

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

Petitioner: Windwrd Shaw LLC, c/o Lisa L. 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: R3

Book and Page(s): 21236/120

Owner(s) Name: Philip Thayer

Mailing Address (if different): 16 Knob Hill, Byfield MA

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) |
| <input type="checkbox"/> Parking | <input type="checkbox"/> Plum Island Overlay District (XXI-G) |
| <input type="checkbox"/> Upward Extension | <input type="checkbox"/> FAR |
| <input type="checkbox"/> Open Space | <input type="checkbox"/> Footprint Expansion |
| <input type="checkbox"/> Height | <input type="checkbox"/> Height Increase |
| <input checked="" type="checkbox"/> Lot Area | |
| <input type="checkbox"/> Use | |

Description of request:

Remove later added one story addition on rear and replace with conforming two story addition. 4 family use to become 3 family use.

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	5487	5487	20000
Frontage	38.60	38.60	120
Height*	32	32	35
Lot Coverage (%)**	31.3	30	25
Open Space (%)***	31.3	31.3	40
Front Setback	11.1	11.1	20
Side A Setback	0.1	0.1	10
Side B Setback	12.7	12.7	10
Rear Setback	45.8	46.1	20
Parking Spaces	2	3	6
FAR****	na	na	na

*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.

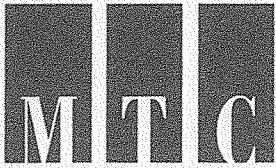
By checking this box and typing my name below, I am electronically signing this application.



 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

July 12, 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;
68 Middle Street, Newburyport, MA (the "Property")
Assessor's 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 three family use¹. The Applicant requests a determination of the relief required for the project.

The Applicant proposes to remove the addition in the back and build an addition which meets all of the setbacks and does not increase the lot coverage rather the new structure would reduce lot coverage². The proposed addition would be inside and smaller than the existing footprint. The use would be a three family use. Please also note there are currently 2 parking spaces and there will be 3 after.

¹ 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. Based upon information gathered it has been used as a 4 family for well over 20 years and is classified as such in the assessor's records.

² In 1970 the then owner received a dimensional variance ("density"). The variance decision is vague but when one examines the assessor's records along with the decision it appears as though the relief was for lot area because of the use, frontage, lot coverage (maybe) and side yard setback on the rear right hand side. No plan exists in the Planning Office file along with the variance nor are there plans of record. I have attached the variance as Exhibit A. This Application does not change the use or impact of use on the lot. Indeed, the proposal will bring into conformance all setbacks once impacted by the use.

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

The Property is listed as contributory on the Data Sheets the original structure having been constructed in or around 1820 according to the Data Sheets and 1860 according to the Assessor's Records. The Applicant is not removing 25% of the exterior walls and therefore a DCOD Special Permit is not required. Further, the Applicant will only be removing the 1970 structure and therefore there will be no review was required by the Historic Commission.

The Property is non-conforming for frontage with 36.60 where 120 are required, westerly side set back with 0.1 where 10 is required and parking with 2 where 6 is required.³

The Applicant requires a Special Permit for Nonconformities under section IX-B(2)(B) from the Zoning Board. The Ordinance requires the Board make the following finding for structures other than single or two family structures:

1. That there will be no intensification or extension of an existing nonconformity or the addition of a new nonconformity; and
2. That the proposed change will not be substantially more detrimental to the neighborhood than the existing nonconforming structure or use.

For the proposal at hand, the Applicant is not intensifying or extending nor creating any new non-conformities. Indeed, the Applicant is improving dimensional incursions that were once granted by variance. All setbacks will be met by the proposed addition.

Next, the Board can find that the proposal will not be substantially more detrimental to the neighborhood. Here, the Applicant is reducing the impacts of the dimensional incursions previously granted. The rear section of the structure will be much more in keeping with the existing historic structure and with the neighborhood. The addition which is being replaced is at the rear of the Property and will meet all setbacks As you can see on the site plan, the addition is not adjacent to any surrounding residence. Immediately to the east at 70 Middle the addition now and will be adjacent to the back yard (but more than the required 10 feet setback away), to the south the back yard abuts the back yards of 1 and 5 Spring Street. There will be no impact on either of those properties. The property at 5 Spring has a barn/garage immediately adjacent to the rear yard of the Property. In any event the addition is 46 feet away from either property. Finally, the property to the west at 64 Middle Street is a four (4) unit condominium and the addition, again, is adjacent to the back yard, but outside of the required side yard setback.

The style and architecture of the addition is more in keeping with the neighborhood than the existing one story addition (See attached photographs). Further, it improves upon the impacted setbacks and the setbacks are now conforming.

³ As noted above it appears as though the variance was granted for lot area, lot coverage and westerly side setback of the 1970 addition along with parking. All of those conditions will be improved or made to meet current zoning requirements, but for lot area.

Based upon the foregoing, the Board can find that the proposed addition does not intensify or create and new non-conformities and is not substantially more detrimental to the neighborhood than the existing non-conforming structure.

Respectfully submitted
Windward Shaw LLC
By their Attorney

A handwritten signature in black ink, appearing to be 'Lisa L. Mead', written over the text 'By their Attorney'.

Lisa L. Mead

Attachment
cc: client

CITY OF NEWBURYPORT, MA
ZONING DETERMINATION

APR# 2020-052

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

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

Request: Demo existing non historic addition at rear of non conforming structure and construct new addition that conforms to setbacks. Proposed structure will be reconfigured to be a 3 unit down from the non legal 4 unit, but remain a non conforming multifamily.

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
 - Open Space
 - 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
 - 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

_____  07/13/2020
Newburyport Zoning Administrator Date

Account #

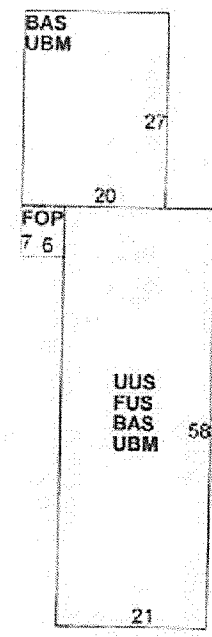
Bldg #: 1 of 1

CONSTRUCTION DETAIL			CONSTRUCTION DETAIL (CONTINUED)		
Element	Cd	Description	Element	Cd	Description
Style	11	Family Conv.			
Model	01	Residential			
Grade	03	Average			
Stories	3	3 Stories			
Occupancy	4				
Exterior Wall 1	20	Brick/Masonry			
Exterior Wall 2					
Roof Structure	03	Gable/Hip			
Roof Cover	03	Asph/F Gls/Cmp			
Interior Wall 1	03	Plastered			
Interior Wall 2					
Interior Fir 1	09	Pine/Soft Wood			
Interior Fir 2	12	Hardwood			
Heat Fuel	04	Electric			
Heat Type	04	Forced Air-Duc			
AC Type	01	None			
Total Bedrooms	03	3 Bedrooms			
Total Bthrms	4				
Total Half Baths	0				
Total Ntra Fixtrs					
Total Rooms	8	8 Rooms			
Bath Style	02	Average			
Kitchen Style	02	Average			

Kitchen Grd

MIXED USE		
Code	Description	Percentage
1110	APT 4-8 UN	100

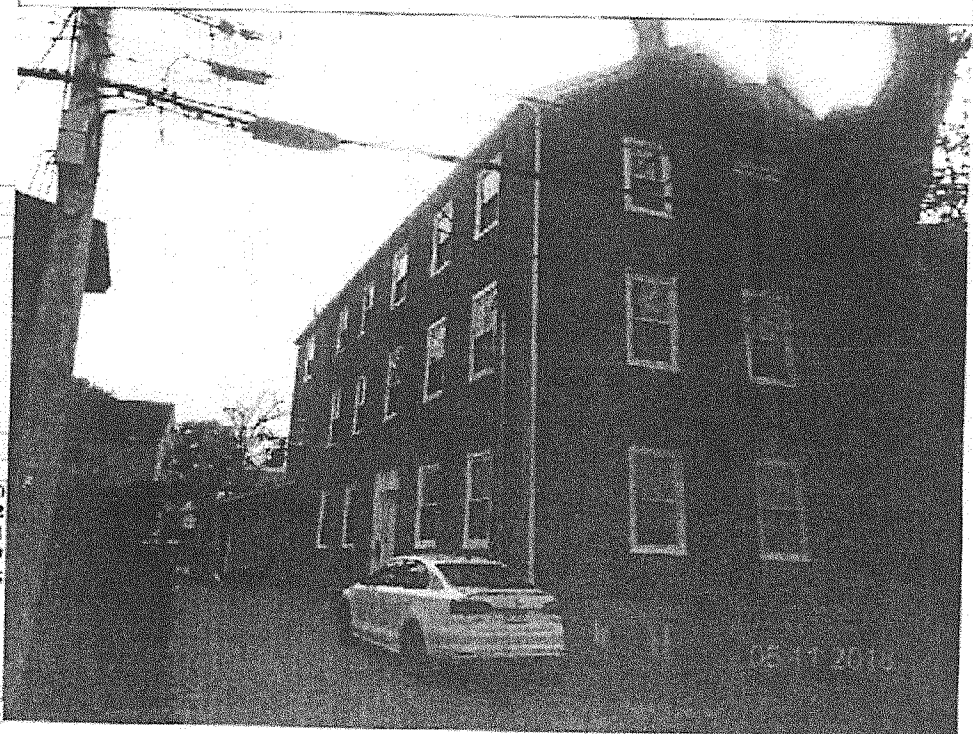
COST/MARKET VALUATION	
Adj. Base Rate:	147.78
Replace Cost	582,975
AYB	1869
EYB	1989
Dep Code	A
Remodel Rating	
Year Remodeled	
Dep %	30
Functional Obslnc	0
External Obslnc	0
Cost Trend Factor	1
Condition	
% Complete	
Overall % Cond	70
Apprais Val	408,100
Dep % Ovr	0
Dep Ovr Comment	
Misc Imp Ovr	0
Misc Imp Ovr Comment	
Cost to Cure Ovr	0
Cost to Cure Ovr Comment	



OR-OUTBUILDING & YARD ITEMS(L) / XF-BUILDING EXTRA FEATURES(B)												
Code	Description	Sub	Sub Descript	L/B	Units	Unit Price	Yr	Gde	Exp Rt	Cnd	%Cnd	Apr Value

BUILDING SUB-AREA SUMMARY SECTION						
Code	Description	Living Area	Gross Area	Eff Area	Unit Cost	Undeprec. Value
BAS	First Floor	1,758	1,758	1,758	147.78	259,790
FOP	Porch, Open	0	42	8	28.15	1,182
FUS	Upper Story, Finished	1,218	1,218	1,218	147.78	179,991
UBM	Basement, Unfinished	0	1,758	352	29.59	52,017
UUS	Upper Story, Unfinished	0	1,218	609	73.89	89,995

Ttl. Gross Liv/Lease Area: 2,976 5,994 3,945 582,975



Property Location: 68 MIDDLE ST
 Vision ID: 612

MAP ID: 16739777

Bldg Name:

State Use: 1110

Account #

Bldg #: 1 of 1

Sec #: 1 of 1

Card 1 of 1

Print Date: 06/29/2020 08:11

CURRENT OWNER		TOPO.	UTILITIES	STRT/ROAD	LOCATION	CURRENT ASSESSMENT			
PHIPPS THAYER F						Description	Code	Appraised Value	Assessed Value
16 KNOBB HILL						RESIDENTL	1110	408,100	408,100
BYFIELD, MA 01922						RES LAND	1110	377,300	377,300
Additional Owners:		SUPPLEMENTAL DATA				Total: 785,400 785,400			
		Other ID: 16-39	CONDO CV:						
		SUB-DIV	INLAW Y/N:						
		PHOTO	LOT SPLIT:						
		WARD 2	40B HSG:						
		TILE #:	ASSOC PID#						
		ATT 1/2 HSE:							
		GIS ID: M 251732 951155							

123
 NEWBURYPORT, MA
VISION

RECORD OF OWNERSHIP		BK-VOL/PAGE	SALE DATE	q/u	wi	SALE PRICE	V.C.	PREVIOUS ASSESSMENTS (HISTORY)									
PHIPPS THAYER F		21236/0120	07/11/2003	Q	1	525,000	00	Yr	Code	Assessed Value	Yr	Code	Assessed Value	Yr	Code	Assessed Value	
CRONIN KATHLEEN J		17705/0392	09/28/2001	U	1		1A	2020	1110	408,100	2019	1110	339,700	2018	1110	334,200	
CRONIN KATHLEEN J TRUSTEE		13214/0099	09/29/1995	Q	1	153,000	00	2020	1110	377,300	2019	1110	377,300	2018	1110	359,300	
LEAVITT MILTON A		3962/ 511				0											
		Total:						785,400		Total:		717,000		Total:		693,500	

EXEMPTIONS				OTHER ASSESSMENTS				APPRAISED VALUE SUMMARY				
Year	Type	Description	Amount	Code	Description	Number	Amount	Comm. Int.	This signature acknowledges a visit by a Data Collector or Assessor			
Total:								Appraised Bldg. Value (Card) 408,100				

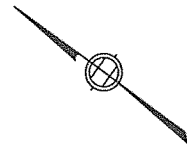
ASSESSING NEIGHBORHOOD			
NBHD: SUB	NBHD Name	Street Index Name	Tracing
6/A			

NOTES	
2 STUDIOS, 2 APPTS- TOTAL 4 UNITS	

BUILDING PERMIT RECORD								VISIT/ CHANGE HISTORY						
Permit ID	Issue Date	Type	Description	Amount	Insp. Date	% Comp.	Date Comp.	Comments	Date	Type	IS	ID	Ca	Purpose/Result
A2019-0701	11/21/2019	RE	Remodel	88,180		0		UNIT 1 - INTER RENO	05/10/2018			DG	50	Building Permit
A2017-0636	11/27/2017	BP	REPAIR/MISC	3,700		100		INSTALL 2 MASONRY	02/01/2007			PR	02	Measur+2Visits
									05/22/1998			CN	01	Measur+1Visit
									05/09/1998			CN	00	Measur+1Listed
									07/21/1988			BM	00	Measur+Listed

LAND LINE VALUATION SECTION																
B Use # Code	Use Description	Zone	D	Front	Depth	Units	Unit Price	Factor	% A	Acre Disc	C Factor	ST Idx	Adj.	Notes- Adj	Special Pricing	
1 1110	APT 4-8 UN	R3				5,260 SF	41.58	1.1500	6	1.0000	1.50		0.00	4 UNITS	Spec Use Spec Code	
														S Adj Fact	Adj. Unit Price	Land Value
														1.00	71.72	377,300

Total Card Land Units: 0.12 AC Parcel Total Land Area: 0.12 AC Total Land Value: 377,300



LOCUS TITLE INFORMATION

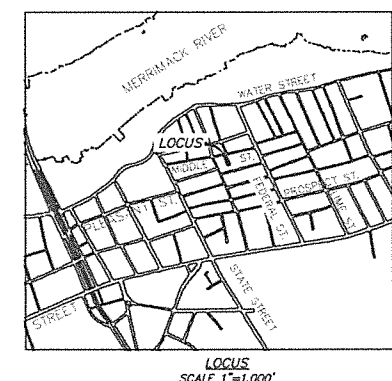
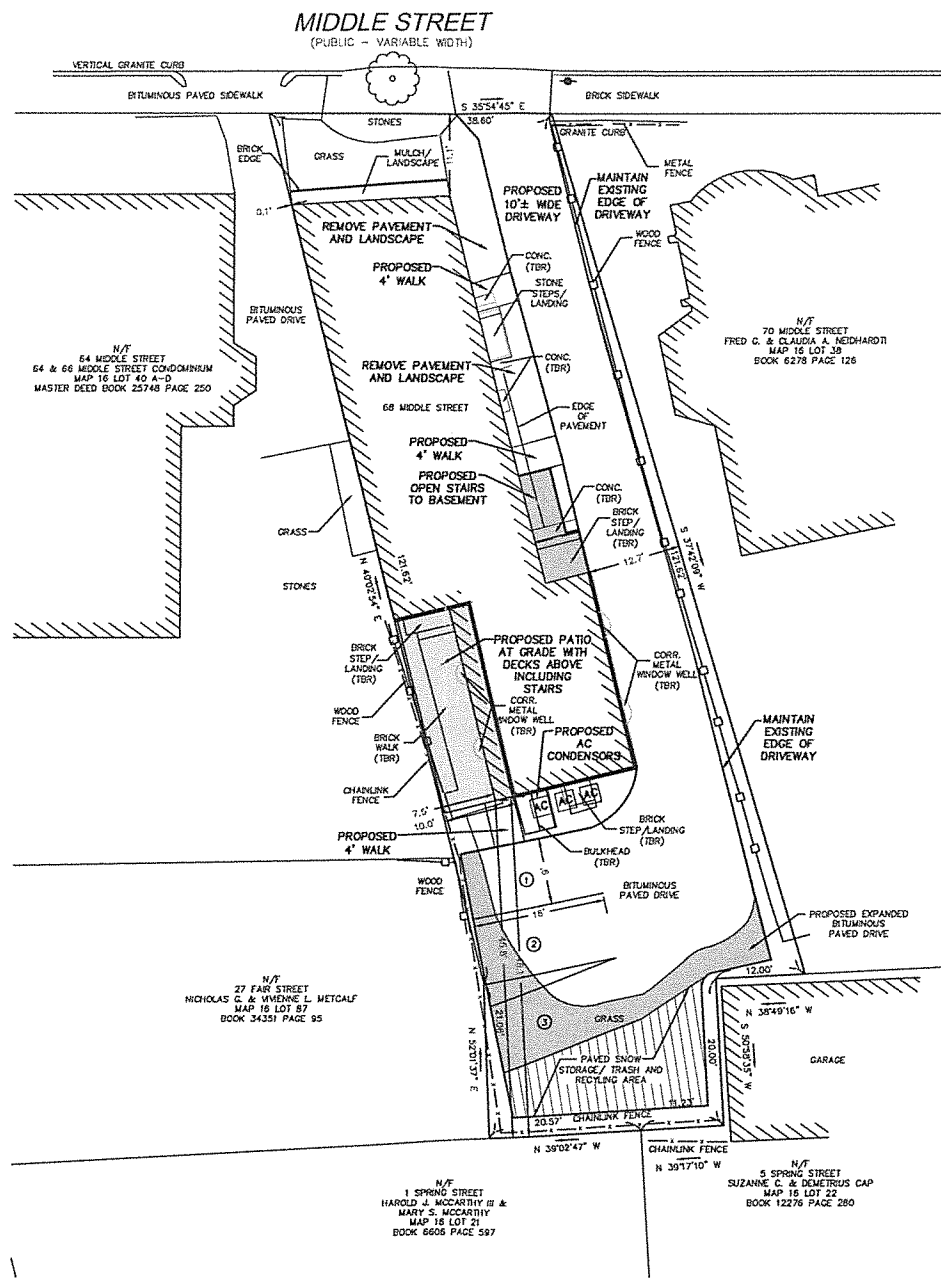
68 MIDDLE STREET
 OWNER: THAYER F. PHIPPS
 DEED REFERENCE: BOOK 21236 PAGE 120
 ASSESSORS: MAP 16 PARCEL 39

ZONING

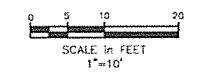
RESIDENTIAL (R-2)
 MULTI-FAMILY (103)

	REQUIRED (MULTI-FAMILY - 103)	EXISTING (MULTI-FAMILY - 103)	PROPOSED (MULTI-FAMILY - 103)
MINIMUM LOT AREA	20,000 SQUARE FEET	5,487 SQUARE FEET	5,487 SQUARE FEET
MINIMUM LOT FRONTAGE	120 FEET	38.60 FEET	38.60 FEET
FRONT SETBACK	20 FEET	11.1 FEET	11.1 FEET
SIDE SETBACK (R)	10 FEET	0.1 FEET	0.1 FEET
SIDE SETBACK (L)	10 FEET	12.7 FEET	12.7 FEET
REAR SETBACK	20 FEET	45.8 FEET	46.1 FEET
MAXIMUM LOT COVERAGE(%)	25.0%	31.3%	30.0%
MAXIMUM HEIGHT	35 FEET	32 FEET	32 FEET
MINIMUM OPEN SPACE	40.0%	31.3%	31.3%
MINIMUM PARKING REQUIRED	6	2	3

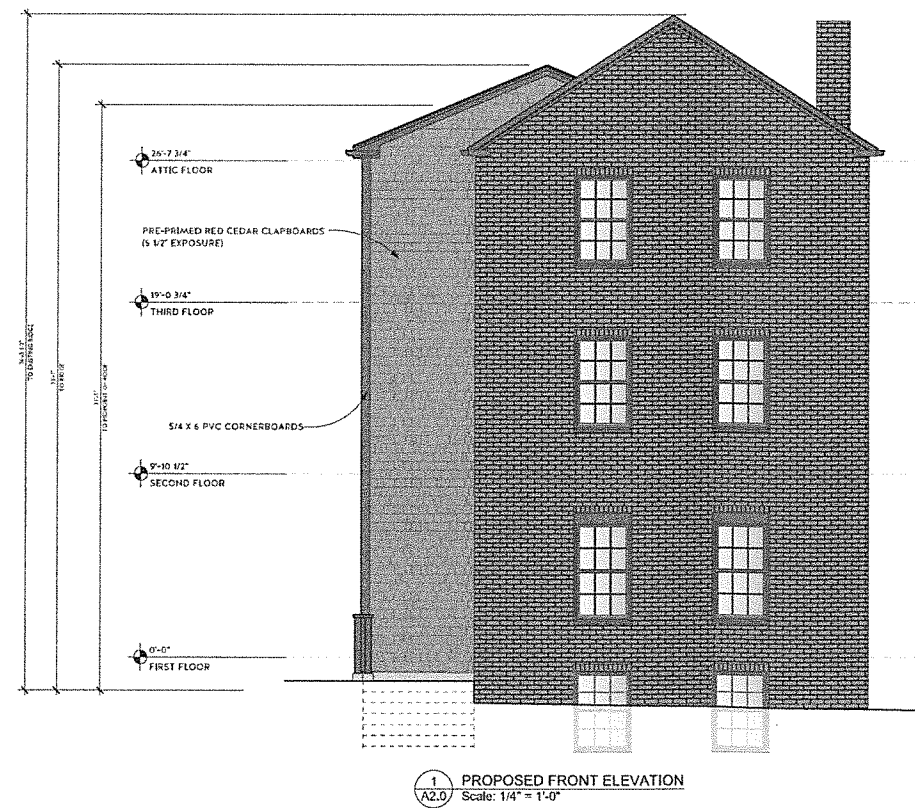
ON-LINE ZONING ORDINANCES
 CITY OF NEWBURYPORT WEBSITE
<http://www.cityofnewburyport.com/Planning/index.html>
 PLANNING DEPARTMENT - MAIN PHONE 978-465-4400
 INFORMATION REGARDING ZONING, INCLUDING PARKING ABOVE, SHOWN HEREON
 IS NOT INTENDED TO BE A DEFINITIVE ZONING OPINION AND IS FOR
 INFORMATIONAL PURPOSES ONLY. ALL INFORMATION SHOULD BE VERIFIED BY
 LEGAL COUNSEL PRIOR TO RELIANCE UPON THE SAME.



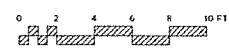
NOTES
 THE PURPOSE OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS ON THE LOT AND IS THE RESULT OF AN ON-THE-GROUND INSTRUMENT SURVEY PERFORMED APRIL 7, 2020.
 DESIGN INFORMATION IS AS PROVIDED BY THE PROJECT ARCHITECT AND PROJECT COORDINATED WITH THE PROJECT TEAM.
 OWNERSHIP INFORMATION USED IN THE 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.



Copyright 2020 Winter GEC, LLC Winter GEC, LLC 44 MERRIMACK STREET NEWBURYPORT, MA 01950 978-270-8626	SCALE: HORIZ: 1" = 10' VERT:	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th>NO.</th> <th>DATE</th> <th>BY</th> <th>REVISIONS</th> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>	NO.	DATE	BY	REVISIONS					FIELD: <u>CO</u> CALCS: <u>EC</u> CHECKED: <u>EJC</u> APPROVED: <u>EJC</u>	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
	NO.	DATE	BY	REVISIONS										
Copyright 2020 Winter GEC, LLC														



C:\01\68MiddleSLD_6-23-20.vvx



SCOTT M BROWN
ESTD ARCHITECTS 2007

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

ADDITION/RENOVATION
68 MIDDLE STREET, NEWBURYPORT, MA

REVISION & REISSUE NOTES		
No.	Date	Notes

Project # 2020-18	Project Manager M.L.	Date 6/29/20
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Scale: AS NOTED

PROPOSED ELEVATIONS

A2.0

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