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July 6, 2021

By Hand and Electronic Mail

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

Re: Application for Special Permit for Non-Conformities
3 Marsh Street, Newburyport, MA (the "Property")
Assessors Map 75, Lot 72

Dear Chair Ciampitti and Members of the Board:

Reference is made to the above-captioned matter. In that connection, this firm represents John and Beverly Murphy, the owners of the Property (the "Applicant"), who seek a Special Permit for Non-Conformities for construction of a one-story addition on their pre-existing non-conforming single-family home. The Applicant has lived on Plum Island since 1960 and has been in the home in question since 1977. Without a Special Permit, the Applicant will not be able to remain in the home due to aging. As you are aware, after the last meeting the Applicant needed to complete his work in front of the Conservation Commission and the Board requested the Applicant review the impact of the proposal on the Floor Area Ratio ("FAR"). The Conservation Commission approved the Applicant's plan, conditioned on requested changes.

This letter addresses the changes made to the Applicant's plans in accordance with the recommendations of the Board at the June 8, 2021 meeting in granting a continuance and the requests from the Conservation Commission. This letter also demonstrates that the construction of the addition is not substantially more detrimental than the existing nonconforming structures to the neighborhood.

On advice from the Board, the Applicants drafted a new site plan to reduce the FAR originally proposed. The original proposal included 43.7% FAR. Now, the Applicant proposes to remove an existing 189 square foot shed from the Property for a new net increase of 232 square feet. This reduces the proposed FAR to 41.0%

Further, on advice from the Conservation Commission, the Applicant intends to remove a portion of existing pavers from the lot. Said pavers would be unnecessary in the absence of the existing shed. This change increases open space and decreases lot coverage relative to the original proposal.

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Finally, in the original submittal we indicated that with this addition there would be three (3) bedrooms in the home. However, we were incorrect. The proposed renovation will result in two (2) bedrooms which is the same as it is today. As you can see from the plans, the new addition includes a bedroom which is adjacent to a storage closet within the existing structure. Therefore, there will be no increase in the number of bedrooms.

The proposed changes will not be substantially more detrimental to the neighborhood than the preexisting nonconforming structures. As the Board is aware, the term “substantially” means to a great or significant extent. The term “detrimental” means tending to cause harm. As a result, the proposal must, to a great or significant extent, cause harm to the neighborhood as compared to the existing structures. See *McAleer v. Board of Appeals of Barnstable*, 361 Mass. 317, 321 (1972) (“The phrase ‘not more detrimental’ implies that any alteration of a nonconforming use must not cause more harm than already exists. The phrase ‘without substantial detriment’ ...implies that a change may be made producing more harm provided that harm is not too significant.”).

When determining if a proposed change is substantially more detrimental to the neighborhood or the PIOD than the preexisting nonconforming structures, the Board should consider the purpose of the PIOD under section XXI of the Ordinance. The Board would have to make a finding that a net increase of 232 square feet to the FAR is “substantially more detrimental” to the neighborhood or the PIOD than the existing house and shed. A 3.2% increase in FAR, in this instance should not be considered “substantially more detrimental” to the neighborhood or the PIOD. Here, the impact on the natural environment is actually improved. With the removal of the shed and the pavers, new vegetation will be replacing hard scape and structure. The improvement to the proposal will allow the free flow of sand and/or flood waters around the property in a more appropriate manner. Further, the new construction will be built entirely over what is existing gravel drive and will not impact the dune or other existing vegetation. The new construction will also be built in conformance with current FEMA construction standards.

Following the last meeting, the Applicant was under the impression that the Board was unclear about what specifically is being added to the home. The existing layout is shown in Exhibit A. The Applicant points out that a closet and full bathroom exist in the home adjacent to the proposed addition. The Applicant intends to open the existing bathroom into the master bathroom shown in the plans and the existing full bath becomes a half bathroom adjacent to living area. No other changes to the existing structure are proposed. The delineation between the existing structure and the addition is highlighted in Exhibit B. The structure will remain a two-bedroom home. The Applicant intentionally designed the addition to minimize its impact, making only the changes necessary to empower the Applicant to comfortably live in the home through retirement. The addition provides sufficient area and space through the proposed master bedroom which includes a laundry space and closet along with a master bathroom to make it possible for the Applicants to age in place.

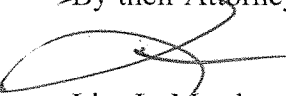
The Applicant plans to condense all structures on the lot into the single existing house. Removing the shed and pavers increases the continuous open space of the lot, reduces lot coverage, reduces the number of structures, and contains all floor area within a central location. Further, the addition to the existing house would be placed above the existing driveway. The minimal increase in FAR would result in an increase in open space on the lot. As the Board may consider the impact of the proposal on the neighborhood and the PIOD, the consolidation of the structures on the lot, the removal of the shed and pavers and the placement of the addition

over the existing driveway may be considered an improvement to the neighborhood and the PIOD and not a substantial detriment.

Based on the foregoing, the Applicant requests that the Board find that the proposed changes are not more detrimental than the existing structures to neighborhood or the PIOD than the existing conditions and issue a Special Permit accordingly.

Please do not hesitate to contact me at 978-463-7700 if you have any questions.

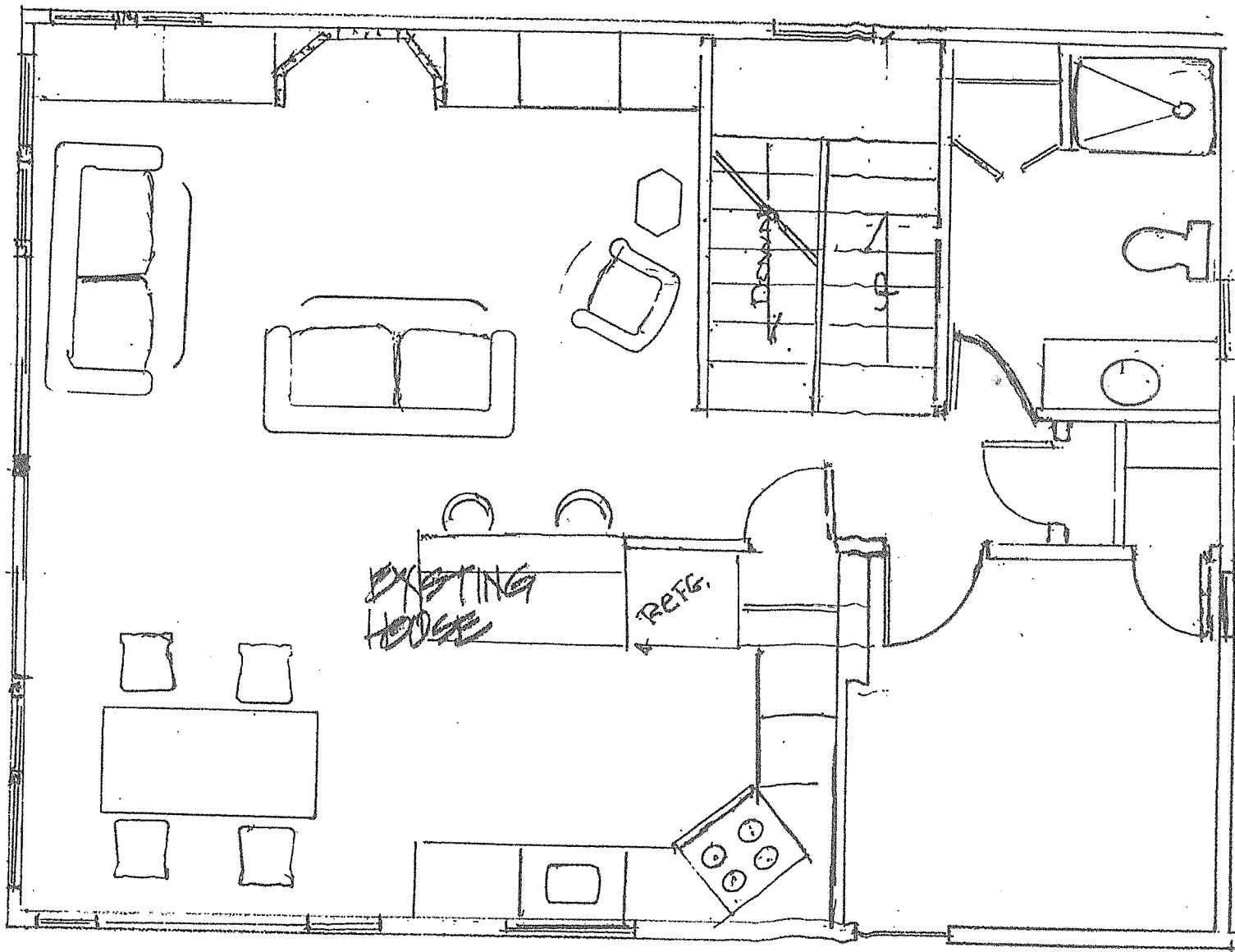
Respectfully submitted,
John and Beverly Murphy,
~~By their Attorney~~



Lisa L. Mead

Attachment
cc: client

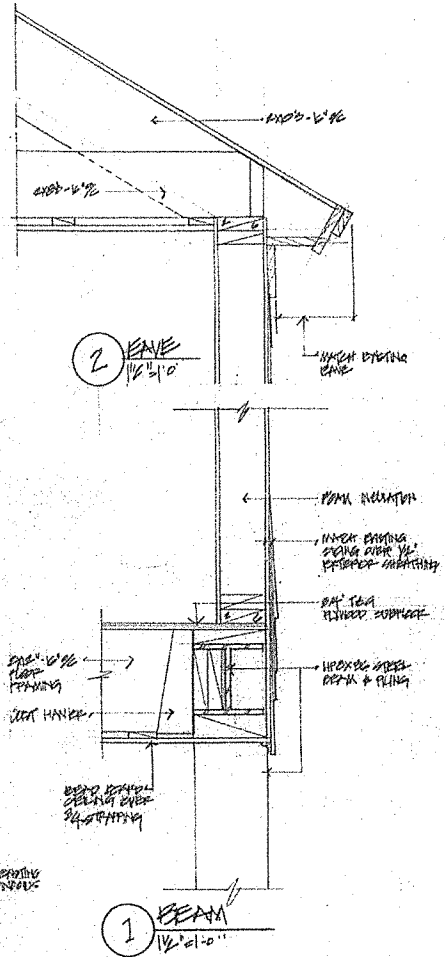
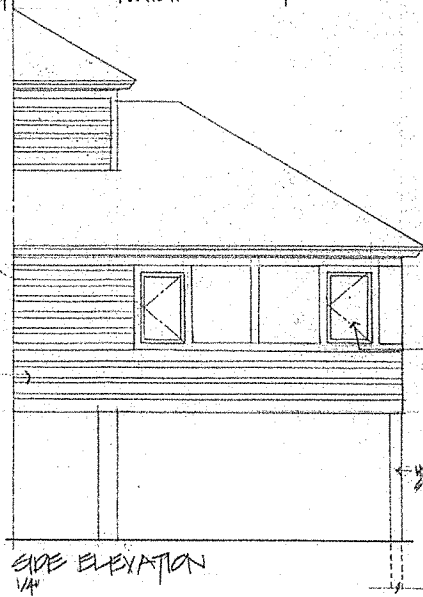
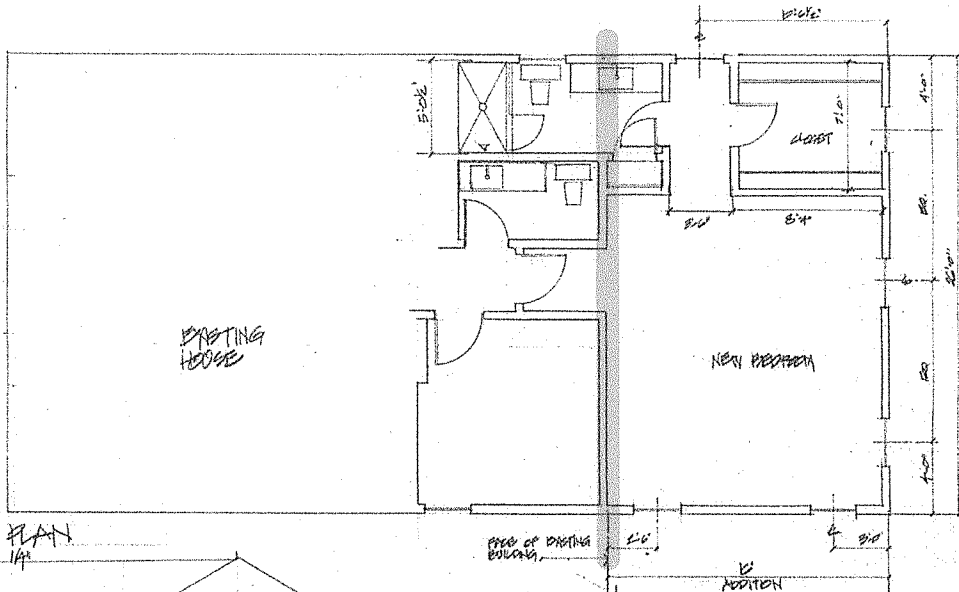
Exhibit A



Scale 1/4" = 1'-0"

MURPHY RESIDENCE
3 MARSH STREET

Exhibit B



MURPHY Residence
3 MARSH STREET