# BOARD OF ADJUSTMENT PORTSMOUTH, NEW HAMPSHIRE

### Remote Meeting Via Zoom Conference Call

Register in advance for this meeting: <a href="https://zoom.us/webinar/register/WN\_RxtPkaUXQ8qG3JfW48jblQ">https://zoom.us/webinar/register/WN\_RxtPkaUXQ8qG3JfW48jblQ</a>

You are required to register to join the meeting over Zoom, a unique meeting ID and password will be provided once you register. Public comments can be emailed in advance to <a href="mailto:planning@cityofportsmouth.com">planning@cityofportsmouth.com</a>. For technical assistance, please contact the Planning <a href="mailto:Department">Department by email (planning@cityofportsmouth.com</a>) or phone (603) 610-7296.

Per NH RSA 91-A:2, III (b) the Chair has declared the COVID-19 outbreak an emergency and has waived the requirement that a quorum be physically present at the meeting pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2020-17, and Emergency Order #12, Section 3. Members will be participating remotely and will identify their location and any person present with them at that location. All votes will be by roll call.

7:00 P.M.

**SEPTEMBER 15, 2020** 

### **AGENDA**

- I. APPROVAL OF MINUTES
- A) Approval of the minutes of the meeting of August 18, 2020.
- II. OLD BUSINESS
- A) Request of **Arbor View & the Pines, Owners**, for property located at **145 Lang Road** for a one-year extension of the variances that were granted on November 20, 2018 Said property is shown on Assessor Map 287 Lot 1 and lies within the Garden Apartment/Mobile Home Park (GA/MH) District.
- III. PUBLIC HEARINGS NEW BUSINESS
- A) Petition of Nathan & Stacey Moss, Owners, for property located at 5 Pamela Street wherein relief is needed from the Zoning Ordinance to construct a one-story rear addition which requires the following: 1) A Variance from Section 10.521 to allow 26% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.321 to a allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 292 Lot 119 and lies within the Single Residence B (SRB) District.

- B) Petition of **Stephen & Bridget Viens, Owners**, for property located at **78 Marne Avenue** wherein relief is needed from the Zoning Ordinance to replace existing 1 car garage with new 2 car garage and mudroom which requires the following: 1) Variances from Section 10.521 to allow a) 27% building coverage where 25% maximum is allowed; b) a 9.5' secondary front yard where 15' is required; and c) an 11.5' rear yard where 20' is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 222 Lot 40 and lies within the General Residence A (GRA) District.
- C) WITHDRAWN Petition of Timothy & Alexandra Lieto, Owners, for property located at 50 New Castle Avenue wherein relief is needed from the Zoning Ordinance to construct a two-story rear addition which requires the following: 1) A Variance from Section 10.521 to allow a 22' rear yard where 30' is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 101 Lot 33 and lies within the Single Residence B (SRB) District. WITHDRAWN
- D) Petition of **KSC**, **LLC**, **Owner**, **and Lafayette Animal Hospital**, **LLC**, **Applicant**, for property located at **2222 Lafayette Road** wherein relief is needed from the Zoning Ordinance to allow a Veterinary Clinic/Hospital which requires the following: 1) A Special Exception from Section 10.440 Use #7.50 to allow a Veterinary Care use where the use is allowed by Special Exception. Said property is shown on Assessor Map 267 Lot 2 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.
- E) Petition of **Kenton Slovenski, Owner**, for property located at **175 Grant Avenue** wherein relief is needed from the Zoning Ordinance to construct a two-story addition with an attached accessory dwelling unit which requires the following: 1) A Variance from Section 10.521 to allow a lot area of 13,950 square feet where 15,000 square feet is the minimum required. Said property is shown on Assessor Map 251, Lot 41 and lies within the Single Residence B (SRB) District.
- F) Petition of the **Rhonda Stacy-Coyle Revocable Trust, Owner**, for property located at **36 Richards Avenue** wherein relief is needed from the Zoning Ordinance to install a heat pump unit which requires the following: 1) A Variance from Section 10.521 to allow a 2' right side yard where 10' is required. Said property is shown on Assessor Map 136 Lot 14 and lies within the Mixed Residential Office (MRO) District.
- G) Petition of the **Kevin Shitan Zeng Revocable Trust, Owner**, for property located at **377 Maplewood Avenue** wherein relief is needed from the Zoning Ordinance to demolish an accessory building and construct a new free standing dwelling which requires the following: 1) A Variance from Section 10.513 to allow more than one free standing dwelling on a lot. 2) Variances from Section 10.521 to allow: a) a lot area per dwelling unit of 2,638 square feet where 7,500 is the minimum required; b) 43% building coverage

where 25% is the maximum allowed; c) a 4.5' secondary front yard where 15' is required; d) a 3' left side yard where 10' is required; and e) a 5.5' rear yard where 20' is required. 3) A Variance from Section 10.321 to allow a building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 141 Lot 22 and lies within the General Residence A (GRA) District.

H) Petition of **553-559 Islington Street, LLC, Owner** for property located at **553 Islington Street** wherein relief is needed from the Zoning Ordinance to construct a rear addition in conjunction with reconfiguration of the existing six-unit apartment building which requires the following: 1) A Variance from Section 10.5A41.10A to a lot area per dwelling unit of 1,201 s.f. where 3,000 s.f. per dwelling is required; 2) A Variance from Section 10.5A41.10A to allow 19.5% open space where 25% is the minimum required; 3) A Variance from Section 10.5A41.10A to allow a ground story height of 10' 7.5" where 11' is required; 4) A Variance from Section 10.321 to allow a nonconforming building or structure to be enlarged, reconstructed or extended without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 157 Lot 3 and lies within the Character District 4-L2 (CD4-L2) District.

#### IV. OTHER BUSINESS

### V. ADJOURNMENT

### BOARD OF ADJUSTMENT MEETING PORTSMOUTH, NEW HAMPSHIRE Remote Meeting via Zoom Conference Call

7:00 P.M. AUGUST 18, 2020

### **MINUTES**

**MEMBERS PRESENT:** Chairman David Rheaume, Vice-Chairman Jeremiah Johnson, Jim

Lee, Christopher Mulligan, Arthur Parrott, Alternate Phyllis

Eldridge, Alternate Chase Hagaman

**MEMBERS EXCUSED:** Peter McDonell, John Formella

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheaume stated that both alternates would vote on all petitions due to the absence of two Board members.

#### I. APPROVAL OF MINUTES

A) Approval of the minutes of the meeting of July 21, 2020.

*The July 21, 2020 minutes were approved as presented by unanimous vote, 7-0.* 

#### II. PUBLIC HEARINGS – NEW BUSINESS

A) Petition of Lockwood & Ingrid Barr, Owners, and James Martin, Applicant, for property located at 421 Pleasant Street wherein relief was needed from the Zoning Ordinance to replace existing 7' tall fence with new 6' tall fence which requires the following: 1) A Variance from Section 10.515.13 to allow a 6 foot tall fence within the front yard where a 4 foot tall fence is the maximum allowed. Said property is shown on Assessor Map 102 Lot 69 and lies within the General Residence B (GRB) District.

#### SPEAKING TO THE PETITION

The applicant James Martin of 405 Pleasant was present and said the owner wasn't comfortable replacing the existing 7-ft tall fence with a 4-ft fence because the street was very busy, and she thought a 6-ft fence would protect her grandchildren more and provide more privacy. He said the fence would be custom made and had been approved by the Historic District Commission. He reviewed the criteria and said they would be met.

Chairman Rheaume asked why there was a 16-ft wide opening on the Pleasant Street side of the fence. Mr. Martin said it would allow a vehicle or large item into the yard if necessary.

### SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheaume closed the public hearing.

#### **DECISION OF THE BOARD**

Mr. Lee moved to grant the variance for the petition, and Ms. Eldridge seconded.

Mr. Lee said replacing the fence that was in poor condition with a new one would be an asset to the neighborhood and that the fence would be more conforming because it would be reduced by a foot in height. He said granting the variance would not be contrary to the public interest or to the spirit of the ordinance and would not alter the essential characteristics of the neighborhood or threaten the public's health, safety, or welfare. He said it would do substantial justice because the fence would protect the owner's grandchildren from going into the street. He said the value of surrounding properties would not be diminished by a nice new fence. He said literal enforcement of the ordinance would result in a hardship to the owner and that there was no fair and substantial relationship between the general public purpose of the ordinance and its specific application to the property. He said the proposed use was a reasonable one and should be approved. Ms. Eldridge concurred and had nothing to add.

The motion **passed** by unanimous vote, 7-0.

B) Petition of the Olson-George Revocable Trust, Owner, for property located at 51 Park Street wherein relief was needed from the Zoning Ordinance to install an AC unit which requires the following: 1) A Variance from Section 10.515.14 to allow a 2.5 foot left side yard where 10 feet is required. Said property is shown on Assessor Map 148 Lot 47 and lies within the General Residence A (GRA) District.

#### SPEAKING TO THE PETITION

The applicant Chris George was present. He reviewed the petition, noting that the proposed location of the AC unit would be shielded and that the abutter was in favor. He said if the unit were located in the backyard, it would be in the middle of the garden and patio, and if it were on the other three sides of the home, it would be in the side yard.

Chairman Rheaume said the front yard requirement was also ten feet and wanted to make sure that the condenser would be located at least 10 feet from the property line. The applicant agreed and said he was confident that the property line was aligned with the sidewalk as well.

#### SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheaume closed the public hearing.

#### **DECISION OF THE BOARD**

Vice-Chair Johnson moved to **grant** the variance for the petition, and Mr. Lee seconded.

Vice-Chair Johnson said it was a reasonable request and that he was confident that the condenser would be fine because it didn't appear to be a heat pump style and had the same range of decibel levels as other condensers. He said granting the variance would not conflict with the purpose of the ordinance, alter the essential characteristics of the neighborhood, or threaten the public's health, safety, and welfare. He said the setback request was relatively big compared to what the setback was supposed to be, but the applicant made a good point about the proposed location of it. He said the driveway would reduce the likelihood of the neighbor building anything in the future and that the unit would not be seen. He said granting the variance would do substantial justice because there would be a positive effect for the applicant and he didn't see any negative effect on the public or neighbors. He said it would not diminish the value of surrounding properties, noting that the unit was quiet and not much bigger than an old-school window unit and would be tucked on the ground behind some trees and other items. He said the hardship was that the applicant had the smallest lot in the neighborhood and it wasn't feasible to install the unit on the two other sides or in the backyard. He said it was a reasonable use and should be approved. Mr. Lee concurred and had nothing to add.

The motion **passed** by unanimous vote, 7-0.

C) Petition of Jason & Katie Jenkins, Owners, for property located at 35 Mark Street wherein relief was needed from the Zoning Ordinance to install an HVAC unit as part of garage renovation which requires the following: 1) A Variance from Section 10.515.14 to allow a 4' setback where 10' is required. Said property is shown on Assessor Map 116 Lot 50 and lies within the Character District 4-L1 (CD4-L1) District.

#### **SPEAKING TO THE PETITION**

The applicant Jason Jenkins was present and reviewed the petition. He said the unit would be installed in the back of the garage and hidden from view by a surrounding fence, that a parking lot was on the other side of the fence, and the nearest building was 40 feet away. He said the criteria were addressed in his application.

Chairman Rheaume noted the dimensions and requested relief and said he was concerned that the requested relief may not be sufficient. Mr. Stith asked if the 47 inches was a more accurate measurement. The applicant said the additional four inches would decrease it to 43 inches. Mr. Stith asked if the condenser could be moved to ensure that it met the 4-ft setback. Chairman Rheaume said the City Inspector would expect to validate it. Vice-Chair Johnson agreed and asked if the Board had the flexibility to amend the request by four inches without legal notice. Mr. Stith said the Board had the flexibility to add a plus or minus.

### SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheaume closed the public hearing.

#### **DECISION OF THE BOARD**

Vice-Chair Johnson proposed an eight-inch plus or minus because it was a small request from the owner of a small house and didn't usually require a site survey. Mr. Mulligan agreed, noting that the property abutted a commercial parking lot, and even if it was more relief than advertised, it wouldn't be a big deal. Chairman Rheaume agreed and said the abutting properties would probably not be negatively affected as well.

*Mr. Mulligan moved to* **grant** the variance for the application, with the following stipulation:

- That the applicant be given a range of plus or minus eight inches from the requested relief of four feet.

Mr. Parrott seconded.

Mr. Mulligan said he didn't think it was an extreme amount of relief requested and that it was an appropriate amount of wiggle room that would be beneficial to everyone. He said granting the variance would not be contrary to the public interest or to the spirit of the ordinance and that the essential characteristics of the neighborhood would not be changed. He said it was a mixed neighborhood with residential and commercial and the most affected property would be a law firm's parking lot. He said substantial justice would be done because the loss to the applicant if the Board required strict compliance with the 10-ft setback would not outweigh any gain to the public. He said granting the variance would not diminish the value of surrounding properties because the only affected property was the parking lot. He said the hardship was the special conditions of the property, including its unusual size and shape for the neighborhood and the existing built environment that already encroached on the setbacks. He said there was no fair and substantial relationship between the setback requirement and its application to the property. He said there was no other place to put that type of unit without requiring the same relief. He said the petition met the criteria and was a reasonable residential use in a residential zone.

Mr. Parrott concurred and thought it was significant that there was a commercial parking lot on the other side of the fence. He said it was unknown where the property line really was and didn't think a few inches mattered. He said it was a good resolution and a good approach to the request.

The motion **passed** by unanimous vote, 7-0.

D) Petition of Yeaton Flats, LLC, Owner, for property located at 171 Austin Street wherein relief was needed from the Zoning Ordinance to demolish existing three-story rear porch and construct new three-story porch which requires the following: 1) A Variance from Section 10.521 to allow a 7 foot right side yard where 10 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 145 Lot 92 and lies within the General Residence C (GRC) District.

Mr. Parrott stated that he was a former owner of the property but sold it more than 20 years ago and had no dealings with subsequent owners.

#### **SPEAKING TO THE PETITION**

The applicant Jason Chute was present and stated that the porch was in complete disrepair. He said they wanted to go about a foot farther along the 7-ft side and would go 6-1/2 feet farther on the other side so that they could put stairs in and make the deck more reasonable. He said there were egress doors on the second and third floors, so they couldn't move the porch more than six inches toward those doors. He said the criteria would be met.

In response to Chairman Rheaume's questions, Mr. Chute said the additional distance would improve the usability because the stairs would be moved to the non-offending line instead of going down the middle of the court. He said there were two units on each floor, and that one side had a decent amount of space but the other side hit the stairs. Chairman Rheaume said the actual tax map showed the property line further inward than the edge of the building, and he asked if the applicant was measuring to the edge of the building and whether a survey had been done to validate the property line's location. Mr. Chute said a survey had not been done and that he didn't intend to do one. He said he measured the feet from the edge of the deck to the fence. He said the existing deck was recessed from the edge of the building and wouldn't be changed and that the neighbor's fence went from the building's corner down to the property line. He said the tax map appeared to show that the building was over the property line.

Mr. Stith said he didn't think the Inspection Department would require a property survey because normally they only required a survey if there was a foundation for a house or a certain cost to the project when they required an as-built. Mr. Parrott said he had a survey done when he bid on the property and that the right side of the building had a bend to it and was exactly on the property line, and the back porch structure was about seven feet off the property line.

#### SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheaume closed the public hearing.

#### **DECISION OF THE BOARD**

Mr. Parrott moved to **grant** the variances for the petition as presented, and Ms. Eldridge seconded.

Mr. Parrott said the upgrade was a desirable one for the building for many reasons, including getting more in conformance with the City's building codes. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed structure was in the back yard and that it was a tight neighborhood, with most of the properties fenced, and that the homes had been built in all kinds of positions with respect to what people thought were the property lines. He said upgrading the property would be good for the health and safety of the residents. He said substantial justice would be done because the project would help the building's usefulness and potential safety of all the residents in the building and adjacent buildings. He said granting the variances would not diminish the value of surrounding properties but could only help the surrounding properties by having the back

structure replaced. He said the building would look better and be more functional and safe. He said the hardship was that the right side of the building was on the property line and there was no wiggle room due to the position of the doors on the property. He said there was no other alternative that he could see. He said the petition met all the criteria and should be approved. Ms. Eldridge concurred and said it was a necessary and thoughtful upgrade to the property.

The motion **passed** by a unanimous vote of 6-0. (Mr. Mulligan was recused because he got disconnected from the meeting).

Chairman Rheaume said he would recuse himself from the two Rock Street petitions and asked that Petition F, 353 Miller Avenue, be heard out of order to allow both Rock Street petitions to be heard back to back.

Mr. Parrott moved to take Petition F, 353 Miller Avenue, out of order, and Vice-Chair Johnson seconded. The motion **passed** by unanimous vote, 7-0.

The Board then addressed 353 Miller Avenue petition.

E) Petition of Gregory & Elizabeth LaCamera, Owners, for property located at 34 Rock Street wherein relief was needed from the Zoning Ordinance to replace existing bulkhead with full height door access and attached shed which requires the following: 1) Variances from Section 10.521 to allow a) a 2 foot right side yard where 10 feet is required; b) a 4 foot rear yard where 20 feet is required; and c) 59% building coverage where 35% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 138 Lot 18 and lies within the General Residence C (GRC) District.

Chairman Rheaume recused himself from the petition, and Vice-Chair Johnson took his seat as Acting Chair.

#### SPEAKING TO THE PETITION

The applicant Greg LaCamera was present and reviewed the petition. He said they wanted to put a doghouse on the existing bulkhead foundation with an attached shed. He said the lot line went toward the left side of the property and that the new bulkhead would have 48 inches on the rear. He said it would look into the condo building's driveway and that the surrounding area would be beautified. He reviewed the criteria and said they would be met.

Mr. Hagaman said the applicant's lot seemed smaller than the neighbor's and asked what the lot's current square footage was relative to the nearby lots. Mr. LaCamera said all the lots were between 1,500 and 2,500 square feet.

#### SPEAKING TO, FOR, OR AGAINST THE PETITION

Robin Husslage said she lived across the street and thought the bulkhead would have a positive impact on the neighborhood and improve it as well.

No one else was present to speak, and Acting Chair Johnson closed the public hearing.

#### **DECISION OF THE BOARD**

Mr. Mulligan moved to **grant** the variance for the petition as presented and advertised, and Mr. Parrott seconded.

Mr. Mulligan said the lot was very small and had a small home that dominated it, so it wasn't surprising that the building coverage was an issue. He said the building coverage was already over 57 percent and what was proposed would increase it slightly, but he didn't think it was unreasonable given how small the lot was and what the improvement to the dwelling would be. He said he couldn't see that it was useful to have the backyard left as open space, due to its irregular shape. He said granting the variances would not be contrary to the public interest or to the spirit of the ordinance and that the essential characteristics of the neighborhood would remain residential and would not be affected. He said substantial justice would be done because the loss to the applicant if he were required to comply with the ordinance would not be outweighed by any gain to the public. He said granting the variances would not diminish the values of surrounding properties because they wouldn't be affected at all. He said the hardship was the special conditions of the property consisting of the small size of the lot and its irregular shape and the existing non-conforming structure related to setbacks and lot coverage, so relief would be needed for anything done. He said there was no fair and substantial relationship between the purpose of the setback and lot coverage ordinances and their application to the property. He said it was a reasonable use and met all the criteria.

Mr. Parrott concurred with Mr. Mulligan, adding that it was a very logical and safe upgrade to the small property and would not have an adverse effect on the neighbors.

The motion **passed** by a unanimous vote, 6-0.

F) Petition of Jonathan & Amy Steinberg, Owners, for property located at 353 Miller Avenue wherein relief was needed from the Zoning Ordinance to replace 8' x 6' deck with new 12' x 10' deck which requires the following: 1) A Variance from Section 10.521 to allow 28.5% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Map 131 Lot 32 and lies within the General Residence A (GRA) District.

### **SPEAKING TO THE PETITION**

The applicants Jonathan and Amy Steinberg were present. Mr. Steinberg said they wanted to repair and expand the current deck, and he reviewed the petition.

Vice-Chair Johnson said it was a reasonable request but asked what made the applicant's property unique from the surrounding lots relating to hardship. Mrs. Steinberg said the backyard was long and narrow and the new deck would make the yard more uniform in size and shape. Chairman Rheaume asked whether the proposed coverage included any steps over 18 inches in height. Mr. Steinberg said it might be about 28.5 percent. Mr. Stith said 28.5 percent was advertised and rounded up to account for extra space, and he thought it would be fine.

### SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheaume closed the public hearing.

#### **DECISION OF THE BOARD**

Mr. Hagaman moved to **grant** the variance for the application as presented, and Vice-Chair Johnson seconded.

Mr. Hagaman said the petition was to repair and expand a deck in disrepair and in need of updating to be up to code. He said granting the variances would not be contrary to the public interest or to the spirit of the ordinance because the deck was in the backyard of a residential property and was in line with the ordinance and would not alter the essential characteristics of the neighborhood or threaten the public's health, safety, or welfare. He said substantial justice would be done because there would be no gain to the public that would outweigh any loss to the applicant. He said granting the variances would not diminish the values of surrounding properties, noting that there was no evidence heard that it would do so. He said it would in fact do the opposite by increasing the value of the home and the neighbors' homes. He said the hardship was that the undersized lot had 6,500 square feet and the requirement was 7,500 square feet, so putting anything on the lot would increase the property coverage, and the requested relief was a relatively minor increase, given that the lot was long, narrow, and undersized. He said the conditions of the property made it so that there was no fair and substantial relationship between the general public purposes of the ordinance and its specific application to the property. He said rebuilding a deck was a reasonable use.

Vice-Chair Johnson concurred and had nothing to add.

*The motion passed by unanimous vote, 7-0.* 

**G)** Petition of the **Robin Husslage Revocable Living Trust, Owner**, for property located at **27 Rock Street** wherein relief was needed from the Zoning Ordinance for conversion of a single-family dwelling to a two family which requires the following: 1) A Special Exception from Section 10.440 #1.61 to allow the conversion of a building existing on January 1, 1980, with less than the required minimum lot area per dwelling unit, into 2 dwelling units where the use is allowed by special exception. Said property is shown on Assessor Map 138 Lot 2 and lies within the General Residence C (GRC) District.

Chairman Rheaume recused himself from the petition, and Vice-Chair Johnson took his seat as Acting Chair.

#### **SPEAKING TO THE PETITION**

The applicant Robin Husslage was present to review the petition. She said the proposed two-family dwelling would meet all the zoning requirements and that the only change to the exterior might be for egress and building code compliance on the second floor and would be located next to the driveway side and within all the required setbacks. She reviewed the special exception criteria and said they would be met. She also noted that she had four parking spaces.

There were no questions from the Board. Acting Chair Johnson opened the public hearing.

#### SPEAKING IN FAVOR OF THE PETITION

Nicole Lapierre of 44 Rock Street said Ms. Husslage was a productive member of the neighborhood association and was confident in her judgement. She said there would be ample off-street parking for an additional unit as well as additional housing for the community.

Greg LaCamera of 27 Rock Street said the applicant was very dedicated to the neighborhood and that anything done to the home would be beautiful.

Mr. Stith said there were also three letters in support.

#### SPEAKING TO, FOR, OR AGAINST THE PETITION

No one else was present to speak, and Acting Chair Johnson closed the public hearing.

#### **DECISION OF THE BOARD**

Mr. Mulligan moved to **grant** the special exception for the application as presented and advertised, and Mr. Parrott seconded.

Mr. Mulligan said there was a good reason to convert the home into a duplex and that the application met the special exception requirements. He said granting the special exception would pose no hazard to the public or adjacent properties on account of fire, explosion, gas, and so on. It would pose no detriment to property values in the vicinity or change in the essential characteristics of the neighborhood on account of noise, glare, pollution, and so on. He said it would create no traffic safety hazard or increase in traffic, and would pose excessive demands on municipal services because the density of one unit would simply be increased and there would be additional parking. He said there would be no significant increase of storm water runoff because the physical environment wouldn't change. He said the petition met all the criteria and should be granted. Mr. Parrott concurred and had nothing to add.

The motion **passed** by unanimous vote, 6-0.

H) Petition of Christoph Wienands & April Guille, Owners, for property located at 307 Wibird Street wherein relief was needed from the Zoning Ordinance for installation of AC unit which requires the following: 1) A Variance from Section 10.515.14 to allow a 7 foot left side yard where 10 feet is required. Said property is shown on Assessor Map 132 Lot 12 and lies within the General Residence A (GRA) District.

#### **SPEAKING TO THE PETITION**

The applicant Christoph Wienands was present and reviewed the petition. He pointed out that that the third floor had a home office and explained why there were limited options in installing a heat pump. He said the unit would be tucked into a corner with a 7-ft setback and hidden behind a fence and that the abutters were fine with it. He said the criteria would be met.

Vice-Chair Johnson asked how wide the driveway was. Mr. Wienands said the entire width was 14 to 15 feet, including the narrower 10-ft section above the driveway.

#### SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present, and Chairman Rheaume closed the public hearing.

#### **DECISION OF THE BOARD**

Mr. Parrott moved to **grant** the variance for the petition as presented, and Vice-Chair Johnson seconded.

Mr. Parrott said the request was similar to others the Board had seen. He said granting the variance would not be contrary to the public interest or to the spirit of the ordinance, or alter the essential characteristics of the neighborhood, or impact the public's health, safety, or welfare. He said it was within the spirit of the ordinance to encourage people to upgrade their properties and to make them more useful, as long as it didn't affect others. He said substantial justice would be done because there would be no gain to the public if the variance wasn't granted but would be a loss to the applicant. He said granting the variance would not diminish the values of surrounding properties because that type of AC unit was becoming more popular, and there were limited resources to put it in an appropriate location on the applicant's narrow lot. He said the hardship was that the house was situated on the property in such a way that it left few options because it took up much of the narrow lot.

Vice-Chair Johnson concurred. He said the house was built out to the property line, so the requested unit wouldn't be the most offending physical dimension of the property. He said that type of unit was quiet and would be seven feet away and tucked in. He said the applicant could stick an AC unit into the wall and it would be a worse situation compared to what was proposed.

The motion **passed** by unanimous vote, 7-0.

I) Petition of **Andrew Lane, Owner**, for property located at **245 Thaxter Road** wherein relief was needed from the Zoning Ordinance to construct a 16' x 24' two-story addition which requires the following: 1) Variances from Section 10.521 to allow a) a 19.5 foot front yard where 30 feet is required; and b) 20.5% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.321 to allow a non-conforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 165 Lot 3 and lies within the Single Residence B (SRB) District.

#### **SPEAKING TO THE PETITION**

Attorney Derek Durbin representing the applicant was present, as were the owner Andrew Lane and the architect Brandon Holben. Attorney Durbin said the applicant wanted to add the addition to support his growing family and to have a home-work environment. Attorney Durbin said a minimal building coverage relief of a half percent was also needed for the entryway and deck for the addition. He noted that the home was built very close to the front property line and would remain a single-family home. He reviewed the criteria and said they would be met.

Chairman Rheaume said he appreciated that the home was built 14 feet from the front property line and that the previous renovation moved it 18 feet away, but he wondered why the applicant was only asking for a half percent coverage. He asked whether the addition could be in full conformance with a brand new addition without the additional 35 square feet. Mr. Holben said they wanted to push it back from the ledge. He said the new hallway would extend through the existing bedroom, so it would go into the front setback, and the loft would connect out to the upper yard. He said some of it would be within 18 inches of grade and they might be able to shorten the length of it while regrading. He said the half percent was really the connector and they hoped to eliminate the deck from the coverage by reducing it a bit. He noted that the yard was unique and that it was hard to access the upper part of the yard from the house.

#### SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheaume closed the public hearing.

#### **DECISION OF THE BOARD**

Vice-Chair Johnson moved to **grant** the variances for the petition as presented, and Mr. Parrott seconded.

Vice-Chair Johnson said it was a complicated site and that he could see why the applicants had been pushed into their decisions. He agreed that a half percent wasn't a lot and thought that it would work. He said the hardships were the front and back slope of the site, the bedrock, and the trapezoidal shape of the property, and that it was tough to get a new living area built into that site. He said granting the variances would not be contrary to the public interest or to the spirit of the ordinance because the house had a long-standing relationship with the street and none of the renovations would overly offend the existing conditions. He said the houses were spaced out and

the wide street wasn't heavily trafficked, and that the hill and trees behind the addition would keep a lot of things on the site scaled down. He said granting the variances would do substantial justice because there would be no negative effect on the public and the additional living space would benefit the applicant. He said the value of surrounding properties would not be diminished because an investment in a tasteful design and quality craftsmanship as well as an increase in square footage for a single-family home would not bring down the values of any properties in the immediate area. He said literal enforcement of the ordinance would result in unnecessary hardship because the property's special conditions included the applicant's being in the middle of the road's arch and the lot being bigger and more egregiously shaped than the others. He said the proposed use was a reasonable one -- an extension of the same use -- and the property had the hill, bedrock, angled property line, and so on. He said if the applicant could push the building back, they would be very much over the side lot, so he felt that it wasn't an over-the-top request.

Mr. Parrott concurred and said it was a classic case of a challenging lot and what the variances were made to deal with.

*The motion passed by unanimous vote, 7-0.* 

J) Petition of the **Brown Family Revocable Trust, Owner**, for property located at **14** Alder Way wherein relief was needed from the Zoning Ordinance to construct a 12 x 14 screen house which requires the following: 1) Variances from Section 10.521 to allow a) an 8 foot right side yard where 9.5 feet is required for an accessory structure; and b) 29% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Map 142 Lot 18 and lies within the General Residence A (GRA) District.

#### SPEAKING TO THE PETITION

The applicant Steve Brown was present and said he wanted to build a screen house to extend the short summer. He said the chosen location was due to the house being tucked into the Maplewood Avenue exit and the Route One Bypass, both of which caused a lot of traffic and significant noise. He reviewed the petition and said the criteria would be met.

Mr. Hagaman asked if the screen house could be narrowed so that the applicant wouldn't need a side yard variance. Mr. Brown said there was a fence between him and his neighbors, so if he built a 12'x14' screen house, the configuration would look out toward the fence. He also noted that there was a patio in front of the screen house and a yard behind it, so the proposed configuration worked nicely. He said both abutters were fine with the project. Chairman Rheaume asked if the structure would be custom built. Mr. Brown agreed and said it would have quality materials as well as panels with screens that wouldn't fall apart like prefab ones.

#### SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheaume closed the public hearing.

#### **DECISION OF THE BOARD**

Mr. Lee moved to grant the variances for the petition, and Mr. Parrott seconded.

Mr. Lee said granting the variances would not be contrary to the public interest or to the spirit of the ordinance and that substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the public. He said surrounding property values would not be diminished because the screen house would be a nice-looking one and the applicant had a delightful yard that would only be an asset to the neighborhood. He said a special condition of the property was the Route One Bypass in the backyard that didn't make it feasible for outdoor living space, so there was no fair and substantial relationship between the general public purpose of the ordinance and its specific application to the property. He said the proposed use was a reasonable one and should be approved. Mr. Parrott concurred and had nothing to add.

The motion passed by unanimous vote, 7-0.

#### III. OTHER BUSINESS

There was no other business.

#### IV. ADJOURNMENT

The meeting was adjourned at 9:45 p.m.

Respectfully submitted,

Joann Breault BOA Recording Secretary TO: Zoning Board of Adjustment

FROM: Peter Stith, AICP, Planning Department

DATE: September 9, 2020

RE: Zoning Board of Adjustment September 15, 2020 Meeting

### **OLD BUSINESS**

1. 145 Lang Road – Request for Extension

### **NEW BUSINESS**

- 1. 5 Pamela Street
- 2. 78 Marne Avenue
- 3. 50 New Castle Avenue
- 4. 2222 Lafayette Road
- 5. 175 Grant Avenue
- 6. 36 Richards Avenue
- 7. 307 Wibird Street
- 8. 377 Maplewood Avenue
- 9. 553 Islington Street

### **OLD BUSINESS**

1.

Petitioners: Arbor View and The Pines LLC c/o Forest Properties Management Inc.

Property: 145 Lang Road Assessor Plan: Map 287, Lot 1

Zoning District: Garden Apartment/Mobile Home Park District (GA/MH)

Description: Construct two additional apartment buildings increasing total dwelling

units to 186.

Requests: Variances and/or Special Exceptions necessary to grant the required

relief from the Zoning Ordinance including:

1. A Variance from Section 10.521 to allow a lot area per dwelling of

8,321± s.f. where 10,000 s.f. is required.

2. A Variance from Section 10.522 to allow two new multifamily buildings with a maximum building length exceeding 160 feet.

The applicant has submitted request for an extension for the property above. Variances were granted on November 20, 2018 and the applicant has yet to obtain a building permit. The Ordinance allows for a one-time, one-year extension if the request is acted on prior to the expiration date.

#### **NEW BUSINESS**

1.

Petition of **Nathan & Stacey Moss, Owners**, for property located at **5 Pamela Street** wherein relief is needed from the Zoning Ordinance to construct a one-story rear addition which requires the following: 1) A Variance from Section 10.521 to allow 26% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.321 to a allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 292 Lot 119 and lies within the Single Residence B (SRB) District.

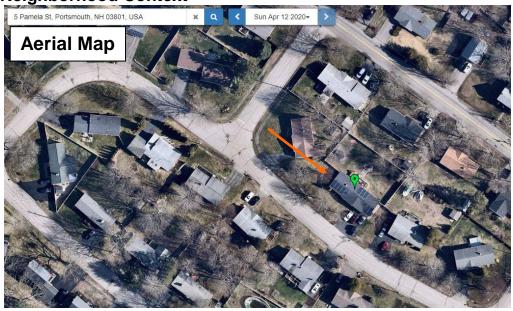
**Existing & Proposed Conditions** 

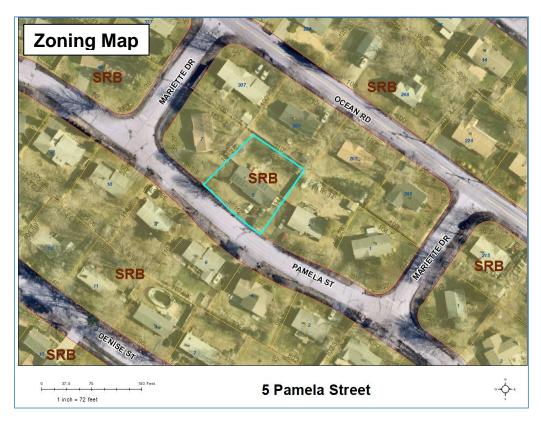
Existing a Froposoa oc	Existing	Proposed	Permitted / Required	
Land Use:	Single family	Rear addition	Primarily Single Family	
Lot area (sq. ft.):	11,326	11,326	15,000	min.
Lot Area per Dwelling Unit (sq. ft.):	11,326	11,326	15,000	min.
Street Frontage (ft.):	112	112	100	min.
Lot depth (ft.):	110	110	100	min.
Primary Front Yard (ft.):	30	30	30	min.
Left Side Yard (ft.):	25	23	10	min.
Right Side Yard (ft.):	22	5'	10	min.
Rear Yard (ft.):	46	35	30	min.
Height (ft.):	<35	<35	35	max.
Building Coverage (%):	24	26	20	max.
Open Space Coverage (%):	>40	>40	40	min.
Parking:	4	4	1.3	
Estimated Age of Structure:	1957	Variance request shown in red.		

### Other Permits/Approvals Required

None.

**Neighborhood Context** 





## **Previous Board of Adjustment Actions**

April 17, 2018 – The Board **granted** the following variance as presented and advertised: Section 10.521 to allow a right side yard of 5'± where 10' is required.

### **Planning Department Comments**

The applicant is proposing a 12' x 20'6" rear addition that aligns with the left side of the house and will conform to the yard requirements for the district, however the building coverage will exceed the maximum, with a proposed coverage of 26%.

#### **Review Criteria**

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

- 1. Granting the variance would not be contrary to the public interest.
- 2. Granting the variance would observe the spirit of the Ordinance.
- 3. Granting the variance would do substantial justice.
- 4. Granting the variance would not diminish the values of surrounding properties.
- 5. The "unnecessary hardship" test:
  (a)The property has <u>special conditions</u> that distinguish it from other properties in the area. **AND** 
  - (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. **OR**

<u>Owing to these special conditions</u>, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

### 2.

Petition of **Stephen & Bridget Viens, Owners**, for property located at **78 Marne Avenue** wherein relief is needed from the Zoning Ordinance to replace existing 1 car garage with new 2 car garage and mudroom which requires the following: 1) Variances from Section 10.521 to allow a) 27% building coverage where 25% maximum is allowed; b) a 9.5' secondary front yard where 15' is required; and c) an 11.5' rear yard where 20' is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 222 Lot 40 and lies within the General Residence A (GRA) District.

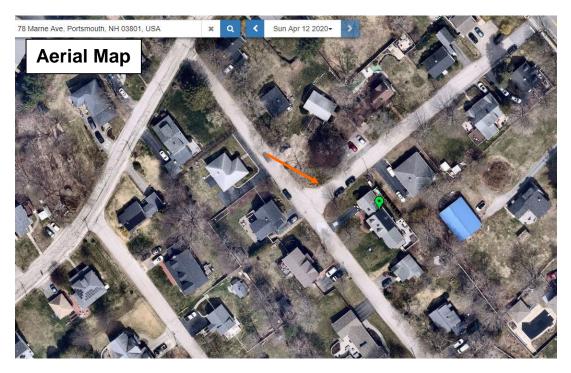
**Existing & Proposed Conditions** 

Existing & Proposed Col	Existing	Proposed	Permitted /	
	<u>======</u>	<u> </u>	Required	
Land Use:	Single family	Replace 1 car	Primarily	
		garage with 2	residential	
		car garage		
Lot area (sq. ft.):	8,858	8,858	7,500	min.
Lot Area per Dwelling Unit	8,858	8,858	7,500	min.
(sq. ft.):				
Street Frontage (ft.):	190	190	100	min.
Lot depth (ft.):	77	77	70	min.
Primary Front Yard (ft.):	30	30	15	min.
Secondary Front Yard	15	9.5'	15	min.
<u>(ft.):</u>				
Right Side Yard (ft.):	11	11	10	min.
Rear Yard (ft.):	11.8'	11.5'	20	min.
Height (ft.):	<35	<35	35	max.
Building Coverage (%):	24	27	25	max.
Open Space Coverage	61	55	30	min.
<u>(%):</u>				
Parking:	4	4	1.3	
Estimated Age of	1950	Variance request shown in red.		
Structure:				

## Other Permits/Approvals Required

None.

## **Neighborhood Context**





### **Previous Board of Adjustment Actions**

June 28, 2016 – The Board **granted** the following variances as presented and advertised:

- 1. Section 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered except in conformity with the ordinance; and,
- 2. Section 10.521 to allow a rear yard setback of 15.9'± where 20' is required.

### **Planning Department Comments**

The applicant is proposing to demolish the existing attached one car garage and construct a new attached two car garage with a mudroom. The corner lot has two front yards, with the secondary front located on Verdun Avenue, where the driveway is located. The lot size exceeds the minimum required for the district, however the location of the house is setback well beyond the front yard requirement of 15 feet.

#### **Review Criteria**

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

- 1. Granting the variance would not be contrary to the public interest.
- 2. Granting the variance would observe the spirit of the Ordinance.
- 3. Granting the variance would do substantial justice.
- 4. Granting the variance would not diminish the values of surrounding properties.
- 5. The "unnecessary hardship" test:
  - (a)The property has <u>special conditions</u> that distinguish it from other properties in the area. **AND**
  - (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. **OR**

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

3.

Petition of **Timothy & Alexandra Lieto**, **Owners**, for property located at **50 New Castle Avenue** wherein relief is needed from the Zoning Ordinance to construct a two-story rear addition which requires the following: 1) A Variance from Section 10.521 to allow a 22' rear yard where 30' is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 101 Lot 33 and lies within the Single Residence B (SRB) District.

### **Existing & Proposed Conditions**

	Existing	Proposed	Permitted /	
		-	<u>Required</u>	
Land Use:	Single family	2-story Rear	Primarily Single	
		addition	Family	
Lot area (sq. ft.):	9,583	9,583	15,000	min.
Lot Area per Dwelling	9,583	9,583	15,000	min.
Unit (sq. ft.):				
Street Frontage (ft.):	97	97	100	min.
Lot depth (ft.):	100	100	100	min.
Primary Front Yard (ft.):	8'6"	8'6"	30	min.
Left Side Yard (ft.):	50'8"	50'8"	10	min.
Right Side Yard (ft.):	11'3"	11'3"	10	min.
Rear Yard (ft.):	56'9"	22	30	min.
Height (ft.):	<35	<35	35	max.
Building Coverage (%):	11.4	19	20	max.
Open Space Coverage	65	49	40	min.
<u>(%):</u>				
Parking:	5	5	1.3	
Estimated Age of	1900	Variance request shown in red.		
Structure:				

## Other Permits/Approvals Required

HDC





### **Previous Board of Adjustment Actions**

No previous BOA history found.

### **Planning Department Comments**

The applicant is proposing a large renovation which includes a two-story addition and rear deck. Most of the project complies with all dimensional requirements for the district, with the proposed deck being the only part that encroaches into the rear yard 8 feet. It appears the size could be reduced to comply with the yard requirements or come closer to compliance with a smaller square footage as it is hard to see the hardship for the deck.

#### **Review Criteria**

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

- Granting the variance would not be contrary to the public interest.
   Planning Department Comments 2. Granting the variance would observe the spirit of the Ordinance.
- 3. Granting the variance would do substantial justice.
- 4. Granting the variance would not diminish the values of surrounding properties.
- The "unnecessary hardship" test:
   (a) The property has <u>special conditions</u> that distinguish it from other properties in the area.
   AND
  - (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. **OR**

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

4.

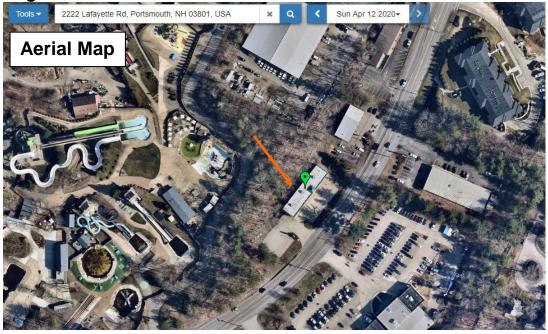
Petition of KSC, LLC, Owner, and Lafayette Animal Hospital, LLC, Applicant, for property located at 2222 Lafayette Road wherein relief is needed from the Zoning Ordinance to allow a Veterinary Clinic/Hospital which requires the following: 1) A Special Exception from Section 10.440 Use #7.50 to allow a Veterinary Care use where the use is allowed by Special Exception. Said property is shown on Assessor Map 267 Lot 2 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

**Existing & Proposed Conditions** 

	Existing	Proposed	Permitted / Required
Land Use:	Vacant commercial	Veterinary Care	Primarily mixed uses
Parking	29	29	7
Estimated Age of Structure:	2004	Special Exception request shown in red.	

# Other Permits/Approvals Required None.

**Neighborhood Context** 





### **Previous Board of Adjustment Actions**

February 19, 2020 – The Board **granted** the following special exception as presented: Section 10.440 Use #3.11 to allow a religious place of assembly where the use is permitted by special exception.

July 20, 2004 – The motion to grant the following request for a variance failed, therefore, the request was **denied**:

Section 304(A) to allow an 8'x10' walk in cooler with a 13' rear yard where 50' is the minimum required.

## **Planning Department Comments**

The applicant is proposing to relocate a veterinary office from 2059 Lafayette Road at the proposed location which requires a special exception. The applicant has indicated they will use 3,500 square feet of the building. For this square footage, 7 parking spaces are required for this use and the site has 29 existing spaces.

#### **Review Criteria**

The application must meet all of the standards for a **special exception** (see Section 10.232 of the Zoning Ordinance).

- 1. Standards as provided by this Ordinance for the particular use permitted by special exception;
- 2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;
- 3. No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;
- 4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;
- 5. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and
- 6. No significant increase of stormwater runoff onto adjacent property or streets.

5.

Petition of **Kenton Slovenski, Owner**, for property located at **175 Grant Avenue** wherein relief is needed from the Zoning Ordinance to construct a two-story addition with an attached accessory dwelling unit which requires the following: 1) A Variance from Section 10.521 to allow a lot area of 13,950 square feet where 15,000 square feet is the minimum required. Said property is shown on Assessor Map 251, Lot 41 and lies within the Single Residence B (SRB) District

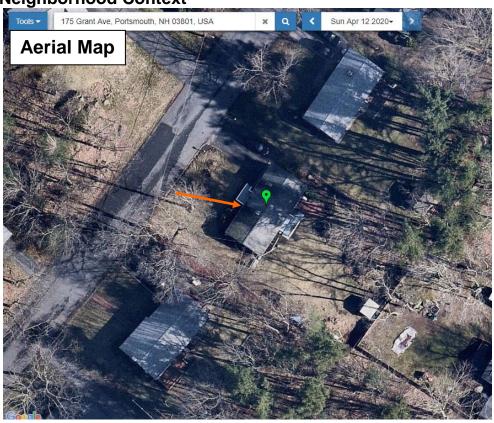
## **Existing & Proposed Conditions**

	Existing	<u>Proposed</u>	Permitted / Required	
Land Use:	Single family	2-story addition	Primarily Single	
		With AÁDU	Family	
Lot area (sq. ft.):	13,950	13,950	15,000	min.
Lot Area per Dwelling	13,950	13,950	15,000	min.
Unit (sq. ft.):				
Street Frontage (ft.):	90	90	100	min.
Lot depth (ft.):	155	155	100	min.
Primary Front Yard (ft.):	40	30	30	min.
Left Side Yard (ft.):	10	10	10	min.
Right Side Yard (ft.):	>10	>10	10	min.
Rear Yard (ft.):	>30	>30	30	min.
Height (ft.):	<35	<35	35	max.
Building Coverage (%):	12	13	20	max.
Open Space Coverage (%):	79	78	40	min.
Parking:	4	4	1.3	
Estimated Age of Structure:	1957	Variance request	shown in red.	

## Other Permits/Approvals Required

Planning Board – CUP for AADU

## **Neighborhood Context**





## **Previous Board of Adjustment Actions**

No BOA history found.

## **Planning Department Comments**

The applicant is proposing a two-story addition to the dwelling which will be reconfigured to accommodate an attached accessory dwelling unit (AADU). Per Section 10.814.22 below, an AADU is allowed on a nonconforming lot if there is no increase in building height or footprint. Since the proposal increases both, and it is deficient for lot area the requested variance is necessary. The applicant will need to obtain a conditional use permit from the Planning Board for the AADU.

10.814.22 An attached accessory dwelling unit is permitted on existing nonconforming lots and within existing nonconforming buildings as long as there is no increase in building height or building footprint for any portion of the existing building and no increase to the nonconformity.

## **Review Criteria**

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

- 1. Granting the variance would not be contrary to the public interest.
- 2. Granting the variance would observe the spirit of the Ordinance.
- 3. Granting the variance would do substantial justice.
- 4. Granting the variance would not diminish the values of surrounding properties.
- 5. The "unnecessary hardship" test:
  (a) The property has <u>special conditions</u> that distinguish it from other properties in the area. **AND** 
  - (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. **OR**

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

6.

Petition of the **Rhonda Stacy-Coyle Revocable Trust, Owner**, for property located at **36 Richards Avenue** wherein relief is needed from the Zoning Ordinance to install a heat pump unit which requires the following: 1) A Variance from Section 10.521 to allow a 2' right side yard where 10' is required. Said property is shown on Assessor Map 136 Lot 14 and lies within the Mixed Residential Office (MRO) District.

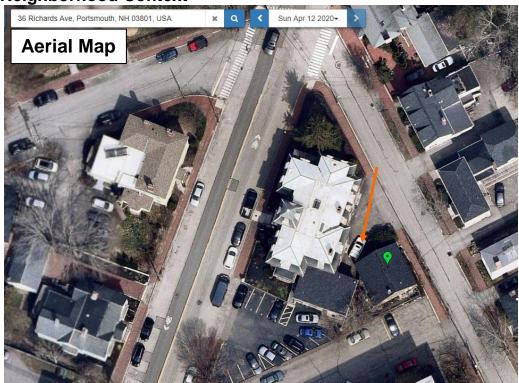
**Existing & Proposed Conditions** 

	Existing	Proposed	Permitted /	
			Required	
Land Use:	Single family	Install heat	Mixed Residential	
		pump	and Office Uses	
Lot area (sq. ft.):	1,306	1,306	7,500	min.
Lot Area per Dwelling	1,306	1,306	7,500	min.
Unit (sq. ft.):				
Street Frontage (ft.):	38	38	100	min.
Lot depth (ft.):	37	37	80	min.
Primary Front Yard	~2.5	~2.5	5	min.
<u>(ft.):</u>				
Left Side Yard (ft.):	~2	~2	10	min.
Right Side Yard (ft.):	~2	<b>2</b> (unit)	10	min.
Rear Yard (ft.):	2.5*	2.5*/ 12 (unit)	15	min.
Height (ft.):	<40	<40	40	max.
<b>Building Coverage</b>	68.5*	68.5	40	max.
<u>(%):</u>				
Open Space	.>25	>25	25	min.
Coverage (%):				
Parking:	0	0	1.3	·
Estimated Age of	1930	Variance reques	ts shown in red.	•
Structure:		*prior variance grant	ted	

## Other Permits/Approvals Required

HDC – Admin. Approval

**Neighborhood Context** 





## **Previous Board of Adjustment Actions**

<u>June 16, 2015 – The Board **granted** the following variances as presented and advertised:</u>

- Section 10.321 to allow a lawful nonconforming structure to be extended or structurally altered without confirming to the requirements of the Ordinance;
- 2. Section 10.521 to allow a 2.5'± rear yard setback where 15' is required; and,
- Section 10.521 to allow 68.5%± building coverage where 40% is the maximum allowed.

## **Review Criteria**

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

- 1. Granting the variance would not be contrary to the public interest.
- 2. Granting the variance would observe the spirit of the Ordinance.
- 3. Granting the variance would do substantial justice.
- 4. Granting the variance would not diminish the values of surrounding properties.
- The "unnecessary hardship" test:
   (a)The property has <u>special conditions</u> that distinguish it from other properties in the area.
   AND
  - (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. **OR**

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

## 7.

Petition of the **Kevin Shitan Zeng Revocable Trust, Owner**, for property located at **377 Maplewood Avenue** wherein relief is needed from the Zoning Ordinance to demolish an accessory building and construct a new free standing dwelling which requires the following: 1) A Variance from Section 10.513 to allow more than one free standing dwelling on a lot. 2) Variances from Section 10.521 to allow: a) a lot area per dwelling unit of 2,638 square feet where 7,500 is the minimum required; b) 43% building coverage where 25% is the maximum allowed; c) a 4.5' secondary front yard where 15' is required; d) a 3' left side yard where 10' is required; and e) a 5.5' rear yard where 20' is required. 3) A Variance from Section 10.321 to allow a building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 141 Lot 22 and lies within the General Residence A (GRA) District.

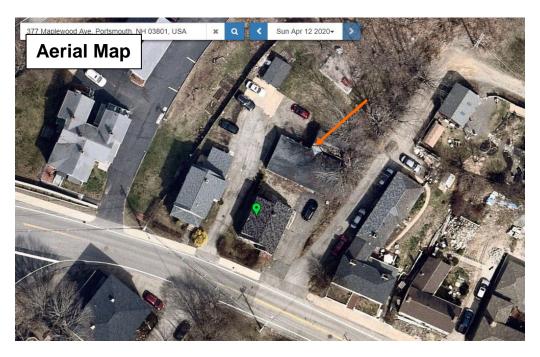
**Existing & Proposed Conditions** 

Laisting & Froposcu	Existing	Proposed	Permitted /	
	Exioting	1100000	Required	
Land Use:	Single family	Demo	Primarily	
<u></u>	July 1	structure/construct	•	
		new free-	Trooladiniai Good	
		standing		
		dwelling		
Lot area (sq. ft.):	5,277	5,277	7,500	min.
Lot Area per Dwelling	5,277	2,638	7,500	min.
Unit (sq. ft.):				
Street Frontage (ft.):	150	150	100	min.
Lot depth (ft.):	108	108	70	min.
Primary Front Yard	68	>50	15	min.
(ft.):				
Secondary Front Yard	0	4.5'	15	min.
<u>(ft.):</u>				
Left Side Yard (ft.):	2'11"	3'	10	min.
Rear Yard (ft.):	2'10"	5.5'	20	min.
Height (ft.):	<35	<35	35	max.
Building Coverage	45	43	25	max.
(%):				
Open Space	>30	>30	30	min.
Coverage (%):				
Parking:	3	3	3	
Estimated Age of	1900s	Variance request sh	nown in red.	
Structure:				

## Other Permits/Approvals Required

HDC

## **Neighborhood Context**





**Previous Board of Adjustment Actions** 

No BOA history found.

## **Planning Department Comments**

The applicant is proposing to demolish an existing structure and construct a new free-standing dwelling unit which will total 2 dwelling units on the lot. Per section 10.513 below, only one freestanding dwelling is allowed in the SRB district.

## 10.513 One Dwelling Per Lot

No more than one free-standing **dwelling** shall be built on any **lot** in a Rural, Single Residence A or B, or General Residence A or B district, except where specifically exempted by other provisions of this Ordinance.

The proposed new structure will be more conforming than the existing structure, however it will still encroach into the rear, left side and secondary front yards and building coverage will be reduced by approximately 2%, from 45% to 43% where 25% is the maximum allowed.

## **Review Criteria**

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

- 1. Granting the variance would not be contrary to the public interest.
- 2. Granting the variance would observe the spirit of the Ordinance.
- 3. Granting the variance would do substantial justice.
- 4. Granting the variance would not diminish the values of surrounding properties.
- The "unnecessary hardship" test:
   (a) The property has <u>special conditions</u> that distinguish it from other properties in the area.
   AND
  - (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. **OR**

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Petition of **553-559 Islington Street, LLC, Owner** for property located at **553 Islington Street** wherein relief is needed from the Zoning Ordinance to construct a rear addition in conjunction with reconfiguration of the existing six-unit apartment building which requires the following: 1) A Variance from Section 10.5A41.10A to a lot area per dwelling unit of 1,201 s.f. where 3,000 s.f. per dwelling is required; 2) A Variance from Section 10.5A41.10A to allow 19.5% open space where 25% is the minimum required; 3) A Variance from Section 10.5A41.10A to allow a ground story height of 10' 7.5" where 11' is required; 4) A Variance from Section 10.321 to allow a nonconforming building or structure to be enlarged, reconstructed or extended without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 157 Lot 3 and lies within the Character District 4-L2 (CD4-L2) District.

**Existing & Proposed Conditions** 

	Existing	Proposed	Permitted / Required	
Land Use:	6 unit apartment building	Rear addition and reconfiguration of apartment building	Primarily mixed Uses	
Lot area (sq. ft.):	7,207	7,207	3,000	min.
Lot Area per Dwelling Unit (sq. ft.):	1,201	1,201	3,000	min.
Primary Front Yard (ft.):	3	3	15	max.
Left Side Yard (ft.):	0	0	5 min to 20 max	
Rear Yard (ft.):	48	48	Greater of 5 ft from or 10 ft from center alley	
Min Ground story height (ft.):	10' 7.5"	10' 7.5"	11	min.
Building Coverage (%):	28	35	60	max.
Open Space Coverage (%):	19	19.5	25	min.
Parking:	8	8*	9*	
Estimated Age of Structure:	1900	Variance requests *CUP required for les	s shown in red. s than required parking.	

## Other Permits/Approvals Required

Planning Board/TAC – Site Review HDC

## **Neighborhood Context**





## **Previous Board of Adjustment Actions**

No BOA history found.

## **Planning Department Comments**

The applicant seeks to construct a rear addition and reconfigure the layout of the six-unit apartment building which will expand the nonconforming use. No increase in the number of units is proposed, but because of the expansion of the use, a variance is required for the lot area per dwelling. The proposed addition will maintain the ground story height of the existing structure, which is less than the required 11 feet. This will require site review and HDC approval as well as a conditional use permit for providing less than the required parking. The applicant is providing 8 spaces where 9 are required.

## **Review Criteria**

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

- 1. Granting the variance would not be contrary to the public interest.
- 2. Granting the variance would observe the spirit of the Ordinance.
- 3. Granting the variance would do substantial justice.
- 4. Granting the variance would not diminish the values of surrounding properties.
- The "unnecessary hardship" test:
   (a) The property has <u>special conditions</u> that distinguish it from other properties in the area.
   AND
  - (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. **OR**

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

# Hoefle, Phoenix, Gormley & Roberts, Pllc

ATTORNEYS AT LAW

127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480 Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

August 20, 2020

## HAND DELIVERED

Re:

David Rheaume, Chair Portsmouth Zoning Board of Adjustment City Hall 1 Junkins Avenue Portsmouth, NH 03801

Request for Extension of Zoning Relief granted 11/20/18
Arbor View & the Pines, LLC
145 Lang Rd., Portsmouth, NH 03801, Permit Number 34605
Assessor's Map 287, Lot 1
Zoning District: Garden Apartment/Mobile home park
Description: Add to apartment buildings with a total of 186 dwelling units on the property

Dear Chair Rheaume and Zoning Board members;

On behalf of Arbor View & the Pines, LLC, and Forest Properties Management, Inc., we hereby respectfully submit this request for a one-year extension of the zoning relief granted by the ZBA on November 20, 2018:

- a) Section 10.52 to allow a lot area per dwelling unit of 8321 ft. were 10,000 ft. is required
- b) Section 10.522 to allow 2 new multifamily dwellings with a maximum building length exceeding 160 feet.

Attached for your review is the November 26, 2018 Notice of Decision identifying the granted relief.

Portsmouth Zoning Ordinance Section 10.236 provides that zoning approvals expire within 2 years unless a building permit is obtained:

"The board may, for good cause shown, extend such period by as much as one year if such extension is requested and acted upon prior to the expiration date. No other extensions may be requested."



DANIEL C. HOEFLE
R. TIMOTHY PHOENIX
LAWRENCE B. GORMLEY
STEPHEN H. ROBERTS

R. PETER TAYLOR

JOHN AHLGREN

KIMBERLY J.H. MEMMESHEIMER

MATTHEW G. STACHOWSKE

KEVIN M. BAUM
GREGORY D. ROBBINS
MONICA F. KIESER
SAMUEL HARKINSON

ERICA A. DUMORE
OF COUNSEL:
SAMUEL R. REID

Good cause is shown in that its request is made based primarily upon the complications and uncertainties from the COVID-19 pandemic, causing the postponement of construction on the project. The intent is to proceed with the project and begin construction within the one-year extension. Please note that pending before the Portsmouth Planning Board is a request for one-year extension of Site Plan and Wetlands Conditional Use Permit granted by the Planning Board on August 15, 2019.

Please let me know if you have any questions or comments.

Very truly yours

R. Timothy Phoenix

RTP/msw Encl.

cc: Juliet T.H. Walker, Planning Director

Cory Belden, Altus Engineering
Arbor View & the Pines, LLC



# CITY OF PORTSMOUTH

Community Development Department (603) 610-7281

Planning Department (603) 610-7216





November 26, 2018

Arbor View & The Pines, LLC 145 Lang Road Portsmouth, New Hampshire 03801

Re: Property at 145 Lang Road, Permit #34605 Assessor Plan 287, Lot 1



The Board of Adjustment at its regular meeting on November 20, 2018 completed its consideration of your application described as follows:

## Application:

3) Case 11-3

Petitioners:

Arbor View and The Pines LLC c/o Forest Properties Management

Inc.

Property:

145 Lang Road Map 287, Lot 1

Assessor Plan: Zoning District:

Garden Apartment/Mobile Home Park

Description:

Add two apartment buildings for a total of 186 dwelling units on the

property.

Requests:

Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:

a) from Section 10.521 to allow a lot area per dwelling unit of  $8,321 \pm s.f.$ 

where 10,000 s.f. is required; and

b) from Section 10.522 to allow two new multifamily dwellings with a

maximum building length exceeding 160 feet.

## Action:

The Board voted to grant the petition as presented and advertised.

## Review Criteria:

The petition was granted for the following reasons:

1 Junkins Avenue Portsmouth, New Hampshire 03801 Fax (603) 427-1593

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. The proposed new buildings will be in keeping with those that are existing so that the character of the neighborhood will not be altered. There is no evidence that the public health, safety or welfare will be threatened. Residential uses create fewer traffic issues than businesses and residents of the new buildings can access a traffic light at Roberts Avenue in lieu of using the more heavily traveled Lang Road. Further, the Technical Advisory Committee and Planning Board will consider traffic and potential storm water runoff during site plan review.
- Granting the variances will result in substantial justice as there is no gain to the
  public that would outweigh the loss to the applicant if the petition were denied.
- The proposed buildings are appropriate to the site and will be located behind existing structures, set off from neighboring properties and not within the sight lines of those properties, so that the value of surrounding properties will not be diminished.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include substantial wetland that is not developable so that there is no fair and substantial relationship between the general purposes of the ordinance and their specific application to the property. The proposed use is a reasonable one as parking has been provided for the additional units and smaller buildings already on the property have not damaged the surrounding wetlands or buffer.

As provided for in NH RSA Chapter 677, the Board's decision may be appealed 30 days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process. Construction drawings or sketches must be reviewed and approved by the Building Inspector prior to the issuance of a building permit. Approvals by other land use boards may also be required prior to the issuance of a building permit.

The minutes and tape recording of the meeting may be reviewed in the Planning Department.

very truly yours,

David Rheaume, Chairman

Board of Adjustment

mek c:

Robert Marsilia, Chief Building Inspector Roseann Maurice-Lentz, City Assessor Forest Properties Management, Inc. R. Timothy, Esq.

# Application to the Portsmouth Zoning Board of Adjustment for a Variance from the Building Coverage Dimensional Standard

## Narrative - 17AUG20

Nathan Moss and Stacey Martinez-Moss are co-owners of a single-family residence at 5 Pamela Street in Portsmouth, NH. They purchased the property in 2006. The property is also listed as Lot 119 on Tax Map 292. The home was built in 1957.

Nathan and Stacey would like to create a master suite in the home by constructing an addition onto the back of the structure. The addition will consist of basement storage, master bathroom and additional closet space (Ref. Construction Drawings dated 27APR20, previously submitted).

The propose addition has been designed to conform to the SRB front, side and rear yard standards, the maximum height standard and the open space standard. This application seeks a variance from the building coverage standard only.

## Tabulation:

The total lot area is 0.26 acres, or 11,326 square feet. The lot coverage consists of a single-story ranch-style residence, front porch, rear deck, and a detached shed. According to the property record card, the lot coverage as of the last assessment consisted of 1,476 square feet of residence, 324 square feet of garage, 288 square feet of deck, 68 square feet of front porch, and 96 square feet of detached shed space; the total tabulated coverage was 2,276 square feet, resulting in a 20.1% lot coverage.

Since the last assessment, one addition was constructed on the east side of the home which resulted in 427 square feet of additional coverage (360 square feet of addition, 67 square feet of front porch). As a result, the current lot coverage is 2,703 square feet (23.9% lot coverage). The proposed addition would increase the lot coverage by 247 square feet to 2,950 square feet, which equates to a 26.0% lot coverage.

## Variance:

The following information is presented to satisfy the variance criteria:

1. The variance is not contrary to public interest. Stacey and Nate intend to improve their home by constructing a single story addition onto the rear of the structure. It will not alter the character of the Pamela Drive neighborhood in any way, as the home will remain a single story ranch. Setbacks to the street and side lot lines will not change. The setback to the rear property line will conform to the existing criteria. The height of the roof will not change. Granting the variance request to the building coverage will not result in any perceivable change to the neighborhood or threaten public health, safety, welfare or any public rights. Therefore, this proposed addition is exactly keeping in line with the essential character of the neighborhood.

- 2. The spirit of the ordinance is observed. The spirit of the ordinance is observed, as the proposed addition will conform to all of the minimum Front, Side, and Rear Yard Dimensions. It also will be much less than the maximum height restriction of 35 feet. The Building Coverage standard will increase from 20% to 26%. However, the lot will still have 74% of Open Space, compared to the SRB minimum standard of 30%. As a result, we submit that constructing the addition will be in keeping with the intent of the ordinance.
- 3. Substantial justice is done. The gains in additional living space that will be realized by Nate and Stacey will not cause any harm to their neighbors or the general public. Abutting owners will not see any noticeable difference from the current structure as the addition is a single story on the rear of the existing building. The proposed addition will be similar to improvements that have been made by other residents on Pamela Street.
- 4. The values of surrounding properties are not diminished. The proposed addition should not have any negative impact on the property values of other Pamela Street property owners. While vertical expansion is an option within the existing limits, Nate and Stacey's choice not to add vertically to the existing structure is in keeping the architectural language of the neighborhood. If anything, the improvements may raise abutter's property values.
- 5. Literal enforcement of the ordinance would result in unnecessary hardship. The 20% Building Coverage requirement for the SRB Zone may be well suited for 15,000+ square foot lots, as listed on Table 10.521 of the ordinance. It means that 3,000 square feet of structure can be built on them. However, the requirement creates a Hardship for existing structures on smaller lots, like Nate and Stacey's 11,326 square foot lot. As a comparison, if Nate and Stacey had a 15,000 square foot lot commensurate with the SRB baseline, the total lot coverage inclusive of the proposed addition would be 20%. The 20% standard is an arbitrary figure that does not relate to other Open Space or Yard Dimension standards. It does not allow owners the flexibility of using other measures to maintain the character of the neighborhood.

The single-story house was constructed in 1956, years before Zoning Ordinances were added to City regulations. Therefore, this requirement for the SRB Zone does create a Hardship for pre-existing lots. This Hardship exists for all the small properties on Pamela Street. Due to that fact that abutting properties have constructed additions and decks onto the rear of their houses and that the houses on Pamela Street are all similar, they must also have exceeded the 20% coverage limit and received City approval to do so. Therefore, granting the Variance to Nate and Stacey to increase the coverage standard up to 26% will not only preserve the character of the neighborhood, but will also be in keeping with precedent for alterations and variances in the neighborhood.

Nate and Stacey request that the BOA grant a Variance to increase the Building Coverage requirement for 5 Pamela Street from 20% to 26%, to allow the construction of the proposed addition. As explained herein, the proposed addition conforms to all other zoning criteria, is in keeping with the architectural mass, scale and character of the Pamela Street neighborhood, is visually indistinguishable from the street, and is otherwise consistent with additions and alterations to those of surrounding properties.

Respectfully Submitted,

George W. Melchior, R.A., P.E., LEED AP

NH Lic. Architect #4382

NH Lic. Professional Engineer #12207



Bedroom Addition 5 Pamela Street Portsmouth, NH 03801

Nathan and Stacey Moss

SPITBAN

PROPERTY OWNER:

MOSS

Residence

# **PROPERTY OWNER**

Nathan and Stacey Moss 5 Pamela Street PORTSMOUTH, NH 03801

# DESIGNER OF RECORD

PROFESSIONAL ENGINEER (P.E.)
NH # 12207
REGISTERED ARCHITECT (R.A.)
NH # 4382 GEORGE W. MELCHIOR, R.A., P.E., LEED AP

# **PROJECT SUMMARY**

PROJECT DESCRIPTION:

CONSTRUCT ONE-STORY ADDITION WITH MASTER BATHROOM AND BASEMENT ON NORTHWEST PORTION OF EXISTING RESIDENCE.

# **PARCEL ID:** 0292-0119-0000

**LOT SIZE:** 0.26 AC.

USE GROUP: SINGLE FAMILY MDL-01

BOOK PAGE:

YEAR OF ORIGINAL CONSTRUCTION: UNK

# ZONING AND **CODE SUMMARY**

PROPOSED USE: SINGLE FAMILY RESIDENCE EXISTING USE: SINGLE FAMILY RESIDENCE

STORIES: 1-STORY

DISTRICT: GRA

FROM ZONING SECTION 10.521

FRONT YARD: 15 FT SETBACKS:

REAR YARD: 20 FT SIDE YARD: 10 FT

MAXIMUM BUILDING COVERAGE:

MAXIMUM HEIGHT: 35 FT MINIMUM OPEN SPACE: 30%

DESIGN CRITERIA:

WIND ZONE: 110 MPH

SNOW LOAD: 50 PSF

PER INTERNATIONAL RESIDENTIAL CODE (IRC)

SEISMIC DESIGN CATEGORY: C

WEATHERING: SEVERE

LOCUS

MEAN ANNUAL TEMPERATURE: 47 DEG. F TERMITE: SLIGHT/MODERATE

AIR FREEZING INDEX: 2,000

# MOSS Re sidence

Bedroom Addition 5 Pamela Street, Portsmouth, NH

1. These plans and all work shall comply with the new hampshire building code as prescribed by RSA 155, and modified by the town of new Castle.

**GENERAL NOTES** 

2. APPLICABLE BUILDING CODES:

- INTERNATIONAL RESIDENTIAL CODE (IRC)

- INTERNATIONAL MECHANICAL CODE (IMC)

- INTERNATIONAL ENERGY CONS. CODE (IECC)

- NFPA 101, LIFE SAFETY CODE

- NFPA 54, NATIONAL FUEL AND GAS CODE

THESE PLANS ARE LIMITED TO THE CONSTRUCTION OF A 1-STORY ADDITION ON THE NORTHWEST PORTION OF THE HOUSE

# **SHEET INDEX**

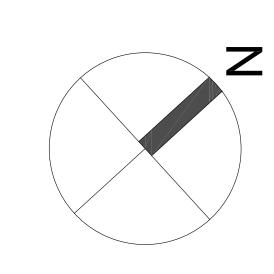
GENERAL G1.0 ARCHITECTURAL
A1.0 EXISTING CONDITIONS
A1.1 NEW ADDITION TITLE SHEET

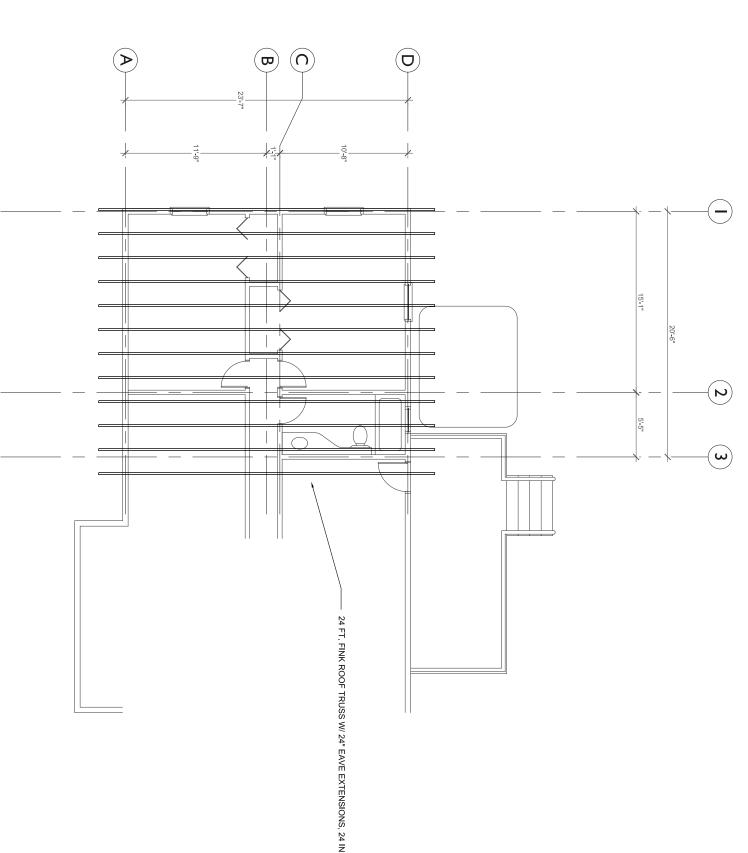
CONSTRUCTION DOC

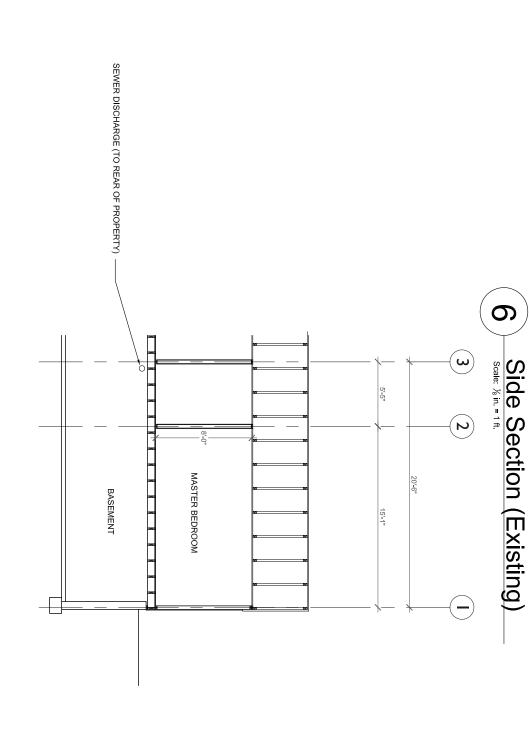
4/27/20

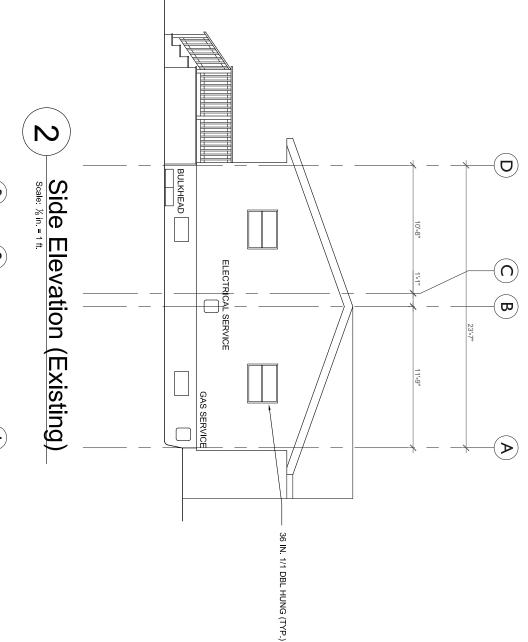
TITLE SHEET

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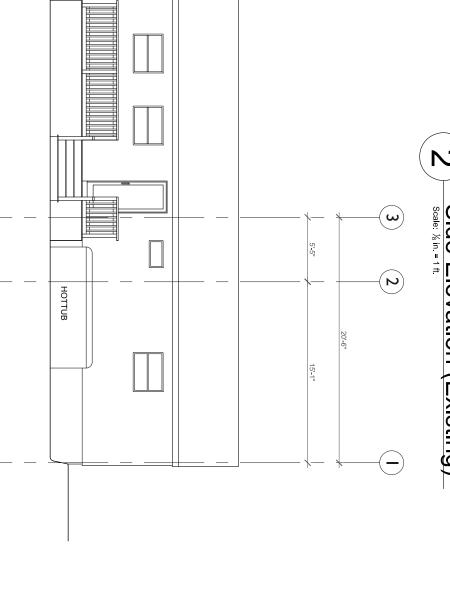








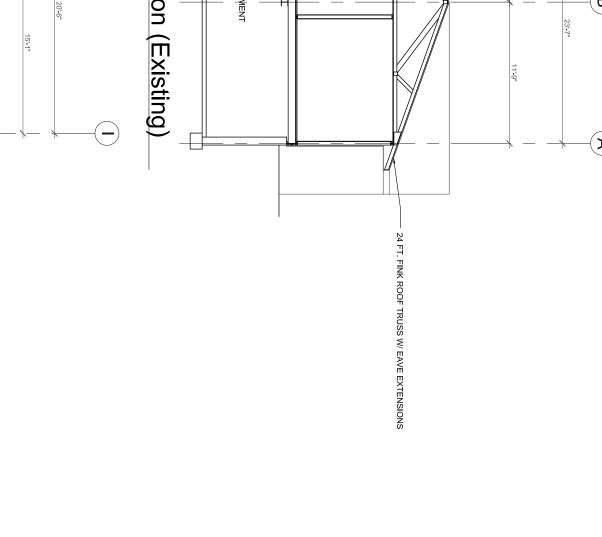
Existing Roof Structure



Partial Plan (Existing)

ယြ

Rear Elevation (Existing)



# CONSTRUCTION:

- REMOVE HOTUB AND SLAB
- REMOVE REAR WALL OF BEDROOM
- PARTIALLY REMOVE REAR WALL OF BATHROOM

ω

- REMOVE WEST SECTION OF DECK FOR ADDITION
- EXCAVATE REAR FOR 12 FT. ADDITION W/BASEMENT

6

5.

Construct ridge beam for New Roof on 2-line; rafters between 2-line and 1-line to be Boise Cascade versa lam laminated veneer lumber (LVL) as noted on sheet a1.1 PARTIALLY CUT ROOF TRUSSES ALONG C-LINE;
BRACE TRUSSES ON EACH SIDE WITH VERTICAL 2X4
CHORDS AND CONNECT TOP CUT AND BOTTOM
CUT TO CONTINUOUS TRANSVERSE BEAMS (SEE
SHEET A1.1)

(0)

Rear Section (Existing)

- $\infty$ CONSTRUCT COLUMNS TO SUPPORT TRANSVERSE TRUSS BEAMS AND ROOF RIDGE BEAM AS INDICATED ON SHEET A1.1; ALL COLUMNS TERMINATE AT FOUNDATION WALLS EXCEPT COLUMN B-2, WHICH TERMINATES ON GRADE FOOTING IN BASEMENT SLAB
- ALL COLUMNS ARE BUILT-UP BC VERSA LAM LVL

%

ALL NEW WALLS ARE STANDARD 2X6 FRAMING WITH DENSE-PACK CELLULOSE INSULATION; EXISTING EXTERIOR 2X4 WALL IN BEDROOM TO BE INSULATED WITH CLOSED CELL FOAM

10.

NEW ROOF WILL BE THERMALLY ISOLATED FROM EXISTING ROOF STRUCTURE; NEW ROOF NOT VENTILATED - INSULATE RAFTERS WITH CLOSED CELL FOAM TO ACHIEVE MIN. R38

<u>-</u>

CONSTRUCT NEW FOUNDATION WALL ON 3-LINE SUCH THAT SEWER LINE IS INSIDE NEW BASEMENT; COORDINATE WITH EXISTING EXTERIOR DOOR JAMB AND KITCHEN CONFIGURATION

12.

CONSTRUCT ROOF RAKE EXTENSION ON ENTIRE EAST SIDE TO MATCH EAVE EXTENSION OF NEW GABLED ROOF OVER BEDROOM ADDITION

13.

- INSTALL CEILING JOISTS TO PROVIDE PARTIALLY VAULTED CEILING; FLOOR-TO-CEILING OF 9'-8" TOP OF VAULT
- CONSTRUCT WALK IN CLOSET; INSTALL TRACK BARN DOOR AT BATHROOM ENTRANCE CONSTRUCT NEW MASTER BATHROOM WITH EXTERIOR EGRESS DOOR TO DECK

16.

15.

14.

**EXISTING** 

# $\omega$ 2 ROOF STRUCTURE: 24 FT. FINK TRUSSES, 24 IN. O.C.; ALL PERIMETER CHORDS NOMINAL 2X4, PRIMARY INTERMEDIATE CHORD 1X6 ELECTRICAL AND GAS SERVICE LOCATED ON WEST SIDE OF HOUSE (TIE-INS IN BASEMENT) PHOTOVOLTAIC ARRAY ON SOUTH SIDE OF GABLED ROOF (TO REMAIN) SEWER SERVICE DISCHARGES AT REAR OF HOUSE BETWEEN EXISTING HOTTUB AND WEST EDGE OF DECK

**GENERAL NOTES:** 

Designer: George Melchior, R.A. P.E. SPITBANK Design 601 Islington Street Suite 202 Portsmouth, NH 03801 PH (603) 828-8168 gwm@spitbank.com

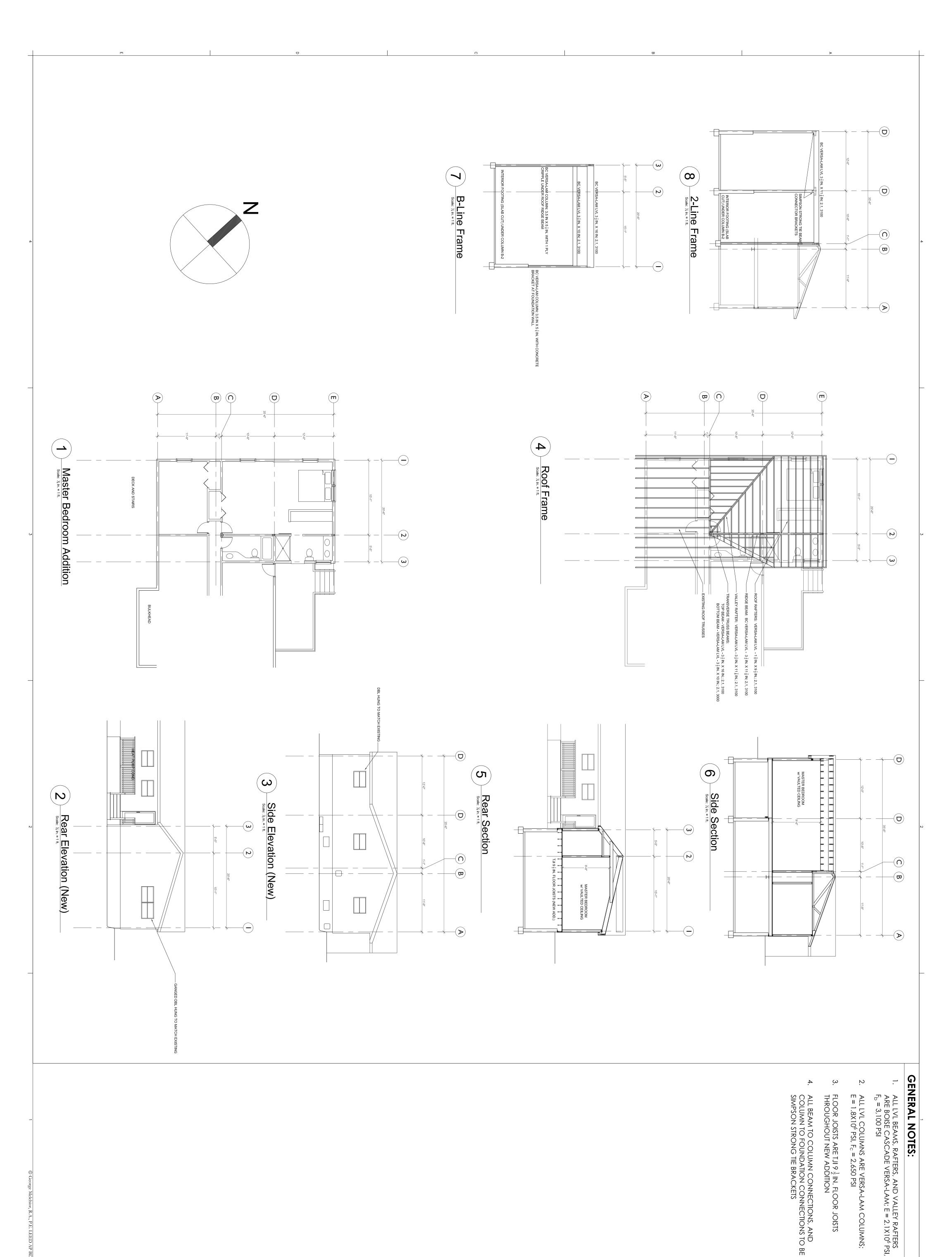


Nathan and Stacey Moss PROPERTY OWNER: Bedroom Addition 5 Pamela Street Portsmouth, NH 03801

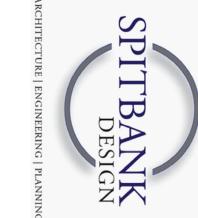
Residence

MOSS

CONDTIONS



Designer:
George Melchior, R.A. P.E.
SPITBANK Design
601 Islington Street
Suite 202
Portsmouth, NH 03801
PH (603) 828-8168
gwm@spitbank.com



Bedroom Addition 5 Pamela Street Portsmouth, NH 03801 Residence PROPERTY OWNER:

Nathan and Stacey Moss

**MOSS** 

NEW

**ADDITION** 



DATE: 4/27/20 SCALE: AS NOTED

Num Description Date

1 CONSTRUCTION DOC. 4/27/20
2

Designer:
George Melchior, R.A. P.E., LEED AP BD+C
SPITBANK Design
601 Islington Street
Suite 202
Portsmouth, NH 03801
PH (603) 828-8168
gwm@spitbank.com

SPITBANK
DESIGN
RCHITECTURE | ENGINEERING | PLANNIN

MOSS
Residence
Bedroom Addition
5 Pamela Street
Portsmouth, NH 03801

PROPERTY OWNER:

Nathan and Stacey Moss

C1.0

# Zoning Board of Adjustment City of Portsmouth New Hampshire

Stephen & Bridget Viens, homeowners of 78 Marne Avenue request relief from setback and maximum building coverage requirements for construction of an attached one story two-car garage to replace an existing one story one-car garage.



Written Statement	3
Photos & Drawings	
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Site Plan	
Existing Site Plan	7
Proposed Site Plan	8
Zoning & Setback Details	9
Existing Dimensions vs. Proposed	10 - 11
Rear & Side Setback Details	11
Elevations & Floor Plan	
Rear & Front Elevations	12
Side Elevation & Building Section	13
Floor Plan	14
Additional Documents	
Neighbor Petition *	
Abutter Letters *	

<sup>\*</sup> Available as Attachments in ViewPointCloud <a href="https://portsmouthnh.viewpointcloud.com/track/48833/submission">https://portsmouthnh.viewpointcloud.com/track/48833/submission</a>

Property Address: 78 Marne Ave. Portsmouth, NH 03801

We have submitted this application to request relief from setback and maximum building coverage requirements for construction of an attached one story two-bay garage to replace an existing one story one-bay garage. The proposed garage to be located 11.8' from the rear lot line where a minimum of 20' is required, 9.9' from the side lot line where a minimum of 15' is required, and building lot coverage of 27% where a minimum of 25% is required.

## 1. The variance is not contrary to the public interest.

We feel the proposed one story addition will provide a safer home without disrupting our neighbors privacy, nor will it cause undue overcrowding. The one story garage will also provide improved and safer access to garage attic storage. The one story garage will not materially impact the light and air of the rear abutters. Both rear and side abutters, as well as other neighbors within view of the proposed garage have reviewed our plans and voiced support for the project.

## 2. The spirit of the ordinance is observed.

The proposed one story garage will greatly benefit our family and at the same time not adversely affect the surrounding community. The spirit of the ordinance is to protect abutters and allow for ample light and air which we believe the proposed garage will respect. Our goal is to rebuild our one story garage in a way that matches the character of the existing home and neighborhood.

## 3. Substantial justice is done.

We do not believe that any perceived harm to our neighbors is outweighed by the gain to ourselves. Both rear and side abutters, as well as other neighbors within view of the proposed garage have reviewed our plans and voiced support for the project.

## 4. The values of the surrounding properties are not diminished.

A new, up-to-code one story 2-car garage will increase the value of the home. The one story addition will not infringe upon our neighbors' property, privacy, views, nor the aesthetics of their homes. Therefore, the value of the surrounding properties should not diminish.

# <u>Literal enforcement of the ordinance would result in unnecessary hardship.</u> The location of the existing home, which was built in the 1950's, is roughly 7 feet over the current rear set back requirement and thus the location of the home poses zoning challenges for any addition.

For the reasons stated above, we believe there is no benefit to the public from denying the variance. Conversely, our family will be harmed by the denial of our right to utilize the home as we

variance. Conversely, our family will be harmed by the denial of our right to utilize the home as we see fit. We therefore humbly request that the board grant the requested variance. We look forward to presenting our proposal to the zoning board on September 15, 2020.

Please feel free to contact us with any questions and thank you for your consideration.

Sincerely, Stephen and Bridget Viens

# **EXISTING**





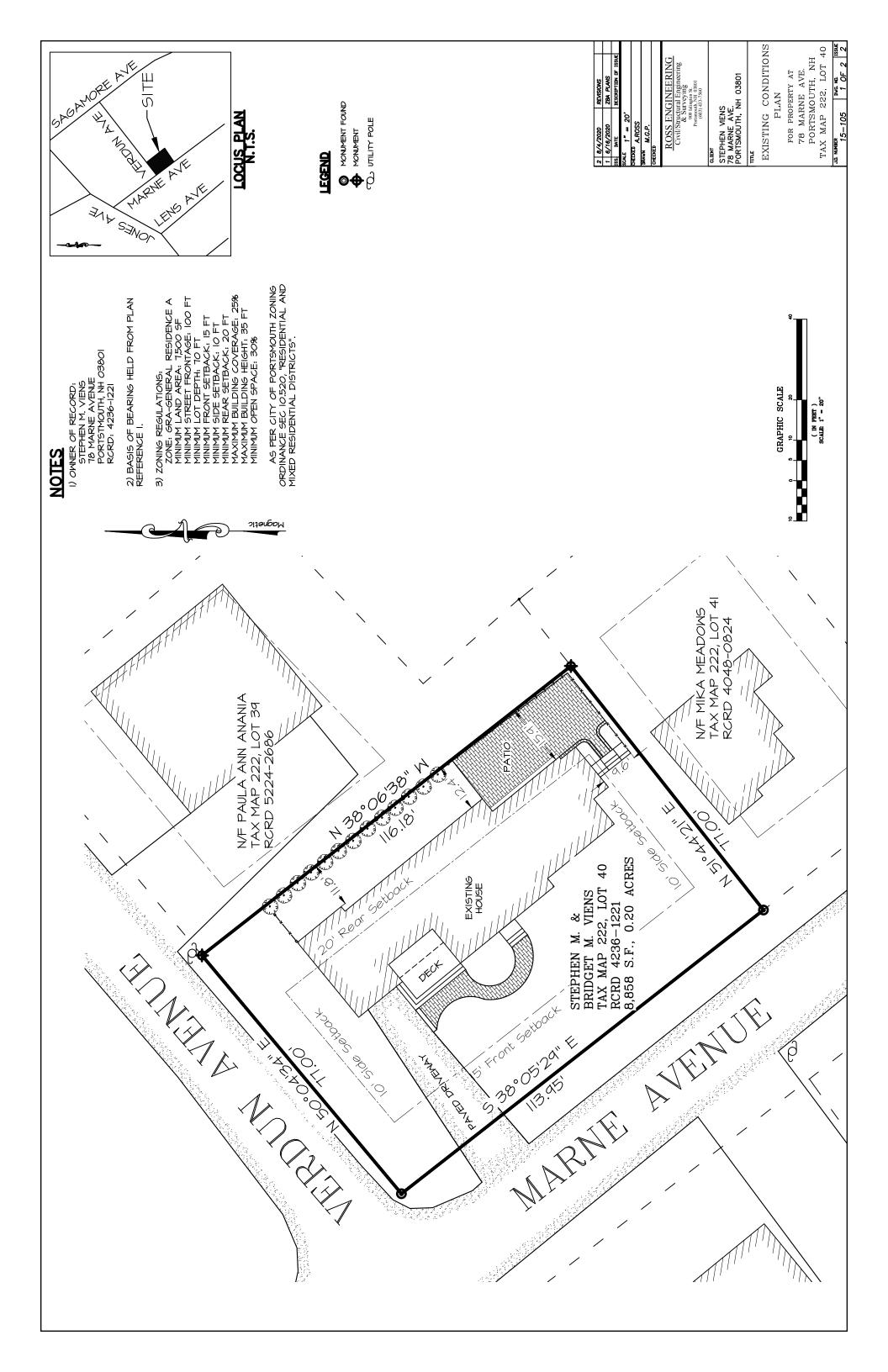


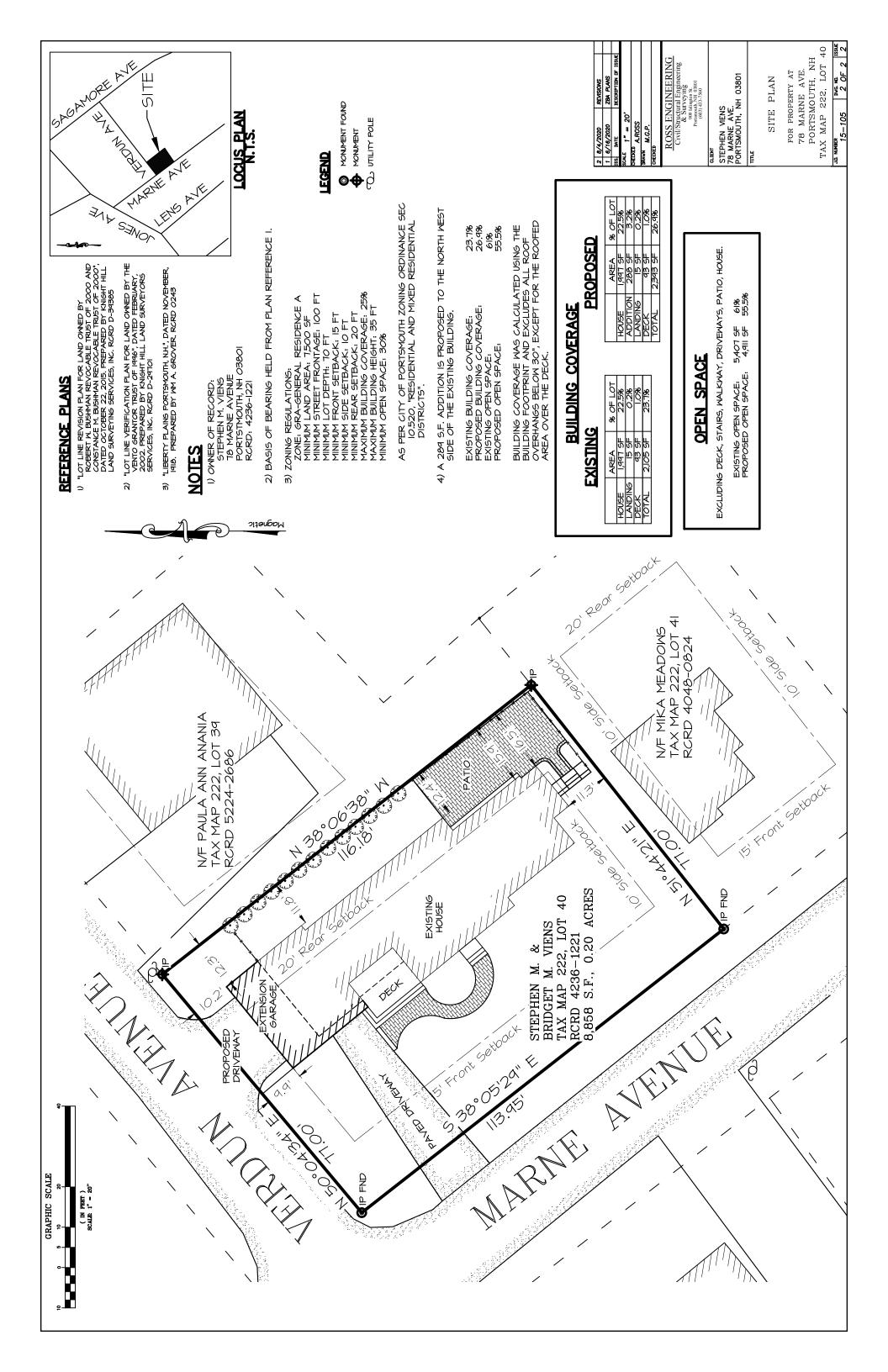
# **PROPOSED**











## REFERENCE PLANS

- "LOT LINE REVISION PLAN FOR LAND OWNED BY ROBERT W. BUSHMAN REVOCABLE TRUST OF 2000 AND CONSTANCE M. BUSHMAN REVOCABLE TRUST OF 2000", DATED OCTOBER 22, 2015. PREPARED BY KNIGHT HILL LAND SURVEYING SERVICES, INC. RCRD D-34385
- "LOT LINE VERIFICATION PLAN FOR LAND OWNED BY THE VENTO GRANTOR TRUST OF 1996", DATED FEBRUARY, 2002. PREPARED BY KNIGHT HILL LAND SURVEYORS SERVICES, INC. RCRD D-29701
- "LIBERTY PLAINS PORTSMOUTH, N.H.", DATED NOVEMBER, 1916. PREPARED BY WM A. GROVER. RCRD 0243

## <u>NOTES</u>

I) OWNER OF RECORD:
STEPHEN M. VIENS
18 MARNE AVENUE
PORTSTMOUTH, NH 03801
RCRD: 4236-1221

STORE PLAN

LOCUS PLAN

- 2) BASIS OF BEARING HELD FROM PLAN REFERENCE I.
- 3) ZONING REGULATIONS:

ZONE: GRA-GENERAL RESIDENCE A
MINIMUM LAND AREA: 7,500 SF
MINIMUM STREET FRONTAGE: 100 FT
MINIMUM LOT DEPTH: 70 FT
MINIMUM FRONT SETBACK: 15 FT
MINIMUM SIDE SETBACK: 10 FT
MINIMUM REAR SETBACK: 20 FT
MAXIMUM BUILDING COVERAGE: 25%
MAXIMUM BUILDING HEIGHT: 35 FT
MINIMUM OPEN SPACE: 30%

## **LEGEND**

9

MONUMENT FOUND

MONUMENT

UTILITY POLE

- AS PER CITY OF PORTSMOUTH ZONING ORDINANCE SEC 10.520, "RESIDENTIAL AND MIXED RESIDENTIAL DISTRICTS".
- A 289 S.F. ADDITION IS PROPOSED TO THE NORTH WEST SIDE OF THE EXISTING BUILDING.

EXISTING BUILDING COVERAGE: 23.7%
PROPOSED BUILDING COVERAGE: 26.9%
EXISTING OPEN SPACE: 61%
PROPOSED OPEN SPACE: 55.5%

BUILDING COVERAGE WAS CALCULATED USING THE BUILDING FOOTPRINT AND EXCLUDES ALL ROOF OVERHANGS BELOW 30", EXCEPT FOR THE ROOFED AREA OVER THE DECK.

# **BUILDING COVERAGE**

# **EXISTING**

## **PROPOSED**

	AREA	% OF LOT
HOUSE	1,997 SF	22.5%
LANDING	15 SF	0.2%
DECK	93 SF	1.0%
TOTAL	2,105 SF	23.7%

	AREA	% OF LOT
HOUSE	1,997 SF	22.5%
ADDITION	288 SF	3.2%
LANDING	15 SF	0.2%
DECK	93 SF	1.0%
TOTAL	2,393 SF	26.9%

# OPEN SPACE

EXCLUDING DECK, STAIRS, WALKWAY, DRIVEWAYS, PATIO, HOUSE.

EXISTING OPEN SPACE: 5,407 SF 61% PROPOSED OPEN SPACE: 4,911 SF 55.5%

2	8/4/2020	REVISIONS
1	6/16/2020	ZBA PLANS
188.	DATE	DESCRIPTION OF ISSUE

DRAVN M.G.P.

CHECKED

## ROSS ENGINEERING

Civil/Structural Engineering & Surveying 909 Islington St. Portsmouth, NH 03801 (603) 433-7560

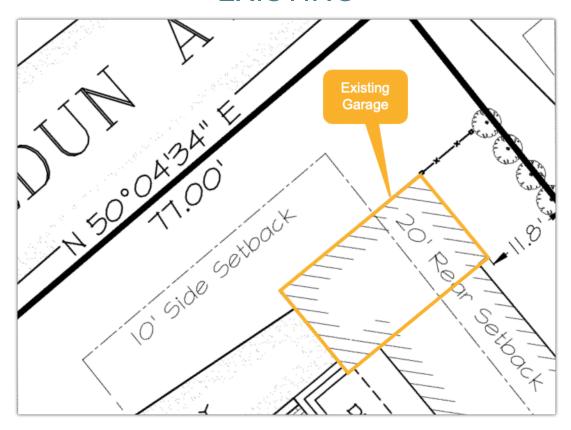
CLIENT

STEPHEN VIENS 78 MARNE AVE. PORTSMOUTH, NH 03801

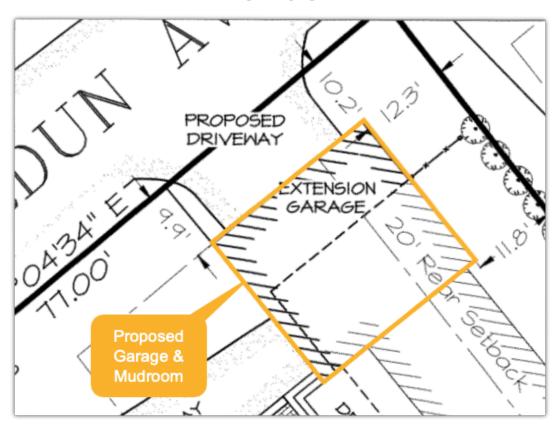
TITLE

SITE PLAN

# **EXISTING**



# **PROPOSED**

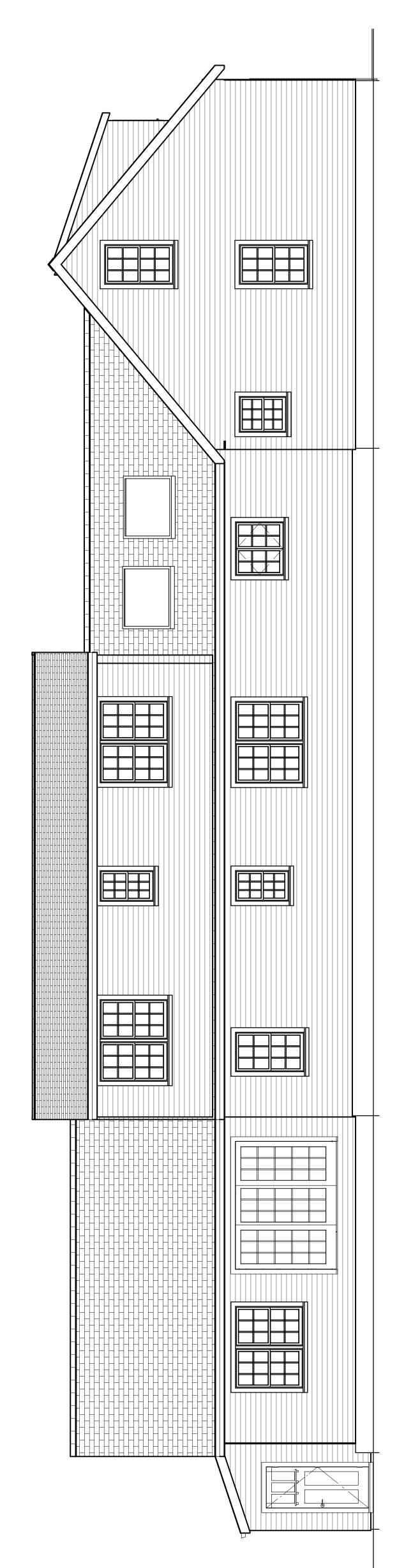


区別 Roar Rear & Side Set Back Details 12.3' approx 77 SF over rear setback 7 118.8" - Q. Q TANDA DA DEC Ø Existing | Garage 24' MINISTON OF THE POST OF THE PO Proposed Garage SON BY BY <u>p</u>.

Size of Existing vs. Proposed

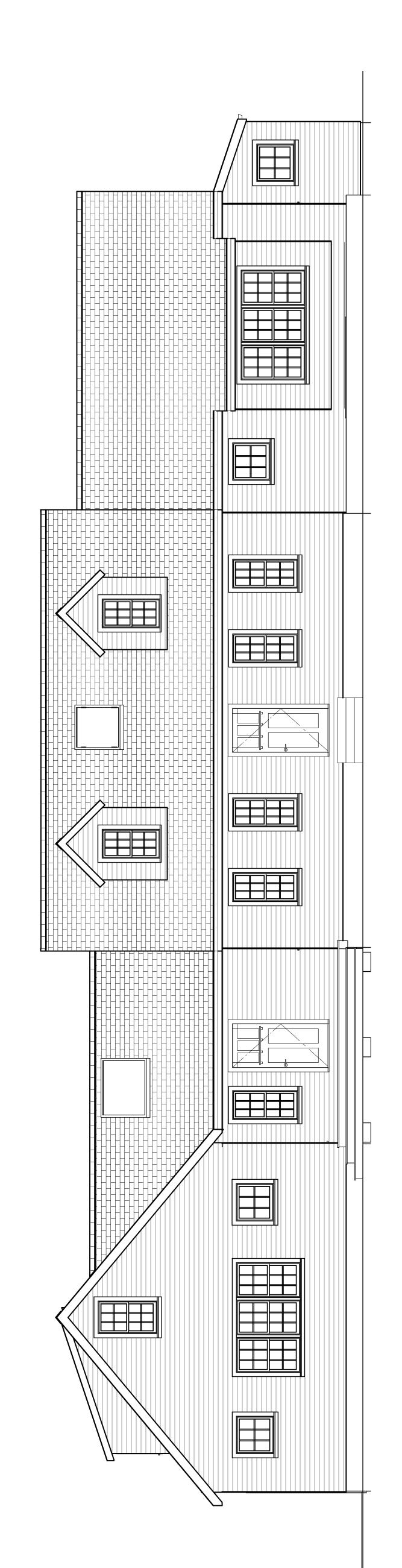
STACE

ST



## REAR ELEVATION

SCALE: 1/4" = 1'-0"



# FRONT ELEVATION

SCAI F. 1/4" = 1'-0"

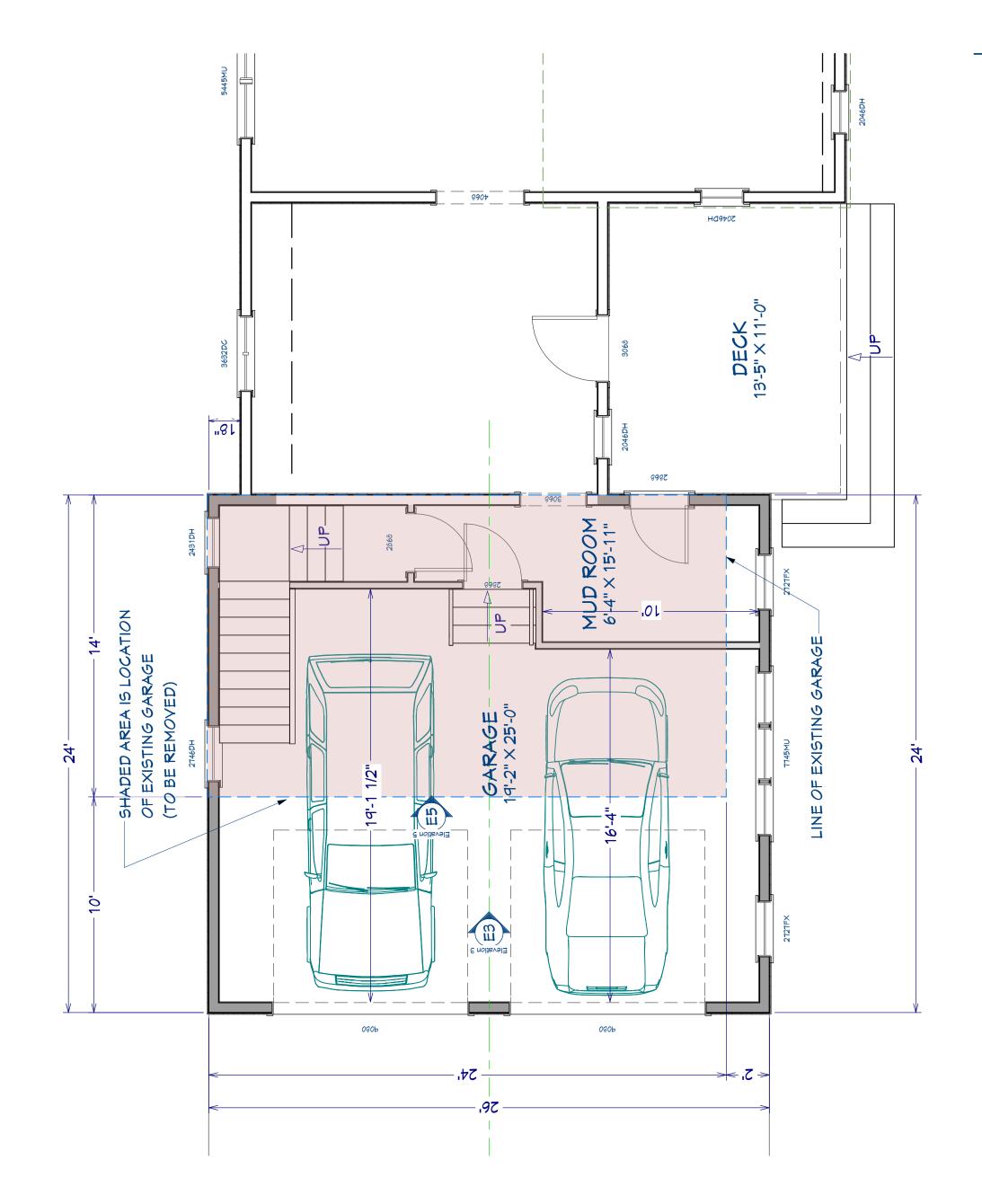
STALE STORM SPOTS

SAFET:

SAF

SIDE ELEVATION

SCALE: 1/4" = 1'-0"

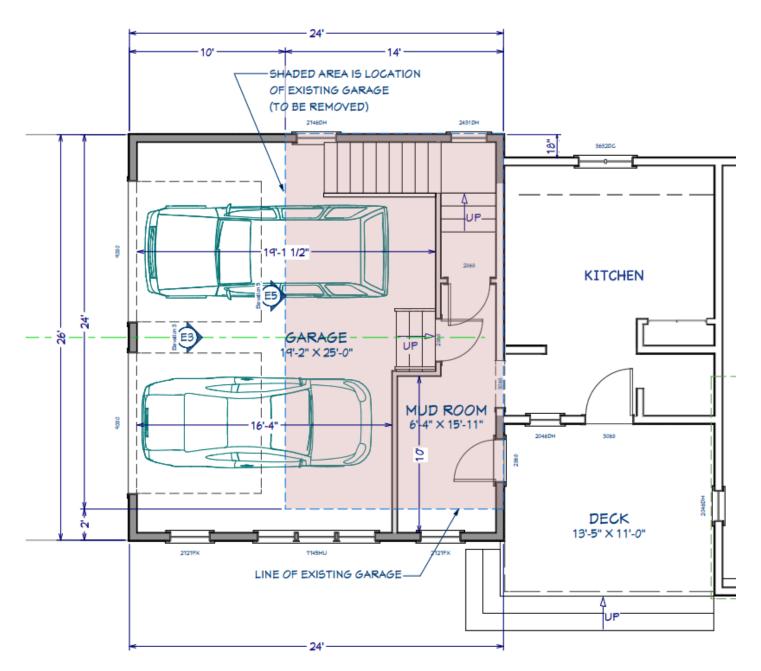


# 

# BULDING SECTION

SCALE: 1/4" = 1'-0"

### Proposed Garage Floor Plan



### FLOOR PLAN

SCALE: 1/4" = 1'-0"

To whom it may concern,

We, Paula Anania, and Barbara Baker, homeowners of 50 Verdun Ave and abutters to Bridget and Stephen Viens are in full support of their plans to replace their existing 1-bay garage with a larger 2-bay garage and mudroom. The new garage will not infringe upon our property, privacy, view, or the aesthetics of our home. We are also in favor of their request to allow access to the new garage from Verdun Avenue.

Sincerely,

Paula Anania

Barbara Baker

July 28, 2020

Dear Portsmouth NH Zoning Board of Adjustment,

We, Mika Meadows and Gwen Gallassio, homeowners of 84 Marne Avenue, and abutters to Steve and Bridget Viens at 78 Marne Avenue are not opposed to their plans to replace their existing 1-bay garage with a larger 2-bay garage.

Sincerely yours,

Mika Meadows

MAn hear

Øwen Gallassio

To whom it may concern,

We, Elizabeth and Jeff Stacy, homeowners of 77 Marne Ave and neighbors to Bridget and Stephen Viens have reviewed and support their plans to replace the existing attached garage with a larger garage+mudroom with access from Verdun avenue.

We also support their wish to retain the existing driveway on Marne Avenue. The new garage will not infringe upon our property, privacy, view, or the aesthetics of our home.

Thank you,

Beth & Jeff Stacy

Beth Stacy

To the Zoning Board of Adjustment for Portsmouth NH,

We, Charles and Meaghan Cullinane, homeowners of 49 Marne Ave and neighbors to Bridget and Stephen Viens have reviewed their plans to replace their 1-bay garage with a 2-bay garage and mudroom. We fully support the project as well as their request to be able to access the new garage from Verdun Avenue. The garage will not infringe upon our property, privacy, view, or the aesthetics of our home. We also recommend allowing them to continue to have and use their current driveway.

Sincerely yours,

Charles & Meaghan Cullinane

49 Marne Avenue

Portsmouth NH

To whom it may concern,

I, Matthew Bushman, homeowner of 34 Marne Avenue, and neighbor to Steve and Bridget Viens at 78 Marne Avenue have reviewed and fully support their plan to build a 2-car garage and mudroom to replace their existing garage. I also support their request to allow access to the new garage from Verdun Avenue.

Sincerely,

Matthew Bushman

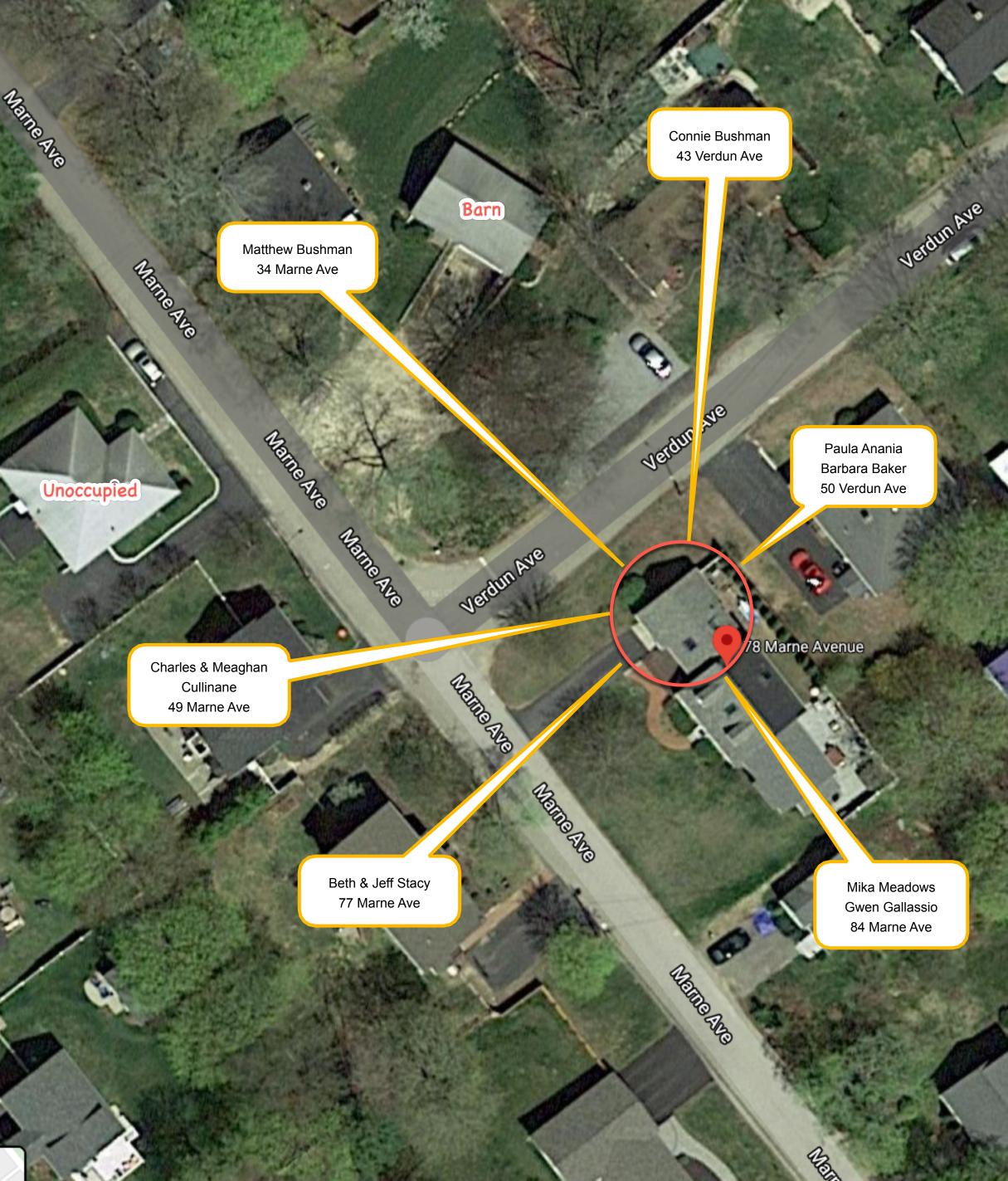
Dear Portsmouth NH Zoning Board of Adjustment,

I, Connie Bushman, homeowner of 43 Verdun Avenue, and neighbor to Steve and Bridget Viens at 78 Marne Avenue are not opposed to their plans to replace their existing 1-bay garage with a slightly 2-bay garage. I also support their request to allow access to the new garage from Verdun Avenue.

Sincerely,

Commie Bushman

Connie Bushman



Portsmouth NH Zoning Board of Adjustment:

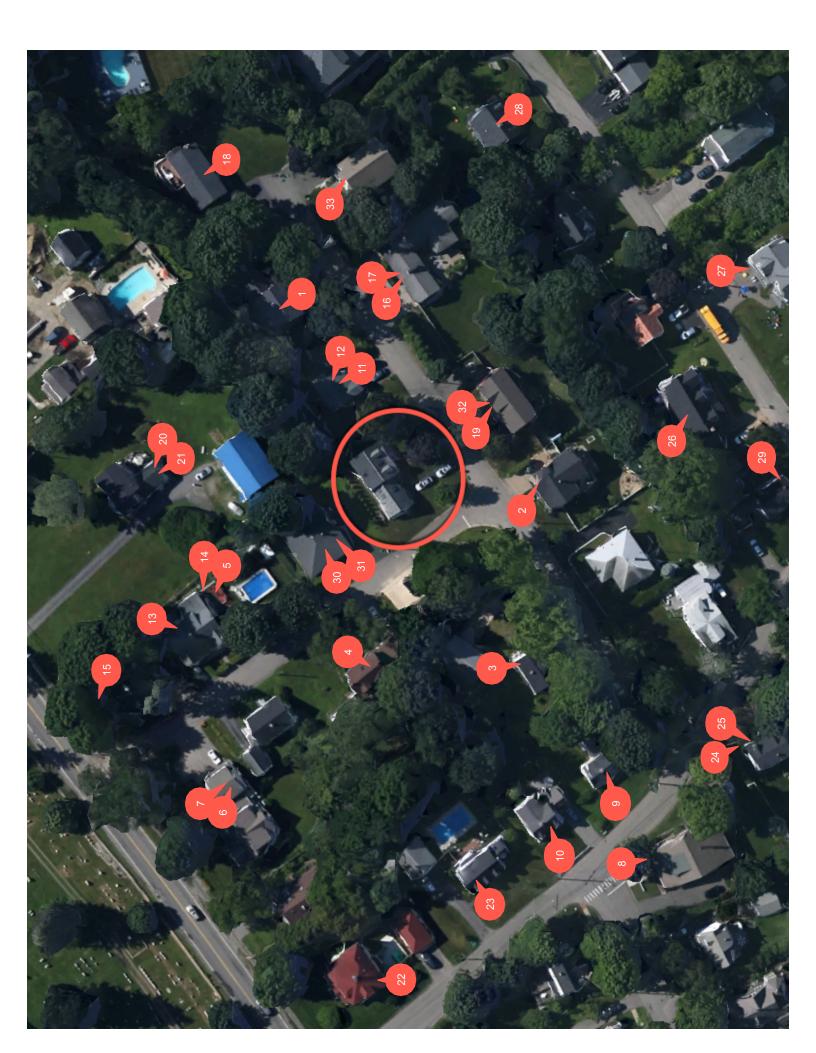
Property Address: 78 Marne Ave. Portsmouth, NH 03801

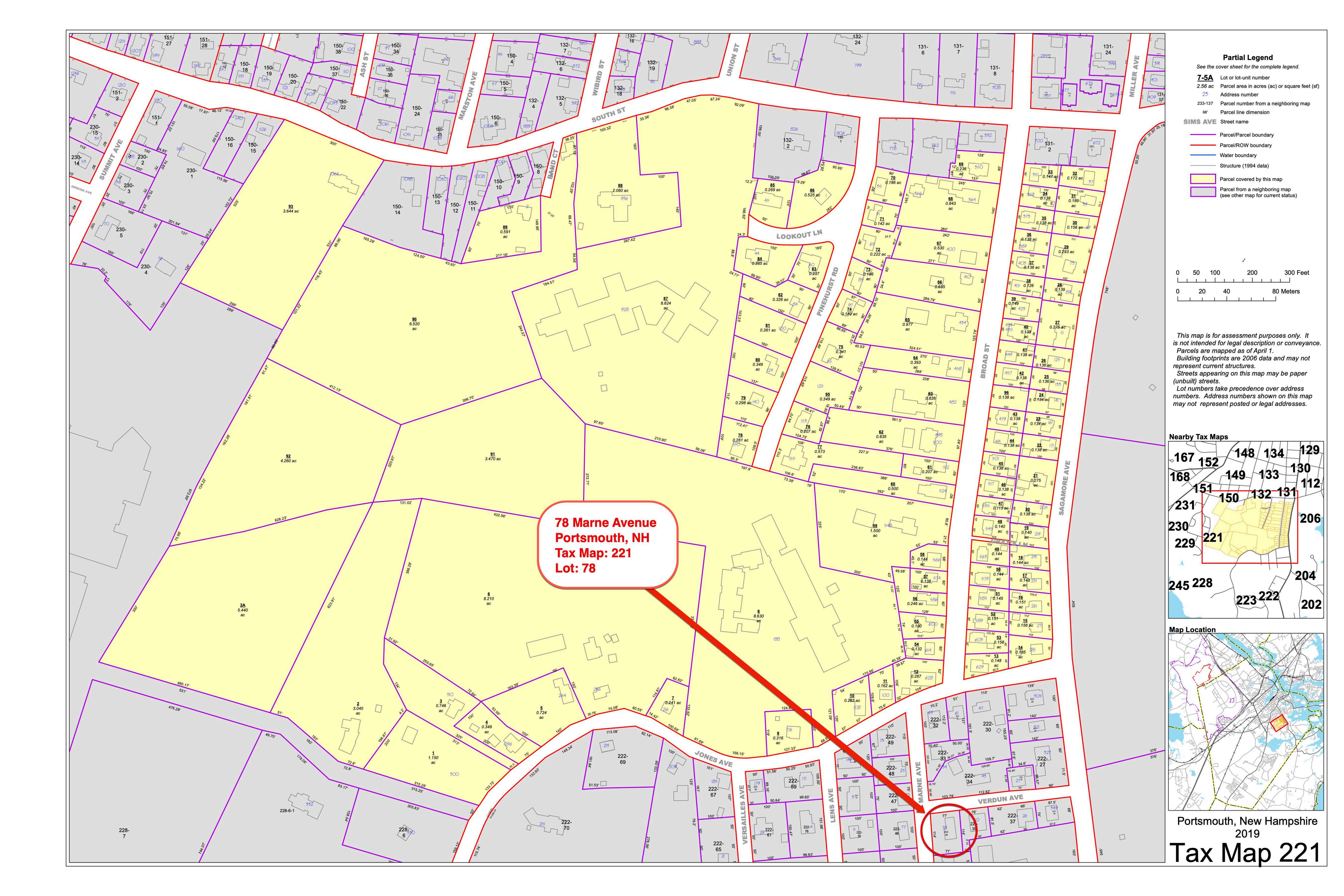
We, the undersigned, are in support of Stephen and Bridget Viens' plans to replace the attached 1-bay garage with an attached two-bay garage on their property at 78 Marne Avenue and petition the Portsmouth ZBA for approval of the following:

- 1. Rear yard setback variance from 20' to 12.3'
- 2. Side yard setback variance from 10' to 9.9'
- 3. Maximum building coverage variance from 25% to 26.9%

	Name	Street Address	Signature
1	Chuck & Christine	100 Mamo Avea	0.6
2	Charles Childank	49 marre Aus.	434
3	Mallorille	3/Mane Ave	Matter
4	ConnieBushman	43 Verdun Ave	& Brohmon
5	1	26 Verous AVE	Shoring
6	BOB MARCHEWKA	327 SALAMORE AUT	Man
70	Jenny Er Angle Marchewko	327 Sagemore An	Jene Olece
8	Michael + Cathy	628 Broad St	MM
9	PALL Over	65 mal Rom	D. Louis
10	lacaveline lucas	61 Jones Ave.	Jull
11	Gwen Gallassi	84 Marne fre.	Jun Geller
12	Mika hersous	84 Mane Ave	Ih der he
13	Crain Orland	a 26 Vecdon Ave	60
14	Denex Sanger	26 Verdun Ave	5)

Address SIGN Print 349 Sagamore 15 Ten Seabrooke 16 99 Marne Are Erin LProulx 17 99 Marie Ave Trouls 18 102 Marre Ave bbie Home Mauri 19 MarneAve 20 329Sagamore Ave 21 309 Sagamon Hon 22 305 Saganore Au Christink Rodgers 23 47 Jones Aurice 24 100 TONES AVE 25 for Jones Hec Melinda Wilke 26 3 Lens Ame 27 Kim Swain 4 Lens Ave 28 resmantari of Lens Ave 29 171 Jests ALE 30 BARB BAKER 50 VERDON AVE 31. Paula Anania so Verdun Au 32 DEFF STACES 77 MARCHE AND 33. Mark+Mary Neubauer 101 Manne Ave





### ATTACHMENT TO APPLICATION FOR SPECIAL EXCEPTION

RE:

Property Address: 2222 Lafayette Road, Portsmouth, NH

Owner: KSC, LLC (Peter Chen, Manager) Applicant: Lafayette Animal Hospital, LLC

### Factual Background

The Applicant is the New Hampshire limited liability company that owns and operates the existing Lafayette Animal Hospital currently located at 2059 Lafayette Rd. in Portsmouth. The Applicant wishes to move across the street to a new space located at 2222 Lafayette Rd. in Portsmouth. That address is a retail mall consisting of three single-story units, and the Applicant seeks to enter into a lease with the owner of that property for two of the three units consisting of a total of 3500 ft.<sup>2</sup>. One of the units is 1500 ft.<sup>2</sup> in the other unit is 3500 ft.<sup>2</sup>. The Applicant plans to renovate the space at a cost of an estimated \$500,000.

The premises at 2222 Lafayette Rd. are slightly larger than the existing space at 2059 Lafayette Rd. and will allow for an additional examination room, in the premises are all on one floor, rather than to in the current location. The business provides preventive and wellness care for small household pets, which typically involves wellness exams, vaccines, minor surgeries and dentistry. The pets rarely stay overnight at the facility will not board any pets and there will be no outdoor kennels.

On average, the existing Lafayette Animal Hospital sees 4 to 8 patients per hour on a busy day, and the typical customer will spend 30 minutes at the animal hospital. The hospital would be open six days a week from approximately 8 AM to 6 PM.

The Applicant employs two veterinarians and approximately 12 staff people.

The premises at 2222 Lafayette Rd. include 29 parking spaces.

The proposed location of the new animal hospital is in the G1 zone.

### **Analysis**

Veterinary care is permitted in the G1 zone by special exception. See Section 10.230 -232 of the Portsmouth Zoning Ordinance.

The Ordinance provides,

- 10.232.20 Special exceptions shall meet all of the following standards:
- 10.232.21 Standards as provided by this Ordinance for the particular use permitted by special exception;
- 10.232.22 No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;
- 10.232.23 No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;
- 10.232.24 No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;
- 10.232.25 No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and
- 10.232.26 No significant increase of stormwater runoff onto adjacent property or streets.

As the New Hampshire Supreme Court stated in Hurley v. Town of Hollis, 143 N.H. 567 (N.H. 1999),

"A special exception is a use permitted upon certain conditions as set forth in a town's zoning ordinance." *New London Land Use Assoc. v. New London Zoning Board*, 130 N.H. 510, 517, 543 A.2d 1385, 1388 (1988). To be entitled to a special exception, the applicant must present to the zoning board sufficient

evidence to support a finding that each requirement or condition for the exception, as listed in the ordinance, has been met. See *Jensen's, Inc. v. City of Dover*, 130 N.H. 761, 765, 547 A.2d 277, 280 (1988). If the conditions are met, the board must grant the special exception. *Cormier v. Town of Danville*, 142 N.H. 775, 777-78, 710 A.2d 401, 403 (1998).

Technically, "special exception" is a misnomer. See 15 P. Loughlin, New Hampshire Practice, Land Use, Planning and Zoning § 23.01, at 250 (2d ed.1993). When approved, it is not an exception to the ordinance but rather a permitted use under the terms of the ordinance. See Geiss v. Bourassa, 140 N.H. 629, 632, 670 A.2d 1038, 1040 (1996); see also 15 Loughlin, supra at 250. Consequently, while there is a long-standing policy of zoning to limit the expansion of nonconforming uses because their expansion tends to thwart the purposes of zoning, cf. Peabody v. Town of Windham, 142 N.H. 488, 493, 703 A.2d 886, 889 (1997), special exceptions fall outside the realm of such policy concerns. Special exceptions circumscribe a more flexible permission for use of property than variances and nonconforming uses. See Geiss, 140 N.H. at 632, 670 A.2d at 1040. Thus, in reviewing the zoning board's decision to grant or deny a special exception, the trial court may not apply the more stringent standard of review applicable [729 A.2d 1004] to variances or nonconforming uses. See id. Nor should the more stringent nonconforming use standard be used to discern the intent of the voters enacting the zoning ordinance.

The particular use in this case is permitted by special exception in accordance with the Ordinance.

No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials exists.

Since the Applicant is a business in the same neighborhood and has been operating there for 26 years without complaint, issue, or incident, it would appear that there would be no detrimental effect to property values in the neighborhood as a result of the Applicant moving across the street. Since the Applicant is currently located "in the neighborhood", then the essential characteristics of the neighborhood are not changing by simply moving across the street. The existing size and footprint of the building at 2222 Lafayette Rd. will not be changing. There is no issue regarding parking, access ways, owner, smoke, gas, dust, pollutants, noise, glare, heat, vibration or any outdoor storage of equipment, vehicles or other materials. The applicant will have no outdoor kennels.

The traffic that previously went in and out of the existing location of the Applicant's business on the east side of Lafayette Road at 2059 will simply be transferred across the street. There will be no traffic safety hazard or any substantial increase in the level of traffic congestion in the vicinity.

There will be no significant increase in stormwater runoff onto the adjacent property where the impermeable surface – the parking lot at 2222 Lafayette Rd. - will not be altered.

Attached hereto are the following supporting documents:

- 1. Site plan showing lot dimensions printed from MapGeo
- 2. Exterior site plan showing the location of the proposed use
- 3. Site Plan (2002, for Variance application shows parking spaces)
- 4. labeled photographs
- 5. Copy of Quitclaim Deed to current owner
- 6. Authorization of owner, signed by DotLoop

WHEREFORE, the Applicant respectfully requests that the Zoning Board of Adjustment grant a special exception for the use and occupancy at 2222 Lafayette Rd. in Portsmouth as a veterinary animal hospital.

Date: August 26, 2020

Respectfully submitted, Lafayette Animal Hospital, LLC

By its attorneys,

Coughlin, Rainboth, Murphy and

Lown, PA

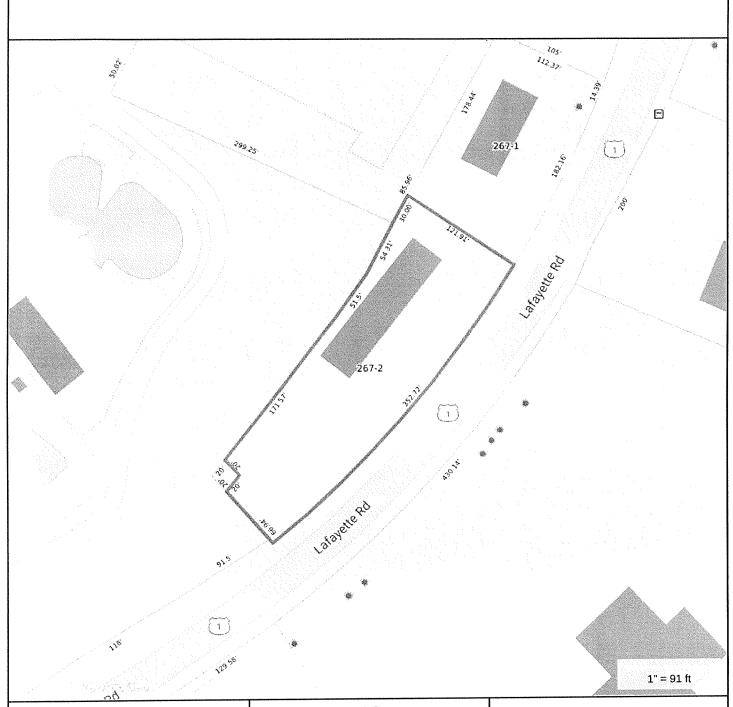
Bradley M. Lown – Bar No. 1518

439 Middle Street

Portsmouth, New Hampshire 03801

(603) 431-1993

lown@nhtrialattorneys.com



Property Information

 Property ID
 0267-0002-0000

 Location
 2222 LAFAYETTE RD

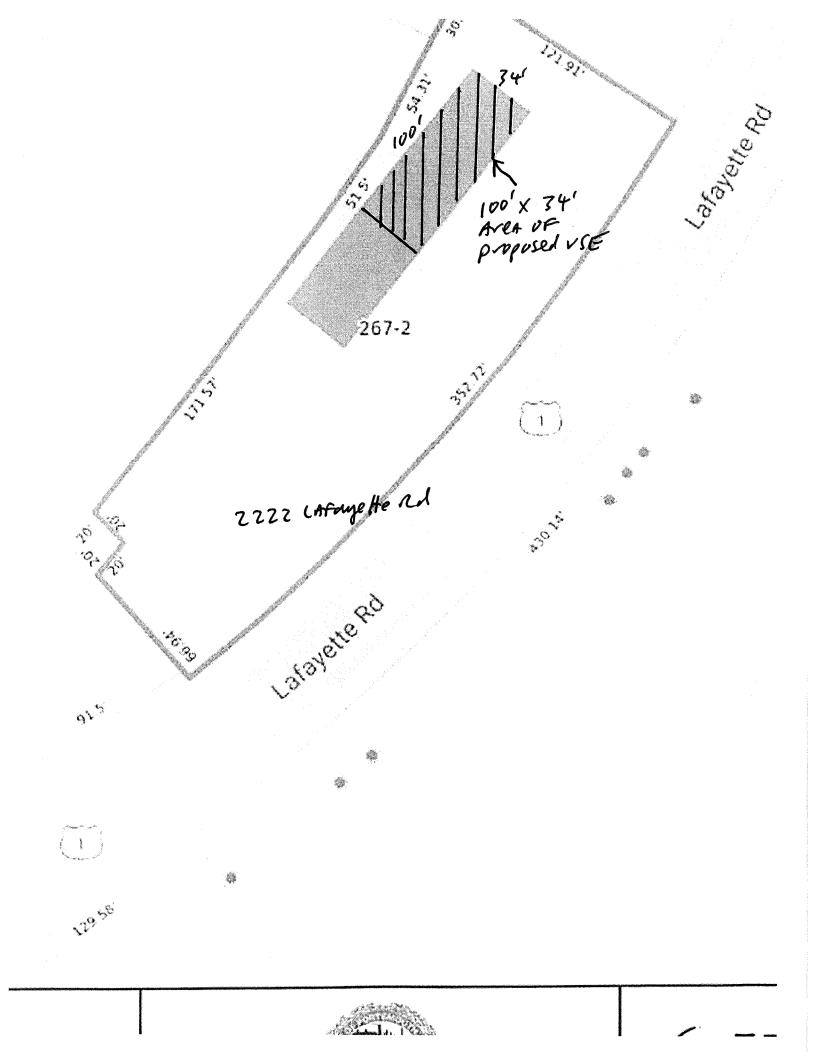
 Owner
 KSC LLC

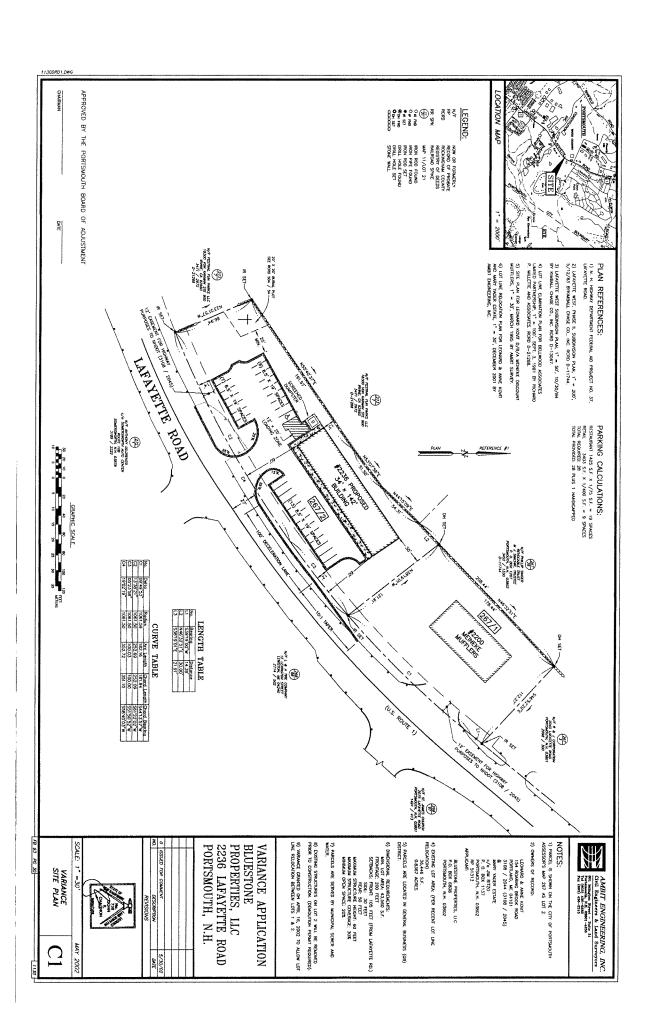


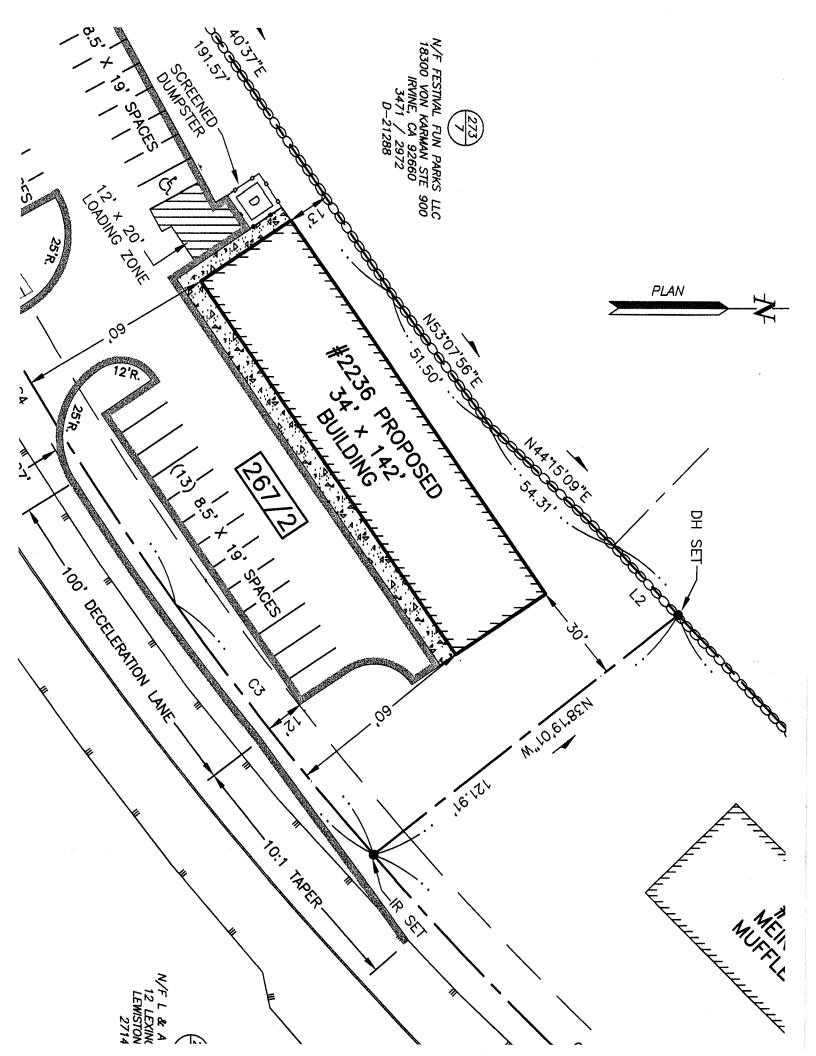
### MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT

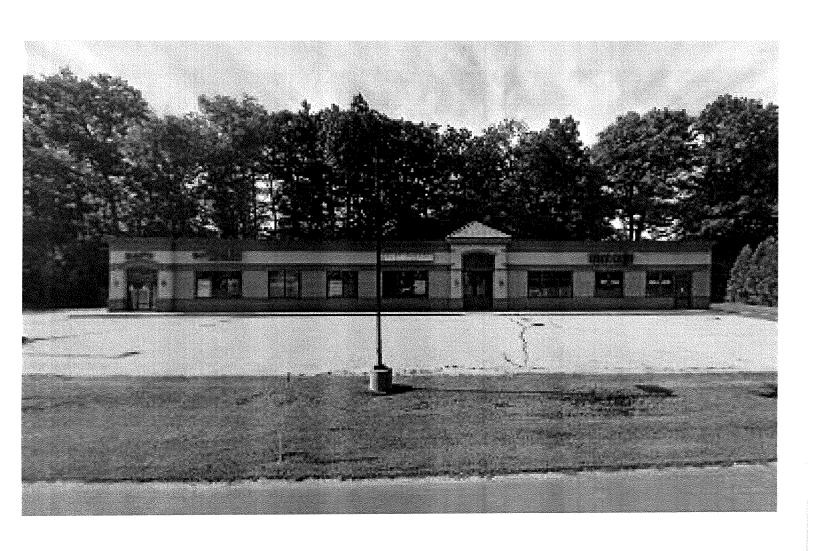
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 4/1/2019 Data updated 7/17/2019 Subject Parcel
2222 Lafayette NI



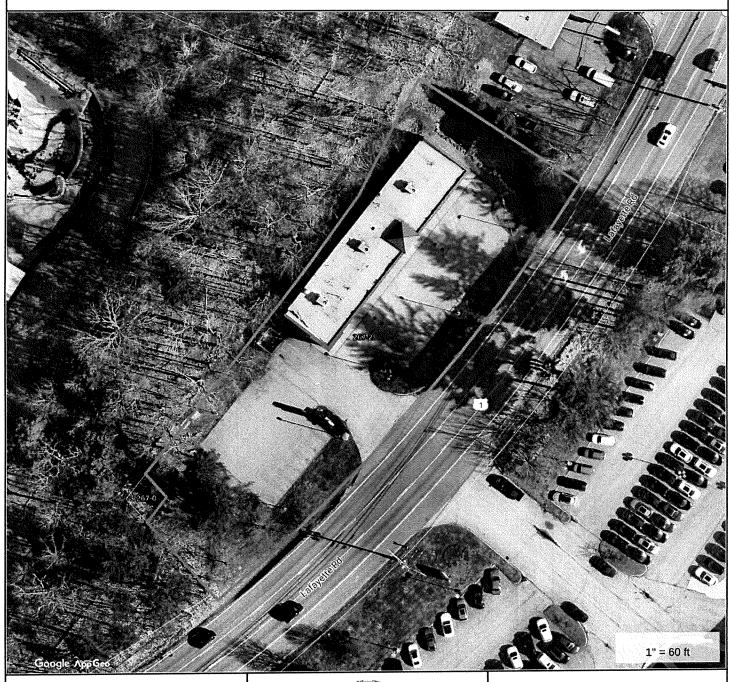






## 2222 Lafayette Rd

Portsmouth, NH 03801 Building



**Property Information** 

 Property ID
 0267-0002-0000

 Location
 2222 LAFAYETTE RD

 Owner
 KSC LLC



MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT

City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 4/1/2019 Data updated 7/17/2019 2222 Wayette Rd Portsmath NH

## Google Maps 2222 Lafayette Rd



Map data ©2020 , Map data ©2020



Front view the red



EZZZ (Afanje ke Rd, Portsmooth RH Frant view



2222 WARMEHE Red PONTMON NH ARMEN WOW

### Book: 6070 Page: 2754

Return to:
Stebbins, Lazos & Van Der Beken PLLC
889 Elm Street, 6th Floor
Manchester, NH 03101

E # 19055581 12/27/2019 12:53:40 PM Book 6070 Page 2754 Page 1 of 2 Register of Deeds, Rockingham County

Carey Un Stacey

LCHIP ROA476602 25.00
TRANSFER TAX RO093962 158.00
RECORDING 14.00
SURCHARGE 2.00

### QUITCLAIM DEED

KERSHAW & LAFAYETTE HOLDINGS, LLC (aka Kershaw and Lafayette Holdings, LLC) a New Hampshire limited liability company of Hampton, New Hampshire, for consideration paid, grants to K.S.C., LLC, a New Hampshire limited liability company, having a mailing address of 3 Winship Drive, Stoneham, Massachusetts 02180, with Quitclaim Covenants, all its right, title and interest in and to the following premises:

A certain tract or parcel of land with the buildings thereon situated on the northwesterly side of Lafayette Road, commonly known as 2222 -Lafayette Road, in Portsmouth, County of Rockingham and State of New Hampshire, shown as Lot 267/2 on a plan entitled "Lot Line Relocation Plan, Map 267 - Lots I & 2, Leonard & Anne Kovit and Mary Yager Estate, 2200 & 2236 Lafayette Road, Portsmouth, NH, County of Rockingham," prepared by Ambit Engineering, Inc., dated December, 2001, last revised April 5, 2002, and recorded in the Rockingham County Registry of Deeds as Plan D-29868, and bounded and described as follows:

Beginning at a corner of a stone wall at the northwest corner of said premises; thence North 55° 40' 37" East along a stone wall a distance of 191.57 feet to a point; thence North 53° 07' 56" East along a stone wall a distance of 51.50 feet to a point; thence North 44° 15' 09" East along said stone wall a distance of 54.31 feet to a point; thence North 46° 32' 51" East along said stone wall a distance of 30.00 feet to a drill hole set; thence turning and running South 38° 19' 01" East a distance of 121.91 feet to an iron rod set; thence turning, and running southerly along the northwesterly sideline of Lafayette Road on an arc of a curve to the right with a radius of 1061.50 feet a distance of 100.03 feet; thence continuing along the curve to the right with a radius of 1061.50 feet a distance of 252.69 feet to an iron rod set; thence turning and running North 23° 31' 57" West a distance of 86.94 feet to the point of beginning.

Excepting therefrom the graveyard on the northwesterly corner of the above described parcel, being a twenty (20) foot square, and subject to the right of passageway to said graveyard as noted in a deed recorded at the Rockingham County Registry of Deeds at Book 800, Page 360.

### Book: 6070 Page: 2755

Excepting therefrom a twelve (12) foot wide easement as described in the Highway Easement Deed to the State of New Hampshire dated April 10, 2003 and recorded at the Rockingham County Registry of Deeds at Book 3998, Page 2226.

This conveyance is made pursuant to subject to and is granted together with the following:

- 1. The provisions of New Hampshire Revised Statutes Annotated Section 529, including satisfaction of the right of redemption held by K.S.C., LLC as a result of sheriff's deed dated May 31, 2019 and recorded in the Rockingham County Registry of Deeds at Book 6006, Page 2835.
  - 2. All rights of way, easements, covenants, conditions, and restrictions of record.

Meaning and intending to convey the same premises conveyed to Grantor by deed of HS Goldberg Plumbing and Mechanical, LLC, dated June 21, 2019, and recorded at Book 6010, Page 945 of the Rockingham County Registry of Deeds.

This is not homestead property.

Witness my hand this 21th day of December 2019,

KERSHAW & LAFAYETTE HOLDINGS LLC

By: Harrison Goldberg

Duly Authorized Manager

THE STATE OF NEW HAMPSHIRE

COUNTY OF ROCKINGHAM

This deed was acknowledged before me on this 24 day of December, 2019 by Harrison Goldberg as the duly authorized manager of Kershaw & Lafayette Holdings LLC, a New Hampshire limited liability company, on behalf of the said company. Before me,

Justice of the Peace/Notary Public

UUU

My commission expires:

### **AUTHORIZATION OF OWNER FOR APPLICANT TO FILE** APPLICATION FOR SPECIAL EXCEPTION

RE:

Property Address: 2222 Lafayette Road, Portsmouth, NH

Portsmouth Tax Map 267/002

Owner: K.S.C., LLC (Peter Chen, Manager) Applicant: Lafayette Animal Hospital, LLC

The undersigned, the duly authorized Manager of K. S. C., LLC a New Hampshire limited liability company having a principal place of business in Hampton, New Hampshire, hereby authorizes Lafayette Animal Hospital, LLC, and its authorized representatives and their attorney, Bradley M. Lown, 439 Middle St., Portsmouth, NH, to file an application for a special exception with the City of Portsmouth Planning Department in connection with the above property, and to do all acts necessary to obtain any necessary approvals to operate a veterinary hospital at the above address.

K. S. C., LLC is the owner of the above property by virtue of a Quitclaim Deed dated December 24, 2019 recorded at Book 6070, Page 2754 in the Rockingham County Registry of Deeds. A copy of the deed is attached hereto.

K. S. C., LLC

Date: August \_ 25 , 2020

Ken S Chen. KSCLLC by: Peter Chen, Manager

144 Washington Street P.O. Box 1222 Portsmouth, NH 03802 www.durbinlawoffices.com



Durbin Law Offices, P.L.L.C.

Derek R. Durbin, Esq. 603.287.4764 derek@durbinlawoffices.com \*Also admitted in MA

### **VIA VIEWPOINT**

August 25, 2020

City of Portsmouth Zoning Board of Adjustment Attn: David Rheaume, Chairman 1 Junkins Avenue Portsmouth, NH 03801

RE: Variance Application of Kenton Slovenski 175 Grant Avenue, Portsmouth (Tax Map 251, Lot 41)

Dear Chairman Rheaume,

Our Office represents Kenton Slovenski, owner of property located at 175 Grant Avenue in Portsmouth. Attached herewith, please find the following materials for submission to the Zoning Board of Adjustment for consideration at its next regularly scheduled meeting:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Plan Set (Site Plan, Floor Plans and Elevations);
- 4) Tax Map Image of Property;
- 5) Photographs of the Property; and
- 6) Letters from Abutters.

Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,

Derek R. Durbin, Esq.

### **LETTER OF AUTHORIZATION**

**Kenton Slovenski**, owner of property located at 175 Grant Avenue, identified on Portsmouth Tax as Map 251, Lot 41 (the "Property"), hereby authorizes Durbin Law Offices PLLC, of 144 Washington Street, Portsmouth, New Hampshire 03801, to act as its agent and representative in connection with the filing of any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property. This Letter of Authorization shall be valid until expressly revoked in writing.

Kenton Slovenski	
	August 24, 2020
Kenton Slovenski	

### CITY OF PORTSMOUTH ZONING BOARD OF ADJUSTMENT APPLICATION NARRATIVE

Kenton Slovenski 175 Grant Avenue Portsmouth, NH 03801 (Owner/Applicant)

### INTRODUCTORY STATEMENT

Kenton Slovenski is the owner of the property located at 175 Grant Avenue, identified on Portsmouth Tax Map 251 as Lot 41 (the "Property"). The Property is zoned Single-Family Residence B ("SRB"). It is a 0.32 acre (13,950 square feet) lot that contains a small one-level, ranch-style, single-family home with 3 bedrooms and 2 bathrooms. The home serves as Mr. Slovenski's full time residence.

Mr. Slovenski desires to renovate the home to add additional living space, create a more functional floor plan and accommodate an attached accessory dwelling unit ("ADU") on the proposed second floor. The proposed renovation involves a two-story vertical expansion of the existing home which is long and narrow and a small bump-out in the front to accommodate a stairwell. The proposed renovation and vertical expansion of the home is designed similarly to other two-story homes within the immediate surrounding area. The overall appearance of the home will be improved from what exists. A design narrative has been included herewith from Newmarket Plains LLC which explains the intent and goals of the design with some comparisons. Exhibit A.

Aside from Mr. Slovenski's desire to add additional living space and an ADU to the home and create a more attractive layout and appearance, the home is in need of quite a bit of maintenance and repair work. The existing home was built in 1957. The bedrooms are small by current standards, the basement is damp, the roof needs to be re-done, the chimneys are in poor condition, insulation needs to be added and/or replaced (issues with ice dams), and the siding and soffits need repair and painting. Furthermore, the electrical, plumbing, and heating/cooling systems all need to be upgraded. For these reasons, the timing is ideal to add on to the home rather than expend the money unnecessarily making improvements that would only be realized for a short period of time.

Mr. Slovenski can vertically expand the home and add the front stairway bump-out without need for any zoning relief. However, because Mr. Slovenski is proposing the inclusion of an ADU within the vertical expansion of the home and the Property is 1,050 square feet short of meeting the 15,000 square foot lot area requirement set forth in Section 10.521 of the Ordinance, he needs a variance. The proposed renovation and vertical expansion of the home will comply with all other requirements set forth in Section 10.521 of the Ordinance. It will also comply with the ADU requirements set forth in Section 10.814 of the Ordinance.

### SUMMARY OF ZONING RELIEF

The Applicant seeks the following variance from the Zoning Ordinance:

1. A variance from Section 10.521 (Table of Dimensional Requirements) to allow 13,950 square feet of lot area (+/-) where 15,000 is the minimum required;

### VARIANCE CRITERIA

Granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.

In the case of Chester Rod & Gun Club, Inc. v. Town of Chester, the Court observed that the requirements that a variance not be "contrary to the public interest" or "injure the public rights of others" are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. 152 N.H. 577 (2005). The Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, "the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives." "Id. "There are two methods of ascertaining whether granting a variance would violate an ordinance's basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare." Harborside Assoc v. Parade Residence Hotel, 162 N.H. 508, 514 (2011).

The inclusion of an ADU within the proposed two-story vertical expansion of the home will have no impact upon abutters or the public beyond that which the addition itself would have aesthetically or otherwise. The proposed ADU would be permitted by right as part of the expansion of the home if the Property were only 1,050 square feet larger in size. The proposed ADU will comply in all respects with the requirements set forth in Sections 10.521 and 10.814 of the Ordinance, including the setback standards which are intended to protect against intrusions into the light, air and space of abutting properties. The proposed ADU will not alter the essential character of the neighborhood which is primarily single-family residential. The use of the Property will remain single-family residential.

The legislature enacted Senate Bill 146 in 2015 for the purpose of allowing ADUs in single-family residential zoning districts. In enacting Senate Bill 146, the legislature found that allowing accessory dwelling units in single family residential districts integrates "affordable housing into the community with minimal negative impact." There is a realized public benefit to allowing ADUs. Accordingly, the proposed inclusion of the ADU within the second-floor addition will not unduly or to a marked degree conflict with the basic objectives of the Ordinance and will meet the spirit and intent of the Ordinance.

There are very few areas in the SRB Zoning Districts in Portsmouth where the properties meet all dimensional criteria, particularly lot area, thus reasonable accommodations under the Ordinance must be made through the granting of zoning relief. In the case of *Belanger v. Nashua*, the New Hampshire Supreme Court recognized that municipalities have an obligation to have their zoning ordinances reflect current characteristics of the neighborhood. 121 N.H. 389 (1981).

### Substantial justice will be done by granting the variance relief.

Any loss to the individual that is not outweighed by a gain to the general public is an injustice. New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997); Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102 (2007).

There is no public benefit that would be realized by denying the variance. Denial of the variance would have no positive impact upon public health, safety or welfare. As stated above, Mr. Slovenski could expand his home and add the same number of bedrooms and bathrooms as proposed without needing any zoning relief at all. The ADU will be integrated with the proposed vertical addition, thus maintaining aesthetic consistency with other similarly situated homes in the neighborhood. The use of the Property will remain single-family residential, consistent with the uses being made of surrounding properties. The denial of the variance would result in an injustice to Mr. Slovenski. He would not be able to include an ADU in his design plans. With an ADU, Mr. Slovenski would have the option of moving an aging parent or other family member into the home while providing them with an independent living space. In the present instance, there is no gain to the public that would outweigh the loss to the Applicant.

# The values of surrounding properties will not be diminished by granting the variance relief.

The values of surrounding properties are likely to increase by granting the variance. They certainly will not be diminished in any respect. As evidenced throughout the City of Portsmouth, improvements of the nature proposed for Mr. Slovenski's property have led to rising property values. The additional living space together with the improved appearance of the home and the inclusion of an ADU will make the Property more valuable. This in turn will make other surrounding properties more valuable.

# Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

The Property has special conditions that distinguish it from surrounding properties. The Property is only 1,050 square feet short of meeting the lot area requirement set forth in Section 10.521 of the Ordinance. In the larger Elwyn Park neighborhood, there are a smattering of properties that meet the 15,000 square foot lot area requirement, but a majority do not. There are very few that are as minimally deficient as Mr. Slovenski's property. The Property is uniquely situated such that it can be vertically expanded without needing any zoning relief at all, which means that Mr. Slovenski can have the same amount of living space and bedrooms and bathrooms

as what is proposed with the inclusion of the ADU. Therefore, there is no fair and substantial relationship between the minimum lot area requirement, which is intended to control density, and its application to the Property.

The proposed use of the Property is also reasonable. The use of the Property will remain single-family residential. The spirt and intent of the SRB Zoning District is to promote single-family residential uses. Moreover, the spirit and intent of the ADU section of the Ordinance is to allow for such accessory uses within single-family residential zoning districts.

### **CONCLUSION**

In conclusion, the Applicant has demonstrated that his application meets the five (5) criteria for granting the variance and respectfully requests that the Board approve his application.

Respectfully Submitted,

Dated: August 25, 2020 Kenton Slovenski

By and Through His Attorneys, Durbin Law Offices PLLC

By:

Derek R. Durbin, Esq. 144 Washington Street Portsmouth, NH 03801

(603)-287-4764

derek@durbinlawoffices.com

August 20, 2020



#### Newmarket Plains, LLC

Home Design and Drafting Service 443 Wadleigh Falls Road Newmarket, NH 03857

To whom it may concern,

My name is Paul LeBeau and I helped Kenton Slovenski with the preliminary design of his 2nd floor addition as a home designer, which includes an ADU. The appearance, height, and roof design are consistent with other nearby two-story homes. The mixed use of brick and vinyl siding can be seen throughout the neighborhood. Mr. Slovenski provided 2 photos of 187 and 190 Grant Ave (just up the street) that are consistent with my design. Most notable are the slight bump outs of the second floor to help break up the two floors and tie the house together. 187 Grant is an example of a house that has a brick exterior section and siding on other areas of the house.

The other main element is the roof. Most houses in the surrounding area are single story ranch homes with a roof pitch that is flatter than what would be recommended by current standards. It is worth noting that the house directly across the street is a cape located on a hill with a pitch of approximately 12:12. This house is much higher than the surrounding houses due to its location on top of a prominence and its large roof. Although I felt I could match a steeper pitch given this, and other more modern houses in the neighborhood, Mr. Slovenski asked that I lower my roof height and pitch from my original plan.

Mr. Slovenski also provided a picture of 184 Grant avenue which has 2 shed dormers, which I referenced when designing the double gable facade on the left side of the house.

The existing home is long and narrow which limits layout options and makes it challenging to create room sizes and layouts that are consistent with modern preferences. Furthermore, brick is used as an interior wall between the living room and the kitchen and there are two chimneys that needed to be accommodated for and planned around. As such, the current layout of the house was not conducive to simple internal adjustments and required the loss of a bedroom for one set of stairs that follows the path of the basement stairs below. The other staircase could not be fit within the existing structure due to the chimney structures and layout of the house. That is why I chose to use a stair tower to allow for the proper layout to be accomplished and add necessary width to the house. By doing a stair tower the footprint of the home is minimally increased. The existing deck is lengthened and includes a small roof element to connect the stair tower and tie the facade together, which allows for a more visually appealing design.

The ADU was designed in accordance with local, state, and federal requirements related to fire safety, building standards, and ADU stipulations. The ADU was limited to 750 square feet, designed to be subordinate in regards to door location as well as the roof design (adding the gable design to the primary residence and ensuring appearance and height of the ADU are equal or less than the primary residence). Windows were also limited in an effort to minimize the impact of the second floor and ADU on neighbors.

Overall, this design was conservative and consistent with the neighborhood and was executed with consideration.

Respectfully,

Paul LeBeau

### Referenced Homes

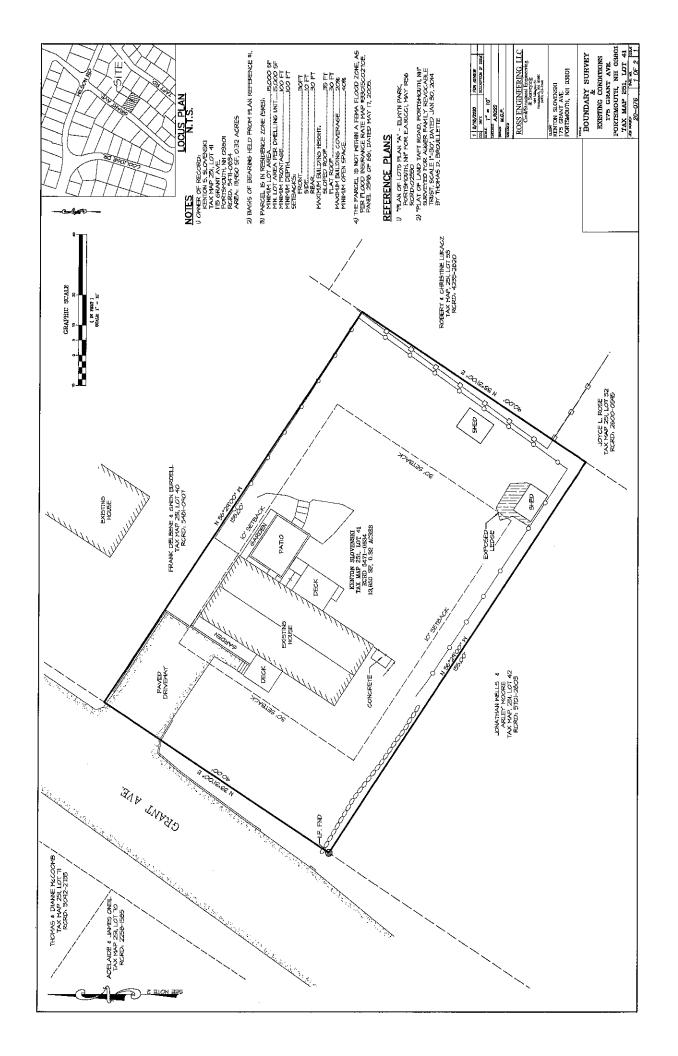


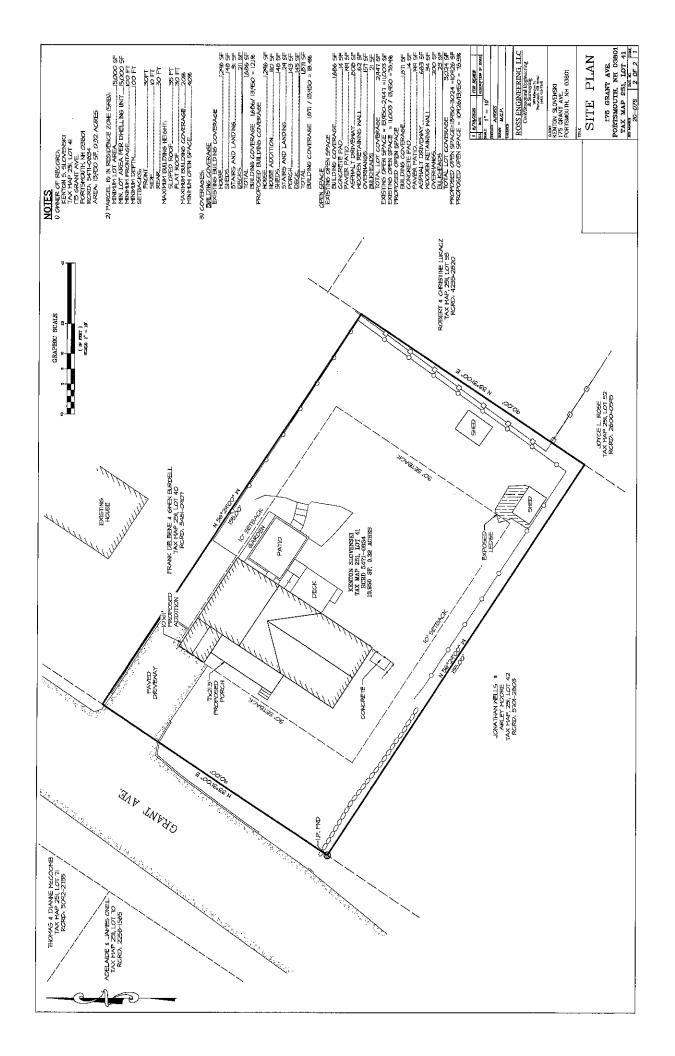
# 187 Grant Ave

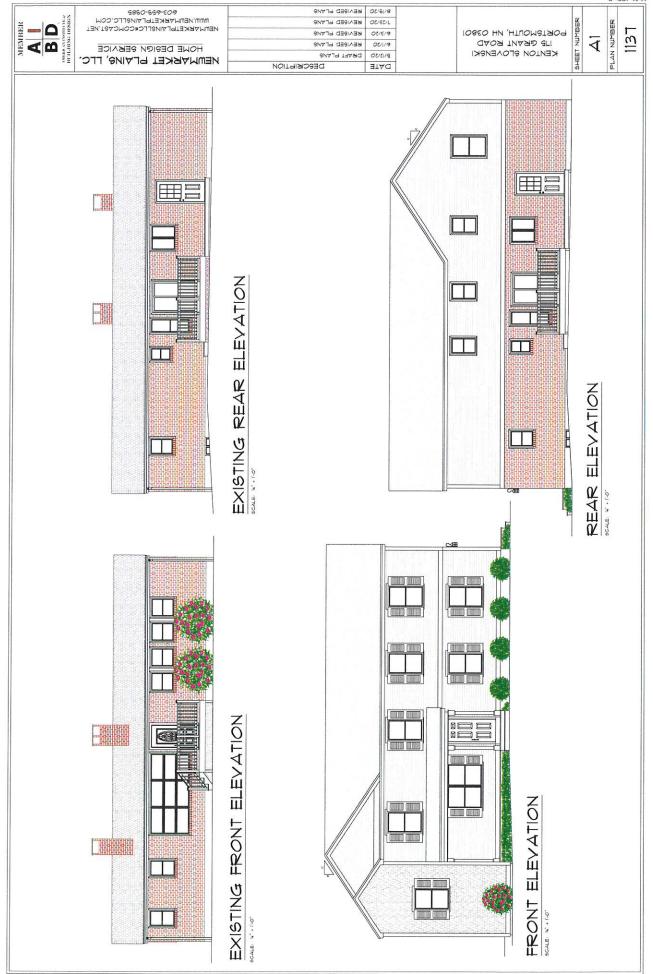


190 Grant Ave

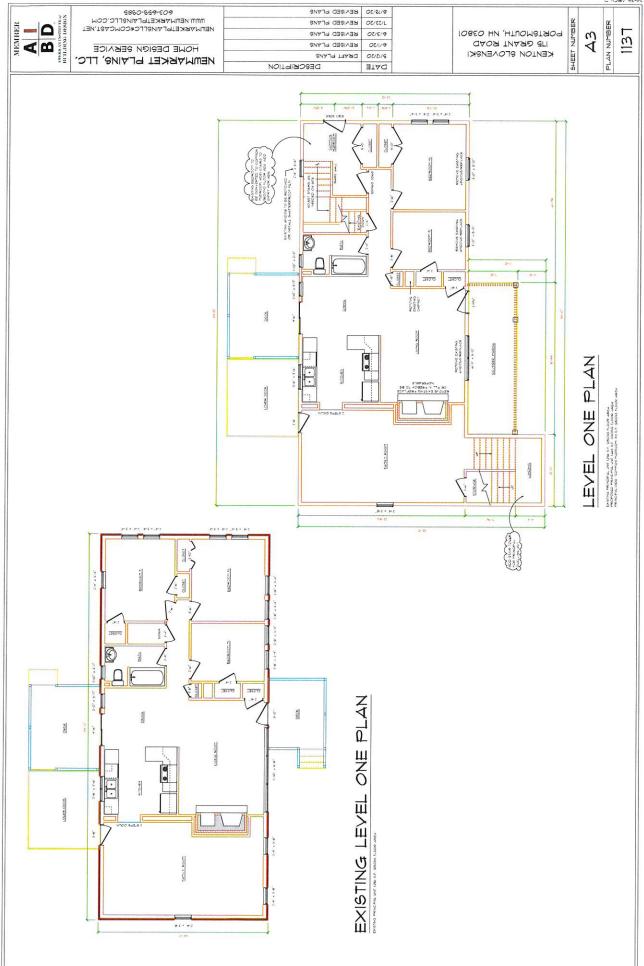
184 Grant Ave



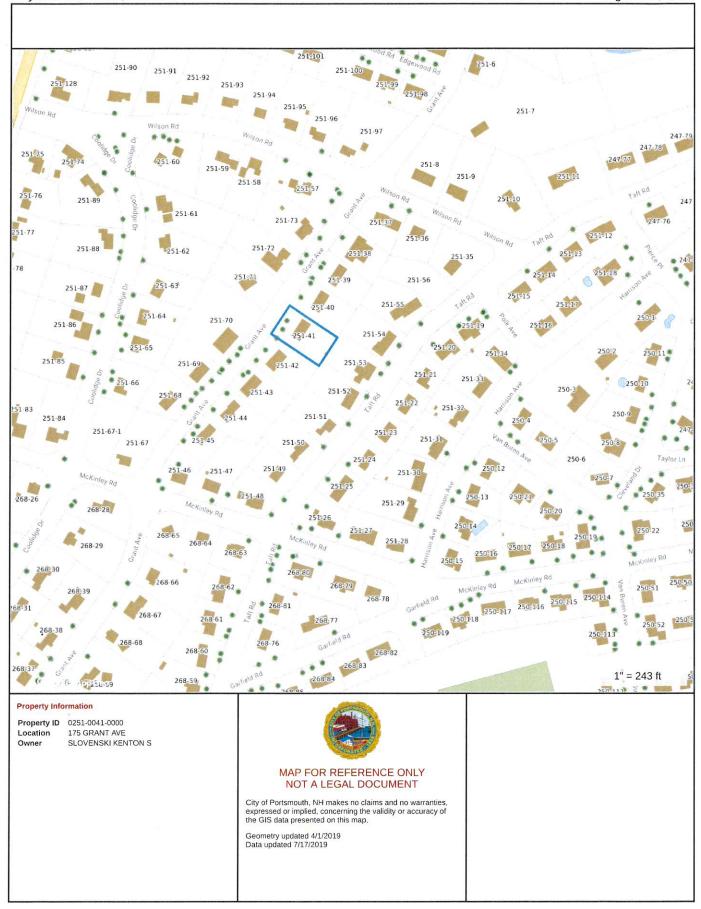












Satellite aerial of 175 Grant from MapGeo (highlighted in blue)



Aerial of 175 Grant from MapGeo (highlighted in blue)



Front of existing home from Grant Ave



Left side of existing home from Grant Ave (northern side of house)



Back Side of existing home (East side)



Right side of existing home from Grant Ave (southern side)



## Driveway



Left side with neighbor



Right side with neighbor



# Email received from Christine Lukacz of 45 Taft Rd (abutter on eastern side) August 19<sup>th</sup> 2020

Good morning Kenton,

Thank you for the consideration you are giving your neighbors with respect to privacy and aesthetics regarding the 2<sup>nd</sup> story addition you wish to build. We have reviewed the plans provided and think the home improvements will fit nicely with the neighborhood provided the pitch of the roof is reduced to conform with existing homes and not look like a skyscraper from our backyard. Being the neighbors that are most directly affected by loss of privacy with a 2<sup>nd</sup> story addition, we are writing to let you know you have our blessings to move forward. We appreciate the opportunity to you gave us to review plans and wish you good luck with your endeavor!

Si	nc	er	el	у,

Christine Lukacz

Email received from Thomas McCoomb of 184 Grant Ave (abutter across the street)
August 16<sup>th</sup> 2020

To whom it may concern:

I Thomas McCoomb at 184 Grant Avenue live directly across the street from Kenton Slovenski and have mixed emotions regarding expansion of his home on Grant Avenue for an Accessory Dwelling Unit. I am comfortable with paving some of the front yard to accommodate a car or two. However, I am concerned the bumped out addition on the left front for a second set of stairs will be architecturally unattractive and wish the stairs could be incorporated within the existing footprint or in the back of the house. I also think the small bedrooms are proliferating an obsolete floor plan and now would be the time to correct their function. I also like the windows and shutters from the road view of the proposed rendering but feel it will be expensive to retrofit the brick for new windows thus resulting less attractive then the rendering. I trust Kenton and Portsmouth board members will see to it that the finished product will be an improvement to our neighborhood and property values.

Thank you for your time and consideration,

Thomas J. McCoomb

#### 36 Richards Ave, Portsmouth NH 03801

ReVision Energy, Inc. in conjunction with our customer, Rhonda Stacy-Coyle, are requesting a variance to install a 24,000 BTU Mitsubishi Multi-Indoor Inverter Heat-Pump System on the parcel of land stamped Map 136 Lot 14, 36 Richards Ave.

Granting the variance would not be contrary to the public interest because the unit is clean, efficient, and environmentally safe. The unit is stationary and poses no threat to public safety. It will not be visible from the road or abutting properties due to decorative fencing surrounding the unit, which has been agreed upon by both our customer and the Historic District Committee.

The spirit of the ordinance is observed because the unit will not hinder, nor harm the general public and will have no substantial effect on surrounding properties. The heat pump system will provide energy efficient heating and cooling to the home. It will create minimal noise, and no smoke, glare, traffic obstructions, or a demand on water.

Substantial justice will be done due to the limited outdoor space. There is a single location for ideal placement. These circumstances are related to the constraints of the property and are not a common hardship. The residence itself is outside setback parameters.

The values of surrounding properties will not be diminished. The outdoor unit will be hidden from view. It also does not create odors, smoke, gas, dust, glare, heat or other pollutants.

Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship because of the limited outdoor space available. The outdoor unit will sit in a flower bed located behind the stairs that lead to the entrance of the residence.

The Historical District Committee has approved the installation of the unit with the condition there be a decorative fence surrounding it. Both the unit and the fencing are fully on the property but come close to the edge of the property line.



#### **Permit Authorization**

Owner:

Rhonda Stacy-Coyle 36 Richards Ave Portsmouth, NH 03801

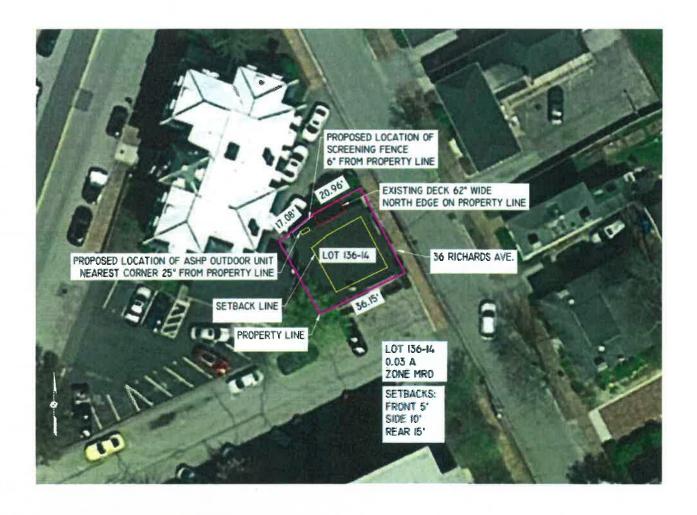
7/16/2020

Owner hereby authorizes ReVision Energy to act as Owner's Agent for the limited purpose of applying for and obtaining any permit or approval from each Authority Having Jurisdiction that may be required for the installation of the Air Source Heat Pump System described in this Contract to be located on Owner's property.

**Owner Signature** 

### **36 RICHARDS AVE PHOTOS**

### **AERIAL PHOTO WITH PLACEMENT AND MEASUREMENTS**



## PLACEMENT OF OUTDOOR UNIT





# **EXAMPLE OF INSTALLED OUTDOOR UNIT**



EXAMPLE OF SURROUNDING FENCING



## M-Series

# MULTI-INDOOR INVERTER HEAT-PUMP (STEM



Job Name:

System Reference:

Date:



#### **ACCESSORIES**

The outdoor unit is delivered with the base pan heater factory installed. Airflow Guide (PAC-SH96SG-E)

3/8" x 1/2" Port Adapter (MAC-A454JP-E)

1/2" x 3/8" Port Adapter (MAC-A455JP-E)

1/2" x 5/8" Port Adapter (MAC-A456JP-E)

M-NET Adapter (PAC-IF01MNT-E)

Outdoor Unit: MXZ-3C24NAHZ2

### (For data on specific indoor units, see the MXZ-C Technical and Service Manual.)

	Specifications		Model Name
	Unit Type		MXZ-3C24NAHZ2
	Rated Capacity	Btu/h	22,000 / 23,600
Cooling*	Capacity Range	Btu/h	12,600 - 23,600
Non-ducted / Ducted)	Rated Total Input	W	1,630 / 2,360
	Rated Capacity	Btu/h 22,000 / 23,600 Btu/h 12,600 - 23,600 W 1,630 / 2,360 Btu/h 25,000 / 24,600 Btu/h 11,400 - 30,600 W 1,725 / 1,871 Btu/h 14,000 / 14,000 Btu/h 25,000 / 24,600 W 1,622 / 1,635 Btu/h 25,000 Btu/h 12,000 - 27,000 Btu/h 12,000 - 27,000 Frecognized Certification Body.) Voltage, Phase, Hertz 208 / 230V, 1-Phase, 60 H A 40 A 30.5 V AC 208 / 230 V DC ±24 DC INVERTER-driven Twin R F.L.A. 2.43 dB(A) 54 dB(A) 58 In 41-9/32 x 37-13/32 x 13 mm 1048 x 950 x 330 Lbs / kg Munsell No. 3Y 7.8/11 In / mm 1/4 / 6.35	25,000 / 24,600
leating at 47°F* Non-ducted / Ducted)	Capacity Range	Btu/h	11.400 - 30.600
Non-addled / Ducled)	Rated Total Input	W	1,725 / 1,871
	Rated Capacity	Btu/h	14,000 / 14,000
leating at 17°F* Non-ducted/Ducted)	Maximum Capacity	Btu/h	25,000 / 24,600
.non-ducted/Ducted)	Rated Total Input	W	1,622 / 1,635
leating at 5°F*	Maximum Capacity	Btu/h	25,000
Connectable Capacity		Btu/h	12,000 - 27,000
energy Star® (ENERGY STAR p	roducts are third-party certified by an EPA	-recognized Certification Body.)	Yes
	Power Supply	Voltage, Phase, Hertz	208 / 230V, 1-Phase, 60 Hz
lectrical Requirements	Recommended Fuse/Breaker Size	Α .	40
	MCA	Α	30.5
TO THE REAL PROPERTY.	Indoor - Outdoor S1-S2	V	AC 208 / 230
/oltage	Indoor - Outdoor S2-S3	V	DC ±24
Compressor			DC INVERTER-driven Twin Rotary
Fan Motor (ECM)		F.L.A.	2.43
	Cooling	dB(A)	54
Sound Pressure Level	Heating	dB(A)	58
External Dimensions (H x W x E	))		
let Weight		Lbs / kg	189 / 86
External Finish			Munsell No. 3Y 7.8/11
	Liquid (High Pressure)	In / mm	1/4 / 6.35
Refrigerant Pipe Size O.D.	Gas (Low Pressure)	In / mm	A:1/2 / 12.7 ; B,C: 3/8 / 9.52
Max. Refrigerant Line Length	All his belon in production	Ft/m	230 / 70
Max. Piping Length for Each Inc	door Unit	Ft/m	82 / 25
Max. Refrigerant Pipe Height	If IDU is Above ODU	Ft/m	49 / 15
Difference	If IDU is Below ODU	Ft/m	49 / 15
Connection Method			Flared/Flared
Refrigerant			R410A

<sup>\*</sup> Rating Conditions per AHRI Standard:

Cooling | Indoor: 80° F (27° C) DB / 67° F (19° C) WB Cooling | Outdoor: 95° F (35° C) DB / W.B. 23.9° C (75° F) Heating at 47°F | Indoor: 70° F (21° C) DB / 60° F (16° C) WB Heating at 17° F | Indoor: 70° F (21° C) DB

Heating at 47°F | Outdoor: 47° F (8° C) DB / 43° F (6° C) WB Heating at 17° F | Outdoor: 17° F (-8° C) DB / 15° F (-9° C) WB

## SPECIFICATIONS: MXZ-3C24NAHZ2

#### **OPERATING RANGE:**

	Outdoor	
Cooling	D.B. 14 to 115° F [ D.B10 to 46° C]*1	
Heating	W.B13 to 65° F [ W.B25 to 18° C ]	

 $<sup>^{\</sup>rm *1.}$  D.B. 5 to 115° F [ D.B. –15 to 46° C ], when an optional Air Outlet Guide is installed.

#### **ENERGY EFFICIENCIES:**

Indoor Unit Type	SEER	EER	HSPF	COP @ 47°F	COP @ 17°F
Non-ducted (06 + 06 + 09)	19.0	13.5	10.0	4.25	2.53
Ducted and Non-ducted	17.3	11.75	9.5	4.03	2.52
Ducted (09 + 09 + 09)	15.5	10.0	9.0	3.80	2.51

#### NOTES:

- Minimum of two Indoor Units must be connected to the MXZ-3C24NAHZ2.
- Minimum installed capacity cannot be less than 12,000 Btu/h.
- · Total connected capacity must not exceed 130% of outdoor unit capacity.
- · System can operate with only one Indoor Unit turned on.
- · Information provided at 208/230V.
- · For Reference:

NOTES:

- MXZ-C Technical & Service Manual for detailed specifications and additional information per Indoor Unit Combination.
- MXZ Series Multi-Zone Indoor/Outdoor Combination Table for allowed unit combinations.

#### **MVZ CONNECTION RULES:**

- · Only 1 MVZ may be used on any system.
- When an MVZ is connected, total connected capacity must be 100% or less.
- · When an MVZ is connected, no P-Series indoor units can be used (PCA, PLA, or PEAD).

# MXZ-3C24NAHZ2 OPERATIONAL PERPORMANCE

#### **NON-DUCTED:**

# of indoor unit	Total Nominal Capacity (x1000 Btu/h)	Total Indoor Unit Capacity (Btu/h)  Operational Performance for Indoor Unit Combinations (Unit A + Unit B + Unit C)	Cooling Capacity Range (Btu/h)  Heating Capacity Range (Btu/h)			
				Unit A	Unit B	Unit C
1	6	6,000	-6	6,000	-	-
	Ů			7,400		
1	9		9	9,000	-	-
	, ,		0	11,000	-	-
1	12		12	12,000	_	-
	12			14,400	in in	-
1	15		<b>-</b> 15	14,000	-	-
	10			18,000		-
1	18		18	17,200	-	-
			1,0	21,600	-	-
2	12	Capacity (Btu/h)  6,000 7,400 9,000 11,000 11,000 12,000 14,400 14,000 18,000 17,200 21,600 12,000 14,800 15,000 18,400 18,000 22,000 20,000 20,000 20,000 21,800 21,800 22,000 21,800 21,800 22,000 21,800 21,800 22,000 24,000 25,000 25,000 24,000 25,000	6+6	6,000	6,000	-
	12			7,400	7,400	-
2	15		6+9	6,000	9,000	-
				7,400	11,000	-
2	18		6 + 12	6,000	12,000	-
	10		0 12	7,500	14,500	
2	18		9+9	9,000	9,000	-
	10		0.0	11,000	11,000	**
2	21		6 + 15	6,000	14,000	-
-	<i>د</i> ۱		0 1 10	6,400	15,600	-
2	21		9 + 12	8,600	11,400	-
	۷۱		0 1 12	9,500	12,500	-
2	24		6 + 18	5,600	16,200	
	27		0 . 10	5,600	16,400	-
2	24		9 + 15	8,500	13,300	
	£-T		0 10	8,300	13,700	-
2	24		12 + 12	10,900	10,900	-
	27		12 12	11,000	11,000	-
2	27		9 + 18	7,500	14,300	-
			0 10	7,400	14,600	-
2	27		12 + 15	10,100	11,700	-
			12 10	9,800	12,200	_
3	18		6+6+6	6,000	6,000	6,000
J	10		0.0.0	7,400	7,400	7,400
3	21		6+6+9	5,100	5,100	7,700
<u> </u>			0.0.0	7,100	7,100	10,600
3	24		6+6+12	5,500	5,500	11,000
<u> </u>	£-7		T V	6,300	6,300	12,300
3	24		6+9+9	5,500	8,300	8,300
<u> </u>	24		0.3.3	6,300	9,400	9,400
3	3 27		6+6+15	5,500	5,500	12,900
J	۲,			5,600	5,600	13,700
3	27	24,000	6 + 9 + 12	5,300	8,000	10,700
J	۲1	25,000	0.07.12	5,600	8,400	11,000
3	27	24,000	9+9+9	8,000	8,000	8,000
J	۷1	25,000	9 7 9 7 9	8,300	8,300	8,300

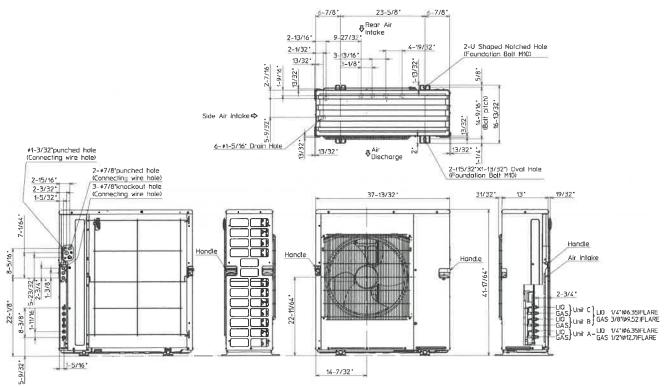
# MXZ-3C24NAHZZ OPERATIONAL PERFORMANCE, CONTD.

#### DUCTED:

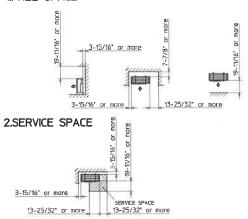
# of indoor unit	Total Nominal Capacity (x1000 Btu/h)	Total Indoor Unit Capacity (Btu/h)  Operational Performance for Indoor Unit Combinations (Unit A + Unit B + Unit C)	Cooling Capacity Range (Btu/h) Heating Capacity Range (Btu/h)			
				Unit A	Unit B	Unit C
		9,000		9,000	-	
1	9	10,900	9	10,900	-	-
	12	12,000	12	12,000		-
1	12	13,600	712	13,600	•	-
_	45	15,000	15	15,000		-
1	15	18,000	15	18,000		-
	40	17,200	40	17,200	-	-
1	18	21,600	18	21,600	-	
	40	18,000	0.10	9,000	9,000	-
2	18	21,800	9 + 9	10,900	10,900	-
_	0.4	21,000	0 . 12	9,000	12,000	-
2	21	21,800	9 + 12	9,700	12,100	-
	24	21,800	0 . 45	8,200	13,600	-
2	24	21,800	9 + 15	8,200	13,600	-
		21,800	40 . 40	10,900	10,900	-
2	24	21,800	12 + 12	10,900	10,900	-
2	077	21,800	0 . 40	7,500	14,300	-
	27	21,800	9 + 18	7,300	14,500	in the
		21,800	10.45	9,700	12,100	-
2	27	21,800	12 + 15	9,400	12,400	-
		23,600	0.0.0	7,900	7,900	7,900
3	27	24,600	9+9+9	8,200	8,200	8,200

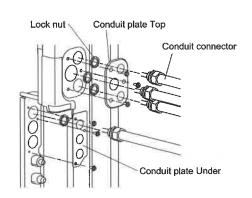
## DIMENSIONS: MXZ-3C24NAHZ2

#### Unit: inch



#### 1.FREE SPACE







COOLING & HEATING

1340 Satellite Boulevard. Suwanee, GA 30024 Toll Free: 800-433-4822 www.mehvac.com







144 Washington Street P.O. Box 1222 Portsmouth, NH 03802 www.durbinlawoffices.com



Derek R. Durbin, Esq. 603.287.4764 derek@durbinlawoffices.com \*Also admitted in MA

#### **VIA VIEWPOINT**

August 26, 2020

City of Portsmouth Zoning Board of Adjustment Attn: David Rheaume, Chairman 1 Junkins Avenue Portsmouth, NH 03801

RE: Variance Application of Kevin Shitan Zeng, Trustee of the Kevin Shitan Zeng Revocable Trust of 2017 377 Maplewood Avenue, Portsmouth (Tax Map 141, Lot 22)

Dear Chairman Rheaume,

Our Office represents Kevin Shitan Zeng, Trustee of the Kevin Shitan Zeng Revocable Trust of 2017, owner of property located at 377 Maplewood Avenue in Portsmouth. Attached herewith, please find the following materials for submission to the Zoning Board of Adjustment for consideration at its next regularly scheduled meeting:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Plan Set (Site Plan, Floor Plans and Elevations);
- 4) Photographs of the Property;
- 5) Tax Map Image of the Property; and
- 6) Zoning Overlay Image of the Property.

Twelve (12) copies of the application submission are being delivered to the City on this date. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Derek R. Durbin, Esq.

Sincerely,

#### **LETTER OF AUTHORIZATION**

Kevin Shitan Zeng, Trustee of The Kevin Shitan Zeng Revocable Trust of 2017, owner of property located at 377 Maplewood Avenue, identified on Portsmouth Tax as Map 141, Lot 22 (the "Property"), hereby authorizes Durbin Law Offices PLLC, of 144 Washington Street, Portsmouth, New Hampshire 03801, to act as his agent and representative in connection with the filing of any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property. This Letter of Authorization shall be valid until expressly revoked in writing.

Kevin Shitan Zeng, Trustee

August 24, 2020

### CITY OF PORTSMOUTH ZONING BOARD OF ADJUSTMENT APPLICATION NARRATIVE

Kevin Shitan Zeng, Trustee
The Kevin Shitan Zeng Revocable Trust of 2017
377 Maplewood Avenue
Portsmouth, NH 03801
(Owner/Applicant)

### **INTRODUCTORY STATEMENT**

#### The Property

Kevin Shitan Zeng is the owner of the property located at 377 Maplewood Avenue, identified on Portsmouth Tax Map 141 as Lot 22 (the "Property" or the "Applicant's Property"). The Property is zoned General Residence A ("GRA") and lies within the Historic District. It is a 0.12 acre (5,277 square feet) parcel that contains a small, two-story, single-family home that was built in 1941. The house is located far to the front of the Property, being approximately 5' from the Maplewood Avenue right-of-way. Just to the rear (north) of the existing home, there is a detached, wood-framed, single-story building that has fallen into significant disrepair and is structurally unsound. This building pre-dates the existing house and is believed to have been built in the early 1900s. It is comprised of multiple sections that have been cobbled together over time. Portions of the exterior walls and floors are missing. The building sits upon concrete and clay piers. Per Section 10.521 of the Ordinance, it is non-conforming as to the left, right and rear yard setbacks. In addition, the Property is non-conforming with respect to building coverage at 45.3%.

#### **Proposed Detached Dwelling Unit**

To make the rear building useable again, it must be demolished and re-constructed. This determination was made in consultation with the Historic District Commission ("HDC"), who viewed the building and determined that replacement is appropriate given the building's current condition. Mr. Zeng is proposing to construct a new one-story single-family residence in its place. The replacement building would have a smaller building footprint than the existing building and more compliant side and rear yard boundary setbacks.

The new building is architecturally designed as a carriage house, as viewed from the street, appearing accessory to the existing dwelling in the front of the Property. The stylistic features and scale of the new building reflect the character of the building that will be demolished. It will be designed similarly to other carriage houses in the City. The proposed design has already undergone a successful Historic District Commission work session.

#### SUMMARY OF ZONING RELIEF

The Applicant seeks the following relief from the Zoning Ordinance:

- 1. A variance from Section 10.513 to allow more than one free standing dwelling on a lot;
- 2. A variance from Section 10.521 to allow lot area per dwelling unit of 2,638.50 square feet ((+/-) where 7,500 square feet is the minimum required and 5,277 square feet exists;
- 3. A variance from Section 10.521 to allow lot coverage of 43.3% (+/-) where 45.3% exists and 25% is the maximum allowed:
- 4. A variance from Section 10.521 to allow a right yard setback of 4'-7" (+/-) where 0" exists and 10' is the minimum required;
- 5. A variance from Section 10.521 to allow a left yard setback of 3'-3" (+/-) where 2'-11 3/4" exists and 10' is the minimum required; and
- 6. A variance from Section 10.521 to allow a rear yard setback of 5'-6" (+/-) where 2'-10 3/4" exists and 20' is the minimum required.

#### VARIANCE CRITERIA

Granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court observed that the requirements that a variance not be "contrary to the public interest" or "injure the public rights of others" are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. 152 N.H. 577 (2005). The Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, "the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives." "Id. "There are two methods of ascertaining whether granting a variance would violate an ordinance's basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare." *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

The area of the GRA District where the Property is located is densely settled. Many of the surrounding properties are of similar size and/or contain more than one dwelling unit. For example, the directly abutting property to the right (east), 357 Maplewood Avenue (Lot 141-24) is a 0.14 acre parcel of land that contains four dwelling units. Of the three properties directly across Maplewood Avenue from the Applicant's Property two of them contain multiple condominium units. The other immediate surrounding properties contain a mixture of single-family, two-family and three-family uses. Two of the surrounding properties have more than one free standing dwelling unit on them. The property at 1 Jackson Hill Street (Lot 141-30) has two detached condominium units on it. The property 33 Northwest Street (Lot 141/27) has two detached single-family residential units on it. Most of the surrounding properties, if not all of them, have buildings on them that encroach into one or more boundary setbacks.

The goal of GRA Zoning is "to provide areas for single-family, two family and multifamily dwellings, with appropriate accessory uses, at moderate to high densities...[.]" (italics added). The purpose of the restrictions pertaining to lot area per dwelling unit and number of dwelling units per lot is to control density and prevent the overcrowding of land. The purpose of the setback requirements is to maintain adequate light, air and space between buildings on contiguous properties to address spacing, privacy and fire safety concerns.

With the proposed demolition and reconstruction of the rear building on the Property, the Applicant will be improving setback conditions, thus creating more light, air and space with buildings on adjacent properties. Moreover, there will be a reduction in building footprint and lot coverage associated with the new building from what presently exists, which will create more open space. In these respects, the replacement building will make the Property more conforming under the terms of the Ordinance than it is presently.

By creating a second free-standing dwelling unit on the Property, the Applicant will be creating a new non-conformity; however, what is proposed falls in line with the character of the surrounding area and would not alter it in any negative fashion. The proposed detached dwelling unit is architecturally designed as a small, one-story carriage house. It will have a secondary appearance to the main residence at the front of the Property.

The overall conditions and appearance of the Property will be greatly improved by the demolition of a building that is structurally unsound and its replacement with a a new, tastefully designed structure that meets current building and life safety codes. For the foregoing reasons, public health, safety and welfare will be positively impacted by granting the variances and it will not negatively alter the essential character of the neighborhood.

### Substantial justice will be done by granting the variance relief.

Any loss to the individual that is not outweighed by a gain to the general public is an injustice. New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997); Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102 (2007).

The public would not realize any gain by denying the variance relief. The rear building on the Property has no functional value. If the variance relief is denied, the rear building would remain on the Property it in its existing derelict condition, which represents a loss to the Applicant, abutters and the general public. The rear building is unsightly, falling apart and structurally unsound. It is an eyesore to the neighborhood. By granting the variance relief, the public benefits from a well-designed building that meets all current building and life safety codes and adds little additional demand upon municipal services. The design of the proposed building has received the initial consent of the HDC and will integrate well with and be compatible with the surrounding neighborhood. The new building will achieve greater compliance with the Ordinance's dimensional requirements than the existing building, thus improving the light, air and space with abutting properties and the buildings thereon. Overall, the new building on the Property will be a substantial improvement over what exists. As such, the substantial justice balancing test weights in favor of the Applicant.

# The values of surrounding properties will not be diminished by granting the variance relief.

The demolition of the decrepit rear building on the Property and its replacement with a new, code-compliant, appropriately designed building that is in greater compliance with the Ordinance's setback and lot coverage requirements can only improve the value of surrounding properties. The proposed building will appear accessory to the existing residence at the front of the Property. It is small and has a simple but tasteful design that will integrate well with the existing residence on the Property and buildings on surrounding properties. The proposed building will improve the value of the Property, which will in turn help to improve the values of surrounding properties.

# Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

The Property has several special conditions that distinguish it from surrounding properties. It is one of the only properties in the neighborhood that contains more than one structure. Of the surrounding properties that do contain more than one structure, the others have two or more dwelling units. As pointed out above, the properties at 33 Northwest Street and 1 Jackson Hill Street each have two detached dwellings on them, much like what is proposed with the Applicant's property.

The Property is an odd-shaped lot that has only *one* abutting property to the left and rear (383 Maplewood Avenue). The properties may have once been part of one larger parcel at some point in time. The property at 383 Maplewood Avenue contains one residential building which is situated to the far left-front portion of the property. There are no buildings to the left or rear of the building that the Applicant intends to demolish and replace with the detached dwelling unit.

The Property is also essentially a corner lot with primary frontage on Maplewood Avenue and secondary frontage on a "passageway", which the City refers to as Jackson Hill Street on its tax maps. The ownership of the passageway remains unclear, although the City appears to maintain it.

The abutting property to the right (357 Maplewood Avenue) is located across the passageway. Therefore, the actual right yard setback with the property at 357 Maplewood Avenue is greater than what is represented in the Applicant's plans. The Applicant's Property sits at much lower grade than the property at 357 Maplewood Avenue which minimizes any impacts that the construction of a new dwelling unit would have on that property.

The one-story building that the Applicant intends to demolish and replace with the detached dwelling unit is only partially visible from the properties across Maplewood Avenue due to the fact that the primary residence on the Property is situated in front of it and is two-stories in height. Similarly, due to existing topography, the proposed building abuts an embankment on the passageway (Jackson Hill Street) side of the Property, further reducing its visibility.

The proposed detached dwelling unit will have a smaller footprint and greater setback from structures on surrounding properties than the building it will replace, thus it will have less of an impact upon abutters and the public than the existing building. Denying the variances would not result in any tangible benefit to abutters or the public, as the existing building could remain. Accordingly, there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

The goal of GRA Zoning is to provide areas for moderate to high density. The neighborhood surrounding the Applicant's Property is densely settled. The abutting property to the right contains four dwelling units and the properties across Maplewood Avenue, except for one vacant parcel of land, are condominiums. Adding one dwelling unit to this area will not have any impact upon it. Therefore, the proposed use of the Property is also reasonable.

#### **CONCLUSION**

In conclusion, the Applicant has demonstrated that his application meets the five (5) criteria for granting the variance relief sought and he respectfully requests that the Board approve his application.

Dated: August 25, 2020

Respectfully Submitted,

Kevin Shitan Zeng, Trustee

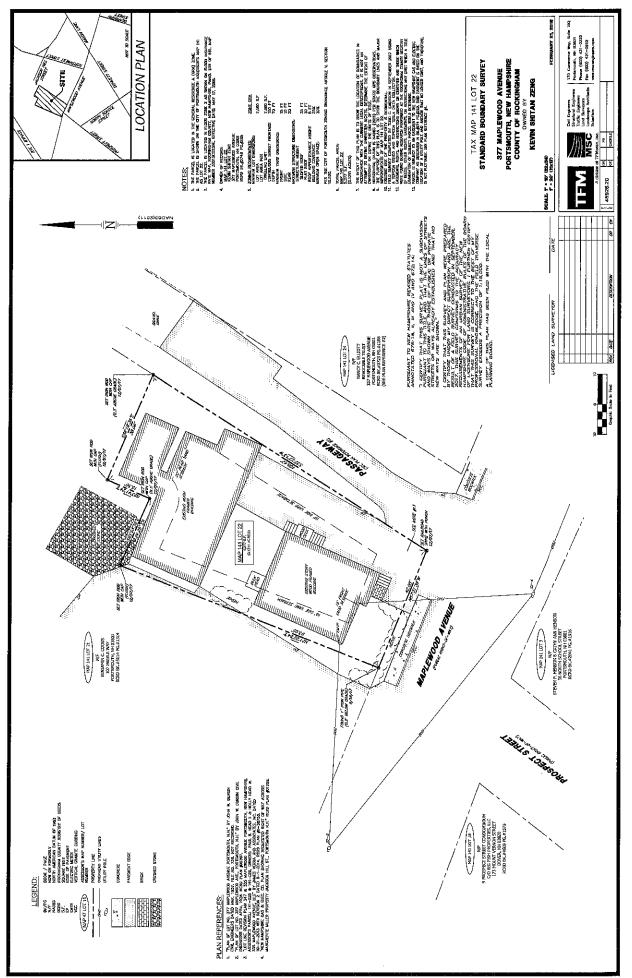
By and Through His Attorneys, Durbin Law Offices PLLC

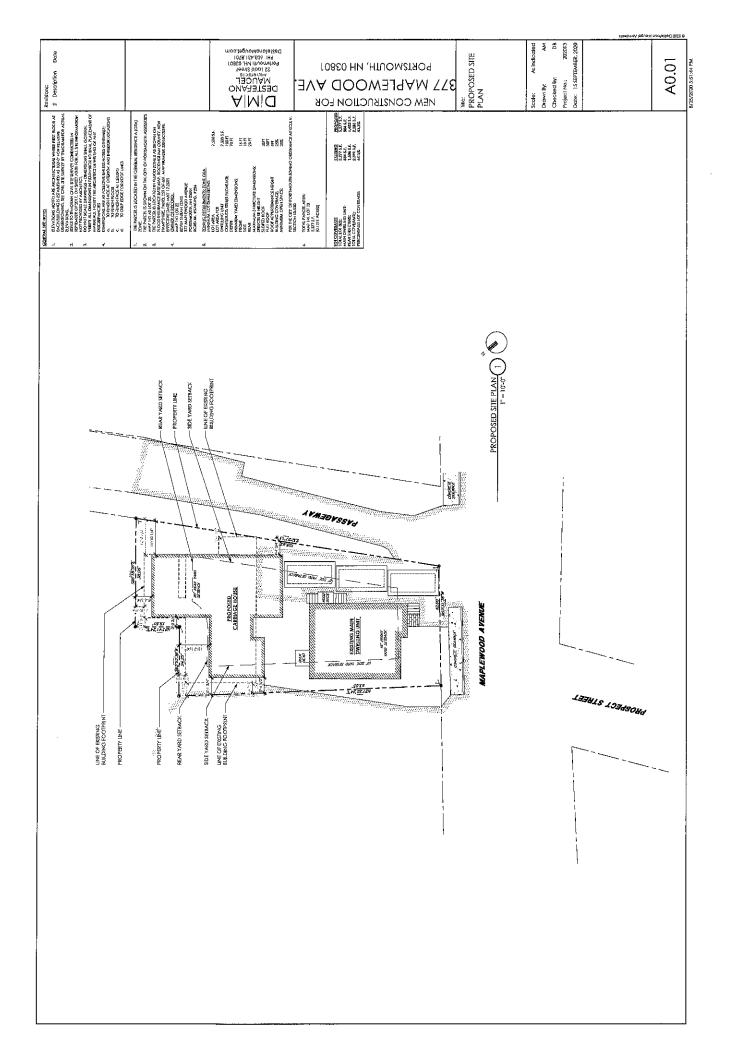
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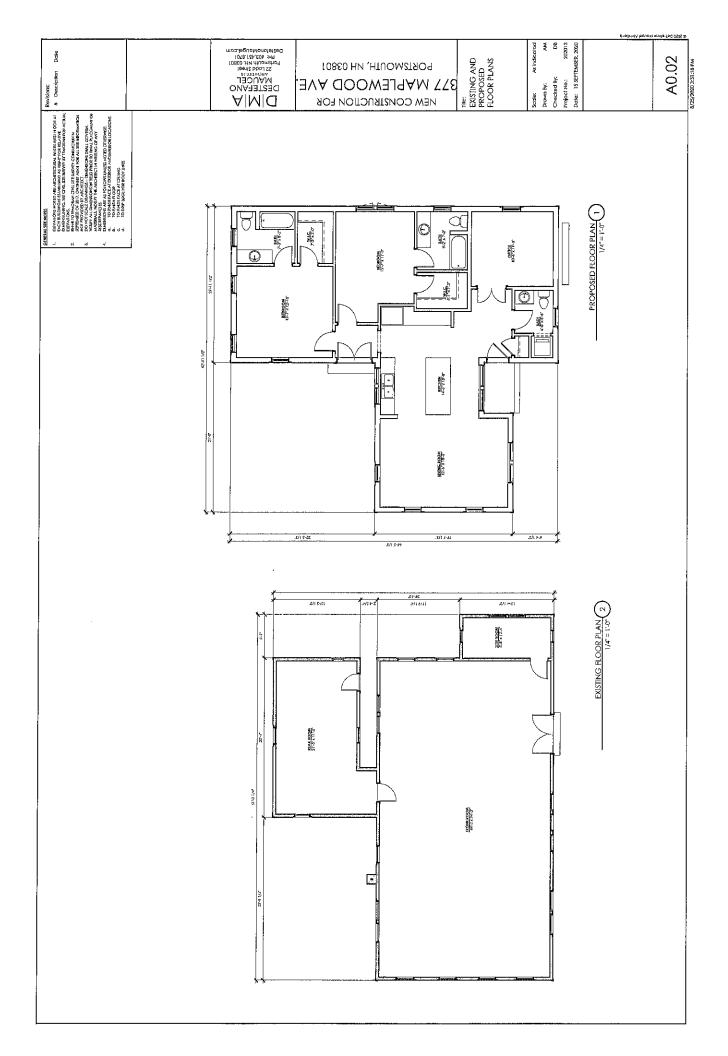
Derek R. Durbin, Esq. 144 Washington Street Portsmouth, NH 03801

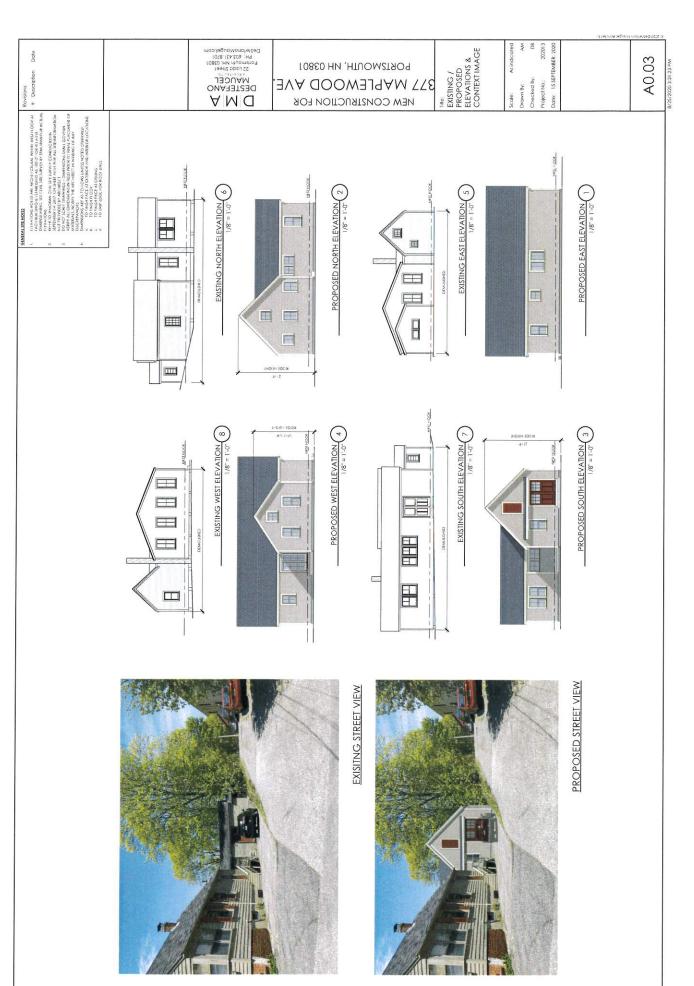
(603)-287-4764

derek@durbinlawoffices.com













REAR STRUCTURE FROM EAST ELEVATION



EAST ELEVATION FROM JACKSON HILL STREET

FRONT ELEVATION FROM JACKSON HILL STREET



NORTH ELEVATION FROM NEIGHBORING PROPERTY

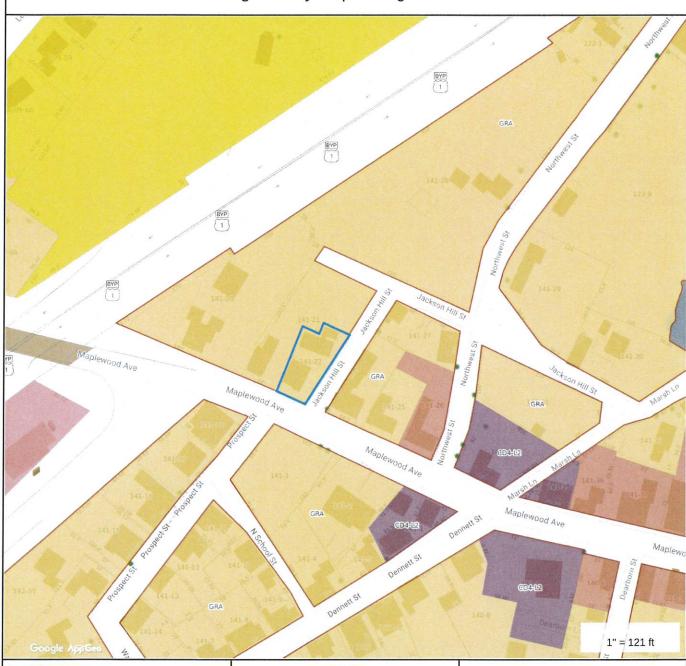
PARTIAL NORTH ELEVATION



WEST ELEVATION AT NEIGHBORING DRIVEWAY

# Tax Map - Zeng - 8-24-2020 122-9 141-29 aplewood Ave Maplewood Ave 141-31 141-3 141-16 Maplewood Ave 141-1 1" = 121 ft 141-7 Property Information Property ID 0141-0022-0000 Location 377 MAPLEWOOD AVE ZENG KEVIN SHITAN REVOC TRUST OF 2017 Owner MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map. Geometry updated 4/1/2019 Data updated 7/17/2019

### Zoning Overlay Map - Zeng - 8-24-2020



#### **Property Information**

Property ID 0141-0022-0000

Location 377 MAPLEWOOD AVE

ZENG KEVIN SHITAN REVOC TRUST OF 2017 Owner



### MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT

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Geometry updated 4/1/2019 Data updated 7/17/2019

### **Map Theme Legends**

### Zoning

Resid	iential L	Districts
		Rural
	SRA S	Single Residence A
	SRB S	Single Residence B
30000	GRA (	Sing <mark>le</mark> Residence B General Residence A
		General Residence B
		General Residence C
		Garden Apartment/Mobile Home Pa
Mixed	Residen	ntial Districts
	MRO Mi	xed Residential Office
		xed Residential Business
	G1 Ga	iteway Corridor
989	G2 Ga	iteway Center
	ess Distr	
	GB Ge	neral Business
	B Bu	siness
	WB Wa	sterfront Business
Indus	trial Dis	stricts
	OR C	Office Research
	l Ir	ndustrial
		Vaterfront Industrial
Airno	rt Distri	cts
	AIR A	
		Airport Industrial
		Pease Industrial
-		Airport Business Commercial
	ABC	Air port Business Commercial
		Districts
		Municipal
	NRP I	Natural Resource Protection
	cter Dis	
	CD5	Character District 5
SAPR	CD4	Character District 4
	CD4W	Character District 4-B
	CD4-L1	Character District 4-L1
	CD4-L2	Character District 4-L2
Civic	District	
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		wn Overlay District
	Historic	

City of Portsmouth

### Application of 553-559 Islington Street, LLC

### STATEMENT OF EXPLANATION

Property Address: 553-559 Islington Street Zone: CD4-L2

Variance from Portsmouth Zoning Ordinance 10.321 to Permit a Lawful Nonconforming Structure to be Extended, Reconstructed or Enlarged While Deviating from the Development Standards Required in Character District 4 Limited 2

### I. The Property and Proposed Project

The project proposes comprehensive interior alterations of the existing six-unit apartment building, and a small addition at the rear of the building to permit the structure to be brought into or to exceed code compliance. The proposed addition will allow for reconfiguration of the existing units making room for the replacement of the existing interior staircase with a larger code-compliant interior central staircase and the addition of a front to rear common area hall, increasing egress and life-safety/first responder access to the units. The project proposes other interior alterations required for code compliance and a more functional unit layout without changing the existing number of units. The additional interior alterations include fire separations between units, addition of a sprinkler system, and new interior fixtures and finishes. Site improvements will include removal of an existing garage and addition of paving and striping for parking areas where none presently exists, as well as the addition of new planting beds at the front of the property that will complement the City's planned City Street Tree location and related improvements.

The Purpose of the Character Districts within the City is "to promote the development of walkable, mixed-use, human-scaled places by providing standards for building form and placement and related elements of development." The proposed alterations are aimed at revitalizing the existing six (6) residential units by modernizing the units and bringing them into code compliance, thus providing desirable reasonably affordable residential spaces within walking distance of the businesses in this mixed-use are of the City.

### II. Variances Sought

The variances sought fall under section 10.321 of the Ordinance requiring a lawful nonconforming structure to conform to all the regulations of the district in which it is located if the same is to be extended, reconstructed or enlarged. Specifically, the variances sought are from the Development Standards required by Figure 10.5A41.10A. In each of the following instances, the deviation from the Development Standard is the same or less non-conforming than the present condition.

Figure 10.5A41.10A – Minimum lot area per dwelling unit – 3,000 sf is required

1,201 SF is existing 1,201 SF is proposed

Figure 10.5A41.10A - Minimum open space - 25% is required

19.2% is existing 19.5% is proposed

Figure 10.5A41.10A - Minimum ground story height, 11 ft is required

The existing building is 10'-7 1/2"
The proposed addition is 10'-7 1/2"

<u>Lawful Non-conforming conditions to remain (no change proposed)</u>:

<u>Side Yard</u> - Existing side yard setback at the westerly side of the property is lawful non-conforming. A 5 foot minimum is required and a 20 foot maximum is permitted, and a 0 foot setback is existing with no proposed change. The proposed project will not alter the footprint of this portion of the building within the side yard.

<u>Facade Glazing</u> – Existing façade glazing is lawful non-conforming. The Development Standards requires a 20% minimum Façade Glazing percentage, where a 16% Façade Glazing percentage is existing with no proposed change.

<u>Front Lot Line Buildout</u> - Existing front lot line buildout is lawful non-conforming. The Development Standards requires a front lot line buildout of at least 60% and permits up to 80% where a 92% front lot line buildout is existing, with no proposed change.

### III. Compliance with the Variance Standard (Criteria)

Section 10.233.21, requiring that the variance will not be contrary to the public interest, is taken together with section 10.233.22, requiring that the spirit of the Ordinance will be observed, pursuant to Malachy Glen Associates v. Chichester, 155 NH 102 (2007). With the approval and completion of the proposed alterations to the property, the essential character of the neighborhood, having residential spaces coinciding harmoniously with a variety of walkable, mixed-use, human-scaled places, will be preserved in observance of the spirit of the Ordinance. The approval and completion of the proposed alterations will allow for the existing six-unit property to remain six units of reasonable affordability benefitting the public interest by maintaining units of this nature in the City. The health safety and welfare of the public will not be negatively impacted by the proposes project which will maintain the existing nature of the property while permitting the rejuvenation of its historic character. The proposed alterations will result in better access for life-safety and other first responder personnel and as such the proposed changes serve as a positive impact on the health, safety and welfare of the occupants of the building, their guests and any responding City personnel in the event of an emergency.

Section 10.233.23, requiring that <u>substantial justice</u> will be done. Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a

property owner the reasonable use of his or her property. In this case, there is no benefit to the public in denying the variance that is not outweighed by the hardship upon the owner. Substantial justice will be done by granting the variance since, if required to strictly comply with the Development Standards of the Ordinance, the property and its character will be negatively impacted, and the likely result will be fewer units of larger configurations and of less relative affordability. The loss to the applicant and to future residents of the property, and the public if the variance is not granted would not be counterbalance by corresponding gain to the public, especially where the variances sought, at least in part, will result in a more conforming property.

Section 10.233.24, requiring that the values of surrounding properties will not be diminished. The values of surrounding properties will not be diminished as a result of the substantial upgrades and enhancement to the property which will include bringing the property into code compliance and overall general modernization and aesthetic revitalization. The same will enhance the property's appearance and livability for its future occupants and in turn increase its value, and thereby will increase the value of surrounding properties. The proposed alterations will allow the building, which is not and has not been rented to capacity in recent years, to accommodate the needs of those in the rental market by making the six existing units more tenantable and as such the area's walkable businesses and the properties in which they are located, are reasonably certain to enjoy an increase in patronage and therefore overall value.

Section 10.233.25, requiring that <u>literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship</u>. That, owing to special conditions of the property that distinguish it from other properties in the area, namely that:

- i. the nonconformities for which the variances are being sought already exist at the property, a six (6) unit apartment building built in or about 1900 and having been used as a six (6) unit apartment building for decades; and
- ii. that the variances sought will not increase the nonconformity, and in the instance of the minimum open space, will reduce the existing nonconformity; and
- iii. that the existing International Building Code requires the replacement of the existing stairs with code compliant stairs if any alterations to the existing structure are to be undertaken;

that (a) no fair and substantial relationship exists between the general public purposes of the Ordinance provisions and the specific application of those provisions to the property where:

- a. the minimum lot area per dwelling unit <u>will not change</u> if the variance is approved; and
- b. where the ground story height <u>will not change</u> and the addition will be built in an aesthetically harmonious manner to the existing structure if the variance is approved; and

- c. as noted above, if approved, the project will result in a <u>more conforming</u> open space percentage; and
- d. if the variance is denied and the proposed addition is not permitted, it would be extraordinarily difficult if not impossible to add the code compliant staircase while maintaining the existing use of the property as a six (6) unit residential apartment building.

Additionally, literal enforcement of the Development Standards required by Figure 10.5A41.10A as applied to this property would require demolition of an existing section of the building to meet the side yard setback and the front lot line buildout requirements while at the same time the Development Standards would require the addition of larger transparent windows and doors on the front façade, rendering the building less desirable as residences. The same would undoubtedly constitute an unnecessary hardship upon the applicant in overall expense and by reducing the number of existing units and in changing the character of the existing use that the Character Districts were intended to preserve and create.

Additionally, (b) the proposed use is a reasonable one where it is the existing and historic use of the property without an increase in nonconformity.

### IV. Conclusion

For the foregoing reasons, the Applicant respectfully requests the Board GRANT the variances as requested and advertised.

August 26, 2020

Steven F. Hyde, Esq.

Respectfully submitted,

Coakley & Hyde, PLLC

1 Greenleaf Woods Drive, Suite 102 Portsmouth, New Hampshire 03801

Ph.: 603-319-1731

e-Mail: shyde@coakleyhyde.com

# PORTSMOUTH, NH 03801

### PROJECT DIRECTORY

### OWNER:

553-559 Islington Street, LLC

11 Grove Street Exeter, NH 03833 Contact: Ed Zimmermann Tel: 410-215-9705

Email: ed\_zimmermann@comcast.com

### ARCHITECT:

**Adra Architecture LLC** 

90 Government Street Kittery, ME 03904 Contact: Tim Brochu Tel: 207-613-7036 Mobile: 207-475-6844 Email: tim@adraarchitecture.com

**CIVIL ENGINEER:** 

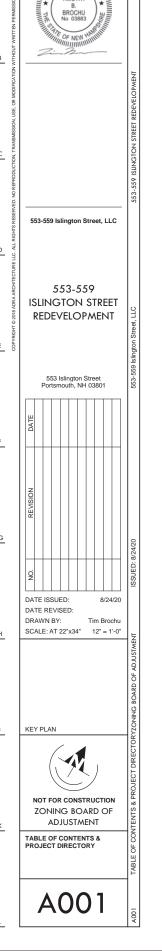
**Ambit Engineering** 

200 Griffin Road, Unit 3 Portsmouth, NH 03801 Contact: John Chagnon Tel: 603-430-9282

Email: jrc@ambitengineering.com



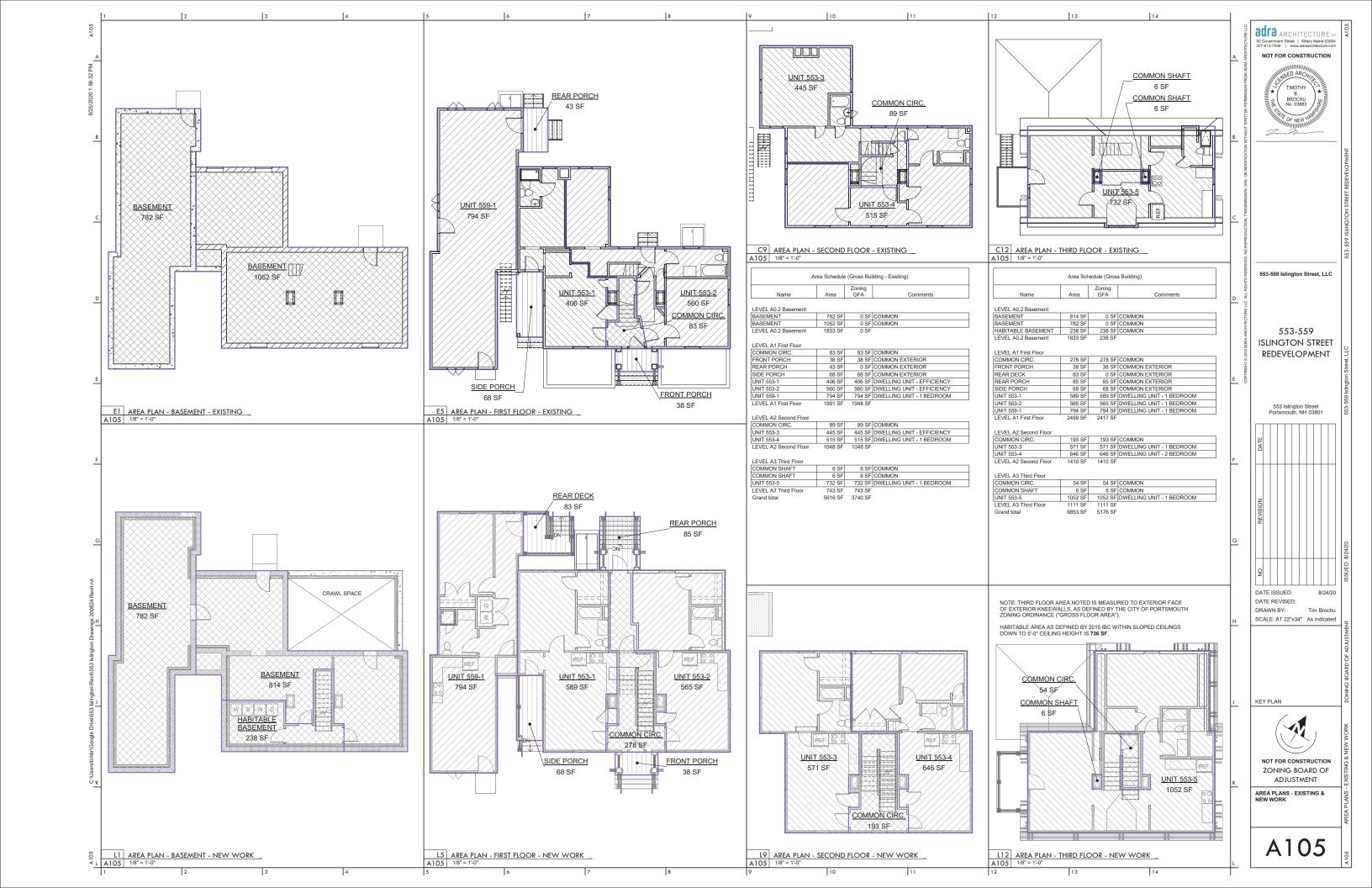
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A110	FLOOR PLANS - DEMOLITION	8/24/20		
A120	FLOOR PLANS - BASEMENT & FIRST FLOOR - NEW WORK	8/24/20		
A121	FLOOR PLANS - SECOND FLOOR & THIRD FLOOR - NEW WORK	8/24/20		
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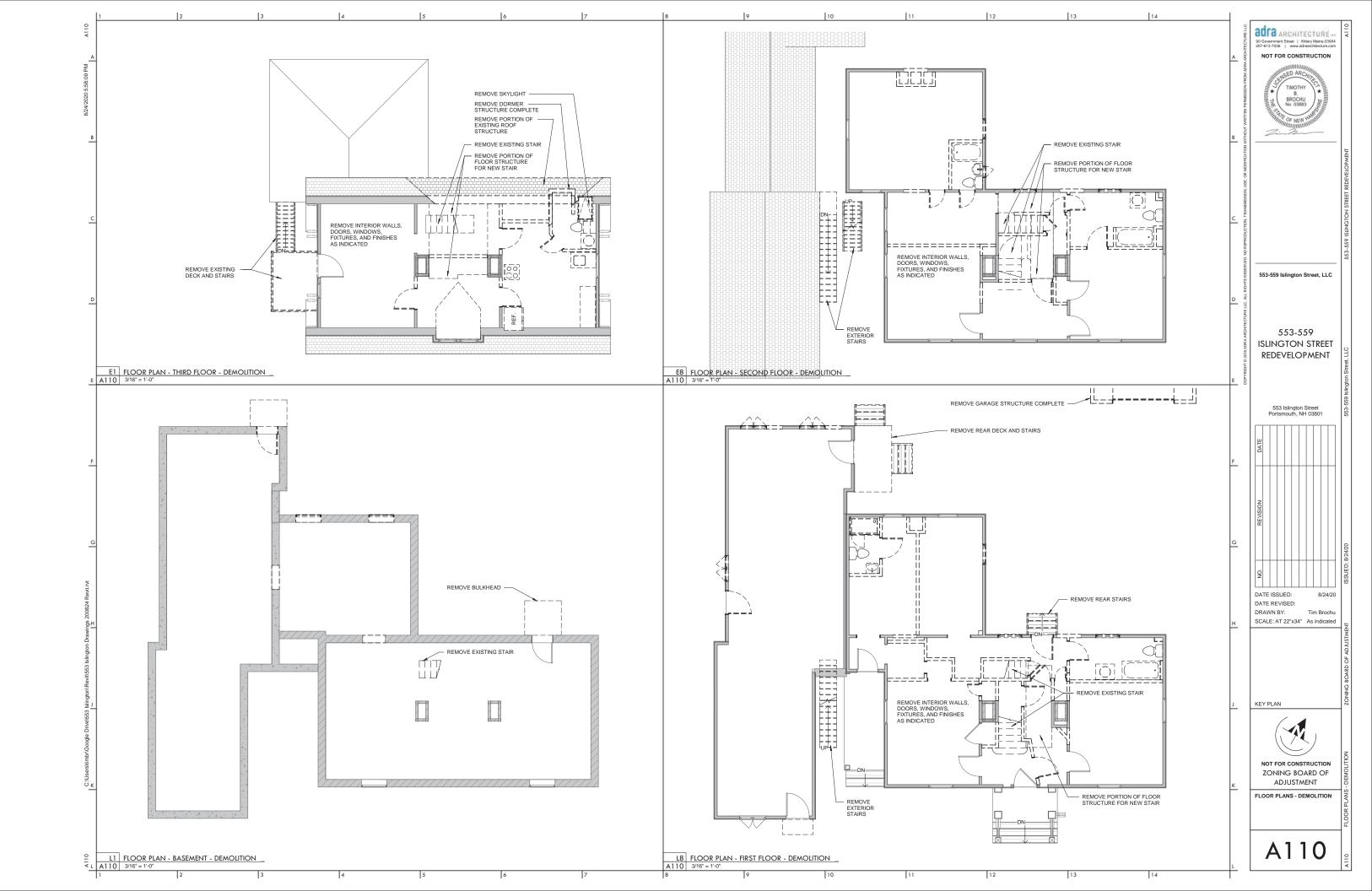


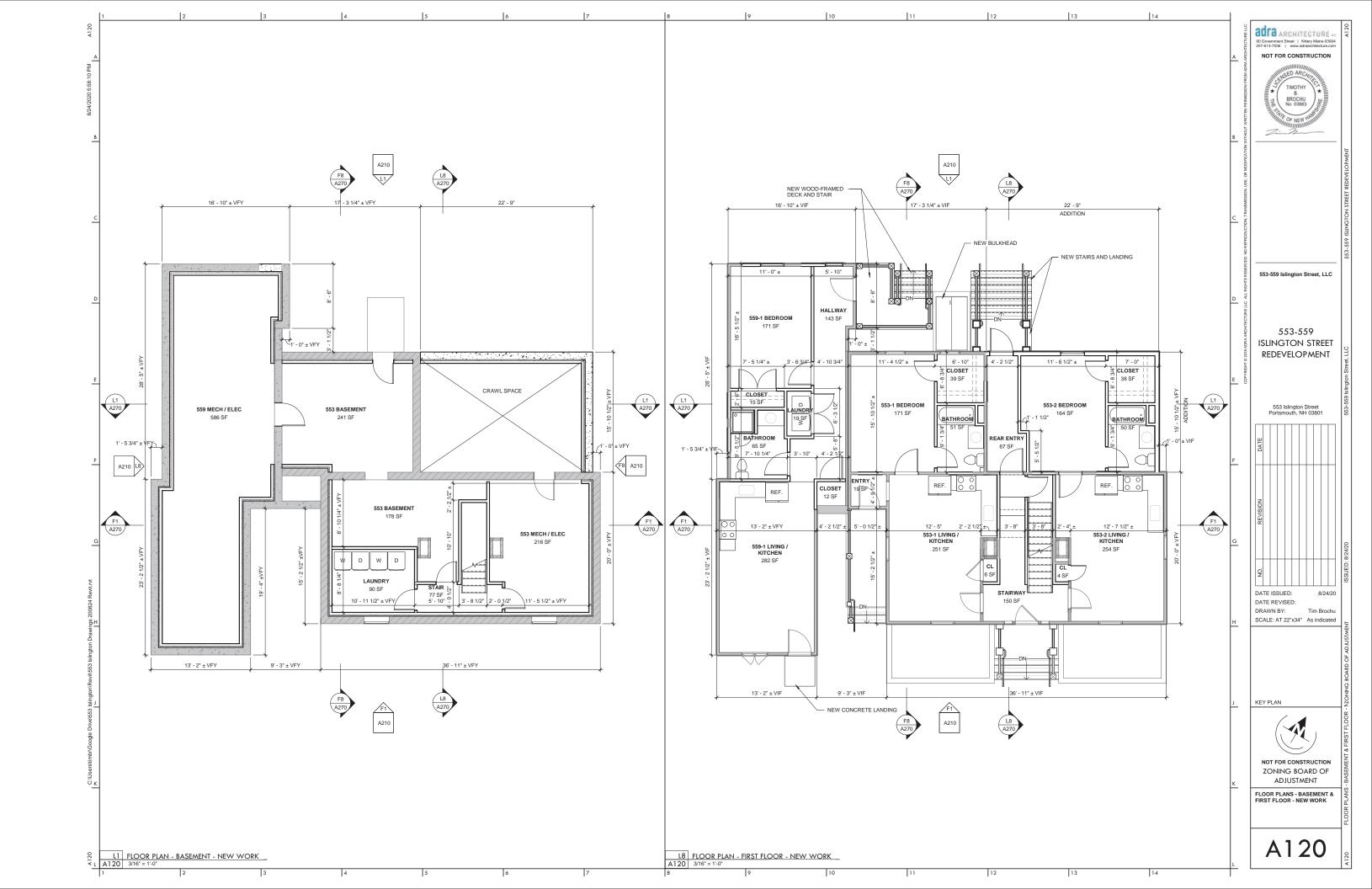
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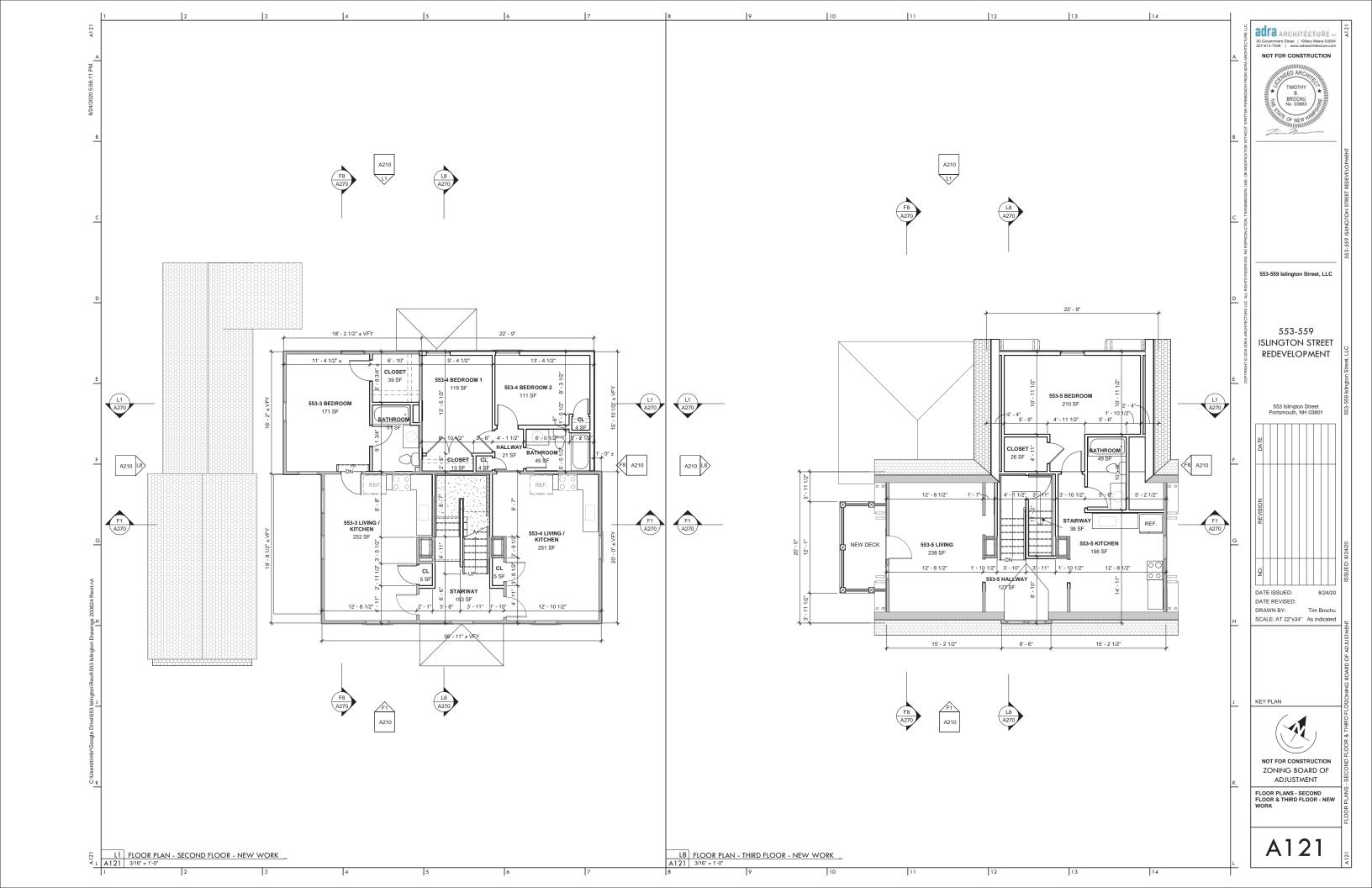
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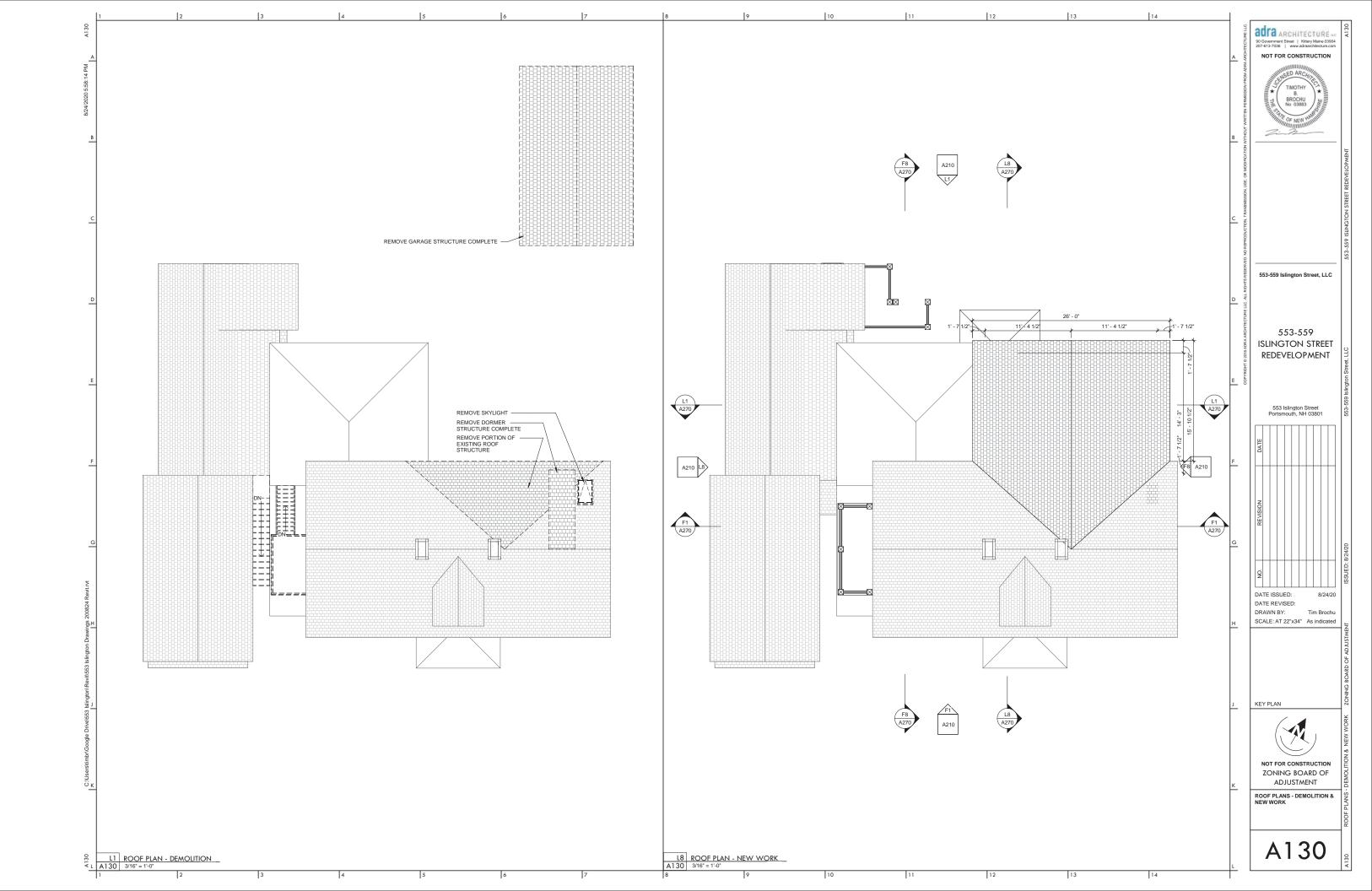


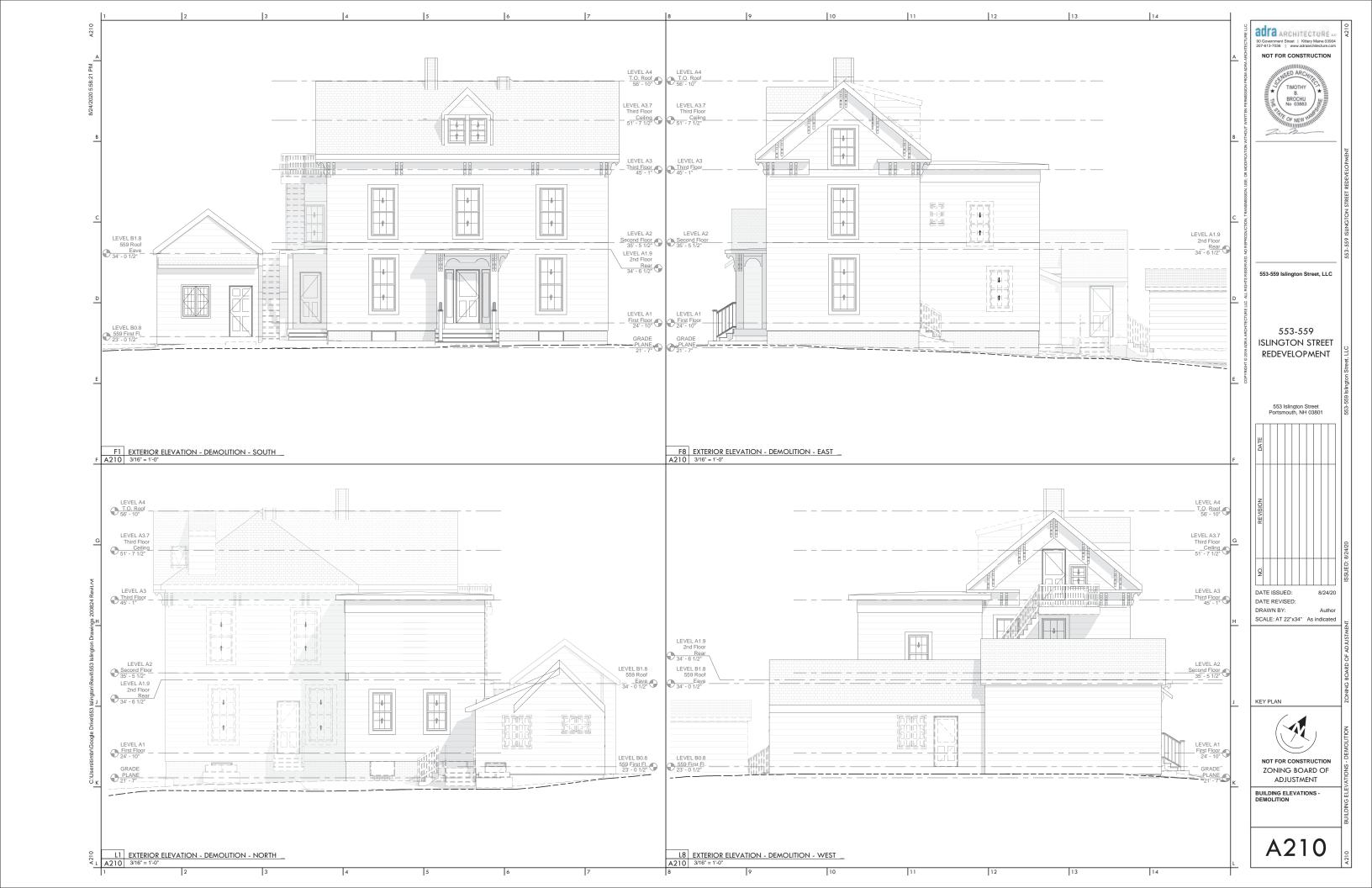






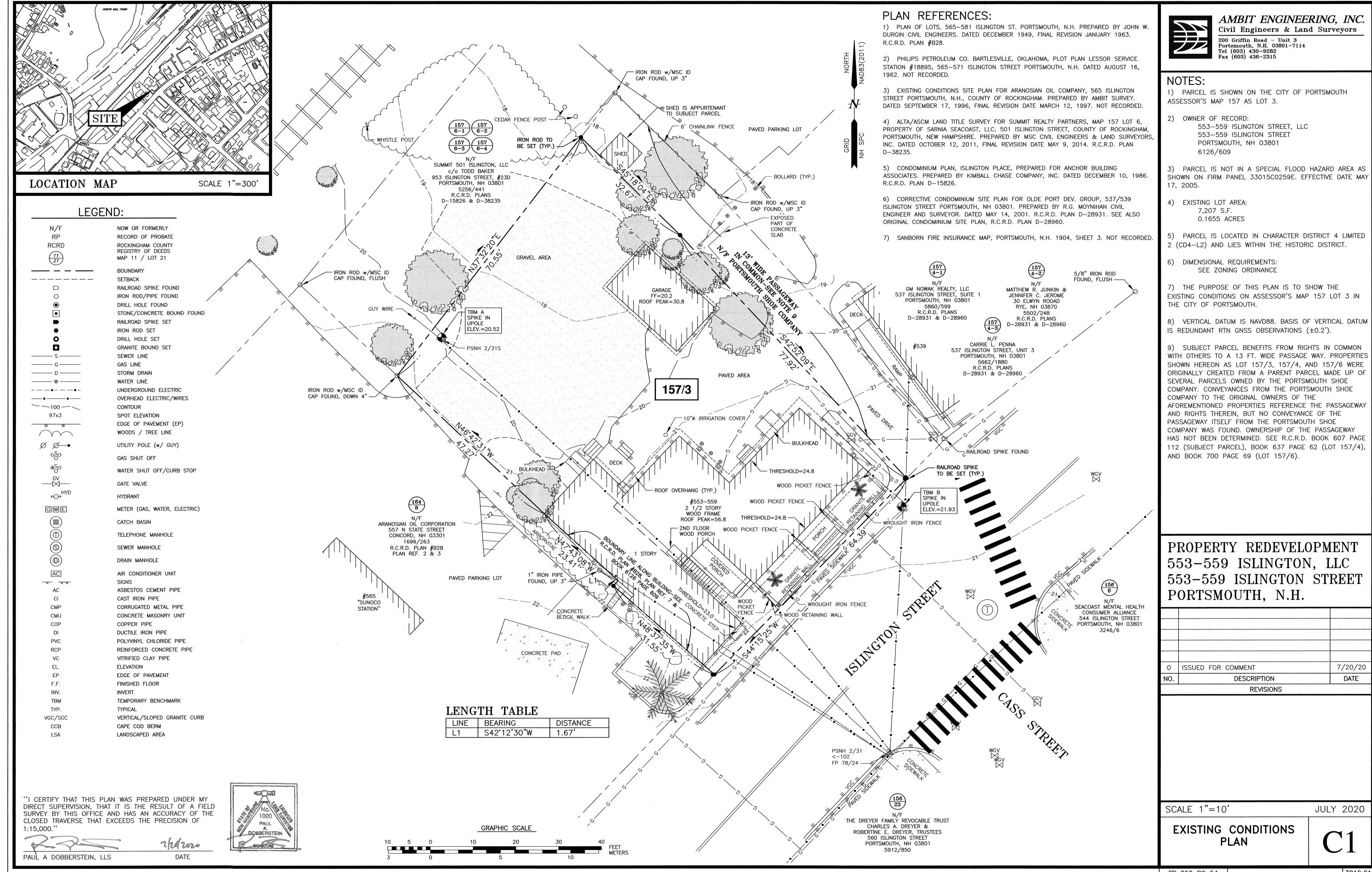












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# **DEMOLITION NOTES**

a) THE LOCATIONS OF UNDERGROUND UTILITIES ARE APPROXIMATE AND THE LOCATIONS ARE NOT GUARANTEED BY THE OWNER OR THE DESIGNER. IT IS THE CONTRACTORS' RESPONSIBILITY TO LOCATE UTILITIES AND ANTICIPATE CONFLICTS. CONTRACTOR SHALL REPAIR EXISTING UTILITIES DAMAGED BY THEIR WORK AND RELOCATE EXISTING UTILITIES THAT ARE REQUIRED TO BE RELOCATED PRIOR TO COMMENCING ANY WORK IN THE IMPACTED AREA OF THE PROJECT.

b) ALL MATERIALS SCHEDULED TO BE REMOVED SHALL BECOME THE PROPERTY OF THE CONTRACTORS UNLESS OTHERWISE SPECIFIED. THE CONTRACTOR SHALL DISPOSE OF ALL MATERIALS OFF—SITE IN ACCORDANCE WITH ALL FEDERAL, STATE, AND LOCAL REGULATIONS, ORDINANCES AND CODES. THE CONTRACTOR SHALL COORDINATE REMOVAL, RELOCATION, DISPOSAL, OR SALVAGE OF UTILITIES WITH THE OWNER AND APPROPRIATE UTILITY COMPANY.

c) ANY EXISTING WORK OR PROPERTY DAMAGED OR DISRUPTED BY CONSTRUCTION/ DEMOLITION ACTIVITIES SHALL BE REPLACED OR REPAIRED TO THE ORIGINAL EXISTING CONDITIONS BY THE CONTRACTOR AT NO ADDITIONAL COST TO THE OWNER.

d) THE CONTRACTOR SHALL VERIFY LOCATION OF ALL EXISTING UTILITIES AND CALL DIG SAFE AT LEAST 72 HOURS PRIOR TO THE COMMENCEMENT OF ANY DEMOLITION/CONSTRUCTION ACTIVITIES.

e) SAWCUT AND REMOVE PAVEMENT ONE FOOT OFF PROPOSED EDGE OF PAVEMENT OR EXISTING CURB LINE IN AREAS WHERE PAVEMENT TO BE REMOVED ABUTS EXISTING PAVEMENT OR CONCRETE TO REMAIN.

f) IT IS THE CONTRACTOR'S RESPONSIBILITY TO FAMILIARIZE THEMSELVES WITH THE CONDITIONS OF ALL THE PERMIT APPROVALS.

g) THE CONTRACTOR SHALL OBTAIN AND PAY FOR ADDITIONAL CONSTRUCTION PERMITS, NOTICES AND FEES NECESSARY TO COMPLETE THE WORK AND ARRANGE FOR AND PAY FOR ANY INSPECTIONS AND APPROVALS FROM THE AUTHORITIES HAVING JURISDICTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY ADDITIONAL AND OFF—SITE DISPOSAL OF MATERIALS REQUIRED TO COMPLETE THE WORK.

h) THE CONTRACTOR SHALL REMOVE AND DISPOSE OF ALL EXISTING STRUCTURES, CONCRETE, UTILITIES, VEGETATION, PAVEMENT, AND CONTAMINATED SOIL WITHIN THE WORK LIMITS SHOWN UNLESS SPECIFICALLY IDENTIFIED TO REMAIN. ANY EXISTING DOMESTIC / IRRIGATION SERVICE WELLS IN THE PROJECT AREA IDENTIFIED DURING THE CONSTRUCTION AND NOT CALLED OUT ON THE PLANS SHALL BE BROUGHT TO THE ATTENTION OF THE OWNER AND ENGINEER FOR PROPER CAPPING / RE-USE. ANY EXISTING MONITORING WELLS IN THE PROJECT AREA IDENTIFIED DURING THE CONSTRUCTION AND NOT CALLED OUT ON THE PLANS SHALL BE BROUGHT TO THE ATTENTION OF THE OWNER AND ENGINEER TO COORDINATE MONITORING WELL REMOVAL AND/OR RELOCATION WITH NHDES AND OTHER AUTHORITY WITH JURISDICTION PRIOR TO CONSTRUCTION.

i) ALL WORK WITHIN THE CITY OF PORTSMOUTH RIGHT OF WAY SHALL BE COORDINATED WITH THE CITY OF PORTSMOUTH DEPARTMENT OF PUBLIC WORKS (DPW).

j) REMOVE TREES AND BRUSH AS REQUIRED FOR COMPLETION OF WORK. CONTRACTOR SHALL GRUB AND REMOVE ALL SLUMPS WITHIN LIMITS OF WORK AND DISPOSE OF OFF-SITE IN ACCORDANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS.

k) CONTRACTOR SHALL PROTECT ALL PROPERTY MONUMENTATION THROUGHOUT DEMOLITION AND CONSTRUCTION OPERATIONS. SHOULD ANY MONUMENTATION BE DISTURBED, THE CONTRACTOR SHALL EMPLOY A NH LICENSED LAND SURVEYOR TO REPLACE THEM.

I) PROVIDE INLET PROTECTION BARRIERS AT ALL CATCH BASINS WITHIN CONSTRUCTION LIMITS AND MAINTAIN FOR THE DURATION OF THE PROJECT. INLET PROTECTION BARRIERS SHALL BE HIGH FLOW SILT SACK BY ACF ENVIRONMENTAL OR APPROVED EQUAL. INSPECT BARRIERS WEEKLY AND AFTER EACH RAIN OF 0.25 INCHES OR GREATER. CONTRACTOR SHALL COMPLETE A MAINTENANCE INSPECTION REPORT AFTER EACH INSPECTION. SEDIMENT DEPOSITS SHALL BE REMOVED AFTER EACH STORM EVENT OR MORE OFTEN IF WARRANTED OR FABRIC BECOMES CLOGGED. EROSION CONTROL MEASURES SHALL BE INSTALLED PRIOR TO THE START OF ANY CLEARING OR DEMOLITION ACTIVITIES.

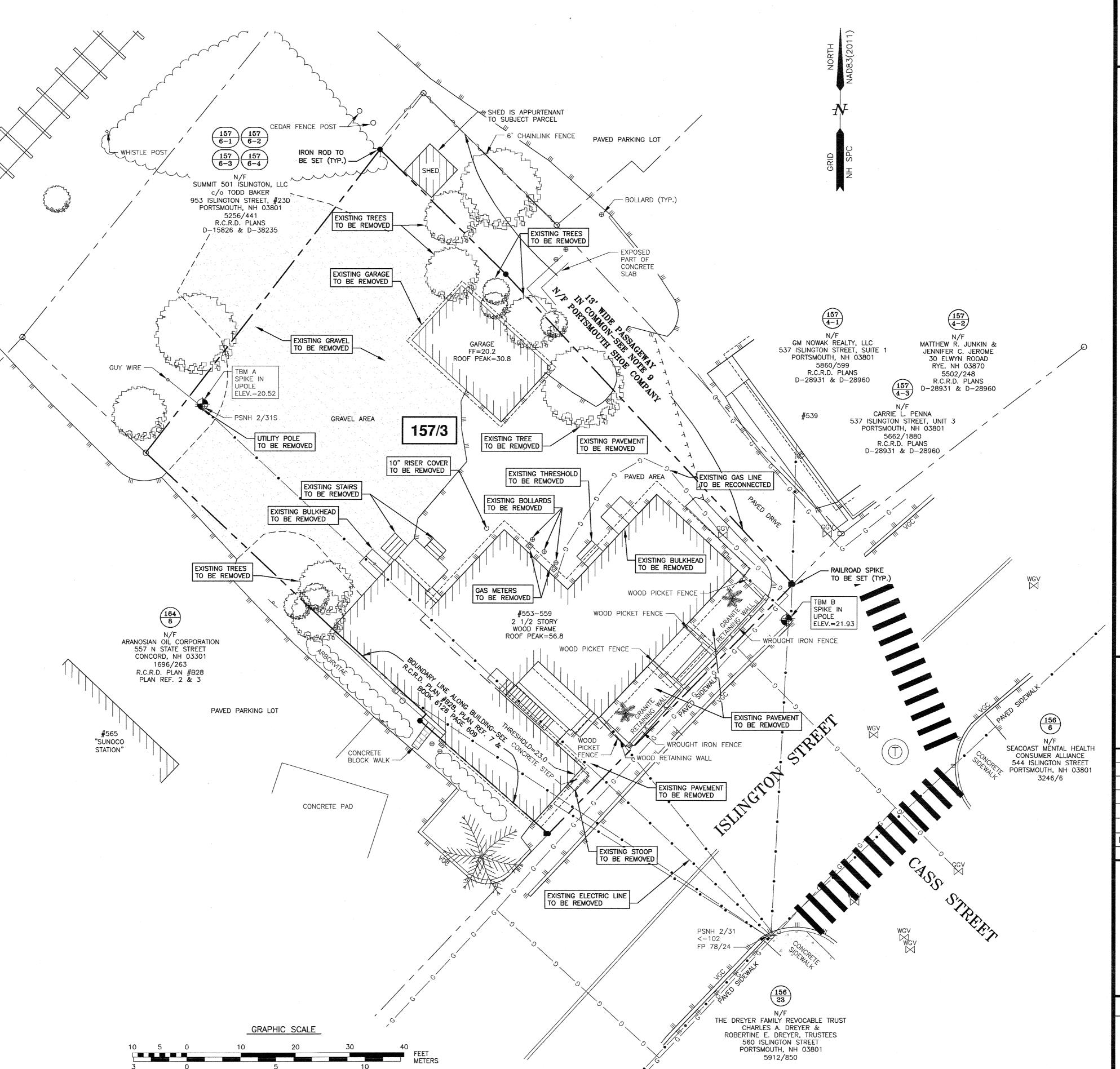
m) THE CONTRACTOR SHALL PAY ALL COSTS NECESSARY FOR TEMPORARY PARTITIONING, BARRICADING, FENCING, SECURITY AND SAFELY DEVICES REQUIRED FOR THE MAINTENANCE OF A CLEAN AND SAFE CONSTRUCTION SITE.

n) ANY CONTAMINATED MATERIAL REMOVED DURING THE COURSE OF THE WORK WILL REQUIRE HANDLING IN ACCORDANCE WITH NHDES REGULATIONS. CONTRACTOR SHALL HAVE A HEALTH AND SAFETY PLAN IN PLACE, AND COMPLY WITH ALL APPLICABLE PERMITS, APPROVALS, AUTHORIZATIONS, AND REGULATIONS

APPROVED BY THE PORTSMOUTH PLANNING BOARD

CHAIRMAN

DATE





# AMBIT ENGINEERING, INC.

Civil Engineers & Land Surveyors

200 Griffin Road - Unit 3 Portsmouth, N.H. 03801-7114 Tel (603) 430-9282

### NOTES:

1) THE CONTRACTOR SHALL NOTIFY DIG SAFE AT 1-888-DIG-SAFE (1-888-344-7233) AT LEAST 72 HOURS PRIOR TO COMMENCING ANY EXCAVATION ON PUBLIC OR PRIVATE PROPERTY.

2) UNDERGROUND UTILITY LOCATIONS ARE BASED UPON BEST AVAILABLE EVIDENCE AND ARE NOT FIELD VERIFIED. LOCATING AND PROTECTING ANY ABOVEGROUND OR UNDERGROUND UTILITIES IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR AND/OR THE OWNER. UTILITY CONFLICTS SHOULD BE REPORTED AT ONCE TO THE DESIGN ENGINEER.

3) CONTRACTOR SHALL INSTALL AND MAINTAIN EROSION CONTROL MEASURES IN ACCORDANCE WITH THE "NEW HAMPSHIRE STORMWATER MANUAL, VOLUME 3, EROSION AND SEDIMENT CONTROLS DURING CONSTRUCTION. (NHDES DECEMBER 2008).

4) EXISTING UTILITY CONNECTIONS SHALL BE ABANDONED IN ACCORDANCE WITH UTILITY COMPANY REQUIREMENTS. UTILITIES THAT ARE TO BE REUSED SHALL BE CUT & CAPPED.

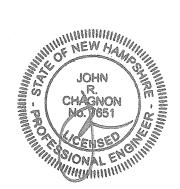
5) CONTRACTOR WILL COORDINATE STREET CLOSINGS, IF ANY, WITH CITY OF PORTSMOUTH.

6) DURING CONSTRUCTION, TEMPORARY FENCING SHALL BE INSTALLED, AS REQUIRED, TO PROTECT THE SITE FROM THE PUBLIC.

7) COORDINATE DEMOLITION WITH CITY OF PORTSMOUTH, PERMITS REQUIRED.

PROPERTY REDEVELOPMENT 553-559 ISLINGTON, LLC 553-559 ISLINGTON STREET PORTSMOUTH, N.H.

	·	
1	ISSUED FOR APPROVAL	8/4/20
0	ISSUED FOR COMMENT	7/20/20
NO.	DESCRIPTION	DATE
	REVISIONS	



SCALE 1"=10'

JULY 2020

DEMOLITION PLAN

C2

FB 259 PG 54

3010.01

MAX. STRUCTURE HEIGHT:	35 FEET	31.0 FEET	31.0 FEET
MAX. FINISHED FLOOR SURFAC	E		
OF GROUND FLOOR ABOVE			
SIDEWALK GRADE:	36 IN. MAX	30/12 IN.	30/12 IN.
MIN. GROUND STORY HEIGHT:	11 FEET	10'-7 <del>1</del> "	10'-7 <del>1</del> "

MIN. GROUND STORY HEIGHT: 11 FEET 10'-7½" 10'-7½" 10'-7½" 10'-7½" 10'-7½"
FACADE GLAZING: 20-40% 16% 16% 16%
ROOF TYPE: FLAT, GABLE, HIP, GAMBREL, MANSARD

LOT OCCUPATION:
MAX. BUILDING BLOCK 80 FEET 41 FEET 41 FEET

MAX FACADE MOD. LENGTH: 50 FEET 36'11" 36'11"  MIN. ENTRANCE SPACING: NR  MAX. BUILDING COVERAGE: 60% 28% 35%  MAX. BUILDING FOOTPRINT: 2,500 SF 2188SF 2500 SF  MIN. LOT AREA: 3,000 SF 7,207 SF 7,207 SF  MIN. LOT AREA/DWELLING: 3,000 SF 1,201 SF 1,201 SF  MIN. OPEN SPACE COVERAGE: 25% 19.2% 19.5%  MAX. GROUND FLOOR GFA/USE: NR	MAX. BUILDING BLOCK	80 FEET	41 FEET	41 FEET
MAX. BUILDING COVERAGE:       60%       28%       35%         MAX. BUILDING FOOTPRINT:       2,500 SF       2188SF       2500 SF         MIN. LOT AREA:       3,000 SF       7,207 SF       7,207 SF         MIN. LOT AREA/DWELLING:       3,000 SF       1,201 SF       1,201 SF         MIN. OPEN SPACE COVERAGE:       25%       19.2%       19.5%	MAX FACADE MOD. LENGTH:	50 FEET	36'11"	36'11"
MAX. BUILDING FOOTPRINT:       2,500 SF       2188SF       2500 SF         MIN. LOT AREA:       3,000 SF       7,207 SF       7,207 SF         MIN. LOT AREA/DWELLING:       3,000 SF       1,201 SF       1,201 SF         MIN. OPEN SPACE COVERAGE:       25%       19.2%       19.5%	MIN. ENTRANCE SPACING:	NR		
MIN. LOT AREA: 3,000 SF 7,207 SF 7,207 SF MIN. LOT AREA/DWELLING: 3,000 SF 1,201 SF 1,201 SF MIN. OPEN SPACE COVERAGE: 25% 19.2% 19.5%	MAX. BUILDING COVERAGE:	60%	28%	35%
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MIN. OPEN SPACE COVERAGE: 25% 19.2% 19.5%	MIN. LOT AREA:	3,000 SF	7,207 SF	7,207 SF
MIN. Of EN STAGE GOVERNOE. 2070	MIN. LOT AREA/DWELLING:	3,000 SF	1,201 SF	1,201 SF
MAX. GROUND FLOOR GFA/USE: NR	MIN. OPEN SPACE COVERAGE:	25%	19.2%	19.5%
	MAX. GROUND FLOOR GFA/USI	E: NR		

APPROVED BY THE PORTSMOUTH ZONING BOARD

CHAIRMAN

DATE

157 CEDAR FENCE POST CEDAR FENCE POST CHAINLINK FENCE PAVED PARKING LOT - WHISTLE POST/ N/F SUMMIT 501 ISLINGTON, LLC c/o TODD BAKER - BOLLARD (TYP.) 953 ISLINGTON STREET, #23D ... PORTSMOUTH, NH 03801 5256/441 R.C.R.D. PLANS D-15826 & D-38235 N/F MATTHEW R. JUNKIN & GM NOWAK REALTY, LLC 537 ISLINGTON STREET, SUITE 1 JENNIFER C. JEROME PORTSMOUTH, NH 03801 30 ELWYN ROAD RYE, NH 03870 5860/599 R.C.R.D. PLANS PROPOSED PARKING SPACES D-28931 & D-28960 R.C.R.D. PLANS R.C.R.D. PLANS D-28931 & D-28960 CARRIE L. PENNA 537 ISLINGTON STREET, UNIT 3 PROPOSED PORTSMOUTH, NH 03801 157/3 GAS METER -5662/1880 PROPOSED GAS CONNECTION PROPOSED R.C.R.D. PLANS CONCRETE WALK D-28931 & D-28960 PROPOSED PROPOSED BULKHEAD STAIRS TBM B SPIKE IN UPOLE ELEV.=21.93 ARANOSIAN OIL CORPORATION 557 N STATE STREET CONCORD, NH 03301 1696/263 R.C.R.D. PLAN #B28 PLAN REF. 2 & 3 PAVED PARKING LOT PROPOSED LANDSCAPING N/F
SEACOAST MENTAL HEALTH
CONSUMER ALLIANCE
544 ISLINGTON STREET
PORTSMOUTH, NH 03801
3246/6 CONCRETE BLOCK WALK -PROPOSED LANDING PSNH 2/31 <-102 FP 78/24-N/F
THE DREYER FAMILY REVOCABLE TRUST
CHARLES A. DREYER &
ROBERTINE E. DREYER, TRUSTEES
560 ISLINGTON STREET
PORTSMOUTH, NH 03801
5912/850 GRAPHIC SCALE



AMBIT ENGINEERING, INC.
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200 Griffin Road - Unit 3 Portsmouth, N.H. 03801-7114 Tel (603) 430-9282 Fax (603) 436-2315

# NOTES:

1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 157 AS LOT 3.

2) OWNER OF RECORD:

553-559 ISLINGTON STREET, LLC 553-559 ISLINGTON STREET PORTSMOUTH, NH 03801 6126/609

3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259E. EFFECTIVE DATE MAY 17, 2005.

4) EXISTING LOT AREA: 7,207 S.F. 0.1655 ACRES

5) PARCEL IS LOCATED IN THE CHARACTER DISTRICT 4-L2 ZONING DISTRICT. SEE ZONING ORDNANCE FOR DIMENSIONAL REQUIREMENTS.

6) THE PURPOSE OF THIS PLAN IS TO SHOW PROPOSED DEVELOPMENT ON TAX MAP 157 LOT 3 IN THE CITY OF PORTSMOUTH.

7) PROPOSED BUILDING COVERAGE:
STRUCTURES: 2,291 SF

DECK/STAIRS/STOOP: 209 SF

TOTAL: 2,500 SF

2,500 SF / 7,207 SF = 35%

8) REQUIRED PARKING:

2 UNITS x 1.3 SPACES PER UNIT = 3 SPACES 4 UNITS x 1 SPACES PER UNIT = 4 SPACES VISITOR, 1 SPACE/5 UNITS = 2 SPACES

REQUIRED PARKING: 9 SPACES

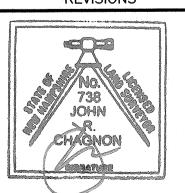
PROVIDED PARKING: 8 SPACES
CONDITIONAL USE PERMIT REQUIRED

9) ARCHITECTURAL PLANS BY ADRA ARCHITECTURE LLC

10) ANY DAMAGE TO EXISTING CITY SIDEWALKS TO BE REPAIRED TO DPW SATISFACTION.

# PROPERTY REDEVELOPMENT 553-559 ISLINGTON, LLC 553-559 ISLINGTON STREET PORTSMOUTH, N.H.

2	ISSUED TO ZBA	8/25/20
1	ISSUED FOR APPROVAL	8/4/20
0	ISSUED FOR COMMENT	7/20/20
NO.	DESCRIPTION	DATE
	REVISIONS	



SCALE 1"=10'

JULY 2020

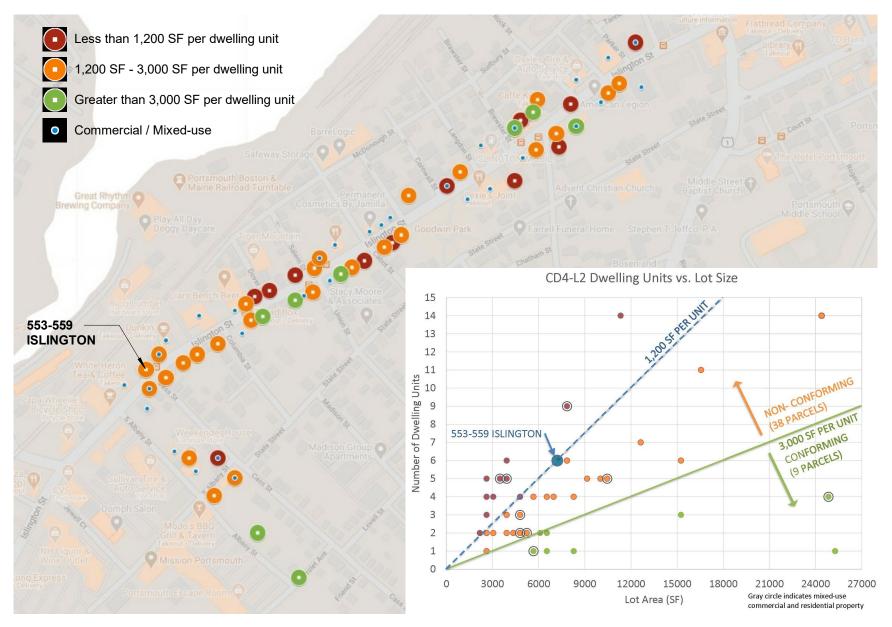
VARIANCE PLAN

**C**3

FB 259 PG 54

3019.01





## CD4-L2 Dwelling Units vs. Lot Size

