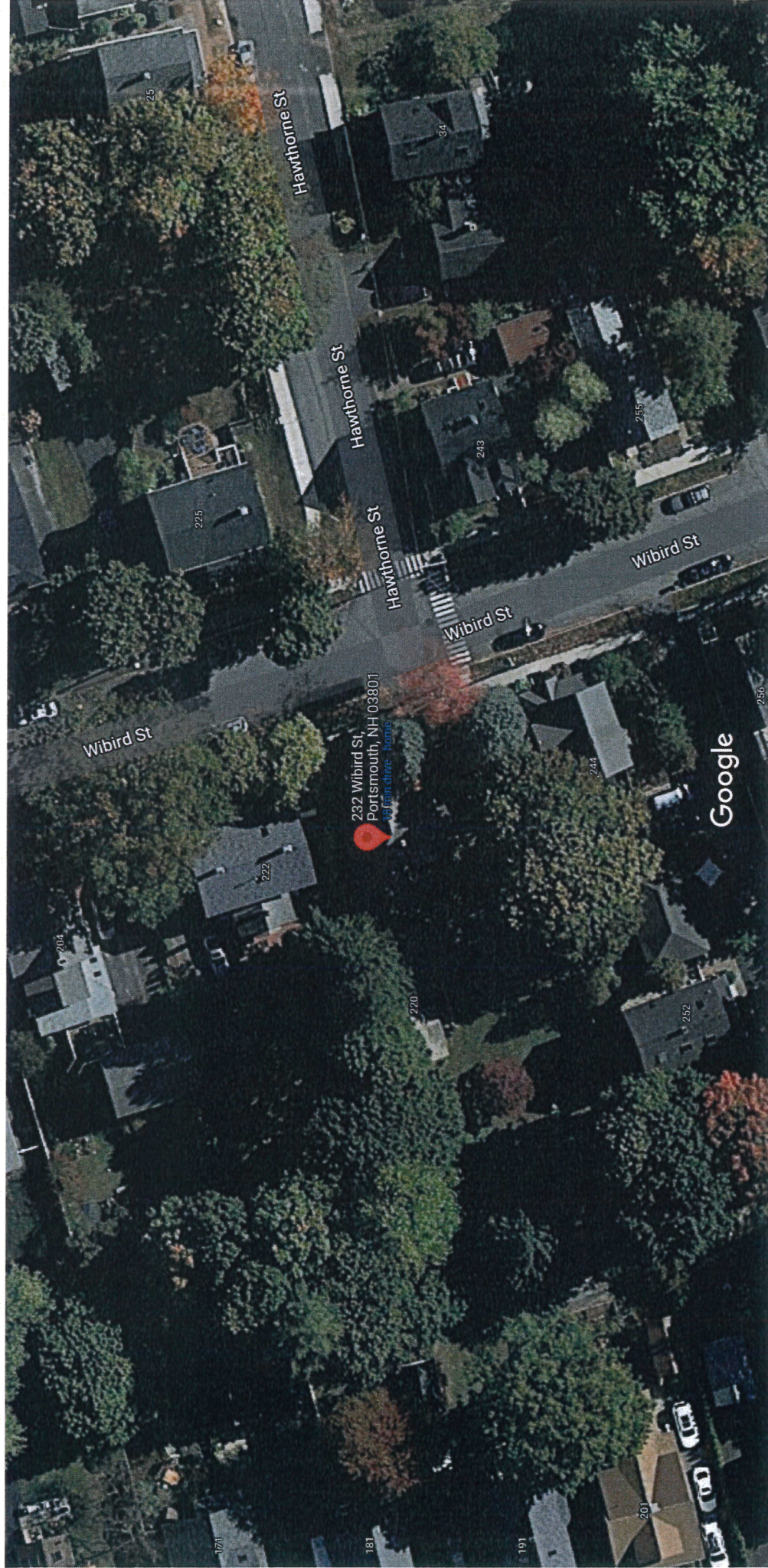


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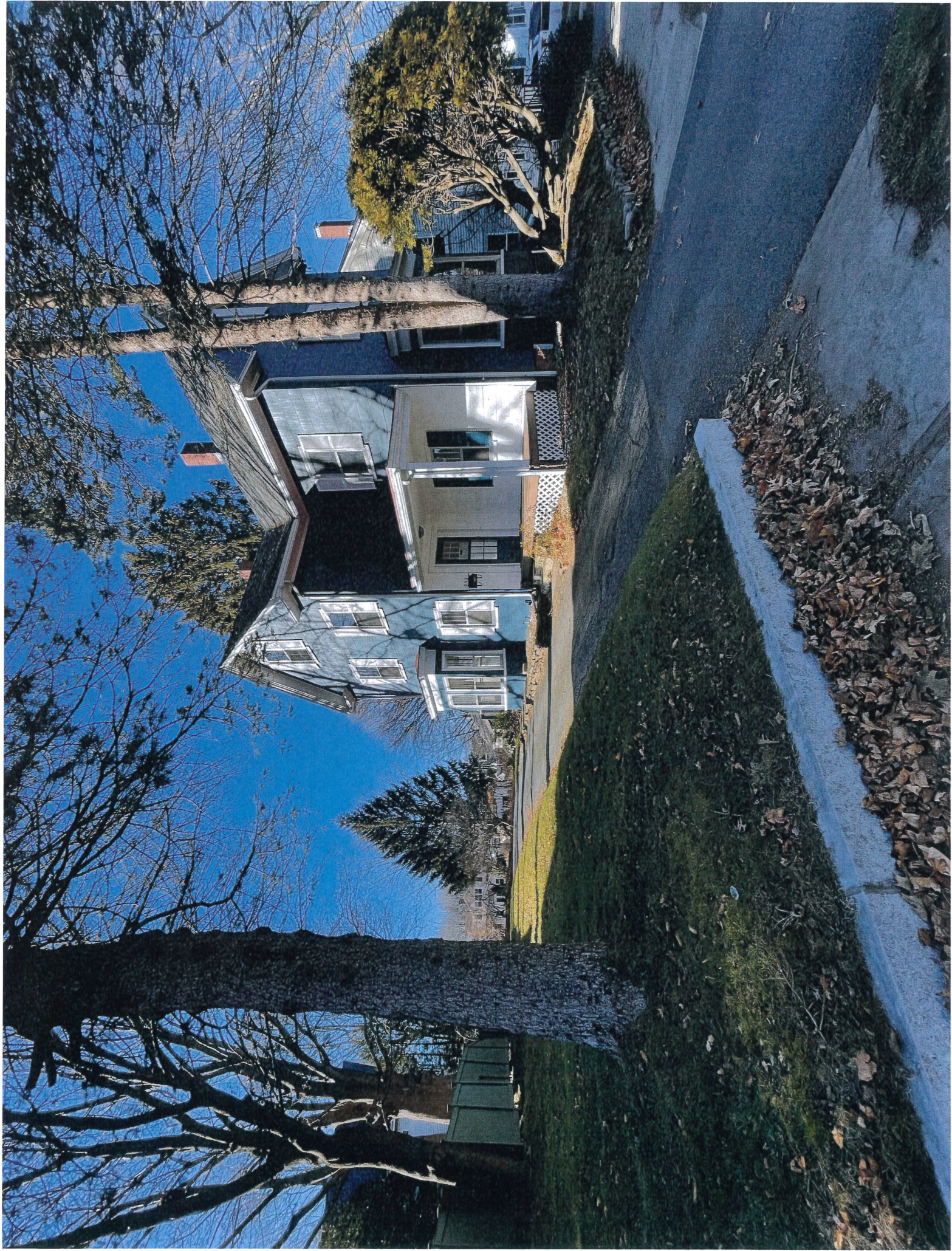
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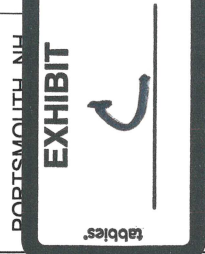












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| CAMELLIE DEVELOPMENT LLC | | 1 Level | 0 All Public | 1 Paved | 8 2+ Off-St PKG | Code | Assessed | Appraised | Assessed | 2229 |
| 9 WILLARD AVE | | 1 Level | | | | 1010 | 166,000 | 166,000 | 166,000 | |
| PORTSMOUTH NH 03801 | | | | | | 1010 | 409,000 | 409,000 | 409,000 | |
| PORTSMOUTH NH | | | | | | 1010 | 5,100 | 5,100 | 5,100 | |
| Alt Prcd ID 0149-0014-0000-0000 | | CONDO C | | | | Total | | 580,100 | | 580,100 |
| OLDACTN 54520 | | INLAW Y/ | | | | | | | | |
| PHOTO | | LOT SPLIT | | | | | | | | |
| WARD | | 2015 Reva JM | | | | | | | | |
| PREC. | | Ex/Cr Appli | | | | | | | | |
| 1/2 HSE | | Assoc Pld# | | | | | | | | |
| GIS ID 34617 | | | | | | | | | | |

| Year | Code | Description | Code | Assessed | Year | Code | Assessed V | Year | Code | Assessed |
|-------|------|-------------|-------|----------|-------|-------|------------|-------|-------|----------|
| 2020 | 1010 | 1010 | 1010 | 166,000 | 2019 | 1010 | 166,000 | 2019 | 1010 | 166,000 |
| | 1010 | 1010 | 1010 | 409,000 | | 1010 | 409,000 | | 1010 | 409,000 |
| | 1010 | 1010 | 1010 | 5,100 | | 1010 | 5,100 | | 1010 | 5,100 |
| Total | | | Total | 580,100 | Total | Total | 580,100 | Total | Total | 580,100 |

This signature acknowledges a visit by a Data Collector or Assessor

| Year | Code | Description | Code | Assessed | Year | Code | Assessed V | Year | Code | Assessed |
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| | | | | 580,100 | | | 580,100 | | | 580,100 |
| Total | | | Total | 580,100 | Total | Total | 580,100 | Total | Total | 580,100 |

| Year | Code | Description | Code | Assessed | Year | Code | Assessed V | Year | Code | Assessed |
|-------|------|-------------|-------|----------|-------|-------|------------|-------|-------|----------|
| | | | | 166,000 | | | 166,000 | | | 166,000 |
| | | | | 0 | | | 0 | | | 0 |
| | | | | 5,100 | | | 5,100 | | | 5,100 |
| | | | | 409,000 | | | 409,000 | | | 409,000 |
| | | | | 0 | | | 0 | | | 0 |
| | | | | 580,100 | | | 580,100 | | | 580,100 |
| Total | | | Total | 580,100 | Total | Total | 580,100 | Total | Total | 580,100 |

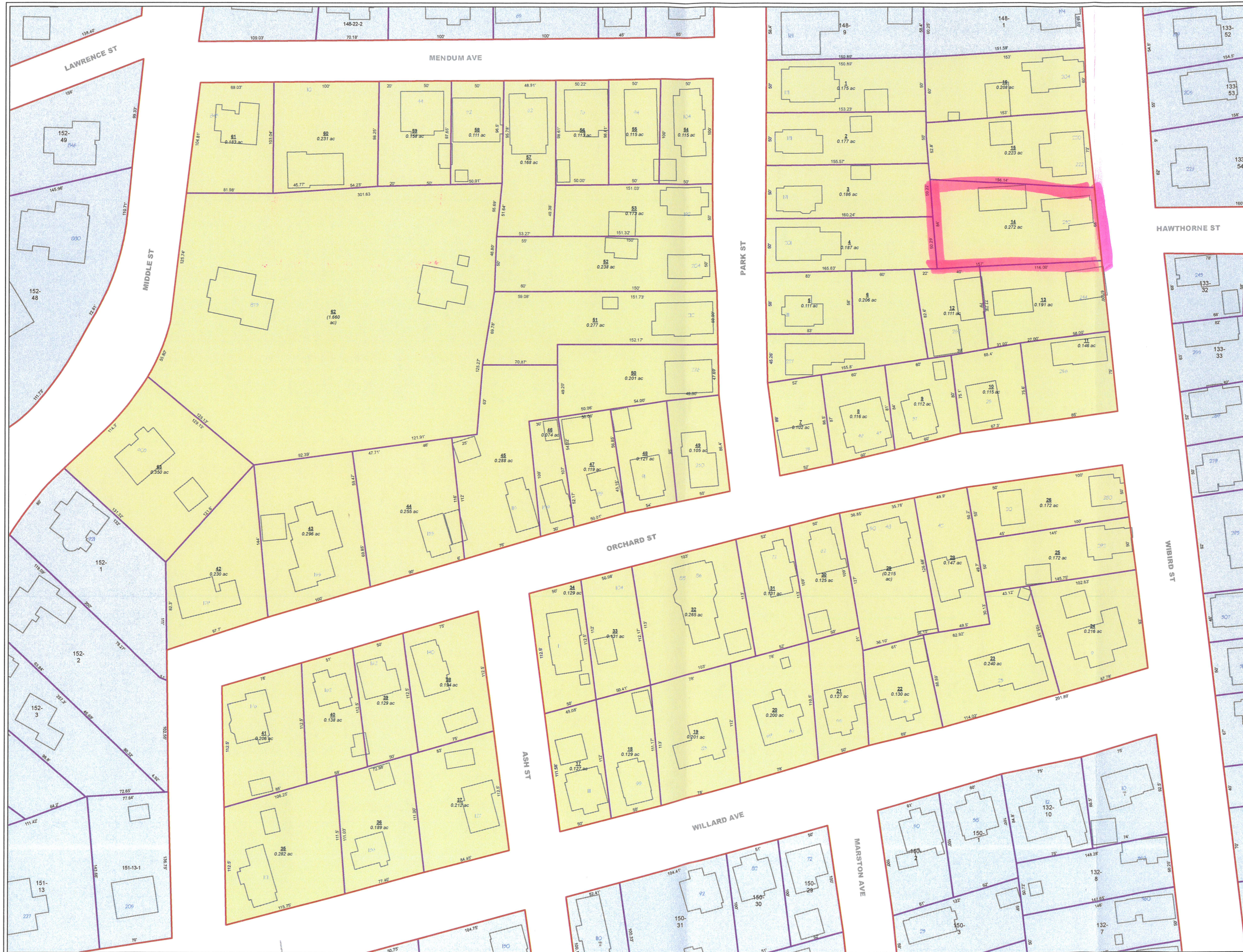
| Permit Id | Issue Date | Type | Description | Amount | Insp Date | % Comp | Date Comp | Comments | Date | Id | Type | Is | Cd | Purposi/Result |
|------------------------------|------------|------|-------------|--------|-----------|--------|-----------|----------|------------|----|------|----|----|--------------------------|
| | | | | | | | | | 08-13-2018 | EH | | | FR | Field Review Stat Update |
| | | | | | | | | | 09-14-2017 | SG | | | 41 | Hearing Change |
| | | | | | | | | | 07-06-2017 | PM | | | FR | Field Review Stat Update |
| | | | | | | | | | 04-14-2015 | RT | | | FR | Field Review Stat Update |
| | | | | | | | | | 03-14-2013 | JM | | | 00 | Measur+Listed INACTIVE |
| | | | | | | | | | 10-18-2010 | JW | | | 00 | Measur+Listed INACTIVE |
| | | | | | | | | | 10-18-2010 | RM | | | HC | HEARING CHANGE INAC |
| Total Appraised Parcel Value | | | | | | | | | | | | | | |

| B Use Code | Description | Zone | Frontage | Depth | Land Units | Unit Price | Size Ad | Site | Cond. | ST Idx | S.I. Adj. | Notes- Adj | Special Pricing | Acj Unit P | Land Value |
|----------------------------|-------------|--------------|----------|-------|------------|------------|---------|------|-------|--------|-----------|------------|-----------------|------------|------------|
| 1 | 1010 | SINGLE FAM M | GRA | | 11,845 SF | 13.81 | 1.0000 | 1 | 1.00 | 103B | 2.500 | | 1.0000 | 34.53 | 409,000 |
| Total Card Land Units | | | | | | | | | | | | | | | |
| Parcel Total Land Area [0] | | | | | | | | | | | | | | | |
| Total Land Value | | | | | | | | | | | | | | | |

| Element | Cd | Description | Element | Cd | Description |
|--------------------|----|--------------------------|---------|----|-------------|
| Style: | 06 | Conventional Residential | | | |
| Model: | 01 | Residential | | | |
| Grade: | B- | | | | |
| Stories: | 2 | | | | |
| Occupancy: | 1 | | | | |
| Exterior Wall 1: | 07 | Asbest Shingle | | | |
| Exterior Wall 2: | | | | | |
| Roof Structure: | 03 | Gable/Hip | | | |
| Roof Cover: | 03 | Asph/F Glis/Cmp | | | |
| Interior Wall 1: | 03 | Plastered | | | |
| Interior Wall 2: | 05 | Drywall/Sheet | | | |
| Interior Fir 1: | 14 | Carpet | | | |
| Interior Fir 2: | 06 | Inlaid Sht Gds | | | |
| Heat Fuel: | 02 | Oil | | | |
| Heat Type: | 04 | Hot Water | | | |
| AC Type: | 01 | None | | | |
| Total Bedrooms: | 02 | 2 Bedrooms | | | |
| Total Bthrms: | 1 | | | | |
| Total Half Baths: | 1 | | | | |
| Total Xtra Fixtrs: | 0 | | | | |
| Total Rooms: | 6 | | | | |
| Bath Style: | 1 | | | | |
| Kitchen Style: | 1 | | | | |
| Kitchen Gr: | | | | | |
| WB Fireplaces: | 1 | | | | |
| Extra Openings: | 0 | | | | |
| Metal Fireplace: | 0 | | | | |
| Extra Openings: | 0 | | | | |
| Bsmt Garage: | 0 | | | | |

| Code | Description | L/B | Units | Unit Price | Yr Bilt | Cond. | Cd | % Gd | Grade | Grade Adj. | Appr. Value |
|------|-------------|-----|-------|------------|---------|-------|----|------|-------|------------|-------------|
| FGR1 | GARAGE-AVE | L | 400 | 31.00 | 1940 | F | | 30 | D | 0.90 | 3,300 |
| SHD1 | SHED FRAME | L | 504 | 13.00 | 1915 | F | | 30 | D | 0.90 | 1,800 |

| Code | Description | Living Area | Floor Area | Eff Area | Unit Cost | Undeprac Value |
|----------------------------|-----------------------|-------------|------------|----------|-----------|----------------|
| BAS | First Floor | 832 | 832 | 832 | 152.68 | 127,026 |
| CRL | Crawl Space | 0 | 160 | 8 | 7.63 | 1,221 |
| FEP | Porch, Enclosed | 0 | 187 | 131 | 106.95 | 20,000 |
| FOP | Porch, Open | 0 | 77 | 15 | 29.74 | 2,290 |
| FUS | Upper Story, Finished | 672 | 672 | 672 | 152.68 | 102,598 |
| UAT | Attic | 0 | 672 | 67 | 15.22 | 10,229 |
| UBM | Basement, Unfinished | 0 | 590 | 118 | 30.54 | 18,016 |
| Ttl Gross Liv / Lease Area | | | | | 3,190 | 1,843 |
| | | | | | | 281,380 |



- 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)
 - 27 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)

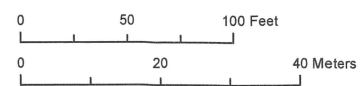
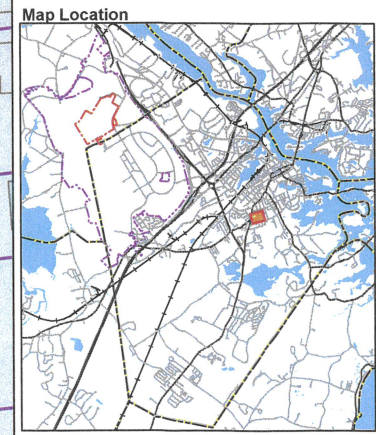
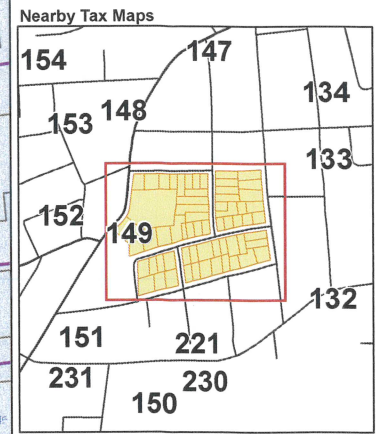


EXHIBIT
D



Portsmouth, New Hampshire
 2020
Tax Map 149