

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
Kevin M. Baum, Esquire
DATE: September 25, 2019
Re: Tuck Realty Corp. – Applicant
Project Location: 3110 Lafayette Road and 65 Ocean Road
Tax Map 292, Lots 151-1, 151-2 and 153
Single Residence B (“SRB”)

Dear Chairman Rheaume and Zoning Board Members:

On behalf of the applicant, Tuck Realty Corp. (“Applicant” or “Tuck”), please accept this memorandum and materials in support of our Application for Additional Zoning Relief for construction of eighteen (18) residential Townhouse units (and one existing single-family home to remain on its own lot) on the subject parcels (the “Project”).

I. Exhibits

1. 9/17/2019 – Plan Set – by Jones and Beach Engineers, Inc.
Sheet C-1 – Existing Conditions Plan;
Sheet C-2 – Site Plan (1”=30” scale).
2. 7/26/2019 – ZBA Approval.
3. 6/ 21/19-Architectural Concept and Elevation Plans¹ – by Michael J. Keane Architects, PLLC.
Sheet A-1 – Unit A Elevations, Floor Plans; and
Sheet A-2 – Concept Plans-B
Sheet A-3 – B&C Garage/Floor Plans
4. Tax Map 292.

II. History/Property/Project

The subject property involves three lots, Lots 151-1, 151-2 and 153. On July 23, 2019, Applicant received variances to construct 18 townhomes in 5 structures on 81,666 s.f. with a lot area of 4,537 s.f./dwelling unit while retaining a single-family home on 15,000 s.f. Specifically, Applicant received the following variances:

¹ Architectural concept and elevations plans are concepts only and are provided for the ZBA’s reference. The final floor and elevation plans are subject to revision based upon the Planning Board’s review and input from prospective tenants.

- a.) from §10.513 to allow more than one free-standing dwelling per lot;
- b.) from §10.440, Use #1.40 to allow townhouses where the use is not permitted
- c.) from §10.521 to allow a lot area per dwelling unit of 4,537 s.f. where 15,000 s.f. is required.

(Exhibit 2). Applicant obtained the 4,537 s.f. lot area per dwelling unit figure by relying on previously recorded plans for the Property. After receiving approval, Jones and Beach surveyed the property and learned that the area of the lot where the townhouses are to be sited is smaller than indicated on the reference plan. As a result, the 18 townhomes will be sited on a lot size of 80,266 s.f. instead of 81,666 s.f. resulting a 78 s.f. difference in the lot size per dwelling unit previously approved by the ZBA. Accordingly, Applicant seeks relief for the same previously presented and approved project, with a lot area per dwelling unit figure of 4,459 s.f. where 4,537 s.f. was previously approved.

III. Relief Required

<u>Section/Required</u>	<u>Approved</u>	<u>Proposed</u>	<u>Comments</u>
§10.521 (Table of Dim. Standards)	1 single family home on 15,000 s.f.	1 single family home; 15,000 s.f.	
15,000 s.f. Lot Area per Dwelling Unit	18 townhomes on 81,666 (4,537s.f./dwelling unit)	18 townhomes on 80,266 s.f. (4,459 s.f./dwelling unit)	Transition zone; 78 s.f. difference; Exceeds G1=2,723 s.f./acre;

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 requested variance does not “in a marked degree conflict with the ordinance such that it violates 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)

Finding that the essential character of the neighborhood will not be altered by an 18 townhome project at this location where the Lafayette Road location “creates a mixed neighborhood with many uses”, the ZBA previously found that the granting a variance to allow a lot area of 4,538 s.f. per dwelling unit was not contrary to the public interest and not violative of the spirit of the Ordinance. (**Exhibit 2**). Similarly, granting a variance to allow a 78 s.f. difference to a lot area of 4,459 s.f. per dwelling unit 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 ZBA previously noted that the Project will “incorporate new homes with code-compliant construction and design elements that will mitigate any negative effects on abutter’s properties”. (**Exhibit 2**). Noting that the part of the Project with the greatest density will be sited on Lafayette Road and a single-family home will remain on Ocean Road, the ZBA found that granting the variances will not diminish the value of the surrounding properties. This revised proposal resulting from a more accurate survey of the property does not change the number or configuration of units over what the ZBA previously approved. Accordingly, granting the variance for a 78 s.f. reduction in lot size per dwelling will not diminish the value of surrounding properties.

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

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

As previously presented, the Property is irregularly shaped with frontage on both Lafayette Road and Ocean Road with many characteristics of a corner lot. It is surrounded by a mix of uses and zoning districts with residences to the rear and left, commercial and municipal uses to the right and front. The transitional nature of the area and proximity of the parcel to heavily travelled Route 1 non-residential uses, leave it poorly suited for single family residential use. These factors create special conditions that distinguish the property it from others in the area and it is upon these factors that the ZBA granted relief when it found special conditions existed. **(Exhibit 2)**. A difference of 78 s.f. lot area per dwelling unit discovered after the property was formally surveyed does not change the ZBA's factual findings or legal reasoning that special conditions exist.

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

As noted above, the requested variance is consistent with the general public purposes and spirit of the ordinance. The ZBA previously found that the density requirement should not reasonably be applied to this parcel given its transitional location and mixed-use location on Lafayette Road. **(Exhibit 2)**. These same findings exist with respect to the relief presently requested, which results from data obtained in a more accurate survey of the property. For these reasons, 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.

The proposed townhouses are consistent with the Property's location between the SRB and adjoining Gateway Zoning District. As a transition between single-family homes and the commercial/mixed uses/structures along the Lafayette Road corridor, the proposed use is clearly reasonable and the ZBA so found in issuing its earlier approval. **(Exhibit 2)**.

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.

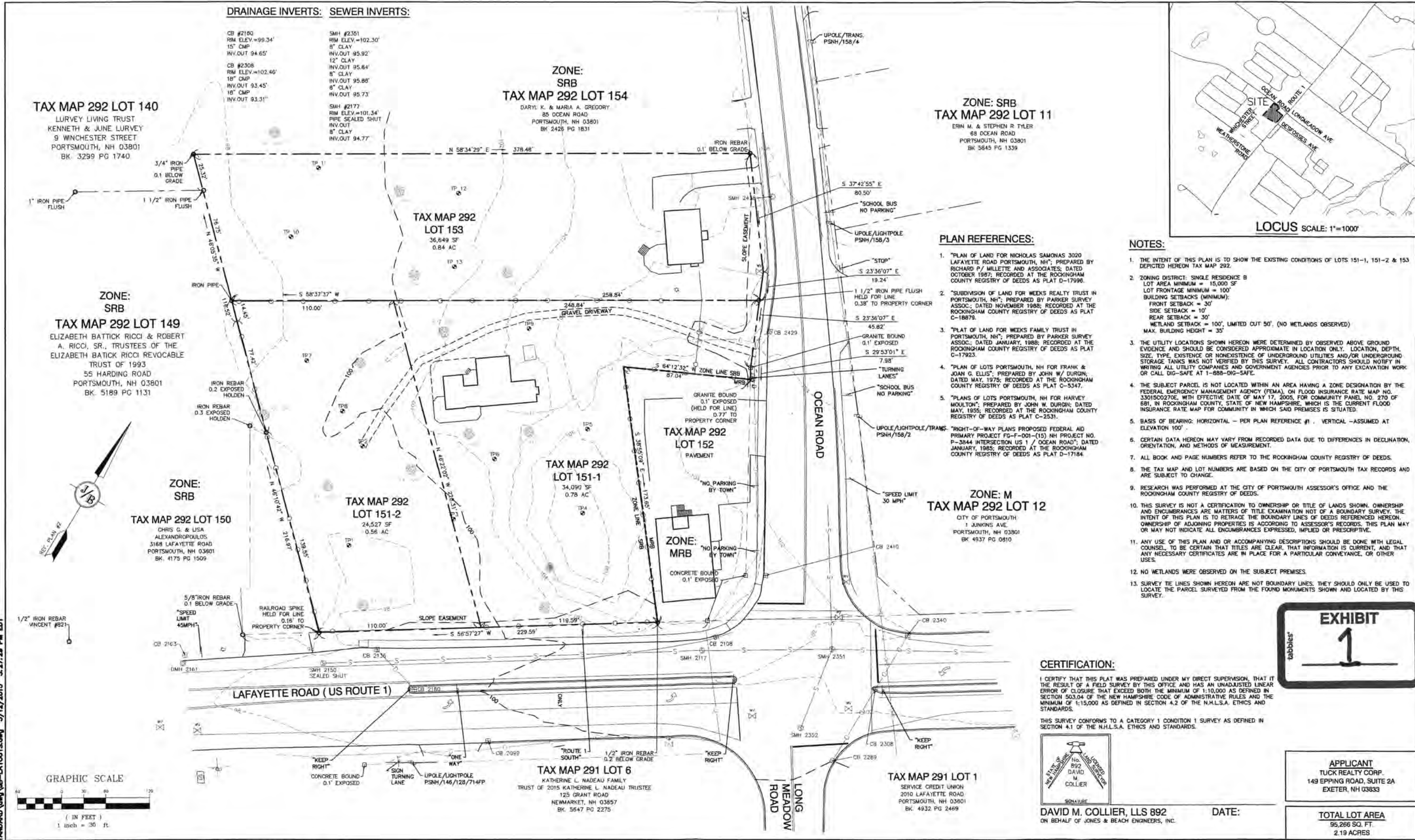
The ZBA previously found that this factor was satisfied and noted that the immediate area was not suited for individual residences. The same underlying rationale supports the present request for relief which differs only slightly than what was previously approved. Granting the requested variance for the same 18 townhouses with a lot area of 4,459 s.f. per dwelling unit (previously 4,537 s.f./dwelling unit) allows Tuck and the property owner a reasonable return via a transition between the residential neighborhood and the Gateway District. It respects the nearby residences while meeting the spirit and intent of the Gateway purposes which it abuts, providing needed additional housing opportunities. Conversely, denial of the variance deprives the owner of a reasonable return and Tuck as well as future homeowners the reasonable use and development of the Property. Thus, there is clearly no benefit to the public that outweighs the harm to the owner and applicant if the requested variances are not granted.

VI. Conclusion

For all of the reasons stated, Tuck respectfully requests that the Portsmouth Zoning Board of Adjustment grant the submitted variance request.

Respectfully submitted,
Tuck Realty Corp.


By: R. Timothy Phoenix
Kevin M. Baum



Design: XXX	Draft: XXX	Date: XX/XX/XX
Checked: XXX	Scale: XXXXXX	Project No.: 18165
Drawing Name: 18165-PLAN.dwg		
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.		

REV.	DATE	ISSUED FOR REVIEW	LAZ
0	9/17/19	ISSUED FOR REVIEW	LAZ
REV.	DATE	REVISION	BY

Designed and Produced in NH

J/B Jones & Beach Engineers, Inc.
Civil Engineering Services

85 Portsmouth Ave. PO Box 219 Stratham, NH 03885

603-772-4746 FAX: 603-772-0227 E-MAIL: JBE@JONESANDBEACH.COM

Plan Name:	EXISTING CONDITIONS PLAN
Project:	3110 LAFAYETTE ROAD AND 65 OCEAN ROAD PORTSMOUTH, NH 03801
Owner of Record:	CARTER CHAD WEEKS REALTY TRUST, WEEKS KALEY E. TRUSTEE 65 OCEAN ROAD SUITE 21 EXETER, NH 03801 PO BOX 100, HAMPTON FALLS, NH 03844

DRAWING No.	C1
SHEET 2 OF X	JBE PROJECT NO. 18165

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TAX MAP 292 LOT 140

LURVEY LIVING TRUST
KENNETH & JUNE LURVEY
9 WINCHESTER STREET
PORTSMOUTH, NH 03801
BK. 3299 PG 1740

**ZONE: SRB
TAX MAP 292 LOT 154**

DARYL K. & MARIA A. GREGORY
85 OCEAN ROAD
PORTSMOUTH, NH 03801
BK 2426 PG 1831

**ZONE: SRB
TAX MAP 292 LOT 11**

ERIN M. & STEPHEN R TYLER
68 OCEAN ROAD
PORTSMOUTH, NH 03801
BK 5845 PG 1339

**ZONE: SRB
TAX MAP 292 LOT 149**

ELIZABETH BATTICK RICCI & ROBERT A. RICCI, SR., TRUSTEES OF THE ELIZABETH BATTICK RICCI REVOCABLE TRUST OF 1993
55 HARDING ROAD
PORTSMOUTH, NH 03801
BK. 5189 PG 1131

**ZONE: SRB
TAX MAP 292 LOT 150**

CHRIS G. & USA ALEXANDROPOULOS
3168 LAFAYETTE ROAD
PORTSMOUTH, NH 03801
BK. 4175 PG 1509

**TAX MAP 292
LOT 152**

PAVEMENT

**ZONE: MRB
TAX MAP 292 LOT 12**

**ZONE: M
TAX MAP 292 LOT 12**

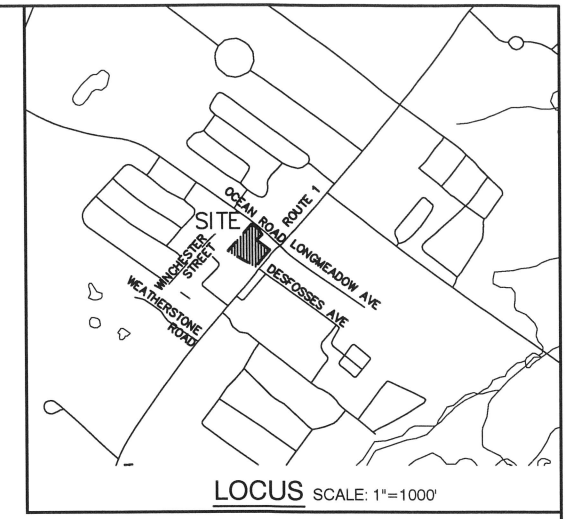
CITY OF PORTSMOUTH
1 JUNKINS AVE.
PORTSMOUTH, NH 03801
BK 4937 PG 0810

TAX MAP 291 LOT 6

KATHERINE L. NADEAU FAMILY
TRUST OF 2015, KATHERINE L. NADEAU TRUSTEE
125 GRANT ROAD
NEWMARKET, NH 03857
BK. 5647 PG 2275

TAX MAP 291 LOT 1

SERVICE CREDIT UNION
2010 LAFAYETTE ROAD
PORTSMOUTH, NH 03801
BK. 4932 PG 2469



SITE NOTES:

- THE INTENT OF THIS PLAN IS TO COMBINE AND ADJUST THE THREE EXISTING HOUSE LOTS INTO TWO PARCELS, ONE SINGLE 15,000 S.F. LOT AND THE OTHER WITH 18 PROPOSED TOWNHOUSES ARE TO BE CONSTRUCTED. THIS PROJECT TO BE SERVED BY ELECTRIC, GAS, MUNICIPAL SEWER & PUBLIC WATER.
- ZONING DISTRICT: SINGLE RESIDENCE B (SRB)
LOT AREA MINIMUM = 15,000 S.F. (1 UNIT PER 4,459 SF PROVIDED)
LOT FRONTAGE MINIMUM = 100'
BUILDING SETBACKS (MINIMUM):
FRONT SETBACK = 30' OR 80' FROM CENTERLINE OF US RT.1 WHICHEVER IS GREATER (80' PROVIDED)
SIDE SETBACK = 10'
REAR SETBACK = 30'
WETLAND SETBACK = 100', LIMITED CUT 50'. (NO WETLANDS OBSERVED)
MAX. BUILDING HEIGHT = 35' (SLOPED ROOFS), 30' (FLAT ROOFS), (8') ROOF APPURTENANCE.
BUILDING COVERAGE = 20%
- PARKING CALCULATIONS:
TYPICAL PARKING SPACE = 8.5'x20'
TOTAL NUMBER OF RESIDENTIAL UNITS = 18
1.3 SPACES PER RESIDENTIAL UNIT
TOTAL SPACES REQUIRED = 24
TOTAL SPACES PROVIDED = 36 OUTDOOR SPACES, 38 INDOOR SPACES
= 72 TOTAL SPACES PROVIDED
- OPEN SPACE CALCULATION:
MINIMUM OF 40% OPEN SPACE REQUIRED
39,892 S.F. ± OPEN SPACE = 49.7% OPEN SPACE PROVIDED
- THIS PLAN SET HAS BEEN PREPARED BY JONES & BEACH ENGINEERS, INC. FOR MUNICIPAL AND STATE APPROVALS AND FOR CONSTRUCTION BASED ON DATA OBTAINED FROM ON-SITE FIELD SURVEY AND EXISTING MUNICIPAL RECORDS. THROUGHOUT THE CONSTRUCTION PROCESS, THE CONTRACTOR SHALL INFORM THE ENGINEER IMMEDIATELY OF ANY FIELD DISCREPANCY FROM DATA AS SHOWN ON THE DESIGN PLANS, INCLUDING ANY UNFORESEEN CONDITIONS, SUBSURFACE OR OTHERWISE, FOR EVALUATION AND RECOMMENDATIONS. ANY CONTRADICTION BETWEEN ITEMS ON THIS PLAN/PLAN SET, OR BETWEEN THE PLANS AND ON-SITE CONDITIONS, MUST BE RESOLVED BEFORE RELATED CONSTRUCTION HAS BEEN INITIATED. CONTRACTOR TO ALWAYS CONTACT DIG SAFE PRIOR TO DIGGING ONSITE OR OFFSITE TO ENSURE SAFETY AND OBEY THE LAW.
- SUBJECT PROPERTY IS NOT LOCATED WITHIN FEDERALLY DESIGNATED 100 YEAR FLOOD HAZARD ZONE. REFERENCE FEMA COMMUNITY PANEL NO. 3301500270E, DATED MAY 17, 2005.
- ALL CONSTRUCTION ACTIVITIES SHALL BE PERFORMED IN ACCORDANCE WITH THE STORMWATER POLLUTION PREVENTION PLAN (S.W.P.P.), THIS DOCUMENT IS TO BE KEPT ONSITE AT ALL TIMES AND UPDATED AS REQUIRED.
- PRIOR TO THE START OF CONSTRUCTION, THE CONTRACTOR SHALL COORDINATE WITH THE ENGINEER, ARCHITECT AND/OR OWNER, IN ORDER TO OBTAIN AND/OR PAY ALL THE NECESSARY LOCAL PERMITS, FEES AND BONDS.
- ALL PROPOSED SIGNAGE SHALL CONFORM WITH THE TOWN ZONING REGULATIONS, UNLESS A VARIANCE IS OTHERWISE REQUESTED.
- ALL SIGNAGE AND PAVEMENT MARKINGS SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (M.U.T.C.D.) AND NHDOT STANDARDS AND SPECIFICATIONS (NON-REFLECTORIZED PAVEMENT MARKINGS), UNLESS OTHERWISE NOTED.
- ALL PARKING STALLS SHALL BE SEPARATED USING 4" WIDE SOLID STRIPES. STRIPING SHALL BE 100% ACRYLIC TYPE, LOW VOC, FAST DRYING, IN A COLOR OF WHITE.
- ALL STOP BARS SHALL BE 18" IN WIDTH IN A COLOR OF WHITE; ALL TRAFFIC ARROWS SHALL BE PAINTED IN A COLOR OF WHITE.
- ALL CURBING TO BE SLOPED GRANITE WITH A MINIMUM RADIUS OF 2', UNLESS OTHERWISE NOTED.
- ALL BUILDING DIMENSIONS SHALL BE VERIFIED WITH THE ARCHITECTURAL AND STRUCTURAL PLANS PROVIDED BY THE OWNER. ANY DISCREPANCIES SHOULD BE BROUGHT TO THE ATTENTION OF THE ENGINEER AND OWNER PRIOR TO THE START OF CONSTRUCTION. BUILDING DIMENSIONS AND AREAS TO BE OUTSIDE OF MASONRY, UNLESS OTHERWISE NOTED.
- SNOW TO BE STORED AT EDGE OF PAVEMENT AND IN AREAS SHOWN ON THE PLANS, OR TRUCKED OFFSITE TO AN APPROVED SNOW DUMPING LOCATION.
- ALL CONSTRUCTION ACTIVITIES SHALL CONFORM TO LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) RULES AND REGULATIONS.23.

APPROVED - PORTSMOUTH, NH
PLANNING BOARD

APPLICANT
TUCK REALTY CORP.
149 EPPING ROAD, SUITE 2A
EXETER, NH 03833

TOTAL LOT AREA
95,266 SQ. FT.
2.19 ACRES

DATE:

**SITE PLAN
MAP BLOCK LOT**

Plan Name: 3110 LAFAYETTE ROAD AND 65 OCEAN ROAD
PORTSMOUTH, NH 03801
Project: 3110 LAFAYETTE ROAD AND 65 OCEAN ROAD
PORTSMOUTH, NH 03801
Owner of Record: CARTER CHAD 65 OCEAN ROAD SUITE 21 EXETER, NH 03801
WEEKS REALTY TRUST, WEEKS KALEY E. TRUSTEE PO BOX 100, HAMPTON FALLS, NH 03844

DRAWING No.
C2
SHEET X OF X
JBE PROJECT NO. 18165

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Design: XXX	Draft: XXX	Date: XX/XX/XX
Checked: XXX	Scale: XXXXXX	Project No.: 18165
Drawing Name: 18165-PLAN.dwg		
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.		

REV.	DATE	REVISION	BY
0	9/17/19	ISSUED FOR REVIEW	LAZ

Designed and Produced in NH

J/B Jones & Beach Engineers, Inc.

85 Portsmouth Ave. PO Box 219 Stratham, NH 03885

Civil Engineering Services

603-772-4746
FAX: 603-772-0227
E-MAIL: JBE@JONESANDBEACH.COM



CITY OF PORTSMOUTH

Community Development Department
(603) 610-7281

Planning Department
(603) 610-7216

PLANNING DEPARTMENT



July 26, 2019

Kaley E. Weeks, Trustee
Weeks Realty Trust
3110 Lafayette Road
Portsmouth, New Hampshire 03801

Chad Carter
65 Ocean Road
Portsmouth, New Hampshire 03801

Tuck Realty Corporation
c/o Hoefle, Phoenix, Gormley & Roberts, PLLC
PO Box 4480
Portsmouth, New Hampshire 03802-4480

Re: Property at 3110 Lafayette Road & 65 Ocean Road, Permit LU 19-141
Assessor Plan 292, Lot 0

Dear Applicants:

The Board of Adjustment at its reconvened meeting on July 23, 2019 completed its consideration of your application described as follows:

Application:

Case 7-9

Petitioners: Weeks Realty Trust, Kaley E. Weeks, Trustee and Chad Carter,
Owners and Tuck Realty Corporation, applicant
Property: 3110 Lafayette Road and 65 Ocean Road
Assessor Plan: Map 292, Lots 151-1, 151-2 and 153
District: Single Residence B

- Description:** Demolish existing residential structure and construct 18 townhouses in 5 structures on merged lots with one existing home to remain.
- Requests:** Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
- a) from Section 10.513 to allow more than one free-standing dwelling per lot;
 - b) from Section 10.440, Use #1.40 to allow townhouses where the use is not permitted;
 - c) from Section 10.521 to allow a lot area per dwelling unit of 4,537 s.f. where 15,000 s.f. per dwelling unit is required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. The essential character of the neighborhood will not be altered by the proposed townhouses as this property's location on Lafayette Road creates a mixed neighborhood with different uses, including several commercial businesses and dense residential properties.
- Substantial justice will be done. The loss to the applicant if the petition were denied and strict conformance to the ordinance was required would not be outweighed by any gain to the general public as the immediate area is not suited for individual residences due to the large lots.
- Granting the variances will not diminish the value of surrounding properties. The development will incorporate new homes with code-compliant construction and design elements that will mitigate any negative effects on abutters' properties. The rhythm of the neighborhood will not be affected because the existing single-family dwelling will remain and the densest part of the project will be closer to Lafayette Road.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property which include its frontage on both Ocean and Lafayette Roads. This is a large amalgamated property, different from others in the area, which is not suitable for single residence development. Due to the special conditions, there is no fair and substantial relationship between the purposes of the ordinance provisions and their specific application to the property. This is a reasonable use of the property as a residential use in a residential zone.

Kaley Weeks, Chad Carter & Tuck Realty Corporation - Page Three
July 26, 2019

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.

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

Very truly yours,



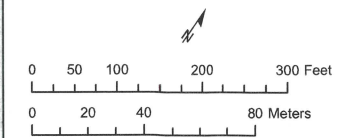
David Rheume, Chairman
Board of Adjustment

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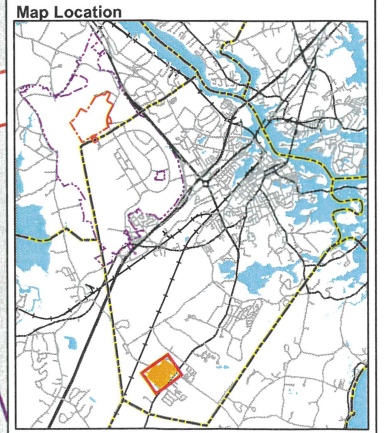
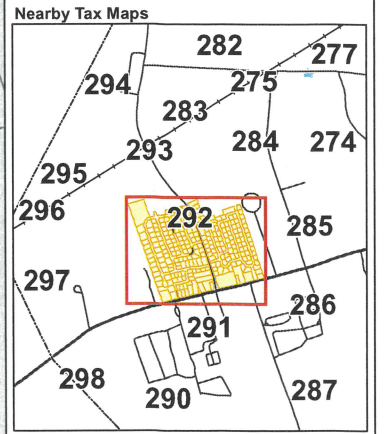
c: Robert Marsilia, Chief Building Inspector
Roseann Maurice-Lentz, City Assessor
R. Timothy Phoenix, Esq.

tabbles

- Parti
See the cover sheet
- 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
 - 66 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)



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
2018
Tax Map 292

