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

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*\*Also admitted in MA*

**VIA VIEWPOINT**

March 31, 2020

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

**RE: Variance Application of AER RE LLC  
185 Cottage Street (Tax Map 174, Lot 14)**

Dear Chairman Rheume,

Our Office represents AER RE LLC, owner of property located at 185 Cottage Street. Attached herewith, please find the following materials for submission to the Zoning Board of Adjustment for consideration at its next regularly scheduled meeting:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Recorded Site Plan;
- 4) Floor Plan;
- 5) Tax Map Image with Zoning Overlay of Property and Surrounding Area;
- 5) Photographs of the Property.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Derek R. Durbin', written over a large, stylized blue oval scribble.

Derek R. Durbin, Esq.

LETTER OF AUTHORIZATION

AER RE LLC, owner of property located at 185 Cottage Street, Portsmouth, New Hampshire, identified on Tax Map 174, as Lot 14 (the "Property"), hereby authorizes Durbin Law Offices PLLC, of 144 Washington Street, Portsmouth, New Hampshire 03801, to act as its agent and representative in connection with the filing of any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property. This Letter of Authorization shall be valid until expressly revoked in writing.

AER RE LLC

David Rosania  
Printed Name: David Rosania

3/30/20  
Date:

Amy Rosania  
Printed Name: Amy Rosania

3/30/20  
Date:

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

AER RE LLC  
185 Cottage Street  
Portsmouth, NH 03801  
Tax Map 174, Lot 14  
(Owner/Applicant)

**INTRODUCTORY STATEMENT**

AER RE LLC (the “Applicant”) is the owner of property located at 185 Cottage Street (the “Property”). AER RE LLC, which is owned by David and Amy Rosania, purchased the Property in 2018. The Property is located in the GRA Zoning District. It is a corner lot with frontage on Cottage Street and Lafayette Road/Route 1 Bypass.

Until 2018, the Property contained two residential buildings (a duplex and single-family residence). Prior to purchasing the Property, the Applicant applied for and received a variance pursuant to Section 10.440 (6.20) to eliminate the residential use of the Property and allow it to be used as “medical (dental) office”. The variance request was approved on June 26, 2018.

Following the purchase of the Property, the residential buildings on the Property were demolished and a two-story commercial building with a parking lot was constructed in their place. The façade of the commercial building is on Lafayette Road. The parking is located to the rear (east) of the building and is accessed from Cottage Street.

Seacoast Periodontics and Dental Implants, which is owned and operated by David and Amy Rosania, occupies the second floor of the building. The bottom floor has been vacant since it was constructed. The Rosanias had envisioned leasing the first floor of the building for a similar or complementary medical use. However, since that time, the Rosanias have had difficulty in finding a tenant for that type of use due to a combination of factors. The first floor of the building is essentially a heated “shell” in its existing condition and will need to be built out by any potential lessee. The costs associated with building out the first-floor unit to suit a medical office are significant. Many potential tenants have deemed the costs to be prohibitive given the size of the space and current market lease rates.

Recently, a local real estate office expressed interest in leasing the first floor. Accordingly, the Applicant offered to apply for the zoning relief necessary for this business to lease the first-floor commercial space. Because the Property is located within the GRA Zoning District and the Applicant only previously received a variance to use the building as a “medical office”, additional relief is necessary pursuant to Article 10.440 to use the first floor for any other type of non-permitted use. Under the Ordinance, a real estate office is classified as a “business office”.



## SUMMARY OF ZONING RELIEF

The Applicant is requesting a variance from Article 10.440 (5.20) of the Ordinance to allow for the first floor commercial unit on the Property to be used as a “business office”, which is not a use that is permitted within the GRA Zoning District.

## VARIANCE CRITERIA

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

“There are two methods of ascertaining whether granting a variance would violate an ordinance’s basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare.” *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

Granting the variance will certainly not alter the essential character of the surrounding area or threaten the public health, safety or welfare. The abutting properties to the west and north are zoned “General Business”. The abutting property to the east is owned by the City of Portsmouth and zoned “Municipal”. The abutting property to the south (across Cottage St) is zoned “Industrial” and contains a car dealership. Moreover, the Board has already determined a “medical office” is an appropriate use of the Property. A real estate office is a far less intense use than a medical office or the uses being made of surrounding properties, as it generates less vehicular traffic and demand for parking. Real estate offices are naturally utilized more on the weekends than during the week. This makes it a complementary use for the building, as dental offices, not unlike other medical offices, are primarily utilized on the weekdays.

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

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

The Applicant has been trying to find a tenant for the 2,241 sf first floor space in the building since December 12, 2018 when it listed it on the MLS system and began advertising it. When the Applicant obtained the relief to construct the commercial building on the Property and use it as a medical office, it did so on the premise that it would be able to rent the first floor unit and receive the income from it to offset its acquisition and construction costs. It has taken longer than expected for that to come to fruition. The main reason why it has taken longer than expected is because the first-floor unit can only currently be used for medical office purposes. Potential tenants that have expressed interest in the space have determined that the fit-up costs to make it a medical office combined with current market lease rates are prohibitive for a space of its size. The space is more appropriately suited for a business or similar office type use which require far less

in build-out costs. Accordingly, the loss to the Applicant in denying the variance outweighs any potential gain to the public, thus constituting an injustice under the circumstances presented.

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

The Board previously determined that a medical use of the Property would not diminish surrounding property values. The real estate office use of the first floor of the building is a less intense use of the Property that will generate less traffic and parking demand than a medical office use and less impact on surrounding properties. Its peak hours of use will be on the weekends during the morning and afternoon hours. There is no evidence to suggest that a use of this nature would have any negative impact upon surrounding properties or their values.

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

The Property has special conditions that distinguish it from surrounding properties. It is a long, narrow property with significant frontage on Lafayette Road. In the context of zoning, it is essentially an "island property". There are no directly abutting properties that are in the GRA Zoning District. The abutting properties are all used for commercial purposes with exception of the abutting property to the east which is under construction and is zoned for municipal use.

A commercial use is the highest and best use of the Property that is most compatible with the uses being made of surrounding properties. Moreover, when the Board granted the variance in 2018 for use of the Property as a "medical office", it determined that it had special conditions that distinguished it from surrounding properties. The same special conditions exist today, except that the residential buildings on the Property have since been demolished and replaced with a commercial building and associated parking lot. Use of the first floor of the building as a business office represents less of an impact than its use as a medical office. As a result, there is no fair and substantial relationship between the Ordinance provisions and their application to the Property.

***The proposed use is reasonable.***

The proposed business office use of the first-floor commercial space on the Property will complement the existing second floor medical office use and have less of an impact on surrounding properties than use of the entire building as a medical office would have.

### **CONCLUSION**

In conclusion, the Applicant has demonstrated that it has satisfied the five (5) criteria for granting the variance pursuant to Section 10.440 of the Ordinance and respectfully requests the Board's approval of its application.



Dated: March 31, 2020

Respectfully Submitted,

AER RE LLC  
David and Amy Rosania, Members

By and Through Their Attorneys,

Durbin Law Offices PLLC

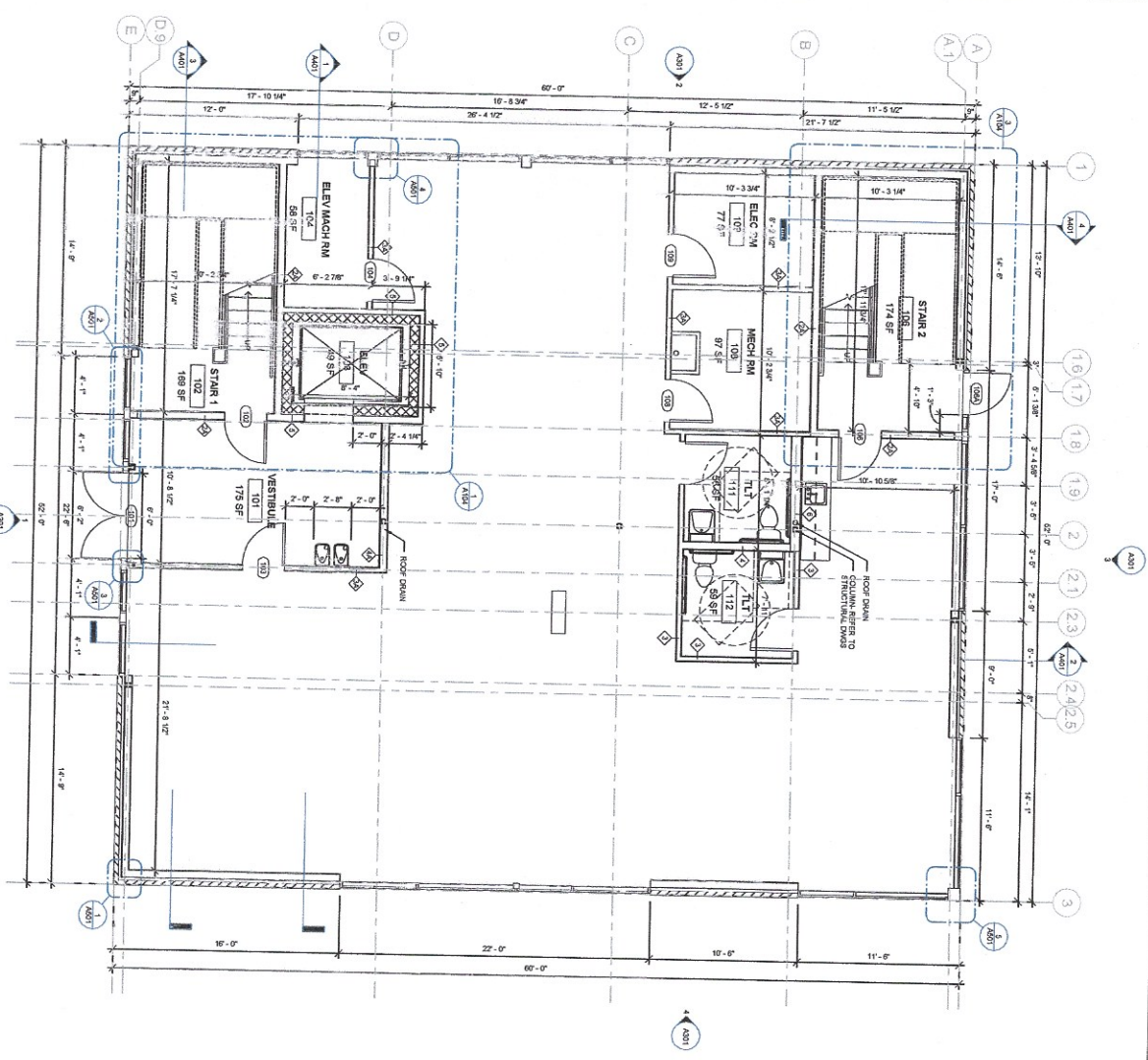
A handwritten signature in blue ink, appearing to read "Derek R. Durbin", is written over a horizontal line. The signature is stylized and includes a large loop at the beginning.

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





1 FIRST FLOOR PLAN



9/23/19, Henry Architects

Project Name:	Seacoast Periodontics
Drawing Name:	FIRST FLOOR PLAN
Project Number:	18971
Created By:	02/28/2019
Checked By:	14
Scale:	1/4" = 1'-0"

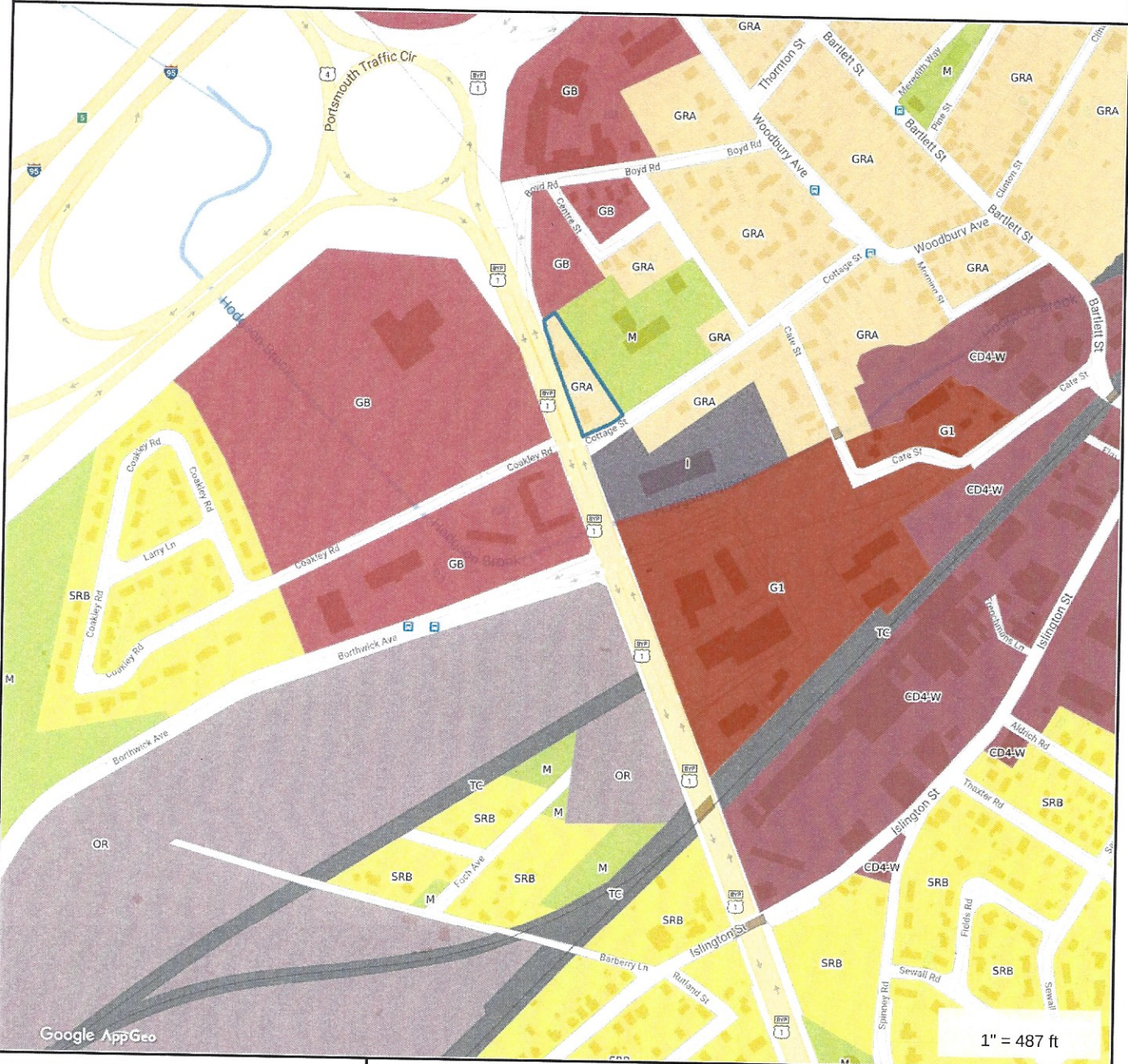
No.	Description	Date

**NOT FOR CONSTRUCTION**  
**EXCEPT FOR NOTES**

**MC HENRY ARCHITECTURE**  
 4 Market Street  
 Portsmouth, NH 03801-4074


Seacoast Periodontics  
 185 Cottage Street  
 Portsmouth, NH





Property Information

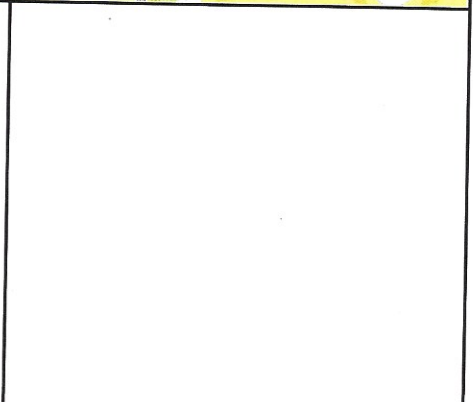
Property ID	0174-0014-0000
Location	185 COTTAGE ST
Owner	AER RE LLC



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

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

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



# 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





**View of Building from Parking Lot (North)**





**View of Building From Lafayette Road (West)**





**Alternate View of Building from Cottage Street (South)**





**View of Building from Rear / Cottage Street (East)**





**View from Cottage Street / Rear of Building (SouthEast)**