

144 Washington Street
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www.durbinlawoffices.com



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

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

VIA VIEWPOINT

August 25, 2020

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

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

Dear Chairman Rheume,

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

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

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

Sincerely,



Derek R. Durbin, Esq.

LETTER OF AUTHORIZATION

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

Kenton Slovenski

August 24, 2020

Kenton Slovenski

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

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

INTRODUCTORY STATEMENT

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

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

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

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

SUMMARY OF ZONING RELIEF

The Applicant seeks the following variance from the Zoning Ordinance:

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

VARIANCE CRITERIA

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

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

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

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

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

Substantial justice will be done by granting the variance relief.

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

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

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

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

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

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

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

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

CONCLUSION

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

Respectfully Submitted,

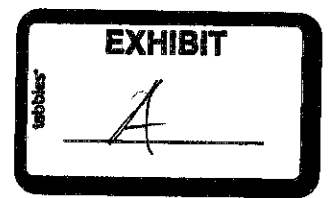
Dated: August 25, 2020

Kenton Slovenski

By and Through His Attorneys,
Durbin Law Offices PLLC



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



August 20, 2020

Newmarket Plains, LLC

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

To whom it may concern,

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

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

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

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

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

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

Respectfully,

Paul LeBeau

Referenced Homes

187 Grant Ave

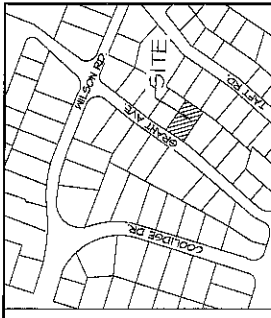


190 Grant Ave



184 Grant Ave





**LOCUS PLAN
N.T.S.**

NOTES

- OWNER OF RECORD:
KENTON SLOVENSKI
TAX MAP 251, LOT 41
175 GRANT AVE.
PORTSMOUTH, NH 02801
RECORD: 5701-2803
AREA: 18,860 SF, 0.32 ACRES
- BASIS OF BEARING HELD FROM PLAN REFERENCE #1.
- PARCEL IS IN RESIDENCE ZONE (SRD).
MINIMUM LOT AREA.....15,000 SF
MIN. LOT AREA PER DWELLING UNIT.....15,000 SF
MINIMUM FRONTAGE.....100 FT
MINIMUM DEPTH.....100 FT
SETBACK FRONT.....30 FT
SIDE.....10 FT
REAR.....30 FT
MAXIMUM BUILDING HEIGHT.....35 FT
FLAT ROOF.....30 FT
MAXIMUM BUILDING COVERAGE.....20%
MINIMUM OPEN SPACE.....40%
- THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE AS PER FLOOD INSURANCE RATE MAP #30102C020E, PANEL 251P OF 601, DATED MAY 11, 2005.

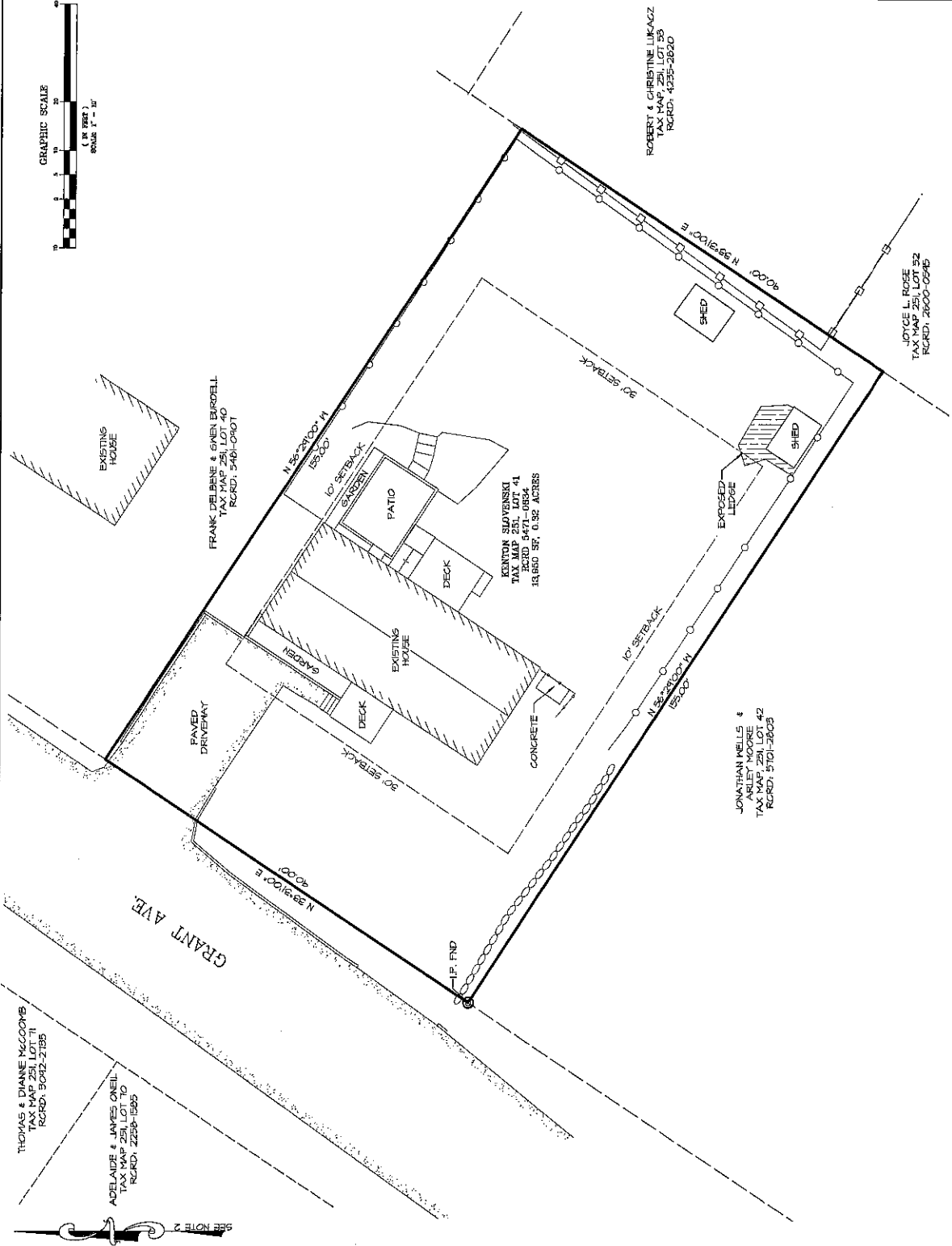
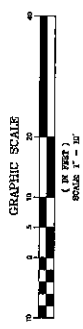
REFERENCE PLANS

- PLAN OF LOTS 31 AN 32, ELYNN PARK, PORTSMOUTH, NH FOR E.A.R.C.C.I., MAY 1956, RECORD: 022540
- PLAT OF LAND TAFT ROAD, PORTSMOUTH, NH SURVEYED FOR ARBER FAMILY REVOCABLE TRUST, SCALE 1"=50', DATED JAN 30, 2014 BY THOMAS P. BRIGOLLETTE

DATE	12/18/2020	FOR REVIEW
SCALE	1" = 10'	EXCEPT WHERE SHOWN OTHERWISE
PROJECT	ARBER	
DRAWN	ARBER	
CHECKED	ARBER	

ROSS ENGINEERING, LLC
Civil, Surveying & Surveying
175 GRANT AVE.
PORTSMOUTH, NH 02801

BOUNDARY SURVEY & EXISTING CONDITIONS
175 GRANT AVE.
PORTSMOUTH, NH 02801
TAX MAP 251, LOT 41
RECORD: 5701-2803
PAGE 2 OF 2



THOMAS & DIANE MCCOY'S
TAX MAP 251, LOT 31
RECORD: 3042-2785

ADELAIDE & JAMES OSEIL
TAX MAP 251, LOT 10
RECORD: 2259-1595

FRANK DELBENE & SVEN BURDELL
TAX MAP 251, LOT 40
RECORD: 5481-0901

KENTON SLOVENSKI
TAX MAP 251, LOT 41
RECORD: 5701-2803
18,860 SF, 0.32 ACRES

ROBERT & CHRISTINE LUK-AZZ
TAX MAP 251, LOT 35
RECORD: 4425-2820

JONATHAN WELLS & CHRISTINE LUK-AZZ
TAX MAP 251, LOT 42
RECORD: 5701-2803

JOYCE L. ROSE
TAX MAP 251, LOT 32
RECORD: 2800-0298

SEE NOTE 2

NOTES

1) OWNER OF RECORD:
 KENTON S. SLOVENSKI
 TAX MAP 251, LOT 41
 175 GRANT AVE.
 FORTSMOUTH, NH 03801
 RCRD. 541-0284
 AREA: 15,950 SF, 0.32 ACRES

2) PARCEL IS IN RESIDENCE ZONE (R2B),
 MIN. LOT AREA PER DWELLING UNIT: 15,000 SF
 MIN. LOT AREA PER DWELLING UNIT: 15,000 SF
 MINIMUM FRONTAGE: 100 FT
 MINIMUM DEPTH: 100 FT
 SETBACKS:
 FRONT: 30 FT
 SIDE: 10 FT
 REAR: 30 FT
 MAXIMUM BUILDING HEIGHT: 36 FT
 FLAT ROOF: 30 FT
 MAXIMUM BUILDING COVERAGE: 70%
 MINIMUM OPEN SPACE: 40%

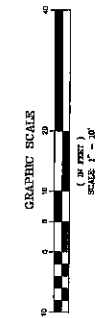
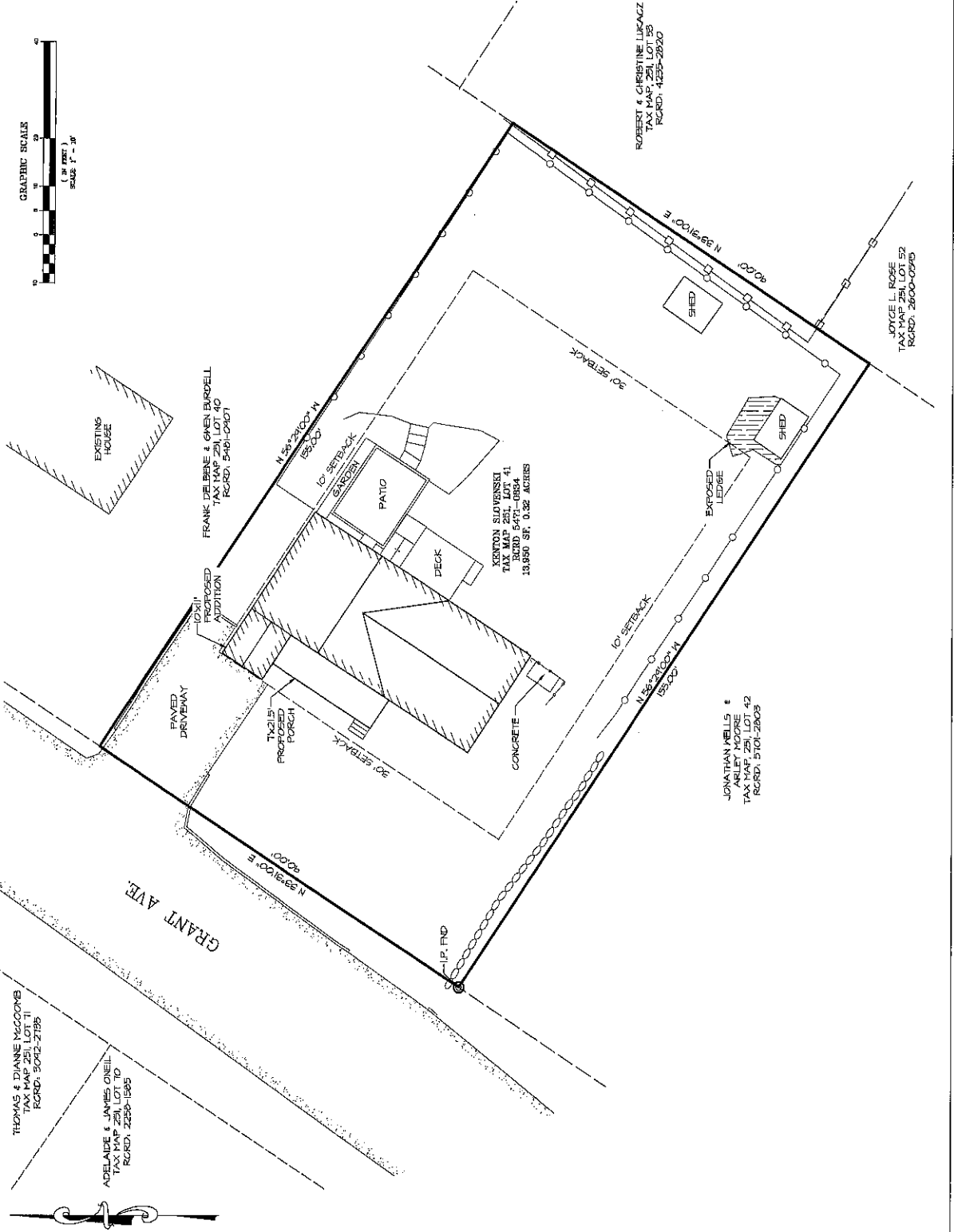
3) COVERAGES:
 BUILDING COVERAGE
 EXISTING BUILDINGS COVERAGE
 HOUSE: 1,296 SF
 HOUSE ADDITION: 1,296 SF
 PORCHES AND LANDINGS: 145 SF
 DECK: 187 SF
 TOTAL: 1,871 SF
 BUILDING COVERAGE 1871 / 15,950 = 11.7%

GREEN SPACE
 EXISTING OPEN SPACE
 BUILDING COVERAGE: 1,871 SF
 CONCRETE PAD: 145 SF
 ASPHALT DRIVEWAY: 600 SF
 ACCORD RETAINING WALL: 63 SF
 OVERHANGS: 157 SF
 TOTAL LOT COVERAGE: 2,426 SF
 EXISTING OPEN SPACE = 15,950 - 2,426 = 13,524 SF
 PROPOSED OPEN SPACE = 13,524 SF - 1,871 SF = 11,653 SF
 BUILDING COVERAGE: 1871 / 15,950 = 11.7%

PAVER PATIO: 191 SF
 ASPHALT DRIVEWAY: 600 SF
 ACCORD RETAINING WALL: 63 SF
 OVERHANGS: 157 SF
 TOTAL LOT COVERAGE: 2,426 SF
 EXISTING OPEN SPACE = 15,950 - 2,426 = 13,524 SF
 PROPOSED OPEN SPACE = 13,524 SF - 1,871 SF = 11,653 SF

ROSS ENGINEERING, LLC
 Certified Professional Engineer
 175 GRANT AVE.
 FORTSMOUTH, NH 03801
 (603) 251-1234

SITE PLAN
 175 GRANT AVE.
 FORTSMOUTH, NH 03801
 TAX MAP 251, LOT 41
 20-076 2 OF 2



THOMAS & DIANNE MACGONIG
 TAX MAP 251, LOT 1
 RCRD. 5012-2735

APELAUDE & JAMES O'NEIL
 TAX MAP 251, LOT 10
 RCRD. 2255-1585

EXISTING HOUSE

PROPOSED ADDITION

PAVED DRIVEWAY

12x15' PROPOSED PORCH

GARDEN

PATIO

DECK

CONCRETE

SHED

SHED

EXPOSED LEDGE

EXPOSED LEDGE

UP. FND

10' SETBACK

10' SETBACK

30' SETBACK

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FRANK DEBENE & GWEN BURDELL
 TAX MAP 251, LOT 40
 RCRD. 541-0907

KENTON SLOVENSKI
 TAX MAP 251, LOT 41
 175 GRANT AVE.
 FORTSMOUTH, NH 03801
 RCRD. 541-0284

ROBERT & CHRISTINE LUKACZ
 TAX MAP 251, LOT 53
 RCRD. 4235-2820

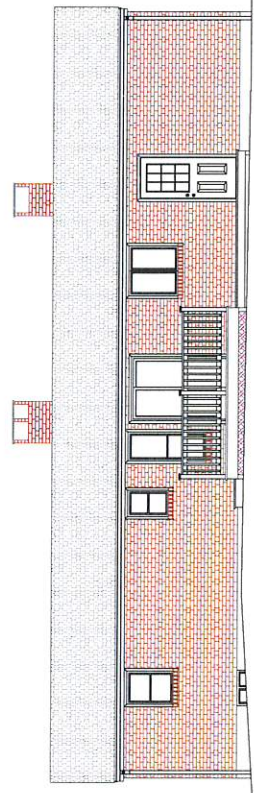
JONATHAN WELLS &
 ARLEY MOORE
 TAX MAP 251, LOT 42
 RCRD. 5701-2803

JOYCE L. ROSE
 TAX MAP 251, LOT 52
 RCRD. 2600-0095

DATE	DESCRIPTION
5/12/20	DRAFT PLANS
6/1/20	REVISED PLANS
6/3/20	REVISED PLANS
7/23/20	REVISED PLANS
8/19/20	REVISED PLANS

KENTON GLOVENSKI
 175 GRANT ROAD
 PORTSMOUTH, NH 03801

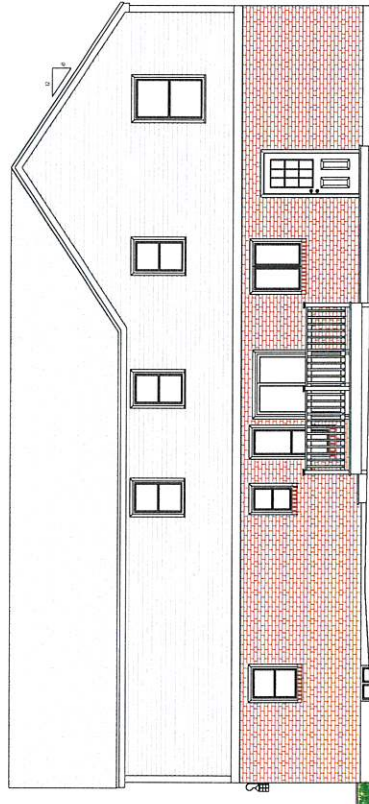
SHEET NUMBER	A1
PLAN NUMBER	1137



EXISTING REAR ELEVATION
 SCALE: 1/4" = 1'-0"



EXISTING FRONT ELEVATION
 SCALE: 1/4" = 1'-0"



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

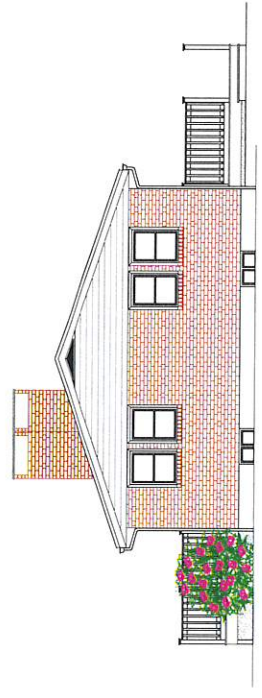


FRONT ELEVATION
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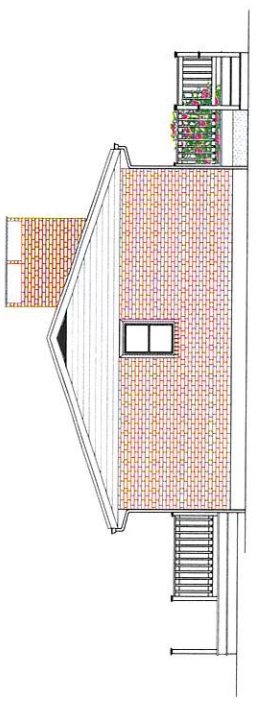
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6/11/20	REVISED PLANS
6/13/20	REVISED PLANS
7/23/20	REVISED PLANS
8/19/20	REVISED PLANS

KENTON SLOVENSKI
 175 GRANT ROAD
 PORTSMOUTH, NH 03801

SHEET NUMBER	A2
PLAN NUMBER	1137



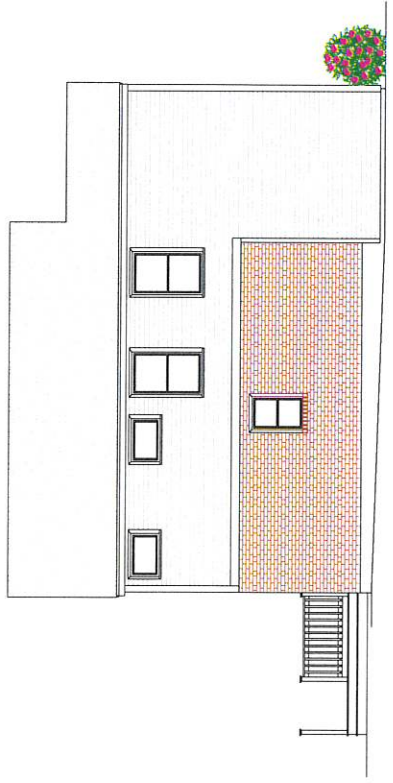
EXISTING RIGHT SIDE ELEVATION
 SCALE: 1/4" = 1'-0"



EXISTING LEFT SIDE ELEVATION
 SCALE: 1/4" = 1'-0"



RIGHT SIDE ELEVATION
 SCALE: 1/4" = 1'-0"

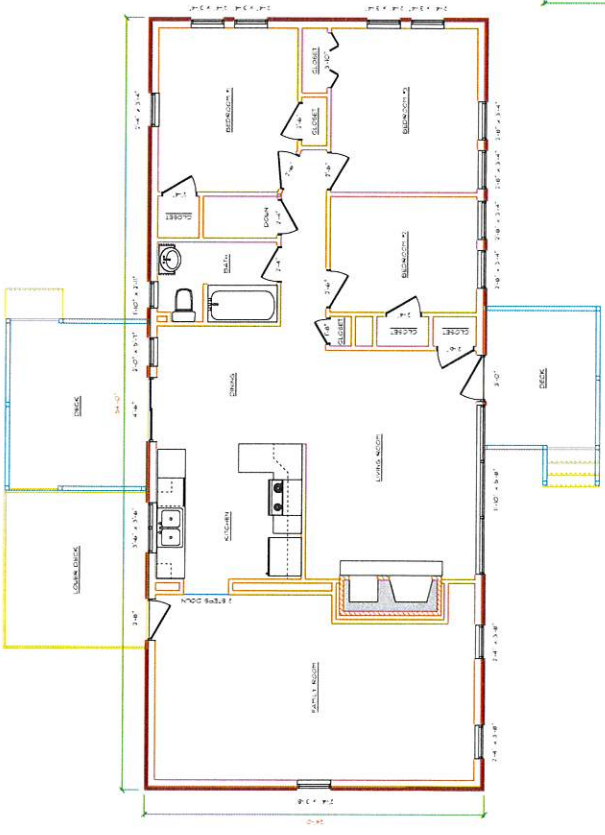


LEFT SIDE ELEVATION
 SCALE: 1/4" = 1'-0"

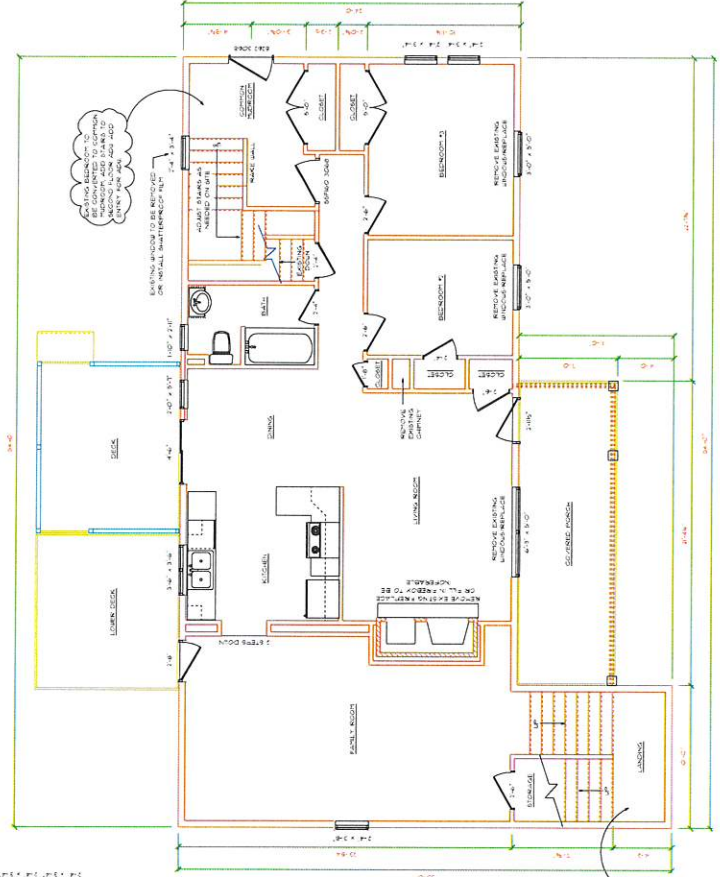
DATE	DESCRIPTION
5/1/20	DRAFT PLANS
6/1/20	REVISED PLANS
6/3/20	REVISED PLANS
7/23/20	REVISED PLANS
8/19/20	REVISED PLANS

KENTON SLOVENSKI
175 GRANT ROAD
PORTSMOUTH, NH 03801

SHEET NUMBER	A3
PLAN NUMBER	1137

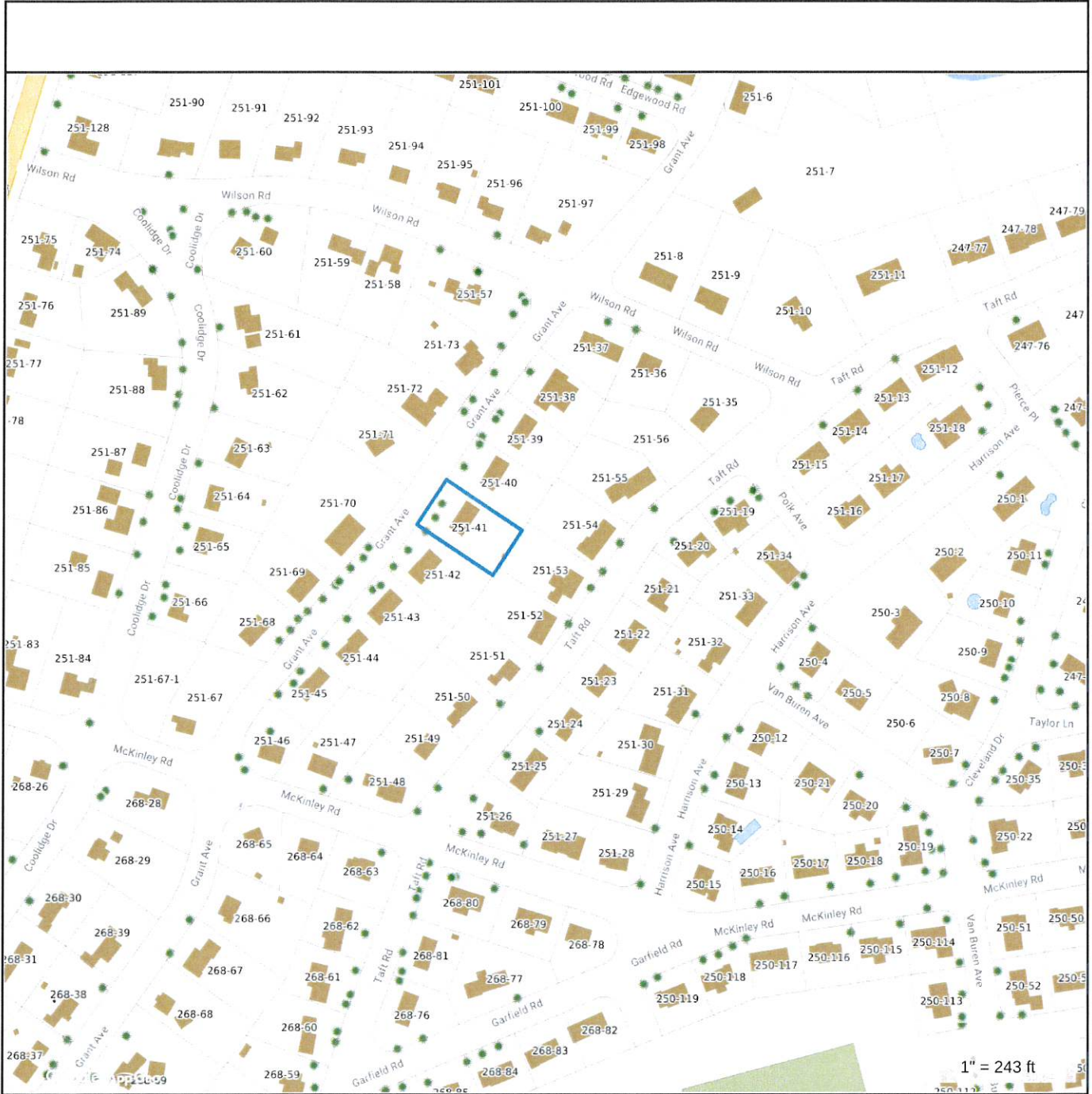


EXISTING LEVEL ONE PLAN
EXISTING PRINCIPAL UNIT (175 GRANT FLOOR AREA)



LEVEL ONE PLAN
EXISTING PRINCIPAL UNIT (175 GRANT FLOOR AREA)
PROPOSED PLAN (SUBJECT TO CHANGE BASED ON UTILITY LOCATIONS)

14x36 ARCH. U



1" = 243 ft

Property Information	
Property ID	0251-0041-0000
Location	175 GRANT AVE
Owner	SLOVENSKI KENTON S



**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

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



Aerial of 175 Grant from MapGeo (highlighted in blue)



Front of existing home from Grant Ave



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



Back Side of existing home (East side)



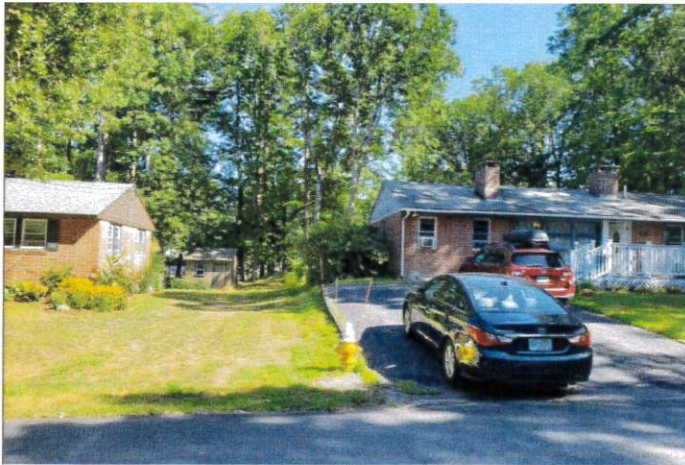
Right side of existing home from Grant Ave (southern side)



Driveway



Left side with neighbor



Right side with neighbor



**Email received from Christine Lukacz of 45 Taft Rd (abutter on eastern side)
August 19th 2020**

Good morning Kenton,

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

Sincerely,

Christine Lukacz

**Email received from Thomas McCoomb of 184 Grant Ave (abutter across the street)
August 16th 2020**

To whom it may concern:

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

Thank you for your time and consideration,

Thomas J. McCoomb