

Board Members
Brian White, Chair
Gibb Phenegar, Vice Chair
Christina Oster, Clerk
Joe Barresi, Member
Tom Emero, Member



Medway Town Hall
155 Village Street
Medway, MA 02053
Telephone (508) 321-4890
zoning@townofmedway.org

TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
SPECIAL PERMIT
21 HIGH STREET

Applicant(s): Medway Development LLC
c/o Michael Larkin
PO Box 129
Medfield, MA 02052

Location of Property: 21 High Street (Assessors' Parcel ID: 57-062).

Approval Requested: The application is for the issuance of a **special permit** under Section 3.4 of the Zoning Bylaw and 5.4 Schedule of Uses to add an addition to the existing home, to create a two-family dwelling that has the exterior appearance of a single-family dwelling on the lot.

Members Participating: Brian White, Chair; Gibb Phenegar, Vice Chair; Christina Oster, Clerk; Joe Barresi, Member; Tom Emero, Member

Members Voting: Brian White, Chair; Gibb Phenegar, Vice Chair; Christina Oster, Clerk; Tom Emero, Member

Date of Decision: April 5, 2023

Decision: **GRANTED WITH CONDITIONS**

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RECEIVED TOWN CLERK
APR 11 '23 AM 10:04

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20 Day Appeal
May 1, 2023

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I. PROCEDURAL HISTORY

1. On January 9, 2023, the Applicant filed for the issuance of a **special permit** under Section 3.4 of the Zoning Bylaw and Section 5.4, Schedule of Uses, of the Zoning Bylaw to add an addition to the existing home, to create a two-family home with the exterior appearance of a single-family home on a 164,221 square foot lot in Agricultural-Residential II (AR-II).
2. Notice of the public hearing was published in the Milford Daily News on January 18, 2023, and January 25, 2023, and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A, §11.
3. The public hearing was opened on February 1, 2023. The hearing was continued to March 1, 2023; the applicant requested that the hearing be further continued to March 15, 2023, and then requested the hearing be further continued to April 5, 2023. No testimony was taken at either the March 1st or March 15th meetings. The public hearing was continued on April 5th and was closed that evening.
4. The Property is located in the Agricultural Residential II (AR-II) District. The front setback requirement is 35 feet, and the side and rear setback requirements are 15 feet. For a two-family home, the minimum lot area requirement is 30,000 sq. ft. and the minimum frontage requirement is 150 feet.
5. The Board notified Town departments, boards, and committees of this application. The Board received comments from the Conservation Commission, Highway Superintendent Nolan Lynch, and Design Review Committee.
6. All documents and exhibits received during the public hearing are contained in the Zoning Board of Appeal's files and listed in Section V. of this Decision.

II. TESTIMONY

Michael Larkin of Medway Development LLC was present at the February 1st public hearing and stated there used to be a barn behind and attached to the existing home, which was demolished with approval from the town, and that they are currently rehabilitating the inside of the existing dwelling. Mr. Larkin stated he is proposing to add a 24 x 46 sq. ft. addition to the back of the existing dwelling. Mr. Larkin reviewed potential exterior design choices for the proposed addition and showed the plans for the project. Mr. White asked if there were any images of the property from the south, Mr. Larkin stated he does not have photos from that angle. Mr. White expressed concern that the massing of the new rear addition seems significantly smaller on the plot plan than it does on the proposed elevations plan, he noted the renderings seem to be not to scale.

Bridget Graziano, Conservation Agent, was present to discuss an existing Enforcement Order put on the property by the Conservation Commission. Ms. Graziano explained that the Enforcement

Order was issued when the property was expected to be developed as a multi-unit lot, and the conditions of the Order have not been met or followed up on. Ms. Graziano noted there are stockpiles of materials from other construction sites on the lot, which are outside of the Conservation Commission's jurisdiction, but may exceed the limits in the Land Disturbance bylaw depending on the location of the piles. Ms. Graziano noted that any work exceeding 20,000 square feet requires a Land Disturbance permit from the Conservation Commission. Ms. Graziano stated that the dirt piles are still currently present on the site, and encouraged the ZBA to enforce some level of testing on these materials to determine if they are from an approved site. Ms. Graziano suggested a new plan be submitted showing the limit of work for the project, location of fill material, all proposed impervious surfaces including parking spaces. The plan should also show grading to make sure there will be no runoff from the site to the roadway.

Mr. White asked if any work had been completed related to the Enforcement Order on the property, Ms. Graziano stated she has not been contacted by the property owner to check if any work has been completed. Mr. Larkin noted that the only item not addressed on the property was installing granite bounds to mark the wetland lines, and that he will contact Ms. Graziano for a site visit.

The members agreed that they would like to see more information from the Applicant, including a more detailed plan with some indication as to where further development would occur in the future, as the Applicant is planning to further develop the lot; a new plan showing potential phasing for the lot; and elevation plans for all sides of the proposed 2-family home. Ms. Saint Andre stated that if the Board grants a special permit for the property, that special permit would apply for the entire lot – if the Applicant then wishes to further develop the property, they will have to come back before the Board to modify the special permit. Mr. Barresi stated he would like to see existing and proposed impervious surfaces on the revised plans. Ms. Saint Andre stated there should be a landscaping plan as well. Mr. Barresi asked if the stone wall in front of the dwelling would remain, Mr. Larkin confirmed that it would.

Caren Carew, 18 High Street, asked if the work for this application was just for the front corner of the lot, and if phase 2 is being proposed. Mr. White clarified that the only application for this hearing is for a 2-family dwelling, and no further proposals have been submitted. Ms. Carew noted that the original barn could not be seen from the road, is wondering if the new structure will be able to be seen from the street, behind the original dwelling. Mr. White stated that Mr. Larkin confirmed in an email that the height of the building would not be increased.

Ms. Carew shared that originally the Applicant had proposed two or three multi-unit structures, which would be dense, and asked that if the lot continues to be developed would the additional density be consider when planning for the second phase of the project. Mr. White stated the Board can only review the special permit application that has been submitted to them, and a future application would likely go to the Planning and Economic Development Board.

Mohamed Shamog, 19A High Street, asked if there were any plans for landscaping or vegetation, specifically where it abuts his property. Mr. Larkin stated he will create a landscape plan and will

work with Mr. Shamog to make sure any concerns are addressed. The public hearing was continued to March 1, 2023, to allow the applicant to provide the Board with the additional information requested.

At the request of the applicant, the public hearing was continued to March 1, 2023; the applicant requested that the hearing be further continued to March 15, 2023, and then requested the hearing be further continued to April 5, 2023. No testimony was taken at either the March 1st or March 15th meetings.

On April 5th, Mr. Larkin explained the updated plans, which included elevations showing the size of the proposed addition compared to the existing structure. Mr. White stated he would like to see a more detailed landscaping plan with plantings to mask the parking area. Mr. Larkin stated he can work with Ms. Graziano to determine plantings in the front, as well as clean up the back of the site. Mr. Phenegar stated he likes the design, and he believes it is appropriate for the area, and agrees with Mr. White on screening the parking area. Ms. Oster also agreed.

Ms. Graziano reminded the Board that the enforcement order on the property is still outstanding and suggested that the Board condition that the applicant comply with the enforcement order. Ms. Graziano stated the fill on the property was tested in 2020, and suggested that if the fill is going to stay on the property, they may want to do further testing. Mr. White suggested adding a condition that if any additional fill is brought on to the property it should be tested.

Ms. Saint Andre asked Mr. Larkin if he has spoken with Mr. Shamog at 19A High Street, Mr. Larkin stated he has not yet, but will. Mr. Larkin stated there are no current plans to remove the fill from the site, they will use it to regrade and spread it around, and hydroseed the area. Ms. Saint Andre asked how the runoff from the driveway will be controlled, Mr. Larkin stated there will be two drywells added to the property, as shown on the plans. Ms. Graziano stated the new parking area must drain into the existing property or some sort of stormwater drainage system, but an MS4 permit would be required if any water would drain to High Street. Mr. White stated one of the Board's conditions is that all water must remain on site. Ms. Graziano suggested adding a condition that none of the fill shall be moved to Conservation Commission jurisdiction without approval from the Commission. Ms. Graziano suggested the land surveyor for the project stake the 100-foot buffer zone from the wetland and keep all work away from that area.

III. FINDINGS

In making its findings and reaching the decision described herein, the Board is guided by G.L. c. 40A, as amended, and by the Medway Zoning Bylaw. The Board also considered evidence and testimony presented at the public hearing and comments submitted by residents placed in the public record during the course of the hearings. The Board considered each special permit criterion separately.

A. Section 3.4 Special Permit Decision Criteria

The Board found that the application, as conditioned by this decision, does meet all the required Special Permit Decision Criteria for Section 3.4 on the following findings:

- 1. The proposed site is an appropriate location for the proposed use.*
- 2. Adequate and appropriate facilities will be provided for the operation of the proposed use.*
- 3. The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians, or the environment.*
- 4. The proposed use will not cause undue traffic congestion or conflicts in the immediate area.*
- 5. The proposed use will not be detrimental to the adjoining properties due to lighting, flooding, odors, dust, noise, vibration, refuse materials, or other undesirable visual, site or operational attributes of the proposed use.*
- 6. The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.*
- 7. The proposed use is in harmony with the general purpose and intent of this Zoning Bylaw.*
- 8. The proposed use is consistent with the goals of the Medway Master Plan.*
- 9. The proposed use will not be detrimental to the public good.*

The Board finds that the adverse effects of the proposed use as conditioned in this decision will outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to the site.

The Board finds that the Applicant has demonstrated through evidence submitted, including the Plans, the Architectural Plans, as well as testimony from the Applicant, that they have met all the required Special Permit Decision Criteria under Section 3.4 of the Zoning Bylaw, as conditioned in this decision.

IV. CONDITIONS OF APPROVAL

1. Smoke, heat and carbon monoxide detectors must be installed in accordance with the Massachusetts Fire and Building Codes.
2. This special permit is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to the special permit and that may be required by the decisions of other Town boards, agencies or commissions shall be submitted to the Board for review as a new request.
3. Any work or use that deviates from this Decision may be a violation of the Medway Zoning Bylaw. All conditions imposed by this Decision are mandatory, and any violation of a condition imposed by this decision may be a violation of the Medway Zoning Bylaw. Any violations of this Decision may prevent the issuance of a building permit and/or occupancy permit or result in the

issuance of a cease and desist order, noncriminal penalties, or fines, as further provided in Section 3.1 of the Zoning Bylaw. Please note that Section 3.1.F of the Zoning Bylaw provides:

1. Anyone who violates a provision of this Zoning Bylaw, or any condition of a variance, site plan review decision or special permit, shall be punishable by a fine of not more than three hundred dollars for each offense. Each day during which any portion of a violation continues shall constitute a separate offense.
2. As an alternative means of enforcement, the Building Commissioner may impose noncriminal penalties pursuant to G.L. c. 40, § 21D and Article XX of the Town's General Bylaws, in accordance with the following schedule:
 - First offense: warning (verbal or written)
 - Second offense: one hundred dollars
 - Third offense: two hundred dollars
 - Fourth and each subsequent offense per violation: three hundred dollars
4. As provided in Section 3.4.E of the Zoning Bylaw, special permits shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal under G.L. c. 40A, §17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or, in the case of a special permit for construction, if construction has not begun by such date, except for good cause. Upon receipt of a written request by the applicant filed at least 30 days prior to the date of expiration, the Board may grant an extension for good cause. The request shall state the reasons for the extension and also the length of time requested.
5. The applicant shall install dry wells as shown on the Plan, or other approved stormwater system which infiltrates all roof run off into the ground. Any and all gutters and downspouts shall not be placed in a manner to allow discharge of stormwater to the street or toward abutting properties. Stormwater shall not be discharged to the street.
6. All site work shall be in compliance with the documents submitted to the Board as listed in Section V of this Decision, including the Plans and Architectural Plans, provided, however, that the Building Commissioner may approve minor changes in the course of construction that are of such a nature as are usually approved as "field changes" that do not require further review by the Board. The dimensions shall not be changed without Board approval.
7. There shall be no tracking of construction materials onto any public way. Daily sweeping of roadways adjacent to the site shall be done to ensure that any loose gravel and dirt is removed from the roadways and does not create hazardous or deleterious conditions for vehicles, pedestrians or abutting residents. In the event construction debris is carried onto a public way, the applicant shall be responsible for all clean-up of the roadway which shall occur as soon as possible and in any event within twelve hours of its occurrence.
8. The owner must affirm that there is no connection whether direct or indirect to the Town storm water system from the site, including any drainage sump pump, perimeter drains, roof drains, or any other source.

9. The applicant shall comply with all Department of Public Works regulations and requirements for construction of the two-family house, including but not limited to the requirement that each dwelling unit has a separate water connection and water meter, and that each dwelling unit has a separate sewer connection; and shall obtain any necessary permits from the Department of Public Works for a two-family house.

10. The applicant shall comply with all Department of Public Works (DPW) regulations and requirements for any street opening permits, utility connections, or other work within DPW jurisdiction.

11. Applicant shall have the limit of work staked in the field, and clearly demarcated to the satisfaction of the Conservation Agent prior to the commencement of work. The limit of work shall be confirmed by the Conservation Agent in order to confirm the limit of work being under 20,000 square feet prior to the issuance of a Building Permit. No clearing or land disturbance is allowed beyond the limit of work as staked, demarcated, and confirmed by the Conservation Agent.

12. The existing curb cuts shall be utilized for the property, as shown on the site plan, no additional curb cuts are allowed. The existing stone wall along High Street shall not be removed and shall remain as in the current condition.

13. If fill is brought into site, any fill must be from an approved site or be tested by an LSP and certified as clean fill. The source (origin) of the fill including the address, owner and nature of the site and associated chemical testing of such fill shall be made known in writing to the Board for the Board's consulting engineer's review prior to placement at the site. The Board reserves the right to require further chemical testing of any additional fill by a third party, at the applicant's expense, for the Board's consideration, prior to issuance of building permit. No fill shall be placed in any area that is within the jurisdiction of the Conservation Commission without obtaining approval from the Conservation Commission.

14. Applicant shall comply with the Enforcement Order issued by the Conservation Commission and obtain a letter from the Conservation Commission stating that the Enforcement Order has been complied with and there are no outstanding violations prior to issuance of building permit and prior to any commencement of site work.

15. Landscaping: The parking area shall be screened from the street by planting at least five shrubs or trees that will provide adequate screening along the front of the lot between the street and the parking area. In addition, at least eight shrubs or trees that will provide adequate screening will be planted along the property boundary with 19A High Street. All plantings will be non-invasive as identified in *The Evaluation of Non-Native Plant Species for Invasiveness in Massachusetts* by the Massachusetts Invasive Plant Advisory Group, and shall consist of native species, noncultivars, from the list approved by the Conservation Commission.

V. INDEX OF DOCUMENTS

A. The application included the following plans and information that were provided to the Board at the time the application was filed:

1. Plan titled “Proposed Addition Plan of Land” prepared by Colonial Engineering, Inc., for 21 High Street in Medway, Massachusetts, dated January 3, 2023.

2. Architectural Plans prepared by Philippe Thibault Architect, LLC, dated March 20, 2019, consisting of three sheets: Existing Floor Plans, Proposed Floor Plans, and Proposed Elevations (collectively referred to herein as “the Architectural Plans”)

B. During the course of the review, the following materials were submitted to the Board:

1. Email from Bridget Graziano, Conservation Agent, dated January 23, 2023, with attachments:

(a) Medway Conservation Commission Enforcement Order for 21 High Street dated June 3, 2019.

(b) Letter from Susy Affleck-Childs, Planning & Economic Development Coordinator, and Bridget Graziano, regarding Land Filling at 21 High Street, dated August 12, 2021.

(c) “Disturbance Plan of Land” for 21 High Street, prepared by Colonial Engineering, Inc., dated August 25, 2021.

2. Email from Nolan Lynch, Superintendent of Highway, dated January 13, 2023.

3. Comments from the Design Review Committee dated February 1, 2023.

4. Mullins Certificate for Christina Oster, Clerk, dated April 5, 2023.

C. Additional materials filed by applicant:

1. Architectural plans entitled “Proposed 2 Family Condominiums” by Axiom Architects, dated 3/30/2023, consisting of five sheets.

2. “Proposed Addition Plan of Land in Medway MA” dated February 1, 2023, revised March 13, 2023, by Colonial Engineering, Inc., referred to herein as “the Plan”.

3. Plans entitled “Heritage Condominiums, 21 High Street, Medway, MA” by Axim Architects, dated 4/5/2023, consisting of floor plans and elevations, 3 sheets, referred to herein as the “Architectural Plans”.

4. Heritage Condominiums rendering by Axiom Architects

VI. VOTE OF THE BOARD

By a vote of 4 to 0, the Zoning Board of Appeals hereby GRANTS the Applicant, Medway Development LLC, a *SPECIAL PERMIT* under Section 3.4 of the Zoning Bylaw and Section 5.4, Schedule of Uses, for the construction of a two-family home located at 21 High Street (Assessors' Parcel ID: 57-062), in accordance with the application, the Plan which is attached hereto as Exhibit A, and the Architectural Plans, attached hereto as Exhibit B, and subject to the *CONDITIONS* herein.

Member:	Vote:	Signature:
Brian White	Aye	_____
Gibb Phenegar	Aye	_____
Christina Oster	Aye	_____
Tom Emero	Aye	_____

The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision on the terms set forth. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in General Laws, chapter 40A, section 15.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, chapter 40A, section 17, and shall be filed within 20 days after the filing of this notice in the office of the Medway Town Clerk.

In accordance with General Laws chapter 40A, section 11, no special permit shall take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds, and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title, bearing the certification of the Town Clerk that twenty days have elapsed after the Decision has been filed in the office of the Town Clerk and no appeal has been filed within said twenty day period or the appeal has been filed within such time. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The fee for recording or registering shall be paid by the Applicant. A copy of the recorded Decision, and notification by the Applicant of the recording, shall be furnished to the Board and Building Department.

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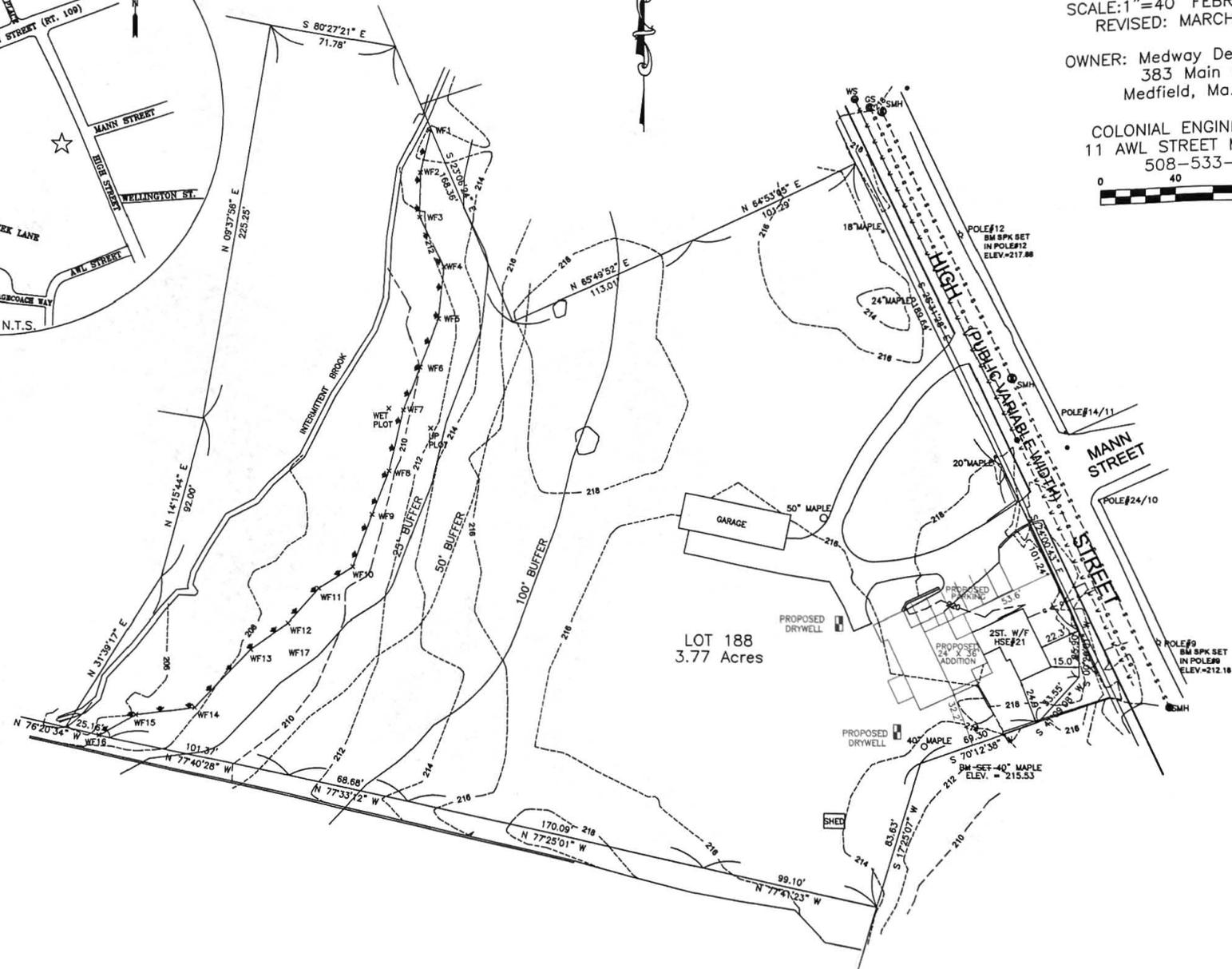
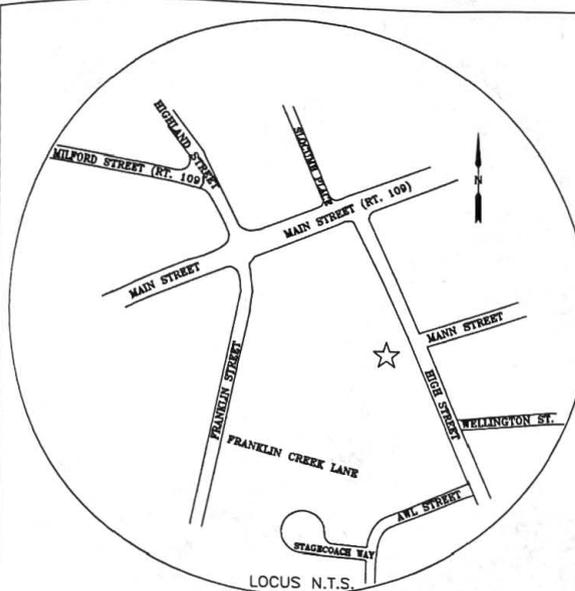
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PROPOSED ADDITION
 PLAN OF LAND
 IN
MEDWAY, MA.

SCALE: 1"=40' FEBRUARY 1, 2023
 REVISED: MARCH 13, 2023

OWNER: Medway Development LLC
 383 Main Street
 Medfield, Ma. 02052

COLONIAL ENGINEERING INC.
 11 AWL STREET MEDWAY, MA.
 508-533-1644



ZONE AR II
 AREA 22,500 S.F.
 FRONTAGE 150.00
 SETBACK 35'
 SIDEYARD 15'
 REARYARD 15'
 BUILDING LOT COVERAGE 30%
 IMPERVIOUS LOT COVERAGE 40%
 NOT WITHIN THE G.P.D.
 PROPOSED LOT COVERAGE
 BUILDING COVERAGE 1.79%
 IMPERVIOUS COVERAGE 5.37%

I CERTIFY THAT THE PROPOSED
 ADDITION SHOWN ON THIS PLAN
 CONFORMS TO THE ZONING
 BY-LAWS OF THE TOWN OF MEDWAY
 MA. AND DOES NOT LIE WITHIN THE
 FLOOD PLAIN.



Anthony M. DeLlorco

HERITAGE CONDOMINIUMS
 21 HIGH STREET
 MEDWAY, MASSACHUSETTS

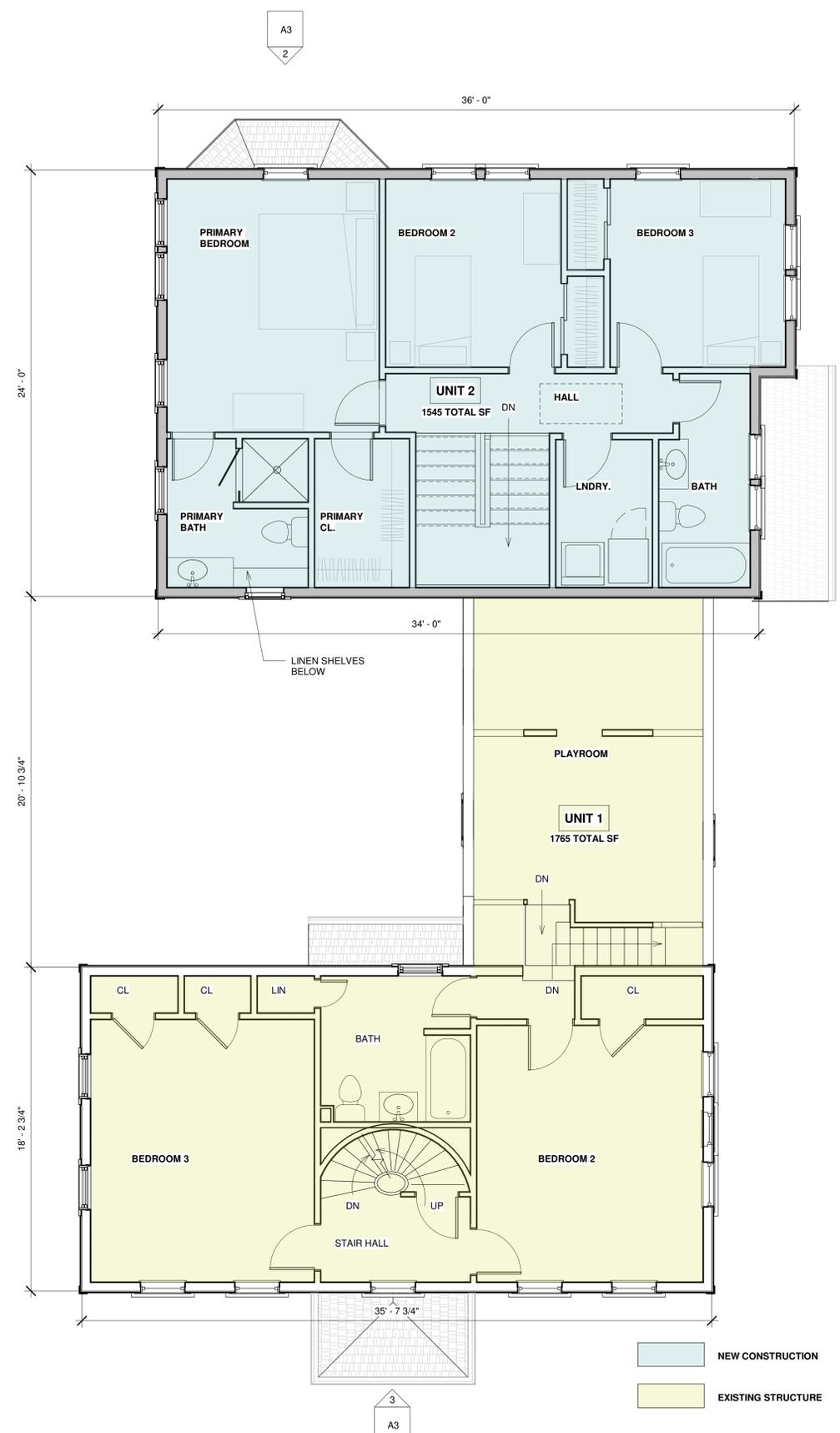


MEDWAY
 DEVELOPMENT,
 LLC.

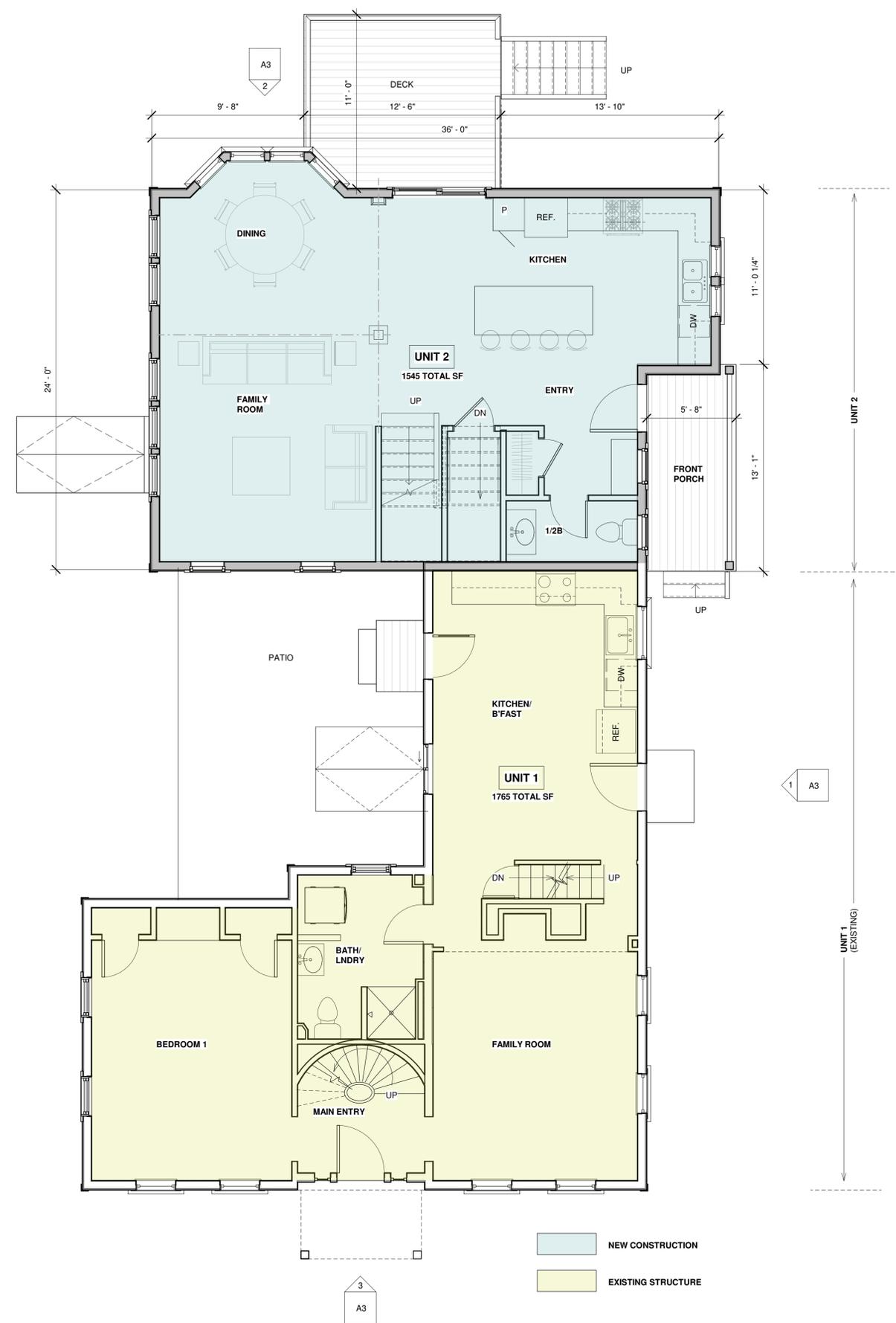
FLOOR PLANS

DATE: 4/5/2023
 SCALE: 1/4" = 1'-0"
 FILE: 2311

A1



② SECOND FLOOR
 1/4" = 1'-0"



① FIRST FLOOR PLAN
 1/4" = 1'-0"

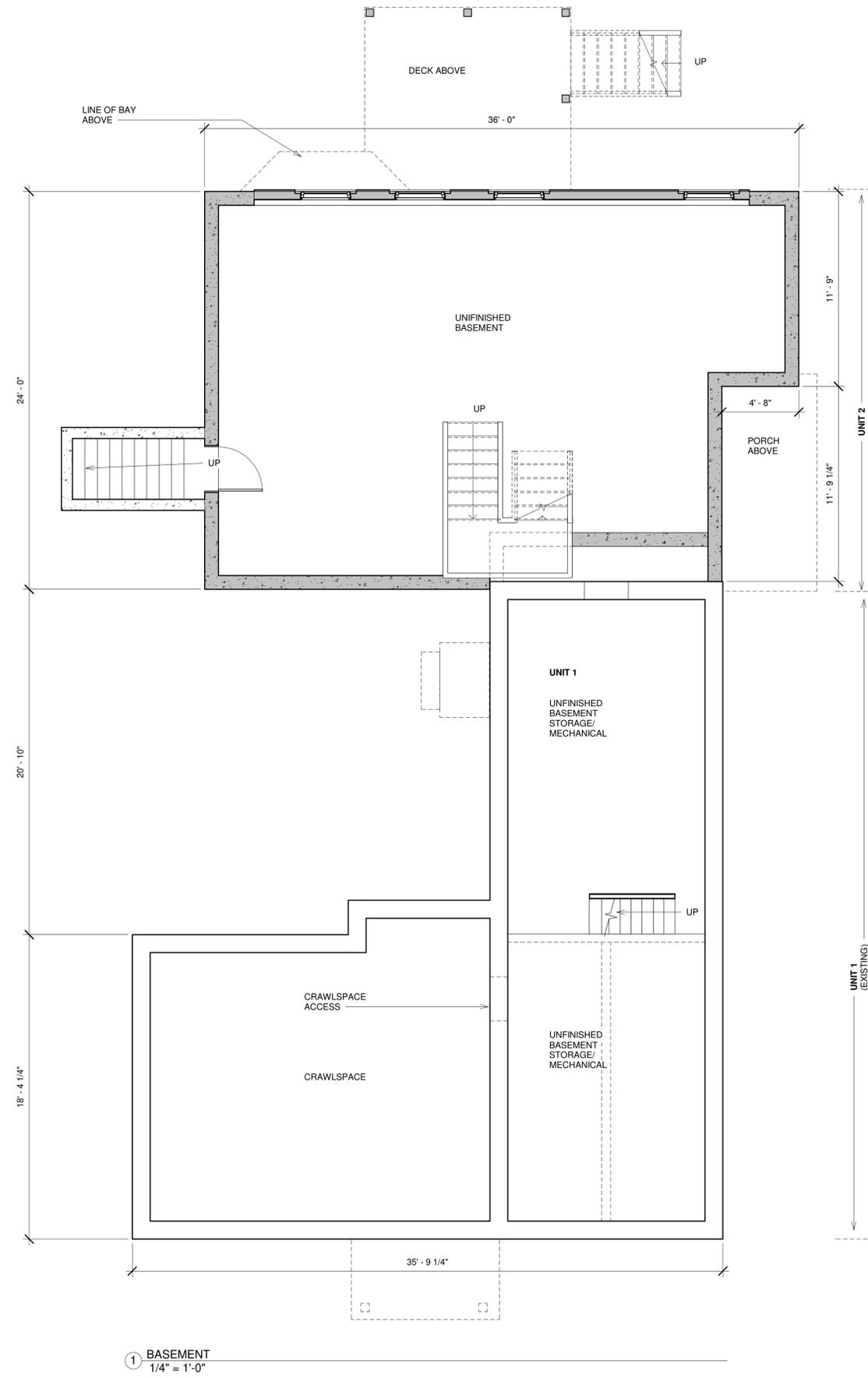
HERITAGE CONDOMINIUMS
21 HIGH STREET
MEDWAY, MASSACHUSETTS



MEDWAY
DEVELOPMENT,
LLC.

FLOOR PLANS

DATE: 4/5/2023
SCALE: 1/4" = 1'-0"
FILE: 2311



① BASEMENT
1/4" = 1'-0"

HERITAGE CONDOMINIUMS
21 HIGH STREET
MEDWAY, MASSACHUSETTS



MEDWAY
DEVELOPMENT,
LLC.

BUILDING
ELEVATIONS

DATE: 4/5/2023
SCALE: 1/4" = 1'-0"
FILE: 2311



① FRONT ELEVATION
1/4" = 1'-0"



③ STREET ELEVATION
1/4" = 1'-0"



② SIDE ELEVATION
1/4" = 1'-0"