

**ATTACHMENT TO APPLICATION FOR SPECIAL EXCEPTION**

RE:

Property Address: 2222 Lafayette Road, Portsmouth, NH  
Owner: KSC, LLC (Peter Chen, Manager)  
Applicant: Lafayette Animal Hospital, LLC

**Factual Background**

The Applicant is the New Hampshire limited liability company that owns and operates the existing Lafayette Animal Hospital currently located at 2059 Lafayette Rd. in Portsmouth. The Applicant wishes to move across the street to a new space located at 2222 Lafayette Rd. in Portsmouth. That address is a retail mall consisting of three single-story units, and the Applicant seeks to enter into a lease with the owner of that property for two of the three units consisting of a total of 3500 ft.<sup>2</sup>. One of the units is 1500 ft.<sup>2</sup> in the other unit is 3500 ft.<sup>2</sup>. The Applicant plans to renovate the space at a cost of an estimated \$500,000.

The premises at 2222 Lafayette Rd. are slightly larger than the existing space at 2059 Lafayette Rd. and will allow for an additional examination room, in the premises are all on one floor, rather than to in the current location. The business provides preventive and wellness care for small household pets, which typically involves wellness exams, vaccines, minor surgeries and dentistry. The pets rarely stay overnight at the facility will not board any pets and there will be no outdoor kennels.

On average, the existing Lafayette Animal Hospital sees 4 to 8 patients per hour on a busy day, and the typical customer will spend 30 minutes at the animal hospital. The hospital would be open six days a week from approximately 8 AM to 6 PM.

The Applicant employs two veterinarians and approximately 12 staff people.

The premises at 2222 Lafayette Rd. include 29 parking spaces.

The proposed location of the new animal hospital is in the G1 zone.

### Analysis

Veterinary care is permitted in the G1 zone by special exception. See Section 10.230 -232 of the Portsmouth Zoning Ordinance.

The Ordinance provides,

10.232.20 Special exceptions shall meet all of the following standards:

10.232.21 Standards as provided by this Ordinance for the particular use permitted by special exception;

10.232.22 No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;

10.232.23 No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;

10.232.24 No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;

10.232.25 No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and

10.232.26 No significant increase of stormwater runoff onto adjacent property or streets.

As the New Hampshire Supreme Court stated in *Hurley v. Town of Hollis*, 143 N.H. 567 (N.H. 1999),

"A special exception is a use permitted upon certain conditions as set forth in a town's zoning ordinance." *New London Land Use Assoc. v. New London Zoning Board*, 130 N.H. 510, 517, 543 A.2d 1385, 1388 (1988). To be entitled to a special exception, the applicant must present to the zoning board sufficient

evidence to support a finding that each requirement or condition for the exception, as listed in the ordinance, has been met. See *Jensen's, Inc. v. City of Dover*, 130 N.H. 761, 765, 547 A.2d 277, 280 (1988). If the conditions are met, the board must grant the special exception. *Cormier v. Town of Danville*, 142 N.H. 775, 777-78, 710 A.2d 401, 403 (1998).

Technically, "special exception" is a misnomer. See 15 P. Loughlin, *New Hampshire Practice, Land Use, Planning and Zoning* § 23.01, at 250 (2d ed.1993). When approved, it is not an exception to the ordinance but rather a permitted use under the terms of the ordinance. See *Geiss v. Bourassa*, 140 N.H. 629, 632, 670 A.2d 1038, 1040 (1996); see also 15 Loughlin, *supra* at 250. Consequently, while there is a long-standing policy of zoning to limit the expansion of nonconforming uses because their expansion tends to thwart the purposes of zoning, cf. *Peabody v. Town of Windham*, 142 N.H. 488, 493, 703 A.2d 886, 889 (1997), special exceptions fall outside the realm of such policy concerns. Special exceptions circumscribe a more flexible permission for use of property than variances and nonconforming uses. See *Geiss*, 140 N.H. at 632, 670 A.2d at 1040. Thus, in reviewing the zoning board's decision to grant or deny a special exception, the trial court may not apply the more stringent standard of review applicable [729 A.2d 1004] to variances or nonconforming uses. See *id.* Nor should the more stringent nonconforming use standard be used to discern the intent of the voters enacting the zoning ordinance.

The particular use in this case is permitted by special exception in accordance with the Ordinance.

No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials exists.

Since the Applicant is a business in the same neighborhood and has been operating there for 26 years without complaint, issue, or incident, it would appear that there would be no detrimental effect to property values in the neighborhood as a result of the Applicant moving across the street. Since the Applicant is currently located "in the neighborhood", then the essential characteristics of the neighborhood are not changing by simply moving across the street. The existing size and footprint of the building at 2222 Lafayette Rd. will not be changing. There is no issue regarding parking, access ways, owner, smoke, gas, dust, pollutants, noise, glare, heat, vibration or any outdoor storage of equipment, vehicles or other materials. The applicant will have no outdoor kennels.

The traffic that previously went in and out of the existing location of the Applicant's business on the east side of Lafayette Road at 2059 will simply be transferred across the street. There will be no traffic safety hazard or any substantial increase in the level of traffic congestion in the vicinity.

There will be no significant increase in stormwater runoff onto the adjacent property where the impermeable surface – the parking lot at 2222 Lafayette Rd. - will not be altered.

Attached hereto are the following supporting documents:

1. Site plan showing lot dimensions – printed from MapGeo
2. Exterior site plan showing the location of the proposed use
3. Site Plan (2002, for Variance application – shows parking spaces)
4. labeled photographs
5. Copy of Quitclaim Deed to current owner
6. Authorization of owner, signed by DotLoop

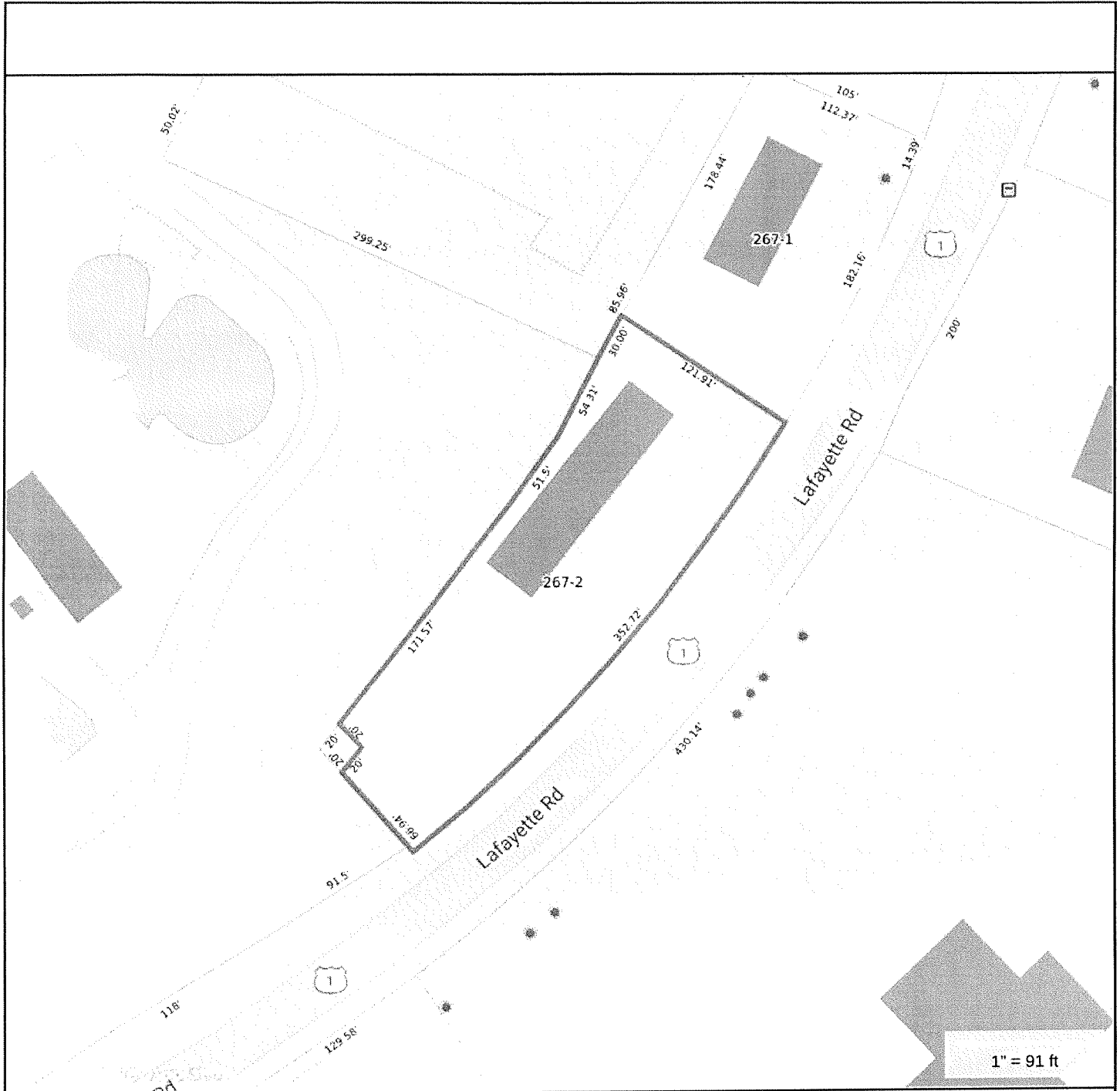
WHEREFORE, the Applicant respectfully requests that the Zoning Board of Adjustment grant a special exception for the use and occupancy at 2222 Lafayette Rd. in Portsmouth as a veterinary animal hospital.

Date: August 26, 2020

Respectfully submitted,  
Lafayette Animal Hospital, LLC  
By its attorneys,  
Coughlin, Rainboth, Murphy and  
Lown, PA

By: 

Bradley M. Lown – Bar No. 1518  
439 Middle Street  
Portsmouth, New Hampshire 03801  
(603) 431-1993  
lown@nhtrialattorneys.com



Property Information

Property ID 0267-0002-0000  
 Location 2222 LAFAYETTE RD  
 Owner KSC LLC



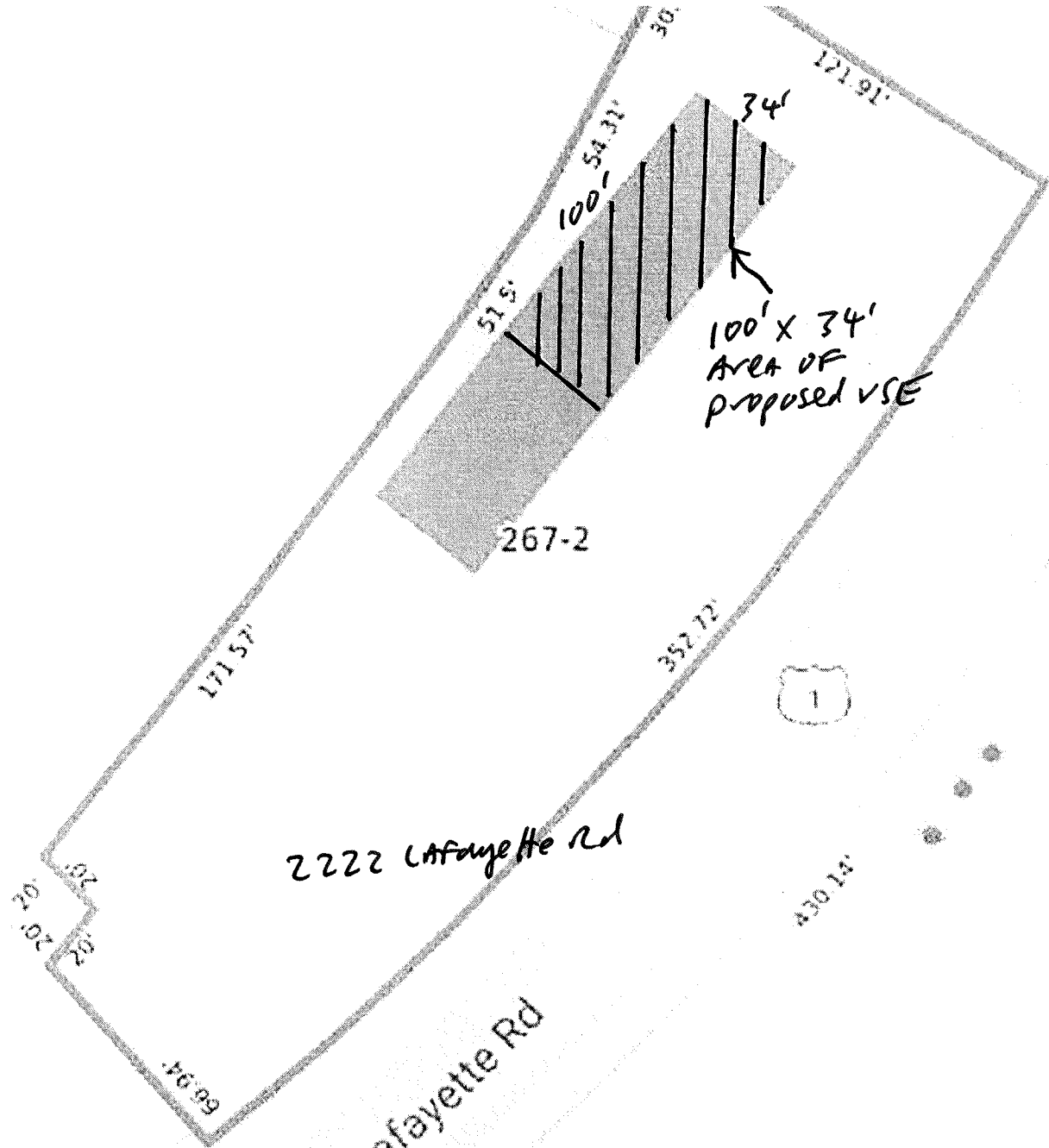
MAP FOR REFERENCE ONLY  
 NOT A LEGAL DOCUMENT

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

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

Subject Parcel  
 2222 Lafayette Rd

Lafayette Rd



2222 Lafayette Rd

Lafayette Rd



1



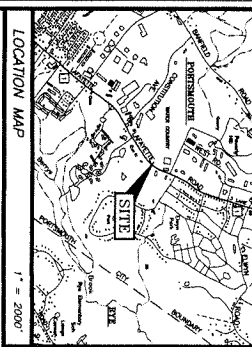
129.58'

91.5'

66.94'

20'  
20'  
20'



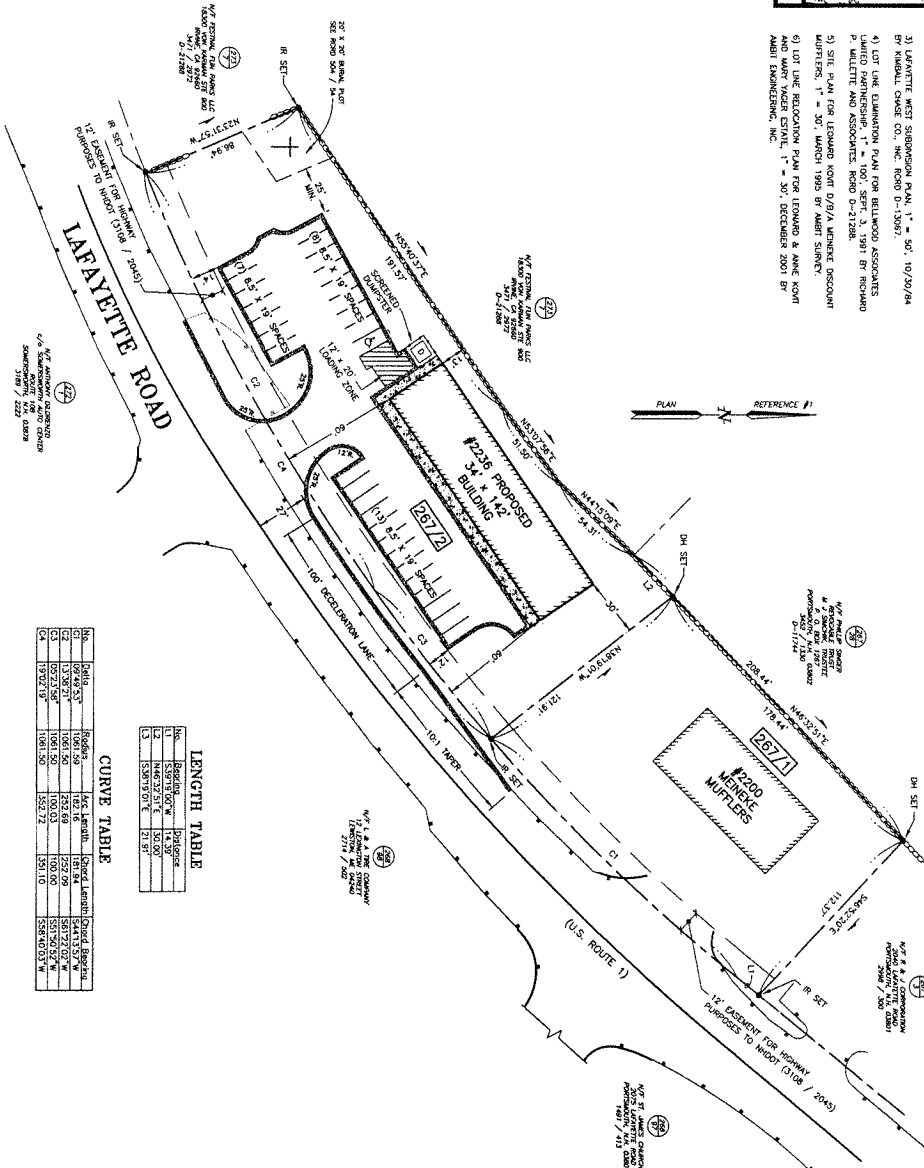


- LEGEND:**
- N/P NON OF PROPERTY
  - R/R RECORD
  - R/R/SK RECORD SURVEY
  - R/R/SK RECORD SURVEY
  - REGISTRY OF DEEDS
  - RECORD SURVEY
  - ROAD
  - 1" = 200'
  - IRON ROD FOUND
  - IRON PIPE FOUND
  - DRILL HOLE SET
  - STONE WALL

- PLAN REFERENCES:**
- LAFAYETTE WEST, PHASE II, SUBDIVISION PLAN, 1" = 200', LAFAYETTE ROAD.
  - LAFAYETTE WEST, PHASE II, SUBDIVISION PLAN, 1" = 200', 5/12/00 BOUNDARY CO. INC. ROAD D-1124.
  - LAFAYETTE WEST SUBDIVISION PLAN, 1" = 50', 10/20/94 BY HANCOCK COAST CO., INC. ROAD D-1387.
  - LOT LINE ELIMINATION PLAN FOR BELLEWOOD ASSOCIATES LIMITED PARTNERSHIP, 1" = 100', SEPT. 3, 1991 BY RICHARD P. BELLETTI AND ASSOCIATES, ROAD S-2126A.
  - SITE PLAN FOR EDWARD KOHN D/V/A WILKINSON DISCOUNT MARTIN, 1" = 30', MARCH 1992 BY AMET STANT.
  - LOT LINE RELOCATION PLAN FOR EDWARD & ANNE KOHN AND WALTER WASSER ESTIMATE, 1" = 30', DECEMBER 2001 BY AMET ENGINEERING, INC.

**PARKING CALCULATIONS:**

REQUIREMENT 1425 SF X 1/70 SF = 19 SPACES  
 TOTAL PROVIDED: 28  
 TOTAL REQUIRED: 28  
 TOTAL PROVIDED: 28 PLUS 1 HANDICAPPED



**CURVE TABLE**

Sta.	Delta	Radius	Arc Length	Chord Length	Chord Bearing
0	97° 49' 53"	1061.50	181.16	142.90	S 44° 13' 57" W
1	122° 32' 36"	1061.50	252.00	151.10	S 58° 10' 03" W
2	137° 52' 19"	1061.50	326.72	151.10	S 58° 10' 03" W

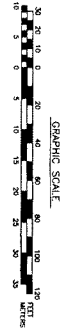
**LENGTH TABLE**

Station	Length
0+00 to 0+10	10.00
0+10 to 0+20	10.00
0+20 to 0+30	10.00
0+30 to 0+40	10.00
0+40 to 0+50	10.00
0+50 to 0+60	10.00
0+60 to 0+70	10.00
0+70 to 0+80	10.00
0+80 to 0+90	10.00
0+90 to 1+00	10.00
1+00 to 1+10	10.00
1+10 to 1+20	10.00
1+20 to 1+30	10.00
1+30 to 1+40	10.00
1+40 to 1+50	10.00
1+50 to 1+60	10.00
1+60 to 1+70	10.00
1+70 to 1+80	10.00
1+80 to 1+90	10.00
1+90 to 2+00	10.00
2+00 to 2+10	10.00
2+10 to 2+20	10.00
2+20 to 2+30	10.00
2+30 to 2+40	10.00
2+40 to 2+50	10.00
2+50 to 2+60	10.00
2+60 to 2+70	10.00
2+70 to 2+80	10.00
2+80 to 2+90	10.00
2+90 to 3+00	10.00
3+00 to 3+10	10.00
3+10 to 3+20	10.00
3+20 to 3+30	10.00
3+30 to 3+40	10.00
3+40 to 3+50	10.00
3+50 to 3+60	10.00
3+60 to 3+70	10.00
3+70 to 3+80	10.00
3+80 to 3+90	10.00
3+90 to 4+00	10.00

APPROVED BY THE PORTSMOUTH BOARD OF ADJUSTMENT

CHUBBY

DATE



**NOTES:**

- PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 297 AS LOT 2.
- OWNER'S OF RECORD:  
 EDWARD & ANNE KOHN  
 154 RAINBOW BROOK ROAD  
 PORTSMOUTH, NH 03843 (1991 / 2004)  
 &  
 WALTER WASSER ESTIMATE  
 P.O. BOX 1137  
 PORTSMOUTH, NH 03802  
 APPLICANT  
 BLUESTONE PROPERTIES, LLC  
 P.O. BOX 8698  
 PORTSMOUTH, NH 03802  
 4) EXISTING LOT AREA: 1098 SQUARED FEET (299 SQUARED FEET RELOCATION)  
 5) EXISTING LOT AREA: 1098 SQUARED FEET (299 SQUARED FEET RELOCATION)  
 6) DIMENSIONAL REQUIREMENTS:  
 MIN. LOT AREA: 42500 S.F.  
 MIN. LOT WIDTH: 120 FEET  
 SETBACKS: FRONT: 105 FEET (FROM LAFAYETTE RD)  
 SIDE: 30 FEET  
 REAR: 30 FEET  
 MAXIMUM STRUCTURE HEIGHT: 60 FEET  
 MAXIMUM STRUCTURE COVERAGE: 30%  
 MINIMUM OPEN SPACE: 20%  
 7) PARCELS ARE SERVED BY MUNICIPAL SEWER AND WATER.  
 8) EXISTING STRUCTURES ON LOT 2 WILL BE REMOVED PRIOR TO CONSTRUCTION (DEMOGRAPHY PLAN REQUIRED).  
 9) VARIANCE GRANTED ON APRIL 16, 2002 TO ALLOW LOT LINE RELOCATION BETWEEN LOTS 1 & 2.

**VARIANCE APPLICATION**  
 BLUESTONE  
 PROPERTIES, LLC  
 2236 LAFAYETTE ROAD  
 PORTSMOUTH, N.H.

NO.	ISSUED FOR COMMENT	DESCRIPTION	DATE
0			5/20/02

SCALE: 1" = 30'

**MAY 2002**

**VARIANCE SITE PLAN**

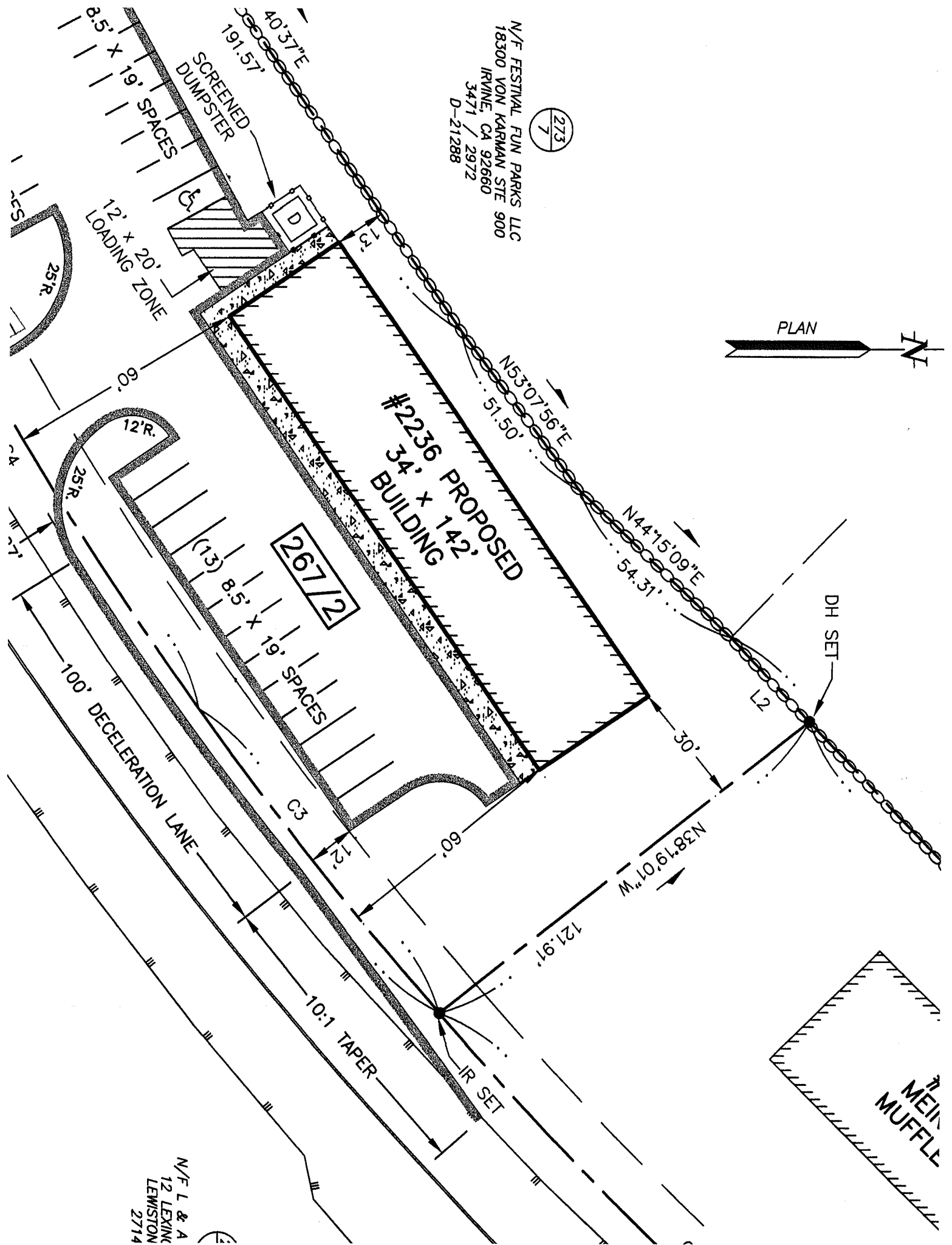
**C1**



N/F FESTIVAL FUN PARKS LLC  
18300 VON KARMAN STE 900  
IRVINE, CA 92660  
3471 / 2972  
D-21288



PLAN



N/F L & A  
12 LEXING  
LEWISTON  
2714





2222 Lafayette Rd

Portsmouth, NH 03801

Building



Property Information

Property ID 0267-0002-0000  
Location 2222 LAFAYETTE RD  
Owner KSC LLC



MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT

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

2222 Lafayette Rd  
Portsmouth NH

# Google Maps 2222 Lafayette Rd



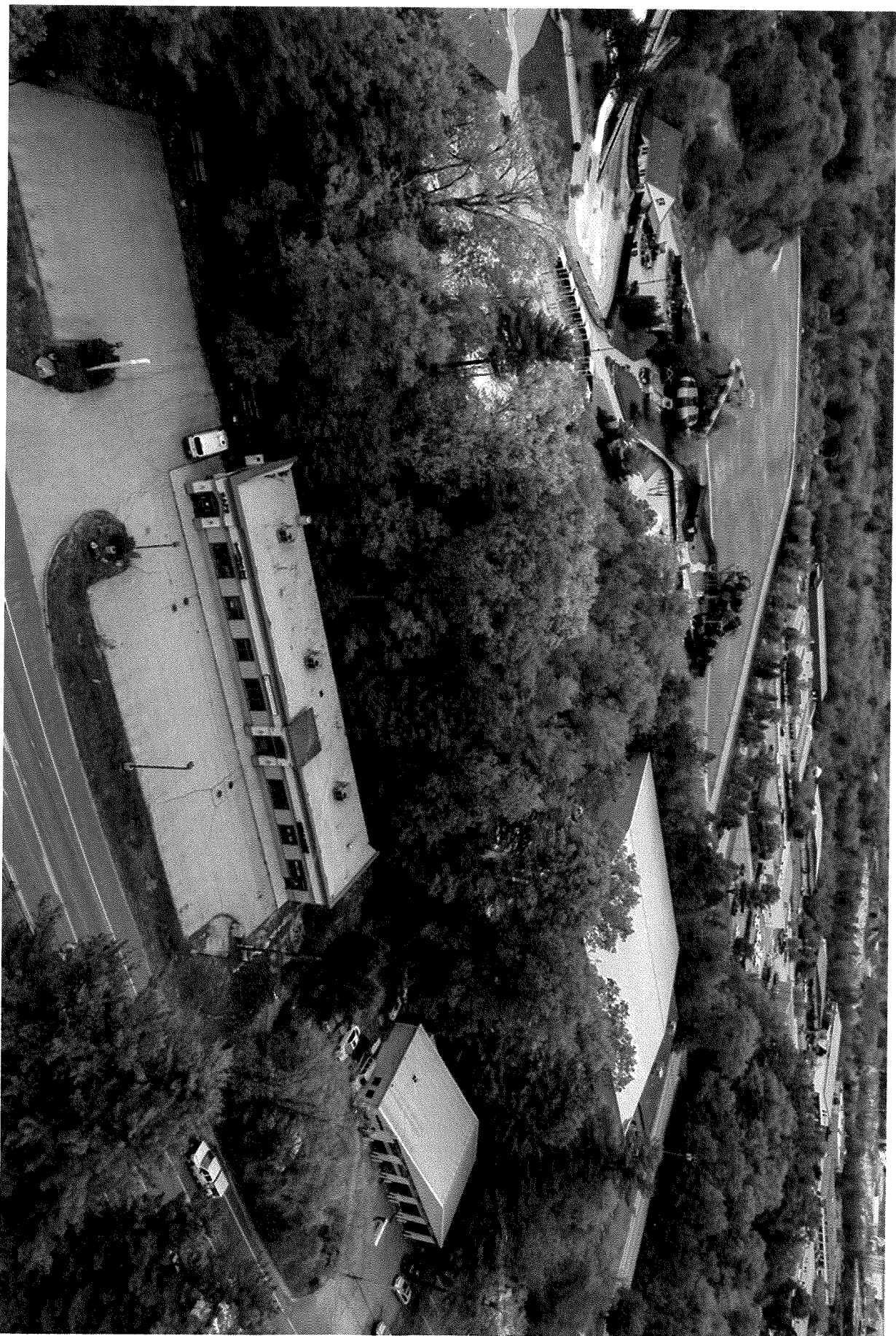
Map data ©2020 , Map data ©2020



2222 LaFarge Ave  
Front view

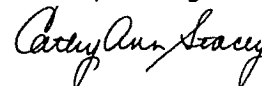
2222 Cottage Rd, Portsmouth NH  
Front View





2222 Wafayette Rd Portsmouth NH  
Aerial view

Return to:  
Stebbins, Lazos & Van Der Beken PLLC  
889 Elm Street, 6th Floor  
Manchester, NH 03101



LCHIP	ROA476602	25.00
TRANSFER TAX	RO093962	158.00
RECORDING		14.00
SURCHARGE		2.00

QUITCLAIM DEED

KERSHAW & LAFAYETTE HOLDINGS, LLC (aka Kershaw and Lafayette Holdings, LLC) a New Hampshire limited liability company of Hampton, New Hampshire, for consideration paid, grants to K.S.C., LLC, a New Hampshire limited liability company, having a mailing address of 3 Winship Drive, Stoneham, Massachusetts 02180, with Quitclaim Covenants, all its right, title and interest in and to the following premises:

A certain tract or parcel of land with the buildings thereon situated on the northwesterly side of Lafayette Road, commonly known as 2222 -Lafayette Road, in Portsmouth, County of Rockingham and State of New Hampshire, shown as Lot 267/2 on a plan entitled "Lot Line Relocation Plan, Map 267 - Lots I & 2, Leonard & Anne Kovit and Mary Yager Estate, 2200 & 2236 Lafayette Road, Portsmouth, NH, County of Rockingham," prepared by Ambit Engineering, Inc., dated December, 2001, last revised April 5, 2002, and recorded in the Rockingham County Registry of Deeds as Plan D-29868, and bounded and described as follows:

Beginning at a corner of a stone wall at the northwest corner of said premises; thence North 55° 40' 37" East along a stone wall a distance of 191.57 feet to a point; thence North 53° 07' 56" East along a stone wall a distance of 51.50 feet to a point; thence North 44° 15' 09" East along said stone wall a distance of 54.31 feet to a point; thence North 46° 32' 51" East along said stone wall a distance of 30.00 feet to a drill hole set; thence turning and running South 38° 19' 01" East a distance of 121.91 feet to an iron rod set; thence turning, and running southerly along the northwesterly sideline of Lafayette Road on an arc of a curve to the right with a radius of 1061.50 feet a distance of 100.03 feet; thence continuing along the curve to the right with a radius of 1061.50 feet a distance of 252.69 feet to an iron rod set; thence turning and running North 23° 31' 57" West a distance of 86.94 feet to the point of beginning.

Excepting therefrom the graveyard on the northwesterly corner of the above described parcel, being a twenty (20) foot square, and subject to the right of passageway to said graveyard as noted in a deed recorded at the Rockingham County Registry of Deeds at Book 800, Page 360.

Excepting therefrom a twelve (12) foot wide easement as described in the Highway Easement Deed to the State of New Hampshire dated April 10, 2003 and recorded at the Rockingham County Registry of Deeds at Book 3998, Page 2226.

This conveyance is made pursuant to subject to and is granted together with the following:

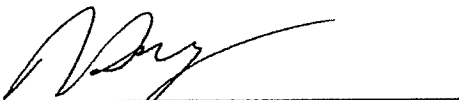
1. The provisions of New Hampshire Revised Statutes Annotated Section 529, including satisfaction of the right of redemption held by K.S.C., LLC as a result of sheriff's deed dated May 31, 2019 and recorded in the Rockingham County Registry of Deeds at Book 6006, Page 2835.
2. All rights of way, easements, covenants, conditions, and restrictions of record.

Meaning and intending to convey the same premises conveyed to Grantor by deed of HS Goldberg Plumbing and Mechanical, LLC, dated June 21, 2019, and recorded at Book 6010, Page 945 of the Rockingham County Registry of Deeds.

This is not homestead property.

Witness my hand this 24<sup>th</sup> day of December 2019.

KERSHAW & LAFAYETTE HOLDINGS LLC



By: Harrison Goldberg  
Duly Authorized Manager

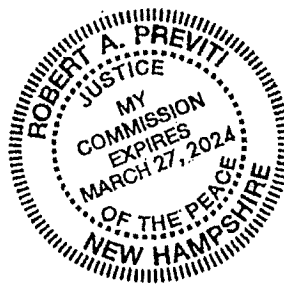
THE STATE OF NEW HAMPSHIRE

COUNTY OF ROCKINGHAM

This deed was acknowledged before me on this 24<sup>th</sup> day of December, 2019 by Harrison Goldberg as the duly authorized manager of Kershaw & Lafayette Holdings LLC, a New Hampshire limited liability company, on behalf of the said company. Before me,



Justice of the Peace/Notary Public  
My commission expires:





**AUTHORIZATION OF OWNER FOR APPLICANT TO FILE  
APPLICATION FOR SPECIAL EXCEPTION**

RE:

Property Address: 2222 Lafayette Road, Portsmouth, NH  
Portsmouth Tax Map 267/002

Owner: K.S.C., LLC (Peter Chen, Manager)

Applicant: Lafayette Animal Hospital, LLC

The undersigned, the duly authorized Manager of K. S. C., LLC a New Hampshire limited liability company having a principal place of business in Hampton, New Hampshire, hereby authorizes Lafayette Animal Hospital, LLC, and its authorized representatives and their attorney, Bradley M. Lown, 439 Middle St., Portsmouth, NH, to file an application for a special exception with the City of Portsmouth Planning Department in connection with the above property, and to do all acts necessary to obtain any necessary approvals to operate a veterinary hospital at the above address.

K. S. C., LLC is the owner of the above property by virtue of a Quitclaim Deed dated December 24, 2019 recorded at Book 6070, Page 2754 in the Rockingham County Registry of Deeds. A copy of the deed is attached hereto.

K. S. C., LLC

Date: August 25, 2020

*Peter S Chen, K.S.C. LLC*  
dotloop verified  
08/25/20 8:28 AM EDT  
S9HB-QAB6-WLLZ-CBOD

by: Peter Chen, Manager