

TOWN OF SCITUATE

*Planning Board*



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Scituate, Massachusetts 02066  
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TOWN OF SCITUATE  
TOWN CLERK

**Accessory Dwelling Special Permit 81 Norwell Avenue  
Decision: APPROVED with Conditions**

Owner: John M. McAuliffe, Trustees of the AMMA Realty Trust

Applicant: Maryanne Lewis

Date: March 22, 2022

Location: 81 Norwell Avenue

Assessor's Map: #34-29-5

Plans: Architectural plans submitted with the application consisting of View from the street, Sheet A1 New House for 81 Norwell Ave, G2 New Garage/Apartment Second Floor Plan dated 4/22/2019, G1 First Floor Plan New Garage/Apartment dated 4/22/2019, G3 Front Elevation New Garage/Apartment dated 5/16/2019, G4 Right and Rear Elevation for New Garage/Apartment dated 5/13/2019; AB1 dated 2/14/22 received by Planning Board 2/28/22; AB2 dated 2/7/22 received by Planning Board on 3/1/22 all by Cotuit Bay Design; A1 New Remodeling dated 3/2/2022 received by the Planning Board on 3/3/2022; A1 New Remodeling dated 3/2/2022 received by the Planning Board on 3/9/22; Site Plan for Maryanne Lewis 81 Norwell Avenue, Scituate, MA by Warwick & Associates, Inc. dated March 29, 2019 and Certified Plot Plan by Warwick Associates dated 11/18/2019.

Members Hearing Special Permit Application: Ann Burbine, Benjamin Bornstein, Patricia Lambert, Stephen Pritchard and Robert MacLean.

**Background:** The property is located in the Residential R-3 Zoning District on a lot of approximately 13,300 sq. ft. according to Town of Scituate Assessor's records. The Site Plan submitted with the application indicates the property to be 13,300 sq. ft. The accessory dwelling is proposed in a detached structure newly built on the property. The proposed accessory

dwelling will have one bedroom, one study and one bathroom with a living room and kitchen. There is an outdoor deck on the north and east sides of the accessory dwelling with a stairway on the east side. Based on a floor plan submitted by the applicant and the Assessor's data, the gross floor area of the accessory dwelling is approximately 870 sq. ft. It is proposed to be authorized as a legal living unit through approval of an accessory dwelling special permit by the Planning Board. The total area of the primary dwelling is 2,310 sq. ft. with a loft and screened porch. The accessory dwelling at 870 sq. ft. is 37.6% of the size of the primary dwelling which is allowed as it is less than the maximum of 40% is allowed in the zoning bylaw. The applicant has signed a notarized statement that she will occupy one of the units at 81 Norwell Ave.

**Procedural Summary:** This request for a Special Permit was filed with the Town Clerk and the Planning Board on December 22, 2021. A Public Hearing before the Planning Board was duly advertised and notices sent to all abutters in accordance with MGL Chapter 40A. The hearing was opened on January 27, 2022 and continued until March 10, 2022 when the Planning Board approved the Special Permit with conditions including the Planning Board standard conditions.

**Hearing Summary:** The public hearing was opened on January 27, 2022 with the applicant Maryanne Lewis present. Ms. Lewis read a letter indicating the property was purchased in 2018 when it was in a dilapidated state with the house unsafe, rodent infested and site for drug users. She has improved the lot with two structures which comply with current zoning and are positioned to maximize parking on a pervious surface for the primary and accessory dwelling. She indicated the scale and design of the structures are proportionate to one another and she would like the accessory dwelling to be used for a person who may not otherwise be able to stay in town. She indicated the accessory dwelling did not exceed 750 sq. ft. or 40% of the primary footprint. The Board and the Town Planner opined that based on the information submitted that the floor area was more than 750 sq. ft. and more than 40% of the size of the primary dwelling and a foundation as-built would be needed. Mr. Borstein inquired about the stairs to the attic area. Ms. Lewis indicated they were interior and the mechanical equipment is in the attic. Mr. Pritchard expressed concern about mitigation if the accessory dwelling was already built before it was permitted and he was concerned with the balcony. Ms. Lewis indicated the outside was built out and there are front and side balconies which comply with the zoning. She said her lot was bigger than her neighbors' lots. Mr. Pritchard said if the square footage is not met, there is not compliance and asked how compliance will be met for the new structure. It was indicated that the Assessor's card had the square footage of the accessory dwelling at 870 sq. ft. and the primary dwelling at 1,863 and 40% of that is 745. The Board opined forgiveness is being sought not permission. Ms. Lewis indicated she was told that she could not apply until the primary dwelling was done; she maintained that square footage is reduced as one goes up in floor levels. Mr. MacLean opined he was okay with floor area but there needs to be some concessions made for privacy of the neighbors. Ms. Burbine commented that two means of egress are needed. The Board continued the hearing until March 10 so that discrepancies in areas could be resolved.

On March 10, 2022, Ms. Lewis indicated that the as-built is on file in the Building Department, on a site visit with Ms. Joseph and Mr. Vogel today it was confirmed there is no lighting to the rear and right side of the accessory dwelling and an updated floor plan has been submitted for the

primary dwelling. Ms. Joseph indicated that the latest plan dated 3/2/2022 stamped in on 3/9/2022, shows the ceiling height in the loft meets the definition of a habitable attic and the porch is enclosed by screen panels, a roof and has electricity and lighting meeting the definition of gross floor area. She indicated there is only one lot and the accessory dwelling structure meets all required yard and height setbacks and it is allowable for stairs and decks to project into the setback. She indicated the loft is 191 sq. ft. and the porch is 256 sq. ft. for a total of 2,310 sq. ft. when added to the existing of 1,863 sq. ft. 40% of the floor area is 924 sq. ft and the accessory dwelling is 870 sq. ft. so compliance is met. The Board clarified that the attic of the accessory dwelling cannot be counted as habitable space.

The Board indicated they are hearing a lot of displeasure; however, even if the permit is denied, the accessory structure will still stand. The Board encouraged that conditions be voiced so that there could be an amicable resolution to some of the issues. Fencing was discussed as not viable screening as the fence would need to be high and shrubbery would need to be high as well. A trellis was discussed and conditioned despite it may not be effective or last due to the wind. Lower wattage lighting was discussed with concern over code requirements. Ms. Lewis agreed to do those items. She did not commit to landscaping. She did commit to room darkening shades in the accessory dwelling so light does not shine out.

**Public Comment:** Robert Vogel, Building Commissioner commented that the accessory dwelling does not meet the size requirements. William Branton of the DPW Sewer Division indicated the structure has already completed a sewer connection and the division has already received the accessory dwelling sewer connection fee. Mark Cloud of the Water Division has indicated that the accessory dwelling will need a separate water service and water meter with a connection fee of \$14,000. Marie Ahern of 334 Tilden Road emailed on 1/27/2022 that she is opposed to the accessory dwelling as she does not believe conditions could reasonably address the negative effects of the accessory dwelling. She indicated that accessory dwelling does not achieve the purposes of the bylaw without negatively impacting her property as well as the neighborhood by increasing density and negatively “impacting the quality of life in a single-family neighborhood.” She indicated the two-story structure blocks natural light despite meeting the backyard setback. She indicated no mitigation measures have been taken to shield her property from potential negative effects spilling over into her backyard including light, noise and odors. She believes the application was not submitted in a timely manner and questions the square footage of the accessory dwelling. In a second email dated 3/10/22, Ms. Ahern expresses her opposition to the accessory dwelling which looms directly over her back yard. She questions the square footage and the porch and loft space proposed to be counted toward habitable floor area. She indicates no mitigation measures have been proposed for landscaping or lighting and the secondary egress stairs. She maintains the accessory dwelling is on its own lot which is a violation of zoning.

Randy Jarvis and Hilary Tuscher of 336 Tilden Road emailed on 1/27/2022 that the proposed accessory dwelling will eliminate their privacy and there is no mitigation. They indicate the height will block natural light and their property is not being shielded from negative effects spilling into their backyard. They are concerned about noise from the windows and

balcony/deck. They feel they should not have to mitigate or remedy at their expense for the creation of an accessory dwelling on this adjacent property.

Diane Dymek of 75 Norwell Ave. submitted letters dated 2/26/2022 and 3/8/2022 asked that the accessory dwelling not be approved as the structure overlooks her entire backyard and people occupying the accessory dwelling will be staring down at her property. She indicated the deck is at the property line and light will flood her property. She indicated boulders that were dug out were placed on her property. She also expressed concern that the accessory dwelling and garage were built prior to the framing of the house and occupancy permits for neither structure have been obtained.

Holly Clark of 78 Norwell Ave. submitted a letter received 3/3/2022. She believes the accessory dwelling should be denied as it is too large and the oversized structure does not improve the neighborhood as it harms abutters who now have no privacy in their yards. She further indicates lighting is an issue.

At the 1/27/2022 hearing session, Ms. Laurie O'Malley of 37 Edgar Road opined the house before Ms. Lewis' was an eyesore and she likes what has been done to the house. Mr. Adam Tufankjian said the garage is big and there will be more light pollution from it as it can be seen from Edgar Road. He indicated accessory dwellings could be built in the tight neighborhood and turned into Airbnb's. Mr. Randy Jarvis of 336 Tilden Road opined there are no mitigation measures that could be implemented to obstruct the view down to his house. He indicated a fence would not be high enough so landscaping will be needed to respect his privacy. He said when he moved in he thought the structure was going to be a garage and now it is a proposed dwelling unit. State Representative Patrick Kearney indicated he supported the project and is grateful Scituate has accessory dwellings to help keep families together. Steve Bjorklund opined that he does not see in the bylaw where the building can't be erected as the Board is allowing the use of the structure. He opined if the applicant is now asking for the use then the Board can grant conditions or not approve it.

At the 3/10/2022 hearing session, Christopher Patch of 82 Norwell Ave. indicated the enclosed deck was not part of the original application and now it is so the accessory dwelling could be accommodated. He felt the Town advised her to do these things to make the permit allowable. The Board disagreed as the Town did not advise her what to do. He opined Ms. Lewis is permitting this after the fact and that is wrong and it has happened with several other accessory dwellings. He agrees with the Board that the bylaw should be redone to avoid variables.

Holly Clark of 78 Norwell Ave. questioned the attic space and if it is habitable now it should be counted and what is to prevent there from being dormers added to make it habitable. Ms. Joseph opined that would be a change that has to come back to the Board and more square footage would likely be needed in the primary dwelling. The Board asked for a condition that the attic space cannot be habitable space. The Building Department will be notified of this for their inspection.

Mr. Patch asked if Occupancy Permits have been issued for the dwellings. Ms. Joseph said not for the accessory and she didn't know about the primary. Mr. Patch said he talked with the Building Commissioner and none have been issued. He questioned how a permit for an accessory dwelling can be given without the primary having its occupancy permit. He indicated he hopes the Town will conform to what is required under the bylaw. The Board opined they are hearing this application after the fact and this is asking for forgiveness instead of permission. The Board is not in charge of issuing occupancy permits. Mr. Patch said he is questioning the legality with the certifications that are required. Ms. Joseph indicated certified foundation plans had been submitted.

Ms. Clark commented that the downward focused lighting is going into neighbors' yards because the structure is so high. She said the light on the stairs side and from the front of the deck have the effect of shining light into windows and down lighting has different impacts to abutters. Ms. Joseph indicated down lighting will be conditioned. The applicant agreed to address the issue. She asked about mitigation – fencing, screening and plantings to improve privacy. The Board indicated it was discussed but not required or agreed upon.

Marie Ahern of 334 Tilden Road asked why the landscape plan was not submitted and can't see any reason why there can't be mitigation in the back of the garage. She requested a condition on landscaping and lighting as she opined the lighting is high intensity now. The Board indicated it would condition a lattice on the right side of the accessory dwelling to screen the view and the applicant indicated she would change the light bulb. Ms. Ahern said mitigation should be conditioned. The Board asked for plans and they were not submitted. She feels there are options for fencing that could be explored and has concern on the secondary egress. Ms. Joseph said the Building Commissioner said the inspector signed off as the egress is proper.

Diane Dymek of 75 Norwell Ave said she lives next door and would like landscaping between the properties. She indicated she has a beautiful backyard that she can no longer use as she is living underneath the garage and feels she will be looked upon. She said there is no greenery and she sent a letter to the Board with her comments.

**Findings of Fact:** A motion was duly made and seconded to make the following Findings of Fact concerning the accessory dwelling at 81 Norwell Avenue:

1. On December 22, 2021 applicant Maryanne Lewis and owner John M McAuliffe, Trustee of the AMMA Realty Trust applied for a special permit for a detached accessory dwelling on the property at 81 Norwell Avenue.
2. According to the Town of Scituate Assessor's records and the deed, the property at 81 Norwell Avenue is owned by AMMA Realty Trust, John M. McAuliffe, Trustee. The affidavit of the trustee indicates that Maryanne Lewis has the right to make operational decisions and to execute legal forms.
3. Based on a floor plan submitted with the application, the Planning Board finds the floor area of the Accessory Dwelling to be 870 sq. ft. in accordance with the Assessors records. A further as-built provided by the applicant shows a loft area of 191 sq. ft. added to first floor area of 1863 for the primary dwelling gives a total of 2054 sq. ft. Plan A1 dated

3/2/22 received by the Planning Board on 3/9/22 shows a screened porch of 256 sq. ft. for a total area of 2310 sq. ft. 40% of 2310 is 924 sq. ft. The loft area meets the zoning bylaw definition of a habitable attic as the ceiling height meets or exceeds 7 1/3 feet. An unenclosed porch does not meet the definition of gross floor area. The enclosed porch is screened with electricity, lighting and a roof thus being enclosed. This **does** meet the size requirements of 530.2F of the zoning bylaw for accessory dwellings as the bylaw allows 750 sq. ft. or 40% of the total square footage of the primary dwelling, whichever is greater. The accessory dwelling is subordinate to the existing single-family home.

4. The Accessory dwelling unit will be a complete separate housekeeping unit and there will be only one accessory dwelling on the lot.
5. The property is in the Residential R-3 Zoning District. The proposed detached accessory dwelling structure meets all the required setbacks, building height and yard requirements for a primary dwelling.
6. The proposed accessory dwelling is to be located on the second floor of the newly constructed garage on the property. Access will be via a deck with a side door and two additional sliding doors on the front of the dwelling.
7. The appearance of the accessory dwelling will be in keeping with the appearance of the primary dwelling.
8. The Site Plan for 81 Norwell Ave, Scituate, MA by Warwick & Associates, Inc., dated 3/29/2019 shows the location of the existing primary dwelling and the proposed accessory dwelling. The plan shows a circular driveway connecting to a driveway leading to the garage. This appears adequate to provide two parking spaces for the primary dwelling and two spaces for the accessory dwelling. Ample parking appears to be provided.
9. The owner has submitted a signed, notarized statement that she will be occupying one of the units at 81 Norwell Ave.
10. The accessory dwelling will be serviced by Town water and sewer. The Water Department has commented that a separate water connection will be required and \$14,000 connection fee paid. The Sewer Department has indicated that a sewer connection and corresponding fees have been completed and paid.
11. The application **meets** the standards of the Scituate Zoning Bylaw for an Accessory Dwelling Special Permit.

I move to approve the Special Permit for an accessory dwelling at 81 Norwell Avenue with the following conditions in addition to the standard conditions for accessory dwellings approved by the Planning Board after a public hearing on 12/17/15:

1. Except for any changes necessary to meet these conditions, any construction shall substantially conform to architectural plans submitted with the application consisting of View from the street, Sheet A1 New House for 81 Norwell Ave, G2 New Garage/Apartment Second Floor Plan dated 4/22/2019, G1 First Floor Plan New Garage/Apartment dated 4/22/2019, G3 Front Elevation New Garage/Apartment dated 5/16/2019, G4 Right and Rear Elevation for New Garage/Apartment dated 5/13/2019; AB1 dated 2/14/22 received by

Planning Board 2/28/22; AB2 dated 2/7/22 received by Planning Board on 3/1/22 all by Cotuit Bay Design; A1 New Remodeling dated 3/2/2022 received by the Planning Board on 3/3/2022; A1 New Remodeling dated 3/2/2022 received by the Planning Board on 3/9/22; Site Plan for Maryanne Lewis 81 Norwell Avenue, Scituate, MA by Warwick & Associates, Inc. dated March 29, 2019 and Certified Plot Plan by Warwick Associates dated 11/18/2019.

2. The number of bedrooms in the accessory dwelling is limited to one in the location and size indicated on the floor plan submitted with the application.
3. No further expansion of the accessory dwelling floor area is allowed without further review by the Planning Board.
4. Upon occupancy of the accessory dwelling, the applicant shall provide a notarized affidavit that she is living in one of the dwelling units. A yearly certification that the owner occupies one of the dwelling units must be provided by March 1 yearly.
5. All requirements of the Board of Health, Building Department, Zoning Board of Appeals, Department of Public Works, Fire Department and other Town agencies must be met prior to occupancy of the accessory dwelling.
6. The accessory dwelling shall conform to all applicable standards in the building, plumbing, electrical, mechanical, fire and health codes and bylaws.
7. Water connection must meet all requirements of the DPW Water Division for the accessory dwelling. The DPW is not requiring a separate water service for the accessory dwelling.
8. Any lighting installed shall be down lighting to not shed light on abutting properties. Existing light bulbs shall be changed to accommodate a reasonable level of light acceptable to the Building Commissioner.
9. Construction work shall not begin prior to 7:00 am weekdays and 8:00 am on Saturdays and shall cease no later than 7:00 pm or sunset whichever is earlier. No construction shall take place on Sundays or legal state and federal holidays. Construction includes idling of vehicles, delivery of materials to the site and all other construction activities.
10. Runoff from the proposed accessory dwelling shall not be increased from the property.
11. Erosion and sedimentation control devices shall be installed to prevent any erosion or sedimentation from leaving the site during construction. Silt sock shall be used as necessary.
12. The attic of the accessory dwelling shall remain as unfinished/uninhabitable space.
13. A trellis shall be established on the stairs side of the accessory dwelling on the deck to mitigate the view.

14. The applicant shall work with the Town Planner to come up with an acceptable landscape plan within 45 days after approval.

The standard conditions for accessory dwellings approved by the Planning Board on 12/17/15 shall be conditions of this decision and shall be included for recording at the Registry of Deeds.

- A. The applicant shall meet all requirements of the Building Department, Board of Health, Department of Public Works, Fire Department, Water Department, Conservation Commission and other town agencies.
- B. The property shall contain a maximum of two dwelling units, the primary dwelling and the accessory dwelling as proposed. The footprint, number of bedrooms and/or square footage shall not be increased without prior approval of the Planning Board.
- C. The owner of the property shall reside on the property as long as it contains an accessory dwelling unit.
- D. The Planning Board may require an on-site inspection for conformance to the approved plans and these conditions prior to the issuance of a Certificate of Occupancy for the accessory dwelling.
- E. An Accessory Dwelling Special Permit Certification of Ownership and Occupancy signed by any new owner shall be provided to the Planning Board within seven days of the closing of the sale of the house. It is recommended that this be signed at the closing.
- F. At any time, at the request of the Planning Board the owner shall provide a notarized affidavit indicating that either the primary or accessory unit is owner occupied.
- G. No on-street parking by occupants of the primary or accessory dwelling shall be permitted at any time.
- H. Construction vehicles/equipment shall not idle, be parked, stored, loaded or unloaded in the street.
- I. This Special Permit shall be void if it is not recorded at the Registry of Deeds within 90 days of the date of filing with the Town Clerk. The owner shall provide proof of this recording to the Planning Board.
- J. This Special Permit shall lapse within two years from the date of its issuance unless substantial use or construction has commenced prior to that time in accordance with MGL Chapter 40A, Section 9.



K. The Planning Board reserves the right to review compliance with this special permit at any time. This Special Permit shall terminate if the use is not in accordance with this decision and its conditions.

**Vote:**

Based on the Findings of Fact and the evidence and information provided by the applicant and obtained through the public hearings, the members of the Planning Board hearing this application voted unanimously to approve the Special Permit for an Accessory Dwelling at 81 Norwell Ave. with the conditions noted above.

March 10, 2022

Date

SCITUATE PLANNING BOARD

Lynn Burbank

Patricia A. Lambert

[Signature]

[Signature]

[Signature]

[Signature]

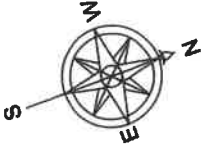
This decision was filed with the Town Clerk on March 22, 2022  
date

Appeal of this special permit may be made pursuant to M.G.L. Chapter 40A, Section 17, and shall be filed in a court of competent jurisdiction. Proof of that filing shall be provided to the Town Clerk within twenty (20) days of the date of the filing of the decision with the Town Clerk.

This special permit will not become effective until such time as an attested copy of this decision has been filed with the Plymouth County Registry of Deeds, after the expiration of the appeal period of twenty (20) days.

The Planning Board certifies that it has complied with all statutory requirements of MGL Chapter 40A, Sections 9 and 11, and will file copies of this decision with the Town Clerk. The Planning Board further certifies that it has taken into consideration all testimony rendered at the Public Hearing, the comments and suggestions of other boards which have reviewed and made comments on the plans

EXISTING HOUSE 1863 S.F.  
 EXISTING LOFT 191 S.F.  
 SCREENED PORCH 256 S.F.  
 TOTAL AREA 2310 S.F.  
 40% AREA 924 S.F.



COTUIT BAY DESIGN, LLC  
 43 BREWSTER ROAD  
 MASHPEE, MA, 02649  
 PH. (508) 274-1166

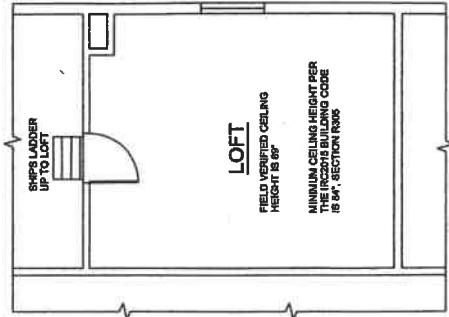
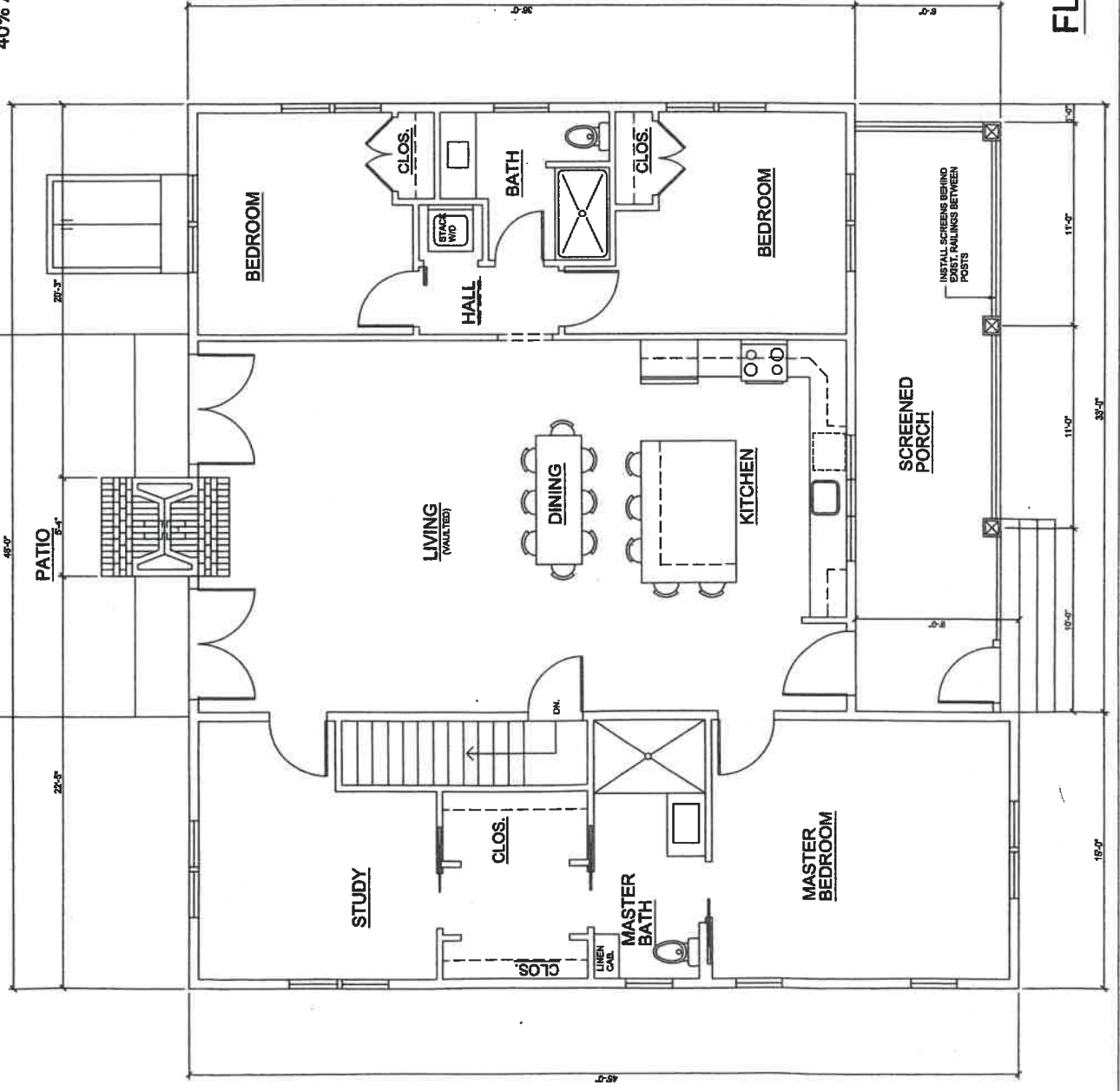


THE DESIGNER SHALL BE NOTIFIED BY MAIL OF ANY CHANGES TO THE CONTRACT. THE DESIGNER SHALL BE NOTIFIED BY MAIL OF ANY CHANGES TO THE CONTRACT. THE DESIGNER SHALL BE NOTIFIED BY MAIL OF ANY CHANGES TO THE CONTRACT.

NEW REMODELING FOR:  
 AMMA REALTY TRUST  
 81 NORWELL AVENUE SCITUATE, MA

SCALE: 1/4" = 1'-0"  
 DATE: 3/2/2022

A1



LOFT PLAN

191 S.F.

TOWN OF SCITUATE  
 MAR 09 2022  
 PLANNING BOARD

FLOOR PLAN