



TOWN OF FRONT ROYAL, VIRGINIA BOARD OF ZONING APPEALS MEETING

Tuesday, December 19, 2023 @ 7:00 PM
Front Royal Town Hall, 2nd Floor East Conference Room

AGENDA

1. Call to Order
2. Roll Call – Determination of Quorum
3. Election of Vice Chairman
4. Approval of Minutes
 - February 21, 2023 (*attached*)
5. Public Hearing
 - **Variance Application 2300755** submitted by Gualberto C. Camacho-Perez for a variance from Town Code Chapter 175-130.C. pertaining to the expansion of a nonconforming structure and the side yard setback located on the property at 219 E. 7th Street identified by Tax Map 20A4-4-2. The property is located in the C-1, Community Business District and is located in the floodway. The variance would effectively allow the applicant a side yard setback of 9.9 feet. The required side yard setback is 10.7 feet, and the applicant has a side yard setback of 9.9 feet. The variance requested by the applicant is to allow a new foundation for a single-family dwelling.
6. Adjournment

This meeting may be viewed in its entirety by accessing the video of the same date online via the Town's website at www.frontroyalva.com for a limited time.

The Board of Zoning Appeals regular meeting of the Town of Front Royal, Virginia was held on February 21, 2023, at 7:00 pm.

CALL TO ORDER:

Chairman McCarthy called the Board of Zoning Appeals, February 21, 2023, meeting to order at 7:00 pm. She asked Ms. Potter for a roll call.

ROLL CALL – DETERMINATION OF QUORUM

Present: Amanda McCarthy, Chairman
Cody Taylor
Lewis Moten

Absent: Christine Erin

Staff: John Ware, Deputy Zoning Administrator
George Sonnett, Town Attorney
Connie L Potter, Executive Assistant / Clerk for the Board of Zoning Appeals

ELECTION OF OFFICERS

Mr. Taylor moved, seconded by Mr. Moten to nominate Amanda McCarthy as Chairman.

VOTE: Yes – McCarthy, Taylor, Moten
No – N/A
Absent – Erin
Abstain – N/A

VOICE VOTE

Chairman McCarthy moved, seconded by Mr. Moten to nominate Cody Taylor as Vice Chairman.

VOTE: Yes – Moten, McCarthy, Taylor
No – N/A
Absent – Erin
Abstain – N/A

VOICE VOTE

APPROVAL OF MINUTES

- December 20, 2022 Regular Meeting

Vice Chairman Taylor moved, seconded by Mr. Moten to approve the minutes.

VOTE: Yes – McCarthy, Taylor
No – N/A
Absent – Erin
Abstain – Moten

VOICE VOTE

PARLIAMENTARY PROCEDURE

The Town Attorney, Gerge Sonnett reviewed the rules of procedure for the Board of Zoning Appeals.

The Board of Zoning Appeals (BZA) is a public body as opposed to a governing body. As a public body the BZA is subject to the Freedom of Information Act as to public records and the open meeting laws.

The following information is a paraphrase from a document created by Walter Erwin. Parliamentary procedure is designed to promote the efficient and orderly conduct of business. One of the parliamentary procedure goals is to balance individual and majority rights. Properly used parliamentary procedure provides all members of a public body an opportunity to be heard but also ensures that a minority cannot prevent a majority from transacting business. Parliamentary procedures are the rules of the game for democracy.

Rules of procedure for this body start with state law which trumps the BZA bylaws and Roberts Rules of Order. Looking at state law in particular 15.2 2308, 15.2 2309 and 15.2 2312.

15.2 2308 – A quorum shall not be less than a majority of all the members of the board. With a membership of five (5) on the BZA three (3) are required to establish a quorum. Under paragraph C. The Board may make, alter, and resend rules and forms for its procedures consistent with ordinances of the locality and general laws of the commonwealth.

15.2 2309 – The board may by resolution fix a scheduled regular meeting and fix the day or days to which any meeting shall be continued if unable to act.

15.2 2312 – A concurring vote of a majority of the membership of the board shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to affect any variance from the ordinance.

Especially in light of the fact that no alternates have been appointed to the BZA its very important that everyone attend the meetings.

BZA Bylaws

The current BZA Bylaws were last revised in 2014. With regard to matters of procedure, the Chairperson is the presiding officer. In the absence of the Chairperson the Vice Chairman is the presiding officer.

Article 3, number 6 – A quorum of three (3) members concurring to take action. The norm is a majority of members present and voting is what is needed to take all other actions. With an abstention the BZA needs a majority of those present and voting. Significant issues coming before the board require three (3) votes of the membership.

Article 7 – public hearings. Numbers 1-14 of this article lay out the procedure for public hearings.

Number 11 is where you get into the meat of parliamentary procedure. Decisions and other actions or orders of the BZA should be taken in the form of a motion or resolution. It requires a second which is not stated in the current bylaws. Under Roberts Rules of Order motions must be seconded.

Number 14 is where it incorporates Roberts Rules of Order into the BZA procedure.

Article 8 – Reconsideration. Looking at 2.D, a motion must be made by at least one member who voted in favor of the decision. The intent is to say one member who voted on the prevailing side is the one to bring the motion for reconsideration as opposed to the non-prevailing side.

2.C. – It will be considered at the next regular meeting whereas Roberts Rules of Order for reconsideration requires reconsideration at the same meeting. The bylaws are operative. What is in the bylaws will trump Roberts Rules of Order.

Roberts Rules of Order

The current Bylaws say Roberts Rules. He would interpret that to say the latest edition of Roberts Rules of Order. It is over 700 pages which the BZA will not use all 700 pages. Especially since the BZA is not a governing body.

The Basics

There is an understanding between an error in rules of procedure vs. an error in substance and some jurisdictions put in their ordinance the following:

Rules and procedures were designed and adopted for the benefit and convenience of the public body. Their purpose is to help the public body conduct its affairs in a timely and efficient manner. They incorporate the general principles of parliamentary procedure found in Roberts Rules and the applicable Virginia laws. The rules of procedure do not create substantive rights for third parties or participants in proceedings before the public body. Further, the public body reserves the right to suspend or amend the rules of procedure whenever a majority of the body decides to do so. The failure of a public body to strictly comply with Roberts Rules shall not

invalidate the action. The point being you should follow the rules of procedure but if there is a “hiccup” as long as its clear on the record what the decision of the body was, you’re ok.

Paraphrasing from Roberts Rules – No one should speak without being recognized by the Chair.

The Main Motion

After going through the public hearing procedure and you get to number 11 it is time for the Chair to entertain a motion. Sometimes referred to as the question. The making of the main motion is the starting point for parliamentary procedure. The maker of a motion is not required to vote for the motion. You are getting the motion on the floor by making a motion. While a maker of a motion can vote against his motion, the maker of the motion may not speak against the motion.

Seconding the motion – The motion needs to be seconded. Requiring a second to a motion prevents a public body from having to consider a motion that only one member wishes to discuss. It helps determine that the motion is worthy of discussion.

Once you have a second you move onto debate. Under Roberts Rules each member of a body has a right to speak twice on the same question or motion. The second opportunity should await everyone having a first opportunity. The maker of a motion has a right to speak first if he or she wishes. During discussion you should always refrain from personal attacks. “The measure not the man is the subject of debate.” The measure being the topic and not the individual.

A motion, a second and debate has occurred, and someone would like to amend the motion on the floor. At this point you would move to amend. Although this body has not been authorized by the governing body to take up Special Use Permits and Special Exceptions with regard to Variances you have the authority to impose conditions. In that context an amended motion may come into play. This would be a motion to amend. You then vote on the motion to amend before you go back to the main motion. If the motion to amend passes it becomes the main motion and that is voted on. If it fails you go back to the main motion.

There could be situations where you have a presentation of all the evidence and there is a motion on the floor to approve with or without conditions and the bodies may not be ready to vote. Possibly new information came in. There could be a motion to postpone at that point. A motion to postpone is a secondary motion to a main motion on the floor. This would entail postponing to a date certain. A motion to postpone is debatable so that you can discuss the merits of postponing. A motion to end debate and vote is called “calling the question”.

The making of a main motion is the starting point for parliamentary procedure.

The Vote

For most matters it’s a majority of the entire membership. If you have a tie vote this would be in situations where you have only four (4) members present, or one member abstains. It would have to be a 2 to 2 situation because it takes three (3) to act on a matter. If this happens then the motion has been rejected.

The question was asked if the Chairman breaks a tie. Mr. Sonnett stated he was not aware of the Chair having a tie breaking function. If that is what the BZA wants it would need to be placed in the Bylaws.

Regarding a motion to reconsider, that motion must be heard during the same meeting. The current BZA Bylaws clearly state that it's not going to happen that way but happen at the next meeting.

OTHER

- By-Laws

Mr. Ware suggested waiting until the full board is present to review the bylaws. Board members agreed they would like to wait until a full board was present.

- 2022 Board of Zoning Appeals Annual Report

The 2022 Board of Zoning Appeals was included in their meeting packets.

ADJOURNMENT

Being no further business, the following motion was made:

Mr. Moten moved, seconded by Vice Chairman Taylor to adjourn the meeting.

VOTE: Yes – McCarthy, Taylor, Moten
 No – N/A
 Absent – Erin
 Abstain – N/A

VOICE VOTE

The meeting was adjourned at 7:35 p.m.

Approved by the Board of Zoning Appeals
Date: _____



TOWN OF FRONT ROYAL
DEPARTMENT OF PLANNING & ZONING

STAFF REPORT FOR THE DECEMBER 19, 2023, BOARD OF ZONING APPEALS MEETING

APPLICATION #:

2300755

APPLICANT:

Gualberto C. Camacho-Perez

APPLICATION SUMMARY:

The applicant is seeking a variance from Town Code Chapter 175-130.C. pertaining to the expansion of a nonconforming structure and the side yard setback located on the property at 219 E. 7th Street identified by Tax Map 20A4-4-2. The property is located in the C-1, Community Business District and is located in the floodway. The variance would effectively allow the applicant a side yard setback of 9.9 feet. The required side yard setback is 10.7 feet, and the applicant has a side yard setback of 9.9 feet. The variance requested by the applicant is to allow a new foundation for a single-family dwelling.

GENERAL INFORMATION:

Site Address	219 East 7 th Street (see vicinity map below)		
Property Owner	Apple Contractors Inc.		
Zoning District	C-1, Community Business District		
Overlay Districts	Historic Area – NO	Floodway – YES	Entrance Corridor – NO
Tax Identification	20A4-4-2		
Location	The property is located at the intersection of 7 th Street and Kibler Street.		
Existing Use	One (1) Single-family dwelling situated on one (1) parcel.		

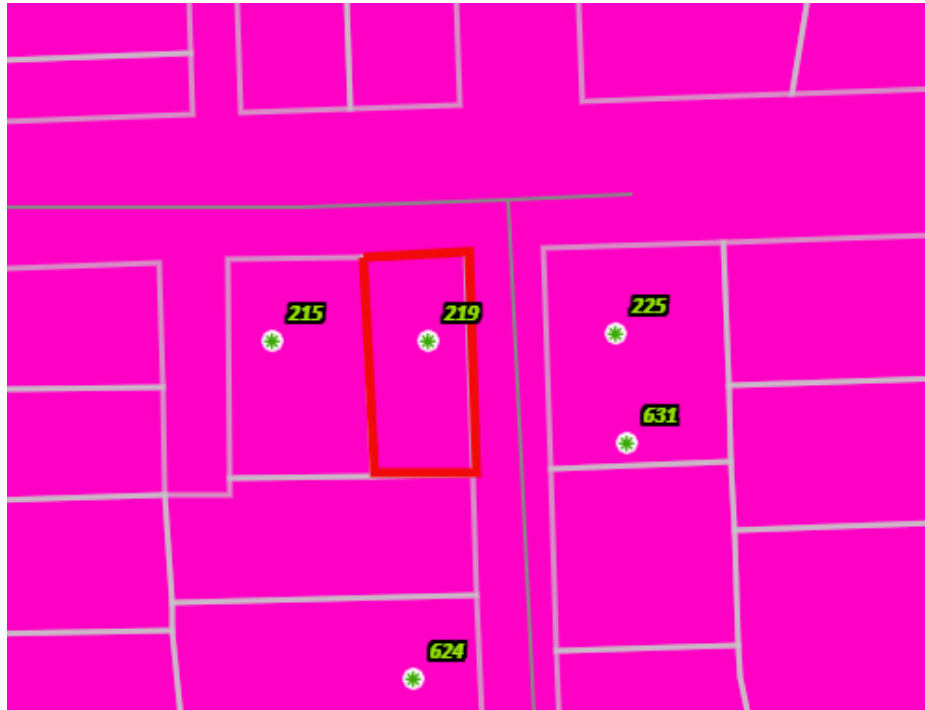
Vicinity Map



Aerial Map



Aerial Floodplain Map



Previous Structure at 219 E. 7th Street



Existing Front Elevation (North) -219 E 7th Street



Existing Left Elevation (East) – 219 E. 7th Street



Existing Rear Elevation (South) – 219 E. 7th Street



Existing Right Elevation (West) – 219 E. 7th Street



ADDITIONAL INFORMATION:

<i>Background</i>	On March 23, 2023, the Town issued a zoning permit for construction to add a second story on to an existing structure, renovate the interior and enlarge the footprint of the existing structure. The structure was built and is currently occupied. During the building process, the footprint was enlarged outside of the permitted building envelope. The applicant is now seeking a variance to bring their structure into compliance. To Staffs knowledge the applicant did not have a surveyor locate the new foundation prior to expanding it.
<i>Applicant's Statements</i>	<i>"Warren County building inspections determined foundation was not up to code, to building code. New foundation was installed trying to put in same place."</i>
<i>Legal Review</i>	The prior use of the property was residential in the commercial zoning district, rendering the use legally non-conforming. Town code permits the applicant to continue to use legally nonconforming uses as long as the use is not discontinued for more than 2 years. In this instance, the use was not discontinued, however, the applicant needed to maintain the existing setbacks. During construction, those setbacks were not maintained, and the new foundation is 8 inches into the permitted setback.

Town Code

VARIANCES

Town Code 175-139.B authorizes the Board of Zoning Appeals with the ability to issue variances, as stipulated below:

“To authorize, upon appeal in specific cases, such variance from the terms of the chapter as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions will result in unnecessary hardship, provided that the spirit of the chapter shall be observed, and substantial justice done, as follows:

1. When a property owner can show that his property was acquired in good faith and where, by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the chapter, or where, by reason of exceptional topographic conditions or other extraordinary situation or condition of the piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the chapter would effectively prohibit or unreasonably restrict the use of the property, or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the chapter.
2. No such variance shall be authorized by the Board, unless it finds:
 - a. That the strict application of the chapter would produce undue hardship.
 - b. That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 - c. That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
3. No such variance shall be authorized except after notice and hearing as required by Section 15. 2-2204 of the Code of Virginia as amended.
4. No variance shall be authorized unless the Board finds that the condition or situation of the property concerned, or the intended use of the property is not of so general or recurring a nature as to make

	reasonably practicable the formulation of a general regulation to be adopted as an amendment to the chapter. 5. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guaranty or bond to ensure that the conditions imposed are being and will continue to be complied with. 6. In the event that a variance is not granted, the same variance application, or a variance application that is substantially the same, may not be submitted to the Board for consideration for a period of one (1) year from the date on which the variance request was denied.
State Code	Virginia Code § 15.2-2309.2 states the following in regard to Variances and the BZA: “Notwithstanding any other provision of law, general or special, to grant upon appeal or original application in specific cases a variance as defined in § 15.2-2201, provided that the burden of proof shall be on the applicant for a variance to prove by a preponderance of the evidence that his application meets the standard for a variance as defined in § 15.2-2201 and the criteria set out in this section. Notwithstanding any other provision of law, general or special, a variance shall be granted if the evidence shows that the strict application of the terms of the ordinance would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance, and (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning

ordinance pursuant to subdivision A 4 of § [15.2-2286](#) at the time of the filing of the variance application.

No variance shall be considered except after notice and hearing as required by § [15.2-2204](#). However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first-class mail rather than by registered or certified mail.

In granting a variance, the board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. Notwithstanding any other provision of law, general or special, the property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance; however, the structure permitted by the variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the ordinance. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance shall be required.”

Based on Virginia Code § 15.2-2309(2), that went into effect on July 1, 2015, the BZA must grant a variance if the evidence shows that the strict application of the terms of the zoning ordinance would “unreasonably restrict the utilization of the property or that granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of

the ordinance”, and the following:

- (i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance;
- (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area;
- (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance;

- | | |
|--|--|
| | <ul style="list-style-type: none">(iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and(v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of §15.2-2286 at the time of the filing of the variance application.” Virginia Code § 15.2-2309(2). |
|--|--|

STAFF COMMENTS:

The Board needs to determine if the applicant has met the following criteria in order to issue the variance.

That the strict application of the chapter would produce undue hardship.

- *The Board needs to have the applicant articulate the issues and determine if this scenario constitutes a hardship.*

That such hardship is not shared generally by other properties in the same zoning district and the same vicinity.

- *Staff does not believe this hardship is widespread in this zoning district. In this instance the applicant did not maintain the required setbacks. In the immediate neighborhood though, there are several existing residential properties that are considered legally nonconforming.*

That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

- *The structures in the immediate vicinity of the Applicant's property appear to be residential in nature. This appears to be an older neighborhood, originally platted in the 1940's and 1950's. The surrounding uses are commercial. The comprehensive plan update calls for this area to be developed as mixed use.*

ATTACHMENT: BZA Application
 House Plans
 Elevation Certificate and Plat
 Variance Guide

RECEIVED
FRBZA
Main 5
Fax 54
www.frontroyalva.com
TOWN OF FRONT ROYAL
PLANNING & ZONING DEPARTMENT

BOARD OF ZONING APPEALS

Application for Variance

Warren County building inspection determine foundation was not up to code to building code
near foundation was install trying to put in the same place

2

or
A clearly demonstrable hardship* would result if a variance is not granted. Specify the hardship that would result from strict application of the ordinance.

* Note: Financial burden or added cost in complying with the ordinance is not a hardship under the law.

3

My property was acquired in good faith, without foreknowledge of the restrictions upon it.

Correct

Incorrect

The hardship outlined above is not shared generally by other properties in the same zoning district and the same vicinity

Specify:

4

Authorizing this variance will not result in substantial detriment or adverse impact to adjacent property.

Correct

Incorrect

5

The character of the district will not be changed by the granting of this variance request.

Correct

Incorrect

Additional comments or justification may be attached on a separate sheet.

I hereby certify that all of the statements and information contained herein are, to the best of my knowledge, complete and correct. By signing this application, the owner authorizes the Board of Zoning Appeals and Town employees to enter the property during the normal discharge of their duties in regard to this request. I (we) agree to comply with any conditions for the variance required by the BZA.

Owner's Signature

Date: 11-17-23

Print Name

Gualberto C. Camacho - Perez

Application Fee: \$400.00

Pd by CK#2196
on 11-17-23

Revised June 23, 2020



219 E 7TH ST

Property Details

Current Owner

Name: APPLE CONTRACTORS INC

Mailing Address: 5540 HARRY BYRD HWY N/A
BERRYVILLE, VA 22611

Physical Address: 219 E 7TH ST
FRONT ROYAL, VA 22630

Tax Map #: 20A4 4 2

Account #: 10029

Total Acres (Includes all Sublots): 0.082

Zoning: C-1

Occupancy Code: Fair Market - Residential

Magisterial Code: North River-Town

Land Use: Commercial/Industrial

School Zone: LFK Elem., WC Middle, WC High

Legal Repository

Legal Description: L2 C D BINNS
LOTS

Instrument Type and Year: LR 2023

Deed Book No: N/A

Legal Description 2: N/A

Instrument Number: 278

Deed Book Page: 0

Legal Description 3: N/A

Slide Number: N/A

Will Book No: N/A

Legal Description 4: N/A

Slide Index: N/A

Will Book Page: 0

Valuation & Sales

Land	Improvements	Total Value
\$28,800	\$15,000	\$43,800

Grantor	Sale Price	Sale Date
PROPERTY CONNECTION LLC	\$62,000	1/20/2023

Number of Parcels Involved in Sale

1



Building

Year Built: N/A

Story Height: N/A

Number of Rooms: 3

Number of Bedrooms: 1

Full Bathrooms: 1

Half Bathrooms: N/A

Basement: None

Finished Basement SQ FT: N/A

Garage Capacity: N/A

Garage Type: None

Foundation Type: Concrete

Water: Public

Sewer: Public

Heating: None

Air Conditioning: N

Fuel Type: None

Floor Type: Wood

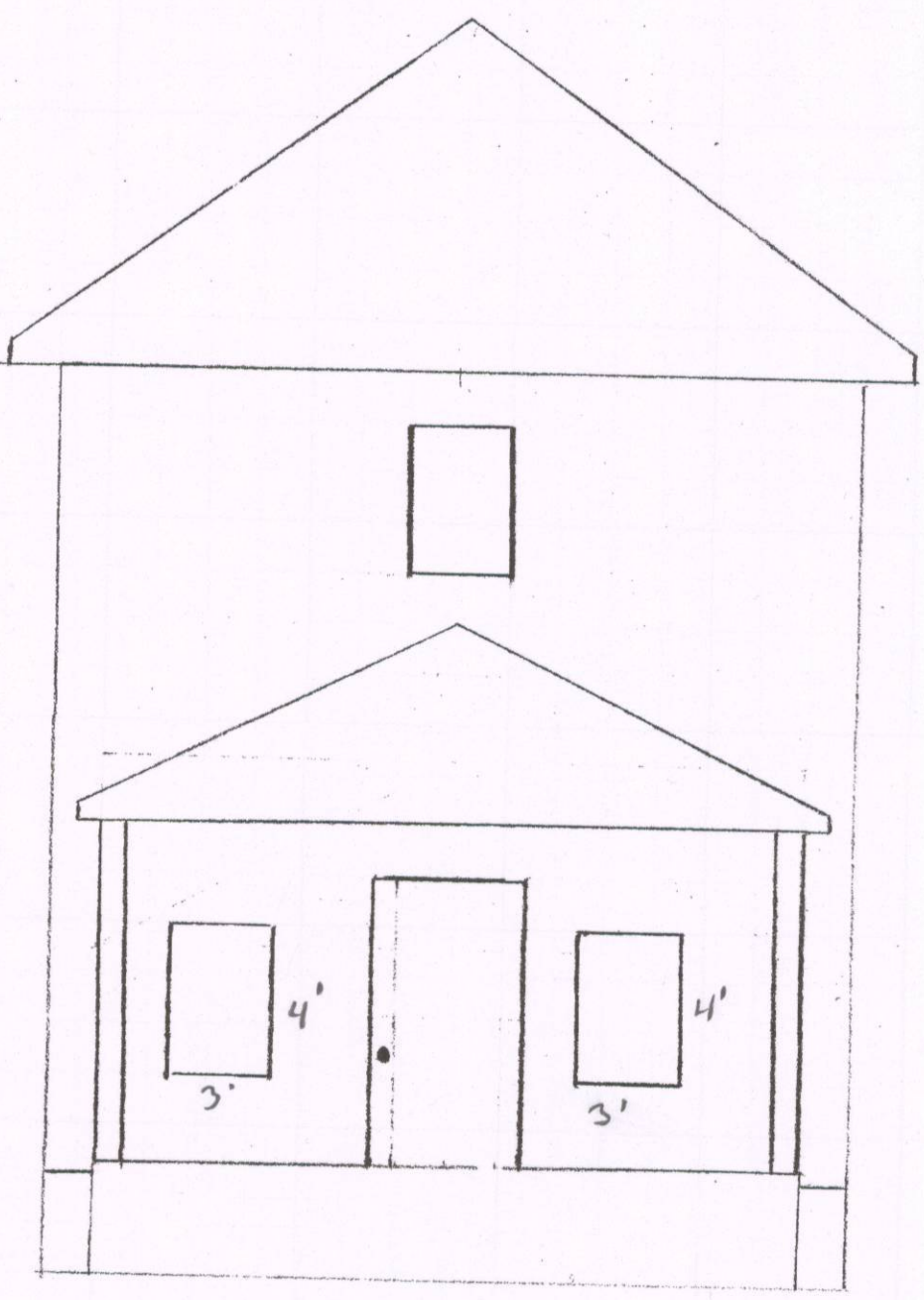
Exterior Wall Type: Wood Siding

Interior Wall Type: Plaster

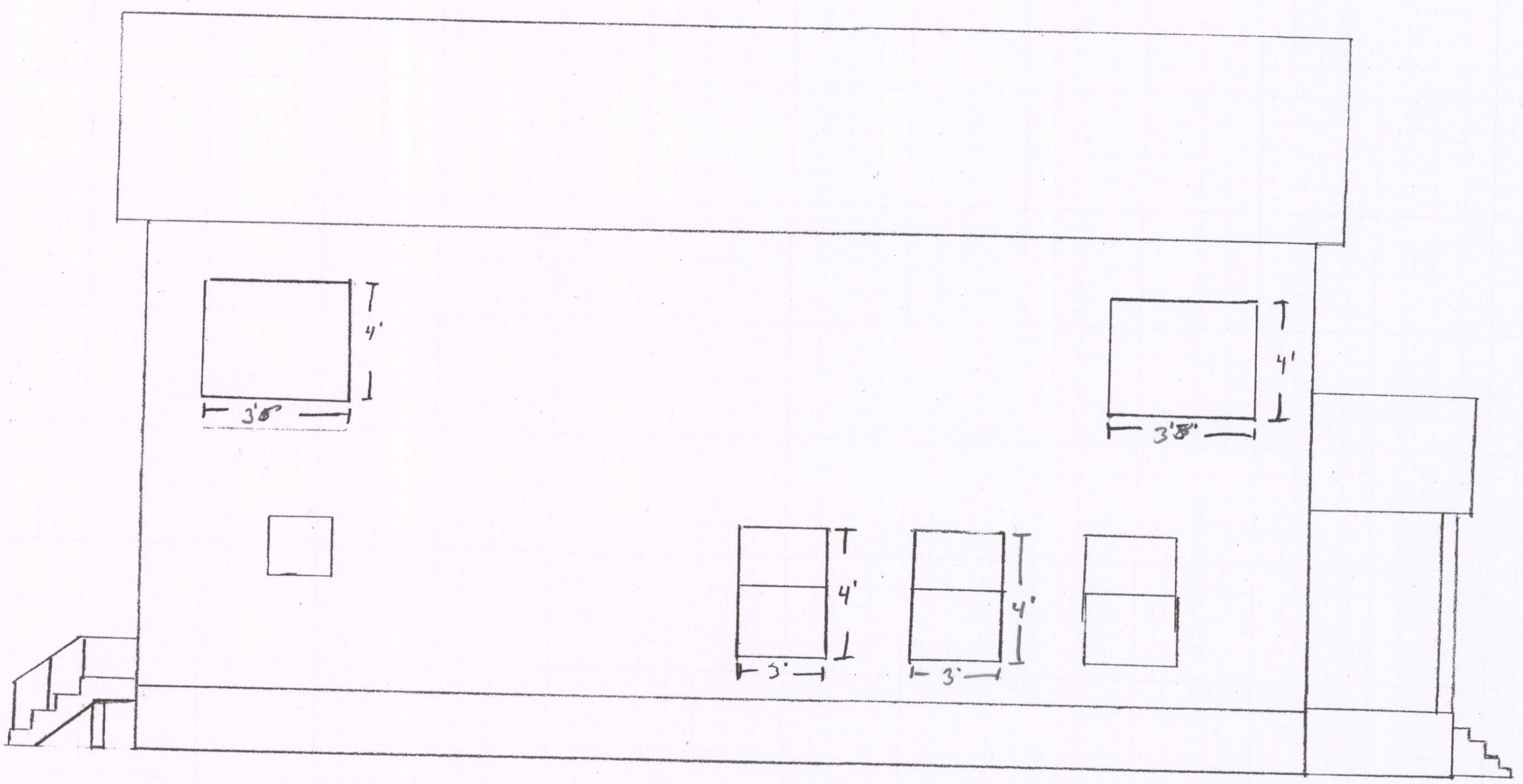
Roof Type: Gable

Roof Material: Metal

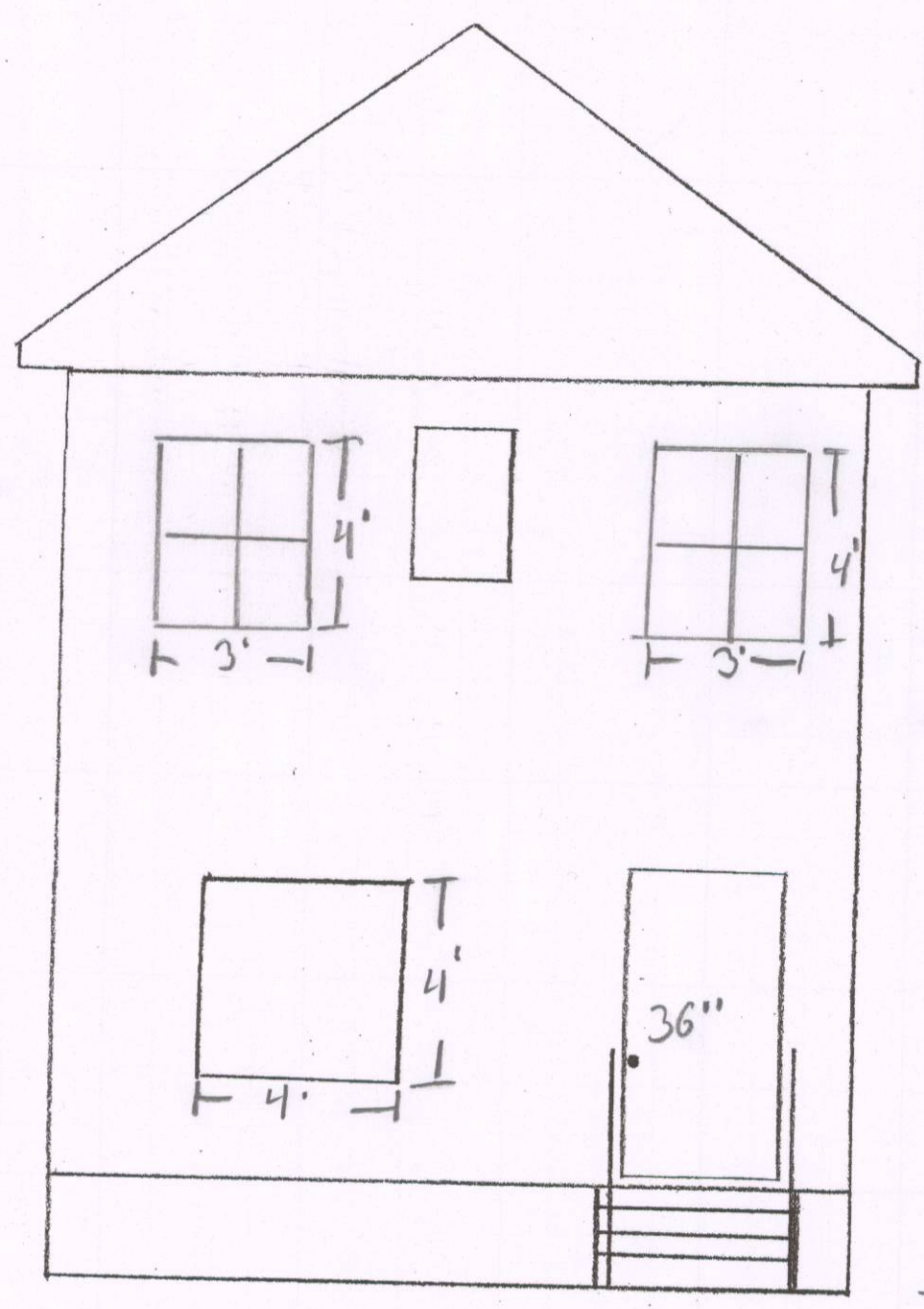




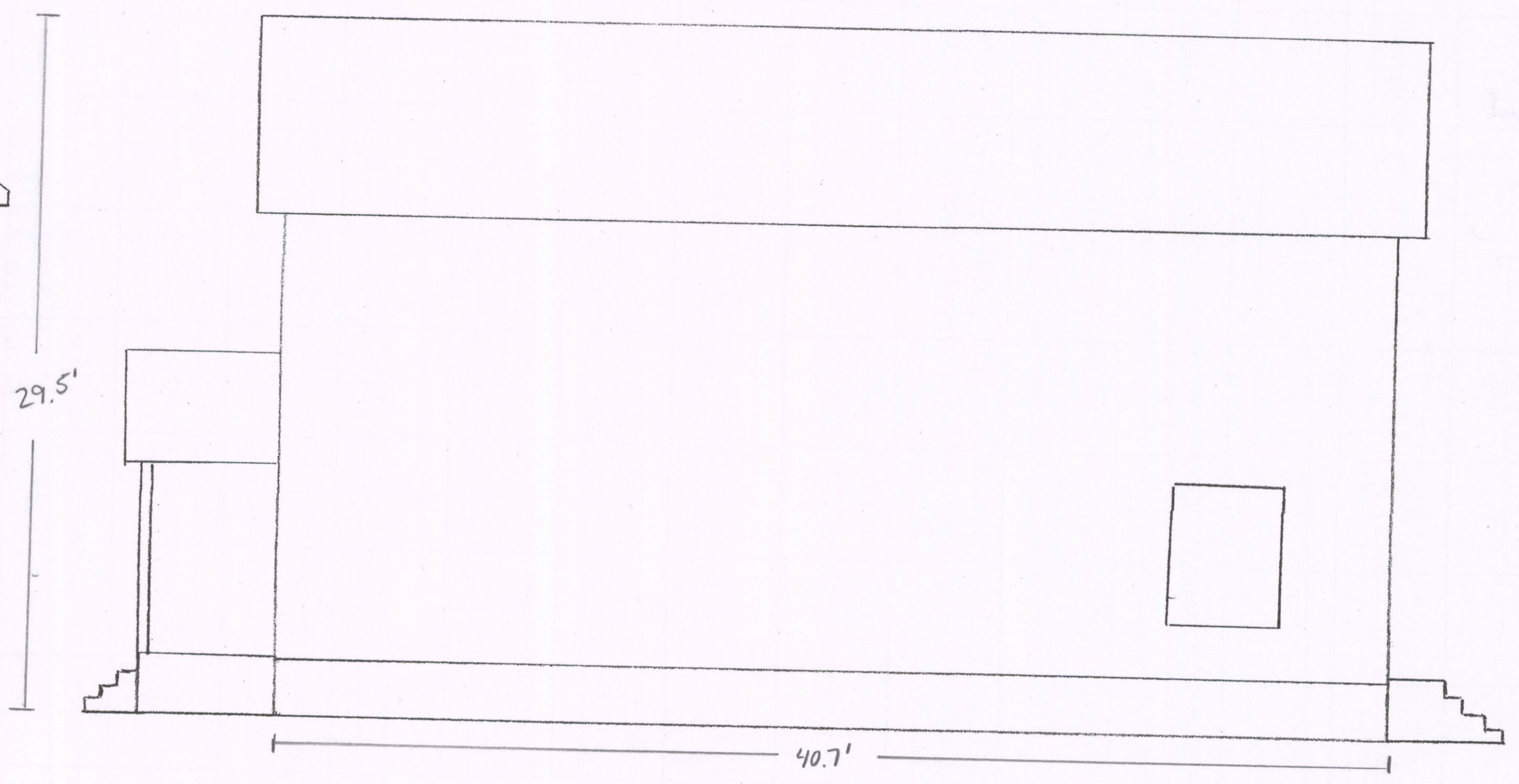
Front Elevation
18.8'



Side Elevation



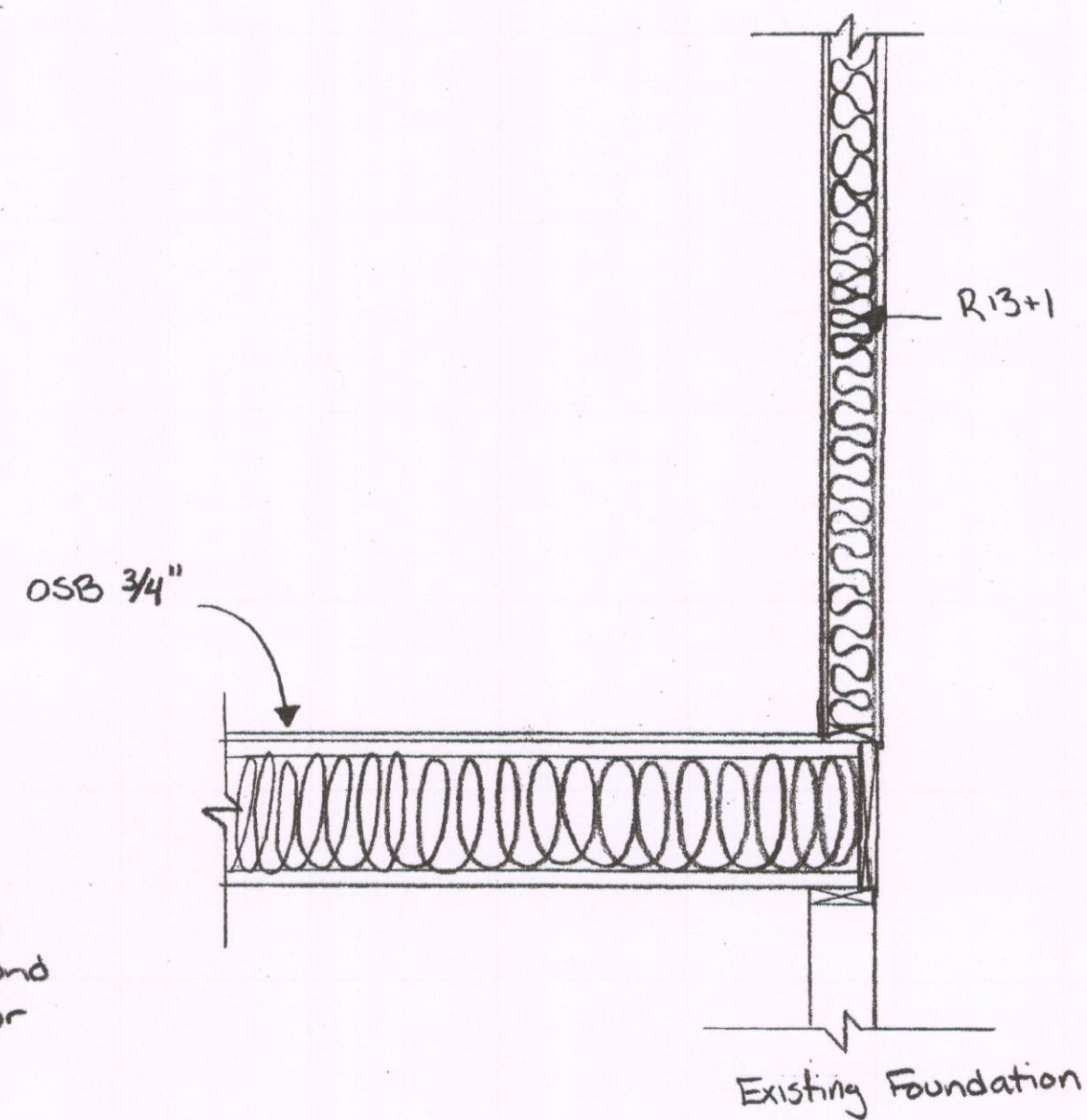
Rear Elevation



40.7'

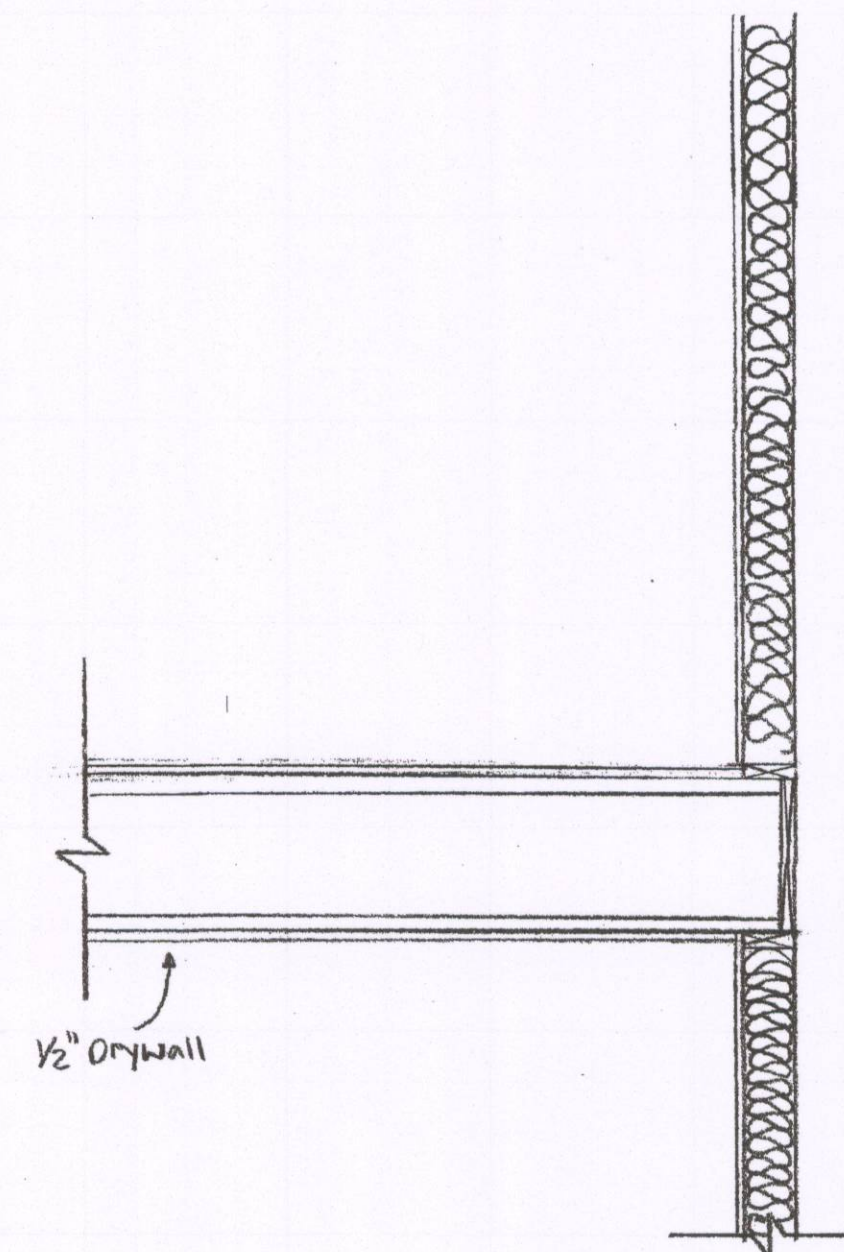
Note:

- Crawl space insulation - R19
- Wall insulation for both second and first floor - R13+1



Wall Section Detail

(NOT TO SCALE)

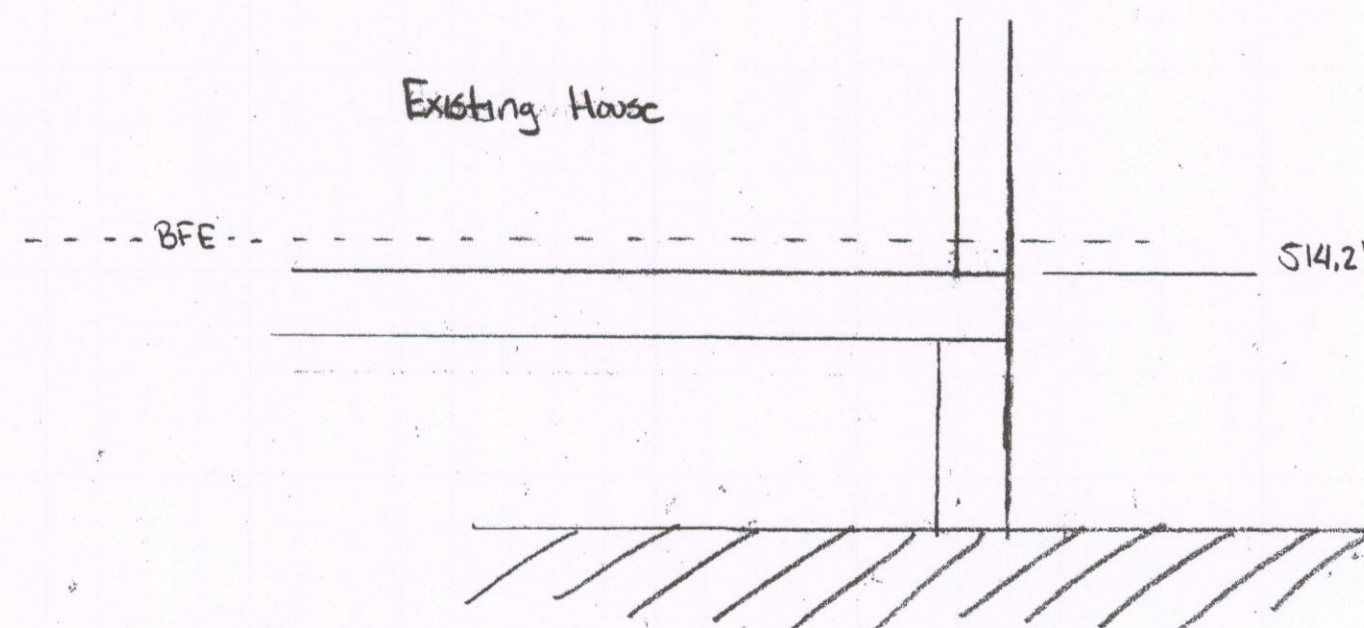


Second Floor Wall Section Detail

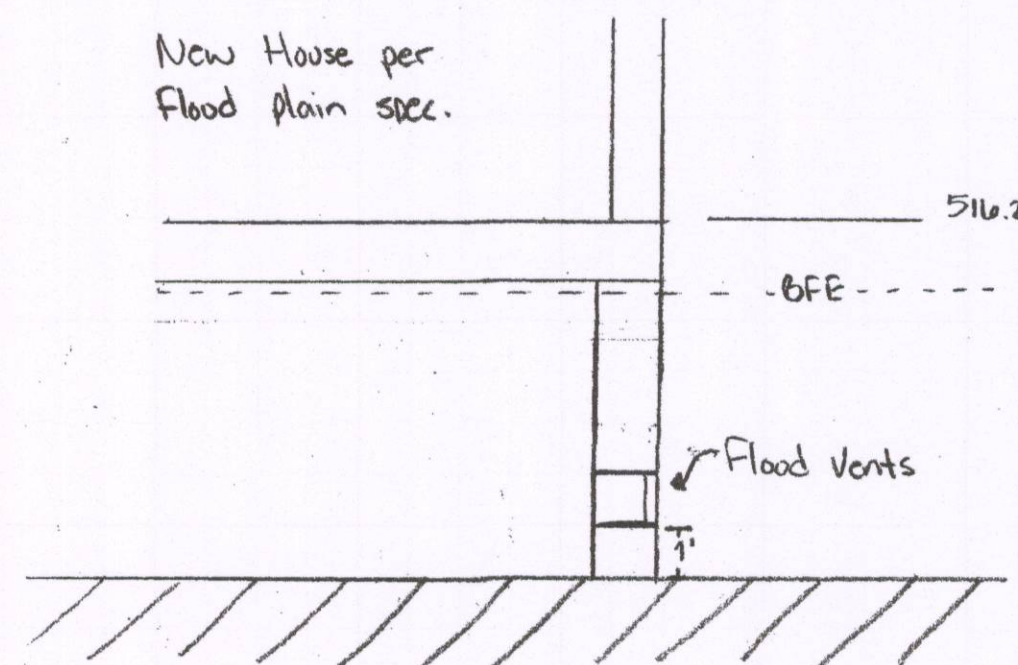
(NOT TO SCALE)

Flood Vents Type and Specs:

- Model number FFV-1608-B
- Size 16.25" W x 8.25" H x 2" D
- Flood Coverage 250 sq ft per unit

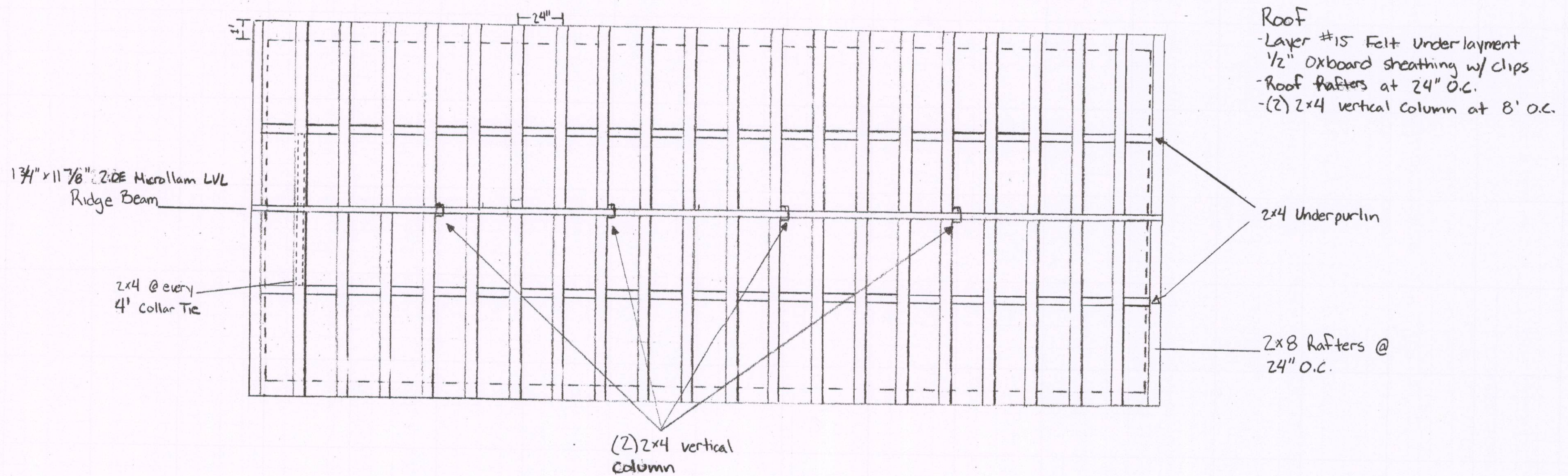
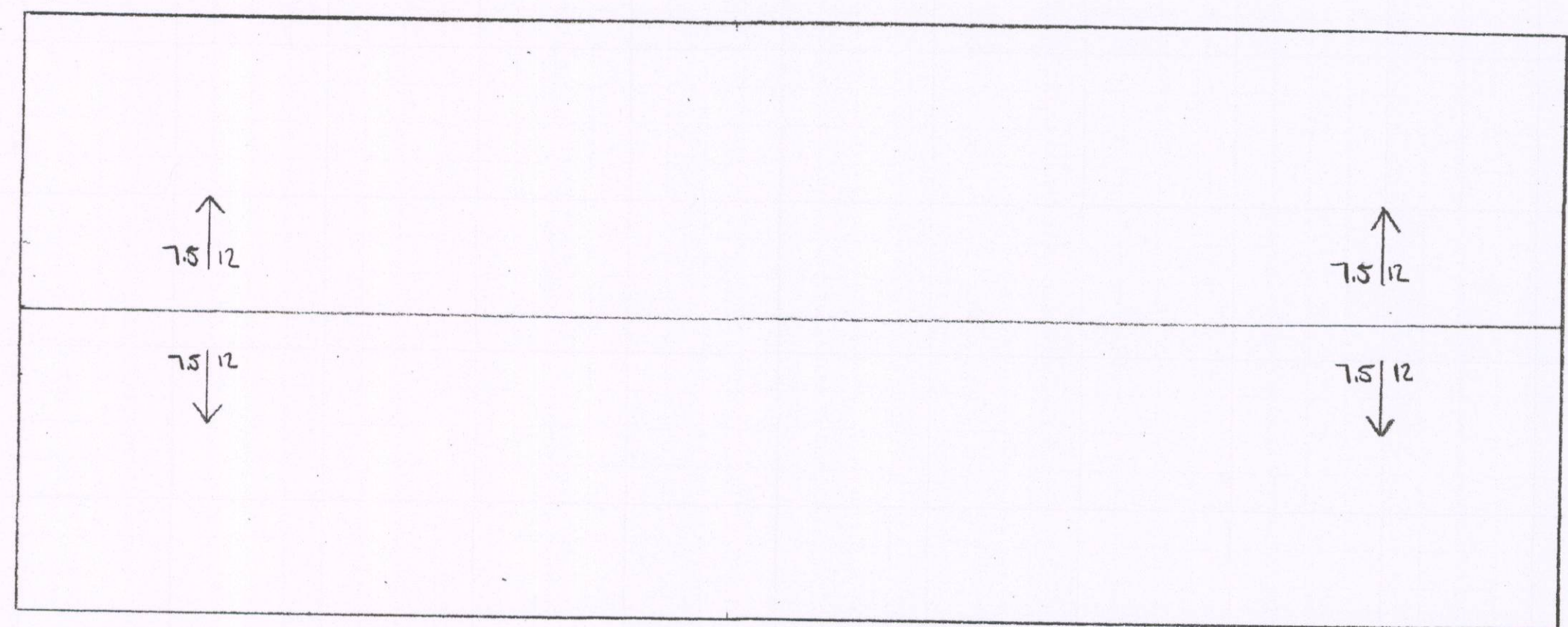
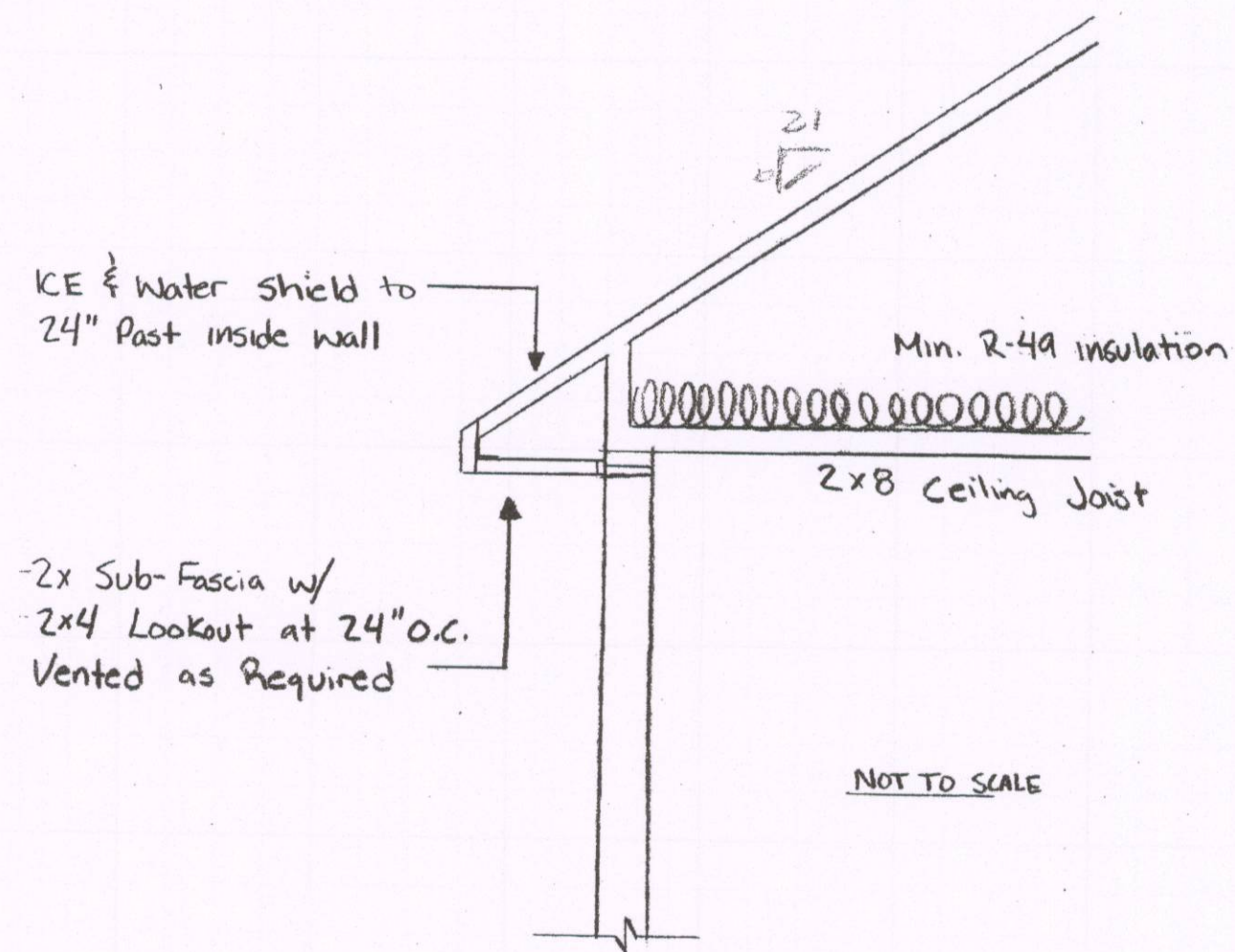


New House per Flood plain spec.



Note:

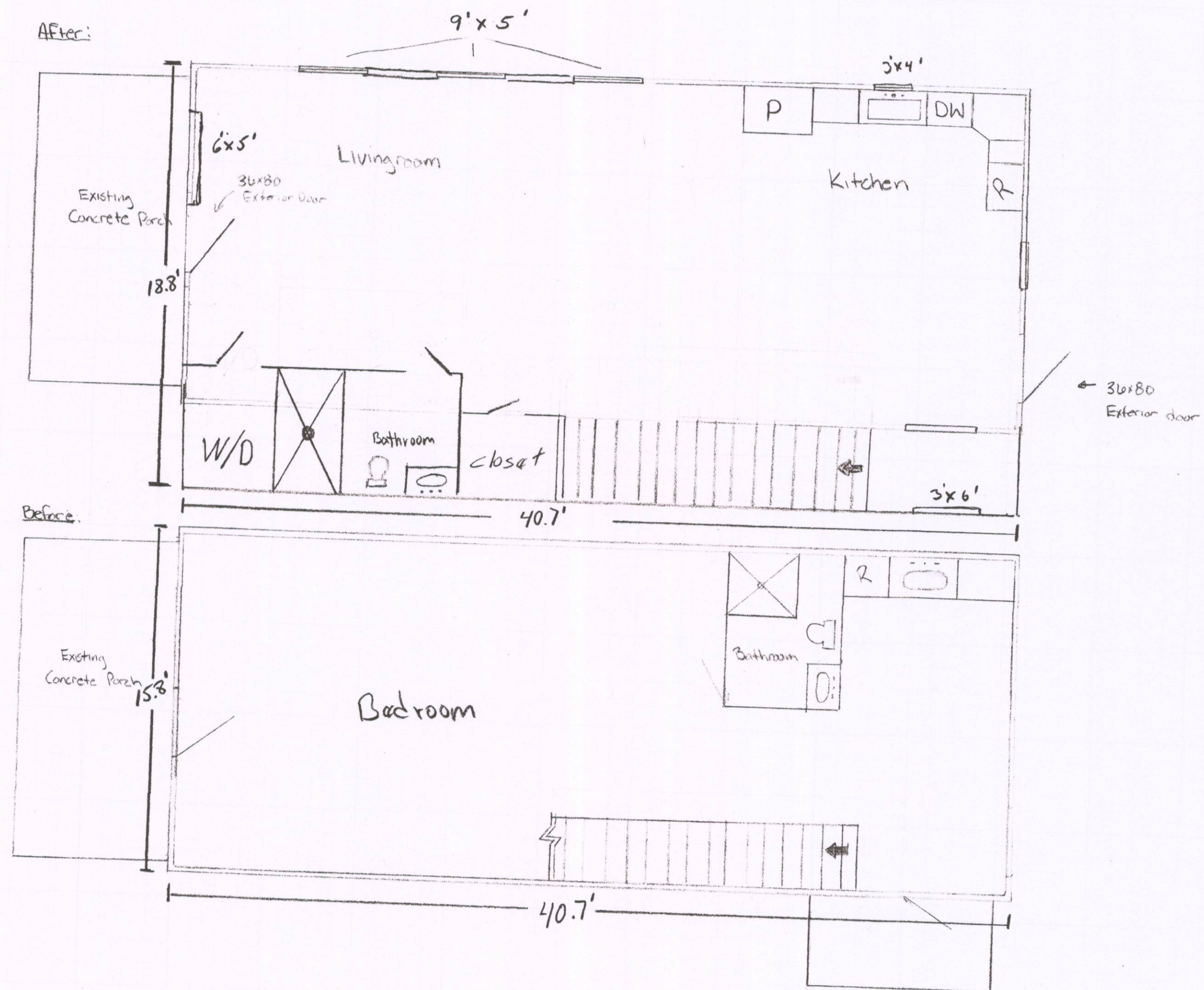
- FF will be 1.2' above Base Flood Elevation (BFE)
- 3 Flood vents will be used.
- All electrical system, utilities and service equipment will be above BFE.



- Roof
- Layer #15 Felt Underlayment
 - 1/2" OSB sheathing w/ clips
 - Roof Rafters at 24" O.C.
 - (2) 2x4 vertical column at 8' O.C.

Roof Plan

1/4" = 1'



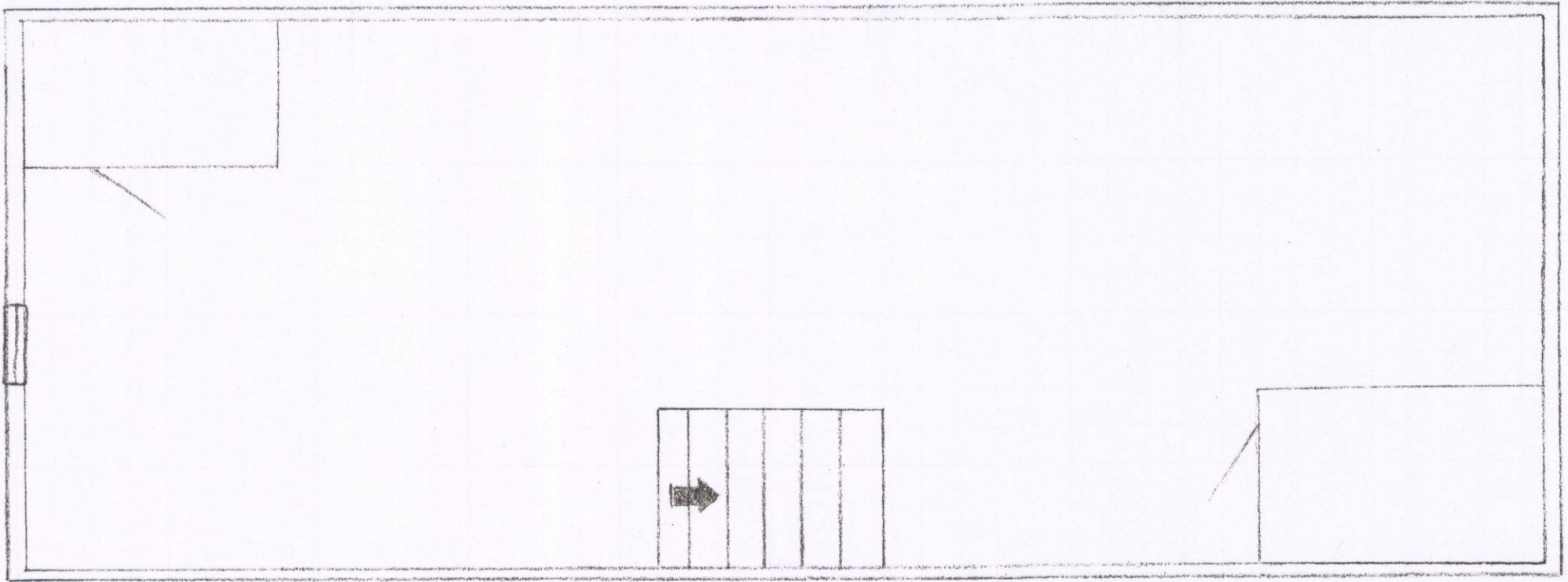
Framing

- Double studs at windows and door headers
- Provide solid blocking at all point loads
- All exterior doors and windows headers to be 2x2x4 unless noted otherwise

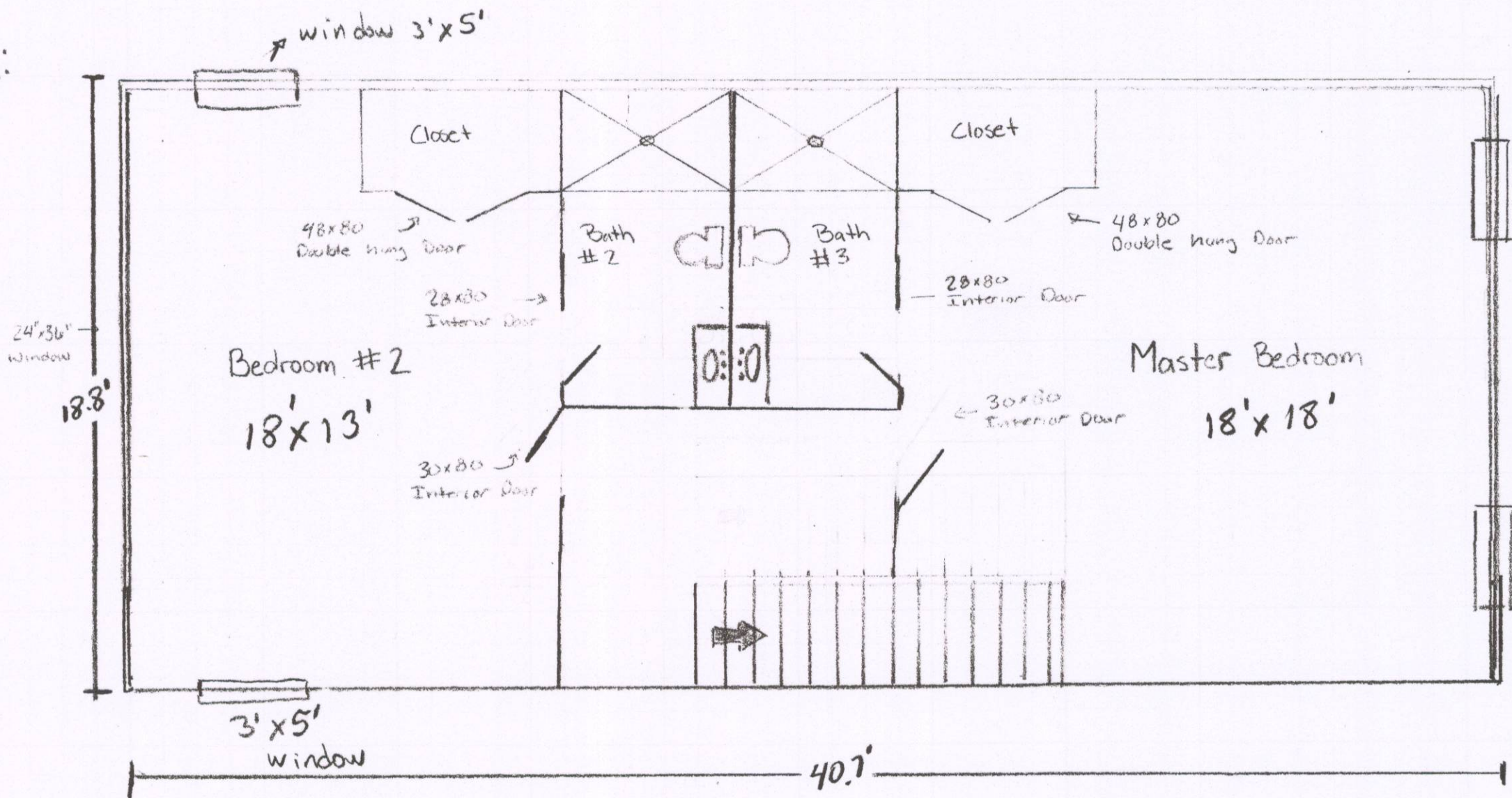
First Floor

1/4" = 1'

Before:

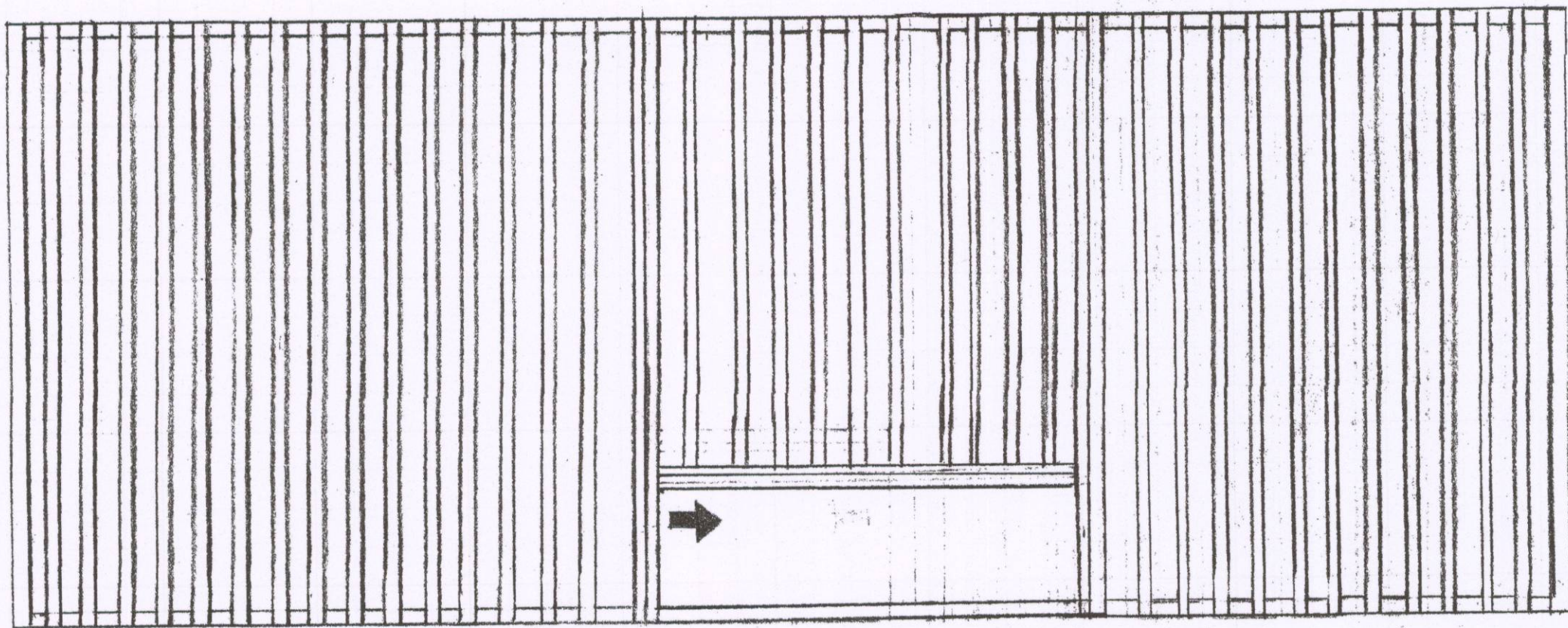


After:

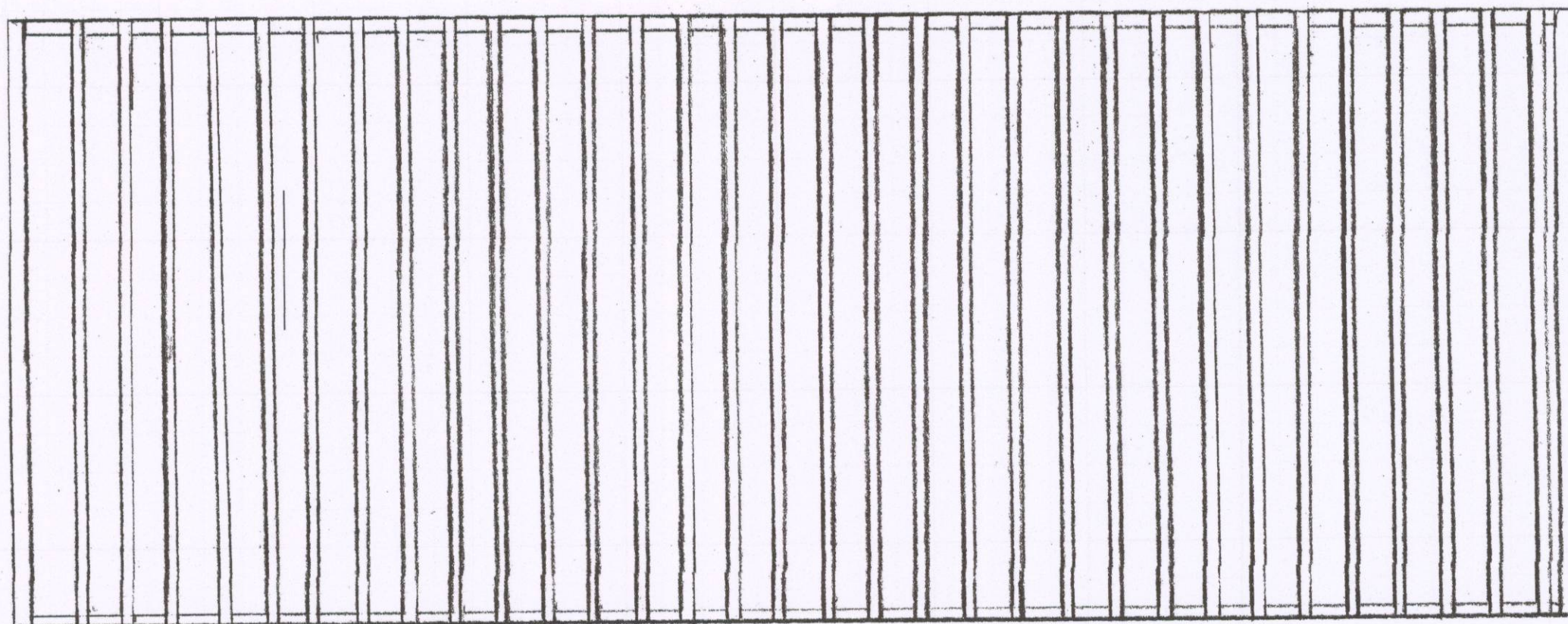


Second Floor

1' = 1/4"



Second Floor Plan



Joist

16" O.C.

Floor System

- wood floor trusses
- Designed to min. L/480 Deflection or less
- Dimensions are from Exterior face of stud of exterior walls and centerline of interior partitions

Floor Plan

$\frac{1}{4}'' = 1'$

National Flood Insurance Program

Elevation Certificate

and Instructions

2023 EDITION



FEMA

ELEVATION CERTIFICATE AND INSTRUCTIONS

PAPERWORK REDUCTION ACT NOTICE

Public reporting burden for this data collection is estimated to average 3.75 hours per response. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and submitting this form. You are not required to respond to this collection of information unless a valid OMB control number is displayed on this form. Send comments regarding the accuracy of the burden estimate and any suggestions for reducing the burden to: Information Collections Management, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20742, Paperwork Reduction Project (1660-0008). **NOTE: Do not send your completed form to this address.**

PRIVACY ACT STATEMENT

Authority: Title 44 CFR § 61.7 and 61.8.

Principal Purpose(s): This information is being collected for the primary purpose of documenting compliance with National Flood Insurance Program (NFIP) floodplain management ordinances for new or substantially improved structures in designated Special Flood Hazard Areas. This form may also be used as an optional tool for a Letter of Map Amendment (LOMA), Conditional LOMA (CLOMA), Letter of Map Revision Based on Fill (LOMR-F), or Conditional LOMR-F (CLOMR-F), or for flood insurance rating purposes in any flood zone.

Routine Use(s): The information on this form may be disclosed as generally permitted under 5 U.S.C. § 552a(b) of the Privacy Act of 1974, as amended. This includes using this information as necessary and authorized by the routine uses published in DHS/ FEMA-003 – *National Flood Insurance Program Files System of Records Notice* 79 Fed. Reg. 28747 (May 19, 2014) and upon written request, written consent, by agreement, or as required by law.

Disclosure: The disclosure of information on this form is voluntary; however, failure to provide the information requested may impact the flood insurance premium through the NFIP. Information will only be released as permitted by law.

PURPOSE OF THE ELEVATION CERTIFICATE

The Elevation Certificate is an important administrative tool of the NFIP. It can be used to provide elevation information necessary to ensure compliance with community floodplain management ordinances, to inform the proper insurance premium, and to support a request for a LOMA, CLOMA, LOMR-F, or CLOMR-F.

The Elevation Certificate is used to document floodplain management compliance for Post-Flood Insurance Rate Map (FIRM) buildings, which are buildings constructed after publication of the FIRM, located in flood Zones A1–A30, AE, AH, AO, A (with Base Flood Elevation (BFE)), VE, V1–V30, V (with BFE), AR, AR/A, AR/AE, AR/A1–A30, AR/AH, AR/AO, and A99. It may also be used to provide elevation information for Pre-FIRM buildings or buildings in any flood zone.

As part of the agreement for making flood insurance available in a community, the NFIP requires the community to adopt floodplain management regulations that specify minimum requirements for reducing flood losses. One such requirement is for the community to obtain the elevation of the lowest floor (including basement) of all new and substantially improved buildings, and maintain a record of such information. The Elevation Certificate provides a way for a community to document compliance with the community's floodplain management ordinance.

Use of this certificate does not provide a waiver of the flood insurance purchase requirement. Only a LOMA or LOMR-F from the Federal Emergency Management Agency (FEMA) can amend the FIRM and remove the federal mandate for a lending institution to require the purchase of flood insurance. However, the lending institution has the option of requiring flood insurance even if a LOMA/LOMR-F has been issued by FEMA. The Elevation Certificate may be used to support a LOMA, CLOMA, LOMR-F, or CLOMR-F request. Lowest Adjacent Grade (LAG) elevations certified by a land surveyor, engineer, or architect, as authorized by state law, will be required if the certificate is used to support a LOMA, CLOMA, LOMR-F, or CLOMR-F request. A LOMA, CLOMA, LOMR-F, or CLOMR-F request must be submitted with either a completed FEMA MT-EZ or MT-1 application package, whichever is appropriate. If the certificate will only be completed to support a LOMA, CLOMA, LOMR-F, or CLOMR-F request, there is an option to document the certified LAG elevation on the Elevation Form included in the MT-EZ and MT-1 application.

This certificate is used only to certify building elevations. A separate certificate is required for floodproofing. Under the NFIP, non-residential buildings can be floodproofed up to or above the BFE. A floodproofed building is a building that has been designed and constructed to be watertight (substantially impermeable to floodwaters) below the BFE. Floodproofing of residential buildings is not permitted under the NFIP unless FEMA has granted the community an exception for residential floodproofed basements. The community must adopt standards for design and construction of floodproofed basements before FEMA will grant a basement exception. For both floodproofed non-residential buildings and residential floodproofed basements in communities that have been granted an exception by FEMA, a floodproofing certificate is required.

The expiration date on the form herein does not apply to certified and completed Elevation Certificates, as a completed Elevation Certificate does not expire, unless there is a physical change to the building that invalidates information in Section A Items A8 or A9, Section C, Section E, or Section H. In addition, this form is intended for the specific building referenced in Section A and is not invalidated by the transfer of building ownership.

Additional guidance can be found in FEMA Publication 467-1, *Floodplain Management Bulletin: Elevation Certificate*.

U.S. DEPARTMENT OF HOMELAND SECURITY
Federal Emergency Management Agency
National Flood Insurance Program

OMB Control No. 1660-0008
Expiration Date: 06/30/2026

ELEVATION CERTIFICATE

IMPORTANT: MUST FOLLOW THE INSTRUCTIONS ON INSTRUCTION PAGES 1-11

Copy all pages of this Elevation Certificate and all attachments for (1) community official, (2) insurance agent/company, and (3) building owner.

SECTION A – PROPERTY INFORMATION		FOR INSURANCE COMPANY USE
A1. Building Owner's Name: <u>APPLE CONTRACTORS INC</u>		Policy Number: _____
A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.: <u>219 E. 7TH STREET</u>		Company NAIC Number: _____
City: <u>FRONT ROYAL</u> State: <u>VA</u> ZIP Code: <u>22630</u>		
A3. Property Description (e.g., Lot and Block Numbers or Legal Description) and/or Tax Parcel Number: <u>TAX MAP 20A4-4-2 LOT 2 C.D. BINNS SUBDIVISION</u>		
A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.): <u>RESIDENTIAL</u>		
A5. Latitude/Longitude: Lat. <u>38.92752</u> Long. <u>-78.19047</u> Horiz. Datum: ☐ NAD 1927 ☒ NAD 1983 ☐ WGS 84		
A6. Attach at least two and when possible four clear color photographs (one for each side) of the building (see Form pages 7 and 8).		
A7. Building Diagram Number: <u>2A</u>		
A8. For a building with a crawlspace or enclosure(s):		
a) Square footage of crawlspace or enclosure(s): <u>775</u> sq. ft.		
b) Is there at least one permanent flood opening on two different sides of each enclosed area? ☒ Yes ☐ No ☐ N/A		
c) Enter number of permanent flood openings in the crawlspace or enclosure(s) within 1.0 foot above adjacent grade: Non-engineered flood openings: <u>N/A</u> Engineered flood openings: <u>4</u>		
d) Total net open area of non-engineered flood openings in A8.c: <u>N/A</u> sq. in.		
e) Total rated area of engineered flood openings in A8.c (attach documentation – see Instructions): <u>1000</u> sq. ft.		
f) Sum of A8.d and A8.e rated area (if applicable – see Instructions): <u>1000</u> sq. ft.		
A9. For a building with an attached garage:		
a) Square footage of attached garage: <u>N/A</u> sq. ft.		
b) Is there at least one permanent flood opening on two different sides of the attached garage? ☐ Yes ☐ No ☐ N/A		
c) Enter number of permanent flood openings in the attached garage within 1.0 foot above adjacent grade: Non-engineered flood openings: _____ Engineered flood openings: _____		
d) Total net open area of non-engineered flood openings in A9.c: _____ sq. in.		
e) Total rated area of engineered flood openings in A9.c (attach documentation – see Instructions): _____ sq. ft.		
f) Sum of A9.d and A9.e rated area (if applicable – see Instructions): _____ sq. ft.		
SECTION B – FLOOD INSURANCE RATE MAP (FIRM) INFORMATION		
B1.a. NFIP Community Name: <u>TOWN OF FRONT ROYAL</u>		B1.b. NFIP Community Identification Number: <u>51067</u>
B2. County Name: <u>WARREN COUNTY</u>	B3. State: <u>VA</u>	B4. Map/Panel No.: <u>0112</u> B5. Suffix: <u>C</u>
B6. FIRM Index Date: <u>06/03/2008</u>		B7. FIRM Panel Effective/Revised Date: <u>06/03/2008</u>
B8. Flood Zone(s): <u>AE</u>		B9. Base Flood Elevation(s) (BFE) (Zone AO, use Base Flood Depth): <u>515.0</u>
B10. Indicate the source of the BFE data or Base Flood Depth entered in Item B9: ☐ FIS ☒ FIRM ☐ Community Determined ☐ Other: _____		
B11. Indicate elevation datum used for BFE in Item B9: ☐ NGVD 1929 ☒ NAVD 1988 ☐ Other/Source: _____		
B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? ☐ Yes ☒ No Designation Date: _____ ☐ CBRS ☐ OPA		
B13. Is the building located seaward of the Limit of Moderate Wave Action (LiMWA)? ☐ Yes ☒ No		

ELEVATION CERTIFICATE

IMPORTANT: MUST FOLLOW THE INSTRUCTIONS ON INSTRUCTION PAGES 1-11

Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.: 219 E. 7TH STREET	FOR INSURANCE COMPANY USE
City: FRONT ROYAL State: VA ZIP Code: 22630	Policy Number: _____ Company NAIC Number: _____

SECTION C – BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

- C1. Building elevations are based on: ☐ Construction Drawings* ☐ Building Under Construction* ☒ Finished Construction
 *A new Elevation Certificate will be required when construction of the building is complete.
- C2. Elevations – Zones A1–A30, AE, AH, AO, A (with BFE), VE, V1–V30, V (with BFE), AR, AR/A, AR/AE, AR/A1–A30, AR/AH, AR/AO, A99. Complete Items C2.a–h below according to the Building Diagram specified in Item A7. In Puerto Rico only, enter meters.
 Benchmark Utilized: **TTS 6 K PID=HW0071** Vertical Datum: **NAVD 88**

Indicate elevation datum used for the elevations in items a) through h) below.

☐ NGVD 1929 ☒ NAVD 1988 ☐ Other: _____

Datum used for building elevations must be the same as that used for the BFE. Conversion factor used?

☐ Yes ☒ No

If Yes, describe the source of the conversion factor in the Section D Comments area.

Check the measurement used:

- | | | | |
|---|-------|--|---------------------------------|
| a) Top of bottom floor (including basement, crawlspace, or enclosure floor): | 513.1 | ☒ feet | ☐ meters |
| b) Top of the next higher floor (see Instructions): | 518.3 | ☒ feet | ☐ meters |
| c) Bottom of the lowest horizontal structural member (see Instructions): | N/A | ☐ feet | ☐ meters |
| d) Attached garage (top of slab): | N/A | ☐ feet | ☐ meters |
| e) Lowest elevation of Machinery and Equipment (M&E) servicing the building (describe type of M&E and location in Section D Comments area): | 517.0 | ☒ feet | ☐ meters |
| f) Lowest Adjacent Grade (LAG) next to building: ☐ Natural ☒ Finished | 513.6 | ☒ feet | ☐ meters |
| g) Highest Adjacent Grade (HAG) next to building: ☐ Natural ☒ Finished | 513.9 | ☒ feet | ☐ meters |
| h) Finished LAG at lowest elevation of attached deck or stairs, including structural support: | 513.6 | ☒ feet | ☐ meters |

SECTION D – SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by state law to certify elevation information. *I certify that the information on this Certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.*

Were latitude and longitude in Section A provided by a licensed land surveyor? ☒ Yes ☐ No

☒ Check here if attachments and describe in the Comments area.

Certifier's Name: **DARRYL G. MERCHANT** License Number: **1606**

Title: **LAND SURVEYOR**

Company Name: **MEASURE & MAP, LLC**

Address: **P.O. BOX 1508**

City: **FRONT ROYAL** State: **VA** ZIP Code: **22630**

Telephone: (540) 636-4949 Ext.: _____ Email: **Survey@measure-map.com**

Signature:  Date: **10/05/2022**



Place Seal Here

Copy all pages of this Elevation Certificate and all attachments for (1) community official, (2) insurance agent/company, and (3) building owner.

Comments (including source of conversion factor in C2; type of equipment and location per C2.e; and description of any attachments):
C2 e) - AIR CONDITIONING/HEAT UNIT LOCATED ON OPEN UTILITY PLATFORM (WEST SIDE OF DWELLING)

A8 - ENGINEERED OPENINGS MANUFACTURED BY FREEDOM FLOOD VENT, MODEL #FFV-1608, ICC-ES REPORT #ESR-4332 (ATTACHED). RATED 250 SQ. FT PER UNIT.

ELEVATION CERTIFICATE

IMPORTANT: MUST FOLLOW THE INSTRUCTIONS ON INSTRUCTION PAGES 1-11

Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.: 219 E. 7TH STREET	FOR INSURANCE COMPANY USE
City: FRONT ROYAL State: VA ZIP Code: 22630	Policy Number: _____
	Company NAIC Number: _____

SECTION E – BUILDING MEASUREMENT INFORMATION (SURVEY NOT REQUIRED) FOR ZONE AO, ZONE AR/AO, AND ZONE A (WITHOUT BFE)

For Zones AO, AR/AO, and A (without BFE), complete Items E1–E5. For Items E1–E4, use natural grade, if available. If the Certificate is intended to support a Letter of Map Change request, complete Sections A, B, and C. Check the measurement used. In Puerto Rico only, enter meters.

Building measurements are based on: ☐ Construction Drawings* ☐ Building Under Construction* ☐ Finished Construction

*A new Elevation Certificate will be required when construction of the building is complete.

E1. Provide measurements (C.2.a in applicable Building Diagram) for the following and check the appropriate boxes to show whether the measurement is above or below the natural HAG and the LAG.

a) Top of bottom floor (including basement, crawlspace, or enclosure) is: _____ ☐ feet ☐ meters ☐ above or ☐ below the HAG.

b) Top of bottom floor (including basement, crawlspace, or enclosure) is: _____ ☐ feet ☐ meters ☐ above or ☐ below the LAG.

E2. For Building Diagrams 6–9 with permanent flood openings provided in Section A Items 8 and/or 9 (see pages 1–2 of Instructions), the next higher floor (C2.b in applicable Building Diagram) of the building is: _____ ☐ feet ☐ meters ☐ above or ☐ below the HAG.

E3. Attached garage (top of slab) is: _____ ☐ feet ☐ meters ☐ above or ☐ below the HAG.

E4. Top of platform of machinery and/or equipment servicing the building is: _____ ☐ feet ☐ meters ☐ above or ☐ below the HAG.

E5. Zone AO only: If no flood depth number is available, is the top of the bottom floor elevated in accordance with the community's floodplain management ordinance? ☐ Yes ☐ No ☐ Unknown The local official must certify this information in Section G.

SECTION F – PROPERTY OWNER (OR OWNER'S AUTHORIZED REPRESENTATIVE) CERTIFICATION

The property owner or owner's authorized representative who completes Sections A, B, and E for Zone A (without BFE) or Zone AO must sign here. *The statements in Sections A, B, and E are correct to the best of my knowledge*

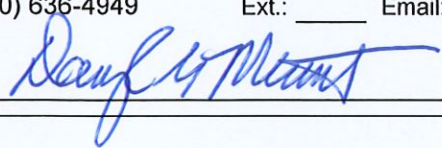
☐ Check here if attachments and describe in the Comments area.

Property Owner or Owner's Authorized Representative Name: DARRYL G. MERCHANT

Address: P.O. BOX 1508

City: FRONT ROYAL State: VA ZIP Code: 22630

Telephone: (540) 636-4949 Ext.: _____ Email: Survey@measure-map.com

Signature:  Date: 10/05/2023

Comments:

ELEVATION CERTIFICATE

IMPORTANT: MUST FOLLOW THE INSTRUCTIONS ON INSTRUCTION PAGES 1-11

Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.: 219 E. 7TH STREET	FOR INSURANCE COMPANY USE
City: FRONT ROYAL State: VA ZIP Code: 22630	Policy Number: _____
	Company NAIC Number: _____

SECTION G – COMMUNITY INFORMATION (RECOMMENDED FOR COMMUNITY OFFICIAL COMPLETION)

The local official who is authorized by law or ordinance to administer the community's floodplain management ordinance can complete Section A, B, C, E, G, or H of this Elevation Certificate. Complete the applicable item(s) and sign below when:

- G1. ☐ The information in Section C was taken from other documentation that has been signed and sealed by a licensed surveyor, engineer, or architect who is authorized by state law to certify elevation information. (Indicate the source and date of the elevation data in the Comments area below.)
- G2.a. ☐ A local official completed Section E for a building located in Zone A (without a BFE), Zone AO, or Zone AR/AO, or when item E5 is completed for a building located in Zone AO.
- G2.b. ☐ A local official completed Section H for insurance purposes.
- G3. ☐ In the Comments area of Section G, the local official describes specific corrections to the information in Sections A, B, E and H.
- G4. ☐ The following information (Items G5–G11) is provided for community floodplain management purposes.
- G5. Permit Number: _____ G6. Date Permit Issued: _____
- G7. Date Certificate of Compliance/Occupancy Issued: _____
- G8. This permit has been issued for: ☐ New Construction ☐ Substantial Improvement
- G9.a. Elevation of as-built lowest floor (including basement) of the building: _____ ☐ feet ☐ meters Datum: _____
- G9.b. Elevation of bottom of as-built lowest horizontal structural member: _____ ☐ feet ☐ meters Datum: _____
- G10.a. BFE (or depth in Zone AO) of flooding at the building site: _____ ☐ feet ☐ meters Datum: _____
- G10.b. Community's minimum elevation (or depth in Zone AO) requirement for the lowest floor or lowest horizontal structural member: _____ ☐ feet ☐ meters Datum: _____
- G11. Variance issued? ☐ Yes ☐ No If yes, attach documentation and describe in the Comments area.

The local official who provides information in Section G must sign here. *I have completed the information in Section G and certify that it is correct to the best of my knowledge. If applicable, I have also provided specific corrections in the Comments area of this section.*

Local Official's Name: _____ Title: _____

NFIP Community Name: _____

Telephone: _____ Ext.: _____ Email: _____

Address: _____

City: _____ State: _____ ZIP Code: _____

Signature: _____ Date: _____

Comments (including type of equipment and location, per C2.e; description of any attachments; and corrections to specific information in Sections A, B, D, E, or H):

ELEVATION CERTIFICATE

IMPORTANT: MUST FOLLOW THE INSTRUCTIONS ON INSTRUCTION PAGES 1-11

Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.: 219 E. 7TH STREET	FOR INSURANCE COMPANY USE
City: FRONT ROYAL State: VA ZIP Code: 22630	Policy Number: _____
	Company NAIC Number: _____

SECTION H – BUILDING'S FIRST FLOOR HEIGHT INFORMATION FOR ALL ZONES (SURVEY NOT REQUIRED) (FOR INSURANCE PURPOSES ONLY)

The property owner, owner's authorized representative, or local floodplain management official may complete Section H for all flood zones to determine the building's first floor height for insurance purposes. Sections A, B, and I must also be completed. Enter heights to the nearest tenth of a foot (nearest tenth of a meter in Puerto Rico). **Reference the Foundation Type Diagrams (at the end of Section H Instructions) and the appropriate Building Diagrams (at the end of Section I Instructions) to complete this section.**

H1. Provide the height of the top of the floor (as indicated in Foundation Type Diagrams) above the Lowest Adjacent Grade (LAG):

a) For Building Diagrams 1A, 1B, 3, and 5–8. Top of bottom _____ ☐ feet ☐ meters ☐ above the LAG floor (include above-grade floors only for buildings with crawlspaces or enclosure floors) is:

b) For Building Diagrams 2A, 2B, 4, and 6–9. Top of next 4.7 ☒ feet ☐ meters ☒ above the LAG higher floor (i.e., the floor above basement, crawlspace, or enclosure floor) is:

H2. Is all Machinery and Equipment servicing the building (as listed in Item H2 instructions) elevated to or above the floor indicated by the H2 arrow (shown in the Foundation Type Diagrams at end of Section H instructions) for the appropriate Building Diagram?

☒ Yes ☐ No

SECTION I – PROPERTY OWNER (OR OWNER'S AUTHORIZED REPRESENTATIVE) CERTIFICATION

The property owner or owner's authorized representative who completes Sections A, B, and H must sign here. *The statements in Sections A, B, and H are correct to the best of my knowledge.* **Note:** If the local floodplain management official completed Section H, they should indicate in Item G2.b and sign Section G.

☐ Check here if attachments are provided (including required photos) and describe each attachment in the Comments area.

Property Owner or Owner's Authorized Representative Name: DARRYL G. MERCHANT

Address: P.O. BOX 1508

City: FRONT ROYAL State: VA ZIP Code: 22630

Telephone: (540) 636-4949 Ext.: _____ Email: Survey@measure-map.com

Signature:  Date: 10/05/2023

Comments:

ELEVATION CERTIFICATE
IMPORTANT: MUST FOLLOW THE INSTRUCTIONS ON INSTRUCTION PAGES 1-11
BUILDING PHOTOGRAPHS

See Instructions for Item A6.

Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.:
219 E. 7TH STREET

City: **FRONT ROYAL** State: **VA** ZIP Code: **22630**

FOR INSURANCE COMPANY USE

Policy Number: _____

Company NAIC Number: _____

Instructions: Insert below at least two and when possible four photographs showing each side of the building (for example, may only be able to take front and back pictures of townhouses/rowhouses). Identify all photographs with the date taken and "Front View," "Rear View," "Right Side View," or "Left Side View." Photographs must show the foundation. When flood openings are present, include at least one close-up photograph of representative flood openings or vents, as indicated in Sections A8 and A9.



Photo One

Photo One Caption: **FRONT VIEW (NORTH) 10-05-2023**

Clear Photo One



Photo Two

Photo Two Caption: **LEFT VIEW (EAST) 10-05-2023**

Clear Photo Two

ELEVATION CERTIFICATE
IMPORTANT: MUST FOLLOW THE INSTRUCTIONS ON INSTRUCTION PAGES 1-11
BUILDING PHOTOGRAPHS

Continuation Page

Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.:
219 E. 7TH STREET

City: FRONT ROYAL State: VA ZIP Code: 22630

FOR INSURANCE COMPANY USE

Policy Number: _____

Company NAIC Number: _____

Insert the third and fourth photographs below. Identify all photographs with the date taken and "Front View," "Rear View," "Right Side View," or "Left Side View." When flood openings are present, include at least one close-up photograph of representative flood openings or vents, as indicated in Sections A8 and A9.



Photo Three

Photo Three Caption: REAR VIEW (SOUTH) 10-05-2023

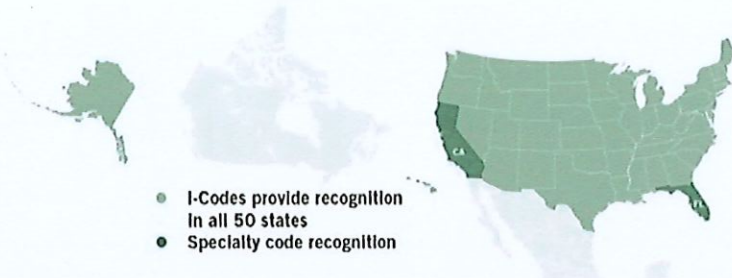
Clear Photo Three



Photo Four

Photo Four Caption: RIGHT VIEW (WEST) 10-05-2023

Clear Photo Four



ICC-ES Evaluation Report

Reissued March 2022

ESR-4332

This report is subject to renewal March 2024.

DIVISION: 08 00 00—OPENINGS

Section: 08 95 43—Vents / Foundation Flood Vents

REPORT HOLDER:

SMART PRODUCT INNOVATIONS, INC.

EVALUATION SUBJECT:

**FREEDOM FLOOD VENT™ AUTOMATIC FOUNDATION
FLOOD VENT: MODEL FFV-1608**

1.0 EVALUATION SCOPE

Compliance with the following codes:

- 2021, 2018, 2015, 2012, 2009 and 2006 *International Building Code®* (IBC)
- 2021, 2018, 2015, 2012, 2009 and 2006 *International Residential Code®* (IRC)

Properties evaluated:

- Physical operation
- Water flow
- Weathering

2.0 USES

The model FFV-1608 Freedom Flood Vent™ is used to equalize hydrostatic pressure on walls of enclosures subject to rising or falling floodwaters. With the cover removed, the model FFV-1608 also provides natural air ventilation.

3.0 DESCRIPTION

3.1 General:

The model FFV-1608 Freedom Flood Vent™ is an engineered mechanically operated in-wall flood vent (FV) that automatically allows floodwater to enter an enclosed area and exit. The FV is comprised of a polycarbonate frame with mounting flange and a polycarbonate horizontally pivoting door. When subjected to rising water, the model FFV-1608 Freedom Flood Vent™ door is activated and pivots to allow water and debris to flow in either direction to equalize hydrostatic pressure from one side of the enclosure to the other. The FV features a removable polycarbonate cover. The FV door will activate and pivot when subjected to rising water with or without the polycarbonate cover installed.

3.2 Engineered Opening:

The FV complies with the design principle noted in Section 2.7.2.2 and Section 2.7.3 of ASCE/ SEI 24-14 (2021, 2018 and 2015 IBC and IRC) [Section 2.6.2.2 of ASCE/ SEI 24-05 (2012, 2009, 2006 IBC and IRC)] for a maximum rate of rise and fall of 5.0 feet per hour (0.423 mm/s). In order to comply with the engineered opening requirement of ASCE/ SEI 24, Freedom Flood Vent™ FVs must be installed in accordance with Section 4.0 below. See Table 1 for vent size and maximum allowable area coverage for a single vent.

4.0 DESIGN AND INSTALLATION

The model FFV-1608 Freedom Flood Vent™ is designed to be installed into walls or overhead doors of existing or new construction. Installation of the vent must be in accordance with the manufacturer's instructions, the applicable code, and this report. In order to comply with the engineered opening design principle noted in Sections 2.7.2.2 and 2.7.3 of ASCE/ SEI 24-14 (2021, 2018 and 2015 IBC and IRC) [Section 2.6.2.2 of ASCE/ SEI 24-05 (2012, 2009, 2006 IBC and IRC)], the Freedom Flood Vent™ must be installed as follows:

- With a minimum of two openings on different sides of each enclosed area.
- With a minimum of one FV for every 250 square feet (23.2 m²) of enclosed area.
- Below the base flood elevation.
- With the bottom of the vent located a maximum of 12 inches (305.4 mm) above the higher of the final interior grade or floor and the finished exterior grade immediately under each opening.

5.0 CONDITIONS OF USE

The Freedom Flood Vent™ described in this report complies with, or is a suitable alternative to what is specified in, those codes listed in Section 1.0 of this report, subject to the following conditions:

- 5.1 The model FFV-1608 Freedom Flood Vent™ unit must be installed in accordance with this report, the applicable code and the manufacturer's published installation instructions. In the event of a conflict, the instructions in this report shall govern.
- 5.2 The model FFV-1608 Freedom Flood Vent™ unit must not be used in place of "breakaway walls" in coastal

high hazard areas, but are permitted for use in conjunction with breakaway walls in other areas.

- 5.3 Use of the Freedom Flood Vent as under-floor space ventilation is outside the scope of this report.

6.0 EVIDENCE SUBMITTED

Data in accordance with the ICC-ES Acceptance Criteria for Mechanically Operated Flood Vents (AC364), dated August 2015 (editorially revised February 2021).

7.0 IDENTIFICATION

- 7.1 The Freedom Flood Vent™ model described in this report must be identified by a label bearing the manufacturer's name (Smart Product Innovations, Inc.) and the evaluation report number (ESR-4332).

- 7.2 The report holder's contact information is the following:

SMART PRODUCT INNOVATIONS, INC.
 430 ANDBRO DRIVE, UNIT 1
 PITMAN, NEW JERSEY 08071
 (800) 507-1527
www.freedomfloodvent.com
info@freedomfloodvent.co

TABLE 1—FREEDOM FLOOD VENT™

MODEL NAME	MODEL NUMBER	MODEL SIZE	COVERAGE (sq. ft.)
Freedom Flood Vent™	FFV-1608	15 ³ / ₄ " X 8 ¹ / ₁₆ "	250

For SI: 1 inch = 25.4 mm

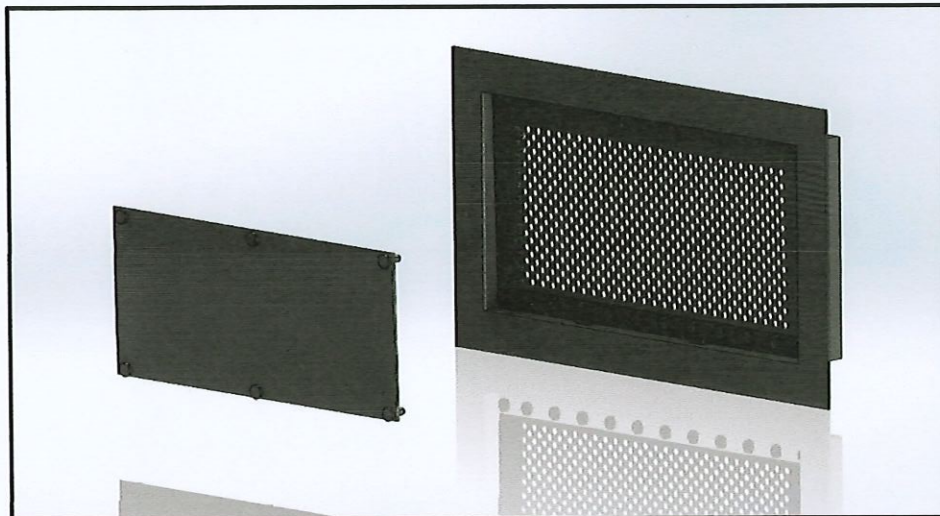


FIGURE 1—MODEL FFV-1608 FREEDOM FLOOD VENT™: SHOWN WITH COVER REMOVED

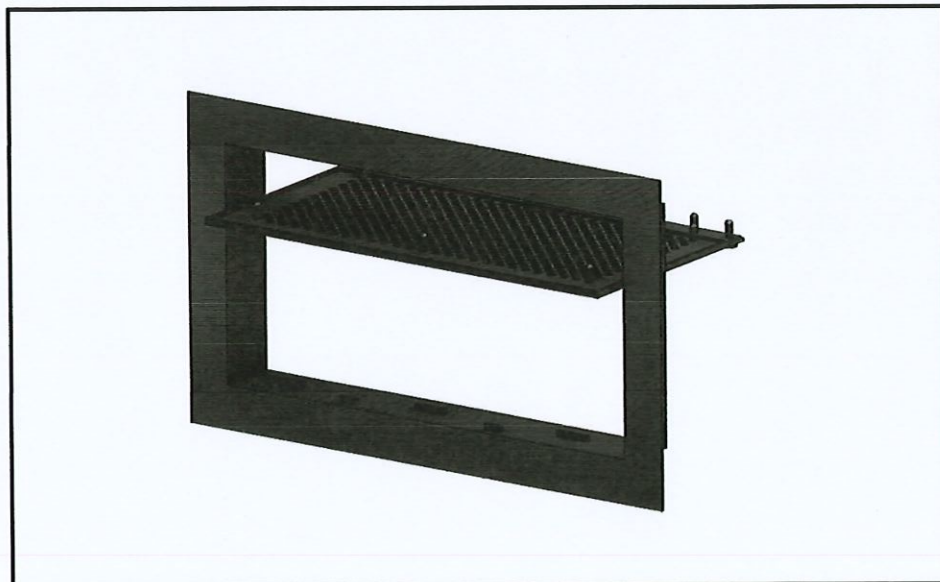


FIGURE 2—MODEL FFV-1608 FREEDOM FLOOD VENT™: SHOWN WITH FLOOD DOOR PIVOTED OPEN

ICC-ES Evaluation Report

ESR-4332 CBC and CRC Supplement

Reissued March 2022

This report is subject to renewal March 2024.

www.icc-es.org | (800) 423-6587 | (562) 699-0543

A Subsidiary of the International Code Council®

DIVISION: 08 00 00—OPENINGS

Section: 08 95 43—Vents / Foundation Flood Vents

REPORT HOLDER:

SMART PRODUCT INNOVATIONS, INC.

EVALUATION SUBJECT:

FREEDOM FLOOD VENT™ AUTOMATIC FOUNDATION FLOOD VENT: MODEL FFV-1608

1.0 REPORT PURPOSE AND SCOPE

Purpose:

The purpose of this evaluation report supplement is to indicate that the Freedom Flood Vent™ Automatic Foundation Flood Vent: Model FFV-1608, described in ICC-ES evaluation report ESR-4332, has also been evaluated for compliance with codes noted below.

Applicable code editions:

- 2019 California Building Code (CBC)

For evaluation of applicable chapters adopted by the California Office of Statewide Planning and Development (OSHPD) and Division of State Architect (DSA), see Sections 2.1.1 and 2.1.2 below.

- 2019 California Residential Code (CRC)

2.0 CONCLUSIONS

2.1 CBC:

The Freedom Flood Vent™ Automatic Foundation Flood Vent: Model FFV-1608, described in Sections 2.0 through 7.0 of the evaluation report ESR-4332, complies with CBC Chapter 12 provided the design and installation are in accordance with the 2018 *International Building Code*® (IBC) provisions noted in the evaluation report and the additional requirements of CBC Chapters 12 and 16, as applicable.

2.1.1 OSHPD: The applicable OSHPD Sections and Chapters of the CBC are beyond the scope of this supplement.

2.1.2 DSA: The applicable DSA Sections and Chapters of the CBC are beyond the scope of this supplement.

2.2 CRC:

The Freedom Flood Vent™ Automatic Foundation Flood Vent: Model FFV-1608, described in Sections 2.0 through 7.0 of the evaluation report ESR-4332, complies with the 2019 CRC, provided the design and installation are in accordance with the 2018 *International Residential Code*® (IRC) provisions noted in the evaluation report.

This supplement expires concurrently with the evaluation report, reissued March 2022.

ICC-ES Evaluation Report

ESR-4332 FBC Supplement

Reissued March 2022

This report is subject to renewal March 2024.

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DIVISION: 08 00 00—OPENINGS

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FREEDOM FLOOD VENT™ AUTOMATIC FOUNDATION FLOOD VENT: MODEL FFV-1608

1.0 REPORT PURPOSE AND SCOPE

Purpose:

The purpose of this evaluation report supplement is to indicate that Freedom Flood Vent™ Automatic Foundation Flood Vent: Model FFV-1608, described in ICC-ES evaluation report ESR-4332, has also been evaluated for compliance with the codes noted below.

Applicable code editions:

- 2020 *Florida Building Code—Building*
- 2020 *Florida Building Code—Residential*

2.0 CONCLUSIONS

The Freedom Flood Vent™ Automatic Foundation Flood Vent: Model FFV-1608, described in Sections 2.0 through 7.0 of the evaluation report ESR-4332, complies with the *Florida Building Code—Building* and the *Florida Building Code—Residential*, provided the design requirements are determined in accordance with the *Florida Building Code—Building* and the *Florida Building Code—Residential*, as applicable. The installation requirements noted in ICC-ES evaluation report ESR-4332 for the 2018 *International Building Code*® (IBC) meet the requirements of *Florida Building Code—Building* and the *Florida Building Code—Residential*, as applicable.

Use of the Freedom Flood Vent™ Automatic Foundation Flood Vent: Model FFV-1608 has also been found to be in compliance with the High-Velocity Hurricane Zone provisions of the *Florida Building Code—Building* and the *Florida Building Code—Residential*.

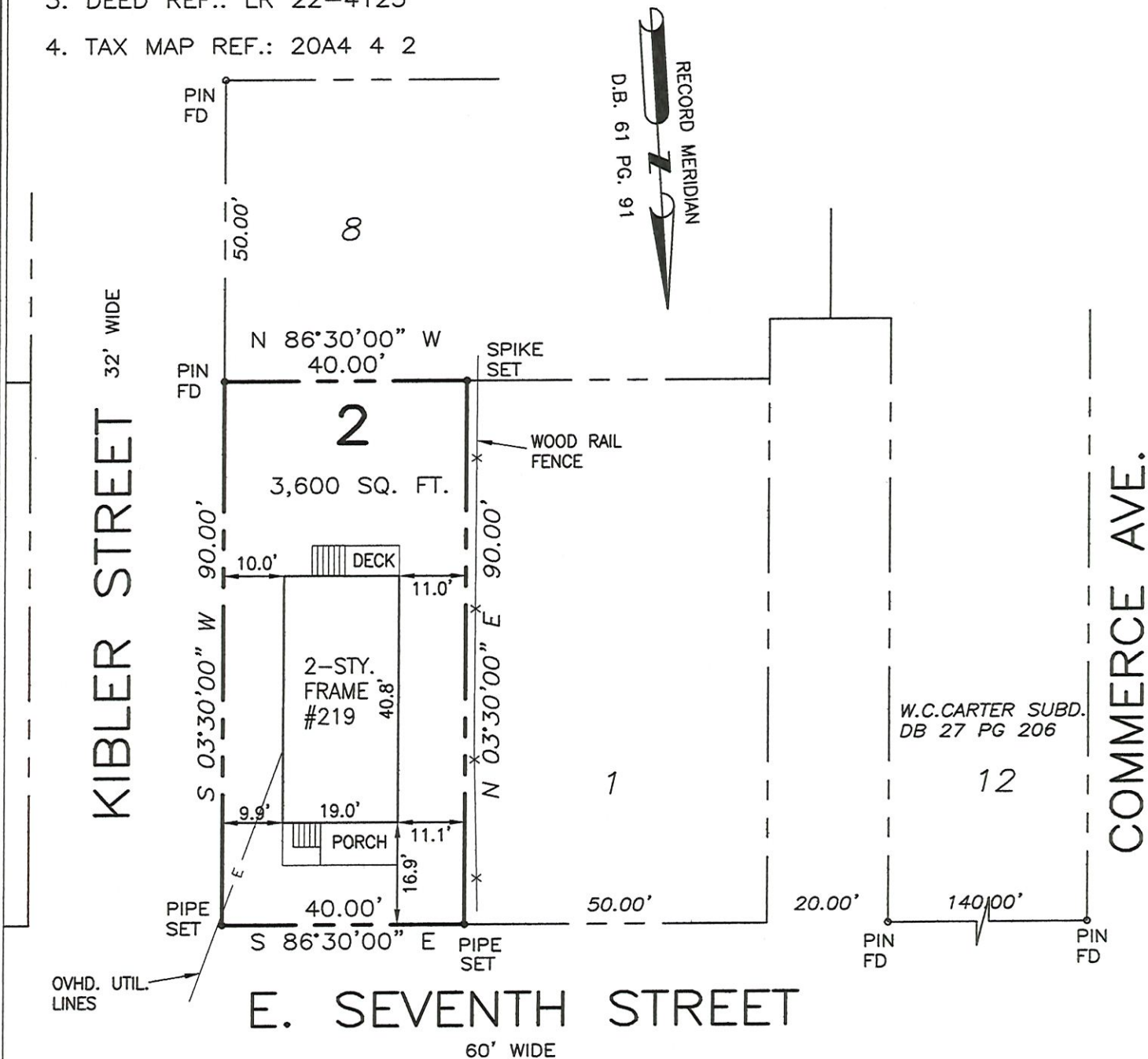
For products falling under Florida Rule 61G20-3, verification that the report holder's quality assurance program is audited by a quality assurance entity approved by the Florida Building Commission for the type of inspections being conducted is the responsibility of an approved validation entity (or the code official, when the report holder does not possess an approval by the Commission).

This supplement expires concurrently with the evaluation report, reissued March 2022.

NOTES:

- 1. NO TITLE REPORT FURNISHED.
PLAT SUBJECT TO EASEMENTS
AND RESTRICTIONS OF RECORD.
- 2. PLAT REF.: DB 61 PG 91 (SLIDE 65)
- 3. DEED REF.: LR 22-4123
- 4. TAX MAP REF.: 20A4 4 2

THE PROPERTY SHOWN HEREON IS
LOCATED WITH FEMA 1% ANNUAL
FLOOD ZONE AE (FLOODWAY) AS PER
FIRM MAP #51187C0112C, JUNE 3, 2008.



SURVEYOR'S CERTIFICATE:

I HEREBY CERTIFY THAT I HAVE SURVEYED THIS PROPERTY ON THE GROUND; THAT THIS PLAT IS CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF; AND THAT THERE ARE NO ENCROACHMENTS EITHER WAY ACROSS PROPERTY LINES EXCEPT AS SHOWN.

www.measure-map.com
540-636-4949
Darryl G. Merchant
Consulting Land Surveyor
P.O. BOX 1508
FRONT ROYAL, VA 22630

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23-F128 DWG. No. AM-1825-1

HOUSE LOCATION SURVEY
LOT 2
OF THE MAP OF LOTS FOR
C.D. BINNS
TOWN OF FRONT ROYAL - WARREN COUNTY, VIRGINIA

0' 25' 50' 75'

DATE: 27 SEPTEMBER 2023 SCALE: 1" = 25'

Chapter 13

Variances

13-100 Introduction

A variance is a “reasonable deviation from” certain provisions of a locality’s zoning ordinance. *Virginia Code* § 15.2-2201; *Adams Outdoor Advertising, Inc. v. Board of Zoning Appeals of City of Virginia Beach*, 261 Va. 407, 544 S.E.2d 315 (2001). Specifically, a *variance* is defined as:

[A] reasonable deviation from those provisions regulating the shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure when the strict application of the ordinance would unreasonably restrict the utilization of the property, and such need for a variance would not be shared generally by other properties, and provided such variance is not contrary to the purpose of the ordinance. It shall not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.

Virginia Code § 15.2-2201. The 2015 amendments to the definition replaced the phrase “unnecessary or unreasonable hardship to the property owner” with “unreasonably restrict the utilization of the property.” The extent to which this amended definition, as well as the changes to the criteria for granting a variance (discussed in section 13-600), have changed the law of variances is still unfolding. However, the concepts of regulations *unreasonably restricting* utilization of the property or causing *hardship* remain and these are still high bars to satisfy.

A variance “allows a property owner to do what is otherwise not allowed under the ordinance.” *Bell v. City Council of the City of Charlottesville*, 224 Va. 490, 496, 297 S.E.2d 810, 813-814 (1982). Stated a different way, variances allow someone to do something “in violation of the ordinance.” *Bell, supra*. By comparison, special use permits (which include special exceptions and conditional use permits) do not allow a landowner to do something in violation of the zoning regulations but, instead, allow the property to be developed in a way consistent with those regulations, but only with approval of the governing body following a case-specific review. Therefore, a governing body desiring to retain legislative control of its zoning ordinance should consider incorporating flexibility into zoning regulations and expanding the availability of special use permits.

13-200 The nature of variances

Historically, variances provided an administrative remedy in those rare circumstances when a facially valid zoning ordinance may prove to be unconstitutional (e.g., a regulatory taking of the property without just compensation) in its application to a particular property, and to do so without destroying the viability of the locality’s zoning ordinance. *Packer v. Hornsby*, 221 Va. 117, 267 S.E.2d 140 (1980). The variance process furnished “elasticity in the application of regulatory measures so that they do not operate in an arbitrary or confiscatory and, consequently, unconstitutional manner.” *Gayton Triangle Land Co. v. Board of Supervisors of Henrico County*, 216 Va. 764, 767, 222 S.E.2d 570, 573 (1976). Under the standards and criteria in effect today, variances are available even when the restrictions on the use of property are not such that they have constitutional implications. Thus, a variance is simply an authorized deviation from certain zoning requirements because of the special characteristics of a property. *Snow v. Amherst County Board of Zoning Appeals*, 248 Va. 404, 448 S.E.2d 606 (1994). A variance ensures that a landowner does not suffer a severe hardship not generally shared by other property holders in the same district or vicinity. *Hendrix v. Board of Zoning Appeals of City of Virginia Beach*, 222 Va. 57, 278 S.E.2d 814 (1981).

A variance cannot confer on a landowner greater rights than could be afforded by the enactment of a zoning ordinance. *Snow, supra*. A variance also does not relieve the owner from having to comply with other aspects of the zoning ordinance that were not directly addressed by the approved variance. *Goyonaga v. Board of Zoning Appeals for the City of Falls Church*, 275 Va. 232, 657 S.E.2d 153 (2008). In addition, a variance may not allow a change in use, which only may be accomplished “by a rezoning or by a conditional zoning.” *Virginia Code* § 15.2-2201; *Tolman v. Richmond*

Board of Zoning Appeals, 46 Va. Cir. 359 (1998) (where the variance allowed the expansion of a nonconforming property from three to seven apartments, the variance allowed an increase in the intensity and the number of dwellings but did not allow a change in use). Given the nature and purpose of variances, they should be granted only to elevate a property to parity with similarly situated properties, rather than to confer a special privilege over other property in the district. The courts may revise some of these longstanding principles as the case law applying the current variance laws develops.

Five Things to Know About Variances

- Variances should be granted only to achieve parity with other properties in the district; they should not be granted to allow the applicant to do what others in the zoning district may not do without a variance.
- Variances should be sparingly granted; a high number of variance applications on a recurring issue indicates problems with the zoning ordinance, and the solution is to amend the regulations, not to keep considering variance applications.
- Variances run with the land, and the consequences of a board of zoning appeals' ("BZA") decision to grant a variance may last for years.
- Each variance must be considered on its own merits, not on prior variance decisions by the BZA; thus, although a BZA should be consistent in its decision-making within the limits of Virginia Code § 15.2-2309(2), it is not compelled to grant a variance because a prior BZA granted a variance from the same restriction in the same neighborhood if there are factual differences.
- If there is an existing reasonable use of the property, neither an unreasonable restriction on the property's use nor a hardship exists and a variance may not be lawfully granted; applications for variances to expand an existing structure, or to add more structures to a parcel, should fail if the use of the existing structure is reasonable.

Special rules apply to variances related to condominium conversions with nonconformities and variance applicants who are disabled or for facilities that serve disabled persons protected by the Americans with Disabilities Act or the Fair Housing Act, and these are addressed in section 13-800.

13-300 The authority of a BZA to consider applications for variances

One of the powers expressly conferred on BZAs is the power to hear and decide applications for variances. *Virginia Code* § 15.2-2309(2).

When considering an application for a variance, a BZA is acting in an administrative capacity and, under applicable constitutional principles, it is empowered to act only in accordance with the standards prescribed by Virginia Code § 15.2-2309(2). *Cochran v. Fairfax County Board of Zoning Appeals*, 267 Va. 756, 594 S.E.2d 571 (2004); *Amherst County Board of Supervisors v. Amherst County Board of Zoning Appeals*, 70 Va. Cir. 91 (2005).

13-400 The application

Applications for variances may be made by any property owner, tenant, government official, department, board or bureau. *Virginia Code* § 15.2-2310. Applications are made to the zoning administrator. *Virginia Code* § 15.2-2310. Before a variance application is considered by the BZA, the application and accompanying maps, plans, or other information must be transmitted to the secretary of the BZA, who must place the matter on the docket. *Virginia Code* § 15.2-2310.

13-500 Procedural requirements prior to and during a hearing on a variance application

Several procedural rules apply to the conduct of a hearing on a variance application:

- Scheduling the hearing on the variance application: The BZA must "fix a reasonable time for the hearing" on a variance. *Virginia Code* § 15.2-2312.
- Notice of the hearing: The BZA must "give public notice thereof as well as due notice to the parties in interest."

Virginia Code § 15.2-2312. Notice of the hearing must be provided as required in *Virginia Code § 15.2-2204.*
Virginia Code § 15.2-2310.

- Before the hearing; contact by parties with BZA members: The *non-legal staff* of the governing body, as well as the applicant, landowner, or its agent or attorney, may have *ex parte* communications with a member of the BZA before the hearing but may not discuss the facts or law relative to the variance. If any *ex parte* discussion of facts or law occurs, the party engaging in the communication must inform the other party as soon as practicable and advise the other party of the substance of the communication. Prohibited *ex parte* communications do not include discussions that are part of a public meeting or discussions before a public meeting to which the applicant, landowner, or their agent or attorney are all invited. The *non-legal staff of the governing body* is “any staff who is not in the office of the attorney for the locality, or for the board, or who is appointed by special law or pursuant to [Virginia Code] § 15.2-1542].” *Virginia Code § 15.2-2308.1(A) and (C).* The legal staff of a governing body is not similarly prohibited from having *ex parte* communications with BZA members.
- Before the hearing; sharing of locality-produced information: Any materials relating to a variance, including a staff recommendation or report furnished to a BZA member, must be available without cost to the applicant or any person aggrieved as soon as practicable thereafter, but in no event more than three business days after the materials are provided to a BZA member. If the applicant or person aggrieved requests additional documents or materials that were not provided to a BZA member, the request should be evaluated under the Virginia Freedom of Information Act (*Virginia Code § 2.2-3700, et seq.*). *Virginia Code § 15.2-2308.1(B).*
- At the hearing; the right to equal time for a party to present its side of the case: The BZA must offer an equal amount of time in a hearing on the case to the applicant and the staff of the local governing body. *Virginia Code § 15.2-2308(C).*
- At the hearing; the burden of proof is on the applicant: The applicant has the burden of proof to prove by a preponderance of the evidence that their application meets the standard for a variance as defined in Virginia Code § 15.2-2201 and the criteria in Virginia Code § 15.2-2309(2). *Virginia Code § 15.2-2309(2).*
- Decision: The BZA *must grant* a variance if the evidence shows that the strict application of the terms of the zoning ordinance would “*unreasonably restrict* the utilization of the property or that granting of the variance would alleviate a *hardship* due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance” and “(i) the property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance; (ii) the granting of the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area; (iii) the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance; (iv) the granting of the variance does not result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property; and (v) the relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to subdivision 6 of § 15.2-2309 or the process for modification of a zoning ordinance pursuant to subdivision A4 of § 15.2-2286 at the time of the filing of the variance application.” *Virginia Code § 15.2-2309(2). See section 13-600 for further discussion.*
- Time for the decision: The decision must be made within 90 days. *Virginia Code § 15.2-2312.* This time period is directory, rather than mandatory, and the BZA does not lose its jurisdiction to act on a variance after the 90-day period has passed. *See Tran v. Board of Zoning Appeals of Fairfax County*, 260 Va. 654, 536 S.E.2d 913 (2000) (BZA did not lose jurisdiction to decide appeal after 550-day delay).
- Required vote: The concurring vote of a majority of the BZA’s membership is necessary to grant a variance. *Virginia Code § 15.2-2312.* This means that a five-member BZA may grant a variance only if at least three members vote for granting the variance. Thus, if only three members of the BZA are present for the vote, all three must vote in favor of granting the variance.

- Explaining the basis for the decision: A BZA may grant a variance only if the evidence *shows* that all of the criteria have been satisfied. Whether called findings or something else, the BZA needs to explain the evidence that supports each criterion so that the circuit court can properly adjudicate the issues if there is an appeal.

13-600 Criteria to establish a right to a variance

The criteria that the BZA must consider when reviewing an application for a variance are referenced in section 13-500 (under “*Decision*”). The reader should anticipate that most variance decisions will come down to the question of whether an *unreasonable restriction* or a *hardship* exists and, unless BZAs and the courts give very relaxed readings of those criteria, there should be few variance applications that actually satisfy the criteria to establish the right to a variance.

13-610 The strict application of the terms of the zoning ordinance would unreasonably restrict the utilization of the property or that granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance or alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability.

The evidence must show “that the strict application of the terms of the zoning ordinance would unreasonably restrict the utilization of the property or that granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance.” *Virginia Code § 15.2-2309(2)(A)(2)*. If a variance is necessary to accommodate a person with a disability, the evidence must show that the granting of a variance is necessary to alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability. *Virginia Code § 15.2-2309(2)(A)(2)*. For a discussion of the hardship arising for persons with disabilities, see section 13-820.

13-611 Unreasonable restriction on the utilization of the property or a hardship due to a physical condition relating to the property or improvements

The key criteria that must be satisfied for a variance to be granted is whether there is an *unreasonable restriction* on the utilization of the property or a *hardship* due to a physical condition relating to the property or improvements. Of those two criteria, the *hardship* that may arise if a variance is not granted has been by far the more commonly analyzed criterion. That may change under the current variance laws because of a peculiarity in the required showing for a hardship. Under either the *unreasonable restriction* or *hardship* criterion, the applicant must also demonstrate that its application meets the standards in the definition of a variance in Virginia Code § 15.2-2201, which includes the “standard” that the “strict application of the ordinance would unreasonably restrict the utilization of the property.” Thus, an applicant seeking a variance under the *hardship* criterion must establish both a hardship and an unreasonable restriction (the latter to satisfy the standard in Virginia Code § 15.2-2201), whereas an applicant seeking a variance under the *unreasonable restriction* criterion need only establish an unreasonable restriction (which continues to be high standard to satisfy).

There are few, if any, cases where the *unreasonable restriction* criterion has been analyzed or formed the basis for granting a variance. The word *unreasonable* cannot be overlooked during the analysis. Something is *reasonable* when it is “[f]air, proper, or moderate under the circumstances; sensible.” *BASF and James City County v. State Corporation Commission*, 289 Va. 375, 770 S.E.2d 458 770 S.E.2d 458 (2015). Something is *unreasonable* if it, in the context here, is “absurd, inappropriate,” “exceeding the bounds of reason or moderation,” or “unconscionable.” *Webster’s Third New International Dictionary* (2002). If an application for a variance is based on the criterion that a restriction is *unreasonable*, the locality should consider whether the restriction – the regulation – should be amended or repealed because unreasonableness raises an issue of whether the regulation is constitutional or facially valid.

In *In re July 17, 2019 Decision of the Board of Zoning Appeals of the Town of Vienna*, 105 Va. Cir. 359 (2020), the trial court held that the BZA incorrectly decided that a 35-foot rear-yard setback was not an unreasonable restriction where the setback prevented the petitioners from adding a screen porch that would extend into the setback. The 2,124 square-foot house was built in 1959 on a corner lot and the house had a diagonal footprint on the lot. There

also were utilities and other setbacks that limited extension into other areas on the lot. Although the rear-yard setback was a restriction, the court engaged in no meaningful analysis as to why the 35-foot rear yard setback was *unreasonable* beyond the fact that the setback did not allow the petitioners to do what they wanted to do.

The *hardship* criterion has experienced a profound evolution since 2009. Before 2009, the criterion called for an *undue hardship approaching confiscation* – language that is tantamount to circumstances approaching a regulatory taking of private property for a public use requiring compensation. In 2009, the criterion was amended to require the applicant to merely show an *undue hardship*, though the BZA still had to find an undue hardship approaching confiscation. Beginning in 2015, Virginia Code § 15.2-2309(2) merely requires a *hardship* due to a physical condition relating to the property or improvements. In *In re December 12, 2019 Decision of Board of Zoning Appeals of City of Chesapeake*, 105 Va. Cir. 54 (2020), the trial court affirmed the decision of the BZA granting a variance, concluding that the record supported the BZA’s finding of a hardship. In rejecting the petitioner neighbor’s arguments based on pre-2015 variance law that imposed a higher *hardship* threshold, the court said the following: “This Court must give effect to the removal of the language [that had been in the prior variance law]; the Court ‘will not construe legislative action in a manner that would ascribe to the General Assembly a futile gesture. Legislative amendments are presumed as intended to effect a change in the law. . . We will not read into the statute language which the legislature purposefully deleted.’” *Shaw v. Commonwealth*, 9 Va. App. 331, 334 (1990).”

13-612 The physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance

The attributes composing the *physical condition of the property* are not described in either the definition of *variance* in Virginia Code § 15.2-2201 or in the variance elements in Virginia Code § 15.2-2309(2). However, the reader should consider the property’s narrowness, shallowness, size, shape, exceptional topographic conditions, or any other similar physical conditions. These conditions, in effect, define the *hardship* the BZA must find in order to grant a variance. *Spence v. Board of Zoning Appeals for City of Virginia Beach*, 255 Va. 116, 496 S.E.2d 61 (1998).

The attributes of any *improvements* on the property existing on the effective date of the zoning ordinance may also be considered, an element that was added in the 2015 amendments. The effect of this change is seen in *In re July 17, 2019 Decision of the Board of Zoning Appeals of the Town of Vienna*, 105 Va. Cir. 359 (2020), where the presence of and limitations caused by utilities on the lot affected the trial court’s decision to hold that the BZA erred when it did not grant a variance to the petitioners.

13-620 The property for which the variance is being requested was acquired in good faith

The evidence must show that “the property for which the variance is being requested was acquired in good faith.” *Virginia Code § 15.2-2309(2)(¶2(i))*.

Although there is no case law identifying what a good faith acquisition of property might be in the context of a variance, it appears that good faith may be shown if the variance is not sought to correct a violation of the zoning ordinance existing on the property when it was acquired by an owner who knew of the violation. An owner’s knowledge that the previous owner of the property had been denied a variance does not affect “good faith” status. *Spence v. Board of Zoning Appeals for City of Virginia Beach*, 255 Va. 116, 496 S.E.2d 61 (1998).

The purchase price of the property is irrelevant to the consideration of whether an owner acted in good faith. *Spence, supra*.

13-630 Any hardship was not created by the applicant for the variance

The evidence must show that “any hardship was not created by the applicant for the variance.” *Virginia Code § 15.2-2309(2)(¶2(i))*. This appears to be similar to the prior standard that prohibited *self-inflicted* hardships, and the cases below were evaluated under that standard.

The situation where the applicant has created a hardship would arise when an owner violates a provision of the

zoning ordinance and then seeks a variance to provide relief from the unlawful act. *Spence v. Board of Zoning Appeals for City of Virginia Beach*, 255 Va. 116, 496 S.E.2d 61 (1998). Following are some examples where the court considered whether a hardship was self-inflicted:

- To correct zoning violation; reliance on erroneous boundary markers: Hardship was self-inflicted where the owners constructed a house in violation of side yard setback requirements, although done inadvertently in reliance on misplaced property line markers. *Steele v. Fluvanna County Board of Zoning Appeals*, 246 Va. 502, 436 S.E.2d 453 (1993) (reliance on statement by homeowners' association, which told builder it could assume the property lines were indicated by certain utility markers, that in fact were not on the property lines, resulting in house being constructed 8 inches from property line).
- To correct zoning violation: Hardship was self-inflicted where the owner continued construction of an apartment over an existing garage in violation of the zoning ordinance after knowledge and warning of the likely consequences of her unlawful conduct. *Board of Zoning Appeals of Town of Abingdon v. Combs*, 200 Va. 471, 106 S.E.2d 755 (1959).
- Knowing need for variance: Hardship was not self-inflicted where the owner purchased property knowing that he needed a variance to build a house, because a self-inflicted hardship must pertain to a violation of the zoning ordinance. *Spence v. Board of Zoning Appeals for City of Virginia Beach*, 255 Va. 116, 496 S.E.2d 61 (1998).

The standard must be satisfied regardless of whether the hardship was created intentionally or inadvertently. It is an open question as to whether the acts of a contractor or some other third party will be attributed to the *applicant*.

13-640 Granting the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area

The evidence must show that “granting the variance will not be of substantial detriment to adjacent property and nearby properties in the proximity of that geographical area.” *Virginia Code § 15.2-2309(2)(i)(ii)*.

The BZA must consider the effect that granting the variance may have on nearby properties. See *Board of Zoning Appeals of City of Chesapeake v. Glasser Bros. Corp.*, 242 Va. 197, 408 S.E.2d 895 (1991). For example, in *Board of Supervisors of Fairfax County v. Fairfax County Board of Zoning Appeals*, 1993 WL 945907 (Va. Cir. Ct. 1993), granting a variance would have required three adjacent lots to provide an additional 25 feet of front yard where they abutted a pipestem lot line or driveway pavement. The court concluded that the BZA failed to consider the potentially detrimental impact the granting of the variance would have on the future development of the three lots.

The prior version of Virginia Code § 15.2-2309(2) also required consideration of whether the “character of the district” would be changed. The elimination of that broader consideration may open the door for variances that might change the character of the district by, for example, allowing a tall building or the encroachment of a building into a front yard. Perhaps the theory of the new law is that a single variance cannot change the character of a district, and a series of variances is needed to change the character of a district. The issue of a series of variances is addressed in the criterion in section 13-650.

13-650 The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance

The “condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.” *Virginia Code § 15.2-2309(2)(i)(iii)*.

An owner's showing that the special condition of the property and the resulting hardship are non-recurring is of considerable importance in determining the propriety of the variance. *Martin v. City of Alexandria*, 286 Va. 61, 743 S.E.2d 139 (2013) (in determining that a variance from setbacks was improperly granted, the Court rejected the

argument that the historic overlay district regulations were intended to apply only to old buildings and granting a setback variance for the proposed new building would render the zoning ordinance meaningless; rejected the argument that a variance was justified because the lot was exceptionally wide and shallow compared to other lots in the area because one-third of the lots in the area were even more shallow yet they complied with the zoning ordinance and the piecemeal granting of variances would nullify the zoning regulations; and, there was “no factual support” for the claim that the condition was unique since all lots in the area must comply with the base and overlay district regulations and the issue must be addressed legislatively).

In *In re July 17, 2019 Decision of the Board of Zoning Appeals of the Town of Vienna*, 105 Va. Cir. 359 (2020), the trial court held that the BZA erred when it denied the petitioners’ variance that would have provided relief from a 35-foot rear yard setback that prevented the petitioners from adding a screened porch that would extend into the setback. The BZA’s conclusion that the setback issue was recurring and could be addressed through a zoning text amendment was based on the 35-foot rear yard setback and its effect on the residents of the zoning district being restricted from having screened porches, which had a greater setback than open decks. The court rejected that reasoning because the BZA failed to base its decision on whether the *condition or the situation of the property* was of so general or recurring that it could be resolved by amending the zoning ordinance. The court said that this issue had to be understood in the context of the petitioners’ lot being a corner lot that was wider than deep, with a house having a diagonal footprint, and with expansion to allow a screened porch into other areas on the lot constrained by utilities and other setbacks. Given the apparently unique condition or situation of the property at issue, the court concluded that the condition or situation was not general or recurring, and therefore a legislative solution was not reasonably practicable.

Why are variances for general or recurring problems prohibited? A high number of variance applications from a particular regulation may indicate that there is a problem with the zoning ordinance. If there is a problem with the zoning ordinance, that problem needs to be addressed legislatively. *Martin, supra*. As the Virginia Supreme Court has said, variances are an “administrative infringement upon the legislative prerogatives of the local governing body.” *Packer v. Hornsby*, 221 Va. 117, 123, 267 S.E.2d 140, 143 (1980). Thus, a legislative solution is always preferred over the piecemeal granting of variances. In *Hendrix v. Board of Zoning Appeals of the City of Virginia Beach*, 222 Va. 57, 61, 278 S.E.2d 814, 817 (1981), the Virginia Supreme Court said that “[t]he power to resolve recurring zoning problems shared generally by those in the same district is vested in the legislative arm of the local governing body.” The Court added that using variances to resolve these problems when a legislative solution is reasonably practicable is prohibited “because the piecemeal granting of variances could ‘ultimately nullify a zoning restriction throughout [a] zoning district’ (internal citation omitted).”

13-660 Granting the variance does not result in a use that is not otherwise permitted on the property or a change in the zoning classification of the property

Granting a variance may not “result in a use that is not otherwise permitted on such property or a change in the zoning classification of the property.” *Virginia Code* § 15.2-2309(2)(i). This element overlaps the definition of *variance*, which provides that a *variance* does “not include a change in use, which change shall be accomplished by a rezoning or by a conditional zoning.” *Virginia Code* § 15.2-2201. Use variances have been prohibited in Virginia since 1988. This element is also directly related to the scope of the regulations which may be varied, which are limited to those pertaining to the “shape, size, or area of a lot or parcel of land or the size, height, area, bulk, or location of a building or structure.” *Virginia Code* § 15.2-2201.

13-670 The relief or remedy sought by the variance application is not available through a special exception or a zoning modification at the time of the filing of the variance application

The “relief or remedy sought by the variance application is not available through a special exception process that is authorized in the ordinance pursuant to [Virginia Code § 15.2-2309(6)] or the process for modification of a zoning ordinance pursuant to subdivision [Virginia Code § 15.2-2286(A)(4)] at the time of the filing of the variance application.” *Virginia Code* § 15.2-2309(2)(v).

This provision is consistent with those cases explaining that a variance “allows a property owner to do what is

otherwise not allowed under the ordinance.” *Bell v. City Council of the City of Charlottesville*, 224 Va. 490, 496, 297 S.E.2d 810, 813-814 (1982). If the zoning ordinance provides an alternative remedy, a variance is unnecessary. In other words, a variance is only a remedy of last resort.

13-680 The variance is not contrary to the purpose of the ordinance

Virginia Code § 15.2-2309(2) requires that the evidence show not only the elements discussed in sections 13-610 through 13-670, but also that the variance application “meets the standard for a variance as defined” in Virginia Code § 15.2-2201. The definition of *variance* provides that it shall not be “contrary to the purpose of the ordinance.” *Virginia Code* § 15.2-2201.

For example, a variance from the setback requirements in a residential zoning district might be considered to be in harmony with the intended spirit and purpose of the zoning ordinance where: (1) the zoning regulations state that their purpose is to promote the development of existing parcels in residential zoning districts with useful housing stock; (2) a variance is sought to allow a house to be constructed on a vacant lot with a minor setback encroachment; and (3) without a variance, the house could not be constructed. As a contrary example, a variance to allow the location of a house in a floodway is not in harmony with the intended spirit and purpose of a zoning ordinance that prohibited development in the floodway. *Corinthia Enterprises, Ltd. v. Loudoun County Board of Zoning Appeals*, 22 Va. Cir. 545 (1988).

13-690 The variance application must meet the standard for a variance as defined in Virginia Code § 15.2-2201

Virginia Code § 15.2-2309(2) requires that the evidence show that the variance application “meets the standard for a variance as defined” in Virginia Code § 15.2-2201.

Whether the applicant is seeking a variance under either the *unreasonable restriction* or *hardship* criterion in Virginia Code § 15.2-2309(2), the applicant must also demonstrate that its application meets the standards in the definition of a variance in Virginia Code § 15.2-2201, which includes the “standard” that the “strict application of the ordinance would unreasonably restrict the utilization of the property.” Thus, an applicant seeking a variance under the *hardship* criterion in Virginia Code § 15.2-2309(2) must establish both a hardship and an unreasonable restriction (the latter to satisfy the standard in Virginia Code § 15.2-2201), whereas an applicant seeking a variance under the *unreasonable restriction* criterion need only establish an unreasonable restriction (which continues to be a high standard to satisfy). This issue is also discussed in section 13-611 as part of the discussion of the *unreasonable restriction* and *hardship* criteria.

13-700 Consideration of a variance application; matters the BZA may and may not decide

A BZA acts in an administrative capacity in accordance with the standards prescribed by Virginia Code § 15.2-2309(2) when it considers a variance application. *Cochran v. Fairfax County Board of Zoning Appeals*, 267 Va. 756, 594 S.E.2d 571 (2004).

13-710 The BZA acts with discretion, to a point

Within the context of the applicant’s burden of proof to show by a preponderance of the evidence that it has satisfied the criteria for granting a variance, the BZA must exercise its discretion with regard to the particular facts of the application, including the precise extent of the relief sought. *Spence v. Board of Zoning Appeals for City of Virginia Beach*, 255 Va. 116, 496 S.E.2d 61 (1998). In the performance of this duty, the BZA is “clothed with discretionary power, and this power must be exercised intelligently, fairly and within the domain of reason, and not arbitrarily.” *Board of Zoning Appeals v. Fowler*, 201 Va. 942, 948, 114 S.E.2d 753, 758 (1960); *see also Board of Zoning Appeals of Town of Abingdon v. Combs*, 200 Va. 471, 106 S.E.2d 755 (1959). “Any arbitrary or unreasonable action, contrary to the terms or spirit of the zoning law, or contrary to or unsupported by facts, is an illegal action by a board of zoning appeals.” *Martin v. City of Alexandria*, 286 Va. 61, 69, 743 S.E.2d 139, 143 (2013).

However, if the standards and criteria for granting a variance are satisfied, Virginia Code § 15.2-2309(2) states that the BZA *must* grant the variance.

13-720 The BZA should explain its decision

Under the prior law, the Virginia Supreme Court said repeatedly that, if the BZA fails to state its findings as required by Virginia Code § 15.2-2309 in granting or denying the variance, the parties cannot properly litigate, and the trial court cannot properly adjudicate, the issues on appeal. *Ames v. Town of Painter*, 239 Va. 343, 389 S.E.2d 702 (1990); *Packer v. Hornsby*, 221 Va. 117, 267 S.E.2d 140 (1980); *see also Amberst County Board of Supervisors v. Amberst County Board of Zoning Appeals*, 70 Va. Cir. 91 (2005). A BZA is no longer required to state *findings*; however, a BZA may grant a variance only if the evidence *shows* that all the standards and criteria have been satisfied. Whether called findings or something else, the BZA needs to explain the evidence that supports each criterion.

13-730 Variances may not be approved unless the standards and criteria in Virginia Code § 15.2-2309(2) are satisfied

Variances may not be approved unless the standards and criteria in Virginia Code § 15.2-2309(2) are satisfied. *Cochran v. Fairfax County Board of Zoning Appeals*, 267 Va. 756, 594 S.E.2d 571 (2004); *Adams Outdoor Advertising, Inc. v. Board of Zoning Appeals of City of Virginia Beach*, 261 Va. 407, 544 S.E.2d 315 (2001) (BZA does not have the authority to grant a variance from a regulation prohibiting a nonconforming sign from being repaired at a cost in excess of 50% of its original cost because the regulation does not pertain to the size, area, bulk, or location of a building or structure). Thus, for example, it is inappropriate for the BZA to grant a variance because a proposed design is superior or more attractive than what would be allowed without the variance.

In addition, variances may not be approved solely because similar variances were previously approved. For example, although not mentioned in the court's opinion in *Cochran*, the Fairfax County BZA had previously granted 20 to 25 variances in the neighborhood that was the center of the controversy in that case. An attorney involved in that case has suggested that the omission of this fact from the Virginia Supreme Court's opinion suggests the irrelevance that prior variances should have on the merits of a variance application before the BZA.

13-740 The BZA may impose conditions

In granting a variance, a BZA may impose conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. *Virginia Code § 15.2-2309(2)*. Property upon which a variance has been granted is treated as conforming for all purposes under state law and local ordinances; however, a structure permitted by a variance may not be expanded unless the expansion is within an area of the site or part of the structure for which no variance is required under the zoning ordinance. *Virginia Code § 15.2-2309(2)*. Where the expansion is proposed within an area of the site or part of the structure for which a variance is required, the approval of an additional variance is required. *Virginia Code § 15.2-2309(2)*. *See section 13-820 for authority to condition variances to accommodate persons with disabilities for as long as the need for the variance exists.*

13-800 Special situations: condominium conversions, the Americans with Disabilities Act, the Fair Housing Act, the National Flood Insurance Program

The preceding analysis pertains to variances subject to and analyzed solely under Virginia Code § 15.2-2309(2). There are at least three special situations where rigid adherence to Virginia Code § 15.2-2309(2) is superseded.

13-810 Condominium conversions

Virginia Code § 55.1-1905(E) provides in part that localities may provide by ordinance that a proposed conversion condominium that does not conform to the zoning, land use, and site plan regulations obtain a variance

before the property becoming a conversion condominium. The BZA must grant the variance “if the applicant can demonstrate to the reasonable satisfaction of the [BZA] that the nonconformities are not likely to be adversely affected by the proposed conversion.” *Virginia Code § 55.1-1905(E)*.

13-820 The Americans with Disabilities Act and the Fair Housing Act

Variance applications received from disabled persons or facilities that serve disabled persons protected by the Americans with Disabilities Act or the Fair Housing Act require special consideration. Under both of those Acts, the locality is required to make reasonable accommodations from its policies and rules (*e.g.*, its zoning regulations and the criteria for granting a variance in Virginia Code § 15.2-2309(2)) so as not to discriminate against disabled persons.

Virginia Code § 15.2-2309(2) expressly recognizes modifying zoning regulations to accommodate persons with disabilities by allowing variances to “alleviate a hardship by granting a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability.” Virginia Code § 15.2-2309(2) continues: “Any variance granted to provide a reasonable modification to a property or improvements thereon requested by, or on behalf of, a person with a disability may expire when the person benefited by it is no longer in need of the modification to such property or improvements provided by the variance, subject to the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 *et seq.*), as applicable. If a request for a reasonable modification is made to a locality and is appropriate under the provisions of state and federal fair housing laws, or the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 *et seq.*), as applicable, such request shall be granted by the locality unless a variance from the board of zoning appeals under this section is required in order for such request to be granted.”

13-830 National Flood Insurance Program

Localities participating in the National Flood Insurance Program are required to adopt floodplain management regulations required by federal law either as part of its zoning ordinance or otherwise. *44 CFR § 59.1 et seq.*

A locality’s floodplain management regulations must include a provision that provides a procedure and standards for variances for development in the floodplain. A landowner may be eligible for a variance under the floodplain management regulations in two circumstances: (1) for new construction or substantial improvements where nearby structures were constructed below the base flood elevation, generally for parcels less than ½ acre in size; and (2) for new construction, substantial improvement, or development that is required for water-dependent facilities. *44 CFR § 60.6*. Encroachment standards and construction standards specific to the floodplain are among the standards that may be varied. *44 CFR § 60.6*. The findings required to be made by the BZA include a finding substantially similar to the hardship standard applicable to variances considered under Virginia Code § 15.2-2309(2), as well as a finding that the variance will not result in unacceptable or prohibited increases in flood heights. *44 CFR § 60.6*. The BZA is also required to consider a number of factors related to the impact of the variance, if granted. *44 CFR § 60.6*.

13-900 Modifications

Virginia Code § 15.2-2286(A)(4) enables localities to authorize zoning administrators to review and approve *modifications* from zoning regulations. A *modification* is relief from any provision contained in the zoning ordinance with respect to the physical requirements on a lot or parcel of land, including but not limited to the size, height, location or features of or related to any building, structure, or improvements.

13-1000 Appeals of BZA decisions to the circuit court

A person aggrieved by a decision of the BZA, or any aggrieved taxpayer or any officer, department, board or bureau of the locality, may appeal the BZA’s decision to the circuit court by filing a petition for writ of certiorari. *Virginia Code § 15.2-2314*. Persons challenging a decision as a person aggrieved must allege that they are aggrieved within the meaning of the Virginia Supreme Court’s decision in *Friends of the Rappahannock v. Caroline County*, 286 Va.

13-1010 The time in which to file a petition for writ of certiorari

The petition for writ of certiorari must be filed in the circuit court within 30 days after the final decision of the BZA. *Virginia Code § 15.2-2314*. The date of the *final decision* is the date the BZA takes its vote on the matter that decides its merits. *West Lewinsville Heights Citizens Association v. Board of Supervisors of Fairfax County*, 270 Va. 259, 268, 618 S.E.2d 311, 315 (2005). Local zoning regulations or BZA by-laws establishing a different method to determine the running of the 30-day period are inconsistent with Virginia Code § 15.2-2314 and are invalid. *West Lewinsville, supra* (holding invalid BZA by-laws that commenced the 30-day period on the “official filing date,” which was a date specified in the BZA clerk’s letter that was eight days after the BZA voted on the appeal).

The failure of a party to file a petition for writ of certiorari within the 30-day period does not divest the circuit court of its subject matter jurisdiction, so the issue of timely filing is waived if it is not raised in the circuit court. *Board of Supervisors of Fairfax County v. Board of Zoning Appeals of Fairfax County*, 271 Va. 336, 347-348, 626 S.E.2d 374, 381 (2006).

13-1020 Nature of the proceeding in circuit court

A proceeding under Virginia Code § 15.2-2314 “has the indicia of an appeal in which the circuit court acts as a reviewing tribunal rather than as a trial court resolving an issue in the first instance.” *Board of Zoning Appeals of Fairfax County v. Board of Supervisors of Fairfax County*, 275 Va. 452, 456-457, 657 S.E.2d 147, 149 (2008) (proceeding under Virginia Code § 15.2-2314 is not a trial proceeding for which nonsuit is available under Virginia Code § 8.01-380(B); adding that the option to take additional evidence was insufficient to change the nature of the proceeding from an appeal to a trial).

The BZA is not a party to the proceeding, and its sole role is to prepare and submit the record of the BZA proceedings to the circuit court within 21 days after being served with the writ of certiorari. *Virginia Code § 15.2-2314*. The necessary parties in a case challenging a BZA decision are the governing body, the landowner, and the applicant before the BZA (assuming the latter is different from the landowner). *Virginia Code § 15.2-2314*. The governing body must be named in the petition within the 30-day appeal period. *Boasso America Corporation v. Zoning Administrator of the City of Chesapeake*, 293 Va. 203, 796 S.E.2d 545 (2017). In *Boasso*, the petitioner appealed the decision of the BZA to the circuit court within the 30-day appeal period required by Virginia Code § 15.2-2314. However, the petition did not name the city as a necessary party and it sought to amend its petition to add the city after the 30-day period had run. The issue in the case was whether the city had to be named in the petition within the 30-day period, or whether the petitioner could add the city as a necessary party by amending the petition after the 30-day period had run. The trial court granted the city’s motion to dismiss the petition because the city had not been named as a necessary party within the 30-day appeal period. The Virginia Supreme Court affirmed. The Court held that a locality’s governing body that “is expressly identified in [Virginia Code § 15.2-2314] as a necessary party must be included in the petition within 30 days of the final decision of the board of zoning appeals, not at some undefined future date by amendment to the petition.” In *In Re: October 31, 2012 Decision of the Board of Zoning Appeals of Fairfax County*, 88 Va. Cir. 114 (2014), the trial court concluded that the failure to serve the governing body with the petition may implicate the provisions of Virginia Code §§ 8.01-275.1 and 8.01-277, but would not constitute grounds for dismissing the case under a motion to dismiss for failing to name a necessary party because the county was included in the style of the case). The court may also allow other aggrieved parties to intervene in the proceeding. *Virginia Code § 15.2-2314*.

The court’s role is to determine whether the BZA’s *decision* was correct. This limited scope of review that applies in a certiorari proceeding prohibits the court from ruling on the validity or constitutionality of the ordinance or statute underlying the BZA’s decision. *City of Emporia v. Mangum*, 263 Va. 38, 44, 556 S.E.2d 779, 783 (2002); *Board of Zoning Appeals of James City County v. University Square Associates*, 246 Va. 290, 294, 435 S.E.2d 385, 388 (1993); *Kebaish v. Board of Zoning Appeals of Fairfax County*, 2004 Va. Cir. LEXIS 37 at 17-18, 2004 WL 516224 at 6-7 (2004) (trial court would not rule on the constitutionality of the federal Religious Land Use and Institutionalized Persons Act of 2000 in a certiorari proceeding).

Because the individual members of a BZA act only as a single entity, the court does not review the individual actions of each member of the BZA but reviews the decision of the BZA. *Sundlun v. Board of Zoning Appeals of Fauquier County*, 23 Va. Cir. 53 (1991). The result reached by the circuit court in *Sundlun* is consistent with the broader principle that public bodies act only through the body itself, and not by the acts of its individual members. See *Campbell County v. Howard*, 133 Va. 19, 59, 112 S.E. 876, 888 (1922) (a board of supervisors can act only at authorized meetings as a corporate body and not by actions of its members separately and individually).

A petitioner in a certiorari proceeding to review a decision of the BZA cannot challenge the composition of the BZA or the authority of a member to sit on the BZA. *Sundlun, supra*.

13-1030 Presumptions attached to BZA decisions and standard of review

On appeals from BZA decisions on variance applications, the decision of the BZA is presumed to be correct. *Virginia Code § 15.2-2314*. The petitioner may rebut that presumption by proving by a preponderance of the evidence, including the record before the BZA, that the BZA erred in its decision. *Virginia Code § 15.2-2314*.

The circuit court may reverse or affirm, wholly or partly, or modify the BZA's decision. *Virginia Code § 15.2-2314*. If the BZA's decision is affirmed and the circuit court finds that the appeal was frivolous, the petitioner may be ordered to pay the costs incurred in making the return of the record. *Virginia Code § 15.2-2314*. The petitioner may be entitled to recover its costs only if the court determines that the BZA acted in bad faith or with malice in making the decision that was appealed. *Virginia Code § 15.2-2314*. Any party may introduce evidence in the proceedings in the court in accordance with the Rules of Evidence of the Supreme Court of Virginia. *Virginia Code § 15.2-2314*.