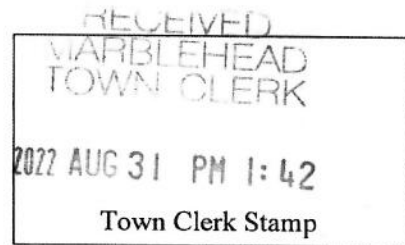




Town of Marblehead
Zoning Board of Appeals



APPEAL FORM

(Appeal of the Building Commissioner's Action/Inaction Regarding Zoning Enforcement)

Date: August 31, 2022

With respect to the property at (address): 8 Seans Way, Marblehead, MA

Assessor Map Number: 906 Parcel Number: 906-3-0 and 906-3A-0

Pursuant to Chapter 40A, §8 of the General Laws and Chapter 200-2-I of the Marblehead Zoning Bylaw and **Section 7 of the Rules and Regulations of the Board of Zoning Appeals**, I (we) respectfully appeal to the Board of Appeals the following action taken or not taken, or determination made, by the Building Commissioner and/or Local Inspector:

X (a) the failure to take a requested enforcement action. The written request for enforcement, the written response (if any), and a written statement specifying the grounds for this appeal are attached to this Form

 (b) the failure to issue a requested building permit. The application for the building permit, the written notice (if any) of the denial of the permit, and a written statement specifying the grounds for this appeal are attached to this Form.

X (c) an order or decision of the Building Commissioner and/or Local Inspector. The written order or decision (if any) and a written statement specifying the grounds for this appeal are attached to this Form.

Applicant Signature: Frances E. Rafferty Tom Millett

Applicant Name Printed: Frances E. Rafferty and Thomas D. Millett

Applicant Address: 3 Sean's Way, Marblehead, MA

Applicant Phone Number: (Home) 617-723-4300 Work) same (Fax)
(Email) Frances@Raffertylaw.com; Tom@MillettLaw.com

Form Complete: Town Engineer's Office: Richyong Date: 8-31-22
(Signature)

Eng. Dept. - MaryAlley Municipal Building, 7 Widger Road, Marblehead, MA 01045
Phone: 781-631-1529 **Fax: 781-631-2617**

Revision Date: 9/22/2011

STATEMENT OF GROUNDS FOR APPEAL

Applicants, Frances E. Rafferty and Thomas D. Millett, have filed this appeal of a building permit issued by the Building Commissioner, permit number BL-22-179, authorizing the renovation and addition to an existing single family residence.

Applicants filed an Enforcement Demand challenging the issuance of the building permit on the following grounds:

1. The lot is non-conforming with less than the required area and no special permit was issued prior to construction.
2. The building added to the existing footprint and no special permit was issued prior to construction.
3. The building increases the gross floor area by more than 10%, and no special permit was issued prior to construction.
4. The building permit issued allowed for "Selective Interior Demo". Building plans were submitted pursuant to said grant of a building permit. The Project Description labeled on said plans reads "Renovation & addition to a single family residence". In contradiction to the averments made in the application for the building permit, the building was demolished, and no special permit was issued prior to construction.

Applicants submitted photographic evidence of the demolition of the building. These photographs contradict information supplied to the Building Commission by the architect to support the contention that the building was not demolished.

Applicants submitted photographs to support their allegations that the building is not being constructed in accordance with the plans filed to obtain the permit. These photographs contradict information supplied to the Building Commission by the architect.

A copy of the Building Permit is attached as well as a copy of the Application that was filed by the owner of 8 Sean's Way and Architect Walter Jacobs.



TOWN OF MARBLEHEAD BUILDING PERMIT



Number: BL-22-179

Date April 27, 2022

Map/Parcel 906 3 0

This permit is granted to Mike Rockett Owner/Tenant

Owner's Address 5 Captain's Walk Lane Marblehead MA 01945

Building Location 8 SEAN` S WY Marblehead MA 01945

Zoning District ESR - Expanded Single
Residence

Contractor:

C.S.L. #

H.I.C #

VILLAGE CONSTRUCTION CO.
INC.

114654

114654

Conservation Commission:
Project Type Renovation
and Addition
Proposed Work

Old & Historic District:
Constr. Type

Site Plan Review:
Use Group

ZBA Special Permit:
Construction Control

Renovation and addition to an existing single family residence IAW 9th Edition MSBC

VIOLATION OF THE FOLLOWING TERMS WILL VOID THIS PERMIT

Certified Plot Plan by Registered Land Surveyor is due within 21 days of completion of new foundation. Work performed under this permit is subject to all State and Local Building Laws now in effect or that hereafter may be enacted, and shall conform with the details of the application and submitted plans. IAW 780 CMR 105.5 this Permit shall expire in 6 months unless constructions has started.

BUILDING COMMISSIONER

781-631-2220

WIRE INSPECTOR

781-639-9151

- 2 Excavation
- 3 Foundation
- 4 Certified "As Built"
- 6 Rough Framing
- 7 Insulation
- 9 Final

- 1 Ufer Ground
Underground
- 5 Rough
Other systems
Service
- 8 Final

FIRE INSPECTOR

781-631-2220

PLUMBING INSPECTOR

781-639-9151

- Detector Permit #
- 8 Alarm
Burner
Other

- Building Drain
Underground
- 5 Rough
Gas
 - 8 Final

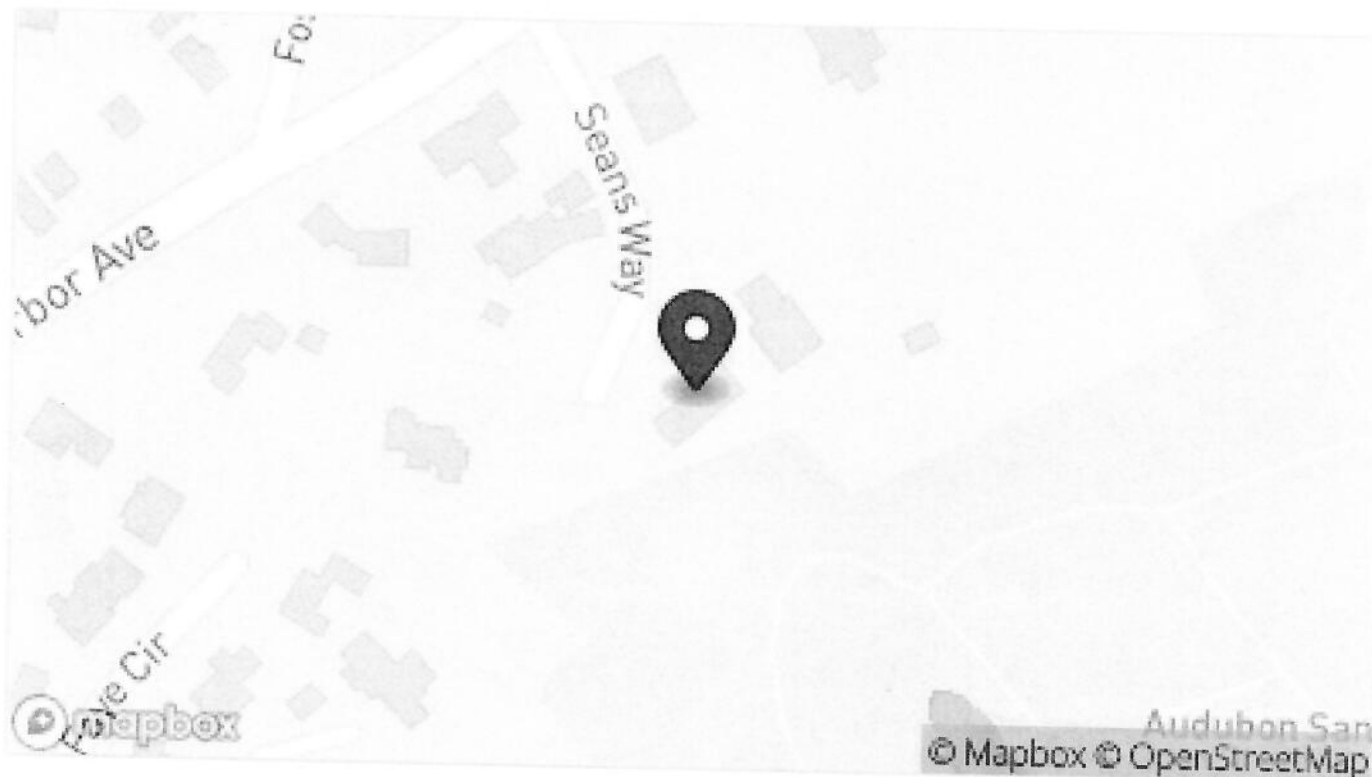
THIS IS A LEGAL DOCUMENT - DO NOT LOSE IT

Certificate of Occupancy required - return this signed permit to the Building

Received payment \$4,600.00 B\$4,500.00 F\$50.00 P W Receipt #

Building Permit - Residential

BL-22-179



Applicant

Walter Jacob

Location

8 SEAN`S WY

Marblehead, MA 01945

[View location details \(/locations/65198\)](/locations/65198)

Created

Apr 11, 2022

Status

Active

Expires

--

Details **Files (0)**

Location Information

Old and Historic Districts

--

Shoreline District ?

--

Condo/Townhouse *

No

Project Info

Brief Description of Proposed Work *

Renovation and addition to an existing single family residence

Total Square Footage *

6,384

Is the Homeowner doing the work?

No

Project Type *

Renovation and Addition

Occupancy Type

Residential One & Two Family

Type of Proposed Work

**For Roofing or HVAC please use Express Permit

New Construction

--

Addition



Accessory Structure

--

Decks/Porches/Gazebos



Swimming Pool

--

Renovation/Repairs



Adding bedroom(s)



If other, please specify:

--

Whole Structure Demolition ?

--

Selective Interior Demo



Contractor Licenses

| Contractor's Name | Business Name | License # | ... |
|-------------------------------|---------------|-----------|-----|
| VILLAGE CONSTRUCTION CO. INC. | -- | 114654 | ... |

HIC License

| Contractor's Name | License # | License Status | ... |
|-------------------------------|-----------|----------------|-----|
| VILLAGE CONSTRUCTION CO. INC. | 114654 | Current | ... |

Workers' Compensation Insurance Affidavit

Are you an employer? Select from the options below.

I am a general contractor and I have hired the sub-contractors. These sub-contractors have employees and have workers' comp. insurance.

Site & Construction Information

Lot Area (sq ft)

16,735

Frontage

166.25

Water Supply

Public

Sewage Disposal System

Municipal

Zoning District

ESR - Expanded Single Residence

Flood Zone

No

Debris Removal * ⓘ

Dumpster on Site

Specify Debris removal Location

--

Dumpster Information

Container Supplier *

Marblehead Transfer Station

Company Address *

5 Woodfin Terrace, Marblehead, MA 01945

Type of Work to be performed *

Dumpster-Construction

Dumpster/Container size in Cubic Yards *

40

Property Use *

Residential

Is property in Old and Historic District? *

No

*Restriction: Dumpster/Containers shall not be placed at any location as to become an obstacle or obstruction to the egress of persons from buildings or to Vehicle traffic or to obstruct operation of emergency vehicles in the performance of their duty. *Dumpsters and or Containers with an individual capacity of 1.5 yards or more shall not be stored in buildings or placed within 10 (ten) feet of combustible walls.

I have read and agree to the restrictions above regarding dumpsters *

☒ Walter Jacob

Apr 11, 2022

Building Setbacks

Provided Front Yard Setbacks (ft) * ?

25.8

Provided Right Side Yard Setbacks (ft) * ?

64.4

Provided Left Side Yard Setbacks (ft) * ?

15

Provided Rear Yard Setbacks (ft) * ?

17.3

Estimated Construction Cost

Building *

220,000

Electrical *

25,000

Plumbing *

25,000

Mechanical (HVAC) *

30,000

Fire Protection *

0

Total Estimated Cost

300,000

Affidavit Signature

I do hereby certify that under the pains and penalties of perjury that the information provided above is true and correct. *



Applicant is *

Authorized Agent

Registered Design Professional

Name ?

Walter Jacob Architects LTD

Address

3 Pleasant Street

Discipline

Architect

Registration #

11087

Expiration Date

08/31/2022

Phone #

7,816,317,440

Email Address

walter@architectwaj.com

Home Owner License exemption

Documents

Building Permit 2

Issued Apr 27, 2022

Town of Marblehead, MA

Your Profile

Sign Up (</sign-up>)

Your Records (</dashboard/records>)

Resources

Search for Records (</search>)

Claim a Record (</claimRecord>)

Employee Login (<https://marbleheadma.viewpointcloud.io>)

This correspondence is sent to demand an enforcement action by the Building Inspector to find the plans submitted and approved by the Building Inspector to be deficient and in violation of the zoning bylaw in the manner as follows:

1. It appears from the plans that the applicant included areas on the second floor which are excluded as non gross square foot areas as the areas were less than 5 feet in height. The existing structure was a cape with a rear dormer. The front roof was significantly pitched to the roof ridge line requiring a full rear dormer to gain the height needed for any second story living space. The roof over the living room was significantly angled. There would be areas under these front roofs that were less than 5 feet or more so must be excluded in the gross square footage calculations. The plans submitted do not identify these areas with corresponding height measurements.
2. It appears from the plans that the applicant included areas in the attic over the garage which are excluded as non gross square foot areas as the areas were less than 5 feet in height. The plans submitted do not identify these areas with corresponding height measurements.
3. The plans show an extension of the buildings perimeter by a two feet extension of the garage. The plans do not show whether this increase violates the lateral dimension percentage increase.
4. The plans do not show the lowest elevation point of the lot to determine the final building elevation as 28.3 ¼ feet is less than the 35 foot maximum height allowed.

Therefore, the complainant demands:

1. That the Building Inspector verify that the gross square foot area increase is no more than 10% to comply with the zoning bylaw by demanding accurate plans reflecting the areas under the eaves in the front roof and attic above the garage; and
2. That the Building Inspector demand an elevation survey to determine that the elevation of the new construction complies with the requirement that the building height be no more than 35 feet and no more than a 10% increase in elevation from the existing building; and
3. That the Building Inspector verify that the extension of the garage complies with the lateral dimension requirements by not extending more than 10% of the aggregate lateral dimension;
4. That the Building Inspector verify that the open land area requirement has been complied with, including those portions of the building with covered porches;
5. That the Building Inspector determine that the additional proposed dormer to the proposed front roof to be an increase in the gross square floor area to be determined at the present time and added to the increase in the gross square floor area proposed by the applicant;
6. That the Building Inspector demand that should the applicant fail to comply with his demands that said Inspector shall determine the building permit to have been issued in violation of the zoning bylaw.

Sincerely,

Thomas D. Millett and Frances E. Rafferty

In re: Enforcement Demand C-22-20

Building Permit BL-22-179

Objectors: Thomas D. Millett, Esq. and Frances E. Rafferty, Esq.

July 13, 2022

Dear Building Commissioner:

We restate and amend our Enforcement Demand of July 8, 2022 to include a demand that you enforce the Marblehead Zoning Bylaw by revoking the building permit issued to Village Construction Co, Inc. based on the following actions taken without proper permitting.

1. The existing building was significantly demolished by the removal or tearing down of the predominance of the structure. No demolition permit was applied for or granted in contravention of the requirements of the Marblehead Zoning Bylaw; and
2. All demolition made was not indicated on the plans filed to obtain the building permit.

The building permit was not amended to inform the building commissioner of the excess demolition being undertaken. Photographs of the current state of the building show little to none of the preexisting structure remaining. The following is a list of some, not intended to be the entirety, of demolition occurring to date not identified on the plans:

- A. All second story flooring and first floor ceiling/floor joists were removed
- B. The rear room first floor roof was removed
- C. The first to second floor staircase was removed
- D. Most of the rear building sheathing was removed
- E. The bulkhead was removed

Wherefore, we demand that the owners of record, Richard P. Rockett, Patricia Rockett and Jennifer Schaeffner, Trustees of the J and T Realty Trust Two, T; owner listed on electrical permit T. Michael Rockett; Village Construction Co., Inc, and Walter Jacobs cease and desist forthwith from further actions pursuant to the improperly obtained building permit.

We appreciate your attention to this matter

Sincerely,

Thomas D. Millett

Frances E. Rafferty

3 Scans Way



TOWN OF MARBLEHEAD

BUILDING INSPECTION DEPARTMENT

Mary A. Alley Municipal Building • 7 Widger Road, Marblehead, MA 01945
Tel: (781) 631-2220 • Email: build@marblehead.org

Thomas D. Millett, Frances E. Rafferty
3 Sean's Way
Marblehead, MA 01945

8-10-2022

RE: Sean's Way, Marblehead, MA - Building Permit BL-22-179.

Dear Mr. Millett, Esq. and Ms. Rafferty, Esq.

In response to your complaint regarding 8 Sean's Way received July 8, 2022, with additional comments received on the 11th and 13th, I visited the project site. Subsequently, I met with the architect of record Walter Jacob AIA to discuss the allegations and to review the definition of "BUILDING, NEW" as defined in section 200-7 Meaning of Words.

Mr. Jacob analyzed the quantities of existing walls and structure that remain and provided this office with a letter summarizing the details. Per Mr. Jacob's calculations, greater than 50% of the existing exterior walls and greater than 50% of the existing structure remain. And so, the work already underway did not require a special permit from the Marblehead ZBA.

In response to the items listed in your complaint I offer the following comments:

1. The 10% rule does not apply to this project as the existing building is situated in a conforming location, therefore new additions are allowed provided that no new non-conformities are created.
2. The proposed new structure is less than 35 feet in height, which the architect has confirmed.
3. There are no open area non-conformities resulting from the proposed work.
4. Dormers do create additional GFA, however since the parcel is relatively large, the open area remains above the 1 to 1 ratio.
5. The permit is legal and valid.

This office finds no merit in the substance of your complaint, and thus, no enforcement action on Building Permit BL-22-179.

If you are aggrieved by this notice you may appeal within thirty (30) days to the Zoning Board of

Appeals by filing a notice of appeal specifying the grounds thereof with the Town Clerk, as outlined in the Marblehead Zoning Bylaw, §200-2.H.



TOWN OF MARBLEHEAD

BUILDING INSPECTION DEPARTMENT

Mary A. Alley Municipal Building • 7 Widger Road, Marblehead, MA 01945
Tel: (781) 631-2220 • Email: build@marblehead.org

If you have questions, or require additional information please contact this office at 781-631-2220.

Respectfully,

Robert Ives
Marblehead Building Department

Cc: ZBA
File: Map 906 –Parcel 3, 3A

Frances Rafferty

From: John Albright <albrightj@marblehead.org>
Sent: Tuesday, August 30, 2022 7:45 AM
To: Frances Rafferty
Cc: Janieka Jones; Bob Ives
Subject: 8 Sean's Way

Good morning Mr. Rafferty.

Bob Ives made the decision and I stand by his determination. While he is not current in the position of Building Commissioner, he's spent 13 years in that capacity.

Please contact Janieka Jones, Sr. Clerk, for an appointment with Bob and I next Wednesday.
Thank you.

John

John Albright
Building Commissioner Town of Marblehead
(781) 631-2220
albrightj@marblehead.org
www.marblehead.org



Our mission is to promote safety.

July 26, 2022

Building Commissioner
7 Widger Road #1
Marblehead, MA 01945

Re: Enforcement Demand C-22-20

Dear Commissioner Ives:

We submitted an Enforcement Demand filed July 8, 2022 requesting you enforce the town zoning bylaw Dimensional Regulations and rescind the building permit issued. The lot fails the lot size square footage required by the Dimensional Regulations, the footprint of the existing structure was expanded, the gross square footage of the structure has increased more than 10%. We submitted an amended Enforcement Demand following your site visit on July 13, 2022 alleging that the original structure on the lot was demolished and that the structure is a "new building" pursuant to the zoning bylaw and construction is proceeding absent proper authority; and the plans submitted to obtain the building permit do not represent the structure being built and have not been amended.

Contrary to Mr. Jacob's assertions in the building permit he submitted on behalf of his clients that the proposed work was a "renovation and addition to an existing single family home", more than 50% of the home's exterior and structural elements were removed. The proper permit application should have stated that the home was to be demolished. See Section 200-7. The building permit states that the construction costs for the renovation and addition to be \$300,000. We suggest that costs were set as a minimal amount to further obfuscate the true intent of the project which was to demolish the existing structure. A 6,000 plus square foot home for \$300,000? Computes to less than \$50 per square foot.

On July 20, 2022 you requested Mr. Walter Jacobs review our letters of complaint and provide you with a letter indicating his findings. To date, Mr. Jacobs has not responded to your request. In his previous submission to your office he provided no statutory, caselaw or other support for his insistence that the construction is proceeding according to law. Nor have we heard from any attorney representing the developers elucidating their position.

Pursuant to the Town of Marblehead Zoning By Law Section 200 – 2.H you are to respond to our request for enforcement within 14 days. We calculate this deadline to be Wednesday, July 27, 2022. To further assist you in your decision, we submit photographs, included at the end of this letter, of the house prior to and during demolition:

1. Photograph from May 5, 2022 shows the house prior to demolition,

2. Photograph from June 28, 2022 shows the entire second floor including all ceiling joists, staircase and all front exterior of the structure removed. The left side first floor exterior wall is shown being supported by 2 x 10's ,
3. Photographs from July 13, 2022 show (a) the rear of the structure with no roof remaining on the smaller bump out room and little sheathing remaining, (b) the rear of the structure with all ceiling joists removed the rear room roof removed, and (c) the new interior structure and new staircase,
4. A photograph from July 13, 2022, (a) depicts rear of structure bump out and garage. Photos from July 21, 2022 (b) depicts the sheathing removed from the rear of garage, and (c) evidence of sheathing in debris pile and (d) garage staircase in dumpster.

Additionally, as persuasive authority we include for your review the minutes of the Zoning Board of Appeals filed 8/3/2010 on the application of Chris and Pam Castner for construction of a new building at 9 Risley Road. **This application reinforces that lot size is a required dimensional regulation.**

8:15 PM 9 RISLEY ROAD CHRIS & PAM CASTNER (FILED 8/3/10) MAP 911-3, 4, 5, 6 The Board heard a request to vary the application of the present Zoning By-law by allowing a Special Permit for the demolition of the existing dwelling and three accessory buildings and the construction of a new single-family structure, in an Expanded Single Residence District. The new construction will be within the rear yard setback on a pre-existing non-conforming property with less than the required lot area...."



9 Risley Road, 2010.

Sincerely,
Frances E. Rafferty and Thomas D. Millett

PHOTOGRAPHS OF 8 SEAN'S WAY
Page 1 of 4

Figure 1. House prior to demolition (May 5, 2022).



Figure 2. The entire second floor including all ceiling joists, staircase and all front exterior of the structure removed. The left side first floor exterior wall is shown being supported by 2 x 10's (June 28, 2022).



PHOTOGRAPHS OF 8 SEAN'S WAY
Page 2 of 4

Figure 3a. Rear of the structure with no roof remaining on the smaller bump out room and little sheathing remaining (July 13, 2022).



Figure 3b. Rear of the structure with all ceiling joists removed the rear room roof removed (July 13, 2022).



PHOTOGRAPHS OF 8 SEAN'S WAY
Page 3 of 4

Figure 3c. New interior structure and new staircase (July 13, 2022).



Figure 4a. Rear of structure bump out and garage (July 13, 2022).



PHOTOGRAPHS OF 8 SEAN'S WAY
Page 4 of 4

Figure 4b. Sheathing removed from the rear of garage (July 21, 2022).



Figure 4c. Sheathing in debris pile (July 21, 2022).

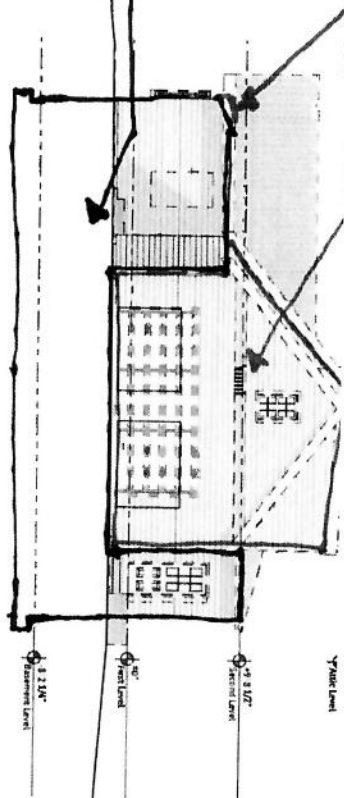


Figure 4d. Garage staircase in dumpster (July 21, 2022).



Demolished

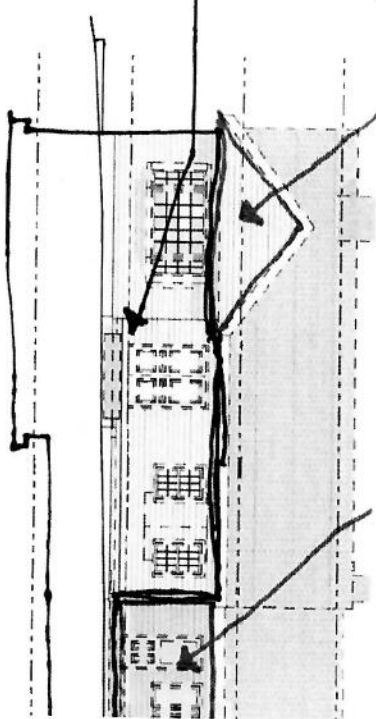
495 SF
ETR



2 Right Elevation
SCALE 1/8" = 1'-0"

Demolished

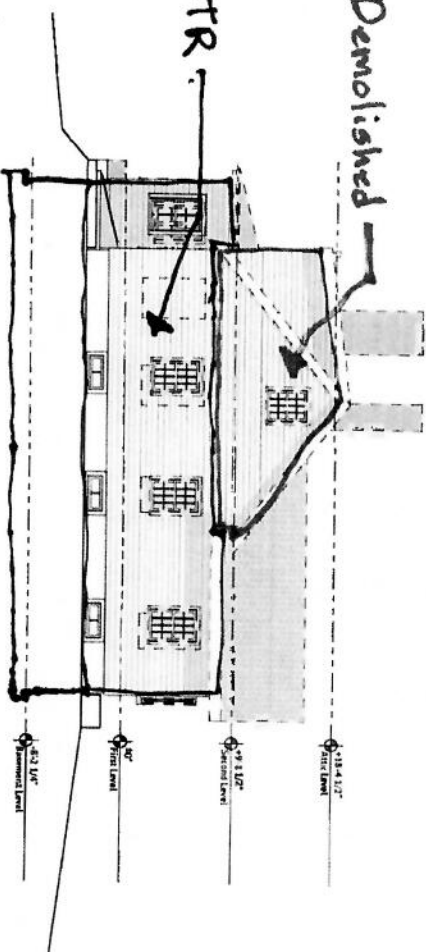
991 SF
ETR



1 Front Elevation
SCALE 1/8" = 1'-0"

194 SF Demolished

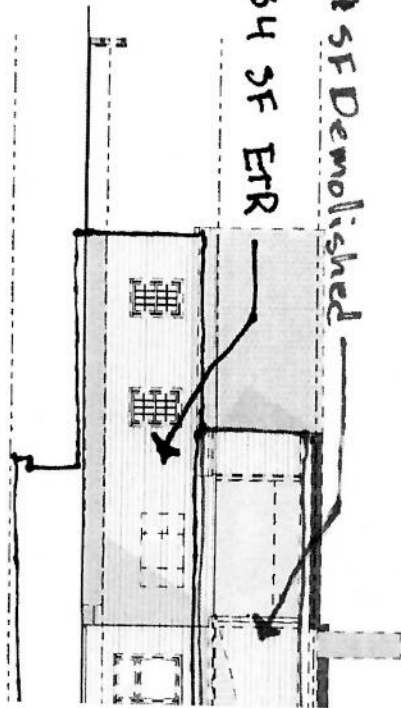
829 SF ETR



4 Left Elevation
SCALE 1/8" = 1'-0"

499 SF Demolished

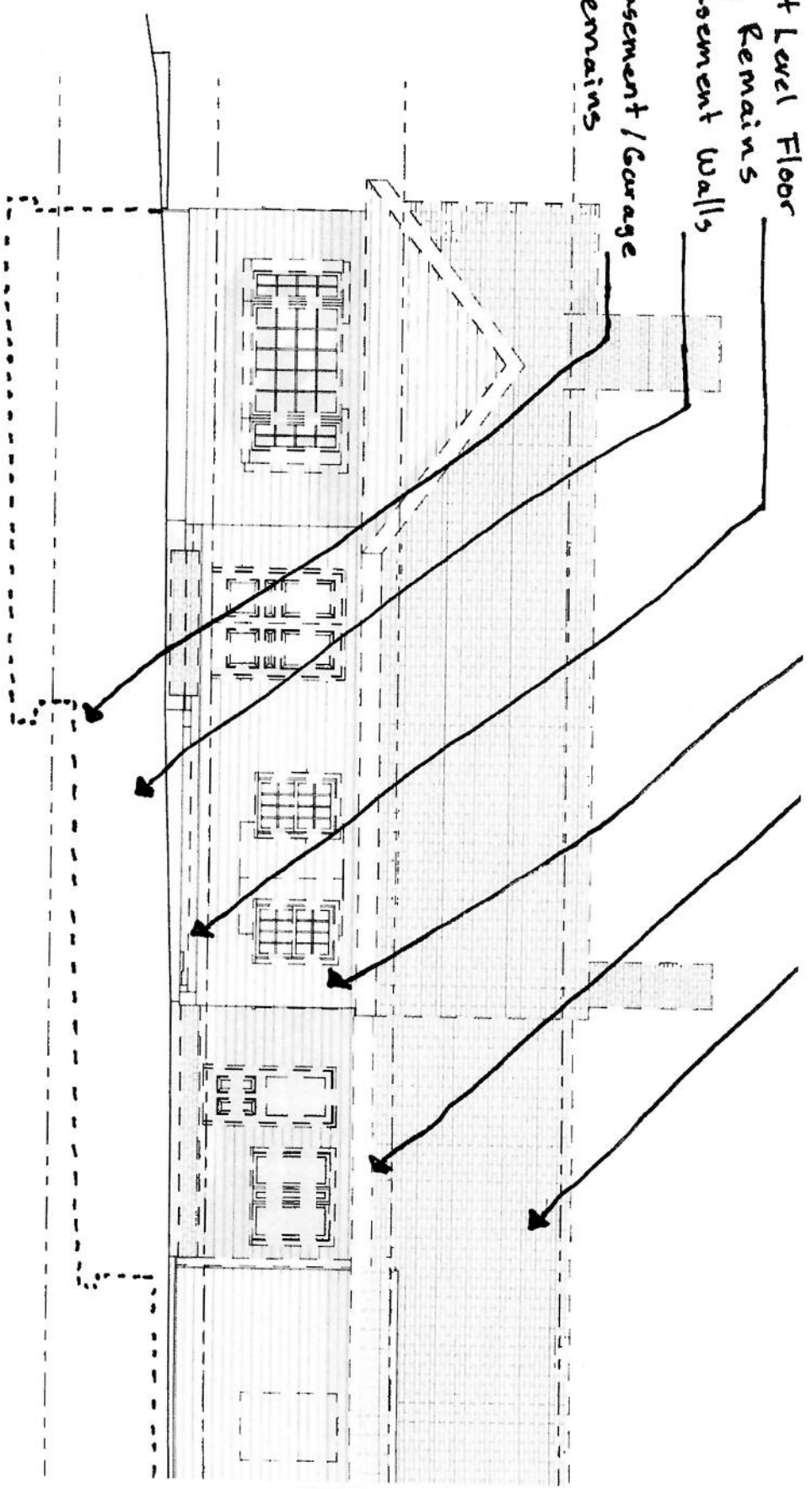
1,134 SF ETR



3 Rear Elevation
SCALE 1/8" = 1'-0"

Percent of Existing Walls to Remain: $3,449 \div 4,764 = 0.723$ or

- 4. 100% 1st Level Floor Framing Remains
- 5. 100% Basement Walls Remain
- 6. 100% Basement / Garage Slab Remains



1 Front Elevation
SCALE 1/8" = 1'-0"

Structural System Analysis: 69% of Original Structure