

# City of Newburyport Zoning Board of Appeals Application for a VARIANCE

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

Mailing Address: 30 Green Street, Newburyport MA 01950

Phone: 9784637700 Email: Lisa@mtclawyers.com

Property Address: 68 Middle Street

Map and Lot(s): 16/39 Zoning District: R2 / DCOD

Book and Page(s): 21236/120

Owner(s) Name: Thayer Phipps

Mailing Address (if different): 10 Riverfront Rd, Newbury

The petitioner is requesting a Variance from section(s):  
(Refer to the Zoning Determination form supplied by the Zoning Administrator)

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Dimensional Controls (VI) | <input type="checkbox"/> Parking (VII)        |
| <input type="checkbox"/> Lot Area                             | <input type="checkbox"/> Front Yard           |
| <input type="checkbox"/> Open Space                           | <input checked="" type="checkbox"/> Side Yard |
| <input type="checkbox"/> Lot Coverage                         | <input checked="" type="checkbox"/> Rear Yard |
| <input type="checkbox"/> Height                               | <input type="checkbox"/> Lot Width            |
| <input type="checkbox"/> Frontage                             |   |

- Modification of existing variance (please attach)       Other: \_\_\_\_\_

Request:  
Allow accessory garage to be built within side and rear yard setbacks.

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 VARIANCE**

	Required Dimensional Controls from Section VI.A	Existing Dimensional Controls from survey or site plan	Proposed Dimensional Controls from proposed plans
Lot Area	15,000	5487	5487
Frontage	120	38.6	38.6
Height*	35(two-family building)/ 15(garage)	32/15	32/15
Max. Lot Coverage (%)**	25%	31.3	33.4
Min. Open Space (%)***	40%	31.3	17.5
Primary Front Setback	25	11.1	11.1
Side A Setback/Secondary Front Setback	20(two-family building)/ 6(garage)	0.1/NA	0.1/3.9
Side B Setback	20/6	12.7/NA	16.6/3.5
Rear Setback	25(two-family building)/ 6(garage)	61/NA	61/4
Parking Spaces	4	2	4
FAR****	NA	NA	NA

\*Height is measured to median roofline.

\*\*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.

Thayer F. Phipps  
\_\_\_\_\_  
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

In Hand

October 26, 2020

Zoning Board of Appeals  
City of Newburyport  
60 Pleasant Street  
Newburyport, Massachusetts 01950

Re: 68 Middle Street (the "Property") / Variance Application and Special Permit Application Modification  
Map 16 Lot 39

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"), who on behalf of the owner of the Property will be renovating and adding onto this four family building and converting it to a two family use<sup>1</sup>. The Applicant's prior plans were to convert the building into a three family use and remove the rear later added addition and replace it with a two story addition of a similar footprint. The new proposal is to reduce the use of the Building to a two family use, remove the later added addition in the rear, replace it with a two story addition of a smaller foot print and construct a two car garage in the rear.

**I Accessory Structure Variance**

The garage will be 22' x 24' in footprint and will be 12' in height and will be located 3.5', 3.9' from the side lines and 4.0' from the rear lot line where 6' are required under the Newburyport Zoning Ordinance for accessory structures. Therefore, a variance will be needed for these setbacks.

Pursuant to Section X-H(6) of the Zoning Ordinance, "[t]he [Z]oning [B]oard of [A]ppeals shall have the power. . . to grant. . . a variance. . . from the terms of this zoning ordinance. . ." Here, the grant of a variance by the Board is consistent with the standards of G.L. c. 40A, § 10 and said Section X-H(6).

The shape of the lot is unique in that it is very narrow and oddly shaped. Starting at the nonconforming frontage of the lot, it is only 38.60 feet wide and does not widen much, if at all, through the rest of the lot. From the shape of the lot alone, it is very difficult, if not impossible to build a functional 22'x24' accessory garage anywhere in the remaining available space on the property that will not violate a side

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<sup>1</sup> Please note while the current use is a four family use, it appears from the record that we can only verify a legal three family use since 1970.

or rear setback and need a variance. We emphasize the functionality aspect of this because there also needs to be sufficient room for cars to get in and out of the garage in addition to it meeting the setbacks. Instead of being a rectangular shape that is flush with Middle Street the lot juts diagonally inward at an angle off the street and has a smaller, more rectangular feature in in the rear of the property where there is an inward jog.

There is also a significant rise in elevation that begins towards the rear of the property as the land continues to get higher moving southerly towards Spring Street. In fact, as it is shown on the design plans for the garage, the Applicant needs to also construct retaining walls around the sides of the proposed garage to maintain the existing grades around the proposed garage at the property lines.

While there is little case law addressing circumstances related to structures, G.L. c. 40A, § 10 includes “circumstances relating to the soil conditions, shape, or topography of such land or structures...” (emphasis added) may support granting a variance. Here there is a nonconforming primary residential structure taking up a significant portion of the lot. At the front of the property it leaves 12.7’ to one side for cars to enter and exit the property and further down has exterior entryways that reduce the width of space areas that are not taken up by the structure to only 12.7’ for cars to pass through to access the rear of the property. This leaves the rear as the only feasible location where a garage may be built, but as discussed above, it is also very difficult if not impossible to construct a functional garage in the rear area of the lot that would conform with all setback requirements. While there are also hardships due to the lot shape and topography, it is also clear that the existing structure in relation to the layout of the lot also causes of a hardship.

Lastly, there is a financial hardship. As the Board may be aware, the applicant originally intended for this project to be a three family use that required a special permit and now it is a proposed two family use that requires a special permit with a garage that requires a variance. Due to the concerns of many abutters regarding accommodation of the parking required for a three family use, notwithstanding that is the legal existing use, the only mutually agreeable solution that satisfies the concerns of abutters and is financial feasible to the Applicant is for the use of the property to be two family with a two car garage. Here, there is a financial hardship in addition to other hardships involving the lot shape, topography, and circumstances related to the land and the existing structure on the property, none of which are self-created by the applicant. Further, some consideration should be given to the hard work of all of the parties to come to a workable solution. The Applicant is giving up a substantial benefit of the continued three (3) family use.

According to the Zoning Ordinance itself, a hardship may be found to exist “[w]here by reason of . . . unusual shape of a specific site. . . the literal enforcement of the requirements of this [Zoning Ordinance] pertaining to yards or other space relationships. . . would result in exceptional practical difficulties or exceptional and undue hardship upon the owner of such property.” See Zoning Ordinance, § X-H(6)(D)(1). Here, the Property is very narrow, has an odd shape, and is located unlevel land with a significant rise in the rear resulting in exceptional practical difficulties and undue hardship. The small side and rear yards and special relationship of the existing structure causes the hardships the Applicant is facing.

The proposal does not derogate from the intent and purpose of the Ordinance as the location of the proposed accessory structure was placed in the location where it could best function as an accessory garage structure despite the dimensional limitations of the lot.

Further, the proposed change will not be detrimental to the neighborhood as there will be no negative impacts on any neighbors as a result of the granting of the variance. Surveying the surrounding neighborhood there appear to be a number of accessory structures located on or at least less than six feet from either side or rear boundaries. See Exhibit A-Merrimack Valley Planning Commission Map attached with accessory structures

highlighted. As shown on the site plan included with this application, the property of 5 Spring Street abutting 68 Middle Street to the rear also appears to have a large accessory structure is mere inches from the property line. Additionally, the Applicant is incorporating retaining walls to help provide support to the adjacent land of abutters at their request.

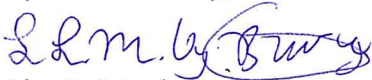
The Property currently is a preexisting non-conforming lot and the Applicants did not choose to create these conditions. The proposed accessory structure will not create any inconsistencies with surrounding properties in this portion of the R-2 district. There are a number of other residential structures and lots in the neighborhood which also appear to have non-conforming accessory structures with the minimum side and rear setbacks not being met.

## II Modification to Previously Requested Special Permit

The Applicant previously submitted a request for a special permit to modify the pre-existing non-conforming three family structure by removing the rear addition and adding a new two story addition. As noted above, the Applicant is now reducing the use to a two family use and reducing the size of the addition on the rear to a smaller foot print. The Applicant continues to require a Special Permit for Non-Conformities. The Applicant will be intensifying lot coverage from 31.3% to 33.4%, open space from 31.3% to 17.9% and the left side setback will be extended but not exacerbated. The current left side setback is 12.7' and the extension will be at the 16.6' length. So while these dimensional requirements are intensified, the overall use is reduced. The reduction from 3 to 2 units and the proposed modifications will not be substantially more detrimental to the neighborhood as the over all impact is less and will provide for less congestion in the neighborhood overall.

Based on the foregoing, the Applicant requests that the Board grant a variance for the Property.

Respectfully submitted,  
Windward Shaw LLC  
By their Attorney,

  
Lisa L. Mead

Attachment  
cc: client

ZONING DETERMINATION

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

Address: 68 Middle Street Zoning District(s): R2/DCOD

Request: Demolish non historic 1 story portion of multifamily structure and construct new smaller 2 story addition in similar non conforming location on NC lot lessening the Use to a two family. Construct a garage in new NC location req. a Variance and increasing NC lot coverage.

ZONING BOARD REVIEW REQUIRED

Variance

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

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)

Site Plan Review (XV)

- Major, Minor

Smart Growth District (XXIX)

- Plan Approval

HISTORICAL COMMISSION REVIEW REQUIRED

- Demo. Delay, \*Advisory Review

CONSERVATION COMMISSION REVIEW REQUIRED

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

Jennifer T Blanchet

10/20/2020

Newburyport Zoning Administrator

Date

# 68 MIDDLE ST

**Location** 68 MIDDLE ST

**MBLU** 16/ 39/ / /

**Owner** PHIPPS THAYER F

**Assessment** \$785,400

**PID** 612

**Building Count** 1

## Current Value

Assessment			
Valuation Year	Improvements	Land	Total
2020	\$408,100	\$377,300	\$785,400

## Owner of Record

**Owner** PHIPPS THAYER F  
**Co-Owner**  
**Address** 16 KNOBB HILL  
BYFIELD, MA 01922

**Sale Price** \$525,000  
**Certificate**  
**Book & Page** 21236/0120  
**Sale Date** 07/11/2003  
**Instrument** 00

## Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
PHIPPS THAYER F	\$525,000		21236/0120	00	07/11/2003
CRONIN KATHLEEN J	\$0		17705/0392	1A	09/28/2001
CRONIN KATHLEEN J TRUSTEE	\$153,000		13214/0099	00	09/29/1995
LEAVITT MILTON A	\$0		3962/ 511		

## Building Information

### Building 1 : Section 1

**Year Built:** 1869  
**Living Area:** 2,976

Building Attributes	
Field	Description
Style	Family Conver.
Model	Residential
Stories:	3 Stories

Occupancy	4
Exterior Wall 1	Brick/Masonry
Exterior Wall 2	
Roof Structure:	Gable/Hip
Roof Cover	Asph/F GlS/Cmp
Interior Wall 1	Plastered
Interior Wall 2	
Interior Flr 1	Pine/Soft Wood
Interior Flr 2	Hardwood
Heat Fuel	Electric
Heat Type:	Forced Air-Duc
AC Type:	None
Total Bedrooms:	3 Bedrooms
Total Bthrms:	4
Total Half Baths:	0
Total Xtra Fixtrs:	
Total Rooms:	8 Rooms
Bath Style:	Average
Kitchen Style:	Average

### Building Photo



(<http://images.vgsi.com/photos/NewburyportMAPhotos//01\01\00\97.jpg>)

### Building Layout



([http://images.vgsi.com/photos/NewburyportMAPhotos//Sketches/612\\_659](http://images.vgsi.com/photos/NewburyportMAPhotos//Sketches/612_659))

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
BAS	First Floor	1,758	1,758
FUS	Upper Story, Finished	1,218	1,218
FOP	Porch, Open	42	0
UBM	Basement, Unfinished	1,758	0
UUS	Upper Story, Unfinished	1,218	0
		5,994	2,976

### Extra Features

Extra Features	Legend
No Data for Extra Features	

### Land



**Land Use**

**Use Code** 1110  
**Description** APT 4-8 UN

**Land Line Valuation**

**Size (Acres)** 0.12  
**Depth** 0  
**Assessed Value** \$377,300

**Outbuildings**

Outbuildings	<u>Legend</u>
No Data for Outbuildings	

**Valuation History**

Assessment			
Valuation Year	Improvements	Land	Total
2019	\$339,700	\$377,300	\$717,000

**LOCUS TITLE INFORMATION**

68 MIDDLE STREET

OWNER: THAYER F. PHIPPS  
 DEED REFERENCE: BOOK 21236 PAGE 120  
 ASSESSORS: MAP 16 PARCEL 39

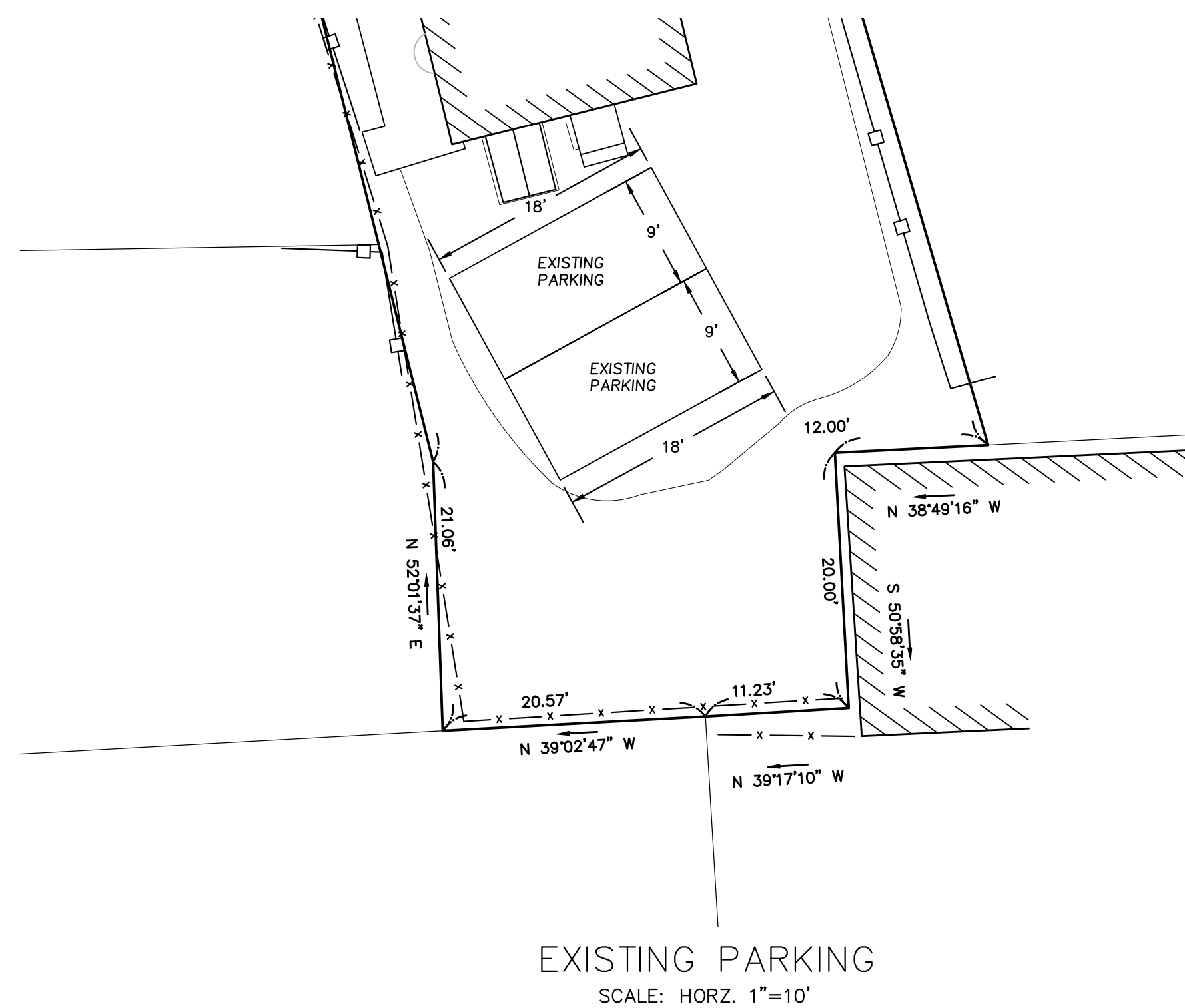
**ZONING**

RESIDENTIAL (R-2)  
 MULTI-FAMILY (103)

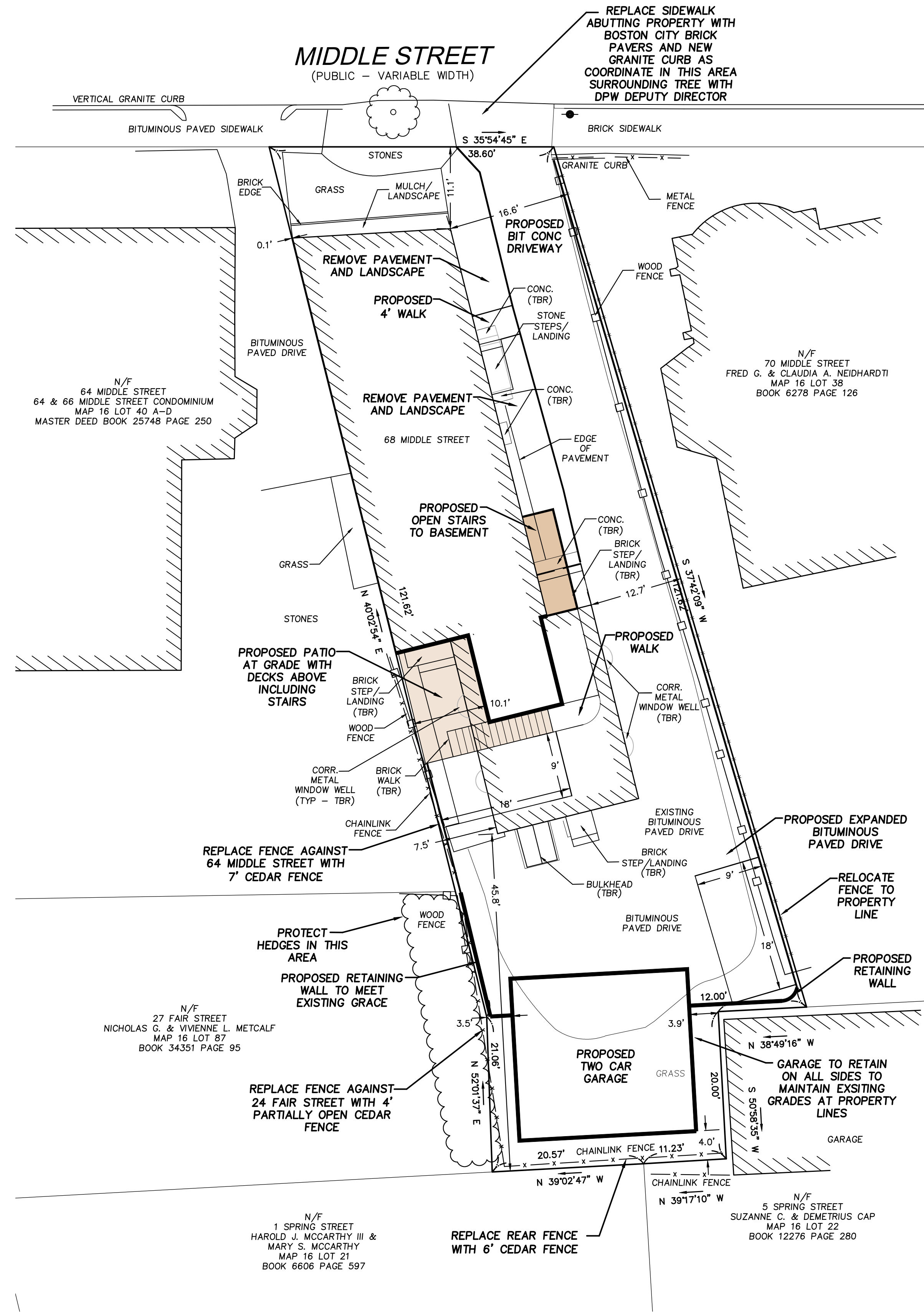
	REQUIRED (MULTI-FAMILY - 103)	EXISTING (MULTI-FAMILY - 103)	REQUIRED (TWO-FAMILY - 102)	PROPOSED (TWO-FAMILY - 102)
MINIMUM LOT AREA	20,000 SQUARE FEET	5,487 SQUARE FEET	15,000	5,487 SQUARE FEET
MINIMUM LOT FRONTAGE	120 FEET	38.60 FEET	120 FEET	38.60 FEET
FRONT SETBACK	20 FEET	11.1 FEET	25 FEET	11.1 FEET
SIDE SETBACK (R)	10 FEET	0.1 FEET	20 FEET	0.1 FEET
SIDE SETBACK (R-GAR)	6 FEET	N/A	20 FEET	3.5 FEET
SIDE SETBACK (L)	10 FEET	12.7 FEET	20 FEET	16.6 FEET
SIDE SETBACK (L-GAR)	6 FEET	N/A	20 FEET	3.9 FEET
REAR SETBACK	20 FEET	45.8 FEET	25 FEET	61.0 FEET
REAR SETBACK (GAR)	6 FEET	N/A	25 FEET	4.0 FEET
MAXIMUM LOT COVERAGE(%)	25.0%	31.3%	25.0%	33.4%
MAXIMUM HEIGHT	35 FEET	32 FEET	35 FEET	32 FEET
MAXIMUM HEIGHT (GAR)	15 FEET	N/A	15 FEET	15 FEET
MINIMUM OPEN SPACE	40.0%	31.3%	40.0%	17.9%
MINIMUM PARKING REQUIRED	6	2	4	4

ON-LINE ZONING ORDINANCES  
 CITY OF NEWBURYPORT WEBSITE  
<http://www.cityofnewburyport.com/Planning/Index.html>  
 PLANNING DEPARTMENT - MAIN PHONE 978-465-4400

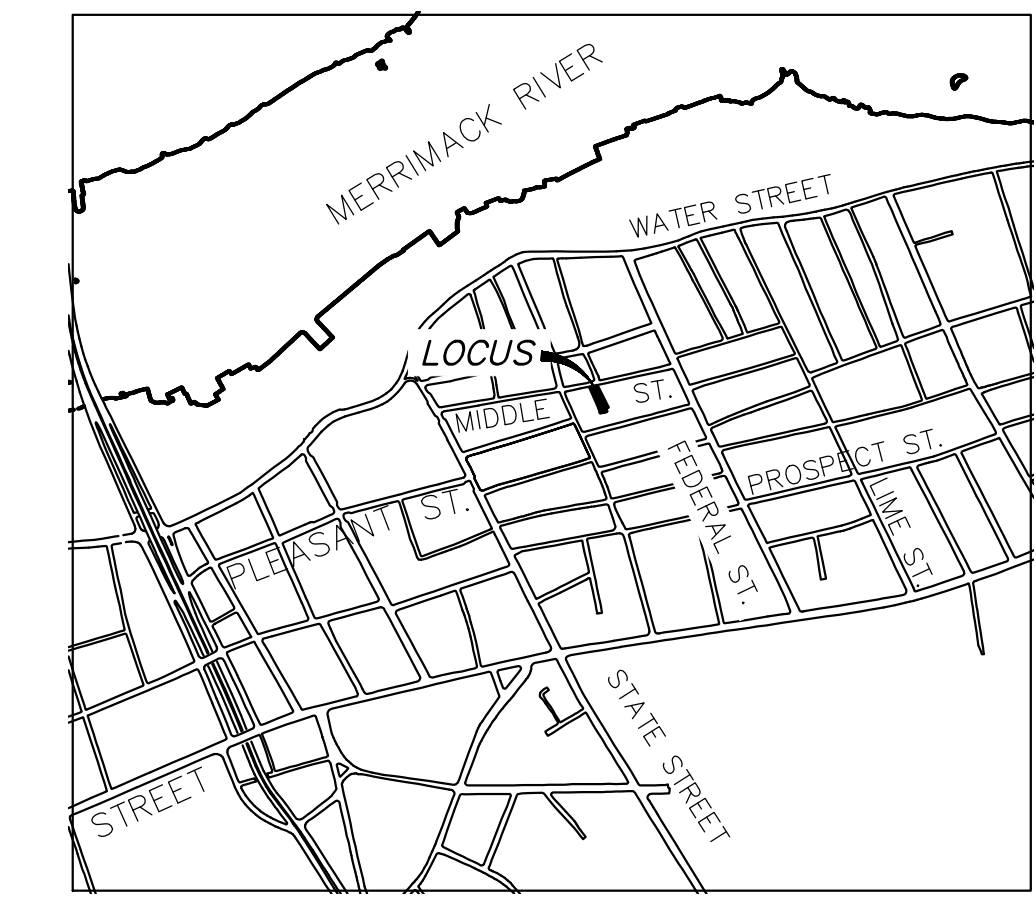
INFORMATION REGARDING ZONING, INCLUDING PARKING ABOVE, SHOWN HEREON IS NOT INTENDED TO BE A DEFINITIVE ZONING OPINION AND IS FOR INFORMATIONAL PURPOSES ONLY. ALL INFORMATION SHOULD BE VERIFIED BY LEGAL COUNSEL PRIOR TO RELIANCE UPON THE SAME.



EXISTING PARKING  
 SCALE: HORZ. 1"=10'



SITE PLAN  
 SCALE: HORZ. 1"=10'



LOCUS  
 SCALE 1"=1,000'

**NOTES**

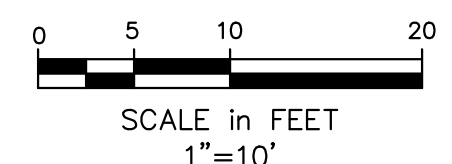
THE PURPOSE OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS ON THE LOT AND IS THE RESULT OF AN ON-THE-GROUND INSTRUMENT SURVEY PERFORMED APRIL 7, 2020.

DESIGN INFORMATION IS AS PROVIDED BY THE PROJECT ARCHITECT AND PROJECT COORDINATED WITH THE PROJECT TEAM.

OWNERSHIP INFORMATION USED IN THE PREPARATION OF THIS PLAN WAS OBTAINED FROM THE CITY OF NEWBURYPORT ASSESSOR'S OFFICES.

TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF, THIS PLAN CONFORMS TO THE TECHNICAL AND PROCEDURAL STANDARDS FOR THE PRACTICE OF LAND SURVEYING IN THE COMMONWEALTH OF MASSACHUSETTS.

EVERETT J. CHANDLER, P.L.S.  
 MASS. REGISTRATION NO. 41783



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Winter GEC, LLC

44 MERRIMACK STREET  
 NEWBURYPORT, MA 01950  
 978-270-8626

NO.	DATE	BY	REVISIONS
2	10/10/20	EJC	UPDATED TO TWO FAMILY / ADDED GARAGE / NOTES
1	9/9/20	EJC	ADDED DETAIL ON EXISTING PARKING

FIELD: CO  
 CALCS: EC  
 CHECKED: EJC  
 APPROVED: EJC

ZONING BOARD OF APPEALS  
 PLAN

68 MIDDLE STREET

PLAN OF LAND IN  
 NEWBURYPORT, MASSACHUSETTS  
 SURVEYED FOR  
 THAYER F. PHIPPS

PROJECT NO.  
 2020-68MIDDLE  
 DATE: JUN 17, 2020  
 SHEET NO.  
 1 OF 1









