

HOEFLE, PHOENIX, GORMLEY & ROBERTS, P.A.

ATTORNEYS AT LAW

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

October 9, 2018

HAND DELIVERED

Peter Stith, Planner
Mary Koepenick, Administrative Clerk
Portsmouth Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

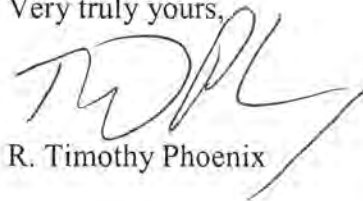
Re: Zoning Relief
James C. and Kimberly Lucy, Trustees
James C. Lucy Revocable Trust, Owner/Applicant
127 and 137 High Street
Tax Map 118/Lots 20 and 21
CD4-L1 Zone, Downtown Overlay District

Dear Mr. Stith, Ms. Koepenick & Zoning Board Members:

On behalf of the above referenced Applicants, enclosed please find the following original and 11 copies of a Supplement Memo and exhibits in support of the requested zoning relief.

We look forward to presenting this application to the Zoning Board of Adjustment at its October 16, 2018 meeting.

Very truly yours,



R. Timothy Phoenix

RTP:pcb

Enclosures

cc: James C. & Kimberly Lucy
Brendan McNamara Residential Design

DANIEL C. HOEFLE
dhoefle@hpgrlaw.com

R. TIMOTHY PHOENIX
tphoenix@hpgrlaw.com

LAWRENCE B. GORMLEY
lgormley@hpgrlaw.com

STEPHEN H. ROBERTS
sroberts@hpgrlaw.com

R. PETER TAYLOR
rtaylor@hpgrlaw.com

JOHN AHLGREN
jahlgren@hpgrlaw.com

KIMBERLY J.H. MEMMESHEIMER
kmemmesheimer@hpgrlaw.com

MATTHEW G. STACHOWSKE
mstachowske@hpgrlaw.com

KEVIN M. BAUM
kbaum@hpgrlaw.com

MONICA F. KIESER
mkieser@hpgrlaw.com

SAMUEL HARKINSON
sharkinson@hpgrlaw.com

OF COUNSEL:
SAMUEL R. REID

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
DATE: October 9, 2018
Re: James C. and Kimberly Lucy, Trustees
James C. Lucy Revocable Trust, Owner/Applicant
127 and 137 High Street
Tax Map 118/Lots 20 and 21
CD4-L1 Zone, Downtown Overlay District

Dear Chairman Rheaume and Zoning Board Members:

On behalf of the Owner/Applicant, James C. and Kimberly Lucy, Trustees of the James C. Lucy Revocable Trust (the “Lucys”), we are pleased to submit this memorandum and attached exhibits in support of Zoning Relief to allow additions to the existing buildings and construction of a residential carriage house on the property, to be considered by the ZBA at its October 16, 2018 meeting.

I. Exhibits

The Lucys submitted exhibits as part of their original application submission. For ease of the ZBA’s review, we submit the following exhibits, which includes several resubmitted (as marked) and new exhibits.

1. 12/30/14 Existing Conditions Plan-by James C. Verra and Associates, Inc.¹
2. Proposed Plan Set-by Brendan McNamara Residential Design.
 - a. Proposed Site Plan²
 - b. Architectural Elevations³
 - c. Floor Plans⁴
3. Neighborhood Use Map.⁵
4. Existing Conditions Site Photographs.⁶
5. Aerial Photograph of Site and Surrounding Area.⁷
6. 9/5/18 Historic District Commission Minutes (pp.1, 9-10).⁷
7. 9/20/16 ZBA Minutes (pp. 1-7).⁷
8. Architectural Elevation Overlay Plans-showing differences between 2016 and current proposal.⁷

¹ Previously provided as p. 4 of the variance application.

² Previously provided as pp. 7-9 of the variance application.

³ Previously provided as pp. pp.10-11; 13; 15-17 of the variance application.

⁴ Previously provided as pp. 12, 14 & 18 of the variance application.

⁵ Previously provided as 6 of the variance application.

⁶ Previously provided as 3 of the variance application.

⁷ Not previously submitted.

9. 10/4/18 Letter from Robert Marchewka of One Commercial, a division of Brick & Barn Real Estate Group.⁷

II. Property/Project

The Lucys own two adjoining lots known as 127 (Tax Lot 21) and 137 (Tax Lot 20) High Street (the "Property"). The Property is currently developed with two buildings. **Exhibits 1 and 4.** 127 High Street contains a single-family residence. 137 High Street is divided into three residential units. The Lucys propose to combine the two lots, create additions to the two existing structures and construct a new single-family dwelling to the rear of the combined Property. **Exhibit 2.** The 127 High Street addition will replace an existing 8' by 10' addition with an approximately 10' by 12' dining room to the rear of the existing building to modestly increase the living space within the dwelling (40 square foot overall increase) and create a new second floor deck.

137 High Street will be improved with an approximately 22' by 28' one and one-half story structure, which will include a two car garage on the ground floor and additional living space in the half story above. The first floor will also be converted to office use. The new dwelling to the rear of the Property will be approximately 20' by 38' with a 6' by 12' sunroom bump out.

The Lucys intend the proposed renovations to maintain the historic character of the Property. The building at 127 High Street, built (or placed on the lot) in approximately 1820, will be restored generally, including the restoration to a more original window configuration and installation of a cedar shingled roof. The building at 137 High Street, believed to have been constructed in approximately 1860, will likewise be restored with wood siding, cedar shingled roofs, and the original rear kitchen fireplace and chimney preserved. The intent is to mirror the layout common to the period of development of the Property, with the one and one-half story addition given the appearance of an attached "coach house," subservient to the main structure. Likewise, the rear building will assume the appearance of a "stable" and "service building."

The overall development approach creates a descending order of buildings from the front to the rear of the Property (main house, kitchen/coach house, stable/service building). The driveway and turnaround is intended to assume the appearance of a "coach yard" with the remaining open space maintained as lawn and garden areas reflective of a colonial garden. Thus,

the proposed construction will improve the Property while maintaining the historic feel of the Hill to the west and Moffatt-Ladd House to the east.

The Lucys presented the proposal at a Historic District Commission (“HDC”) work session on September 5, 2018. **Exhibit 7.** The proposal received positive feedback overall, including with respect to density and number of buildings. *Id.* at p. 10. The HDC requested that the roofline of the 137 High Street “Coach House” addition be kept as low as possible. *Id.*

The Property is located in the CD4-L1 and Downtown Overlay Zoning Districts, and thus must meet the use and dimensional requirements of both districts. The proposal meets the vast majority of these requirements with minor exceptions. Residential uses are permitted within both zoning districts. In fact, single, two and multi-family (<8 dwelling units) are permitted by right in the CD4-L1 zone. However, Section 10.642 of the Portsmouth Zoning Ordinance (“PZO”) requires non-residential principal uses on the ground floor of any building within the Downtown Overlay District (“DOD”). 137 High Street will be converted to first floor office use, rendering the Property more conforming with the DOD. 127 High Street will continue its longstanding utilization for residential purposes. The new dwelling to be built to the rear of the Property, well off High Street (78’), will also be residential.

Additionally, PZO Section 10.5A41.10A requires a minimum ground story height of 11 feet. The existing ground stories for both existing buildings, constructed in the 1800s long prior to the enactment of PZO Section 10.5A41.10A, do not meet this height requirement. The Lucys propose to construct the first floor of the new building with an approximately 9 foot first floor story height, consistent with the 8 foot, 8 inch ground story height of the existing buildings and the proposed residential use of the building.

In addition, the Lucys have amended their application to include relief from the 3,000 minimum lot area per dwelling unit requirement of PZO Section 10.5A41.10A. This request was not originally included in the Lucys’ variance application. The lot area per dwelling unit at 127 and 137 High Street is permitted as a pre-existing nonconforming condition. When the two lots are merged, the Property will overall be less nonconforming. Thus, the Lucys understood, based on discussions with City Planning Staff, that relief was not necessary. However, as this issue has been raised by The National Society of the Colonial Dames of America (“NSCDA”) by letter from their counsel dated September 14, 2018, the Lucys have, out of an abundance of caution, added this additional request for relief to their variance application.

The Lucys propose additions to renovate and construct additions to the two existing buildings on the Property, convert 137 High Street to first floor office, and to construct a new standalone single-family residence to the rear of the Property. Thus, the buildings will either be more conforming with the PZO or will retain the longstanding residential use of the Property. This proposal is consistent with the surrounding area, which includes several all residential properties (**Exhibit 3**) and, as noted in the PZO, consists of “medium density areas with a mix of medium to large houses.” PZO §10.5A41 (Fig. 10.5A41.10A). All dimensional regulations are met with the exception of (1) the ground floor story height (9 feet where 11 feet is required), which will match the existing structures and that of structures in the area (i.e. the Hill) and other nearby residential structures; and (2) the lot area per dwelling unit, which will become less nonconforming. The proposal is reasonable, complimentary to the surrounding area, and, as discussed in detail below, meets the variance criteria.

III. Relief Required

<u>Variance Section/ Requirement</u>	<u>Existing</u>	<u>Proposed</u>
PZO§10.5A41.10A 11’ ground floor story height	8’ 8” in existing buildings	9’ for all buildings, including new proposed residential dwelling . Consistent with structures in the are
PZO§10.5A41.10A/10.642 non-residential principal use on the ground floor	Residential	127 High Street – residential 137 High Street – 1 st floor office New dwelling - residential
PZO§10.5A41.10A 3,000 minimum lot area per dwelling unit (sq. ft.)	127 High Street – 2,792 137 High Street – 1,332 Average – 2,062	2,416

IV. Fisher v. Dover does not prohibit the pending application

NSCDA in its September 14, 2018 letter suggests that the New Hampshire Supreme Court case of *Fisher v. Dover*, 120 N.H. 187, 190 (1980) bars the ZBA from considering the pending application due to the Lucys’ prior denied variance application in 2016. *Fisher v. Dover* prohibits applicants from filing subsequent variances absent “a material change of

circumstances” or where the second application “materially differs in nature and degree from its predecessor.” *Id.* at 190 (1980). The 2016 variance application sought: (a) a three-story building where up to a two-story was the maximum permitted; (b) a minimum lot area of 1,200 square feet where 3,000 was required; (c) a duplex style building where duplexes were not permitted in the DOD; (d) a minimum ground story height of 8 feet, 8 inches where 11 feet was required; and (e) a 20 foot wide maneuvering aisle where 24 feet was required. *See* BOA Staff Report for September 18, 2018 meeting at p. 22; **Exhibit 5** (2016 Proposed Site Plan & Elevations).

The current application differs materially from the 2016 request. The Lucys have modified the proposal to eliminate most of the zoning relief requested in the prior application. They are no longer: (a) proposing a three-story building; (b) seeking relief for minimum lot area (which at 7,249 square feet greatly exceeds the 3,000 square foot minimum; (c) proposing a duplex style building; or (d) seeking relief for the maneuvering aisle. In fact, the only duplicate request is for the lower ground floor height, which is driven by the conditions of the existing buildings and HDC comments. The pending proposal is significantly less dense than the 2016 request. **Exhibit 8**. The proposal has fewer overall units, less massing, a lower height and is more consistent with the surrounding area, per the HDC’s comments, and intent of the CD4-L1 Zone and DOD. *Id.* Thus, the current application clearly “materially differs in nature and degree from its predecessor.”

Since the *Fisher* case, the New Hampshire Supreme Court has clarified that this restriction does not apply to “a subsequent application explicitly or implicitly invited by the ZBA and modified to address its concerns.” *Hill-Grant Living Trust v. Kearsarge Lighting Precinct*, 159 N.H. 529, 536 (2009) (*citing Morgenstern v. Town of Rye*, 147 N.H. 558 (2002)). In other words, where a subsequent application is modified to address the specific concerns raised by the ZBA in its prior denial, the *Fisher* test is satisfied. *Id.* (“it is logical to presume that if the ZBA invites submission of a subsequent application modified to meet its concerns, it would find an application so modified to be materially different from its predecessor, thus satisfying Fisher.”)

This is precisely what occurred with the current application. The concerns raised by the ZBA in 2016 related primarily to density, massing and concerns that the proposal did not adequately reflect the historic character of the neighborhood. **Exhibit 6** at p. 5 (“[Mr. Mulligan]

said the values of the surrounding properties would be negatively affected by the sheer mass of the project and because of the historically-inaccurate character of the new building proposed.”) Member Parrott also expressed concern that the proposed construction to the rear of the lots was larger than the existing front structures. *Id.* Chairman Rheume “struggled with the height and felt that adding on the extra story made the structure feel much larger than the two older homes and would impose too much on the two neighboring buildings.” *Id.* Moreover, in denying the 2016 application, the ZBA explicitly invited a new, revised proposal. *Id.* at p. 7 (“[Member Mulligan] said a revised proposal would be better.”); (“Chairman Rheume stated that he would support [the motion to deny] somewhat reluctantly as well because he felt there was merit to the proposal but that it seemed a little too large relative to the history [sic] structures around it...the applicant, however, made a good case that he wasn’t far away from the new Ordinance.”)

The Lucys considered and addressed all of the concerns raised by the ZBA in submitting their current proposal. The existing structures will be renovated and additions constructed to preserve the historic feel of the area. The volume of the proposed additions are reduced. **Exhibit 8.** The proposal no longer includes a third story and, in direct response to Member Parrott’s comments, the height and mass of the new construction are designed to provide a descending order of dominance from the front to the rear of the Property (main house, kitchen/coach house, stable/service building).

The new proposal is both significantly different/improved over the previous proposal, and addresses the concerns and invitation of board members that a different proposal would be worthy of consideration for approval. Given these significant changes between the 2016 application and current proposal, as well as the ZBA’s statements, the current variance application fully satisfies the *Fisher* test, as clarified by *Hill-Grant Living Trust, supra*.

V. Variance Requirements

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

The first step in the ZBA’s analysis is to determine whether granting the variances is not contrary to the public interest and is consistent with the spirit and intent of the ordinance, considered together pursuant to *Malachy Glen Associates, Inc. v. Town of Chichester*, 155 N.H.

102 (2007) and its progeny. Upon examination, it must be determined whether granting a variance “would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives”. *Id.* “Mere conflict with the zoning ordinance is not enough”. *Id.*

The intent of CD4-L1 is to “To promote the development of walkable, mixed-use, human-scaled places by providing standards for building form and placement and related elements of development.” PZO §10.410. Additionally, PZO Development Standards §10.5A41.10A describes the zone as:

[consisting] of medium density areas with a mix of medium to large houses. Upper floor uses are almost entirely residential. Ground floors include some commercial office uses; areas zoned CD4-L2 also allow some restaurant and retail uses on the ground floor. There are shallow front yards and shallow to medium side yards, with variable private landscaping, and on-site accessory parking. Streets have sidewalks and street trees, and define medium to large blocks. (emphasis added)

The DOD is intended to “promote the economic vitality of the downtown by ensuring continuity of pedestrian-oriented business uses along streets.” PZO §10.641.20.

The proposal meets the intentions of both the CD4L-1 zone and DOD. It retains the existing, medium sized, historic houses. All upper floor uses will be residential. Moreover, the Property become more conforming with the DOD, with the ground floor office at 137 High Street will converted to office use. The other ground floor residential uses are either pre-existing and simply being continued (127 High Street) or located to the rear of the Property, away from the street, with the office use remaining the dominant street-level use. The proposal creates a private landscaped courtyard and on-site parking. This area is not a typical pedestrian “draw” area. Given these factors, granting the limited requested variances will not conflict with the basic zoning objectives of the PZO.

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

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

There will be no threat to the public health, safety or welfare by granting the requested variances. The variances will allow additional ground floor residential use consistent with the existing use of 127 High Street and many of the surrounding lots. **Exhibit 3.** The lower ground floor story height and overall density is likewise consistent with the existing buildings and those of the surrounding area, including the Hill, as well as in keeping with the HDC's work session comments. Moreover, the Lucys propose to both renovate and construct the new additions and residence in keeping with the historic standards of the area. Clearly, the requested variances neither alter the essential character of the locality nor threaten the public health safety or welfare. Accordingly, none of the variances are contrary to the public interest and all observe the spirit of the ordinance.

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

Granting the requested variances will not diminish surrounding property values. The proposal will renovate two older structures while providing a more historic look to the Property overall in line with the surrounding area and the Hill. The overall development approach applies a descending order of buildings from the front to the rear of the Property, limiting the view of the additions from High Street. Importantly, the requested variances cause no impact to surrounding property values. The additions and new residential building could be constructed to the same height and dimensions as proposed by right, as the variances related to internal (ground floor) story heights and first floor use. Additionally, the Lucys have received a letter from Robert Marchewka, a commercial real estate broker and abutter to the Property, stating his professional opinion that the project "will enhance property values and generally make the area a nicer place in which to live and work." **Exhibit 8.** Given the nature and scope of the proposal and Mr. Marchewka's opinion, the variances will not diminish surrounding property values.

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

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

The lots are relatively small and narrow and are burdened by an existing "passageway" between the two existing buildings. Two buildings exist on the Property that are non-conforming with respect to the 11 foot ground story height requirement. *See Farrar v. City of Keene*, 158 N.H. 684 (2009); *Harborside Associates, LP v. Parade Residence Hotel, LLC*, 162

N.H. 508 (2011)(the size and location of a building may constitute special conditions forming the basis for unnecessary hardship). Additionally, its inclusion in both the CD4 L-1 zone and DOD severely limit the ground floor uses on the Property. See PZO §10.5A41.10A (limiting the permitted mixed use structures to live /work buildings). In light of these conditions and restrictions, special conditions exist at the Property.

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

The purpose of requiring 11 foot high ground stories in the DOD is to promote commercial first floor use. However, it makes little sense to impose this restriction in this instance where the ground floors of the two existing buildings, located on High Street and most visible to the public, are and will remain approximately 9 feet. Requiring an 11 foot ground story for the additions and new residential dwelling will not accomplish the goals of the DOD. To the contrary, it will result in structures that are out of character with the existing historic buildings and surrounding area. It would also result in increased overall height of the new structures in direct opposition to the concerns raised by the ZBA in 2016, the HDC's comments, and creating greater impact to abutting property owners.

The intent of the ground floor residential use restriction is to promote walkable, street level commercial uses in the Downtown area. The street front uses of the Property will either remain office, as required in the DOD, or residential as is permitted as a pre-existing nonconforming use. Requiring commercial ground story use of the new building to be constructed to the rear of the Property, well away from High Street, does not promote the goals of the DOD.

Finally, while the merging of the two lots may render the 127 High Street slightly more non-conforming, the overall merged Property (which includes the passageway and Parcel B) will be significantly more conforming than the current situation. The resulting lot area will be approximately 7,249 square feet, well above the 3,000 square foot requirement. Likewise, the lot area per dwelling unit will increase from an average of 2,062 square feet between the two lots to 2,416 overall. The proposal ultimately creates a more conforming property that is consistent with the surrounding area. Accordingly, there is no fair and substantial relationship between the purposes of the ordinance and its application in this instance.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. *Vigeant v. Hudson*, 151 N.H. 747 (2005). Residential use is permitted in both the CD4-L1 zone and DOD. The Lucys propose to convert 137 High Street to first floor commercial use, maintain the longstanding ground floor residential use in the 127 High Street addition and to continue it to the new residential dwelling to be constructed to the rear of the Property. This use is consistent with the overall intent of the zoning districts and similar conditions throughout the surrounding area. Thus, the improvements and variances required for them are reasonable.

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

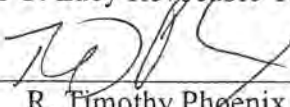
If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. *Harborside Associates, L.P. v. Parade Residence Hotel, L.L.C.*, 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” *Malachy Glen, supra* at 109. The Lucys can construct the additions and new outbuilding without the requested variances. The relief is limited to ground story use, height and density per dwelling unit that is more conforming than currently exists. Thus, the requested variances will cause no impact to the general public. Conversely, the Lucys will be greatly harmed by denial of any of the variances. Without question, substantial justice will be done by granting each variance while a substantial injustice will be done by denying any of them.

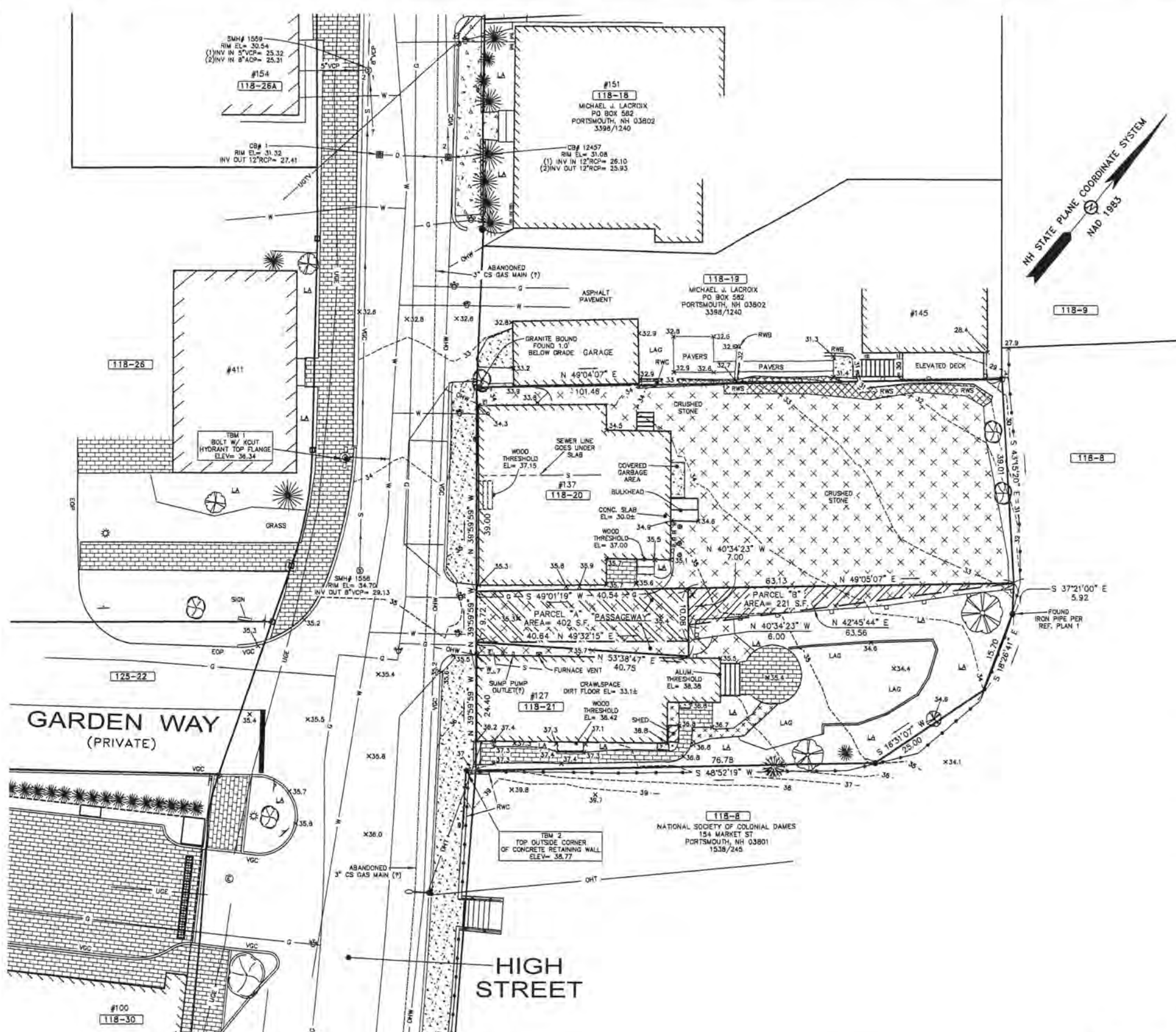
VI. Conclusion

For all of the reasons stated, James and Kimberly Lucy respectfully requests that the Portsmouth Zoning Board of Adjustment grant each variance request.

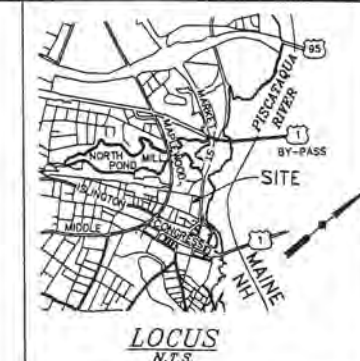
Respectfully submitted,

James C. and Kimberly Lucy, Trustees
James C. Lucy Revocable Trust

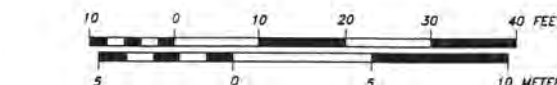
By: 
R. Timothy Phoenix
Hoefle, Phoenix, Gormley & Roberts, P.A.
127 Parrott Avenue
Portsmouth, NH 03801
(603) 436-0666



- LEGEND:**
- IRON ROD
 - IRON PIPE
 - BOUND as DESCRIBED
 - ▲ RAILROAD SPIKE
 - △ PORTSMOUTH HOUSING AUTHORITY
 - CHAIN LINK FENCE
 - WOOD FENCE
 - 110-5 TAX SHEET - LOT NUMBER
 - RCRD ROCKINGHAM COUNTY REGISTRY OF DEEDS
 - EOP EDGE OF PAVEMENT
 - VGC VERTICAL FACED GRANITE CURB
 - RWC CONCRETE RETAINING WALL
 - RWS STONE RETAINING WALL
 - RWW GRANITE RETAINING WALL
 - PARKING METER
 - BOLLARD
 - SIGN
 - UTILITY POLE
 - UTILITY POLE W/ TRANSFORMER
 - LIGHT POLE
 - UTILITY POLE WITH ARM & LIGHT
 - GUY
 - ELECTRICAL CONDUIT
 - ELECTRIC METER
 - GAS METER
 - GAS SHUT OFF
 - GAS VALVE
 - WATER GATE VALVE
 - WATER SHUT OFF VALVE
 - HYDRANT
 - CATCH BASIN
 - CATCH BASIN
 - DRAIN MANHOLE
 - SEWER MANHOLE
 - CONIFEROUS TREE
 - DECIDUOUS TREE
 - CONIFEROUS SHRUB
 - DECIDUOUS SHRUB
 - W WATER LINE
 - S SEWER LINE
 - D DRAIN LINE
 - G GAS LINE
 - OHW OVERHEAD WIRE
 - OHE OVERHEAD ELECTRIC
 - OHT OVERHEAD TELEPHONE
 - CEMENT CONCRETE
 - BRICK PAVERS
 - SPOT GRADE



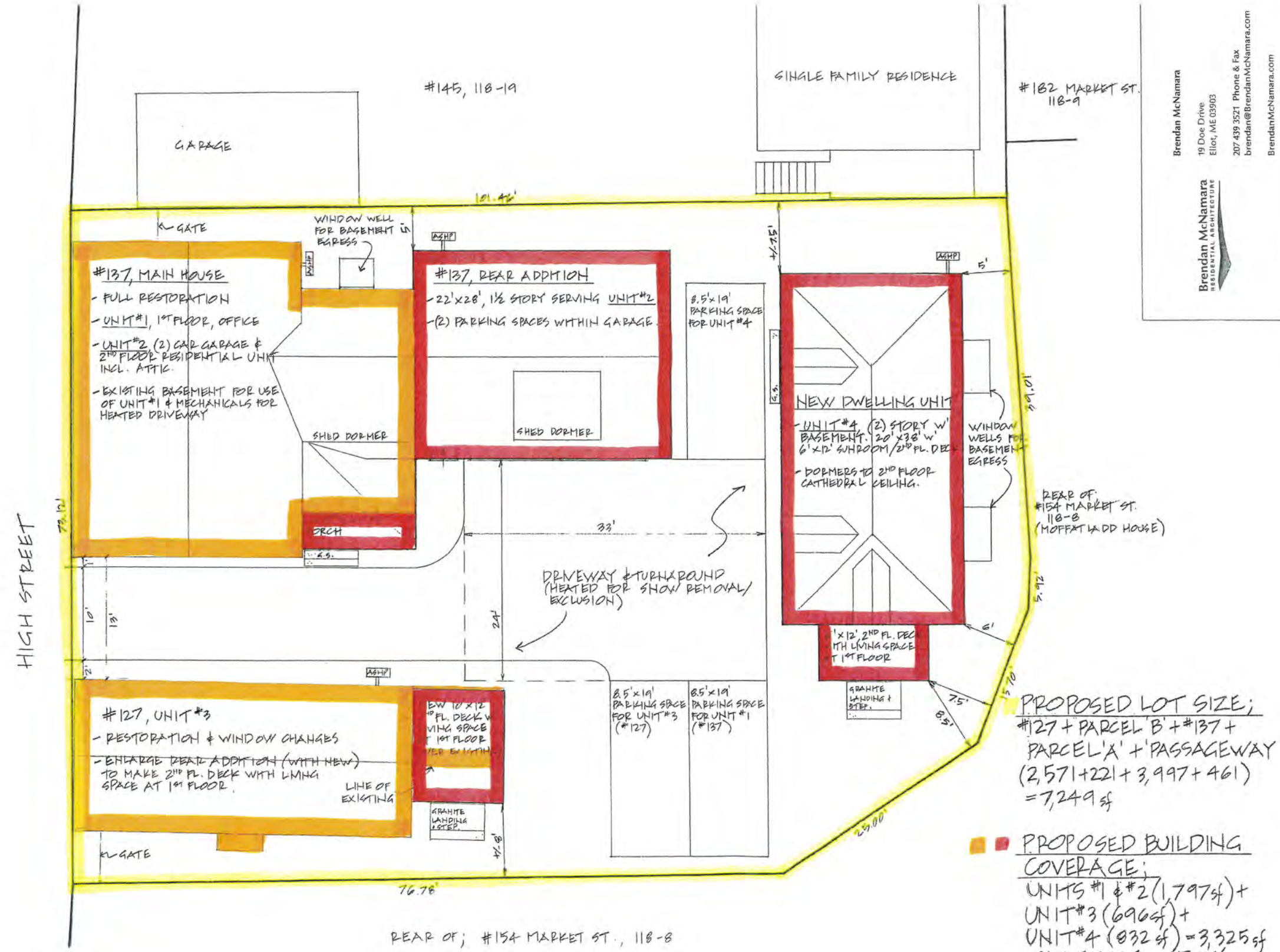
- NOTES:**
- OWNER OF RECORD..... KIMBERLEY A. LUCY REV. LIVING TRUST
 ADDRESS..... 17 WINDSOR GREEN RD, GREENLAND, NH 03840
 DEED REFERENCE..... 5198/598
 TAX SHEET / LOT..... 118-20
 TRUSTEES..... KIMBERLEY A. LUCY & JAMES C. LUCY
 PARCEL AREA..... 3,997 S.F.
 - OWNER OF RECORD..... JAMES C. LUCY REV. LIVING TRUST
 ADDRESS..... 17 WINDSOR GREEN RD, GREENLAND, NH 03840
 DEED REFERENCE..... 5198/500
 TAX SHEET / LOT..... 118-21
 TRUSTEES..... JAMES C. LUCY & KIMBERLEY A. LUCY
 PARCEL AREA..... 2,792 S.F.
 - PASSAGEWAY AREA..... 461 S.F.
 - ZONED..... CBB FRONT YARD SETBACK..... 0'
 MINIMUM LOT AREA 2,000 S.F. SIDE YARD SETBACK..... 0'
 FRONTAGE..... NR REAR YARD SETBACK..... 0'
 - PARCELS ARE SUBJECT TO THE DOWNTOWN OVERLAY DISTRICT AND THE HISTORIC OVERLAY DISTRICT.
 - CONTRACTOR TO VERIFY SITE BENCHMARKS BY LEVELING BETWEEN 2 BENCHMARKS PRIOR TO THE SETTING OR ESTABLISHMENT OF ANY GRADES/ELEVATIONS. DISCREPANCIES ARE TO BE REPORTED TO JAMES VERRA AND ASSOC., INC.
 - HORIZONTAL DATUM: NAD 1983 (2011)(EPOCH: 2010.0000)
 VERTICAL DATUM: NAVD 1988
 PRIMARY BM: CITY CONTROL POINT "ALBA"
 - NO SOURCE DEED CONVEYING THE "PASSAGEWAY" INTO PARCEL 118-20 OR PARCEL 118-21 WAS FOUND. SEE RCRD BOOK 2657, PAGE 2212 FOR THE QUITCLAIM DEED OF PARCEL "A" TO PARCEL 118-21.
 - SEE RCRD BOOK 2657, PAGE 2212 FOR EASEMENT AND AGREEMENT BETWEEN PARCELS 118-20 & 118-21. PARCEL 118-20 HAS AN EASEMENT FOR INGRESS & EGRESS OVER PARCELS "A" & "B" SHOWN HEREON AND ON REFERENCE PLAN 1. PARCEL 118-21 IS TO HAVE THE BENEFIT OF 2 DESIGNATED PARKING SPOTS ON PARCEL 118-20. SEE THE REFERENCED DOCUMENT FOR OTHER STIPULATED CONDITIONS.
 - THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE 1-888-DIG-SAFE.



- REFERENCE PLANS:**
- BOUNDARY SURVEY & LOT LINE VERIFICATION OF LAND OWNED BY BUSINESS ASSETS MANAGEMENT, INC., 137 HIGH STREET, PORTSMOUTH, N.H., REVISED TO 10/9/1984, RCRD PLAN D-13066.
 - LOT LINE ADJUSTMENT PLAN, TAX MAP 118 LOTS 18 & 19, HIGH STREET, PORTSMOUTH, N.H., PREPARED FOR MICHAEL J. LACROIX, DATED 12/11/2006, RCRD PLAN D-34594.
 - PLAT OF LAND, MARKET STREET & HIGH STREET, PORTSMOUTH, N.H., FOR NATIONAL SOCIETY OF COLONIAL DAMES, DATED 10/10/1997, BY JAMES VERRA AND ASSOC., INC., NOT RECORDED.



REV. NO.	DATE	DESCRIPTION	APP'D
EXISTING CONDITIONS PLAN			
127 & 137 HIGH STREET			
PORTSMOUTH, NEW HAMPSHIRE			
ASSESSOR'S PARCELS 118-21 & 118-20			
for			
JAMES C. LUCY & KIMBERLEY A. LUCY, TRUSTEES			
JAMES VERRA and ASSOCIATES, INC.			DATE: 12-30-2014
101 SHATTUCK WAY SUITE B NEWINGTON, N.H., 03801-7876 603-436-3557			JOB NO: 23575
SCALE: 1" = 10'			DWG NAME: C-23575
PROJECT MGR: [Signature]			PLAN NO: 23575
DRAWN BY: [Signature]			SHEET: 1 of 1
COPYRIGHT © 2014 BY JAMES VERRA and ASSOCIATES, INC.			



Brendan McNamara
 19 Doe Drive
 Elliot, ME 03903
 207.439.3521 Phone & Fax
 brendan@BrendanMcNamara.com
 BrendanMcNamara.com

Brendan McNamara
 RESIDENTIAL ARCHITECTURE

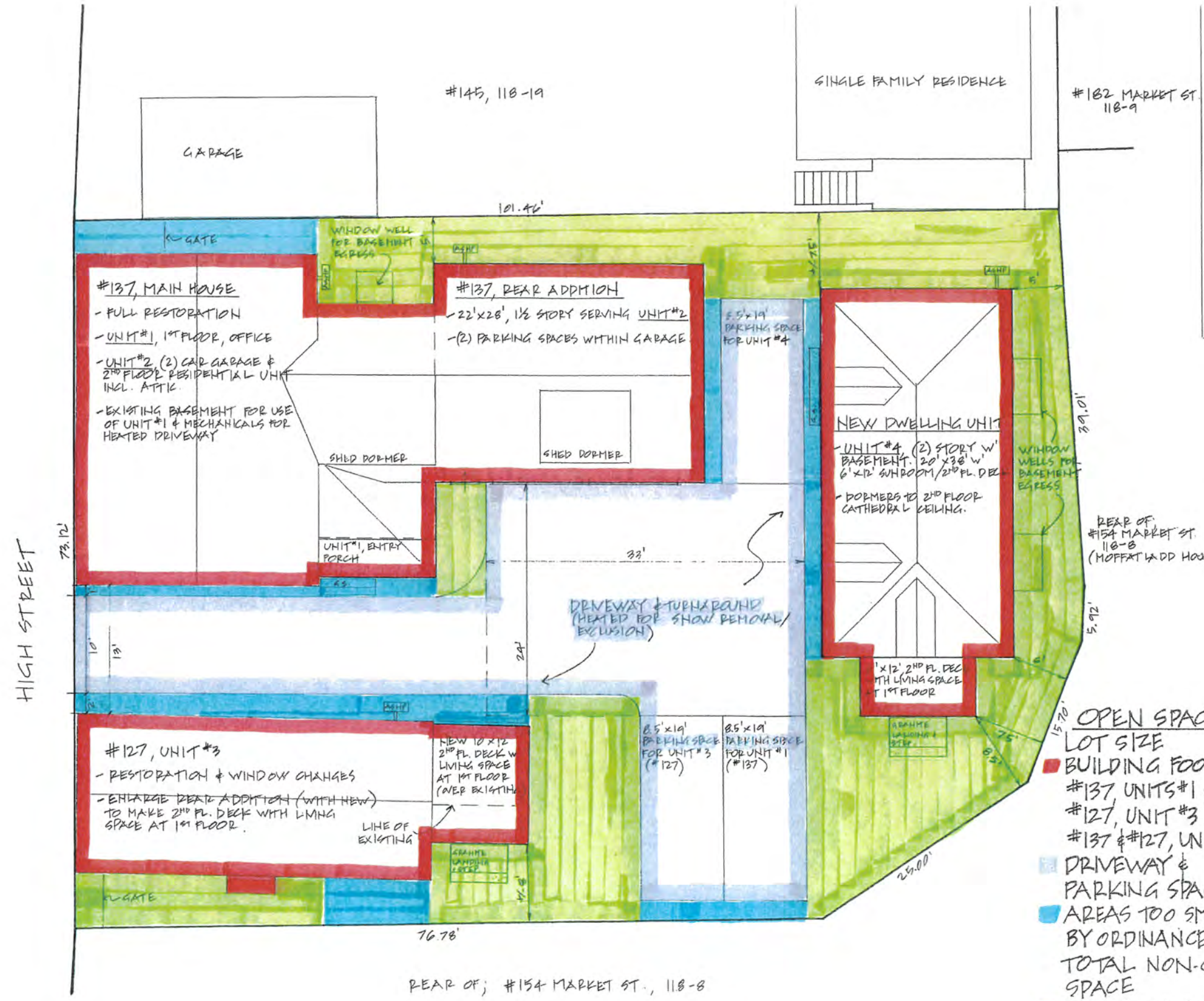
TITLE: PROPOSED SITE PLAN (LOTS COMBINED)
 SCALE: 1" = 10'
 DATE: 7.24.2018
 REVISIONS:

#127 & #137 HIGH ST.,
 PORTSMOUTH, NH

HIGH STREET

REAR OF; #154 MARKET ST., 118-8

REAR OF; #154 MARKET ST. 118-8 (MOFFATT WADD HOUSE)



Brendan McNamara
19 Doe Drive
Eliot, ME 03903
207.439.3521 Phone & Fax
brendan@BrendanMcNamara.com
BrendanMcNamara.com

Brendan McNamara
RESIDENTIAL ARCHITECTURE

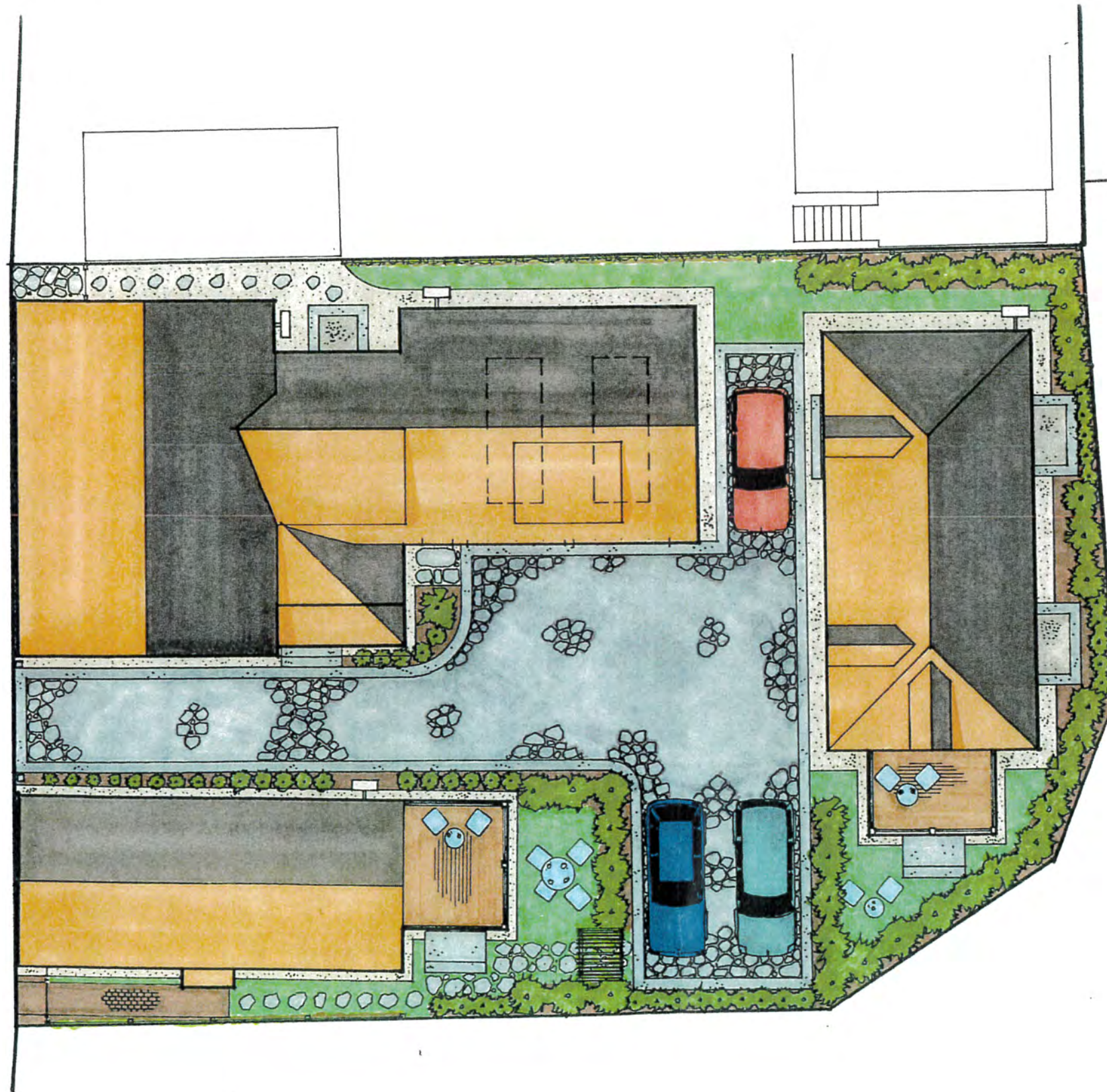
TITLE: PROPOSED SITE PLAN (LOTS COMBINED)
SCALE: 1" = 10'

DATE: 7.24.2018
REVISIONS:

OPEN SPACE CALCS.

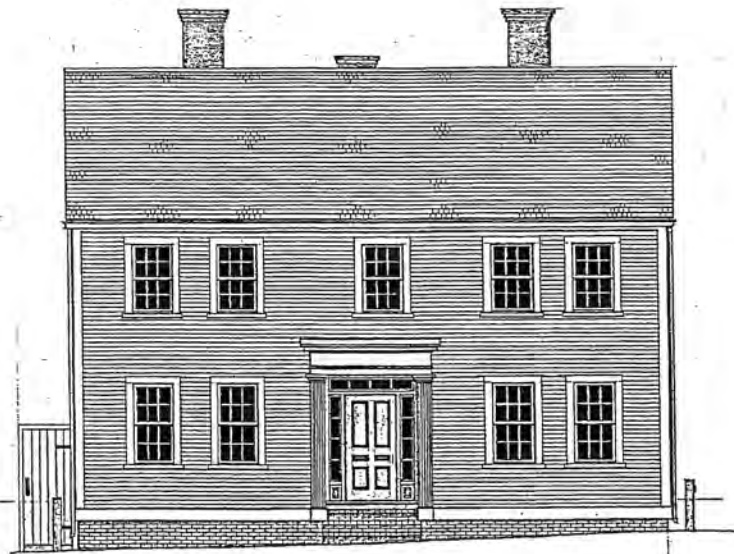
LOT SIZE	= 7,249 sf
BUILDING FOOTPRINTS	
#137 UNITS #1 & #2	= 1,797 sf
#127, UNIT #3	= 696 sf
#137 & #127, UNIT #4	= 832 sf
DRIVEWAY & PARKING SPACES	= 1,675 sf
AREAS TOO SMALL BY ORDINANCE	= 435 sf
TOTAL NON-OPEN SPACE	= 5,435 sf
OPEN SPACE	= 1,814 sf
% OPEN SPACE	= 25.02%

#127 & #137 HIGH ST., PORTSMOUTH, NH

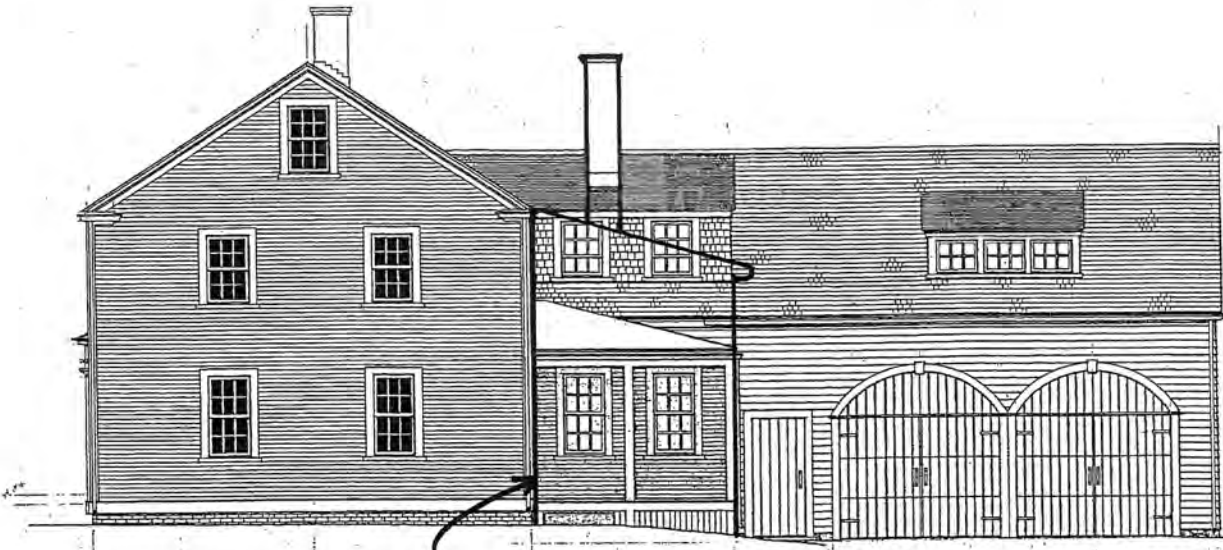


PROPOSED LANDSCAPING
PLAN

*127 & *137 (LOTS COMBINED)
HIGH ST., PORTSMOUTH, NH
1"=10' 12.28.2017

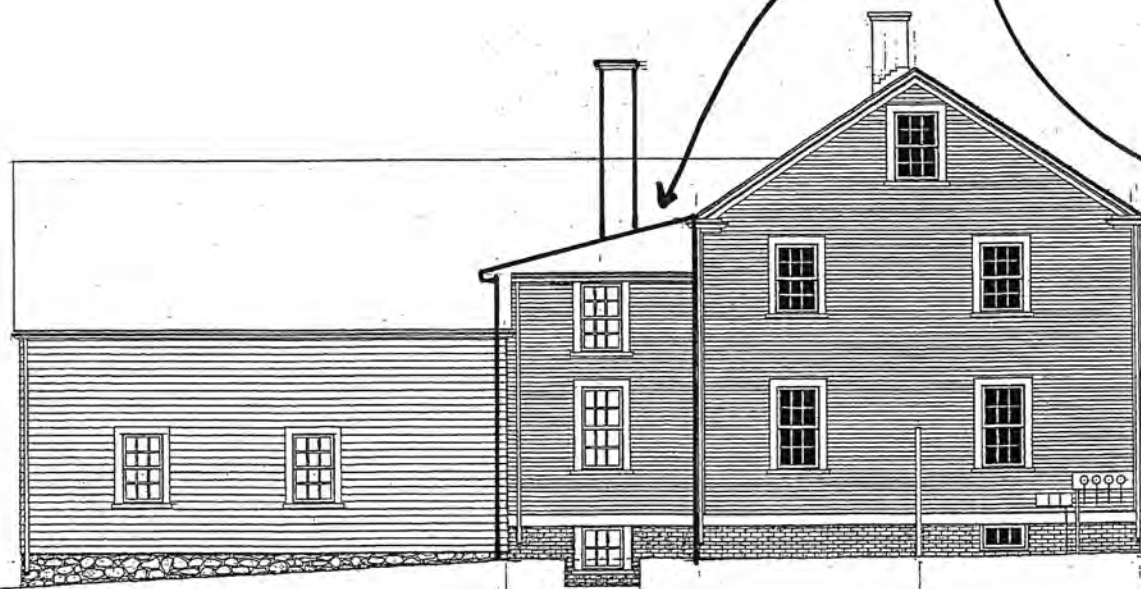


PROPOSED FRONT (SOUTH) ELEVATION

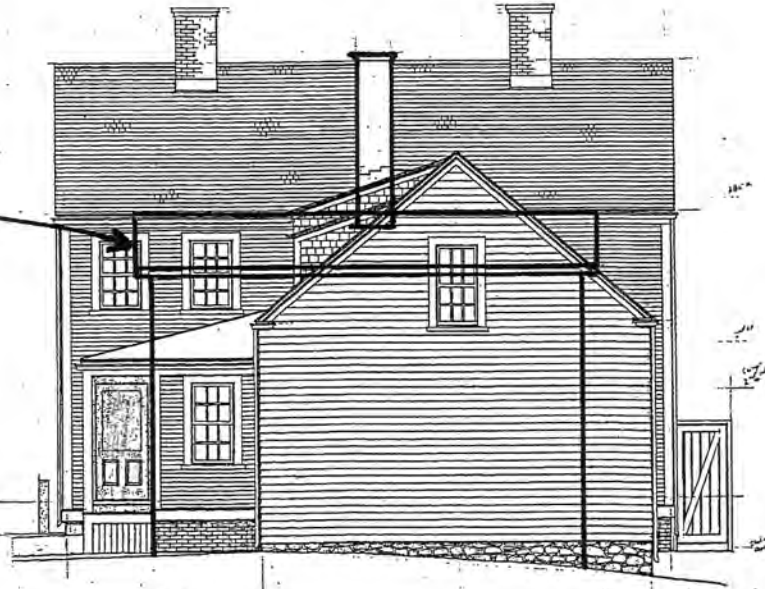


PROPOSED RIGHT SIDE (EAST) ELEVATION

EXISTING REAR ADDITION



PROPOSED LEFT SIDE (WEST) ELEVATION * REDUCED TO FIT 11 X 17

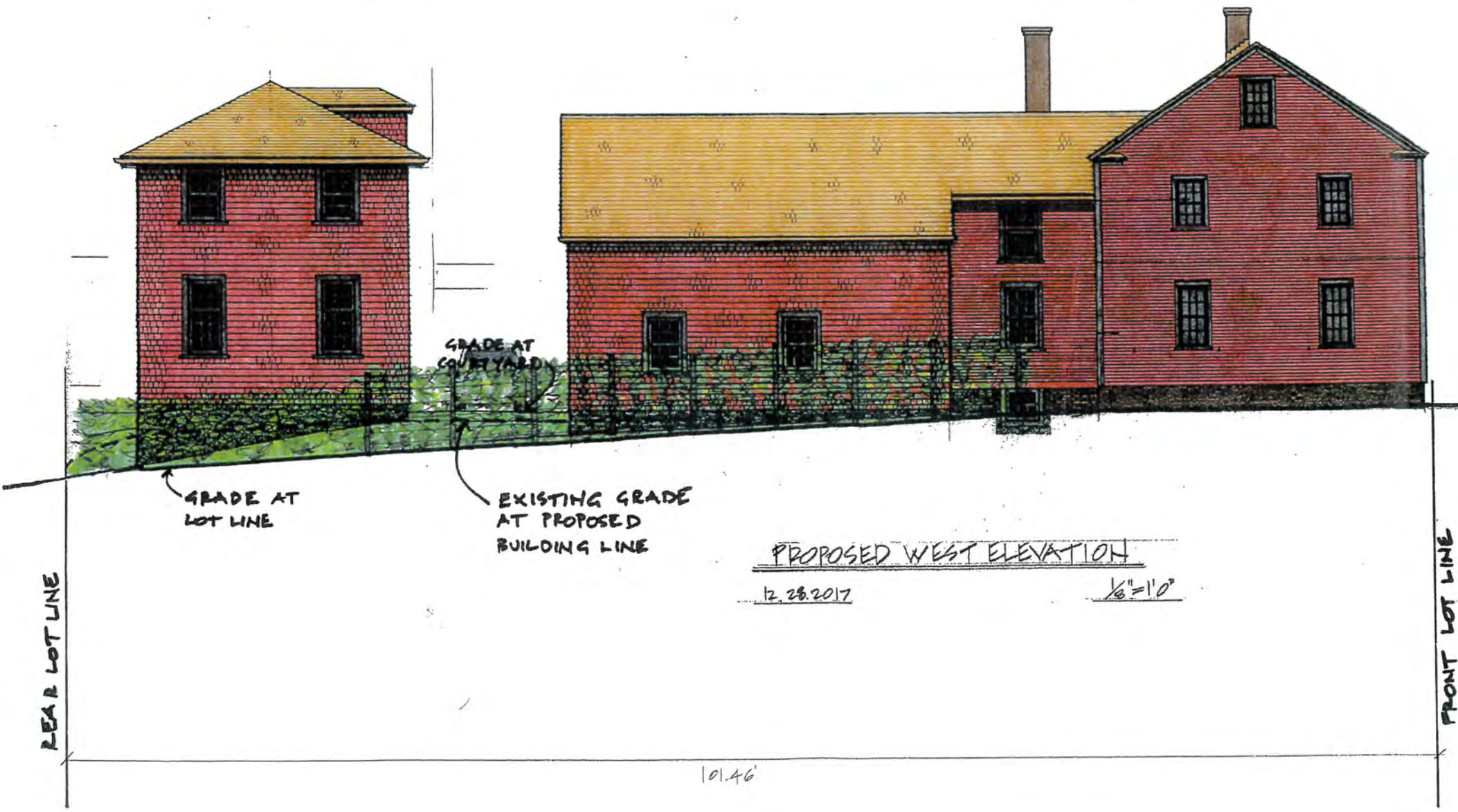


PROPOSED REAR (NORTH) ELEVATION

EXISTING CONDITIONS OVERLAYED TO PROPOSED

REMODEL & ADDITION TITLE: PROPOSED ELEVATIONS
 EXISTING STRUCTURE # SCALE: 1/4"=1'-0" * REDUCED TO FIT 11 X 17
 #197 HIGH ST. DATE: 1.26.2018
 PORTSMOUTH, NH PERMITS

37
34
33
32
31
30
29



REAR LOT LINE

GRADE AT LOT LINE

GRADE AT COURTYARD

EXISTING GRADE AT PROPOSED BUILDING LINE

PROPOSED WEST ELEVATION

12.28.2017

1/8"=1'0"

101.46'

FRONT LOT LINE

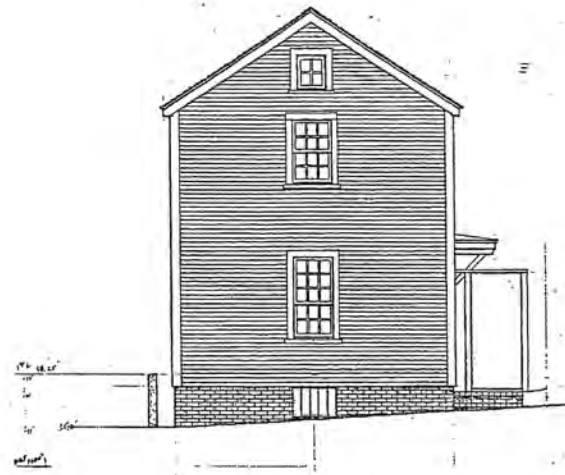
TITLE: PROPOSED WEST ELEVATION AT LOT LINE

SCALE: 1/8"=1'0"

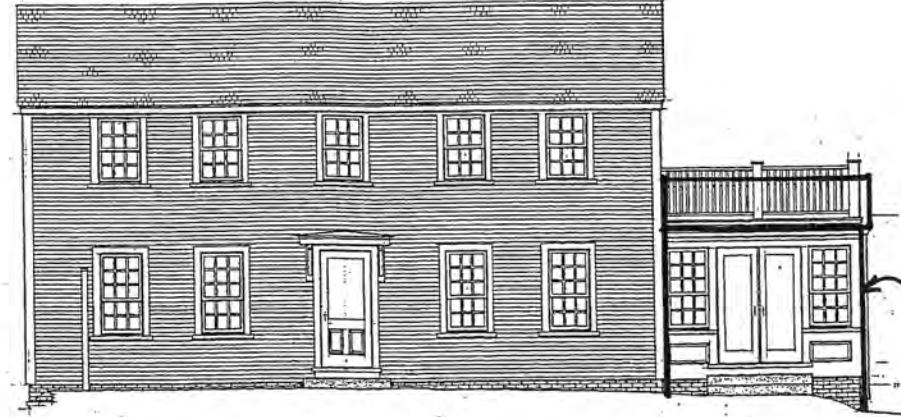
DATE: 12.28.2017

REVISIONS:

REMODEL & ADDITION
at #137 HIGH STREET,
PORTSMOUTH, NH

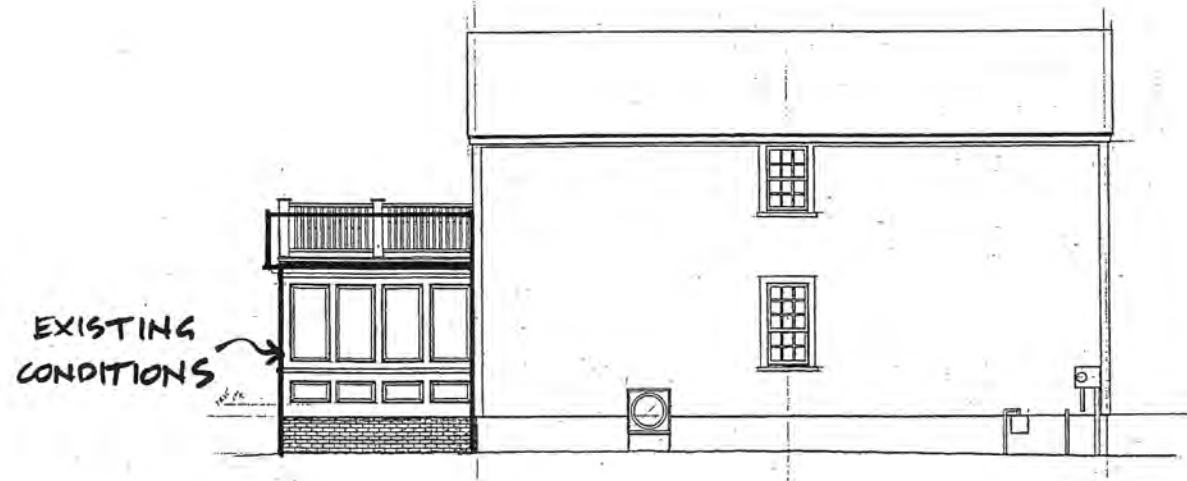


PROPOSED FRONT (SOUTH)
ELEVATION



PROPOSED RIGHT SIDE (EAST) ELEVATION

EXISTING CONDITIONS



EXISTING
CONDITIONS

PROPOSED LEFT SIDE (WEST) ELEVATION



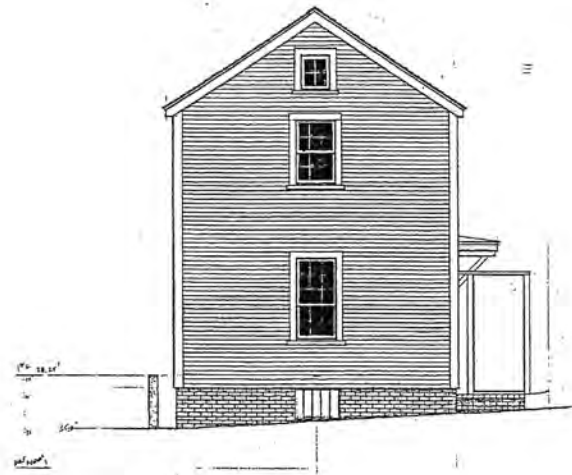
EXISTING CONDITIONS

PROPOSED REAR (NORTH)
ELEVATION

* REDUCED TO FIT 11 X 17

EXISTING CONDITIONS OVERLAYED TO PROPOSED

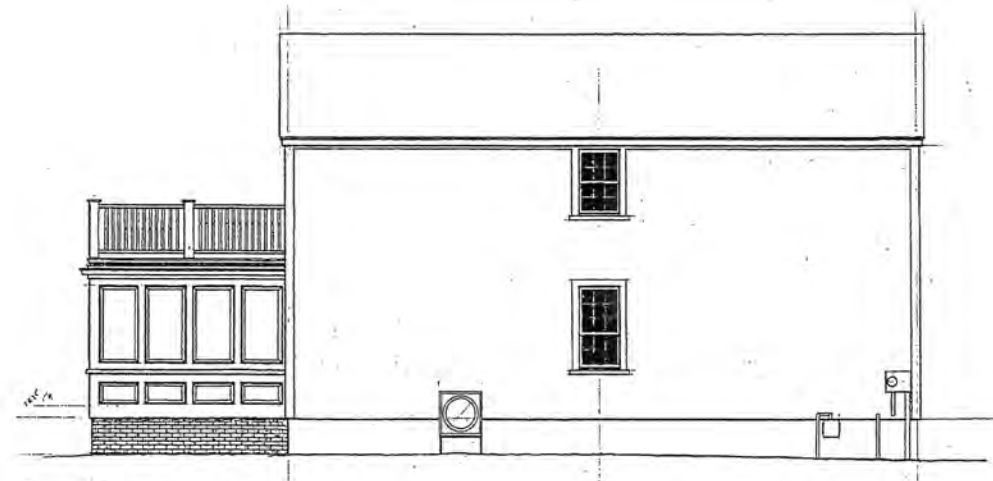
REMODEL ADDITION
at #27 HIGH ST.,
PORTSMOUTH, NH.
TITLE : PROPOSED ELEVATIONS
SCALE : 1/4" = 1'-0" * REDUCED TO FIT 11 X 17
DATE : 1.26.2018
REVISIONS



PROPOSED FRONT (SOUTH)
ELEVATION



PROPOSED RIGHTSIDE (EAST) ELEVATION



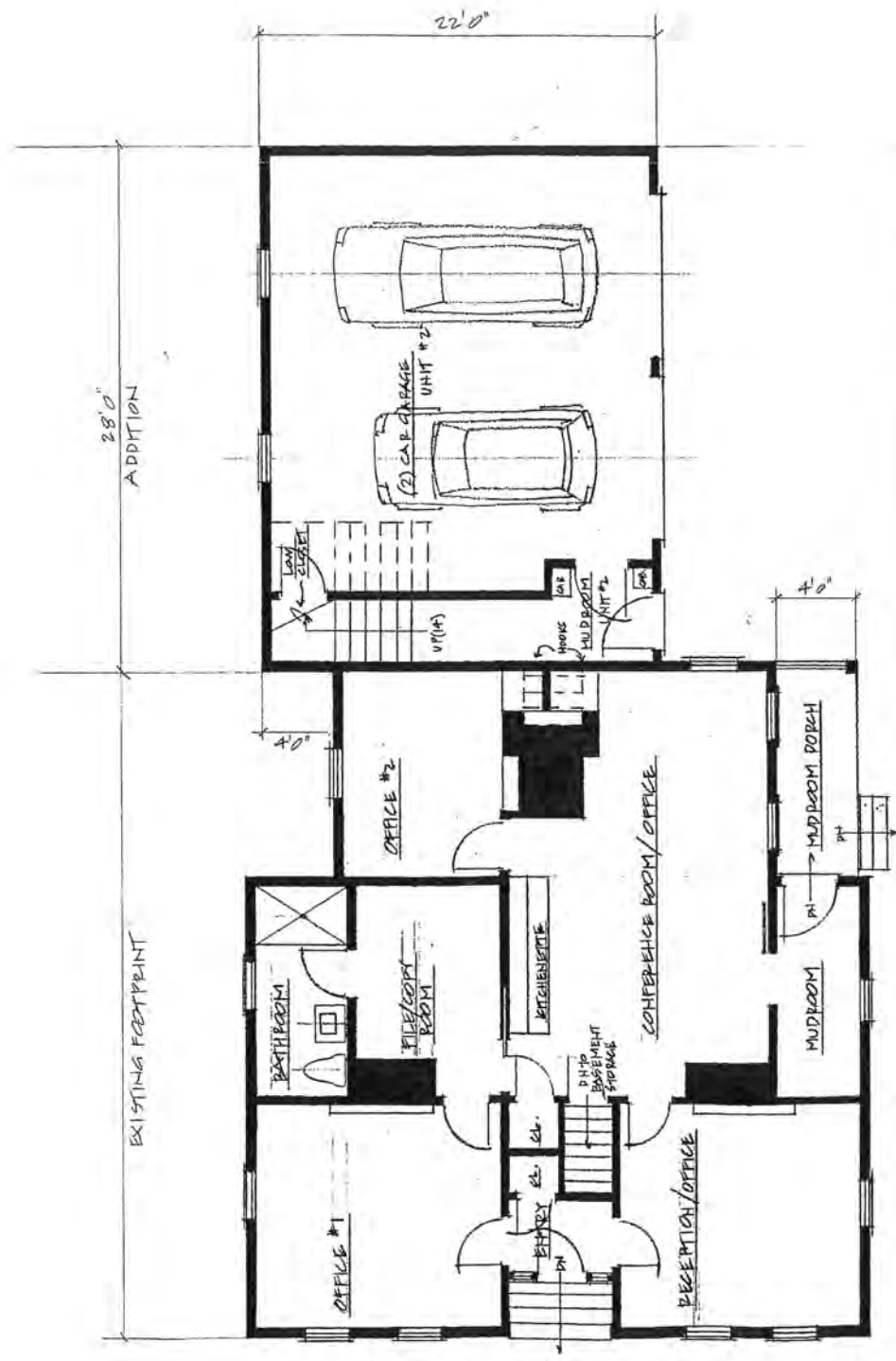
PROPOSED LEFT SIDE (WEST) ELEVATION



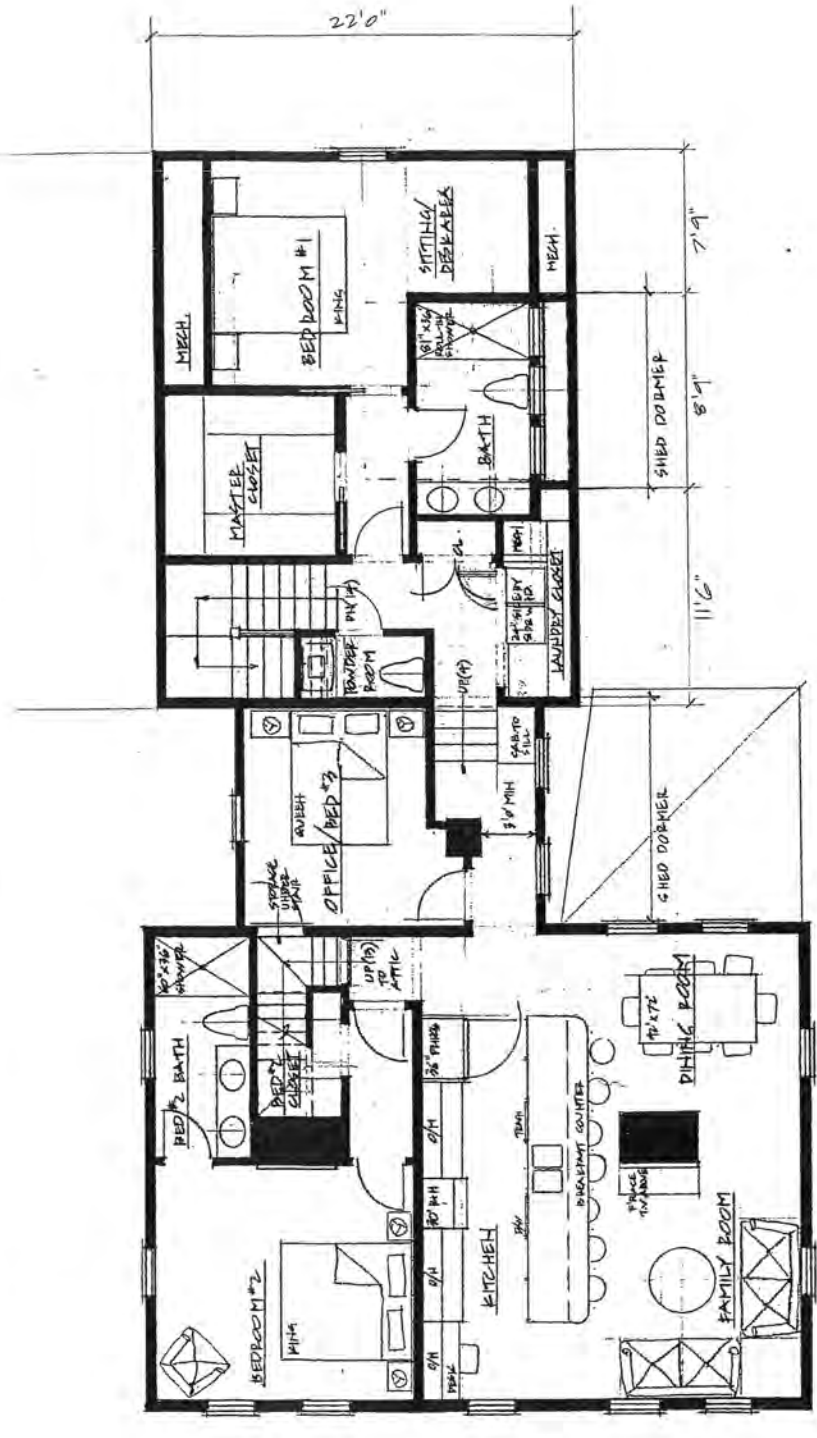
PROPOSED REAR (NORTH)
ELEVATION

TITLE : PROPOSED ELEVATIONS
SCALE : 1/4"=1'-0"
DATE : 1-26-2018
REVISIONS

REMODEL & ADDITION
at #17 HIGH ST.,
PORTSMOUTH, NH.



PROPOSED FIRST FLOOR PLAN
OFFICE UNIT #1 (1,138.4 HLS)



PROPOSED SECOND FLOOR PLAN
RESIDENTIAL UNIT #2 (1,746.4 HLS)

Brendan McNamara
19 Doe Drive
Elliot, ME 03903
207 439 3521 Phone & Fax
brendan@BrendanMcNamara.com
BrendanMcNamara.com

REMODEL & ADDITION TITLE: PROPOSED FLOOR PLANS
#137 HIGH STREET, SCALE: 1/8" = 1'-0"
PORTSMOUTH, NH DATE: 7/24/2018
REVISIONS:





NEIGHBORHOOD "USE" MAP

FIRST FLOOR 'USE' TABLE

USE	EXISTING	PROPOSED
RESIDENTIAL UNITS	1+3 = 4	1+1+1 = 3
COMMERCIAL (OFFICE) UNITS	0	1
COMMERCIAL AREA	0	1,138 sf
RESIDENTIAL AREA	1,138 sf + 656 sf = 1,794 sf	832 sf + 696 sf = 1,528 sf

PARKING REQUIREMENTS (DOD)

CONDITION	REQUIRED	AVAILABLE
EXISTING (4) DWELLING UNITS	(4) x 1.3 = 5.2 (6)	(5) BY ZONING REQ'
PROPOSED (3) D'UNITS, (1) OFFICE	(3) x 1.3 + 0 = 3.9 (4)	(5)

TITLE: NEIGHBORHOOD "USE" MAP
 - FIRST FLOOR 'USE' TABLE
 - PARKING REQUIREMENT TABLE

#127 & #137 HIGH ST.,
 PORTSMOUTH, NH



VIEW FROM
HIGH STREET



VIEW FROM
HIGH STREET



VIEW FROM
REAR



VIEW FROM
REAR

REMODEL & ADDITION
at #127 & #137 HIGH STREET
PORTSMOUTH, NH.
TITLE: PHOTOGRAPHS, EXISTING
CONDITIONS
DATE : 7.24.2018

127



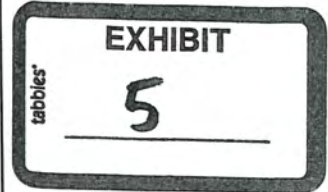
Property Information
Property ID 0118-0021-0000
Location 127 HIGH ST
Owner LUCY JAMES C REVO LIVING TRUST



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

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

Parcels updated 01/04/2018
Properties updated 10/05/2018





**MINUTES
HISTORIC DISTRICT COMMISSION
ONE JUNKINS AVENUE, PORTSMOUTH, NEW HAMPSHIRE**

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

6:30 p.m.

September 5, 2018

MEMBERS PRESENT: Chairman Vincent Lombardi; Vice Chairman Jon Wyckoff; City Council Representative Doug Roberts; Reagan Ruedig, Martin Ryan, Dan Rawling; and Alternate Cyrus Beer

MEMBERS EXCUSED: Richard Shea

ALSO PRESENT: Nick Cracknell, Principal Planner, Planning Department

.....
Chairman Lombardi noted that Work Session A was asked to be postponed by the applicant.

*It was moved, seconded, and passed by unanimous vote to **postpone** Work Session A to the October 3 meeting.*

I. APPROVAL OF MINUTES

1. August 1, 2018

*It was moved, seconded, and passed by unanimous vote (7-0) to **approve** the August 1, 2018 minutes as amended.*

II. ADMINISTRATIVE APPROVALS

Note: The Administrative Approval items were reviewed in the following order:

*It was moved, seconded, and passed by unanimous vote (7-0) to **postpone** review of Items B, E, G and I until after the less-complicated items were reviewed.*

The Commission then reviewed Items C, F, and H. *It was moved, seconded, and passed by unanimous vote (7-0) to **approve** Items C, F, and H.*

The Commission reviewed Item D, from which Ms. Ruedig recused herself. *It was moved, seconded, and passed by a vote of 6-0 to **approve** Item D.*

The Commission then reviewed the remainder of the items.

VI. WORK SESSIONS (NEW BUSINESS)

A. Work Session requested by **James C. Lucy Revocable Living Trust, James C. and Kimberley A. Lucy, trustees and owners**, for property located at **127 & 137 High Street**, wherein permission was requested to allow new construction to an existing structure (construct rear additions to both structures) and allow a new free standing structure (construct single family dwelling at rear of #137) and allow exterior renovations to an existing structure (miscellaneous renovations to both structures) as per plans on file in the Planning Department. Said properties are shown on Assessor Plan 118 as Lots 20 and 21 and lie within the Character District 4-L1 (CD 4-L1), Downtown Overlay, and Historic Districts.

The applicant James Lucy and the project designer Brendan McNamara were present to speak to the petition. Mr. McNamara said the project was essentially the same and comprised a total of five parcels joined into one lot. He reviewed the site plan in detail.

Ms. Ruedig asked if there was a staircase from the first to second floor. Mr. McNamara said the staircase was not original and that the main entry to the residential unit would be through the garage. Vice-Chair Wyckoff asked that second floor go down six stairs to make the garage more subservient and also suggested that the roofline from the addition to the coach house drop down a bit. Mr. McNamara said they would keep the second floor as low as possible and that the ridgeline to the rear was as large as they could make it.

Page Trace of 27 Hancock Street (and a member of the Colonial Dames) noted that the northwest corner of the property was five feet from the property line and asked whether stormwater runoff would be an issue when the basement-level windows were dug out, especially since the new house would be built on a hill that went down to the abutting property and had a long roof pitch. Mr. McNamara said that a stormwater plan had to be approved by the Planning Board. He said gutters would be placed on all the buildings. Ms. Page asked why the project didn't have room for more parking. Mr. Cracknell said the parking depended on the size of the unit and that the property had a credit of five spaces because it was in the Downtown Overlay District. Ms. Trace said she felt that the carriage house was not appropriate for the spot it was being placed in because the red building was circa 1820.

Barbara Ward of 16 Nixon Park said she was the Director and Curator of the Moffatt-Ladd House and also a Portsmouth Advocate. She asked whether the footprint of the new construction house had changed from the previously-proposed one. Mr. McNamara said it was previously 20'x40' but was now 20'x38'. Ms. Ward said it was not a subordinate building and wasn't a historically appropriate size for a structure at that location and thought it would change the nature of the area. She said the paving would disturb areas of archaeological resources as well. She said the applicant's property had a significant drop-off to the Moffett-Ladd House and was much higher than the properties around it, and that changing the natural grade at the back of the property would be an issue.

Ms. Ruedig said she was also concerned about the archeological digging. Mr. Lucy said he just wanted to upgrade the property in the spirit of the City. Mr. Rawling said he thought there was a

lot more breathing room on the site and liked the scale of everything. He suggested raising the ell on the red house to break up the roofline, and it was further discussed. City Council Representative said he felt it was more of an issue of whether the back building detracted more than whether it was not subordinate. Mr. Rawling agreed and suggested that there be more embellishment on the yellow house. The windows were also discussed. Mr. Ryan said he liked the complex of the three buildings and didn't feel that there needed to be one to be subordinate. He said he liked the density and wished there were more of it throughout the city, noting that it would add to the character. Ms. Ruedig said she was excited to see the front two buildings brought back and thought the new construction was much better than the previous proposed one.

The applicant indicated that he would return for another work session at the October 3 meeting.

DECISION OF THE COMMISSION

*It was moved, seconded, and passed by unanimous vote to **continue** the work session to the October 3 meeting.*

VII. ADJOURNMENT

*It was moved, seconded, and passed by unanimous vote to **adjourn** the meeting at 10:45 p.m.*

Respectfully Submitted,

Joann Breault
HDC Recording Secretary

These minutes were approved at the Historic District Commission meeting on October 3, 2018.

**MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

SEPTEMBER 20, 2016

- MEMBERS PRESENT:** Chairman David Rheume, Vice-Chairman Charles LeMay, Arthur Parrott, Christopher Mulligan, Jeremiah Johnson, James Lee, Peter McDonell, John Formella
- MEMBERS EXCUSED:** Patrick Moretti
- ALSO PRESENT:** Jane Ferrini, Planning Department

I. APPROVAL OF MINUTES

- A) August 16, 2016

It was moved, seconded and passed unanimously (7-0) to approve the August 16, 2016 minutes.

II. PUBLIC HEARINGS – OLD BUSINESS

- A) Case #8-3
Petitioners: Abigail Kell Sutcliffe, owner, Fred Kell, applicant
Property: 12 Woodbury Avenue
Assessor Plan 163, Lot 9
Zoning District: General Residence A
Description: Add rear porch.
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
 2. A Variance from Section 10.521 to allow 55.94%± building coverage where 25% is the maximum allowed.
(Postponed from the August 16, 2016 meeting.)

SPEAKING IN FAVOR OF THE PETITION

The applicant Fred Kell stated that he wanted to build a standard porch within all the setbacks. He noted that the house was already a nonconforming use and that the porch would be similar to neighboring porches in the area and would not affect property values.

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

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

DECISION OF THE BOARD

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

Mr. Mulligan stated that the lot was an unusually small one and appeared to be oddly configured, and there were unique characteristics to the property because the existing structure seemed to encroach over the setbacks entirely. He said he agreed with the applicant that the modest porch was similar to other add-ons to pre-existing nonconforming structures in the neighborhood. Mr. Mulligan said that granting the variances would not be contrary to the public interest or to the spirit of the Ordinance because the essential characteristics of the neighborhood would not change and the public's health, safety and welfare would not be threatened. It would result in substantial justice because the loss to the applicant if the building coverage requirements were strictly enforced would outweigh any appreciable gain to the public. The property was already over the 50% building coverage, so any type of improvement to the house would require the same thing. Granting the variances would not diminish the value of surrounding properties because they seemed to have similar amenities, and the project would enhance the property as well as surrounding properties. As to literal enforcement resulting in unnecessary hardship, Mr. Mulligan said there were special conditions to the property because it was a small lot area, trapezoidal in shape, and already had some setback and significant lot coverage nonconforming issues, so there was no fair and substantial relationship between the purpose of the lot coverage requirement because it already exceeded what was required and the change was only a slight incremental increase. Mr. Mulligan said the use was a reasonable one and met all the criteria.

Mr. Parrott said he concurred with Mr. Mulligan and noted that, the way the small deck was proposed, it would not be immediately adjacent to the bulk of the houses on each side, so he couldn't see where it would cause the neighbor any problems. He said it was already a very tight neighborhood, so he could support the application.

*The motion **passed** with all in favor, 7-0.*

B) Case #8-8

Petitioners: James C. Lucy Revocable Living Trust, James C. & Kimberley A. Lucy, Trustees

Property: 127 & 137 High Street
Assessor Plan: Map 118, Lots 20 & 21
Zoning District: CD4-L1 and Downtown Overlay Districts
Description: Construct two-family dwelling unit with parking underneath.
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Sections 10.5A41.10A & 10.5A43.31 to allow a three-story building where up to a two-story building is the maximum permitted.
2. Variances from Section 10.5A41.10A to allow the following:
 - (a) A minimum lot area per dwelling unit of 1,200± s.f. where 3,000 s.f. is required.
 - (b) A duplex building type where duplexes are not permitted in the Downtown Overlay District.
 - (c) The minimum ground story to be 8'8"± in height where 11' is required.
3. A Variance from Section 10.1114.20 to allow a 20'± maneuvering aisle where 24' is required.

(Postponed from the August 16, 2016 meeting.)

SPEAKING IN FAVOR OF THE PETITION

The owner Jim Lucy, Attorney Peter Loughlin, and the designer Galen Doscher were present to speak to the petition. Mr. Lucy briefly reviewed the project history and goals and said he collected feedback from the neighbors and various groups, including the Portsmouth Advocates and the Moffatt Ladd House representatives. He reviewed the changes and said he would work with the abutters on some issues.

Attorney Loughlin stated that Mr. Lucy bought the property in 1996, when it already had three units, and said it had changed a good deal. He referenced his July 2, 2016 letter, which pointed out that Mr. Lucy had a right to construct what he proposed and that there had to be a balance regarding land use restrictions. Attorney Loughlin discussed whether or not the Ordinance was arbitrary and unreasonable as applied to Mr. Lucy's property, and he concluded that the applicant did not feel the Ordinance was fair and that it created an unnecessary hardship. He said the application met all the criteria except for Criteria #5, the duplex prohibition, and he discussed the reasons why he felt the prohibition was unfair. Attorney Loughlin also discussed the reasons relief was being sought from the parking aisle and minimum ground floor requirements, the 2-story requirement, and the minimum lot area. He referred to a letter from the National Society of Colonial Dames and said they did not have the right to limit what the owners of surrounding properties did, and he also noted that the Character-Based Zoning District was almost a lot-by-lot rezoning. He concluded that the relief asked for was justifiable.

Chairman Rheaume asked Attorney Loughlin if he would appear before the Planning Board, and Attorney Loughlin said he would do so only for the site review. Chairman

Rheume also noted that Attorney Loughlin indicated that the upper stories required a 10-ft height but that the property had an 8-ft height, and he said the Planning Department didn't include that in the Public Notice. He asked whether Attorney Loughlin felt it wasn't an issue and that no variance was needed for it. Attorney Loughlin said he had no knowledge of it.

Joseph Almeida of 103-105 High Street stated that he was very familiar with Mr. Lucy's lot and said the neighborhood had seen an amazing amount of change in the last 15 years. He said the proposal was a tasteful one and noted that Mr. Lucy had reached out to his neighbors and would continue the character of the neighborhood.

Barbara DeStefano of 99 Hanover Street said she was anxious to see the existing buildings improved and was 100% in favor of the project.

Bill Healey of 188 Dennett Street said he thought the proposal was very good and that the technical points were minor in the bigger scheme of things.

Attorney Loughlin then showed the 3-dimensional slides to the Board.

SPEAKING IN OPPOSITION TO THE PETITION

Eddie Lacroix of 145 High Street stated that she was a direct abutter and opposed the project. She reviewed her reasons, noting that the Character-Based Zoning restrictions did not allow a duplex, the duplex would block her home's light and air and would be too close to her front porch, and the parking situation would be a problem.

Michael Lacroix of 145 High Street stated that the project would diminish the value of his property as well as surrounding properties. He discussed issues with the proposed six air conditioning units, encroachment, and emergency access and concluded that the project was in direct opposition to the spirit of the Ordinance.

Paige Trace of 27 Hancock Street said she was representing Kerry Vautrot, Chair of the Portsmouth Advocates. She said the Portsmouth Advocates met with Mr. Lucy and provided feedback to make the proposal more compatible, but some of their feedback was not incorporated into the plans, so they were not in support of the project.

Attorney Justin Pasay on behalf of the Colonial Dames and the Moffatt Ladd House stated that he provided a letter to the Board in August and still agreed with the arguments in that letter. He said he disagreed with Attorney Loughlin and felt that the Colonial Dames had a right to insist that abutting properties receive variances if they conformed to City requirements. He felt it was the wrong venue to argue the fairness of the variances and asked the Board to deny the requested variances.

Barbara Ward, Director and Curator of the Moffatt Ladd House and a resident of 16 Nixon Park stated that the addition of the duplex and the fact that it would be larger than the main house would destroy the property's character.

Attorney Pasay returned and reviewed the intensity, character and density issues. He said the project would be a direct departure from the purpose of the Ordinance and that the applicant had the burden of proving that the development would not diminish property values, which he didn't see evidence of. He said the harm to the public would far outweigh any benefit to the Lucys, and he noted that there was no hardship. He also noted that a former owner's request to permit four dwelling units at 137 High Street had been denied by the Board of Adjustment.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Barbara Ward stated that the applicant's two houses were just as historically important as any other property in the area and said the emergency access was dangerous. Bill Healey said the project would spoil the historic view. Edie Lacroix stated that the nonconforming variances didn't apply to her.

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

DISCUSSION OF THE BOARD

Mr. Johnson said he was hard-pressed to find many projects downtown that could comply with every letter of the law for most of the zones. He said that the CD4-L1 was overlaid on several different-sized properties of different uses, and 100% compliance would be unusual in many cases. Mr. Mulligan said he didn't think the resulting density of the project was far out of line from the immediate neighborhood and didn't feel that the 20' travel maneuvering aisle was a huge amount of relief. He said he agreed with many of the statements that what was being proposed was not compatible with the established character of its surroundings, as far as the two-unit townhouse with attached garages placed in the rear of the property and a larger structure than the original historic structures that defined the character of the neighborhood. Although he agreed with Mr. Johnson that strict compliance with the Character-Based Zoning would be difficult if not impossible for a lot of properties in the area, Mr. Mulligan thought the project was very aggressive and out of character with the neighborhood. He said the values of surrounding properties would be negatively affected by the sheer mass of the project and because of the historically-inaccurate character of the new building proposed. Vice-Chair LeMay said he agreed with Mr. Mulligan and felt that the testimony of light and air to the abutting houses was one of the fundamentals that the Board needed to worry about.

Mr. Parrott said he also agreed with the previous comments and noted that 50 feet was larger front to back than either of the other structures, which was not desirable in such a condensed area. He also noted, relative to the overall character of the neighborhood, that the other buildings faced the street, and the applicant's didn't. Also, the applicant was asking for a larger building than was already on the lot and placing it in the historic back yard of the red building. He referred to the CD4-L1, the regulations indicating shallow front yards and shallow-to-medium side yards with variable private landscaping. He said that was what the District was supposed to be all about. He said the project proposed no

front yard. The side yards were a narrow 4-5 feet of space on one side and air conditioning units on the other, and the renderings showed no proposed landscaping. In terms of compliance with the character of the District, he felt it wasn't even close. Mr. Parrott said another concern was diminution of property values and agreed with the experts who said the project would affect the next-door property's light and air because the proposed house would be very close and was tall. Mr. Lee stated that the 2-story building going to a 3-story building was a big stretch and that placing a duplex in that area was not permitted. Mr. McDonnell said there was persuasive testimony from the opposing citizens that there would be a diminution of value in properties.

Chairman Rheume said the Character-Based Zoning District was established to keep patterns and styles of buildings and uses and not result in massive transitions. He said he had been involved in a lot of Character-Based discussions and work, and he noted that it was very detailed and that the Board had to be careful not to confuse that specificity with the accuracy of the information. He said the information could be precise but may not be entirely accurate for the specific property, and it was the Board's responsibility to look at the requirements. He said the Character District goals were to ease the transitions and felt that the application addressed most of the boxes. He thought the project compared favorably in terms of density and lot area per dwelling unit to with properties across the street and in The Hill. He discussed the minimum ground story height and maneuvering capability and felt they were okay. However, he said he struggled with the height and felt that adding on the extra story made the structure feel much larger than the two older homes and would impose too much on the two neighboring buildings.

DECISION OF THE BOARD

*Mr. Mulligan moved to **deny** the variances for the application as presented and advertised, and Vice-Chair LeMay seconded.*

Mr. Mulligan said he would incorporate his previous comments. He said the project was contrary to the public interest and the spirit of the Ordinance because the essential character of the neighborhood would be altered. The 2-unit townhouse would not be in keeping with the neighborhood, and the new building would be larger than the original historic structure. He said the variances if granted would diminish the value of surrounding properties, especially the value of the property to the north, which would be negatively impacted by the size and increased scale. He felt that what was being proposed was not historically accurate. He said all five of the criteria needed to be satisfied, and those two criteria were not. He said he didn't think that granting the variances would result in substantial justice because the Board had to weigh the applicant's loss if not allowed to proceed with his project against the gain to the public, and as stated numerous times, they had a fairly comprehensive Ordinance that was enacted with significant public input, and it was a reflection of the public's interest in how that particular zone was to be developed. He felt that, to simply say it wasn't fair or not equitable because the rules were changed was not a persuasive argument.

Vice-Chair LeMay said the Board, with respect to hardship, had not heard much persuasion, particularly in terms of characteristics of the properties to the variances being requested, and he felt that criteria was not met either.

Mr. Johnson said he would reluctantly support the motion because he thought the project was a bit aggressive but also felt that the requested variances were minimal. He said he agreed with Mr. Mulligan about the character of the neighborhood but also saw a huge hotel across the street. He said a revised proposal would be better.

Chairman Rheume stated that he would support to motion somewhat reluctantly as well because he felt there was merit to the proposal but that it seemed a little too large relative to the history structures around it. He said he understood the compromises and improvements but felt that the project would not keep the character of the neighborhood and the spirit of the Ordinance, and he didn't see a hardship fully expressed. He said the applicant, however, made a good case that he wasn't far away from the new Ordinance.

The motion to deny passed with all in favor, 7-0.

III. PUBLIC HEARINGS – NEW BUSINESS

1) Case #9-1

Petitioner: 393 New Castle Avenue LLC

Property: 390 New Castle Avenue

Assessor Plan 207, Lot 6

Zoning District: Single Residence B

Description: Raise existing structure 18" and convert to dwelling unit.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

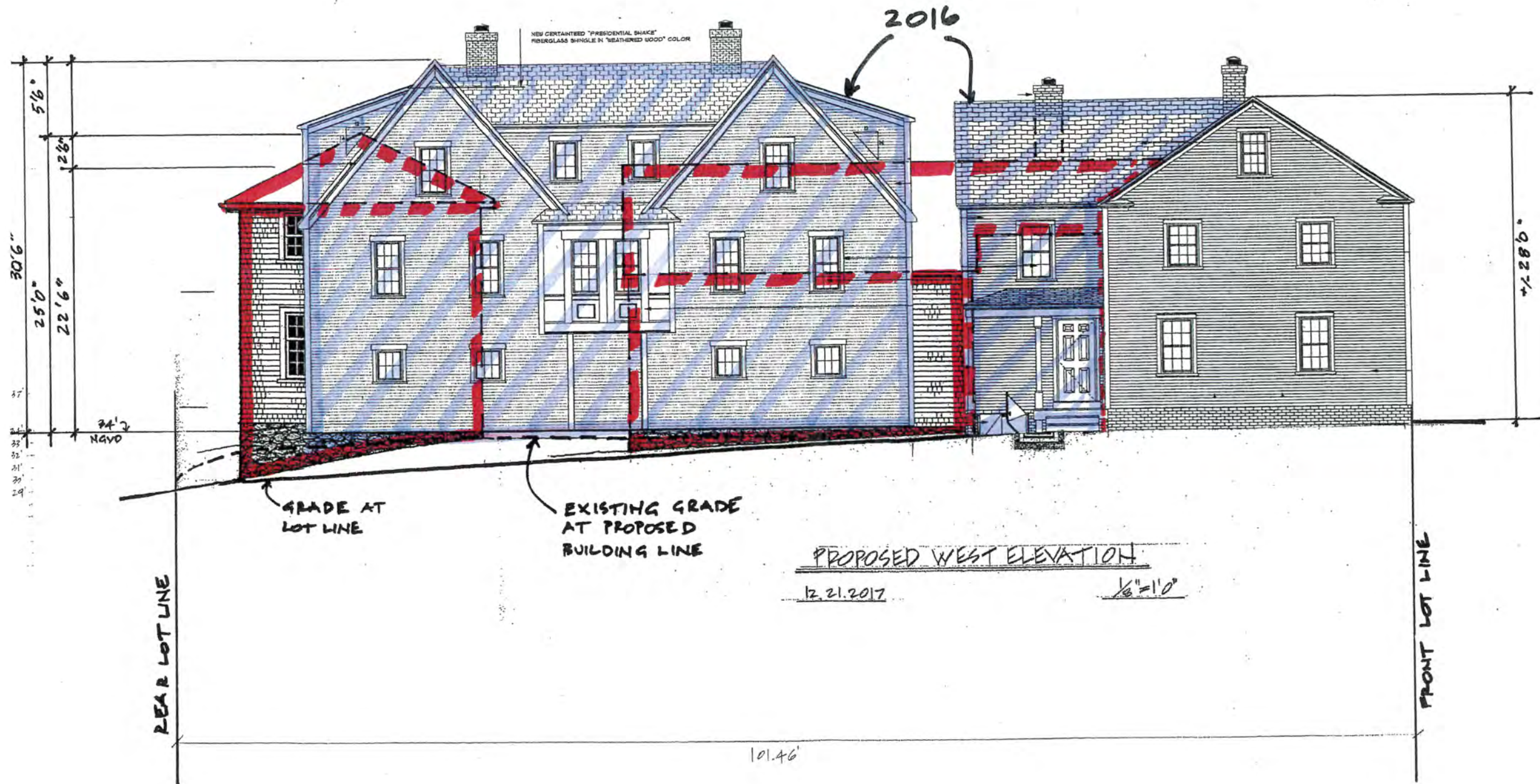
1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. Variances from Section 10.521 to allow the following:
 - a) 96'± continuous street frontage where 100' is required.
 - b) A lot depth of 40'± where 100' is required.
 - c) A rear yard setback of 2'± where 30' is required;

Chairman Rheume stated that some information was provided about concerns with Fisher vs. Dover on a 1987 application that was denied. It was indicated that the same application was being put forward and that Fisher vs. Dover should apply. After discussion, the Board decided to not make a motion to invoke Fisher vs. Dover.

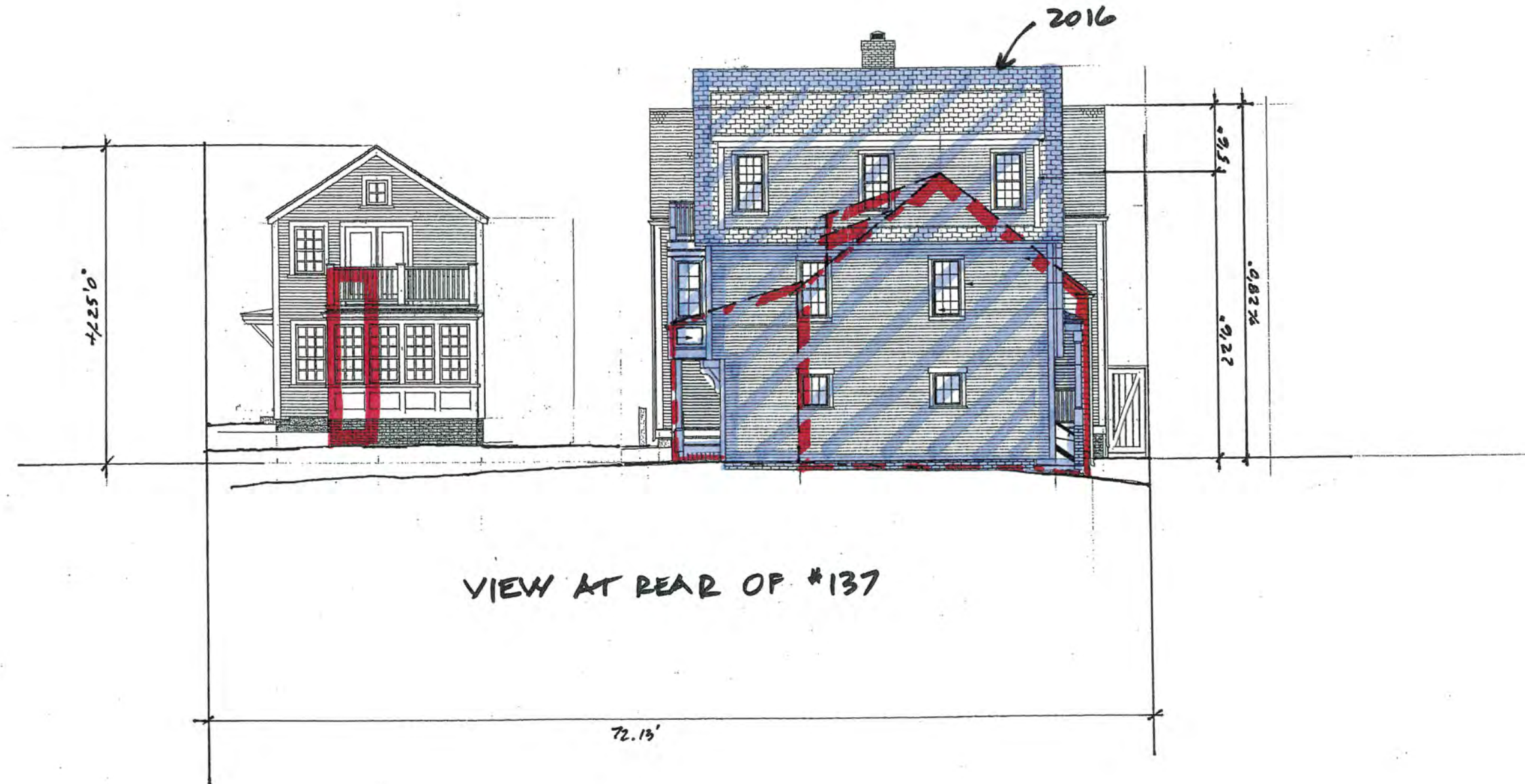
SPEAKING IN FAVOR OF THE PETITION

The applicant Mark Hepp stated that his attorney met with the City Attorney and was told that the previous two owners did not get building permits. He said he also owned the

2016 PROPOSAL OVERLAYED TO CURRENT PROPOSAL



2016 PROPOSAL OVERLAYED TO CURRENT PROPOSAL



VIEW AT REAR OF #137

2016 PROPOSAL OVERLAYED TO CURRENT PROPOSAL



ONE COMMERCIAL

— A DIVISION OF —
BRICK & BARN
REAL ESTATE GROUP



October 4, 2018

Chairman David Rheume
Zoning Board of Adjustment
City of Portsmouth
1 Junkins Ave
Portsmouth NH 03801

Re: 127 & 137 High Street

Dear Chairman Rheume,

I am writing to support the applicant's request for variance for the property located at 127 & 137 High Street. I am the owner of property at 410 The Hill and operated my commercial real estate brokerage out of the building from 2006 to 2018. I am very familiar with the subject property and have watched with interest over the last several years as the owner has proposed plans to renovate and further develop the property. This is the first time I have written in support of a plan for the property.

I think this is a reasonable use of the property and an excellent plan architecturally. I am happy to see the residential use of the building at 137 High Street moved to the rear portion of the lot and replaced with office use in keeping with zoning and surrounding property uses, particularly on The Hill. I am impressed with the proposed renovation plan of the existing buildings and plan for an added structure. The proposal seems in keeping with the scale and appearance of surrounding properties; I think it fits in very well.

I believe this proposed project will not only positively benefit direct abutters like myself and my neighbors but the entire neighborhood. In my professional opinion it will enhance property values and generally make the area a nicer place in which to live and work. Thank you for considering my opinion.

Sincerely,


Robert Marchewka

Quechee Office
1171 Murphys Road
Quechee, VT 05059
(802) 295-7525

www.brickandbarngroup.com

Portsmouth Office
51 Islington Street, Suite 2
Portsmouth, NH 03801
(603) 373 8725