Hoefle, Phoenix, Gormley & Roberts, Pllc

ATTORNEYS AT LAW

127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480 Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

July 28, 2021

HAND DELIVERED

Peter Stith, Principal Planner Portsmouth City Hall 1 Junkins Avenue Portsmouth, NH 03801

Re:

Shirley W. Scarponi Trust, Owner/Applicant

276 Melbourne Street Tax Map 233/Lot 84 Single Residence B Zone

Dear Mr. Stith & Zoning Board Members:

On behalf of the Shirley W. Scarponi Trust, enclosed please find the following in support of a request for zoning relief:

- Land Use Application uploaded to Viewpoint today.
- Owner Authorization.
- 7/28/2021 Memorandum and exhibits in support of Variance Application (original and 11 copies).

We look forward to presenting this application to the Zoning Board at its August 17, 2021 meeting.

Very truly yours,

R. Timothy Phoenix Monica F. Kieser

Encl.

cc:

Shirley W. Scarponi, Trustee

Jones & Beach Engineering, Inc.

Artform Home Plans

Monica Kieser

From: Phil Scarponi <philscarponi@gmail.com>

Sent: Wednesday, July 28, 2021 1:10 PM

To: Monica Kieser

Subject: Re: Variance Application due today

I Shirley Scarponi Trustee of the Shirley W. Scarponi Trust authorize Hoefle, Phoenix, Gormley & Roberts, PLLC to execute all applications before Portsmouth Land Use Boards and to take any and all actions necessary throughout the application and permitting process related to my property at 276 Melbourne Road (Tax Map 233, Lot 84) including but not limited to attendance and presentation at public hearings.

Shirley Scarponi Trustee

MEMORANDUM

TO:

Portsmouth Zoning Board of Adjustment ("ZBA")

FROM:

R. Timothy Phoenix, Esquire

Monica F. Kieser, Esquire

DATE:

July 28, 2021

RE:

Shirley W. Scarponi Trust, Owner/Applicant

Project Location: 276 Melbourne Street

Tax Map 233/Lot 84 Single Residence B Zone

Dear Chairman Rheaume and Zoning Board Members:

On behalf of the Shirley W. Scarponi Trust ("Scarponi"), we are pleased to submit this Memorandum and attached exhibits in support of Zoning Relief to be considered by the Zoning Board of Adjustment ("ZBA") at its August 17, 2021 meeting.

I. <u>EXHIBITS</u>

- A. 7/28/2021 Plan issued by Jones & Beach Engineers, Inc.
- B. 6/25/2021 Architectural Plan Set issued by ArtForm Home Plans.
- C. Site Photos
- D. Tax Map 146.

II. PROPERTY/PROJECT

276 Melbourne Street is a 10,867 sq. ft. lot located at the junction of Melbourne and Vine Streets entirely within the wetland buffer. Upon the lot exists a one-story single-family home with incorporated garage (the "Property"). (Exhibits A, and C). The property is L-shaped with 129.91 ft. of frontage on Melbourne Street and is in a neighborhood comprised of single-family homes on lots of varying sizes. The existing home is situated in a long narrow portion of the lot encroaching on side, front, and rear setbacks and leaves a large undeveloped area on the northwest side of the lot. Scarponi intends an 877 s.f. Detached Accessory Dwelling Unit ("DADU") for herself, leaving the main home for her son and his family. While a Conditional Use Permit will be required for the DADU and for development in the 100 ft. wetland buffer, relief from the Portsmouth Zoning Ordinance ("PZO") is required in the first instance for lot area, building coverage, and rear yard setback.

III. RELIEF REQUIRED

After conferring with the City Planning Department staff, it has been determined that the following is required:

- 1. PZO §10.521, §10.814.20-21 and §10.814.51 To permit construction of a DADU on a 10,867 s.f. lot where 15,000 s.f. lot area is required.
- 2. <u>PZO §10.521 Table of Dimensional Standards To permit building coverage of 34.3% where 24.8% presently exists and 22.2% was previously approved.</u>
- 3. <u>PZO §10.521 Table of Dimensional Standards To permit a rear yard setback of 15.29 ft. where 30 ft. is required</u>

IV. VARIANCE CRITERIA

- 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 general purposes of the ordinance pursuant to PZO§10.121 is "to promote the health, safety and the general welfare of Portsmouth and its region in accordance with the city's Master Plan...by regulating:

- 1. The use of land, buildings and structures for business, industrial, residential and other <u>purposes</u> It is widely known that home prices in Portsmouth are quite high. Relatively modestly priced homes are difficult to find, leaving many young people and moderate income earners to live in other communities, while elders must give up their homes. The addition of a DADU structure allows Scarponi to stay in her home close to family, and defrays housing expenses for her son.
- 2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space The 10,867 s.f. lot is a prior nonconformity and is already developed with a single-story home. Addition of an Attached ADU would not require relief from lot area requirements, but in this case a DADU better utilizes space on the lot and is further from the wetland and lot lines than if the existing home was expanded. The proposed structure will conform with side yard and front yard setbacks and the area behind the lot is undeveloped. Open space remains compliant.

Portsmouth Zoning Board of Adjustment

3. The design of facilities for vehicular access, circulation, parking and loading – The existing curb cut will not change, while the driveway on the lot will expand to accommodate an additional car allowing sufficient vehicular circulation on the lot.

- 4. The impact on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding This property will retain its use as a single-family home with a DADU for Scarponi. Side setbacks are met, and the reduced rear setback still provides ample space for stormwater treatment. Open space requirements are met. Accordingly, there will be no negative impact on surrounding properties.
- 5. The preservation and enhancement of the visual environment The appearance of the existing home from the street will be unaffected while the added DADU will be compatible with the existing single-family home.
- 6. The preservation of historic districts and buildings and structures of historic or architectural interest The proposal does not undermine these purposes of the Ordinance.
- 7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality The DADU is further from the wetland than the existing home and open space requirements are met by the project.

The purpose of the SRB District is "to provide for single-family dwellings with appropriate accessory uses, at moderate to high densities (ranging from approximately 1-3 dwelling units per acre), together with appropriate accessory uses and limited services." PZO§10.440 Residential District Purposes. A DADU for family is a reasonable accessory use. The L-shaped lot and location of the existing single-story dwelling dictates placement of the DADU on the undeveloped area northwest of the existing home further from the wetland than the existing home. Siting the structure closer to the rear lot line affords sufficient space for the closest abutting neighbor and promotes vehicular circulation by providing parking for the ADU.

In considering whether variances "in a marked degree conflict with the ordinance such that they violate the ordinance's basic zoning objectives". Malachy Glen, *supra*, also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would <u>alter the essential character of the locality</u>.... 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)

Here, the existing neighborhood includes other single-family homes located on small narrow lots, and other larger lots with single-family homes and detached accessory buildings close to rear lot lines. (**Exhibit D**). Given that: the lot is previously developed; the DADU will be used for a Scarponi's dwelling; the structure meets side and front setbacks; the lot is bounded by undeveloped woods; and open space is compliant, granting the variances for lot area, granting

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the variances to allow a DADU on the lot 15.29 ft. from the rear lot line with 34.3% building coverage in a thickly settled area of Portsmouth 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.

A single-story single-family home presently exists. The parcel is nestled into the crook of Melbourne and Vine and exposed to minimal thru-traffic. The proposed DADU to serve the single family home is located i\on the best possible location on the lot and is architecturally compatible with the existing home and meets side and front setbacks. The rear of the property abuts a deep yard associated with an Islington Street property and the woods at the rear of the Riverbrook Condominium on Middle Road. Granting the variances to further the purposes recognized by the State in enacting the Accessory Dwelling Unit law will not diminish surrounding property values.

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

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

The large lot is L-shaped and pinched in the middle and is developed with a long narrow single-story home on the narrow portion leaving an open undeveloped area. To comply with front yard setbacks and prevent obstruction of the existing garage and driveway, the DADU must be set back into the rear yard area. These factors combine to create special conditions.

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

Setback requirements exist to preserve adequate access, sightlines, air, light, and space for stormwater treatment while lot area and building coverage requirements ensure density is compatible and land is not overburdened. Because side and front yard setbacks are met, the rear yard abuts an undeveloped area, there is space for adequate stormwater treatment and open space requirements are met, there is no fair and substantial relationship between the purposes of these requirements and their application in this instance. Accordingly, there is no reason to apply the strict requirements of the zoning ordinance.

c. <u>The proposed use is reasonable.</u>

Accessory Dwelling Units have, by State law and this Ordinance, been recognized as an appropriate avenue to increase housing stock and defray housing expenses for young families

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and elders. Granting the necessary dimensional variances to accommodate a reasonably sized unit in the most appropriate location on a previously developed lot furthers these goals. The proposed DADU is a residential use in a residential zone. Accordingly, the use is reasonable. <u>Vigeant v. Town of Hudson</u>, 151 N.H. 747 (2005).

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. Because DADU is a reasonable accessory use to a single-family, the structure meets front and side yard setbacks, abuts undeveloped woods and the proposal meets open space requirements, there is no benefit to the public from denying the variances, and no harm to the public in granting the variances. In comparison, Scarponi will be harmed by denial as she will be unable to construct a DADU and age in place with family nearby. Accordingly, there is no benefit to public outweighing the hardship to Scarponi if the variances are denied.

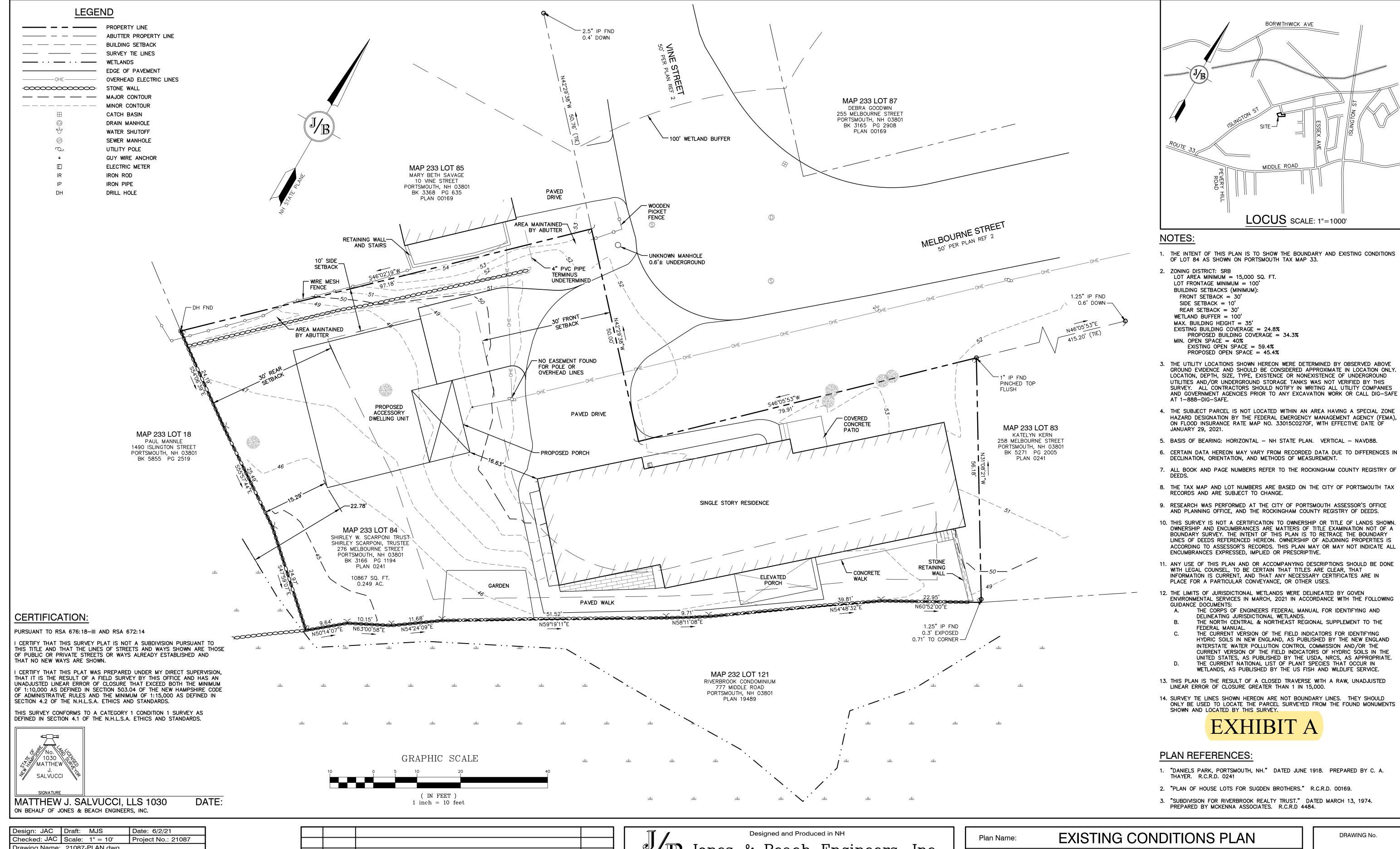
V. <u>CONCLUSION</u>

For all of the reasons stated, Shirley W. Scarponi respectfully requests that the Portsmouth Zoning Board of Adjustment grant the requested variances.

Respectfully submitted,

Shirley W. Scarponi Revocable Trust

By: R. Timothy Phoenix Monica F. Kieser



Stratham, NH 03885

Checked: JAC Scale: 1" = 10' Project No.: 21087

Drawing Name: 21087-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.

1	7/28/21	MINOR REVSIONS	AJB
0	6/2/21	ISSUED FOR REVIEW	MJS
REV.	DATE	REVISION	BY



E-MAIL: JBE@JONESANDBEACH.COM

	riaii Naiile.	EXISTING CONDITIONS PLAN
	Project:	TAX MAP 233 LOT 84
	Project:	276 MELBOURNE STREET, PORTSMOUTH, NH
	Owner of Pecerd:	SHIRLEY W. SCARPONI TRUST

19 SUZANNE DRIVE, PORTSMOUTH, NH

Owner of Record:

DRAWING No.

C1

SHEET 1 OF 1
JBE PROJECT NO. 21087

(6/25/2021)

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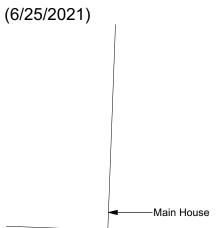
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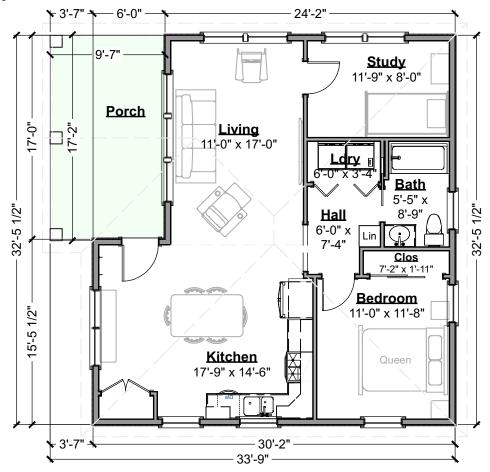
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Living Area this Floor: 877 sq ft

8 ft Ceilings



First Floor Plan



Front Elevation



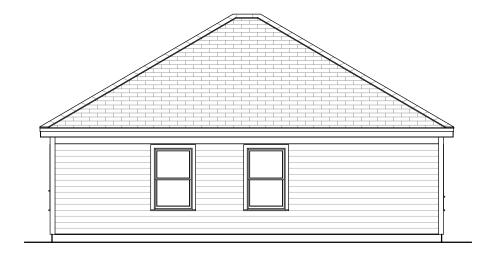
Right Elevation

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Rear Elevation

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Left Elevation

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Interior Views



276 Melbourne St



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Google Maps 255 Melbourne St



Image capture: Sep 2011 © 2021 Google

Portsmouth, New Hampshire



Google

Street View

