

1 **TOWN OF SUNNAPEE**

2 **ZONING BOARD**

3 **JANUARY 5, 2023**

4 **Chairman Claus called the meeting to order at 6:34 PM.**

5 **MEMBERS PRESENT IN THE MEETING ROOM:** Jim Lyons, Chairman Jeff Claus, Jamie Silverstein, Pierre
6 Lessard, Michael Jewczyn, David Munn.

7 **MEMBERS PRESENT VIA ZOOM:** David Andrews.

8 **ALSO PRESENT IN THE MEETING ROOM:** Renee Theall, Assessing & Land Use Coordinator

9 **PRESENT VIA ZOOM:** Scott Hazelton – Highway Director.

10 **NEW CASES**

11 **CASE # 22-20 PARCEL ID: 0126-0010-0000 SEEKING APPROVAL OF A SPECIAL EXCEPTION FROM**
12 **ARTICLE III, SECTION 3.50(I) A PRE-EXISTING NONCONFORMING GARAGE STRUCTURE TO BE REPLACED**
13 **WITH A SMALLER FOOTPRINT BUT HIGHER GARAGE STRUCTURE. 158 GARNET HILL ROAD. RURAL**
14 **RESIDENTIAL ZONE. JAMES AND REBECCA LOREE.**

15 Chairman Claus reminded the members that they have the special exceptions in front of them and it is
16 just a matter of checking off the boxes, which should be a simple procedure.

17 Chriss Kessler from Gradient Landscape Architects and Ari Pollack, attorney at Gallagher, Callahan, and
18 Gartrell presented the case and the owner Rebecca Loree was present via ZOOM.

19 Mr. Kessler presented that the garage is within the site setback of the property and what are they
20 looking to do is change the footprint slightly, so reduction of the overall sq. ft. of the footprint and
21 increase the roof height by less than 10 feet as outlined in the special exception criteria. Building
22 footprint will remain in the side setback, totally within the area that contains the structure, but it is
23 going to be slightly taller and slightly less sq. ft. The structure itself sits about 4 feet off of the property
24 line of the southern abutter and in the proposed change to that, they are going to be 5.5-6 feet off of
25 the property line, so there is a slight increase of the distance within the property line and structure, with
26 an overall sq. ft. of couple of hundred sq. ft less of area that is located within the site setback, mostly
27 due to the proposed use which is allowing for the new garage structure to increase and have two floors,
28 instead of being a single storage shed. The primary use of the structure is going to remain a garage and
29 be used for storage, and potentially having some usable space above the storage office, but not having
30 living quarters. Some of the main criteria that they meet is that it is an existing non-conforming
31 structure that is under 24 feet tall, which is criteria number three. Criteria one is an existing garage and
32 the vertical expansion proposed is 7 feet 2 inches from lowest point to lowest point. Group changes are
33 within the height requirements of the ordinance. No abutter is going to be adversely affected and they
34 have received a letter from the abutter to the south Mr. Carrol, who is in favor, supportive of this
35 proposal. The structure itself is located outside of the 250-foot shoreline setback, so there is no state
36 permitting required. Because there is proposed water to be added to the structure, there is going to be
37 a coordination with the Septic and the Sewer Department, because it is on a town sewer, to make sure

38 that any pump chambers or requirements are within the town rules and regulations and they are
39 working with a licensed engineer to make sure that they are all up to code and created correctly.

40 Mr. Lyons asked how many residences are currently on the property.

41 Mr. Kessler answered that there are two residences, with full kitchens and living quarters.

42 Mr. Lyons asked if potentially there might be a third.

43 Mr. Kessler answered negative and said that the proposal is just to have a garage with water and sewer,
44 no kitchen and no living space.

45 Mr. Lessard asked when was the garage built.

46 Mr. Kessler answered that he does not have the exact date of when it was constructed, but said that the
47 1989 property record card had the garage as one of the description items.

48 Chairman Claus went into deliberative session. He said that it seems as there are some concerns about
49 whether the garage is preexisting non-conforming and that usually gets looked into when they come to
50 the zoning administrator.

51 Mr. Lessard said that it is not a concern, especially if the garage was there in 1989.

52 Mr. Jewczyn expressed some concerns that this seems like it is a direct march to making this another
53 dwelling, kind of like going under the radar for subdivision under five acres, having three dwellings or
54 three short-term rentals on a very condensed parcel on a residential area. He does not have a problem
55 of saying yes for the garage, but he has a problem with the plumbing and sewer, because they are
56 granting it with the property, not to the current owner. That way they are setting it up for a property
57 that has three residential dwellings which will become STR Mecca, which is contrary to the Zoning Board
58 working toward in the Master Plan. He has no problem granting permission for the garage, but not a
59 dwelling, because it is a change of use, and he thinks that technically this application should have gone
60 before the Planning Board for site plan review, because this is not really a garage, it is a garage
61 becoming a dwelling. He said that the garage currently does not have sewage.

62 Chairman Claus said that they see this a lot, but they can only respond to what is being presented to
63 them, and they are not being presented with a dwelling unit.

64 Ms. Silverstein replied that they need to accept the applicant at their word and the sewage is irrelevant.

65 Chairman Claus said that he knows it does not take much to convert and rather than looking at it as they
66 could have made it a dwelling unit, there is nothing stopping them on putting a structure there and
67 having what they have listed, studio and storage. They can have an office up there, bathroom, a sink or a
68 mini fridge, per ordinance they can do all that and not be violating anything.

69 Mr. Pollack asked the board to reopen the hearing, so he can make a comment, because this did not
70 come up during the hearing.

71 Ms. Silverstein replied that they cannot do that and are going to continue with the deliberation.

72 Mr. Jewczyn said that his impression and strong opinion is that they are building another dwelling unit.

Chairman Claus said that in his years in this, they see these similar projects and the concerns rise, but they can only respond to what it is in front of them. After that, if it becomes an enforcement issue or if it becomes an STR, the town will be implementing a Registration System. As a board they cannot speculate.

Ms. Silverstein said that they cannot suggest that the applicant is deceiving them and asked Mr. Jewczyn if he is suggesting that the use is anything other than a garage.

Mr. Jewczyn said that they have a long-term plan to make it a dwelling since in the application they have said that they have approached the town for sewer hookup. He suggested that the eventual use is going to be a STR.

Mr. Lessard said that when it gets to that they are going to something, ask permission to convert it to a dwelling unit or STR.

Ms. Theall read the dwelling unit definition in the ordinance as follow: one room or rooms connected together constituting a separate independent housekeeping establishment for owner occupancy, rental or lease, and physically separated from any other rooms or dwelling units, which may be in the same structure. For the purpose of this definition, an independent housekeeping establishment including the following minimum attributes: space devoted to kitchen facilities for the storage, preparation and consumption of food, including counters, cabinets, appliances and a sink for washing dishes, space for one or more bedrooms for sleeping and a bathroom with a tub and/or shower. A bar equipped with a bar-sink and an under the counter refrigerator shall not constitute kitchen facilities.

Mr. Lyons said that most of the houses that they look at for special exceptions in zoning districts like this have a single-family dwelling on them and that is one of the things that you rarely see nonconformity. As far as he knows, this house and property is unique. He does not know of any other property possibly around the lake in general that has two large houses on a same piece of property and he is very sensitive to Mr. Jewczyn's concern about the possibility of there being the third, and that has nothing to do with the present individuals before them and with the current property owners. The problem is that the special exception or the variance does not go with the owner, it goes with the property, and so this is essentially granted forever. It is not unusual for them where have variances to attach various caveats and he would feel a lot better about this, if they were to attach a requirement to this particular special exception. Something to the effect that under no circumstances shall this structure ever be used as a residence.

Chairman Claus agreed that they can put a condition like that in for a dwelling. They can only react to the criteria under this special exception and not about the speculation of what could possibly be done. He also said that the case cannot go to the Planning Board for site plan review they do not have a ground for that because the applicants are not asking for a variance for a dwelling unit.

Ms. Silverstein made a motion to approve Case # 22-20 Parcel ID: 0126-0010-0000 Seeking approval of a Special Exception from Article III, Section 3.50(i) a pre-existing nonconforming garage structure to be replaced with a smaller footprint but higher garage structure, no higher than 24.6 ft. that can only be used as a garage and not a dwelling. 158 Garnet Hill Road. Rural Residential Zone. James and Rebecca Loree.

Mr. Lyons seconded the motion.

113 **The motion was voted in favor unanimously.**

114 Chairman Claus announced the next case.

115 **CASE # 22-21 PARCEL ID: 0118-0059-0000 SEEKING APPROVAL OF A SPECIAL EXCEPTION FOR A**
116 **TOURIST HOME UNDER ARTICLE IV, 4.10 PERMITTED USES – ALL DISTRICTS. RURAL RESIDENTIAL**
117 **ZONE. 52 BURMA RD. JOHN P. MCMAHON & SUZANNE GRAVES MCMAHON.**

118 Chairman Claus noted that this is a rehearing so they are going to look at the case all over again.

119 John P. McMahon & Suzanne Graves McMahon presented the case.

120 Ms. Graves McMahon said that they have owned the house since 1994 and they have lived in there
121 summers and some winters since then. They are not full-time residents at the moment, but they plan to
122 be in the future. She went through the criteria and the first one was that the selected site is an
123 appropriate location for approved use. She said that in their original application they have said that
124 there are approximately 15-17 homes that are currently used for seasonal, weekly or less timeframes in
125 terms of rentals, and Mr. Jewczyn had asked them if they could provide the names of the people. They
126 have found a map that is used by the town that identifies from AirDNA, which identifies whole bunch of
127 different units that are used and their kind of usage. She handed members a copy of the list. She
128 mentioned that there are around a hundred homes on Perkins Pond Road and this would represent
129 around 15% of the homes there. There is currently a daycare business on North Shore Road, which was
130 approved by this Committee on 2020, so it is very clear that there are a lot of activities that are
131 happening on the pond itself.

132 Chairman Claus asked if that what is she showing to them are STR's.

133 Ms. Graves McMahon said that she does not even want to use the term STR, because she would really
134 like to separate the concept of what they are trying to do. She presented a check from 1997 as an
135 example that they were renting the property and said that the real estate agent who sold them the
136 house and then renting it for them would know what the current laws were back then. So, they did not
137 know by now that they were not being in compliance with the rules. Their intention is to make it right
138 with the town, different from the whole short-term rental piece.

139 Chairman Claus noted that their application is for a tourist home and those items on the list are not
140 tourist homes. Those are usages that are not allowed by the ordinance. He said that is difficult for the
141 board to take what she is presenting that the selected site is an appropriate location based on these
142 other not allowed uses and he does not know how well an argument that is.

143 Mr. McMahon replied that whether it is legal or not, it represents what the community is there.

144 Mr. Jewczyn asked if they are saying that if everybody is being inappropriate and against the regulations
145 of the town, it is ok for them to go ahead and do what they are doing.

146 The applicants said that they are just showing what the reality is at the moment. The dwelling is a single-
147 family home, a residence.

148 Ms. Silverstein asked if they could speak to the selected site as an appropriate location for what they are
149 now suggesting the use would be, converted to a tourist home.

150 Ms. Graves McMahon replied that she does not understand the question.

151 Ms. Silverstein said that in the ordinance the selected site is an appropriate location for the proposed
152 use. The only evidence that they are providing them is that other people are doing it illegally, therefore
153 it is ok for them to do it.

154 Ms. Graves McMahon replied that she is also proposing that they take a look at their residence; they
155 have 1/3 of an acre, 125 feet in front of the water, there is a plenty of room, a single-family home and
156 the residence is only used for people to reside there.

157 Mr. Jewczyn asked about their residence, if they live in another state as residents, where do they receive
158 their taxes. He added that they do not vote in the town and do not have any input as to what happens
159 to the town in its future. They live in another state and go there and visit for couple of months a year
160 and now they want to rent it to somebody else, but they are really not a resident to the town.

161 Ms. Graves McMahon replied that as she had mentioned, they do have their legal residence in
162 Massachusetts, they have owned this home as a residence, not as their legal residence but they have
163 lived there, mostly during the summer, 120 days.

164 Mr. Munn asked what the relevance of the residence.

165 Ms. Theall clarified that Ms. Graves McMahon had meant a residence as physical residence or property,
166 a dwelling unit.

167 Ms. Silverstein asked again why do they think that the site is appropriate as a tourist home.

168 Ms. Graves McMahon replied that it is a great place for people to come and visit. They do not rent to
169 party houses, they do not rent to people that have animals, motor boats and that is in their rent rules
170 and regulations. It is a great use of the property and they are renting it only for few weeks in the
171 summer, when they are not there. She continued with the second criteria and read that the adequate
172 and safe highway access is provided to the proposed site and there is adequate all street parking
173 provided for the proposed use. Burma Road is dirt road and it has been agreed by the town that they
174 the road will be maintained for safe passage of emergency vehicles. The have a minimum of three
175 parking spaces and they could probably fit six in there.

176 Ms. Silverstein asked for clarification on their last statement that last year they have rented only three
177 weeks out of the entire year.

178 Ms. Graves McMahon replied that they have rented approximately three weeks last year and the year
179 before that. Sometimes they rent less and sometimes more, but they have rented in the autumn and
180 summer.

181 Ms. Silverstein asked if they have rented less than three weeks for the last three years and if the road
182 was passable and the answer was affirmative.

183 Mr. McMahon said that the only time he has had difficulties on that road was once during the winter.

184 Chairman Claus explained that they are talking about this because that road has been classified as an
185 emergency lane. He read towards the bottom of the RSA that the declaration of this section may be

186 rescinded or disregarded at any time without notice and expressed concerns if the town decides to no
187 longer maintain that section as an emergency lane.

188 Scott Hazelton – Highway Director said that the emergency lanes were designated by the Board of
189 Selectmen and there is no intent by the Board at this point and down the road for them ever to rescind
190 that and he could tell them through the Director's position that they have actually discussed doing more
191 for those emergency lanes, so that it is more manageable for the town and they try to do a little
192 environmental prevention to keep some of the sediment out of Perkins Pond.

193 Ms. Graves McMahon continued with the third criteria and said that they are hooked up to the town
194 sewer.

195 Mr. Lessard asked to how many people they can rent out to maximum and the answer was to six people.

196 Ms. Graves McMahon said that she wants to focus more on the criteria four and five. She said that she
197 had done research in terms of making sure that they are clear about what is the intended use and is that
198 in keeping with the spirit of the Master Plan. The future usage of Master Plan map that was done in
199 2009 is very consistent with the Zoning Ordinance. The current Master Plan map identifies that Perkins
200 Pond is mostly residential. The Zoning Ordinance also defines bed & breakfast, tourist home, inn,
201 lodging, boarding as an owner-occupied single-family dwelling in which no more than ten rooms are
202 used to provide transient sleeping accommodations with meals served to guests only. The owner
203 occupancy is defined as the occupancy of a dwelling for more than 120 days during a calendar year by a
204 land owner who is a natural person. They are there 120 days during a calendar year.

205 Ms. Silverstein asked if they have calendars that they can provide to show the 120 days occupancy for
206 the last three years. She said that bed & breakfast, tourist home, inn, lodging, boarding as an owner-
207 occupied, but indicate that the owner is in occupancy during the time of rental.

208 Ms. Graves McMahon stated that she disagrees with that and they may well have a manager who is
209 there, they may not live there, they may have somebody that they are sending in order to manage the
210 property, so it does not necessarily say that they have to live there during that time, except for 120 days.

211 Mr. Andrews asked the applicants why is it not an acceptable solution for them to wait for STR rules and
212 regulations to become clear. He asked how are they planning to rent their house between now and
213 March.

214 Ms. Graves McMahon said that they do not know what is going to happen with the STR's and they are
215 trying to make things right for now and to the future and be in compliance. She said that they have
216 removed the house and is not available for rent from Airbnb and they have a long-term rental there
217 right now, until March.

218 Ms. Silverstein said that STR's are not permitted and they are not in compliance because they have
219 created an opportunity to basically have a STR under the guise of tourist home.

220 Ms. Graves McMahon said that when they have looked at it back in September and even before that
221 when they put in the application, in August, none of this conversation was in place. She had looked at
222 the ordinance and ended up saying that this seems to be what makes sense for them in order to be legal
223 and had applied.

224 Ms. Silverstein asked if she is suggesting that the difference between a STR and what they are proposing
225 to be a tourist home is that they are in residence, 120 days and the answer was affirmative.

226 Robin Saunders said that she lives near the applicants and Perkins Pond is clearly a rural residential area.
227 People have moved there because they like it to be quiet, they do not like the activity and the town only
228 allows transient housing under special exception. Special exceptions go with the property, so if it is
229 granted and then sold, it stays with the property. The applicant are residents of Massachusetts and in
230 order to maintain their residence there for 183 days and if she subtracts 365 out of 183 days there are
231 182 days. For long-term rentals in the winter take up either 90 or 120 days, which leaves them a total of
232 92 or 62 days to actually be here and be in a home. Ms. McMahon says that she rents for approximately
233 three weeks, which would be 21 days, and if she removes the 21 days from that, it comes up to either 71
234 or 41 days and that is for last two years. The other she said is that the McMahons have said that they
235 rent for only three weeks in the summer. Anybody can go on Airbnb, in 2019 they have 17 reviews of
236 single rental episodes, in 2021 6 reviews and 76 reviews since 2017. According to the map, they can be
237 up here for 120 days but they have to be in Massachusetts for 183, they have long-term rentals both last
238 year and this year and they say they rent for three weeks in the summertime. The other comment she
239 made was that Perkins Pond is an emergency lane and right now is a mudhole. They are very careful to
240 maintain as little traffic on that road as possible, because it gets damaged very quickly.

241 Ms. Graves McMahon replied that when they are in Massachusetts, they are renting for the winter up
242 here, so the winter rental does not go in those numbers. She said that 360 minus 120 is 240, so out of
243 those 240 days that they could rent, they could still be here for 120 days.

244 Ms. Silverstein said that there are 320 days for her to be owner-occupied.

245 Mr. Lessard asked Ms. Saunders if she would have any objection if one day the applicants decide to
246 become full-time residents in Sunapee and her answer was negative. He asked what is the difference
247 between them living there versus somebody else when they are not there.

248 Ms. Saunders replied that there is a huge difference because they do not treat the vacation spot the way
249 they treat their home. People go there to party and she does not have a problem with long-term rentals,
250 but short-term rental people are not stewards of the ecology of the lake. Two days ago, there were
251 people out on the ice on Perkins Pond digging holes and she had to call the Chief to come and check on
252 them, so it is very different.

253 Ms. Graves McMahon replied that Ms. Saunders had rented her home for one week, two years ago.

254 Mr. Lyons asked to go back to the numbers again and it turned out that they have enough days out of a
255 year to be owner-occupied for which the applicants agreed to provide proof.

256 Member of the audience commented that if you claim to be a tourist home, those days cannot overlap,
257 because you have to be there and has to be owner occupant. She added that there are no tourist homes
258 on Perkins Pond and to say that it is an appropriate location because there are other not allowed uses
259 there is not right. She paraphrased STR expert Cordell Johnson saying "Just because people are doing
260 something that is illegal and not allowed in the town, and the town does not enforce the law does not
261 make it legal. She said that the renters that are there now own a dog, but the board argued that what
262 are the applicants doing now is long-term rental. She asked the board if long-term rental is allowed in
263 rural residential area and the answer was affirmative. She added that Ms. Graves McMahon told the

264 board that she did not know about STR's not being allowed until September and is trying to do the right
265 thing, except that she was in the task force and attended the meetings early in the summer and had sad
266 on the meeting in May that she knew STR's are illegal, she has one and she will continue to operate it.
267 She commented that the road was in bad condition last spring and people were getting stuck and Mr.
268 Hazelton had to bring few trucks of gravel to dumped in there.

269 Ms. Graves McMahon reacted that she attended meetings in July and had put her application in
270 September and had said that on the meeting in September.

271 Chairman Claus stated that according to the definitions, they have to be there 120 days a year but not
272 there while renting.

273 Ms. Theall read the dwelling unit from the ordinance as follows: a dwelling unit, home, house can be
274 used for rental or lease.

275 Mr. Lyons asked if anyone has ever seen an ambulance or a fire truck on Burma Road and the answer
276 was positive for the ambulance but negative for the fire truck.

277 Loran McMahon (via ZOOM) said that she had seen a fire truck back up all the way on Burma Road to
278 the house that is located two houses down from theirs.

279 Mr. Hazelton added that by RSA they are required to either grade in or plow that road throughout entire
280 year and last year during the worst mud season that he had seen last ten years, they were contacted by
281 the Fire Department and had indicated that they have had difficulties going up the road with their fire
282 trucks, so they had gone there and put gravel on the road. He said that they are there constantly
283 maintaining that road and does not think that many more vehicles that can get up that road and get
284 stuck, unless it is them with their trucks, and they have not.

285 Mr. Lyons asked what would the effect of an increased traffic on Burma Road be, suppose the road
286 traffic would be doubled and asked if the increased traffic would make it more passable or less. He
287 asked about the fire truck that had to back up.

288 Mr. Hazelton replied that Burma Road was designed to handle two lanes of traffic, ranges anywhere
289 from 16-20 feet wide and then in some location even wider. They are able to pass with their vehicles on
290 the road when they are doing their daily operations, it is tight but people can get by, throughout the
291 whole season. He does not see it as an unsafe road for particular travel coming in and out of Perkins
292 Pond. He said that the fire truck did not have to back up, but had chosen to, due to the condition of the
293 road. He added that dead-end roads have to be maintained and kept open.

294 Chairman Claus went into deliberative session. He said that his original concern was the road but Mr.
295 Hazelton addressed that issue and everything he said satisfies his opinion for criteria number two.

296 Mr. Lyons said that the fire truck having to back up the road to respond to a fire emergency says it all
297 and if you allow more vehicles on that road, it is going to be more interesting for emergency vehicles to
298 navigate.

299 Mr. Lessard argued that it could be the case for any house and not specific to the applicant's property.
300 He argued as how it is different if they lived in the house versus of renting it.

301 Mr. Jewczyn added that someday in the future the town may simply not be able to afford to put \$80-
302 100.00 to a single road and may abandon it.

303 Mr. Lyons addressed the criteria of selected site as an appropriate location and argued that it is not an
304 appropriate location because of the increased volume of the vehicles on that road, which would make it
305 harder for emergency vehicles to respond.

306 Chairman Claus said that he struggles a little bit with Mr. Lyons argument that renting their house makes
307 the road conditions unsafe, because the number of vehicles is not increasing substantially.

308 Ms. Silverstein's concern was the connection of the definition of a tourist home to owner-occupied and
309 while the ordinance defines owner-occupied as 120 days, the applicants have not given them any
310 documents to show that they are in residence in Sunapee for 120 days. Subject to that, when she reads
311 the ordinance that bed & breakfast, inn, lodging and boarding are all in her mind commercial interests
312 where a natural person is in residence while the transient guest is on site, and that is the disconnect.
313 That relates to the criteria number five, which is the spirit of the ordinance.

314 Chairman Claus agreed as well.

315 Mr. Andrews said that he has a similar issue and it was not clear to him with the new regulations for this
316 year and the 120 days because they are refining the definition of a tourist home versus STR's and it
317 sounds like what are they doing is STR to him and it is not clear why, because they might be in
318 compliance once everything comes into place. There are others on Perkins Pond in similar situation and
319 they are not getting any requests to be tourist homes potentially to get around their STR issues. Maybe
320 what are they doing now is related to get around of what STR proposal might be.

321 Ms. Silverstein agreed and said that it might be related to the spirit of the ordinance and the intent of
322 the master plan, but they have to connect the statements of fact to the five criteria.

323 Mr. Lessard agreed that their definitions are conflicting, which is making all this difficult, but in general
324 this is a three-bedroom residence in a rural residential area. The fact that people who are staying there
325 own it for residential type of use, they need to differentiate own versus rent versus picture that people
326 have about Airbnb and party houses. They cannot legislate based on speculation of what their renters
327 might do just like they cannot make rules based on how the owners are going to behave. Whether they
328 are in their residence full-time or other people stay in there while they are not there, he does not see
329 that changing the residential nature of the neighborhood, the traffic on the street and he does not see
330 that as a detriment to the neighborhood.

331 Ms. Silverstein asked if they are removing tourist home in the draft of the warrant article and Chairman
332 Claus confirmed it.

333 Mr. Andrews said that if tourist home is getting removed than he thinks that this could wait until new
334 regulations come into place, because they are giving them some sort of benefit that many others might
335 do the same thing. He said he was struggling with criteria number five, the intent of the master plan

336 Chairman Claus said that there is timing involved that someone cannot skirt changing ordinance and
337 they are outside that window.

338 Ms. Silverstein brought the topic of site plan review back and said that if approved they could make it
339 contingent on a site plan review.

340 Mr. Lyons argued that no matter what they do, they cannot fix the road. His principal concern was
341 detrimental, hazardous and injurious to the neighborhood.

342 Chairman Claus did not agree on that and said that if anything that Mr. Lyons is saying would better fall
343 under criteria number two; that he is questioning the road, for a good reason, and it does not provide a
344 safe highway access.

345 Ms. Silverstein stated that the challenge for all of them is to connect the statement of fact to Section
346 4.15 Special Exception Criteria for Uses and the ordinance is not favorable to their concerns. The
347 definition of owner-occupied, tourist home; the town had said that the road is maintained. They all have
348 concerns, but she thinks that without the ability to connect that to the criteria under 4.15, legally...

349 The board had a discussion about the road and the maintenance of that road.

350 Chairman Claus said that they have two options, either to put a motion or if there is a concern about the
351 information to verify the 120 days, that would be a continuance.

352 The board had a discussion and decided to move forward with a motion and make the 120 owner-
353 occupied proof a condition.

354 **Ms. Silverstein made a motion to approve Case # 22-21 Parcel ID: 0118-0059-0000 Seeking approval of**
355 **a Special Exception for a Tourist Home under Article IV, 4.10 Permitted Uses – All Districts, based on**
356 **subject to a site plan review, documentation for the past three years of the 120 days related to the**
357 **owner-occupied definition and the last three years of rental records, showing how many room nights**
358 **or how many nights the resident was rented in their absence. Rural Residential Zone. 52 Burma Rd.**
359 **John P. McMahon & Suzanne Graves McMahon.**

360 **Mr. Munn seconded the motion.**

361 **The motion was voted in favor with four votes for and one vote against (Mr. Lyons).**

362 MISCELLANEOUS: Review Minutes from Previous Meeting(s).

363 There were no Minutes reviewed.

364 OTHER BUSINESS: Alternate Interview: Ann Bordeianu

365 Ms. Bordeianu said that she had spent a lot of time with various boards over past years and had
366 presented in front of this board this summer and had been thinking of applying as an alternate for this
367 board since then. She did have an obligation with the community task force, which she was leaving and
368 felt like she had the need to fulfill that obligation. She does a lot of research and reading and with her
369 profession in business development, the quality that she would bring to this board is that she is a good
370 listener, a great researcher. She has experience working with municipalities from her profession and
371 worked in healthcare and insurance her whole career. She mentioned that she works as a secretary at
372 Sunapee Harbor West Club, which is a boat association and they have 54 boat slips and the association
373 owns a very large parking lot which they have to maintain and also prepare financial reports.

374 Chairman Claus stated that the good about it is that she had seen complicated and challenging cases and
375 the research is very important. He said that he is excited to have a new board member because these
376 decisions are hard and he would like more voices at the table.

377 Ms. Silverstein said that she and Chairman Claus had a privilege of speaking to her during her application
378 processing and what was standing out as she was presenting her case was that she was very clear in
379 connecting her application to the ordinance.

380 Mr. Jewczyn asked what is her frustration index and her answer was that she is pretty easy-going and
381 working with clients throughout her career had taught her to see all sides of the situation and try to
382 understand what the issue is about and where they are coming from and she thinks that coming in with
383 e pre-conceived ideas and pre-conceived decisions or notions helps her with her frustration. He asked if
384 her involvement economically in town is going to hamper in any way rendering a decision. Ms.
385 Bordeianu said that she could recuse herself if anything lie that comes up.

386 Robin Saunders read a letter of support to appoint Ms. Bordeianu as an outstanding addition to the
387 board as highly qualified alternate member, ready to serve to the community and a valuable asset.

388 **Ms. Silverstein made a motion to accept Ann Bordeianu's application as a Zoning Board alternate**
389 **member for three-year term.**

390 **Mr. Munn seconded the motion.**

391 **The motion was voted in favor unanimously.**

392 The board instructed Ms. Bordeianu that she will need to take an oath and then attends the meetings as
393 a member, but cannot vote, unless she is sitting in for a full-member and gets voted in. If full members
394 cannot make it to a meeting, they will notify her previously.

395 **Ms. Silverstein made a motion to adjourn the meeting at 9:26PM. Mr. Munn seconded the motion.**
396 **The motion was passed unanimously.**

397 Respectfully submitted

398 Rajmonda Selimi

**TOWN OF SUNAPEE
ZONING BOARD OF ADJUSTMENT
A PUBLIC MEETING WILL BE HELD
THURSDAY, JANUARY 5TH, 2023, AT 6:30 PM,
AT THE SUNAPEE TOWN MEETING ROOM
ON THE FOLLOWING CASE(S):**

Join Zoom Meeting

<https://us06web.zoom.us/j/83218752029>

Meeting ID: 832 1875 2029

NEW CASES

Case # 22-20

Parcel ID: 0126-0010-0000

Seeking approval of a Special Exception from Article III, Section 3.50(i) a pre-existing non-conforming garage structure to be replaced with a smaller footprint but higher garage structure.

158 Garnet Hill Road

Rural Residential Zone

James and Rebecca Loree

Case # 22-21

Parcel ID: 0118-0059-0000

Seeking approval of a Special Exception for a Tourist Home under Article IV, 4.10 Permitted Uses – All Districts.

Rural Residential Zone

52 Burma Rd

John P. McMahon & Suzanne Graves McMahon

MISCELLANEOUS:

Review Minutes from Previous Meeting(s).

OTHER BUSINESS:

Alternate Interview: Ann Bordeianu

NOTE:

In the event the meeting is cancelled, the agenda will be continued to the next scheduled Zoning Board meeting.

12-1-16
Check Received #1249 \$150
Payment #1248 \$31.40

Town of Sunapee

23 Edgemont Rd., Sunapee NH

Phone (603) 763-3194 / Website www.town.sunapee.nh.us

Email zoning@town.sunapee.nh.us

CASE# 22-20

Zoning Board of Adjustment (ZBA) Special Exception

Questions? Please contact the Land Use & Assessing Coordinator or the Planning & Zoning Director. All dates and deadlines are published on the ZBA calendar.

1. Landowner(s) Name(s): James and Rebecca Loree
2. Parcel ID: 000126-000010-000000 3. Zoning District: Rural Residential
4. Project Location (Street & #): 158 Garnet Hill Road
5. Mailing Address: 188 Garden Street, Farmington, CT 06032
6. Phone Number: (860) 983-9509
7. Email: rebecca.loree@gmail.com, jim.loree@outlook.com

☒ **ABUTTERS LIST:** You must prepare a list of all abutting property owners and attach it to your application. If you have any difficulty, consult the Town Office, but the accuracy of the list is your responsibility. You can download an abutters list by using the Tax Maps/GIS on the Town's website (under Assessing Department).

☒ **FEES:** ☒ Application Fee: \$ 150.00 * Make check payable to Town of Sunapee.
☒ Abutter Notification Fee: \$ 31.40 * per abutter. Make payable to US Post Office.

* NOTE: Rates and fees are subject to change. For the most current rate, please check with the Town Office.

☒ **ATTACHMENTS:** To assist the Board, please attach sketches, photos, surveys, plot plans, pictures, construction plans, or whatever may help explain the proposed use. Include copies of any prior Zoning or Planning decisions concerning the property. If you have something in writing stating that your proposed project does not meet zoning, please attach that to this application; it may be a letter, email or denied permit. A professional survey by a licensed surveyor is strongly recommended for variances related to setback requirements. For properties located in the Shoreline Overlay District, a professional survey is required. Supplemental materials for the Board must be submitted no later than five (5) days before the scheduled hearing, however, adequate plans and exhibits must accompany the application. This includes, but is not limited to: lot dimensions, dimensions of proposed and existing structures, identification of abutting properties and roads, locations of water bodies, wetlands, septic systems, etc.

Applications will not be considered complete unless all the questions are answered, the fees are paid, and an Abutters Mailing List is attached.

GENERAL DESCRIPTION: This is a place to give a general summary of the proposed project as an introduction and overview for the public hearing. For example, where is the property located? Describe the property. Give area, frontage, side and rear lines, slopes, natural features, etc. What do you propose to do? Why does your proposal require a Special Exception from the Board of Adjustment?

The Applicant is seeking a Special Exception to replace a pre-existing, non-conforming garage structure on the property at 158 Garnet Hill Road (Tax Map 126, Lot 10) with a garage structure that has a smaller footprint, but is higher than the existing structure. See the attached narrative for more information on this proposal.

Attach additional sheets of paper as necessary.

EXPLAIN HOW THE PROPOSAL MEETS THE SPECIAL EXCETION CRITERIA AS SPECIFIED IN ARTICLE III, SECTION 3.50(i) OF THE ZONING ORDINANCE (list all criteria from the Ordinance)

See attached narrative for responses the Special Exception Criteria in Section 3.50(i) & 3.55 of the Zoning Ordinance.

Criteria 1: _____

Criteria 2: _____

Criteria 3: _____

Criteria 4: _____

Criteria 5: _____

Criteria 6: _____

Criteria 7: _____

Criteria 8: _____

SIGNATURE: I understand that the public hearing will be held at the scheduled date and time unless a request is made by me for a new hearing. Any rehearing will require a new public notice and notification to abutters, the cost of which will be borne by the applicant. Further, I hereby give permission to the ZBA members and zoning officials to visit the subject property prior to the public hearing. To the best of my knowledge, the above is true and correct.

Therese M. Alexander
Landowner(s) Signature(s)

12.1.22
Date

SPECIAL EXCEPTION APPLICATION
Loree Residence at 158 Garnet Hill Road, Sunapee, NH
(Tax Map 126, Lot 10)

Project Description & Responses to Special Exception Criteria

The proposal is to replace a pre-existing, non-conforming garage structure on the property at 158 Garnet Hill Road (Tax Map 126, Lot 10) with a garage structure that has a smaller footprint, but is higher than the existing structure.

The subject property is a 2.03-acre parcel in the Rural Residential District with approximately 200 feet of shoreline frontage on Lake Sunapee. Existing structures on the property include two (detached) single family dwellings, a boat house, dock, and a one-story garage. There is also a tennis court on the parcel.

The existing 1,140 sq. ft. garage, which is located partially in the Town's 25' side building setback, is a legally non-conforming structure. Although this parcel is adjacent to Lake Sunapee, the garage structure is located outside of the Town's Water Resources Overlay District, which extends 250' from the normal high water-line of the Lake. The height of the existing garage, as measured from the ground level to the highest point of the structure, is 15'-4" at the front (north-facing elevation) and 17'-4" at the rear (south-facing elevation).

The Applicant proposes to replace the existing one-story garage with a new two-story garage that will be 24'-6" at its highest point. The new garage will be built in the same location as the existing structure; however, it will have a smaller footprint. The footprint of the proposed structure will be 920 sq. ft. The second story of the proposed garage will be finished space; however, it will not be used as a dwelling unit.

In accordance with Article III, Section 3.50(i), the Applicant is seeking a Special Exception to replace the existing, non-conforming garage with a new garage of a greater height. Article III, Section 3.50(i) of the Zoning Ordinance states that:

"The ZBA may allow a pre-existing non-conforming structure to undergo vertical expansion or be replaced with a higher structure provided that:

- 1) (Repealed 3/12/2019)*
- 2) The existing structure is a house (living space only), garage, or commercial building;*
- 3) The existing structure is less than 24' in height;*
- 4) The vertical expansion will be no more than 10' higher than the pre-existing structure;*
- 5) Any roof changes are within the height requirements set forth in this Ordinance;*
- 6) In the judgment of the ZBA, no abutter will be adversely affected by the enlargement (loss of view will not be considered an adverse impact);*
- 7) All state and local permits are acquired to insure compliance with Article VII of the Ordinance;*
- 8) Such enlargement or replacement, in the judgement of the ZBA, is consistent with the intent of the Ordinance."*

Included below is a description of how the proposal meets the special exception criteria specified in Article III, Sections 3.50(i) and 3.55 of the Zoning Ordinance.

- **Section 3.50(i)(2) “The existing structure is a house (living space only), garage, or commercial building;”**

The proposal is to replace an existing detached garage.

- **Section 3.50(i)(3) “The existing structure is less than 24’ in height”**

The height of the existing garage is less than 24’. As measured from the ground level to the highest point of the structure, the front (north-facing elevation) of the existing garage is 15’-4” high and the rear (south-facing elevation) is 17’-4” high.

- **Section 3.50(i)(4) “The vertical expansion will be no more than 10’ higher than the pre-existing structure;”**

The proposed garage will be no more than 10’ higher than the existing structure. At its highest point, the proposed garage will be 24’-6”, which is 9’-2” higher than the front of the existing garage and 7’-2” higher than the rear of the existing garage.

- **Section 3.50(i)(5) “Any roof changes are within the height requirements set forth in this Ordinance;”**

The maximum structure height permitted in the Rural Residential District is 40’ (see Section 3.10 of the Sunapee Zoning Ordinance). The proposed garage will be 24’-6” at its highest point and will be in compliance with the height requirements of the Zoning Ordinance.

- **Section 3.50(i)(6) “In the judgment of the ZBA, no abutter will be adversely affected by the enlargement (loss of view will not be considered an adverse impact);”**

The proposal to replace the existing garage with a higher structure will not adversely affect any abutting properties. The proposed garage will be built within the same building footprint as the existing garage structure, which is currently 1,140 sq. ft. and is partially in the 25’ side building setback. However, the footprint of the proposed garage will be 920 sq. ft, which is smaller than the existing garage.

The existing garage is situated near the property line shared with the parcel to the south at 154 Garnet Hill Road (Tax Map 126, Lot 11). However, the existing garage is over 100 feet from the nearest building/structure on the abutting parcel, and is screened by existing vegetation from the abutting residence.

- **Section 3.50(i)(7) “All state and local permits are acquired to insure compliance with Article VII of the Ordinance;”**

If this Special Exception is granted, the Applicant will obtain approval from the Sunapee Water and Sewer Commission for the proposed garage in accordance with Section 7.10(3) of the Sunapee Zoning Ordinance, and will include a Town-approved sewer plan as part of its applications for Land Disturbance and Certificate of Zoning Compliance.

Although the proposed garage will not be used for the purpose of residential dwelling, it will have plumbing on the first and second stories. The parcel is currently served by municipal sewer and there is a private well on site. The Applicant is working with a licensed septic designer/engineer and will coordinate with the Sunapee Water and Sewer Department to insure that the structure will be designed in compliance with the local and state requirements for sewer and water.

As noted earlier, the existing garage structure is located greater than 250' from the reference line of Lake Sunapee. Since this structure is outside the jurisdiction of the NH Shoreland Water Quality Protection Act, a Shoreland Permit from the NH Department of Environmental Services will not be required.

- **Section 3.50(i)(8) "Such enlargement or replacement, in the judgement of the ZBA, is consistent with the intent of the Ordinance."**

The proposed garage is in keeping with the intent of the Sunapee Zoning Ordinance and the purpose of the Rural Residential District, which is characterized by low-density residential housing and home-based businesses (See Section 2.30 of the Zoning Ordinance). The use is a permitted accessory use in the Rural Residential District, as the garage is associated with and subordinate to the primary residential use. In addition, the proposal conforms with the criteria in Section 3.50(i) of the Zoning Ordinance (outlined above) for the replacement of a pre-existing, non-conforming structure with a higher structure.

- **Section 3.55(1) "The granting of the Special Exception, in the judgement of the ZBA, is necessary to fairly utilize the lot..."**

The Applicant is seeking to replace the existing garage structure to improve its functionality. The current structure has four bays with doors that open manually either by swinging out or sliding horizontally. The height of the existing structure limits opportunity for storage. Granting the Special Exception will allow the Applicant to rebuild the existing garage structure in a manner that suits the needs of a modern garage space, and limits site disturbance by building within the footprint of the existing developed area. The proposal will also reduce the area of the structure located within the 25' side building setback by 150 sq. ft.

- **Section 3.55(2) "The granting of the Special Exception, in the judgement of the ZBA, is consistent with the intent of the Ordinance and Master Plan."**

As noted in the above response to Section 3.50(i)(8) of the Zoning Ordinance, granting the Special Exception is in keeping with the intent of the purpose of the Rural Residential District in Section 2.30; the criteria outlined in Section 3.50(i) for the replacement of a pre-existing, non-conforming structure with a higher structure; and with Section 6.12 of the Zoning Ordinance, which permits the replacement of a pre-existing, non-conforming structure with a new structure that increases the non-conformity by Special Exception.

The proposal is also consistent with the goals and objectives of the Sunapee Master Plan related to housing, which "encourage renovation to existing housing stock where feasible" (See Section VII "Housing Section" of the Master Plan).

GRADIENT

LANDSCAPE ARCHITECTS

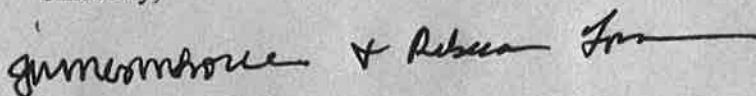
P.O. Box 311 | New London | NH | 03257

21 November 2022

To Whom It May Concern:

This letter authorizes Greg Grigsby and Christopher Kessler of Gradient, PLLC to act as agents on my behalf. This authorization includes applying for any permits required and/or representing my interests for work on my property located at 158 Garnet Hill Road in Sunapee, NH (Tax Map 126, Lot 10).

Sincerely,

A handwritten signature in cursive script, appearing to read "James & Rebecca Loree", followed by a horizontal line.

James & Rebecca Loree
188 Garden Street
Farmington, CT 06032



0 foot Abutters List Report

Tri Town, NH

November 16, 2022

Subject Property:

Parcel Number: Sun-0126-0010-0000
CAMA Number: Sun-0126-0010-0000
Property Address: 158 GARNET HILL RD

Mailing Address: LOREE, JAMES & REBECCA K C
188 GARDEN ST ✓
FARMINGTON, CT 06032

Abutters:

Parcel Number: Sun-0122-0029-0000
CAMA Number: Sun-0122-0029-0000
Property Address: 164 GARNET HILL RD

Mailing Address: WARD, SCOBIE D.
7 MANOR PARKWAY ✓
SALEM, NH 03079

Parcel Number: Sun-0126-0009-0000
CAMA Number: Sun-0126-0009-0000
Property Address: GARNET HILL RD

Mailing Address: STONE END OWNER, LLC
125 HIGH ST, #2111 ✓
BOSTON, MA 02110

Parcel Number: Sun-0126-0011-0000
CAMA Number: Sun-0126-0011-0000
Property Address: 154 GARNET HILL RD

Mailing Address: CARROLL, JAMES R.
37 BEEHCROFT ROAD ✓
NEWTON, MA 02458



www.cai-tech.com

11/16/2022

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Page 1 of 1

ABUTTER LIST

158 GARNET HILL RD (0126-0010-0000) SPECIAL EXCEPTION APPLICATION

PARCEL ID:	STREET ADDRESS:	OWNER NAME:	OWNER MAILING ADDRESS:	PROPERTY OWNER/APPLICANT
0126-0010-0000	158 GARNET HILL RD	JAMES & REBECCA K.C. LOREE	188 GARDEN ST, FARMINGTON, CT 06032	PROPERTY OWNER/APPLICANT
0126-0011-0000	154 GARNET HILL RD	JAMES R. CARROLL	37 BEECHCROFT ROAD, NEWTON, MA 02458	ABUTTER
0126-0009-0000	GARNET HILL RD	STONE END OWNER, LLC	125 HIGH ST, #2111, BOSTON, MA 02110	ABUTTER
0122-0029-0000	164 GARNET HILL RD	SCOBIE D. WARD	7 MANOR PARKWAY, SALEM, NH 03079	ABUTTER
N/A	N/A	GRADIENT PLLC	P.O. Box 311, NEW LONDON, NH 03257	OWNER AGENT



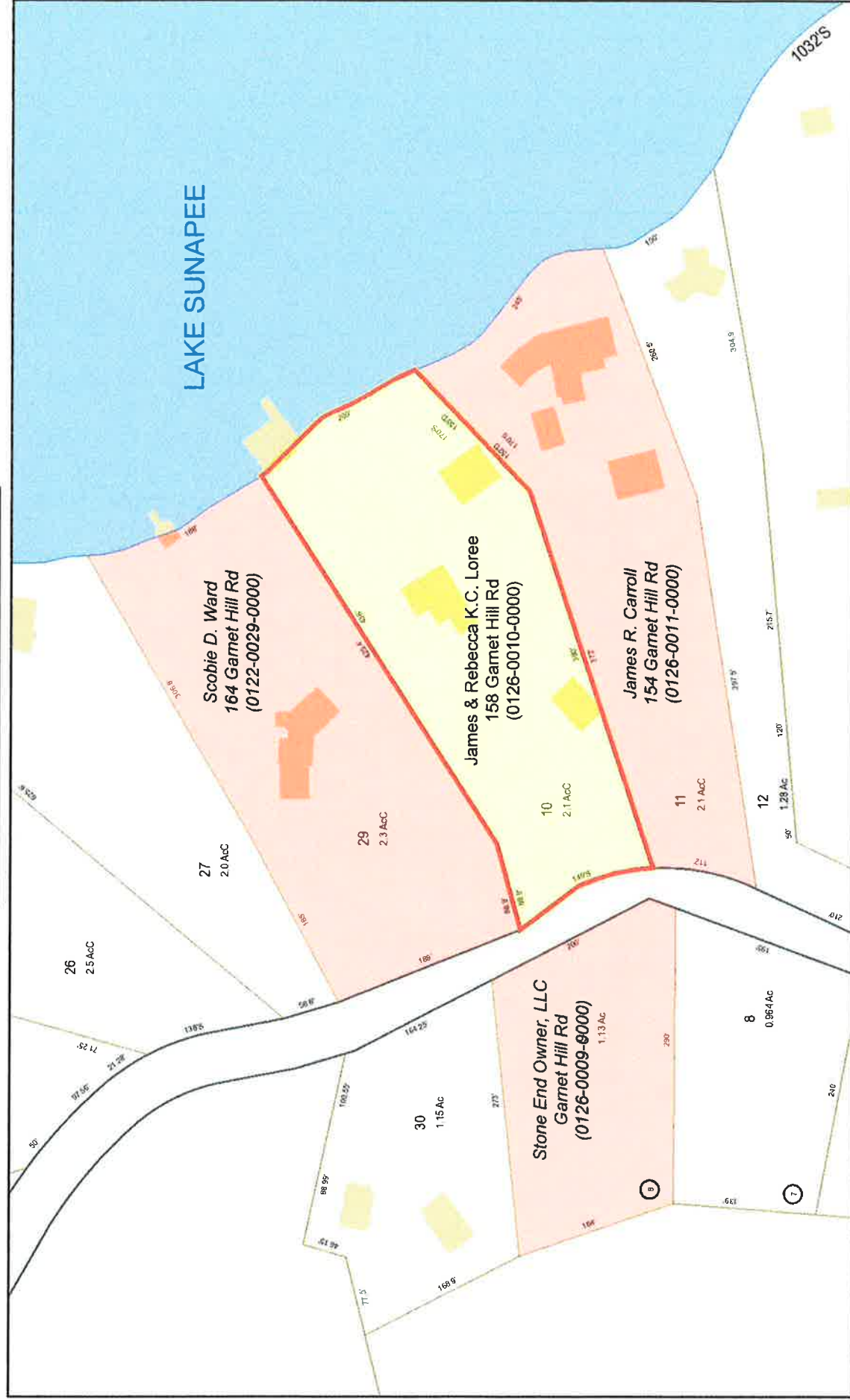
Abutter Map

Special Exception Application for 158 Garnet Hill Rd

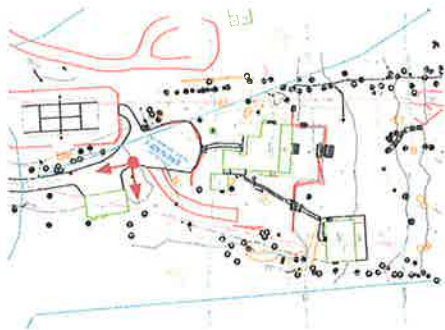
November 16, 2022



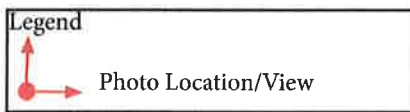
www.cai-tech.com



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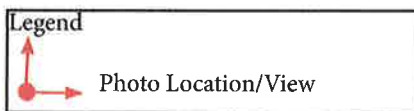
Locus Plan
Not To Scale



Existing Garage Structure (Photo Taken Facing West/Southwest)



Locus Plan
Not To Scale



Existing Garage Structure (Photo Taken Facing South)

James and Rebecca Loree

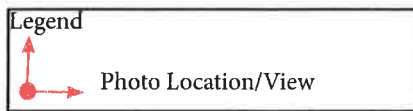
158 Garnet Hill Rd., Sunapee, NH 03782 (Tax Map 126, Lot 10)

Existing Condition Photos for Special Exception Application

Photos taken on November 10, 2021



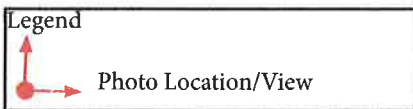
Locus Plan
Not To Scale



Existing Garage Structure & Primary Residence (Photo Taken Facing East)



Locus Plan
Not To Scale



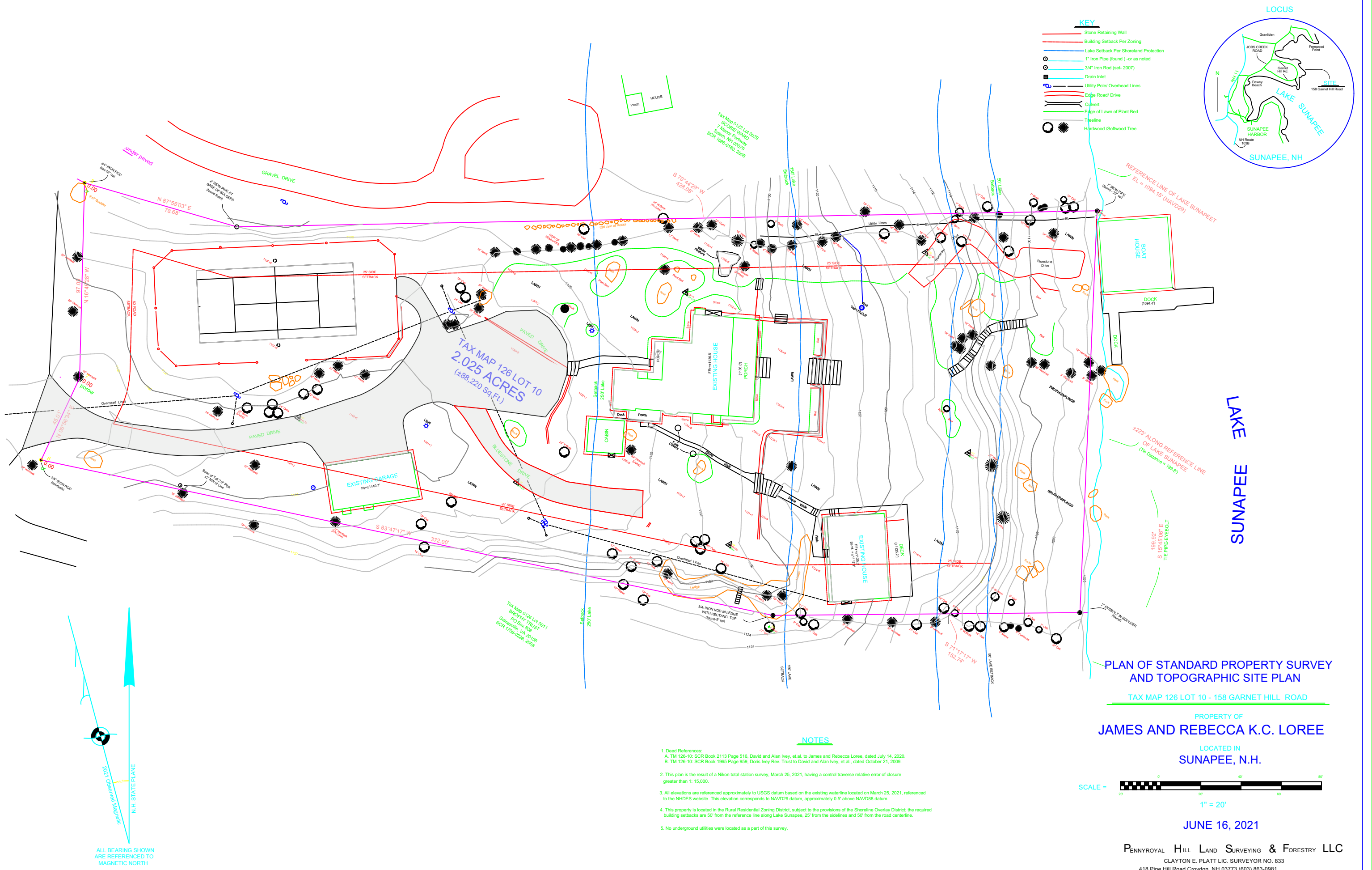
Existing Garage Structure (Photo Taken Facing South)

James and Rebecca Loree

158 Garnet Hill Rd., Sunapee, NH 03782 (Tax Map 126, Lot 10)

Existing Condition Photos for Special Exception Application

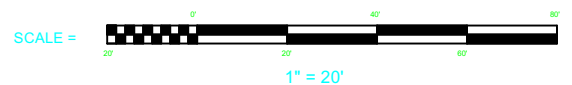
Photos taken on November 10, 2021



PLAN OF STANDARD PROPERTY SURVEY
AND TOPOGRAPHIC SITE PLAN

TAX MAP 126 LOT 10 - 158 GARNET HILL ROAD

PROPERTY OF
JAMES AND REBECCA K.C. LOREE
LOCATED IN
SUNAPEE, N.H.



JUNE 16, 2021

PENNYROYAL HILL LAND SURVEYING & FORESTRY LLC
CLAYTON E. PLATT LIC. SURVEYOR NO. 833
418 Pine Hill Road Croydon, NH 03773 (603) 863-0981

NOTES

- Deed References:
A. TM 126-10; SCR Book 2113 Page 516; David and Alan Ivey, et al. to James and Rebecca Loree, dated July 14, 2020.
B. TM 126-10; SCR Book 1965 Page 959; Doris Ivey Rev. Trust to David and Alan Ivey, et al., dated October 21, 2009.
- This plan is the result of a Nikon total station survey, March 25, 2021, having a control traverse relative error of closure greater than 1: 15,000.
- All elevations are referenced approximately to USGS datum based on the existing waterline located on March 25, 2021, referenced to the NHDES website. This elevation corresponds to NAVD29 datum, approximately 0.5' above NAVD88 datum.
- This property is located in the Rural Residential Zoning District, subject to the provisions of the Shoreline Overlay District; the required building setbacks are 50' from the reference line along Lake Sunapee, 25' from the sidelines and 50' from the road centerline.
- No underground utilities were located as a part of this survey.

Legend:

Existing House

Proposed Building

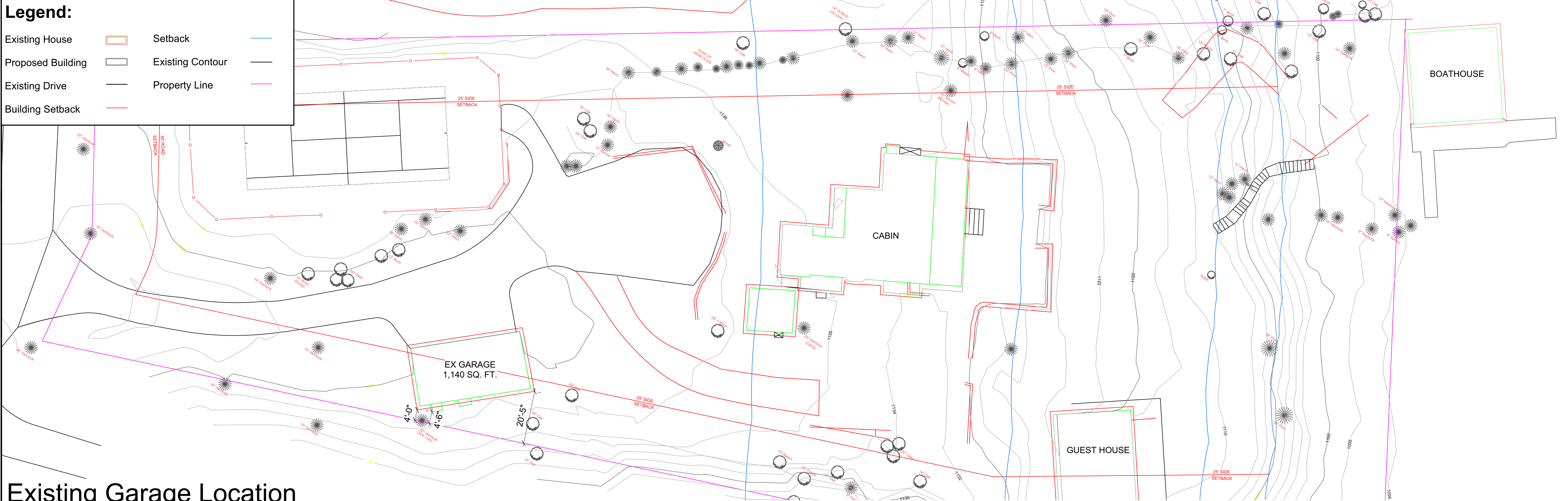
Existing Drive

Building Setback

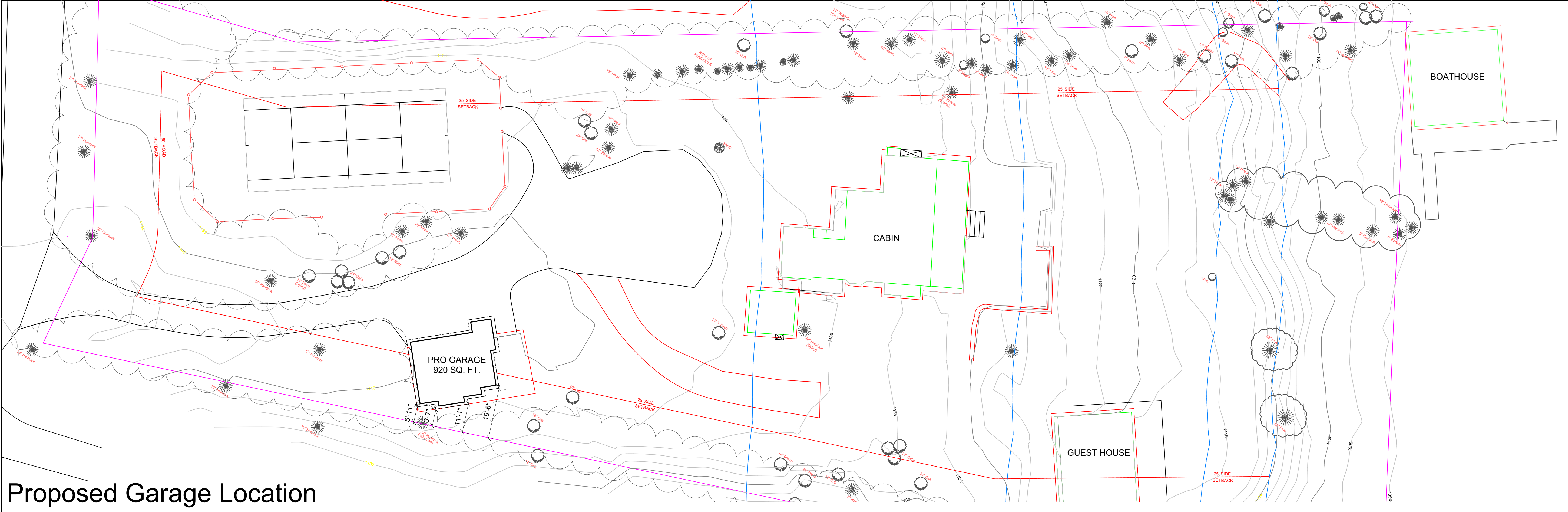
Setback

Existing Contour

Property Line



Existing Garage Location



Proposed Garage Location

L-900

Project Manager
Chris Kessler

Prepared by
CGK

Date
20 Nov. 22

Revised

Scale
1" = 20'-0"

The Log Cabin at Twin Pines

Existing and Proposed Garage

Project

Title

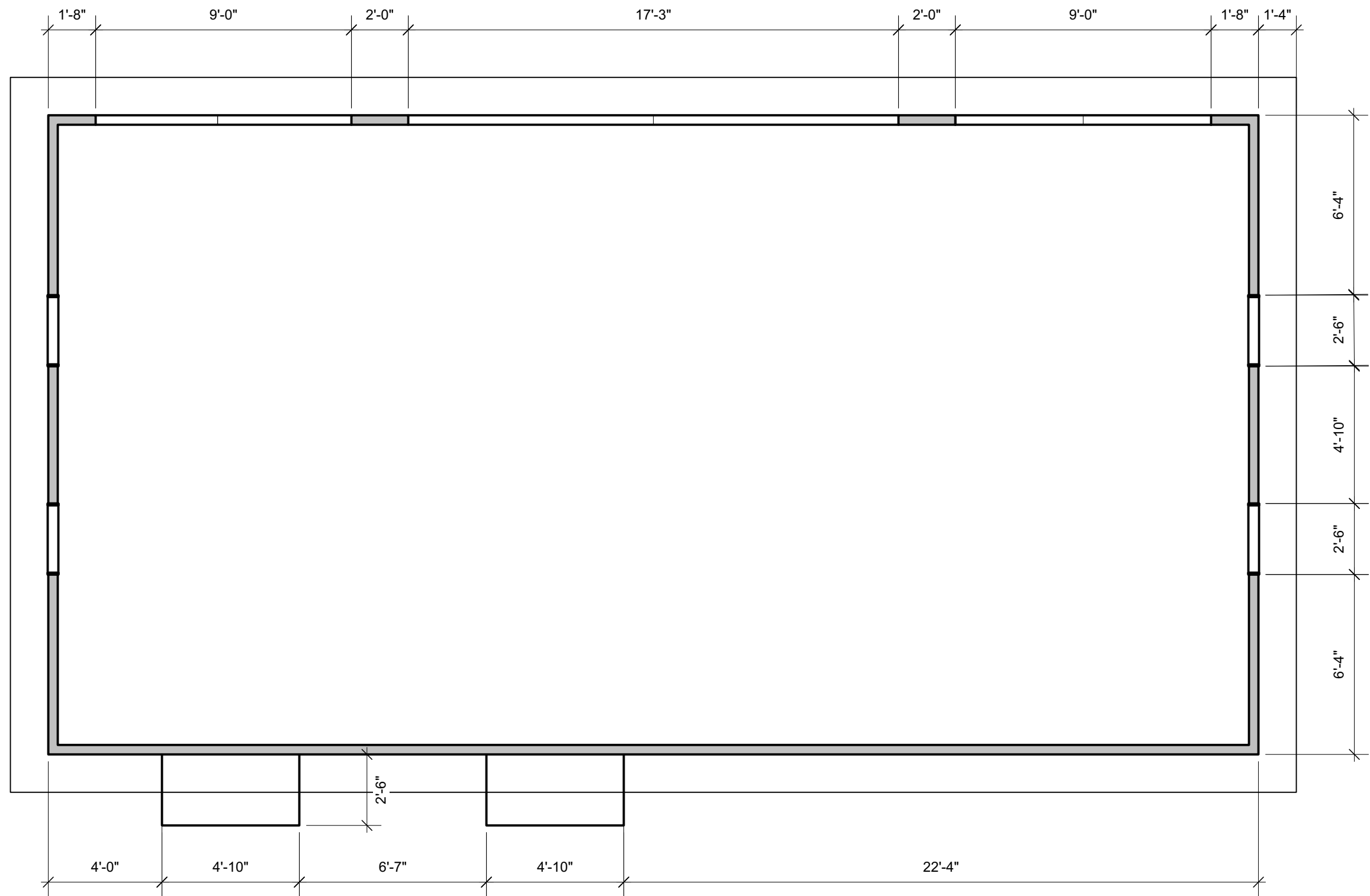
Scale

GRADIENT

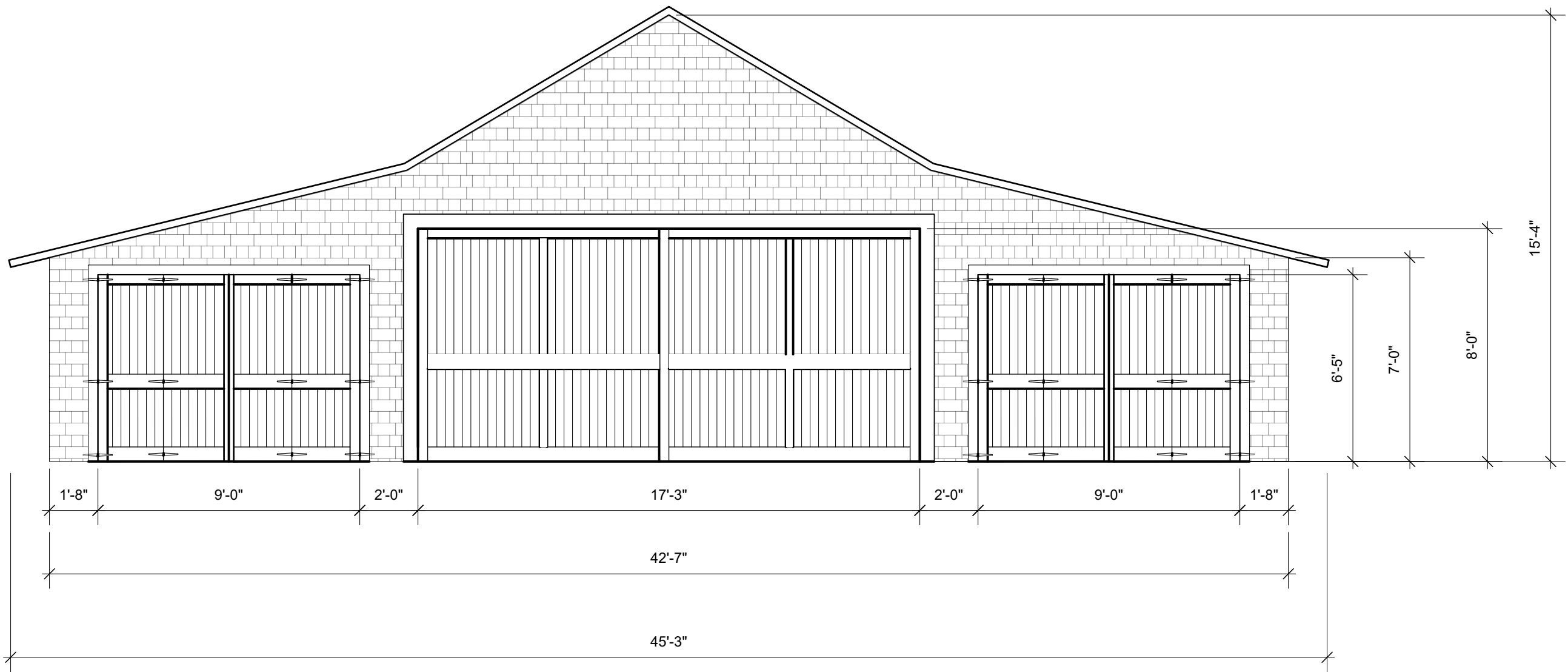
LANDSCAPE ARCHITECTS

P.O. Box 311 | New London | NH | 03257

Loree Property
158 Garnet Hill Road
Sunapee, NH 03782



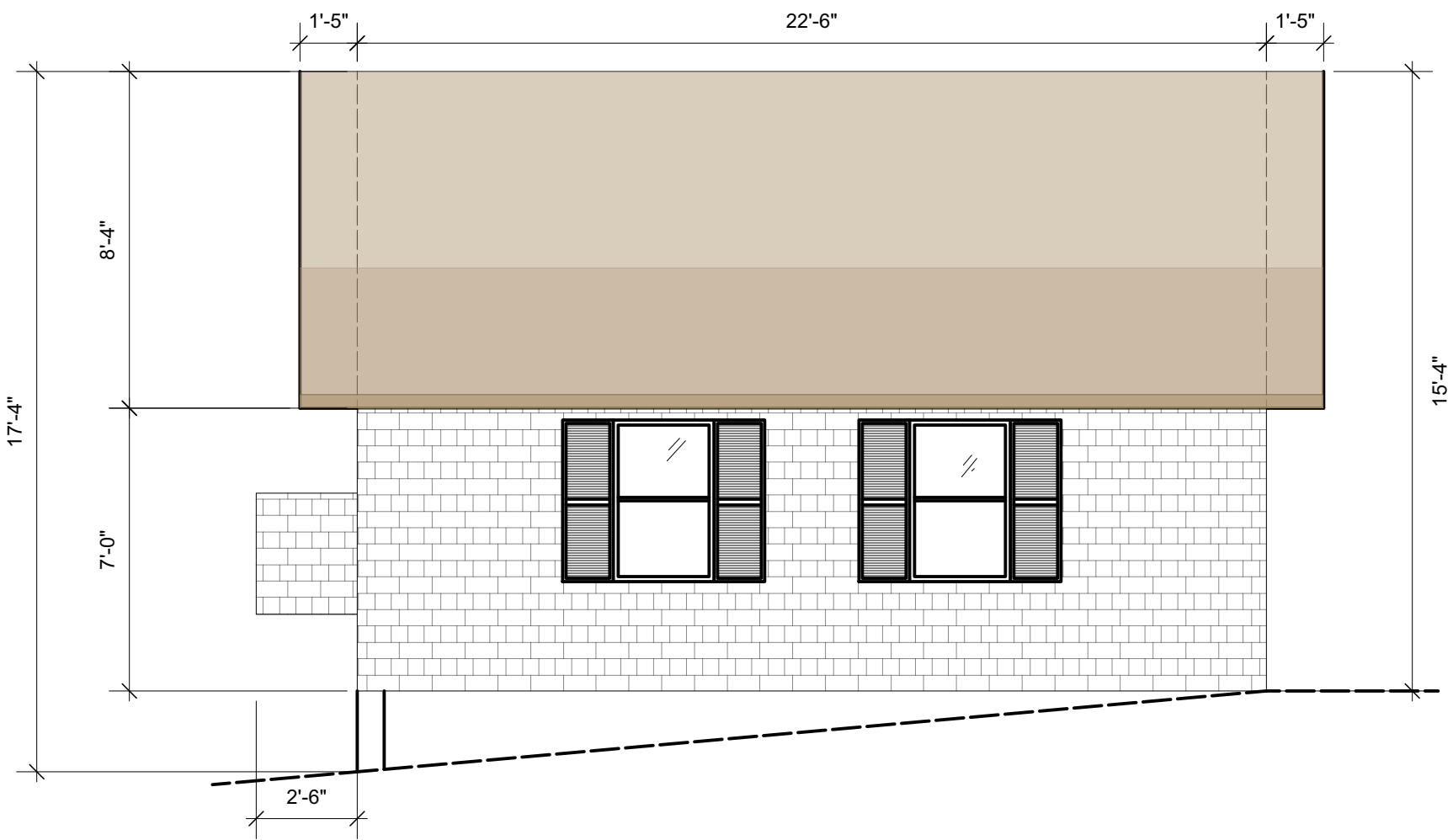
PLAN VIEW



NORTH ELEVATION

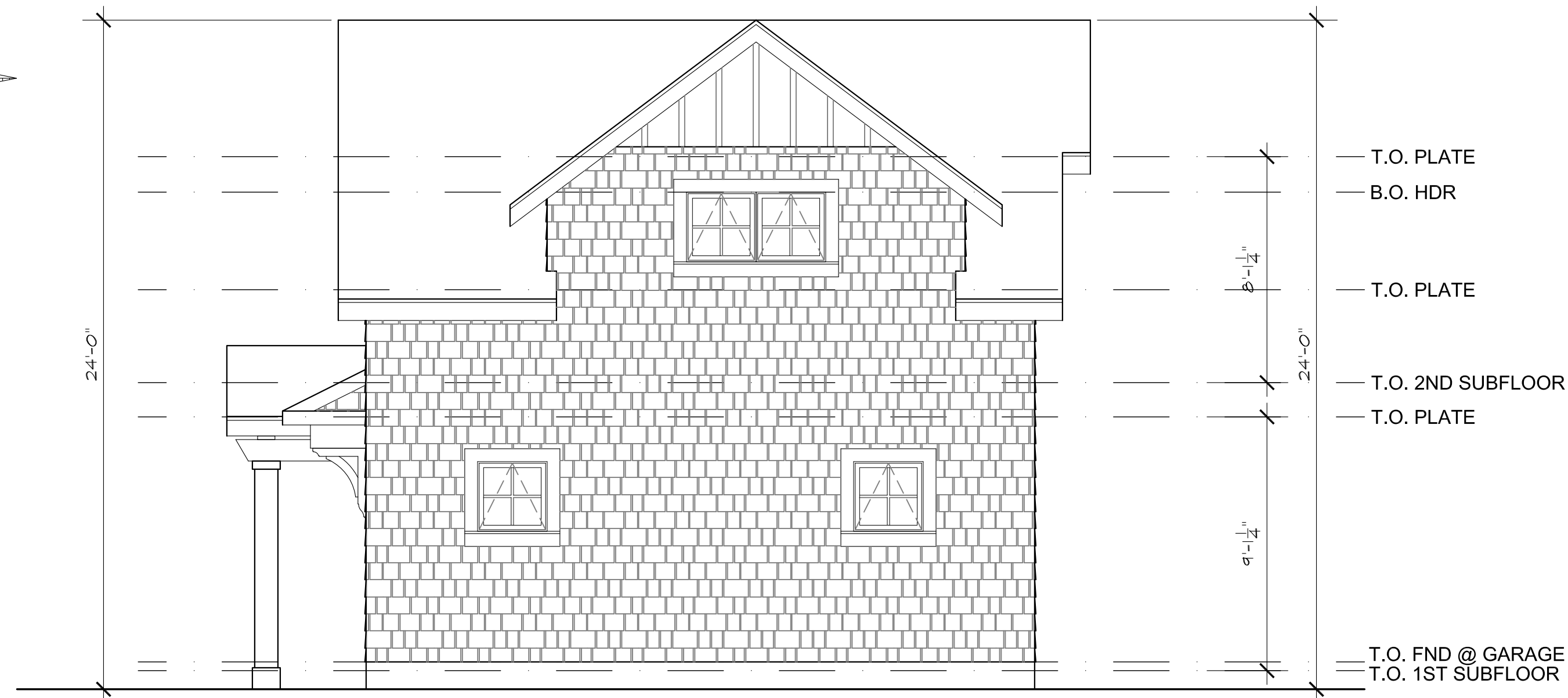
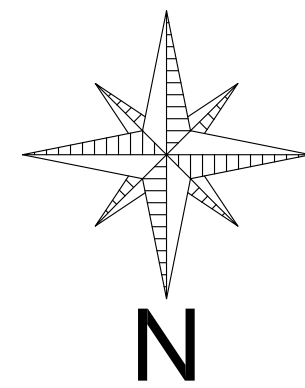


EXISTING GARAGE PHOTO

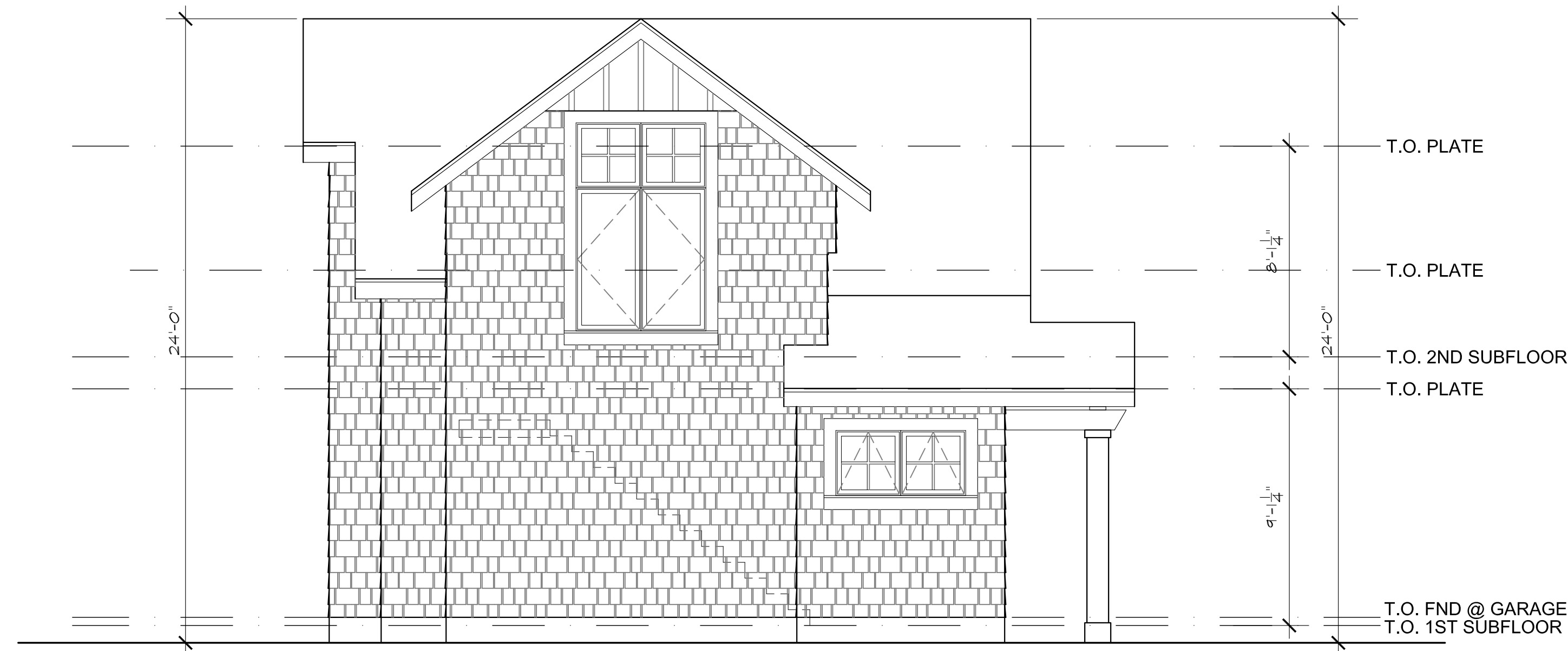


EAST ELEVATION

L-800		Project Manager Chris Kessler		Project The Log Cabin at Twin Pines	
Prepared by CGK		Title Existing Garage Elevations		L A N D S C A P E A R C H I T E C T S	
Date 15 March '22		Scale 1" = 20'		P.O. Box 311 New London NH 03257	
Revised		Loree Property 158 Garnet Hill Road Sunapee, NH 03782		G R A D I E N T	



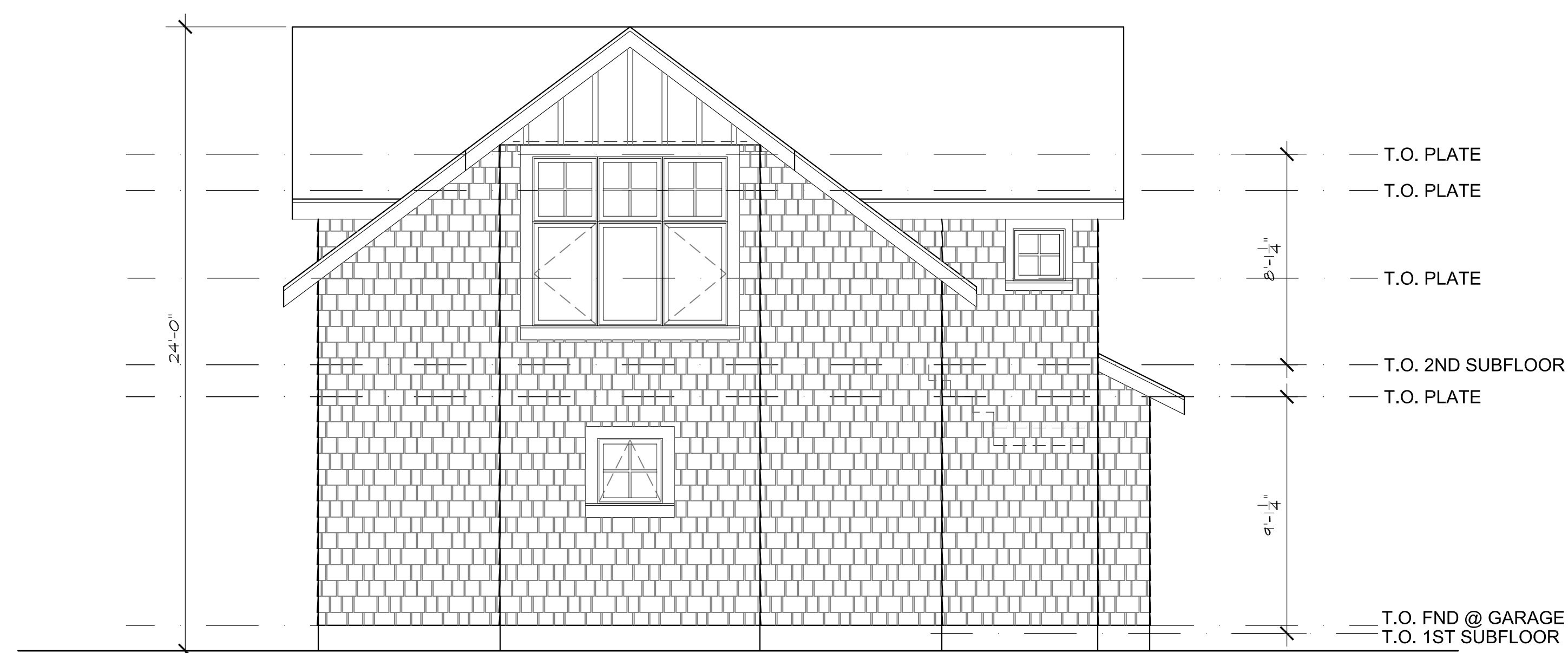
PROPOSED WEST ELEVATION
SCALE 1/4"=1'-0"



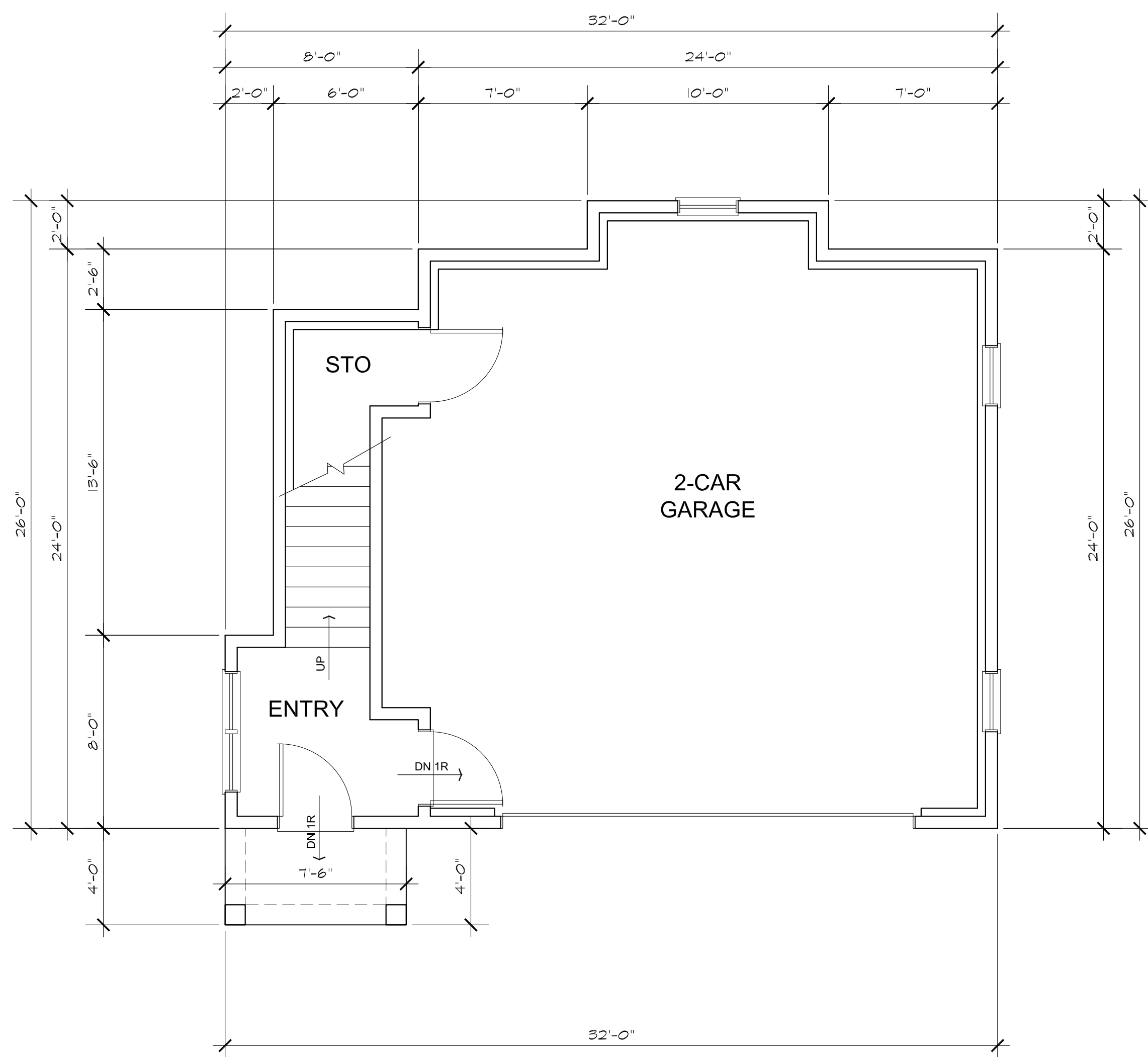
PROPOSED EAST ELEVATION
SCALE 1/4"=1'-0"



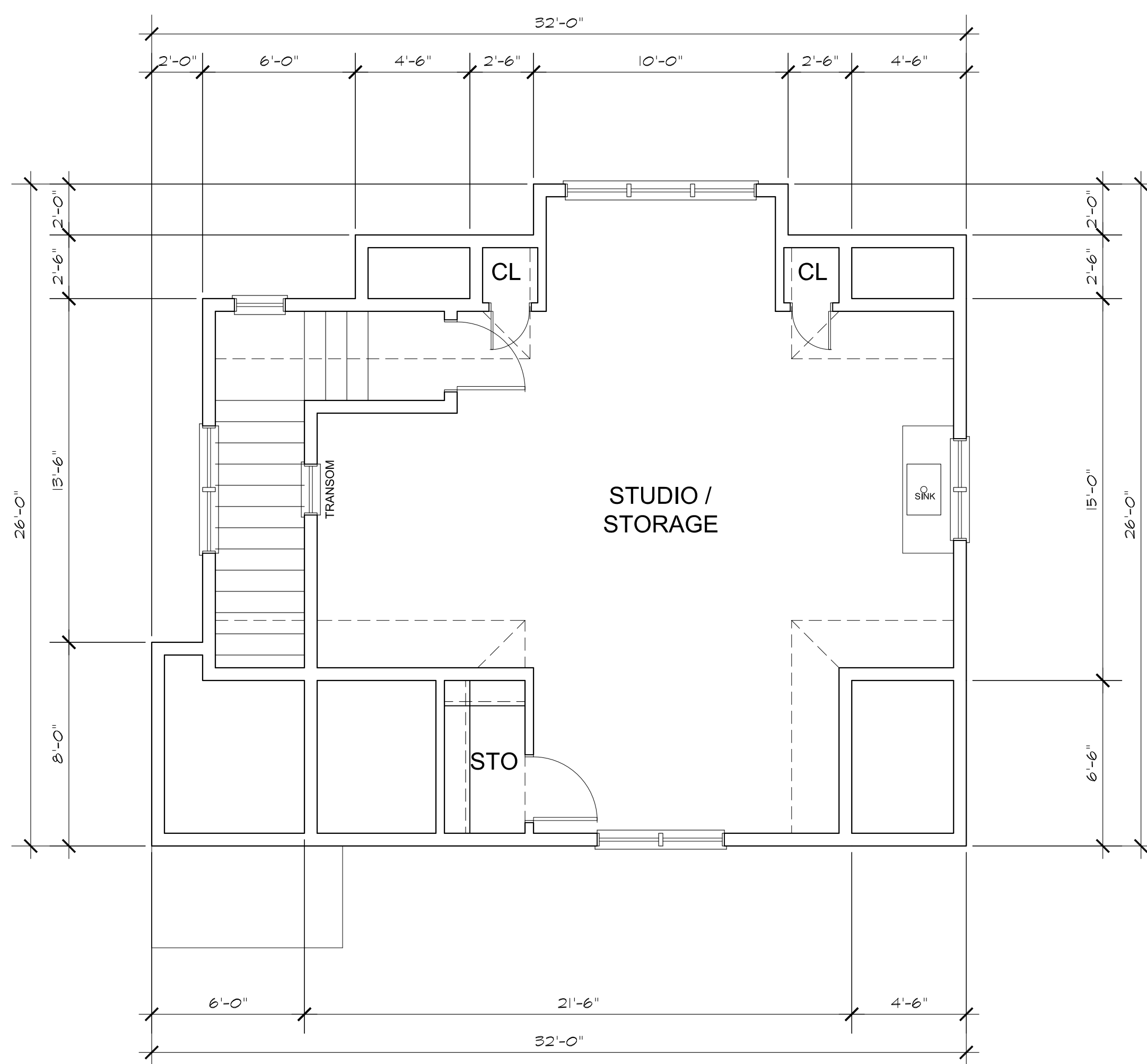
PROPOSED NORTH ELEVATION
SCALE 1/4"=1'-0"



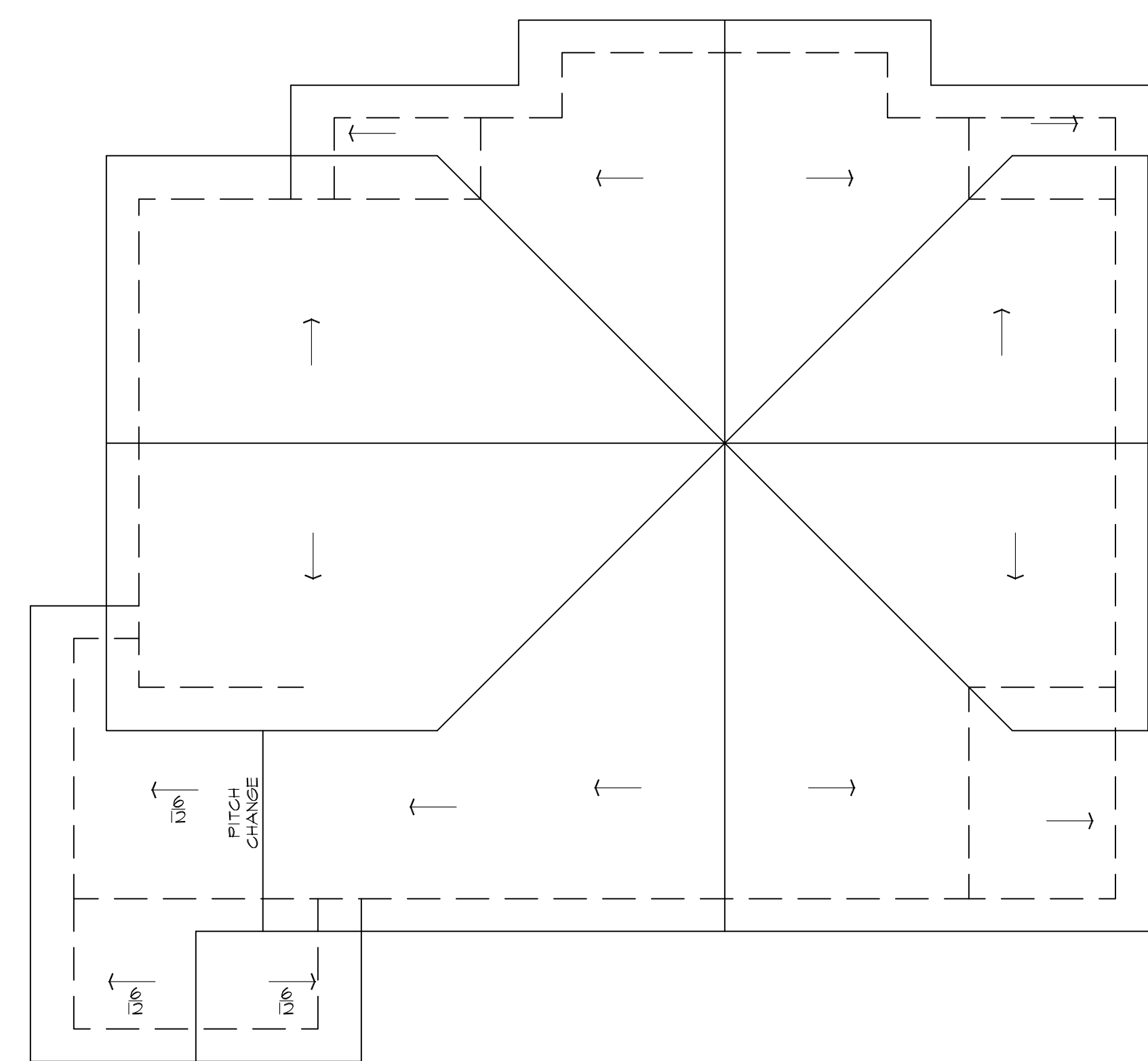
PROPOSED SOUTH ELEVATION
SCALE 1/4"=1'-0"



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



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



ROOF PLAN
SCALE: 1/8"=1'-0"
ROOF PITCH 9 / 12 UNLESS OTHERWISE NOTED

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Date
28 Nov 2022

Revision

Kemper Associates Architects LLC
700 Farmington Avenue • Bldg. #2 • Farmington, Connecticut 06032
(860) 409 - 7155 Fax (860) 409 - 7160

PROPOSED RENOVATION TO:
THE LOG CABIN AT TWIN PINES -
150 GARNET HILL ROAD
SUNAPEE, NEW HAMPSHIRE

Revision

Checked By

Sheet No.

A-1



PROXIMITY OF EXISTING GARAGE AT 158 GARNETT HILL RD TO ABUTTING BUILDINGS

Tri Town, NH



November 28, 2022

1 inch = 136 Feet



www.cai-tech.com



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TOWN OF SUNAPEE

Planning/Zoning Office

23 Edgemont Road

Sunapee, New Hampshire 03782

Phone: (603) 763-3194 Fax: (603) 763-4925

Case # ZBA22-18

Date: 11/29/22

Fee Paid: _____

APPLICATION FOR APPEAL

Name of Applicant John P. McMahon + Suzanne Graves McMahon
Mailing Address 36 Blauvelt Street, Cambridge MA 02138
Owner(s) John P. McMahon + Suzanne Graves McMahon
Location of Property 52 Burma Rd, Sunapee NH 03782
Parcel ID 0118-0059-0000

SECTION I. APPEAL FROM AN ADMINISTRATIVE DECISION

Relating to the interpretation and enforcement of the provisions of the Zoning Ordinance.

Decision of the Zoning Board of Appeal to be reviewed.

Seeking appeal of denial for
A special exemption for a tourist home under
Article IV Section 4.10 Permitted Uses - all districts
Please see attached information.

Number _____ Date 11/3/2022
Article IV Section 4.10 of the Zoning Ordinance in question.

Additional information may be supplied on separate sheet if the space provided is inadequate.

Please sign the following statement: I understand that the public hearing will be held at the scheduled date and time unless a request is made by me for a new hearing. Any rehearing will require a new public notice and notification to abutters, the cost of which will be borne by the applicant. Further, I hereby give permission to the ZBA members to visit the property prior to the public hearing. To the best of my knowledge, the above is true and correct.

[Signature] 11/29/2022
Applicant Date

OFFICE HOURS: Mon., Tues., Thurs., Fri - 8:00 a.m. to 5:00 p.m. • Wed. - 8:00 a.m. to 1:00 p.m.

RECEIVED

NOV 30 2022

SUNAPEE

John McMahon and Suzanne Graves McMahon
36 Blakeslee Street
Cambridge, MA 02138

28 November 2022

Zoning Board of Adjustment
23 Edgemont Road
Sunapee, NH 03782

RE: 52 Burma Road
Sunapee, NH 03782

Case #ZBA22-18: Seeking approval of a special exception for a tourist home under Article IV, Section 4.10 Permitted uses – All Districts
52 Burma Road, John McMahon & Suzanne Graves McMahon
Parcel ID 0118-0059-0000

Our request for approval to be granted a special exemption to become a tourist home was denied on 11/3/22 at the Zoning Board meeting and confirmed in writing 11/9/22.

It was denied for the following reasons/facts:

‘Failure to meet the requirements of #4 & #5 of the special exception. The proposed use is not consistent with the Spirit of the Ordinance and the intent of the Mater Plan. A Tourist Home is in like-kind to Bed & Breakfast, Inns, and Lodging & Boarding in the Ordinance with is intended for the owner to be present at the time guests are present and that the owner is providing room(s) for transient sleeping accommodations only. The owners stated that they will not be on the premises when renters are present and will be renting out the entire home for use. In addition, the applicant made note of an unsafe building on the premises which could be hazardous to the neighborhood.’

We respectfully disagree with this finding and request that the ZBA rehear our application or reconsider their denial based on the following:

1. The proposed use is consistent with the ordinance. Below are the definitions included in the ordinance (1987, Amended 2020) which are stated in very clear language.

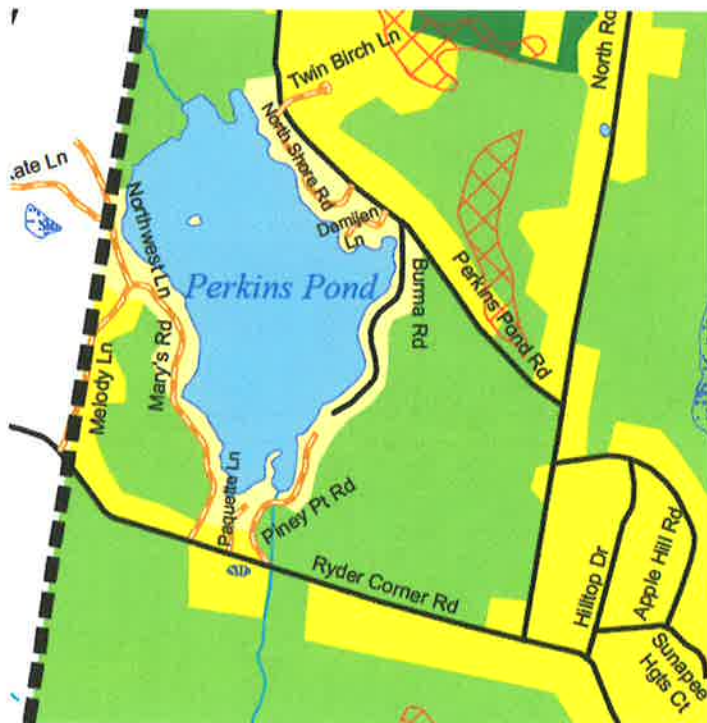
‘BED & BREAKFAST, TOURIST HOMES, INNS, LODGING & BOARDING- An owner-occupied single-family dwelling in which no more than ten (10) rooms are used to provide transient sleeping accommodations, with meals served to guests only. (Adopted 3/14/2000)’

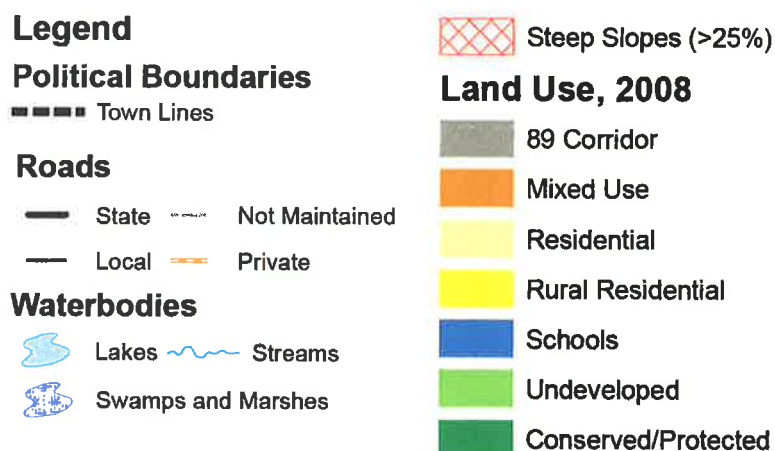
'OWNER-OCCUPIED The occupancy of a dwelling for more than 120 days in a calendar year by a landowner who is a natural person (Amended 3/10/2020)'

The definition of owner occupied is very specific and clear. Interpreting the ordinance as 'intended for the owner to be present at the time guests are present and that the owner is providing room(s)', is an interpretation, **not the actual language in the ordinance.**

Additionally, this portion of the ordinance was updated recently, in March 2020. Interpreting the language as different from the actual words is not applicable. In no place does the ordinance define owner occupied as different from the above definition.

2. The proposed use is consistent with the Master Plan. In reviewing the Master Plan 2010 and the Existing Land Use Map (2009), a majority of shoreline property surrounding Perkins Pond is identified as residential. The property that is identified as undeveloped is owned by a single individual. As you can see, the property along North Shore Road, Demijen Lane, Burma Road, Piney Point Road, Paquette Lane, Mary's Road and Northwest Lane are all identified as residential.





This designation shifts in the proposed land use map. While this second proposed map is in alignment with the current zoning map, there is a **pre-existing condition** identifying that the land surrounding Perkins Pond is, in its very nature, residential. As a result, the proposed use as a tourist home is consistent with what is permitted in Residential and requested by this special exception.

It is, therefore, clear that the proposal is not detrimental or injurious to the neighborhood, given the current Master Plan map.

3. Regarding the 'unsafe conditions', this referred to a 'garage' and in reality, a shed, given that it is too small to fit a car, and it currently houses a boat. We had stated during the hearing that this was locked, and it is impossible for the door to be raised without use of tools. I am sure that the board imagined the worst situation on the property. Therefore, we have attached pictures of the 'garage'/ shed, below.



Please note that John is sitting on top of the 'shed' and that he had to climb up the roof to get there. The roof is not in danger of collapse. Also, please note the two locks, one on each side, of the door that prevent the door from opening. The structure is true and level on all sides.



In this photo, we have posted a 'keep out' sign. Again, please note the two locks.



This is a picture of the 'garage'/shed from the roadside. Please note it is approximately 5 feet at the peak.



These are pictures from grade level of the 'garage'/ shed. The roof is in good shape, it is close to the ground level (approximately 18 inches at the height from the ground on the non-peak side).

The 'garage'/shed was in existence since we purchased the home in 1994.

I am sure that after reviewing the 'garage'/shed pictures, you will find that this does not show a danger to the community either from someone entering it, nor from someone mistakenly walking near or on the roof.

We respectfully request that you re-hear or approve our application for a special exception to become a Tourist Home.

Sincerely,



Suzanne Graves McMahon and John McMahon

WP: ZBA 112122

check 2764 rev
\$ 150.00

Town of Sunapee
23 Edgemont Rd., Sunapee NH
Phone (603) 763-3194 / Website www.town.sunapee.nh.us
Email zoning@town.sunapee.nh.us

CASE# _____

Zoning Board of Adjustment (ZBA) Special Exception

Questions? Please contact the Land Use & Assessing Coordinator or the Planning & Zoning Director. All dates and deadlines are published on the ZBA calendar.

1. Landowner(s) Name(s): John P. McMahon, Suzanne Graves McMahon
2. Parcel ID: 000118 000059 000000 3. Zoning District: Rural Residential
4. Project Location (Street & #): 52 Burma Road, Sunapee
5. Mailing Address: 36 Blakeslee Street, Cambridge, MA 02138
6. Phone Number: 508 277 2010
7. Email: Suzanne.Graves@me.com

☒ **ABUTTERS LIST:** You must prepare a list of all abutting property owners and attach it to your application. If you have any difficulty, consult the Town Office, but the accuracy of the list is your responsibility. You can download an abutters list by using the Tax Maps/GIS on the Town's website (under Assessing Department).

☒ **FEES:** ☒ Application Fee: \$ 150.00 * Make check payable to Town of Sunapee.
☒ Abutter Notification Fee: \$ 7.85 * per abutter. Make payable to US Post Office.

* NOTE: Rates and fees are subject to change. For the most current rate, please check with the Town Office.

☐ **ATTACHMENTS:** To assist the Board, please attach sketches, photos, surveys, plot plans, pictures, construction plans, or whatever may help explain the proposed use. Include copies of any prior Zoning or Planning decisions concerning the property. If you have something in writing stating that your proposed project does not meet zoning, please attach that to this application; it may be a letter, email or denied permit. A professional survey by a licensed surveyor is strongly recommended for variances related to setback requirements. For properties located in the Shoreline Overlay District, a professional survey is required. Supplemental materials for the Board must be submitted no later than five (5) days before the scheduled hearing, however, adequate plans and exhibits must accompany the application. This includes, but is not limited to: lot dimensions, dimensions of proposed and existing structures, identification of abutting properties and roads, locations of water bodies, wetlands, septic systems, etc.

Applications will not be considered complete unless all the questions are answered, the fees are paid, and an Abutters Mailing List is attached.

GENERAL DESCRIPTION: This is a place to give a general summary of the proposed project as an introduction and overview for the public hearing. For example, where is the property located? Describe the property. Give area, frontage, side and rear lines, slopes, natural features, etc. What do you propose to do? Why does your proposal require a Special Exception from the Board of Adjustment?

We are currently the owners of 52 Burma Road, Sunapee. We are requesting a special exemption to become a Tourist Home for our intermittent rental for our property. We are currently in a rural residential zone.

When we first owned our home, our real estate agent asked if we were interested in renting our house on a weekly basis for a few weeks during the summer season to "cover the taxes and insurance". We did rent for approximately three weeks a year through Lake :

In the past several months, it has come to our attention that we have not followed the zoning ordinances. While ignorance of the law provides no excuse, we do beg your forgiveness. We truly did not realize that we were in non-compliance. We would, therefore, I

Attach additional sheets of paper as necessary.

EXPLAIN HOW THE PROPOSAL MEETS THE SPECIAL EXCETION CRITERIA AS SPECIFIED IN ARTICLE _____, SECTION _____ OF THE ZONING ORDINANCE (list all criteria from the Ordinance)

Criteria 1: We are owner-occupied. We do occupy the home 120 days per year. This occurs throughout the year.
For example, this year we have occupied the home from late April through early September. We will also be present during long weekends and holidays.

Criteria 2: Our home away from home is located on one-third acre with 125 feet of frontage on Perkins Pond. Across the street, we own an additional two-thirds of an acre.
There are several other properties on our street which are also used as seasonal rental properties. We are reasonably private from other homes in the area.

Criteria 3: There is adequate and safe highway access to the site, and we have adequate and allowed off-street parking.
We are located on a dead-end private dirt road and own both sides of the road. We have parking available for up to six cars.

Criteria 4: We are properly connected to the public sewer system. We paid for the installation of the sewer and have consistently paid for the use of that service since inception.

Criteria 5: We rent to a maximum of six adults. We do not place a burden on any of the town beaches (we are a waterfront property), nor do we place an undue burden on the town garbage disposal system.
We do not allow renters to bring in their boats, dogs, or other undesirable. We successfully screen those who may desire to rent our home. We are cited as an exemplar for tourist rentals by our neighbors.

Criteria 6: We believe that this use is consistent with the spirit of the Ordinance and the intent of the Master Plan in that it allows for tourists to visit the lovely Sunapee community and get to know the area, hopefully to return time and again.

Criteria 7:

Criteria 8:

SIGNATURE: I understand that the public hearing will be held at the scheduled date and time unless a request is made by me for a new hearing. Any rehearing will require a new public notice and notification to abutters, the cost of which will be borne by the applicant. Further, I hereby give permission to the ZBA members and zoning officials to visit the subject property prior to the public hearing. To the best of my knowledge, the above is true and correct.

Landowner(s) Signature(s)

Date

ABHers

Bill Griffin (50 Burma Road)
37 Hig Hill Road
Pepperill, MA 01465

Bill Lucchini (56 Burma Road)
15 Bent Avenue
Wayland MA





John P. McMahon
Suzanne Graves McMahon
36 Blakeslee Street
Cambridge, MA 02138
508 277 2010

Town of Sunapee, NH
Zoning Board
23 Edgemont Road
Sunapee, NH 03782

Dear Sir/Madam:

We are currently the owners of 52 Burma Road, Sunapee. We are requesting a special exemption to become a Tourist Home for our intermittent rental for our property.

We purchased the home August 22, 1994. At the time the home was a three bedroom, one bath home. In 2008, we expanded the house to three bedrooms and two baths.

When we first owned our home, our real estate agent asked if we were interested in renting our house on a weekly basis for a few weeks during the summer season to 'cover the taxes and insurance'. We did rent for approximately three weeks a year through Lake Station Reality for approximately two decades. And more recently, we have rented occasionally through Airbnb. We have had limited rentals for the past three years.

In the past several months, it has come to our attention that we have not followed the zoning ordinances. While ignorance of the law provides no excuse, we do beg your forgiveness. We truly did not realize that we were in non-compliance.

We would, therefore, like to apply for a special exemption to become a 'Tourist Home'. We fulfill the following criteria.

We are owner-occupied. We do occupy the home 120 days per year. This occurs throughout the year. For example, this year we have occupied the home from late April through early September. We will also be present during long weekends and holidays.

Our home away from home is located on one-third acre with 125 feet of frontage on Perkins Pond. Across the street, we own an additional two-thirds of an acre. This site is appropriate for the location of a tourist home. We are reasonably private from other homes in the area. There are several other properties on our street which are also used as seasonal rental properties.

There is adequate and safe highway access to the site, and we have adequate and allowed off-street parking.

We are hooked up to town sewer, as required for our location. We paid for the sewer hook-up and pay additional taxes for this service.

The use of our dwelling is not detrimental, hazardous or injurious to the neighborhood. We rent to a maximum of six adults. We endeavor to rent only to families or adult (25+ years old) couples. (At times we have rented to couples who have run in the Sunapee triathlon, or who are attending the Dartmouth reunion.) We are always very careful to ask the possible renter's plans prior to accepting their request, turning down those that may not be in keeping with the neighborhood. A good gauge that we use is if we would want to have that group next to our quiet retreat. If not, we don't rent to them. After all, this is our home away from home and we do not want it to be abused in any way, nor do we want our reputation in our community hurt. People in our community have noted that we are the exemplar for those who rent on an occasional basis, and have stated so publicly.

We believe that this use is consistent with the spirit of the Ordinance and the intent of the Master Plan in that it allows for tourists to visit the lovely Sunapee community and get to know the area, hopefully to return time and again. (We have had many return requests, and one who purchased a home across the lake from ours because of their stay.) We do not place a burden on any of the town beaches (we are a waterfront property), nor do we place an undue burden on the town garbage disposal system. We do not allow renters to bring in their boats, dogs, or other undesirables.

As long-term taxpayers, and retirees, we are hoping that you will provide us with the Tourist Home designation.

Thank you,



Suzanne Graves McMahon
John P. McMahon
52 Burma Road
Sunapee, NH 03782

Renee Theall

From: Ifarnold2 <Ifarnold2@aol.com>
Sent: Friday, December 23, 2022 9:30 PM
To: Renee Theall
Subject: [EXTERNAL]Graves /Mcmahon property Does not meet the intent of the ordinance

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Renee

Please forward this to the ZBA members in time for them to read and consider for the Jan 5th meeting.

ZBA Members,

When rehearing the McMahons appeal please consider:

The special exception criteria #5 states that the proposed use is consistent with the spirit of the Ordinance and the intent of the Master Plan.

The ordinance defines Tourist home as Owner occupied single family dwelling in which no more than 10 rooms are used to provide transient sleeping accommodations.

The McMahons are claiming to be a tourist home but the property is not owner occupied and they rent the entire house vs rooms during which time they are never occupying the house. Their use is not in the spirit of the Ordinance.

Thank you
Lynn Arnold

From: [V jepson](#)
To: [Renee Theall](#)
Cc: [Town Manager: Michael Marquise](#)
Subject: [EXTERNAL]Would you please make sure that the zoning board members and their alternates each receive a copy of this for the 1/5/22 zoning meeting? Thank you in advance Case 22-21 Rehearing of appeal for Special Exception at 52 Burma Rd, Graves-Mc...
Date: Tuesday, January 3, 2023 5:48:24 PM

You don't often get email from vjepson@comcast.net. [Learn why this is important](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Case 22-21 January 5, 2022

Rehearing of appeal for Special Exception at 52 Burma Rd, Graves-McMahon.

We feel this appeal should not be granted. Reasons below:

1. Special Exception Criteria 4 and 5 does not meet criteria

The spirit of the ordinance and Master Plan is still owner occupied, implied, intended & interpreted as owner present. The owner has admitted whole house rented, therefore not present. The spirit of the ordinance is not for owner to vacate and rent the property.

Reference BED & BREAKFAST, TOURIST HOMES, INNS, LODGING & BOARDING – An owner occupied single family dwelling in which no more than ten (10) rooms are used to provide transient sleeping accommodations, with meals served to guests only. (Adopted 3/14/2000)

2. If 'tourist home' is an outdated term and will not be in the new ordinances, why is this being considered? They will be able to apply for an STR, which they admit they are currently doing.

We don't feel the town should accept any new lodging & boarding or tourist homes applications until the vote has been counted. This should apply to any new applicants prior to these amendment changes

3. Criteria #4 -Does not meet criteria, issue not rectified. 11/3 hearing, re hazardous structure, garage needs to be taken down according to applicants it is structurally compromised.

The new application seems to recant this, but the structure has not changed and is still there even though applicant stated need to be taken down.

(11/3/2022 minutes lines 70-75)

Mr. Jewczyn asked about the garage that needs to be demolished, as it pertains to criteria number four.

The applicants came to the conclusion there is a potential hazard on the property because the spare garage is structurally compromised. The structurally compromised garage is inaccessible, locked, and not in use.

Mr. Jewczyn asked whether there are specific things in the rental agreement stating one absolutely cannot use these buildings or go anywhere near them because it's hazardous.

Ms. McMahon answered that it is within the written household rules of Airbnb.

4. At the October 29th planning/zoning combined meetings Suzanne Graves McMahon on zoom October lines 250 & 251 stated:

Beginning Line 250

Susan (via ZOOM) said that she had been renting her house for 27 years in a rural residential area, in Perkins Pond and she did not know that she was not in compliance.

Note:

This property is still listed on Air BNB, even though she made the above statement and has known for at least most of 2022, or longer that STR's are not allowed, was a cease and desist order sent?

https://www.airbnb.com/rooms/6652629?source_impression_id=p3_1672340262_1ypcOtuI2Jq%2FXLJ8

5. Under criteria 5

Page 26 of upcoming January 5th meeting agenda-

Explain how the proposal meets the special exemption criteria:

Under criteria 5 Graves-McMahon states on their application for tourist home

‘We don’t allow renters to bring in their **boats**, dogs or other undesirables’

Her AirBNB statement below says the opposite & shows under outdoor amenities: ‘******boat dock**’ Also shows ‘******fire pit**’, is this legal without a **fire inspection** and are they allowed with STRs or other rentals?

Outdoor

Private patio or balcony

Private backyard – Not fully fenced

An open space on the property usually covered in grass

******Fire pit**

Outdoor furniture

Outdoor dining area

BBQ grill

Beach essentials

Beach towels, umbrella, beach blanket, snorkeling gear

Kayak

******Boat slip**

Respectfully submitted
Linc & Vicki Jepson
1072 Lake Ave
Georges Mills NH

Renee Theall

From: Fleuri MacIntyre <fleuri121@yahoo.com>
Sent: Saturday, December 31, 2022 1:57 PM
To: Town Manager; Renee Theall; Michael Marquise
Subject: [EXTERNAL]Tourist Home
Attachments: NMAH-AHB2011r2747-000001.jpg

You don't often get email from fleuri121@yahoo.com. [Learn why this is important](#)

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Hi,

Wanted to share thoughts on the "Tourist Home" and why 52 Burma Road does not qualify to be one.

Tourist Homes (TH) do not have a place as a synonym in our modern and current definition of a rental property. THs existed so travelers can hang one's hat for a night or so in the company of the farmer and his kin. I applaud the Planning Board for eliminating this antiquated term from the current Zoning Ordinance.

A century or more ago in towns such as North Sutton, New Hampshire farmers welcomed guests in their homes during the warmer seasons to make nominal "milk money" as commonly called. Homes such as Musterfield Farm, along with some of the ample lovely farmhouses around Kezar lake...welcomed and opened their homes to guests for short stays, shared meals, and perhaps a farm chore or two... It was a good arrangement for both parties. New England has many such stories - it was a simpler and more congenial time.

Today's overnight guests generally seek a **private space** usually **self-catering** with cooking and sleeping areas. 52 Burma Road charges an average of \$300/night according to Airbnb. Nothing close to the antiquated and outdated farmhouse sharing term "tourist home" of yore.

The purpose of this is *again* to ask that you REJECT AGAIN "special exceptions" for "Tourist Home" application in rural residential zone at 52 Burma Road.


In no way does it resemble anything close to "Tourist Home" as described above. And is not in the spirit of our ordinance.

This is an important step in shaping and naming the community we would like to see. This is not the best for our small pond...and the Sunapee community in general.

Thank you for the important contributions you give to our community.

Happy New Year

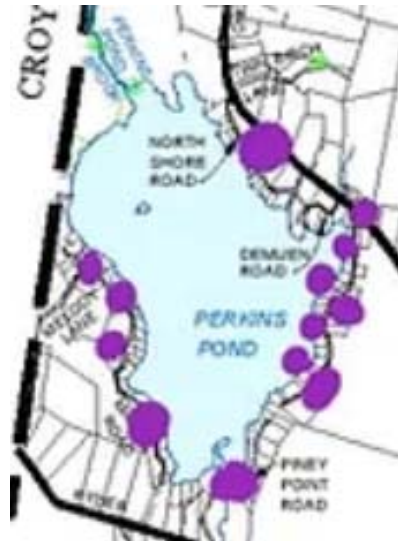
Fleur and Mike MacIntyre

Fleur M. MacIntyre 
60 Marys road
Sunapee NH

Zoning Board of Adjustment

5 January 2023

In keeping with the Neighborhood



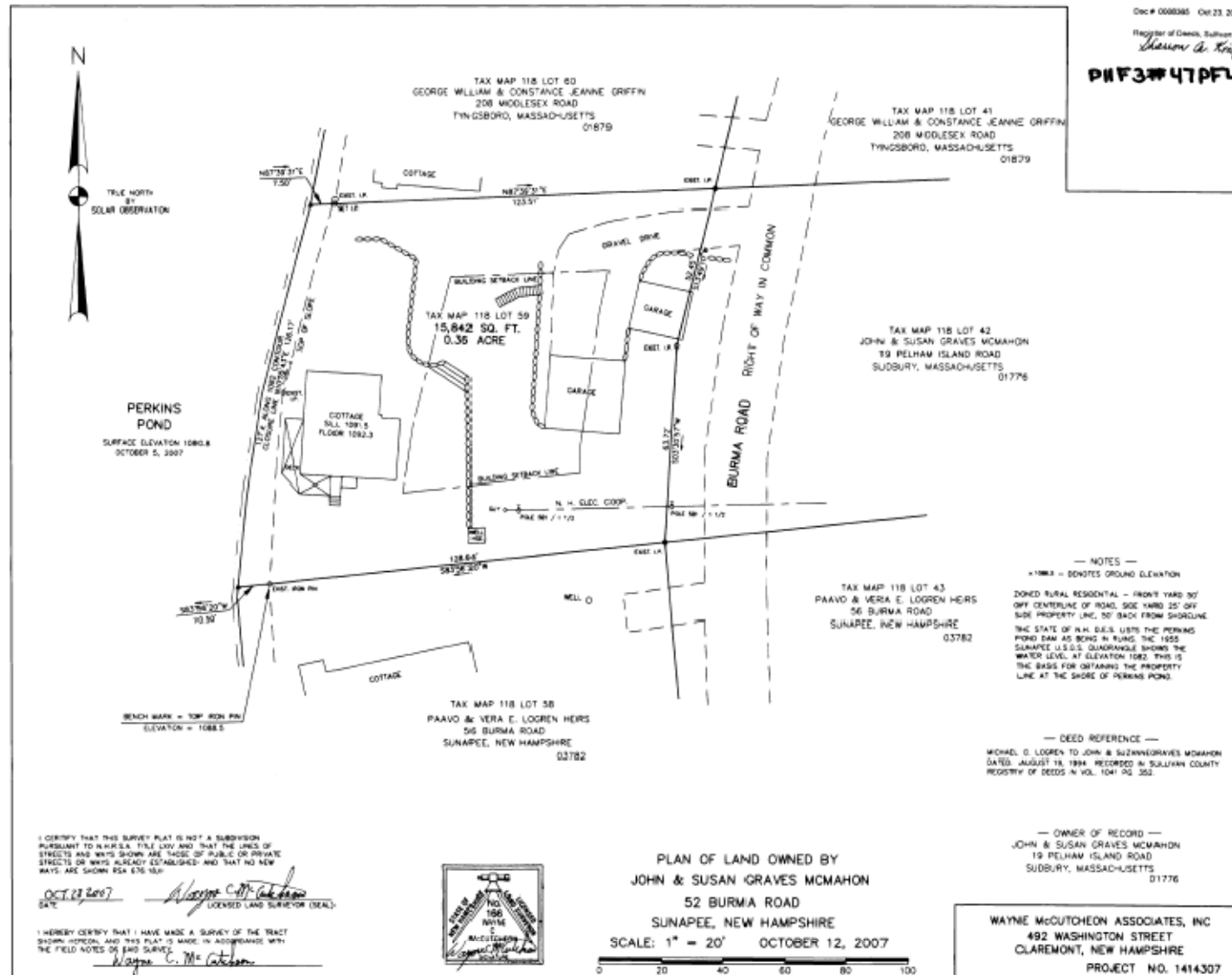
This information is publicly available
Through a town sponsored website
AIRDNA

Doc # 0008985 Oct 23, 2007 12:54 PM

Register of Deeds, Sullivan County

Sharon A. Krip

PHF3#47PF4



Master Plan 2010, Current Usage Map 2008











Pictures from 2002 Appraisal

