



**TOWN AND VILLAGE OF ELICOTTVILLE
BUILDING / CODE ENFORCEMENT
DIVISION**



17 MILL ST. ELICOTTVILLE, NY 14731

Code Enforcement Officer: Kelly Fredrickson, (716) 699-4773

E-MAIL: kelly.fredrickson@evlengineering.com

Planner: Gary Palumbo, (716) 801-3016, E-Mail: gary.palumbo@evlengineering.com

ZONING PERMIT APPLICATION

Jurisdiction: TOWN VILLAGE App. #

Application is hereby made to: Date: 5/17/2022
 CHANGE IN USE ERECT REPAIR ALTER EXTEND
 REMOVE DEMOLISH OCCUPY

LOCATION: 9 Elk Street

Address: 9 Elk Street, Ellicottville, NY 14731

Property tax map #: 043601-055-035-0001-023-000-0000

APPLICANT INFORMATION:

Applicant's name: Michelle & Craig Winters Date: 5/17/2022

Mailing address: P.O. Box 852, Ellicottville, NY 14731

Cell Phone Number: 716-316-9346 E-Mail: m32winters@gmail.com

Applicant must be (check all that apply): Owner Operator Lessee

Applicant's Engineer or representative: Jake Alianello, MDA Consulting Engineers, PLLC

Address: P.O. Box 604, Three Bristol Lane, Ellicottville, NY 14731

Phone #: 716-699-4650 E-Mail: jalianello@mdaengineers.com

PROPERTY OWNER INFORMATION (if different than Applicant)

Name: _____

Mailing Address: _____

Cell Phone Number: _____ E-Mail: _____

Current use of property:

Residence

Description of Proposed Project/Use (attach additional pages, survey and plans):

Lift building, build basement foundation to correct air duct and flood damaged building, extend 16' addition to allow for corrections to unconventional build and improve safety with staircase and ingress/egress.

Zoning Requirements from Town/Village Zoning Local Law

Front yard setback: 25' Rear yard setback: 35'
 Side yard setback: 10' Combined side: 30'
 Minimum lot size: as platted Width: _____
 Height: 28' max Floor area ratio: n/a (Village)
 Usable Open space: n/a per Law 4 2021

Site Information for proposed/existing structures:

Size of lot: 8916 Sq. Ft. Size of area to be developed: 320 (footprint) Sq. Ft.

Number of proposed lots: _____

Proposed method of Sanitary Sewage disposal: already on Village

Proposed method of Water Supply: already on Village

Main Structure proposed or existing:

Construction type: wood-framed construction Front yard setback: 14.8 feet
 Height: 2 stories, 21.2 feet Side yard setback: 7.4 feet
 # of family units: 1 at 9 Elk (3 on lot) Total of both side yard setbacks: 23.3 feet
 Size of lot: 8916 Sq. Ft. Rear yard setback: 20.4' (62.7' to rear corner of property) feet
 Usable Open Space: n/a % Floor area ratio: n/a (village)
 Corner or interior lot? interior Other: max lot coverage is 25%

Accessory Building proposed or existing:

Description:

Percentage of yard: _____ Height: _____ feet

Setback from rear lot line: _____ feet Setback from side lot line: _____ feet

Floodplain:

FIRM Zone _____ BFE _____

Flood Plain Development Permit Required? YES NO

ATTACHMENTS

Attach all relevant items listed in the Town/Village of Ellicottville Zoning Local Law for a zoning permit. Additional copies of all plans, documents and other application materials may be required. Please include copy of survey if available. Plot Plan Survey Site Plan

SIGNATURES

Applicant and Owner (if different) must sign the application.

I hereby certify that I have examined this application and know the same to be true and correct. All provisions of laws and ordinances covering this type of work will be complied with whether specified herein or not. The acceptance or approval of this application does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction, land use or the performance of construction. I have read and am familiar with the Town/Village of Ellicottville zoning law that is relevant to this application(s).

Permission to inspect – I hereby consent to Town/Village of Ellicottville Staff inspection of the project site and adjacent property areas. Town/Village staff may enter the property without notice. Inspection may occur without the owner, applicant or agent present, If the property is posted with “keep out” signs or fenced with an unlocked gate, staff may still enter the property. Agency staff may take measurements, analyze site physical characteristics, take soil and vegetation samples, sketch and photograph the site.

Applicant Signature: Michelle Winters Date: 5/17/2022

Applicant must be (check all that apply): Owner Operator Lessee/purchaser

Applicant Name: ^{Print} Michelle Winters

Property Owner’s Signature (if different than applicant) _____ Date: _____

Property Owner’s Name: ^{Print} _____

Office use only:

Application Fee: \$46.00 _____

Received by: _____ on _____ (Date)

Project Number(s): _____

Zoning Permit Approved - May obtain building permit.

Denied – Not in conformance with following provision(s) of the Zoning Ordinance:

CEO Signature: _____

Date: _____



**TOWN AND VILLAGE OF ELICOTTVILLE
BUILDING / CODE ENFORCEMENT
DIVISION**

17 MILL ST. ELICOTTVILLE, NY 14731

Code Enforcement Officer: Kelly Fredrickson, (716) 699-4773

E-MAIL: kelly.fredrickson@evlengineering.com

Planner: Gary Palumbo, , (716) 923-1325, E-MAIL: gary.palumbo@aecom.com

ZONING BOARD OF APPEALS APPLICATION

Property is in: TOWN VILLAGE App. # 2022-00071

APPLICANT INFORMATION:

Applicant's name: Michelle & Craig Winters Date: 5/12/2022

Mailing address: P.O. Box 852, Ellicottville, NY 14731

Cell Phone Number: 716-316-9346 E-Mail: m32winters@gmail.com

Applicant must be (check all that apply): Owner Operator Lessee

Applicant's Engineer or representative: Jake Alianello, MDA Consulting Engineers, PLLC

Address: P.O. Box 604, Three Bristol Lane, Ellicottville, NY 14731

Phone #: 716-699-4650 E-Mail: jalianello@mdaengineers.com

PROPERTY OWNER INFORMATION (if different than Applicant)

Name: _____

Mailing Address: _____

Cell Phone Number: _____ E-Mail: _____

TYPE OF APPEAL:

Area Variance Use Variance Interpretation of Zoning Law text or map

Section of Zoning Law from which variance is requested: 3A(2)(C); 7(5); 7(7)

Describe the requested variance: Relief from certain setback requirements to relieve excessive flooding which has resulted in serious air quality concerns in a single family dwelling on the property.

Is this appeal from a decision of the Town/Village of Ellicottville Building Official? YES NO

If yes, what as the type of decision or permit? _____

Date of decision: _____

A previous appeal has has not been made with respect to this decision or with respect to the property. If a previous appeal was made, provide the Appeal # ZP-2021-079 and Date of Appeal 6.4.2021

Reasons Supporting Your Appeal

Please reply to the questions below for the type of appeal that you are making. These are the criteria that the Zoning Board of Appeals will use to evaluate your appeal. Provide as much detail as possible. Feel free to attach an additional statement.

AREA VARIANCE

In making its determination on an area variance, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance were granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making that determination, the ZBA will consider these five questions.

1. Will an undesirable change be produced in the character of the neighborhood or will a detriment to nearby properties be created by the granting of the area variance?
 Neighborhood aesthetics will be improved by streetscape and building improvements. Proposal also presents desirable changes to stormwater impacts on pedestrian walkway and neighbors fieldstone foundation.
2. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?
 The building needs to address mold and mildew, while the property needs to address flood storage capacity. Owners have looked at various options and present the best methods. Variances are necessary because the lot shape is awkward.
3. Is the requested area variance substantial?
 Mathematically, the footprint of 299 sq ft addition, is substantial on a 369 sq ft house footprint. However, this will not cause a negative impact on the community.
 This portion of neighborhood is already dense with buildings and this property maintains more than required open space and much more than adjacent neighbors.
4. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?
 Proposal reduces the greenspace by 300 square feet, but property has more than adequate open space to meet the Village requirement of 30% open space & create raingardens for stormwater capture, which improves sidewalk conditions (ponding/ice).
5. Is the alleged difficulty self-created, which consideration shall be relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.
 Stormwater ponding on property comes from 11 Elk and Village street and sidewalk. Stormwater ponding is affecting furnace ducts. Applicant has annually crawled in 15" space to replace ducts for 10 years and requests a permanent solution.

USE VARIANCE

In order for the Zoning Board of Appeals to grant a use variance, the applicant shall show that the applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

1. The applicant cannot realize a reasonable return, provided that lack of return is substantial, as demonstrated by competent financial evidence; and
 n/a
2. The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood; and
 n/a
3. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 n/a

4. That the alleged hardship has not been self-created

n/a

Provide a statement that discusses each of these points, demonstrating that the zoning regulations have caused unnecessary hardship.

INTERPRETATION OF ZONING LAW

Provide a statement that describes what the Building Official determined, what you believe should be the interpretation, and why.

See Attachment A

Attach additional statement.

PROPERTY / FACILITY NAME

Address: 9 Elk Street, P.O. Box 852, Ellicottville, New York 14731

Property tax map #: 043601-055-035-0001-023-000-0000

Current use of property: Residence

Description of Proposed Project/Use (attach additional pages, survey and plans):

Lift building, basement and 14ft addition. Rain gardens to retain stormwater.

Zoning Requirements from Town/Village Zoning Law.

Front yard setback: 25', Rear yard setback: 35', Side yard setback: 10',

Combined side: 30', Minimum lot size: as platted, Width: _____,

Height: 28' max, Floor area ratio: XXXXXXXXXX (Village)

Usable Open space: 30%

Site Information

Size of site: 8916 Sq. Ft. Size of area to be developed: 320 (footprint) Sq. Ft.

Main Structure:

Construction type: wood-framed addition

Front yard setback: 14.8 feet

Height: 2 stories, 21.2 feet

Side yard setback: 7.4 feet

of family units: 3

Total of both side yard setbacks: 23.3 feet

Size of lot: 8916 Sq. Ft.

Rear yard setback: 20.4' (62.7' to rear corner) feet

Usable Open space: n/a per Law No. 4 2021 %

Floor area ratio: XXXXXXXXXXXX (Village)

Corner or interior lot? interior

Other: Max lot coverage is 25% (this is less than 60% max)

Accessory Building:

Description: n/a

Percentage of yard: _____ Height: _____ feet.

Setback from rear lot line: _____ feet. Setback from side lot line: _____ feet.

Floodplain:

FIRM Zone _____ BFE _____

Flood Plain Development Permit Required? YES NO

ATTACHMENTS

Attach all relevant items listed in the Town/Village of Ellicottville Zoning Law for type of application(s) being submitted. Additional copies of all plans, documents and other application materials may be required. See attached list of required forms and information needed for type of application being submitted. Deadline for submittal is three (3) weeks prior to regularly scheduled meeting date. Meeting dates are subject to change by the Board Chair.

SIGNATURES

Applicant and Owner (if different) must sign the application.

I hereby certify that I have examined this application and know the same to be true and correct. All provisions of laws and ordinances covering this type of work will be complied with whether specified herein or not. The acceptance or approval of this application does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction, land use or the performance of construction. I have read and am familiar with the Town/Village of Ellicottville zoning law that is relevant to this application(s).

Additional Fees may be charged for: pre-application meetings, SEQR review, and additional legal/consulting/engineering labor. Permit Fees are NON-REFUNDABLE

Permission to inspect – I hereby consent to Town/Village of Ellicottville Staff inspection of the project site and adjacent property areas. Town/Village staff may enter the property without notice. Inspection may occur without the owner, applicant or agent present, If the property is posted with “keep out” signs or fenced with an unlocked gate, staff may still enter the property. Agency staff may take measurements, analyze site physical characteristics, take soil and vegetation samples, sketch and photograph the site.

Applicant Signature: Michelle Winters Date: 5-12-2022

Applicant must be (check all that apply) Owner Operator Lessee

Applicant Name: ^{Print} Michelle Winters

Property Owner’s Signature (if different than applicant) _____ Date: _____

Property Owner’s Name: ^{Print} _____

<u>Office use only:</u>	
Application Fee(s)	<u>\$275</u>
Received by: <u>GREGORY D. KEYSER</u>	on <u>5/17/2022</u> (Date)
Project Number(s):	_____

Attachment A
(Interpretation of Zoning Law)

Legal Standard

Section 19(4) of the Village of Ellicottville Zoning Ordinance (“Ordinance”) governs Variances. In reviewing applications for a variance, the Zoning Board of Appeals (“ZBA”) “shall insure that the spirit of this Code shall be observed and substantial justice done, provided that before any variance may be authorized, it must be shown that:

- The variance will not substantially affect the comprehensive master plan of zoning in the Village and that adherence to the strict letter of the Code will cause difficulties and hardship, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the plan;
- Special circumstances do not apply generally to other property in the same district;
- Because of said special circumstances, property covered by the application is deprived of the same privileges possessed by other property in the same district and that the granting of the variance is essential to the enjoyment of the substantial right possessed by the other property in the district.”

Ordinance at § 19(4).

The instant request constitutes an “Area Variance” under Section 19(4)(B), which further requires the ZBA to “take into consideration the benefit to the application if the variance were granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.” In making this determination, the ZBA “shall also consider:

- a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance.
- b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
- c) Whether the requested area variance is substantial.
- d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- e) Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.”

Ordinance at § 19(4)(B)(1). Finally, the ZBA, “in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and health, safety and welfare of the community.”

Ordinance at § 19(4)(B)(2). The criteria set forth in the Ordinance mirrors the language governing all Boards of Appeal under Village Law § 7-712-b. *See Miller v. Town of Brookhaven*, 74 A.D.3d 1343, 1343-44 (2d Dep’t 2010). Additionally, the ZBA’s obligation to grant the minimum required variance does *not* relieve it from engaging in the balancing test mandated by Village Law § 7-712-b. *See Corp. of Presiding Bishop of Church of Jesus Christ of Latter Day Saints v. Zoning Bd. of Appeals of Town/Vill. Of Harrison*, 296 A.D.2d 460, 462 (2d Dep’t 2002).

June 28, 2021 Draft Staff Report

On June 28, 2021, the ZBA issued a Draft Staff Report regarding several appeals submitted by Applicant on June 10, 2021. *See* Draft Staff Report, No. VZBA-2021-079, attached hereto as **Exhibit A-1**. It was determined that the parcel is located in the VR district (which permits single-family detached dwellings) and contains “2 pre-existing dwelling units in the house (7 Elk) and 1 pre-existing dwelling units in the converted accessory structure (9 Elk).” *Id.* at 1.

An “Accessory Building” is defined as “[a] building upon the same lot (or on a contiguous lot under the same ownership) as the principal building and which is (1) clearly incidental to, and customarily found in connection with such principal building, or use and (2) is operated and maintained for the benefit of convenience of the owners, occupants, employees, customers or visitors of the lot with the principal use.” Ordinance at § 2(2). Under this definition, the structure located at 9 Elk is not an accessory building. It is a separate and distinct dwelling utilized by the Applicant as an apartment. As such, it is not clearly incidental to the rented duplex located at 7 Elk. Furthermore, it is not operated and maintained for the benefit of convenience of the occupants

or visitors of the duplex; in fact, it is wholly unrelated to those occupants. Instead, the 9 Elk structure should be classified as a single-family dwelling.

This distinction is critical because Applicant proposes the addition of a basement in the 9 Elk Street structure. Although Local Law No. 4 of 2021, Section 3A.7(C)(c) prohibits the modification of construction of a basement in an accessory building, there is no such restriction for single-family dwellings. In any event, the use remains non-conforming under Section 3A(2)(G), and any expansion or modification is governed by Sections 7(5) and (7) of the Ordinance.

Section 7(10) also sets forth several criteria for review by the ZBA which govern requests for changes to non-conforming uses:

- A. "All reasonable measures will be undertaken to alleviate or reduce the incompatibility or adverse effects of the non-conforming use or building upon abutting properties or in the neighborhood; i.e., objectionable conditions, visual or noise pollution, vehicular traffic, and/or on-street parking impacts.
- B. All changes of non-conforming uses shall comply with all current development requirements and conditions of this Sections and other applicable Village Codes, except for the use change being requested.
- C. Upon review of an application for a change of an existing non-conforming use, the Zoning Board of Appeals shall consider and apply reasonable conditions to bring the subject up to other provisions and standards of the Codes to include parking, landscaping and architectural design features."

Ordinance at § 7(10). Notably, the June 28, 2021 Draft Staff Report did not address the criteria listed in Section 7(10).

The Requested Variance

Applicant seeks an area variance from certain setback requirements under Section 3A(2)(C) and approval of certain modifications to the non-conforming structures which would alleviate flooding and air quality issues. Section 3A(2)(C) provides the following setback requirements:

- Side Yards: Minimum Side Yard 10' with a 30' total side yard.
 - *Proposed Variance: 7.4' (increasing the present setback of 7.3').*
- Rear Yard: Minimum depth of 35'.
 - *Proposed Variance: 20.4' (Actual depth of rear yard is 62.7ft, due to odd lot shape).*
- Front Yard: Minimum depth of 25'.
 - *Proposed Variance: 14.8' (This variance will not modify the existing setback, which is in alignment with adjacent structures).*
- Minimum Building Size: 1,000 sq. ft.
 - *Proposed Change: Increases the 9 Elk Structure from 623 sq. ft. to 1187 sq. ft. (This change brings structure into compliance with Local Village Zoning for single family dwellings in the VR district).*

Applicant has owned the lot and structures at 7 and 9 Elk Street since December of 2012.

Notably, the property is located on a “Y-Shaped” lot which creates unusual difficulties in meeting setback requirements (to fully comply with the setback requirements listed in the Ordinance, the structures would have to be contained to small, triangular lots which would not permit standard construction). For the past eight years, Applicant has attempted to manage health and safety concerns resulting from flooding on the property. The flooding causes water to pool in heating ducts on the 9 Elk structure, causing increasing humidity and mildew inside the home. Absent a variance to permit expansion, Applicant is unable to prevent flooding of the property. In addition to these concerns, the proposed variance would also permit other potential safety issues including proper ingress and egress.

Application of the Balancing Test

Benefit to the Applicant if the variance were granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community

In this case, the benefit to the Applicant is also a benefit to the health, safety and welfare of the neighborhood. Indeed, both Applicant and surrounding neighbors have a health and safety interest in preventing flooding across the front and side yards of the property. Aside from any

minor temporary inconveniences associated with construction, there is *no* detriment to the health, safety and welfare of the community in this case. In fact, this is the type of area variance which should be encouraged by the ZBA because it has a net positive result in the overall health, safety and welfare of the surrounding community.

Will the variance produce an undesirable change in the character of the neighborhood or a detriment to nearby property owners?

In its June 28, 2021 Draft Staff Report, the Staff determined that Applicant did not show that this criteria was met, noting that “[t]he neighborhood is characterized by single-family homes with no more than 1 accessory structure on each lot. The subject lot has 2 houses, and the applicants wish to increase the size of the accessory structure.” *See Ex. A-1* at 3.

First and foremost, the structure at 9 Elk street is *not* an accessory structure under the applicable definition in the Ordinance. The proposed modification will rotate the 9 Elk structure slightly *away* from the neighboring property, thereby increasing the setback, and extend the structure backwards. As a result, the proposed changes bring the structure into character of the neighborhood, with a raised foundation and addition providing depth and style to building in like representation to the neighboring homes. The contention that the change will “further blur the distinction between the principal structure and accessory” bears no weight, given that the 9 Elk structure is a single-family dwelling. *See id.*

Additionally, the Staff determined that “the increases to the existing non-conformities in the floor area ratio, rear yard and height must be considered, as well as the extension of the non-conforming side yard.” *Id.* Although the requested variance requires modifications to several setback requirements, there are several other factors which must be considered. As noted above, the property is located on a “Y-Shaped” property, which would only permit the construction of an irregularly-shaped triangular building (which would undoubtedly change the character of the

neighborhood). The requested variance from setback requirements is also *not* a deviation from the character of the neighborhood. Indeed, the neighboring property adjacent to 9 Elk Street actually encroaches onto the 9 Elk property by more than two feet. Similarly, numerous properties in the VR District and throughout the village do not abide by the required front and side setback requirements.

Where numerous houses in the neighborhood have similarly deficient setbacks, a denial of Applicant's request based on this factor would be arbitrary and capricious. *See Cassano v. Zoning Bd. of Appeals of Inc. Village of Bayville*, 263 A.D.2d 506, 507 (2d Dep't 1999) (finding that Zoning Board's denial of area variance request was arbitrary and capricious where at least nine houses in the neighborhood had similar decks with similarly deficient setbacks).

Finally, the requested variance will actually relieve a detriment to neighboring properties by reducing the impact of flooding in the front and side-yard of the 9 Elk Street structure.

Can the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance?

In its June 28, 2021 Draft Staff Report, the Staff determined that "a small addition in width and height, would have minimized the number of the variances requested." **Ex. A-1** at 3. The relevant question under this balancing factor – which is slightly mischaracterized in the Staff Report – is whether the benefit sought can be achieved by a method *other than* an area variance. Notably, the Staff Report found that "the ZBA may determine the alteration is permissible under Section 7.5," but concluded that because the area variance request could be smaller, the criteria was not met.

This conclusion seems to concede the fact that an area variance of some sort *is* required to achieve the benefit sought by the Applicant. The question of whether this constitutes the minimum variance necessary is a separate question, contemplated elsewhere in the Ordinance, which should

not be addressed under this factor. Under the narrow question presented by this factor, however, Applicant has plainly demonstrated – and the Staff Report concedes – that an area variance is necessary to achieve the benefit sought.

Is the requested area variance substantial?

To determine whether an alteration is “substantial” under Section 7(5), the ZBA must examine whether the improvement exceeds in aggregate cost fifty percent of the market value of the building or structure. *See* Ordinance § 7(5). Market value shall be determined by dividing the assessed rate by the equalization rate. *See id.*

Section 2 separately defines “Substantial improvement” as “[a]ny reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the ‘start of construction’ of the improvement.” *Id.* at § 2. However, “Substantial improvement” does not include “any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions.” *Id.*

As noted above, the proposed variance seeks to correct existing health and safety issues, including air quality resulting from build-up of mildew, establishment of proper ingress and egress routes, and relocation of utilities. The requested variance is the minimum necessary to assure the resolution of these issues; most notably, to permit construction of the staircase inside the 9 Elk Street Property.

Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

In its June 28, 2021 Draft Staff Report, the Staff concluded that “no additional environmental impacts are anticipated.” **Ex. A-1** at 4. Although the Staff Report concedes that

this point weighs in favor of Applicant, it is worth noting that the area variance is intended to have a *positive* environmental impact by reducing flooding and improving air quality inside Applicant's home.

Is the difficulty self-created?

A hardship is self-created when the applicant for a variance acquires the property subject to the restriction from which he or she seeks relief. *See Padwee v. Bronnes*, 242 AD.2d 334, 335 (2d Dep't 1997). Although the structures on the property pre-date the current Ordinance, Applicant acquired the property after the enactment of the Ordinance. However, there are other factors which should be considered in this case. The proposed variance aims to cure flooding which results from the lack of Village storm drains and proximity of a neighboring property, creating high humidity and mildew inside the 9 Elk Street property. Although the restrictions applicable to the requested variance were in place when Applicant purchased the property, the issues which led to the variance application did not exist. In any event, failure to meet this factor is not a sufficient reason alone to deny Applicant's request for a variance.

Section 7(10) Criteria

As noted above, approval of a request for changes to a non-conforming use under Section 7 shall be granted only when it can be shown that certain criteria are met.

All reasonable measures will be undertaken to alleviate or reduce the incompatibility or adverse effects of the non-conforming use upon abutting properties or in the neighborhood

The proposed variance will not only decrease flooding between the 9 Elk structure and neighboring property, but will also rotate the structure and slightly increase the present setback. Aside from the minor inconveniences associated with construction, the requested variance will not create any other objectionable conditions or otherwise affect the neighborhood in any way. In

fact, the proposed variance will benefit the neighborhood, by alleviating standing water and ice on sidewalk and improving aesthetics.

All changes of non-conforming uses shall comply with all current development requirements and conditions of this Section and other applicable Village Codes, except for the use change being requested

Apart from the relief requested from the requirements of Section 3A(2)(C), the proposed variance will comply with all required Codes, including permit and construction requirements. Applicants' proposal adds 564 square feet to an existing 623 square foot home, which brings the structure into Village compliance for minimum 1,000 square foot structure, while lot coverage is maintained at 25% (well below the 40% maximum coverage). Proposal also seeks to provide architectural design features consistent with Village standards, as well as landscaping features designed for aesthetics and functional flood control.

Consideration and application of reasonable conditions to bring the subject up to other provisions and standards of the Codes to include parking, landscaping and architectural design features

The structural modifications requested by Applicant is are intended not only to relieve flooding and air quality concerns, but will also ensure that the 9 Elk structure complies with other code requirements. These include improvements to non-traditional construction standards, such as the relocation of utilities, safe standard staircase, improved air quality and sufficient ingress and egress routes. Additionally, the proposal includes two rain gardens which will not only combat flooding, but will also improve the overall aesthetics of the property.

Conclusion

A thorough review of the balancing factors listed in the Ordinance, as well as the requirements of Section 7 demonstrate that the proposed variance should be granted. The issues currently facing Applicant present a difficulty and hardship which warrants a deviation from the strict letter of the Ordinance. On balance, the benefit to both Applicant and surrounding properties

in granting the variance greatly outweighs any real or perceived detriment to the health, safety and welfare of the neighborhood or community. In fact, the proposal seeks to cure such a detriment. As a result, we respectfully ask that the ZBA grant the proposed variance in order to alleviate the hardship created by flooding and the resulting health issues associated with high humidity and mildew within the 9 Elk Street property.

**VILLAGE OF ELLICOTTVILLE
ZONING BOARD OF APPEALS**

DRAFT STAFF REPORT

draft June 28, 2021

File No:	VZBA-2021-079
Applicant:	Michelle Winters -- owner / MDA Consulting Engineers -- consultant
Location:	9 Elk Street
Tax Map No:	55.035-1-23
Existing Zoning:	Village Residential (VR)
Type of Appeal:	Area Variances
Application Date:	June 10, 2021
Meeting Date:	July 7, 2021
Attachments:	Applications, Site Plan, Floor Plans, Elevations and Survey

Project Description

This application is for several appeals. The applicant seeks to construct a residential addition at the rear of the pre-existing non-conforming residential structure at 9 Elk Street. The proposed 2-story addition has a 20'9" x 14' footprint. The single tax parcel has two residential structures on it. 7 Elk appears to be the original principal residence, which has two dwelling units. 9 Elk St. (subject structure) is a converted accessory building (former garage) with one dwelling unit.

Per application materials, the applicant seeks relief from several sections of the zoning. Staff analysis differs slightly regarding which sections of the Village Zoning are at issue – see below.

Staff Analysis

Land use.

The pre-existing parcel is located in the VR District - outside the Historic District. There are no non-conformities with the parcel. A single-family detached dwelling is a "Permitted" use in the VR District, and 1 accessory apartment is allowed with a Special Use Permit (Section 3A.2).

The subject parcel has 2 pre-existing dwelling units in the house (7 Elk) and 1 pre-existing dwelling units in the converted accessory structure (9 Elk). However, Section 3A.2.G limits any property to "... a maximum total of two (2) dwelling units (a principal dwelling plus one apartment/lockout unit) shall be allowed on any single property in the Village Residential District." Therefore, the appeals for variances for the addition should be reviewed as an expansion to both a non-conforming structure and as an expansion of a non-conforming use (Section 7.7). And the raising and repair of the existing structure should be reviewed as an alteration under Section 7.5.

Height and Bulk Standards – for 9 Elk St.

VR DISTRICT STANDARD	EXISTING	PROPOSED	
Min. Lot Size	"...as presently platted..."	8,916 s.f.	8,916 s.f.
Min. Lot Width	"...as presently platted..."	100 +/- at r.o.w.	100 +/- at r.o.w.
Min. Front Yard	25 feet	14.8' (existing house)	34.8' (addition)
Min. Rear Yard	35 feet	<35' (9 Elk)	26.3' (addition)
Min. Side Yard	10' min.	7.3' (9 Elk - north) 15.9' (7 Elk - south)	7.5' (addition)
Min. Side Yard	30' combined	23.2' (7 & 9 Elk)	23.4' (addition & 7 Elk)
Max. Height	28' max. 1½ stories min.	1 story / ??? (9 Elk) 2 stories / 25.9' (7 Elk)	22.8' / 2 stories (9 Elk) per plans
Accessory Structure: (Sec. 3A.2.H.)	- 75% height - 70% total s.f. - max. 1,650 s.f.	2 stories / 25.9' (7 Elk) ~1,820 -	22.8' / 88% of principal building 55% of principal building 1,002.85 s.f. total - 9 Elk
Usable Open Space	30% (2,675 s.f.)	78.8% (per application)	t.b.d.
Floor area Ratio	0.2 x lot area (15%)	.27 (7 Elk & 9 Elk)	3.4 (per staff calculation)

*Bold indicates exceedances that should be subject of appeal.

Based on the information provided, the following area variances are requested:

Minimum Side Yard – Section 3A.2.C.2) for addition:

Required: 10.0'
Provided: 7.5'
 Variance (short): 2.5' (25%)

Minimum Combined Side Yard – Section 3A.2.C.2) - for addition:

Required: 30.0'
Provided: 23.4'
 Variance (short): 6.6' (22%)

Minimum Rear Yard – Section 3A.2.C.3): - for addition:

Required: 35.0'
Provided: 26.3'
 Variance (short): 8.7' (24.8%)

Maximum Height of Accessory Structure – Section 2A.2.H) - (max. 75% of principal structure):

Maximum Allowed: 19.4' (75% of 25.9-foot principal structure - 7 Elk)
Provided: 22.8' (proposed 2-story addition at 9 Elk)
 Variance (overage): 3.4' / 18% variance of standard)

Floor Area Ratio: The total area of both existing structures have a floor area ratio of 2.7 (27%), which exceeds the 2.0 FAR in the current condition. Adding the 2-story addition increases the FAR to 3.4 This exceeds the maximum allowed, even when granting a .5 bonus for the new 2nd floor addition on 9 Elk).

Max. Number of Dwelling Units: Section 3A.2.G limits any property to 1 accessory apartment or 2 dwelling units total in the VR District, which makes the property a non-conforming use, which is allowed to continue under the current zoning , but not expand.

Balancing Test.

Prior to granting an Area Variance, the ZBA must weigh the benefit to the applicant against the detriment to the health, safety and welfare of the neighborhood or community if the variance were to be granted. In making its decision, Section 19 of the Village of Ellicottville Zoning and Section 7-712-b of NYS Village Law require that the ZBA consider five criteria (tests), below. NYS Village law also requires the ZBA to grant the minimum relief necessary.

To facilitate the Board's determination, Staff offers the following analysis for your consideration:

1. Will the variance produce an undesirable change in the character of the neighborhood or a detriment to nearby property owners?

The applicant indicates that: *"Proposal will improve building & lot with proper elevation, land grading, drainage, and landscape improvements."* See application.

Staff analysis: I do not believe the applicant has shown that the criteria is met. It is understood that the total 3 dwelling units pre-exist the current zoning, which is what makes them non-conforming uses. Non-conforming uses may continue, but their expansion is limited by the provisions in Section 7 of the Village Zoning. The neighborhood is characterized by single-family homes with no more than 1 accessory structure on each lot. The subject lot has 2 houses, and the applicants wish to increase the size of the accessory structure will further blur the distinction between principal structure and accessory (smaller, subordinate) structure. It is noted that Section 1.9 would only allow more than 1 principal use on a given lot if all the dimensional standards were met, as if each structure were on its own individual lot. The increases to the existing non-conformities in the floor area ratio, rear yard and height must be considered, as well as the extension of the non-conforming side yard. *(parallel to the side line)*

2. Can the applicant achieve similar results through another feasible method? Are there alternatives to the variance request?

The applicant indicates that: *"No, we have explored other heating options and blocking vents, as well as other design changes, that just do not offer similar comfort level to existing forced air furnace."* See application.

Staff analysis: This criterion, should look at repair/alteration of the existing ~20'x20' structure separately from the proposed 2-story 20'x14' addition. While the ZBA may determine the alteration is permissible under Section 7.5, I do not believe the applicant has shown that the criterion is met for the addition. The addition (new work) exceeds standards for FAR, side yard, rear yard and maximum height for an accessory structure. For example, a smaller addition in width and height, would have minimized the number of the variances requested. *(but they would still be required)*

3. How substantial is the requested variance?

The applicant indicates that *"The proposed changes will get this building to scale with neighborhood."* See application

Staff analysis: To gauge how substantial the variance would be, the impact from the encroachment should be considered, not just the numerical results. Or, how substantial are potential impacts to the neighbors from the variance, if it is granted? I do not believe the applicant has shown that the criterion is met. The applicant's desired benefit should be considered in 2 parts; repairs to the existing structure at 9 Elk, and the proposed addition. Repairing the home (including a minimal increase in height) will not result in as substantial ^{of a} impact as constructing the addition, which changes the lot coverage, encroaches further into the side and rear yards, increases the height ratio, and further increases the floor area ratio.

4. Will the grant of a variance have an adverse impact on the physical or environmental conditions of the neighborhood or community?

The applicant indicates that: *“variance is requested to improve indoor air quality, site drainage, landscaping, elevation of building, scale of building, improved flushing, etc.”* See application.

Staff analysis: The property is located in an existing built-out area and the no additional environmental impacts are anticipated.

5. Is the difficulty self-created? If yes, this by itself is not sufficient reason to deny the variance request.

The applicant indicates that: *“The difficulty is inherently an unsafe condition, based on how this dwelling was designed prior to our purchase of property.”* See application

Staff analysis: I do not believe the applicant has shown that the criterion is met. This criterion relates to difficulty in meeting the zoning, not the mechanical problems inside the house, even though serious and significant. The structure was purchased with the non-conformity and wishes to now expand it to a greater non-conformity. However, failing this test by itself is not a sufficient reason alone to deny the request.

Procedure

SEQR Review: Granting a setback or lot line variance is typically a Type II SEQR Action, pursuant to Section 617.5(c)(12) of NYS SEQR regulations. For the record, the ZBA should move to formally classify the project a Type II Action before it acts on the application.

Public Hearing: This is the public hearing on the application. On Thurs. July 1, 2021, it came to the Village’s attention the newspaper inadvertently failed to publish the public hearing notice in its July 1, 2021, publication. For that reason, the public hearing may have to be re-published and re-noticed to the neighbors. The ZBA must act within 62 days of closing the public hearing.

Site Plan / ADR: If the ZBA grants variances and approves the proposed modifications, the project is subject to Site Plan Review and Architectural Design Review by the Planning Board.

Moratorium: Staff recommends that the Village attorney be consulted regarding the applicability of the moratorium on accessory apartments in this situation (allowing expansion of a non-conforming use (3 dwelling units).

ZBA Action / Recommendation

It appears that tests 1, 2 and 3 are not met and based on the information provided, on balance, the benefit to the applicant does not outweigh any potential detriment to the neighborhood or community if the requested variances are granted. In addition, granting variances for the addition would be allowing a non-conforming use to be expanded. For those reasons, staff recommends the variances related to the addition not be granted.

Regarding repair and alteration of the existing structure, if the ZBA agrees that the criteria in 7.5 are met, then the applicant can raise, rotate and repair in the existing structure on the same general footprint, provided the following are met:

- a. Existing floor area ratio, front yard, side yard and rear yard non-conformities are not increased.
- b. The maximum height of the reconstructed building does not exceed 19.4’ (75% of the principal structure).
- c.

GENERAL NOTES

THESE PLANS WERE DESIGNED TO CONFORM WITH THE RESIDENTIAL CODE OF NEW YORK STATE... THESE PLANS ARE SUBJECT TO LOCAL REQUIREMENTS AND REGULATIONS...

BUILDER QUALIFICATIONS & CONSTRUCTION STANDARDS

THESE PLANS ARE INTENDED FOR USE ONLY BY PERSONS KNOWLEDGEABLE IN AND FAMILIAR WITH... ALL CONSTRUCTION IS TO BE PERFORMED IN ACCORDANCE WITH THESE CODES AND STANDARDS.

DIMENSIONS

WRITTEN DIMENSIONS WILL TAKE PRECEDENCE OVER SCALE DIMENSIONS... (SEE SCALE REFERENCE)

ERRORS AND OMISSIONS

EVERY EFFORT HAS BEEN MADE TO ENSURE THAT THESE PLANS ARE ACCURATE AND DRAWN TO... REFLECT ALL CURRENT NATIONAL STANDARDS FOR SAFE AND PROPER BUILDING PRACTICES...

DESIGN LOADS

THESE PLANS WERE DESIGNED TO MEET THE EXTERNAL DESIGN CONDITIONS LISTED BELOW... DESIGN LOADS AND SPECIFICATIONS ESPECIALLY FOR ROOFS VARY FROM REGION TO REGION...

Table with 2 columns: DEAD LOADS and LIVE LOADS. Rows include ROOFS WITH SHAKES OR COMPOSITION SHINGLES, FIRST FLOOR, SECOND FLOOR, DECKS AND BALCONIES, CEILING (STORAGE - NOT ROOM CONSTRUCTION).

INSULATION AND WEATHER SEALING

CALCULATING OR CASING IS TO BE APPLIED TO ALL EXTERIOR WALLS AND FLATES AND ALL EXTERIOR... ENVELOPE PENETRATIONS (BETWEEN WINDOW OR DOOR FRAMES AND ROOM OPENINGS). INSULATION WITH THE FOLLOWING 'R' VALUES IS TO BE INSTALLED WITH VAPOUR BARRIER FACING TOWARD THE HEATED SPACE...

CONCRETE

- 1. CONCRETE FORMS, SHORING AND POURING METHODS SHALL CONFORM TO ALL CURRENT PRACTICES ENDORSED BY THE AMERICAN CONCRETE INSTITUTE. 2. BACK FILL SHALL NOT BE PLACED AGAINST BASEMENT FOUNDATION WALLS UNTIL: A. CONCRETE OR MASONRY GROUT HAS REACHED 28 DAY STRENGTH...

WINDOW AND DOOR REQUIREMENTS

- A. ALL WINDOWS ARE NOTED BY ANNOTATION CATALOG # SERIES AND LOW E IN PLAN AND ELEVATION, WITH SPECIFIC MANUFACTURER SELECTION BY OWNER AND/OR CONTRACTOR. B. BEDROOM AND SLEEPING AREAS MUST HAVE AT LEAST ONE WINDOW W/ SILL HEIGHT NO MORE THAN 44" ABOVE THE FLOOR WHICH WILL MEET LOCAL CODE...

FOUNDATIONS

- 1. FOOTINGS SHALL BEAR ON FIRM UNDISTURBED SOIL A MIN. OF 4" BELOW THE FINAL FINISHED GRADE LINE FOR ONE OR TWO STORY STRUCTURES. 2. TO ENSURE PROPER SUPPORT FOR THE FOOTINGS AND FOUNDATION WALLS, FOOTINGS MUST ALWAYS BE FOUNDED WITH A FLAT BOTTOM SURFACE...

FRAMING NOTES

- A. ALL FRAME WALLS SHALL HAVE STUD FRAMING PLACED AT 16" O.C. EXCEPT WHERE NOTED OTHERWISE. B. TOP PLATES SHALL BE DOUBLED ON ALL WALLS EXCEPT WHERE NOTED OTHERWISE. C. JACK STUDS UNDER ALL HEADERS SHALL BE CONTINUOUS TO SOLID PLATE...

WOOD FRAMING

ALL SOLID SAWN LUMBER SHALL BE SPF #2 GRADE OR BETTER, UNLESS NOTED OTHERWISE... ALL LUMBER SHALL HAVE A MOISTURE CONTENT OF NO MORE THAN 19% UNLESS OTHERWISE SPECIFIED IN ACCORDANCE WITH THE NATIONAL FOREST PRODUCTS ASSOCIATION.

Table with 2 columns: USE and NYSDOT CLASS. Rows include FOOTINGS, FROST WALLS & PIERS, BASEMENT WALLS, SLABS ON GRADE, EXT. CONC.

STRUCTURAL & MISC. METAL

- A. STRUCTURAL SHAPES, BARS AND PLATES SHALL BE STEEL, MEETING ASTM STANDARD A36. PIPE COLUMNS SHALL BE STAINLESS STEEL, MEETING ASTM A312 TYPE 316 UNLESS OTHERWISE NOTED.

- B. DESIGN AND FABRICATION SHALL CONFORM TO ASSC SPECIFICATIONS, EXPOSED WELDS SHALL BE GRIND SMOOTH AND FLUSH. REINFORCEMENT SHALL BE BENT COLD AND SHALL NOT BE WELDED. ALL ITEMS EXCEPT THOSE TO BE ENCASED IN CONCRETE, SHALL BE SHIP PAINTED BY RUST INHIBITING PRIMER. ERECTION SHALL CONFORM TO ASSC SPECS.

CONNECTORS & FASTENERS

- A. ALL NAILING AND FASTENING SHALL COMPLY WITH THE APPLICABLE CODE'S AND NAIL FASTENING SCHEDULE (NYS Residential Code). B. ALL FLUSH BEAMS AND GIRDERS SHALL USE JOIST HANGERS TO SUPPORT ABUTTING JOISTS AND RAFTERS.

FLASHING

INSTALL FLASHING AND COUNTER-FLASHING OF 26 GAUGE GALVANIZED METAL OR ALUMINUM WHEREVER PENETRATIONS OCCUR AT THE ROOF OR INTERSECTIONS OF THE ROOF WITH WALLS, CORNERS, AND SIDINGS. ALL FLASHINGS SHALL BE INSTALLED ABOVE WINDOWS AND DOORS, AND AT ALL HORIZONTAL JOINTS IN SHEET IRON.

GUTTERS

ALL GUTTERS SHALL BE CONTINUOUS WITHOUT SEAMS AND MADE OF ALUMINUM OR ANOTHER CORROSION RESISTANT MATERIAL. GUTTERS SHOULD BE SECURED A MIN. 4" O.C. W/ APPROVED FASTENERS.

ELECTRICAL

ALL WIRING SHALL BE DONE IN ACCORDANCE WITH NFPA 70 - NATIONAL ELECTRIC CODE OF THE LATEST REVISION.

PLUMBING

ALL PLUMBING SHALL BE INSTALLED IN ACCORDANCE WITH PLUMBING CODE OF NEW YORK STATE.

MISCELLANEOUS

- A. PLUMBING DIAGRAMS OR DRAWINGS SHALL BE PROVIDED BY THE PLUMBING CONTRACTOR. B. HEATING/COOLING DUCTS DRAWINGS SHALL BE PROVIDED BY THE H.V.A.C. CONTRACTOR. C. HEAT LOSS OR ENERGY USE CALCULATIONS TO BE PROVIDED BY THE HVAC CONTRACTOR AS REQUIRED BY REGULATION.

ENERGY CONSERVATION CODE

- 1. RESIDENTIAL BUILDING REGULATED BY 2015 ICC ENERGY CONSERVATION CODE. 2. TO THE BEST OF HIS KNOWLEDGE, BELIEF, AND PROFESSIONAL JUDGEMENT, THESE PLANS AND SPECIFICATION ARE IN COMPLIANCE WITH THE ENERGY CODE. 3. THE BUILDING IS LOCATED IN CATTARAUGUS COUNTY, WHICH IS CLIMATE ZONE 6.

CONCRETE QUALITY, DESIGN, AND CONTROL

- A.) DESIGN OF MIXTURES - CONCRETE DESIGNED IN ACCORDANCE WITH ACI 301 (LATEST EDITION) TO ATTAIN FOLLOWING PROPERTIES OF STRENGTH, SLUMP, AND ENHANCED AIR CONTENT, WATERPROOFING, AND SUBMITTED TO ENGINEER FOR APPROVAL.

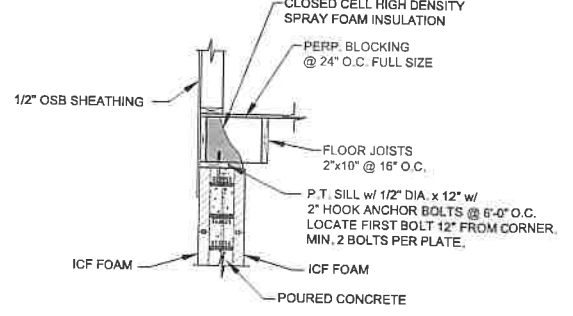
Table with 5 columns: USE, NYSDOT CLASS, 28 DAY PSI, AIR, SLUMP, W/C RATIO. Rows include FOOTINGS, FROST WALLS & PIERS, BASEMENT WALLS, SLABS ON GRADE, EXT. CONC.

- ALL CONCRETE NOT DEFINITELY SPECIFIED TO BE OF CLASS A CONCRETE, 60 KSI REINFORCEMENT INSTALLED WHERE AND AS SHOWN. B.) IF, AT ANY TIME, TESTS FOR JOB CONCRETE, INDICATE FAILURE TO MEET STRENGTH, SLUMP, WATERPROOFING OR AIR CONTENT, THE CONTRACTOR IS REQUIRED TO CHANGE PROPORTIONS TO MEET REQUIREMENTS.

- 30 CARBON MONOXIDE DETECTOR SHALL BE WIRED INTO 110V CIRCUIT.

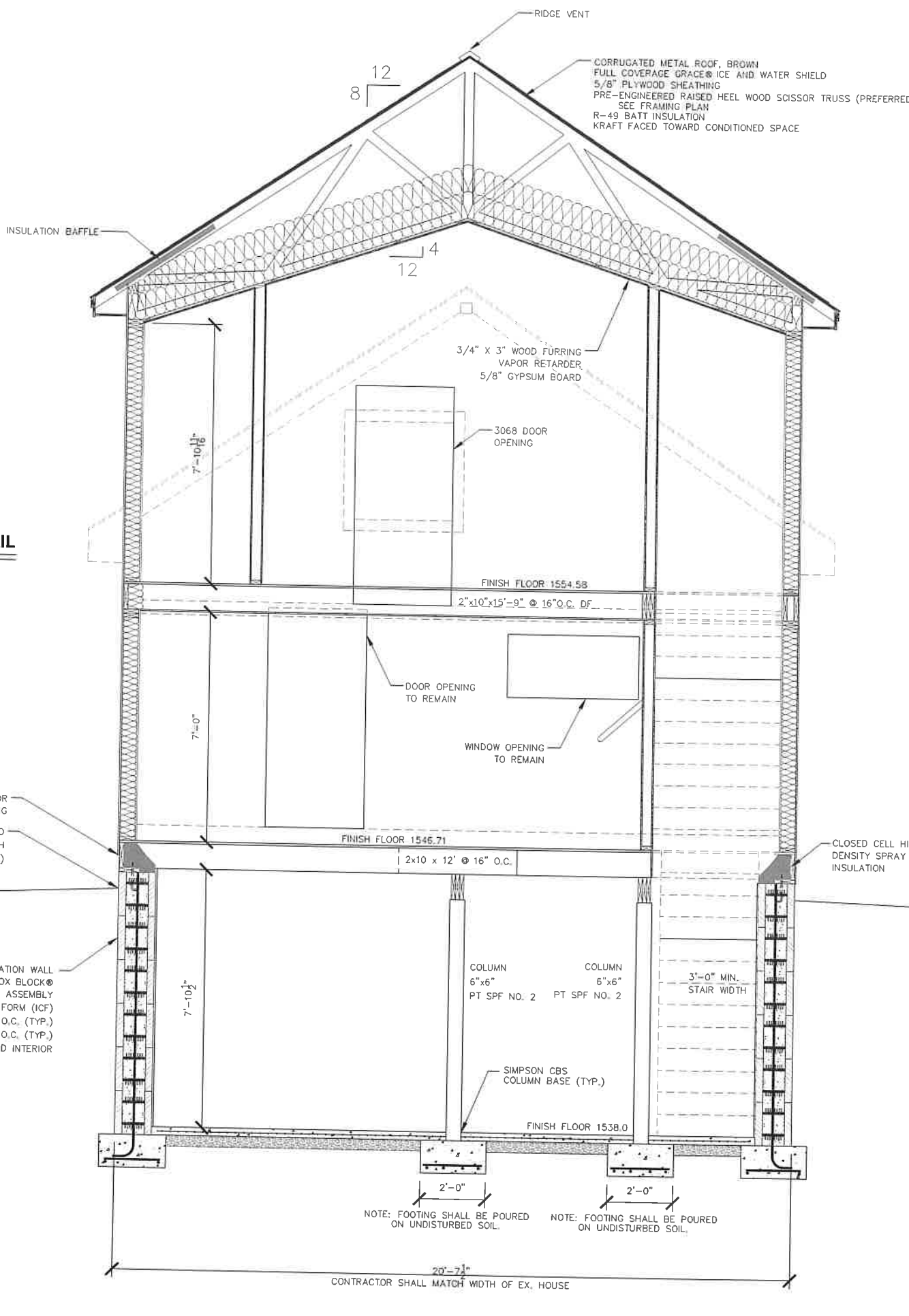
- 30 SMOKE DETECTOR SHALL BE WIRED INTO 110V CIRCUIT.

- 30 MECHANICAL VENTILATION REQUIRED.



FOX BLOCK® PERPENDICULAR JOIST DETAIL

SCALE: N.T.S.



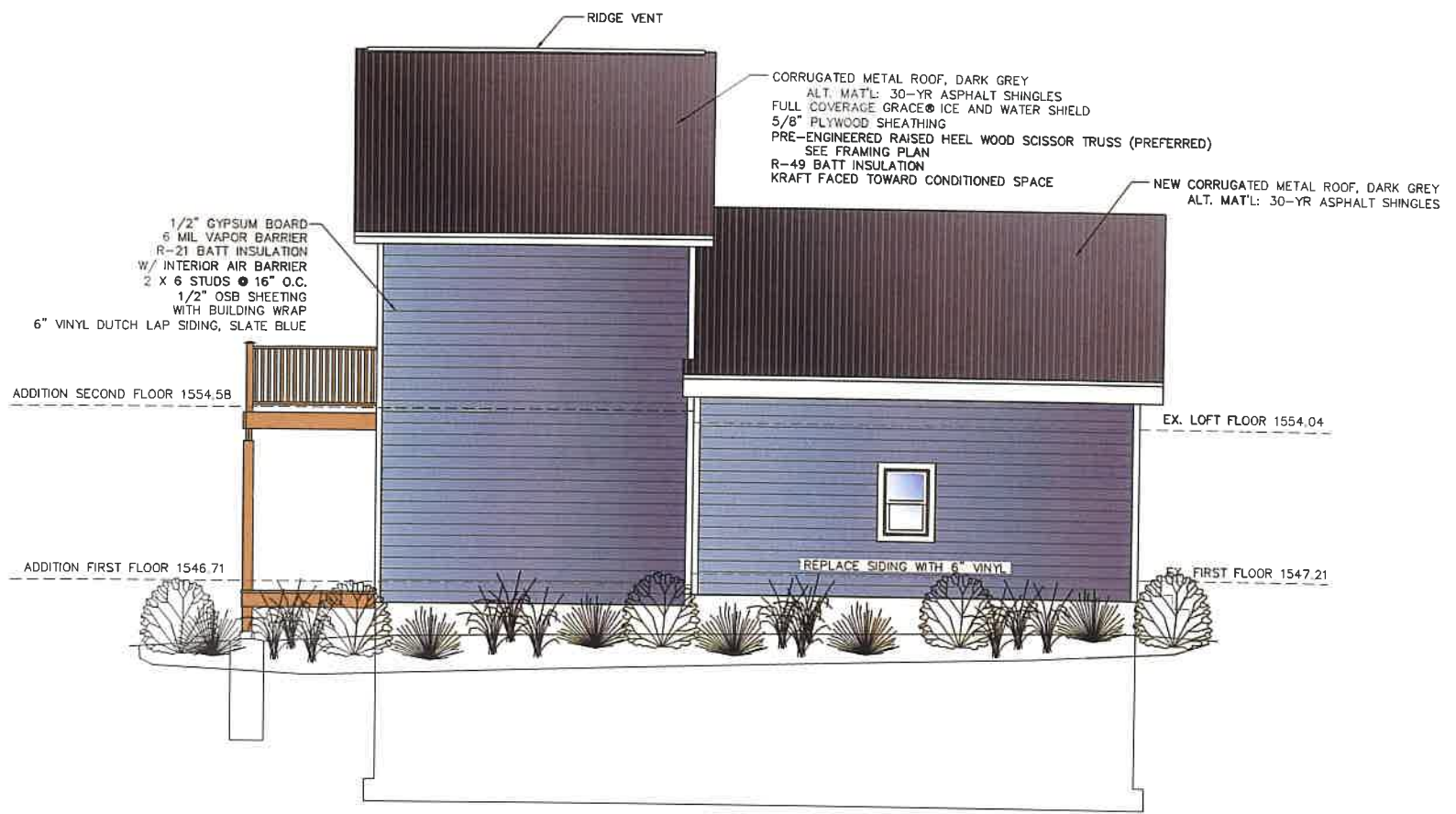
PROPOSED SECTION A

SCALE: 1/2"=1'-0"

ALP PROJECT FILES 2024 10 10 10:00 - MICHELLE WINTERS - NEW FOUNDATION CONSULTING ARCHITECTS 2024 10 10 10:00

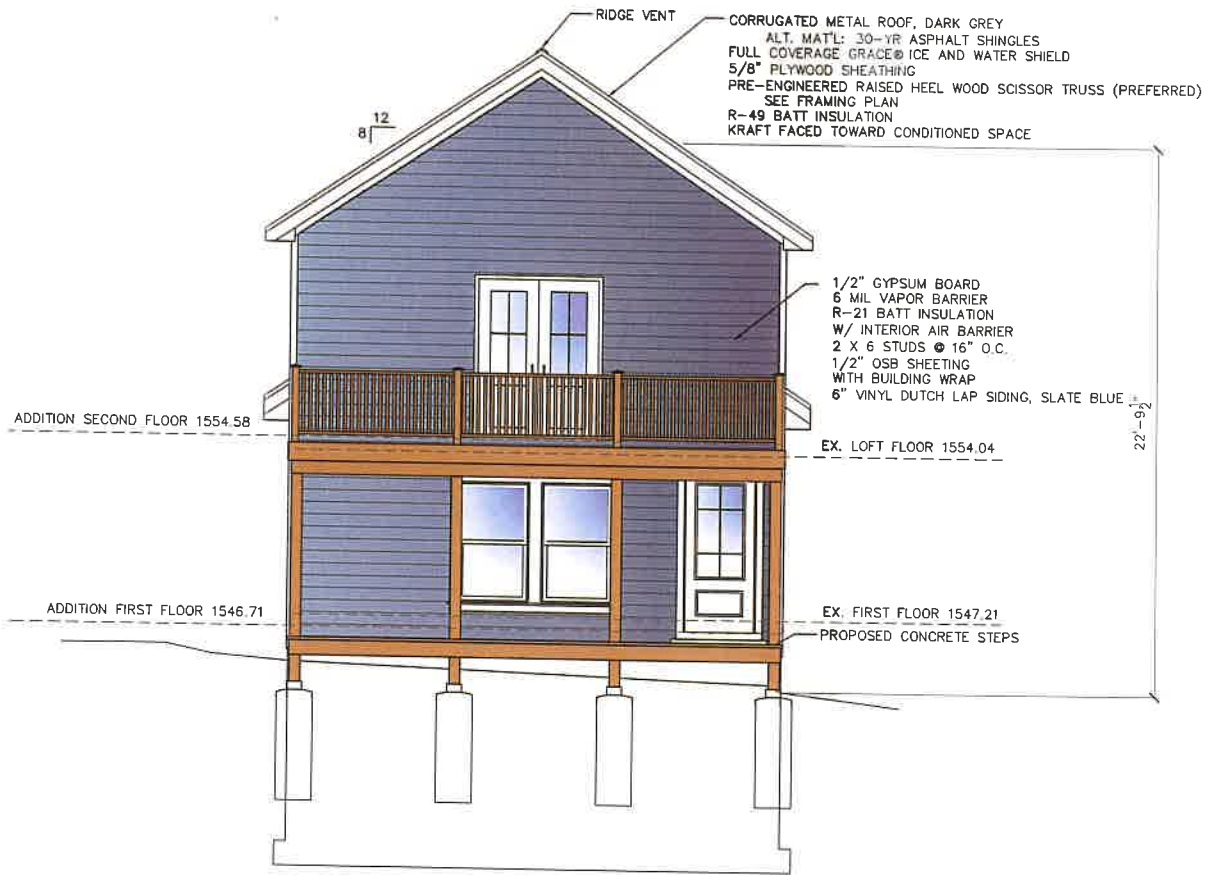
EXITTERS: 5/10/2023 11:25 AM

PLANS 1 BLESSED IS THE MANT THAT WALKETH NOT IN THE COUNSEL OF THE UNDOOBL... BUT HIS DELIGHT IS IN THE LAW OF THE LORD.



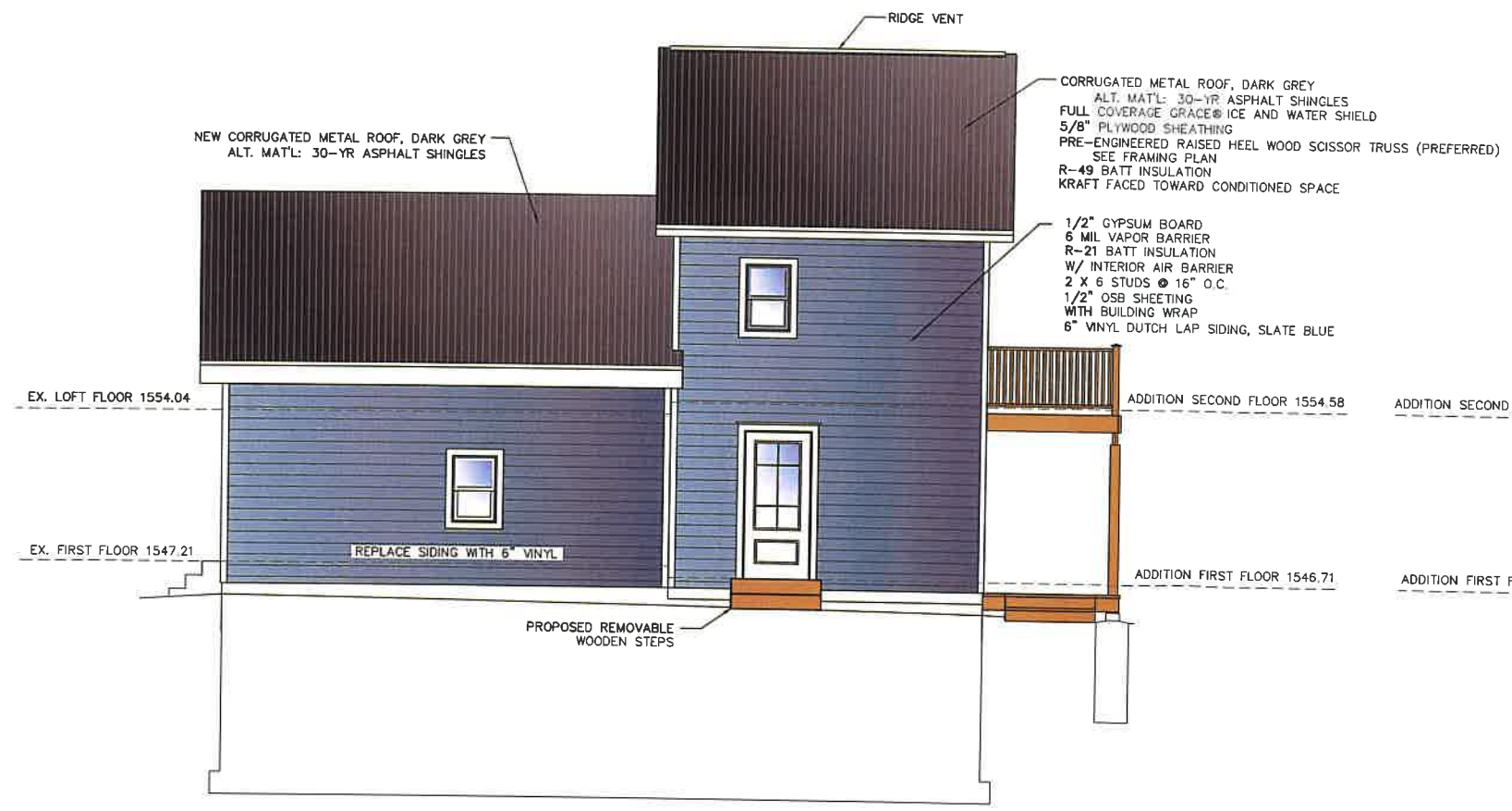
PROPOSED LEFT ELEVATION

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



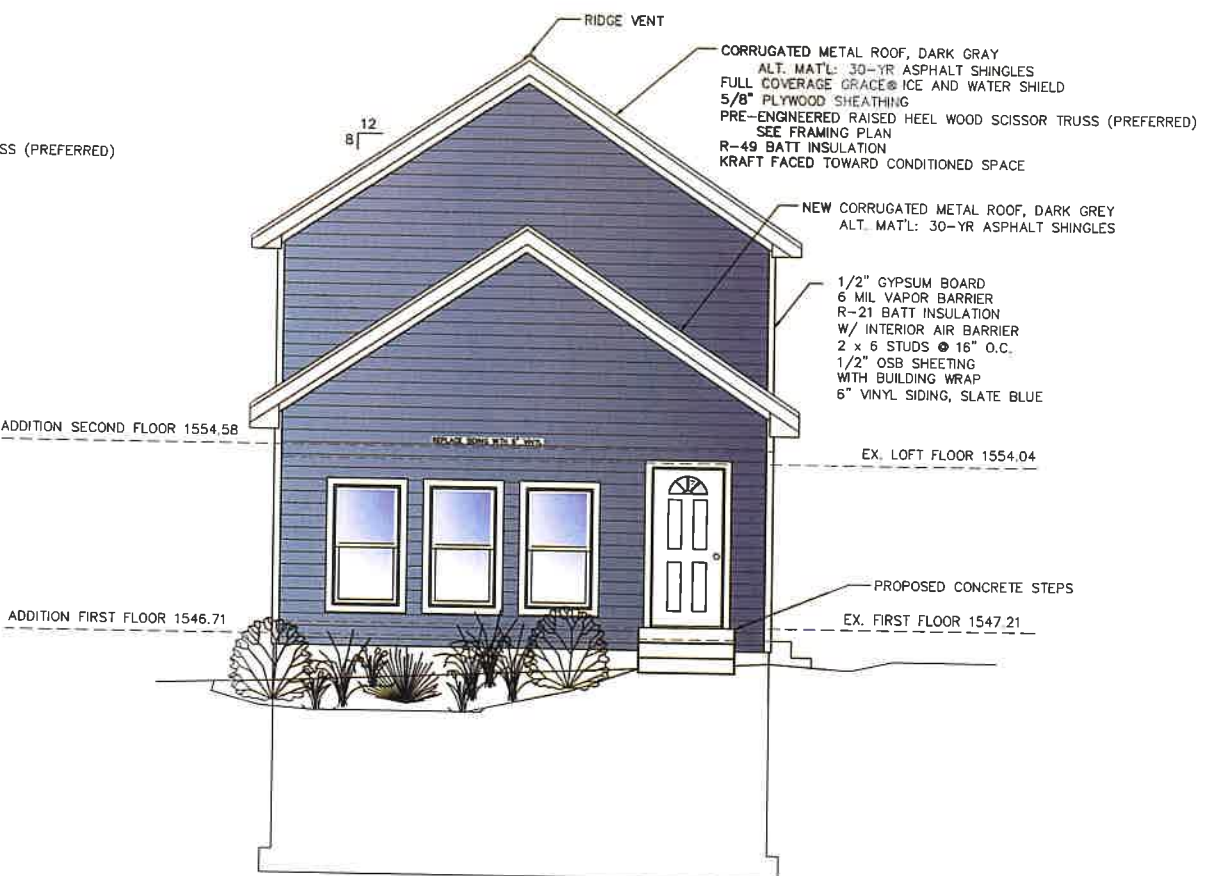
PROPOSED REAR ELEVATION

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



PROPOSED RIGHT ELEVATION

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



PROPOSED FRONT ELEVATION

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