

**BOARD OF ADJUSTMENT
PORTSMOUTH, NEW HAMPSHIRE**

Remote Meeting Via Zoom Conference Call

Register in advance for this meeting:

https://zoom.us/webinar/register/WN_nVxGcuO7SQmubrQ3j3NKwg

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 the COVID-19 outbreak an emergency and has waived the requirement that a quorum be physically present at the meeting pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2020-5, 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.

MAY 26, 2020

AGENDA

I. PUBLIC HEARINGS – NEW BUSINESS

1) Petition of **Barry & Martha White, Owners**, for property located at **83 Rockingham Avenue** wherein relief is 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.

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.

3) Petition of **Stacey & Philip Gibson, Owners**, for property located at **48 Hillside Drive** wherein relief is 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.

4) Petition of **Borthwick Forest, LLC, Owner**, for property located at **0 Islington Street** wherein relief is 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.

5) Petition of **James E. Gould, Owner**, for property located at **246 Thornton Street** wherein relief is 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.

6) Petition of **Salema Realty Trust, Owner**, for property located at **199 Constitution Avenue** wherein relief is 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.

II. OTHER BUSINESS

III. ADJOURNMENT

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: May 20, 2020
RE: Zoning Board of Adjustment May 26, 2020 Meeting

NEW BUSINESS

1. 83 Rockingham Avenue
2. 268 Dennett Street
3. 48 Hillside Drive
4. 0 Islington Street
5. 246 Thornton Street
6. 199 Constitution Avenue

NEW BUSINESS

1.

Petition of **Barry & Martha White, Owners**, for property located at **83 Rockingham Avenue** wherein relief is 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.

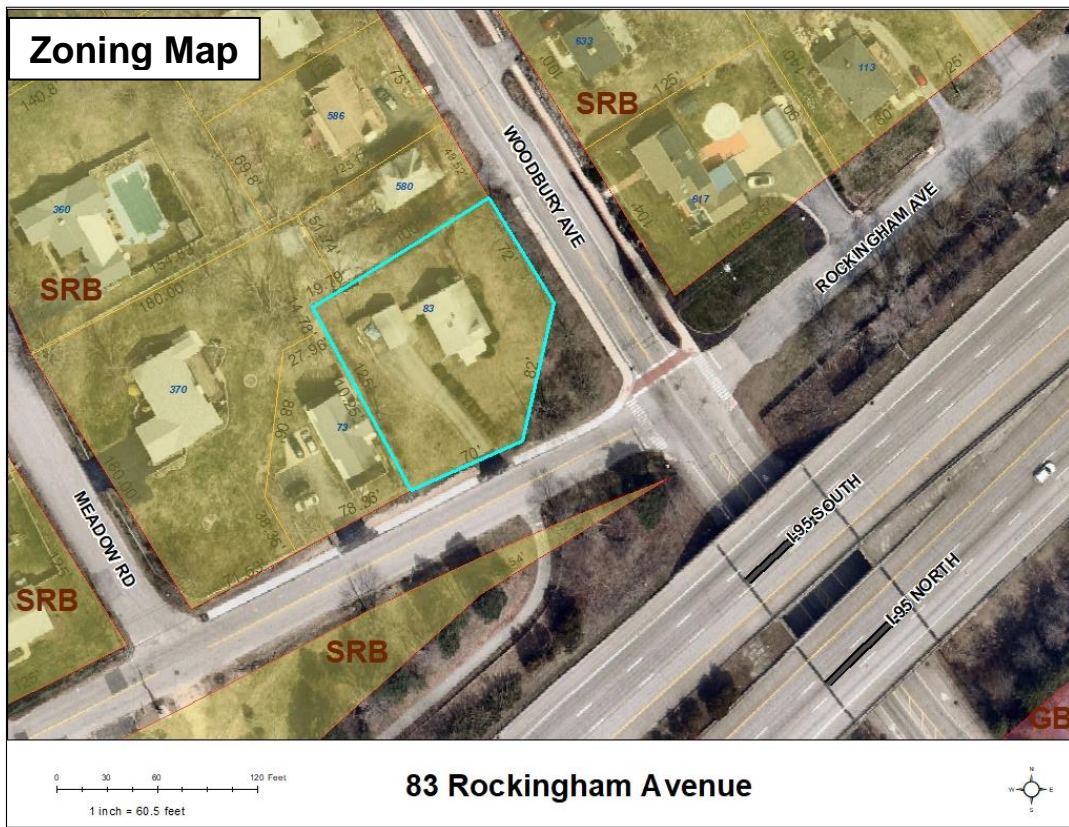
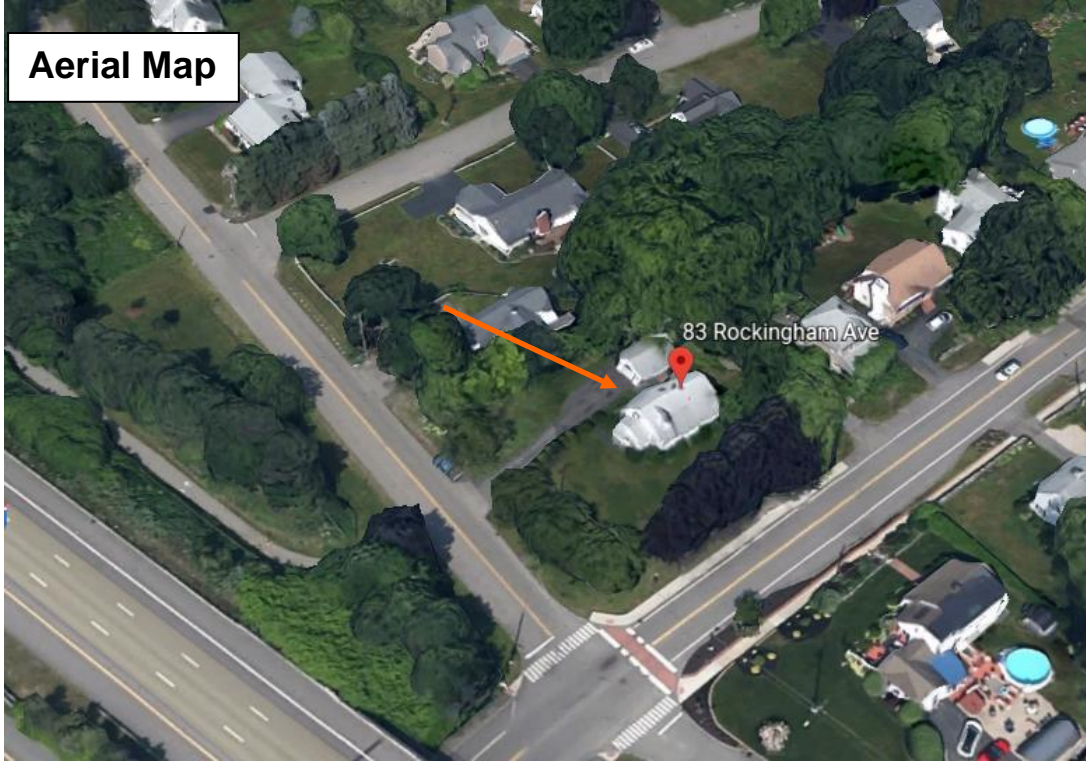
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family	Condenser unit	Primarily residential uses
<u>Lot area (sq. ft.):</u>	14,258	14,258	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	14,258	14,258	15,000 min.
<u>Street Frontage (ft.):</u>	222	222	100 min.
<u>Lot depth (ft.):</u>	125	125	100 min.
<u>Primary Front Yard (ft.):</u>	26	21	30 (15 per 10.516.10) min.
<u>Secondary Front Yard (ft.):</u>	40	30	30 (26 per 10.516.10) min.
<u>Left Side Yard (ft.):</u>	26	22	10 min.
<u>Rear Yard (ft.):</u>	26	30.5	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u> :	10	19	20 max.
<u>Open Space Coverage (%)</u> :	>40	>40	40 min.
<u>Parking</u>	2+	2+	1.3
<u>Estimated Age of Structure:</u>	1920	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposing to demolish the existing structures on the lot and construct a new single-family dwelling. Because the existing lot is nonconforming, variances are required for lot area and lot area per dwelling unit. Application of Section 10.516.10 reduces the required front setback from 30 feet to 15 feet on Rockingham Ave, however the proposed front yard is 21 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.

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.

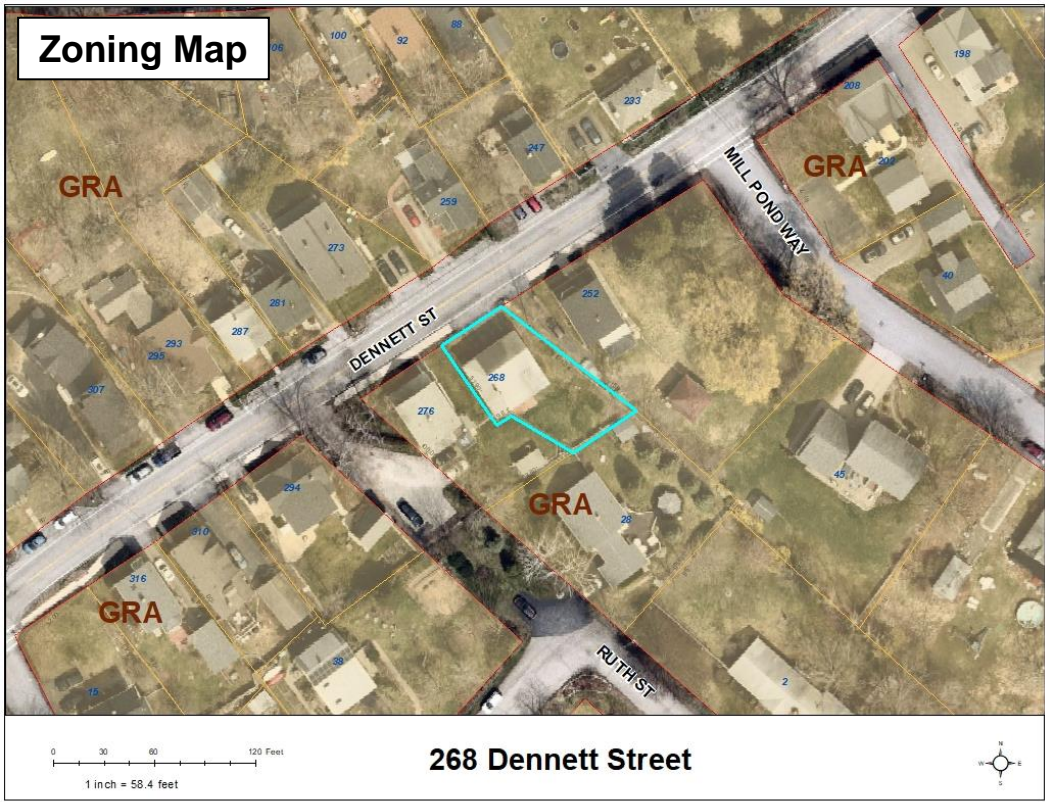
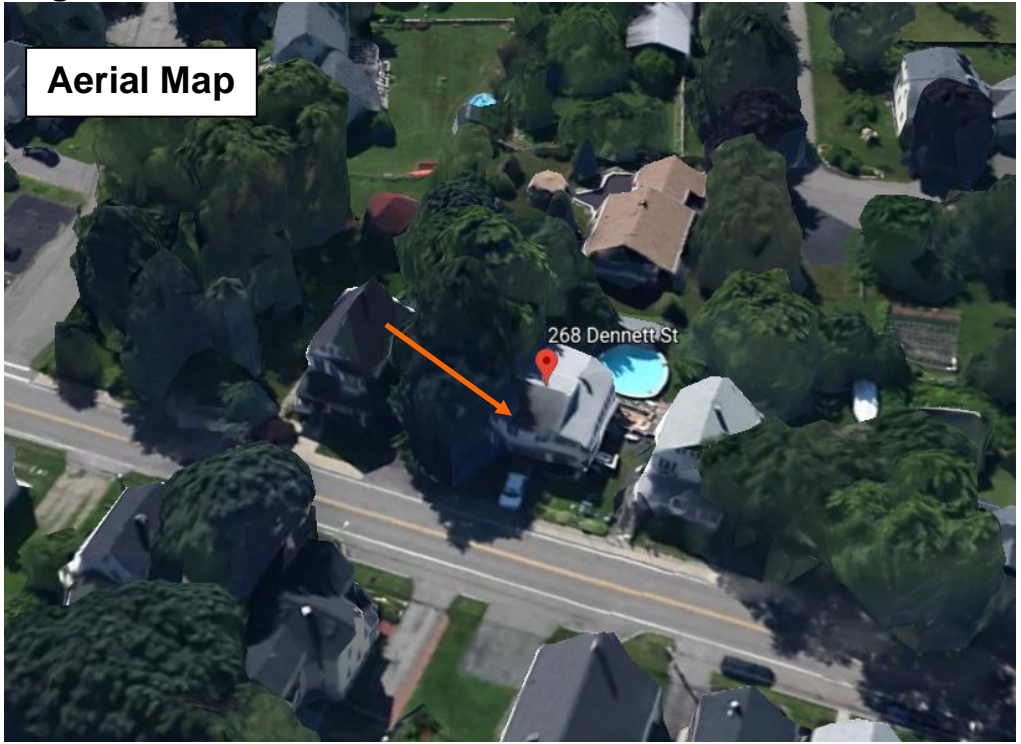
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Construct addition	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	4,821	4,821	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	4,821	4,821	7,500 min.
<u>Street Frontage (ft.):</u>	42	42*	100 min.
<u>Lot depth (ft.):</u>	>100	>100	70 min.
<u>Primary Front Yard (ft.):</u>	20	20	15 min.
<u>Right Side Yard (ft.):</u>	0	0*	10 min.
<u>Left Side Yard (ft.):</u>	11	11	10 min.
<u>Rear Yard (ft.):</u>	39	39	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	28.5	28.5*	25 max.
<u>Open Space Coverage (%):</u>	59	59	30 min.
<u>Parking:</u>	4	4	1.3
<u>Estimated Age of Structure:</u>	1955	Variance request shown in red. *prior variances granted in 2017	

Other Permits/Approvals Required

None.

Neighborhood Context



Previous Board of Adjustment Actions

March 21, 2017 The Board granted variances for a lot line adjustment as follows: Section 10.521 to allow continuous street frontage of 42.4'± where 100' is required; a right side yard of 0'± where 10' is required; and 28.5%± building coverage where 25% is the maximum allowed.

Planning Department Comments

Variances were granted as part of a lot line revision approval in 2017, as shown in the history above. The proposal is an upward expansion of the existing house within the right side yard. As the applicant's representative states, there is a building and maintenance easement for 268 Dennett Street on 276 Dennett Street that would allow for construction and maintenance of the house, if the variances are granted.

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 **Stacey & Philip Gibson, Owners**, for property located at **48 Hillside Drive** wherein relief is 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.

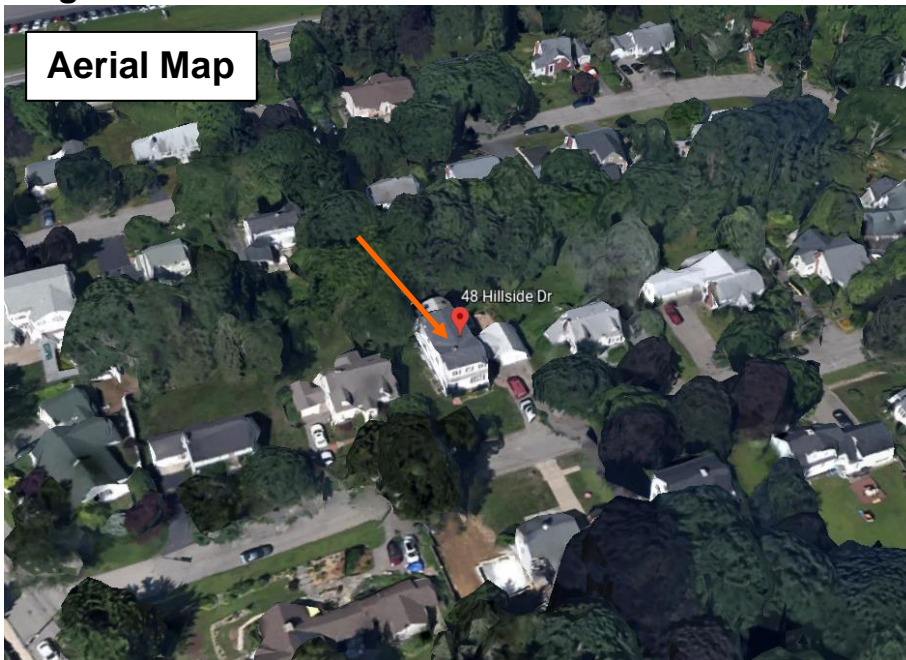
Existing & Proposed Conditions

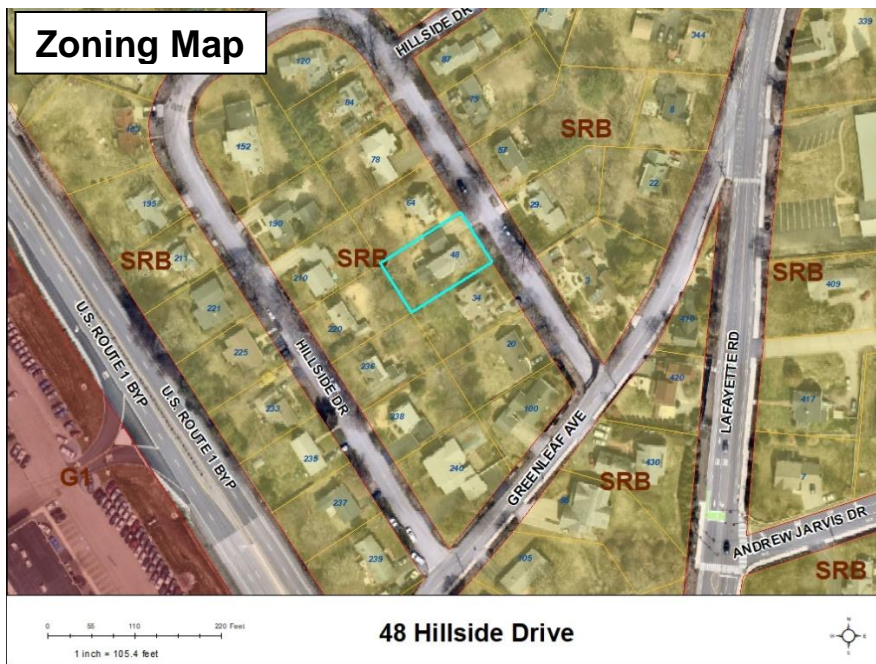
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Keep chickens	Primarily residential uses
		Special exception request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context





Previous Board of Adjustment Actions

June 25, 1991 The Board granted variances to construct an addition to an existing garage as follows: Article III, Section 10-302 to allow a 3' right yard where a 10' right hard is required; and a lot coverage of 29.15% where a lot coverage of 20% is the maximum allowed.

Planning Department Comments

The applicant is proposing to have 2 chickens (hens) including a 6x2 foot coop on wheels. If granted approval the Board should consider a stipulation that prohibits roosters and limits the number of chickens.

Review Criteria

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

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

4.

Petition of **Borthwick Forest, LLC, Owner**, for property located at **0 Islington Street** wherein relief is 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.

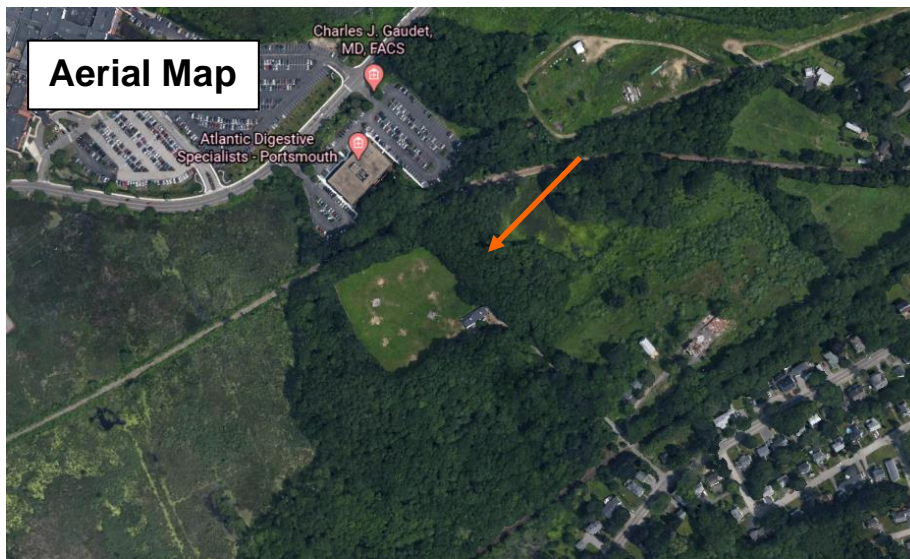
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use</u> Sign District 4:	Medical facility	Monument sign	Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	41.56	41.56	3 acres min.
<u>Setback (ft.):</u>	NA	3.6'	20 min.
<u>Height (ft.):</u>	NA	5'2"	20 max.
<u>Sign area (sq. ft.):</u>	NA	45	100 max.
<u>Estimated Age of Structure:</u>	Under Construction	Variance request shown in red.	

Other Permits/Approvals Required

None.

Neighborhood Context





Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The property is located in sign district 4 where the minimum setback from any lot line for a freestanding sign is 20 feet. The development for this property includes the new medical office building and a new road extension off of Borthwick Avenue. The road ends in a cul-de-sac just beyond the office building and includes a new multi-use path as part of the development. As shown on Exhibit 3 in the application, the multi-use path is located on the same side of the road as the new building, which results in a greater setback distance. It appears from this exhibit that in this location a variance would be needed if the path was not on this side of the road.

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.

5.

Petition of **James E. Gould, Owner**, for property located at **246 Thornton Street** wherein relief is 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.

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>		<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Un-merge lots Lot 23 Lot 25		Primarily Residential Uses
<u>Lot area (sq. ft.):</u>	14,344	7,183	7,161	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,172	3,591	7,161	7,500 min.
<u>Street Frontage (ft.):</u>	121.61	61	60.61	100 min.
<u>Lot depth (ft.):</u>	118	118	118	70 min.
<u>Primary Front Yard (ft.):</u>			16	15 min.
<u>Right Side Yard (ft.):</u>	12.8	12.8	10.4	10 min.
<u>Left Side Yard (ft.):</u>	67	4	6	10 min.
<u>Rear Yard (ft.):</u>	52	52	41	20 min.
<u>Height (ft.):</u>	<35	<35	<35	35 max.
<u>Building Coverage (%):</u>	13	20	26	25 max.
<u>Open Space Coverage (%):</u>	81	53	61	30 min.
<u>Parking:</u>	3	3	3	3 (lot 23) 1.3 (lot 25)
<u>Estimated Age of Structure:</u>	1890	Variance request shown in red.		

Other Permits/Approvals Required

City Council – Un-merge lot to premerger status

Previous Board of Adjustment Actions

No BOA history found.

Planning Department Comments

The applicant is proposing to unmerge the lots pursuant to RSA 674-39aa. Reverting back to two lots will result in several nonconformities with both lots. The existing two-family will become more nonconforming to lot area per dwelling unit and the existing side yard will become nonconforming. The proposed dwelling on lot 25 will encroach into the left side yard and will result in 26% building coverage where 25% is the maximum allowed. It appears the shed side yard will become nonconforming as a result of restoring the property line between the two lots. This was not advertised and the applicant has indicated the approximate height at 9'4", which would be the required setback. If the Board grants approval of the requested variances, and feels that sufficient notice was given to account for the side yard setback for the shed, the motion should indicate approval of the shed location. Otherwise, the shed would need to be relocated to a conforming location or a separate variance application would be required.

Review Criteria

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

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
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.

6.

Petition of **Salema Realty Trust, Owner**, for property located at **199 Constitution Avenue** wherein relief is 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.

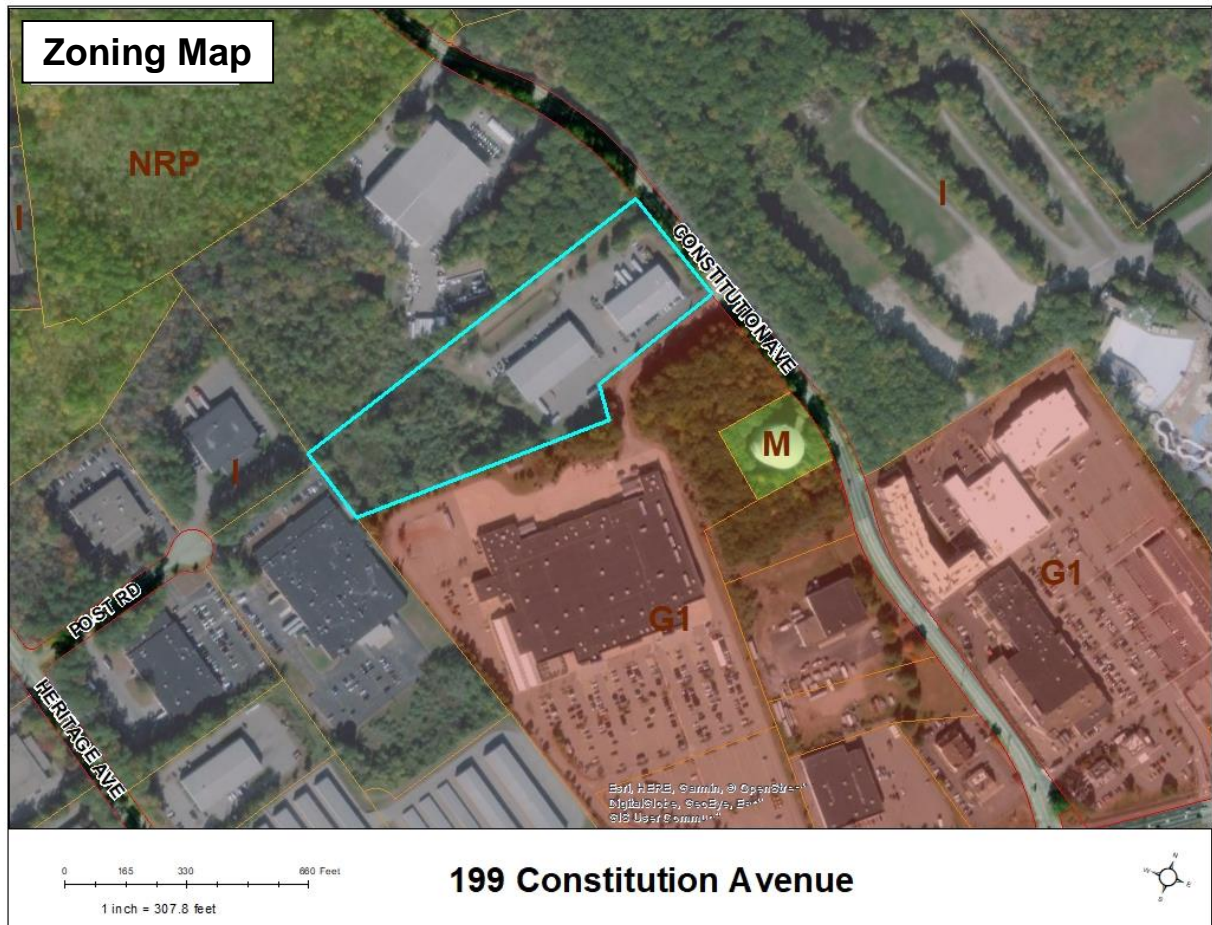
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Industrial/ Commercial	Multifamily residential 40- 70 units	Industrial uses
<u>Lot area (sq. ft.):</u>	8.49 acres	8.49 acres	2 acres min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	NA	5,287 (70 units)	NA min.
<u>Street Frontage (ft.):</u>	331	331	200 min.
<u>Lot depth (ft.):</u>	1123	1123	200 min.
<u>Parking</u>		86 shown on plan	61/73 (depending on # of units)
		Variance request shown in red.	

Other Permits/Approvals Required
TAC/Planning Board – Site Plan review

Neighborhood Context





Previous Board of Adjustment Actions

January 20, 1998 The Board granted a variance from Article II, Section 10-209(21) to allow the establishment of a 3,000 s.f. millwork sales for both retail and wholesale sales with more than 25% of the space being devoted to retail sales showroom.

June 3, 1997 The Board granted a variance from Article II, Section 10-209 to allow an indoor recreational facility (dance studio/8 students, climbing wall/24 persons, gymnastics/12 students, tutor center/1 teacher & 2 students, trick blade and board course/20 persons) with associates babysitting service for members in a district where such use is not allowed.

- October 21, 1997 The Board granted an amendment to that variance to change the located from Building #1 to Building #2.

June 27, 2000 The Board granted the following:

A special exception as allowed in Article II, Section 10-209(35)(b) to place a 24' x 38' modular training trailer for a period of 6 months for use in training existing employees on a new manufacturing process software in a district where temporary structure may be allowed for 180 days by Special Exception, and,

A variance from Article III, Section 10-304(A) to allow said trailer within the required 50' rear yard setback where a 50' setback is the minimum required.

These were granted with the following stipulations:

- The variance be in conjunction with the Special Exception; and,
- A bond be posted in the amount of \$1,000.00 to ensure removal of the trailer.

Planning Department Comments

The applicant is proposing to construct a 4-story multi-family residential building in the Industrial district where residential uses are not permitted. The lot currently contains two other buildings that are used for commercial and industrial purposes. The proposed residential building location conforms to all of the dimensional requirements for the zone, as well as the parking requirements. If granted approval, the proposal will go through site review with TAC and the Planning Board. The application indicates the final number of units will be determined through the planning process, however the Board should consider stipulating the maximum number for this proposal.

If the variance is granted, the Board should consider a stipulation that sets a maximum number of units for the proposal.

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.

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

April 28, 2020

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

**RE: Variance Application of Barry and Martha White
83 Rockingham Avenue, Portsmouth (Tax Map 236, Lot 20)**

Dear Chairman Rheame,

Our Office represents Barry and Martha White, owners of property located at 83 Rockingham Avenue, 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 with Exhibits;
- 3) Variance Site Plan;
- 4) Floor Plans and Elevations;
- 5) Tax Map Image of Property and Surrounding Area;
- 6) 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 large, stylized flourish extending to the right.

Derek R. Durbin, Esq.

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

Barry and Martha White
(Owners/Applicants)
Tax Map 236, Lot 20
83 Rockingham Avenue
Portsmouth, NH 03801

INTRODUCTORY STATEMENT

Barry and Martha White (the “Applicants” or the “Whites”) own property located at 83 Rockingham Avenue, identified on Portsmouth Tax Map 236 as Lot 20 (the “Property”). The Property is 0.33 acres in size (14,258 sf) and contains a small single-family home with a detached garage. It is located in the Single Family Residence B (“SRB”) Zoning District.

The Property served as Barry’s parents’ residence until the passing of his father. The Whites subsequently purchased the Property from Barry’s father’s estate in 2001. The Whites, who live on Opal Avenue, have since rented the Property, with the intent of later improving it and making it their primary residence once they retired.

The Whites seek to demolish the existing single-family home and 1-story garage on the Property and construct a new home that they would move into and make their primary residence. The Property is lawfully non-conforming with respect to lot area and lot area per dwelling unit. The existing 1-story garage on the Property encroaches into the rear yard setback by 3.8’. Because the Whites would be demolishing the existing home as part of their proposed plans for the Property and the lot fails to conform to the 15,000 square foot lot area requirement in the SRB District, zoning relief is required for any new construction. The Whites are proposing a new home for the Property that would comply with the minimum setback requirements, thus representing an improvement over what exists.

SUMMARY OF VARIANCE RELIEF

The Applicant seeks the following variances from Section 10.521 (Table of Dimensional Requirements) of the Zoning Ordinance:

1. To allow 14,258 square feet (+/-) of lot area where 15,000 square feet is the minimum required in the SRB Zoning District; and
2. To allow 14,258 square feet (+/-) of lot area per dwelling unit where 15,000 square feet is the minimum required in the SRB 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).

The neighborhood where the Property is located is characterized by single-family homes with lot dimensions of similar or lesser size. While there are properties in the surrounding area that meet the 15,000 square foot lot area requirement for the SRB Zoning District, the majority do not. Accordingly, the proposed redevelopment of the Property will not alter the essential character of the neighborhood.

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 dimensional standards applicable to the SRB District do not reflect the characteristics of the area in which the Property is located.

There will be no undue demand upon municipal services or other aspects of the proposed redevelopment of the Property that will threaten public health safety or welfare. There is already a single-family home on the Property. By constructing a new single-family home on the Property that is more aesthetically appealing and provides greater amenities than what exists, the Property will be assessed at a higher value and will generate additional tax revenue to the City without creating any additional impact or demand upon services. Furthermore, the Applicants will be eliminating the rear yard setback encroachment, thus providing a benefit to the abutter at 580 Woodbury Avenue (Lot 236-1) by increasing light, air and space between the properties. The property at 580 Woodbury Avenue has a shed located in close proximity to the rear boundary of 83 Rockingham Avenue.

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 Applicants in the present case is the inability to construct a new home on the Property which meets their retirement needs and enables them to sell their existing home, which no longer meets their needs. There is no gain to the public in denying the relief sought by the Applicants. To the contrary, there is a benefit. There is no realistic way to change the square footage of the Property. However, by granting the variance relief sought, the Applicants will be

able to construct a new home on the Property that complies with the rear building setback, which represents an improvement.

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

Surrounding properties will not be negatively impacted by the construction of a new single-family home on the Property. To the contrary, the construction of new, tastefully designed home on the Property that complies with all building setbacks will represent a significant improvement over what exists.

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

The Property has special conditions that make it distinguishable from surrounding properties. The Property was a conforming lot by current zoning standards in its original layout. Exhibit A¹. The southeast corner of the Property was conveyed in 1967 to the State in conjunction with a roadway improvement project. Exhibit B². As part of this conveyance, the house on the Property, which was located in the area being conveyed to the State, had to be moved north on the lot, thus creating the conditions that presently exist. Owing to these special conditions there is no fair and substantial relationship between the general purposes of the Ordinance provision(s) and their application to the Property. If the variance relief were denied, the home could continue in its existing location. By granting the variance relief, the Applicants will be achieving greater compliance with the Ordinance than what exists by eliminating the rear yard setback encroachment. It is also important to point out that the Property cannot be used in strict compliance with the Ordinance given the deficiency in lot area.

The proposed use is reasonable.

The Property will continue to be used for single-family residential purposes, thus meeting the spirit and intent of SRB Zoning. The proposed use is also consistent with the use(s) of surrounding properties.

CONCLUSION

In conclusion, the Whites have demonstrated that their application meets the five (5) criteria for granting the variances sought pursuant to Section 10.521 of the Ordinance. Accordingly, they respectfully request that the Board approve their Variance Application.

¹ Exhibit A is a cross-section of Plan 01885 recorded in 1938 in the Rockingham County Registry of Deeds showing the Property in its original dimension.

² Exhibit B is the cover sheet and a cross-section of NH DOT Plan 3875-D, which shows the area of the Property conveyed to the State.

Dated: April 28, 2020

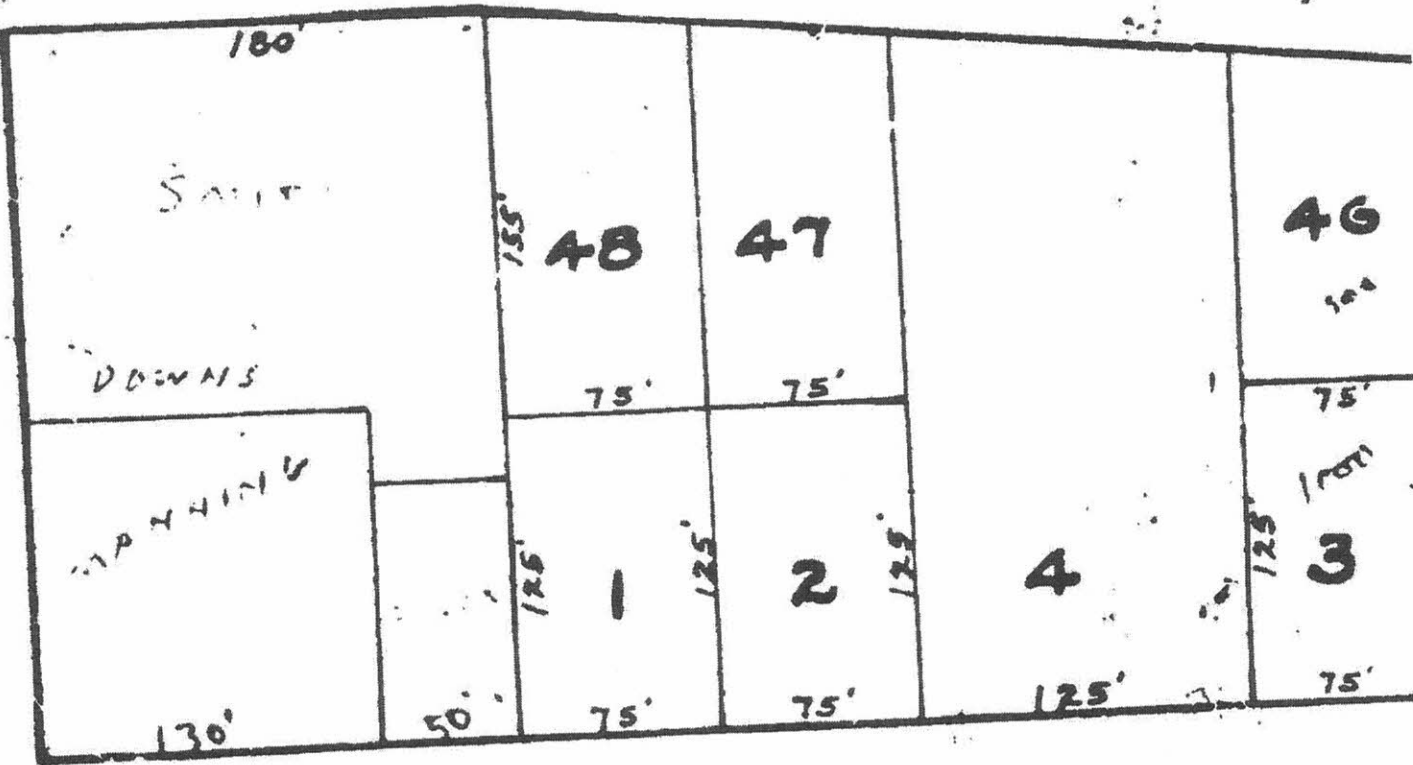
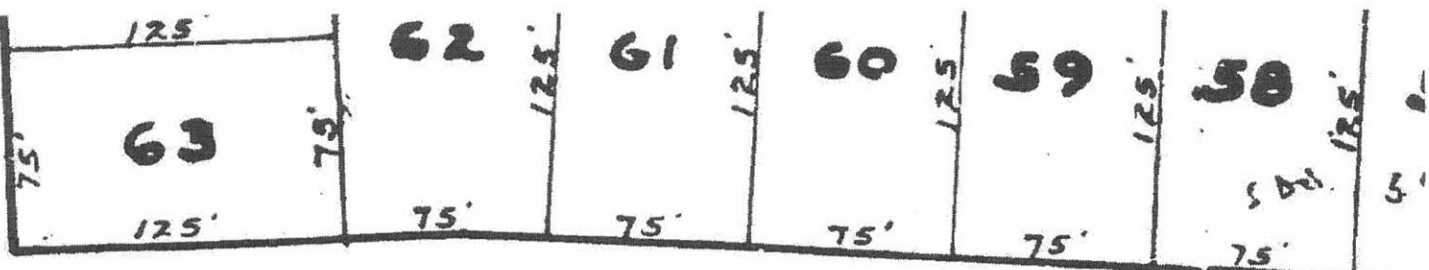
Respectfully Submitted,

Barry and Martha White
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

ROCKINGHAM AVENUE



STATE

01885
1930

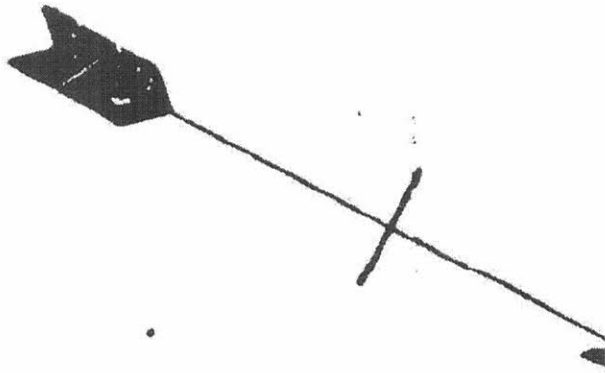


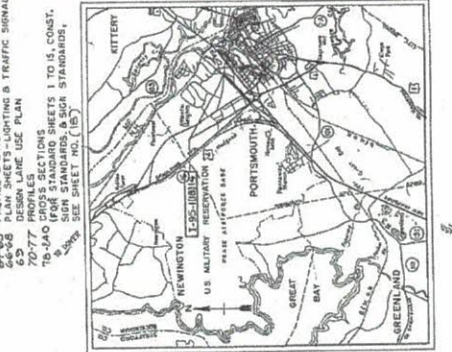
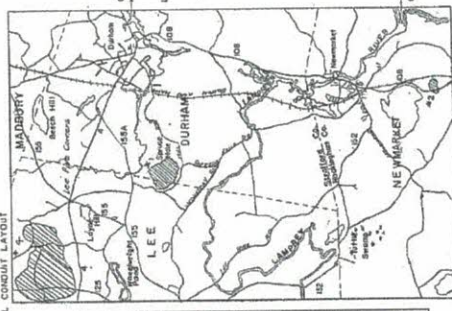
EXHIBIT D

REVISION AFTER PROPOSAL NO. 1
 STATE OF NEW HAMPSHIRE
 DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS

**PLANS OF PROPOSED
 FEDERAL AID PROJECT**

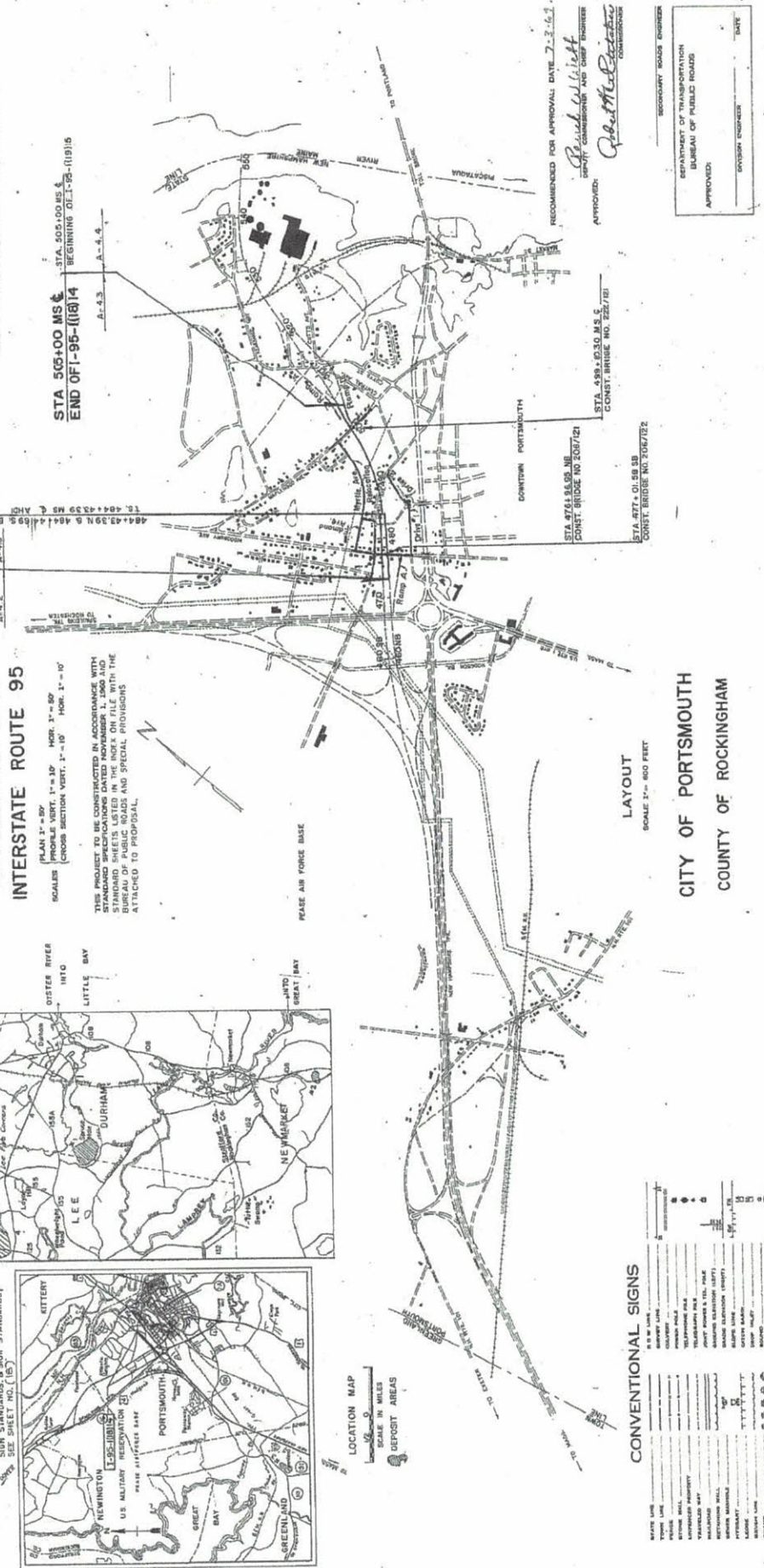
I-95-1(18)14
 N.H. PROJECT NO. P-3875-D
 INTERSTATE ROUTE 95

INDEX OF SHEETS
 TITLE PAGE
 SUMMARY OF IMPROVEMENTS
 SUMMARY OF QUANTITIES
 SPECIAL MANHOLE DETAILS
 SPECIAL MANHOLE & HEADER DETAILS-ORIGINE
 BROGE PLANS
 PLAN SHEETS-MANHOLE, CURBS & DRAINAGE LAYOUT
 PLAN SHEETS-WATER PIPE LAYOUT
 PROFILE SHEETS-SIGNALS & TRAFFIC SIGNAL CONDUIT LAYOUT
 DESIGN LANE USE PLAN
 70-77 PROFILES
 78-JAO FOR STANDARD SHEETS 1 TO 15, COAST.
 SIGN STANDARDS & SIGN STANDARDS,
 SEE SHEET NO. (15)



DESIGN DATA

AVERAGE DAILY TRAFFIC	9500
DESIGN YEAR	1985
TRAFFIC CLASSIFICATION	1888
DESIGN SPEED	70
MAXIMUM CURVATURE	0.0008
MAXIMUM SUPER ELEVATION	0.0018
NON-SEPARATED SIDING DISTANCE	100
K FACTOR - CREST	100
LENGTH OF PROJECT	0.668 MILES



RECOMMENDED FOR APPROVAL DATE: 7-2-68
 APPROVED: *Robert M. Hickey*
 CHIEF ENGINEER
 DEPARTMENT OF TRANSPORTATION
 BUREAU OF PUBLIC ROADS

APPROVED: _____ DATE: _____
 DIVISION ENGINEER

SECONDARY ROAD ENGINEER
 DEPARTMENT OF TRANSPORTATION
 BUREAU OF PUBLIC ROADS

STA 473+00 NB 8.5B
 END OF 1-95-1(18)14

STA 473+00 NB 8.5B
 BEGINNING OF 1-95-1(18)14

STA 505+00 MS
 END OF 1-95-1(18)14
 BEGINNING OF 1-75-1(18)15

STA 498+30 MS
 CONST. BRIDGE NO. 226/121

STA 476+85 NB
 CONST. BRIDGE NO. 208/121

STA 477+01 SB
 CONST. BRIDGE NO. 706/122

SCALE 1" = 800 FEET

LAYOUT
 CITY OF PORTSMOUTH
 COUNTY OF ROCKINGHAM

17-CB-104 (D)S STUDY SECTION A-4-3

H14 P-3875-D ORIGINAL HOUSE MOVED
 AND ROTATED 90°

LETTER OF AUTHORIZATION

Barry White and Martha White, owners of property located at 83 Rockingham Avenue, Portsmouth, New Hampshire, identified on Tax Map 236, as Lot 20 (the "Property"), hereby authorize Durbin Law Offices PLLC, of 144 Washington Street, Portsmouth, New Hampshire 03801, to act as their 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.

Barry White

Printed Name: Barry White

4/27/20

Date:

Martha White

Printed Name: Martha White

4-27-20

Date:

GENERAL NOTES:

1. THESE PLANS ARE CREATED BY THE CITY OF PORTSMOUTH ZONE 58B SINGLE RESIDENCE ZONE. THE ZONING REQUIREMENTS AND DISTING ARE AS FOLLOWS:
2. THE EXISTING SITE CONDITIONS DETAILS SHOW ARE THE RESULTS OF AN ON THE GROUND INSTRUMENT FIELD SURVEY PERFORMED BY KNIGHT HILL LAND SURVEYING, INC. ON 04/22/2020.
3. THE PROPERTY DOES NOT LIE IN A HAZARDOUS FLOOD ZONE AS INDICATED ON THE FLOOD INSURANCE RATE MAP (FIRM) FOR ROCKINGHAM COUNTY, PORTSMOUTH, N. H. WITH AN EFFECTIVE DATE OF MAY 17, 2020. PROPERTY LIES IN ZONE "X".
4. SUBJECT LOT IS SERVED BY MUNICIPAL SEWER AND WATER AND OVERHEAD ELECTRIC BY COURTESY.
- 5.1. BEARINGS SHOWN WITH THESE PLANS ARE THE REFERENCE TO THIS PLAN OBSERVATIONS IN JUNE 2008.
- 6.1. SUBJECT LOT MAY BE SUBJECT TO BOUNDARY OR ADJACENT PROPERTY RIGHTS. REFERENCED TO OWN TO THE STATE OF NEW HAMPSHIRE PER RECORD DEED BK. 128 PCL 462.

PLAN REFERENCES:

1. PLAN OF LOTS OWNED BY MRS. CHARLES W. BARRON, FOR PAUL C. & OWEN L. BARRON, DATED 01/15/1977, RECD. VOL. 3508 PG. 818B.
2. PLAN OF LOTS, PORTSMOUTH, N.H., FOR PAUL C. & OWEN L. BARRON, DATED 01/15/1977, RECD. VOL. 3508 PG. 818B.
3. PLAN OF LOTS, PORTSMOUTH, N.H., BY TOWN PLANNING AND ENGINEERING ASSOC., INC. DATED JAN. 1977, RECD. PLAN # 18730.
4. LOT LINE REVISION 73 ROCKINGHAM AVENUE & 370 MEADOW ROAD, PORTSMOUTH, N.H., ASSESSOR'S PARCEL ID # 19A-0000-0000-0000-0000, RECD. PLAN # 5970.
- 5.1. PLANS OF PROPOSED FEDERAL JO BLDG. PROJECT # 00-10714, PORTSMOUTH, N.H., ASSESSOR'S PARCEL ID # 19A-0000-0000-0000-0000, RECD. PLAN # 5970.
- 6.1. TAX MAP 236 LOT 2, SUBDIVISION PLAN ROCKINGHAM ESTATES FOR PORTSMOUTH, N.H., ASSESSOR'S PARCEL ID # 19A-0000-0000-0000-0000, RECD. PLAN # 5970.
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- 76.1. TAX MAP 236 LOT 1, SUBDIVISION PLAN ROCKINGHAM ESTATES FOR PORTSMOUTH, N.H., ASSESSOR'S PARCEL ID # 19A-0000-0000-0000-0000, RECD. PLAN # 5970.
- 77.1. TAX MAP 236 LOT 1, SUBDIVISION PLAN ROCKINGHAM ESTATES FOR PORTSMOUTH, N.H., ASSESSOR'S PARCEL ID # 19A-0000-0000-0000-0000, RECD. PLAN # 5970.
- 78.1. TAX MAP 236 LOT 1, SUBDIVISION PLAN ROCKINGHAM ESTATES FOR PORTSMOUTH, N.H., ASSESSOR'S PARCEL ID # 19A-0000-0000-0000-0000, RECD. PLAN # 5970.
- 79.1. TAX MAP 236 LOT 1, SUBDIVISION PLAN ROCKINGHAM ESTATES FOR PORTSMOUTH, N.H., ASSESSOR'S PARCEL ID # 19A-0000-0000-0000-0000, RECD. PLAN # 5970.
- 80.1. TAX MAP 236 LOT 1, SUBDIVISION PLAN ROCKINGHAM ESTATES FOR PORTSMOUTH, N.H., ASSESSOR'S PARCEL ID # 19A-0000-0000-0000-0000, RECD. PLAN # 5970.
- 81.1. TAX MAP 236 LOT 1, SUBDIVISION PLAN ROCKINGHAM ESTATES FOR PORTSMOUTH, N.H., ASSESSOR'S PARCEL ID # 19A-0000-0000-0000-0000, RECD. PLAN # 5970.
- 82.1. TAX MAP 236 LOT 1, SUBDIVISION PLAN ROCKINGHAM ESTATES FOR PORTSMOUTH, N.H., ASSESSOR'S PARCEL ID # 19A-0000-0000-0000-0000, RECD. PLAN # 5970.
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- 88.1. TAX MAP 236 LOT 1, SUBDIVISION PLAN ROCKINGHAM ESTATES FOR PORTSMOUTH, N.H., ASSESSOR'S PARCEL ID # 19A-0000-0000-0000-0000, RECD. PLAN # 5970.
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- 99.1. TAX MAP 236 LOT 1, SUBDIVISION PLAN ROCKINGHAM ESTATES FOR PORTSMOUTH, N.H., ASSESSOR'S PARCEL ID # 19A-0000-0000-0000-0000, RECD. PLAN # 5970.
- 100.1. TAX MAP 236 LOT 1, SUBDIVISION PLAN ROCKINGHAM ESTATES FOR PORTSMOUTH, N.H., ASSESSOR'S PARCEL ID # 19A-0000-0000-0000-0000, RECD. PLAN # 5970.

BEARINGS PER RECORD PLAN # 05970



SITE DATA
 TAX MAP 236 LOT 20
 RECORD OWNERS: BARRY A. WHITE, SR.
 MARTHA J. WHITE
 RECORD DEED: R.C.D. BK. 3540 PG. 2884
 AREA: EXISTING AREA = 14,258 SQ.FT./0.33 AC.

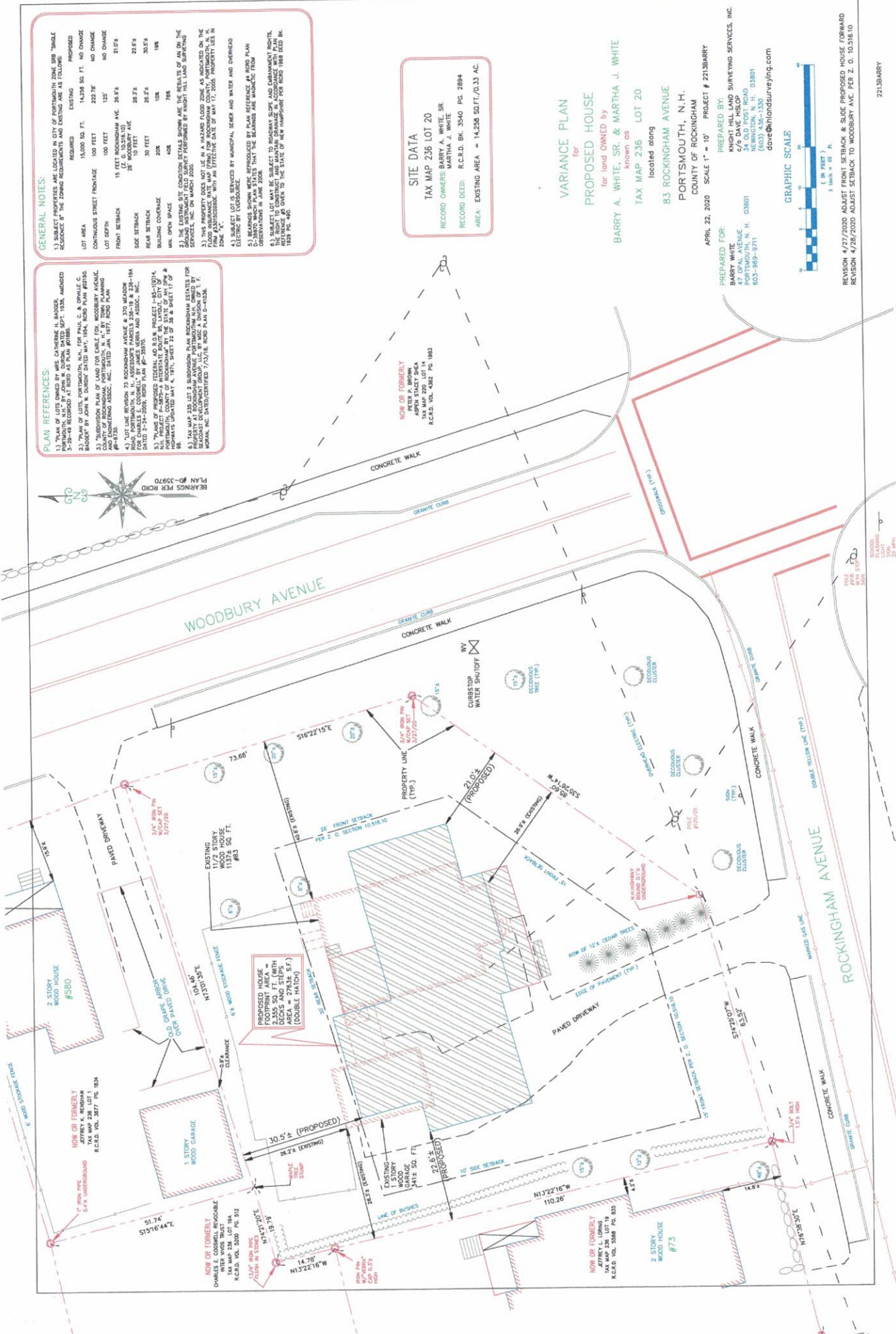
VARIANCE PLAN
 for
PROPOSED HOUSE
 for land owned by
BARRY A. WHITE, SR. & MARTHA J. WHITE
 known as
 located along
83 ROCKINGHAM AVENUE
PORTSMOUTH, N.H.
 COUNTY OF ROCKINGHAM

APRIL 22, 2020 SCALE 1" = 10'
 PROJECT # 2215BARRY
 PREPARED BY:
 KNIGHT HILL LAND SURVEYING SERVICES, INC.
 47 SPAL AVENUE
 NEWTON, N.H. 03801
 (603) 436-1300
 dove@khlhillsurveying.com

GRAPHIC SCALE
 1 inch = 10 feet
 1 foot = 12 inches

REVISION 4/27/2020 ADJUST FRONT SETBACK & SLICE PROPOSED HOUSE FORWARD
 REVISION 7/20/2020 ADJUST SETBACK TO WOODBURY AVE. PER Z. 10.516.10

2215BARRY



Emerald Sea Deluxe

320.130.v5 GL (3/6/2020)

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Artform Home Plans

603-431-9559

Dear Builders and Home Buyers,

In addition to our Terms and Conditions (the "Terms", available on ArtformHomePlans.com), please be aware of the following:

As defined in the Terms, this is a Design Drawing and may not yet have Construction Drawings (CDs) or the CDs may not reflect design changes. During the conversion of a Design Drawing to Construction Drawings, changes may be necessary including, but not limited to, dimensional changes or changes to the framing and structural supports.

We require that our designs be built substantially as shown in the Drawings. Markups agreed to by Builder and Home Buyer must still be approved by Artform, and may require additional changes, such as structural updates. While we attempt to accommodate requested changes where possible and reasonable, including considerations of design integrity, any and all changes to Drawings must be approved in writing by Artform. It is recommended that you have your Design Drawings updated by Artform prior to attaching any Drawing to any builder agreement. Artform shall not be responsible for the misuse of or unauthorized alterations to any of its Drawings.

• To maintain design integrity, we pay particular attention to features on the front facade, including but not limited to door surrounds, window casings, finished porch column sizes, and roof friezes. While we may allow builders to add their own flare to aesthetic elements, we don't allow our designs to be stripped of critical details. Any such alterations require the express written consent of Artform.

• Increasing or decreasing ceiling heights requires adjustments to window sizes and other exterior elements.

We are not responsible for typographical errors. Home Buyer shall give thoughtful consideration to all drawings and documents provided to them and shall be solely responsible for ensuring that they understand features in the home that are important to them.



Emerald Sea Deluxe 320.130.v5 GL (3/6/2020)

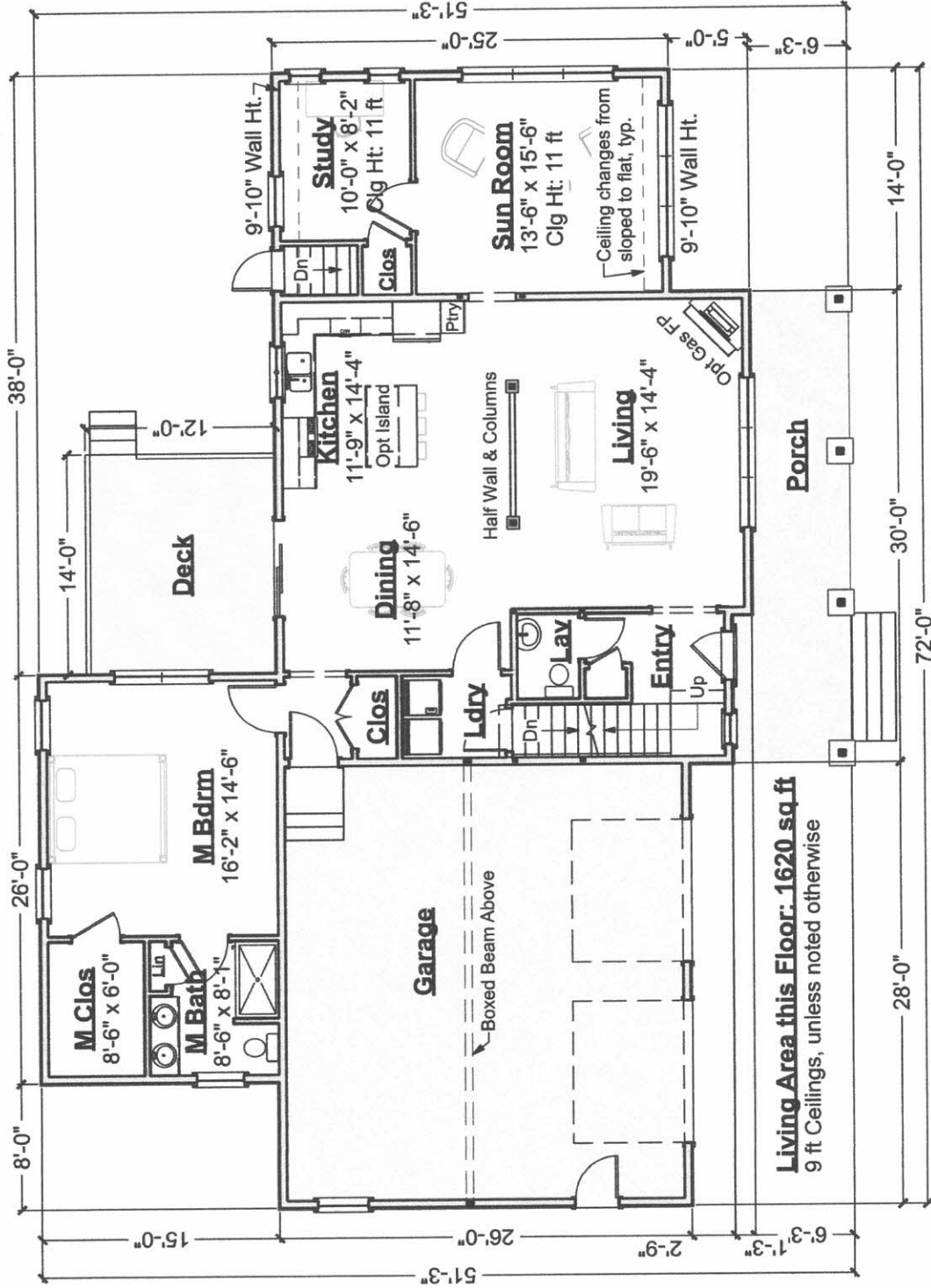
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Emerald Sea Deluxe

320.130.v5 GL (3/6/2020)

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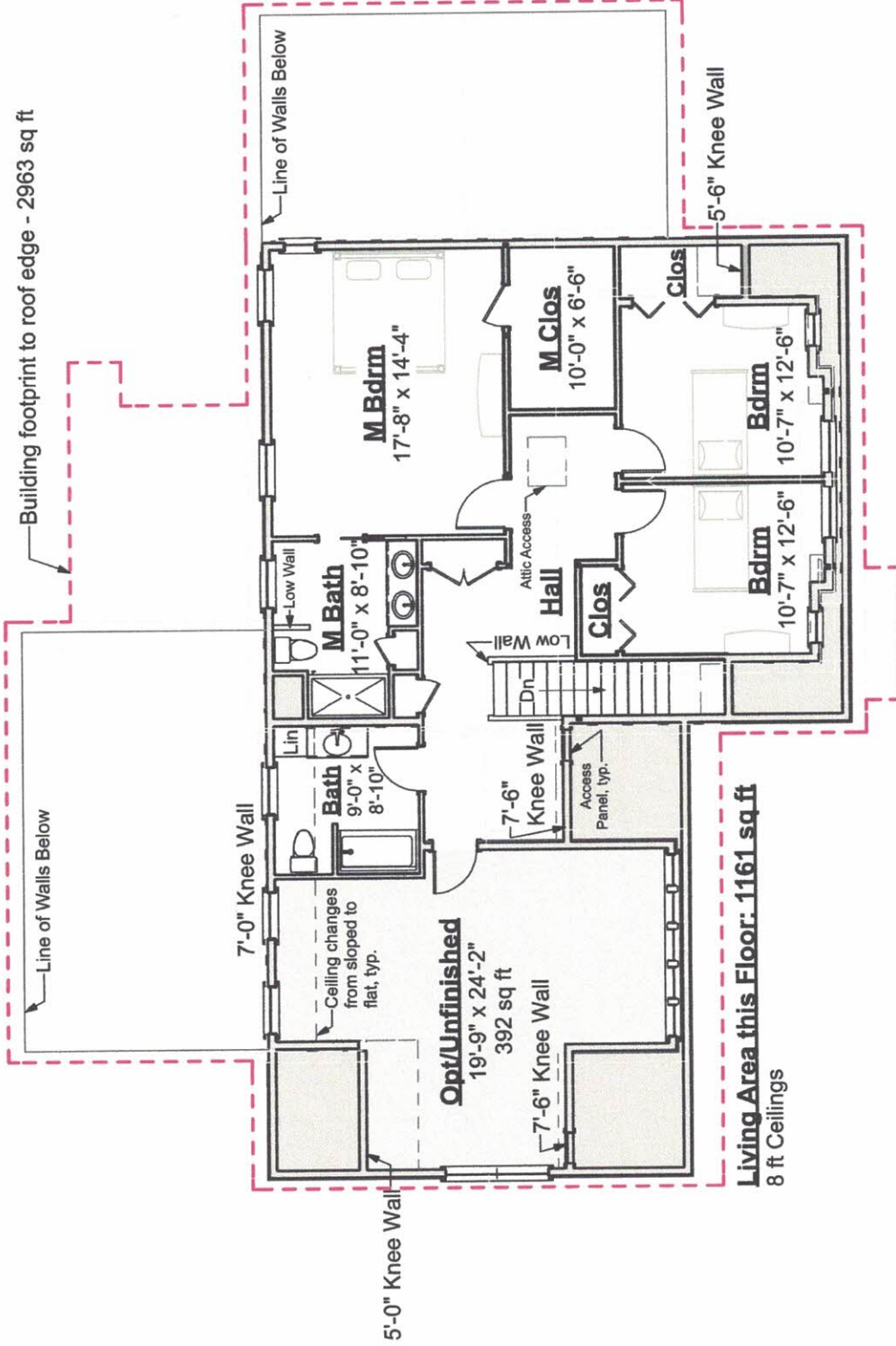
First Floor Plan

Scale: 3/32" = 1'-0"

Emerald Sea Deluxe

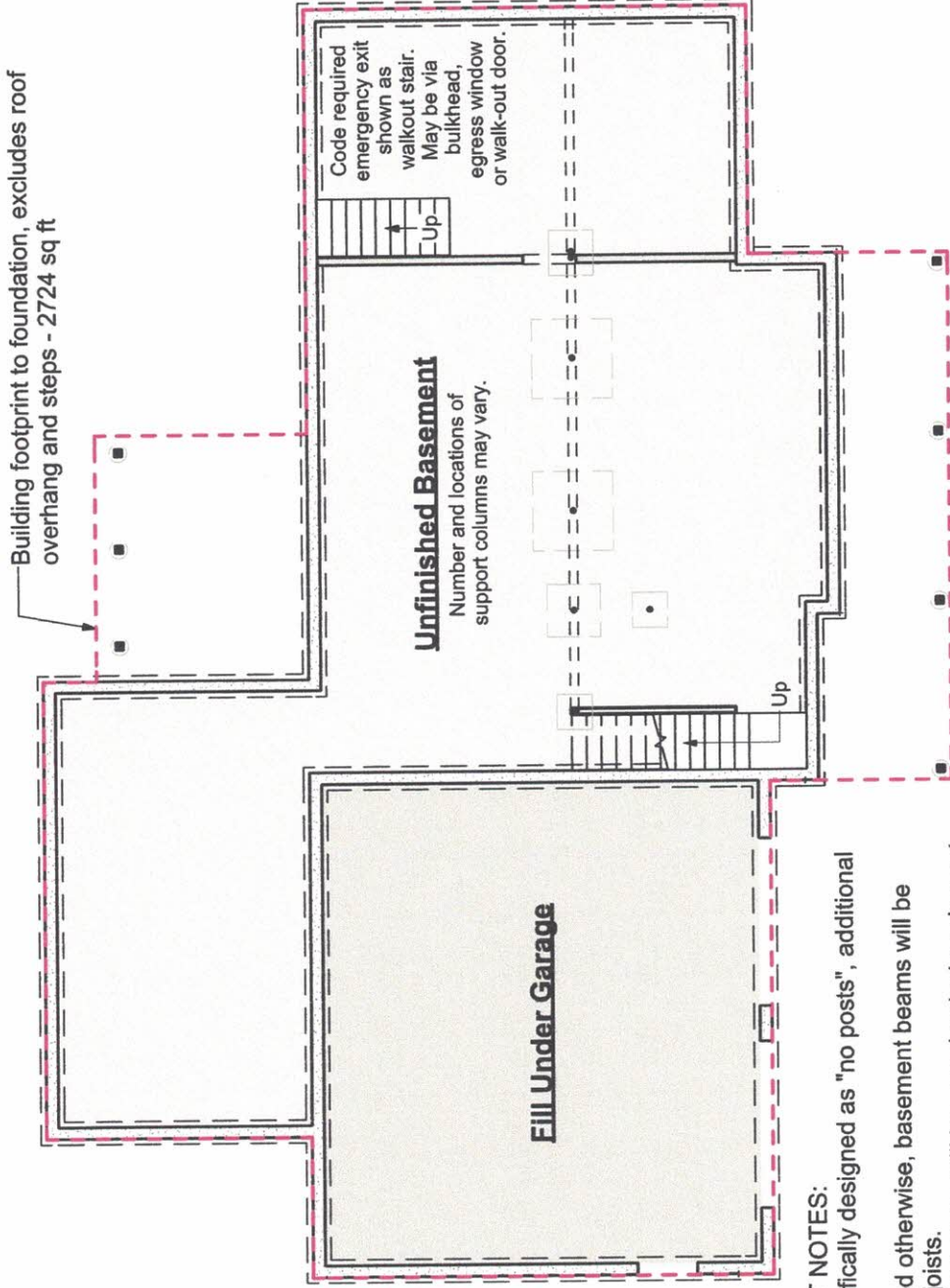
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Second Floor Plan

Scale: 3/32" = 1'-0"



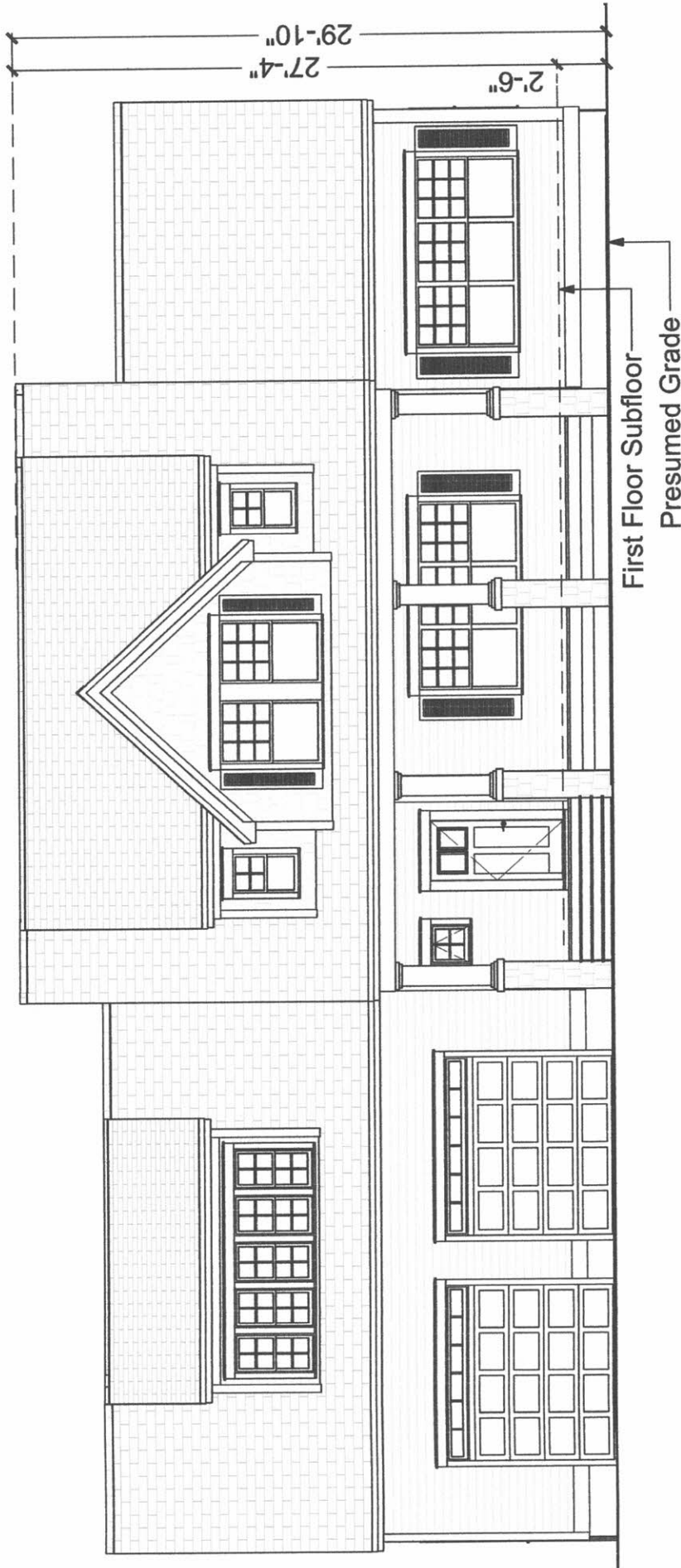
IMPORTANT BASEMENT NOTES:

- Unless an area is specifically designed as "no posts", additional posts may be required.
- Unless specifically noted otherwise, basement beams will be framed below the floor joists.
- Basement spaces accommodate utilities, mechanical equipment and the horizontal movement of plumbing pipes, electrical wires and heating ducts. Both as part of any Construction Drawings produced based on this design and as future decisions made by the builder, changes to accommodate these items must be expected.
- Basement window locations are dependent on site conditions and utility locations. Clarify number and location with your builder.

Emerald Sea Deluxe
320.130.v5 GL (3/6/2020)

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Artform Home Plans
603-431-9559



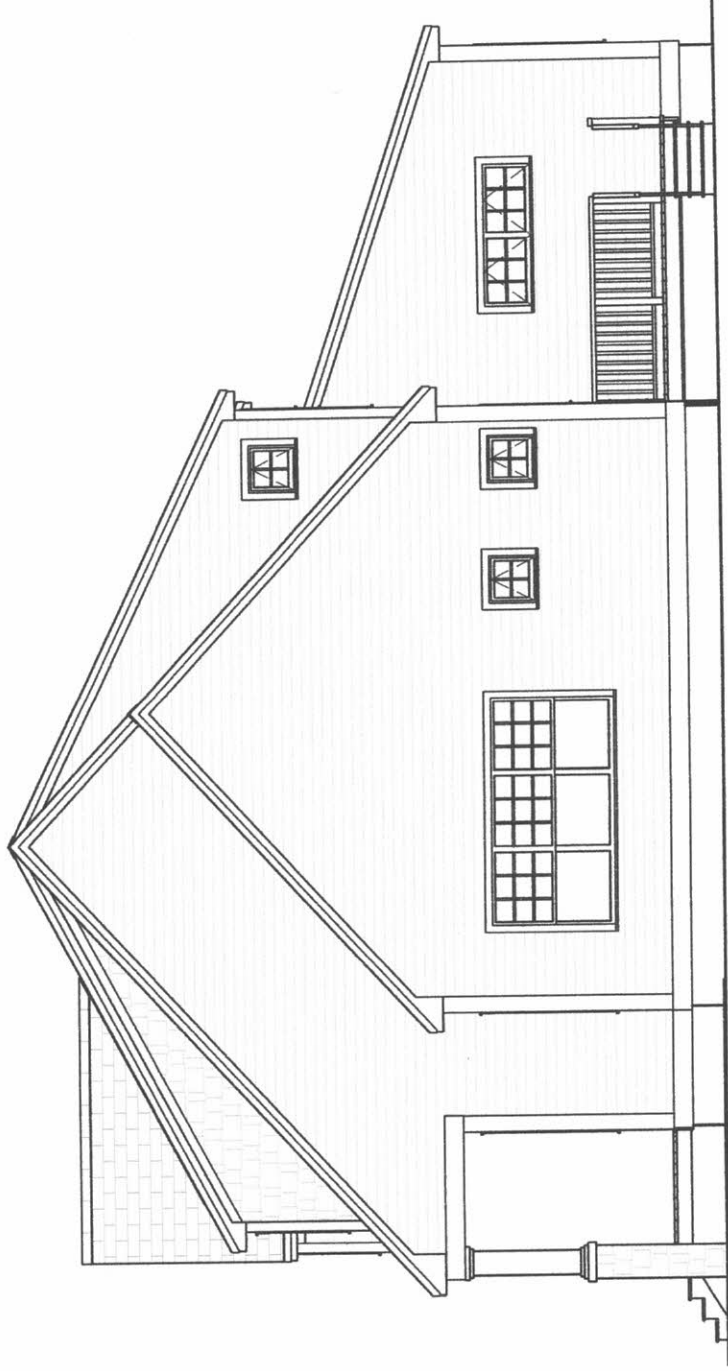
Front Elevation
Scale: 3/32" = 1'-0"

Artform Home Plans

Emerald Sea Delux
320.130.v5 GL (3/6/2020)

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Artform Home Plans
603-431-9559



Right Elevation
Scale: 1/8" = 1'-0"

Emerald Sea Deluxe
320.130.v5 GL (3/6/2020)

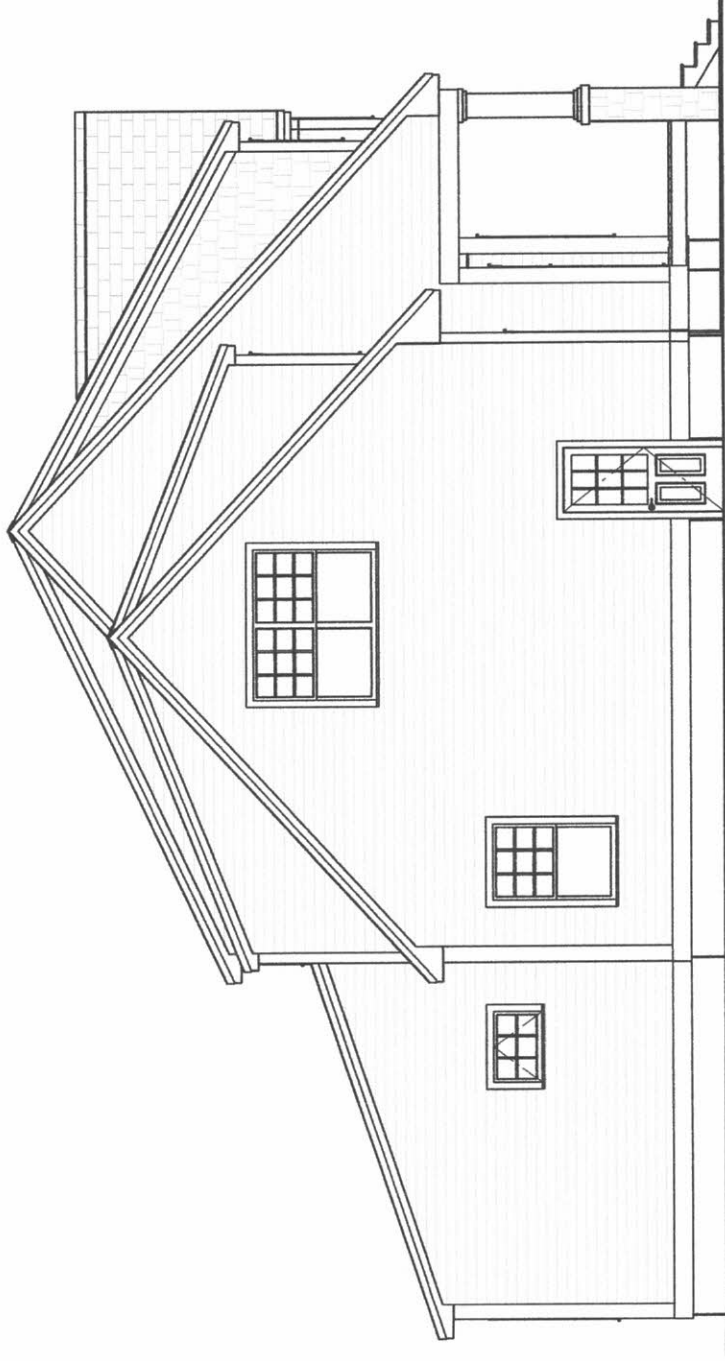
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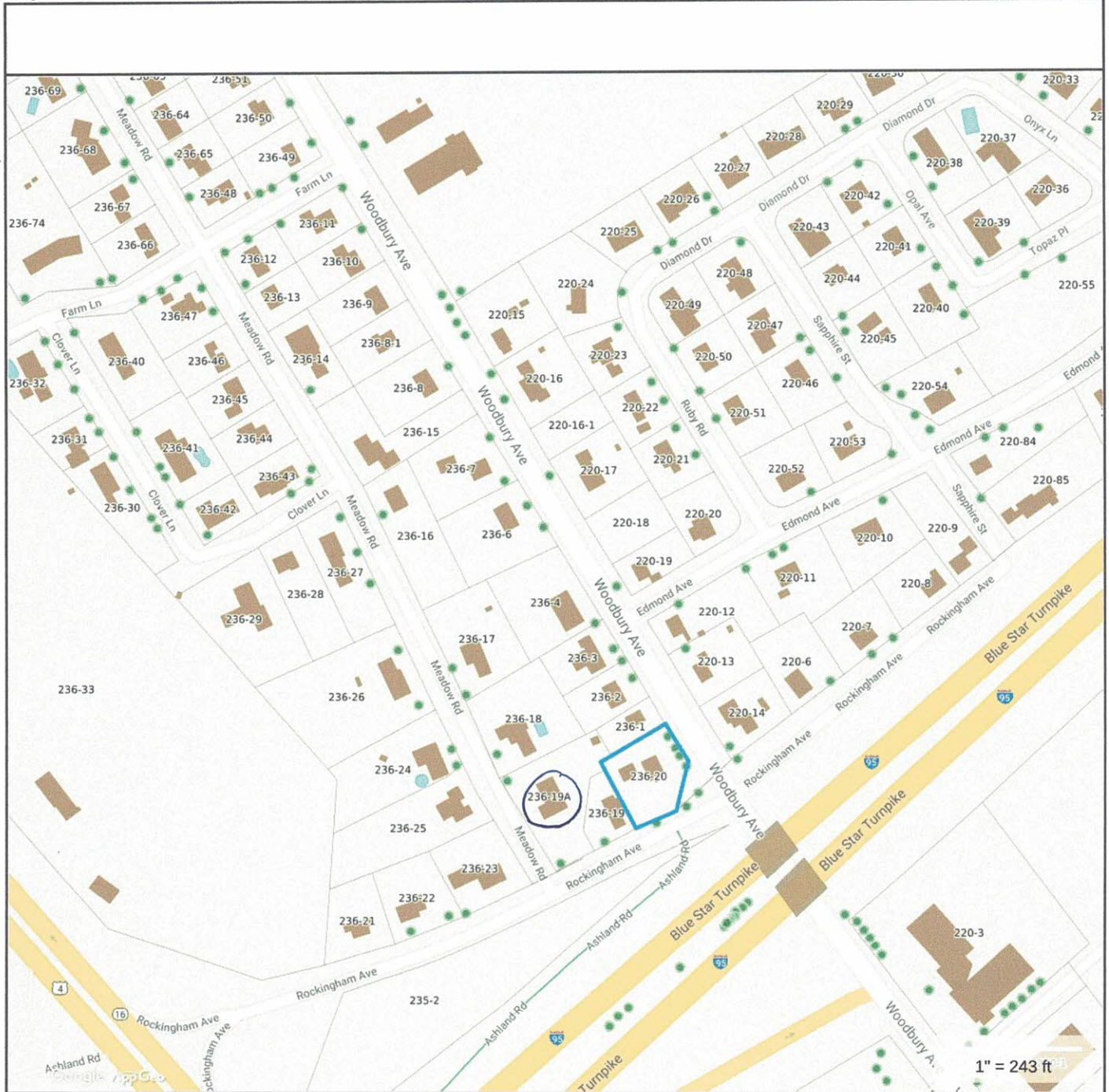
Rear Elevation
Scale: 1/8" = 1'-0"

Emerald Sea Deluxe
320.130.v5 GL (3/6/2020)

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Left Elevation
Scale: 1/8" = 1'-0"



Property Information

Property ID 0236-0020-0000
Location 83 ROCKINGHAM AVE
Owner WHITE BARRY A SR



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



Front of Property from Corner of Rockingham Ave. and Woodbury Ave.



View of Front of House from Sidewalk on Rockingham Ave.



View of Detached Garage from Front of Property on Rockingham Avenue



Side View of House and Detached Garage from Left Side Yard



Rear Yard View of House and Detached Garage



Side of Property from Woodbury Avenue

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

April 28, 2020

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

**RE: Variance Application of Michael Petrin
268 Dennett Street, Portsmouth (Tax Map 143, Lot 13-1)**

Dear Chairman Rheume,

Our Office represents Michael Petrin, owner of property located at 268 Dennett 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;
- 4) Floor Plans and Elevations;
- 5) Tax Map Image of Property and Surrounding Area;
- 6) 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 large, stylized initial 'D'.

Derek R. Durbin, Esq.

LETTER OF AUTHORIZATION

Michael Petrin, owner of property located at 268 Dennett Street, Portsmouth, New Hampshire, identified on Tax Map 243, as Lot 13-1 (the "Property"), hereby authorizes Durbin Law Offices PLLC, of 144 Washington Street, Portsmouth, New Hampshire 03801, to act as his agent and representative in connection with the filing of any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property. This Letter of Authorization shall be valid until expressly revoked in writing.



Printed Name: Michael Petrin

Date:

4/27/2020

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

Michael Petrin
268 Dennett Street
Portsmouth, NH 03801
(Owner/Applicant)

INTRODUCTORY STATEMENT

Michael Petrin is the owner of the property located at 268 Dennett Street, Portsmouth, identified on Portsmouth Tax Map 143 as Lot 13-1 (the "Property"). Mr. Petrin purchased the Property in 2017. The Property is located within the GRA Zoning District and contains a single-family home originally built in 1955 that Mr. Petrin resides in.

The residence is a "raised ranch" style home. The living space is contained in what most people would consider to be the second floor of the home. The first floor consists primarily of unfinished space that includes a two (2) car garage, utility room and partially enclosed entryway area to the westerly (right) side of the house.

Mr. Petrin is proposing a renovation of the home that will add living space to it and give it a more functional floor plan and appearance that is more architecturally appealing and consistent with surrounding homes on Dennett Street. As part of the proposed renovation, Mr. Petrin will be demolishing an 8' wide section of the right side of the home and rebuilding within the same footprint. In its existing condition, this 8' wide section of the home consists of an unfinished entryway area on the first floor and a finished three-season porch on the second floor. This section of the home appears to have been added on at some point after the home was originally built. The reconstructed right side of the home will consist entirely of finished living space that is designed to integrate with the new floor plan and blend in architecturally with the rest of the residence.

The building footprint of the home will remain the same or will be slightly reduced by reconfiguring the entryways to the front and rear of the home. A small new entryway will be added onto the front of the residence. The existing rear entryway and landing will be demolished. A small new entryway will be added to the rear of the home, similar in appearance and dimension to the front entryway.

In order to re-build the right side of the home in the same location where it currently exists, a side yard setback variance is required under Section 10.521 of the Ordinance. In its existing condition, the home has a 0' setback from the right property boundary where 10' is the minimum required. This is mitigated by the fact that there is 8' wide perpetual easement that runs the length of the westerly boundary that allows Mr. Petrin to access and maintain the right side of the home.

Mr. Petrin's property and the neighboring property to the right, 276 Dennett Street (Tax Map 143, Lot 13), were one merged lot with two dwellings until 2016. In 2016, the lots were unmerged by the current owners of 276 Dennett Street and Mr. Petrin's lot was sold to his

predecessor in title. At this time, the 8' wide easement was granted across 276 Dennett Street for the benefit of 268 Dennett Street.

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 0' right yard setback where 10' is the minimum required in the GRA Zoning District.
2. 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).

Many of the surrounding properties on Dennett Street are narrow lots that have minimal or no building setback on at least one or more sides from adjacent properties. Unlike Mr. Petrin’s property, very few of the surrounding properties have defined easements rights to access and maintain existing buildings. Mr. Petrin has an unimpeded perpetual 8’ wide access and maintenance easement across 276 Dennett Street for the benefit of the home on his property. This is the functional equivalent of having an 8’ building setback. Mr. Petrin will not be extending the home further into the right yard setback. Thus, there will be no impact to the light, air and space of the nearest abutter at 276 Dennett Street beyond that which already exists. There are no public health, safety or welfare concerns implicated by re-constructing the right side of the home as proposed nor would it alter the essential character of the neighborhood. The renovated home will be more consistent in architectural appearance and character with other homes along Dennett Street than the existing home.

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 general public in denying the variance relief. Mr. Petrin could continue to maintain the right side of his home in its existing location and dimension. Aesthetically, the home sticks out like a “sore thumb” on Dennett Street. It also has a floor plan that is functionally obsolete. The proposed changes to the home are designed to improve its appearance and functionality, which is a “win-win” situation for Mr. Petrin and the general public. Accordingly, the equitable balancing test of whether to grant the variance relief weighs in favor of the Applicant.

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

The values of surrounding properties can only be enhanced with the proposed modification to the home. The current architecture of the home is incompatible with the prevailing character of other homes along Dennett Street. The floor plan is dysfunctional. The appearance and floor plan of the home will be significantly improved over what exists. This can only add value to the Property and to those that surround it.

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 home on the Property already has a 0’ right yard setback. If the variance relief were denied, the home could continue to exist in its present location and Mr. Petrin would have the right to maintain and modify it so long as he did not increase the setback non-conformity. The proposed changes to the home represent a substantial improvement to the functionality and appearance of the home that will objectively benefit surrounding properties and the neighborhood. For these reasons, there is no fair and substantial relationship between the Ordinance provisions and their application to the Property.

The proposed use is reasonable.

The Property will continue to be occupied as a single-family residence, a use which is permitted by right within the GRA Zoning District. The footprint of the home on the Property will not change. As such, the proposed use of the property is reasonable.

CONCLUSION

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

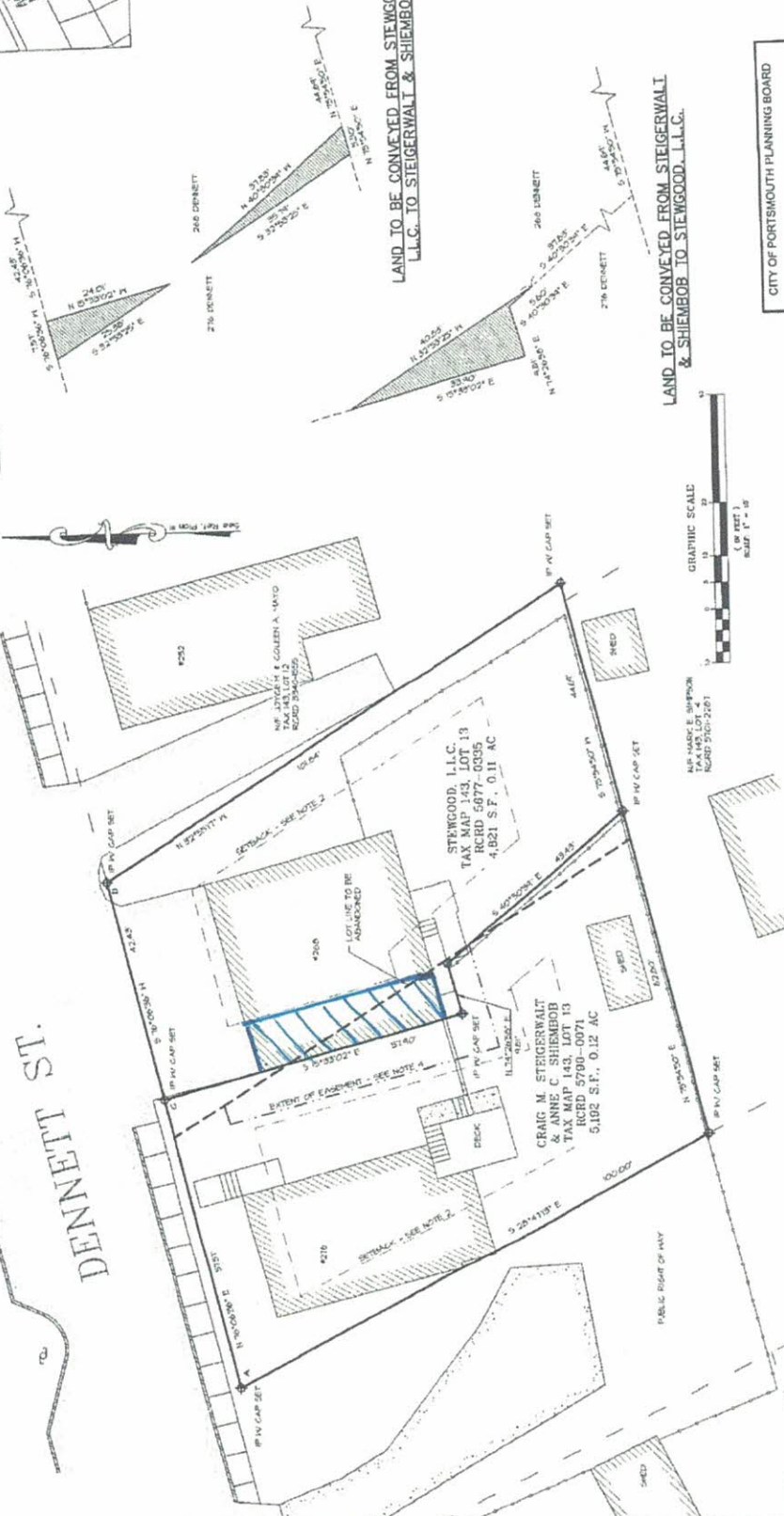
Dated: April 28, 2020

Respectfully Submitted,

Michael Petrin
By and Through His Attorneys,
Durbin Law Offices PLLC

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

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



LAND TO BE CONVEYED FROM STEWART, L.L.C. TO STEIGERWALT & SHIEMBOB

LAND TO BE CONVEYED FROM STEIGERWALT & SHIEMBOB TO STEWART, L.L.C.

NOTES

- 1) PARCELS WERE INVESTIGATED BY THE CITY ENGINEER, AS TO WHETHER THEY WERE SUBJECT TO EASEMENTS OR INTERESTS.
- 2) A BUILDING AND FOUNDATION EASEMENT IS SHOWN FOR THE PROPERTY OF DENNETT STREET, SEE RECORD BOOK 5780, PAGE 0073.
- 3) PROPERTY MARKERS SHALL BE SET AS REQUIRED BY THE DEPARTMENT OF PUBLIC WORKS PRIOR TO THE PLANNING PLAN.
- 4) 605 DAY SIGNAGE IS REQUIRED TO THE DEPARTMENT OF PUBLIC WORKS IN THE FORM AS REQUIRED BY THE CITY.
- 5) ALL EASEMENT DEEDS SHALL BE RECORDED SEPARATELY AT THE OFFICE OF THE CITY CLERK OR AS DEEMED APPROPRIATE BY THE PLANNING BOARD.
- 6) COORDINATES OF LOT CORNERS:
 - A - WEST CORNER
 - B - EAST CORNER
 - C - COMMON CORNER
- 7) LOT REQUIREMENTS PER PORTSMOUTH ZONING ORDINANCE:
 - MINIMUM LOT SIZE: 10,000 S.F.
 - MINIMUM LOT FRONTAGE: 100.00 S.F.
 - MINIMUM SETBACKS:
 - FRONT: 20.00 S.F.
 - REAR: 10.00 S.F.
 - SIDE: 10.00 S.F.
 - MINIMUM BUILDING COVERAGE: 20%
 - MINIMUM OPEN SPACE: 10%

LOT AREAS

LOT	AREA (ACRES)	RESERVED AREA (ACRES)
278 DENNETT ST.	0.025 S.F.	0.000 S.F.
279 DENNETT ST.	0.025 S.F.	0.000 S.F.

LOT REQUIREMENTS

LOT	AREA (S.F.)	MINIMUM SETBACKS (S.F.)	MINIMUM FRONT SETBACKS (S.F.)	MINIMUM SIDE SETBACKS (S.F.)	MINIMUM REAR SETBACKS (S.F.)
278 DENNETT ST.	4,821	10	10	10	10
279 DENNETT ST.	4,821	10	10	10	10

REFERENCE PLANS

- 1) BOUNDARY SURVEY FOR STEWART, L.L.C. BY ROSS ENGINEERING, DATED DECEMBER 20, 2016, RECD D-3405.

- 1) ALEX ROSS, SURVEY CERT. NO. 1002
- 2) THIS WAS A DIRECT SURVEY.
- 3) THIS SURVEY IS A RESULT OF FIELD SURVEY PERFORMED BY ALEX ROSS, INC. ON 08/14/2016. THE ERROR OF CLOSURE IS WITHIN THE ALLOWABLE TOLERANCE FOR A SURVEY OF THIS CLASSIFICATION.

Alex Ross
CITY ENGINEER

CITY OF PORTSMOUTH PLANNING BOARD

Alex Ross
CITY ENGINEER



Lot Line Adjustment

ROSS ENGINEERING
Civil/Survey Engineering
1000 N. 10th St.
Portsmouth, NH 03801
Tel: 603.883.1100
Fax: 603.883.1101

BILL STEWART
278 DENNETT STREET
PORTSMOUTH, NH 03801

STEWART, L.L.C. & CRAIG M. STEIGERWALT & ANNE C. SHIEMBOB
208 & 276 DENNETT ST.
PORTSMOUTH, NH 03801

DATE: 10/15/2016
SCALE: 1" = 10'

D-40257



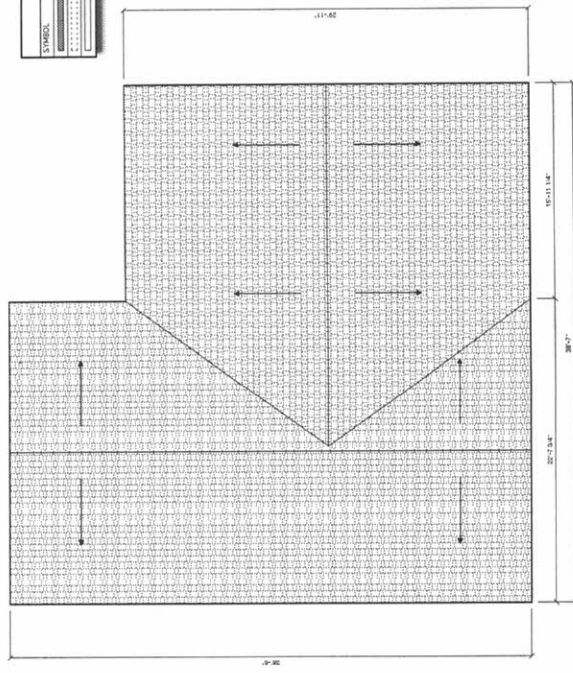
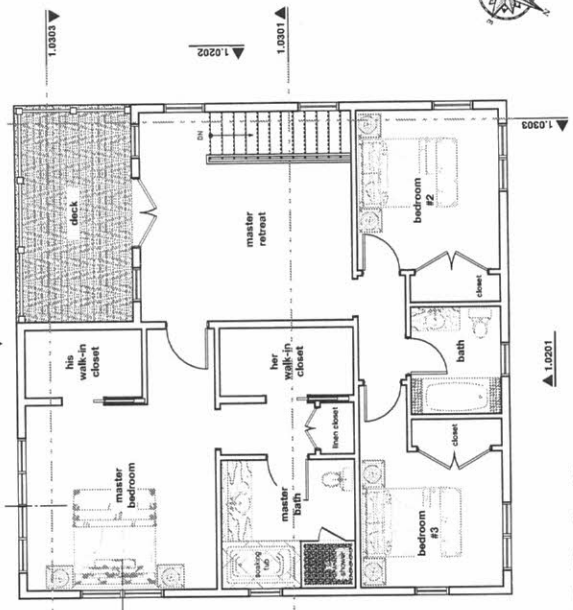
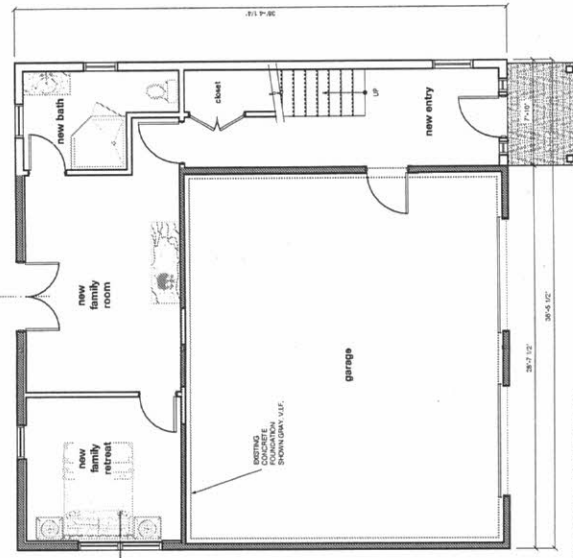
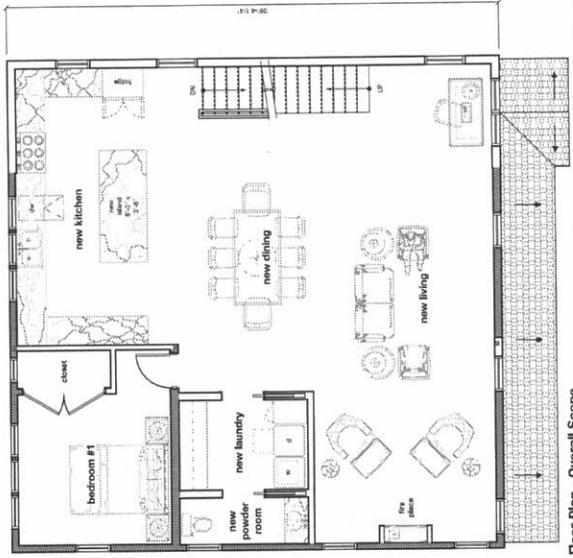
PROGRESS ISSUES:
 03/27/18
 NEW KITCHEN, LIVING, DINING, BATH, BEDROOM #1, BATH, BLDG FOUNDATION, SHOWN UNLN. 1/2"

Bid Issues:	
Construction Issues:	

Renovation & Addition
 for
The Mike Petrin & Katie Laverriere Residence
 263 Danett Street
 Portsmouth, NH, 03801

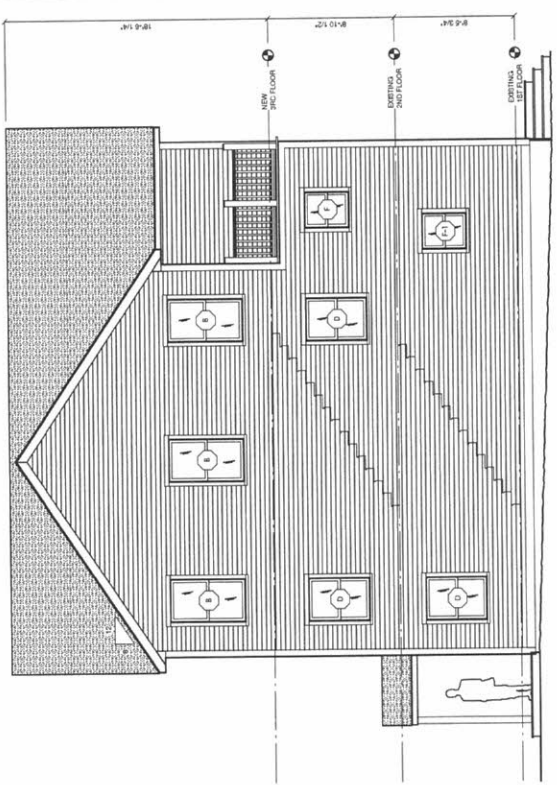
DATE: 03/27/18
 PROJECT: Pricing Issue

Architectural Floor Plan
 all Phases
AD-1.01

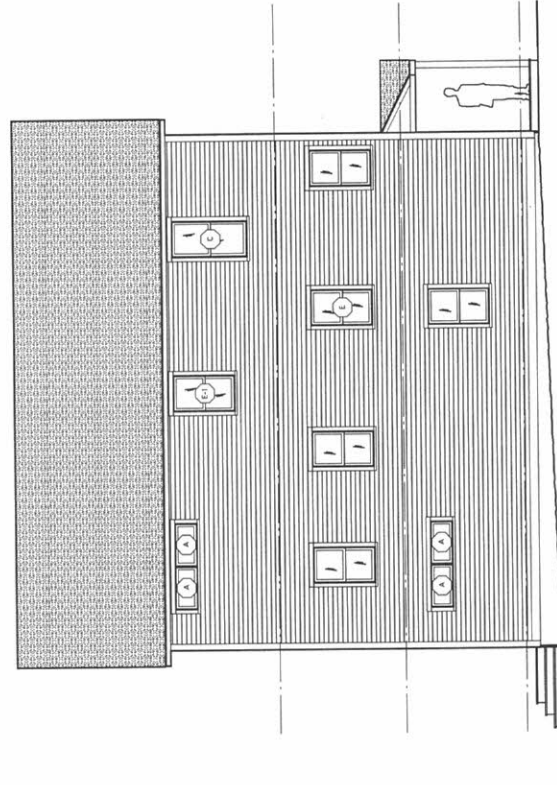


LEGEND	
[Symbol]	DESCRIPTION
[Symbol]	EXISTING WALLS TO REMAIN
[Symbol]	EXISTING WALLS TO BE REMOVED
[Symbol]	NEW WALLS

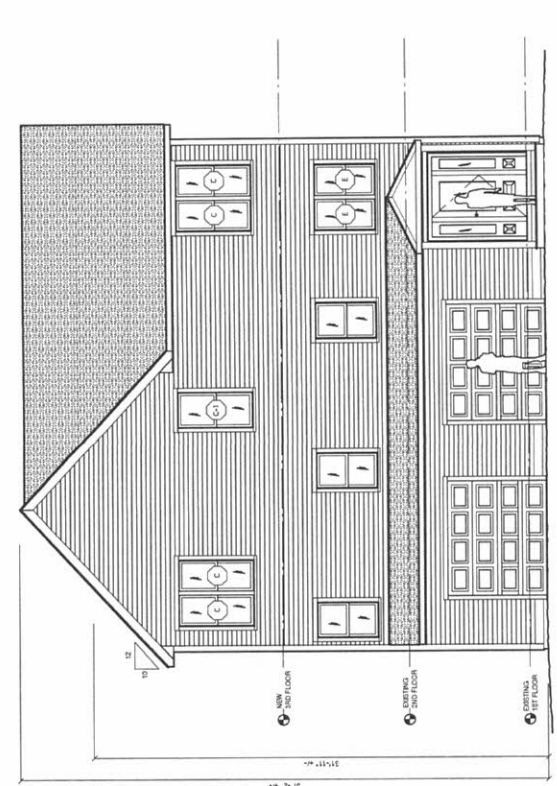




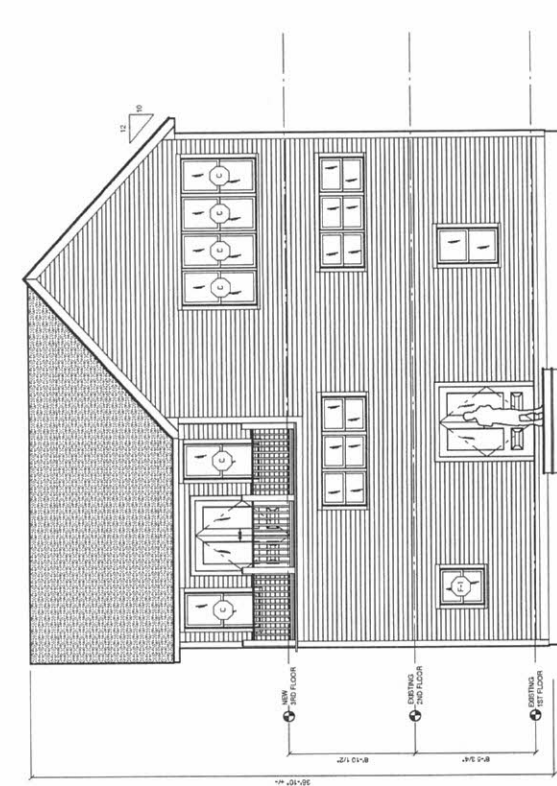
1.0202: New Exterior Elevation South
1/8" = 1'-0"



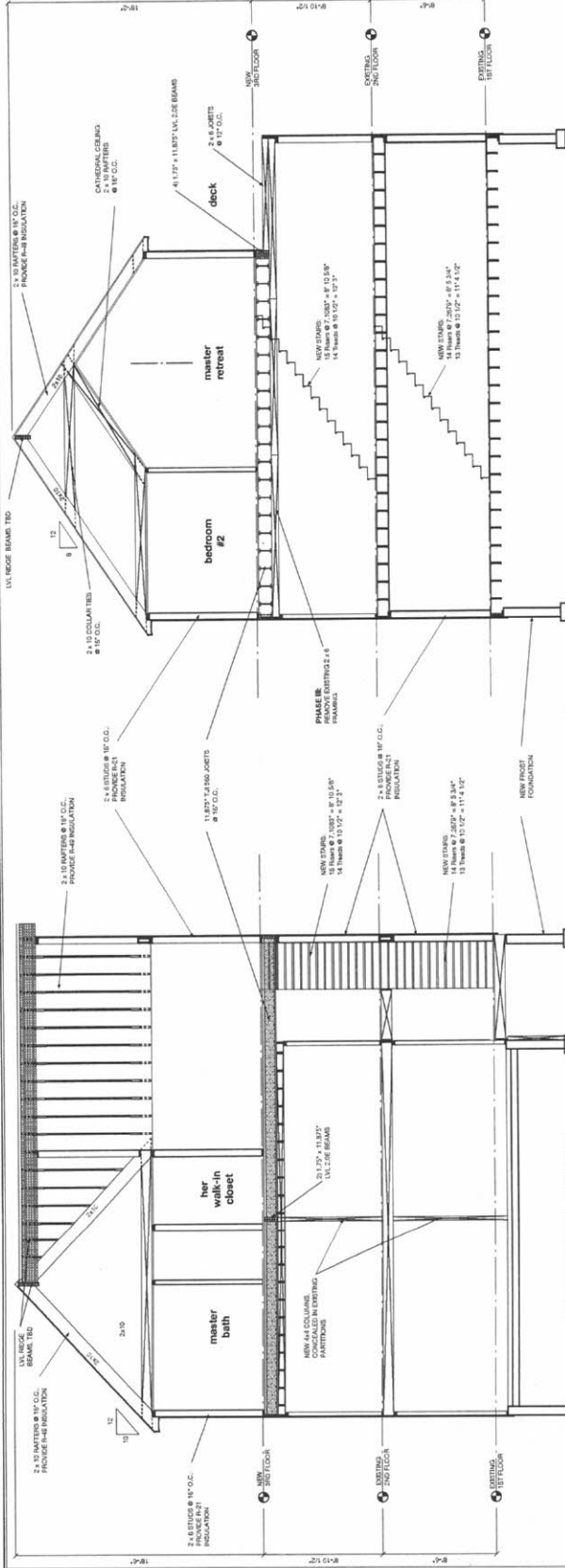
1.0204: New Exterior Elevation North
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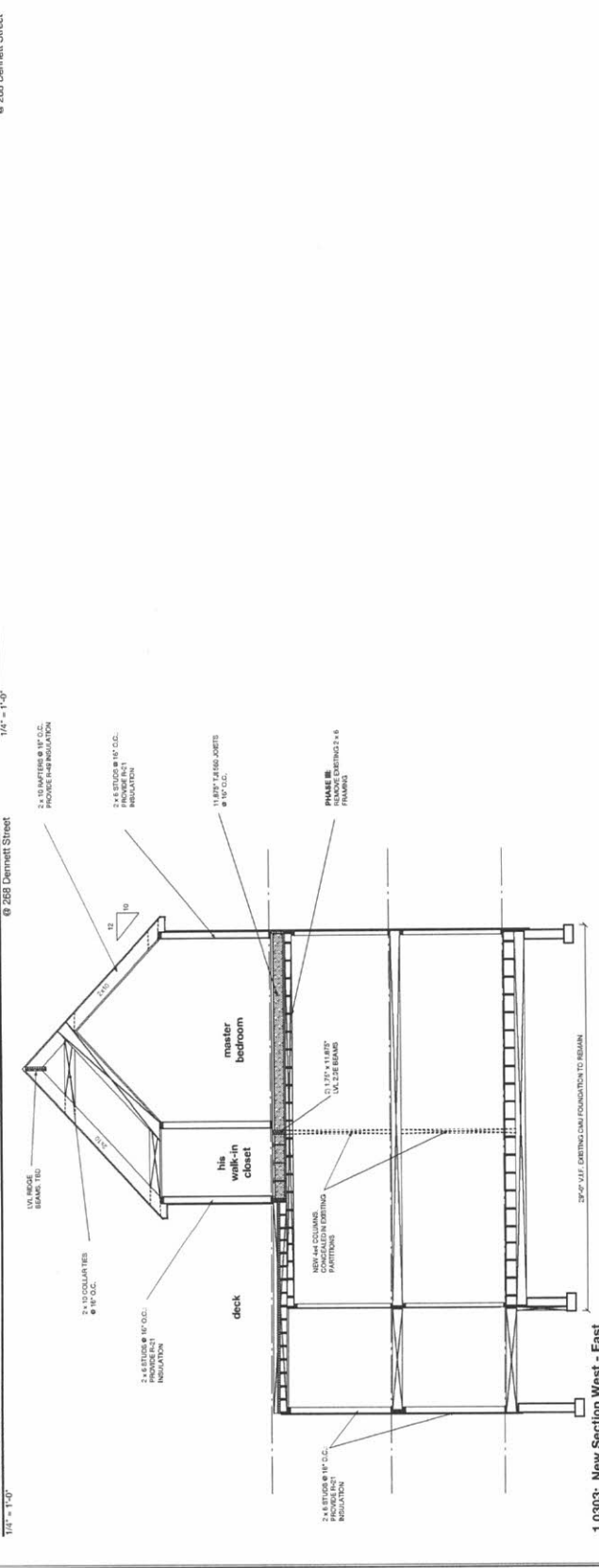
1.0201: New Exterior Elevation West
1/8" = 1'-0"



1.0203: New Exterior Elevation East
1/8" = 1'-0"



1.0301: New Section East - West
1/8" = 1'-0"



1.0302: New Section North - South
1/8" = 1'-0"

1.0303: New Section West - East
1/8" = 1'-0"



Property Information

Property ID 0143-0013-0001
Location 268 DENNETT ST
Owner PETRIN MICHAEL



**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



Right Side of Home



Rear Side of Home



Left Side of Home



Front Side of Home

Request for Special Exception of Land Use
Stacey and Philip Gibson
48 Hillside Dr., Portsmouth, NH 03801

We would like to get 2 hens (no roosters), kept in a small coop. We would plan to keep them only for the summer and early fall. We thought that this would be a fun and educational experience as the kids have been home from school. We have discussed our plan with most of our neighbors (we have not seen some of them due to social distancing), who did not have any objections. The proposed location of the 6x2 feet chicken coop is provided on the site plan; the coop will be a minimum of 25 feet from adjacent property lines.

The coop will be in the back yard and not visible from the front, so should not change any essential characteristics or affect property values of our neighborhood. The chickens will be kept in a small coop and will not pose any potential hazardous exposure or excessive demand on municipal services. The coop is on wheels so will not be built as a permanent structure, and its placement will not cause any change in stormwater runoff from our property, or change any traffic patterns as it will be placed in the backyard. We will not be making any changes to parking spots or the garage at on our property.



Current existing exterior conditions of site of proposed chicken coop





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ROBERT D. CIANDELLA
LIZABETH M. MACDONALD
JOHN J. RATIGAN
DENISE A. POULOS
ROBERT M. DEROSIER
CHRISTOPHER L. BOLDT
SHARON CUDDY SOMERS
DOUGLAS M. MANSFIELD
KATHERINE B. MILLER
CHRISTOPHER T. HILSON
HEIDI J. BARRETT-KITCHEN
JUSTIN L. PASAY
ERIC A. MAHER
BRENDAN A. O'DONNELL
ELAINA L. HOEPPNER

RETIRED
MICHAEL J. DONAHUE
CHARLES F. TUCKER
NICHOLAS R. AESCHLIMAN

April 29, 2020

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

Re: Borthwick Forest, LLC/Application for Variance
100 Eileen Dondero Road, Tax Map 241, Lot 25

Dear Chair Rheume and Board Members:

Enclosed please find supporting information for the variance application submitted via the City's online permitting system. The Applicant proposes to install a sign within the 20' front line setback on the property located at 100 Eileen Dondero Road.

We respectfully request that this matter be placed on the Board's May 19, 2020 agenda. In the meantime, if you have any questions do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Justin L. Pasay
JLP/sac
Enclosures

cc: Borthwick Forest, LLC
Patrick Crimmins, Tighe & Bond

S:\BF-BQ\Borthwick Forest, LLC\2020 Sign Variance\Submittal Materials\2020 04 29 zba letter.docx

DONAHUE, TUCKER & CIANDELLA, PLLC
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253
83 Clinton Street, Concord, NH 03301

VARIANCE APPLICATION FOR
BORTHWICK FOREST, LLC (the “Applicant”)

VARIANCE FROM ZONING ORDINANCE ARTICLE 12, SECTION 10.1253.10 TO ALLOW A MONUMENT SIGN 3.6 FEET FROM THE FRONT LOT LINE WHERE 20 FEET IS REQUIRED IN SIGN DISTRICT 4, AT PROPERTY LOCATED AT 100 EILEEN DONDERO ROAD (shown as Islington Street on the City Assessing Cards), FURTHER IDENTIFIED AS CITY ASSESSOR MAP 241, LOT 25 (the “Property”)

A. Introduction:

The Applicant proposes to construct a monument sign at the Property that is 3.6’ from the front lot line where 20’ is required pursuant to §10.1253.10 of the Zoning Ordinance. The Property is located in the Office Research Zoning District (the “OR District”), where office buildings and appropriate signage are permitted by right, and Sign District 4. The Property has 41.56 acres of lot area.

The Property has been approved by the City for a medical office building which is under construction. As permitted, the City required that the Applicant construct a multi-use path along the roadway, which is called Eileen Dondero Road. The roadway would normally be centered within the right of way but because of the multi-use path, Eileen Dondero Road has been located further east within the right of way. The unique configuration causes a large portion of the driveway accessing the new building (approximately 20’) to be constructed within the right of way. If the Applicant were to construct the proposed sign 20’ from the lot line, as required by the ordinance, it would be located approximately 40’ from Eileen Dondero Road and would be difficult to see in light of the site conditions as described below. The proposed sign is an 8’ x 4’-8” monument sign which is depicted in **Enclosure 1**, which enclosure also includes a rendering of the sign and the building under construction.

The proposed location of the new sign is depicted in **Enclosure 2**, which is an overall site plan for the new building, and **Enclosure 3**, which is a monument sign location exhibit. We note that Enclosure 3 depicts both the applicable 20’ sign setback in black, from which relief is sought, as well as the 20’ sign setback line where it would exist if there was no multi-use path along the Eileen Dondero Road, which is depicted in red. Variance relief would still be required were there no multi-use path but the proposed sign would be far closer to compliance with the 20’ setback requirement. Eileen Dondero Road is long, measuring 1000’ from Borthwick Ave to the cul-de-sac and benefited from a waiver for cul-de-sac length from the Planning Board. After an initial crest in the roadway off Borthwick Ave, Eileen Dondero Road slopes down and curves towards the new building. The west side of the road and multi-use path has a large berm which obstructs the sightline to the new building where signage is proposed, as depicted in the photograph contained in **Enclosure 4**.

Because the proposed sign location would not be inconsistent with the essential character of the surrounding area, will not compromise the public health in any way, will provide substantial justice, will not compromise the property values of surrounding properties, and because there is no rational connection between the intent of the City’s Sign Ordinance and its application to the

Property under the unique circumstances of this case, we respectfully request that this variance be granted.

B. Variance Criteria

Pursuant to Article 2, Section 10.233 of the Zoning Ordinance, and RSA 674:33, to obtain a variance in New Hampshire, an applicant must show that: (1) the variance will not be contrary to the public interest; (2) the spirit of the ordinance is observed; (3) substantial justice is done; (4) the values of surrounding properties are not diminished; and (5) literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, where said term means that, owing to special conditions of the property that distinguish it from other properties in the area: no fair and substantial relationship exists 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 if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, 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. *See* RSA 674:33, I (b).

The Applicant asserts that the proposed sign location meets each of the variance criteria as described in greater detail below.

1. The variance will not be contrary to the public interest.

The New Hampshire Supreme Court has indicated that the requirement that a variance not be “contrary to the public interest” is coextensive and related to the requirement that a variance be consistent with the spirit of the ordinance. *See* Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577, 580 (2005); Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 105-06 (2007); and Farrar v. City of Keene, 158 N.H. 684, 691 (2009). A variance is contrary to the public interest only if it “unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance’s basic zoning objectives.” Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. *See also* Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011) (“[m]ere conflict with the terms of the ordinance is insufficient.”) Moreover, these cases instruct boards of adjustment to make the determination as to whether a variance application “unduly” conflicts with the zoning objectives of the ordinance “to a marked degree” by analyzing whether granting the variance would “alter the essential character of the neighborhood” or “threaten the public health, safety or welfare” and to make that determination by examining, where possible, the language of the Zoning Ordinance.

The purpose of the City’s Sign Ordinance is to “maintain and enhance the character of the city’s commercial districts and residential neighborhoods and to protect the public from hazardous and distracting displays.” Zoning Ordinance, §10.1211. This express purpose of the Sign Ordinance is substantially similar to the standard of review, outlined above, that the Board of Adjustment must use in determining whether the requested variance will be contrary to the public interest and whether the spirit of the Ordinance is observed, which is whether the proposed sign will alter the essential character of the neighborhood or threaten the public health, safety or welfare. The new sign will do neither.

First, the proposed sign will not alter the essential character of the neighborhood. The proposed new office building is the only office building currently being developed off Eileen Dondero Road. Moreover, due to the multi-use path, the proposed new sign will appear substantially similar to other monument signs located on adjacent properties which identify medical uses to include the Jackson Gray building located at 330 Borthwick Ave and further identified as City Assessor Map 240, Lot 2(2) (the “Jackson Gray Property”), and Portsmouth Regional Hospital located at 333 Borthwick Ave and further identified as City Assessor Map 240, Lot 2(1) (“PRH”), both of which are in the OR District and Sign District 4. More specifically, **Enclosure 5** depicts the east and west monument signs at the Jackson Gray Property as well as the main monument sign at PRH. As shown in Enclosure 5, the Jackson Gray monument signs are located in very close proximity to the paved area of Borthwick Ave and they are not located behind a multi-use path or sidewalk. Similarly, while the PRH property does have a sidewalk along the front lot line, its sign is not located behind the same. Through consideration of Enclosures 1 – 5, it is clear that the proposed new sign will not alter the essential character of the neighborhood. If anything, the new sign will appear in greater conformity with the Sign Ordinance, by virtue of its proposed placement, than the aforementioned adjacent properties.

The proposed new sign will also not threaten the public health, safety, or welfare. As explained above, the monument signs identifying the Jackson Gray Property and PRH appear substantially similar to the sign proposed by the Applicant, and they are not buffered from Borthwick Ave by a multi-use path the way the proposed sign will be buffered from Eileen Dondero Road. Moreover, Eileen Dondero Road has far less traffic than Borthwick Ave. To summarize, granting the requested variance will not threaten the public health, safety or welfare.

As the proposed sign meets the express intent of the Sign Ordinance as well as New Hampshire jurisprudence, because it will not alter the essential character of the neighborhood nor threaten the public health, safety or welfare, it would be reasonable and appropriate for the Board of Adjustment to conclude that granting the variance will not be contrary to the public interest.

2. The spirit of the Ordinance is observed.

As referenced in Section 1, above, the requested variance observes the letter and spirit of the Sign Ordinance and New Hampshire jurisprudence regarding the “public interest” prong of the variance criteria because the proposed sign will not alter the essential character of the neighborhood and will not threaten the public health, safety, or welfare. As the New Hampshire Supreme Court has indicated in both Chester Rod & Gun Club and in Malachy Glen, the requirement that the variance not be “contrary to the public interest” is coextensive and is related to the requirement that the variance be consistent with the spirit of the ordinance. *See Chester Rod & Gun Club*, 152 N.H. at 580. A variance is contrary to the spirit of the ordinance only if it “unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance’s basic zoning objectives.” *Chester Rod & Gun Club*, 152 N.H. at 581; *Farrar*, 158 N.H. at 691. As discussed above, the requested variance is consistent with the spirit of the Sign Ordinance because of the reasons stated in Section 1. Similarly, for the reasons stated above, the Applicant respectfully asserts that granting the variance would not “alter the essential character of the neighborhood” or “threaten the public health, safety or welfare”. Accordingly, the Board of Adjustment should determine that the requested variance will observe the spirit of the Zoning

Ordinance.

3. Substantial justice is done.

As noted in Malachy Glen, *supra*, “perhaps the only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, *supra*, citing 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 24.11, at 308 (2000) (quoting New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997)). In short, there must be some gain to the general public from denying the variance that outweighs the loss to the Applicant from its denial.

In this case, the public does not stand to gain anything from denying the variance request. On the contrary, the public will benefit greatly from the multi-use path along Eileen Dondero Road and as proposed, the new sign will appear consistent with other adjacent properties in the area. Further, the proposed sign poses no threat to the public health, safety, or welfare. On the other hand, the Applicant will benefit significantly from the grant of the variance as the Property will benefit from signage that is logically sited in a manner to identify the new building.

As there is no gain to the general public from denying the variance that outweighs the loss to the Applicant from its denial, granting the requested variance will accomplish substantial justice.

4. The proposal will not diminish surrounding property values.

Given the location of the Property and the proposed sign, the size, nature and locations of the surrounding parcels, and the existing monument signs on the Jackson Gray and PRH properties, none of the surrounding properties will suffer any diminution in value as a result of granting this variance. Accordingly, the Applicant respectfully requests that the Board of Adjustment find that the requested variance will not diminish surrounding property values.

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

As set forth in the provisions of RSA 674:33, I, there are two options by which the Board of Adjustment can find that an unnecessary hardship exists:

- (A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:
 - (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
 - (ii) The Proposed use is a reasonable one.

or,

- (B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it

from other properties in the area, 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 “special conditions” of the Property for purposes of this variance criterion include its large size, its insulation and isolation from other surrounding properties and the length of Eileen Dondero Road, the large berm to the east of Eileen Dondero Road which obstructs the sightline to the sign area of the new building, and the multi-use path along the front lot line. As depicted in Enclosures 1 – 4 and noted above, the proposed sign is located behind the multi-use path. Importantly, the Jackson Gray Property has no such multi-use path or sidewalk, and while the PRH property does have a sidewalk along the front lot line, its sign, depicted in Enclosure 5, is not located behind the same.

In Harborside Assocs. v. Parade Residence Hotel, the New Hampshire Supreme Court upheld the Portsmouth Board of Adjustment’s finding that the physical improvements on a property, in that case the size of a building when compared to other buildings in the area within the context of sign variance request, could be considered “special circumstances.” Affirming the analysis of the Board of Adjustment, the Supreme Court stated:

The [Respondent] is not attempting to meet the ‘special conditions’ test by showing that its *signs* would be unique in their settings, but that its *property* – the hotel and conference center – has unique characteristics that make the signs themselves a reasonable use of the property.

Harborside, 162 N.H. at 518 (emphasis added). Cf Farrar, 158, N.H. 689 (where variance sought to convert large, historical single use residence to mixed use of two residence and office space, size of residence was relevant to determining whether property was unique in its environment).

Here, like the size of the building in Harborside, and the size of the residence in Farrar, the Property’s physical improvements, to specifically include the existence of the multi-use path, make the proposed sign reasonable under the circumstances, especially when considered against similar monument signs on abutting property. Moreover, as noted above, the Property is large and is insulated and isolated from buildings and uses on surrounding properties, the new medical office building is the only proposed building to be accessed off of Eileen Dondero Road at this time, which road is a considerable length from Borthwick Ave, and there is a large berm on the eastern side of Eileen Dondero Road which obstructs the sightline to the sign area for the new building. Under the circumstances, the Applicant and the public will benefit greatly by a sign that is placed in a manner that will readily identify the new building so to avoid confusion.

Through consideration of these special circumstances, and the discussion above regarding the nature of the proposed sign, the character of the Property, and the nature and character of the surrounding area to include other monument signs, there is no fair and substantial relationship between the general public purposes of the Sign Ordinance, which is, as indicated above, to “maintain and enhance the character of the city’s commercial districts and residential neighborhoods and to protect the public from hazardous and distracting displays”, and its application to the Property in this case, because strictly enforcing the same, will not advance those public purposes. The proposed sign does not compromise the character of the city’s commercial

districts and does not create a hazard or distracting display. On the contrary, the proposed sign is tasteful and conservative and is substantially similar to other monument signs in the area. As result, the proposed sign actually advances the express purpose of the Sign Ordinance.

The Applicant respectfully reminds the Board of Adjustment that the mere fact that the Applicant is seeking a variance from the express provisions of the Zoning Ordinance is not a valid reason for denying the variance. *See Malachy Glen Associates, Inc. v. Town of Chichester*, 155 N.H. 102, 107 (2007); *see also Harborside Associates*, 162 N.H. at 2011 (“mere conflict with the terms of the ordinance is insufficient”).

Finally, the proposed sign will be appropriately sited away from Eileen Dondero Road and the multi-use path, will appropriately identify the Property, and is substantially similar to other monument signs identifying medical office/building uses on abutting properties which are also in the OR District and Sign District 4. As such, the proposed new sign is reasonable under the circumstances. *See Vigeant v. Town of Hudson*, 151 N.H. 747, 752 - 53 (2005); and *Malachy Glen*, 155 N.H. at 107; *see also Harborside* at 518-519 (applicant did not need to show signs were “necessary” rather only had to show signs were a “reasonable use”).

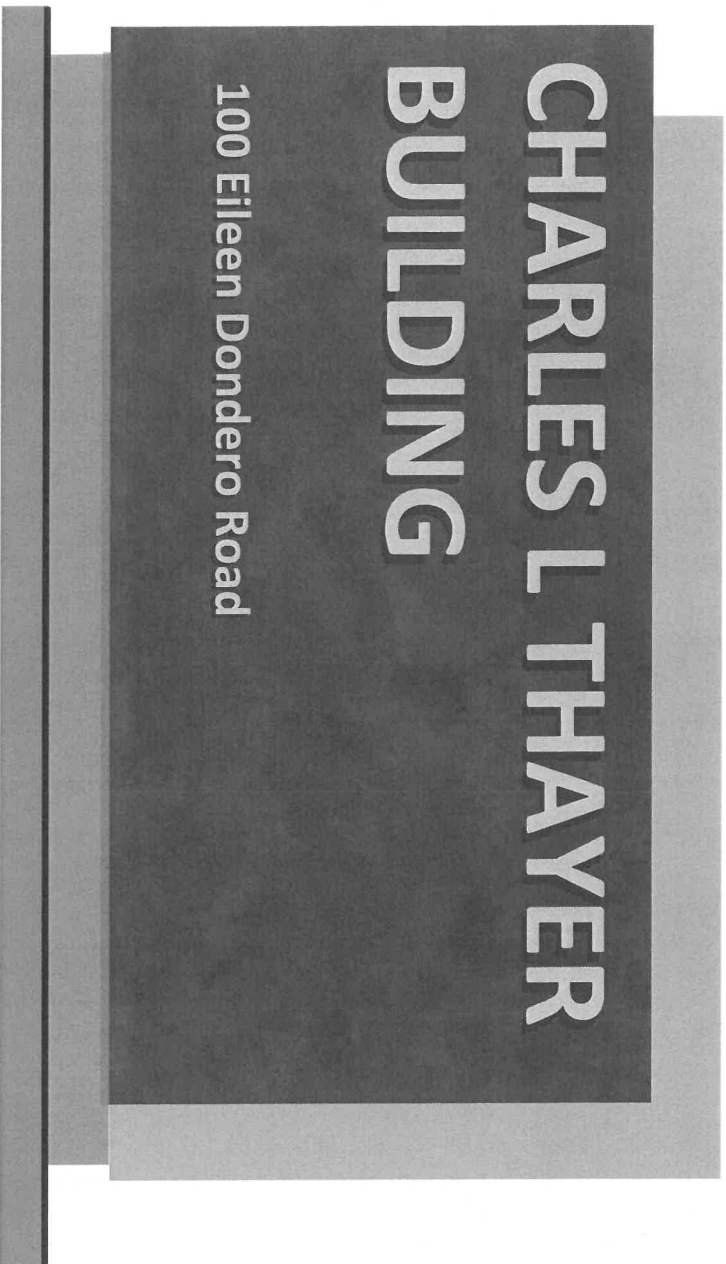
Accordingly, the Applicant respectfully asserts that its application complies with the standard for Option A of the unnecessary hardship criterion and the Board of Adjustment should so find.

C. Conclusion

The Applicant respectfully submits that all five criteria for the variance as requested have been met such that its Variance Application should be granted.

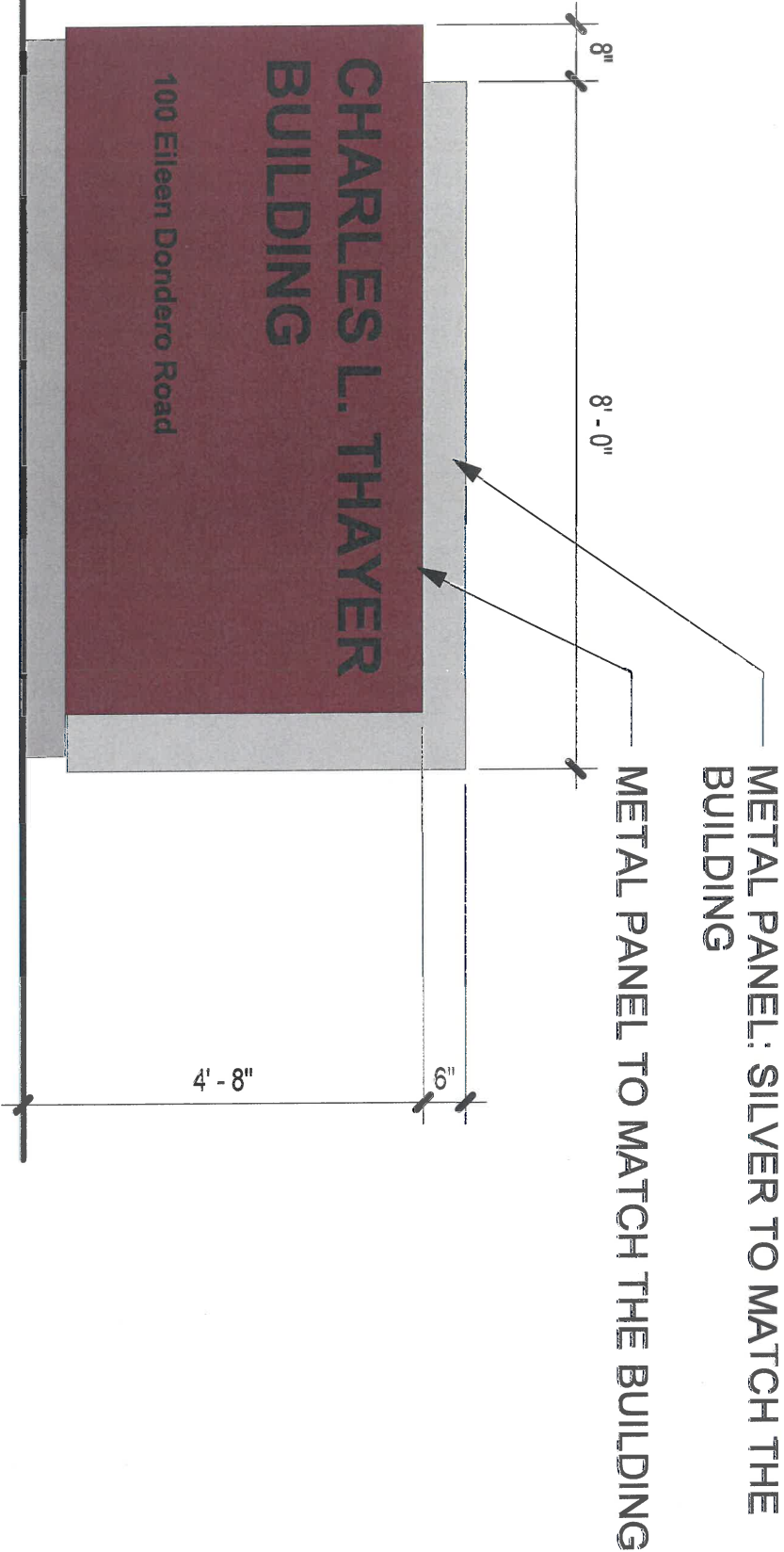


BUILDING SIGNAGE



BUILDING SIGNAGE

SIGN MATERIALS: METAL PANELS TO MATCH BUILDING METAL PANELS



BUILDING SIGNAGE

SIGN MATERIALS: METAL PANELS TO MATCH BUILDING METAL PANELS

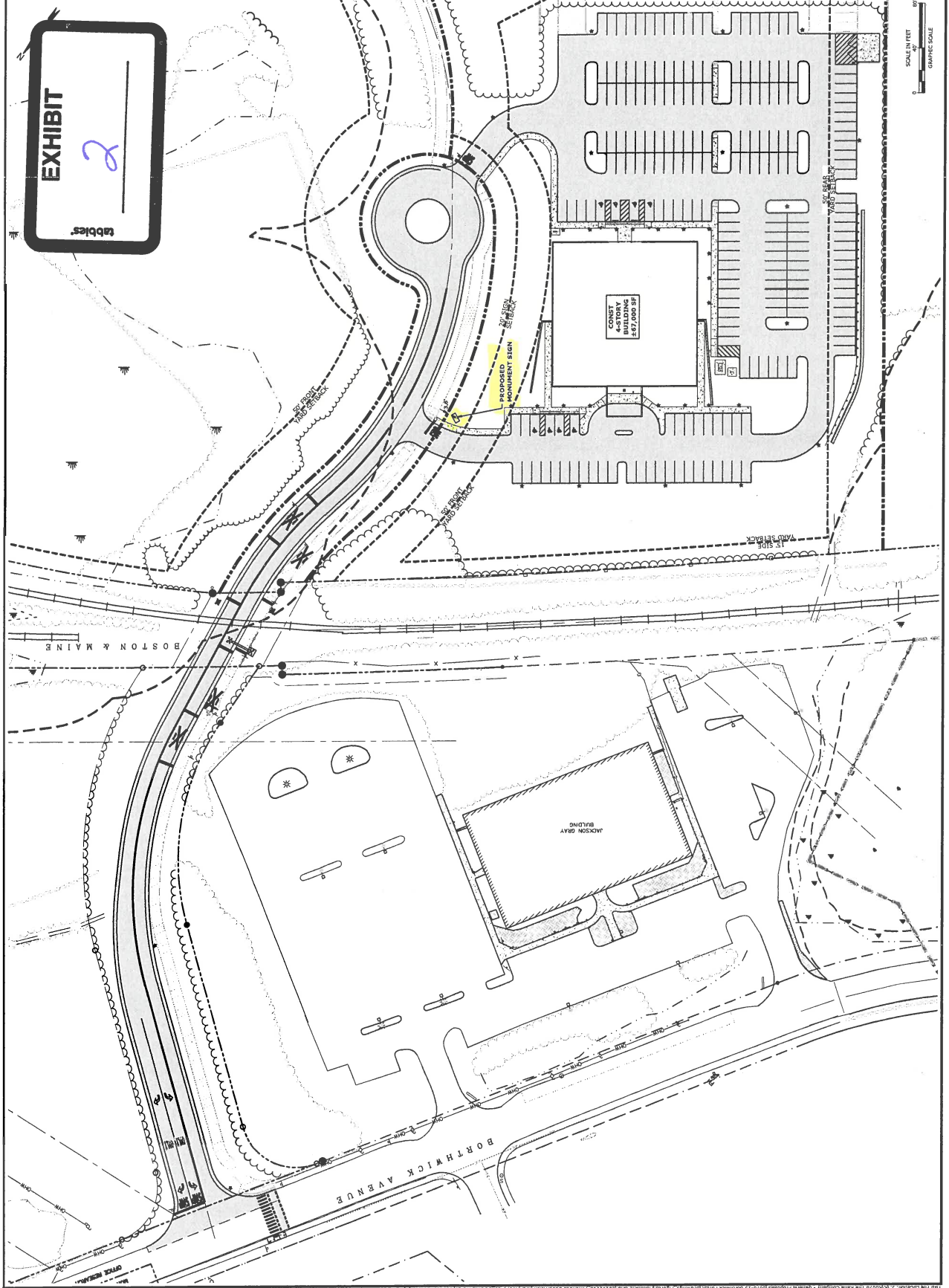
**Proposed
Subdivision Road
& Office Building
Development**

Borthwick Forest, LLC
Portsmouth,
New Hampshire

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DATE		02/20/20
FILE		NO2012-13_02/20/20
DRAWN BY:		CHL
CHECKED:		PMC
APPROVED:		ELM

MONUMENT SIGN LOCATION
EXHIBIT

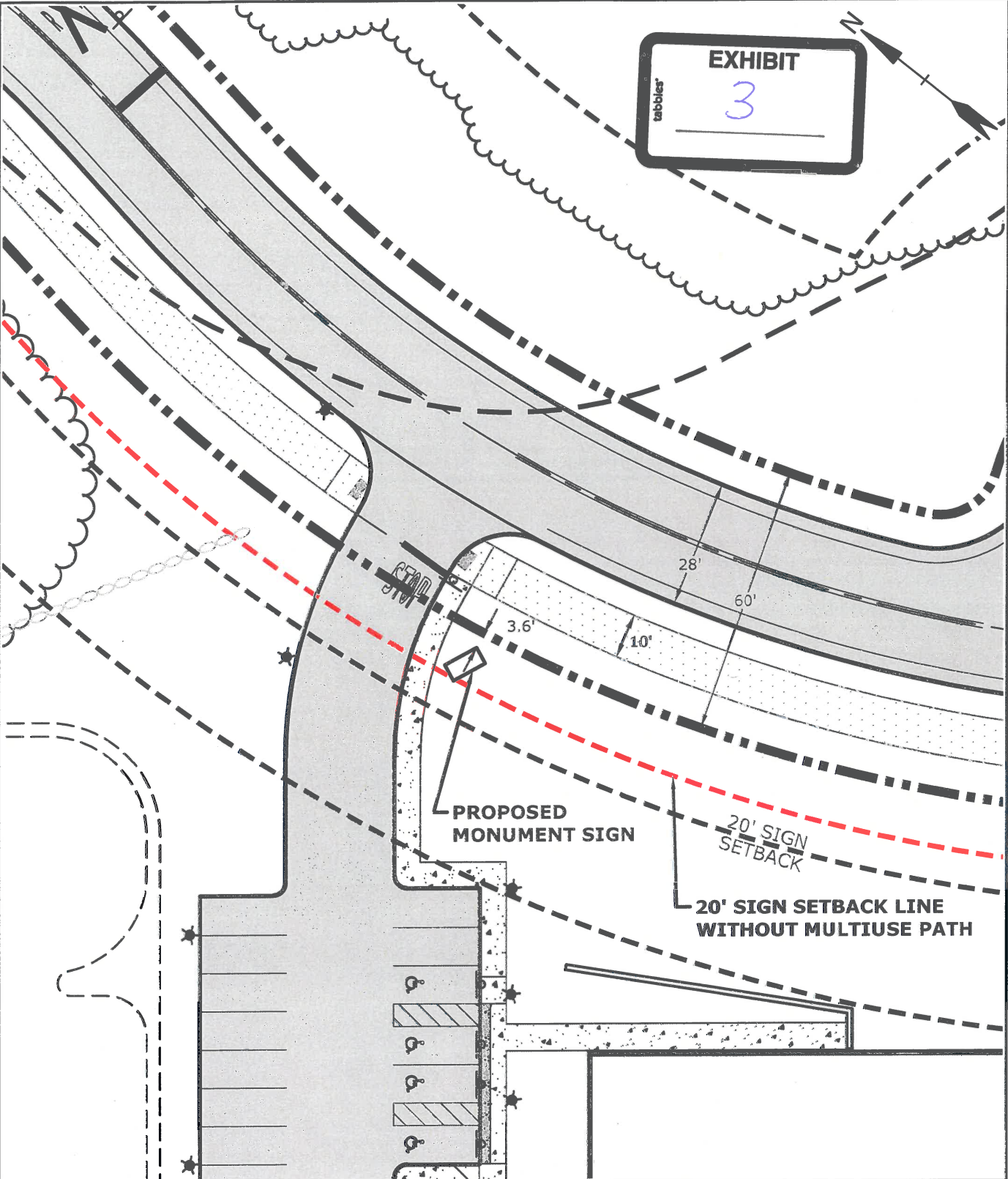
SCALE: AS SHOWN
1 OF 1



labbles
EXHIBIT 2

SCALE IN FEET
0 50 100
GRAPHIC SCALE

tabbler
EXHIBIT
 3



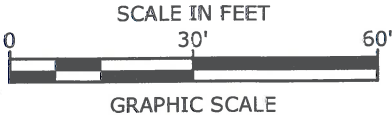
PROPOSED MONUMENT SIGN

20' SIGN SETBACK

20' SIGN SETBACK LINE WITHOUT MULTIUSE PATH

**PROPOSED SUBDIVISION ROAD & OFFICE BUILDING DEVELOPMENT
 PORTSMOUTH, NEW HAMPSHIRE**

**MONUMENT SIGN LOCATION
 EXHIBIT**



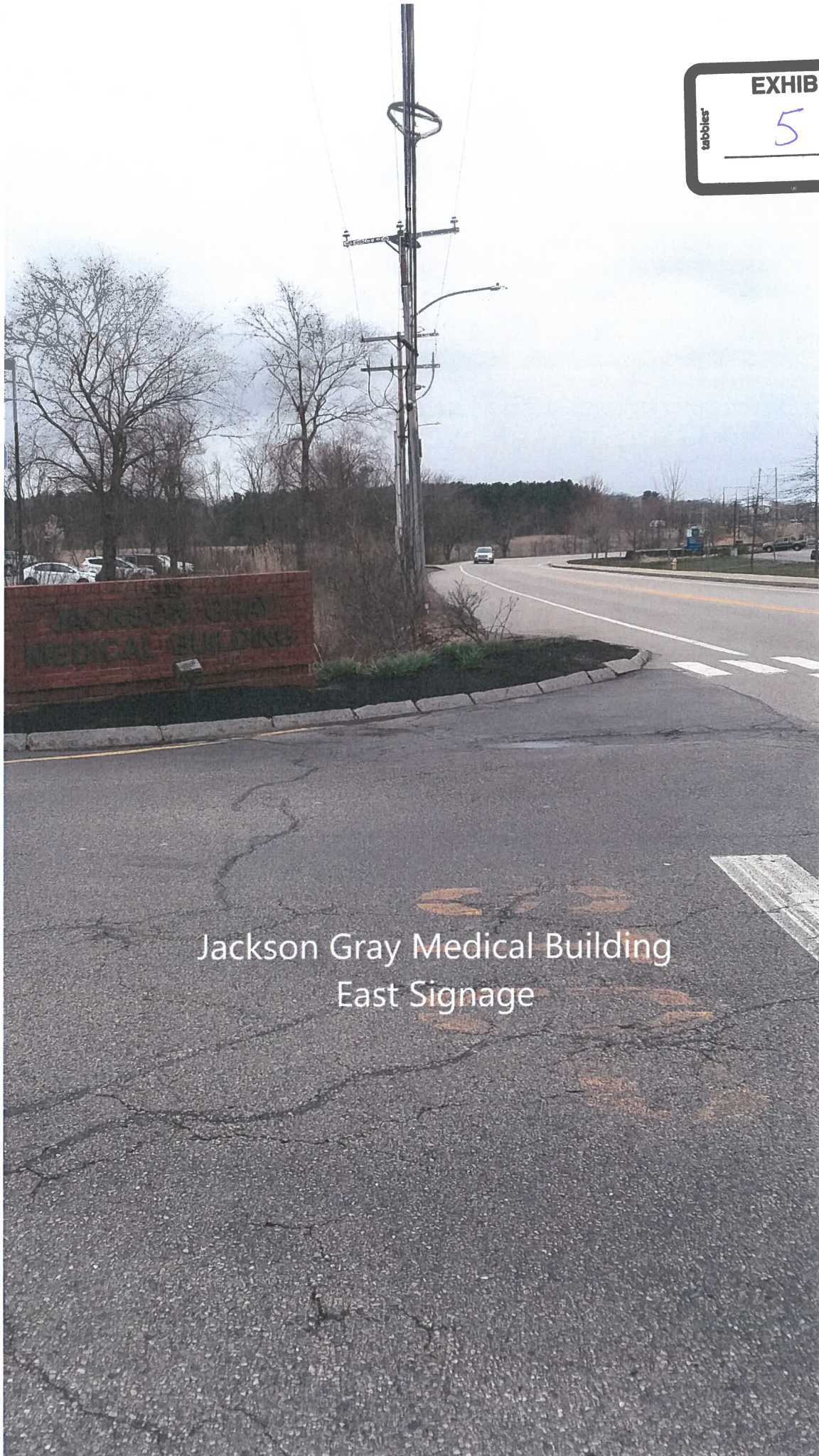
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APPROVED:	BLM

Tighe & Bond
 Engineers | Environmental Specialists

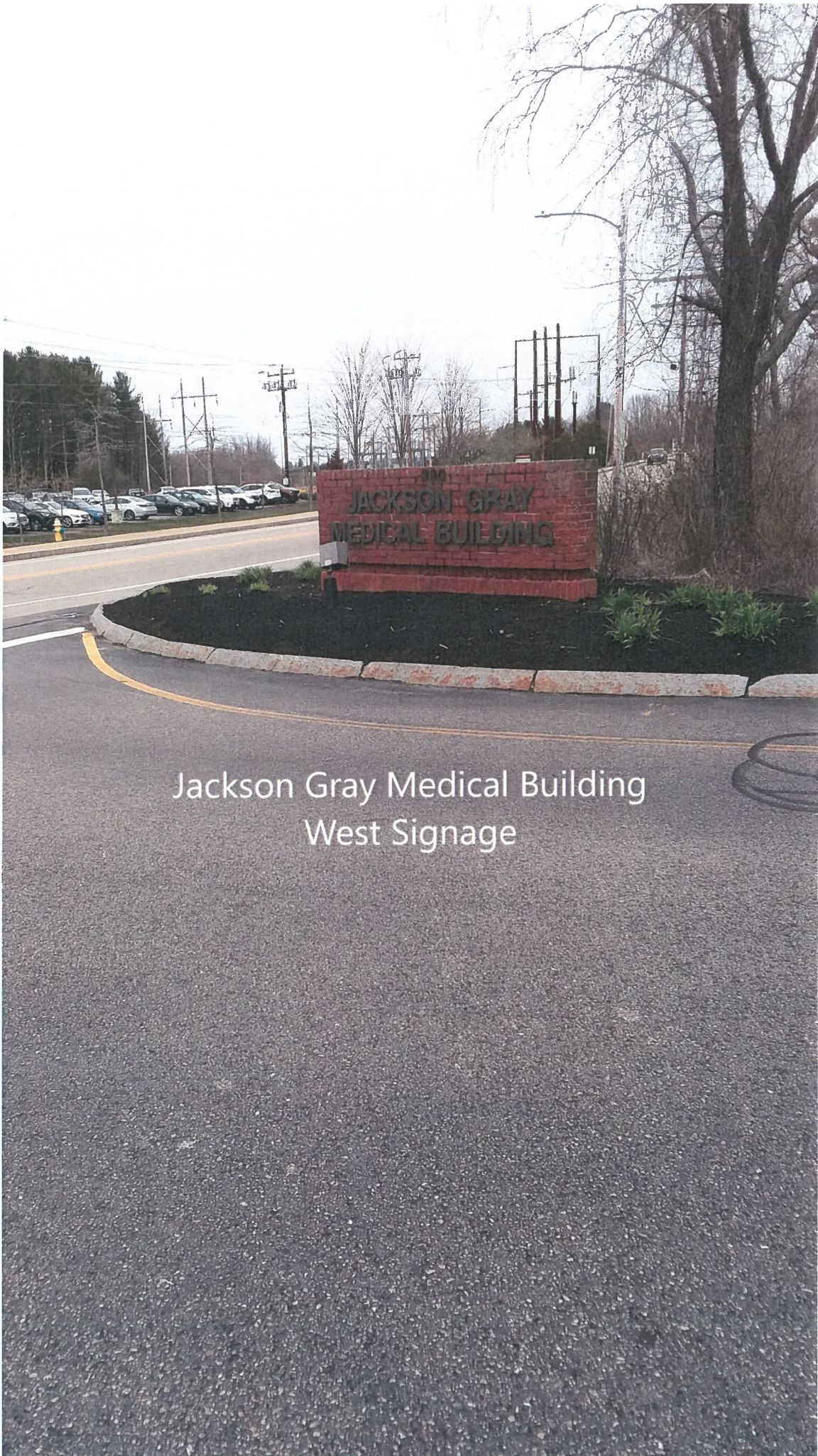
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 Plot Date: Wednesday, April 01, 2020 Plotted By: Craig M. Lunton
 T&B File Location: J:\K0076 The Kane Company - General Proposals\0076-13 Berthwick Forest\Drawings_Figures\AuteCAD\Xref\K0076-13_DSGM.DWG Layout Tab: Sign Ex

EXHIBIT
4





Jackson Gray Medical Building
East Signage



Jackson Gray Medical Building
West Signage



Portsmouth
Regional
Hospital

- ↑ **EMERGENCY**
- Main Entrance
 - Registration
 - Medical Office Building

*Parking For Official Hospital Business Only.
Violators Will Be Towed At Owners Expense.*

333 Borthwick Avenue

STOP

Portsmouth Hospital Sign

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

April 29, 2020

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

**RE: Variance Application of James Gould
246 Thornton Street, Portsmouth (Tax Map 161, Lot 7)**

Dear Chairman Rheume,

Our Office represents James Gould, owner of property located at 246 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 with Exhibits A-D;
- 3) 3-Sheet Plan Set;
- 4) Floor Plans and Elevations; and
- 5) Photographs of the Property (Lots 23 and 25).

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 flourish extending to the right.

Derek R. Durbin, Esq.

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

James Gould
246 Thornton Street
Portsmouth, NH 03801
Tax Map 161, Lot 7
(Owner/Applicant)

INTRODUCTORY STATEMENT

James Gould is the owner of Property located at 246 Thornton Street, identified on Portsmouth Tax Map 161 as Lot 7 (“Mr. Gould” or “Applicant”). The Property is located within the GRA Zoning District. The Property consists of two (2) involuntarily merged lots of record,¹ identified as Lots 23 and 25, as first shown on a “Plan of Lots of Land of the City of Portsmouth”, prepared by A.C. Hoyt, Surveyor, dated June 21, 1890. Exhibit A.

Lot 25 remains a vacant lot while Lot 23 is occupied by a duplex that Mr. Gould and his family reside in. Lot 25 is a 7,161 square foot lot with 60.61’ of continuous street frontage while Lot 23 is a 7,183 square foot lot with 61’ of continuous street frontage. Both lots fails to conform to the Zoning Ordinance’s minimum lot area (7,500 sf.) and continuous street frontage (100’) requirements for the GRA Zoning District. However, they are nonetheless similar or identical in dimension to most surrounding properties. Exhibit B.

Mr. Gould intends to exercise his statutory right pursuant to RSA 674:39-aa to un-merge Lots 23 and 25. Exhibit C. This will allow the Gould family to construct a two-story single-family home on Lot 25, which they would move into upon completion. The proposed home will contain three (3) bedrooms, one (1) full-size bathroom, two (2) half-baths and a two (2) vehicle garage, providing adequate space and amenities for their family. In order to proceed with their un-merger and development plans for the Property, the Goulds require several variances, as more specifically set forth below.

¹ This finding is based on title research performed through the Registry of Deeds and a review of the City’s assessing, inspections, planning and zoning records for the Property. No evidence could be found that the Owner or his predecessors in title ever voluntarily merged the lots.

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:

Lot 23

1. Continuous street frontage of 61' where 100' is required;
2. Left Yard Setback of 4.4' where 10' is required;
3. Lot Area of 7,183 sf. where 7,500 sf is minimum required; and
4. Lot Area per dwelling unit of 3,591.5 sf where 7,500 sf is minimum required.

Lot 25

1. Continuous Street Frontage of 60.61' where 100' is required;
2. Left Yard Setback of 6.3' where 10' is required;
3. Building Coverage of 25.9% where 25% is the maximum permitted;
4. Lot Area of 7,161 sf. where 7,500 sf is required; and
5. Lot Area per dwelling unit of 7161 where 7,500 is required.

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).

In the present case, the Applicant has a statutory right to un-merge the two (2) involuntarily merged lots. The dimensions of the lots are not changing nor are the existing conditions associated with Lot 23, except that the Applicant is proposing to remove the hot tub, outdoor shower and fence situated 1.5' from the common boundary with Lot 25 to address potential future privacy concerns. This will bring Lot 23 into greater conformity with the Ordinance’s setback requirements once the Property is un-merged.

The relief being sought is primarily related to Lot 25 and the construction of the proposed new home. The Applicant is seeking variances for less than 1% of building coverage and 3.7' of left side yard setback relief.

The relief for building coverage is necessary to accommodate a two (2) vehicle garage on Lot 25. This will provide for ample off-street parking on Lot 25 and allow the Applicant and his family to store their two (2) primary vehicles inside during the winter months.

The variance for the left yard setback is driven by the bulkhead access to the basement. Because it is a “structure” by definition and *may* rise 18” above the ground, the 6.3’ left side yard setback variance has been applied for out of an abundance of caution. The closest corner of the proposed home to the left property boundary is actually setback 10.3’ and would otherwise be comply with the Zoning Ordinance.

The building coverage being proposed for Lot 25 is consistent with many of the surrounding properties. Exhibit D. Of the seven (7) properties on the same block (excluding Lot 23), four (4) currently exceed the 25% maximum building coverage requirement. The City Assessing records indicate that these four (4) properties range from approximately 28-33% building coverage. The Applicant has reduced features associated with their original house design for Lot 25 to minimize the amount of zoning relief needed without having to go with a less functional and/or attractive design.

The location of the home will provide for adequate separation from buildings on adjacent properties. Therefore, granting the variances will not negatively impact the light, air and space of abutting properties. Moreover, the addition of one (1) single-family home to the neighborhood will not create any undue demand on municipal services. Any impact costs associated with the construction of the new home and its occupancy by one (1) family will be offset by the permit fees and increase in tax revenue that will be recouped. For the foregoing reasons, granting the variances will not alter the essential character of the neighborhood or threaten the public 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).

There would be no gain to the public in denying the variance relief sought by the Applicant. The Applicant would still be able to un-merge the two (2) lots but would be required to re-design their house plans to eliminate the 0.9% building coverage request and potentially re-locate the bulkhead. This would result in the Applicant losing the ability to construct a home on Lot 23 that is designed around their present needs while providing no tangible benefit to abutting property owners or the general public. Specifically, the Applicant would be required to re-design the proposed home so that it has only a one (1) vehicle garage or no garage at all. The difference in building coverage between what they are proposing to build and what they could build without a variance is 64.45 square feet (+/-). Under the circumstances, the equitable balancing test for determining whether substantial justice is done weighs in favor of the Applicant.

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

There is ample evidence throughout Portsmouth and in the City's assessing records that proves that surrounding property values will either remain unchanged or will increase with the construction of a new home on Lot 25. The proposed home has a tasteful design that will fit in with the surrounding architecture. The request for building coverage relief (0.9% or 64.45 sf.) is so negligible in the present instance that it will have no impact upon surrounding properties beyond that which a conforming home would have.

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

The Property consists of two (2) involuntarily merged lots of record and is significantly larger than most surrounding properties, which are conditions that distinguish it from surrounding properties in the area. There are very few, if any, involuntarily merged lots of record left in the "Christian Shores" area of Portsmouth. The individual lots were created by recorded plan in 1890, long before Portsmouth adopted a Zoning Ordinance and a 7,500 square foot lot dimension requirement. If Lot 25 was a conforming lot, the Applicant would not need a building coverage variance for his proposed house design.

The Applicant's request for left yard setback relief is related to the proposed basement bulkhead which is classified as a "structure" under the broad definition given to this term under the Portsmouth Zoning Ordinance. The bulkhead itself is only 24 square feet in dimension and may not rise more than 18" above the ground, but because it is located within the setback, the Applicant has applied for relief for it now to avoid the possibility of having to come back before the Board. The house itself meets the 10' left yard setback.

For the above reasons, there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property. Moreover, the proposed uses of the un-merged lots are reasonable. Both lots will be used for residential purposes that conform to Section 10.440 of the Zoning Ordinance. The building on Lot 23 will continue to be occupied as a two-family dwelling. The new home on Lot 25 will be occupied as a single-family residence.

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.

Dated: April 29, 2020

Respectfully Submitted,

James Gould

By and Through His Attorneys,

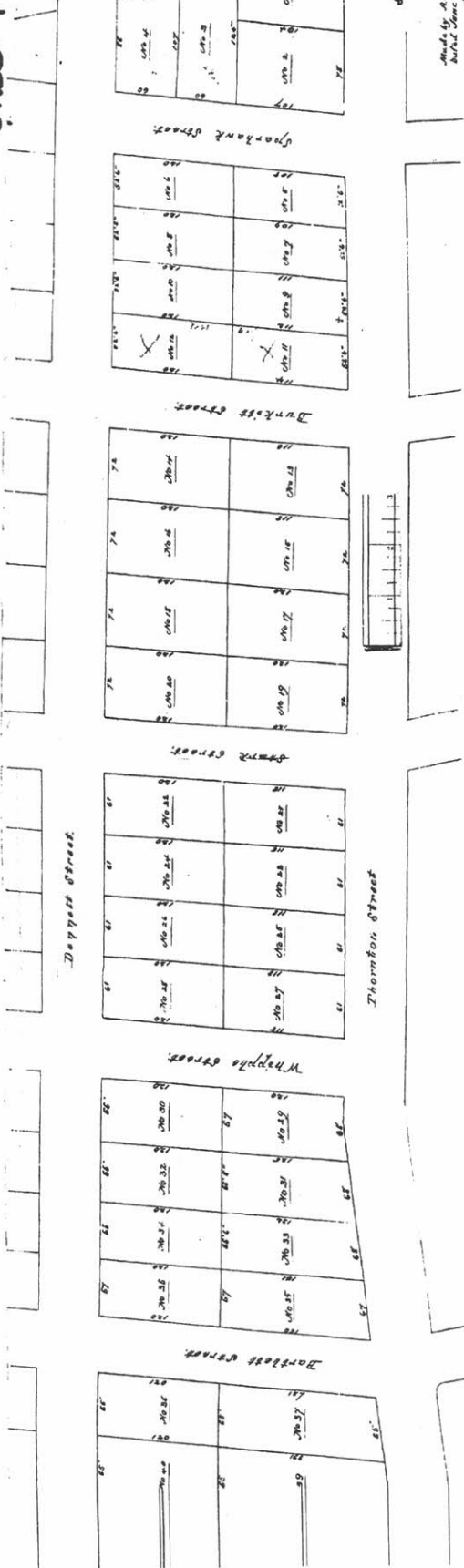
Durbin Law Offices PLLC

A handwritten signature in blue ink, appearing to read "Derek R. Durbin", is written over the text "Durbin Law Offices PLLC". The signature is stylized and includes a long horizontal flourish extending to the right.

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

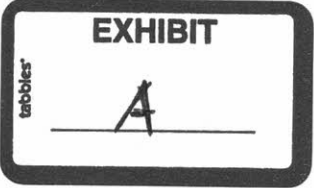
SHEET 1 of 2

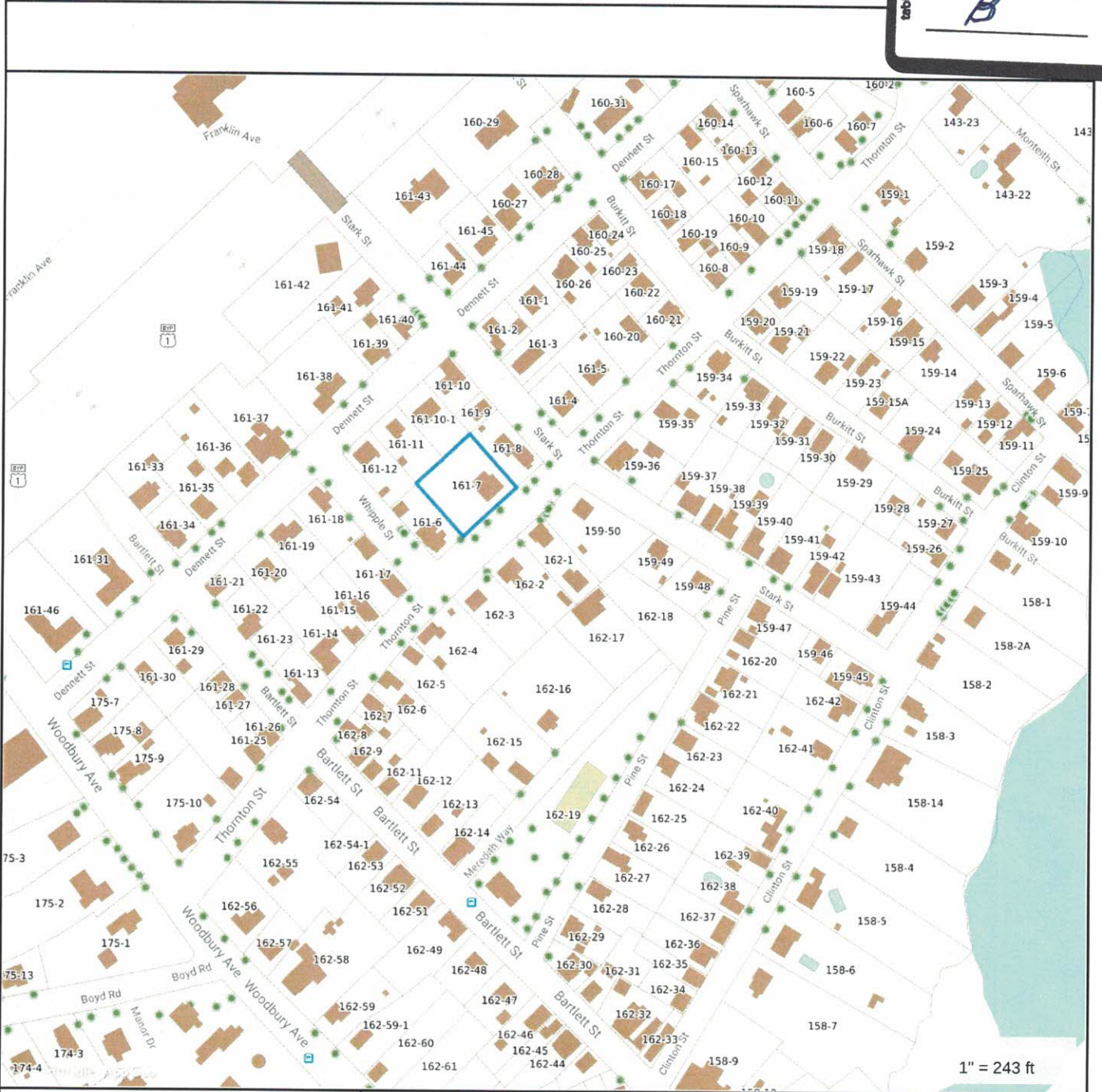
00150



SECTION 1


Right or less or 1/4th of
 owned by the City of Hayward, Cal.
 1888-1890
 Made by A.C. Hoff, Engineer
 April 20th 1890





Property Information

Property ID	0161-0007-0000
Location	246 THORNTON ST
Owner	GOULD JAMES E



**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

1" = 243 ft



TITLE LXIV PLANNING AND ZONING

CHAPTER 674 LOCAL LAND USE PLANNING AND REGULATORY POWERS

Regulation of Subdivision of Land

Section 674:39-aa

674:39-aa Restoration of Involuntarily Merged Lots. –

I. In this section:

- (a) "Involuntary merger" and "involuntarily merged" mean lots merged by municipal action for zoning, assessing, or taxation purposes without the consent of the owner.
- (b) "Owner" means the person or entity that holds legal title to the lots in question, even if such person or entity did not hold legal title at the time of the involuntary merger.
- (c) "Voluntary merger" and "voluntarily merged" mean a merger under RSA 674:39-a, or any overt action or conduct that indicates an owner regarded said lots as merged such as, but not limited to, abandoning a lot line.

II. Lots or parcels that were involuntarily merged prior to September 18, 2010 by a city, town, county, village district, or any other municipality, shall at the request of the owner, be restored to their premerger status and all zoning and tax maps shall be updated to identify the premerger boundaries of said lots or parcels as recorded at the appropriate registry of deeds, provided:

- (a) The request is submitted to the governing body prior to December 31, 2021.
- (b) No owner in the chain of title voluntarily merged his or her lots. If any owner in the chain of title voluntarily merged his or her lots, then all subsequent owners shall be estopped from requesting restoration. The municipality shall have the burden of proof to show that any previous owner voluntarily merged his or her lots.

III. All decisions of the governing body may be appealed in accordance with the provisions of RSA 676.

IV. Any municipality may adopt local ordinances, including ordinances enacted prior to the effective date of this section, to restore previously merged properties that are less restrictive than the provisions in paragraph I and II.


V. The restoration of the lots to their premerger status shall not be deemed to cure any non-conformity with existing local land use ordinances.

VI. Municipalities shall post a notice informing residents that any involuntarily merged lots may be restored to premerger status upon the owner's request. Such notice shall be posted in a public place no later than January 1, 2012 and shall remain posted through December 31, 2016. Each municipality shall also publish the same or similar notice in its 2011 through 2015 annual reports.

Source. 2011, 206:4, eff. July 24, 2011. 2016, 327:2, eff. Aug. 23, 2016.



Property Information	
Property ID	0160-0021-0000
Location	162 THORNTON ST
Owner	PIERCE BARBARA F


MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT
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 Geometry updated 4/1/2019
 Data updated 7/17/2019



260 THORNTON ST

Location 260 THORNTON ST

Mblu 0161/ 0006/ 0000/ /

Acct# 34992

Owner BRIOLAT RANDALL A SR

PBN

Assessment \$622,600

Appraisal \$622,600

PID 34992

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2019	\$366,200	\$256,400	\$622,600

Assessment			
Valuation Year	Improvements	Land	Total
2019	\$366,200	\$256,400	\$622,600

Owner of Record

Owner BRIOLAT RANDALL A SR
 Co-Owner BRIOLAT LINDA
 Address 260 THORNTON ST
 PORTSMOUTH, NH 03801

Sale Price \$0
 Certificate
 Book & Page 2903/1239
 Sale Date 12/20/1991
 Instrument

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
BRIOLAT RANDALL A SR	\$0		2903/1239		12/20/1991

Building Information

Building 1 : Section 1

Year Built: 1928
 Living Area: 2,534
 Replacement Cost: \$453,913
 Building Percent Good: 79
 Replacement Cost
 Less Depreciation: \$358,600

Building Photo

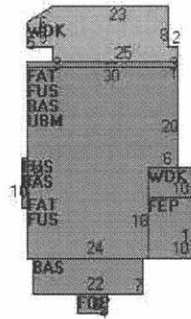
Building Attributes

Field	Description
Style	Conventional
Model	Residential
Grade:	B
Stories:	2
Occupancy	1
Exterior Wall 1	Clapboard
Exterior Wall 2	
Roof Structure:	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Plastered
Interior Wall 2	
Interior Flr 1	Hardwood
Interior Flr 2	
Heat Fuel	Oil
Heat Type:	Hot Water
AC Type:	None
Total Bedrooms:	3 Bedrooms
Total Bthrms:	1
Total Half Baths:	1
Total Xtra Fixtrs:	0
Total Rooms:	7
Bath Style:	Above Avg Qual
Kitchen Style:	Above Avg Qual
Kitchen Gr	
WB Fireplaces	1
Extra Openings	0
Metal Fireplaces	1
Extra Openings	0
Bsmt Garage	



(http://images.vgsi.com/photos2/PortsmouthNHPhotos/\00\01\00\42.JPG)

Building Layout



(http://images.vgsi.com/photos2/PortsmouthNHPhotos/Sketches/34992)

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
BAS	First Floor	1,196	1,196
FUS	Upper Story, Finished	1,072	1,072
FAT	Attic	1,062	266
FEP	Porch, Enclosed	120	0
FOP	Porch, Open	24	0
UBM	Basement, Unfinished	1,032	0
WDK	Deck, Wood	352	0
		4,858	2,534

Extra Features

Extra Features		Legend
No Data for Extra Features		

Land

Land Use

Use Code 1010

Land Line Valuation

Size (Acres) 0.17

Description SINGLE FAM MDL-01
Zone GRA
Neighborhood 131
Alt Land Appr Category No

Frontage
Depth
Assessed Value \$256,400
Appraised Value \$256,400

Outbuildings

Outbuildings						<u>Legend</u>
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
FGR4	GAR WLFT AVE			484 S.F	\$6,000	1
SHD1	SHED FRAME			240 S.F.	\$1,600	1

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2018	\$326,500	\$233,000	\$559,500
2017	\$326,500	\$233,000	\$559,500
2016	\$289,500	\$182,500	\$472,000

Assessment			
Valuation Year	Improvements	Land	Total
2018	\$326,500	\$233,000	\$559,500
2017	\$326,500	\$233,000	\$559,500
2016	\$289,500	\$182,500	\$472,000

570 DENNETT ST

Location 570 DENNETT ST

Mblu 0161/ 0012/ 0000/ /

Acct# 34998

Owner BRANDT RYAN M

PBN

Assessment \$621,400

Appraisal \$621,400

PID 34998

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2019	\$365,000	\$256,400	\$621,400

Assessment			
Valuation Year	Improvements	Land	Total
2019	\$365,000	\$256,400	\$621,400

Owner of Record

Owner	BRANDT RYAN M	Sale Price	\$585,000
Co-Owner	BRANDT JOANNA C	Certificate	
Address	570 DENNETT ST PORTSMOUTH, NH 03801	Book & Page	5622/0865
		Sale Date	06/01/2015
		Instrument	00

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
BRANDT RYAN M	\$585,000		5622/0865	00	06/01/2015
DUBOIS GARY E	\$0		5348/0212		08/22/2012
DOROW DIANE A	\$237,000		3455/2916	0	02/22/2000

Building Information

Building 1 : Section 1

Year Built: 1903
 Living Area: 2,010
 Replacement Cost: \$373,711
 Building Percent Good: 79

Building Photo

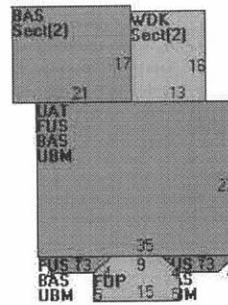
Replacement Cost
 Less Depreciation: \$295,200

Building Attributes	
Field	Description
Style	Conventional
Model	Residential
Grade:	B
Stories:	2
Occupancy	1
Exterior Wall 1	Vinyl Siding
Exterior Wall 2	
Roof Structure:	Gable/Hip
Roof Cover	Asph/F Glis/Cmp
Interior Wall 1	Plastered
Interior Wall 2	
Interior Flr 1	Hardwood
Interior Flr 2	Carpet
Heat Fuel	Gas
Heat Type:	Hot Water
AC Type:	None
Total Bedrooms:	4 Bedrooms
Total Bthrms:	2
Total Half Baths:	0
Total Xtra Fixtrs:	1
Total Rooms:	8
Bath Style:	Avg Quality
Kitchen Style:	Above Avg Qual
Kitchen Gr	
WB Fireplaces	0
Extra Openings	0
Metal Fireplaces	0
Extra Openings	0
Bsmt Garage	

Building Photo

(<http://images.vgsi.com/photos2/PortsmouthNHPhotos//00102131/73.jpg>)

Building Layout



(<http://images.vgsi.com/photos2/PortsmouthNHPhotos//Sketches/34998>)

Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
BAS	First Floor	1,005	1,005
FUS	Upper Story, Finished	1,005	1,005
FOP	Porch, Open	111	0
UAT	Attic	945	0
UBM	Basement, Unfinished	1,005	0
		4,071	2,010

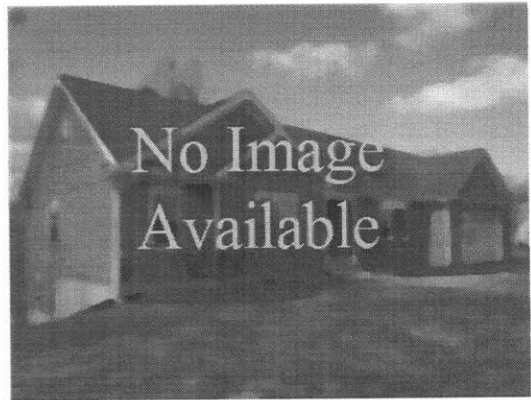
Building 1 : Section 2

Year Built: 2011
 Living Area: 357
 Replacement Cost: \$72,553
 Building Percent Good: 92
 Replacement Cost
 Less Depreciation: \$66,700

Building Photo

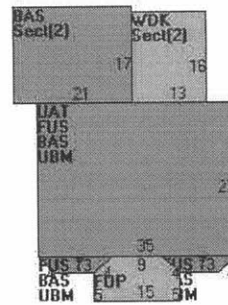
Building Attributes : Section 2 of 2	
Field	Description
Style	Conventional
Model	Residential

Grade:	B
Stories:	2
Occupancy	1
Exterior Wall 1	Vinyl Siding
Exterior Wall 2	
Roof Structure:	Gable/Hip
Roof Cover	Asph/F GlS/Cmp
Interior Wall 1	Drywall/Sheet
Interior Wall 2	
Interior Flr 1	Hardwood
Interior Flr 2	Carpet
Heat Fuel	Gas
Heat Type:	Hot Water
AC Type:	None
Total Bedrooms:	4 Bedrooms
Total Bthrms:	2
Total Half Baths:	0
Total Xtra Fixtrs:	1
Total Rooms:	8
Bath Style:	Avg Quality
Kitchen Style:	Above Avg Qual
Kitchen Gr	
WB Fireplaces	0
Extra Openings	0
Metal Fireplaces	0
Extra Openings	0
Bsmt Garage	



(<http://images.vgsi.com/photos2/PortsmouthNHPhotos/default.jpg>)

Building Layout



(<http://images.vgsi.com/photos2/PortsmouthNHPhotos/Sketches/34998>)

Building Sub-Areas (sq ft)			Legend	
Code	Description	Gross Area	Living Area	
BAS	First Floor	357	357	
WDK	Deck, Wood	208	0	
		565	357	

Extra Features

Extra Features		Legend
No Data for Extra Features		

Land

Land Use

Use Code	1010
Description	SINGLE FAM MDL-01
Zone	GRA
Neighborhood	131
Alt Land Appr Category	No

Land Line Valuation

Size (Acres)	0.17
Frontage	
Depth	
Assessed Value	\$256,400
Appraised Value	\$256,400

Outbuildings

Outbuildings						Legend
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
FGR1	GARAGE-AVE	02	DETACHED	240 S.F.	\$2,200	1
SHD1	SHED FRAME			160 S.F.	\$900	1

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2018	\$327,600	\$233,000	\$560,600
2017	\$327,600	\$233,000	\$560,600
2016	\$292,700	\$182,500	\$475,200

Assessment			
Valuation Year	Improvements	Land	Total
2018	\$327,600	\$233,000	\$560,600
2017	\$327,600	\$233,000	\$560,600
2016	\$292,700	\$182,500	\$475,200

530 DENNETT ST

Location 530 DENNETT ST

Mblu 0161/ 0010/ 0001/ /

Acct# 35030

Owner DAVIS JAMES W

PBN

Assessment \$633,500

Appraisal \$633,500

PID 35030

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2019	\$377,100	\$256,400	\$633,500

Assessment			
Valuation Year	Improvements	Land	Total
2019	\$377,100	\$256,400	\$633,500

Owner of Record

Owner	DAVIS JAMES W	Sale Price	\$85,000
Co-Owner	DAVIS HEATHER L	Certificate	
Address	530 DENNETT ST PORTSMOUTH, NH 03801	Book & Page	3570/1071
		Sale Date	02/27/2001
		Instrument	38

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
DAVIS JAMES W	\$85,000		3570/1071	38	02/27/2001

Building Information

Building 1 : Section 1

Year Built: 2018
 Living Area: 1,932
 Replacement Cost: \$380,082
 Building Percent Good: 99
 Replacement Cost
 Less Depreciation: \$376,300

Building Photo

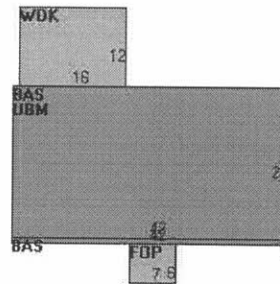
Building Attributes

Field	Description
Style	Colonial
Model	Residential
Grade:	B
Stories:	2
Occupancy	1
Exterior Wall 1	Vinyl Siding
Exterior Wall 2	
Roof Structure:	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Drywall/Sheet
Interior Wall 2	
Interior Flr 1	Hardwood
Interior Flr 2	Ceram Clay Til
Heat Fuel	Gas
Heat Type:	Warm Air
AC Type:	Central
Total Bedrooms:	3 Bedrooms
Total Bthrms:	2
Total Half Baths:	1
Total Xtra Fixtrs:	1
Total Rooms:	7
Bath Style:	Above Avg Qual
Kitchen Style:	Above Avg Qual
Kitchen Gr	
WB Fireplaces	0
Extra Openings	0
Metal Fireplaces	0
Extra Openings	0
Bsmt Garage	0

Building Photo

(<http://images.vgsi.com/photos2/PortsmouthNHPhotos/100102133/16.jpg>)

Building Layout



(<http://images.vgsi.com/photos2/PortsmouthNHPhotos/Sketches/35030>)

Building Sub-Areas (sq ft)			Legend	
Code	Description	Gross Area	Living Area	
BAS	First Floor	840	840	
FUS	Upper Story, Finished	840	840	
TQS	Three Quarter Story	336	252	
FGR	Garage, Attached	336	0	
FOP	Porch, Open	180	0	
UBM	Basement, Unfinished	840	0	
WDK	Deck, Wood	30	0	
		3,402	1,932	

Extra Features

Extra Features	Legend
No Data for Extra Features	

Land

Land Use

Use Code 1010

Land Line Valuation

Size (Acres) 0.17

Description SINGLE FAM MDL-01
Zone GRA
Neighborhood 131
Alt Land Appr No
Category

Frontage
Depth
Assessed Value \$256,400
Appraised Value \$256,400

Outbuildings

Outbuildings						Legend
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
SHD1	SHED FRAME			120 S.F.	\$800	1

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2018	\$147,400	\$233,100	\$380,500
2017	\$147,400	\$233,100	\$380,500
2016	\$126,000	\$182,500	\$308,500

Assessment			
Valuation Year	Improvements	Land	Total
2018	\$147,400	\$233,100	\$380,500
2017	\$147,400	\$233,100	\$380,500
2016	\$126,000	\$182,500	\$308,500

24 STARK ST

Location 24 STARK ST

Mblu 0161/ 0009/ 0000/ /

Acct# 34995

Owner DOLAN TIMOTHY

PBN

Assessment \$463,600

Appraisal \$463,600

PID 34995

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2019	\$244,900	\$218,700	\$463,600

Assessment			
Valuation Year	Improvements	Land	Total
2019	\$244,900	\$218,700	\$463,600

Owner of Record

Owner DOLAN TIMOTHY

Sale Price \$290,000

Co-Owner

Certificate

Address 18 HUBBARD RD

Book & Page 5331/0726

DOVER, NH 03820-4272

Sale Date 07/02/2012

Instrument 00

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
DOLAN TIMOTHY	\$290,000		5331/0726	00	07/02/2012
MERRIAM JEFFREY L	\$0		3229/2239		08/01/1997

Building Information

Building 1 : Section 1

Year Built: 1910
 Living Area: 1,430
 Replacement Cost: \$275,174
 Building Percent Good: 89
 Replacement Cost
 Less Depreciation: \$244,900

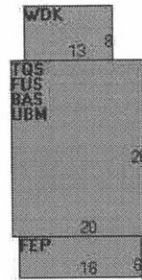
Building Photo

Building Attributes	
Field	Description
Style	Conventional
Model	Residential
Grade:	B-
Stories:	2.75
Occupancy	1
Exterior Wall 1	Vinyl Siding
Exterior Wall 2	
Roof Structure:	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Drywall/Sheet
Interior Wall 2	
Interior Flr 1	Hardwood
Interior Flr 2	Ceram Clay Til
Heat Fuel	Gas
Heat Type:	Hot Water
AC Type:	None
Total Bedrooms:	2 Bedrooms
Total Bthrms:	2
Total Half Baths:	0
Total Xtra Fixtrs:	0
Total Rooms:	5
Bath Style:	Avg Quality
Kitchen Style:	Avg Quality
Kitchen Gr	
WB Fireplaces	0
Extra Openings	0
Metal Fireplaces	1
Extra Openings	0
Bsmt Garage	



(http://images.vgsi.com/photos2/PortsmouthNHPhotos//00\01100\46.JPG)

Building Layout



(http://images.vgsi.com/photos2/PortsmouthNHPhotos//Sketches/34995)

Building Sub-Areas (sq ft)			Legend	
Code	Description	Gross Area	Living Area	
BAS	First Floor	520	520	
FUS	Upper Story, Finished	520	520	
TQS	Three Quarter Story	520	390	
FEP	Porch, Enclosed	108	0	
UBM	Basement, Unfinished	520	0	
WDK	Deck, Wood	104	0	
		2,292	1,430	

Extra Features

Extra Features		Legend
No Data for Extra Features		

Land

Land Use

Use Code 1010
Description SINGLE FAM MDL-01

Land Line Valuation

Size (Acres) 0.06
Frontage

Zone GRA
 Neighborhood 131
 Alt Land Appr No
 Category

Depth
 Assessed Value \$218,700
 Appraised Value \$218,700

Outbuildings

Outbuildings	<u>Legend</u>
No Data for Outbuildings	

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2018	\$218,000	\$198,800	\$416,800
2017	\$218,000	\$198,800	\$416,800
2016	\$193,100	\$151,200	\$344,300

Assessment			
Valuation Year	Improvements	Land	Total
2018	\$218,000	\$198,800	\$416,800
2017	\$218,000	\$198,800	\$416,800
2016	\$193,100	\$151,200	\$344,300

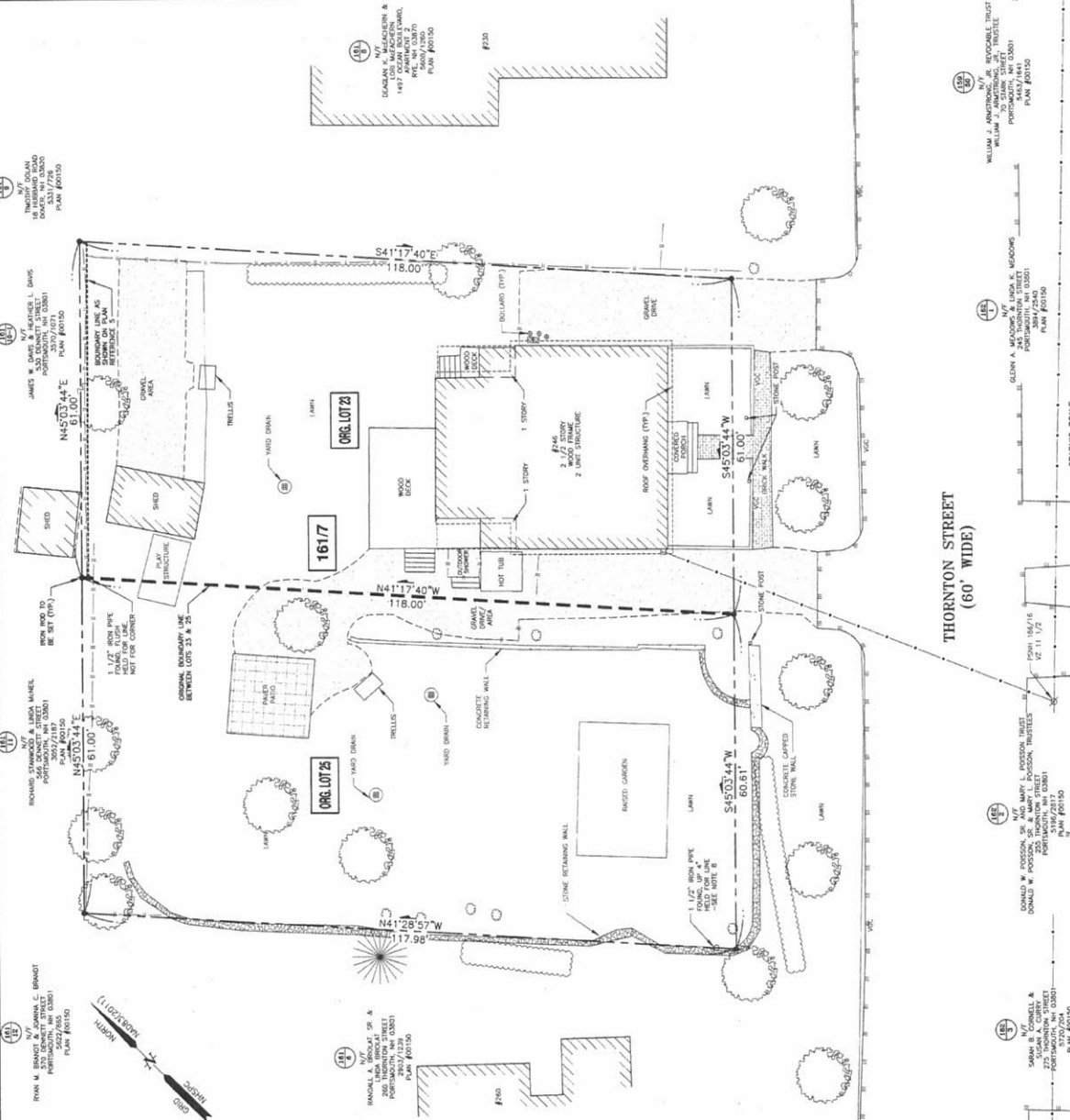
NOTES:
 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 161 AS LOT 7.
 2) OWNER OF RECORD:
 JAMES E. GOULD
 246 THORNTON STREET
 PORTSMOUTH, NH 03801
 5180 7600
 R.C.R.D. PLAN #00150 (LOTS 23 & 25)
 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL J015050201. EFFECTIVE DATE MAY 17, 2006.
 4) EXISTING LOT AREAS:
 ORIGINAL LOT 23 7,183 S.F.
 ORIGINAL LOT 25 7,161 S.F.
 5) PARCEL IS LOCATED IN GENERAL RESIDENCE A (GRA) ZONING DISTRICT.
 6) DIMENSIONAL REQUIREMENTS:
 MIN. LOT AREA 7,500 S.F.
 FRONT SETBACK 10 FEET
 SIDE SETBACK 10 FEET
 REAR SETBACK 20 FEET
 MINIMUM OPEN SPACE 30%
 MAXIMUM STRIKE RATIO 25%
 MINIMUM OPEN SPACE 30%
 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE RESULTS OF A STANDARD PRELIMINARY SURVEY OF ASSESSOR'S MAP 161 LOT 7 IN THE CITY OF PORTSMOUTH.
 8) PER OWNER OF ASSESSOR'S MAP 161 LOT 6, IRON STREET, PORTSMOUTH, NH, THE SURVEY OF SUBLOT PARCELS WAS SET BY AGREEMENT OF THE OWNERS OF ASSESSOR'S MAP 161 LOTS 6 & 7 AT THE TIME OF CONSTRUCTION OF THE STONE RETAINING WALL ALONG THE COMMON LINE PIPE HELD FOR USE TO THROUGH AGREEMENT.

NO.	ISSUED FOR COMMENT	DESCRIPTION	DATE
0			1/10/20

OWNER:
JAMES E. GOULD
 246 THORNTON STREET
 CITY OF PORTSMOUTH
 STATE OF NEW HAMPSHIRE

**STANDARD BOUNDARY SURVEY
 TAX MAP 161 - LOT 7**

SCALE 1"=10'
 FB 356 PG. 37
 JANUARY 2020



PLAN REFERENCES:

- 1) PLAN OF LOTS OF LAND OF THE CITY OF PORTSMOUTH, PREPARED BY A.C. HOYT, SURVEYOR DATED JUNE 21, 1890, R.C.R.D. PLAN #00150.
- 2) PLAN OF LOTS PORTSMOUTH, NH, FOR DANBURY CORP. PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS, DATED JUNE 1963, REVISED AUGUST 1963, R.C.R.D. PLAN #64.
- 3) PLAN OF HOUSE LOT STARK ST. PORTSMOUTH, NH, OWNED BY ARTIS F. SHIRMAN, PREPARED BY JOHN W. DURGIN CIVIL ENGINEER, DATED JULY 1933, R.C.R.D. PLAN #097.
- 4) STREET PLAN OF SPRINGWATER, BURRITT, STARK, CLUNTON, AND PHILIP STREETS IN PORTSMOUTH, NEW HAMPSHIRE, PREPARED BY JOHN W. DURGIN CIVIL ENGINEER, DATED JULY 1960, NOT RECORDED.
- 5) CONSERVATION DISTRICT, 538 DENNETT STREET, PORTSMOUTH NH 03801, OWNED BY HEATHER L. DAVIS, PREPARED BY JAMES VERRA AND ASSOCIATES, INC., DATED MAY 27, 2010, NOT RECORDED.

I, CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION AND THAT I AM A LICENSED SURVEYOR IN THE OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:115,000.

I, CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THE SUBDIVISION ACT, N.H.S.A. 281:101, AND THAT THE LOTS ARE NOT TO BE USED FOR PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.

PAUL A. CORDELLI, L.S. 11500
 DATE

PHILIP A. CORDELLI, L.S. 11500
 DATE

WILLIAM J. JARVIS, JR., REGISTERED TRUST SURVEYOR
 WILLIAM J. JARVIS, JR. TRUST SURVEYOR
 246 THORNTON STREET
 PORTSMOUTH, NH 03801
 545/7141
 PLAN #00150

GLYN A. MACKENZIE, L.S. 11500
 246 THORNTON STREET
 PORTSMOUTH, NH 03801
 389/7240
 PLAN #00150

DONALD W. POISSON, SR. AND MARY L. POISSON TRUST
 DONALD W. POISSON, SR. AND MARY L. POISSON TRUSTS
 255 THORNTON STREET
 PORTSMOUTH, NH 03801
 PLAN #00150

FRANK M. BRADY, JR. AND JENNIFER L. BRADY
 278 DENNETT STREET
 PORTSMOUTH, NH 03801
 832/7074
 PLAN #00150

RICHARD STANWOOD & LINDA MAHLET
 150 THORNTON STREET
 PORTSMOUTH, NH 03801
 PLAN #00150

JAMES W. DAVIS & HEATHER L. DAVIS
 246 THORNTON STREET
 PORTSMOUTH, NH 03801
 PLAN #00150

BARBARA M. WILKINSON & LORI MAZURKIEWICZ
 145 DENNETT STREET
 PORTSMOUTH, NH 03801
 755/6011
 PLAN #00150

THORNTON STREET (60' WIDE)



NOTES:
 1) PARCEL SHOWN IS AN UNIMPROVED PORTION OF LOT 7 AND WAS LOT 25 IN THE ORIGINAL SUBDIVISION.
 2) OWNER OF RECORD: JAMES E. COULD
 246 THORNTON STREET
 PORTSMOUTH, NH 03801
 5180/501
 R.C.D. PLAN #00150 (LOTS 23 & 25)
 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 330150025SE. EFFECTIVE DATE MAY 17, 2005.
 4) LOT AREA: LOT 23: 7,183 S.F., 0.1644 ACRES
 LOT 25: 7,183 S.F., 0.1644 ACRES
 5) PARCEL IS LOCATED IN GENERAL RESIDENCE A (GRA) ZONING DISTRICT.
 6) DIMENSIONAL REQUIREMENTS:
 MIN. LOT AREA: 7,000 S.F.
 MIN. LOT AREA: 1,000 S.F.
 FRONT SETBACK: 70 FEET
 SIDE SETBACK: 10 FEET
 REAR SETBACK: 20 FEET
 MAXIMUM STRUCTURE HEIGHT: 35 FEET
 MAXIMUM BUILDING COVERAGE: 25%
 MINIMUM OPEN SPACE: 30%
 7) THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED DEVELOPMENT FOR A VARIANCE APPLICATION.
 8) PROPOSED DIMENSIONS:
 LOT 25: FRONT: 16.0 FEET, SIDE: 6.3 FEET, REAR: 41.4 FEET
 SETBACKS: BUILDING COVERAGE: 25.9%
 OPEN SPACE: 61.4%
 LOT 23: FRONT: 11.7 FEET, SIDE: 8.2 FEET, REAR: 52.1 FEET
 SETBACKS: BUILDING COVERAGE: 50.7%
 OPEN SPACE: 50.7%

RESIDENTIAL CONSTRUCTION
VACANT LOT
TBD THORNTON STREET
PORTSMOUTH, N.H.

NO.	DESCRIPTION	DATE
0	ISSUED FOR COMMENT	4/23/20

REVISIONS

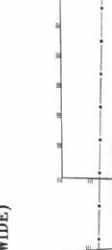
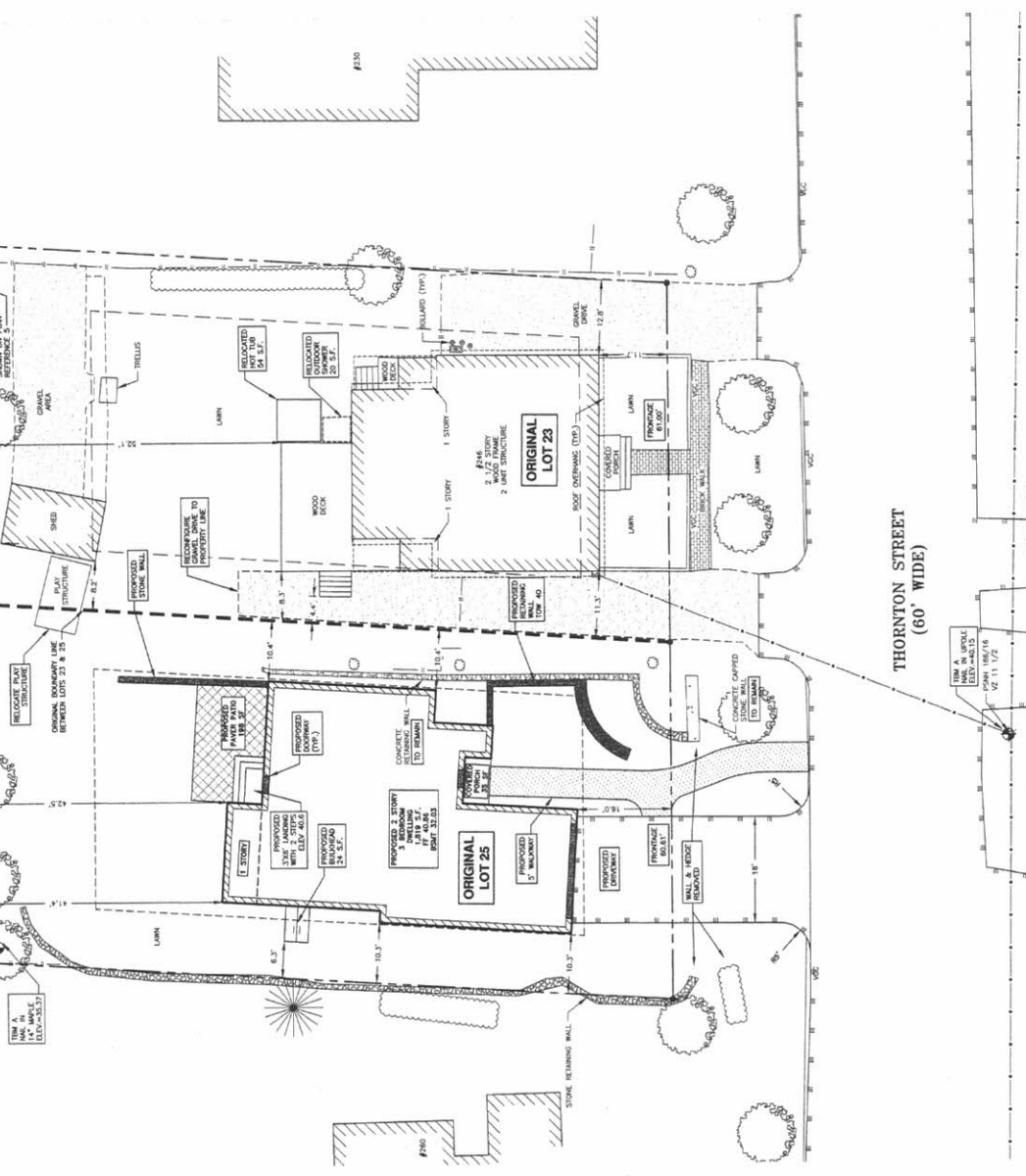
SCALE 1"=10'

APRIL 2020

VARIANCE APPLICATION PLAN

C1

FB 330 PG. 37 3147



THORNTON STREET
(60' WIDE)

ITEM A: POLE
 ITEM B: POLE
 ITEM C: POLE
 ITEM D: POLE
 ITEM E: POLE
 ITEM F: POLE
 ITEM G: POLE
 ITEM H: POLE
 ITEM I: POLE
 ITEM J: POLE
 ITEM K: POLE
 ITEM L: POLE
 ITEM M: POLE
 ITEM N: POLE
 ITEM O: POLE
 ITEM P: POLE
 ITEM Q: POLE
 ITEM R: POLE
 ITEM S: POLE
 ITEM T: POLE
 ITEM U: POLE
 ITEM V: POLE
 ITEM W: POLE
 ITEM X: POLE
 ITEM Y: POLE
 ITEM Z: POLE

STRUCTURE	LOT 25 IMPERVIOUS (S.F.)	LOT 23 IMPERVIOUS (S.F.)
MAIN STRUCTURE	1,819	1,448
POORCH	35	34
DECK	0	379
SHED/BALKONAD	24	108
POOL & SHOWER	12	0
STAIRS & LANDING	40	24
WALLS	183	0
WALKWAY	170	27
DRIVEWAY	298	0
GRAVEL	0	1,179
TOTAL	2,782	3,375
LOT SIZE	7,183	7,183
% LOT COVERAGE	38.8%	47.0%

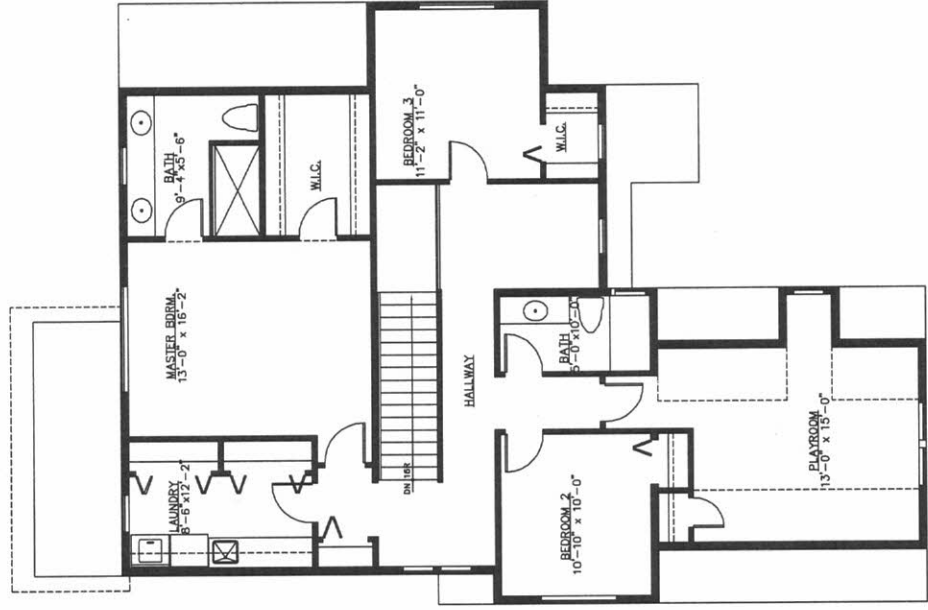
APPROVED BY THE PORTSMOUTH ZONING BOARD

CHAIRMAN _____ DATE _____

AMBIT ENGINEERING, INC. 4/23/2020



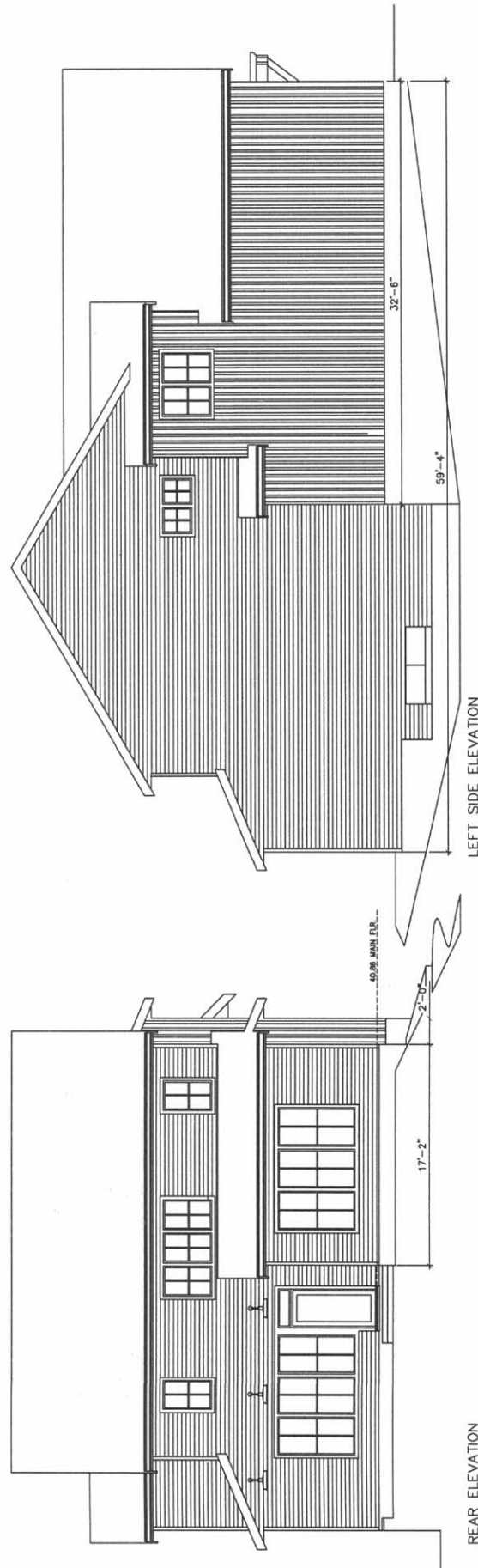
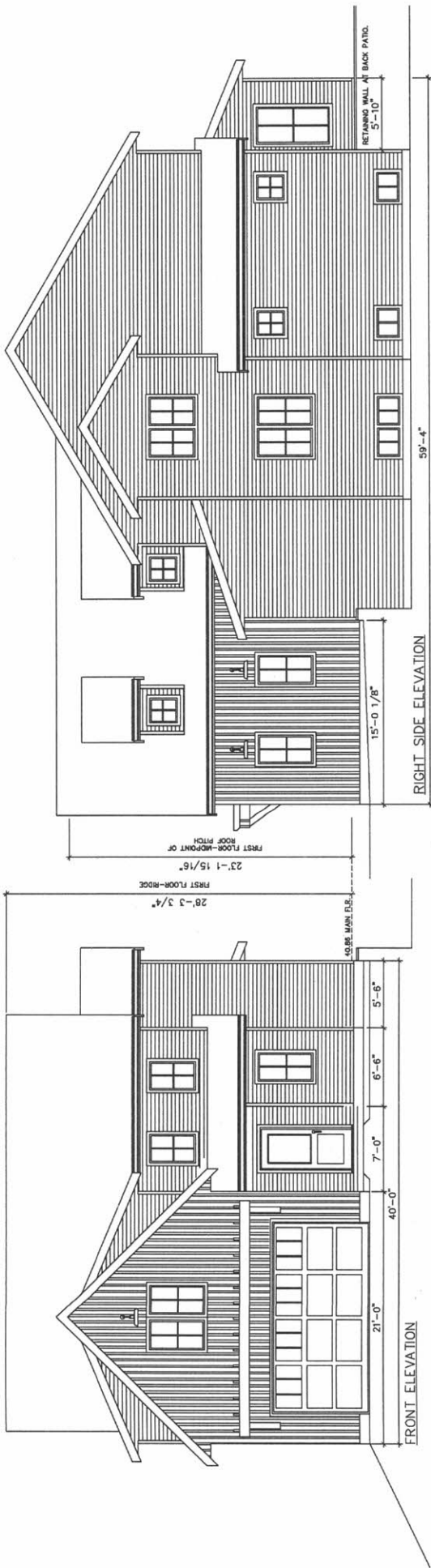
MAIN FLOOR
 AREA: 1325 SQ. FT.
 GARAGE AREA: 500 SQ. FT.



UPPER FLOOR
 AREA: 1465 SQ. FT.

FLOOR PLANS
 246 THORNTON STREET, PORTSMOUTH, NEW HAMPSHIRE

BOA SPRING, 2020
 1/8" = 1'-0"



BOA SPRING 2020
 1/8"=1'-0"

246 THORNTON STREET, PORTSMOUTH, NEW HAMPSHIRE



Front of Lot 23 (House Lot) from Thornton Street



Right Front of Lot 23 (House Lot) from Thornton Street



Left Side of Lot 23 (House Lot) with Partial View of Lot 25 (Vacant Lot)



Rear Yard View of Lot 23 (House Lot)



View of Lot 25 (Vacant Lot) from Thornton Street



View of Lot 25 (Vacant Lot) from Thornton Street



View of Lot 25 (Vacant Lot) from House on Lot 23



View of Lot 25 (Vacant Lot) from Rear Yard



CELEBRATING OVER 30 YEARS OF SERVICE TO OUR CLIENTS

ROBERT D. CIANDELLA
LIZABETH M. MACDONALD
JOHN J. RATIGAN
DENISE A. POULOS
ROBERT M. DEROSIER
CHRISTOPHER L. BOLDT
SHARON CUDDY SOMERS
DOUGLAS M. MANSFIELD
KATHERINE B. MILLER
CHRISTOPHER T. HILSON
HEIDI J. BARRETT-KITCHEN
JUSTIN L. PASAY
ERIC A. MAHER
BRENDAN A. O'DONNELL
ELAINA L. HOEPPNER

RETIRED

MICHAEL J. DONAHUE
CHARLES F. TUCKER
NICHOLAS R. AESCHLIMAN

April 29, 2020

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

Re: Salema Realty Trust/Application for Variance
199 Constitution Avenue, Tax Map 283, Lot 16-303

Dear Chair Rheame and Board Members:

Enclosed please find supporting information for the variance application submitted via the City's online permitting system. The Applicant proposes to construct a residential multifamily dwelling with more than eight (8) dwelling units in the Industrial Zone on the property located at 199 Constitution Avenue.

We respectfully request that this matter be placed on the Board's May 19, 2020 agenda. In the meantime, if you have any questions do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Justin L. Pasay
JLP/sac
Enclosures

cc: Salema Realty Trust
Denise Poulos, Esq.
John Chagnon, Ambit Engineering

P:\Salema Realty Trust\199 Constitution Avenue Permitting\Submittal Materials\2020 04 29 zba letter.docx
DONAHUE, TUCKER & CIANDELLA, PLLC

16 Acadia Lane, P.O. Box 630, Exeter, NH 03833

111 Maplewood Avenue, Suite D, Portsmouth, NH 03801

Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253

83 Clinton Street, Concord, NH 03301

www.dtclawyers.com

VARIANCE APPLICATION FOR
SALEMA REALITY TRUST (the “Applicant”)

VARIANCE FROM ZONING ORDINANCE ARTICLE 4, SECTION 10.440 TO ALLOW A MULTIFAMILY DWELLING WITH MORE THAN EIGHT (8) DWELLING UNITS RESIDENTIAL USE AT PROPERTY LOCATED AT 199 CONSTITUTION AVENUE, FURTHER IDENTIFIED AS CITY ASSESSOR MAP 285, LOT 16-303, LOCATED WITHIN THE INDUSTRIAL ZONING DISTRICT (the “Property”), WHERE RESIDENTIAL USES ARE NOT PERMITTED.

A. Introduction

The Property is 370,120 SF in size, currently has 121,439 SF +/- of existing impervious area, which is 32.8% of the Property, and is located within the Industrial Zoning District, where residential uses are prohibited. As depicted in the enclosed aerial photo of existing conditions (*see Enclosure 1*), the Property is located to the west of Lafayette Road and the Walmart property which is identified as City Assessor Map 285, Lot 16-2 (“Walmart” or the “Walmart Property”) and has deeded access via Constitution Avenue and Lafayette Road. The Walmart Property immediately to the east of the Property, and the majority of properties on either side of Lafayette Road, are located within the Gateway Neighborhood Mixed Use Corridor Zoning District (“G1 District”), where multifamily dwellings with more than eight (8) dwelling units are permitted by right.

The Property has been submitted to a condominium form of ownership and is currently improved by two industrial buildings and corresponding site improvements, each building being a condominium unit pursuant to the Constitution Avenue Condominium Declaration recorded at Book 3203, Page 0272 of the Rockingham County Registry of Deeds, and are owned by the Applicant. *See also* Enclosure 1. The existing condominium units contain various commercial spaces which are leased from the Applicant by local businesses. The development, described below, which is the subject of this application, is proposed to take place on the southern undeveloped vacant land at the southern end of the Property, as depicted in Enclosure 1 (the “Development Area”), which is currently wooded.

In 2017, the Applicant designed and the Planning Board approved an industrial building to be sited in the Development Area, as depicted in the approved site plan included herewith as **Enclosure 2** (the “Industrial Development”). The Industrial Development contemplated a 12,800 SF building to accommodate up to four (4) tenants, with corresponding site improvements, and would have added 64,075 SF +/- of impervious area to the Property. Prior to the Applicant proceeding to construct the approved project, however, it was determined that the expense for doing so, particularly for constructing the approved stormwater drainage infrastructure by virtue of the amount of new impervious surface area, was cost-prohibitive, and the Applicant abandoned the project.

The Applicant now proposes to develop a four (4) story apartment building comprised of 46-70¹ one and two-bedroom units that will be offered by Applicant for rent, with corresponding

¹ The proposed number of units will be refined through the planning review process.

site improvements (the “Residential Development”), which will comply in all respects, save for the prohibition on residential uses, with the requirements of the Industrial Zoning District. A rendering of the proposed apartment building, produced by CJ Architects, is included herewith as **Enclosure 3**. The proposed Residential Development will both justify the expense of developing the Development Area of the Property, and also contribute housing stock to the greater Portsmouth area that will directly align with the Portsmouth 2025 Master Plan (the “Master Plan”) goals of encouraging walkable mixed-use development along existing commercial corridors, developing housing that will accommodate changing demographics and accommodate the housing needs of low and moderate income residents.²

The preliminary design for the proposed Residential Development, which is depicted in **Enclosure 4**, a Variance Application Site Plan produced by Ambit Engineering, Inc., is intentionally similar to the Industrial Development that was previously approved for the Property. Like the Industrial Development, access to the Residential Development will be based on existing easements over the Walmart Property which will, in conjunction with the proposed new driveway, create a direct connection to Lafayette Road, with secondary egress to Constitution Avenue. *See Enclosure 4*. As depicted in Enclosure 4, the proposed new driveway follows the southwesterly Property line and then arcs to the north to a split which allows access on either side, and around, the proposed apartment building. This design creates an area where drainage will be captured and detained on the site. As a result, there will be no increase runoff to the surrounding properties. This same method was employed in the previously approved design for the Industrial Development.

Though the Property has more proposed parking than the Industrial Development to accommodate the residential use³, the proposed Residential Development will require 8,861 SF *less* impervious area than the Industrial Development design, and will translate into a total impervious surface area for the Property of 176,653 SF +/-, or 47.7%, where 50.4% impervious area would have resulted from the Industrial Development. *See Enclosure 2*. Most other site design elements, such as the placement of trash disposal and the utility connections, will be similar to the previous design, which was of course the product of the TAC and Planning Board approval process, which provides a high degree of confidence that the Residential Development design is sound. Of course, should the requested variance be granted by the Board of Adjustment, this proposal will again have to go through the planning review and approval process.

Because the proposed Residential Development would not be inconsistent with the essential character of the surrounding area, will not compromise the public health in any way, will provide substantial justice, will not compromise the property values of surrounding properties, and because there is no rational connection between the intent of the City’s Zoning Ordinance and its application to the Property under the unique circumstances of this case, we respectfully request that this variance be granted.

² *See* Master Plan, Introduction, Theme 3, Goal 1.2, Goal 3.1, Goal 3.2.

³ *See Enclosure 5*, Ambit Engineering, Inc.’s Parking Calculations worksheet.

B. Variance Criteria

Pursuant to Article 2, Section 10.233 of the Zoning Ordinance, and RSA 674:33, to obtain a variance in New Hampshire, an applicant must show that: (1) the variance will not be contrary to the public interest; (2) the spirit of the ordinance is observed; (3) substantial justice is done; (4) the values of surrounding properties are not diminished; and (5) literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, where said term means that, owing to special conditions of the property that distinguish it from other properties in the area: no fair and substantial relationship exists 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 if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, 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. *See* RSA 674:33, I (b).

The Applicant asserts that the proposed Residential Development meets each of the variance criteria as described in greater detail below.

1. The variance will not be contrary to the public interest.

The New Hampshire Supreme Court has indicated that the requirement that a variance not be “contrary to the public interest” is coextensive and related to the requirement that a variance be consistent with the spirit of the ordinance. *See* Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577, 580 (2005); Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 105-06 (2007); and Farrar v. City of Keene, 158 N.H. 684, 691 (2009). A variance is contrary to the public interest only if it “unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance’s basic zoning objectives.” Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. *See also* Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011) (“[m]ere conflict with the terms of the ordinance is insufficient.”) Moreover, these cases instruct boards of adjustment to make the determination as to whether a variance application “unduly” conflicts with the zoning objectives of the ordinance “to a marked degree” by analyzing whether granting the variance would “alter the essential character of the neighborhood” or “threaten the public health, safety or welfare” and to make that determination by examining, where possible, the language of the Zoning Ordinance.

The general purpose of the City’s Zoning Ordinance and of its Table of Uses is to “promote the health, safety, and the general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan.” Zoning Ordinance, §10.121. The Residential Development proposal which is the subject of this application advances these purposes because it advances the goals articulated within the Master Plan for the underlying area. For starters, the Applicant’s apartment building will be sited immediately adjacent to the G1 District, the purpose of which is “to facilitate a broad range of housing types together with compatible commercial, fabrication, and civic uses in a high-quality pedestrian environment with moderate to high density.” Zoning Ordinance, §10.410. Further, this area of the City along the Lafayette Road commercial corridor, is specifically envisioned to one day embody the current planning efforts in the West End of the City to create a more walkable and vibrant mixed-use area. *See* Master Plan, Goal 1.2 (“This type of

transformation is also envisioned for Portsmouth's outlying commercial corridors over time"). Moreover, the Applicant envisions that his apartment building will serve low to moderate income people, to include those in younger demographics, which will provide access to the City to such demographics, and will advance other specifically identified goals articulated in the Master Plan. See Master Plan, Goals 3.1 and 3.2 ("Adapt Housing Stock to Accommodate Changing Demographics" and "Accommodate the Housing Needs of Low and Moderate Income Residents", respectively).⁴ Suffice to say, the proposed Residential Development will advance the general and specific goals of the Zoning Ordinance and the Master Plan. It also satisfies the standard of review, outlined above, that the Board of Adjustment must use in determining whether the requested variance will be contrary to the public interest and whether the spirit of the Ordinance is observed, which is whether the proposed Residential Development will alter the essential character of the neighborhood or threaten the public health, safety or welfare. The Residential Development will do neither.

First, the Residential Development will not alter the essential character of the neighborhood. Though the Property is bound to the east by the Walmart Property, it is bound to the north by a large unimproved parcel located at 2300 Lafayette Road (Assessor Map 273, Lot 5), and to the west by property located at 275 Constitution Avenue (Assessor Map 285, Lot 16-4) which is, at its southern end closest to the Development Area, unimproved and wooded. To the south, the Property is abutted initially by industrial/commercial development along Heritage Avenue, but immediately thereafter by residential development like Patriot Park Apartments off of Freedom Circle, and the residential properties along Suzanne Drive, Simonds Road and Wallis Road. Accordingly, the proposed Residential Development will not, as a matter of fact, alter the essential character of the neighborhood. Rather, the proposal will be consistent with the general area and will advance, as discussed above, the express goals and intentions for the area articulated within the Master Plan.

The proposed Residential Development will also not threaten the public health, safety, or welfare. On the contrary, this proposal will provide housing options for low to moderate income people and families, will not have an adverse environmental impact on the surrounding property and will advance the goals of the Master Plan which, by definition, will further the public interest.

As the proposed Residential Development meets the general purposes and intent of the Zoning Ordinance, as well as New Hampshire jurisprudence, because it will not alter the essential character of the neighborhood nor threaten the public health, safety or welfare, it would be reasonable and appropriate for the Board of Adjustment to conclude that granting the variance will not be contrary to the public interest.

2. The spirit of the Ordinance is observed.

As referenced in Section 1, above, the requested variance observes the purposes articulated in the Zoning Ordinance, the specific goals articulated in the Master Plan, and New Hampshire jurisprudence regarding the "public interest" prong of the variance criteria because the proposed Residential Development will not alter the essential character of the neighborhood

⁴ See Master Plan, Goal 3.1, 3.2, Action # 3.2.2 ("Promote the development of mixed-income multifamily housing in appropriate locations . . .").

and will not threaten the public health, safety, or welfare. As the New Hampshire Supreme Court has indicated in both Chester Rod & Gun Club and in Malachy Glen, the requirement that the variance not be “contrary to the public interest” is coextensive and is related to the requirement that the variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club, 152 N.H. at 580. A variance is contrary to the spirit of the ordinance only if it “unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance’s basic zoning objectives.” Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. As discussed above, the requested variance is consistent with the general purpose and intent of the Zoning Ordinance because of the reasons stated in Section 1. Similarly, for the reasons stated above, the Applicant respectfully asserts that granting the variance would not “alter the essential character of the neighborhood” or “threaten the public health, safety or welfare”. Accordingly, the Board of Adjustment should determine that the requested variance will observe the spirit of the Zoning Ordinance.

3. Substantial justice is done.

As noted in Malachy Glen, *supra*, “perhaps the only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, *supra*, citing 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 24.11, at 308 (2000) (quoting New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997)). In short, there must be some gain to the general public from denying the variance that outweighs the loss to the Applicant from its denial.

In this case, the public does not stand to gain anything from denying the Applicant’s variance request. On the contrary, the public will benefit greatly from the Residential Development which will provide housing stock for low and moderate income people and families, provide housing which is accessible to the necessities of life, and potentially work too, by foot or other public transportation, expand access to the City, and advance the goals of the Master Plan. On the other hand, the Applicant will benefit significantly from the grant of the variance as it will be able to develop the Property in a manner that will provide a reasonable return on investment, which is not otherwise possible as discussed above and below, and maximize its use of the Property.

As there is no gain to the general public from denying the variance that outweighs the loss to the Applicant from its denial, granting the requested variance will accomplish substantial justice.

4. The proposal will not diminish surrounding property values.

Given the location of the Property and the Development Area, the surrounding properties and the uses thereof, as discussed above, and the nature and design of the Residential Development, none of the surrounding properties will suffer any diminution in value as a result of granting this variance. Accordingly, the Applicant respectfully requests that the Board of Adjustment find that the requested variance will not diminish surrounding property values.

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

As set forth in the provisions of RSA 674:33, I, there are two options by which the Board of Adjustment can find that an unnecessary hardship exists:

(A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The Proposed use is a reasonable one.

or,

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, 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 “special conditions” of the Property for purposes of this variance criterion include the location of the Development Area vis-à-vis surrounding properties, the Property’s location adjacent to the G1 District, it’s unique ability to accommodate the proposed Residential Development and fulfill the general and express intentions of the Zoning Ordinance and Master Plan with mixed-use like development, and its inability to accommodate a permitted industrial use by virtue of the exorbitant stormwater drainage and other infrastructure costs associated with same as evidenced through the Applicant’s experience with the Industrial Development proposal. More specifically, the location of the Development Area in close proximity to the forested areas of surrounding industrially zoned property and Natural Resource Protection Area zoned property beyond that, as well as surrounding commercial and other residential uses, make it an ideal location for a residential development.

Through consideration of these special circumstances, there is no fair and substantial relationship between the general public purposes and intent of the Zoning Ordinance to promote the health, safety, and the general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan⁵, and its application to the Property in this case, because strictly enforcing the same will not advance those public purposes. On the contrary, the Property is burdened by the inability to develop the Development Area in an economically practical way which presents an ideal opportunity to develop the same in accordance with the purpose of the G1 District which it abuts, all in furtherance of the express goals of the Master Plan as discussed above. Accordingly, the proposed Residential Development actually advances the purpose of the Zoning Ordinance.

The Applicant respectfully reminds the Board of Adjustment that the mere fact that the Applicant is seeking a variance from the express provisions of the Zoning Ordinance is not a valid reason for denying the variance. See Malachy Glen Associates, Inc. v. Town of Chichester, 155

⁵ See Zoning Ordinance, §10.121.

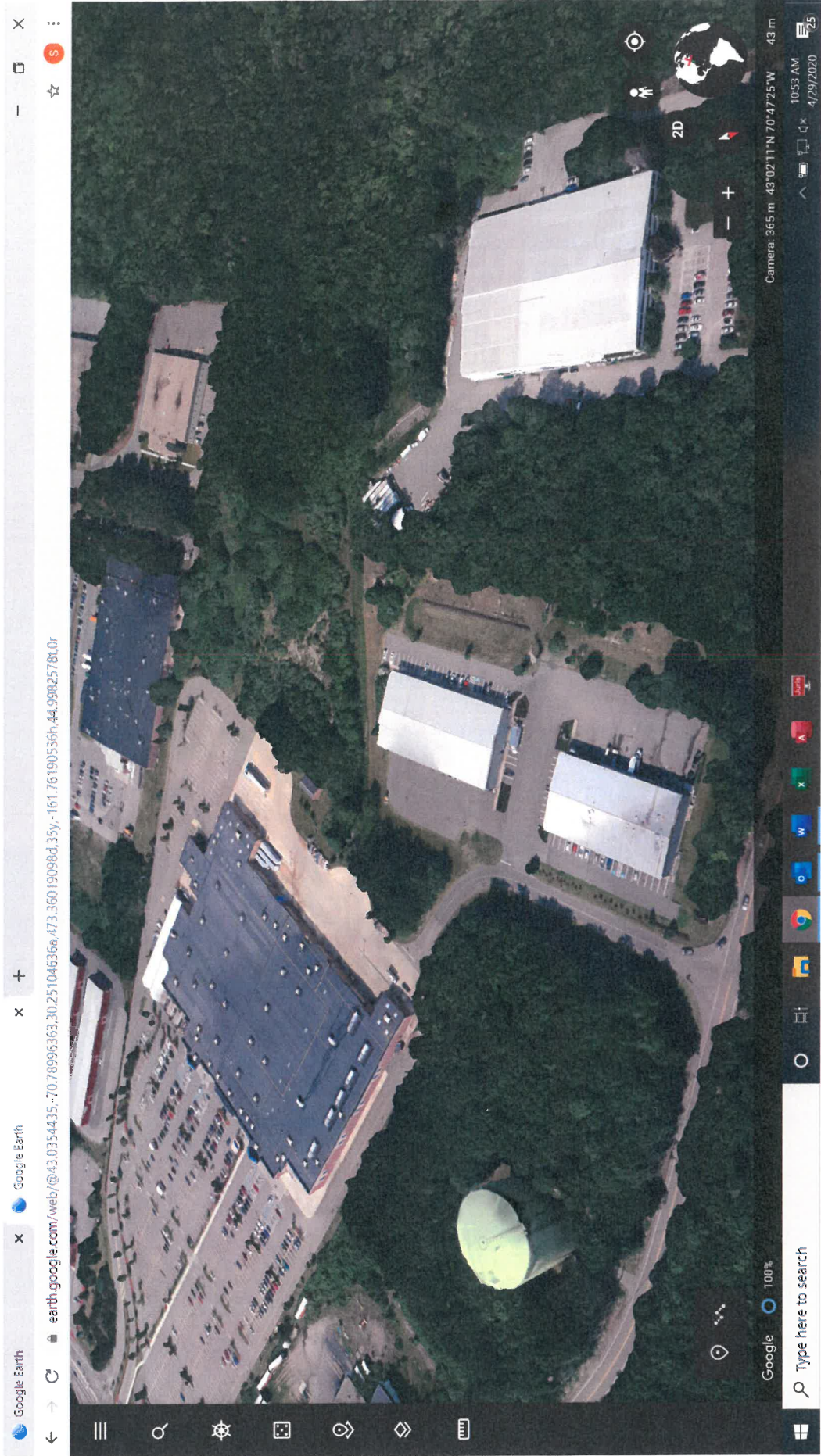
N.H. 102, 107 (2007); *see also* Harborside Associates, 162 N.H. at 2011 (“mere conflict with the terms of the ordinance is insufficient”).

Finally, the proposed Residential Development will be appropriately sited amidst surrounding forested land, commercial uses, and residential uses, and will further the objectives of the Master Plan, and is therefore reasonable under the circumstances. *See* Vigeant v. Town of Hudson, 151 N.H. 747, 752 - 53 (2005); and Malachy Glen, 155 N.H. at 107; *see also* Harborside at 518-519 (applicant did not need to show signs were “necessary” rather only had to show signs were a “reasonable use”). Accordingly, the Applicant respectfully asserts that its application complies with the standard for Option A of the unnecessary hardship criterion and the Board of Adjustment should so find.

The Applicant also submits, however, that it satisfies Option B of the unnecessary hardship criterion because based on the special conditions of the Property described above, the Property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of the Development Area. More specifically, the Development Area on the Property is ideally situated for the proposed Residential Development and cannot, as described above, accommodate a permitted industrial use.

C. Conclusion

The Applicant respectfully submits that all five criteria for the variance as requested have been met such that its Variance Application should be granted.

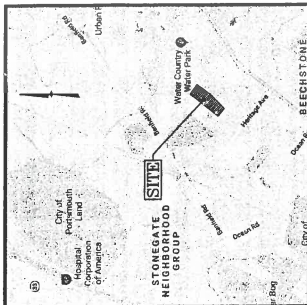


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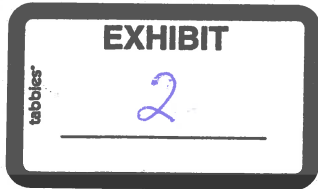
1

EXHIBIT

2018 Plan



NOTES:
 1) REFER TO SET PLAN FOR ADDITIONAL NOTES AND GENERAL INFORMATION.

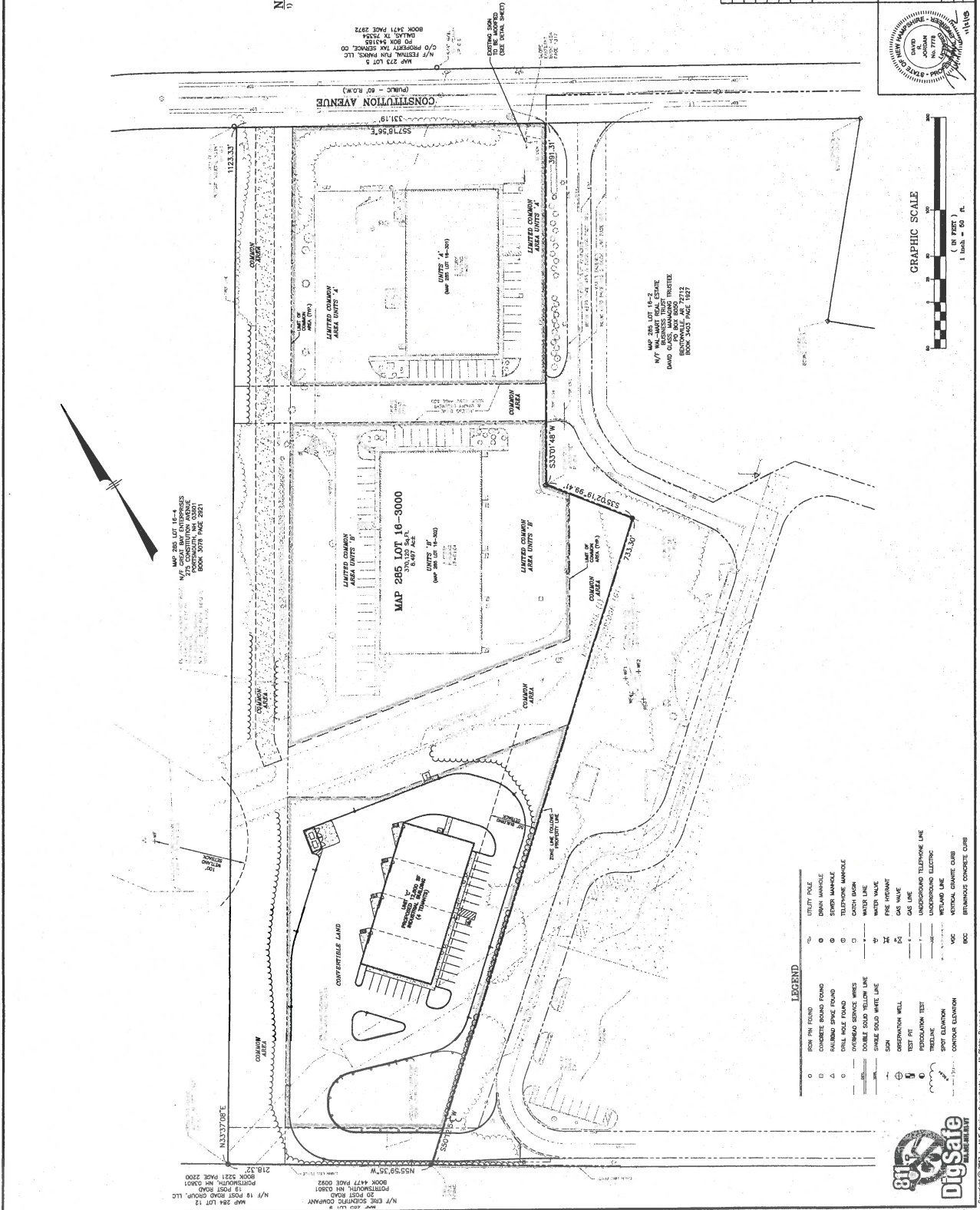


NO.	REVISIONS	DESCRIPTION	BY	DATE
3	REVISIONS PER AOT COMMENTS			CMT 10/23/18
2	REVISIONS PER TAC MEETING			CMT 8/7/18
1	REVISIONS PER TAC WORKSHOP			CMT 7/13/18

SITE OVERVIEW PLAN
 ASSESSORS MAP 285 LOT 16-3000
 PORTSMOUTH, NH 03801
 PREPARED FOR:
SALEMA REALTY TRUST
 10000 SALEM ROAD
 PORTSMOUTH, NH 03801

44 Silas Road, Suite One
 Portsmouth, NH 03801
 (603) 883-0700
 www.mdfdesign.com

DATE: MAY 31, 2018
 SCALE: 1" = 50'
 DRAWN BY: SJB
 CHECKED BY: CMT
 PROJECT NO. 428417
 SHEET NO. 3 OF 14



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CONSTITUTION AVENUE
PORTSMOUTH, NEW HAMPSHIRE



EXHIBIT
3

Salema Realty - Constitution Avenue Housing Project
 Lower Unit Count Scenario



Residential Parking Space Calculation			
Apartment Categories By Sq. Ft.	Parking Spaces Required	#Units	Parking Spaces Required
< 500	0.5	3	2
500 to 750	1	6	6
Over 750	1.3	34	44
Visitor Parking = 43/5 =			9
Totals		43	61

Parking Spaces

Salema Realty - Constitution Avenue Housing Project
 Larger Unit Count Scenario

Residential Parking Space Calculation			
Apartment Categories By Sq. Ft.	Parking Spaces Required	#Units	Parking Spaces Required
< 500	0.5	36	18
500 to 750	1	10	10
Over 750	1.3	24	31
Visitor Parking = 70/5 =			14
Totals		70	73

Parking Spaces