



Michael A. Russell, MS, Director  
Permitting and Inspections Department

Ann Machado  
Zoning Administrator

**CITY OF PORTLAND  
ZONING BOARD OF APPEALS**

**Practical Difficulty Variance Application**

**Applicant Information:**

Erica Schair-Cardona and Ivan Cardona  
NAME

2 Stratton Place  
ADDRESS

Portland, ME 04112 04101

207-774-3663 icardona001@gmail.com  
PHONE # & E-MAIL

Owner  
APPLICANT'S RIGHT/TITLE/INTEREST  
(EG; owner, purchaser, etc)

R-6 Residential Zone  
CURRENT ZONING DESIGNATION

**Subject Property Information:**

2 Stratton Place, Portland, ME 04101  
PROPERTY ADDRESS

044 B032001  
CHART/BLOCK/LOT (CBL)

Erica Schair-Cardona and Ivan Cardona  
PROPERTY OWNER (if different)

2 Stratton Place, Portland, ME 04101  
ADDRESS

207-774-3663 erica\_schair@schw.com  
PHONE # & E-MAIL

PRACTICAL DIFFICULTY VARIANCE  
FROM SECTION 14- 473(c) 1 and 2

**EXISTING USE OF PROPERTY:**

Typical Backyard (without deck currently)

**NOTE:** If site plan approval is required, attach preliminary or final site plan.

*The undersigned hereby makes application for a Practical Difficulty Variance as described above, and certifies that the information supplied herein is true and correct to the best of his OR her knowledge and belief.*

SIGNATURE OF APPLICANT

3/13/17  
DATE

The following words have the meanings set forth below:

1. **Dimensional Standards**: Those provisions of the article which relate to lot area, lot coverage, frontage and setback requirements
2. **Practical Difficulty**: A case where strict application of the dimensional standards of the Ordinance to the property for which a variance is sought, would BOTH preclude a use of the property which is permitted in the zone in which it is located AND also result in significant economic injury to the applicant.
3. **Significant Economic Injury**: The value of the property, if the variance were denied, would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that the denial of the variance would mean the practical loss of all beneficial use of the land.

A Practical Difficulty Variance may not be used to grant relief from the provisions of Section 14-449 (Land Use Standards) to increase either volume or floor area, nor to permit the location of a structure, including, but not limited to, single-component manufactured homes, to be situated on a lot in a way which is contrary to the provisions of this article.

Notwithstanding the provisions of subsections 14-473(c)(1) and (2) of this section, the Zoning Board of Appeals (ZBA) may grant a variance from the dimensional standards of this article when strict application of the provisions of the Ordinance would create a practical difficulty, as defined herein, and when **all** the following conditions are found to exist:

“Practical Difficulty” variance standards pursuant to Portland City Code §14-473(c)(3):

1. The need for the variance is from dimensional standards of the Land Use Zoning Ordinance (lot area, lot coverage, frontage, or setback requirements).

Satisfied \_\_\_\_\_ NOT Satisfied \_\_\_\_\_ (deny the appeal)  
Reason and supporting facts:

*See attachment*

2. Strict application of the provisions of the ordinance would create a **Practical Difficulty**, meaning it would both (1) preclude a use of the property which is permitted in the zone in which it is located, and also (2) would result in significant economic injury to the applicant. (*“Significant Economic Injury” means the value of the property, if the variance was denied, would be substantially lower than its value if the variance were granted.*) To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land.

Satisfied \_\_\_\_\_ NOT Satisfied \_\_\_\_\_ (deny the appeal)  
Reason and supporting facts:

*See attachment*

3. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

Satisfied \_\_\_\_\_ Not Satisfied \_\_\_\_\_ (deny the appeal)

Reason and supporting facts:

*See attachment*

4. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use, or fair market value, of abutting properties.

Satisfied \_\_\_\_\_ Not Satisfied \_\_\_\_\_ (deny the appeal)

Reason and supporting facts:

*See attachment*

5. The practical difficulty is not the result of action taken by the applicant or a prior owner.

Satisfied \_\_\_\_\_ Not Satisfied \_\_\_\_\_ (deny the appeal)

Reason and supporting facts:

*See attachment*

6. No other feasible alternative is available to the applicant, except the variance.

Satisfied \_\_\_\_\_ Not Satisfied \_\_\_\_\_ (deny the appeal)

Reason and supporting facts:

*see attachment*

7. The granting of a variance will not have an unreasonably adverse effect on the natural environment.

Satisfied \_\_\_\_\_ Not Satisfied \_\_\_\_\_ (deny the appeal)

Reason and supporting facts:

*see attachment*

8. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. §435, nor within a shoreland zone or flood hazard zone.

Satisfied \_\_\_\_\_ Not Satisfied \_\_\_\_\_ (deny the appeal)

Reason and supporting facts:

*see attachment*

Cover Letter

Practical Difficulty Variance Application

2 Stratton Place, Portland, Maine

Dear Zoning Board of Appeals:

We are seeking a variance to build a deck off of the back of our house. Our deck would be the same size (8x10) as many of our attached neighbors who also have backyard decks. Indeed, our direct next door neighbor (#3) recently built a permitted deck in the fall of 2016, on the back of their house, despite similar side yard setbacks, as we are all attached row homes. Our deck would be congruent with our neighbors.

We believe the addition of a deck would allow more access to the outdoors/green space, not less. In addition, our deck would not impact our back-yard accessibility, as it would be an overhang with the ability to walk/stand underneath it. If our variance application were denied, our property value would be significantly lower than if it were granted, thus causing "severe economic injury" vis a vis our other similarly situated neighbors on our row.

Moreover, we also believe it is important to point out that 8 of the 10 Stratton Place neighbors (including us) are now owners of the green space in front of our home (referred to as Park Row Green, LLC), which has a square footage of 7875. We collectively purchased this property for our access to green space, to conserve Portland City green space, and for public use. So, while this green space is not directly connected to our lot coverage, we are keenly aware of the desire to preserve green area, as this was our intent in purchasing the Park Row Green.

We hope that the Board takes into consideration the above, and the answers to the questions in the Practical Difficulty Variance Application attached to this Cover Letter. Please feel free to contact us if additional information is needed.

Sincerely,

Ivan D. Cardona and Erica Schair-Cardona  
207-774-3663

P.S.

Attached you will find a copy of our \$100 invoice for "additions permit" paid  
9/28/16

## Question 1:

We are seeking a variance from the requirements of Sec 14-139(a) of the R-6 Dimensional Requirements to build a 1-level 8-foot by 10-foot (~80 sq feet) overhanging deck, (i.e. not an enclosed multi-level structure), off of the back of our house. Currently our lot coverage is over the 60% (as is typical in almost all of the houses on our row, Stratton Place), but we are seeking a variance with this proposed one-level deck from the lot coverage limitation. While we understand that the Board interprets lot coverage as any structural footprint that is built above the ground as part of lot coverage, we do believe that it should be noted, that we would still be able to walk beneath the deck and that this deck would not preclude us from using and/or accessing our lot/the green space behind our house. In fact we believe, and have seen from our neighbors, that it would enhance our access to the back yard.

Our total lot size is 955 square feet and our home goes to the very edge of our lot line on the sides of our home, as is the nature of most/all of the row homes on Stratton PLace. Currently our lot coverage is 80.7%, if the variance is granted, the lot coverage would be 89.3%.

Additionally, we are seeking a variance from the minimum landscaped open space requirement. We live in a row home with a very small back yard/open space. (As we referenced in our Cover Letter, we and some of our neighbors, purchased the large green space in front of our home to preserve an open, green space for our home and the community at large.)

As our home currently stands we do not have 20% of our lot preserved as green area. We have a small, partially landscaped back yard that does not provide us as much access to the outdoors as we would like. We are seeking this variance to *increase* our access to the outdoors. As stated above, if this variance is approved, our home and deck would occupy 89.3%, leaving us with a green space of 10.7% of our lot.

Regarding the rear yard setbacks, we are seeking a setback reduction variance from the 10-foot rear setback of 6-feet to build the deck/stairs down to the ground. As



we have stated above, and as with all of the small lots on Stratton Place, we are limited for outdoor space and after 10 years of living here, we believe that the best way to utilize the back yard/rear outdoor space is to build a deck. While we are requesting a setback reduction variance, we believe that our deck will in no way negatively impact our neighbors, since many of our neighbors to the side already have decks and behind us is simply a driveway and a back path/driveway for an apartment building on Park Street.

Additionally, our proposed deck could be construed as an accessory structure, which would mean that since it is less than 144sq ft (80sq ft to be exact), it would only need to have a rear yard setback of 5ft, which our deck would satisfy.

Moreover, our proposal for a rear yard deck would be in keeping with many of the existing rear yard decks already present on the row (as seen in the attached Google earth picture). Our proposal would not be a solid structure to increase living space or density of our home, but rather it would be a deck in line with the recently permitted and constructed rear deck of our immediate neighbor in #3 Stratton Place, and similar in dimension to the other decks on our row. It will have an aesthetic and visual flow in keeping with our neighbor's back yards. And since our house has a smaller footprint among the 10 homes on Stratton Place, it will allow us to access our rear outdoor space more easily, which is important in an urban area.

Lastly, our proposal would not have an impact on our current drainage of storm water, since the deck would have a slated permeable floor. Since water would continue to flow as it currently does, there would be no need to capture and treat storm water on site with this deck (i.e. no waste water issues would be created).

**Question 2:**

Strict application of the provisions of the ordinance would create a Practical Difficulty because;

1) denying this rear yard deck would preclude from fully using our property/outdoor space. Indeed, others on our row already have and continue to use a rear yard deck and have easier/better access to their green area.

And

2) other homes on the row already have backyard decks, which increases their property value. We stand to lose property value relative to the comps on our row if our deck were to be denied. This would result in "significant economic injury", as it is defined in the Practical Difficulty Variance Application.

**Question 3:**

Our need for a variance is due to the unique circumstances of our property and the other homes on Stratton Place, and not due to the general conditions in the neighborhood (i.e. the 10 homes of Stratton Place are an architecturally unique set of row homes, where the traditional and updated set backs are difficult to meet).

That said we hope that our explanation requesting a variance is satisfactory.

In addition, the construction of this deck would be in concert with the historic and present pattern of development on the row; that is, it allows for existing neighborhood patterns to be replicated.

**Question 4:**

We believe the granting of this variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonable detrimental effect on either the use, or fair market value, of abutting properties. The proposed deck would not detrimentally affect the public purpose of having urban green space, since our deck would not be visible to the general public, due to the nature of these row homes, and since the deck would not be part of the frontage of the house. In addition, the proposed deck would actually be in keeping with the

neighborhood/row since there are already multiple homes on our row with rear yard decks. We would essentially replicate the deck recently permitted and built by #3 Stratton place. Moreover, our deck would not affect the use of abutting properties (for the reasons described above), and would not affect the use of our own rear yard/green space, but rather, on the contrary, the deck would increase our accessibility to our rear yard space. Lastly, our deck would actually help us keep up with the fair market value of adjoining properties.

**Question 5:**

We have not added onto our home or changed the outside in any way since we purchased the home in 2006. This is the first time we are seeking a permit from the City to build. Therefore, the need for this Practical Difficult Variance is not the result of any action taken by prior homeowners or us.

**Question 6:**

We are unaware of any other feasible alternative besides this variance.

**Question 7:**

We are confident this deck will not have an unreasonable adverse affect on the natural environment. It would be a simple structure with traditional materials in keeping with the decks already present on our row. And, as stated above, the deck would have a slated permeable floor and water would continue to flow as it currently does.

**Question 8:**

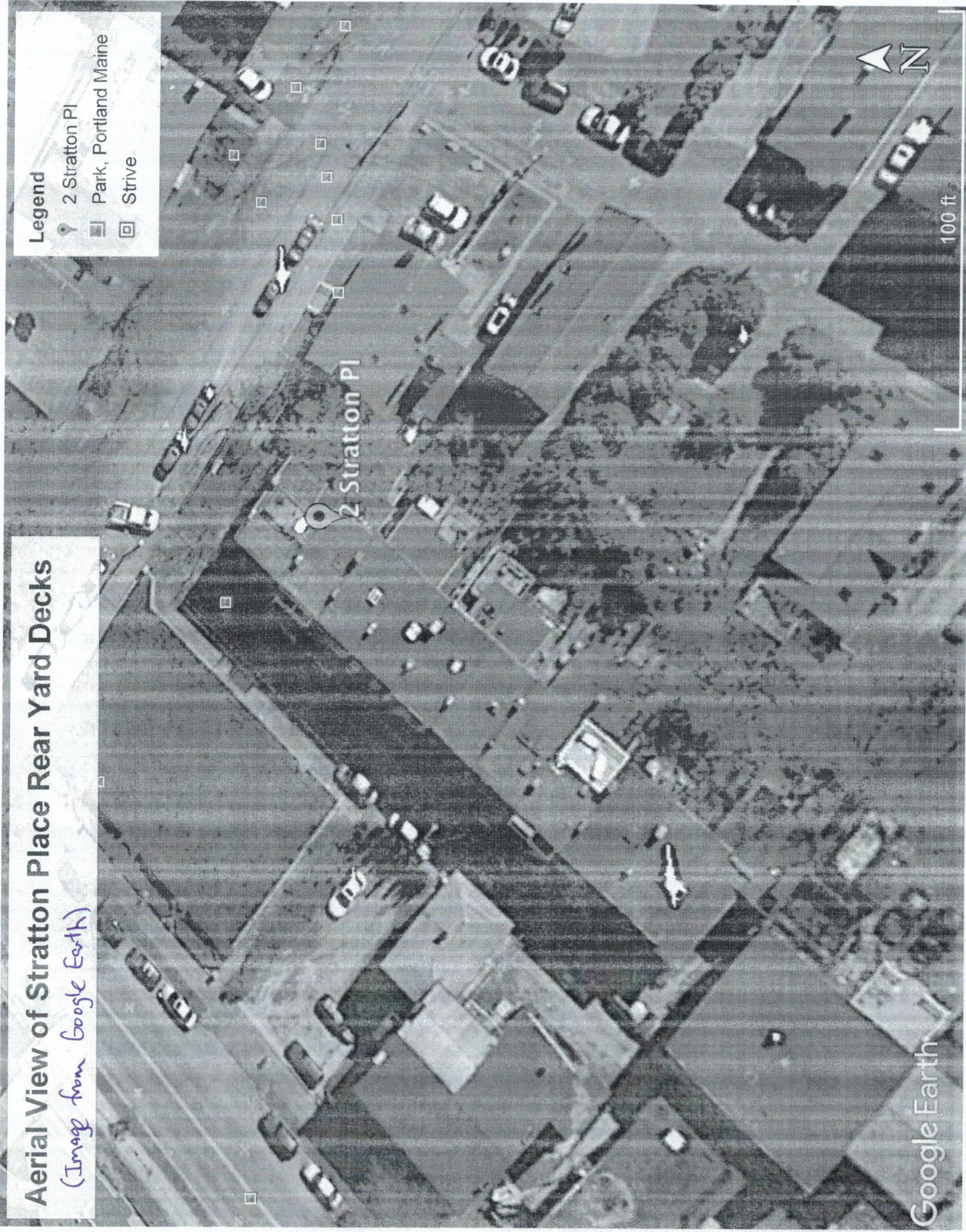
To our knowledge, our property is not located within a shore land area, or within a shore land zone or flood hazard zone.

# Aerial View of Stratton Place Rear Yard Decks

(Image from Google Earth)

## Legend

- 2 Stratton Pl
- Park, Portland Maine
- Strive



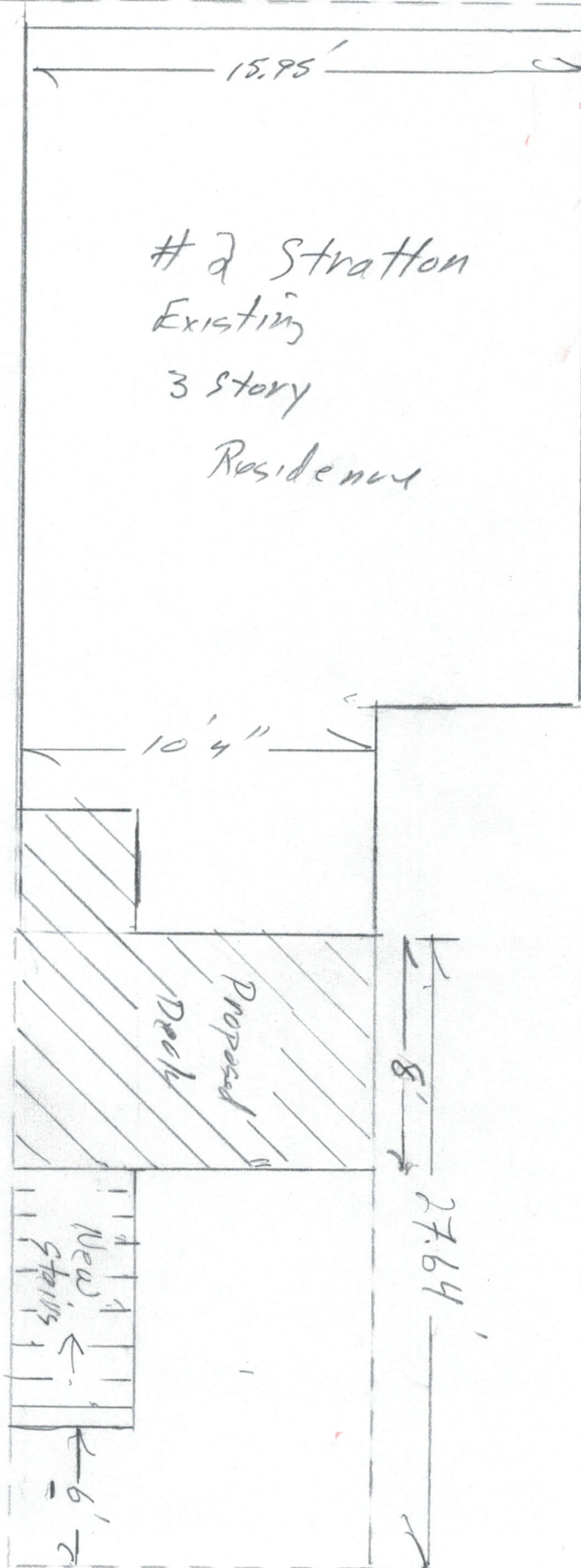
Google Earth

100 ft

#2 Stratton Place  
Front of House



Stratton Place



#2 Stratton  
Existing  
3 story  
Residence

10' 4"

Proposed Deck

8'

27.64'

New Stairs

6'



#4 Deck

#3 Deck

#2 Paper Deck

#3 Deck

#9 Deck



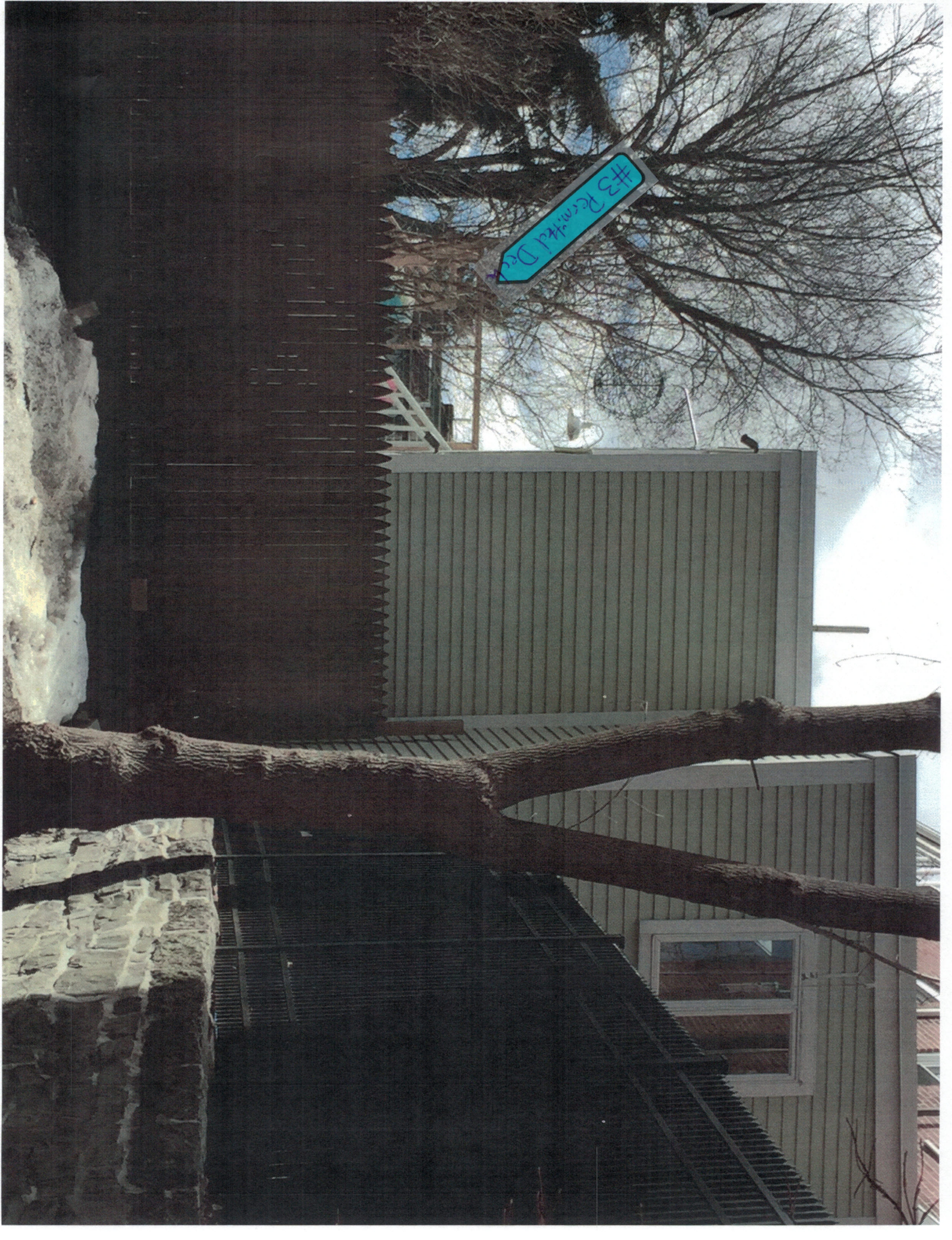






#3 Rem-Hall Deck

#2 Porch Deck



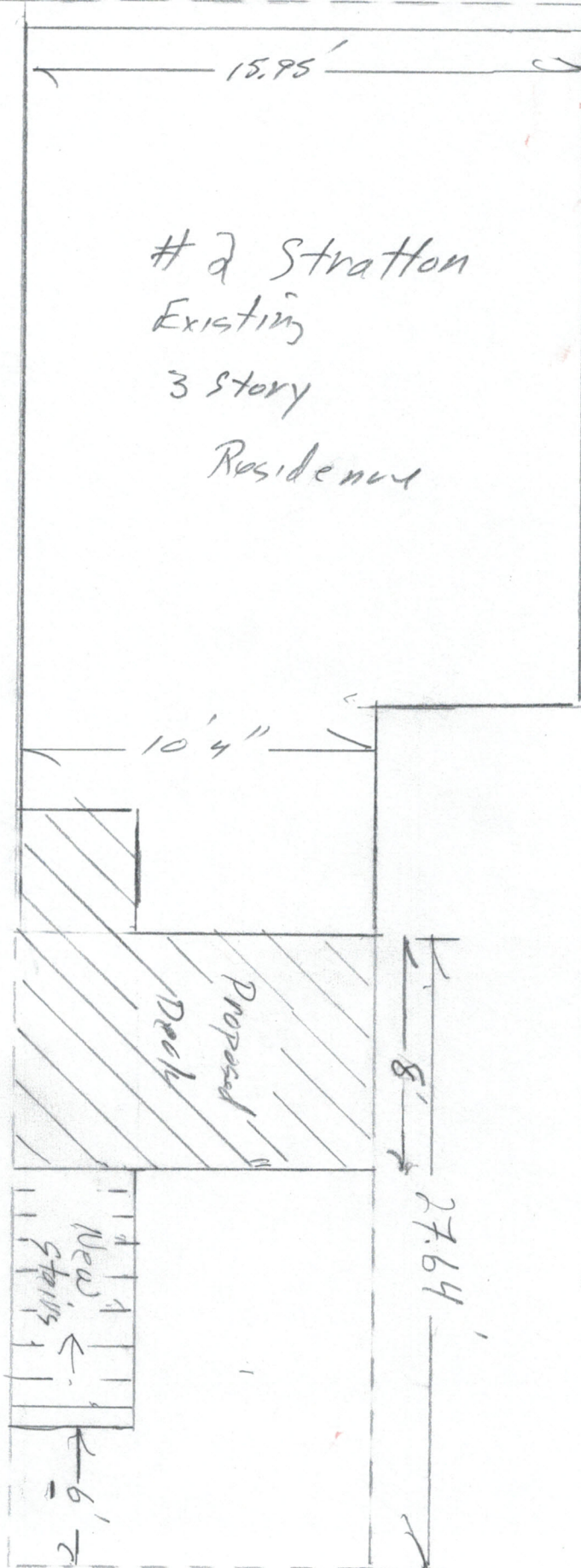
#3 Remodel Dec





#2 deck site

Stratton Place



#2 Stratton  
Existing  
3 story  
Residence

10' 4"

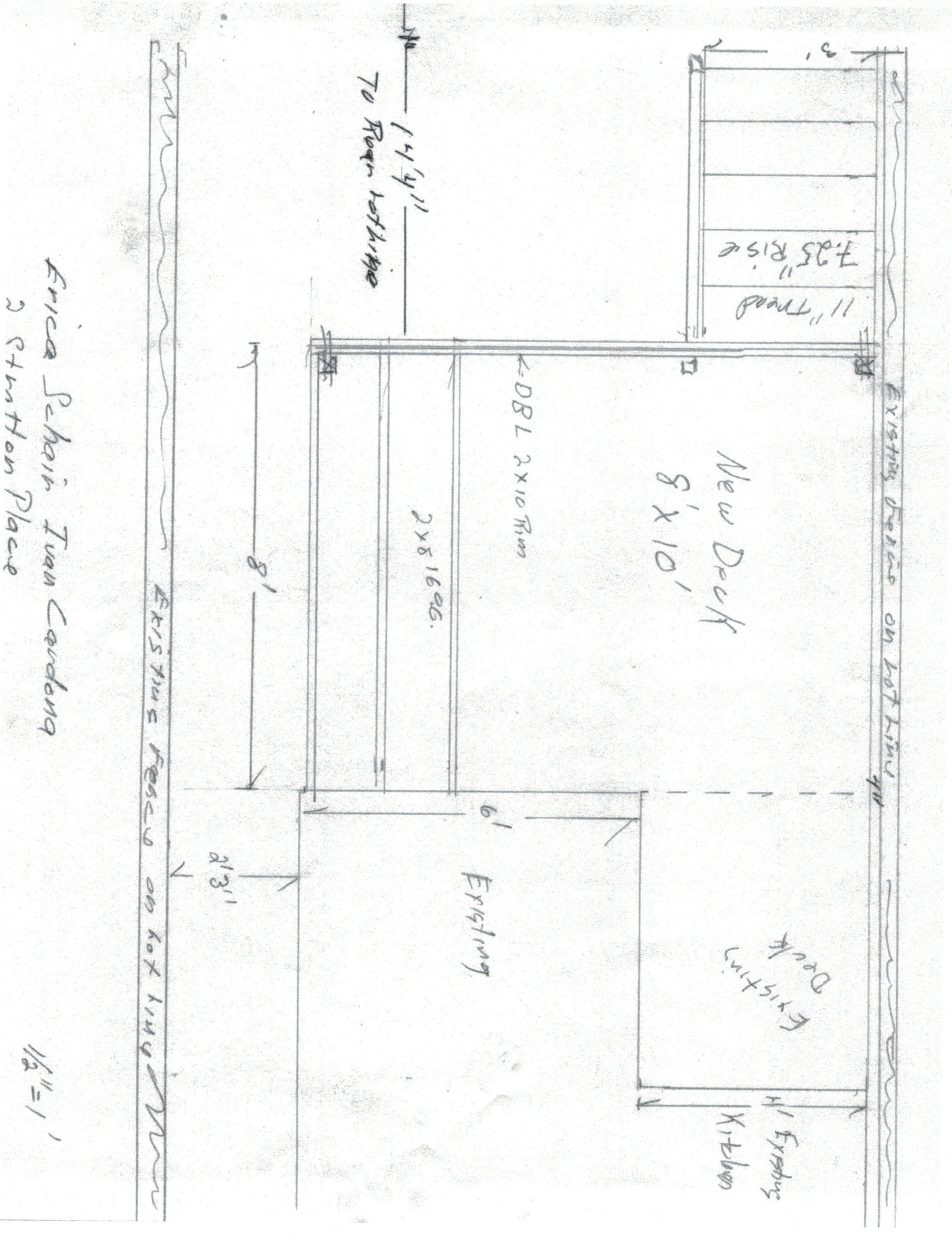
Proposed  
Deck

8'

27.64'

New  
Stairs

6'



Erica Schair Ivan Cardona  
 2 Stanton Place

1/2" = 1'

2 Stratton Place

Existing  
Foundation

8'

36"

Vertical  
Ballistics  
4" o.c.

2x10 Run 2x8 Joists 16 o.c.

2-1 1/2" Garage bolts Through House Sill

#3 4 Topo Deck

4x4

Existing grade

8" Sonotube  
concrete

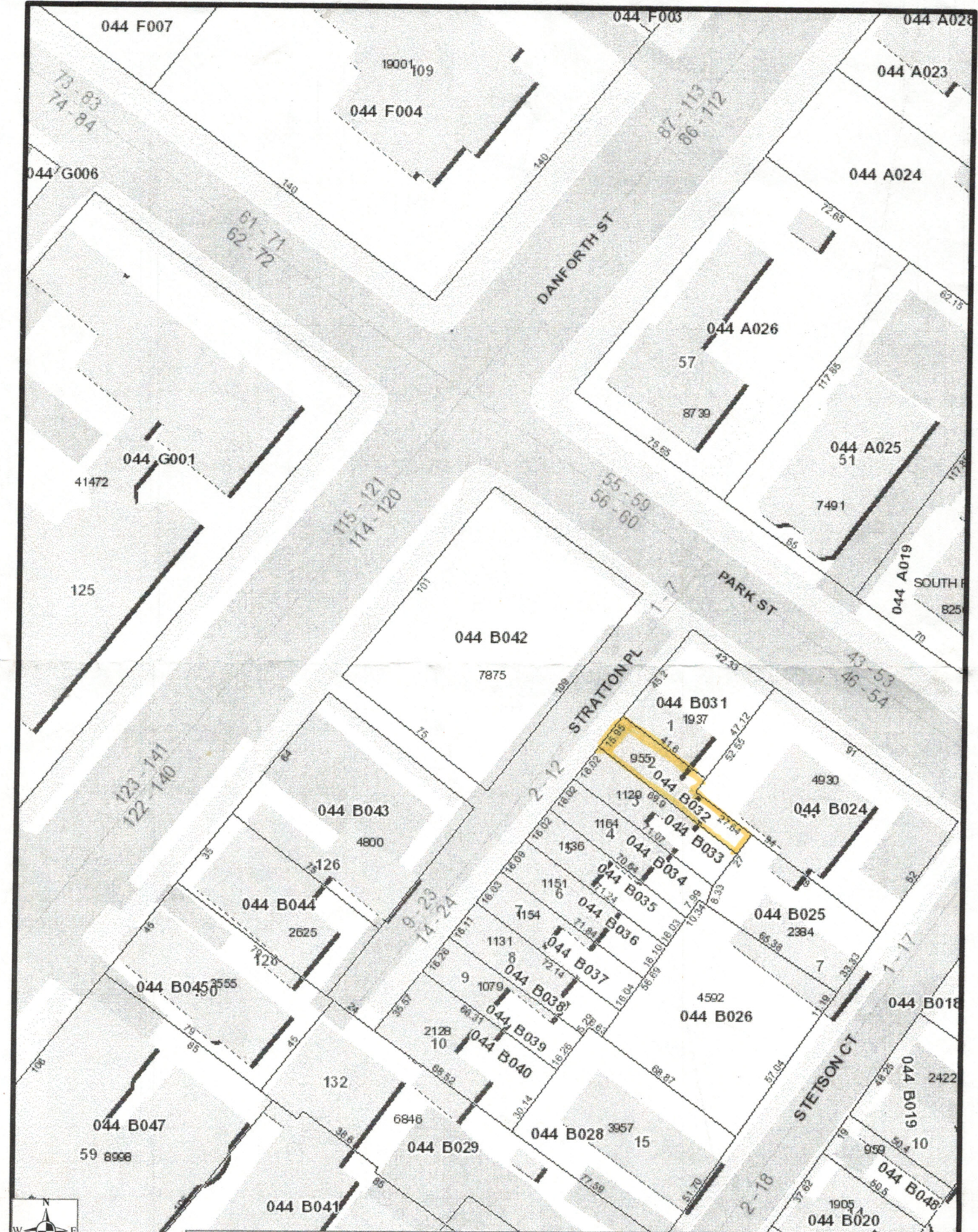
Existing

Basement

1/2" = 1'

Park St Side

Schwin - Candona





**WARRANTY DEED**

**Know all Persons by these Presents** that we, **Andrew S. McNabb and Sharon E. McNabb**, of the City of Portland, State of Maine, in consideration of one dollar and other valuable consideration paid by **Ivan Dario Cardona and Erica Schair-Cardona**, whose mailing address is P.O. Box 7325, Portland, ME 04112 the receipt whereof we do hereby acknowledge do hereby **give, grant, bargain, sell and convey** unto the said **Ivan Dario Cardona and Erica Schair-Cardona**, as joint tenants, not as tenants in common, their heirs and assigns forever,

A certain lot or parcel of land, with the buildings thereon, situated on the southeasterly side of Stratton Street, formerly Park Place, in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

BEGINNING on the southeasterly side of Stratton Street at a point distant 45.2 feet from the southwesterly side of Park Street; thence South 36° 30' East 41.6 feet to a stone retaining wall; thence south 54° 20' West 5.43 feet to an angle; thence South 38° East 27.64 feet; thence South 49° 41' West 11.24 feet to a point; thence North 36° 30' West through the center of a partition 69.9 feet to Stratton Street; thence northeasterly along Stratton Street 15.95 feet to the point of beginning. Also conveying, a four foot right of way in common with others over the southeasterly side of Lots No. 3 and 4 and shown on plan of property made for Aucocisco Co. by H.I. and E.C. Jordan, C.E., and recorded in the Cumberland County Registry of Deeds in Plan Book 42, Page 21, and a 10 foot wide right of way to Stetson Court, in common with others; both rights of way being as shown on said plan.

Meaning and intending to convey Lot No. 2 on said plan, to which reference is hereby made.

Meaning and intending to convey, and hereby conveying, the premises described in a deed from Dale S. Hanson to Andrew S. McNabb and Sharon E. McNabb dated February 4, 2004, and recorded in the Cumberland County Registry of Deeds in Book 20858, Page 82.

**To have and to hold** the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said **Ivan Dario Cardona and Erica Schair-Cardona**, their heirs and assigns, to them and their use and behoof forever.

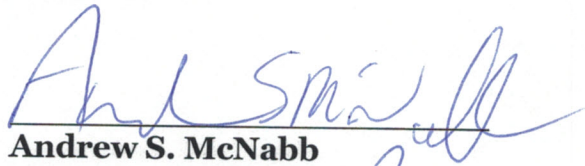
MAINE REAL ESTATE TAX PAID

And we do **covenant** with the said Grantee(s), their heirs and assigns, that we are lawfully seized in fee of the premises, that they are free of all encumbrances, that we have good right to sell and convey the same to the said Grantee(s) to hold as aforesaid; and that we and our heirs shall and will **warrant and defend** the same to the said Grantee(s), their heirs and assigns forever, against the lawful claims and demands of all persons.

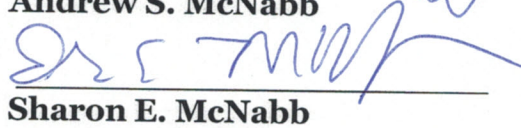
**IN WITNESS WHEREOF**, we, the said **Andrew S. McNabb and Sharon E. McNabb**, have hereunto set our hand and seal this 12th day of December, 2006.

*Signed, Sealed and Delivered  
in the presence of*

\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
**Andrew S. McNabb**

\_\_\_\_\_  
Witness

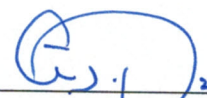
  
\_\_\_\_\_  
**Sharon E. McNabb**

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

Dated: December 12, 2006

Personally appeared the above-named Andrew S. McNabb and Sharon E. McNabb and acknowledged the foregoing instrument to be their free act and deed.

Before me,

  
\_\_\_\_\_  
Attorney at Law/Notary Public

Printed name: Christopher J. Ryer

RETURN TO:  
FIDELITY TITLE CO., INC.  
1050 FOREST AVENUE  
PORTLAND, ME 04103

*JPR*

Received  
Recorded Register of Deeds  
Dec 13, 2006 12:17:45P  
Cumberland County  
John B DBrien