

January 3, 2025

Via Regular and Electronic Mail

Coastal Resources Management Council
Stedman Government Center, Suite 3
4808 Tower Hill Road
Wakefield, RI 02879
Cstaffl@crmc.ri.gov

Re: CMRC File No. 2024-06-087, 88 Washington Street, Plat 12, Lot 46 (“Property”)

Dear Coastal Resources Management Council:

This firm is counsel for Newport PM LLC, Karen G. Harris 2003 Living Trust, R. Perry Harris 2003 Living Trust, Edward W. Kane, and Martha J. Wallace (collectively, “Neighbors”) and write regarding the above-referenced CRMC File and Property. The Neighbors object to applicant William J. Ruh Trust’s (“Applicant”) Application for State Assent (“Application”).

The Application must fail on both procedural and substantive grounds. First, the Neighbors have learned that CRMC intends to set this matter for hearing in early 2025. The Neighbors object to scheduling this matter for hearing as it is not yet ripe. It has long been CRMC’s practice to require that a project receive all required local approvals before it will be considered by CRMC. This project has *not* received all the required approvals. *See* 650 RICR 20-00-1.3.1(C)(2)(a). Reference is made to the undersigned’s letters of December 9, 2024 and July 15, 2024 for a more detailed recitation of the procedural hurdles that prevent consideration of the Application at this time.

The Application is additionally substantively defective. First, it is evident that Applicant is not seeking the same approvals from the relevant regulatory authorities (Newport’s Historic District Commission, the Rhode Island Historic Preservation and Heritage Commission, and the CRMC). For example, Applicant has, in one instance, submitted plans showing the new, proposed house both closer to the street than the historic Tripp House (approximately 16.5’ setback for the new house compared with approximately 19.5’ setback for the Tripp House), and has, in another instance, submitted plans showing the new, proposed house approximately in line with the Tripp House. *Compare*, CRMC Submission Plan dated June 10, 2024 (copy attached as Exhibit 1), *with* Sheet No. A001, submitted to the Newport HDC dated January 18, 2024 (copy attached as Exhibit 2). It is inappropriate to proceed with consideration of the Application when it is apparent that Applicant is seeking approval for different plans from different regulatory bodies.

Applicant's inconsistent representations of its plan are not confined solely to setbacks. Applicant has represented the existing lot coverage as both 786 square feet (Ex. 1) and 1,062 square feet (Ex. 2). Applicant has represented a total proposed lot coverage of 2,513 square feet (Ex. 1) and 2,789 square feet (Ex. 2). Lot coverage percentage can, as CRMC knows, have an affect upon required buffer zones. The onus should not be upon CRMC, Neighbors, or others to ensure that Applicant is seeking the same relief from all regulatory bodies. Applicant should consistently apply for the same project before consideration by CRMC.

In addition to the Application's procedural and substantive errors, and even assuming Applicant was clear as to the relief it seeks, it is plain that *any* request for relief for the proposed house is extraordinary and should be summarily denied by CRMC. The Property is located adjacent to Type 2 waters (low intensity use) and is 13,919 square feet. Accordingly, a 50' coastal buffer zone applies. (CRMP, Table 4). Per regulation, an additional 25' setback is required. A review of Applicant's plan (see Ex. 1) clearly shows that a significant percentage of the new, proposed house would be located within the buffer zone and would require a variance of well over 50%.

In order to receive a variance from setback requirements Applicant must satisfy the six criteria enumerated in Section 1.1.7(A) of the CRMP, which provides that a variance shall only be granted if every one of the following standards are met:

1. The proposed alteration conforms with the applicable goals and policies of the Coastal Resources Management Program;
2. The proposed alteration will not result in significant adverse environmental impacts or use conflicts, including but not limited to, taking into account cumulative impacts;
3. Due to conditions at the site in question, the applicable standard(s) cannot be met;
4. The modification requested by the applicant is the minimum variance to the applicable standard(s) necessary to allow a reasonable alternative or use of the site;
5. The requested variance to the applicable standard(s) is not due to any prior action of the applicant or the applicant's predecessors in title [. . .]; and
6. Due to the conditions of the site in question, the standard(s) will cause the applicant an undue hardship. In order receive relief from undue hardship and applicant must demonstrate inter alia the nature of the hardship and that the hardship is shown to be unique or particular to the site. Mere economic diminution, economic advantage, or inconvenience does not constitute a showing of undue hardship that will support the granting of a variance.

Applicant cannot satisfy a single one of the standards required for a variance. First, the proposed alteration does not conform to the goals of the CRMP, and Applicant does not substantively address this factor. Applicant instead wrongfully states that the Property's shoreline qualifies as "manmade shoreline" under Section 1.2.2(F) of the CRMP. This is belied by the plain language of the regulation, which provides that "the presence of isolated seawalls, bulkheads, and other similar structures does not constitute a manmade shoreline as the term is used in this Program." CRMP,

Section 1.2.2.(F)(1)(e). As evidence by the material submitted in support of Applicant's efforts to receive approval from Newport's HDC, the Property is unique from its neighbors in that its coastal feature was created in the 1950s (see excerpt from Applicant's presentation to HDC attached as Exhibit 3). Accordingly, Applicant's attempt to avoid explaining how its Application can satisfy the CRMP must fail. Applying the CRMP, Type 2 waters are those "with high scenic value that support low intensity recreational and residential use." CRMP, Section 1.2.1(C)(1). "The Council's goal is to maintain and, where possible, restore the high scenic value . . . of these areas[.]" CRMP, Section 1.2.2(a). Applicant provides no rationale for how construction of a new second home on the Property maintains or restores the high scenic value that exists in the historic Point neighborhood. In fact, construction of this new, large house that would entirely obscure a view of the waters of Newport Harbor from the public way along Washington Street would have a deleterious impact upon the area's scenic value.

Applicant has not provided any support for its assertion that its project will not have adverse environmental impacts or use conflicts. In fact, there is no support in the record for the proposition that a second, stand-alone residence should be constructed on the Property, which is zoned R10 (single family).

Applicant's attempt to justify its request for a variance due to site conditions must fail. The Property is a conforming lot of record. The Property already contains a single family, historic home. The Applicant's statement that the historic "Tripp House is functionally obsolete" is simply not true. The Applicant has undertaken a significant renovation and modernization of the Tripp House since purchasing the Property in 2020. *See* email from A. Sawaia dated November 29, 2024 attached as Exhibit 4. The simple reality is that Applicant decided to purchase an historic, waterfront property without first determining whether he could construct the structure that Applicant desired upon that property. The answer is clearly no. This is at least the fourth house for which Applicant has sought approval to construct. Applicant has simply decided that he wants a house of a certain size and refuses to abide by the regulations that clearly prevent his desires. *See* email from M. Melchert (Applicant's architect) dated June 11, 2024, attached as Exhibit 5, advising RIHPHC that "we have looked into decreasing the footprint further, but the owner does not want to lose any more space." Applicant still has failed to meet RIHPHC's recommendations for any proposed construction, particularly as related to size, scale and massing. Site conditions are not to blame for the need for a variance for the proposed house. Applicant's refusal to modify his plans is to blame.

Applicant cannot satisfy the "minimum variance" requirement for the same reasons Applicant cannot satisfy the site conditions requirement. The Property can be – and already is being – put to a reasonable use: that of a single-family home, consonant with the use to which the Property has historically been put and in character with the surrounding neighborhood. Placing a second, large house (more than 3,400 square feet) on the same lot that already contains a home (for a total of

more than 4,500 square feet of living space), requiring a more than 50% variance from the applicable CRMP standards is not, on its face, a minimum variance.

The requested variance is due solely to the actions of the Applicant. The Applicant knew he was buying an historic home, in a colonial city, located within CRMC's jurisdiction, with particular development requirements. By choosing to purchase this home, he knowingly undertook to abide by those standards. Applicant's desire for a second house does not entitle him to relief.

Finally, Applicant cannot satisfy the "undue hardship" requirement for grant of a variance. This is a classic case of mere inconvenience. Applicant suffers no hardship by enjoying a remodeled, historic home on the water in Newport. Applicant's stated desire to "not want to lose any more space" is not a reason to depart from the strictures of the CRMP.

As Applicant cannot satisfy the Section 1.1.7 standards for receipt of a variance, the Application should be denied. Please do not hesitate to contact me if you have any questions.

Sincerely,

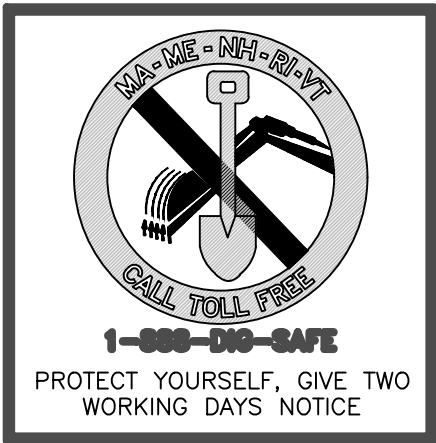


Joshua S. Parks
jparks@apslaw.com

Encl.

cc: Laura Miguel (lmiguel@crmc.ri.gov)
Amy Silva (asilva@crmc.ri.gov)
Anthony Sawaia (asawaia@crmc.ri.gov)
Joseph DeAngelis, Esq. (jdeangelis@apslaw.com)
Jeremiah C. Lynch, III (jlynch@mvlaw.com)

Exhibit 1



CRMC STRUCTURAL LOT COVERAGE:

EXISTING DWELLING (TO REMAIN): 786 SF
TOTAL EX. STRUCTURAL LOT COVERAGE: 786 SF

PROPOSED NEW DWELLING: 1,727 SF
TOTAL PROPOSED STRUCTURAL LOT COVERAGE: 2,513 SF

TOTAL PROPOSED STRUCTURAL LOT COVERAGE (%) =
(2,513 SF - 786 SF) / 786 SF= 220% > 50%

FEMA FLOOD NOTE

ZONE VE (EL. 17) - 1% ANNUAL CHANCE FLOOD HAZARD
FIRM NO. 44005C0177J
EFF. DATE: 09/04/2013

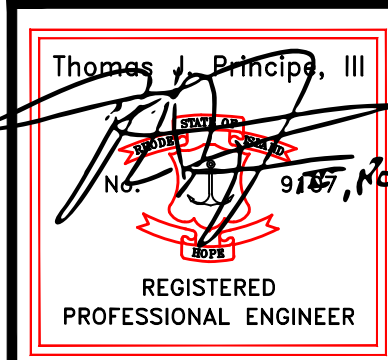
LEGEND

PROPERTY LINE	EXISTING UTILITY POLE	
ABUTTER LINE	EXISTING WATER VALVE	
EX. EDGE OF PAVEMENT	EXISTING WATER LINE	
EXISTING CONTOUR	BUILDING SETBACK	
EXISTING SPOT GRADE	PROPOSED WATER LINE	
EXISTING TEST PIT	PROPOSED CONTOUR	
EXISTING STONE WALL	PROPOSED SPOT GRADE	
EXISTING TREELINE	CRMC COASTAL FEATURE	
EXISTING FENCE LINE	RI DOT STD. 9.9.0	
EXISTING BUILDING	CONSTRUCTION ACCESS	
EXISTING DRAIN LINE	PROPOSED DOWNSPOUTS	
EXISTING CATCH BASIN	PROPOSED SOLID DRAIN LINE	
EXISTING SEWER LINE	PROPOSED PERF. DRAIN LINE	
EXISTING SEWER MANHOLE		
EXISTING U.G. ELECTRIC		

GENERAL NOTES:

- THE LOCATION AND DEPTH OF EXISTING UTILITIES ARE APPROXIMATE AND HAVE BEEN PLOTTED FROM THE LATEST AVAILABLE INFORMATION. THE UTILITY LOCATIONS ARE APPROXIMATE AND MAY NOT BE ALL INCLUSIVE. THE CONTRACTOR SHALL CHECK AND VERIFY THE LOCATIONS OF ALL EXISTING UTILITIES, BOTH OVERHEAD AND UNDERGROUND, AND "DIG-SAFE" MUST BE NOTIFIED PRIOR TO COMMENCING ANY CONSTRUCTION OPERATIONS. RESTORATION AND REPAIR OF DAMAGE TO EXISTING UTILITIES SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR WITH NO ADDITIONAL COST TO THE OWNER. NO EXCAVATION SHALL COMMENCE UNTIL ALL INVOLVED UTILITY COMPANIES AND/OR TOWN WHOSE FACILITIES MIGHT BE AFFECTED BY ANY WORK TO BE PERFORMED BY THE CONTRACTOR ARE NOTIFIED AT LEAST 72 HOURS IN ADVANCE.
- THE ELEVATIONS SHOWN ON THIS PLAN REFERENCE THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88).
- THE HORIZONTAL LOCATIONS AS SHOWN ON THIS PLAN REFERENCE THE NORTH AMERICAN DATUM OF 1983 (NAD83).

PROPOSED CONDITIONS PLAN



PRINCIPE COMPANY, INC.
ENGINEERING DIVISION
27 SAKONNET RIDGE DRIVE
TIVERTON, RI 02878
401.816.5385
PRINCIPLEENGINEERING@GMAIL.COM

CRMC SUBMISSION PLAN
for
88 WASHINGTON STREET
AP 12 LOT 46
in
NEWPORT, RHODE ISLAND

SCALE: 1"=10'
SHEET NO: 1 of 4
DRAWN BY: KAB
DESIGN BY: KAB
CHECKED BY: TJP
DATE: 06/10/2024
PROJECT NO.: SVY-2023-22

OWNER:
FAIRPOINT REALTY LLC
34 BROAD COMMON ROAD
BRISTOL, RI 02809

DRAWING ISSUE:

- ☐ CONCEPT
☐ CUSTOMER APPROVAL
☒ PERMITTING
☐ CONSTRUCTION
☐ AS-BUILT
☐ OTHER:
- ONLY PLANS ISSUED FOR CONSTRUCTION
SHALL BE USED FOR CONSTRUCTION

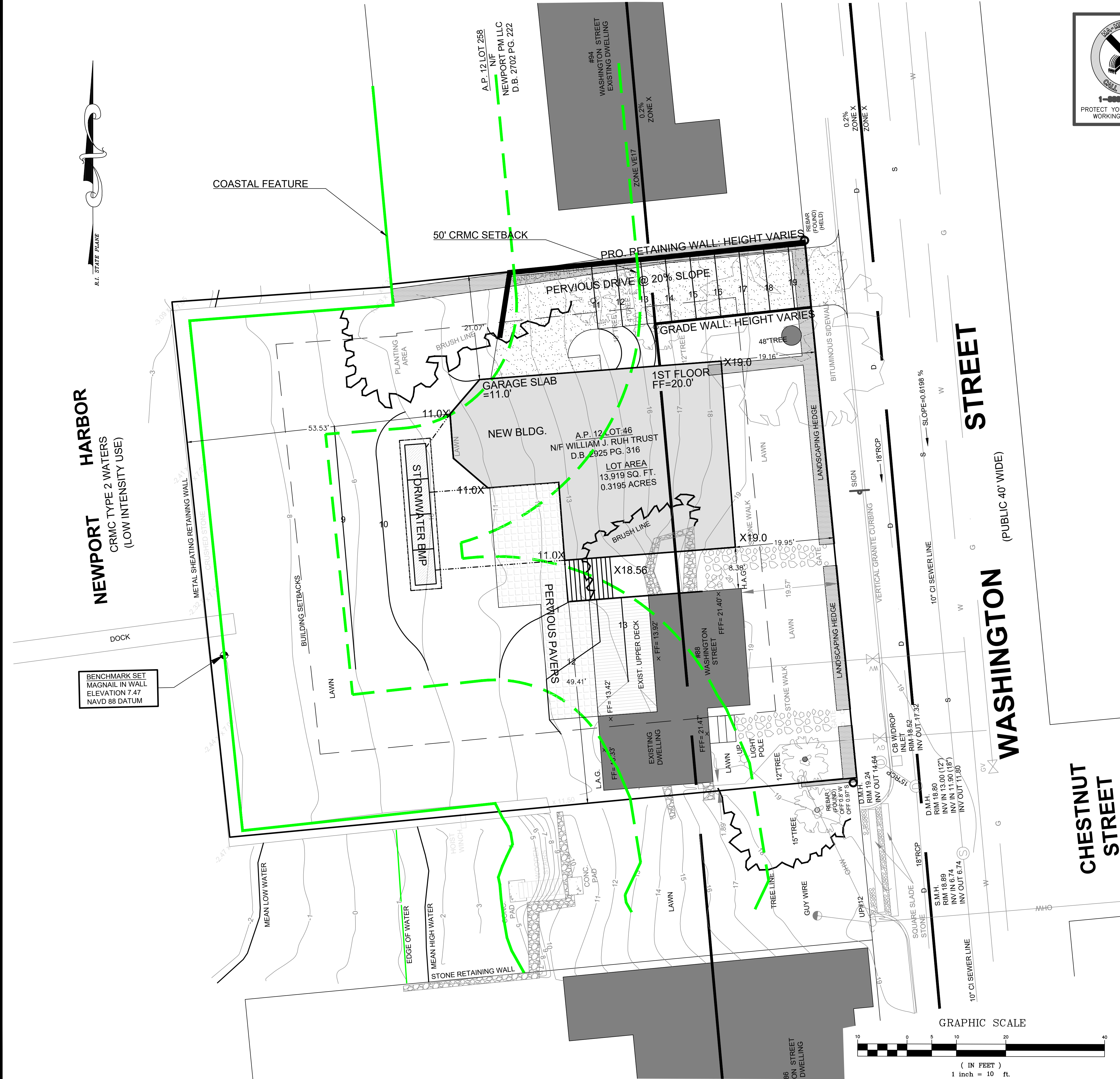
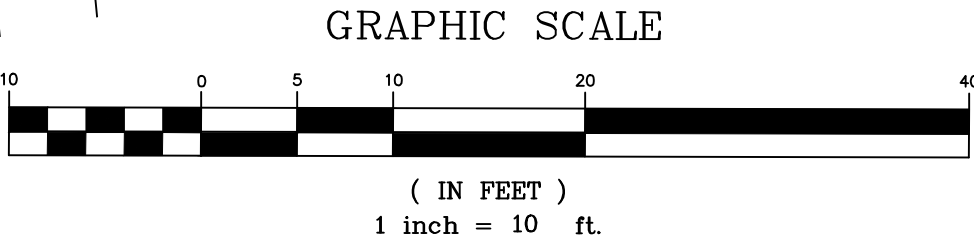


Exhibit 2

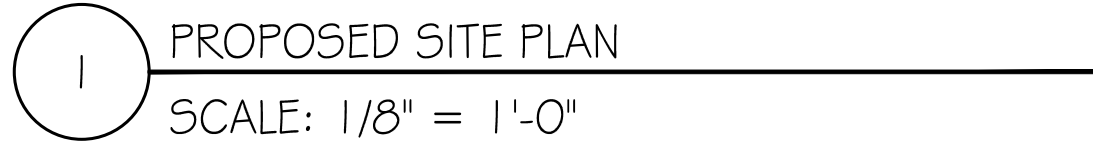
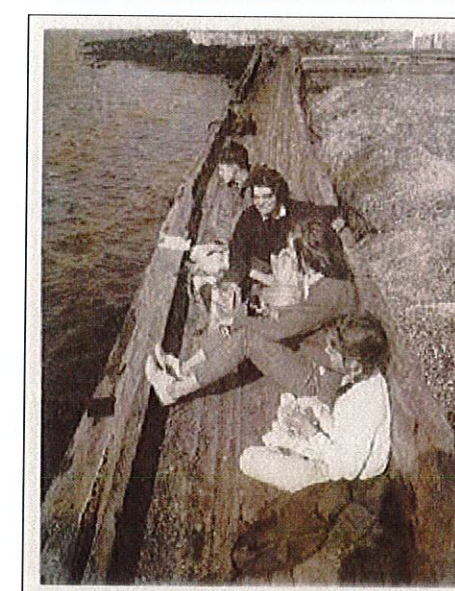
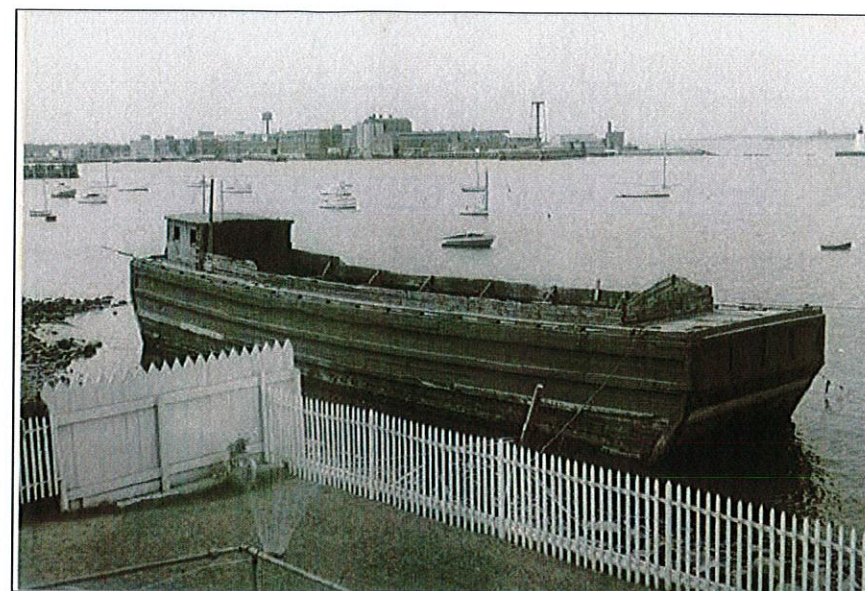
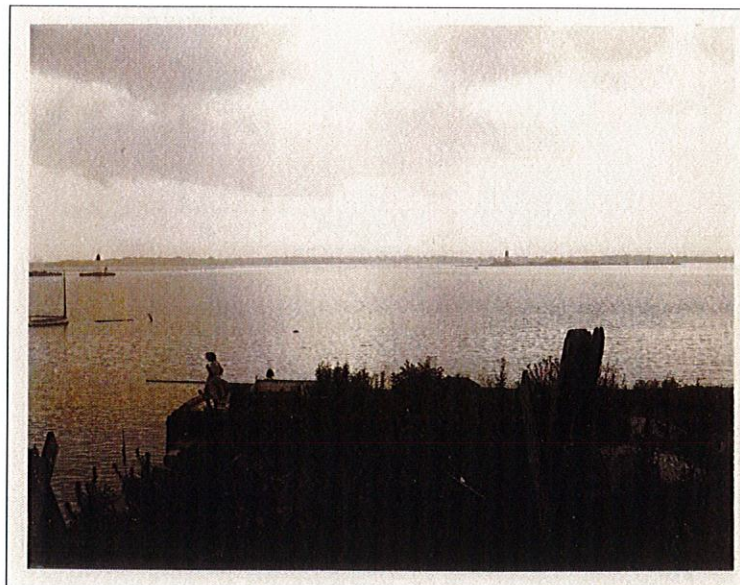


Exhibit 3



THE LOT ON WHICH 88 WASHINGTON
STREET NOW STANDS --PART III

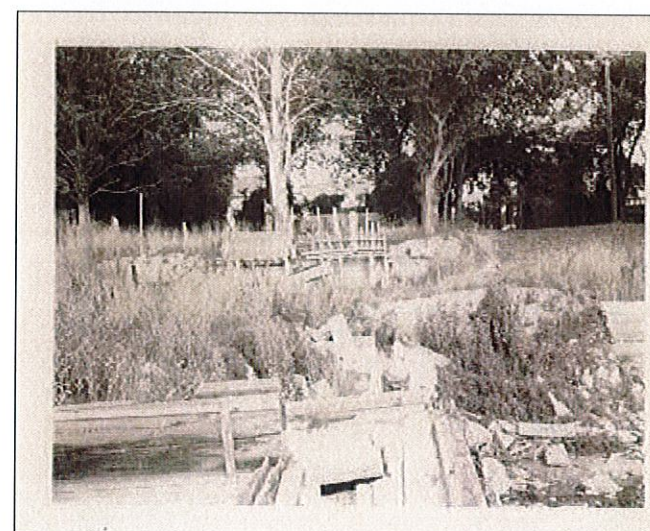
In my article on this subject in the October Green Light I made a mistake. When my husband and I put the lot up for sale, Powell Kazanjian bought it. He had always hoped to live on the Washington Street shore, and our lot was just what he wanted. He planned to construct a long pier and have a fast boat with which he could go rapidly to Providence, Boston, or New York. At once he began to work on the sea wall, but into the picture came four Kazanjian children and Mrs. Kazanjian, whose responsibility for her family was paramount. She was not prepared to take risks for the safety of her children when high tides, wild winds and huge waves attacked the shore. I think I have to agree with her. It did not take long for Mr. and Mrs. Kazanjian to make up their minds, and once more the property was sold.

Then came Dave Feltham, a World War II veteran who served with the Sea-Bees. He and his mother lived in a cottage on the Hunter House grounds. Dave, who was of modest height but with strong and powerful shoulders, walked up and down Washington Street, no doubt realizing that 83 was the last vacant lot on the water side. When it came up for sale, he bought it.

The sea wall, just a mere foundation, was a difficult problem, but Dave, who had an original mind, had a new idea. He would find an old barge, tow it to the property, fasten it on somehow, and have a great

soa walked modest coast and involving least work than building, one, he found a barge which had been laid up in the lower harbor, deteriorating for a couple of years; Manchester Shipyard had owned it, trying at one time to strengthen its sides for use as a coal barge. Dave bought it for a small fee, then planned its removal to Washington Street. A tug hauled it up to the waterfront near his house, and he had it beached as close to shore as possible. Then, with block and tackle and his heavy Oldsmobile, Dave winched the barge closer and closer. A full-moon tide finally did the trick, but the transmission of the Oldsmobile was burned out! Dave did most of the work by himself; he had hoped to buy a second barge, but after the above struggle, he gave up that time.

Slowly he tried to fit the barge in, to make it strongly attached to the land at both ends of the property. He filled it with rocks and huge chunks of broken concrete. It was an almost impossible task. He had added about 35 feet to the width of the land, but it was an unsightly mess. Washington Street is a handsome street, and soon the neighbors began to complain at the junky pile of rocks, used lumber, concrete and other debris. In the end, it was too much for Dave. He was one of those free spirits, of which I am sure there were many in the San-Bears. He just thought you could accomplish

[illegible]

- ADMIRAL AND MRS. BELNAP SOLD THE LOT ON THE SOUTH SIDE OF THE PARCEL TO AGNES STORER AND THEN THE PARCEL CHANGED HANDS A FEW TIMES BEFORE IT WAS PURCHASED BY DAVID FELTHAM WHO BEGAN TO DEVELOP THE LOT.

- MR. FELTHAM ENLARGED THE SOUTH LOT BY BRINGING IN A BARGE AND ANCHORING IT TO THE PROPERTY, THEN FILLING THE LAND IN WITH WHATEVER MATERIALS HE COULD OBTAIN. MANY OF THE “POINTERS” COMPLAINED ABOUT THE MESS HE MADE SO HE SOLD THE PROPERTY TO CHARLES AND ANNE REYNOLDS FROM WORCHESTER MASS.

Exhibit 4

Parks, Joshua

From: Lisa Turner <lturner@crmc.ri.gov>
Sent: Monday, December 2, 2024 12:12 PM
To: Parks, Joshua
Subject: FW: As Built Assent needed for previous work done to Tripp House

 External email >

Hi Josh: Please see email below in response to your earlier information request.

Cordially,
Lisa Turner

Lisa A. Turner, Programming Services Officer
aka Office Manager and Record Keeper
Coastal Resources Management Council
Oliver Stedman Government Center
4808 Tower Hill Road; Room 116
Wakefield, RI 02879
401-783-3370

From: Anthony Sawaia <asawaia@crmc.ri.gov>
Sent: Monday, December 2, 2024 11:47 AM
To: 'Lisa Turner' <lturner@crmc.ri.gov>
Subject: FW: As Built Assent needed for previous work done to Tripp House

Info Request Email for 2024-06-087

Anthony Sawaia
Environmental Scientist II
Coastal Resources Management Council
Oliver Stedman Government Center
4808 Tower Hill Road Wakefield, RI 02879
(401)-783-3370
<http://www.crmc.ri.gov>

From: Anthony Sawaia <asawaia@crmc.ri.gov>
Sent: Friday, November 29, 2024 1:44 PM
To: 'Tom@principeengineering.com' <Tom@principeengineering.com>; 'wruh@yahoo.com' <wruh@yahoo.com>
Subject: As Built Assent needed for previous work done to Tripp House

Mr. Ruh, Tom,

It has come to our attention that previously work has been done to the John Tripp house that at least includes exterior work. Refer to attached picture. This work has not received any permits from CRMC.

It is required that you submit an As built Assent application with an additional as built fee for the work previously done. This is the case even if the work was done by a prior owner. This work appears to have been done in 2021 or 2022?

Please address this as this may need to be done before completing review of the current additional dwelling application.

Thank you

Anthony



Anthony Sawaia
Environmental Scientist II
Coastal Resources Management Council
Oliver Stedman Government Center
4808 Tower Hill Road Wakefield, RI 02879
(401)-783-3370
<http://www.crmc.ri.gov>

Exhibit 5

Totten, Elizabeth (HPHC)

From: Madeline Melchert <madeline@melchertarchitecture.com>
Sent: Wednesday, June 26, 2024 2:58 PM
To: Totten, Elizabeth (HPHC); Helen Johnson
Subject: RE: 88 Washington

This Message Is From an External Sender

This message came from outside your organization.

Report Suspicious

Hey Elizabeth,

I was just made aware that the engineer submitted the application to CRMC – to be honest I don't know which version was submitted but I wanted to give you a heads up – and know that we (and the owners) are willing to discuss in person or via zoom if your office would like to!

Thanks,
Maddy

From: Madeline Melchert
Sent: Friday, June 14, 2024 1:19 PM
To: Totten, Elizabeth (HPHC) <Elizabeth.Totten@preservation.ri.gov>; Helen Johnson <helen@kirbyperkins.com>
Subject: RE: 88 Washington

Hey Elizabeth,
Just checking to see if you had a chance to review these?

Thanks so much, enjoy your weekend!
Maddy

From: Madeline Melchert
Sent: Tuesday, June 11, 2024 4:47 PM
To: Totten, Elizabeth (HPHC) <Elizabeth.Totten@preservation.ri.gov>; Helen Johnson <helen@kirbyperkins.com>
Subject: 88 Washington

Hey Elizabeth,

As we spoke about over the phone, I was wondering if you could give me some feedback on whether or not certain design items will significantly impact our chances of getting support from your office during our CRMC application process.

When we met in person, we spoke about a few changes:

1. Moving the proposed structure back to sit slightly behind the Tripp House.
 - a. Since then, we have gotten confirmation from CRMC that moving the building back and creating a 50% or more variance request would significantly impact their opinion of the project. Our option to please both sides is to reduce the building depth by 2'-6".
 - b. **We have looked at decreasing the footprint further, but the owner does not want to lose any more space. We would like to keep it where it was originally proposed (at 2' in front of the Tripp House).**
2. Lowering the roof line/ceiling height on the first floor 1' and changing the proportions of the windows facing Washington Street to make them smaller.

- a. We looked at lowering the roof and making the windows smaller. The owner would really prefer not to lose the ceiling height and therefore we believe the windows are sized correctly for the proportion of the house. We could further discuss keeping the roof height AND making the windows smaller (but then it might not look right, we would want to show you a drawing).
- 3. Changing the half window at the stair to a full window (blocked from the inside).
 - a. We will make this change as requested.

Please review and let me know if you would like to have a zoom meeting to discuss/look at options!

Thank you,

Madeline Melchert, Architect

MELCHERT ARCHITECTURE

cell: 518.524.6925