

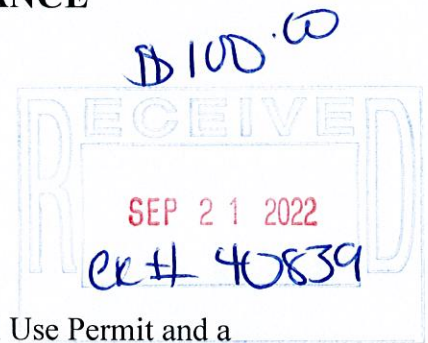
**COMBINED APPLICATION FOR A SPECIAL USE PERMIT &
A REGULATORY (DIMENSIONAL) VARIANCE**

**CITY OF NEWPORT, RI
ZONING BOARD OF REVIEW**

DATE: September 20, 2022

Board Members:

ZBR
OCT- 5



The undersigned hereby petitions the Zoning Board of Review for a Special Use Permit and a Regulatory (Dimensional) Variance in the application of the provisions or regulations of the Zoning Ordinance affecting the following described premises in the manner and on the grounds hereinafter set forth.

Location of Premises

Street & No.: 2 Ashurst Place

Tax Assessor's Plat: 19, Lot: 113

Petitioner Information

Applicants: Donald A. Fitch
Tracy S. Fitch

Addresses: c/o J. Russell Jackson, Esq.
Miller Scott Holbrook & Jackson
122 Touro Street
Newport, RI 02840

Owner: Same

Same

Leasee: N/A

N/A

Property Characteristics

Dimensions of Lot: **Frontage:** 42.85 ft. +/-
Depth: 74.60 ft. +/-
Area: 3,142 sf. +/-

Zoning District in which premises is located:

R-10

How long have you owned above premises?

14 Months (7/13/2021)

Are there buildings on the premises at present?

Yes

Total square footage of the footprint of existing buildings:

1,001.5 sf. (32%)

Total square footage of the footprint of proposed buildings:

1,037.75 sf. (33%)

Present use of premise:

Single Family Residential

Proposed use of premises:

Single Family Residential

Give extent of proposed alterations: The Applicants propose to expand the existing southwest side third floor dormer, construct a full dormer on the northeast side of the roof, construct a roof top deck and expand the stairs on the existing first floor rear deck.

Zoning Characteristics Matrix

	Existing	Required/Allowed	Proposed
Lot Size (sq. ft)	3,142 sf.	10,000 sf.	3,142 sf.
Lot Coverage	32%	20 %	33 %
Dwelling Units	1	1	1
Parking (# of spaces)	2	2	2
Front Setback (ft.)	0.1 ft. +/-	15 ft.	0.1 ft. +/-
Side Setbacks (ft.)	Southwest = 3.8 ft. +/- Northeast = 15 ft. +/-	10 ft.	Southwest = 3.8 ft. +/- Northeast = 15 ft. +/-
Rear Setback (ft.)	28 ft. +/-	20 ft.	26.5 ft. +/-
Height (ft.)	30.5 ft.	30 ft.	35.25 ft.

Project Summary:

The Applicants seek relief under:

- Section 17.108.020 (Special Use Permits)
- Section 17.108.010 (Variances)
- Section 17.72.030 (Alteration to Nonconforming Development)
- Section 17.20.050 (R-10 Lot Coverage Requirements)
- Section 17.20.040 (Setback Requirements)
- Section 17.20.060 (Building Height Requirements)

The Applicants seek permission to fully dormer the third floor by construction an expansion of the existing dormer on the southwest side of the roof and constructing a new dormer along the full length of the northeast side of the roof to allow for expanded use and occupancy of the third level. A roof deck is also proposed to provide outdoor living space. The existing structure already exceeds building height. Thus, the new roof deck and enclosed access staircase structure will require building height relief. Lastly, an expanded set of new stairs for the existing first floor rear deck is proposed which will result in a 1% increase of lot coverage.

The existing parcel is a legal non-conforming lot of record containing only 3,142 square feet of land. The purpose of this overall project is to fully upgrade and renovate the dwelling. Given the foot print of the residence is only 621 square feet, the Applicants seek to create additional livable space

on the third floor and to provide outdoor living space on the roof. The property is in the R-10 Zone and is significantly substandard in size. The existing structure already exceeds lot coverage and encroaches into the southwest side setback. The front porch sits right on the front property line, however, by virtue of the streetscape with abutting houses also up to the front boundary, there is no applicable front setback for this property. As a result of the small lot size and existing dimensional non-conformities, any addition or expansion to the property will result in the need for zoning relief. The expanded dormer on the southwest side of the roof will require side setback relief since the house sits only 3.8 feet from side boundary. The new northeast dormer will not encroach into any setbacks and is allowed by right. The new rear deck stairs will not encroach into the northeast side setback or the rear setback, however they will increase lot coverage by 1%. Total lot coverage will go from 32% to 33%. Last, building height relief will be needed for the roof deck and the enclosed access stairs. The resulting lot coverage is reasonable for a parcel which is so significantly smaller than required for a conforming lot in the R-10 Zone. The side setback encroachment is not extended beyond existing conditions and building height relief is relatively minor. The property is not in the Newport Historic District. The plan proposed by the Applicants is harmonious with the surrounding neighborhood and will not create dimensional non-conformities to such a degree that it is injurious to, or inconsistent with the area or inconsistent with the purpose and intent of the R-10 Zone.

What provisions of the Comprehensive Land Use Plan are the applicable to this project?

The Applicants state that the proposed development is consistent with many provisions of the Comprehensive Land Use Plan, including, but not limited to the following:

Land Use:

Goal LU-1: To provide a balanced City consisting of residential, commercial, and employment uses consistent with the character, environmental resources and vision of the community.

Housing:

Goal H-1: To preserve and protect existing housing resources in the community.

Policy H-1.3 The City shall continue to promote the repair, revitalization or rehabilitation of residential structures and neighborhoods.

Policy H-1.4 The City shall encourage resident involvement in identifying and addressing the maintenance of housing in their neighborhood.

Transportation & Circulation:

Goal T-5: To provide sufficient and suitably located parking, designed to eliminate, mitigate or reduce impacts.

What special conditions and circumstances exist which are peculiar to the land, structure or building involved, which are not applicable to other lands, structures or buildings in the same district?

The existing parcel is a legal non-conforming lot of record containing only 3,142 square feet of land. The lot is significantly substandard and is less than half the standard lot size for the R-10 Zone. The existing structure already exceeds lot coverage and encroaches into the southwest side setback. Based on the size of the lot and location of existing structures, any reasonable improvements, additions or modifications will require dimensional relief. As a result of the conditions and circumstances that are peculiar to this non-conforming development, the proposed improvements will slightly increase lot coverage, exceed building height and encroach into the side setback, requiring dimensional variances.

Explain how the literal interpretation of the provisions of this zoning code deprive the applicant of rights commonly enjoyed by other property owners in the same district under the provisions of this zoning code?

The Applicants propose to continue the single family residential use of the property and will be seeking relief for dimensional variances and a special use permit for the alteration of a non-conforming development by constructing full third floor dormers, a roof deck and an expanded staircase on the first floor rear deck. The subject property is located on the northwest side of Ashurst Place, which serves as a small connector street between Cranston Avenue and Calvert Street. The abutting property to the rear is the former Cranston Calvert School, which has been transformed into a multi-unit residential development. In addition to this intense residential use, the neighborhood is densely developed with a number of abutting parcels that are also substandard in size with existing dimensional nonconformities. A number of these properties also exceed lot coverage and encroach into setbacks. The literal interpretation of the zoning code, resulting in the denial of the relief requested, would unreasonably deny these Applicants the ability to make the requested improvements for the full use and enjoyment of their property. The proposed lot coverage, building height and southwest side setback encroachment will not be inconsistent with surrounding properties. The proposed improvements will be appropriate and consistent with the surrounding neighborhood, and the rights enjoyed by other property owners in this area of the R-10 Zone.

Explain why this is the minimum variance that will make possible the reasonable use of the land, building or structure:

The Applicants are before the Board for permission to expand the southwest side third floor dormer. The house and existing small dormer already sit within the southwest side setback. The new construction will not increase the setback encroachment. The new stairs on the first floor rear deck result in only 36.25 square feet of new lot coverage, however because the parcel is so small, this constitutes a 1% increase. Last, the existing structure already exceeds building height, therefore a variance is needed to accommodate the roof decking and the small enclosure at the rear of the house to accommodate the access stairs. The construction of the proposed improvements is consistent with similar uses for a number of properties in this general area. The improvements will allow for full access and use of the third floor, given the foot print of the house is so small. It will also provide additional outdoor living space, providing enhanced use and enjoyment of the property. Lot

coverage increases by only 1% to a total of 33%. Southwest side setback relief is required and a minor building height variance is requested. The Applicants have taken great care to develop a proposed improvement plan which meets their needs and is appropriate in scope, scale and size for this substandard lot. The overall proposal has been designed to meet the reasonable living needs of the Applicants with minimal dimensional variances. The hardship is driven by the substandard lot and the fact that the existing structure already exceeds lot coverage, exceeds building height and encroaches into the southwest side setback. Granting the requests for dimensional relief are the minimum variances which will allow the reasonable use of the property. Accordingly, the proposed use of the property and the relief sought by the Applicants will not be injurious to, or create a burden for abutting property owners, will be harmonious with the neighborhood, and will be an appropriate use for this area of the R-10 Zoning District.

The Zoning Boards Role

Special use permits shall be granted only where the zoning board of review finds that the proposed use or the proposed extension or alteration of an existing use is in accord with the public convenience and welfare, after taking into account, where appropriate:

1. The nature of the proposed site, including its size and shape and the proposed size, shape and arrangement of the structure;
2. The resulting traffic patterns and adequacy of proposed off-street parking and loading;
3. The nature of the surrounding area and the extent to which the proposed use or feature will be in harmony with the surrounding area;
4. The proximity of dwellings, churches, schools, public buildings and other places of public gathering;
5. The fire hazard resulting from the nature of the proposed buildings and uses and the proximity of existing buildings and uses;
6. All standards contained in this zoning code;
7. The comprehensive plan for the city.

The burden of proof in a special-use permit application is on the applicant. This means that if the applicant fails to present adequate competent evidence to prove the applicable standard for issuing a special-use permit has been met, the board must deny the application.

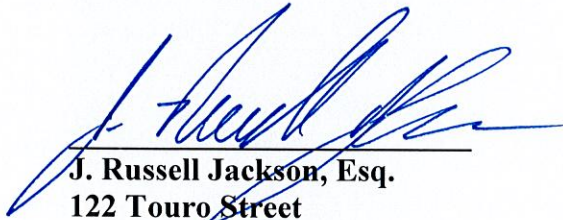
In granting a variance, the zoning board of review shall require that evidence of the following standards be entered into the record of the proceedings:

- a) That the reasons set forth in the application justify the granting of the variance and that the variance, if granted, is the minimum variance that will make possible the reasonable use of the land, building or structure;
- b) That the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will not impair the intent or purpose of the zoning code or the comprehensive plan upon which this zoning code is based;

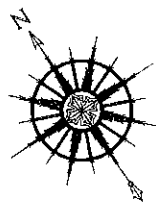
- c) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant; and
- d) That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain;
- e) That the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.

By signing below, I hereby attest that the information provided is accurate and truthful. I also attest that I have read the section entitled "The Zoning Board's Role".

**Applicants & Owners,
By Their Attorneys,
Miller Scott Holbrook & Jackson**



J. Russell Jackson, Esq.
122 Touro Street
Newport, RI 02840
Tel: 401-847-7500
Fax: 401-848-5854
jackson@millerscott.com



SEE GENERAL NOTES #3

LEGEND	
---	PROPERTY LINE
---	ADJUTER'S PROPERTY LINE
X	CHAIN LINK FENCE
---	WOOD FENCE
⊙	MANHOLE
⊙	UTILITY POLE
○	REBAR

ZONING DATA TABLE	
R10 RESIDENTIAL DISTRICT	
SINGLE-FAMILY DWELLING	
MINIMUM LOT AREA	18,000 SQ. FT.
MINIMUM LOT WIDTH/FRONTAGE	80 FT.
MAXIMUM PERCENTAGE OF LOT TO BE OCCUPIED	20%
MAXIMUM HEIGHT OF PRINCIPAL BUILDING	35 FT.
MINIMUM YARD DIMENSIONS	
FRONT	15 FT.
SIDE	10 FT.
REAR	20 FT.
ACCESSORY BUILDINGS MINIMUM DISTANCE	10 FT.
SIDE LOT LINES	10 FT.
REAR LOT LINES	10 FT.

SURVEYOR'S CERTIFICATION:

THIS SURVEY HAS BEEN CONDUCTED AND THE PLAN HAS BEEN PREPARED PURSUANT TO 435-RICR-00-20-1.8 OF THE RULES AND REGULATIONS ADOPTED BY THE RHODE ISLAND STATE BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS ON APRIL 28, 2018, AS FOLLOWS:

TYPE OF SURVEY:

LIMITED CONTENT BOUNDARY SURVEY

MEASUREMENT SPECIFICATION:

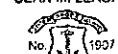
CLASS I

STATEMENT OF PURPOSE:

THE PURPOSE FOR THE CONDUCT OF THE SURVEY AND FOR THE PREPARATION OF THE PLAN IS AS FOLLOWS:

TO DETERMINE AND MONUMENT THE LOCATION OF THE PROPERTY BOUNDARIES OF A.P. 19, LOT 113.

SEAN M. LEACH



PROFESSIONAL
LAND SURVEYOR

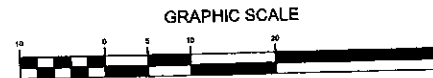
SEAN M. LEACH
DATE: 6/11/2021
CDA NO. 1288

GENERAL NOTES:

- EXISTING CONDITIONS ARE THE RESULT OF A FIELD SURVEY BY NORTHEAST ENGINEERS & CONSULTANTS, INC. IN FEBRUARY 2022.
- VERTICAL DATUM IS NAVD83.
- NORTH ARROW REFERENCES GRID NORTH (RISP NAVD83).
- SUBJECT PARCEL FALLS WITHIN THE R10 RESIDENTIAL DISTRICT.

PLAN REFERENCES:

- PLAN ENTITLED "LIMITED CONTENT BOUNDARY SURVEY WITH EXISTING CONDITIONS, TOPOGRAPHY, AND ROAD ABANDONMENT", PREPARED BY NORTHEAST ENGINEERS & CONSULTANTS, INC. SCALE: 1"=20', DATED SEPTEMBER 5, 2018, REVISED NOVEMBER 27, 2018.



1 INCH = 10 FEET

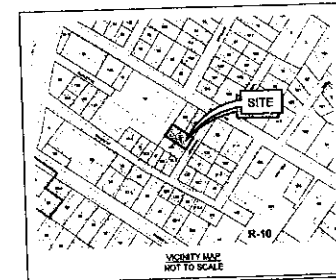
NORTHEAST ENGINEERS
& CONSULTANTS, INC.



A KNOWLEDGE CORPORATION

6 VALLEY ROAD MIDDLETOWN, RHODE ISLAND 02842
PHONE (401) 849-0810 FAX (401) 845-4169
WWW.NORTHEASTENGINEERS.COM

SITE/CIVIL
LAND PLANNING
WATERFRONT
SURVEYING
GEOTECHNICAL
ENVIRONMENTAL
TRANSPORTATION
STRUCTURAL
MATERIALS TESTING



No.	Revision	Date	App.
1			

Designed By: VAL Drawn by: SML Checked by: SML

Scale: 1"=10' Date: 01JUN2022

Project Title:

A.P. 19, LOT 113
2 ASHURST PLACE
NEWPORT, RHODE ISLAND

Client/Owner:

DONALD FITCH
5 EDGEHILL ROAD
WINCHESTER, MA 01880

Drawing Title:

LIMITED CONTENT
BOUNDARY SURVEY
WITH ZONING

Drawing Number:

L-1

Sheet 1 of 1

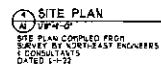
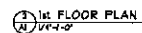
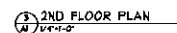
Project Number:

21288.0

Survey Index:

14 - 19 - 113

OWNERSHIP AND USE OF DOCUMENTS: DRAWINGS AND SPECIFICATIONS, AS INSTRUMENTS OF PROFESSIONAL SERVICE, ARE AND SHALL REMAIN THE PROPERTY OF THE ENGINEER. THESE DOCUMENTS ARE NOT TO BE USED, IN WHOLE OR PART, FOR ANY OTHER PROJECTS OR PURPOSES, OR BY ANY OTHER PARTIES, THAN THOSE PROPERLY AUTHORIZED BY CONTRACT, WITHOUT THE EXPRESS AUTHORIZATION OF THE ENGINEER.

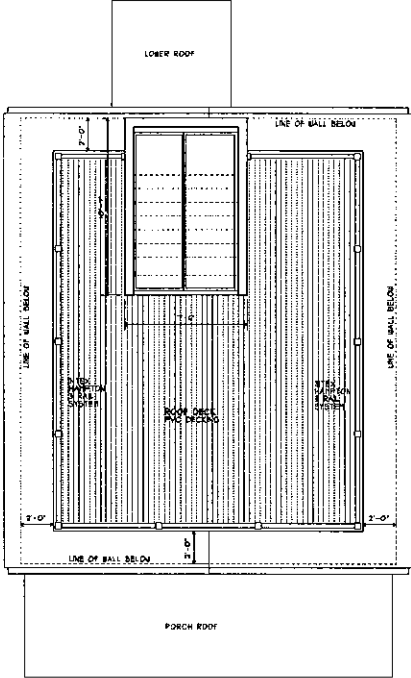


ANDERSEN 400 SERIES
GRG WHITE EXTERIOR WHITE INTERIOR
ENERGY STAR GLAZING INCLUDE SCREENS.
SEE ELEVATIONS FOR GRILL PATTERN.
TEMPERATURE REQUIRED / CONFIRM ORDER WITH ARCHITECT. BEFORE PLACING
STORMWATCH PROTECTION- ALL WINDOWS AND DOORS

ENERGY CODE

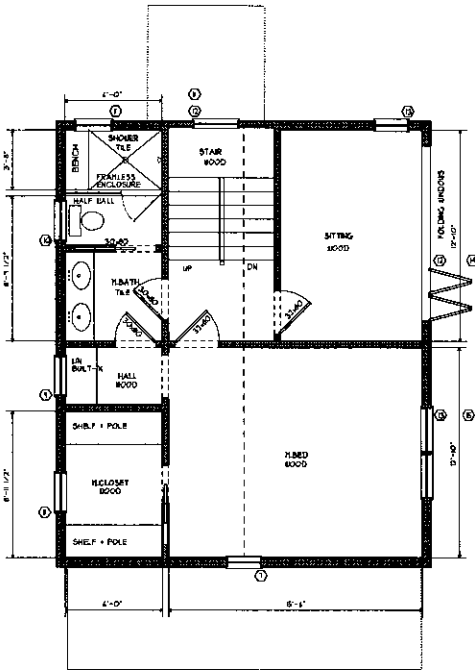
A1	PROJECT NOTES, AND FLOOR PLANS
A2	FLOOR PLANS
A3	ELEVATIONS AND SECTIONS

SHEET INDEX

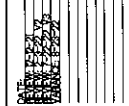


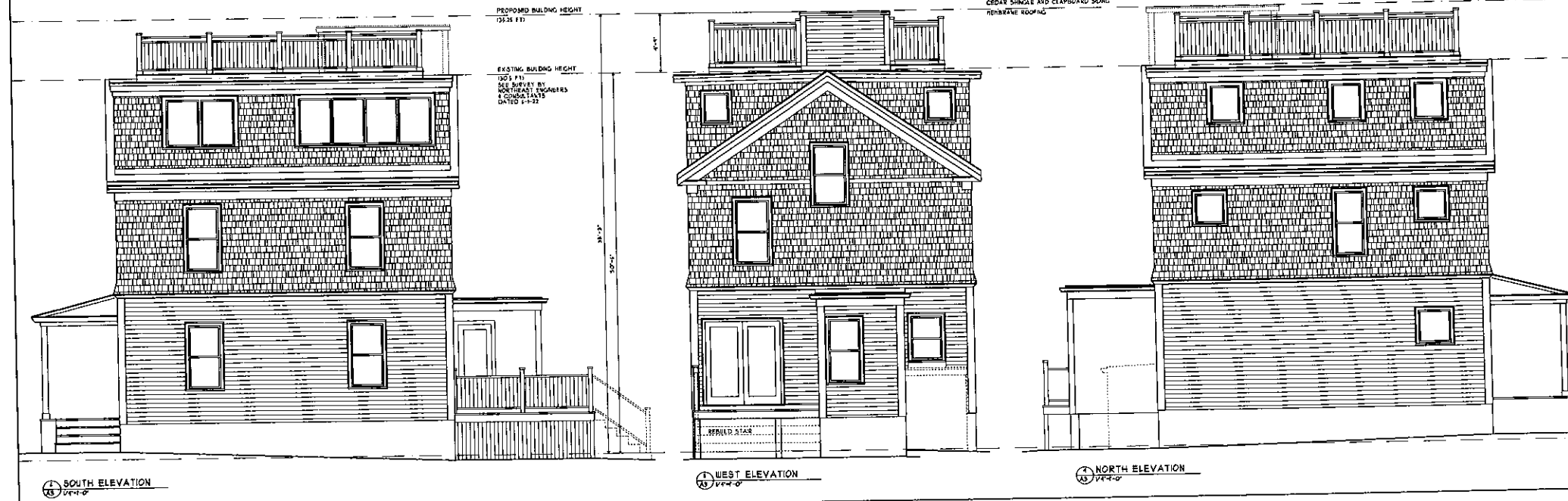
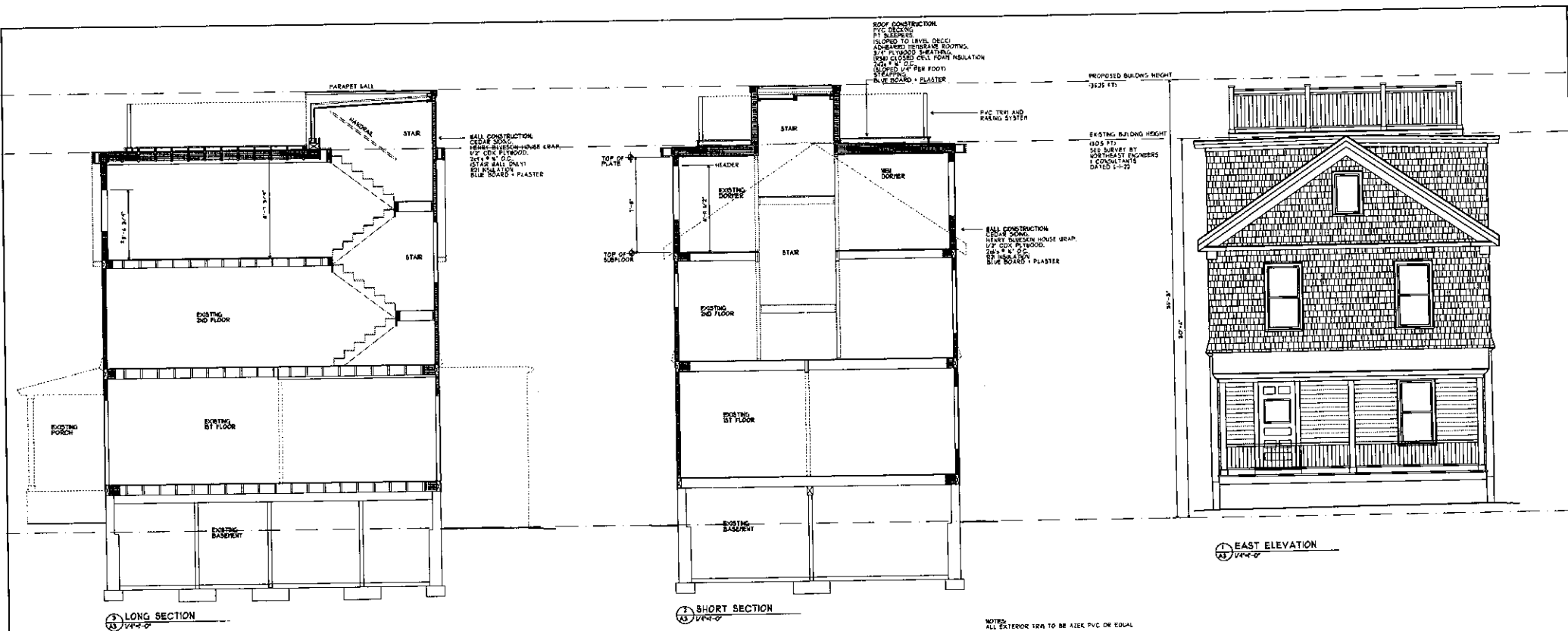
1 ROOF DECK PLAN
13 1/4" x 9"

EXISTING CONSTRUCTION
EXISTING TO BE REMOVED
NEW CONSTRUCTION
NOTE:
ALL DIMENSIONS ARE TO FACE OF FRAMING OR
TO CONCRETE, UNLESS OTHERWISE NOTED.



2 ATTIC PLAN
13 1/4" x 9"





flh ARCHITECTS

15 HIGH STREET
WINCHESTER, MA
801-885-1895

ADDITIONS & RENOVATIONS TO 2 ASHURST PLACE, NEWPORT RI

A3



ID	19-113
Location	2 ASHURST PL
Owner	



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

City of Newport, RI makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Print map scale is approximate.
Critical layout or measurement
activities should not be done using
this resource.



Newport

(Summary Data - may not be Complete Representation of Property)



Parcel: 19-113
Account: 3576

Location: 2 ASHURST PL
User Acct: R03771

Owner: FITCH DONALD ALLEN &
LUC: 01 - Single Fam
Zoning: R10

Parcel Values

Total: \$361,900 Land: \$142,100 Land Area: 3,132 SF Building: \$219,800 Assessed: \$361,900

Sales Information

Book and Page	Instrument Type	Date	Price	Grantor
3018-248	Warranty	07/13/2021	\$505,000	MCCUNE MICHAEL C
1577-269		01/05/2005	\$290,000	LANCE JOSEPH J - HEIR OF

Building Type: Colonial	Year Built: 1900	Grade: C+	Condition: AV
Heat Fuel: Oil	Heat Type: Hot Water	% Air Conditioned: 0.00	Fireplaces: 0
Exterior Wall: Wood Shingle	Bsmnt Garage: 0	Roof Cover: Asph/F GlS/C	# of Units: 1
# of Rooms: 6	# of Bedrooms: 3	Full Bath: 1	1/2 Baths: 0

Yard Item(s)

Description	Quantity	Size	Year	Condition	Quality	Value
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Building Areas

Area	Net Area	Finished Area
Attic, Unfinished	124.2 SF	0 SF
Basement, Unfinished	621 SF	0 SF
Deck, Wood	49 SF	0 SF
First Floor	621 SF	621 SF
Porch, Enclosed, Finished	49 SF	0 SF
Porch, Open, Finished	120 SF	0 SF
Upper Story, Finished	621 SF	621 SF

Disclaimer: This information is for tax
assessing purposes
and is not warranted

