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**Also admitted in MA*

BY: VIEWPOINT & HAND DELIVERY

December 29, 2021

City of Portsmouth
c/o Peter Stith
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

**RE: Variance Application of Sherbeth Young and Joseph Dibella
Woodbury Avenue, Tax Map 220, Lot 16-1**

Dear Peter,

Our Office represents Sherbeth Young and Joseph Dibella, the owners of the Property referenced above. Enclosed herewith, please find the following materials for submission to the Zoning Board of Adjustment for consideration at its January 2022 meeting:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Survey and ZBA Site Plan;
- 4) Floor Plans and Elevations
- 5) GIS Map; and
- 6) Photographs of the Property.

Twelve (12) copies of the application submission are being hand-delivered to the City today. 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.

**CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT
APPLICATION NARRATIVE**

Sherbeth Young
Joseph Dibella
Woodbury Avenue
Portsmouth, NH 03801
Tax Map 220, Lot 16-1
(Owners/Applicants)

**INTRODUCTORY STATEMENT
& SUMMARY OF ZONING RELIEF**

Sherbeth (“Beth”) Young and Joseph Dibella are the owners of a parcel of land shown on Portsmouth Tax Map 220 as Lot 16-1 (the “Property”). The Property is located within the SRB Zoning District.

The Property is a vacant lot that had been involuntarily merged with the abutting property at 737 Woodbury Avenue (Tax Map 220, Lot 16). The Property was restored to its pre-merger status under RSA 674:39-aa in 2018. It was subsequently sold to the Applicants in June 2021. The Property is non-conforming with respect to lot area (7,436 sf) and continuous street frontage (60’).

The Applicants purchased the Property with the intent of constructing a two-story 3 bedroom, 1.5 bath single-family home on it that will serve as their primary residence. The proposed home will meet the setback, building coverage and open space requirements set forth in the Ordinance. However, because the lot fails to conform to the Ordinance’s lot area and continuous street frontage requirements, the City has taken the position that the Applicant must obtain 3 separate but interrelated variances under Section 10.521 to construct the proposed home on the Property, as follows¹:

- 1) Lot Area – to allow a non-conforming lot with 7,436 square feet of area where 15,000 square feet is required;
- 2) Lot Area per Dwelling Unit – to allow for the construction of a single-family home on a non-conforming lot that has 7,436 square feet of area where 15,000 is required; and
- 3) Continuous Street Frontage – to allow 60’ of continuous street frontage where 100’ is required.

¹ It is undersigned counsel’s opinion that City has no jurisdiction to require the Applicant to obtain variances for lot area per dwelling unit or continuous street frontage based on the fact that the property is a legal non-conforming lot of record that the City restored to its pre-merger status in 2018.

VARIANCE CRITERIA

Granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.

“There 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.” *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

In the present case, the Applicants own a non-conforming lot of record that predates current zoning standards. The Property has adequate street frontage to provide for safe ingress and egress. The Applicants will be constructing a home that will observe the setback, building coverage, open space and height requirements of the Ordinance, thus it will not negatively impact the light, air and space of abutting properties. The proposed home will comply with current life safety and building codes and will not create any undue demand upon municipal services. Thus, it will not threaten public health, safety or welfare.

There are many examples of similar-sized lots in the surrounding area within the SRB Zoning District. In fact, a majority of the surrounding properties do not comply with the lot area and continuous frontage requirements of the Ordinance. Granting the variances will not alter the essential character of the neighborhood.

Overall, the request for relief is minimal when considering the small size of the lot, narrow building envelope and the fact that the Property has existed in its current configuration since the early 1900s.

Substantial justice will be done by granting the variance relief.

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).

There would be no gain to the public in denying the variance relief sought by the Applicants. The Applicants own a buildable lot of record that predates current zoning. It would constitute a significant injustice and financial hardship upon the Applicants to deny them the right to build a single-family home on the Property. Under the circumstances, the equitable balancing test for determining whether substantial justice is done weighs in favor of the Applicants.

The values of surrounding properties will not be diminished by granting the variance relief.

There is ample evidence throughout the City of Portsmouth that proves that surrounding property values will only increase with the construction of a new home on the Property. The Applicants intend to construct a tastefully designed home that will fit with surrounding architecture and will serve as their primary residence. There is no evidence to suggest that granting the variances will negatively impact surrounding property values.

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

The Property has special conditions that distinguish it from surrounding properties. The Property is a vacant, non-conforming lot of record that the City of Portsmouth involuntarily merged with the abutting property at 737 Woodbury Avenue many years ago. The City Council restored it to its pre-merger status in 2018. It is quite small even when compared to many of the immediately surrounding properties, most of which are also non-conforming with respect to the 15,000 square foot lot area requirement. As a result of these special conditions of the Property, there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property. The use of the Property for a single-family home is permitted by right and encouraged within the SRB Zoning District. Accordingly, the proposed use is reasonable.

CONCLUSION

In conclusion, the Applicants have demonstrated that their application meets the five (5) criteria for granting the variance relief. They respectfully request that the Board approve their application.

Respectfully Submitted,

Dated: December 29, 2021

Sherbeth Young and Joseph Dibella
By and Through Their Attorneys,
Durbin Law Offices PLLC



By: _____
Derek R. Durbin, Esq.
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(603)-287-4764
derek@durbinlawoffices.com



RAMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors

200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

NOTES:

- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ZONING MAP 220 AS LOT 16-1.
- 2) OWNERS OF RECORD:
JOSEPH DEBELLA & SHERBETH YOUNG
150 US ROUTE 1 BYPASS #106
PORTSMOUTH, NH 03801
0627-1937
- 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON THE FEMA FLOOD MAP & 301050260P. EFFECTIVE DATE JANUARY 28, 2021.
- 4) EXISTING LOT AREA:
0.1707 ACRES
- 5) PARCEL IS LOCATED IN THE SINGLE RESIDENCE B ZONING DISTRICT.
- 6) DIMENSIONAL REQUIREMENTS:
- | | |
|---------------------------|-------------|
| FRONT YARD SETBACK: | 15,000 S.F. |
| FRONT YARD DEPTH: | 100 FEET |
| FRONT YARD WIDTH: | 30 FEET |
| REAR YARD SETBACK: | 30 FEET |
| REAR YARD DEPTH: | 30 FEET |
| REAR YARD WIDTH: | 35 FEET |
| MAXIMUM STRUCTURE HEIGHT: | 35 FEET |
| MINIMUM LOT COVERAGE: | 40% |
| MINIMUM OPEN SPACE: | 40% |
- 7) THE PURPOSE OF THE PLAN IS TO SHOW THE LOCATION OF THE PROPOSED LOT 16-1 ON THE CITY OF PORTSMOUTH ZONING MAP 220.
- 8) THE LAYOUT AND BUILDING PLANS FROM BENCHMARK SURVEYS, LLC, PLANS DATED 12/1/2021.

PROPOSED RESIDENCE
TBD WOODBURY AVE
PORTSMOUTH, N.H.

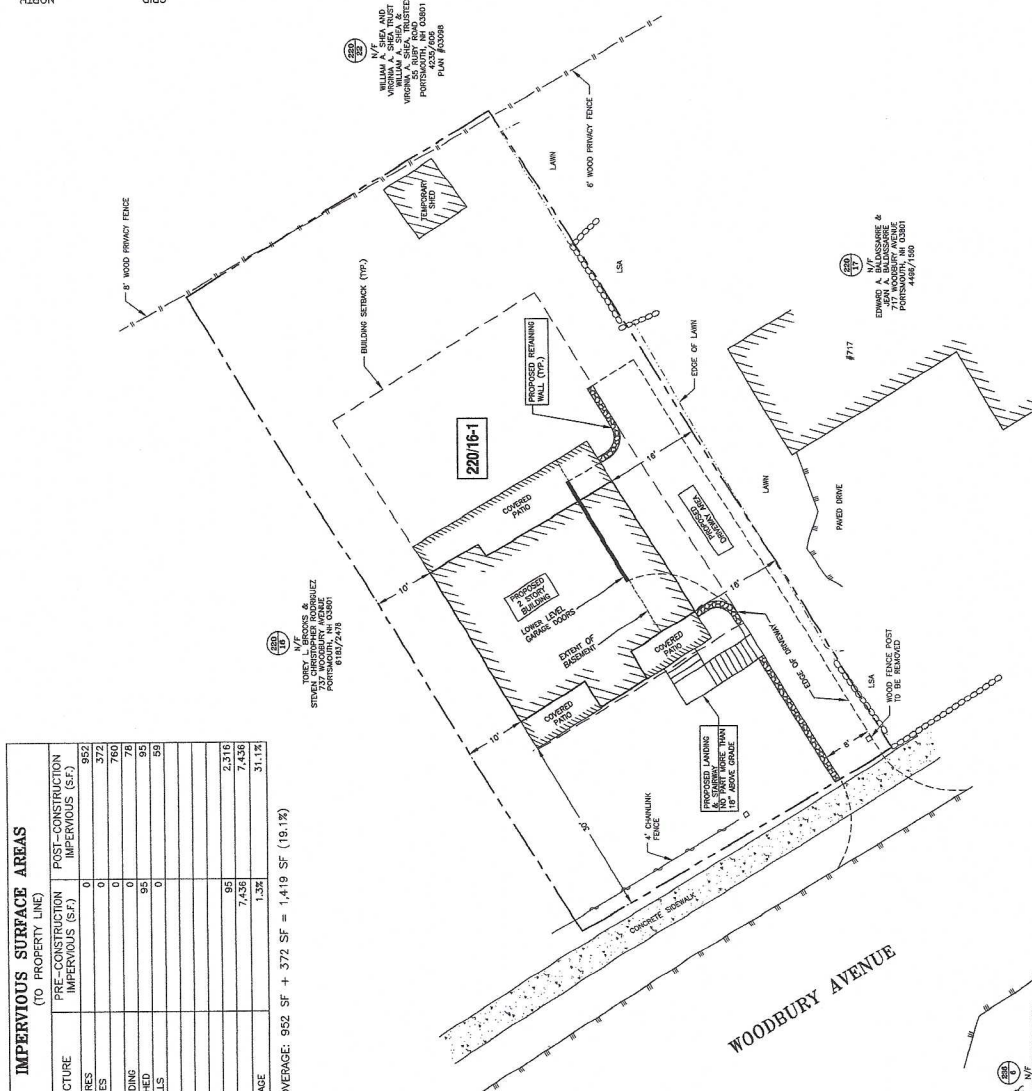
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SCALE: 1" = 10' NOVEMBER 2021

SITE PLAN

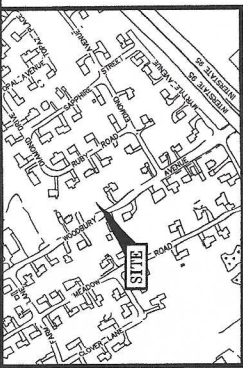
5

3369	38 277	QC 38
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IMPERVIOUS SURFACE AREAS			
(TO PROPERTY LINE)		PRE-CONSTRUCTION IMPERVIOUS (S.F.)	POST-CONSTRUCTION IMPERVIOUS (S.F.)
STRUCTURE		0	952
MAN STRUCTURES		0	952
DICKS/PORCHES		0	760
DRIVEWAY		0	78
LANDING		0	78
TEMPORARY SHED		95	95
RETAINING WALLS		0	59
TOTAL	95	2,316	
LOT SIZE	7,436	7,436	
% LOT COVERAGE	1.3%		31.1%

BUILDING COVERAGE: 952 SF + 372 SF = 1,419 SF (19.1%)



LOCATION MAP

SCALE 1"=300'

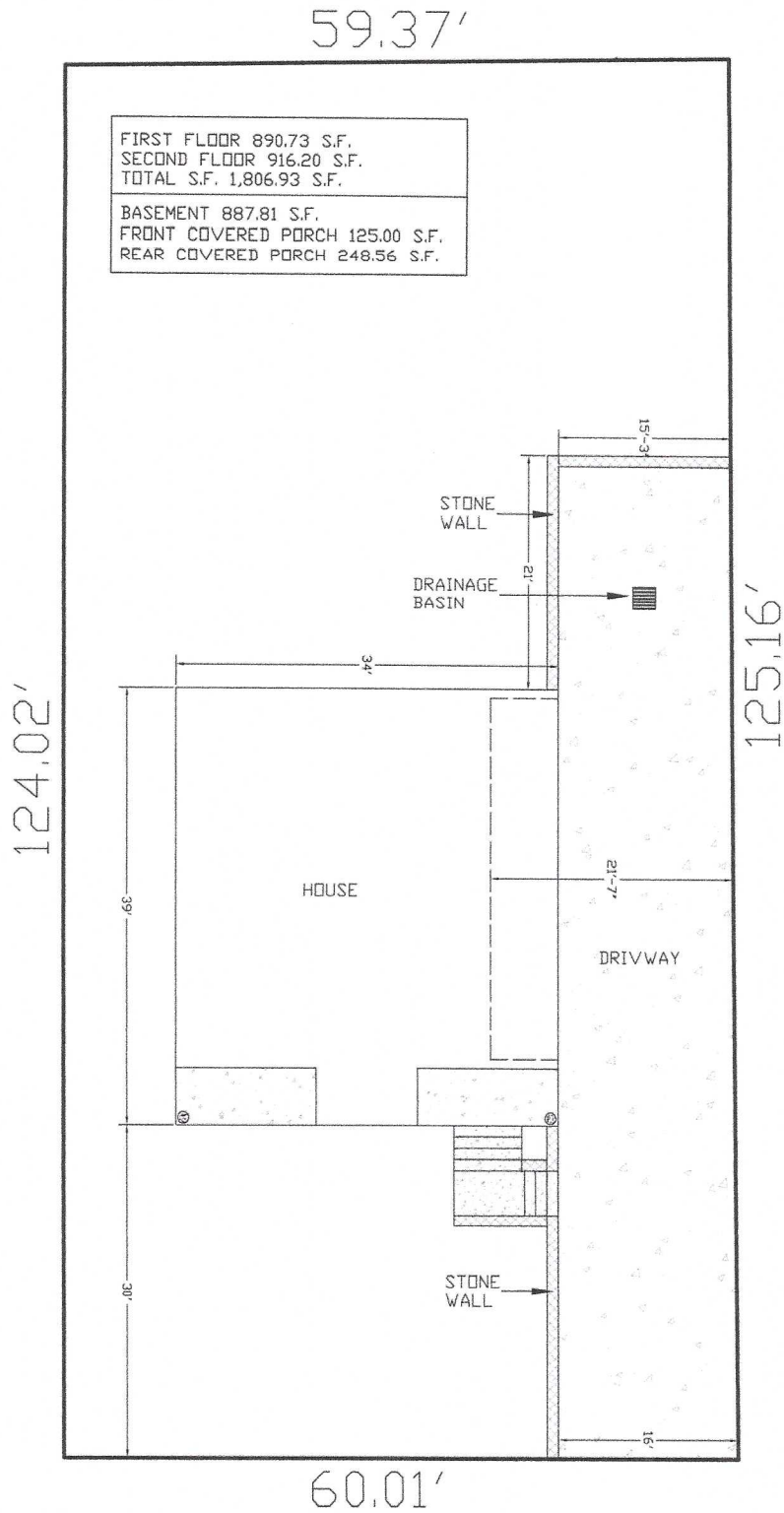
- N/F
 RP
 RCHD
 MAP 11 / LOT 21
 BOUNDARY
 SETBACK
 IRON ROD/PFE FOUND
 EDGE OF PAVEMENT (EP)
 PROPOSED METER (GAS, WATER, ELECTRIC)
 TYPICAL
 UNDISCLOSED AREA
 LSA

WOODBURY AVENUE

CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000.

12.6.21

PHEN R. CHAGNON, U.S. #738



FIRST FLOOR 890.73 S.F.
 SECOND FLOOR 916.20 S.F.
 TOTAL S.F. 1,806.93 S.F.

BASEMENT 887.81 S.F.
 FRONT COVERED PORCH 125.00 S.F.
 REAR COVERED PORCH 248.56 S.F.

A-1

PRELIMINARY
 NOT FOR
 CONSTRUCTION

JOSEPH DIBELLA &
 BETH YOUNG
 WOODBURY STREET
 PORTSMOUTH, NH

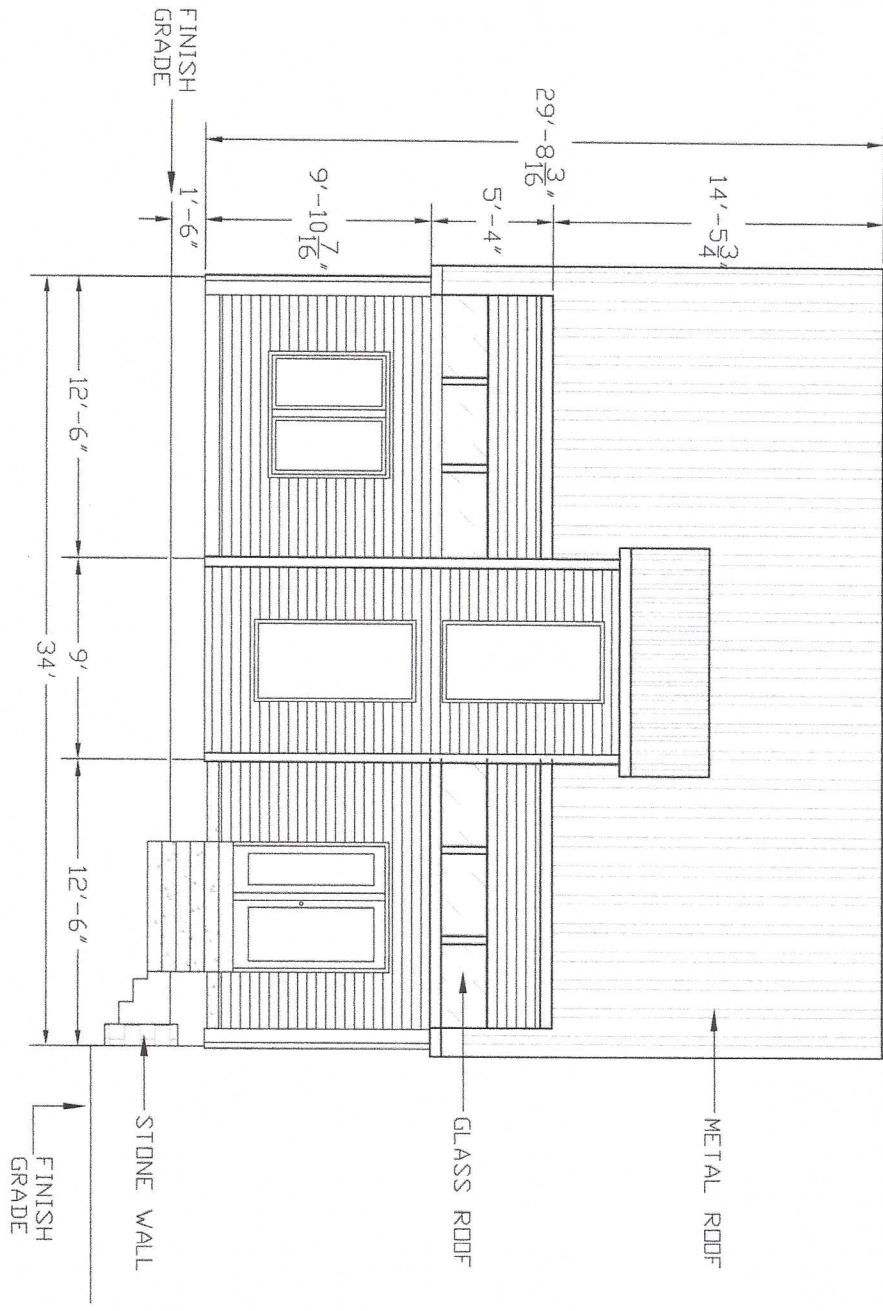
BUILDING PLAN

39 E DUNSTABLE ROAD
 NASHUA, NH 03060
 (603) 809-3112

DATE: 09/27/2021
 DRAWN BY: BM / MC
 PROJECT NO.: 090821
 SCALE: 3/32" = 1'-0"

REV: 09/30/2021
 10/26/2021
 12/24/2021

BENCHMARK
 DESIGNS, LLC



BENCHMARK
DESIGNS, LLC

39 E DUNSTABLE ROAD
NASHUA, NH 03060
(603) 809-3112

DATE: 09/27/2021

DRAWN BY: BM / MC

PROJECT NO: '090821

SCALE: 3/16" = 1'-0"

REV: 09/30/2021

10/26/2021

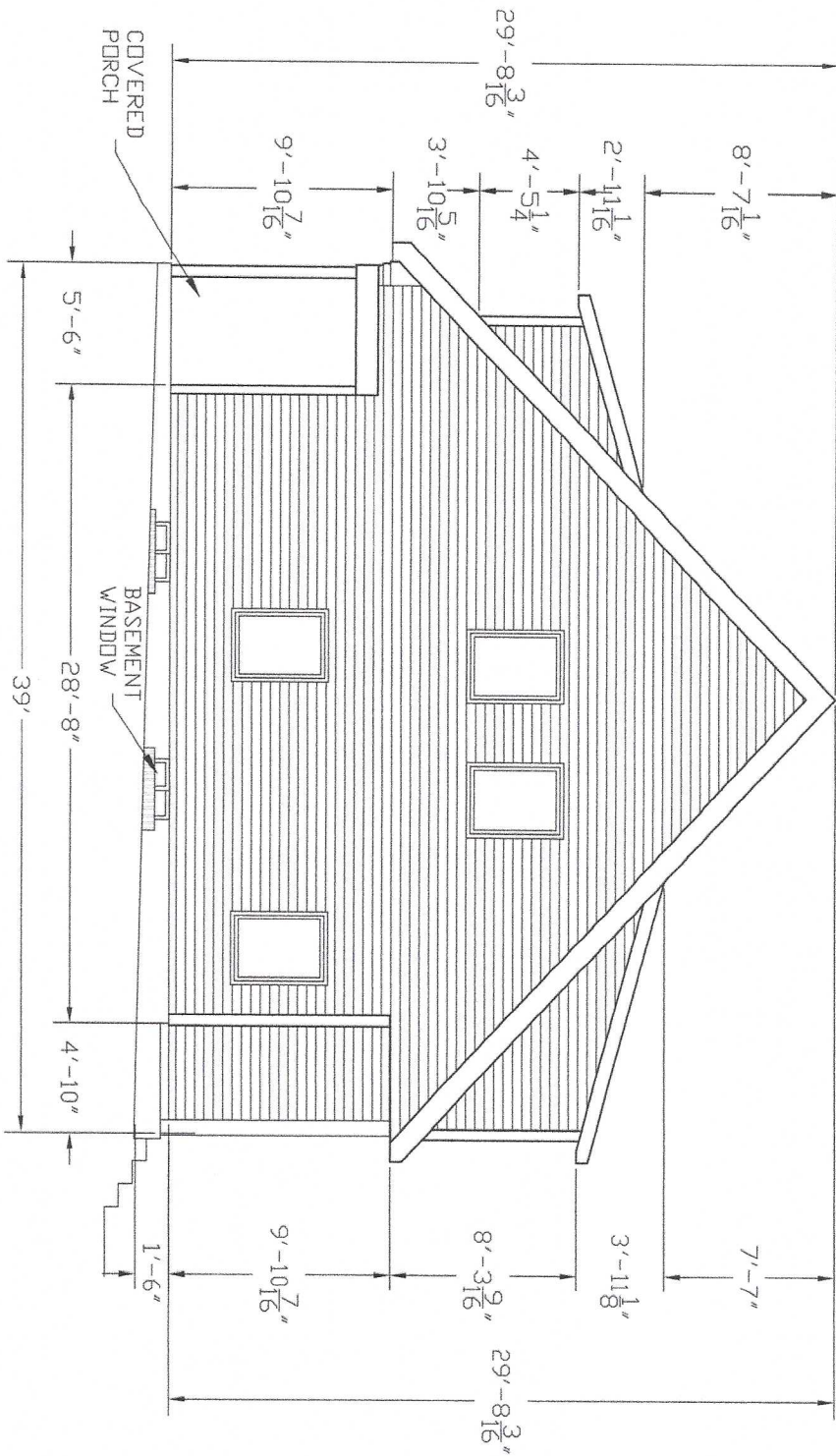
12/24/2021

JOSEPH DIBELLA &
BETH YOUNG
WOODBURY STREET
PORTSMOUTH, NH

FRONT ELEVATION

PRELIMINARY
NOT FOR
CONSTRUCTION

A-2



BENCHMARK
DESIGNS, LLC

39 E DUNSTABLE ROAD
NASHUA, NH 03060
(603) 809-3112

DATE: 09/27/2021

DRAWN BY: BM / MC

PROJECT NO: 090821

SCALE: 3/16"=1'-0"

REV: 09/30/2021

10/26/2021

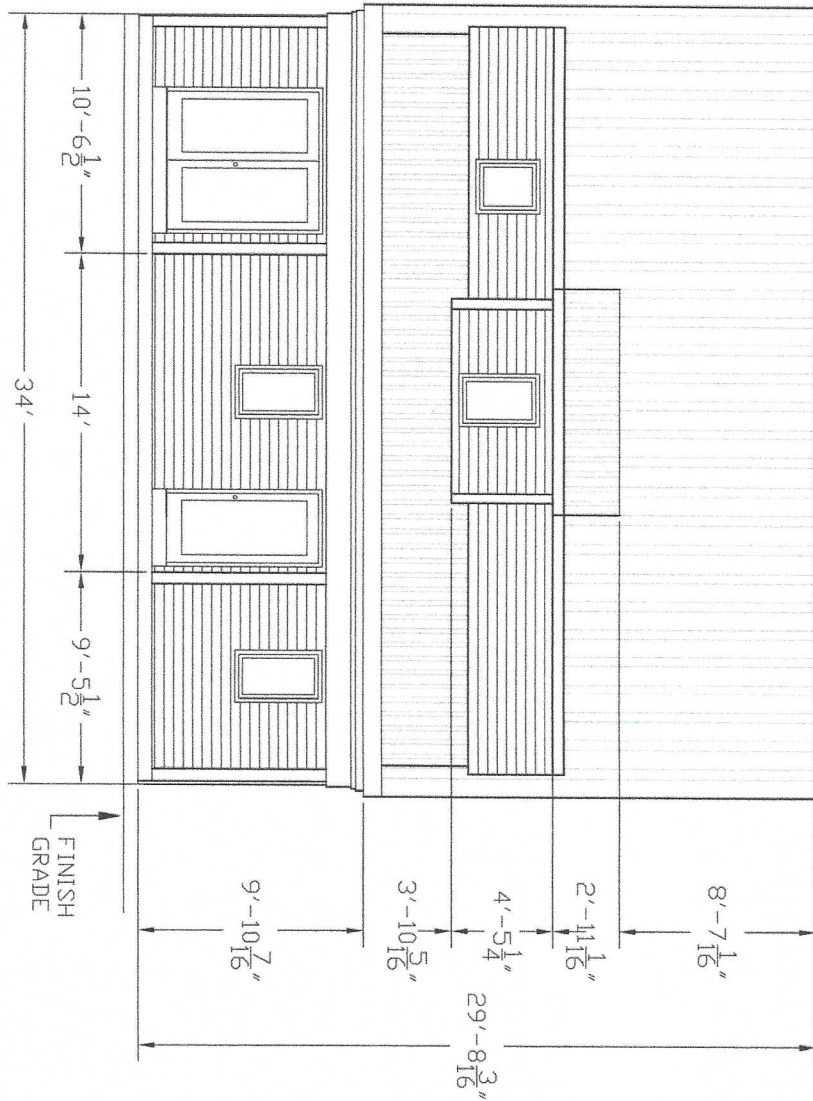
12/24/2021

JOSEPH DIBELLA &
BETH YOUNG
WOODBURY STREET
PORTSMOUTH, NH

LEFT SIDE ELEVATION

PRELIMINARY
NOT FOR
CONSTRUCTION

A-3



BENCHMARK
DESIGNS, LLC

39 E DUNSTABLE ROAD
NASHUA, NH 03060
(603) 809-3112

DATE: 09/27/2021

DRAWN BY: BM / MC

PROJECT NO: 090821

SCALE: 3/16" = 1'-0"

REV: 09/30/2021

10/26/2021

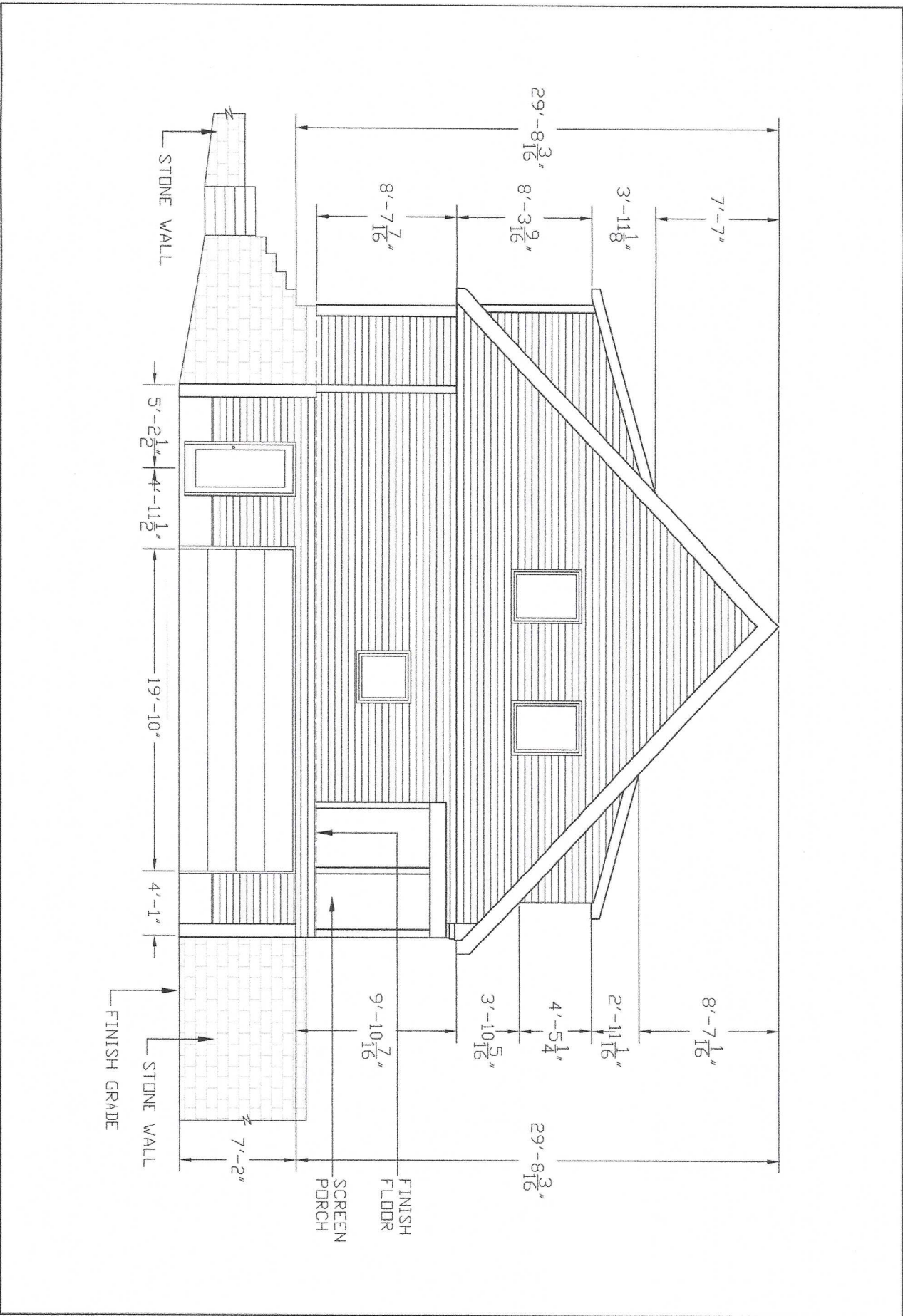
12/24/2021

JOSEPH DIBELLA &
BETH YOUNG
WOODBURY STREET
PORTSMOUTH, NH

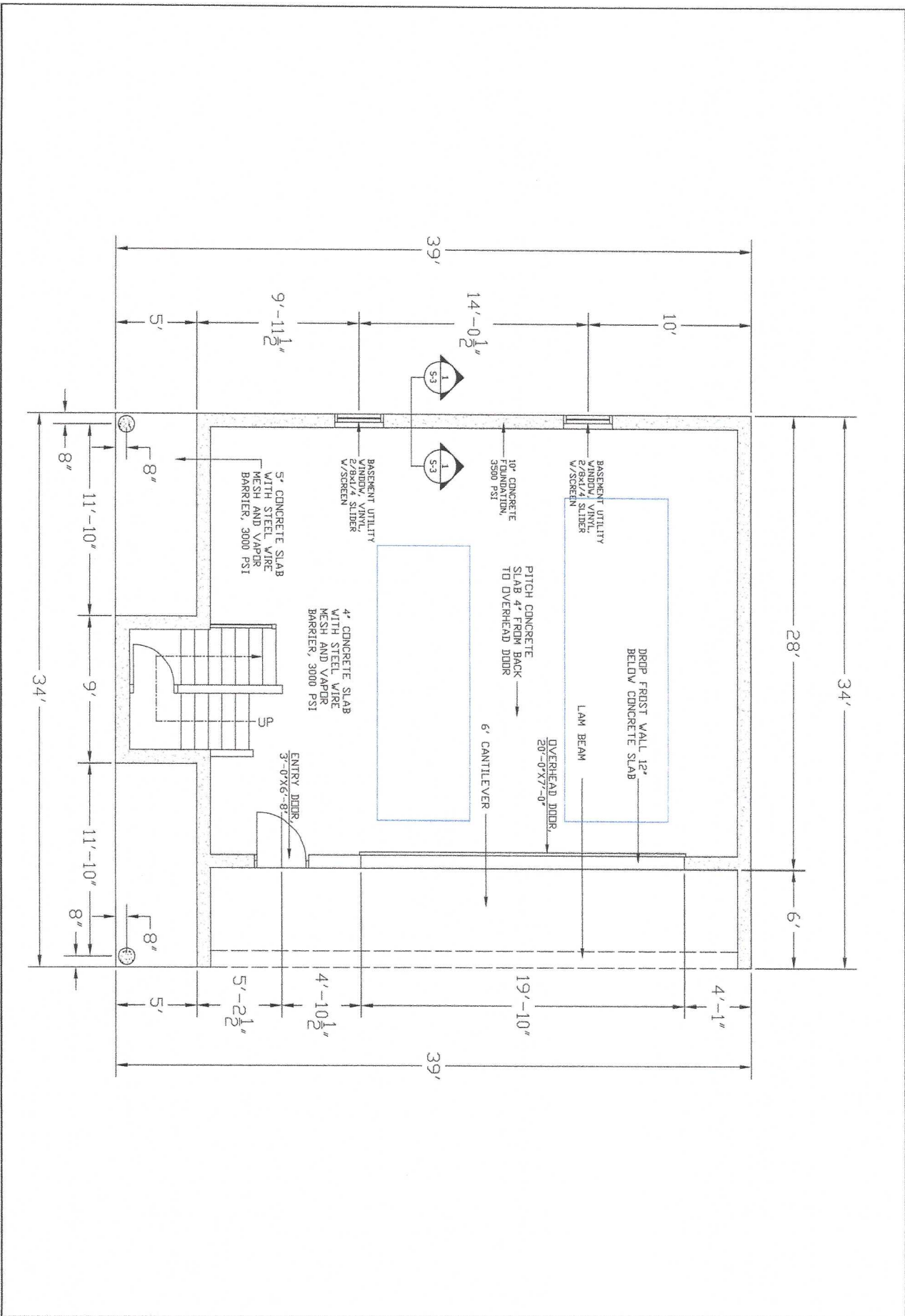
REAR ELEVATION

PRELIMINARY
NOT FOR
CONSTRUCTION

A-4

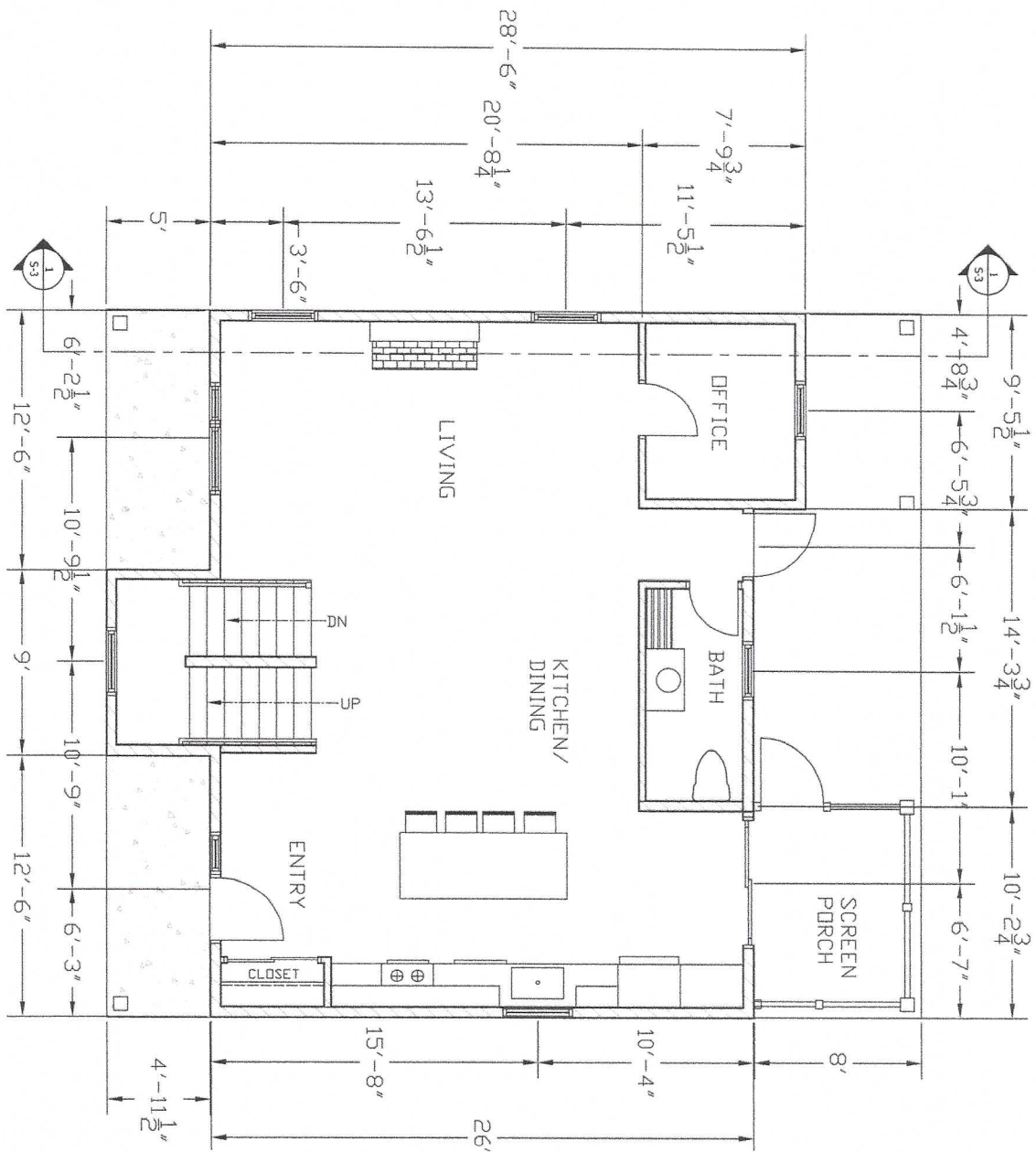


<div style="font-size: 48pt; font-weight: bold;">A-5</div>	<div style="font-size: 10pt; font-weight: bold;">PRELIMINARY NOT FOR CONSTRUCTION</div>	JOSEPH DIBELLA & BETH YOUNG WOODBURY STREET PORTSMOUTH, NH		<div style="font-size: 12pt; font-weight: bold;">RIGHT SIDE ELEVATION</div>	
		DATE: 09/27/2021		DRAWN: BM / MC	
		PROJECT No.: 090821		SCALE: 3/16" = 1'-0"	
		REV: 09/30/2021		10/26/2021	
		12/24/2021			



<h1 style="font-size: 48px; margin: 0;">A-6</h1>	<p>JOSEPH DIBELLA & BETH YOUNG WOODBURY STREET PORTSMOUTH, NH</p>		<p>LOWER LEVEL PLAN</p>	
	<p>PRELIMINARY NOT FOR CONSTRUCTION</p>			

BENCHMARK DESIGNS, LLC	39 E. DUNSTABLE ROAD NASHUA, NH 03060 (603) 809-3112	DATE 09/27/2021	DRAWN BM / MC	PROJECT No. 090821	SCALE 3/16"=1'-0"	REV 09/30/2021	10/26/2021	12/24/2021
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BENCHMARK
DESIGNS, LLC

39 E DUNSTABLE ROAD
NASHUA, NH 03060
(603) 809-3112

DATE: 09/27/2021

DRAWN BY: BM / MC

PROJECT NO: '090821

SCALE: 3/16"=1'-0"

REV: 09/30/2021

10/26/2021

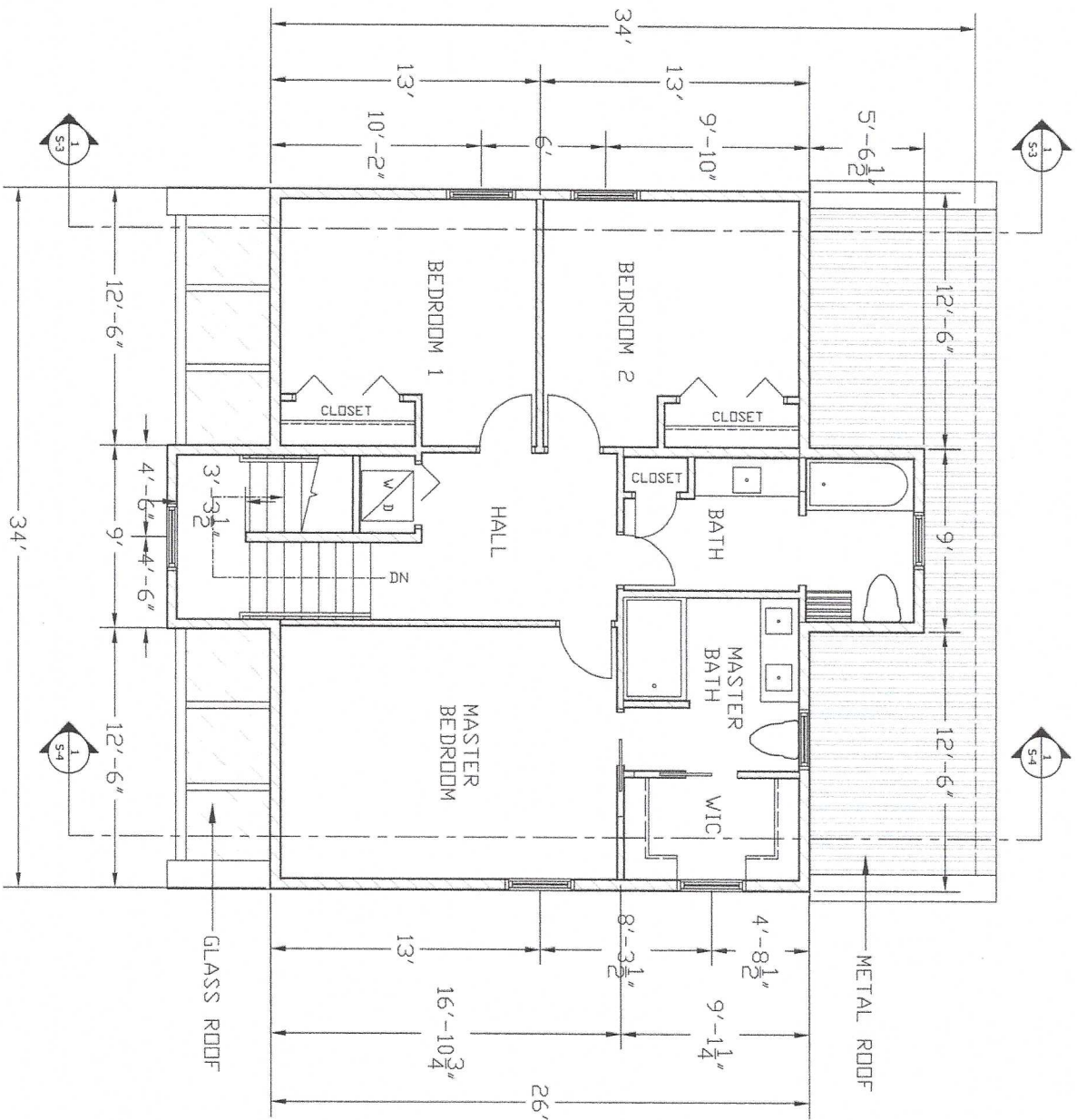
12/24/2021

JOSEPH DIBELLA &
BETH YOUNG
WOODBURY STREET
PORTSMOUTH, NH

FIRST FLOOR PLAN

PRELIMINARY
NOT FOR
CONSTRUCTION

A-7



BENCHMARK
DESIGNS, LLC

39 E DUNSTABLE ROAD
NASHUA, NH 03060
(603) 809-3112

DATE: 09/27/2021

DRAWN BY: BM / MC

PROJECT No: '090821

SCALE: 3/16"=1'-0"

REV: 09/30/2021

10/26/2021

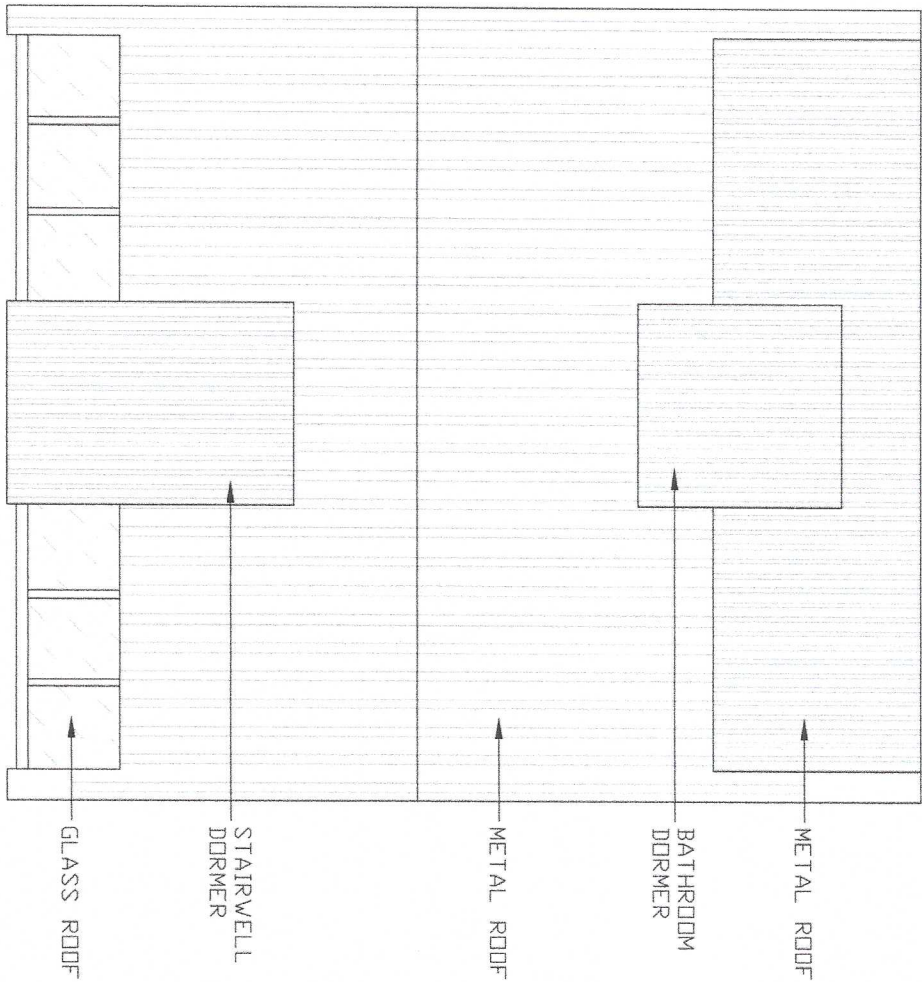
12/24/2021

JOSEPH DIBELLA &
BETH YOUNG
WOODBURY STREET
PORTSMOUTH, NH

SECOND FLOOR PLAN

PRELIMINARY
NOT FOR
CONSTRUCTION

A-8



BENCHMARK
DESIGNS, LLC

39 E DUNSTABLE ROAD
NASHUA, NH 03060
(603) 809-3112

DATE: 09/27/2021

DRAWN BY: BM / MC

PROJECT NO: 090821

SCALE: 3/16"=1'-0"

REV: 09/30/2021

10/26/2021

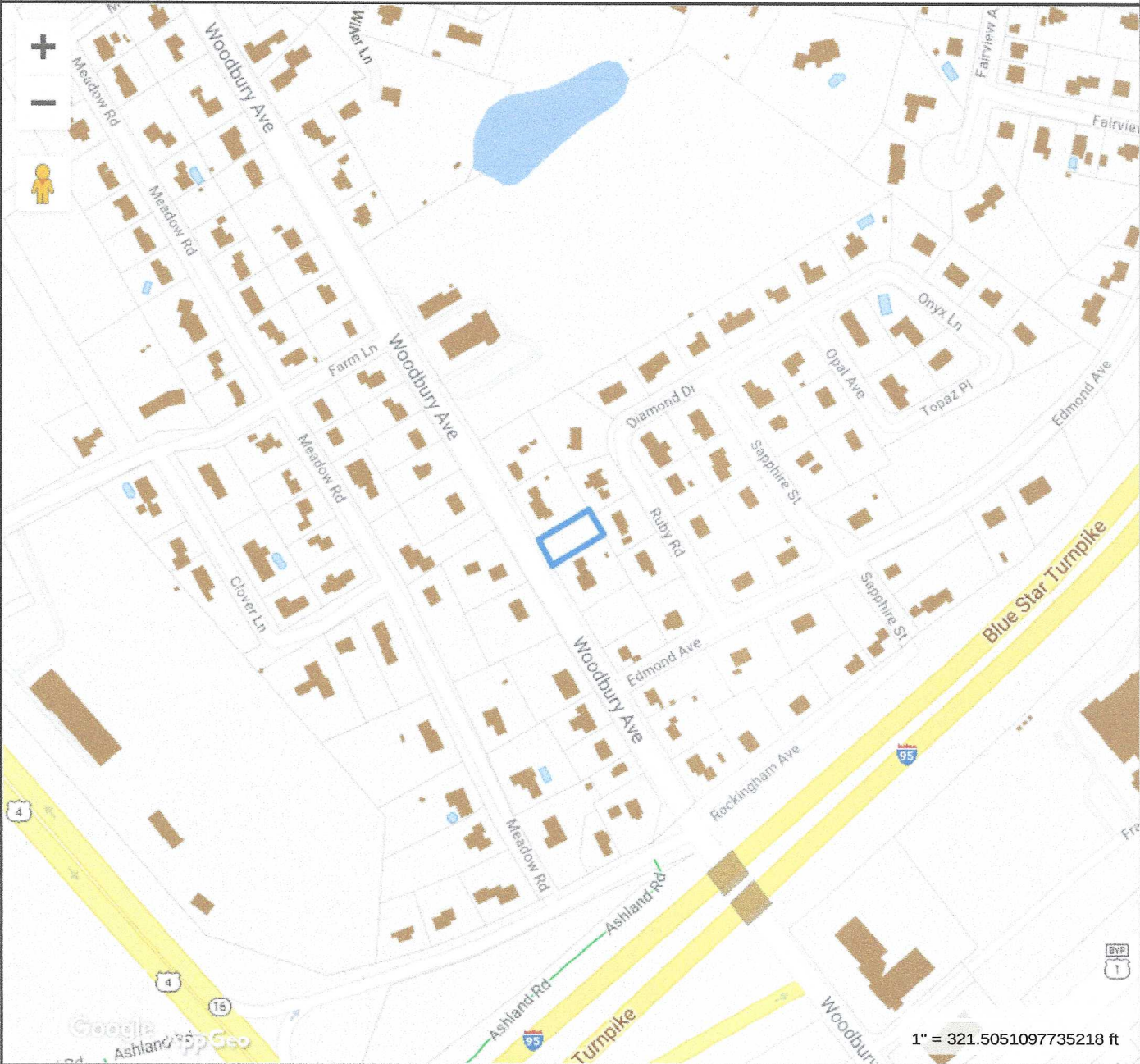
12/24/2021

JOSEPH DIBELLA &
BETH YOUNG
WOODBURY STREET
PORTSMOUTH, NH

ROOF PLAN VIEW

PRELIMINARY
NOT FOR
CONSTRUCTION

A-9



Property Information

Property ID 0220-0016-0001
Location WOODBURY AVE
Owner DIBELLA JOSEPH



**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

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



View from Right-Front of Lot 16-1



View from Left Abutter's Side Yard of Lot 16-1



View from Front Left Corner of Lot 16-1