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TOWN OF CARLISLE

OFFICE OF Zoning Board of Appeals

66 Westford Street
Carlisle, MA 01741
978-369-5326

Minutes: Board of Appeals, May 3, 2021

Call to Order

The meeting was called to order at 7:31 p.m. Pursuant to the Governor's Executive Order Concerning Open Meetings during the COVID-19 crisis, there was no in-person attendance. Participation was entirely remote utilizing the teleconference application Zoom Meeting. Chair Snell reported that the meeting was recorded and asked if any other persons were recording the meeting. No one else present said they were recording the meeting.

Roll Call and Declaration of Quorum

Chair Snell recognized the required quorum of Members. Present were Members Travis Snell (Chair), Manuel Crespo (Clerk), Steven Hinton and Associate Members Jay Lee and Eric Adams. Absent was Associate Members Gretchen Anderegg.

Statement of Compliance

The issue of compliance regarding posting of the meeting was confirmed by the Chair. According to Secretary Wang, the Meeting Agenda was posted April 28, 2021, on the Town website and at Town Hall.

Public Comment – Approval of Agenda

Chair Snell asked those present if there were any matters other than those listed on the agenda which the public would like to add to the agenda. When none were offered, the agenda was accepted.

Approval of prior minutes

The Board voted to accept the minutes from April 5, 2021, as amended, Snell (aye), Crespo (aye), Lee (aye), Hinton (aye) and Adams (aye).

Old Business – Application 2105

Chair Snell reopened the public hearing that was continued on April 5, 2021, for the application of Gretchen and Paul Nelson requesting a Special Permit in accordance with Zoning Bylaw Section 6.3 for the construction of additions to an existing dwelling and cabin located on a non-conforming lot resulting in an increase of habitable space. The property is located within the Residence District B at 868 Concord Street. Participation was entirely remote used the teleconference application Zoom Meeting. There was no in person attendance.

Present were the Applicants, Gretchen and Paul Nelson, their representative Paul Kirchner of Stamski and McNary Inc., Secretary Peggy Wang, Mosquito reporter Mark Brittle and members of the public. Secretary Wang reported that no correspondence had been received since the April 5, 2021, public hearing.

Documents entered into the record since the April 5, 2021, public hearing

ZBA_2105_09 Proposed plans prepared by Marshal McClean dated 11/17/2020

ZBA_2105_10 Existing conditions prepared by Marshal McClean dated 11/16/2020

ZBA_2105_11 Floor area calculations prepared by Paul Kirchner of Stamski and McNary, Inc. dated 4/29/2021

Background

Chair Snell noted at the prior public hearing the Board informed the Applicants that a variance and a special permit would be required to build the porch on the cabin because it would be in violation of the setback bylaw. The Board thought this to be true based on their recent experience with an application to build a deck in the setback which according to the Building Commissioner required a variance. The Board advised the Applicants to apply for a variance and the previous public hearing was continued. Thereafter, the Chair sought advice from Town Counsel and the Building Commissioner. The Building Commissioner determined that the existing cabin was non-conforming, which would require just a special permit. Town Counsel more specifically reasoned that if a specific structure already violates a specific dimensional requirement in the Zoning Bylaw and, if the proposed construction increases to the footprint within the same dimensional requirement, then only a Special Permit would be required. However, if the existing structure complies with the relevant dimensional requirement, and the Applicant is proposing construction that would violate if for the first time, then a variance would be required. In the Applicants' case, the cabin was already in violation of the side yard setback, so only a Special Permit is required. As a result, the Chair determined that a variance would not be required and advised the Applicants accordingly.

Applicant's testimony

Paul Kirchner of Stamski and McNary Inc. reviewed the Floor area calculations (ZBA_2105_11) that documented the existing and proposed square feet of habitable space. He said the existing total of 2,115 square feet is less than the amount reported on the Assessor's card.

Board's comments

The Board asked if there would be a connector between the garage and the house on the second floor, the Applicants said there would be. They confirmed with the Applicants that the storage area above the garage would be unheated, and the basement would remain unfinished after the proposed construction. The Members reviewed the Floor area Calculations (ZBA_2105_11) focusing on the change in habitable space versus the gross floor space. They noted that a Special Permit grants an increase in habitable space. They confirmed with Mr. Kirchner that the gross numbers reported were based on the exterior measurements of the existing and proposed structure.

Public comments

When Chair Snell asked if there were any comments from the public and none were offered, Chair Snell moved, and Member Hinton seconded the motion to close the public hearing. The Board voted 5 to 0 in favor of the motion, Snell (aye), Hinton (aye), Crespo (aye), Adams (aye) and Lee (aye).

Deliberations

The Board discussed the need to clearly record in the decision the existing amount of habitable space in house to serve as a benchmark for any future construction treating the house and cabin separately. While they noted that the cabin was considered habitable space since it had heat, the purposed open porch addition to the cabin was not an increase in habitable space. The Board determined it appropriate to grant the Special Permit for both the cabin and house.

Decision

Member Hinton moved, and Chair Snell seconded the motion to grant the Special Permit for application 2105 to increase the habitable space in the exiting house from 2,115 square feet to 2,792 square feet and to build an unheated porch on the cabin according to the plans submitted to the Board. They added that the existing shed (see plan of record Stamski and McNary Inc. plan 6403 P.PPL.dwg) shall remain unfinished with no heat.

Consistent with the informal historic practice of the Board, all Members and Associate Members that participated in not public hearings also participated in the vote, the motion was approve by a vote of 4 to 0 as follows:

Board of Appeals vote:

Snell (Member)	Affirm
Crespo (Member)	Affirm
Hinton (Member)	Affirm
Lee (Associate Member)	Affirm
Adams (Associate Member)	Affirm

Findings and Conditions

The decision was based on the standard findings and the following specific findings:

- 1) The lot is non-conforming regarding the lot shape as it cannot accommodate an ellipse with an area of 1.12 acres and minimum diameter of 150' as required under Zoning Bylaw Section 4.1.3.3.
- 2) There is an existing non-conforming cabin on the property located 20.4 feet from the side setback where 40 feet is required under Zoning Bylaw Section 4.3.2.
- 3) The proposed screened porch on the cabin will not increase the non-conformity of the structure or its habitable space.
- 4) The proposed house expansion will be an increase of 677 square feet or 32% of habitable space.
- 5) A Special Permit is necessary under the terms of Zoning Bylaw Section 6.3 because the existing cabin is non-conforming, and the lot is non-conforming.
- 6) The maximum build out of the existing house is 3,172 square feet of habitable space, any future expansion must be limited to 380 square feet.
- 7) The measurements of the existing square feet and proposed square feet reported in the Floor Area Calculations (ZBA_2105_11) were taken from the exterior of the structure.
- 8) No correspondence was received, and no parties of interest attended the public hearings.

The decision is subject to the standard conditions and the following specific conditions:

- 1) The Special Permit allows for an increase of habitable space in the existing house from 2,115 square feet to 2,792 square feet as shown on the plans submitted by the Applicants (ZBA_2105_09).
- 2) The space above the proposed attached garage must remain unheated unhabitable space.
- 3) For the expansion of the cabin, the porch must remain unheated.
- 4) The established benchmark of habitable space for the structure is as follows:

	Existing	Proposed
First floor	1,195 s. f.	1,872 s. f.
Second floor	920 s. f.	920 s. f.
Basement	0 s. f.	0 s. f.
Total habitable space	2,115 s. f.	2,792 s. f.

Appeal

The Applicants were advised that the written Decision would be prepared and signed within fourteen (14) days. A copy of the Decision will be mailed to the Applicants and abutters at which time the twenty (20) day appeal period begins. At the end of the appeal period, if no appeal is filed, the Applicants shall pick up the Decision along with the Town Clerk certified Grant of Special Permit.

Application 2106

Chair Snell moved and Member Hinton seconded the motion to open the public hearing for application of Emma Boettcher requesting a Special Permit under bylaw 3.2.2.3 to operate a part-time, all outdoor nursery school. The Board voted 4 -0 in favor of the motion, Snell (aye), Crespo (aye), Hinton (aye), Adams (aye) and Lee (aye). The property is located within the Residence B District at 60 Ledgeways. Participation was entirely remote utilizing the teleconference application Zoom Meeting. There was no in-person attendance.

Present were the Applicant Emma Boettcher, teachers Jenna Hull and Erika Miles, Secretary Peggy Wang, Mosquito reporter Mark Brittle and members of the public. Secretary Wang reported that no correspondence had been received regarding the application.

Documents enter into the record

ZBA_2106_01 Letter included with the application explaining the plans for operating an outdoor pre-school with photographs of the conditions and the children in the 2020 playground prepared by Emma Boettcher.

Applicant’s testimony

The Applicant, Emma Boettcher, told the Board that she and two other families started a bi-weekly playgroup in her yard in September of 2020. The group is in the process of obtaining a license from the Department of Early Education and Care for a small group program to operate outdoors September to June three days a week. The current outdoor classroom includes tables, log stools, easel and other tools. Boettcher added that there are plans to install a greenhouse and composting toilet, but she has not started the permitting process yet for those additional components.

Board’s comments and questions

The Board noted that this is an unusual request because previous pre-school applications were requesting a Special Permit to operate inside a building. In this case of a unique outdoor experience, the Board discussed the need to understand the boundaries in which the school would operate to protect the privacy of the neighbors. The Applicant was asked how the boundaries would be marked. Boettcher explained that the edges of the 50 foot by 100 foot open area used by the students would be marked with sticks like the ones used for the marking the lines for the snow plow.

The Board confirmed with the Applicant that the open area used by the students does not encroach into the 40 foot setback. She added that there are no plans to build a fence. The Board asked if the students would be allowed to go into the woods. Boettcher said that the students would spend time in the wooded area but always with supervision. When asked by the Board if she had spoken with the neighbors regarding the pre-school Boettcher said that she spoke with three of the five neighbors, and they supported the pre-school.

Public comments

When Chair Snell asked if there were any comments from the public and when none were offered, Snell made the motion and Hinton seconded the motion to close the public hearing. The Board voted 5 to 0 in favor of the motion, Snell (aye), Hinton (aye), Crespo (aye), Adams and Lee (aye).

Deliberations

The Board discussed what conditions should be included in the decision and determined it appropriate to grant the Special Permit. They noted that the Applicant should speak with the two other neighbors to ensure they understand the operation of the business and are comfortable with limits that are in place to protect their privacy.

Decision

Member Hinton made and Associate Member Adams seconded the motion to grant the Special Permit for application 2106 to Emma Boettcher for a period of one (1) year. Consistent with the informal historic practice of the Board, all Members and Associate Members who participated in the public hearing also participated in the vote, and the motion was approved by a vote of 5 to 0 as follows:

Board of Appeals vote:

Snell (Member)	Affirm
Crespo (Member)	Affirm
Hinton (Member)	Affirm
Adams (Associate Member)	Affirm
Lee (Associate Member)	Affirm

The decision was based on the standard findings and the following specific findings:

- 1) A Special Permit is necessary to operate a business in the Residence B District under the terms of Zoning Bylaw Section 3.2.2.3.
- 2) No abutters were present at the hearing and no correspondence was received.

The decision is subject to the standard conditions and the following specific conditions:

- 1) The hours of operation for the business shall be:
Monday through Friday – 9:00 am to 12:00 pm
Drop off of students from 8:30 am to 9:00 am
Pick up of students from 12:00 pm to 12:30 pm
- 2) A maximum of ten (10) students on the property at any time.
- 3) A maximum of four (4) employees/teachers on the property at any time
- 4) This Special Permit is granted to the business owner Emma Boettcher only and cannot be transferred to any other person(s) through sale or assign.
- 5) The permit is granted for a period of one (1) year to expire on May 3, 2022.

Appeal

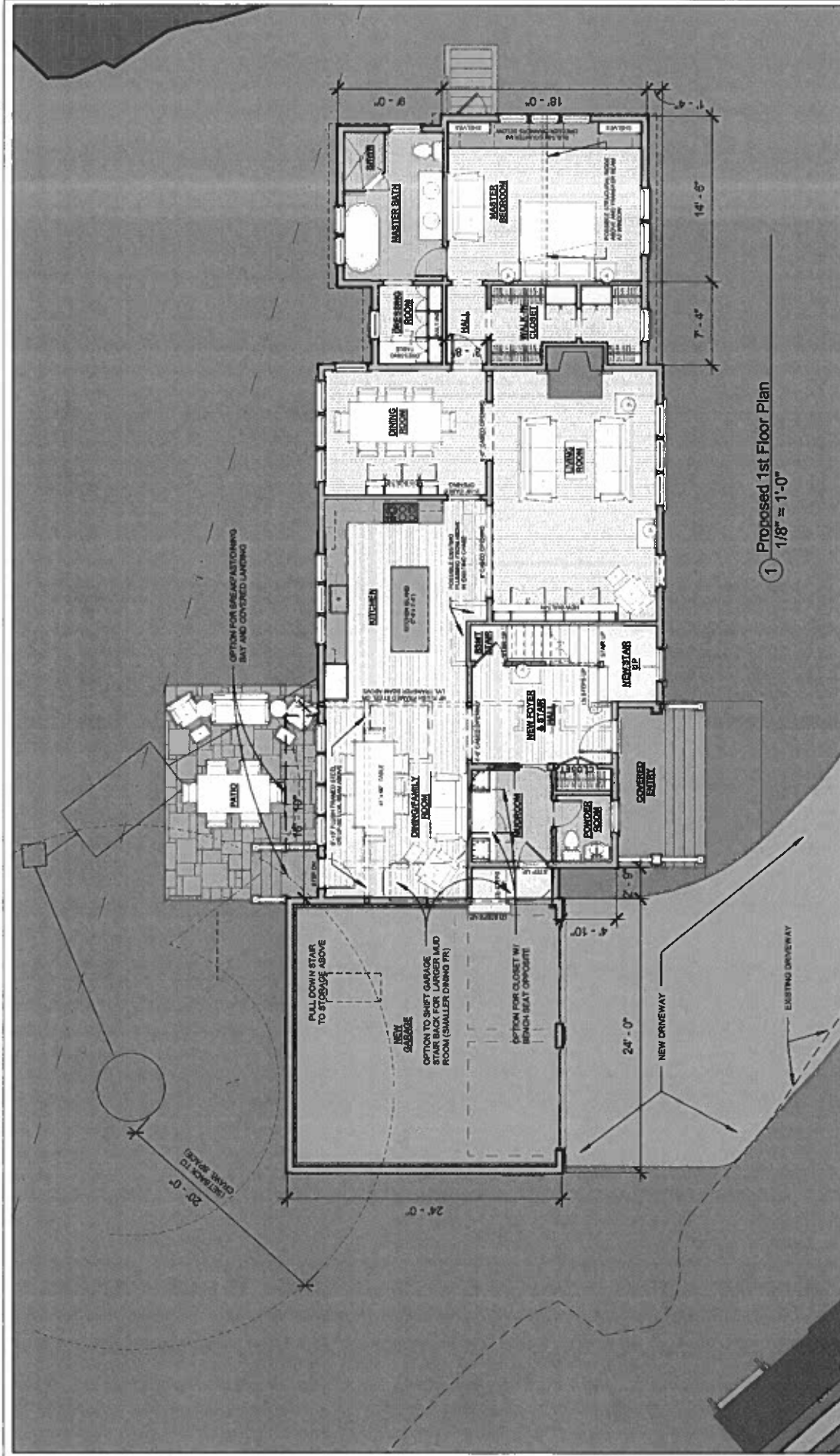
The Applicants were advised that the written Decision would be prepared and signed within fourteen (14) days. A copy of the Decision will be mailed to the Applicants and abutters at which time the twenty (20) day appeal period begins. At the end of the appeal period, if no appeal is filed, the Applicants shall pick up the Decision along with the Town Clerk certificate Grant of Special Permit.

Adjournment

Chair Snell asked those present if there were any additional issues to discuss. When none were offered, Chair Snell moved, and Member Crespo seconded the motion to adjourn. The Board voted 5 -0 in favor of the motion, Snell (aye), Crespo (aye), Lee (aye), Adams, and Hinton (aye). The meeting adjourned at 8:37 pm.

Respectfully Submitted - Peggy Wang

11/16/2020 11:17:22 AM

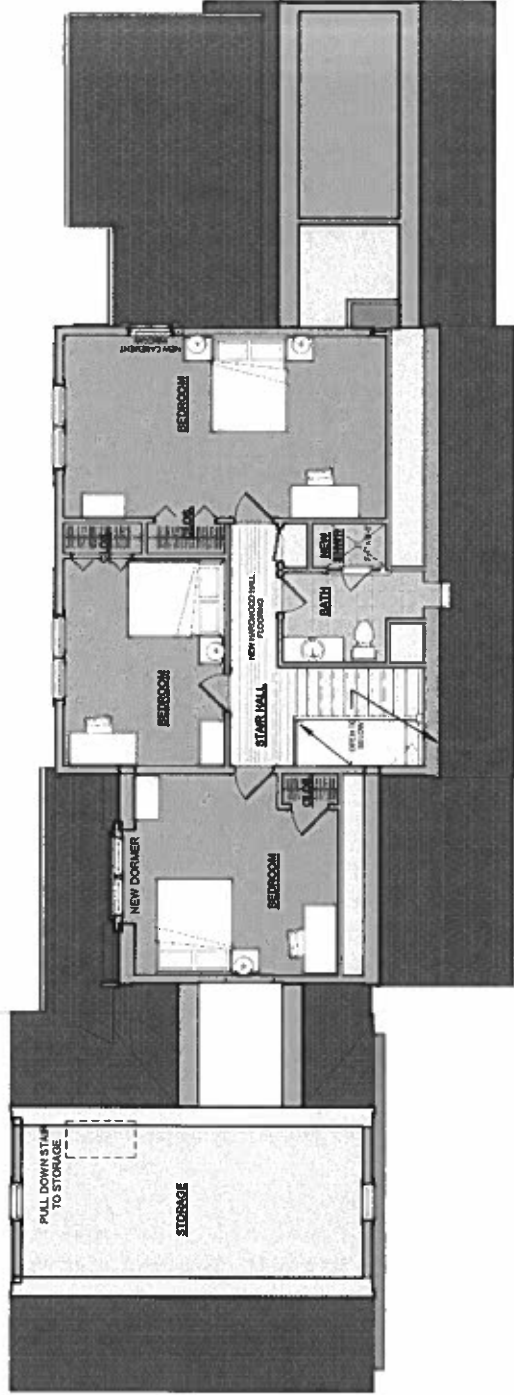


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111520

Proposed 1st Floor Plans Nelson Residence

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 100 Sully Road, Ste 10
 Omaha, NE 68102
 402.425.4400
 www.marshallmclean.com

MMA
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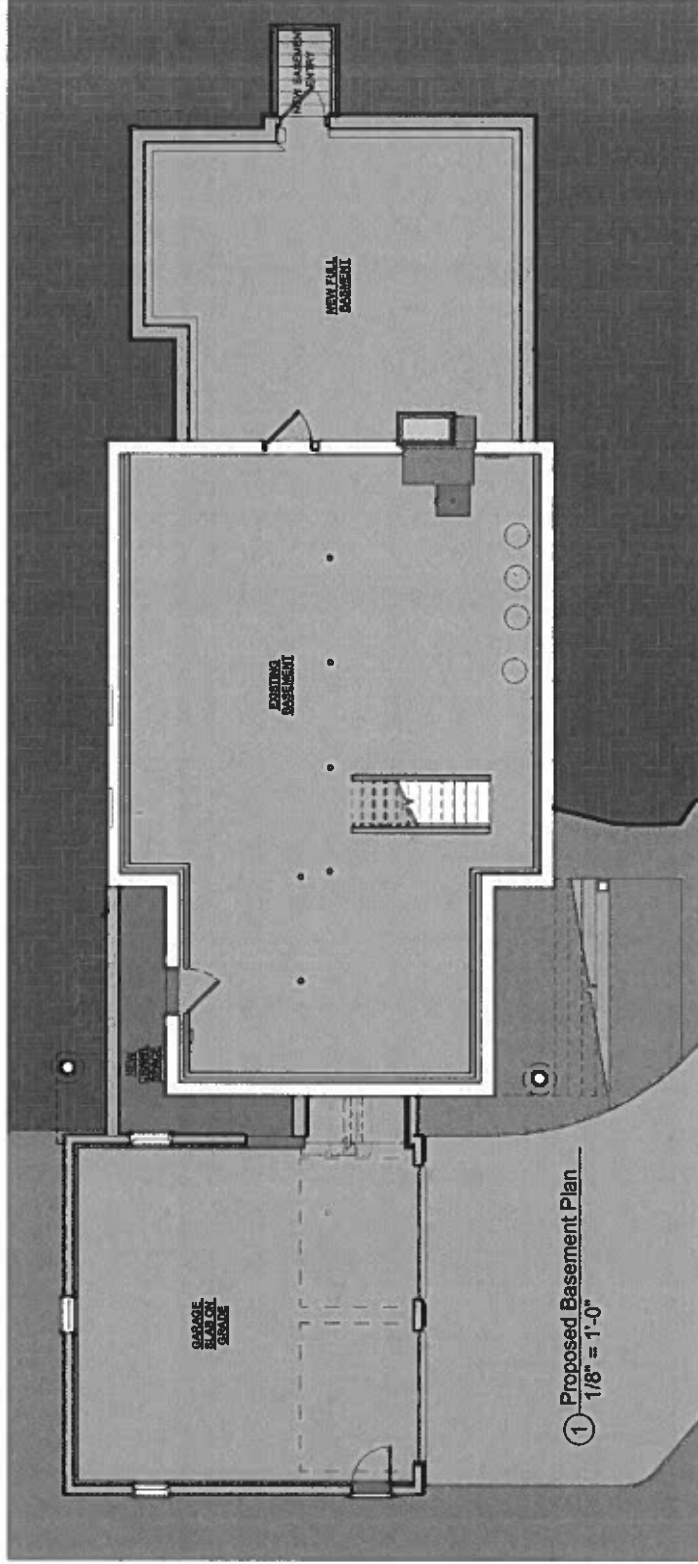
1 Proposed 2nd Floor Plan
1/8" = 1'-0"

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111520

Proposed 2nd Floor Plan
Nelson Residence
MARSHALL MCLEAN / ARCHITECT
106 Oakbury Road, Ste 10
Waltham, MA 02451
617.429.6400
marshall@mcleanarchitect.com
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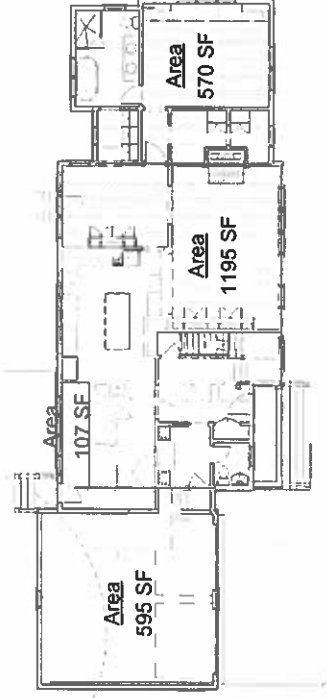


① Proposed Basement Plan
1/8" = 1'-0"

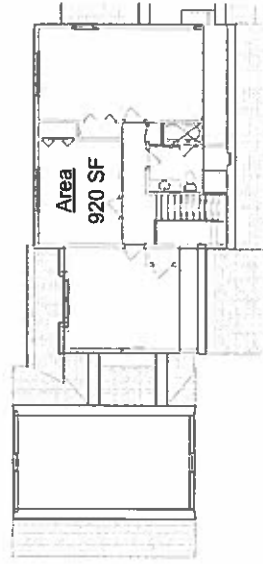
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111520

Proposed Basement Plan Nelson Residence

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 100 Sundry Road, Ste. 10
 Victoria, BC V8T 1T2
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① Proposed 1st Floor Plan
1/16" = 1'-0"



② Proposed 2nd Floor Plan
1/16" = 1'-0"

.SKA.PA.1
111520

Proposed Area Plans
Nelson Residence

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Prepared/Submitted by Paul Kircher of Stamski & McNary

868 Concord St, Carlisle

Floor Area Calculations

4/29/2021

Gross Floor Area							
House & Garage				Cabin			
	Existing (s.f.)	Proposed (s.f.)	% change		Existing (s.f.)	Proposed (s.f.)	% change
1st Floor	1195	1872		Main Cabin	359	359	
2nd Floor	920	920		Storage	92	92	
Garage	496	595		Porch	0	91	
Basement	1195	1765					
Total	3806	5152	35.37	Total	451	542	20.18

Living Space							
House				Cabin			
	Existing (s.f.)	Proposed (s.f.)	% change		Existing (s.f.)	Proposed (s.f.)	% change
1st Floor	1195	1935		Main Cabin	359	359	
2nd Floor	920	920					
Total	2115	2855	34.99	Total	359	359	0.00

ZBA-2105-11