

**BOARD OF APPEALS  
OF THE  
CITY OF WALTHAM**

**Case No. 2020-17  
August 11, 2020**

**BRIEF  
OF  
Michael W. & Sandra L. Creonte  
Petitioners / Owners  
3 Essex Street**

**Michael W. & Sandra L. Creonte**

**Petitioners / Owners**

**3 Essex Street**

**Exhibits**

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- L. 1969 Zoning Ordinance**



Bk: 63596 Pg: 243 Doc: DEED  
Page: 1 of 2 05/12/2014 08:57 AM

### FIDUCIARY DEED

John S. Burley, as Personal Representative of the Estate of Jeanne Marie Burley, a/k/a Jeanne M. Burley, Middlesex Probate Court Docket No. 14P0772, for consideration paid and in full consideration of Five Hundred Forty-Five Thousand (\$545,000.00) dollars, grant to Michael W. Creonte and Sandra L. Creonte, as husband and wife, tenants by the entirety, both of 137 Clark Street, Waltham, Middlesex County, Massachusetts, with **fiduciary covenants**,

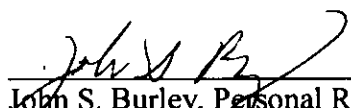
The land and building on Essex Street, Waltham, Massachusetts, the same being lot No. 449 on plan of land entitled "Plan of Glen Meadow Park West, Section 2, Trapelo Road, Waltham, Mass.", Arthur M. King, C. E. dated May, 1952, recorded with Middlesex South District Registry of Deeds as Plan No. 764 of 1952, bounded and described as follows:

NORTHERLY	by Lot 448, one hundred ten (110.00) feet;
EASTERLY	by part of Lot No. 450, eighty-two and 50/100 (82.50) feet;
SOUTHERLY	by Brewster Road, eighty-nine and 65/100 (89.65) feet;
SOUTHWESTERLY	by a curved line, thirty-one and 79/100 (31.79) feet;
WESTERLY	by Essex Street sixty-four and 16/100 (64.16) feet.

Containing 9,030 square feet, more or less.

For title reference see deed from John A. Burley to John A. Burley and Jeanne M. Burley dated October 30, 1991 and recorded in the Middlesex County South District Registry of Deeds at Book 21519, Page 368 and deed from Jeanne M. Burley to Jeanne M. Burley dated December 18, 2012 and recorded in the Middlesex County South District Registry of Deeds at Book 61164, Page 523.

Witness my hand and seal this 9th day of May, 2014.

  
John S. Burley, Personal Representative  
Estate of Jeanne Marie Burley, a/k/a Jeanne M. Burley  
Middlesex Probate Court Docket No. 14P0772

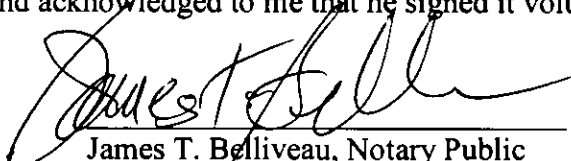
MASSACHUSETTS EXCISE TAX  
Southern Middlesex District ROD # 001  
Date: 05/12/2014 08:57 AM  
Ctrl# 203682 26637 Doc# 00080621  
Fee: \$2,485.20 Cons: \$545,000.00

## COMMONWEALTH OF MASSACHUSETTS

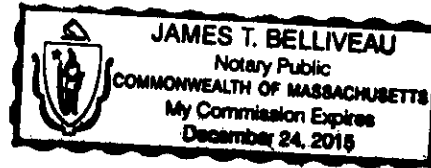
Middlesex, ss

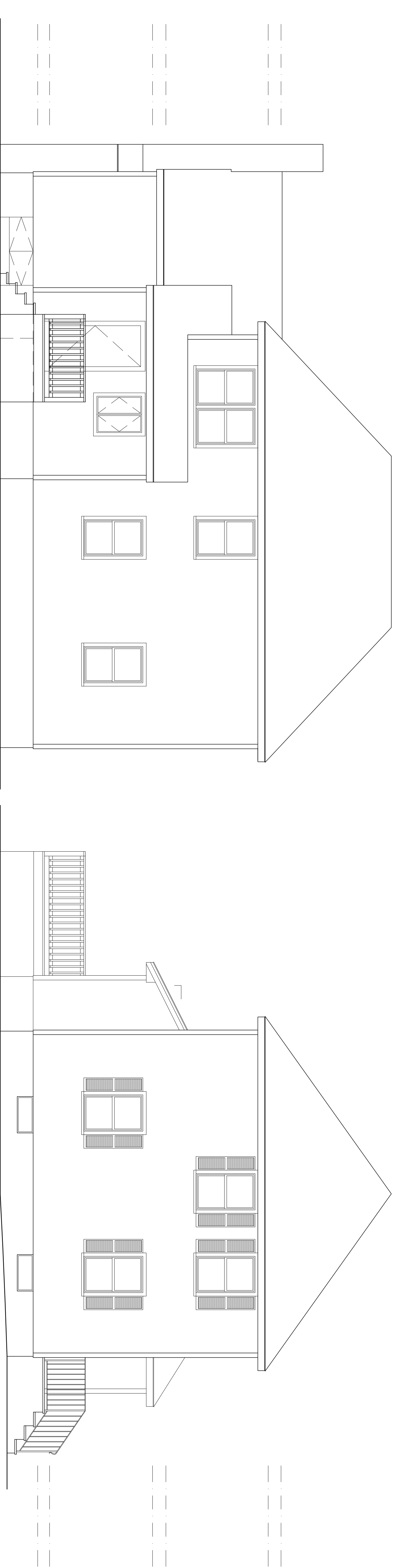
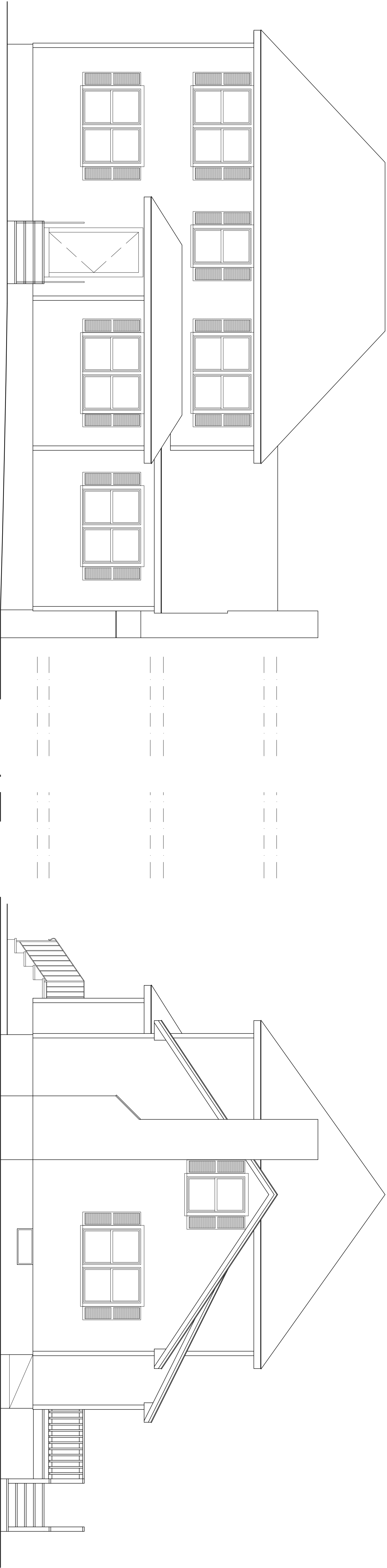
May 9, 2014

On this 9th day of May, 2014, before me, the undersigned notary public, personally appeared John S. Burley, Personal Representative of the Estate of Jeanne Marie Burley, a/k/a Jeanne M. Burley, and proved to me through satisfactory evidence of identification, which was his Massachusetts driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.



James T. Belliveau, Notary Public  
My Commission Expires: 12-24-15





PETITION TO ZONING  
BOARD OF APPEALS

3 ESSEX STREET  
WALTHAM, MASS

PROPOSED  
SECOND FLOOR ADDITION

General Notes :

Symbol



681 MAIN STREET  
WALTHAM, MA 02451  
TEL./FAX: 781-647-5831



Job Number: 21156.00

Scale: 1/4" = 1'-0"

Date: 5-21-2020

Revisions:

EXISTING ELEVATIONS

Drawing

EX-1

PETITION TO ZONING  
 BOARD OF APPEALS

3 ESSEX STREET  
 WALTHAM, MASS

PROPOSED  
 SECOND FLOOR ADDITION

General Notes :

Symbol



881 MAIN STREET  
 WALTHAM, MA 02451  
 TEL./FAX: 781-647-5831



Job Number: 21156.00

Scale: 1/4" = 1'-0"

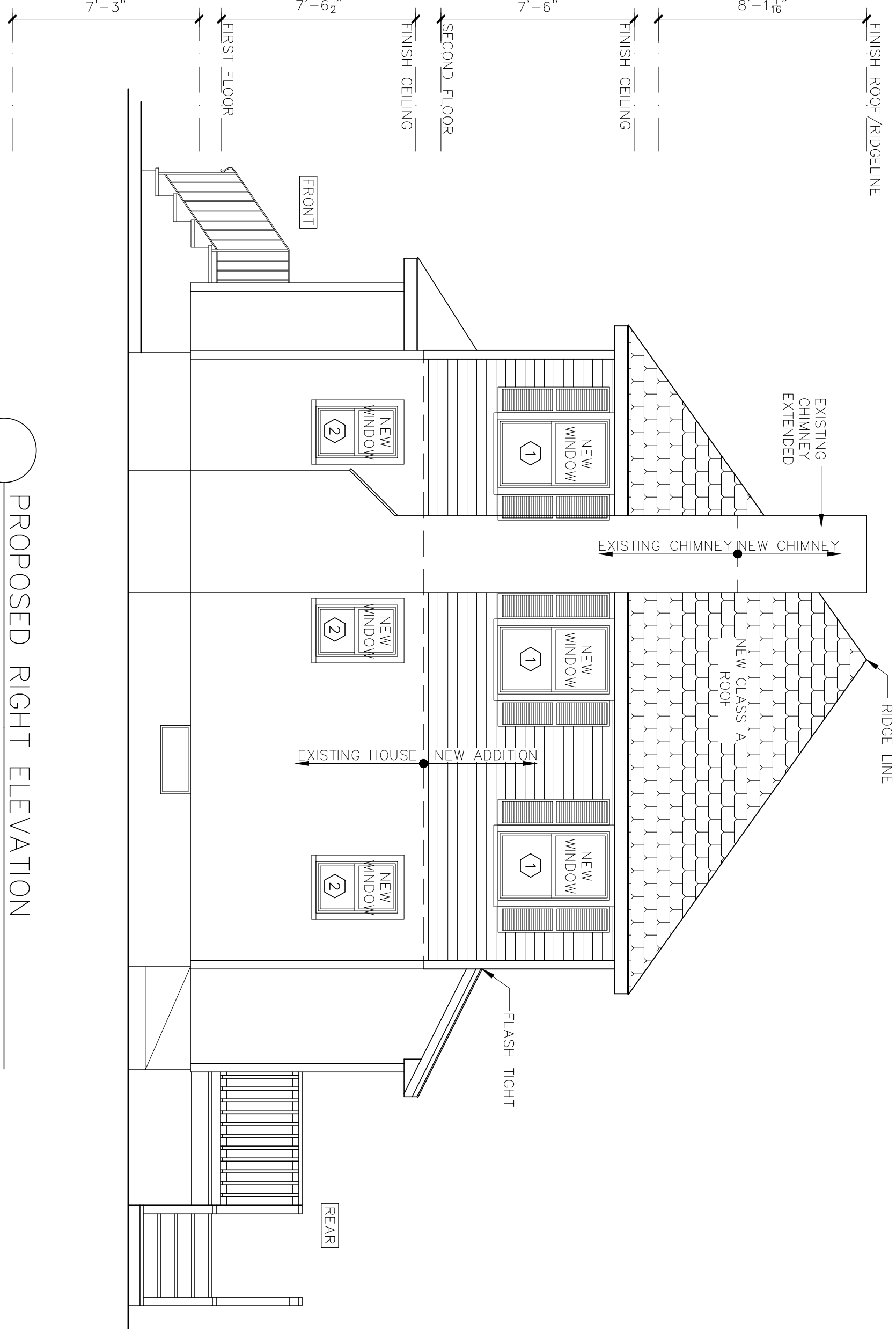
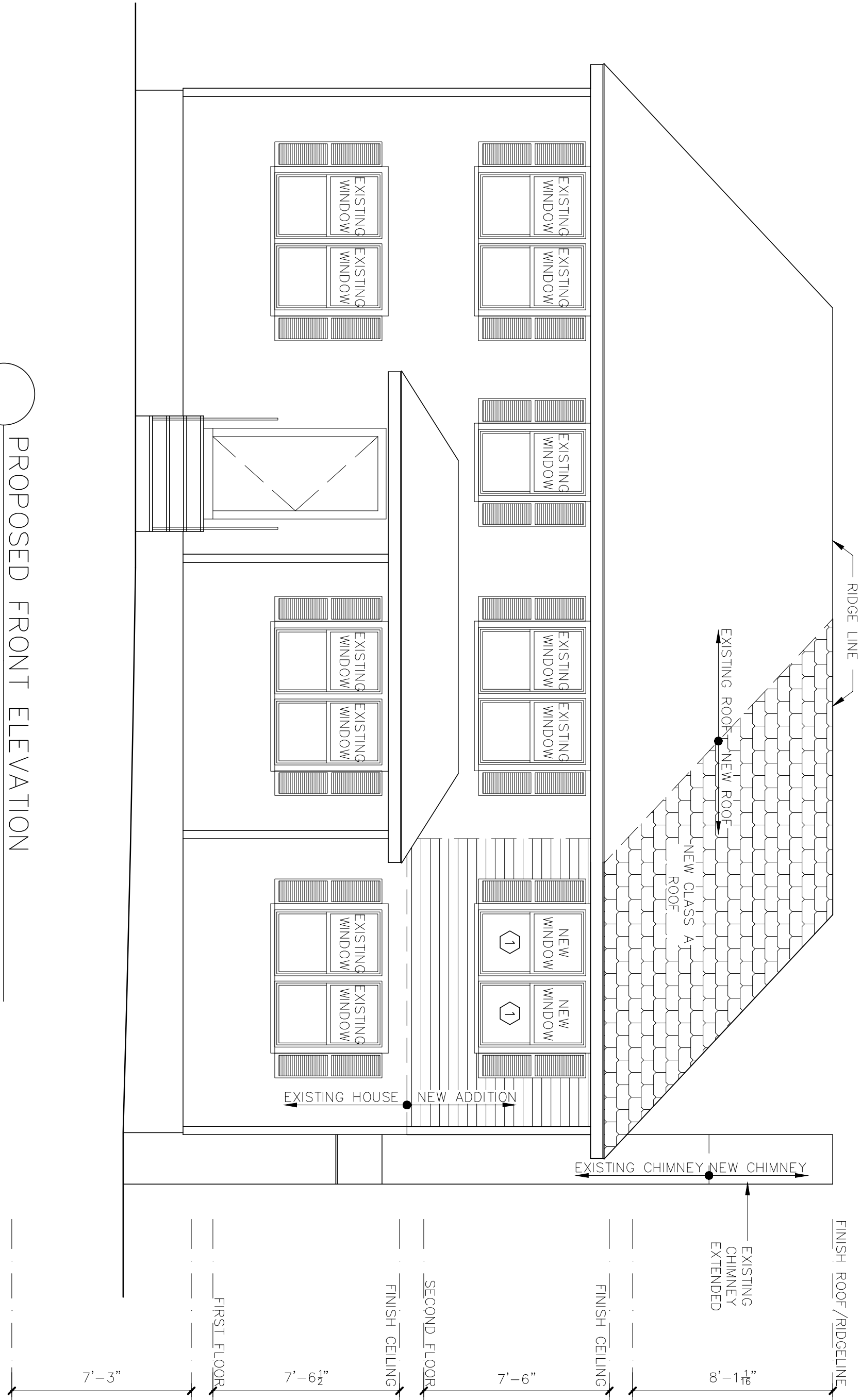
Date: 5-21-2020

Revisions:

PROPOSED ELEVATIONS

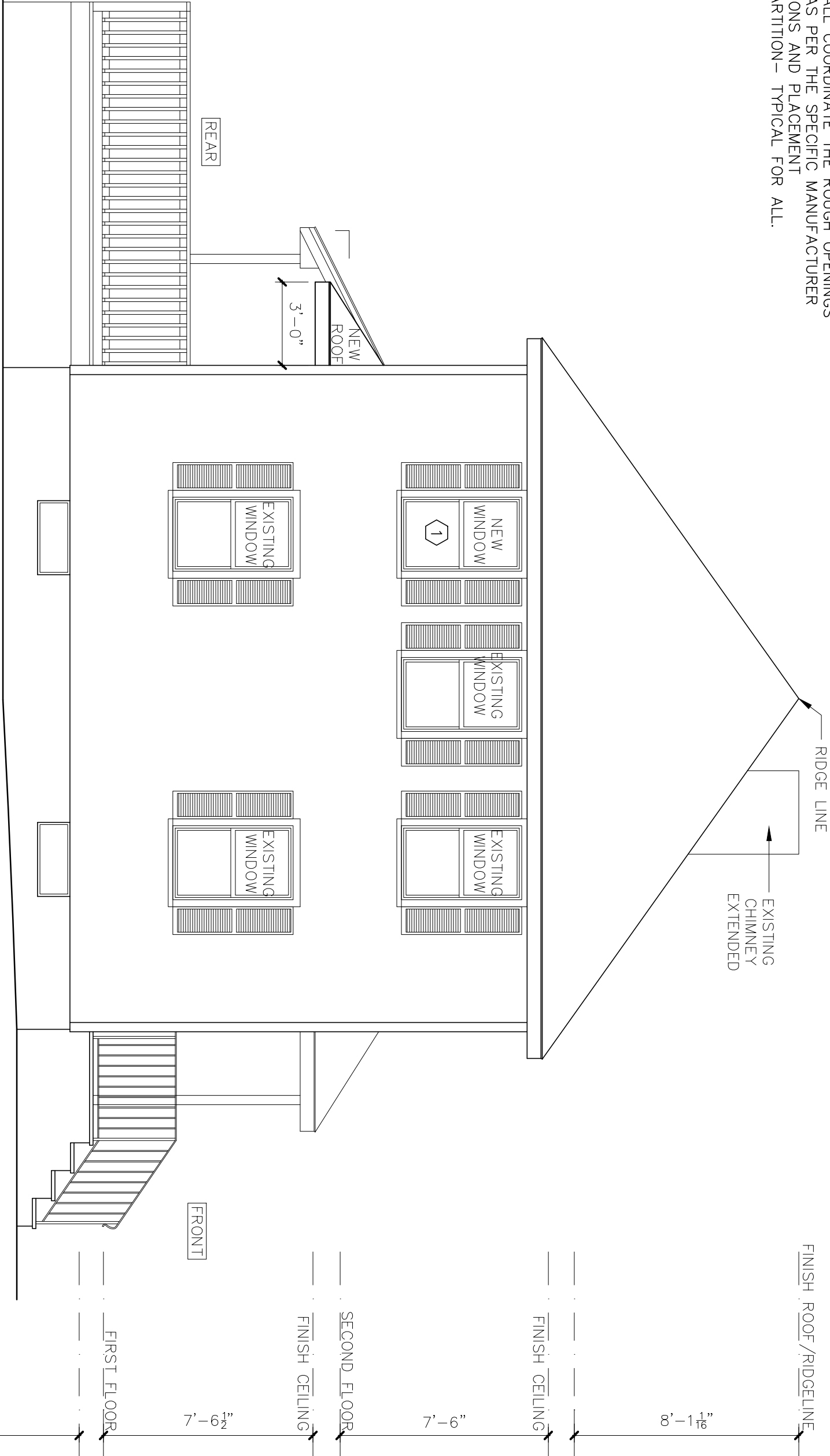
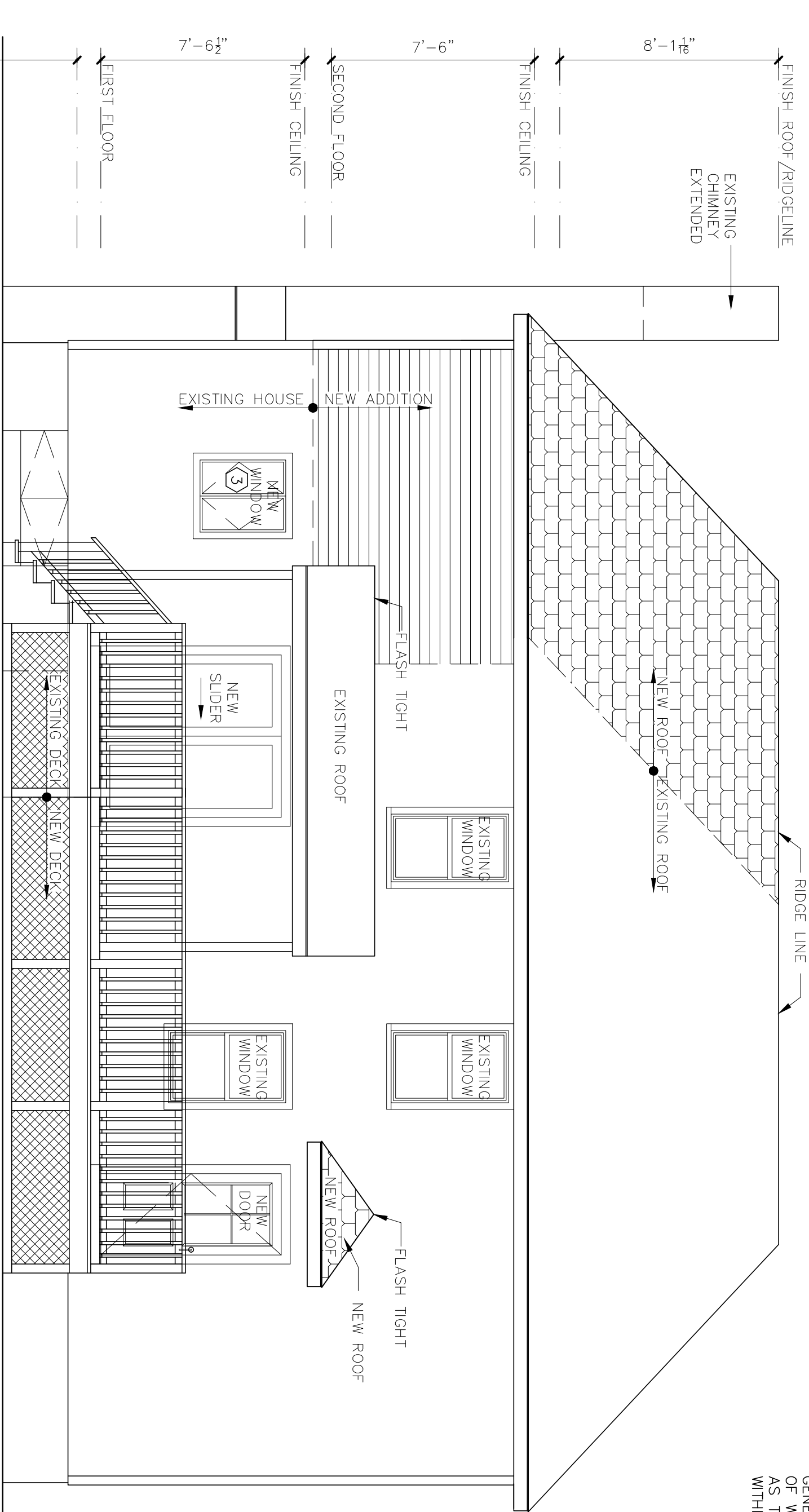
Drawing

A-1



PROPOSED RIGHT ELEVATION

SCALE 1/4"=1'-0"



PROPOSED LEFT ELEVATION

SCALE 1/4"=1'-0"

PROPOSED FRONT ELEVATION

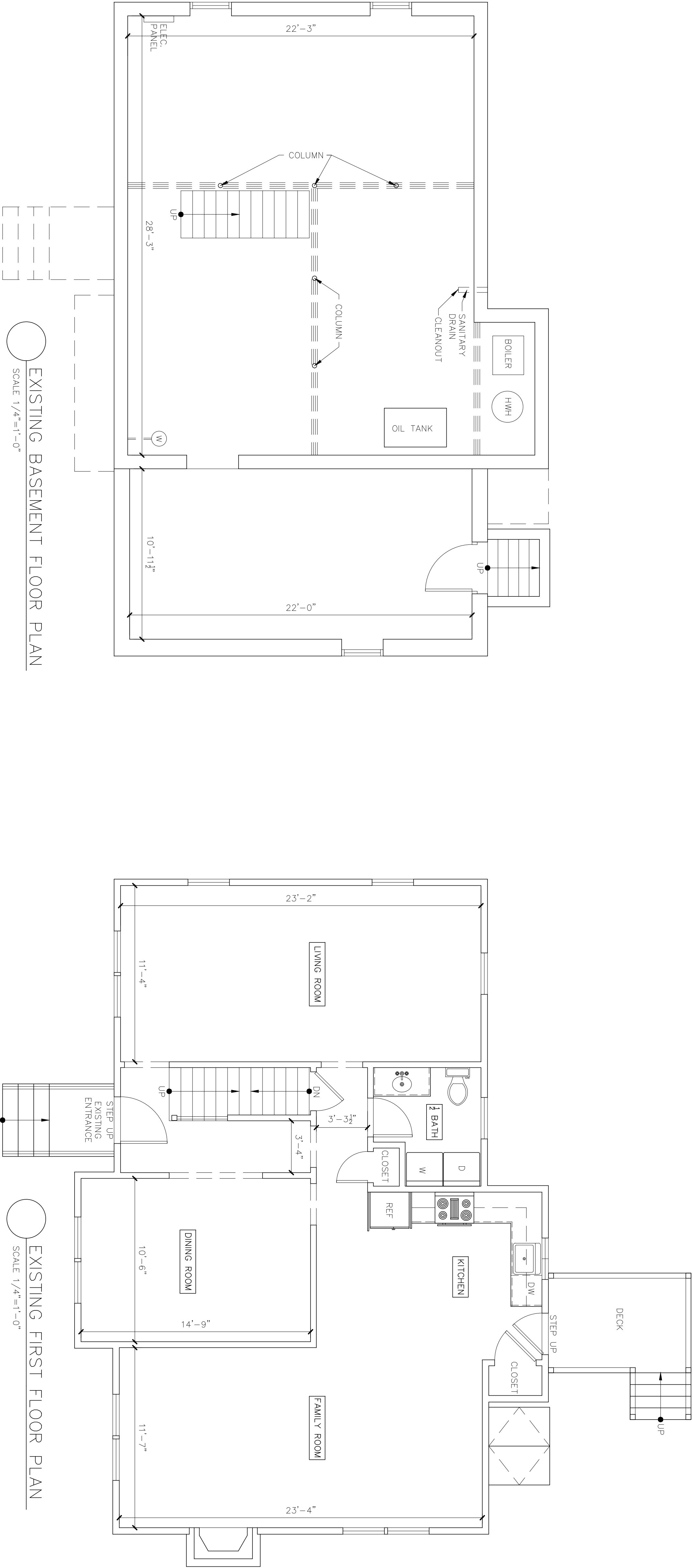
SCALE 1/4"=1'-0"

WINDOW SCHEDULE		
SYMBOL	WINDOW SIZE	NOTES
①	2'-8"x4'-4"	DOUBLE HUNG
②	2'-0"x3'-2"	DOUBLE HUNG
③	2'-8"x3'-2"	CASEMENT CRAWK OUT

GENERAL CONTRACTOR SHALL COORDINATE THE ROUGH OPENINGS OF WINDOWS AND DOORS AS PER THE SPECIFIC MANUFACTURER AS TO THE EXACT DIMENSIONS AND PLACEMENT WITHIN THE WALLS AND PARTITION— TYPICAL FOR ALL.

PROPOSED REAR ELEVATION

SCALE 1/4"=1'-0"



MR. & MRS. CREONTE  
3 ESSEX STREET  
WALTHAM, MASS  
PROPOSED SECOND  
FLOOR ADDITION  
INTERIOR RENOVATIONS

General Notes :

Symbol



681 MAIN STREET  
WALTHAM, MA 02451  
TEL./FAX: 781-847-5831

Job Number:	21156.00
Scale:	1/4" = 1'-0"
Date:	12-06-19
Revisions:	12-30-19 01-14-2020
EXISTING BASEMENT, FIRST AND SECOND FLOOR PLANS	

Drawing

EX-1



# Unofficial Property Record Card - Waltham, MA

## General Property Data

Parcel ID **R007 006 0006**  
 Prior Parcel ID **--**  
 Property Owner **CREONTE, MICHAEL & SANDRA L.**

Account Number **37301**

Mailing Address **3 ESSEX STREET**

Property Location **3 ESSEX ST**

Property Use **ONE FAM**

Most Recent Sale Date **5/12/2014**

Legal Reference **63596-243**

City **WALTHAM**

Grantor **BURLEY, JEANNE M.,**

Mailing State **MA**

Zip **02451-2319**

Sale Price **545,000**

ParcelZoning

Land Area **0.207 acres**

## Current Property Assessment

Card 1 Value Building Value **327,900**

Xtra Features  
Value **300**

Land Value **320,000**

Total Value **648,200**

## Building Description

Building Style **COLONIAL**  
 # of Living Units **1**  
 Year Built **1953**  
 Building Grade **AVERAGE**  
 Building Condition **Average**  
 Finished Area (SF) **1806**  
 Number Rooms **7**  
 # of 3/4 Baths **0**

Foundation Type **CONCRETE**  
 Frame Type **WOOD**  
 Roof Structure **HIP**  
 Roof Cover **ASPHALT**  
 Siding **VINYL**  
 Interior Walls **DRYWALL**  
 # of Bedrooms **3**  
 # of 1/2 Baths **1**

Flooring Type **CARPET**  
 Basement Floor **CONCRETE**  
 Heating Type **FORCED H/W**  
 Heating Fuel **OIL**  
 Air Conditioning **0%**  
 # of Bsmt Garages **0**  
 # of Full Baths **1**  
 # of Other Fixtures **0**

## Legal Description

## Narrative Description of Property

This property contains 0.207 acres of land mainly classified as ONE FAM with a(n) COLONIAL style building, built about 1953 , having VINYL exterior and ASPHALT roof cover, with 1 unit(s), 7 room(s), 3 bedroom(s), 1 bath(s), 1 half bath(s).

## Property Images



Disclaimer: This information is believed to be correct but is subject to change and is not warranted.

# Neighbors / Abutters Signatures in Support of Petition to Waltham Zoning Board of Appeals

PETITIONERS: Michael W. Creonte and Sandra L. Creonte

PROPERTY: 3 Essex Street

## SUBJECT MATTER:

The Petitioners are asking the Zoning Board of Appeals (ZBA) for permission to build an addition to the existing single-family residence located on the property. The original 2.5 story home was constructed in 1932.

Subsequently, in 1973 the ZBA granted a variance from the front yard setback requirement (to Brewster Road) to construct a 1.5 story addition (ZBA Case No. 73-32).

Now, the Petitioners are seeking to modify the relief granted in Case No. 73-32 to construct a second story over the one-story addition that was granted by Case No. 73-32 (see Exhibit A - ZBA Petition and Exhibit B - Elevations Plans attached hereto). The proposed second-story buildout will match the existing roof line, will not bring the structure closer to any street line or reduce the existing setbacks, and will result in the entire structure being a 2.5 story single-family residence.

We the undersigned are abutters / neighbors of Michael W. Creonte and Sandra L. Creonte of 3 Essex Street. We have reviewed the attached Petition and Plans as to this proposal and have signed our names below as evidence of our support in hopes that it will be approved by the Board of Appeals.

SIGN	PRINT NAME	ADDRESS
<i>[Signature]</i>	SEAN P. McGERILL	51 SHEPPARD RD
<i>[Signature]</i>	Jessie Latoro	65 SHEPPARD RD
<i>[Signature]</i>	Sandra Creonte	3 Essex St.
<i>[Signature]</i>	PAUL OWERS	12 ESSEX ST
<i>[Signature]</i>	Arro Mitchell	31 ESSEX ST
<i>[Signature]</i>		32 Essex.
<i>[Signature]</i>	Charles Barber	Sheffield Rd.
<i>[Signature]</i>	Carey Carlson	5 Berkeley St
<i>[Signature]</i>	Barbara Decker	14 Essex St.
<i>[Signature]</i>	Chuck Monagle	4 - Essex St
<i>[Signature]</i>	Torane Monagle	4 - Essex St



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SIGN	PRINT NAME	ADDRESS
	Amanda Shortt	32 Whittier Ave
	David J. Carr	40 Whittier Ave
	June Casey	48 Whittier Ave
	Jacobo Chohan	18 Whittier Ave
	Allegra Atkinson	5 Whittier Ave
	Minassian	5 Brewster Rd.
	Dennis Deveney	70 Essex St
	Kellie Connerton	57 Sheffield Rd
	John Connerton	57 Sheffield Rd
	Melissa Egnous	41 Kingston Rd.



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SIGN

PRINT NAME

ADDRESS

*[Signature]*

Andrew J. Hogan

30 SHEFFIELD RD

*[Signature]*

Robert Mahail

33 SHAW RD

*[Signature]*

SUEAN AGHARA

19 SHEFFIELD

*[Signature]*

SUSAN REARRICK

41 SHEFFIELD RD

*[Signature]*

Alicia Foley

1187 Trapelo Rd

*[Signature]*

Gordon Salvatore

128 COPELAND ST

*[Signature]*

Ryan Foley

1187 Trapelo

*[Signature]*

JANET DOOLAN

4 WHITTIER AVE

*[Signature]*

FRANCIS COTTON

11 WHITTIER AVE

*[Signature]*

COTTON DUNN-KAYE

17 WHITTIER AVE



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SIGN

PRINT NAME

ADDRESS

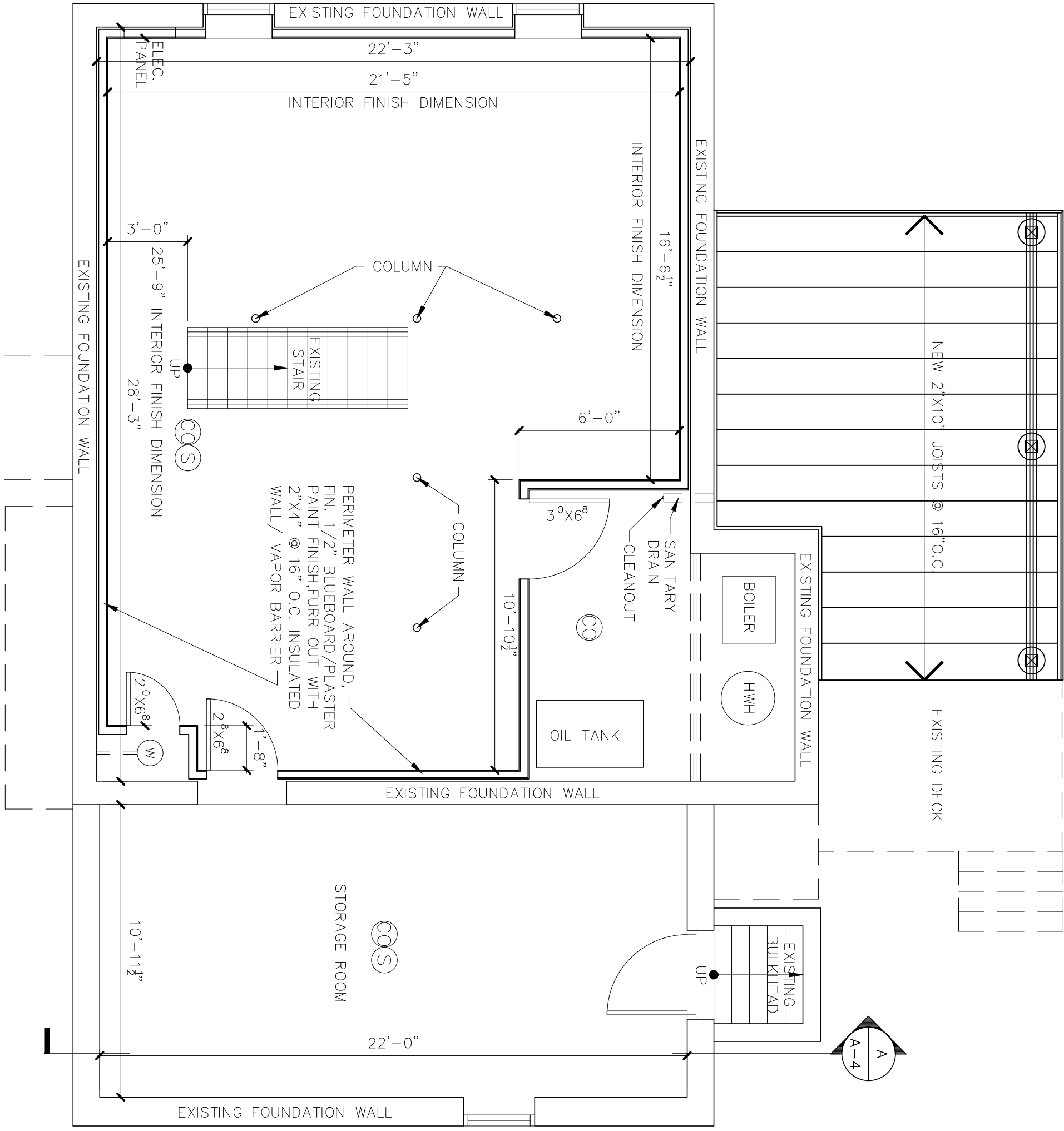
Deborah Creonte Deborah Creonte 32 Brewster Rd

Ross Barvin Ross Barvin 37 Brewster Rd

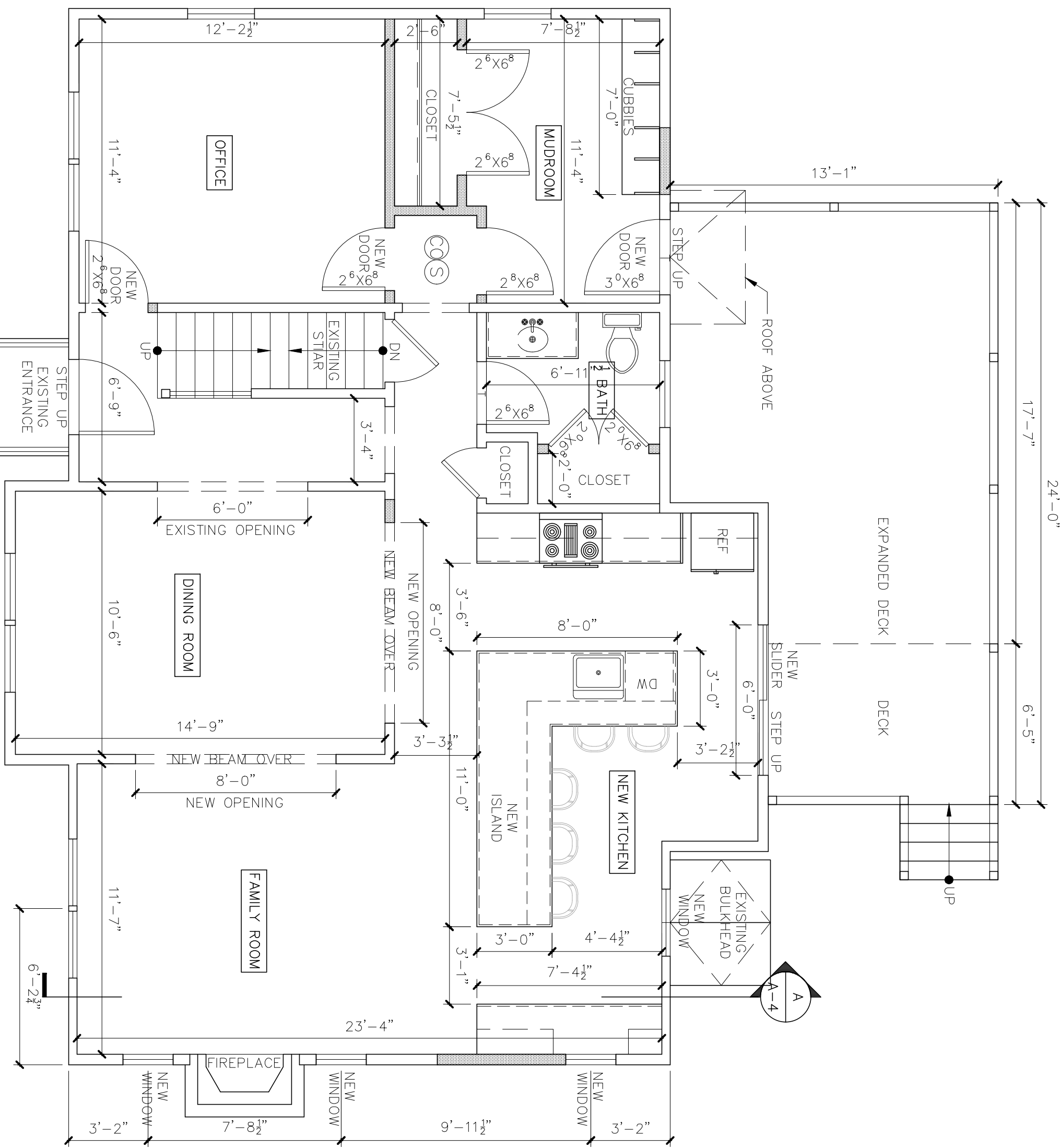
Donna Barvin Donna Barvin 39 Brewster Rd

Anthony DiStasio Anthony DiStasio 31 Brewster Road

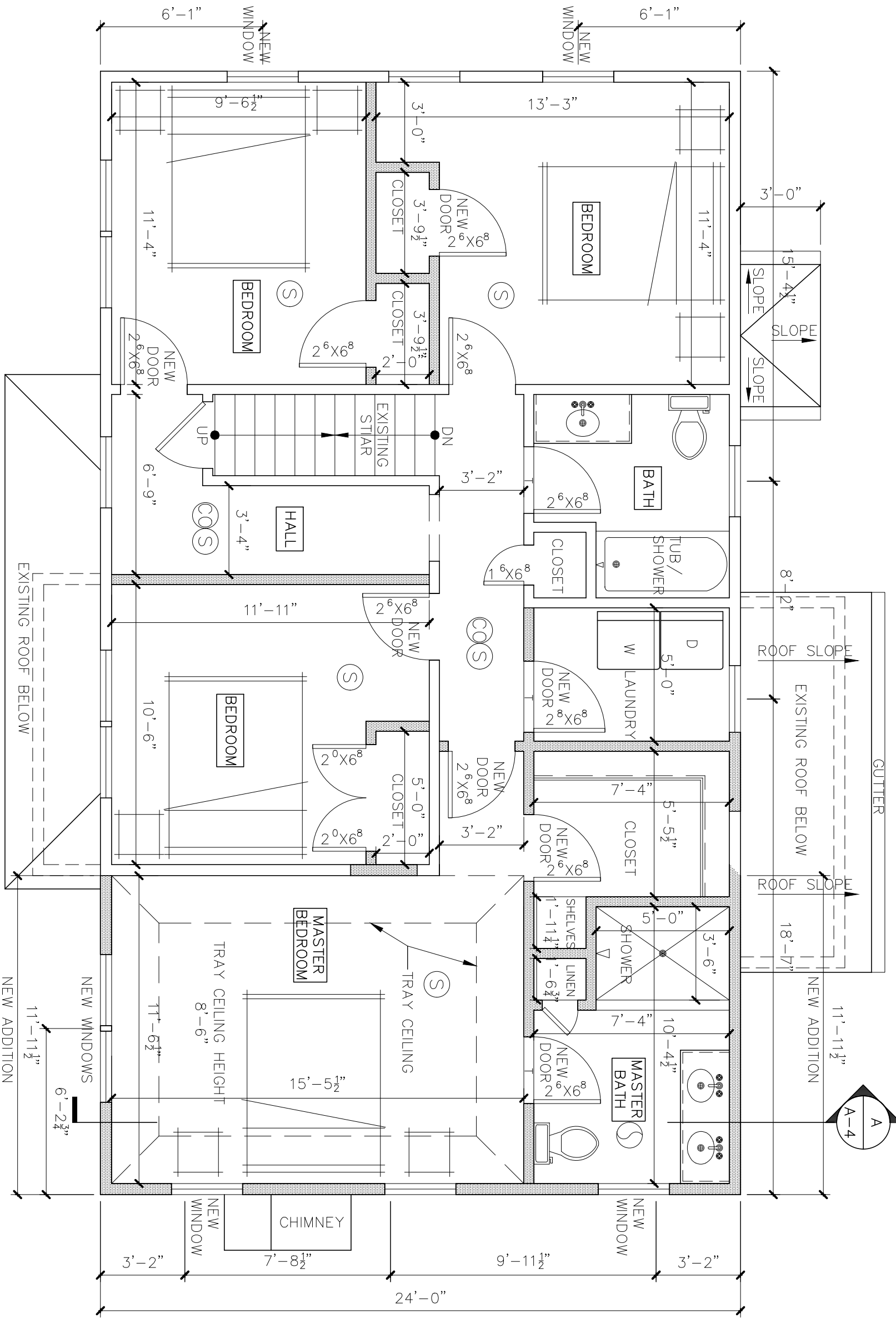




EXISTING BASEMENT FLOOR PLAN  
SCALE 1/4"=1'-0"



EXISTING/PROPOSED FIRST FLOOR PLAN  
SCALE 1/4"=1'-0"



EXISTING/PROPOSED SECOND FLOOR PLAN  
SCALE 1/4"=1'-0"

1. ALL DIMENSIONS TO BE VERIFIED IN THE FIELD.
2. EXACT MATERIALS, COLORS TO BE VERIFIED IN THE FIELD.

- |  |  |
|--|--|
| <p>Ⓢ = SMOKE DETECTOR</p>                                | <p>Ⓢ = SMOKE DETECTOR</p>                                |
| <p>Ⓢ = CARBON MONOXIDE DETECTOR</p>                      | <p>Ⓢ = CARBON MONOXIDE DETECTOR</p>                      |
| <p>Ⓢ = HEAT DETECTOR</p>                                 | <p>Ⓢ = HEAT DETECTOR</p>                                 |
| <p>Ⓢ = ALL TO BE UL LISTED AND INSTALLED AS PER CODE</p> | <p>Ⓢ = ALL TO BE UL LISTED AND INSTALLED AS PER CODE</p> |

- ALL MATERIAL FINISHES AND COLORS TO BE AS PER OWNER
- ALL CROWN, BASE, TRIM, ETC MOLDINGS AS PER OWNER
- ALL PAINTING AND PAINT COLORS TO BE AS PER OWNER
- ALL DIMENSIONS TO BE VERIFIED IN THE FIELD
- Ⓢ = BATHROOM, TOILETS, EXHAUST FAN VENTED

MR. & MRS. CREONTE  
3 ESSEX STREET  
WALTHAM, MASS  
PROPOSED SECOND  
FLOOR ADDITION  
INTERIOR RENOVATIONS

General Notes :

Symbol



681 MAIN STREET  
WALTHAM, MA 02451  
TEL./FAX: 781-647-5831

Job Number: 21156.00

Scale: 1/4" = 1'-0"

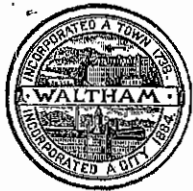
Date: 12-06-19

Revisions: 12-30-19  
01-14-2020

EXISTING/PROPOSED  
BASEMENT, FIRST AND  
SECOND FLOOR PLANS

Drawing

A-1



# CITY OF WALTHAM MASSACHUSETTS

 DATE October 30, 1973

## BOARD OF APPEALS NOTICE OF DECISION

 CASE NUMBER 73-32

 NAME OF PETITIONER TOMM A. BULLIV

 LOCATION OF PROPERTY 3 ESSEX STREET

 DATE OF HEARING 10/16/73 DATE OF DECISION 10/16/73

 DATE OF FILING OF DECISION WITH CITY CLERK 10/30/73

 DATE OF NOTIFICATION TO BUILDING INSPECTOR 10/30/73

 FINAL DATE FOR FILING OF APPEAL FROM THIS DECISION — SUPERIOR COURT 11/5/73

 DISTRICT COURT 11/5/73

### DECISION

 PETITION GRANTED XXXXXX

PETITION DENIED \_\_\_\_\_

### ROLL CALL

	YES	NO	TO GRANT
Rosario A. Campisi	<u>X</u>	_____	
Edward P. Powers	<u>X</u>	_____	
Edmund R. Tarallo	<u>X</u>	_____	
Leo Surette	<u>X</u>	_____	
Beatrice O'Toole	_____	_____	

	YES	NO
George E. Miller	_____	_____
Ralph A. Zampitella	<u>X</u>	_____
Beatrice O'Toole	_____	_____

### PETITION

for a variance to allow the construction of an addition to an existing single family dwelling at 3 Essex Street in Waltham. The proposed addition is to be made to the southeasterly side of the existing dwelling and will measure 12 x 24 feet, and a southerly side yard of 17 feet will be provided. The premise is situated in a Residence A-3 Zoning District, is a corner lot subject to the provisions of Article V, Section 21-10, subsection 8, which requires that in a corner lot, the side yard adjacent to the intersecting street shall be subject to the same provisions as the front yard of buildings on such intersecting street, which front yard depth in a Residence A-3 District is 25 feet, and to all other requirements of Article VII, Section 21-15.


The granting of the petition is based on the following reasons:

1. There are conditions especially affecting this parcel (building) but not affecting generally the zoning district in which it is located in that the house is irregularly set upon the lot, thus preventing its normal expansion.
2. A literal enforcement of the provisions of the ordinance or by law would create substantial hardship financial or otherwise to the applicant in that construction of a proposed addition, without a variance, would necessitate extensive and expensive renovation to the existing structure.
3. Desirable relief may be granted without substantial detriment to the public good in that the building will maintain its present use.
4. The petition may be granted without nullifying or substantially derogating from the intent and purpose of the zoning ordinance in that the character of the building will be maintained.

The petition is granted subject to the following conditions:

1. All necessary permits shall be issued and work commenced within one year of the date of filing of the decision with the office of the City Clerk of the City of Waltham.
2. All construction and use of the premises be in accordance with the following plan(s) introduced as evidence during the hearing:

"Plan to accompany petition of John A. Burley for a variance at 3 Essex Street, Waltham dated August 27, 1973 drawn by Alfred Gargaro, Land Surveyor."

  
Edmund R. Tarallo, Clerk *Ref*

ERT:lmf



## Exhibit H

PLAN OF  
GLEN MEADOW PARK WEST  
SECTION #2

TRAPELO ROAD  
WALTHAM, MASS.

SCALE - 1 INCH = 50 FEET  
ARTHUR M. KING, C.E.  
WALTHAM, MASS.

I hereby certify that a plan and profile of the following street is: At-bor Lane, Banbury Ave, Bancroft St, Berkeley St, Brewster Rd, Cambridge St, Essex St, Meadow Lane, Sheffields Rd, Tudor St, and Whitler Ave, have been approved by the Board of Surveying Planning, and is on file in the office of the City Engineer  
DATE- MAY 5, 1952.

Robert F. Howe  
City and City Engineer

E- MAY 5, 1952  
*Walter F. Howe*  
 Clerk and City Engineer

764  
May 9 52 1 27 P  
Recd  
Realty Co. of N. E. Inc.  
Realty Co. of Eng. Inc.





1. V.  
HOMOPOLLOS

S. T.

94

BREWSTER

R. D.

S. F. BROWN

220

J. R. W. H. J.  
STEWART

13405

Ave.

○ 〇 元 月 八 日

9240

— A T A T E

240

ROBBINS

DUMORE

G. M. & D.  
DOHERTY

9,240 E

J. F. E.  
MEL

卷之四

ROMANIAN

B. W. & D. MEYLER

6205

D. J. & A.  
PENDERGAST

PLAN TO ACCOMPANY PETITION OF  
JOHN A. BUREY  
FOR VARIANCE AT 3 ESSEX ST. —  
WALTHAM, MASS.

SCALE: 1 in = 40 ft.  
ALFRED GAARD

August 27, 1973  
LAND SURVEYOR

NOTE: FIRE AREA IS RES. A-3 DIST.

CASE NO.: 73-32

BOARD OF APPEALS

PROVED BY

DATE:

BY:

A circular postmark from GARGARO, N. 15805, dated MAR 19 1917. The text "COMMONWEALTH OF MASSACHUSETTS" is visible around the top edge of the circle.

Alfred Rogers



2/7/2020

[https://web-server.city.waltham.ma.us/GovernEcomponents/WebUserInterface/\(S\(ej4eswsxyifdhdm54rrgkai\)\)/Multimedia/Print.aspx](https://web-server.city.waltham.ma.us/GovernEcomponents/WebUserInterface/(S(ej4eswsxyifdhdm54rrgkai))/Multimedia/Print.aspx)

STREET: 3 Essex street

LOT NO: 449

DATE	OWNER	PROPOSED WORK	AMOUNT	PLAN NO.
7.3.51	Realty Joint & Ingr	Single dwelling Per #101	\$7500.	50-201
11/15/73	John A. Burley	Variance To Allow Addition Granted By The Board of Appeals. Case #73-32		
11/15/73	John A. Burley	Addition to Single Family Per #458	\$3000.	73-115
9.9.85	" "	Add porch Per#374	\$5,000	
1/4/89	" "	Alt - bathroom Per#006	\$3000	
1/12/89	" "	Plumbing Permit #15		
3/9/98	Res A-3 "	demolish SFD Per #637	\$4000.	
3/10/98	Res A-3 John Burley	erect SFD Per #646	\$80,000.	98-25
5/21/98	" "	Plmb. Permit #508		
12/16/98	" "	Cert. of Occup. issued Permit #646		

1946

# ZONING

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Reprinted from

**The General Ordinances of the City of Waltham, 1946**

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*Original References Retained*

---

MICHIE CITY PUBLICATIONS COMPANY  
CHARLOTTESVILLE, VIRGINIA  
1946

*Walter E. Gray*

8. *Frontage for residential lots.* For each dwelling house or club house hereafter constructed in any residential district there shall be provided a lot having a depth of at least 100 feet and containing not less than 8,000 square feet with a frontage at the set back line of not less than eighty feet in residence "A" districts; 7,000 square feet with a frontage at the set back line of not less than seventy feet in residence "B" districts; and 6,000 square feet with a frontage at the set back line of not less than sixty feet in residence "C" districts; but nothing contained in this section shall prevent the construction or placing of any building on a lot in any of said districts containing a smaller area or frontage, providing such lot on the effective date hereof does not adjoin other land of the same owner available of use in connection with said lot.

The foregoing provisions of this section shall not apply to lots shown on plans duly recorded before the effective date of this chapter.<sup>4</sup>

No lot on which a dwelling house or club house is situated, whether heretofore or hereafter placed, shall be reduced in area or frontage, if such lot is smaller than is hereby prescribed or if by such reduction it would be made smaller than is hereby prescribed, except in either case by taking by eminent domain or by a conveyance for a public purpose.

The board of appeals may make special exceptions to the provisions of this section, either upon appeal or upon the written request of the owner of a parcel of land by authorizing the building inspector to grant a permit for the erection or placing of a dwelling house upon any lot containing less area or frontage than is hereby prescribed, subject to such limitations of time and other conditions as it may impose when after a public hearing it shall find that—

(1) Adjoining areas have previously been generally developed by the construction of houses on lots generally smaller than is prescribed by this section and the standard of the neighborhood so established does not reasonably require a subdivision of the applicant's land into lots as large as is hereby prescribed;

(2) Lots as large as is hereby prescribed would not be readily salable or economically or advantageously used for building purposes because of the proximity of the land to through ways bearing heavy traffic or to a railroad or because of other physical conditions or characteristics affecting it but not affecting generally the zoning district in which the land lies.

4. Made effective immediately upon passage and publication, by § 18.

inches shall be deducted from the required depth of a rear yard for each foot of such lesser depth of lot, except that in no case shall the clearance be less than ten feet.

(1) *Rear projections.* A ground story rear projection may extend into any such required rear yard not more than one third of its required depth.

(2) *Accessory buildings.* Accessory buildings hereinbefore permitted may occupy not more than one third of the required rear yard area. No accessory building or structure shall be more than one and one-half stories or 25 feet high or (except for a fence not over six feet high) shall extend within less than three feet of any side or rear lot line. On corner lots accessory buildings shall be located as far as possible from all street lines. (10223, § 3, 6-22-25.)

#### Sec. 4. Residence "B" districts.

(a) *USES.* Within any residence "B" district, as indicated on the building zone map, no building or premises shall be used and no building or structure shall be erected which is intended or designed to be used in whole or in part for any industry, trade, manufacturing or commercial purposes or for other than one or more of the following specified purposes:

(1) Any use specified above in section 3 (a) and permitted in residence "A" districts.

(2) Two family houses, double houses and houses for two families on each side of a common party wall.

(3) Customary home occupations including the taking of roomers or boarders, without restriction as to the proportion of the floor area so used.

(4) Hospitals and institutions at least 20 feet from all street and lot lines.

(5) Telephone central buildings and broadcasting stations without yards or garages for service.

(6) Trailer camps.

(b) *HEIGHT AND AREA.* No building or structure shall have a height exceeding three stories or 40 feet, nor shall it have a combined gross area on all floors greater than the area of the lot, excluding basements, porches and uninhabited attics.

The provisions of this section with respect to height shall not apply to church spires, belfries, cupolas, chimneys, radio towers, radio and flag poles, water tanks and hose towers.

(c) **FRONT YARDS.** Except as hereinafter specified, no building or structure shall extend within 15 feet of the street line, except that ground story porches or projections may extend to eight feet of any street line and a two or three story porch unenclosed at least half of the year may extend into the front yard to 9 feet from the street line.

(1) *Certain buildings may extend near the street line.* Where there are two or more then existing buildings within the same block front and within 200 feet of the lot in question, any building or structure on the lot may extend as near the street line as the average alignment of such then existing buildings.

(2) *Buildings on corner lots.* On one side of a corner lot buildings or structures may extend within a distance from the street line equal to the required sum of the two side yards minus three feet.

(3) *Not to interfere with traffic visibility.* On a corner lot no planting, structure or part of a building shall extend within 15 feet of any corner street line intersection so as to interfere with traffic visibility around the corner.

(d) **SIDE YARDS.** There shall be a side yard along each side lot line. The sum of the widths of the two side yards shall be not less than ten feet for buildings or projections one story high and not less than 16 feet for higher buildings.

However, for each foot that the lot is less than 50 feet wide, at the time of the passage of this chapter, three inches shall be deducted from the required sum of the widths of the two side yards. No side yard shall be less than five feet wide.

Within 60 feet of any street line no garage shall be within ten feet of any adjoining lot except that a garage or pair of garages may cross a common lot line by mutual agreement between adjoining property owners. These provisions shall not apply to a boundary fence or wall which is less than six feet high.

(e) **REAR YARDS.** There shall be a rear yard on every lot and it shall be at least 25 feet deep behind the building, but if the lot is less than 100 feet deep at the time of passage of this chapter, six inches shall be deducted from the required depth of rear yard for each foot of such lesser depth of lot, except that in no case shall the clearance be less than ten feet. A ground story rear projection may extend into any such required rear yard not more than one third of its required depth.



ROBERT E. CONNORS, JR.  
ATTORNEY AT LAW  
510 MAIN ST.  
WALTHAM, MASS. 02154

# Zoning

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General Ordinances of  
Waltham, Massachusetts*

REVISED 1969

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8. *Corner lot side yards.* On a corner lot, the side yard adjacent to the intersecting street shall be subject to the same provisions as the front yards of buildings on such intersecting street, except that in no case shall any building, including a detached accessory building, be nearer than ten feet to the side street line, and in all cases the corner clearance provision hereinabove set forth in subsection 4 shall be observed. (Ord. No. 17462; Ord. No. 21178.)

**Sec. 21-11. Applicable to business, commercial and industrial districts.**

The following provisions and restrictions shall be applicable in all business, commercial and industrial districts:

1. *Location of public garages, automobile service facilities and alcoholic beverage establishments.* No public garage, storage battery service station, gasoline filling station nor any of their appurtenances or accessory uses and no commercial establishment for the sale or dispensing of alcoholic beverages shall hereafter be erected or placed so that any entrance or exit at the street line thereto shall be within a radius of two hundred feet from any entrance or exit at the street line (such as a door, walk, or driveway) of any public or private school, public library, church, playground or institution for the sick, dependent or for children under sixteen years of age if such entrances or exits are on the same street or on an intersecting street; nor within twenty-five feet of any residence district.

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Ord # 22222

3. *Building height limit.* No building shall be erected to a height in excess of two and one-half stories or thirty-five feet, except as provided in section 21-9, subsection 9, and section 21-10, subsection 3.

4. *Yards required.* Except as provided in section 21-9, subsection 5 and section 21-10, subsection 8, each lot shall have front, side and rear yards not less than the following dimensions:

A. FRONT YARD DEPTH. Forty feet.

B. EACH SIDE YARD WIDTH. Twenty feet.

C. REAR YARD DEPTH. Forty feet.

(Ord. No. 17462.)

## Article VII. Residence A-3 and A-4 Districts.

### Sec. 21-14. Permitted uses.

Within any residence A-3 and residence A-4 districts, no building structure or land shall be used and no building or structure shall be erected or altered, except for the following uses:

1. Any use which is permitted in a residence A-1 or a residence A-2 district.

2. The board of appeals, after a finding that such action will not be injurious to the neighborhood, may issue a permit for the alteration of a single-family dwelling existing at the time of the passage of this chapter into a dwelling for occupancy by two families; provided, that the exterior design of the structure is not changed from the character of a single-family dwelling.

3. Accessory uses customarily incident to any use permitted herein; provided, that such use shall not include any activity conducted for gain or any private walk or way giving access to such activity or any activity prohibited under this chapter. (Ord. No. 17462.)

**Sec. 21-15. Lot area, width and coverage; building height; yards.**

The following provisions shall be applicable in residence A-3 and A-4 districts:

1. *Required lot area and width.* For each single-family dwelling a lot not less than nine thousand six hundred square feet in a residence A-3 district, and seven thousand square feet in a residence A-4 district, having a width of not less than eighty feet in a residence A-3 district and seventy feet in a residence A-4 district, subject, however, to the provisions of section 21-14, subsection 2, and section 21-9, subsection 11.

2. *Percentage of lot coverage.* All buildings, including accessory buildings, shall not cover more than twenty-five per cent of the area of the lot.

3. *Building height limit.* No building shall be erected to a height in excess of two and one-half stories or thirty-five feet, except as provided in section 21-9, subsection 9, and section 21-10, subsection 3.

4. *Yards required.* Except as provided in section 21-9, subsection 5, and section 21-10, subsection 8, each lot shall have front, side, and rear yards not less than the following dimensions:

A. FRONT YARD DEPTH. Twenty-five feet.

B. EACH SIDE YARD WIDTH. Fifteen feet.

C. REAR YARD DEPTH. Thirty feet.

(Ord. No. 17462.)

**Sec. 21-16**

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**Sec. 21-17**

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**Michael W. & Sandra L. Creonte**

**Petitioners / Owners**

**3 Essex Street**

**Brief**

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**Michael W. & Sandra L. Creonte**

**3 Essex Street**

**The Petitioners / Owners:**

Michael W. & Sandra L. Creonte (Petitioners) purchased 3 Essex Street in 2014 (see **Exhibit A – Owner’s Deed**) and have resided there since that time raising their three children ages five to eight.

Michael Creonte is a lifelong Waltham resident and is the third-generation owner of Creonte Tire & Auto located at 127 Linden Street. Sandy Creonte grew up in Watertown but has called Waltham home for over a decade and is a special education teacher at McDevitt Middle School.

**The Locus:**

3 Essex Street is located in the Residence A-3 Zoning District according to the Zoning Map of the City of Waltham. The locus is a corner lot, situated on the corner of Essex Street and Brewster Road, consisting of approximately 9,098 square feet of land. There is presently a primarily 2.5 story home located thereon.



*Existing home from corner of Essex Street and Brewster Road*

### The Proposal:

Now, the Petitioners propose to construct, use, and maintain a second story addition over the existing 1.5 story section of the home as seen above (see also **Exhibit B – Exterior Elevations Plans**, which were previously filed with the Zoning Board of Appeals (Board)<sup>1</sup>). The proposed second story buildout (resulting in the entire structure being a 2.5 story single-family residence) will match the existing roofline and the home will not be extended outward in any way to the front, side, or rear of the lot.

As indicated above, the Petitioners reside in the home with their three children ages five to eight. However, the existing home only contains three bedrooms (see **Exhibit C – Existing Floor Plan** and **Exhibit D – Assessor's Department Record Card**). Obviously, this presents challenges for a family of five with growing children.

The Petitioners love the neighborhood and their neighbors, as evidenced by the number of signatures in support of this Petition received from abutters within 300 feet (as well as others in the immediate vicinity outside of the 300 foot statutory standard (see **Exhibit E – Neighbor / Abutter Signatures in Support**, which is to be further supplemented prior to the public hearing).

The neighborhood is filled with young families like the Petitioners, many of which make up some of the Petitioners own friends and the children's friends and classmates at MacArthur Elementary School. It is a great environment for the children and the Petitioners want to remain in the neighborhood, but they require more living space to do so.

The primary purpose of the second-floor addition (as can be seen **Exhibit F – Proposed Floor Plans**) is to add a master bedroom suite, thus making the proposed structure a four-bedroom home. Though additionally, as can also be seen on **Exhibit F**, the entire interior of the structure is being renovated, including but not limited to a new kitchen, new mudroom, new upstairs laundry room, additional closet space for the existing bedrooms, finished basement, and expanded rear deck.

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<sup>1</sup> Any reference to the "Plans" are to the Plans previously filed with the Board in this matter, unless otherwise noted.



If allowed, the resulting structure will provide the Petitioners with the additional space they require, as well as a newly renovated, modernized home which they desire to continue to raise their family in a neighborhood they have come to love.

### **The Petition:**

In order to undertake the proposed expansion, the Petitioners require three variances from the Zoning Ordinance of the City of Waltham (the "Zoning Ordinance"). It should be noted that all three variances pertain to existing conditions of the locus / structure and are not due to the proposed construction of the addition, which is merely vertical (while matching the existing roof line) in relation to abutting properties.

Two of these conditions have been in existence since the original home was constructed in 1952, while the third has been in existence since 1973, when this Board previously granted a variance for a corner lot side yard in Case No. 73-32 (see **Exhibit G – ZBA Case No. 73-32**).

Accordingly, the following variances being requested in this Petition are simply to document the existing conditions as requested by the Building Inspector:

1. **Lot Area:** § 4.11<sup>2</sup> requires a lot area of at least 9,600 square feet in the Residence A-3 Zoning District and the existing lot has an area of 9,098 square feet. The lot was shown on a recorded plan dated May 9, 1952 (see **Exhibit H – Recorded Subdivision Plan**) and has remained unchanged since that time.

As indicated, the lot area is being listed solely because the same was requested by the Building Inspector, as the lot is exempt from lot area requirements of the Residence A-3 Zoning District pursuant to § 4.218, which provides in pertinent part that:

*lot area as required by Sections 4.211 through 4.214 shall not apply to lots for single- and two-family residential use which, prior to the adoption of this chapter, were shown as separate parcels on subdivision plans approved by the Board of Survey and Planning...*

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<sup>2</sup> All references to section numbers are to the sections of the Zoning Ordinance, unless otherwise noted

2. Front Yard Setback: § 4.11 requires a front yard setback of at least 25 feet in the Residence A-3 Zoning District. When the Petitioners surveyed the locus in preparing for the proposed addition, it showed that the existing structure has a front yard setback from Essex Street of 23.83 feet (as seen on the Site Plan filed in this matter). The approved Plan in ZBA Case No. 73-32 shows that the 23.83 feet setback from Essex Street has been in existence since that time and since the home was initially constructed in 1952 (see **Exhibit I – 1973 ZBA Plan**).

At the time of initial construction in 1952, as indicated further below, the required front yard setback was only 15 feet. Thus, this front yard setback is legally pre-existing nonconformity. The front yard setback will remain unchanged by this Petition.

3. Corner Lot Side Yard: Similarly, when the Petitioners surveyed the locus in preparing the proposed addition, it showed that the existing structure was located 16.17 feet from Brewster Road. § 4.228 (Corner lot side yards) requires that the side yard adjacent to the intersecting street be subject to the front yard setback requirements of the Zoning District. Therefore, in the Residence A-3 Zoning District, a front yard setback of 25 feet from Brewster Road is required pursuant to § 4.11.

ZBA Case No. 73-32 granted a variance from this 25-foot setback requirement and allowed a setback from Brewster Road of 17 feet (see **Exhibit G – ZBA Case No. 73-32**). Accordingly, the Petitioners request that the relief granted in Case No. 73-32 be modified to reflect the actual setback of 16.17 feet, which has been in existence since the construction of the first-floor addition over 45 years ago. The proposed second story addition will not affect the existing setback.

Additionally, the Petitioners are requesting that the Board modify its decision in Case No. 73-32 by substituting the Plans filed in Case No. 73-32 with the Plans filed in this case.



## **JURISDICTION**

Massachusetts General Laws Chapter 40A §§ 10 and 14 authorize this Board of Appeals to grant variances as long as they are not for a use (use variance) prohibited by the Zoning Ordinance. The use in this instance, a single-family house, is allowed in the Residence A-3 Zoning District.

The variances requested hereunder pertaining to lot area, front yard setback, and corner lot side yard setback are all dimensional variances under § 4.11 (Table of Dimensional Regulations) and § 4.228 (Corner lot side yards) as it pertains to the size of the locus and setbacks of the principal structure in a Residence A-3 Zoning District.

As to the modifications of Case No. 73-32, the case law of Massachusetts has long interpreted M.G.L. c. 40A, §10 as allowing modifications to prior decisions, *Huntington v. Zoning Board of Appeals of Hadley*, 12 Mass. App. Ct. 710 (1981), provided the Board of Appeals holds a public hearing after notice is given in accordance with M.G.L. c. 40A, § 11.

§ 7.2 of the Zoning Ordinance authorizes this Board of Appeals to utilize all of the powers granted to it by the General Laws and the Zoning Ordinance, which would include the granting of dimensional variances and modifications of prior Board of Appeal decisions as set forth in *Huntington v. Zoning Board of Appeals of Hadley*.

Therefore, in that this Board of Appeals has both the power (G.L. c. 40A, §§ 10 and 14) and the authority (Zoning Ordinance § 7.2) to grant the requested variances and modifications of Case No. 73-32, the Petitioners respectfully request that their Petition be granted for the following reasons:

## **DISCUSSION**

### **THE VARIANCES**

**Owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located**

In order to obtain a variance, M.G.L. c. 40A § 10 first requires that there are “circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located.”

In this instance, the existing structure and its placement on the lot, as well as the shape of the lot as a corner lot, are unique circumstances which especially affect this locus but do not generally affect other properties in the Residence A-3 Zoning District. To better understand this, it is necessary to understand the history of the locus.

### 1. History of the Locus:

The locus is shown as Lot 449 in a subdivision plan entitled “Plan of Glen Meadow Park West Section #2 Thapelo Road, Waltham, Mass” which was approved by the Board of Survey and Planning on May 5, 1952 and recorded at the Middlesex South District Registry of Deeds as Plan No. 764 of 1952 (see **Exhibit H – Recorded Subdivision Plan**).

On July 3, 1952, a building permit was granted to construct a single-family home thereon the locus (see **Exhibit J – Building Department Street Card**). This was for the original 2.5 story colonial home.

At such time, the Zoning Ordinance in effect was the 1946 Zoning Ordinance and the locus was located in a “Residence B” Zoning District. The 1946 Zoning Ordinance provided the following requirements for lots in the Residence B Zoning District:

- 7,000 square feet of lot area;
- 70 feet of frontage;
- Maximum 40 feet of height, maximum three stories;
- 15-foot front yard setback;
- The sum of the combined side yards shall equal at least 16 feet, no side yard to be less than 5 feet (corner lot side yards shall extend the sum of the required two sides yards minus three feet, in this case 13 feet); and
- 25-foot rear yard setback.

See **Exhibit K – 1946 Zoning Ordinance**.



In that the original home complied with all of these requirements (as can be verified by the Site Plan filed in this matter), the original home was built “by-right”.

In December of 1952, the City of Waltham implemented its first major revamp of the Zoning Ordinance and Zoning Map since zoning was implemented in Waltham in 1925. This resulted in the locus now being included in the newly implemented Residence A-3 Zoning District, which is consistent with current zoning.

It should be noted in viewing the recorded subdivision plan attached as **Exhibit H**, that a significant number of the lots shown contain less than 9,600 square feet of lot area (the locus included), as 9,600 square feet became the minimum required lot area for the Residence A-3 Zone beginning with the 1952 revision of the Zoning Ordinance (see also below as to the 1969 Zoning Ordinance).

As previously indicated however, the locus (and others similarly affected on the recorded subdivision plan) is exempt from lot area requirements of the Residence A-3 Zoning District pursuant to § 4.218, which provides in pertinent part that:

*lot area as required by Sections 4.211 through 4.214 shall not apply to lots for single- and two-family residential use which, prior to the adoption of this chapter, were shown as separate parcels on subdivision plans approved by the Board of Survey and Planning...*

Thereafter, in ZBA Case No. 73-32, this Board granted a variance from the setback requirements (corner lot side yard) to allow a 1.5 story addition to the southerly side of the house that would be setback 17 feet from the southerly lot line (Brewster Road) (see **Exhibit G – ZBA Case No. 73-32**).



*The 1.5 story addition to the original 2.5 story home can clearly be seen on the “right” side*

At such time, the Zoning Ordinance in effect was the 1969 Zoning Ordinance. The 1969 Zoning Ordinance provided the following requirements for lots in the Residence A-3 Zoning District:

- 9,600 square feet of lot area;
- 80 feet of frontage;
- Maximum 35 feet of height, maximum two and one-half stories;
- 25-foot front yard setback;
- 15-foot side yard setbacks (with corner lot side yards requiring the same setback as the required front yard, in this case 25 feet); and
- 30-foot rear yard setback.

See **Exhibit L – 1969 Zoning Ordinance.**

In that the proposed addition was to be set back 17 feet from Brewster Road (the corner lot side yard, which it should be noted meets the 15 foot requirements of a regular side yard in the Residence A-3 Zoning District), a variance was requested and obtained from the required 25 foot corner lot side yard. In that case the Board found that:

*There are conditions especially affecting this parcel (building) but not affecting generally the zoning district in which it is located in that the house is irregularly set upon the lot, thus preventing its normal expansion.*

A building permit was granted for construction of the proposed addition on November 15, 1973 and aside from the later construction of the rear deck, the structure has remained unchanged since the construction of the addition pursuant to ZBA Case No. 73-32 (see **Exhibit J – Building Department Street Card**).

As to the issue of the original addition being built 16.17 feet from Brewster Road (which is still greater than the 15 feet required for a normal side yard in the Residence A-3 Zoning District), as opposed to 17 feet as approved by the ZBA, the existing structure is protected by Massachusetts General Laws (M.G.L.) c. 40A, §§ 6 and 7.

In 2016 the state legislature amended M.G.L. c. 40A § 7 to provide greater rights to non-conforming structures, even structures that were built in violation of the conditions of a variance. The statute provides in pertinent part:

*No criminal or civil action intended to compel the removal, alteration, or relocation of a structure by reason of an alleged violation of this chapter or of an ordinance or by-law adopted under this chapter or the conditions of a variance or special permit shall be*



*maintained unless the action, suit or proceeding is commenced... within 10 years of the commencement of the alleged violation.*

Here, a building permit was issued on November 15, 1973 to construct a "Variance To Allow Addition Granted by The Board of Appeals. Case #73-32." Over 45 years have passed since the construction of the original addition and the setback of 16.17 feet (as opposed to 17 feet) has existed since that time without any notice of violation. Consequently, the existing corner lot side yard setback has been protected from zoning enforcement since 10 years after the completion of the original addition.

Additionally however, M.G.L. c. 40A, § 7 goes on to further provide:

*If real property has been improved by the erection or alteration of 1 or more structures and the structures or alterations have been in existence for a period of at least 10 years and no notice of an action, suit or proceeding as to an alleged violation of this chapter or of an ordinance or by-law adopted under this chapter has been [commenced]... within a period of 10 years from the date the structures were erected, then the structures shall be deemed, for zoning purposes, to be legally non-conforming structures subject to section 6 and any local ordinance or by-law relating to non-conforming structures.*

Therefore, pursuant to M.G.L. c. 40A, §§ 6 and 7, the existing structure located thereon the locus is a legally existing non-conforming structure which is protected (aka "grandfathered") from zoning enforcement.

With the preceding history in mind, in preparing for the proposed addition, the Petitioners, through counsel, approached the Building Inspector as to a simple modification to Case No. 73-32 to note the actual setback of 16.17 feet and to substitute the Plans filed in that case with the Plans filed in this matter, but the Building Inspector indicated that he would request that all existing nonconformities be listed as variance requests under this Petition.

## 2. Hardship – Existing Structure:

As noted above, in ZBA Case No. 73-32, the Board found that:

*There are conditions especially affecting this parcel (building) but not affecting generally the zoning district in which it is located in that the house is irregularly set upon the lot, thus preventing its normal expansion.*

(see **Exhibit G – ZBA Case No. 73-32**).

The Petitioners contend that the same issues that were present in that case exist today, and as such, to grant the relief requested to expand the original addition upward to match the existing roof line, without extending the structure further into the front, side, or rear yard.

In *Johnson v. Board of Appeals of Wareham*, 360 Mass. 872 (1972), the Supreme Judicial Court (SJC) found that the unique circumstances and conditions of a structure may support a finding of hardship to support the granting of a variance.

In this instance, the original structure was placed on the corner lot by-right pursuant to zoning in effect in July 1952. The home was also constructed with the front of the home facing the corner of Essex Street and Brewster Road, as opposed to squarely facing Essex Street. A review of the Site Plan filed in this matter shows that the locus contains one of the only homes in the immediate vicinity that is not squarely located on its lot, thus a unique circumstance which does not generally affect other lots in the Residence A-3 Zoning District.

This decision resulted in limited expansion area under future zoning ordinances and is a hardship created by the existing structure.

For example, the 1946 Zoning Ordinance in effect at the time of the initial construction required that the sum of the total side yards equal 16 feet, with each side yard having a minimum of 5 feet. Additionally, for the corner lot side yard the requirement is the required sum of the two side yards minus three feet (in this case 13 feet) (see **Exhibit K – 1946 Zoning Ordinance**).

Here, if the initial construction took advantage of the 5-foot side yard towards the neighboring property at 11 Essex Street (could actually be located nearly 10 feet from



(the 11 Essex Street lot line), then the original addition would have been able to be located over 25 feet from Brewster Road and not required a variance in Case No. 73-32.

Therefore, the Petitioners contend that they have met the first requirement for the granting of the requested relief in that there are conditions (placement of existing structure on the lot) which especially affect this locus, but which do not generally affect other lots in the Residence A-3 Zoning District.

**A literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner**

Not only does this locus and the existing house located thereon have conditions which especially affect them, which do not generally affect other lots in the Residence A-Zoning District, but these conditions create a substantial hardship, financial and otherwise, for the Petitioners, meeting the second requirement of M.G.L. c. 40A § 10.

As previously indicated, the existing structure is grandfathered from any type of zoning enforcement as a legally existing non-conforming structure pursuant to M.G.L. c. 40A §§ 6 and 7. But for sake of illustration, if there was a literal enforcement of the Zoning Ordinance to allow the proposed addition, the Petitioners would be required to take 1.17 feet off the northwesterly corner of the house to set it back at least 25 feet from Essex Street and take nearly 9 feet off of the original addition in order to set the structure back at least 25 feet from Brewster Road (not to mention that the Petitioners would lack sufficient lot area but for § 4.218).

This would create substantial hardship, financial or otherwise, in that the existing structure would be reduced in size, and the proposed addition would be significantly reduced in size, completely defeating the purpose of the proposed addition to provide additional living space for a family of five with three growing children.

Further, practically speaking, the Petitioners would suffer significant hardship, including significant financial hardship, if they were required to locate an expansion elsewhere by right (e.g. expansion into the rear yard). Here, the proposed expansion is simply to go upwards on the existing structure. If the Petitioners were required to

build elsewhere by-right, it would necessitate significant additional costs, such as installing new foundation to support the expanded structure.

These site limitations, costs and legal issues do not apply just to the Petitioners. Anyone else wanting to use propose an addition to the existing home would be faced with this hardship. In *Wolfman v. Board of Appeals of Brookline*, 15 Mass. App. Ct. 112, 444 N.E. 2d 942 (1983), where the Court found that subsoil conditions and the resultant increased cost of building to be a hardship, "These expenses are not personal to the developers but would be experienced by anyone attempting to make a reasonable and permitted use of the locus. See *Sherman v. Board of Appeals of Worcester*, 354 Mass. 133, 235 N.E.2d 800 (1968), *Johnson v. Board of Appeals of Wareham*, 360 Mass. 872, 277 N.E.2d 695 (1972)".

As stated in *Kirkwood v. Board of Appeals of Rockport*, 17 Mass.App.Ct. 423, 458 N.E.2d 1213 (1984) "... statutory hardship is usually present when a landowner cannot reasonably make use of his property for the purposes, or in the manner, allowed by the zoning ordinance" *Rodenstein v. Board of Appeals of Boston*, 337 Mass. 333, 149 N.E.2d 382 (1958); *Dion v. Board of Appeals of Waltham*, 334 Mass. 547, 183 N.E.2d 479 (1962); *Sherman v. Board of Appeals of Worcester*, 354 Mass. 133, 235 N.E.2d 800 (1968); *Broderick v. Board of Appeals of Boston*, 361 Mass. 472, 280 N.E.2d 670 (1972).

Thus, the Petitioners contend that they have met the second requirement for the granting of these variances in that a literal enforcement of the provisions of the Zoning Ordinance would involve substantial hardship, financial and otherwise, due to the placement of the existing structure on the corner lot. These practical and financial hardships are not personal to the Petitioners, but would apply to anyone wanting to use this locus.

**Desirable relief may be granted without substantial  
detriment to the public good**

The next issue is whether these variances may be granted without substantial detriment to the public good. The Petitioner contends that the requested variances will have little to no detriment to the public good and thus may be granted.

In this case, as previously indicated, the proposed addition is merely vertical (while matching the existing roof line) in relation to abutting properties and does not extend



the structure further into any front, side, or rear setback. The footprint which has existing for over 45 years will remain the same.

Accordingly, the Petitioners have opted to expand the existing structure not only in the manner that is most economically feasible, but in such a way that does not expand upon any existing nonconformities nor does it create any new nonconformities.

This is further evidenced by the support which the Petitioners have received from abutters within 300 feet, those who will regularly see the home with the proposed addition (as well as others in the immediate vicinity outside of the 300-foot statutory standard (see **Exhibit E – Neighbor / Abutter Signatures in Support**, which is to be further supplemented prior to the public hearing).

In *Kairis v. Board of Appeals of Cambridge*, 337 Mass. 528, 150, N.E. 2d 278 (1958) the Court stated that a factor in upholding a variance was that the variance will promote the general welfare of the City.

In this instance, the granting of these variances for a vertical expansion which will match the existing roof line without expanding the footprint of the structure into any front, side, or rear yard setback will not have a substantial detriment on the public good, but rather will be a further improvement to this vibrant neighborhood which has seen a significant amount of redevelopment in recent years as young families populate the neighborhood.

**Without nullifying or substantially  
derogating from the intent or purpose of such ordinance**

The final question to be answered is whether the granting of these variances will either nullify or substantially derogate from the intent or purpose of the Zoning Ordinance.

In this instance, the granting of the requested variances will not nullify the intent or the purpose of the Zoning Ordinance in the existing front yard and corner lot side yard, both of which are legally pre-existing nonconformities which are protected from zoning enforcement pursuant to M.G.L. c. 40A, §§ 6 and 7, will remain unchanged. Accordingly, the Zoning Ordinance, which requires both a front yard and corner lot side yard requirement, is not nullified.

Nor will the granting of these variances substantially derogate from the intent or purpose of the Zoning Ordinance. In *Cavanaugh v. DiFlumera*, 9 Mass. App. Ct. 396, 401 N.E.2d 867 (1980), the Court stated:

*"... unless the [granting of the variance] significantly detracts from the zoning plan for the district, the local discretionary grant of the variance... must be upheld, some derogation from the [Zoning Ordinance's]... purpose is anticipated by every variance."*

The purpose of front yard and corner lot side yard setbacks are to assure an area of privacy between the structure on a property and the neighboring lots, as well as to provide sufficient sight lines for motorists. In this instance, the existing house has been in its present location for over 45 years and the proposed addition will not alter the footprint.

As a result, the neighbors will continue to enjoy the same level of privacy and the condition of the locus for motorists will remain unchanged. Further, as previously noted, the side yard setback towards Brewster Road is 16.17 feet, which exceed the 15-foot side yard setback requirement for the Residence A-3 Zoning District, but for a corner lot which requires 25 feet.

Therefore, the Petitioners contend that the Zoning Ordinance is not nullified, nor is the Zoning Ordinance substantially derogated from where under existing and proposed conditions the footprint is to remain the same

#### **MODIFICATIONS OF ZBA CASE NO. 73-32**

As previously noted, the case law of Massachusetts has long interpreted M.G.L. c. 40A, §10 as allowing modifications to prior decisions, *Huntington v. Zoning Board of Appeals of Hadley*, 12 Mass. App. Ct. 710 (1981), provided the Board of Appeals holds a public hearing after notice is given in accordance with M.G.L. c. 40A, § 11.

§ 7.2 of the Zoning Ordinance authorizes this Board of Appeals to utilize all of the powers granted to it by the General Laws which would include modifications of prior Board of Appeal decisions as set forth in *Huntington v. Zoning Board of Appeals of Hadley*.

In that a public hearing is to be held after notice is given in accordance with M.G.L. c. 40A, § 11, and for the reasons stated herein, the Petitioners respectfully request that the Zoning Board of Appeals modify the Decision in Case No. 73-32 to reflect the existing corner lot side yard of 16.17 feet, which has been in existence since the construction of the first-floor addition over 45 years ago.

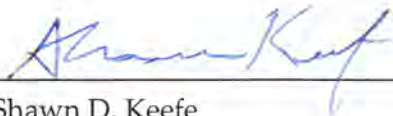


Additionally, the Petitioners are requesting that the Board modify its decision in Case No. 73-32 by substituting the Plans filed in Case No. 73-32 with the Plans filed in this case and making the conditions consistent with the zoning relief outlined above to allow the Petitioner to construct, use, and maintain the proposed second story buildout (resulting in the entire structure being a 2.5 story single-family residence) which will match the existing roofline and will not extend the home outward in any way to the front, side, or rear of the lot, all as shown on the Plans filed in this Case.

\* \* \* \* \*

The Petitioners, having met all the legal requirements for the variances and modification to ZBA Case No. 73-32, respectfully requests that their Petition be granted.

Michael W. & Sandra L. Creonte  
By their Attorneys,  
Connors & Connors LLP

By:   
Shawn D. Keefe

**Michael W. & Sandra L. Creonte**

**Petitioners / Owners**

**3 Essex Street**

**Proposed Findings of Fact**

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**CITY OF WALTHAM**

**BOARD OF APPEALS**

Petition of )  
Michael W. & Sandra L. Creonte )  
Petitioners / Owners )  
)  
For Variances from the Requirements )  
of the Zoning Ordinance )  
and )  
Modifications to ZBA Case No. 73-32 )  
)

**Case No. 2020-17**

**August 11, 2020**

**PROPOSED FINDINGS OF FACT**

The Board of Appeals for the City of Waltham makes the following findings of fact after a hearing on the above captioned Petition for dimensional variances and modifications to ZBA Case No. 73-32:

1. This Board of Appeals, having met all legal prerequisites by proper publications and postings as provided in General Laws Chapter 40A, Section 11 and having also notified by mail all parties in interest and having heard all the evidence, is now empowered to exercise the power to grant or to deny the variances and modifications to ZBA Case No. 73-32 sought by the Petitioners.
2. The land that is the subject of this Petition is located at the corner of Essex Street and Brewster Road and is commonly known and numbered as 3 Essex Street. The locus contains 9,098 ± square feet of land.
3. The locus is situated entirely in the Residence A-3 Zoning District. There is presently a primarily 2.5 story home located thereon, with a 1.5 story section which was allowed pursuant to ZBA Case No. 73-32.
4. Said ZBA Case No. 73-32 granted a variance from the requirements of the corner lot side yard setback (25 feet required) and allowed a setback of 17 feet from Brewster Road.

5. The Petitioners reside in the home with their growing family of children ages five to eight and require additional space, as the existing home only provides three bedrooms.
6. Now, the Petitioners propose to construct, use, and maintain a second story addition over the existing 1.5 story section of the home. The proposed second story buildout (resulting in the entire structure being a 2.5 story single-family residence) will match the existing roofline and the home will not be extended outward in any way to the front, side, or rear of the lot (in other words, the footprint of the structure is not being expanded).
7. The proposed addition will primarily add a master bedroom suite, thus making the proposed structure a four-bedroom home.
8. In order to undertake the proposed expansion, the Petitioners require three variances from the Zoning Ordinance of the City of Waltham (the "Zoning Ordinance"). It should be noted that all three variances pertain to existing conditions of the locus / structure and are not due to the proposed construction of the addition, which is merely vertical (while matching the existing roof line) in relation to abutting properties.
9. Two of these conditions have been in existence since the original home was constructed in 1952, while the third has been in existence since 1973, when this Board previously granted a variance for a corner lot side yard in Case No. 73-32.
10. Accordingly, the following variances being requested in this Petition are simply to document the existing conditions as requested by the Building Inspector:
  - a. Lot Area: § 4.11 requires a lot area of at least 9,600 square feet in the Residence A-3 Zoning District and the existing lot has an area of 9,098 square feet. The lot was shown on a recorded plan dated May 9, 1952 and has remained unchanged since that time.

The lot area is being listed solely because the same was requested by the Building Inspector, as the lot is exempt from lot area requirements of the Residence A-3 Zoning District pursuant to § 4.218, which provides in pertinent part that:



*lot area as required by Sections 4.211 through 4.214 shall not apply to lots for single- and two-family residential use which, prior to the adoption of this chapter, were shown as separate parcels on subdivision plans approved by the Board of Survey and Planning...*

- b. Front Yard Setback: § 4.11 requires a front yard setback of at least 25 feet in the Residence A-3 Zoning District. When the Petitioners surveyed the locus in preparing for the proposed addition, it showed that the existing structure has a front yard setback from Essex Street of 23.83 feet (as seen on the Site Plan filed in this matter). The approved Plan in ZBA Case No. 73-32 shows that the 23.83 feet setback from Essex Street has been in existence since that time and since the home was initially constructed in 1952.

At the time of initial construction in 1952, as indicated further below, the required front yard setback was only 15 feet. Thus, this front yard setback is legally pre-existing nonconformity. The front yard setback will remain unchanged by this Petition.

- c. Corner Lot Side Yard: Similarly, when the Petitioners surveyed the locus in preparing the proposed addition, it showed that the existing structure was located 16.17 feet from Brewster Road. § 4.228 (Corner lot side yards) requires that the side yard adjacent to the intersecting street be subject to the front yard setback requirements of the Zoning District. Therefore, in the Residence A-3 Zoning District, a front yard setback of 25 feet from Brewster Road is required pursuant to § 4.11.

ZBA Case No. 73-32 granted a variance from this 25-foot setback requirement and allowed a setback from Brewster Road of 17 feet. Accordingly, the Petitioners request that the relief granted in Case No. 73-32 be modified to reflect the actual setback of 16.17 feet, which has been in existence since the construction of the first-floor addition over 45 years ago. The proposed second story addition will not affect the existing setback.

11. Additionally, the Petitioners are requesting that the Board modify its decision in Case No. 73-32 by substituting the Plans filed in Case No. 73-32 with the Plans filed in this case.



12. The variances requested are not “use” variances and this Board has the power (Massachusetts General Laws Chapter 40A, § 10 and § 14) and the authority (§ 7.2 of the Zoning Ordinance) to grant them.
13. The Petitioners contend that the proposed modifications to Case No. 73-32 are proper in that a public hearing was held after this matter was noticed in accordance with M.G.L. c. 40A, § 11.

**Michael W. & Sandra L. Creonte**

**Petitioners / Owners**

**3 Essex Street**

**Proposed Decision**

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**CITY OF WALTHAM**

**BOARD OF APPEALS**

Petition of )  
Michael W. & Sandra L. Creonte )  
Petitioners / Owners )  
 )  
For Variances from the Requirements )  
of the Zoning Ordinance )  
and )  
Modifications to ZBA Case No. 73-32 )  
 )

Case No. 2020-17

August 11, 2020

**PROPOSED DECISION**

Therefore, the Board of Appeals of the City of Waltham, after due deliberation, on motion duly made and seconded, voted:

To grant the Petition of Michael W. & Sandra L. Creonte for dimensional variances and modifications to ZBA Case No. 73-32 to be able to construct, use, and maintain a second story addition to the existing single-family residence , and hereby incorporates by reference the Findings of Fact and further cites as reasons the following:

**VARIANCES**

**Owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located**

The Board agrees with the Petitioners' contention that there are circumstances relating to the existing structure and its placement on the lot, as well as the shape of the lot as a corner lot, that are unique circumstances which especially affect this



locus but do not generally affect other properties in the Residence A-3 Zoning District.

### 1. History of the Locus:

The locus is shown as Lot 449 in a subdivision plan entitled "Plan of Glen Meadow Park West Section #2 Thapelo Road, Waltham, Mass" (Subdivision Plan) which was approved by the Board of Survey and Planning on May 5, 1952 and recorded at the Middlesex South District Registry of Deeds as Plan No. 764 of 1952. On July 3, 1952, a building permit was granted to construct the original 2.5 story single-family home thereon the locus.

At such time, the Zoning Ordinance in effect was the 1946 Zoning Ordinance and the locus was located in a "Residence B" Zoning District. The original home complied with all of the requirements of the Residence B Zoning District in effect at that time and was built "by-right".

In December of 1952, the City of Waltham implemented its first major revamp of the Zoning Ordinance and Zoning Map since zoning was implemented in Waltham in 1925. This resulted in the locus now being included in the newly implemented Residence A-3 Zoning District, which is consistent with current zoning.

The Subdivision Plan contains a significant number of the lots (the locus included) containing less than 9,600 square feet of lot area, which became the minimum required lot area for the Residence A-3 Zone beginning with the 1952 revision of the Zoning Ordinance and is consistent with current zoning.

But the Board agrees with the Petitioners' contention that the locus (and others similarly affected on the recorded subdivision plan) is exempt from lot area requirements of the Residence A-3 Zoning District pursuant to § 4.218, which provides in pertinent part that:

*lot area as required by Sections 4.211 through 4.214 shall not apply to lots for single- and two-family residential use which, prior to the adoption of this chapter, were shown as separate parcels on subdivision plans approved by the Board of Survey and Planning...*

Thereafter, in ZBA Case No. 73-32, this Board granted a variance from the setback requirements (corner lot side yard) to allow a 1.5 story addition to the southerly side of the house that would be setback 17 feet from the southerly lot line.

At such time, the Zoning Ordinance in effect was the 1969 Zoning Ordinance, which required in pertinent part that corner lot side yards required the same setback as the required front yard, in this case 25 feet.

In that the proposed addition was to be set back 17 feet from Brewster Road (the corner lot side yard, which it should be noted meets the 15 foot requirements of a regular side yard in the Residence A-3 Zoning District), a variance was requested and obtained from the required 25 foot corner lot side yard.

In Case No. 73-32 the Board found that:

*There are conditions especially affecting this parcel (building) but not affecting generally the zoning district in which it is located in that the house is irregularly set upon the lot, thus preventing its normal expansion.*

A building permit was granted for construction of the proposed addition on November 15, 1973 and aside from the later construction of the rear deck, the structure has remained unchanged since the construction of the addition pursuant to ZBA Case No. 73-32.

The Board agrees with the Petitioners' contention that the construction of the original addition being built 16.17 feet from Brewster Road, as opposed to 17 feet as approved by the ZBA, and the existing structure as a whole, is protected by Massachusetts General Laws (M.G.L.) c. 40A, §§ 6 and 7.

In 2016 the state legislature amended M.G.L. c. 40A § 7 to provide greater rights to non-conforming structures, even structures that were built in violation of the conditions of a variance. The statute provides in pertinent part:

*No criminal or civil action intended to compel the removal, alteration, or relocation of a structure by reason of an alleged violation of this chapter or of an ordinance or by-law adopted under this chapter or the conditions of a variance or special permit shall be maintained unless the action, suit or proceeding is commenced... within 10 years of the commencement of the alleged violation.*



Here, the Board acknowledges that a building permit was issued on November 15, 1973 to construct a "Variance To Allow Addition Granted by The Board of Appeals. Case #73-32." Over 45 years have passed since the construction of the original addition and the setback of 16.17 feet (as opposed to 17 feet) has existed since that time without any notice of violation. Consequently, the existing corner lot side yard setback has been protected from zoning enforcement since 10 years after the completion of the original addition.

M.G.L. c. 40A, § 7 goes on to further provide:

*If real property has been improved by the erection or alteration of 1 or more structures and the structures or alterations have been in existence for a period of at least 10 years and no notice of an action, suit or proceeding as to an alleged violation of this chapter or of an ordinance or by-law adopted under this chapter has been [commenced]... within a period of 10 years from the date the structures were erected, then the structures shall be deemed, for zoning purposes, to be legally non-conforming structures subject to section 6 and any local ordinance or by-law relating to non-conforming structures.*

Therefore, the Board agrees that pursuant to M.G.L. c. 40A, §§ 6 and 7, the existing structure located thereon the locus is a legally existing non-conforming structure which is protected (aka "grandfathered") from zoning enforcement.

## **2. Hardship – Existing Structure:**

As noted above, in ZBA Case No. 73-32, the Board found that:

*There are conditions especially affecting this parcel (building) but not affecting generally the zoning district in which it is located in that the house is irregularly set upon the lot, thus preventing its normal expansion.*

The Board agrees with the Petitioners contention that the same issues that were present in that case exist today, and as such, to grant the relief requested to expand the original addition upward to match the existing roof line, without extending the structure further into the front, side, or rear yard (in other words, remaining within the same footprint).



In this instance, the original structure was placed on the corner lot by-right pursuant to zoning in effect in July 1952. The home was also constructed with the front of the home facing the corner of Essex Street and Brewster Road, as opposed to squarely facing Essex Street. The Board finds that the locus contains one of the only homes in the immediate vicinity that is not squarely located on its lot, thus a unique circumstance which does not generally affect other lots in the Residence A-3 Zoning District.

This decision resulted in limited expansion area under future zoning ordinances and is a hardship created by the existing structure.

For example, if the initial construction took advantage of the 5-foot side yard requirement in effect at the time towards the neighboring property at 11 Essex Street (could actually be located nearly 10 feet from the 11 Essex Street lot line), then the original addition would have been able to be located over 25 feet from Brewster Road and not required a variance in Case No. 73-32.

Therefore, the Board agrees with the Petitioners' contention that they have met the first requirement for the granting of the requested relief in that there are conditions (placement of existing structure on the lot and shape of the locus as a corner lot) which especially affect this locus, but which do not generally affect other lots in the Residence A-3 Zoning District.

**A literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner**

The Board further agrees that not only does this locus and the existing house located thereon have conditions which especially affect them, which do not generally affect other lots in the Residence A-Zoning District, but these conditions create a substantial hardship, financial and otherwise, for the Petitioners, meeting the second requirement of M.G.L. c. 40A § 10.

The Board acknowledges, as indicated above, that the existing structure is grandfathered from any type of zoning enforcement as a legally existing non-conforming structure pursuant to M.G.L. c. 40A §§ 6 and 7.

But if there was a literal enforcement of the Zoning Ordinance to allow the proposed addition, the Petitioners would be required to take 1.17 feet off the northwesterly corner of the house to set it back at least 25 feet from Essex Street and take nearly 9 feet off of the original addition in order to set the structure back at least 25 feet from Brewster Road.

The Board agrees that this would create substantial hardship, financial or otherwise, in that the existing structure would be reduced in size, and the proposed addition would be significantly reduced in size, completely defeating the purpose of the proposed addition to provide additional living space for a family of five with three growing children.

Further, practically speaking, the Board agrees that the Petitioners would suffer significant hardship, including significant financial hardship, if they were required to locate an expansion elsewhere by right (e.g. expansion into the rear yard). Here, the proposed expansion is simply to go upwards on the existing structure. If the Petitioners were required to build elsewhere by-right, it would necessitate significant additional costs, such as installing new foundation to support the expanded structure.

The Board agrees that these site limitations, costs, and legal issues do not apply just to the Petitioners. Anyone else wanting to use propose an addition to the existing home would be faced with this hardship.

Thus, the Board finds that the Petitioners have met the second requirement for the granting of these variances in that a literal enforcement of the provisions of the Zoning Ordinance would involve substantial hardship, financial and otherwise, due to the placement of the existing structure on the corner lot. These practical and financial hardships are not personal to the Petitioners, but would apply to anyone wanting to use this locus.



**Desirable relief may be granted without substantial  
detriment to the public good**

The Board finds that these variances may be granted with little to no detriment to the public good and thus may be granted.

In this case, the Board finds that the proposed addition is merely vertical (while matching the existing roof line) in relation to abutting properties and does not extend the structure further into any front, side, or rear setback. The footprint which has existing for over 45 years will remain the same.

Accordingly, the Board finds that the Petitioners have opted to expand the existing structure not only in the manner that is most economically feasible, but in such a way that does not expand upon any existing nonconformities nor does it create any new nonconformities.

This is further evidenced by the support which the Petitioners have received from abutters within 300 feet, those who will regularly see the home with the proposed addition (as well as others in the immediate vicinity outside of the 300-foot statutory standard).

In this instance, the Board finds that the granting of these variances for a vertical expansion which will match the existing roof line without expanding the footprint of the structure into any front, side, or rear yard setback will not have a substantial detriment on the public good, but rather will be a further improvement to this vibrant neighborhood which has seen a significant amount of redevelopment in recent years as young families populate the neighborhood.

**Without nullifying or substantially  
derogating from the intent or purpose of such ordinance**

Finally, the Board finds that the granting of these variances will neither nullify, nor substantially derogate from the intent or purpose of the Zoning Ordinance.

In this instance, the Board finds that the granting of the requested variances will not nullify the intent or the purpose of the Zoning Ordinance in the existing front yard and corner lot side yard, both of which are legally pre-existing nonconformities which are protected from zoning enforcement pursuant to M.G.L. c. 40A, §§ 6 and 7,



will remain unchanged. Accordingly, the Zoning Ordinance, which requires both a front yard and corner lot side yard requirement, is not nullified.

Nor will the granting of these variances substantially derogate from the intent or purpose of the Zoning Ordinance. The purpose of front yard and corner lot side yard setbacks are to assure an area of privacy between the structure on a property and the neighboring lots, as well as to provide sufficient sight lines for motorists. In this instance, the Board notes that existing house has been in its present location for over 45 years and the proposed addition will not alter the footprint.

As a result, the Board finds that the neighbors will continue to enjoy the same level of privacy and the condition of the locus for motorists will remain unchanged.

Therefore, the Board agrees with the Petitioners' contention that the Zoning Ordinance is not nullified, nor is the Zoning Ordinance substantially derogated from where under existing and proposed conditions the footprint is to remain the same.

#### **MODIFICATIONS OF ZBA CASE NO. 73-32**

The Board acknowledges that the case law of Massachusetts has long interpreted M.G.L. c. 40A, §10 as allowing modifications to prior decisions provided the Board of Appeals holds a public hearing after notice is given in accordance with M.G.L. c. 40A, § 11.

§ 7.2 of the Zoning Ordinance authorizes this Board of Appeals to utilize all of the powers granted to it by the General Laws which would include modifications of prior Board of Appeal decisions.

In that a public hearing was held after notice is given in accordance with M.G.L. c. 40A, § 11, and for the reasons stated herein, the Board hereby modifies its prior decision in Case No. 73-32 to reflect the existing corner lot side yard of 16.17 feet, which has been in existence since the construction of the first-floor addition over 45 years ago.

Additionally, the Board hereby modifies its prior decision in Case No. 73-32 by substituting the Plans filed in Case No. 73-32 with the Plans filed in this case and making the conditions consistent with the zoning relief outlined above to allow the

Petitioner to construct, use, and maintain the proposed second story buildout (resulting in the entire structure being a 2.5 story single-family residence) which will match the existing roofline and will not extend the home outward in any way to the front, side, or rear of the lot, all as shown on the Plans filed in this Case.

\* \* \* \* \*

Therefore, based on the all of the above the Board of Appeals grants these variances.

The granting of these variances and modifications to Case No. 73-32 are subject to the following conditions:

1. All necessary permits shall be issued and work commenced in accord with G.L. c. 40A, § 10; and
2. All construction and use of the premises shall be in substantial accordance with the following plans introduced as evidence during the hearing, and on file in the office of the Board of Appeals, entitled:
  - a. "Plan to Accompany Petition for a Variance at 3 Essex Street, Waltham, MA" prepared by Bibbo Brothers & Associates, dated February 18, 2020;
  - b. "Existing Elevations", Sheet EX-1, prepared by Costa Architects, dated May 21, 2020; and
  - c. "Proposed Elevations", Sheet A-1, prepared by Costa Architects, dated May 21, 2020.