

STATE OF RHODE ISLAND  
NEWPORT, SC.

SUPERIOR COURT

GLENN MITCHELL and NUMI MITCHELL  
(Appellant)

VS.

C.A. NO: NC-2024-0231

TOWN OF JAMESTOWN ZONING BOARD  
OF REVIEW  
(Appellee)

**CONSENT ORDER**


The Appellant and Appellee have conferenced this matter, and after consideration of the Certified Record and the Appellant's reasons for appeal, the Appellant, Glenn Mitchell and Numi Mitchell ("Mitchell"), and Appellee, Town of Jamestown Zoning Board of Review ("Board"), in this zoning board of review appeal matter stipulate that the Court enter this Consent Order. After consideration, it is hereby:

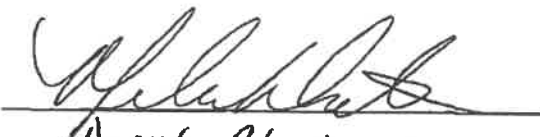
**ORDERED, ADJUDGED, AND DECREED**

1. That this matter is remanded to the Board for the Board to reconsider its Decision. The Board shall make the requisite findings of fact based upon the evidence presented, and the Board shall apply those facts to the standard of review for the granting of a dimensional variance.

ENTER:

PER ORDER:

  
7/28/24

  
Deputy Clerk F  
7/29/24

Dated: July 24, 2024

Glenn Mitchell and Numi Mitchell  
By their Attorney,

/s/ Mark E. Liberati, Esq

Mark E. Liberati (1909)  
57 Narragansett Avenue  
Jamestown, RI 02835  
401-447-5021  
mark@lp.legal

Town of Jamestown Zoning Board of Review  
By their Attorney,

/s/ Wyatt A. Brochu, Esq.

Wyatt A. Brochu (#5763)  
Assistant Town Solicitor  
RUGGIERO BROCHU & PETRARCA  
20 Centerville Road  
Warwick, RI 02886  
Tel: (401) 737-8700  
Email: [Wyatt@RuBroc.com](mailto:Wyatt@RuBroc.com)

### **CERTIFICATION**

I hereby certify that, on this \_\_\_\_ day of July, 2024, I electronically filed and served this document via the Rhode Island Judiciary's Electronic Filing System with notice to all parties in the system. The document is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/



# Town of Jamestown

Town Clerk's Office  
Town Hall, 93 Narragansett Avenue  
Jamestown, Rhode Island 02835-1199  
401-423-9800 • Fax 423-7230  
email: rfagan@jamestownri.net

**received**  
8-6-24 pw

Roberta J. Fagan  
Town Clerk  
Probate Clerk

June 10, 2024

Newport County Superior Court  
Office of the Superior Court Administrator  
Murray Judicial Complex  
45 Washington Square  
Newport, RI 02840

RE: Glenn Mitchell and Numi Mitchell  
V.

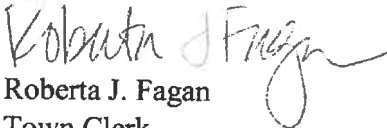
Zoning Board of Review of Jamestown, Richard Boren, Jane Bentley, James Sisson,  
Robert Maccini, Elliott Brown, and Denise Brown  
C.A. NO. NC-2024-0231

Honorable Court Administrator:

Enclosed are the certified copies of the Zoning Board of Review for the Town of Jamestown  
pertaining to the above-referenced Civil Action, File No. NC-2024-0231.

Thank you.

Attest:

  
Roberta J. Fagan  
Town Clerk

Enclosures



# Town of Jamestown

Town Clerk's Office  
Town Hall, 93 Narragansett Avenue  
Jamestown, Rhode Island 02835-1199  
401-423-9800 • Fax 423-7230  
email: rfagan@jamestownri.net

Roberta J. Fagan  
Town Clerk  
Probate Clerk

## Office of the Town Clerk

### CERTIFICATE

**I, Roberta J. Fagan, Town Clerk of the Town of Jamestown, Rhode Island, having by law the custody of the seal, and the records, books, documents and papers of or appertaining to said Town, hereby certify the annexed to be true copies of papers appertaining to said Town, and on file and of record in this office.**

**In attestation whereof I have hereunto set my hand, and have affixed the Seal of said Town, this 10<sup>th</sup> day of June, 2024.**

*Roberta J. Fagan*

---

**Roberta J. Fagan  
Town Clerk**

**Certified Documents relative to C.A. No. NC-2024-0231 in Superior Court: Glenn Mitchell and Numi Mitchell v. Jamestown Zoning Board of Review, Richard Boren, Jane Bentley, Robert Maccini, James Sisson, Denise Brown and Elliott Brown**

- 1. Application for Exception or Variation under the Zoning Ordinance, received on or about February 27, 2024 (12 pages).**
- 2. GIS map and abutters mailing list (2 pages).**
- 3. Photos and Graphics Index (6 pages).**
- 4. Correspondence to the Jamestown Zoning Board and Zoning Official Peter Medeiros from Alan Barnes, Esq. representing Elliott and Denise Brown, 92 High Street, dated March 26, 2024 (7 pages).**
- 5. Draft decision letter from Zoning Board Chairperson Richard A. Boren regarding the Mitchell application, dated April 8, 2024 (9 pages).**
- 6. Memorandum and attached Superior Court Decision to the Zoning Board members received from Mark Liberati, Esq. regarding Glenn and Numi Mitchell, 67 Howland Avenue, dated April 2, 2024 (21 pages).**
- 7. Abutter notifications returned marked "UTF":**
  - a. Catherine Kelleher, 58 Clinton Avenue, Jamestown, RI 028535**
  - b. Parker Builders LLC, 145 Front St. #1547, Worcester, MA 01608**
  - c. Jeffrey & Caroline Boden, 71 Howland Drive, Jamestown, RI 02835**
- 8. Jamestown Zoning Board of Review Decision re: Application of Glenn H. Mitchell, Et Numi, for a variance from Article 3, Section 82.302 – District Dimensional Regulations to renovate an existing bathroom to 5 feet 2 inches from the lot line instead of the required 7 feet, dated April 23, 2024 (3 pages).**

TOWN OF JAMESTOWN  
ZONING BOARD OF REVIEW

**Application for Exception or Variation under the Zoning Ordinance**

Zoning Board of Review;

Jamestown, R. I.

Date \_\_\_\_\_

Gentlemen:

The undersigned hereby applies to the Zoning Board of Review for an exception or a variation in the application of the provisions or regulations of the zoning ordinance affecting the following described premises in the manner and on the grounds hereinafter set forth.

Applicant Nomi/GLENN Mitchell Address 67 Howland Ave

Owner same Address same

Lessee — Address —

1. Location of premises: No. 67 Howland Ave Street

2. Assessor's Plat 9 Lot 191

3. Dimensions of lot: frontage 100 ft. depth 200 ft. Area 1/2 Acre sq. ft.

4. Zoning Districts in which premises are located: Use R8 Area 9 Height \_\_\_\_\_

5. How long have you owned above premises? Oct 1994

6. Is there a building on the premises at present? y

7. Size of existing building 1228 sq. ft

Size of proposed building or alteration \_\_\_\_\_

8. Distance of proposed bldg. or alteration from lot lines:

front 120.8' rear 37' left side 61' right side 5'2"

9. Present use of premises: Residential

10. Proposed use of premises: Residential

Location of septic tank & well on lot Town sewer

11. Give extent of proposed alterations Increase footprint of existing bathroom by 50 sq ft. + complete Renovation

12. Number of families for which building is to be arranged: 1

13. Have you submitted plans for above to Inspector of Buildings? Y w/THIS Application

Has the Inspector of Buildings refused a permit? \_\_\_\_\_

14. Provision or regulation of Zoning Ordinance or State Enabling Act under which application for exception or variance is made:-

Article 3. Application of District Regulations  
Sec 82.302; DISTRICT Dimensional Regulations  
Table 3-2

15. State the grounds for exception or variation in this case:

Bathroom requires Renovation - subfloor damaged by many years of leaking fixtures. Everything needs to be replaced (House ~1939)

Owners are aging and will need a walk in shower.

Respectfully Submitted,

Signature

Sam H. Mitchell

Address

67 Howland Ave

Jamestown, RI

Telephone No.

401. 835. 0943

NOTE: A LOCATION PLAN AND SKETCH AND DRAWINGS NECESSARY TO GIVE FULL INFORMATION MUST BE FILED WITH THE APPLICATION.

SAMPLE ZONING ADVERTISEMENT  
MUST BE FILLED OUT BY THE APPLICANT

Application of Glenn Mitchell/Numi Mitchell whose

property is located at 67 Howland Ave, and further

identified as Tax Assessor's Plat 9, Lot 191 for a Variance/Special Use Permit

from Article 3, Section 82.302 District Dimensional Regulations

to Renovate existing bathroom to 5'2" from lot line instead of required 7 ft.

Said property is located in a R8 zone and contains 1/2 acres/square feet.

**HOW TO WRITE YOUR AD:**

Name of owner must be advertised exactly as it appears on the most recent deed for the property. If the applicant's name differs from the owner, the ad must read: "Application of John R. Smith et ux Mary, (Jane L. Doe, owner), whose property...etc." The exact street address must be included in the advertisement, as well as the Tax Assessor's Plat and Lot numbers. Cross out "Variance" or "Special Use Permit" if one does not apply to what you are seeking. List the exact Article(s) and Section(s) numbers from the Zoning Ordinance from which you are seeking relief, followed by the title of the section as it appears in the Ordinance. Then briefly describe what you wish to do: "to construct a tool shed five feet from the side lot line instead of the required ten feet". List what zone your property is in: R8, R20, R40, RR80, RR200, CL, CD, CW or OS. Finally, enter the total acreage or square footage of your lot, crossing out the term that does not apply: acres or square feet.



# GOOGLE EARTH - 67 HOWLAND AVE

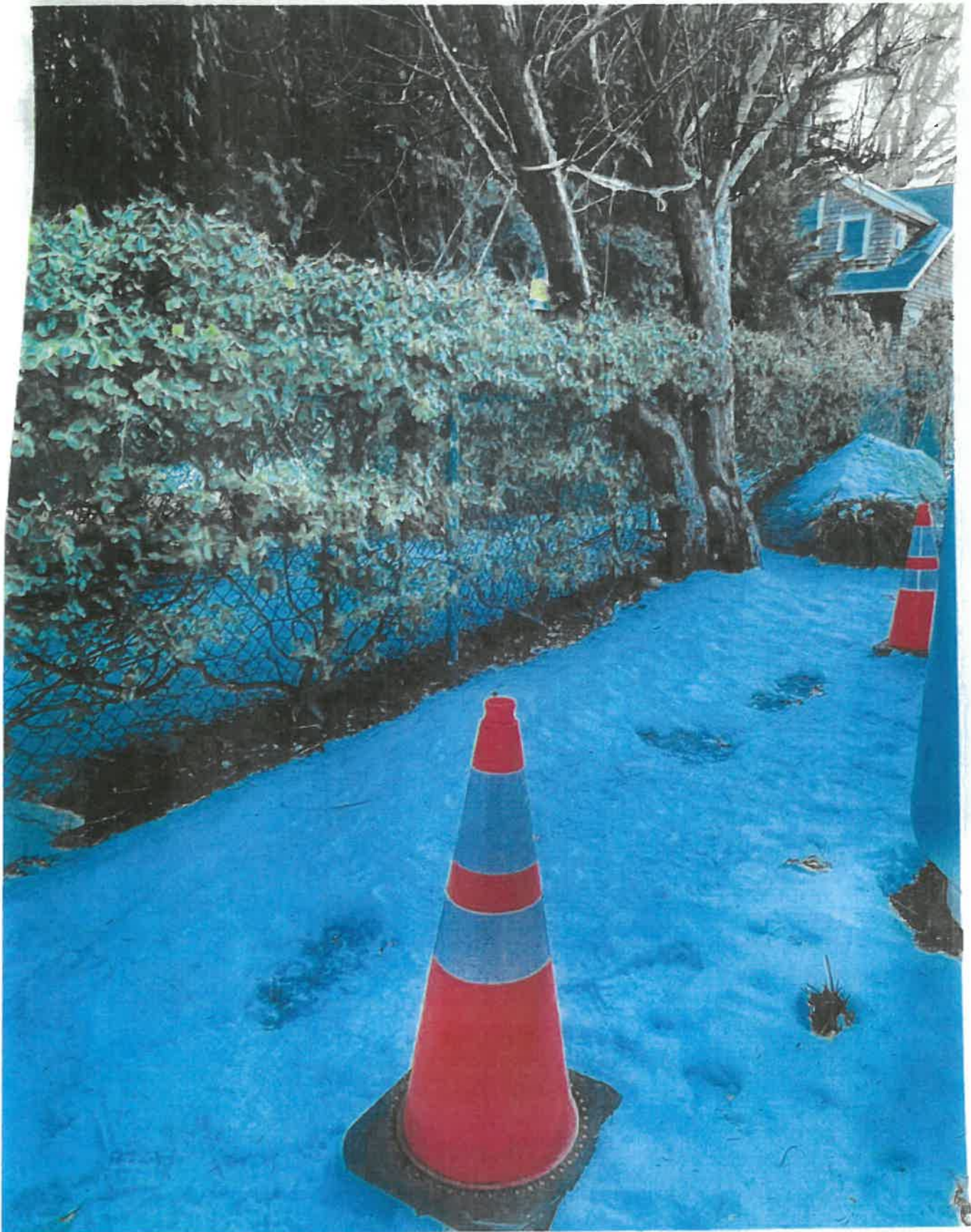
## APPROX EXTENT OF VEGETATION BLOCKING PROPOSED BATHROOM



Reid's Remodeling

Elliott's Heating Service, Inc

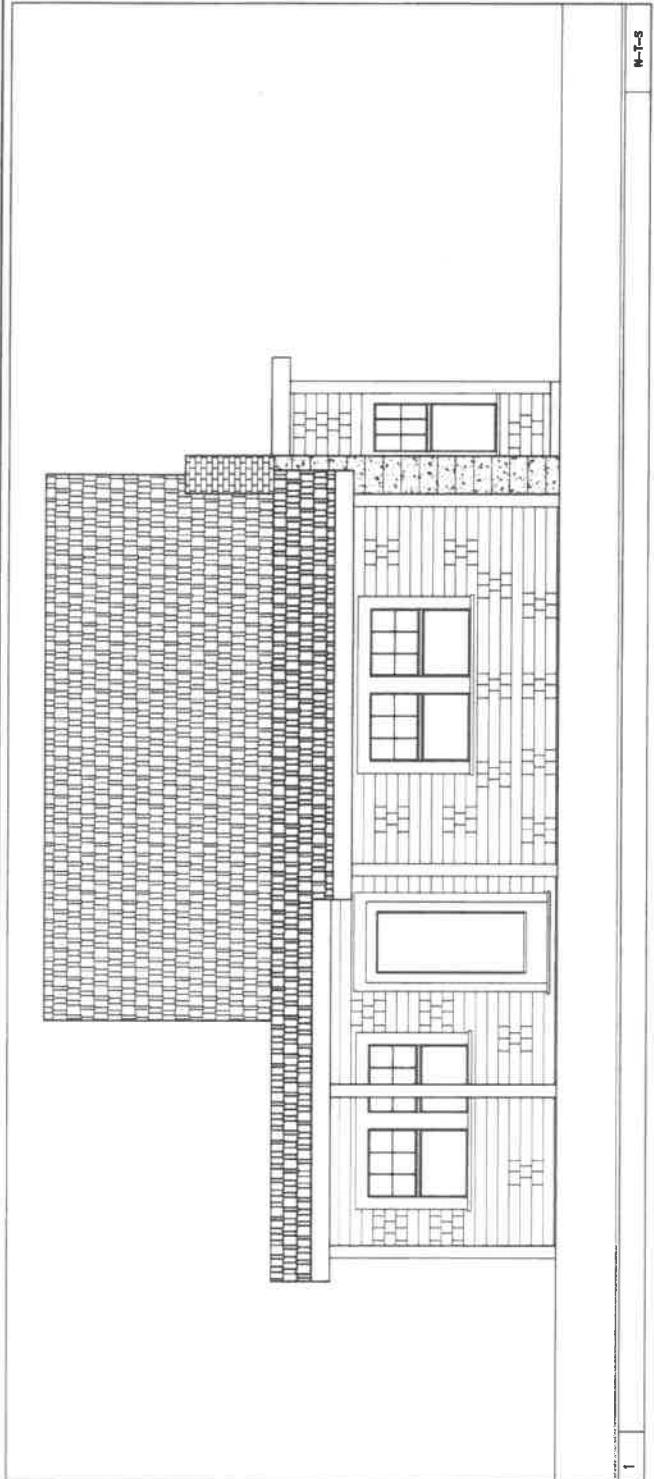




LOOKING WEST - PROPERTY LINE - QUONYPUS, SPRUCE, ARBOR VITAE

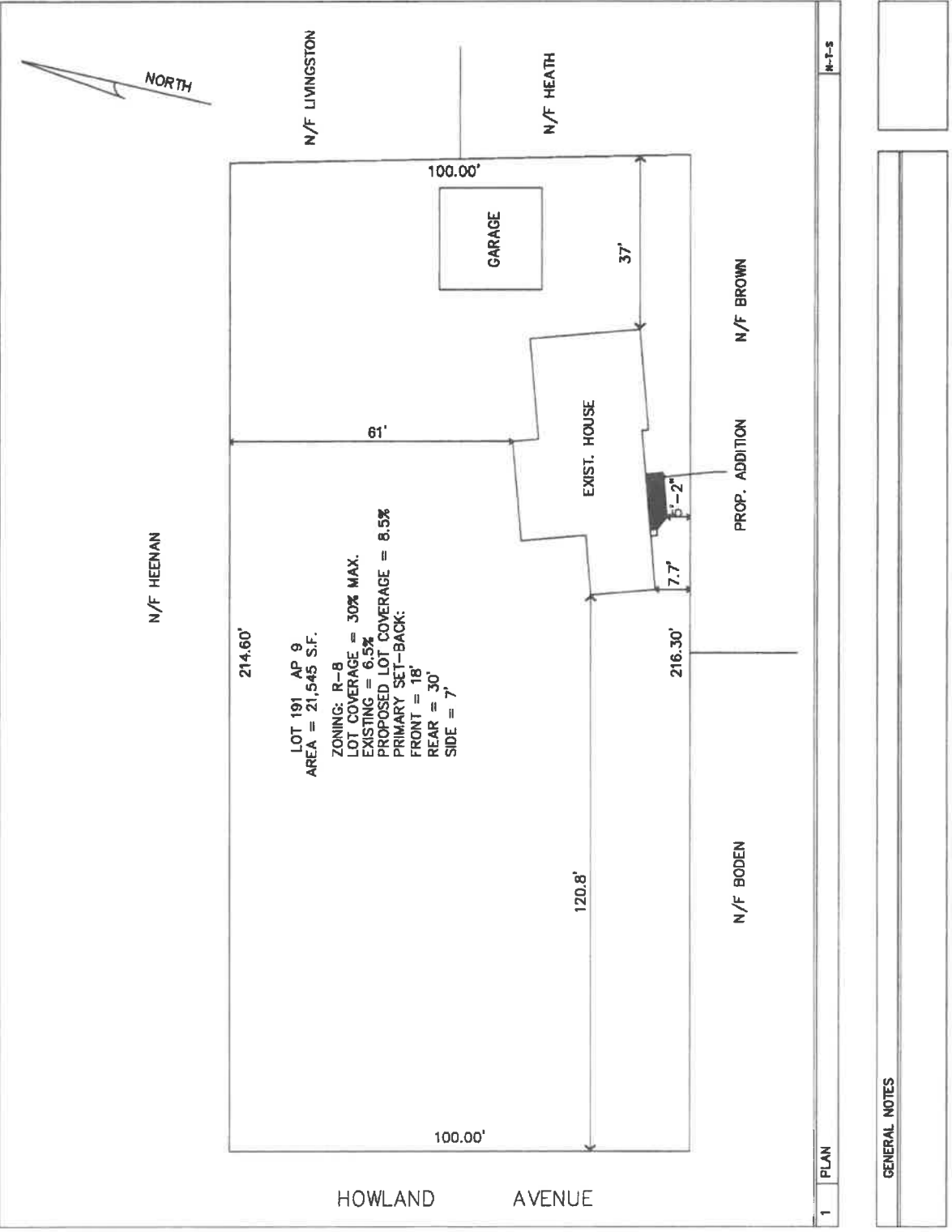


PROPOSED ADDITION TO BATH PREPARED FOR NUMI & GLENN MITCHELL	TITLE/INDEX SHEET	REVISIONS <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">No.</th> <th style="width: 75%;">Description</th> <th style="width: 20%;">Date</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	No.	Description	Date																															NOTE: ALL CONSTRUCTION TO CONFORM TO RISB 2019 1 & 2 FAMILY REQUIREMENTS	Scale: As Shown Drawn By: J.P. Checked By: J.P. Approved By: Project No: 023- Date: February 21, 2014 DWS: Mc T-1.0
No.	Description	Date																																			



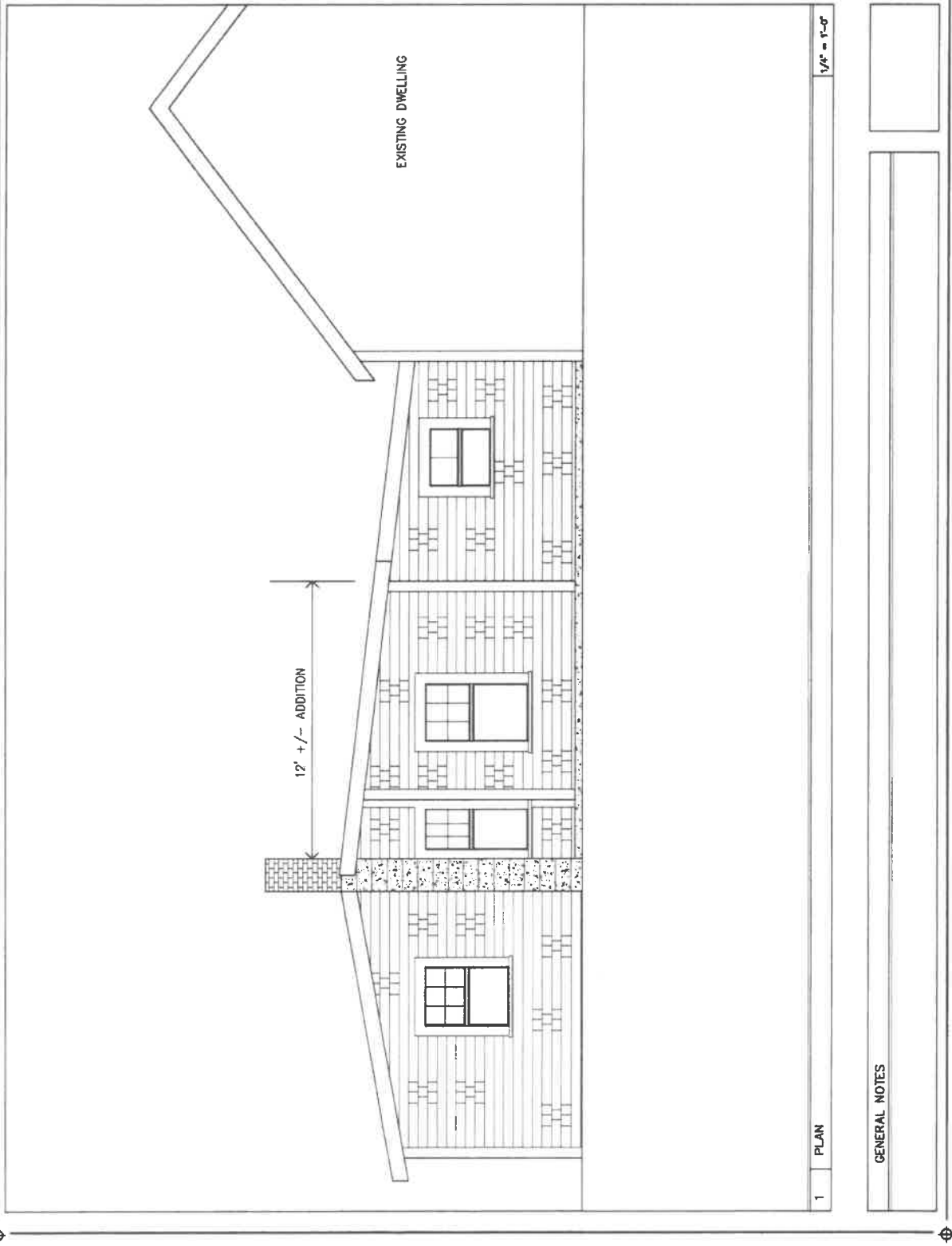
DRAWING NO.	TITLE	REV'D	DRAWING NO.	TITLE	REV'D
T - 1.0	TITLE/INDEX SHEET				
S - 1.0	SITE PLAN				
A - 2.0	FIRST FLOOR PLAN				
A - 3.0	SOUTH ELEVATION				
A - 4.0	WEST ELEVATION				
A - 5.0	EAST ELEVATION				

PROPOSED ADDITION TO BATH 67 HOWLAND AVE., JAMESTOWN PREPARED FOR NUMI & GLENN MITCHELL SITE PLAN	REVISIONS No. Description Date	Scale As Shown Drawn By: JH Checked By: JB Approved By: Project No: 025- Date: February 21, 2004 DWM No. S-1.0
	1 PLAN	

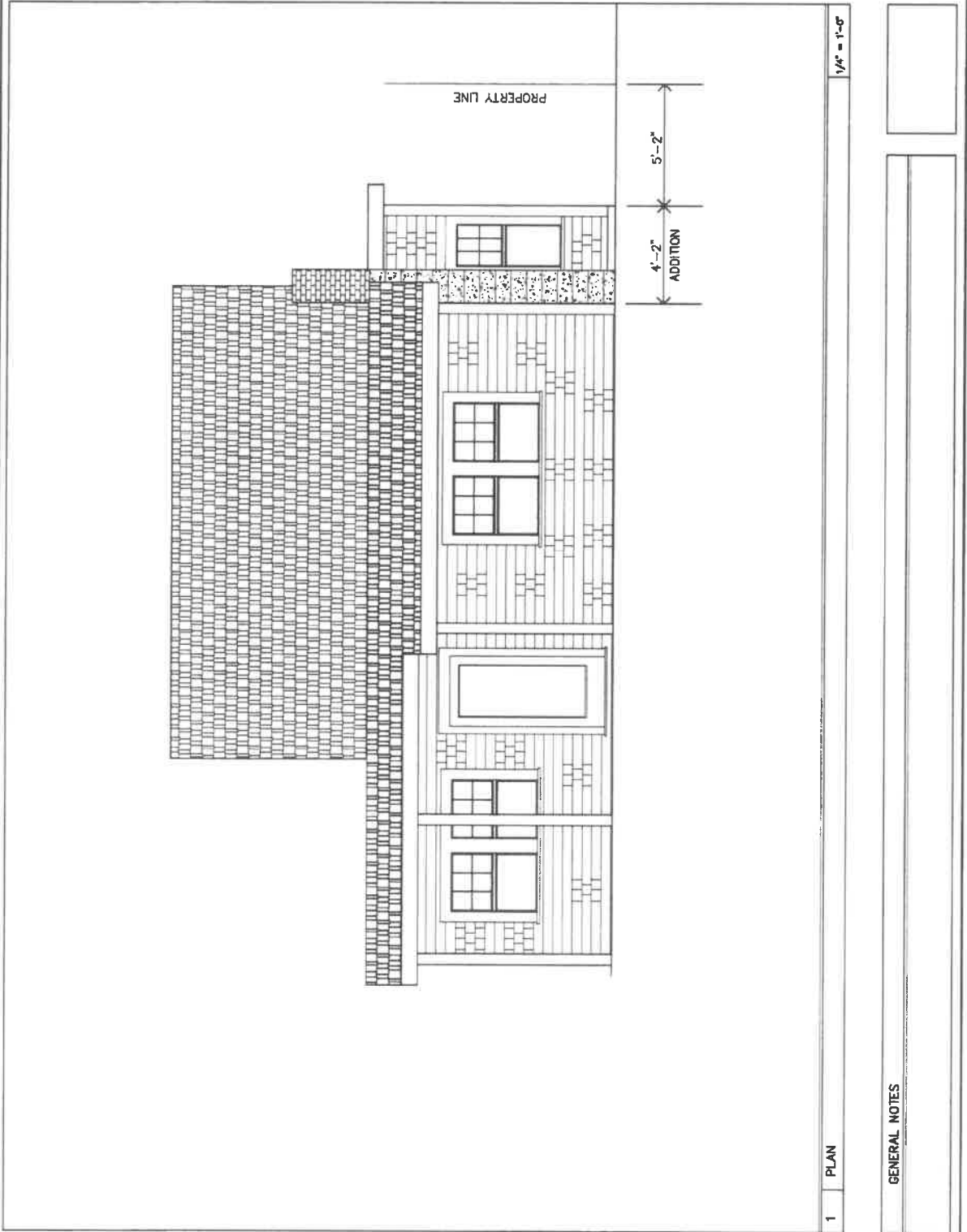


GENERAL NOTES

PROPOSED ADDITION TO BATH PREPARED FOR NUMI & GLENN MITCHELL		SOUTH ELEVATION	
REVISIONS No.   Description   Date		DATE PLOTTED A-3.0	
TITLE PROPOSED ADDITION TO BATH PREPARED FOR NUMI & GLENN MITCHELL		DRAWN BY: P CHECKED BY: P APPROVED BY: P PROJECT NO.: 002- DATE: FEBRUARY 21, 2004	



PROPOSED ADDITION TO BATH 67 HOWLAND AVE., JAMESTOWN PREPARED FOR NUMI & GLENN MITCHELL WEST ELEVATION	TITLE REVISIONS	
	No.   Description   Date	Date
Scale: As Shown Drawn By: P. Checked By: P. Approved By: Project No: 003- Date: February 21, 2024 DWG No: A-4.0		

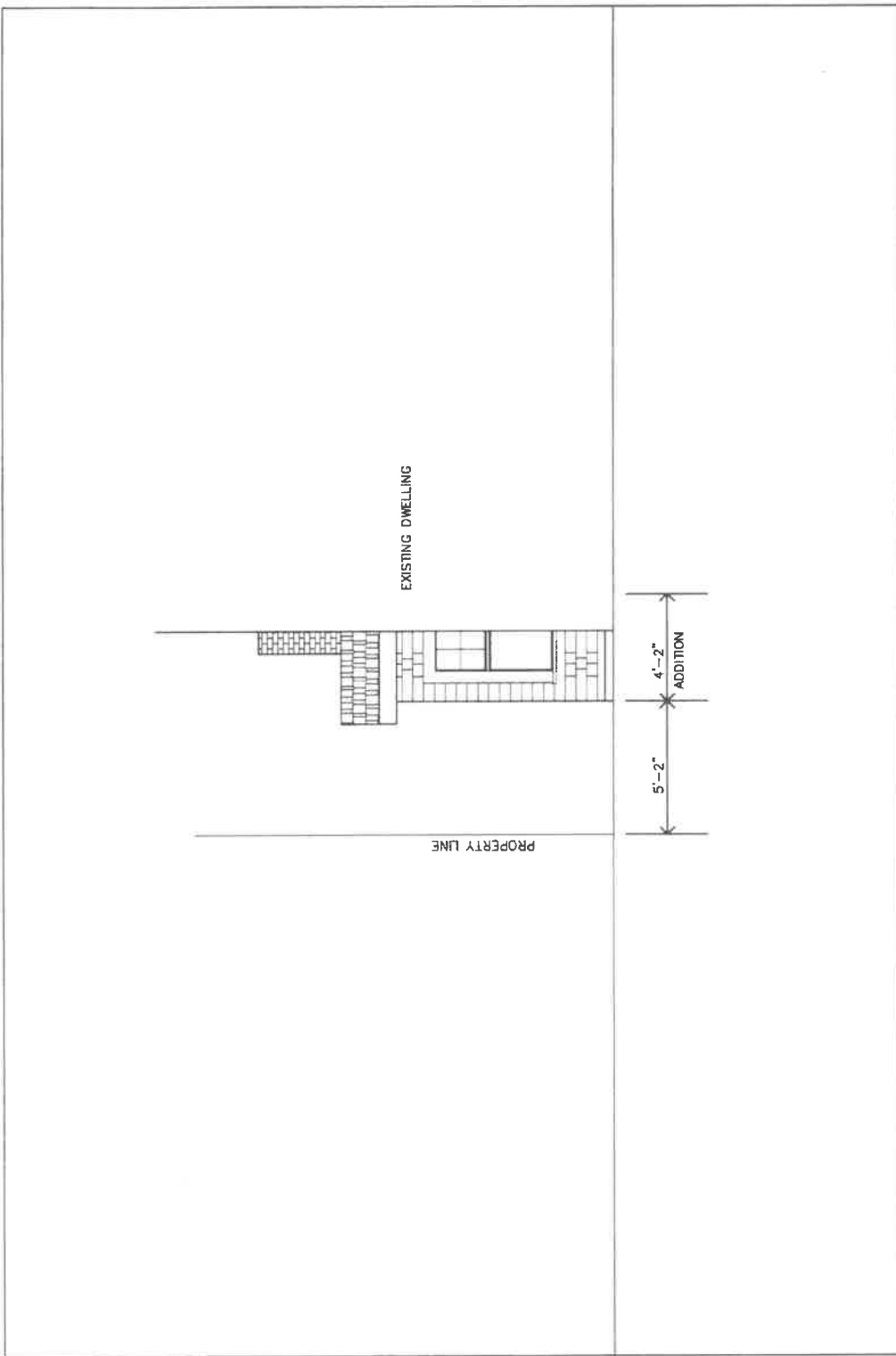


1 PLAN

GENERAL NOTES



TITLE PROPOSED ADDITION TO BATH 67 HOWLAND AVE., JAMESTOWN PREPARED FOR NUMI & GLENN MITCHELL EAST ELEVATION		REVISIONS <table border="1"> <thead> <tr> <th>No.</th> <th>Description</th> <th>Date</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	No.	Description	Date																												Scale As Shown Drawn By: J. Checked By: P. Project No: 022- Date: February 21, 2009 Date Rec: A-5.0
No.	Description	Date																															



1	PLAN	1/4" = 1'-0"
GENERAL NOTES		

AYVAZIAN SUZANNE &  
HANCOCK ANDREW T  
76 HOWLAND AVENUE  
JAMESTOWN, RI 02835

CORMIER MARIE-HELENE  
70 CLINTON AVENUE  
JAMESTOWN, RI 02835

POULTON LINDA A  
43 COLE STREET  
JAMESTOWN, RI 02835

BARRETT SHEILA M ET UX  
SMITH DAVID A TE  
70 HOWLAND AVENUE  
JAMESTOWN, RI 02835

CYCON ANNETTE HM TRUSTEE  
9 CEMETARY ROAD  
LEVERETT, MA 01054

ROBINSON HAYLEY C TRUSTEE  
ROBINSON DAVID S TRUSTEE  
55 COLE ST  
JAMESTOWN, RI 02835

BODEN JEFFREY K ET  
BODEN CAROLINE G  
71 HOWLAND AVENUE  
JAMESTOWN, RI 02835

GUTIERREZ MARSHA ET  
GUTIERREZ A O  
66 CLINTON AVENUE  
JAMESTOWN, RI 02835

SMITH WILLIAM F ET  
SMITH KATHLEEN A TRUSTEES  
60 HOWLAND AVENUE  
JAMESTOWN, RI 02835

BOTELHO ETHEL M  
64 HOWLAND AVENUE  
JAMESTOWN, RI 02835

HARDING SARAH M  
DE LA TORRE JESUS TE  
PO BOX 44  
JAMESTOWN, RI 02835

TARLTON JUSTINE & BRADY T  
47 COLE STREET  
JAMESTOWN, RI 02835

BROWN ELLIOTT E ET  
DENISE F  
92 HIGH STREET  
JAMESTOWN, RI 02835

HEATH JEFFREY L TRUSTEE  
2923 HATTERAS WAY  
NAPLES, FL 34119-7525

WILSON ELIZABETH & WILLIA  
73 HOWLAND AVENUE  
JAMESTOWN, RI 02835

BROWNELL BARBARA R ET  
BROWNELL KATHERINE M  
49 COLE STREET  
JAMESTOWN, RI 02835

HEENAN CHRISTINE M  
63 HOWLAND AVENUE  
JAMESTOWN, RI 02835

BUCKLIN GRAFTON W  
201 ROUTE 164  
PRESTON, CT 06365-8726

KELLEHER CATHERINE M  
58 CLINTON AVENUE  
JAMESTOWN, RI 02835

BYRNE JANINE C  
57 SIXTH STREET  
CAMBRIDGE, MA 02141

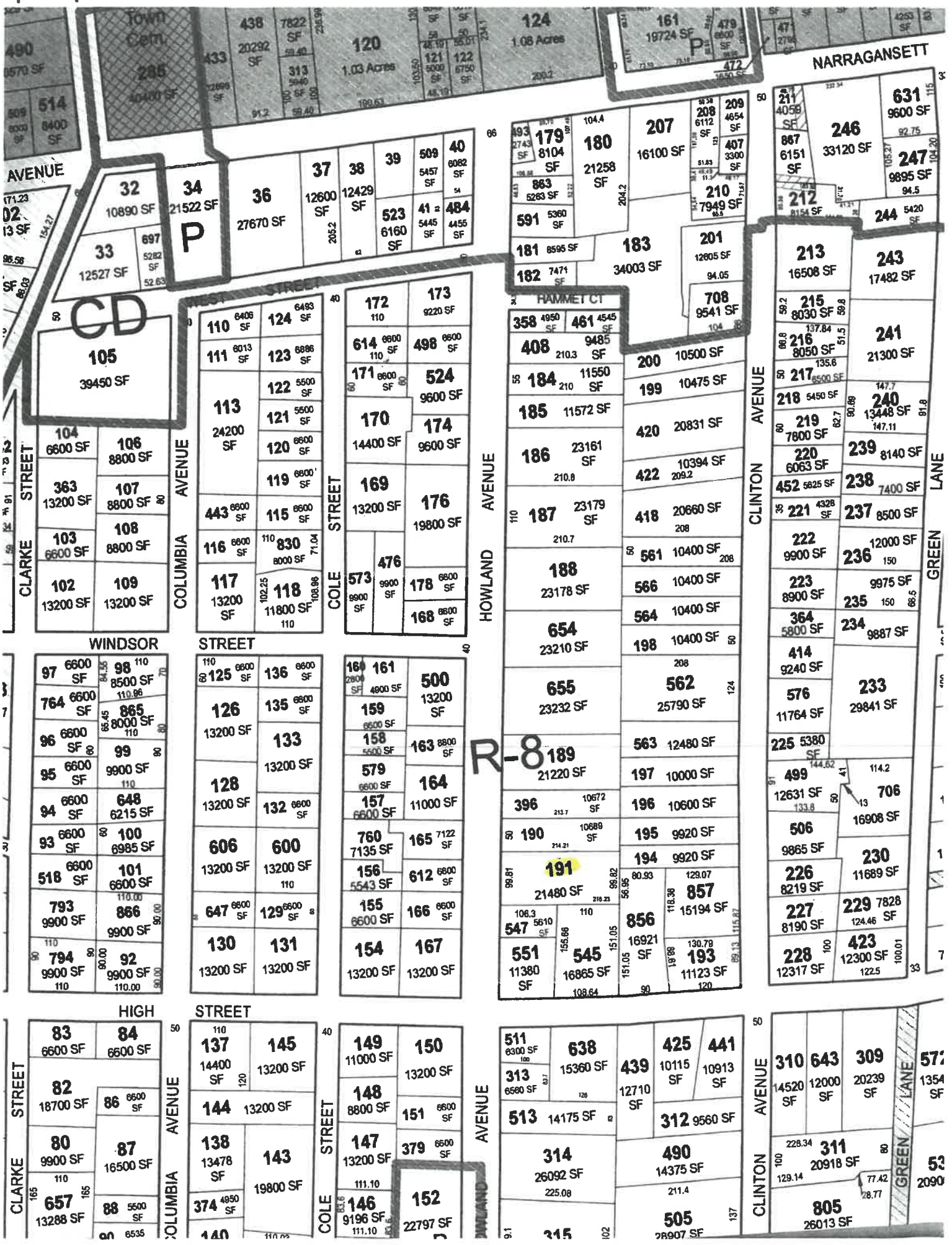
LIVINGSTON TERENCE TRUSTE  
68 CLINTON AVENUE  
JAMESTOWN, RI 02835

CHEW WILLIAM D M JR  
SHALETTE NICOLE H TE  
300 WEST 23RD ST #18K  
NEW YORK, NY 10011

NOTA ANDREW E & MICHELE A  
61 COLE STREET  
JAMESTOWN, RI 02835

COLEMAN ELIZABETH & JOHN  
8 MEADOW LANE  
JAMESTOWN, RI 02835

PARKER BUILDERS LLC  
145 FRONT ST #1547  
WORCESTER, MA 01608



**CD**

**P**

**R-8**

NARRAGANSETT

AVENUE

CLARKE STREET

COLUMBIA AVENUE

COLE STREET

HOWLAND AVENUE

CLINTON AVENUE

GREEN LANE

WINDSOR STREET

STREET

HAMMET CT

CLARKE STREET

COLUMBIA AVENUE

COLE STREET

HOWLAND AVENUE

CLINTON AVENUE

GREEN LANE

HIGH STREET

STREET

AVENUE

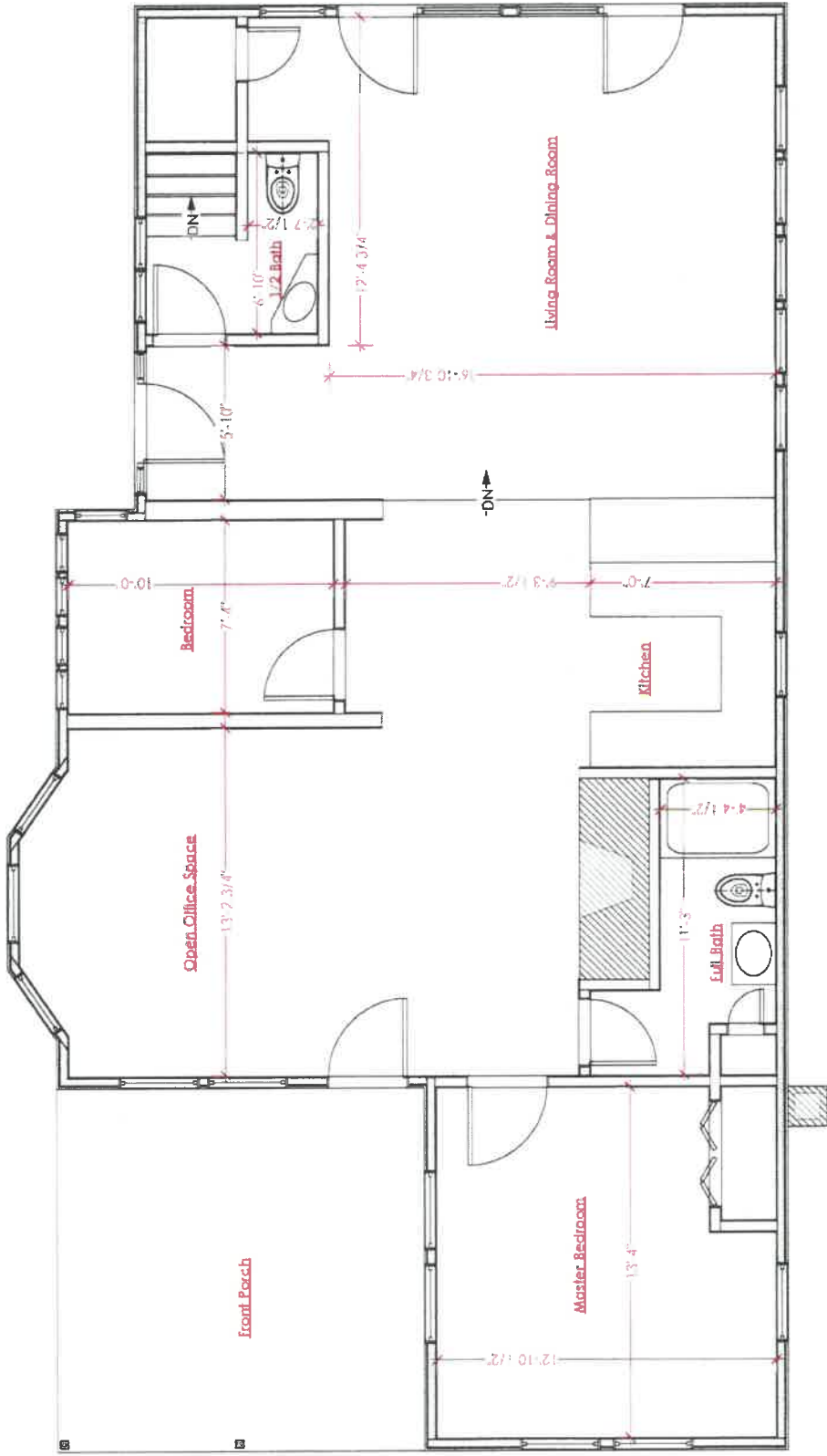
AVENUE

LANE

**Photos and Graphics Index**  
**(Photos represent current conditions)**

- 1. Google Earth overview of 67 Howland Ave showing property line and vegetation. NOTE: Most vegetation is evergreen – euonymys, spruce, and arbor vitae.**
  
- 2. Looking west toward Howland Ave. Corresponds to site plan East Elevation. NOTE: Traffic cones are placed at corners of proposed renovation 4' 2" from *existing bathroom wall*.**
  
- 3. Looking west toward Howland Ave. Note 1: Fence is the property line. NOTE 2: Traffic cones are placed at corners of proposed renovation.**
  
- 4. Looking east. Corresponds to site plan West Elevation.**
  
- 5. Looking east. Corresponds to site plan East Elevation.**
  
- 6. Bathroom entrance showing fireplace to left. The wall inside the bathroom follows the back of the fireplace. The small kitchen and bedroom are on left and right side of bathroom walls. Window in background looks out toward proposed renovation.**

1-X3



67 Howland Ave,  
Jamestown RI 02835

Existing Floor Plan  
Scale: 1/4" = 1'-0"

# GOOGLE EARTH - 67 HOWLAND AVE APPROX EXTENT OF VEGETATION BLOCKING PROPOSED BATHROOM



Reid's Remodeling

Elliott's Heating Service, Inc

*Handwritten signature*

9X3



**PLAN NOTES:**

1. NORTH ARROW REFERENCE MAGNETIC NORTH (NOVEMBER 2022)
2. EXISTING CONDITIONS SHOWN AS OF MAY 4, 2021 AND ARE THE RESULT OF A FIELD SURVEY BY SOUTH COUNTY SURVEY COMPANY LLC
3. SUBJECT PARCEL LIES WITHIN THE RR ZONING DISTRICT
4. BY GRADING PLOTTING ONLY, SUBJECT PARCEL LIES WITHIN FEMA FLOOD ZONE X (HIGHWATER) AREA OF ANNUAL FLOOD HAZARD. SEE MAPS 4400R01P1 EFFECTIVE 9/1/2013

**PLAN REFERENCES:**

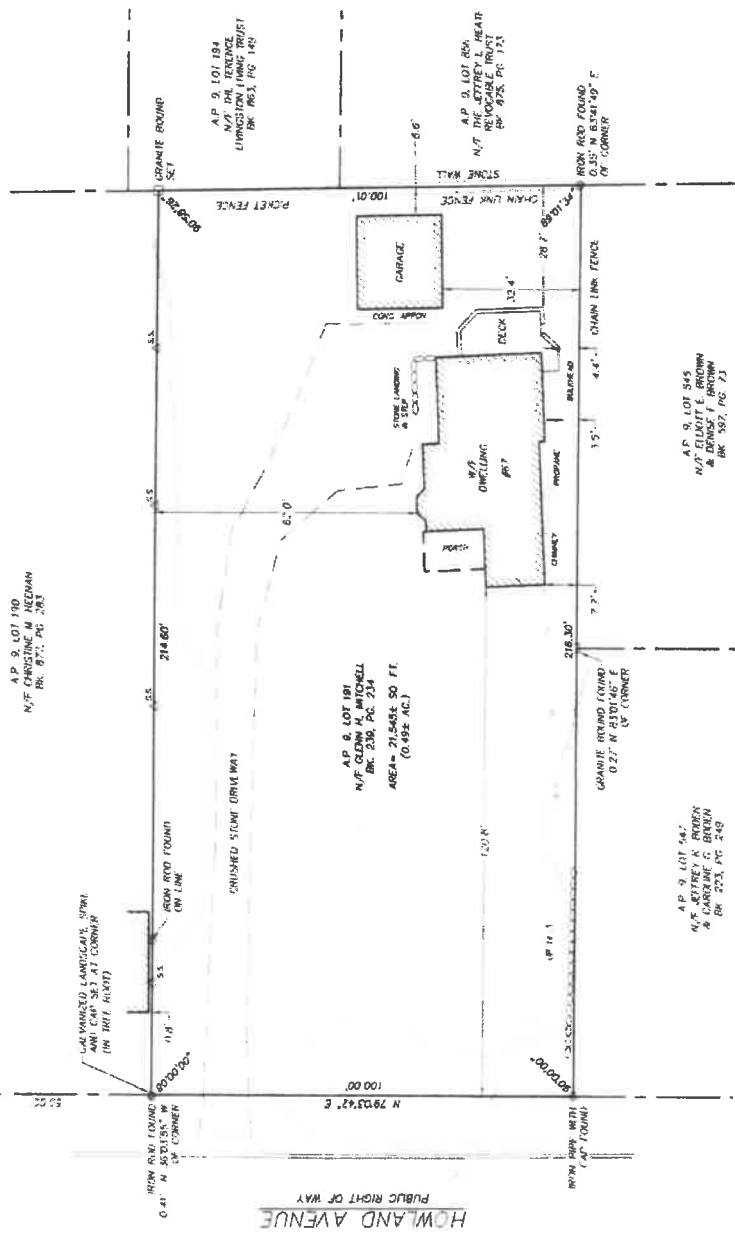
1. SEE THE HOWLAND REAL JAMESTOWN, RI, SCALE 80 FT. = 1 IN. CORRECTED AND LAD OUT BY F.W. BEAN, C.E. AND G.W. KETTEL, C.T. (C.E. AND LINDA) THE DIVISION OF PERCY M. BLAKE CIVIL ENGINEER AUGUST 1937 RECORDED IN THE TOWN OF JAMESTOWN LAND EVIDENCE RECORDS #918
2. SEE "SURVEY PLAN PREPARED FOR NAMI & CLARA MITCHELL 67 HOWLAND AVENUE, JAMESTOWN, RHODE ISLAND 02835 FOR PROPERTY PLANNED MAP 9, LOT 191, BY ENVIRONMENTAL PLANNING & SURVEYING, INC. DATED AUGUST 2009, RECORDED IN THE TOWN OF JAMESTOWN LAND EVIDENCE RECORDS #494
3. SEE CORRECTED "SURVEY PLAN PREPARED FOR NAMI & CLARA MITCHELL 67 HOWLAND AVENUE, JAMESTOWN, RHODE ISLAND 02835 FOR PROPERTY PLANNED MAP 9, LOT 191, BY ENVIRONMENTAL PLANNING & SURVEYING, INC. DATED AUGUST 2009, RECORDED IN THE TOWN OF JAMESTOWN LAND EVIDENCE RECORDS #494
4. SEE "PLAN OF SURVEY OF PROPERTY OWNED BY ELIOTT BROWN, PLAT 9, LOT 845 OF NICH STREET, JAMESTOWN, RHODE ISLAND" BY SC COMPUTER SURVEYS, INC. DATED OCT. 6, 2005, RECORDED IN THE TOWN OF JAMESTOWN LAND EVIDENCE RECORDS #204

**PLAN OF LAND**

IN THE TOWN OF JAMESTOWN, RHODE ISLAND  
 A.P. 9, LOT 191 ~ 67 HOWLAND AVENUE  
 PREPARED FOR: NAMI MITCHELL  
 MARCH 14, 2023. SCALE: 1"=20'  
 REVISED: APRIL 4, 2023  
 REVISED: MAY 10, 2023  
 REVISED: MAY 8, 2023



**SOUTH COUNTY SURVEY Co**  
 3803 MAIN ST., WASHINGTON, RI 02874  
 (401) 783-2300  
 www.southcountysurvey.com



**LEGEND**

- PROPERTY LINE
- ADJACENT'S PROPERTY LINE
- CHAIN LINK FENCE
- POCKET FENCE
- OVERHEAD WIRE
- EDGE OF VEGETATION
- UTILITY PALE
- CONCRETE/STONE STRAND
- IRON NIPP/ROD
- SPIKE WITH CAP SET
- STONE SET (ON LINE)



**SURVEYOR'S CERTIFICATION**  
 I, JAMES CALLAWAY, HAVE BEEN QUALIFIED AND THE PLAN PREPARED PURSUANT TO THE REQUIREMENTS OF THE PROFESSIONAL LAND SURVEYORS ACT OF 1976, AS AMENDED, AND THE STATE BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS ON NOVEMBER 25, 2013, AS FOLLOWS:

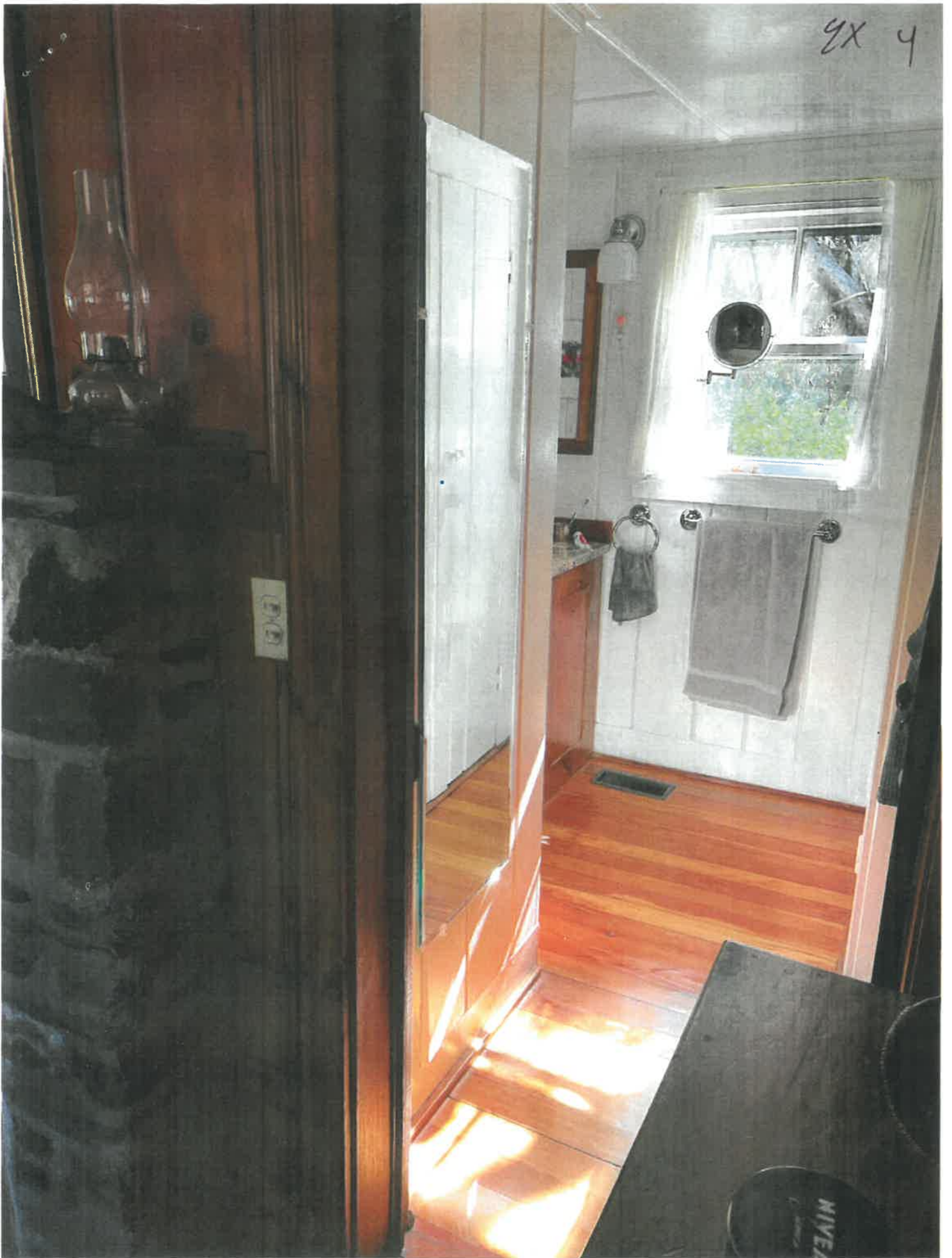
DATE OF BOUNDARY SURVEY: [ ] / [ ] / [ ]  
 DATE OF ACCURACY CLASS: B  
 CLASS OF BOUNDARY: [ ]  
 TO BE PERMANENT AND MINIMUM THE PROPERTY BOUNDARY LINES

BY: *James Callaway*  
 JAMES T. CALLAWAY, PLS. No. 5113  
 CON No. 722

**GRAPHIC SCALE**

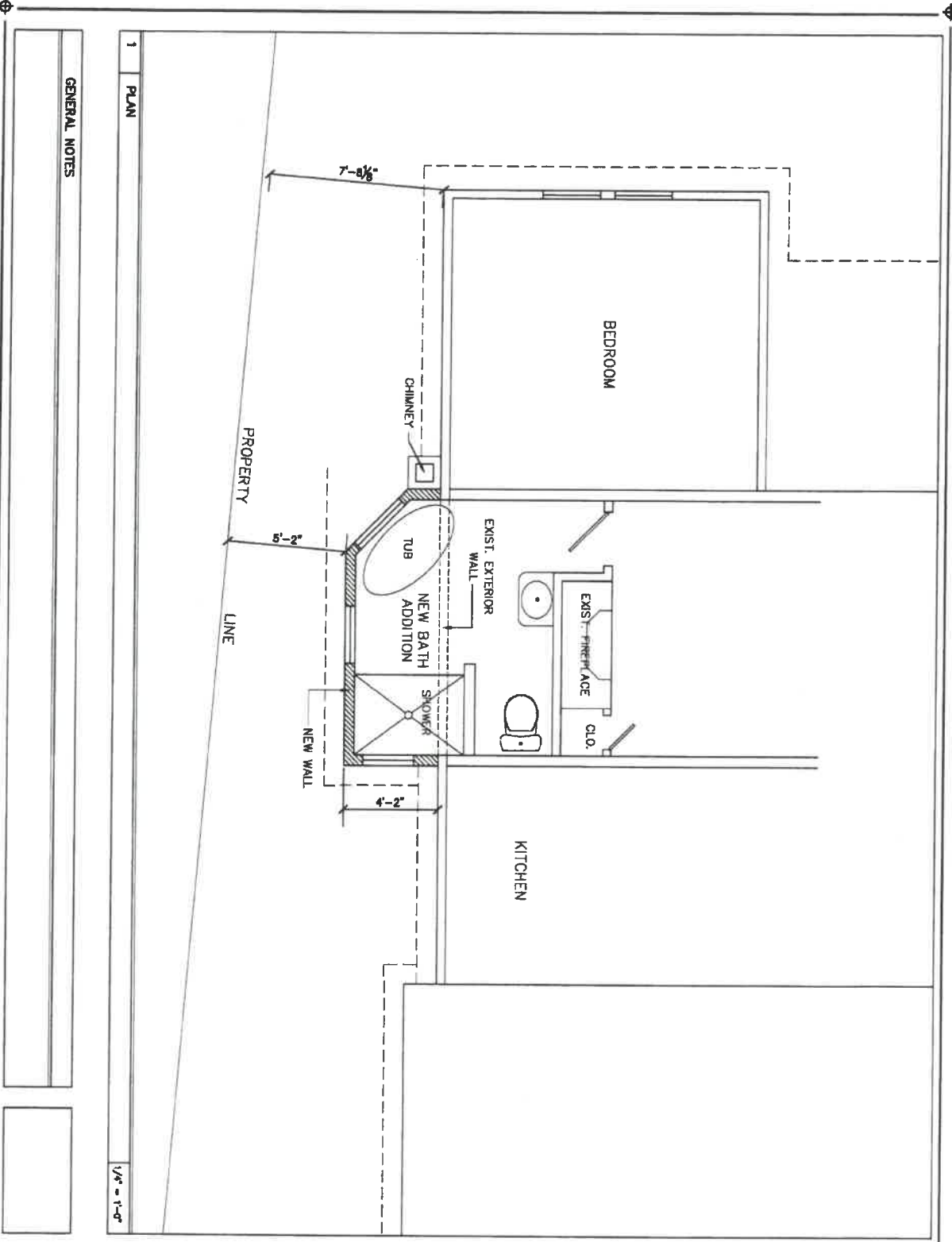


4x 4





5/23



1 PLAN

GENERAL NOTES

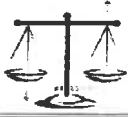
1/4" = 1'-0"

Scale: As Shown  
 Drawn By: J. B.  
 Checked By: J. B.  
 Approved By: J. B.  
 Project No: 023-  
 Date: February 21, 2004  
 DWG No: A-2.0

REVISIONS	No.	Description	Date

TITLE: PROPOSED ADDITION TO BATH  
 67 HOWLAND AVE., JAMESTOWN  
 PREPARED FOR  
 NUMI & GLENN MITCHELL

BATH FLOOR PLAN



ALAN M. BARNES  
Attorney At Law

EX A

March 26, 2024

Town of Jamestown  
Zoning Board  
93 Narragansett Avenue  
Jamestown, RI 02835

**RE: Application of Glenn & Numi Mitchell  
67 Howland Ave, plat 9, lot 191**

Dear Members:

This office represents Elliott and Denise Brown. The Browns live at 92 High Street, Lot 9, Plat 545. The Brown property abuts the rear yard of the applicant, Mitchell.

Elliott and Denise Brown of 92 High Street, Lot 9, Plat 545, abutters of the Mitchell property hereby OBJECT to the application of Glenn and Numi Mitchell whose property is located at 67 Howland Avenue, and further identified as Tax Assessor's Plat 9, Lot 191, for a variance from Article 3, Section 82.302, (now 82.305) – District Dimensional Regulations to renovate an existing bathroom to 5 feet 2 inches from the rear lot line (this distance is in dispute, as the **recorded property line** would place the structure approximately three (3) feet from the Brown rear yard) instead of the required setback. This is a R-8 Zoning District.

The basis of this objection is as follows:

1. The standard that the Town must follow, in part, in addressing the dimensional variance request is stated, in part, in Article 3, Sec. 82-104.1

***Dimensional variance.*** *Permission to depart from the dimensional requirements of the zoning ordinance [this chapter], where the applicant for the requested relief has shown, by evidence upon the record, that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience. However, the fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.*

The applicant has requested a dimensional variance in order to expand on an existing bathroom. Clearly if this variance is not granted, this will only be a **mere inconvenience** because the property already has a bathroom. The fact that the renovated bathroom would add value to the home is not grounds for relief.

2. ***Sec. 82-300. Considerations of the zoning board.*** *In granting any special use permit or variance, the zoning board shall consider whether or not satisfactory provisions and arrangements have been or will be made concerning, but not limited to, the following matters, where applicable:*

A. *Ingress and egress to the lot and to existing or proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire, emergency, or other catastrophe;*

If the applicant was allowed to expand the footprint to within 3 feet of the recorded property line, this would increase the chance of fire from spreading from one property to another.

D. *Utilities and surface water drainage with reference to locations, availability and suitability;*

If the applicant was allowed to expand the footprint to within 3 feet of the recorded property line, this would reduce the surface drainage area and could cause water to flow

onto the abutters land. With climate change and an increase of the severity of coastal storms, this would only lead to drainage problems.

**G. *Required yards and other open spaces;***

The yards in this area are small and crowded. If the applicant was allowed to increase the footprint of their structure, this would decrease the open space on their property and impact the existing open space on the abutter's property. The applicant's bathroom would be located within 3 feet of the recoded property line, causing the abutters to endure additional noise and noxious odors.

**H. *General compatibility with lots in the same or abutting zoning districts;***

This addition to the applicant's structure is not compatible with this neighborhood and would increase the density of the structures in the neighborhood. This is not what this community wants or needs

**I. *Environmental compatibility and safeguards to protect the natural environment;***

With climate change and an increase of the severity of coastal storms, this addition to the existing structure would only lead to drainage problems.

**J. *Electrical, electronic or noise interference;***

The applicant's bathroom would be located within 3 feet of the recoded property line, causing the abutters to endure additional noise and noxious odors.

**3. *Sec. 82-307. Variances—Additional restrictions. The zoning board of review shall, in addition to the above standards, require that evidence be entered into the record of the proceedings showing that:***

***A. In granting a use variance, the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the ordinance [this chapter]. Nonconforming use of neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance; and***

There is no evidence that the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning ordinance, as there is already a

home with a bathroom located on said property. See RI Gen. Laws 45-24-41 General provisions -variances - effective January 1, 2024.

*B. In granting a dimensional variance, the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.*

If the dimensional variance is not granted, this would only be a mere inconvenience, as there is already a home with a bathroom located on said property. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted is not grounds for relief. See RI Gen. Laws 45-24-41

Based upon the above, the Brown's hereby request that the application of Glenn and Numi Mitchell whose property is located at 67 Howland Avenue, and further identified as Tax Assessor's Plat 9, Lot 191, for a variance from Article 3, Section 82.302 (now 82.305) – District Dimensional Regulations be denied.

Sincerely,

Alan M. Barnes, Esquire

received  
3-8-24 pu

CORRESPONDENCE



**ALAN M. BARNES**  
Attorney At Law

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March 8, 2024

Town of Jamestown  
Attn: Peter Medeiros, Zoning Official  
93 Narragansett Avenue  
Jamestown, RI 02835

**RE: Application of Glenn & Numi Mitchell  
67 Howland Ave, plat 9, lot 191**

Dear Mr. Medeiros:

This office represents Elliott and Denise Brown. The Browns live at 92 High Street, Lot 9, Plat 545. The Brown property abuts the rear yard of the applicant, Mitchell.

Elliott and Denise Brown of 92 High Street, Lot 9, Plat 545, abutters of the Mitchell property hereby OBJECT to the application of Glenn and Numi Mitchell whose property is located at 67 Howland Avenue, and further identified as Tax Assessor's Plat 9, Lot 191, for a variance from Article 3, Section 82.302 – District Dimensional Regulations to renovate an existing bathroom to 5 feet 2 inches from the rear lot line (this distance is in dispute, as the **recorded property line** would place the structure approximately three (3) feet from the Brown rear yard) instead of the required setback. This is a R-8 Zoning District.

The basis of this objection is as follows:

1. The standard that the Town must follow in addressing the dimensional variance request is stated, in part, in Article 3, Sec. 82-101 (162) b.

- a. **Dimensional variance.** Permission to depart from the dimensional requirements of a zoning ordinance [this chapter], where the applicant for the requested relief has shown, by evidence upon the record, **that there is no other reasonable alternative way to enjoy a legally permitted beneficial use of the subject property unless granted the requested relief from the dimensional regulations.** However, the fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.
2. That the hardship from which the applicant seeks relief is NOT due to the unique characteristics of the subject land or structure. The applicant property currently contains a bathroom, and the requested variance is to extend or expand upon said bathroom, this request is not due to any unique characteristics of the existing structure that would prevent them from utilizing the existing structure. See RI Gen. Laws 45-24-41 General provisions -variances - effective January 1, 2024. Town of Jamestown Ordinance Article 3, Sec. 82-606. - Conditions for granting a variance.
3. That the granting of the requested variance WILL alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance, as the rear yard of the Brown's will face a structure, that for all intent and purposes, would be located within approximately three (3) feet of the **recorded property line**. By allowing this variance, the bathroom of the Mitchell home would be almost at the property line. This would prevent the Browns from enjoying the peace and quiet that they have enjoyed in their yard, could increase the chance of fire spreading from one building to another, and cause the release of offensive odors and noise. The purpose of the Town Zoning Ordinance is to prevent these types of problems occurring in an already densely populated area. This would be a substantial hardship to the Browns. See RI Gen. Laws 45-24-41 General

provisions -variances - effective January 1, 2024. Town of Jamestown Ordinance Article 3, Sec. 82-101 - Purpose and 82-606. - Conditions for granting a variance.

4. There is no evidence that the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning ordinance, as there is already a home with a bathroom located on said property. See RI Gen. Laws 45-24-41 General provisions -variances - effective January 1, 2024. Town of Jamestown Ordinance Article 3, Sec. 82-607. - Variances—Additional restrictions.
  
5. There is no evidence that the hardship suffered by the owner of the subject property, if the dimensional variance is not granted, amounts to more than a mere inconvenience, as there is already a home with a bathroom located on said property. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted is not grounds for relief. See RI Gen. Laws 45-24-41 General provisions -variances - effective January 1, 2024. Town of Jamestown Ordinance Article 3, Sec. 82-607. - Variances—Additional restrictions.

Based upon the above, the Brown's hereby request that the application of Glenn and Numi Mitchell whose property is located at 67 Howland Avenue, and further identified as Tax Assessor's Plat 9, Lot 191, for a variance from Article 3, Section 82.302 – District Dimensional Regulations be denied.

Please feel free to contact this office should you have any questions.

Sincerely,



Alan M. Barnes, Esquire

LAW OFFICE OF ALAN M. BARNES  
67 SHORE DRIVE • JOHNSTON, RI 02919  
(401) 934-3368 • [Office@BarnesRI.Com](mailto:Office@BarnesRI.Com)



## Mari-Anne Sprague

---

**From:** Mari-Anne Sprague  
**Sent:** Monday, April 8, 2024 3:58 PM  
**To:** pwestall@jamestownri.net  
**Cc:** Richard A. Boren  
**Subject:** Mitchell Application  
**Attachments:** 20240408 -- Letter to Pat Westall, Bldg & Zoning.pdf

Hi Pat:

Attached please find a letter from Attorney Richard A. Boren with regard to the Mitchell Application.

Thank you.

*Mari-Anne Bovill*

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Mari-Anne Bovill, Legal Assistant  
Jerry L. McIntyre, Esquire  
Laura Ruzzo Reale, Esquire  
Richard A. Boren, Esquire  
MCINTYRE ◊ TATE LLP  
50 Park Row West, Suite 109  
Providence, Rhode Island 02903  
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[www.mcintyretate.com](http://www.mcintyretate.com)

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MCINTYRE

TATE <sup>LLP</sup>

COUNSELLORS AT LAW

JERRY L. MCINTYRE ∞  
DEBORAH MILLER TATE \*Δ  
ROBERT S. PARKER \*\*  
STEPHEN M. PRIGNANO \*\*  
LAURA RUZZO REALE \*  
RICHARD A. BOREN  
NICHOLAS T. HUNT

Also member  
∞ New York Bar  
\* Massachusetts Bar  
\* Connecticut Bar  
Δ Florida Bar

April 8, 2024

**VIA EMAIL**

Pat Westall, Building & Zoning Clerk  
TOWN OF JAMESTOWN  
93 Narragansett Avenue, 2nd Floor  
Jamestown, RI 02835  
[pwestall@jamestownri.net](mailto:pwestall@jamestownri.net)

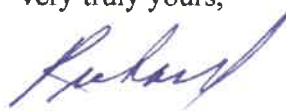
Re: *Mitchell Application*

Dear Pat:

I am enclosing my draft decision on the Mitchell application. The Board has not yet voted on this application. Would you please email a copy to all board members, Mark Liberati, Esq., Alan Barnes, Esq. and Wyatt.

Thank you.

Very truly yours,



Richard A. Boren

RAB/mas  
Enclosure

Form to Grant or Deny a VARIANCE

CASE NAME: MITCHELL

DATE: March 24, 2024

MOTION BY RICHARD BURSON SECONDED BY \_\_\_\_\_

I move that we ( GRANT DENY ) request of Glenn and Numi Mitchell whose property is located at 67 Howland Avenue, and further identified as Tax Assessor's Plat 9, Lot 191, for a variance from Article 3, Section 82.302 - District Dimensional Regulations to renovate an existing bathroom to 5 feet 2 inches from the lot line instead of the required 7 feet.

This Board has determined that this application ( DOES DOES NOT ) satisfy the requirements of Article 3, Section 300, Section 306, and Section 307, Paragraph 6.

[In particular reference to Article 6, Section \_\_\_\_\_, Paragraph \_\_\_\_\_.]

[This Variance is granted with the following restriction/condition(s):]

This project must be constructed in strict accordance with the site and building plans duly approved by this Board.

→ This motion is based on the following findings of fact:

1. Said property is located in an R8 zone and contains 1/2 acres.
2. The residence located on the property was constructed IN or around 1939.
3. The residence is 1228 sq. feet
4. The lot is 21,540 sq. feet
5. The lot is large for this R8 zone, but the residence sits on the south set back of 7 feet
7. Although correspondence from an attorney for an objection, questioned, said the current set back was, closer to the property line of 7 feet, ex 3 to a Class 2 Surveyor's certification, that

establishes the current set back of 7 feet, 7 inches

8. The applicants have owned the property for 29 years.
9. The master bedroom is located on the south side of the house at the 7 foot set back.
10. The master bathroom (there is only one full bathroom) is located immediately to the east of the master bedroom and is currently <sup>approximately</sup> 7 feet from the property.
11. The middle bathroom has a sink, toilet and an old steel bathtub smaller than today's standard bath tub. The old bathtub also serves as a shower.
12. The master bathroom is approximately 4 feet, 4 1/2 inches by 11 feet, 13 inches.
13. The current bathroom will not accommodate both a separate shower and tub.
14. The antiquated bath tub currently serves as a shower.

15. The master bedroom is 12 feet, 10 inches by 13 feet, 4 inches and not large enough to add a bathroom.
16. Currently, the master bathroom cannot be extended into the panna as there is a large masonry fireplace.
17. Currently, the master bathroom is also adjacent to the kitchen which is only 7 feet by 10 feet and is not large enough to accommodate an expansion of the bathroom.
18. The half-bathroom cannot be extended, which is currently 6 feet, 10 inches by 2 feet, 7 1/2 inches and abuts a basement stairway.
19. In summary the master bathroom cannot be extended north, east, or west. The only possible extension is to the south into the 7 foot set back.
20. The proposed set back, per ~~the~~ EX. 5, Birth floor plan, is to extend the bathroom by moving the south

wall 5 feet, 2 inches from the property line.

21. Shaker Barzani, architect, credibly testified that the only way to make the bathroom suitable for modern living conditions is to extend the master bath south so that a ~~suit~~ bath and a shower may be built.
22. It is noted that currently a 3 feet, 8 inch antiquated tub is in a 4 foot, 4 inch bathroom.
28. Mr. Barzani, credibly testified that there is no other way to reconfigure the bathroom and no other reasonable location.
29. The sole objectors were Elliott and Denise Brown who live at 92 High Street. Their residence is approximately 60 to 80 feet from the Mitchell property line.
30. Elliott Brown was present throughout the presentation and testimony, was represented by counsel,

who examined the applicant and  
their architect, but Mr Brown  
chose not to 'verify' nor to  
present any evidence.

31. It would appear from Ex 2, an  
overhead photograph of both  
the applicants' residence and the  
Brown residence, that there EXISTS  
a CONTINUOUS line of ORBORVITAE  
and other vegetation skirting the  
Brown property from the applicants'  
property.

32. Mr. Barzin Credibly testified that  
the friendship is due to the  
unique character of the structure  
and its location; the residence was  
built in 1939 and the applicants desire to  
create the need for a Varome;  
the general character of the  
surrounding area is residential and  
the general character of the surrounding  
area will not be altered.

## CONCLUSION

It would appear that the Mitchell application was filed after the zoning amendment to the State enabling act, R.S. 62-45-24-41 et seq took effect on January 1, 1924 and the hearing itself occurred after the Johnston Town Council amended its zoning ordinance to incorporate R.S. 41-24-41.

However, whether the application is governed by the present or pre-existing Johnston zoning code and State enabling act, the Mitchells are met their burden.

It is further noted that new section 82-309 entitled Modification granted by building official, provides inter alia, that the zoning enforcement officer shall be permitted to grant modifications from literal dimensional requirements of the zoning ordinance up to 25 percent. If written objection is received, the request shall be denied by the zoning



officer and he considered my tax zoning  
board as a request for a variance.

Here, based upon your application and  
the exhibits, the modification sought  
is less than 25% per cent. The  
written objection appeared at the hearing,  
objected; but presented no testimony.

## Pat Westall

---

**From:** Mark Liberati <mark@lp.legal>  
**Sent:** Tuesday, April 2, 2024 9:40 AM  
**To:** Pat Westall; Peter Medeiros  
**Cc:** Wyatt Brochu; numimitchell@gmail.com  
**Subject:** 67 HOWLAND AVENUE  
**Attachments:** MITCHELL MEMO 4-2-24.pdf; Kelly v. Jamestown ZBR (1).pdf

**CAUTION:** This email originated from outside the Jamestown email system. Please do not click links or open attachments unless you recognize the sender and determine the content is safe.

Hi Pat and Peter

Can you please send the attached memorandum and attached superior court decision to the zoning board members in advance of the next zoning board meeting?

Please let me know.

MARK LIBERATI  
57 NARRAGANSETT AVENUE  
JAMESTOWN, RI 02835  
401-447-5021

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received  
4-2-24

TOWN OF JAMESTOWN  
ZONING BOARD OF REVIEW

IN RE: GLENN AND NUMI MITCHELL  
67 HOWLAND AVENUE

APPLICANT'S POST TRIAL MEMORANDUM

This matter was heard before the Zoning Board on March 26, 2024. The evidence presented at the hearing established the following facts:

1. Glenn and Numi Mitchell have owned 67 Howland Avenue since 1994.
2. The home located on the property was constructed in and around 1939.
3. The home is comprised of 1,228 square feet.
4. The lot is comprised of 21,545 square feet.
5. Although the lot is oversized for this R 8 zone, the home sits on the south setback of 7 feet.
6. The master bedroom also sits on the south side of the house at the required zoning code setback of 7 feet.
7. The master bathroom is situated to the east of the master bedroom.
8. The master bathroom is undersized. It has a sink, toilet and old steel bathtub that is smaller than a standard bathtub and cannot accommodate a person with her legs extended out. The antiquated bathtub also serves as a shower.
9. Applicants seek a zoning variance of less than 25% and are qualified for a modification under the code. However, the abutting landowner to the south filed an objection and therefore, the matter was heard by the Zoning Board.
10. The master bedroom is 12'x13' and is not large enough to add a bath. The kitchen lies to the east of the existing bathroom and is only 7'x10' and is not large enough to accommodate an expansion of the bathroom.
11. To the north of the kitchen lies a second bedroom which is 7'x10'. To the east of that bedroom lies a ½ bath with a sink and toilet. That ½ bath cannot be moved north for several reasons. First, moving it north would block the existing access into the garage. Second, the ½ bath would lie to the east of the front entrance to the house and would be visible to those coming in the main entrance. Third, using that as the main bath would require the applicants to walk from the south side of the house to the north side and through a public space.

12. The master bathroom cannot be extended north due to the placement of a large masonry fireplace.

13. The only way to extend the bathroom is to move the wall south toward the property line. The proposed addition is 5' 2" from the property line and the zoning code requires a 7' setback.

14. Shahin Barzin, AIA testified that the only reasonable way of making the bathroom suitable for modern living conditions is to extend the master bath south so that a bath and shower may be incorporated.

15. The sole objector's residence is approximately sixty feet from the property line and there exists a continuous line of arbor vitae and other vegetation which shields his property from the applicants' property.

**APPLICANT QUALIFIES FOR A DIMENSIONAL VARIANCE UNDER RHODE ISLAND  
LAW**

Rhode Island zoning law was recently changed with amendments effective as of January 1, 2024. The effect of the change is to make it easier for applicants to receive a dimensional variance. The least relief necessary standard has been eliminated. The law now reads as follows:

***"(2) In granting a dimensional variance, that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience, meaning that relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted is not grounds for relief. The zoning board of review, or, where unified development review is enabled pursuant to §45-24-46.4, the planning board or commission has the power to grant dimensional variances where the use is permitted by special-use permit ."***

**RI Gen. Laws 45-24-41 General provisions -variances - effective January 1, 2024 (Rhode Island General Laws (2024 Edition))**

In this case, it is difficult if not impossible for the Zoning Board to find that the relief sought is not minimal to a reasonable enjoyment of the permitted use. "Reasonable enjoyment" is a subjective standard, but the facts in this case do not come close to the boundary of such a determination. Glenn and Numi Mitchell seek only "reasonable enjoyment" in asking to be allowed to extend their master bathroom to add a full size bath and shower. To find that their requested enjoyment is unreasonable is to find that a truncated old steel bathtub that serves also as a shower is a perfectly reasonable way to live in the twenty-first century.

The Applicants proffer that there is no debate about the remaining standards.

***"(1) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in §45-24-30(a)(16);.."***

**RI Gen. Laws 45-24-41 General provisions -variances - effective January 1, 2024 (Rhode Island General Laws (2024 Edition))**

Shahin Barzin testified that the hardship is indeed due to the unique characteristics of the subject structure and its location along the south property line. Further evidence of the unique characteristics of the structure is provided by the testimony about the location and configuration of the master bedroom and the masonry fireplace. Physical disability will be dealt with separately.

**"2) That the hardship is not the result of any prior action of the applicant ; and..." RI Gen. Laws 45-24-41 General provisions -variances - effective January 1, 2024 (Rhode Island General Laws (2024 Edition))**

Shahin Barzin testified that the existing home was built in and around 1939, and therefore the applicant did not create the need for a variance.

**"(3) That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based". RI Gen. Laws 45-24-41 General provisions - variances - effective January 1, 2024 (Rhode Island General Laws (2024 Edition))**

Shahin Barzin testified that the general character of the surrounding area is residential, so clearly this small addition will not alter the general character of the surrounding area. Single family homes are an allowed use in a R 8 zone, which ipso facto satisfies this test.

The focus of the objector at the hearing was that the proposed addition was 3' from the property line, and not 5'2".

Applicants presented a Class 1 survey at the hearing. A Class 1 survey is the highest level of surveying. The survey located iron pins and a concrete bound along the surveyed property line. The objector questioned the accuracy of the distance to the proposed addition, but did not offer a survey or any other expert rebuttal to the Class 1 survey entered into evidence. Therefore, this objection to the accuracy of the survey should be rejected.

The objector also focused on whether the applicants were entitled to a variance as their reason for the variance related to the physical disability of Glenn's mother, or their prospective disability as they age. It is difficult to imagine a zoning board denying relief to someone who is physically compromised, and in need of an elevator, or a wider or less steep stairway, or in need of some kind of change of layout to make living less burdensome. The objector posits that the code prohibits such consideration.

Perhaps owing to this distorted reading of the code, the legislature added the following modification to the standard language"

**"(1) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the**

surrounding area; and is not due to a physical or economic disability of the applicant, *excepting those physical disabilities addressed in §45-24-30(a)(16);*”

That section (*§45-24-30(a)(16)*) refers to one of the purposes for which zoning codes are established and reads as follows:

(16) Providing opportunities for reasonable accommodations in order to comply with the Rhode Island Fair Housing Practices Act, chapter 37 of title 34; the United States Fair Housing Amendments Act of 1988 (FHAA); the Rhode Island Civil Rights of Persons with Disabilities Act, chapter 87 of title 42; and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq.

**RI Gen. Laws 45-24-30 General purposes of zoning ordinances (Rhode Island General Laws (2024 Edition))**

Shahin Barzin testified at length about the amount of space needed to navigate a bathroom in a wheelchair. He testified that the existing bathroom did not satisfy the design criteria for use of a bathroom by a person with disabilities. He testified concerning ADA standards for passageway entry and turn around for people in wheelchairs. Therefore, the objection that applicants do not qualify for a zoning variance resulting from a disability should be rejected.

This paragraph appears in the Rhode Island Fair Housing Practices Act:

*b) It is hereby declared to be the policy of the state to assure to all individuals regardless of race, color, religion, sex, sexual orientation, gender identity or expression, marital status, lawful source of income, military status as a veteran with an honorable discharge or an honorable or general administrative discharge, servicemember in the armed forces, country of ancestral origin, or disability, age, familial status, housing status, or those tenants or applicants or members of a household who are, or have been, or are threatened with being the victims of domestic abuse, or those tenants or applicants who have obtained, or sought, or are seeking relief from any court in the form of a restraining order for protection from domestic abuse, equal opportunity to live in decent, safe, sanitary, and healthful accommodations anywhere within the state in order that the peace, health, safety, and general welfare of all the inhabitants of the state may be protected and ensured.*

RI Gen. Laws 34-37-1 Finding and declaration of policy (Rhode Island General Laws (2024 Edition))

See also the Americans with Disabilities Act:

*(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;*

The objector's argument that the disability of Glenn's mother or the desire of Glenn and Numi Mitchell to allow them to age in place should not be considered by the Zoning Board fails in light of this recent amendment of the zoning enabling act.

A very recent Superior Court decision upholding the Jamestown Zoning Board in granting a zoning variance is instructive. Even though the zoning hearing was conducted before this most recent amendment to the enabling act, part of the justification for granting the variance was the need to provide decent housing, as well as to accommodate the applicant's father, who had significant physical limitations.

The Superior Court cited the following testimony in its decision:

"The Board conducted a hearing on May 24, 2022. Mr. Welch described the existing dwelling stating how it is an old house, built in 1934, "rather primitive[,]" and that his realtor told him "it's in rough shape"—"living there is like camping." Id. at 6:11-17."

The Superior Court found as follows:

"Here, the Board heard various testimony confirming that living in the existing dwelling is "like camping" and fails to meet safety and efficiency standards. See Tr. 6:11-17; 13:12-23. Substantial evidence supports the Board's finding that Mr. Welch's sole reason for the improvements was not to have his elderly parents live with him, but rather was because the poor conditions of the existing dwelling necessitate improvements." *Kelly v. Town of Jamestown Zoning Board*, C.A. No. NC-2022-0203.

Now that the zoning enabling act has been amended, it is not necessary to determine if the sole motivation of the applicant is to accommodate a disability. However, the applicant's desire to upgrade their antiquated bathroom would qualify for a variance under the ruling in the *Kelly* case.

#### CONCLUSION

For the above reasons, Glenn and Numi Mitchell respectfully request that their request for a variance be granted.

GLEN AND NUMI MITCHELL

By their attorney:

/S/ MARK E. LIBERATI

Mark E. Liberati  
57 Narragansett Avenue  
Jamestown, RI 02835  
401-447-5021





received  
4-2-24

STATE OF RHODE ISLAND

NEWPORT, SC.

SUPERIOR COURT

(FILED: March 27, 2024)

FRED A. KELLY, JR. and ALICIA KELLY, :

*Appellants,* :

v. :

C.A. No. NC-2022-0203

THE TOWN OF JAMESTOWN ZONING :  
BOARD OF REVIEW; JOHN WELCH; DEAN :  
WAGNER, in his capacity as a Member of the :  
Jamestown Zoning Board of Review; JAMES :  
KING, in his capacity as a Member of the :  
Jamestown Zoning Board of Review; :  
RICHARD BOREN, in his capacity as a :  
Member of the Jamestown Zoning Board of :  
Review; TERRANCE LIVINGSTON, in his :  
capacity as a Member of the Jamestown :  
Zoning Board of Review; JANE BENTLEY, :  
in her capacity as a Member of the Jamestown :  
Zoning Board of Review; JUDITH BELL, :  
in her capacity as an Alternate Member of the :  
Jamestown Zoning Board of Review; :  
JOHN SHEKARCHI, in his capacity as an :  
Alternate Member of the Jamestown Zoning :  
Board of Review; and ALEX FINKELMAN, :  
in his capacity as an Alternate Member of the :  
Jamestown Zoning Board of Review, :  
*Appellees.* :

DECISION

LANPHEAR, J. Before this Court for decision is Appellants Fred A. Kelly, Jr. and Alicia Kelly's (collectively, the Kellys or the Appellants) appeal from a May 24, 2022 decision of Appellee Town of Jamestown Zoning Board of Review. *See* Certified Record (Record), Ex. 12. The Board granted Applicant John Welch's (Mr. Welch or Applicant) petition requesting a variance and special use permit on his property located at 11 Bay View Drive North, Jamestown,

Rhode Island, further identified as Town of Jamestown Tax Assessor's Plat 1, Lot 221 (Property). *See id.* at Ex. 4. Jurisdiction is pursuant to G.L. 1956 § 45-24-69.

## I

### Facts and Travel

Mr. Welch seeks to raze an existing house and construct a new house on his Property so that his partner and elderly parents may move in with him. At present, the Property is improved with a single-family home, which is an allowed use pursuant to the Jamestown Zoning Code. *See Appellees' Mem. in Opp'n of Appellants' Appeal (Appellees' Mem.)* 1. In March 2022, Mr. Welch submitted site plans to the Town of Jamestown Building/Zoning Official requesting a variance and special use permit.<sup>1</sup> *See Record at Exs. 5, 7, 8.* He requested a variance from the front and side setback requirements to replace the existing dwelling "with a new house in substantially the same location" with the same footprint as the existing dwelling, except for an additional ninety-nine square feet for a cantilevered stair tower to the west side. *Id.* at 4, 5; *see Appellees' Mem.* 2. He requested a special use permit due to the high groundwater and impervious soil on the Property. *See Appellees' Mem.* 8. Mr. Welch planned to install a "rain garden to capture stormwater runoff" and "an advanced on-site wastewater treatment septic system" to reduce impervious coverage and "improve the surface and groundwater quality." *Id.*

The Planning Commission unanimously voted to recommend approval of Mr. Welch's requests to the Board on April 6, 2022. (Record at Exs. 6, 7.) Meanwhile, the Kellys, owners of

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<sup>1</sup> Specifically, Mr. Welch petitioned for a variance from the following: (1) Article 3, Section 82-302 entitled *District Dimensional Regulations*; (2) Table 3-2 for RR 80 District; and, (3) Article 6, Section 82-605 *et seq.* entitled *Variations Authorized by this Ordinance*. *See Record, Ex. 5.* He requested a special use permit for relief from the following: (1) Article 3, Section 82-314 entitled *High Groundwater and Impervious Layer Overlay District*; (2) Article 6, Section 82-601 *et seq.* entitled *Special Use Permits Authorized by this Ordinance*; and (3) Article 6, Section 82-605 *et seq.* entitled *Variations Authorized by this Ordinance*. *See id.*

real property<sup>2</sup> abutting the Property, were in discussions with Mr. Welch regarding his plans because they feared the proposed construction would obstruct their view. *See* Hr'g Tr. (Tr.) 28:17-29:1, May 24, 2022. Subsequently, on April 15, 2022, Mr. Welch filed an application (Application) with the Board seeking the same requests as in the site plans. *See* Record, Ex. 5.

## A

### **Board Hearing and Decision**

The Board conducted a hearing on May 24, 2022. Mr. Welch described the existing dwelling stating how it is an old house, built in 1934, “rather primitive[.]” and that his realtor told him “it’s in rough shape”—“living there is like camping.” *Id.* at 6:11-17.

Shahin Barzin, a licensed architect, opined how the existing dwelling’s “conditions are not right . . . for [Mr. Welch’s] needs and his elderly parents[.]” *Id.* at 11:16-18. Additionally, Mr. Barzin testified that (1) “the hardship from which Mr. Welch seeks relief is due to the unique characteristics of the land or structure” because “the lot is . . . much smaller than standard size within that zone”; (2) “the main objective is to build the house that meets today’s standard . . . efficiencies [and] . . . safety standards and provide a home for him, for his partner and the parents, and . . . there is no interest in investment”; (3) the proposed dwelling would not “alter the general character of the surrounding area” because “the proposed use as a single-family home is perfectly consistent with the existing use”; (4) “given the conditions of the existing house, the constraints that exist with the lot itself, the environmental safety and . . . the rule of creating a decent living space . . . I believe that this is the least he could ask for. The least relief”; and (5) Mr. Welch would suffer “significant” hardship if not granted his requested relief because the existing dwelling does “not meet any standards of modern living[.]” *See id.* at 12:1-7; 13:15-20;

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<sup>2</sup> The Kellys own real property located at 1116 East Shore Road, Jamestown, Rhode Island, further identified as Tax Assessor’s Plat 1, Lot 352.

14:4-5, 11-12; 14:21-15:1;15:9-11.

Thereafter, professional engineer Matthew Viana opined as to how the plan will reduce impervious coverage, explaining that the “[e]xisting impervious is 1620 square feet” including the building and four sheds, and since the plan calls for a removal of three sheds, “it [will] reduce[] the impervious coverage from 1620 to 1479, or from 14.85 percent to 13.61.” *Id.* at 18:11-19. Mr. Viana further opined that the proposed dwelling’s design is appropriate because storm water runoff will be reduced, the foundation’s design “will not affect the septic system,” and the septic system is “the best technology available” so it will not “pose a threat to the public health or safety.” *Id.* at 18:20-23; 19:11; 20:6-9.

Witnesses in opposition to the Application expressed concerns with the proposed height of the dwelling, erosion of the road, and design aesthetics. *See id.* at 23:9-18, 24-25; 24:1-9. Appellant Alicia Kelly insisted that the proposed dwelling is not “in keeping with the character of the area” and “is essentially exceeding or extending the footprint” which is “effecting [her] view.” *See id.* at 27:1-21.

On June 29, 2022, the Board recorded its written decision unanimously granting the Application. *See* Record, Ex. 3. On May 1, 2023, the Kellys timely appealed the Decision to this Court on the following grounds: (1) the Application does not satisfy the standards for granting a variance or special use permit and (2) they did not receive sufficient notice of the Hearing. *See* Appellants’ Mem. in Supp. of Appeal (Appellants’ Mem.) 7, 15.

## II

### Standard of Review

The Superior Court's review of a zoning board decision is governed by § 45-24-69(d), which provides:

"The court shall not substitute its judgment for that of the zoning board of review as to the weight of the evidence on questions of fact. The court may affirm the decision of the zoning board of review or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:

"(1) In violation of constitutional, statutory, or ordinance provisions;

"(2) In excess of the authority granted to the zoning board of review by statute or ordinance;

"(3) Made upon unlawful procedure;

"(4) Affected by other error of law;

"(5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or

"(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Section 45-24-69(d).

This Court is required to "'examine the whole record to determine whether the findings of the zoning board were supported by substantial evidence.'" *Lloyd v. Zoning Board of Review for City of Newport*, 62 A.3d 1078, 1083 (R.I. 2013) (quoting *Apostolou v. Genovesi*, 120 R.I. 501, 507, 388 A.2d 821, 824 (1978)). Substantial evidence is "such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance." *Iadevaia v. Town of Scituate Zoning Board of Review*, 80 A.3d 864, 870 (R.I. 2013)). In reviewing an appeal from a zoning board's decision,

“the Superior Court may not substitute its judgment for that of the zoning board concerning the weigh of the evidence on questions of fact.” *Mill Realty Associates v. Crowe*, 841 A.2d 668, 672 (R.I. 2004). If the Court concludes that the zoning “board’s decision was supported by substantial evidence in the whole record[,]” then the zoning board’s decision must be affirmed. *Lloyd*, 62 A.3d at 1083. If the Court determines that the zoning board’s decision was not supported by sufficient findings of fact and conclusions of law, the Court may remand the matter to the zoning board. *See Irish Partnership v. Rommel*, 518 A.2d 356, 359 (R.I. 1986).

### III

#### Analysis

##### A

#### Dimensional Variance

The Kellys assert that the Board erred in granting Mr. Welch’s requested zoning relief because the Application failed to satisfy the requirements for a dimensional variance as stated in G.L. 1956 §§ 45-24-41(d) and (e). *See* Appellants’ Mem. 7-11. Section 45-24-41(d) states,

- “(1) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in § 45-24-30(a)(16);
- “(2) That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain;
- “(3) That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based; and

“(4) That the relief to be granted is the least relief necessary.”  
Section 45-24-41(d).<sup>3</sup>

The applicant also must show “that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience.” *Id.* at (e)(2).

## 1

### Source of Hardship

On appeal, the Kellys claim that Mr. Welch “created his own hardship” because he purchased a property which he knew was substandard and intended to move his partner and parents into it. Appellants’ Mem. 8; *see also* Appellants’ Reply Mem. to Appellees’ Opp’n (Appellants’ Reply) 5-6. The Kellys further insist that the request for dimensional relief is “directly related to a physical disability of the applicant” because Mr. Welch plans to move his elderly parents into the home, and the question of “whether the home would be suitable for Welch’s parents” should not bear on the Board’s decision. (Appellants’ Mem. 8-9.)<sup>4</sup>

Section 45-24-41(d)(1) requires that the hardship “relate to some characteristic of the land for which the variance is requested, and must not be *solely* based on the needs of the owner.” *See* 3 Rathkopf, *The Law of Zoning and Planning* § 58:20 (4th ed. Dec. 2023 Update) (emphasis added); *see also* § 45-24-41(d)(1). For example, in *O’Donnell v. Town of East*

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<sup>3</sup> The Legislature amended the Rhode Island Zoning Enabling Act, Title 45, Chapter 24, effective January 1, 2024. However, the appropriate standard for an appeal is “the law in effect at the time when the applicant . . . submitted its application for a permit to the zoning board[,]” absent a “clear expression of retroactive application.” *East Bay Community Development Corporation v. Zoning Board of Review of Town of Barrington*, 901 A.2d 1136, 1144 (R.I. 2006). Thus, although the current ordinance is effective January 1, 2024, the ordinance as it was before January 1, 2024 is applicable. *See id.*

<sup>4</sup> Because the Board did not make any findings regarding disability, nor was disability discussed at the Hearing, the Court need not address the parties’ arguments on this matter.



*Greenwich Zoning Board of Review*, No. KC-2022-0065, 2023 WL 6968057, at \*1-2 (R.I. Super. Oct. 17, 2023), the applicant requested two dimensional variances so she could construct an addition to accommodate a first-floor bedroom with a handicap-accessible bathroom. In granting the variances, the zoning board cited a variety of factors as the source of the hardship, such as the property's historic nature, the comments from the Historic District Commission, the property's proximity to the northern property line, and the applicant's wish for a handicap-accessible bathroom on the first floor. *Id.* at \*9. On review, the Court concluded that the zoning board had based its finding of hardship only in part on the applicant's need for a handicap-accessible room. *Id.* The Court determined that the burden under § 45-24-41(d)(1) was met because her disability was not the sole reason for granting the variance. *Id.*

Here, the Board heard various testimony confirming that living in the existing dwelling is "like camping" and fails to meet safety and efficiency standards. *See* Tr. 6:11-17; 13:12-23. Substantial evidence supports the Board's finding that Mr. Welch's sole reason for the improvements was not to have his elderly parents live with him, but rather was because the poor conditions of the existing dwelling necessitate improvements.

## 2

### **Financial Gain**

The Kellys challenge the Board's finding that Mr. Welch met his burden under § 45-24-41(d)(2). *See* Appellants' Mem. 11. They claim that the relief requested "is primarily motivated by a desire of the [A]pplicant to realize greater financial gain" because the "new house will have a value two to three times the value of the existing dwelling[.]" *Id.*

A determination that an improvement will add value is not enough to satisfy this prong. Critically, the § 45-24-41(d)(2) standard requires that an applicant's primary desire be financial

gain. *See New Castle Realty Co. v. Dreczko*, 248 A.3d 638, 648 (R.I. 2021) (denying applicant’s request for a dimensional variance because the request was primarily for financial gain or investment purposes, which was confirmed by applicant’s testimony that the size of the house would “affect the value of the real estate”).

Here, the record is devoid of evidence regarding Mr. Welch’s desire for financial gain. Mr. Barzin opined that it would be “a very long time before [Mr. Welch] can see a return on the investment.” (Tr. 13:21-23.) He also opined that the requested changes are to improve the “efficiencies” and “safety standards” of the dwelling.” *Id.* at 13:17-20. Indeed, these improvements may increase the value of the property; however, this Court is satisfied that substantial evidence supports the Board’s finding that Mr. Welch’s primary motivation for the improvements is his desire to make the dwelling livable for him, his partner, and his parents.

### 3

#### **General Character of the Surrounding Area**

The Board correctly determined that the evidence before it sufficiently confirmed that the general character of the area would not be altered. *See* Tr. 14:3-17 (“granting of the variance will not alter the general character of the surrounding area” because “[t]he surrounding area is . . . exclusively single-family homes, and the proposed use as a single-family home is perfectly consistent with the existing use . . .”). Furthermore, the concerns about the height of the new dwelling are misguided; Mr. Welch did not seek a variance for height; the proposed height of his new dwelling was lawful, as he only sought relief from the side and front setback requirements. *See* Record, Exs. 4, 5.

**Least Relief Necessary / More than a Mere Inconvenience**

Finally, the Kellys assert that Mr. Welch's requested relief was not the least relief necessary and that Mr. Welch would not suffer hardship greater than a mere inconvenience if his Application were denied. (Appellants' Reply 8-10.) In requesting a dimensional variance, an applicant must "establish that the relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted." *Standish-Johnson Co. v. Zoning Board of Review of City of Pawtucket*, 103 R.I. 487, 492, 238 A.2d 754, 757 (1968). The standard also requires an applicant to demonstrate that denial of the request would result in more than a mere inconvenience. *See* § 45-24-41(e). A "mere inconvenience" means that "there is no other reasonable alternative to enjoy a legally permitted beneficial use of [one's property.]" *Lischio v. Zoning Board of Review of Town of North Kingstown*, 818 A.2d 685, 692 (R.I. 2003). This Court finds the rationale from *Cosel v. Silveira*, No. NC-09-0264, 2011 WL 1748542, at \*6 (R.I. Super. May 3, 2011) and *Hayde v. New Shoreham Zoning Board of Review*, No. WC-2022-0221, 2023 WL 8531120, at \*8 (R.I. Super. Dec. 04, 2023) to be persuasive.

In *Cosel*, the applicants petitioned for a dimensional variance to "demolish an existing detached, single-story garage and to construct an attached two-story garage." 2011 WL 1748542, at \*1. An expert testified at the zoning board hearing that the existing property is "outdated" and that the "proposed changes would be to add a master bedroom/bathroom suite that would be in keeping with today's standards[.]" *Id.* The zoning board granted the variance in reliance on various factors, including the expert's testimony that "the property was outdated and inadequate[.]" *Id.* at \*5. On appeal, the Court upheld the zoning board's decision, reasoning that the zoning board relied on "the unique characteristics of the [p]roperty (i.e., an antiquated home

on an undersized lot which predates the [town's zoning ordinance])." *Id.* at \*6.

Likewise, in *Hayde*, the applicant requested dimensional variances to build a single-family home because she wanted to build a "forever home on Block Island for people in her family so they can age and be taken care of." 2023 WL 8531120, at \*6. At the zoning board hearing, the applicant testified that she planned for a "small house placed in the center of the lot, with a footprint of 1,145.7 square feet out of 7,177 square feet, seeking only relief from the front and rear setback requirements[.]" *Id.* at \*8. Additionally, the land surveyor opined that "it would not be possible to build a single-family dwelling on the lot without the rear and front setback relief requested in the variance[.]" *Id.* The zoning board approved the application, reasoning that denying the application "would have been more than a mere inconvenience to [the applicant] because she would have been denied of her right to build a single-family home on the property." *Id.* at \*8. The trial court concluded that the zoning board's determination was "well-supported by substantial evidence in the record." *Id.*

Similarly, here, the Board relied on substantial evidence in determining that Mr. Welch's plan requests the least relief necessary and he would suffer hardship greater than a mere inconvenience if his requested relief were denied. The evidence before the Board sufficiently summarized the "rough shape" of the existing dwelling, such that a raze and rebuild of the existing dwelling would be necessary regardless of whether Mr. Welch was to live there on his own or with his elderly parents. Mr. Barzin opined that "given the conditions of the existing house, the constraints that exist with the lot itself, the environmental safety and . . . the rule of creating a decent living space . . . I do believe that this is the least he could ask for." (Tr. 14:21-15:1.) He further opined that, without approval by the Board, the existing dwelling "will not meet any standards of modern living." *Id.* at 15:10-11. Mr. Viana explained how the requested

relief would result in a reduction of the impervious coverage, reduction of stormwater runoff, and an improved septic system that uses the “best technology available.” *See id.* at 18:17-20:9. As in *Cosel* and *Hayde*, the testimony before the Board sufficiently provided that without a variance, Mr. Welch would not have a livable home nor would the existing dwelling properly capture runoff or accommodate today’s septic system’s health and safety needs. Accordingly, this Court is satisfied that the Board’s approval of Mr. Welch’s dimensional variance was well supported by substantial evidence in the record.

## **B**

### **Sufficiency of Evidence for Special Use Permit**

The Kellys additionally assert that the Board “did not have competent evidence available in order to make the findings necessary to satisfy [the] special use permit standard.” (Appellants’ Mem. 12.) The Board and Mr. Welch (collectively, Appellees) insist that the Board was permitted to rely on Rhode Island Department of Environmental Management’s (DEM) approval of the septic system. (Appellees’ Mem. 15.)

“[A]n applicant for zoning relief ought to be able to rely on permits granted by DEM with respect to those matters uniquely within DEM’s expertise.” *New Castle Realty Co.*, 248 A.3d at 646. A DEM permit “is not conclusive evidence” that all DEM regulations have been satisfied; however, if “there is no contrary competent evidence in the record[,]” the DEM permit approval is entitled to deference. *Id. See id.* (“relief should not be denied based upon a board member’s belief that a particular septic system would be more beneficial than one approved by DEM, unless that member’s belief is firmly grounded upon competent scientific evidence”).

Here, DEM granted Mr. Welch a permit for his plans “to move the well and to install an advanced [Onsite Wastewater Treatment System], AdvanTex treatment and bottomless sand

filter system.” (Tr. 4:13-15.) His application “received the approval of the town engineer as being consistent with the ordinance and the unanimous approval of the planning commission.” *Id.* at 5:1-4. In other words, DEM granted Mr. Welch a permit for the very activity in which he sought a special use variance for. At the Hearing, no evidence was presented in opposition to the permit. Accordingly, this Court is satisfied that substantial evidence supported the Board’s grant of the special use permit.

## C

### Notice of Zoning Board Hearing

On appeal, the Kellys insist that they “did not receive sufficient or otherwise adequate notice” of the Hearing, claiming that Mr. Welch “purposefully deceived” them as to his proposed construction plans. (Appellants’ Mem. 15.) Prior to the Hearing, the Kellys and Mr. Welch were “actively engaged in negotiations” regarding Mr. Welch’s plans. *Id.* at 4. According to the Kellys, Mr. Welch’s initial plans proposed a new dwelling that would not obstruct their view; therefore, the Kellys did not organize for an expert to attend the Hearing. *See id;* *see also* Appellants’ Reply 12. They claim they learned of Mr. Welch’s “true proposed location of the home, in contradiction of their previous negotiations” one week prior to the Hearing; therefore, they did not have enough time to get an expert. *See* Appellants’ Mem. 4. According to Appellees, the Kellys waived their right to object to the sufficiency of the notice because they attended the Hearing. (Appellees’ Mem. 17.) Further, Mr. Welch insists that he did not misrepresent his plan to the Kellys, directing this Court to review the email correspondence between him and the Kellys. *Id.* at 17-18. The Kellys request that this Court either (1) remand the matter to the Board and allow them to introduce additional evidence for the disposition of the appeal, or (2) allow them to present the additional evidence pursuant to G.L. 1956 § 45-24-69(c).

(Appellants' Mem. 16-17.) This Court finds one issue to be of crucial importance: the Kellys' failure to ask for a stay or continuance at the Hearing.

"It is well settled that this Court will not consider on appeal an issue that was not raised before the trial court." *Rhode Island Depositors Economic Protection Corporation v. Rignanese*, 714 A.2d 1190, 1196-97 (R.I. 1998). Here, Mrs. Kelly attended the Hearing. She did not ask for a stay, nor did she imply that Mr. Welch misrepresented the plans to them or that they would like to have an expert testify as to the negative impacts of the plans. *See generally* Tr. 26:18-31:6. In summary, the Kellys did not raise this issue and they should have. *See East Bay Community Development Corporation*, 901 A.2d at 1153. As such, this Court is satisfied that the raise-or-waive rule prohibits the Kellys from now raising the issue of misrepresentation and insufficient notice because they had the opportunity to raise such issues before the Board.

#### IV

#### Conclusion

For the reasons stated herein, the Court affirms the decision of the Zoning Board. Accordingly, the issuance of the variance and the special use permit is affirmed. Counsel shall submit an appropriate order for entry.

**RHODE ISLAND**  
*Decision Addendum Sheet*

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**SUPERIOR COURT**

**TITLE OF CASE:** Fred A. Kelly, Jr. and Alicia Kelly v. The Town of Jamestown Zoning Board of Review, et al.

**CASE NO:** NC-2022-0203

**COURT:** Newport County Superior Court

**DATE DECISION FILED:** March 27, 2024

**JUSTICE/MAGISTRATE:** Lanphear, J.

**ATTORNEYS:**

**For Plaintiffs:** Michael A. Kelly, Esq.

**For Defendants:** Wyatt A. Brochu, Esq.





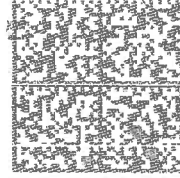
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*Mitchell*

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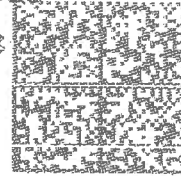
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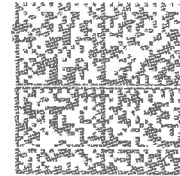
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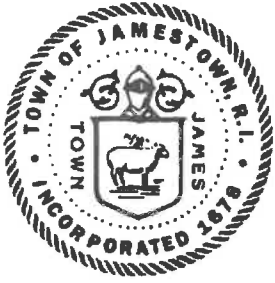


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ZONING BOARD OF REVIEW

**Town of Jamestown**

93 Narragansett Avenue  
401-423-7200

Jamestown, Rhode Island  
02835-1199

Glenn H. Mitchell  
Et Numi  
67 Howland Avenue  
Jamestown, RI 02835

April 23, 2024  
DOC: 20240000065809  
Bk: 1050 Pg: 23

Dear Mr. & Ms. Mitchell,

The following is the decision on your Petition heard by the Town of Jamestown Zoning Board of Review.

After testimony was completed at the public hearing for which due notice was given and a record kept, the Town of Jamestown Zoning Board of Review, after taking into consideration all of the testimony and exhibits at the public hearing, makes the following determination:

A decision was drafted by Richard Boren and sent to all members of the Board of a motion to grant the request of Glenn and Numi Mitchell. It was marked as an exhibit and the members agreed to waive the reading, but that would constitute the motion upon which the Board is voting.

A motion was made by Richard Boren to grant the request of Glenn and Numi Mitchell whose property is located at 67 Howland Avenue, and further identified as Tax Assessor's Plat 9, Lot 191, for a variance from Article 3, Section 82.302 - District Dimensional Regulations to renovate an existing bathroom to 5 feet 2 inches from the lot line instead of the required 7 feet.

This Board has determined that this application does satisfy the requirements of Article 3, Section 300, Section 306, and Section 307, Paragraph 6.

This Variance is granted with the following restriction/condition(s):

This project must be constructed in strict accordance with the site and building plans duly approved by this Board.

This motion is based on the following findings of fact:

1. Said property is located in an R8 zone and contain ½ acre.
2. The residence located on the property was constructed in or around 1939.
3. The residence is 1228 sq. ft.

4. The lot is 21,545 sq. ft.
5. The lot is large for the R8 zone, but the residence sits on the south set back of 7 feet.
6. Although correspondence from an attorney for an abutter, questioned that the current set back was closer to the property line of 7 feet, Exhibit 3 is a Class 1, Surveyed Certification, that establishes the current set back of 7 feet, 7 inches.
7. The applicants have owned the property for 29 years.
8. The master bedroom is located on the south side of the house at the 7 foot set back.
9. The master bathroom (there is only one full bathroom) is located immediately to the east of the master bedroom and is currently approximately 7 feet from the property line.
10. The master bathroom has a sink, toilet and an old steal bathtub smaller than today's standard bathtub. The old bathtub also serves as a shower.
11. The master bathroom is approximately 4 feet, 4 ½ inches by 11 feet, 3 inches.
12. The current bathroom will not accommodate both a separate shower and tub.
13. The antiquated bath tub currently serves as a shower.
14. The master bedroom is 12 feet, 10 inches by 13 feet, 4 inches and not large enough to add a bathroom.
15. Currently, the master bathroom cannot be extended into the house as there is a large masonry fireplace.
16. Currently, the master bathroom is also adjacent to the kitchen which is only 7 feet by 10 feet and is not large enough to accommodate an expansion of the bathroom.
17. The half-bathroom cannot be extended, which is currently 6 feet, 10 inches by 2 feet, 7 ½ inches and abuts a basement stairway.
18. In summary, the master bathroom cannot be extended north, east, or west. The only possible extension is to the south into the 7 foot set back.
19. The proposed set back per Exhibit 5, Bath floor plan, is to extend the bathroom by moving the south wall 5 feet, 2 inches from the property line.
20. Shahin Barzin, architect, credibly testified that the only way of making the bathroom suitable for modern living conditions is to extend the master bath south so that a bath and a shower may be built.
21. It is noted that currently a 3 foot, 8 inch antiquated tub is in a 4 foot, 4 inch bathroom.
22. Mr. Barzin, credibly testified that there is no other way to reconfigure the bathroom and no other reasonable location.
23. The sole objectors were Elliott and Denise Brown who live at 92 High Street. Their residence is approximately 60 to 80 feet from the Mitchell property line.
24. Elliott Brown was present throughout the presentation and testimony, was represented by counsel, who examined the applicant and their architect, but Mr. Brown chose not to testify nor to present any evidence.
25. It would appear from Exhibit 2, an overhead photograph of both the applicant's residence and the Brown residence, that there exists a continuous line of arborvitae and other vegetation shielding the Brown property from the applicant's property.

26. Mr. Barzin credibly testified that the hardship is due to the unique characteristics of the structure and its location; the residence was built in 1939 and the applicants didn't create the need for a variance; the general character of the surrounding area is residential and the general character of the surrounding area will not be altered.

### CONCLUSION

It would appear that the Mitchell application was filed after the zoning amendment to the state enabling act, RIGL-45-24-41 et seq took effect on January 1, 2024 and the hearing itself occurred after the Jamestown Town Council amended its Zoning Ordinance to incorporate RIGL 45-24-41.

However, whether the application is governed by the present or pre-existing Jamestown zoning code and State Enabling Act, the Mitchells have met their burden.

It is further noted that new section 82-309 entitled Modification Granted by Building Official, provides inter alia, that the Zoning Enforcement Officer shall be permitted to grant modification from lateral dimensional requirements of the zoning ordinance up to 25 percent. If written objection is received, the request shall be denied by the Zoning Officer and be considered by the Zoning Board as a request for a variance.

Here, based upon the application and the exhibits, the modification sought is less than 25 per cent. The written objector appeared at the hearing, objected, but presented no testimony.

The motion did not carry by a vote of 1 – 3

Therefore, the request is denied.

Richard Boren voted in favor of the motion.

Jane Bentley, James Sisson, and Robert Maccini voted against the motion.

Dean Wagner, James King, and John Shekarchi were not seated and Terence Livingston recused himself.

Very truly yours,



Richard Boren, Chairman  
Jamestown Zoning Board of Review  
RB/pw

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