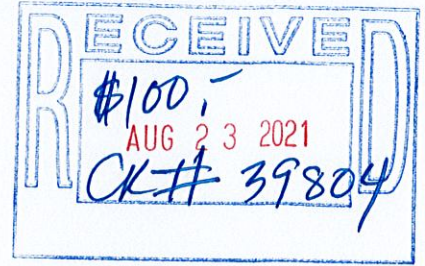


**COMBINED APPLICATION FOR A SPECIAL USE PERMIT &  
A REGULATORY (DIMENSIONAL) VARIANCE**

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



DATE: August 23, 2021

Board Members:

*ZBR  
Sept-10*

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.: 22 Berkeley Avenue

Tax Assessor's Plat: 33, Lot: 099

**Petitioner Information**

<b>Applicants:</b>	Jacqueline L. LaPierre Richard R. Busardo	<b>Addresses:</b>	c/o J. Russell Jackson, Esq. Miller Scott Holbrook & Jackson 122 Touro Street Newport, RI 02840
<b>Owner:</b>	Elizabeth A. LaPierre, Life Estate		Same
<b>Leasee:</b>	N/A		N/A

**Property Characteristics**

<b>Dimensions of Lot:</b>	<b>Frontage:</b>	67.83 ft. +/- (Berkeley Avenue)
	<b>Frontage:</b>	64.10 ft. +/- (Berkeley Terrace - East)
	<b>Frontage:</b>	47.61 ft. +/- (Berkeley Terrace - North)
	<b>Depth:</b>	77.57 ft. +/-
	<b>Area:</b>	5,025 sf. +/-

<b>Zoning District in which premises is located:</b>	R-10
<b>How long have you owned above premises?</b>	46 Years (6/6/1975)
<b>Are there buildings on the premises at present?</b>	Yes
<b>Total square footage of the footprint of existing buildings:</b>	1,136 sf. (23%)
<b>Total square footage of the footprint of proposed buildings:</b>	1,274 sf. (25%)
<b>Present use of premise:</b>	Single Family Residential
<b>Proposed use of premises:</b>	Single Family Residential



**Give extent of proposed alterations:** The Applicants propose to remove the existing front steps and landing and construct a new covered front porch and steps.

### Zoning Characteristics Matrix

	Existing	Required/Allowed	Proposed
Lot Size (sq. ft)	5,025 sf.	10,000 sf.	5,025 sf.
Lot Coverage	23 %	20 %	25 %
Dwelling Units	1	1	1
Parking (# of spaces)	2	2	2
Front Setback (ft.)	South/Berkeley Ave 15 ft. +/- ----- East/Berkeley Terrace 10 ft. +/- ----- North/Berkeley Terrace 28 ft. +/-	15 ft.	South/Berkeley Ave 10 ft. +/- ----- East/Berkeley Terrace 10 ft. +/- ----- North/Berkeley Terrace 28 ft. +/-
Side Setbacks (ft.)	House = 18 ft. +/- ----- Shed = 0 ft. +/-	10 ft.	House = 18 ft. +/- ----- Shed = 0 ft.
Rear Setback (ft.)	N/A	20 ft.	N/A
Height (ft.)	House < 30 ft.	30 ft.	House < 30 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)

The Applicants seek permission to construct a new covered porch along the front of their existing residence. The proposed covered porch will provide south facing outdoor living space and will be consistent with many residences on Berkeley Avenue that also have front porches. The new porch will increase lot coverage by only 2% and encroach into the front/south setback.



The existing parcel is a legal non-conforming lot of record containing only 5,025 square feet of land. The purpose of this project is to provide south facing outdoor living space. The property is in the R-10 Zone and is significantly substandard in size. The parcel is also very unique with street frontage on three sides. As a result of the small lot size and imposition of three front setbacks, the existing development exceeds lot coverage and encroaches into setbacks. Any modest addition or expansion to the property will result in the need for zoning relief. The front setback encroachment for the new porch and steps will be consistent with the Berkeley Avenue streetscape. Total proposed lot coverage will be 25%. 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. No building height relief is required. 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 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.*

*Policy LU-1.7 The City shall protect the existing character of residential neighborhoods while encouraging local neighborhood business.*

**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.*

**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 5,025 square feet of land. The lot is significantly substandard and is essentially only half the standard lot size for the R-10 Zone. The parcel also has a public street or way on three sides, resulting in the application of three front setbacks. Based on the size of the lot, the three front setbacks and the size and location of existing structures, any reasonable improvements or construction will require dimensional relief. As a result, the proposed covered front porch and steps will encroach into the front setback and increase lot coverage.



**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 alternation of a non-conforming development by constructing a new covered front porch and steps. The subject property is located on Berkeley Avenue and has Berkeley Court running along both the east and north sides of the property. The neighborhood is densely developed with a number of abutting parcels that are substandard in size with 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 construct a covered front porch for outdoor living space. The proposed lot coverage and front setback encroachment will not be inconsistent with surrounding properties. The construction of a covered front porch is appropriate and is not inconsistent with the surrounding neighborhood, the Berkeley Avenue streetscape 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 construct standard size covered front porch. It will be 7 feet deep and run 30 feet along the front of the house. The new steps from the front porch will terminate no closer than 10 feet from the front property line along Berkeley Avenue. The construction of a covered front porch is visually consistent with a number of properties on Berkeley Avenue and allows for the use and enjoyment of south facing outdoor living space. Utilizing this space on the south side of the lot will be in harmony with the streetscape on Berkeley Avenue. Lot coverage increases by only 2% to a total of 25%. Minor front setback relief is required. There will be no modification to the other setbacks. There will be no change in building height. The Applicants have taken great care to develop a proposed porch 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 the minimal dimensional variance. The hardship is driven by the substandard lot, the application of front setbacks on three sides and the fact that the existing structures already occupy 23% lot coverage. Granting the request for dimensional relief is the minimum variance 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.

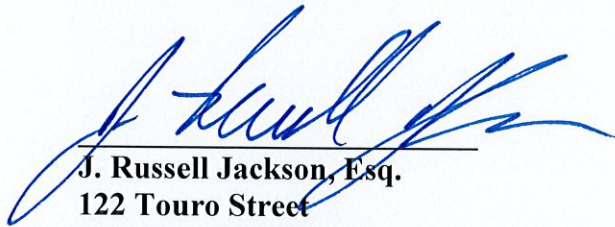
The burden of proof in a special-use permit application is on the applicant. This means that if the applicant fails to present adequate competent evidence to prove the applicable standard for issuing a special-use permit has been met, the board must deny the application.

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.

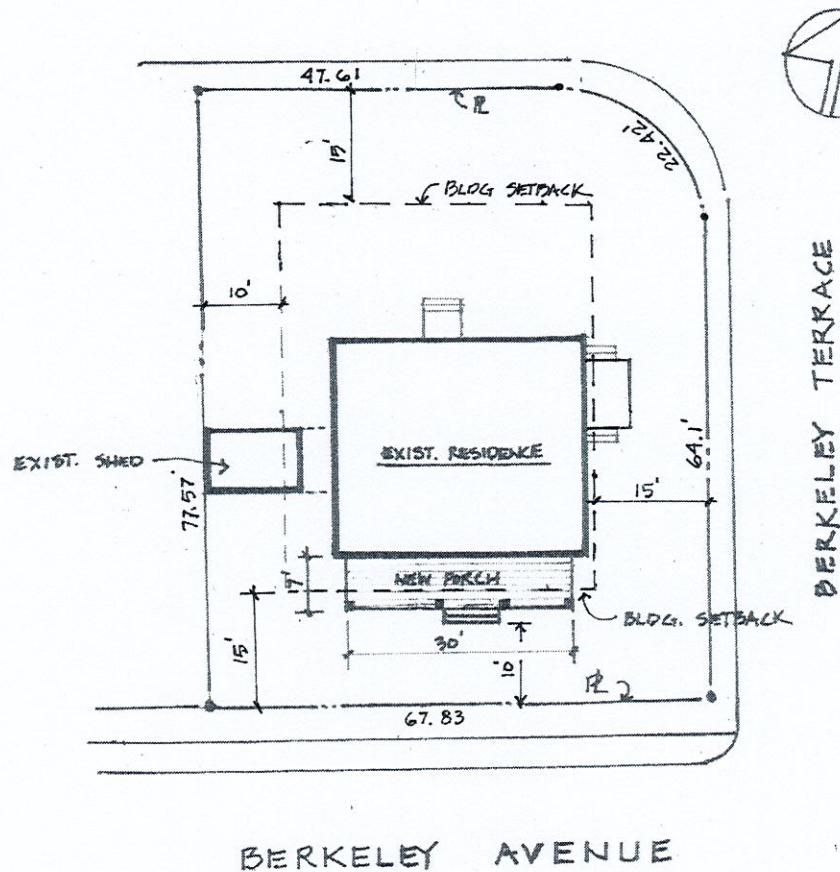
By signing below, I hereby attest that the information provided is accurate and truthful.  
I also attest that I have read the section entitled "The Zoning Board's Role".

Applicants & Owner,  
By Their Attorneys,  
Miller Scott Holbrook & Jackson

A handwritten signature in blue ink, appearing to read "J. Russell Jackson", is written over a horizontal line.

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





BERKELEY TERRACE

BERKELEY AVENUE

SITE PLAN

1" = 16'

MAP 33, LOT 99 :

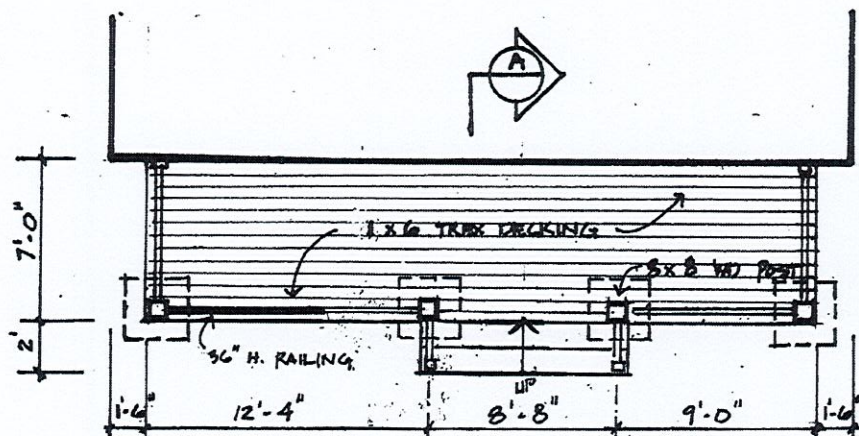
LOT AREA : 5,025 SF  
 EXIST. LOT COVERAGE : 1,136 SF / 23 %  
 PROPOSED LOT COVERAGE : 1,274 SF / 25 %  
 R-10 ZONE

PROJECT	Busardo Residence Newport, RI
	L1



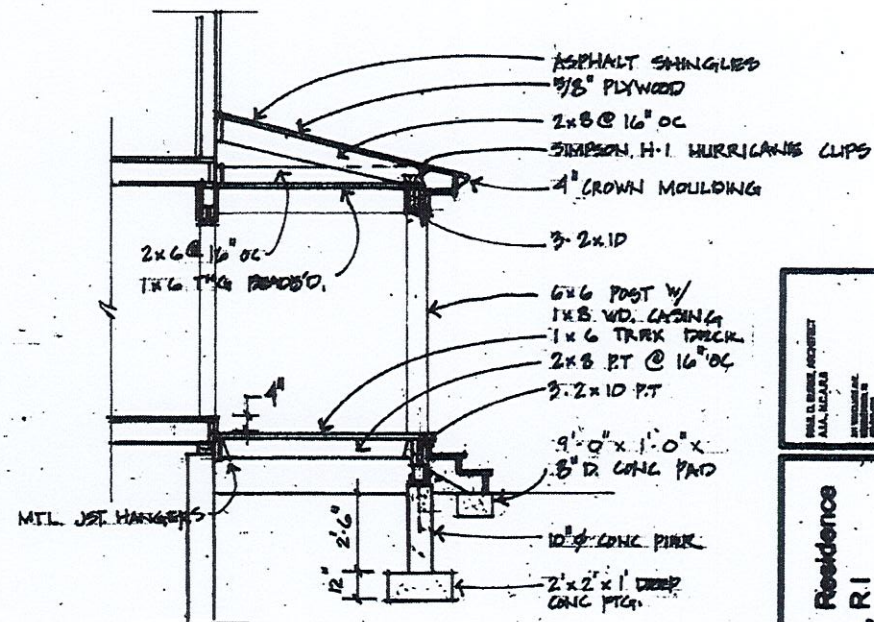
PAUL & BRIAN ARCHITECT AIA, NCMA 1000 N. Main St. Newport, RI 02840
PROJECT: <b>Busardo Residence</b> <b>Newport, RI</b>
A2





PORCH PLAN

$\frac{3}{16}'' = 1'-0''$



SECTION A

PROJECT:  
Bureau of Building  
JAN. 1974

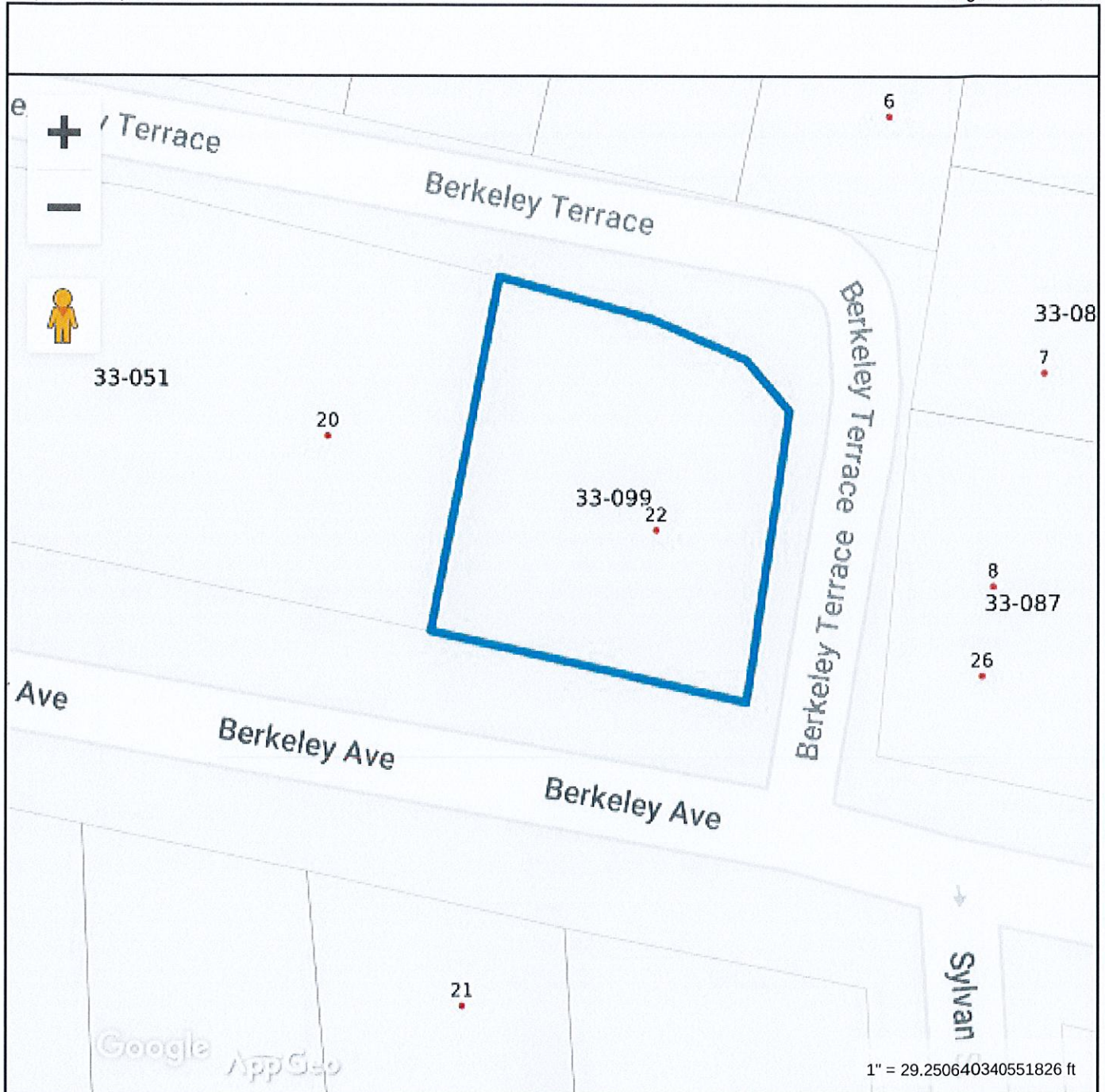
PROJECT:  
Bureau of Building  
JAN. 1974

SCALE

SCALE

A1



**Property Information**

ID 33-099  
Location 22 BERKELEY AVE  
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.





ID	33-099
Location	22 BERKELEY AVE
Owner	



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.