

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
Kevin M. Baum, Esquire
DATE: July 28, 2021
Re: Applicant: Kung Food, LLC
Owner: Lucky Thirteen Properties, LLC
Property: 361 Islington Street
Tax Map 144, Lot 23
CD4-L2 Zoning District

Dear Chairman Rheaume and Members of the Zoning Board of Adjustment (“ZBA”):

On behalf of the applicant, Kung Food, LLC (“Applicant” or “Kung Food”), we are pleased to submit this Memorandum and exhibits in support of the requested Variances to permit the redevelopment of the former Getty Station on the above-referenced property (the “Property”) for restaurant use.

I. EXHIBITS

1. Board of Adjustment Site Plan – issued by Altus Engineering, Inc.
2. Exterior Elevations – by Market Square Architects.
3. Site Photographs.
 - Street view & aerial views
 - Existing building conditions and surrounding area (from HDC Work Session)
4. City GIS Map – showing the property and surrounding area zones.
5. Tax Map 144.
6. 12/22/17 ZBA Notice of Decision & Minutes – previously granting relief for Lexie’s to operate on the Property.
7. 9/21/18 ZBA Notice of Decision – previously granting relief for a food truck on the Property.

II. PROPERTY/PROJECT

The Property is a small, approximately 0.35 acre, parcel located at the corner of Islington and Cabot Streets. **Exhibit 1.** It is currently developed with a long-closed Getty gas station, including the former gas station building (office and garage bays) and canopy. **Id.;** **Exhibit 3.** Until recently, the Property has remained vacant and unused. In December 2017 this Board granted approval for multiple variances to permit the redevelopment of the site for a Lexie’s restaurant, noting the fit with the City’s Master Plan and vision for the Islington Street corridor and recognizing repurposing the existing building under current zoning. **Exhibit 6.** Lexie’s did not ultimately develop the Property. The ZBA, in September 2018, later granted relief for the use of

a food truck on the lot, which likewise noted the difficulty of developing the site under the current ordinance. **Exhibit 7.** The food truck operated until 2020, and based on conversations with City Staff, without any identified complaint from the surrounding neighbors.

Kung Food now proposes to renovate the existing building and canopy area to allow for a new restaurant with both indoor and outdoor seating. Proposed renovations include a small, ±100 square foot, addition on the left (west) side of the building, updating the building to allow for restaurant use, and the addition of landscaping and removal of asphalt throughout the lot, which is now virtually all impervious, resulting in a significant improvement of the open space from the current 5.7% to 17.4%. The proposal is largely similar to the previously approved Lexie’s design in that it repurposes the existing structures with the footprint of the existing building will be virtually unchanged. However, unlike Lexie’s the canopy area will remain open as outdoor seating and the project will provide additional landscaping and greenspace.

Due to the limited space available on the Property and layout of the long-existing improvements, relief is required to permit redevelopment for restaurant use, as noted in Section III below. This relief largely mirrors the relief previously granted in 2017. Since that time, conditions have not changed nor has the Portsmouth Zoning Ordinance (“PZO”) been amended in any way contrary to the relief previously granted, with the notable exception of the number of parking spaces, which are now permitted by Conditional Use Permit.¹ Pursuant to the relief previously granted by the ZBA, the Property has been used for food truck service without incident, providing further evidence that restaurant use is compatible with the lot and surrounding area. Accordingly, Kung Food respectfully requests this Board grant the requested relief to allow for restaurant use on this long-dormant property.

III. RELIEF REQUIRED

1. **PZO §10.440** – Variance to permit restaurant use with an occupant load of between 50 and 250 patrons.
2. **PZO §10.5A41.10A** – Variance to permit a ±100 square foot building addition ±29.4 feet from the side yard setback where a 5 foot minimum and 20 foot maximum setback

¹ If the requested relief is granted, Kung Food intends to seek a conditional use permit from the Planning Board for parking, along with site plan review approval.

is required. Strict compliance would result in a significantly larger structure and would eliminate emergency access and drive aisle negatively impacting traffic flow.

3. **PZO §10.5A41.10A** – Variance to permit 17.4% open space where 5.7% currently exists and 25% is required.
4. **PZO §10.5A44.31** – Variance to permit parking to the side and front of the existing building façade.
5. **PZO §10.5A44.32** – Variance to permit parking unscreened by a building or streetscreen (fence or wall).
6. **PZO §10.575** – Variance to permit a dumpster within 20 feet of a residential zoned lot or within 10 feet of any lot line.
7. **PZO §10.1113.20** – Variance to permit parking in a required front yard between a building and a street.

IV. VARIANCE REQUIREMENTS

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

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

The purpose of the Portsmouth Zoning Ordinance as set forth in PZO §10.121 is “to promote the health, safety and the general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan... [by] regulating”:

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The proposal repurposes an existing long-dormant property.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The proposal utilizes the existing structures; open space, which is currently virtually non-existent, is greatly improved.

3. The design of facilities for vehicular access, circulation, parking and loading – Traffic circulation is provided around the existing building utilizing both Islington and Cabot Streets. Traffic will be further vetted as part of the Planning Board review process.
4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – Outdoor lighting will be designed to limit impact to abutting properties. Any noise will be consistent with the previously approved restaurant and food truck uses of the Property. Stormwater will be improved by the removal of existing asphalt and increased open space. The project will be fully vetted by the Planning Board.
5. The preservation and enhancement of the visual environment – The project will renovate the existing structures on the Property and allow for updated and to code structures. The project will add landscaping and increased green space on the Property.
6. The preservation of historic districts, and buildings and structures of historic or architectural interest – The proposal preserves and innovatively reuses the long-existing Getty building and canopy. The Property is located in the Historic District and will receive Historic District Commission (“HDC”) review.
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – The Property is located on Islington Street in a densely developed area. To the extent the project impacts natural resources, it will be an improvement due to the removal of existing asphalt and increased open space.

Based upon the foregoing, none of the variances “in a marked degree conflict with the ordinance such that they violate the ordinance’s basic zoning objectives.” *Malachy Glen, supra*, which also held:

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

The Property is located on Islington Street in a densely developed area of the City. **Exhibit 3-4.** Through the reuse of the existing, long-vacant building, the Property will be refreshed, consistent with other nearby restaurants and retail facilities in the vibrant Islington Street corridor. The proposed restaurant use is also consistent with the previously approved variances for Lexie’s and with the prior food truck use on the property. The project will be further vetted by both the Planning Board and HDC. Accordingly, granting each requested variance will neither “alter the essential character of the locality,” nor “threaten the public health, safety or welfare.”

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

The proposal reuses a long-vacant building and replaces the vacant and derelict gas station on the Property. The existing structures will remain but will be updated and refreshed for a new use, compatible with other restaurants and commercial uses along the Islington Street corridor.

Exhibit 3. Landscaping and open space will be added to the current almost entirely impervious lot. Parking is consistent with other redeveloped commercial lots along Islington Street. In light of these factors, granting the requested variance will not diminish surrounding property values.

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

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

The Property is small, at 0.35 acres, with a long vacant building that predates the implementation of the CD4-L2 Zone. Little, if anything, can be done on the Property absent relief, especially absent the removal of the existing building and structures. The Property is also burdened by access easements to the left (west) side of the lot, further restricting development on the lot. The lot, as it currently exists, is almost entirely developed with buildings and asphalt.

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

The Property has pre-existing conditions that pre-date current zoning. CD4-L2 zoning requirements cannot be met on the Property without demolition of the existing structures and building new. Compliance with the ordinance would require greater build-out of the parcel with more impact to surrounding properties. Conversely, the proposal allows for adaptive reuse the long-standing building and canopy. It adds landscaping and additional open space to what is currently an almost entirely paved lot. The proposed restaurant use, with both indoor and outdoor seating and off-street parking, complements the surrounding Islington corridor area and is consistent with the overall intent of the Master Plan and the CD4-L2 Zone, which is intended “[t]o promote the development of walkable, mixed-use, human-scaled places...” PZO §10.410. Off street parking cannot occur in compliance with the ordinance absent demolition or reconstruction of the existing structures. Allowing parking without adding streetscreening (wall or fence) will keep the newly landscaped lot visually open and maintain sight lines for ingress and egress to Islington and Cabot Streets. Accordingly, there is no fair and substantial relationship between the general public purposes of the PZO and its specific 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). Restaurant use is permitted within the CD4-L2 Zone. The proposal creatively readapts a long dormant property with a new use compatible with the area. Accordingly, Kung Food’s proposed use of the Property is reasonable.

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

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. *Harborside Associates, L.P. v. Parade Residence Hotel, L.L.C.*, 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” *Malachy Glen, supra* at 109. “The right to use and enjoy one’s property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; *Town of Chesterfield v. Brooks*, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man’s property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. *L. Grossman & Sons, Inc. v. Town of Gilford*, 118 N.H. 480, 482 (1978). “Property” in the constitutional sense has been interpreted to mean not the tangible property itself, but rather the right to possess, use, enjoy and dispose of it. *Burrows v. City of Keene*, 121 N.H. 590, 597 (1981). (emphasis added).

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

Granting the requested variance allows for the creative and productive reuse of a long dormant property in a manner consistent with walkable, mixed-use purposes of the zoning district and surrounding area. Denial results in the continued disuse of this long, mostly vacant parcel. Accordingly, there is no benefit to the public that outweighs the harm to the owner if the requested relief is not granted. Denial would result in significant harm to the Applicant and the public.

V. CONCLUSION

For all the reasons stated, Kung Food respectfully requests that the Portsmouth Zoning Board of Adjustment grant the submitted variance requests to permit the development of a restaurant on this long-dormant property.

Respectfully submitted,
KUNG FOOD, LLC

By: _____
R. Timothy Phoenix, Esquire
Kevin M. Baum, Esquire

NOT FOR CONSTRUCTION

ISSUED FOR:
BOARD OF ADJUSTMENT

ISSUE DATE:
JULY 28, 2021

REVISIONS
NO. DESCRIPTION BY DATE
0 BOARD OF ADJUSTMENT EBS 07/28/21

DRAWN BY: EBS
APPROVED BY: EDW
DRAWING FILE: 5211-SITE.dwg

SCALE:
22" x 34" - 1" = 10'
11" x 17" - 1" = 20'

OWNER:
LUCKY THIRTEEN PROPERTIES, LLC
P.O. BOX 4780
PORTSMOUTH, NH 03802-4780

APPLICANT:
KUNG FOOD, LLC
10 POLLOCK DRIVE
RYE, NH 03870

PROJECT:
KING FU TACO
361 ISLINGTON STREET
PORTSMOUTH, NH
MAP 144 LOT 23

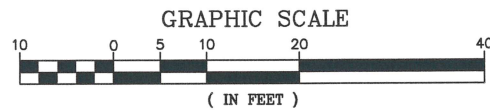
TITLE:
BOARD OF ADJUSTMENT SITE PLAN

SHEET NUMBER:
1 OF 1



SITE NOTES

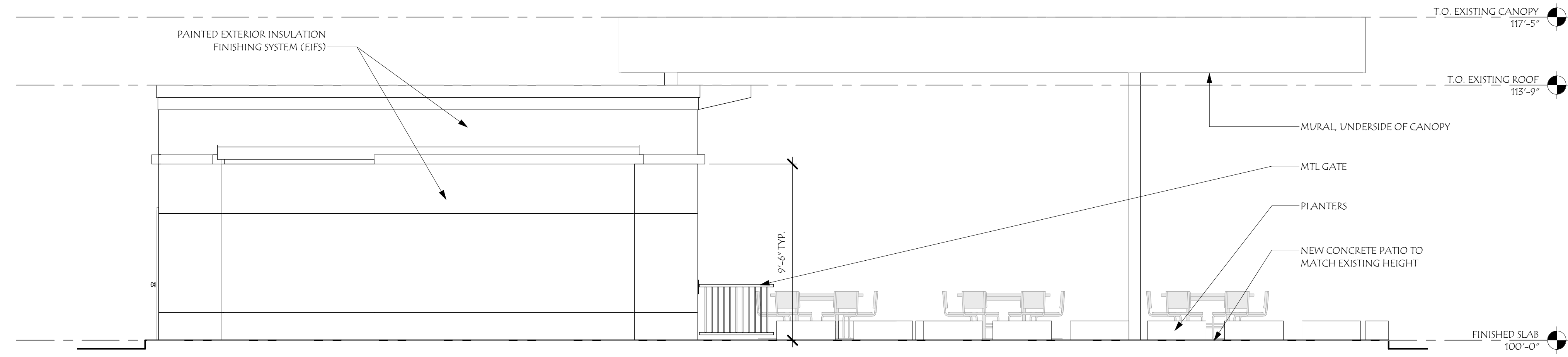
- DESIGN INTENT - THIS PLAN SET IS INTENDED TO DEPICT THE REDEVELOPMENT OF THE SITE FOR A RESTAURANT USE.
- PLAN REFERENCE: "EXISTING CONDITIONS PLAN", DATED DECEMBER 10, 2012, BY JAMES VERRA & ASSOCIATES, INC.
- LOT AREA: ±15,114 S.F. (±0.35 ACRES)
- ZONE: CHARACTER DISTRICT 4 - L2 (CD4-L2) HISTORIC DISTRICT
- DIMENSIONAL REQUIREMENTS - CD4-L2:**
FRONT YARD SETBACK: 15' (MAX.) - PRIMARY (ISLINGTON ST.)
12' (MAX.) - SECONDARY (CABOT ST.)
SIDE YARD SETBACK: 5' (MIN.) - 20' (MAX.)
REAR YARD SETBACK: GREATER OF 5' OR 10' FROM CL OF ALLEY
FRONT LOT LINE BUILDOUT: 60% (MIN.) - 80% (MAX.)
MAX. BUILDING COVERAGE: 60% (9.8% EXISTING)
MAX. BUILDING FOOTPRINT: 2,500 S.F. (1,497 S.F. PROPOSED)
MIN. LOT AREA: 3,000 S.F. (15,114 S.F. EXISTING)
MIN. OPEN SPACE: 25% (5.7% EXISTING, 17.4% PROPOSED)
BUILDING HEIGHT: 2 STORIES (SHORT 3RD) OR 35' (17.5' EXISTING)
- PARKING REQUIREMENTS:**
RESTAURANT: 1 SPACE PER 100 S.F. GFA
1,485 S.F. BUILDING + 1,525 S.F. PATIO = 3,010 S.F.
3,010 S.F. / 100 = 30 SPACES
TOTAL PARKING REQUIRED = 30 SPACES
TOTAL PARKING PROVIDED = 15 SPACES (15 SPACE DEFICIT)
- SECTION 10.440 - VARIANCE REQUIRED FOR RESTAURANT USE 9.42 WITH AN OCCUPANT LOAD BETWEEN 50 AND 250 PATRONS.
- SECTION 10.575 - VARIANCE REQUIRED FOR DUMPSTER WITHIN 20' OF A RESIDENTIALLY ZONED LOT AND 10' OF A LOT LINE.
- SECTION 10.5A41.10A - VARIANCE REQUIRED FOR BUILDING ADDITION THAT DOES NOT MEET THE REQUIRED MAXIMUM SIDE YARD SETBACK.
- SECTION 10.5A41.10A - VARIANCE REQUIRED FOR OPEN SPACE LESS THAN THE REQUIRED MINIMUM.
- SECTION 10.5A44.31 - VARIANCE REQUIRED FOR PARKING LOCATED BETWEEN A BUILDING AND A STREET.
- SECTION 10.5A44.32 - VARIANCE REQUIRED TO ALLOW PARKING TO BE UNSCREENED FROM THE STREET.
- SECTION 10.1112.321 - CONDITIONAL USE PERMIT REQUIRED FOR LESS PARKING THAN THE REQUIRED MINIMUM.
- SECTION 10.1113.20 - VARIANCE REQUIRED FOR PARKING LOCATED IN A REQUIRED FRONT YARD AND BETWEEN A BUILDING AND A STREET.



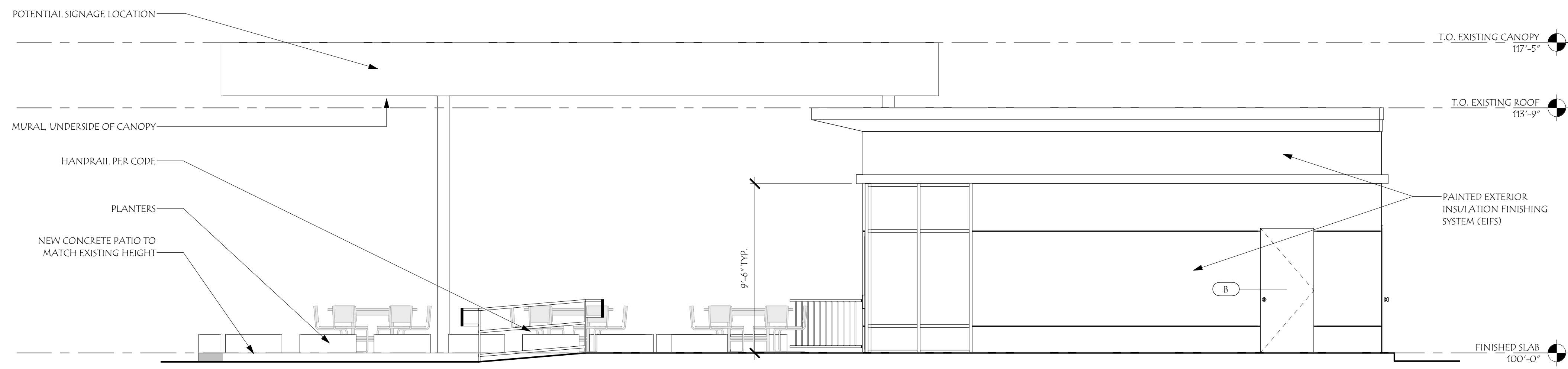
P4881

NOT FOR CONSTRUCTION

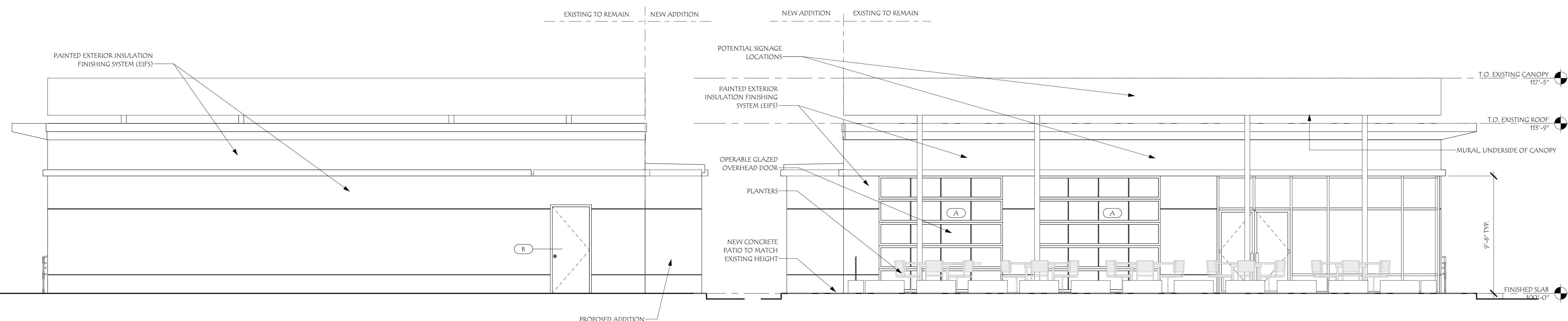
Date	
Revisions:	Description
1/4" = 1'-0"	PS
Drawn By:	SNH
Checked By:	2021069
Project No.:	SCHEMATIC DESIGN
Date:	WORKSESSION JULY 2021
Title:	EXTERIOR ELEVATIONS
	A2.00



3 WEST ELEVATION
 SCALE: 1/4" = 1'-0"



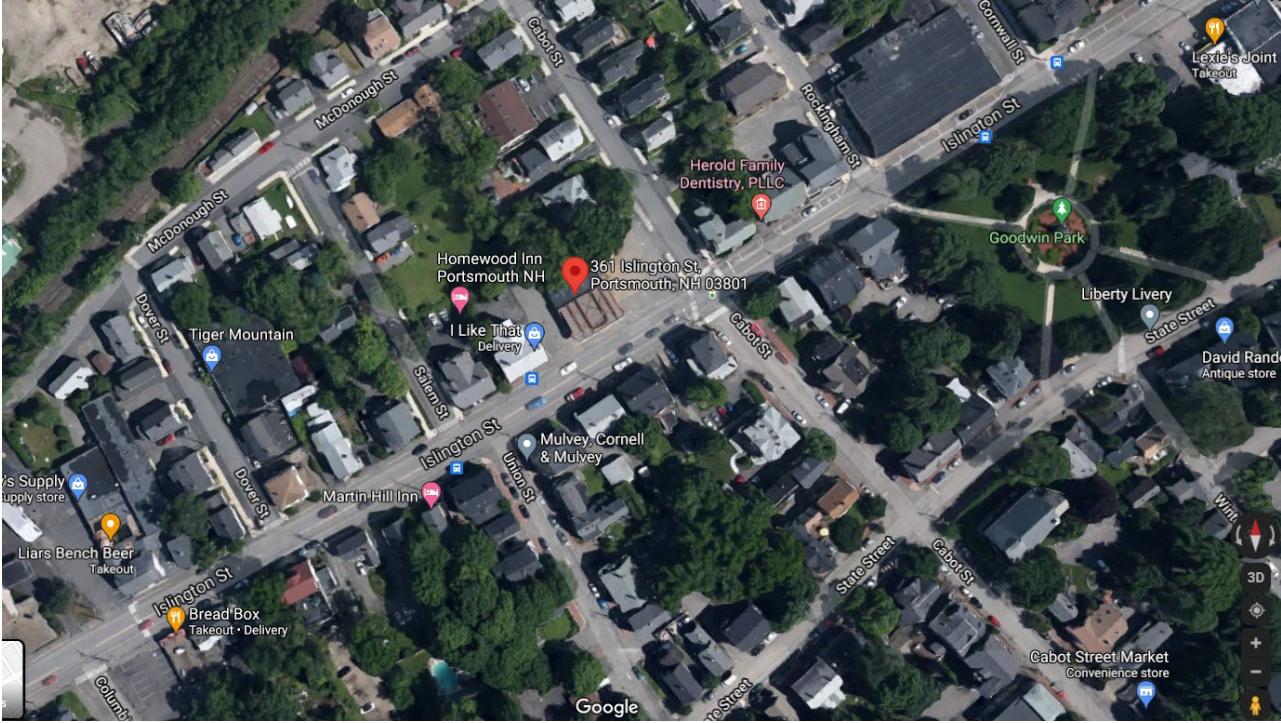
2 EAST ELEVATION
 SCALE: 1/4" = 1'-0"



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

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

**Exhibit 3
Site Photographs**



Aerial View of Property



Aerial View of Property

**Exhibit 3
Site Photographs**



View of Property from Islington Street



View of Property from Cabot Street

GENERAL PROJECT DESCRIPTION:

THIS PROJECT CONSISTS OF A SINGLE LOT ON THE CORNER OF ISLINGTON STREET AND CABOT STREET. THE LOT CURRENTLY CONTAINS A FORMER GAS STATION THAT INCLUDES A SINGLE STRUCTURE WITH AN EXISTING CANOPY. THERE WILL BE MINOR MODIFICATIONS TO THE EXTERIOR OF THE STRUCTURE TO ACCOMMODATE FENESTRATION AND KITCHEN EQUIPMENT.

ZONING SUMMARY:

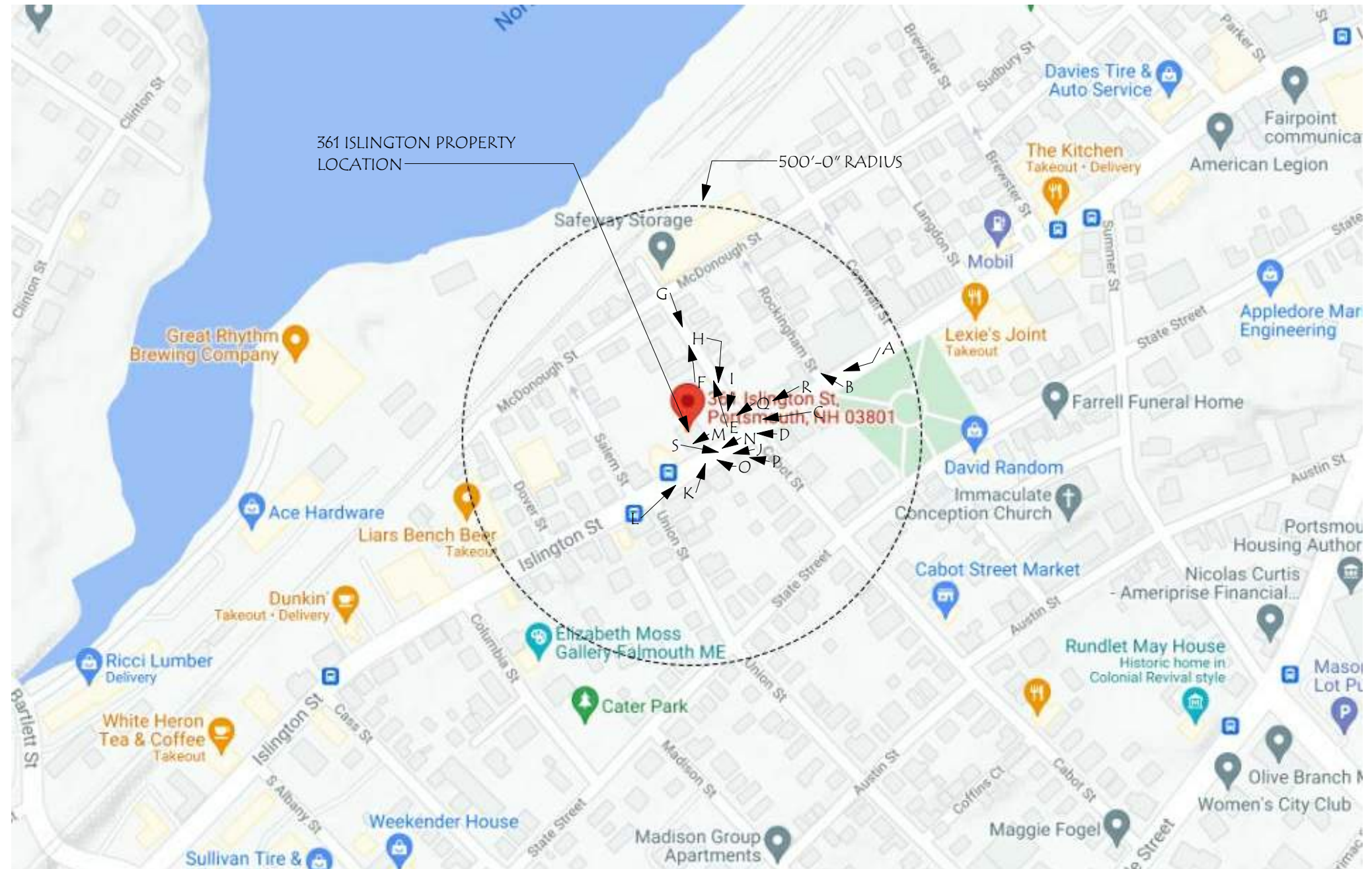
ZONING DISTRICT: CD4-L2

LOT SIZE: 15,114

BUILDING HEIGHT: 35'-0" ALLOWED

GROUND FLOOR ABOVE SIDEWALK: 3'-0"

MIN GROUND STORY HEIGHT: 11'0"



PROJECT 2021XXX

361 ISLINGTON - HISTORIC DISTRICT COMMISSION

COVER SHEET

WORKSESSION
JULY 2021



ARCHITECTS
© 2021 market square architects
PH: 603.501.0202



A - ISLINGTON STREET



B - ISLINGTON STREET



C - ISLINGTON STREET



D - ISLINGTON STREET



E - CABOT STREET



F - CABOT STREET



G - CABOT STREET



H - CABOT STREET



I - CABOT STREET

PROJECT 2021XXX

361 ISLINGTON - HISTORIC DISTRICT COMMISSION

CONTEXT PHOTOS

WORKSESSION
JULY 2021



ARCHITECTS
© 2021 market square architects
PH: 603.501.0202



J - ISLINGTON STREET



K - ISLINGTON STREET



L - ISLINGTON STREET



M - ISLINGTON STREET



N - ISLINGTON STREET



O - ISLINGTON STREET



P - ISLINGTON STREET



Q - ISLINGTON STREET



R - ISLINGTON STREET



S - 361 ISLINGTON STREET

PROJECT 2021XXX

361 ISLINGTON - HISTORIC DISTRICT COMMISSION

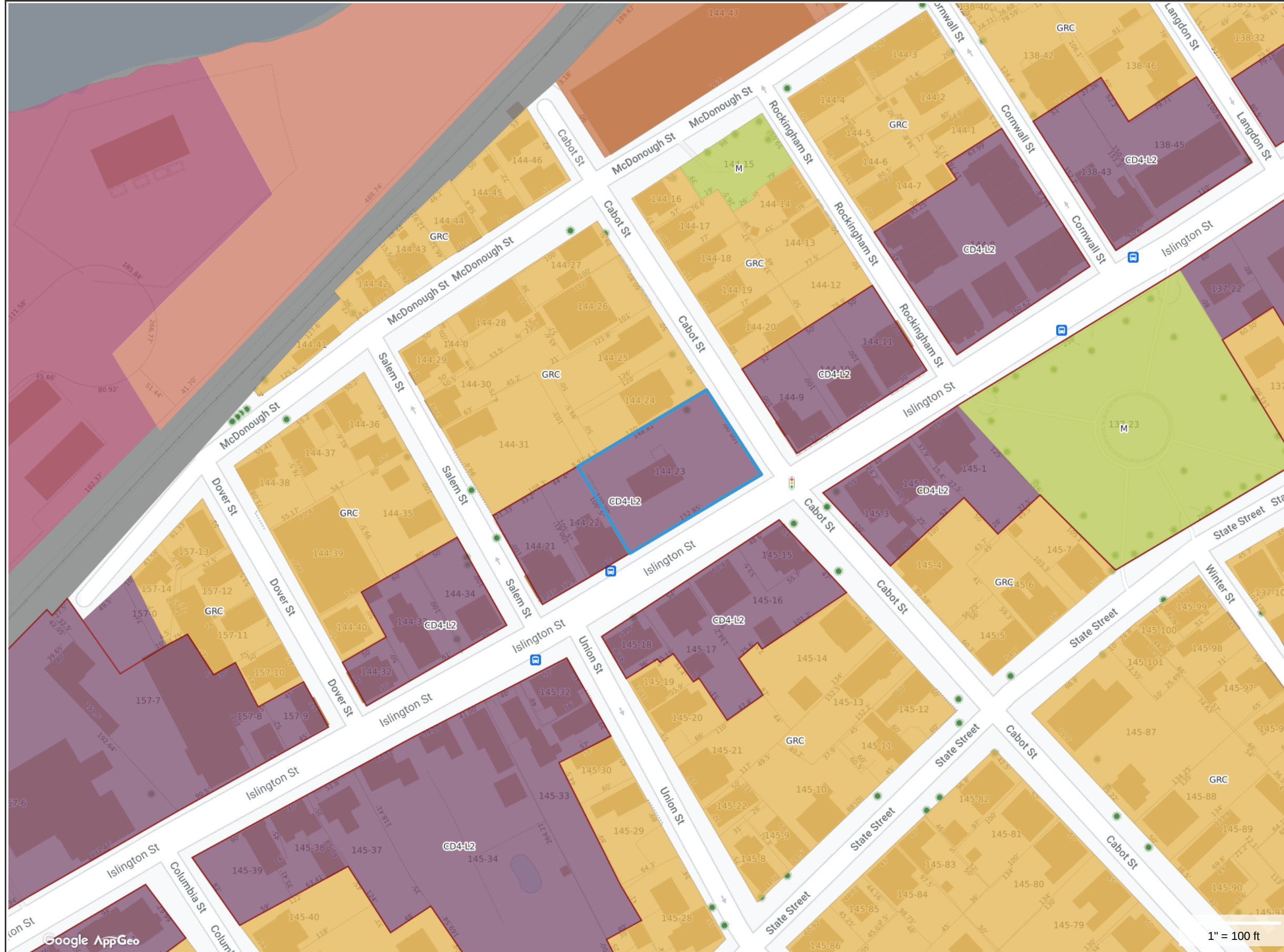
CONTEXT PHOTOS

WORKSESSION
JULY 2021



ARCHITECTS
© 2021 market square architects
PH: 603.501.0202

361 Islington Street



Property Information
Property ID 0144-0023-0000
Location 361 ISLINGTON ST
Owner LUCKY THIRTEEN PROPERTIES LLC

Exhibit 4



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

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

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

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

Map Theme Legends

Zoning

- Residential Districts**
 - R Rural
 - SRA Single Residence A
 - SRB Single Residence B
 - GRA General Residence A
 - GRB General Residence B
 - GRC General Residence C
 - GA/MH Garden Apartment/Mobile Home Park
- Mixed Residential Districts**
 - MRO Mixed Residential Office
 - MRB Mixed Residential Business
 - G1 Gateway Corridor
 - G2 Gateway Center
- Business Districts**
 - GB General Business
 - B Business
 - WB Waterfront Business
- Industrial Districts**
 - OR Office Research
 - I Industrial
 - WI Waterfront Industrial
- Airport Districts**
 - AIR Airport
 - AI Airport Industrial
 - PI Pease Industrial
 - ABC Airport Business Commercial
- Conservation Districts**
 - M Municipal
 - NRP Natural Resource Protection
- Character Districts**
 - CD5 Character District 5
 - CD4 Character District 4
 - CD4W Character District 4-B
 - CD4-L1 Character District 4-L1
 - CD4-L2 Character District 4-L2
- Civic District**
 - Civic District
- Municipal District**
 - Municipal District
- Overlay Districts**
 - OLOD Osprey Landing Overlay District
 - Downtown Overlay District
 - Historic District

City of Portsmouth

North Mill Pond

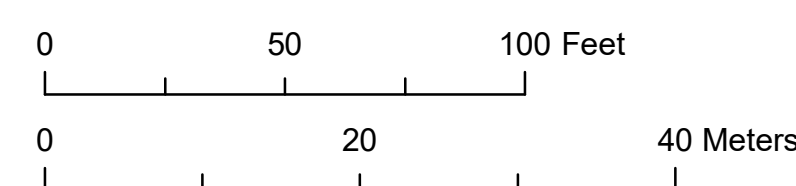
Partial Legend

See the cover sheet for the complete legend.

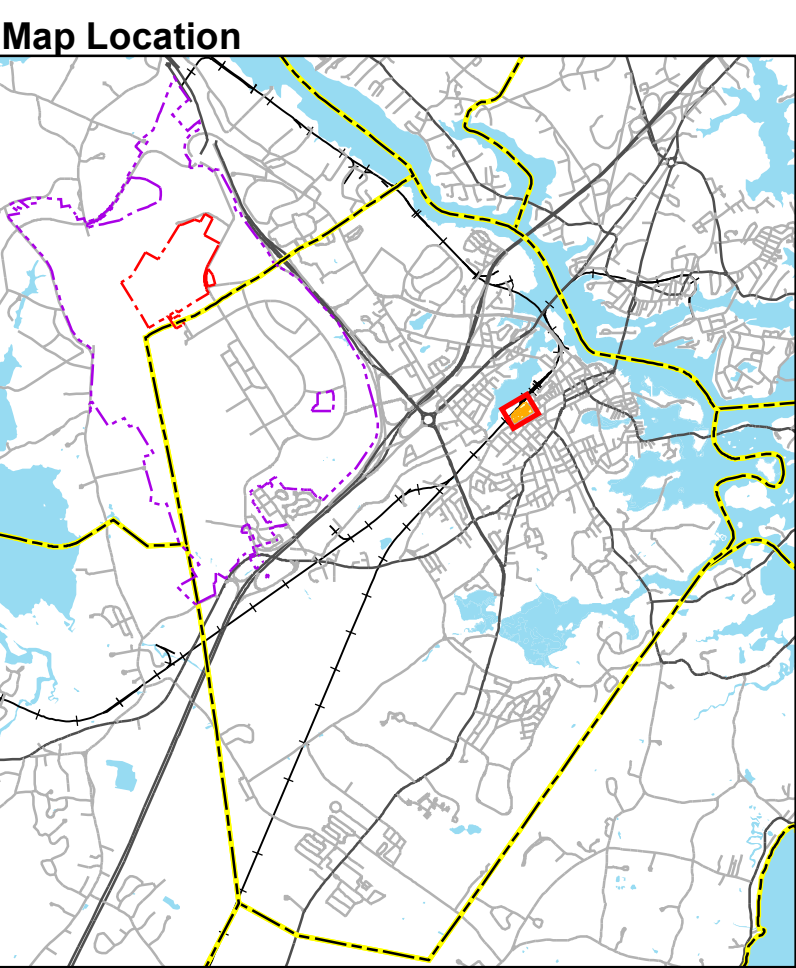
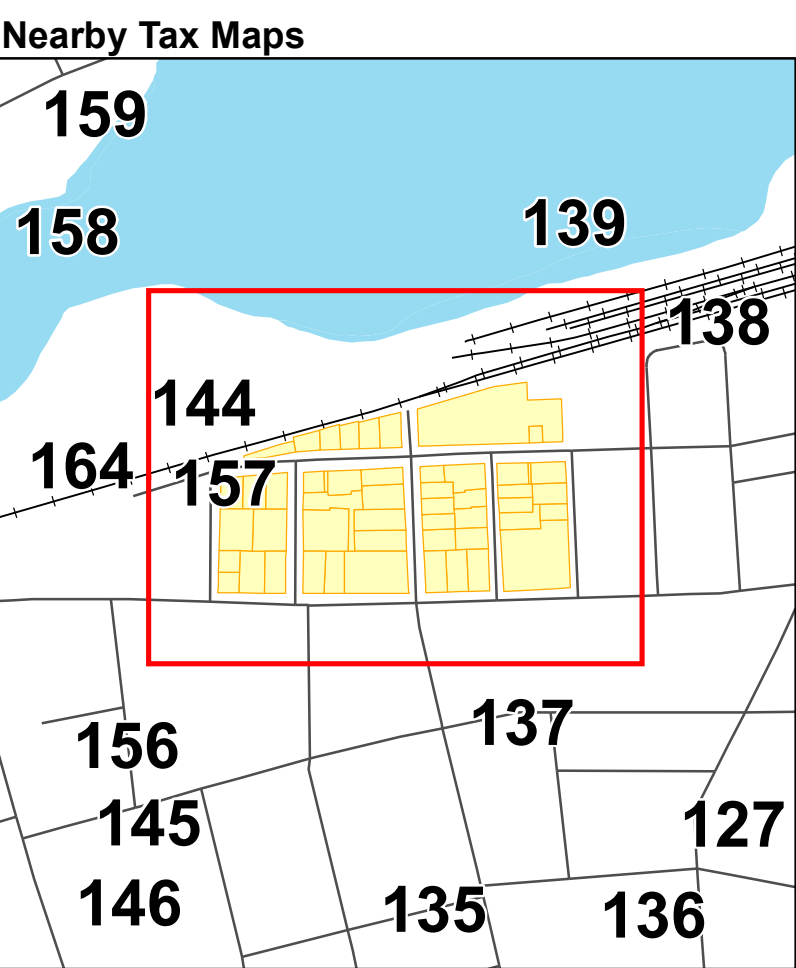
- 7-5A** Lot or lot-unit number
- 2.56 ac Parcel area in acres (ac) or square feet (sf)
- 25 Address number
- 233-137 Parcel number from a neighboring map
- 68' Parcel line dimension
- SIMS AVE** Street name

- Parcel/Parcel boundary
- Parcel/ROW boundary
- Water boundary
- Structure (1994 data)
- Parcel covered by this map
- Parcel from a neighboring map (see other map for current status)

Exhibit 5

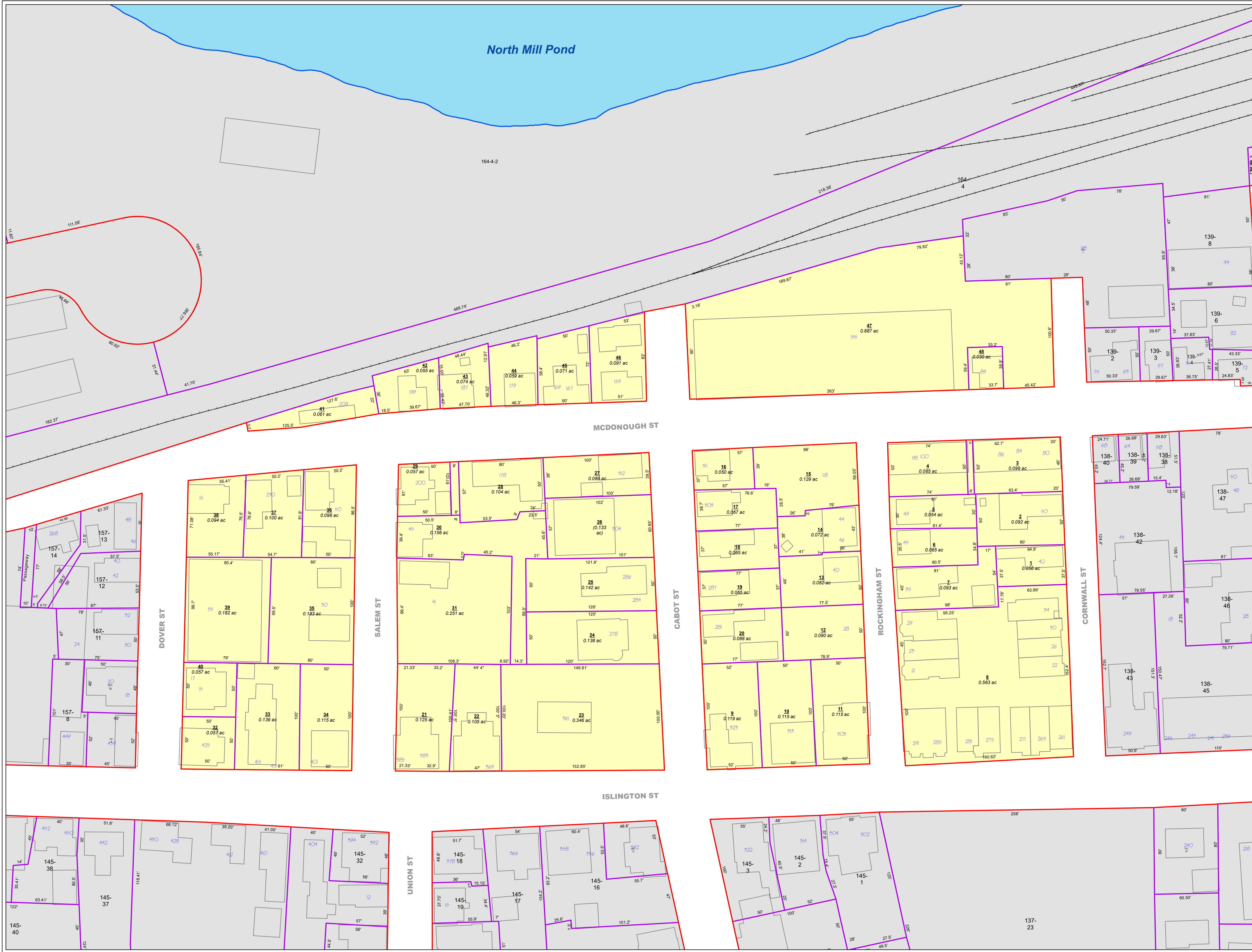


This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over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



Portsmouth, New Hampshire
2020

Tax Map 144





RECEIVED DEC 28 2017
RECEIVED DEC 28 2017

Exhibit 6

CITY OF PORTSMOUTH

Community Development Department
(603) 610-7281

Planning Department
(603) 610-7216

PLANNING DEPARTMENT

December 22, 2017

Lucky Thirteen Properties, LLC
PO Box 4780
Portsmouth, New Hampshire 03802-4780

Re: Property at 361 Islington Street, Permit #26440
Assessor Plan 144, Lot 23

Dear Applicant:

The Board of Adjustment at its regular meeting on December 19, 2017 completed its consideration of your application described as follows:

Application:

5) Case 12-5

Petitioners: Lucky Thirteen Properties LLC, owner, Lexie's Portsmouth, LLC, applicant.

Property: 361 Islington Street

Assessor Plan: Map 144, Lot 23

Zoning District: Character District 4- Limited 2 (CD4-L2)

Description: Convert existing building plus 90 s.f. addition to restaurant use.

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

1. A Variance from Section 10.5A41.10A to allow the following: a) a secondary front yard of 66'± where 12' is the maximum permitted; b) a 30'± left side yard setback where 20' is the maximum permitted; c) 14.9%± open space where 25% is the minimum required; and d) shopfront façade glazing of 47%± where 17% exists and 70% is the minimum required.
2. A Variance from Section 10.1113.20 to allow off-street parking to be located in a required front yard between the principal building and a street.

3. A Variance from Section 10.5A44.31 to allow off-street parking spaces to be located less than 20' behind the façade of a principal building.
4. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Action:

The Board voted to **grant** the petition as presented and advertised.

Review Criteria:

The petition was granted for the following reasons:

- As an existing and allowed use in this district the proposal will not alter the essential character of the neighborhood. The proposed project fits into the City's master plan and its vision for the Islington Street corridor so that granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed.
- The substantial justice balance test tips to the applicants who are making an effort to reuse and improve the property with design aspects to mitigate any possible detriment to the general public from the intensity of the use, light, sound, etc.
- Improving the property with a tasteful restaurant destination should benefit the value of this property as well as surrounding properties.
- The former use predated current zoning and with the building repurposed under modern requirements, a hardship is created due to the existing location on the lot and the need to balance the relief required for setbacks, open space and parking.

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

Lucky Thirteen Properties, LLC - Page Three
December 22, 2017

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

Very truly yours,

A handwritten signature in black ink, appearing to read "David Rheame". The signature is fluid and cursive, with a large initial "D" and "R".

David Rheame, Chairman
Board of Adjustment

mek

c: Robert Marsilia, Chief Building Inspector
Roseann Maurice-Lentz, City Assessor
Lexie's Portsmouth, LLC
John K. Bosen, Esq.



CITY OF PORTSMOUTH

Community Development Department
(603) 610-7281

Planning Department
(603) 610-7216

PLANNING DEPARTMENT

September 21, 2018

Lucky Thirteen Properties, LLC
361 Islington Street
Portsmouth, New Hampshire 03801

Re: Property at 361 Islington Street, Permit #32319
Assessor Plan 144, Lot 23

Dear Applicant:

The Board of Adjustment at its regular meeting on September 18, 2018 completed its consideration of your application described as follows:

Application:

C) Case 8-11

Petitioners: Petition of Lucky Thirteen Properties, LLC, owner, and Opendell Journey, LLC, applicant
Property: 361 Islington Street
Assessor Plan: Map 144, Lot 23
Zoning District: Character District 4-L2
Description: Operate a food truck style establishment.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 10.440 to allow a food truck style establishment.
Note: This petition was tabled at the August 21, 2018 meeting.

Action:

After voting to take the petition from the table, the Board then voted to **grant** the petition as presented and advertised with the following stipulations:

Stipulations:

- That only one food truck will be allowed on the property.
- That the power source for the food truck will be the electrical supply in the existing building and not from a generator or engine in the truck
- That the food truck may only operate during the following times: after 11 a.m. on any day of the week; before 8 p.m. on Sunday through Thursday; and before 10 p.m. on Friday and Saturday.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest and the spirit of the ordinance will be observed. The essential character of this eclectic neighborhood will not be altered. The lot will retain the look of the former old gas station but with a food truck on it. There will be no threat to the public's health, safety or welfare and no injury to public rights. The proposal requires appropriate technical review of the amended site plan which will address details concerning parking, traffic ingress and egress, public safety and similar issues.
- Substantial justice will be done as the applicants will benefit by making use of the property. This property is in a zone that allows commercial uses and the proposal is a minimal development of the property consistent with or less intense than other allowed commercial uses.
- Granting the variance will not diminish the value of surrounding properties. The intensity of the proposed use is consistent with or less than other uses which could reasonably be expected for the property.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property, which include a difficult site that is limited in its development capability and options. For these reasons, there is no fair and substantial relationship between the purposes of the Ordinance provision and its application to the property. A restaurant use is allowed in this district and a food truck is a reasonable use in the Islington Street Corridor.

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

Lucky Thirteen Properties, LLC - Page Three
September 21, 2018

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

Very truly yours,

A handwritten signature in black ink, appearing to read "David Rheaume". The signature is fluid and cursive, with a large initial "D" and "R".

David Rheaume, Chairman
Board of Adjustment

mek

c: Robert Marsilia, Chief Building Inspector
Roseann Maurice-Lentz, City Assessor
Opendell Journey, LLC
John P. McGee, Jr., Esq.
Derek R. Durbin, Esq