

Derek R. Durbin, Esq. 603.287.4764 derek@durbinlawoffices.com *Also admitted in MA

BY: HAND DELIVERY & Viewport Cloud

May 29, 2019

City of Portsmouth Zoning Board of Adjustment Attn: Chairman David Reauhme 1 Junkins Avenue Portsmouth, NH 03801

RE: Variance Application of Haven Properties LLC Rep. owner Jeff Demers 187 McDonough St, Tax Map 144, Lot 43

Dear Chairman Reauhme,

Our Office represents Haven Properties LLC, owner of the property located at 187 McDonough Street, Portsmouth. Please find twelve (12) copies of my client's zoning application and related materials for consideration by the Zoning Board at its June hearing. The following are included in the package, which has also been uploaded the City's Viewport system:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) ZBA Existing and Proposed Conditions Plan;
- 4) Floor Plans;
- 5) Elevations;
- 6) Tax Map Image of Neighborhood;
- 7) Photographs of Property and Surrounding Properties; and
- 8) \$150.00 filing fee.

Should you have any questions or concerns, regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,

Derek R. Durbin, Esq.

CITY OF PORTSMOUTH ZONING BOARD OF ADJUSTMENT APPLICATION NARRATIVE

Haven Properties LLC (Owner/Applicant) Tax Map 144, Lot 43 187 McDonough Street Portsmouth, NH 03801

INTRODUCTORY STATEMENT

Haven Properties LLC (the "Applicant") is the owner of property located at 187 McDonough Street, Portsmouth, New Hampshire 03801, identified on Tax Map 144, as Lot 43 (the "Subject Property"). The Subject Property is in Portsmouth's General Residence C ("GRC") Zoning District. It is approximately 0.06 acres in size (1,868 square feet) and contains a single-family home that abuts railroad property to the rear.

The Applicant acquired the Subject Property in 2017. Prior to the Applicant acquiring the Subject Property, it was owned by one family for just under 48 years. The existing home was originally built in 1856. It has fallen into significant disrepair. The home has structural issues and is in very poor condition overall. It has been unoccupied since the Applicant purchased it due to unsafe and inhabitable conditions. The existing home also has an outdated floor plan that contains 4 small bedrooms and approximately 1,496 square feet of living space. Portions of the home encroach slightly into the abutting property to the west (left) and touch upon or cross slightly over the boundary to the north (rear) with the railroad property.

Restoring and modernizing the existing home and bringing into code compliance would be cost prohibitive. The existing boundary encroachments are also problematic, as the Applicant has no established legal access to the encroaching portions of the home to the left and rear. As such, the Applicant is proposing to tear down the existing residence and construct a new modest-sized home in its place. The proposed home would have a more modern floor plan and contain 3 bedrooms and approximately 2,200 square feet of living space, consistent with what today's renters and home buyers desire. The proposed home would have an attached garage that would accommodate one vehicle and driveway space for an additional vehicle to park behind it. In its existing condition, the Subject Property has no parking.

The Applicant is presently under contract to purchase approximately 669 square feet of adjacent railroad land to the rear of the Subject Property, as depicted on the plans submitted with the variance application. The Applicant's purchase of the additional land hinges on receiving the necessary variances to construct the proposed home on the Subject Property. If the Zoning Board approves its application, the Applicant would next proceed to the Planning Board for lot line adjustment approval.

SUMMARY OF VARIANCE RELIEF

The Applicant seeks the following variances from Section 10.521 (Table of Dimensional Requirements) of the Zoning Ordinance:

- 1. To allow lot area of 2,537 s.f. where 3,500 s.f is the minimum required and 1,868 s.f. exists);
- 2. To allow lot area per dwelling unit of 2,537 s.f. where 3,500 s.f. is the minimum required and 1,868 s.f. exists);
- 3. To allow continuous street frontage of 48' where 70' is the minimum required and 48' exists;
- 4. To allow building coverage of 49% (+/-) where 35% is the maximum required and 46% exists.
- 5. To allow a 4' (+/-) right yard setback where 10' is the minimum required and 14' (+/) exists;
- 6. To allow a 2' (+/-) left yard setback where 10' is the minimum required and 0' exists;¹ and
- 7. To allow a 10' (+/-) rear yard setback where 20' is the minimum required and 0' exists.²

VARIANCE CRITERIA

Granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court observed that the requirements that a variance not be "contrary to the public interest" or "injure the public rights of others" are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. <u>152 N.H. 577</u> (2005). The Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, "the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives." "<u>Id</u>. "Mere conflict with the terms of the zoning ordinance is insufficient to constitute a violation of the ordinance's basic zoning objectives." (1) examining whether granting a variance would violate an ordinance's basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare." <u>Id</u>.

¹¹ The foundation, first floor and third floor of the house are actually setback 4' from the left (west) property boundary, but the second-floor projects into the right yard setback by 2 additional feet; hence the Applicant is requesting a 2' left side yard setback variance.

² Section 10.516.20 of the Ordinance reads: *Notwithstanding any other provision of this Article, in any district where a rear yard or side yard is required, the minimum yard adjoining a railroad right of way shall be 15 feet.* The Applicant has applied for rear setback relief under the general standards given the differing standards set forth in the Ordinance for properties abutting railroad right-of-ways.

Consistent with most, if not all, of the properties in the section of McDonough Street between Dover and Cabot Streets, building coverage on the Subject Property exceeds the maximum amount allowed under Section 10.521 of the Zoning Ordinance. Building coverage on the Subject Property will be increased by a deminimis percentage (3%) if the application is approved, but this is driven primarily by the small size of the lot. The proposed home itself will contain a modest 2,200 square feet of living space with 3 bedrooms and an attached garage. Because the lots in this area are very small, a significant percentage of them fall short of the minimum lot area requirements. This naturally leads to a situation where most of the properties also exceed the maximum allowable building coverages. Even with the 3% proposed increase, the Subject Property will contain similar of lesser lot coverage than many of the surrounding properties.

Of the eleven (11) other properties that have frontage on McDonough Street and are located between Cabot and Dover Streets, eight (8) have structures that encroach significantly into one or both side yard setbacks. Many of these properties also encroach into the rear yard setback.

The Applicant is proposing to construct the home in a more centered location on the Subject Property. This will require 6' of right yard setback relief. However, the Applicant will compensate for this by reducing the rear and left yard setback encroachment and creating off-street parking where none presently exists. The lot depth requirement of the Zoning Ordinance will also be met with the additional land being added in the rear, whereas it is presently non-compliant. Lot area/lot area per dwelling unit will be brought into greater conformance with the Zoning Ordinance. The frontage of the lot will remain the same, which is consistent with other surrounding properties.

The abutter to the left will be directly benefited by the proposed construction, as they will no longer have a home encroaching into the right side of their property. The reduction in left and rear yard setback encroachments will also benefit the Applicant, who will now have enough space to maintain the proposed home without needing permission from the abutting property owners, a luxury that does not presently exist. In addition, the residents of the neighborhood and general public will be benefited by the creation of off-street parking where none presently exists. Overall, with the zoning trade-offs proposed, the Applicant is bringing the Subject Property into greater conformity with the provisions of the Zoning Ordinance and bettering the situation with this lot.

Granting the variances requested for the Subject Property will not alter the essential characteristics of the neighborhood or create any threat to the public health, safety or welfare. This is a densely settled area where most of the surrounding properties have greater or similar building coverages and setback encroachments to what is proposed on the Subject Property.

In the case of *Belanger v. Nashua*, the New Hampshire Supreme Court recognized that municipalities have an obligation to have their zoning ordinances reflect current characteristics of the neighborhood. <u>121 N.H. 389</u> (1981). In the present instance, the dimensional standards applicable to the GRC District do not reflect the characteristics of the neighborhood.

Substantial justice will be done by granting the variance relief.

Any loss to the individual that is not outweighed by a gain to the general public is an injustice. *New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials* (1997); *Malachy Glen Assocs., Inc. v. Town of Chichester*, <u>155</u> <u>N.H. 102</u> (2007).

If the variances were to be denied, the Applicant would be left with a home that is presently inhabitable and in need of a complete renovation which would include significant structural work. The existing home is relatively small and contains a dysfunctional, outdated floor plan that would not appeal to most families or couples looking to rent or purchase in the area. The home that the Applicant is proposing to construct on the Subject Property would contain a more functional and desirable layout which would appeal to many modern renters and potential home buyers. The loss(es) to the Applicant in denying the variances would not be outweighed by any corresponding gain to the public.

The values of surrounding properties will not be diminished by granting the variance relief.

Surrounding properties will not be negatively impacted by the construction of a new, modern single-family home on the Subject Property. To the contrary, the construction of new, tastefully designed home on the Subject Property is likely to increase the values of surrounding properties. It will have a direct benefit to the owners of 199 McDonough Street (Tax Map 144, Lot 42, who will no longer have another person's home encroaching into the right side of their property.

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

The Subject Property has special conditions that make it distinguishable from surrounding properties. Owing to these special conditions, there is no fair and substantial relationship between the general purposes of the Ordinance provision(s) and their application to the Property.

The Subject Property contains a small single-family home that is inhabitable in its current state, has a dysfunctional floor plan and structural issues with the foundation. The home encroaches into the neighboring property to the left and touches upon or slightly crosses over the boundary in the rear, thus violating the left and rear yard setbacks. The Applicant presently lacks legal access to maintain those portions of the home that encroach upon and cross over the shared boundaries. To gain permanent legal access, the Applicant would need easements from the abutting property owners, which may be achievable but would serve no long-term benefit to anyone. The Subject Property does not have any off-street parking and already exceeds the maximum allowable building coverage by 11%. Taken together, these are special conditions that distinguish the Subject Property from surrounding properties.

Owing to its special conditions, there is no fair and substantial relationship between the general purposes of the GRC Zoning restrictions and their application to the Subject Property, as the Applicant could keep the home in its current location if the variance relief were denied. By adding land to the north and constructing a new home in a different location on the Subject Property, the Applicant will be able to significantly reduce the left and rear yard setback encroachments, eliminate the lot depth non-conformity, improve the lot area/lot area per dwelling unit non-conformity and provide off-street parking where no presently exists. The elimination of the left and rear boundary encroachments will give the Applicant the necessary access to maintain all portions of the proposed home without needing revocable licenses or permanent easements from abutting property owners. The Applicant will be able to create a modern, more attractive single-family home on the Subject Property without violating the spirit, intent and basic objectives of the Zoning Ordinance, which is intended to promote *medium* to *high* density in the GRC District.

The proposed use is reasonable.

The use of the Subject Property for a single-family home will be consistent with the spirit and intent of GRC Zoning, which promotes a mixture of single-family, two-family and multifamily uses. The Subject Property has always been used for single-family residential purposes. Accordingly, it can be objectively concluded that the proposed use is reasonable.

PROPOSED CONDITION OF APPROVAL

In conjunction with the variances requested, the Applicant proposes the following condition of approval: *This approval is expressly conditioned upon the Applicant receiving lot line adjustment approval from the Planning Board in substantial compliance with the plans presented to and approved by the Zoning Board of Adjustment.*

CONCLUSION

In conclusion, the Applicant has demonstrated that the proposed plans meet the five (5) criteria for granting each of the variances requested. Accordingly, it respectfully requests that the Board approve its Variance Application.

Respectfully Submitted,

Dated: May 29, 2019 Revision Date: June 6, 2019 Haven Properties LLC Jeffrey Demers, Member

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By: Derek R. Durbin, Esq. DURBIN LAW OFFICES PLLC 144 Washington Street Portsmouth, NH 03801 (603)-287-4764 derek@durbinlawoffices.com

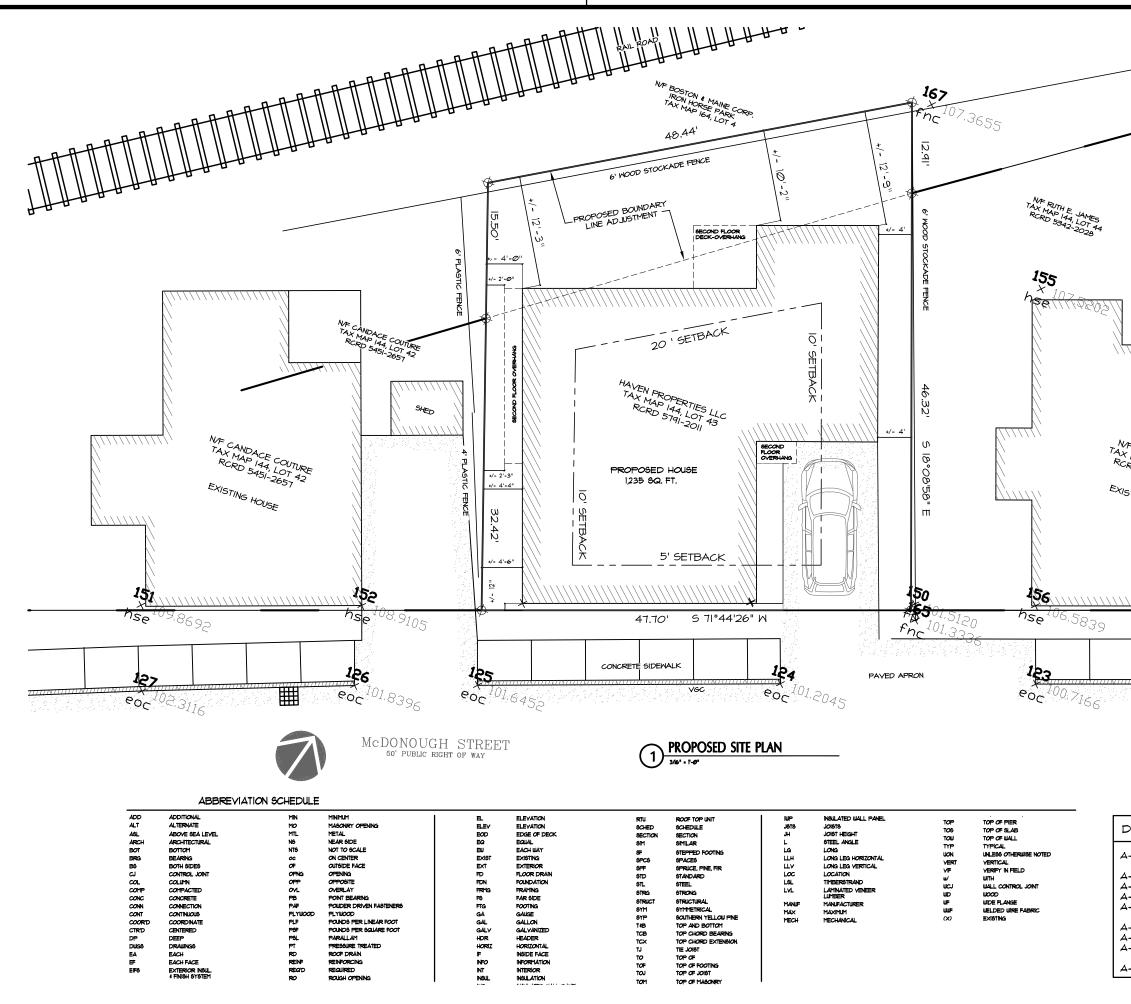
LETTER OF AUTHORIZATION

Haven Properties LLC, of 80 Haven Drive, Portsmouth, New Hampshire 03801, the owner of real property located at 187 McDonough Street, Portsmouth, New Hampshire 03801, identified on Tax Map 144, as Lot 43 (the "Property"), hereby authorizes Durbin Law Offices PLLC to act as his agent and representative in connection with the filing of any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property. Said Letter of Authorization shall be valid until expressly revoked in writing.

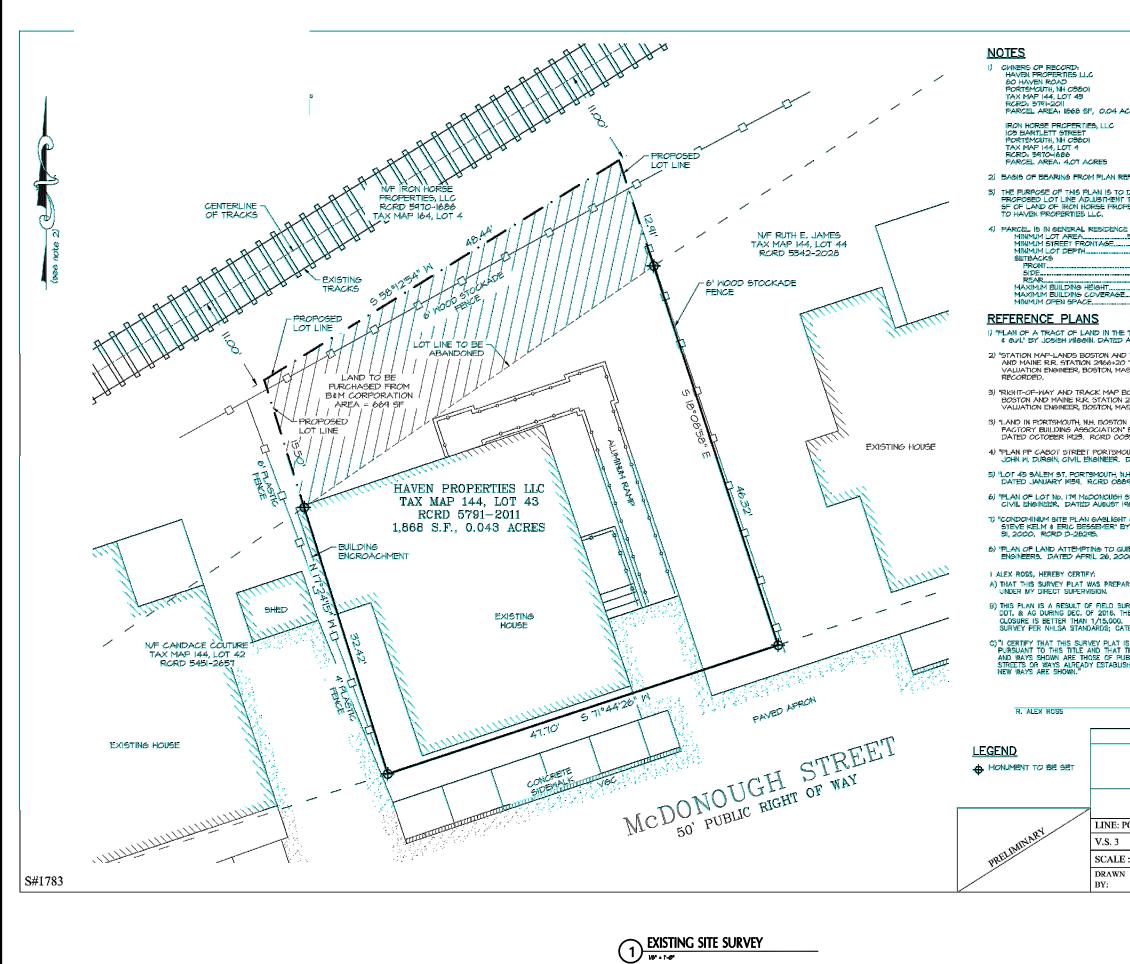
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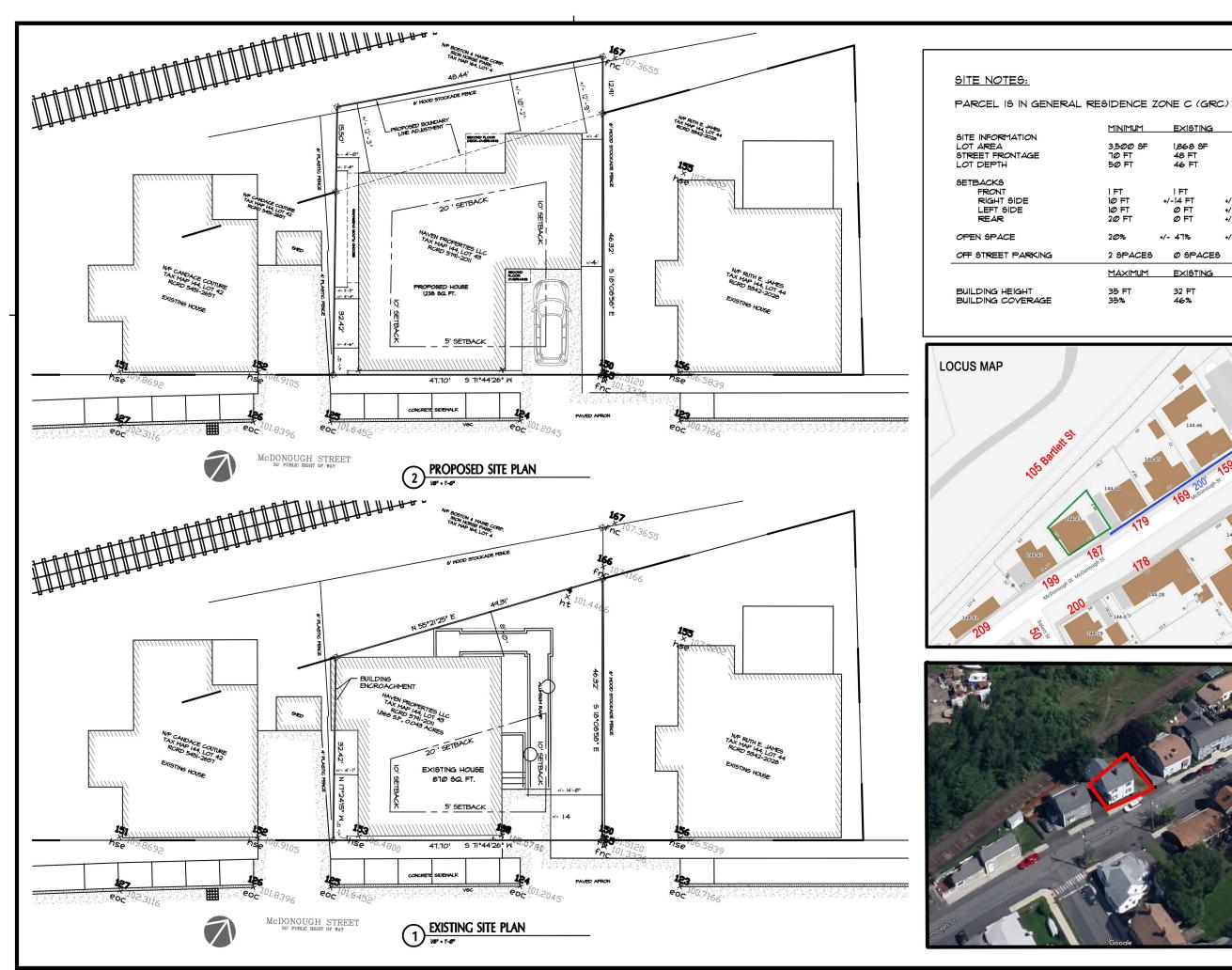
Printed Name: Jeffrey Demers, Member Duly Authorized Date



	JEFF DEMERS DESIGN 163 COURT STREET FORTSMOUTH NEW HAMPSHIRE 03801 W: 1.603.501.0381 C: 1.603.502.8074 JEENERE @JEFFDEMERSDESIBN.COM JEENERE @JEFFDEMERSDESIBN.COM These drawings, specifications, and the design conveyed are the exclusive property of Jeff Demers Design, LLC. Any form of reproduction or construction of this design without express legal consent is prohibited.
VF RUTH E. JAMES CRD 5342-2028 ISTING HOUSE	187 MC DONOUGH ST Portsmouth, NEW HAMPSHIRE Rockingham county Tax MAP 144, LOT 43
	DRAWING INDEX SITE PLAN & ABBREVIATIONS DATE MAY 25, 2019 PROJECT NUMBER DRAWN BY JLD SCALE As Shown
DRAWING INDEX	
A-10 DRAWING INDEX, SITE PLAN 4 ABBREVIATIONS A-01 SITE SURVEY A-02 EXISTING 4 PROPOSED SITE PLAN A-03 EXISTING CONDITIONS PHOTOS A-0.4 EXISTING CONDITIONS PHOTOS A-2.0 FOUNDATION PLAN A-2.1 FIRST 4 SECOND FLOOR PLAN A-3.1 EXTERIOR ELEVATIONS	SHEET NUMBER A-1.0

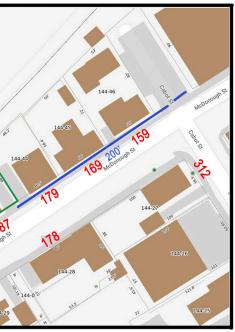


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MINIMUM	EXISTING	PROPOSED
3,500 SF 70 FT 50 FT	1,868 SF 48 FT 46 FT	2,537 SF 48 FT 51 FT
1 FT 10 FT 10 FT 20 FT	1 FT +/-14 FT Ø FT Ø FT	FT +/- 4 FT +/- 2 FT +/- 1Ø FT
2Ø%	+/- 47%	+/- 41%
2 SPACES	Ø SPACES	2 SPACES
MAXIMUM	EXISTING	PROPOSED
35 FT 35%	32 FT 46%	34 FT 49%





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DEMERS@JEFFDEMERSDESIGN WWW.JEFFDEMERSDESIGN.CI

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EXISTING & PROPOSED SITE PLAN

DATE MAY 25, 2019 PROJECT NUMBER DRAWN BY Ц SCALE As Shown

SHEET NUMBER

A-0.2







187 McDonough Northeast



187 McDonough Southeast

187 McDonough Northwest

187 McDonough Northeast

187 МсDолоидн St. Роктямоитн NH TAX MAP 144, LOT 43



EXISTING CONDITIONS PHOTOS

JEFF DEMERS DESIGN PORTSMOUTH, NEW HAMPSHIRE T:(603)501-0381 | C:(603)502-8074 WWW.JEFFDEMERSDESIGN.COM





179 & 169 McDondugh east



50 SHAW RD



169 McDonough Northeast



178 McDondugh West

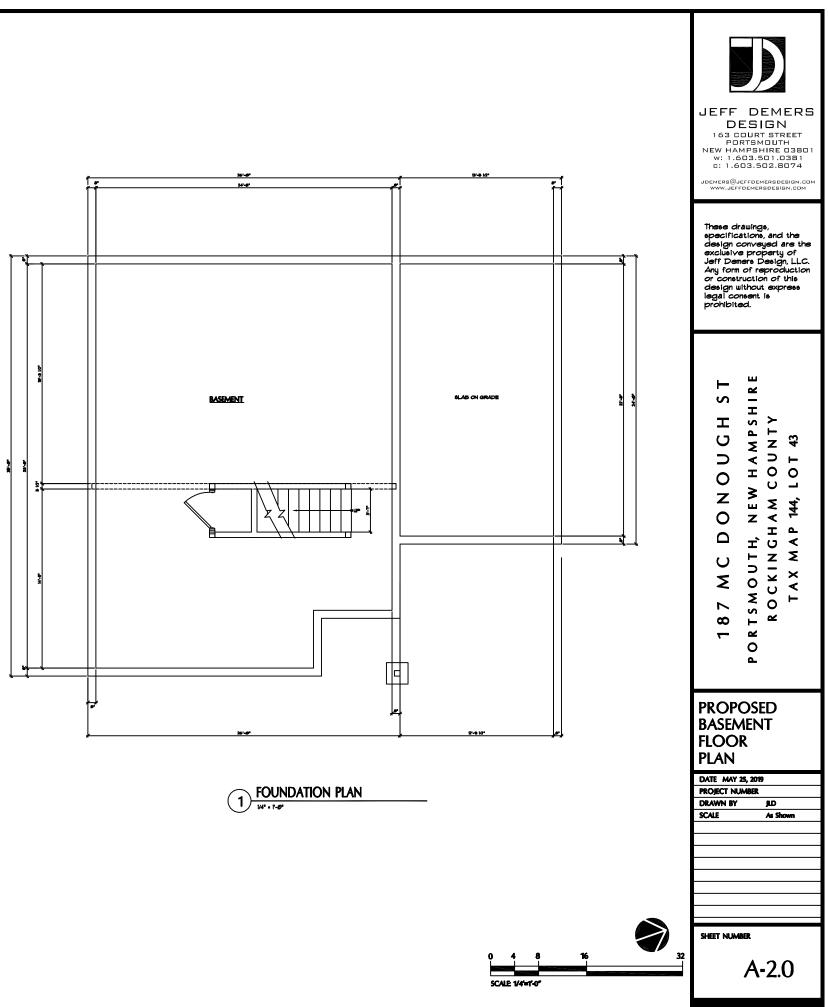
187 McDonough St. Portsmouth NH Tax map 144, lot 43

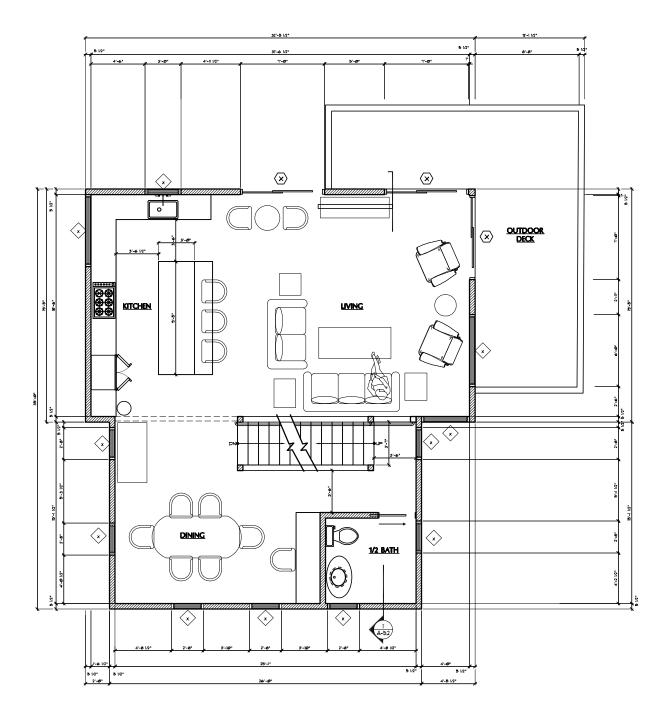




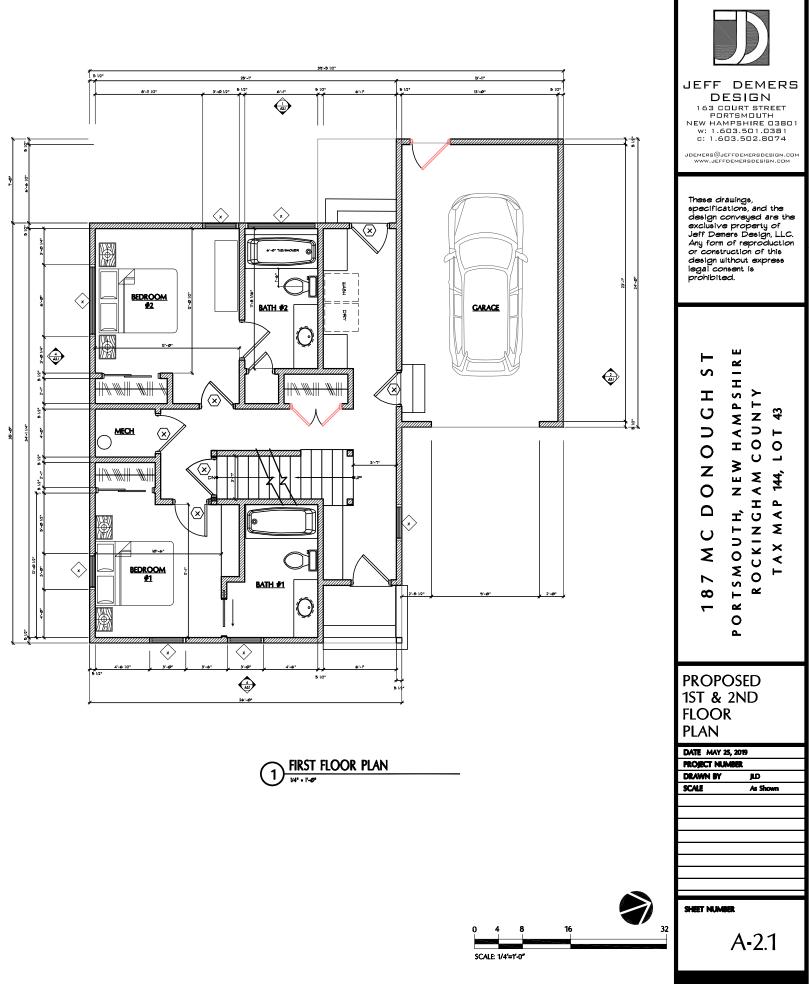
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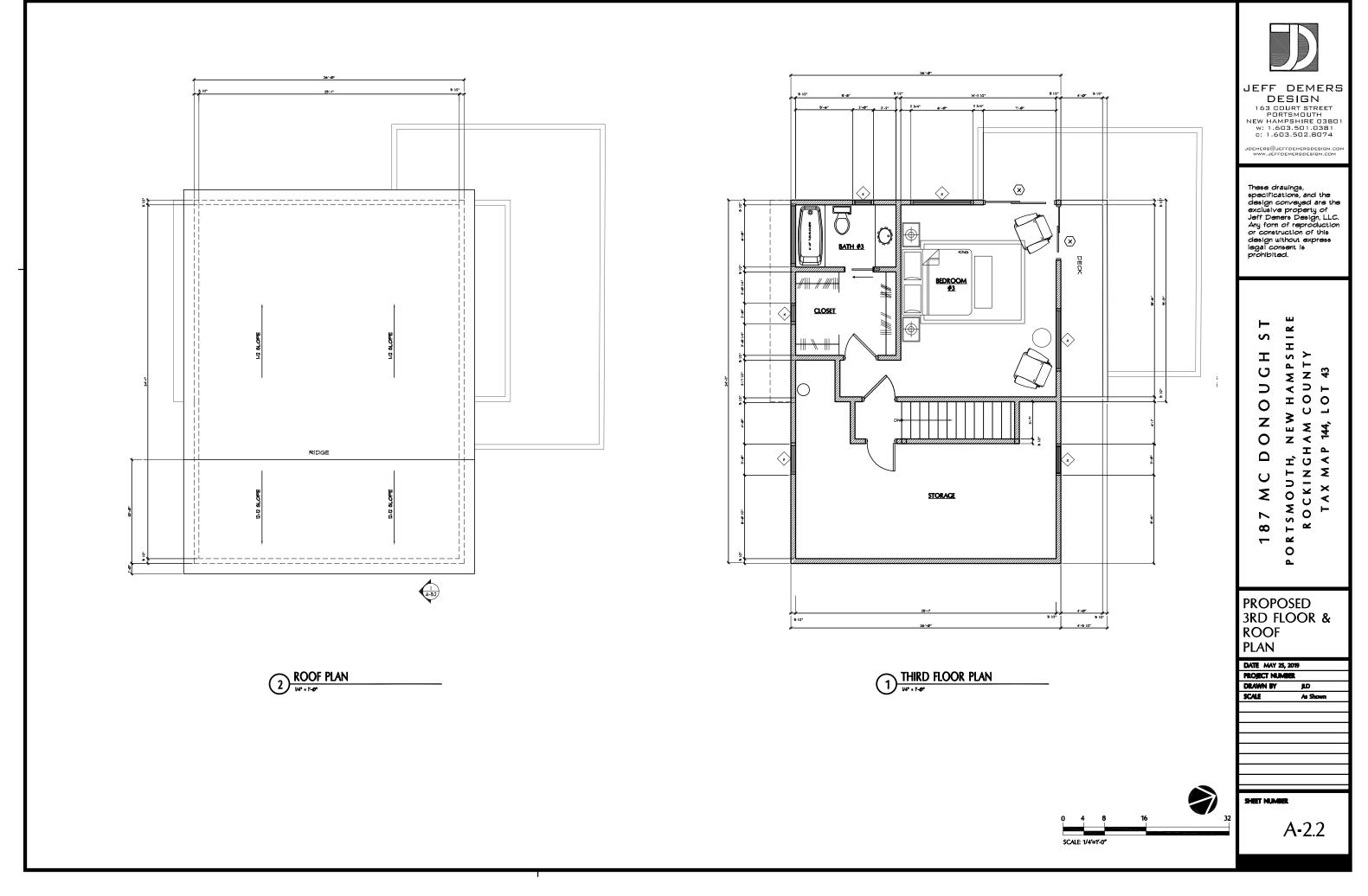
















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TSMOUTH, NEW HAMPSHIRE ROCKINGHAM COUNTY TAX MAP 144, LOT 43 \vdash S ONOUGH Δ C Σ 187 2 0 ۵.

PROPOSED EXTERIOR ELEVATIONS

DATE MAY 25, 2019		
PROJECT NUMBER		
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As Shown		
SHEET NUMBER		
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4-3.1		