

**City of Newburyport Zoning Board of Appeals
Application for an APPEAL**

Petitioner: Sherry Evans and Andrew Rosen c/o Adam Costa, Mead, Talerma & Costa LLC

Mailing Address: 30 Green Street, Newburyport, MA 01950

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

Property Address: Property at issue: 6-8 Savory Street

Map and Lot(s): 61/4A and 61/4B Zoning District: WMD

Book and Page(s): 29571/199 (Master Deed)

Owner(s) Name: The Ram Island Condominium Trust

Mailing Address (if different): _____

The petition for the Appeal is made under the Newburyport Zoning Ordinance section X.H-5 and M.G.L.s c.40A, s.8 & 15.

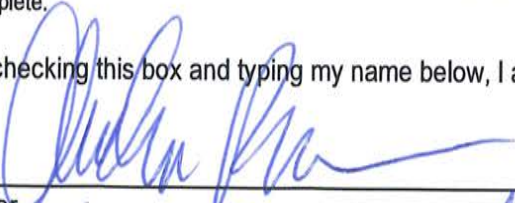
Brief description of Appeal:


Appeal of Zoning Enforcement Officer's determination that a shed on the property of 6-8 Savory Street is conforming under Newburyport Zoning Ordinance Section VI-F.

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. 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



Sherry Evans, by Andrew Rosen 



Mead, Talerman & Costa, LLC
Attorneys at Law

30 Green Street
Newburyport, MA 01950
Phone 978.463.7700
Fax 978.463.7747

www.mtclawyers.com

By Hand
Via Electronic Submission

October 2, 2020

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

Re: Administrative Appeal
6-8 Savory Street

Dear Mr. Chairman and Members of the Board:

Reference is made to the above-captioned matter. In that connection, I represent Sherry Evans and Andrew Rosen (the "Appellants"), the owners of property located at 5 River Street. Said property immediately abuts certain other property at 6-8 Savory Street (the "Property"), owned by the Ram Island Condominium Trust. As shown in the accompanying materials, a shed is situated on the Property in very close proximity to the aforementioned properties' shared boundary. See Exhibit 1. The Appellants requested enforcement action by the Newburyport Zoning Administrator and Enforcement Officer (the "ZEO"), who initially sent an enforcement letter to the owners of the two (2) condominium units at 6-8 Savory Street, in or about June 2020. Said letter stated that the shed is in violation of the setback required for accessory structures under the Newburyport Zoning Ordinance (the "Ordinance"). See Exhibit 2.

On September 4, 2020, however, the Appellants received an update (the "Determination") from the ZEO via e-mail stating that "the shed is legal." See Exhibit 2. The ZEO's justification therein was that Section VI-F of the Ordinance requires that accessory buildings or structures have setbacks of six (6) feet from any side or rear lot line "or" be located at least ten (10) feet from any principal building or structure on an abutting property. Contrary to long-standing interpretation and past practice, as explained below, the Determination concludes that the shed at-issue is "legal" because it is more than 10 feet away from the nearest principal building or structure on an abutting property, i.e. the Appellants' property, even though it is not six (6) feet from the lot line.

The Appellants now challenge the Determination pursuant to G. L. c. 40A, § 15, on the grounds that the ZEO's decision departs from past practice, constitutes an unreasonable reading and interpretation of the Ordinance, is arbitrary and capricious, is erroneous and cannot stand.

For as long as the undersigned counsel is aware, interpretation of the Ordinance by the City has consistently been that an accessory structure must be situated six (6) feet

Millis Office

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

from any side or rear lot line or at least ten (10) feet from any principal building or structure on an abutting property, *whichever is greater*. The following are just three (3) recent examples of where the Board considered variance applications for proposed accessory structures on the basis that they were less than six (6) feet away from a rear or side boundary even if more than ten (10) feet away from the nearest building or structure on abutting property.

- 18 Madison Street: A public hearing was conducted on July 28, 2020; but the application was later withdrawn. While it appears the proposed accessory structure, a garage, was at least ten feet away from the nearest principal building or structure on abutting property, the ZEO made a zoning determination that a variance was required. The Board did not disagree. See Exhibit 3.
- 10 Independent Street: On December 13, 2016, the Board granted a variance for a garage on a property that had a “[r]ear [y]ard [s]etback of 1.1 ft. where six feet... is [sic] required.” See Exhibit 4. The variance decision makes no mention of the distance between the garage, i.e. an accessory structure, and the nearest principal building or structure on abutting property.
- 49 Marlboro Street: The Board, on June 14, 2016, considered an applicant’s request for a variance to construct a two-car garage approximately two (2) feet from her rear lot line. The application was later withdrawn. According to the meeting minutes, a Board member commented that “an accessory structure must be 6’ from the property line... If this was the case they may not need permitting.” See Exhibit 5. Again, the Board did not consider the distance between the garage and the nearest principal building or structure on abutting property.

While these are only three (3) recent examples of accessory structures less than six (6) feet from a rear or side property line requiring a variance, regardless of whether they were ten (10) feet or more from the nearest principal building or structure on abutting property, it is likely that many other examples exist.

“[Z]oning rules must be applicable uniformly.” Bignami v. Serrano, 2020 WL 1686452 (Mass. Land Ct.) (Long, J.) (Apr. 3, 2020). What must be avoided is “a crazy-quilt pattern of the enforceability of a zoning law intended to have uniform applicability.” Lopes v. Peabody, 417 Mass. 299, 3030 (1994). The Determination, however, strays from the City’s uniform application of the Ordinance as regards accessory structures. Even if “multiple plausible interpretations” of the Ordinance provision at-issue are possible, “proof of a pattern, by the boards and other officials in the [city or] town, of following one of the possible interpretations” is a “proper” consideration should a challenge ensue; and litigants would be wise to “show why their interpretation jive[s] with what the [city or] town long ha[s] done when applying the contested provision.” Kitras v. Eccher, 2013 WL 5636619 (Mass. Land Ct.) (Piper, J.) (Oct. 15, 2013); see also Royer v. Murphy, 2010 WL 1412566 (Mass. Land Ct.) (Piper, J.) (Apr. 9, 2010) (criticizing the Board for “not purport[ing] in its

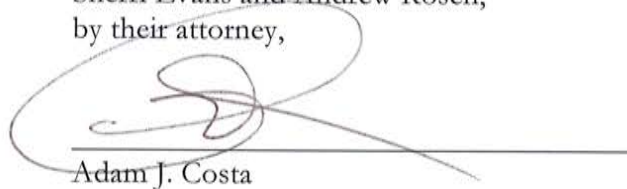
Decision to harmonize its denial of the Plaintiffs' administrative appeal with an established history of interpretation of the Bylaw by the Board or other [municipal officials").

The ZEO's new interpretation of the Ordinance is also unreasonable, inasmuch as it yields unworkable and unfair consequences. A local zoning ordinance or bylaw must not be interpreted in a manner that would produce an absurd result. See North Shore Realty Trust v. Commonwealth, 434 Mass. 109, 111-12 (2001). "If literalness is sheer absurdity, we are to seek some other meaning whereby reason will be instilled and absurdity avoided." Cadle Co. v. Vargas, 55 Mass. App. Ct. 361, 366 n. 7 (2002) (quotation omitted). According to the Ordinance interpretation now advanced in the Determination, i.e. that an accessory structure may legally be constructed closer than six (6) feet from a boundary so long as it is at least 10 feet from the nearest principal building or structure on an abutting property, neighbors' rights to be free from physical infringement into their personal spaces, i.e. front-, back- and side-yards, patios or gardens, are dependent on whether their principal structures are close to their boundaries. If a principal structure is 10 or more feet from a boundary, an accessory structure may be constructed on an abutting property with *no setback whatsoever*. That cannot be the intended objective of the Ordinance provision at-issue; and, again, is not how the City has historically interpreted it. A change in interpretation, now, also exposes the City to countless new requests to construct accessory structures immediately adjacent to property boundaries, so long as the home of one's neighbor is a meaningful distance away, e.g. close to or exceeding ten (10) feet.

For the foregoing reasons, the Appellants ask that the Board reverse the Determination, find that the shed situated at 6-8 Savory Street violates the Ordinance's setback requirement and order the ZEO to enforce the same.

Respectfully submitted,

Sherri Evans and Andrew Rosen,
by their attorney,



Adam J. Costa

AJC/bwt
cc: City Clerk
ZEO
Client (via e-mail only)

EXHIBIT 1



EXHIBIT 2

Ben Taylor

Subject: FW: [Ext]Re: [Ext][Newburyport MA] 6 Savory Street Shed (Sent by Sherry Evans, sevansnbpt@gmail.com)

From: Sherry Evans <sevansnbpt@gmail.com>

Sent: Tuesday, September 8, 2020 10:33 AM

To: Adam J. Costa <adam@mtclawyers.com>

Subject: Fwd: [Ext]Re: [Ext][Newburyport MA] 6 Savory Street Shed (Sent by Sherry Evans, sevansnbpt@gmail.com)

----- Forwarded message -----

From: Jennifer Blanchet <JBlanchet@cityofnewburyport.com>

Date: Fri, Sep 4, 2020 at 11:57 AM

Subject: RE: [Ext]Re: [Ext][Newburyport MA] 6 Savory Street Shed (Sent by Sherry Evans, sevansnbpt@gmail.com)

To: Sherry Evans <sevansnbpt@gmail.com>

Cc: Katelyn E. Sullivan <KESullivan@cityofnewburyport.com>

Ms. Evans,

I wanted to follow up with you on the matter of your neighbor's shed.

When we first spoke it was my understanding that a shed needed to be 6' from a side or rear property line. It has been pointed out that the ordinance language reads

A detached accessory building or structure within the side or rear-yard setbacks shall conform to the following provisions. It shall be: set back from the public way the required front yard distance for the district in which it is located; at least six (6) feet from any side or rear lot line Or ten (10) feet from any principal building or structure on an abutting property; and not exceed twenty-two (22) feet by twenty-four (24) feet in dimension, nor exceed fifteen (15) feet in height. Garages or other such accessory structures, whether attached or detached, that exceed the above dimensions shall conform to the height, front, side and rear yard setback requirements applicable to accessory buildings or structures in the zoning district where located. In-ground and aboveground pools shall be located in the side or rear yard and are subject only to the six (6) foot lot-line restrictions as herein stated.

As you can see on the attached survey the shed exceeds this 10' requirement.

The property has also been analyzed for lot coverage conformance. The shed that fronts on River Street is 84 square feet and the adjacent condo that fronts on Savory Street has a shed 96 square feet. The footprint of the two condo buildings (707 SF + 657 SF) = 1,448 SF + 84 SF (Shed on River) and 96 SF (Shed on Savory) = 1,544 SF. The total lot size is 6,810 SF so 1,544 SF/6,810 SF = 22.7% coverage which is well within the requirement of 40% max coverage.

This AND vs OR in the ordinance was a detail that has not been challenged in the past, but that your abutter and their surveyor correctly pointed out. We continue to guide applicants to locate these structures six feet off the side and rear and may in the future change the ordinance, but at present the language as it stands means that the abutting shed is legal.

Regards,

Jennifer Blanchet

Zoning Administrator & Enforcement Officer

Office of Planning & Development

City of Newburyport

60 Pleasant Street

Newburyport, MA 01950

Phone (978) 465-4400

Email jblanchet@cityofnewburyport.com

Web www.cityofnewburyport.com

From: Sherry Evans [mailto:sevansnbpt@gmail.com]

Sent: Wednesday, July 29, 2020 11:43 AM

To: Jennifer Blanchet

Subject: [Ext]Re: [Ext][Newburyport MA] 6 Savory Street Shed (Sent by Sherry Evans, sevansnbpt@gmail.com)

external e-mail use caution opening

Thank you for letting me know. Is a response required within a set time period?

Sherry

On Wed, Jul 29, 2020 at 9:52 AM Jennifer Blanchet <JBlanchet@cityofnewburyport.com> wrote:

A notice of violation (see attached) was sent out last week via certified mail. No response yet.

Jennifer Blanchet

Zoning Administrator & Enforcement Officer

Office of Planning & Development
City of Newburyport
60 Pleasant Street
Newburyport, MA 01950

Phone (978) 465-4400
Email jblanchet@cityofnewburyport.com
Web www.cityofnewburyport.com

-----Original Message-----

From: cmsmailer@civicplus.com [mailto:cmsmailer@civicplus.com]
Sent: Monday, July 27, 2020 5:56 PM
To: Jennifer Blanchet
Subject: [Ext][Newburyport MA] 6 Savory Street Shed (Sent by Sherry Evans, sevansnbpt@gmail.com)

external e-mail use caution opening

Hello jblanchet,

Sherry Evans (sevansnbpt@gmail.com) has sent you a message via your contact form (<https://www.cityofnewburyport.com/user/1073/contact>) at Newburyport MA.

If you don't want to receive such e-mails, you can change your settings at <https://www.cityofnewburyport.com/user/1073/edit>.

Message:

Hi Jennifer,
Can you please update me on what has been done regarding the shed that is illegally situated at 6 Savory Street.
Thank you,
Sherry

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Sherry Evans

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Sherry Evans

EXHIBIT 3

**City of Newburyport
Zoning Board of Appeals
Online Meeting
July 28, 2020
Minutes**

1. Roll Call

Chair Robert Ciampitti called an online meeting of the Newburyport Zoning Board of Appeals to order at 7:00 p.m. In attendance were members Robert Ciampitti, Stephen DeLisle, Mark Moore, Rachel Webb and Ken Swanton and associate member Bud Chagnon. Also in attendance were Planning Director Andy Port, Planner Katelyn Sullivan and note taker Gretchen Joy.

2. Business Meeting

a) Minutes

Ms. Webb moved to approve the minutes of the July 14, 2020, meeting as amended. Mr. Swanton seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes).

b) 20 Union Street

The applicant submitted a request to modify the Special Permit for Non-Conformities that was approved on June 9, 2020. The Planning Office considers the proposed changes to be minor in nature. It intends to approve the changes without further review by the Board and notify the applicant by letter.

c) Staff Level Review Discussion

The Planning Office provided the language of a standard staff level review condition this is now being made a part of decisions. This condition allows the Planning Director and Zoning Administrator to review and approve Requests for Minor Modifications without further review by the ZBA. Chair Ciampitti said the procedure appears to be effective and should be continued. The Board members had no additional comments.

3. Public Hearings

Hebbelinck Real Estate LLC c/o Lisa Mead, Mead, Talerman & Costa, LLC

193 High Street

2019-042 – Appeal

Mr. DeLisle recused himself from the discussion. The applicant requested an extension. Mr. Moore moved to continue the public hearing to the October 13 meeting. Ms. Webb seconded the motion. The motion was approved by a 4-0 vote (Mr. Ciampitti, yes; Mr. DeLisle, abstain; Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes).

Redco Construction Inc. c/o Lisa Mead, Mead, Talerman & Costa, LLC

3-5 School Street

2020-031 - Dimensional Variance

2020-032 - Special Permit for Non-Conformities

The applicant is requesting to withdraw the request for a Variance and a Special Permit for Non-Conformities. Mr. DeLisle moved to accept the request to withdraw without prejudice the application for a Variance for 3-5 School Street (2020-031) and the application for a Special

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July 28, 2020

Permit for Non-Conformities for 3-5 School Street (2020-032). Mr. Moore seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes).

Nadine Ritchie

22 Munroe Street

2020-047 - Special Permit for Non-Conformities

The applicant is proposing to demolish a one-story addition with a shed roof at the rear of a half house and replace it with a two-story addition with a pitched roof on an expanded footprint. The project would extend the pre-existing non-conforming side yard setback and lot coverage. Cedar siding would be used to match the main structure. The new windows would be the same size as the existing ones and would have simulated divided lights.

The hearing was opened to comments from the public. Chris Currier, 18 Munroe Street, said everyone in neighborhood he has spoken with is in favor of the proposal and thinks it would be an improvement over the existing conditions. Letters of support from abutters have been received. The Historical Commission has approved the demolition application.

Mr. DeLisle said the proposal would not create any new non-conformities. The visibility of the addition from a public way would be limited. Ms. Webb said the approval of the abutters would lead her to support the application. Mr. Moore said the application is a reasonable one. Mr. Swanton said the addition would be in keeping with the existing structure and the neighborhood.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 22 Munroe Street. Mr. DeLisle seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes).

John and Margaret Ohrn c/o Mead, Talerman & Costa, LLC

18 Madison Street

2020-048 - Dimensional Variance

Lisa Mead represented the applicant, who is seeking a variance to construct a garage that would not comply with the side yard setback requirement. It would be two feet from the property line where six feet is required. Attorney Mead said the shape of the lot is odd and if the garage were pulled away from the side property line, it would move closer to the rear lot line. She said there are many accessory structures in the neighborhood that are located near lot lines. She said the applicant considered constructing a one-car garage but would like extra storage space.

No one from the public spoke in favor of or in opposition to the application. Letters of support have been received from the abutters to the rear and right of the property, as well as two neighbors on the opposite side of the street.

Mr. Swanton said there is enough space in the yard to move the garage away from the property line. He said a variance should only be granted when there are no other options, which does not appear to be the case in this situation. Attorney Mead responded that the applicant wishes to preserve the back yard and have the shortest possible driveway. Ms. Webb questioned how the side of the garage would be maintained if it were to be so close to the edge of the property. She also asked if Attorney Mead knew how many one-car garages there are in the neighborhood as compared to two-car garages. She did not. Mr. Moore said other accessory

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July 28, 2020

structures in the neighborhood appear to be located near lot lines and the Board would not be granting a special privilege. He said there is, however, a difference between a want and a need. The option of moving the garage away from the property line is available to the applicant. Mr. DeLisle said he understands the desire for a two-car garage but this would not be sufficient to get over the high bar that is needed for a variance. Ms. Webb said she thinks two-car garages are rare in the neighborhood and the size of the lot could accommodate the structure without a variance. Mr. Swanton agreed that the applicant has not demonstrated the need for a variance.

The applicant requested a continuance. Ms. Webb moved to continue the public hearing to the August 11 meeting. Mr. Moore seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes).

MFG Ventures

4 Hart Road

2020-049 - Special Permit for Non-Conformities

Braden Monaco described the plans to demolish an existing structure and construct a new house on a portion of the same footprint. The proposal would upwardly extend the pre-existing non-conforming front yard setback. The existing structure is 21 feet from the property line. The proposed cantilevered second floor and first-floor window bumps outs would be 18.9 feet from the lot line. The existing structure is set back slightly farther from the street than other houses and the proposal would bring it more in line with the other structures. Mr. Monaco said the height of the house would be the same as the structure at 2 Hart Road and two feet higher than the house at 6 Hart Road.

No one from the public spoke in favor of or in opposition to the application. Letters of support from abutters have been received.

Mr. Moore said no new non-conformities would be created and the proposed structure would fit in with the neighborhood. Mr. DeLisle said the applicant has meet the criteria for a special permit.

Mr. Moore moved to approve a Special Permit for Non-Conformities for 4 Hart Road. Ms. Webb seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes).

Jennifer & Hunter Flynn c/o Lisa Mead, Mead, Talerman & Costa, LLC

44 High Street

2020-050 - Special Permit for Non-Conformities

Lisa Mead and Matt Langis represented the applicant, who is proposing to demolish a one-story section at the rear of a single-family house and construct a two-story addition on a slightly larger footprint. The property is non-conforming for lot area, frontage, and lot coverage. The structure is non-conforming for front yard setback and both side yard setbacks. The proposal would extend the non-conforming setback on the east side. The existing setback on this side is 5.0 feet and the proposed addition would be 6.9 feet from the property line. The non-conforming lot coverage would increase 1.7% from 27.8% to 29.5%. The siding and trim would match that of the existing structure. Attorney Mead said other structures in the neighborhood have rear additions. The addition would not be visible from a public way and its roof would be lower than

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that of the main structure. She said the massing and style of the addition would be appropriate for the neighborhood.

No one from the public spoke in favor of or in opposition to the proposal. Three direct abutters at 90 and 92 Bromfield Street and 42 High Street submitted letters of support. The Historical Commission has approved the plans.

Mr. Moore said no new non-conformities would be created and one existing non-conformity would be slightly improved. Mr. DeLisle said the addition would not be visible from a public way and he is not opposed to the increased lot coverage.

Mr. DeLisle moved to approve a Special Permit for Non-Conformities for 44 High Street. Mr. Moore seconded the motion. The motion was approved by a 5-0 vote (Mr. Ciampitti, yes; Mr. DeLisle, yes; Mr. Moore, yes; Mr. Swanton, yes; Ms. Webb, yes).

Ms. Webb moved to adjourn the meeting at 8:20 p.m. Mr. Moore seconded the motion. The motion was unanimously approved.

Respectfully submitted,
Gretchen Joy
Note Taker

ZONING DETERMINATION

Name: John and Margaret Ohrn c/o/Lisa Mead, MTC LLC

Address: 18 Madison Street Zoning District(s): R2/DCOD

Request: Construct accessory structure that does not comply with the side yard setback for such a structure.

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

Review of substantial improvement

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

Jennifer Blanchet 06/25/2020
Newburyport Zoning Administrator Date

EXHIBIT 4



CITY OF NEWBURYPORT
 ZONING BOARD OF APPEALS
 60 PLEASANT STREET • P.O. BOX 550
 NEWBURYPORT, MA 01950
 (978) 465-4400
 WWW.CITYOFNEWBURYPORT.COM

RECEIVED
 CITY CLERK'S OFFICE
 NEWBURYPORT, MA
 2016 DEC 21 P 3:05

RECORD OF PROCEEDINGS AND DECISION
 FOR A DIMENSIONAL VARIANCE

An application for a Dimensional Variance was filed by:

George Haseltine, Trustee, Independent St. Realty Trust
 c/o Lisa L. Mead, Blatman, Bobrowski, Mead & Talerman, 30 Green Street
 Newburyport, MA 01950


 SO.ESSEX #159 Bk:35641 Pg:355
 01/27/2017 10:21 AM VAR Pg 1/11
 eRecorded

for property owned by **Independent St. Realty Trust** for the following request:

renovation of existing structure encroaching on side yard setback and construction of free-standing garage within required front and rear setback

The application was filed at the City Clerk's Office on **9/23/16** under the Zoning Ordinance Section X-H.3 Powers of the Board and Section **VI.A Dimensional Controls**.

The application is for the premises at **10 Independent Street** in the **R3** Zoning District, as indicated in the Newburyport Assessor's Office as map and parcel **16-80** and recorded in the Essex South District Registry of Deeds as Book and Page **35175-121**. The newspaper notices for the public hearing were posted on **11/28/16** and **12/05/16** in the Newburyport Daily News.

A public hearing was held for the above application on **12/13/16** at 7:15 p.m. at which time the Board heard the petition for a Dimensional Variance. After the close of the hearing on **12/13/16**, upon motion made by Member **Robert Ciampitti** and duly seconded by Member **Duncan LaBay**, the Board voted to **APPROVE** the petition for the Dimensional Variance.

The following members present and voting, and voting as follows with respect to the petition:

Robert Ciampitti	<u>Yes</u>	Duncan LaBay	<u>Yes</u>
Richard Goulet	<u>Yes</u>	Renee Bourdeau	<u>Absent</u>
Maureen Pomeroy, Associate	<u>Yes</u>	Edward Ramsdell, Chair	<u>Yes</u>

Having received the necessary two-thirds super majority vote or all the members of the ZBA, in accordance with M.G.L. c.40A, Section 10, as adopted, the petition for the Dimensional Variance was therefore **APPROVED**.

FINDINGS

After the public hearing, in accordance with the criteria set forth in the City of Newburyport Zoning Ordinance Section X-H-6 Dimensional Variances, the Newburyport Zoning Board of Appeals made the following findings:

1. The applicant proposed to remove the existing single-story rear addition and replace it with a two-story addition on the pre-existing, non-conforming two-family home (two-family use to remain) and also to construct a free-standing, two-car garage. The applicant also proposed to construct a small, single-story addition on the western side of the residential structure, located approximately 9 ½' from the front lot line.
2. This application was continued from the October 25th and November 29th meetings to allow additional time for the applicant to meet with the abutters at six and eight Independent Street and potentially revise the plans to address abutter and Board concerns. The applicant met with the residents at 6 and 8 Independent Street and has submitted a revised application and plans (dated 5 December 2016). These revisions include the following:
 - A rear addition that has been reduced in width, has been shifted away from the westerly corner of the main structure creating some differentiation between the original structure and the addition, and a "hip" style roof;
 - Plantings along the eastern property line;
 - A frosted glass bathroom window facing 8 Independent Street;
 - A slight shift westerly of the proposed garage; and
 - Clapboard siding and colonial barn-style door on the façade of the garage.
3. Dimensional relief is sought for the following existing conditions (Garage): Front Yard Setback of 5.3 ft. where 20 ft. is required and a Rear Yard Setback of 1.1 ft. where six feet. Ft. is required. Also relief is sought for the residential structure for a Side Yard Setback of 8.8 ft. where 10 ft. is required.
4. Conditions and circumstances are related to the soil conditions, shape, topography of such land especially affecting the property for which the Dimensional Variances are sought, and generally do not affect the Zoning District in which the property is located.
5. There is a substantial hardship, financial or otherwise which results from the literal enforcement of the applicable zoning restrictions with respect to the land and structure for which the variance is sought. Literal enforcement imposes a significant hardship upon the property. The lot is oddly shaped and also Section X-H.6.D provides an additional basis for determining that hardship exists; abutting properties are non-conforming.
6. The relief sought is desirable and without substantial detriment to the public good.
7. Strict application of the Ordinance would deprive the applicant of reasonable use of the lot and building in a manner equivalent to the use permitted to be made by other owners of their neighboring lands, structure, or structures in the same district.
8. Relief sought may be given without nullifying or substantially derogating from the intent or purpose of the Ordinance.

9. The unique conditions and circumstances are not the result of the actions of the applicant taken subsequent to the adoption of the Ordinance.

10. Relief will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the District. There are other properties where relief has been granted for various reasons within this zoning district.

PLAN REFERENCES

This variance is approved based on the following plans and/or documents:

- "Additions/Renovations to 10 Independent Street Newburyport, MA 01950 dated December 5, 2016, consisting of sheets A1 through A6; and
- "Plan of Land in Newburyport, MA showing proposed improvements at 10 Independent Street" by Millennium Engineering, dated Dec. 6, 2016

Any alterations to these plans shall require subsequent approval by the Zoning Board of Appeals.

CONDITIONS OF APPROVAL

The following conditions do not limit any other rights and remedies the City of Newburyport may have.

1. This Variance shall not take effect until a copy of the decision bearing the certification of the City Clerk of Newburyport is recorded in the Essex County South Registry of Deeds under the name of the owner of record or is recorded and noted on the owner's certification of title. The fee for recording or registering shall be paid by the owner or applicant.
2. This Variance will lapse if not exercised within one year from the date of granting.
3. Existing wood single-glazed windows w/storm panel to remain or be replaced with simulated divided lite windows (as written on plans)
4. Existing wood clapboard to remain (as written on plans)
5. New wood clapboards to match existing clapboard exposure (as written on plans)
6. Retain all 4 corner boards of original building (as shown on plans)
7. Retain the two existing chimneys above the roofline.
8. North elevation, 8-9' foot tall evergreen screening on East property line bordering 8 Independent.
9. North elevation, 2nd story rear window to be frosted glass.
10. In accordance with the applicable provisions of Sections II-B.46a, X-H.6.Q, and X-H.7.B.10 of the

Newburyport Zoning Ordinance the Board found, as recommended by DPS, that requiring construction of a sidewalk under these provisions is appropriate - the applicant proposed replacing the existing sidewalk with brick (to be coordinated with DPS). No tree plantings along sidewalk were recommended by DPS.

This decision was filed with the Newburyport City Clerk on **12/21/16** and sent registered mail to the applicant and by regular mail to the Parties in Interest and the abutting Municipalities.

Undersigned Chair of the Zoning Board of Appeals,



Edward Ramsdell


Date: 12/21/16

CERTIFICATION OF CITY CLERK

I, Richard Jones, City Clerk of the City of Newburyport, hereby certify pursuant to M.G.L. Chapter 40A, Section 17, that the decision for the property known as **10 Independent Street** was filed in the Office of the City Clerk on **12/21/16**.

Pursuant to M.G.L. Chapter 40A, Section 11 this decision was also filed with the Newburyport Planning Board on **12/21/16**.

Twenty (20) days have elapsed since the decision was filed and **NO APPEAL** has been filed. Appeals shall be made pursuant to M.G.L. Chapter 40A, Section 17 and filed within (20) twenty days after the date of filing of this decision in the Office of the City Clerk.



Newburyport City Clerk

Date: JAN 27 2017

PROJECT:
**ADDITIONS/
 RENOVATIONS**

TO
 10 INDEPENDENT STREET
 NEWBURYPORT, MA 01950

APPLICANT:
**INDEPENDENT
 STREET REALTY
 TRUST**

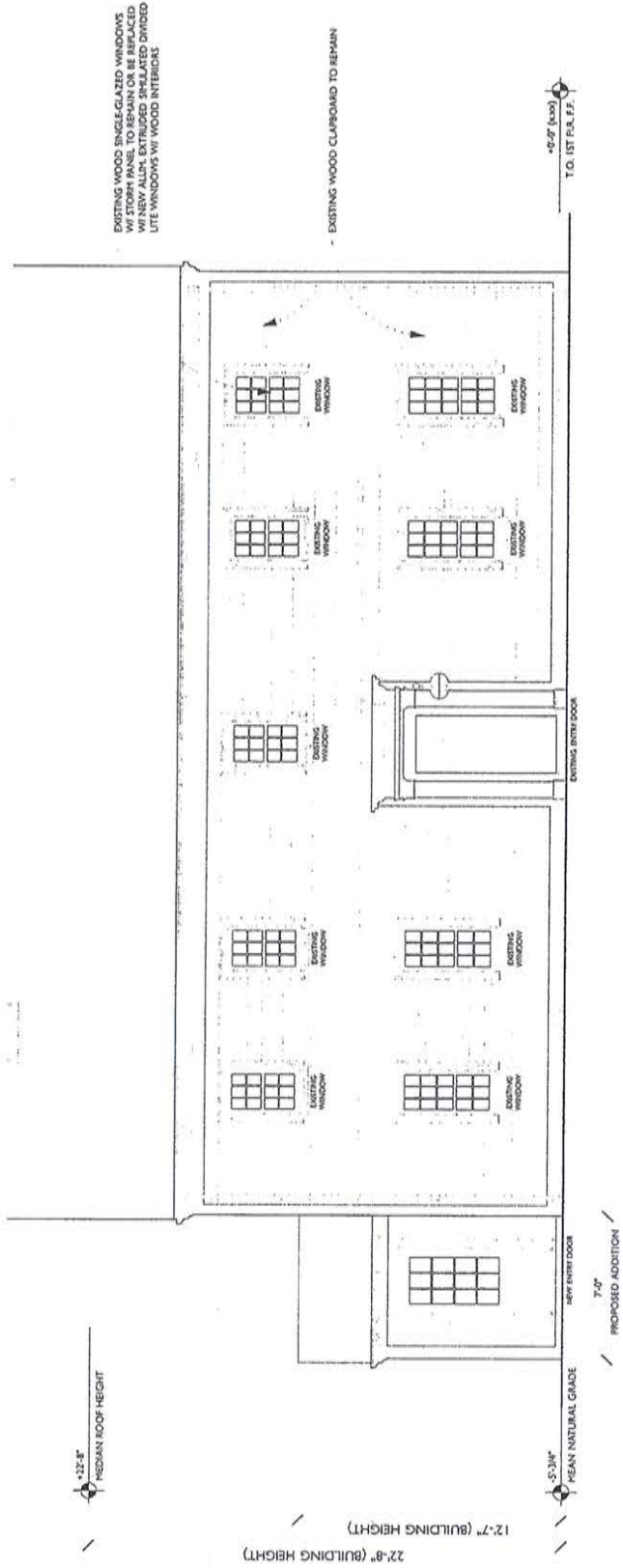
66 GILCREAST RD
 LONDONDERRY, NH 03063

**PROPOSED
 EAST
 ELEVATION**

SHEET NO.

A1

DATE: DECEMBER 5, 2016
 SCALE: 3/16" = 1'-0"



PROJECT:
**ADDITIONS/
 RENOVATIONS**

70
 10 INDEPENDENT STREET
 NEWBURYPORT, MA 01950

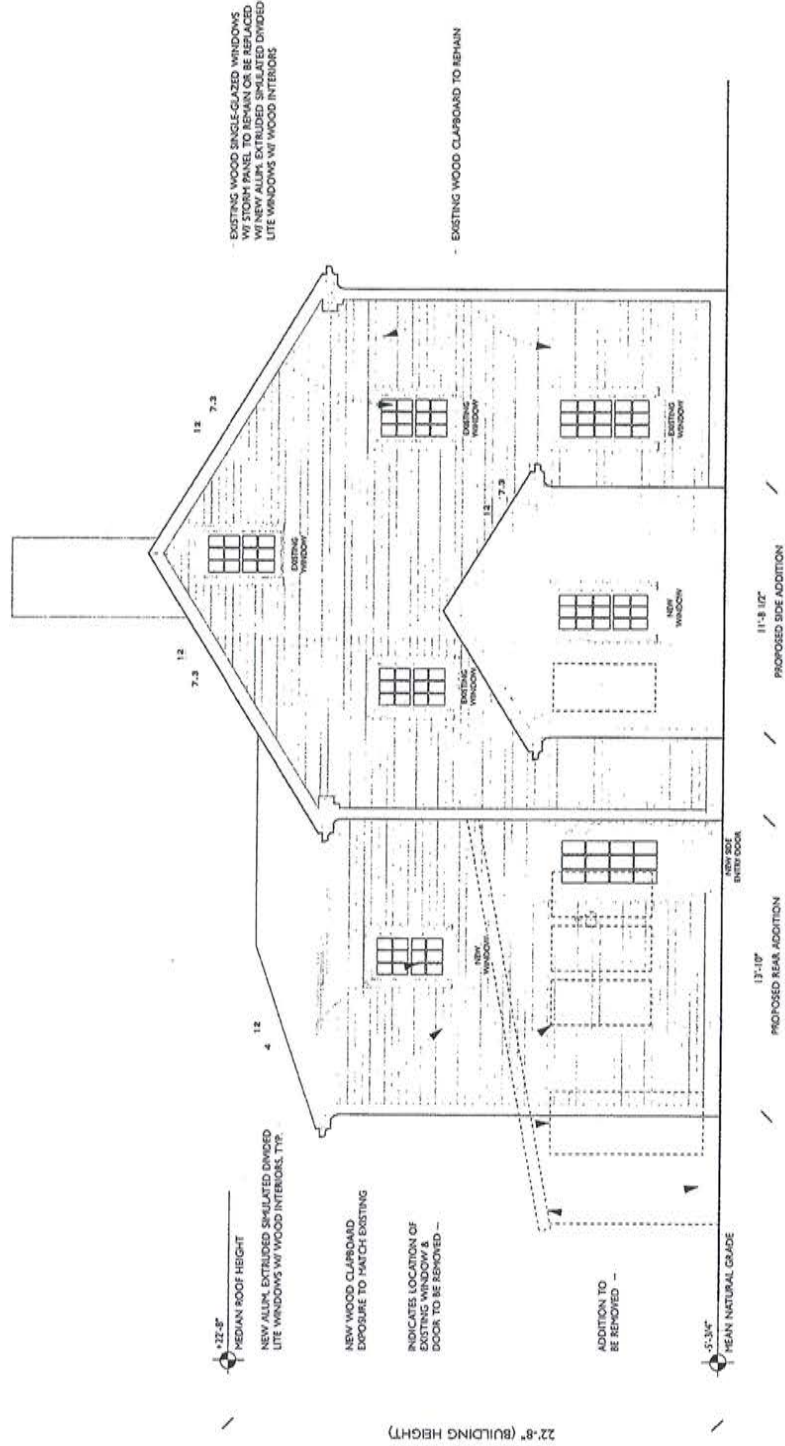
APPLICANT:
**INDEPENDENT
 STREET REALTY
 TRUST**
 66 GILCREAST RD
 LONDONDERRY, NH 03083

PROPOSED
**SOUTH
 ELEVATION**

SHEET NO.

A2

DATE: DECEMBER 3, 2016
 SCALE: 3/16" = 1'-0"



PROJECT:
**ADDITIONS/
RENOVATIONS**

TO
10 INDEPENDENT STREET
NEWBURYPORT, MA 01950

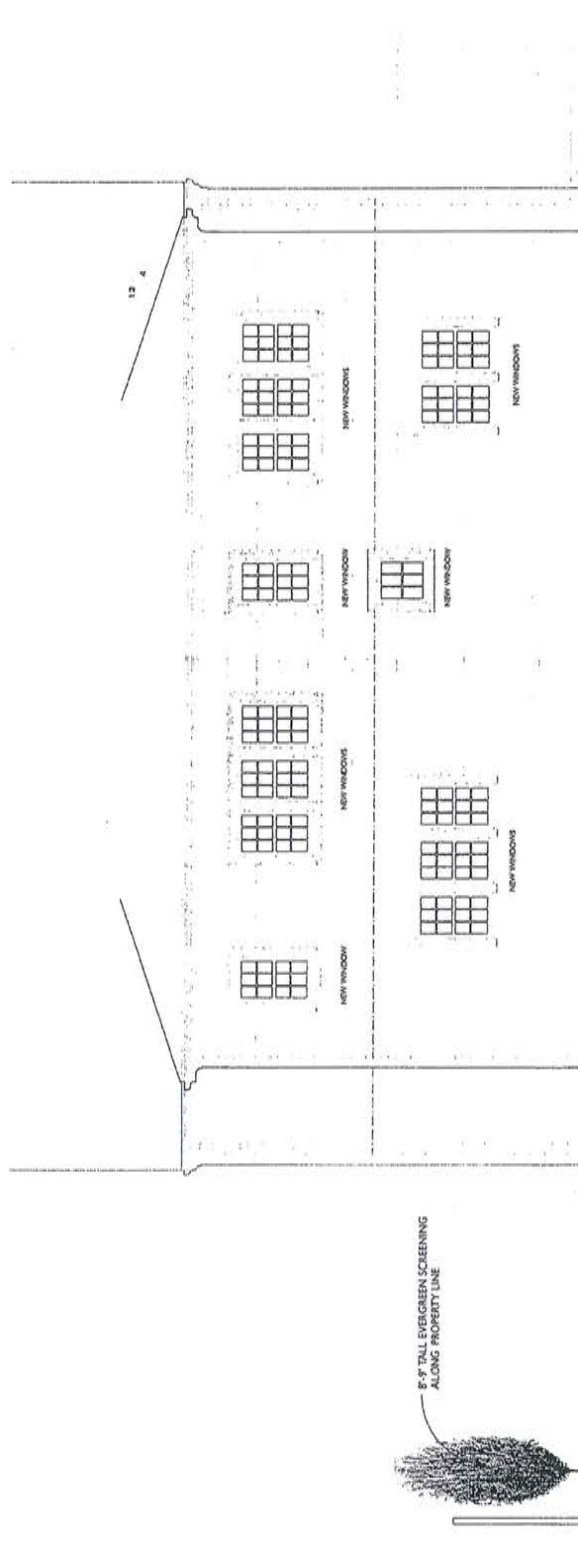
APPLICANT:
**INDEPENDENT
STREET REALTY
TRUST**
88 GILCREAST RD
LONDONDERRY, NH 03053

**PROPOSED
WEST
ELEVATION**

SHEET NO.

A3

DATE: DECEMBER 5, 2016
SCALE: 3/16" = 1'-0"



PROJECT:
**ADDITIONS/
 RENOVATIONS**

TO
 10 INDEPENDENT STREET
 NEWBURYPORT, MA 01950

APPLICANT:
**INDEPENDENT
 STREET REALTY
 TRUST**

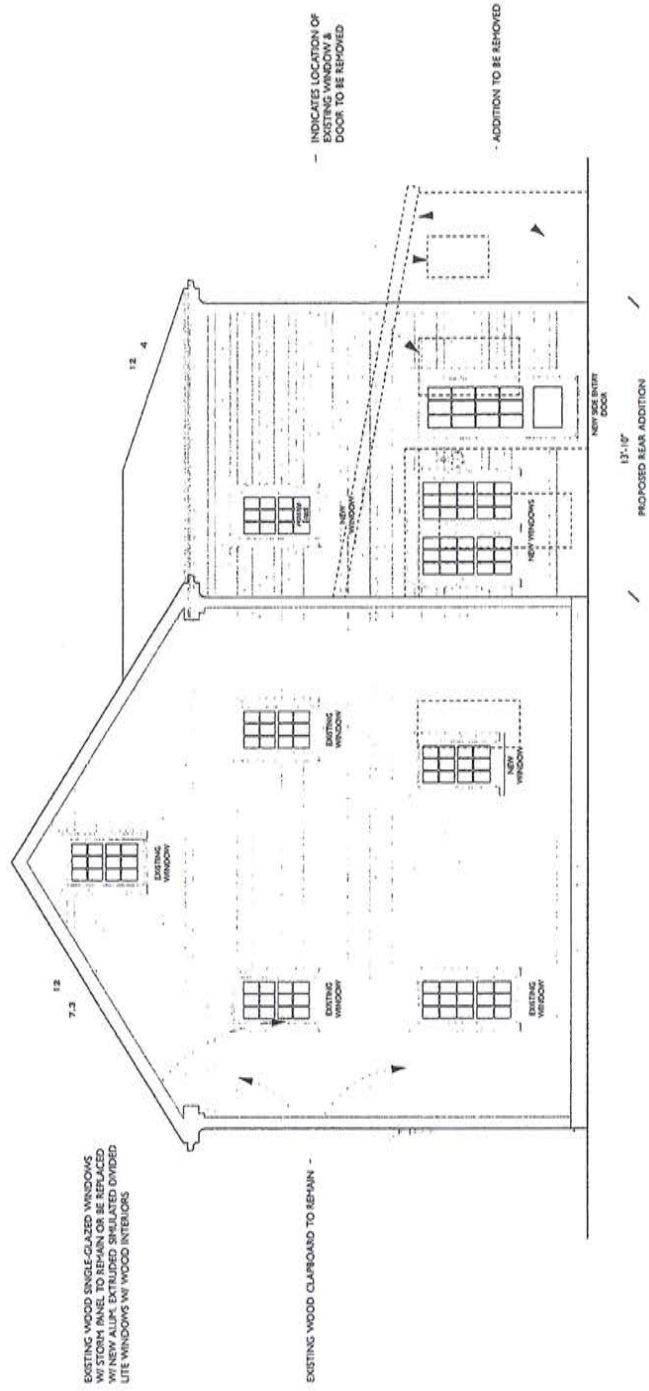
66 GILCREAST RD
 LONDONDERRY, NH 03053

**PROPOSED
 NORTH
 ELEVATION**

SHEET NO.

A4

DATE: DECEMBER 5, 2016
 SCALE: 3/16" = 1'-0"

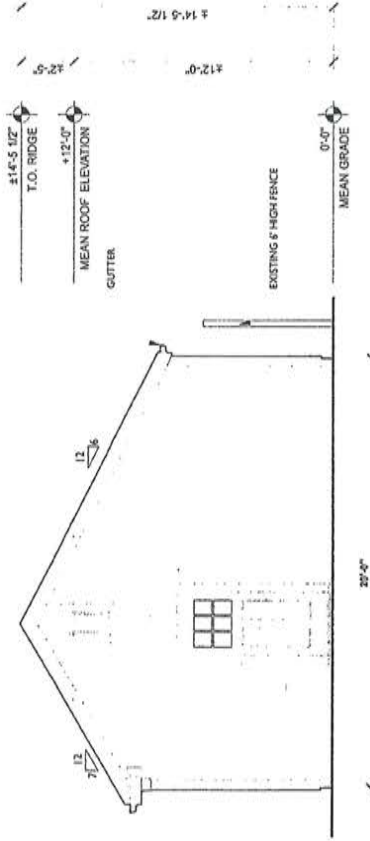


PROJECT:
**ADDITIONS/
 RENOVATIONS**

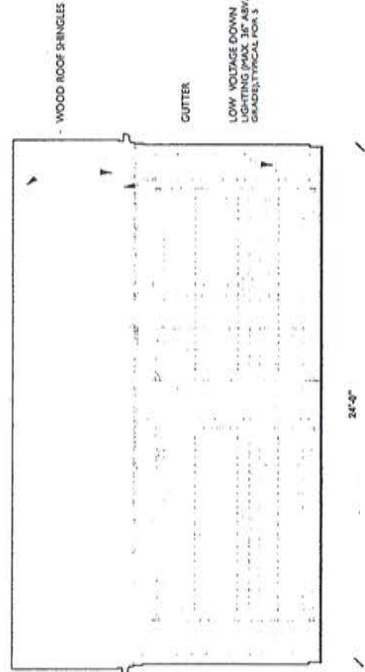
TO
 18 INDEPENDENT STREET
 NEWBURYPORT, MA 01960

APPLICANT:
**INDEPENDENT
 STREET REALTY
 TRUST**

86 GILCREAST RD
 LONDONDERRY, NH 03053



2 RIGHT SIDE ELEVATION
 Scale: 3/16" = 1'-0"



1 FRONT ELEVATION
 Scale: 3/16" = 1'-0"

NOTES:
 1) EXISTING INVASIVE VEGETATION ALONG THE FENCE IS TO BE REMOVED.
 2) TALL LANDSCAPING SCREENING IS TO BE PROVIDED ALONG THE PROPERTY LINE IN AREAS TO THE LEFT AND RIGHT OF THE GARAGE.

**PROPOSED
 GARAGE
 ELEVATIONS**

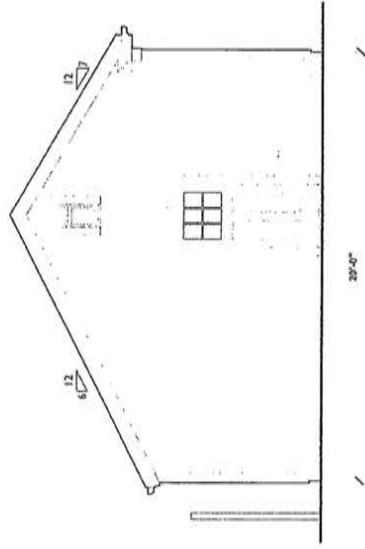
SHEET NO.
A5

DATE: DECEMBER 5, 2019
 SCALE: 3/16" = 1'-0"

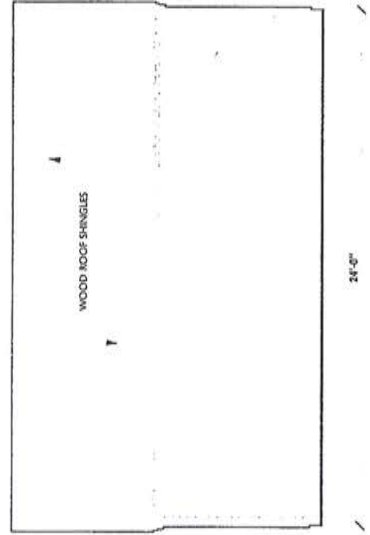
PROJECT:
**ADDITIONS/
RENOVATIONS**

70
10 INDEPENDENT STREET
NEWBURYPORT, MA 01550

APPLICANT:
**INDEPENDENT
STREET REALTY
TRUST**
66 GILCREAST RD
LONDONDERRY, NH 03053



4 LEFT SIDE ELEVATION
Scale: 3/16" = 1'-0"



3 REAR ELEVATION
Scale: 3/16" = 1'-0"

**PROPOSED
GARAGE
ELEVATIONS**

SHEET NO.
A6

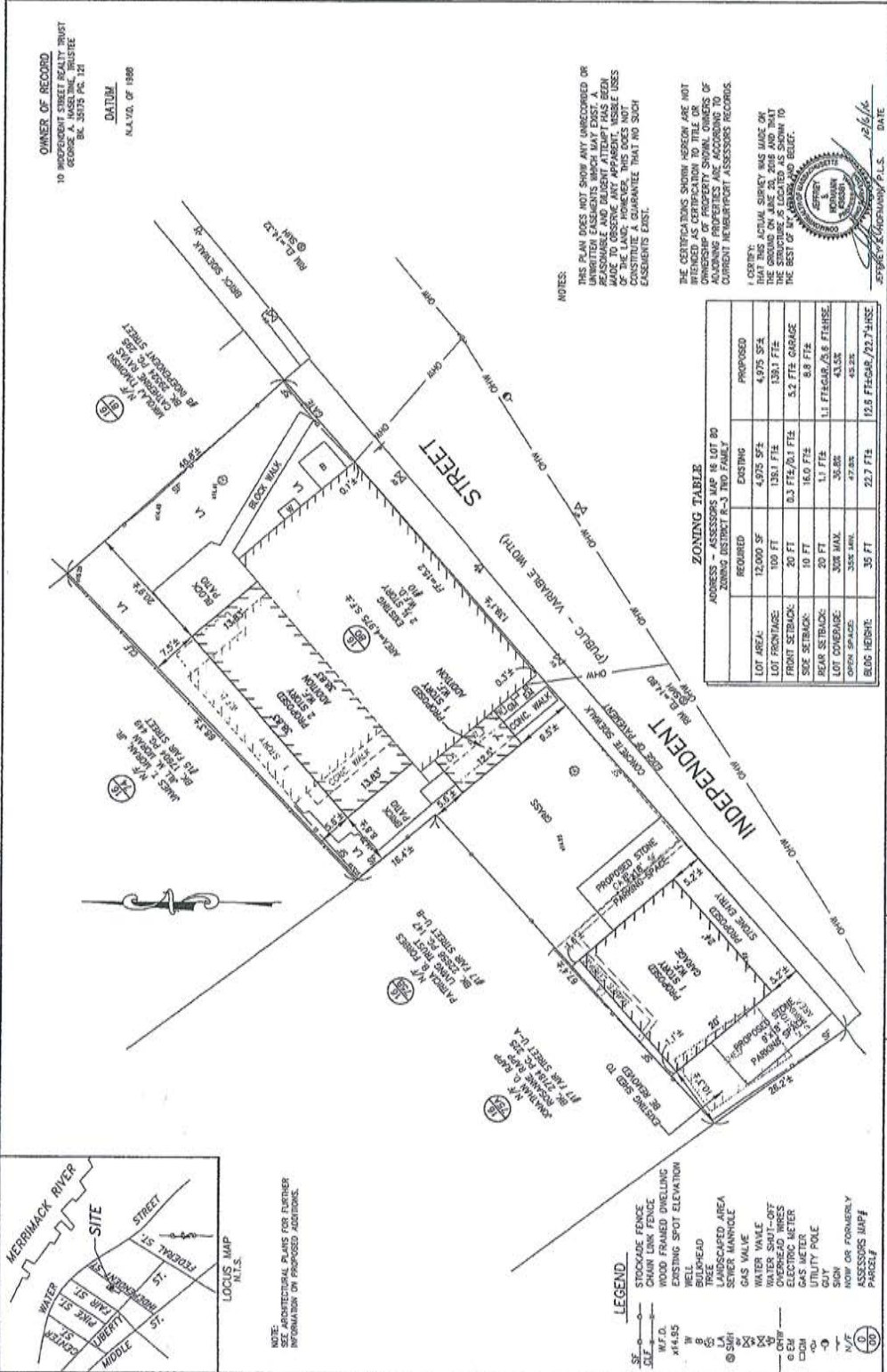
DATE: DECEMBER 5, 2018
SCALE: 3/16" = 1'-0"

OWNER OF RECORD
 10 INDEPENDENT STREET REALTY TRUST
 GEORGE A. HASELTINE, TRUSTEE
 BK. 35375 P. 121

DATUM
 N.A.V.D. OF 1980



NOTE:
 SET ARCHITECTURAL PLANS FOR FINISH
 INFORMATION ON PROPOSED ADDITIONS.



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

THE CERTIFICATIONS SHOWN HEREON ARE NOT
 INTENDED AS CERTIFICATION TO TITLE OR
 OWNERSHIP OF PROPERTY SHOWN. OWNERS OF
 EASEMENTS AND INTERESTS ARE ACCORDING TO
 CURRENT RECORDATORY ASSESSORS RECORDS.

I CERTIFY:
 THAT THIS ACTUAL SURVEY WAS MADE ON
 THE DATE SHOWN AND THAT THE DATA
 THE STRUCTURE IS LOCATED AS SHOWN TO
 THE BEST OF MY ABILITY AND BELIEF.



ZONING TABLE
 ADDRESS - ASSESSORS MAP 16 LOT 80
 ZONING DISTRICT R-3 TWO FAMILY

REQUIRED	EXISTING	PROPOSED
12,000 SF	4,975 SF	4,975 SF
100 FT	139.1 FT	139.1 FT
20 FT	0.3 FT/0.1 FT	5.2 FT GARAGE
10 FT	16.0 FT	8.8 FT
300 MAX.	35.00	43.00
300 MAX.	47.00	43.00
35 FT	22.2 FT	15.8 FT GAR/22.7 FT USE

PLAN OF LAND
 IN
 NEWBURYPOR, MA

SHOWING
 PROPOSED IMPROVEMENTS
 10 INDEPENDENT STREET

PREPARED FOR
 10 INDEPENDENT STREET REALTY TRUST
 GEORGE A. HASELTINE, TRUSTEE
 66 BILGECREST ROAD
 LONDONDERRY, NH 03053



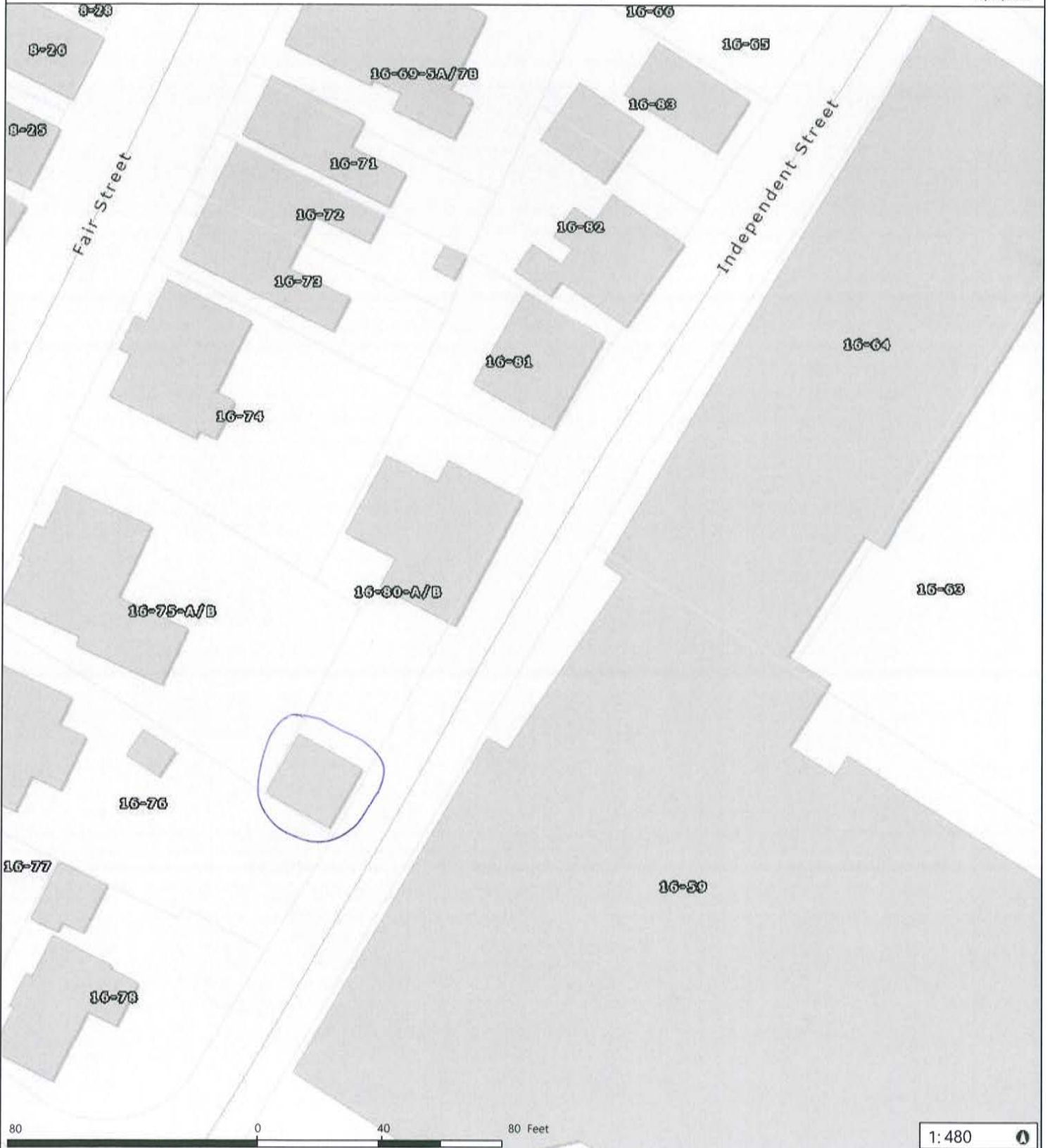
MILLENNIUM ENGINEERING, INC.
 ENGINEERING AND LAND SURVEYING
 12 COURT ST., SUITE 201, WASHINGTON, MA 01892 (978) 453-8880
 13 HAMPTON RD. EXETER, NH 03833 (603) 778-0528

SCALE: 1"=10'
 DATE: DEC. 6, 2016
 CALC. BY: J.S.H.
 CHKD. BY: J.S.H.
 PROJECT: M162806
 SHEET: 1 OF 1

3:\working\5\16162806\16162806-02.dwg 12/16/2016 4:17:47 PM

City of Newburyport

10/02/2020



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Municipal Boundary	Roads	Interstate	Major Road	Local Road	Railroad
Parcels (on aerial)					

City of Newburyport

10/02/2020



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Legend

Municipal Boundary	Roads	Interstate	Major Road	Local Road	Railroad
Parcels (on aera)					

EXHIBIT 5

**City of Newburyport
Zoning Board of Appeals
June 14, 2016
Council Chambers**

The meeting was called to order at 7:11 P.M.
A quorum was present.

1. Roll Call

In Attendance:

Ed Ramsdell (Chair)
Duncan LaBay (Secretary)
Jamie Pennington
Richard Goulet
Renee Bourdeau (Associate Member)

Absent:

Robert Ciampitti (Vice-Chair)

2. Business Meeting

a) Approval of Minutes

Minutes of the 05/24/16 meeting

Mr. LaBay made a motion to approve the minutes and Mr. Goulet seconded the motion.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell – approve
Robert Ciampitti – absent
Duncan LaBay – approve
Jamie Pennington – approve
Richard Goulet – approve
Renee Bourdeau – approve

3. Public Hearings

Public Hearing #1:

2016 012

Address: 1 Kent Street

Sign Variance

Erect a free-standing externally illuminated sign and (2) canopy signs fir existing gas station

Michael Lowry of Newburyport One Stop presented. The Board wished to see changes in sign design. Mr. Lowry presented updates made to the free-standing sign. The applicant proposed the removal of

Richard Goulet – approve
Renee Bourdeau – approve

Public Hearing #8:

2015	048
Address: 49 Marlboro Street	
Dimensional Variance	
Construct a 22'x28' garage with storage above within the required setback	

Britt McCloy presented the application. There is currently a shed on the property lot line. They would like to construct a two car garage 2' from the lot line. Hardship argued is that they are a corner lot where other neighbors are non-conforming. If they were to construct the garage 10' from the lot line, it would be right in middle of the yard and would take up the entire yard space.

Chair Ramsdell opened the hearing to public comment.

In Favor:

None

In Opposition:

Craig Batchelder, 2 Reilly Avenue

His mother's house is a cape on small lo next door. His concerns included a row of trees on the lot line that would be affects, and light and air affected by the size and location of the garage. It may affect his property value later on.

Questions from the Board:

Mr. LaBay asked for the existing shed dimensions. It is approximately 8'x14' and single story with a pitched roof. He asked the proposed garage dimensions. It would be approximately 22'x28,' 21' to top of roof with a 2nd floor storage area with dormer facing their home. There is no attic in the home and storage is needed.

Mr. Goulet asked if any curb cuts would be needed. No, they did not need any curb cuts.

Ms. Bourdeau asked if they would consider moving the garage to 5' from the property line to work with the neighbor. The applicant considered it, but needed to consult with his wife before making any decision.

There was discussion on whether this proposed garage would qualify as an accessory structure.

Deliberations:

Mr. LaBay thought the there was too much building too close to the property line. He would like to see Mimap view of the neighborhood. He believed they could come into compliance with lot coverage if they made it smaller.

Mr. Ramsdell agreed. This probably does not fall under an accessory building as presented.

Mr. LaBay commented an accessory structure must be 6' from the property line and be maximum 22'x24' and 15' mean height. If this was the case they may not need permitting.

Request to continue the application.

Motion to continue application 2016-048 to 6/28/16 made by Mr. LaBay, seconded by Mr. Goulet.

The motion passed unanimously.

Votes Cast:

Ed Ramsdell– approve

Robert Ciampitti – absent

Duncan LaBay – approve

Jamie Pennington – approve

Richard Goulet – approve

Renee Bourdeau – approve

The meeting adjourned at 10:35pm

**Respectfully submitted,
Katie Mahan - Note Taker**

City of Newburyport

10/02/2020

24-11

Marlboro Street

28-1-A

Railly Avenue

28-7

28-8

28-6



1:240

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Legend	
Municipal Boundary	Roads
Parcels (on serial)	Interstate
	Major Road
	Local Road
	Railroad