

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

October 1, 2020

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

Re: Appeal of Decision of Official

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 an appeal of the decision of the Planning Director, Juliet Walker, contained in a letter dated August 18, 2020. As background, in 2009, Mr. Boyle submitted a site plan application for the addition of a second automobile dealership on his site. Due to litigation concerning the City's sewer line which was built on his property without an easement, review of the application was suspended. Ultimately, the Supreme Court affirmed the Trial Court's decision that the sewer line was illegally trespassing. With determination of this issue, Mr. Boyle sought to reactivate review of his proposed site plan. Some changes were made to the plan over the years. Accordingly, he submitted the new plans for informal feedback from the Planning Director prior to formally reactivating the application. The Planning Director provided the requested in her July 21 letter. Thereafter, Mr. Boyle submitted a new land use application to revive the earlier 2009 discussions and also to modify those plans.

Three issues raised in the letter are being appealed: (1) a determination that the plan would require a variance because it expanded an automotive use into a 200' buffer from a residential zone, (2) a determination that the plan would require a variance because it showed cars displayed within a 100' buffer from a residential zone, and (3) a determination that a conditional use permit would be required. All three issues raise discrete questions of law, and, as will be demonstrated below, must be resolved in Mr. Boyle's favor.

The August 18 letter also addresses the completeness of the application. The Planning Director has informed the applicant that these are not appealable issues. Mr. Boyle will not

actively address them in this appeal other than to raise the issue solely to preserve his rights should these later be characterized as appealable.

Finally, the August 18 letter addresses Mr Boyle's request that the third building of the development be disregarded. He did this to save time and effort but when advised new plans and drainage calculations would be needed, he now withdraws that request and asked the plans be reviewed as submitted. This is identified in this letter solely so there will be a clear record.

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

There are several reasons why the 200' Buffer does not apply. First, the Planning Director uses the wrong version of the ordinance. In 2006 and 2009, the ordinance was amended. However, these amendments were ineffective as they were not validly adopted. The City Charter which must be strictly followed when enacting an ordinance provides that the public is to be notified of the availability of a copy of the proposed amendment at no charge. This was never done so that the purported amendments never became effective. Failure to give notice as required by a statute, in this case the City Charter is grounds for invalidating an amendment to a zoning ordinance. *V.M. Stevens, Inc., v. Town of South Hampton*, 114 N.H. 118 (1974).

Thus, the version of the ordinance used by Mr. Boyle in his analysis applies. The Planning Director did not analyze the 200 foot buffer in Section 10-208 Table 4, use 35. Clearly the use of automobile sales is permitted. There is a single proviso separated from the permitted use by a semicolon and then a comma. It reads "...; provided, outdoor storage areas are located at least forty feet from the street right-of-way and two hundred feet from any Residential or Mixed Residential district;..." Grammatically, by use of the separator punctuation and there being no comma after right-of-way establishes that the 200 foot limit applies only to outdoor storage areas. It does not apply to the entirety of the use. There will be no outdoor storage within 200 feet of Residential. While the current version of the ordinance clarifies that the limit applies to the use, that version of the ordinance does not apply to the area in question as it was shown on the plan and the Board has determined it is governed by the pre-2010 ordinance.

The proposed third building meets the 200 foot limit. Moreover, in the original site plan approval for the dealership, no conditions were placed on the use which limited to the buildings and paved areas. The entire site was approved for automotive use. In fact, on many occasions and for varying length of time Mr. Boyle stored vehicles on unpaved portions of the site. In particular he regularly used the area where the third building is proposed for automotive use. He is not changing a use but rather continuing the same approved use but in a building. Thus, the location of the building is permissible even if it otherwise might violate the 200 foot buffer.

Further, the Supreme Court has already held that by displaying cars, Mr. Boyle is not engaging in outdoor storage. *Boyle, Trustee, 150 Greenleaf Avenue Realty Trust v. City of*

Portsmouth, 154 N.H. 390; 910 A.2d 1229 (2006). A copy is attached for your convenience. This ruling applies to the entire property as it did not distinguish any physical areas. Thus, the 200 foot exclusion cannot apply as a matter of law.

Second, the proposed amendments cannot be enforced against Mr. Boyle. The amendments related to a lawsuit in which Mr. Boyle's interpretation of the ordinance prevailed. These amendments were retaliation for the lawsuit and designed so that Mr. Boyle would have difficulty in developing his property. This type of amendment in bad faith cannot be enforced. *PMC Realty Trust v. Town of Derry*, 125 N.H. 126 (1984).

Finally, the Planning Director mischaracterizes the proposed development as expansion of a use. The entire site was used for automotive including the unpaved areas. Cars for repairs or processing due to recall were routinely stored on unpaved areas. Adding pavement does not change the use. Likewise adding a building does not change the use, even though there may be more volume of automobiles associated with it. Moreover the City is estopped from claiming the proposed development is a change of use for the undeveloped portions of the property. In the sewer line lawsuit between Mr. Boyle and the City, the City strenuously argued that Toyota of Portsmouth was using all of the property. For all of the above reasons, there is no 200' setback for displaying cars.

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

Section 10-1201 of the 2009 ordinance prohibits parking within 100 feet of a residential zone. However, the vehicles within this buffer, as a matter of law, are not parked. Any vehicles in that area will be either inventory or display vehicles. It will not be "parking" as the term is commonly used. *Galinsky Family Real Estate, LLC v. City of Des Moines Zoning Bd. of Adjustment*, 797 N.W.2d 622 (Iowa App. 2011) ("Galinsky II") which held display lots do not constitute as off-street parking under a zoning ordinance. But see: *Galinsky Family Real Estate, LLC v. City of Des Moines Zoning Bd. of Adjustment*, 797 N.W.2d 621 (Iowa App. 2011). (Dissent agreeing with Galinsky II.) Since Galinsky II is the later published opinion, it controls. The concept of parking versus storage or display was extensively treated and discussed in *Incorporated Village v. Green*, 8 Misc.2d 356, 166 N.Y.S.2d 219 (1957). The Court stated:

'When automobiles are left for months on end¹ at a given place, there is no doubt that they are stored and not parked. Parking is of short duration and measured by hours or at most a day or two. It has in it the element of an automobile in use, being temporarily placed until it is about to be again put into service and use. The cars which have been on the lot and about which the complaint is concerned are not cars ready for the road. They

¹ The average time for a new car at Mr. Boyle's dealership being on the lot is 160 days; used cars, 39 days.

are not licensed for the road, they are not cleaned greased and oiled for the road. The use of the lot for these cars is not parking but storage, storage awaiting the time when they will be withdrawn for sale and delivery. There is a substantial distinction, clearly cognizable, between the meaning ‘storage’ and ‘parking’. One has a certain degree of permanency, while the other denotes transience. At 166 N.Y.S.2d 221.

In this case, customers can walk around the vehicles and look at different colors and configurations. The Supreme Court has already determined that they are permissible display vehicles and not storage. Clearly, they are not parked in the ordinary use of the word.

Parking is not defined in the ordinance. When terms are not defined, they are ascribed their ordinary and common meaning. *Boyle v. City of Portsmouth*, 154 N.H. 390 (2006). In this instance the 2009 ordinance shed light on its meaning. Reading the totality of Chapter XII of the Ordinance, and in particular how required parking is contemplated, it is clear that the term “parking” encompasses employees coming to work and leaving their car as well as customers and third parties who have business at the facility. The cars are registered and actively being used until they are stopped and an individual performs whatever tasks he or she needs to perform on site. In contrast, the cars displayed in this area are not in active use. They are rarely moved. - certainly not on a daily basis. Thus, they do not create the kind of noise, traffic and other impacts that might occur in a normal parking lot, thus obviating any concerns of cars in the area. Thus, the cars are not violating any parking setback.

3. The Planning Director Erred In Determining That A Conditional Use Permit Is Needed.

Mr. Boyle’s proposed work involves dredging and filling manmade drainage structures and in the area of nuisance created by the City. Normally, a conditional use permit would be required. Under fairly unique circumstances, a conditional use permit for filling the manmade ditch is not required here because one if it was denied, Mr. Boyle could still proceed with his development project. In 2013, Mr. Boyle and NHDES entered into a Consent Decree concerning the property, which was approved by the Rockingham Superior Court and entered as an order of the Court. A copy is attached to this appeal. The Consent Decree required development of the property as shown on Mr. Boyle’s plans and further required NHDES to issue both the AoT and wetlands 44 permits which were required. NHDES has issued those permits. A remedial consent decree entered as a court order trumps municipal permits. *Metro. Housing Development Corp. v. Village of Arlington Heights*, 496 F. Supp. 836 (N.D. Ill. 1979). Thus, the permitting process would be a waste of City resources and time.

Moreover, Mr. Boyle’ experts have extensively studied the site. Their conclusion is that leaving the site as is constitutes an environmental hazard as well as a safety hazard. NHDES agrees and concluded Mr. Boyle’s development is the best solution to all the concerns being raised about the site. It would be irrational for the Planning Board to go against the great weight of the evidence and anything but approval would get reversed. Thus, in the interest saving time

and money for all involved, the Board should determine under the unique circumstances here, that a permit is not needed.

Nevertheless, despite the waste, Mr. Boyle is willing to seek a conditional use permit as long as the Board postpones decision on the merits of this issue until after the decision on the conditional use permit so that's right to appeal it is preserved. If the permit is granted, it will make the relief sought here moot. If it is not granted, then the Board would have to decide the issue.

Accordingly, on behalf of Mr. Boyle, I ask that the Board reverse the decision of the Planning Director on the two buffer issues and that it take no action on the conditional use permit pending a determination by the Conservation Commission. Thank you.

Sincerely,

/s/ John Kuzinevich

John Kuzinevich

Copy to: client



CITY OF PORTSMOUTH

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

John J. Kuzinevich, Esq.
Law Offices of John Kuzinevich
71 Gurnet Road
Duxbury, MA 02332

September 18, 2020

RE: Application for Amended Site Plan Review for 150 Greenleaf Ave

Dear Attorney Kuzinevich:

I have reviewed the updated site plan review application that you submitted on September 11, 2020 on behalf of your client for a proposed expansion of your client's automobile dealership at 150 Greenleaf Avenue. As we have previously confirmed, an application for amended site plan review approval was originally submitted to the Planning Department in October of 2009 (along with an application fee of \$2,500). While those plans received preliminary review by both the Site Plan Review Technical Advisory Committee (TAC) and the Planning Board, the project did not complete the site plan review and approval process. In order to receive final approvals, the updated application will need to complete the public hearing and approval process with both TAC and the Planning Board.

As decided by the Board of Adjustment in July 2010, the original application that was filed in October 2009 is subject to the Zoning Ordinance in effect in 2009. The original application included expansion of the parking area and the addition of one new building located to the north of the existing building. As such, we would apply the 2009 Zoning Ordinance for that portion of the project unless the current Zoning Ordinance is more permissive or would otherwise benefit the project.

The addition of a proposed third building to the west (rear) of the existing building was not on the original plans submitted to the Planning Board, and therefore would be subject to the requirements of the current Zoning Ordinance. You have explained in your cover letter that, although a third building is shown on the revised plan set submitted with your updated application, your client is not intending to proceed with approvals for the third building at this time. We have reviewed this application with that understanding. However, in order for the project to proceed through the land use review process, we require an updated plan set that does not show the third building and the supporting drainage analysis should be updated accordingly.

As submitted, the site plan review application is missing some information that is required in order for the application to be considered complete according to the City's Site Plan Review regulations. We also require that one complete hard copy of all of the information submitted via the online permit be provided for the Planning Department files. Per Section 2.5.4 (4) the

applicant shall either submit the required information or request that the Planning Board grant a waiver from the requirements. The following information is missing from or is incomplete in the application package submitted on September 11, 2020:

- 2.5.3.1A Green building statement;
- 2.5.3.1B Gross floor area and dimensions of all buildings and a statement of uses and floor area for each floor;
- 2.5.3.1E Names and addresses of all direct abutting property owners and holders of existing conservation, preservation, or agricultural preservation restrictions affecting the subject property [NEEDS UPDATING];
- 2.5.3.1H List of names and contact information of all public or private utilities servicing the site;
- 2.5.4.1D Plans stamped by a NH licensed civil engineer;
- 2.5.4.1E Stamp verifying that wetlands have been delineated by a NH certified wetlands scientist;
- 2.5.4.3B Building elevations (height, massing, materials, lighting, façade treatments);
- 2.5.4.3C AASHTO truck turning templates;
- 2.5.4.3D Parking calculations (number required and number provided);
- 2.5.4.3J Outdoor lighting plan;
- 2.5.4.3K Landscaping plan;
- 2.5.4.3M Open space calculations;
- 2.5.4.3O Location of snow storage areas;
- 3.2.1-2 Traffic generation report or traffic impact study;
- 7.4.4.1 Stormwater Management and Erosion Control Plan.

Please note, the above list does not preclude the TAC or Planning Board requesting additional information based on further review of the application.

As referenced in Section 2.9 (1) of the Site Plan Review Regulations, in order to grant site plan review approval, the TAC and Planning Board must find that the application is in compliance with all City Ordinances and Codes. Therefore, if any project as proposed does not meet the City's Zoning Ordinance, such project cannot receive site plan review approval unless appropriate relief is granted by the Zoning Board of Adjustment thereby bringing the project into compliance.

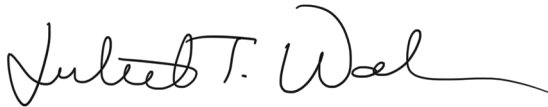
Upon review of the application, I have found that the following zoning relief will be required before this project can proceed to site plan review approval:

- 1) Setbacks from motor vehicle sales (Section 10-208 Table 4 – Uses in Business Districts in 2009 Ordinance, Section 10.592.20 in current Ordinance)
 - The site plan shows parking, display, and/or storage of vehicles within the required 200-foot setback from a Single Residence B (SRB) district. The ordinance requires such uses to be no closer than 200 feet from any adjoining Residential or Mixed Residential district.
- 2) Setbacks for Business Parking Areas (Section 10-1201 – Off-Street Parking in 2009 Ordinance and Section 10.1113.30 in current Ordinance)
 - The site plan shows parking spaces and accessways between 50 and 100 feet from the adjoining SRB district. The ordinance requires such uses to be no closer than 100 feet from any adjoining Residential or Mixed Residential district.

In addition to the zoning relief listed above, the application will also require a wetland conditional use permit for development within the Inland Wetlands Protection District. The proposed site plan shows extensive alterations to jurisdictional wetlands (labeled as manmade ditch). As defined by the Zoning Ordinance, man-made drainage structures are part of the Inland Wetlands Protection District, but until the 2010 Ordinance, did not require a buffer zone. A separate application will need to be submitted for this approval, which requires Conservation Commission review prior to the Planning Board. The Planning Board can consider an application for wetland conditional use permit approval at the same time as the site plan review application as long as all of the application requirements have been satisfied.

Please feel free to reach out to discuss any of these items further.

Sincerely,

A handwritten signature in black ink that reads "Juliet T. Walker". The signature is written in a cursive style with a long horizontal flourish extending to the right.


Juliet T.H. Walker, AICP
Planning Director

Cc: Robert P. Sullivan, City Attorney

**CITY OF PORTSMOUTH
LEGAL DEPARTMENT
MEMORANDUM**

DATE: December 9, 2020

TO: DAVID REHEAUME, BOARD OF ADJUSTMENT CHAIR

FROM: ROBERT P. SULLIVAN, CITY ATTORNEY
SUZANNE M. WOODLAND, DEPUTY CITY ATTORNEY 

RE: ADMINISTRATIVE APPEAL OF PLANNING DIRECTOR WALKER
PROPERTY ADDRESS: 150 GREENLEAF AVENUE

This memorandum confirms that the Legal Department supports the conclusions of the Planning Director Juliet Walker as expressed in her communication of September 18, 2020 to the applicant's legal counsel John Kuzinevich. It is our understanding that Planning Director Walker will be available at the Board of Adjustment (BOA) appeal hearing scheduled for December 17, 2020 to provide any further explanation that may be required by the BOA. In addition, the City Attorney and the Deputy City Attorney will also be available at the meeting in the event of questions. In order to assist further in consideration of this appeal, the Legal Department provides the following background and analysis.

An Appendix is included with this Memorandum to provide referenced documents.

BACKGROUND

Existing Use of the Property

James Boyle as Trustee of the 150 Greenleaf Avenue Realty Trust ("Boyle") purchased the 13.78 parcel at the intersection of Greenleaf Avenue and the Route 1 Bypass in December 2003. The property was occupied by multiple commercial tenants at the time of acquisition, but Boyle promptly established an automotive dealership at the site in 2004. Non-automotive tenancies were wound down and building permits were obtained over several years to expand the automobile use on the site. A copy of the 2003 Existing Conditions Plan prepared by Boyle to support the change in use and initial building permit can be found in the Appendix. (The plan happens to show the 200' setback for automobile uses which was in existence at the time of Boyle's acquisition of the parcel.)

In August of 2008, the Planning Board approved improvements to the site including new parking areas, lights and drainage. In September of 2017, the Planning Director administratively approved the addition of a new driveway off of Route 1 Bypass, a

driveway permit having been issued by the State of New Hampshire Department of Transportation.

The 2009 Site Plan Application and the Board of Adjustment Decision of 2010

Boyle submitted a site plan application in the fall of 2009 for a second dealership and new extensive associated parking/inventory storage (2009 Application). This 2009 Application was notable for the extensive area the applicant proposed for parking and storing vehicles. A copy of sheet C2 from the 2009 Application is included in the Appendix to show generally the scope of the 2009 Application request.

While Boyle was developing plans for expanding his dealership, the City was in the process of amending its site plan regulations and zoning ordinance; those changes subsequently became effective January 2010. Mr. Boyle and his counsel participated in that lengthy public process, commenting in 2009 on various components of the proposed ordinance update.

Boyle argued that the 2009 zoning ordinance should apply to his pending 2009 Application. The Planning Director at the time, Rick Taintor, and the Planning Board disagreed finding that the new 2010 zoning ordinance applied. Boyle appealed the decision of the Planning Board to use the 2010 zoning ordinance to the BOA.

The BOA on July 20, 2009, by a vote of 4 to 3, agreed to grant Boyle's appeal and apply the 2009 zoning ordinance to the 2009 Application. A copy of the minutes are included in the Appendix.

Due to unrelated pending litigation concerning the City's sewer line that crosses the rear of the parcel Boyle asked the City to place his 2009 Application on hold and the Planning Board voted in 2010 to postpone the application indefinitely at the request of the applicant. As of the granting of that request, the application had only received preliminary review by the Technical Advisory Committee and the Planning Board. A complete application had not yet been submitted.

The Revised Plan and Land Use Application 2020

In August of 2011, Boyle undertook without benefit of local or state permits certain site work on the rear of his property in areas considered jurisdictional wetlands by both the City and NH Department of Environmental Services (NH DES). NH DES subsequently issued a finding of violation. Boyle and the NH DES reached a Consent Decree which allowed Boyle the opportunity to submit a plan for NHDES wetlands permit approval as part of a process and means to resolve the violation. Boyle submitted a plan to NH DES that varied from the 2009 Application, in particular it reduced the amount of proposed outdoor storage of inventory area/parking area and included a third building ("Revised Plan"). In March of 2020 the NH DES issued a wetlands permit based on the Revised Plan.

Boyle seeks to proceed with the work shown on the Revised Plan. The applicant consulted with the Planning Director to determine the appropriate process forward and, after a preliminary review of the application, the Planning Director advised that the

Revised Plan appeared to be incomplete and would also likely require variances and a wetland conditional use permit. In order to reactivate the land use review process, the Planning Director properly advised that Boyle should commence a new land use application. As a starting point and to facilitate the process of review, the Planning Director recommended that Boyle use the Revised Plan as a basis for the new land use application. Boyle did so on September 11, 2020 (2020 Land Use Application) and the Planning Director's subsequent land use code review of the application (issued on September 18, 2020) is the subject of this appeal. A copy of sheet C3 from the 2020 Land Use Application showing generally the revised parking scheme and third building is included in the Appendix.

ANALYSIS

The Planning Director has correctly determined that two variances are required for the pending 2020 Land Use Application as well as a wetlands conditional use permit. In short, the Planning Director has respected the BOA 2010 decision and applied the 2009 zoning ordinance to those portions of the 2020 Land Use Application that is consistent with the postponed 2009 Application.

As a preliminary matter, Boyle suggests that the Planning Director has applied the wrong zoning ordinance with regard to his 2020 Land Use Application. He makes a somewhat confused argument that the City should look back to an ordinance that predates his 2009 Application. The Legal Department disagrees with this proposition.

The BOA determined in 2010 that the 2009 version of the ordinance would apply to the 2009 Application. The Planning Director has given Boyle the benefit of that prior BOA decision, specifically, to the extent his 2020 Land Use Application presents the same configuration of parking and buildings shown in the 2009 Application the 2009 zoning ordinance will apply.

Even if the BOA were inclined not to give weight to its prior decision, Boyle provides no convincing evidence that a different ordinance should apply. He has supplied no documents or other support that the City failed to promulgate its zoning ordinances in accord with the City of Portsmouth Charter or State law. To the contrary, the City staff would be prepared to submit to the BOA the necessary proof of posting and publishing of the 2009/2010 ordinance changes should the BOA wish it. The City points out that Boyle misstates the conditions set forth of the Charter and refers the BOA to Portsmouth Charter Section 4.5. Boyle raised this argument before in multiple forums without success.

Staff is also prepared to discuss the history of the ordinance changes from 2006 to 2009 relative to outdoor storage of vehicles relative to dealership uses if the BOA is inclined to explore that history and not rely on the BOA's previous action in 2010. Staff reaffirms that all proper procedures were followed to amend the zoning ordinance over the years and the references interlaced in the appeal relative to bad faith are simply attempts to move this Board beyond a straightforward consideration of Planning Director Walker's interpretation.

200' foot Buffer from Residential for Automobile Use

The Planning Director determined as follows:

Setbacks from motor vehicle sales (Section 10-208 Table 4 – Uses in Business Districts in 2009 Ordinance, Section 10.592.20 in current Ordinance)

The site plan shows parking, display, and/or storage of vehicles within the required 200-foot setback from a Single Residence B (SRB) district. The ordinance requires such uses to be no closer than 200 feet from any adjoining Residential or Mixed Residential district.

Boyle argues that the placement of the semicolon in the ordinance demands a different conclusion than the one reached by Planning Director Walker. The section, which is from the Table of Uses, allows as follows:

Motor vehicles sales, renting or leasing, including accessory repair services, for vehicles not requiring tractor registration plates and weighing less than 32,000 pounds; provided, areas of parking, display, and/or storage of vehicles, equipment, goods materials are located at least forty feet from the street right-of-way and two hundred feet from any Residential or Mixed Residential district; and all accessory uses are located within a building.

See the Appendix for a copy of the relevant section of the 2009 ordinance.

Words in the ordinance are entitled to their plain meaning and are viewed in the context of the whole ordinance. The Planning Director's interpretation is consistent with that of the previous Planning Director. Each Planning Director relied on the plain reading of the relevant ordinance language.

Boyle's argument that *Boyle, Trustee 150 Greenleaf Avenue Realty Trust v. City of Portsmouth* 154 N.H. 390 (2006) dictates a different interpretation is wrong. The City amended the ordinance on which that case was decided prior to Boyle's 2009 Application. Therefore, the Planning Director's determination which is based on the plain language of the 2009 ordinance is the correct one.

Finally, Boyle makes the unusual argument that if one violates the City zoning laws long enough (by parking cars outside of the approved parking areas) the property owner gets the benefit of that non-enforcement when a land use application is filed. Parking areas that are approved and constructed for the purpose of parking cars are to be used for parking vehicles. The fact that Boyle may have parked vehicles on other portions of his property in violation of his site approval doesn't mean he now has a right to lawfully use the entire property parking and other automotive sales purposes.

100' Foot Buffer From Residential for business parking areas

The Planning Director determined as follows:

Setbacks for Business Parking Areas (Section 10-1201 – Off-Street Parking in 2009 Ordinance and Section 10.1113.30 in current Ordinance)

The site plan shows parking spaces and accessways between 50 and 100 feet from the adjoining SRB district. The ordinance requires such uses to be no closer than 100 feet from any adjoining Residential or Mixed Residential district.

The ordinary and common meaning of parking (in the context of a vehicle), is a vehicle that is stationary. This section of the ordinance is applicable to all business parking (ie not specific to automobile sales and leases), it provides the design criteria for parking and accessways on a property, and a common sense interpretation of that term is to be applied.

Merriam-Webster defines a parking space as “a place to park a car, truck, etc.” The verb, “park” is further defined in part as “to leave temporarily on a public way or in a parking lot or garage”. Ordinance Section 10-1201 provides the technical requirements for where vehicles may be temporarily left including prohibiting temporarily leaving vehicles within 100 feet of a residential district. Whether a property owner characterizes this act as storing, displaying, or parking a vehicle, each of these terms falls under the broad umbrella of “to leave temporarily”, and as a result the property owner must still do so within a space designated for parking. To do otherwise would contravene the site plan approval and be contrary to the zoning ordinance.

Wetland Conditional Use Permit

The Planning Director has determined that a wetland conditional use permit is required to construct the improvements shown in the Land use Application 2020. The City has consistently taken the position that the area behind the existing Toyota dealership is compromised in large part of jurisdictional wetlands as defined under the City’s zoning ordinance. There are no grounds for treating this 2020 Land Use Application differently from the 2009 Application. Moreover, there are no grounds for treating the 2020 Land use Application differently from the many land use applications filed by other property owners across the City.

The NH Supreme Court has made it abundantly clear that local jurisdictions have the authority to regulate wetlands in the same manner or more stringently than the State of New Hampshire. Girard v. Plymouth, 172 NH 576 (2019). The Consent Decree referenced by Boyle is an agreement between the NHDES and Boyle to resolve a state law violation of the laws relating to wetlands permitting. The City was not a signatory to it. Citing a 1979 case from the State of Illinois is unpersuasive.

The City further points out that at paragraph 4, under the section entitled *General Conditions that Apply to All NHDES Wetlands Permits* on the Wetlands Permit issued by the NH DES on March 5, 2020, the following language can be found: “This permit does not relieve the applicant from the obligation to obtain other local, state or federal permits, and/or consult with other agencies....” See Appendix. It could not be clearer that NH DES permitting does not displace the need for local permitting and approvals including the issuance of a conditional use permit.

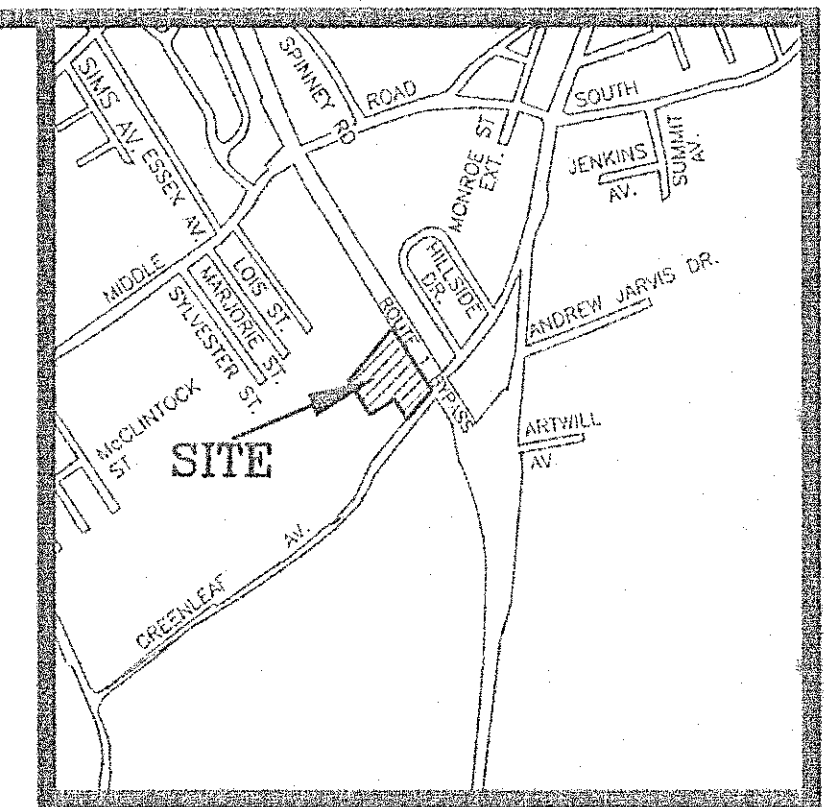
Finally, as background and to clarify the record, the City and its wetlands consultant Mark West have long identified the wetlands behind the existing Toyota dealership as

having important functional values. Included in the Appendix is the 2006 Functional Assessment that was performed by NH Certified Wetland Scientist Mark West along with the resource inventory data sheet also prepared by Mark West in 2017 relative to the property.

Addition of "Third Building"

In contradiction to the application submitted on September 11, 2020, Mr. Boyle's appeal to the BOA notes that the applicant has changed his mind about the so-called "third building" included on the plans submitted. The applicant had previously indicated that, although a third building is shown on the revised plan set submitted with the Revised Application, he was not intending to proceed with approvals for the third building at this time. As a result, Planning Director Walker's review letter of September 18th did not include comments related to zoning and land use compliance for that building.

The addition of a proposed third building to the west (rear) of the existing building was not on the original plans submitted to the Planning Board in 2009, and therefore would be subject to the requirements of the City's current Zoning Ordinance. The Planning Director has completed her review of the third building and Boyle is not appealing any elements of that review.



LOCATION PLAN

NOTES:

1. THE PARCEL IS LOCATED IN THE GENERAL BUSINESS (GB) ZONE.
2. THE PARCEL IS AS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 243 AS LOT 67.
3. THE PARCEL IS NOT LOCATED IN A FLOOD HAZARD ZONE AS SHOWN ON FLOOD INSURANCE RATE MAP - MAP INDEX COMMUNITY-PANEL NUMBERS 330139 0001-0030 WITH AN EFFECTIVE DATE OF MAY 17, 1982.
4. OWNER OF RECORD: MSM BROTHERS, INC. P.O. BOX 5033 PORTSMOUTH, NH 03801 RCRD: BK#2765 PG#1109
- OPTION HOLDER: JAMES G. BOYLE 3612 LAFAYETTE RD. PORTSMOUTH, NH 03801
5. ZONING REQUIREMENTS:
 MINIMUM LOT SIZE: 43,560 SF
 MINIMUM FRONTAGE: 200'
 MINIMUM SETBACKS:
 FRONT YARD: 70'
 SIDE YARD: 30'
 REAR YARD: 50'
 MINIMUM DEPTH: 100'
 MAXIMUM COVERAGE: 30%
6. TOTAL PARCEL AREA: 600,413 S.F. 13.78 ACRES
7. WETLAND DELINEATION WAS DONE BY COVE ENVIRONMENTAL SERVICES, INC. IN ACCORDANCE WITH THE 1987 CORPS OF ENGINEERS WETLAND DELINEATION MANUAL AND FIELD LOCATED BY MILLETTE, SPRAGUE & COLWELL, INC.

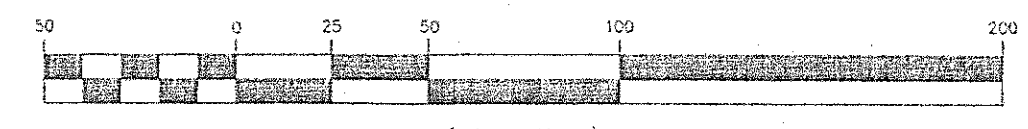
PLAN REFERENCES:

1. "PLAN OF LAND FOR STATE OF NEW HAMPSHIRE PORTSMOUTH VOC. TECH. SCHOOL, GREENLEAF AVENUE PORTSMOUTH, NEW HAMPSHIRE" SURVEYED DEC. 1982, PLAN DATED JAN. 1983 BY K.E. MOORE. RCRD PLAN #0-11259.
2. "PROSPECT PARK PORTSMOUTH, NH BELONGING TO LEAMITT, WOODWORTH & SWEATT" SURVEYED APRIL 30, 1903 BY JOHN N. MCCLINTOCK, A.M.C.E., FIELD WORK BY EDWARD H. SAMPTON, BOSTON, MASS. RCRD PLAN #00225.
3. "SUBDIVISION PLAN LOCATED IN PORTSMOUTH, NEW HAMPSHIRE BUSINESS CENTER" DATED 6/25/85 BY KIMBALL CHASE COMPANY, INC. RCRD PLAN #0-14108.
4. "LOT LINE REVISION 500 MIDDLE ROAD PORTSMOUTH, NEW HAMPSHIRE FOR JULIA KORONA REALTY TRUST" DATED 6/2/01 BY JAMES VERRA AND ASSOCIATES, INC. RCRD PLAN #0-29143.
5. "MARIE - NEW HAMPSHIRE INTERSTATE BRIDGE AUTHORITY PISCATAQUA RIVER BRIDGE KITTERY, MAINE - PORTSMOUTH, NH RIGHT OF WAY MAPS N.H. APPROACH" DATED 1954 BY MOULTON ENGINEERING CO.
6. "GREENLEAF AVENUE IMPROVEMENTS, CITY OF PORTSMOUTH, PORTSMOUTH, NH" DATED AUG. 2000 BY HOYLE, FANNER & ASSOCIATES, INC. ON FILE WITH THE CITY OF PORTSMOUTH.
7. "PLAN OF LAND, RIDGEWOOD APARTMENTS CO., GREENLEAF AVENUE, PORTSMOUTH, N.H." DATED SEPTEMBER 16, 1974 BY MCKENNA ASSOCIATES. RCRD PLAN #0-4736.
8. "SITE PLAN PREPARED FOR PORT CITY CHRYSLER/DOODGE, PORTSMOUTH, N.H." DATED JULY 30, 1993 BY TF MORAN, INC. ON FILE WITH THE CITY OF PORTSMOUTH.
9. "PROPERTY LINE & SEWER EASEMENT PLAN, CONTINENTAL CABLEVISION, PORTSMOUTH, N.H." DATED 9/15/88 BY KIMBALL CHASE ON FILE WITH THE CITY OF PORTSMOUTH.

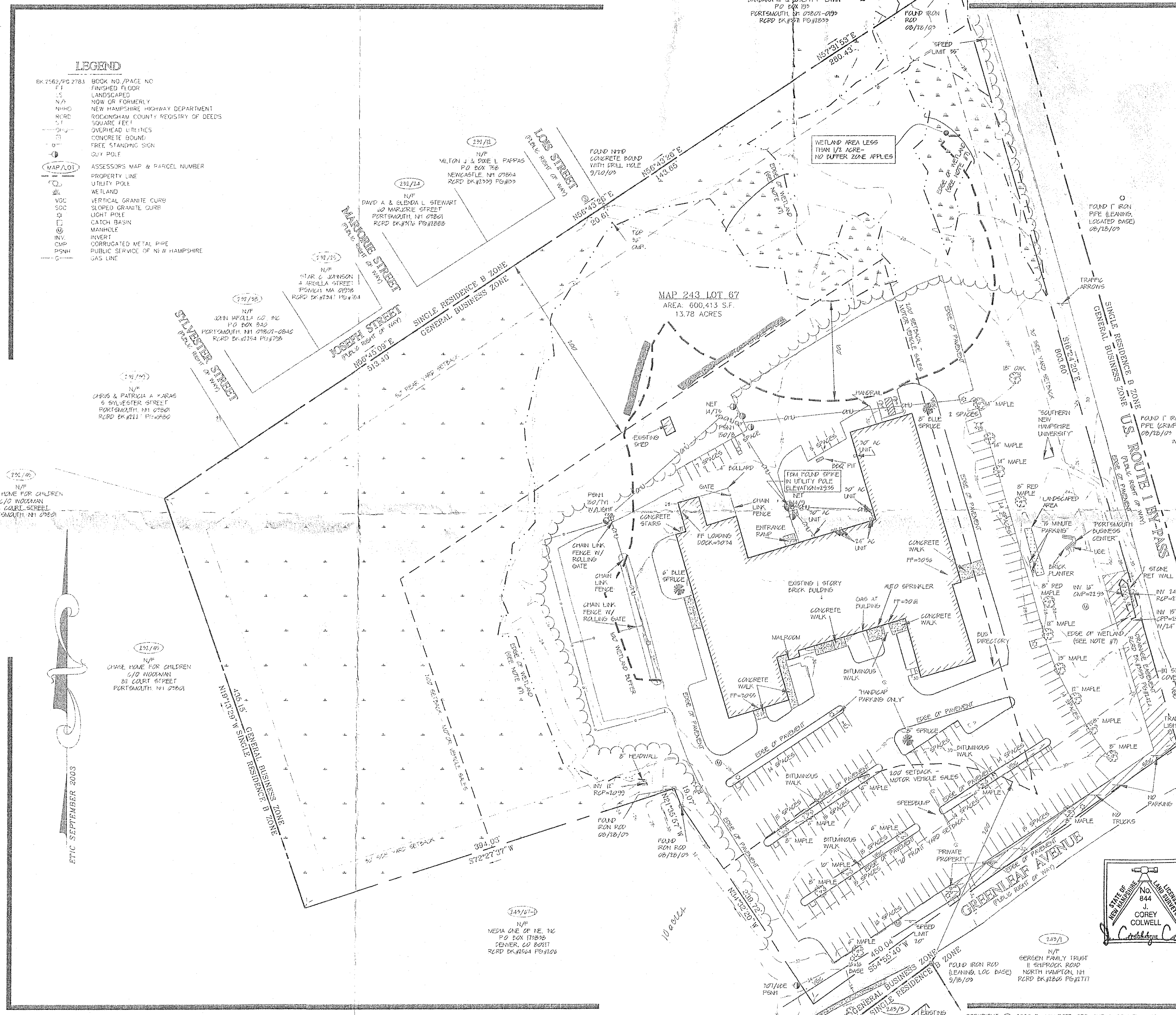
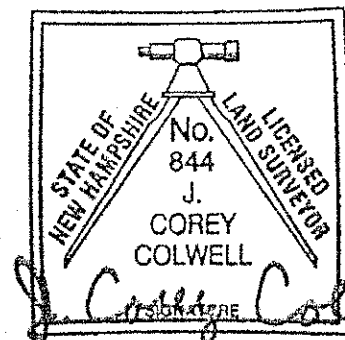
MILLETTE, SPRAGUE & COLWELL, INC.
 CIVIL ENGINEERS LAND SURVEYORS

EXISTING FEATURES PLAN

FOR
JAMES G. BOYLE
 GREENLEAF AVE. / U.S. ROUTE 1 BY-PASS
 COUNTY OF ROCKINGHAM
 PORTSMOUTH, NH



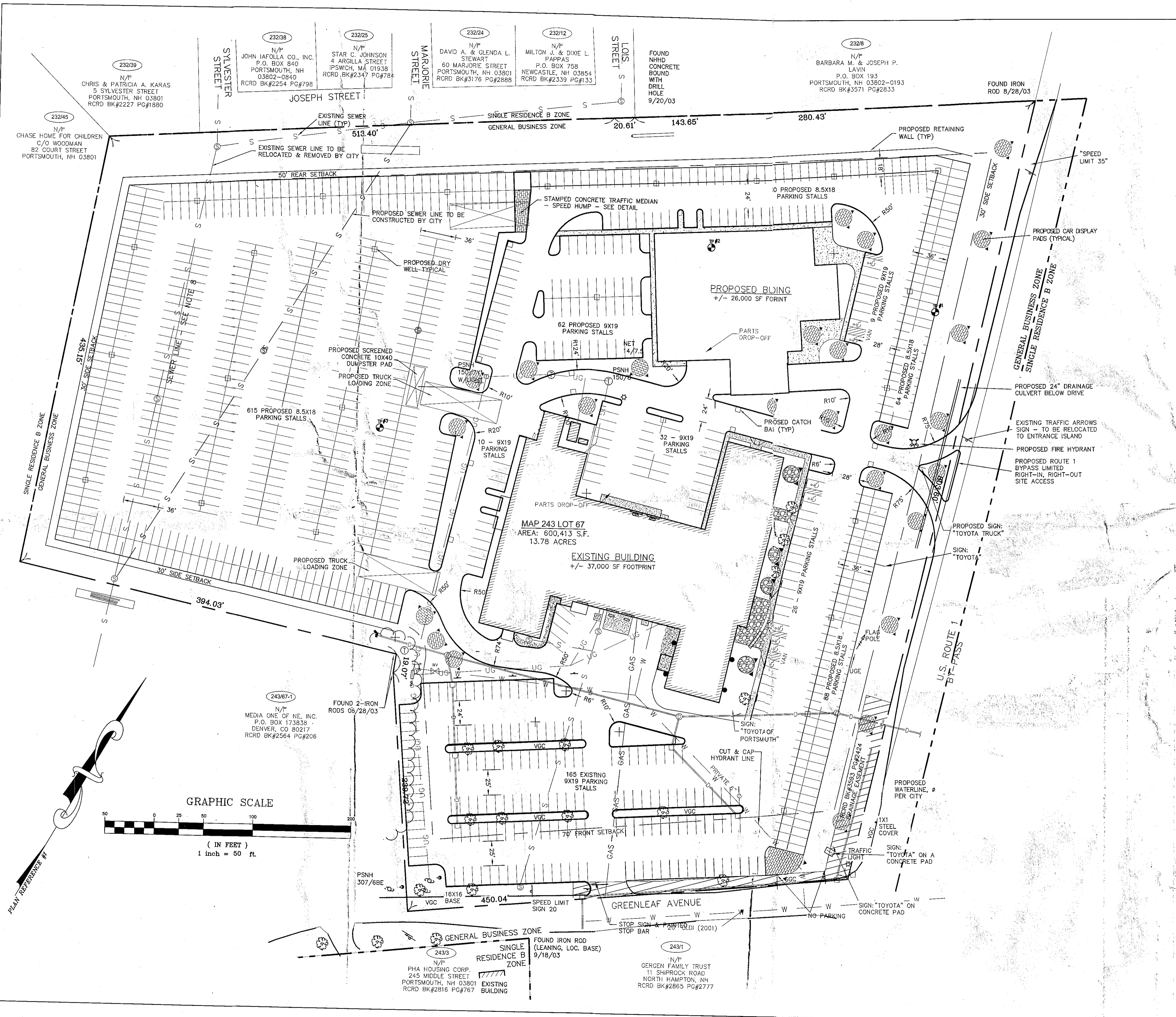
SCALE: 1" = 50' DATE: SEPTEMBER 11, 2003
 JOHN HART MANSION, 403 - THE HILL, P.O. BOX 471, PORTSMOUTH, N.H. (603)431-2277
<http://www.msceinginc.com>



LEGEND

- BK#2562/PG#2783 BOOK NO./PAGE NO.
- FF FINISHED FLOOR
- LS LANDSCAPED
- N/O NOW OR FORMERLY
- N/HD NEW HAMPSHIRE HIGHWAY DEPARTMENT
- R/RD ROCKINGHAM COUNTY REGISTRY OF DEEDS
- S/S SQUARE FEET
- OU OVERHEAD UTILITIES
- CB CONCRETE BOUND
- FS FREE STANDING SIGN
- GP GUY POLE
- MAP/LOT ASSESSOR'S MAP & PARCEL NUMBER
- PL PROPERTY LINE
- UP UTILITY POLE
- W/WETLAND
- VGC VERTICAL GRANITE CURB
- S/SLOPED GRANITE CURB
- LP LIGHT POLE
- CB CATCH BASIN
- M/M MANHOLE
- INV INVERT
- CMP CORRUGATED METAL PIPE
- PSNH PUBLIC SERVICE OF NEW HAMPSHIRE
- G GAS LINE

ETIC SEPTEMBER 2003



PLAN REFERENCES:

- "SITE CONSTRUCTION PLANS FOR 150 GREENLEAF AVENUE REALTY TRUST" DATED JAN. 27, 2009 BY MSC ON FILE WITH THE CITY OF PORTSMOUTH.
- "PLAN OF LAND FOR STATE OF NEW HAMPSHIRE PORTSMOUTH VOC. TECH. SCHOOL GREENLEAF AVENUE PORTSMOUTH, NEW HAMPSHIRE" SURVEYED DEC. 1982, PLAN DATED JAN. 1983 BY K.E. MOORE. RCRD PLAN #0-11299.
- "PROSPECT PARK PORTSMOUTH, NH BELONGING TO LEAVITT, WOODWORTH & SWEATT" SURVEYED APRIL 30, 1903 BY JOHN N. MCCLINTOCK, A.M.C.E., FIELD WORK BY EDWARD N. SAMPSON, BOSTON, MASS. RCRD PLAN #00225.
- "SUBDIVISION PLAN LOCATED IN PORTSMOUTH NH FOR PORTSMOUTH BUSINESS CENTER" DATED 6/25/85 BY KIMBALL CHASE COMPANY, INC. RCRD PLAN #0-14106.
- "LOT LINE REVISION 500 MIDDLE ROAD PORTSMOUTH, NEW HAMPSHIRE FOR JULIA KORONA REALTY TRUST" DATED 6/2/01 BY JAMES VERRA AND ASSOCIATES, INC. RCRD PLAN #0-29143.
- "MAINE - NEW HAMPSHIRE INTERSTATE BRIDGE AUTHORITY PISCATAQUA RIVER BRIDGE KITTERY, MAINE - PORTSMOUTH, NH RIGHT OF WAY MAPS N.H. APPROACH" DATED 1954 BY MOULTON ENGINEERING CO.
- "GREENLEAF AVENUE IMPROVEMENTS, CITY OF PORTSMOUTH, PORTSMOUTH, NH" DATED AUG. 2000 BY HOYLE, TANNER & ASSOCIATES, INC. ON FILE WITH THE CITY OF PORTSMOUTH.
- "PLAN OF LAND, RIDGEWOOD APARTMENTS CO., GREENLEAF AVENUE, PORTSMOUTH, N.H." DATED SEPTEMBER 16, 1974 BY MCKENNA ASSOCIATES. RCRD PLAN #0-4736.
- "SITE PLAN PREPARED FOR PORT CITY CHRYSLER/DODGE, PORTSMOUTH, N.H." DATED JULY 30, 1993 BY TF MORAN, INC. ON FILE WITH THE CITY OF PORTSMOUTH.
- "PROPERTY LINE & SEWER EASEMENT PLAN, CONTINENTAL CABLEVISION, PORTSMOUTH, N.H." DATED 9/15/88 BY KIMBALL CHASE ON FILE WITH THE CITY OF PORTSMOUTH.

NOTES:

- OWNER OF RECORD: 150 GREENLEAF AVENUE REALTY TRUST, JAMES G. BOYLE TRUSTEE, 150 GREENLEAF AVENUE, PORTSMOUTH, NH 03801, RCRD BK#4215 PG#0227, CITY OF PORTSMOUTH ASSESSOR'S MAP 243 AS LOT 67.
- THE PARCEL IS LOCATED IN THE PORTSMOUTH GENERAL BUSINESS (GB) ZONE.
- THIS PARCEL IS NOT IN A FLOOD HAZARD ZONE PER FEMA FLOOD INSURANCE RATE MAP 33015c0259, MAY 17, 2005.
- WETLAND DELINEATION PERFORMED BY GOVE ENVIRONMENTAL SERVICES, INC. (GES) ON AUGUST 23, 2005, IN ACCORDANCE WITH THE 1987 CORPS OF ENGINEERS WETLAND DELINEATION MANUAL AND FIELD LOCATED BY MSC CIVIL ENGINEERS & LAND SURVEYORS, INC. (MSC).
- SURVEY FIELD WORK PREVIOUSLY CONDUCTED BY MSC AND REVISED BY EMANUEL ENGINEERING, INC. (EE) IN 2009.
- THIS IS NOT A BOUNDARY PLAN. SEE BOUNDARY SURVEY PLAN.
- PLAN DATUM ELEVATION TIED TO MSC REFERENCE PLAN #10.
- UNDERGROUND FACILITIES, UTILITIES AND STRUCTURES HAVE BEEN LOCATED FROM FIELD OBSERVATIONS AND THEIR LOCATIONS MUST BE CONSIDERED APPROXIMATE ONLY. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO HAVE ALL UNDERGROUND UTILITIES OR STRUCTURES LOCATED PRIOR TO EXCAVATION WORK BY CALLING 1-888-DIG-SAFE.
- THIS PLAN WAS PREPARED WITH ONSITE FIELD SURVEY AND EXISTING PLANS. THE CONTRACTOR SHALL NOTIFY EMANUEL ENGINEERING, INC. DURING CONSTRUCTION OF ANY DISCREPANCIES TO THE PLAN FOUND ON SITE.
- ZONING REQUIREMENTS:
 - MINIMUM LOT SIZE: 43,560 SF.
 - MINIMUM FRONTAGE: 200'
 - FRONTAGE PROVIDED: 450.04'
 - FRONT YARD MINIMUM SETBACK: 70'
 - SIDE YARD MINIMUM SETBACK: 30'
 - REAR YARD MINIMUM SETBACK: 50'
 - MINIMUM LOT DEPTH: 100'
 - LOT DEPTH PROVIDED: 186.60'
 - MAXIMUM STRUCTURE COVERAGE: 30%
 - PROPOSED STRUCTURE COVERAGE: 10.4%
- PARKING REQUIREMENTS:
 - 847 DISPLAY 8.5X18 SPACES
 - 269 SERVICE/EMPLOYEE 9X19 SPACES
 - 35 CUSTOMER 9X19 SPACES
 - (* SOME SERVICE & EMPLOYEE SPACES MAY BE UTILIZED FOR DISPLAY PURPOSES)
- ALL SITE CONSTRUCTION TO BE TO LOCAL, STATE AND FEDERAL DESIGN SPECIFICATIONS, STANDARDS, & REQUIREMENTS.
- ALL NEW UTILITIES TO BE BURIED BELOW GRADE.
- SEE SITE AND PAVEMENT PLANS FOR LIMITS OF PERVIOUS PAVEMENT.

2	FEB. 16, 2010	FOR APPROVAL	
1	OCT 23, 2009	PRELIMINARY WORK	
ISS. DATE:		DESCRIPTION OF ISSUE:	CHK.
DRAWN:	BDS	DESIGN:	BDS
CHECKED:	DFE	CHECKED:	DFE

EMANUEL ENGINEERING, INC.
 CIVIL & STRUCTURAL CONSULTANTS
 118 PORTSMOUTH AVE.
 STRATHAM, NH 03885
 Tel: (603) 772-4400 Fax: (603) 772-4487
 www.emanuelengineering.com

CLIENT:
150 Greenleaf Avenue Realty Trust
 150 Greenleaf Avenue
 Portsmouth, NH 03801
 (603) 431-6100

TITLE:
SITE PLAN FOR TOYOTA OF PORTSMOUTH 150 GREENLEAF AVENUE PORTSMOUTH, NH 03801

PROJECT:	SCALE:	SHEET:
09-026	1"=50'	C2

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

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

July 20, 2010

MEMBERS PRESENT: Chairman Charles LeBlanc, Vice Chairman David Witham, Carol Eaton, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternate: Derek Durbin

EXCUSED: Alternate: Robin Rousseau

ALSO PRESENT: Principal Planner, Lee Jay Feldman

I. APPROVAL OF MINUTES

A) Board of Adjustment Meeting April 20, 2010

It was moved, seconded and passed by unanimous voice vote to accept the Minutes as presented.

B) Board of Adjustment Meeting April 27, 2010 not available for vote.

It was moved, seconded and passed by unanimous voice vote to postpone review of these Minutes until July 27, 2010.

II. OLD BUSINESS

5) Case #6 -5

Petitioners: Houston Holdings, LLC, Daniel Houston, President

Property: 653 Islington Street Assessor Plan 164, Lot 5

Zoning district: Business

Request: Variance: 10.440 Table of Uses 10.18.24 to allow two (2) temporary structures to remain on the premises for not more than 180 days, which is not allowed by Ordinance.

Variance: 10.531 Table of Dimensional Standards, to allow a 4' right side setback where 15' is required

Variance: 10.531 Table of Dimensional Standards, to allow a 4' left side

setback where 15' is required

6) Case #6 -6

Petitioners: Houston Holdings, LLC, Daniel Houston, President

Property: 653 Islington Street Assessor Plan 164, Lot 5

Zoning district: Business

Request: Variance: 10.321 to allow the expansion of a nonconforming structure.

Variance: 10.531 Table of Dimensional Standards, to allow a 25' x 20' addition with a 4' right side setback where 15' is required

Variance: 10.531 Table of Dimensional Standards, to allow a 4' left side setback for the addition where 15' is required

These petitions were postponed from June 15 meeting. Motion was made, seconded and passed by unanimous voice vote to bring them again before the Board. It was requested that Case # 6-6 be discussed in conjunction with the above. Chairman LeBlanc indicated the Board would hear arguments for both cases at the same time, but would vote on them separately.

SPEAKING IN FAVOR OF THE PETITION

Attorney Jack McGee stated he was appearing on behalf of Houston Holdings, LLC, and was there along with the applicants. The lot in question was a tight lot at the intersection of Islington and Bartlett. This has been a subject of a great deal of activity this year because of the City's sewer project. During that project, it had been pointed out to Mr. Houston that the storage trailers that he had been using were not appropriate for the Ordinance and it was suggested that he take remedial action. After discussions with Planning officials, Mr. Houston was attempting to enclose the trailers within a single structure which would be permanent and, within that, would be the removable storage trailers. Attorney McGee furnished a portion of the plan as well as schematics for the proposed building for the Board, stating that the lot was very odd-shaped and tight. The building as it existed was already up against the boundary line on Islington and the old West End Café. Mr. Houston has discussed this with the owners of West End Café property and he advised they do not have any objections, nor had they heard any objections from Gilford Transportation which was the side abutter.

Attorney McGee reiterated that the plan was to legitimize this storage area under the zoning Ordinance by encapsulating the storage trailers into a permanent structure. The setbacks in the area were 15 feet and the structure would be on the property to the back with a side setback of 4'. This area would be up against the drive way of the West end Café property and the 4 feet on the back/side area up against the Gilford Transportation property. They were asking that the storage trailers be allowed to remain there for 180 days which would give Mr. Houston a chance to build this permanent structure, hopefully obtaining a variance from this Board. Approval would also be required from the Historic District Commission and possibly Site Review. These variances would allow a business, which has served the community for quite a while to stay in existence. It needed storage and the trailers have provided that storage and there was no other location to put a storage area in this building. While the trailers had been there for some time, the applicant was unaware that they were contrary to the zoning Ordinance. They hadn't posed a problem to anyone at this point and it was not conceivable that, encased, they would pose a problem in the future.

Addressing the special conditions requirement under the Boccia criteria, Attorney McGee stated that the shape and size of this lot was unique for that particular area of town. It was a lot which had been seriously affected by the City's sewer project, which made it difficult to do anything with the lot due to the easements that the City had taken by eminent domain. He stated that there was no other way to do this. He and the applicant had met with the Planning Department to explore various ideas and this proposal was something that appeared feasible. Hopefully, the Board would view it that way and grant approval. Attorney McGee that granting the variances would be consistent with the spirit of the Ordinance in that nobody wants to see a business shut down for this type of lack of storage. A long-standing business, it served a good number of members of the community and hopefully would be allowed to stay there and operate as it had for a number of years. Substantial justice would be served by allowing the business to be maintained there. Attorney McGee felt the real criteria was whether anyone was going to be hurt by this. As an indication that it was not going to hurt surrounding properties, he noted that the most affected abutters were not there. He stated that the building would look better in appearance, which would be good for the area. It would solve the applicant's problem while being consistent with what the City was attempting to accomplish. For all those reasons, they asked that the Board grant both variances.

Mr. Grasso asked about cars he had observed parked along where the proposed addition was behind the building. The applicant, Mr. Houston, indicated that when the City took the front of their parking lot by eminent domain there was no access to the parking lot. The West End Café had given him temporary right to use their driveway so that the City vehicles could park there during the sewer project. When that project was completed, there would be no vehicles there.

In response to further questions from Chairman LeBlanc, Mr. LeMay and Mr. Jousse, Mr. Houston indicated that the trailers would be where they were during construction. They had been moved for the sewer project but would be moved back after construction. The plans showed the old location of the trailers. The spaces on the plan marked 14 through 16 were parking spaces. He confirmed they had looked into going up for storage rather than out of the building but either way a variance would be needed and this was preferred as it would be more difficult to get to the storage trailers if they were up.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

For Case # 6-5: Mr. Parrott made a motion to grant the petition as presented and advertised which was seconded by Ms. Eaton.

Mr. Parrott stated that this petition seemed simple and straightforward. The petition asking for a 180-day extension to remain where they were currently was temporary in nature. He stated that there was no serious public interest involved as the trailers had been there for some time without causing any trouble to the public. The spirit of the Ordinance would be observed as this would aid the business to transition in a new expansion and allow a place for temporary storage. Substantial justice would be done and there were no overriding private or public interests that

would be harmed by granting these variances. The value of the surrounding properties would not be diminished or there would be no negative impact on the surrounding properties. The hardship was that the City through their work on the sewer had impacted this lot adversely and in a manner that was out of the control of the owner. The trailers were there because they were needed for storage. Ms. Eaton agreed and had nothing to add.

Mr. Grasso asked the maker and second to add a stipulation that the trailers would be 8' x 20' instead of "two (2) temporary structures" as previously read. Mr. Parrott and Ms. Eaton agreed.

The motion to grant the petition as presented and advertised, with the stipulation that the size of the two temporary structures would be 8' x 20', was passed by a unanimous vote of 7-0.

For Case # 6-6: Mr. Parrott made a motion to grant the petition as presented and advertised which was seconded by Mr. Witham.

Mr. Parrott indicated that the reason for proposing such a small setback in the back was that it went up against an embankment to the railroad track. That land had no productive use and had no impact on neighbors. In the same manner the right side setback was adjacent to a neighboring business' parking lot and also had no impact. Addressing the criteria, similar to the previous discussion on the storage containers, he saw no negative impact on the public interest. In fact, most of the public would not see this addition. The spirit of the Ordinance would be observed as a variance was needed to allow the business to operate. He felt that, in the substantial justice test, the balance tipped to the applicant as there is no public or private interest that would be adversely affected. The value of surrounding properties would not be diminished. The structure would be out of sight, would be more attractive than the current trailers, and would be appropriate to the rest of the building. He stated that literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. In this case there would be no alternative for this lot. It had been impacted by City work, was an odd-shaped lot and backed up against railroad tracks.

Mr. Witham added that he did not see any way that this variance would have any adverse impact on the two abutters. Further confirming this was the fact that the abutter's property had 24 more feet toward the railroad tracks and a structure could be built nine feet closer than what was being proposed and still be in conformance. He noted that the height of the tracks would be the same height as the roof of this structure so there was no impact on light and air. It was a good solution to a unique problem.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 7 to 0.

III. PUBLIC HEARINGS

- 1) Case # 7-1
Petitioners: Kara L. Hutchins
Property: 40 Mill Pond Way Assessor Plan 143, Lot 6
Zoning district: General Residence A
Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure
 Variance from Section 10.521 to construct a front porch with a 10' setback

from the front lot line where a 15' front yard is required

Mr. Jousse stepped down and Mr. Durbin sat in on this case.

SPEAKING IN FAVOR OF THE PETITION

Ms. Kara L. Hutchins stated she lived at 40 Mill Pond Way and was there to ask permission to add a porch to the front of her house. Part of the challenge of the house was its location as the street cut diagonally across her property. One corner had a 25-foot setback and the other corner had a 15-foot setback. The porch she wanted to add was in part of the 15-foot setback. This was the next step in renovations to improve the value of her home. She had spoken to her neighbors and she provided to the Board a petition signed by the neighbors saying they did not object to this addition. Ms. Hutchins also indicated that she felt the addition of a porch would not be contrary to the public interest as it would be similar to other homes in the vicinity.

In response to a question from Ms. Eaton as to why she needed the porch to go into that setback area, Ms. Hutchins indicated she was planning a traditional farmer's porch across the whole front of her house and to have the porch stay within the setback, she would have to start the porch half-way in on her house. This would make it start right in front of her front door, which was in the middle of the house.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Grasso made a motion to grant the petition as presented and advertised which was seconded by Mr. Durbin.

Mr. Grasso stated that about one-third of the house was in the setback area. The applicant wanted a full porch and he didn't feel it made sense to start the porch in front of her front door. There were unique conditions on the property and the house was not parallel to the street. This would not be contrary to public interest as how the porch was set should not affect and the street was not well-traveled. The spirit of the Ordinance would be observed as there was just one end of the porch that fell within the setback. Mr. Grasso stated that, in the justice test, there would be no benefit to the public in denying the variance. The values of surrounding property would not be diminished. Literal enforcement of the provisions of the Ordinance would result in unnecessary hardship as it would not be an attractive design to start the porch in the middle of the door or a window.

Mr. Durbin agreed, adding that where the home was placed on the lot was probably the only place on the lot to build. The property was unique in relation to how the road ran along the lot. It was different from the other homes in vicinity and created a special condition on the property that did, along with the other criteria, justify a variance.

Mr. Witham noted that the area that the public actually used, the road, was an additional 10 feet away from the property line and this was one of those situations where the property owner maintained the property all the way up to the pavement. At the edge of the public right of way the porch was in conformance and an open structure would have no impact on light and air.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 7 to 0.

Mr. Jousse resumed his seat and Mr. Durbin resumed his status as an alternate.

2) Case # 7-2

Petitioner: Kayla Realty, LLC, owner, and Heather Lessard, applicant, dba Tulips

Property: 60-62 Market Street Assessor Plan 117, Lot 34

Zoning district: Central Business B

Request: Variance from Section 10.1253.50 to allow a projecting sign to project 42” from the building where 36” (one-third of the sidewalk width) is the maximum allowed

SPEAKING IN FAVOR OF THE PETITION

Ms. Heather Lessard stated the sign in question was painted by her mother, built by her father and had been hanging in Portsmouth for 30 years. The business had to move because their lease was lost on Bow Street and they were not allowed to grandfather the sign. The applicant felt it was her heritage as the sign had been there for such a long time and been a part of the city that they support.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Witham made a motion to grant the petition as presented and advertised which was seconded by Ms. Eaton.

Mr. Witham recalled that when he received the packet and began to read this petition he wondered why these people couldn't just build the sign at 36 inches and felt that the only way he could support it was if the sign were a preexisting sign from another location, which turned out to be the case. He didn't feel the variance would be contrary to the public interest in any way and the spirit of the Ordinance would be still be observed by the granting of this variance. He indicated substantial justice would be done because he felt the harm to the applicant if the petition were denied would not be outweighed by any benefit to the general public. There was no reason to believe that the value of surrounding property would be diminished in any way. Considering the literal enforcement of the provisions of the Ordinance resulting in unnecessary hardship, he gave weight to the fact that this was a sign that was part of a business that was

relocating, a sign that it has been successfully hung in this city for 30 years without any problems and felt it could be done again. Again, if this were a brand new sign, he would probably look at it differently but, in this case, he was willing to give the 6 inches over the sidewalk.

Ms. Eaton indicated she had the same initial reaction that it would not be something that would be supportable, but finding out it was the original Tulips sign that was just moving across the street, she thought it could also be said the essential character of the neighborhood would be altered by removing it.

The motion to grant the petition as presented and advertised was passed 6-1, with chairman LeBlanc voting against the motion.

3) Case # 7-3

Petitioner: 150 Greenleaf Avenue Realty Trust, James G. Boyle Trustee

Property: 150 Greenleaf Avenue Assessor Plan 243, Lot 67

Zoning district: Gateway

Request: Appeal under RSA 676:5(III) of the determination by the Planning Board that the Zoning Ordinance adopted by the City Council on December 21, 2009, and effective January 1, 2010, is applicable to a site plan review application submitted on October 23, 2009

Mr. Jousse stepped down for this petition and Mr. Durbin assumed a voting seat.

SPEAKING IN FAVOR OF THE PETITION

Attorney Bernard Pelech stated he was appearing on behalf of the applicant 150 Greenleaf Avenue Realty Trust, James G. Boyle Trustee. Mr. Boyle was present with additional counsel, Attorney John Kuzinevich. Mr. Boyle is the owner of 150 Greenleaf Avenue Realty Trust which is the site of Portsmouth Toyota. Citing RSA 676.5, Attorney Pelech stated they were present to appeal the decision of the Planning Board in their determination as to which zoning Ordinance applied to a site plan filed by Mr. Boyle. Under the statute, if the Planning Board made a determination as to the application or interpretation of a zoning Ordinance, remedies must be exhausted before an appeal could be taken to the Superior Court, which placed the burden on the Board of Adjustment to hear that appeal.

Attorney Pelech stated that discussions were had with the City of Portsmouth in the summer of 2009 regarding filing a new site plan. At the time, the City was also in discussion regarding revising the zoning Ordinance. Mr. Boyle's site plan was filed and stamped by the City on October 23, 2009. On November 20, 2009, the clerk in the Planning Department posted notice of their site review application before the Technical Advisory Committee and also sent out notices via certified mail to abutters. On the same day, the City Clerk's office posted a notice of a public hearing of the City Council on zoning amendments. No one knew which was posted first on that day. Attorney Pelech stated that City Attorney Robert Sullivan had indicated in a November 20, 2009 memorandum that on that day the City Council posted a notice on the second reading of the revised zoning Ordinance and therefore, he determined that once the notice of the public hearing had been posted, and before the effective date of the revised Ordinance, one must comply with

the new Ordinance. Attorney Sullivan further stated that the requirement to compliance with the proposed revised Ordinance didn't apply to "...a structure shown on a plan or application for which notice of a public hearing by the Planning Board, such as for site plan approval, was posted prior to November 20." Attorney Pelech stated that the problem was that the City's posting of the proposed public hearing on the revised Ordinance was not sufficient under the City Charter nor was it sufficient under the state statute. NH RSA 675:7 required "notice of each public hearing should be published in a paper of general circulation in a municipality and should be posted in at least two public places." He maintained that the fact that the notice of public hearing was posted on November 20, 2009 was of no consequence because it was not published in the Portsmouth Herald until November 23, 2009. The City Charter, in Section 4.5, also explicitly required publication of the proposed Ordinance in a local newspaper and that did not occur until November 23, 2009.

Attorney Pelech stated that, when the petitioners went before the Planning Board in May, 2010, the Planning Department submitted a memo which dealt with the applicable zoning Ordinance and site plan review regulations. It stated that it was the opinion of both the Planning and Legal Departments that the current zoning Ordinance and site plan review regulations applied to this development proposal. He maintained that this was directly contrary to what Attorney Sullivan, in his memo, stated on November 20, 2009. Attorney Pelech stated that there should be no arguments made that evening regarding the criteria as this was not a legal argument but a fact argument. He reiterated what he and the applicant maintain were the posting dates for the site review application and the legal notice of the public hearing on the revised zoning Ordinance. Attorney Pelech noted that there was also a case pending in the Superior Court regarding the filing.

Mr. Witham commented that the situation was the race to who could get posted first. Attorney Pelech agreed and stated it was beyond the petitioner's control as there were two separate city employees doing the postings and probably neither one looked to see what else had been posted that day. Mr. Witham noted that the City council had first, second and third readings and he could not find anywhere in the NH zoning regulations where it said a petition had to come before a given reading. He asked when the first reading had been posted and Attorney Pelech advised that, unlike the second reading, the first reading of a proposed zoning Ordinance did not require posting of a notice of a public hearing to the public. He had no knowledge of a posted first reading.

Chairman LeBlanc cited a section of the statutes which indicated that once a plan had been accepted by the Planning Board and there was a structure on it, then that became in essence grandfathered. Attorney Pelech confirmed that was correct. Chairman LeBlanc asked if there was a structure proposed on the plans submitted in November. Attorney Pelech corrected that they were submitted in October, and there was a structure.

Attorney John Kuzinevich introduced himself as also representing Mr. Boyle. He stated that plain language of Section 4.5 of the City Charter said, "Notwithstanding any other provisions of law, publication for the purposes of this section shall mean publication of the notice in any daily newspaper in the City of Portsmouth." This whole section outlined how the City was to adopt and amend Ordinances. He felt that, by the terms of the express and unambiguous language of the City Charter, there was no notice of the second reading, the operative reading, until three days after notice of the TAC review. Attorney Kuzinevich stated his reasons for also believing that the

entire 2010 revision of the zoning Ordinance was not adopted validly and was subject to challenge by anyone coming before this Board. Citing RSA 676:12 and a court case regarding interpretation of the zoning statutes and grandfathering, he stated that the legislative history revealed that the statute was intended to prevent municipalities from retroactively amending local land use regulations for the purpose of stopping proposed projects or developments while an application was under consideration. He stated that the petitioner did not control the timing of any of this, other than submitting their site plan application a month before any of the notice issues came to pass. It was something discussed with the City all summer as a form of resolving some of the other outstanding issues. He stated that in a pending lawsuit, they had asked the Court to consider which zoning Ordinance applied as the question of law. While the judge could have decided it, she said perhaps the City was not going to apply the new Ordinance and perhaps would apply the old one. Attorney Kuzinevich felt the Court was giving the City the opportunity to do follow the plain language of the law so that there was not yet another continuing controversy. He maintained that application of the old zoning Ordinance would save the City significant money and narrow the issues in dispute.

Mr. LeMay asked if he was clear on the allegation that this zoning Ordinance that was adopted on January 1, 2010 was not legal and anyone could appeal it. Attorney Kuzinevich confirmed the allegation. When Mr. LeMay asked if it was because of the posting, he stated, “no.” It was due to the failure to follow the City Charter by making copies available free of charge to anyone who wanted them. The Courts strictly construe the process by which you adopt and Attorney Kuzinevich felt the process was not followed. There was a brief discussin about how copies of, or information about, the proposed new Ordinance had been, or should have been, provided.

Mr. LeMay asked if it were Attorney Kuzinevich’s position that the Technical Advisory Committee was one and the same with the Planning Board? Attorney Kuzinevich replied that the statute RSA 676:12 extended the grandfathering to when notices were given for a design review committee, which was not defined but it was clear to him that the entire purpose of the Technical Advisory Committee was to review the design and provide. He felt that TAC clearly qualified under the grandfathering provisions, which made sense because by the time you got to public notice of a TAC hearing, you’ve invested a lot in the plan so that it should not be changed willy-nilly. In the instance of this petition, Attorney Kuzinevich stated that the biggest thing was changing the use buffer for residential zones so that automotive uses were not allowed within 200 feet of a residential zone. The prior version of the zoning Ordinance only prohibited certain types of parking or storage or display, not all uses, so that the applicant could label his building as a chain pharmacy, a non-automotive use, and physically build the exact same building that he was proposing with the same external impact on the neighborhood.

Mr. Parrott asked if it was their position that they were unaware of what the City was doing and were surprised by these changes, or were they informed along the way and treated in a respectful and proper manner by the Planning Dept. In other words, did they feel they were “tricked” into not knowing what was going on? Attorney Kuzinevich indicated that they were tricked in that the rug was pulled out from under them, but they weren’t tricked at the beginning of the process. They kept watching for when the Planning Board made its recommendations for the Ordinance changes and then passed it on to the City Council. So it is relatively easy to predict when an Ordinance was ready for the public hearing and adoption. Mr. Boyle actually paid the engineers overtime to rush during the summer to get the project in and filed before they went to second reading. Mr. Parrott asked if Attorney Kuzinevich would agree that the applicant was well

represented by a very experienced, very knowledgeable land-use counsel who did business in the City on a regular basis and Attorney Kuzinevich answered “yes.”

Mr. Parrott read from a paper prepared by outside counsel, “in order to be exempt from the changes in the zoning Ordinance in the site review process, an applicant needs to have an approved site plan by the Planning Board after a public hearing prior to the adoption of the new zoning Ordinance pursuant to RSA 674:13. In this case, plaintiff did not have an approved site plan by the Planning Board before January 1, 2010, when the zoning Ordinance became effective. Plaintiff’s pending site plan application has not been reviewed by the TAC or the Planning Board due to postponements requested by the applicant. The application has never been accepted, reviewed or denied by the Planning Board at a public hearing. Therefore, how could it have been deemed, vested or approved if it didn’t exist?” Mr. Parrott stated that his understanding was that it didn’t exist until it had been approved and asked for Attorney Kuzinevich’s reaction, which was to cite RSA676:12. Mr. Parrott indicated that every lawyer has their favorite laws and he would like for him to respond to this particular one.

Attorney Kuzinevich stated that he thought outside counsel, Attorney Bower, was wrong on the basis that other sections of the statute expressly allowed it. He stated that Attorney Sullivan had informed the world that it was a matter of posting and, Attorney Kuzinevich stated, there was a municipal estoppel argument there. Attorney Bower did not address the failure to comply with the City Charter when adopting it and whether the zoning Ordinance at all was effective. Mr. Parrott asked if this is confusing a site plan with a building permit. Attorney Pelech responded that they were not confusing it. They were going by Attorney Sullivan’s memo. Regarding Attorney Bower, he was outside counsel and was totally unfamiliar with the procedures of the Portsmouth Planning Board. Mr. Parrott would know as a former Chairman that the Portsmouth Planning Board did not follow the state statute and it never voted to accept a plan which started a 60-day clock running. When Mr. Parrott indicated he did not know that, Attorney Pelech countered that he should. Attorney Pelech indicated that he had appeared before the Portsmouth Planning Board for 30 years and that procedure was never followed as it was done in most other towns. What happened in Portsmouth was you filed a site review application and it went to the Technical Advisory Committee. With a recommendation from that committee, you were automatically put on the Planning Board agenda. They do not vote to accept or not accept the plan as being complete because TAC has already done that. The Planning Board holds a hearing on the merits and you can walk away in one night with your site review approval. In most other towns, it takes at least two meetings. Attorney Pelech stated that he didn’t think Attorney Bower knew that. He also stated that, regarding the timeline, he had been in the hospital and not involved in the application but the applicant was represented by competent counsel. Mr. Parrott noted that the City’s business with regard to the Ordinance was in full view of the public with information on the website and in newspaper articles. The applicant was doing its private business thing, as it should, but the City had no influence whatsoever over the speed with which those plans were developed. To turn around and say that the City was somehow wrong because it proceeded in an orderly fashion and the dates fell as they did, he found a hard argument to buy. Attorney Pelech stated they were not saying the City was wrong. They were saying that they didn’t follow the law, the City Attorney’s memo, or the City Charter.

Mr. Parrott asked if the website and the posting at the library was all irrelevant and Attorney Kuzinevich replied that was correct. He wanted to clarify something, which was that the City was participating with them in developing their plans for the second building. Mr. Boyle and he

hand-sketched them out with Attorney Sullivan over the summer. He stated that Attorney Sullivan was well aware and they talked about getting something filed immediately for consideration and all of this is in the context of trying to settle a pending sewer line case. He maintained that, just as much as they knew the Ordinance was being amended, the City at every step of the way knew what they were doing. Mr. Parrott stated that reinforced his earlier point that the Planning Department was entirely supportive as, to his knowledge, it was with all applicants.

Mr. Witham stated that it seemed to him that the attorneys and Mr. Boyle were well aware within hours of when they needed to submit this application to fall under the previous zoning, by following when the reading was going to happen. Attorney Kuzinevich disagreed that it was within hours, because they submitted in October. Mr. Witham stated that what he was saying was that the petitioner was following this very closely and had the ability to gauge when the second reading was going to happen. Attorney Kuzinevich replied that yes, they projected it out. They knew and they beat it. They accomplished their goal. They got it submitted. Mr. Witham stated that when Mr. Kuzinevich said he accomplished his goal, to him it got to where it was, “We have to get it in now, pencils down, wherever we are, submit it.” Attorney Kuzinevich stated that they followed the regulations in terms of what had to be submitted. Mr. Witham added that it had been stated that Mr. Boyle paid overtime to get these in and get it done. But then if you look at the minutes from some of the TAC meetings where some of the information was missing and incomplete, it was a very long list. Mr. Witham understood that some of those were things that got worked out in the process. But a storm water drainage study was something that was part of a complete application, not something you worked out along the way. Attorney Pelech had talked about the two-step process most towns have with a complete application and the next time they voted on it. As Mr. Witham saw things, this application would have never been deemed complete even with a two-step process because there were some major elements that weren’t part of the application. When the TAC meeting minutes were looked at with the pieces of information that were not submitted with the application and the petitioner kept asking for postponements to put together more information to make it more complete, Mr. Witham felt that the petitioner got to the point of “OK pencils down, submit.” It was submitted incomplete, knowing it was incomplete, in order to stay with the previous zoning Ordinance.

Attorney Kuzinevich stated that Mr. Witham’s statements were incorrect as to completeness and he used drainage calculations as an example. They were still under the old site review regulations and procedures, which did not call for submission of drainage calculations. The regulations said that TAC may require drainage calculations. Therefore a plan without drainage calculations was fully complete in terms of what had to be submitted for a plan. He felt that the City wasn’t following the rules when it said you have to have drainage calculations for a complete application as that was not what the regulations said. It was understood that TAC would then after the fact say they needed certain other information. Attorney Kuzinevich stated that it wasn’t “put down the pencils.” It was when the engineer took the site review regulation and went to where it said what applications should contain. They checked off everything in the regulations and, due to time pressures, they did not put in optional stuff. He referred to a 6-page letter from the Planning Director indicating that there were several things missing. He stated that most of these were under the 2010 amended Site Review Regulations that required things that were never required under the regulations that existed at the time they submitted. He alleged that the City was “seesawing” them between one regulation that they submitted under and then the change of regulations, which was exactly why it was important to say that things were frozen at a point in

time. He stated they were not asking for an unreviewed project or to do anything that was harmful to the City. They were trying to follow the rules and put a second building on the site.

When Mr. Witham asked if during the review process the petitioners were trying to provide 2010 requirements for the 2009 application. Attorney Kuzinevich stated that the whole process disintegrated when an agreement couldn't be had on what version of the zoning applied, because they were talking building what would constitute a second automobile dealership. If that building couldn't go on, it was going to affect how much parking you needed and the drainage calculations. It was radically different if there are two buildings or only one building and a slight expansion. They really were postponing on most of the technical grounds to try and get to the point of determining which Ordinance applied. He stated that it didn't make sense for them to draw up a 2009 plan for a 2010 review or the City to engage in 2009 review when it really meant 2010. That was why they were in front of this Board on the narrow issue of which statute applied. The Planning Board had granted his request to say that what they were doing was a question of law. They decided the question of the 2009 Ordinance, but they basically tabled the rest of the plan review, so that it was currently an open plan. If the 2010 Ordinance applied, they had to go make drastic revisions to it. If 2009 applied, then they went into the normal refinement and the give and take that typically occurs at TAC. Mr. Witham, asked regarding all the minutes from TAC showing the incompleteness of the application based on the 2010 requirements, if they had said at that point, "Time out, we're not playing right now. We have to go see the judge and see what rules we're playing under," but the TAC kept going and produced all these minutes about all the things you were missing?" Attorney Kuzinevich answered yes.

Chairman LeBlanc asked if 675:7 was the statute that sets up the criteria for grandfathering an application. Attorney Kuzinevich confirmed it was. Chairman LeBlanc asked what was the trigger that brought that into action? Was it the mere submittal of the plan to the Planning Board or did the Planning Board have to actually act on the plan that the applicant has given? Attorney Kuzinevich stated that, because the whole notion of acceptance had already been addressed and as he didn't have a copy of the statute in front of him, he was hesitant to answer that question directly. Chairman LeBlanc felt that it was absolutely crucial because the only thing able to be dealt with now was whether or not the Planning Board applied the correct Ordinance to the case. If the petitioner couldn't say that this submittal was what triggered the grandfathering under the pre-2010 zoning Ordinance, then the Planning Board was correct in going with the 2010. Attorney Kuzinevich stated that section of the Ordinance applies to towns and has not been adopted by the City. There was a question of whether that was the trigger or not or that it even applied. They believe the triggering statute was 676:12:6 and also the analysis in the memo from the City Attorney that said the triggering event was notice of the public hearing. Chairman LeBlanc asked then if an application that was submitted before the legal notice of the change of the Ordinance meant that the application submitted prior to that date had to go under the old Ordinance? Attorney Kuzinevich answered, "no." The triggering event was the notice of TAC for the application. It was not the submittal of the application but the notice of the TAC meeting.

Mr. LeMay stated that this was strictly notice by the Planning Board, and not an advisory board that triggered this. Was there any posted meeting by the Planning Board for a hearing for the petitioner? Attorney Kuzinevich stated that, under 676:12, it was the Planning Board or design review committee. Mr. LeMay stated he did not see that in this Ordinance. It didn't say reviewed by anybody except the Planning Board and he thought agreement could be had that TAC and Planning Board were two differently constituted boards, even though he agreed that they both

review the material. Attorney Kuzinevich cited the sentence “the provisions of this paragraph shall also apply to proposals submitted to a Planning Board for design review pursuant to 676:4 provided that formal application filed with the Planning Board within 12 months of the design review process.” He concluded that the statute did tie into design review and that was the sole function of TAC. They don’t submit a separate application for TAC to review a plan. They submit the application for site review, which in Portsmouth’s process was review by TAC and then to the Planning Board.

Mr. LeMay quoted from the legal memo on file, “...On November 20, 2009, a letter was sent to all applicants, including plaintiff, advising them of the likely effective date and application of the new zoning Ordinance.” In that letter it was noted, “It is the approval and recording of the plan, not the mere submission of the plan, to the Planning Board which provides the exemption from regulatory changes.” He stated that was from the affidavit of Mr. Taintor. None of them were under oath tonight, but Mr. Taintor was when he signed it. Mr. LeMay asked if Mr. Taintor, as head of the Planning Dept. was not the expert in that area with respect to the timing and submission of the plan and what constituted a exemption from an Ordinance change. Attorney Kuzinevich replied that he was not in a position to evaluate his expertise. When Mr. LeMay asked if by position. Attorney Kuzinevich replied, “no”, a title didn’t mean somebody had expertise. He cited past cases where, he believed, the Court had found the City’s experts to be wrong. He stated that the Planning Director was contradicting Attorney Sullivan’s memo regarding notice. He stated that the mere submission of a plan accepted by the clerk was acceptance of a plan for review, under the Portsmouth process. He felt that a plan was accepted by the Planning Board, maybe not approved, but accepted upon the date of filing. They agreed with Attorney Sullivan who apparently disagreed with Mr. Taintor about the notice being the triggering the triggering event. Mr. LeMay stated if that were the case, nothing would ever get done because many of these, especially larger projects go through numerous revisions. The Board has sat and been confused with an applicant who was either not straight in his own mind or trying to see what would stick if they threw it. Which of these was the official plan? Anybody who’s been involved in the design process understood that there could be draft upon draft and at some point you have to say “OK. This is the one we’re going with.” Attorney Kuzinevich maintained that the official plan didn’t matter. What mattered was the plan that was submitted for determining which Ordinance applied. There may be revisions but those revisions got measured in the light of whether the 2009 or 2010 Ordinance was applicable. Mr. LeMay asked if Attorney Kuzinevich would say that once a plan was recorded then it achieves a certain status and it has a legal standing? Attorney Kuzinevich answered he didn’t think Portsmouth recorded its approved site plans, so he thought that was an irrelevant question. When Mr. LeMay stated it was a general question. Attorney Kuzinevich stated he hated to answer general questions because he has tried to be prepared on the law for Portsmouth and he wasn’t a general New Hampshire attorney. Mr. LeMay then asked, even though earlier Attorney Kuzinevich stated he was an expert, he didn’t know what recording a plan at Rockingham Courthouse meant? Attorney Kuzinevich answered he knew what recording meant and he also knew that Portsmouth didn’t record plans at Rockingham. Mr. LeMay stated that he personally has recorded plans at Rockingham. Attorney Kuzinevich replied that Mr. LeMay may have voluntarily, but there is no requirement for it.

Mr. Boyle then introduced himself to the Board. He stated he rushed his team to get stuff done because he had a handshake deal with the City Manager to make this stuff go away. He felt the City Manager was aware of mistakes made in the past. He stated that he had made the plans in

question in a hurry to accommodate the City and felt the City had backed out. As the Board was probably aware, a judge in Rockingham would determine what happened. Mr. Boyle outlined his pride in his past accomplishments and the sacrifices made by employees and countless friends who had helped produce them over the past six years. He felt that in Portsmouth well-grounded development was out of style and some people thought growth and development weren't good. Mr. Boyle outlined his vision for his business, which he felt stood as a "beacon of the American dream," and for the City of Portsmouth. He maintained that this roadblock that had brought them to this Board was wrong and unnecessary. He detailed how he felt his business had created jobs, helped the environment and increased the tax base while providing opportunity. He asked the Board to not blindly follow the advice of the Legal and Planning Departments as, he maintained, they had been wrong every time regarding this project. He asked that the Board do the right thing and go forward and keep building Portsmouth as a great city.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Chairman LeBlanc addressed the Board and stated there was a question before them. Did the Planning Board make an error when they decided that the 2010 Ordinance was applicable to this project or not?

Mr. LeMay made a motion to support the Planning Board in their recommendation that the 2010 zoning be applied to this property. Chairman LeBlanc then clarified that the motion was that 2010 was the governing statute in this case and asked for a second. Ms. Eaton seconded the motion.

Mr. LeMay stated he understood the arguments about the notice and the postings and so forth and essentially the postings were simultaneous as mentioned by the attorneys. He thought that all participants were probably operating in good faith and that the City was proceeding on its schedule and the applicant was proceeding on his schedule. He also thought there was a distinction between the Technical Advisory Committee and the Planning Board. He wasn't certain that there was a legal obligation of the Advisory Board to post notice. In other words, like the Historical District Commission who had work sessions, one got a notice from them that they are having a work session. There might be discussions but no decisions were made at that time. There was a period of time when an application was in flux and they were trying to get it worked out in a particular way that was acceptable to all parties as a complete application. He thought that was similar in a project of this complexity and probably should have been anticipated by the applicant, although he wasn't saying the applicant should be penalized. When an application was made, certainly that could be voted up or down. But as a practical matter you had a lot of time to work through the details to get to the point where you've got a complete application. With these large projects, there were multiple spins and multiple revisions of a plan as time goes on and it was probably reasonable to the Planning Board that this would only occur at a time down the road when the plan would be finalized. So he felt the right decision was made

Addressing her second, Ms. Eaton thought it was clear that the TAC review committee and the Planning Board were completely separate and had different intent. She viewed the TAC more as a preliminary check to make sure there was a complete application which she thought was very important. Anybody can throw an application up and try to start a clock ticking, and that was the whole basis of deeming an application complete or acknowledging that. In this case, she was clear this was not a complete application and there wasn't a building permit issued or applied for. With all the questions that were there, she thought the Planning Board's decision was valid and she supported it.

Mr. Witham stated he would not be supporting the motion. He couldn't separate the TAC and Planning Board entities in terms of triggering the starting point for all of this. As the petitioner stated, there's one application that you fill out and that's to get the process rolling to go before the Planning Board. He didn't think it was fair to say that because it hadn't gone to TAC yet or TAC hadn't deemed it complete then you weren't before the Planning Board. He thought the petitioner knew what they had to do to get this project to fall under the 2009 guidelines and he thought they did it. He stated that his questions had been answered in terms of the completeness of the application because what he had read was based on completeness in terms of the 2010 requirements. The petitioners know they were under a microscope and he doubted they would haphazardly submit something knowing that it would be shot down. They could split hairs but the bottom line was that the petitioners filled out an application for something to go before the Planning Board. The first notice was published on the 20th, the same day the second reading of the zoning changes was posted. Although it didn't make it to the paper until the 23rd, essentially they got posted on the same day. He didn't think you could say to them you didn't get it in on time. It was the same day and those other parts about building permit or not having Planning Board approval, he personally didn't see that as the triggering point of getting things done. So whether he liked the dealership or not, seeing it expand and the residents' outcry over the years, it was not a factor in this situation. It was merely did they get an application in on time for the 2009 zoning Ordinance and he felt they did.

Chairman LeBlanc agreed with Mr. Witham. He thought that the applicant did due diligence and got the plan in when it was supposed to be in. It was submitted in October and the staff had until the 20th of November to look this over and talk to the applicant and say well you're missing this, that or the other thing. It did or didn't happen, he didn't know, but there was a notice given that TAC was going to look at this and to his mind that implied that the application was complete and he will not support the motion.

Mr. Parrott stated that from everything he has read, he saw ample evidence that the application was not anywhere near complete and he saw no reason to believe that these Minutes and these affidavits they had all seen were in any way inaccurate. The Ordinance revision job was a long, complex, multi-faceted thing done in full view of the public with numerous public hearings, notice in the papers, televised workshops, etc. This applicant nor any other applicant could not conceivably claim that they didn't understand that it was getting near the end road and, if they had a project that they wished to do under the old Ordinance, they needed to speed it up and get it in. Any implication that maybe the City should have slowed up and stretched out its process so that some of these things could be completed and submitted, he thought was just unreasonable. It was unfortunate to come to this point, but he thought the Legal Dept. and the Planning Dept. both acted in good faith and certainly in a most public way. He thought at some point, you have to say this is the cut off. There was substantial knowledge by all parties involved and to say it wasn't in

the newspaper for three days, even though it was on TV and even though it was posted for the public to see and even though anybody could pick up the phone and call the Planning Dept., it was a very thin reed to lean on and say therefore everything was invalid because the local newspaper didn't have it published on a certain day. He thought the Planning Board and the Planning Dept. acted entirely in good faith. They worked with the applicant as demonstrated on numerous occasions. For all those reasons, he took the position that the Planning Board did not err and he would support them.

Mr. Witham stated he wasn't looking at making a rebuttal, but he had brought up a similar point and didn't think it was fair to say that the application was incomplete based on the Minutes, which is what he brought up, because the Minutes were based on the 2010 zoning Ordinance. He thought it was irrelevant to apply that criteria to an application that was assumed to be submitted under the 2009 Ordinance. He also felt that the idea that the applicant should have gotten it in sooner was irrelevant because they knew what was going on. The zoning change/revisions had been in the work for years and how do you arbitrarily pick when it's coming. He stated that bottom line was that it was spelled out clearly what the criteria was to get it in on time and if the criteria said notice in a newspaper, a judge was going to ask a simple question of yes or no. He didn't feel the petitioner dragged their feet or too long. He reiterated his feeling that they knew what they had to do and he felt they did it.

The motion to affirm that the Planning Board applied the proper zoning Ordinance that was effective January 1, 2010 to a site review application submitted on October 23, 2009 failed to pass by a vote of 3 to 4 with Chairman LeBlanc and Messrs Witham, Grasso and Durbin voting against the motion.

Chairman LeBlanc stated this was a positive motion that failed. Mr. Witham offered to make a new motion and Chairman LeBlanc didn't think one was needed because they were done. The pre-2010 Zoning Ordinance was what should apply. Mr. Witham mentioned that, since the petitioner had a request before the Board for an appeal, it seemed to him that it would need a positive motion in that an appeal had been granted.

Mr. Witham then made a motion to grant the appeal as presented, which was seconded by Mr. Durbin.

Mr. Witham requested to carry forward his previous comments. Mr. Durbin added that the Board needed to give a plain reading of the statutes that were particularly involved in this case and the City Ordinance and he thought they clearly read in favor of the applicants. For that reason he was in support of the motion on the table.

Chairman LeBlanc stated this was a motion to grant the appeal and, in effect, establish that the pre-2010 Ordinance applied in this particular case.

Mr. Parrott wanted to go back to when he was reading earlier from the Legal Dept. memo, prepared by outside counsel. He wanted it noted on the record that this outside opinion was endorsed by Suzanne Woodland, Assistant City Attorney who practiced in the City. He was relying on this legal memo prepared by Attorney Charles P. Bower and the law as it was cited, interpreted and explained in there as it was endorsed by one of the City's own assistant City Attorneys. So when an attorney for the plaintiff, who doesn't even practice in the City, says

that's all wrong, it presented him with a major problem. He stated that he believed that what Attorney Bower said was correct and it coincided with his reading of the law, but the important thing, again, was that the opinions in that were endorsed by Attorney Woodland on behalf of the City, so he thought it had a lot of validity and the applicant could not rebut the comments other than saying they were wrong. Mr. Parrott just wanted that on the record.

Mr. Witham had a final comment in that he was disappointed that the City wasn't able to have legal counsel there for the Board. He knew there was a 100-page packet that was supposed to be reviewed and understood by the members but a lot of it was in legal jargon. He could read the same sentence 10 times and still not know what it meant. It would have been advantageous to have some legal counsel there so that layman-type questions could be asked and get an answer that the Board could understand instead of having 100 pages of memo that was really hard to grasp at times. Mr. Parrott seconded that statement and several other members concurred.

Chairman LeBlanc stated this was a motion to grant the appeal of the determination of the Planning Board and, in effect, to establish the applicability of the pre-2010 Ordinance to a site review application for 150 Greenleaf Avenue which was submitted on October 23, 2009. The motion to grant the appeal was passed by a vote of 4 to 3, with Ms. Eaton and Messrs. Grasso and Parrott voting against the motion.

 Mr. Jousse resumed his seat. Mr. Parrott recused himself from the following hearing and Mr. Durbin retained a voting seat

4) Case # 7-4

Petitioners: 75 New Hampshire Avenue, LLC

Property: 75 New Hampshire Avenue Assessor Plan 306, Lot 4

Zoning district: Pease Industrial

Requests: Variance from Section 10.1243 to allow more than 1 freestanding sign per lot
 Variance from Section 10.1253.10 to allow a freestanding sign to be 12'6"
 from a lot line where 20' is the minimum setback allowed
 Variance from Section 306.01(d) of the Pease Development Authority Zoning Ordinance to allow 218.9 square feet of aggregate sign area where 200 square feet is the maximum sign area allowed

SPEAKING IN FAVOR OF THE PETITION

Mr. Tim Sullivan introduced himself as an employee of Barlo Signs and was representing Pixel Media and their location at 75 New Hampshire Avenue in the Pease Industrial Trade Port. He stated that they were seeking 3 variances for this location. The first was Section 10.1243 to allow more than 1 freestanding sign per lot. This property was just under 14 acres with numerous buildings, numerous tenants, and numerous entrances. It was important that each tenant had an identification to the driveway or to the entrance on their part of the property to avoid confusion as one drove around the 14 acre-area. Their intention was to identify the entrance into the Pixel Media part of the property to provide motorists with an easy egress into the facility. With respect to Section 10.1253.10, the setback of 20 feet really could not be maintained where this entrance was. The setback would actually put the sign into the parking spaces. With respect to where it was actually located, they were 12.5' from the property line, but from the sidewalk itself it was

12.5' so they were actually 24' off the sidewalk. Finally, the sign they were proposing would bump them up over the existing 200-square foot aggregate to 218. The proposed sign was 27 s.f. so it wasn't terribly large and was in keeping with the size of the other signs in that area and within the park itself. Their proposals had been approved by the Pease Development Authority, but they needed to come before the Board because they are within the City of Portsmouth.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Grasso made a recommendation to recommend to the Pease Development Authority that the petition be granted as presented and advertised. Mr. Witham seconded the motion.

Mr. Grasso agreed with the applicant that a business needed to be recognized and have its location known. The previous signage on the property took them close to the allowed 200 square feet. The sign was close to 25 s.f., bringing them to 218.9 s.f. Addressing the criteria, he stated that the variance would not be contrary to the public interest. The public interest in this would be in knowing where this business was located. The spirit of the Ordinance was observed as the sign was being located within the setback due to parking and sidewalk constraints in the area. Substantial justice would be done as there was no great benefit to the general public in denying the petition. The values of surrounding property would not be diminished. With regard to unnecessary hardship, Mr. Grasso thought the proposed location was the right place for the sign and, given the layout of the current parking lot and the existing signs on the property, this was the way to go.

Mr. Witham stated there were three variances here. He thought it was very reasonable for a property of 14 acres with numerous entrances and buildings, to have more than one freestanding sign to help people identify it, especially on a corner lot. If you were coming down one street and the sign was on the other street, it made it difficult to find. So for traffic and safety reasons, he felt it was appropriate. With regard to the 20-foot setback along the lot line, the reality was that it was 25' from the sidewalk, so he felt the spirit and intent of the Ordinance was observed. Concerning the square footage of the aggregate sign, he thought on a property of 14 acres with numerous buildings to ask for less than 10% relief for square footage was also reasonable.

The motion to recommend approval of the petition as presented and advertised to the Pease Development Authority was passed unanimously.

Mr. Parrott rejoined the Board. Chairman LeBlanc recused himself from the following hearing and Mr. Durbin retained a voting seat. Vice-Chairman Witham assumed the Chair.

5) Case # 7-5

Petitioners: Gerald W. Howe

Property: 45 Miller Avenue Assessor Plan 129, Lot 33

Zoning district: General Residence A

Request: Variance from Section 10.331 to allow the expansion of a nonconforming use
Variances from Section 10.521, Table of Dimensional Standards, to allow the construction of a new garage with:

- A setback of 3'4" from the right side lot line where a 10' side yard is required
- A setback of 4'8" from the left side lot line where a 10' side yard is required
- A setback of 19'1" from the rear lot line where a 20' rear yard is required
- Building coverage of 28.8% where 25% is the maximum coverage allowed

SPEAKING IN FAVOR OF THE PETITION

Mr. Gerald Howe introduced himself and submitted to the Board an affidavit of support from the abutting neighbors. He felt granting the petition would improve the neighborhood because he would be able to get everything on his property currently outside and place it inside the garage. He did not submit a drawing of the current garage so he then distributed to the Board front and side views of the existing structure he wanted to replace while extending it 1.5' in width and 6' in length. Mr. Witham asked about height and Mr. Howe indicated there was no change in height. It is would stay at 9'. He concluded that that he needed a variance because it was a pre-existing nonconforming use.

Mr. Grasso stated that he had tried to find the property. In the aerial view given, was it on Miller Ave now or is it on a separate lot? Mr. Howe indicated it was a separate lot and he received two separate tax bills. Mr. Grasso asked if it was connected to 45 Miller? Mr. Howe confirmed it was. He believed the Planning Department called it "0 Miller Ave."

Mr. Parrott indicated the lot was small and the garage that was currently on there took up most of the very small setbacks as it was. Why was the applicant deciding to go bigger? Mr. Howe indicated he wanted to go bigger so that he could get all the stuff that was outside inside so that he can improve the streetscape for the neighbors.

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

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Parrott made a motion to deny the petition as presented and advertised, which was seconded by Mr. Grasso.

Mr. Parrott's concerns were simple in that this was an extremely small lot. Whether it was a separate lot without frontage or it was landlocked or it was merely an appendage to the other lot didn't matter. It had boundaries. The present garage was 4'8" on one side and 6'2" on the other

side. It provided very minimal clearances, much less than the Ordinance these days required. He stated that not only was there a request to replace it, but also to enlarge it by a fairly substantial amount and cut down the already small 6' 2" setback on the side toward the 129-34 lot to 3' 6". The same applied off the back and the 4' 8" was retained on the other side. The Board's concerns were supposed to be with light and air and overcrowding and overbuilding and so forth, and unfortunately, this was a small lot, so the applicant was sort of limited to what he can do with it. This proposal just didn't meet the test of compliance with the Ordinance and there was no hardship inherent in the lot that was claimed and none when you looked at it.

Mr. Grasso agreed with Mr. Parrott. The garage currently was about 20'X20' and the applicant was proposing to go 22' X 26'. With the size and the existing setbacks, he couldn't support this as it stood right now. He could perhaps support replacement with the existing size, but definitely not the enlargement.

Mr. Jousse also supported the motion. If it was just to replace the garage on the existing footprint or maybe extending the length of the garage by a few feet and still be able to meet the setback requirement behind the garage, he would go along with it, but this was too much more of an encroachment than what existed in the side yard.

Ms. Eaton stated that the Board could not grant a variance on "this is what I want to have" unfortunately. In this case expanding the nonconforming use was not supportable.

The motion to deny the petition as presented and advertised was denied unanimously.

Chairman LeBlanc rejoined the Board as Chair and Mr. Durbin resumed alternate status.

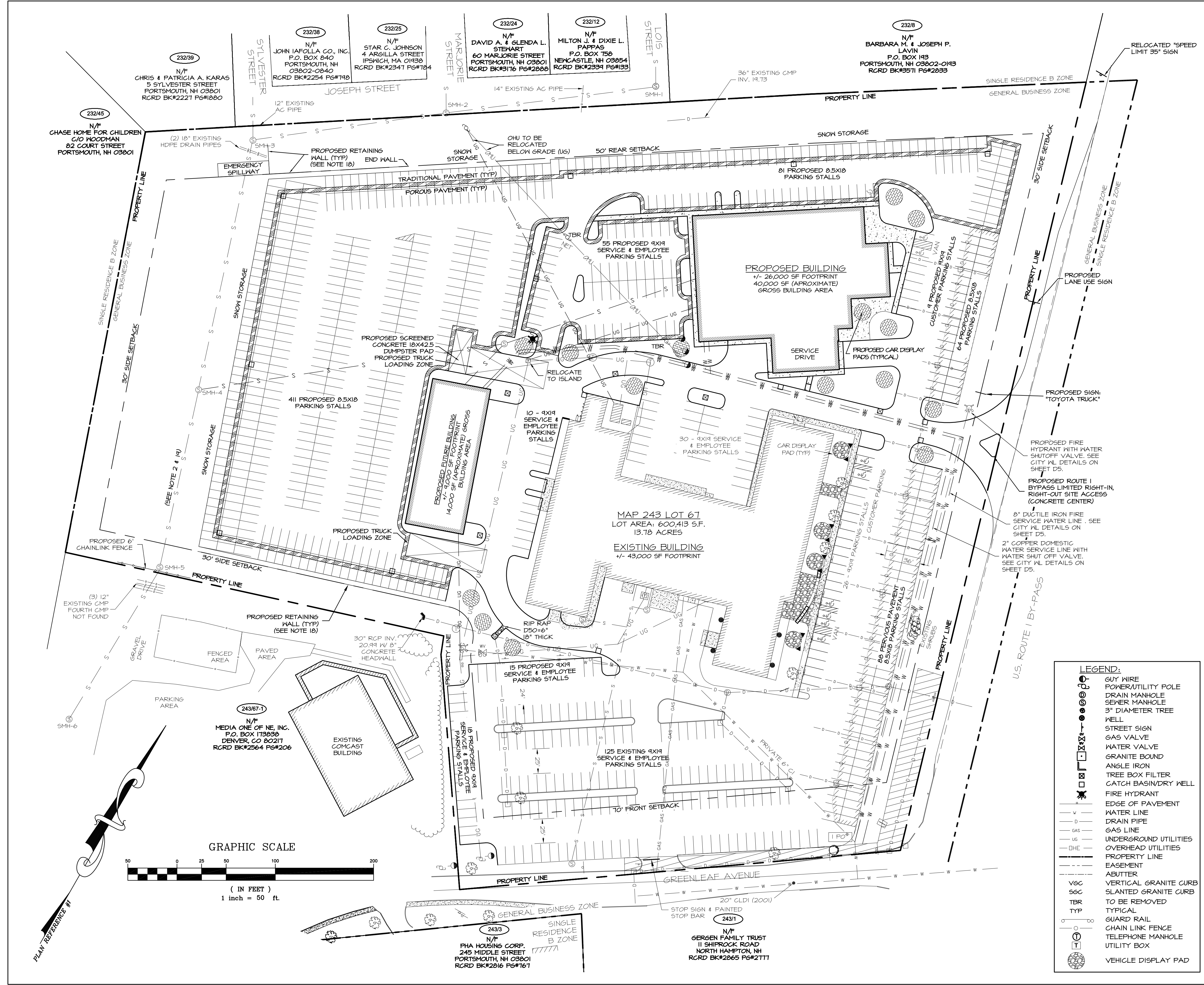
II. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 9:30 p.m.

Respectfully submitted,

Patty Coughlin, Acting Secretary

These minutes were approved at the Board of Adjustment meeting on February 15, 2011.



NOTES:

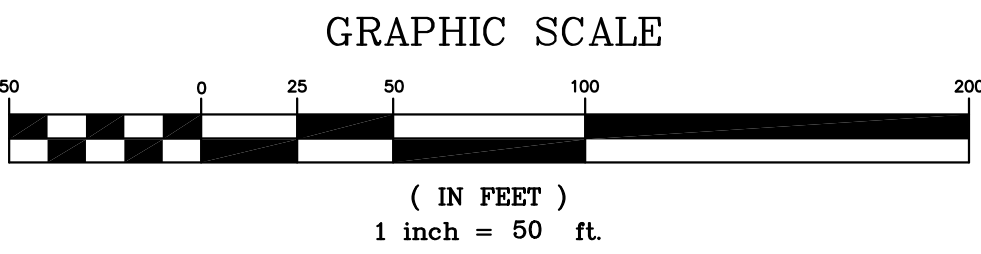
- OWNER OF RECORD, 150 GREENLEAF AVENUE REALTY TRUST, JAMES G. BOYLE TRUSTEE, 150 GREENLEAF AVENUE, PORTSMOUTH, NH 03801, RCRD. BK.#4215 PG.#0227, CITY OF PORTSMOUTH ASSESSOR'S MAP 243 AS LOT 67.
- THE INTENT OF THIS PLAN IS TO SHOW THE ADDITION OF TWO AUTOMOTIVE DEALERSHIPS TO AN EXISTING AUTOMOTIVE DEALERSHIP SITE, AND ITS ASSOCIATED IMPROVEMENTS. IT IS ALSO THE INTENT TO BECOME COMPLIANT WITH CONSENT DECREE DATED AUGUST 20, 2013.
- THE PARCEL IS LOCATED IN THE PORTSMOUTH GENERAL BUSINESS (GB) ZONE.
- THIS PARCEL IS NOT IN A FLOOD HAZARD ZONE PER FEMA FLOOD INSURANCE RATE MAP 33015C0254, MAY 17, 2005.
- WETLAND DELINEATION PERFORMED BY GOVE ENVIRONMENTAL SERVICES, INC. (GES) ON AUGUST 23, 2005 AND SHOWN ON PLAN SET PER CONSENT DECREE DOCKET NUMBER 2012-CV-00015 DATED AUGUST 20, 2013.
- SOILS WERE DELINEATED BY GOVE ENVIRONMENTAL SERVICES, INC. ON OCTOBER 17, 2014.
- SURVEY FIELD WORK PREVIOUSLY CONDUCTED BY MSC AND REVISED BY EMANUEL ENGINEERING, INC. (EEI) IN 2004 AND 2014.
- THIS IS NOT A BOUNDARY PLAN.
- PLAN DATUM ELEVATION TIED TO PLAN TITLED "EXISTING FEATURES PLAN" DATED MARCH 20, 2008 BY MSC CIVIL ENGINEERS & LAND SURVEYORS, INC.
- UNDERGROUND FACILITIES, UTILITIES AND STRUCTURES HAVE BEEN LOCATED FROM FIELD OBSERVATIONS AND THEIR LOCATIONS MUST BE CONSIDERED APPROXIMATE ONLY. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO HAVE ALL UNDERGROUND UTILITIES OR STRUCTURES LOCATED PRIOR TO EXCAVATION WORK BY CALLING 1-888-DIG-SAFE.
- THIS PLAN WAS PREPARED WITH ONSITE FIELD SURVEY AND EXISTING PLANS. THE CONTRACTOR SHALL NOTIFY EMANUEL ENGINEERING, INC. DURING CONSTRUCTION OF ANY DISCREPANCIES TO THE PLAN FOUND ON SITE.
- ZONING REQUIREMENTS (EFFECTIVE PRIOR TO JANUARY 1, 2012):
 - MINIMUM LOT SIZE: 43,560 SF
 - LOT SIZE PROVIDED: 600,413 S.F., 13.78 AC.
 - MINIMUM FRONTAGE: 200'
 - FRONTAGE PROVIDED: 450.04'
 - FRONT YARD MINIMUM SETBACK: 10'
 - SIDE YARD MINIMUM SETBACK: 30'
 - REAR YARD MINIMUM SETBACK: 50'
 - MINIMUM LOT DEPTH: 100'
 - MAXIMUM STRUCTURE COVERAGE: 30%
 - PROPOSED STRUCTURE COVERAGE: 12.9%
 - PARKING REQUIREMENTS:
 - 644 DISPLAY 8.5X18 SPACES
 - 253 SERVICE/EMPLOYEE 9X14 SPACES*
 - 35 CUSTOMER 9X14 SPACES
 - (* SOME SERVICE & EMPLOYEE SPACES MAY BE UTILIZED FOR DISPLAY PURPOSES)
- ALL SITE CONSTRUCTION TO BE TO LOCAL, STATE AND FEDERAL DESIGN SPECIFICATIONS, STANDARDS, & REQUIREMENTS.
- ALL NEW UTILITIES TO BE BURIED BELOW GRADE.
- SITE AND PARKING LOT LIGHTING TO BE DESIGNED BY AN ELECTRICAL ENGINEER.
- LANDSCAPING TO BE DESIGNED BY OTHERS.
- ARCHITECTURAL DESIGN TO BE COMPLETED BY AN ARCHITECT.
- PROPOSED SHEET PILE RETAINING WALLS TO BE DESIGNED BY GEOTECHNICAL ENGINEER. A MINIMUM OF 42 INCHES TO BE EXPOSED ABOVE GRADE TO SERVE AS A GUARD AND GUARD RAIL. SEE SHEET D4 FOR DETAIL.
- EXISTING SEWER LINE TO BE REMOVED OR TAKEN BY EMINENT DOMAIN AND OFF SITE STORMWATER MITIGATED CONCURRENTLY, PER COURT DOCKET 2010-EQ-100 AND 2010-CV-1205 RULING ON FEBRUARY 27, 2014 BY JUDGE N. WILLIAM DELKER.

PLAN REFERENCES:

- "SITE CONSTRUCTION PLANS FOR 150 GREENLEAF AVENUE REALTY TRUST" DATED JAN. 21, 2004 BY MSC ON FILE WITH THE CITY OF PORTSMOUTH.
- "PLAN OF LAND FOR STATE OF NEW HAMPSHIRE PORTSMOUTH VOC. TECH. SCHOOL GREENLEAF AVENUE PORTSMOUTH, NEW HAMPSHIRE" SURVEYED DEC. 1982, PLAN DATED JAN. 1983 BY K.E. MOORE. RCRD PLAN #D-11294.
- "PROSPECT PARK PORTSMOUTH, NH BELONGING TO LEAVITT, WOODNORTH & SWEATT" SURVEYED APRIL 30, 1903 BY JOHN N. MCCLINTOCK, A.M.C.E., FIELD WORK BY EDWARD N. SAMPSON, BOSTON, MASS. RCRD PLAN #00225.
- "SUBDIVISION PLAN LOCATED IN PORTSMOUTH NH FOR PORTSMOUTH 'BUSINESS CENTER' DATED 6/25/85 BY KIMBALL CHASE COMPANY, INC. RCRD PLAN #D-14106.
- "LOT LINE REVISION 500 MIDDLE ROAD PORTSMOUTH, NEW HAMPSHIRE FOR JULIA KORONA REALTY TRUST" DATED 6/2/01 BY JAMES VERRA AND ASSOCIATES, INC.. RCRD PLAN #D-29143.
- "MAINE - NEW HAMPSHIRE INTERSTATE BRIDGE AUTHORITY PISCATAQUIA RIVER BRIDGE KITTERY, MAINE - PORTSMOUTH, NH RIGHT OF WAY MAPS 'NH APPROACH' DATED 1954 BY MOULTON ENGINEERING CO.
- "GREENLEAF AVENUE IMPROVEMENTS, CITY OF PORTSMOUTH, PORTSMOUTH, NH" DATED AUG. 2000 BY HOYLE, TANNER & ASSOCIATES, INC. ON FILE WITH THE CITY OF PORTSMOUTH.
- "PLAN OF LAND, RIDGEMOOD APARTMENTS CO, GREENLEAF AVENUE, PORTSMOUTH, NH." DATED SEPTEMBER 16, 1974 BY MCKENNA ASSOCIATES. RCRD PLAN #D-4136.
- "SITE PLAN PREPARED FOR PORT CITY CHRYSLER/DODGE, PORTSMOUTH, NH." DATED JULY 30, 1993 BY TF MORAN, INC. ON FILE WITH THE CITY OF PORTSMOUTH.
- "PROPERTY LINE & SEWER EASEMENT PLAN, CONTINENTAL CABLEVISION, PORTSMOUTH, NH." DATED 9/15/88 BY KIMBALL CHASE ON FILE WITH THE CITY OF PORTSMOUTH.

LEGEND:

	GUY WIRE
	POWER/UTILITY POLE
	DRAIN MANHOLE
	SEWER MANHOLE
	3" DIAMETER TREE
	WELL
	STREET SIGN
	GAS VALVE
	WATER VALVE
	GRANITE BOUND
	ANGLE IRON
	TREE BOX FILTER
	CATCH BASIN/DRY WELL
	FIRE HYDRANT
	EDGE OF PAVEMENT
	WATER LINE
	DRAIN PIPE
	GAS LINE
	UNDERGROUND UTILITIES
	OVERHEAD UTILITIES
	PROPERTY LINE
	EASEMENT
	ABUTTER
	VERTICAL GRANITE CURB
	SLANTED GRANITE CURB
	TO BE REMOVED
	TYPICAL
	GUARD RAIL
	CHAIN LINK FENCE
	TELEPHONE MANHOLE
	UTILITY BOX
	VEHICLE DISPLAY PAD



6	NOV 17, 2016	FOR APPROVAL	
5	NOV 11, 2016	FOR APPROVAL	
4	OCT 25, 2016	FOR APPROVAL	
1	OCT 23, 2009	PRELIMINARY WORK	
ISS. DATE:	DESCRIPTION OF ISSUE:		CHK.
DRAWN:	JJM	DESIGN:	JJM
CHECKED:	BDS	CHECKED:	BDS

EMANUEL ENGINEERING
civil & structural consultants, land planners
118 PORTSMOUTH AVENUE, A202
PORTSMOUTH, NH 03801
P: 603-772-4400 F: 603-772-4487
WWW.EMANUELENGINEERING.COM

CLIENT:
150 Greenleaf Avenue Realty Trust
150 Greenleaf Avenue
Portsmouth, NH 03801
(603) 431-6100

TITLE:
SITE PLAN
FOR
TOYOTA OF PORTSMOUTH
150 GREENLEAF AVENUE
PORTSMOUTH, NH 03801

PROJECT:	SCALE:	SHEET:
09-026	1"=50'	C3

Section 10-208 Table 4
 Uses in Business Districts

P = Permitted Uses
 S = Special Exception
 N = Not Permitted

USES	CBA	CBB	GB	B	WB
1) Retail sales; excluding, motor vehicles, recreational vehicles, marine craft and mobile home sales, if conducted within a building and with no limitation as to gross floor area; except, as contained in Article III.	P	P	P	P	N
2) Retail sales conducted within a building, limited to 2,000 sf. of gross floor area and in and in compliance with Article III for the following:	P	P	P	P	P
a. Marine goods, groceries and ice.					
b. Fresh or frozen fish, shellfish or lobster; provided, the hours of operation shall not exceed twelve (12) hours per day.					
c. The sale of baked, boiled or steamed: shellfish or lobster and fish or seafood chowder as prepared on the premises; provided, the hours of operation shall be limited to 8 AM to 9 PM and the consumption of these products shall not take place within the building or on the property.					
3) Permitted retail sales, as listed in 10-208(1)(2), with a maximum gross floor area of wholesale space devoted to that retail use as noted.	P 20%	P 20%	P 40%	P 40%	S 40%
4) Convenience Goods I.					
a. Hours of operation between 6 AM and 11 PM.	P	P	P	P	N
b. 24 hours per day operation.	S	P	P	S	N
5) Convenience Goods II.					
a. Hours of operation between 6 AM and 11 PM.	P	P	P	P	N
b. 24 hours per day operation.	S	S	S	S	N
6) Business, real estate and professional offices.	P	P	P	P	N
7) Financial Institutions.	P	P	P	P	N
8) Consumer services; including, hair salons, shoe repair shops and similar service establishments.	P	P	P	P	N

Section 10-208 Table 4
 Uses in Business Districts

P = Permitted Uses
 S = Special Exception
 N = Not Permitted

USES	CBA	CBB	GB	B	WB
9) Laundry and dry cleaning establishments with the following possible combinations:					
a. Drop off/pick up only for items to be dry cleaned or laundered off site;	P	P	P	P	N
b. Self service coin operated laundry and dry cleaning establishments for use by the general public; and,	N	S	P	P	N
c. Drop off/pick up for items to be dry cleaned or laundered on site (no self-service) with a maximum floor area devoted to this use of 2,000 sf.	N	P	P	P	N
10) A nightclub, bar or tavern, as a principal use, and serving non-alcohol based drinks. This use is based on the maximum occupancy that is permissible for the space under the City's Building Code.					
a. Occupancy for less than 250 persons and which shall not be located on a lot which directly abuts a Residential or Mixed Residential district or on a lot located within the indicated setback for the appropriate district.	P N/A	P N/A	P 200'	N	N
b. Occupancy for 250 to 500 persons and which shall not be located on a lot which directly abuts a Residential or Mixed Residential district or on a lot located within the indicated setback for the appropriate district.	S N/A	S N/A	S 200'	N	N
11) A nightclub, bar or tavern, as a principal use, and serving alcohol based drinks, shall not be located on a lot which directly abuts a Residential or Mixed Residential district or on a lot located within 200 feet of one of these districts. This use is regulated based on the maximum occupancy that is permissible for the space under the City's Building Code.					
a. Occupancy for less than 250 persons and which shall not be located on a lot which directly abuts a Residential or Mixed Residential district or on a lot located within the indicated setback for the appropriate district.	P N/A	P N/A	P 200'	N	N

Section 10-208 Table 4
 Uses in Business Districts

P = Permitted Uses
 S = Special Exception
 N = Not Permitted

USES	CBA	CBB	GB	B	WB
b. Occupancy for 250 to 500 persons and which shall not be located on a lot which directly abuts a Residential or Mixed Residential district or on a lot located within the indicated setback for the appropriate district.	S N/A	S N/A	S 200'	N	N
12) Boarding house.	N	P	N	P	N
13) Conversion of structures existing prior to January 1, 1980, to a Bed and Breakfast Inn for no more than ten sleeping rooms. Dining facilities, as an accessory use to the principal use of overnight lodging, are allowed; provided, the dining facilities can accommodate no more than twenty-five persons.	P	P	P	P	N
14) Hotels and Motels, including accessory uses, with the exception that nightclubs, bars, taverns, places of public assembly or function rooms are not permitted.	P	P	P	S	N
15) Hotels and Motels, including accessory uses, nightclubs, bars, taverns, places of public assembly or function rooms whose total combined occupancy, exclusive of the hotel/motel occupancy, would be less than 500 persons.	S	P	S	N	N
16) Hotels and Motels, including accessory uses, nightclubs, bars, taverns, places of public assembly or function rooms whose total combined occupancy, exclusive of the hotel/motel occupancy, would exceed 500 persons.	S	P	S	N	N
17) Restaurants - Take out only.	P	P	P	P	N
18) Restaurants with no accessory uses and with no nightclub, bar, tavern, place of public assembly or function room.	P	P	P	P	N
19) Restaurants, including accessory uses, bars, taverns, places of public assembly and function rooms.	P	P	P	S	N
a. Combined occupancy for less than 250 persons and which shall not be located on a lot which directly abuts a Residential or Mixed Residential district or on a lot located within the indicated setback for the appropriate district.	N/A	N/A	200'		

Section 10-208 Table 4
 Uses in Business Districts

P = Permitted Uses
 S = Special Exception
 N = Not Permitted

USES	CBA	CBB	GB	B	WB
20) Restaurants, including accessory uses, bars, taverns, nightclubs, places of public assembly and function rooms.					
a. Combined occupancy for less than 500 persons and which shall not be located on a lot which directly abuts a Residential or Mixed Residential district or on a lot located within the indicated setback for the appropriate district.	S N/A	P N/A	S 200'	N	N
b. Combined occupancy would exceed 500 persons and which shall not be located on a lot which directly abuts a Residential or Mixed Residential district or on a lot located within the indicated setback for the appropriate district.	S N/A	S N/A	S 200'	N	N
21) Outdoor entertainment shall meet the following requirements: outdoor entertainment is restricted to the hours of 4:00 PM to 11:00 PM; all outdoor entertainment areas shall be located no less than two hundred (200) feet from a Residential or Mixed Residential district; shall not be located in a required yard area; parking for outdoor entertainment shall meet the requirements of Article XII; the use shall comply with Article V; and, combined occupant load, including outside entertainment areas, shall meet the following.					
a. Less than 250 persons.	S	S	S	N	N
b. For 250 to 500 persons.	S	S	S	N	N
22) Non-Inspectable vessels, used as restaurant, bar or tavern and having for an occupant load, according to the City's Building Code, of less than 250 persons.	S	N	N	N	N
23) Fraternal and service organizations, lodges and clubs; provided, principal activities are limited to their membership and no activities are conducted that constitute a use customarily carried on as a business.	N	P	N	S	N
24) Trade, craft and general service establishments; including, shops for plumbers, electricians, painters, paper hangers, upholsterers, sign painters and	N	P	P	P	N

Section 10-208 Table 4
 Uses in Business Districts

P = Permitted Uses
 S = Special Exception
 N = Not Permitted

USES	CBA	CBB	GB	B	WB
monument works; provided, such use provides for the storage of materials and equipment within a building.					
25) Undertaking establishments, funeral parlor or mortuary chapel, but excluding crematoriums.	N	N	P	P	N
26) Health Clubs.	P	P	P	S	N
27) Indoor amusement or recreation uses; including, cinemas, theaters and similar entertainment provided noise is confined to the building and the lot is located not less than two hundred feet from a Residential or Mixed Residential district.	P	P	P	P	N
28) Reserved for future use.					
29) Cultural facility/outdoor shall meet the following requirements: the use is restricted to the hours of 4:00 PM to 11:00 PM; the lot shall be located no less 500 feet from a Residential or Mixed Residential district; shall not be located in a required yard area; parking for the facility shall meet the requirements of Article XII; the use shall comply with Article V; and, the outdoor cultural facility capacity shall not exceed the maximum occupancy as described below.					
a. Occupancy for 500 or less persons.	S	S	S	N	N
b. Occupancy for more than 500 persons.	N	S	S	N	N
30) Cultural facility/indoor shall meet the following requirements: the use is restricted to the hours of 8:00 AM to 11:00 PM; the lot shall be located no less than 200 feet from a Residential or Mixed Residential district; parking shall meet the requirements of Article XII; the use shall comply with Article V; and, the capacity shall not exceed the maximum allowable design capacity in the City's Building Code as as described below.					
a. Occupancy for 500 or less persons.	S	P	S	S	N
b. Occupancy for more than 500 persons.	S	S	S	N	N

Section 10-208 Table 4
 Uses in Business Districts

P = Permitted Uses
S = Special Exception
N = Not Permitted

USES	CBA	CBB	GB	B	WB
31) Commercial greenhouses and nurseries; provided, all outdoor displays are set back at least thirty (30) feet from the street right-of-way.	N	N	P	P	N
32) Manufacture of goods sold at retail on the premises; such as, pottery, handcrafts and bakery products; provided, not more than five (5) persons shall be employed in such manufacture.	P	P	P	P	N
33) Group day care facilities (no age restriction) between the hours of 7 AM and 7 PM; provided, adequate off-street parking is available to allow a safe passage from the parking area to the facility and outdoor recreation areas are fenced.	P	P	P	P	N
34) Veterinary hospital; including, animal crematory sale and boarding of animals; provided, all kennels are located within an enclosed building and the lot is located at least 200 feet from any Residential or Mixed Residential district.	N	N	S	S	N
35) Motor vehicles sales, renting or leasing, including accessory repair services, for vehicles not requiring tractor registration plates and weighing less than 32,000 pounds; provided, areas for parking, display, and/or storage of vehicles, equipment, goods or materials are located at least forty feet from the street right-of-way and two hundred feet from any Residential or Mixed Residential district; and, all accessory uses are located within a building.	N	N	P	S	N
36) Motor vehicle service stations, repair garages, washing facilities and sale of Convenience Goods I and II as an accessory use; principally, for vehicles not requiring tractor registration plates and weighing less than 32,000 pounds and located on lots of not less one acre in area provided: a. All repairs and service work shall take place within an enclosed building. b. No vehicles in an inoperative condition are to remain on the site for more than a two week period; unless, enclosed in a building and repaired	N	N	S	S	N

Section 10-208 Table 4
 Uses in Business Districts

P = Permitted Uses
S = Special Exception
N = Not Permitted

USES	CBA	CBB	GB	B	WB
or rebuilt vehicles shall not be sold upon the premises.					
c. Screening as delineated in Article V, Section 10-504 shall be placed on side and rear property lines which separate the site from properties used residentially or from any Residential or Mixed Residential district.					
d. All pump islands shall be set back at least 40 feet from all property lines.					
e. There shall be no more than two, 40 foot wide curb cuts or access or egress points on each abutting street.					
f. The minimum front yard shall be 50 feet, side and rear yards shall be 50 feet, except, as required by Section 10-301(8).					
37) Media studios, publishing facilities and similar electronic production operations, but excluding any transmitting antennae tower.	P	P	P	P	N
38) Marina on lots equal to or greater than two acres with the following possible combinations.					
a. Marine storage on land or water.	N	N	S	N	P
b. Marine storage in water.	P	N	P	N	P
c. Rental of marine craft located on land or water.	S	N	S	N	P
d. Repair and servicing of marine pleasure craft.	N	N	S	N	S
e. Fueling of marine pleasure craft.	S	N	S	N	S
f. Sale of marine pleasure craft located in the water.	S	N	P	N	S
g. Sale of marine pleasure craft located on the land.	N	N	S	N	S
h. Facility for the repair of marine related structures.	N	N	N	N	S
39) Excursion boats and boats for passenger transport located in the water, including related docking	S	N	S	N	P

Section 10-208 Table 4
 Uses in Business Districts

P = Permitted Uses
 S = Special Exception
 N = Not Permitted

USES	CBA	CBB	GB	B	WB
facilities; provided, parking conforms to Article XII.					
40) Docking and mooring facilities only; provided, there is sufficient off street parking.	S	N	S	N	P
41) Landing of commercial fishing craft with the following associated activity involving no more than five employees.					
a. Fish preparation (refer to Article I) conducted within an enclosed building.	N	N	S	N	S
b. Fish preparation (refer to Article I) conducted within an enclosed building.	N	N	S	N	S
42) Oceanographic laboratories and other marine related facilities.	P	P	N	N	P
43) New residential dwelling units constructed on a vacant lot with no non-residential uses; provided, the following minimum requirements are met:	P	P	N	N	N
a. There is 500 sf. of gross floor area per dwelling unit.					
b. Comply with Article III.					
c. Lot area requirement per dwelling unit.	N/A	N/A		N/A	
44) New residential dwelling units and non-residential uses constructed on a vacant lot (only in the Business District there shall be a minimum of 1/3 of the total building square footage devoted to nonresidential uses); provided, the following minimum requirements are met:	P	P	N	P	N
a. There is 500 sf. of gross floor area per dwelling unit.					
b. Comply with Article III.					
c. Lot area requirement per dwelling unit.	N/A	N/A		2,500 sf	

Section 10-208 Table 4
 Uses in Business Districts

P = Permitted Uses
S = Special Exception
N = Not Permitted

USES	CBA	CBB	GB	B	WB
45) Conversion of existing buildings to all residential dwelling units with no non-residential uses; provided, the following requirements are met: a. There is 500 sf. of gross floor area per dwelling unit. b. Comply with Article III. c. Lot area requirement per dwelling unit.	P	P	N	N	N
46) Conversion of existing buildings to residential dwelling units and non-residential uses (only in the Business District there shall be a minimum of 1/3 of the total building square footage devoted to nonresidential uses); provided, the following minimum requirements are met: a. There is 500 sf. of gross floor area per dwelling unit. b. Comply with Article III. c. Lot area requirement per dwelling unit.	P	P	N	P	N
47) New additions to existing buildings for residential dwelling units with no non-residential uses in the addition; provided, the following requirements are met: a. There is 500 sf. of gross floor area per dwelling unit. b. Comply with Article III. c. Lot area requirement per dwelling unit.	P	P	N	N	N
48) New additions to existing buildings for residential dwelling units and non-residential uses in the addition (only in the Business District there shall be a minimum 1/3 of the total building square footage devoted to nonresidential uses); provided , the following minimum requirements are met: a. There is 500 sf. of gross floor area per dwelling unit.	P	P	S	P	N

Section 10-208 Table 4
 Uses in Business Districts

P = Permitted Uses
S = Special Exception
N = Not Permitted

USES	CBA	CBB	GB	B	WB
b. Comply with Article III.					
c. Lot area requirement per dwelling unit.	N/A	N/A		2,500 sf	
49) Schools.	P	P	P	P	P
50) Historic houses and structures which are owned and/or maintained by non-profit agencies for preservation purposes may conduct the following activities.	P	P	P	P	P
a. Live in caretaker.					
b. Conduct periodic events and displays as an accessory use.					
c. Maintain an accessory office space for activities related to the operation of the historic house.					
51) Public or private transformer station, substation, pumping station, satellite dish greater than 42 inches in diameter or automatic telephone exchange; provided, that such service structure or building is essential to service the area in which it is located and that no business office nor any storage yard or storage building is operated in connection therewith.	S	S	S	S	S
52) Sexual oriented businesses, which include the following and comply with Article XI.	N	N	S	N	N
a. Adult arcade.					
b. Adult bookstore or adult video store.					
c. Adult cabaret.					
d. Adult theater.					
e. Sexual encounter centers.					
53) Carts or trailers; including, outdoor display area, used for the seasonal sale of dry goods, Christmas trees, flowers, fruits, vegetables, seasonal products and	P	P	P	P	N

Section 10-208 Table 4
 Uses in Business Districts

P = Permitted Uses
 S = Special Exception
 N = Not Permitted

USES	CBA	CBB	GB	B	WB
prepared food; provided, the following conditions are met.					
a. Yards and coverage shall be in compliance with Article III.					
b. Sign areas shall be in compliance with Article IX and shall be located on the sidewalls of the carts or trailers only.					
c. That a one hundred dollar bond be posted to cover the cost for the removal of the cart or trailer.					
d. The use shall be in compliance with Article V.					
e. The outdoor display area shall be limited to a six foot strip directly abutting and around the cart or trailer with the exception of Christmas trees.					
f. There shall be a minimum available lot area of 2,000 square feet per cart or trailer.					
54) Temporary structures, if a bond or other form of security, as required by the Code Official, is posted to insure their removal and the restoration of grounds to their original condition. Such structure shall not be construed to mean mobile homes (except as related to temporary construction activities).					
a. A term up to thirty (30) days.	P	P	P	P	P
b. A term up to ninety (90) days.	S	S	S	S	S
55) Construction trailers in conformance with Article IV.	P	P	P	P	P
56) Earth Products Removal and Placement in conformance with Article VIII.	P	P	P	P	P
57) Satellite dish receivers that have a diameter equal to or less than 42 inches and which will be located on the ground and meet the appropriate yard requirements in Article III.	S	S	S	S	S

Section 10-208 Table 4
 Uses in Business Districts

P = Permitted Uses
 S = Special Exception
 N = Not Permitted

USES	CBA	CBB	GB	B	WB
68) The following customary accessory uses for 1-52 above which are incidental to the permitted principal use on a lot, provided said use is in conformance with Article III.	P	P	P	P	P
a. Off-street parking as required in Article XII.					
b. Signs as permitted in Article IX.					
c. Customary accessory uses incidental to permitted principal uses but not including any outdoor storage.					
d. Satellite dish receivers that have a diameter equal to or less than 42 inches and have a maximum height less than or equal to four feet from the roof surface.					
e. Periodic, Special Events; such as, concerts, fairs, auctions or fundraisers; provided, the Performance Standards as contained in Article V are complied with.					
f. Whip antennae not greater than 30' in height.					
g. Household pets.					
h. Outdoor storage of lobster traps, lobster buoys, and/or rope as well as the associated repair of the stored traps; provided, the outdoor storage is screened from the public in accordance with Article V.	N	N	P	P	P

City Council Adopted: 18 December 95,
 Revised: 15 December 97, 9 November 98, 7 August 06, 16 October 06, 21 May 07

Article XII *Off-Street Parking and Loading*

Section 10-1201 *Off-street Parking*

A. All new buildings and structures, as well as, additions to or changes in use or intensification of use in existing buildings and structures shall be provided with off-street parking spaces in accordance with the following specifications. A use, which is non conforming as to the requirements for off-street parking, shall not be enlarged or altered; unless, off-street parking is provided for the original building, structure or use(s) and all expansions, intensification or additions sufficient to satisfy the requirements of this Ordinance.

1. Location:

Parking facilities shall be located on the same lot as the principal use they are required to serve except, however;

- a. Where the applicant and the City agree on the terms and conditions under which a municipally owned covered parking facility shall be constructed as part of the overall development project; or
- b. Where the Board of Adjustment authorizes a Special Exception for the provision of required parking on another lot in the same ownership as the lot in question; provided, all parking spaces lie within 300 feet of the property line of the lot in question. In no case, shall parking be permitted within any Residential or Mixed Residential District other than that which is accessory to the allowed principal use(s).

In the Office Research/Mariner's Village District, parking will be permitted on a separate lot if one or more lots are used together in a campus like design and layout. There shall be no building setback required for parking structures adjacent to a railroad right of way or other land zoned for office research use and in common ownership with the land which is the site of the parking structure. The setbacks for the Industrial District shall apply to any parking structure where it abuts an industrial zone.

2. Design Standards:

The design standards in this section shall apply to required parking in all districts; unless, otherwise noted.

Parking areas and access drives shall be surfaced with a bituminous binder, concrete, asphalt, gravel or crushed stone.

Handicap parking shall comply with either the City's Building Code or the Code for the State of New Hampshire Architectural Barrier Free Design which ever is more restrictive.

Parking spaces and maneuvering aisles shall be laid out in compliance with the minimum dimensions set forth in the following table.

MINIMUM PARKING SPACE AND AISLE DIMENSIONS FOR PARKING AREAS			
<i>Angle of Parking</i>	<i>Width of Parking Space</i>	<i>Depth of Parking Space</i>	<i>Width of Maneuvering Aisle</i>
61 - 90 degrees	8.5'	19'	24' (2 way)
46 - 60 degrees	8.5'	19'	18' (1 way)
Parallel	10'	20'	14'

3. Layout:

a) General

- 1) With the exception of one and two family dwellings, access to and egress from all parking areas shall be only via driveways which meet the design standards of this section.
- 2) A required common driveway that services more than one lot shall be exempt from side yard requirements as used in this Article.
- 3) With the exception of one and two family dwellings, each required off-street parking space shall be designed so that any motor vehicle may proceed to and from said parking space without requiring the moving of any other vehicle or the passing over of any other parking space.
- 4) With the exception of one and two family dwellings, each parking area shall be designed to provide a circulation system within the lot so that vehicles may exit onto the adjacent street or way by being driven in a forward direction. No vehicle shall enter or leave by backing into the street.
- 5) With the exception of one and two family dwellings, all parking spaces shall be marked and maintained to provide delineation between parking stalls and aisles.
- 6) Fire lanes, as required by the Fire Department, shall be properly identified.

- b) **All Residential Districts and the Overlay District Mariner's Village Component**
 - 1) **Off-street parking spaces for any Home Occupation use shall be located no closer than 10 feet from side and rear property lines and shall be screened in accord with Article V.**

- c) **All Mixed Residential Districts**
 - 1) **Off-street parking spaces and accessways for any non-residential use shall be located no closer than 50 feet from a Residential or Mixed Residential lot line and shall be screened in accord with Article V.**
 - 2) **Off-street parking, maneuvering space and traffic aisles shall not be located within ten feet of the front property line. The resulting buffer area shall be landscaped. This landscaping shall consist of 10% of the buffer being planted with a minimum of 2 inch caliper deciduous trees and/or 5' - 6' conifer trees with additional shrubs, bushes or evergreens and with the remaining area to be grass or vegetative beds of flowers.**

- d) **Business District**
 - 1) **Off-street parking spaces and accessways shall be located no closer than 50 feet to any adjoining Residential or Mixed Residential district and shall be screened in accord with Article V.**
 - 2) **Off-street parking, maneuvering space and traffic aisles shall not be located within twenty feet of the front property line. The resulting buffer area shall be landscaped. This landscaping shall consist of 10% of the buffer being planted with a minimum of two inch caliper deciduous trees and/or 5' - 6' conifer trees with additional shrubs, bushes or evergreens and with the remaining area to be grass or vegetative beds of flowers.**

- e) **General Business District**
 - 1) **Off-street parking spaces and accessways shall be located no closer than 100 feet to any adjoining Residential or Mixed Residential district and shall be screened in accord with Article V.**
 - 2) **Off-street parking, maneuvering space and traffic aisles shall not be located within 40 feet of the front property line. The resulting buffer area shall be landscaped. This landscaping shall consist of 10% of the buffer being planted with a minimum of two inch caliper deciduous trees and/or 5' - 6' conifer trees with additional**

shrubs, bushes or evergreens and with the remaining area to be grass or vegetative beds of flowers.

f) **All Industrial Districts and the Overlay District Office Research Component**

- 1) Off-street parking spaces and accessways shall be located no closer than 100 to any adjoining Residential or Mixed Residential district and shall be screened in accord with Article V.
- 2) Off-street parking, maneuvering space and traffic aisles shall not be located within 50 feet of the front property line. The resulting buffer area shall be landscaped. This landscaping shall consist of 10% of the buffer being planted with a minimum of 2 inch caliper deciduous trees and/or 5' - 6' conifer trees with additional shrubs, bushes or evergreens and with the remaining area to be grass or vegetative beds of flowers.

g) **All Airport Districts**

- 1) Off-street parking spaces and accessways shall be located no closer than 100 feet to any adjoining Residential or Mixed Residential district and shall be screened in accord with Article V.
- 2) Off-street parking, maneuvering space and traffic aisles shall not be located within 50 feet of the front property line. The resulting buffer area shall be landscaped. This landscaping shall consist of 10% of the buffer being planted with a minimum of two inch caliper deciduous trees and/or 5' - 6' conifer trees with additional shrubs, bushes or evergreens and with the remaining area to be grass or vegetative beds of flowers.

4. **Rules of Interpretation:**

For the purposes of determining the requirement for off-street parking, loading and accessway setbacks; the measurement shall be taken from the appropriate lot line to the off-street parking, loading or accessway.

Where individual seats are not provided for each patron, then every 18 inches of benches, bar rails or other similar seating or stand up space shall be considered as one seat.

In the case of mixed uses, required off-street parking shall be the sum of the requirements for the various individual uses, computed separately (except developments designed as a multi-use shopping center).

A multi-use shopping center, as defined in Article I, shall be required to provide off-street parking as required in Section 10-1204 Table 15.

Where the computation of required off-street parking results in a fractional number, the fraction of one-half or more shall be counted as one space.

For any permitted use not covered by Section 10-1204 Table 15, the Code Official shall determine the closest similar use listed in that table and require off-street parking accordingly.

5. **Parking Spaces Required.**

Parking spaces shall be provided as determined in Section 10-1204 Table 15; except, as listed in the following:

Central Business A and Central Business B districts: Within these, an initial total parking threshold figure shall be calculated by a Code Official using one of the two following procedures depending on which is most appropriate to the administration and enforcement of this Article as determined from a review of City records for purposes of determining what relief, if any, has been authorized from off-street parking requirements.

Procedure One - a lot not subject to relief from off-street parking spaces by Variance or Special Exception: An initial total parking threshold figure is calculated by totaling the number of necessary off-street parking spaces that are required as determined from Section 10-1204 Table 15 for each use located on that lot. This calculation shall be performed on all legally established preexisting uses, including, legally established non-conforming uses, which were established on that lot no later than June 1, 1997. The number from this calculation shall then be adjusted by adding to it the number of conforming off-street parking spaces which currently exist as of June 1, 1997. This resulting number shall constitute the initial total parking threshold figure for that lot as of June 1, 1997. This figure shall be used in the future as a basis for determining whether a change of use in the lot will produce a greater parking need. If greater parking needs are shown as a part of this analysis, then, an unmet parking need shall be deemed to exist that shall be satisfied by applying credits and or fees as authorized in this Article.

Procedure Two - a lot currently subject to relief from off-street parking spaces by Variance or Special Exception: In this instance, the total amount of parking relief that has been granted prior to December 18, 1995 by the Board of Adjustment shall constitute a component of the initial total parking threshold figure. A second component includes any additional conforming off-street parking spaces which may have been provided following an action by the Board of Adjustment on the particular lot and as a third component any additional off street parking that would have been required due to a Change of Use or Building Permit issued during the

period from December 18, 1995 and June 1, 1997. As appropriate, these component figures shall be added together and shall comprise the initial parking threshold figure as of June 1, 1997. This figure shall be used in the future as a basis for determining whether a change of use in the lot will produce a greater parking need. If greater parking needs are shown as a part of this analysis, then, an unmet parking need shall be deemed to exist that shall be satisfied by applying credits and or fees as authorized in this Article.

- a) **Unmet Parking Need Calculation:** The initial total parking threshold as established for June 1, 1997 or a current total parking threshold figure shall be used to determine whether an unmet parking need exists due to changes on a lot which are regulated by this Ordinance and or Article. Such calculations shall be completed as part of the Building Permit and Change of Use Application process. This determination shall be made by calculating from Section 10-1204 Table 15 a current total parking requirement that is based on all existing legally recognized uses. When the resulting calculation produces a figure greater than the initial total parking threshold, then, the difference between the figures constitutes an unmet parking need which shall be addressed as follows in this Section. Upon its provision, the current total parking requirement shall become the current total parking threshold figure and it replaces the initial total parking threshold for purposes of this Section (see subsequent sections as it pertains to this process).
- b) **Current Total Parking Threshold Requirement:** On providing credit(s) necessary to address an unmet parking need, the new current total parking threshold figure shall represent the off-street parking credit for that lot; until, such time as a new current total parking requirement is calculated that would exceed that credit. The highest total parking threshold figure, either an initial one or a new current one, shall remain in effect, until it is exceeded; or, unless the credits, on which it is based, are changed by some action. In those instances, a new current parking requirement shall be calculated and compared to a prior recognized total parking threshold credit.
- c) **Parking requirements that are less than a prior total parking threshold calculation:** A total threshold parking figure, that is based on legally established uses and where any unmet parking need requirement has been satisfied, shall constitute compliance with this Article for all subsequent off-street parking calculations that are less than or equal to that figure so long as all credits continue to be applicable. Therefore, for use(s) on a lot, whose current total parking requirement is determined to be less than or equal to this figure as calculated for June 1, 1997, the providing of additional off-street parking shall not be required.

- d) Issuance of a Building Permit and or Change of Use Permit based on parking credits: The highest authorized total threshold parking credit shall be used as a basis from which to calculate a subsequent new total threshold parking figure.
- e) Vacant Lot: For purposes of this Section, a vacant lot or a lot with no legally recognized uses as of June 1, 1997 shall be deemed to have an initial parking threshold credit of zero.
- f) Effect on Transferability and Subdivision: For purposes of this Article, off-street parking credit(s) for a particular lot shall be transferable to future owner(s) of that lot. In instances where lots are proposed to be consolidated in a manner that does not require Subdivision Approval from the Planning Board, the total parking threshold credit for each lot shall be combined to form a current total parking threshold credit for the resulting lot. In instances where a lot(s) is proposed to be subdivided in a manner that requires Subdivision Approval by the Planning Board, the total parking threshold credit for each lot shall equal the number of required off-street parking spaces that would be required for each lot. If there are insufficient parking credits; then, an unmet parking need shall be deemed to exist and shall be subject to the requirements of this Section.

Section 10-1202 *Off-Street Parking Innovation: Inter Modal Transportation Credit for Central Business A and Central Business B Districts*

- A. Within these districts, the City's policy shall be to create a dedicated municipal revenue fund whose purpose is to secure and to provide for necessary and appropriate transportation related improvements within the Central Business A, Central Business B Districts. These efforts are intended to reduce congestion, to increase the supply of available public and private parking spaces and to promote activities that assist in the attainment of Federal Air Quality Standards for this region. It is intended that all property owners should participate in these endeavors. Such improvements shall include, but are not necessarily limited to, the following.
 - 1. To provide adequate, safe, off-street parking facilities for use within the Central Business districts by its residents, patrons and visitors;
 - 2. To provide convenient, safe, off-street parking facilities and or structures which are located in proximity to the Central Business districts;
 - 3. To encourage the design of such structures in ways that recognize their location, the areas distinctive urban character and which recognizes the objectives of Article X. Historic District Ordinance;
 - 4. To support mass transit initiatives and support services; and,



The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

=====

WETLANDS AND NON-SITE SPECIFIC PERMIT 2015-02195

NOTE CONDITIONS

PERMITTEE: 150 GREENLEAF AVENUE REALTY TRUST
ATTN JAMES BOYLE TTEE
150 GREENLEAF AVE
PORTSMOUTH NH 03801

PROJECT LOCATION: 150 GREENLEAF AVENUE, PORTSMOUTH
TAX MAP #243, LOT #67

WATERBODY:

APPROVAL DATE: MARCH 05, 2020

EXPIRATION DATE: MARCH 05, 2025

=====

Based upon review of the above referenced application, in accordance with RSA 482-A and RSA 485-A:17, a Wetlands Permit and Non-Site Specific Permit was issued by the New Hampshire Department of Environmental Services (NHDES). This permit shall not be considered valid unless signed as specified below.

PERMIT DESCRIPTION: Fill 2,900 square feet of palustrine forested wetland for commercial lot development.

THIS APPROVAL IS SUBJECT TO THE FOLLOWING PROJECT SPECIFIC CONDITIONS:

1. All work shall be in accordance with plans by Emanuel Engineering dated December 16, 2016 as received by the NH Department of Environmental Services (NHDES) on February 12, 2020.
2. Work shall comply with the amended consent decree dated February 28, 2020 and granted March 2, 2020 entered by the Rockingham County Superior Court in the matter of State of New Hampshire Department of Environmental Services v. James Boyle, Individually and as Trustee 150 Greenleaf Avenue Trust. Docket No. 2012-CV-00015.
3. This permit is not valid and effective until it has been recorded with the Rockingham County Registry of Deeds by the applicant. Prior to starting work under this permit, the permittee shall submit a copy of the recorded permit to the NHDES Wetlands Program by certified mail, return receipt requested.
4. No person undertaking any activity shall cause or contribute to, or allow the activity to cause or contribute to, any violations of the surface water quality standards in RSA 485-A and Env-Wq 1700.
5. Not less than 5 state business days prior to starting work authorized by this permit, the permittee shall notify the NHDES Wetlands Program and the local conservation commission in writing of the date on which work under this permit is expected to start.
6. Prior to construction, all wetland and surface water boundaries adjacent to construction areas shall be clearly marked to prevent unintentional encroachment on adjacent wetlands and surface waters.
7. Prior to starting any work authorized by this permit, the permittee shall place orange construction fencing at the limits of construction to prevent unintentional encroachment on wetlands.
8. There shall be no further alteration of wetlands for lot development, driveways, culverts, or septic setback.
9. Extreme precautions shall be taken within riparian areas to prevent unnecessary removal of vegetation during construction. Areas cleared of vegetation must be revegetated with like native species within three days of the completion of the disturbance.

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095

NHDES Main Line: (603) 271-3503 • Subsurface Fax: (603) 271-6683 • Wetlands Fax: (603) 271-6588

TDD Access: Relay NH 1 (800) 735-2964

- 10. Construction equipment shall be inspected daily for leaking fuel, oil, and hydraulic fluid prior to entering surface waters or wetlands or operating in an area where such fluids could reach groundwater, surface waters, or wetlands.
- 11. The permittee's contractor shall maintain appropriate oil/diesel fuel spill kits on site that are readily accessible at all times during construction, and shall train each operator in the use of the kits.
- 12. All refueling of equipment shall occur outside of surface waters or wetlands during construction. Machinery shall be staged and refueled in upland areas only.
- 13. Faulty equipment shall be repaired immediately prior to entering areas that are subject to RSA 482-A jurisdiction.
- 14. Any fill used shall be clean sand, gravel, rock, or other suitable material.
- 15. Discharge from dewatering of work areas shall be to sediment basins that are: a) located in uplands; b) lined with hay bales or other acceptable sediment trapping liners; c) set back as far as possible from wetlands and surface waters, with a preferred undisturbed vegetated buffer of at least 50 feet and a minimum undisturbed vegetative buffer of 20 feet.
- 16. Precautions shall be taken to prevent import or transport of soil or seed stock containing nuisance or invasive species such as Purple Loosestrife, Knotweed, or Phragmites. The contractor responsible for work shall appropriately address invasive species in accordance with the NHDOT Best Management Practices for Roadside Invasive Plants (2008).
- 17. To prevent the introduction of invasive plant species to the site, the permittee's contractor(s) shall clean all soils and vegetation from construction equipment and matting before such equipment is moved to the site.
- 18. The permittee shall control invasive plant species such as Purple loosestrife (*Lythrum salicaria*) and Common reed (*Phragmites*) by measures agreed upon by the NHDES Wetlands Program if any such species is found in the stabilization areas during construction or during the early stages of vegetative establishment.

GENERAL CONDITIONS THAT APPLY TO ALL NHDES WETLANDS PERMITS:

- 1. A copy of this permit shall be posted on site during construction in a prominent location visible to inspecting personnel;
- 2. This permit does not convey a property right, nor authorize any injury to property of others, nor invasion of rights of others;
- 3. The NHDES Wetlands Bureau shall be notified upon completion of work;
- 4. This permit does not relieve the applicant from the obligation to obtain other local, state or federal permits, and/or consult with other agencies as may be required (including US EPA, US Army Corps of Engineers, NH Department of Transportation, NH Division of Historical Resources (NH Department of Cultural Resources), NHDES Alteration of Terrain, etc.);
- 5. Transfer of this permit to a new owner shall require notification to and approval by NHDES;
- 6. This project has been screened for potential impacts to known occurrences of protected species and exemplary natural communities in the immediate area. Since many areas have never been surveyed, or have only received cursory inventories, unidentified sensitive species or communities may be present. This permit does not absolve the permittee from due diligence in regard to state, local or federal laws regarding such communities or species;
- 7. Review enclosed sheet for status of the US Army Corps of Engineers' federal wetlands permit.

APPROVED:



David Price
Wetlands Bureau
Land Resources Management

=====

BY SIGNING BELOW, I HEREBY CERTIFY THAT I HAVE FULLY READ THIS PERMIT AND AGREE TO ABIDE BY ALL PERMIT CONDITIONS.

OWNER'S SIGNATURE (required)

CONTRACTOR'S SIGNATURE (required)

WEST ENVIRONMENTAL INC.



122 Mast Road, Suite 6, Lee, NH 03824
603-659-0416 ♦ Fax 603-659-0418 ♦ mark@westenv.net

Suzanne Woodland
Assistant City Attorney
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

October 19, 2006

RE: Portsmouth Toyota site, 150 Greenleaf Avenue

Dear Ms. Woodland:

At your request, West Environmental, Inc. performed a functional assessment of the wetlands on the above referenced site. We conducted two field inspections during which time data was collected and photographs were taken. The first inspection was conducted on June 22, 2006 and was attended by Jim Gove, Peter Britz, Suzanne Woodland and Mark West. The second inspection was conducted on August 30, 2006 and was attended by Jim Gove, Peter Britz and Mark West. We have attached the following information:

- A photolog of the wetlands on the site, taken on 8-30-06
- Wetland Functional Assessment Inventory and Data Forms
- An aerial photo of the site dated 4-21-06 at a scale of 1"=400' identifying the wetlands on the site

The onsite wetlands were separated into three main systems. These were evaluated utilizing the US Army Corps of Engineers New England Divisions Highway Methodology Workbook Supplement as an outline for functional assessment. This evaluation was based on collection of data on the physical characteristics of the wetland through field inspections, research of existing information and best professional judgment. Seven functions were evaluated including:

Groundwater recharge/discharge
Floodflow alteration
Sediment/toxicant/pathogen retention
Nutrient removal/retention/transformation
Production export
Sediment/shoreline stabilization
Wildlife habitat

Wetland 1 includes the majority of the wetlands on the site and is associated with the stream that enters the site in the northeast corner and flows west and then south exiting the site in the southwest corner. This wetland includes forested and scrub-shrub / emergent plant communities with good plant species diversity. Fish were observed in the stream, which is a tributary to Sagamore Creek. Although there exists historical disturbances to this wetland, it currently provides habitat for a variety of wildlife.

Wetland 1 was found to have principal functions for six of the seven functions as evaluated. This wetland's most important feature is its water quality and habitat functions associated with a tributary to Sagamore Creek. The presence of organic soils and dense herbaceous vegetation adjacent to the stream enable this wetland to provide water quality renovation functions that help to clean the water draining from and moving through the site. The stream system flowing through this wetland increases its functions and values above smaller and more isolated wetlands within the city. This wetland clearly meets the definition of Inland Wetlands found in the Portsmouth Zoning Ordinance at Article VI (Section 10-604) "Freshwater areas that have hydric soils, hydrophytic vegetation, and wetland hydrology as defined in the Federal Manual." In addition, its function meets the Purpose and Intent Article VI Section 10-603 including...maintaining the quality of surface waters...land which provide flood protection...to protect wildlife habitats...to protect shellfish and fisheries.

Wetland 2 is a forested wetland located in the northwest corner of the site that is drained by a ditch along the western property boundary. This wetland extends west and east off of the site. This wetland provides three principal functions out of the seven evaluated. It is less diverse than Wetland 1 and does not have a stream running through it. This wetland also meets the city's definition of Inland Wetland.

The isolated wetland (Wetland 3) in the northeastern corner of the site does not meet the size criteria under the City of Portsmouth Inland Wetland Protection Regulations. Although a functional analysis was not performed on this wetland it ponds with up to 12 inches of water and it provides flood storage, water quality and wildlife habitat functions, which are only limited by its smaller size. Amphibians were observed utilizing this wetland.

This concludes our report at this time. If you have any questions or require further clarification, please call our office at (603) 659-0416. Thank you.

Sincerely,
West Environmental, Inc.

Mark C. West, President
NH Certified Wetland Scientist

WETLAND INVENTORY DATA FORM

WETLAND ID: 1

CLASSIFICATION: PFO1/SS1/EM1E

ACREAGE: 2.25

WEI PROJECT #: 06-035NH

SCIENTIST: Mark West

DATE:

WETLAND TYPE:

- | | | | |
|--|---|--|---|
| <input checked="" type="checkbox"/> WOODED SWAMP | <input checked="" type="checkbox"/> Deciduous | <input type="checkbox"/> Evergreen | <input checked="" type="checkbox"/> Scrub-Shrub |
| <input type="checkbox"/> MARSH | <input type="checkbox"/> Freshwater Shallow | <input type="checkbox"/> Freshwater Deep | <input type="checkbox"/> Tidal |
| <input type="checkbox"/> WET MEADOW | <input type="checkbox"/> Ditched | <input type="checkbox"/> Grazed | |
| <input type="checkbox"/> RIVER | <input type="checkbox"/> Upper Perennial | <input type="checkbox"/> Lower Perennial | Order: |
| <input checked="" type="checkbox"/> STREAM | <input type="checkbox"/> Perennial | <input checked="" type="checkbox"/> Intermittent | |
| <input type="checkbox"/> POND | Name: | | |
| <input type="checkbox"/> LAKE | Name: | | |
| <input type="checkbox"/> VERNAL POOL | <input type="checkbox"/> Documented | <input type="checkbox"/> Potential | |
| <input type="checkbox"/> HUMAN MADE or OTHER | Description: | | |

WETLAND PLANT COMMUNITY DATA Forested Portion

TREE LAYER

Red maple
American elm
White ash

SAPLING LAYER

Grey birch
Speckled alder
Willow
Quaking aspen

SHRUB LAYER

Northern arrowwood
Winterberry
Willow
Glossy leaved buckthorn

HERBACEOUS LAYER

Sensitive fern
Sedges
Reed canary grass
Beggar's tick
Cattail
Eastern burweed
Tearthumb

WETLAND PLANT COMMUNITY DATA Scrub-Shrub Portion

TREE LAYER

SAPLING LAYER

Quaking aspen
Speckled alder
Willow

SHRUB LAYER

Meadowsweet
Arrowwood

HERBACEOUS LAYER

Tussock sedge
Rattlesnake grass
Purple loosestrife
Cattail

WETLAND SOILS DATA

Poorly & very poorly drained silt loam
Mapped as Maybid silt loam

WETLAND HYDROLOGY DATA:

Seasonally flooded / saturated with pockets of ponded water
A small floodplain is associated with the main stream channel

WILDLIFE SIGNIFICANCE / ADDITIONAL NOTES:

Stream has fish
Amphibian habitat is abundant
Songbirds inhabit scrub-shrub area – green heron and woodcock habitats observed

WETLAND FUNCTIONAL ASSESSMENT DATA FORM

WETLAND ID: 1

WEI PROJECT #: 06-035NH

GROUNDWATER RECHARGE/DISCHARGE

Geology Restrictive Layer? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Subsoil Type Present Clay Other Geologic Features:	Hydrology Groundwater Relationship? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Variable Water Levels? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Springs/Seeps Observed? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Function Present <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Principal Function <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		Discharge	

FLOODFLOW ALTERATION

Watershed Information Land Cover In Catch. Area Urban Assoc. w/ Water Course? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Other Catch. Storage? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Watershed Position <input checked="" type="checkbox"/> H <input type="checkbox"/> M <input type="checkbox"/> L	Topographic Information Constricted Outlet? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Topography of Watershed: Flat Topography of Wetland: Flat	Function Present <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Principal Function <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	---	--	--

SEDIMENT/TOXICANT/PATHOGEN RETENTION

Soils Organic Soils? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Broad Boundary Trans.? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Setting Sed./Tox./Path. Upstream? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Erosion/Sed. Observed? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Diffuse Flows/Veloc. Drop? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Does Wetland Flood? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Function Present <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Principal Function <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	--	--	--

NUTRIENT REMOVAL/RETENTION TRANSFORMATION

Hydrology Open Water Present? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Slow Moving Water? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Nutrients Upslope? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	along stream Transformers Organic Soils? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Aquatic Vegetation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Abundant Vegetation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Function Present <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Principal Function <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
---	--	--	--

PRODUCTION EXPORT

Vegetation Food Source? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Density: <input checked="" type="checkbox"/> H <input type="checkbox"/> M <input type="checkbox"/> L Interspersion: <input type="checkbox"/> H <input checked="" type="checkbox"/> M <input type="checkbox"/> L Diversity: <input checked="" type="checkbox"/> H <input type="checkbox"/> M <input type="checkbox"/> L	Export Detritus? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Aquatic Plants? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Signs of Export? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Function Present <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Principal Function <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
---	---	--	--

SEDIMENT/ SHORELINE STABILIZATION

Associated w/ stream? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, STOP, if yes, stream characteristics: Elev. Change Present? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No High Flows Present? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Channelized Flow? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Open Water Fetch? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Description of Bank Bank Present? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Bank Vegetated? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Bank Eroded? <input type="checkbox"/> Yes <input type="checkbox"/> No	Function Present <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Principal Function <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
--	---	--	--

WILDLIFE HABITAT

Diversity Aquatic Insect Habitat? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Amphibian Habitat? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Fisheries Habitat? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Cavity Trees? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Vernal Pool? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Connections Corridor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Wetland Connections? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Upland Connections? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Island? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Function Present <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Principal Function <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Buffer Type: Urban / wooded Width: 50-100' Comments:		Degradation Present? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Type: Old ditching & filling	

WETLAND INVENTORY DATA FORM

WETLAND ID: 2

CLASSIFICATION: PFO1E

ACREAGE:

WEI PROJECT #: 06-035NH

SCIENTIST: Mark West

DATE:

WETLAND TYPE:

- | | | | |
|--|---|--|--------------------------------------|
| <input checked="" type="checkbox"/> WOODED SWAMP | <input type="checkbox"/> Deciduous | <input type="checkbox"/> Evergreen | <input type="checkbox"/> Scrub-Shrub |
| <input type="checkbox"/> MARSH | <input type="checkbox"/> Freshwater Shallow | <input type="checkbox"/> Freshwater Deep | <input type="checkbox"/> Tidal |
| <input type="checkbox"/> WET MEADOW | <input type="checkbox"/> Ditched | <input type="checkbox"/> Grazed | |
| <input type="checkbox"/> RIVER | <input type="checkbox"/> Upper Perennial | <input type="checkbox"/> Lower Perennial | Order: |
| <input checked="" type="checkbox"/> STREAM | <input type="checkbox"/> Perennial | <input checked="" type="checkbox"/> Intermittent | |
| <input type="checkbox"/> POND | Name: | | |
| <input type="checkbox"/> LAKE | Name: | | |
| <input type="checkbox"/> VERNAL POOL | <input type="checkbox"/> Documented | <input type="checkbox"/> Potential | |
| <input type="checkbox"/> HUMAN MADE or OTHER | Description: | | |

WETLAND DESCRIPTION

This forested wetland extends north and west of the site and is drained by an excavated ditch at its southern end.

WETLAND PLANT COMMUNITY DATA

TREE LAYER

Red maple
American elm
White ash

SAPLING LAYER

Speckled alder
Quaking aspen

SHRUB LAYER

Northern arrowwood
Winterberry
Highbush blueberry
Multiflora rose

HERBACEOUS LAYER

Sensitive fern
Cinnamon fern
Sedges

WETLAND SOILS DATA

Mapped as Maybid silt loam, very poorly drained.

WETLAND HYDROLOGY DATA:

Seasonally flooded / saturated
No defined stream channel

WILDLIFE SIGNIFICANCE / ADDITIONAL NOTES:

Wooded swamp habitat



1. This is a view of the stream as it enters the northern boundary of the site.



2. This photo shows a stream channel which has a stony bottom.



3. This is another view of the stream onsite after it discharges from the culvert along the northern boundary.



4. This is a view of the scrub-shrub portion of Wetland 1 below the stream culvert. Pockets of standing water were still present in August.



5. This is a view of Wetland 1 in the eastern portion of the site. Areas of emergent wetland are present within the forested swamp.



6. This photo was taken looking at the stream channel in the western portion of Wetland 1. The stream bottom is loamy muck in this area.



7. This is a view of the thick herb and shrub layers in Wetland 1.



8. This is a view of Wetland 2 along the western property boundary.



9. This is a view of Wetland 3 located in the northeast corner of the site.



10. This photo shows the isolated wetland with pockets of standing water and emergent vegetation.

PULA RESOURCE INVENTORY DATA SHEET

PARCEL ID: 94
TAX MAP/LOT #: Map 243 Lot 67-2
ADDRESS: 150 Greenleaf ave rear

ACREAGE: 4.6
GROUP ID:

DATE: 6-8-17
AERIAL PHOTO #:
SCIENTIST: M. West

Nearest Road:

On site Adjacent to site Distance from Road: 20 feet Boundary ID present

Type of Road:

Dirt 2-lane paved 4-lane paved Interstate
 Access Description: acces from end of Lois Street

Existing Structures on Site:

Historical features
 Other: Sewer Line

Adjacent Land Uses (check all that apply):

<input checked="" type="checkbox"/> Forest	<input checked="" type="checkbox"/> Shrubland	<input type="checkbox"/> Grassland	<input type="checkbox"/> Residential
<input type="checkbox"/> Pasture	<input type="checkbox"/> Freshwater Wetland	<input type="checkbox"/> Open Water	<input checked="" type="checkbox"/> Industrial/Commercial
<input type="checkbox"/> Cropland	<input type="checkbox"/> Tidal Wetland	<input type="checkbox"/> Abandoned/Disturbed	<input type="checkbox"/> Other:

Habitat Types Present:

<input type="checkbox"/> Forest <u>10</u> %	<input type="checkbox"/> Shrub/Old Field <u>20</u> %	<input type="checkbox"/> Grass/Forb _____%	<input type="checkbox"/> Cultivated _____%
<input type="checkbox"/> Pasture _____%	<input checked="" type="checkbox"/> Wetland <u>70</u> %	<input type="checkbox"/> Open Water _____%	<input type="checkbox"/> Other _____%

Topography:

Streams:

<input type="checkbox"/> None	<input checked="" type="checkbox"/> Intermittent	<input checked="" type="checkbox"/> Perennial	<input type="checkbox"/> River
<input type="checkbox"/> Ephemeral	<input checked="" type="checkbox"/> Presence of fish		

Water Bodies:

<input type="checkbox"/> None	<input type="checkbox"/> Small pond	<input type="checkbox"/> Beaver flowage	<input type="checkbox"/> Clamming/oyster beds
<input type="checkbox"/> Estuary			

Wetlands:

<input type="checkbox"/> None	<input type="checkbox"/> Sedge meadow	<input type="checkbox"/> Shallow marsh	<input type="checkbox"/> Deep marsh
<input checked="" type="checkbox"/> Shrub swamp	<input type="checkbox"/> Bog	<input checked="" type="checkbox"/> Forested wetland	<input type="checkbox"/> Atlantic white cedar swamp
<input type="checkbox"/> Prime wetland	<input type="checkbox"/> Vernal pool	<input type="checkbox"/> Wet meadow	

Description: Red maple swamp with areas of scrub-shrub and emergent vegetation.

Dominant Upland Forest :

<input type="checkbox"/> Early successional <u>30</u> %	<input type="checkbox"/> Northern hardwood <u>30</u> %	<input type="checkbox"/> Red maple <u>10</u> %	<input type="checkbox"/> Hemlock _____%
<input type="checkbox"/> Oak-pine _____%	<input type="checkbox"/> White pine <u>30</u> %	<input type="checkbox"/> Other _____%	

Description:

Forest Age Class:

<input type="checkbox"/> Regeneration-seedling _____%	<input type="checkbox"/> Sapling-pole <u>60</u> %	<input type="checkbox"/> Mature <u>40</u> %	<input type="checkbox"/> Older growth _____%
---	---	---	--

Logging Evidence:

<input type="checkbox"/> Recent	<input type="checkbox"/> 10-20 years ago	<input type="checkbox"/> 20+ years ago	<input type="checkbox"/> Previous Agricultural use
<input type="checkbox"/> Clear cut	<input type="checkbox"/> Diameter cut	<input type="checkbox"/> Selective cut	

NH Natural Heritage Data:

Rare Plant Community?

PULA RESOURCE INVENTORY DATA SHEET (cont.)

PARCEL ID: 94

Wildlife Habitat

Existing Critical Habitat Yes No **Type:**
 Critical Habitat Features Yes No
 Vertical Stratification Low Moderate High

Specific Habitat Features:

Highest Ranked Habitat: State Biological Region

Connectivity

Corridor (through or adj.)? Yes No
 Wetland Connectivity? Yes No
 Upland Connectivity? Yes No

Wildlife Observations:

Stream salamanders, fish

Habitat Degradation

% of Buffer w/Encroachment: 40%
 Activities Adversely Affecting Wildlife Function: Yes No
 Significant Disturbance? Yes No
 Structures Obstructing Wildlife Movement? Yes No
 Prox. to Beaver/Mink/Otter? Yes No
 Dumping? Yes No
 ATV Activity? Yes No
 Invasive Species: numerous species of shrub and herbaceous invasives Yes No

Recreational Value/Potential

Parking Available? Yes No
 Watercraft Access? Yes No
 Fishing Available? Yes No
 Hunting Permitted? Yes No
 Walking/Biking Trails? Yes No
 Passive Recreation? Yes No
 Tidal Access? Yes No
 Potential Ballfield? Yes No
 Existing Conservation Land? Yes No
 Describe Access:

Restoration/Property Potential

Description: culvert in stream at end of Lois Sreet could be removed.
 Recommendation(s) to improve access or overall potential:

Development Potential

Description:

Storm Water Data

Watershed ID: Sagamore Creek
 Upstream Sources of Poll.? Yes No
 Erosion/Sed. Observed? Yes No
 Stabilization needed? Yes No
 BMP needed/modified? Yes No
 BMP type?
 Description:

Additional Natural Resource Data Layers

Adjacent Conservation Land Yes No
 Soils Yes No
 Underlying Aquifers and Transmissivity Yes No
 Sand & Gravel Deposits Yes No

Potential property liabilities:

Homeless Activity Describe:
 Safety Hazard Describe:
 Hazardous Waste Possible Describe:

Comments:



Looking northwest from the eastern property boundary along the sewerline which is also used as a trail.



Looking north through the thick vegetation at the dealership buildings in the far background.



Looking northwest along the sewerline which is bordered by thick invasive shrubs.



This is a view of the red maple swamp south of the sewerline in the southwestern portion of the site.



This is a view of the ditched stream in along the southern property boundary.



Looking north at the scrub-shrub wetland between the sewerline and the dealership.



Looking northeast where the sewerline takes an eighty degree turn along the northwestern boundary.



Looking at northern most portion of the site where the ditched stream extends to the Route 1 bypass.