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Durbin Law Offices, P.L.L.C.

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*\*Also admitted in MA*



**BY: HAND DELIVERY & EMAIL**

November 26, 2019

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

**RE: Variance Application of Peter Ehnstrom and Diane DeSantis  
270 Meadow Road, Tax Map 236, Lot 16**

Dear Chairman Rheame,

Our Office represents Peter Ehnstrom and Diane DeSantis, owner of property located at 270 Meadow Road. Please find twelve (12) copies of their zoning application and related materials for consideration by the Zoning Board at its December meeting. The following are included in the package:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) ZBA Site Plan;
- 4) Tax Map Image of Property;
- 5) Photographs of Property; and
- 6) \$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,

A handwritten signature in black ink, appearing to read 'Derek R. Durbin'.

Derek R. Durbin, Esq.

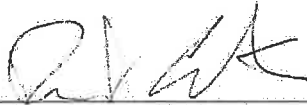
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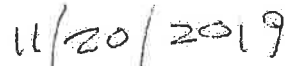
BY: \_\_\_\_\_

LETTER OF AUTHORIZATION

**Peter Ehnstrom and Diane DeSantis**, of 46-344 Nahewai Street, Kaneohe, Hawaii 96744-4151, owners of property located at 270 Meadow Road, Portsmouth, New Hampshire 03801, identified on Tax Map 236, as Lot 16 (the "Property"), hereby authorize Durbin Law Offices PLLC, of 144 Washington Street, Portsmouth, New Hampshire 03801, to act as their 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. This Letter of Authorization shall be valid until expressly revoked in writing.



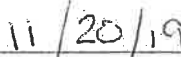
Printed Name: Peter Ehnstrom



Date:



Printed Name: Diane DeSantis



Date:

**CITY OF PORTSMOUTH  
ZONING BOARD OF ADJUSTMENT  
APPLICATION NARRATIVE**

Peter Ehnstrom and Diane DeSantis  
(Owners/Applicants)  
Tax Map 236, Lot 16  
270 Meadow Road  
Portsmouth, NH 03801

**INTRODUCTORY STATEMENT**

The foregoing Application involves a straightforward request by Peter Ehnstrom and Diane DeSantis (the "Applicants") to subdivide their property at 270 Meadow Road (the "Property") into two (2) lots. Peter Ehnstrom has been an owner of the Property since 1980. The Property is located in Portsmouth's Single Family Residence B ("SRB") Zoning District. It is approximately 0.46 acres in size (20,009 square feet) and is rectangular in shape, containing 231.09' of street frontage. The home is situated to the far left (west) side of the Property. There is a large grass yard to the right (east) of the home. When viewed from the street, it naturally appears as if the grass yard to the east of the home is its own separate lot. The long rectangular shape of the Property coupled with the configuration of the existing home on it, gives it a dissimilar look and appearance from surrounding properties. As the saying goes, "this one doesn't look like the others". In subdividing the Property, the Applicants desire to create a second buildable lot that they could eventually construct a home on.

**SUMMARY OF VARIANCE RELIEF**

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

**Remainder Lot:**

1. To allow 10,005 (+/-) square feet of lot area where 15,000 square feet is the minimum required;
2. To allow 10,005 (+/-) square feet of lot area per dwelling unit where 15,000 square feet is the minimum required;
3. To allow lot depth of 85' (+/-) where 100' is the minimum required;
4. To allow a front yard setback of 26' (+/-) where 30'<sup>1</sup> is the minimum required;

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<sup>1</sup> Pursuant to Section 10.516 of the Ordinance, the front yard setback is calculated based on the average of abutting properties on the same side of the street within 200' if located closer to the street than what is otherwise required by Section 10.521. The Applicant has applied for relief for the front yard setback on the remainder lot out of an abundance of caution, although it appears that the required setback in the present instance is 26' rather than 30'. As existing and proposed, the home on the Property has a 26' front yard setback.

### New Lot

5. To allow 10,004 (+/-) square feet of lot area where 15,000 square feet is the minimum required;
6. To allow 10,004 (+/-) square feet of lot area per dwelling unit where 15,000 square feet is the minimum required;
7. To allow lot depth of 85' (+/-) where 100' is the minimum required.

### 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. 152 N.H. 577 (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.'" Id. "Mere conflict with the terms of the zoning ordinance is insufficient to constitute a violation of the ordinance's basic zoning objectives." *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011). "There are two methods of ascertaining 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." Id.

The subdivision of the Property will not alter the essential character of the surrounding neighborhood. To the contrary, the subdivision of the Property will make it more consistent in size, dimension and overall appearance to most of the other properties that surround it. Once a home is constructed upon the second lot, it will fit neatly into the fabric of the neighborhood where the majority of properties are 0.17 (7,405.20 sf) - 0.22 acres (9,583.20 sf) in size and have road frontages of 75'. There are examples of some larger lots with similar frontages along Meadow Road, but at least one or more of those properties contain two (2) deeded parcels which could be unmerged in the future. These larger lots in the neighborhood are outliers and are not representative of the look and feel of this area of Portsmouth.

The subdivision of the Property will not be injurious to the public in any way. For the foreseeable future, the City will be collecting taxes on an unimproved buildable lot, thus increasing its revenue stream. The collection of these taxes will not be offset by any demand upon municipal services. Once the lot is developed, the demand upon municipal services will be offset by the permit/impact fees and taxes that are collected by the City. The light, air and space of abutting properties will not be impacted by the construction of a new home on the Property, as it will be designed to comply with all setbacks applicable to the SRB Zoning District.

***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*, 155 N.H. 102 (2007).

Substantial justice is done in the present instance, as the City will increase its tax base with the creation of an additional buildable lot, and the owners will benefit from having a second property that they can utilize for their own benefit or convey in the future. The Applicants are nearing retirement age and have children in college. Having an additional asset that they can utilize or draw from in the future is particularly important to them, as it would be to most of us in a similar context. The loss of not having the additional lot as an asset is not outweighed by any gain to the public. The public would not realize any benefit if the variance relief were denied. In reality, the public realizes a gain by having an additional taxable lot.

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

Surrounding properties will not be negatively impacted by the subdivision of the Property or the eventual construction of a single-family home on it. The dimensions of the subdivided parcels will be consistent with most other properties on Meadow Road and the surrounding area. Therefore, it is fair and reasonable for the Board to conclude based on its own expertise that the subdivision of the Property would not diminish surrounding property values.

***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 Property looks like two (2) separate parcels of land when viewed from Meadow Road. It is rectangular in shape. The existing residence on the Property was constructed to the west side of the Property, leaving a large grass field and open space to the east of it. It is larger than most surrounding properties at approximately 0.46 acres. It contains more road frontage than any of the surrounding properties at 231.03'. In fact, the Property's most distinguishing feature may be the amount of road frontage it has. There is only one property on Meadow Road with similar street frontage (Lot 236-27). The vast majority of properties on Meadow Road and surrounding streets have only 75' of road frontage. The Ehnstrom/DeSantis Property has more than three (3) times the amount of street frontage than most other properties on Meadow Road.

By subdividing the Property, the remainder lot and new lot will still have greater street frontage than most surrounding properties. The size of the subdivided lots will also remain consistent with surrounding properties, giving it a similar appearance. The creation of two (2) new

lots will not “over-densify” the neighborhood or make it appear over-developed. Thus, there is no fair and substantial relationship between the general purposes of the ordinance provisions and their application to the Property in the present instance.

***The proposed use is reasonable.***

The use of the subdivision of the lots for single-family purposes will be consistent with the spirit and intent of SRB Zoning. The subdivision of the Property will not have any adverse impacts to the public, as the new lots will be consistent in dimension with most other properties in this area of Portsmouth. In addition, the light, air and space of abutters will not be impacted, as any future home on the Property will be designed to comply with all applicable setback and height limitations.

**CONCLUSION**

In conclusion, the Applicant has demonstrated that the relief associated with the proposed subdivision of their Property meets the five (5) criteria for granting each of the variances requested. Accordingly, they respectfully request that the Board approve their application.

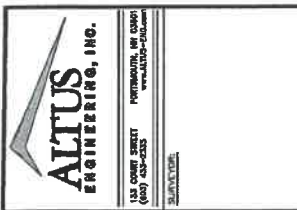
Respectfully Submitted,

Dated: November 26, 2019

**Peter Ehnstrom and Diane DeSantis**



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

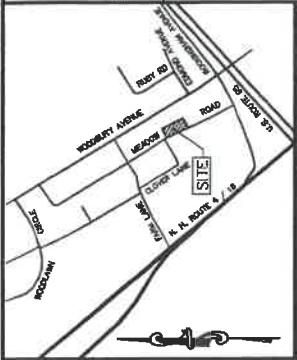


**BOARD OF ADJUSTMENT**  
**NOVEMBER 25, 2019**  
 BY DATE  
 INITIAL SUBMISSION EOW 11/29/18

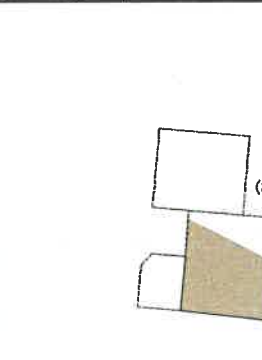
**APPLICANT/OWNER:**  
 PETER J. ENNSTROM &  
 DIANE H. DESANTIS  
 48-344 MAHEWAI STREET  
 KANEONE, HI 96744-4151

**PROJECT:**  
 2-LOT  
 SUBDIVISION  
 ASSESSOR'S PARCEL  
 238-16  
 870 MEADOW ROAD  
 PORTSMOUTH,  
 NEW HAMPSHIRE

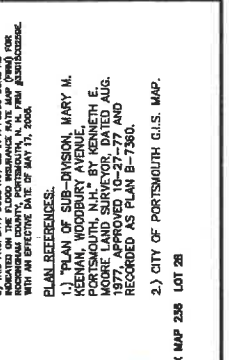
**TITLE:**  
 BOARD OF  
 ADJUSTMENT  
 SITE PLAN  
 SHEET NUMBER:  
 1 OF 1



**PLAN INTENT:**  
 THE INTENT OF THIS PLAN IS TO SUBMIT FOR THE PURPOSE OF RECEIVING SUBDIVISION APPROVAL FROM THE PLANNING BOARD FOR A 2-LOT SUBDIVISION OF LAND TO BE SPLIT INTO LOTS IN THE SRS ZONING DISTRICT.



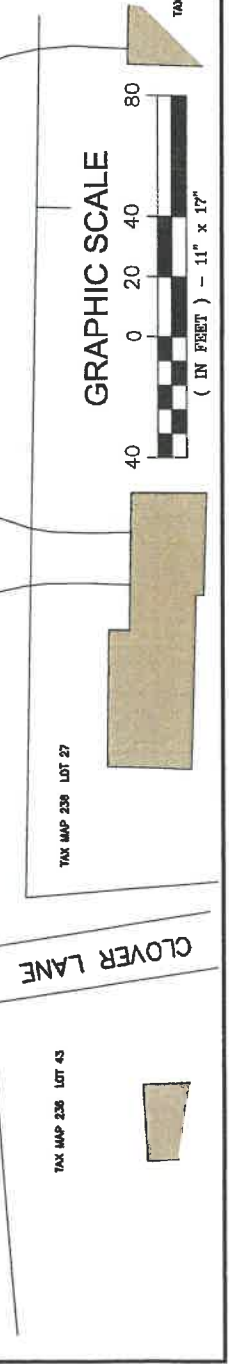
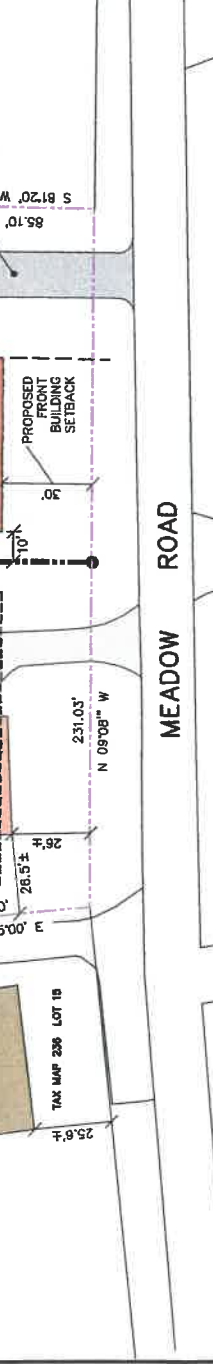
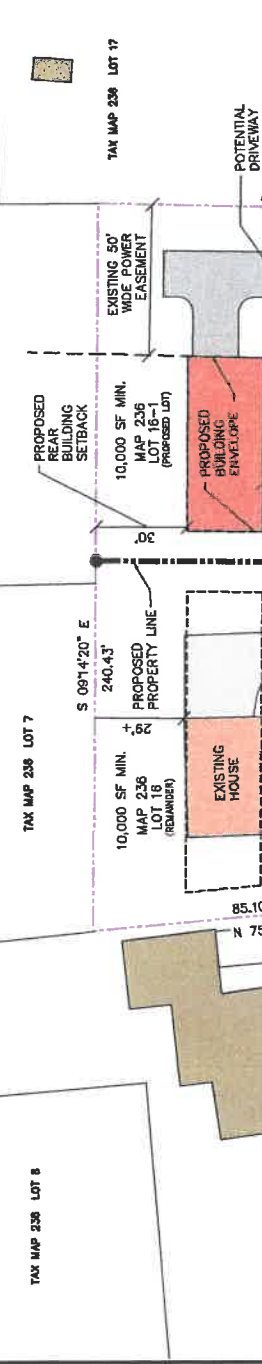
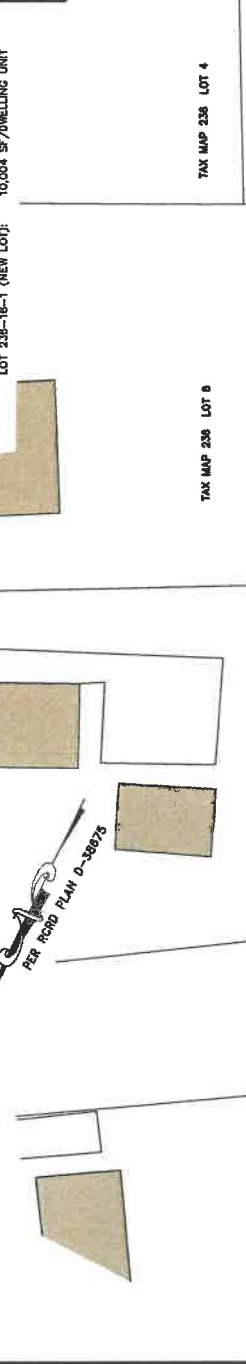
**SURVEY NOTES:**  
 1) THESE ARE NO RELIANCE ON THE PARCEL.  
 2) THE EXISTING & PROPOSED LOTS WILL BE SURVEYED WITH THE CITY OF PORTSMOUTH.  
 3) THIS PROPERTY DOES NOT LIE IN A FLOOD ZONE AS INDICATED ON THE FLOOD INSURANCE RATE MAP (FIRM) FOR PORTSMOUTH, NH, BY KENNETH E. MOORE, LAND SURVEYOR, DATED AUG. 1977, APPROVED 10-27-77 AND RECORDED AS PLAN B-7500.  
 PLAN REFERENCES:  
 1.) PLAN OF SUB-DIVISION, MARY H. KEENE, WOODBURY AVENUE, PORTSMOUTH, N.H., BY KENNETH E. MOORE, LAND SURVEYOR, DATED AUG. 1977, APPROVED 10-27-77 AND RECORDED AS PLAN B-7500.  
 2.) CITY OF PORTSMOUTH C.I.S. MAP.



**ZONING SUMMARY**

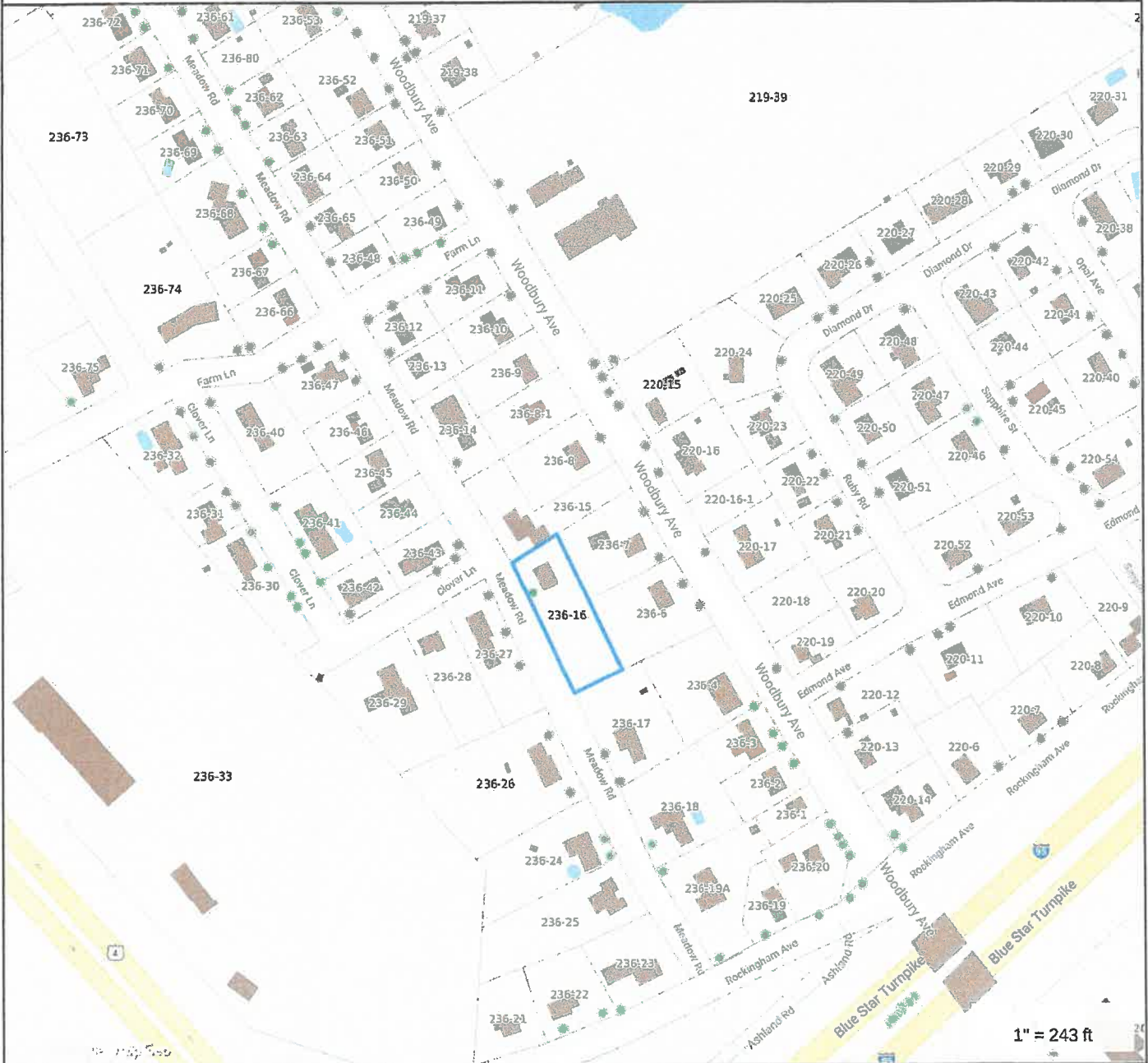
EXISTING LOT	PROPOSED SUBDIVIDED LOTS
EXISTING LOT 8	ASSESSOR'S PARCEL 238-16 (REMAINDER)
REQUIRED	10,005 S.F.
MIN. LOT AREA:	10,005 S.F.
MIN. STREET FRONTAGE:	117.00' (MEADOW ROAD)
MIN. LOT DEPTH:	54' ± (PROP.)
MIN. SIDE SETBACK:	10' (PROP.)
MIN. REAR SETBACK:	30' (PROP.)
MIN. BUILDING HEIGHT:	14.4±± (PROPOSED BLDG. ENVELOPE AS SHOWN, 1,439 S.F.±)
MIN. OPEN SPACE:	73% ± assuming 2 1/2" wide driveway and use entire bldg envelope
	DWELLING DENSITY PER LOT:
	LOT 238-16 (REMAINDER): 10,005 SF/DWELLING UNIT
	LOT 238-16-1 (NEW LOT): 10,004 SF/DWELLING UNIT

\* ALLOWED FRONT SETBACK IS CALCULATED BY AVERAGING THE ABUTTERS ADJACENT TO THE LOT PER SECTION 10.516.10





# 270 Meadow Road



**Property Information**

**Property ID** 0236-0016-0000  
**Location** 270 MEADOW RD  
**Owner** EHNSTROM PETER J



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

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

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





View of Grass Field and Existing House (View from East)



View of Grass Field to Right of Existing House (View from South)



View of Existing House and Left Side of Grass Field (View from South)