

**BOARD OF ADJUSTMENT
PORTSMOUTH, NEW HAMPSHIRE**

Remote Meeting Via Zoom Conference Call

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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 planning@cityofportsmouth.com. For technical assistance, please contact the Planning Department by email (planning@cityofportsmouth.com) or phone (603) 610-7296.

Per NH RSA 91-A:2, III (b) the Chair has declared 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 2020-09, 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.

JUNE 16, 2020

AGENDA

I. APPROVAL OF MINUTES

- A) Approval of the minutes of the meetings of May 19, 2020 and May 26, 2020.

II. PUBLIC HEARINGS – OLD BUSINESS

1) Petition of the **Donna Pantelakos Revocable Trust, Owner** for property located at **138 Maplewood Avenue** wherein relief is needed from the Zoning Ordinance to create a new dwelling unit by constructing a second floor addition over an existing garage which requires the following; 1) A Variance from Section 10.521 to allow: a) a lot area per dwelling unit of 2,616 where 3,000 is required; and b) a 1' right side yard where 5' 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 124 Lot 6 and lies within the Character District 4-L1 (CD4-L1) District.

2) **WITHDRAWN** Petition of **Michael Petrin, Owner**, for property located at **268 Dennett Street** wherein relief is needed from the Zoning Ordinance to demolish the right side portion of house and reconstruct new addition which requires the following: 1) A Variance from Section 10.521 to allow a 0' right side yard where 10' 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 143 Lot 13-1 and lies within the General Residence A (GRA) District. **WITHDRAWN**

III. PUBLIC HEARINGS – NEW BUSINESS

- 1) Petition of **Joseph & Jessica Denuzzio, Owners**, for property located at **105 Thornton Street** wherein relief is needed from the Zoning Ordinance to demolish existing greenhouse and construct new shed addition which requires the following: 1) A Variance from Section 10.521 to allow a) a 2' front yard where 15' is required; and b) 49% building coverage where 25% 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 159 Lot 18 and lies within the General Residence A (GRA) District.
- 2) Petition of **Timothy Whitaker, Owner**, for property located at **1163 Sagamore Avenue, Unit 20** wherein relief is needed from the Zoning Ordinance for construction of a 10' x 24' rear deck which requires the following: A Variance from Section 10.521 to allow a 7.5' rear yard where 15' is required. Said property is shown on Assessor Map 224 Lot 17-2 and lies within the Mixed Residential Office (MRO) District.
- 3) Petition of **Raleigh Way Holding Group, LLC, Owner**, for property located at **0 Falkland Way (off Albacore and Saratoga Way)** wherein relief is needed from the Zoning Ordinance to merge two lots and demo existing structures in order to construct a 4 unit multi family dwelling which requires the following: 1) A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,736 square feet where 5,000 square feet is the minimum required; and 2) A Special Exception from Section 10.440 Use #1.51 to allow 4 dwelling units where the use is allowed by a special exception. Said property is shown on Assessor Map 212 Lot 112 and lies within the General Residence B (GRB) District.
- 4) Petition of **RKW Investment Properties, LLC, Owner**, for property located at **115 Heritage Avenue** wherein relief is needed from the Zoning Ordinance to allow a place of assembly which requires the following: 1) A Variance from Section 10.440 Use #3.10 to allow a place of assembly where the use is not permitted in the district. Said property is shown on Assessor Map 285 Lot 5-1 and lies within the Industrial (I) District.
- 5) Petition of **Karen Dufour, Owner**, for property located at **77 Meredith Way** wherein relief is needed from the Zoning Ordinance to subdivide one lot into two lots which requires the following: A Variance from Section 10.521 to allow 0' of continuous street frontage for both lots where 100' is required for each. Said property is shown on Assessor Map 162 Lot 16 and lies within the General Residence A (GRA) District.

IV. OTHER BUSINESS

V. ADJOURNMENT

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE**

Remote Meeting via Zoom Conference Call

7:15 P.M.

MAY 19, 2020

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman

MEMBERS EXCUSED: John Formella

ALSO PRESENT: Peter Stith, Planning Department

I. APPROVAL OF MINUTES

A) April 21, 2020

*It was moved, seconded, and passed by unanimous vote to **approve** the April 21, 2020 minutes as amended.*

II. PUBLIC HEARINGS – NEW BUSINESS

1) Petition of **Robert Morin III Revocable Trust, Owner**, for property located at **20 Partridge Street** wherein relief was needed from the Zoning Ordinance for installation of a condenser unit which requires the following: A Variance from Section 10.515.14 to allow a 4.5' setback where 10' is required for a mechanical system. Said property is shown on Assessor Map 101 Lot 8 and lies within the General Residence B (GRB) District.

Alternate Ms. Eldridge assumed a voting seat.

SPEAKING TO THE PETITION

The applicant Joyce Morin was present and reviewed the petition and the criteria, noting that the condenser would be located at the back of the house and would not be visible to the public.

Vice-Chair Johnson asked if Ms. Morin had considered siting the heat pump around the corner to the rear. Ms. Morin said it would be a problem because of how the plumbing had to be run. Mr. Hagaman asked how loud the pump would be. Ms. Morin said she didn't know but that the neighbors were fine with it because it would not face any windows. Chairman Rheaume noted that the Japanese mini-split units were generally very quiet.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Mulligan moved to **approve** the variance as presented and advertised. Mr. Lee seconded.*

Mr. Mulligan agreed that the units were very quiet and had advantages over higher profile window set units, especially in the south end where homes were close together. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance because the essential character of the neighborhood would not be changed and the public's health, safety, and welfare would not be threatened. He said substantial justice would be done because the loss to the applicant if the Board were to require a full 10-ft setback would not be outweighed by any gain to the public. He said granting the variance would not diminish the values of surrounding properties because the only affected neighbor was to the right and the applicant had explained why it wouldn't conflict. He said the special condition for a hardship was that the pre-existing nonconforming home already violated the setback, and the chosen location was the optimal position on the property in terms of which side of the house to place it on, so there was no fair and substantial relationship between the purpose of the side yard setback and its application to the property. He said it was a reasonable residential use in a residential zone and met all the criteria.

Mr. Lee concurred, noting that the unit was quiet and that similar units were installed all over town.

*The motion **passed** by unanimous roll call vote, 7-0,*

2) Petition of **3201 Lafayette Road, LLC, Owner**, for property located on **Lafayette Road** wherein relief was needed from the Zoning Ordinance to establish a mobile home sales operation on the subject parcel which requires a Special Exception from Section 10.440 Use #11.30 where the use is only permitted by special exception. Appeal of an Administrative Decision of a Code Official in the application of Sections 10.5B83.10 and 10.1113.20 of the Ordinance. If the Appeal is not granted, the Variances necessary to grant the required relief is requested: 1) A Variance from Section 10.5B83.10 and Section 10.1113.20 to allow parking spaces to be located between a principal building and a street. Said property is shown on Assessor Map 291 Lot 8 and lies within the Gateway Neighborhood Corridor (G1) District.

Mr. Hagaman assumed a voting seat and Ms. Eldridge returned to alternate status.

SPEAKING TO THE PETITION

Corey Colwell of TFMoran and Attorney John Kuznevich were present on behalf of the applicant, including the owner/applicant Glenn Gidley. Mr. Colwell reviewed the petition, noting that the applicant owned a manufactured home park and that the subject property was between the park and Lafayette Road and included an office building and parking. He said the applicant wanted to display and/or store six model homes on the property and also have storage for boats, trailers, and RVs. He said there would be five parking spaces for customers and staff, that an existing garage would be

removed to make room for the display units, and that the only additional permit required was site plan approval from the Planning Board. Attorney Kuznevich reviewed the criteria for the requested variance and special exception. He noted that parking was prohibited between the principal building and the street and that a street was either formally accepted by the City or shown on an approved subdivision plan. He said Lafayette Road did not qualify as a definition of a street and that the parking restrictions did not apply. He said an applicant had the right to rely on an ordinance as drafted and he asked the Board to reverse the decision of the code official. He explained that a special exception was normally required for a manufactured house in the G1 zone but normally meant occupied housing. He said the parcel was really for display and that the manufactured homes met the requirements of the special exception. Mr. Colwell said the requested variance was for parking in the front yard, noting that there was currently parking in the front yard between the office building and the street and there was also a paved strip representing half of that parking, so added pavement would be nominal.

The Board addressed the special exception request. Mr. Lee asked whether there was space in the back of the manufactured home park for boats and RVs. Mr. Colwell said there wasn't because much of the park was wetlands and buffer and it was completely built out. Mr. Lee asked where the sold units would be placed if the park was already built out. Mr. Gidley said that most of the homes sold were in other existing parks and that 90 percent of their business was replacement homes.

Mr. Hagaman asked whether there were other office locations around the state with a similar display that might not require a variance or special exception or appeal from a City decision. Mr. Gidley said there were not. Mr. Hagaman said that, based on the presented drawings, the parking could be arranged any number of ways to avoid a turning hazard. He said the five parking spots could be placed behind the units and that almost all the issues could be cured except for the special exception. Mr. Gidley said they initially had a proposal that showed more of the area in the wetland buffer but were told that any use in that wetland buffer would not be supported by the City staff. He also said that most of the doors to access the model homes were in the front, making it inconvenient for customers who would have to drive around the back and walk up a grade. He said he didn't want customers parking in an area where there were expensive RVs. Mr. Mulligan verified that storage for boats and RVs was a permitted use in the Gateway District. He said the special exception was just related to model home sales, and Chairman Rheume read the relevant section in the ordinance.

Mr. Parrott said he toured the site and saw signs stating that it was a sale site already, and he asked what was different about the applicant's request and what the status of the sales office currently was. Mr. Gidley said the previous owner displayed model homes for sale on the property but that the use no longer complied with the ordinance since the zone was changed to the Gateway District. Mr. Parrott said there was no mention in the proposal of additional lighting or signage, and he cited cases where car dealers had very bright lighting displays that affected nearby homes. He asked how it would be addressed. Mr. Colwell said the display units would have a porch light over the building's entrance only and that the back storage area would have a light mounted on a pole that would not extend to the front. He also noted that it would require site plan approval.

Mr. McDonnell said the definition of a 'street' was a thoroughfare or roadway, which was either formally accepted by the City or shown on an approved subdivision plan. He said he took no issue with the applicant's position that Lafayette Road was a State road never formally accepted by the City and that it wasn't built as a subdivision road, but he didn't think that was what the definition

actually meant. He said the applicant stated that Lafayette Road wasn't a street that was constructed pursuant to an approved subdivision. He said he didn't think that's what the definition said because it said it had to be shown as an approved subdivision plan constructed to subdivision specifications. He said he would be surprised if parts of Lafayette Road were not shown on any approved subdivision plan or if it wasn't actually constructed to City specifications. He said there was some ambiguity in the definition of 'street' that the Board should look at regarding what the intent was. He said the intent of the parking ordinance was to include Lafayette Road as a street, but he was confused because no one had raised that issue.

Attorney Kuznevich said they found no evidence that the road was constructed to City subdivision specifications. He said it was constructed to State road specifications. Mr. McDonell asked what the City subdivision specifications were. Attorney Kuznevich said they were basically all the things that got approved in a typical site plan subdivision with all the details of how thick the base course was, pavement, and so on. Mr. McDonell said he thought it could possibly comply with both City and State specifications. Attorney Kuznevich said there was no evidence of that on any plan and the City Staff report did not provide any evidence or arguments that it was constructed to City subdivision plans. Mr. McDonell said he suspected that the City was trying to respond to the applicant's argument, which was that it wasn't built as a subdivision road. He said he didn't dispute it and didn't think the City did either, and thought it could have been missed. He said he saw no evidence that a) the definition was not ambiguous at all, and b) given the ambiguity, that it wasn't resolved in favor of the decision of the code official.

Mr. Hagaman said he looked through the zoning ordinance's Definition section and found intermittent uses of the words 'road', 'street', 'thruway', and so on. He said many of those definitions were not defined in the ordinance but were used in common layperson terms. He said the applicant quoted certain cases citing the definition, and he asked whether there were no cases whatsoever that would say with legal authority that the spirit of the ordinance or the intent could carry when there was some ambiguity as to the intent of the definition or the clarity of the definition. Attorney Kuznevich said the ambiguity would have to be on the face of the words, but if the words weren't ambiguous, then one didn't go behind them to think of some other intent. He said there would have to be a real ambiguity, which he didn't think existed as a matter of law. He said there could have been some sloppiness in the ordinance when it was drafted, and he cited Section 10.15.11: 'Unless expressly stated, the following words shall have the meaning shown in this article'. He said therefore the very requirement of the ordinance was to apply the definition strictly and not go into the common usage. Mr. Hagaman said if the word 'street' was meant to apply to every public way, whether a court could justify separating that intended meaning and set it aside as a technicality. Attorney Kuznevich agreed but said it would be a very meaningful technicality because applicants had the right to rely on what was written. He said the courts did not go beyond definitions, and he thought the City could amend or clarify that the word 'street' included Lafayette Road.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION AND DECISION OF THE BOARD

Chairman Rheaume asked for comments on the special exception request. Mr. McDonell said he didn't have much concern for the special exception request because it was reasonable and would comply with the requirements. He said he didn't think there would be a change in the characteristics of the area because the project was a relatively minimal expansion of an existing or historical use.

*Vice-Chair Johnson moved to **grant** the special exception request as presented, and Mr. Hagaman seconded.*

Vice-Chair Johnson said he agreed with Mr. McDonell that the petition crossed off the boxes on most of the special exception requirements, including a reasonable use and low intensity. He said Route One was a good spot for the proposal because it had similar uses. He said granting the special exception would pose no hazard to the public or adjacent properties on account of potential fire, explosion, release of toxic materials, and so on. He said he didn't think that would be more of an issue than what was presently on the site. He said it would pose no detriment to property values in the vicinity or change in the essential characteristics of any area including neighborhoods, business districts, parking areas, odors, smoke, pollutants, unsightly equipment storage, and so on. He said it was an eclectic group of uses in that neighborhood that included a residential portion on Route One but also ten different businesses. He said granting the special exception would create no odor, smoke, gas, dust, and so on because those weren't really issues. He said there would be no creation of a traffic safety hazard or substantial increase in the level of traffic, noting that he didn't see the project greatly increasing the level of traffic and that the traffic lights caused people to drive at a slow pace and be aware of the in-and-out curb cuts. He said there would be no excessive demand on municipal services and no significant increase of stormwater runoff onto adjacent properties, noting that there was a decent portion of the area covered in asphalt and that stormwater drainage would be addressed by the Planning Board and the Technical Advisory Committee (TAC). For those reasons, he said the special exception should be granted.

Mr. Hagaman concurred and had nothing to add.

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

Chairman Rheaume then addressed the appeal of the decision by the code official that the parking between the structures and the road was subject to the ordinance in terms of whether Lafayette Road was in fact a street.

Mr. Mulligan said that a few good points were made but that he disagreed with Mr. McDonell in that he couldn't look at the definition of 'street' and determine on its base that it was ambiguous. He said a better argument might be that if one were to literally apply it, even though it was ambiguous, it didn't lead to an absurd result. He asked what it did to setbacks on Lafayette Road and various design elements required within the Gateway District if the Board didn't think of Lafayette Road as a street under the ordinance's definition. He noted that there were specific references in the Gateway District portion of the ordinance to Lafayette Road as a 'road' and not a 'street', so that suggested to him that there was some recognition that Lafayette Road was separate from the 'street' garden variety. He said if someone looked at the definition of 'front yard', where setback requirements came from, there was a way to determine front yard dimensions without access to a street on a plan but with reference to a position 25 feet from and parallel to the center line of a travelled way, so there was an alternative to 'street' for determining what front yard setbacks were and other design

requirements were in the Gateway Zone. He said he still thought that it wasn't the intended result but didn't think it was an absurd result because it was argued that Lafayette Road was a different animal than a garden variety street. He said he was inclined to support the administrative appeal to overturn the Planning Department's decision.

Chairman Rheume said the Board received a late input from the City attorneys and that they also used the term 'absurd', so he thought the Board could wrestle with the concept of what the threshold for 'absurd' was. Mr. Hagaman asked whether an absurd result not be the simple fact that any property on Lafayette Road could put parking between the primary structure and the road, which would defeat the spirit and purpose of that requirement. Mr. Mulligan said that was what the ordinance should state if that's what it required. He said it didn't specifically invalidate all of the other requirements as to setbacks and other design elements, so he didn't think so. Chairman Rheume agreed that in some cases, some of those requirements were specific to the term 'Lafayette Road', as Mr. Mulligan had pointed out. In response to Mr. Hagaman's question of whether he thought there was no ambiguity in the actual definition of 'street' in regard to subdivision plans, Mr. Mulligan said he didn't agree with the idea that a State road built to State specifications was also built to City specifications because the two may overlap, saying it was a pretty serious stretch.

Mr. Parrott said the word 'street' was a pretty generic term and not some new scientific thing that had a precise meaning that was unambiguous. He said his neighborhood had houses sited on 'roads, places, streets, and even a park', so in reading the ordinance, the intent of the definition was clear when it used the word 'street'; otherwise, one could get to the silly point where any time something was related to a street, one would have to say 'street' to include six different names. He said US Route One Bypass could also be considered to not be a street. He said the intent of the ordinance was to call roads and streets and places, etc. and they were all considered to be public or private paved areas on which a property was sited. He said he didn't think there was any rule that said common sense wasn't allowed, and there was nothing in the ordinance that said someone had to take something and strain it to get a legalistic definition to understand it. He said the Planning Department's interpretation made the most common sense to him. Mr. Hagaman said it was ironic that the definition of a manufactured housing park in the ordinance used the word 'road'. He asked if there was a process under Subsection A of the definition formally accepting the thruway where that occurred or if there were actions taken by the City to deem that it was formally accepted, like plowing that might fall under that aspect of definition. Mr. Stith said there was and that it had to be built to City standards to be accepted into the City's system. Chairman Rheume said that the mere fact that the City plowed something wasn't sufficient to indicate that it was actually a street.

Mr. McDonell said there was a process by which someone wanting to build a street could dedicate it, and the City could accept it or not. He said he agreed with Mr. Parrott that the clear intent of the parking ordinance was to include Lafayette Road as a street, but he thought the applicant was right in stating that one had to look at a defined term to see if it was ambiguous, which was why he thought Lafayette Road was not subject to parking requirements because it wasn't a street. He said he took issue with the definition of 'street', noting that it had to be shown on an approved subdivision plan constructed to City subdivision specifications. He said that, just because there might be overlap between State road construction specifications and City road subdivision specifications, it was a stretch to say that if the intent was to comply with State requirements and one happened to comply with City requirements, that should be sufficient. He said the City subdivision specifications provided some minimal level that a roadway must comply with, meaning a minimal level of road width or pavement depth and so on. He said if someone built a driveway, it was probably not a street

under that definition because it wouldn't meet City subdivision standards. He said if the State built a road that would otherwise comply with City subdivision specifications, he thought it was either clearly within that part B of the definition 'street' or there was enough ambiguity to raise the issue as to what the intent was. He said there may be instances in the ordinance where the word 'street' was not intended to include Lafayette Road, but in the case of the parking requirement, it was.

Chairman Rheaume said he was torn as well. He said the ordinance defined the term 'street' explicitly and it would have been well served by adding the term 'includes but is not limited to the following'. He said the Legal Department added the concept of absurdity. He asked whether the consideration of Lafayette Road as not being a street resulted in something absurd, and he thought that was a high bar to meet. He said he couldn't make the argument that the end result would be far divorced from reality, even though he thought it was. He said it was common sense that the ordinance intended for Lafayette Road to be treated as a street, but there was a bit too much effort to be very specific in one area, i.e. the definition of 'street', without recognizing the potential fallout or consequences in recognizing the more common sense or traditional definition of the word. He said the applicant raised a good point about the ordinance in stating that it was a weakness that could be corrected, and if the Board decided that the applicant's concept had merit, then the Board would just have to deal with follow-up applications by anyone else.

The Board discussed whether the application should be postponed until the City corrected the error. Chairman Rheaume said unless there was additional information or a legal opinion that the Board needed, it behooved them to move the application along one way or another. He said the Board could decide that it was an error or they could uphold the Planning Department's decision.

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the appeal and overturn the decision of the administrative official. Mr. Hagaman seconded.*

Mr. Mulligan said he would reference his earlier comments. He said it was an unintended consequence of the drafting of the ordinance but that the Board saw a lot of unintended consequences with their ordinances. Mr. Hagaman concurred. He said that seconding the motion pained him a bit because it felt like a loophole in that it was an oversight of how that particular term was defined and then used, but he thought the Board's deliberation was more with the frustration with how it was defined and then used, and not with ambiguity surrounding the definition.

Chairman Rheaume said he would approve the appeal because he thought the common sense approach was that Lafayette Road was a street, but the ordinance painted itself into a corner. He said the applicant's representative was clever enough to have thoroughly read the ordinance in detail to pick up on that subtlety that no prior applicant had brought up. He said that, while he wasn't in favor of the necessary consequences that came from it, he didn't think the end result was something that would end up in the realm of the absurd. He said the Board would have to either say the definition was ambiguous or absurd, but that it seemed straightforward to him. He didn't think the resulting parking would be noticeable because it would look like parking for residences.

*The motion **passed** by a vote of 5-2, with Mr. McDonell and Mr. Parrott voting in opposition.*

Chairman Rheaume said there was no need to take up the request for a variance since it no longer applied, based on the Board's decision to grant the appeal.

3) Petition of **Todd & Jan Peters, Owners**, for property located at **379 New Castle Avenue** wherein relief was needed from the Zoning Ordinance for a partial demolition and reconstruction of an existing residence and porch which requires the following: 1) A Variance from Section 10.521 to allow: a) a 6' right side yard where 10' is required; b) 22% building coverage where 20% 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 207 Lot 4 and lies within the Single Residence B (SRB) District.

Mr. Hagaman returned to alternate status and Ms. Eldridge assumed a voting seat.

SPEAKING TO THE PETITION

The architect Anne Whitney was present on behalf of the applicant and reviewed the petition. She noted that the property was within a 50-ft shore land buffer so they needed approval to keep the same footprint. She said both neighbors were in support. She reviewed the criteria and set it would be met.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Stith noted that the Board received a comment in favor of the petition. No one else was present to speak to the petition, so Chairman Rheaume closed the public hearing.

DECISION OF THE BOARD

*Mr. Parrott moved to **grant** the variances as presented and advertised, and Mr. Lee seconded.*

Mr. Parrott said there was small relief requested and a fair amount of construction, but that it was mostly upward. He said there was practically no change in the footprint and that it would only be 10 percent over the required maximum. He noted that the property was in dire need of attention and would benefit the owner and the neighbors. He said granting the variances would not be contrary to the public interest or the spirit of the ordinance because the property's appearance would be improved and the house would be brought up to code, which would not affect the public's health, safety, or welfare. He said substantial justice would be done because the applicant would have a code-compliant house with better operating systems and a better appearance that would be a benefit to the owner, neighbors, and the public. He said granting the variances would not diminish the values of surrounding properties because the improvements would only benefit them. He said literal enforcement of the ordinance would result in unnecessary hardship. He said the hardship was that the house was large and the lot was small, and the restrictions on what one could do were pretty clear because the property was so close to the water. He said the requested relief was minimal and that the petition easily met the criteria and should be approved.

Mr. Lee concurred with Mr. Parrott.

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

At this time, Chairman Rheaume noted that there was a request to postpone Case 7, 138 Maplewood Avenue. He asked for a motion to take the case out of order. Ms. Eldridge assumed a voting seat.

*Mr. Lee moved to take the case out of order, and Mr. Mulligan seconded. The motion **passed**, 7-0.*

*Mr. Lee moved to **grant** the request to postpone, and Ms. Eldridge seconded.*

Mr. Lee said that the Board historically always granted first requests to postpone, and Ms. Eldridge agreed.

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

4) Petition of **AER RE, LLC, Owner**, for property located at **185 Cottage Street** wherein relief was needed from the Zoning Ordinance to allow a business office use which requires the following: A Variance from Section 10.440 Use #5.20 to allow a business office use where the use is not permitted. Said property is shown on Assessor Map 174 Lot 14 and lies within the General Residence A (GRA) District.

Vice-Chair Johnson recused himself from the petition, and both alternates took voting seats.

SPEAKING TO THE PETITION

Attorney Derek Durbin representing the applicant was present. He said the property was an island property in the zoning context and that it was approved for medical use in 2018 and had two residential uses at the time. He said they currently had a dental office on the second floor and wanted a business office use for the first floor. He reviewed the criteria and said they would be met.

Ms. Eldridge asked how many tenants the applicant wanted, noting that it might affect the usage of the lot. Attorney Durbin said it was just one use, in terms of the ordinance, and that the owner wanted a particular tenant. He said the space had not been built out yet and had not been advertised for multiple tenants. Chairman Rheaume asked whether the entrances and exits for multiple businesses on the first floor would satisfy egress requirements. Attorney Durbin said they would because the building was built out for just one tenant on the ground floor.

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. McDonell moved to **grant** the variance as requested, and Mr. Mulligan seconded.*

Mr. McDonell said granting the variance would not be contrary to the public interest or to the spirit of the ordinance, noting that he saw no reason why the Board should not grant it because it would pose no injury to public rights or harm to the public by allowing a business use in a site like that. He

said the values of surrounding properties would not be diminished. He said the Board had heard no testimony that they would be, and the location of the property was sort of an island when it came to zoning and had no property abutting it that was in the GRA zone. He said an argument could be made that if a house was next door its value could be diminished, but that wasn't the issue. He said literal enforcement of the ordinance would result in an unnecessary hardship due to the property's special conditions of being an island on the corner and standing alone, so there was no fair and substantial relationship between the purpose of the ordinance that restricted the uses of the GRA zone and the specific application of that provision to the property. He said the proposed use was a reasonable one, noting that the Board previously found the medical office use reasonable, and that the business office use was reasonable for the same reasons.

Mr. Mulligan concurred and had nothing to add.

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

5) Petition of **GIRI Dover, LLC, Owner**, for property located at **99 Durgin Lane** wherein relief was needed from the Zoning Ordinance for installation of concealed wireless communication facilities which requires the following: A Special Exception from Section 10.923.30 to allow the installation of concealed wireless communication facilities where the use is permitted by Special Exception. Said property is shown on Assessor Map 239 Lot 15 and lies within the Gateway Neighborhood Corridor (G1) District.

Vice-Chair Johnson returned to his seat. Mr. Hagaman retained his voting seat and Ms. Eldridge returned to alternate status.

SPEAKING TO THE PETITION

The Verizon representative Ben Skillin was present on behalf of the applicant. He stated that Verizon wanted to co-locate six panel antennas and three remove radio heads within the parapet walls of an existing Hampton Inn. He reviewed the petition, noting that there would be no ground disturbance and that the equipment would be concealed from view using material matching the existing parapet. He said the need was to address a gap in service to targeted areas along Route 16, Woodbury Avenue, and surrounding businesses and that Verizon would monitor and maintain the equipment. He reviewed the special exception criteria and said they would be met.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Vice-Chair Johnson moved to **grant** the special exception, and Mr. Mulligan seconded.*

Vice-Chair Johnson said it was a small request and wouldn't be seen from a public way. He said granting the special exception would pose no hazard to the public or adjacent properties on account of potential fire, explosion, release of toxic materials and so on because there was nothing driving any concerns about fire, and the equipment would be on the exterior of the building. He said there

would be no detriment to property values in the vicinity or change in the character of the neighborhood because it wouldn't been seen and operationally wouldn't have a lot of noise or anything airborne or bright lights, and so on. He said the traffic safety hazard was a non-issue. He said granting the special exception would pose no excessive demand on municipal services because it would have the opposite effect of boosting a municipal service or something similar to it. He said there would be no increase of stormwater runoff. He concluded that only a few of the criteria were really affected and that the others were only minimally affected.

Mr. Mulligan concurred and added that it was a very passive use that wouldn't present itself to the public or neighboring properties unless they already knew it was there. He said he didn't see any detriment to property values or creation of a traffic safety hazard and agreed that it would be a decrease on demand for municipal services. He said the project met all the criteria.

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

6) Petition of **Andrew S. Bridges, Owner**, for property located at **10 Fairview Drive** wherein relief was needed from the Zoning Ordinance for construction of a 10 x 12 shed which requires the following: A Variance from Section 10.573.20 to allow a 3' rear and a 3' side yard where 8.5' is required for both. Said property is shown on Assessor Map 219 Lot 18 and lies within the Single Residence B (SRB) District.

Vice-Chair Johnson recused himself from the petition, and both alternates took voting seats.

SPEAKING TO THE PETITION

The applicant Andrew Bridges was present and reviewed the petition, noting that there was a big slope in the middle of the backyard and that he didn't want to use the level portion for the shed.

Mr. McDonell asked if the applicant's shed would line up well with the two neighboring sheds. Mr. Bridges agreed and said his shed was bigger than the one at 12 Fairview Drive and slightly bigger than the one directly behind his house.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Parrott moved to **grant** the variance as presented, and Mr. Lee seconded.*

Mr. Parrott said it was a simple and straightforward petition and was in harmony with the rest of the neighborhood's sheds. He said granting the variance would pose no conflict with the purposes of the ordinance and no threat to the public's health, safety, or welfare because it was in character with the rest of the neighborhood. He said it would benefit the applicant because a shed was a logical solution to maintain yard and garden equipment. He said granting the variance would not diminish the values of surrounding properties because it would have no effect on the two abutting properties that had similar structures in similar locations on their lots and would not stand out as a detriment to other

properties in the neighborhood. He said the hardship was the grade of the property and that the chosen location was the most logical place to put a small shed. He said it would be tucked in the place with the least effect on the property and would not impinge on the yard, yet it would be offset three feet to allow access to its exterior for maintenance without affecting someone else's property. He said the proposal satisfied all the criteria and should be approved.

Mr. Lee concurred and had nothing to add.

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

7) REQUEST TO POSTPONE the Petition of the **Donna Pantelakos Revocable Trust, Owner** for property located at **138 Maplewood Avenue** wherein relief is needed from the Zoning Ordinance to create a new dwelling unit by constructing a second floor addition over an existing garage which requires the following; 1) A Variance from Section 10.521 to allow: a) a lot area per dwelling unit of 2,616 where 3,000 is required; and b) a 1' right side yard where 5' 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 124 Lot 6 and lies within the Character District 4-L1 (CD4-L1) District.

*It was moved, seconded, and passed by unanimous vote (7-0) to **postpone** the petition to a future meeting.*

III. OTHER BUSINESS

There was no other business.

IV. ADJOURNMENT

The meeting was adjourned at 10:00 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE**

Remote Meeting Via Zoom Conference Call

7:00 P.M.

MAY 26, 2020

MEMBERS PRESENT: Chairman David Rheaume, Vice-Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman

MEMBERS EXCUSED: John Formella

ALSO PRESENT: Peter Stith, Planning Department

Chairman Rheaume requested that Petition #2, 268 Dennett Street, be taken out of order to be postponed.

It was moved, seconded, and passed by unanimous vote (7-0) to take Petition #2 out of order.

(See Petition #2).

I. PUBLIC HEARINGS – NEW BUSINESS

1) Petition of **Barry & Martha White, Owners**, for property located at **83 Rockingham Avenue** wherein relief was needed from the Zoning Ordinance to demolish existing structures and construct new single-family dwelling which requires the following: A Variance from Section 10.521 to allow a lot area and lot area per dwelling unit of 14,258 where 15,000 is required for each. Said property is shown on Assessor Map 236 Lot 20 and lies within the Single Residence B (SRB) District.

Alternate Ms. Eldridge took a voting seat.

SPEAKING TO THE PETITION

Attorney Derek Durbin representing the applicant reviewed the petition. He stated that the property had a single-family home with a detached garage and that the owner wanted to demolish the existing house and build a new one. He reviewed the criteria, noting that a special condition of the property was that it was originally a conforming lot but the southwest corner was conveyed to the State in the 1960s, so the home was relocated to its existing location and the property became nonconforming.

Mr. Mulligan asked when the existing home was built. Attorney Durbin said it was built in the 1950s, so it pre-dated the conveyance to the State. Chairman Rheaume said it seemed odd that the State felt they had to clip off the corner of the lot. Attorney Durbin said utilities ran through the area but that he didn't know the reason why the corner was cut off.

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

Mr. McDonell said the request was straightforward and that he didn't think the corner issue mattered because the house's reconstruction was in an existing nonconforming lot. He said granting the variance would not be contrary to the public interest or to the spirit of the ordinance. He didn't see anything that would alter the essential characteristics of the neighborhood or cause injury to the public's health, safety, or welfare. He said the existing single-family home on an existing and almost completely conforming lot would remain that way. He said substantial justice would be done because the benefit to the applicant would outweigh any benefit to the public, noting that it was a clear benefit to the applicant or they would not tear down the house and rebuild. He said granting the variance would not diminish the values of surrounding properties and that placing a new house would likely increase them by increasing the value of the new structure. He said the special condition of the lot that distinguished it from others was the fact that it was an existing nonconforming lot due to the State taking it, and there was no fair and substantial relationship between the general purposes of the ordinance and the application of its provisions to the property. He said it was a single-family home and would remain that way, and he thought the variance should be granted.

Vice-Chair Johnson concurred, adding that the house was based on the time it was built, and its size, scale, and appearance had helped define the character of the neighborhood. He said the only physical change experienced by the public would be a more modern house in the same scale.

Chairman Rheaume said he would support the motion, noting that the only reason the petition was before the Board was because the State chose for some reason to clip a corner of the lot. He said anyone looking at the lot would not know that it was undersized.

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

2) Petition of **Michael Petrin, Owner**, for property located at **268 Dennett Street** wherein relief is needed from the Zoning Ordinance to demolish the right side portion of house and reconstruct new addition which requires the following: 1) A Variance from Section 10.521 to allow a 0' right side yard where 10' 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 143 Lot 13-1 and lies within the General Residence A (GRA) District.

Chairman Rheaume recused himself from the vote, and Vice-Chair Johnson assumed his seat as Acting Chair. Alternates Ms. Eldridge and Mr. Hagaman took voting seats.

Acting Chair Johnson read the petition into the record. He asked the applicant's representative Attorney Derek Durbin why the applicant wanted the petition postponed. Attorney Durbin said he received a letter late that day from the attorney representing the abutter to the right of the property that questioned the scope of a maintenance easement. He said his client opted to postpone the petition so that he could discuss the issue with the abutter.

*Mr. Hagaman moved to **postpone** the petition to the June 16, 2020 meeting, and Ms. Eldridge seconded.*

Mr. Hagaman said the Board typically looked kindly on an initial motion to postpone, and in that instance it was especially important, given that the applicant was trying to work with an abutting neighbor. Ms. Eldridge concurred and had nothing to add.

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

3) Petition of **Stacey & Philip Gibson, Owners**, for property located at **48 Hillside Drive** wherein relief was needed from the Zoning Ordinance for the keeping of chickens including a Special Exception from Section 10.440 Use #17.20 to allow the keeping of farm animals where the use is permitted by special exception. Said property is shown on Assessor Map 231 Lot 32 and lies within the Single Residence B (SRB) District.

Alternate Mr. Hagaman took a voting seat.

SPEAKING TO THE PETITION

The owners Stacey and Philip Gibson were present to speak to the petition. Ms. Gibson said they wanted to rent two hens for the summer and early fall only, and that there would be no roosters. She said the coop was small and wasn't a permanent structure and was located in the backyard 25 feet from the other property lines. She reviewed the special exception criteria and said they would be met. She noted that the chickens were delivered two weeks earlier.

Chairman Rheaume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Karen Solomonides said she was an abutter and in favor because there would be no roosters.

Mr. Stith said the Board received letters from three other abutters who were in favor.

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

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

DECISION OF THE BOARD

*Vice-Chair Johnson moved to **grant** the special exception as presented, with the following stipulation:*

- *That the hens number no more than six, and that there be no roosters.*

Mr. Hagaman seconded.

Vice-Chair Johnson stated that the Board tended to approve that type of application as long as the applicant met a few criteria. He said he saw no issue with the petition, noting that the feedback from previous applicants requesting chickens had met the Board's standards and that the requests were reasonable and met the criteria. He said chicken coops were permitted by special exception and would pose no hazard to the public or adjacent properties on account of fire, toxic materials, and so on. He pointed out that there could be an argument about toxic materials if the chickens were a larger quantity, but there was no issue with two chickens. He said granting the special exception would pose no detriment to property values in the vicinity or change in the essential characteristics of the area on account of noise, odor, dust, and so on. He said the standard quantity of six chickens with no roosters was something that didn't tend to affect neighborhoods negatively in terms of odor and sound disturbance and that the request for two chickens was small and would only be for two seasons. He said granting the special exception would not create a traffic or safety hazard, pose no excessive demand on municipal services, or cause significant stormwater increase. He said the petition should be approved.

Mr. Hagaman concurred and had nothing to add.

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

4) Petition of **Borthwick Forest, LLC, Owner**, for property located at **0 Islington Street** wherein relief was needed from the Zoning Ordinance for installation of a monument sign which requires the following: A Variance from Section 10.1253.10 to allow a 3.6' setback for a monument sign where 20' is required. Said property is shown on Assessor Map 241 Lot 25 and lies within the Office Research (OR) District.

Mr. Hagaman returned to alternate status, and Ms. Eldridge took a voting seat.

SPEAKING TO THE PETITION

Attorney Justin Pasay representing the applicant was present, as well as the project engineer Patrick Crimmins. Attorney Pasay said the applicant needed signage to identify the new medical building. He said the property had a new private road called Eileen Dondero Foley Avenue,

which sloped up so that the new building or sign couldn't be seen from Borthwick Avenue. He said a berm would also obstruct the building and sign from view. He noted that the multi-use path caused twenty feet of the driveway to be constructed in the right-of-way, so the sign had to be located where it could be seen. He reviewed the criteria and said they would be met.

Chairman Rheume said the exhibit had several lines that looked odd, and it was discussed. Attorney Pasay said the thickest line was the front lot line and looked like it was 15 feet away from the paved portion of the new road, and the front lot line showed the relief sought.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Mulligan moved to **grant** the variance as presented and advertised, and Mr. Lee seconded.*

Mr. Mulligan said it was an interesting project in that it was a blank slate that the applicant was drawing upon, but he thought the applicant made a good argument as to why the strict application of the 20-ft sign setback was not warranted. He said granting the variance would not be contrary to the public interest or to the spirit of the ordinance, noting that trying to characterize the essential characteristics of the neighborhood was difficult because it was brand new and a neighborhood unto itself, so he didn't see how any relief would alter its essential character. He said the sign's placement was well thought out and would enhance the public's health, safety, or welfare because it would be easier to identify the facility's location. He said granting the variance would do substantial justice because the loss to the applicant if the Board were to require strict compliance with the ordinance would not be outweighed by any gain to the public. He noted that there was an artificial setback due to the multi-use path, and if the Board were to add a full 20 feet onto that, it would likely be less conducive to identifying the property from the vehicular-travelled way and would result in a loss to the applicant and no positive gain to the public. He said granting the variance would not diminish the value of surrounding properties because the development was off by itself on a large lot, and there were similar types of signage for similar uses in the immediate vicinity that had not negatively impacted the values of those surrounding properties. Relating to hardship, he said the special conditions of the property was its large size and the fact that it was isolated from other developments. He said that the way the approach and driveway sat in relation to some of the other topography, especially the berm that would impact the site lines, made it more feasible to bring the signage closer to the traveled way. He said they were all special conditions that distinguished the property from others and that there was no fair and substantial relationship between the purpose of the setback ordinance and its application to the property. He said one had to have signage for that type of commercial use, so it was a reasonable use and met all the criteria.

Mr. Lee concurred and had nothing to add.

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

5) Petition of **James E. Gould, Owner**, for property located at **246 Thornton Street** wherein relief was needed from the Zoning Ordinance to un-merge two lots and construct a single-family dwelling on the vacant lot which requires the following: For lot 23: Variances from Section 10.521 to allow: a) 61' feet of continuous street frontage where 100' is required; b) a 4' left side yard where 10 feet is required; c) lot area of 7,183 sq. ft. where 7,500 is required; and d) lot area per dwelling unit of 3,591 where 7,500 is required. For lot 25: Variances from Section 10.521 to allow: a) 60.61' of continuous street frontage where 100' is required; b) a 6' left side yard where 10 feet is required; c) 26% building coverage where 25% is the maximum allowed; d) lot area and lot area per dwelling unit of 7,161 where 7,500 is required for each.. Said property is shown on Assessor Map 161 Lot 7 and lies within the General Residence A (GRA) District.

Ms. Eldridge returned to alternate status, and Mr. Hagaman took a voting seat.

SPEAKING TO THE PETITION

Attorney Derek Durbin representing the applicant was present, as well as the project architect Jennifer Ramsey and project engineer John Chagnon. Attorney Durbin reviewed the petition, noting that the property had two involuntarily-merged lots, of which Lot 23 had a house and Lot 25 was vacant. He said the applicant wanted to build a single-family home on Lot 25. He pointed out that the left yard setback relief was for a bulkhead and that they tried to bring the two-car garage into compliance but couldn't due to the constraints of the lot. He noted that the abutter to the right submitted a letter in support of the project.

Mr. Mulligan asked where Attorney Durbin was in the process of restoring the lots to their pre-merged status. Attorney Durbin said they were seeking the zoning relief before going to the City Council. Mr. Mulligan said there was therefore a possibility that the Board could grant the relief but that the City Council would not restore the lots. Attorney Durbin agreed but said there was no indication that they would not restore the lots, noting that it was a merger by right and that he was confident that it would be approved. Mr. Mulligan said he struggled with it procedurally because the Board was dealing with two separate lots and he wondered how they would grant relief based on the size of the lots, seeing that they didn't yet exist as far as the City was concerned. Attorney Durbin said it was the same situation as a subdivision.

Mr. Hagaman said one of the requests could be eliminated if the bulkhead was in a different location. He asked if alternative locations had been considered. Attorney Durbin said the back of the building itself was considered but the bulkhead would access an unfinished portion of the basement. He said they had been on the cusp of whether or not to ask for the relief for the bulkhead and that they still were not sure, but it would probably depend on the grading of the property. He said it was easier to apply for the relief than not to.

Vice-Chair Johnson said the Board normally didn't see that much of a developed plan for the house when they got subdivision requests for a vacant lot. He asked whether the presented design would be the one that would be built. Attorney Durbin said they had worked on that design for

quite a while and thought it was better to show it to the Board so that the Board could get a true sense of how the property would be developed.

Chairman Rheume said the requested one percent relief was just one percent of lot coverage, and he asked if the applicant could find a way to get rid of it because the bulkhead might not be required. He said he was concerned that it was one percent this time, but next time it could be two percent or five percent. He wanted to ensure that the applicant had done their due diligence. Attorney Durbin said the benefit to the applicant was to provide the enclosed space for two vehicles that would also address any off-street parking concerns.

Chairman Rheume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Nelly Parkington of 592 Dennett Street said she lived around the corner and wasn't concerned about on-street parking because she didn't think it would alter the neighborhood's characteristics. She said she was pleased that something would finally be done with the vacant lot and thought it would increase her property's values.

(Note: Ms. Parkington originally mistakenly spoke during the Opposition section).

SPEAKING IN OPPOSITION TO THE PETITION

Glen Meadows of 245 Thornton Street said he lived across the street and was opposed for two reasons, the street parking and site drainage. He said the property had been rented out to four adults previously and that there were two cars on the street at any given time, so he felt that the availability of on-street parking would be lessened with the new curb cut and double-wide driveway and would change the neighborhood's character. He said the previous owner also had issues with site drainage, noting that the area was flooded during severe rainstorms. He said he wanted the City to conduct a site review showing that the design of the stormwater infiltration system behind the home would not exceed its capacity.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Project Engineer John Chagnon said the prepared plans included a conceptual drainage plan that would work well. He explained that there were currently a few basins that infiltrated water below the surface and that sometimes the coverage might get clogged, which would keep water ponded for longer periods. He said the lot drained well enough so that it was not a wetland and that they would introduce an area where the roof runoff could be moved and infiltrated into the soil. He said the proposed grades were such that the water would move from the front right curved wall, and the second wall would be higher up so the ground would slope to the top of the first wall, which would allow water to flow from the house and toward the back. He said they would not create any holes, although the drawing seemed to indicate that they would.

Mr. Meadows said it looked like there were spot grades on the new curb curve.

Mr. Chagnon said the grades came from the home and dropped one foot and one and a half inches from the top of the new 2-ft high wall. He said there was 1'3" in grade change from the new grade to the top of the existing wall on the street side, and that the 34.5' measurement was the existing back side of it which would be filled, so the front wall would sort of disappear.

Mr. Meadows said he still wanted the Board's feedback on the possibility of a site review for the drainage around the area of the stormwater infiltration system because he was concerned about runoff onto the abutting property on Dennett Street.

No one else was present to speak, so Chairman Rheame closed the public hearing.

DECISION OF THE BOARD

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

Mr. Parrott said he was glad that all the parties recognized the issue of stormwater drainage and runoff, noting that it was important because it was a small, tight lot that didn't have a lot of extra space, so there had to be an engineered solution that would not adversely affect adjacent lots. He said he believed that Mr. Chagnon's firm had addressed the issue and come up with a reasonable approach. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because a single-family house was located on a previously-existing and perhaps to-be-created new lot and the house had been designed to fit the lot. He said it would not alter the essential characteristics of the well-established residential neighborhood and nothing would impact the public's health, safety, or welfare. He said it would do substantial justice because the balancing test was whether there would be a benefit to the public if the project was denied, which he didn't see, and he thought there would be a harm to the applicant if the potential for a new house were to be denied. He said granting the variances would not diminish the values of surrounding properties, noting that there was no testimony other than the one about the drainage issue that an additional house built to modern standards would negatively affect other homes and would probably have a positive effect. Relating to the hardship, he said the proposed use was a reasonable one and that it was hard to make a judgment as to whether there was any relationship between the purpose of the ordinance and its specific application to the property because the property was a blank slate for what was a vacant lot and he didn't think the Board could argue that, so he thought the criterion was met. He noted that the Board had some information about the engineering that was already done on the site for stormwater and that the issue would be part of the development process, so he was satisfied that all the criteria were met.

Mr. McDonell concurred. He said the location of the existing structure was driving the side yard setbacks, which was another special condition. He said it was a large lot, and he noted that one Board member made the point that one could probably get away with a little less relief than what was requested, particularly the building coverage that was just one percent over what was allowed, but he thought the applicant's representative articulated the reasons for the proposal and that it was reasonable. He said the only thing left was the street frontage and lot area, which were driven by the unmerging, and he didn't think that was the Board's call to make. He said it was a blank slate in a way but a lot of what was driving the relief request was the location.

Mr. Mulligan said he would support the motion, even though he was hesitant about approving a variance based on a plan to restore involuntarily-merged lots that had not yet occurred, but if the applicant was willing to roll the dice with the City Council, he didn't believe that the requested relief was anything extraordinary, should those lots get restored to that status. He said if the lots didn't get restored and they retained their pre-merger status, he wouldn't look at a proposed subdivision the same way, but given that the applicant knew it was the first step in the process and that the City Council had to decide, he didn't think it was a lot of relief requested.

Chairman Rheume said he would support the motion. He said the Board was generally the first land board that applicants started with because it was more straightforward and the applicant either got the approval or didn't. As far as the unmerged lot, he said the Board always preferred that new construction be fully compliant with the zoning ordinance, but he understood the bulkhead issue. He said he thought the bulkhead could be moved and understood that the lot was small, the dwelling wasn't extremely large, and that having a two-car garage was not excessive, but he didn't think it was worth making the applicant rework everything for a one percent relief. He said there was validity to the abutter's concerns about drainage but thought the applicant had done a fair amount of engineering and would ensure that changes would be made if any errors caused a problem with an abutting property, so he didn't think the extra step of having it submitted to the City for site review would help.

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

6) Petition of Salema Realty Trust, Owner, for property located at **199 Constitution Avenue** wherein relief was needed from the Zoning Ordinance for construction of a multifamily dwelling containing 40 - 70 dwelling units in a zone where residential uses are not permitted which requires the following: A Variance from Section 10.440 Use #1.53 to allow more than 8 dwelling units where the use is not permitted in the district. Said property is shown on Assessor Map 285 Lot 16 and lies within the Industrial (I) District.

Mr. Hagaman returned to alternate status, and Ms. Eldridge took a voting seat.

SPEAKING TO THE PETITION

Attorney Justin Pasay was present on behalf of the applicant to review the petition. Project architect John Chagnon was also present.

Attorney Pasay said the goal was to fill a significant need for housing stock in Portsmouth that was consistent with the Master Plan, would help lower-income individuals, provide access to public transportation, and would provide a reasonable return for the applicant. He referenced the Staff Memo that put a cap on the number of units, and he said the basis of the 40-70 unit building was a placeholder and that his client would be happy with a conditional approval to build four stories with a maximum of 60 units. He noted that the applicant originally got approval for an industrial building that didn't require any variance relief, but he had decided that it would be expensive to build and that he wouldn't get much of a return on it financially, so he switched to a residential building. Attorney Pasay reviewed the criteria in detail and said they would be met.

Mr. Hagaman asked if there were any public transportation stops near the building and if the applicant had considered workforce housing for the project. Attorney Pasay said he wasn't aware of any public transportation stops but said the owner also owned two industrial buildings that housed commercial entities and also owned other businesses around Portsmouth, some of which were within walking distance of public transportation, job opportunities, and so on. He said they had discussed workforce housing and that their goal was to provide housing that was consistent with the affordable type of workforce housing statutes but not anything that would comply with challenging procedural items. He said his client wasn't building workforce housing as a means to earn a living but would provide reasonable housing for people, including his own employees.

Mr. Hagaman said Attorney Pasay referenced a few other developments that were more tied in with businesses surrounding them, and he asked what measures the client was taking to tie in the proposed project and make it feel more residential as opposed to a misfit island among all the industrial uses. Attorney Pasay said his client had to go through the planning and review processes, but for now it was a concept that would activate the commercial corridors along Lafayette Road, like the Master Plan intended to do, and also accommodate the surrounding needs. He said the building would be attractive and viable and noted that the Planning Board would vet some of the specifics about the site itself.

Mr. McDonell said the applicant had stated that the property couldn't reasonably be used in strict conformance with the ordinance regarding hardship, and he asked why the applicant's financial argument was used as reasoning for not being able to do so. Attorney Pasay asked if the question meant the law in general. Mr. McDonell said he meant the law in general and whether the applicant had seen that financial argument applied in another case. Attorney Pasay said when the shift in the law happened back in 2010, a new standard was added, and his client endured the expense of trying to use the property consistent with the ordinance, but the expense of drainwater and stormwater remediation was so much that he couldn't make it work. He said he didn't have a specific case to cite but knew that there were several similar cases that made for a hardship.

Mr. McDonell said he thought it was something inherent in the property rather than the financial aspect of it. He also remarked that Attorney Pasay referenced the south development in his presentation, and he asked if there were similar residential facilities in the area, noting that he hadn't seen any. Attorney Pasay said there weren't any to the north of the project, but to the south were Patriot Park Apartments and residential areas. He said Walmart was in the G1 zone. He said when one considered the area at large and the proximity of the property to Lafayette Road, there were residential uses in the general area. He said the concept was to incorporate the mixed-use nature of what the Master Plan talked about in the G1 District. Mr. Chagnon said the Southgate Plaza was in close proximity and that it also had the Veridian apartment building behind the first row of retail buildings that blended in well and was very successful.

Mr. Parrott said he didn't understand the difference between the applicant not being able to create an industrial building in an industrial zone and then building a structure that was the same size but for residential use in the zone. Second, he wondered if the applicant considered convincing the City Council that the parcel was zoned incorrectly. He asked why the parcel would support a large apartment building but not an industrial building of the same size. Attorney Pasay said the industrial building wasn't built because it didn't justify the expense of a

million dollars for drainage construction on the property. He said it could be justified with an apartment building, even with modest rents coming in. As far as going before the City Council to petition for rezoning, he said it was a unique case because it was a property that had two industrial buildings, and if they were to rezone it or redevelop it, there might be a lot of required relief down the road. He said it made more sense to pursue the variance relief. Mr. Parrott said the applicant could go for a re-subdivision and a rezoning of the newly-created lot.

Ms. Eldridge agreed with Mr. Parrott. She said Lafayette Road was full of successful commercial properties. She said there might be tradeoffs if it were workforce housing, but she wasn't convinced that there was a hardship. Attorney Pasay said those buildings were permitted at different times when costs were different, and lots of money was spent by his client on engineering and approvals, only to conclude that once the bids came in, especially for drainage, it wasn't viable. Ms. Eldridge asked whether the drainage costs for a commercial building would be much greater than a 70-unit apartment building. Attorney Pasay said that it came down to the return on investment, and the standards for stormwater had become much more stringent.

Chairman Rheume asked if there were any restrictions in the easement part of the plan for gaining access to the development via Walmart, noting that there were different needs for traffic flow than a residential apartment building, and whether those easements would prevent the applicant from developing the property. Attorney Pasay said they had discussed it with Walmart and were comfortable that the easements would be sufficient to provide the access they needed. He noted that it would be vetted at the Planning Board stage. Chairman Rheume agreed but said there were a lot of potential uses in the industrial zone for something different than a not-permitted use for residents. Attorney Pasay said the legal argument was that the standard for hardship was based on whether the special circumstances of the property made it so that the zoning ordinance wasn't just or reasonable. He said they had outlined why that was the case. He said he wasn't sure what other types of activity could be permanent in the area and wasn't sure if his client had analyzed different concepts. He said the standard was not whether something else could be put there but whether the specific conditions of the property made the application of the zoning ordinance reasonable. He said they concluded that it did constitute a hardship.

Chairman Rheume said Attorney Pasay implied that complying with workforce housing was onerous but not impossible and that his client was not an experienced developer, but he said a 60-unit development was in the big league of developers. He asked if the applicant had considered workforce housing. Attorney Pasay said they had discussed it but decided not to. He said it didn't mean that it would not be considered in the future, but the current proposal would provide rental housing in a manner consistent with the Master Plan in providing housing to an array of people who might not otherwise have access to it.

Chairman Rheume opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION OR IN OPPOSITION TO THE PETITION

No one spoke in favor or opposition.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Pasay phoned his client Mr. Salema to see if his perspective had changed after listening to the Board's discussion. He said Mr. Salema stated that the expense of building the industrial building would have been two million dollars and there was no way in the current market to make the math work between all the costs, including the cost of the infrastructure, and the revenue generated.

No one else spoke, and Chairman Rheame closed the public hearing.

DISCUSSION OF THE BOARD

Ms. Eldridge said she could not support the petition because it went against everything she understood about what the definition of hardship was. She said it wasn't like the property had too many wetlands or was too narrow, it was simply that the applicant had tried to build an industrial building and it wouldn't work, so he wanted to build a residential building. She said she didn't see not being able to make money as a hardship. Mr. Mulligan said he didn't know if he could make a convincing argument for hardship as well. He said the Veridian complex was close by and worked well, and he could see why a similar use could thrive in that location because it had access to a lot of the same things, but he struggled with what the unnecessary hardship was. He said he didn't think it was a bad project, but he was on the fence as to what the downside of approving the project would be. He said he didn't think the Board would see a glut of 60-unit apartment buildings going up in the Industrial District, but he agreed that the financial and return-on-investment arguments were not persuasive. He said the project did fill a housing need and could improve as it went through the site approval process, but the hardship was difficult to articulate.

Chairman Rheame said he could not support granting the variances because, in addition to the hardship criteria, mostly everything the Board had heard was financial, based on one option the applicant had tried and wasn't successful in doing. He said there were a number of potential uses in the industrial zone that could have been looked at, and the threshold was higher than just looking at 'one and done'. He said the petition also failed on the public interest and spirit of the ordinance and the general characteristics of the neighborhood. He said he didn't see anything that indicated that the project was something that would fit, where the ordinance said it would not fit. He noted that there were no other residential areas really close, except for the Veridian complex that was on a parcel zoned for the Gateway District. He said the Veridian had offered numerous advantages that made sense to the Planning Board, in that it was in a walkable community that offered a cinema, coffee shops, restaurants, shopping and so on. He said one could live there and not have to drive anywhere, while the applicant's development was walkable only to Walmart and was more of a complex where people would have to drive to everything. He said the applicant's building would abut a gateway district that happened to extend far back into the industrial zone because the Walmart store occupied a lot of the area, but it was really much deeper and farther away from the central hub. He said that previous applications had something close by that made the Board think it was the wrong kind of zoning, but he wasn't seeing that in this instance. He said there was an opportunity for the applicant to

get relief, but what the Board was asked to do was a legislative function of rezoning that portion of the property. He said there were possibilities of doing something in breaking off that portion of the larger property, like going through the Planning Board and the City Council and making the argument to potentially rezone it, but he said it was too much of a stretch for the Board. He said the project was just too far away, not promoting anything pedestrian, and completely surrounded by industrial buildings, so he could not support it.

DECISION OF THE BOARD

*Mr. Parrott moved to **deny** the application, and Mr. Lee seconded.*

Mr. Parrott stated that all five criteria had to be satisfied. He said the project was contrary to the public interest and conflicted with the explicit and implicit purposes of the ordinance. He said the purpose of industrial zoning, which made it some of the most valuable property in the City, was to provide opportunities to create jobs by making structures, stores, or manufacturing facilities and that the project would not do that. He said it would also alter the essential characteristics of the neighborhood because it would not be surrounded by residential properties but by commercial properties on a commercial street in part of the industrial zone set up by the City to encourage businesses, not housing. He said that, regarding the hardship and the special conditions of the property that distinguished it from others in the area, there was nothing special about the property because it was similar to nearby properties and was part of a larger property that had industrial properties on it. He said it wasn't something that satisfied the basic underlying condition of having special conditions that distinguished it from others in the area, so that criterion was not satisfied. He said all those reasons were sufficient to support the argument that the project did not meet the zoning ordinance requirements for granting a variance.

Mr. Lee concurred and had nothing to add.

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

III. OTHER BUSINESS

There was no other business.

IV. ADJOURNMENT

The meeting was adjourned at 10:07 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: June 9, 2020
RE: Zoning Board of Adjustment June 16, 2020 Meeting

OLD BUSINESS

1. 138 Maplewood Avenue
2. 268 Dennett Street - Withdrawn

NEW BUSINESS

1. 105 Thornton Street
2. 1163 Sagamore Avenue Unit 20
3. 0 Falkland Way (off Albacore Way & Saratoga Way)
4. 115 Heritage Avenue
5. 77 Meredith Way

OLD BUSINESS

1.

Petition of the **Donna Pantelakos Revocable Trust, Owner** for property located at **138 Maplewood Avenue** wherein relief is needed from the Zoning Ordinance to create a new dwelling unit by constructing a second floor addition over an existing garage which requires the following; 1) A Variance from Section 10.521 to allow: a) a lot area per dwelling unit of 2,616 where 3,000 is required; and b) a 1' right side yard where 5' 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 124 Lot 6 and lies within the Character District 4-L1 (CD4-L1) District.

Existing & Proposed Conditions

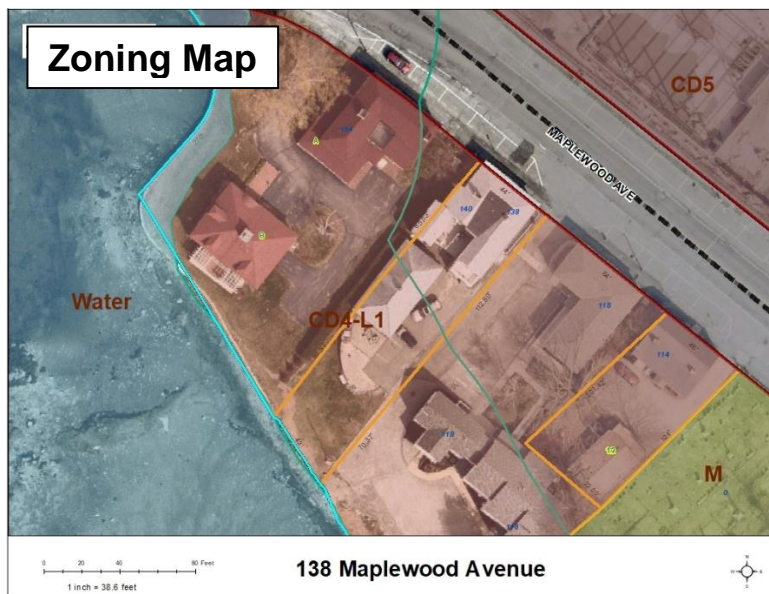
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two family	Garage addition/3 dwelling units	Primarily mixed residential uses
<u>Lot area (sq. ft.):</u>	7,850	7,850	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,925	2,616	3,000 min.
<u>Front Yard (ft.):</u>	0	0	15 max.
<u>Right Side Yard (ft.):</u>	1	1	5' min to 20' max.
<u>Left Side Yard (ft.):</u>	10	10	5' min to 20' max.
<u>Rear Yard (ft.):</u>	68	62	5 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u> :	39	41	60 max.
<u>Open Space Coverage (%)</u> :	32	32	25 min.
<u>Parking</u>	6	6	4
		Variance request shown in red.	

Other Permits/Approvals Required

Historic District Commission

Planning Board/TAC – Site Review

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing to add a third dwelling unit to the property by constructing a second floor addition on the existing garage which includes a rear addition onto the garage. The garage sits approximately 1' from the property line on the right side. The applicant postponed in May to work with acquiring a no-build area from the adjacent property. The applicant has indicated they have a signed no-build area agreement with the abutter, but at the time on writing this staff report it was not available to staff.

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 special conditions 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.

NEW BUSINESS

1.

Petition of **Joseph & Jessica Denuzzio, Owners**, for property located at **105 Thornton Street** wherein relief is needed from the Zoning Ordinance to demolish existing greenhouse and construct new shed addition which requires the following: 1) A Variance from Section 10.521 to allow a) a 2' front yard where 15' is required; and b) 49% building coverage where 25% 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 159 Lot 18 and lies within the General Residence A (GRA) District.

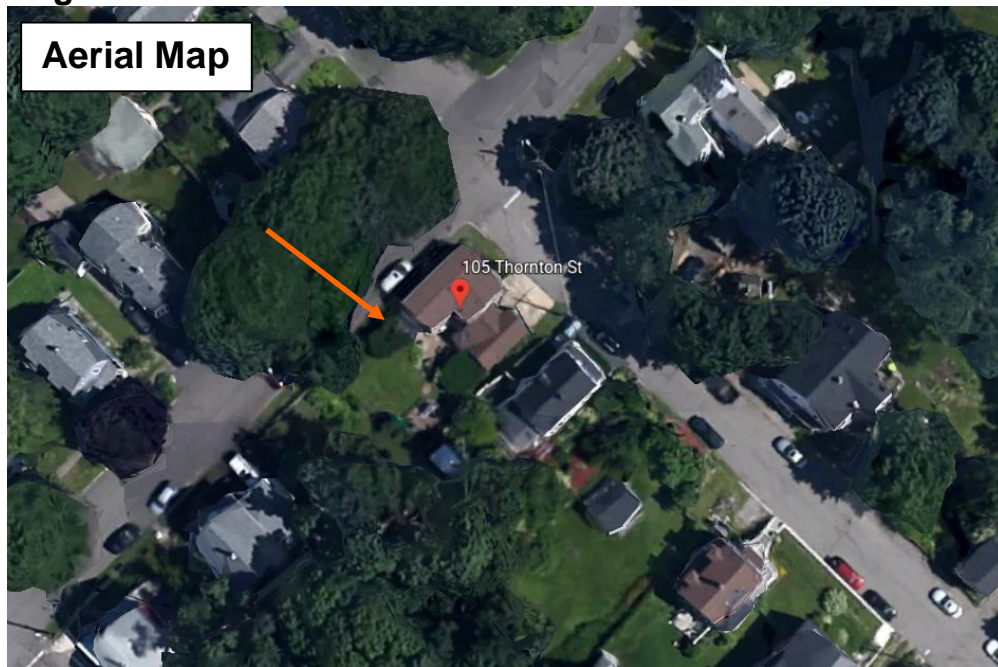
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Reconstruct attached shed	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	3,920	3,920	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,920	3,920	7,500 min.
<u>Street Frontage (ft.):</u>	126	126	100 min.
<u>Lot depth (ft.):</u>	50	50	70 min.
<u>Primary Front Yard (ft.):</u>	1 (house)	2 (Shed)	15 min.
<u>Secondary Front Yard (ft.):</u>	+/-1	+/-1	15 min.
<u>Right Side Yard (ft.):</u>	30	30	10 min.
<u>Rear Yard (ft.):</u>	5	5	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	33*	33*	25 max.
<u>Open Space Coverage (%):</u>	65	65	30 min.
<u>Parking:</u>	2	2	1.3
<u>Estimated Age of Structure:</u>	1945	Variance request shown in red. *application indicated 49% but actual is approx. 33%.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing demolish the existing attached greenhouse and construct an attached shed in the same footprint. The application indicates a building coverage of 49% where 25% is the maximum allowed in the district. Without a surveyed plan for this project, the tax map and assessor's data was used to compute the coverage and setbacks. The setback on the site plan shows 2'4" for the shed, but the applicant is asking for a 2' front yard which will account for any discrepancies. The calculated building coverage based on the tax card resulted in approximately 32.5%, which is less than what was initially requested in the application. **If granted approval, staff would recommend the Board consider a stipulation that allows 33% building coverage.**

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 special conditions 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.

2.

Petition of **Timothy Whitaker, Owner**, for property located at **1163 Sagamore Avenue, Unit 20** wherein relief is needed from the Zoning Ordinance for construction of a 10' x 24' rear deck which requires the following: A Variance from Section 10.521 to allow a 7.5' rear yard where 15' is required. Said property is shown on Assessor Map 224 Lot 17-2 and lies within the Mixed Residential Office (MRO) District.

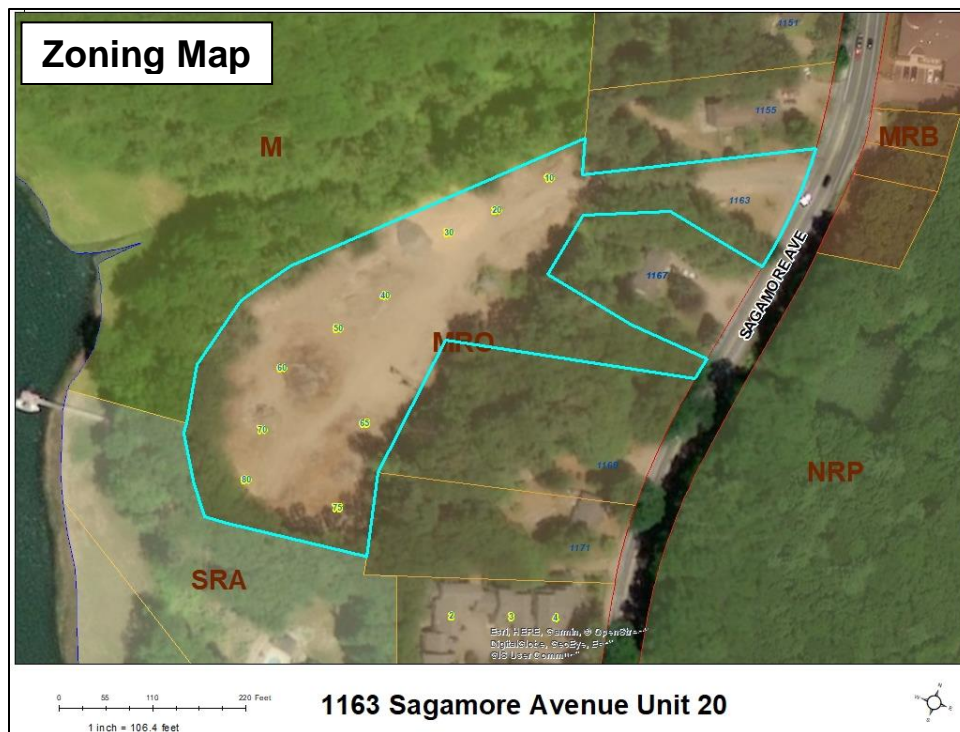
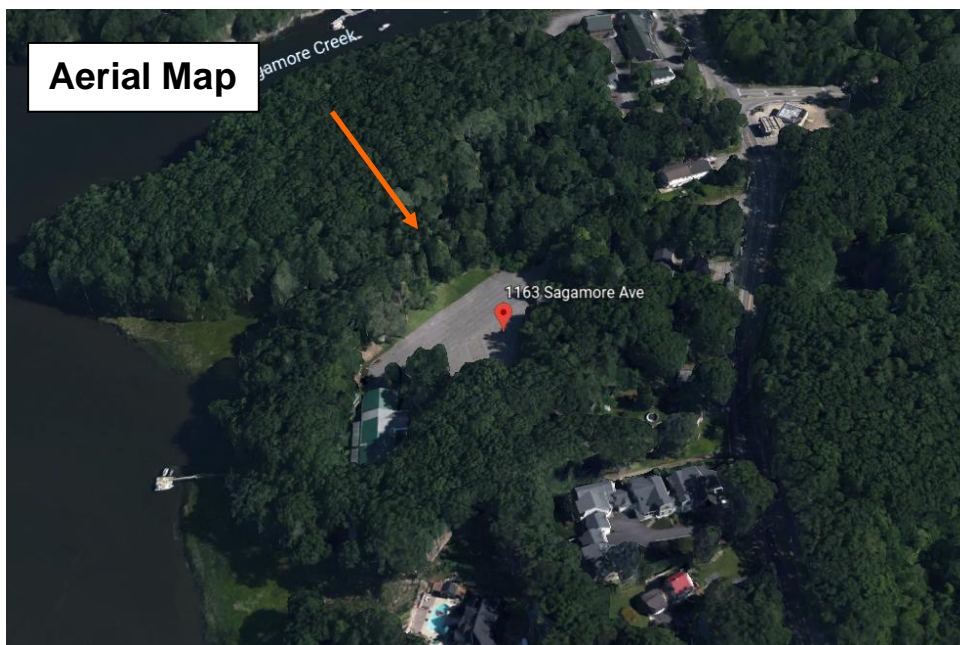
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	10 SFD condos	Construct rear deck	Primarily mixed Residential Office
<u>Lot area (sq. ft.):</u>	146,510	146,510	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	14,651	14,651	7,500 min.
<u>Street Frontage (ft.):</u>	192	192	100 min.
<u>Lot depth (ft.):</u>	430	430	80 min.
<u>Primary Front Yard (ft.):</u>	240	240	5 min.
<u>Left Side Yard (ft.):</u>	14	>10	10 min.
<u>Right Side Yard (ft.):</u>	>10	>10	10 min.
<u>Rear Yard (ft.):</u>	15	7.5	15 min.
<u>Height (ft.):</u>	<40	<40	40 max.
<u>Building Coverage (%):</u>	12	12	40 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking:</u>	ok	Ok	Ok
<u>Estimated Age of Structure:</u>	2018	Variance request shown in red.	

Other Permits/Approvals Required

No prior pertinent BOA history found.

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The property consists of 10 individual single family homes in a condominium development that was recently completed. The applicant is proposing to construct a

deck off the back of his unit which would encroach into the rear yard. The house was constructed just off the rear yard setback line at 17.5 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 special conditions 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 **Raleigh Way Holding Group, LLC, Owner**, for property located at **0 Falkland Way (off Albacore and Saratoga Way)** wherein relief is needed from the Zoning Ordinance to merge two lots and demo existing structures in order to construct a 4 unit multi family dwelling which requires the following: 1) A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,736 square feet where 5,000 square feet is the minimum required; and 2) A Special Exception from Section 10.440 Use #1.51 to allow 4 dwelling units where the use is allowed by a special exception. Said property is shown on Assessor Map 212 Lot 112 and lies within the General Residence B (GRB) District.

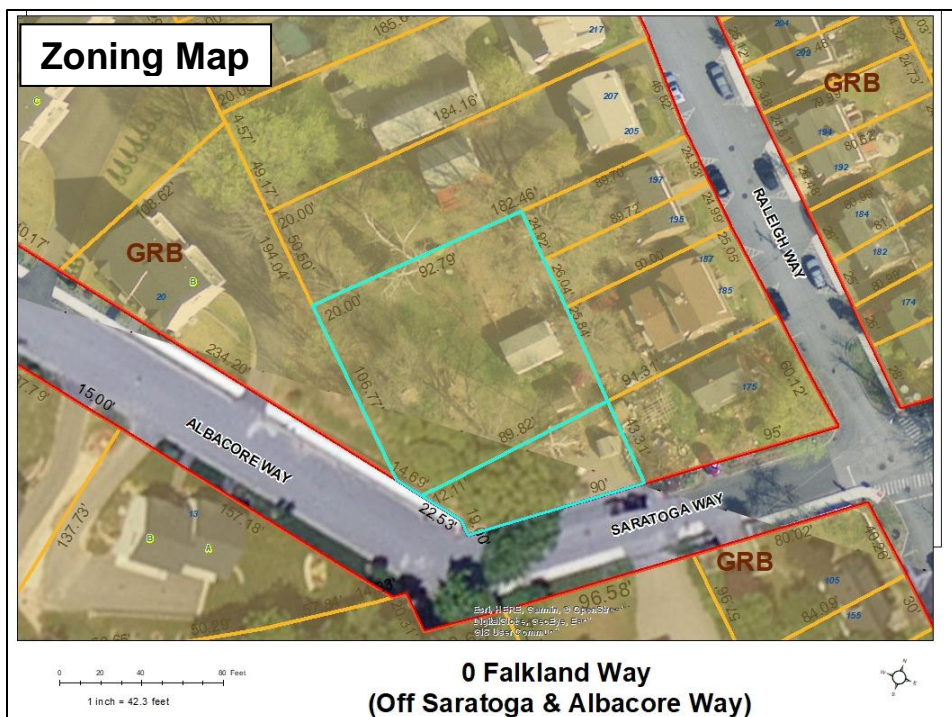
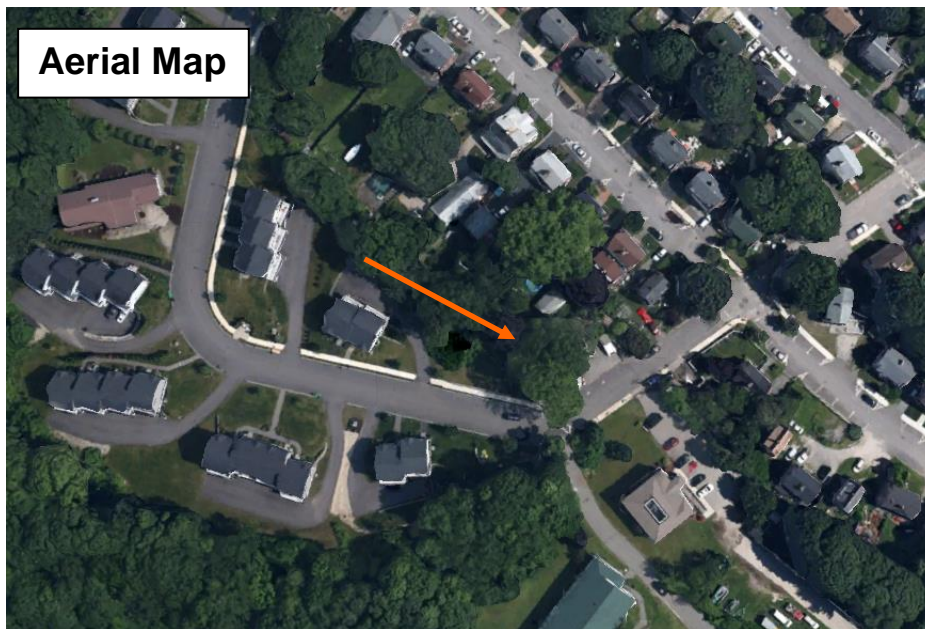
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two lots	Construct 4 unit dwelling	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	11,681; 3,263	14,944	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	3,736	5,000 min.
<u>Street Frontage (ft.):</u>	90	90	80 min.
<u>Lot depth (ft.):</u>	91	>100	60 min.
<u>Primary Front Yard (ft.):</u>	10	12	5 min.
<u>Right Side Yard (ft.):</u>	50	>10	10 min.
<u>Left Side Yard (ft.):</u>	50	10	10 min.
<u>Rear Yard (ft.):</u>	60	>25	25 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	3	28	30 max.
<u>Open Space Coverage (%):</u>	88	45	25 min.
<u>Parking:</u>	NA	8	6
	Variance/Special Exception requests shown in red.		

Other Permits/Approvals Required

TAC/Planning Board – Site Review

Neighborhood Context



Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing to merge the two lots, demolish the existing structure and construct a 4 unit multi family dwelling, which is permitted in this district by Special Exception. The proposed lot will be over 14,944 square feet where the district minimum is 5,000, resulting in a proposed lot area per dwelling unit of 3,736 square feet. The proposed building conforms to all other dimensional

requirements of the zoning district. If approved, site plan review will be required for this project.

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.*
 - 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.*
 5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions 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.*

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.*

4.

Petition of **RKW Investment Properties, LLC, Owner**, for property located at **115 Heritage Avenue** wherein relief is needed from the Zoning Ordinance to allow a place of assembly which requires the following: 1) A Variance from Section 10.440 Use #3.10 to allow a place of assembly where the use is not permitted in the district. Said property is shown on Assessor Map 285 Lot 5-1 and lies within the Industrial (I) District.

Existing & Proposed Conditions

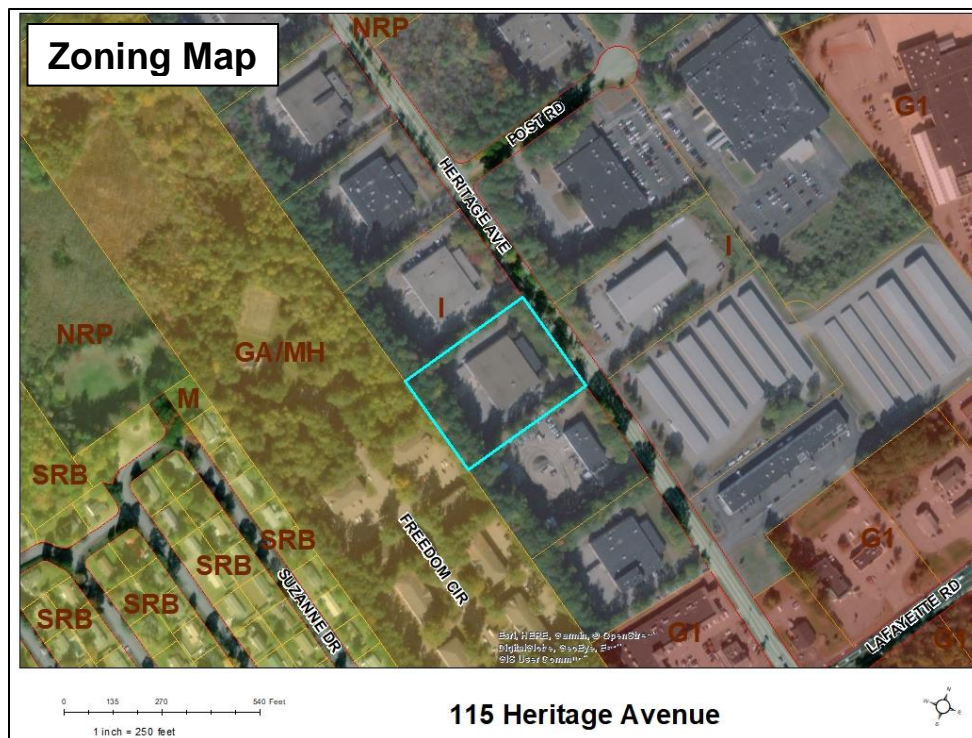
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant building	Religious place of assembly	Primarily industrial uses
<u>Parking</u>			TBD
<u>Estimated Age of Structure:</u>		Special Exception request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context





Previous Board of Adjustment Actions

February 15, 2011 – Variance granted from Section 10.592 of the Zoning Ordinance to permit a food processing facility within 500' of a residential district. This request was approved with the following stipulations:

- The applicant shall not store any materials outdoors;
- The applicant shall not operate the machinery while the rear doors are opened; and,
- The operation is limited to dry food missing and packaging. No other processing is allowed.

Planning Department Comments

The Salvation Army recently was before the Board and received approval for a place of assembly at 2222 Lafayette Road, however that arrangement fell through and they are seeking approval to locate on the subject property. A place of assembly is not a permitted use in any district and is allowed by special exception in some districts. In the Industrial district, it is not a permitted use. The Salvation Army ultimately wants to find a permanent location, and the proposal is for the subject property to be an interim location. They are proposing to use only 3,000 square feet of the building for this use.

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 special conditions 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.

5.

Petition of **Karen Dufour, Owner**, for property located at **77 Meredith Way** wherein relief is needed from the Zoning Ordinance to subdivide one lot into two lots which requires the following: A Variance from Section 10.521 to allow 0' of continuous street frontage for both lots where 100' is required for each. Said property is shown on Assessor Map 162 Lot 16 and lies within the General Residence A (GRA) District.

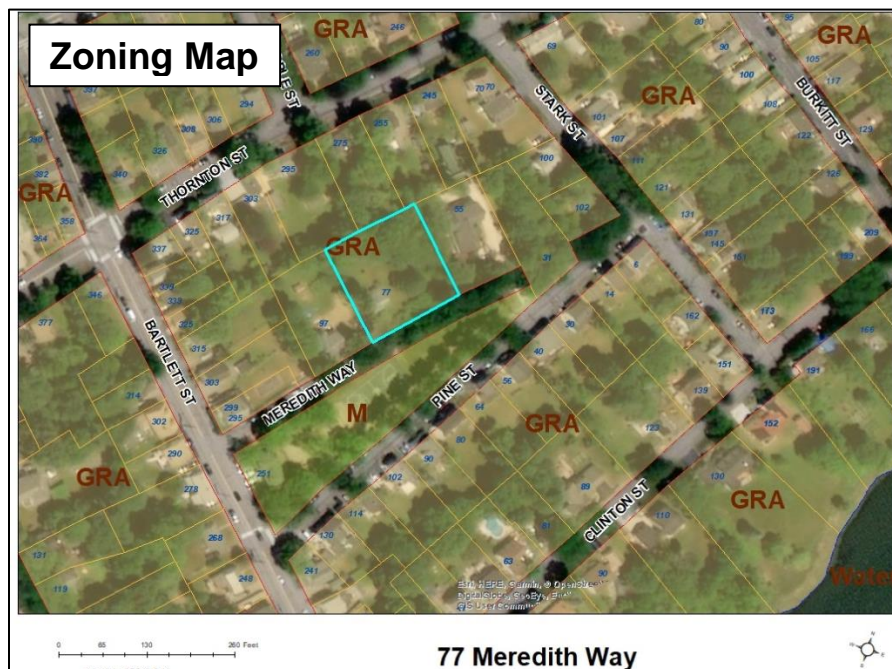
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use:</u>	Single family on one lot	Subdivide into two lots		Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	22,500	11,250	11,250	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	22,500	11,250	11,250	7,500 min.
<u>Street Frontage (ft.):</u>	30*	0	0	100 min.
<u>Lot depth (ft.):</u>	150	150	150	70 min.
<u>Primary Front Yard (ft.):</u>	29	29	NA	15 min.
<u>Right Side Yard (ft.):</u>	100	29	NA	10 min.
<u>Left Side Yard (ft.):</u>	11	11	NA	10 min.
<u>Rear Yard (ft.):</u>	94	94	NA	20 min.
<u>Height (ft.):</u>	<35		NA	35 max.
<u>Building Coverage (%):</u>	5	10	0	25 max.
<u>Open Space Coverage (%):</u>	90	85	100	30 min.
<u>Parking:</u>	Ok	ok	Ok	1.3
<u>Estimated Age of Structure:</u>	1870	Variance requests shown in red.		

Other Permits/Approvals Required

TAC/Planning Board – Subdivision approval

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposing to subdivide the existing lot into two lots. The existing lot contains a dwelling and a portion of the lot has minimal frontage on Meredith Way. The applicant is requesting relief for 0 feet of frontage on both lots as precautionary

measure. Otherwise, both lots will meet or exceed dimensional requirements for the district and the new vacant lot will have sufficient area to construct a dwelling.

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 special conditions 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.

138 Maplewood Ave.
Map 124 Lot 6
Zoning: CD4-L1

To permit the following:

1. Lot Area of 7850sf for 3 Dwelling Units, where 3000sf per Unit is required
2. Vertical Expansion of a non-conforming Structure, for 2nd Floor Addition.
Existing Garage has +/- 1' right side Setback where 5' is required.
3. Right Side Setback of +/-1' for 2nd Floor Rear Addition (144sf) to Existing Garage.

The undersigned agrees that the following circumstances exist.....

1. A 2nd Floor is proposed over the Existing Garage which will add a 3rd Dwelling Unit to the Property. The Lot Area of 7850sf, is 1150sf under the required 9000sf. The 4 Properties on this section of Maplewood Ave start at the City Cemetery and end at the North Mill Pond Bridge..On the left side; 118 Maplewood Ave is a 10 Unit Office Condo in 2 Buildings (Lot 19,384sf) and 114 Maplewood has 3 Dwelling Units and 1 Office Rental (Lot size 5057sf). On the Right Side, 154 Maplewood has a 2 Unit Office Condo in the Front Building & a Dwelling Unit in the Back Building (Lot Size 18,384sf)..Across the street a large Multiuse Commercial & Residential Building is under Construction.
2. The Existing Garage is within the Right Side Setback and adding a 2nd Floor will continue that non-conformity.
3. The 6' x 24' 2nd Floor Addition (144sf) to the Rear of the Garage will match the existing width and will have a +/- 1' Right Side Setback.

Criteria for the Variance:

1. The Variances are not contrary to the public interest in that the existing Garage is set back from public view and can only be seen from a couple of narrow openings on Maplewood Ave and from the North Mill Pond Bridge. The Existing 1-Story Garage Structure is surrounded by 2-Story Structures and the Garage 1st floor level is 3.5' lower then Primary Buildings on Maplewood Ave.
2. The Variances are consistent with the spirit of the ordinance in that it will allow this expansion without adversely impacting the immediate abutters. Existing Parking on the Lot (6 spaces) exceeds the required 4 Spaces.
3. Substantial justice will be done, as the benefit to the Owners out-weighs any negative affects to abutting properties.
4. These Variances will not diminish the value of surrounding properties. The design has a more residential presence then the current 4 garage doors.
5. The special condition of this property is the Lot Size and the location of the Existing Garage Structure.

9 Sheafe Street
Portsmouth
NH 03801
603-427-2832

AW

ANNE WHITNEY ARCHITECT

138 MAPLEWOOD AVE.
EXISTING & PROPOSED LOT PLAN

SCALE 1" = 10'-0" 4/22/2020

NOTE: EXISTING AND PROPOSED ARE OVERLAYED
ON EXISTING SURVEY PLAN JULY 29, 1997
BY MILETTE, SPRAGUE & COLWELL, INC.,
ANNE WHITNEY ARCHITECT, FIELD MEASURED
AND DRAFTED CURRENT EXISTING CONDITIONS.



N/F
GIDEON WALKER HOUSE TRUST
JAMES SOMES JR., TRUSTEE
361 HANOVER STREET
PORTSMOUTH, NH. 03801
RCRD BK.#3120 PG.#1900

MAP U24 LOT 6
7,850 S.F.
0.18 ACRES

EXISTING
BUILDING
FINISH FLOOR
ELEV.=15.94

MAP U24 LOT 5

N/F
CAPTAIN JOHN MOSES CONDOMINIUMS
118 MAPLEWOOD AVENUE
PORTSMOUTH, NH. 03801

10' WIDE ALL PURPOSE RIGHT OF WAY
FROM MAP U24/5 TO MAP U24/6 SEE
RCRD BK.#899 PG.#9 AND PROBATE #40689

100' TIDAL
BUFFER ZONE

EXISTING PARKING AREA

RAMP

CONCRETE
WALK

BITUMINOUS
CURB

WOOD STAIRS

RAISED PLANTING BED WITH RET-WALL

PAVING

WOOD DECK

18" PEAR

18" HARDWOOD

23' REMAINS AS GARAGE

2 PARKING SPACES IN GARAGE

EXISTING STRUCTURE
24' X 46'

23' PROPOSED LIVING SPACE
6' X 24' ADDED TO NEW 2ND FLOOR
24' X 32' PROPOSED 2ND FLOOR
4 POSTS AT GROUND LEVEL

FOUND IRON
ROD WITH CAP

PAVED DRIVEWAY

11'-1' EXIST.
& PROPOSED

EXIST.
11'-10'

EXIST.
11'-0'

EXIST. & PROPOSED
11'-5'

EXIST.
11'-0'

EXIST. 11'-63'
PROPOSED 11'-62'

11'-19.5'
EXIST. & PROPOSED

EXIST.
ROW

EX. CRUSHED STONE

EX. RETAINING WALL

EX. GARDEN

EXIST. PATIO

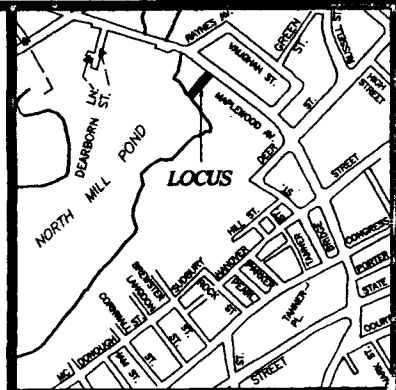
POST
(IMP.)

SHRUB
(TYPICAL)

FLOOD HAZARD ZONE
FLOOD HAZARD ZONE

LEGEND

AC.	ACRES
BK.2562/PG.2783	BOOK NO./PAGE NO.
EP	EDGE OF PAVEMENT
ELEC.	ELECTRIC
FKA	FORMERLY KNOWN AS
LS	LANDSCAPED
N/F	NOW OR FORMERLY
RCD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
S.F.	SQUARE FEET
SL	SEWER LATERAL
TBM	TEMPORARY BENCHMARK
TBR	TO BE REMOVED
USGS	UNITED STATES GEODETIC SURVEY
---	EXISTING GAS
---	EXISTING SEWER
---	PROPOSED CONTOUR
---	SEWER LATERAL
---	DRILL HOLE
MAP LOT	ASSESSORS MAP & PARCEL NUMBER
---	PROPERTY LINE
---	STONE WALL
---	EXISTING SPOT GRADE
---	UTILITY POLE
---	WATER SHUT OFF



LOCATION PLAN

NOTES

1. THE PARCEL IS LOCATED IN THE CENTRAL BUSINESS A (CBA) ZONE AND THE HISTORIC OVERLAY DISTRICT A (HDA).
2. THE PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP U24 AS LOT 6.
3. THE PARCEL IS LOCATED IN A FLOOD HAZARD ZONE AS SHOWN.
4. OWNER OF RECORD: EDWARD ZOFFOLI REVOCABLE TRUST, JOSEPHINE ZOFFOLI REVOCABLE TRUST, 138 MAPLEWOOD AVENUE, PORTSMOUTH, NH. 03801, RCD. BK.3120 PG.1900.
5. ZONING REQUIREMENTS: MINIMUM LOT SIZE: 1,000 S.F., MINIMUM FRONTAGE: N/A, MINIMUM SETBACKS: 0', FRONT YARD: 0', SIDE YARD: 0', REAR YARD: 0', MINIMUM DEPTH: N/A, MAXIMUM COVERAGE: 95%, 6. TOTAL PARCEL AREA: 7,850 S.F., 0.18 ACRES.
7. THE PARCEL IS SUBJECT TO RESTRICTIONS RELATED TO THE 250' COMPREHENSIVE SHORELAND PROTECTION ACT (RSA 483-B).

PLAN REFERENCES

1. "PLAN OF LAND PREPARED FOR STEVEN MASSCOTTE & D. JOHN FOLEY, MAPLEWOOD AVENUE, PORTSMOUTH, N.H." DATED 10/31/88 BY KIMBALL CHASE COMPANY, INC. NOT RECORDED.
2. "SITE PLAN FOR D. JOHN FOLEY & STEVEN M. MASSCOTTE 118 MAPLEWOOD AVENUE, COUNTY OF ROCKINGHAM PORTSMOUTH, N.H." DATED JANUARY 30, 1989 REVISED 3/2/89 BY RICHARD P. MILLETTE AND ASSOCIATES. NOT RECORDED.
3. "CAPTAIN JOHN MOSES CONDOMINIUM SITE PLAN DRAWN FOR DANIEL LOGGINS, 118 MAPLEWOOD AVE., PORTSMOUTH, N.H. OWNER OF UNIT B-1" DATED MARCH, 1995 BY EDWARD N. HERBERT, ASSOC. INC. RCD PLAN #0-23905.
4. "SITE PLAN GIDEON WALKER CARRIAGE HOUSE FOR GIDEON WALKER TRUST 154 MAPLEWOOD AVENUE, PORTSMOUTH, N.H. 03801" DATED JUNE 1995 REVISED 3-28-97 BY BARRY W. KIMBALL, P.E., L.L.S. RCD PLAN #0-25362.
5. "VAUGHAN STREET URBAN RENEWAL PROJECT N.H. R-10 PORTSMOUTH, NEW HAMPSHIRE, DISPOSITION MAP" DATED 11/5/70 BY ANDERSON-WIGGINS & CO., INC. RCD PLAN #0-2408.

REV.#3	11/13/97 REMOVE 2ND STORY APARTMENT AND NOTE #8
REV.#2	09/23/97 REVISE BUILDING
REV.#1	09/08/97 ADD PROPOSED GRADES



MILLETTE, SPRAGUE & COLWELL, INC.
CIVIL ENGINEERS LAND SURVEYORS

SITE PLAN FOR

EDWARD ZOFFOLI REVOCABLE TRUST &
JOSEPHINE ZOFFOLI REVOCABLE TRUST
138 MAPLEWOOD AVENUE
COUNTY OF ROCKINGHAM
PORTSMOUTH, NH.



SCALE: 1" = 10'

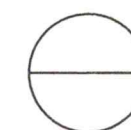
(IN FEET)

DATE: JULY 23, 1997

501 ERLINGTON STREET, P.O. BOX 4006, PORTSMOUTH, N.H. 03841-2222
http://www.mscenginc.com



VIEW FROM DRIVEWAY ENTRY



SOUTH ELEVATION

SCALE : 3/16" = 1'-0"



EXISTING GARAGE SOUTH VIEW

SCHEMATIC DESIGN

9 Sheafe Street
Portsmouth
NH 03801
603-427-2832

ANNE WHITNEY ARCHITECT

GARAGE 2ND FLOOR ADDITION & RENOVATIONS

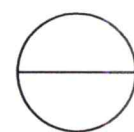
PANTELAKOS 138 MAPLEWOOD AVE PORTSMOUTH, NH

Project: # 2004

Date: 3 / 13 / 20

Revisions: 4 / 24 / 20

1 OF 4



WEST ELEVATION

SCALE : 3/16" = 1'-0"



VIEWS FROM WEST YARD

SCHEMATIC DESIGN

9 Sheafe Street
Portsmouth
NH 03801
603-427-2832

ANNE WHITNEY ARCHITECT

GARAGE 2ND FLOOR ADDITION & RENOVATIONS


PANTELAKOS 138 MAPLEWOOD AVE PORTSMOUTH, NH

Project: 2004

Date: 3/13/20

Revisions: 4/24/20

2 OF 4



NORTH ELEVATION

SCALE : $\frac{3}{16}" = 1'-0"$

SCHEMATIC DESIGN

9 Sheafe Street
Portsmouth
NH 03801
603-427-2832

LANNE WHITNEY ARCHITECT

GARAGE 2ND FLOOR ADDITION & RENOVATIONS

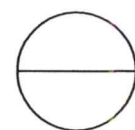
PANTELAKOS 138 MAPLEWOOD AVE PORTSMOUTH, NH

Project: # 2002

Revisions: 4 / 24 / 20

Date: 3 / 13 / 20

3 OF 4



EAST ELEVATION

SCALE : 3/16" = 1'-0"

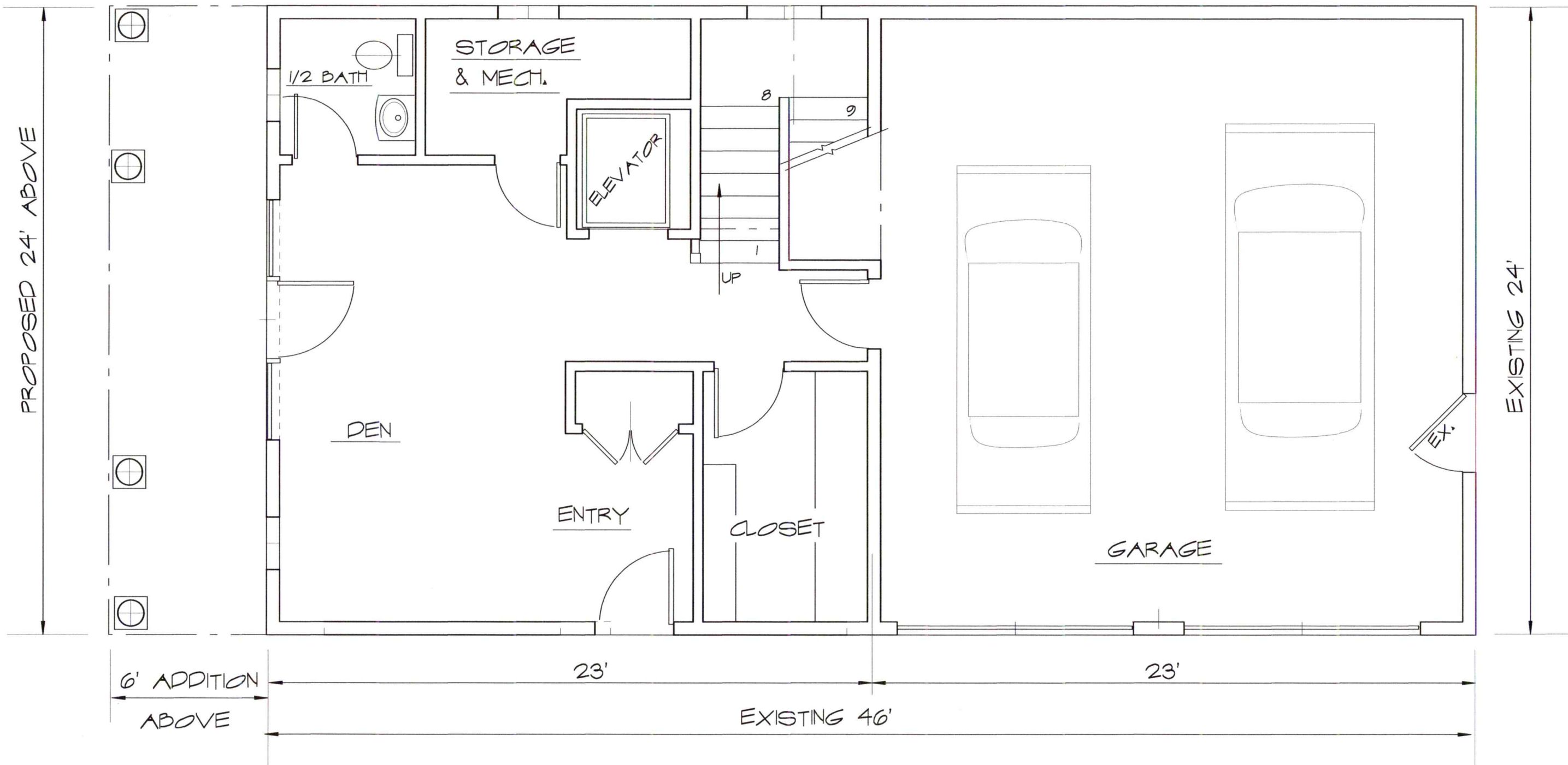


EXISTING CUPOLA



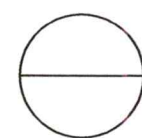
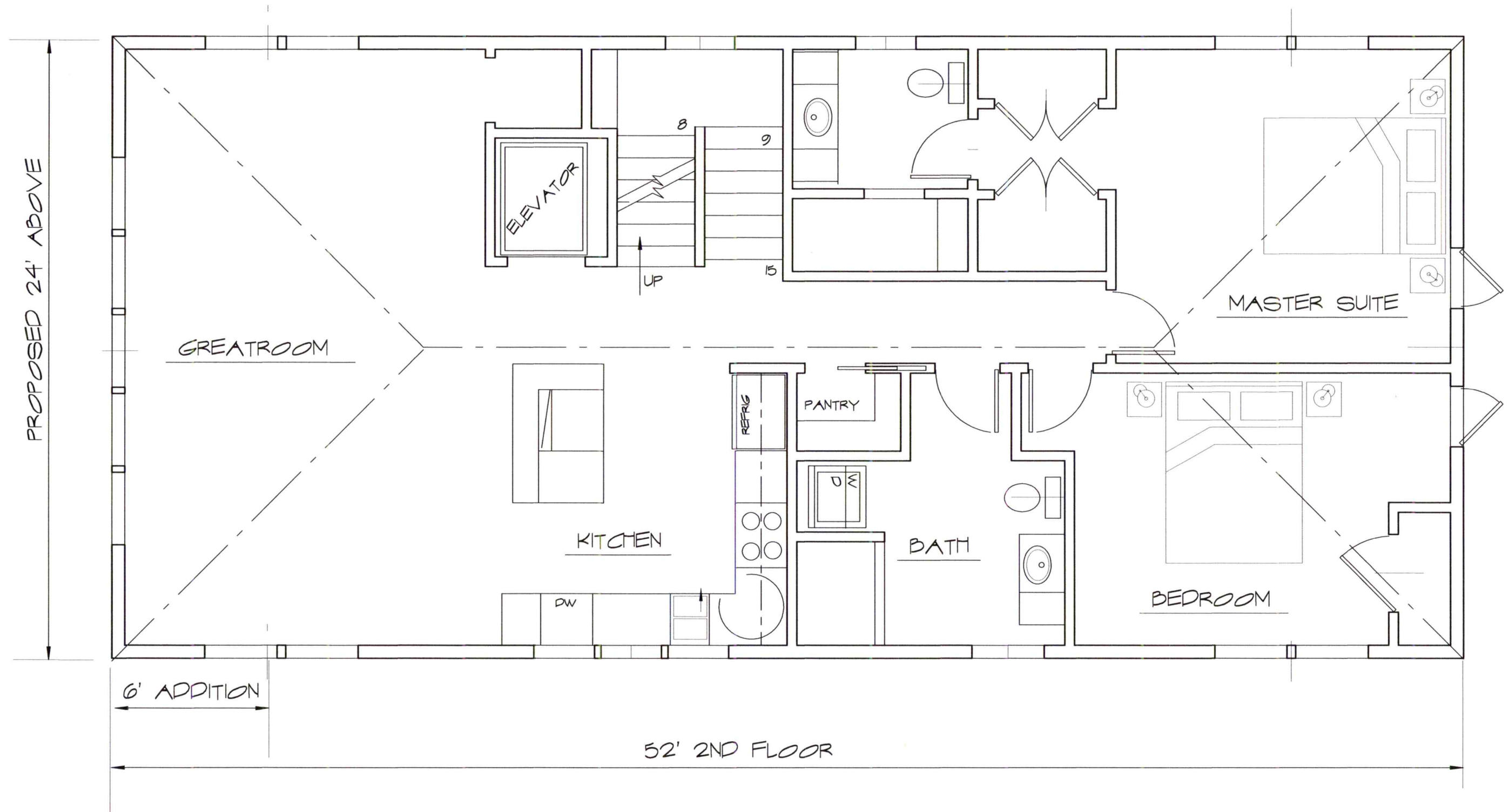
EXISTING EAST ELEVATION

<p>SCHEMATIC DESIGN</p>	<p>9 Sheafe Street Portsmouth NH 03801 603-427-2832</p> <p>ANNE WHITNEY ARCHITECT</p> <p>GARAGE 2ND FLOOR ADDITION & RENOVATIONS</p> <p>PANTELAKOS 138 MAPLEWOOD AVE PORTSMOUTH, NH</p>	<p>Project: 2002</p> <p>Revisions: 4 / 24 / 20</p>	<p>Date: 3 / 13 / 20</p> <p>4 OF 4</p>
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1ST FLOOR PLAN
 SCALE : 1/4" = 1'-0"

SCHEMATIC DESIGN GARAGE 2ND FLOOR ADDITION & RENOVATIONS PANTELAKOS 138 MAPLEWOOD AVE PORTSMOUTH, NH	9 Sheafe Street Portsmouth NH 03801 603-427-2832	Project: 2002 Revisions:	Date: 4/23/20
	ANNE WHITNEY ARCHITECT	1 OF 3	



2ND FLOOR PLAN
SCALE : 1/4" = 1'-0"

SCHEMATIC DESIGN

9 Sheafe Street
Portsmouth
NH 03801
603-427-2832

ANNE WHITNEY ARCHITECT

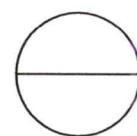
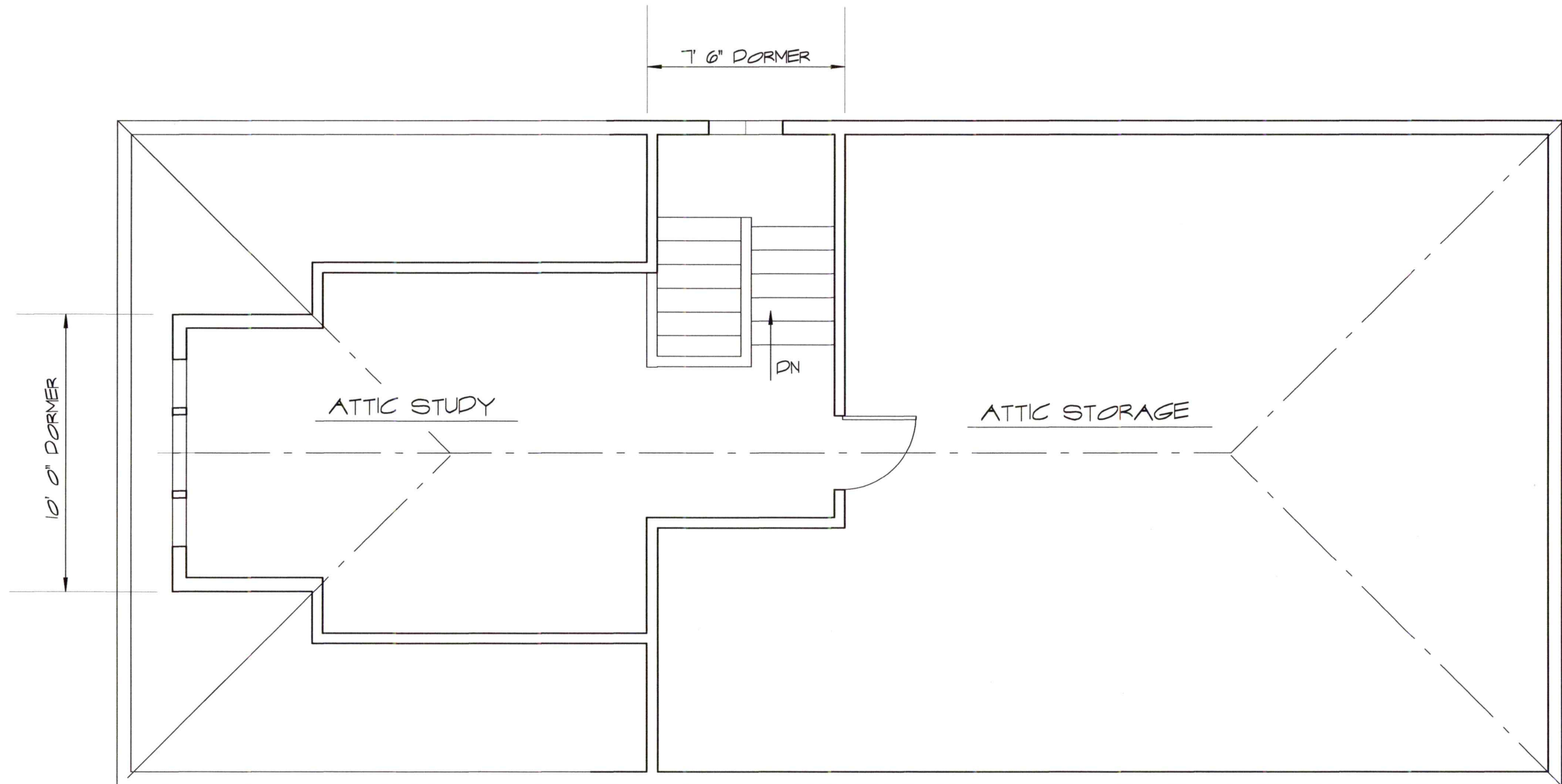
GARAGE 2ND FLOOR ADDITION & RENOVATIONS

PANTELAKOS 138 MAPLEWOOD AVE PORTSMOUTH, NH

Project: 2002
Revisions:

Date: 4/23/20

2 OF 3



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

SCHEMATIC DESIGN ANNE WHITNEY ARCHITECT GARAGE 2ND FLOOR ADDITION & RENOVATIONS PANTELAKOS 138 MAPLEWOOD AVE PORTSMOUTH, NH	9 Sheafe Street Portsmouth NH 03801 603-427-2832	Project: 2002 Date: 4/23/20
	Revisions:	3 OF 3

EASEMENT DEED

James H. Somes Jr., as Trustee of the Gideon Walker House Trust, u/t/d 6/6/1994, of 154 Maplewood Avenue, Portsmouth, New Hampshire 03801 ("Grantor"), for no consideration paid, grants to George T. Pantelakos and Donna P. Pantelakos, as Trustees of the Donna P. Pantelakos Revocable Trust u/t/d December 6, 2011, of 138 Maplewood Avenue, Portsmouth, New Hampshire 03801 ("Grantee"), an easement appurtenant in real property located at 154 Maplewood Avenue, Portsmouth, New Hampshire 03801, for the purposes more specifically described below.

The Easement Area is more specifically described as follows:

Beginning at an Iron Rod with Cap found at the Southeast Corner of the Grantor's land and the Northeast Corner of Grantee's land along the Westerly sideline of Maplewood Avenue; thence turning and running Northwest a distance of 5' to a point; thence turning and running Southwest a distance of 113' to a point; thence turning and running Southeast a distance of 5' to a point; thence turning and running Northeast a distance of 113' to the point of beginning (the "Easement Area").

The Easement Area consists of approximately 565 square feet.

The Easement Area described above should form a rectangle 5' in width and 113' in length running parallel to the common boundary with Grantee's property.

The Property owned by Grantor located at 154 Maplewood Avenue, Portsmouth, New Hampshire 03801 (Tax Map 124, Lot 7) is the burdened parcel of land for purposes of this Easement. The Property owned by Grantee at 138 Maplewood Avenue, Portsmouth, New Hampshire 03801 (Tax Map 124, Lot 6) is the benefited parcel of land for purposes of this Easement.

The Grantee shall have the perpetual right of ingress, egress and access, on and over and through the Easement Area for purposes of maintaining, repairing, improving and re-constructing all existing improvements on Grantee's land so long as they are not extended closer to the Grantor's land. Said right shall extend to the Grantor's agents, invitees and licensees.

No encroachments are permitted within the Easement Area, temporary or permanent, that would frustrate or make difficult the purposes of the Easement. However, temporary

encroachments shall be permitted within the Easement Area for purposes of carrying out the purposes of the Easement (i.e. the maintenance, repair, improvement or reconstruction of the existing improvements.

In the event that any of the improvements on Grantee's land are moved or altered so as to eliminate the need for the Easement, the Easement shall be automatically extinguished.

The Easement shall run in perpetuity with Grantor and Grantee's properties and be binding upon and inure to the benefit of the Grantor and the Grantee's heirs, successors and assigns.

The Grantor shall ensure that this easement is subordinate to any mortgages or other liens encumbering Grantor's Property.

The easement is situated on the same premises acquired by the Grantor by Deed dated August 25, 2016 and recorded in the Rockingham County Registry of Deeds in Book 5746, Page 651.

This is not homestead property of the Grantor.

This is a non-contractual transfer that is exempt from the NH Real Estate Transfer Tax pursuant to RSA 78-B:2, IX.

TRUSTEE CERTIFICATE

James Somes, Jr., Trustee of the Gideon Walker House Trust u/t/d 6/6/1994, has the full and absolute power in said Trust Agreement to convey any interest in real estate and improvements thereon held in said Trust and no purchaser or third party shall be bound to inquire whether the Trustee has said power or are properly exercising said power or to see to the application of any Trust asset paid to the Trustees for a conveyance thereof.

Executed this ____ day of May 2020.

Gideon Walker House Trust u/t/d 6/6/1994

By: _____
James Somes, Jr., Trustee

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this ____ day of _____, 2020, personally appeared, James Somes, Jr., Trustee of the Gideon Walker House Trust u/t/d 6/6/1994 ,known to me or satisfactorily proven to be the person signing this instrument, and acknowledged that he executed the foregoing Easement Deed for the purposes contained therein.

Before me,

Notary Public/Justice of the Peace
My Commission Expires:

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

May 22, 2020

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

**RE: Variance Application of Joseph and Jessica Denuzio
105 Thornton Street, Portsmouth (Tax Map 159, Lot 18)**

Dear Chairman Rheume,

Our Office represents Joseph Denuzio and Jessica Denuzio, owners of property located at 105 Thornton Street, 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) Site Plan; and
- 4) Photographs of the Property.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Derek R. Durbin', with a long horizontal line extending to the right.

Derek R. Durbin, Esq.

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

Joseph and Jessica Denuzzio
105 Thornton Street
Portsmouth, NH 03801
(Owner/Applicant)

INTRODUCTORY STATEMENT

Joseph and Jessica Denuzzio are the owners of the property located at 105 Thornton Street, identified on Portsmouth Tax Map 159 as Lot 18 (the "Property"). The Property is zoned General Residence A ("GRA"), is 0.09 acres and contains a modest-sized single-family home (1,488 sf gross living area) with small single-car garage. The Property is a corner lot with primary frontage on Thornton Street and secondary frontage on Sparhawk Street.

Total building coverage on the Property is approximately 49%. The side of the home on Thornton Street has a 1' (+/-) or lesser front yard setback. Within this front yard setback there is a small addition to the home that was built many years ago that the City Assessing Department classifies as a "greenhouse". This structure is 96' square feet (12' x 8') in dimension and 9' 5" in height. It is inset from the Thornton Street side of the home by approximately 20". The roof of the addition is significantly lower than the roofline of the home.

The Denuzzios wish to demolish the "greenhouse" addition and replace it with an attached shed that would be of approximately the same dimension and have the same siding, look and appearance as their home. In order to do this, they require variances relative to building coverage, primary front yard setback and reconstruction of a non-conforming structure. It is important to note that there will be no interior access to the attached shed from the home and it will not be finished as living space.

SUMMARY OF ZONING RELIEF

The Applicant seeks the following variances from the Zoning Ordinance:

1. A variance from Section 10.521 (Table of Dimensional Requirements) to allow a 2' (+/-) front yard setback from Thornton Street where 15' is the minimum required in the GRA Zoning District and 2' (+/-) exists.
2. A variance from Section 10.521 to allow 49% (+/-) building coverage where 25% is the maximum allowed in the GRA Zoning District and 49% (+/-) exists.
3. A variance from Section 10.321 to allow the reconstruction and enlargement of a lawful nonconforming structure.

VARIANCE CRITERIA

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

“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 variance will not alter the essential character of the neighborhood or create any negative impact to public health, safety or welfare. Building coverage on the Property is not being altered by the proposed attached shed. Moreover, it will not encroach further into the front yard setback from Thornton Street than the existing home. The shed will replace an existing non-conforming addition to the home that appears to have once been used as a greenhouse. The design and appearance of the attached shed will be architecturally compatible with the home, whereas the greenhouse is not. This will only serve to enhance the look of the home and achieve greater aesthetic conformity with 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 loss to the Applicant is clear if the variance relief is denied. They would be forced to choose between maintaining the incompatible greenhouse structure, which is structurally unsound and obsolete, and demolishing it without being able to re-build in the same footprint. The Denuzzios are a family of four (4) that have a small property with limited storage area. The attached shed will provide the Denuzzios with much needed storage space and will improve the appearance of their home. There is no gain to be achieved by the public in denying the relief sought. The equitable balancing test weights overwhelmingly in favor of granting the variances.

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

The values of surrounding properties can only be enhanced by demolishing the greenhouse addition to the home, which sticks out like a sore thumb, and replacing it with an architecturally compatible attached shed.

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 a corner lot. The existing home, which is lawfully non-conforming, is setback by less than 1' from the front boundary along Thornton Street. The existing greenhouse addition is inset from the Thornton Street side of the home by an additional 8" (+/-). The attached shed which would replace it would be sited within the same footprint, thus it would not encroach further into the front yard setback or add any additional building coverage. For the foregoing reasons, there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

The proposed use is reasonable.

The Property is used as a single-family home. This use will remain the same. The attached shed will add much needed storage space to the Property and replace an unusable, structurally unsound greenhouse addition.

CONCLUSION

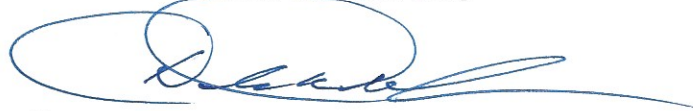
In conclusion, the Applicant has demonstrated that their application meets the five (5) criteria for each of the variances sought and respectfully requests that the Board approve their application.

Dated: May 22, 2020

Respectfully Submitted,

Joseph and Jessica Denuzzio

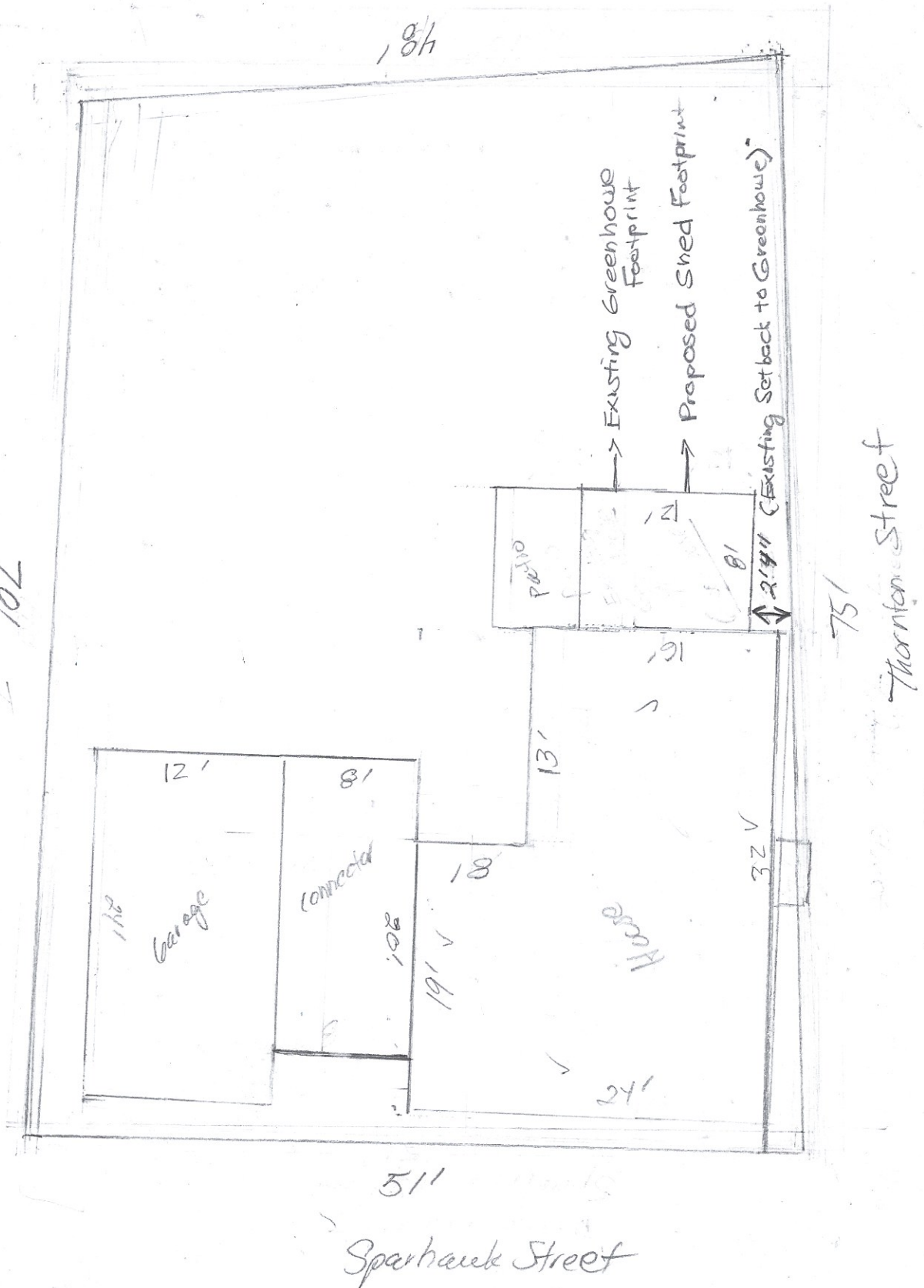
By and Through Their Attorneys,
Durbin Law Offices PLLC



By: Derek R. Durbin, Esq.
144 Washington Street
Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com

105 Thornton Street

101 = 11



DENV2210
ZBA Site Plan
5/21/2020

Scale: 1" = 10'

Thornton Street Elevation



Sparkhawk Street Elevation



Rear Yard Elevation



Picture of Greenhouse Addition



Side View of Greenhouse



Alternate Side View of Greenhouse Addition



Image of Proposed Shed Design



**Property Information**

Property ID 0224-0017-0000
Location 1163 SAGAMORE AVE
Owner CHINBURG DEVELOPMENT 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



May 26, 2020

Anthony Vivinetto
President, Sea Star Cove Association
11163 Sagamore Ave., #65
Portsmouth, NH 03801

To Whom It May Concern:

May 26, 2020

As President of the Sea Star Cove Home Owners Association, I authorize Timothy Whitaker, property owner of 1163 Sagamore Ave Unit #20, to proceed with his variance application to the City of Portsmouth Planning, Zoning and/or Land Use Boards.

Regards,

A handwritten signature in blue ink, appearing to read "Anthony J. Vivinetto", with a stylized flourish at the end.

Anthony J. Vivinetto

This letter is provided in support of the variance application submitted by Tim Whitaker, 1163 Sagamore Ave. Unit 20.
May 26, 2020

Overview: We purchased this home, our primary residence, in early December 2019. This home was the last of ten to sell in the Sea Star Cove community and as such was sold in an “as is condition.” Unlike our neighbors, we had no opportunity to customize this property to include a deck. We are seeking a variance approval to build a deck in the back of our house that will measure approximately 24 feet wide by 10 feet deep. The back of this house 17.5 feet from the property line, which is owned by the City of Portsmouth and designated “woodlands.” The deck proposed would extend to within approximately 7.5 feet of the property line, requiring a variance approval in order to proceed. If this request were to be approved, it will enable reasonable use of the land, will remedy an unintended hardship and will not affect density or safety.

REQUIREMENT 1

The variance is not contrary to the public interest

EXPLANATION 1

The proposed deck will not conflict with any known ordinance and doesn't affect the character, public health, safety or welfare of the community or City property.

REQUIREMENT 2

The spirit of the ordinance is observed

EXPLANATION 2

Again, the proposed deck will not conflict with any known ordinance and doesn't affect the character, public health, safety or welfare of the community or City property.

REQUIREMENT 3

Substantial justice is done

EXPLANATION 3

To the best of my knowledge, construction of this deck would not cause any harm to the public or other individuals.

REQUIREMENT 4

Values of surrounding properties are not diminished.

EXPLANATION 4

The effect of this deck construction will NOT diminish the value of surrounding properties. To the contrary, HOA leadership and adjacent neighbors have stated that approved home improvement projects can have a desirable effect on property values.

REQUIREMENT 5

Literal enforcement of the ordinance would result in unnecessary hardship

EXPLANATION 5

This deck construction project would enable the property owners to reasonable use of land, while still maintaining a setback from the City-owned woodlands property line of approximately 7.5 feet. Given all of the uncertainty that goes with today's pandemic, it is especially important to know that this deck project will improve quality of life while adhering to the government's self-distancing guidelines. If the variance approval were not granted by the city, it is literally an unfair hardship, preventing the homeowners from using the area for improved, simple and customary outdoor use, while minimizing the owner's opportunity to improve the home's property value.

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

May 26, 2020

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

**RE: Variance/Special Exception Application of Raleigh Way Holding Group LLC
Off Saratoga Way, Tax Map 212, Lots 112-113**

Dear Chairman Rheume,

Our Office represents Raleigh Way Holding Group LLC, owner of two (2) lots located off of Saratoga Way in Portsmouth, for which zoning relief is being applied for. 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 with Exhibits A-D;
- 3) 3-Sheet Plan Set;
- 4) Floor Plans and Elevations; and
- 5) Photographs of the Property (Lots 112 and 113).

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

Sincerely,

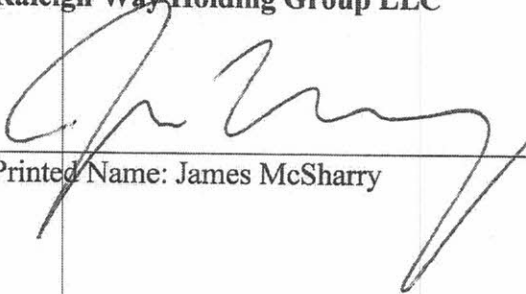
A handwritten signature in blue ink, appearing to read 'Derek Durbin', is written over a large, loopy blue oval that serves as a decorative flourish or part of the signature.

Derek R. Durbin, Esq.

LETTER OF AUTHORIZATION

Raleigh Way Holding Group LLC, owner of property located off of Albacore and Saratoga Ways, identified on Portsmouth Tax Map 212, as Lot 112-113 (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.

Raleigh Way Holding Group LLC

A handwritten signature in black ink, appearing to read 'James McSharry', is written over a horizontal line. The signature is stylized and extends to the right, crossing the line.

Printed Name: James McSharry

May 25, 2020

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

Raleigh Way Holding Group LLC
1 Middle Street, Suite 1
Portsmouth, NH 03801
(Applicant/Owner)

Lots Off Saratoga Way
Tax Map 212, Lots 112-113

INTRODUCTORY STATEMENT

Raleigh Way Holding Group LLC (the “Applicant”) is the owner of two (2) contiguous lots located at the intersection of Saratoga Way and Albacore Way identified on Tax Map 212, as Lots 112-113 (hereinafter “Lot 112” and “Lot 113” and collectively the “Property”). The Property is located in the General Residence B (“GRB”) Zoning District. Lot 113, which primarily fronts on Saratoga Way is 0.07 acres (3,263 sf.) and is unimproved except for an asphalt paved area that the Applicant intends to remove. Lot 112, which has a small amount of frontage on Albacore Way is 0.27 acres (11,682 sf.), is mostly unimproved except for an existing garage and shed that the Applicant intends to demolish.

The Applicant is proposing to merge Lot 112 and Lot 113 into one (1) parcel consisting of 14,944 sf. (0.34 acres) for the purpose of developing a four (4) unit residential building that is consistent in architectural design and appearance with other homes in the Atlantic Heights neighborhood.

BACKGROUND ON THE PROPERTY

Lot 112 consists of four (4) involuntarily merged parcels first shown on a subdivision plan from 1925 recorded in the Rockingham County Registry of Deeds (“RCRD”) as Plan #0273. **Exhibit A**. The 4 lots are identified on the Plan as parcels 13, 14, 15 and 16. Lot 113 has always been one (1) parcel of land identified as 17. *Id.* It is unclear when the City merged the 4 parcels comprising Lot 112, but it appears to have occurred several decades ago. In their unmerged state, the parcels are of similar dimension to many other properties throughout Atlantic Heights.

ATLANTIC HEIGHTS

The development of Atlantic Heights began in 1919 as one of the first federally funded housing projects in the nation, aimed at providing attractive affordable housing to low income workers. **Exhibit B**. It was designed in the architectural style of the English Garden-City Movement. At the time, Atlantic Heights was considered a “bold experiment in community design.” *Id.* Today, Atlantic Heights is still one of the more affordable option for housing in the City, which has experienced an incredible appreciation in real estate value.

SUMMARY OF ZONING RELIEF

1. Variance from Section 10.521 (Table of Dimensional Requirements) to allow lot area per dwelling unit of 3,736 sf. where 5,000 sf. is the minimum required in the GRB Zoning District; and
2. Special Exception pursuant to Section 10.440 to allow four (4) dwelling units where only two (2) is permitted by right.

VARIANCE CRITERIA

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

“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).

Section 10.410 of the Ordinance indicates that the purpose of GRB Zoning is to provide areas for single-family, two family and multifamily dwellings, with appropriate accessory uses, at moderate to high densities (ranging from approximately 5 to 12 dwelling units per acre), together with appropriate accessory uses and limited.

In September 2005, the Board ruled on a variance application for property off of Falkland Place and Ranger Way in Atlantic Heights. **Exhibit C**. The application involved the construction of a building containing four (4) dwelling units and a building containing two (2) dwelling units on one (1) lot. The Applicant sought a variance to allow 3,254 sf. of lot area per dwelling unit where 7,500 sf. was required.¹ The Board granted the relief. In its written decision, the Board found as follows:

1. It will not be contrary to the public interest to add needed housing.
2. Literal enforcement of the ordinance results in a hardship due to the unique setting in Atlantic Heights where 75% of the lots have less square footage per dwelling unit than the proposed units.
3. No fair and substantial relationship between the purposes of the ordinance and the restriction on the property, as in this neighborhood, 7,500 s.f. of lot area per dwelling unit would be out of place and the number of units is well suited for the neighborhood.

¹ The Property was located within the Mixed Residential Business (“MRB”) Zoning District where 7,500 sf of lot area is required per dwelling unit.

4. The variances will not injury the public or private rights of others as the applicant has attempted to preserve the style and scale of area properties.
5. The variances are consistent with the spirit of the ordinance as there is an acknowledgment in the ordinance of the uniqueness of the Atlantic Heights area and this project is in keeping with the area.
6. Substantial justice is done as the petitioners will be able to appropriately develop their property while providing additional parking for the neighborhood.
7. The value of surrounding properties will, if anything, be enhanced by building attractive well-designed buildings.

The Falkland Place / Ranger Way application shares many similarities to the instant application being considered by the Board, except that even less density relief is being applied for in the present case (3,736 sf. v. 3,254 sf.). It is fair to presume, based on the City's current assessing records, and assuming that the Board's assessment of Atlantic Heights was accurate in 2005 when it rendered its decision, that 75% or more of the properties in that neighborhood still have less lot area per dwelling unit than what the Applicant has proposed with the instant application. The tax map and assessing records for many of the properties immediately surrounding Lots 112 and 113 evidence this. **Exhibit D**. Many of the lots remain in their original configuration of 25' x 90', more or less, and contain one (1) dwelling unit.

The proposed architecture of the four (4) unit building would also conform in appearance to buildings on surrounding properties as demonstrated by the elevations submitted to the Board. The building is designed to have the appearance of a large converted Carriage House or Barn with a gambrel roof and architectural detailing that is in keeping with the original style of the period. The Applicant further intends to install solar panels on the building to take advantage of the southern exposure and to provide an alternative energy source for the Property. In addition, the Applicant has designed a detailed stormwater plan to alleviate any concerns about the grade of the Property in relation to surrounding properties.

The proposed building will comply with all required building setbacks and have a consistent height to surrounding structures, thus there will be no negative impact upon the light, air and space of abutting properties. The Applicant is creating adequate off-street parking to accommodate the proposed dwelling units, which will mitigate any concerns about on-street congestion in the neighborhood.

The Applicant will be cleaning up and improving two (2) derelict lots and creating something that will add value to the Atlantic Heights neighborhood. It will be creating new affordable housing where demand far exceeds supply within the City. The application before the Board is a detailed, well thought-out plan that reflects this intention.

For the foregoing reasons, granting the variances requested will not alter the essential character of the neighborhood nor will it create any undue demand upon municipal services or threat to surrounding property owners or the public's health, safety or welfare.

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 Applicant has proposed an appropriate development and use of the Property that can only serve to enhance the character of the neighborhood. As such, there is no conceivable gain to the public in denying the relief sought. To the contrary, granting the variance relief will add value to the neighborhood and create new affordable housing for the community. Alternative development plans for the property with a lesser unit count would either create something that is architecturally inconsistent and out-of-character with the rest of the neighborhood and/or would be financially infeasible given the costs to acquire the land and develop it.

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

The proposed four (4) unit residential building is consistent in style and scale with other buildings in the Atlantic Heights neighborhood. In fact, it is quite similar, albeit more aesthetically appealing, than what the Board approved off of Falkland Place and Ranger Way in 2005. Improving two (2) derelict lots that serve little purpose to the neighborhood with an attractive development can only serve to enhance surrounding property values.

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

The Property is distinguishable from surrounding properties for the following reasons:

- (1) It is significantly larger than most other properties within the Atlantic Heights neighborhood;
- (2) The Property consists of five (5) lots of record, four (4) of which were involuntarily merged and can be un-merged by statutory right and potentially developed for single-family purposes. Each lot on its own is consistent in dimension to many other single-family properties in Atlantic Heights;
- (3) The development of four (4) residential units on the Property will result in greater conformity with the Ordinance than what exists with most other properties in Atlantic Heights, which have less than 3,736 square feet per dwelling unit.

As a result of these unique conditions, there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

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). In the present instance, the GRB density standard does not reflect the prevailing character of the Atlantic Heights neighborhood

The proposed use is reasonable.

The creation of a four (4) unit residential building of consistent architecture to surrounding properties that meets the off-street parking requirements and contains more lot area per dwelling unit than the majority of other properties in Atlantic Heights is an objectively reasonable use of the Property.

SPECIAL EXCEPTION CRITERIA

The criteria for granting a special exception relative to the four (4) dwelling unit use of the Property under Section 10.440 is addressed as follows:

Sec. 10.232.21

The four (4) unit residential use of the Property is permitted by Special Exception.

Sec. 10.232.22

There will be no hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials. The building will be built to current code requirements, thus providing a safer structure than what exists with many older multi-family buildings in the area.

Sec. 10.232.23

There will be no detriment to surrounding property values in the vicinity or change in the essential characteristics of the surrounding area. *See* Pages 2-4 of Narrative.

Sec. 10.232.24

There will be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the area resulting from the proposed four (4) unit residential use of the Property. The Property will meet the Ordinance's parking space requirements and will not result in any substantial increase in vehicular traffic to the area.

Sec. 10.232.25

The proposed use of the Property will not result in any excessive demand on municipal services. The development of the Property will be offset and compensated for by the permit-related fees and improvements that the City will require of the Applicant. It is fair to assume that families of four (4) or less, couples, or individuals, will occupy the residences, which will contain approximately 2,120 square feet of living space, three (3) bedrooms and (2) bathrooms. This will certainly not result in any demand upon the school system or municipal utilities or other services that will not be offset by the tax revenue received and opportunities created by the additional housing created.

Sec. 10.232.26

There will be no significant increase of stormwater runoff onto adjacent properties or streets.

Drainage for a large portion of this block of the neighborhood is collected and flows through an existing 18" culvert which flows to a drain manhole structure in Albacore way. This parcel is low in elevation and thus it does not negatively impact abutting parcels.

Alex Ross, from Ross Engineering, tested the soils and their percolation rate. The tests indicate that the soils have a fast rate of permeability. Alex and his staff have also visited the site during after several rainfall events and there was no standing water found on the Property. The Applicant intends to control the roof and asphalt runoff by directing it into infiltration swales and raingardens. This will allow the stormwater to be detained the resulting runoff rate that is directed towards the 18" culvert will be the same or decreased post-development compared to pre-development. It is important to note that if the zoning relief is successful, the Applicant will be required to go through TAC and Planning Board review, where certain aspects of the stormwater management plan may be modified.

CONCLUSION

In conclusion, the Applicant has demonstrated that it satisfies all the criteria for granting the variance and special exception relief requested. Accordingly, the Applicant respectfully requests that the Board approve the its application as presented.

Respectfully Submitted,

Dated: May 26, 2020

Raleigh Way Holding Group LLC

By and Through Their Attorneys,

Durbin Law Offices PLLC



By: _____
Derek R. Durbin, Esq.
144 Washington Street
Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com

T 8

PLOT 7

PLOT 6

BLOCK 6

FUTURE FAIRLAND WAY



Portion of
RD #0273

CITY OF PORTSMOUTH

SCHOOL HOUSE LOT



Seacoast History

- [HISTORY](#)
- [Historical Societies](#)
- [As I Please](#)
- [Jesse James Films](#)
- [History Matters](#)

Maritime History

- [Famous People](#)
- [Black History](#)
- [Places & Events](#)
- [Timeline](#)

SEACOASTNH

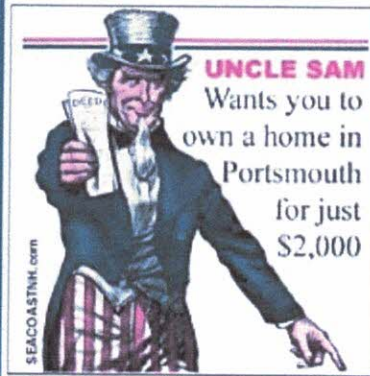
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HISTORY
ALIVE**

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LIVING IN THE SEACOAST

The brainstorm was to build affordable housing that low income workers actually liked. The result in 1919 was one of the first federally funded housing projects in the nation. When Uncle Sam sold off these "garden city" movement houses, poor renters were offered a deal. But things rarely go the way Uncle Sam plans.

It looks vaguely like an English village poised above the dark Piscataqua River, and with good reason. Atlantic Heights, a Portsmouth neighborhood of red brick dwellings, was supposed to break the mold of drab homes for working-class families. Designed in 1918 in just ten days, built in eight months, the nation's first federally funded housing project was a bold experiment in community design. And the experiment is still bubbling.

"I remember we were coming across the I-95 bridge from Maine," Atlantic Heights homeowner Jacqueline Scarpetti recalls. "It was January and I looked down and saw this lovely little neighborhood. It sort of reminded me of Georgetown in Washington."

Atlantic Heights design sketch



Only one road, Kearsage Way, leads to and from "The Heights" huddled beneath the towering Interstate halfway between the city's bustling Market Square and the malls of Newington. Ken and Jacqueline Scarpetti did not find the inroad easily on their first visit. Kearsage Way, named for a famous Portsmouth ship built in the Civil War, leads to a cluster of roads named for other ships – Ranger, Porpoise, Raleigh, Preble, Falkland, Saratoga. Many lifetime Portsmouth residents have never seen the crisp rows of small homes created in the architectural style of the English Garden-City Movement.

That design concept evolved from the work of English town planner Sir



EXHIBIT

B

tabbles

LEARN
MORE

PISCATAQUA
SAVINGS BANK

Explore



Star Island



NEW ENGLAND'S
UNIQUE
SUMMER ISLAND

The MUSIC HALL
An American Tradition for the Arts

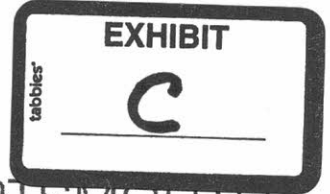
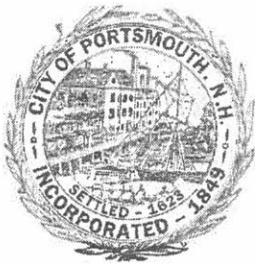
MAREN
DIDN'T
DO IT



Smellynose Website
(click)

Maine Harbors

hair studio
603-433-2772
sanctuary



CITY OF PORTSMOUTH

Community Development Department
(603) 431-2006, ext. 232

Planning Department
(603) 431-2006, ext. 216

PLANNING DEPARTMENT

September 22, 2005

Frank Perrone & John Giacalone
10 Webster Street
Winchester, Massachusetts 01890

Re: Property at **off Falkland Place and off Ranger Way**
Assessor Plan 212, Lot 26-1

Dear Messrs. Perrone and Giacalone:

The Board of Adjustment, at its regular meeting of September 20, 2005, completed its consideration of your application wherein the following were requested in conjunction with the construction of a building with 4 dwelling units and a building with 2 dwelling units on a combined lot: 1) a Variance from Article III, Section 10-301(A)(2) to allow two separate residential buildings on one lot where all dwelling units are required to be in one building, 2) a Variance from Article III, Section 10-303(A) to allow 3,254± sf of lot area per dwelling unit where 7,500 sf of lot area per dwelling unit is the minimum required, 3) a Variance from Article II, Section 10-207(13) to allow 6 dwelling units on a lot where the maximum allowed is 4 dwelling units; and, 4) a Variance from Article II, Section 10-211 to allow dwelling units on private property in a municipal district. Said property is shown on Assessor Plan 212 as Lots 26-1, 27, Alley No. 1 and Alley No. 2 (all to be combined) and lie within the Mixed Residential Business and Municipal districts.

After consideration, the Board voted to **grant** the petition, as presented and advertised for the following reasons:

- It will not be contrary to the public interest to add needed housing.
- Literal enforcement of the ordinance results in a hardship due to the unique setting in Atlantic Heights where 75% of the lots have less square footage per dwelling unit than the proposed units.
- No fair relationship exists between the purposes of the ordinance and the restriction on the property as, in this neighborhood, 7,500 s. f. of lot area per dwelling unit would be out of place and the number of units is well suited for the neighborhood.
- The variances will not injure the public or private rights of others as the applicant has attempted to preserve the style and scale of area properties.
- The variances are consistent with the spirit of the ordinance as there is acknowledgement in the ordinance of the uniqueness of the Atlantic Heights area and this project is in keeping with the area.
- Substantial justice is done as the petitioners will be able to appropriately develop their property while providing additional parking for the neighborhood.

Messrs. Perrone and Giacalone
Page Two
September 22, 2005

- The value of surrounding properties will, if anything, be enhanced by building attractive, well-designed buildings.

Prior to the issuance of a building permit, the Building Inspector will need to review and approve construction drawings/sketches. Contact the Inspector at 603-610-7243 between the hours of 8:00 –10:00 a.m. Applicants should note that approvals may also be required from other Committees and/or Boards 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,

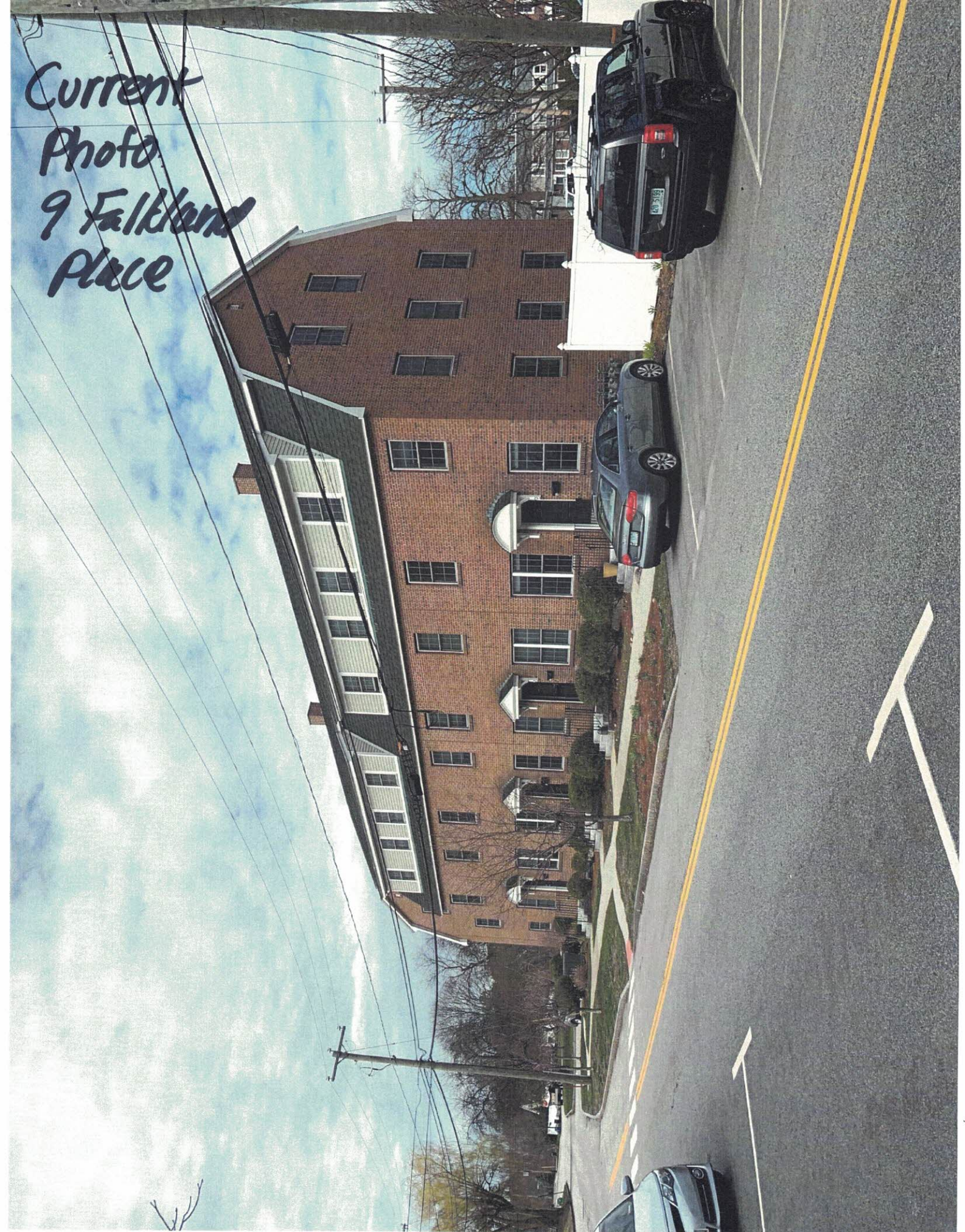
A handwritten signature in dark ink, reading "Charles A. Le Blanc". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Charles A. Le Blanc, Chairman
Board of Adjustment

mek

c: Richard A. Hopley, Building Inspector
Bernard W. Pelech, Esq.

Current
Photo
9 Falkland
Place



This is a detailed street map of a residential neighborhood in San Francisco. The map shows a grid of streets with numerous house numbers. A blue diamond-shaped outline highlights a specific lot, labeled 212-112, located at the intersection of Albacore Way and Saratoga Way. The map includes a scale bar in the bottom right corner indicating 1 inch equals 169 feet. The map is sourced from Google Maps, as indicated by the logo in the bottom left corner.

Property ID	0212-0112-0000
Location	FALKLAND WAY
Owner	RALEIGH WAY HOLDING GROUP LLC



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

Tax Map Image - Atlantic Heights - Version 1



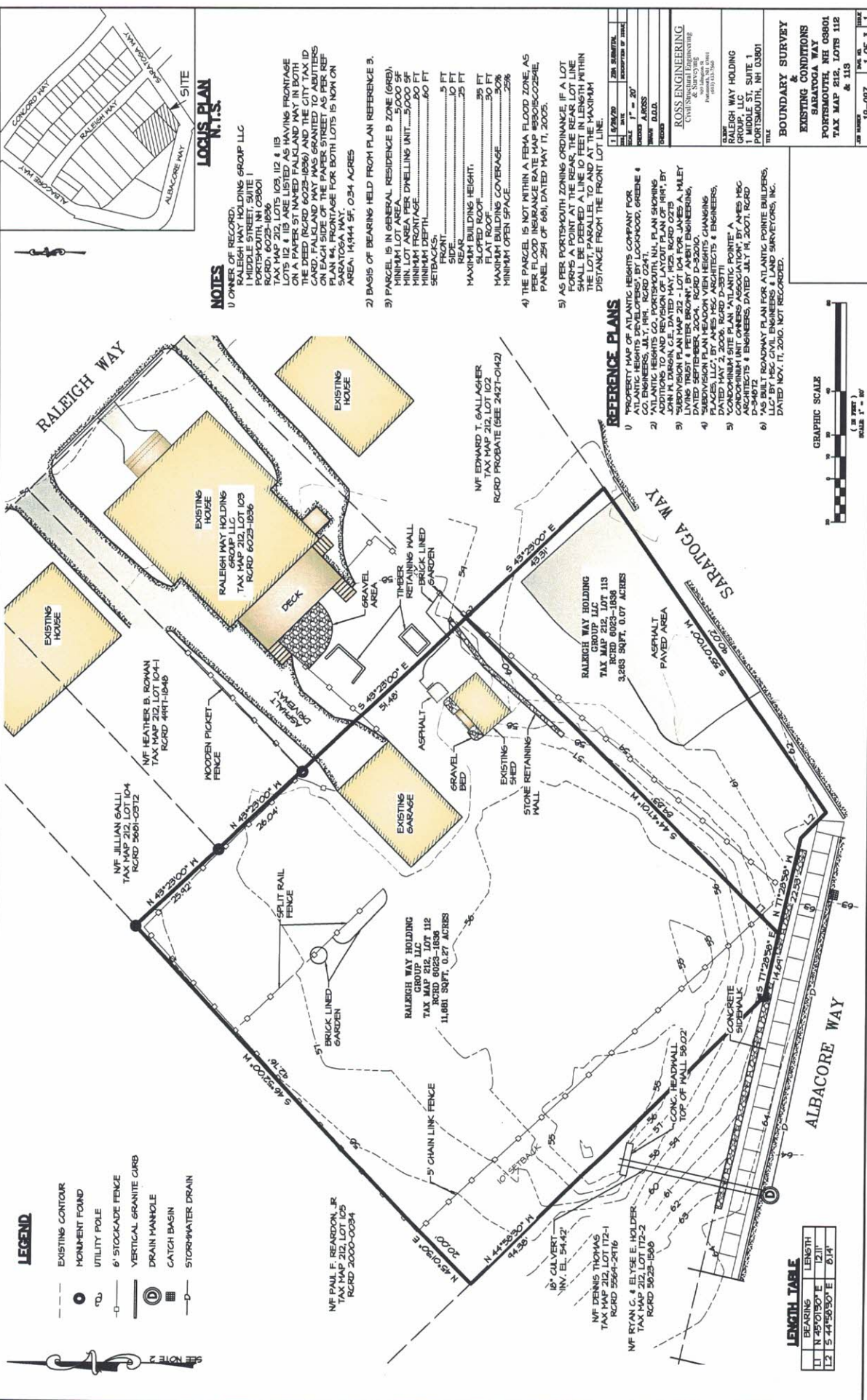
Property Information

Property ID 0212-0112-0000
Location FALKLAND WAY
Owner RALEIGH WAY HOLDING GROUP 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



LEGEND

- EXISTING CONTOUR
- MONUMENT FOUND
- UTILITY POLE
- 6" STOCKADE FENCE
- VERTICAL GRANITE CURB
- DRAIN MANHOLE
- CATCH BASIN
- STORMWATER DRAIN

LENGTH TABLE

BEARING	LENGTH
12° 15' 44" 50" E	12.11"
12° 15' 44" 50" E	8.14"

NOTES

1) OWNER OF RECORD, RALEIGH WAY HOLDING GROUP LLC, 11111 RALEIGH WAY, PORTSMOUTH, NH 03801, RCRD. 6023-1836, TAX MAP 212, LOTS 105, 112 & 113. LOTS 105 & 113 ARE HAVING FRONTAGE TO RALEIGH WAY. THE CITY TAX ID OF THE DEED (RCRD 6023-1836) AND THE CITY TAX ID OF THE DEED (RCRD 6023-1836) WAS GRANTED TO ADJUTERS ON EACH SIDE OF THE PAPER STREET AS PER REF PLAN #4. FRONTAGE FOR BOTH LOTS IS NON ON RALEIGH WAY. TOTAL AREA 14,444 SF, 0.34 ACRES.

2) BASIS OF BEARING HELD FROM PLAN REFERENCE 3.
3) PARCEL IS IN GENERAL RESIDENCE B ZONE (R6B), MINIMUM LOT AREA, 5,000 SF, MINIMUM FRONTAGE, 50 FT, MINIMUM DEPTH, 60 FT, SETBACKS: FRONT, 5 FT, REAR, 10 FT, SIDE, 25 FT, MAXIMUM BUILDING HEIGHT, 35 FT, MAXIMUM BUILDING COVERAGE, 30 FT, MAXIMUM BUILDING COVERAGE, 30%, MINIMUM OPEN SPACE, 25%.

4) THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP 8803020254E, PANEL 254 OF 681, DATED MAY 11, 2005.

5) AS PER PORTSMOUTH ZONING ORDINANCE, IF A LOT FORMS A POINT AT THE REAR, THE REAR LOT LINE SHALL BE DENSED A LINE 10 FEET IN LENGTH WITHIN THE LOT, PARALLEL TO AND AT THE MAXIMUM DISTANCE FROM THE FRONT LOT LINE.

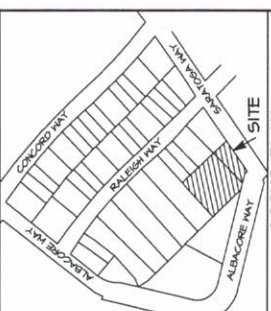
REFERENCE PLANS

- 1) PROPERTY MAP OF ATLANTIC HEIGHTS COMPANY FOR ATLANTIC HEIGHTS DEVELOPERS, BY LOCKWOOD, GREENE & CO. ENGINEERS, JULY, 1991, RCRD 0241.
- 2) SUBDIVISION PLAN FOR RALEIGH WAY, PLAN SUSHING ADDITIONS TO AND REVISION OF LAYOUT PLAN OF R41, BY JOHN N. DUBSON, C.E., DATED MAY, 1925, RCRD 0275.
- 3) SUBDIVISION PLAN MAP 212 - LOT 104 FOR JAMES A. MALEY DATED SEPTEMBER, 2004, RCRD D-32010.
- 4) SUBDIVISION PLAN HEADQUARTERS VEHICULAR CHANGING DATED MAY, 2004, RCRD D-32010.
- 5) CONDOMINIUM SITE PLAN 'ATLANTIC POINTE', A CONDOMINIUM UNIT OWNERS ASSOCIATION, BY ARES HEC ARCHITECTS & ENGINEERS, DATED JULY 14, 2001, RCRD D-34872.
- 6) AS BUILT ROADWAY PLAN FOR ATLANTIC POINTE BUILDERS, LLC BY HEC CIVIL ENGINEERS & LAND SURVEYORS, INC. DATED NOV. 11, 2000, NOT RECORDED.

GRAPHIC SCALE



LOCUS PLAN N.T.S.



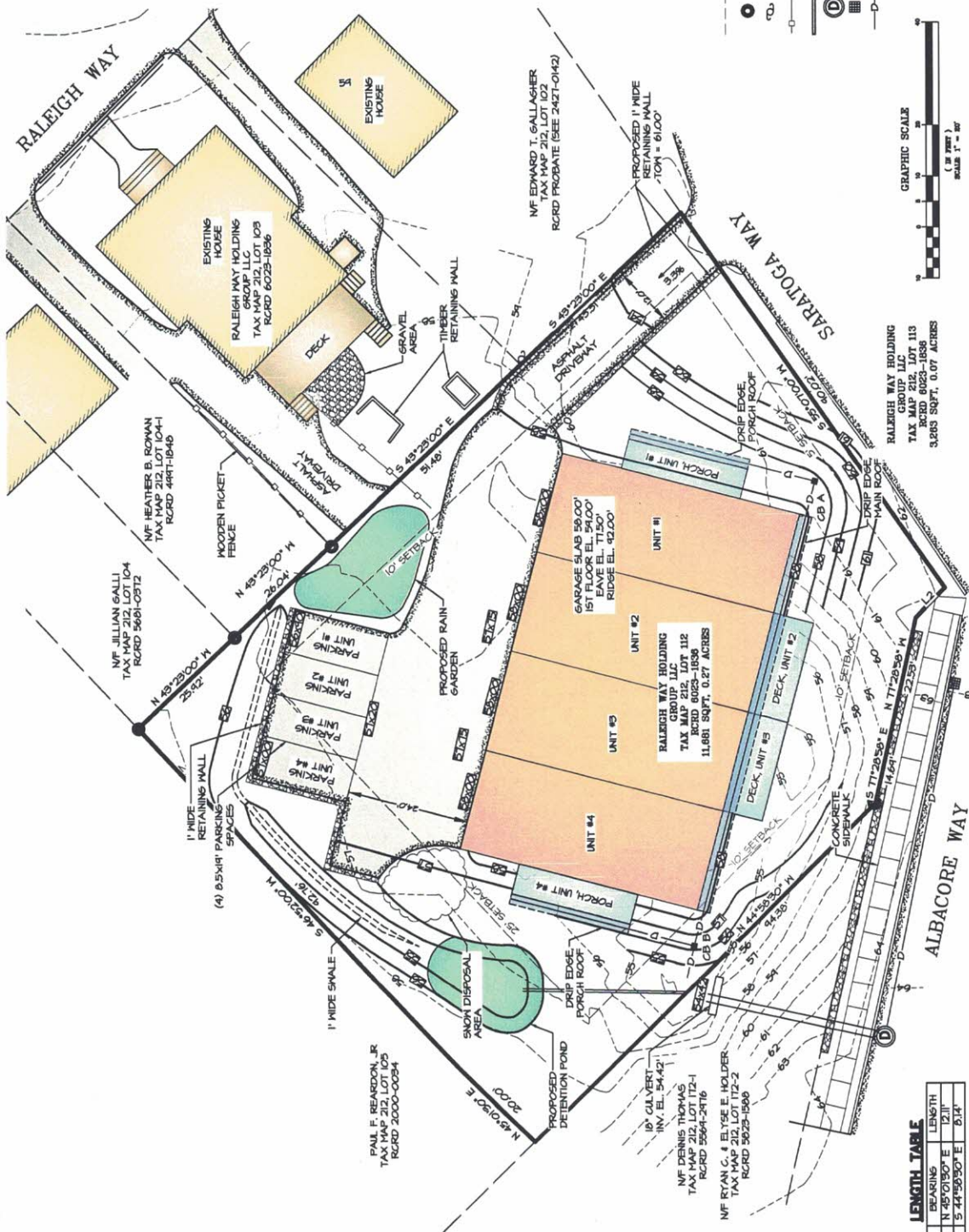
BOUNDARY SURVEY

EXISTING & CONDITIONS
PORTSMOUTH, NH 03801
TAX MAP 212, LOTS 112 & 113

19-087
1 OF 3

THE FOLLOWING STORMWATER MANAGEMENT IMPROVEMENTS ARE PROPOSED

- A) RAIN GARDEN, CONSTRUCTED IN THE NE OF THE PROPERTY TO COLLECT WATER FROM THE PROPOSED ASPHALT DRIVEWAY AND PARKING AREA.
- B) DRIP EDGES ALONG THE PERIMETER OF THE BUILDING COLLECTING WATER FROM THE ROOFS.
- C) DETENTION Pond LOCATED IN THE NW OF THE PROPERTY, COLLECTING WATER FROM THE ASPHALT PARKING AREA AND WATER FROM DRAINAGE LINES COMING FROM THE DRIP EDGES LISTED ABOVE.
- D) THE 405-NB-10' CULVERT REMAINS THE SOLE DISCHARGE POINT FOR THE SITE, THROUGHOUT THE 2, 10, 25, & 50 YEAR STORMS.

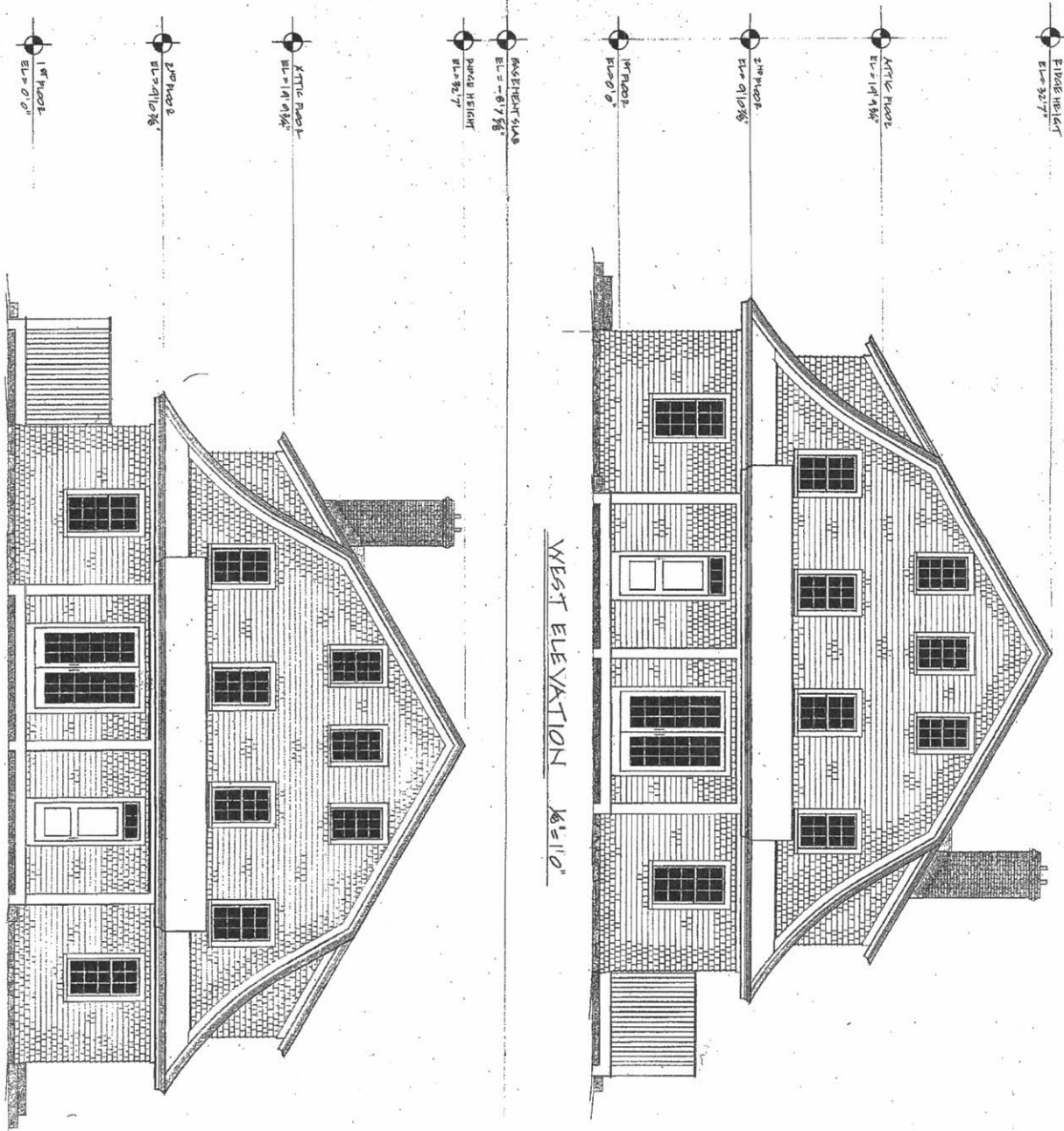


LENGTH TABLE		
	BEARING	LENGTH
LI	N 45° 01' 30" E	12.11'
2	S 44° 05' 30" E	14.14'

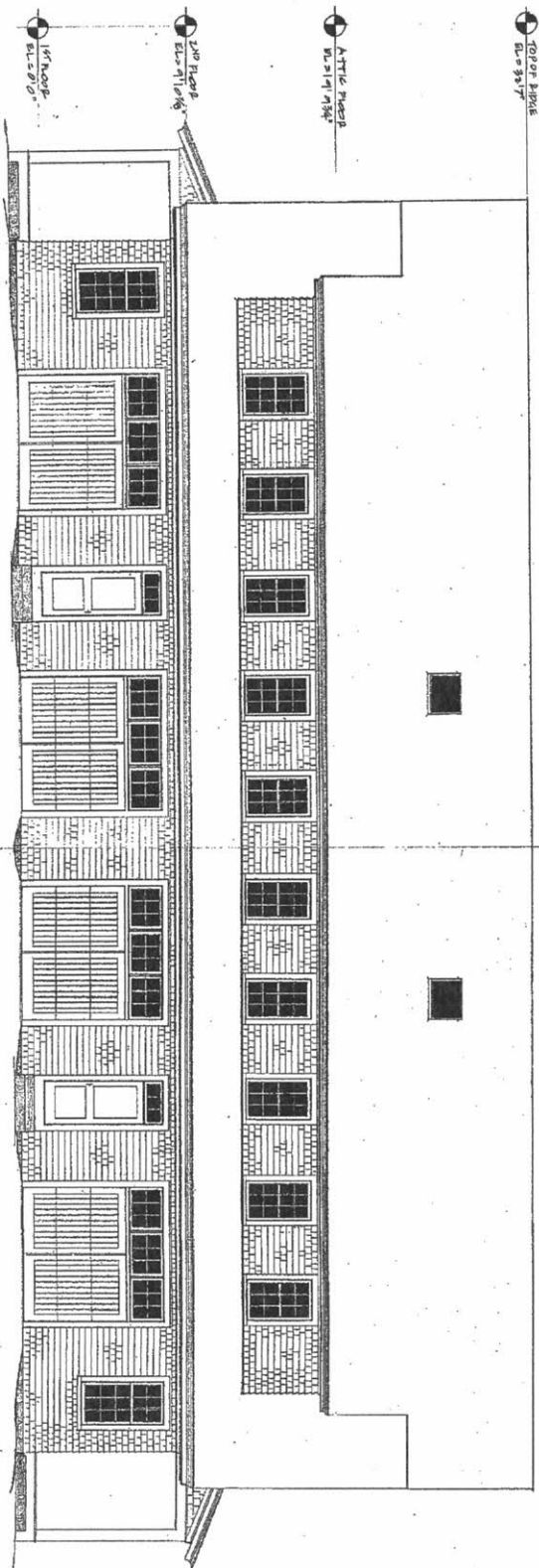
LEGEND

- EXISTING CONTOUR
MONUMENT FOUND
UTILITY POLE
VERTICAL GRANITE CURB
DRAIN MANHOLE
CATCH BASIN
STORMWATER DRAIN

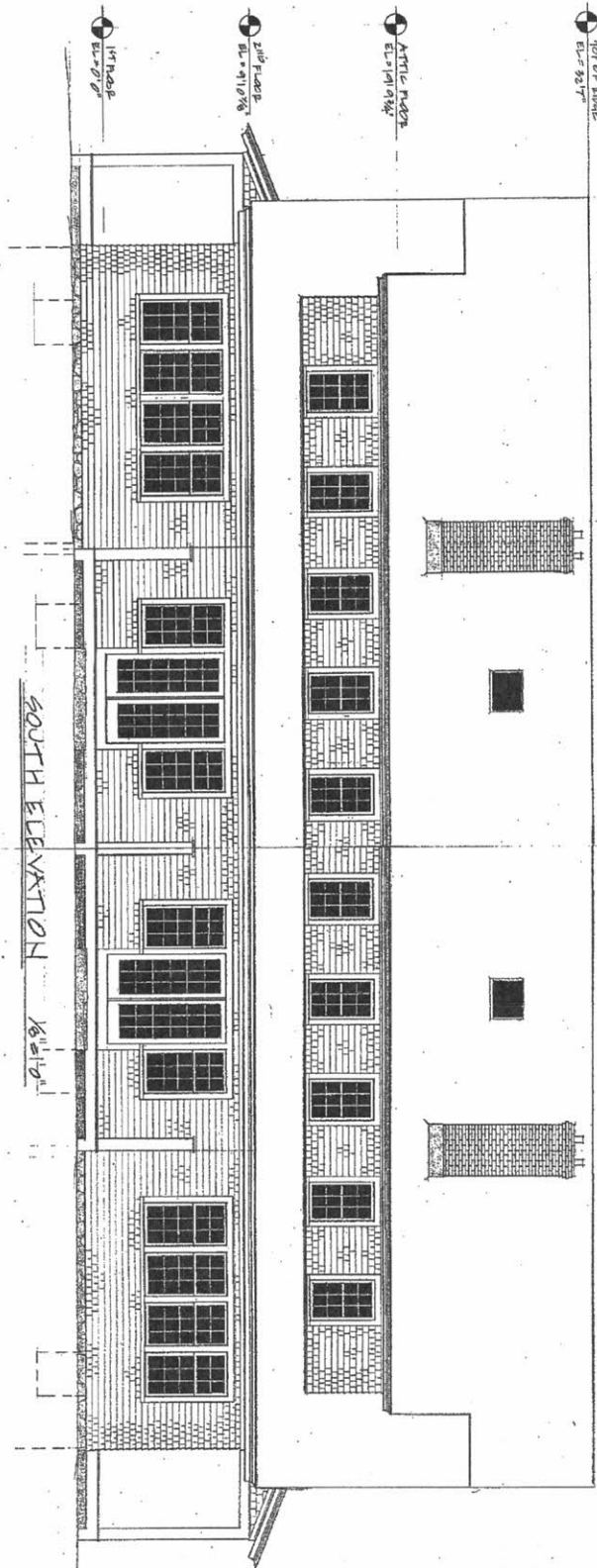
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NORTH ELEVATION $\frac{1}{8}"=1'0"$



SOUTH ELEVATION $\frac{1}{8}"=1'0"$



PAGE A.2.

PROPOSED BUILDING AT
185-187 PALEIGH WAY
PORTSMOUTH, NH

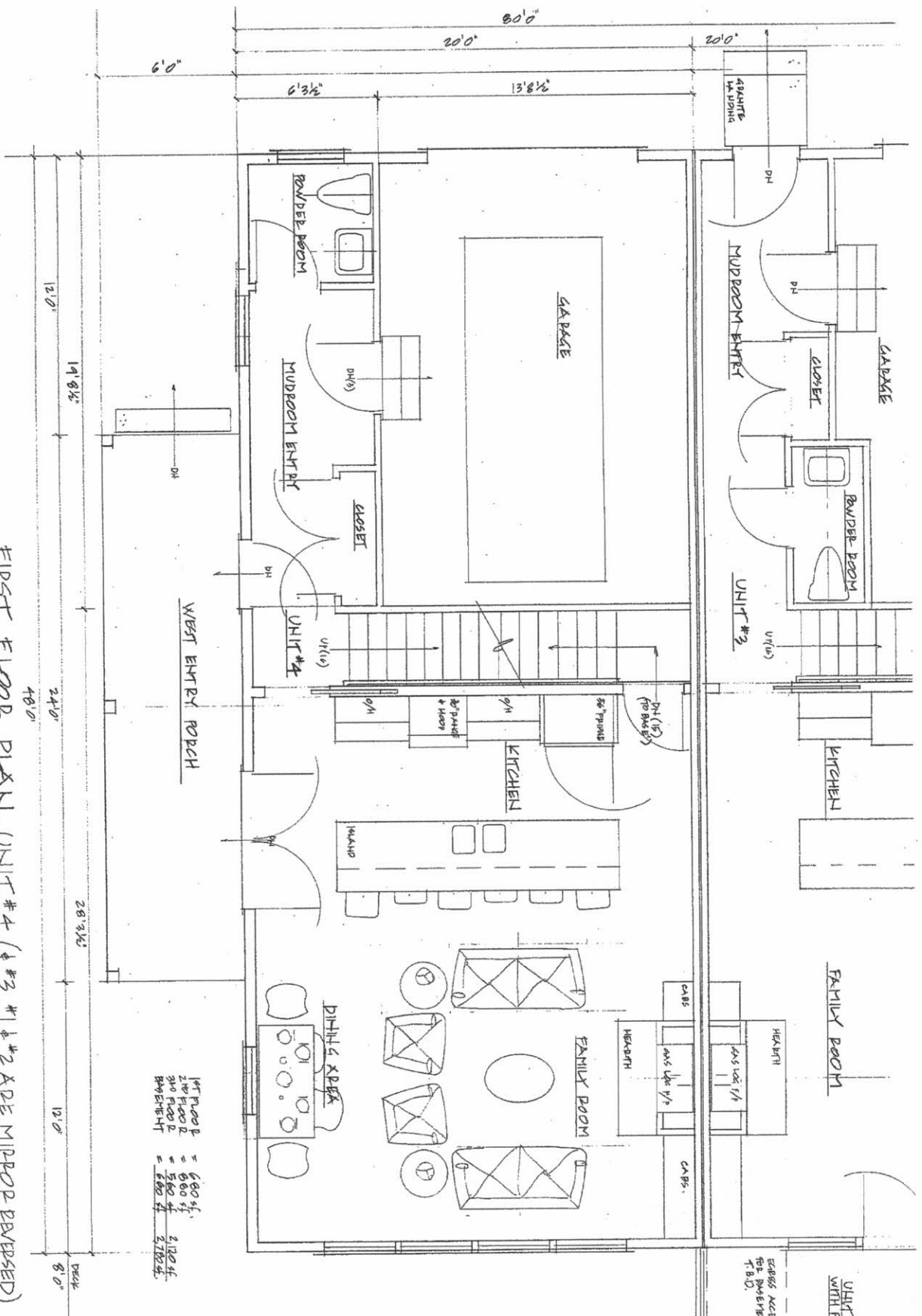
TITLE: PROP' SOUTH & NORTH ELEV
SCALE: $\frac{1}{8}"=1'0"$

DATE : 3.30.2020

REVISIONS:

HL5. = 680sf

FIRST FLOOR PLAN, UNIT #4 (1st & 2nd ADE MIRROR REVERSED)



PAGE A.3

PROPOSED BUILDING AT
185-187 PALEIGH WAY
PORTSMOUTH, NH

TITLE: 1ST FL. PLAN
SCALE: 1/4" = 1'-0"
DATE: 3.30.2020

REVISIONS:

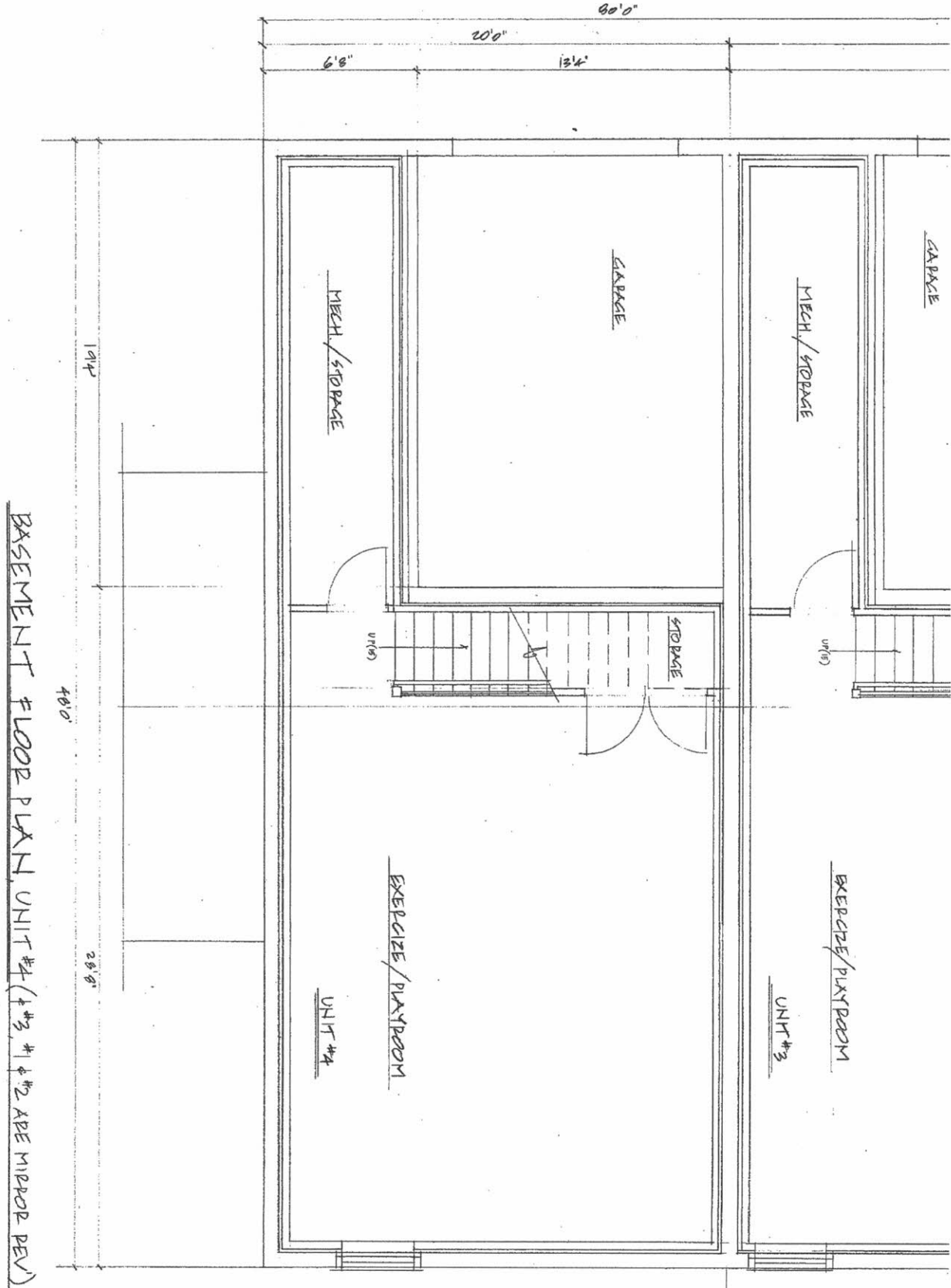


PAGE 5

TITLE: 3RD FLOOR (ATTIC) PLAN

DATE : 3.30.2020

REVISIONS:



PAGE A.6

PROPOSED BUILDING AT
185-187 PALEIGH WAY
PORTSMOUTH, NH

TITLE: BASEMENTS FLOOR PLAN
SCALE: 1/4"=1'0"
DATE: 3.30.2020
REVISIONS:

View of Property from Intersection of Saratoga Way and Albacore Way



View of Property from Saratoga Way



View of Property from Saratoga Way



View of Garage and Shed on Lot 113



Alternate View of Garage and Shed



View of Lot 113 from Albacore Way



View of Lot 112 from Paved Area



MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment ("ZBA")
FROM: Kevin M. Baum, Esquire
DATE: May 27, 2020
Re: Applicant: Salvation Army
Owner: RKW Investment Properties LLC
Property: 115 Heritage Avenue
Tax Map 285, Lot 5-1
Industrial ("I") Zoning District

Dear Chairman Rheaume and Zoning Board Members:

On behalf of the Salvation Army, we are pleased to submit this Memorandum and exhibits in support a Variance to permit Place of Assembly use on the above-referenced property (the "Property"). The variance is necessary for the Salvation Army to provide temporary services at the Property while it looks for a permanent new home.

I. Exhibits

1. Building Plan.
2. Office Floor Plan – showing leased premises.
3. Tax Assessor's Card – Tax Map 285, Lot 5-1.
4. City GIS Map – showing the property and surrounding area.
5. Site Photographs.

II. Relief Requested

The Salvation Army respectfully requests the following variance from the Portsmouth Zoning Ordinance ("PZO"):

Section 10.440.3.10 (Table of Uses) – to allow the use of the Property as a Place of Assembly.

III. Overview of Request and Property

On February 19, 2020, this Board granted the Salvation Army a Special Exception to allow Place of Assembly use at 2222 Lafayette Road to replace its longstanding Middle Street facility. The Middle Street building had become a burden to the organization due to its age and size, and has since been sold. Unfortunately, the Salvation Army's purchase of the 2222 Lafayette Road property did not occur, and the organization continues to look for a long-term

home. In the interim, the organization is leasing the subject Property as a temporary location for its local operations.

The Property is an approximately 2.74 acre parcel with an existing $\pm 25,376$ square foot industrial/warehouse building (the “Building”) and associated parking located at 115 Heritage Avenue in the Industrial (I) Zoning District. **Exhibit 1** (Building Plan); **Exhibit 3** (Tax Card). The Salvation Army is leasing approximately 3,000 square feet of space within the Building (**Exhibit 2**), which it has been for office use, permitted by right in the Industrial District. Additional uses are currently limited due to COVID-19 related restrictions. However, as restrictions lift, the Salvation Army hopes to increase the use of the space to provide a full range of its organizational services.

Proposed operations at the Property will mirror those of the Middle Street facility and those proposed for 2222 Lafayette Road, for which approval was recently granted. Specifically, the Salvation Army will provide weekly church services, youth and adult programming and associated religious/community services. The organization will also provide daily breakfasts and dinners via its food truck, with which it is currently providing prepared foods from the City’s designated State Street location on a temporary basis.¹ There will be no overnight facilities or services offered at the Property.

Parking is available on the Property, with approximately 15 unlined and undesignated spaces on each side of the Building (± 30 total) and additional space to the rear of the lot if needed. However, most of the organization’s patrons do not currently use (or own) cars to access services. They access the Property primarily via the Coast bus service or are picked up by Salvation Army staff members. The Property is located within walking distance of the Coast Bus route, with the closest stop located on Lafayette Road. **Exhibit 4**. Services and other events typically bring maximum of ± 35 -40 patrons and not more than ± 10 -12 cars. Thus, there is more than enough parking available at the Property.

The Property meets the Salvation Army’s needs while it seeks a more permanent home. No changes to the Building or parking area are proposed or needed to allow the organization to provide services. However, because the Property is located within the Industrial District, a variance is required to expand its utilization beyond minimal office use so that the Salvation

¹ See Portsmouth Herald, May 5, 2020 article available at <https://www.seacoastonline.com/news/20200505/salvation-army-rolls-out-food-truck-for-those-in-need-in-portsmouth>

Army can provide the full range of organizational services permitted under Place of Assembly use.

Other nearby places of assembly exist, including the Portsmouth Believers Church located at 235 Heritage Avenue, less than one-half mile up the road and also in the Industrial District, Calvary Baptist Church on Ocean Road and United Pentecostal Church on Banfield Road. Accordingly, the Salvation Army respectfully requests this Board grant a variance to allow the Salvation Army to operate as a Place of Assembly on the Property, consistent with other nearby church uses.

IV. VARIANCE REQUIREMENTS

1. The variances will not be contrary to the public interest.
2. The spirit of the ordinance is observed.

The first step in the ZBA's analysis is to determine whether granting a variance is not contrary to the public interest and is consistent with the spirit and intent of the ordinance, considered together pursuant to *Malachy Glen Associates, Inc. v. Town of Chichester*, 155 N.H. 102 (2007) and its progeny. Upon examination, it must be determined whether granting a variance "would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives." *Id.* "Mere conflict with the zoning ordinance is not enough." *Id.*

The purpose of the Portsmouth Zoning Ordinance as set forth in PZO §10.121 is "to promote the health, safety and the general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan... [by] regulating":

1. The use of land, buildings and structures for business, industrial, residential and other purposes – Office use is already permitted within the I District and on the Property as is secondary education use. The Salvation Army seeks to also provide small religious services, youth and other educational programming and similar Place of Assembly use within the existing Building. Use of the food truck on the Property is consistent with similar, commercial, food services typically provided to industrial facilities. Thus, the proposed use is consistent with the use of land within the area.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – No changes to the Building or parking area are proposed.

3. The design of facilities for vehicular access, circulation, parking and loading – No changes to the parking area is proposed. Given the long-existing layout, availability of ±30 (undesignated) spaces available and limited parking needs of the Salvation Army’s patrons, parking layout and vehicle circulation are fully adequate for the use.

4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – No impacts will be created by the variance. All use will be within the Building with the exception of the food truck offering prepared meals at limited times.

5. The preservation and enhancement of the visual environment – No impact. No changes to the Building or Property are proposed.

6. The preservation of historic districts, and buildings and structures of historic or architectural interest – Not applicable.

7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – No changes to the Building or Property are proposed. No wetlands or water bodies are identified on or adjacent to the Property (per City GIS mapping).

Based upon the foregoing, none of the variances “in a marked degree conflict with the ordinance such that they violate the ordinance’s basic zoning objectives.” *Malachy Glen, supra*, which also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality.... Another approach to [determine] whether granting the variance violates basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare. (emphasis added)

The Salvation Army proposes no physical changes to the Property. It only seeks to expand the use of the Property beyond office and secondary educational use, which are both permitted, to include other Place of Assembly uses such as small religious services, youth educational programs, meal service (via its food truck) and similar uses. Other Places of Assembly exist nearby, including the Portsmouth Believers Church located a short distance up Heritage Road. **Exhibit 5**. Accordingly, granting each requested variance will neither “alter the essential character of the locality,” nor “threaten the public health, safety or welfare.”

3. Granting the variance will not diminish surrounding property values.

The requested variance simply permits the Salvation Army to use the Property for the full range of its organizational services rather than the limited office and secondary educational uses currently permitted. Most of the use will be entirely within the Building and out of sight of surrounding properties. The only proposed exterior use is to provide meals via the food truck, a service typically provided by third party commercial food trucks to employees on other industrial properties. Thus, from the outside, the use of the Property will be unseen or indistinguishable from others in the area. The location of the Property within an industrial area and availability of ample off-street parking further mitigates any potential impacts to surrounding properties. In light of these factors, granting the requested variance will not diminish surrounding property values.

4. Denial of the variances results in an unnecessary hardship.

a. Special conditions distinguish the property/project from others in the area.

The Property includes an existing industrial/warehouse Building that is currently being used by the Salvation Army for office use. The Property's location on Heritage Avenue, away from residential neighborhoods but in close proximity to the Coast Bus route, makes it an ideal location for a broader range of use by the Salvation Army to provide its organizational services. Additionally, other, similar, Places of Assembly already exists in the area. *Walker v. City of Manchester*, 107 N.H. 382, 386 (1966) (hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use will have no adverse effect on the neighborhood.) These factors clearly combine to create special conditions.

b. No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance.

The PZO does not articulate a reason why Place of Assembly use is prohibited in the Industrial Zone. Presumably, it is to avoid bringing large numbers of congregants to the area for religious services, which could potentially conflict with nearby industrial activities. However, no such issue is present here. The Salvation Army's use of the Property will include office and adult educational uses (both already permitted) and limited other educational programs and small religious services. Services and other events typically bring maximum of ± 35 -40 patrons and not

more than ±10-12 cars. There is little risk of conflict with surrounding uses. Moreover, a similar use already exists just up the road at the Portsmouth Believers Church located at 235 Heritage Avenue, for which we are aware of no issues with other nearby properties. For all these reasons, there is no fair and substantial relationship between the general public purposes of these provisions of the PZO and their specific application to the Property.

c. The proposed use is reasonable.

For all the reasons previously stated, the proposed Place of Assembly use is reasonable. It simply expands the Salvation Army's use of the Property to include the full range of its organizational services. The location, size and layout of the lot are appropriate and further support the proposed use. Finally, other similar Places of Assembly exist nearby without any known issues.

5. Substantial justice will be done by granting the variance.

If "there is no benefit to the public that would outweigh the hardship to the applicant" this factor is satisfied. *Harborside Associates, L.P. v. Parade Residence Hotel, L.L.C.*, 162 N.H. 508 (2011). That is, "any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice." *Malachy Glen, supra* at 109. Granting the variance allows the Salvation Army to continue to provide the full range of its services, which are all the more important in the current economic circumstances. Thus, granting the variance provides a significant benefit to the public. Conversely, denial deprives the Salvation Army the full use of the Property and the public of a fuller range of religious/charitable services. There is no benefit to the public that outweighs the harm to the owner if the requested variance is not granted. Denial would result in significant harm to the Applicant and the public.

V. **CONCLUSION**

For all the reasons stated, the Salvation Army respectfully requests that the Portsmouth Zoning Board of Adjustment grant the submitted variance request to permit the use of the Property as a Place of Assembly.

Respectfully submitted,

THE SALVATION ARMY

By: 

Kevin M. Baum, Esquire
Hoefle, Phoenix, Gormley & Roberts, PLLC
127 Parrott Avenue
Portsmouth, NH 03801
(603) 436-0666

EXHIBIT B



BUILDING PLAN

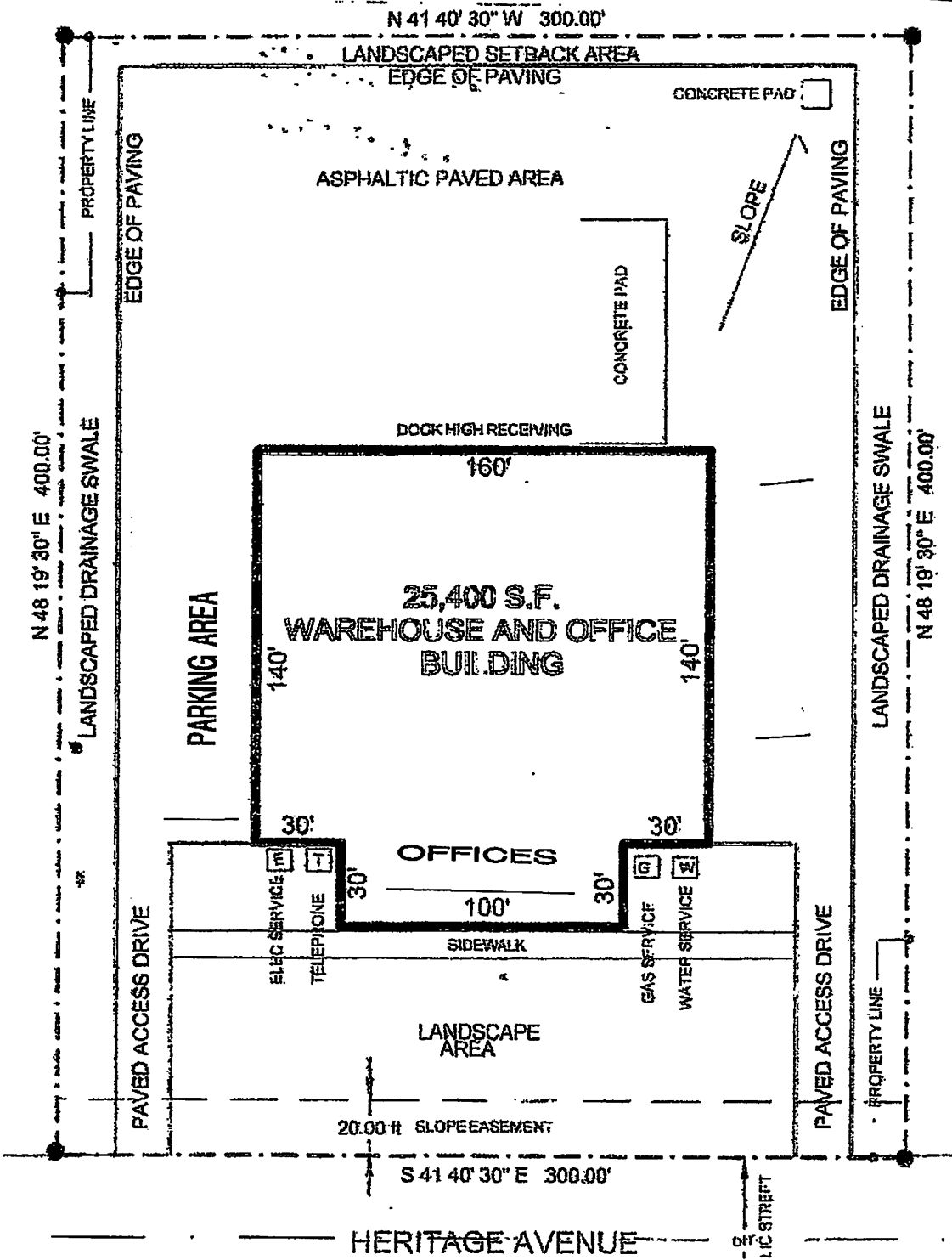
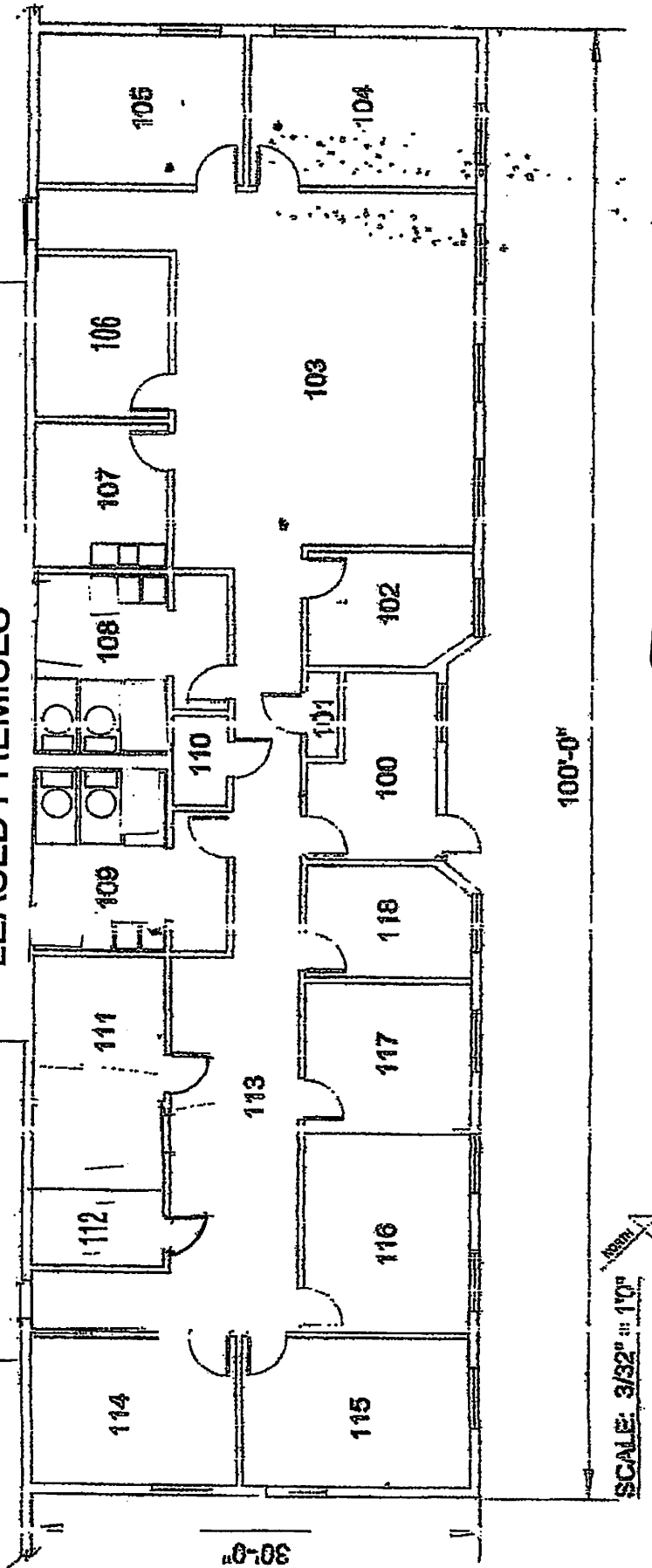


EXHIBIT C LEASED PREMISES



OFFICE FLOOR PLAN
WAREHOUSE & OFFICE BUILDING
115 HERITAGE AVENUE
PORTSMOUTH, N.H.



FIKW INVESTMENT PROPERTIES, LLC

P.O. BOX 341 RYE BEACH N.H. 03871

TEL: 603-773-5015

e-mail: whaveria@ansn.com

115 HERITAGE AVE

Location 115 HERITAGE AVE

Mblu 0285/ 0005/ 0001/ /

Acct# 35948

Owner RKW INVESTMENT
PROPERTIES LLC

PBN

Assessment \$1,767,400

Appraisal \$1,767,400

PID 35948

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2019	\$1,191,900	\$575,500	\$1,767,400
Assessment			
Valuation Year	Improvements	Land	Total
2019	\$1,191,900	\$575,500	\$1,767,400

Owner of Record

Owner RKW INVESTMENT PROPERTIES LLC
Co-Owner
Address PO BOX 341
 RYE BEACH, NH 03871

Sale Price \$850,000
Certificate
Book & Page 3490/0745
Sale Date 07/14/2000
Instrument 0

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
RKW INVESTMENT PROPERTIES LLC	\$850,000		3490/0745	0	07/14/2000

Building Information

Building 1 : Section 1

Year Built: 1985
Living Area: 25,376
Replacement Cost: \$1,606,902

Building Percent Good: 70
Replacement Cost
Less Depreciation: \$1,124,800

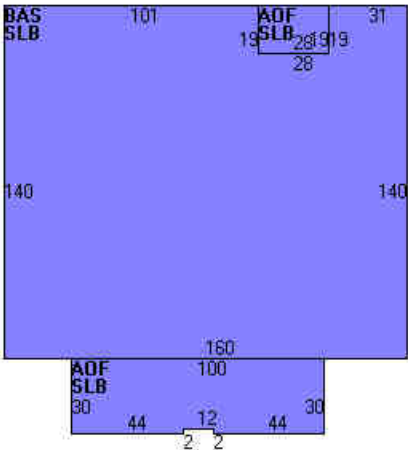
Building Attributes	
Field	Description
STYLE	Office/Warehs
MODEL	Industrial
Grade	C
Stories:	1
Occupancy	1
Exterior Wall 1	Concr/Cinder
Exterior Wall 2	
Roof Structure	Flat
Roof Cover	T & Grvl/Rubbr
Interior Wall 1	Drywall/Sheet
Interior Wall 2	
Interior Floor 1	Carpet
Interior Floor 2	
Heating Fuel	Gas
Heating Type	None
AC Type	None
Bldg Use	IND WHSES
Total Rooms	
Total Bedrms	
Total Baths	
Kitchen Grd	
1st Floor Use:	
Heat/AC	HEAT/AC PKGS
Frame Type	STEEL
Baths/Plumbing	AVERAGE
Ceiling/Wall	CEIL & MIN WL
Rooms/Prtns	AVERAGE
Wall Height	18
% Comn Wall	

Building Photo



(http://images.vgsi.com/photos2/PortsmouthNHPhotos/\00\01\14\64.JPG)

Building Layout



(http://images.vgsi.com/photos2/PortsmouthNHPhotos//Sketches/35948_3:

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
BAS	First Floor	21,880	21,880
AOF	Office	3,496	3,496
		25,376	25,376

Extra Features

Extra Features				Legend
Code	Description	Size	Value	Bldg #
SPR1	SPRINKLERS-WET	25376 S.F.	\$29,300	1
LDL1	LOAD LEVELERS	4 UNITS	\$10,900	1
A/C	AIR CONDITION	3508 S.F	\$6,500	1

Land

Land Use		Land Line Valuation	
Use Code	4010	Size (Acres)	2.74
Description	IND WHSES	Frontage	
Zone	I	Depth	
Neighborhood	301	Assessed Value	\$575,500
Alt Land Appr Category	No	Appraised Value	\$575,500

Outbuildings

Outbuildings						Legend
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
FN2	FENCE-5' CHAIN			1100 L.F.	\$7,300	1
PAV1	PAVING-ASPHALT			15000 S.F.	\$13,100	1

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2018	\$948,700	\$532,700	\$1,481,400
2017	\$948,700	\$532,700	\$1,481,400
2016	\$912,300	\$450,800	\$1,363,100

Assessment			
Valuation Year	Improvements	Land	Total
2018	\$948,700	\$532,700	\$1,481,400
2017	\$948,700	\$532,700	\$1,481,400
2016	\$912,300	\$450,800	\$1,363,100



Property Information
Property ID 0285-0008-0000
Location 175 HERITAGE AVE
Owner ARTISAN REALTY ASSOCIATES 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

Exhibit 4

Map Theme Legends

Zoning

Residential Districts

R

Rural

SRA

Single Residence A

SRB

Single Residence B

GRA

General Residence A

GRB

General Residence B

GRC

General Residence C

GA/MH

Garden Apartment/Mobile Home Park

Mixed Residential Districts

MRO

Mixed Residential Office

MRB

Mixed Residential Business

G1

Gateway Corridor

G2

Gateway Center

Business Districts

GB

General Business

B

Business

WB

Waterfront Business

Industrial Districts

OR

Office Research

I

Industrial

WI

Waterfront Industrial

Airport Districts

AIR

Airport

AI

Airport Industrial

PI

Pease Industrial

ABC

Airport Business Commercial

Conservation Districts

M

Municipal

NRP

Natural Resource Protection

Character Districts

CD5

Character District 5

CD4

Character District 4

CD4W

Character District 4-B

CD4-L1

Character District 4-L1

CD4-L2

Character District 4-L2

Civic District

Civic District

Municipal District

Municipal District

Overlay Districts

OLOD

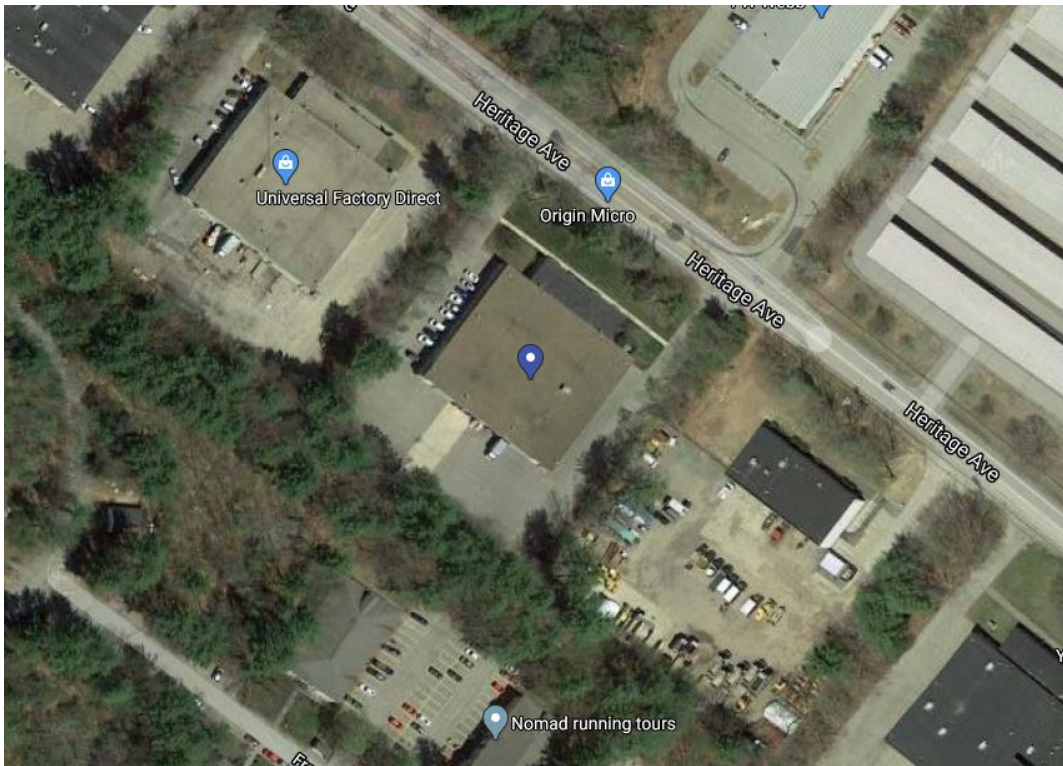
Osprey Landing Overlay District

Downtown Overlay District

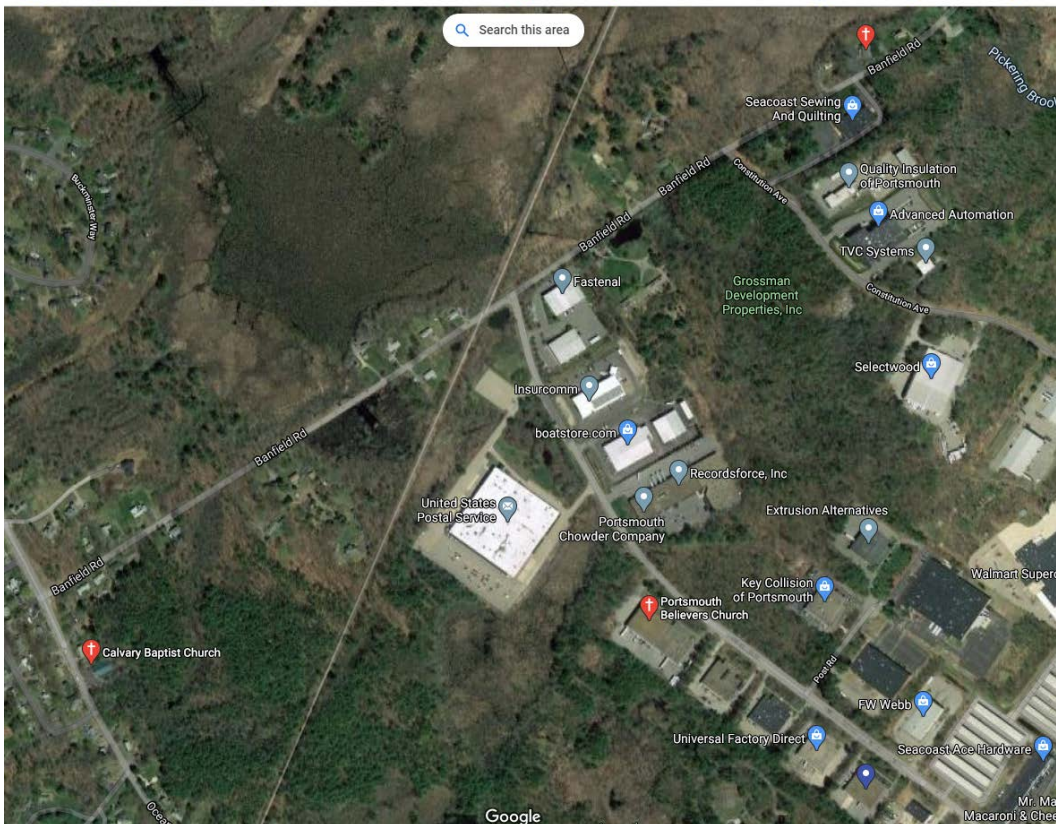
Historic District

City of Portsmouth

Exhibit 5
Site Photographs



Aerial View of Property



Aerial View of Property showing nearby places of assembly

Exhibit 5
Site Photographs



View of Property from the front (northeast)



Exhibit 5
Site Photographs



View from Property from the side (north)



View from Property from the side (south)

Exhibit 5
Site Photographs



View from Property from the side (southwest)



Salvation Army Food Truck

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

May 27, 2020

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

RE: Variance Application for Property at 77 Meredith Way (Tax Map 162, Lot 16)
Owner: Karen Dufour
Applicant: Derek R. Durbin

Dear Chairman Rheume,

Enclosed, please find the following materials associated with the Variance application for 77 Meredith Way for consideration at the Zoning Board of Adjustment's next regularly scheduled meeting:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application with Exhibits A-E;
- 3) ZBA Site Plan;
- 4) Photographs of the Property.

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

Karen Dufour, owner of property located at 77 Meredith Way, Portsmouth, New Hampshire, (the "Property"), hereby authorizes Derek R. Durbin to submit any municipal permit applications on her behalf and take all actions related thereto relative to the proposed subdivision of the Property. This Letter of Authorization shall be valid until expressly revoked in writing.

Karen R. Dufour
Printed Name: Karen Dufour

5/24/2020
Date:

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

Karen Dufour
77 Meredith Way
Portsmouth, NH 03801
(Owner)

Derek R. Durbin
162 Stark Street
Portsmouth, NH 03801
(Applicant)

77 Meredith Way
Portsmouth, NH 03801

INTRODUCTORY STATEMENT

Karen Dufour is the owner of Property located at 77 Meredith Way, identified on Portsmouth Tax Map 162 as Lot 16 (“the Property”). The Property is located within the GRA Zoning District and contains approximately 0.52 acres and a small, 2 bedroom, 1 bathroom single-family home. The assessing records indicate that the current home was built in 1870, but the Applicant’s research indicates that it was actually built in or around 1860. The Property is located in the “Creek Neighborhood” section of Portsmouth.

Background on Property

The Property is significantly larger than surrounding properties. Past deeds to the Property describe it as a 150’ x 150’ lot, making it a perfect square. A Plan for “Elm Place” recorded in 1856 appears to show the Property as 3 separate lots. Exhibit A. However, past deeds to the Property dating back to 1887 have only described it as 1 parcel. The registry records for the Property beyond this are unclear, as it appears that it may have been conveyed through an estate, which may explain why the Property was subsequently described as a 150’ x 150’ parcel of land rather than 3 separate tracts.

Meredith Way

The Property has approximately 30’ of paved street frontage on Meredith Way, although the Tax Map shows the pavement as ending before the Property.¹ The paved portion of the street

¹ Section 10.530 of the Ordinance defines “frontage” as: [t]he horizontal distance measured along a **lot line** dividing a **lot** from a **street**. Such measurement shall refer to a continuous line except where otherwise specified.

“Street” is defined as: A thoroughfare or roadway which is either (a) formally accepted by the City, or (b) shown on a subdivision plan approved by the Planning Board and constructed to City subdivision specifications or for which surety has been posted to guarantee construction of all improvements required by the Planning Board.

is approximately 12-13' wide. The City tax map shows Meredith Way continuing beyond the paved portion of the street in front of the Property, across the abutting property (Lot 162-17) and then stopping at the boundary of Lot 162-18. Exhibit B. It has been said that Meredith Way, which was originally shown as "Park Street" on the Elm Place Plan, was once actually utilized as a through-way to what is now Stark Street. Clearly this was the original intent behind the street. However, most of this area is now overgrown with vegetation and has been for decades. Whether or not the City considers the street to be "accepted" is an open question. There are utilities (sewer line) that run through the paper portion of Meredith Way out to Pine Street and the City continues to show the paper portion of the street on its Tax Map. Exhibit C. A lot line adjustment plan associated with Lot 162-18 was approved by the City in 1993 which allowed for the owners of that property to obtain ownership in a portion of Meredith Way. Exhibit D. This plan explains why the paper portion of the street ends at Lot 162-18 and no longer continues through to Stark Street.

Proposed Subdivision

The Applicant is applying for the necessary zoning relief to subdivide the Property into 2 equal 75' x 150' parcels (11,250 square feet). Because the individual lots would lack 100' of continuous street frontage, the Applicant needs variance relief for the proposed lots. Out of an abundance of caution, the Applicant has opted to treat both lots as having 0' of frontage since the Tax Map shows the paved portion of Meredith Way ending before the Property. However, the reality is that appropriate access can be provided to both lots by constructing the un-constructed portion of the street either as a private drive or city way. Accordingly, the Applicant is proposing to continue the street, preferably as a private drive, to provide access to both proposed lots. If the variance relief is approved, the project will be subject to TAC and Planning Board review where the means of access to the lots will ultimately be determined to ensure that there is safe ingress and egress for emergency vehicles.

SUMMARY OF ZONING RELIEF

The Applicants are requesting the following variances from Section 10.521 of the Ordinance (Table of Dimensional Requirements), as outlined by individual lot:

Remainder Lot

- 1) To allow 0' of continuous street frontage where 100' is the minimum required in the GRA Zoning District.

New Lot

- 2) To allow 0' of continuous street frontage where 100' is the minimum required in the GRA Zoning District.

VARIANCE CRITERIA

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

“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).

Many of the surrounding properties in the “Creek Neighborhood”, particularly those on Pine Street, remain in the same configuration that they were in when this area was first shown on the Plan of Elm Place in 1856. See Exhibit A.² The properties on Pine Street are generally 0.17 – 0.18 acre lots with around 60’ of street frontage. Exhibit E (2 Pages). The properties on Pine Street define the character of the neighborhood. In the larger neighborhood outside of Pine Street (i.e. Thornton, Stark, Clinton etc.) there are examples of lots greater in size with more continuous street frontage, but these are the exceptions to the general rule. Likewise, there are also plenty of properties that are significantly smaller and have far less continuous street frontage than the properties on Pine Street.

Minimum street frontage requirements are primarily intended as density control and to ensure that properties have sufficient access to promote orderly development (i.e. adequate ingress and egress). The proposed lots will be approximately 0.26 acres in size and will have up to 75’ of frontage either on a public or a private street. It is unclear what the City will ultimately require in terms of a street or driveway build-out if this Board approves the variance requests and the project then moves through the TAC and Planning Board process. Notwithstanding, the proposed lots will be of greater dimension than most other developed properties in the neighborhood, thus conforming to the prevailing character and density of the neighborhood. Moreover, reasonable access can be provided to the subdivided lots through the construction of the paper street as a city way or private drive. Therefore, granting the variances will not alter the essential character of the neighborhood or pose any threat to the public, health, safety or welfare. The creation of an additional lot will provide additional housing for a community that lacks the same.

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). In the present instance, the majority of properties in the Creek Neighborhood do not conform to the minimum continuous street frontage requirement.

² Pine Street was called “East Park Street” and Meredith Way was called West Park Street on the Elm Place Plan of 1856.

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 would be no gain to the public in denying the variance relief. To the contrary, there would be a detriment. The property can accommodate a large two-unit condominium by right without having to go through any type of site plan review or subdivision process given the significant size of the lot and available building envelope. However, a large attached two-unit condominium would be out of character with the rest of the neighborhood, which is characterized primarily by smaller lots with single-family homes. If the variances were denied, the landowner would lose the ability to subdivide the Property, leaving her with an oversized lot with a small, functionally obsolescent single-family home that has a very high tax assessment.

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

The subdivided lots will be of similar or greater size and character to other properties within the neighborhood. Any new development that would occur on the subdivided lots would only serve to increase surrounding property values, as evidenced by other similar projects in Portsmouth.

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. It is much larger in size than surrounding properties with 22,500 square feet of lot area and has up to 150' of available street frontage. By legal right, the Applicant could construct a very large, attached two-unit condominium on the Property without needing variance relief or subdivision approval. However, as stated above, this would not conform to the prevailing character of the neighborhood and would ultimately be a detriment to surrounding property owners and the public. As proposed, the subdivided lots will exceed the minimum lot area requirement by 3,750 square feet and provide up to 75' of street frontage in a neighborhood where most lots are smaller in size and have far less frontage. As a result of these special conditions, there is no fair and substantial relationship between the general purpose of the 100' continuous street frontage requirement and its application to the Property.

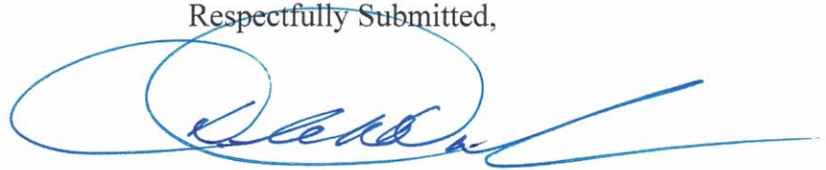
Finally, the intended use of the subdivided lots is for single-family residential purposes, which is permitted by right in the GRA Zoning District. Therefore, the proposed use is inherently reasonable per Section 10.440 of the Ordinance.

CONCLUSION

In conclusion, the Applicant has demonstrated that the five (5) criteria are met for granting each of the variances requested and respectfully requests an approval from the Board.

Respectfully Submitted,

Dated: May 27, 2020

A handwritten signature in blue ink, appearing to read 'Derek R. Durbin', is written over a large, loopy blue oval. A long horizontal line extends from the end of the signature to the right.

By: Derek R. Durbin, Esq.
Durbin Law Offices PLLC
144 Washington Street
Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com

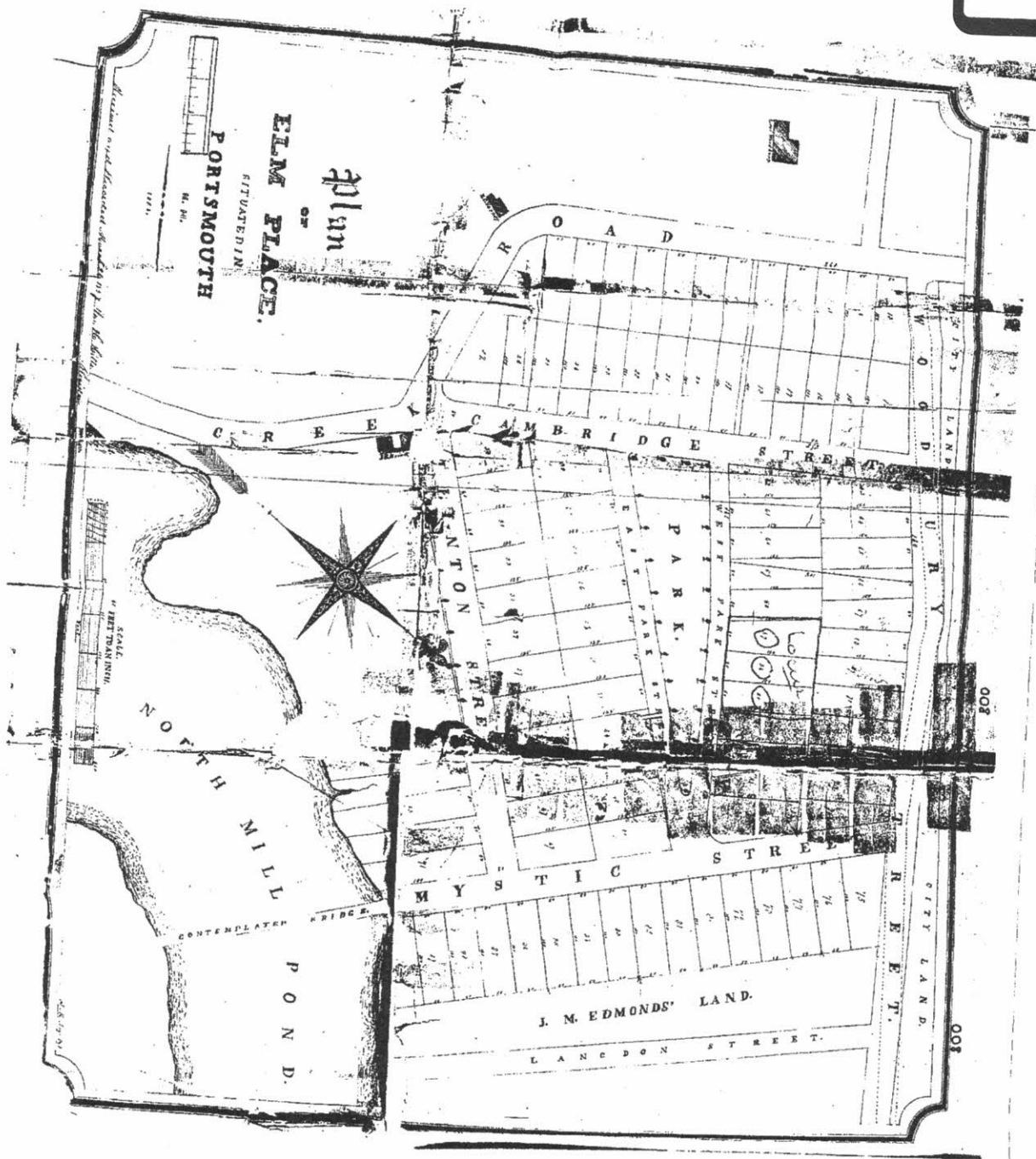
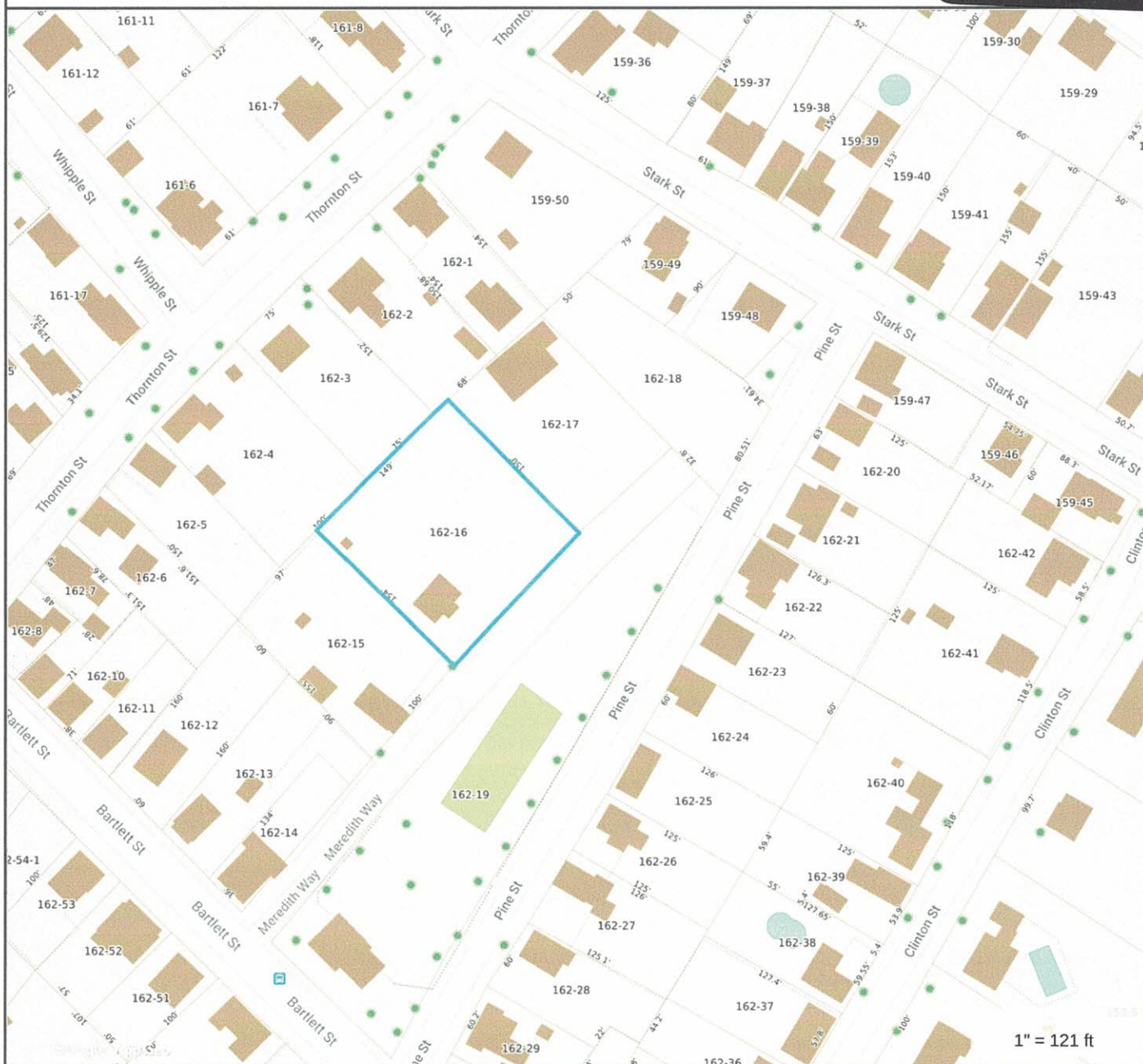


Exhibit B



Property Information

Property ID 0162-0016-0000
Location 77 MEREDITH WAY
Owner DUFOUR KAREN L



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

**Property Information**

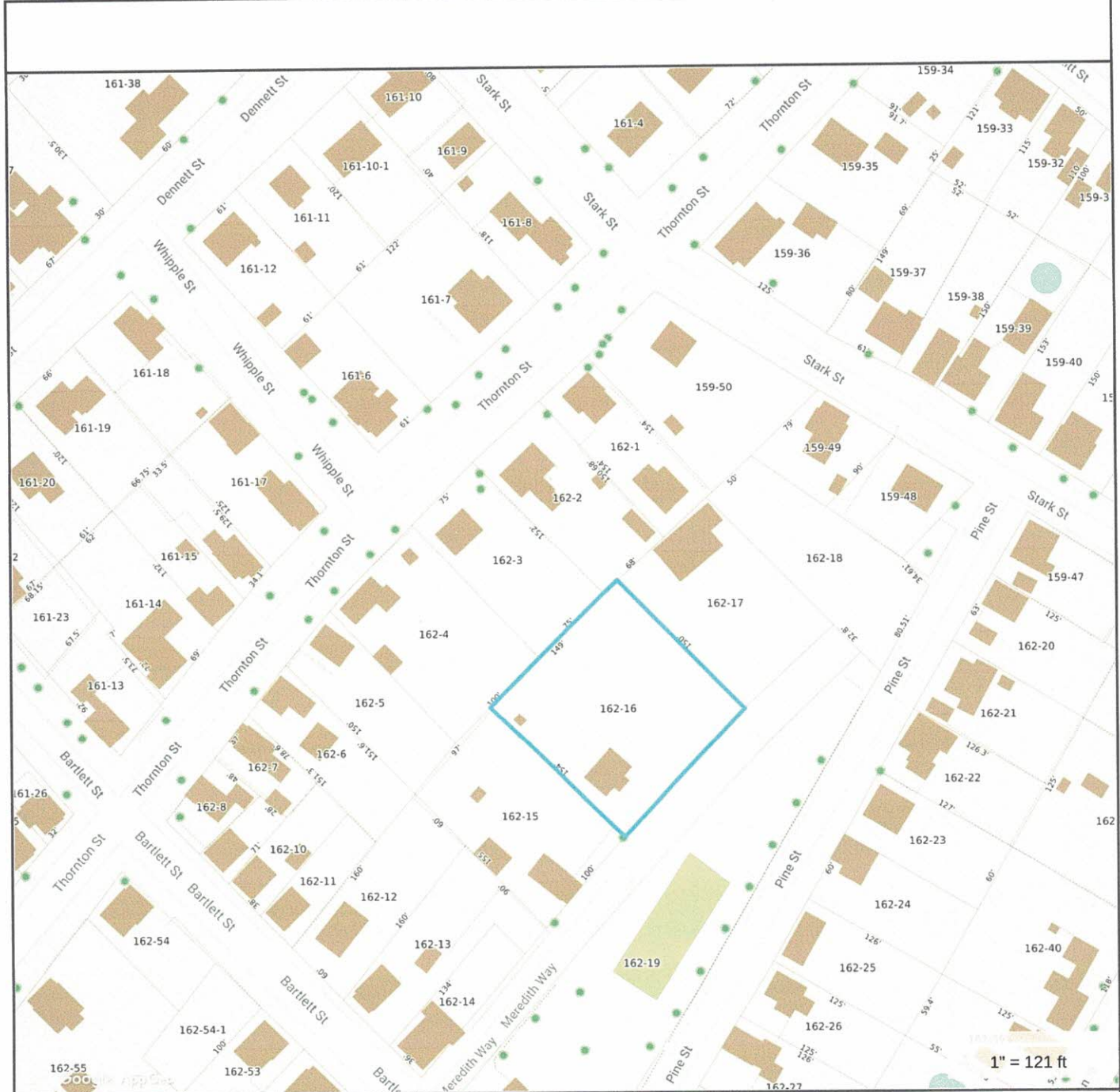
Property ID 0162-0016-0000
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ZBA Site Plan
77 meredith Way

Front View of Property from Meredith Way



View of Right Side Yard



View of Rear Yard of Property



View of Rear Property Boundary



Alternate View of Rear Yard



View of Right Side Yard from Rear Yard



View of End of Pavement on Meredith Way and beginning of Unpaved Portion of Street

