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June 30, 2021

David Rheume, Chair
Zoning Board of Adjustment
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: 2454 Lafayette Road, Tax Map 273, Lot 3

Dear Chair Rheume and Board Members:

Enclosed please find supporting materials to accompany the information submitted via the City's on-line permitting system for variance relief regarding the proposed standalone ATM on a portion of the above referenced property.

We respectfully request that this matter be placed on the Board's July 20, 2021 agenda. In the meantime, if you have any questions or require additional information do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Justin L. Pasay
JLP/sac
Enclosures

cc: TKO Installations
Tighe & Bond

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VARIANCE APPLICATION FOR
Chase Bank (the “Applicant”)

The Applicant requests a variance from Section 10.1530, the City of Portsmouth Zoning Ordinance’s (the “Zoning Ordinance”) definition section, to permit the construction of a standalone, drive-up, automated teller machine (the “ATM”) in the Portsmouth Green shopping center located at 2454 Lafayette Road, which property is further identified as City Assessor Map 273, Lot 3 (the “Property” or the “Shopping Center”). The proposed ATM and associated site improvements, as well as other improvements on the Property which are in various phases of completion pursuant to a redevelopment scheme for the Shopping Center, are depicted in **Enclosure 1**, which is an Overall Site Plan, and **Enclosure 2**, which are architectural plans for the ATM.

A. Introduction and Factual Context

• **Existing Conditions**

The Property is approximately 18.71 acres in size and is located on the northern side of Lafayette Road in the City’s Gateway Zoning District (the “G1 Zoning District”). The Property is improved by a condominium and a variety of commercial and retail establishments which collectively constitute a “Shopping Center”, as defined by the Zoning Ordinance. Specifically, “Shopping Center” is defined as:

An integrated group of commercial establishments that is planned, developed, owned and managed as a unit. Uses in a shopping center may be in one or more buildings and on one or more lots, provided that all buildings and lots are developed with a unified approach to access and circulation, parking, truck loading, vehicular entrances and exits, drainage, utilities, and management of landscaped and buffer areas.

Zoning Ordinance, Section 10.1530.

In this case, the principal use of the Property is a Shopping Center because the Property consists of an integrated group of commercial and retail establishments that are planned, developed, owned and managed as a unit. Specifically, though owned by 2422 Lafayette Road Association, LLC, the Property is managed by Waterstone Properties. Further, the Property was developed with a unified approach to access and circulation, parking, truck loading, vehicular entrances and exits, drainage, utilities and management of landscaped and buffer areas. See Enclosure 1. See also Enclosure 3, which is the applicable Tax Map; **Enclosure 4**, which is an aerial photograph of the Shopping Center.

The Property’s primary ingress/egress is via four lanes (two entering, and two exiting) from Lafayette Road. There are three additional access points from Constitution Avenue. On the east (right) side of the primary access to the Property from Lafayette Road, the Property abuts a distinct parcel located at 2400 Lafayette Road, which property is further identified as

City Assessor Map 273, Lot 6, and is improved with a Bangor Savings Bank (the “Bank Property”).

The Shopping Center currently consists of approximately 168,701 sf of commercial/retail space and while several tenancies are currently transitioning, the current configuration includes McKinnons, Cinemagic, Chipotle, Pub 99, Roger’s Redliner Diner (the “Diner”), Hand & Stone Massage and Facial Spa, Lash Out Beauty, Linda Taylor, Making Faces, Orange Theory Fitness, Athleta, Dough, Pinz Bowling, Buff & File Nail Bar, and Starbucks Coffee.

The Shopping Center has ample parking and significant parking lot area. For example, the maximum parking spaces permitted at the Property under the Zoning Ordinance is 766, and 756 spaces are provided. See Enclosure 1. Additionally, though the Property only has 22.6% building coverage where 75% is the maximum permitted, the Property has the bare minimum 20% open space.¹ Id.

Photographs depicting the north, south, east and west perspectives from the proposed location of the ATM are included in **Enclosure 5**.

- **Proposed ATM and Associated Improvements and Future Planning Board Review**

The Applicant proposes to install an ATM and associated site improvements in an underutilized parking lot of the Shopping Center with very little traffic which is located in the southeastern portion of the Property (the “Southeast Parking Lot”). See Enclosures 1, 3, 4, 5.

The proposal consists of a drive-up ATM with an approximately 27’6” x 4’9” concrete pad² sited within the existing landscaped island on the west side of the Southeast Parking Lot, seven 6” traffic bollards for security,³ and the ATM machine itself which will be protected by a signature Chase Bank canopy.⁴ The improvements will also feature a vehicle height detector bar⁵ and new light pole which will complement an existing light pole in the Southeast Parking Lot in close proximity to the proposed ATM.⁶ Finally, four existing parking spaces will be removed and in their place, the Applicant will provide new lane striping, directional arrows and car queuing area.⁷ See Enclosure 2.

¹ Defined by Section 10.1530 of the Zoning Ordinance as “[l]and area vertically open to the sky, free of all structures, parking area/lots, driveways and other uses which preclude attractive landscaping in such area. Open space shall be predominantly pervious, may be landscaped with lawn, trees, shrubs or other planting, and may include walks and terraces. For the purposes of this definition, water areas are considered to constitute open space.”

² See Enclosure 2, Sheet A101.

³ See Id., note 3.

⁴ See Id., note 14.

⁵ See Id., note 5.

⁶ See Id., note 13.

⁷ The Applicant conducted an ATM Queuing Study to ensure that the design will meet demand during the peak period in the evening time. This study is discussed in greater detail below.

The ATM will be primarily shielded from view from Lafayette Road by the Bank Property which it will be tucked behind, the large free-standing sign at the entrance of the Property on Lafayette Road, and the mature landscaping adorning the primary access road. The Applicant envisions that the ATM will be patronized primarily by individuals already shopping and recreating at the Shopping Center, though patrons may also access the Property from off-site with the specific intent to utilize the ATM.

In addition to obtaining the requested variance, the Applicant must also apply for and receive Amended Site Plan Review Approval and a corresponding Conditional Use Permit for a “drive-through facility⁸” from the City’s Planning Board. This process will require the Applicant to establish, among other things, that it meets special performance standards⁹ and setbacks¹⁰, and that “the level of service and traffic safety conditions of all streets and intersections to be impacted by the project will be the same as, or better than, predevelopment conditions.”¹¹ Further, in making its determination, the Planning Board is required to “consider the traffic impact analysis and additional available information, including review by independent consultants if deemed necessary.”¹²

In preparation for that review process and to provide evidence to this Board that the design of the ATM will satisfy traffic safety concerns, the Applicant obtained an ATM Queuing Study which concludes, among other things, that the proposed ATM is conservatively estimated to average 1,900 monthly transactions of approximately 1 minute in length, and that the proposed stacking capability of 2 cars at this location will “easily handle the peak periods” of 4:00 PM – 5:00 PM. See Enclosure 6.

Regardless, should the Applicant receive the requested variance, it will undergo additionally considerable review and scrutiny by the City’s Planning Staff, Technical Review Committee, and Planning Board, with a specific focus on traffic and public safety.

- **Relief Requested and Request for Threshold Determination**

The Applicant requests relief from Section 10.1530 of the Zoning Ordinance which defines “automated teller machine (ATM)” as:

An unattended electronic device that is activated by customers to conduct financial transactions. An ATM may be located on the outside of a building, or in an access-controlled entrance to a building, or within a principal use in a building, and may serve pedestrians or patrons in motor vehicles. An ATM servicing patrons in motor vehicles must meet the standards for drive-through establishments provided in this Ordinance. An ATM is permitted only as an

⁸ Defined by the Section 10.1530 of the Zoning Ordinance as “[a] building, attached structure or portion thereof that provides products or services directly to a customer in a motor vehicle by means of a window or mechanical device.”

⁹ See Zoning Ordinance, Section 10.835.20.

¹⁰ See Zoning Ordinance, Section 10.835.30.

¹¹ See Zoning Ordinance, Section 10.834.41.

¹² See Zoning Ordinance, Section 10.835.42.

accessory use to a related principal use, and is not permitted as a principal use or in a freestanding structure not attached to a principal use.

We understand that the City's interpretation is that all free-standing ATMs are not permitted by virtue of this definition.

However, a plain language reading of the Zoning Ordinance reveals that the proposed ATM is a permitted accessory use to the principal Shopping Center use on the Property and does not, therefore, require a variance.

Accessory uses to a permitted principal use are permitted by right in every Zoning District. See Zoning Ordinance, Section 10.440(19.10). "Accessory use" is defined by the Zoning Ordinance as "a use that is incidental and subordinate to the principal use and located on the same lot with such principal use or building." Zoning Ordinance, Section 10.1530. Neither "incidental" nor "subordinate" are defined terms within the Zoning Ordinance, but the plain language meaning of "incidental" is "minor" and the plain language meaning of "subordinate" is "of less or secondary importance." "Principal use" is defined by the Zoning Ordinance as "the primary use on a lot, which may have accessory uses." Zoning Ordinance, Section 10.1530.

Here, the principal use on the lot is the Shopping Center because it is the primary use. The proposed ATM is clearly minor and of less or secondary importance when compared to the principal Shopping Center Use. In fact, the ATM is designed to attract patrons who are already on-site to withdraw cash needed to patronize the various commercial and retail establishments which collectively constitute the Shopping Center. The proposed ATM use will inhabit only a minor underutilized portion of the Property's total area and is not a principal use itself, as a standalone ATM would never be proposed for an otherwise unimproved lot.

In other words, the proposed ATM complies with the definition found in Section 10.1530 of the Zoning Ordinance because it is in fact "an accessory use to a related principal use" which actually is "attached", the principal use (Shopping Center) on the same lot, because by definition, Shopping Centers include an integrated group of commercial establishments and buildings which can be located on one or more lots together with unified access, circulation, parking, truck loading, vehicular entrances and exists, drainage, utilities, and landscaped areas.

If the Board of Adjustment agrees with this analysis, we ask that it determine that no variance relief is required under these circumstances. Otherwise, we ask that the Board proceed to review the Applicant's variance application.

- **Brief Note of Distinction from 1465 Woodbury Avenue Application**

At its 17 November 2020 public hearing, the Board unanimously denied the variance petition of Bromley Portsmouth, LLC, owner of property located at 1465 Woodbury Avenue, to construct a standalone ATM in the Market Basket plaza (the "Woodbury Avenue Case"). See Enclosure 7, which contains the minutes from that public hearing. A brief review of the foundational facts in that matter is relevant to refresh the Board's recollection and draw a few critical distinctions between that case and this one.

In the Woodbury Avenue Case, the applicant sought to add a standalone ATM machine in the lawn area to the south of the Wendy's located off of Woodbury Avenue. Id. In reviewing the application, the Board unanimously determined that the proposed location for the ATM was the worst potential location for the same on the site light of the heavy traffic in that area of the property. Id. Additionally, the Board determined that the proposed location was very visible from Woodbury Avenue, that the property did not appear to have special conditions, and that the constraints placed on the siting of the ATM by an existing contract between the bank and the property owner, to include a prohibition on siting the ATM within the existing parking lots on the property, were not sufficient to constitute a hardship. Id. Despite these concerns, however, several Board members noted that their primary concern pertained to the location of the proposed use, and not the nature of the use itself, which several members noted may receive favorable consideration if it were sited properly. Id.

In this case, and as discussed in greater detail below, the Applicant's proposal addresses all of the primary concerns raised by the Board during its review of the Woodbury Avenue Case. First, the ATM is proposed to be sited in perhaps the least trafficked area of the Property to promote maximum safety. Second, as noted above, the ATM is obscured from view from Lafayette Road by the Bank Property, signage, and landscaping. Third, the Property does have special conditions, as discussed in greater detail below, which undermine application of the Zoning Ordinance to the specific facts of this case such that variance relief is appropriate.

B. Statutory Variance Criteria

Pursuant to Article 2, Section 10.233 of the Zoning Ordinance, and RSA 674:33, to obtain a variance in New Hampshire, an applicant must show that: (1) the variance will not be contrary to the public interest; (2) the spirit of the ordinance is observed; (3) substantial justice is done; (4) the values of surrounding properties are not diminished; and (5) literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, where said term means that, owing to special conditions of the property that distinguish it from other properties in the area: no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and the Proposed use is a reasonable one; or if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. See RSA 674:33, I (b).

Because the Applicant's ATM proposal will not be inconsistent with the essential character of the surrounding area, will not compromise the public health in any way, will provide substantial justice, will not compromise the property values of surrounding properties, and because there is no rational connection between the intent of the underlying ordinance provision and its application to the Property under the unique circumstances of this case, as outlined below, we respectfully request that the variance be granted.

C. Analysis

The Applicant requests a variance from Section 10.1530 to permit the construction of a standalone, drive-up ATM as depicted on **Enclosures 1 and 2**.

1. The variance will not be contrary to the public interest.

The New Hampshire Supreme Court has indicated that the requirement that a variance not be “contrary to the public interest” is coextensive and related to the requirement that a variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577, 580 (2005); Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102, 105-06 (2007); and Farrar v. City of Keene, 158 N.H. 684, 691 (2009). A variance is contrary to the public interest only if it “unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance’s basic zoning objectives.” Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. See also Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508, 514 (2011) (“[m]ere conflict with the terms of the ordinance is insufficient.”) Moreover, these cases instruct boards of adjustment to make the determination as to whether a variance application “unduly” conflicts with the zoning objectives of the ordinance “to a marked degree” by analyzing whether granting the variance would “alter the essential character of the neighborhood” or “threaten the public health, safety or welfare” and to make that determination by examining, where possible, the language of the Zoning Ordinance.

The Applicant’s proposal does not unduly conflict with the Zoning Ordinance. Though there are no express purpose or intent provisions to Section 10.1530, the general purpose and intent of the Zoning Ordinance 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, among other things, regulating the use of land, the intensity of land use, the design of facilities for vehicular access, circulation, parking and loading, environmental impacts on properties, and preservation of the visual environment. Zoning Ordinance, Section 10.121. Similarly, the purpose of the G1 Zoning District is to, among other things, “encourage walkable mixed-use development and continued economic vitality of the City’s primary gateway areas, [and] ensure that new development complements and enhances its surroundings ...” Zoning Ordinance, Section 10.5B11.10.

As a foundational matter, the Applicant’s proposed ATM will fulfill the general purpose and intent of the Zoning Ordinance and the more specific purposes of the G1 Zoning District, and therefore serve the public interest, by promoting the vitality of commercial and retail establishments in the City in a time they desperately need it, by repurposing existing and underutilized impervious surface area on the Property, by ensuring appropriate traffic and vehicular access concerns are addressed as depicted in the ATM Queuing Study¹³ and via the Site Plan Review and Conditional Use Permit review process by the Planning Board, by preserving the visual environment of the Shopping Center via the siting of the ATM in a manner that will be barely, if at all, discernible from Lafayette Road, and by encouraging walkable mixed-use development that enhances its surroundings. See **Enclosures 1 – 5**.

¹³ See **Enclosure 6**.

The proposal also satisfies the tests articulated in the relevant case law. First, the proposed ATM will not alter the essential character of the surrounding area. Currently, the Southeast Parking Lot is an underutilized parking lot that serves as overflow to the closest retail/commercial establishments within the Shopping Center which are the Diner, Hand & Stone Massage and Facial Spa, and Lash Out Beauty. The appearance of the ATM will be consistent with the other establishments in the Shopping Center and barely, if at all, discernible from Lafayette Road. As a result, the essential character of the Shopping Center will remain.

The proposed ATM will also not threaten the public health, safety or welfare. As detailed above, the public will derive a considerable benefit from the proposal and will be protected from any detrimental impact caused by the same, through the Site Plan Review Approval and Conditional Use Permit review process that the City Planning Staff, Technical Review Committee and Planning Board will undertake. See also Enclosure 6.

As the proposed ATM will be consistent with the general intent and purpose of the City's Zoning Ordinance, will not alter the essential character of the area, and will not threaten the public health or safety, it would be reasonable and appropriate for the Board of Adjustment to conclude that granting the variance will not be contrary to the public interest.

2. The spirit of the Ordinance is observed.

As referenced in Section (C)1, above, the requested variance observes the spirit of the Zoning Ordinance and New Hampshire jurisprudence regarding the "public interest" prong of the variance criteria because the Applicant's proposed ATM will be consistent with the general purpose and intent of the Zoning Ordinance, and the more specific purposes of the G1 Zoning District, and will not compromise the character of the neighborhood or threaten the public health, safety, or welfare. As the New Hampshire Supreme Court has indicated in both Chester Rod & Gun Club and in Malachy Glen, the requirement that the variance not be "contrary to the public interest" is coextensive and is related to the requirement that the variance be consistent with the spirit of the ordinance. See Chester Rod & Gun Club, 152 N.H. at 580. A variance is contrary to the spirit of the ordinance only if it "unduly, and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives." Chester Rod & Gun Club, 152 N.H. at 581; Farrar, 158 N.H. at 691. As discussed above, the requested variance is consistent with the spirit of the Sign Ordinance because of the reasons stated in Section (C)1. As a result, for the reasons stated above, the Applicant respectfully asserts that it would be reasonable and appropriate for the Board of Adjustment to conclude that the requested variance will observe the spirit of the Zoning Ordinance.

3. Substantial justice is done.

As noted in Malachy Glen, supra, "perhaps the only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." Malachy Glen, supra, citing 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning § 24.11, at 308 (2000) (quoting New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997)). In short, there must be

some gain to the general public from denying the variance that outweighs the loss to the Applicant from its denial.

In this case, the public does not stand to gain anything from denying the variance requested. The Applicant proposes to site the ATM on an underutilized, already disturbed area of the Property with minimal traffic and the ATM will be difficult to discern from Lafayette Road. In fact, the public will gain from being able to access an ATM while patronizing the Shopping Center, or from adjacent residential uses, and will be protected from any detrimental impact caused by the proposal through the Planning Board review process.

On the other hand, the Applicant will significantly benefit from the proposal by establishing a footprint within the Shopping Center and advancing its business plans.

As there is no gain to the general public from denying the variance that outweighs the loss to the Applicant from its denial, granting the requested variance will accomplish substantial justice.

4. The proposal will not diminish surrounding property values.

Given the nature of the Shopping Center on the Property and the surrounding retail and commercial uses, none of the surrounding properties will suffer any diminution in value as a result of granting this variance as a matter of common sense. Certainly, the Applicant is aware of no evidence to the contrary. Accordingly, the Applicant respectfully requests that the Board of Adjustment find that the requested variance will not diminish surrounding property values.

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

As set forth in the provisions of RSA 674:33, I, there are two options by which the Board of Adjustment can find that an unnecessary hardship exists:

(A) For purposes of this subparagraph, “unnecessary hardship” means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The Proposed use is a reasonable one.

or,

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

The “special conditions” of the Property for purposes of this variance criterion include the size and scale of the Property and Shopping Center, which is the largest of its kind in the area within the G1 Zoning District, the amount of existing impervious (parking lot) area, the nature of the proposed location for the ATM within the Southeast Parking Lot which is obscured from view from Lafayette Road by the Bank Property, signage, and landscaping, and the Property’s unique ability to accommodate the proposal and incorporate the same into the principal Shopping Center use in a benign manner that advances the general purpose and intent of the Zoning Ordinance and the purpose of the G1 Zoning District.

In Harborside Assocs. v. Parade Residence Hotel, the New Hampshire Supreme Court upheld the Portsmouth Board of Adjustment’s finding that the physical improvements on a property, in that case the size of a building when compared to other buildings in the area within the context of sign variance request, could be considered “special circumstances.” Affirming the analysis of the Board of Adjustment, the Supreme Court stated:

The [Respondent] is not attempting to meet the ‘special conditions’ test by showing that its *signs* would be unique in their settings, but that its *property* – the hotel and conference center – has unique characteristics that make the signs themselves a reasonable use of the property.

Harborside, 162 N.H. at 518 (emphasis added). Cf Farrar, 158, N.H. 689 (where variance sought to convert large, historical single use residence to mixed use of two residence and office space, size of residence was relevant to determining whether property was unique in its environment).

Here, the Property’s physical characteristics and improvements make the proposed ATM use reasonable under the circumstances because it is proposed to be sited in an underutilized, previously developed parking lot with minimal traffic, and because it will be primarily obscured from view from Lafayette Road.

Due to these special conditions of the Property, there is no fair and substantial relationship between the general public purpose of the Zoning Ordinance and the more specific purposes of the G1 Zoning District, and their specific application to the Property. Despite its technical lack of conformity with the definition of “automated teller machine (ATM)”, the Applicant’s proposal constitutes a reasonable land use that promotes the vitality of commercial and retail establishments in the City that desperately need it, that smartly repurposes existing and underutilized impervious surface, that protects the public health and safety via the ATM Queuing Study and the anticipated Planning Board review process, that preserves the visual environment of the Shopping Center and that encourages walkable mixed-use development.

Put another way, strictly enforcing the underlying Zoning Ordinance and denying the variance request will not advance the Zoning Ordinance general purposes or the G1 Zoning District purposes but granting the requested variance will.

The Applicant respectfully reminds the Board of Adjustment that the mere fact that the Applicant is seeking a variance from the express provisions of the Zoning Ordinance is not a valid reason for denying the variance. See Malachy Glen Associates, Inc. v. Town of Chichester,

155 N.H. 102, 107 (2007); see also Harborside Associates, 162 N.H. at 2011 (“mere conflict with the terms of the ordinance is insufficient”).

Finally, because the proposed ATM will complement surrounding uses and be subordinate to the same, and because banks with ATMs are permitted by right in the underlying Zoning District, it is reasonable under the circumstances. See Vigeant v. Town of Hudson, 151 N.H. 747, 752 - 53 (2005); and Malachy Glen, 155 N.H. at 107; see also Harborside at 518-519 (applicant did not need to show signs were “necessary” rather only had to show signs were a “reasonable use”).

Accordingly, the Applicant respectfully asserts that its application complies with the standard for Option A of the unnecessary hardship criterion and the Board of Adjustment should so find.

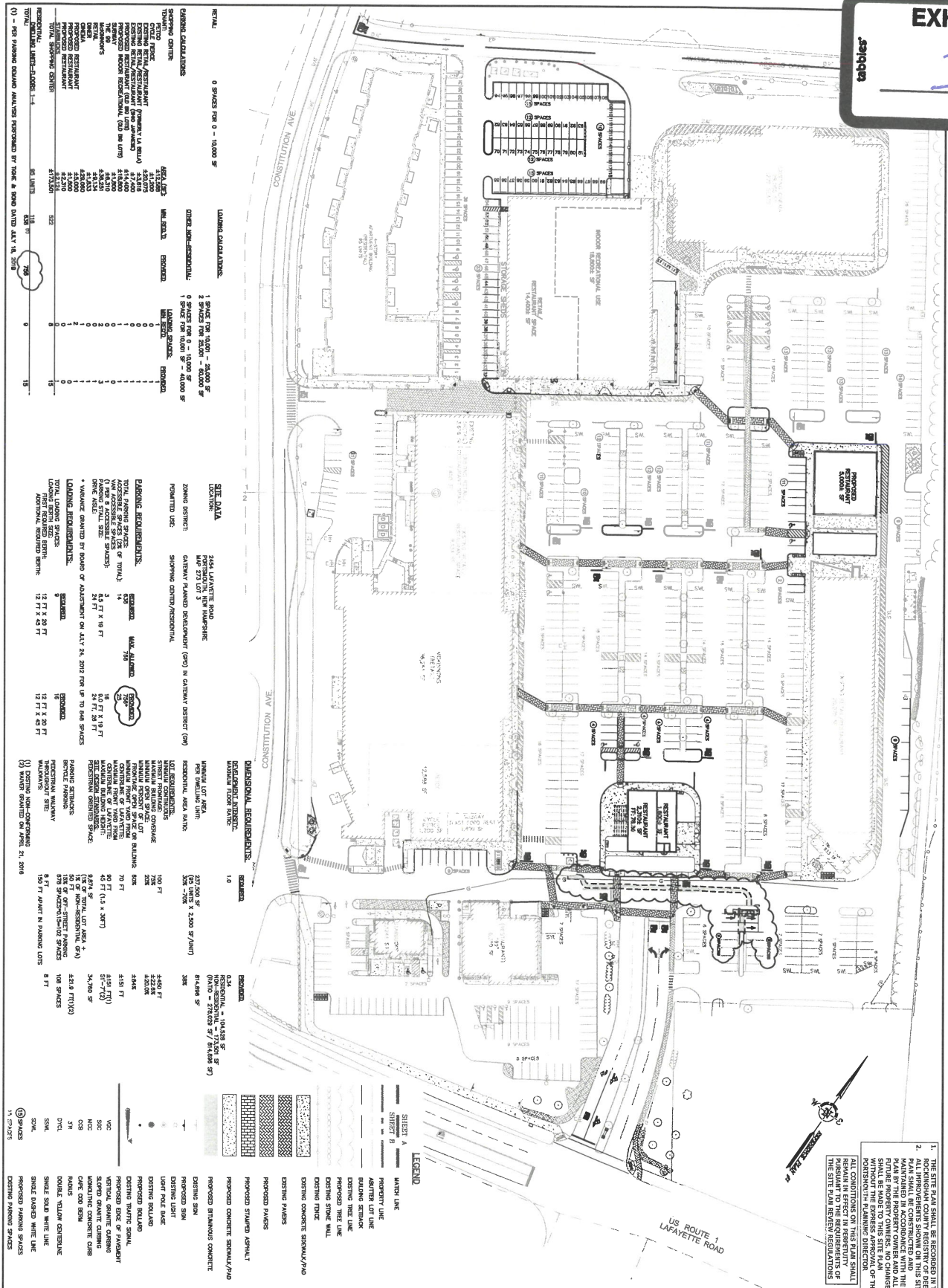
D. Conclusion

The Applicant respectfully submits that it has satisfied the statutory variance criteria in this matter and its Application should be approved.

EXHIBIT

I

tabbco's



- THE SITE PLAN SHALL BE RECORDED IN THE OFFICE OF THE REGISTERED PLANNING DIRECTOR.
- ALL IMPROVEMENTS SHOWN ON THIS SITE PLAN SHALL BE CONSTRUCTED AND THE PLANNING DIRECTOR SHALL REVIEW AND APPROVE THE PLANS FOR CONSTRUCTION OF THE IMPROVEMENTS. NO CHANGES TO THE PLANS SHALL BE MADE WITHOUT THE EXPRESS APPROVAL OF THE REGISTERED PLANNING DIRECTOR.
- ALL CONDTIONS ON THIS PLAN SHALL BE SUBJECT TO THE REQUIREMENTS OF THE PLANNING DIRECTOR.
- THIS SITE PLAN REVIEW RESOLUTIONS SHALL BE SUBJECT TO THE REQUIREMENTS OF THE REGISTERED PLANNING DIRECTOR.

RETAIL	0 SPACES PER 0 - 10,000 SF	1 SPACE PER 10,000 - 20,000 SF	2 SPACES PER 20,000 - 30,000 SF	3 SPACES PER 30,000 - 40,000 SF
RESTAURANT	15	15	15	15
RETAIL	15	15	15	15
TOTAL	15	15	15	15

RESTAURANT	RETAIL	TOTAL
0 SPACES PER 0 - 10,000 SF	15	15
1 SPACE PER 10,000 - 20,000 SF	15	15
2 SPACES PER 20,000 - 30,000 SF	15	15
3 SPACES PER 30,000 - 40,000 SF	15	15
4 SPACES PER 40,000 - 50,000 SF	15	15
5 SPACES PER 50,000 - 60,000 SF	15	15
6 SPACES PER 60,000 - 70,000 SF	15	15
7 SPACES PER 70,000 - 80,000 SF	15	15
8 SPACES PER 80,000 - 90,000 SF	15	15
9 SPACES PER 90,000 - 100,000 SF	15	15
10 SPACES PER 100,000 - 110,000 SF	15	15
11 SPACES PER 110,000 - 120,000 SF	15	15
12 SPACES PER 120,000 - 130,000 SF	15	15
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15 SPACES PER 150,000 - 160,000 SF	15	15
16 SPACES PER 160,000 - 170,000 SF	15	15
17 SPACES PER 170,000 - 180,000 SF	15	15
18 SPACES PER 180,000 - 190,000 SF	15	15
19 SPACES PER 190,000 - 200,000 SF	15	15
20 SPACES PER 200,000 - 210,000 SF	15	15
21 SPACES PER 210,000 - 220,000 SF	15	15
22 SPACES PER 220,000 - 230,000 SF	15	15
23 SPACES PER 230,000 - 240,000 SF	15	15
24 SPACES PER 240,000 - 250,000 SF	15	15
25 SPACES PER 250,000 - 260,000 SF	15	15
26 SPACES PER 260,000 - 270,000 SF	15	15
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41 SPACES PER 410,000 - 420,000 SF	15	15
42 SPACES PER 420,000 - 430,000 SF	15	15
43 SPACES PER 430,000 - 440,000 SF	15	15
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45 SPACES PER 450,000 - 460,000 SF	15	15
46 SPACES PER 460,000 - 470,000 SF	15	15
47 SPACES PER 470,000 - 480,000 SF	15	15
48 SPACES PER 480,000 - 490,000 SF	15	15
49 SPACES PER 490,000 - 500,000 SF	15	15
50 SPACES PER 500,000 - 510,000 SF	15	15
51 SPACES PER 510,000 - 520,000 SF	15	15
52 SPACES PER 520,000 - 530,000 SF	15	15
53 SPACES PER 530,000 - 540,000 SF	15	15
54 SPACES PER 540,000 - 550,000 SF	15	15
55 SPACES PER 550,000 - 560,000 SF	15	15
56 SPACES PER 560,000 - 570,000 SF	15	15
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59 SPACES PER 590,000 - 600,000 SF	15	15
60 SPACES PER 600,000 - 610,000 SF	15	15
61 SPACES PER 610,000 - 620,000 SF	15	15
62 SPACES PER 620,000 - 630,000 SF	15	15
63 SPACES PER 630,000 - 640,000 SF	15	15
64 SPACES PER 640,000 - 650,000 SF	15	15
65 SPACES PER 650,000 - 660,000 SF	15	15
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96 SPACES PER 960,000 - 970,000 SF	15	15
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98 SPACES PER 980,000 - 990,000 SF	15	15
99 SPACES PER 990,000 - 1,000,000 SF	15	15
100 SPACES PER 1,000,000 - 1,010,000 SF	15	15

RETAIL	0 SPACES PER 0 - 10,000 SF	1 SPACE PER 10,000 - 20,000 SF	2 SPACES PER 20,000 - 30,000 SF	3 SPACES PER 30,000 - 40,000 SF
RESTAURANT	15	15	15	15
RETAIL	15	15	15	15
TOTAL	15	15	15	15

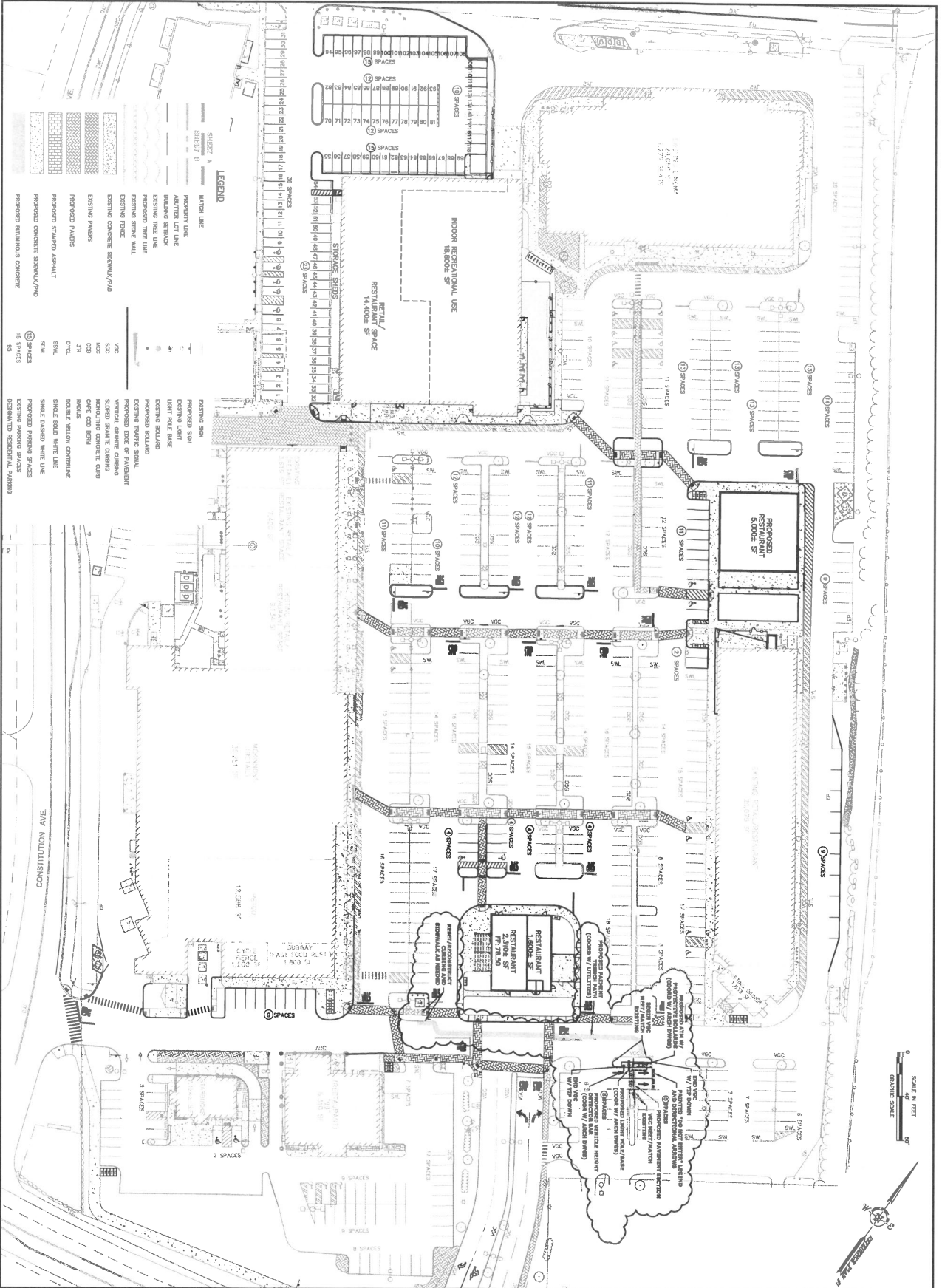
RETAIL	0 SPACES PER 0 - 10,000 SF	1 SPACE PER 10,000 - 20,000 SF	2 SPACES PER 20,000 - 30,000 SF	3 SPACES PER 30,000 - 40,000 SF
RESTAURANT	15	15	15	15
RETAIL	15	15	15	15
TOTAL	15	15	15	15

WATERSTONE RETAIL
SOUTHGATE PLAZA
REDEVELOPMENT
 Portsmouth,
 New Hampshire

Scale: AS SHOWN
 C-3

Tabbco's
 ENGINEERS

Tighe & Bond
 Consulting Engineers
 www.tighebond.com

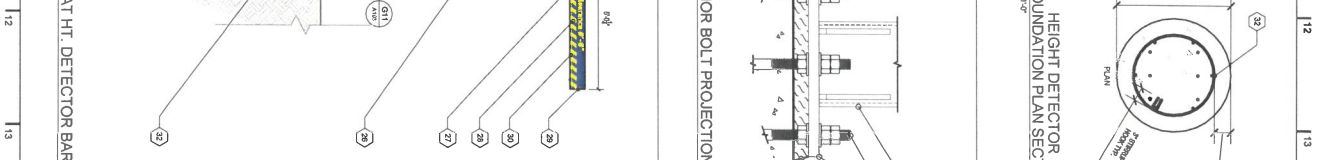
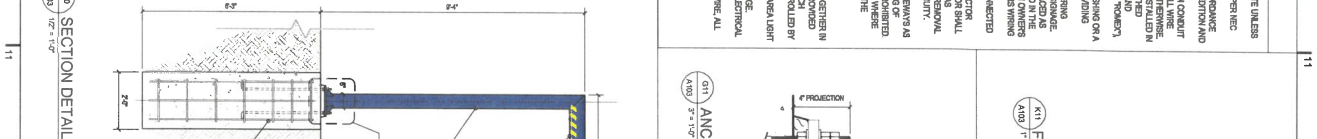
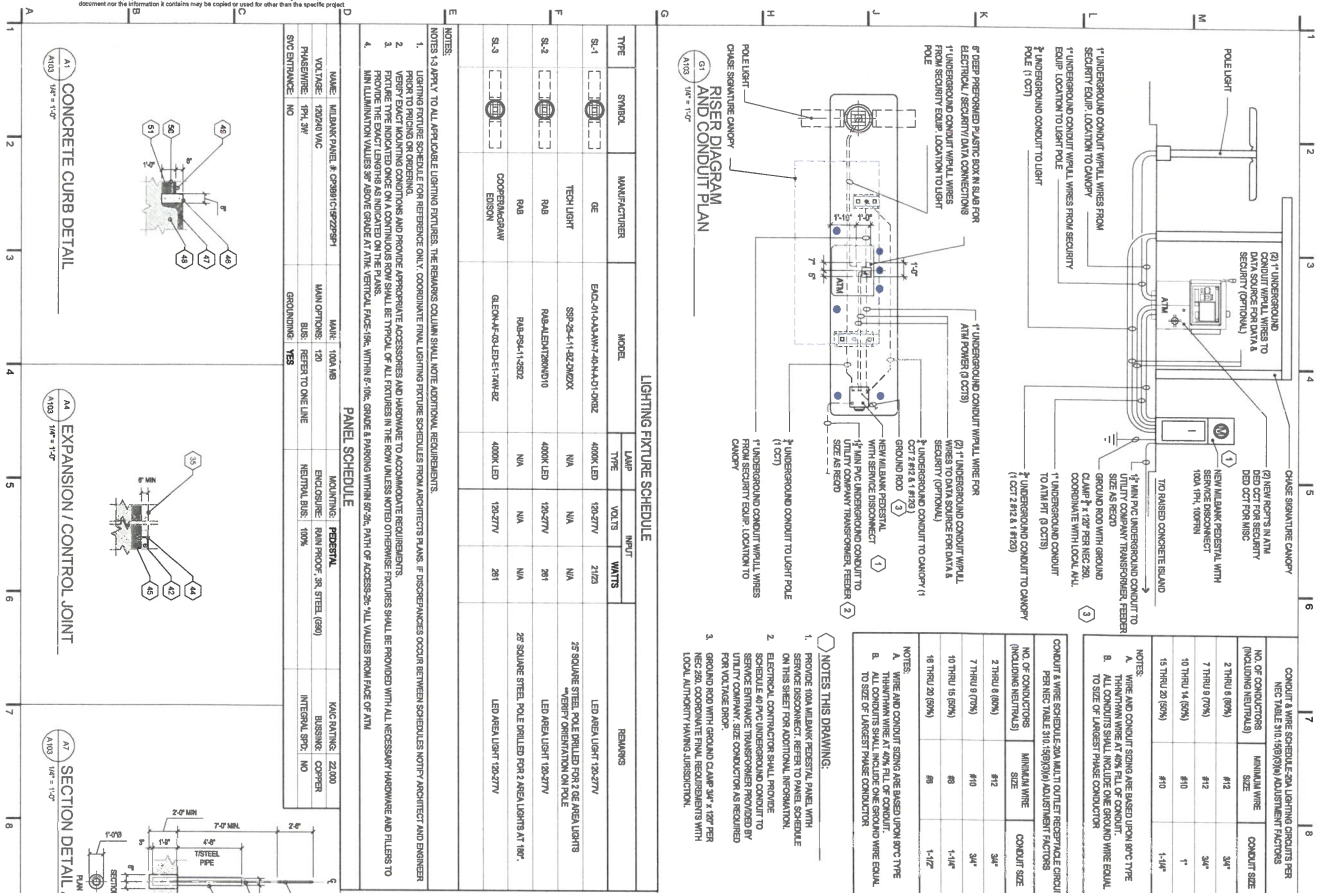


Waterstone Retail Development
 Southgate Plaza Redevelopment
 Portsmouth, New Hampshire

Tighte & Bond
 Consulting Engineers
 www.tightebond.com

NO.	REVISION	DATE
1	ISSUED FOR PERMIT	6/24/2021
2	REVISED PER 1723-4-303A, JLN-1.dwg	6/24/2021
3	REVISED PER 1723-4-303A, JLN-1.dwg	6/24/2021
4	REVISED PER 1723-4-303A, JLN-1.dwg	6/24/2021
5	REVISED PER 1723-4-303A, JLN-1.dwg	6/24/2021
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7	REVISED PER 1723-4-303A, JLN-1.dwg	6/24/2021
8	REVISED PER 1723-4-303A, JLN-1.dwg	6/24/2021
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49	REVISED PER 1723-4-303A, JLN-1.dwg	6/24/2021
50	REVISED PER 1723-4-303A, JLN-1.dwg	6/24/2021

SCALE: AS SHOWN
 C-3A



- ### GENERAL NOTES
1. ALL SERVICES SHALL BE INSTALLED IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL ELECTRICAL CODE (NEC), NFPA 70, AND ALL APPLICABLE CODES, ORDINANCES, AND REGULATIONS.
 2. ALL MATERIALS AND METHODS SHALL BE APPROVED BY THE ARCHITECT AND THE LOCAL AUTHORITY HAVING JURISDICTION.
 3. ALL MATERIALS SHALL BE NEW UNLESS NOTED OTHERWISE.
 4. ALL MATERIALS SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S INSTALLATION INSTRUCTIONS.
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CHASE BANK NEW MARKETS PORTSMOUTH GREEN ATM
2454 LAFAYETTE ROAD
PORTSMOUTH, NH 03801

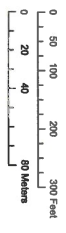
BHDP

PAUL D. ORBAN, ARCHITECT
100 STATE STREET
PORTSMOUTH, NH 03801
TEL: 603.883.1100
WWW.PDORBAN.COM

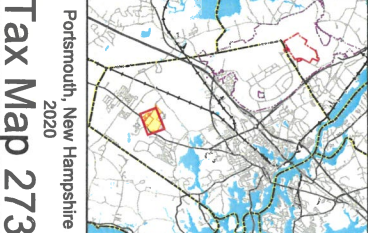
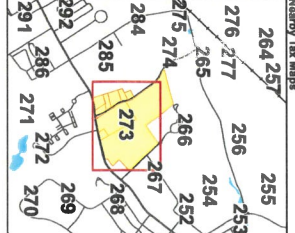
TKO INSTALLATIONS, INC.
700 BROADWAY
PORTSMOUTH, NH 03801
TEL: 603.883.1100
WWW.TKOINSTALLATIONS.COM



Partial Legend
 See the cover sheet for the complete legend.
 7.5A Lot or lot-unit number
 7.5B Parcel area in acres (ac) or square feet (ft²)
 2023.17 Parcel number from a map/parcel map
 or Parcel line dimension
81MS AVE: Street name
 — Parcel/peak boundary
 — Water boundary
 — Structure (ft/dia)
 — Parcel from a map/parcel map (see the map or parcel sheet)



This map is for assessment purposes only. It is not intended for legal description or conveyance. Building footprints are 2006 data and may not represent current structures.
 Streets appearing on this map may be pipe-lined numbers like provisions over address numbers. Address numbers shown on this map may not represent posted or legal addresses.



**VIEW EAST TOWARD SOUTHEAST PARKING LOT AND
PROPERTY LINE**



VIEW NORTH TOWARD CINEMAGIC



VIEW SOUTH TOWARDS LAFAYETTE ROAD



VIEW WEST INTO INTERIOR OF PROPERTY



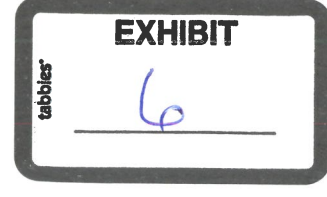
ATM Queuing Study

Site Under Study

Portsmouth Green
2454 Lafayette Road
Portsmouth, NH 03801

Intended Use

Drive Up ATM



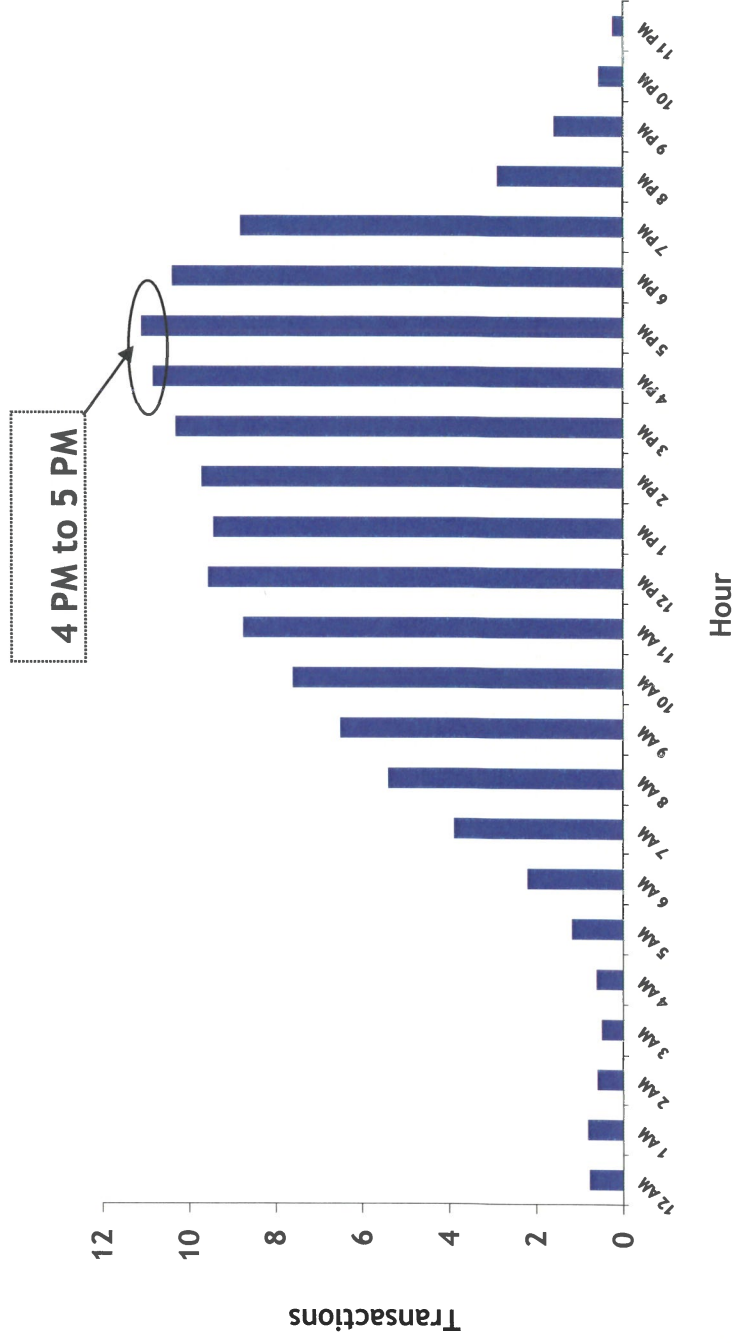
Overview

■ Purpose of Study

- Understand the average queue length and wait times experienced by Chase customers at remote drive-up ATMs
- Using ATM transaction data from multiple states and off-premise ATM sites to project the expected queue length and stacking requirement for the Portsmouth Green drive-up ATM location.
- Data will demonstrate that there will not be an adverse impact to traffic flow in the parking lot even at peak usage times.

Overview

- A study of 498 off-premise, drive-up ATMs accounting for 6.9MM annual transactions
- ATM's used for this study are drive-up off-premise locations
 - Non-branch connected
- Determine the peak hour as basis for maximum queue experienced



Queuing Results and Recommendation

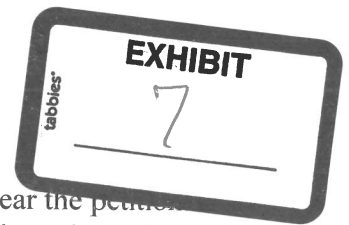
- The proposed drive-up ATM at Portsmouth Green is estimated to average 1,900 monthly transactions, which places it in Tier 1.
- Service times based on time-in-motion studies of Chase ATM transactions - actual experience is 45 seconds; conservatively assume 1 minute
- **Does not assume that transactions are evenly distributed, but are random events, which is a more accurate reflection of stacking requirements**
- The maximum theoretical queue that *could* result is 2 cars, although with a statistical probability of less than 0.02%, it is highly unlikely (bottom chart). The average queue length is actually less than 1 car (top chart).
- Recommendation at this location is stacking capability of 2 cars which would easily handle the peak periods.

Tier	Avg Q Length (Cars)	Max Q Length (Cars)*	Avg Time in Queue (min)	Avg Time in System (min)	ATM Utilization
1	0.02	2	0.11	1.15	13%
2	0.04	4	0.17	1.16	18%
3	0.07	5	0.25	1.25	24%
4	0.14	6	0.40	1.41	33%
5	0.26	10	0.59	1.56	38%
6	0.63	10	1.11	2.10	53%

* Maximum observed over 100 simulated hours of activity.

Tier	Cars in Queue									
	1	2	3	4	5	6	7	8	9	10
1	1.50%	0.20%	0.03%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
2	2.72%	0.49%	0.09%	0.02%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
3	4.64%	1.15%	0.29%	0.07%	0.02%	0.00%	0.00%	0.00%	0.00%	0.00%
4	7.21%	2.36%	0.77%	0.25%	0.08%	0.03%	0.01%	0.00%	0.00%	0.00%
5	9.29%	3.63%	1.42%	0.55%	0.22%	0.08%	0.03%	0.01%	0.01%	0.00%
6	13.29%	7.09%	3.79%	2.02%	1.08%	0.58%	0.31%	0.16%	0.09%	0.05%

Minutes, Board of Adjustment Hearing, November 17, 2020



applicant's representative had technical difficulties, so the Board couldn't hear the petition. The applicant for Petition C also had technical difficulties. The Board then voted to take Petition E, 30 Spring Street, out of order and address it.

Alternate Mr. Hagaman took a voting seat for the following petition.

C) Petition of **Bromley Portsmouth, LLC, Owner**, for property located at **1465 Woodbury Avenue** wherein relief was needed from the Zoning Ordinance to construct a standalone automated teller machine (ATM) which requires the following. 1) A Variance from Section 10.1530 to allow an automated teller machine (ATM) as defined in this section to be a principal freestanding structure and not located on the outside of a building, or in an access-controlled entrance to a building, or within a principal use in a building. Said property is shown on Assessor Map 216 Lot 3 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

SPEAKING TO THE PETITION

Michael Pereira was present on behalf of the applicant and reviewed the petition. He said the freestanding ATM enclosure would house the ATM machine and that it had an illuminated canopy. He said the existing precast curb would be replaced with a new curb cut to provide a 22-ft wide continuous drive aisle. He said there would also be a new lawn and additional plantings.

In response to Mr. Hagaman's questions, Mr. Pereira said the bollards would be protection against potential vehicular traffic that could run into the ATM structure itself and that the ATM would be illuminated at night. Mr. Lee asked if the only hardship was the fact that, without the variance, Citizens Bank and the property management company not be able to keep their agreement. Mr. Pereira said it was one of the main hardships. He said there would be no other location within the property, so the contract would be terminated. Mr. Parrott asked if it was in anticipation of further construction of a regular building on the property or nearby, or if it was the total development for Citizen's Bank. Mr. Pereira said it was the total development and was just a walk-up ATM machine.

Chairman Rheaume said he wondered if it was really the only location for the ATM because traffic in that location backed up considerably and it was the most trafficked area on the whole site. He asked what drove the idea of putting the ATM on that side instead of on the green strip on the opposite side. Mr. Pereira said it was an agreement between the bank and Bromley properties, and that the easiest route for utilities was the light pole next to Wendy's because if they put the ATM on the green strip, they would have to run power that would cross over Woodbury Avenue. Chairman Rheaume said the applicant didn't need a financial institution to have an ATM as an accessory use and that it could be a grocery store and so on. Mr. Pereira said the contract between the bank and the property management company was beyond their discussions and that the bank wanted the freestanding ATM so that they could control it more. Chairman Rheaume said the ordinance did not like freestanding ATM machines and that he didn't understand the hardship because a hardship was something about the property that distinguished it from others. He said he was concerned that if the Board approved the

freestanding ATM for the applicant, it could set a precedent. He said there had to be something unique about the property. Mr. Pereira said the property's high visibility and the shopping mall were attractive to the bank and that the stores would benefit from the ATM. He said the location was a barren lawn area, so the footprint wouldn't take up a lot of space.

Chairman Rheume opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one was present to speak, and Chairman Rheume closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Lee said he was struggling with the hardship, noting that the applicant's representative was basically saying that Citizens Bank would fire him if the variance wasn't approved. Mr. Parrott agreed and said the hardship had to be inherent in the way the land was developed.

Mr. Mulligan said he didn't think the proposed use was the problem. He understood that a freestanding ATM was not a permitted use, but he thought there were some characteristics of the property that might lend themselves to a freestanding ATM in an appropriate location. He said much of the large amount of parking space wasn't used, and a lot of retail space was getting used less and less. He could see that there might be some benefit to permitting those types of creative use in order to drive a little extra traffic to a retail location that might really need it. He said he could get behind the petition if the location wasn't where it was proposed, which was very visible and would impact traffic on two different corridors. He said he didn't think the applicant made a compelling case for hardship, though. He agreed with Chairman Rheume's concern about the location but knew that the proposal also had to go before the Planning Board and the Technical Advisory Committee. Mr. Hagaman agreed with Mr. Mulligan and Chairman Rheume and said it came down to the location, which was a huge issue. He said two out of three of the entrances had constant backup of cars, and he thought there were more suitable locations for a freestanding ATM. Chairman Rheume said if the Board denied the petition, the applicant could rework it to avoid a Fisher v. Dover scenario.

Mr. Pereira said the agreement was that they could not construct the ATM within the parking lot area. He said the bank understood the traffic concern but felt that it was a freestanding ATM and not a branch bank location. He said the traffic would be the same as at a typical branch location but that transactions were quick at ATM machines.

Vice-Chair Johnson said it wasn't a special exception and that a plaza like that with a bunch of different uses could be a perfect argument for a hardship to have an ATM, but it needed a slam dunk. He said it was the worst location for a freestanding ATM, traffic-wise and safety-wise. Mr. Lee said there was already an agreement in place but that it didn't mean it couldn't be changed for a new location. Chairman Rheume said there were other things to consider per the criteria, and part of the problem was the short transactions at an ATM machine that would cause more traffic and have cars going in all directions.

DECISION OF THE BOARD

Mr. Lee moved to deny the variance for the petition, and Mr. Parrott seconded.

Mr. Lee said the petition had to pass the five criteria. He said it would be contrary to the public interest because the location was probably the worst one in the 16-acre parcel and had great potential for traffic congestion, and that he couldn't find any hardship at all.

Mr. Parrott concurred and referred to his previous comments.

The motion to deny passed by unanimous vote, 7-0.

Chairman Rheume and Mr. Mulligan recused themselves from the following petition. Vice-Chair Johnson assumed the seat of Acting Chair and both alternates took voting seats.

D) Petition of **Michael Petrin, Owner**, for property located at **239 Northwest Street** wherein relief was needed from the Zoning Ordinance to demolish a rear addition and construct a new two-story rear addition which requires the following: 1) Variances from Section 10.521 to allow: a) 1.5 foot rear yard where 20 feet is required; b) 48% building coverage where 25% is the maximum allowed; and c) 28% open space where 30% is the minimum required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 122 Lot 3 and lies within the General Residence A (GRA) District.

SPEAKING TO THE PETITION

Attorney Bernie Pelech was present on behalf of the applicant. He said the house had an encroachment into the State's right-of-way and also had a zero front yard setback. He said the hardship was that the home was built in 1830 and taken by the State in 1939, so the structure was nonconforming and there was a hardship inherent in the land. He reviewed the criteria. He said the petition received positive feedback from the Historic District Commission (HDC)

Acting-Chair Johnson asked for a status update on the HDC approval and the shoreland buffer. Attorney Pelech said the HDC put the petition on hold pending the BOA's decision, and he didn't think a Conditional Use Permit (CUP) was necessary because the house's footprint wasn't being increased by more than 25 percent and the addition was no closer to the water than the main structure. Mr. Stith noted that environmental planner Peter Britz was weighing in on the need for a CUP. Acting-Chair Johnson asked if there were exterior and interior renovations, and Attorney Pelech said there would be a full renovation. Mr. Hagan asked if there were concerns about the safety of the property relative to the Route One Bypass and if the property was in the way of the road building process. Attorney Pelech said the 1939 right-of-way was sufficient and that there didn't seem to be a history of safety issues. He said there was a considerable grade change between the bridge and the rear of the house and about 50 feet of