



TOWN OF DURHAM
ZONING BOARD OF ADJUSTMENT
 8 NEWMARKET RD
 DURHAM, NH 03824
 PHONE: 603/868-8064
 www.ci.durham.nh.us

RECEIVED
 Town of Durham
 AUG 15 2023
 Planning, Zoning
 and Assessing
 Fee: \$415
 Check # 207

VARIANCE

Prior to seeking a variance, the property owner must have been denied a building permit by the Building Inspector or denied an approval by the Planning Board.

Name of Applicant Barry Reinhold (on behalf of Durham Evangelical Church)

Address: 13 Lamprey Lane, Lee NH

Phone # 603 834 5449 Email: reinholds@comcast.net

Owner of Property Concerned Durham Evangelical Church
 (If same as above, write "Same")

Address: 114 Dover Road, Durham NH 03824
 (If same as above, write "Same")

Location of Property: 37 Mill Road
 (Street & Number)

Tax Map & Lot number 109 Lot 73

A Variance is requested from Article(s) XX Section(s) 109- C.6 of the Zoning Ordinance to permit: An Accessory Dwelling Unit to not have an interior door that connects to the single-family dwelling.

All applications must include a statement explaining how the applicant meets each of the five (5) statutory requirements for granting a variance, (A) through (E), which are found on page 2. The Zoning Board of Adjustment may consider the variance application incomplete if these five statements have not been addressed. In addition all applications must be accompanied by adequate plans and exhibits.

Owner Authorization and Signature:

1. I/we do hereby authorize Barry Reinhold to file this application with the Zoning Board of Adjustment, to appear before the Board and to act on my/our behalf.
2. I/we do hereby authorize members of the Zoning Board of Adjustment and/or staff to enter upon the property on the afternoon prior to the Zoning Board meeting for purposes of reviewing this application.
3. To the best of my/our knowledge the information contained in this application is complete and accurate.

Owner's Signature(s): [Signature] Date: 8/15/2023
 _____ Date: _____

RSA 674:33 Powers of the Zoning Board of Adjustment:

I(a)The zoning board of adjustment shall have the power to:

- (1) Hear and decide appeals if it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16; and
 - (2) Authorize, upon appeal in specific cases, a **variance** from the terms of the zoning ordinance if:
 - (A) **The variance will not be contrary to the public interest;**
 - (B) **The spirit of the ordinance is observed;**
 - (C) **Substantial justice is done;**
 - (D) **The values of surrounding properties are not diminished; and**
 - (E) **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**
- (b)(1) For purposes of this subparagraph I(a)(2)(E), "**unnecessary hardship**" means that, owing to special conditions of the property that distinguish it from other properties in the area:
- (A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - (B) The proposed use is a reasonable one.
- (2) If the criteria in subparagraph (1) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish 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.
- (3)The definition of "unnecessary hardship" set forth in subparagraphs (1) and (2) shall apply whether the provision of the ordinance from which a variance is sought is a restriction on use, a dimensional or other limitation on a permitted use, or any other requirement of the ordinance.

EXPIRATION PERIOD FOR VARIANCES

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.



TOWN OF DURHAM
8 NEWMARKET RD
DURHAM, NH 03824-2898

AUDREY CLINE
Zoning Administrator
Code Enforcement Officer
Health Officer

TEL: (603) 868-8064
acline@ci.durham.nh.us

Decision or Order of the Building Inspector/Code Enforcement Officer

175-12. Administrative Appeals.

Any person who believes that the Zoning Administrator has made an error in the interpretation or application of the provisions of this Ordinance, may appeal such determination to the Zoning Board of Adjustment as an administrative appeal under the provisions of Section 175-19. If the Board finds that the Zoning Administrator erred in his/her interpretation of the Ordinance, it shall modify or reverse the decision accordingly.

175.19. Powers and Duties

B. In exercising the above-mentioned powers, the Board may, in conformity with the provisions hereof, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from and may make such order or decision as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

Applicant: DURHAM EVANGELICAL CHURCH, 114 DOVER RD, DURHAM, NH 03824

Date of order: August 22, 2023

Deadline for application for appeal: September 22, 2023

Decision or Order of the Building Inspector/Code Enforcement Officer:

Building Permit Application number 23-353 dated August 16, 2023 for property located at 37 Mill Road, is DENIED as the proposal does not meet the requirements of ARTICLE XX of the Durham Zoning Ordinance below:

STANDARDS FOR SPECIFIC USES

175-109. Compliance Required.

C. Accessory Dwelling Units and Accessory Apartments.

6. An interior door shall be provided between the single-family dwelling and the accessory dwelling unit, but the door may be locked or not at the option of the property owner.

By Durham's Building Inspector/Code Enforcement Officer:

Audrey Cline CEO

**Statement on the
Five Statutory Requirements for a Variance
37 Mill Road, Tax Map 109 Lot 73**

Date	version	change	who
15-AUG-2023	1.0	Incorporation of feedback	Barry Reinhold
14-AUG-2023	0.7	First full document	Barry Reinhold

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1 Background

The property at 37 Mill Road is owned by Durham Evangelical Church and contains the McDaniel Tomb lot as well as a single-family home intended to be a parsonage for a senior or executive pastor ministering at Durham Evangelical Church. The property is unique in that it is under a “religious use” covenant (see [Appendix III](#)) that restricts the way in which the property can be used making it unlikely to change hands except to another religious organization where the proposed accessory dwelling unit would likely be used in a similar manner.

The single-family dwelling contains a mudroom that connects the dwelling to a garage (see [Appendix II.1](#)). Above the garage, on the side facing away from the single-family dwelling, is a full dormer (external measurements of 29 feet by 25 feet, see [Appendix II.2](#) and [II.3](#)) containing a stairway with an external door and an unfinished area above the garage with ~~450~~ 580 square feet of living space. See [Appendix II.4](#) BR

The property resides in a zone (Residential RA) which does not allow for an accessory apartment but does allow for an accessory dwelling unit (ADU). The space as currently constructed does not contain an internal door that connects the proposed ADU to the single-family dwelling, otherwise it meets the requirements set forth for an ADU.

The objective of Durham Evangelical Church in applying for an ADU is so that it can provide affordable housing for an individual providing ministry services, such as a youth pastor or a campus minister working with UNH students. These positions are typically held by a single individual, or young married couple, who work closely with the church leadership and would have a working relationship with any family living in the single-family dwelling.

Given the layout and construction of the building, adding an internal door that directly connects the proposed ADU to the single-family dwelling would be a significant expense as there is no simple way to directly connect the proposed ADU space to the single-family dwelling space.

It should be noted that due to the religious use covenant it would be unlikely that the ADU would ever end up having an occupant that is not connected to the occupants of the single-family dwelling. Further, there will be no external changes made to the building structure, the unfinished space will simply be completed in a manner that supports independent living.

Based on the above observations we respectfully request that a variance be granted to allow the space above the garage at 37 Mill Road to be used as an ADU. This helps Durham align with the objectives of RSA 674:71-73, which is in the public good, and avoids the unnecessary hardship that would be associated with renovating the existing structure.

2 Five Points for Variance

The following clauses present the required supporting information as requested in the Variance application.

2.1 The Variance will not be contrary to the public interest.

The state of New Hampshire introduced RSA 674:71-73 in 2017 “to expand the supply of housing in New Hampshire communities without further land development, as well as to encourage efficient use of existing housing stock and infrastructure and provide an affordable housing option in communities.” [1]

The proposed ADU for the single-family house at 37 Mill Road in Durham requires no external changes to the existing structure, or additional parking space to be conformant to zoning requirements. The occupant of the apartment will have a working relationship with the occupant of the single-family home and is highly unlikely to cause any disturbance to the abutters. The creation of the ADU also expands the supply of housing in Durham without further land development, better utilizes the space at 37 Mill Road, and creates an affordable housing option. It thus meets the objectives of RSA 674:71-73, and is thus in the overall public good, and to the extent that we are aware of does not introduce any elements that are contrary to the public interest.

2.2 The Spirit of the ordinance is observed.

The proposed ADU is perfectly aligned with the overall spirit of RSA 674:71-73. There is some question, however, as to the intent of the internal door, which is what has generated the need to apply for a variance. Here are some possible intents of the requirement:

- (1) The New Hampshire Housing Financial Authority Web site [2] - Appendix C – wording (*only applies to attached ADUs*) suggests that the idea of having an internal door is to ensure that there is independence between the single-family dwelling space and the ADU, since the requirement is only for attached ADUs. Note the following text taken from the explanation section of 674:72 (under section III on page 27) “*This requirement may suggest that there must be a common wall between the units, but local interpretation could allow ADUs above attached garages where there might be more than one intervening door between the ADU and the main house.*” If this is the intent of the interior door then the proposed ADU is indeed a distinct space and would meet the spirit of RSA 674:71-73.
- (2) Since the town of Durham has zoning requirements that allow for ADUs but not accessory apartments, the intent of the internal door here seems to be to limit the type of accessory that can be built, that is to maintain the appearance of a single-family home. If this is the intent of the town, the spirit of the ordinance is maintained as the external appearance will not change.
- (3) If the intent is to limit the type of relationship that exists between the occupiers of the ADU and that of the single-family home such that there is a level of oversight provided by the people living in the single-family home, we believe that the religious use restriction on how the land can be used, support this to a greater extent than a requirement for an internal door, as the occupant is going to be associated with the work of Durham Evangelical Church and overseen by vocational, membership, or relational context.

In any, or all, of the interpretations of intent for the internal door, we hold that the spirit of the ordinance is being observed.

2.3 Substantial Justice is Done

A fair and reasonable outcome from the town of Durham’s perspective would be to ensure that the proposed ADU still meets the spirit and objectives associated with the zone in which the property resides. That would appear to be achieved in the granting of the variance. From the perspective of the state of New Hampshire and RSA 674:71-73, there is additional low-cost housing that more effectively uses current housing stock, and from Durham Evangelical Church’s perspective the financial burden of renovating the structure to provide a single internal door would be removed with the variance. Hence it appears that Substantial Justice is Done with the granting of the variance.

2.4 The values of Surrounding Properties are not Diminished

The proposed ADU requires no change to the exterior of the building, and no additional work on the lot, hence there is no impact on the value of the surrounding properties. Indeed, if the variance is required the resulting appearance of the overall structure may be difficult to make aesthetically pleasing and might have some small negative impact on property values.

2.5 Literal Enforcement of the Provisions of the Ordinance would result in an Unnecessary Hardship

Based on the most restrictive reading of the wording of RSA it would be necessary to create a wall where one side of the wall is the living space of the ADU and the other side of the wall is the living space of the single-family dwelling. The interior door would allow for passage between these two spaces without any other doors. In this case it would be necessary to do extensive work to raise the roof over the breezeway and integrate it into the roof of the garage, which would have to be raised as well. The cost of doing this work would be prohibitive.

It is possible that other alterations would be acceptable, but it is unclear as to what objectives would need to be satisfied. For example, an interior door could be added in the garage that would provide access to the apartment via the existing stairs. This would introduce an indoor door, but doesn't seem to meet any objective and would make the garage difficult to use for two cars.

Appendix I References

- [1] <https://www.nhhfa.org/housing-challenges-solutions/accessory-dwelling-units>
- [2] https://www.nhhfa.org/wp-content/uploads/2019/06/ADU_HOGuideAppendixC_2018.pdf

Appendix II Information on the Current Structure at 37 Mill Road

II.1 Single-family Home showing Garage and Dormer

This image shows how the single-family house is connected to the garage and the position of the proposed accessory dwelling unit above the garage.



The garage has an internal entrance to the breezeway/mud-room.

II.2 Accessory Dwelling Unit as seen from Mill Road

There will be no external changes to the existing structure if the accessory dwelling unit variance is approved. The picture below shows how the structure will look from the viewpoint of Mill Road



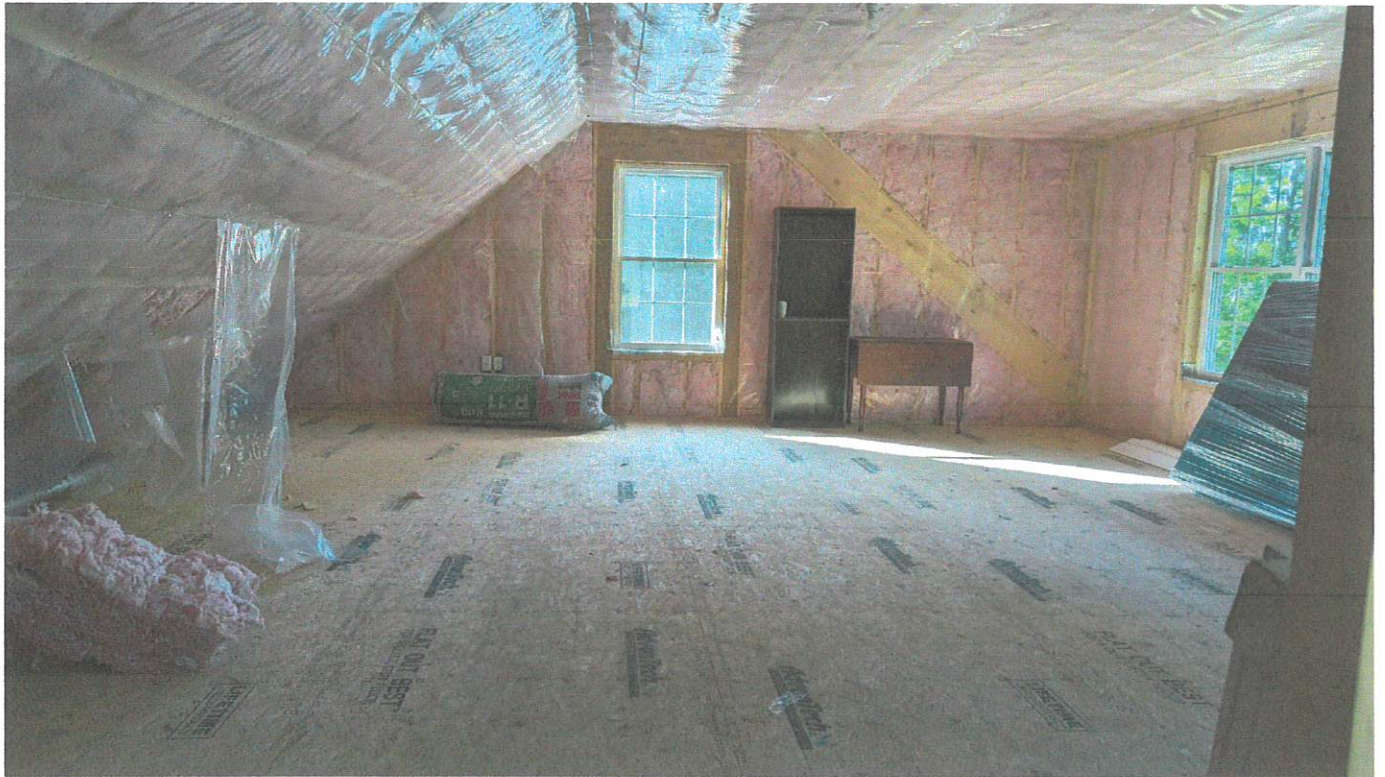
II.3 External Entrance

The current entrance to the unfinished space is an external entrance as shown in this picture.



II.4 Image of interior of proposed Accessory Dwelling Unit

This image provides background information on the space above the garage. It demonstrates the viability of creating a distinct living space without the need for any external changes.



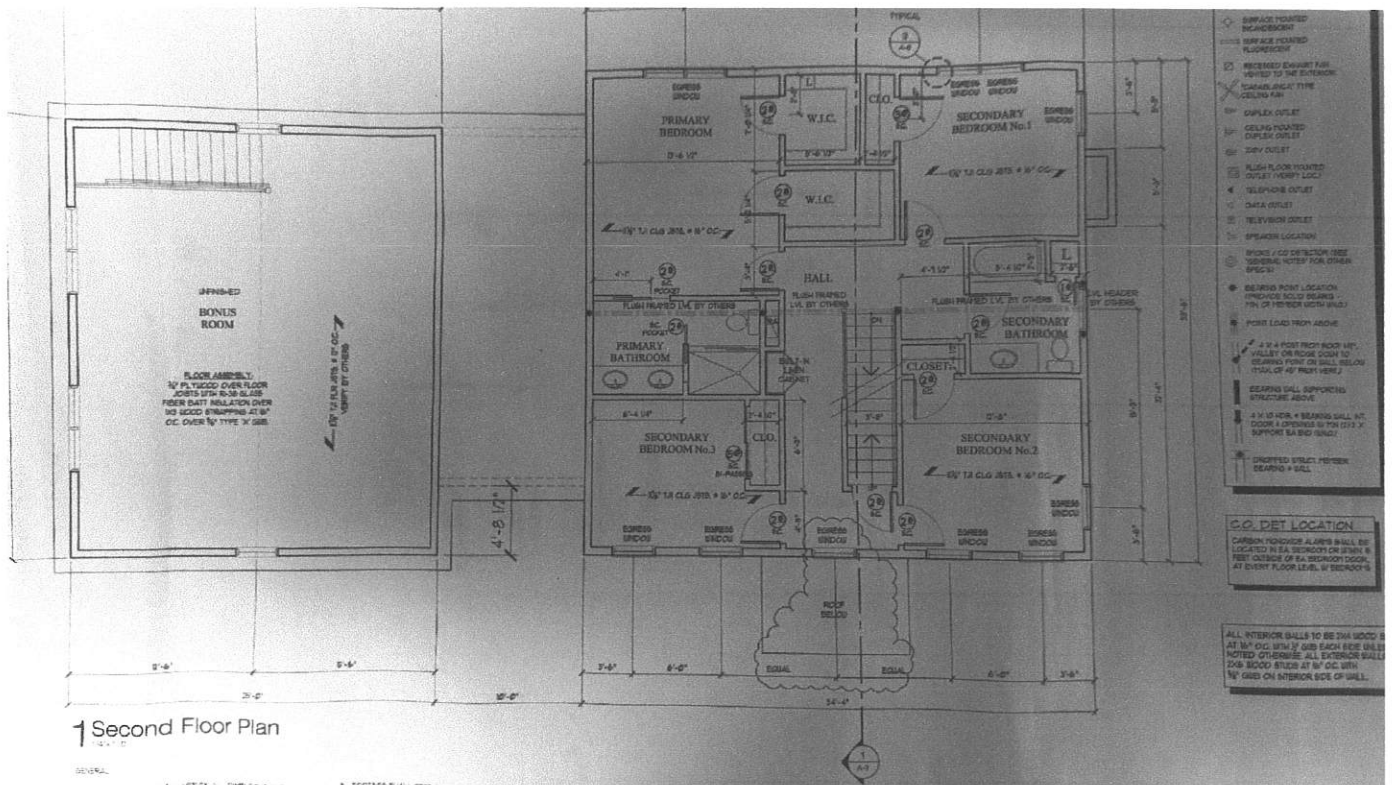
II.5 Entrance Stairway

This image shows the existing stairway leading to the space above the garage.



II.6 2nd floor plan from Architectural Drawings

This picture shows the location of the “Bonus Room” relative to the single-family dwelling from the second-floor architectural drawing perspective.



Appendix III Quitclaim Deed for 37 Mill Road

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that we, the TRUSTEES OF THE PROTESTANT EPISCOPAL CHURCH IN NEW HAMPSHIRE, a non-profit organization, of 63 Green Street, Concord, County of Merrimack, State of New Hampshire, for consideration paid, grant to DURHAM EVANGELICAL CHURCH (Conservative Baptist), a non-profit organization, having a post office address of Box 651, Durham, County of Strafford and State of New Hampshire, with quitclaim covenants, a certain parcel of land described as follows:

A certain parcel of land situated in said Durham, bounded and described as follows; viz:

Beginning on the easterly side of Mill Road at the northwesterly corner of land of Doris Tyrrell, and running thence northerly by said Mill Road a distance of 114 feet, more or less, to a stone bound at land of T. Burr Charles, and running thence easterly by land of said Charles a distance of 198 feet, more or less, to a cement post at land of the University of New Hampshire; thence running southerly by land of the said University of New Hampshire about 132 feet, to a stone bound at land of said Doris Tyrrell; thence running westerly by land of said Doris Tyrrell about 198 feet to the point of beginning.

Meaning and intending to describe and convey hereby all and the same premises conveyed to the Trustees of the Protestant Episcopal Church in New Hampshire by deed of Florence E. McDaniel et als, dated April 12, 1947, recorded Strafford County Registry of Deeds Book 732, Page 185.

This deed is given upon the conditions that the above lot shall be used for religious purposes only, and that the McDaniel Tomb shall be kept intact.

IN WITNESS WHEREOF, the Trustees of the Protestant Episcopal Church in New Hampshire have caused their seal to be affixed hereto and this deed to be subscribed by Timothy W. Woodman, Treasurer, this 10th day of February, 1981.

WITNESS:

TRUSTEES OF THE PROTESTANT EPISCOPAL CHURCH IN NEW HAMPSHIRE

Jeanette C. Smith By *T. W. Woodman*
Timothy W. Woodman, Treasurer

1981 JUN -3 AM 11:11
Laura D. Carey

REGISTER OF DEEDS
STRAFFORD COUNTY

JAMES RICE
12.25

STATE OF NEW HAMPSHIRE
1981 FEB 10

**List of Abutters to
37 Mill Road, Tax Map 109 Lot 73**

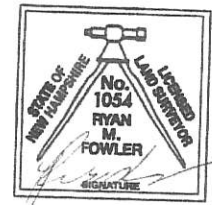
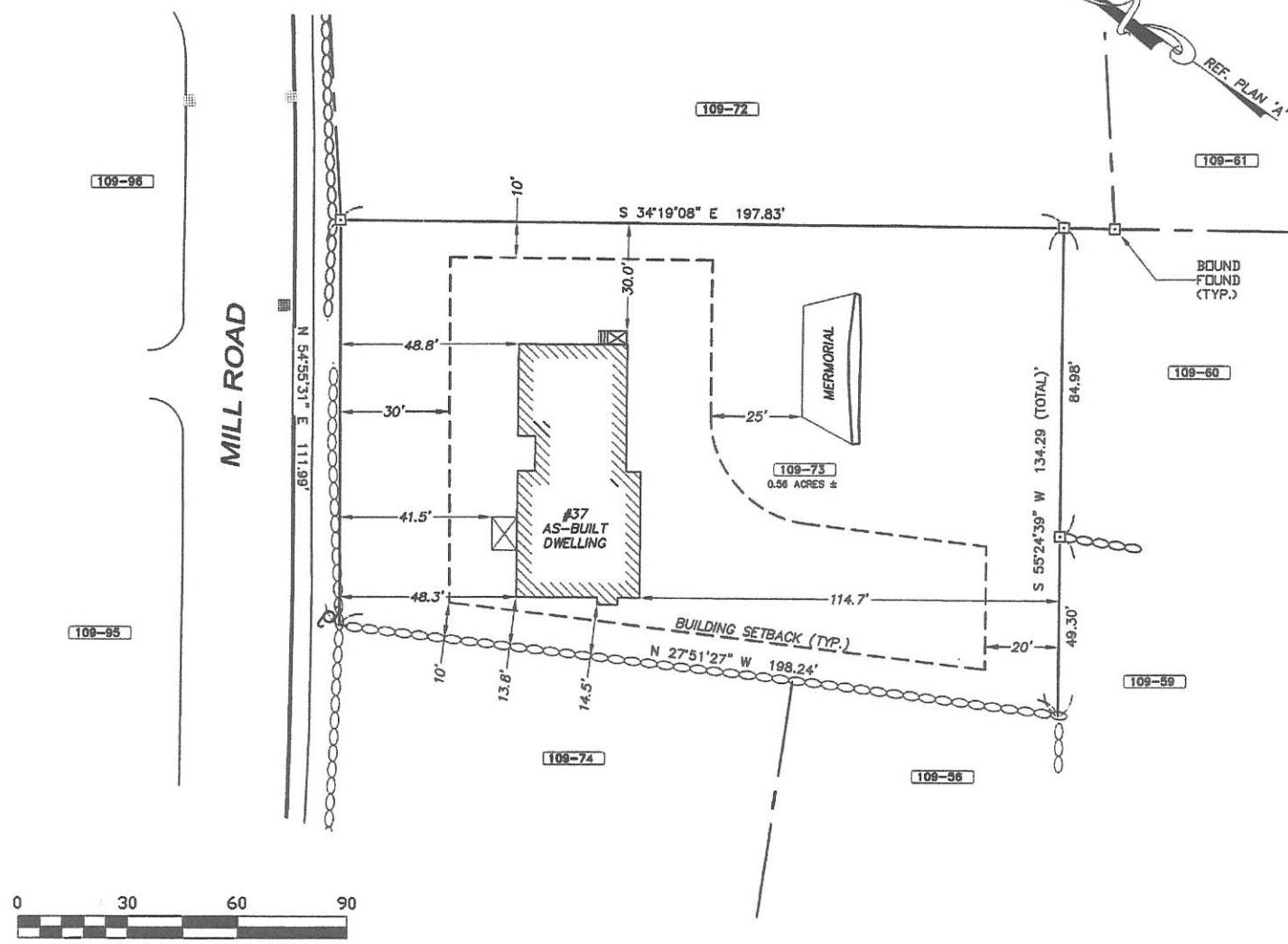
PLOT PLAN #1

NOTES:

- OWNER OF RECORD...DURHAM EVANGELICAL CHURCH
ADDRESS.....114 DOVER ROAD, DURHAM, NH 03824
DEED REFERENCE.....BK: 1065 PG: 494
TAX SHEET / LOT...109/73
- ZONED:RESIDENCE A DISTRICT (RA)

FRONT YARD SETBACK30'
SIDE YARD SETBACK10'
REAR YARD SETBACK20'
- THE INTENT OF THIS PLAN IS TO SHOW THE AS-BUILT BUILDING ON THE SUBJECT PARCEL. ALL OTHER IMPROVEMENTS WERE NOT LOCATED, AND WHERE OUTSIDE THE SCOPE OF THIS SURVEY. SEE REFERENCE PLAN 'A' FOR BOUNDARY DETERMINATION.
- REFERENCE PLAN:

A. "PLAN SHOWING BOUNDARY & TOPOGRAPHICAL SURVEY PF LAND OF DURHAM EVANGELICAL CHURCH, OF PROPERTY LOCATED ON: 37 MILL ROAD, DURHAM, STRAFFORD COUNTY, NEW HAMPSHIRE, DURHAM MAP 6 LOT 3-31, DEED BOOK 1065 PAGE 494.



PLAN: 24047-1
DATE: 11/7/2022
JOB: 24047

SCALE: 1" = 30'
DWG BY: RMF
CHK BY: RMF

**BUILDING AS-BUILT PLAN
DURHAM EVANGELICAL CHURCH**

**37 MILL ROAD
DURHAM, NH**

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