

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

Petitioner: Arthur Russo c/o Lisa Mead, Mead, Talerman & Costa LLC

Mailing Address: 30 Green Street, Newburyport, MA 01950

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

Property Address: 316 High Street

Map and Lot(s): Map 66; Lot 7 Zoning District: R2/DCOD

Book and Page(s): 37306/176

Owner(s) Name: Arthur Russo

Mailing Address (if different): 316 High Street, Newburyport, MA 01950

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 checked="" 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 type="checkbox"/> Lot Area | |
| <input type="checkbox"/> Use | |
| <input type="checkbox"/> Rear Yard | |
| <input type="checkbox"/> Lot Coverage | |
| <input type="checkbox"/> Side Yard | |
| <input type="checkbox"/> Lot Frontage | |
| <input checked="" type="checkbox"/> Front Yard | |

Description of request:

Construct addition in rear yard of a corner lot extending an existing nonconformity and creating a new nonconformity.

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

	Required Dimensional Controls from Section VI.A	Existing Dimensional Controls from survey or site plan	Proposed Dimensional Controls from proposed plans
Lot Area	10,000 s.f.	9,361 s.f.	9,361 s.f.
Frontage	90 ft.	200.68 ft.(combined)	200.68 ft.(combined)
Height*	35 ft.	23'4"	23'4"
Max. Lot Coverage (%)**	25%	18.9%	24.4%
Min. Open Space (%)***	40%	60.7%	57.5%
Primary Front Setback	25 ft.	34.1 ft.	34.1 ft.
Side A Setback/Secondary Front Setback	25 ft. (secondary front setback)	1.2 ft.	1.2 ft.
Side B Setback	10 ft.	67.9 ft.	63.4 ft.
Rear Setback	25 ft.	26.1 ft.	10 ft.
Parking Spaces	2	2+	2+
FAR****	n/a	n/a	n/a

*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.

Same as Owner

 Petitioner

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

Chris Russo

 Owner (if different)

Francesca Russo

City of Newburyport Zoning Board of Appeals Application for a VARIANCE

Petitioner: Arthur Russo c/o Lisa Mead, Mead, Talerman & Costa LLC

Mailing Address: 30 Green Street, Newburyport, MA 01950

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

Property Address: 316 High Street

Map and Lot(s): Map 66; Lot 7 Zoning District: R2/DCOD

Book and Page(s): 37306/176

Owner(s) Name: Arthur Russo

Mailing Address (if different): 316 High Street, Newburyport, MA 01950

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 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 | |
| <input type="checkbox"/> Modification of existing variance (please attach) | <input type="checkbox"/> Other: _____ |

Request:
Construct addition in rear yard of a corner lot extending an existing nonconformity and creating a new nonconformity.

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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	10,000 s.f.	9,361 s.f.	9,361 s.f.
Frontage	90 ft.	200.68 ft.(combined)	200.68 ft.(combined)
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Side B Setback	10 ft.	67.9 ft.	63.4 ft.
Rear Setback	25 ft.	26.1 ft.	10 ft.
Parking Spaces	2	2+	2+
FAR****	n/a	n/a	n/a

*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).

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

→ Same as owner

 Petitioner

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

_____ Veretta M Russo
 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 24, 2021

By Hand

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

Re: Special Permit for Non-Conformities and Dimensional Variance
316 High Street, Newburyport, MA (the "Property")
Assessor's Map: 66 Lot: 7

Dear Chair and Members of the Board:

Reference is made to the above-captioned matter. In that connection, this firm represents Arthur Russo (the "Applicant"), the owner of the Property, relative to a proposed addition to the northern side of the existing single family structure on the Property.

The Property is a corner lot located in the R-2 zoning district and DCOD Overlay District of the Newburyport Zoning Ordinance (the "Ordinance") at the corner of High Street and Forrester Street. Having the longer frontage, the Forrester Street side is the primary front yard, making the side opposite to it the rear yard. The Property is pre-existing nonconforming for lot area and front setback on the High Street side. The R2 district requires a minimum lot area of 10,000 square feet where the Property has 9,361 square feet and a front yard setback of 25 feet where it is currently 1.2 feet.

The original Structure was constructed in 1740 according to the Assessor's Records, and on the District Data sheets it indicates the structure was constructed around 1775. It is listed as Contributory to the district. Regardless, this project is removing 13.1% of the existing walls, less than the 25% that would require a DCOD Special Permit.

Regarding the Applicant's proposed addition, it will have a front setback of 13.1 feet from the High Street side, thus extending the existing non-conformity. It will also total 515 square feet which also triggers a special permit for non-conformities. Last, it will be 10 feet from the rear yard boundary where 25 feet are required, thus creating a new nonconformity and requiring a variance.

Special Permit for Nonconformities

The Applicant requires the special permit for nonconformities under Section IX-B(2)(A) of the Ordinance. This section allows the modification of a preexisting nonconforming single-family structure where the Board finds that:

- 1. There will be no addition of a new nonconformity; and**

Millis Office

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

2. The proposed change will not be substantially more detrimental to the neighborhood than the preexisting nonconforming structure.

1. As noted above, the Applicant is also requesting the required variance for the creation of a new conformity regarding the rear yard setback. However, in addition to the Variance, a Special Permit remains required because of the extension of the front yard non-conformity on the High Street Side and the addition totaling over 500 square feet. Provided the Board grants the requested variance, this requirement will be met.

2. The proposed changes will not be substantially more detrimental to the neighborhood than the preexisting nonconforming Structure. 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, it is not enough for the proposal to be different than that which is around it but that it will to a great or significant extent cause harm to the neighborhood, as compared to the existing structure. See *McAleer v. Board of Appeals of Barnstable*, 361 Mass. 317, 321 (1972).

As shown on the plans, the proposed addition is a reasonable extension to the existing structure and will have no negative impact on the neighborhood. Concerning the extension of the front yard setback, it does not intensify it. Instead, the addition will be setback much further at 13.1 feet while the existing structure has a mere 1.2 foot setback and is almost on the sidewalk of High Street. Indeed, nonconforming front yard setbacks are common in this portion of High Street as there are many structures located much closer to High Street than the R-2 District’s 25 foot front yard setback would otherwise require.

Through design and the existing conditions, the addition will also create minimal disruption to the appearance existing structure. Its design is complimentary to the form of the existing structure and is matching the materials used on the different sides of the structure as the High Street side will have clapboards and the northern side will have shingles. There is an existing fence off of the structure that continues along High Street up to the Property’s boundary before changing direction along the rear yard. This fence will partially screen the addition. There are also street trees and other plantings on or around the High Street side that will provide partial screening of the proposed addition as well.

Based upon the foregoing, the Applicant requests that the Board find the proposed application is not substantially more detrimental to the neighborhood than the existing Structure and approve a Special Permit for Nonconformities.

Variance

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) due to the property being a corner lot under the Ordinance and the existing conditions preventing any other location for an addition from being feasible.

If this were not a corner lot, the rear yard would be a side yard and the addition would be conforming as to side yard setback because 10 feet are required and it is proposed to be 10 feet from the boundary. The lot is laid out with multiple gardens, plantings, and an ornate back yard and driveway. If this addition were proposed off any other portion of the structure, these striking landscaping conditions would be diminished to the detriment of both the Applicant and the public in general who can view these features when driving and walking along Forrester Street. Instead, these unique conditions will be preserved by building the addition on the northern side of the structure.

Additionally, this Board shall recall that G.L. c. 40A, § 10 includes “circumstances relating to the soil conditions, shape, or topography of such land or structures...”. Here, due to the shape and location of the existing structure, in existence since the late 1700’s, the Applicant is left with few options as to how they could construct an addition without needing zoning relief. As aforementioned, the structure is nearly on top of the High Street sidewalk which does not allow many options for functional additions due to the more stringent requirements placed on corner lots. There is also a garage structure in use at the rear corner of the lot. Any addition to the eastern side of the single-family structure makes accessing this garage impossible without significantly altering the lot as it would block the existing driveway path to the garage. The Applicant would be forced to destroy a significant portion of the back yard’s unique landscaping of this Property which would significantly diminish much of what makes this property distinctive and contributing to the surrounding neighborhood.

Further, while the lot was originally designed to provide access and egress onto High Street (curb cut still in existence but not used) over the years, the access and egress to the Property has been provided off of Forrester Street in a much safer manner. This change of access and egress for public safety purposes would also need to change back to the original configuration should relief not be granted.

Indeed, the proposal does not derogate from the intent and purpose of the Ordinance as the location of the proposed addition is located in a position to cause the least amount of disruption to existing conditions of the Property as possible. But for this being a corner lot, the set back at issue would be conforming, and the addition would not require a variance.

The proposed addition 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 northern portion of this part of the High Street neighborhood there appear to be numerous structures that are nonconforming with side or rear setbacks including those on other “corner” lots. It is not a stretch to say that it appears there are as many nonconforming structures as conforming ones along this side of High Street in this portion of the City. The Applicant would certainly not be receiving any special privilege if the Board grants a variance.

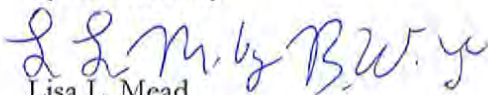
As a result, the Applicant requests the Board grant a variance for rear yard setback.

Thank you for your consideration.

Respectfully submitted,

Arthur Russo

By his Attorney



Lisa L. Mead

Attachment

cc: client

CITY OF NEWBURYPORT, MA
ZONING DETERMINATION

APR# _____

Name: _____

Address: _____ Zoning District(s): _____

Request: _____

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

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

Newburyport Zoning Administrator

Date

316 HIGH ST

Location 316 HIGH ST

MBLU 66/ 7/ / /

Owner RUSSO ARTHUR R

Assessment \$716,300

PID 4329

Building Count 1

Current Value

Assessment			
Valuation Year	Improvements	Land	Total
2021	\$421,800	\$294,500	\$716,300

Owner of Record

Owner RUSSO ARTHUR R
Co-Owner VENETTA M T/E
Address 316 HIGH ST
NEWBURYPORT, MA 01950

Sale Price \$767,000
Certificate
Book & Page 37306/0176
Sale Date 01/31/2019
Instrument 00

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
RUSSO ARTHUR R	\$767,000		37306/0176	00	01/31/2019
MARINO RICHARD T	\$717,500		35092/0608	00	07/18/2016
PAGE ARTHUR S JR & BARBARA F TRS	\$659,000		19927/0154	00	01/02/2003
GRAHAM CHRISTOPHER W	\$0		06498/0565		07/28/1978

Building Information

Building 1 : Section 1

Year Built: 1740
Living Area: 1,803

Building Attributes	
Field	Description
Style:	Antique
Model	Residential
Grade:	Average +10

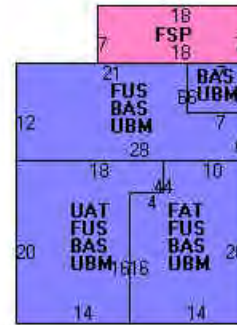
Stories:	2 1/2 Stories
Occupancy	1
Exterior Wall 1	Clapboard
Exterior Wall 2	Wood Shingle
Roof Structure:	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Plastered
Interior Wall 2	Drywall/Sheet
Interior Flr 1	Pine/Soft Wood
Interior Flr 2	Hardwood
Heat Fuel	Gas
Heat Type:	Hot Water
AC Type:	None
Total Bedrooms:	3 Bedrooms
Total Bthrms:	1
Total Half Baths:	1
Total Xtra Fixtrs:	
Total Rooms:	7 Rooms
Bath Style:	Average
Kitchen Style:	Modern
Num Kitchens	01
Cndtn	
Num Park	
Fireplaces	
Kitchen Grd	
Fndtn Cndtn	
Basement	

Building Photo



(<http://images.vgsi.com/photos/NewburyportMAPhotos/\01\00\34\18.jpg>)

Building Layout



(http://images.vgsi.com/photos/NewburyportMAPhotos/Sketches/4329_44)

Building Sub-Areas (sq ft)			Legend	
Code	Description	Gross Area	Living Area	
BAS	First Floor	896	896	
FUS	Upper Story, Finished	854	854	
FAT	Attic	264	53	
FSP	Porch, Screened	126	0	
UAT	Attic	296	0	
UBM	Basement, Unfinished	896	0	
		3,332	1,803	

Extra Features

Extra Features				Legend
Code	Description	Size	Value	Bldg #
FPL3	FIREPLACE 2 ST	1.00 UNITS	\$3,600	1
FPO	EXTRA FPL OPEN	2.00 UNITS	\$1,400	1

FPO	EXTRA FPL OPEN	2.00 UNITS	\$1,400	1
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Land

Land Use

Use Code 1010
Description SINGLE FAM

Land Line Valuation

Size (Acres) 0.21
Depth 0
Assessed Value \$294,500

Outbuildings

Outbuildings						<u>Legend</u>
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
BRN3	1 STORY W/LOFT			660.00 S.F.	\$9,600	1
PAT1	PATIO-AVG			440.00 S.F.	\$2,000	1

Valuation History

Assessment			
Valuation Year	Improvements	Land	Total
2020	\$421,800	\$294,500	\$716,300

DISTRICT : R-2 (PRIMARY STRUCTURE)

	LOT AREA	STREET FRONTAGE	% LOT COVERAGE	OPEN SPACE	FRONT YARD	SIDE YARD	REAR YARD
REQUIRED	10,000 SF	90'	25% MAX.	40% MIN.	25'	10'	25'
EXISTING	9,361± SF	107.92'± (FORRESTER) 92.76'± (HIGH)	18.9% ±	60.7% ±	34.1'± (FORRESTER) 1.2'± (HIGH)	67.9'±	26.1'±
PROPOSED	9,361± SF	107.92'± (FORRESTER) 92.76'± (HIGH)	24.4% ±	57.5% ±	34.1'± (FORRESTER) 1.2'± (HIGH)	63.4'±	10.0'±

ZONING DISTRICT: R-2 & DCOD OVERLAY

ASSESSORS: MAP 66 LOT 7

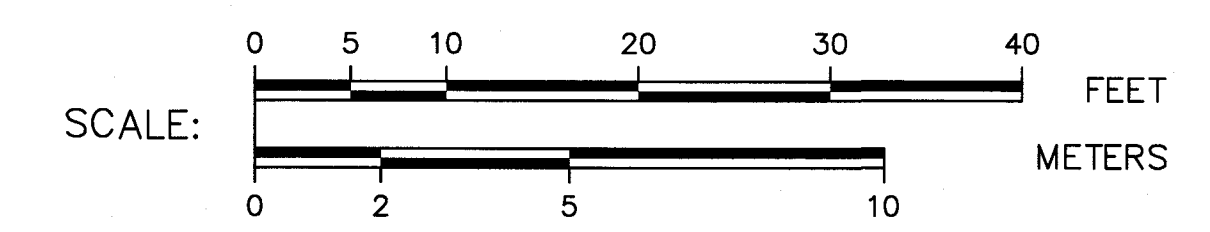
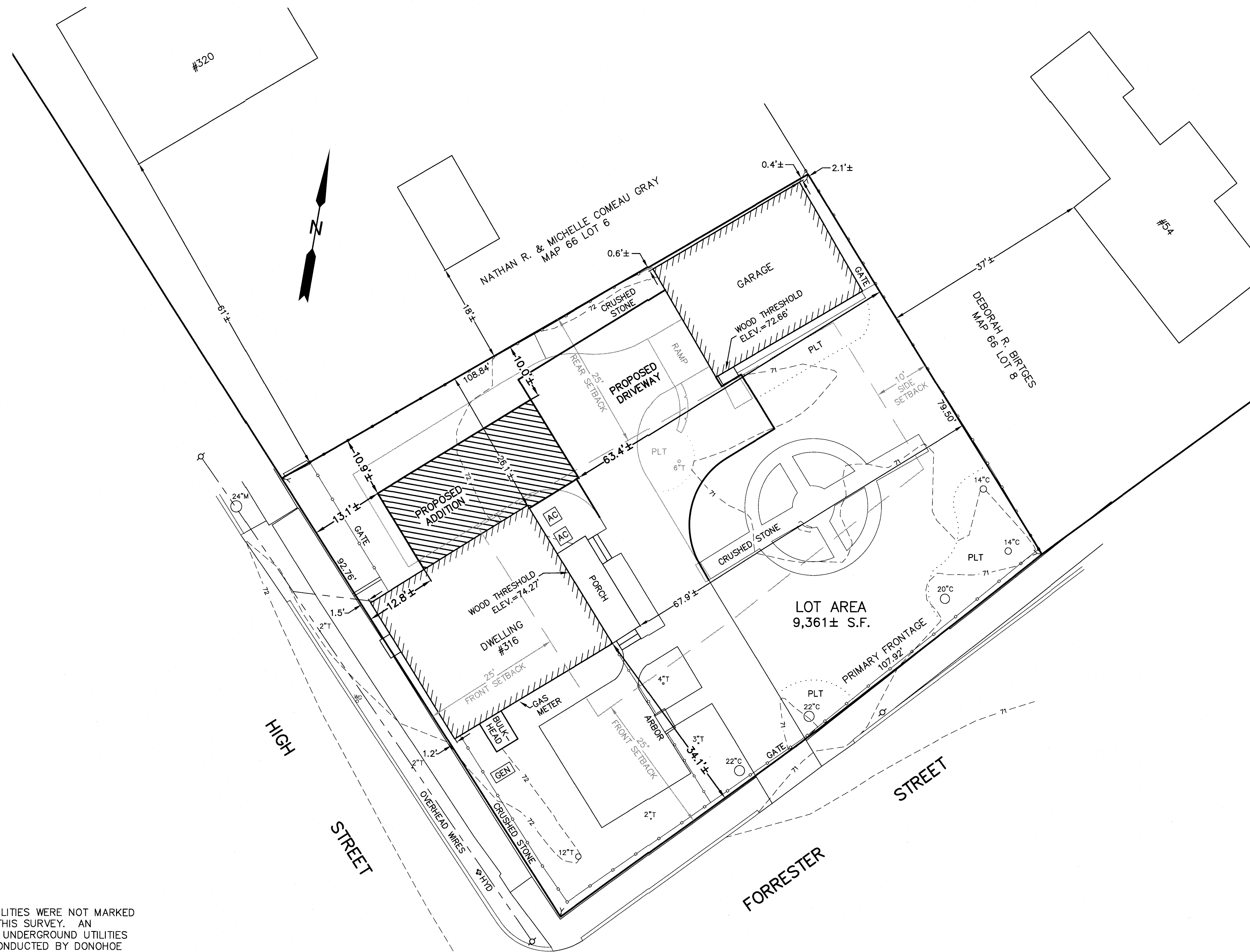
REFERENCE:

DEED - BK. 37306 PG. 176

VERTICAL DATUM: N.A.V.D. 1988

LEGEND & SYMBOLS

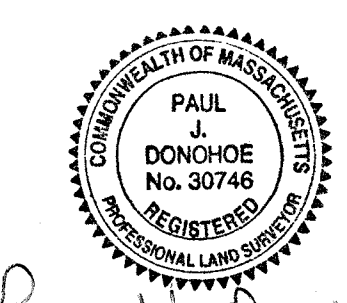
- AC AIR CONDITIONER
- ELEV. ELEVATION
- PLT PLANTED/GARDEN
- HYD HYDRANT
- T TREE
- M MAPLE
- C CHERRY
- GEN GENERATOR
- WG WATER GATE
- ⊕ UTILITY POLE
- METAL FENCE
- WOOD FENCE
- |— RETAINING WALL



NOTE:

- UNDERGROUND UTILITIES WERE NOT MARKED AT THE TIME OF THIS SURVEY. AN INVESTIGATION OF UNDERGROUND UTILITIES HAS NOT BEEN CONDUCTED BY DONOHOE SURVEY, INC.
- DUE TO LACK OF DEFINITIVE RECORD DATA & MONUMENTS, LOT LINES ARE SHOWN APPROXIMATELY. BOUNDARY LINE AGREEMENTS ARE RECOMMENDED.
- ABUTTING BUILDINGS ARE SHOWN APPROX. BASED ON NEWBURYPORT GIS.

Paul J. Donohoe
4/30/21



PROPOSED PLAN
#316 HIGH STREET
NEWBURYPORT, MA
PROPERTY OF
ARTHUR R. & VENETTA M. RUSSO
SCALE: 1" = 10' APRIL 30, 2021
DONOHOE SURVEY, INC.
363 BOSTON ST. TOPSFIELD, MA
(978) 887-6161



EXISTING
-NO CHANGES

PROPOSED

REAR ELEVATION



EXISTING
-NO CHANGES

PROPOSED

NO CHANGE AT
EXISTING PORCH

FRONT ELEVATION (FORRESTER STREET)



MEAN ROOF HEIGHT-EXISTING

MEAN ROOF HEIGHT-PROPOSED ADDITION

23'-4"

15'-1"

PROPOSED
SECOND FLOOR PLAN

EXISTING
-NO CHANGES

LEFT SIDE ELEVATION



PROPOSED

EXISTING
-NO CHANGES

FRONT ELEVATION (HIGH STREET)

BENJAMIN NUTTER ARCHITECTS, LLC
POST OFFICE BOX 254
TOPSFIELD, MASSACHUSETTS 01963
T: 978.887.9836 BENJAMINNUTTER.COM

DRAWN BY:
DS

PRINTS MADE:
APRIL 29, 2021

CONCEPT 2.0 ELEVATIONS
SCALE: 1/4" = 1'-0"

ALTERATIONS & ADDITIONS FOR
RUSSO RESIDENCE
316 HIGH ST
NEWBURYPORT, MA

C2.1



REAR ELEVATION EXISTING
WALL AREA: 484 S.F.
OUTLINED IN RED

REAR ELEVATION



RIGHT SIDE EXISTING
WALL AREA: 753 S.F.
OUTLINED IN RED

FRONT ELEVATION (FORRESTER STREET)



LEFT SIDE EXISTING
WALL AREA: 753 S.F.
OUTLINED IN RED

LEFT SIDE ELEVATION

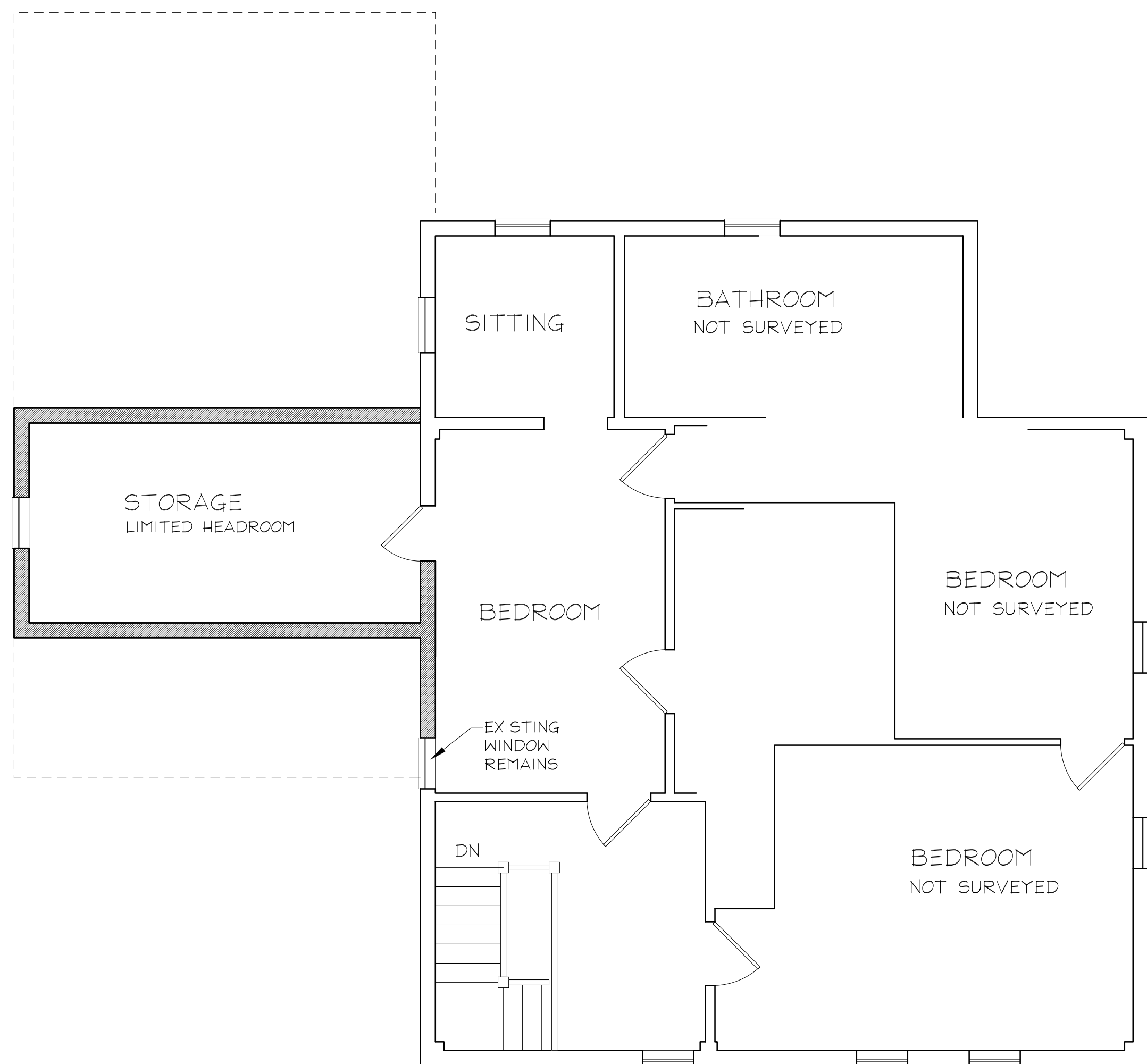


FRONT ELEVATION EXISTING
WALL AREA: 484 S.F.
OUTLINED IN RED

FRONT ELEVATION (HIGH STREET)

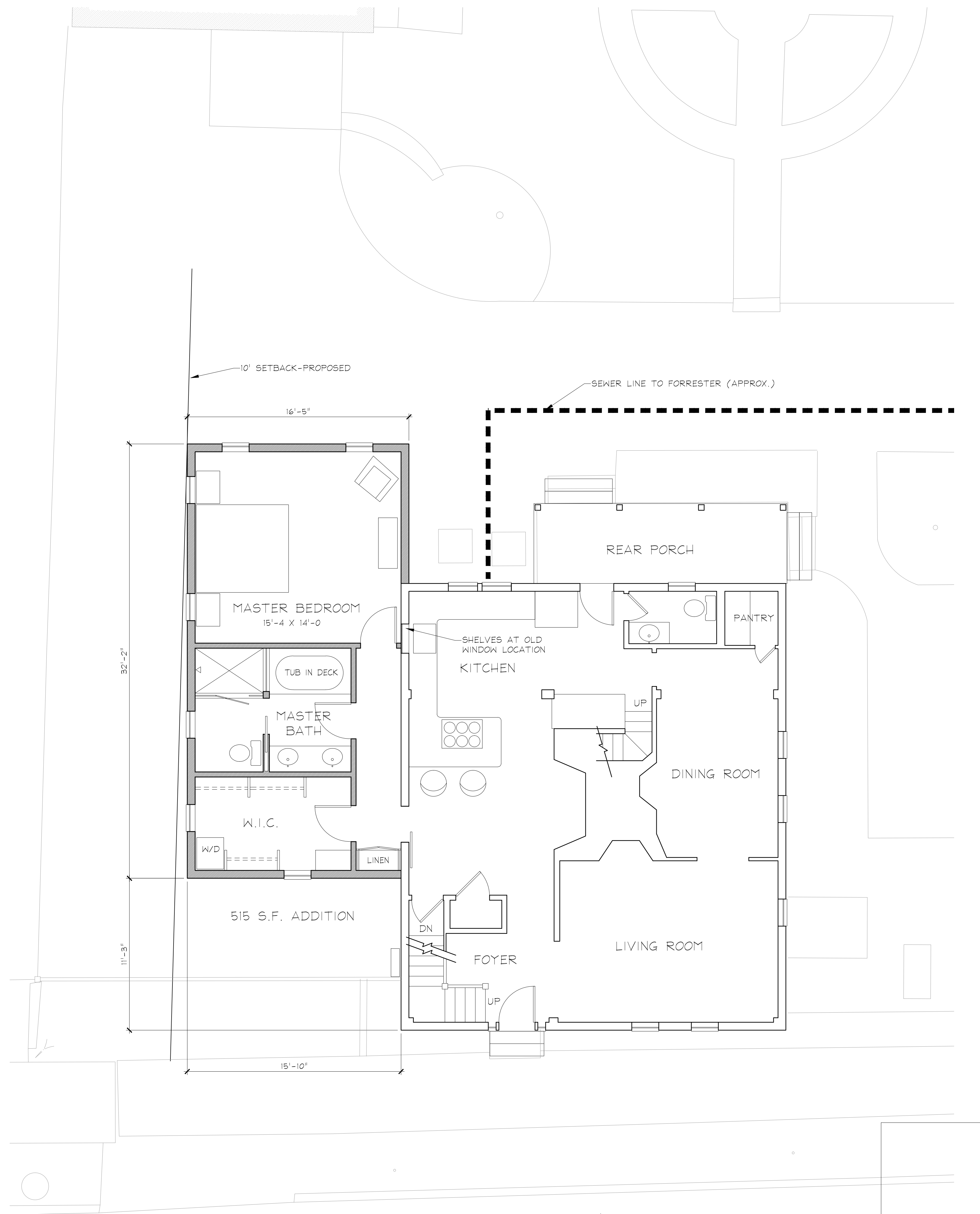
EXTERIOR WALL AREA CALCULATION:

- EXISTING EXTERIOR WALL AREA: 2,474 S.F.
- EXTERIOR WALL PROPOSED DEMO: 332 S.F.
- % OF PROPOSED DEMO: 13.4%



143 S.F. ADDITION
(ATTIC STORAGE)

SECOND FLOOR PLAN



FIRST FLOOR PLAN

BENJAMIN NUTTER ARCHITECTS, LLC
POST OFFICE BOX 254
TOPSFIELD, MASSACHUSETTS 01963
T: 978.887.9836 BENJAMINNUTTER.COM

DRAWN BY:
DS

PRINTS MADE:
APRIL 29, 2021

CONCEPT 2.0 PLANS
SCALE: 1/4" = 1'-0"

ALTERATIONS & ADDITIONS FOR
RUSSO RESIDENCE
316 HIGH ST
NEWBURYPORT, MA

C2.0