



**IN CITY COUNCIL**

**ORDERED:**

May 8, 2023

Be it ordained by the City Council of the City of Newburyport as follows:

**THAT** the City Council of the City of Newburyport hereby approve and authorize the acceptance of a perpetual Preservation Restriction (PR) between the City, acting through the Newburyport Historical Commission (NHC), and Samuel Bartow Kimball and Michelle Christine Kimball, for the property located at 344 Merrimac Street, said PR to be substantially in the form submitted to and approved by vote of the NHC at its meeting on June 23, 2022, and as further reviewed and approved by the Massachusetts Historical Commission (MHC).

; and

Further, that the Mayor of the City of Newburyport, the City Council President and City Clerk are hereby authorized to sign the subject Preservation Restriction as may be required, to act on behalf of the City and enter into any and all instruments, including acceptance of said Preservation Restriction in accordance with Massachusetts General Laws Chapter 184, and to take any other actions necessary to execute this acceptance and the associated Preservation Restriction accordingly.

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Councillor Edward C. Cameron, Jr.

**In City Council May 8, 2023:**

Motion to waive the rules, accept the late files, and refer to the recommended committees (ORDR00456 to Planning & Development) by Councillor Zeid, seconded by Councillor Preston. Roll call vote. 11 yes. Motion passes.



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Massachusetts Historical Commission

April 28, 2023

Paul J. Gagliardi  
Dalton & Finegold, LLP  
[BY EMAIL]

RE: Draft Preservation Restriction Agreement, 344 Merrimac Street (aka Levi Carr House),  
Newburyport, Massachusetts (MHC # NWB.273)

Dear Mr. Gagliardi:

Staff of the Massachusetts Historical Commission (MHC) have reviewed the revised draft Preservation Restriction Agreement for the above referenced property response to MHC's comment letter of January 24, 2023. The following comments are provided under the MHC's approval authority for preservation restrictions under M.G.L. Chapter 184, Section 32.

The MHC is prepared to approve the Preservation Restriction Agreement for 344 Merrimac Street, Newburyport, Massachusetts conditional upon the incorporation of the following comments:

- 1) Page 3. Second Recital. Please include the Planning Board Special Permit Decision number and the Book and Page recording information in this Recital. It should read: "WHEREAS, the City of Newburyport Planning Board (the "Planning Board") did, by Decision PBSP-22-4 dated June 15, 2022, and recorded with Essex South Registry of Deeds in Book 41249, Page 33, a copy of which is attached hereto and incorporated herein as Exhibit G, approve a Special Permit pursuant to Section VI.C of the Zoning Ordinance of the City of Newburyport to allow two residential structures on one lot (the "Planning Board Decision"); and". Please note that Exhibit G was missing from your submission.
- 2) Page 3. Seventh Recital. The reorganized Exhibits are not quite as MHC requested. The easiest solution is to revise the references here as follows.
  3. Exhibit C – Newburyport Assessors' Parcel Map with Building Footprint; and
  4. Exhibit D – Massachusetts Historical Commission Inventory Form B (NWB.273) (1980) amended and updated by Essex Preservation Consulting (2022); and a set of thirty-four (34) exterior photographs of the Building taken February 2022, and a set of ten (10) interior photographs of the Chimney taken March 2023;

[The photo lists then follow.]

- 3) Page 18. Exhibit A. Please delete "(Make sure this is correct)" form the title.
- 4) Page 19. Exhibit B. The plan included as Exhibit B is not the correct plan. The Plan must be the recorded Plan presently cited in both the First and Seventh Recitals, and referenced in Exhibit A. That is the 1987 plan recorded in Essex South Registry of Deeds Plan Book 224, as Plan 25.

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[www.sec.state.ma.us/mhc](http://www.sec.state.ma.us/mhc)

- 5) Page 65. Exhibit G. Missing from your submission. Please add copies of the 13 pages of the Planning Board Special Permit recorded in Essex South Registry of Deed Book 41249, Page 33. Please continue the page numbering of the Agreement through these pages and renumber the Mortgagee Assent page that follows Exhibit G.

Once these final revisions are incorporated the Agreement should be executed by all parties and the signed and notarized assents of the mortgagees obtained. The complete original agreement including all exhibits and assents should then be forwarded to the Massachusetts Historical Commission for its signature approval. Please assure that the final, original agreement is a single-sided document as registries will not accept double-sided submissions. Prior to submitting the agreement to the MHC, please verify that all notary signature verifications have been correctly executed, as notary errors and omissions are common, and MHC will not approve agreements with any irregularities in the signature notarizations. The notary signature verification must positively indicate the form of identification used to verify the identity of the signatory.

We will return the approved agreement to you for filing at the Registry of Deeds. Once it has been filed at the Registry, we ask that a complete facsimile copy, showing registration and date-received stamps, be returned to MHC for our records.

Please don't hesitate to contact me with any questions regarding the comments included in this letter.

Sincerely,



Deputy State Historic Preservation Officer  
Director, Preservation Planning Division  
Massachusetts Historical Commission  
[Michael.steinitz@sec.state.ma.us](mailto:Michael.steinitz@sec.state.ma.us)  
978-836-2438 (mobile)

Xc [email]: Newburyport Office of Planning and Development; Brad Kutcher; Sam Kimball; Nicholas Cracknell

**PRESERVATION RESTRICTION AGREEMENT**

**between**

**SAMUEL KIMBALL a/k/a SAMUEL BARTOW KIMBALL  
AND  
MICHELLE C. KIMBALL a/k/a MICHELLE CHRISTINE KIMBALL**

**and the**

**CITY OF NEWBURYPORT, MASSACHUSETTS**

**BY AND THROUGH THE NEWBURYPORT HISTORICAL COMMISSION**

THIS PRESERVATION RESTRICTION AGREEMENT is made this \_\_\_ day of May, 2023 by and between Samuel Bartow Kimball and Michelle Christine Kimball of 344 Merrimac Street, Newburyport, Massachusetts. 01950 (“**Grantor**”), and the CITY OF NEWBURYPORT (“**Grantee**”), a municipality duly organized under the laws of the Commonwealth of Massachusetts and located in Essex County, Massachusetts, to be administered, managed and enforced by its agent, the NEWBURYPORT HISTORICAL COMMISSION, located at 60 Pleasant Street, Newburyport, Massachusetts, 01950 (“**Commission**”),

WHEREAS, the Grantor is the owner of certain real property located 344 Merrimac Street, Newburyport, Massachusetts, referred to as “**the Property**” and containing about 14,373 square feet, more or less, as more particularly described in Grantor’s deed recorded in the Essex South District Registry of Deeds in Book 41197, Page 316, and in Exhibit A, incorporated herein by reference and attached hereto, and further described on a plan of land entitled “Plan of Land in Newburyport, Mass. prepared for Colin and Connie T. Nelson & N. Diane Koehler, dated January 1987,” recorded in the Essex South District Registry of Deeds in Plan Book 224, Plan 25, a copy of which is and incorporated herein by reference and attached hereto as Exhibit B, said Property improved by a building thereon known as the Levi Carr House and is referred to hereinafter as “**the Building**”, described as follows:

The original main block rises two and one-half stories from a rough-cut stone foundation and is finished with painted clapboard siding with wood trim elements, in the form of narrow corner boards, roof cornice, water tables, window trim, and entry surrounds (Photo 5). The gabled roof of the main block is currently finished with asphalt shingles and features a prominent broad central chimney, which is centered on the roof ridge. The chimney is parged with concrete but is likely of brick construction. The roofline at the facade is defined by a shallow box cornice and prominent fascia; the eaves at the rear are obscured by the two-story addition. The side gables of the main block are defined by compound fascia boards with shallow returns. Modern aluminum gutters and downspouts were installed around the building. Windows of the main block are trimmed with painted flat wood trim, except at the facade where windows are topped by shallow hood moulds. Window openings hold a combination of historic wood double-hung windows and modern replacements, as noted below. All windows are covered by modern storm windows.

The principal facade (southwest elevation) is five bays wide and laid out symmetrically around a central entry. The entry is framed by what appears to be the original surrounds, which consists of wide Tuscan pilasters supporting a tall entablature with dentil molding. The existing door is a fairly recent replacement. Access to the entry is by way of a modern poured concrete step. Window openings in the two northernmost bays of the facade hold modern replacement windows, while the remaining windows retain historic wood windows in a nine-over-six pane

configuration at the first floor and a two-over-one configuration at the second floor. Two small basement window openings (one on either side of the central entry) were likely added and are set within poured concrete window wells; the openings hold modern windows.

The northwest elevation is three bays wide and finished with painted clapboards. Fenestration is asymmetrically arranged, with windows (two per floor) in the easternmost bays only. All window openings hold modern replacement windows. A modern vent is centered beneath the gable peak within an untrimmed opening. The southeast elevation is finished with painted clapboards and is partially covered by a one-story enclosed porch and the two-story rear addition. Fenestration at the exposed upper levels of this elevation are similar to those at the northwest elevation, with a vent in the gable and windows in the two easternmost bays of the second floor. Here, the window opening in the central bay holds a historic two-over-one window, while the second opening has a one-over-one window that appears to be a replacement. The enclosed porch at the first floor was added after 1914. The porch is largely made up of grouped windows separated by slender mullions - two windows on the southwest wall and four on the southeast wall. These adjoining windows hold older wood two-over-one sashes. The porch is enclosed by a hip roof finished with asphalt shingles. The roof edge has shallow overhanging eaves with painted flat wood soffit and fascia boards.

Much of the rear ell is covered by later additions, however it is clearly discernible on the northwest side. The ell appears to have been constructed as a one and one-half story structure with a gable roof. It rests on a rough-cut granite ashlar foundation holding two small modern basement windows. The northwest elevation is finished with painted clapboards and features three asymmetrical windows, all of which hold modern replacement windows. A portion of the upper level was raised to create a full second floor with a single small window opening, which now holds a modern window. Only the upper portion of the ell's northeast elevation is visible; the remainder is covered by a single-story shed addition. The exposed gabled wall of the ell is finished in painted wood shingles and trimmed with narrow corner boards and a compound fascia. A single window set beneath the gable peak holds a modern window. The shed addition is a relatively recent feature, resting on a poured concrete foundation and featuring painted flat wood trim, modern windows, and a modern door on its southeast wall. Access to the entry is by way of an unpainted wood porch. The shed addition is finished with painted clapboards on the northwest wall and painted wood shingles elsewhere. Most of the southeast wall of the ell is obscured by the two-story rear addition, however a narrow section of the wall remains exposed. This section of wall is finished with painted wood shingles and features a single window opening with painted flat wood trim and a modern window.

The two-story rear addition covers the rear (northeast) elevation of the main block and wraps around to cover a small portion of the southeast elevation as well. The rear addition has a flat roof, poured concrete foundation, painted flat wood trim, and a combination of painted wood shingle siding (northeast elevation) and painted clapboards (southeast elevation). A slender brick chimney projects from the roof. Fenestration at the rear elevation of the addition is asymmetrical, with window openings of varying sizes and configurations, including single and paired windows. Most openings hold older two-over-one wood windows, although two windows have one-over-one sashes. The southernmost half of the addition has a narrow fascia board at the roofline, while the northern half has no visible trim along the roof edge. A portion of the rear addition at the southernmost end is covered by a fairly recent one-story shed addition with a cross gabled bay. This small addition has a combination of painted wood shingles and clapboards, painted flat trim, and contemporary windows. The one-story addition has an entry at its southeast wall; the entry holds a modern door and a screen door.

The Building is further depicted and described in Exhibit D incorporated herein and attached hereto by reference; and

WHEREAS, the City of Newburyport Planning Board (the “Planning Board”) did, by Decision PBSP-22-4 dated June 15, 2022, and recorded with the Essex South District Registry of Deed in Book 41249, Page 33, a copy of which is attached hereto and incorporated herein as Exhibit G, approve a Special Permit pursuant to Section VI.C of the Zoning Ordinance of the City of Newburyport to allow two residential structures on one lot (the Planning Board Decision”); and

WHEREAS, pursuant to the Planning Board Decision, the Grantor was required to enter into this Preservation Agreement; and

WHEREAS, the cultural, historical and architectural significance of the Building emanates from its construction around 1805 and its location as a contributing property within the Newburyport Historic District, designated August 2, 1984 and listed on State and National Registers of Historic Places. The Building is important for its associations with the social and religious history of Newburyport, and to the public’s enjoyment and appreciation of Newburyport’s architectural and historical heritage; and

WHEREAS, Grantor and Grantee recognize the architectural, historic, and cultural values (hereinafter “preservation values”) and significance of the Building and the Property, and have the common purpose of preserving the aforesaid preservation values and significance of the exterior of the Building, both the interior and exterior portions of the chimney (both the interior and exterior hereinafter referred to as the “Chimney”) and the Property; and

WHEREAS, the preservation values of the Building, Chimney and the Property are documented in a series of photographs and documents (hereinafter, “Baseline Documentation”) incorporated herein by reference and attached hereto as Exhibits A, B,C and D, which Baseline Documentation the parties agree provides an-accurate representation of the Building as of the date of this grant; and

WHEREAS, the Baseline Documentation (Exhibits A, B, C and D) shall consist of the following:

1. Exhibit A – Legal Property Description;
2. Exhibit B - Recorded Plan (Essex South District Registry of Deeds, Plan Book 224, Plan 25);
3. Exhibit C – Newburyport Assessors’ Parcel Map with Building Footprint; and
4. Exhibit D – Massachusetts Historical Commission Inventory Form B (NWB.273) (1980) amended and updated by Essex Preservation Consulting (2022); and a set of thirty-four (34) exterior photographs of the Building taken February 2022, and a set of ten (10) interior photographs of the Chimney taken March 2023;

A set of thirty-four (34) exterior photographs of the Buildings taken in February of 2022;

- a. Photos 1 - 4: Setting
- b. Photos 5 – 6; View northeast showing the principal façade and foundation
- c. Photo 7: View northeast showing chimney on main block
- d. Photo 8: View northeast showing principal façade and detail of cornice
- e. Photo 9: View northeast showing detail of main entry
- f. Photos 10-11: View northeast showing first and second floor windows

- g. Photo 12: View northeast showing detail of foundation and basement window
- h. Photo 13: View southwest showing northwest elevation
- i. Photos 14-15: View southeast showing northwest elevation detail of corner board, fascia, return at gable and typical window
- j. Photo 16: View southwest showing detail of foundation to ell and basement windows
- k. Photo 17: View north showing southeast elevation from the west end
- l. Photo 18: View northwest showing southeast elevation from the east end
- m. Photo 19: View north showing southeast elevation with detail of enclosed porch
- n. Photos 20-21: View northwest showing southeast elevation showing detail of second floor windows and of entry at east end
- o. Photos 22-25: View southwest showing the rear elevation with detail of the northeast addition, the central bays on the first and second floors
- p. Photo 26: View northwest showing southeast face of rear ell
- q. Photo 27: View northwest showing chimneys on roofs of main block and addition
- r. Photos 28-34: Views of non-historic outbuildings and the rear yard; and

A set of ten (10) interior photographs of the Chimney taken in March of 2023;

- Photo 1: View from southeast showing chimney in the basement
- Photo 2: View from southwest showing chimney foundation and brick arch in Basement
- Photo 3: View from southeast showing chimney foundation and fieldstone base in the basement
- Photo 4: View showing east side fireplace on first floor
- Photo 5: View showing west side fireplace on first floor
- Photo 6: View showing north side fireplace on first floor
- Photo 7: View showing east side fireplace on second floor
- Photo 8: View showing west side fireplace on second floor
- Photo 9: View showing southeast side of chimney in the attic
- Photo 10: View showing southside of chimney in the attic; and

WHEREAS, the Building and the chimney are in need of preservation and restoration; and

WHEREAS, the preservation of the Chimney and the Building is important to the public for the enjoyment and appreciation of its architectural and historical heritage and serves the public interest in a manner consistent with the purposes of Massachusetts General Laws, Chapter 184, Sections 31, 32 and 33 (“Act”); and

WHEREAS, the Commission is authorized to accept preservation restrictions in the name of the City of Newburyport and the Commission is a governmental body duly organized under the laws of the Commonwealth of Massachusetts, including the General Laws, Chapter 40, Section 8 (d), authorized and directed by the Grantee to manage the Property and Building burdened by such restrictions, consistent with the provisions of the Act and to administer and enforce this preservation restriction;

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby irrevocably grant and convey to the Grantee in gross in perpetuity this Restriction over the Property, the Chimney and the exterior of the Building to be administered, managed and enforced by the Commission.

1. Purpose: It is the Purpose of this Restriction to assure that, the architectural, historic, and cultural features of the Chimney and the exterior of the Building will be retained and maintained forever substantially in their current condition or in a restored condition approved by the Commission for preservation purposes and to prevent any use or change of the Property or either the Chimney or the exterior of the Building that will significantly impair or interfere with the either the Chimney's or the Building's preservation values or alter views of either the Chimney or the exterior of the Building.

2. Preservation Restriction: The Grantor grants the Grantee the right to forbid or limit:

- a. any alteration to the appearance, materials, workmanship, condition or structural stability of the Chimney and the Building unless (i) clearly of minor nature and not affecting the characteristics which contribute to the architectural or historical integrity of the Chimney, the Building and the Property, or (ii) the Grantee has previously determined that it will not impair such characteristics after reviewing plans and specifications submitted by Grantor in accordance with the requirements of paragraph 7, which determination shall not be unreasonably withheld, or (iii) required by casualty or other emergency promptly reported to Grantee in accordance with the requirements of paragraph 9. For the purposes of this Agreement, interpretation of what constitutes alterations of a minor nature and ordinary maintenance and repair is governed by the Restriction Guidelines, which are attached hereto as Exhibit E and hereby incorporated by reference.
- b. any other act or use that may be harmful to the historic preservation of the Chimney, the Building or the Property.

3. Grantor's Covenants: Covenant to Maintain. Subject to Paragraph 2 and the terms and conditions of this Restriction and such other terms and conditions as the Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor covenants and agrees at all times to maintain the Chimney and the Building, including the maintenance/preservation of the entire central chimney from the basement (within the structure) to its termination above the roofline, in the a good structural condition. Grantor's obligation to maintain shall require replacement, repair, and reconstruction by Grantor whenever necessary to preserve the Chimney and the exterior of the Building. Subject to the casualty provisions of paragraphs 9 and 10, this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction of the Chimney and the Building whenever necessary in accordance with the policies and procedures of the Commission and in accordance with The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (36 CFR 67 and 68), as these may be amended from time to time (hereinafter the "Secretary's Standards").

4. Grantor's Covenants: Prohibited Activities. The following acts or uses are expressly forbidden except as otherwise conditioned in this paragraph:

- a. neither the Chimney nor the Building shall be demolished, removed, or razed except as provided in Paragraphs 9 and 10;
- b. the dumping of ashes, trash, rubbish, or any other unsightly or offensive materials is prohibited on the Property near the Building;
- c. no above-ground utility transmission lines, except those reasonably necessary for the existing Building, may be created on the Property, subject to utility easements already recorded;



- d. no additions and/or outbuildings may be attached to the Building without prior approval of the Grantee;
- e. no further subdivision of the lot shall be permitted and this condition shall be memorialized as a deed restriction for both structures; and
- f. moving the Building to another location shall be forbidden without prior approval of the Commission.

5. Conditional Rights Requiring Grantee Approval: Subject to Paragraph 4 and the terms and conditions of this Restriction and such other terms and conditions as the Commission may reasonably impose to accomplish the purposes of this Restriction, the Grantor shall not alter either the Chimney or the Building without prior express written approval of the Commission. Without said approval Grantor shall not make any changes to the Building, including the alteration, partial removal, construction, remodeling, or other physical or structural change, including permanent signs, and any change in material or color or any change to the footprint, size, mass, ridge-line, and rooflines of the Building. Grantor shall similarly, other than landscaping elements less than 36 inches in height, not make any alterations to the surrounding Property that would obscure the current view of the Building, such as the installation of permanent signage or trees or very large shrubs without approval of the Commission.

Activities by Grantor to maintain the Chimney, the Building and the Property which are intended to be performed in accordance with the provisions of paragraph 4.1, and which are of a minor nature, shall not require the prior approval of the Commission. For the purposes of this section, interpretation of what constitutes ordinary maintenance of a minor nature is governed by the Restriction Guidelines (Exhibit E), which are attached to this Agreement and hereby incorporated by reference.

6. Grantor's Reserved Rights Not Requiring Further Approval by the Grantee: Subject to the provisions of paragraphs 2 and 4.2, the following rights, uses, and activities of or by Grantor on, over, or under the Property are permitted by this Restriction and by the Commission without further approval by the Commission:

- a. the right to engage in all those acts and uses that:
  - (i) are permitted by governmental statute or regulation;
  - (ii) do not substantially impair the preservation values of the Chimney, Building and Property;
  - (iii) are not inconsistent with the Purpose of this Restriction; and
  - (iv) are listed in the Grantor's Proposed and Granted Changes and more particularly described in Exhibit F.
- b. pursuant to the provisions of Paragraph 4.1, the right to maintain and repair the Chimney and the Building strictly according to the Secretary's Standards. As used in this sub-paragraph, the right to maintain and repair shall mean the use by the Grantor of in-kind materials and colors, applied with workmanship comparable to that which was used in the construction or application of those materials being repaired or maintained, for the purpose of retaining in good condition the appearance and construction of the Chimney and the exterior of the Building. The right to maintain and repair as used in this sub-paragraph shall not include the right to make changes in appearance, materials, workmanship from that existing prior to the maintenance and repair without the prior approval of the Commission in accordance with the provisions of Paragraph 5;

7. Review of Grantor's Requests for Approval: Grantor shall submit to the Commission for the Commission's approval of those conditional rights set out at Paragraphs 2 and 5 two copies of information (including plans, specifications, and designs where appropriate) identifying the proposed activity with reasonable specificity. In connection therewith, Grantor shall also submit to the Commission a timetable for the proposed activity sufficient to permit the Commission to monitor such activity. Within forty-five (45) days of the Commission's receipt of any plan or written request for approval hereunder, the Commission shall certify in writing that (a) it approves the plan or request, or (b) it disapproves the plan or request as submitted, in which case the Commission shall provide Grantor with written suggestions for modification or a written explanation for the Commission's disapproval. Any failure by the Commission to act within forty-five (45) days of receipt of Grantor's submission or resubmission of plans or requests shall be deemed to constitute approval by the Commission of the plan or request as submitted and to permit Grantor to undertake the proposed activity in accordance with the plan or request submitted, so long as the request sets forth the provisions of this section relating to deemed approval after the passage of time provided nothing herein shall be construed to permit the Grantor to undertake any of the activities prohibited hereunder.

8. Standards for Review: In exercising any authority created by this Restriction to inspect the Chimney and the Building; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of either the Chimney or the Building following casualty damage, the Commission shall apply the Secretary's Standards.

9. Casualty Damage or Destruction: In the event that the Chimney, Building or Property shall be damaged or destroyed by fire, flood, windstorm, hurricane, earth movement or other casualty, Grantor shall notify the Commission in writing within fourteen (14) days of the damage or destruction, such notification including what, if any, emergency work has already been completed. No repairs or reconstruction of any type, other than temporary emergency work to prevent further damage to the Chimney, Building and Property and to protect public safety, shall be undertaken by Grantor without the Commission's prior written approval of the work. Within sixty (60) days of the date of damage or destruction, if required by the Commission, Grantor at its expense shall submit to the Commission a written report prepared by a qualified restoration architect and an engineer who are acceptable to the Grantor and the Commission, which report shall include the following:

- a. an assessment of the nature and extent of the damage;
- b. a determination of the feasibility of the restoration of the Chimney and/or Building and/or reconstruction of damaged or destroyed portions of either the Chimney or the Building; and
- c. a report of such restoration/reconstruction work necessary to return either the Chimney or the Building to the condition existing at the date hereof or the condition subsequently approved by the Commission.

10. Review After Casualty Damage or Destruction: If, after reviewing the report provided in Paragraph 9 and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 11, Grantor and the Commission agree that the Purpose of the Restriction will be served by such restoration/reconstruction, Grantor and the Commission shall establish a schedule under which Grantor shall complete the restoration/reconstruction of the Chimney and/or Building in accordance with plans and specifications consented to by the parties up to at least the total of the casualty insurance proceeds available to Grantor.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 11, Grantor and the Commission agree that restoration/reconstruction of either the Chimney or the Building is impractical or impossible, or agree that the Purpose of the Restriction would not be served by such restoration/reconstruction and Grantor may, with prior written consent of the Commission, alter, demolish, remove or raze either or both the Chimney and the Building, and/or construct new improvements on the Property, Grantor and Grantee may agree to seek to extinguish this Restriction in accordance with the laws of the Commonwealth of Massachusetts and paragraph 23 hereof.

If, after reviewing the report and assessing the availability of insurance proceeds after satisfaction of any mortgagee's/lender's claims under paragraph 11, Grantor and the Commission are unable to agree that the Purpose of the Restriction will or will not be served by such restoration/reconstruction, the matter may be referred by either party to binding arbitration and settled in accordance with the Commonwealth of Massachusetts arbitration statute then in effect, and all other applicable laws, rules, regulations, and ordinances. Arbitrator shall have experience in historic preservation matters.

11. Insurance: Grantor shall keep the Building insured by an insurance company rated "A" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Building without cost or expense to Grantor or contribution or coinsurance from Grantor. Grantor shall deliver to the Commission, within ten (10) business days of the Commission's written request thereof, certificates of such insurance coverage. Provided, however, that whenever the Property is encumbered with a mortgage or deed of trust nothing contained in this paragraph shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

12. Indemnification: Grantor hereby agrees to pay, protect, indemnify, hold harmless and defend, at its own cost and expense, Grantee, its boards, commissions, appointees, agents, directors, employees, or independent contractors from and against any and all claims, liabilities, expenses, costs, damages, losses and expenditures (including attorneys' fees and disbursements hereafter incurred) arising out of or in connection with injury to or death of any person as a result of the existence of this Restriction; physical damage to the Chimney and/or the Building; the presence or release in, on, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any law, ordinance or regulation as a hazardous, toxic, polluting or contaminating substance; or other injury or other damage occurring on or about the Building; unless such injury, death, or damage is caused by Grantee or its boards, commissions, appointees, agents, directors, employees, or independent contractors. In the event that Grantor is required to indemnify Grantee pursuant to the terms of this paragraph, the amount of such indemnity, until discharged, shall constitute a lien on the Property with the same effect and priority as a mechanic's lien.

13. Written Notice: Any notice which either Grantor or Grantee may desire or be required to give to the other party shall be in writing;

Grantor: Samuel Bartow Kimball  
Michelle Christine Kimball  
344 Merrimac Street  
Newburyport, MA 01950

Grantee: City of Newburyport  
c/o Newburyport Historical Commission  
City Hall  
60 Pleasant Street  
Newburyport, MA 01950

Each party may change its address set forth herein by a notice to such effect to the other party.

14. Evidence of Compliance: Upon request by Grantor, Grantee shall promptly furnish Grantor with certification that, to the best of Grantee's knowledge, Grantor is in compliance with the obligations of Grantor contained herein, or that otherwise evidence the status of this Restriction to the extent of Grantee's knowledge thereof.

15. Inspection: With the consent of Grantor, Grantee or its representatives shall be permitted at reasonable times to inspect the Chimney, the Buildings and the Property on an annual basis. Grantor covenants not to withhold unreasonably its consent in determining dates and times for such inspections.

16. Grantee's Remedies: The Grantor, for itself, its assigns and successors, expressly acknowledges that a violation of this Preservation Restriction Agreement may result in the Commission exercising its right to enforce the terms and conditions of the Restriction by seeking appropriate legal and equitable relief, including, but not limited to, restoration of the Chimney, the Building and such other legal and equitable remedies as may be available to the Commission to effectuate the purposes of this Restriction and to enforce the Grantor's obligations hereunder.

In the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee for any costs or expenses incurred in connection with Grantee's enforcement of the terms of this Restriction, including all court costs, and attorneys', architectural, engineering, and expert-witness fees. Grantor shall, at its own expense and with approval of Commission, reverse any actions or activities which violated this restriction and altered the Chimney and/or Building.

Nothing in this Restriction shall impose upon the Commission any duty to maintain or require that the Chimney and Building be maintained in any particular state or condition, notwithstanding the Commission's acceptance hereof Enforcement of the terms of this Preservation Restriction shall be at the discretion of the Commission. Any election by the Commission as to the manner and timing of the exercising of its right to enforce this Preservation Restriction or otherwise exercise its rights hereunder shall not be deemed or construed to be a waiver of such rights. By its acceptance of this Preservation Restriction, the Commission does not assume any liability or obligation relating to the condition of the Chimney, the Building or the Property, including compliance with hazardous materials or other environmental laws and regulations.

17. Notice from Government Authorities: Grantor shall deliver to Grantee copies of any notice of violation or lien relating to the Chimney, the Buildings or the Property received by Grantor from any government authority within five (5) days of receipt by Grantor. Upon request by Grantee, Grantor shall promptly furnish Grantee with evidence of Grantor's compliance with such notice or lien where compliance is required by law.

18. Notice of Proposed Sale: Grantor shall promptly notify Grantee in writing of any proposed sale of the Property and provide the opportunity for Grantee to explain the terms of the Restriction to potential new Grantors prior to sale closing.

19. Runs with the Land: Except as provided in Paragraphs 9 and 10, the restrictions, obligations and duties set forth in this Restriction shall run with the Property and shall inure to the benefit of the Commission and all parties claiming by, through or under the Commission and shall bind the Grantor and all parties claiming by, through or under the Grantor. The rights hereby granted to the Commission constitute the perpetual right of the Commission to enforce this Preservation Restriction Agreement. The Grantor hereby covenants for itself to stand seized and hold title to the Property subject to the terms of this Restriction. This Restriction shall extend to and be binding upon Grantor and Grantee, their respective successors in interest and all persons hereafter claiming under or through Grantor and Grantee, and the words “Grantor”, “Grantee” when used herein shall include all such persons. Any right, title, or interest herein granted to Grantee also shall be deemed granted to each successor and assign of Grantee and each such following successor and assign thereof, and the word “Grantee” shall include all such successors and assigns.

Anything contained herein to the contrary notwithstanding, Grantor of the Property shall have no obligation pursuant to this instrument where such Grantor shall cease to have any ownership interest in the Property by reason of a bona fide transfer. The restrictions, stipulations and covenants contained in this Restriction shall be inserted by Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor divests itself of either the fee simple title to or any lesser estate in the Property or any part thereof, including by way of example and not limitation, a lease of all or a portion of the Property.

20. Assignment: Grantee may convey, assign, or transfer this Restriction to a unit of federal, state, or local government or to a similar local, state, or national charitable corporation or trust that qualifies under the Act, and whose purposes include the preservation of buildings or sites of historical significance, provided that any such conveyance, assignment or transfer requires that the Purpose for which the Restriction was granted will continue to be carried out. Grantor shall give prior written approval of such conveyance, assignment, or transfer by Grantee, such approval not to be unreasonably withheld.

21. Alternate Designee: Grantee may, at its discretion, remove and replace the Commission as its designee to administer, manage, and enforce this Restriction, provided that any new designee is qualified as such under the Act and other applicable law.

22. Recording and Effective Date: Grantee shall do and perform at its own cost all acts necessary to the prompt recording of this Restriction which shall become effective upon its being duly executed by the Grantor, the City of Newburyport, and the Newburyport Historical Commission, its being approved by the Massachusetts Historical Commission, and its being recorded with the Essex South District Registry of Deeds.

23. Extinguishment: Grantor and Grantee hereby recognize that an unexpected change in the conditions surrounding the Property may make impossible the continued use of the Property for the Purpose of this Restriction and necessitate extinguishment of the Restriction. Such a change in conditions may include, but is not limited to, partial or total destruction of the Building resulting from casualty. Such an extinguishment must meet all the requirements of the Act for extinguishment, including approvals following public hearings by the City of Newburyport and the Massachusetts Historical Commission to determine that such extinguishment is in the public interest. In the event of a sale of the Property, net proceeds of sale shall be paid to Grantor.

24. Condemnation: If all or any part of the Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of those interests in the Property that are subject to the taking and all incidental and direct

damages resulting from the taking. All expenses reasonably incurred by Grantor and Grantee in connection with such taking shall be paid out of the recovered proceeds. Such recovered proceeds shall be paid to Grantor.

25. Interpretation: The following provisions shall govern the effectiveness, interpretation, and duration of the Restriction:

- a. Any rule of strict construction designed to limit the breadth of restrictions on alienation or use of the Property shall not apply in the construction or interpretation of this Restriction and this instrument shall be interpreted broadly to affect its Purpose and the transfer of rights and the restrictions on use contained herein.
- b. This instrument may be executed in two counterparts, one of which is to be retained by Grantor and the other, after recording, to be retained by Grantee. In the event of any disparity between the counterparts produced, the recorded counterpart shall in all cases govern. Except as provided in the preceding sentence, each counterpart shall constitute the entire Restriction of the parties.
- c. This instrument is made pursuant to the Act, but the invalidity of such Act or any part thereof shall not affect the validity and enforceability of this Restriction according to its terms, it being the intent of the parties to agree and to bind themselves, their successors and their assigns in perpetuity to each term of this instrument whether this instrument be enforceable by reason of any statute, common law or private Restriction either in existence now or at any time subsequent hereto.
- d. Nothing contained herein shall be interpreted to authorize or permit Grantor to violate any ordinance or regulation relating to building materials, construction methods or use. In the event of any conflict between any such ordinance or regulation and the terms hereof Grantor promptly shall notify Grantee of such conflict and shall cooperate with Grantee and the applicable governmental entity to accommodate the purposes of both this Restriction and such ordinance or regulation.

If any court or other tribunal determines that any provision of this instrument is invalid or unenforceable, such provision shall be deemed to have been incorporated herein automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event any provision invalidated is of such a nature that it cannot be modified, the provision shall be deemed deleted from this Preservation Restriction as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

26. Amendment: If circumstances arise under which an amendment to or modification of this Restriction would be appropriate, Grantor and Grantee may by mutual written agreement jointly amend this Restriction, provided that no amendment shall be made that will adversely affect the qualification of this Restriction or the status of Grantee under any applicable law. Any such amendment shall be consistent with the protection of the preservation values of the Property and the Purpose of this Restriction; shall not affect its perpetual duration; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall architectural and historic values protected by this Restriction. Any such amendment shall be effective when the requirements of the Act with respect to amendments have been met and the amendment is recorded in the Essex South District Registry of Deeds. Nothing in this paragraph shall require Grantor or Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

27. Release: This Preservation Restriction is intended to be a restriction in gross in perpetuity and may only be released, in whole or in part, by the Grantee pursuant to the procedures for release established by the Act and otherwise by law, including approvals following public hearings by the City of Newburyport and the Massachusetts Historical Commission to determine that such a release is in the public interest.

28. Archaeological Activities: The conduct of archaeological activities on the Property, including without limitation survey, excavation, and artifact retrieval, may occur only following the submission of an archaeological field investigation plan prepared by the Grantor and approved in writing by the Grantee and the State Archaeologist of the Massachusetts Historical Commission (M.G.L. C. 9, Sec. 27C, 950 C.M.R. 70.00).

29. Subordination of Prior Liens: Grantor represents and warrants to Grantee that the Property is not subject to any mortgages, liens, or leases prior in right to this Restriction other than the following: Mortgage granted by Grantor to the Institution for Savings in Newburyport and Its Vicinity recorded with Essex South District Registry of Deeds in Book 41197, Page 318. The Institution for Savings in Newburyport and Its Vicinity has subordinated its mortgage to this Restriction with the Assent attached hereto and recorded herewith. Grantor agrees not to enter into or permit other mortgages, liens or leases affecting the Property prior in right to this Restriction.

IN WITNESS WHEREOF, the Grantor sets its hand and seal this \_\_\_\_ day of May, 2023.

By:

**GRANTOR:**

\_\_\_\_\_  
Samuel Bartow Kimball

\_\_\_\_\_  
Michelle Christine Kimball

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this \_\_\_\_ day of May, 2023, before me, the undersigned notary public, personally appeared Samuel Bartow Kimball proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principals), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purposes.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this \_\_\_\_ day of May, 2023, before me, the undersigned notary public, personally appeared Michelle Christine Kimball proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principals), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes.

---

Notary Public  
My Commission Expires:



**ACCEPTANCE BY THE NEWBURYPORT HISTORICAL COMMISSION**

\_\_\_\_\_  
Glenn Richards, duly authorized  
Chair, Newburyport Historical Commission

COMMONWEALTH OF MASSACHUSETTS

Essex ,ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes as duly authorized Chair of the Newburyport Historical Commission.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**ACCEPTANCE AND APPROVAL BY THE CITY OF NEWBURYPORT**

I, the undersigned City Clerk of the City of Newburyport, Massachusetts, hereby certify that at a meeting duly held on \_\_\_\_\_, 2023, the City Council voted to approve and accept the foregoing Preservation Restriction Agreement for the preservation of the historic resources of said City and being in the public interest pursuant to Massachusetts General Laws Chapter 184, Section 32.

CITY OF NEWBURYPORT

By its Clerk

\_\_\_\_\_  
Richard B. Jones

The undersigned hereby certifies that the foregoing preservation restrictions have been approved and accepted by the City of Newburyport

CITY OF NEWBURYPORT

\_\_\_\_\_  
Sean Reardon, Mayor

**COMMONWEALTH OF MASSACHUSETTS**

Essex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared Richard B. Jones, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that s/he signed it voluntarily for its stated purposes as Clerk of the City of Newburyport.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared, Sean Reardon, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purposes as Mayor of the City of Newburyport.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**APPROVAL BY THE MASSACHUSETTS HISTORICAL COMMISSION**

**COMMONWEALTH OF MASSACHUSETTS**

The undersigned Executive Director and Clerk of the Massachusetts Historical Commission hereby certifies that foregoing preservation restriction has been approved pursuant to Massachusetts General Law, chapter 184, section 32.

MASSACHUSETTS HISTORICAL COMMISSION

By: \_\_\_\_\_

Executive Director and Clerk

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared, \_\_\_\_\_, Executive Director and Clerk, proved to me through satisfactory evidence of identification, which was (a current driver's license) (a current U.S. passport) (my personal knowledge of the identity of the principal), to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

## EXHIBIT A

### Legal Description

The land in said Newburyport with the buildings thereon, being Parcel "A" on a plan entitled "Plan of Land in Newburyport, Mass. owned by Bertram T. French, Jr., dated Aug. 5, 1961, scale one inch (1) equals twenty feet (20) by Walter T. Martin, Registered Profession Engineer and Land Surveyor", and being more particularly described as follows, viz:

Parcel "A" Beginning at a nail in a stake on Merrimac Street in said plan at the southwest corner of this parcel "A" by land of Bertram T. French et ux and thence running Northwesterly by said Merrimac Street sixty-six and no hundredths (66.00) feet to a spike at the southeast corner of Merrimac Street and Union Court as shown on said plan; thence running northeasterly along said Union Court one hundred twenty-three and eighty-two one hundredths (123.82) feet to a spike in a cut off old fence post at the corner of Parcel "B" as shown in said plan; thence southeasterly fifty-eight and twenty-four one-hundredths (58.24) feet by said Parcel "B" shown on said plan to a spike at land of Bertram T. French et ux and a corner of said Parcel "B"; thence southwesterly one hundred fourteen and ninety-four one-hundredths (114.94) feet by land of Bertram T. French et ux as shown on said plan to the nail in the stake begun at.

Containing approximately 7366 square feet.

Also: Another parcel, Parcel B as shown on said plan. Beginning at a spike in a cut off old fence post shown in said plan at the northwest corner of this Parcel "B" also at a corner of Parcel "A" and thence running northeasterly by said Union Court one hundred twenty and thirty-nine one-hundredths (120.39) feet to a spike as shown on said plan. Thence running southeasterly from said spike on Union Court twenty-nine and fifty-one hundredths (29.51) feet to a spike at a corner on Merrimac Court. Thence running southwesterly by said Merrimac Court twenty-five and no one hundredths (25.00) feet to a nail in a stake at a corner of other land of Bertram French shown on said plan as Parcel "C". Thence running southwesterly by said Parcel "C" eighty-two and fifty-eight one-hundredths (82.58) feet to a corner at land of Bertram T. French et ux and continuing running on the same southwesterly course by the land of said Bertram T. French et ux thirty-six and fifty-eight one-hundredths (36.58) feet to a spike at the corner of Parcel "A" as shown on said plan. Thence running northwesterly by said Parcel "A" fifty-eight and twenty-four one-hundredths (58.24) feet to the spike in the old cut off fence post begun at.

Containing approximately 7007 square feet.

See also plan of land entitled "Plan of Land in Newburyport, Mass. Prepared for Colin & Connie T. Nelson & N. Diane Koehler, dated January, 1987" recorded at Plan Book 224, Plan 25.

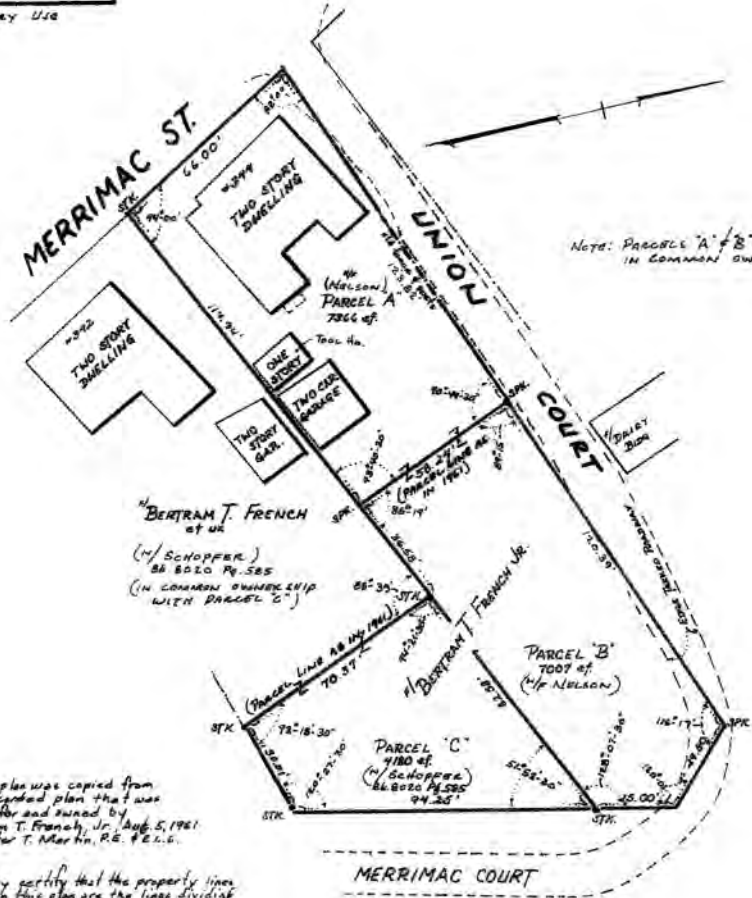
**EXHIBIT B**  
**RECORDED PLAN**

PLAN BOOK 224 P. 25  
 April 14, 1981  
 J. J. [Signature]  
 Register of Deeds

Reference: Assessor's Map 65 Parcel 9 = 1/4 Nelson  
 Parcel 10-11 = 1/4 Schopfer  
 Deed: B 8432 P. 22  
 (M.B. 213 P. 53)

For Registry Use

25  
 224



NOTE: PARCELS 'A' & 'B' NOW OWNED IN COMMON OWNERSHIP.

BERTRAM T. FRENCH  
 of UK  
 (1/4 SCHOPFER)  
 86 B210 P. 585  
 (IN COMMON OWNERSHIP  
 WITH PARCEL 'C')

Note:  
 This plan was copied from  
 a unrescued plan that was  
 drawn for and owned by  
 Bertram T. French, Jr., Aug. 5, 1961  
 by Walter T. Martin, P.E. & C.E.S.

I hereby certify that the property lines  
 shown on this plan are the lines dividing  
 existing ownerships, and the lines of  
 streets and ways shown are those of  
 public or private ways already established  
 and that no new lines for division of existing  
 ownership or new ways are shown.

Robert G. Goodwin 01/30/81  
 I certify that this plan conforms  
 with the Rules and Regulations  
 of the Register of Deeds.



MERRIMAC COURT

PLAN OF LAND  
 IN  
**NEWBURYPORT, MASS.**  
 FOR  
**COLIN & CONNIE T. NELSON**  
 & N. DIANE KOEHLER "344 MERRIMAC STREET ASSOCIATION"

SCALE: 1"=20'  
 0 20 40 80

JANUARY 1981

EVERETT C. RAYMOND, JR.  
 CONSULTANT  
 857 BROADWAY - HAVERHILL, MASS.

ROBERT G. GOODWIN  
 SURVEYOR  
 82 CENTRAL ST. - ANDOVER, MASS.

# EXHIBIT C

## ASSESSOR'S MAP





# EXHIBIT D

## BASELINE DOCUMENTATION BASELINE PHOTOGRAPHS – FEBRUARY 2022

### Baseline Documentation

(Massachusetts Historical Commission Inventory Form B cover sheet prepared 1980 by Mary Jane Stirgwolt. Continuation sheets prepared in 2022 by Essex Preservation Consulting.)

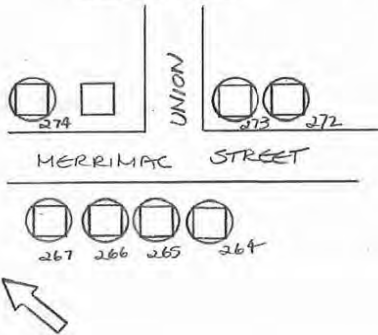
FORM B - BUILDING

MASSACHUSETTS HISTORICAL COMMISSION



SKETCH MAP

Draw map showing property's location in relation to nearest cross streets and other buildings or geographical features. Indicate north.



NWB.273

Area	Form no.
I+L	273

USGS - Newburyport

Newburyport  
 Address 344 Merrimac Street  
 Historic Name Levi Carr House  
 Original Residence  
 Present Residence  
 Ownership:  Private individual  
 Private organization  
 Public  
 Original owner Levi Carr

### DESCRIPTION:

Date c. 1805  
 Source Essex County Registry of Deeds  
 Style \_\_\_\_\_  
 Architect Unknown  
 Exterior wall fabric Clapboards  
 Outbuildings Garage and shed  
 Major alterations (with dates) several additions at rear (dates unknown)  
 Moved \_\_\_\_\_ Date \_\_\_\_\_  
 Approx. acreage 14,373 sq. ft.  
 Setting in residential area of late eighteenth and nineteenth century houses on the banks of the Merrimack River.

Recorded by Mary Jane Stirgwolt  
 Organization Office of Community Development  
 Date 01-04-80

ARCHITECTURAL SIGNIFICANCE (describe important architectural features and evaluate in terms of other buildings within community)

This two story house with pitched roof and symmetrical, five bay facade is an excellent example of the vernacular architecture built in Newburyport around the turn of the nineteenth century. Noteworthy features of the house include a large central chimney, simple Federal cornice moulding, and unusual, eared window lintels. The doorway is simple but is detailed with the pilasters and simple entablature characteristic of the period.

HISTORICAL SIGNIFICANCE (explain the role owners played in local or state history and how the building relates to the development of the community)

This parcel of land was purchased from George Burroughs by Jacob Whitmore in 1793. In 1801 when Whitmore sold the property to Levi Carr there was no house mentioned in the deed of sale. Carr was probably the original owner of this house.

In 1851 the owner of this house was Levi Carr, probably the son of the builder of the house. He was a shipcarpenter who was employed as a foreman by John Currier, Jr. for many years. The Currier shipyard was located on the riverbanks adjacent to this house. Carr was also part-owner of Carr's Island.

In 1872 Levi Carr still owned this house. Also in residence at that time was Charles H. Carr, also a shipcarpenter. Levi Carr died in 1876 at the age of eighty. At that time the house was willed to his heirs.

BIBLIOGRAPHY and/or REFERENCES

Assessor's Records 1890-1980  
1851 Plan of Newburyport, Mass. H. McIntire  
~~1872~~ Map of the City of Newburyport, Mass. D. G. Beers and Co.  
1851, 1871 City Directories  
Deed Research compiled by Mrs. Nancy Flynn and Mrs. Kathy Horden.

20M-2/80

**INVENTORY FORM CONTINUATION SHEET**

TOWN

ADDRESS

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

NEWBURYPORT

Area(s) Form No.

NWB	273
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**Architectural Description**

According to the Massachusetts Historical Commission Inventory Form B for the property, the Levi Carr House at 344 Merrimac Street was constructed circa 1805. The house design is consistent with New England late Georgian style residences, with its rectangular plan, gable roof, symmetrical five-bay facade, center entry with prominent surrounds, and large central chimney (Photo 5). The Carr House (constructed ca.1805) is located roughly one mile to the northwest of the Newburyport downtown commercial district and sits just 700 feet southwest from the Merrimack River. Merrimac Street is the principal thoroughfare between the downtown center and Route 95 near the western edge of the city. The stretch of Merrimac Street in the vicinity of the Carr House is characterized by single-family historic homes from the 18th and 19th centuries (Photos 1 and 2). The same is true for Union Place, a narrow short lane running along the northwest side of the Carr House property (Photo 4), and Merrimac Court, another narrow lane leading to a cluster of houses behind (northeast of) the Carr House (Photo 3). Most of the homes in the immediate area of the Carr House are single-family residences, although a few, including the Carr House, have been converted to multi-family occupancy. The long narrow lot on which the Carr House stands includes 14,373 square feet of land and runs from Merrimac Street, along the length of Union Place, to Merrimac Court (Photo 32). The house is situated at the southwest end of the lot, fronting on Merrimac Street; the setback from Merrimac Street is roughly 15.5 feet (Photo 34). The property includes the house and two small outbuildings - a non-historic guesthouse (Photos 28 and 29) and a deteriorated shed structure (Photos 30 and 31). Although the house was converted to two condominiums, the exterior still reads as a single-family dwelling. The house has an irregular footprint due to several additions. The original rectangular main block is five bays wide, three bays deep, and enclosed by a gabled roof. As early as 1884 there was a small ell extending off the northwest end of the rear elevation (see attached map from 1884). This is likely the existing two-story gabled section with the granite ashlar foundation (Photo 13). A break in the foundation between the original main block and the ell suggests that the ell was not part of the original construction but was an early addition. A map from 1914 shows a second two-story rear addition, this one running the width of the main block (see attached map from 1914). This second addition was later enlarged widthwise (date unknown) to create the two-story rear addition with flat roof that exists today (Photo 22). The 1914 map also shows a single-story porch at the southeast elevation, located toward the rear of the house and adjoining the two-story rear addition. This porch is no longer extant, instead a one-story enclosed porch (likely a circa 1920s feature) runs along the southeast elevation of the main block (Photo 17). Finally, there are two more recent one-story additions projecting from either end of the rear elevation, creating a roughly U-shaped footprint for the building as a whole (Photo 22 and 23).

*Main Block*

The original main block rises two and one-half stories from a rough-cut stone foundation and is finished with painted clapboard siding with wood trim elements, in the form of narrow corner boards, roof cornice, water tables, window trim, and entry surrounds (Photo 5). The gabled roof of the main block is currently finished with asphalt shingles and features a prominent broad central chimney, which is centered on the roof ridge (Photo 7). The chimney is parged with concrete but is likely of brick construction. The roofline at the facade is defined by a shallow box cornice and prominent fascia (Photo 8); the eaves at the rear are obscured by the two-story addition. The side gables of the main block are defined by compound fascia boards with shallow returns (Photos 14 and 17). Modern aluminum gutters and downspouts were installed around the building. Windows of the main block are trimmed with painted flat wood trim (Photo 15), except at the facade where windows are topped by shallow hood moulds (Photos 10 and 11). Window openings hold a combination of historic wood double-hung windows and modern replacements, as noted below. All windows are covered by modern storm windows.

*Continuation Sheet 1*

**INVENTORY FORM CONTINUATION SHEET**

TOWN

ADDRESS

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

NEWBURYPORT

Area(s) Form No.

NWB	273
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*Principal Facade (Southwest Elevation)*

The principal facade (southwest elevation) is five bays wide and laid out symmetrically around a central entry (Photo 9). The entry is framed by what appears to be the original surrounds, which consists of wide Tuscan pilasters supporting a tall entablature with dentil molding. The existing door is a fairly recent replacement. Access to the entry is by way of a modern poured concrete step. Window openings in the two northernmost bays of the facade hold modern replacement windows, while the remaining windows retain historic wood windows in a nine-over-six pane configuration at the first floor (Photo 10) and a two-over-one configuration at the second floor (Photo 11). Two small basement window openings (one on either side of the central entry) were likely added and are set within poured concrete window wells; the openings hold modern windows.

*Side Elevations*

The northwest elevation is three bays wide and finished with painted clapboards (Photo 13). Fenestration is asymmetrically arranged, with windows (two per floor) in the easternmost bays only. All window openings hold modern replacement windows (Photo 15). A modern vent is centered beneath the gable peak within an untrimmed opening.

The southeast elevation is finished with painted clapboards and is partially covered by a one-story enclosed porch and the two-story rear addition (Photos 17 and 18). Fenestration at the exposed upper levels of this elevation are similar to those at the northwest elevation, with a vent in the gable and windows in the two easternmost bays of the second floor. Here, the window opening in the central bay holds a historic two-over-one window, while the second opening has a one-over-one window that appears to be a replacement (Photo 20). The enclosed porch at the first floor was added after 1914. The porch is largely made up of grouped windows separated by slender mullions - two windows on the southwest wall and four on the southeast wall (Photo 19). These adjoining windows hold older wood two-over-one sashes. The porch is enclosed by a hip roof finished with asphalt shingles. The roof edge has shallow overhanging eaves with painted flat wood soffit and fascia boards.

*Rear Ell (Northeast Addition)*

Much of the rear ell is covered by later additions, however it is clearly discernible on the northwest side (Photo 13). The ell appears to have been constructed as a one and one-half story structure with a gable roof. It rests on a rough-cut granite ashlar foundation holding two small modern basement windows (Photo 16). The northwest elevation is finished with painted clapboards and features three asymmetrical windows, all of which hold modern replacement windows. A portion of the upper level was raised to create a full second floor with a single small window opening, which now holds a modern window.

Only the upper portion of the ell's northeast elevation is visible; the remainder is covered by a single-story shed addition (Photos 22). The exposed gabled wall of the ell is finished in painted wood shingles and trimmed with narrow corner boards and a compound fascia (Photo 13). A single window set beneath the gable peak holds a modern window.

The shed addition is a relatively recent feature, resting on a poured concrete foundation and featuring painted flat wood trim, modern windows, and a modern door on its southeast wall (Photos 23 and 26). Access to the entry is by way of an unpainted wood porch. The shed addition is finished with painted clapboards on the northwest wall and painted wood shingles elsewhere.

*Continuation Sheet 2*

**INVENTORY FORM CONTINUATION SHEET**

TOWN

ADDRESS

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

NEWBURYPORT

Area(s) Form No.

NWB	273
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Most of the southeast wall of the ell is obscured by the two-story rear addition, however a narrow section of the wall remains exposed (Photo 26). This section of wall is finished with painted wood shingles and features a single window opening with painted flat wood trim and a modern window.

*Two-Story Rear Addition*

The two-story rear addition covers the rear (northeast) elevation of the main block and wraps around to cover a small portion of the southeast elevation as well (Photos 18 and 22). The rear addition has a flat roof, poured concrete foundation, painted flat wood trim, and a combination of painted wood shingle siding (northeast elevation) and painted clapboards (southeast elevation). A slender brick chimney projects from the roof (Photo 27). Fenestration at the rear elevation of the addition is asymmetrical, with window openings of varying sizes and configurations, including single and paired windows. Most openings hold older two-over-one wood windows, although two windows have one-over-one sashes (Photos 24 and 25). The southernmost half of the addition has a narrow fascia board at the roofline, while the northern half has no visible trim along the roof edge (Photo 25). A portion of the rear addition at the southernmost end is covered by a fairly recent one-story shed addition with a cross gabled bay (Photo 22). This small addition has a combination of painted wood shingles and clapboards, painted flat trim, and contemporary windows. The one-story addition has an entry at its southeast wall; the entry holds a modern door and screen door (Photo 21).

*Continuation Sheet 3*



INVENTORY FORM CONTINUATION SHEET

TOWN

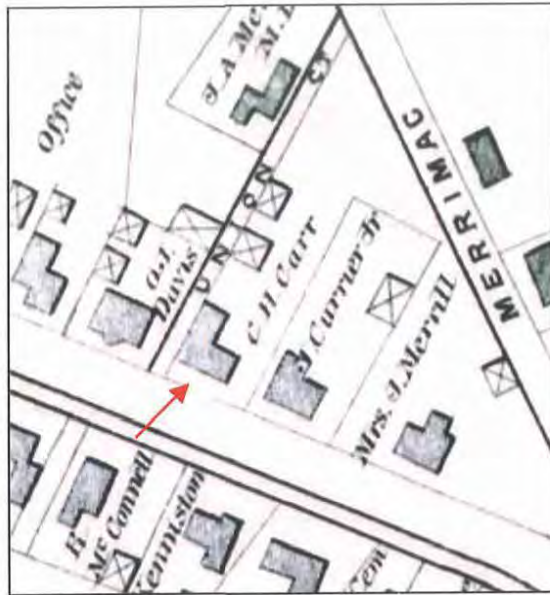
ADDRESS

MASSACHUSETTS HISTORICAL COMMISSION  
220 MORRISSEY BOULEVARD, BOSTON, MASSACHUSETTS 02125

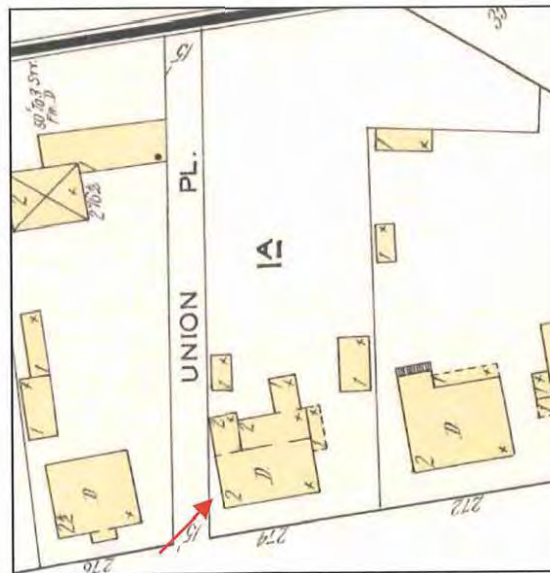
NEWBURYPORT

Area(s) Form No.

NWB	273
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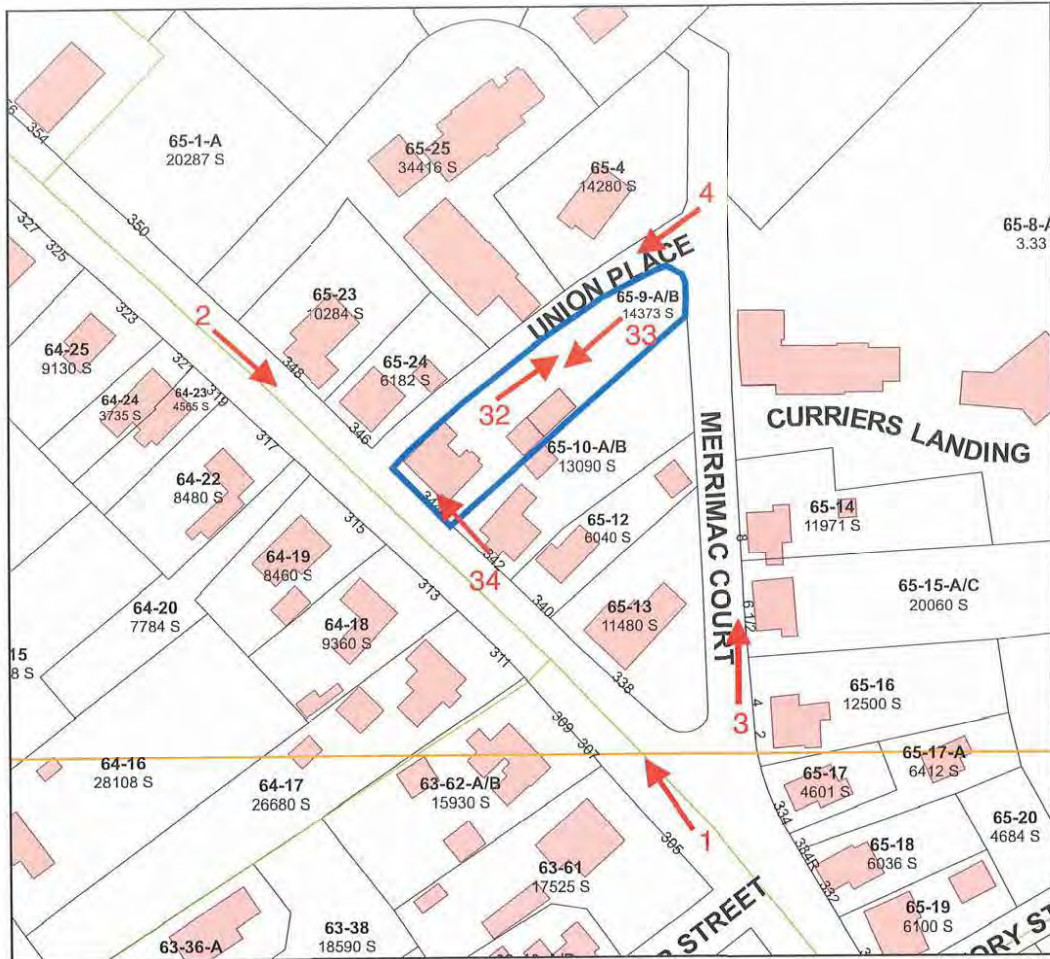



1884 Map




1914 Map

Continuation Sheet 4



 <p><b>ESSEX</b> Preservation Consulting</p>	<p>LEVI CARR HOUSE 344 MERRIMAC STREET NEWBURYPORT, MASSACHUSETTS</p>	<p>CURRENT PHOTOGRAPHS PHOTO KEY</p>
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 <p><b>ESSEX</b> Preservation Consulting</p>	<p>LEVI CARR HOUSE 344 MERRIMAC STREET NEWBURYPORT, MASSACHUSETTS</p>	<p>CURRENT PHOTOGRAPHS PHOTO KEY</p>
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1\_ Setting - View northwest along Merrimac Street showing Carr House (center) and neighboring houses on northeast side of the street



2\_ Setting - View southeast along Merrimac Street showing Carr House (left) and neighboring houses on northeast and southwest sides of the street

	<p style="text-align: center;">LEVI CARR HOUSE 344 MERRIMAC STREET NEWBURYPORT, MASSACHUSETTS</p>	<p style="text-align: center;">CURRENT PHOTOGRAPHS FEBRUARY 2022</p>
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3\_ Setting - View north along Merrimac Court showing houses along east side of the street



4\_ Setting - View southwest along Union Place showing rear of Carr House (left) and neighboring houses on northwest side of the street


	<p>LEVI CARR HOUSE 344 MERRIMAC STREET NEWBURYPORT, MASSACHUSETTS</p>	<p>CURRENT PHOTOGRAPHS FEBRUARY 2022</p>
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5\_View northeast showing principal facade (southwest elevation)



6\_View northeast showing principal facade (southwest elevation) - detail of foundation

	<p>LEVI CARR HOUSE 344 MERRIMAC STREET NEWBURYPORT, MASSACHUSETTS</p>	<p>CURRENT PHOTOGRAPHS FEBRUARY 2022</p>
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7\_ View northeast showing chimney on main block and asphalt roof



8\_ View northeast showing principal facade (northwest elevation) - detail of cornice

	<p>LEVI CARR HOUSE 344 MERRIMAC STREET NEWBURYPORT, MASSACHUSETTS</p>	<p>CURRENT PHOTOGRAPHS FEBRUARY 2022</p>
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9\_View northeast showing principal facade (northwest elevation) - detail of main entry



10\_View northeast showing principal facade (northwest elevation) - detail of first floor window at south end



11\_View northeast showing principal facade (northwest elevation) - detail of second floor window at south end

	<p>LEVI CARR HOUSE 344 MERRIMAC STREET NEWBURYPORT, MASSACHUSETTS</p>	<p>CURRENT PHOTOGRAPHS FEBRUARY 2022</p>
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12\_View northeast showing principal facade (northwest elevation) - detail of foundation and basement window at north end



13\_View southwest showing northwest elevation



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344 MERRIMAC STREET  
NEWBURYPORT, MASSACHUSETTS


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14\_View southeast showing northwest elevation - detail of corner board, fascia, and return at gable



15\_View southeast showing northwest elevation - detail of typical window

	<p>LEVI CARR HOUSE 344 MERRIMAC STREET NEWBURYPORT, MASSACHUSETTS</p>	<p>CURRENT PHOTOGRAPHS FEBRUARY 2022</p>
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16\_View southwest showing northeast elevation - detail of foundation to ell and basement windows



17\_View north showing southeast elevation from west end

	<p>LEVI CARR HOUSE 344 MERRIMAC STREET NEWBURYPORT, MASSACHUSETTS</p>	<p>CURRENT PHOTOGRAPHS FEBRUARY 2022</p>
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18\_View northwest showing southeast elevation from east end



19\_View north showing southeast elevation - detail of enclosed porch

	<p>LEVI CARR HOUSE 344 MERRIMAC STREET NEWBURYPORT, MASSACHUSETTS</p>	<p>CURRENT PHOTOGRAPHS FEBRUARY 2022</p>
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20\_View northwest showing southeast elevation - detail of second floor windows



21\_View northwest showing southeast elevation - detail of entry at east end



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22\_View southwest showing rear (southeast) elevation



23\_View northwest at rear (southeast) elevation - detail of northeast addition



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24\_View southwest showing rear (southeast) elevation - detail of central bays at first floor



25\_View southwest showing rear (southeast) elevation - detail of central bays at second floor



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26\_ View northwest showing southeast face of rear ell/  
northeast addition - detail of porch, entry, and window



27\_ View northwest showing chimneys on roofs of main block (right) and  
rear addition (left)

	<p>LEVI CARR HOUSE 344 MERRIMAC STREET NEWBURYPORT, MASSACHUSETTS</p>	<p>CURRENT PHOTOGRAPHS FEBRUARY 2022</p>
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28\_View south showing northeast elevation of non-historic guesthouse



29\_View northeast showing southeast elevation of non-historic guesthouse



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344 MERRIMAC STREET  
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30\_View southeast showing northwest elevation of shed



31\_View northwest showing rear (southeast) elevation of deteriorated shed


	<p>LEVI CARR HOUSE 344 MERRIMAC STREET NEWBURYPORT, MASSACHUSETTS</p>	<p>CURRENT PHOTOGRAPHS FEBRUARY 2022</p>
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32\_View northeast at rear of house showing rear yard




33\_View southwest at rear of house showing rear yard and driveway

	<p>LEVI CARR HOUSE 344 MERRIMAC STREET NEWBURYPORT, MASSACHUSETTS</p>	<p>CURRENT PHOTOGRAPHS FEBRUARY 2022</p>
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34\_View north from south corner of property showing fence and landscaping along front of house (left)

	<p>LEVI CARR HOUSE 344 MERRIMAC STREET NEWBURYPORT, MASSACHUSETTS</p>	<p>CURRENT PHOTOGRAPHS FEBRUARY 2022</p>
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# **EXHIBIT E**

## **RESTRICTION GUIDELINES ATTACHMENT TO PRESERVATION RESTRICTION AGREEMENT**

The purpose of the Restriction Guidelines is to clarify paragraph 5 of the terms of the Preservation Restriction, which deals with alterations to the Premises, including the Building. Under this paragraph, permission from the Commission is required for any major alteration. Alterations of a minor nature, which are part of ordinary maintenance and repair, do not require Commission review.

In an effort to explain what constitutes a minor alteration and what constitutes a major change, which must be reviewed by the Commission, the following list has been developed. By no means is this list comprehensive: it is only a sampling of some of the more common alterations, which may be contemplated by building owners.

### **LANDSCAPE/OUTBUILDINGS**

Minor - Routine maintenance of outbuildings and landscape including lawn mowing, pruning, planting, painting, and repair.

Major - Moving or subdividing buildings or property; altering of property; altering or removing significant landscape features such as gardens, vistas, walks, plantings, walls, fences; ground disturbance affecting archaeological resources.

### **HEATING/AIR CONDITIONING/ELECTRICAL/PLUMBING SYSTEMS**

Minor - Repair of existing systems.

Major - Installing or upgrading systems which will result in major exterior appearance changes (i.e. exterior ducts, piping, ventilators, HVAC units); the removal of substantial quantities of original materials in the course of construction.

### **PAINT**

Minor – Exterior hand scraping and repainting of non-decorative and non-significant surfaces as part of periodic maintenance.

Major – Painting or fully stripping decorative surfaces or distinctive stylistic features including ornamental, decorative or significant woodwork.

### **WINDOWS AND DOORS**

Minor – Regular maintenance including caulking, painting and necessary reglazing. Repair or in-kind replacement of existing individual decayed window parts.

Major – Wholesale replacement of units; change in fenestration or materials; alteration of profile or setback of windows. The addition of storm windows is also considered a major change; however, with notification it is commonly acceptable.

### **EXTERIOR**

Minor – Spot repair of existing cladding and roofing including in-kind replacement of clapboards, shingles, slates, etc.

Major – Large-scale repair or replacement of cladding or roofing. Change involving inappropriate removal or addition of materials or building elements (i.e., removal of chimneys or cornice detailing, existing and original corner trim, roof edge trim, the new replicated window trim, entry roof pediments and the original restored front and side doors; installation of architectural detail which does not have a historical basis); altering or demolishing building additions; spot repointing of masonry. Structural stabilization of the property is also considered a major alteration.

Changes classified as major alterations are not necessarily unacceptable. In fact, approval of such changes shall not be unreasonably withheld. Under the Preservation Restriction such changes must be reviewed by the Commission and their impact on the historic integrity of the Building assessed.

It is the responsibility of the property owner to notify the Commission in writing when any major alterations are contemplated. Substantial alterations may necessitate review of plans and specifications.

The intent of the Preservation Restriction is to enable the Commission to review proposed alterations and assess their impact on the integrity of the structure, not to preclude future change. The Commission will attempt to work with property owners to develop mutually satisfactory solutions that are in the best interests of the Premises.

## EXHIBIT F

### Grantor's Proposed and Granted Changes – Final Restoration Plan for Levi-Carr House at 344 Merrimac Street, Newburyport, MA

- Window Replacement** – All the windows located on the Merrimac Street and Union Place façades of the Levi-Carr House will be replaced using a Green Mountian, double-hung, SDL wood windows. The windows will replicate federal style mullions, include spacer bars and applied mullions, concealed jamb-liners, and a half screen. The windows will be sized to fit the existing openings and include the mullion patterns as shown in Figures 1 & 2. One (1) existing 2/1 wood window from the second floor of the Merrimac Street facade will be relocated to replace the 1/1 second floor wood window on the side porch. The first floor 2/1 windows in the porch addition shall be retained in-place. All other windows on the side and rear elevations may subsequently be replaced provided the size of the openings remain the same and the Green Mountian replacement window is used with the same mullion pattern to match the front facades on Merrimac Street and Union Place.



Figure 1A - Window Replacement on the Merrimac Street Facade



Figure 1B - Window Replacement on the Union Place Facade



2. **Window Casing** – The existing window casing shall be restored or repaired and shall remain in place. Care will be taken to maintain and preserve the moldings and trim on the casing as shown in Figure 2.



*Figure 2 – Existing Window Casing on the Merrimac Street Facade*

3. **Front Entryway and Door** – The existing arts and crafts door will be replaced with a federal-style door. Figure 3 shows an example of a federal-style door. Prior to installation, the applicant will provide the Chairman of the Historic Commission information, including but not limited to images, of the proposed federal-style door. The lighting and mailbox will also be consistent with a federal style fixture and mailbox.



*Figure 3 – Example Federal-Style Door Replacement*

4. **Chimney Repair** – The existing central chimney will be repaired as needed and remain parged above the roofline. The Preservation Restriction will be expanded to include preservation of the entire central chimney from the basement (within the structure) to its termination above the roofline.



*Figure 4 – Chimney Repair and Full Preservation (including the Interior)*



5. **Front Step and Walkway** – The existing concrete sidewalk will remain in place and the front concrete step will be replaced with a smooth faced granite step.



*Figure 5 – Walkway Preservation and Step Replacement*

6. **Shutters** – Wood shutters (with federal-style pintels and dogs) will be added to all the windows on the Merrimac Street façade. The shutters shall be operable and sized to fully-enclose the windows as shown in Figure 6.



*Figure 6 – Example of Federal-Style Shutters*

7. **Gutters and Downspouts** – The existing aluminum gutters and downspouts along the Merrimac Street façade will be replaced with copper half-round gutters and round downspouts as shown in Figure 7.



*Figure 7 – Examples of Gutters and Downspouts*

8. **Soffit, Trim and Clapboards** – As shown in Figures 8A and 8B, the existing wood clapboards will be repair and replaced where needed and scarf joints shall be used. All soffit, crown molding or trim repair shall be a restoration, repair of a replacement in-kind.



*Figure 8A – Soffit and Trim Repair*





*Figure 8B – Clapboard Repair*

9. **Fencing** – The existing wood privacy fence shall be replaced with a cedar privacy fence no taller than 4 feet with a top rail as shown in Figure 9.



*Figure 9 – Proposed 4 Foot Cedar Fence*

10. **Rear Shed** – As shown in Figure 10, the existing rear shed will be removed due to its dilapidated condition.



*Figure 10 – Rear Shed to be Removed*

**EXHIBIT G**

**NEWBURYPORT PLANNING BOARD SPECIAL PERMIT DECISION**

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NEWBURYPORT, MA

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CITY OF NEWBURYPORT  
PLANNING BOARD  
60 PLEASANT STREET • P.O. BOX 550  
NEWBURYPORT, MA 01950  
(978) 465-4400  
WWW.CITYOFNEWBURYPORT.COM



SO.ESSEX #142 Bk:41249 Pg:033  
10/17/2022 10:54 AM PERMIT Pg 1/13  
eRecorded

**RECORD OF PROCEEDINGS AND  
SPECIAL PERMIT DECISION**

**APPLICANT:** Brad Kutcher  
138 Elm St., Salisbury, MA 01952

**PROPERTY OWNER:** Sam Kimball

**FILE NO.:** PBSP-22-4

**PROPERTY ADDRESS:** **344 Merrimac Street**

**DECISION DATE:** 06/15/2022

**MAP/PARCEL(S):** 65-9

**BOOK/PAGE:** 40515-0295

**ZONING DISTRICT:** WMD/DCOD

**PROCEDURAL HISTORY:**

An application for a Special Permit was filed for relief from the City of Newburyport's Zoning Ordinance Section VI.C by the above-referenced owner and filed with the Planning Board on 4/6/2022 for the following request: *allow two residential structures on one lot*

Notice of the public hearing was published on 5/3/2022 and 5/10/2022 in the Newburyport Daily News. The public hearing was held on 5/18/2022 and continued to 6/15/2022 and 7/6/2022.

At the close of the public hearing, upon a motion to approve made by Rick Taintor and seconded by Alden Clark, the Planning Board voted as follows:

Bonnie Sontag, Chair	<u>Yes</u>	Don Walters	<u>Yes</u>	Rick Taintor	<u>Yes</u>
Elisabeth DeLisle	<u>Yes</u>	Alden Clark	<u>Yes</u>	Robert Koup	<u>Yes</u>
Heather Rogers	<u>Yes</u>	Jamie Pennington	<u>Yes</u>	Richard Yeager	<u>Absent</u>

Having received the necessary two-thirds supermajority vote of the Planning Board, in accordance with M.G.L. Chapter 40A Section 9, as amended, the petition was therefore **APPROVED**.

**PLANS AND DOCUMENTS:**

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The Board approved the project subject to the following plans attached hereto:

- "Proposed Front/Right Side Elevations, Proposed New Residence at 344 Merrimac Street, Newburyport, MA 01950" prepared by Scott M. Brown Architects and dated February 3, 2022; and
- "Proposed Rear/Left Side Elevations, Proposed New Residence at 344 Merrimac Street, Newburyport, MA 01950" prepared by Scott M. Brown Architects and dated February 3, 2022; and
- "Proposed Plan of Land, 344 Merrimac Street, Newburyport, MA" prepared by GA Consultants, Inc. dated October 11, 2021 and revised on January 8, 2022 and January 25, 2022 (ZBA referenced plan); and
- "Planting Plan, 344 Merrimac Street, Newburyport, MA" dated June 13, 2022 consisting of Sheet L10.0; and
- "Planting Details, 344 Merrimac Street, Newburyport, MA" dated June 13, 2022 consisting of Sheet L20.1; and
- "Materials Details, 344 Merrimac Street, Newburyport, MA" dated June 13, 2022 consisting of Sheet L20.2.

This application was also accompanied by the following plans, drawings, documents, and submittals, which are hereby incorporated into this decision:

- "VI.C Project Narrative for 344 Merrimac Street" dated April 5, 2022; and
- "Final Draft Preservation Restriction for 344 Merrimac Street, Newburyport, MA" accepted by the Newburyport Historical Commission on June 23, 2022.

Throughout its deliberations, the Board has been mindful of the statements of the applicants and their representatives, and the comments of the general public, as made at the public hearing.

**FINDINGS:**

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In order to grant this Special Permit pursuant to Section VI.C, this Board must determine that the applicant's project meets certain specific criteria, as provided in Section X-H (7) and Section VI.C of the NZO. These criteria and the Board's project specific findings for each are enumerated here:

**VI.C Special Permit Development Standards:**

The lot and buildings do not comply with the two of the development standards set forth in Section VI.C(2)(a), but the Newburyport Zoning Board of Appeals has granted two variances from said development standards to allow the applicant to apply for this Special Permit:

- i. The applicant received a Variance from the (ZBA) to allow two dwellings on a lot with less than the required the lot area for a two-family dwelling in the WMD zoning district. The unique lot with frontage on three public streets was the primary hardship found by the ZBA in the granting of said Variance. Accordingly, the required dimensional standards for the subject structures/lots have been commensurately reduced for the purposes of compliance with Section VI-C(2)(a)(i).
- ii. The applicant received a Variance from the ZBA to allow a new principal single-family building on the lot with less than the required front yard setback for principal single-family buildings. The unique lot with frontage on three public streets was the primary hardship found by the ZBA in



the granting of said Variance. Accordingly, the required dimensional standards for the subject structures/lots have been commensurately reduced for the purposes of compliance with Section VI-C(2)(a)(ii).

- iii. But for the dimensional Variance approvals received and noted above, both residential buildings comply with all other applicable zoning regulations.
- iv. The applicant's lot is a corner lot with frontage on three public streets. The existing historic structure fronts Merrimac Street and the new structure will front Union Place. Each residential building will have a separate and distinct rear yard conforming to the rear yard requirement for the WMD zoning district.

**VI.C Special Permit Criteria:**

1. The design and layout of buildings and open spaces on the site is consistent with the established character, scale, massing and density of the surrounding neighborhood.
2. The buildings and accessory off-street parking areas maintain a compatible relationship to adjacent properties in terms of location and design, and will not significantly reduce the privacy of adjacent properties.
3. Developing a second residential building on the lot will be equally or more beneficial to the neighborhood than subdividing the lot or providing two (2) dwelling units in a two-family dwelling.

**General Special Permit Findings:**

1. **The use requested is listed in the table of use regulations or elsewhere as in the ordinances requiring a special permit in the district for which application is made or is similar in character to permitted uses in a particular district but is not specifically mentioned.**

The property is located in the WMD zoning district. Two-family residential use is permitted in the WMD zoning district.

2. **The requested use is essential and/or desirable to the public convenience or welfare.**

The applicant proposes restoring the existing historic structure to a single-family residence and entering into a Preservation Restriction Agreement to ensure that the structure will be preserved in perpetuity. A perpetual Preservation Restriction final draft was accepted by the Newburyport Historical Commission on June 23, 2022.

3. **The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.**

The use on the property will remain a two-family use. The requested use will not create undue traffic congestion, or unduly impair pedestrian safety.

4. **The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the city will be unduly subjected to hazards affecting health, safety or the general welfare.**

The current use on the property is two-family and the applicant is seeking to separate the use into two separate structures. The requested use will not overload any public water, drainage or sewer system or any other municipal system to such an extent that the requested use or any developed use in the immediate area or in any other area of the city will be unduly subjected to hazards affecting health, safety or the general welfare.

5. **Any special regulations for the use, set forth in the special permit table are fulfilled.**

There are no special regulations for the two-family use. The applicant has addressed the required criteria under Section VI.C.

6. **The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health or welfare.**

The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health or welfare. The proposed project will improve the integrity and character of the historic Levi-Carr House and **will be consistent with the character of** the structures and lots within the surrounding neighborhood.

7. **The requested use will not, by its addition to a neighborhood, cause an excess of that particular use that could be detrimental to the character of said neighborhood.**

There will not be a change in the two-family use of the property. The proposed project is consistent with the surrounding historic and current land use pattern within the immediate neighborhood.

8. **The proposed use is in harmony with the purpose and intent of this ordinance.**

More than one residential structure on a lot is allowed by Special Permit from the Planning Board. Two-family use is allowed in the WMD district. The proposed use is in harmony with the purpose and intent of this ordinance. No new non-conformities are being created.

9. **The proposed use shall not be conducted in a manner as to emit any dangerous, noxious, injurious, or otherwise objectionable fire, explosion, radioactive or other hazard, noise, vibration, smoke, dust, odor, or other form of environmental pollution.**

The proposed use will remain residential in nature and is therefore not expected to emit any dangerous, noxious, injurious, or otherwise objectionable fire, explosion, radioactive or other hazard, noise, vibration, smoke, dust, odor, or other form of environmental pollution.

**STANDARD CONDITIONS:**

In view of the foregoing findings, the Planning Board hereby grants a Special Permit approval subject to the terms and conditions stated below:

1. **Recording of Decision and Approved Plans:** The applicant shall file this decision with the Southern Essex County Registry of Deeds (or Land Court if registered land) and a copy of the decision stamped with the recording information (Book/Page or Land Court document number) shall be included with the application for any related Building Permits. To ensure compliance with this decision, site/construction plans issued to any contractors shall make clear reference to this written decision and conditions of approval contained herein.
2. **Permit Lapse:** This permit will lapse after three years from the date of granting and shall no longer be valid if a substantial use has not commenced except for good cause or, in the case of a permit for construction, if construction has not commenced except for good cause, within this period. Excluded from any lapse period is the time required to pursue or await the determination of any appeal taken pursuant to MGL Chapter 40A Section 17.
3. **Modifications to Approved Plans:** The applicant, property owner, and their successors or assigns, shall adhere to the above referenced and approved plans which are incorporated herein by reference. Should the applicant and/or property owner determine that a plan(s) needs to be

modified, they shall notify the Planning Board and Office of Planning and Development (OPD) of the proposed modifications in writing and obtain approval from the Planning Board (or OPD as specified herein) for such modifications prior to making any changes in the field. The OPD shall determine whether such modifications are minor or major (material) in nature. The Planning Board shall schedule a public hearing for review and approval of any changes deemed major or material in nature to the permit originally issued. Any major or material alterations or changes to the above referenced plans shall require prior approval by the Planning Board. Minor changes may be approved in writing by the OPD without further review by the Planning Board. The determination as to whether an alteration or change in plans is material and therefore subject to Planning Board review shall be made at the discretion of the OPD.

4. Curb Cuts: Any new driveway opening or curb cuts that have egress to the public right of way must be approved by the Director of Public Services or Designee in advance of construction.
5. Fire Department Review and Approval: The applicant, owner, successors, or assigns shall be responsible for designing the utilities to meet City standards and ensuring compliance with fire codes prior to commencing work under this approval.
6. Stormwater Management Permit: If the project involves more than 10,000 square feet of land disturbance, the applicant, owner, his successors or assigns, shall obtain a Stormwater Management Permit under the City of Newburyport Stormwater Management Ordinance (Code of Ordinances, Chapter XVII) from the Department of Public Services prior to beginning any site work, including tree clearing and/or regrading. The applicant shall provide a copy of said permit to the Building Commissioner and Zoning Administrator with the application for any related Building Permits.
7. Code & Permit Compliance: The proposed exterior building demolition shall be limited to the scope of work shown in the above referenced and approved plans, and shall remain at all times in compliance with the Demolition Control Overlay District (DCOD) zoning provisions. Any changes that exceed the above scope (including but not limited to the removal of existing exterior wall wood framing) shall require that such modification be submitted to, and approved in writing by, the Zoning Administrator or the Planning Board, as the case may be, prior to such additional demolition.
8. Submission of As-Built Foundation Plan: A copy of the as-built foundation plan shall be provided to the Office of Planning and Development and Building Department upon foundation completion.
9. Site Lighting: All lighting fixtures, including but not limited to, signage, building, parking lot, site, decorative, and security, shall feature cut off fixtures so that the lights are pointed downward reducing light pollution and glare onto abutting properties.
10. Hours of Construction: The developer shall take reasonable care not to disturb surrounding properties and property owners during construction. Construction work shall be limited to the hours between 7 a.m. and 5 p.m. Monday through Friday and 8 a.m. and 4 p.m. on Saturday.
11. Trees and Sidewalks: The applicant shall be responsible for compliance with the applicable provisions of Sections II-B.46a, X-H.6.C, and X-H.7.B.10 of the Newburyport Zoning Ordinance. If at least one (1) dwelling unit is added or if the cost of the project exceeds more than 50% of the physical value of the entire property, the applicant shall obtain the written recommendation from the Newburyport Tree Warden and Department of Public Services prior to building permit with respect to plans and specifications for (1) the reconstruction, repair, and/or replacement,

where appropriate, of all city-owned sidewalks actually adjoining the project Property, in accordance with Sections 12-54 and 12-55 of the Newburyport Code of Ordinances; and (2) the planting, preservation, and/or replacement, where appropriate, of street trees along all public rights-of-ways actually adjoining the project Property, in accordance with article VI of chapter 12 of the Newburyport Code of Ordinances. Said improvements shall be completed prior to occupancy or a proposal shall be submitted to the Zoning Administrator indicating proposed completion schedule.

12. Submission of As-Built Site Plans: A copy of the as-built site plan stamped by a professional engineer shall be submitted to the Office of Planning and Development at the completion of the construction.

### **SPECIAL CONDITIONS**

In addition to the foregoing standard conditions, the Planning Board hereby grants approval subject to the Special Conditions stated below:

1. No further subdivision: Per Section VI.C of the Newburyport Zoning Ordinance, no further subdivision of this lot shall be permitted. This condition shall be memorialized as a deed restriction for both structures.
2. Contribution to the Affordable Housing Trust: In consideration of the increase in value represented by the granting of a special permit under this section VI-C, the applicant shall make a financial contribution to the Affordable Housing Trust Fund in an amount equal to twenty dollars (\$20.00) per square foot of the additional second residential building on the lot, said payment to be made prior to the issuance of a building permit for said second residential building. The applicant has estimated the above referenced contribution to be approximately \$40,000 based on the proposed plans.
3. Prior to grant of any Building Permits for the proposed second/rear dwelling unit, the applicant/owner shall copy the Zoning Administrator and Office of Planning and Development on his/her submission to the Massachusetts Historical Commission (MHC) of a fully drafted perpetual Preservation Restriction (PR), including all applicable attachments and exhibits, approved by the Newburyport Historical Commission (NHC), for the existing primary structure at 344 Merrimac Street. All construction work, and building permits related thereto, shall comply with the stipulations identified in Special Condition #4 below.
4. Prior to grant of any Occupancy Permits for the proposed second/rear dwelling unit the applicant/owner shall provide the Zoning Administrator and Office of Planning and Development with a copy of the final, fully executed and recorded PR referenced in Special Condition #3 above, which shall incorporate the stipulations as recommended by the Newburyport Historical Commission as laid out in the above referenced Preservation Restriction accepted by the Newburyport Historical Commission on June 23, 2022.
5. Prior to grant of any Occupancy Permits for the proposed second/rear dwelling unit, the applicant/owner shall complete all restoration work as shown in the document entitled "Grantor's Proposed and Granted Changes – Final Restoration Plan for Levi-Carr House at 344 Merrimac Street, Newburyport, MA" which is included as Exhibit D in the above referenced PR. Completion of said work shall be verified in the field by the Zoning Administrator. The Board may, at its sole discretion, allow said Occupancy Permit to be released for the proposed second/rear dwelling unit prior to the completion of said work provided that financial security deemed adequate in the opinion of the Board, is provided to be held in escrow pending said recording.

6. Easement for Tree Maintenance along Union Place: Consistent with the applicable provisions of Sections II-B.46a, X-H.6.Q, and X-H.7.B.10 of the Newburyport Zoning Ordinance, the Applicant shall include in the condominium documents and on record for both *dwellings*, an easement to allow the City of Newburyport's Department of Public Services to access and maintain the proposed trees along *Union Place* since they will not be placed in the existing public right-of-way. Said provision shall be reviewed and approved by the Director of Planning and Development, and proof of proper recording shall be provided to the Zoning Administrator prior to the issuance of any Certificate of Occupancy.

**CONCLUSION AND DECISION:**

For all of the reasons stated herein, the petition for a Special Permit is therefore **APPROVED**.

**APPEALS:**

Appeals shall be made within twenty (20) days after the date of filing of this decision in the Office of the City Clerk directly to a court of competent jurisdiction in accordance with the provision of M.G.L. Chapter 40A Section 17.

**SIGNATURE OF THE BOARD:**

Electronic signatures appearing on this decision are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

Bonnie Sontag

Bonnie Sontag, Chair

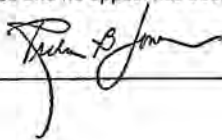
07/19/22

Date

**CITY CLERK CERTIFICATION:**

I, Richard Jones, City Clerk of the City of Newburyport, hereby certify pursuant to M.G.L. Chapter 40A Section 17, that the Special Permit decision for the property known as 344 Merrimac Street was filed in the Office of the City Clerk on July 19, 2022. Twenty (20) days have elapsed since the decision was filed and no appeal has been filed.

\_\_\_\_\_  
City Clerk



October 11, 2022

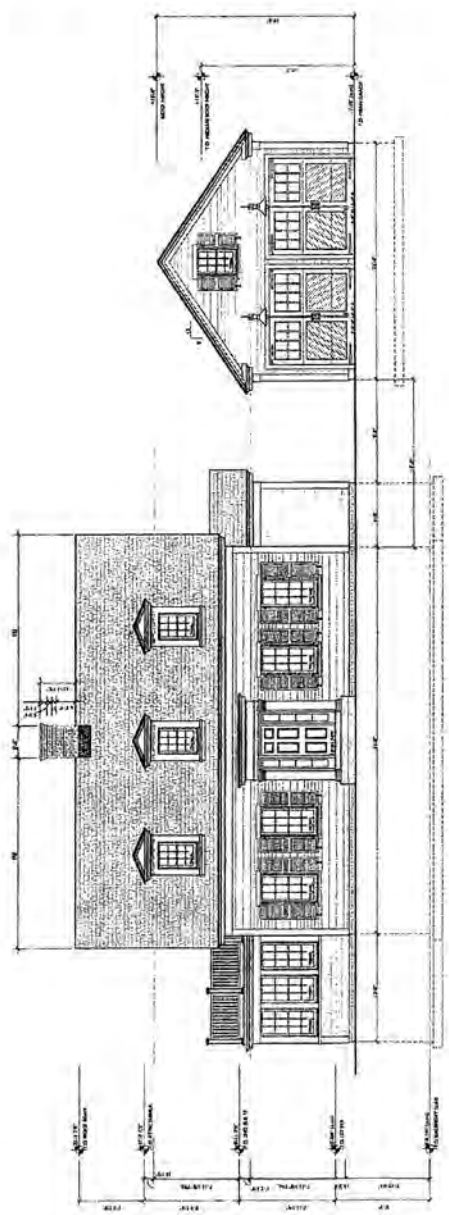
Date

**SCOTT BROWN**  
ARCHITECTS  
1000 STATE STREET  
NEWBURYPORT, MA 01950  
TEL: 978.535.1100  
WWW.SCOTTBROWNARCHITECTS.COM

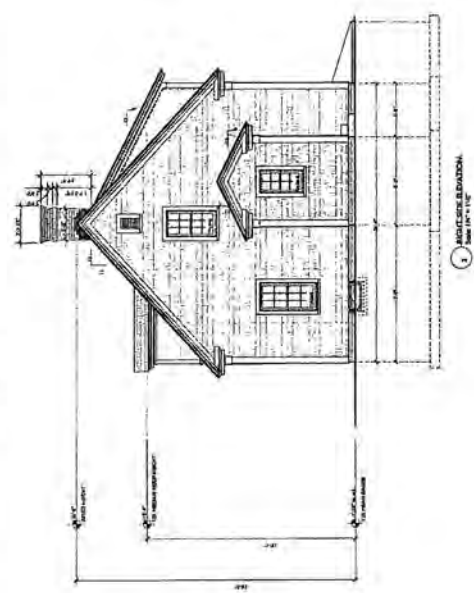
**PROPOSED NEW RESIDENCE**  
AT  
344 MERRIMAC STREET,  
NEWBURYPORT, MA 01950

Project Name	344 MERRIMAC STREET
Project Number	2020-02
Scale	AS SHOWN
Date	3.3.2022

**PROPOSED FRONT/RIGHT SIDE ELEVATIONS**  
**A2.1**



1 FRONT ELEVATION  
Scale: 1/4" = 1'-0"



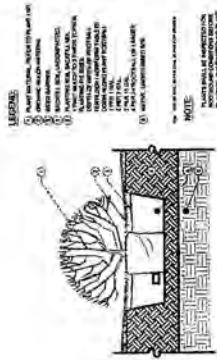
2 RIGHT SIDE ELEVATION  
Scale: 1/4" = 1'-0"



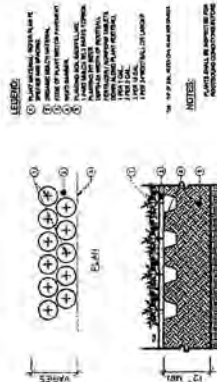




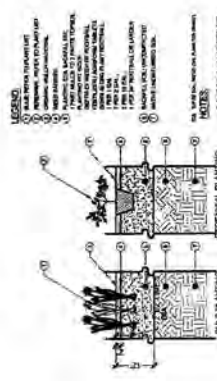




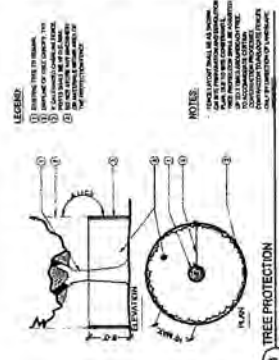
4 SHRUB PLANTING  
 SCALE 1/4" = 1'-0"



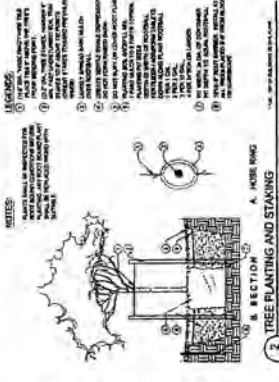
5 GROUNDCOVER PLANTING  
 SCALE 1/4" = 1'-0"



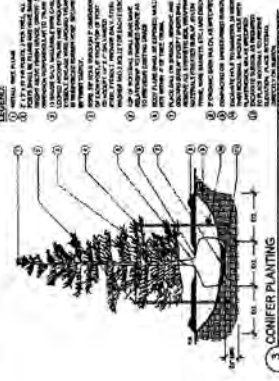
6 BULB AND PERENNIAL PLANTING  
 SCALE 1/4" = 1'-0"



1 TREE PROTECTION  
 SCALE 1/4" = 1'-0"



2 TREE PLANTING AND STAKING  
 SCALE 1/4" = 1'-0"



3 CONIFER PLANTING  
 SCALE 1/4" = 1'-0"



ASSENT BY MORTGAGEE

Institution for Savings in Newburyport and Its Vicinity is the holder of a Mortgage from Samuel Bartow Kimball and Michelle Christine Kimball said mortgage being dated September 14, 2022, and recorded with the Essex South District Registry of Deeds at Book 41197, Page 318. The Premises affected by this instrument is 344 Merrimac Street, Newburyport, Essex County, Massachusetts. Said Mortgagee by this instrument assents to the Preservation Restrictions from its Mortgagor, Samuel Bartow Kimball and Michelle Christine Kimball, to the City of Newburyport as set forth in an Agreement dated \_\_\_\_\_, 2023, and recorded herewith, and agrees that upon the Mortgagee's exercise of its right to foreclosure on the mortgaged Premises it shall assume the burdens of the Preservation Restrictions accepted by the Mortgagor.

Signed as a sealed instrument this \_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_  
By: [Signatory Name]  
[Signatory Title]  
Institution for Savings in Newburyport and Its Vicinity

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public, personally appeared, \_\_\_\_\_, proved to me through satisfactory evidence of identification being \_\_\_\_\_ to be the person whose name is signed on the preceding document and acknowledged to me she/he signed it voluntarily for its state purpose and had authority to sign in such capacity.

\_\_\_\_\_  
Notary Public  
My Commission Expires: