

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Joseph Zamboni, Cha
Thomas Loureiro
Daniel Black
Andrew Weaver
Todd Morse

APPEAL AGENDA

The Zoning Board of Appeals will hold a remote Public Hearing on Thursday, January 18, 2024 at 6:00 p.m.

This meeting will take place remotely using Zoom.

This meeting will be held remotely pursuant to the Remote Meeting Policy adopted by the Zoning Board of Appeals and as authorized under 1 M.R.S. 403-B because of the existence of an emergency or urgent issue that requires the committee to meet by remote methods. Allow your computer to install the free Zoom app to get the best meeting experience. If you are not able to attend live, a recording will be available following the meeting.

For live public comment, you will need to use the "raise your hand" feature. To raise your hand via the telephone, please hit *9. You will be unmuted by the host when it is time for public comment.

To submit written public comment on an agenda item, email zoning@portlandmaine.gov. Submissions must be received by 12:00 pm the day before the ZoningBoard of Appeals meeting to guarantee their inclusion in the agenda packet. All submissions must include the commenter's name and legal address. To help ensure your comment is submitted for the correct item, please include the name of the agenda item (see below).

ZOOM MEETING INSTRUCTIONS:

You are invited to a Zoom webinar.

When: Jan 18, 2024 06:00 PM Eastern Time (US and Canada)

Topic: Zoning Board of Appeals

Please click the link below to join the webinar:

<https://portlandmaine-gov.zoom.us/j/87671993056>

Or One tap mobile :

+13092053325,,87671993056# US, +13126266799,,87671993056# US (Chicago)

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1 309 205 3325 US, +1 312 626 6799 US (Chicago), +1 646 931 3860 US,

+1 929 205 6099 US (New York), +1 301 715 8592 US (Washington DC)

+1 305 224 1968 US, +1 253 215 8782 US (Tacoma), +1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

Webinar ID: 876 7199 3056

International numbers available: <https://portlandmaine-gov.zoom.us/j/kcUCe2fwM2>

1. New Business

A. Practical Difficulty Appeal ([ZBA-002569-2023](#))

14 Orchard Street, Family Crisis Services, Inc. owners, Tax Map 061, Block E, Lot 006, R-4 Residential Zone: The applicant is seeking a Practical Difficulty Variance to reduce the minimum required side setback of 10 feet (Article 7, Table 7-A) to 7.5 feet in order to convert an accessory detached garage to a detached single family home. Representing the owner is Gordon Smith

2. Adjournment

INSTRUCTIONS FOR VIEWING APPEAL APPLICATIONS:

Please find the appeal documents by following these steps:

1. Go to the following website:

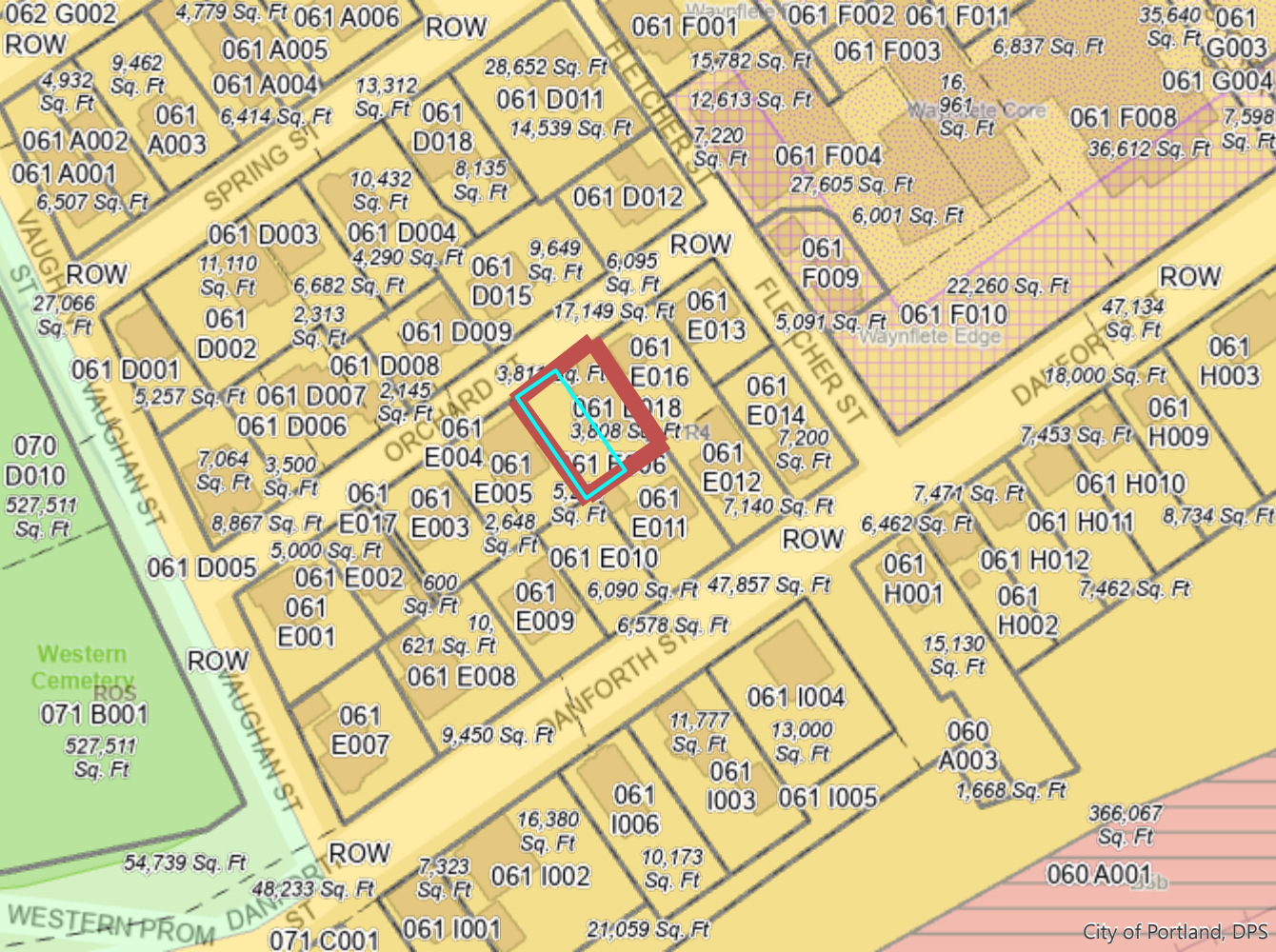
https://selfservice.portlandmaine.gov/EnerGov_Prod/SelfService#/home 2. Click on “Search Public Records”

3. Choose Plan in Search Box pull down

4. Type in Plan Number from agenda (Ex: ZBA-009999-2020) and click the “Search” button.

5. Click on the blue Plan Number. This will open the record.

6. Select the “Attachments” tab and all available documents will appear and can be downloaded.





June 19, 2023
230243

Zoning Board of Appeals
City of Portland
389 Congress St
Portland, Maine 04101

Zoning Board of Appeals
Practical Difficulty Variance Appeal
14 Orchard St – One Family Unit Setbacks

Dear Zoning Board,

On behalf of Through These Doors., we are pleased to submit the enclosed Zoning Board of Appeals Application for Practical Difficulty Variance for a project located at 14 Orchard Street. The project is requesting a 2'-6" variance from the side setbacks which will allow for the renovation of an existing conforming 250sqft garage into a (2) bedroom accessible one-family unit. Through These Doors currently operates a non-profit 16-bed shelter for individuals and families homeless and/or fleeing because of domestic abuse. The conversion of this garage will allow Through These Doors to house larger families and expand their ability to house more unsheltered people. The project will be made possible by funds from the Maine Housing Authority to create long-term solutions to decrease the number of unsheltered people.

Through These Doors would like to pursue the renovation of the existing garage **in place** and convert it into a one-family unit. As such, the garage would be required to meet the 10ft side setbacks for a 1.5-story primary building. The strict adherence to the dimensional side setback standards will require the existing garage, stairs, and retaining wall to be demolished, a new foundation poured, and a new structure (of the same size and stature) erected 2'-6" away from the existing location. The existing garage is 7'-6" off the side setback and is legally conforming. The cost of the demolition and construction to relocate and rebuild the building 2'-6" to conform with a 10ft setback will make it infeasible for Through These Doors to provide more housing for unsheltered families. The cost of a new foundation alone is estimated to be \$50,000 - \$75,000. Additionally, there are added site costs for moving the buildings such as grading, retaining wall, and step demo and replacement all of which could bring the added cost to move the building over \$100,000. This is before the cost of new structural requirements and design required for re-building the garage 2'-6" away from its current location. This additional cost will make the project infeasible for Through These Doors, a non-profit organization.

Renovating the garage in place will result in an improved façade that will not decrease the value of the abutting property or the character of the neighborhood. The character of this neighborhood includes many older homes that are not conforming to the minimum setbacks required per the ordinance. The project is in one of Portland's Historic districts and further review by the Historical Preservation Commission will ensure that the renovation is in keeping with the character of the neighborhood. In addition, allowing the variance will have a reduced impact on the natural environment and reduce construction waste. Renovating the garage in place will limit the disturbance to the existing site elements

(stairs, retaining walls, foundations, yard area, patios) and keep the impervious footprint the same as the existing condition.

This project was initially proposed as a conversion of a garage into an Accessory Dwelling Unit (ADU). The applicant was notified that due to their use (Handicapped Family Unit), they do not “occupy” the dwelling unit on the property and as such will not qualify for a legal ADU conversion. See reference to Chapter 14 Section 6.6.2 below:

*“At the time of an ADU’s initial construction or legal creation, the **owner(s)** of the property on which the accessory dwelling unit is created must **occupy** at least one of the dwelling units, with the exception of legally nonconforming lots on Peaks Island.”*

The term “occupy” is not defined within the Land Use Code and it is our understanding that the dictionary definition of the term occupy is as follows:

“Reside or have one’s place of business in (a building).” – Oxford English Dictionary
“To reside in as an owner or tenant” - Merriam Webster

By the dictionary definition of the term “occupy,” we assert that Through These Doors, do occupy the dwelling unit/property and could develop an ADU.

While we disagree with the interpretation that Through These Doors does not occupy the handicapped dwelling unit, we concede that applying for this Practical Difficulty Variance for a one-family dwelling unit may provide a more direct path forward. This application is for the practical difficulty variance and requesting a 2’-6” variance to the side setback to allow the existing garage to be renovated in place as a one-family unit. This garage conversion will make it possible for Through These Doors to provide more housing for those who are unsheltered victims/ survivors of domestic abuse.

Please see the attached application that describes how the project and Through These Doors will meet the (8) criteria required for the practical difficulty variance appeal to the Zoning Board. We are hopeful that we have provided sufficient information for the review. Please do not hesitate to contact us if you have any questions, or need additional information. Email: Hhess@sebagotechnics.com Ph: 207-200-2086

Thank you for your consideration.

Sincerely,

SEBAGO TECHNICS, INC.



Henry A. Hess, RLA
Project Manager
Maine Licensed Landscape Architect



CITY OF PORTLAND
Permitting and Inspections Department
Zoning Board of Appeals
Practical Difficulty Variance Application

Applicant Information:

Applicant Name: Through These Doors **Phone:** (207) 874 - 1196

Business Name (if applicable): Through These Doors Inc. **Email:** RebeccaH@throughthesedoors.org

Mailing Address: P.O. Box 704 Portland Maine 04104

Is the applicant an agent, representative, or lessee of the property owner/purchaser? ☐ Yes ☒ No

Name of Property Owner/Purchaser: Family Crisis Services Inc. **Phone:** (207) 874 - 1196

Business Name (if applicable): Through These Doors Inc. **Email:** RebeccaH@throughthesedoors.org

Mailing Address: P.O. Box 704 Portland Maine 04104

Property and Project Information:

Property Address: 14 Orchard street. Portland Maine 04102 **Zone:** R-4

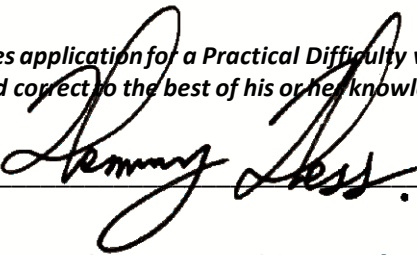
Tax Assessor's CBL: 061 E 006 **Current Use of Property:** Handicapped Family Unit
Chart # Block # Lot #

Seeking a Variance from the Portland Land Use Ordinance, Chapter 14, Section 7-3 (dimensional standards)

Description of Proposed Project: The applicant would like to convert their garage into a (2) bedroom family unit to provide more shelter and beds for victims and survivors of abuse. The current garage is a conforming structure

Please submit all applicable items listed on the **Application Process and Instructions** sheet. You are welcome to submit any additional documents and exhibits that may support your request. Provide answers to the Practical Difficulty standards found on pages 2-3 of this form.

The undersigned hereby makes application for a Practical Difficulty variance as described above, and certifies that the information herein is true and correct to the best of his or her knowledge and belief.

Applicant signature:  Date: 06/19/2023



CITY OF PORTLAND
Permitting and Inspections Department
Addendum to Practical Difficulty Variance

The applicant will provide answers to the eight standards below. The following key terms are defined as:

1. **Dimensional Standards:** Those provisions of the article which relate to lot area, lot coverage, frontage and setback requirements.
2. **Practical Difficulty:** A case where strict application of the dimensional standards of the Ordinance to the property for which a variance is sought would both preclude a use of the property which is permitted in the zone in which it is located and also result in significant economic injury to the applicant.
3. **Significant Economic Injury:** The value of the property, if the variance were denied, would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that the denial of the variance would mean the practical loss of all beneficial use of the land.

Section 2.3.11.D of the Chapter 14 Land Use ordinance states that the Zoning Board of Appeals may grant a variance from the dimensional standards of the Land Use Code when strict application of the provisions of the ordinance would create a practical difficulty. In granting a Practical Difficulty variance, the board must find that all the following conditions exist (answer must be "Yes" to all questions):

1. The need for a variance is from **dimensional standards** of the Land Use Zoning Ordinance (see definition above).

☒ Yes ☐ No

Reason and supporting facts:

The existing conforming garage will be converted into a new one family dwelling to house victims/survivors of abuse and as such the requirement for the setbacks will change from the current - 5ft setback to a 10 ft setback. The existing garage unit is 7'-6" from the property line and would be required to move 2.5 ft to accommodate a new setback. The applicant is requesting a 2.5ft variance to the setback so the existing garage may be renovated and converted (in place) into a family unit.

2. Strict application of the provisions of the ordinance would create a **practical difficulty**, meaning it would both (1) preclude a use of the property which is permitted in the zone in which it is located, and also (2) would result in **significant economic injury** to the applicant (see definitions above).

☒ Yes ☐ No

Reason and supporting facts: The strict adherence to the dimensional side setback standards

for the R-4 residential district would require the applicant to completely demolish and remove the existing garage structure that is in good condition. The project would then require a new foundation poured 2'-6" to the North (away from the property line) to create a building of the same shape and size dimensionally as what is existing today. The new foundation will be at least \$50,000 - \$75,000 additional on top of the improvements to the site required to move the building and may cost over \$100,000. this cost will make the project infeasible

3. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

☒ Yes ☐ No

Reason and supporting facts: This property is unique due to the fact that the owner, Through These Doors, of the handicapped family unit it is not a "Home Owner" and as such it has been determined by City staff that Through These Doors does not "occupy" the unit and can not develop the garage as an ADU (for which this garage meets the required setbacks). In order to create a new one family dwelling, City staff has stated they must permit the project as a primary unit for which, the ordinance requires a 10ft side setback. Through These Doors operates a 16 bed dwelling shelter for homeless and/ or those fleeing due to domestic abuse. They are seeking to use the converted garage as a means to house larger families and provide additional services. The Neighborhood Character include many older primary family units that also do not meet the minimum setbacks required in the R-4 District.

389 Congress Street, Room 315 • Portland, Maine 04101 • 207-874-8703

zoning@portlandmaine.gov • www.portlandmaine.gov



CITY OF PORTLAND
Permitting and Inspections Department

4. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use, or fair market value of abutting properties.

☒ Yes ☐ No

Reason and supporting facts: The garage would be renovated in place with improvements to the exterior facade and the roof. As the garage is existing, there will be no major visual change or change to the uses of the current property. The garage conversion and improvement will not have an undesirable change in the character of the neighborhood and will not have an unreasonable detrimental effect on the use or fair market value of the abutting properties. Due to the Historic District overlay in the West End, the conversion will undergo review by the Historical preservation commission that will further ensure that there will be no undesirable change in character to the neighborhood

5. The practical difficulty is not the result of action taken by the applicant or a prior owner.

☒ Yes ☐ No

Reason and supporting facts:

The R-4 zone permits the construction of multiple units on a single property. prior to 1993 there was a larger garage that was non-conforming. This garage was built, smaller and more conforming in the early 1990's (prior to through These Doors taking ownership). To feasibly construct new shelter units to house larger families within the existing garage structure Through These Doors must pursue a 2'-6" variance from the dimensional setbacks of of a 1.5 story structure in the R-4 District.

6. No other feasible alternative is available to the applicant, except the variance.

☒ Yes ☐ No

Reason and supporting facts:

Due to the available funding from the Maine Housing Authority the project and the unique circumstances and uses of the property, it is cost prohibitive to demolish the garage and build a similar structure 2'-6" further away to house victims/ survivors of abuse.

7. The granting of a variance will not have an unreasonably adverse effect on the natural environment.

☒ Yes ☐ No

Reason and supporting facts:

Converting the garage in place will protect existing stonewalls, steps and prevent further impacts to the surrounding property that would be due to excavation, grading and the pouring of new impervious foundations. As such, granting this variance will not have an unreasonably adverse effect on the natural environment. Many of the existing steps and retaining walls are older and a part of the existing historical character of the property and neighborhood

8. The property is not located, in whole or in part, with a shoreland area, as defined in 38 M.R.S.A. §435, nor within a shoreland zone or flood hazard zone.

☒ Yes ☐ No

Reason and supporting facts:

The property is not located within the shoreland area as defined in 38 MRSA 435, nor within shoreland zone or flood hazard zone.

AGENT AUTHORIZATION

APPLICANT/ OWNER	Name	Through These Doors <i>Rebecca Hobbs</i>		
PROPERTY DESCRIPTION	Physical Address	14 Orchard Street Portland ME 04102	Map	61
			Lot	18
APPLICANT'S AGENT INFORMATION	Name	Sebago Technics - Henry Hess RLA		
	Phone	207-200-2100	Business Name & Mailing Address	Sebago Technics, Inc. 75 John Roberts Road, Suite 4A South Portland, Maine 04106

RH
APPLICANT SIGNATURE

DATE

6/18/23

Rebecca Hobbs
PLEASE TYPE OR PRINT NAME HERE

APPLICANT'S AGENT SIGNATURE

DATE

06/14/2023

Henry Hess

PLEASE TYPE OR PRINT NAME HERE

Henry Hess

PHOTOS OF THE GARAGE AND SITE



Front of garage from porchard St



Rear of Garage



Left side of Garage



Right side of Garage

DETAILS REPORT****Note:** Report is Sorted in Ascending Order by Office, Recorded Date, Document Number

Doc#	Document Type	Book/Vlm/Page	File Date
55154	DEED	27232/341	09/03/2009
Street	Street Name	Description	
Grantors	Grantees	Street	Property Description
FRANNIE PEABODY CENTER	FAMILY CRISIS SERVICES INC		
References			
Book/Vlm/Page	Description	Recorded year	
Legal Description\Remarks			
Lot	Block	Subdivision	Plat

SHORT FORM QUITCLAIM DEED WITH COVENANT

FRANNIE PEABODY CENTER, a Maine nonprofit corporation (f/k/a The Aids Project, successor by merger to Peabody House, Inc.) doing business in Portland, Cumberland County, Maine, FOR CONSIDERATION PAID, grants to FAMILY CRISIS SERVICES, INC., a Maine nonprofit corporation having a mailing address of P. O. Box 704, Portland, Maine 04104, WITH QUITCLAIM COVENANT, the real property located at 14 Orchard Street in the City of Portland, County of Cumberland and State of Maine and more particularly described on Exhibit A attached hereto and made a part hereof.

IN WITNESS WHEREOF, FRANNIE PEABODY CENTER has caused this instrument to be executed by Patricia J. Capouch, its duly authorized Executive Director, this 3rd day of August, 2009.

WITNESS:

FRANNIE PEABODY CENTER

M. Selinger

By: P. J. Capouch
Patricia J. Capouch, its Executive
Director

STATE OF MAINE
CUMBERLAND, SS.

August 3, 2009

Personally appeared the above-named Patricia J. Capouch, Executive Director of Frannie Peabody Center, as aforesaid, and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said Frannie Peabody Center.

Before me,

M. Selinger
~~Notary Public~~/Attorney-at-Law

Print Name: MASELINGER M
My commission expires: _____

MAINE REAL ESTATE TAX PAID

EXHIBIT A

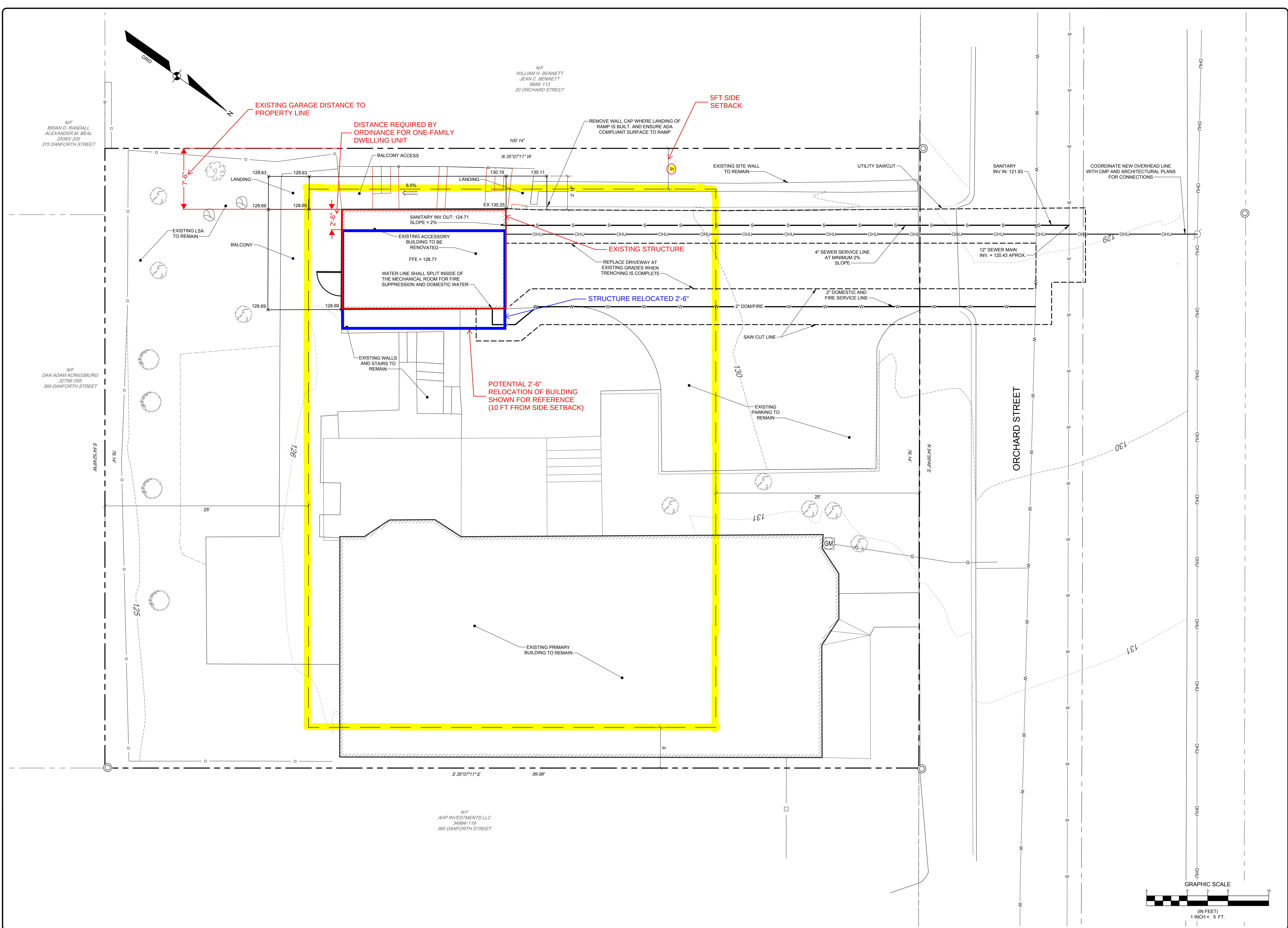
Beginning at a stake on the southerly side of Orchard Street, distant on said side of Orchard Street westerly from Fletcher Street one hundred fifty-nine and seven one-hundredths (159.07) feet and at the westerly line of lot of Abby D. Hersey conveyed to Frances E. Ward by deed of August 2, 1900; thence southerly parallel with said Fletcher Street (formerly referred to as Orchard Street in prior deeds) and by the lot of land above referred to one hundred and six-one hundredths (100.06) feet to land now or formerly of Ellen S. Baker; thence westerly by said Baker land and parallel with Danforth Street thirty-eight and seven one-hundredths (38.07) feet to stake; thence northerly parallel with the first described line one hundred and fourteen one hundredths (100.14) feet to said Orchard Street; thence easterly by said Orchard Street thirty-eight and seven one-hundredths (38.08) feet to the point of beginning.

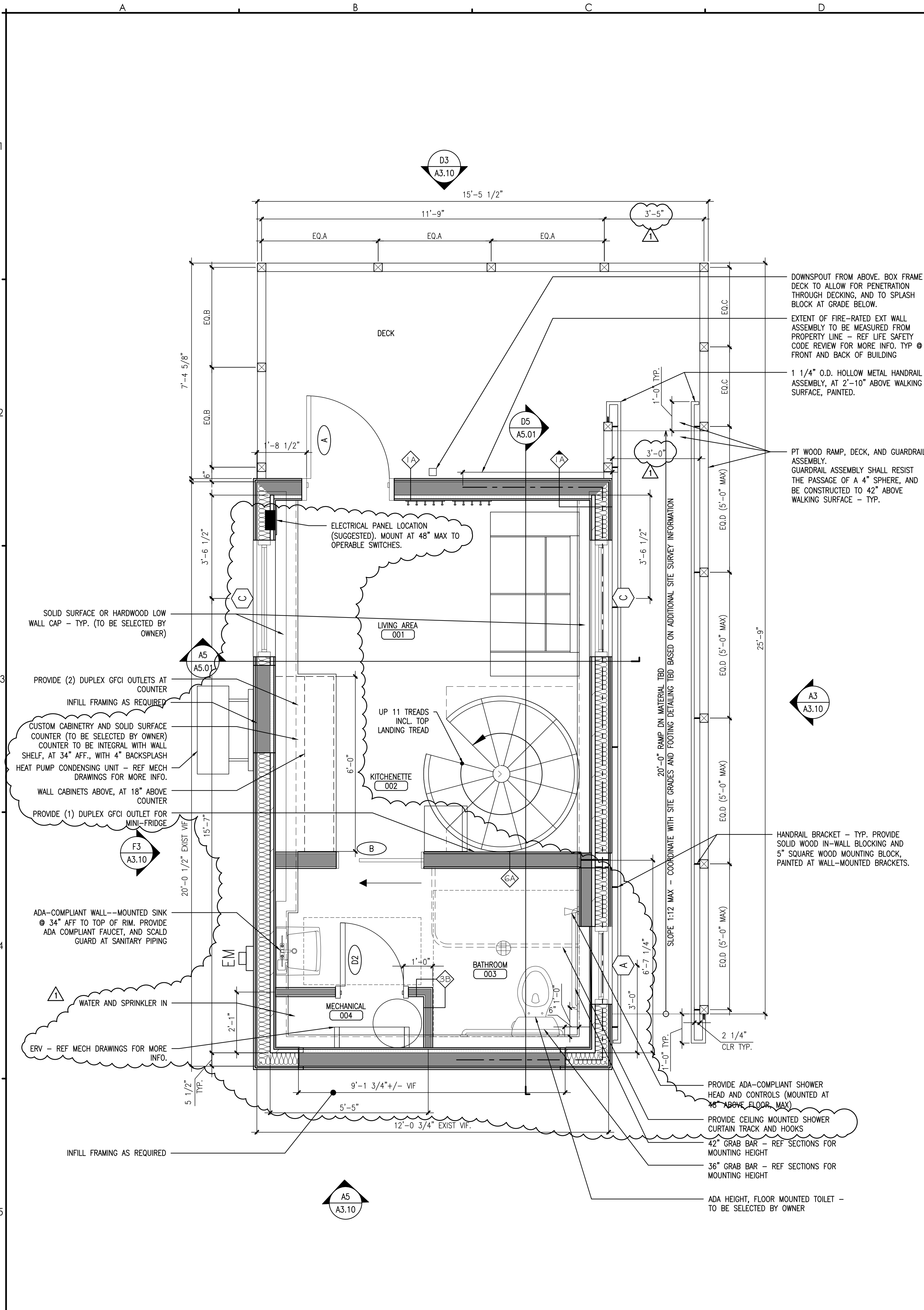
Also the right in common with others to use the twenty (20) foot passageway extending from Fletcher Street northerly to Spring Street.

Also another certain lot or parcel of land with the buildings thereon situated on the south side of Orchard Street, so called, in said Portland, and bounded and described as follows: Beginning at a stake on the southerly side of said Orchard Street, at the north-westerly corner of the parcel of land sold by Abby D. Hersey to Abial Carter in May, 1895, said stake being one hundred and twenty-one (121) feet westerly from Fletcher Street; thence southerly by the westerly line of said Carter's land, which is parallel with Fletcher Street, ninety nine and ninety-eight hundredths (99.98) feet, to a stake; thence westerly by land now or formerly of Martha V. Carter and by land now or formerly of Ellen S. Baker, thirty-eight and seven hundredths (38.07) feet; thence northerly parallel with said Abial Carter's westerly line, and thirty-eight and seven hundredths (38.07) feet therefrom, one hundred and six hundredths (100.06) feet to said Orchard Street; thence easterly by said Orchard Street thirty-eight and seven hundredths (38.07) feet to the point of beginning.

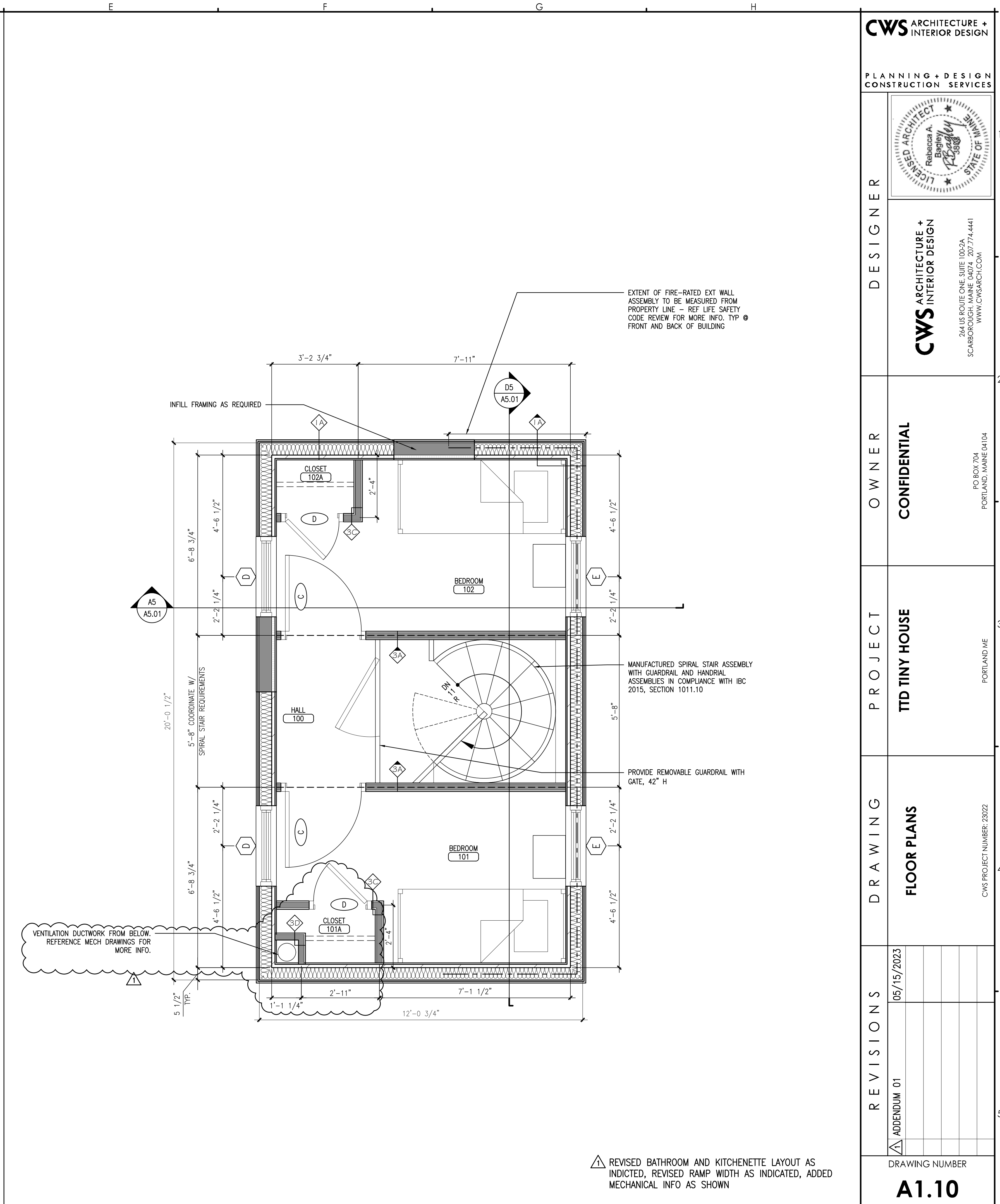
Also the right in common with others to use the twenty (20) foot passageway extending from Fletcher Street northerly to Spring Street.

Meaning and intending to convey the same real property acquired by Frannie Peabody Center by Confirmatory Deed from Peabody House, Inc. dated September 12, 2002, and recorded in the Cumberland County Registry of Deeds in Book 18170, Page 104.





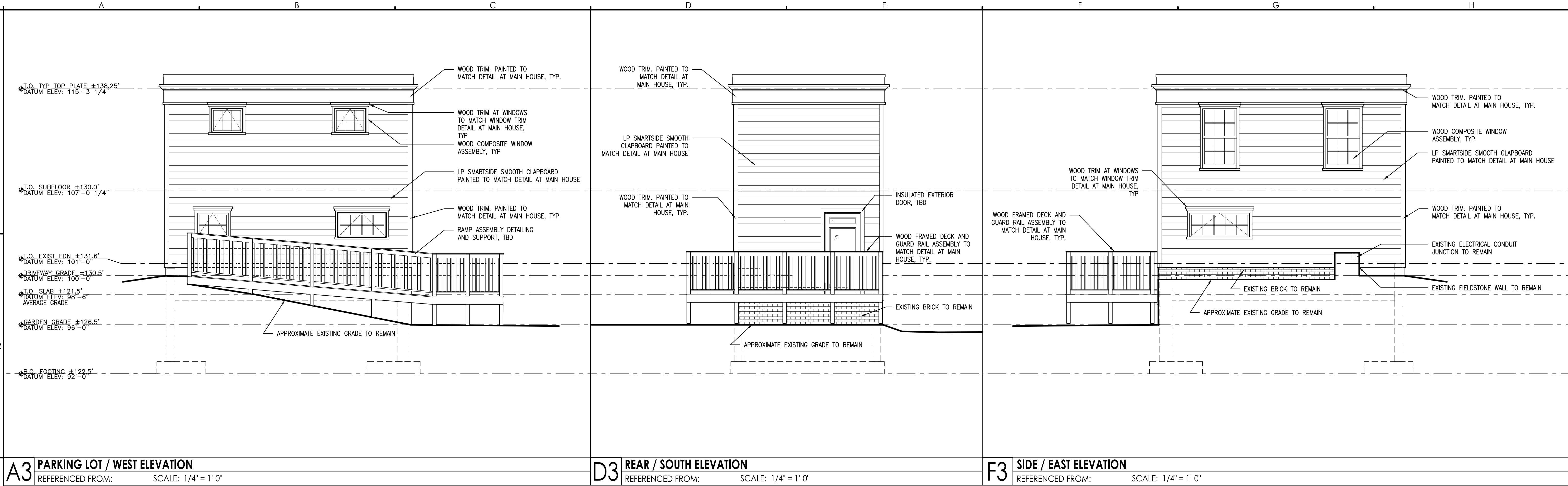
A5 LOWER LEVEL FLOOR PLAN
REFERENCED FROM: SCALE: 1/2" = 1'-0"



D5 UPPER LEVEL FLOOR PLAN
REFERENCED FROM: SCALE: 1/2" = 1'-0"



REVISIONS	05/15/2023				
ADDENDUM 01					



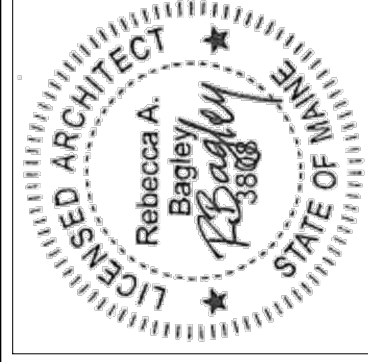
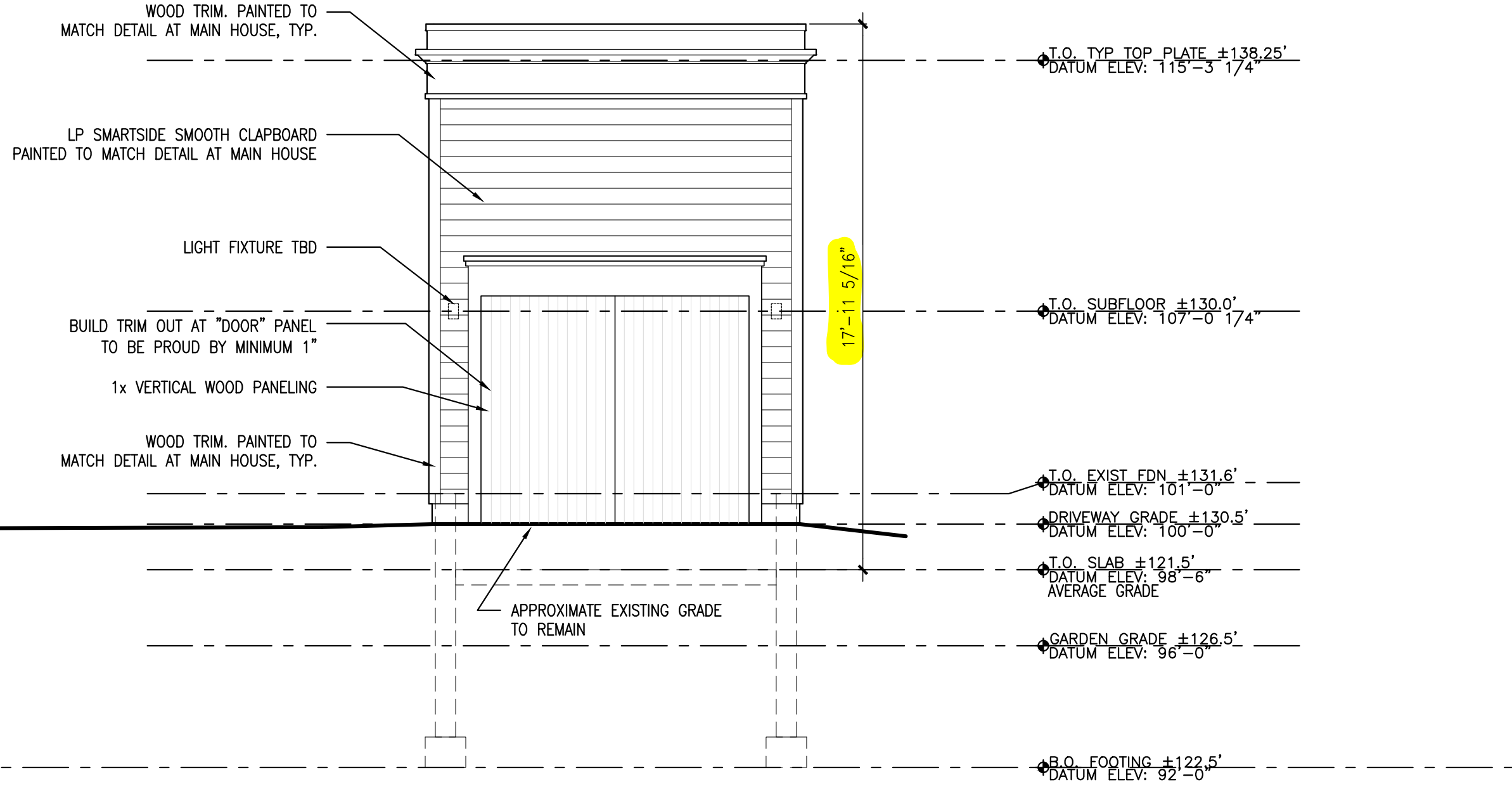
A3 PARKING LOT / WEST ELEVATION
REFERENCED FROM: SCALE: 1/4" = 1'-0"

D3 REAR / SOUTH ELEVATION
REFERENCED FROM: SCALE: 1/4" = 1'-0"

F3 SIDE / EAST ELEVATION
REFERENCED FROM: SCALE: 1/4" = 1'-0"



A5 STREET / NORTH ELEVATION
REFERENCED FROM: SCALE: 1/4" = 1'-0"



DESIGNER

CWS ARCHITECTURE + INTERIOR DESIGN
264 US ROUTE ONE SUITE 100-2A
SCARBOROUGH, MAINE 04074 207.774.4441
WWW.CWSARCH.COM

OWNER

CONFIDENTIAL

PO BOX 704
PORTLAND, MAINE 04104

PROJECT

TTD TINY HOUSE

PORTLAND ME

DRAWING

BUILDING ELEVATIONS

CWS PROJECT NUMBER: 2022

REVISIONS
