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**TOWN OF MARBLEHEAD  
DECISION OF  
THE BOARD OF APPEALS**

**on  
Application of  
Isaac Dyer and Julie Duffy**

**For a Special Permit  
16 Hathaway Road  
Marblehead, MA**

Report of Facts, Findings, and Decision of the Board of Appeals on the petition of:

Isaac Dyer and Julie Duffy (the "Petitioner")

The Applicants requested that the Zoning Board of Appeals issue a Special Permit under the Zoning By-Laws allowing renovation of an existing single-family dwelling that includes lowering the attic, expanding the second floor, expanding and covering a deck area and other alterations as shown on submitted plans. The property is non-conforming having less than the required lot frontage, lot width, side yard setback and height exceedance and is located at 16 Hathaway Road in a **SHORELINE SINGLE RESIDENCE ZONING DISTRICT**. The additions will be constructed partially in the side yard setback and above the current height limit and will increase the gross floor area by more than 10% of the pre-existing nonconforming structure.

All statutory requirements relating to publication and notice were duly complied with through timely publication in the Marblehead Reporter, a local newspaper of general circulation. Notice to all persons deemed by the Board to be affected by the petition, as required by Section 17 of Chapter 40A of the General Laws of the Commonwealth and the provisions of the Marblehead Zoning By-Laws, was given.

The Public Hearing was called to order at or after 8:30 PM on Tuesday, July 26, 2022 with the hearing being held via Zoom Conferencing pursuant to the Executive Order of Governor Baker of the Commonwealth of Massachusetts. The Public Hearing had been duly continued on June 28, 2022 at which time no evidence regarding the application was taken. Sitting at the hearing on July 25, 2022 were:

Property Address: 16 Hathaway Road, Marblehead, MA

Chairman: Alan E. Lipkind  
Members: Bruce Krasker  
William Lewis Barlow IV  
Benjamin LaBrecque  
Leon W. Drachman

The following documents were filed with the Application and constitute a part of the permanent record of the Board:

A Survey entitled "Zoning Board of Appeals Plan, 16 Hathaway Road, Marblehead, Property of Issac Dyer & Julie Duffy" Scale 1" = 20' dated February 15, 2022 and prepared by North Shore Survey;

B. Architectural Plans and Renderings prepared by Rob Bramhall Architects entitled "Dyer Residence, 16 Hathaway Road, Marblehead 01945" consisting of 8 sheets depicting details of both the existing and the proposed structure/additions and floor plans as follows:

- A1 Existing and Proposed Basement Plans Rev1 07-21-22
- A2 Existing and Proposed Third Floor Plans Rev1 07-21-22
- A3 Existing and Proposed Second Floor Plans Rev1 07-21-22
- A4 Existing and Proposed Attic Plans Rev1 07-21-22
- A5 Existing and Proposed Roof Plans Rev1 07-21-22
- A6 Existing and Proposed Southeast Elevations and Building section and Existing and Proposed Northwest Elevations Rev1 07-21-22
- A7 Existing and Proposed Northeast Elevations Rev1 07-21-22
- A8 Existing and Proposed Southwest Elevations Rev1 07-21-22

The Petitioner was represented by their architect and attorney who presented the application, plans and requested relief. The Petitioner explained that the proposed construction is for a substantial re-construction of the existing single-family dwelling. The existing attic portion of the home will be lowered and there will no longer be gross floor area and bedrooms in that area. The second floor will be expanded over the existing first floor and garage increasing the size of the second floor by approximately 1360 sq ft. Given the elimination of gross floor area and bedrooms in the attic, with a the net increase of gross floor area within the house. Minor changes will occur on the first floor and a deck on the ocean side of the structure will be expanded and covered. The exterior will be all as shown on the Plans submitted to the Board.

The Petitioner indicated that all direct abutters supported the application except the immediately adjacent abutter located at 14 Hathaway Road. The Petitioner explained that during the site plan approval process with the Planning Board, this abutter objected to the expansion on the second floor because it will increase shadows on their home and partially impair views. The Petitioner indicated that an extensive shadow study was undertaken and that shadows would increase at 14 Hathaway Road as a result of the expanded second floor. Specifically, during the period beginning March 1 through May 15 (and a corresponding time in the Fall) shadows would impact the home structure at 14 Hathaway about one hour and fifteen minutes sooner than the existing condition on March 1 with that impact lessening each day until about May 15<sup>th</sup> when no additional shadow will

result. Regarding views, there would be some impact but nearly all ocean views would be preserved.

After the Petitioner's presentation, the Board opened the hearing to the general public for comment. No one from the public spoke in favor or against the application.

Thereafter, upon motion duly made and seconded, the Board voted to close the public comment portion of the hearing. After discussion amongst the Board Members, the Board made the following findings and decision:

### **Findings of the Board**

The existing house was built in 1916 and is in need of substantial repair. The existing attic contained 2 bedrooms that did not have access meeting current requirements. The Applicant made several changes to its initial design in order to mitigate the impact on views and shadows and otherwise respond to comments made about the proposed project. The second-floor addition will be located on top of the first floor and will be within the side yard setback but no closer to the property line than the existing house. In fact, the non-conforming side yard setback will slightly improve on one side as will the height exceedance be less. The Petitioner's revised design does lower the overall massing of the new second floor in meaningful ways. Part of the limitations faced by the Petitioner is the narrowness of the lot itself and the proposed design manages that situation as best as possible.

By voting positively on the Application, the Board made the following determinations and findings:

1. That all statutory requirements relating to publication and notice were duly complied with.
2. That all submitted plans and specifications meet the requirements of the Rules and Regulations of the Board.
3. That based upon the plans and specifications, and the information presented to the Board, the Board found that the criteria set forth in ARTICLE IX, § 200-36F of the Marblehead Zoning By-Laws, consisting of the following, have been satisfied:

- a. The general purposes and intent of the By-Law are met:

An important purpose of the By-law is to protect the health and safety of the Town and promote appropriate land use. The renovation will address current safety concerns. The existing attic contained 2 bedrooms that did not have access meeting current requirements, eliminating those bedrooms and placing them on the second floor will improve the condition. We note the bedroom count will decrease from 5 to 4 bedrooms; and,

- b. The specific site is an appropriate location for such use or building.

A single-family home is allowed as of right and an appropriate use for this parcel; Although the side yard non-conformity increases in the area of the second-floor expansion because of new structure in that area, it is not getting closer to the property lines than the existing first floor, and the distance of set back to the property line will increase when compared to the existing condition. The same is true for the height, as the overall height of the structure will decrease by about 3 feet, even though new portions of the addition will exceed the current height limit, and

- c. The use as developed will not adversely affect the neighborhood.

The design of the renovation and the scale and massing of the addition is in keeping with the neighborhood homes. The bedroom count is being reduced by 1 bedroom and the overall increase in the gross square footage of the house structure itself is not substantially more than the 10% increase that is allowed under the by-law. Views of the ocean for the neighborhood will remain virtually the same as the addition is being placed behind an existing portion of the house that is taller and will not be any wider. ; and,

- d. There will be no nuisance or serious hazard to vehicles or pedestrians.

Vehicular and pedestrian access to the home will not change. It will remain direct and unobstructed with adequate off-street parking. and

- e. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

All facilities necessary for a single family home are provided.

### **Decision**

Whereupon the Board, after adopting the standard conditions listed below, voted to issue the Special Permit under Section 200-30.D of the Zoning By-law to allow more than a 10% expansion of the gross floor area of a non-conforming building and to issue the Special Permit under Section 200-37 of the Zoning By-law to allow relief from the dimensional requirements set forth in Table 2 of the By-law and to allow a change to a non-conforming building as provided in Section 200-30.C of the Zoning By-law as necessary to allow the renovation of the single family home as set forth on the drawings approved and stamped by the Board of Appeals with the following conditions:

- This Special Permit is issued on the condition that there shall be no construction at any time following the vote of the Board of Appeals which either differs from the construction set forth on the drawings approved and stamped by the Board of Appeals by that vote, or which is inconsistent with this Decision and these

conditions, without the Petitioners obtaining prior written approval from the Board of Appeals for such construction, shall continue.

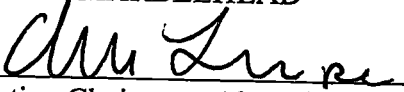
- This Special Permit is issued on the basis that there will be a so-called “delay of permit” condition imposed, that a permit may not be applied for and that work may not be commenced until all appeal periods have expired and a copy of this six (6) page Decision, in its entirety, and not merely the conditions, bearing the certification of the Town Clerk that twenty (20) days have elapsed after the Decision has been filed in the office of the Town Clerk and either that no appeal has been filed, or that an appeal has been filed within such time, has been recorded in the Essex South District Registry of Deeds and indexed in the Grantor Index under the name of the owner of record or is filed for registration, if the land is registered, and noted on the Owner’s Certificate of Title, all as required by Massachusetts General Laws Chapter 40A.
- This Special Permit is issued on the condition that no Certificate of Occupancy shall be issued by the office of the Building Inspector if any of the construction either differs from the construction set forth on the drawings approved and stamped by the Board of Appeals by that vote, or which is inconsistent with this Decision and these conditions, without the Petitioners obtaining prior written approval from the Board of Appeals for such construction.
- If the Petitioners shall exercise any rights of construction under a duly appealed Special Permit, such rights shall be at the Petitioners’ sole risk that a court will reverse the Special Permit and that any construction performed under the Special Permit may be ordered undone.
- There shall be no future alterations, changes or additions whatsoever, including additions of less than 10%, to any structure, or any new structure constructed or placed on the property, except pursuant to a Special Permit granted by the Board of Appeals.

The votes by the Board Members granting the Special Permit were:

Chairman:	Alan E. Lipkind	YES
Members:	Bruce Krasker	YES
	William Lewis Barlow IV	YES
	Benjamin LaBrecque	YES
	Leon W. Drachman	YES

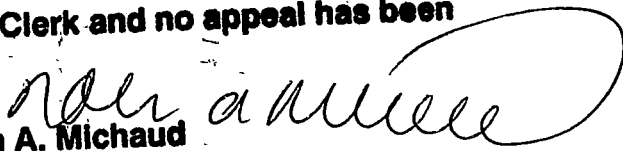
The hearing adjourned at approximately 8:45 PM

BOARD OF APPEALS  
TOWN OF MARBLEHEAD

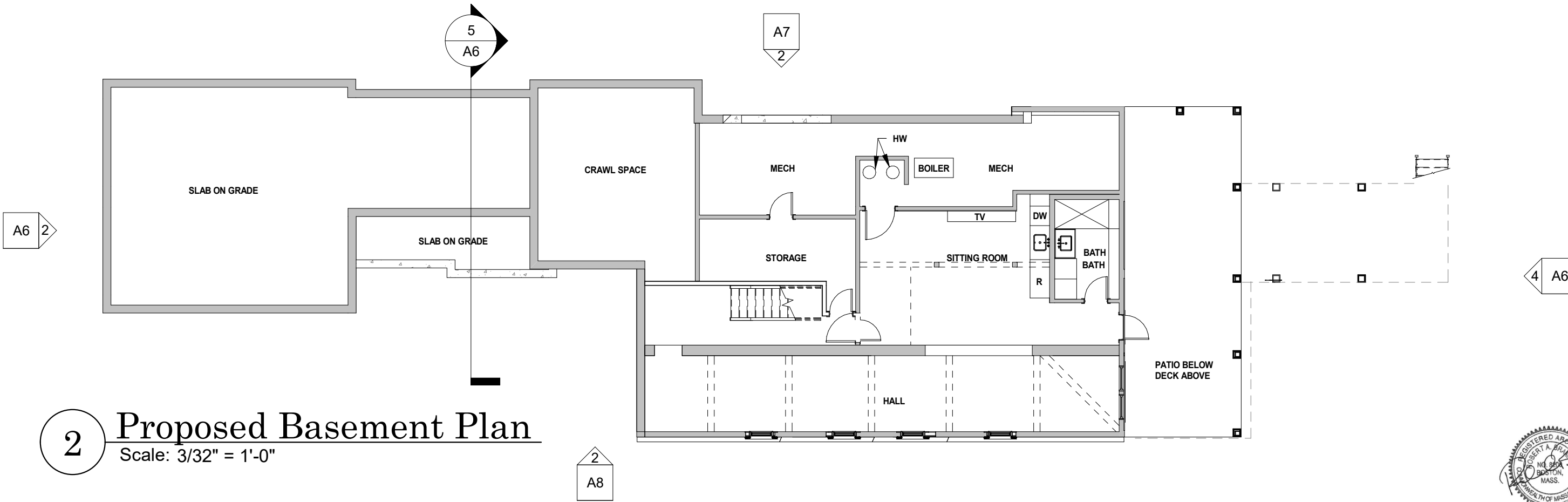
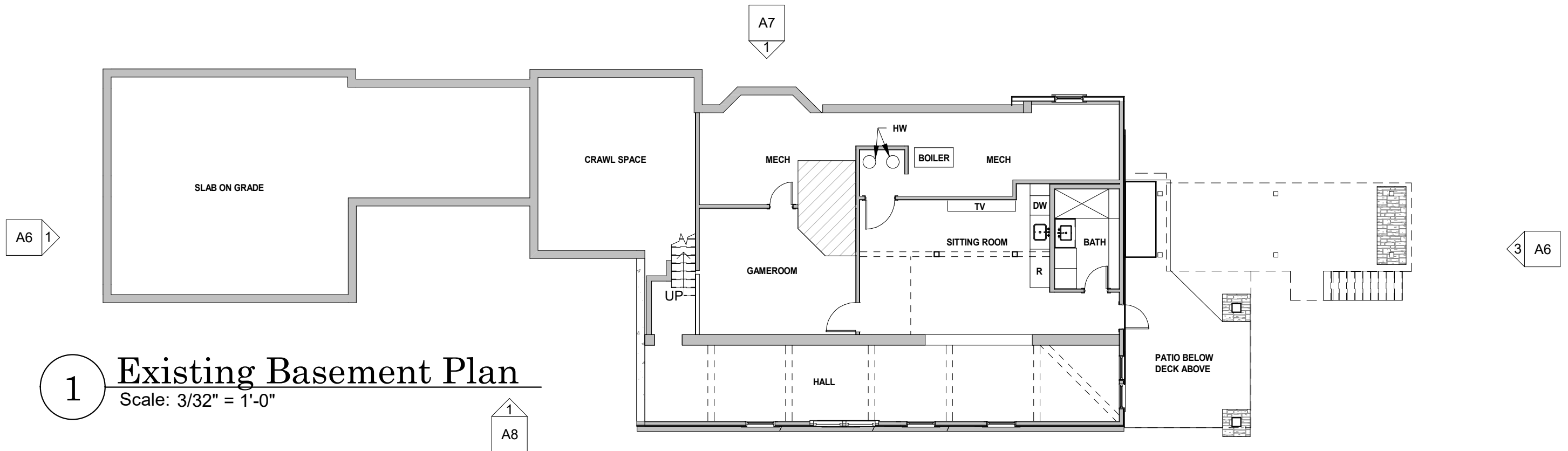
By:   
Acting Chairman: Alan Lipkind

Decision filed with Town Clerk \_\_\_\_\_, on

I hereby certify that twenty days  
have elapsed since this decision has  
been filed in the office of the  
Town Clerk and no appeal has been  
filed.

  
Robin A. Michaud  
Town Clerk-Marblehead

SEP 19 2022



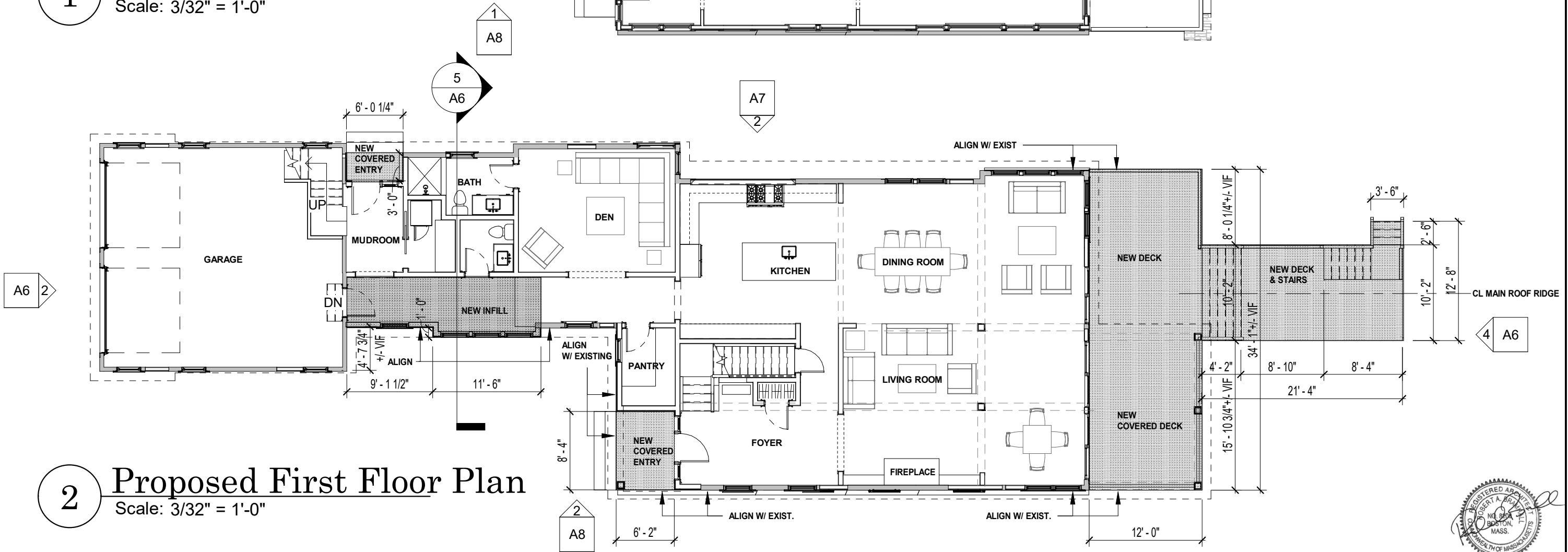
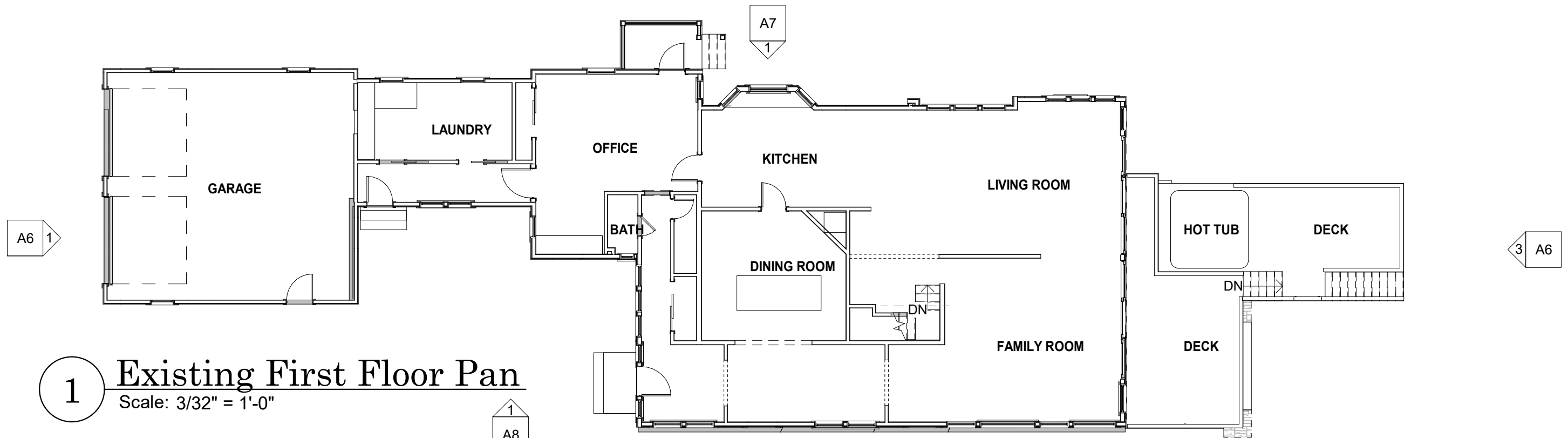
*Dyer Residence*  
16 Hathaway Road  
Marblehead, MA 01945

**ROB BRAMHALL ARCHITECTS**  
14 Park Street Andover,  
Massachusetts 01810  
978-749-3663

**Basement Plans**  
Scale: 3/32" = 1'-0"

Date: 04/26/22

Rev.	Date	Description
1	07/21/22	Planning Board Revisions



*Dyer Residence*  
16 Hathaway Road  
Marblehead, MA 01945

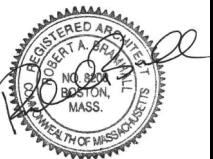
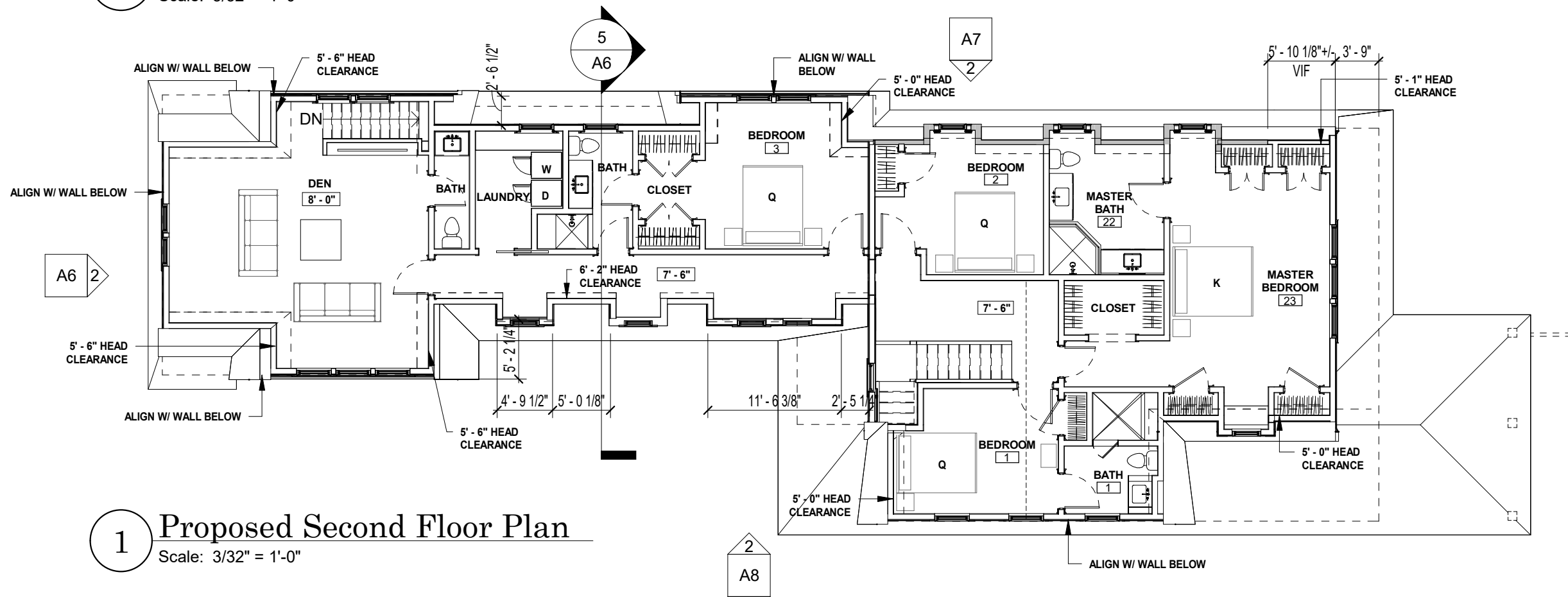
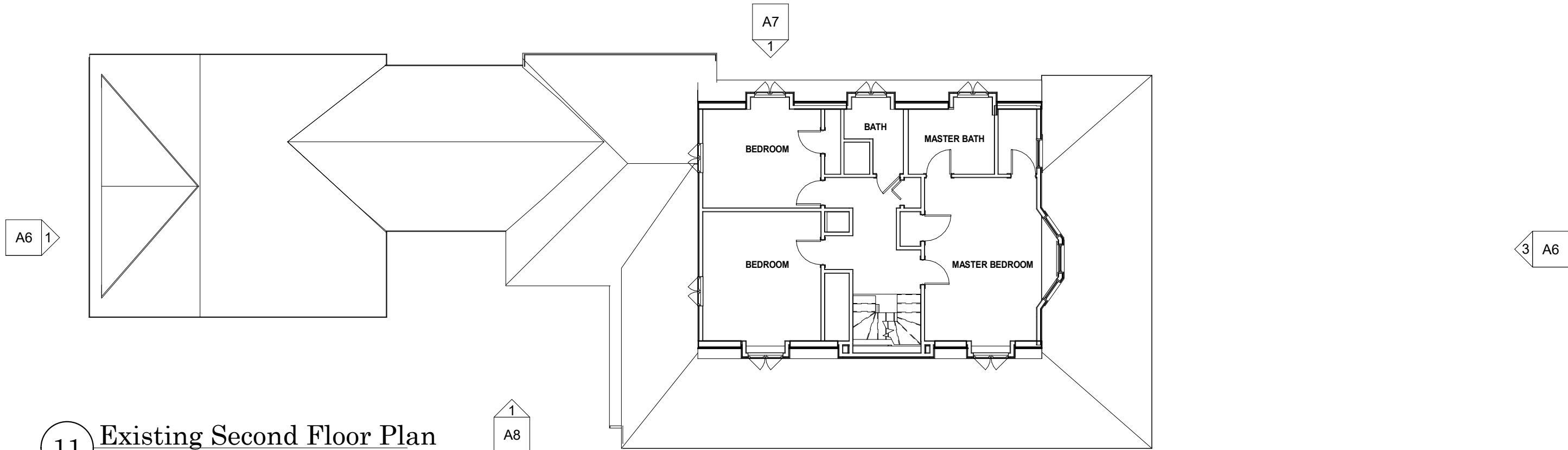
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**First Floor Plans**  
Scale: 3/32" = 1'-0"

Date: 04/26/22

Rev.	Date	Description
1	07/21/22	Planning Board Revisions





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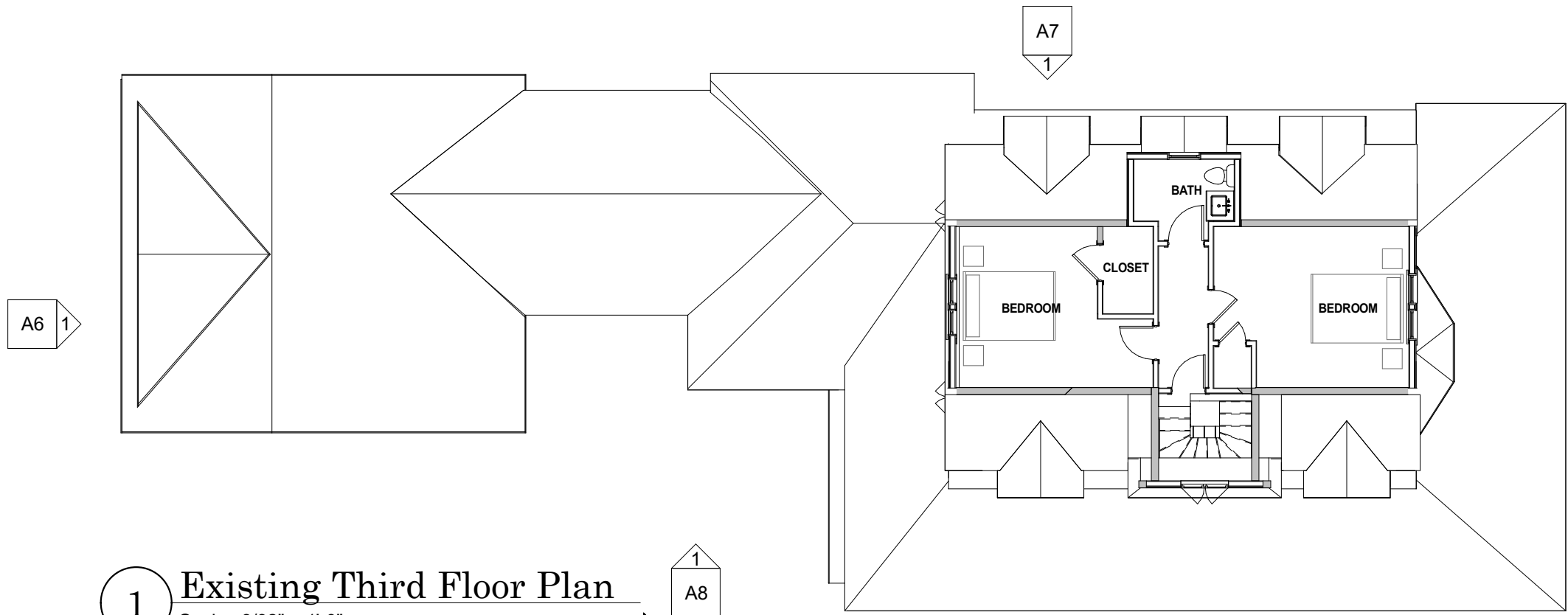
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**Second Floor Plans**

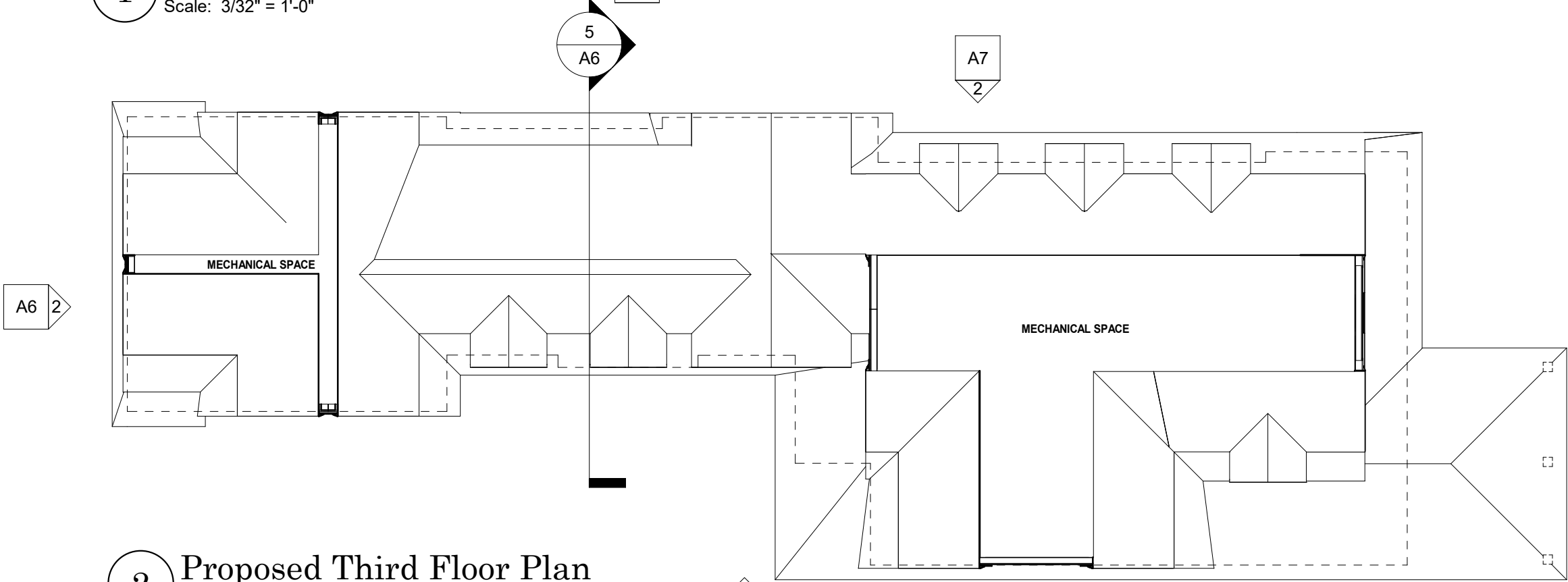
Scale: 3/32" = 1'-0"

Date: 04/26/22

Rev.	Date	Description
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**1 Existing Third Floor Plan**  
Scale: 3/32" = 1'-0"



**2 Proposed Third Floor Plan**  
Scale: 3/32" = 1'-0"



*Dyer Residence*  
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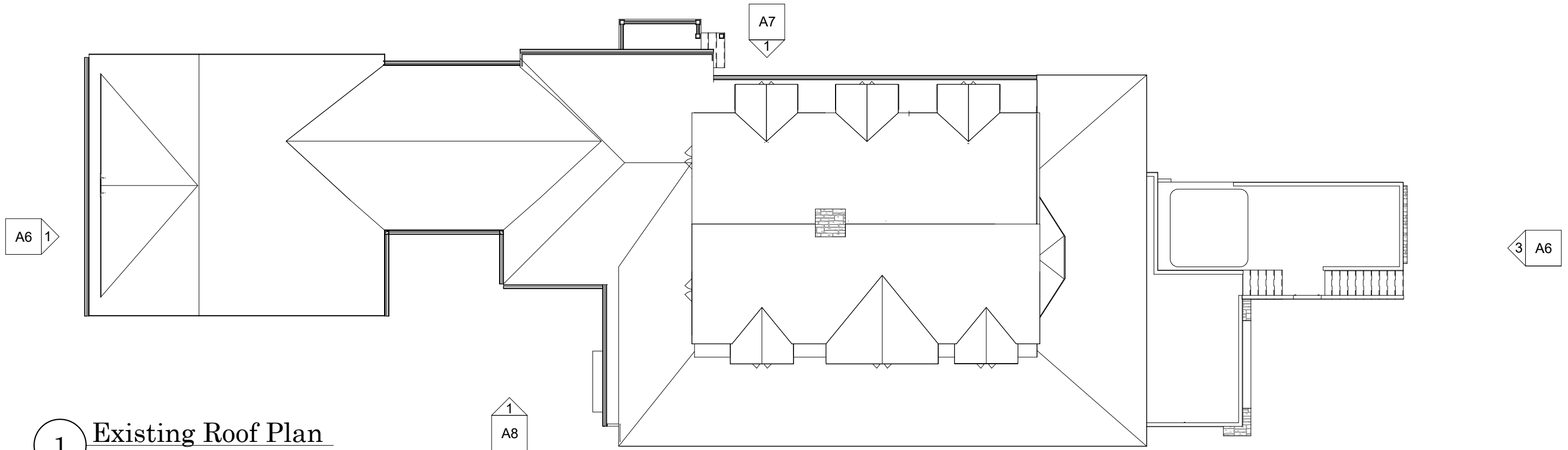
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**Third Floors**  
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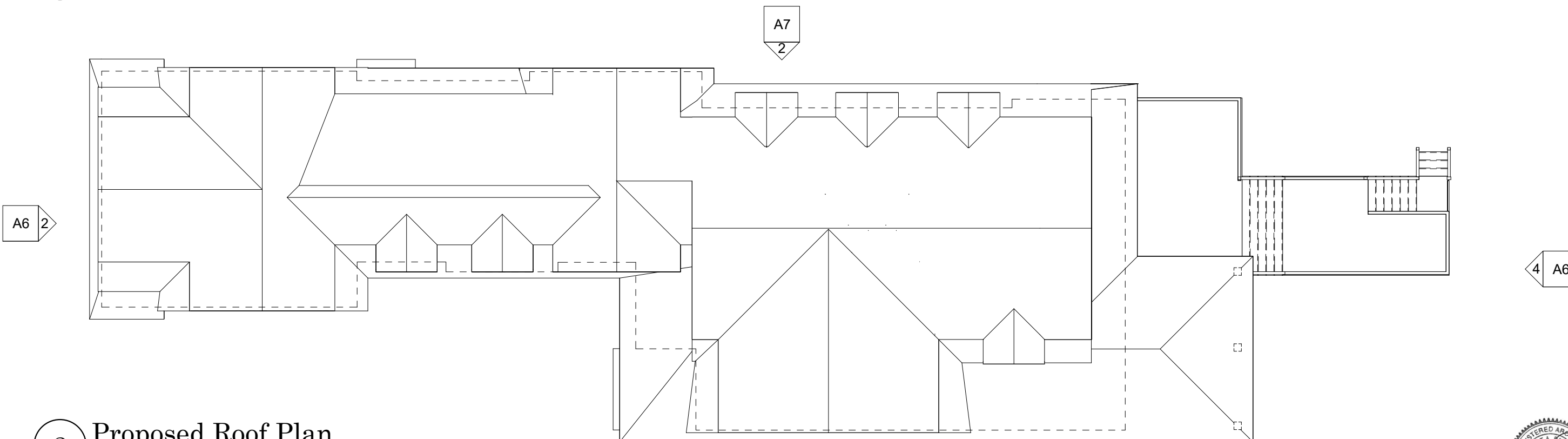
Date: 04/26/22

Rev.	Date	Description
1	07/21/22	Planning Board Revisions

**A4**



**1 Existing Roof Plan**  
Scale: 3/32" = 1'-0"



**2 Proposed Roof Plan**  
Scale: 3/32" = 1'-0"



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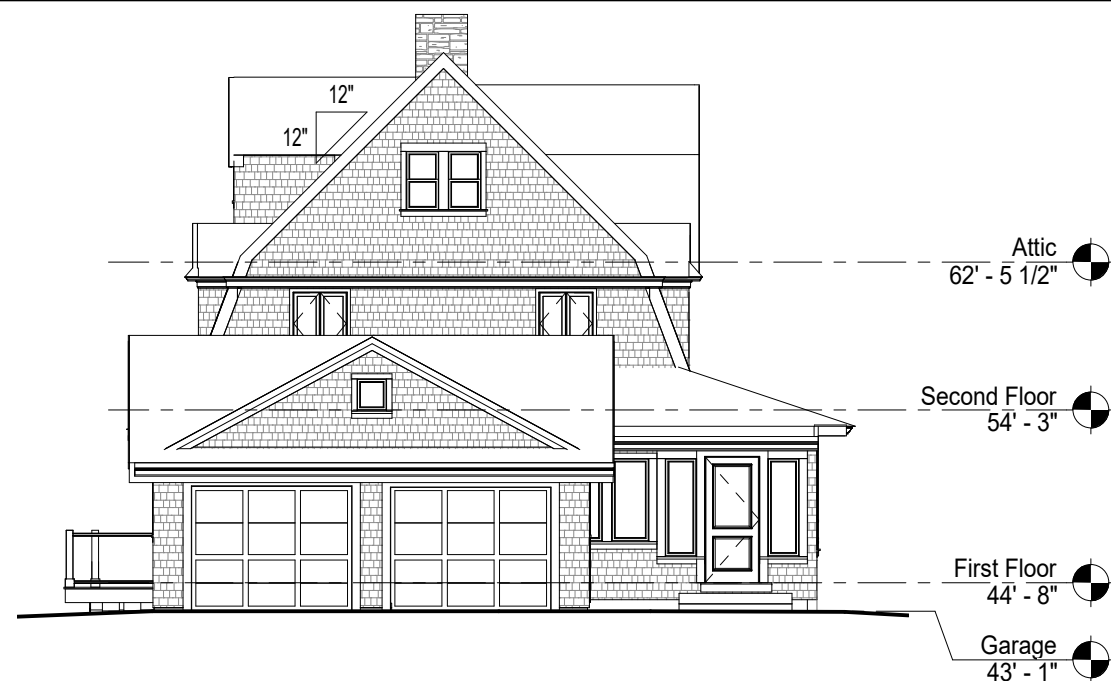
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**Roof Plans**

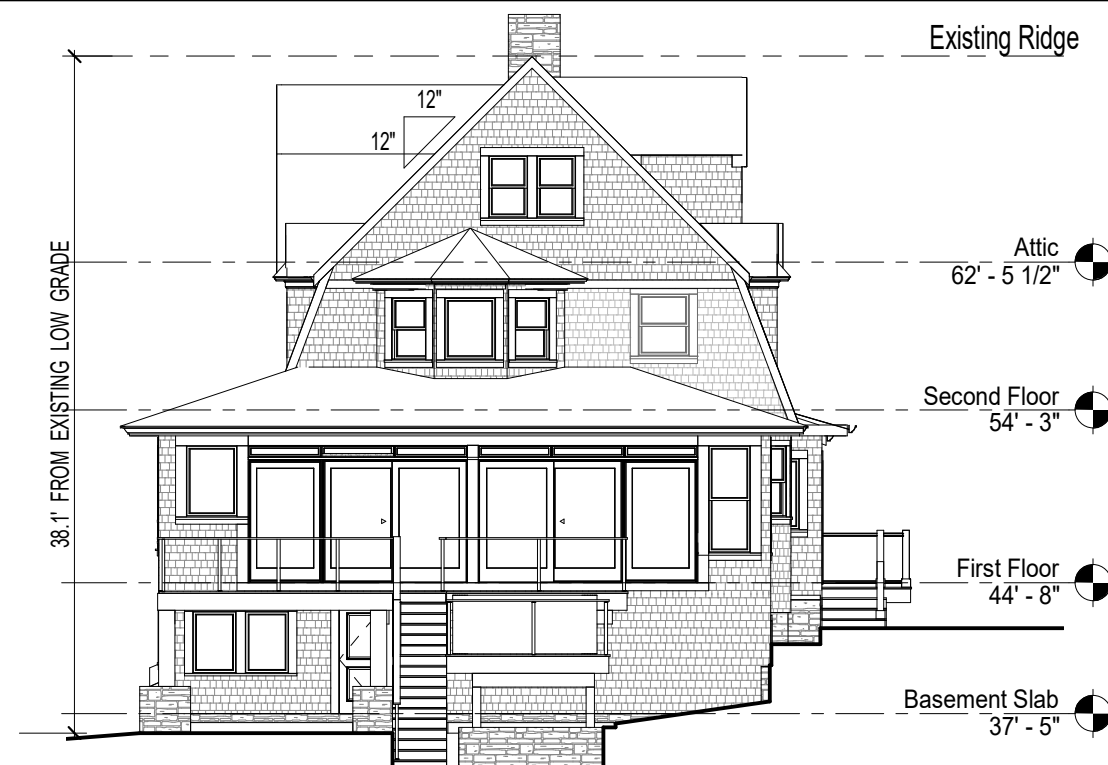
Scale: 3/32" = 1'-0"

Date: 04/26/22

Rev.	Date	Description
1	07/21/22	Planning Board Revisions



1 Existing Northwest Elevation  
Scale: 3/32" = 1'-0"

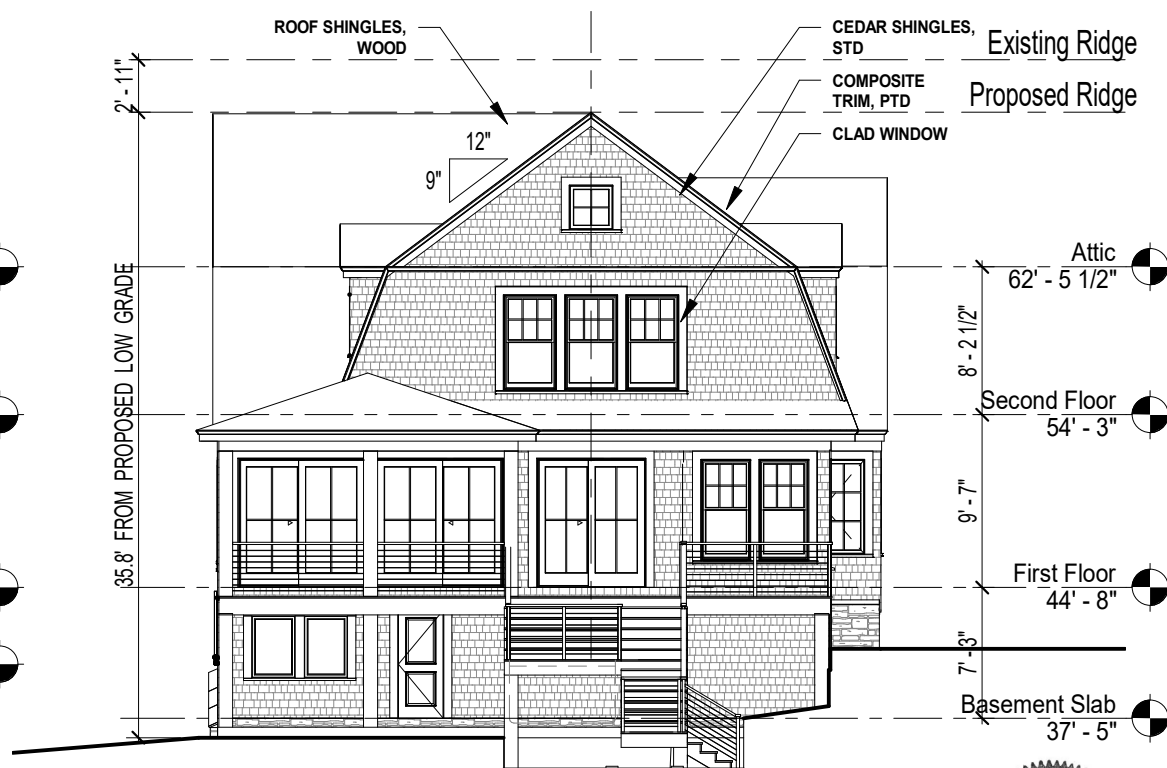


3 Existing Southeast Elevation  
Scale: 3/32" = 1'-0"



2 Proposed Northwest Elevation  
Scale: 3/32" = 1'-0"

5 Building Section Through Baths  
Scale: 3/32" = 1'-0"



4 Proposed Southeast Elevation  
Scale: 3/32" = 1'-0"



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Exterior Elevations

Scale: 3/32" = 1'-0"

Date: 04/26/22

Rev.	Date	Description
1	07/21/22	Planning Board Revisions

A6



1 Existing Northeast Elevation  
Scale: 3/32" = 1'-0"



2 Proposed Northeast Elevation  
Scale: 3/32" = 1'-0"



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Exterior Elevations  
Scale: 3/32" = 1'-0"

Date: 04/26/22

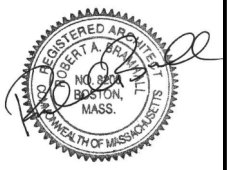
Rev.	Date	Description
1	07/21/22	Planning Board Revisions



**1 Existing Southwest Elevation**  
Scale: 3/32" = 1'-0"



**2 Proposed Southwest Elevation**  
Scale: 3/32" = 1'-0"



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**Exterior Elevations**  
Scale: 3/32" = 1'-0"

Date: 04/26/22

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