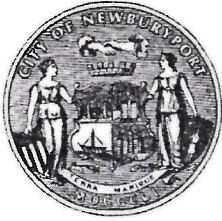


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CITY OF NEWBURYPORT
PLANNING BOARD
60 PLEASANT STREET • P.O. BOX 550
NEWBURYPORT, MA 01950
(978) 465-4400
WWW.CITYOFNEWBURYPORT.COM

**RECORD OF PROCEEDINGS AND
SPECIAL PERMIT DECISION**

APPLICANT: Dan and Judy Lynch c/o Lisa Mead, Mead, Talerman & Costa, LLC
30 Green Street
Newburyport, MA 01950

PROPERTY OWNER: Daniel and Judith Lynch

FILE NO.: 2020-SP-12

PROPERTY ADDRESS: **342 Merrimac Street**

DECISION DATE: 07/01/20

MAP/PARCEL(S): 65-10-A and 65-10-B

BOOK/PAGE: 25045-487 and 35650-573

ZONING DISTRICT: WMD

PROCEDURAL HISTORY:

An application for a Special Permit pursuant to Section VI.C of the City of Newburyport's Zoning Ordinance (NZO) was made by the above-referenced owner and filed with the Planning Board on 03/20/20 for the following request: *special permit to construct a residential structure on a lot to separate two-family use into two single-family structures*

Notice of the public hearing was published on 04/21/20 and 04/28/20 in the Newburyport Daily News. A public hearing on the application was held at Newburyport City Hall on 05/06/20 and continued to 6/3/20, 6/17/20, 7/1/20, and 7/15/20.

Upon a motion to approve, made by Rick Taintor and seconded by Anne Gardner, the Planning Board voted as follows:

Bonnie Sontag, Chair	<u>Yes</u>	Don Walters	<u>Yes</u>	Leah McGavern	<u>Absent</u>
Tania Hartford	<u>Absent</u>	Anne Gardner	<u>Yes</u>	MJ Verde	<u>Yes</u>
Rick Taintor	<u>Yes</u>	Elisabeth DeLisle	<u>Yes</u>	Alden Clark	<u>Abstain</u>

Having received the necessary two-thirds super majority 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:

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

- “Site Plan for 342 Merrimac Street, Newburyport, MA, 01950” prepared by Waypoint Surveying Services dated June 20, 2018 and most recently revised on 5/12/20; and
- “Existing Conditions, Existing Elevations (showing demolition items), 342 Merrimac Street, Newburyport, MA 01950” prepared by Keery Design, LLC and dated June 15, 2020; and
- “Existing Conditions, Existing Elevations, 342 Merrimac Street, Newburyport, MA 01950” prepared by Keery Design, LLC and dated February 13, 2020; and
- “Proposed Exterior Elevations, 342 Merrimac Street, Newburyport, MA 01950” prepared by Keery Design, LLC and dated June 15, 2020; and
- “Proposed Exterior Elevations, 342 R Merrimac Street, Newburyport, MA 01950” prepared by Keery Design, LLC and dated March 28, 2019.

Throughout its deliberations, the Planning 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:

In order to grant a Special Permit this Board must first determine that the applicant’s project meets certain specific criteria, as provided in Section VI.C of the NZO. These criteria and the Board’s project specific findings for each are enumerated here:

- **The application shall include conceptual by-right development plans, such as conventional subdivision, to demonstrate to the planning board that more than one residential structure per lot is a reasonable alternative to other allowed developments of the parcel involved.**
The by right plan is the existing two-family use of the property and which structure could have an addition to the rear.
- **A clear public benefit is derived from the proposed development, including but not limited to a long-term restriction involving one or more of the following: a.) Creation of affordable housing; b.) Preservation of historical structure; and/or c.) Conservation of significant natural resources.**

The applicant proposes a perpetual Preservation Restriction (PR) on the historic property at 342 Merrimac Street. The Newburyport Historical Commission (NHC) is in support of a PR and the applicant will work with the NHC on crafting an appropriate PR which calls out specific features to be preserved and acceptable alterations that could be made to the structure.

- **Unless the residential structures are located side-by-side and have the same front-yard setback, then one (1) residential structure shall be subordinate to the other dwelling in appearance by meeting either of the following: a.) Covering at least ten (10) percent less building footprint and built no higher than the existing dwelling; or b.) Located entirely within the envelope of an accessory building in existence on the effective date of this ordinance.**

As shown on the plans, the applicant proposes to construct the second single-family structure to the rear of the existing structure. The new house will contain at least ten percent (10%) less

building footprint than the existing structure. The new house will not be higher than the existing structure.

- **The plan provides adequate ways furnishing access to each site for such building, in the same manner as otherwise required for lots within a subdivision.**

The plan provides adequate ways furnishing access to each site for such building, in the same manner as otherwise required for lots within a subdivision. The existing structure fronts on Merrimac Street with access provided by a driveway and the proposed second structure would front on Merrimac Court and access Merrimac Court via a driveway.

- **The proposed residential structures shall comply with all other applicable zoning regulations.**

The new structure will comply with zoning setbacks as shown on the attached plans. The applicant has obtained a dimensional Variance from the Zoning Board of Appeals for the new structure.

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

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 structure to a single-family residence and entering into a Preservation Restriction Agreement to ensure that the structure will be preserved in perpetuity. The applicant met with the Newburyport Historic Commission on June 11, 2020 where the Commission voted to accept the preservation plan as proposed with changes which are codified in the Special Conditions section of this decision.

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

- 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.

- 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.

- 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 pursuant to Section VI.C 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 is valid for two years from the date of approval. The approval 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. Provision of Construction Documents:** The applicant shall provide documentation to the Building Commissioner and Zoning Administrator with the application for any related Building Permits illustrating that the proposed work has been reviewed and approved by the Water, Sewer, and Engineering Divisions of the City's Department of Public Services (DPS).
- 4. Curb Cuts:** Any new driveway 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. The applicant shall provide documentation to the Building Commissioner and Zoning Administrator with the application for any related Building Permits illustrating that the proposed work has been reviewed and approved by the Newburyport Fire Department (NFD).
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.
7. 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.
8. 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.
9. 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.
10. Permit Compliance Contact Form: No site work or construction related to this permit shall begin until a Permit Compliance Contact Form is completed and submitted to the Office of Planning and Development.
11. Submission of As-Built Plans: One hard copy and one .pdf copy of foundation as-built plan shall be provided to the Office of Planning and Development and Building Department upon foundation completion. One hard copy and one .pdf copy of 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. Certification shall be provided to the Office of Planning and Development that the as-built plans match approved plans.

SPECIAL CONDITIONS

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

1. 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 342 Merrimac Street. Said draft PR shall incorporate all of the stipulations identified in Special Condition #2 below, as recommended by the Newburyport Historical Commission. All construction work, and building permits related thereto, shall comply with the stipulations identified in Special Condition #2 below.
2. 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 #1 above, which shall incorporate the following stipulations as recommended by the Newburyport Historical Commission:
 - All the exterior historical features reflecting the Greek revival renovation carried out in 1842 shall be restored through repair or replacement in kind. No doors or window openings (except as noted below) are to be altered all in accordance with the Plans dated June 15, 2020 titled "Proposed Exterior Elevations" and "Demolition Elevations" by Keery Design LLC (collectively the "Plans") and attached to this decision.
 - The front 'portico' shall be removed, and the front elevation restored according to the Plans presented and the center window on the second floor shall be a single window of the same design and configuration as the other windows on that façade as shown on the Plans.
 - As shown on the Plans, all the existing historic windows – that is, windows identified as dating to sometime from 1840 to 1950, shall be repaired and/or restored. Newer windows (identified as "Brosco" replacement windows by the applicant) shall be replaced by new, historically appropriate replacement windows with wood sash and muntins and true divided lights.
 - As shown on the Plans, the historic door and window (by the proposed new kitchen area) on the East elevation shall not be altered, but repaired or restored as needed.
 - As shown on the Plans, the historic window lights surrounding the front entrance door shall be preserved. The door may be replaced with a historically-appropriate door pending review and approval of the commission of the specific design and reason for replacement. The entablature above the door shall be restored to a historically-appropriate design as shown in the plans.
 - As shown on the Plans, the chimney will not be removed or altered.
 - The shutters on the front of the house may be removed or may remain in place, at the discretion of the Applicant.
3. In accordance with the requisite recommendation provided by the Department of Public Services (DPS), the applicant shall install a new concrete sidewalk along the frontage of the property at 342 Merrimac Street, as well as one (1) new street tree, all in accordance with City/DPS standards. This work shall be completed prior to the grant of an Occupancy Permit for the second/rear dwelling unit.

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:

The name typed below represents the intent to sign the foregoing document:

Bonnie Sontag
Bonnie Sontag, Chair
Newburyport Planning Board

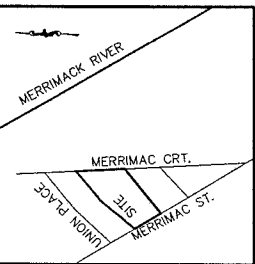
8/5/20
Date

CITY CLERK CERTIFICATION:

I, _____, 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 342 Merrimac Street was filed in the Office of the City Clerk on _____. Twenty (20) days have elapsed since the decision was filed and no appeal has been filed.

City Clerk

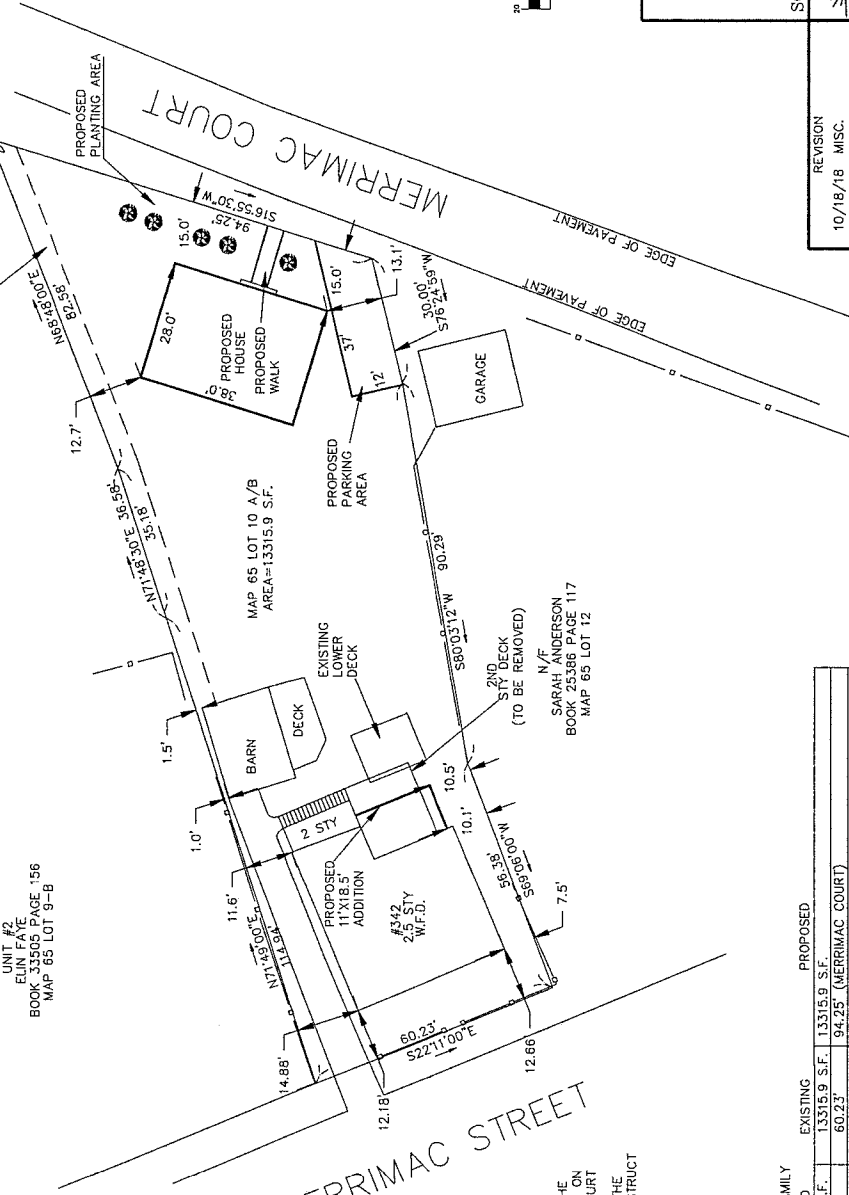
Date



NOT TO SCALE

UNIT #2
ELIN FAYE
BOOK 33505 PAGE 56
MAP 65 LOT 9-B

UNIT #1
SAMUEL N. KIMBALL
BOOK 33643 PAGE 266
MAP 65 LOT 9-A



NOTES

- 1.) THIS PLAN IS THE RESULT OF AN ON GROUND SURVEY PERFORMED BY WAYPOINT SURVEYING SERVICES.
- 2.) THE PURPOSE OF THIS PLAN IS TO PRESERVE THE TWO FAMILY USE OF THE PROPERTY AND TO PROPOSE THE CONSTRUCTION OF A SINGLE FAMILY ON THE FRONT LOT USING MERRIMAC COURT AS FRONTAGE. ALSO, TO SHOW THE REMOVAL OF THE SECOND STORY DECK AND TO CONSTRUCT AN 11'X18.5' FIRST STORY ADDITION.

ZONING TABLE

ZONING DISTRICT: WMD TWO FAMILY	
MIN. LOT AREA	REQUIRED
15,000 S.F.	13,315.9 S.F.
MIN. FRONTAGE	120'
MIN. FRONT YD.	25'
MIN. SIDE YD.	20'
MIN. REAR YD.	25'
MAX. LOT COVERAGE	40%
OPEN SPACE	60%

PROPOSED	
13,315.9 S.F.	13,315.9 S.F.
94.25' (MERRIMAC COURT)	94.25'
15.0'	15.0'
12.7' / 13.1' (10.1' PROPOSED ADDITION)	12.7' / 13.1'
N/A	N/A
2.3%	2.3%
69%	69%

REVISION

DATE	REVISION
10/18/18	MISC.
2/13/19	MISC.
3/25/19	MISC.
4/16/19	MOVE PROPOSED
2/18/20	PROPOSED ADDITION
5/12/20	MISC.

SCALE: 1" = 20'

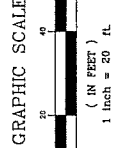
WAYPOINT SURVEYING SERVICES
141 BRIDGE ROAD, SUITE 202-5
SALISBURY, MASSACHUSETTS 01952
(978) 505-5261

DRAWN BY: D.A.
CHECKED BY: D.A.
DESIGN BY: D.A.

3590

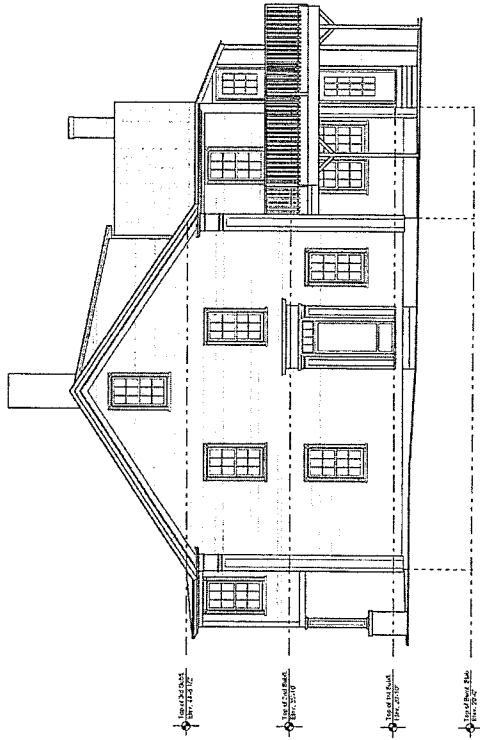
BOARD OF APPEALS PLAN
342 MERRIMAC STREET
NEWBURYPORT, MASSACHUSETTS
ASSESSORS MAP 65 PARCEL 10 A/B
PREPARED FOR
DAN LYNCH

JUNE 20, 2018

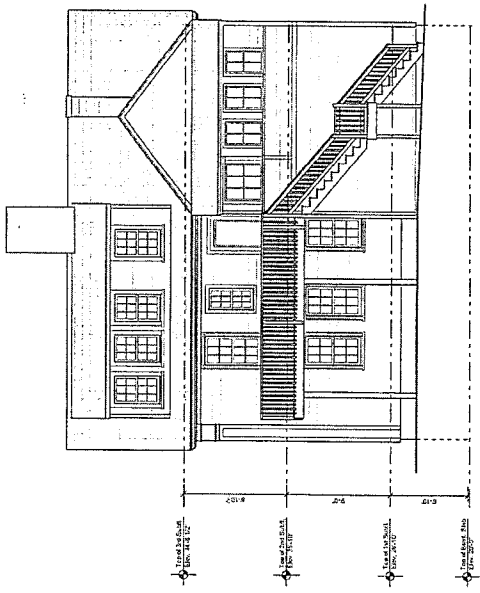


NEWBURYPORT ZONING BOARD OF APPEALS

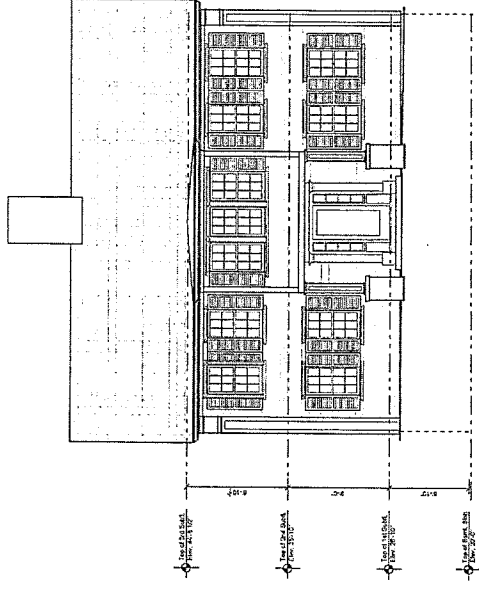
DATE _____



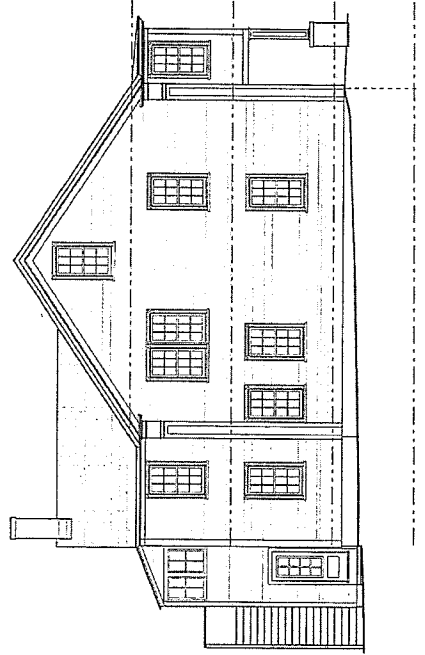
Existing East Elevation
Scale: 1/4" = 1'-0"



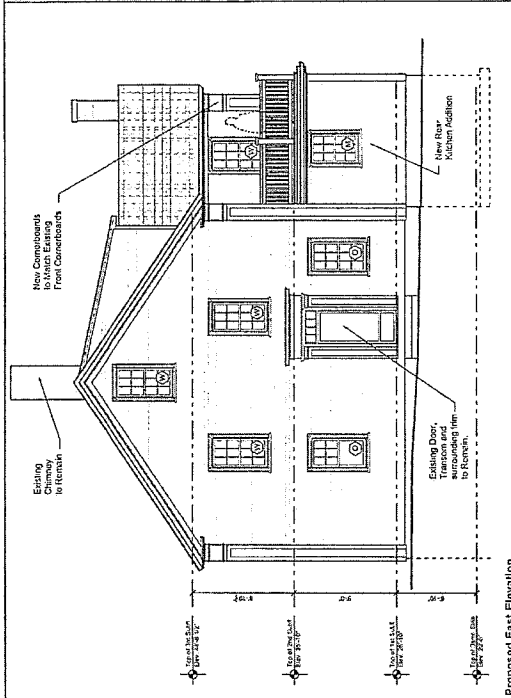
Existing North Elevation
Scale: 1/4" = 1'-0"



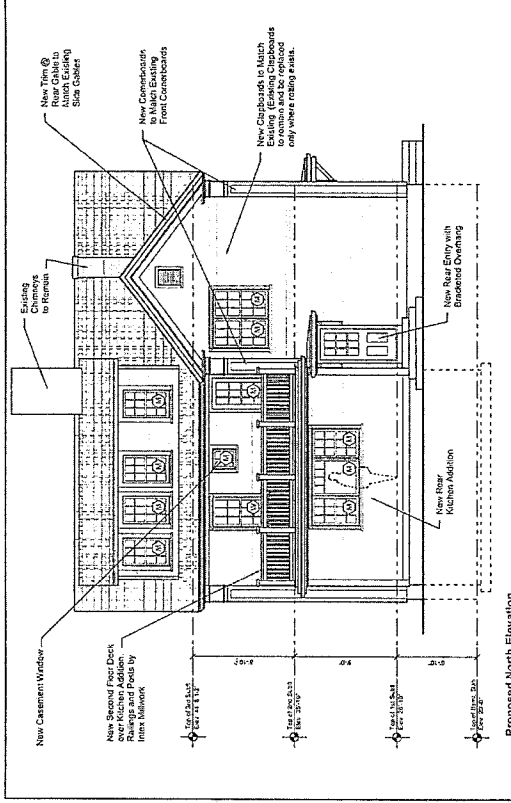
Existing South Elevation
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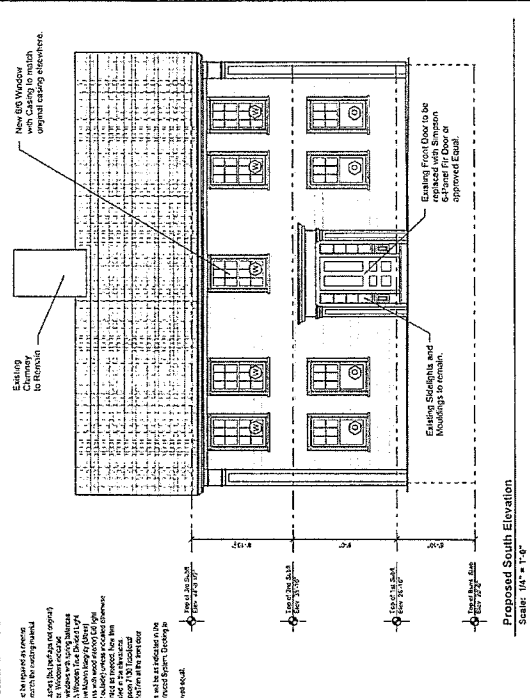
Existing West Elevation
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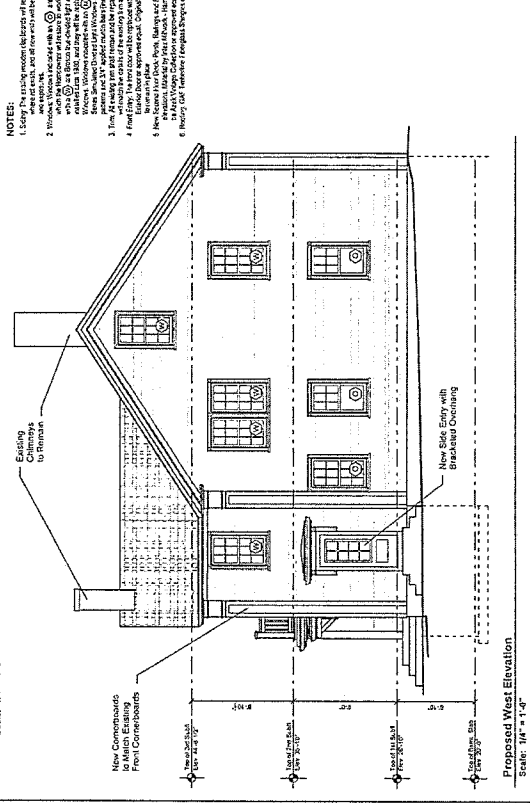
Proposed East Elevation
 Scale: 1/4" = 1'-0"



Proposed North Elevation
 Scale: 1/4" = 1'-0"



Proposed South Elevation
 Scale: 1/4" = 1'-0"



Proposed West Elevation
 Scale: 1/4" = 1'-0"

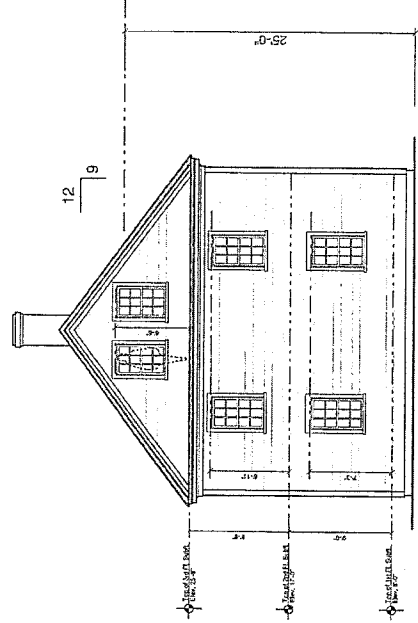
- NOTES:**
1. Existing window details will be replaced as shown.
 2. Windows shown in circles with an 'X' are to be replaced with new windows.
 3. Trim, including front and rear, to be replaced with new trim.
 4. Front Entry, Transition and Sill to be replaced with new trim.
 5. New casement window, trim, sill, and header to be replaced.
 6. Existing door, transition and sill to be replaced.

Proposed Exterior Elevations

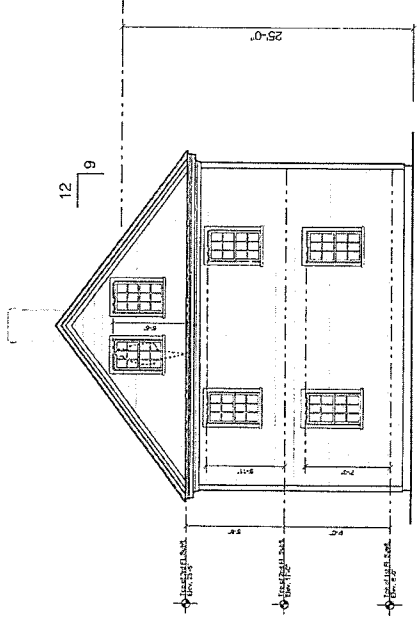
342 Rear Merimac Street
Newburyport, MA 01850

DESIGN DEVELOPMENT

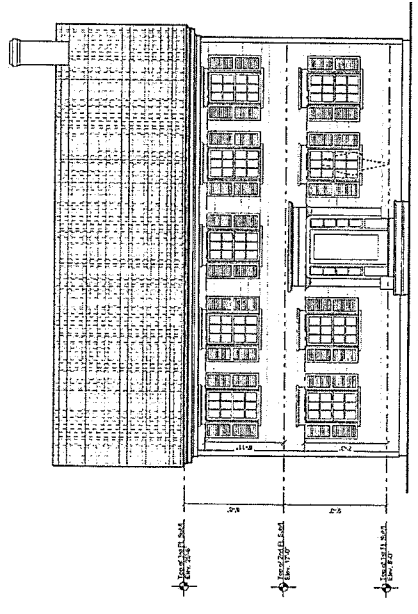
KEERY design LLC
437 Commercial Street
Newburyport, Massachusetts 01850
Tel: 978.352.2222



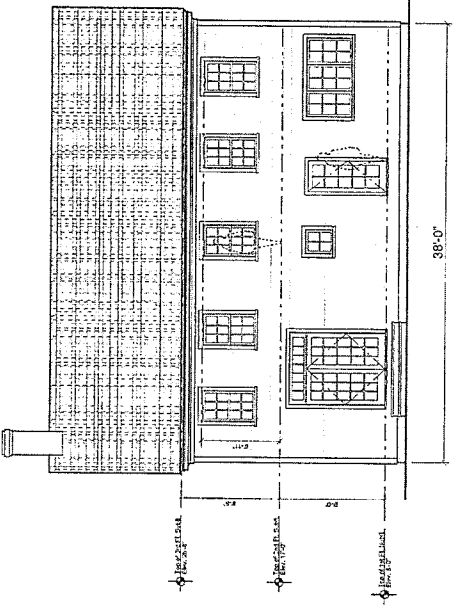
Proposed North Elevation
Scale: 1/4" = 1'-0"



Proposed South Elevation
Scale: 1/4" = 1'-0"



Proposed East Elevation
Scale: 1/4" = 1'-0"



Proposed West Elevation
Scale: 1/4" = 1'-0"