



**Stratham Board of Adjustment
AGENDA
December 22, 2020
Time: 7:00 PM**

The public may also access this meeting at the date and time above using this conference call information. Please dial **1-800-764-1559** and input **4438** when prompted for a user pin/code. Please follow the Chair's instructions delivered at the meeting in order to register comments during the public meeting.

If at any time during the meeting you have difficulty hearing the proceedings, please call 603-772-7391 ext. 180.

1. Call to Order/Roll Call/Seating of Alternates

2. Approval of Minutes

- a. November 10, 2020

3. Public Hearing(s)

- a. Case #656A, Robert & Stephanie Cleary, 7 Boat Club Drive, Map 08, Lot 39, Residential Agricultural Zoning District, represented by Justin Pasay, Donahue, Tucker & Ciandella, 111 Maplewood Avenue, Portsmouth, NH.

The applicant requests a Special Exception from Section V, Article 5.1.3 of the Stratham Zoning Ordinance to expand a non-conforming structure, i.e. construct a 30'x49' residential addition.

- b. Case #656B, Robert & Stephanie Cleary, 7 Boat Club Drive, Map 08, Lot 39, Residential Agricultural Zoning District, represented by Justin Pasay, Donahue, Tucker & Ciandella, 111 Maplewood Avenue, Portsmouth, NH.

The applicant requests a Variance from Section XII: Shoreland Protection District: (overlay), Article 12.6.1(a), of the Stratham Zoning Ordinance in order to construct a 30'x49' residential addition.

4. New Business

5. Other Business

6. Adjourn

Note(s):

- 1. Materials related to the above meeting are available for review at the Municipal Center and during normal business hours. For more information, contact the Stratham Building/Code Enforcement Office at 603-772-7391 ext.180.
- 2. The Zoning Board of Adjustment reserves the right to take items out of order and to discuss and/or vote on items that are not listed on the agenda.



**Stratham Zoning Board of Adjustment
Meeting Minutes
November 10, 2020
Municipal Center/Virtual Meeting/ Conference Call
Time: 7:00 PM**

Members Present: Garrett Dolan, Chairman
Bruno Federico, Full Time Member
Drew Pierce, Full Time Member
Phil Caparso, Full Time Member
Richard Goulet, Alternate

Members Absent: Amber Dagata, Full Time Member
Tana Ream, Alternate

Staff Present: Shanti Wolph, Code Enforcement Officer/Building Inspector

1. Call to Order/Roll Call

Chairman Dolan called meeting to order at 7:00 PM and took roll call.

2. Approval of Minutes

a. April 28, 2020

Mr. Dolan stated there are some typographical errors. Mr. Dolan asked Mr. Goulet to be a voting member for this meeting in place of Ms. Dagata's absence. Mr. Goulet agreed.

Mr. Caparso made a motion to approve the April 28, 2020 meeting minutes as amended. Mr. Goulet seconded the motion. Motion passed unanimously.

3. Public Hearing(s)

Mr. Caparso made a motion to end the hearing at 10:00 pm and continue to December 8, 2020 if more time is required. Mr. Federico seconded the motion to end the meeting at 10:00 pm with a continuation if not complete. Motion passed unanimously.

Mr. Wolph stated the next ZBA hearing date is November 24, 2020 (official next ZBA hearing date) or December 8.

- a.** Case #655, Philip J. Malone and Stephanie Malone, 72 River Road, Map 08 Lot 38, Residential Agricultural Zoning District, represented by Coughlin, Rainboth, Murphy & Lown, PA of 439 Middle Street, Portsmouth, NH. The applicant is appealing the September 2, 2020 decision of the

45 Stratham Planning Board granting approval of the Cleary subdivision; a minor subdivision
46 application for 7 Boat Club Drive, Tax Map 08, Lot 39 owned by Robert and Stephanie Cleary,
47 pursuant to RSA 676:5, on the grounds stated in the appeal document submitted 10/01/2020.
48

49 Attorney Ken Murphy introduced himself as the representative for Phil & Stephanie Malone.
50 Attorney Murphy stated Phil Malone and Eric Weinrieb, PE, Atlas Engineering were present at
51 this meeting.
52

53 Attorney Murphy asked to address the letter received by Attorney Pasay on behalf of the Cleary's.
54 Attorney Murphy stated his client filed an Appeal for Administrative Decision due to the Planning
55 Board paperwork the Cleary's took the position that an Administrative Decision was made back
56 in March 2020 that a variance was not required. Attorney Murphy stated he had some discussions
57 with the Town Attorney and the Malone's were not aware the applicant came into the town and
58 had a discussion with someone in the town and was told no variance was required for the Planning
59 Board project. In the paperwork submitted by Attorney Pasay to the Planning Board stated
60 compliance with all zoning regulations. Attorney Murphy stated whether this application is a
61 formal Appeal of Administrative Decision or an Appeal of a Planning Board decision that
62 interpreted a zoning ordinance his client would be before the Zoning Board. Attorney Murphy
63 stated RSA 676:5, which was referenced in the letter received today, either appeal has a zoning
64 component and would be heard by the Zoning Board of Adjustment. Attorney Murphy read
65 Section III of RSA 676:5; "If in the exercise of a subdivision or site plan review the planning
66 board makes any decision or determination which is based upon the terms of the zoning
67 ordinance, or upon the construction, interpretation or application of the zoning ordinance, which
68 would be appealable to the Board of Adjustment if it had been made by the administrative officer
69 then such decision may be appealed to the Board of Adjustment under this section." Attorney
70 Murphy stated his client appealed this decision correctly. Attorney Murphy explained the
71 chronology that after the decision was made by the zoning officer that no variance was required
72 the applicant went through the Planning Board process, there was a hearing and it was continued
73 and the hearing was held in September. Attorney Murphy stated that during that hearing this issue
74 came up and the exact words are in the Site Plan Regulations and in the Zoning Ordinance. The
75 Planning Board granted the Subdivision application and his clients are before the Board of
76 Adjustment for appealing that decision. Attorney Murphy stated the Board of Adjustment
77 whether the Cleary's are required to get a variance or not.
78

79 Mr. Caparso questioned the timeline of appealing the decision and stated there is a 30 days to
80 appeal a decision and this decision was made back in March and the deadline was missed. Mr.
81 Caparso asked why the deadline is not germane if the law is specific. Attorney Murphy does not
82 believe the law is an appeal of an administrative decision in any formal sense and they are
83 bringing it forward since the planning board paperwork the applicant's attorney reiterated this
84 cannot be brought up because back in March the administrative officer made the decision and his
85 client was unaware of that decision. Attorney Murphy stated there was no way for his client to
86 appeal the decision that was made. Mr. Caparso stated he is unclear as Section 2 of the
87 application, Decision of the Administrative Official to be reviewed, states "Please refer to appeal
88 document field with Town of Stratham, as included in this packet" and the appeal document reads
89 as an appeal is being requested from the administrative decision and not arguing on Land Use.
90 Attorney Murphy explained he is trying appealing both the Planning Board decision and the
91 administrative decision of the zoning officer. Mr. Caparso questioned if the Planning Board is
92 required to give notice to neighbors on a hearing with impact to the neighborhood. Attorney
93 Murphy stated abutters receive notice of public hearings of the planning board. Attorney Murphy
94 stated the planning board paperwork that the Cleary's lawyers submitted a question asked by the
95 abutters was has the Stratham Zoning Board been involved in this application. Attorney Pasay
96 wrote no, by administrative decision by Tavis Austin and Shanti Wolph on March 5, 2020 no

97 variance relief from the town's ordinances are required because the regulation in question appears
98 in both the Zoning Ordinance and the Planning Ordinance. Mr. Caparso questioned if the abutters
99 were noticed of this meeting. Attorney Murphy stated yes, and they attended via person or on the
100 phone. Attorney Murphy explained the decision in March made by Mr. Wolph, whether it was
101 formal or informal, and his clients were not notified of that decision.
102

103 Mr. Dolan stated that the March meeting was not a formal noticed meeting. Mr. Wolph explained
104 that the Land Use Department is contacted every day via phone calls, emails, inquiries, etc. on
105 how to proceed with an application. Mr. Wolph stated the department advised the resident on
106 how to proceed with their application. Mr. Wolph explained, as the building inspector, he has no
107 authority when it comes to planning board subdivision regulations and the decision was made by
108 the town planner who advised the board on how to move forward and queried Mr. Wolph during
109 the meeting with Attorney Pasay. This meeting was an informational meeting, nothing in writing
110 or memorialized. Mr. Dolan asked for clarification from Mr. Wolph that there was no notice of
111 the March meeting, no public invitation, no public record kept, no quorum, or no board, which
112 explains the reason for the plaintiff to be aware of that meeting.
113

114 Eric Weinrieb, Altas Engineering, introduced himself as having over 35 years of experience in
115 site development working with land development clients and for municipalities. Mr. Weinrieb
116 distributed a Millennium Engineering drawings representing what a house would look like placed
117 on this property to the board. Mr. Weinrieb explained the plan speaks to Section 11.5, adequately
118 accommodating housing, sewage disposal, and utilities within the applicable setbacks. Mr.
119 Weinrieb stated the Millennium plan supports the Malone's concerns that the lot is challenged and
120 is not adequate for development. Mr. Weinrieb explained the test pits are adequate to sight a
121 septic in that area and how the lot shows the requirements for building a house. Mr. Weinrieb
122 stated when the plan is scaled having a garage and pulling out would be a challenge and there is
123 not adequate space to sight everything required in the applicable setbacks. Mr. Weinrieb
124 explained the grading for the septic and it does not meet the criteria of Section 11.5. Mr.
125 Weinrieb explained the way the grade pitches from the site now based on the plan is a high point
126 at the intersection of River Road and Boat Club Drive which redirects the runoff towards the
127 westerly property line. Mr. Dolan questioned if these issues were addressed by the Planning
128 Board during site plan review. Mr. Wolph explained what happened at the Planning Board. A
129 30,000 SF upland portion of the parcel wouldn't be suitable with the wetland setbacks to
130 accommodate the home, septic, well, and utilities which is the ordinance in Subdivision
131 Regulations specifies. Mr. Wolph explained the Cleary's asked for a waiver to that section
132 because there is another 20,000 SF parcel of land in that lot which does accommodate the home,
133 septic, well, and utilities for the required setbacks. The Planning Board and the former Town
134 Planner gave a waiver from the required section for the 20,000 SF parcel which accommodates
135 everything required. Mr. Wolph stated this was addressed at the Planning Board level and the
136 applicant was granted a waiver for the split to take place. Mr. Weinrieb explained subdivision
137 regulations was discussed, but Section 11.5 was not discussed which requires all of the utilities
138 occur on the property which cannot be accommodated and supports the need for a variance.
139

140 Mr. Pierce questioned if the drainage could be altered to keep the grading on the property and if
141 the plan could be corrected prior to submitting a building permit. Mr. Weinrieb stated the
142 information presented on the plan does not work and does not meet the Stratham ordinance. Mr.
143 Wolph explained this subdivision approval was not a building permit approval and it was only to
144 subdivide the land from 1 parcel into 2 parcels and must meet the subdivision regulation criteria.
145 One of the criteria addresses the 30,000 SF upland.

146 Attorney Murphy explained Attorney Pasay stated an Administrative Appeal has not been before
147 the Zoning Board and no variance relief from the town is required because the regulation in
148 question appears in both the Zoning Ordinance and the Subdivision Regulations.

Mr. Dolan asked if the board had questions in respect to the immediate case. Mr. Federico asked for clarification of the phase of this project. Mr. Wolph stated it has received subdivision approval with a waiver in lieu of a variance due to the regulation the applicant needed waived resides in the Subdivision Regulations, statutorily, and in the Town of Stratham ordinances and the Planning Board has the authority to grant this waiver. This exact regulation also lives in the Zoning Ordinance. Mr. Federico stated if the regulations grant the Planning Board the authority to waive a requirement the Board of Adjustment cannot rule against that. Attorney Murphy explained that the applicant will not be required to apply for a variance since the determination that was made in March and the Planning Board waived the regulation. Mr. Wolph explained the building inspector review and approval for building a home on a lot of record as a standard house lot.

Mr. Goulet stated the subdivision has been approved by the Planning Board and there are no issues that don't fit the zoning laws, the waiver has been granted and there is nothing for the Zoning Board to address. Mr. Dolan questioned whether the Zoning Ordinance or the Subdivision Regulations take priority which is the decision before the board. Attorney Murphy stated new evidence cannot be submitted at the Superior Court and they will decide if the Planning Board made an error.

Justin Pasay, DTC Lawyers in Exeter, is representing Robert and Stephanie Cleary at 7 Boat Club Drive. Attorney Pasay stated the board is not meeting to discuss the appearance of a block, concept block, for a house on a subdivision plan. Attorney Pasay explained his clients went before the Planning Board for subdivision approval and for an abundance of precaution a concept of a house was provided on the plan for the second lot. Attorney Pasay stated the appeal before the board should be denied because 1) its dressed up like an appeal from the planning board but it is really an appeal from an Administrative Decision which was made by Mr. Wolph and Mr. Austin in March and the seven day appeal started on the date that Attorney Murphy represents his client was aware of the decision which was September 1st. There was no appeal of that decision within 7 days and the appeal of that decision was more than 30 days later on October 2nd. 2) The appeal should be denied because the board, like Mr. Wolph in the first instance sitting as the town's Code Enforcement Officer, he is the individual who would decide whether a variance is required or not. The Zoning Board of Adjustment are the interpreters of the zoning ordinance and when the language of the regulation being discussed his applicant complied. Attorney Pasay distributed plans to the board (labeled Exhibit 2, 3a, and 3b) and explained the property and subdivision application for 7 Boat Club Drive. Attorney Pasay explained as the Cleary's went through the subdivision and zoning regulations it was noticed there are two identical provisions. Attorney Pasay read the passage that appears in Section 11.5 of the Zoning Ordinance and Section 4.3.1.b.1 of the Subdivision Regulations: "Areas designated as poorly drained soils (type B hydric) may be utilized to fulfill the Town's minimum lot size requirement provided that a contiguous non-wetland area of at least 30,000 square feet is provided for each building lot. This contiguous non-wetland area must be sufficient in size and configuration to adequately accommodate all housing and required utilities such as sewage disposal, water supply, and all applicable setbacks." A meeting was scheduled in March 2020 with Attorney Pasay, Mr. Wolph and Mr. Austin to discuss this issue. Attorney Pasay stated a variance would not be required because this provision applies in the Subdivision Regulations and the Planning Board has the power to waive this. It was decided at the March meeting the Cleary's would not be required to apply to the Zoning Board of Adjustment for a variance from Section 11.5.1 and requested a waiver from the planning board for the 30,000 SF contiguous upland which was granted.

Attorney Pasay explained there are two main categories of Administrative Appeals. The first is an appeal from an administrative decision and defined by the statute as "any decision

involving construction, interpretation, or application of the ordinance”. The second is an appeal from planning board “where there is a decision or determination which is based upon the terms of the ordinance or upon any construction interpretation or application of the zoning ordinance.” An appeal must be a specific interpretation by the planning board, of the zoning ordinance, to allow a client to have jurisdiction to go to the ZBA. Appeals of Administrative Decision require 7 days and Appeals from a Planning Board decision require 30 days under the town’s regulations. The decision in March was a decision that involved the construction interpretation or application of the zoning ordinance. The appeal before the board is not an appeal from the Planning Board. The appeal document provided referenced the planning board in the first paragraph and there is no indication the planning board made the interpretation of the zoning ordinance, constructed a portion of the zoning ordinance, or referenced the zoning ordinance, see the planning board minutes dated 9/2/2020. The appeal documentation focuses on the administrative decision from March. Attorney Pasay explained when the application was filed with the Planning Board in July abutters questions were fielded and answered. In the supplemental filing, referenced by Attorney Murphy, Attorney Pasay wrote the March 2020 into the record and was not appealed at that time. Attorney Pasay stated 30 days after understanding the administrative decision was made and appeal is filed and this does not meet the requirements for jurisdiction because upon realizing there was a determination no appeal was filed within 7 days, which is the requirement. Attorney Pasay stated a variance from Section 11.5.1 is not required because the language in the regulations is met. Attorney Pasay ready Section 11.5.1 “Areas designated as poorly drained soils may be utilized to fulfill the minimum lot size required by Town ordinances, and subdivision regulations provided that a contiguous non-wetland area of 30,000 square feet is provided for each lot. This contiguous non-wetland area must be sufficient in size and configuration to adequately accommodate all housing and required utilities such as sewage disposal, water supply, and all applicable setbacks.” Attorney explained while the ordinance states there must be 30,000 SF of contiguous upland, it does not specify that the house needs to be located there.

Mr. Wolph stated the application before the board tonight is a Zoning Board of Adjustment, Appeal from Administrative Decision. Mr. Wolph read Section 17.8.1, Administrative Appeals: “The Board shall hear and decide appeals from the decisions or orders of the Building Inspector and/or Code Enforcement Officer concerning administration or enforcement of this Ordinance. Such appeal shall be filed within seven (7) days of the order with the Code Enforcement Officer from whom the appeal is taken and with the Board of Adjustment a notice of appeal specifying the grounds thereof. Applications for appeal of a decision of the Planning Board must be filed within thirty (30) days from the issuance of the decision. The Code Enforcement Officer shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.”

Attorney Pasay stated this is the appropriate venue of an appeal from a planning board decision if, as stated in RSA 676:5.III. “If, in the exercise of subdivision or site plan review, the planning board makes any decision or determination which is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance...” and their position is the field document before the board does not allege there was a determination, decision, interpretation, construction that was wrong by the Zoning Ordinance. The planning board reviewed the subdivision application and discussed the waiver, but this discussion happened with Mr. Wolph and Mr. Austin in March and the first time the Malone’s were aware of the contents of that discussion and the guidance his applicant received from the town that a variance was not required was on September 1, 2020.

Mr. Dolan asked if the board had any questions. No questions from the board came forward. Mr. Dolan opened the public hearing for public comment. No questions came forward.

Attorney Murphy asked the board to review the argument of the seven day appeal. Attorney Murphy stated the 7 days begins once someone is aware of the decision. Attorney Murphy stated the appeal before the board adequately addresses these issues and if a variance is required. Attorney Murphy stated 11.5.1 states “this contiguous non-wetland area...” refers to the 30,000 SF uplands not the 20,000 SF.

Mr. Dolan moved the board to deliberate the application before them tonight.

Mr. Caparso made a motion to close the public hearing and move to the discussion phase. Mr. Goulet seconded the motion. Motion passed unanimously.

Mr. Dolan asked Mr. Wolph if both sections of the ordinance were being referenced, why the applicant wasn’t informed the stricter interpretation of the ordinance should take preference. Mr. Wolph stated page 4 of the staff review “5.1 Waiver Procedure” the ordinance language is identical. Mr. Dolan questioned why the more restrictive and more controlling aspect used. Mr. Wolph pointed to 5.1 “the Planning Board may grant a waiver in a special case, so that justice may be done and the public interest secured...”. Mr. Wolph stated he was unaware that one regulation was subordinate to the other. Mr. Dolan stated the Subdivision and Site Plan Review regulations came into being after the Zoning Ordinance was established.

Attorney Abigail Karoutas, Town Counsel, stated it is unusual for the subdivision regulations and the zoning regulations to have identical provisions in them. It is not a question of whether one takes precedence over the other or is more restrictive, the issue is interpreting zoning regulations. Attorney Karoutas stated the issue is whether or not what Mr. Wolph and Mr. Austin told to the applicant in March was or was not an administrative decision or whether it as an issue to be decided.

Mr. Caparso asked for guidance on how the board would overturn a planning board decision. Mr. Wolph explained it is from the perspective of receiving an application regardless of the attorney for 7 Boat Club is arguing that the board would need to make a decision from the applicant’s application. The question is whether the Planning Board should have sent the applicant to the Zoning Board to require a variance as opposed to approving a waiver. The second is the administrative decision whether the building inspector had the ability to authorize this decision. Mr. Caparso stated he does not agree that the meeting held in March was an administrative meeting and it was up to the applicant and their counsel to make the final decision and not base the decision solely on the recommendation of the code enforcement officer. Mr. Pierce questioned if this is the wrong venue to have this decision made.

Mr. Caparso made a motion to re-open the public hearing. Mr. Pierce seconded the motion. Motion carried unanimously.

Attorney Murphy explained the zoning board hears appeals, jurisdictionally, based on the law of RSA 676:5. Attorney Murphy stated that if his client had found out about the decision that a variance was not needed and came before the zoning board in 7 days, the question would be asked if Mr. Wolph made a mistake in interpreting the ordinance by telling the applicant they did not need a variance. Attorney Murphy explained the board is being asked tonight to determine if Mr. Wolph was wrong in deciding that a variance was not required, or was the

301 planning board wrong in interpreting they complied with the zoning ordinance. The question
302 before the board tonight is:

- 303
- 304 1) Was code enforcement wrong in telling the applicant in March they did not need a
305 variance?
 - 306 2) Was the planning board wrong in interpreting the zoning ordinance correctly?
- 307

308 Mr. Caparso asked Attorney Murphy for clarification that he believes the meeting in March
309 was an administrative meeting. Attorney Murphy stated he did not know what it was. Mr.
310 Caparso questioned if Mr. Murphy agrees this was an administrative meeting back in March
311 and the appeal window is 7 days, why should the board waive the 7 day and consider this
312 tonight. Attorney Murphy stated it was not fair to the abutter who does not know about the
313 meeting and that decision affected the planning board and the applicant is not allowed to come
314 before the board. Mr. Caparso questioned if the applicant was notified of the planning board
315 hearing. Attorney Murphy stated yes and the applicant was present at the meeting.

316

317 Attorney Pasay stated there are two appeals that could come before this board. Attorney Pasay
318 explained he believes an administrative decision was made in March and he is not suggesting
319 Mr. Malone should have appealed within 7 days of that date, and when Attorney Pasay
320 deliberately answered the question of whether a variance was required was posed by Mr.
321 Malone in a correspondence to the planning board, Attorney Pasay responded and said it was
322 looked at and discussed with the town and no variance is needed. This issue was not discussed
323 at September 2, 2020 planning board meeting. The criteria was looked at for the waiver under
324 the subdivision regulations. Attorney Pasay explained the town then should have directed the
325 applicant to get a variance and that argument wasn't made. The question is this an
326 administrative decision and, if it is, was it timely appealed. Attorney Pasay does not agree it
327 was timely appealed and the latest cutoff for the appeal should be September 1, 2020. There
328 must be finality so an applicant has assurance going forward with the approvals. The Planning
329 Board did not discuss the zoning ordinance on September 2, 2020.

330

331 Mr. Caparso questioned if the zoning board is an appellate board to the planning board.
332 Attorney Pasay explained if the planning board made a zoning decision, the zoning board of
333 adjustment's job would be to either agree or not agree and would grant an appeal. Attorney
334 Karoutus explained the jurisdiction of this board to hear two types' appeals. Mr. Dolan
335 questioned if the zoning ordinance applies to the subdivision and site plan review process.
336 Attorney Karoutus stated it is up to the attorney's present to explain what they think applies or
337 not for the board to make a decision. Phil Malone, 72 River Road, stated during the planning
338 board meeting, possibly Rob, asked to question the town's attorney what the reasoning is
339 behind this rule being in both the planning and zoning and the planning board refused to check
340 with the town's attorney on this issue. Mr. Federico explained he was on the Board of
341 Selectmen in 2017 when the Town Planner came before that board and explained they would
342 like to have the regulation in both ordinances because it would give the town planner the
343 authority to waive certain components during the subdivision application process. Mr.
344 Federico stated the planning board did not have to work through those requirements at the
345 subdivision level when it will happen at the site plan level. When the building plans are
346 submitted the requirement would not be waived if the 30,000 SF was not there. Mr. Federico
347 that Mr. Austin added this to both regulations to give the planning board the authority to say
348 they don't need the regulation at this level in the subdivision process, but it will be needed
349 during site plan review if the setbacks are not met. Mr. Federico explained that once the
350 building permit is submitted and if the setbacks are not met then the applicant would need to

come before the board for a variance. Mr. Wolph stated the applicant meets all the setbacks and contiguous upland that would support some or all of the building components.

Mr. Caparso asked Town Counsel what metric can the zoning board overturn a planning board approval. Attorney Karoutus stated if the board is taking an appeal from the administrative decision then they have the power. If the board is taking an appeal from the planning board decision the board would review the information as if they are the planning board to make the decision. Discussion ensued regarding the difference between the planning board review and interpretation of the zoning ordinance. Mr. Malone stated he does not remember the specific details of the meeting and reaching out with the understanding for potential conditions of landscaping and screening and whether it was required. Mr. Malone states he looked at the minutes from the meeting, reviewed the appeal that was filed, and their position there is no specific discussion on how the planning board interpreted the zoning ordinance.

Mr. Dolan stated, per the planning board minutes it appears the zoning ordinance was discussed during the public hearing. Mr. Dolan and Mr. Caparso agreed that it is the board's responsibility to determine whether the planning board was the right place for the decision to be made. Mr. Caparso stated he was uncomfortable with this planning board decision. Mr. Caparso stated if one of the determinants with the zoning board voting for the appeal to move forward is the planning board was doing the zoning board's work and the board is uncomfortable with that, then Mr. Caparso is comfortable with hearing this appeal. Mr. Goulet stated the administrative decision is guidance that is provided on a daily basis as part of the process. As to the question of whether the planning board was interpreting for the zoning board, Mr. Goulet believes they were interpreting their own regulation language which happens to be in the zoning as well and it doesn't constitute interpreting a zoning law. Mr. Wolph explained the applicant's submittal references Section 4.3.1(b)(i) of the Subdivision Regulations. Attorney Pasay explained the reference Mr. Wolph is mentioning an excerpt from a letter that he wrote. Mr. Malone filed comments with the planning board and one of the questions was about the zoning ordinance. In response to Mr. Malone's question Attorney Pasay took the time to address all of the comments the abutters raised. Attorney Murphy stated this is evidence that all issues are in compliance with the zoning board. Mr. Caparso asked town counsel for clarification whether he, as a member of the zoning board, to vote for the appeal if he believes the planning board performed the zoning board's work and feels they were in error. Attorney Karoutus stated the board has the ability to vote to sustain the appeal if in making the subdivision decision the planning board interprets a zoning ordinance provision and it is felt they did that incorrectly.

Mr. Caparso made a motion to close the meeting to public comment. Mr. Pierce seconded the motion. Motion carried unanimously.

Mr. Wolph read the two questions before the board. Mr. Caparso made a motion for the board to vote on the two issues before them. Mr. Goulet seconded the motion. Motion carried unanimously.

- 1) Was code enforcement wrong in telling the applicant in March they did not need a variance?

Mr. Federico asked Mr. Wolph to explain why he told the applicant's they did not need a variance. Mr. Wolph stated his decision was based on the subdivision regulations specifically allow for a waiver of any conditions that live within the subdivision

regulations and the specific regulation they sought the waiver for lived in the subdivision regulations. Mr. Federico asked what the regulation was. Mr. Wolph explained Section 4.3.1, Minimum Lot Sizes, of the Subdivision Regulations has the requirements and the town planner, Attorney Pasay, and Mr. Wolph met and discussed the subdivision regulations. Mr. Wolph asked Mr. Austin what the waiver criteria and authority for the planning board to grant waivers. After reviewing the waiver criteria it does not speak to the zoning ordinance and it was Mr. Wolph's interpretation that this did not require a variance because the planning board had the authority to grant a waiver provided it met the criteria.

Mr. Caparso asked for clarification whether both parts of this appeal need to pass in order for it to move forward. Attorney Karoutus explained the board is being asked to vote on two issues that are independent of each other.

Mr. Caparso voted yes, Mr. Federico voted no, Mr. Dolan voted no, Mr. Pierce voted no, Mr. Goulet voted no. The votes are 4:1 the code enforcement officer was not wrong in telling the applicant in March they did not need a variance.

2) Did the planning board interpret the zoning ordinance incorrectly?

Mr. Caparso is uncomfortable with the planning board making zoning board decisions.

Mr. Caparso voted yes; Mr. Federico voted no, Mr. Dolan voted no, Mr. Pierce voted no, Mr. Goulet voted no. The votes are 4:1 the planning board did not interpret the zoning ordinance incorrectly.

Mr. Dolan stated the applicant has a 30 day time period to appeal this zoning board decision. Attorney Karoutus stated there is a Superior Court appeal that is pending on this substance of the planning board's decision which the zoning board does not have jurisdiction but the court does. There is a 30 day appeal period from this decision. Mr. Wolph asked if this decision was relevant to the court case. Attorney Karoutus stated this would be relevant only to the extent that this was appealed at the zoning board level.

4. New Business: None

5. Other Business: Mr. Wolph stated there have been several visits to the building department to discuss potential home businesses or variances from setbacks for single family homes due to a lot of activity in Stratham at the moment but no applications have come forward. Mr. Dolan inquired if board assignments are outstanding and due to be voted on. Caparso asked if the board could do a Zoom administrative meeting on the record to clean up housekeeping items. Mr. Goulet agreed as long as it meets the guidelines. Mr. Wolph stated a Zoom meeting would meet the guidelines.

6. Adjournment

Mr. Caparso made a motion to close the meeting at 9:40 pm. Mr. Goulet seconded. Motion passed unanimously.

Note(s):

1. Materials related to the above meeting are available for review at the Municipal Center during normal business hours. For more information, contact the Stratham Building/Code Enforcement Office at 603-772-7391 ext.180.
2. The Zoning Board of Adjustment reserves the right to take items out of order and to discuss and/or vote on items that are not listed on the agenda.



TOWN OF STRATHAM

INCORPORATED 1716
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VOICE (603) 772-4741 - FAX (603) 775-0517
www.strathamnh.gov

12/14/20

Staff Review

RE: **7 Boat Club Drive**

Map 08 Lot 39, Zone: R/A

ZBA #656A & 656B – Special Exception & Variance

I've reviewed the application for Special Exception and Variance. The application document appears to be complete.

The applicants, Robert & Stephanie Cleary would like to build an addition onto their existing single family residential home. The existing dwelling is situated within the Shoreland Protection District and as such is a non-conforming structure. Section V, 5.1.3 of the Stratham Zoning Ordinance specifies a **Special Exception is required to expand a non-conforming structure:**

5.1.3 Expansion of Non-Conforming Structures: (Rev. 3/15)

Non-conforming structures may be expanded in accordance with the terms of a special exception issued by the Zoning Board of Adjustment.

The Board must find the following factors to exist before issuing such a special exception:

- a. The proposed expansion must intrude no further into any setback area than does the existing structure;*
- b. The expansion must have no further adverse impact on the view, light, and air of any abutter;*
- c. The expansion must not cause property values to deteriorate;*
- d. The expansion must not impede existing rights of access or egress;*
- e. That portion of the proposed expansion, which will intrude into the setback must, in no event, exceed the footprint square footage of that portion of the structure which presently intrudes into the setback, regardless of the number of applications made over time under this subsection;*
- f. In the event the non-conforming structure contains a commercial use, there must be no adverse impact on access, traffic, parking, lighting, or other safety or visibility features of the existing structure;*
- g. A special exception under this subsection may be granted only as to expansions into the side, front, and rear setbacks, and is not available for expansions which violate height restrictions of this ordinance.*

In addition to the Special Exception requirement of 5.1.3, Section XII: Shoreland Protection District (SPD), article 12.6.1, indicates erecting a structure in the SPD is not a permitted use, therefore a **Variance from 12.6.1 is required.**

12.6.1 General: The following uses are permitted under this Section:

- a. Any Use Otherwise Permitted: By the Zoning Ordinance and by State and Federal laws that **does not involve the erection of a structure**, and does not alter the surface configuration of the land by the addition of fill or by dredging, except as a common treatment associated with a permitted use, and provided that a buffer strip of natural vegetation 75 feet in width along the Squamscott River, Great Bay Estuary, and associated tidal marshes, and 50 feet in width elsewhere, be maintained between the area of use and the shoreline or upland extent of the tidal marsh;*

The applicant has applied for and received through NH DES, Shoreland Impact Permit #2020-02690 to: *Impact 9,537 square feet of protected Shoreland in order to construct an addition onto the nonconforming primary structure and a detached accessory structure.*

Sincerely,

Shanti Wolph

Building Inspector/Code Enforcement Officer

603-772-7391 x180

swolph@strathamnh.gov



TOWN OF STRATHAM

INCORPORATED 1716

10 BUNKER HILL AVENUE • STRATHAM NH 03885
VOICE (603) 772-4741 • FAX (603) 775-0517 • www.strathamnh.gov

Decision or Order of the Building Inspector/Code Enforcement Officer

17.8 SCOPE OF REVIEW (REV. 3/15)

In accordance with state law the ZBA shall hear and decide applications for Special Exceptions from the terms of this ordinance, Variance applications for as allowed by this ordinance, appeals of decisions from an administrative official regarding the enforcement of this ordinance, applications for Equitable Waivers of dimensional requirements (current statutory reference: RSA 674:33-a), appeals of Planning Board decisions based on this ordinance (current statutory reference: RSA 676:5), and such other matters as are allowed by law.

Applicant: Robert Michael Cleary and Stephanie Clark Cleary of 7 Boat Club Drive. Stratham, NH

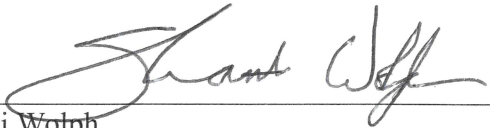
Date of order: 12/01/20

Deadline for application for appeal: 12/31/20

Decision or Order of the Building Inspector/Code Enforcement Officer: For property located at 7 Boat Club Drive, Map 08 Lot 39, Zone R/A

Your building permit #2020-878 to construct a 30'x49' addition is denied. The reason for denial is:

1. According to the Stratham Zoning Ordinance 'Section V, Article 5.1.3' a **Special Exception** is required when expanding non-conforming structures.
2. A **Variance** is required from 'Section XII: Shoreland Protection District: (overlay)', Article 12.6.1(a):
General: The following uses are permitted under this Section:
 - a. Any Use Otherwise Permitted: By the Zoning Ordinance and by State and Federal laws that **does not involve the erection of a structure**, and does not alter the surface configuration of the land by the addition of fill or by dredging, except as a common treatment associated with a permitted use, and provided that a buffer strip of natural vegetation 75 feet in width along the Squamscott River, Great Bay Estuary, and associated tidal marshes, and 50 feet in width elsewhere, be maintained between the area of use and the shoreline or upland extent of the tidal marsh;



Shanti Wolph
Stratham Building Inspector/Zoning Enforcement Officer

12-01-20

Date



CELEBRATING OVER 35 YEARS OF SERVICE TO OUR CLIENTS

LIZABETH M. MACDONALD
JOHN J. RATIGAN
DENISE A. POULOS
ROBERT M. DEROSIER
CHRISTOPHER L. BOLDT
SHARON CUDDY SOMERS
DOUGLAS M. MANSFIELD
KATHERINE B. MILLER
CHRISTOPHER T. HILSON
HEIDI J. BARRETT-KITCHEN
JUSTIN L. PASAY
ERIC A. MAHER
BRENDAN A. O'DONNELL
ELAINA L. HOEPPNER
WILLIAM K. WARREN

December 1, 2020

Gary Dolan, Chair
Zoning Board of Adjustment
Town of Stratham
10 Bunker Hill Avenue
Stratham, NH 03885

Re: Map 8, Lot 39, 7 Boat Club Drive (the "Property")
Applications for Variance and Special Exception

Dear Chair Dolan and Board Members:

Enclosed please find an original and nine (9) copies of Applications for Variance and Special Exception together with the supporting materials. Also enclosed is a check in the amount of \$425.00 for filing fees.

We respectfully request that this matter be placed on the Board's December 22, 2020 meeting agenda. In the meantime, if you have any questions do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

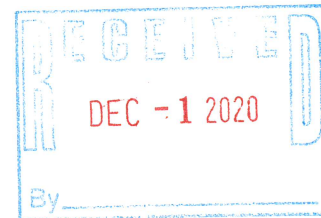
Justin L. Pasay
JLP/sac
Enclosures
cc: Robert & Stephanie Cleary
Henry Boyd

S:\CE-CL\Cleary, Robert & Stephanie\ZBA\2020 12 01 ZBA letter.docx

DONAHUE, TUCKER & CIANDELLA, PLLC
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253
83 Clinton Street, Concord, NH 03301



**TOWN OF STRATHAM
BOARD OF ADJUSTMENT
SPECIAL EXCEPTION APPLICATION**



CASE# 656A

OWNER & APPLICANT INFORMATION:

APPLICANT: Robert & Stephanie Cleary PHONE NUMBER: 781-771-8397
EMAIL ADDRESS: rob@clearcutdsgn.com
MAILING ADDRESS: 7 Boat Club Drive, Stratham, NH 03885
STREET ADDRESS TOWN/CITY STATE ZIP
PROPERTY OWNER: same PHONE NUMBER: _____
(IF SAME AS APPLICANT, WRITE "SAME") EMAIL ADDRESS: _____
MAILING ADDRESS: same
STREET ADDRESS TOWN/CITY STATE ZIP

CONSULTANTS/PROFESSIONAL SUPPORT:

NAME: Justin L. Pasay, Esq. Donahue, Tucker & Ciandella PHONE NUMBER: 603-766-1686
EMAIL ADDRESS: jpasay@dtclawyers.com
BUSINESS MAILING ADDRESS: 111 Maplewood Avenue, Portsmouth, NH 03801
STREET NUMBER TOWN/CITY STATE ZIP
NAME: _____ PHONE NUMBER: _____
EMAIL ADDRESS: _____
BUSINESS MAILING ADDRESS: _____
STREET NUMBER TOWN/CITY STATE ZIP

SECTION I. PROPERTY LOCATION/DESCRIPTION:

LOCATION: 7 Boat Club Drive, Stratham, NH 03885
STREET NUMBER TOWN/CITY STATE ZIP
TAX MAP: 8 LOT(s): 39 Zoning District(s): RA Overlay District(s): _____
SPECIAL CONDITIONS OF THE PROPERTY: see attached

SECTION II. APPLICATION FOR SPECIAL EXCEPTION:

A SPECIAL EXCEPTION, AS SPECIFIED IN SECTION V, ARTICLE 5.1.3 OF THE ZONING ORDINANCE IS REQUESTED TO PERMIT: (DESCRIBE THE PROPOSED USE OR ACTIVITY THAT REQUIRES SPECIAL EXCEPTION PERMIT)

see attached

SECTION II. APPLICATION FOR SPECIAL EXCEPTION: (CONTINUED)

PLEASE EXPLAIN HOW THE PROPOSAL MEETS THE SPECIAL EXCEPTION CRITERIA AS SPECIFIED IN ARTICLE XVII, SECTION 17.8.2 OF THE ZONING ORDINANCE:

- I. THE PROPOSED USE MEETS THE STANDARDS PROVIDED BY THIS ORDINANCE FOR THE PARTICULAR USE PERMITTED BY SPECIAL EXCEPTION BECAUSE:

see attached

- II. NO HAZARD TO THE PUBLIC OR ADJACENT PROPERTY ON ACCOUNT OF POTENTIAL FIRE, EXPLOSION, OR RELEASE OF TOXIC MATERIALS WILL RESULT BECAUSE:

see attached

- III. NO DETRIMENT TO PROPERTY VALUES IN THE VICINITY OR CHANGE IN THE ESSENTIAL CHARACTERISTICS OF A RESIDENTIAL NEIGHBORHOOD ON ACCOUNT OF THE LOCATION OR SCALE OF BUILDINGS AND OTHER STRUCTURES, PARKING AREA, ACCESS WAYS, ODOR, SMOKE, GAS, DUST, OR OTHER POLLUTANT, NOISE, GLARE, HEAT, VIBRATION, OR UNSIGHTLY OUTDOOR STORAGE OF EQUIPMENT, VEHICLES OR OTHER MATERIALS WILL OCCUR BECAUSE:

see attached

- IV. NO CREATION OF A TRAFFIC SAFETY HAZARD OR A SUBSTANTIAL INCREASE IN THE LEVEL OF TRAFFIC CONGESTION IN THE VICINITY AS A RESULT OF THE PROPOSAL BECAUSE:

see attached

- V. THE USE WILL NOT RESULT IN THE EXCESSIVE DEMAND ON MUNICIPAL SERVICES, INCLUDING, BUT NOT LIMITED TO, WATER, SEWER, WASTE DISPOSAL, POLICE AND FIRE PROTECTION, AND SCHOOLS BECAUSE:

see attached

- VI. THERE WILL BE NO SIGNIFICANT INCREASE OF STORM WATER RUNOFF ONTO ADJACENT PROPERTY OR STREETS AS A RESULT OF THE PROPOSED USE BECAUSE:

see attached

SECTION II. APPLICATION FOR SPECIAL EXCEPTION: (CONTINUED)

Special Exception Approvals: may be subject to appropriate conditions including the following:

- i. Front, side, or rear yards in excess of the minimum requirements of this Ordinance;
- ii. Screening of the premises from the street or adjacent property by walls, fences, or other devices;
- iii. Modification of the exterior features or buildings or other structures;
- iv. Reasonable limitations on the number of occupants and methods and times of operation;
- v. Grading of the premises for proper drainage;
- vi. Regulation of design of access drives, sidewalks, and other traffic features;
- vii. Regulation of the number, size, and lighting of signs more stringent than the requirements of this Ordinance.

SECTION II. APPLICATION FOR SPECIAL EXCEPTION: (CONTINUED)**SPECIAL EXCEPTION – ADDITIONAL CRITERION**

SEVERAL TYPES OF SPECIAL EXCEPTIONS HAVE SPECIFIC CRITERION THAT MUST BE MET IN ADDITION TO SECTION 17.8.2 OF THE ZONING ORDINANCE. IF YOUR PROJECT IS COVERED BY ONE(OR MORE) OF THE BELOW SITUATIONS, INCLUDE YOUR ANSWERS TO THE REQUIRED CRITERIA AS SPECIFIED IN THE REFERENCED SECTION OF THE STRATHAM ZONING ORDINANCE AS AN ATTACHMENT UNDER SECTION II. TO THIS APPLICATION.

1. SECTION 3.6, FOOTNOTES, 4. ADULT USES.
2. SECTION 3.6, FOOTNOTES, 2. RETAIL SALES IN AN INDUSTRIAL ZONING DISTRICT.
3. SECTION 5.1.3 EXPANSION OF NON-CONFORMING STRUCTURES.
4. SECTION 5.4. ACCESSORY APARTMENTS.
5. SECTION 5.11. DAY- CARE FACILITIES.
6. SECTION 5.13. HOME OCCUPATIONS.
7. SECTION 7.9.A.IX. SERVICE/CIVIC ASSOCIATION SIGNS: INSTALLATION OF SIGNS.
8. SECTION 12.6.4 SHORELAND PROTECTION DISTRICT - SPECIAL EXCEPTION FOR LOTS OF RECORD: TO PERMIT THE ERECTION OF A STRUCTURE WITHIN THE SHORELAND PROTECTION DISTRICT.
9. SECTION 13.4.H. AQUIFER PROTECTION DISTRICT - SPECIAL EXCEPTION FOR LOTS OF RECORD: TO PERMIT THE ERECTION OF A STRUCTURE WITHIN THE AQUIFER PROTECTION DISTRICT ON A NON-CONFORMING LOT.
10. SECTION 19.4.2. TELECOMMUNICATION FACILITIES - USE DISTRICTS: CONSTRUCTION OF NEW TELECOMMUNICATIONS TOWER IN RESIDENTIAL AND COMMERCIAL ZONING DISTRICTS.
11. SECTION 20.1.5.F. SANITARY PROTECTION AND SEPTIC ORDINANCE: TO CONSTRUCT A SEPTIC DESIGN AND DISPOSAL AREA THAT FAILS TO MEET THE REQUIREMENTS OF SECTION 20.
12. SECTION 20.4.1. SANITARY PROTECTION AND SEPTIC ORDINANCE – VACANT LOTS OF RECORD: A SEPTIC DESIGN AND DISPOSAL AREA THAT FAILS TO MEET THE REQUIREMENTS OF SECTION 20.

SECTION III. APPLICANT CERTIFICATION:

I DECLARE UNDER PENALTY OF PERJURY THAT ALL OF THE SUBMITTED INFORMATION IS TRUE AND VALID TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT THERE IS NO VIOLATION OF THE APPROVED ORDINANCES, CODES, AND/OR REGULATIONS OF THE TOWN OF STRATHAM. I HAVE READ AND AGREE TO ABIDE BY THE REGULATIONS AND CONDITIONS OF APPROVAL LISTED ON THIS APPLICATION. I UNDERSTAND THAT MY MISREPRESENTATIONS OF SUBMITTED DATA MAY INVALIDATE ANY APPROVAL OF THIS APPLICATION.

Justin L. Pasay for
Signature of Applicant

Justin L. Pasay, duly authorized
Print Applicant's Name

12/01/2020
Date

Signature of Owner

Print Owner's Name

Date

NOTES:

1. APPLICATION MUST BE SIGN SIGNED BY THE OWNER OF THE PROPERTY OR OTHER PERSON HAVING THE LEGAL RIGHT TO APPLY AS AN AGENT OF THE OWNER. IF SIGNED BY A PERSON OTHER THAN THE OWNER OF THE PROPERTY DOCUMENTATION OF THE LEGAL RIGHT TO APPLY AS AN AGENT OF THE OWNER MUST BE SUPPLIED AT THE TIME THE APPLICATION SUBMITTAL.
2. IF APPLICANT IS RENTING/LEASING SUBJECT PROPERTY/STRUCTURES, SAID APPLICANT MUST HAVE A SIGNED LETTER FROM THE OWNER STATING THEIR PERMISSION TO CONDUCT PROPOSE BUSINESS PROJECT ON THEIR PROPERTY. THIS LETTER MUST INCLUDE THE PROPERTY OWNER'S NAME, CURRENT ADDRESS, AND TELEPHONE NUMBER.

SECTION IV. AUTHORIZATION TO ENTER THE SUBJECT PROPERTY:

I HEREBY AUTHORIZE MEMBERS OF THE STRATHAM ZONING BOARD OF ADJUSTMENT, CODE ENFORCEMENT, PLANNING DEPARTMENT, AND OTHER PERTINENT TOWN DEPARTMENTS AND BOARDS/COMMISSIONS TO ENTER MY PROPERTY FOR THE PURPOSE OF EVALUATING THIS APPLICATION, INCLUDING PERFORMING INSPECTIONS DURING THE APPLICATION PHASE, POST-APPROVAL PHASE, CONSTRUCTION PHASE AND OCCUPANCY PHASE. IT IS UNDERSTOOD THAT THESE INDIVIDUALS MUST USE ALL REASONABLE CARE, COURTESY, AND DILIGENCE WHEN ON THE PROPERTY.

Justin L. Pasay for
Signature of Owner

Justin L. Pasay, duly authorized
Print Owner's Name

12/01/2020
Date

SECTION V. LIST OF ABUTTERS:

PURSUANT TO RSA 676:4, THE STATE LAW OF NEW HAMPSHIRE, THE TOWN OF STRATHAM IS REQUIRED TO NOTIFY THE APPLICANT, ABUTTERS (INCLUDING HOLDERS OF CONSERVATION EASEMENTS), AND ANY PROFESSIONAL WHOSE SEAL IS ON THE PLAN, OF THE PUBLIC HEARING BY CERTIFIED MAIL. THE APPLICANT MUST OBTAIN THE ABUTTER INFORMATION FROM THE RECORDS OF THE TAX ASSESSOR'S OFFICE IN ORDER TO PROCESS THE SPECIAL EXCEPTION PERMIT APPLICATION.

ABUTTER IS DEFINED AS THE OWNER OF RECORD OF A PARCEL OF LAND LOCATED IN NEW HAMPSHIRE AND THAT ADJOINS OR IS DIRECTLY ACROSS THE STREET OR STREAM FROM THE LAND UNDER CONSIDERATION BY THE ZONING BOARD OF ADJUSTMENT. THE TERM ABUTTER SHALL ALSO INCLUDE THE OWNER AND APPLICANT. FOR A CONDOMINIUM OR OTHER COLLECTIVE FORM OF OWNERSHIP, ABUTTER MEANS THE OFFICERS OF THE COLLECTIVE OR ASSOCIATION.

OWNER:

MAP	LOT	PROPERTY OWNER	STREET ADDRESS	TOWN	STATE	ZIP
		see attached list/labels				

APPLICANT (IF DIFFERENT FROM OWNER):

MAP	LOT	APPLICANT	STREET ADDRESS	TOWN	STATE	ZIP

SURVEYOR AND/OR ENGINEER:

MAP	LOT	NAME OF COMPANY	STREET ADDRESS	TOWN	STATE	ZIP

CONSERVATION EASEMENT HOLDER:

MAP	LOT	PROPERTY OWNER	STREET ADDRESS	TOWN	STATE	ZIP

[illegible]

SIGNATURE OF APPLICANT

MAP AND LOT

DATE _____

Date Received: 12/1/2020	Fee(s) Paid: \$ 212.50
Date of Notice: 12/8/2020	Cash/Check: # 67126
Date of Public Hearing:	Code Enforcement Officer:



**TOWN OF STRATHAM
ZONING BOARD OF ADJUSTMENT**

10 Bunker Hill Avenue · Stratham, NH 03885

(603) 772-4741 · Fax 603-775-0517

www.StrathamNH.gov

Zoning Board of Adjustment – Variance Application

FOR OFFICE USE ONLY

ZBA Case Number: 656 B

Public Notification Date: 12/8/2020

Date Application Filed: 12/1/2020

Public Hearing Date: _____

Received By: DJL (Initials Only)

Approval/Denial Date: _____

Fees Received: \$212.50

ZB A Decision Date: _____

Section 1. General Information (Please print or Type)

APPLICANT/AGENT

Phone#: 781-771-8397 Fax #: _____

Robert & Stephanie Cleary

Email Address: rob@clearcutdsgn.com

7 Boat Club Drive, Stratham, NH 03885

Street Address Town/City State ZIP

PROPERTY OWNER (If different from Applicant)

Phone#: _____ Fax #: _____

same

Email Address: _____

Street Address Town/City State ZIP

Tax Map: 8 Total parcel area: 351,900 (s.f.) Property Deed Information:
Lot(s): 39 8.1 (acres) Book: 5936 Page: 2884

ZONING DISTRICT(S): RA

OVERLAY DISTRICT(S):

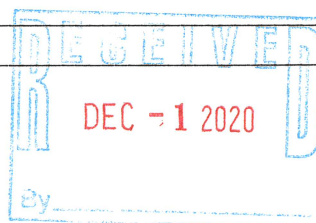
(Check all that apply)

- ☐ Aquifer Protection District ☐ Wetland Conservation District
☒ Shoreline Protection ☐ Floodplain Management
☐ Gateway Commercial Business District

Section 2. Background

Please provide a brief description of your project, including your intended use of the property and/or intended improvements to the property, if applicable:

see attached



Section 3. Variance Request

A variance is requested from Section XII Article 12.6.1(a) of the Zoning Ordinance and asks that said terms be waived to permit the following:

see attached

The applicant bears the burden of presenting evidence sufficient to allow the Zoning Board to reach conclusions and make findings to support the authorization of a variance. To do so, the undersigned alleges that the following legal criteria for granting a variance are satisfied, and submits the accompanying written statement, records, photographs, and other materials to justify the granting of the variance and to explain how each of the criteria for the variance is or will be satisfied.

Facts supporting this request:

- i. The variance will not be contrary to the public interest because:

see attached

- ii. The spirit of the ordinance is observed because:

see attached

- iii. Substantial justice is done because:

see attached

- iv. The values of surrounding properties are not diminished because:

see attached

- v. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.
1. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - a. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:
see attached

And:

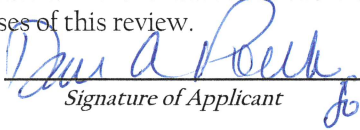
- b. The proposed use is a reasonable one because:
see attached

2. Explain how, if the criteria in subparagraph 1. are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties on the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. :
see attached

3. The definition of "unnecessary hardship" set forth in this section shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

Section 4. Applicant's Certification

I declare under penalty of perjury that all of the submitted information is true and valid to the best of my knowledge and belief and that there is no violation of the approved ordinances, codes, and/or regulations of the Town of Stratham. I have read and agree to abide by the regulations and conditions of approval listed on this application. I understand that my misrepresentations of submitted data may invalidate any approval of this application. I further authorize the Members of the Board and/or their staff to enter onto my property for the purposes of this review.


Signature of Applicant

Justin L. Pasay, duly authorized

Print Applicant's Name

12/01/2020

Date

Signature of Owner

Print Owner's Name

Date

NOTES:

1. Application must be sign signed by the owner of the property or other person having the legal right to apply as an agent of the owner. If signed by a person other than the owner of the property documentation of the legal right to apply as an agent of the owner must be supplied at the time the application submittal.
2. If applicant is renting/leasing subject property/structures, said applicant must have a signed letter from the owner stating their permission to conduct the proposed business project on their property. This letter must include the property owner's name, current address, and telephone number.

APPLICATION CHECKLIST

Section 4. Applicant's Certification

- ☒ Completed and signed application (check to ensure the proper section is filled out).
 - ☐ Section 1. APPEAL FROM AN ADMINISTRATIVE DECISION
 - ☐ Section 2. APPLICATION FOR A SPECIAL EXCEPTION
 - ☐ Section 3. APPLICATION FOR VARIANCE
 - ☐ Section 4. APPLICATION FOR EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS
- ☒ Submission of a plat or drawing, which should provide information in support of the appeal. (9 sets)
- ☒ Completed abutters list with three (3) address labels, no envelopes
- ☒ Fees: \$250 plus \$5 for each abutter
 - **Town of Stratham and all individuals requiring notification (property owner, legal counsel, engineering firms, etc.) must be included on the abutter list.
- ☒ Check for the appropriate amount made out to the Town of Stratham.

SPECIAL EXCEPTION AND VARIANCE APPLICATIONS FOR ROBERT AND
STEPHANIE CLEARY (the “**Applicants**”)

The Applicants request a special exception pursuant to Section 5.1.3 of the Zoning Ordinance and a variance from Section 12.6.1(a) of the Zoning Ordinance to construct a 1,363 s.f. addition (the “**Proposed Addition**”) on the single family residence on their property located at 7 Boat Club Drive, which property is further identified as Town Tax Map 8, Lot 39 (the “**Property**”). The entire dwelling, and the Proposed Addition, are located within the Town’s Shoreland Protection Overlay District (the “**District**” or the “**Shoreland District**”), which extends 150’ horizontal distance from the shoreline and upland extend of any tidal marsh adjacent to the Squamscott River and Great Bay Estuary, as depicted in three sheet plan set titled “NHDES Shoreland Plan” filed by the Applicants with the State of New Hampshire, which is enclosed herewith as **Enclosure 1**.

I. Introduction

Currently, the Property is 11.2 acres in size and is bound to the west by the Squamscott River, to the east by Boat Club Drive, and to the north and south by other residential properties. In September, the Planning Board approved a minor subdivision of the Property which will carve off 3.1 acres of the southern portion of the Property to create a distinct building lot, as depicted in the plan included herewith as **Enclosure 2**. A tax map depicting the Property and surrounding properties along Boat Club Drive and River Road is included as **Enclosure 3**.

The entire existing single-family dwelling on the Property, with a footprint of 5,484 s.f., is located within the Town’s Shoreland Protection Overlay District. Additionally, the Property contains 2,809 s.f. of impervious driveway surface within the District. *See* **Enclosure 4**. As a result of these site conditions, the Property contains approximately 8,293 s.f. of existing impervious surface area within the District and constitutes a nonconforming use.¹ Current photographs of the Property are included as **Enclosure 5**.

The Applicants, who are expecting a second child soon, intend to improve the Property by constructing the Proposed Addition and the detached garage depicted in **Enclosure 1**. Both of those structures are within the State of New Hampshire’s 250’ Shoreland Zone. *See* **Enclosure 1**. As such, the Applicants were required to obtain a Shoreland Permit from the New Hampshire Department of Environmental Services, which permit was recently approved. *See* **Enclosure 6**. However, as noted above, only the Proposed Addition is within the Town’s Shoreland District. As such, only the Proposed Addition, and not the proposed detached garage, is the subject of the Applicants’ filings with the Zoning Board of Adjustment (the “**ZBA**”).

The Proposed Addition will consist of two additional bedrooms, an office, a family room, and an extended master bathroom, and will create 1,363 s.f. of footprint/impervious surface area, as depicted in the floor plans and renderings included herewith as **Enclosure 7**. *See also* **Enclosure 1**. Of the 1,363 s.f. addition, however, 48 s.f. of same will be constructed over

¹ Defined by Section 2.1.47 of the Zoning Ordinance as “use of land, building or premises which is not a use permitted by the provisions of [the Zoning Ordinance] for the district in which such land, building or premises is situated.”

existing impervious driveway surface. As a result, the total proposed increase of impervious surface area within the District created by the Proposed Addition is approximately 1,315 s.f. With the Proposed Addition, the total approximate impervious surface area within the District would increase by approximately 16% to approximately 9,608 s.f.² **However, to offset the additional proposed impervious surface area within the Shoreland District caused by the Proposed Addition, the Applicants propose to remove the 2,761 s.f. of impervious driveway surface within the District and replace the same with pervious crushed stone, gravel, or other pervious materials, which will permit the infiltration of water. The removal of the existing impervious driveway surface in the District will result in a greater than 17% (1,446 s.f.)³ net decrease in impervious surface area within the District on the Property.**

Nonconforming structures may only be expanded via special exception from the ZBA pursuant to Section 5.1.3 of the Zoning Ordinance. Here, because the Applicants seek to expand the footprint of the single-family dwelling on the Property, which is a nonconforming structure based on its location within the District as noted above, the Applicants seek a special exception pursuant to Section 5.1.3. Additionally, Section 12.6.1(a) of the Zoning Ordinance prohibits the “erection of structure[s]” within the District, which is why variance relief from that provision is also sought.

The Applicants address both the special exception criteria outlined in Section 5.1.3 as well as the statutory variance criteria below.

II. Special Exception Pursuant to Section 5.1.3 of the Zoning Ordinance

Nonconforming structures may be expanded in accordance with the terms of a special exception issued by the ZBA in Stratham. The ZBA must find that seven individual factors exist before granting that special exception. The Applicants respectfully submit that each of those factors are satisfied in this case, as depicted below.

- a. The proposed expansion must intrude no further into any setback area than does the existing structure.**

This requirement is satisfied. As depicted in **Enclosure 1**, the Proposed Addition will be constructed on the front/eastern side of the house. As a result, the expansion will not be intruding further into the applicable District Setback, which is measured from the shoreline of the Squamscott River, which is located on the western side of the Property behind the house.

- b. The expansion must have no further adverse impact on the view, light, and air of any abutter.**

This requirement is satisfied. As depicted in **Enclosure 1**, the Property is large and the single-family dwelling and Proposed Addition are insulated by hundreds of feet from the closest

² +/- 8,293 s.f. existing impervious surface area plus +/- 1,315 s.f. proposed additional impervious surface area.

³ +/- 8,293 s.f. existing impervious surface area plus +/- 1,315 s.f. proposed additional impervious surface area less +/- 2,761 s.f. impervious driveway area.

abutter. The Proposed Addition will cause no adverse impact on the view, light, or air of any abutter.

c. The expansion must not cause property values to deteriorate.

This requirement is satisfied. The Proposed Addition will beautify the Property which in turn increase its value. The anticipated increase in the value of the Property will positively affect the value of surrounding properties. No deterioration in property value will be suffered by any surrounding properties, particularly as the Applicants' proposal will decrease the impervious surface area within the District on the Property by more than 17%. *See also Enclosure 8.*

d. The expansion must not impede existing rights of access or egress.

This requirement is satisfied. The Proposed Addition to the single-family structure will in no way affect any existing rights of access or egress, either to the Applicants, or any abutter.

e. That portion of the proposed expansion, which will intrude into the setback must, in no event, exceed the footprint square footage of that portion of the structure which presently intrudes into the setback, regardless of the number of applications made over time under this subsection.

This requirement is satisfied. The existing dwelling on the Property has an approximately 5,474 s.f. footprint. The Proposed Addition will add approximately 1,315 s.f. of impervious surface within the Shoreland District. *See Enclosures 1, 4.* Accordingly, the expansion footprint is less than quarter of the size of the existing footprint. Beyond this and more importantly, the net result of the Applicants' proposal is a reduction by greater than 17% of the impervious surface area within the District.

f. In the event the nonconforming structure contains a commercial use, there must be no adverse impact on access, traffic, parking, lighting or other safety or visibility features of the existing structure.

This requirement is satisfied. The Proposed Addition is entirely residential in nature and will cause no adverse impact on access, traffic, parking, lighting or other safety or visibility feature of the existing structure.

g. A special exception under this subsection may be granted only as to expansions into the side, front, and rear setbacks, and is not available for expansions which violate height restrictions of this ordinance.

This requirement is satisfied. The Proposed Addition will be located within the District off the front of the single-family dwelling's façade and will not violate the Zoning Ordinance's height restrictions. Beyond this, the Applicants' proposal will result in a net decrease of impervious surface area within the District of greater than 17%.

As the Applicants squarely meet each of the seven delineated factors contained within Section 5.1.3 of the Zoning Ordinance, they respectfully request that the ZBA vote to approve their special exception application.

III. Variance from Section 12.6.1(a) of the Zoning Ordinance

Pursuant to Section 17.8.3 of the Zoning Ordinance and RSA 674:33, to obtain a variance in New Hampshire, an applicant must show that: (1) the variance will not be contrary to the public interest; (2) the spirit of the ordinance is observed; (3) substantial justice is done; (4) the values of surrounding properties are not diminished; and (5) literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, where said term means that, owing to special conditions of the property that distinguish it from other properties in the area: no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and the Proposed use is a reasonable one; or if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. *See* RSA 674:33, I (b).

In this case, and as detailed below, the ZBA should grant the Applicants' variance request because their proposal will not be inconsistent with the essential character of the surrounding area, will not compromise the public health in any way, will provide substantial justice, will not compromise the property values of surrounding properties, and because there is no rational connection between the general intent of the Zoning Ordinance and the implied intent of the Shoreland Protection Overlay District Ordinance and its application to the Property under the unique circumstances of this case.

1. The variance will not be contrary to the public interest.

The New Hampshire Supreme Court has indicated that the requirement that a variance not be "contrary to the public interest" is coextensive and related to the requirement that a variance be consistent with the spirit of the ordinance. *See Chester Rod & Gun Club v. Town of Chester*, 152 N.H. 577, 580 (2005); *Malachy Glen Associates, Inc. v. Town of Chichester*, 155 N.H. 102, 105-06 (2007); and *Farrar v. City of Keene*, 158 N.H. 684, 691 (2009). A variance is contrary to the public interest only if it "unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives." *Chester Rod & Gun Club*, 152 N.H. at 581; *Farrar*, 158 N.H. at 691. *See also Harborside Associates, L.P. v. Parade Residence Hotel, LLC*, 162 N.H. 508, 514 (2011) ("[m]ere conflict with the terms of the ordinance is insufficient.") Moreover, these cases instruct boards of adjustment to make the determination as to whether a variance application "unduly" conflicts with the zoning objectives of the ordinance "to a marked degree" by analyzing whether granting the variance would "alter the essential character of the neighborhood" or "threaten the public health, safety or welfare" and to make that determination by examining, where possible, the language of the Zoning Ordinance.

The general purposes of the Zoning Ordinance are to promote the health, safety, convenience and general welfare of the Town of Stratham and to protect and conserve the value

of property and the appropriate use of land. *See* Zoning Ordinance, Section 1.2. The express purpose of the Shoreland Protection Overlay District Ordinance is to “protect and promote environmental quality, public health, resource conservation, and the general welfare of the public, with particular attention to the special cultural and ecological significance of the Great Bay estuarine system.” Zoning Ordinance, Section 12.2.

Integral to the advancement of the Zoning Ordinance’s general purposes and the express purpose of the Shoreland Protection Overlay District Ordinance, is the prevention of impervious surfaces within the District. Impervious surfaces collect stormwater and deliver drainage to ecologically sensitive areas, like the 150’ shoreland area from the Squamscott River. That is why the erection of “structures”⁴ is prohibited in the District.

Here, while the Proposed Addition will add approximately 1,315 s.f. of impervious surface area in the District, that addition will be more than offset by a corresponding reduction of impervious surface caused by the removal of the impervious driveway surface within the District and its replacement with previous crushed stone, gravel, or other previous material, which will permit the infiltration of water. As detailed above, the net result of the Applicants’ proposal is a decrease by more than 17% of the impervious surface area within the District on the Property. As a result, and as a foundational matter, granting the variance will permit construction of the Proposed Addition and replacement of the impervious driveway surface within the District such that the Property is in *greater* conformance with the Zoning Ordinance and its purposes, than it is today.

Based on these realities, the proposed variance will not be contrary to the public interest advanced by the general purposes of the Zoning Ordinance or the express purpose of the Shoreland Protection Overlay District Ordinance because strictly enforcing the ordinance will not advance those purposes. In fact, the opposite is true: strictly enforcing the Shoreland Protection Overlay District Ordinance would be contrary to its stated purposes. In other words, the variance will not “unduly” or “in a marked degree” conflict with the ordinance such that it violates the ordinance’s basic zoning objectives, because the Zoning Ordinance’s basic zoning objectives, and the objectives of the Shoreland Protection Overlay district are met by the proposal, which significantly decreases impervious surface area within the District. See Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691; Harborside Associates, L.P. 162 N.H. at 514.

Beyond this, the proposed variance will not impact the essential character of the area. Rather, the Proposed Addition will beautify the Property and enhance its value and that of surrounding properties, and will reduce the impervious surface area within the District, which will enhance the character of area by bringing it into greater conformity with the provisions of the Zoning Ordinance.

⁴ Defined broadly by the Zoning Ordinance to be “[a]nything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground. Structure includes, but are not limited to, buildings, mobile home, bridges, trestles, towers, framework, hoop houses, tanks or group of tanks exceeding a total of 500 gallons (excluding septic tanks), tunnels, stadiums, platforms, shelters, piers, wharfs, signs, fences and retaining walls over six feet (6’) in height, swimming pools, or the like.”

Similarly, the variance will not threaten the public health or safety because the Applicants' proposal will result in a 17% *reduction* of the impervious surface area within the Shoreland District, which in turn will better-advance the goals of the Zoning Ordinance and the Shoreland Protection Overlay District Ordinance by further promoting the health, safety, and welfare of the public and the environmental quality and resource conservation of the District, than the Property as it is currently situated.

Because the Applicants' proposal advances the general purposes of the Zoning Ordinance and the express purposes of the Shoreland Protection Overlay District Ordinance beyond what currently exists today, and because the Applicants' proposal is consistent with the character of the neighborhood and will not threaten the public's health or safety, granting the variance will not be contrary to the public interest.

2. The spirit of the Ordinance is observed.

As referenced in Section 1 above, the requested variance observes the general purposes of the Zoning Ordinance and the express purposes of the Shoreland Protection Overlay District Ordinance, as well as New Hampshire jurisprudence regarding the "public interest" prong of the variance criteria, because the Applicants' proposal will result in a Property with less impervious surface within the District than what exists today, thereby advancing the purposes of the Zoning Ordinance. As the New Hampshire Supreme Court has indicated in both Chester Rod & Gun Club and in Malachy Glen, the requirement that the variance not be "contrary to the public interest" is coextensive and is related to the requirement that the variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club, 152 N.H. at 580. A variance is contrary to the spirit of the ordinance only if it "unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives." Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691.

As discussed above, the requested variance is consistent with the general purposes of the Zoning Ordinance and the express purposes of the Shoreland Protection Overlay District Ordinance because of the reasons stated in Section 1. As a result, for the reasons stated above, the Applicants respectfully assert that it would be reasonable and appropriate for the ZBA to conclude that the requested variance will observe the spirit of the Zoning Ordinance.

3. Substantial justice is done.

As noted in Malachy Glen, *supra*, "perhaps the only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." Malachy Glen, *supra*, citing 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 24.11, at 308 (2000) (quoting New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997)). In short, there must be some gain to the general public from denying the variance that outweighs the loss to the Applicant from its denial.

In this case, the public does not stand to gain anything from denying the variance requested. Rather, denial of the variance would be contrary to the public interest because it will

prevent the reduction of impervious surface area within the District which would make the Property more compliant with the Shoreland Protection Overlay District Ordinance.

On the contrary, the requested variance will permit the Applicants to exercise their real property rights and will authorize the construction of the Proposed Addition which will facilitate a better living situation for the Applicants, who are, as noted above, expecting a second child. Beyond this, however, the Applicants' proposal will also reduce the impervious surface area in the District which is a great benefit to the surrounding ecology and, by translation, the public.

As there is no gain to the general public from denying the variance that outweighs the loss to the Applicants from its denial, granting the requested variance will accomplish substantial justice.

4. The proposal will not diminish surrounding property values.

Given the nature of the neighborhood as described above, none of the surrounding properties will suffer any diminution in value. First, the impacts to the Shoreland Protection Overlay District will not have any impact on surrounding properties, especially as the net impervious footprint within the District will be decreasing as a result of the Applicants' proposal. Further, the variance will permit the construction of the Proposed Addition which will beautify the Property and, in turn, increase the Property's value. Common sense dictates that the increase in value to the Property will have a corresponding positive effect on the value of surrounding properties. These conclusions are further evidenced by the letter filed herewith from Jamieson Duston of the Bean Group in Portsmouth. *See Enclosure 8.* Accordingly, the Applicant respectfully requests that the ZBA find that the requested variance will not diminish surrounding property values.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

As set forth in the provisions of RSA 674:33, I, there are two options by which the ZBA can find that an unnecessary hardship exists:

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The Proposed use is a reasonable one.

or,

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The “special conditions” of the Property for purposes of this variance criterion include the size of the Property, which is significantly larger than the surrounding properties (*see Enclosure 3*), the location of the single-family dwelling completely within the District, and the Property’s ability to accommodate the Proposed Addition in a manner that will ultimately reduce the impervious surface area within the District, making literal enforcement of the same unreasonable.

In Harborside Assocs. v. Parade Residence Hotel, the New Hampshire Supreme Court upheld the Portsmouth Board of Adjustment’s finding that the physical improvements on a property, in that case the size of a building when compared to other buildings in the area within the context of sign variance request, could be considered “special circumstances.” Affirming the analysis of the Board of Adjustment, the Supreme Court stated:

The [Respondent] is not attempting to meet the ‘special conditions’ test by showing that its *signs* would be unique in their settings, but that its *property* – the hotel and conference center – has unique characteristics that make the signs themselves a reasonable use of the property.

Harborside, 162 N.H. at 518 (emphasis added). *Cf Farrar*, 158, N.H. 689 (where variance sought to convert large, historical single use residence to mixed use of two residence and office space, size of residence was relevant to determining whether property was unique in its environment).

Here, like the size of the building in Harborside, and the size of the residence in Farrar, the Property’s physical characteristics and improvements make the Proposed Addition reasonable under the circumstances. More specifically, the Property is large and insulated from abutting properties, making expansion of the existing dwelling abundantly reasonable. Further, the entirety of the single-family dwelling is located within the District as a nonconforming use, which makes any expansion of same impossible without a variance. However, based on the Applicants’ proposal to remove the impervious driveway surface area within the District, expansion of the house can be reasonably obtained in a manner that advances the general purposes of the Zoning Ordinance and the express purposes of the Shoreland Protection Overlay District Ordinance by significantly reducing, by 17%, the impervious surface area within the District.

Due to these special conditions of the Property, there is no fair and substantial relationship between the public purposes of the underlying ordinance and its specific application to the Property. On the contrary and as noted above, the Applicants’ proposed improvements are consistent with the public purposes Zoning Ordinance and Shoreland Protection Overlay District Ordinance because they facilitate reasonable use of the Property whilst advancing those ordinances’ express purpose to protect the environment and public health and welfare.

Put another way, strictly enforcing the underlying Shoreland Protection Overlay District Ordinance will not advance the public purposes of the same, but granting the requested variance will because it will translate into 17% less impervious surface area within the District on the Property.

The Applicant respectfully reminds the ZBA that the mere fact that the Applicant is seeking a variance from the express provisions of the Zoning Ordinance is not a valid reason for denying the variance. *See Malachy Glen Associates, Inc. v. Town of Chichester*, 155 N.H. 102, 107 (2007); *see also Harborside Associates*, 162 N.H. at 2011 (“mere conflict with the terms of the ordinance is insufficient”).

Finally, because the Applicants’ Proposed Addition will reduce impervious surface within the District and complement the existing residential use, it is reasonable under the circumstances. *See Vigeant v. Town of Hudson*, 151 N.H. 747, 752 - 53 (2005); and *Malachy Glen*, 155 N.H. at 107; *see also Harborside* at 518-519 (applicant did not need to show signs were “necessary” rather only had to show signs were a “reasonable use”).

Accordingly, the Applicant respectfully asserts that its application complies with the standard for Option A of the unnecessary hardship criterion and the Board of Adjustment should so find.

IV. Conclusion

The Applicant respectfully submits that all of the special exception and variance criteria for the underlying applications have been satisfied as outlined above and requests that the ZBA approve a motion to grant the same at its next public hearing.

**SPECIAL EXCEPTION SUPPLEMENT FOR ROBERT
AND STEPHANIE CLEARY (the “Applicants”)**

The Applicants have requested a special exception pursuant to Section 5.1.3 of the Zoning Ordinance to expand a nonconforming structure within the Town’s Shoreland Protection Overlay District. The Applicants detailed their compliance with the special exception criteria depicted within Section 5.1.3 of the Zoning Ordinance in their original filing. This supplemental narrative addresses the general special exception criteria depicted within Section 17.8.2(c) to the extent this additional analysis is required. As described below, the Applicants’ proposal plainly meets each of these additional special exception criteria.

i. The proposed use meets the standards provided by this Ordinance for the particular use permitted by special exception.

This requirement is satisfied. The Proposed Addition constitutes the expansion of a nonconforming use which meets all of the specific special exception criteria outlined in Section 5.1.3 of the Zoning Ordinance, as detailed above. Moreover, the proposed use is reasonable and will lead to a 17% reduction in impervious surface area within the Shoreland District which advances the purposes of the Shoreland Protection Overlay District Ordinance.

ii. No hazard to the public or adjacent property on account of any potential fire, explosion, or release of toxic materials will result.

The special exception use is the expansion of a single-family residential use in a neighborhood. There will be no hazardous activity conducted by virtue of this use. The development will reduce the impervious surface area within the Shoreland District and beautify the Property. As a result, no adjacent properties will be negatively impacted. *See Enclosure 8.*

iii. No detriment to property values in the vicinity or change in the essential character of a residential neighborhood on account of the location or scale of buildings and other structures, parking area, access ways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials will occur.

Surrounding property values will not decrease. If anything, they will increase as a result of the Applicants’ proposal which will beautify the Property and increase the Property’s value. *See Enclosure 8.* The special exception use is limited to a single-story addition to an existing residential structure to be used for residential purposes. There are no impacts to surrounding buildings, parking areas, access ways, etc. Further, there will be no generation of odor, smoke, gas, dust, or other pollutants, noise, glare, heat, vibration or unsightly outdoor storage of equipment caused by the special exception residential use. The character of the neighborhood will be preserved and enhanced as described above.

iv. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity as a result of the proposal will occur.

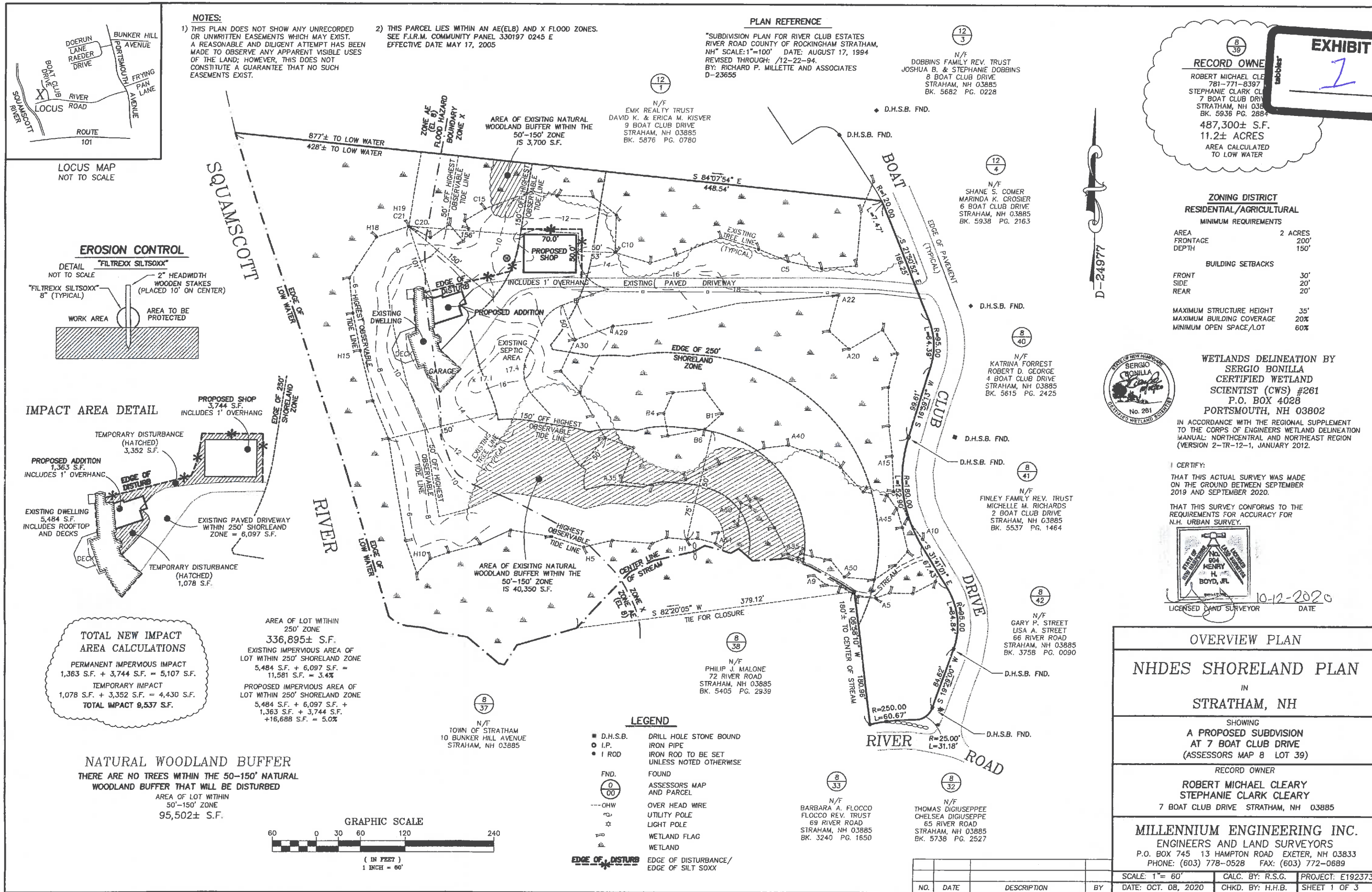
The special exception use will cause no more traffic or safety hazards than the existing use because the existing single-family residential use will remain the use on the Property.

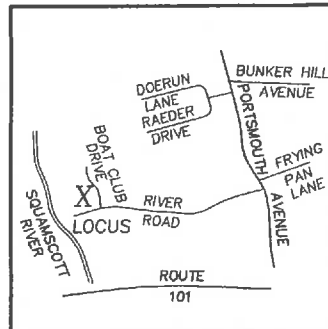
- v. The use will not result in the excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.**

The special exception use is the limited expansion of a single-family residential use. The Property is serviced by septic and well-water. The Property will cause no more demand on municipal services than what exists today. In no way will the special exception use on the Property cause an “excessive demand” on municipal services.

- vi. There will be no significant increase of storm water runoff onto adjacent property or streets as a result of the proposed use.**

The special exception use and Proposed Addition will cause no increase at all of storm water runoff onto adjacent properties or the public street. The dwelling structure on the Property and the Proposed Addition are well insulated by hundreds of feet from any surrounding abutters. Moreover, the Applicants’ proposal will result in a 17% decrease in impervious surfaces within the Shoreland District and will therefore be greatly reducing stormwater discharge altogether.





NOTES:
1) THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO OBSERVE ANY APPARENT VISIBLE USES OF THE LAND; HOWEVER, THIS DOES NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.
2) THIS PARCEL LIES WITHIN AN AE(ELB) AND X FLOOD ZONES. SEE F.I.R.M. COMMUNITY PANEL 330197 0245 E EFFECTIVE DATE MAY 17, 2005

NATURAL WOODLAND BUFFER
THERE ARE NO TREES WITHIN THE 50'-150' NATURAL WOODLAND BUFFER THAT WILL BE DISTURBED
AREA OF LOT WITHIN 50'-150' ZONE 95,502± S.F.



WETLANDS DELINEATION BY
SERGIO BONILLA
CERTIFIED WETLAND
SCIENTIST (CWS) #261
P.O. BOX 4028
PORTSMOUTH, NH 03802
IN ACCORDANCE WITH THE REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION (VERSION 2-TR-12-1, JANUARY 2012)

LOCUS MAP
NOT TO SCALE

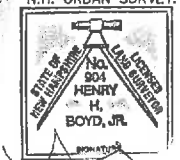
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SQUAMSCOTT RIVER

SEE SHEET 1 FOR IMPACT
AREA CALCULATIONS AND DETAIL

I CERTIFY:
THAT THIS ACTUAL SURVEY WAS MADE
ON THE GROUND BETWEEN SEPTEMBER
2019 AND SEPTEMBER 2020.

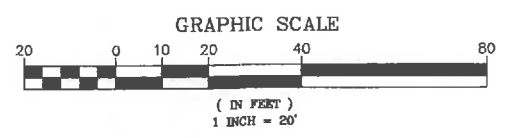
THAT THIS SURVEY CONFORMS TO THE
REQUIREMENTS FOR ACCURACY FOR
N.H. URBAN SURVEY.



10-12-2020
DATE

LEGEND

WETLAND FLAG
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EDGE OF LOW WATER
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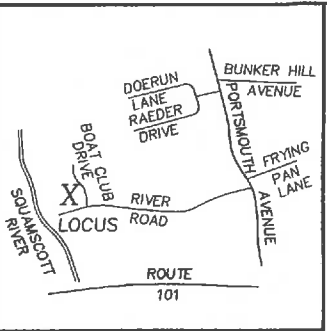
150'

50' OFF HIGHEST
OBSERVABLE
TIDE LINE

10

150'

50' OFF HIGHEST
OBSERVABLE
TIDE LINE



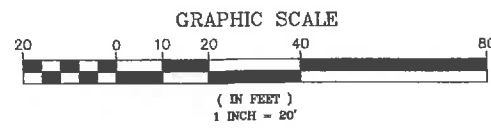
LOCUS MAP
NOT TO SCALE

SQUAMSCOTT

D-24977

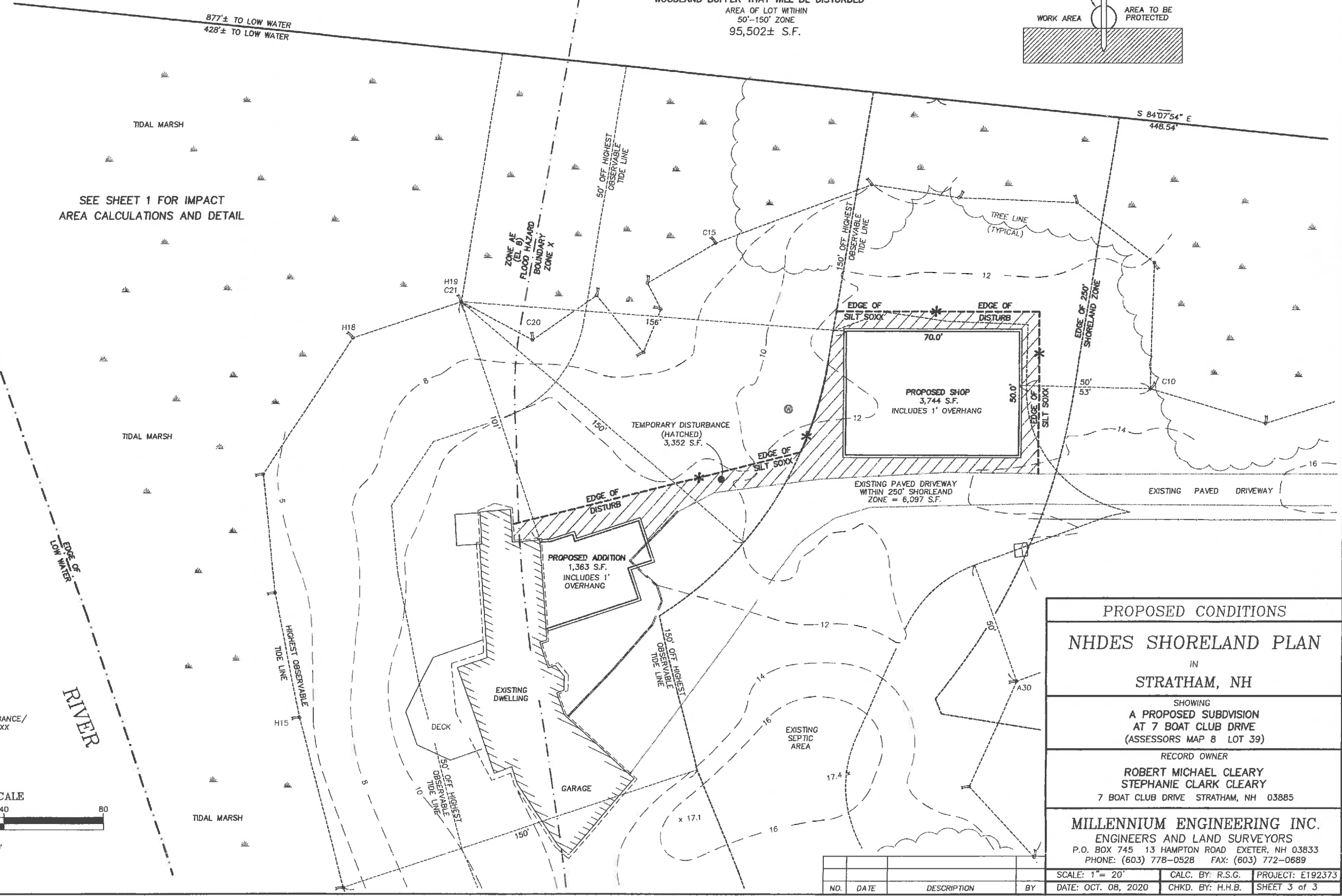
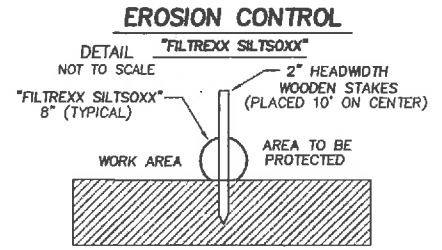
LEGEND

- WETLAND FLAG
- WETLAND
- EDGE OF DISTURBANCE
- EDGE OF SILT SOXX



- NOTES:**
- 1) THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO OBSERVE ANY APPARENT VISIBLE USES OF THE LAND; HOWEVER, THIS DOES NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.
 - 2) THIS PARCEL LIES WITHIN AN AE(EL8) AND X FLOOD ZONES. SEE F.I.R.M. COMMUNITY PANEL 330197 0245 E EFFECTIVE DATE MAY 17, 2005

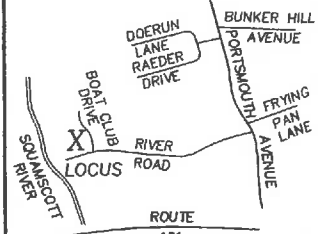
NATURAL WOODLAND BUFFER
THERE ARE NO TREES WITHIN THE 50-150' NATURAL WOODLAND BUFFER THAT WILL BE DISTURBED
AREA OF LOT WITHIN 50'-150' ZONE
95,502± S.F.



PROPOSED CONDITIONS			
NHDES SHORELAND PLAN			
IN			
STRATHAM, NH			
SHOWING			
A PROPOSED SUBDIVISION			
AT 7 BOAT CLUB DRIVE			
(ASSESSORS MAP 8 LOT 39)			
RECORD OWNER			
ROBERT MICHAEL CLEARY			
STEPHANIE CLARK CLEARY			
7 BOAT CLUB DRIVE STRATHAM, NH 03885			
MILLENNIUM ENGINEERING INC.			
ENGINEERS AND LAND SURVEYORS			
P.O. BOX 745 13 HAMPTON ROAD EXETER, NH 03833			
PHONE: (603) 778-0528 FAX: (603) 772-0689			
SCALE: 1" = 20'	CALC. BY: R.S.G.	PROJECT: E192373	
DATE: OCT. 08, 2020	CHKD. BY: H.H.B.	SHEET 3 of 3	
NO.	DATE	DESCRIPTION	BY

NOTES:

- 1) THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO OBSERVE ANY APPARENT VISIBLE USES OF THE LAND; HOWEVER, THIS DOES NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.
- 2) THIS PARCEL LIES WITHIN AN AE(EL8) AND X FLOOD ZONES. SEE F.I.R.M. COMMUNITY PANEL 330197 0245 E EFFECTIVE DATE MAY 17, 2005
- 3) ELEVATIONS SHOWN ARE BASED ON N.G.V.D.29.
- 4) SHEET 2 ON FILE AT OWN OF STRATHAM.

LOCUS MAP
NOT TO SCALE

WETLANDS DELINEATION BY
SERGIO BONILLA
CERTIFIED WETLAND
SCIENTIST (CWS) #281
P.O. BOX 4028
PORTSMOUTH, NH 03802

IN ACCORDANCE WITH THE REGIONAL SUPPLEMENT
TO THE CORPS OF ENGINEERS WETLAND DELINEATION
MANUAL: NORTHCENTRAL AND NORTHEAST REGION
(VERSION 2-TR-12-1, JANUARY 2012)

LOT LOADING - LOT 7B:

NRCS SOILS INFORMATION:		
SYMBOL:	32A	NAME: BOXFORD
SOIL GROUP:	3	LOT AREA: 0.41± ACRES***
SLOPE CLASS:	A	LOADING FACTOR: 1.60
SYMBOL:	33A	NAME: SOTICO
SOIL GROUP:	5	LOT AREA: 1.20± ACRES***
SLOPE CLASS:	A	LOADING FACTOR: 3.00
SYMBOL:	313B	NAME: DEERFIELD
SOIL GROUP:	3	LOT AREA: 0.04± ACRES***
SLOPE CLASS:	B	LOADING FACTOR: 1.60

*** LOT AREAS USED IN THIS CALCULATION DO NOT INCLUDE ANY LAND WITHIN THE PROTECTIVE WELL RADIUS OR LAND CONTAINING VERY POORLY DRAINED SOILS. FOR THE PURPOSE OF THIS CALCULATION ALL ONSITE WETLANDS HAVE BEEN ASSUMED TO CONTAIN VERY POORLY DRAINED SOILS AND ARE EXCLUDED FROM THE CALCULATION

DETERMINING FLOW EXISTING LOT/ACREAGE CAN ACCOMMODATE:
 $(2,000 \times 0.41 \pm \text{ACRES [GROUP 32A]}) / 1.60 [\text{LOADING FACTOR}] = 512.5 \text{ GPD}$
 $(2,000 \times 1.20 \pm \text{ACRES [GROUP 33A]}) / 3.00 [\text{LOADING FACTOR}] = 800.0 \text{ GPD}$
 $(2,000 \times 0.04 \pm \text{ACRES [GROUP 313B]}) / 1.60 [\text{LOADING FACTOR}] = 50.0 \text{ GPD}$
 TOTAL FLOW EXISTING LOT CAN ACCOMMODATE = 1,362.5 GPD

TOTAL FLOW PROPOSED FOR NEW 4 BEDROOM USE = 600.0 GPD

SOIL TESTING RESULTS

T.PIT# DATE ELEV.	DEPTH (INCHES)	HORIZON	USDA TEXTURE	MUNSELL COLOR	ESHWIT WEEPING STND WATER	PERC. TEST DEPTH RESULTS (MPI)	NOTES
01-19 12/4/19 14.5	0-7 7-21 21-45 45-57+	A Bw C1 C2	F.S.LOAM F.L.SAND S.L.C.LOAM CLAY	10YR 4/2 2.5Y 5/6 5Y 5/2 5Y 5/2	ESHWIT=18" NO WEEPING NO STANDING	6"+13" = 19" 8 MPI	ROOTS @ 22"
02-19 12/4/19 13.6	0-12 12-16 16-22 22-41 41-61+	A Bw C1 C2	F.S.LOAM L.F.SAND LOAM S.L.C.LOAM CLAY	10YR 3/3 10YR 4/4 2.5Y 5/3 5Y 5/2 5Y 5/2	ESHWIT=20" NO WEEPING NO STANDING	---	ROOTS @ 15"

TEST PITS PERFORMED BY: MATTHEW A. STEINEL, S.E. / LICENSE #01713
TOWN WITNESSED: MICHAEL CUOMO OF ROCKINGHAM COUNTY CONSERVATION DISTRICT

N/F
EMK REALTY TRUST
DAVID K. & ERICA M. KISVER
9 BOAT CLUB DRIVE
STRAHAM, NH 03885
BK. 5876 PG. 0780

N/F
DOBBINS FAMILY REV. TRUST
JOSHUA B. & STEPHANIE DOBBINS
8 BOAT CLUB DRIVE
STRAHAM, NH 03885
BK. 5682 PG. 0228

N/F
SHANE S. COMER
MARINDA K. CROSIER
6 BOAT CLUB DRIVE
STRAHAM, NH 03885
BK. 5938 PG. 2163

N/F
KATRINA FORREST
ROBERT D. GEORGE
4 BOAT CLUB DRIVE
STRAHAM, NH 03885
BK. 5615 PG. 2425

N/F
FINLEY FAMILY REV. TRUST
MICHELLE M. RICHARDS
2 BOAT CLUB DRIVE
STRAHAM, NH 03885
BK. 5537 PG. 1464

N/F
GARY P. STREET
LISA A. STREET
66 RIVER ROAD
STRAHAM, NH 03885
BK. 3758 PG. 0090

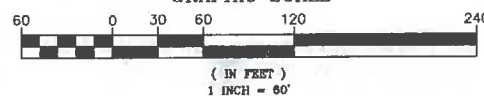
N/F
PHILIP J. MALONE
72 RIVER ROAD
STRAHAM, NH 03885
BK. 5405 PG. 2939

N/F
BARBARA A. FLOCCO
FLOCCO REV. TRUST
69 RIVER ROAD
STRAHAM, NH 03885
BK. 3240 PG. 1650

N/F
THOMAS DIGIUSEPPE
CHELSEA DIGIUSEPPE
65 RIVER ROAD
STRAHAM, NH 03885
BK. 5738 PG. 2527

SEE SHEET 2 FOR
PROPOSED SEPTIC AREA

GRAPHIC SCALE



RECORD OWNER

ROBERT MICHAEL CLEARY
781-771-8397
STEPHANIE CLARK CLEARY
7 BOAT CLUB DRIVE
STRAHAM, NH 03885
BK. 5936 PG. 2884
487,300± S.F.
11.2± ACRES
AREA CALCULATED
TO LOW WATER

ZONING DISTRICT
RESIDENTIAL/AGRICULTURAL

MINIMUM REQUIREMENTS

AREA	2 ACRES
FRONTAGE	200'
DEPTH	150'
BUILDING SETBACKS	
FRONT	30'
SIDE	20'
REAR	20'
MAXIMUM STRUCTURE HEIGHT	
MAXIMUM BUILDING COVERAGE	35'
MINIMUM OPEN SPACE/LOT	20%
	60%

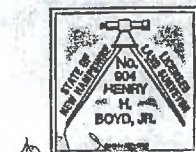
PLAN REFERENCE

"SUBDIVISION PLAN FOR RIVER CLUB ESTATES
RIVER ROAD COUNTY OF ROCKINGHAM STRATHAM,
NH" SCALE: 1"=100' DATE: AUGUST 17, 1994
REVISED THROUGH: 12-22-94
BY: RICHARD P. MILLETTE AND ASSOCIATES
D-23655

I CERTIFY:

THAT THIS ACTUAL SURVEY WAS MADE
ON THE GROUND BETWEEN SEPTEMBER
2019 AND JANUARY 2020.

THAT THIS SURVEY CONFORMS TO THE
REQUIREMENTS FOR ACCURACY FOR
N.H. URBAN SURVEY.



08-14-2020
LICENSED LAND SURVEYOR DATE

SEE STATE OF NH SUBDIVISION
APPROVAL #202002676

TEST PITS/LOT LOADING SHEET

PLAT OF LAND

IN
STRATHAM, NH

SHOWING
A PROPOSED SUBDIVISION
AT 7 BOAT CLUB DRIVE
(ASSESSORS MAP 8 LOT 39)

RECORD OWNER

ROBERT MICHAEL CLEARY
STEPHANIE CLARK CLEARY
7 BOAT CLUB DRIVE STRATHAM, NH 03885

MILLENNIUM ENGINEERING INC.

ENGINEERS AND LAND SURVEYORS
P.O. BOX 745 13 HAMPTON ROAD EXETER, NH 03833
PHONE: (603) 778-0528 FAX: (603) 772-0689

1	08-14-20	REVISED TIDAL OFFSET	K.I.R.	SCALE: 1"= 60'	CALC. BY: R.S.G.	PROJECT: E192373
NO.	DATE	DESCRIPTION	BY	DATE: JUNE 25, 2020	CHKD. BY: H.H.B.	SHEET 2 OF 4

tabbies
EXHIBIT
3

Tax Map
8



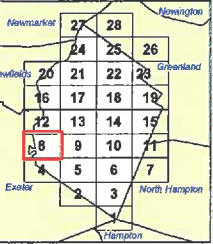
STRATHAM
NEW HAMPSHIRE



LEGEND

- PROPERTY LINE
- OLD PROPERTY LINE
- PUBLIC RIGHT-OF-WAY
- PRIVATE RIGHT-OF-WAY
- RAILROAD RIGHT-OF-WAY
- CITY/TOWN LIMIT
- TOWN OWNED PARCELS
- STATE OF NH FISH & GAME
- COMMON LAND PARCELS
- EASEMENT
- CONSERVATION EASEMENT
- UTILITY RIGHT-OF-WAY
- HYDROGRAPHY
- WETLAND
- 3 PARCEL NUMBER
- 2 DISJOINTED PARCEL NUMBER
- 1 SURVEY LOT NUMBER
- 800 DIMENSION

INTENDED FOR ASSESSMENT PURPOSES ONLY. COMPILED FROM TAX MAPS, ORTHOPHOTOGRAPHY, AND OTHER PUBLIC RECORDS AND DATA. USERS SHOULD CONSULT THE PUBLIC PRIMARY SOURCE DOCUMENTS FOR VERIFICATION OF THE INFORMATION APPEARING ON THIS MAP.



Date of Revisions

9-1-2012
4-1-2013
4-1-2014
7-9-2015
5-17-2016
5-30-2017
5-15-2018
4-1-2019

REVISED & REPRINTED BY
CAI Technologies
117 BASINS STREET, LITTLETON, NH 03251
603.322.4840 - WWW.CAI-TECH.COM
Plot Date: 5/3/2019 Sheet: 8

Exeter



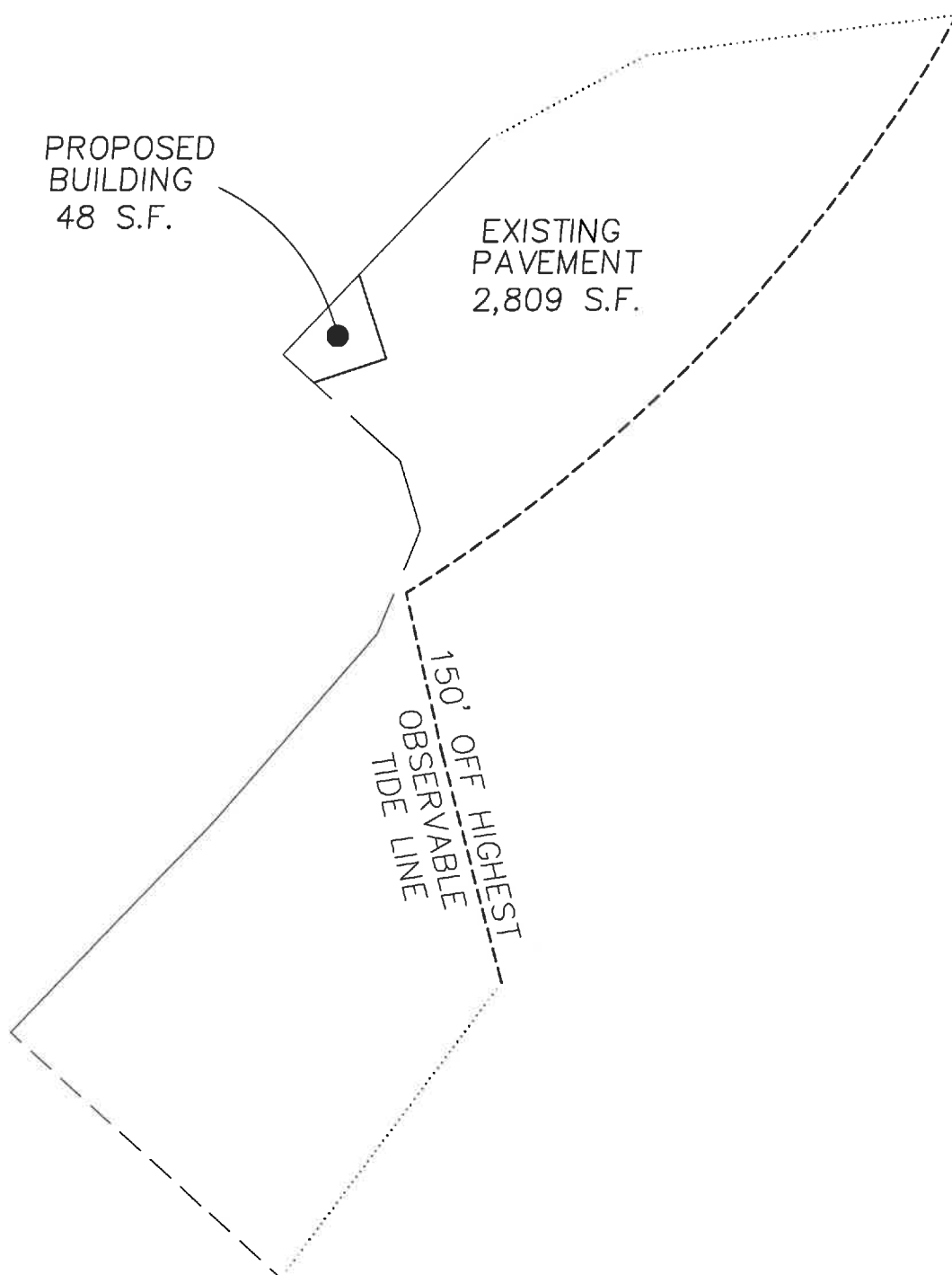
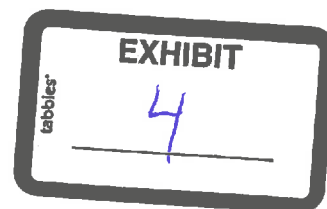


PHOTO LOG
7 Boat Club Drive
Stratham, New Hampshire

Photos Taken: October 5, 2020



Photograph No. 1: Easterly view of 7 Boat Club Drive in Stratham, New Hampshire.



Photograph No. 2: Northeasterly view of proposed housing addition area.

PHOTO LOG
7 Boat Club Drive
Stratham, New Hampshire

Photos Taken: October 5, 2020



Photograph No. 3: Southeasterly view of maintained lawn in the proposed housing addition area.



Photograph No. 4: Southerly view of maintained lawn adjacent to Squamscott River.

PHOTO LOG
7 Boat Club Drive
Stratham, New Hampshire

Photos Taken: October 5, 2020



Photograph No. 5: Southerly view of Squamscott River from 7 Boat Club Drive maintained lawn.



Photograph No. 6: Northeasterly view of proposed shop location from driveway of 7 Boat Club Drive.



2020-02690	
10/19/2020	
ROBERT CLEARY	
7 BOAT CLUB DR STRATHAM, ROCKINGHAM	
8	39
SQUAMSCOTT RIVER	

Application Type	SHORELAND STANDARD
Preliminary Category	SHORELAND STANDARD
Application Status	PERMIT APPROVED
Final Category	SHORELAND STANDARD
DES Reviewer	ROSEMARY AURES
Agent	GZA GEOENVIRONMENTAL INC

Impact 9,537 square feet of protected shoreland in order to construct an addition onto the nonconforming primary structure a detached accessory structure.

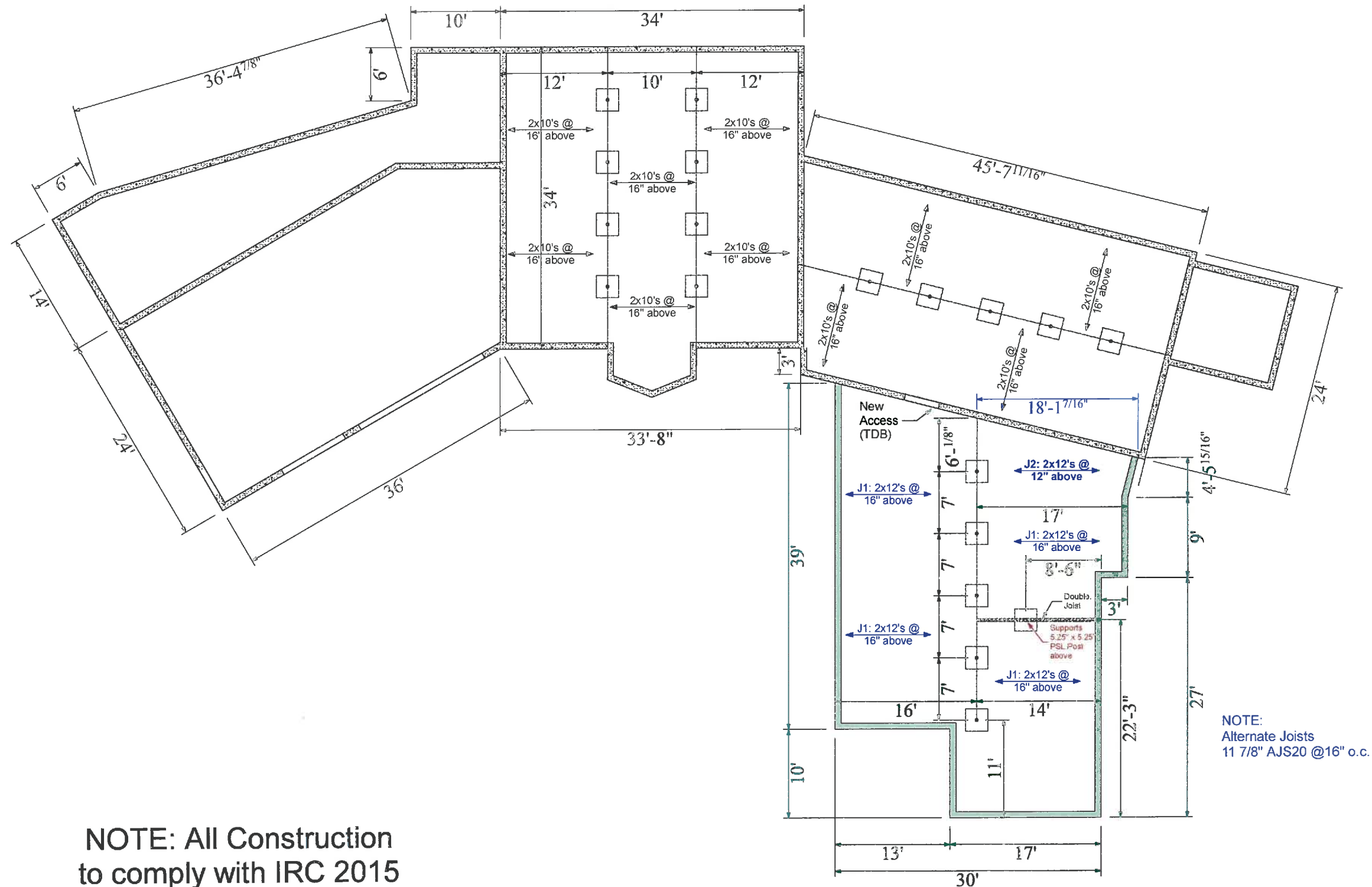
Impervious Surface Percentage Approved: 5.0%

Natural Woodland Area Required per RSA 492-B:0 V (b): 22,975 square feet

EXETER-SQUAMSCOTT RIVER

	Letter Name	Owner	Document Signed Date
View	ACCEPT_SHORE	WSDMB	10/20/2020

Total Documents Returned: 1



Michelle Shields Design
Smart Creative Architecture
www.MichelleShieldsDesign.com

6 Rudolph Avenue
Kittery, Maine 03904
207-438-9829
Cell: 207-752-7623

PROJECT:
Rob and Stephanie
Cleary Residence

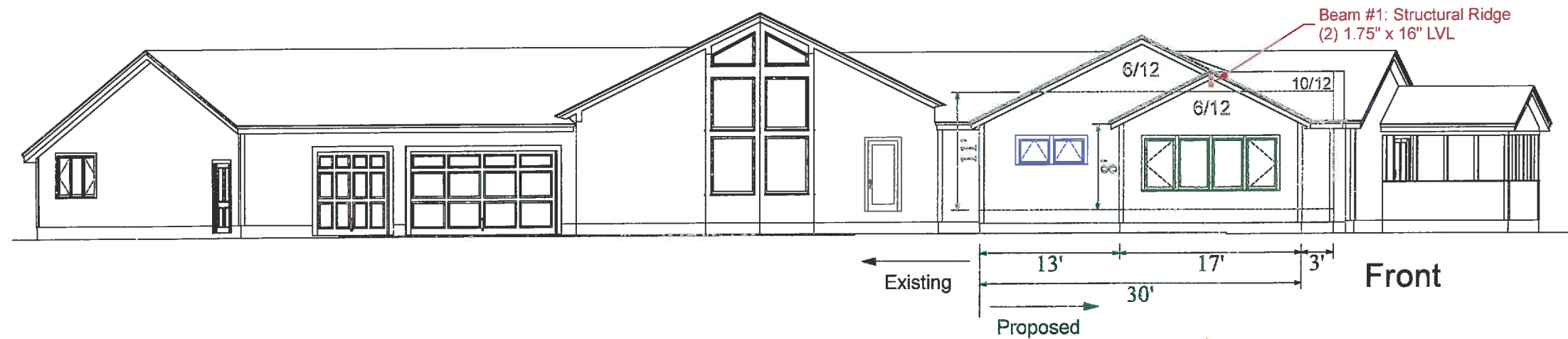
SITE:
7 Boat Club Way
Stratham, NH

ISSUED FOR:
Review
ISSUE DATE:
September 21, 2020

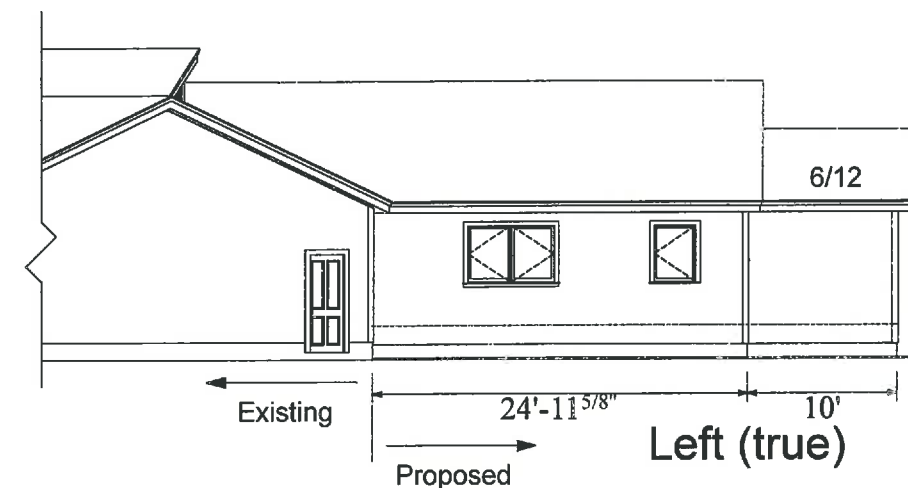
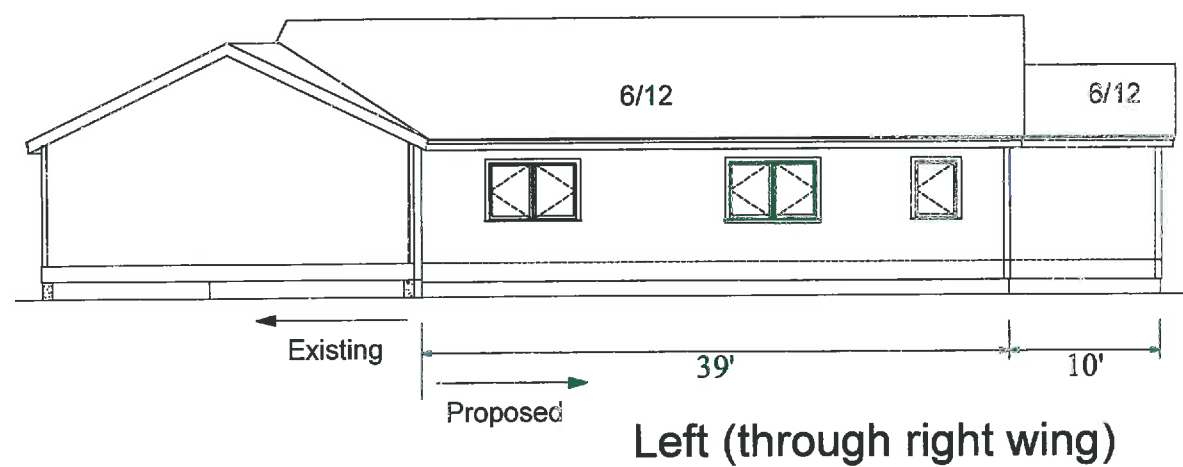
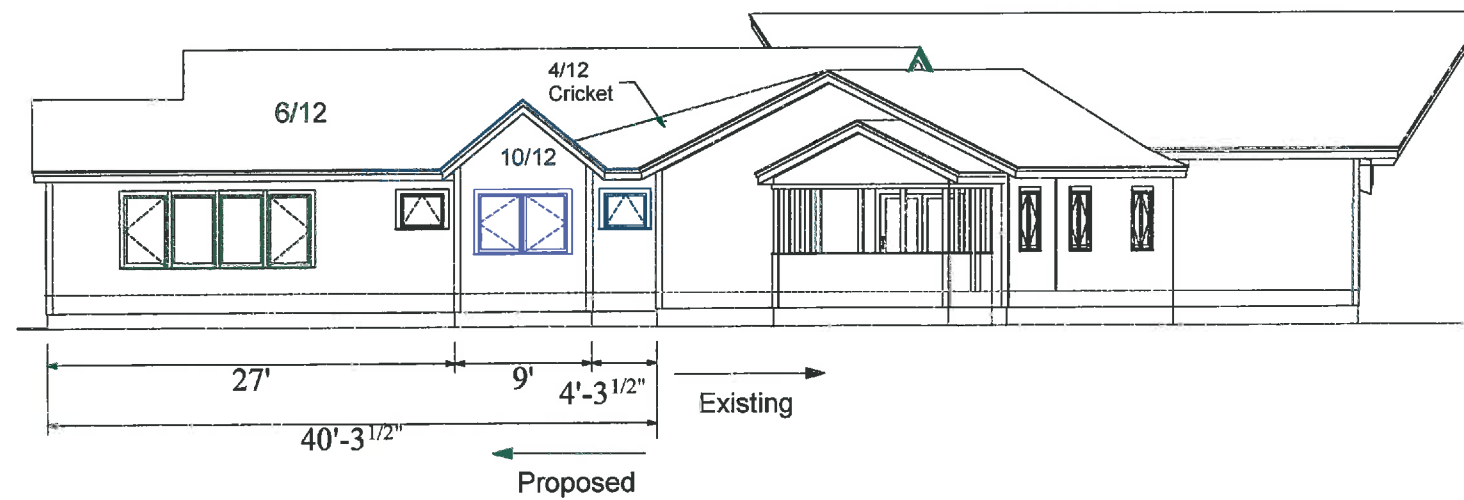
SCALE:
1/16" = 1'-0"
(Letter)

TITLE:
Proposed
Foundation

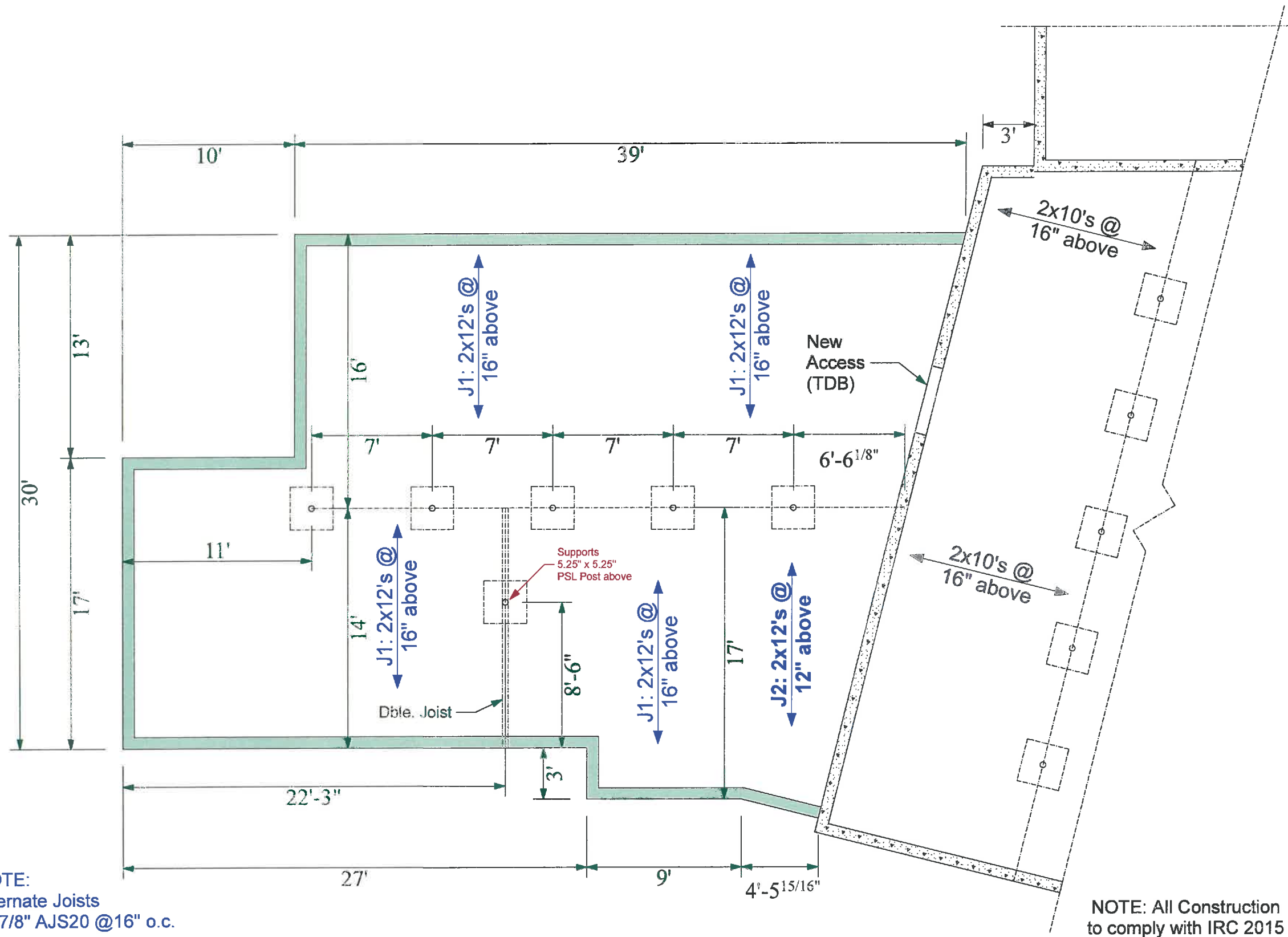
SHEET:
P2



Right

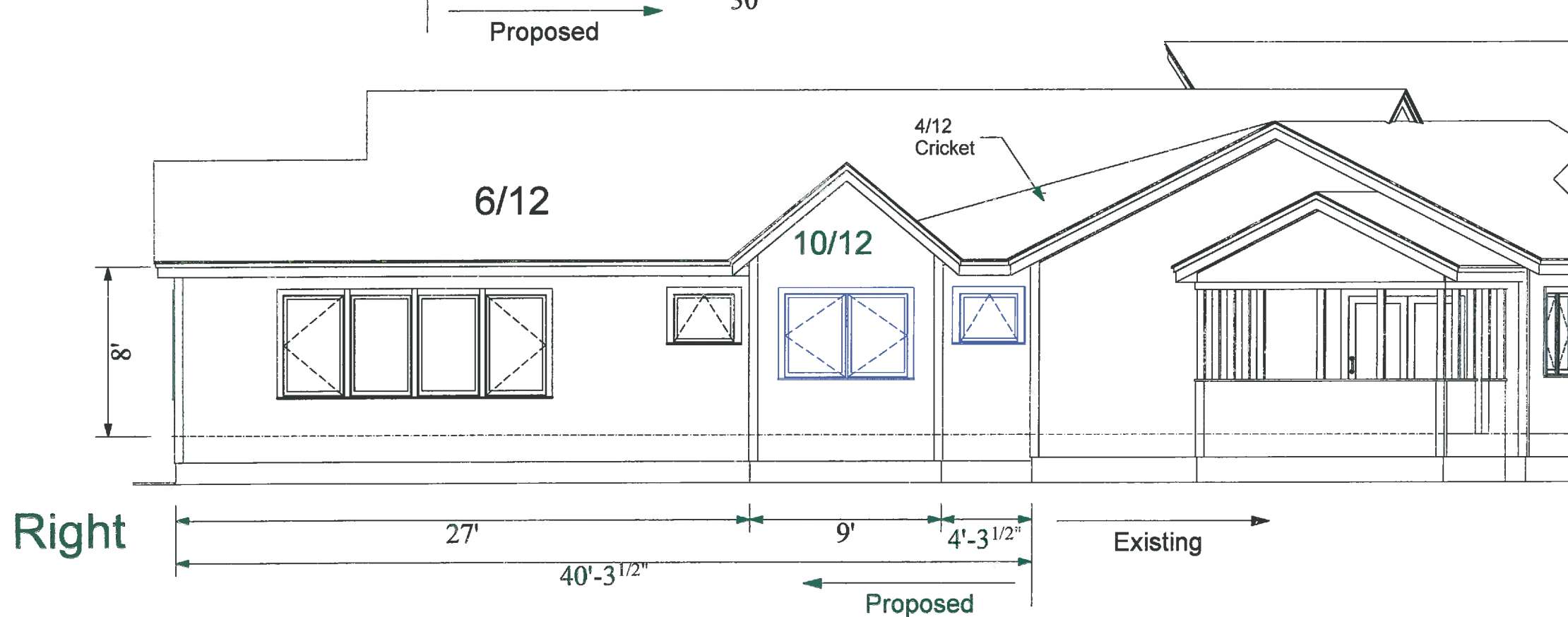
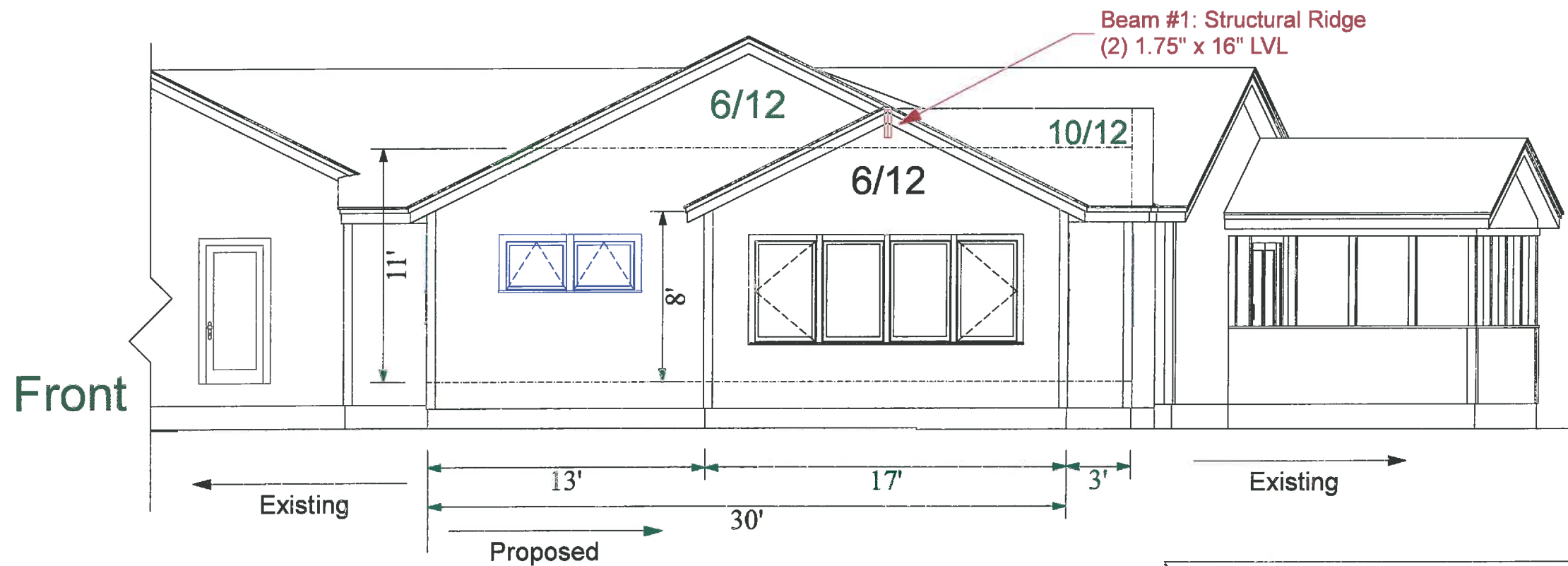


Michelle Shields Design Smart Creative Architecture www.MichelleShieldsDesign.com	6 Rudolph Avenue Kittery, Maine 03904 207-438-9829 Cell: 207-752-7623	PROJECT: Rob and Stephanie Cleary Residence	SITE: 7 Boat Club Way Stratham, NH	ISSUED FOR: Review	SCALE: 1/16" = 1'-0" (Letter)	TITLE: Proposed Elevations	SHEET: P3
				ISSUE DATE: September 21, 2020			

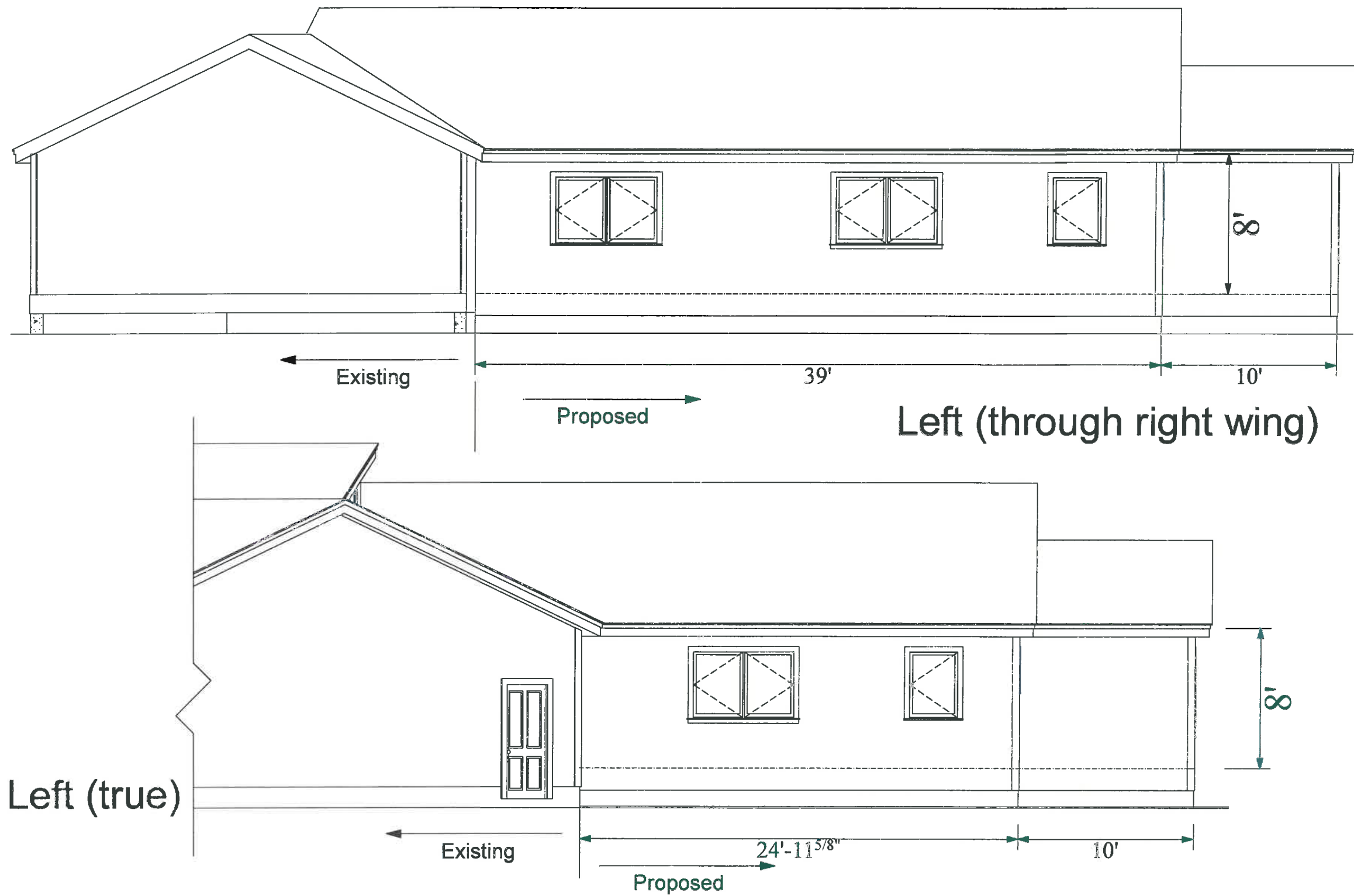


NOTE:
Alternate Joists
11 7/8" AJS20 @16" o.c.


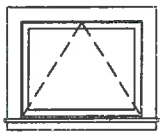
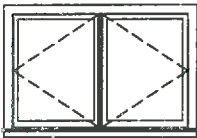
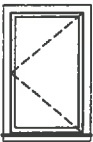
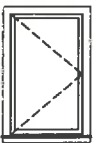
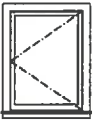
Michelle Shields Design Smart Creative Architecture www.MichelleShieldsDesign.com	6 Rudolph Avenue Kittery, Maine 03904 207-438-9829 Cell: 207-752-7623	PROJECT: Rob and Stephanie Cleary Residence	SITE: 7 Boat Club Way Stratham, NH	ISSUED FOR: Review	SCALE: 1/8" = 1'-0" (Letter)	TITLE: Proposed Foundation	SHEET: P5
				DATE: September 21, 2020			



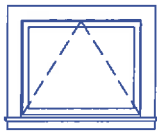
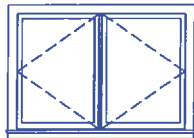
Michelle Shields Design Smart Creative Architecture www.MichelleShieldsDesign.com	6 Rudolph Avenue Kittery, Maine 03904 207-438-9829 Cell: 207-752-7623	PROJECT: Rob and Stephanie Cleary Residence	SITE: 7 Boat Club Way Stratham, NH	ISSUED FOR: Review	SCALE: 1/8" = 1'-0" (Letter)	TITLE: Proposed Elevation	SHEET: P6
				DATE: September 21, 2020			



Michelle Shields Design Smart Creative Architecture www.MichelleShieldsDesign.com	PROJECT: Rob and Stephanie Cleary Residence	SITE: 7 Boat Club Way Stratham, NH	ISSUED FOR: Review DATE: September 21, 2020	SCALE: 1/8" = 1'-0" (Letter)	TITLE: Proposed Elevation	SHEET: P7
--	---	---	--	---	-------------------------------------	----------------------------

New Pella Black Windows			
ID	Qty.	ELEVATION	DIMENSIONS
3559 Fixed	4		2'-11" X 4'-11"
A3529 Tempered	1		2'-11" X 2'-5"
C3547-2	2		5'-10" X 3'-11"
C3559L	2		2'-11" X 4'-11"
C3559R	2		2'-11" X 4'-11"
C3547L	1		2'-11" X 3'-11"

Solid Core Interior Doors		
ID	Qty.	DIMENSIONS
2668 Pkt	1	2'-6" X 6'-8"
2868	3	2'-8" X 6'-8"
3068 Pkt	1	3'-0" X 6'-8"
4068 Barn	1	4'-0" X 6'-8"
4068 Pair	2	4'-0" X 6'-8"

Re-install Existing Windows			
ID	Qty.	ELEVATION	DIMENSIONS
R1	3		2'-11" X 2'-5"
R2 Tempered	1		5'-10" X 4'-1"

Typical Foundation:

Foundation walls to be 8" thick with (2) #4 Rebar longitudinal top.\ and #6 @ 48". PerT 404.1.2(1). Footings to be 10" x 16" with (2) #4 longitudinal bottom & (1) #4 anchor @ 48". Foundation walls to be 7'-10" Maintain continuous 4' frost protection 1/2" Anchor Bolts @ 6'-0" O.C. (2 @ Each Corner / 2 @ Each Joint) Laly pads to be 2'-6" x 2'-6" (continuous) with (3) #4 bottom. Perimeter drains stone shall extend a minimum of 6" above the top of the footing (Section R 405.1)

Typical Floor:

L/360, 40 LL + 15 DL

J1: 2x12's @ 16" o.c.
(Max unsupported span 17'-10")

J2: 2x12's @ 12" o.c.
(Max unsupported span 20'-7")

Alternate: All 11 7/8" AJS20's @ 16" o.c.
(Max unsupported span 21'-9"),
3/4" T&G Plywood Subfloor
(Nailed and Glued)

Typical Exterior Wall

Cedar or Vinyl Siding
1/2" OSB Sheathing
Tyvar or equiv house wrap
2x6 Studs @ 16" O.C.
2x6 Sill and (2) 2x6 Top Plate
R21 Batt insulation
1/2" Drywall

Typical New Frame Roof

Architectural Shingles
5/8" OSB Sheathing or 1/2" Fir Plywood
2x12 Ridge
2x10 Rafters @ 16" o.c.
2x6 Collar ties @ 32" o.c.
Ice and Snow barrier
Vented Soffit or Ridge Vent
R49 Batt Insulation
NOTE: Alternate Truss roofs
per manufacturers specs.

Headers:

Deflection criteria of L/360 Live Load
and L/240 Total Load

Typical door and windows:
For openings not exceeding 6'-4": (3) 2x10's
with two Jack Studs

Beams:

Deflection criteria of L/360 Live Load
and L/240 Total Load

Beam #1: Structural Ridge
(17' House Span; 6/6 Pitch)
(2) 1.75" x 16" x 23'-6" Versa-Lam 2.0 3100 SP

Beam #2: Supports Roof
(24' House Span; 6/6 Pitch)
(3) 1.75" x 9.25" x 23'-6" Versa-Lam 2.0 3100 SP
or:
(2) 1.75" x 11.25" x 23'-6" Versa-Lam 2.0 3100 SP

Porch Foundation:

12" Concrete filled Sonotube with
spread footing and Anchor Bolt and
Elevated 4x4 Post Base

Deck / Porch:

Connection bolt / screw per R502.2.2.1
Lateral connection per R502.2.2.3

Windows

Egress windows to have minimum clear openable
width of 20", clear openable height of 24",
and clear openable area of 5.7 s.f.
2nd Floor sills to be a minimum of 24" from floor.

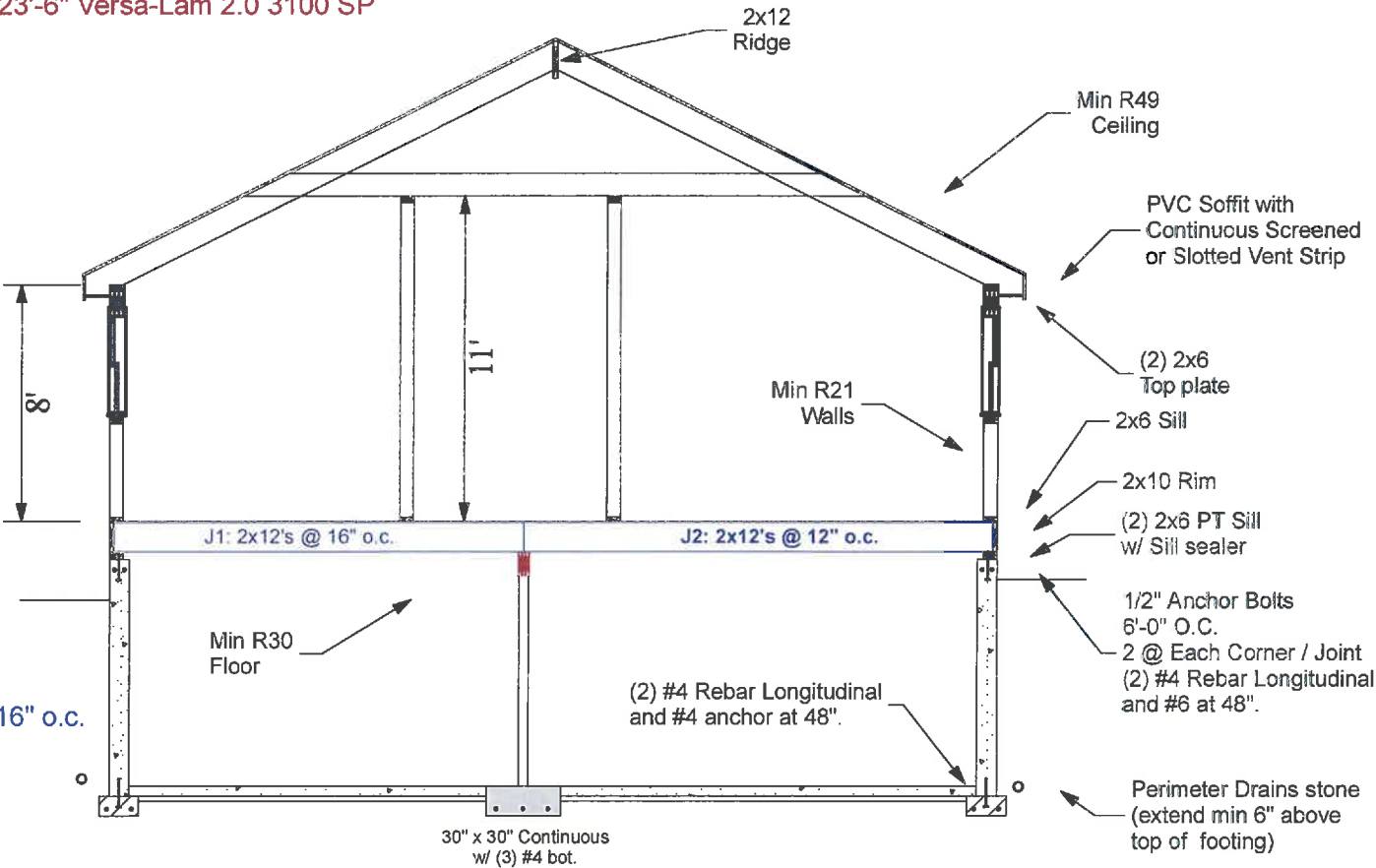
Stair notes:

Handrail height above nose: 34"
Balluster spacing: Max 4" clear
Min (3) 2 x12 Stringers
Rise: Min 7 1/4" Max 7 3/4"
Run: 10" nosing to nosing
Finish tread 11 1/4"
Min 36" wide with 6'-8" Headroom

Note: Smoke / CO2 detectors in all
bedrooms, and to code throughout.

NOTE: All Construction
to comply with IRC 2015

NOTE:
Alternate Joists
11 7/8" AJS20 @16" o.c.



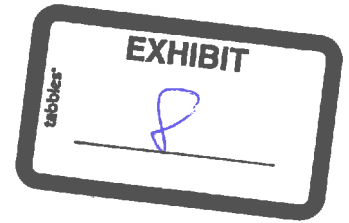
Michelle Shields Design Smart Creative Architecture www.MichelleShieldsDesign.com	6 Rudolph Avenue Kittery, Maine 03904 207-438-9829 Cell: 207-752-7623	PROJECT: Rob and Stephanie Cleary Residence	SITE: 7 Boat Club Way Stratham, NH	ISSUED FOR: Review	SCALE: 1/8" = 1'-0" (Letter)	TITLE: Typical Section Details	SHEET: D1
				DATE: September 21, 2020			



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www.beangroup.com

November 30, 2020

Justin L. Pasay, Esq.
Donahue, Tucker & Ciandella, PLLC
111 Maplewood Ave., Suite D
Portsmouth, NH 03801



RE: Cleary Addition – Boat Club Drive

Justin,

I'm writing in support of the Cleary's request to construct an addition to their home on Boat Club Drive, Stratham; a property that sits within the Town's Shoreland Protection District.

My name is Jamieson Duston and I am a licensed Realtor at the Bean Group; one of the largest real estate firms in New England, represented by hundreds of Realtors who are focused on meeting the needs of home buyers and sellers in Connecticut, Maine, Massachusetts, New Hampshire, and Vermont. My office is located at our corporate headquarters - 1150 Sagamore Avenue, Portsmouth, NH 03801. I've been a Realtor for 12 years and am an active member of the National Association of Realtors, the New Hampshire Association of Realtors and the Seacoast Board of Realtors. I have been Bean Group's top performing Agent since 2010 and have transacted nearly \$300M in property sales during that period. My specialty is listing/selling tidal waterfront properties along the inland coast of New Hampshire – Dover, Durham, Stratham, Greenland, Newington & Portsmouth.

As a matter of record, I have listed and sold what most would agree is (geographically speaking) the closest comparable property to the Cleary's home – 34 Raeder Drive, Stratham. Like the Cleary's home, 34 Raeder is uniquely positioned along the shores of the Squamscott River and I have been involved in all three transfers of that property since 2012. That is to say, I'm quite familiar with the Squamscott River, the real estate market within the Town of Stratham and to a larger extent, developed waterfront properties along Great Bay, Little Bay, the Piscataqua River, and the many river systems that flow into these water bodies.

The Cleary's have shared their plans with me so that I might guide them on the estimated value added from such a project. The plans call for a +/- 1,300 square foot, single level addition in keeping with the style of the existing structure. The addition is to be built on the East side of the home and will include 2 bedrooms, a small office, a family room and a master bathroom that will connect to the existing master bedroom. The plans are well thought out and professionally designed. It's my firm belief that the project described above will not diminish the value of surrounding

Portsmouth, NH | Nashua, NH | Bedford, NH | Londonderry, NH | Meredith, NH | Wolfeboro, NH | Franklin, NH | Stratton, VT | York, ME | Newburyport, MA
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properties. In point of fact, such an addition serves to elevate the value of not only the subject property but those surrounding it, as well.

One of the issues to be considered with the approval of any developed waterfront property within the Shoreland Protection District is the overall impact to surface area. My understanding is that the Cleary's are voluntarily removing 1,446 SF of impervious driveway surface (a net reduction of approximately 17%) to offset the impact of the addition. This will ensure that the project has a "net zero" impact on surface area within the Shoreland Protection District.

In conclusion, I believe the proposed addition serves the property quite well. It not only improves the value of the subject property but those (values) of the surrounding properties, as well. It has no impact on surface area and should serve as a model for other owners of developed waterfront properties to follow.

Should you have any follow up questions, please feel free to reach me. I've included my contact information below.

Kind Regards,

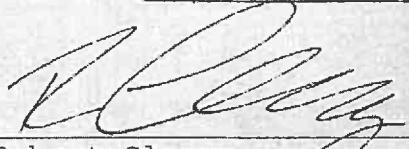
Jamieson Duston
Cell - 603-365-5848
Email - jd@beangroup.com

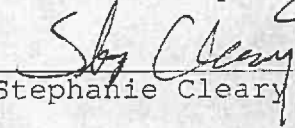
LETTER OF AUTHORIZATION

We, Robert and Stephanie Cleary, owners of property depicted on Tax Map 8, Lot 39, do hereby authorize Donahue, Tucker and Ciandella, PLLC and Millennium Engineering, to execute any land use applications to the Town of Stratham and to take any action necessary for the application and permitting process, including but not limited to, attendance and presentation at public hearings, of the said property.

Dated:

2/19/20


Robert Cleary


Stephanie Cleary

S:\CE-CL\CLEARY, ROBERT & STEPHANIE\LETTER OF AUTHORIZATION.DOCX

**ROBERT & STEPHANIE CLEARY
7 BOAT CLUB DRIVE, TAX MAP 8, LOT 39
ABUTTER LIST**

OWNER/APPLICANT:

8/39

Robert & Stephanie Cleary
7 Boat Club Drive
Stratham, NH 03885

STRATHAM ABUTTERS:

8/32

Thomas & Chelsea Digiosepppe
65 River Road
Stratham, NH 03885

8/33

Barbara Flocco, Trustee
Flocco Revocable Trust
69 River Road
Stratham, NH 03885

8/37

Town of Stratham
10 Bunker Hill Avenue
Stratham, NH 03885

8/38

Philip Malone
72 River Road
Stratham, NH 03885

8/40

Katrina Forest & Robert George
4 Boat Club Drive
Stratham, NH 03885

8/41

Michelle Richards, Trustee
Finley Family Revocable Trust
2 Boat Club Drive
Stratham, NH 03885

8/42

Gary & Lisa Street
66 River Road
Stratham, NH 03885

12/1

David & Erika Kisver, Trustees
EMK Realty Trust
9 Boat Club Drive
Stratham, NH 03885

12/3	Joshua & Stephanie Dobbins Dobbins Family Revocable Trust 8 Boat Club Drive Stratham, NH 03885
12/4	Shane Comer & Marinda Crosier 6 Boat Club Drive Stratham, NH 03885
12/5	Squamscott Scullers LTD PO Box 526 Exeter, NH 03833
EXETER ABUTTERS: 38/8	Boston & Maine Railroad Corp. 1700 Iron Horse Park Billerica, MA 01862
ATTORNEY:	Justin L. Pasay, Esq. Donahue, Tucker & Ciandella 111 Maplewood Avenue Portsmouth, NH 03801
SURVEYOR:	Henry Boyd, P.E. Millenium Engineering PO Box 745 Exeter, NH 03833

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