

Please send this form with Plot Plan and List of Abutters to the Town of Durham, 8 Newmarket Rd., Durham, NH 03824, Attn: Zoning Board of Adjustment.

Appeal for Applicant

State of New Hampshire

Strafford, SS

To: Zoning Board of Adjustment, Town of Durham NH 03824

Name of Applicant: MJS Engineering, P.C.

5 Railroad Street, P.O. Box 359
Address: Newmarket, NH 03857 Phone # 603-659-4979

Email: mjs@mjs-engineering.com

Owner of Property Concerned: Alpha Sigma House, Corp. of Kappa Delta Sorority
(If same as above, write "Same")

Address: c/o In Demand Realty, P.O. Box 9, Somersworth, NH 03878
(If same as above, write "Same")

Location of Property: 25 Madbury Road, Map 02, Lot 12-2
(Street & Number, Subdivision and Lot number)

Description of Property (Give Tax Map number, length of frontage, side and rear lines and other pertinent descriptive information) Map 02 Lot 12-2

Madbury Road Frontage 152'-2"; North Side 163'-8"; South Side 167'-7"; Rear 180'-9"; Attached Proposed East Front Elevation shows grades across the front of the building.

Fill in Section 1, 2, 3 or 4 below as appropriate. Do not fill in more than one section. This application is not acceptable unless all required statements have been made. Additional information may be supplied on separate sheets if the space provided is inadequate.

SECTION 1: APPEAL FROM AN ADMINISTRATIVE DECISION

Appeal must be filed no later than 30 days from the date of the original decision.

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

Decision of the enforcement officer to be reviewed: Not Applicable
Number _____ Date _____

Article _____ Section _____ of the Zoning Ordinance in question.

SECTION 2: APPLICATION FOR SPECIAL EXCEPTION

Any Special Exceptions granted shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.

Description of proposed use showing justification for a Special Exception as specified in the Zoning Ordinance Article _____ Section _____ **Not Applicable**

SECTION 3: APPLICATION FOR EQUITABLE WAIVER

The undersigned hereby requests an Equitable Waiver of Dimensional Requirements as provided in RSA 674:33-A of the New Hampshire Planning and Land Use Regulations.

Please give a brief description of the situation: Not Applicable

SECTION 4: APPLICATION FOR A VARIANCE

STANDARD OF REVIEW: Prior to seeking a variance, the property owner must have been DENIED a building permit by the Building Inspector or approval by the Planning Board.

Any Variances granted shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.

A Variance is requested from Article II DefinitionSection 175-7 of the Zoning Ordinance to permit the existing lower level to be defined as a basement rather than a story where the existing "...front exterior wall of the lower floor level rises more than two feet above finished grade." This will allow the ~~existing building to be renovated and expanded to include a third floor in order to move bedrooms out of the basement .~~

The New Hampshire Legislature has declared that each of the following conditions must be found in order for a variance to be legally granted. Please answer the following questions in support of the variance request either on this form or on a separate sheet of paper.

1. No decrease in value of surrounding properties would be suffered because:
See attached.

2. Granting the variance would not be contrary to the public interest because:
See attached.

Current law requires the existence of unnecessary hardship for the granting of any variance, whether that is for a use not allowed in a particular zone or a deviation from a dimensional requirement.

3(A). Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

See attached.

and

- b. the proposed use is a reasonable one because:

See attached.

Or

3(B). Owing to special conditions of the property that distinguishes it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Not Applicable.

4. By granting the variance substantial justice would be done because:
See attached.

5. The use will not be contrary to the spirit and intent of the ordinance because:
See attached.

Application for a Variance

Kappa Delta Renovation/Expansion

AG Architects Project No. 18-738.1
24 October 2018

AG Architects, PC
63+ Central Avenue, Dover, NH 03820
E-Mail aga@agarchitects.com
www.agarchitects.com
Phone 603-743-3700
Fax 603-743-3777



- Kappa Delta Sorority
25 Madbury Road
Durham, New Hampshire 03824

Map 2, Lot 12-2

- Project Description: Kappa Delta Sorority is proposing to renovate and expand their existing building at 25 Madbury Road in order to improve living conditions and to provide accessibility. The sorority currently has bedrooms located in the basement, and additional bedrooms/bunk rooms on the upper floors. The existing third floor bedrooms are located under a sloped roof line. The proposed improvements include renovating the second floor, reconstructing the third floor and roof, and adding a three story addition with basement to the rear of the existing building. The new addition will include an accessible entrance and accessible bedrooms on the first floor. There are no changes proposed to the existing grades across the front of the building. In order to comply with the Town of Durham's Zoning Ordinance the sorority building is limited to three stories, including a basement that is not counted as a story. The lower level, which has been considered a basement since it was constructed in 1965, is now considered a story because of the recent Zoning Ordinance change in the definitions of Basement and Story.
- A variance is requested from Article II Definitions, Section 175-7, of the Zoning Ordinance to permit the existing lower level of Kappa Delta to be defined as a basement rather than a story where the "... front exterior wall of the lower floor level rises more than two feet above finished grade." This will allow the existing building to be renovated/expanded to include a full third floor in order to move resident bedrooms out of the basement. Current zoning definitions for Basement and Story both indicate a maximum of two feet of wall above existing grade to qualify as a basement, while the existing front elevation has walls that vary from 1'-8" to almost 6' above existing grade as shown in the attached Proposed East Front Elevation drawing.
- Site Plan and Photographs are attached.
- Facts Supporting This Request:

1. *No decrease in value of surrounding properties will be suffered because:*

The surrounding properties are similar scale fraternities and a 3 to 4 story apartment/mixed-use building next door (See Photos 1- 10). Allowing the proposed renovation and expansion to include additional space for improved bedrooms in a reconstructed third floor, with the existing lower level accepted as a basement, will complement the uses, scale and size of adjacent properties. This will increase the property values for both the sorority and the surrounding properties. The sorority value increases because the building is expanded to fit resident bedrooms on upper floors rather than in the basement, and the increase in building size and creation of properly sized double bedrooms upgrades the quality of the building. Since the adjacent buildings are similar uses, the Kappa Delta expansion will enhance the surrounding property values.

2. *Granting the variance would not be contrary to the public interest because:*

The Kappa Delta sorority at 25 Madbury Road has been in the building since it was purchased in 1996. The original center portion of the building was constructed in the early 1900's, and the wings to either side are believed to have been built in 1965. The existing lower level has always been considered a basement, the basement is classified as a basement in the Town's property tax cards,

and is considered a basement in accordance with current building code definitions. The zoning ordinance definition of a basement and a story is different than how the building code defines them, thereby creating the issue. Granting the variance to classify the lower level as a basement and to allow a three story building above is in the public interest because:

- a. It would recognize that the lower level has been a basement for years before this recent 2017 zoning ordinance definition. The lower level is mainly below grade and is unobtrusive in appearance, especially on the front elevation.
 - b. The proposed renovation/expansion moves resident bedrooms out of the lower level to upper floors, which is bringing the building more into compliance with the spirit and intent of the Zoning Ordinance, Article 175-55, Paragraph 8.
 - c. The proposed renovation/expansion is comparable in size, massing, scale and character to the adjacent properties which are permitted and allowed by zoning. The Photos 1-10 show Kappa Delta and adjacent properties for comparison. Most of the adjacent properties have grades more than two feet below the first floor.
3. *(A) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:*

- a. *No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:*

The general purpose of the definition of Basement and Story is to limit the height of buildings and to prevent a basement from being too prominent and unsettling in appearance at the front of a building. The Zoning Ordinance also prohibits dwelling units in the basement of multi-unit residences. The existing building presents an attractive appearance where most of the adjacent front grade is reasonably close to the first floor, as shown in the attached Proposed East Front Elevation drawing. In addition, the proposed design reflects the intent of the ordinance by creating an image of a two story building with a third floor under a dormered roof line. The existing grades across the front of the building have been in place long before the new 2017 Zoning Ordinance definition of a story and basement, and it is unreasonable to apply these definitions that create a strict dimensional limit that prevents construction of a third floor when the purpose of the ordinance is being met.

- b. *and the proposed use is a reasonable one because:*

Sororities are permitted within the Central Business District with Conditional Use approval and Site Plan review. The Central Business District allows three story buildings up to 35 feet height on this lot along Madbury Road. The existing building is currently a sorority, and includes bedrooms under a sloped roof which is considered a half-story by zoning. The proposed renovation/expansion enhances the living conditions for the sorority members, and the proposed height, including a full third floor and basement, will be less than 34 feet 7 inches with the new roof peak within two feet six inches of the existing roof peak. The exposed lower level wall does not have a significant impact of the height of the building. Bedrooms are being moved out of the basement into the upper floors, a sufficient number of double bedrooms that meet current standards are being provided for the current number of residents, and the use as a sorority is well situated with several adjacent fraternities and apartments occupied by students.

4. *By granting the variance substantial justice would be done because:*

Substantial justice is achieved with granting of this variance for several reasons, as follows:

- The use of the building as a sorority is permitted by Zoning and the use complements surrounding properties.

- The scale of the proposed renovation/expansion with three stories plus a “basement” is comparable to surrounding properties, especially the adjacent Madbury Commons property which is 3 to 4 stories in height plus a basement with walls much higher than the two feet now allowed.
- The existing building front, which is not being modified at grade, has been at the current elevation grades since it was constructed in 1965, and has been considered a basement since that time as indicated in the Town’s own property tax cards.
- Denial of the variance would create a loss to the Owner that would far outweigh any gain to the public because the grade condition has existed at the property since 1965.

5. *The use will not be contrary to the spirit and intent of the ordinance because:*

We have noted that the Zoning Ordinance Conditional Use requirements limit building height to 35 feet maximum and the number of stories to three, and the Zoning story definition intent is to minimize the exposed basement wall. Our building height is less than 35 feet high and the basement is unobtrusive and feels like a basement. The discrepancy in the height of the exposed basement wall along the front elevation for a building dating to the early 1900's and 1965 expansion, does not alter the fact that the proposed building appears to be two stories in height with a third story under the roof line as intended in the Zoning Ordinance. Further, the building meets the building code definition of a basement plus three stories. The proposed existing “basement” plus three stories meets the spirit and intent of the ordinance.



PO Box 9
Somersworth, NH 03878-0009
(603) 740-4999

Alpha Sigma House Corporation of Kappa Delta Sorority

October 19, 2018

Durham Planning and Zoning Boards
Town of Durham
8 Newmarket Road
Durham, New Hampshire 03824

RE: Kappa Delta Sorority
25 Madbury Road
Durham, New Hampshire 03824

Dear Chairpersons,

I hereby authorize Michael J. Sievert, P.E. of MJS Engineering and Art Guadano of AG Architects, PC to represent us at the Durham Planning and Zoning Boards, and any and all technical review committee meetings for variance, conditional use and site plan approvals. The subject parcel is shown on Tax Map 2 as Lot 12-2 located at 25 Madbury Road.

Sincerely,

Brian T. Blair - In Demand Realty, LLC
Authorized Agent for
Alpha Sigma House Corporation of Kappa Delta Sorority

Subject: RE: Kappa Delta - Variance

From: Michael Behrendt <mbehrendt@ci.durham.nh.us>

Date: 10/18/2018 3:11 PM

To: Art Guadano <art@agarchitects.com>

CC: Audrey Cline <acline@ci.durham.nh.us>, James Gibbons <james@agarchitects.com>, Mike Sievert <mikesievert@mjs-engineering.com>

Hello Art,

That is correct. Under the zoning ordinance you would need a variance to build out a third floor under the existing roof as proposed. The existing basement/lower level would be considered a story under the definition below since the front exterior wall rises more than two feet above the finished grade. Thus, if the third floor is built out the building would be considered four stories, where only three are permitted.

Section 175-42 B. 10. states:

Maximum Height of Mixed-Use Buildings, Madbury Road – No building in the Central Business District on any lot with frontage along Madbury Road shall exceed three (3) stories. This provision specifically includes the following properties: Tax Map 2, Lot 12-0; Tax Map 2, Lot 12-2; Tax Map 2, Lot 12-3; Tax Map 2, Lot 12-4; Tax Map 2, 12-5; Tax Map 4, Lot 1-0; Tax Map 4, Lot 11-0; Tax Map 4, Lot 12-0; Tax Map 4, Lot 13-0UNH; and Tax Map 4, Lot 14-0.

Definitions:

STORY - The complete horizontal division of a building, situated at or above ground level, comprising the usable space or room(s) on one level. Each such division is considered one full story, except for the top level when it is under a sloped roof, which is considered a half story. For the purpose of determining the total number of permitted stories, a sloped roof that does not contain usable space (other than crawl-type storage space) is not considered a half story. For the purposes of this ordinance, a lower level is considered to be a story if the front exterior wall of the lower floor level rises more than two feet above the finished grade.

Michael Behrendt

Durham Town Planner

Town of Durham

8 Newmarket Road

Durham, NH 03824

(603) 868-8064

www.ci.durham.nh.us

From: Art Guadano [mailto:art@agarchitects.com]

Sent: Thursday, October 18, 2018 2:47 PM

To: Michael Behrendt

Cc: Audrey Cline; James Gibbons; Mike Sievert

Subject: Kappa Delta - Variance

Hi Michael,

I am writing to confirm our discussion at our meeting on 9 October 2018 concerning our plans for renovating and expanding Kappa Delta sorority at 25 Madbury Road. We understand we will need to go the Planning Board for Conditional Use approval and that we have one issue that may require a zoning variance. The lower level of the existing building has been considered a basement since it was constructed years ago, and we are now seeking to construct three stories above the basement as allowed for sororities in the Central Business District. We understand that based on the current ordinance that you consider the lower level to be a story rather than a basement, and would therefore not allow what is being proposed since it would be considered a four story building. We wish to confirm your denial for treating the lower level as a basement rather than a story.

Attached is a drawing that shows the Proposed East Front Elevation and the grade heights. Please give me a call if you have any questions.

Thanks,

Art

--



Art Guadano, AIA, LEED AP BD-C
AG Architects, PC

634 Central Avenue
Dover, New Hampshire 03820
Phone: (603) 743-3700
Fax: (603) 743-3777
www.agarchitects.com



This map was originally produced by Strafford Regional Planning Commission in October 2004, and was updated by the Town of Durham in January 2017.

THIS MAP IS FOR ASSESSMENT PURPOSES. IT IS NOT INTENDED FOR LEGAL DESCRIPTION OR CONVEYANCE.

Legend
 [Outline] Adjacent Map Sheets
 [Blue Shaded] Current Map Sheet

PROPERTY MAP
DURHAM
 NEW HAMPSHIRE

1 inch = 428 feet

Map 2



KAPPA DELTA

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Photographs

Kappa Delta Renovations/Expansion

AG Architects Project No. 18-738.1

24 October 2018

AG Architects, PC

634 Central Avenue, Dover, NH 03820

E-Mail aga@agarchitects.com

www.agarchitects.com

Phone 603-743-3700

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Photograph 1: Kappa Delta East Front Elevation



Photograph 2: Kappa Delta Northeast Elevation



Photographs

Kappa Delta Renovations/Expansion

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24 October 2018



Photograph 3: Kappa Delta Southwest Elevation



Photograph 4: View of Sigma Alpha Epsilon

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Kappa Delta Renovations/Expansion

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Photograph 5: View of Sigma Beta



Photograph 6: View of Orion UNH Student Apartments



Photographs

Kappa Delta Renovations/Expansion

AG Architects Project No. 18-738.1

24 October 2018



Photograph 7: View of Orion UNH Student Apartments



Photograph 8: View of Delta Kappa and Madbury Commons

Photographs

Kappa Delta Renovations/Expansion

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24 October 2018

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Photograph 9: View of Alpha Chi Omega



Photograph 10: View of Sigma Nu

Kappa Delta Expansion

Durham, New Hampshire

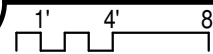
AG Architects Project No.: 18-738.1

24 October 2018

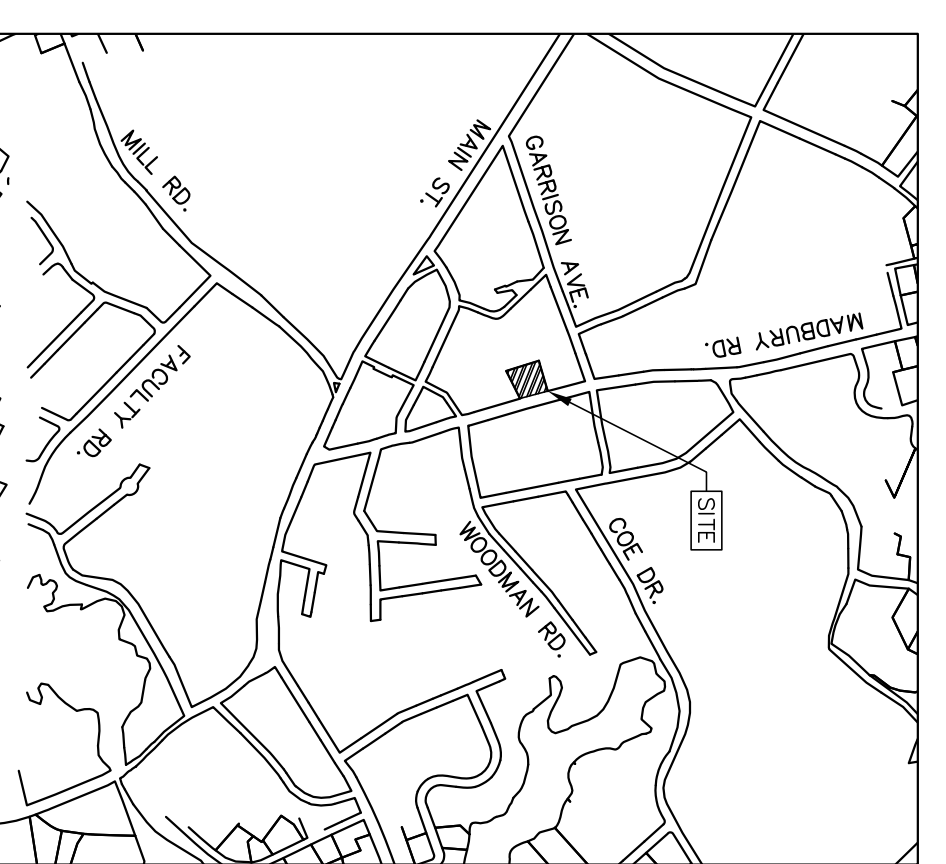
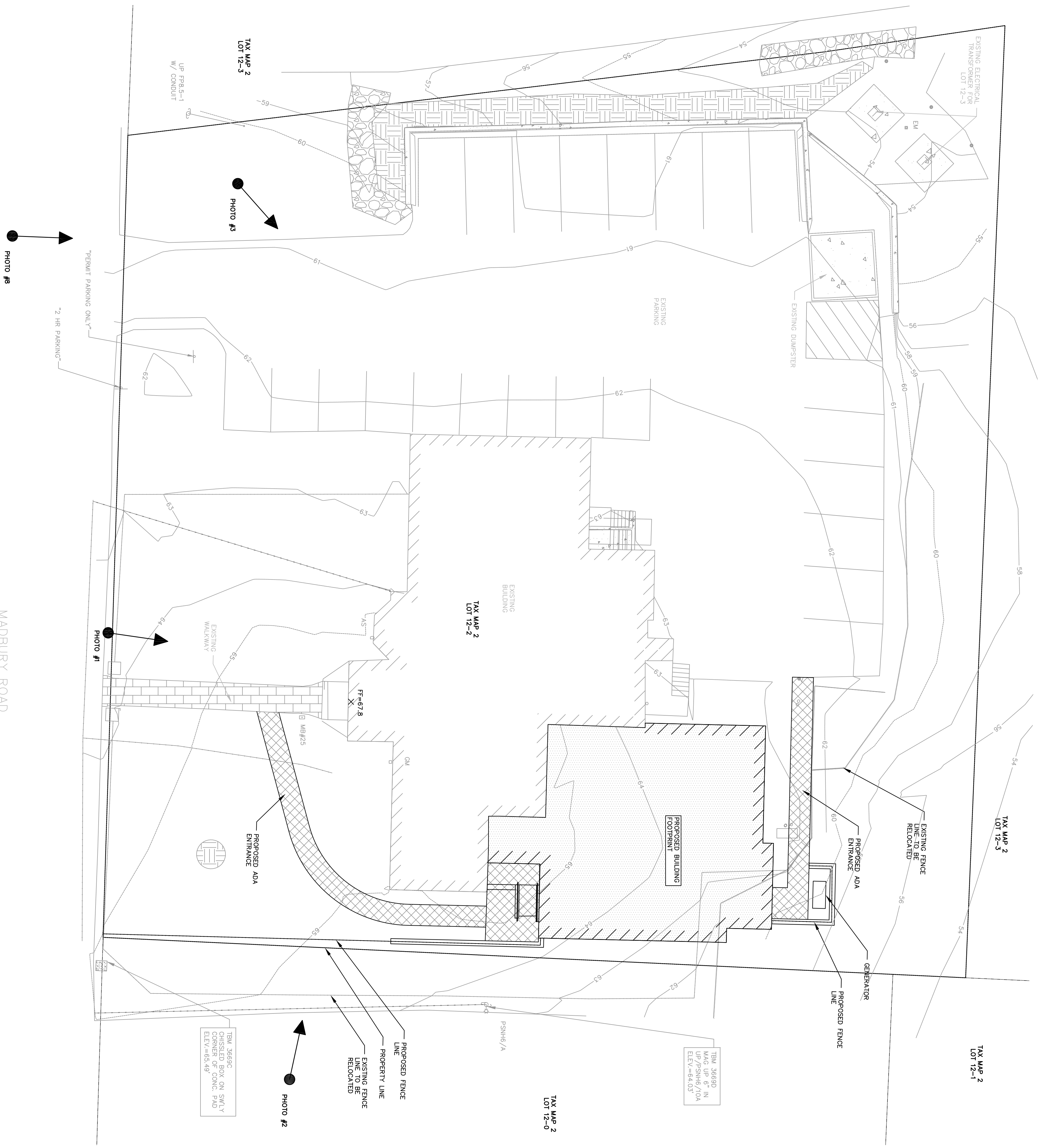
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1 Proposed East Front Elevation



1/8" = 1'-0"



SITE DATA BLOCK:

PLAN INTENT: THE PROPOSED IS TO CONSTRUCT AN ADDITION TO THE EXISTING BUILDING ON THE EXISTING LOT. THE PROPOSED ADDITION WILL BE USED FOR STORAGE OF SUPPLIES AND SITE GRADING FOR THE VARIANCE REQUEST.

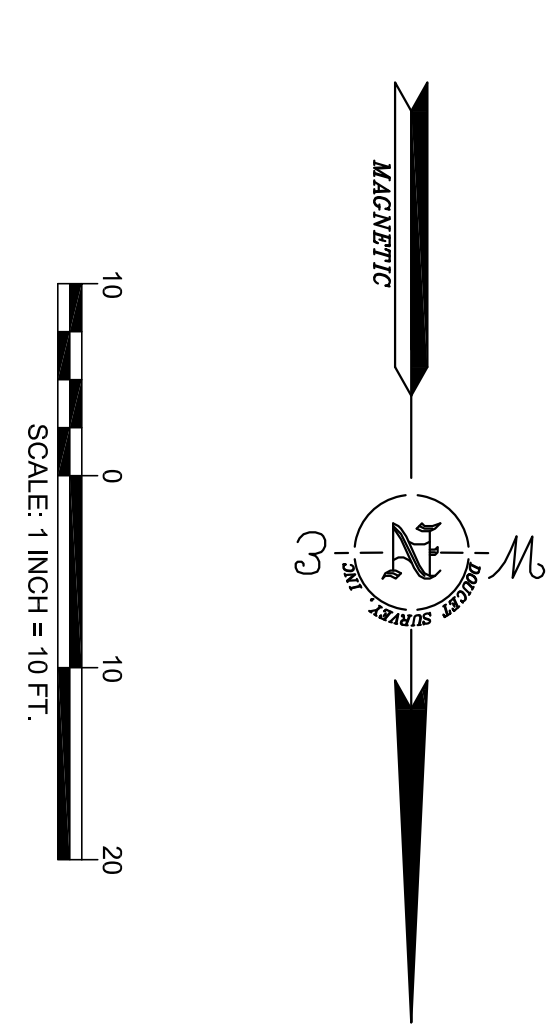
ZONE: CG (CENTRAL BUSINESS)
 DIMENSIONAL REQUIREMENTS:
 MIN. LOT AREA: 5,000 sq.ft.
 MIN. FRONTAGE: 50 ft.
 MIN. FRONT/SIDE/REAR SETBACK: N/A
 SETBACK REQUIREMENTS ARE OUTLINED IN THE "DEVELOPMENT STANDARD" SECTION OF THE DURHAM ZONING ORDINANCE.
 THE PROPERTY IS SUBJECT TO ANY AND ALL APPLICABLE ZONING REGULATIONS NOT OUTLINED ABOVE.

GENERAL NOTES:

- OWNER OF RECORD: DATA SIGMA HOUSE CORP. OF KAPPA DELTA SOCIETY SOMERSWORTH, NH 03378 S.C.R.D. 1899, PAGE 0532
- LOT AREA: 0.63 ACRES (27429± S.F.)
- FIELD SURVEY PERFORMED BY G.A.N. & E.L.S. DURING 9/18 USING A TRIMBLE S7 TOTAL STATION AND A LEICA DISTANCE MEASUREMENT SYSTEM. ALL ELEVATIONS ARE AUDIO LEVEL. TRAVERSE ADJUSTMENT BASED ON LEAST SQUARE ANALYSIS.
- HORIZONTAL DATUM BASED ON MAGNETIC OBSERVATION.
- VERTICAL DATUM IS BASED ON NAVD88 PER DISK UTM3 (ELEVATION=76.72').
- PROPER FIELD PROCEDURES WERE FOLLOWED IN ORDER TO GENERATE CONTOURS AT 1' INTERVALS. ANY MODIFICATION OF THIS INTERVAL WILL DIMINISH THE INTEGRITY OF THE DATA, AND DUCRET SURVEY, INC. WILL NOT BE RESPONSIBLE FOR ANY SUCH ALTERATION PERFORMED BY THE USER.
- UNDERGROUND UTILITIES SHOWN HEREON ARE BASED ON OBSERVABLE PHYSICAL EVIDENCE AND PAINT MARKS FOUND ON-SITE.
- THE ACCURACY OF MEASURED UTILITY INVERTS AND PIPE SIZES/TYPES IS SUBJECT TO NUMEROUS FIELD CONDITIONS, INCLUDING: THE ABILITY TO MAKE VISUAL OBSERVATIONS; DIRECT ACCESS TO THE VARIOUS ELEMENTS; MANHOLE CONTRIBUTION, ETC.
- ALL ELECTRIC, GAS, TEL, WATER, SEWER AND DRAIN SERVICES ARE SHOWN IN SCHEMATIC FASHION. THEIR LOCATIONS ARE NOT BASED ON NECESSARY FIELD OBSERVATIONS. THE USER SHALL CONSULT WITH THE APPROPRIATE UTILITY AUTHORITIES CONCERNED WITH THE SUBJECT SERVICE LOCATIONS FOR INFORMATION REGARDING SUCH. CALL DIG-SCALE AT 1-888-360-3461.
- THIS IS NOT A BOUNDARY SURVEY AND SHALL NOT BE USED AS SUCH. REFER TO THE PLANNING BOARD FOR MORE INFORMATION.
- THIS IS NOT A BOUNDARY SURVEY AND SHALL NOT BE USED AS SUCH. REFER TO THE PLANNING BOARD FOR MORE INFORMATION.

REFERENCE PLANS:

- "RE-SUBDIVISION OF LAND IN DURHAM" DATED AUGUST 24, 1980 BY JOHN W. DURGON ASSOCIATES, INC. S.C.R.D. PLAN 21-86



NO.	REVISIONS	DATE	INT.
0.	INITIAL SUBMISSION TO DURHAM ZONING BOARD	10/22/18	MCS

DATE:	10/22/18
SCALE:	1" = 10'
DESIGNED BY:	MJS
DRAWN BY:	MCS
APPROVED BY:	MJS
DWG FILE:	18-067 C1C.dwg

SITE PLAN
 prepared for
KAPPA DELTA
 TAX MAP 2, LOT 12-2
 25 MADBURY ROAD
 DURHAM, NH

MJS ENGINEERING, P.C.
 CIVIL • STRUCTURAL • ENVIRONMENTAL

5 RAILROAD ST., P.O. BOX 359
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 PHONE: (603) 659-4979, FAX: (603) 659-4627
 E-MAIL: MJS@MJS-ENGINEERING.COM