

**BOARD OF ADJUSTMENT  
PORTSMOUTH, NEW HAMPSHIRE**

**Remote Meeting Via Zoom Conference Call**

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*You are required to register to join the meeting over Zoom, a unique meeting ID and password will be provided once you register. Public comments can be emailed in advance to [planning@cityofportsmouth.com](mailto:planning@cityofportsmouth.com). For technical assistance, please contact the Planning Department by email ([planning@cityofportsmouth.com](mailto:planning@cityofportsmouth.com)) or phone (603) 610-7216.*

Per NH RSA 91-A:2, III (b) the Chair has declared COVID-19 outbreak an emergency and has waived the requirement that a quorum be physically present at the meeting pursuant to the Governor's Executive Order 2020-04, Section 8, as extended by Executive Order 2020-24, 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.**

**JANUARY 19, 2021**

**AGENDA**

**I. APPROVAL OF MINUTES**

A) Approval of the minutes of the meeting of December 15, 2020.

**II. OLD BUSINESS**

A) Extension Request. The request of **Stephen Bucklin, Owner**, for property located at **322 Islington Street** for an extension of the approval issued on February 26, 2019 to move an existing carriage house to a new foundation and add a one-story connector to the existing house wherein the following variances are required: a) from Section 10.5A41.10A to allow a 1 foot rear yard where five feet is required, b) from Section 10.5A41.10A to allow a two foot left side yard where five feet is the minimum required; and c) from Section 10.321 to allow a nonconforming structure or building to be expanded, reconstructed or enlarged without conforming to the requirements of the ordinance. Said property is shown on Assessor Map 145, Lot 3 and lies within the Character District 4-L2 (CD4-L2) District.

B) Rehearing Request. The request of **Jessica Kaiser and John Andrew McMahon, Owners**, for property located at **30 Spring Street** for a rehearing of the Board's November 17, 2020 decision.

C) Rehearing Request. The request of **150 Greenleaf Avenue Realty Trust, Owner**, for property located at **150 Greenleaf Avenue** for a rehearing of the Board's December 15, 2020 decision.

D) Rehearing Request. The request of **Gregory & Amanda Morneault, Owners**, for property located at **137 Northwest Street** for a rehearing of the Board's November 24, 2020 decision.

### III. PUBLIC HEARINGS – NEW BUSINESS

A) Petition of **PMC Realty Trust, Owner**, for property located at **500 Market Street, Unit 2B** whereas relief is needed from the Zoning Ordinance for a change of use from Professional Office to Medical Office which requires the following: 1) A Special Exception from Section 10.440 Use #6.20 to allow a medical office where the use is allowed by special exception. Said property is shown on Assessor Map 120 Lot 2-2B and lies within the (CD4-L1) District.

B) Petition of **Brett & Stefanie Berger, Owners**, for property located at **71 Brackett Road** whereas relief is needed from the Zoning Ordinance to remove existing deck and construct a 15' x 15' rear addition with new 15' x 45' deck which requires the following: 1) A Variance from Section 10.521 to allow a 10 foot rear yard where 30 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 206 Lot 14 and lies within the Single Residence B (SRB) District.

C) Petition of **685 State Street, LLC, Owner**, for property located at **685 State Street** whereas relief is needed from the Zoning Ordinance to add a fifth dwelling unit to an existing four unit building which requires the following: 1) A Special Exception from Section 10.440 Use #1.63 to allow a building existing on January 1, 1980 with less than the required lot area per dwelling unit to be converted into five units. Said property is shown on Assessor Map 137 Lot 11 and lies within the General Residence C (GRC) District.

D) Petition of **Cherie Holmes & Yvonne Goldsberry, Owners**, for property located at **45 Richmond Street** whereas relief is needed from the Zoning Ordinance to remove existing garage and rear addition and construct a new garage and 2-story addition which requires the following: 1) Variances from Section 10.521 to allow: a) a 0.5 foot front yard where 5 feet is required; b) a 4.5 foot rear yard where 15 feet is required; and c) a 4 foot right side yard where 10 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 108 Lot 18 and lies within the Mixed Residential Office (MRO) District.

E) Petition of **Karona, LLC, Owner**, for property located at **36 Artwill Avenue** whereas relief is needed from the Zoning Ordinance to convert an existing garage into a Detached Accessory Dwelling Unit which requires the following: 1) A Variance from Section 10.521 to allow 0 feet of street frontage where 100 feet is required. Said property is shown on Assessor Map 229 Lot 4 and lies within the Single Residence B (SRB) District.

### IV. OTHER BUSINESS

### V. ADJOURNMENT

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

**Remote Meeting via Zoom Conference Call**

**7:00 P.M.**

**DECEMBER 15, 2020**

**MINUTES**

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

**MEMBERS ABSENT:** None

**ALSO PRESENT:** Peter Stith, Planning Department

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**I. ELECTION OF OFFICERS**

Chairman Rheume noted that Vice-Chair Johnson would not be a Board member in 2021.

*Mr. Mulligan moved to reappoint Chairman Rheume as Chairman and appoint Mr. McDonell as the new Vice-Chair. Mr. Hagaman seconded.*

Mr. Mulligan stated that Chairman Rheume was doing a great job, especially lately under trying circumstances. He said the Board would miss Mr. Johnson and would welcome Mr. McDonell, who had made cogent and persuasive motions as a Board member.

*The motion **passed** unanimously, 7-0.*

**II. APPROVAL OF MINUTES**

A) Approval of the Minutes of the November 17 and 24, 2020 Meetings

*It was moved, seconded, and **passed** by unanimous vote (7-0) to **approve** both sets of minutes as presented.*

**III. OLD BUSINESS**

A) Petition of **150 Greenleaf Avenue Realty Trust, Owner**, for property located at **150 Greenleaf Avenue** for Appeal of an Administrative Decision that the following are required: 1) A Variance from Section 10-208 Table 4 - Uses in Business Districts (2009 Ordinance, Section 10.592.20 in current Ordinance) that requires a 200 foot setback from any adjoining Residential or Mixed Residential district for motor vehicle sales. 2) A Variance from Section 10-1201, Off-

Street Parking (2009 Ordinance, Section 10.1113.30 in current Ordinance) that requires a 100 foot setback for business parking areas from any adjoining Residential or Mixed Residential district. 3) A Wetland Conditional Use Permit for development within the Inland Wetlands Protection District. Said property is shown on Assessor Map 243 Lot 67 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

Mr. Mulligan recused himself from the petition, and Mr. Hagaman took a voting seat.

### **SPEAKING TO THE PETITION**

Attorney John Kuzinevich was present on behalf of the applicant. He said the applicant James Boyle bought the property in 2004 and converted it into an auto dealership, but at the time there was no 200-ft buffer for auto uses, so he was grandfathered into not having the 200-ft buffer. He said several changes were made to the buffer between 2006 and 2010 and that the Planning Department's version of the ordinance was incorrect because it was not validly cast. He said there was no provision of free copies of the ordinance as required by the Charter, so they had to go back to the 2006 version, which stated that there could be no outdoor storage in the 200-ft buffer. He said the court determined that the displayed vehicles did not constitute outdoor storage. He said the second issue was parking. He said the Statute prohibited parking in the 100-ft buffer, but he said storage of new vehicles for sale and display did not constitute parking and they could display up to the 50-ft buffer line. He said the court in the eminent domain found that the City was trying to raise points to further delay development. He said the Board should not be a tool for preventing that development and should apply the zoning laws. Relating to the third request, he said the Conditional Use Permit (CUP) issue for supposed wetlands should not have to be dealt with by his client because the jury had determined that the wet areas were a nuisance created by the City. He said his client did not need a CUP because the land should be all dry lands and the City's actions were a ploy to alter the course of litigation and prevent development. He said his client had the appropriate dressage and alteration of terrain permits pursuant to a remedial decree approved by the Rockingham Superior Court. He cited the Village of Arlington Heights case, which held that a remedial consent decree approved by the court trumped zoning or planning and land use regulation. He said the City Attorney said the case from Illinois didn't have to be followed. He said all the City's actions were unfair and illegal.

Mr. McDonell said Attorney Kuzinevich's first point regarding setbacks for motor vehicle sales was that the 2006 and 2009 ordinance amendments were not validly adopted, but that the Board's point was that the City Charter stated that the public was to be notified of the availability of a copy of the proposed amendment at no charge. He said he looked at the Charter's current version about the publication of a notice in a daily City newspaper and found no explanation of the purpose of the ordinance and information about where a citizen might get a copy of it. He said the second requirement was that, if the full text was not published, the City Manager had to make a copy available without charge. He asked Attorney Kuzinevich if he was stating that the City did not make a copy available without charge or didn't include a public notice stating that they would make a copy without charge. Attorney Kuzinevich agreed. Mr. McDonell said he didn't see anything in the Charter requiring the City to make a copy without charge.

Regarding Attorney Kuzinevich's second point, Mr. McDonell said the setback for parking areas was cited in a few cases, and he asked if there were any cases about controlled parking in New Hampshire. Attorney Kuzinevich said the only cases he found with that kind of zoning for a car dealership were the ones he cited. Regarding the wetlands issue, Mr. McDonell said the City's responsibility relating to the applicant's proposition was that the consent decree required the grant of some permit, and that granting the permit did not relieve the applicant of the obligation to get required local, state, or federal permits. Attorney Kuzinevich said they didn't have an issue with federal permits but were only looking at the City, which created the problem of being the source of the permit. Mr. McDonell said he had a copy of the permit but not the actual decree, and that it didn't order the State to grant the permit but it ordered the applicant to make it happen. Attorney Kuzinevich said it ordered them to apply and get the work done and it ordered the State to grant the permit. Mr. McDonell asked if it ordered the municipality to do anything. Attorney Kuzinevich said no, that the municipality was aware of the legal action and received notice, so it could have been heard on the day the consent decree was approved, but he believed that the City was in court that day and wasn't made a party. He said it was probably the only consent decree concerning wetlands where one was told to build a parking lot. He said the wetland area had been a dump and chemicals were leaching, so doing the remediation would cap them. He said his client was strengthening the berm where the sewer line was and doing other environmental work, which caused the City to issue cease-and-desist actions and seek revenues against him. He said the City tried to keep it as a polluted wetland and that there was no rationale regarding how to address the site. He said it went back to 2004 or 2005, when his client had offered to give City the sewer line for free if there weren't obstacles to development, but the City dug in harder to prevent development.

Mr. Parrott said there was a note in the 2009 plan about the third wetland area stating that it was less than a half-acre and that no buffer zone applied, yet there was a buffer zone line drawn around it. He asked what the actual area was of the dumped wetland. Attorney Kuzinevich said he didn't know and that the small wetland was not in the area they were talking about.

Chairman Rheume said the concern stated in Attorney Kuzinevich's brief was that the 2009 ordinance didn't apply. He asked what difference that made. Attorney Kuzinevich said it was the money, which was very different from 2009 and 2006. He said he quoted the 2006 language and that the 2009 ordinance expanded the prohibition of the 200-ft buffer use as opposed to a clause that talked about outdoor storage. Chairman Rheume said the 2009 ordinance that the City Attorney provided was slightly different and talked about motor vehicle sales and provided areas for parking, display and storage materials being 200 feet from residential or mixed-residential districts. Attorney Kuzinevich said that language should not apply. Chairman Rheume said the 2010 meeting minutes showed that the City was arguing that the more recent 2010 version should apply, which indicated to him that it should go through the normal process and that the applicant had agreed. Attorney Kuzinevich said they were looking at the global issue back then. Chairman Rheume verified that in 2009, the applicant had not made any argument that the 2009 version was invalid for some reason. Attorney Kuzinevich said he didn't remember but didn't think so because they didn't get far enough into the process. Chairman Rheume said the City Attorney provided a plan recently dated November 2016, and he asked Attorney Kuzinevich if that was the 2010 plan that he and his client had submitted to the City. Attorney Kuzinevich said he believed it was. Chairman Rheume said the 200-ft buffer would apply along the north

property line and was also the boundary between the zone that 150 Greenleaf Avenue was in and the SRB properties. Attorney Kuzinevich said the City owned the property on the bypass, so it was a municipal zone. It was further discussed. Attorney Kuzinevich said that, under the 2006 version, they had not anticipated any outdoor storage of materials because the version was loaded with materials. He said there would be a display of vehicles rather than storage because the law determined storage as being more in the back of the property as opposed to where consumers would go. Chairman Rheume asked what all the parking was used for if it wasn't for storing or parking vehicles. Attorney Kuzinevich said they were displaying the vehicles. Chairman Rheume asked what was being done to prevent vehicles from parking there, noting that there was a handicap parking spot, which was odd if the intent was to display vehicles rather than allow customer parking. Attorney Kuzinevich said the parking for the customers was in the front of the building and was the only logical place to park. He said there would be new cars all along the side and at times would be stacked parking. Chairman Rheume asked what would be done to ensure that cars would not be parked in the area for displaying vehicles. Attorney Kuzinevich said it was subject to signage. Chairman Rheume asked if there was anything in prior approvals from land boards indicating that using unpaved areas for vehicle storage was an acceptable use. Attorney Kuzinevich said the issue had never come up and that his client was forced to do it for some time, but the City never objected to it. He said his client had envisioned a 2-3 dealership campus from the beginning, and when they met with the City for the first renovation of the building, the concept that it was just one unified automotive site came up.

Regarding the wetlands permit, Chairman Rheume said the consent decree required development of the property and the issuance of AOT and wetland permits, and he asked what those were. Attorney Kuzinevich said the AOT was alteration of terrain, and if more than 100,000 feet of soil was moved around, one had to prove that they weren't flooding other properties or changing the property's water drainage flow. He said wetland permits were dredge and fill permits. Chairman Rheume reasoned that it would then be the responsibility of the City to look at other aspects of what their requirements were for wetlands, and that perhaps other things the client was doing were separate from the decree that could be of concern to the City and would require the CUP. Attorney Kuzinevich said he didn't think there were any. Chairman Rheume read the New Hampshire Department of Environmental Services (NHDES) permit and said Attorney Kuzinevich's argument was that he was required to move forward with all the development to meet the consent decree. He asked why Attorney Kuzinevich was discounting local permits. Attorney Kuzinevich said it was because of the Arlington Heights case that stated that a consent decree requiring remediation trumped any zoning or other land use regulations. He said the City could not hold up the remediation. He said the reason the back property was wet was a result of the City creating a nuisance and that the City should be responsible for returning it to a dry state.

Mr. Hagaman asked if the applicant had a deadline to complete the remediation regardless of whether the expansion of the property occurred. Attorney Kuzinevich said there were dates set for when the permits had to be applied for and that the developments would occur after getting the permits. He said there was no timetable given. In response to further questions from Mr. Hagaman, Attorney Kuzinevich said the client had to solve the problem in the back under the consent decree, and it had to be capped to prevent the other pollutants from leaching. He said the NHDES and the court were concerned that there wasn't a good enough structural integrity of the

berm with the sewer line and that it could be overwhelmed in storm conditions, so a good environmental situation had to be provided. Relating to the fact that his client was grandfathered into using the property for car display or storage and the buffer should not apply, he did not consider it an expansion of an existing use, but rather a modification of putting down pavement where there was none. He said the site had always been a single automotive use. He said the Supreme Court determined in the 2006 case that his client wasn't engaged in storage by displaying cars and that it addressed the outdoor storage materials.

Planning Director Juliet Walker was present and summarized the key points from the review letter that she had submitted. She said the City in 2010 determined that the dealership was subject to zoning for 2009, which included an expansion of the parking area and the addition of one building. She said it was postponed and the owner had indicated that he wanted to proceed with securing his land use for the expansion. She said the Planning Staff reviewed the updated plan and the display of cars had to be set back 200 feet from any residential parking. She said she based her review on the site plan application that was submitted, which also referenced the 2009 zoning. City Attorney Suzanne Woodland was present and said the NHDES was a separate agency pursuing its own regulations, and enforcement decisions did not prevent the City from pursuing its own ordinance and policies relating to environmental issues.

Mr. Hagaman asked if there was evidence to contradict the allegations that the ordinance changes were not properly publicized or that proper notice was not given, and if there were additional changes in 2009 that would impact the plan being considered in 2009. Attorney Woodland said the proper publication of the ordinance did come up in the Superior Court and that it included affidavits from the City. She said efforts were made to make the ordinance change available and that the applicant had participated in some of the public hearings.

Chairman Rheume asked if the 2009 change effective in 2010 or earlier changes would have impacted the ordinance in 2009. Attorney Woodward said the focus was the 2009 and 2010 change and that she could supply the changes in 2006 for the 200-ft setback. She said there was an affidavit from the Planning Department Director explaining what the ordinance was. She said prior to 2006, the City ordinance included the provisions about outdoor storage areas having to be more than 200 feet away from a residential district. In 2004, for expansion of the dealership, the City said that the phrase 'outdoor storage areas' meant vehicle inventory or display. She said the client appealed the City's action, and in 2006 the Superior Court supported the City's interpretation. She said it was 'cars on a lot', whether you called it display or storage. She said they had a favorable ruling at Superior Court, and then it was appealed to the Supreme Court. She said the City gave the same kind of notice in terms of publication on the website and available copies. Chairman Rheume said the talk about outdoor storage areas must have been the pre-2006 wording, and between 2006 and 2009, the wording 'provided areas for parking, display, and storage of vehicles' would have been in effect. Attorney Woodland agreed.

Mr. McDonell pointed out that one section of the restriction setbacks for parking specifically called out parking, display, and storage of vehicles, and another section said it defined parking setbacks. He questioned whether parking under Section X.1201 also meant the display and potential storage of vehicles and asked how that played into the calculation of what offsite parking was required. Ms. Walker said those two requirements in the ordinance were not

mutually exclusive and that both applied. She said in order to determine parking in terms of off-street parking requirements, they needed to know that parking was designated for such, other than display, and ensure that the applicant met the requirements for minimum parking.

Chairman Rheume opened the public hearing.

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

Attorney Kuzinevich said that a big issue relating to the mechanism for publication and getting the correct ordinance passed out to the public was that the Charter did not indicate that posting on a website was sufficient notice for publishing an ordinance change. He said the City posted it on the website instead of making hard copies available. He said there was discussion about 2009 versus 2010 in the courts, but there was no adjudication about the 2006 versus 2009 issue.

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

### **DISCUSSION OF THE BOARD**

Mr. Hagaman said the applicable ordinance with the language change that captured storage and display seemed to be in effect for the 2009 application or plan and that, based on the City Staff's testimony, there was no indication that the revision had an abnormal process that would not have involved the same public notice that all ordinance changes went through. Mr. Formella agreed but said he was more sympathetic to the applicant's issue of whether the 100-ft buffer of parking applied. He said the applicant made a persuasive argument that what he was doing wasn't really parking within the meaning of the ordinance but was more display or storage. Mr. Formella also noted that another section of the ordinance broke out the terms 'display' and 'storage' from 'parking', so they were different things. He said he was wrestling with the issue of the CUP permit but thought the argument about the consent decree with NHDES should be made before the Planning Board. He said he would probably grant the appeal on the determination of the 100-ft buffer but deny the 200-ft buffer for storage and hold off on the third request for the CUP.

Mr. McDonell said he agreed with Mr. Formella and Mr. Hagaman. He said the second request dealt with parking and access ways. He said he wasn't convinced on the parking question and hadn't seen anything in the NHDES of what constituted parking, but there seemed to be a discrepancy in what the ordinance said and how it dealt with parking, display, storage, and other uses of vehicles. He said he didn't know how to counter the applicant's argument that the display cars were moved and didn't create the noise, traffic, and other impacts that parking would cause. He said there was less of a reason for the City to want to restrict something like that. He said the effective use of the area would also be governed by the setbacks for vehicle sales. He said he was inclined to rely on the affidavits that stated that the City had followed the requirements for publication, and if the 2009 ordinance applied, he thought it was clear. He said the bad faith discussion in the applicant's memo talked about a case where an application was delayed by the municipality on purpose until a law could be amended that would allow the municipality to authorize denial of the application, but that he didn't get the sense that it was applicable to the applicant's case. As far as the wetlands, he said the consent decree was between the State and the



landowner and it imposed obligations on the landowner. He didn't think the City should try to throw up roadblocks to prevent the landowner doing what he was required to do by the State, but he didn't think it relieved the applicant of getting other permits.

Vice-Chair Johnson said he agreed with Mr. Formella and Mr. McDonell about the parking and the intent of restricting parking near a residential area. He said he didn't think of the parking lot as a typical one that had exhaust from cars, night headlights, and so on. Mr. Hagaman agreed and said there was a bit of a distinction for the parking. He said he was okay with the 100-ft setback from residential areas but wasn't sold on the CUP. He said the decree stated that local ordinances could impact the process. He said he was inclined to deny the appeal on the first and third requests but was leaning toward granting the second request for the setback as it pertained to actual parking. Mr. Lee said the cars for sale on the lot were a product for sale and that it was irrelevant whether they were parked or displayed.

Mr. Parrott said the applicant claimed that, because the City didn't advertise the ordinance change perfectly, the dealership was in the dark as to what was going on, yet another part of the City's Memo stated that the dealership was actively involved in the drafting of the ordinance changes. He said the applicant couldn't complain after the fact that they didn't know what was going on. He said the discussion of whether a vehicle was on display or parked or stored was mute because the objective of those setbacks was to protect the residential areas from activities that weren't friendly to them. He said the reason why the vehicle was there was less important than the fact that it was there. He said it was a complicated issue because the City acted in good faith and the dealership was trying to maximize their business. He thought it was unfortunate that the applicant was using more of the lot for parking vehicles than had been agreed to, but if the argument was that less than perfect enforcement of an agreement eliminated the need to ever enforce it and that someone could do what they liked, he couldn't buy that argument either.

Chairman Rheaume said he was in favor of not granting the appeal for any of the three items. He said the first request came down to whether the 2009 ordinance was in effect at the time the plans were put into place and whether providing the information on a website was equivalent to distributing hard copies. He said if the argument was that the 2009 ordinance was in place, it made it clear that the Planning Department was in the right by stating that it was a potential concern and also a concern with the southerly property line because the SRB zone affected the parking there. He said the 100-ft setback verbiage was clearer but the 2009 one had a distinction between parking, display, and storage. He further stated the reasons why he thought the Planning Department was correct in saying that it should be subject to that based, on the information provided. He said the legal documentation did not negate the City's ability to recognize that the applicant had to get the CUP, but there might be other issues that the City should add on.

## **DECISION OF THE BOARD**

*Mr. Formella moved to **deny** the appeal for Request 1, **grant** the appeal for Request 2, and **deny** the appeal for Request 3. No one seconded the motion.*

Mr. McDonell said the definition of parking on the second point was ambiguous as to how the spaces were going to be used. He referenced Chairman Rheume's point of the handicap space raising ambiguity about whether everything in the 100-ft buffer would be display vehicles and whether that was the reason that the Planning Department said a variance for the second point was required. He suggested amending the motion to deny the second request. Mr. Formella agreed and noted that Attorney Kuzinevich had said it would not be parking and that any vehicles in that area would be display or storage vehicles.

*Mr. McDonell moved to **deny** all three requests, and Mr. Parrott seconded.*

Mr. McDonell said the first request, the 200-ft setback for motor vehicle sales, came down to whether or not the 2009 amendment was properly adopted. He said the applicant said it wasn't the case, but the Board had an assertion by the City's Legal Department and the affidavit from the City Planner that the procedures were followed, so the 2009 version of the ordinance would be applicable and the 200-ft buffer clearly would apply, given the language of the 2009 ordinance. He said the applicant's representative made other points about whether the City had engaged in bad faith in enacting that amendment. He said it wasn't proven and that he didn't agree with that assertion. He said the case law that the applicant's representative cited did say that city municipalities acted in bad faith, but he didn't see any evidence that it applied to this case and that he didn't buy the argument that the entire site was originally approved for automotive use and that what was proposed was just a continuation of the use and not an expansion. He said it was clearly an expanded use.

Mr. McDonell said the second request relating to the 100-ft setback for business parking areas and what constituted parking had ambiguity under Section X.1201. He said he agreed with the applicant's representative that it was customer parking and that it was in line with the applicant's argument on what the purpose of the parking ordinance would be. He said the proposal did not clearly show that that was what was proposed within the 100-ft setback. He said if he had been in the Planning Department looking at it back then, he would say it wasn't clear to him that what was proposed in the 100-ft boundary didn't constitute parking, and he would think the applicant was required to get a variance. Regarding the third request for the wetlands CUP, he said the consent decree from 2013 stated that certain work was required and that the NHDES had to grant certain permits. He said the only permit the Board had seen indicated that it did not relieve the applicant of the obligations to comply with other laws or to apply for state, local, or federal permits, and that the City had asserted that a local permit was required.

Mr. Parrott concurred and had nothing to add.

Chairman Rheume said he would support the motion and referenced his earlier discussion.

*The motion **passed** by a vote of 5-2, with Mr. Formella and Mr. Lee voting in opposition to the motion.*

**B) Petition of 111 Maplewood Avenue, LLC, Owner, for property located at 145 Maplewood Avenue wherein relief is needed from the Zoning Ordinance for signage for new**

building which requires the following: 1) A Variance from Section 10.1251.20 to allow a 57 square foot freestanding sign where 20 square feet is the maximum allowed. 2) A Variance from Section 10.1242 to allow wall signs above the ground floor on all sides of the building. 3) A Variance from Section 10.1242 to allow wall signs above the ground floor on a side of a building not facing a street. 3) A Variance from Section 10.1144.63 to allow illuminated signs above 25 feet from grade. Said property is shown on Assessor Map 124 Lot 8-1 and lies within the Character District 5 (CD5) District.

Mr. Mulligan resume his voting seat and Mr. Hagaman returned to alternate status. Chairman Rheame noted that the Board approved Variances 1, 2, and 3 at the previous meeting and had postponed Variance 4 (noted as the second Variance 3 in the petition) for review.

### **SPEAKING TO THE PETITION**

Attorney Chris Boldt and architect Chris Lizotte were present on behalf of the applicant. Attorney Boldt said he submitted a night view of the wall washer lights and that they were more of an architectural design and would not be glaring. He reviewed the criteria in full.

Chairman Rheame verified that the reason the applicant needed the variance was for the wall washer lights and not for the internally-illuminated signs above 25 feet. Mr. Parrott asked what the functional purpose of the wall washer lights was, since there was already a good deal of lighting for other purposes on the building. Attorney Boldt said the purpose was for decorative architectural features. In response to other questions from the Board, Attorney Boldt said the signs attached to the building didn't have text yet but would be internally illuminated and not bright. Mr. Lizotte said they would be a standard white and would not change color. Attorney Boldt said they had a letter from the HDC stipulating that the lighting would not change color.

*It was moved, seconded, and passed unanimously (7-0) to **reopen** the public hearing.*

### **SPEAKING IN FAVOR OF THE PETITION**

No one was present to speak.

### **SPEAKING IN OPPOSITION TO THE PETITION**

Bruce Ocko said he owned a condominium unit at 233 Vaughan Street and thought the wall washer lights and illuminated signs would cast a lot of light toward his building and would diminish his building's property values. He asked what the hardship was for having the wall washer lights since they were just an architectural design.

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

Attorney Boldt said the ell near the underground parking garage would be lit as well as a light near the lobby. He said there would be no light from any luminaires on the outside of the building. He said the intention of showing the bars of lights was the worst-case scenario before

the lettering went on and that the lettering would block a lot of the light. He said the hardship was justified, given the special conditions of the property. He emphasized that they would not wash every wall panel but that it was an architectural feature that the owner wanted.

Mr. Ocko said the fact that the owner wanted the architectural feature did not create a hardship.

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

## **DISCUSSION OF THE BOARD**

Vice-Chair Johnson said he didn't see the proposed additional lighting as being a big deal but had trouble finding a hardship as to why it had to be there. He said the renderings were helpful to understand where the signage and wash lights would be but wasn't a true depiction of the brightness of an area or a fixture. Mr. Lee said a Bridge Street building currently had a lot of exterior lights and lit up the parking lot and the side buildings at 5 a.m. and that the applicant's building had even more lights that would flood toward Mr. Ocko's building. He said it was the reason the Board denied the eyebrow light for the AC hotel. Chairman Rheume said he would be in favor of allowing the variance, noting that the applicant was held hostage by some of the ordinance's oddities regarding building lighting. He said the applicant's building had a lot less light than the AC hotel and thought the hardship was that the property was more removed from its adjacent neighbors than the AC hotel and was more adjacent to commercial spaces.

## **DECISION OF THE BOARD**

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

Mr. Lee said the request was contrary to the public interest and did not meet the spirit of the ordinance due to the building's proximity to Mr. Ocko's building. He said the lights from the signage and the wall washer lights would create a hardship for Mr. Ocko's building and would diminish its value. Mr. Parrott concurred and said he couldn't see anything inherent in the property that constituted a hardship and that it was reinforced by the statement made by Attorney Boldt that the purpose of the wall washer lights was strictly decorative.

Vice-Chair Johnson said he would support the motion but thought the lighting and signage approach was respectful and that it wouldn't be that close to Mr. Ocko's building. He said there should be more flexibility when someone chose to live in a downtown commercial zone. Mr. McDonell said he would not support the motion because the variance request met the spirit of the ordinance. He said wall washer signs were not really dealt with in the ordinance, and the hardship was the nature of the building that had an undulating façade, which was enough of a special condition to make use of not only the signs with lettering but also the wall washer signs.

*The motion to deny **passed** by a vote of 4-3, with Mr. McDonell, Mr. Mulligan, and Chairman Rheume voting in opposition.*

*It was moved, seconded, and passed unanimously (7-0) to **suspend** the 10:00 o'clock meeting ending rule.*

#### **IV. PUBLIC HEARING – NEW BUSINESS**

**A)** Petition of **Jonathan Sandberg, Owner**, for property located at **160 Bartlett Street** whereas relief is needed from the Zoning Ordinance to construct a 6' x 15' mudroom addition on the rear of the house which requires the following: 1) A Variance from Section 10.521 to allow 34% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 163 Lot 5 and lies within the General Residence A (GRA) District.

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

The applicant Jonathan Sandberg was present to review the petition. He said the house was very small and that its main entrance was in the back and went into the kitchen. He said the neighborhood was dense and that almost all the houses were built out to the street and all had mudrooms. He said the mudroom would provide storage and keep the house warmer and cleaner.

Chairman Rheume asked if the small mudroom would be strictly a mudroom area. Mr. Sandberg agreed and said they might open an interior wall to have a window.

Chairman Rheume opened the public hearing.

#### **SPEAKING IN FAVOR OF THE PETITION**

Josh Pierce of 164 Bartlett Street said he and his wife were in support of the project.

Carla and Ed Rice of 25 Morning Street said they were neighbors and supported the project.

#### **SPEAKING IN OPPOSITION TO THE PETITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one rose to speak, and Chairman Rheume closed the public hearing.

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

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

Mr. Mulligan said the lot was substandard and almost half as big as the minimum required, and the small home was right up on the busy street, so all the activity was oriented to the rear of the house where the primary entrance was. He said the mudroom made a lot of sense and would meet all the criteria. He said granting the variance would not be contrary to the public interest or the spirit of the ordinance because the essential character of the neighborhood would not change.

He said substantial justice would be done and that the loss to the applicant would not be outweighed by any gain to the public. He said granting the variance would not diminish the values of surrounding properties, noting that there would be a slight increase in the nonconformity but it was in a neighborhood that was dense and had a lot of nonconforming properties itself, so property values would not be negatively affected. He said the hardship was the property's special conditions were the substandard lot in size with a very small home on it that was built up against a very busy right-of-way, which oriented all the activity to the rear of the house. He said there was no fair and substantial relationship between the purpose of the lot coverage requirement and its application to the property because it was already nonconforming and wasn't an extreme increase. He said it was a reasonable residential use in a residential neighborhood and should be granted.

Mr. Lee concurred and said it might result in a slight increase in property values for the house and adjacent homes. Chairman Rheume said he would support the motion, noting that there were some pocket areas in the neighborhood that were more of a General Residence C zone.

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

**B)** Petition of **The Rice Family Revocable Trust of 1988, Owner**, for property located at **25 Morning Street, Unit B** whereas relief is needed from the Zoning Ordinance to construct a 6' x 21' deck which requires the following: 1) Variances from Section 10.521 to allow a) a 2 foot side yard where 10 feet is required; and b) 32% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 163 Lot 19-2 and lies within the General Residence A (GRA) District.

### **SPEAKING TO THE PETITION**

The applicant Carla Rice was present and said the house was a two-unit building. She said the hardship was that the common area was split into two sections and that her side had the walkway going through it so it wasn't private. She reviewed the criteria and said they would be met.

There were no questions from the Board. Chairman Rheume opened the public hearing.

### **SPEAKING IN FAVOR OF THE PETITION**

Josh Pierce of 154 Bartlett Street said he and his wife were in full support of the project.

Jonathan Sandberg of 160 Bartlett Street said the project would improve the neighborhood.

### **SPEAKING IN OPPOSITION TO THE PETITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one rose to speak, and Chairman Rheume closed the public hearing.

## DECISION OF THE BOARD

*Mr. Formella moved to **grant** the variance requests as presented and advertised, and Vice-Chair Johnson seconded.*

Mr. Formella said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said it was already a dense neighborhood, and adding the small deck in the proposed location would not alter the essential characteristics of the neighborhood. He said substantial justice would be done because there would be no gain to the public by denying the variances and it would be a loss to the applicant because they would be unable to build the space for their family to use. He said it would not diminish the values of surrounding properties, noting that the neighbors had testified that the project would be an improvement and might increase property values. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property was unique due to its odd location in the middle of all the other properties. He said the concerns of the building coverage and setbacks ordinance were based on light and air, and those concerns would be wiped away because the building was in the middle of the other properties, and increasing the nonconformity by adding a small deck would not cause any issues. He said there was no substantial relationship between the ordinance's provisions and its application to the property because the use was reasonable and the property was already nonconforming.

Vice-Chair Johnson concurred. He said the location in the center of all those other properties created a unique entrance to the property. He said it was a low-impact solution that would be a win-win for everyone. Chairman Rheume said he would normally be concerned about a 2-ft setback, but the deck would be maintained due to the open area around it.

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

**C)** Petition of **Sean Miller, Owner**, for property located at **303 Thornton Street** whereas relief is needed from the Zoning Ordinance to construct an addition to an existing home which requires the following: 1) A Variance from Section 10.521 to allow a 5 foot front yard where 15 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 162 Lot 5 and lies within the General Residence A (GRA) District.

## SPEAKING TO THE PETITION

The applicant Sean Miller was present. He said he and his architect agreed that building the addition at the front of the house instead of the back would open up the house more and gain an upstairs bedroom. He reviewed the criteria and said they would be met.

There was no questions from the Board. Chairman Rheume opened the public hearing.

## SPEAKING TO, FOR, OR AGAINST THE PETITION

There was no one present to speak. Chairman Rheume said the Board received a letter in support of the project. He closed the public hearing.

### **DECISION OF THE BOARD**

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

Mr. Parrott said granting the variances would not be contrary to the public and would observe the spirit of the ordinance because the house was small and very close to the street, which was typical of that neighborhood, and the proposed addition was in the logical place. He said substantial justice would be done because the project would make the house more useful and there would be no harm to the general public. He said granting the variances would not diminish the values of surrounding properties because the house was similar to nearby ones and the addition would make the house look nicer and reflect well on adjacent properties. He said enlarging the living space of a small house was a reasonable request and that the hardship was the narrowness of the lot. He said all the criteria were satisfied.

Vice-Chair Johnson concurred. He said one of the special conditions of the property was that the property line was deceiving as it related to the street. He said that matching the 15-ft front yard setback would make the property much more of an outlier than the rest of the properties.

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

### **V. OTHER BUSINESS**

The Board wished Vice-Chair Johnson well. Chairman Rheume said he appreciated having Mr. Johnson on the Board, especially in the Vice-Chair role, and that his valued advice and opinions on architectural matters would be greatly missed. Mr. Johnson said he enjoyed his time on the Board and had learned a lot. He said the work the Board did was important and that they put a lot of dedicated time into fostering the community.

### **VI. ADJOURNMENT**

The meeting was adjourned at 11 p.m.

Respectfully submitted,

Joann Breault  
BOA Recording Secretary



TO: Zoning Board of Adjustment  
FROM: Peter Stith, AICP, Planning Department  
DATE: January 12, 2020  
RE: Zoning Board of Adjustment January 19, 2020 Meeting

## **OLD BUSINESS**

1. 322 Islington Street – Request for Extension
2. 30 Spring Street – Request for Rehearing
3. 150 Greenleaf Avenue – Request for Rehearing
4. 137 Northwest Street – Request for Rehearing

## **NEW BUSINESS**

1. 500 Market Street
2. 71 Brackett Road
3. 685 State Street
4. 45 Richmond Street
5. 36 Artwill Avenue



## OLD BUSINESS

1.

Petitioners:	Stephen G. Bucklin
Property:	322 Islington Street
Assessor Plan:	Map 145, Lot 3
Zoning District:	Character District 4-L2 (CD4-L2), Historic District (HD)
Description:	Move existing carriage house to new foundation and add one-story connector to existing house.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: <ol style="list-style-type: none"><li>1. A Variance from Section 10.5A41.10A to allow the following: a) a 1'± rear yard where 5' is required; and b) a 2'± left side yard where 5' is required.</li><li>2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.</li></ol>

The applicant has submitted request for an extension for the property above. Variances were granted on February 26, 2019 and the applicant has yet to obtain a building permit. The Ordinance allows for a one-time, one-year extension if the request is acted on prior to the expiration date.



2.

Petition of **Jessica Kaiser and John Andrew McMahon, Owners**, for property located at **30 Spring Street** are requesting a rehearing of pursuant to RSA 677:2. Said property is shown on Assessor Map 130 Lot 13 and lies within the General Residence A (GRA) District.

On Tuesday, November 17, 2020, the Board granted the following variances for construction of a covered front porch and dormers to the existing dwelling: 1) Variances from Section 10.521 to allow a) 28.5% building coverage where 25% is the maximum allowed; b) a 0 foot front yard where 15 feet is required; and c) a 4 foot side yard where 10 feet is required. The original side yard request was 0, however the Board stipulated a 4 foot side yard. The applicant is requesting a rehearing on the side yard variance for the front porch.

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, the rehearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.



3.

Petition of **150 Greenleaf Avenue Realty Trust, Owner**, for property located at **150 Greenleaf Avenue** is requesting a rehearing pursuant to RSA 677:2. Said property is shown on Assessor Map 243 Lot 67 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

On November 24, 2020 the Board denied the appeal of an Administrative Decision that the following are required: 1) A Variance from Section 10-208 Table 4 - Uses in Business Districts (2009 Ordinance, Section 10.592.20 in current Ordinance) that requires a 200 foot setback from any adjoining Residential or Mixed Residential district for motor vehicle sales. 2) A Variance from Section 10-1201, Off-Street Parking (2009 Ordinance, Section 10.1113.30 in current Ordinance) that requires a 100 foot setback for business parking areas from any adjoining Residential or Mixed Residential district. 3) A Wetland Conditional Use Permit for development within the Inland Wetlands Protection District.

The appellant has filed a request for a rehearing within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, the rehearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.





4.

Petition of **Gregory & Amanda Morneault**, Owners, for property located at 137 Northwest Street, is requesting a rehearing pursuant to RSA 677:2. Said property is shown on Assessor Plan 122, Lot 2 and lies within the General Residence A (GRA) District.

On November 17, 2020 the Board **denied** variances to subdivide a lot and construct a two-family dwelling which required the following: 1) Variances from Section 10.521 to allow: a) a lot depth of 44.7 feet for Lot 1 and 23.4 feet for Lot 2 where 70 feet is required for each; b) a lot area per dwelling unit of 5,317 square feet for proposed Lot 2 where 7,500 square feet per dwelling is required; c) a 2.5 foot front yard for proposed Lot 2 where 15 feet is required; and d) a 4 foot rear yard for proposed Lot 2 where 20 feet is required.

A request for a rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, the rehearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.



# NEW BUSINESS

1.

Petition of **PMC Realty Trust, Owner**, for property located at **500 Market Street, Unit 2B** whereas relief is needed from the Zoning Ordinance for a change of use from Professional Office to Medical Office which requires the following: 1) A Special Exception from Section 10.440 Use #6.20 to allow a medical office where the use is allowed by special exception. Said property is shown on Assessor Map 120 Lot 2-2B and lies within the (CD4-L1) District.

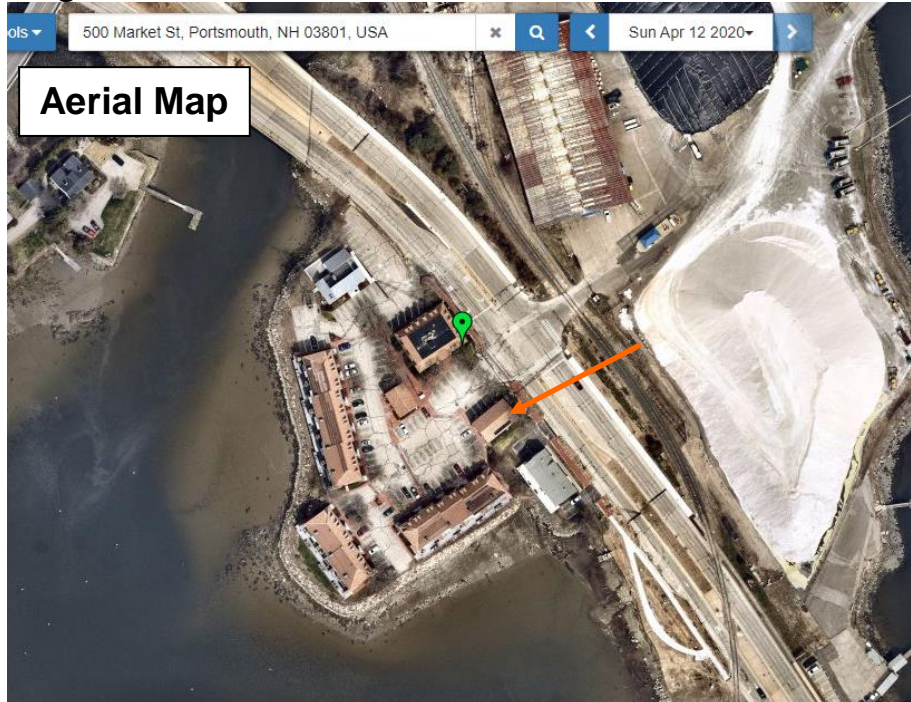
## Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Profesional office	<b>Medical office</b>	Primarily mixed uses
<u>Lot area (sq. ft.):</u>	111,513	111,513	3,000 min.
<u>Parking</u>	115	115	113
<u>Estimated Age of Structure:</u>	1983	<b>Special Exception request shown in red.</b>	

## Other Permits/Approvals Required

HDC

## Neighborhood Context





### Previous Board of Adjustment Actions

August 19, 2008 – **Denied** variance from Article IX, Section 10-908 to allow the following

- 4 freestanding signs totaling 103 square feet where 10 square feet is the maximum square footage allowed.
- 3 attached signs totaling 99 square feet where 60 square feet is the maximum square footage allowed.
- 202 square feet of aggregate signage where 75 square feet is the maximum allowed.

January 20, 2009 – **Approved** variance from Article IX, Section 10-908 to allow:

- 100.19 square feet of attached signage where 60 square feet is the maximum allowed.
- 26.18 square feet of freestanding signage where 10 square feet is the maximum allowed.
- 126.37 square feet of aggregate signage wherein 75 square feet is the maximum allowed.

### Planning Department Comments

The applicant is proposing to change the use of a portion of the building from professional office into medical office. A new access ramp is proposed for better access to the building, which requires HDC approval. No other site improvements or exterior changes are proposed.

## **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.*



2.

Petition of **Brett & Stefanie Berger, Owners**, for property located at **71 Brackett Road** whereas relief is needed from the Zoning Ordinance to remove existing deck and construct a 15' x 15' rear addition with new 15' x 45' deck which requires the following: 1) A Variance from Section 10.521 to allow a 10 foot rear yard where 30 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 206 Lot 14 and lies within the Single Residence B (SRB) District.

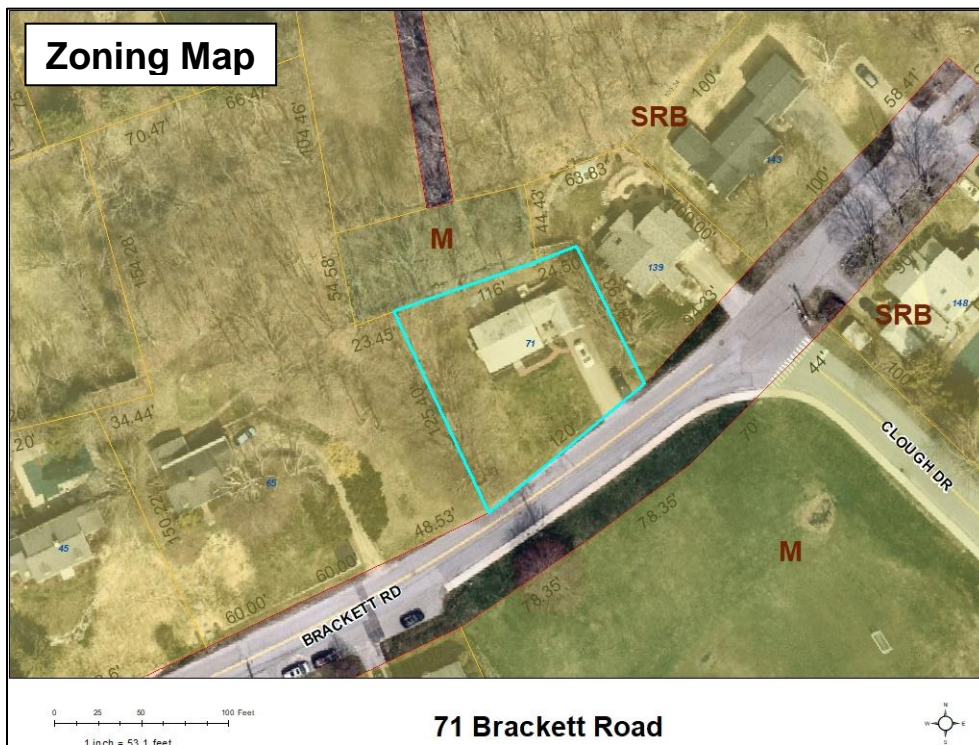
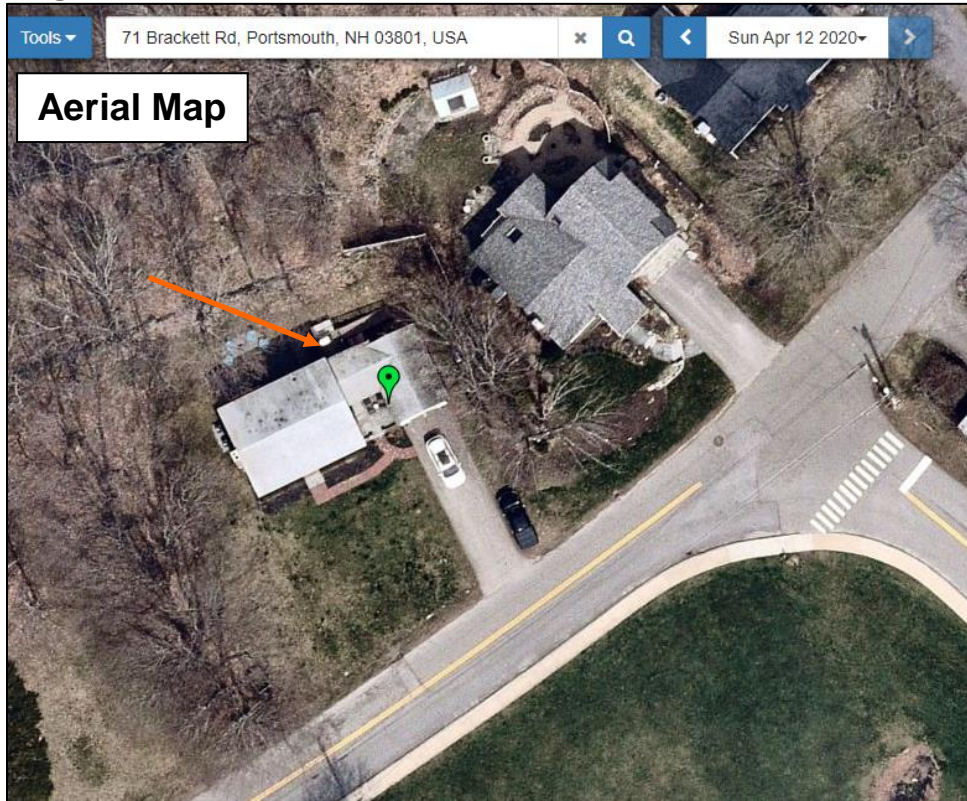
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Two family	Construct rear addition and deck	Primarily residential uses
<u>Lot area (sq. ft.):</u>	12,196	12,196	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	12,196	12,196	15,000 min.
<u>Street Frontage (ft.):</u>	120	120	100 min.
<u>Lot depth (ft.):</u>	106.5	106.5	100 min.
<u>Front Yard (ft.):</u>	44	44	30 min.
<u>Right Yard (ft.):</u>	15'6"	15'6"	10 min.
<u>Left Yard (ft.):</u>	36	36	10 min.
<u>Rear Yard (ft.):</u>	16	<b>10</b>	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	12	18	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	3	3	1.3
<u>Estimated Age of Structure:</u>	1966	<b>Variance request shown in red.</b>	

**Other Permits/Approvals Required**

None.

## Neighborhood Context



### Previous Board of Adjustment Actions

No BOA history found.



## Planning Department Comments

The applicant is proposing to construct an attached one story rear addition and deck across the length of the back of the house which will result in a rear yard of 10 feet at the closest point. The existing house is nonconforming with respect to the rear yard. All other dimensional requirements conform to the Ordinance as proposed.

## Review Criteria

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

1. *Granting the variance would not be contrary to the public interest.*
- Planning Department Comments* 2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
  - (a) *The property has special conditions that distinguish it from other properties in the area.*

**AND**

- (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

**OR**

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



3.

Petition of **685 State Street, LLC, Owner**, for property located at **685 State Street** whereas relief is needed from the Zoning Ordinance to add a fifth dwelling unit to an existing four unit building which requires the following: 1) A Special Exception from Section 10.440 Use #1.63 to allow a building existing on January 1, 1980 with less than the required lot area per dwelling unit to be converted into five units. Said property is shown on Assessor Map 137 Lot 11 and lies within the General Residence C (GRC) District.

**Existing & Proposed Conditions**

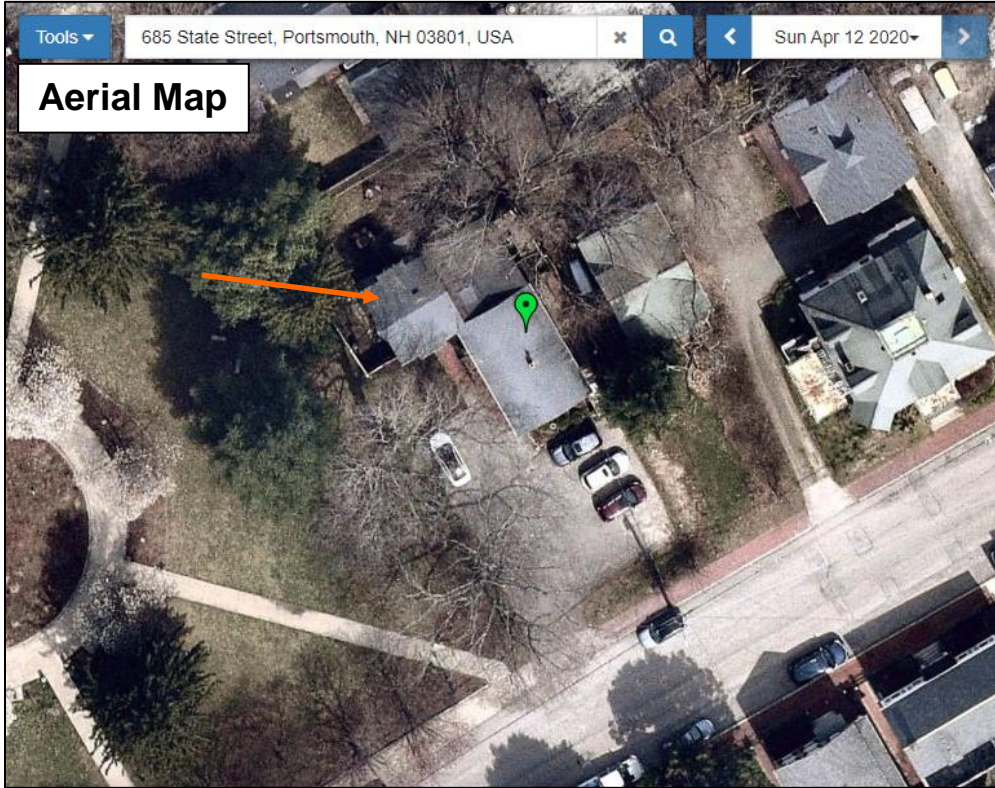
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	4 unit dwelling	<b>Add 5<sup>th</sup> dwelling unit</b>	Primarily residential uses
<u>Lot area (sq. ft.):</u>	8,561	8,561	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,140	1,712	3,500 min. 1,000 per 10.812
<u>Street Frontage (ft.):</u>	60	60	70 min.
<u>Lot depth (ft.):</u>	142	142	50 min.
<u>Front Yard (ft.):</u>	58	58	5 min.
<u>Right Yard (ft.):</u>	8	8	10 min.
<u>Left Yard (ft.):</u>	11	11	10 min.
<u>Rear Yard (ft.):</u>	21.6	21.6	20 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	20.5	<b>20.5</b>	35 max.
<u>Open Space Coverage (%):</u>	39.5	39.5	20 min.
<u>Parking</u>	6	6	6
<u>Estimated Age of Structure:</u>	1960	<b>Special Exception request shown in red.</b>	

**Other Permits/Approvals Required**

None



# Neighborhood Context



## Previous Board of Adjustment Actions

January 22, 1985 – Approved variance from Article IX, Section 10-906 to allow the following:

- Erection of a 19.5 square foot free-standing sign in the left yard with floodlight illumination where no illuminated free-standing sign is allowed.
- A total maximum aggregate sign area of 19.5 square feet where a total maximum aggregate sign area of 4 square feet is allowed.

This variance was granted with the following stipulations:

- The sign be no larger than 10 square feet.
- The Sign be no closer than 15 feet to the front property line.
- The sign shall not be illuminated.

## Planning Department Comments

The applicant is proposing to convert an existing four unit dwelling into a five unit dwelling under Section 10.812 of the Ordinance which permits a building existing before January 1, 1980 to be converted to a multifamily dwelling if the following requirements are met:

The conversion of a **dwelling** existing on January 1, 1980, to additional **dwelling** units as a permitted **use** or by special exception with less than the minimum required **lot area** per **dwelling unit** (per Section 10.440, use 1.50) shall comply with all the following requirements:

10.812.11 The conversion shall not include any change to the exterior of the **building** except for minimum egress components required for **Building Code** compliance.

10.812.12 The **lot** shall comply with the applicable minimum **open space** and maximum **building coverage** requirements in Article 5 and the **off-street parking** requirements in Article 11.

## 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 **Cherie Holmes & Yvonne Goldsberry, Owners**, for property located at **45 Richmond Street** whereas relief is needed from the Zoning Ordinance to remove existing garage and rear addition and construct new garage and 2-story addition which requires the following: 1) Variances from Section 10.521 to allow: a) a 0.5 foot front yard where 5 feet is required; b) a 4.5 foot rear yard where 15 feet is required; and c) a 4 foot right side yard where 10 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 108 Lot 18 and lies within the Mixed Residential Office (MRO) District.

**Existing & Proposed Conditions**

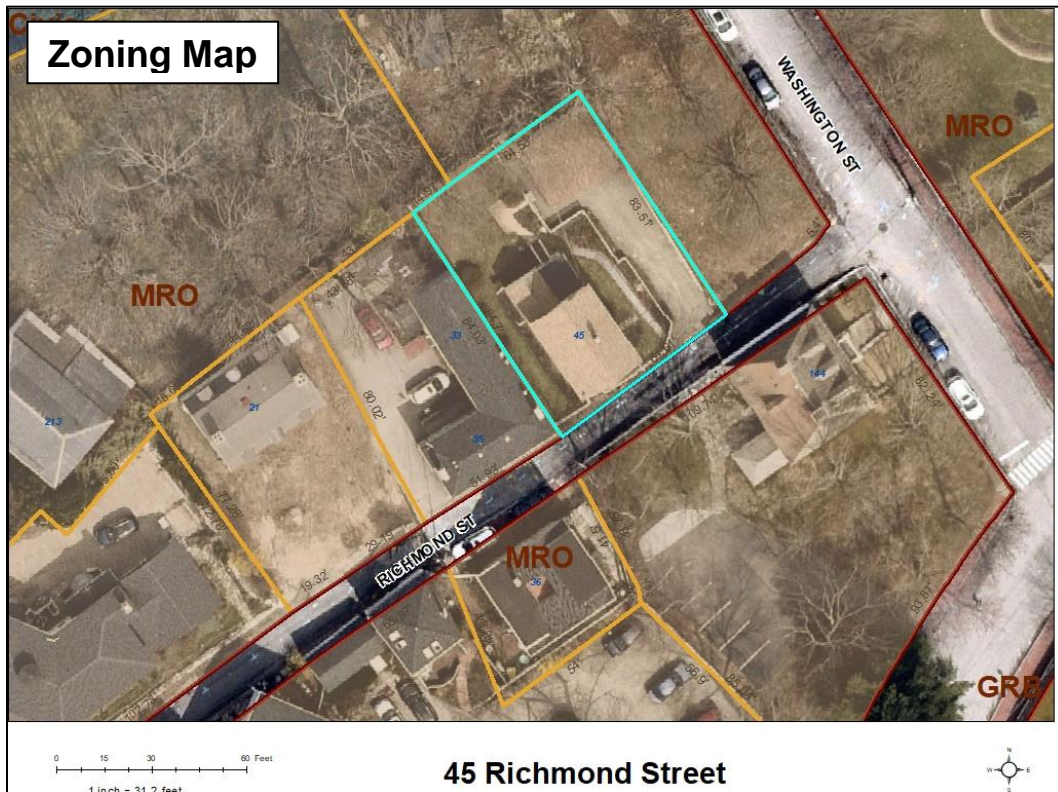
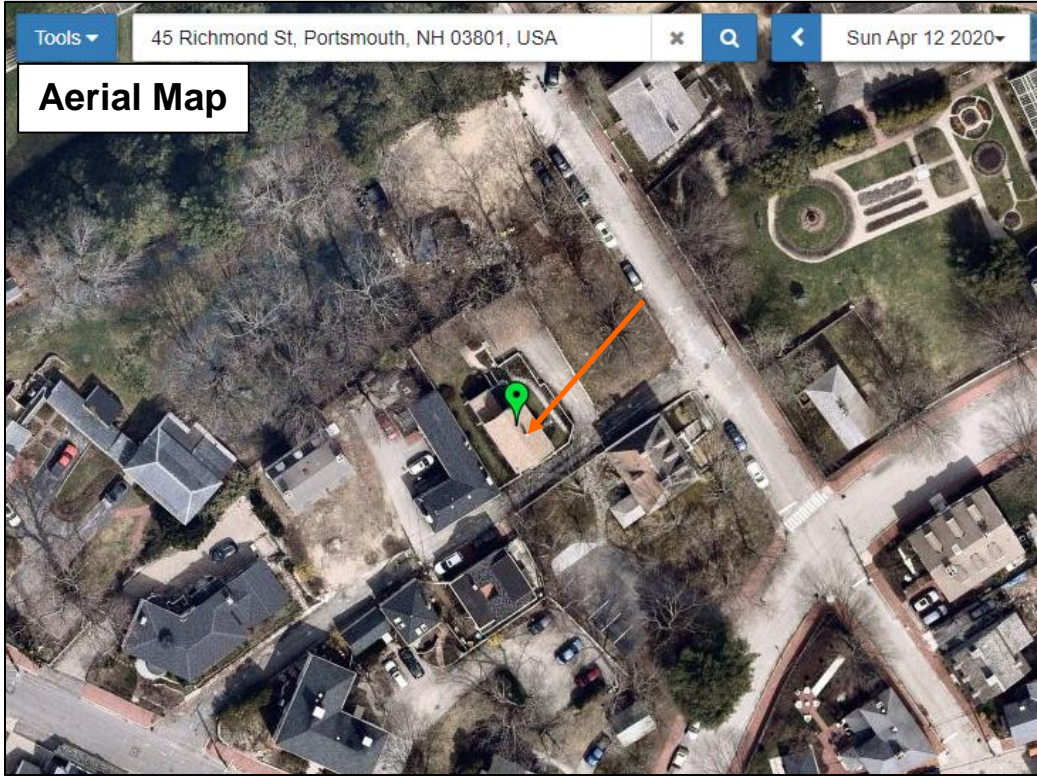
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family	Construct new garage and additions	Primarily mixed residential/office
<u>Lot area (sq. ft.):</u>	5,417	5,417	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,417	5,417	7,500 min.
<u>Street Frontage (ft.):</u>	64	64	100 min.
<u>Lot depth (ft.):</u>	84	84	80 min.
<u>Front Yard (ft.):</u>	0	<b>0.5'</b>	5 min.
<u>Right Yard (ft.):</u>	2.8'	<b>4'</b>	10 min.
<u>Left Yard (ft.):</u>	10.6	10.6	10 min.
<u>Rear Yard (ft.):</u>	5	<b>4.5'</b>	15 min.
<u>Height (ft.):</u>	<35	<35	40 max.
<u>Building Coverage (%):</u>	25	23	40 max.
<u>Open Space Coverage (%):</u>	48	42	25 min.
<u>Parking</u>	ok	Ok	1.3
<u>Estimated Age of Structure:</u>	1860	<b>Variance request shown in red.</b>	

**Other Permits/Approvals Required**  
Historic District Commission





# Neighborhood Context



## Previous Board of Adjustment Actions

November 24, 1964 – **Approved** petition to erect a garage 24' x 20', five feet back from line, and two feet from sideline.

## Planning Department Comments

The applicant is proposing to demolish the existing garage which received variances in 1964 for the current location, as well as removing a rear addition in order to construct a new garage with an attached greenhouse and a two story rear addition on the main dwelling. The existing front steps extend over the front lot line and the proposed steps will be located 0.5' from the lot line. The application indicated a 4.4' right side yard, but the legal notice stated 4 feet, which if granted, will allow some flexibility to the right side yard.

## Review Criteria

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

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

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

5.

Petition of **Karona, LLC, Owner**, for property located at **36 Artwill Avenue** whereas relief is needed from the Zoning Ordinance to convert an existing garage into a Detached Accessory Dwelling Unit which requires the following: 1) A Variance from Section 10.521 to allow 0 foot street frontage where 100 feet is required. Said property is shown on Assessor Map 229 Lot 4 and lies within the Single Residence B (SRB) District.

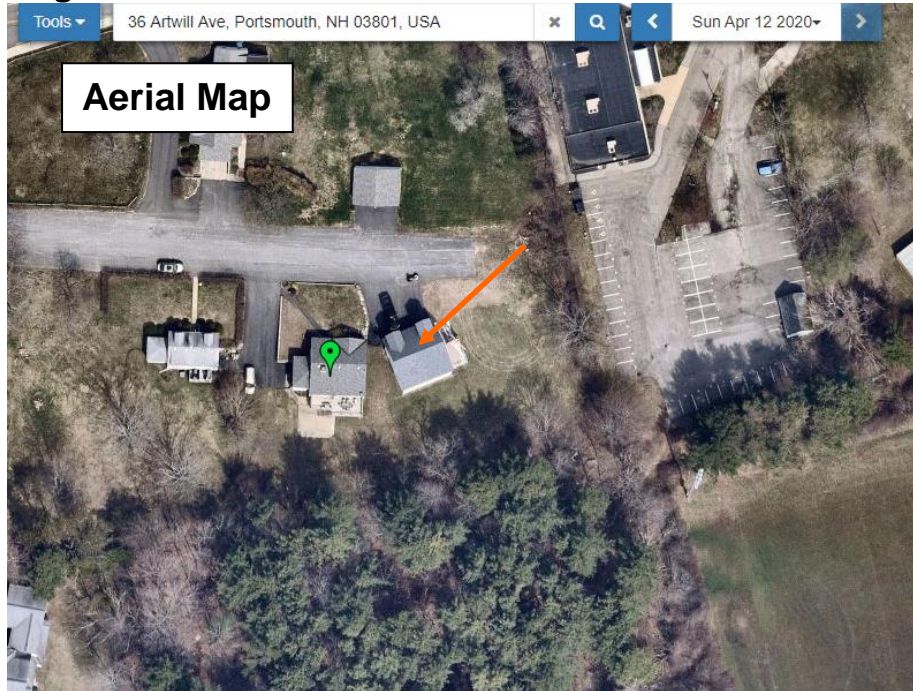
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Single-family w/ Detached ADU	Primarily Single-family Uses
<u>Lot area (sq. ft.):</u>	26,737	26,737	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	26,737	26,737	15,000 min.
<u>Street Frontage (ft.):</u>	0	<b>0</b>	100 min.
<u>Lot depth (ft.):</u>	>100	>100	100 min.
<u>Primary Front Yard (ft.):</u>	23.8	23.8	30 min.
<u>Left Yard (ft.):</u>	75.3	75.3	10 min.
<u>Right Yard (ft.):</u>	>30	>30	10 min.
<u>Rear Yard (ft.):</u>	61.5	61.5	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	9.7	9.7	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Estimated Age of Structure:</u>	1940 (House)	Variance request shown in red.	

**Other Permits/Approvals Required**

Planning Board – Conditional Use Permit for ADU

## Neighborhood Context



36 Artwill Avenue

### Previous Board of Adjustment Actions

June 17, 2014 – **Denied** the following variances:

- Section 10.440, Use #1.20 to allow a second dwelling unit on a lot where only one single family dwelling is permitted.
- Section 10.513 to allow more than one free-standing dwelling unit on a lot.

- Section 10.521 to allow a lot area of 13,068 square feet per dwelling unit where 15,000 square feet per dwelling unit is required.

July 25, 2017 – **Approved** variance from Section 10.521 for street frontage where 100' is required and 0' exists.

### **Planning Department Comments**

The applicant is proposing to convert a portion of the garage into a detached ADU. The lot is nonconforming to street frontage, being located on a private street. As shown in the history above, a variance was granted in 2017 for the same request, however the conditional use permit for the ADU was denied by the Planning Board. The Planning Board decision was appealed to the Superior Court and the Court upheld the Planning Board's decision. The applicant states that the LLC consists of the the owners who will now in the main dwelling. The original variance request expired, which is the reason for returning to the Board for the same relief that was granted in 2017.

### **Review Criteria**

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

1. *Granting the variance would not be contrary to the public interest.*
- Planning Department Comments* 2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
  - (a) *The property has special conditions that distinguish it from other properties in the area.*

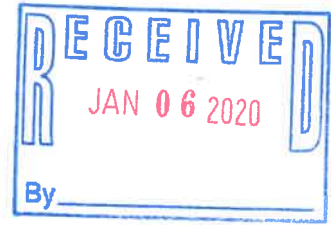
**AND**

  - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

**OR**

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

City of Portsmouth  
Planning Department



January 6, 2021

Re: Property at 322 Islington St., Permit LU- 19-11  
Assessor plan 145, Lot 3

Dear Board of Adjustment,

I would like to request the extension of the permit that was approved and granted March 1, 2019. There have been many delays in the planning process for this project related to Covid. The extension will allow for additional planning time for this restoration project.

I appreciate your consideration for this extension.

Regards,

Stephen Bucklin

603-496-8274

A handwritten signature in blue ink that reads "Stephen Bucklin".

CC: Brendan McNamara

**BOSEN & ASSOCIATES, P.L.L.C.**  
ATTORNEYS AT LAW

December 14, 2020

**John K. Bosen**  
Admitted in NH & MA

***VIA VIEWPOINT and HAND DELIVERY***

**Christopher P. Mulligan**  
Admitted in NH & ME

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

**Molly C. Ferrara**  
Admitted in NH & ME

**Bernard W. Pelech**  
Admitted in NH & ME

***RE: 30 Spring Street – REQUEST FOR REHEARING***

Dear Mr. Rheaume:

On behalf of the owners, Jessica Kaiser and John Andrew McMahon, (the "Applicants") the foregoing is a formal request that the Board of Adjustment grant a rehearing with respect to its decision of November 17, 2020 to partially deny the Applicants's requested variances, specifically, the denial of our request for a zero right side yard setback to accommodate a modest covered porch.

I. Standard of Relief.

"Within 30 days after any order or decision of the zoning board of adjustment . . . any party . . . may apply for a rehearing . . . specifying in the motion for rehearing the ground therefor; and the board of adjustment . . . may grant such rehearing if in its opinion good reason therefor is stated in the motion." RSA 677:2. "A motion for rehearing . . . shall set forth fully every ground upon which it is claimed that the decisional order complained of is unlawful or unreasonable . . . the board of adjustment . . . shall within 30 days either grant or deny the application [for rehearing]." RSA 677:3. The ZBA must grant a rehearing if good reason is shown. RSA 677:2. The purpose of rehearing is to allow the ZBA to correct any errors it may have made. McDonald v. Effingham, 152 NH 171 (2005).

The Applicants respectfully submit that the Board's decision was unlawful or unreasonable, based upon a misapplication or misunderstanding of fact. Good cause for rehearing exists, as set forth herein.

II. Basis for rehearing.

As the board will recall, the Applicant received front and side yard setback variances for second stormal dormer additions. The proposal to replace the existing front door landing with a small covered porch (80 square feet) with zero front and side yard setbacks was denied by a vote of four to three. The primary objection to the proposal was the Board's understandable reluctance to sanction an encroachment so close to the lot line between neighboring properties.

The Applicants sought a covered porch in order to have a more secure place to receive deliveries now that they are working from home (which was not coincidentally the purpose for the dormers) and to be able to more comfortably keep watch over their children. The proposed porch would encroach no closer to the neighboring property than the existing non-conforming house structure.

As the attached statement and photos from Ms. Kaiser demonstrate, there were factors other than these that support the relief requested. Specifically, the neighboring home underwent a substantial addition in 2008 which has had the effect of eliminating any afternoon sunlight into the Applicants' backyard. The addition not only casts shadows into the Applicants' backyard, but it also contains a number of second story windows which directly overlook the backyard, substantially eliminating any privacy for the Applicants' family.

As this Board is acutely aware, some of the oft-stated purposes for setbacks is to assure that properties enjoy adequate light and air. The proposed covered porch actually promotes this purpose by providing usable outdoor living space in the only area of the home that gets any significant afternoon sunlight. Furthermore, the lack of privacy in the backyard as a result of the neighbor's addition is an additional and compelling reason for the siting of the porch as proposed. Finally, the proposed design of the porch is such as to provide a sense of balance with the existing bay window on the front of the house. See Plan A2.o1 submitted herewith. Shifting the porch away from the boundary would compromise the aesthetic quality of the home for little discernible benefit. Recall, the existing arborvitae and fenced storage corral already substantially occupy the space where the porch would go. The Board's concerns about the necessity of accessing the neighbors' property to maintain the porch would apply equally to maintenance of the existing landscaping and encroaching main house structure.

The existence of the neighbor's addition and its effect on the Applicants' use and enjoyment of their home are special conditions of this property that were not adequately raised and considered when the proposal was rejected.

For the foregoing reasons, we respectfully suggest that the Board's conclusion that the Applicants' proposed covered porch did not meet the criteria for granting a variance was based upon a misapplication or misunderstanding of fact and a rehearing is appropriate.

Thank you for your consideration.

Sincerely,

*John K. Bosen*

John K. Bosen

JKB/

Enclosures

cc: Jessica Kaiser and John Andrew McMahon



**30 Spring Street**  
**Statement in Support of Request for Rehearing**

**There are 3 primary reasons why I'd like to have a small front porch on my home:**

- Due to covid, my company (which I own) has downsized by 70%, my office has been entirely shut down and our office space has been rented by another tenant for the next 5 years. Due to this change, I'm now working out of my home and all packages relating to my company are now shipped to my home. I'd like a covered space where packages can be left securely. As it is right now, even my mail (inside my mailbox) gets drenched every time it rains because I don't even have enough covered space for a mailbox.
- Secondly, I have 3 small children ages 8, 6 and 3. One of my children has an intense level of ADHD and the other two are just naturally active and on-the-move. We are a family that encourages outdoor play and activities, and our kids play outside at least 2 - 4 hours per day. On Spring street, the backyards are quite small, so all of the children play together in the street; riding bikes, scooters, playing frisbee etc. That said, Spring Street also gets a lot of traffic turning off of Miller ave and it's imperative that an adult is standing watch, making sure that the kids are safe. Our children are outside all year long, in rain, snow and sunshine, and I'd like a small covered space where I can sit, watch them, and make sure my kids, as well as the neighborhood children, are kept safe.
- Lastly, in 2008, my neighbors to my right (the neighbor whose property line I'm seeking a variance for) built a massive addition on their house, which doubled the size of their home. They were given approval to extend the back of their home 18 feet further into their backyard, and build a second floor addition over their garage. This addition runs along the exact lot-line that is in discussion regarding my porch, and they built the second half of their home within 4 feet of the fence that divides our properties. I was living at my house during their renovation, and did not oppose their addition as I understand a growing family's need to expand. That said, when the addition was complete, I found that the new extended roof-line blocked all sun into my backyard after 2PM in the afternoon, since the sun sets behind the new addition to their house. Unfortunately I don't get any morning sun due to a large maple tree in a neighbor's yard, and I don't get afternoon sun due to my neighbor's renovation, so the only way to get sunlight is to sit in my front yard. Additionally, during the renovation, my neighbor added a window that looks directly into my backyard, eliminating any privacy for me and my family. I feel quite awkward sitting in a lawn chair in my front yard, and I'd just like a small area where I can sit in privacy, and get sunlight at some point during the day.

**Here are some pictures of my neighbor's 2008 home addition:**



**This is the view of the neighbor's addition from my backyard. Prior to the addition, the back of my neighbors house lined up with the back of my house. They were then given approval to extend 18 feet into their backyard and extend over their garage. The garage is the second building that juts out further behind the main section of the house. This also shows you the window that looks directly into my backyard.**



**Another view of the neighbor's addition from my backyard. My house is the sage green one on the right. My neighbors house is the grey one on the left. Everything you see in this picture is from the 2008 addition.**



**All of the afternoon sunlight that I used to have in my backyard is now gone, since the sun passes over the top of this roof around 1:30 - 2PM in the summer, and earlier in the winter.**



**The clapboards on the upper siding, show where the old part of the home used to end, in line with the back of my own house. The addition extends out 18 feet from there.**



**This angle shows my neighbors addition (on the right) showing the proximity of their home and my home in the backyard where both homes jutt toward each other. My request for a small 5 foot porch, on the front of my home, will not even extend beyond the footprint where the back portion of my home extends out.**

**FROM PAST MEETING**

**30 Spring Street - Exterior Photos. Here are photos of my home that were viewed in the previous meeting. (For reference if needed).**





The right side of the porch would end just past the existing arborvitae, and would not exceed the width of the back half of the house.





All neighbors, including my neighbor on the right side, are agreeable to a porch and dormer. The neighbor on my right underwent an extensive expansion / renovation in 2008 which required a variance on both sides of their house.



Here is a porch located 3 houses down from my house, on the corner of Spring St. and Lincoln St, that was approved for development in 2017. This porch is located closer to the road than the one we are proposing.

John Kuzinevich, Esq.  
Law Office of John Kuzinevich

71 Gurnet Road  
Duxbury, Massachusetts 02332

Telephone: 781 536-8835  
Cell: 508 245-2105

E-mail: jjkuz@comcast.net

December 23, 2020

Zoning Board of Appeals  
Municipal Complex  
1 Junkins Ave.  
Portsmouth, NH 03801

## Request for Rehearing

Dear Mr. Chairman and Members of the Board

Please be advised that I represent James G Boyle, Trustee of the 150 Greenleaf Avenue Realty Trust. This letter constitutes a request for rehearing of the decision of the Board made on December 15, 2020 with written notice dated December 17, 2020 whereby the Board upheld the decision of the Planning Director that Mr. Boyle's proposed development needs three variances. Mr Boyle incorporate by reference his prior arguments and will only expand upon them rather than repeat them

1. **The Board Erred In Determining That A 200' Buffer From Residential For Automotive Use Would Apply.**

Mr. Boyle objected to the use of the ordinance as amended in 2009 rather than the ordinance as it existed in 2006 on the ground that it was not validly adopted. There was no evidence that the City Manager made "reasonable provisions so that a copy of the complete ordinance shall be obtainable free of charge...by any citizen who may request the same" as required by Section 4.5 of the City Charter. Indeed, the City never advised Citizens of this option and no copies were prepared to give out. The City offered no proof except for mention of an affidavit by Mr. Taintor which was not produced. In this regard it is the City Manager's actions which are relevant; not Mr. Taintor's actions.

When the correct ordinance is applied, by virtue of straightforward grammatical construction of an ordinance, the buffer applies only to outdoor storage of materials which, clearly, does not apply to automobiles for sale.

2. **The Board Erred In Determining That A 100' Buffer From Residential For Parking Would Apply.**

The Board improperly focused on a single handicapped marked space to conclude that the area not of the proposed building would be used for parking. Mr. Boyle advised the Board that the area would be used for display and sale. A single space out of dozens does not alter this. Further, Mr. Boyle sells a number of vehicles that have been modified for use by the handicapped. It makes sense to reserve a single such space in display areas as handicapped individuals want to see and test drive a modified vehicle.

More importantly, the Board erroneously used the handicapped space to find that a variance was needed. No variance is needed for this space as it falls outside the 100 foot buffer zone. The Board failed to recognize that directly to the north of this spot, the City acquired a large residential lot. By operation of law, this lot became municipal zoned instead of residential zoned. Since the buffer only applies to residential zones, the Board erred in considering that any buffer would be measured from the boundaries of this lot. Thus, this spot is fully conforming to zoning. It is irrational to use a conforming section of the proposal to determine that other and different sections would require a variance.

3. **The Board Erred In Determining That A Conditional Use Permit Is Needed.**

The Board ignored clear caselaw that a remedial consent decree approved by a court, will trump local land use regulations, the language in the Order approving the consent decree notwithstanding. The Rockingham Superior Court wanted to make clear that it was not imposing any affirmative actions on Portsmouth when it approved the decree. It was making sure that the decree did not force the City to approve Mr. Boyle's project. The Court was not addressing, however, what would occur if the City did not approve the proposed development. That is

resolved through the cited case. Thus, the decree has not bound the City. Since the project can go forward with either favorable or unfavorable action on an application for a conditional use permit, it becomes a moot issue and not needed.

For the reasons stated above as well as the reasons in the initial appeal and presentation at public hearing, Mr Boyle requests the Board vote to reconsider its action.

Sincerely,

/s/ John Kuzinevich

John Kuzinevich

Copy to: client

# HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

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

December 23, 2020

## HAND DELIVERED

Peter Stith, Planner  
City of Portsmouth  
1 Junkins Ave.  
Portsmouth, NH 03801

Re: Gregory & Amanda Morneault, Owner  
Darrell Moreau, Applicant  
137 Northwest Street  
Portsmouth, New Hampshire, 03801  
Tax Map 122, Lot 2, Gen. Residence A (GRA) District

Dear Peter:

Attached please find an original and eleven (11) copies of a **Request for Rehearing** for consideration by the Zoning Board of Adjustment. We will upload this to Viewpoint Cloud as well.

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

Very truly yours,



R. Timothy Phoenix

RTP/mfk  
Encl.

cc: Darrell Moreau  
Ambit Engineering, Inc.  
Artform Architecture, Inc

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DANIEL C. HOEFLE	R. PETER TAYLOR	GREGORY D. ROBBINS	DUNCAN A. EDGAR
R. TIMOTHY PHOENIX	JOHN AHLGREN	MONICA F. KIESER	OF COUNSEL:
LAWRENCE B. GORMLEY	KIMBERLY J.H. MEMMESHEIMER	SAMUEL HARKINSON	SAMUEL R. REID
STEPHEN H. ROBERTS	KEVIN M. BAUM	JACOB J.B. MARVELLEY	

## MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)  
FROM: R. Timothy Phoenix, Esquire  
DATE: December 23, 2020  
RE: Request for Rehearing  
Gregory and Amanda Morneault, Owners  
Darrell Moreau, Applicant  
Property Location: 137 Northwest Street, Portsmouth, NH 03801  
Tax Map 122, Lot 2, GRA and Historic Districts

Dear Chair Rheame and Zoning Board Members:

Now comes Darrell Moreau and requests that the Zoning Board of Adjustment (“ZBA”) rehear and reverse its 11/24/20 denial of requested zoning relief and in support thereof states:

### **I. EXHIBITS**

1. 12/1/20 Notice of Decision with respect to 11/24/20 hearing.
2. Plan set, Variance Plan/Subdivision Plan-by Ambit Engineering (**EXHIBIT 1** to original submission)
3. City of Portsmouth, NH Maps, 137 Northwest Street in Context (**EXHIBIT 5** to original submission, marked up for review purposes)

### **II. RELIEF REQUESTED**

#### **Lot 1**

PZO§10.521-Table of Dimensional Standards

Lot Depth-44.7 feet where 51.1 feet exists and 70 feet is required.

#### **Lot 2**

PZO§10.521 Table of Dimensional Standards

Lot area per dwelling unit-5317 s.f. (10634/2) where 7500 s.f. is required.

Front yard-2.9 feet where 15 feet is required.

Rear Yard-4.0 feet where 20 feet is required.

Lot Depth- 23.4 feet where 70 feet is required.

### **III. STANDARD OF REVIEW**

Within 30 days after any... decision of the Zoning Board of Adjustment... any party to the action or proceedings... may apply for rehearing in respect to any matter determined in the action specifying in the motion for rehearing the grounds therefor; and the

Board of Adjustment may grant such rehearing if in its opinion good reason therefor is stated in the motion. RSA 677:2.

A motion for rehearing. Shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. RSA 677:3, I.

The purpose of the statutory scheme is to allow the ZBA to have the first opportunity to pass upon any alleged errors in its decision so that the court may have the benefit of the board's judgment in hearing the appeal. Town of Bartlett Board of Selectmen v. Town of Bartlett Zoning Board of Adjustment, 164 NH 757 (2013). Rehearing is designed to afford local zoning boards of adjustment an opportunity to correct their own mistakes before appeals are filed with the courts. Fisher v. Boscawen, 121 NH 438 (1981).

#### IV. RELEVANT FACTS

137 Northwest St. is an 18,134 square-foot lot sandwiched between Northwest Street and the Route 1 Bypass. With frontage of approximately 536 feet, and a depth ranging from less than 20 feet to approximately 70 feet, the lot is very long and narrow. The existing home is located at the far west (left) end of the lot, leaving a significant area presently undeveloped except for a city of Portsmouth sewer pump station just off the lot and access area for the pump station and turnaround on the lot at the far easterly (right) end of the lot.

The project proposes to subdivide the single lot into 2 lots, each of which meets the GRA requirement of 7500 s.f. per lot. Lot 1, 7500 s.f. will hold the existing home. Lot 2, 10,634 s.f. will hold a duplex, permitted in the GRA zone, with 5317 ft. per dwelling unit (10634/2). It was recognized by board members at the 11/24/20 hearing that the duplex format and location of the project abutting the bypass will result in comparatively affordable family homes in downtown Portsmouth. Relief is required for both lots because the depth of Lot 1 will be slightly reduced,



and Lot 2 does not meet the front/rear yard/depth requirements or the 7500 ft. per dwelling unit lot size requirement.

The purpose of the GRA, GRB and GRC district is "to provide for areas of single-family, 2-family and multifamily dwellings with appropriate accessory uses, at moderate to high densities (ranging from approximately 5 to 12 dwelling units per acre), together with appropriate accessory uses and limited services." PZO §10.440. As proposed, Lot 1 with one dwelling on 7500 s.f. equals 5.8 units per acre. Lot 2 at 5317 s.f. per unit equals 8.19 units per acre, in keeping with the stated purposes of the ordinance.

The primary "neighborhood" is bounded to the south by Maplewood Avenue, to the north and east by the mill pond, and to the north and west by the Route 1 Bypass (**EXHIBIT 3**). The neighborhood is comprised of 29 separate lots (including the subject lot) by our count. Of the 28 lots (not including the subject); 18 (62%) have less than 7500 ft. of lot area per dwelling unit, including the 2 lots directly abutting the subject to the left and right (122-1, 122-3); 14 lots (50%) appear not to meet front and/or rear setback requirements including 2 lots directly across the street from the subject lot; and 5 lots (17.8%) appear to fail to meet both setback and lot area per dwelling unit. Many of the smaller lots also appear not to meet lot depth requirements. Considering the larger overall neighborhood including lots across Maplewood Avenue, a significant majority of those lots fail to meet the lot area per dwelling unit requirement, front or rear setback and/or depth requirements. Id. Clearly, this neighborhood, whether considered in the context of the closer neighborhood north of Maplewood Avenue, or the entire neighborhood northwest of the mill pond, southeast of the bypass as shown on **EXHIBIT 3**, it is an area of significant noncompliance with zoning ordinance density, setback and/or depth requirements.

At the 11/24/20 hearing, after public comment, questions by board members, and board member comment and discussion during deliberation, member Parrott moved to approve the requests, seconded by member Eldridge. The motion failed, 3-4. Following was a motion to deny by member McDonell, seconded by member Hagaman which passed, 4-3.

Review of the Zoom hearing video (City of Portsmouth Zoning Board of Adjustment meeting 11/24/20, <https://youtu.be/iQHfujTk2F8>) reveals the following paraphrased comments of board members in support of or opposition to the requested relief including a reference to the timestamp that the comments begin:<sup>1</sup>

Member Hagaman- felt that the property size was a bit misleading when there is a city used turnaround; hesitant to agree with a permanent variance without those issues being sorted out. (Meeting video at 41:55,42:29)

Acting Chair Johnson- appears comfortable with dimensional setback; has a harder time with the density and the approving of hardship for 2 units. (42:46)

Member Parrott- a significant factor is that there practically no traffic on the street, being a dead-end; lot has obvious challenges; the use seems appropriate. (44:19)

Member Lee- agrees with member Parrott on the burdened location; notes the effect of the bypass and lights; special hardship due to location. (45:51)

Member McDonell- doesn't think the application meets a lot of criteria; understands the possible changes at HDC; proposal would change character of the neighborhood; does not agree that the Maplewood Avenue area is included; feels it will decrease property values. Does not feel there is a hardship, although there are special conditions it doesn't meet the second prong and it is reasonable to apply requirements of the zoning ordinance; feels it fails on quite a few of the zoning requirements. (46:32)

Member Lee- disagrees that there will be diminution in value; sees no reduction in value of surrounding properties; low traffic; common for these outlying parcels to be developed; just because a vacant lot exists for many years is no guarantee that it will remain undeveloped. (50:00)

Member Eldridge- tends to agree with member Lee, not sure what is being voted on given potential changes to the project resulting from the HDC process. (51:54, 52:45)

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<sup>1</sup> Written minutes of the 11/24/20 ZBA meeting have not been published as of the date of this filing. A link titled "Minutes" on the webpage contains only an Agenda.

Acting Chair Johnson- might be before us again with a single unit. (53:25)

Member Parrott in support of motion to approve seconded by Member Eldridge- ordinance is designed to meet this kind of odd situation where the board is to act as a relief valve; lot complies with this in spades; relief does not alter the neighborhood, existing houses are not that similar; use is residential; no harm to health, feels there is a gain to the public; notes that much of the city has short distances from houses to a street, for example in the south end; notes that the only expert to address diminution of value is Member Lee who is in the real estate business; hardship due to the unusually long and narrow lot with a highway behind, and a dead-end. (53:56)

Member Hagaman- housing is needed, but this is not the right place to squeeze in an extra unit; half of the lot is too narrow and the other half has a city use not resolved. (59:28)

Member Lee- duplex is a creative use on a challenging property. (1:00:47)

Member McDonell in support of Motion to deny seconded by Member Hagaman- duplex will alter the character of the neighborhood; there is nothing like this in the area; will diminish property values of at least 2 home across the street and in general up and down the street; special conditions exist but there is no hardship because there is a substantial relationship; economically driven which is understandable, but a duplex is unreasonable. (1:02:25)

V. **A MAJORITY OF THE ZBA ERRED, REQUIRING REHEARING IN FINDING THAT THE REQUIREMENTS FOR VARIANCES WERE NOT MET.**

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

A review of the meeting video reveals that these two requirements were not in detail addressed in the motion to deny and comments in support of that motion. During deliberation there were merely generalized comments without support that the variances would alter the character of the locality. The evidence reveals however, that this is erroneous. It must be concluded that at a minimum the "neighborhood" is comprised of the 29 lots bounded by Maplewood Avenue, the millpond, and the bypass. A large percentage of the lots in that specific area fail to meet lot size per dwelling unit front/rear setback and/or lot depth. Several fail to meet two or three. (EXHIBIT 3) Additionally, both proposed lots meet the minimum lot size

requirement of 7500 s.f. where many lots in the area do not. Particularly important is the fact that the 2 closest abutting lots each provide less than 7500 ft. per dwelling unit and 2 of the 3 lots directly across the street, one of which is a two-family (122-7), fail to meet front or rear setback requirements. As Member Parrott noted, there are numerous homes of various sizes, shapes, and locations in the area. This area is an eclectic "neighborhood" with no real uniformity.

Accordingly, a duplex which is permitted in the GRA district and where other multifamily homes exist, does not alter the essential character of the locality. Furthermore, a brand-new fully to-code home will in no way threaten the public health, safety or welfare, nor was there commentary from board members to the contrary.

The spirit of the ordinance is to provide a relief valve from the strict requirements of the ordinance. Given the nature of the lots and homes in that neighborhood, there could be no greater need for such a relief valve, particularly in view of the undisputed recognition that the permitted duplex format and location of the subject property abutting the bypass will create much-needed comparatively affordable family housing within downtown Portsmouth. For these same reasons, the public interest is fully supported and protected by this project and the relief needed to proceed with it. Given the nature of the area, it cannot reasonably be found that granting the requested relief "would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives." Malachy Glen Assoc. v. Town of Chichester 155 N.H. 102 (2007). Nor can it reasonably be found that granting the variances alters the essential character of the locality or threatens the public health, safety, or welfare. Id.

3. **Granting the variances will not diminish surrounding property values.**

There was absolutely no evidence from members of the public supporting a conclusion that surrounding property values would be diminished. In support of his motion to deny, Member

McDonnell felt that property values would be diminished, but offered no support for the conclusion. The only "expert" commentary on the matter was from Member Lee, an experienced local realtor who specifically opined that granting the variances will not decrease surrounding property values. Given Mr. Lee's experience and opinion, in the face of the permitted duplex requiring density, setback and depth relief in an area where many lots fail to meet one or more of those requirements, it was error for a majority of the board to find that granting the requested relief would diminish surrounding property values.

**4. Denial of the variances clearly results in unnecessary hardship.**

- a. Special Conditions exist which distinguish the property/project from others in the area.

The minutes reveal virtually no commentary from board members that this prong of the hardship test is not met. It is simply beyond dispute that a very long very narrow lot abutting the bypass has special conditions.

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

Density limits are intended to provide space, air, light prevent overcrowding, protect against over bulking structures, maintain off street parking and protect against congestion. Lot 1, holding the existing home, requires only minor lot depth relief due to the placement of the new lot line and meets the density requirement. Front and rear setbacks cannot be changed. Lot 2 at 5370 s.f. per unit, is 71.6% of the required 7500 s.f. per unit requirement of the GRA District. It does meet the general purposes of the overall GRA, GRB and GRC district by providing approximately 8 units per acre, within the 5-12 guidelines set forth under the general purposes. Moreover, again noting that the 2 lots closest to the subject each fail to meet the 7500 s.f. per dwelling unit requirement, the proposal is consistent with and better than a significant number of lots in the

area bordered by Maplewood Avenue, the Mill Pond and the Bypass. Noting that duplexes are permitted, and this lot exceeds the minimum lot size, strict application of the density requirement prohibits an otherwise permitted use on a street with a handful of two-family homes, including one directly across the street from the proposed duplex. That the proposed Lot 2 may continue to offer the City access over the lot for its turnaround is of no consequence to the density analysis as property owners may make private arrangements for easements over their property as they see fit. Furthermore, addition of a dwelling to a home existing before January 1980 is permitted upon compliance with standards set forth in PZO §10.812 including, in the GRA, a density requirement of just 3,000 sf/dwelling unit. Where the density (5370 sf/unit) is consistent with or better than many in the area and well above the requirement of older homes in the neighborhood capable of conversion, it is clear error requiring rehearing for a majority of the board to find that there is a fair and substantial relationship between the purpose of the density requirement and its application to this proposal.

Setback and depth requirements are intended to provide adequate space between homes, sightlines, area for stormwater treatment, air, light and space. Again, noting that the two closest lots do not meet the lot area requirement, 2 of the 3 lots directly across the street do not meet the setback requirement, and many other lots in the vicinity do not meet lot size, setback and/or depth requirements, it is clear that the proposal fits in the neighborhood. In fact, of the 11 lots (excluding the subject) northeast of Jackson Hill Street, 6 (54.6%) have either a front and/or rear setback nonconformity. Noting: the eclectic nature of the neighborhood; the common depth, lot size per dwelling unit and/or setback noncompliance in the area; that duplexes are permitted in the GRA Zone and any code compliant structure would require setback relief; it cannot reasonably be found that there is a fair and substantial relationship between the purposes of the

setback and depth ordinances and their application in this instance. Thus, denial of the requested relief was error requiring rehearing.

c. The proposed use is a reasonable one.

Duplexes are permitted in the GRA zone and a handful already exist on Northwest Street, so the residential use is clearly reasonable. To find otherwise is error requiring rehearing.

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

If "there is no benefit to the public that would outweigh the hardship to the applicant, this factor is satisfied" Harborside Associates LP v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011). "Any loss to the[applicant] not outweighed by a gain to the general public is an injustice." Malachy Glen, supra at 109.

A review of the hearing video reveals no commentary or support for the majority finding that substantial justice would not be done by granting, or that substantial justice is done by denying the requested relief. There was, however, commentary that denial of the relief will deprive the applicant and property owners of the value of the land and its development, and will deny two families comparatively affordable housing than typically found in downtown Portsmouth. There is no question that these facts demonstrate a significant economic hardship to the owner/applicant from denial of the variances. There is no evidence, and it cannot reasonably be found that the "public" is harmed by granting the variances to a property which has a clear hardship, where duplexes are permitted, and where a significant number of lots in the area also fail to meet one or more of the zoning requirements for which relief is here requested.

Balancing the owner/applicant's constitutional rights to own and develop property against the harm to the general public if the variances are granted clearly demonstrates that denial of the requested relief was in error. "The right to use and enjoy one's property is a fundamental right

protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). “Property” in the constitutional sense has been interpreted to mean not the tangible property itself, *but rather the right to possess, use, enjoy and dispose of it*. Burrows v. City of Keene, 121 N.H. 590, 597 (1981). (emphasis added).

The Supreme Court has held that zoning ordinances must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of the regulation. Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001); Chesterfield at 69. To “determine whether an ordinance is arbitrary and unreasonable, the injury or loss to the landowner must be balanced against the gain to the public.” Metzger v. Town of Brentwood, 117 N.H. 497, 501 (1977). In other words, “[w]hen the restriction as applied to a particular piece of land is unnecessary to accomplish a legitimate public purpose, or the gain to the public is slight but the harm to the citizen and his [or her] property is great, the exercise of the police power becomes arbitrary and unreasonable and this court will afford relief under the constitution of this state.” *Id.* at 503.

It is well-established above that denial of the variances in turn denies the owners of the sale of a valuable lot, the applicant to develop that lot and sell the units, and potential owners to own relatively reasonably priced housing in downtown Portsmouth. Thus, there is significant



harm to the owners/applicant from denial of the requested relief. The public purposes of setback, lot depth and lot area per dwelling unit requirements of the ordinance are primarily to provide separation of neighbors, adequate air, light and space, sightlines, prevent over bulking, and provide land area where possible for stormwater treatment. There is simply no harm to the public, thus no rational basis for applying these restrictions to the land in question given that a large number of lots in the neighborhood, including the 2 closest abutting lots and two lots across the street fail to meet one or more of the applicable zoning requirements. Indeed, the area, including Northwest Street itself is an eclectic mix on a dead-end street abutting the bypass so will remain virtually unseen to the “general public.”

To the extent that a majority of board members found that the application did not meet the substantial justice variance requirement, the decision was in error, justifying rehearing.

**VI. CONCLUSION**

For all of the foregoing reasons, the subject property owners and applicant respect request that the zoning board of adjustment grant rehearing.

Respectfully submitted

Darrell Moreau

By: 

R. Timothy Phoenix



# CITY OF PORTSMOUTH

Planning Department  
1 Junkins Avenue  
Portsmouth, New  
Hampshire 03801  
(603) 610-7216

## ZONING BOARD OF ADJUSTMENT

December 1, 2020

Gregory & Amanda Morneault  
137 Northwest Street  
Portsmouth, NH 03801



**RE: Board of Adjustment request for property located at 137 Northwest Street (LU 20-222)**

Dear Mr. & Mrs. Morneault:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, November 24, 2020**, considered your application for subdivide one lot into two lots and construct a new two family dwelling which requires the following: 1) Variances from Section 10.521 to allow: a) a lot depth of 44.7 feet for Lot 1 and 23.4 feet for Lot 2 where 70 feet is required for each; b) a lot area per dwelling unit of 5,317 square feet for proposed Lot 2 where 7,500 square feet per dwelling is required; c) a 2.5 foot front yard for proposed Lot 2 where 15 feet is required; and d) a 4 foot rear yard for proposed Lot 2 where 20 feet is required. Said property is shown on Assessor Map 122 Lot 2 and lies within the General Residence A (GRA) District. As a result of said consideration, the Board voted to deny the request as submitted. All the criteria to grant the variance were not met. This request would diminish surrounding property values and literal enforcement of the provisions of the Ordinance would not result in an unnecessary hardship.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

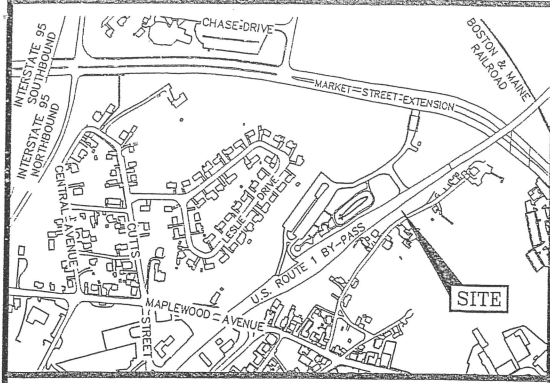
The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

Jeremiah Johnson, Vice Chairman of the Zoning Board of Adjustment

cc:

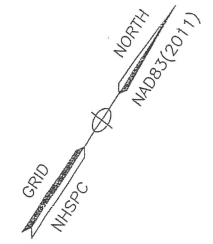
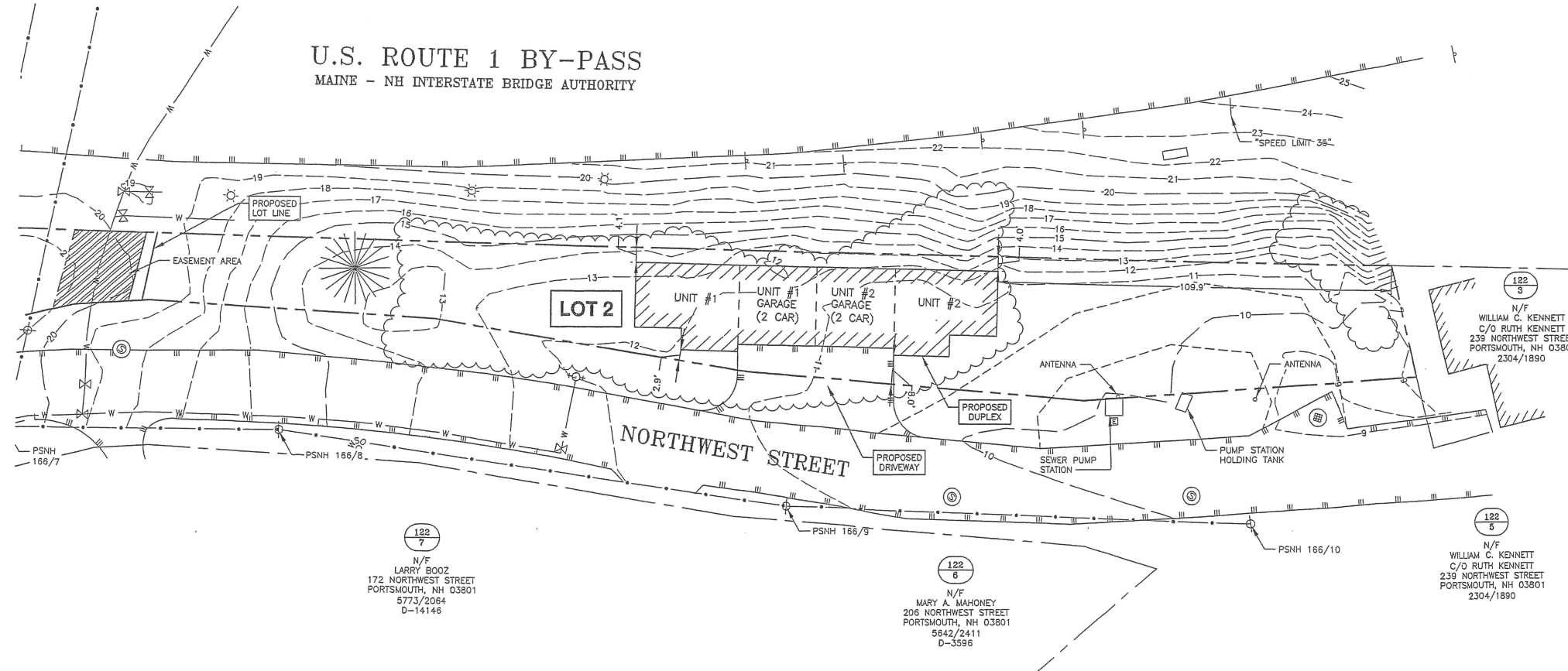
R. Timothy Phoenix, Esq.



LOCATION MAP SCALE: 1" = 500'

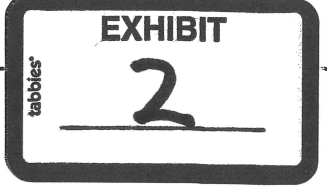
LEGEND:

- N/F NOW OR FORMERLY
- RP RECORD OF PROBATE
- RCRD ROCKINGHAM COUNTY REGISTER OF DEEDS MAP 11 / LOT 21
- BOUNDARY
- SETBACK
- RAILROAD SPIKE FOUND
- IRON ROD/PIPE FOUND
- DRILL HOLE FOUND
- STONE/CONCRETE BOUND FOUND
- RAILROAD SPIKE SET
- IRON ROD SET
- DRILL HOLE SET
- GRANITE BOUND SET
- SEWER LINE
- GAS LINE
- STORM DRAIN
- WATER LINE
- UNDERGROUND ELECTRIC
- OVERHEAD ELECTRIC/WIRES
- CONTOUR
- SPOT ELEVATION
- EDGE OF PAVEMENT (EP)
- WOODS / TREE LINE
- UTILITY POLE (w/ GUY)
- GAS SHUT OFF
- WATER SHUT OFF/CURB STOP
- GATE VALVE
- HYDRANT
- METER (GAS, WATER, ELECTRIC)
- CATCH BASIN
- TELEPHONE MANHOLE
- SEWER MANHOLE
- DRAIN MANHOLE
- AIR CONDITIONER UNIT
- SIGNS
- ASBESTOS CEMENT PIPE
- CAST IRON PIPE
- CORRUGATED METAL PIPE
- CONCRETE MASONRY UNIT
- COPPER PIPE
- DUCTILE IRON PIPE
- PVC POLYVINYL CHLORIDE PIPE
- RCP REINFORCED CONCRETE PIPE
- VC VITRIFIED CLAY PIPE
- EL. ELEVATION
- EP EDGE OF PAVEMENT
- F.F. FINISHED FLOOR
- INV. INVERT
- TBM TEMPORARY BENCHMARK
- TYP. TYPICAL
- VGC/SGC VERTICAL/SLOPED GRANITE CURB
- CCB CAPE COD BERM
- LSA LANDSCAPED AREA

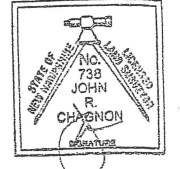


**AMBIT ENGINEERING, INC.**  
Civil Engineers & Land Surveyors  
200 Griffin Road - Unit 3  
Portsmouth, N.H. 03801-7114  
Tel (603) 430-9282  
Fax (603) 436-2315

- NOTES:**
- PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 122 AS LOT 2.
  - OWNERS OF RECORD:  
GREGORY J. MORNEAULT  
AMANDA B. MORNEAULT  
137 NORTHWEST STREET  
PORTSMOUTH, N.H. 03801
  - APPLICANT:  
DARRELL MOREAU  
18 JACKSON HILL ROAD  
PORTSMOUTH, NH 03801
  - PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259E. EFFECTIVE DATE MAY 17, 2005.
  - EXISTING LOT AREA:  
18,134 S.F.  
0.4163 ACRES
  - PROPOSED LOT AREAS:  
LOT #1 7,500 S.F. 0.1722 ACRES  
LOT #2 10,634 S.F. 0.2441 ACRES
  - THE PURPOSE OF THIS PLAN IS TO SHOW THE SUBDIVISION OF ONE LOT INTO TWO LOTS.
  - ZONING DISTRICTS:  
GENERAL RESIDENCE A (GRA) AND HISTORIC DISTRICT.
  - DIMENSIONAL REQUIREMENTS:  
LOT AREA: 7,500 S.F.  
FRONTAGE: 100'  
DEPTH: 70'  
SETBACKS: FRONT: 15', SIDE: 10', REAR: 20'.  
MAXIMUM STRUCTURE HEIGHT: 35'  
MAXIMUM BUILDING COVERAGE: 25%  
MINIMUM OPEN SPACE: 30%
  - PROPOSED LOT 2 DIMENSIONAL CALCULATIONS:  
LOT AREA: 10,634 S.F.  
FRONTAGE: 357'  
DEPTH: 19' (MINIMUM)  
34' (MIDPOINT)  
SETBACKS:  
FRONT: 2.9'  
SIDE: 109.9'  
REAR: 4.0'  
STRUCTURE HEIGHT: <35'  
BUILDING COVERAGE: 2,204 S.F. (21%)  
OPEN SPACE: 7,430 S.F. (70%)

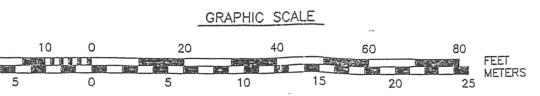


NO.	DESCRIPTION	DATE
3	ZONING INFO; BUILDING	10/22/20
2	REVISED FOOTPRINT	10/20/20
1	ADDED ZONING REQUIREMENTS	10/13/20
0	ISSUED FOR COMMENT	9/30/20



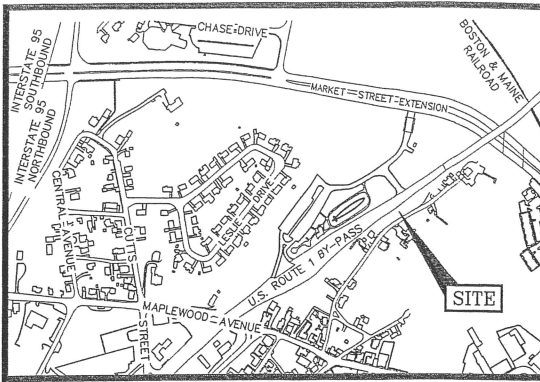
APPROVED BY THE PORTSMOUTH ZONING BOARD

CHAIRMAN \_\_\_\_\_ DATE \_\_\_\_\_



SCALE 1" = 20' SEPTEMBER 2020

VARIANCE PLAN **C1**



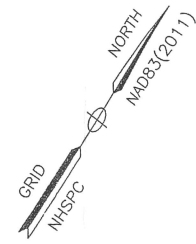
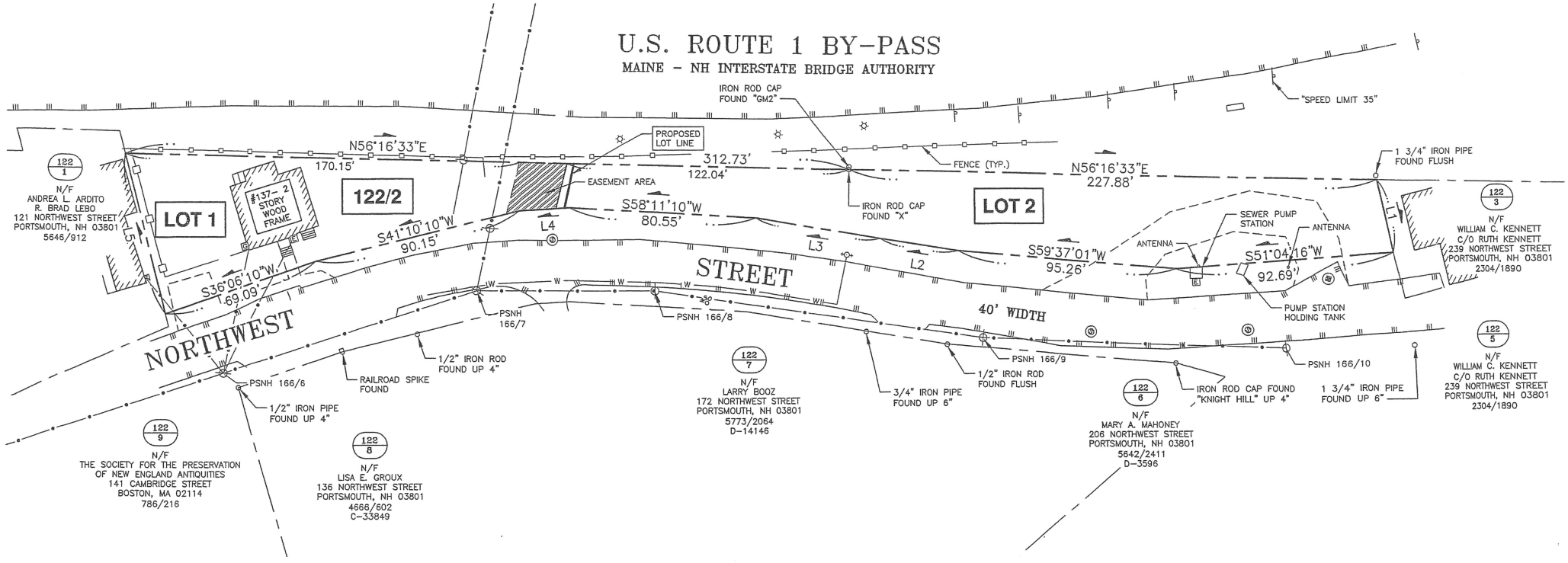
LOCATION MAP SCALE: 1" = 500'

**PLAN REFERENCES:**

- 1) MAINE NEW HAMPSHIRE INTERSTATE BRIDGE AUTHORITY PISCATAQUA RIVER BRIDGE KITTERY, MAINE - PORTSMOUTH, NEW HAMPSHIRE RIGHT OF WAY MAP - N.H. APPROACH, SCALE: 1" = 50', PREPARED BY HARRINGTON AND CORTELYOU CONSULTING ENGINEERS KANSAS CITY, MO., DATED DECEMBER 1938, SHEET 1 OF 11, NOT RECORDED
- 2) MAINE - NEW HAMPSHIRE INTERSTATE BRIDGE AUTHORITY PISCATAQUA RIVER BRIDGE KITTERY, MAINE - PORTSMOUTH, NEW HAMPSHIRE RIGHT OF WAY MAPS N.H. APPROACH, RE-SURVEYED BY: MOULTON ENGINEERING CO. KITTERY, MAINE 1954, SCALE: 1" = 50', SHEET 1 OF 5, NOT RECORDED
- 3) US ROUTE 1 BYPASS & SUBMARINE WAY RIGHT OF WAY LAYOUT PLANS CITY OF PORTSMOUTH JULY 17, 2019, OWNER OF RECORD: STATE OF NEW HAMPSHIRE, STATE PROJECT NO. 13455, SCALE: 1" = 50', PREPARED BY GM2 ASSOCIATES, SHEETS 3 & 4 OF 6, RCRD D-41603
- 4) PLAN OF LAND PORTSMOUTH, N.H. FOR ESTATE OF GRACE L. HOYT, SCALE: 1" = 20' DATED DEC. 1972 REV. MAR. 1973, PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS, RCRD D-3596
- 5) CONDOMINIUM SITE PLAN FOR GANTRY REALTY TRUST 172 NORTHWEST STREET COUNTY OF ROCKINGHAM PORTSMOUTH, N.H. SCALE: 1" = 20', DATED SEPT. 11, 1985 REV OCT. 1, 1985, PREPARED BY RICHARD P. MILLETTE AND ASSOCIATES, SHEET 1 OF 3, RCRD D-14146
- 6) STANDARD PROPERTY SURVEY AND CONDOMINIUM SITE PLAN OF LAND OF LOT 4 TAX MAP U-22 250 NORTHWEST STREET PORTSMOUTH, NEW HAMPSHIRE COUNTY OF ROCKINGHAM, SCALE: 1" = 10', DATED 9-9-96, PREPARED BY CIVILWORKS DOVER, N.H., RCRD D-24991
- 7) PLAN OF LAND IN THE NAME OF THE SUSAN M. REED REVOCABLE TRUST OF TAX MAP 122 / LOT 8 LOCATED AT #136 NORTHWEST STREET COUNTY OF ROCKINGHAM PORTSMOUTH, NH, SCALE: 1" = 20' DATED MAY 23, 2006, PREPARED BY DAVID W. VINCENT, LLS RCRD C-33849

**LEGEND:**

- N/F NOW OR FORMERLY
- RP RECORD OF PROBATE
- RCRD ROCKINGHAM COUNTY REGISTRY OF DEEDS
- RR SPK RAILROAD SPIKE
- MAP 11/LOT 21
- IRON ROD FOUND
- IRON PIPE FOUND
- IRON ROD SET
- DRILL HOLE FOUND
- DRILL HOLE SET
- NHDB FOUND
- TOWN BOUND
- BOUND WITH DRILL HOLE
- STONE BOUND WITH DRILL HOLE



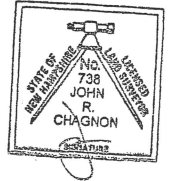
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- NOTES:**
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AMANDA B. MORNEAULT  
137 NORTHWEST STREET  
PORTSMOUTH, N.H. 03801
  - APPLICANT:  
DARRELL MOREAU  
18 JACKSON HILL ROAD  
PORTSMOUTH, NH 03801
  - 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259E. EFFECTIVE DATE MAY 17, 2005.
  - 4) EXISTING LOT AREA:  
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  - 5) THE PURPOSE OF THIS PLAN IS TO SHOW THE SUBDIVISION OF ONE LOT INTO TWO LOTS.
  - 6) ZONING DISTRICTS:  
GENERAL RESIDENCE A (GRA) AND HISTORIC DISTRICT.
  - 7) DIMENSIONAL REQUIREMENTS:  
LOT AREA: 7,500 S.F.  
FRONTAGE: 100'  
DEPTH: 70'  
SETBACKS: FRONT: 15', SIDE: 10', REAR: 20'.  
MAXIMUM STRUCTURE HEIGHT: 35'  
MAXIMUM BUILDING COVERAGE: 25%  
MINIMUM OPEN SPACE: 30%
  - 8) PROPOSED LOT 1 DIMENSIONAL CALCULATIONS:  
LOT AREA: 7,500 S.F.  
FRONTAGE: 179'  
DEPTH: 19' (MINIMUM)  
39' (MIDPOINT)  
SETBACKS:  
FRONT: 13.8'  
SIDE: 40.5'  
REAR: 1.8'  
BUILDING COVERAGE: 1,029 S.F. - 14%  
OPEN SPACE: 6,246 S.F. - 83%

I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000.

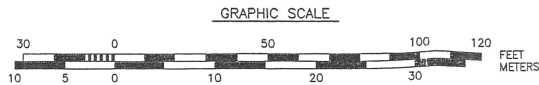
*John R. Chagnon*  
JOHN R. CHAGNON, LLS 738

10.22.20  
DATE



APPROVED BY THE PORTSMOUTH PLANNING BOARD

CHAIRMAN DATE



**LENGTH TABLE**

LINE	BEARING	DISTANCE
L1	S 47°28'51" E	31.75'
L2	S 64°01'21" W	34.26'
L3	S 64°19'54" W	54.79'
L4	S 51°20'10" W	21.35'
L5	N 49°16'35" W	70.45'

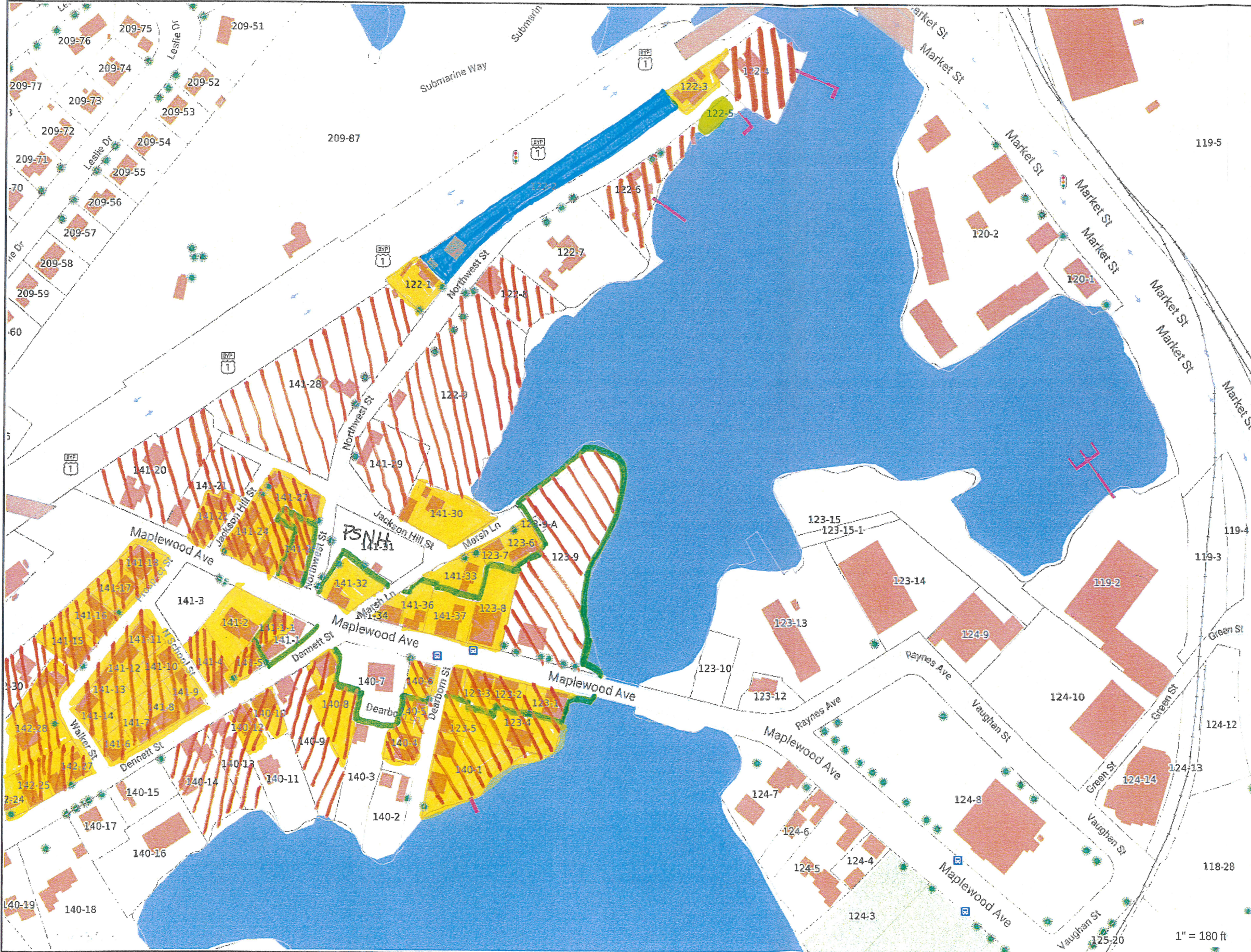
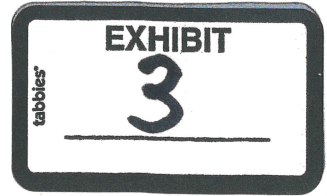
**EASEMENT LENGTH TABLE**


LINE	BEARING	DISTANCE
E1	N 56°16'33" E	20.54'
E2	S 20°36'02" E	19.73'
E3	S 51°20'10" W	15.48'
E4	S 41°10'10" W	5.99'
E5	N 20°36'02" W	22.71'

NO.	DESCRIPTION	DATE
2	ZONING INFO; SETBACKS	10/22/20
1	ADDED ZONING REQUIREMENTS	10/13/20
0	ISSUED FOR COMMENT	9/30/20

**SUBDIVISION PLAN**  
**TAX MAP 122 - LOT 2**  
OWNERS:  
**GREGORY J. MORNEAULT & AMANDA B. MORNEAULT**  
137 NORTHWEST STREET  
CITY OF PORTSMOUTH  
COUNTY OF ROCKINGHAM  
STATE OF NEW HAMPSHIRE

137 Northwest Street in Context










**MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT**

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

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

- Subject Lot 
- Less than 7,500 s.f. Lot Area/dwelling 
- Front or rear setback nonconformity 
- Both nonconformities 
- CD4L1/L2 

1" = 180 ft

**APPLICATION OF SPECIAL EXCEPTION**  
**500 MARKET STREET (NOBLES ISLAND), UNITS 2A, 2B and 2C**  
**Map 120, Lot 2**

**APPLICANT'S NARRATIVE**

Noble Properties, LLC seeks a special exception to convert units 2A and 2B which consist of approximately 1,442 square feet of general office space at the above location into Medical Office space. Currently, the space is being utilized as Professional Office. Unit 2 C will continue to function as a Professional Office. The applicant proposes to lease space to Tailored Pediatrics which will provide outpatient services. The affected units are all within a stand-alone building within the Nobles Island condominium development on Market Street. The building will be owner occupied.

The property lies in the CD4-L1 zone, the purpose of which is "to promote the development of walkable, mixed-use, human-scaled places by providing standards for building form and placement and related elements of development." §10.410. The proposed medical office use is permitted only by special exception. §10.440.6.20

The applicant believes the proposal easily meets the criteria for the necessary special exception. Those criteria are set forth in the ordinance at §10.232.20.

First, the use proposed here, "medical offices and clinics (outpatient)," is permitted within this district by special exception, see §10.440 Table of Uses, no. 6.20. §10.232.10.

Second, the proposed use will pose no hazard to the public or adjacent properties on account of potential fire, explosion or release of toxic materials. §10.232.22. No explosives, toxic materials or unusual accelerants will be stored on site. Typical medical waste (sharps, etc.) will be properly and legally disposed of by a contracted third-party vendor. As typical, bill of lading will be provided and records will be kept.

Third, there will be no detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials. §10.232.23. The use is entirely within and complementary to the Nobles Island mixed-use development. The building already exists and no new construction, with the minor exception of an ADA compliant wheelchair ramp, is contemplated and which has already received design approval from the HDC.

Fourth, there will be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. §10.232.23. The existing use is comprised of Professional Office. The applicant has provided parking information to confirm there is sufficient shared parking for their proposed use.

Fifth, there will be no excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools. §10.232.24. None of these services will be implicated by this proposal. Notably, there is already a precedent set with at least two (2) other medical uses within the Noble Island Condominium Association, located in buildings 1 and 7, respectively.

Finally, the project will result in no significant increase of stormwater runoff onto adjacent property or streets. §10.232.25. There will be no change to the existing building footprint, with the exception of the proposed addition of an ADA compliant wheelchair ramp, which has currently been submitted to the HDC for the appropriate approval.

For the foregoing reasons, the applicant respectfully requests the Board grant the special exception as requested and advertised.

Respectfully submitted,

Dated: December 18, 2020

By:

  
\_\_\_\_\_  
John K. Bosen, Esquire

November 4, 2020

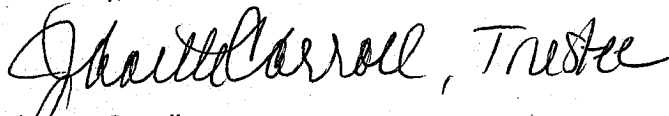
Portsmouth Planning Department  
Portsmouth City Hall  
1 Junkins Ave  
Portsmouth, NH 03801

Re: Permit and Approval Efforts at 500 Market Street, Units 2A, 2B & 2C, Portsmouth, NH 03801

Dear Whom it May Concern:

This letter serves as written permission from the current owners, PMC Realty Trust, for the potential buyers, Noble Properties LLC, to seek approvals from the City of Portsmouth City for a special exemption permit, approvals from the City of Portsmouth's Historic District Commission for the proposed alterations to the property, and any other permits and approvals needed for their use of the property located at 500 Market Street, Units 2A, 2B & 2C, Portsmouth, NH 03801.

Sincerely,

A handwritten signature in black ink that reads "Janette Carroll, Trustee". The signature is written in a cursive, flowing style.

Janette Carroll  
PMC Realty Trust



Revisions: #	Description	Date

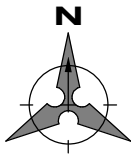
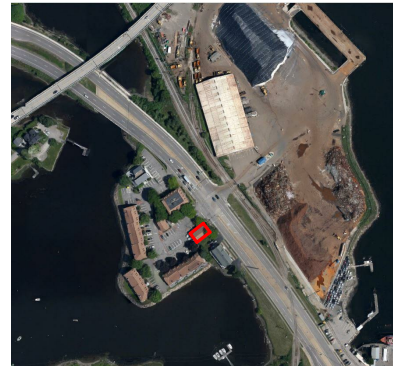
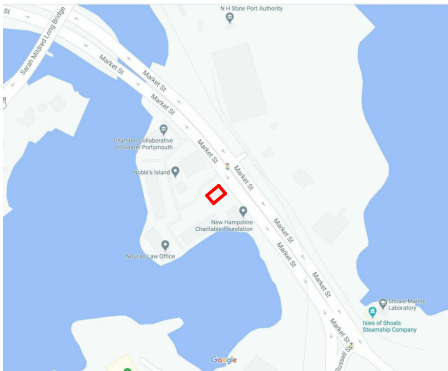
SCALE:	CIP
DRAWN BY:	ALW
CHECKED BY:	2020076
PROJECT NO.:	11/20/20
DATE:	11/20/20

TITLE: COVER SHEET	CS
-----------------------	----

PERSPECTIVE VIEW:



AERIAL SITE PLANS:



GENERAL PROJECT DESCRIPTION:

THIS PROJECT CONSISTS OF A MODIFICATION TO THE EXISTING ENTRY TO ONE BUILDING LOCATED AT 500 MARKET STREET, PORTSMOUTH, NH IN NOBLES ISLAND TO MAKE ENTRY ACCESSIBLE.

THE MODIFICATIONS INCLUDE:

- ◇ REMOVAL OF EXISTING STAIRS ELEVATION, & PLAN EAST
- ◇ THE ADDITION OF A RAILING, BRICK SHELF, AND PILLAR TO MATCH EXISTING
- ◇ THE ADDITION OF AN ACCESSIBLE RAMP IN BRICK TO MATCH EXISTING (NO ALTERATION TO EXISTING CURBING).
- ◇ THE ADDITION OF NEW STAIRS TO MAINTAIN 2ND ENTRY OPTION PLAN EAST.
- ◇ REPLACEMENT/ SUPPLEMENTING OF EXISTING CONDENSERS, TO BE INSTALLED AND SCREENED IN KIND.



EXISTING/CURRENT SOUTH ELEVATION FROM ACROSS PARKING LOT



VIEW FROM WEST SIDE OF PROPOSED RAMP TO EAST SIDE OF EXISTING/CURRENT BUILDINGS IN COMPLEX



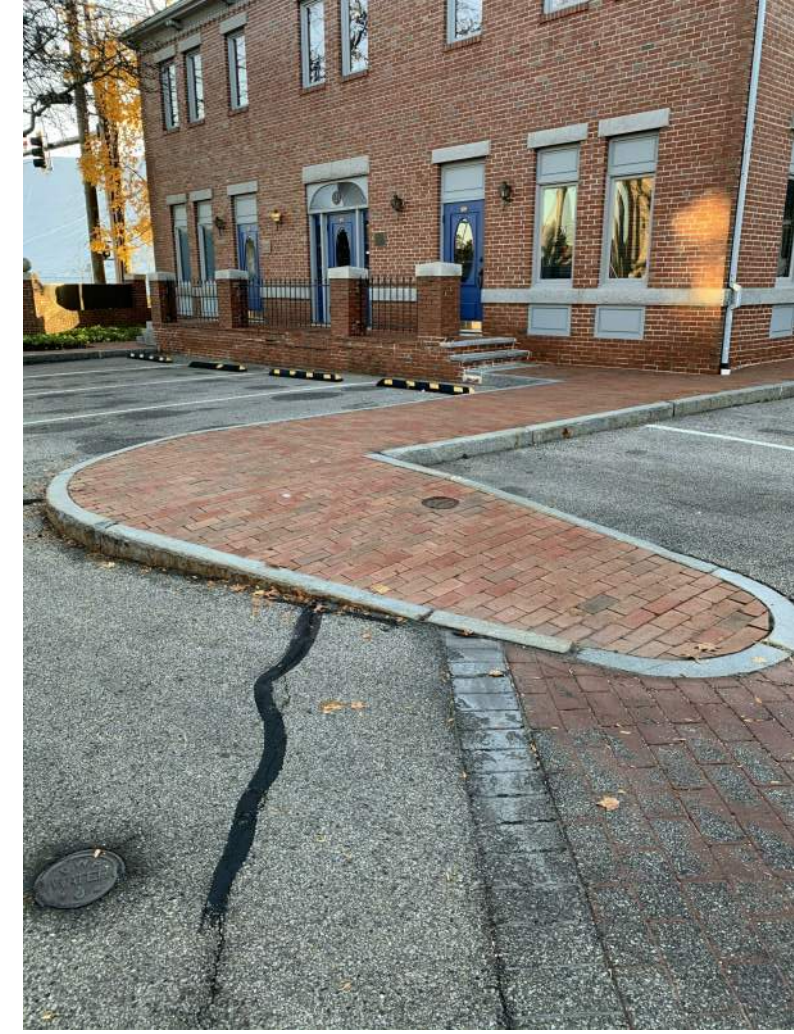
EXISTING/CURRENT SOUTH ELEVATION



VIEW TOWARDS MARKET STREET



VIEW FROM CURRENT EAST STAIR ENTRY TO EXISTING/CURRENT BUILDING



VIEW FROM PROPOSED RAMP ENTRY TO EXISTING/CURRENT BUILDING

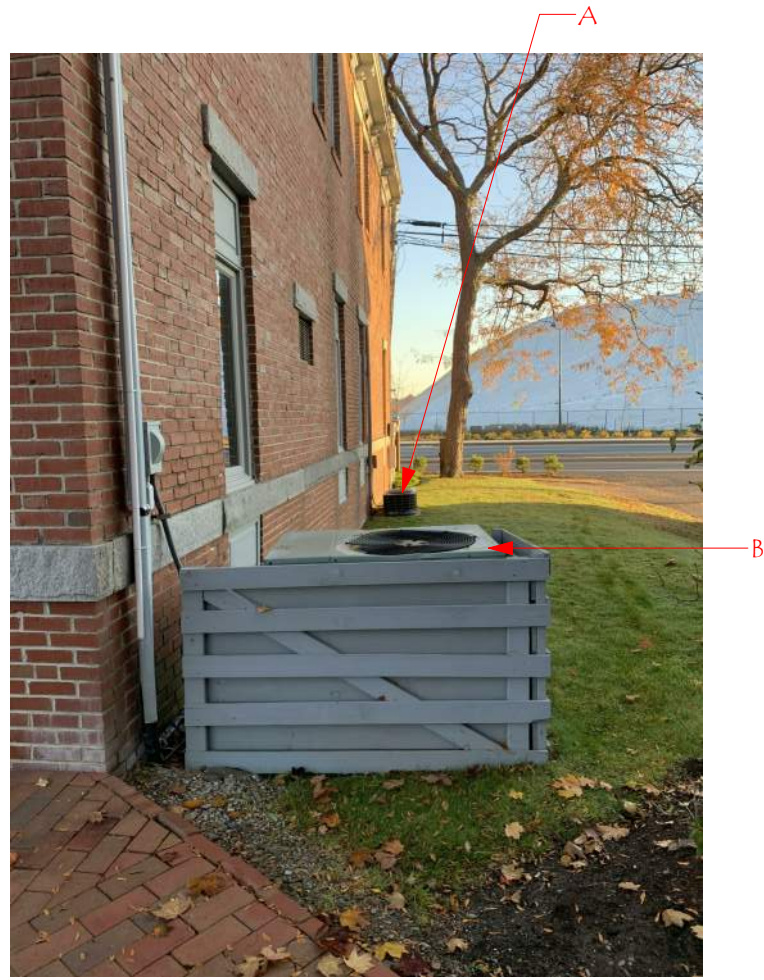
**NOBLE PROPERTIES, LLC.**

500 MARKET ST.  
 PORTSMOUTH, NH

Revisions: #	Description	Date

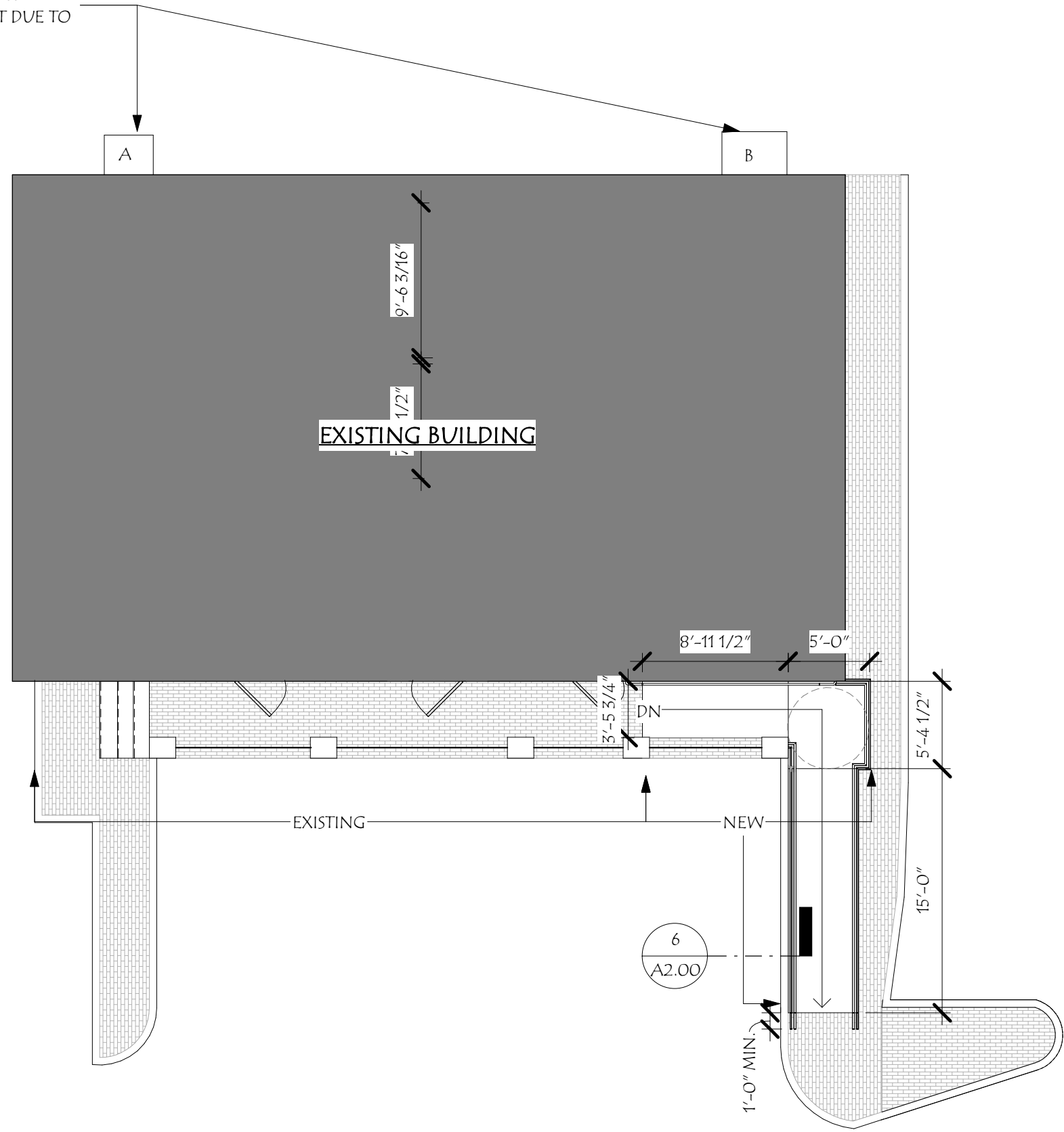
SCALE:	CIP
DRAWN BY:	ALW
CHECKED BY:	2020076
PROJECT NO.:	11/20/20
DATE:	11/20/20

TITLE: EXISTING CONTEXT	1
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EXISTING/CURRENT CONDENSER LOCATIONS TO BE POSSIBLY REPLACED, AND SCREENED IN KIND.

EXISTING CONDENSERS REQUIRING POSSIBLE REPLACEMENT DUE TO AGE



① OVERALL PLAN - 1ST FLOOR W/ RAMP HDC  
1/8" = 1'-0"

Revisions: #	Description	Date

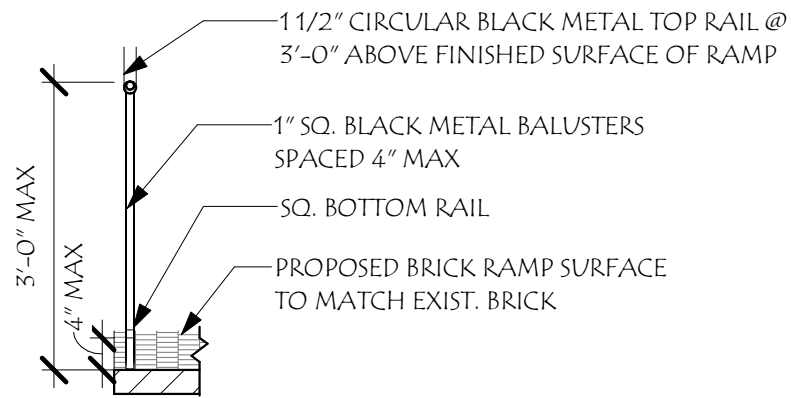
SCALE:	1/8" = 1'-0"
DRAWN BY:	CJP
CHECKED BY:	ALW
PROJECT NO.:	2020076
DATE:	11/20/20

TITLE:	PLAN
<b>A1.00</b>	

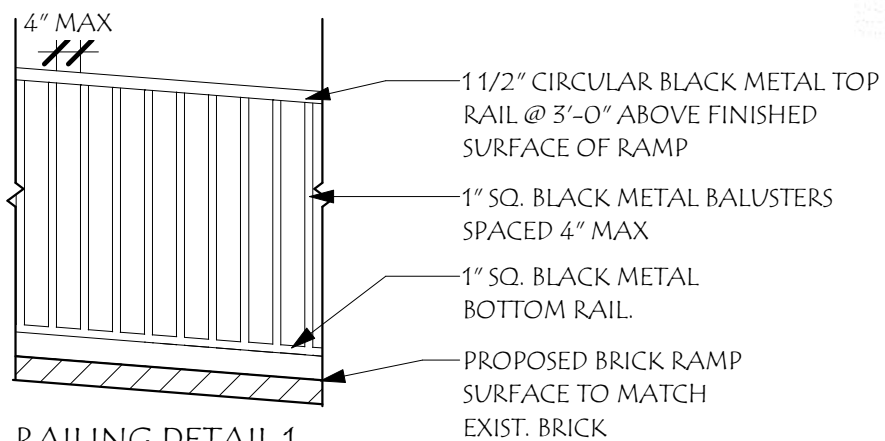
Revisions #	Description	Date

SCALE:	AS INDICATED
DRAWN BY:	OP
CHECKED BY:	ALW
PROJECT NO.:	2020076
DATE:	11/20/20

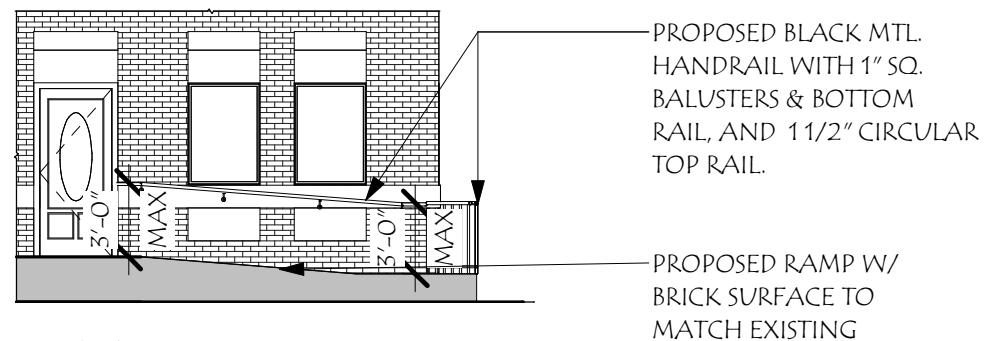
TITLE:	BUILDING ELEV., SECTIONS, & DETAILS
	A2.00



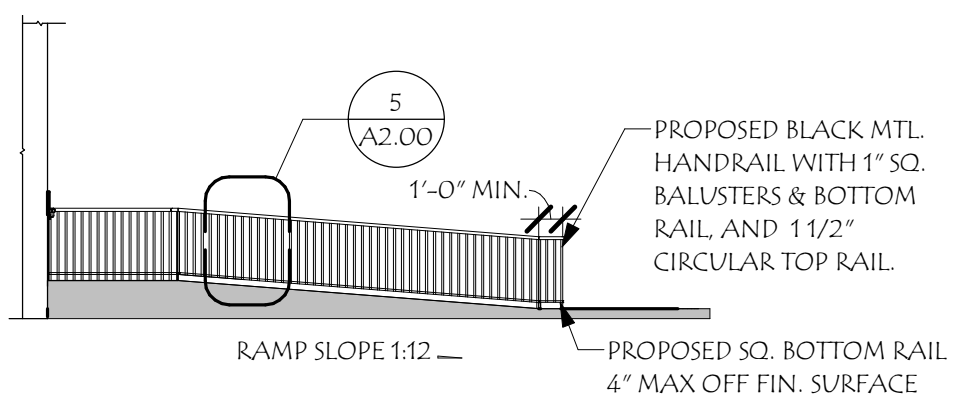
6 RAILING DETAIL 2  
 1/2" = 1'-0"



5 RAILING DETAIL 1  
 1/2" = 1'-0"



4 RAMP SECTION 2  
 1/8" = 1'-0"

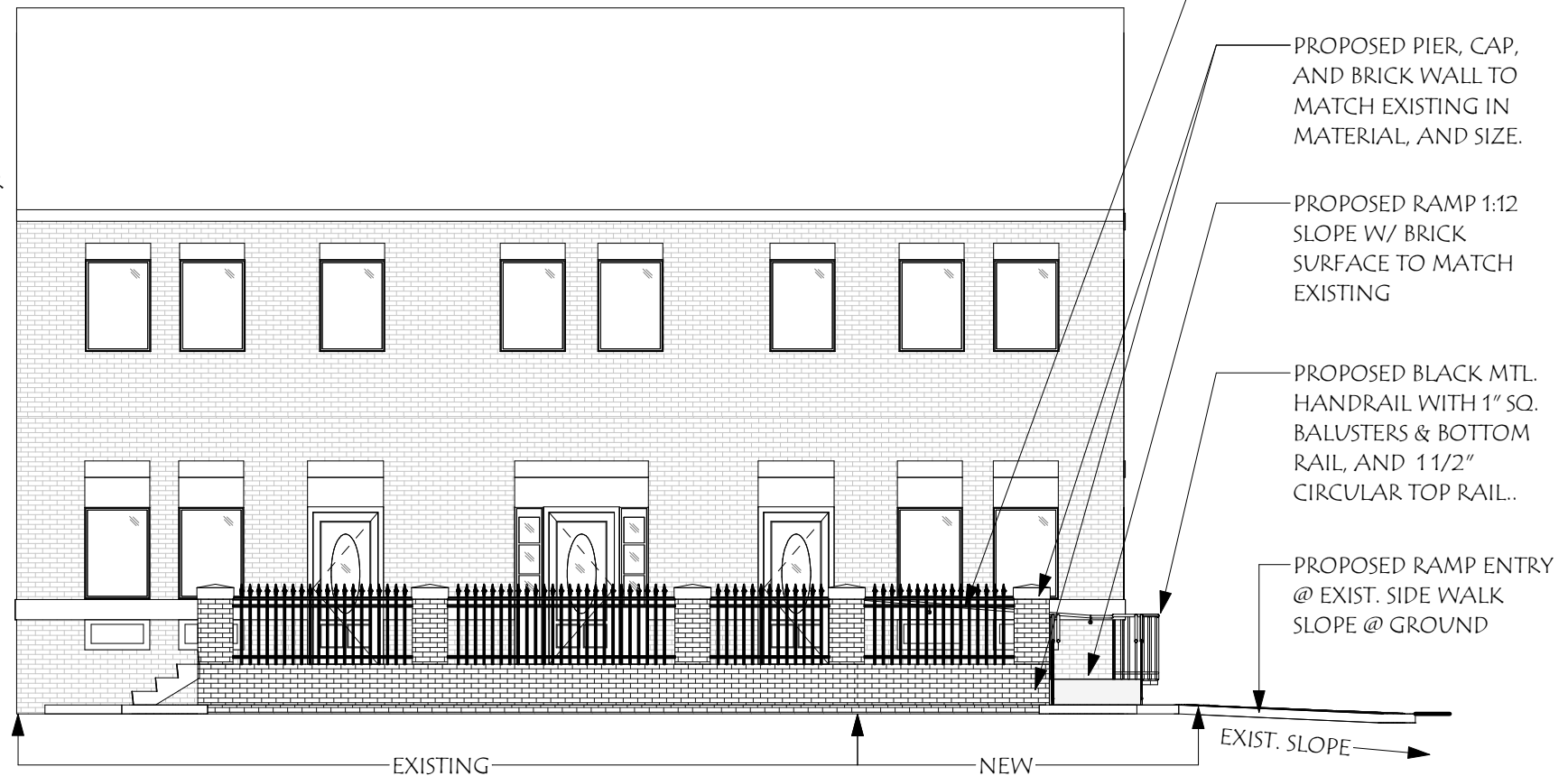


3 RAMP SECTION 1  
 1/8" = 1'-0"



2 FRONT PERSPECTIVE  
 N.T.S

NOTE: ALL PROPOSED NEW BRICK TO MATCH EXISTING

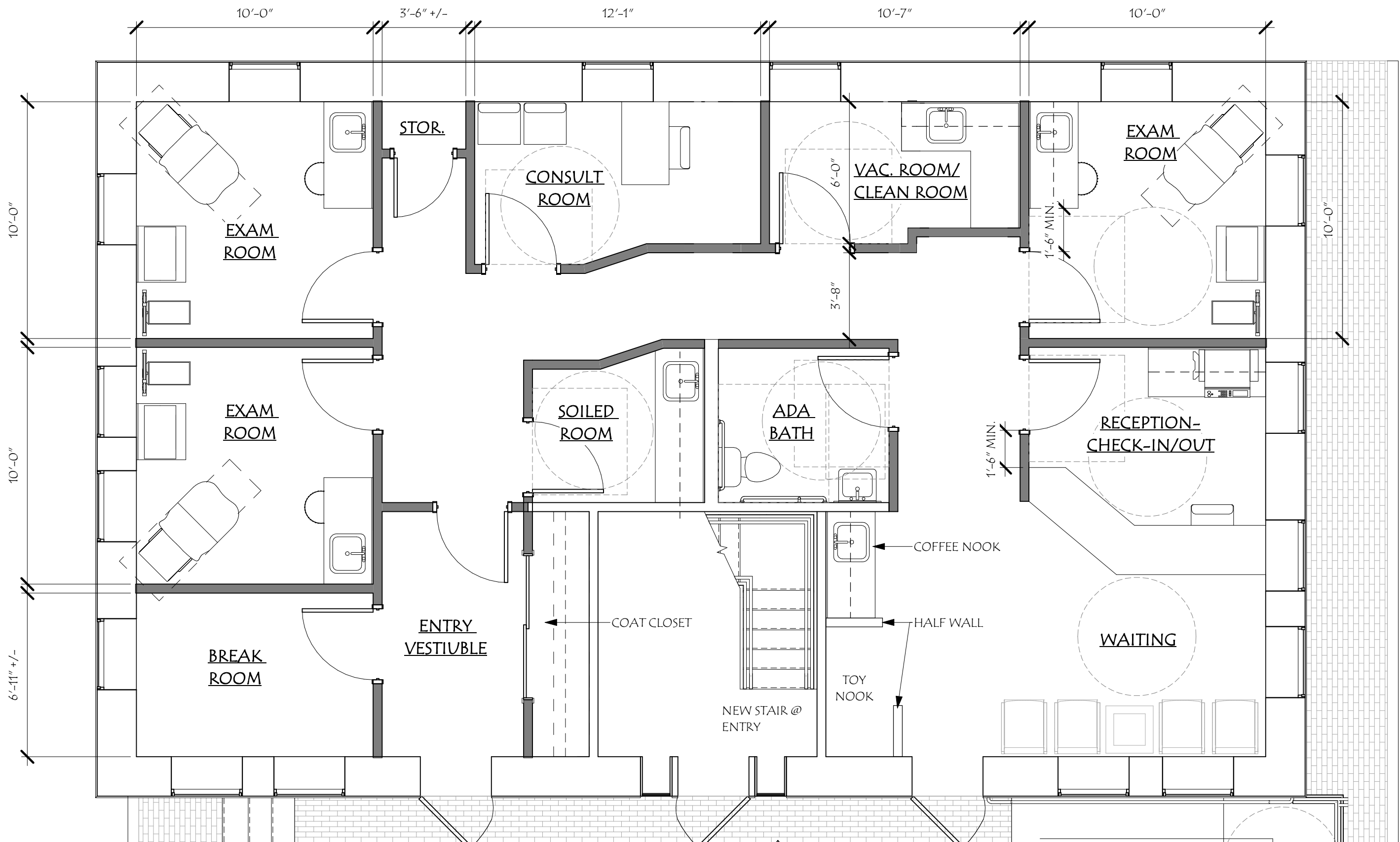


1 South  
 1/8" = 1'-0"

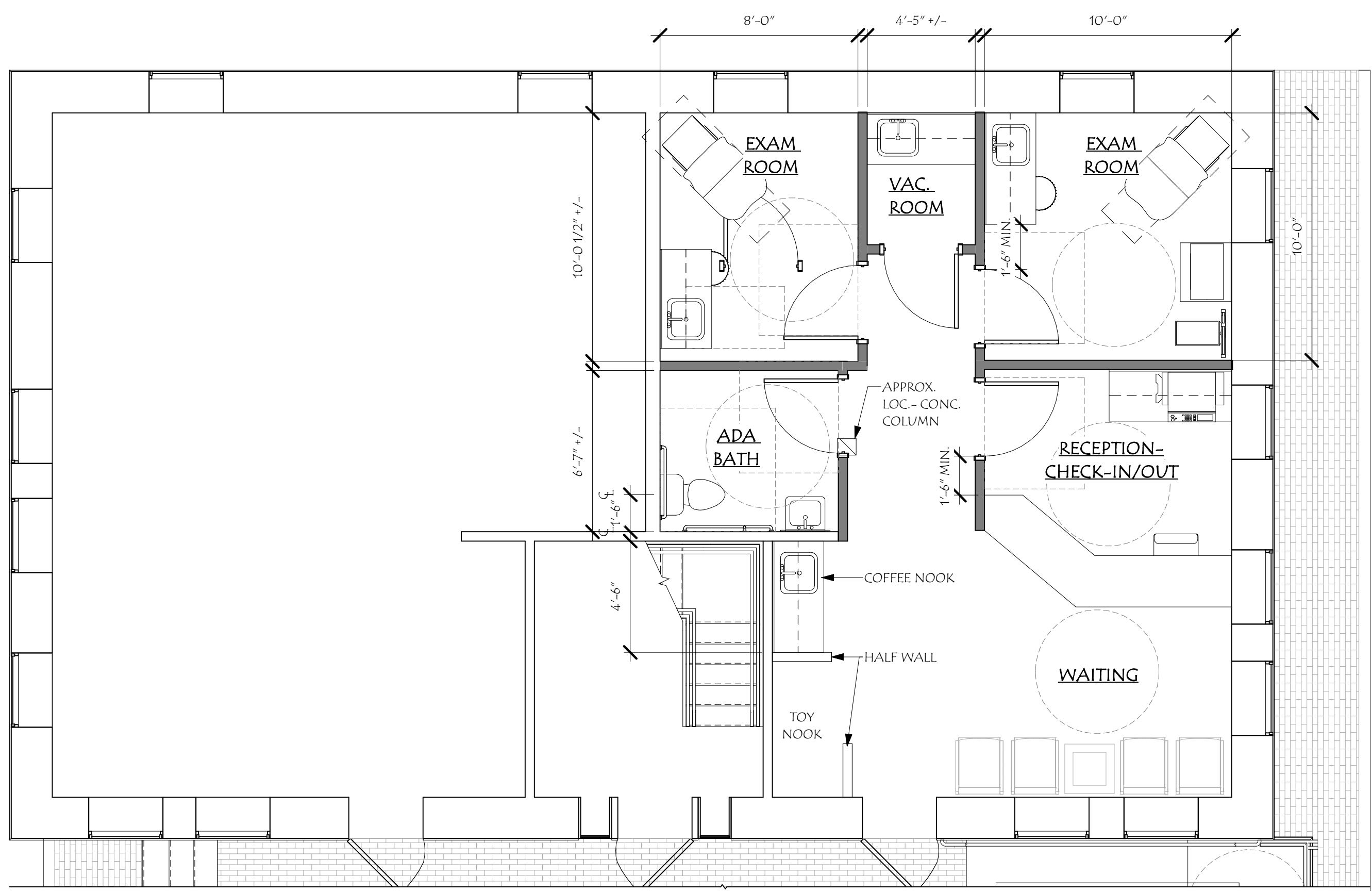
**NOT FOR CONSTRUCTION**

**NOBLE PROPERTIES, LLC.**

500 MARKET ST.  
 PORTSMOUTH, NH



2 OVERALL PLAN- 1ST FLOOR- PHASE 2  
 1/4" = 1'-0"



1 OVERALL PLAN- 1ST FLOOR- PHASE 1  
 1/4" = 1'-0"

Revisions:

#	Description	Date

Scale:	1/4" = 1'-0"
Drawn By:	CJP
Checked By:	ALW
Project No.:	2020076
Date:	12/1/20

Title: FIRST FLOOR PLAN

**A1.01**

Noble Island  
500 MARKET STREET  
Parking Calculation

ASSUMPTIONS

USE

Calculation PER GSF

Professional Office	1/350
Medical Offices (Outpatient)	1/250
Residential (Less than 500SF)	1
Residential (500-750SF)	1
Residential (750SF+)	1

MIXED USE CALCULATION TABLE Per 10.1112.60 Shared Parking

Land Use	Weekday	Weekday	Weekend	Weekend	Nighttime
	Daytime (8AM-5PM)	Evening (6PM-Midnight)	Daytime (8AM-5PM)	Evening (6PM-Midnight)	Midnight-6AM
Residential	60.00%	100.00%	80.00%	100.00%	100.00%
Office / Industrial	100.00%	20.00%	10.00%	5.00%	5.00%
Retail / Service	60.00%	90.00%	100.00%	70.00%	5.00%
Hotel / Motel	70.00%	100.00%	75.00%	100.00%	100.00%
Restaurant	70.00%	100.00%	80.00%	100.00%	10.00%
Entertainment	40.00%	100.00%	80.00%	100.00%	10.00%
Conference / Convention	100.00%	100.00%	100.00%	100.00%	5.00%
Place of Worship	10.00%	5.00%	100.00%	50.00%	5.00%
Other Institutional	100.00%	20.00%	10.00%	10.00%	5.00%

Office	93	19	9	5	5
Medical	6	1	1	1	0
Residential	15	25	20	25	25
Other	0	0	0	0	0

TOTALS BASED ON SHARED

APPROACH	113	44	30	30	30
----------	-----	----	----	----	----

TOTAL EXISTING	115	115	115	115	115
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DELTA	2	71	85	85	85
-------	---	----	----	----	----

\*\* Green Means Extra Spaces Provided



Chamber Collaborative  
of Greater Portsmouth

A

B

C

D

E

F

M

N

G

O

P

H

I

L

J

K



**See Page 1 Photo Map  
Location "A"**

**LOCATION A**



**See Page 1 Photo Map  
Location "B"**

**LOCATION B**





LOCATION C

See Page 1 Photo Map  
Location "C"



LOCATION D

See Page 1 Photo Map  
Location "D"



**See Page 1 Photo Map  
Location "E"**

**LOCATION E**



**See Page 1 Photo Map  
Location "F"**

**LOCATION F**



LOCATION G

See Page 1 Photo Map  
Location "G"



LOCATION H

See Page 1 Photo Map  
Location "H"



LOCATION I

**See Page 1 Photo Map  
Location "I"**



**See Page 1 Photo Map  
Alternate Photo Location "O"**

**See Page 1 Photo Map  
Location "J"**



LOCATION J



LOCATION K

See Page 1 Photo Map  
Location "K"



LOCATION L

See Page 1 Photo Map  
Location "L"



**LOCATION M**

**See Page 1 Photo Map  
Location "M"**



**LOCATION N**

**See Page 1 Photo Map  
Location "N"**

**See Page 1 Photo Map  
Location "O"**



**LOCATION O**



**See Page 1 Photo Map  
Location "P"**



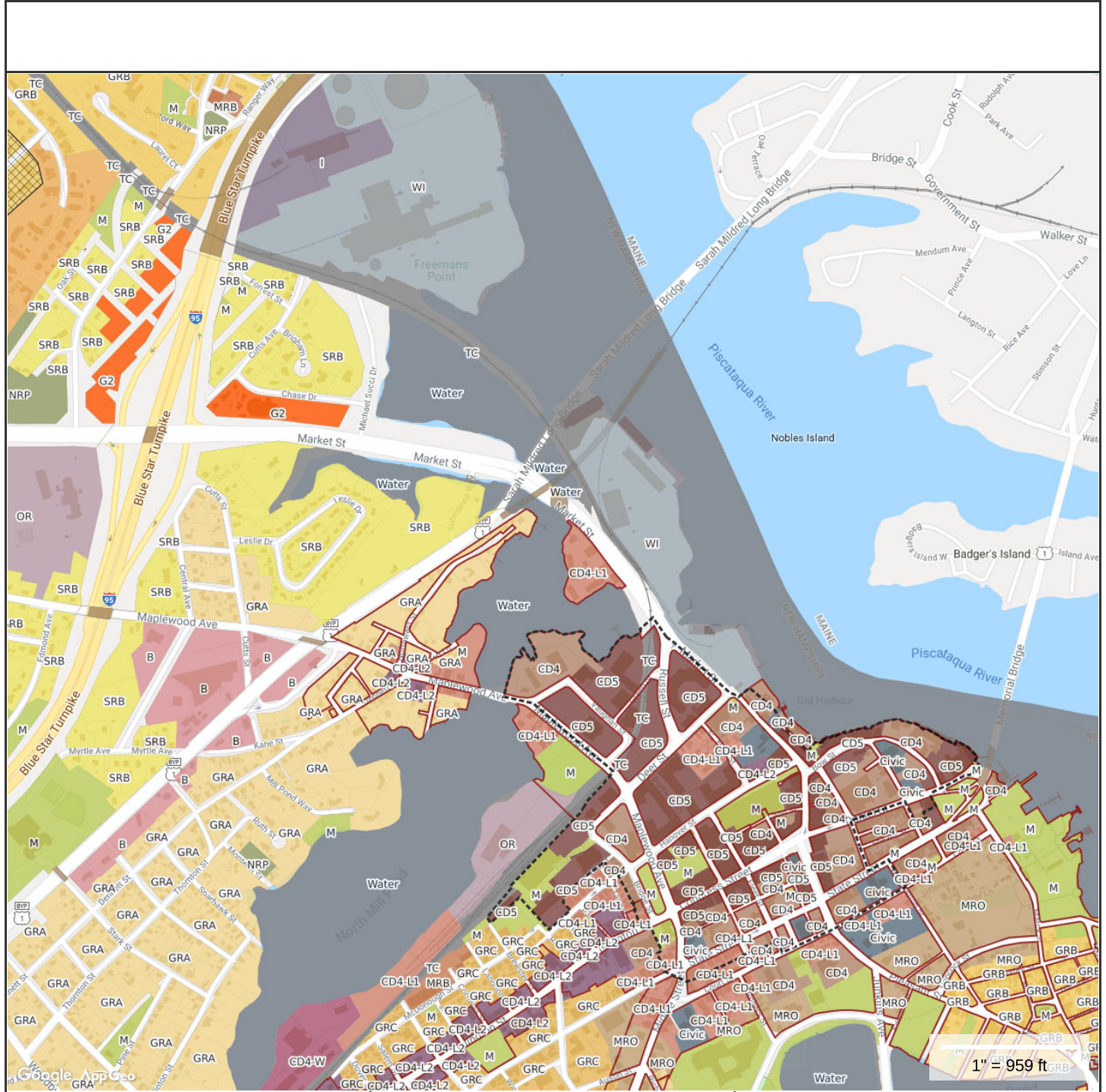
**LOCATION P**



**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



**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

# Map Theme Legends

## Zoning

### Residential Districts

	R	Rural
	SRA	Single Residence A
	SRB	Single Residence B
	GRA	General Residence A
	GRB	General Residence B
	GRC	General Residence C
	GA/MH	Garden Apartment/Mobile Home Park



### Mixed Residential Districts

	MRO	Mixed Residential Office
	MRB	Mixed Residential Business
	G1	Gateway Corridor
	G2	Gateway Center





### Business Districts

	GB	General Business
	B	Business
	WB	Waterfront Business



### Industrial Districts

	OR	Office Research
	I	Industrial
	WI	Waterfront Industrial






### Airport Districts

	AIR	Airport
	AI	Airport Industrial
	PI	Pease Industrial
	ABC	Airport Business Commercial


### Conservation Districts

	M	Municipal
	NRP	Natural Resource Protection


### Character Districts

	CD5	Character District 5
	CD4	Character District 4
	CD4W	Character District 4-B
	CD4-L1	Character District 4-L1
	CD4-L2	Character District 4-L2




### Civic District

	Civic District
---	----------------

### Municipal District

	Municipal District
---	--------------------

### Overlay Districts

	OLOD	Osprey Landing Overlay District
	Downtown Overlay District	
	Historic District	

City of Portsmouth



cpmanagement

Property Management  
Trusted. Seasoned. Leaders.

November 24, 2020

**Subject: Dean Mello Building 2 ramp and condenser approval**

Dear Mr. Mello,

Thank you for submitting the enclosed revised design plans dated 11/20/20 from Market Square Architects following Board of Director feedback at the Board Meeting on Friday November 20, 2020. The Nobles Island Condo Association Board of Directors have reviewed these revised plans and approve the ramp installation as designed.

The Board of Directors also approves of the replacement of the two condensers shown in the Market Square design plans. The Board requests replacement of the existing corral and the installation of a corral around the condenser that does not already have one. The corral needs to be constructed in like-kind and painted to match all other corrals around the property.

If you have any questions, please do not hesitate to contact me at (603) 778-6300 or [michaels@cpmanagement.com](mailto:michaels@cpmanagement.com).

On Behalf of the Nobles Island Board of Directors,

Michael Street, AMS, CMCA  
Property Manager  
CPManagement, Inc.

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

Property Address: **71 Brackett Rd.** (Map 0206 Lot 0014; SRB)

Owners: Brett & Stefanie Berger

Online Application Submitted Dec 2, 2020 at 4:00pm

To the Chairman of the Board of Adjustment:

Please find this letter of intent in support of request for variance at 71 Brackett Road (Map 0206 Lot 0014; SRB).

Proposed Improvements:

We would like to construct a 15'x15' one-story addition off back of our home at 71 Brackett Road. That room would have double doors leading to a new 15'x45' deck, which would run the remaining length of the house (total length of house is 60'). We will remove the 9x8 deck and ramp that currently exists.

The new addition will serve as a playroom off the main floor living room for our growing family (soon to be family of four)! The deck will be a great entertaining space for friends and family. Our front yard slopes towards the road, so the back yard is the safest place to gather.

Our abutting neighbors are in full support our proposed project (letters included in appendix). We love our neighborhood, particularly being across the street from our future elementary school, and foresee our family setting roots down for many years to come.

Variance Relief:

We are applying for variance relief from Section 10.521 of the Zoning Ordinance:

- To allow a 10'0" setback where 30'0" is the minimum required by the Ordinance.

Our current home is non-conforming (built in 1966), as our current minimum setbacks are 18'0" (deck), 16'0" (deck ramp) and 25'9" (main house) to our angled rear lot line (Appendix page 5). With the proposed improvements, the new minimum setback would be 10'0" (Appendix page 9). Proposed building coverage would change to 18%, adhering to the 20% threshold.

Variance Criteria:

**10.233.21 The variance will not be contrary to the public interest:** The new addition is intended to stay within the beautiful character of the neighborhood. Most houses on Brackett and Haven are either colonials or capes, a number with additions off the rear of the house. The proposed improvements will have limited sightlines from the street and will be restricted to one story high. There is no threat to public health, safety or welfare.

**10.233.22 The spirit of the Ordinance will be observed:** The SRB district "*provides areas for single-family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre), and appropriate accessory uses*". Our property will still be within the range set forth by the Ordinance. New building coverage would only be 18%.

**10.233.23 Substantial justice will be done:** The requested relief is reasonable given our current structure and lot lines. If the application were denied, the comfort of our home would be diminished given our growing family. There would be no gain to the public by denying the requested zoning relief.

**10.233.24 The values of surrounding properties will not be diminished:** We have made major improvements to our home over the past three years, adding significant value to the neighborhood. Our current back yard is mostly unusable and an eyesore. The proposed improvements will be visually appealing, similar to the improvements we have already made, further increasing property values. Our neighbors will all benefit from these improvements.

**10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship:** While we are fortunate to have the space we currently have, our walls are quickly closing in on our growing family. Having a space for the kids to play on the main level of the house is very important to us. Furthermore, our rear yard has a slight slope and can be dangerous for children around the rock wall and tree line. Our front yard has a heavy slope towards the road, so the rear yard is the safest place to spend our time outdoors. The proposed improvements will add much needed usable indoor space, a safe barrier from exterior hazards, and room to enjoy the outdoors that is away from the street.

Economically, improvements to the rear of the house are the most cost-effective. We have space to expand interior square footage above our garage, but the costs are not feasible. We have available setbacks to one side of the house, but all of our utilities run on that side (gas, water/sewer, electrical, A/C). That would also require demolition of recent interior improvements, a disruption to our living space, and significant expenses out of scope for this project. The cost of the proposed improvements are far more economical than our other options.

Thank you in advance for your time and consideration.

Brett & Stefanie Berger

71 Brackett Rd.

## APPENDIX

Please find the supporting pictures and renderings. If we are granted relief from the Ordinance as requested, we will be working with an architect on final plans.

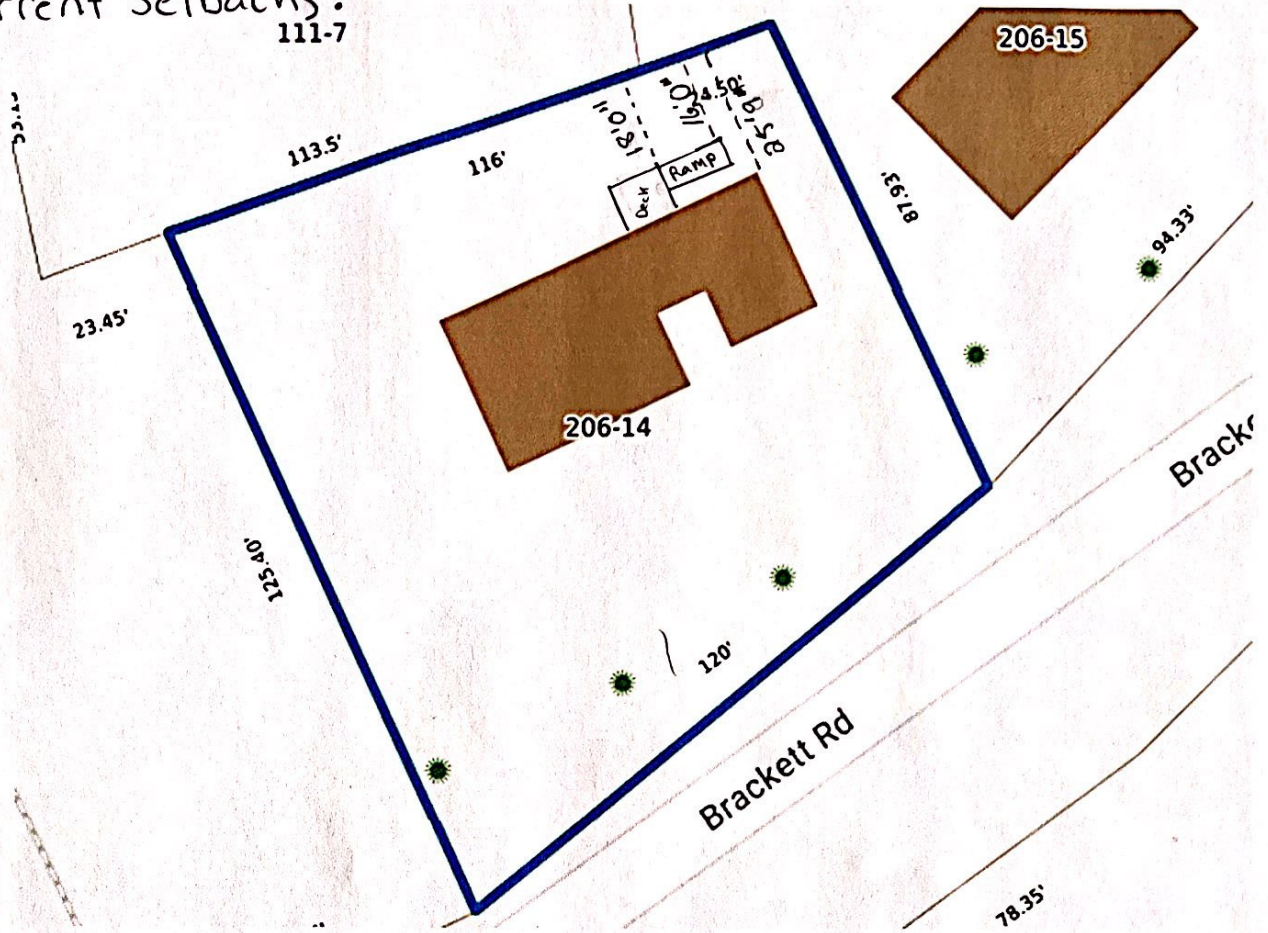
### A. **Current** pictures and setbacks of subject property:



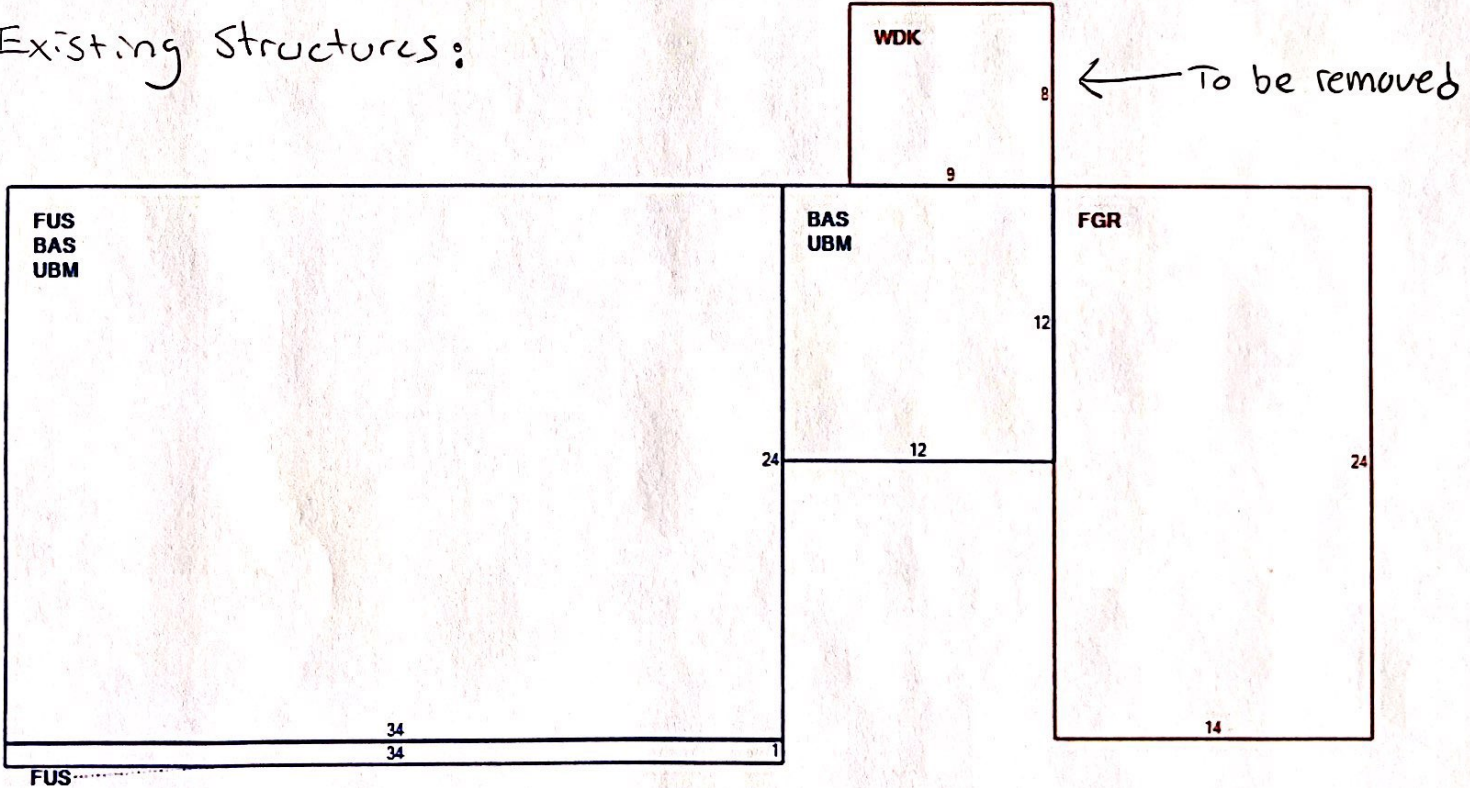




Current Setbacks:  
111-7



Existing Structures:

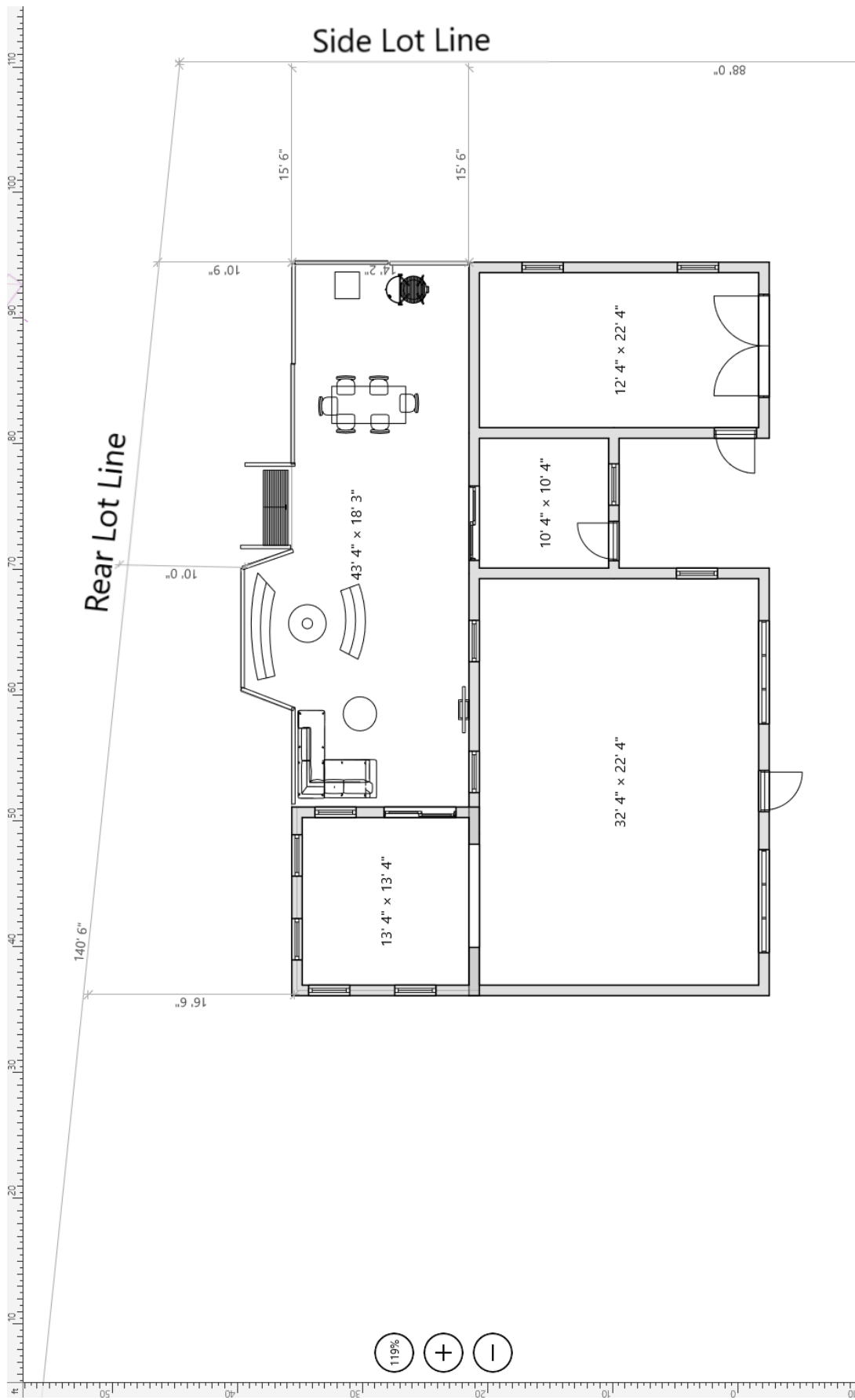




B. Proposed addition and deck renderings with new setbacks:







C. Abutter support:

Tom and Karen Carpenter: 139 Brackett Rd.



Brett B <unhberger@gmail.com>

---

## Exciting news and proposed addition

---

Tom Carpenter <tkarp@comcast.net>

Thu, Dec 17, 2020 at 3:03 PM

To: Brett B <unhberger@gmail.com>, Karen Carpenter <karen.g.carpenter@gmail.com>

Cc: Stef <stefberger26@gmail.com>

Hi Brett-

Congratulations! Reese should be thrilled. A wonderful dog and a younger brother. What could be better?

Karen and I have no problem with the addition. Looks fine to us.

Tom

On 12/17/2020 11:38 AM Brett B <unhberger@gmail.com> wrote:

Hi Tom and Karen -

We are excited to finally announce that we are expecting a baby boy in June!!! Reese can't wait to be a big sister! Things are about to get busy around here!!

To that note, we are hoping to build a playroom off the back of the house, along with a new deck (see attached rough renderings). We are hoping to add some much needed square footage on the main floor for kiddos to play. We are applying for a variance for rear setback relief. Our home is non-conforming as it stands, where the current rear setback for SRB is 30 feet, and we are currently at 23. We are proposing a 10 foot rear setback with the improvements shown.

We hope you are in support of this project, and if not, we would like that feedback too! The corner of your lot is closest to the proposed improvements, so your feedback is truly important to us. If you are in support, it would be great to include your response in the application.

Thanks for being such great neighbors. We miss seeing you around!

Brett & Stef



Brett B <unhberger@gmail.com>

---

## Exciting news and proposed addition

---

**Donna Saunders** <dpsaunders44@gmail.com>  
To: Brett B <unhberger@gmail.com>

Thu, Dec 17, 2020 at 5:33 PM

Hi Brett & Stef,

What great news! We are thrilled for you, and will do everything we can to support your playroom and deck project. Keep us posted.

All the best,

Mike & Donna

> On ThuDec 17, 20, at 11:32 AM, Brett B <unhberger@gmail.com> wrote:

>

> Hi Mike and Donna -

>

> We are excited to finally announce that we are expecting a baby boy in June!!! Reese can't wait to be a big sister! Things are about to get busy around here!!

>

> To that note, we are hoping to build a playroom off the back of the house, along with a new deck (see attached rough renderings). We are hoping to add some much needed square footage on the main floor for kiddos to play. We are applying for a variance for rear setback relief. Our home is non-conforming as it stands, where the current rear setback for SRB is 30 feet, and we are currently at 23. We are proposing a 10 foot rear setback with the improvements shown.

>

> We hope you are in support of this project, and if not, we would like that feedback too! If you are, it would be great to include your response in the application.

>

> Thanks again for being such great neighbors!

>

> Brett & Stef

> <3D\_1.png><3D\_3.png><3D\_2.png>



# HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

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

December 22, 2020

## HAND DELIVERED

Peter Stith, Planner  
City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801

Re: 685 State Street LLC  
685 State Street  
Portsmouth, New Hampshire, 03801  
Tax Map 137 Lot 11, Gen. Residence C (GRC) and Historic Districts

Dear Peter:

Attached please find our Memorandum with exhibits in support of an Application for Special Exception in order to add a fifth 441 s.f. apartment unit to the existing four unit building. We have uploaded the Application and documents. We will also deliver the original and eleven (11) copies as required.

We look forward to presenting this the Zoning Board of Adjustment at its January, 2021 meeting.

Let me know if you have any questions or comments.

Very truly yours,



R. Timothy Phoenix

RTP/msw

Encl.

cc: Client  
Corey Colwell  
Arilda Densch

---

DANIEL C. HOEFLE	R. PETER TAYLOR	GREGORY D. ROBBINS	DUNCAN A. EDGAR
R. TIMOTHY PHOENIX	JOHN AHLGREN	MONICA F. KIESER	OF COUNSEL:
LAWRENCE B. GORMLEY	KIMBERLY J.H. MEMMESHEIMER	SAMUEL HARKINSON	SAMUEL R. REID
STEPHEN H. ROBERTS	KEVIN M. BAUM	JACOB J.B. MARVELLEY	

**MEMORANDUM**

TO: Portsmouth Zoning Board of Adjustment ("ZBA")  
FROM: R. Timothy Phoenix, Esquire  
DATE: December 22, 2020  
RE: Special Exception/Variance  
685 State Street LLC  
Property Location: 685 State Street, Portsmouth New Hampshire, 03801  
Tax Map 137, Lot 11 Gen. Residence C ("GRC) zone

Dear Chair Rheaume and Zoning Board members:

On behalf of 685 State Street, LLC ("685 State" or "Applicant") we are pleased to submit this Memorandum and the attached exhibits in support of a Special Exception for a fifth apartment unit in GRC zone where four units are permitted.

**I. Exhibits**

1. 12/3/20 Zoning Relief Plan - by TF Moran.
2. 12/9/20 Floorplan A1, A2, A3 - by Arilda Densch
3. Site Photographs.
4. Tax Map 137.
5. 1971 Tax Card.

**II. Property/Project**

685 State Street is a 8561 s.f. lot holding a two-story wood frame structure, the former dental office of Dr. William Ruel, and, since the 1960s, also containing apartments. The principal of 685 State Street, LLC is Dr. Ruel's daughter. The building presently exclusively houses four apartments, with the following parking requirements per PZO 10.1112.311:

2@ 500s.f. or less =	1 space
1@500-750 s.f.=	1 space
1@750+ s.f. =	<u>1.3 spaces</u>
Total:	3.3 spaces ( <b>Exhibit 2</b> , p. A2)

685 State now seeks to convert unused space to a fifth apartment 441 s.f. = .5 space (Id.) plus a visitor parking space for a total of 4.8 spaces required, 6 provided.

Use as dwelling units has existed since at least 1968, long before the January 1, 1980 limit of PZO §10.812. (See 1971 Tax Card, **Exhibit 5**, referencing two apartments and an addition built in 1968.) Accordingly, the 5 units meet the requirements of PZO §10.812 (See **Exhibit 1**) since:

10.812.11 - The conversion does not include any change to the exterior of the building except for minimum egress components required for Building Code Compliance.

10.812.12 - The lot complies with minimum open space and maximum building coverage requirements in Article 5 and the off-street parking requirements in Article 11.

10.812.13 - The lot complies with the required lot area per dwelling unit standards.

GRC	Required	Provided
	1000 s.f.	1712.2 s.f.

**III. Relief Required**

PZO§10.440 Table of Uses -1.52- Special Exception for 5 apartment units where four are permitted

**IV. Special exception requirements**

Pursuant to P0§10.232.10:

The [Zoning] Board shall hear and decide requests for special exceptions as provided for in this ordinance. The board shall grant requests for special exceptions which are in harmony with the general purpose and intent of this ordinance and meet the standards of 10.232.20. Appropriate conditions of the sort set forth in 10.232.30 may be placed upon special exception approvals when necessary to meet the standards of 10.232.20. The board shall deny requests for special exceptions that do not meet the standards of this section.

10.232.21-Standards as provided by this ordinance for the particular use permitted by special exception-the addition of a fifth unit meets the standards of PZO §10.812 as set forth above.

10.232.22- No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials-a single additional to-code apartment will be added, creating no such hazard while providing an additional comparatively affordable apartment in downtown Portsmouth where residential prices are at a premium.

10.232.23- No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and special districts on account of the location or scale of buildings and other structures, parking areas, accessways, order, smoke, gas, dust or other pollutant, noise, glare, heat, vibration or unsightly outdoor storage of equipment, vehicles or other materials.- The building itself will not change. Required off street parking including a visitor space is provided. One additional 441 s.f. apartment will not violate this standard.

10.232.24- No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity-the additional unit requires one more parking space plus a visitor space, fully met by the proposal. A vehicle for one additional apartment will neither create a traffic safety hazard nor congestion in the vicinity, which is a mix of residential and commercial uses (i.e. funeral home).

10.232.25- No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools- one additional 441 s.f. apartment will not create excessive demand.

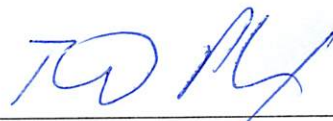
10.232.26- No significant increase of stormwater runoff onto adjacent property or streets- the lot and improvements upon it will not change.

Since one additional unit will be created from existing space, and there is no change to the building or other improvements, the owner respectfully submits that additional conditions such as those set forth in PZO§10.232.30 are unnecessary.

**IV. Conclusion**

For all the foregoing reasons, 685 State Street, LLC respectfully requests that the zoning board grant the requested relief.

Respectfully submitted  
685 State Street, LLC

By:   
\_\_\_\_\_  
R. Timothy Phoenix

RTP/msw  
Encl.

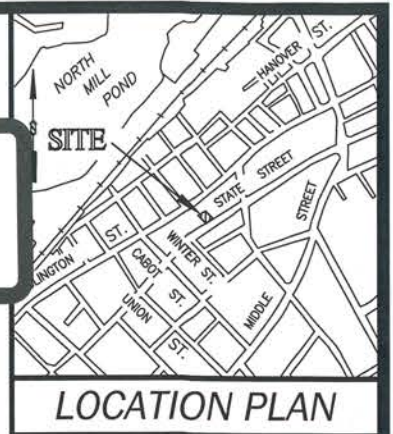
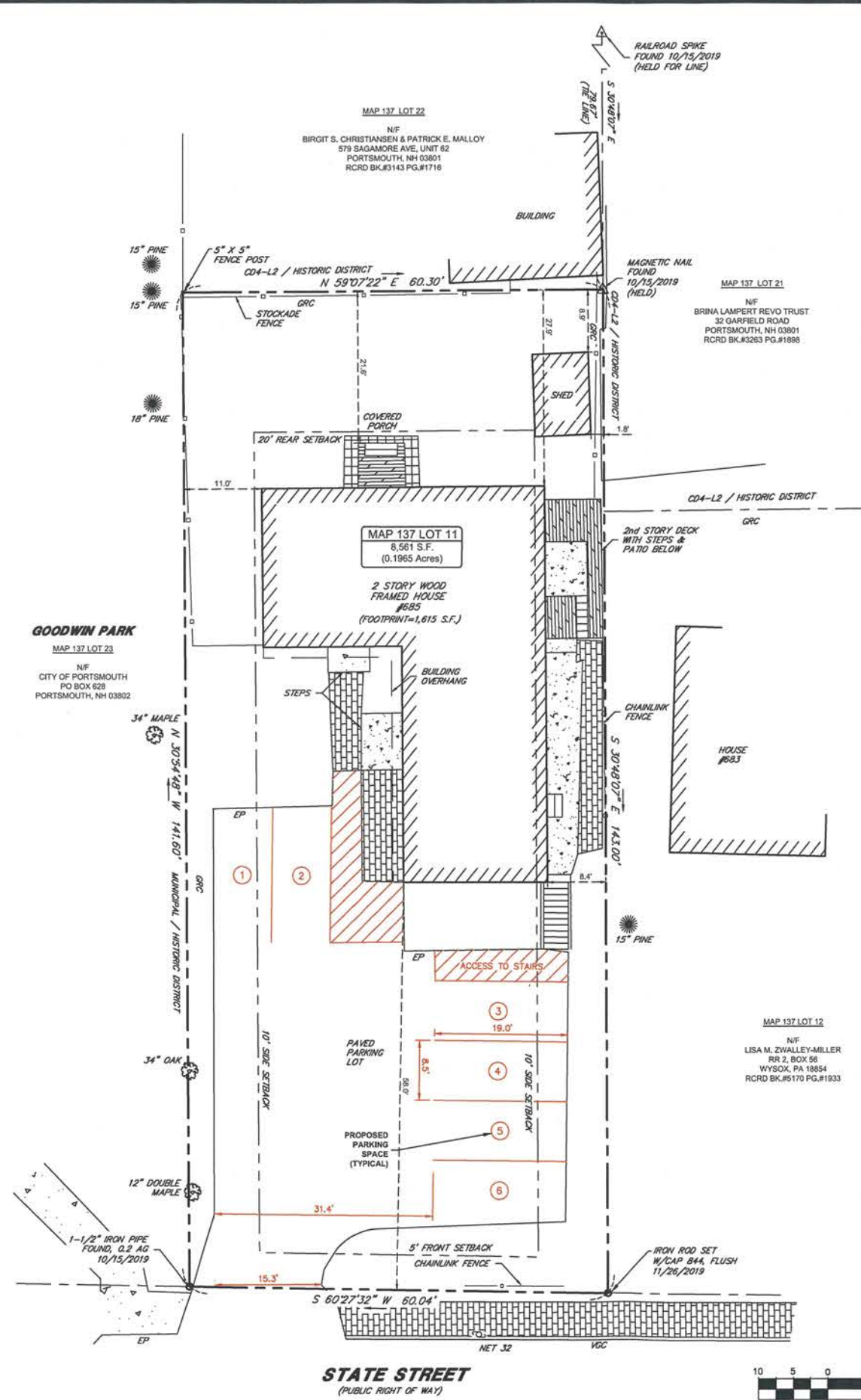


EXHIBIT 1

ABUTTERS ACROSS STATE STREET:  
MAP 137 LOT 7 JAMES & ALISON K. FORBES  
698 STATE ST  
PORTSMOUTH, NH 03801  
RCRD BK #3308 PG.#1370  
MAP 137 LOT 8 THOMAS J. SCHLADENHAUFFEN  
LONGI M. SCHLADENHAUFFEN  
708 STATE ST  
PORTSMOUTH, NH 03801  
RCRD BK #3098 PG.#0698

**LEGEND:**

MAP 137 LOT 11	ASSESSORS MAP AND LOT NUMBER
AG	ABOVE GRADE
BK. PG.	BOOK / PAGE
CD4-L2	CHARACTER DISTRICT 4 - LIMITED 2
EP	EDGE OF PAVEMENT
GRC	GENERAL RESIDENCE DISTRICT C
NET	NEW ENGLAND TELEPHONE
N/F	NOW OR FORMERLY
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
S.F.	SQUARE FOOTAGE
VGC	VERTICAL GRANITE CURB
W/	WITH
○	SPIKE/NAIL FOUND
○	IRON PIPE/ROD
○	UTILITY POLE
○	CONIFEROUS TREE
○	DECIDUOUS TREE
○	CHAINLINK FENCE
○	STOCKADE FENCE
○	BOUNDARY LINE
○	SETBACK LINE
▨	WOODEN DECK
▨	BRICK
▨	CONCRETE



- NOTES:**
- THE PARCEL IS LOCATED IN THE GENERAL RESIDENCE C (GRC) ZONING DISTRICT.
  - THE PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 137 AS LOT 11.
  - THE PARCEL IS LOCATED IN ZONE "X" AS SHOWN ON NATIONAL FLOOD INSURANCE PROGRAM (NFIP), FLOOD INSURANCE RATE MAP (FIRM) ROCKINGHAM COUNTY, NEW HAMPSHIRE, PANEL 259 OF 681, MAP NUMBER 3301500259E, WITH AN EFFECTIVE DATE OF MAY 17, 2005.
  - MINIMUM LOT DIMENSIONS:
 

GRC REQUIRED:	EXISTING:
LOT AREA:	3,500 S.F. / 8,561 S.F.
LOT AREA PER DWELLING UNIT:	3,500 S.F. / 1,712 S.F.
CONTINUOUS STREET FRONTAGE:	70' / 60.0'
DEPTH:	50' / 142.3'
MINIMUM YARD DIMENSIONS:	
FRONT:	5' / 58.0'
SIDE:	10' / 8.4'
REAR:	20' / 27.9'
MAXIMUM STRUCTURE DIMENSIONS:	
STRUCTURE HEIGHT: SLOPED ROOF	35' / <35'
BUILDING COVERAGE:	35% / 20.5%
MINIMUM OPEN SPACE:	20% / 39.5%
  - OWNER OF RECORD:  
MAP 137 LOT 11:  
685 STATE STREET, LLC  
PO BOX 853  
NEW CASTLE, NH 03854  
RCRD BK.#5775 PG.#1827
  - PARCEL AREA:  
MAP 137 LOT 11:  
8,561 S.F.  
(0.1965 ACRES)
  - THE INTENT OF THIS PLAN IS TO SHOW THE LOCATION OF BOUNDARIES IN ACCORDANCE WITH THE CURRENT LEGAL DESCRIPTIONS. IT IS NOT AN ATTEMPT TO DEFINE THE EXTENT OF OWNERSHIP OR DEFINE THE LIMITS OF TITLE.
  - THE PURPOSE OF THIS PLAN IS TO SHOW THE BOUNDARY LINES, EXISTING SITE FEATURES OF MAP 137 LOT 11 AND PROPOSED PARKING DESIGNATION.
  - FIELD SURVEY COMPLETED BY TODD C. EMERSON USING A TOPCON DS103 AND A TOPCON FC-5000 DATA COLLECTOR IN OCTOBER 2019.
  - HORIZONTAL DATUM IS NAD83 (2011) PER STATIC GPS OBSERVATIONS.
  - EASEMENTS, RIGHTS, AND RESTRICTIONS SHOWN OR IDENTIFIED ARE THOSE WHICH WERE FOUND DURING RESEARCH PERFORMED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS. OTHER RIGHTS, EASEMENTS, OR RESTRICTIONS MAY EXIST WHICH A TITLE EXAMINATION OF SUBJECT PARCEL(S) WOULD DETERMINE.
  - PARCEL MAY BE SUBJECT TO A SEWER AND DRAINAGE EASEMENT TO THE CITY OF PORTSMOUTH AS DESCRIBED IN ROCKINGHAM COUNTY REGISTRY OF DEEDS BOOK #820 PAGE #22.

**SPECIAL EXCEPTION REQUESTED FROM THE CITY OF PORTSMOUTH ZONING ORDINANCE:**

- SPECIAL EXCEPTION FROM SECTION 10.440 - TO ALLOW 5 UNITS WHERE 4 ARE PERMITTED.

- PLAN REFERENCES:**
- "PHASE 2 CONDOMINIUM SITE PLAN ISLINGTON PLACE CONDOMINIUMS UNITS #4, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14 SUBMITTED LAND DECLARANT OWNER IS ROKDOLLA, LLC KNOWN AS TAX MAP 137 LOT 20 LOCATED AT 198 ISLINGTON STREET PORTSMOUTH, NH ROCKINGHAM COUNTY" BY KNIGHT HILL LAND SURVEYING SERVICES, INC. DATED APRIL 12, 2013. RCRD PLAN D-37699.
  - CONDOMINIUM SITE PLAN PREPARED FOR BRIAN J. DONNELLY, NETTIE J. THOMPSON, STEPHEN J. MEADE 663 STATE STREET CONDOMINIUMS LOCATED AT 663 STATE STREET, PORTSMOUTH, NH BY ATLANTIC SURVEYING CO, INC. DATED JANUARY 2006. RCRD PLAN D-33874.
  - FIRST AMENDMENT TO THE SITE PLAN OF THE CONDOMINIUMS AT GOODWIN PARK 718 STATE ST TAX MAP 137 LOT 09 PORTSMOUTH, NH BY ROSS ENGINEERING CIVIL/STRUCTURAL ENGINEERING & SURVEYING WITH REVISION 3 DATED FEBRUARY 17, 2012. RCRD PLAN D-37131.
  - AMENDED CONDOMINIUM SITE PLAN TAX MAP 145 LOT 1 PROPERTY OF HICKORY-STICK CONDOMINIUMS 302 & 304 ISLINGTON STREET PORTSMOUTH, NEW HAMPSHIRE, COUNTY OF ROCKINGHAM" BY MSC CIVIL ENGINEERS & LAND SURVEYORS, INC. DATED MARCH 28, 2014 WITH REVISION 2 DATED APRIL 2, 2014. RCRD PLAN D-38185.

TAX MAP 137 LOT 11  
ZONING RELIEF PLAN

685 STATE STREET  
PORTSMOUTH, NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM  
OWNED BY  
685 STATE STREET, LLC

SCALE: 1" = 10' (22x34)  
1" = 20' (11x17)

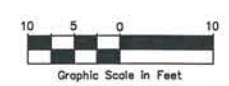
DECEMBER 3, 2020

I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY THOSE UNDER MY DIRECT SUPERVISION AND ARE THE RESULT OF A FIELD SURVEY CONDUCTED IN OCTOBER 2019. THIS SURVEY CONFORMS TO THE ACCURACY REQUIREMENTS OF AN URBAN SURVEY OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS. I FURTHER CERTIFY THAT THIS SURVEY IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, AND THE FIELD TRAVERSE SURVEY EXCEEDS A PRECISION OF 1:15,000.

Dec 04, 2020 - 12:42pm F:\MSC Projects\459911 - State Street - Portsmouth\459911-30\_685 State Street.LLC\_685 State Street Survey\Drawings\6991-30\_ZBA.dwg

LICENSED LAND SURVEYOR \_\_\_\_\_ DATE \_\_\_\_\_

STATE STREET  
(PUBLIC RIGHT OF WAY)



REV.	DATE	DESCRIPTION	DR	CK

Seacoast Division

**TFM**

Civil Engineers  
Structural Engineers  
Traffic Engineers  
Land Surveyors  
Landscape Architects  
Scientists

170 Commerce Way, Suite 102  
Portsmouth, NH 03801  
Phone (603) 431-2222  
Fax (603) 431-0910  
www.tfmoran.com

45991.30 DR ID FB  
CK JCC CADFILE S-1

**ALAN & SHARON WESTON**  
 685 STATE STREET APARTMENTS  
 PORTSMOUTH, NEW HAMPSHIRE 03801

**ARILDA DESIGN**  
 densch@comcast.net / www.arilda.com  
 9 Adams Lane, Unit 2  
 Kittery, Maine 03904  
 207-604-6848

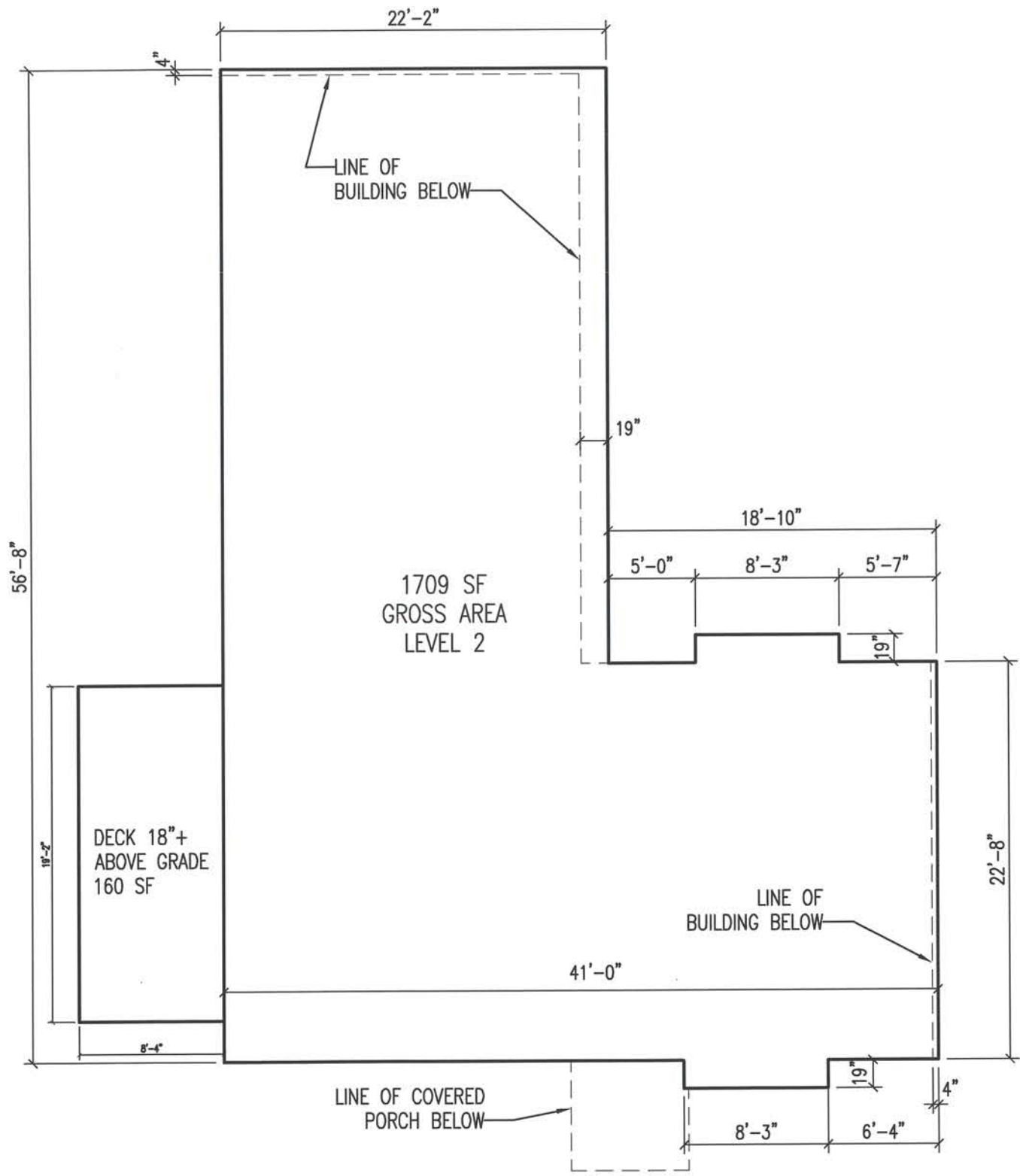
Revisions:

**GROSS FLOOR AREA**  
**LEVELS 1 & 2**

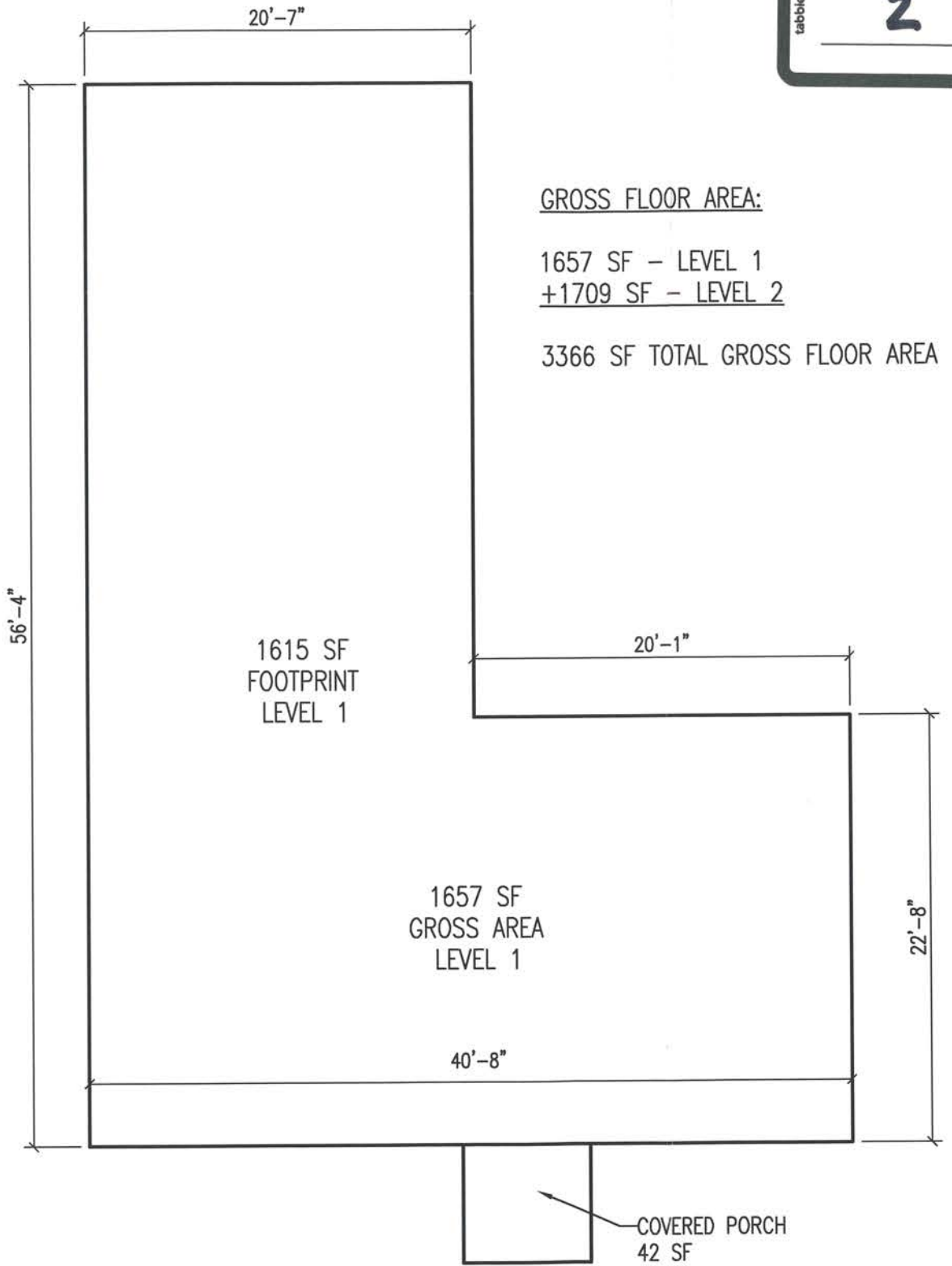
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scale: 1/8" = 1'-0"

**A1**

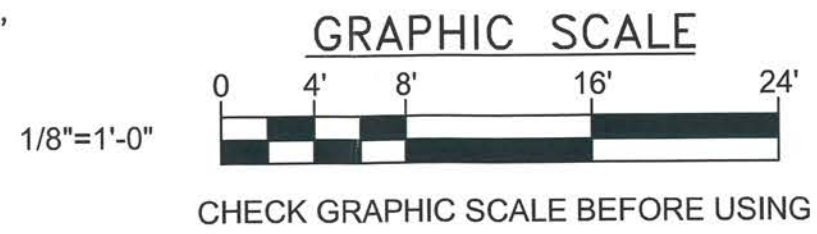


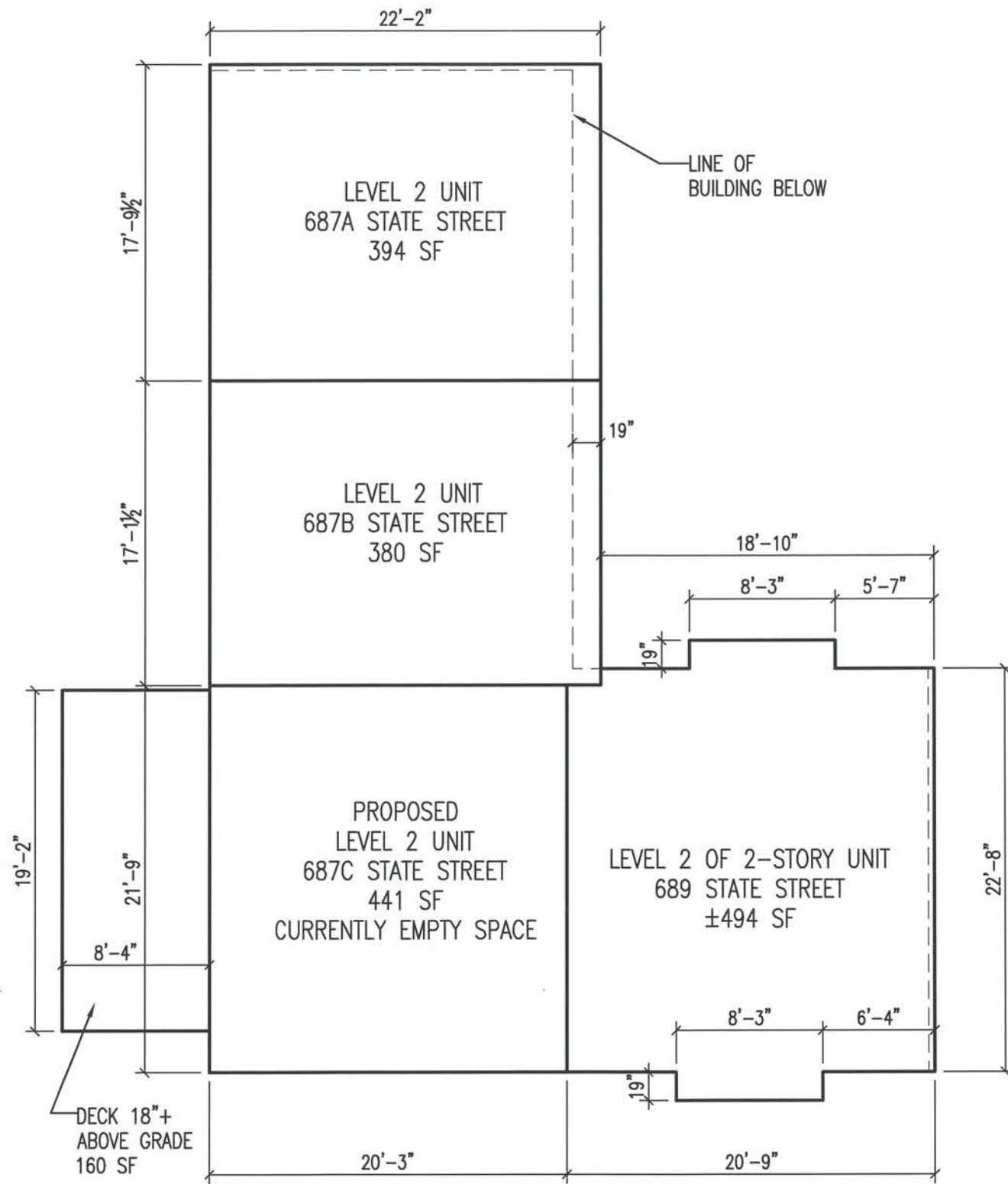
LEVEL 2  
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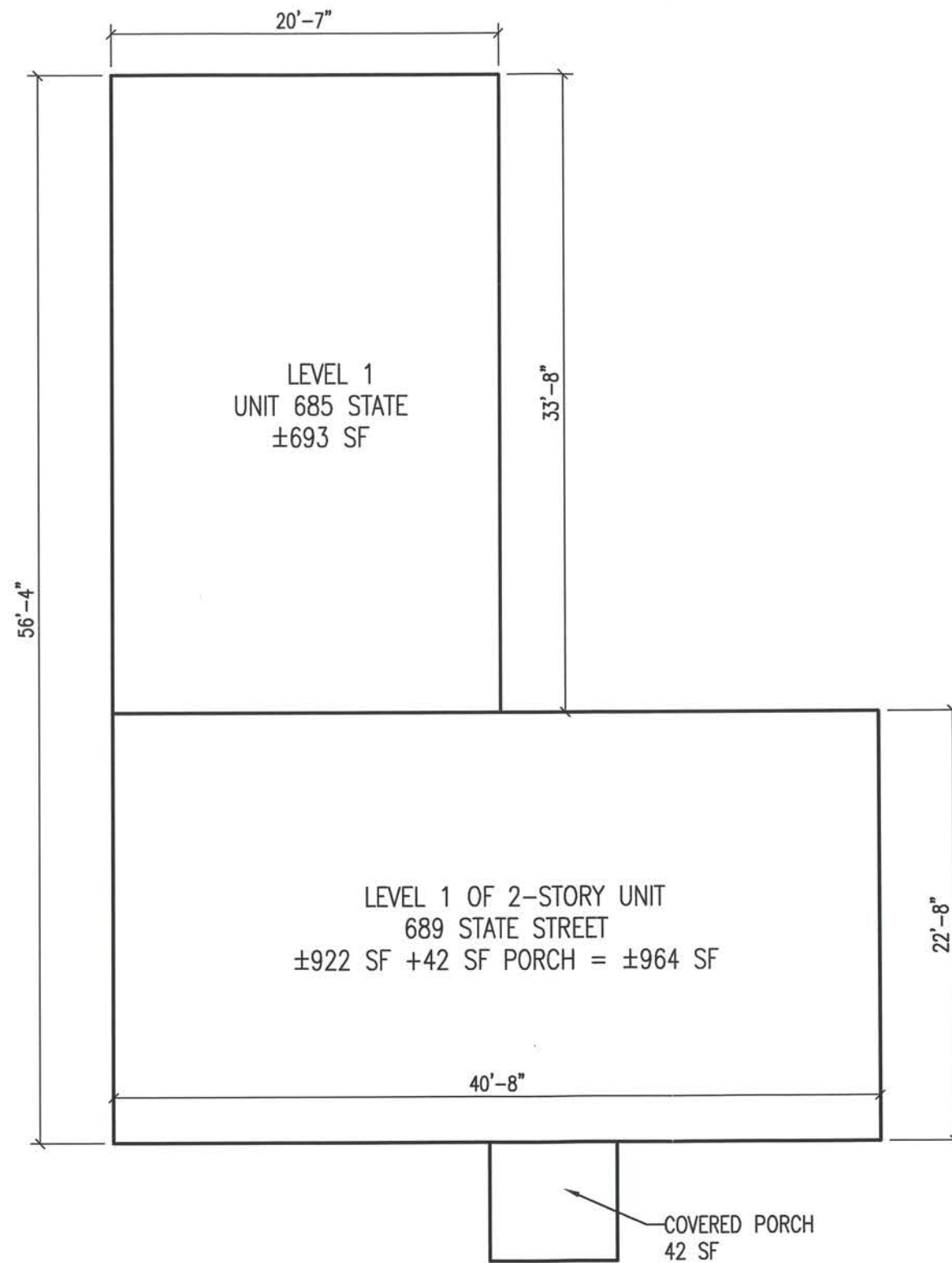
LEVEL 1  
 SCALE: 1/8" = 1'-0"

GROSS FLOOR AREA:  
 1657 SF - LEVEL 1  
 +1709 SF - LEVEL 2  
 3366 SF TOTAL GROSS FLOOR AREA

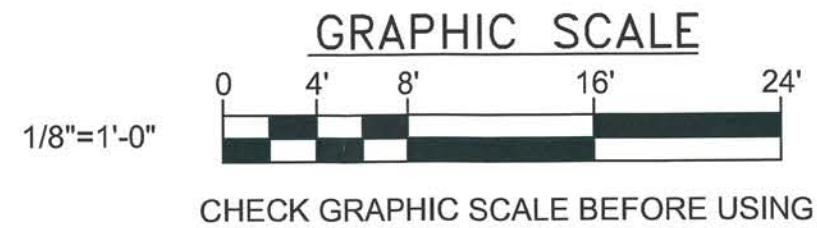




**LEVEL 2**  
SCALE: 1/8" = 1'-0"



**LEVEL 1**  
SCALE: 1/8" = 1'-0"



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685 STATE STREET APARTMENTS  
PORTSMOUTH, NEW HAMPSHIRE 03801

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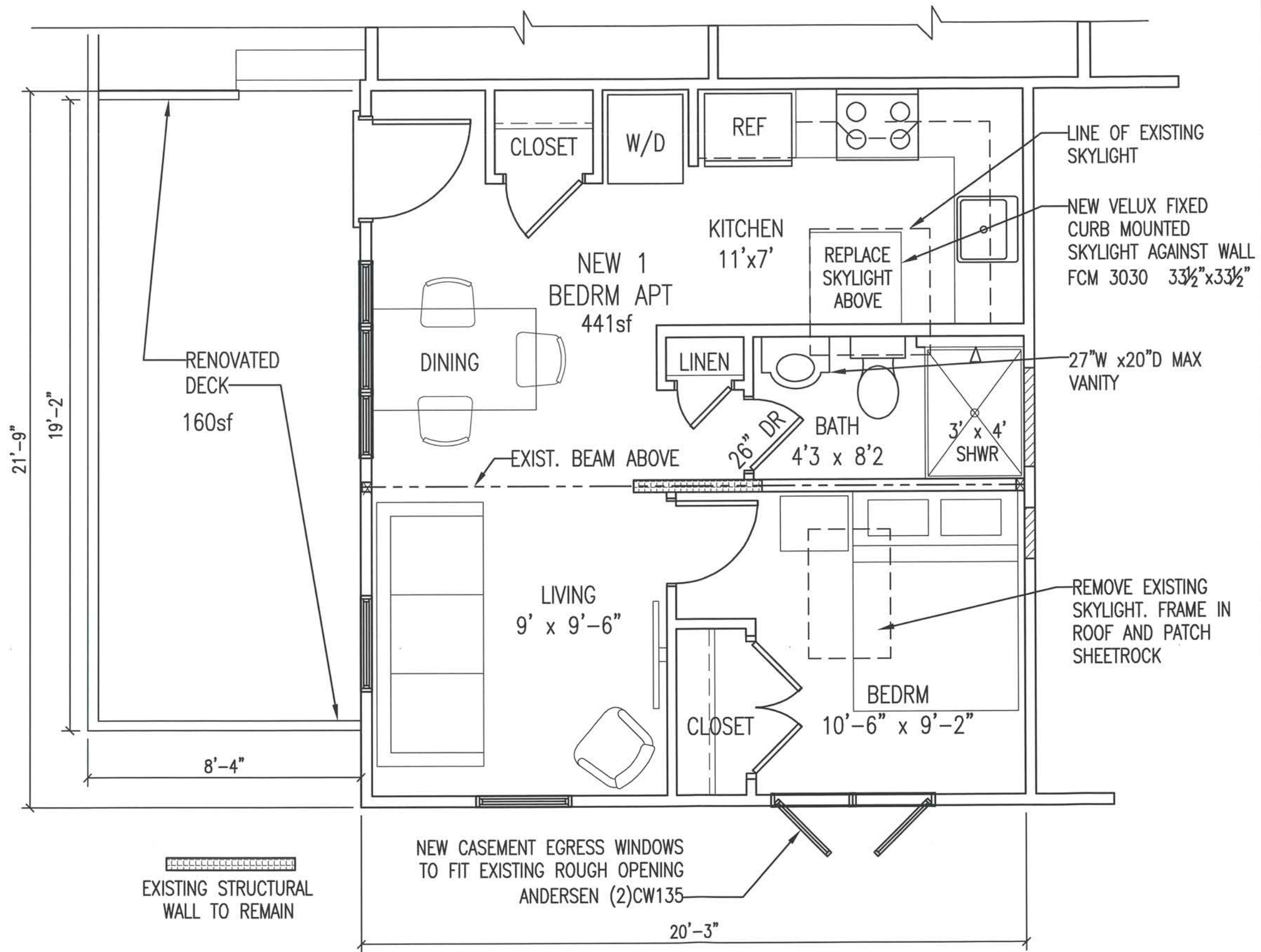
Revisions:

**APT SQUARE FOOTAGE**  
**LEVELS 1 & 2**

date: Dec 9, 2020

scale: 1/8" = 1'-0"

**A2**



**ALAN & SHARON WESTON**  
 685 STATE STREET APARTMENTS  
 PORTSMOUTH, NEW HAMPSHIRE 03801

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 9 Adams Lane, Unit 2  
 Kittery, Maine 03904  
 207-604-6848

**APT LAYOUT FOR NEW UNIT**

date: Dec 9, 2020  
 scale: 1/4" = 1'-0"

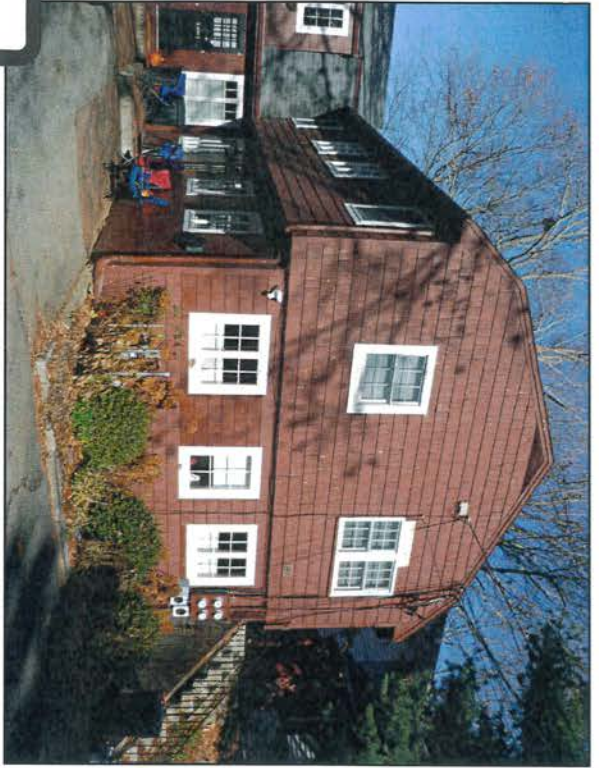
**A3**



tabbies

EXHIBIT

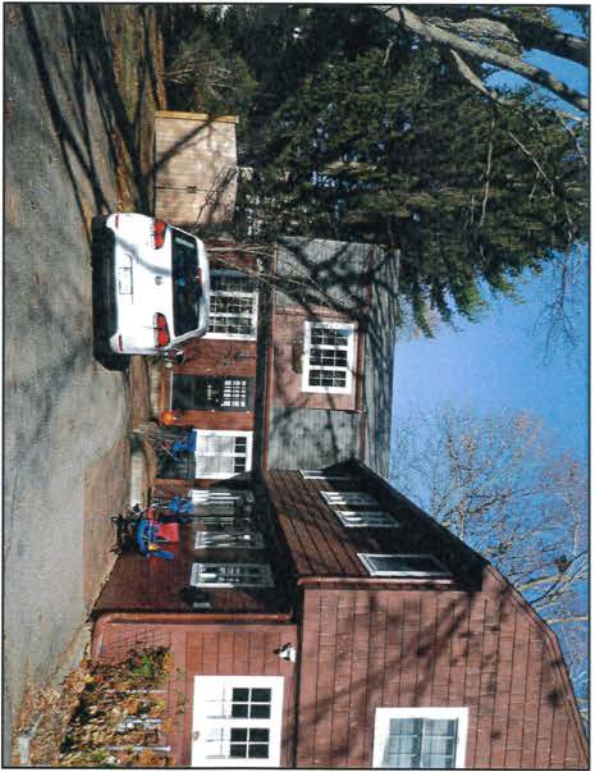
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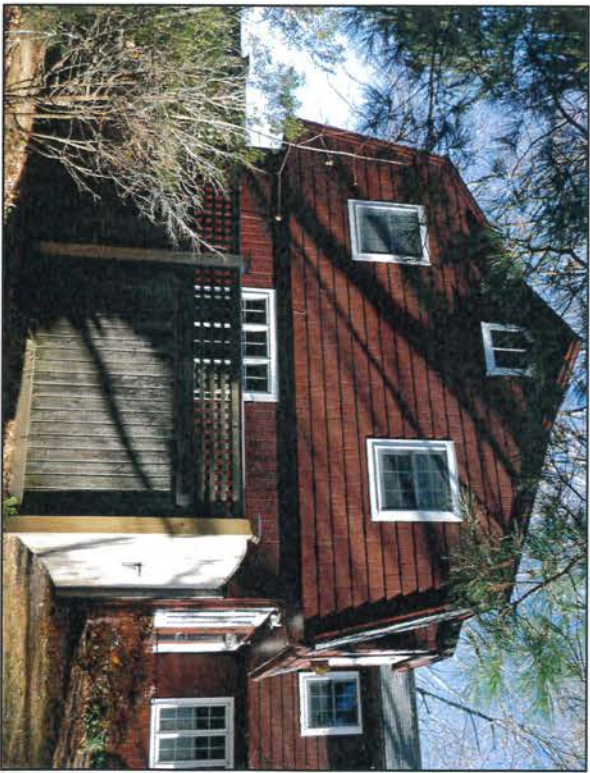
STATE ST SOUTH ELEVATION 1



PARK SIDE WEST ELEVATION 1



STATE ST SOUTH ELEVATION 2



PARK SIDE WEST ELEVATION 2

SITE PHOTOS 1

ARILDA DESIGN  
densch@comcast.net / www.arilda.com  
9 Adams Lane, Unit 2  
Kittery, Maine 03904  
207-604-6848

ALAN & SHARON WESTON  
685 STATE STREET APARTMENTS  
PORTSMOUTH, NEW HAMPSHIRE 03801

date: Dec 8, 2020

NO SCALE



BACKYARD NORTH ELEVATION 1



BACKYARD NORTH ELEVATION 2



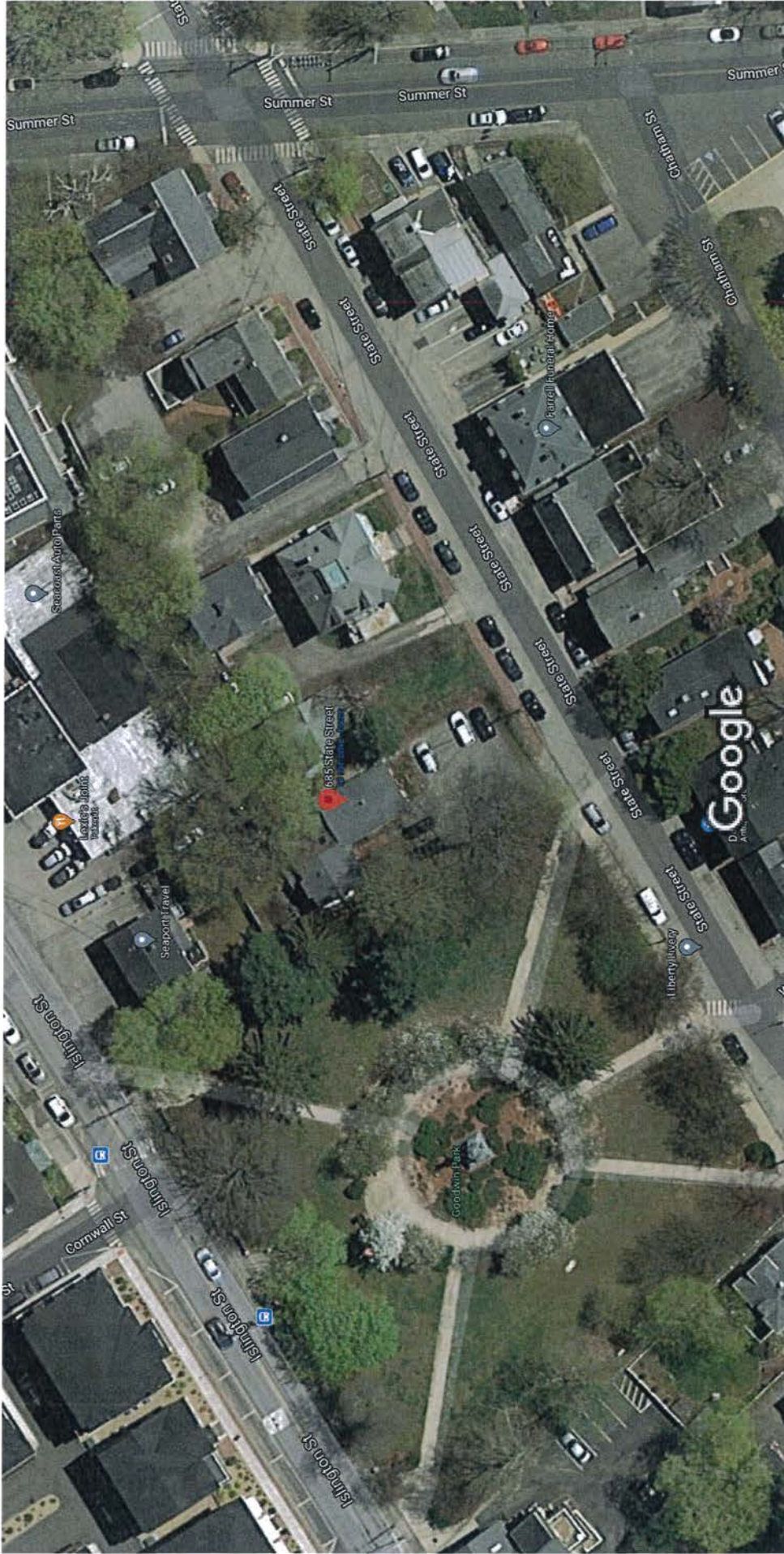
UPPER LEVEL EAST ENTRIES ELEVATION 1



UPPER LEVEL EAST ENTRIES ELEVATION 2

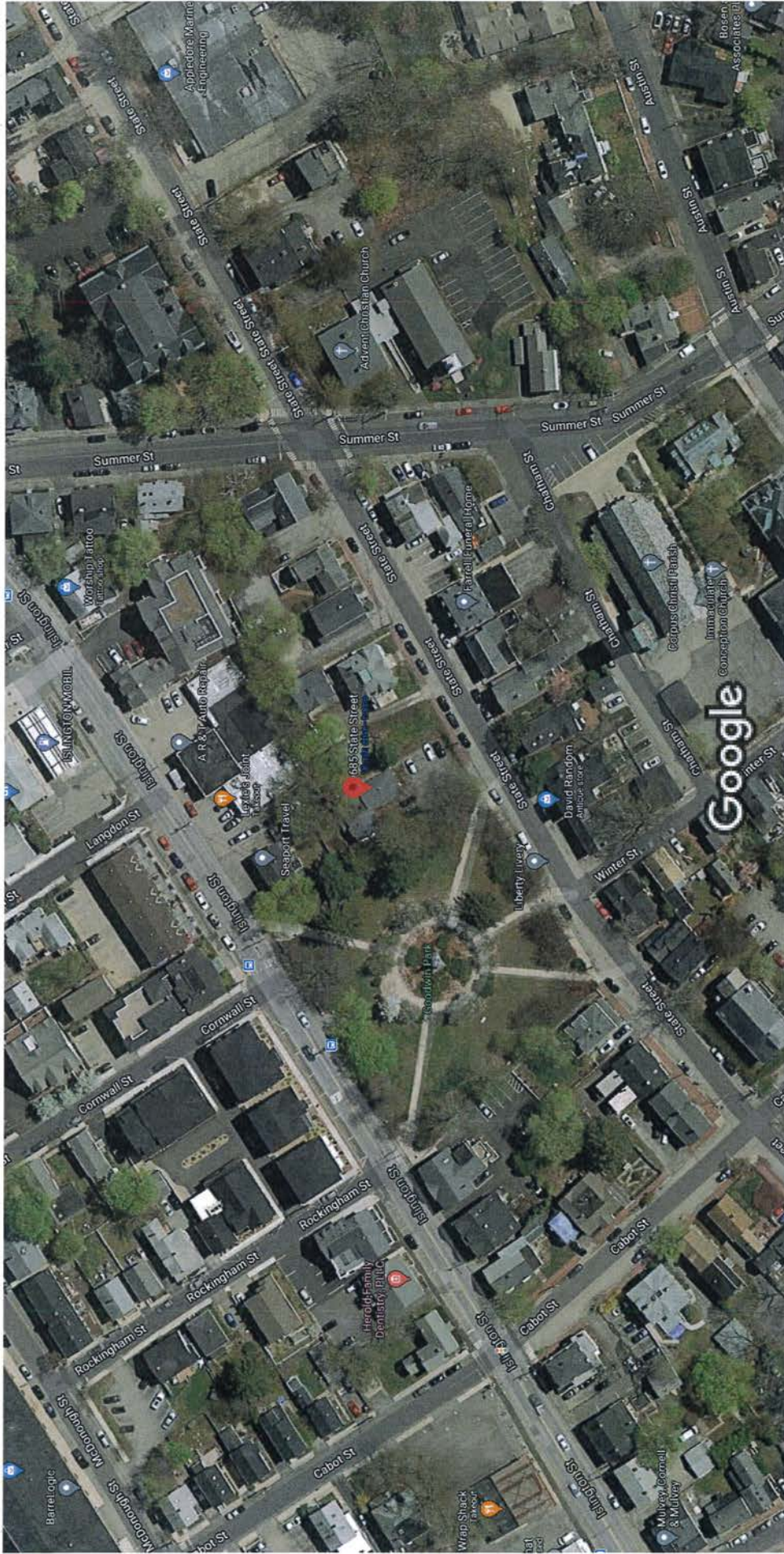
<p>date: Dec 8, 2020 NO SCALE</p>	<p><b>SITE PHOTOS 2</b></p>	<p>ARILDA DESIGN          densch@comcast.net / www.arilda.com          9 Adams Lane, Unit 2          Kittery, Maine 03904          207-604-6848</p>	<p><b>ALAN &amp; SHARON WESTON</b>          685 STATE STREET APARTMENTS          PORTSMOUTH, NEW HAMPSHIRE 03801</p>
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Google Maps 685 State Street

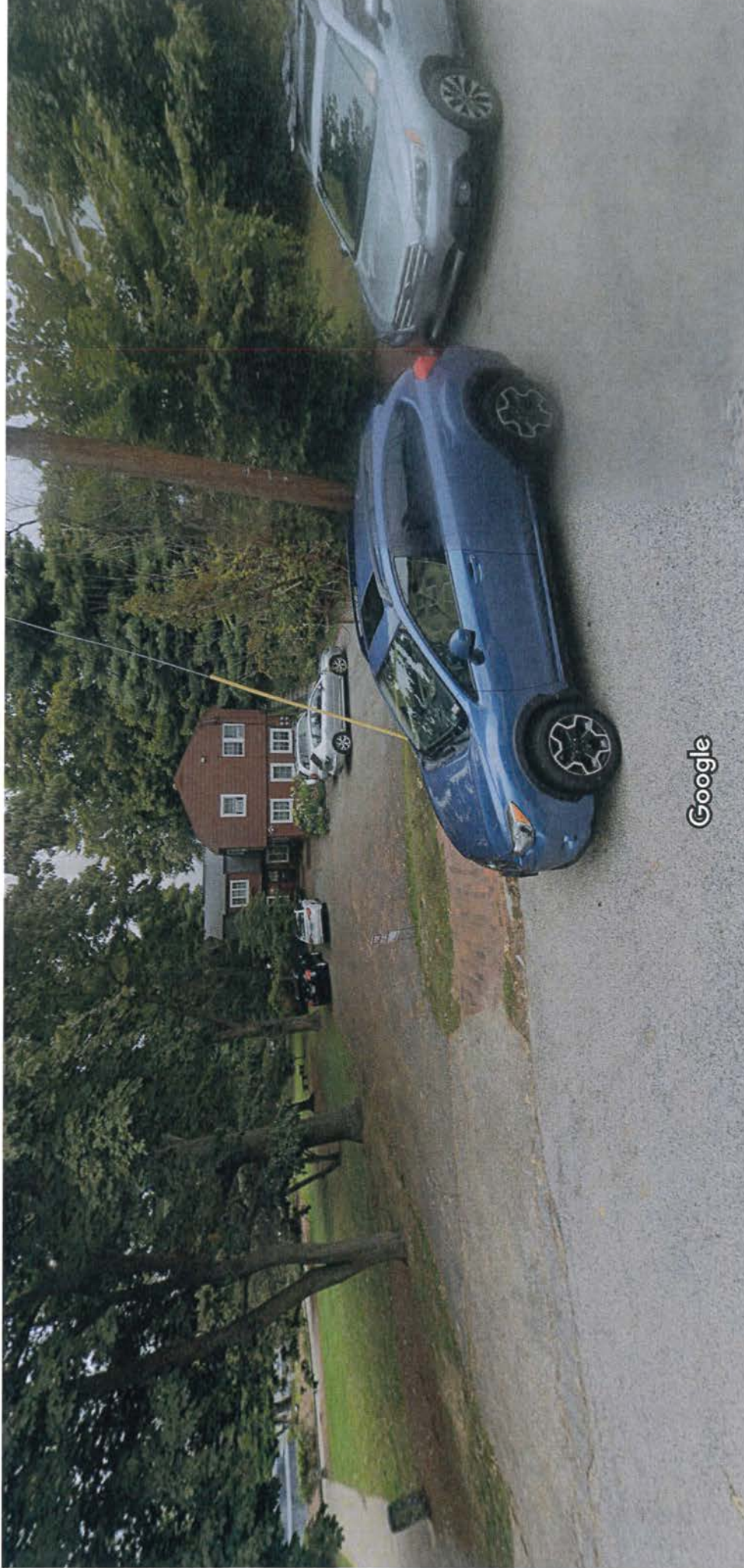


Imagery ©2020 Maine GeoLibrary, U.S. Geological Survey, Map data ©2020 20 ft

Google Maps 685 State Street



Imagery ©2020 Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, Map data ©2020 50 ft



# Weston 685 State 12-8-2020 Site photos 2.pdf

Details

Size  
29.78 MB

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BACKYARD NORTH ELEVATION 1

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# Weston 685 State 12-8-2020 Site photos 1.pdf

Details

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26.66 MB

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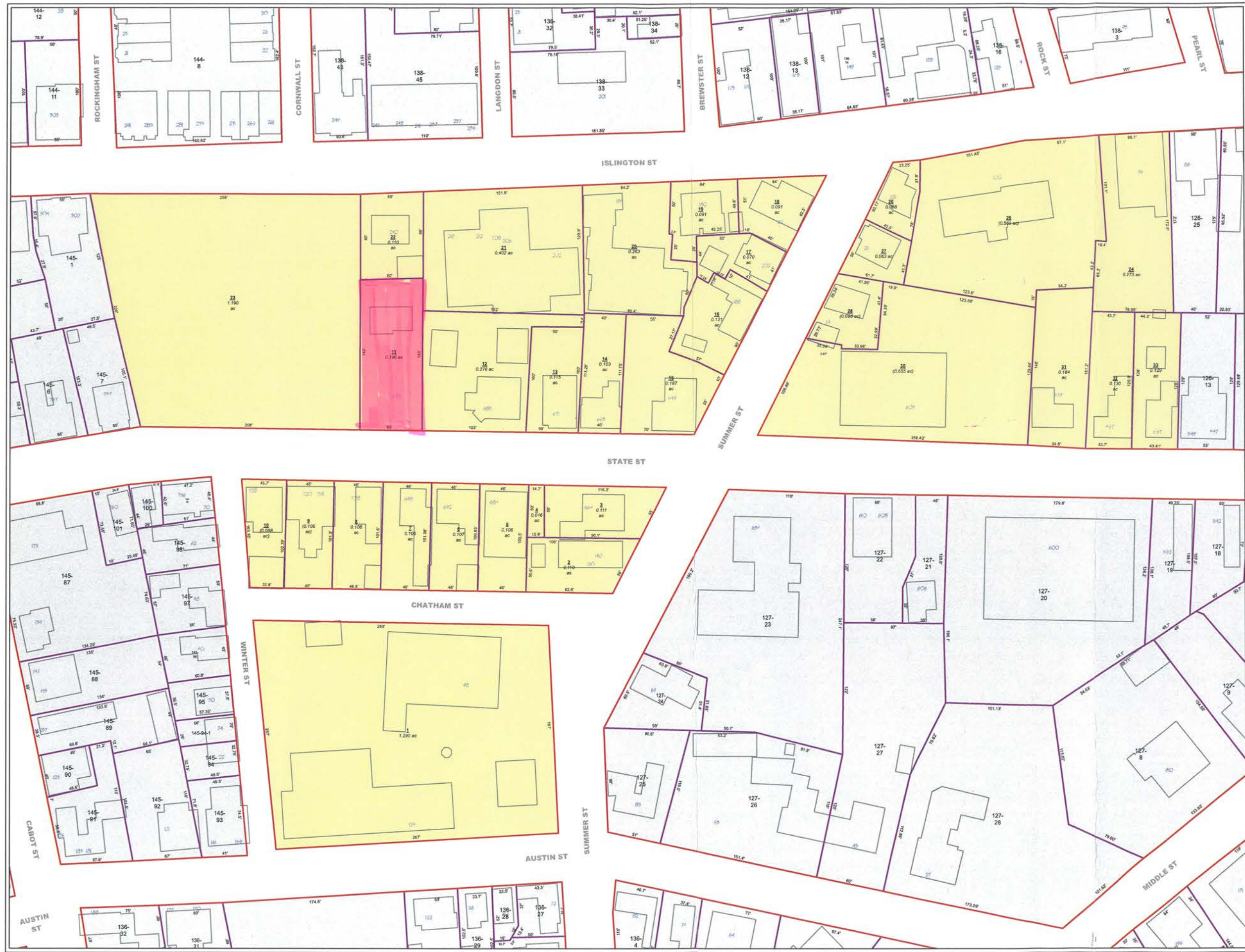
STATE ST SOUTH ELEVATION 1

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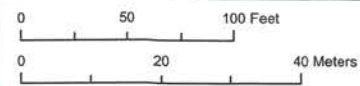
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- Partial Legend**  
See the cover sheet for the complete legend.
- 7-5A** Lot or lot-unit number
  - 2.56 ac Parcel area in acres (ac) or square feet (sf)
  - 23 Address number
  - 233-137 Parcel number from a neighboring map
  - 66' Parcel line dimension
  - SIMS AVE Street name
  - Parcel/Parcel boundary
  - Parcel/ROW boundary
  - Water boundary
  - Structure (1994 data)
  - Parcel covered by this map
  - Parcel from a (see other m...)

**EXHIBIT**  
**4**



*This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.*



Portsmouth, New Hampshire  
2019  
**Tax Map 137**



35 LOT 914

685 State St. North

DESCRIPTION

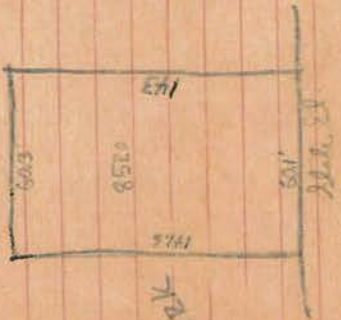


EXHIBIT 5

RECORD OF OWNERSHIP

DATE OF TRANSFER

SALE PRICE IF KNOWN

ASSESSMENT RECORD

1519/084 9/1/59 3.30-S  
 1401/161 7/10/56 see 76  
 FRANK R. PIMENTEL

William A. & Teresa C. Ruel

Frank R. & Frances N. Pimentel

FRANK R. PIMENTEL

RURAL PROPERTY

LAND VALUE COMPUTATIONS AND SUMMARY

OWNERS PREVIOUS TO 1951

DATES ASSESSMENTS

CLASSIFICATION	NO. OF ACRES	RATE	TOTAL	NAME	DATES	ASSESSMENTS
TILLABLE						
PASTURE						
WOODED						
WASTE LAND						
TOTAL ACREAGE						
TOTAL VALUE LAND						
TOTAL VALUE BUILDINGS						
TOTAL VALUE LAND & BUILDINGS						

URBAN PROPERTY

LAND VALUE COMPUTATIONS AND SUMMARY

FRONTAGE	DEPTH	UNIT PRICE	DEPTH FACTOR	FRONT FT. PRICE	TOTAL
60.1	143	15	1.14	1710	1050
Park Influence					450
TOTAL VALUE LAND					1500
TOTAL VALUE BUILDINGS					6000
TOTAL VALUE LAND & BUILDINGS					7500

PROPERTY FACTORS

TOPOGRAPHY	IMPROVEMENTS
LEVEL	WATER
HIGH	SEWER
LOW	CLG
ROLLING	ELECTRICITY
SMARTY	ALL UTILITIES
	WASTE DISPOSAL
STREET	TREND OF DISTRICT
PAVED	IMPROVING
SEMI-IMPROVED	STATIC
DIRT	DECLINING
SIDEWALK	

RECORD OF BUILDINGS

NOTES—SPECIAL EQUIPMENT

COMPUTATIONS	
UNIT	1951
S.F.	(A)
S.F.	(A)
S.R.	(A)

LAND ONLY

NEW BLDG IN 1960

MARKET VALUE 24,000

New Addition in '68 — 18,000 — 20,000

CONSTRUCTION			FLOORS			COMPUTATIONS		SUMMARY OF BUILDINGS								
OCUPANCY			B	I	B	U	S	GRADE	AGE	DATE PERIOD	COND.	REPL. VAL.	PHYS. DEPR.	PHYS. VALUE	FUNCT. DEPR.	SOUND VALUE
SINGLE FAMILY																
TWO FAMILY																
APARTMENT																
STORE																
THEATRE																
HOTEL																
OFFICES																
WAREHOUSE																
COMM. GARAGE																
GAS STATION																
<b>FOUNDATION</b>			<b>INTERIOR FINISH</b>													
CONCRETE			B	I	B											
CONCRETE BLOCK																
BRICK OR STONE																
PIERE																
CELLAR AREA FULL																
NO. CELLAR	1/4															
<b>EXTERIOR WALLS</b>			<b>HEATING</b>													
CLAPBOARD																
WIDE SIDING																
DRIP SIDING																
NO SHEATHING																
WOOD SHINGLES																
ASBES SHINGLES																
STUCCO ON FRAME																
STUCCO ON TILE																
BRICK VENEER																
BRICK ON TILE																
SOLID BRICK																
STONE VENEER																
CONC OR CIND BL.																
<b>PLUMBING</b>			<b>PLUMBING</b>													
BATHROOM																
TOILET ROOM																
WATER CLOSET																
KITCHEN SINK																
STD. WAT. HEAT																
AUTO. WAT. HEAT																
ELECT. WAT. SYST.																
LAUNDRY TUBS																
NO PLUMBING																
<b>TILING</b>			<b>TILING</b>													
BATH FL. & WCOT.																
TOILET FL. & WCOT.																
<b>LIGHTING</b>			<b>LIGHTING</b>													
ELECTRIC																
NO LIGHTING																
<b>NO. OF ROOMS</b>			<b>NO. OF ROOMS</b>													
BEST																
1ST																
2ND																
3RD																
DATE			LISTED	NEAR	AREA	PRICED	19	TOTAL VALUE BUILDINGS								
							19	TOTAL VALUE BUILDINGS								

OFFICE +  
2 Aprs.

GRADE DENOTES QUALITY OF CONSTRUCTION: A—EXCELLENT; B—GOOD; C—AVERAGE; D—CHEAP; E—VERY CHEAP

**45 Richmond Street  
Map 108 Lot 18**

**To permit the following:**

1. At Proposed Rebuilt Garage, a 4.5' Right Side Setback where 10' is required & a 4.5' Rear Setback where 15' is required. Existing Garage has a +/- 2.8' Rightside and +/- 5' Rear Setbacks.
2. New Front Door Landing & Steps with 0.5' Front Setback where 5' is required.

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

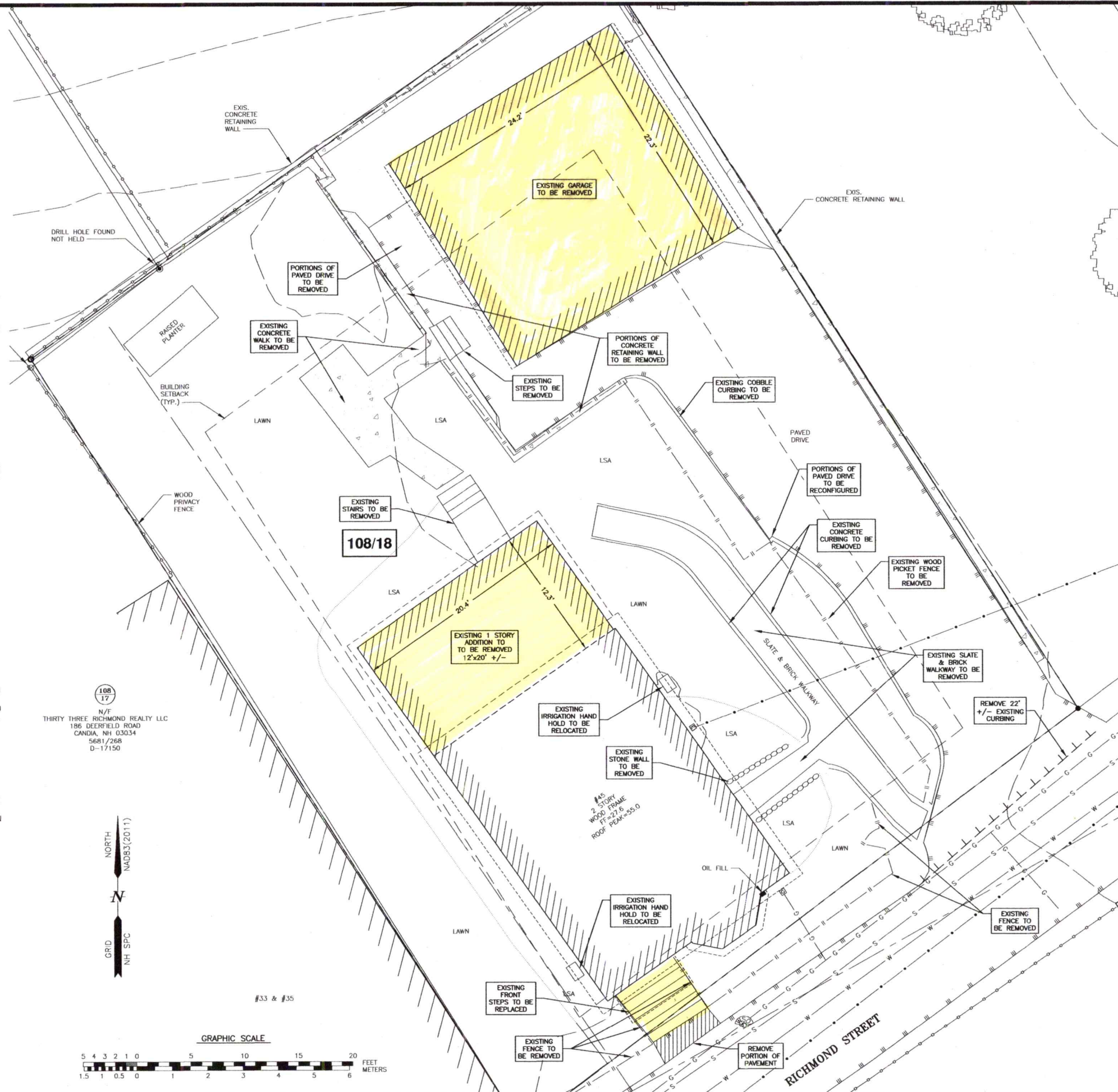
1. The Proposed Garage is smaller and less non-conforming than the Existing Garage and aligns with the Existing Driveway. Moving the Garage to be more conforming will complicate access to the Residence and would require moving the Driveway.
2. The current Front Steps have no landing and run directly into the street. The Proposed Landing and Steps is sized to work with the Entry Door & Surround and access is parallel to the Street. The street has a slope & locating on the access on the uphill side reduces the number of steps.

**Criteria for the Variance:**

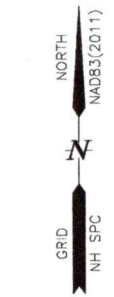
1. The Variances are not contrary to the public interest in that it will not adversely affect adjacent properties and the New Entry Steps will be safer.
2. This Variances are consistent with the spirit of the ordinance in that these modest changes will improve the appearance of both the Garage & Entry.
3. Substantial justice will be done, as these changes will allow the owners to improve access to the house from the Entry, Driveway & Garage.
4. The Variances will not diminish the value of surrounding properties. The proposed Variances, Additions & Renovations will improve this Property which has had little done to it for decades.
5. The special condition of this property is the Sloping Lot and location of the Driveway.

**DEMOLITION NOTES**

- A) THE LOCATIONS OF UNDERGROUND UTILITIES ARE APPROXIMATE AND THE LOCATIONS ARE NOT GUARANTEED BY THE OWNER OR THE DESIGNER. IT IS THE CONTRACTORS' RESPONSIBILITY TO LOCATE UTILITIES AND ANTICIPATE CONFLICTS. CONTRACTOR SHALL REPAIR EXISTING UTILITIES DAMAGED BY THEIR WORK AND RELOCATE EXISTING UTILITIES THAT ARE REQUIRED TO BE RELOCATED PRIOR TO COMMENCING ANY WORK IN THE IMPACTED AREA OF THE PROJECT.
- B) ALL MATERIALS SCHEDULED TO BE REMOVED SHALL BECOME THE PROPERTY OF THE CONTRACTORS UNLESS OTHERWISE SPECIFIED. THE CONTRACTOR SHALL DISPOSE OF ALL MATERIALS OFF-SITE IN ACCORDANCE WITH ALL FEDERAL, STATE, AND LOCAL REGULATIONS, ORDINANCES AND CODES. THE CONTRACTOR SHALL COORDINATE REMOVAL, RELOCATION, DISPOSAL, OR SALVAGE OF UTILITIES WITH THE OWNER AND APPROPRIATE UTILITY COMPANY.
- C) ANY EXISTING WORK OR PROPERTY DAMAGED OR DISRUPTED BY CONSTRUCTION/ DEMOLITION ACTIVITIES SHALL BE REPLACED OR REPAIRED TO THE ORIGINAL EXISTING CONDITIONS BY THE CONTRACTOR AT NO ADDITIONAL COST TO THE OWNER.
- D) THE CONTRACTOR SHALL VERIFY LOCATION OF ALL EXISTING UTILITIES AND CALL DIG SAFE AT LEAST 72 HOURS PRIOR TO THE COMMENCEMENT OF ANY DEMOLITION/CONSTRUCTION ACTIVITIES.
- E) SAWCUT AND REMOVE PAVEMENT ONE FOOT OFF PROPOSED EDGE OF PAVEMENT TRENCH IN AREAS WHERE PAVEMENT IS TO BE REMOVED.
- F) IT IS THE CONTRACTOR'S RESPONSIBILITY TO FAMILIARIZE THEMSELVES WITH THE CONDITIONS OF ALL THE PERMIT APPROVALS.
- G) THE CONTRACTOR SHALL OBTAIN AND PAY FOR ADDITIONAL CONSTRUCTION PERMITS, NOTICES AND FEES NECESSARY TO COMPLETE THE WORK AND ARRANGE FOR AND PAY FOR ANY INSPECTIONS AND APPROVALS FROM THE AUTHORITIES HAVING JURISDICTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY ADDITIONAL AND OFF-SITE DISPOSAL OF MATERIALS REQUIRED TO COMPLETE THE WORK.
- H) THE CONTRACTOR SHALL REMOVE AND DISPOSE OF ALL EXISTING STRUCTURES, CONCRETE, UTILITIES, VEGETATION, PAVEMENT, AND CONTAMINATED SOIL WITHIN THE WORK LIMITS SHOWN UNLESS SPECIFICALLY IDENTIFIED TO REMAIN. ANY EXISTING DOMESTIC / IRRIGATION SERVICE WELLS IN THE PROJECT AREA IDENTIFIED DURING THE CONSTRUCTION AND NOT CALLED OUT ON THE PLANS SHALL BE BROUGHT TO THE ATTENTION OF THE OWNER AND ENGINEER FOR PROPER CAPPING / RE-USE.
- I) ALL WORK WITHIN THE CITY OF PORTSMOUTH RIGHT OF WAY SHALL BE COORDINATED WITH THE CITY OF PORTSMOUTH DEPARTMENT OF PUBLIC WORKS (DPW).
- J) REMOVE TREES AND BRUSH AS REQUIRED FOR COMPLETION OF WORK. CONTRACTOR SHALL GRUB AND REMOVE ALL SLUMPS WITHIN LIMITS OF WORK AND DISPOSE OF OFF-SITE IN ACCORDANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS.
- K) CONTRACTOR SHALL PROTECT ALL PROPERTY MONUMENTATION THROUGHOUT DEMOLITION AND CONSTRUCTION OPERATIONS. SHOULD ANY MONUMENTATION BE DISTURBED, THE CONTRACTOR SHALL EMPLOY A NH LICENSED LAND SURVEYOR TO REPLACE THEM.
- L) PROVIDE INLET PROTECTION BARRIERS AT ALL CATCH BASINS WITHIN CONSTRUCTION LIMITS AND MAINTAIN FOR THE DURATION OF THE PROJECT. INLET PROTECTION BARRIERS SHALL BE HIGH FLOW SILT SACK BY ACF ENVIRONMENTAL OR APPROVED EQUAL. INSPECT BARRIERS WEEKLY AND AFTER EACH RAIN OF 0.25 INCHES OR GREATER. CONTRACTOR SHALL COMPLETE A MAINTENANCE INSPECTION REPORT AFTER EACH INSPECTION. SEDIMENT DEPOSITS SHALL BE REMOVED AFTER EACH STORM EVENT OR MORE OFTEN IF WARRANTED OR FABRIC BECOMES CLOGGED. EROSION CONTROL MEASURES SHALL BE INSTALLED PRIOR TO THE START OF ANY CLEARING OR DEMOLITION ACTIVITIES.
- M) THE CONTRACTOR SHALL PAY ALL COSTS NECESSARY FOR TEMPORARY PARTITIONING, BARRICADING, FENCING, SECURITY AND SAFELY DEVICES REQUIRED FOR THE MAINTENANCE OF A CLEAN AND SAFE CONSTRUCTION SITE.
- N) ANY CONTAMINATED MATERIAL REMOVED DURING THE COURSE OF THE WORK WILL REQUIRE HANDLING IN ACCORDANCE WITH NHDES REGULATIONS. CONTRACTOR SHALL HAVE A HEALTH AND SAFETY PLAN IN PLACE, AND COMPLY WITH ALL APPLICABLE PERMITS, APPROVALS, AUTHORIZATIONS, AND REGULATIONS



108/17  
N/F  
THIRTY THREE RICHMOND REALTY LLC  
186 DEERFIELD ROAD  
CANDIA, NH 03034  
5681/268  
D-17150



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

- NOTES:**
- 1) THE CONTRACTOR SHALL NOTIFY DIG SAFE AT 1-888-DIG-SAFE (1-888-344-7233) AT LEAST 72 HOURS PRIOR TO COMMENCING ANY EXCAVATION ON PUBLIC OR PRIVATE PROPERTY WITHIN 100 FEET OF UNDERGROUND UTILITIES. THE EXCAVATOR IS RESPONSIBLE TO MAINTAIN MARKS. DIG SAFE TICKETS EXPIRE IN THIRTY DAYS.
  - 2) UNDERGROUND UTILITY LOCATIONS ARE BASED UPON BEST AVAILABLE EVIDENCE AND ARE NOT FIELD VERIFIED. LOCATING AND PROTECTING ANY ABOVEGROUND OR UNDERGROUND UTILITIES IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR AND/OR THE OWNER. UTILITY CONFLICTS SHOULD BE REPORTED AT ONCE TO THE DESIGN ENGINEER.
  - 3) CONTRACTOR SHALL INSTALL AND MAINTAIN EROSION CONTROL MEASURES IN ACCORDANCE WITH THE "NEW HAMPSHIRE STORMWATER MANUAL, VOLUME 3, EROSION AND SEDIMENT CONTROLS DURING CONSTRUCTION. (NHDES DECEMBER 2008).

**HOLMES & GOLDSBERRY  
RESIDENCE  
45 RICHMOND STREET  
PORTSMOUTH, N.H.**

NO.	DESCRIPTION	DATE
1	ISSUED FOR COMMENT	12/8/20
0	ISSUED FOR COMMENT	11/23/20



SCALE 1"=5' NOVEMBER 2020

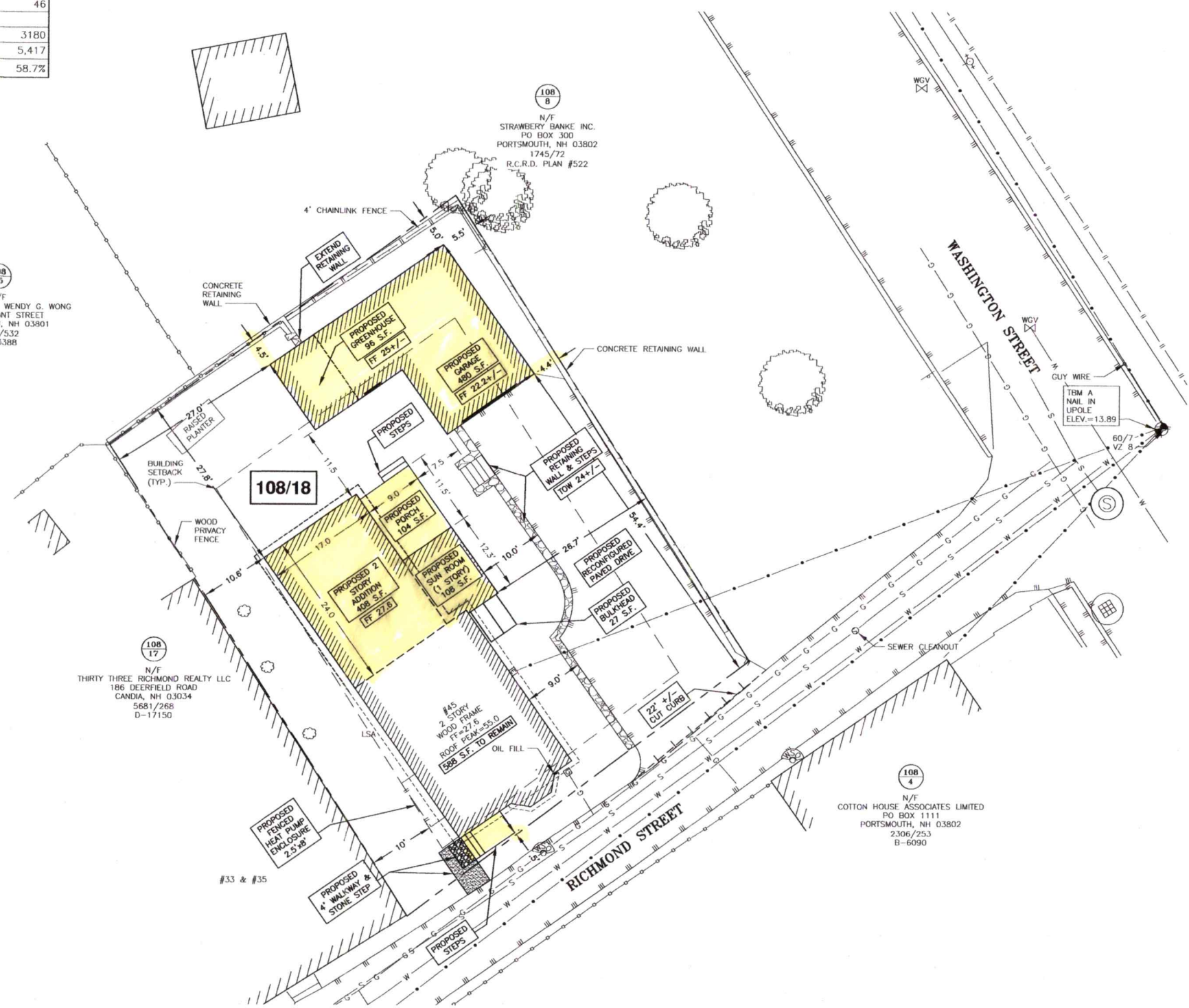
**DEMOLITION  
PLAN**

**C2**



IMPERVIOUS SURFACE AREAS (TO PROPERTY LINE)		
STRUCTURE	PRE-CONSTRUCTION IMPERVIOUS (S.F.)	POST-CONSTRUCTION IMPERVIOUS (S.F.)
MAIN STRUCTURE & PORCHES	839	1,208
GARAGE	539	576
BULKHEAD	0	26
CONCRETE WALK	97	0
PAVED DRIVEWAY	982	1099
RETAINING WALLS	165	203
WALKWAY	144	22
STEPS	61	46
TOTAL	2827	3180
LOT SIZE	5,417	5,417
% LOT COVERAGE	52.2%	58.7%

- NOTES:**
- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 108 AS LOT 18.
  - 2) OWNERS OF RECORD:  
CHERIE A. HOLMES & YVONNE GOLDSBERRY  
1087 COUNTY ROAD  
WALPOLE, NH 03608  
5957/665  
R.C.R.D. PLAN #522
  - 3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259E. EFFECTIVE DATE MAY 17, 2005.
  - 4) EXISTING LOT AREA:  
5,417 S.F.  
0.1244 ACRES
  - 5) PARCEL IS LOCATED IN THE MIXED OFFICE RESEARCH (MRO) ZONING DISTRICT.
  - 6) DIMENSIONAL REQUIREMENTS:  
MIN. LOT AREA: 7,500 S.F.  
FRONTAGE: 100 FEET  
DEPTH: 80 FEET  
SETBACKS: FRONT 5 FEET, SIDE 10 FEET, REAR 15 FEET  
MAXIMUM STRUCTURE HEIGHT: 40 FEET  
MAXIMUM STRUCTURE COVERAGE: 40%  
MINIMUM OPEN SPACE: 25%
  - 7) THE PURPOSE OF THIS PLAN IS TO SHOW PROPOSED CONSTRUCTION AND VARIANCES REQUIRED ON ASSESSOR'S MAP 108 LOT 18 IN THE CITY OF PORTSMOUTH.
  - 8) BUILDING/SITE PLANS BASED ON ARCHITECTURAL DESIGN BY ANNE WHITNEY ARCHITECT.

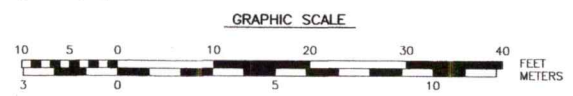
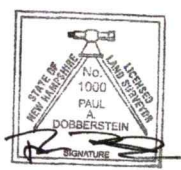


108/15  
N/F  
ALAN W. WONG & WENDY G. WONG  
179 PLEASANT STREET  
PORTSMOUTH, NH 03801  
5883/532  
D-3338B

108/17  
N/F  
THIRTY THREE RICHMOND REALTY LLC  
186 DEERFIELD ROAD  
CANDIA, NH 03034  
5681/268  
D-17150

108/4  
N/F  
COTTON HOUSE ASSOCIATES LIMITED  
PO BOX 1111  
PORTSMOUTH, NH 03802  
2306/253  
B-6090

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."  
*Paul A. Dobberstein*  
PAUL A. DOBBERSTEIN, LLS  
DATE 12/8/2020



APPROVED BY THE PORTSMOUTH ZONING BOARD

CHAIRMAN \_\_\_\_\_ DATE \_\_\_\_\_

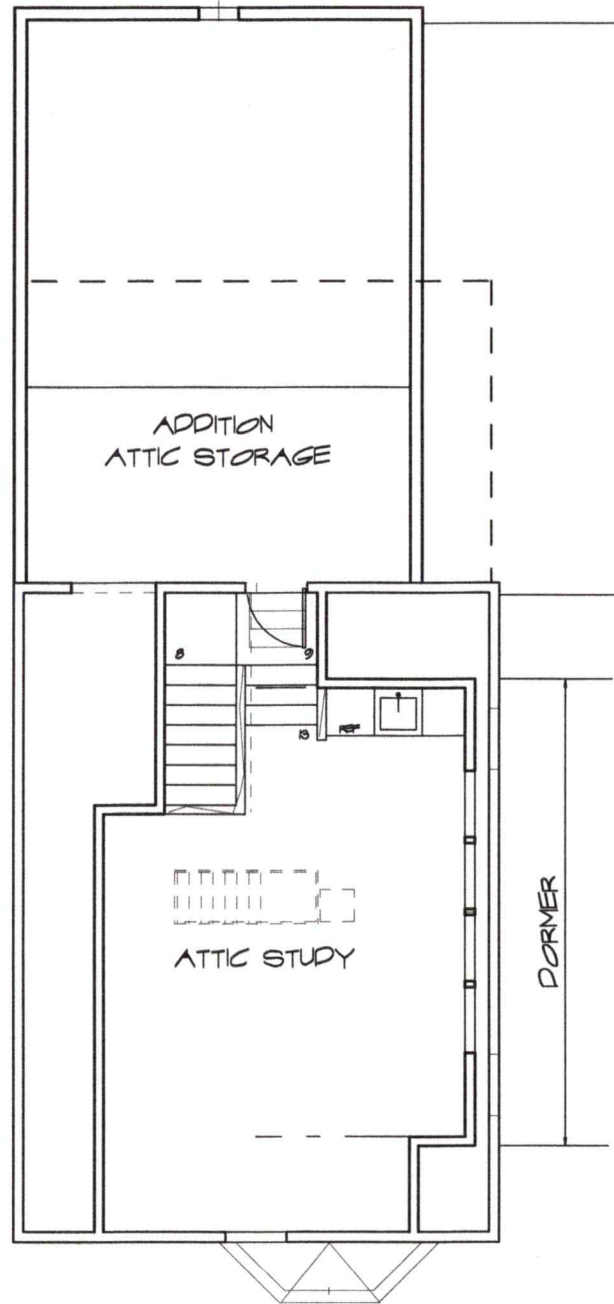
**HOLMES & GOLDSBERRY RESIDENCE**  
45 RICHMOND STREET  
PORTSMOUTH, N.H.

NO.	DESCRIPTION	DATE
1	ISSUED FOR APPROVAL	12/8/20
0	ISSUED FOR COMMENT	11/23/20

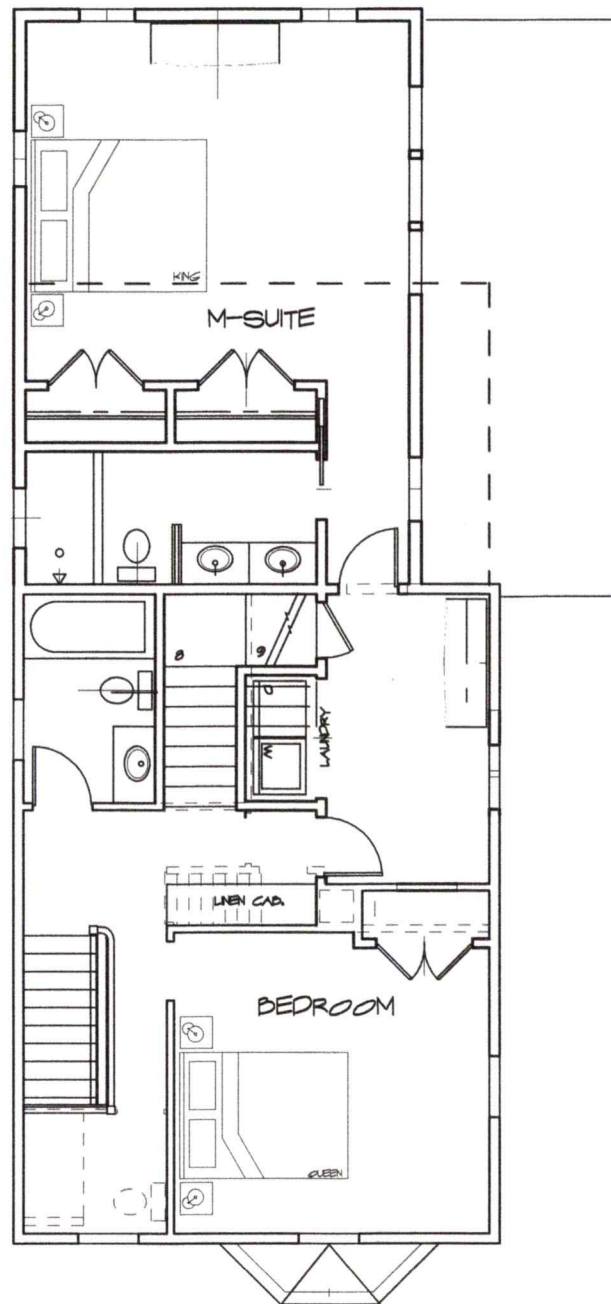
REVISIONS		
NO.	DESCRIPTION	DATE

SCALE 1"=10' NOVEMBER 2020

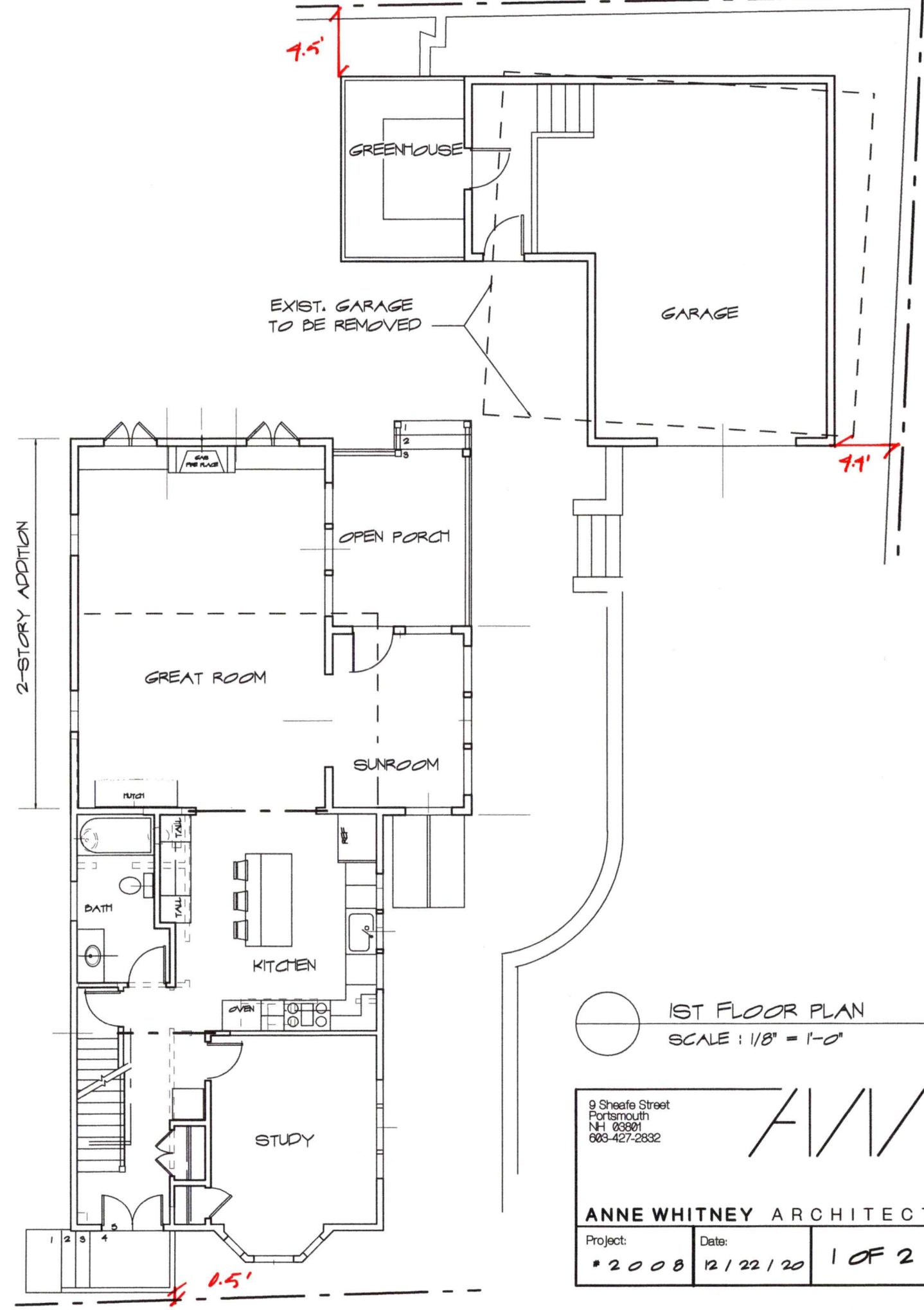
VARIANCE PLAN **C3**



○ ATTIC PLAN  
SCALE : 1/8" = 1'-0"



○ 2ND FLOOR PLAN  
SCALE : 1/8" = 1'-0"



○ 1ST FLOOR PLAN  
SCALE : 1/8" = 1'-0"

9 Sheafe Street  
Portsmouth  
NH 03801  
603-427-2832

**AW**

**ANNE WHITNEY ARCHITECT**

Project: # 2008	Date: 12/22/20	1 OF 2
--------------------	-------------------	--------



VEWS OF EXIST FRONT STEPS



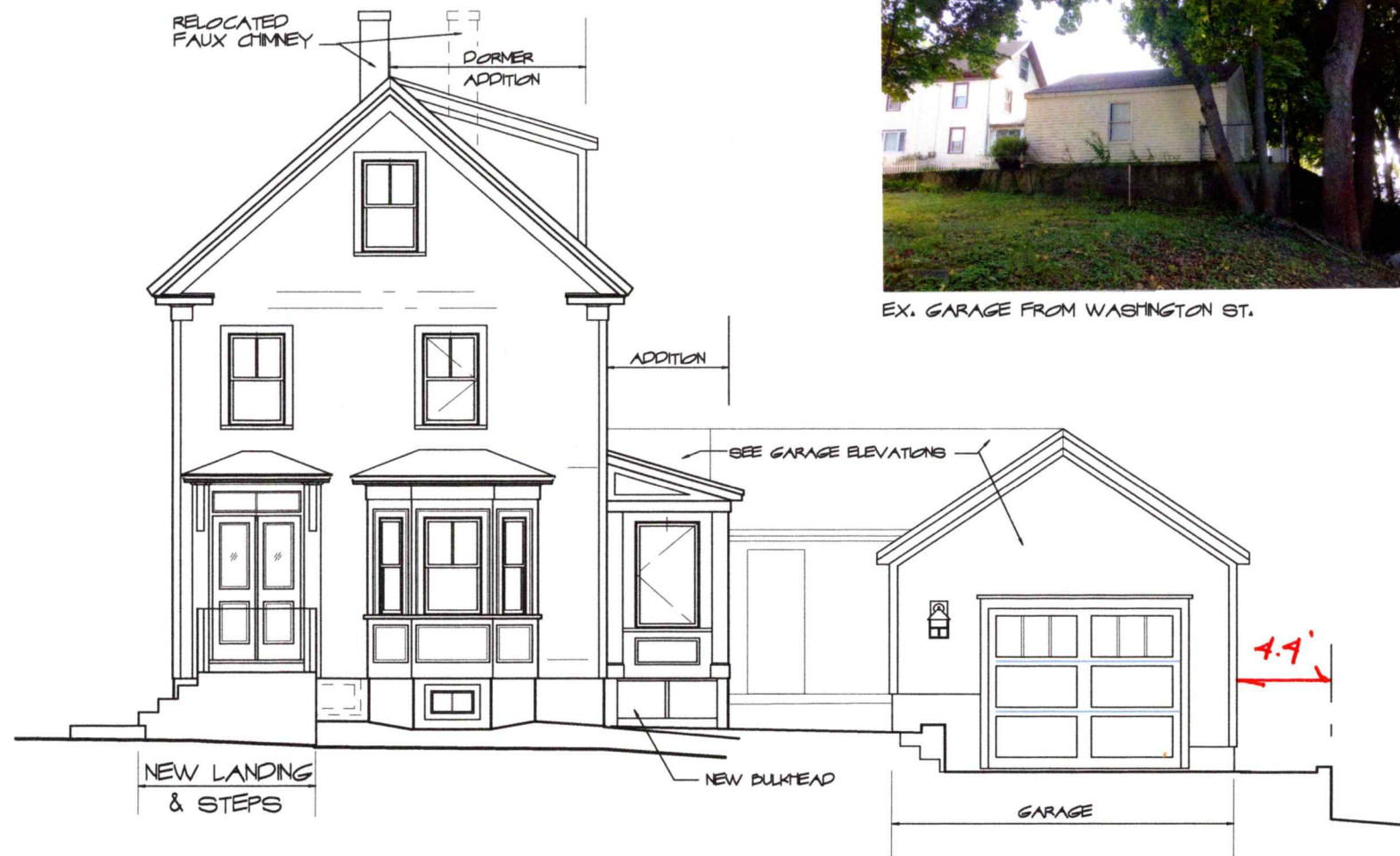
WEST, LEFTSIDE ELEVATION  
SCALE: 3/16" = 1'-0"



EX. GARAGE FROM WASHINGTON ST.



EXIST GARAGE FRONT ELEVATION



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

9 Sheafe Street  
Portsmouth  
NH 03801  
603-427-2832

*AW*

**ANNE WHITNEY ARCHITECT**

Project:	Date:	2 OF 2
# 2008	12/22/20	

# HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

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

December 22, 2020

## HAND DELIVERED

Peter Stith, Planner  
Izak Gilbo, Administrative Clerk  
Portsmouth Zoning Board of Adjustment  
City Hall  
1 Junkins Avenue  
Portsmouth, NH 03801

Re: Zoning Relief  
Karona, LLC, Owner/Applicant  
36 Artwill Avenue  
Tax Map 229/Lot 4  
SRB Zone

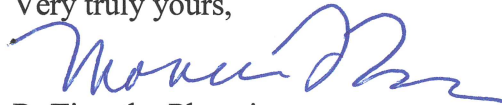
Dear Mr. Stith, Mr. Gilbo & Zoning Board Members:

On behalf of Karona, LLC, enclosed please find the following:

- Land Use Application (submitted online December 22, 2020)
- Owner's Authorization
- Memorandum in Support of Variance (original and 11 copies)

We look forward to presenting this the Zoning Board of Adjustment at its January 19, 2021 meeting.

Very truly yours,



R. Timothy Phoenix  
Monica F. Kieser

Encl.

cc: Karona, LLC  
Thomas House  
James Verra & Associates, Inc.

---

DANIEL C. HOEFLE	R. PETER TAYLOR	GREGORY D. ROBBINS	DUNCAN A. EDGAR
R. TIMOTHY PHOENIX	JOHN AHLGREN	MONICA F. KIESER	OF COUNSEL:
LAWRENCE B. GORMLEY	KIMBERLY J.H. MEMMESHEIMER	SAMUEL HARKINSON	SAMUEL R. REID
STEPHEN H. ROBERTS	KEVIN M. BAUM	JACOB J.B. MARVELLEY	



On behalf of Karona LLC, owner of property located at 36 Artwill Ave, Portsmouth, NH, the firm of Hoefle Phoenix Gormley and Roberts P.A. is authorized to represent us before any and all City of Portsmouth Boards, Commissions and staff with respect to any permitting required for our development of the property.

  
Butch Ricci, Member/Manager.

## MEMORANDUM

**TO:** Portsmouth Zoning Board of Adjustment (“ZBA”)  
**FROM:** R. Timothy Phoenix, Esquire  
**DATE:** December 22, 2020  
**RE:** Karona, LLC, Owner/Applicant  
Project Location: 36 Artwill Avenue  
Tax Map 229/Lot 4  
SRB Zone

Dear Chairman Rheume and Zoning Board Members:

On behalf of Karona, LLC (“Karona”), we are pleased to submit this memorandum and attached exhibits in support of Zoning Relief to be considered by the Zoning Board of Adjustment (“ZBA”) at its January 19, 2021 meeting.

### **I. Exhibits**

1. 8/3/17 Site Plans 36 Artwill Avenue – issued by James Verra & Associates, Inc.
2. Architectural Plan Set, 36 Artwill Avenue – issued by THA Architects, LLC.
  - Page A1 – Floor Plans
  - Page A2 – Elevations
3. A-G Site Photographs.
4. Tax Map 229.
5. 1958 recorded RCRD Plan 02637.
6. 2017 ZBA Notice of Decision & Minutes.

### **II. Property/Project**

36 Artwill Avenue is a 26,737 sq. ft. lot on a private street upon which exists a single-family dwelling and a not yet completed garage with a begun but not completed second floor apartment. (**Exhibits 1,3**). The primary dwelling has long existed, with the detached garage erected in 2013 pursuant to a building permit for a 32’ by 30’ accessory structure. That permit was issued in error due to the frontage requirement. Karona purchased the property in 2017, intending to complete the garage and apartment for use as a detached accessory dwelling unit (“DADU”) in compliance with the Portsmouth Zoning Ordinance (“PZO”) §10.814. Karona received a frontage variance on July 25, 2017 (**Exhibit 6**) but its subsequent request for a Conditional Use Permit for the DADU was denied because the majority members of the LLC did not reside at the property. The frontage Variance subsequently expired.

Karona, LLC is now comprised of Robert Ricci and his wife Katherine, both of whom reside at 36 Artwill Avenue. Applicant intends to complete the DADU as previously designed,

but because the variance has expired, Karona again seeks a variance from the frontage requirement of Portsmouth Zoning Ordinance (“PZO”) §10.521 to permit DADU in the existing garage. The footprint of the building, thus the dimensions of the ADU is 1,096 sq. ft. Construction of the DADU is incomplete, having been halted by the inspection department due to prior owner actions. Complete are interior wall framing and delivery without installation of appliances.

### III. **Relief Required**

After conferring with the City Planning Department staff, it has been determined that the following is required:

1. PZO Section 10.521 – Table of Dimensional Standards- To permit the accessory structure on a lot on a private street with no frontage on a public street where 100’ is required.

The former owner received building permits to erect a 32’x 30’ accessory structure however, built it slightly larger (32x32 +/-) than approved. Apparently, the building permit was issued in error due to the frontage requirement. As a result, the situation may well be the rightful subject of a request for equitable waiver; however, since the structure is now existing and the relief rather slight, built by a former owner, zoning relief is here sought.

### IV. **Variance Requirements**

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

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

In considering whether variances “in a marked degree conflict with the ordinance such that they violate the ordinance’s basic zoning objectives”. Malachy Glen, supra, also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the

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

Here, the accessory structure was built by a former owner after a permit was received from the Building Department. It is unclear why the variance requirement was not learned during the permit approval process. In any event, the structure was an existing condition when Karona purchased the property. Since: the building will be used for a garage, a positive feature compared to existing uncovered parking only; and will if issued a CUP by the Planning Board provide a DADU as is permitted under the Portsmouth Zoning Ordinance and mandated by State statute NH RSA 674:72; is on a lot that was permitted (“no jurisdiction”) by the Planning Board in 1958 (Exhibit 5); has frontage on the private Artwill Avenue which is built to public street specifications, where a home already exists, it is reasonable to allow the accessory building to remain via this minimal zoning relief. The building, on a large lot, is the last on a short, private dead-end street, providing covered parking in a neighborhood of homes, public swimming pool, high school and other nearby commercial and residential uses. (**Exhibit 3**, Satellite Photo) The lack of frontage on a public street will neither “alter the essential character of the locality nor threaten the public health, safety or welfare.”

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

The accessory building already exists. The lot and existing home have long existed. The accessory building was granted a permit to a prior property owner, and it was not realized or discovered via City review that zoning relief was needed until after the building was constructed. The new building is on the far side of the existing home on a private dead-end street. To the casual observer, the lack of public street frontage is not readily ascertainable. Given that the area is a mixture of homes, public swimming pool, high school, churches and other nearby residential and commercial uses, it is clear that granting this slight “frontage” variance will not diminish surrounding property values.

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

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

Financial hardship alone does not justify a variance; however, when considered in the overall picture, it is one of the considerations. Karona purchased the property with the existing

accessory building and without knowledge that there was a technical violation of the frontage requirement. The lot and home were long ago permitted on the private Artwill Avenue. It is not possible to create frontage on the public Lafayette Road. Creation of the lot and construction of any structure would require identical relief. Since it is impossible to create frontage on a public street, special conditions exist.

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

The frontage requirement is designed to maintain access, adequate air, light, space, and visual perspective. The private Artwill Avenue fully provides these requirements. Given that: this is the last property on a dead-end private street, so will be seen by almost no one; the lot was created with Planning Board review in 1958 (**Exhibit 5**); the long existing single-family home; the existing frontage on the private Artwill Avenue; the purpose of frontage requirement is met, so there is no reason to apply the strict frontage requirements of the zoning ordinance.

- c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). This is a residential use in a residential area with the accessory building being the last on a dead-end street that no one else will see. Accordingly, the use is reasonable.

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

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, L.L.C., 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice”. Malachy Glen, supra at 109. While arguably technically noncompliant, the ordinance violation is impossible to avoid. Any structure on the lot would require the same relief. Together with facts that: the building already exists, apparently permitted through the inspection process; was built by a former owner; has frontage on Artwill Avenue which appears to be a public way; frontage relief was previously granted by the ZBA in 2017; and the structure will be seen by virtually no one since it is the last structure on the dead-end Artwill Avenue, there is no benefit to the public from denying the frontage variance. In comparison, the owner will suffer great harm as it would be required to remove an existing building it has paid for, and is otherwise entirely and reasonably usable. Its removal after being permitted by the City would diminish the

value of the property, add unnecessary costs of removal, deny a possible DADU, and leave an uncovered-only parking situation.

It is clear that there is no benefit to public outweighing the hardship to the applicant if the variances are denied.

**V. Conclusion**

For all of the reasons stated, Karon respectfully requests that the Portsmouth Zoning Board of Adjustment grant the submitted variance requests.

Respectfully submitted,

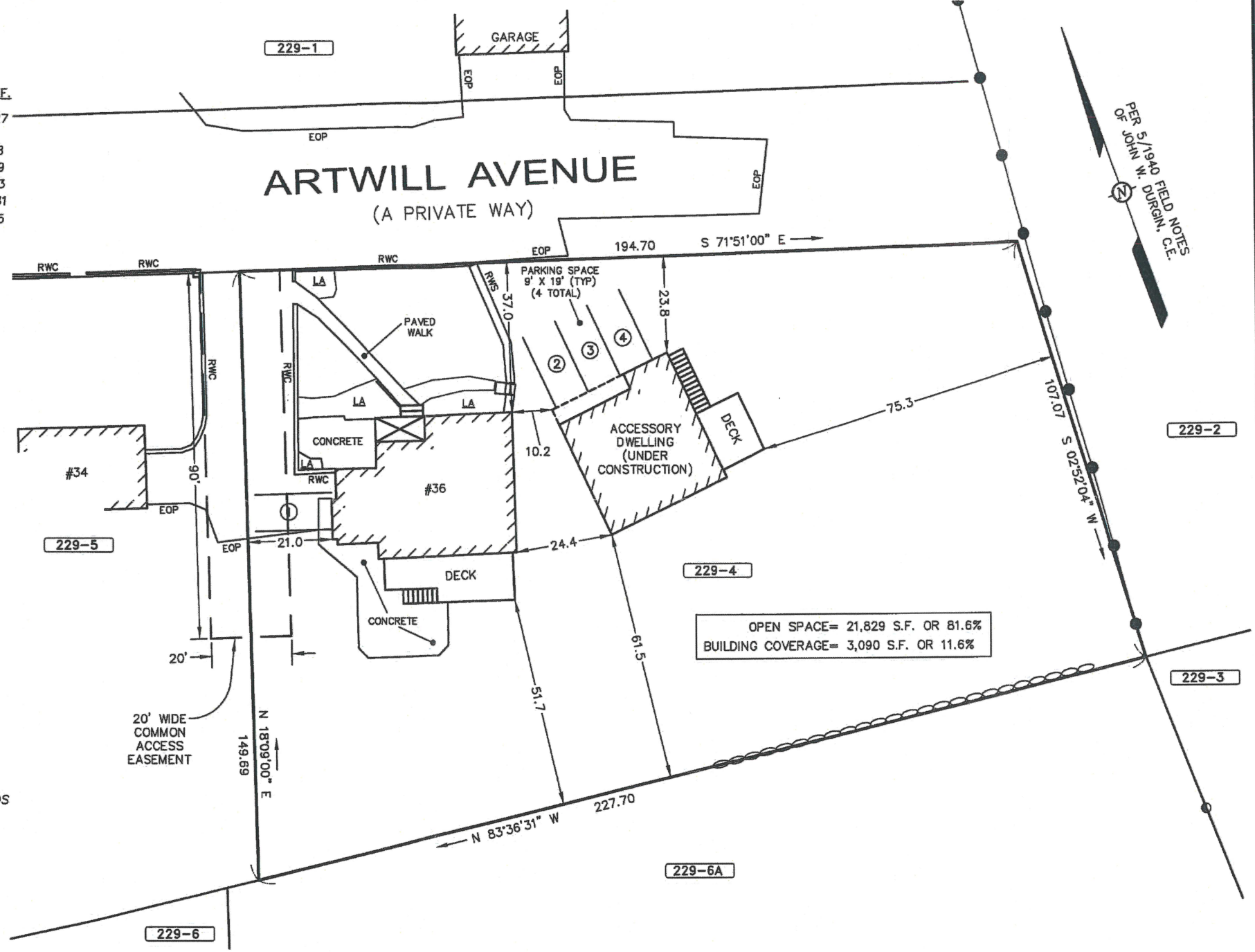
Karon, LLC

A handwritten signature in blue ink, appearing to read "Monica F. Kieser", written over a horizontal line.

By: R. Timothy Phoenix  
Monica F. Kieser

**ABUTTERS LIST**

MAP-LOT	OWNER OF RECORD	DEED REF.
229-1	HARLON P. WILLIS, TRUSTEE JEAN P. WILLIS, TRUSTEE	3537/1327
229-2	ST. NICHOLAS GREEK ORTHODOX CHURCH	1840/128
229-3	CITY OF PORTSMOUTH	1985/379
229-5	KRISTIN M. & CHRISTOPHER M. CHASE	5599/453
229-6	DOMER REALTY, LLC	4231/1881
229-6A	ST. NICHOLAS GREEK ORTHODOX CHURCH	2410/505



OPEN SPACE = 21,829 S.F. OR 81.6%  
BUILDING COVERAGE = 3,090 S.F. OR 11.6%

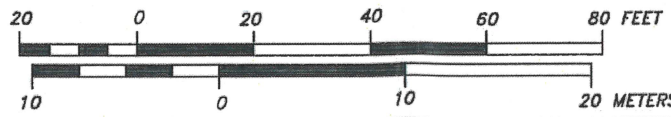
- LEGEND:**
- ○ ○ ○ ○ STONE WALL
  - IRON ROD
  - IRON PIPE
  - ● ● CHAIN LINK FENCE
  - 110-5 TAX SHEET - LOT NUMBER
  - RCRD ROCKINGHAM COUNTY REGISTRY OF DEEDS
  - EOP EDGE OF PAVEMENT
  - RWC CONCRETE RETAINING WALL
  - RWS STONE RETAINING WALL
  - LA LANDSCAPED AREA

**NOTES:**

- OWNER OF RECORD..... KARONA, LLC  
ADDRESS..... 25 PARK AVE, GREENLAND, NH 03840  
DEED REFERENCE..... 5821/1630  
TAX SHEET / LOT..... 229-4  
PARCEL AREA ..... 26,739 S.F.
- THIS PLAN IS BASED ON A FIELD SURVEY 7/28/2017 BY JAMES VERRA AND ASSOC., INC.
- ZONED:..... SRB  
MINIMUM LOT AREA 15,000 S.F.  
FRONTAGE..... 100'  
MINIMUM OPEN SPACE ..... 40%  
MAXIMUM BUILDING COVERAGE ..... 20%
- FRONT YARD SETBACK..... 30'  
SIDE YARD SETBACK..... 10'  
REAR YARD SETBACK..... 30'
- THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE @ 1-888-DIG-SAFE.

**REFERENCE PLANS:**

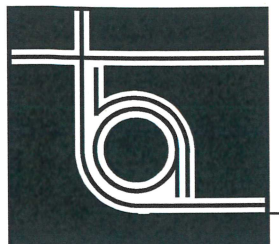
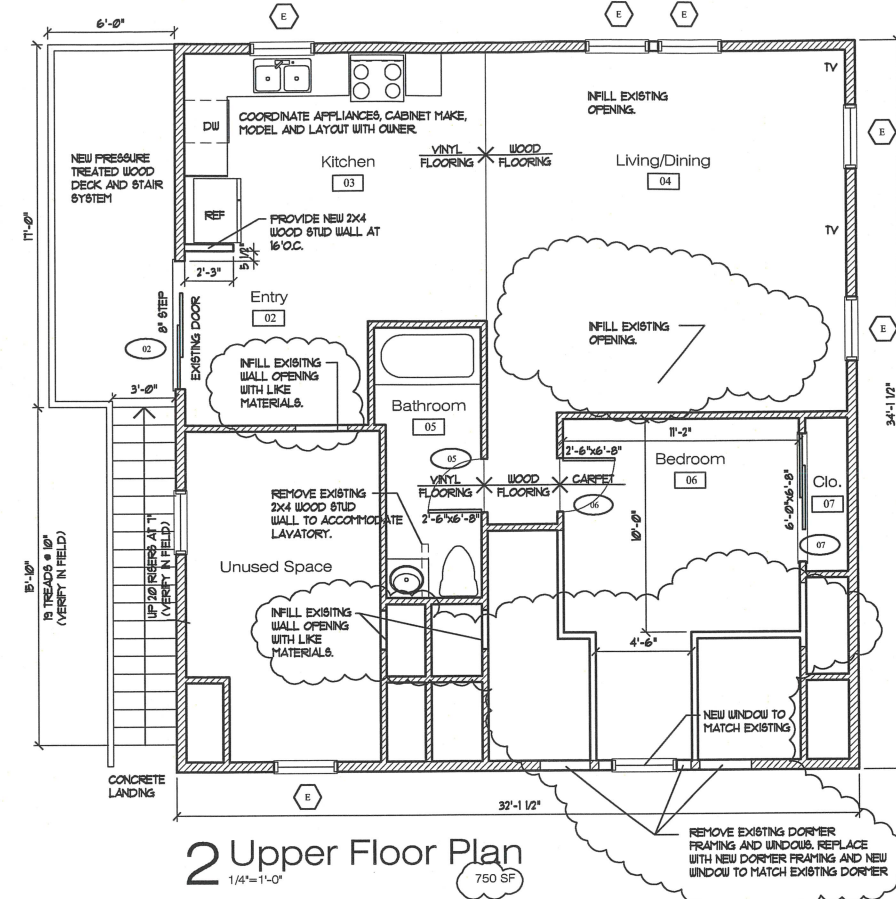
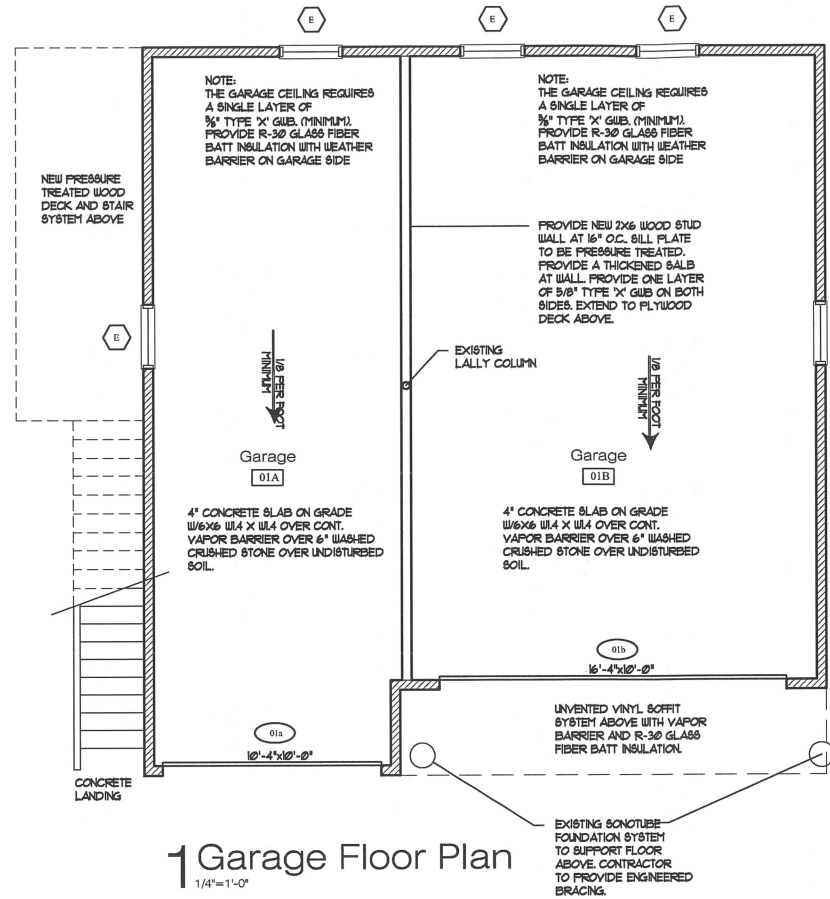
- PLAN OF LOTS OWNED BY BEATRICE L. HOPLEY, LAFAYETTE ROAD, PORTSMOUTH, N.H., REVISED TO 2/1957, RCRD PLAN 02637.



REV. NO.	DATE	DESCRIPTION	APPR'D
<b>SITE PLAN</b> <b>36 ARTWILL AVENUE</b> <b>PORTSMOUTH, NEW HAMPSHIRE</b> <b>ASSESSOR'S PARCEL 229-4</b> for <b>KARONA, LLC</b>			
<b>JAMES VERRA and ASSOCIATES, INC.</b> 101 SHATTUCK WAY SUITE B NEWINGTON, N.H. 03801-7876 603-436-3557			DATE: 8/3/2017 JOB NO: 23723 SCALE: 1" = 20' DWG NAME: 23723 PLAN NO: 23723-2 SHEET: 1 of 1
JV PROJECT MGR COPYRIGHT © 2017 by JAMES VERRA and ASSOCIATES, INC.		JCS DRAWN BY	

**General Notes**

- The intent of these drawings is to give the tradesperson enough information to perform a complete job. The General Contractor and subcontractors are responsible for providing all labor, materials, and equipment to perform the full work in a complete and craftsman like manner. If additional clarification is required to describe the scope of work, it is the responsibility of the General Contractor to contact the architect or owner prior to submitting bids.
- Should local codes and/or ordinances differ from these plans, a determination shall be made by the general contractor and/or local building official as to which is the most stringent. The most stringent requirement shall rule. Should a change in these plans be necessary or desired which will alter the design the architect of record must verify all changes.
- All interior full height walls are to be 3 1/2" wood studs at 16" o.c. with one layer of 1/2" GWB each side unless otherwise noted. Interior walls shown are existing except as noted.
- All exterior walls are to be 5 1/2" wood studs at 16" o.c. with one layer of 1/2" GWB each side, R-21 glass fiber batt insulation, vapor barrier on inside stud surface and weather resistant barrier on outside face of sheathing surface unless noted otherwise. Exterior walls shown are existing.
- Bathroom walls are to include 3" sound batts.
- If required, all water lines located within exterior walls or adjacent to unheated spaces are to be insulated.
- All exposed finished surfaces, including insulation materials, facings, vapor barriers and breather papers shall have a flame spread of not more than 200 and a smoke density of not more than 450.
- Provide draft stopping in all concealed spaces of walls, at cove, overhangs, soffited ceilings, dropped ceilings and all penetrations of ducts, pipes, conduits, etc. through exterior walls, floor/ceiling assembly and roof/ceiling assembly.
- Provide smoke detectors in sufficient quantities and locations to meet requirements of the Building Code.
- Fire stop all penetrations through fire rated assemblies per a UL listed assembly.
- All plumbing fixtures shall be sealed to adjacent materials with appropriate sealant.
- Blocking installation by contractor to be provided where blocking is required.
- General Contractor to verify and provide for a weather tight building including but not limited to exterior wall system, roof system, flashing and counterflashing.
- Patch all areas which have been disturbed to match existing adjacent construction.
- It is the responsibility of the contractors to familiarize themselves with the site existing condition prior to construction.
- Coordinate the removal of all hazardous material per State and local codes.
- Verify and coordinate power requirements with Owner.
- Provide new lighting as shown. Coordinate with Owner.
- Coordinate plumbing requirements with tenant.
- Provide galvanized flashing, hangers and fasteners when installing the exterior pressure treated wood decking and stair system. Fasteners to be G-185 hot dipped coating.
- Contractor is responsible to field verify all dimensions and conditions and report any and all discrepancies to the Owner and architect.
- Substrate for under slab shall be a minimum of 6" below finished floor and a maximum of 8" below finished floor and shall be free of large rocks and debris.
- Concrete floor to consist of 3000 psi 4" (minimum) concrete slab on grade with polypropylene fibers or galvanized 6x6 w2.9x2.9 welded wire fabric reinforced level slab with flatness equivalent to FF50, or 1/8" over 10 feet over 15 mil Stego vapor barrier over compacted fill with all penetrations sealed per manufacturer's specifications prior to installation of slab.
- Contractor to provide access panels as required for servicing utilities. Contractor to coordinate locations with Owner.
- Contractor to coordinate with Owner the installation of hose bibbs.
- Contractor to provide shop submittals to Owner for all kitchen appliances/equipment. Shop submittal shall address any and all details, electrical requirements, etc.
- Unless otherwise noted, all dimensions are to face or centerline of the wall studs, not the wall assembly.
- MR gypsum board shall be used throughout bathroom and similar damp locations except where backer board is required.
- Provide R-21 glass fiber batt unfaced insulation at exterior walls. Tape all vapor barrier seams and adhere to wood studs as required. Provide one layer of 1/2" GWB. Provide expansion joints as recommended by manufacturer.
- Mechanical/plumbing system design is to be provided by Contractor.
- Electrical system, including security, design is to be provided by Contractor.

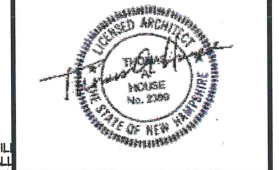


**THA ARCHITECTS, LLC**

ARCHITECTURE • DESIGN • PLANNING • INTERIOR DESIGN  
105 WILLOW BROOK AVENUE  
STRATHAM, NEW HAMPSHIRE 03885

Tel: (603) 770-2491 Fax: (603) 773-0238  
www.thaarc.com

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**Ricci Addition**

36 Artwill Avenue  
Portsmouth, NH

**Floor Plans Notes**

tabbles®  
**EXHIBIT 2**

SCALE: \_\_\_\_\_

ISSUED / DRAWN BY: \_\_\_\_\_  
July 25, 2017  
© THA Architects, LLC

REVISED / REVISED BY: \_\_\_\_\_  
Aug. 21, 2017

\_\_\_\_\_

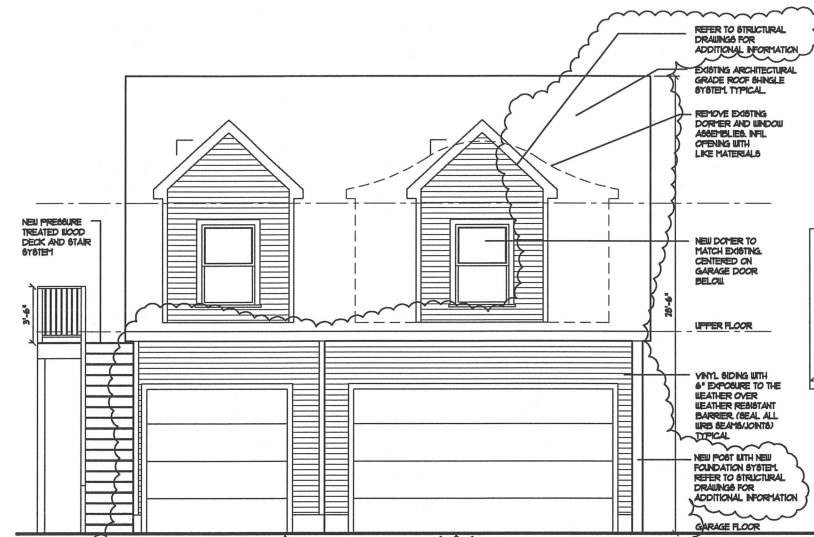
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JOB NO: 17008

SHEET NUMBER

**A-1**

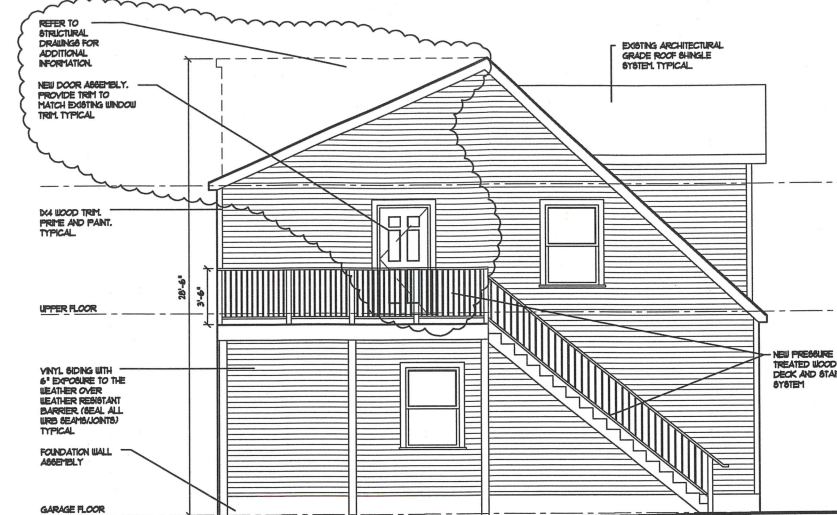




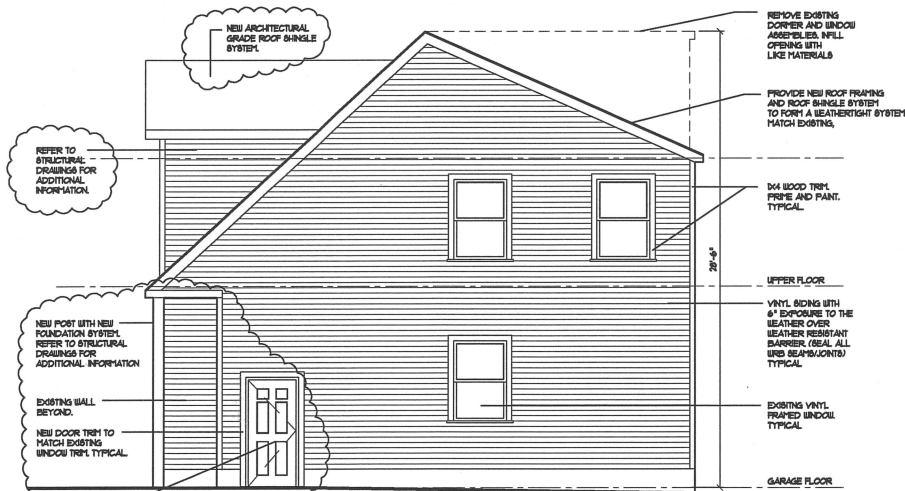
1 Elevation (Front)  
3/16"=1'-0"



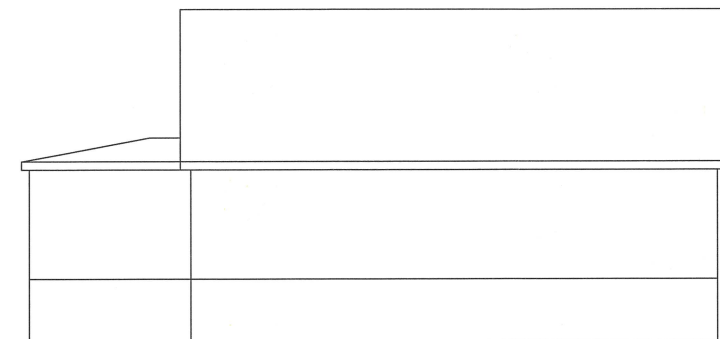
Existing Home



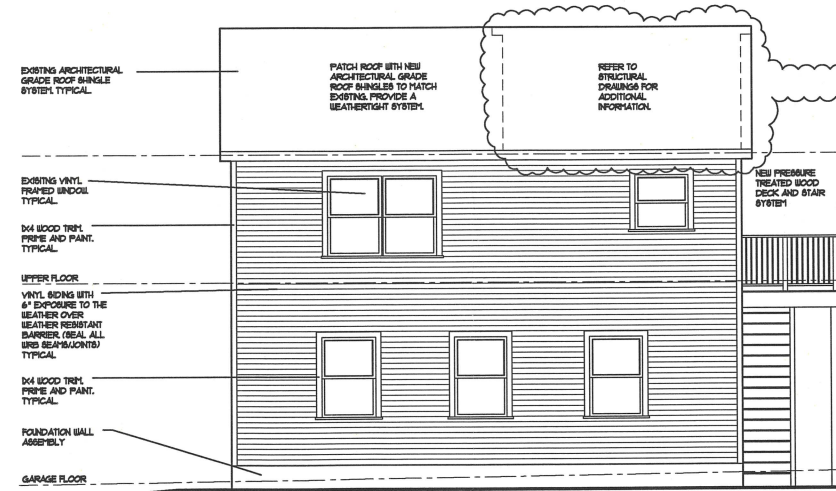
2 Elevation (Left Facing School)  
3/16"=1'-0"



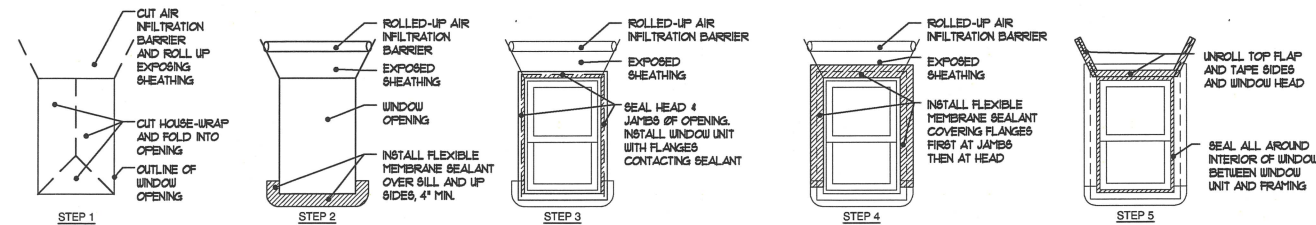
3 Elevation (Right Facing Home)  
3/16"=1'-0"



4 Elevation (Rear) Existing Home  
3/16"=1'-0"




PROVIDE NEW BELL SCOUTURE FOUNDATION AT A MINIMUM 4'-0" BELOW GRADE. TYPICAL.




5 Window Installation Notes  
No Scale

NOTE:  
ALL OPERABLE WINDOWS ARE TO BE EGRESS WINDOWS.  
CONTRACTOR TO VERIFY WITH LOCAL AUTHORITY  
HAVING JURISDICTION.



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**Ricci Addition**

36 Artwill Avenue  
Portsmouth, NH

**Exterior Elevations Notes**

SCALE: \_\_\_\_\_  
ISSUED / DRAWN BY \_\_\_\_\_  
July 25, 2017  
© THA Architects, LLC  
REVISED / REVISED BY \_\_\_\_\_  
Aug. 21, 2017  
Nov. 29, 2017  
\_\_\_\_\_

JOB NO: 17008

SHEET NUMBER  
**A-2**



Google Maps -42 Artwill Ave



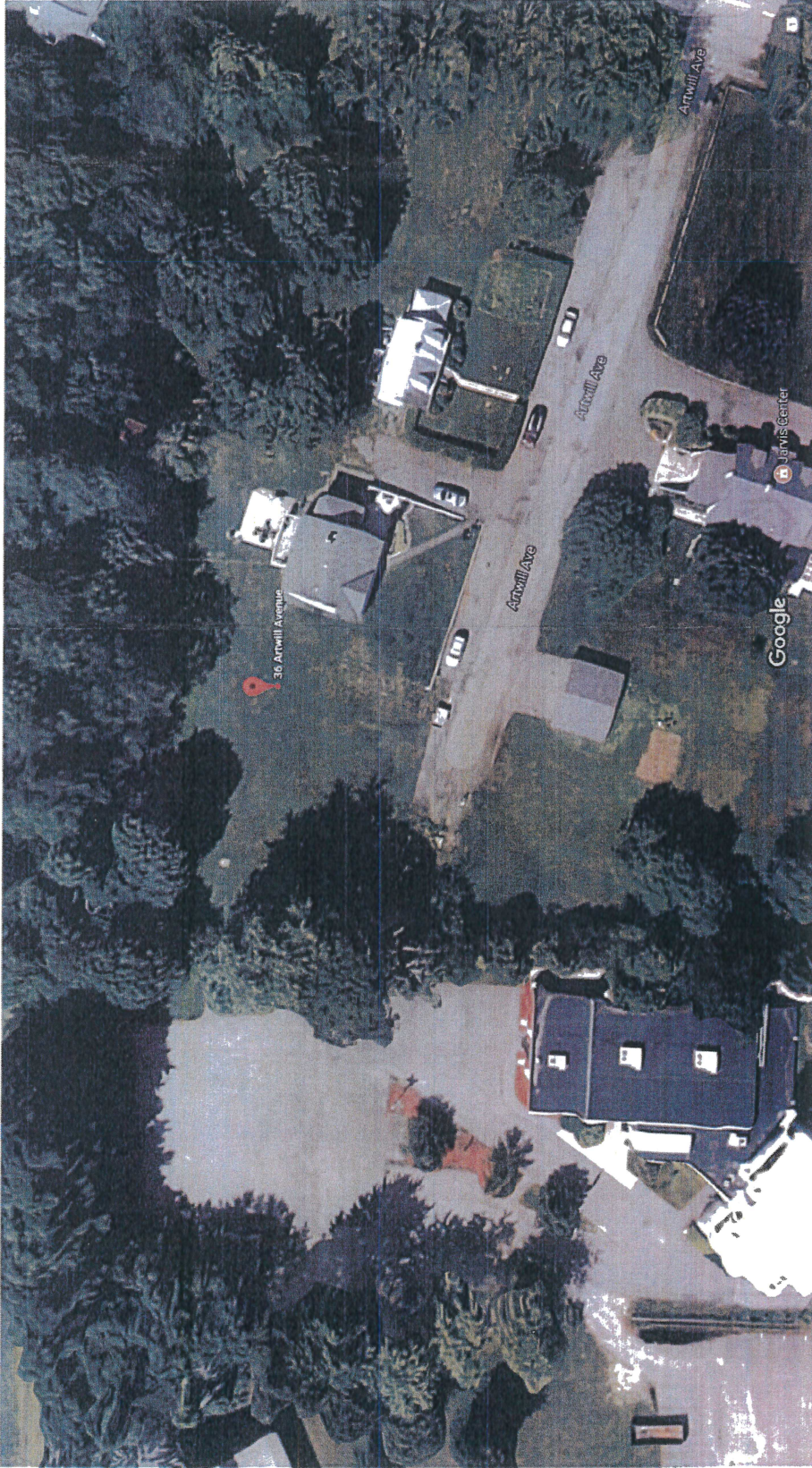
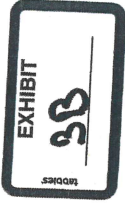
Image capture: Sep 2011 © 2017 Google

Portsmouth, New Hampshire  
Street View - Sep 2011



[https://www.google.com/maps/@43.0582434,-70.7685242,3a,75y,164.91h,89.11t/data=!3m6!1e1!3m4!1sHYepfHF\\_0BuS6RRgtw-3Mg!2e0!7113312!8i6656](https://www.google.com/maps/@43.0582434,-70.7685242,3a,75y,164.91h,89.11t/data=!3m6!1e1!3m4!1sHYepfHF_0BuS6RRgtw-3Mg!2e0!7113312!8i6656)

6/26/2017



imagery © 2017 Google, Map data © 2017 Google 20 ft



Google Maps 36 Artwill Ave



Imagery ©2017 Google, Map data ©2017 Google 100 ft



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**EXHIBIT**  
**3D**



tabbies®  
EXHIBIT  
3E

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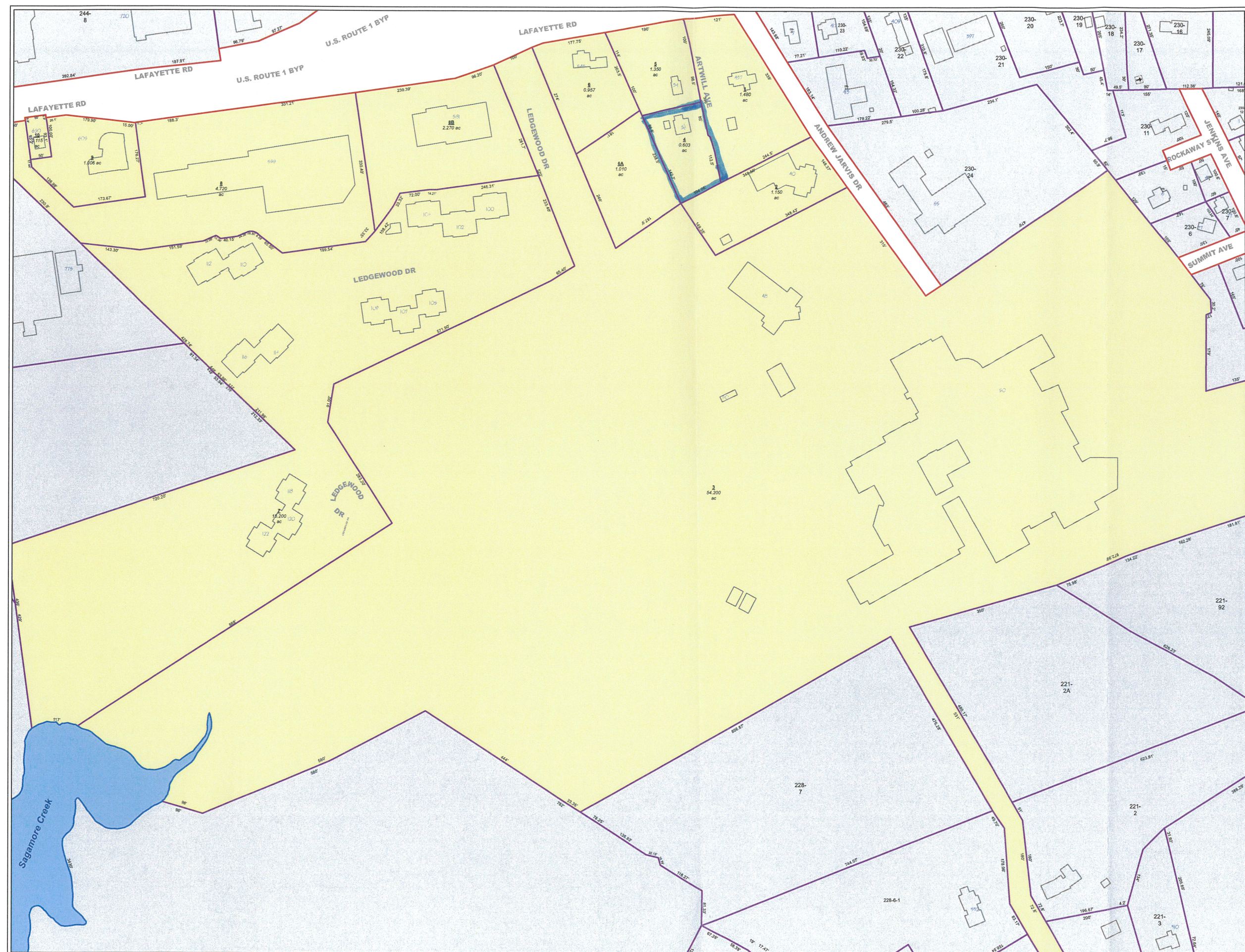
tabbles<sup>®</sup>  
**EXHIBIT**  
**3F**



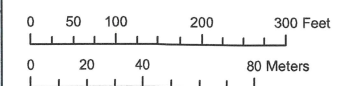
tabbies®  
**EXHIBIT**  
36







- See the code book for:
- 7-5A Lot or lot-unit number
  - 2.56 ac Parcel area in acres (ac) or square feet (sf)
  - 25 Address number
  - 233-137 Parcel number from a neighboring map
  - 68' Parcel line dimension
- SIMS AVE**
- Parcel/Parcel boundary
  - Parcel/ROW boundary
  - Water boundary
  - Structure (1994 data)
  - Parcel covered by this map
  - Parcel from a neighboring map (see other map for current status)



*This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.*

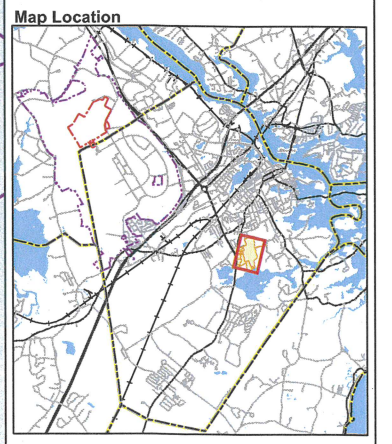
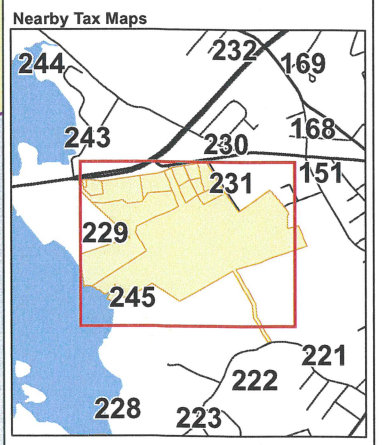
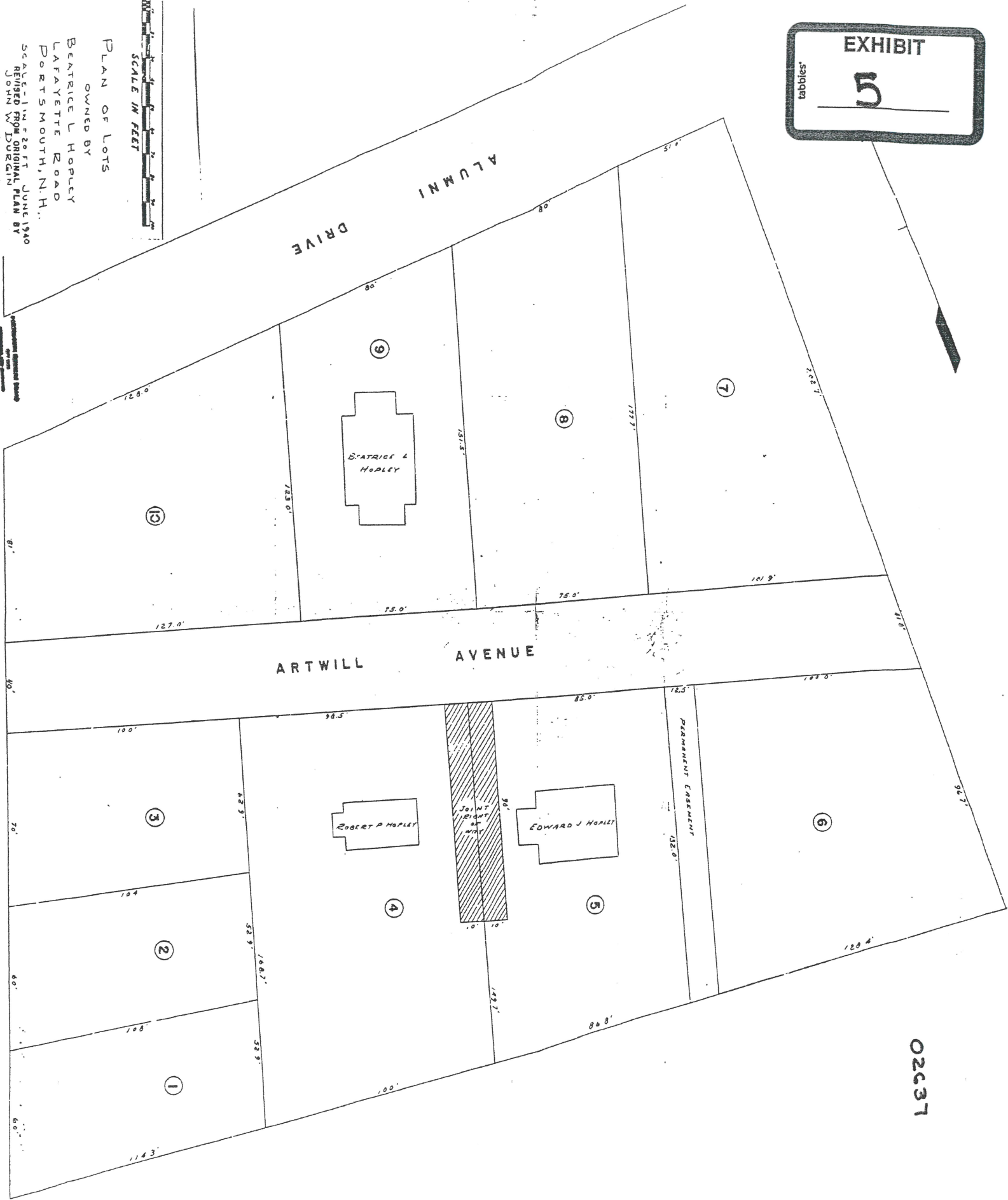


EXHIBIT  
5

02637



SCALE IN FEET

OWNED BY  
BEATRICE L. HOPLEY  
LAFAYETTE ROAD  
DORRISTMOUTH, N.H.  
SCALE 1" = 20 FT. JUN. 1940  
REVISED FROM ORIGINAL PLAN BY  
JOHN W. DURGIN  
CIVIL ENGINEER  
REVISED MAY, 1946  
REVISED FEB. 1957

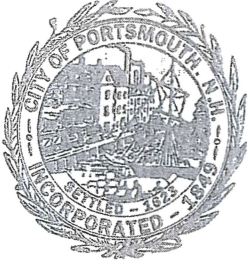
*See Specifications*  
*File No. 2249*  
*Plan No. 794*  
*8/29/1958*

LAFAYETTE ROAD

ARTWILL AVENUE

ALUMNI DRIVE

FILE NO. 2249  
PLAN NO. 794

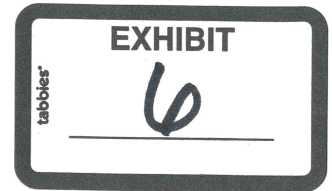


# CITY OF PORTSMOUTH

Community Development Department  
(603) 610-7232

Planning Department  
(603) 610-7216

## PLANNING DEPARTMENT



July 28, 2017

Karona, LLC  
25 Park Street  
Greenland, New Hampshire 03840

Re: Property at 36 Artwill Avenue, Permit #3037  
Assessor Plan 229, Lot 4

Dear Applicant:

The Board of Adjustment at its reconvened meeting on July 25, 2017 completed its consideration of your application described as follows:

### Application:

9) Case 7-9.

Petitioner: Karona LLC  
Property: 36 Artwill Avenue  
Assessor Plan: Map 229, Lot 4  
Zoning District: Single Residence B District  
Description: Detached accessory dwelling unit in an existing garage.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:  
1. A Variance from Section 10.521 for street frontage where 100' is required and 0'± exists.

### Action:

The Board voted to **grant** the petition as presented, and re-advertised on July 18, 2017.

### Review Criteria:

The petition was granted for the following reasons:

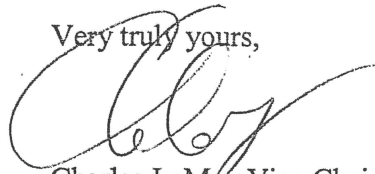
Karona LLC - Page Two  
July 28, 2017

- The specific frontage request before the Board will not materially change the character of this residential neighborhood so that granting the variance will not be contrary to the public interest and the spirit of the ordinance will be observed.
- Granting the variance will result in substantial justice. The frontage is needed by the applicant for any improvements to the property so that the loss to the applicant by requiring strict compliance with the frontage requirement would not be outweighed by any gain to the public.
- This technical change and the specific relief required will have no effect on surrounding property values.
- There are special conditions of the property such that literal enforcement of the ordinance would result in unnecessary hardship. The City has determined that the property has no frontage, as defined in the ordinance, due to the fact that it fronts on a private right-of-way which distinguishes the property from others in the general area. While not considered a road, there is adequate access on Artwill Avenue so that there is no fair and substantial relationship between the purpose of the frontage requirement in the ordinance and its specific application to this property.

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

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

Very truly yours,



Charles LeMay Vice-Chairman  
Board of Adjustment

mek

c: Robert Marsilia, Chief Building Inspector  
Roseann Maurice-Lentz, City Assessor  
R. Timothy Phoenix, Esq.

---

Mr. Moretti recused himself from the vote.

9) Case 7-9.

Petitioner: Karona LLC  
Property: 36 Artwill Avenue  
Assessor Plan: Map 229, Lot 4  
Zoning District: Single Residence B District  
Description: Detached accessory dwelling unit in an existing garage.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:  
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**SPEAKING IN FAVOR OF THE PETITION**

Attorney Tim Phoenix was present on behalf of the applicant. He said the principal Butch Ricci was also present. Attorney Phoenix explained the background of the lot and showed photos of the house and the garage and an aerial context of the neighborhood. He noted that they had a Conditional Use Permit (CUP) from the Planning Board that was on hold until they got more plans. He explained that it was impossible to have frontage on the street because of a 1958 ruling that the Planning Board to not let it have frontage, so it was a nonconforming condition. He said the new building required relief because the overall lot had no frontage on a public street. He reviewed the criteria and said they would were met.

Mr. Mulligan said he had a hard time with whether the structure would qualify as a detached ADU, due to the square footage and it not being separated by the primary dwelling by at least 20 feet. Attorney Phoenix said even if the ADU were denied, the garage could still be put to good use. He said the distance and size could be waived by the Planning Board.

Mr. Mulligan said the project had a checkered history because the prior owner well exceeded the scope of the building permit that he was granted. He said the owner previously went before the Board before the ADU Ordinance to seek relief and was shut down, so he wanted to be careful about granting relief based on a preexisting condition that was sort of illegal. He said that the nonconforming condition of the garage was more than its position on a private road with no frontage. Attorney Phoenix said the garage was given the building permit and then inspected. He said the owner got into issues about the quality of the framing and so on. He said a variance was needed at the time for that type of use but wasn't needed any longer. He said Mr. Ricci bought the property subjective to a Cease and Desist order. He asked that that applicant not be penalized for the sins of a former owner.

Mr. Parrott asked whether the location and dimensions were defined, relative to the street. Attorney Phoenix said it was defined by the factual location of the pavement but the tax map was not. Mr. Parrott said the front setback was shown as 27.5 feet and was too little. He said he met with the Planning staff and filed a request for a setback variance but discovered that it wasn't a City street and there was no setback, so he pulled the variance and submitted the new request. Mr. Parrott said he found it odd logic.

Chairman Rheume said that one of the things mentioned was access to emergency vehicles, and he pointed out that there was some disagreement between the neighboring properties before. He asked what the current status of agreement among the neighboring parties that now owned the access street was and whether there were plans to improve it.

Mr. Ricci said Jean Wilson owned the property as well as most of Artwill Avenue and that she would have to bring it up to City standards but couldn't afford it. Consequently, he said that Artwill Avenue would remain a private road, and the rest of the street residents would make it accessible. He said the City wanted to extend a water line, so the residents would have City water and a maintained line instead of a private line. He said he was working with the neighbors in accessing that road, and there were some signs of progress.

**SPEAKING IN OPPOSITION TO THE PETITION AND/OR  
SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one rose to speak, and Chairman Rheume closed the public hearing.

**DECISION OF THE BOARD**

Chairman Rheume noted that the law had changed because it related to ADUs. He said the Planning Department said that, because of the change in use, they wanted to ensure that the lot was fully compliant. He said the argument was whether or not it was a street and that the Planning Department decided that the street did not exist.

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

Mr. Mulligan stated that the specific relief was not that big a deal, but the checkered history could be. He said the Board was asked whether or not the applicant could make improvements to his property, and he would need the same relief if he just wanted to put an addition on the dormer. He said it would always be a private street, but big enough so that a lot of improvements could be made to the main dwelling and would require the same relief. He said he wasn't thrilled with the idea that the ADU was about as big as the primary dwelling, but the applicant was entitled to get the CUP from the Planning Board, so he thought it met all the criteria. Focusing on the specific frontage requirements, he said that granting the variance would not violate the spirit of the Ordinance and the public interest. He said the character of the neighborhood would still be residential. Granting the variance would result in substantial justice because the applicant couldn't get frontage any other way, so anything he could do to improve the property would require the same variance and therefore the loss to the applicant was not outweighed by any gain to the public. He said the value of surrounding properties would not be diminished because, specific to the frontage requirement, granting relief would not have any effect. He said the hardship involved special conditions because the property that the City deemed as having no frontage because it was on a private right-of-way distinguished it from others within the general area, so there was no fair and substantial relationship between the purpose of the frontage requirement and its application to the property. He said there was plenty of access on Artwill Avenue, but it just wasn't what the City considered a road. Mr. Mulligan said the use was a reasonable one, a residential use in a residential area, and met the criteria.

Mr. Parrott concurred with Mr. Mulligan, noting that it was a technical change, and thought it was proper for the Board to approve it.

Chairman Rheume said he would support the motion. He said he had thought of waiting until there was a better legal definition for Artwill Avenue due to previous problems and relationships, but it sounded like there was enough progress moving forward.

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

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