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**Also admitted in MA*

VIA VIEWPOINT

May 27, 2020

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

RE: Variance Application for Property at 77 Meredith Way (Tax Map 162, Lot 16)
Owner: Karen Dufour
Applicant: Derek R. Durbin

Dear Chairman Rheume,

Enclosed, please find the following materials associated with the Variance application for 77 Meredith Way for consideration at the Zoning Board of Adjustment's next regularly scheduled meeting:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application with Exhibits A-E;
- 3) ZBA Site Plan;
- 4) Photographs of the Property.

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

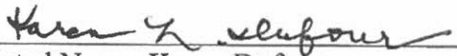
Sincerely,

A handwritten signature in blue ink, appearing to read 'Derek R. Durbin', with a large, stylized flourish at the end.

Derek R. Durbin, Esq.

LETTER OF AUTHORIZATION

Karen Dufour, owner of property located at 77 Meredith Way, Portsmouth, New Hampshire, (the "Property"), hereby authorizes Derek R. Durbin to submit any municipal permit applications on her behalf and take all actions related thereto relative to the proposed subdivision of the Property. This Letter of Authorization shall be valid until expressly revoked in writing.


Printed Name: Karen Dufour

Date: 5/24/2020

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

Karen Dufour
77 Meredith Way
Portsmouth, NH 03801
(Owner)

Derek R. Durbin
162 Stark Street
Portsmouth, NH 03801
(Applicant)

77 Meredith Way
Portsmouth, NH 03801

INTRODUCTORY STATEMENT

Karen Dufour is the owner of Property located at 77 Meredith Way, identified on Portsmouth Tax Map 162 as Lot 16 (“the Property”). The Property is located within the GRA Zoning District and contains approximately 0.52 acres and a small, 2 bedroom, 1 bathroom single-family home. The assessing records indicate that the current home was built in 1870, but the Applicant’s research indicates that it was actually built in or around 1860. The Property is located in the “Creek Neighborhood” section of Portsmouth.

Background on Property

The Property is significantly larger than surrounding properties. Past deeds to the Property describe it as a 150’ x 150’ lot, making it a perfect square. A Plan for “Elm Place” recorded in 1856 appears to show the Property as 3 separate lots. Exhibit A. However, past deeds to the Property dating back to 1887 have only described it as 1 parcel. The registry records for the Property beyond this are unclear, as it appears that it may have been conveyed through an estate, which may explain why the Property was subsequently described as a 150’ x 150’ parcel of land rather than 3 separate tracts.

Meredith Way

The Property has approximately 30’ of paved street frontage on Meredith Way, although the Tax Map shows the pavement as ending before the Property.¹ The paved portion of the street

¹ Section 10.530 of the Ordinance defines “frontage” as: [t]he horizontal distance measured along a **lot line** dividing a **lot** from a **street**. Such measurement shall refer to a continuous line except where otherwise specified.

“Street” is defined as: A thoroughfare or roadway which is either (a) formally accepted by the City, or (b) shown on a subdivision plan approved by the Planning Board and constructed to City subdivision specifications or for which surety has been posted to guarantee construction of all improvements required by the Planning Board.

is approximately 12-13' wide. The City tax map shows Meredith Way continuing beyond the paved portion of the street in front of the Property, across the abutting property (Lot 162-17) and then stopping at the boundary of Lot 162-18. Exhibit B. It has been said that Meredith Way, which was originally shown as "Park Street" on the Elm Place Plan, was once actually utilized as a through-way to what is now Stark Street. Clearly this was the original intent behind the street. However, most of this area is now overgrown with vegetation and has been for decades. Whether or not the City considers the street to be "accepted" is an open question. There are utilities (sewer line) that run through the paper portion of Meredith Way out to Pine Street and the City continues to show the paper portion of the street on its Tax Map. Exhibit C. A lot line adjustment plan associated with Lot 162-18 was approved by the City in 1993 which allowed for the owners of that property to obtain ownership in a portion of Meredith Way. Exhibit D. This plan explains why the paper portion of the street ends at Lot 162-18 and no longer continues through to Stark Street.

Proposed Subdivision

The Applicant is applying for the necessary zoning relief to subdivide the Property into 2 equal 75' x 150' parcels (11,250 square feet). Because the individual lots would lack 100' of continuous street frontage, the Applicant needs variance relief for the proposed lots. Out of an abundance of caution, the Applicant has opted to treat both lots as having 0' of frontage since the Tax Map shows the paved portion of Meredith Way ending before the Property. However, the reality is that appropriate access can be provided to both lots by constructing the un-constructed portion of the street either as a private drive or city way. Accordingly, the Applicant is proposing to continue the street, preferably as a private drive, to provide access to both proposed lots. If the variance relief is approved, the project will be subject to TAC and Planning Board review where the means of access to the lots will ultimately be determined to ensure that there is safe ingress and egress for emergency vehicles.

SUMMARY OF ZONING RELIEF

The Applicants are requesting the following variances from Section 10.521 of the Ordinance (Table of Dimensional Requirements), as outlined by individual lot:

Remainder Lot

- 1) To allow 0' of continuous street frontage where 100' is the minimum required in the GRA Zoning District.

New Lot

- 2) To allow 0' of continuous street frontage where 100' is the minimum required in the GRA Zoning District.

VARIANCE CRITERIA

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

“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.” *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

Many of the surrounding properties in the “Creek Neighborhood”, particularly those on Pine Street, remain in the same configuration that they were in when this area was first shown on the Plan of Elm Place in 1856. See Exhibit A.² The properties on Pine Street are generally 0.17 – 0.18 acre lots with around 60’ of street frontage. Exhibit E (2 Pages). The properties on Pine Street define the character of the neighborhood. In the larger neighborhood outside of Pine Street (i.e. Thornton, Stark, Clinton etc.) there are examples of lots greater in size with more continuous street frontage, but these are the exceptions to the general rule. Likewise, there are also plenty of properties that are significantly smaller and have far less continuous street frontage than the properties on Pine Street.

Minimum street frontage requirements are primarily intended as density control and to ensure that properties have sufficient access to promote orderly development (i.e. adequate ingress and egress). The proposed lots will be approximately 0.26 acres in size and will have up to 75’ of frontage either on a public or a private street. It is unclear what the City will ultimately require in terms of a street or driveway build-out if this Board approves the variance requests and the project then moves through the TAC and Planning Board process. Notwithstanding, the proposed lots will be of greater dimension than most other developed properties in the neighborhood, thus conforming to the prevailing character and density of the neighborhood. Moreover, reasonable access can be provided to the subdivided lots through the construction of the paper street as a city way or private drive. Therefore, granting the variances will not alter the essential character of the neighborhood or pose any threat to the public, health, safety or welfare. The creation of an additional lot will provide additional housing for a community that lacks the same.

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. 121 N.H. 389 (1981). In the present instance, the majority of properties in the Creek Neighborhood do not conform to the minimum continuous street frontage requirement.

² Pine Street was called “East Park Street” and Meredith Way was called West Park Street on the Elm Place Plan of 1856.

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).

There would be no gain to the public in denying the variance relief. To the contrary, there would be a detriment. The property can accommodate a large two-unit condominium by right without having to go through any type of site plan review or subdivision process given the significant size of the lot and available building envelope. However, a large attached two-unit condominium would be out of character with the rest of the neighborhood, which is characterized primarily by smaller lots with single-family homes. If the variances were denied, the landowner would lose the ability to subdivide the Property, leaving her with an oversized lot with a small, functionally obsolescent single-family home that has a very high tax assessment.

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

The subdivided lots will be of similar or greater size and character to other properties within the neighborhood. Any new development that would occur on the subdivided lots would only serve to increase surrounding property values, as evidenced by other similar projects in Portsmouth.

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

The Property has special conditions that distinguish it from surrounding properties. It is much larger in size than surrounding properties with 22,500 square feet of lot area and has up to 150' of available street frontage. By legal right, the Applicant could construct a very large, attached two-unit condominium on the Property without needing variance relief or subdivision approval. However, as stated above, this would not conform to the prevailing character of the neighborhood and would ultimately be a detriment to surrounding property owners and the public. As proposed, the subdivided lots will exceed the minimum lot area requirement by 3,750 square feet and provide up to 75' of street frontage in a neighborhood where most lots are smaller in size and have far less frontage. As a result of these special conditions, there is no fair and substantial relationship between the general purpose of the 100' continuous street frontage requirement and its application to the Property.

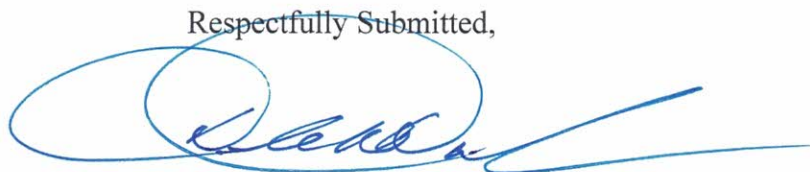
Finally, the intended use of the subdivided lots is for single-family residential purposes, which is permitted by right in the GRA Zoning District. Therefore, the proposed use is inherently reasonable per Section 10.440 of the Ordinance.

CONCLUSION

In conclusion, the Applicant has demonstrated that the five (5) criteria are met for granting each of the variances requested and respectfully requests an approval from the Board.

Respectfully Submitted,

Dated: May 27, 2020



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

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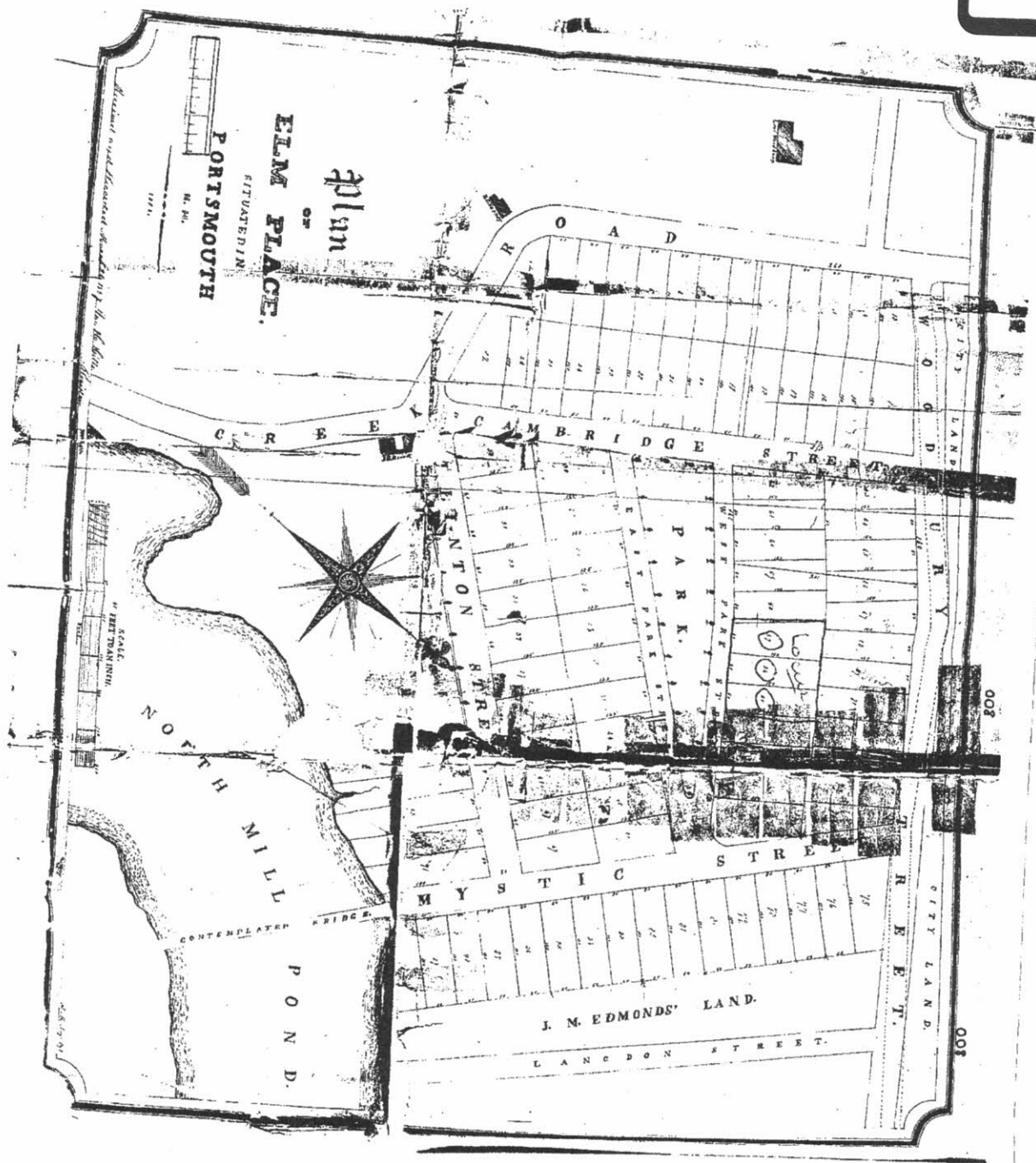
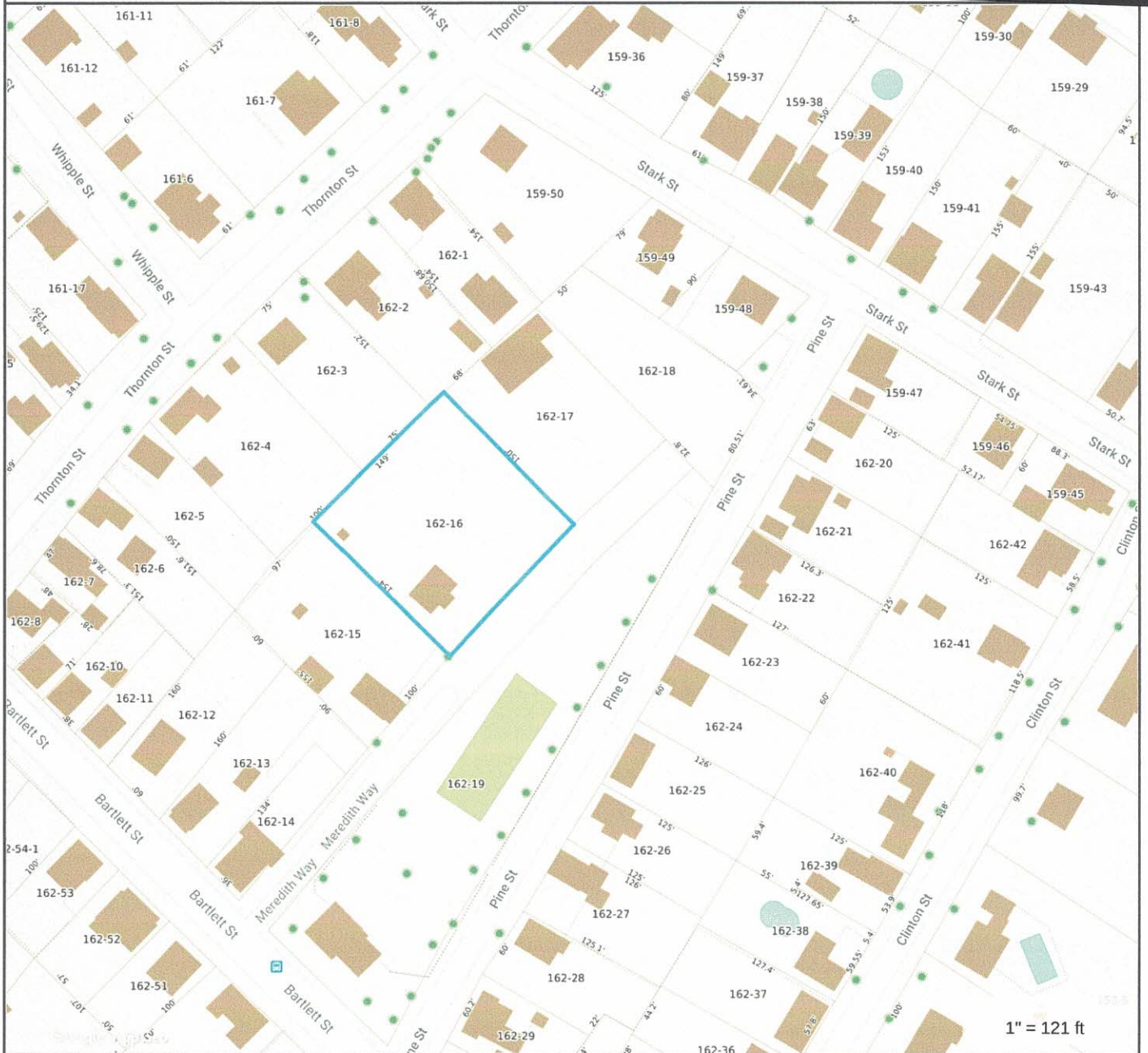


Exhibit B



Property Information

Property ID 0162-0016-0000
Location 77 MEREDITH WAY
Owner DUFOUR KAREN L



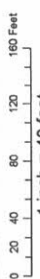
**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

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

tabbles[®] EXHIBIT C

Existing Conditions
Map prepared by City of Portsmouth Public Works



1 inch = 40 feet

tabbles

LOT LINE REVISION
PINE STREET
 for
PORTSMOUTH, NEW HAMPSHIRE
 JOYCE M. MAYO & CITY of PORTSMOUTH
 DURGIN, VERRA and ASSOCIATES, INC.

PROJECT NO. 100-100-100-100
 DATE 10/17/13
 CONTRACT ENGINEER: DURGIN, VERRA AND ASSOCIATES, INC.

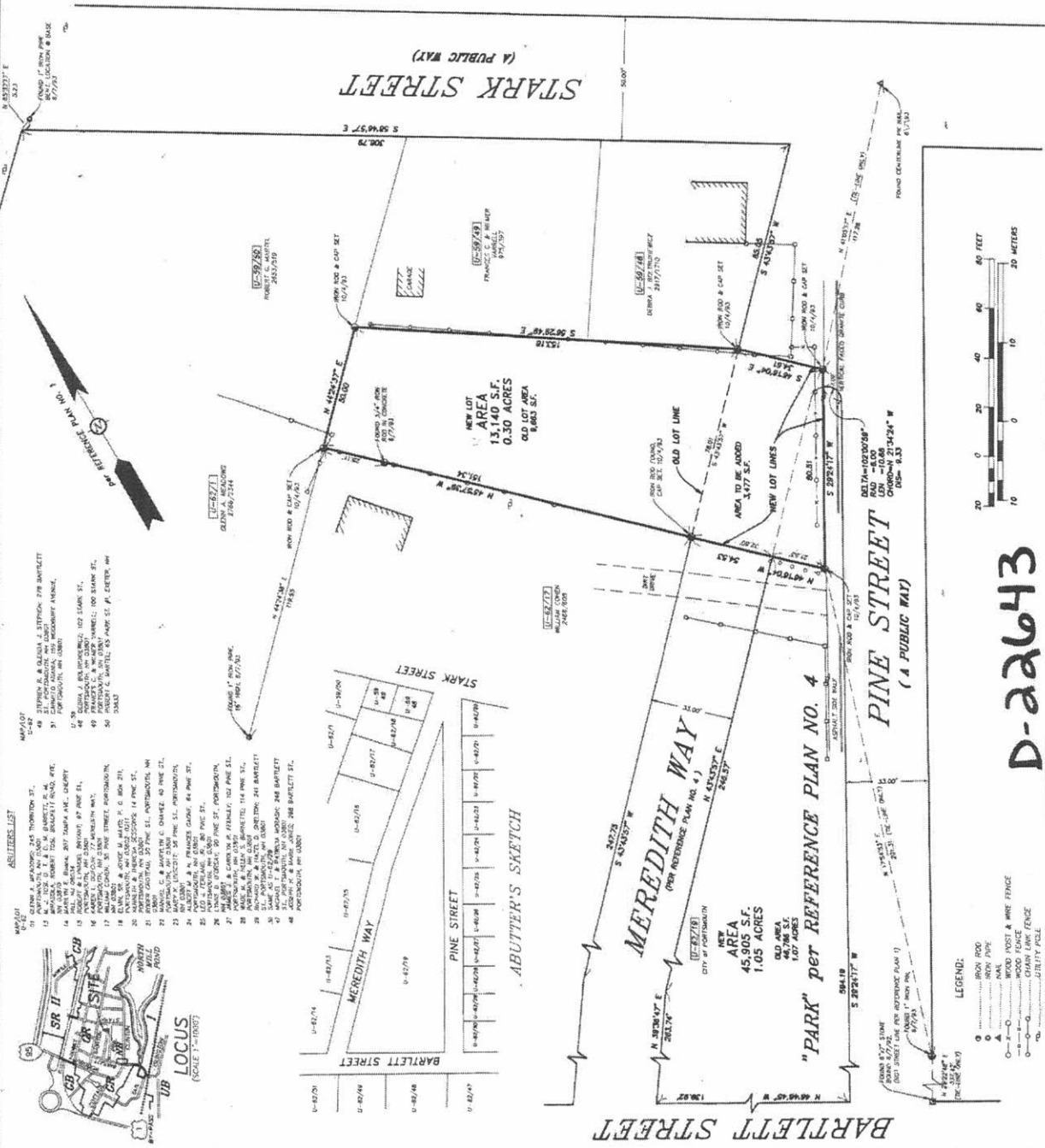
APPROVED FOR THE RECORD:
[Signature]
 OFFICIAL PORTSMOUTH PLANNING BOARD

DATE 10/17/13

- NOTES:**
- OWNER OF RECORD: JOYCE M. MAYO
 ADDRESS: P.O. BOX 2111, PORTSMOUTH, N.H., 03801
 TAX MAP SHEET NO. 100-100-100-100
 OWNER OF RECORD: CITY OF PORTSMOUTH
 ADDRESS: P.O. BOX 638, PORTSMOUTH, N.H. 03801
 TAX MAP SHEET NO. 100-100-100-100
 - GENERAL NOTE: - OR FRONT YARD SETBACK... 20'
 REAR YARD SETBACK... 10'
 NEAR YARD SETBACK... 25'
 - THE RELATIVE ERROR OF CLOSURE WAS LESS THAN 1 FOOT IN 15,000 FEET.

REFERENCE PLANS:

- STREET PLAN OF SPARKHILL, RUMFORD, STARK, CLINTON, AND PINE STREETS, IN PORTSMOUTH, NEW HAMPSHIRE, JULY 1980, PLAN NO. 5874-35, BY JDMW
- PLAN OF LAND PORTSMOUTH, N.H., SHOWING PROPERTIES OF SEAMANNA AND MAYO, JANUARY 17, 1985, PLAN NO. 58027, BY JOHN W. DURGIN, INC.
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- PLAN OF ELM PLACE, SITUATED IN PORTSMOUTH, N.H., 1858, REISSO PLAN NO. 1008



ADJACENT LIST

- 11 GLEN VALLEY DRIVE THORNTON ST.
- 12 211 PORTSMOUTH RD. JAMES ST.
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LOCUS
(SCALE 1"=100')



ABUTTER'S SKETCH



D-22643

D-22643



Property Information

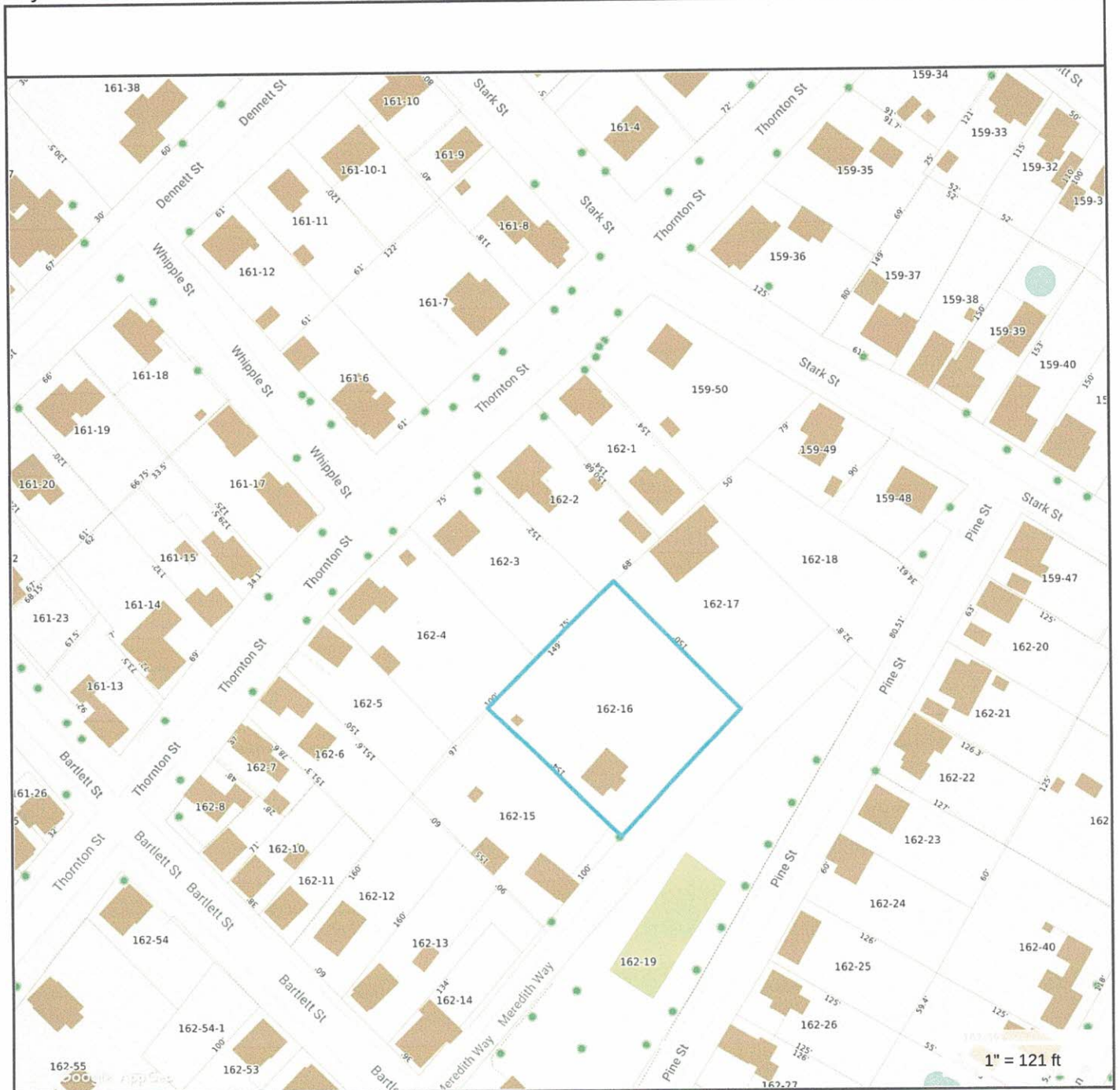
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Geometry updated 4/1/2019
 Data updated 7/17/2019



Property Information

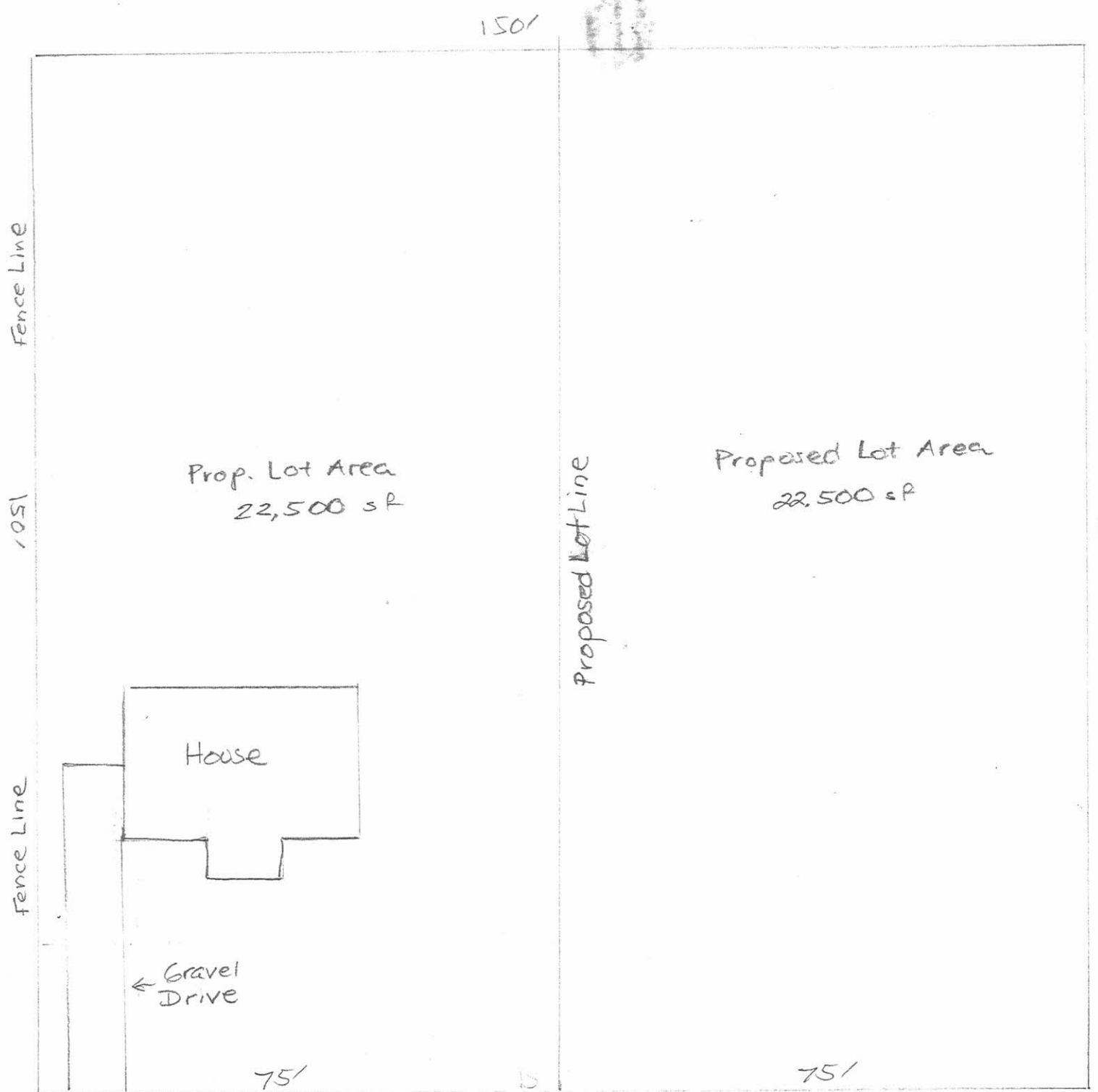
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Geometry updated 4/1/2019
Data updated 7/17/2019



meredith way
(End of Pavement)

Paper Street

1" = 20'
scale

ZBA Site Plan
77 meredith Way

Front View of Property from Meredith Way



View of Right Side Yard



View of Rear Yard of Property



View of Rear Property Boundary



Alternate View of Rear Yard



View of Right Side Yard from Rear Yard



View of End of Pavement on Meredith Way and beginning of Unpaved Portion of Street

