

City of Newburyport Zoning Board of Appeals Application for a SPECIAL PERMIT for NON-CONFORMITIES

Petitioner: Windward Shaw LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC

Mailing Address: 30 Green Street

Phone: 978-463-7700 Email: lisa@mtclawyers.com

Property Address: 20 Union Street

Map and Lot(s): 30 - 44 Zoning District: R2/DCOD

Book and Page(s): 38348 - 048

Owner(s) Name: Christopher and Eileen Ferraiolo

Mailing Address (if different): _____

This request for a Special Permit for Non-Conformities is made under section(s):
(Refer to the Zoning Determination form supplied by the Zoning Administrator)

- | | |
|--|---|
| <input checked="" type="checkbox"/> Extension or Alteration (IX.B.2) | <input type="checkbox"/> Over 500 s.f. increase (IX.B.3.c) |
| ___ Parking | <input type="checkbox"/> Plum Island Overlay District (XXI-G) |
| ___ Upward Extension | ___ FAR |
| ___ Open Space | ___ Footprint Expansion |
| ___ Height | ___ Height Increase |
| ___ Lot Area | |
| ___ Use | |
| ___ Rear Yard | |
| ___ Lot Coverage | |
| ___ Side Yard | |
| ___ Lot Frontage | |
| ___ Front Yard | |

Description of request:

Construct additions to side and rear of single-family residence, covered porch, and garage.

All information contained within this application will become a formal part of the Zoning Board of Appeals proceedings and decision.

City of Newburyport Zoning Board of Appeals
Application for a SPECIAL PERMIT for NON-CONFORMITIES

	Existing Dimensional Controls	Proposed Dimensional Controls	Required Dimensional Controls
Lot Area	5,779 sf	5,779 sf	10,000 sf
Frontage	48.84 ft	48.84 ft	90 ft
Height*	20.7 ft	20.7 ft	35 ft
Lot Coverage (%)**	17.2%	24.8%	25%
Open Space (%)***	74.9%	51.6%	40%
Front Setback	4.8 ft	4.8 ft	25 ft
Side A Setback	4 ft	4 ft	10 ft
Side B Setback	12.2 ft	11.7 ft	10 ft
Rear Setback	83.6 ft	56.1 ft	25 ft
Parking Spaces	2	2	2
FAR****			

*Height is measured to median roof line.


**Total building footprint divided by the lot area expressed as a percentage.

***Area unoccupied by building, parking areas, or driveways expressed as a percentage of lot area. Pools, patios, and decks may be included in open space.

****FAR is only applicable in the Plum Island Overlay District (PIOD).

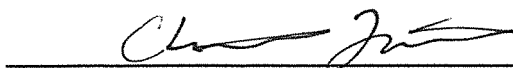
Any advice, opinion, or information given by any board member or any other official or employee of the City of Newburyport shall not be binding on the Zoning Board of Appeals. It shall be the responsibility of the petitioner to furnish all supporting documentation with this application. The dated copy of this application received by the City Clerk or Planning Office does not absolve the petitioner from this responsibility. The petitioner shall be responsible for all expenses for the filing, publication, and legal notification. Failure to comply with the application requirements, as cited herein and in the Zoning Board Rules and Regulations may result in a dismissal by the ZBA of this application as incomplete.

By checking this box and typing my name below, I am electronically signing this application.



 Petitioner

By checking this box and typing my name below, I am electronically signing this application.



 Owner (if different)



Mead, Talerman & Costa, LLC
Attorneys at Law

30 Green Street
Newburyport, MA 01950
Phone 978.463.7700
Fax 978.463.7747

www.mtclawyers.com

May 15, 2020

By Hand

Rob Ciampitti, Chair
Zoning Board of Appeals
City of Newburyport
City Hall
60 Pleasant Street
Newburyport, Massachusetts 01950

Re: Request for Special Permit for Non-Conformities;
20 Union Street, Newburyport, MA (the "Property")
Assessor's Map: 30 Lot: 44

Dear Chair and Members of the Board:

Reference is made to the above-captioned matter. In that connection, this firm represents Windward Shaw LLC (the "Applicant"), the contractor for the owners of the Property Christopher and Eileen Ferraiolo, relative to a proposed project to a single-family residence (the "Structure") on the Property. The Applicant seeks a Special Permit for Non-Conformities for the project.

The Property is located in the R2 zoning district and Demolition Control Overlay District ("DCOD") under the Newburyport Zoning Ordinance (the "Ordinance"). The Property is pre-existing, nonconforming for lot area and frontage; it contains 5,779 square feet of land where the minimum requirements is 10,000 square feet. The frontage is 48.84 feet where the minimum required is 90 feet. The Structure is pre-existing, nonconforming for front and side yard setback. The front setback is 4.8 feet where the minimum requirement is 25 feet. The minimum required side yard setback is 10 feet and side yard setback at the southern corner of the Structure is 4 feet.

The Applicant proposes to demolish a one-story addition on the northern side of the Structure, which was constructed in 2011. Given the age of this newer addition, the Applicant does not require Historical Commission review. The Applicant then proposes to construct a two-story addition in that location. The side yard setback for this two-story addition will comply at 11.7 feet. At the rear of the Structure, the Applicant proposes to construct a one-story addition that will extend the nonconforming side yard setback. Although this addition carries the nonconforming side yard setback, it will be stepped back with a setback of 7.3 feet, reducing the nonconformity. A covered porch is proposed of the rear of the one-story addition and will not be enclosed. Finally, the Applicant proposes to construct a garage at the rear of the Property. The rear and side yard setbacks for the garage are 6.2 feet and 6.1 feet, in compliance with the minimum required 6 feet for an accessory structure. The garage is also 10' x 20', which falls under the allowed area for an accessory structure in section VI-F of the Ordinance.

Millis Office

730 Main Street, Suite 1F
Millis, MA 02054
Phone 508.376.8400

The Applicant will require a Special Permit for non-conformities under section IX-B-2.A of the Ordinance for the proposed addition. Section IX-B-2.A allows the modification of a preexisting nonconforming single-family structure where the Board finds that:

- 1. There will be no addition of a new non-conformity; and**
- 2. The proposed change will not be substantially more detrimental to the neighborhood than the preexisting nonconforming structure.**

1. As is shown on the plans, there will be no addition of a new non-conformity. The proposed rear addition will extend the side yard setback but will be stepped back with a setback of 7.3 feet, while the existing nonconforming setback is 4 feet.
2. The proposed changes will not be substantially more detrimental to the neighborhood than the preexisting nonconforming Structure. As shown on the site plan, the Property can accommodate the addition without overcrowding the lot, as evidenced by the conforming lot coverage and open space post-addition. The Property is of similar size to other lots in the neighborhoods, and with the proposed additions the Structure will be consistent with other residences in the neighborhood.

The addition will be constructed in such a manner as it will be complimentary to the existing house and clearly subordinate to the original Structure. While there is a second story addition being added over the existing one story structure to the right of the house, it is away from Union Street and at the rear of the structure. Again, the height of the addition is subordinate to the main original Structure. The size, materials and design are complimentary to the style of the existing Structure – and those of the neighborhood.

The current living space for the property is 1,613 square feet. The proposed living space will be 2,094 which is an increase of 481 square feet. A modest increase in living area. Further, the height of the structure will not change and the height of the addition is shorter than the existing Structure.

Union Street contains a mixture of homes constructed in the 1700s, 1800s, and 1900s. Starting at the intersection of Union and Marlboro Streets, a cluster of homes was constructed circa 1850. As one travels down Union Street to the east past Woodwell and heading towards Flat Iron Point, while there are a few homes constructed circa 1750, other construction dates are 1975, 1914, 1890, 1972, 1885, 1988, 1917, 1900, and 1977. The average living space of 21 single-family residences on Union Street, including a residence with frontage on both Water Street and Union Street, is 2,112.66 square feet. There are 7 homes on Union Street, including the aforementioned home with frontage on both Water and Union Streets, that have living space of over 2,500 square feet. With the new addition, the proposed structure will include 2,094 square feet, just below the average. Similarly, other homes on Union Street include accessory structures to the rear of their respective properties. Further, as noted previously you can see the lots on Union Street include an array of amounts of lot coverage and the proposed conditions fall squarely within the neighborhood.

When the Board is determining what is substantially more detrimental to the neighborhood, they must consider the existing conditions and those other structures which may or may not be non-conforming. Here, almost every other property and structure on Union Street is non-confirming. The term “substantially” means to a great or significant extent. Here, the proposal is no more detrimental to the neighborhood than the existing non-conforming structure, let alone substantially more detrimental.

In the case of *Graf v. Akin*, Mass. Land Ct., 2018 WL 6738179 (2018). In *Graf*, the defendant sought a special permit to raze a one-story garage and replace it with a two-story structure; an immediate abutter objected. *Id.*



at *1. The zoning board found no substantial detriment to the neighborhood and the abutter appealed to the Land Court. *Id.* The Land Court judge determined that the zoning board correctly found that there was no substantial detriment, particularly where the board noted that the nonconformities were not unique to the defendant's property and the objecting abutters own garage was within the side-yard setback. *Id.* Further, the proposal was compatible with garages and residences on the street and in the broader neighborhood. *Id.*

Here, not only is the proposed addition diminutive to the original structure, the proposal creates nothing new or different by way of non-conformities that already exist in the greater neighborhood. As noted previously, importantly, the new one story addition to the rear steps away from and is less non-conforming than the existing structure.

Finally, the projected project will likely cost more than 50% of the assessed value of the Property, triggering Section X-H.7.B.10 of the Ordinance, which requires reconstruction, repair, and/or replacement of city-owned sidewalks adjacent to the project, if necessary, as well as the planting, preservation, and/or replacement of street trees along the public way adjoining the project. The Applicant will consult with DPW to determine the appropriate action.

The Applicant respectfully requests that the Board find that the proposed changes are not substantially more detrimental to the neighborhood than the pre-existing, nonconforming Structure and grant a Special Permit for Non-Conformities.

Respectfully submitted
Windward Shaw LLC
By its Attorney


Lisa L. Mead 

Attachment
cc: client

ZONING DETERMINATION

Name: Windward Shaw, LLC c/o Lisa Mead, MTC, LLC

Address: 20 Union Street Zoning District(s): R2/DCOD

Request: Construct additions (net <500sf) at rear and side of nonconforming structure extending a non-conforming side yard setback. Note-garage does not require relief and no roofline change and <25% wall demo so no DCOD. Porch at rear to be unenclosed.

ZONING BOARD REVIEW REQUIRED

Variance

- Dimensional Controls (VI)
 - Lot Area
 - Lot Frontage
 - Lot Coverage
 - Parking (VII)
 - Modification
- Open Space
- Height
- Lot Width
- Front Yard
- Side Yard
- Rear Yard

Sign Variance

- Signs (VIII)
 - Type
 - Lighting
 - Size
 - Location

Other

Special Permit

- Table of Use Regulations (V.D) #: _____
- Spacing (VI.D)
- In-Law Apartment (XIIA)
- Bonus for Multifamily Developments (XVI)
- Personal Wireless Communication Services (XX)
- Demolition Control Overlay District (XXVIII)*
- Wind Energy Conversion Facilities (XXVI)
- Other _____

Special Permit for Non-Conformities

- Extension or Alteration (IX.B.2)
 - Parking
 - Upward Extension
 - Open Space
 - Height
 - Lot Area
 - Use
 - Rear Yard
 - Lot Coverage
 - Side Yard
 - Lot Frontage
 - Front Yard
- Over 500 sf. increase (IX.B.3.c)
- Plum Island Overlay District (XXI-G)
 - FAR
 - Lot Coverage
 - Height
 - Setbacks
 - Open Space

PLANNING BOARD REVIEW REQUIRED

Special Permit

- Table of Use Regulations (V-D) # _____
- One residential structure per lot (VI.C)
- Open Space Residential Development (XIV)
- Water Resource Protection District (XIX)
- Federal Street Overlay District (XXII)
- Courts and Lanes (XXIII)
- Waterfront West Overlay District (XXIV)
- Towle Complex Redev. Overlay District (XXV)
- Downtown Overlay District (XXVII)*
- Other _____

Special Permit for Non-Conformities

- Extension or Alteration (IX.B.2)
 - Parking
 - Upward Extension
 - Open Space
 - Height
 - Lot Area
 - Use
 - Rear Yard
 - Lot Coverage
 - Side Yard
 - Lot Frontage
 - Front Yard
- Over 500 sf. increase (IX.B.3.c)

Smart Growth District (XXIX)

- Plan Approval

Site Plan Review (XV)

- Major
- Minor

HISTORICAL COMMISSION REVIEW REQUIRED

- Demo. Delay
- *Advisory Review

CONSERVATION COMMISSION REVIEW REQUIRED

Review project for substantial improvement

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

Jennifer Blanchet

05/14/2020

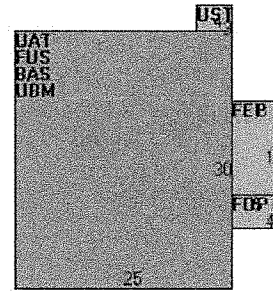
Newburyport Zoning Administrator

Date

(<http://images.vgsi.com/photos/NewburyportMAPhotos/A01100162/03.jpg>)

Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Plastered
Interior Wall 2	
Interior Flr 1	Pine/Soft Wood
Interior Flr 2	Carpet
Heat Fuel	Gas
Heat Type:	Hot Water
AC Type:	None
Total Bedrooms:	2 Bedrooms
Total Bthrms:	1
Total Half Baths:	1
Total Xtra Fixtrs:	
Total Rooms:	6 Rooms
Bath Style:	Average
Kitchen Style:	Average

Building Layout



(http://images.vgsi.com/photos/NewburyportMAPhotos/Sketches/1692_1765.jpg)

Building Sub-Areas (sq ft)			Legend	
Code	Description	Gross Area	Living Area	
BAS	First Floor	750	750	
FUS	Upper Story, Finished	750	750	
FEP	Porch, Enclosed	66	0	
FOP	Porch, Open	20	0	
UAT	Attic	750	0	
UBM	Basement, Unfinished	750	0	
UST	Utility, Storage, Unfinished	12	0	
		3,098	1,500	

Extra Features

Extra Features		Legend
No Data for Extra Features		

Land

Land Use

Use Code 1010
Description SINGLE FAM

Land Line Valuation

Size (Acres) 0.13
Depth 0
Assessed Value \$255,100

Outbuildings

Outbuildings							Legend
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #	

PAT1	PATIO-AVG		200 S.F.	\$500	1
------	-----------	--	----------	-------	---

Valuation History

Assessment			
Valuation Year	Improvements	Land	Total
2019	\$244,200	\$255,100	\$499,300

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City of Newburyport

5/14/2020

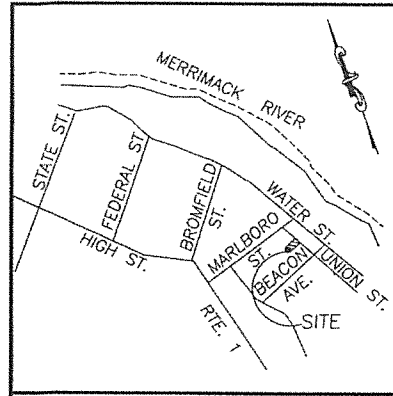


Data Sources: Produced by Merrimack Valley Planning Commission (MVPC) using data provided by the City of Newburyport & MassIT/MassGIS. MVPC AND THE CITY OF NEWBURYPORT MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE ACCURACY, COMPLETENESS, RELIABILITY, OR SUITABILITY OF THESE DATA. THE CITY OF NEWBURYPORT AND MVPC DOES NOT ASSUME ANY LIABILITY ASSOCIATED WITH THE USE OR MISUSE OF THIS INFORMATION.

Legend						
	Roads					Parcels (on aerial)



Projection: NAD_1983_StatePlane_Massachusetts_Mainland_EPS_2001



LOCUS MAP
N.T.S.

ZONING TABLE

20 UNION STREET - ASSESSORS MAP 30 LOT 44 ZONING DISTRICT R-2 & DCOD			
	REQUIRED	EXISTING	PROPOSED
LOT AREA:	10,000 S.F.	5,779 S.F.	5,779 S.F.
LOT FRONTAGE:	90 FT	48.84 FT.	48.84 FT.
FRONT SETBACK:	25 FT	4.8 FT.	4.8 FT.
SIDE SETBACK:	10 FT	4.0 FT., 12.2 FT.	4.0 FT, 7.3 FT, 11.7 FT
REAR SETBACK:	25 FT	83.6 FT.	56.1 FT.
LOT COVERAGE:	25 %	17.2%	24.8%
OPEN SPACE:	40%	74.9%	51.6%
BLDG HEIGHT:	35 FT	20.7 FT	20.7 FT

NOTE: PROPOSED GARAGE SIDE SETBACKS = 6.1 FT. & 6.9 FT. & REAR SETBACK = 6.2 FT.
- SEE ARCHITECTURAL PLANS FOR FURTHER INFORMATION ON PROPOSED BUILDING AND GARAGE IMPROVEMENTS.

LEGEND

- I.P. IRON PIPE
- I ROD IRON ROD
- FND. FOUND
- N/F NOW OR FORMERLY
- 17 EXISTING ELEVATION CONTOUR
- LA LANDSCAPE AREA
- SHRUB OR TREE
- EMTR ELECTRIC METER
- UP UTILITY POLE
- W.F.D. WOOD FRAMED DWELLING
- CONC. CONCRETE
- BIT. BITUMINOUS
- GC GRANITE CURB
- OHW OVERHEAD WIRE
- CB CATCH BASIN
- DMH DRAIN MANHOLE
- SMH SEWER MANHOLE
- BH BUILDING HEIGHT
- /○ ASSESSORS MAP#
PARCEL#

PETER J. GALOSKY
JENNIFER L. WHITE
BK. 18874 PG. 326

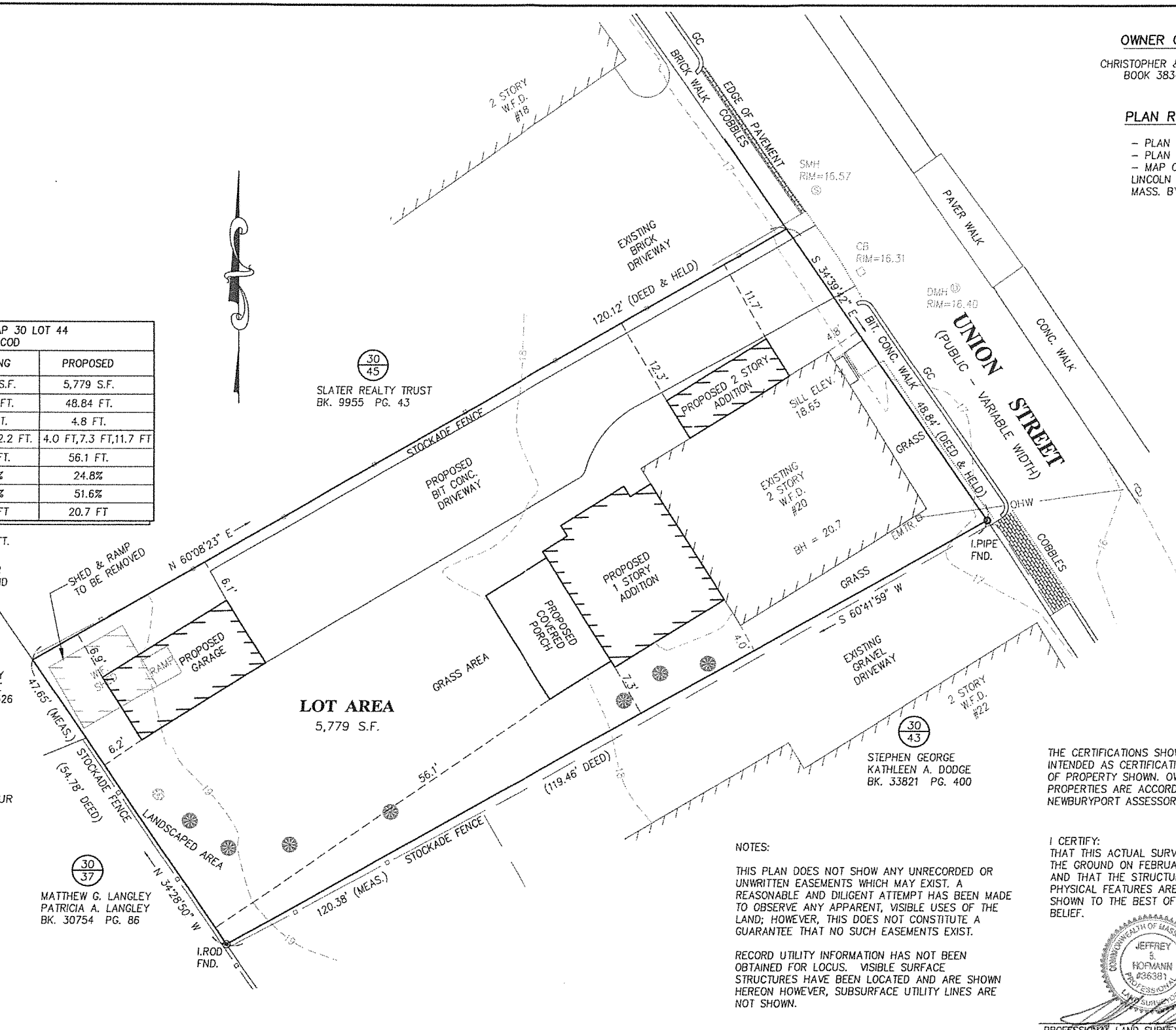
MATTHEW G. LANGLEY
PATRICIA A. LANGLEY
BK. 30754 PG. 86

STEPHEN GEORGE
KATHLEEN A. DODGE
BK. 33821 PG. 400

SLATER REALTY TRUST
BK. 9955 PG. 43

OWNER OF RECORD
CHRISTOPHER & EILEEN FERRAILO
BOOK 38348 - PAGE 48

PLAN REFERENCES
- PLAN 311 OF 1977
- PLAN 254 OF 1979
- MAP OF BUILDING SITES ON
LINCOLN STREET NEWBURYPORT,
MASS. BY G.W. LANGDON, MAY, 1903.



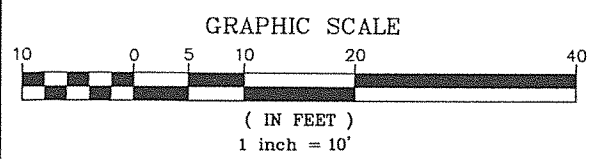
NOTES:
THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO OBSERVE ANY APPARENT, VISIBLE USES OF THE LAND; HOWEVER, THIS DOES NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.

RECORD UTILITY INFORMATION HAS NOT BEEN OBTAINED FOR LOCUS. VISIBLE SURFACE STRUCTURES HAVE BEEN LOCATED AND ARE SHOWN HEREON HOWEVER, SUBSURFACE UTILITY LINES ARE NOT SHOWN.

THE CERTIFICATIONS SHOWN HEREON ARE NOT INTENDED AS CERTIFICATION TO TITLE OR OWNERSHIP OF PROPERTY SHOWN. OWNERS OF ADJOINING PROPERTIES ARE ACCORDING TO CURRENT CITY OF NEWBURYPORT ASSESSORS RECORDS.

I CERTIFY:
THAT THIS ACTUAL SURVEY WAS MADE ON THE GROUND ON FEBRUARY 24, 2020, AND THAT THE STRUCTURES AND PHYSICAL FEATURES ARE LOCATED AS SHOWN TO THE BEST OF MY ABILITY AND BELIEF.

JEFFREY S. HOFMANN
PROFESSIONAL LAND SURVEYOR
DATE: 5/12/20



PREPARED FOR
WINDWARD SHAW
P.O. BOX. 1389
NEWBURYPORT, MA 01950

PLAN OF LAND
IN
NEWBURYPORT, MA
SHOWING
PROPOSED IMPROVEMENTS
AT
20 UNION STREET
(MAP 30 - LOT 44)

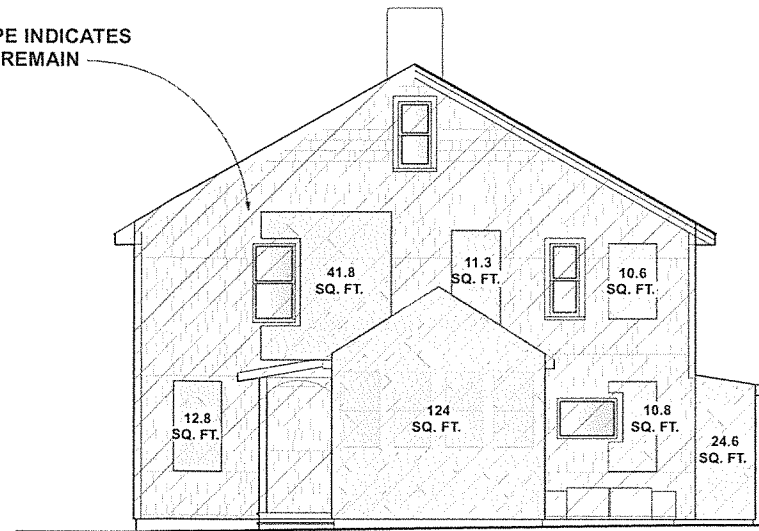
MEI **MILLENNIUM ENGINEERING, INC.**
ENGINEERING AND LAND SURVEYING
62 ELM ST. SALISBURY, MA 01952 (978) 463-8980
13 HAMPTON RD. EXETER, NH 03833 (603) 778-0528

SCALE: 1"=10'	CALC. BY: S.F.R.	PROJECT: M203698
DATE: MAY 12, 2020	CHKD. BY: J.S.H.	SHEET: 1 OF 1



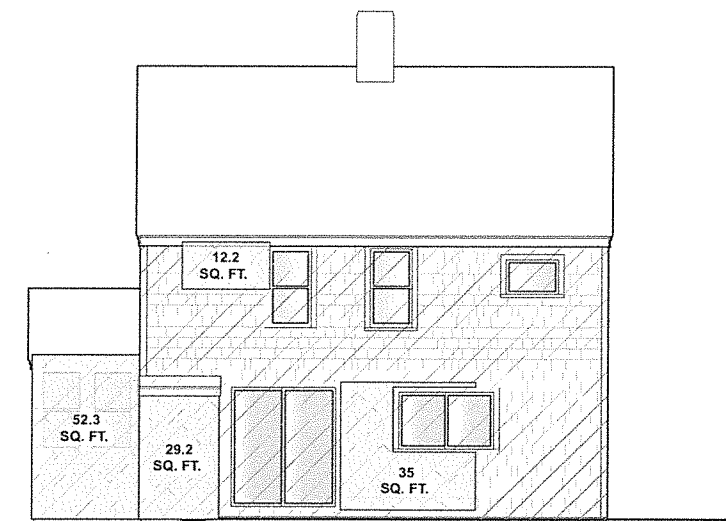
1 FRONT ELEVATION
Scale: 1/4" = 1'-0"

HATCH TYPE INDICATES
AREAS TO REMAIN

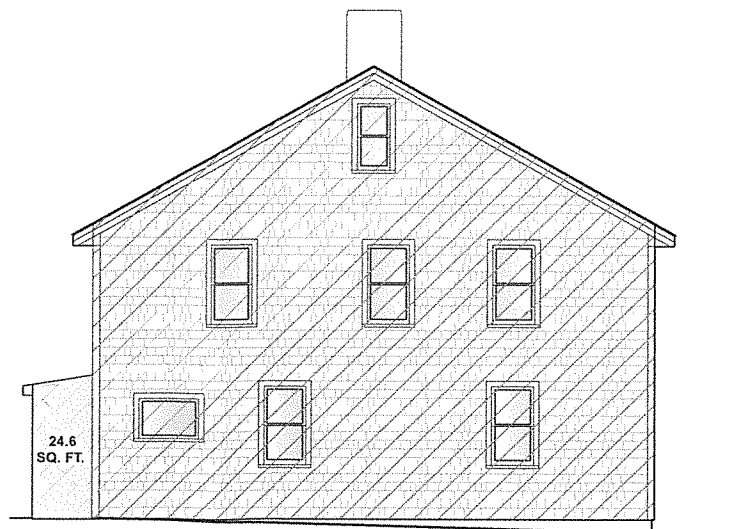


2 RIGHT ELEVATION
Scale: 1/4" = 1'-0"

CROSS HATCH TYPE
INDICATES AREAS
TO BE REMOVED



3 REAR ELEVATION
Scale: 1/4" = 1'-0"



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

EXISTING WALLS

430 SQ. FT.
644 SQ. FT.
430 SQ. FT.
644 SQ. FT.

= 2148 SQ. FT.

WALLS TO BE REMOVED

60.8 SQ. FT.
235.9 SQ. FT.
120.7 SQ. FT.
24.6 SQ. FT.

= 442 SQ. FT.

**% OF WALL AREA
TO BE REMOVED =**

2148/615.5 = 20.6% SQ. FT.

SCOTT BROWN

ESTD ARCHITECTS 2007

48 MARKET STREET,
NEWBURYPORT, MA 01950
T. 978.465.3535
WWW.SCOTTBROWNARCHITECT.COM

ADDITIONS AND ALTERATIONS
TO:
20 UNION STREET
NEWBURYPORT, MA 01950

REVISION & REISSUE NOTES

No.	Date	Notes

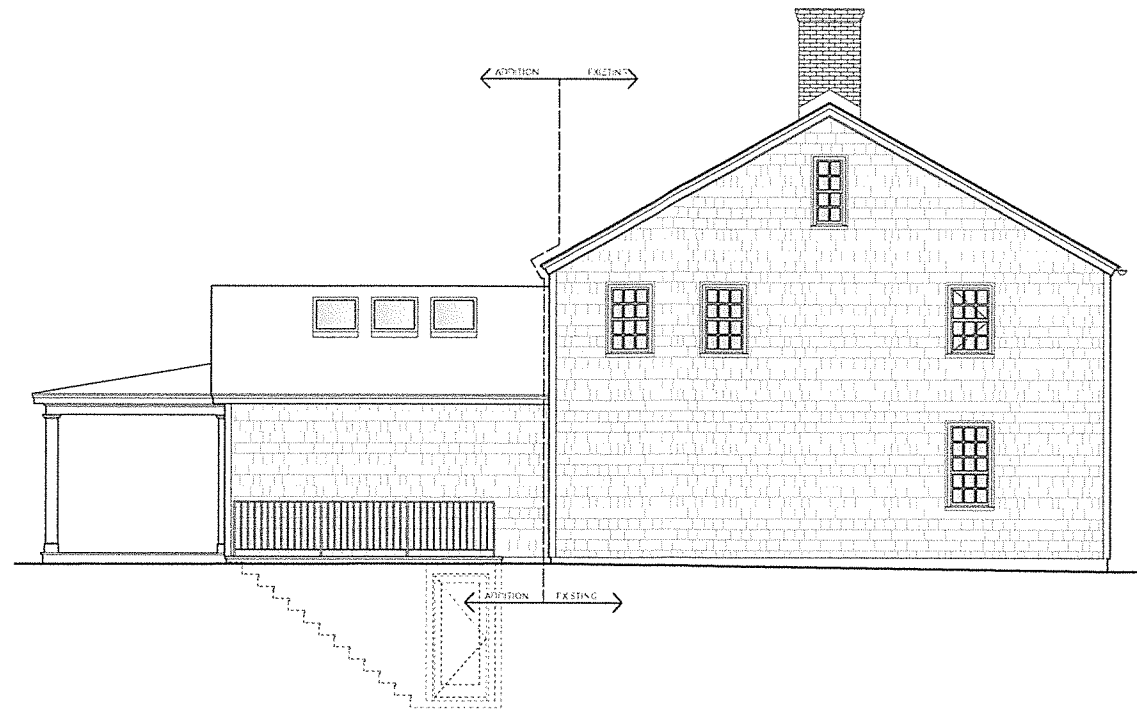
Project #	Project Manager	Date
2020-09	X.X.	5-12-20

Scale: AS NOTED

**DCOD
CALCULATIONS**

EC2.3

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2 PROPOSED LEFT ELEVATION
Scale: 1/4" = 1'-0"



1 PROPOSED REAR ELEVATION
Scale: 1/4" = 1'-0"

CAD FILE NAME:
20090905_CD_Plan.rvt

SCOTT BROWN
ARCHITECTS
48 MARKET STREET,
NEWBURYPORT, MA 01950
1. 978.365.3535
WWW.SCOTTBROWNARCHITECTS.COM

ADDITIONS AND ALTERATIONS
TO:
20 UNION STREET
NEWBURYPORT, MA 01950

REVISION & REISSUE NOTES

No.	Date	Notes

Project #	Project Manager	Date
2020-09	X.X.	3-12-20

Scale: AS NOTED

PROPOSED
ELEVATIONS

A2.2

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ADDITIONS AND ALTERATIONS
 TO:
20 UNION STREET
 NEWBURYPORT, MA 01950

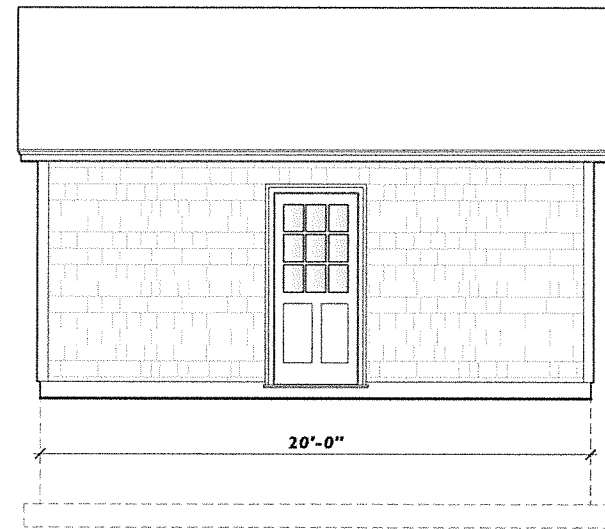
REVISION & REISSUE NOTES

No.	Date	Notes

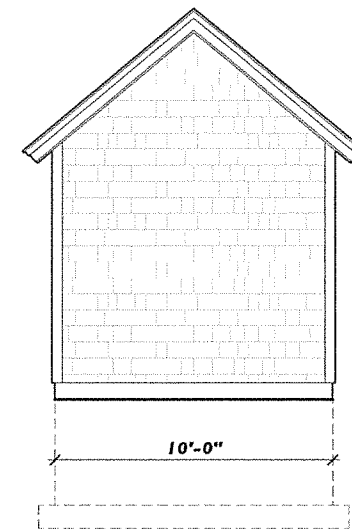
Project # 2020-09	Project Manager X.X.	Date 5-14-20
Scale: AS NOTED		

PROPOSED GARAGE ELEVATIONS

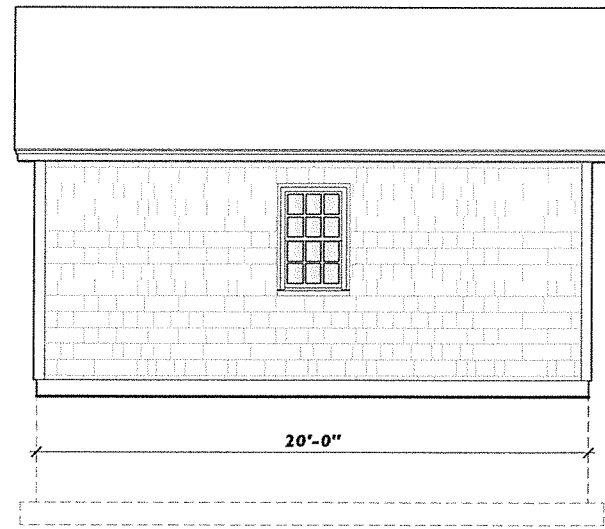
A2.3



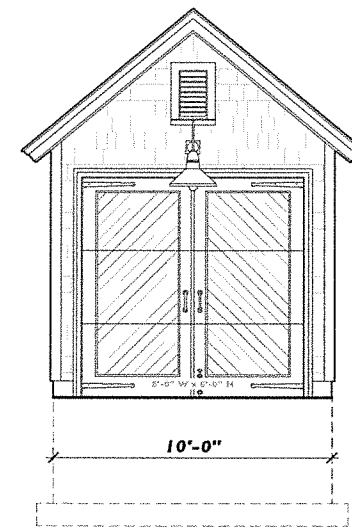
4 PROPOSED LEFT SIDE ELEVATION
 Scale: 3/8" = 1'-0"



3 PROPOSED REAR ELEVATION
 Scale: 3/8" = 1'-0"



2 PROPOSED RIGHT SIDE ELEVATION
 Scale: 3/8" = 1'-0"



1 PROPOSED FRONT ELEVATION
 Scale: 3/8" = 1'-0"

