

Hand-Delivered

April 30, 2019

Mary E. Koepenick, Administrative Clerk
City of Portsmouth Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

RE: Application for Zoning Variance
Owner: 56 Middle St LLC
Applicant: 56 Middle St LLC
Property: 56 Middle Street, Portsmouth
Tax Map 126, Lot 19
Zoning District: CD4-L1/DOD

Dear Koepenick:

On behalf of the above references Owner/Applicant, enclosed please find the following in support of its request for Use and Dimensional Variances.

1. Board of Adjustment Application for Variance (submitted online on April 30, 2019).
2. Owner's Authorization
3. Memorandum and Exhibits in support of Application (original and 11 copies).
4. 12 copies (11"x17') of Variance Application Plan, Floor Plans, 3-D Exterior Renderings & Exterior Elevations and Area Calculation Plans..

Also enclosed is our check in the amount of \$150.00, made payable to "City of Portsmouth" covering the application fee. We look forward to addressing this application at the May 21, 2019 meeting of the Zoning Board of Adjustment.

Very Truly Yours,


Thomas R. Watson

TRW/ag
Enclosures.

Cc: Jason N. & Barbara L. Theodore (w/ enc.)
John R. Chagnon, P.E. (w/ enc.)
John M. Tuttle, AIA (w/ enc.)

STATEMENT OF AUTHORIZATION

The undersigned, Jason N. Theodore, Manager of 56 Middle St LLC (the, "Company"), owner of property at 56 Middle Street, Portsmouth, NH, does hereby authorize Thomas R. Watson, or any other attorney associated with the law firm of Drummond Woodsum and MacMahon, PA, as attorneys for 56 Middle St LLC, to prepare, sign and file any and all applications and supporting materials with the City of Portsmouth land use boards and departments, including the Zoning Board of Adjustment, Historic District Commission and Planning Board, and further authorize Thomas R. Watson, and any other attorney associated with the firm of Drummond Woodsum & MacMahon, PA, to represent the Company's interests before the said Zoning Board, Historic District Commission and/or Planning Board with regard to the property located at 56 Middle Street, Portsmouth, NH.

56 Middle St LLC

Dated: April 4, 2019

By: 
Jason N. Theodore, Manager

MEMORANDUM

TO: David M. Rheume, Chair and Members of the Zoning Board of Adjustment

FM: Thomas R. Watson, Esquire

DT: April 30, 2019

RE: Application for Zoning Variance

Owner/Applicant: 56 Middle St LLC

Property: 56 Middle St, Portsmouth

Tax Map 126, Lot 19

Zoning: Character District 4 (C4-L1); Downtown Overlay District (DOD)

On behalf of 56 Middle St LLC (the “Applicant”), owner of property at 56 Middle Street, Portsmouth, we are pleased to submit this memorandum and attached exhibits in support of the Applicant’s request for use and dimensional variances for property located at 56 Middle St, Portsmouth, to be considered by the Zoning Board of Adjustment (“ZBA”) at its May 21, 2019 meeting.

A. Property

The subject property (the “Property”) is located at 56 Middle Street at the Northwest corner of the intersection of Middle Street and State Street. It is identified on the tax maps of the city of Portsmouth as Map 126, Lot 19 [**Exhibit 1**]. The Property consists 10,128 square feet of land on which is situated what was originally a two and a half story single family residence which is currently used as commercial offices. The Property lies in the City’s Character District 4 – Limited zoning district (CD4-L1). It is also situated in the Downtown Overlay District (“DOD”). [**Exhibit 2**]. The Property abuts the outer boundary of the DOD. The neighborhood in which the Property sits is best described as an area of transition from the traditional downtown urban core, with primarily commercially designed structures, and the urban residential neighborhood of primarily residentially designed structures lying between Islington Street and Middle Street in which State Street serves as the spine

B. History of Property

Until the second half of the 20th Century the Property was dedicated to residential use. In 1845, a Gothic Revival cottage was erected on the lot for S.R. Cleaves, a local soap factory owner. [**Exhibit 3**]. It came to be known as Glen Cottage. It remained as such throughout the 19th century. [**Exhibits 4 and 5**].

In the first decade of the 20th Century a much larger two and one-half story Tudor Revival home replaced much of the Gothic Revival cottage.¹ It was shingled on the first story and half-timbered above. [Exhibits 6 and 7]. That construction remains to this day. [Exhibit 10, pp. 1-4] The remains of the Gothic Revival cottage can be seen in the rear el of the structure. [Exhibit 6, p. 3; Exhibit 10, pp. 3-6]. In the 1982 Portsmouth Advocates West-End Survey, the Property is described as: “One of Portsmouth’s most interesting and unusual examples of the combination of complimentary style from different periods, (far more common in the city is the combination of Federal and Colonial Revival styles)”. [Exhibit 7, p. 2]. With the possible exception of a small addition on the rear of the structure added prior to 1947, the structure that exists on the Property today is substantially the same as that following the erection of the Tudor Revival home during the first decade of the 20th Century.

For at least the first half of the 20th century, the Property continued to serve as a residence. It was depicted as such on the 1947 Sanborn Insurance Map. [Exhibit 8]. At some point after that date, the rear of the property was used as a dentist’s office while the front continued to be used as a single family residence. In 1966, the entire structure was converted into a law office and used as such until Attorney Charles A. Griffin relocated his practice in 2012. In and around 1986, Attorney Griffin began to lease portions of the building for general office purposes. That use continues to this day.

Interestingly, after the Property began to be used as professional law offices, while the first floor kitchen was removed, the other rooms of the first and second floor of the structure remained as originally laid out for residential occupancy.

C. The Proposal

The Applicant purchased the Property in August, 2018. Applicant proposes to convert the Property to residential use as a duplex. A first floor kitchen will be installed to replace that removed when the structure was converted to office use and a first floor bath added. The existing one story addition, approximately 27’ x 17’ in size, added to the rear of the home in the first half of the 20th Century and most recently used as an office, together with a bulk head, will be demolished and replaced by a two-bedroom, two story 34’ x 25’ addition with a new, separate entrance. [Exhibit 13].

D. Procedural History

In November, 2018, the Applicant submitted an application for variances to the Zoning Board of Adjustment requesting certain use and dimensional variances in conjunction with a proposal to restore the Property as a single family residence and to replace the existing one-story rear addition to the building with a two-story addition consisting of a first floor garage and a second

¹ The Tax Assessor’s Card for the Property suggests the current structure was built in 1910.

floor bedroom suite. Following a public hearing on December 18, 2018, the ZBA granted variances from (a) Sections 10.5A32 and 10.642 to allow for residential principal use on the ground floor of the building in the Downtown Overlay District; (b) Sections 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance; and (c) Section 10.5A41,10A to allow a 1.7' +/- rear yard where 5' is required.

E. Relief Requested

1. Art. 5A, Section 10.5A41 & Figure 10.5A41.10A and Section 10.5A43.60 & Figure 10.5A43.60 – To allow for use of the Property as a residential duplex where the Ordinance does not permit duplexes in the Downtown Overlay District.

The Property lies in the Character District 4 (CD4-L1) zoning district. The proposed use of the Property as a duplex is a permitted use in the CD4-L1. See Section 10.400 Table of Uses 1.30 and Figure 10.5A41.10A Building Types However, the Property also lies in the Downtown Overlay District established in Section 10.640. That section states:

Section 10.640 Downtown Overlay District

10.641 Establishment and Purpose

- 10.641.10 The Downtown Overlay District (DOD) is an overlay district applied to portions of the Character Districts. All properties located in the DOD must satisfy the requirements of both the DOD and the underlying district.
- 10.641.20 The purpose of the DOD is to promote the economic vitality of the downtown by ensuring continuity of pedestrian-oriented business uses along streets.

Similarly, Section 10.5A32, governing character district uses, states

Section 10.5A30 Character District Use Standards

- 10.5A32 A lot in the Downtown Overlay District shall comply with the requirements of Section 10.642 Ground Floor Uses.

Residential uses are not prohibited entirely in the Downtown Overlay District. See Section 10.5A43.60 which allows for Live/Work Buildings (defined as “[a] **building** designed to accommodate a **ground floor** commercial use and a residential use above or beside”) in the DOD. See also Section 10.642.2 which provides that ground floors in the DOD may include “[e]ntries, lobbies, stairs and elevators providing pedestrian access to permitted upper-floor uses, not exceeding 20 percent of the **ground floor** area”)

However, the Ordinance does limit residential uses in the DOD in two important ways affecting the Property. The first controls residential activity in the first floor of buildings in the DOD. See Sections 10.5A32 and 10.642. That prohibition is satisfied by the use variance from these sections granted in December, 2018.

The second limitation is found in Sections 10.5A43.60 and 10.5A43.60 which prohibit certain types of residential structures in the DOD. Section 10.5A43.60 provides:

Section 10.5A43.60 Building Types

Buildings in each Character district shall be one or more of the **building** types specified in such Character district in Figure 10.5A43.60 (Building Types).

Figure 10.5A43.60 states:

Figure 10.5A43.60 BUILDING TYPES

Duplex

Permitted districts

CD4-L1, CD4-L2

This **building** is not permitted in the Downtown Overlay District

Section 10.5A43.60 is echoed in Section 10.5A41 which states:

Section 10:5A41 Development Standards

Development, structures and lots within Character districts shall comply with the applicable general description and standards set forth in Figures 10.5A41.10A-D (Development Standards) and elsewhere in Article 5A

Figure 10.5A41A DEVELOPMENT STANDARDS – CHARACTER DISTRICT 4-LIMITED

BUIDLING TYPES

Duplex *

*Not permitted in Downtown Overlay District

Because of these restriction against duplexes in the DOD, the Applicant seeks relief from the strict application of Section 10.5A41.& Figure 10.5A41.10A and Section 10.5A43.60 and Figure 10.5A43.60 by way of variances from the ZBA.

In addition, the removal and replacement of the existing rear one-story addition with a two-bedroom, two-story addition implicates three dimensional standards of the Ordinance governing character districts.

2. Section 10.321 – To allow for the extension or enlargement of an existing nonconforming building where the extension or enlargement does not conform to all the regulations of the district in which it is located.
3. Section 10.5A41 and Figure 10.5A41.10A BUILDING PLACEMENT – To allow for a building footprint of 2,646 sq. ft. where the development standards permit a maximum building footprint of 2,500 sq. ft.

Presently, the Property includes a one-story addition to the rear of the main structure. It will be demolished and replaced by a larger two-story, 25' x 34' addition. Because the addition will also increase the gross footprint of the building to 2,646 sq. ft., variances from Section 10.5A41 and Figure 10.5A41.10A are required

F. Variance Requirements

For so long as cities and towns in New Hampshire have been authorized to regulate land usage through zoning ordinances, there have existed zoning boards of adjustment which are empowered to “authorize on appeal in specific cases such variance from the terms of the zoning ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done. This language is derived from the Standard State Zoning Enabling Act created by the United States Department of Commerce in the 1920s, and has been part of New Hampshire law since 1925.” *P. Loughlin, 15 N.H. Practice: Land Use Planning and Zoning, Ch. 24, §24.01, p.374*. The existence of variances in zoning laws is a recognition that the power of municipalities to regulate land use is not unlimited. “To determine the validity of zoning laws, the ‘police power and the right of private property must be considered together as interdependent, the one qualifying and limiting the other.’” *Simplex Technologies, Inc v. Town of Newington 145 N.H. 727, 729 (2001)* citing *Metzger v. Town of Brentwood, 117 N.H. 497, 502 (1977)*.

Inevitably and necessarily, there is a tension between zoning ordinances and property rights, as courts balance the right of the citizens to the enjoyment of private property with the right of municipalities to restrict property use. In this balancing process, constitutional property rights must be respected and protected from unreasonable zoning restrictions. The New Hampshire Constitution guarantees to all persons the right to acquire, possess, and protect property. *See N.H. CONST. pt. 1, arts. 2, 12*. These guarantees limit all grants of power to the State that deprive individuals of the reasonable use of their land. *Simplex at p. 731*.

“The purpose of a variance is to allow for ‘a waiver of the strict letter of the zoning ordinance without sacrifice to its spirit and purpose.’” *Simplex at 729* citing *Husnander v. Town of Barnstead*, 139 N.H. 476, 478 (1995).

New Hampshire RSA 674:33, I (a)(2) and Section 10.233 of the Portsmouth Zoning Ordinance set forth five criteria upon which variances may be granted. The application of these criteria to Applicant’s proposal is discussed hereafter.

1. **Granting of the variances will not be contrary to the public interest.**
2. **The spirit and intent of the ordinance will be observed.**

The New Hampshire Supreme Court has recognized that the requirements that a variance not be contrary to the public interest and that the spirit and intent of the ordinance be observed are substantially related. In *Harborside Associates L.P. v. Parade Residents Hotel, LLC*, 162 N.H. 508, 514 (2011), the court noted:

We first address the public interest and spirit of the ordinance factors. “The requirement that the variance not be contrary to the public interest is related to the requirement that [it] ... be consistent with the spirit of the ordinance.” *Farrar v. City of Keene*, 158 N.H. 684, 691 973 A.2d 326 (2009) (quotation omitted). The first step in analyzing whether granting the variance would not be contrary to the public interest and would be consistent with the spirit of the ordinance is to examine the applicable ordinance. See *Chester Rod & Gun Club v. Town of Chester*, 152 N.H. 577, 581, 883 A.2d 1034 (2005). “As the provisions of the ordinance represent a declaration of public interest, any variance would in some measure be contrary thereto.” *Id.* (quotations omitted). Accordingly, to adjudge whether granting a variance is not contrary to the public interest and is consistent with the spirit of the ordinance, we must determine whether to grant the variance would “unduly, and in a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” *Id.* (quotation omitted). Thus, for a variance to be contrary to the public interest and inconsistent with the spirit of the ordinance, its grant must violate the ordinance’s “basic zoning objectives.” *Id.* (quotation omitted). Mere conflict with the terms of the ordinance is insufficient. See *id.*

We have recognized two methods for ascertaining whether granting a variance would violate an ordinance’s “basic zoning objectives.” One way is to examine whether granting a variance would “alter the essential character of the neighborhood.” *Id.* (quotation omitted). Another approach “is to examine whether granting the variance would threaten the public health, safety or welfare.” *Id.*

Section 10.121 of the Portsmouth Zoning Ordinance states that “[t]he purpose of this Ordinance is to promote the health, safety and general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan. The Ordinance is intended to implement the goals and objectives of the Master Plan . . .” The Portsmouth 2025 Master Plan establishes five

overriding themes for the City, that is, to promote vibrancy, authenticity, diversity, connectedness and resiliency. *Master Plan, p.37.*

Use Variances

The conversion of a residentially designed and constructed structure on the Property to residential use as a duplex neither violates the basic objectives of promoting the health, safety and general welfare of Portsmouth nor violates to the goals of the Master Plan to promote vibrancy, authenticity, diversity, connectedness and resiliency. The proposed use certainly does not “threaten the public health, safety and welfare” of the City. To the contrary, the return of the Property to residential use as a two-family structure promotes authenticity in that to preserves both in use and appearance that which has been described as one of the City’s most interesting and unusual examples of the combination of complimentary styles from different periods. It is noteworthy that the entrance for the second unit will be tucked into the interior of the site so that the structure will continue to appear as a single family residence from Middle Street and State Street.

Nor will the requested use variances violate the basic objective of the Downtown Overlay District to promote the economic vitality of the downtown. The requested use variances do not seek to convert a commercially designed structure to a duplex. They do not request the conversion to a duplex of a structure in the core commercial areas of the DOD along Congress, Market, Bow, Daniel and State Streets to residential use. In contrast, the Property consists of a building that was originally designed for residential use. It sits on the very edge of the DOD, and in a neighborhood that has both residential and commercial uses, including duplexes. The loss of one general office building in this neighborhood will not have an impact on the economic vitality of the downtown. Most important, granting a use variance will not “alter the essential character of the neighborhood.”

The Zoning Board recognized the appropriateness of this analysis when it granted variances from the prohibition against residential principal use of the first floor in the DOD in December, 2018 as part of the Applicant’s then proposal to restore the Property to a single family residence. The current proposal for a duplex instead of a single family dwelling is not so different as to change the analysis.

Dimensional Variances

Similarly, granting the requested dimensional variances from Section 10.321 and from the development standards of Section 10.5A41 and Figure 10.5A41.10A will not violate the Ordinance’s basic zoning objectives or alter the essential character of the neighborhood. Section 10.5A11 states that the purpose of character-based zoning “is to encourage development that is

compatible with the established character of its surroundings and consistent with the City's goal for the preservation and enhancement of the area.

Allowing for a building with a footprint of 2,646 sq. ft., where only 2,500 sq. ft. is permitted will not threaten the public health, safety and general welfare of the City or its citizens or change the established character of the surrounding areas. The request only seeks a variance of 146 sq. ft. or 5.8 % above the norm established in the Ordinance. The same table of standards also requires a minimum lot area of 3,000 sq. ft. If the Property at 56 Middle Street was only 3,000 sq. ft. in size, 146 sq. ft. might be viewed as significant. However, the Property is 10,128 sq. ft., more than three times the minimum. A small deviation from the maximum footprint standard is both reasonable and consistent with the character of the neighborhood as it has developed.

Given the existing addition on the Property, its long standing history, and the very small deviation from the footprint standard of the Ordinance of the proposed addition, it is clear that granting the requested variances to allow for a two-story replacement for the addition will not violate the Ordinance's basic zoning objectives nor alter the essential character of the neighborhood. To the contrary, the proposed addition is compatible with the established character of its surroundings. Under no circumstances can it be said that granting the variance will threaten public health, safety or welfare.

3. Granting the variances will do substantial justice.

In addressing the requirement that a variance do substantial justice, the New Hampshire Supreme Court has stated “[p]erhaps the only guiding rule on this factor is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” *Harborside Associates, L.P. v. Parade Residential Hotel, LLC* 162 N.H. 508, 515 (2011) citing *Malachy Glen Associates v. Town of Chester*, 155 N.H. 102, 109 (2007).

Use Variances

As part of its analysis, the Board should look “at whether the proposed development [is] consistent with the area's present use.” *Malachy Glen at p. 109*. For example, in *U-Haul Co. of N.H. & Vt., Inc v. Concord*, 122 N.H. 910 (1982), the applicant had requested a variance to build a watchmen's apartment in a commercial building, a use not allowed by the ordinance. The Supreme Court noted that since multi-family dwellings were permitted in the same zone and since the watchmen's apartment would have less impact on the area than a permissible multi-family unit, substantial justice would be done by granting of a variance. *See 15 N.H. Practice, §24.11*.

The neighborhood in which the Property sits is a very mixed-use one. It contains structures that house residences, including multi-unit residences, offices, a museum, a gallery, retail stores and a house of worship on the first floor. In fact, the Property sits on the very edge of the

Downtown Overlay District and is in the area that serves as a transition from the urban commercial district and the urban residential neighborhood lying between Middle Street and Islington Street. In this transition area, many of the structures that currently house commercial activity on the first floor started as residences and transitioned to multi-unit residences. It contrasts with the more traditional commercial streets in the DOD, such as Congress, Daniel, Bow, Pleasant, and Market Streets, where commercial buildings long ago replaced their residential predecessors.

No harm to the public will result in allowing the Property to revert to its former status as residential and allowing the building to become a duplex. Given the mixed nature of the neighborhood, there will be no adverse effect on its character. Moreover, if the purpose of the Downtown Overlay District is to promote economic vitality in the downtown by increasing pedestrian use of its streets through insuring pedestrian-oriented businesses on those streets, that purpose will not be appreciably adversely impacted by the conversion of a former home turned business on the edge of the Downtown Overlay District to a duplex. This is particularly so given the location of the Property at a heavily trafficked intersection which is a major pedestrian entry point into the downtown from the residential neighborhoods served by State Street and Middle Street. The use of the Property as a duplex will not lessen that pedestrian traffic. In short, a denial of the requested use variance will provide no benefit to the public. Conversely, denying the variance will deprive the Applicant of the reasonable use of its property as a duplex.

Dimensional Variances

Similarly, no harm to the public will result from allowing the Applicant to construct the proposed two-story addition in replacement of a one-story addition to the rear of the main structure even though the addition will cause the footprint of the total building to slightly exceed the norm. A denial of a variance for the small deviation from the maximum building footage permitted (5.8 %) will offer no benefit to the general public. In contrast, denying the variances will deprive the Applicant of use of the Property as a duplex which is a reasonable use of its property.

4. Granting the variances will not result in the diminution in value of surrounding properties.

Use Variances

The Applicant's proposal to renovate and restore the former home on the Property to a duplex will not cause a diminution in the value of surrounding properties. The Property sits in a very mixed-use neighborhood which includes residential (both single and multi-family), office, museum, church, retail and restaurant uses. The conversion of one structure from general office use to a duplex will not change the character of this neighborhood nor adversely impact surrounding properties. To the contrary, use of the Property as a duplex will decrease vehicular traffic, noise, and other adverse side effects of the commercial uses of the Property. Moreover,

with the exception of replacing the one-story addition on the rear of the building with a two-story addition, the appearance of the building, particularly from Middle Street and State Street, will not change. It presently appears to be a residence and will so appear after its restoration as a two-family dwelling. If anything, the conversion of the property to a duplex will likely increase the value of surrounding properties.

Dimensional Variances

It is also hard to imagine how granting the requested dimensional variances, which will allow for a building with a footprint 146 sq. ft. more than that permitted by the Ordinance, will have any adverse effect on the value of surrounding properties. The nonconformities are very small in nature. They will exist in the rear of the lot, away from the eastern and southern building facades. Because there are no structures on the adjoining property close to the addition, it will not create or increase crowding. Moreover, the new addition will be more architecturally compatible with the existing house, thereby enhancing the appearance of the Property. This upgrade of the Property will only have a positive effect on the values of surrounding properties.

5. Literal enforcement of the provisions of the ordinance will result in an unnecessary hardship.

“Of the five traditional requirements for the grant of variance relief, the so-called ‘unnecessary hardship’ requirement is generally the most troublesome.” *P. Loughlin, 15 N.H. Practice: Land Use Planning and Zoning, Ch. 24, §24.13, p.400.* Part of the reason for this confusion has been the evolving nature of the interpretation and application of the hardship requirement by the New Hampshire Supreme Court and the state legislature. *Id.* This evolution finally reached a balancing point in the Court’s 2001 decision in *Simplex Technologies. supra.*

We believe our definition of unnecessary hardship has become too restrictive in light of the constitutional protections by which it must be tempered. In consideration of these protections, therefore, we depart today from the restrictive approach that had defined unnecessary hardship and adopt an approach more considerate of the constitutional rights to enjoy property. Henceforth, applicants for a variance may establish unnecessary hardship by proof that: (1) a zoning restriction has applied to their property interferes with their reasonable use of the property, considering the unique setting of the property in its environment; (2) no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and (3) the variance would not injure the public or private rights of others. *Simplex at p. 731-32.*

Thereafter, the state legislature codified *Simplex* when it repealed and reenacted RSA 674:33, I. That Section defines unnecessary hardship as:

(b)(1) For purposes of subparagraph 1(a)(2)(E), “unnecessary hardship” means that, owing to the special conditions of the property that distinguish it from other properties in the area:

- (A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (B) The proposed use is a reasonable one.

(b)(2) If the criteria in subparagraph (1) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and the variance is therefore necessary to enable a reasonable use of it.

(a) Special conditions distinguish the property from others in the area.

Use Variances

There are a number of special conditions about the Property that distinguish it from other properties in the DOD and suggest that granting the use variances for a duplex is appropriate. First, unlike most structures in the DOD, the Property was constructed as a residence and served that purpose for most of its existence. Second, because the Property sits on the very edge of the Downtown Overlay District, it is located proximate to numerous properties that house multi-unit residences but sit outside the Downtown Overlay District. Third, the existing structure on the Property appears to be residential. It does not include any storefronts or display windows or other indicia of pedestrian-oriented commercial activity. As currently constructed, the structure on the Property does not suggest or invite pedestrians seeking commerce. In light of these characteristics, special conditions exist at the Property.

Dimensional Variances

There are also special conditions about the Property that distinguish it from other properties in the area that suggest that granting the dimensional variances are appropriate. The first is that the Property has a very unusual configuration. Unlike adjoining properties that largely have 4 sides or lot lines, the Property has 12 different lot lines. This odd lot configuration together with location of the existing structures on the lot make it difficult to comply with the current development standards of the character district. The conditions are unique to the Property. The unusual configuration of the Property and the location of the existing structures, including the existing addition, limit ability to create a second residential unit without exceeding the maximum building footprint. Also unique to the Property is its lot area, 10,128 sq. ft., more than three times the minimum lot area for the district. This larger tract allows for a larger building footprint without crowding or overburdening the Property or adversely impacting neighboring properties.

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

As noted in Sections 1 and 2 above, the general public purpose of the Portsmouth Zoning Ordinance is “to promote the health, safety and general welfare of Portsmouth and its region in accordance with the City of Portsmouth’s Master Plan.” The Portsmouth 2025 Master Plan establish five overriding themes for the city, that is, to promote vibrancy, authenticity, diversity, connectedness and resiliency. The basic objective of the Downtown Overlay District is to “promote the economic vitality of the downtown . . .”

Use Variances

There is no fair and substantial relationship between these general public purposes and the specific application of the prohibition against use of the Property as a duplex. As previously explained, use of the entire structure on the Property as a duplex will not injure the health, safety or general welfare of the City of Portsmouth nor impede or reduce its vibrancy, authenticity, diversity, connectedness and resiliency. Moreover, because of the Property’s peculiar location and characteristics, its use as a duplex will not adversely impact the economic vitality of the downtown. Stated another way, the proscriptions against use of the Property as a duplex has no fair and substantial relationship to the goals and objectives of the Zoning Ordinance generally and the sections of the Ordinance governing the Downtown Overlay District specifically.

Dimensional Variances

Similarly, there is no fair and substantial relationship between these general public purposes and the specific application of the gross footprint maximum standard to the proposed two-story addition. Allowing for a small deviation from the maximum building footprint in the new addition will not adversely affect the health, safety and general welfare of the City. To the contrary, the addition, together with similar additions to other properties in the area, has helped establish the character of the area. In fact, this upgrade of the existing addition is the type of “development that is compatible with the established character of its surroundings and consistent with the City’s goals for the preservation and enhancement of the area.” which serves as the purpose of Character-Based Zoning per Section 10.5A11 of the Ordinance.

(c) The proposed use is a reasonable one.

Neither RSA 674:33 nor the Portsmouth Zoning Ordinance defines “reasonable.” *Merriam-Webster.com* defines the term as “not extreme or excessive” and “moderate, fair.” In the context of land use regulation, a reasonable use is one that is not excessive because it does not overburden the property or the surrounding area given the property’s location, size, configuration, and other characteristics and the location, size, configuration and other characteristics of structures situated on the property.

Use Variances

The use of the property as a duplex is one of the least burdensome uses of the Property absent razing the home and returning it to an undeveloped lot. It will generate minimal traffic, noise, glare and other potentially adverse effects typically associated with commercial activity. Moreover, a duplex is a permitted use in the CD4-L1 character district in which the Property sits. A proposed use is “presumed to be reasonable if it is a permitted use under the Town’s applicable zoning ordinance.” *Vigeant v Town of Hudson, 151 N.H. 747, 752 (2005)*. The fact that the Property also lies in the Downtown Overlay District, which prohibits duplexes and restricts residential uses on the ground floor, does not alter this analysis. The use of the Property as a duplex with ground floor as part of the residences, as proposed by the Applicant, is, by all standards a reasonable one.

Dimensional Variances

Similarly, the Applicant’s proposal the replace the existing one-story addition with a two-story addition even though it will create a 146 sq. ft. deviation from the building footprint development standard can best be described as a classic “reasonable use” of the Property. The proposed addition does not over burden the Property or adjacent properties or the surrounding area. The slight “excess” in the building’s footprint will not impact adjoining properties. It will not cause an increase in traffic, noise, glare or other adverse effects. In all regards, the proposed substitution of a two-story addition for the existing one-story addition on the Property is a reasonable one.

G. Conclusion

In considering the Applicant’s requests for variances, the Zoning Board may be best served by reviewing its analysis in granting a use variance for this property in December, 2018. The Board recognized the appropriateness of the analysis discussed above when it granted variances from the prohibition against residential principal use of the first floor in the DOD as part of the Applicant’s then proposal to restore the Property to a single family residence. The current proposal for a duplex instead of a single family dwelling is not so different as to change that analysis and determination.

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

Respectfully submitted,
56 Middle St LLC
By its Attorneys
Drummond Woodsum & MacMahon, P.A.

By: 
Thomas R. Watson, Esquire

TABLE OF EXHIBITS

1. Portion of Tax Map 126
2. Portion of Zoning Map
3. Excerpt from Richard M. Candee, *Building Portsmouth*
4. 19th Century Photo of Glen Cottage
5. 1870's Photo of Glen Cottage
6. 1980's Photos of Subject Property
7. Excerpt from 1982 Portsmouth Advocates West-End Survey
8. Portion of 1947 Sanborn Insurance Map
9. 1948 Plan of Lot for No. 56 Middle Street, Portsmouth
10. Existing Conditions Photos of Subject Property
11. Variance Application Plan of Subject Property
12. Floor Plans with Layout of Existing and Proposed Addition
13. 3-D Exterior Renderings and Exterior Elevations of Proposed Addition

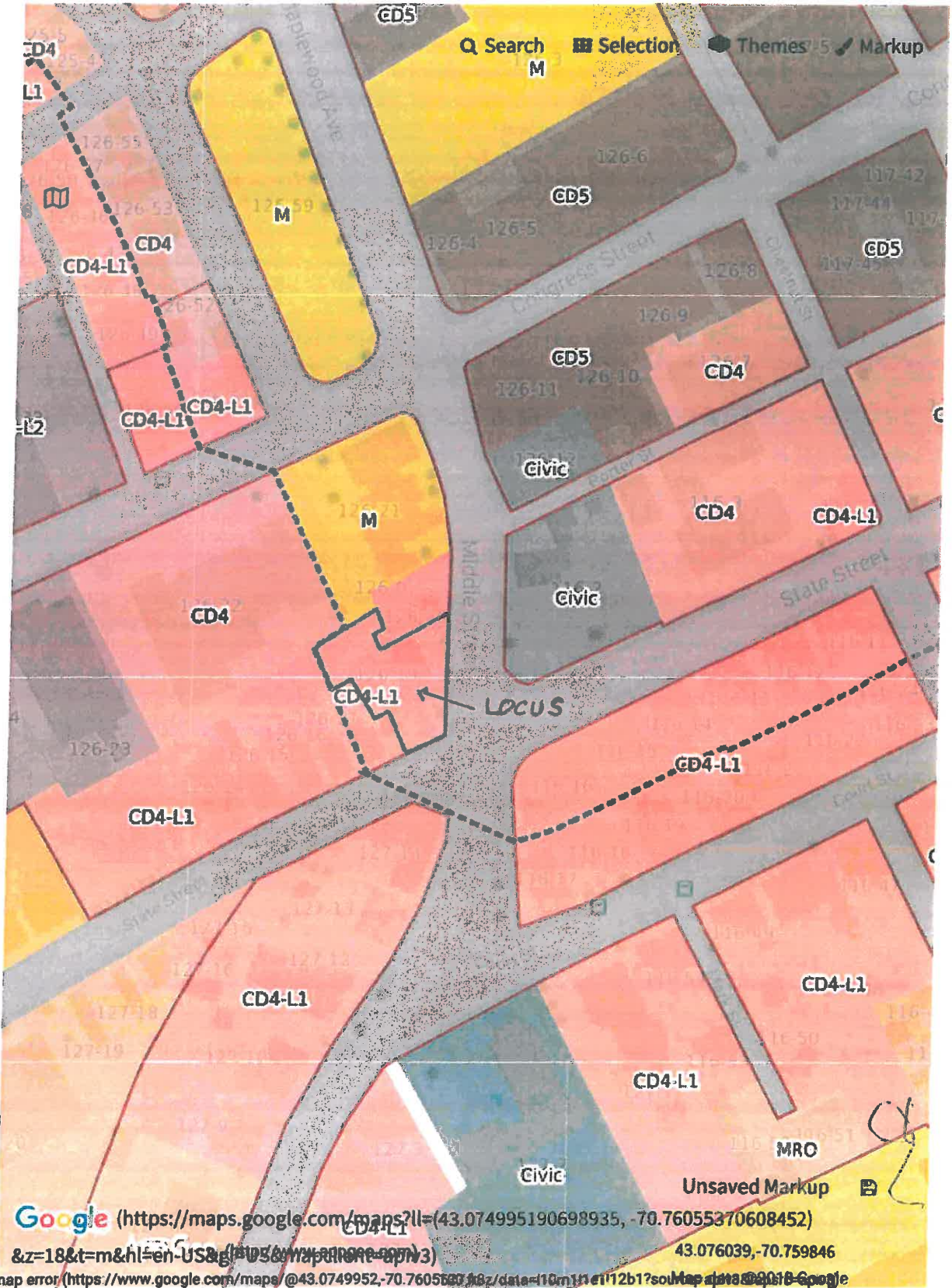
City of Portsmouth, NH

Property

Share

Print

Property



Google (https://maps.google.com/maps?ll=(43.074995190698935,-70.76055370608452)

&z=18&t=m&hl=en-US&gl=US&map=on&app=3)

43.076039,-70.759846

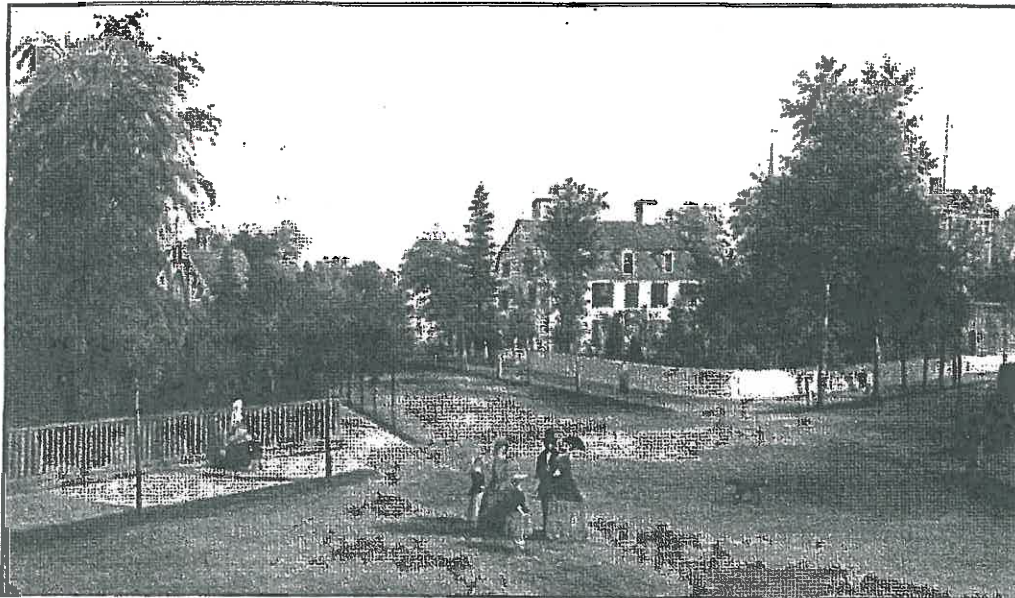
nap error (https://www.google.com/maps/@43.0749952,-70.7605537,18z/data=!1m1!1e1!1b1?source=ap&sa=Google



Courtesy Portsmouth Athenæum
S.R. Cleaves House, Glen Cottage.

"The open garden of Glen Cottage, at the corner of State and Middle streets, ...low and open fences show that the owners wish for the world to enjoy with them the beauties which nature by their training richly displays." Portsmouth Journal, 19 Sept. 1846.

Courtesy Rundlet-May House, SPNEA
Painting, Purcell House & Glen Cottage, 1853, by William H. Titcomb.
Glen Cottage (left), the Purcell-Lord (now John Paul Jones) House and Rockingham Hotel (right).



area remained industrial even after the textile mills burned and new industries emerged to the west. By the early 20th century two- and three-deckers, New England's most common multi-family building form, began to be built on a few remaining empty lots.

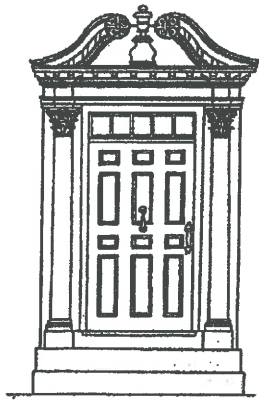
CWD

ACADEMY CORNER

The intersection of Middle and Islington streets includes elements of each phase of West End development. Purcell House or "John Paul Jones House" and the Buckminster House represent the last surviving pre-Revolutionary houses in the area. Although the hay market was gone by 1850, the area gradually developed as an institutional core. The construction of the Portsmouth Academy dates to 1806, as Portsmouth's elite sought to provide college preparatory training for its young men. The Academy was soon joined by the Baptists in 1828 and the Christians after 1862. In 1895 the Academy was converted into the Portsmouth Public Library. During the 20th century this institutional focus was affirmed by the construction of the Portsmouth High School (1903 by John Ashton of Lawrence, Mass.) and the former North Church chapel (now the Salvation Army). Little remains of one of Portsmouth's handful of Gothic cottages built in the second quarter of the 19th century.

The original appearance of Glen Cottage, 56 Middle Street, built in 1845 for S.R. Cleaves, a soap factory owner, can be seen in a painting at the of the Rundlet-May House. Glen Cottage is now obscured by the addition of a ca. 1920 Tudor design, and remodeled for offices.

CWD



BUILDING PORTSMOUTH

The Neighborhoods & Architecture
Of New Hampshire's Oldest City

Second Edition

Richard M. Candee

&.....

Contributors

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Erica Dodge	ED	Martha Pinello	MP
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James L. Garvin	JLG	Mark J. Sammons	MJS
Sarah Giffen	SG	Barbara Ward	BW
Bernard L. Herman	BLH		

Illustrators

Aldrich Associates	Elizabeth Hostutler
Amy Amidon	Philip Kendrick
Aring-Schroeder	Gabrielle Lanier
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David Hart	Philip Tambling
Allen Charles Hill	Nancy Van Dolsen

Cartographers

Robert J. Kozman	William Paarlberg
Eliza McClennen	Barbara Schmidt

EXHIBIT

tabler

4

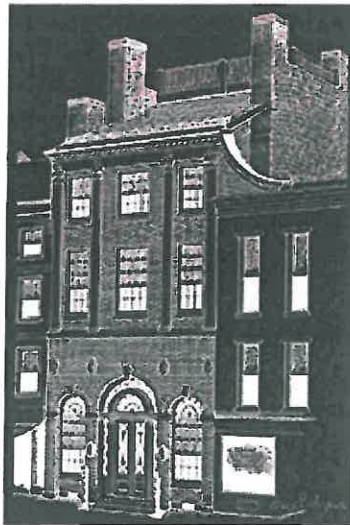


Portsmouth Athenaeum

PORTSMOUTH ATHENÆUM



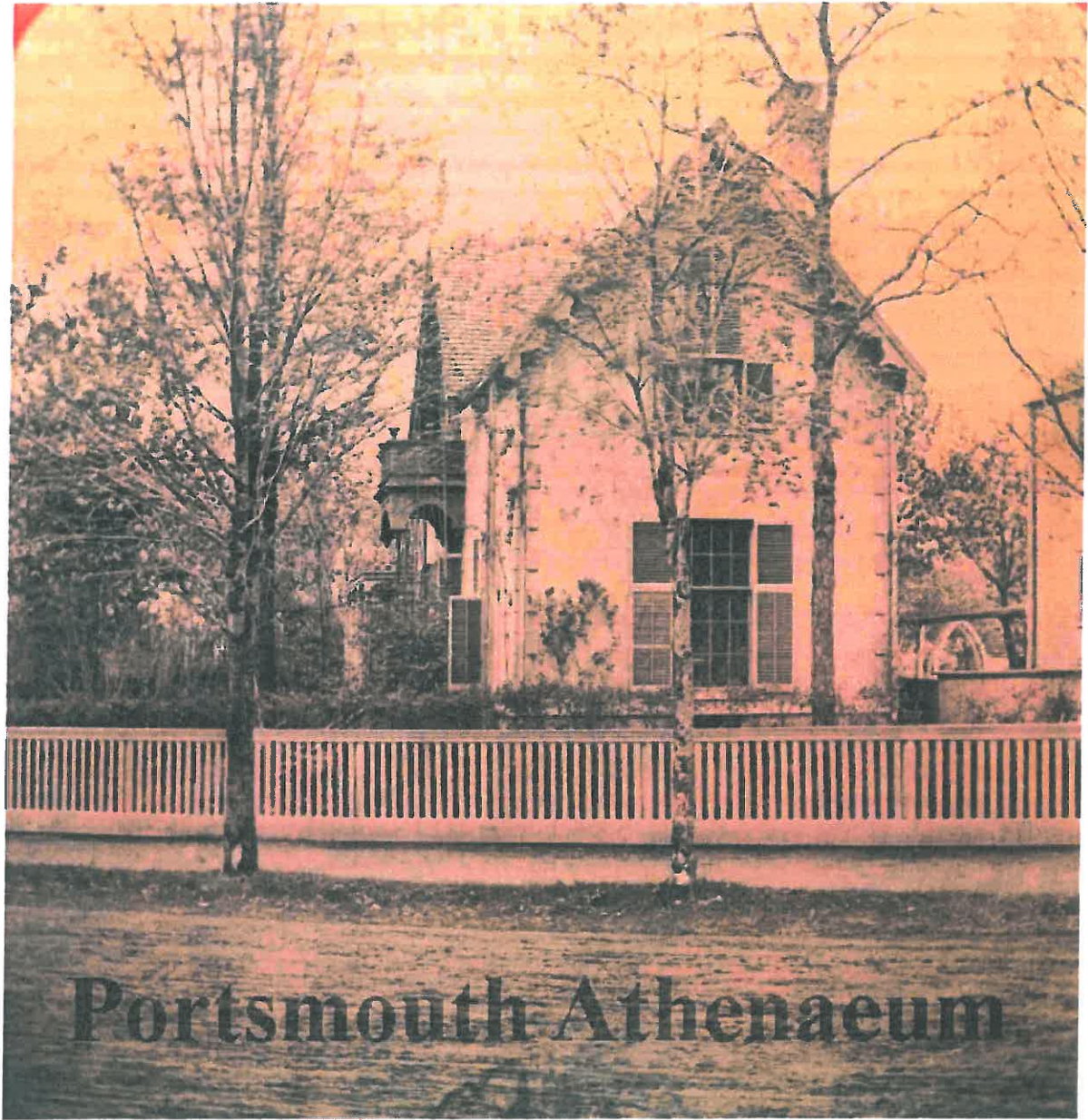
Catalog Number PS2019
Collection Small Photograph Collections
Title Glen Cottage
Year Range from 1870
Year Range to 1879
Description Glen Cottage, corner of Middle and State Streets, Portsmouth.
Object Name Stereograph
Photographer Davis Brothers
Search Terms Middle Street
State Street



Portsmouth Athenæum

6 - 9 Market Square in Portsmouth, NH
 (603) 431-2538
info@portsmouthathenaeum.org

P. 1



PORTSMOUTH ATHENÆUM



Catalog Number P40_0881
Collection Portsmouth Advocates West End Survey
Title West End Survey
Date c1982
Year Range from 1982
Year Range to 1992

Glenn Cottage, 43 Middle, corner of Middle and State streets, Portsmouth, NH.

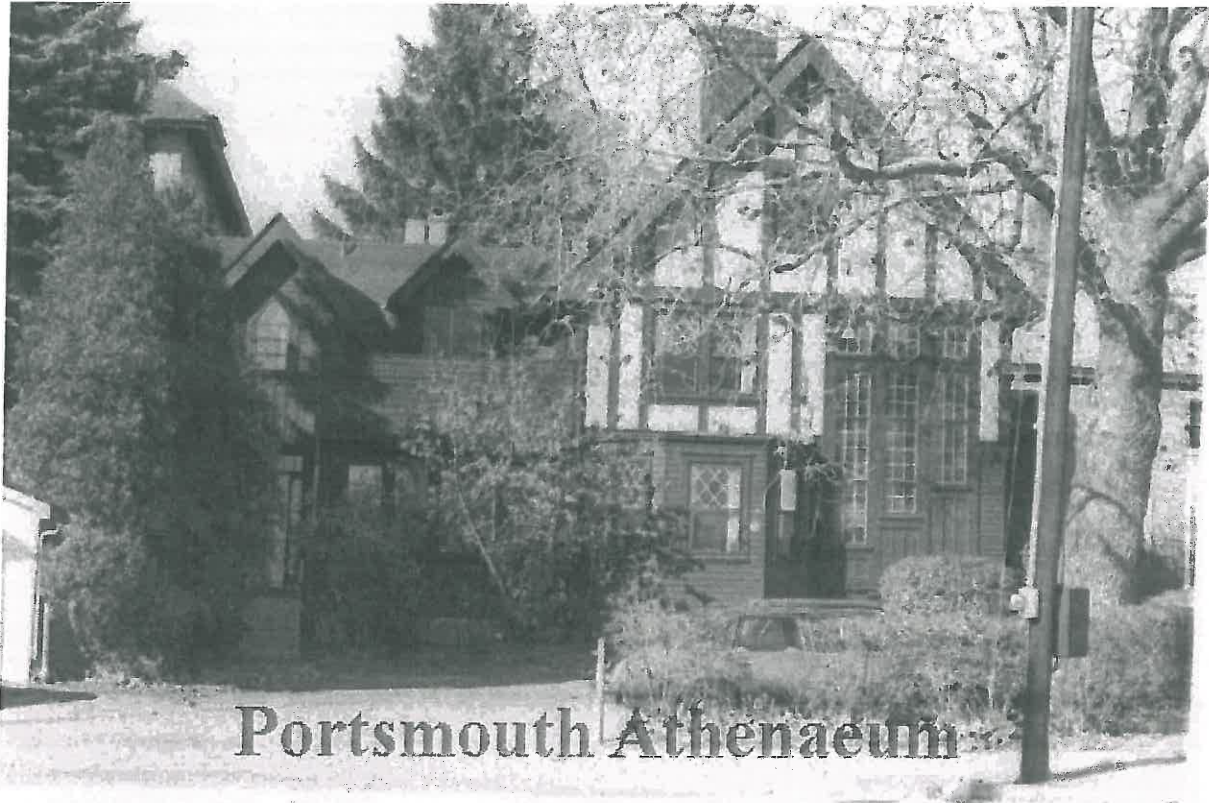
Description

This collection primarily consists of a photographic survey of the houses in the West End of Portsmouth, NH. Images correlate with the number on the tax assessor's maps of the City of Portsmouth, which are at city hall. The goal of the project was to record the architectural elements of Portsmouth homes to aid in planning for future preservation. The collection also includes a few 1991 photographs of buildings that are outside the west end, images of Portsmouth doorways, and images of downtown Portsmouth taken in 1982 for the Historic District Survey. See also MS109.

Object Name Print, Photographic
Print size 3.5" x 5"
Search Terms Historic District Survey (1982)
Middle Street
State Street

P. 1





Portsmouth Athenaeum

Site number:

EXHIBIT
7

Address 56 Middle St. cor. State St. (NW cor.)
 New tax map (1979) U26 lot 19 size 10,100sq.
 Old tax map 24 lot 13 size ft.

Owner RITZO, James & GRIFFIN, Charles
 Address 56 Middle Street



Location of legal description:
Rockingham County Registry of Deeds
Hampton Road; Exeter, New Hampshire
03833

Representation in existing surveys:
 HABS NR NHL
 HAER Other

Date c. 1840/1900
 Sources: Estimate x Other:

Historic name
 Common name 1850: S.R. Cleves
 Original owner
 Architect/bldr.

Functional type house
 Present use, if different offices

Moved Date
 Altered Date

Effect: Focal Contributing x
 non-contributing Intrusion

Photo roll 18 no. 23 & 24
 Negative with: Portsmouth Advocates
 Description
 Date taken by

Tudor Revival and

1. Style Gothic Revival No. of stories 2 1/2 No. of bays

2. Overall plan: T-shaped plan.

3. Foundation: Brick x Stone Poured concrete Concrete block
 Artificial stone Other

4. Wall structure: Wood frame x Brick Stone Other
 If wood: Post and beam Balloon frame x

5. Wall covering: Clapboard x Wood shingle x Flushboard Imitation ashlar
 Brick Stone Stucco x Composition board Aluminum Vinyl
 Sheet metal Asphalt shingles Other Half-timbering.

6. Roof: Gable x Hip Shed Mansard Flat Gambrel Other

7. Specific features (location, no., appearance of porches, windows, doors, chimneys, dormers, eels/wings--see also description), decorative elements:

8. Outbuildings:

(over.....

 **PORTSMOUTH
ADVOCATES, INC.**

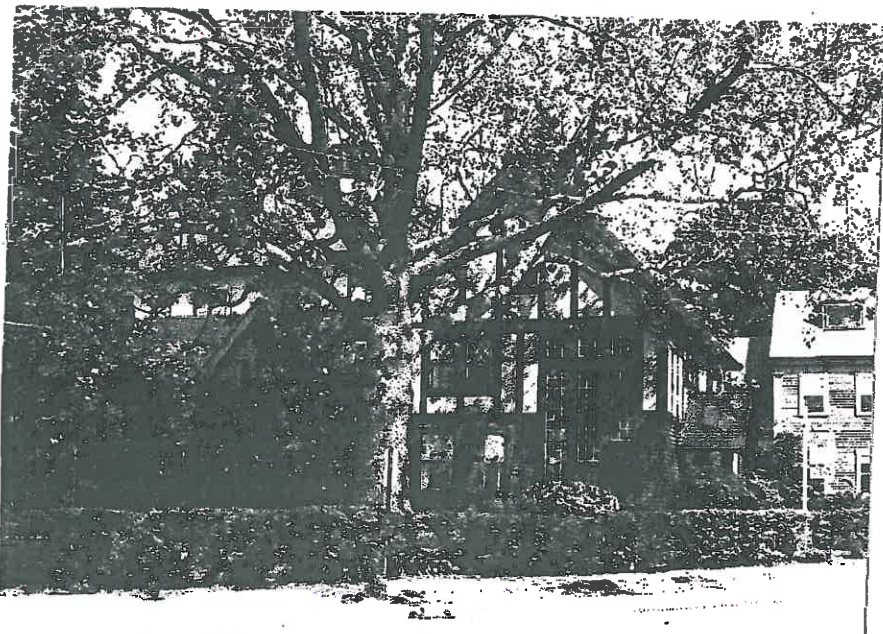
P.O. BOX 4066 · PORTSMOUTH, NEW HAMPSHIRE 03801
 603-431-2499

P.!

Description:

The original part of this house is a 1½ story gable roofed Gothic Revival cottage with a cross gable in the middle of the facade. It is pictured in a painting in the Rundlet-May House on Middle Street. To this was added, a much larger 2½ story Tudor Revival section, shingled on the first story and half-timbered above.

It is one of Portsmouth's most interesting and unusual examples of the combination of complementary styles from different periods (far more common in the city is the combination of Federal and Colonial Revival styles).



Portsmouth Advocates West-End Historic District B Field Survey
 surveyor: Beth Hostutler date: November 1991 area: Islington - Middle St.

NAME
 street Middle 036
 St No
 photo
 map

type gable block
 subtype
 style Gothic (r) and Tudor (front)
 stories 2.5
 building date 1840s rear / 19:

notes see 1850 painting of this house; historic photos

Exterior Features

___ facade bays, entry/ ies at ___ (left to right) ___ bays right lateral wall
 ___ bays left lateral wall
 ___ chimney/ ies location/ s: ridge slope eave gable-end rear-wall ___
 windows:
 sash:
 clapboard shingle brick sythetic _____ wall/ cover
 rubble granite brick block _____ foundation
 entablature consoles hood _____ at door
 cornice returns entablature freize _____ at cornice
 corner pilasters paneled pilasters board _____ at corners

Clarifications / Exceptions

rectangle "T" "L"-shaped _____ primary mass
 1 1.5 2 more pile/ s deep
 1 1.5 2 2.5 3 3.5 more story height
 gable hip gambrel flat _____ roof

Complex Massing / Additions

ell/ wing projecting bay

facade:
 rear:
 lateral right:
 lateral left:

Outbuildings

garage
 barn
 carriage hse.
 other _____

MIDDLE / ISLINGTON STREET CULTURAL RESOURCE SURVEY 1978

Number(s) 36 Street Middle

Architectural Description

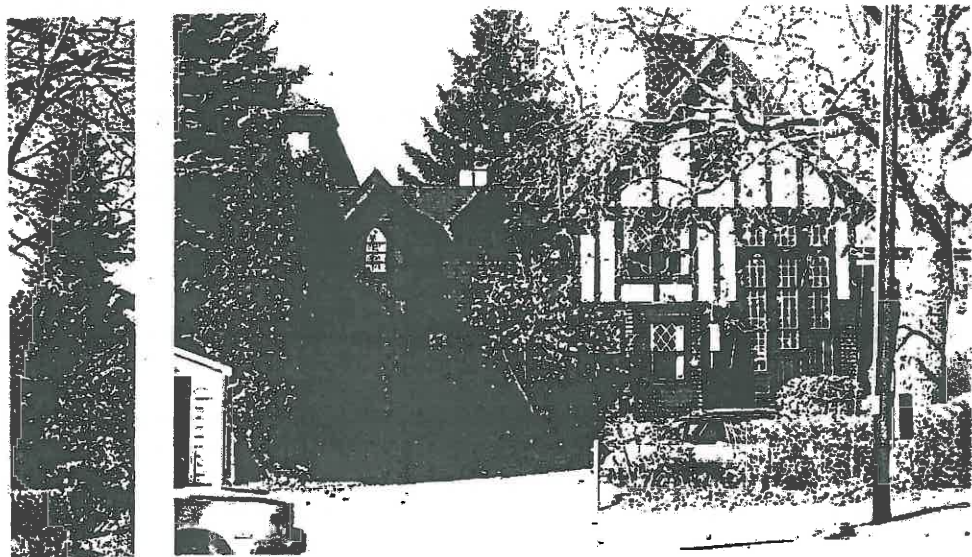
Style/ Type Tudor Revival Date c1840/1900

Significant Features: 2 story Tudor Revival ~~shingled~~
and stucco in imitation of English half-timbering; projecting entry bay with decorative half board overhang between floors on front and at attic level on end; stepped stained windows, side bay - near all is early 19th C Gothic Cottage of center entry; Gothic - "palladian" window in center dormer

Harrington Ho

Map History

- 1813 —
- 1850 S.R. Cleves
- 1878 —
- 1887 DW6
- 1892 D06
- 1910 —



Comments

NOB - ptg of orig. house (near ell) is in Rundlett - May House

Recorded by: Richard M. Candee

October 30, 1978

MIDDLE / ISLINGTON STREET CULTURAL RESOURCE SURVEY 1978

Number(s) 36 Street Middle

Architectural Description

Style/ Type Tudor Revival Date c1840/1900

Significant Features: 2 story Tudor Revival ~~shingled~~
and stucco in imitation of English half-timbering; ^{diamond windows in upper half-timbered} projecting entry bay with decorative base board, overhang between floors and at attic level on end; stepped stair windows, side bay - near ell is early Gothic College of retail entry; Gothic - "palladian" window in ell

Islington Ho

Map History

- 1813 -
- 1850 S.R. Cleves
- 1878 -
- 1887 Dob
- 1892 Dob
- 1910 -



Comments

NOB - ptg of orig. house (near ell) in in Rudlett - May House

October 30, 1978

Recorded by: Richard M. Candee

P.5

Glen Cottage rear 56 Middle, cor. State

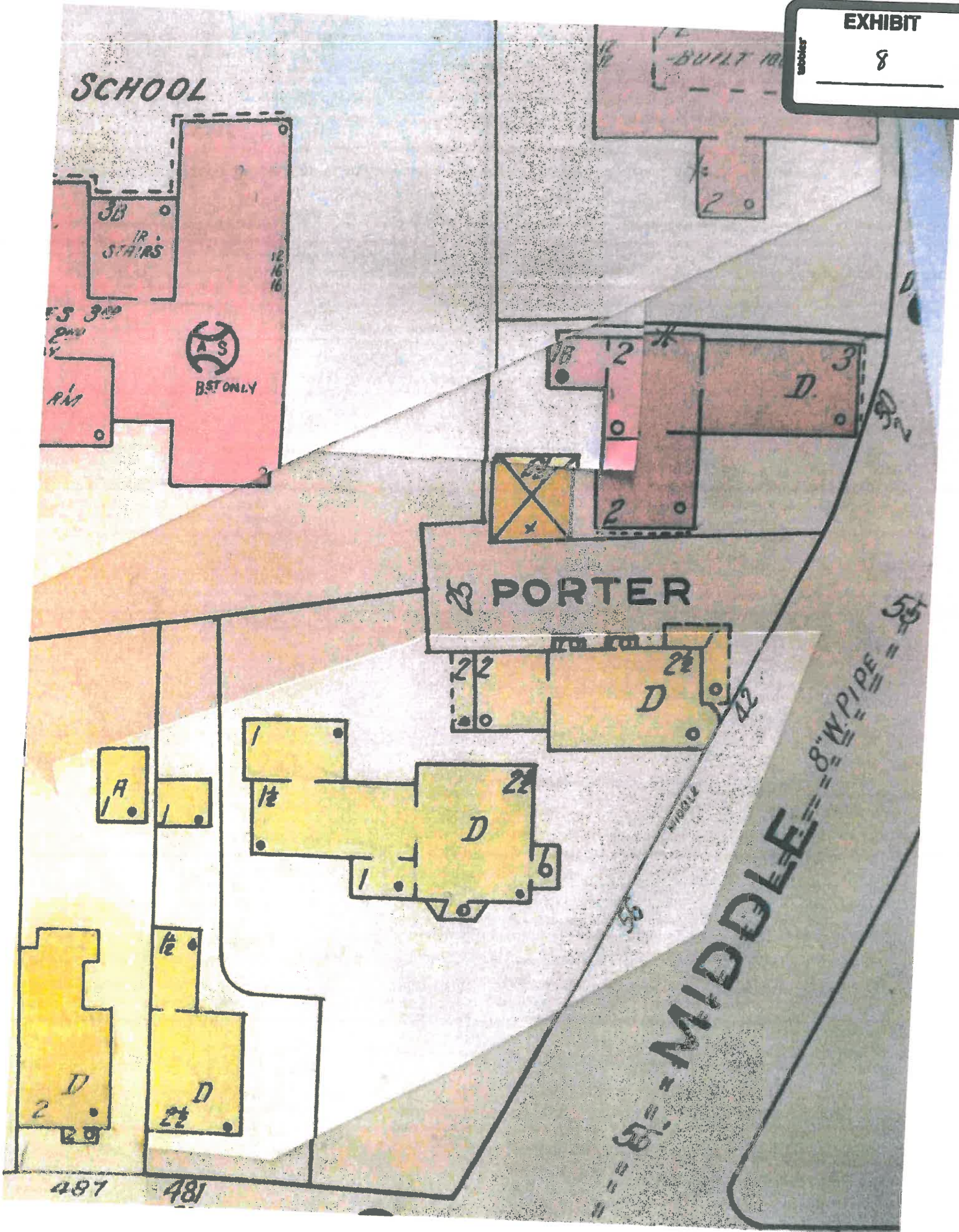
orig. for S. R. Cleaves [Soap Factory owner] (1850 map)

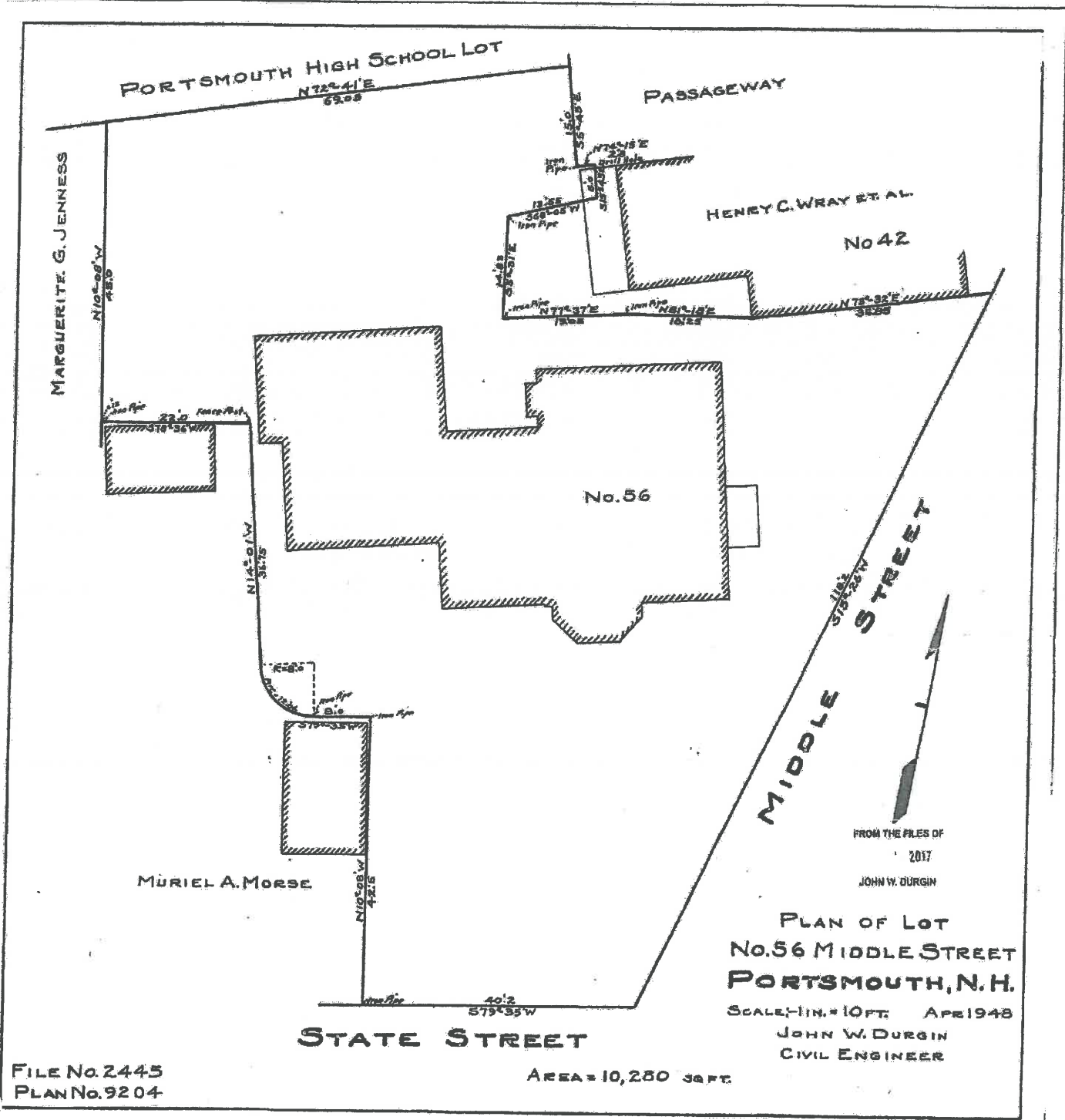
tax: S.R. Cleaves 1844 lot \$374; 1845 house Middle \$1200

1845

Journal: Sept. 19, 1846: "Glen Cottage, at the corner of State
and Middle streets, ..where low and open fences
show the owners wish for the world to enjoy with
them the beauties of nature."

Rundlet painting 1851?; SPNEA stereo card; Athen. photo





EXHIBIT

10

APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE



Front facade from Middle Street

P.1

APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE



Front facade from Middle Street

**APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE**



Side view from State Street

**APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE**



Front and left side view from State and Middle Streets intersection

**APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE**



Right side view, including addition to be removed and replaced

P. 5

**APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE**



Rearview including addition to be removed and replaced

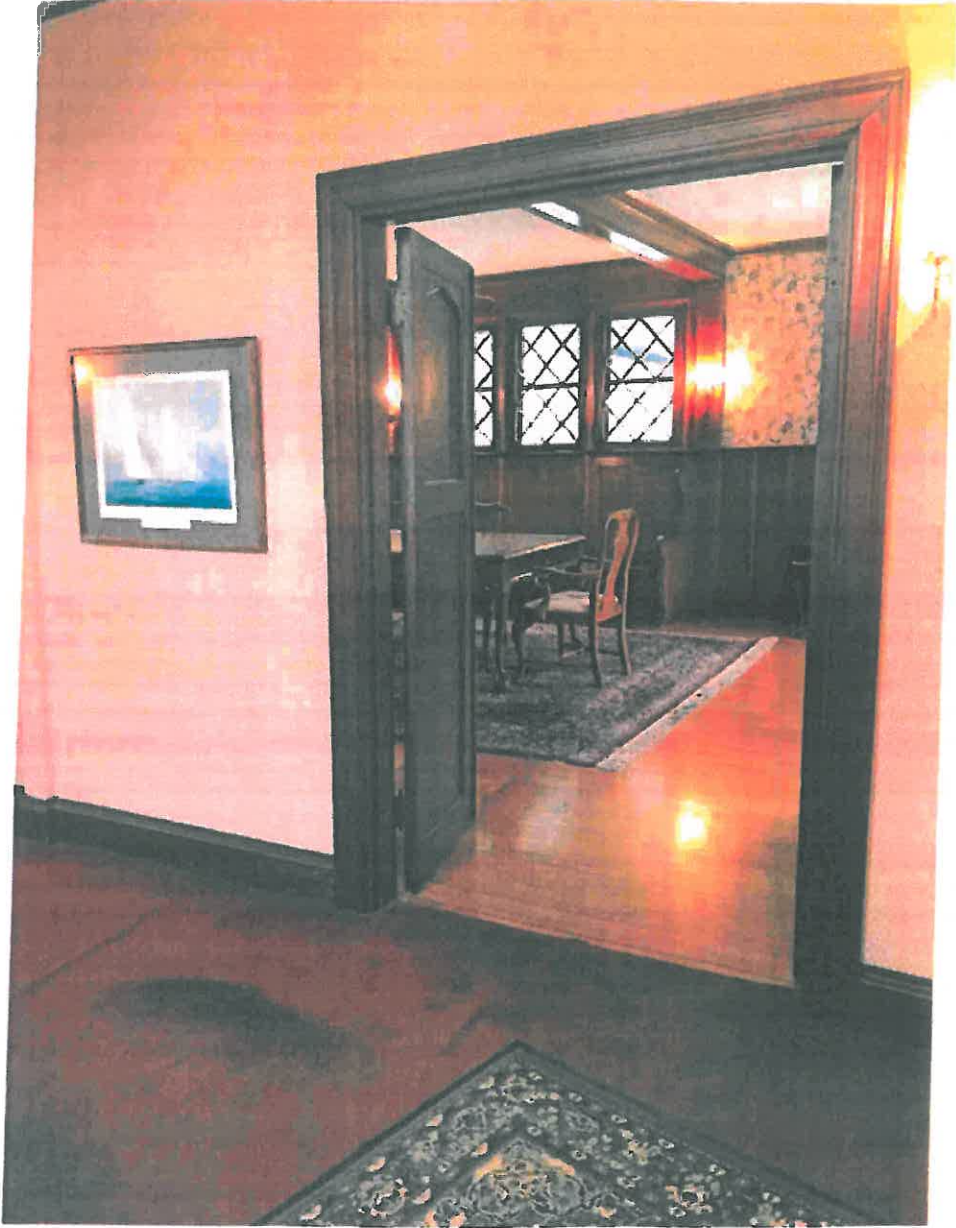
p. 6

APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE



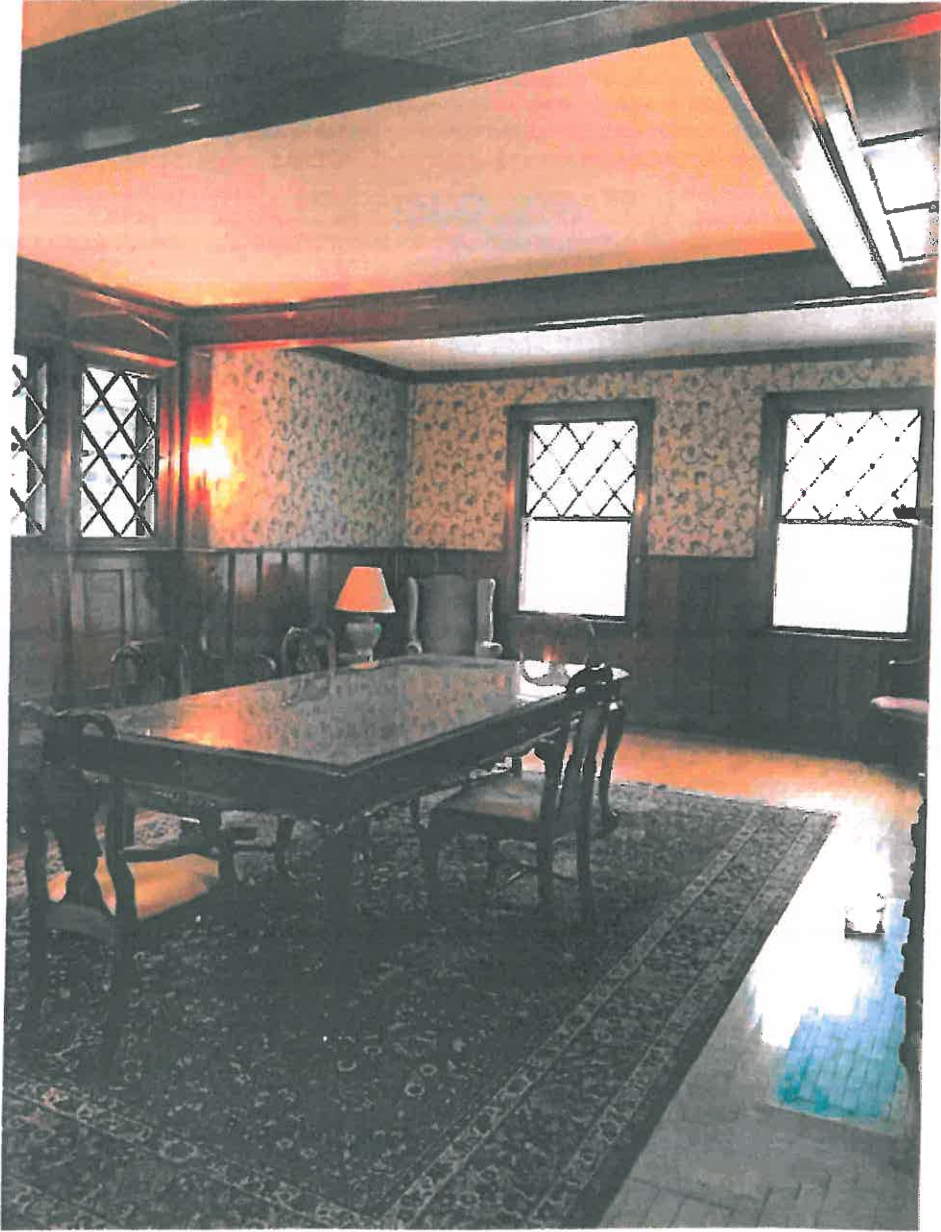
Interior – front hall

APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE



Interior – view from front hall to former living room

**APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE**



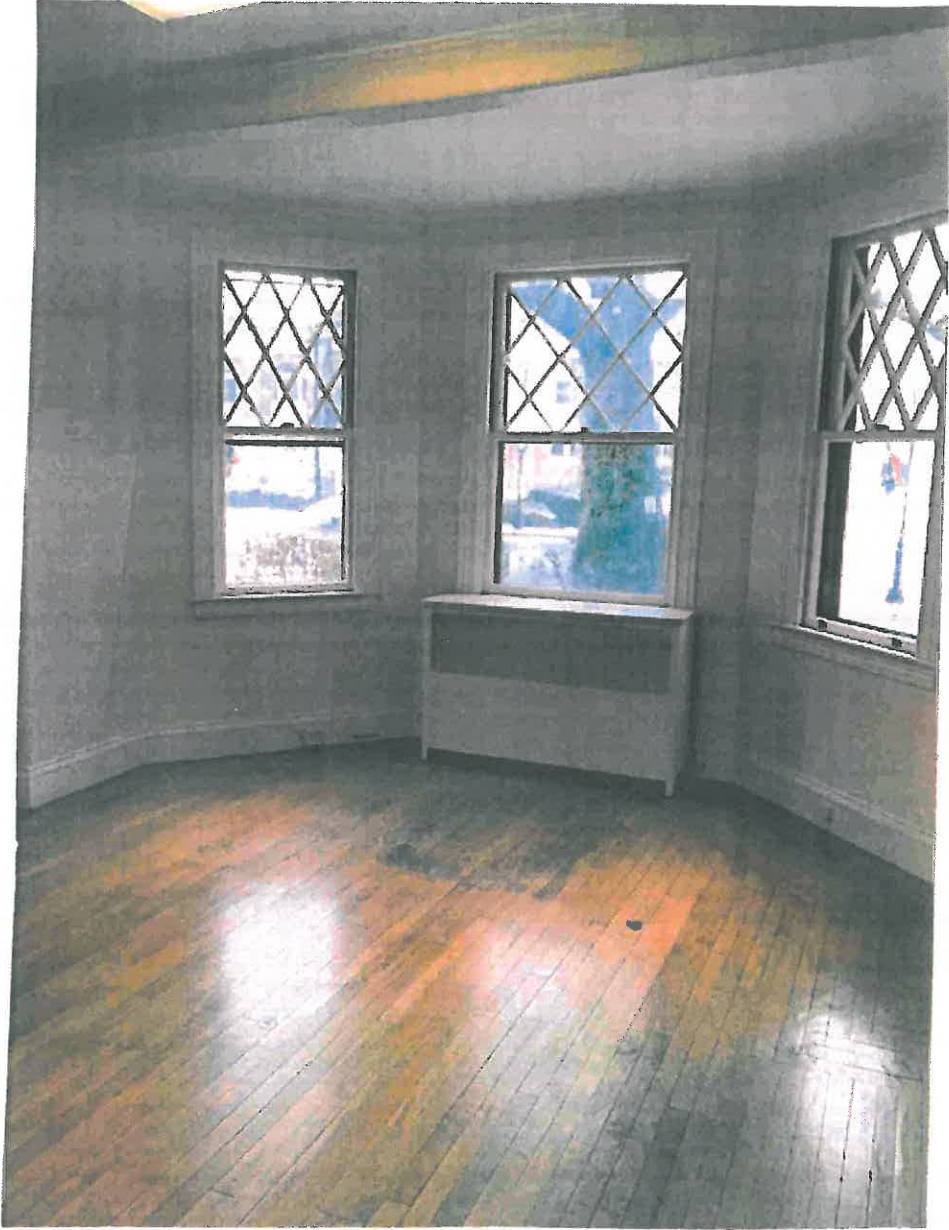
Interior – former living room, presently conference room

**APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE**



Interior – former living room, presently conference room

**APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE**



Interior – former dining room

APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE



Interior – former dining room

APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE



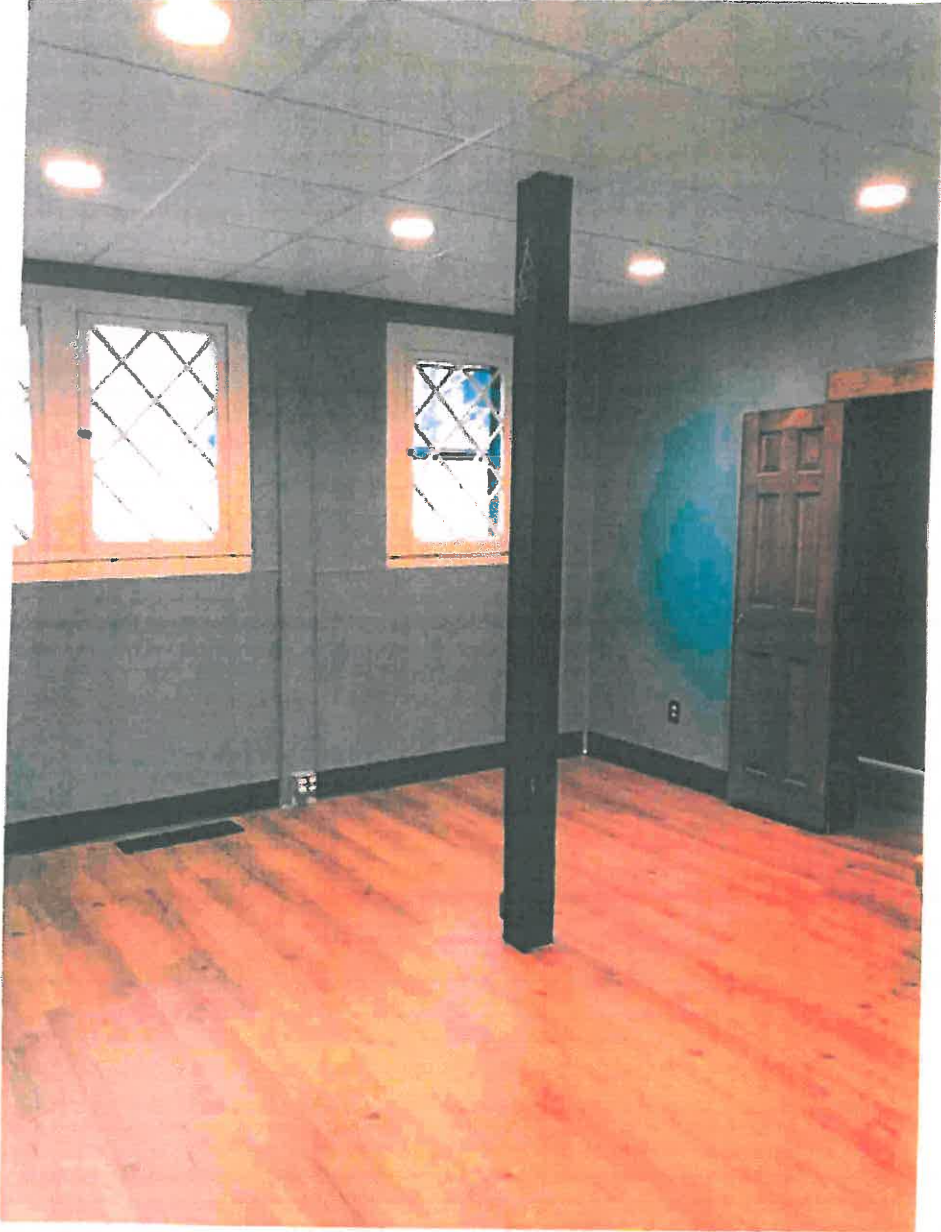
Interior – former kitchen, presently office

APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE



Interior – former kitchen, presently office

**APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE**



Interior – one-story rear addition

P.15

**APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE**



Interior – one-story rear addition

P. 16

APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE



Interior – one-story rear addition

P.17

**APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE**



Interior – one-story rear addition

Project Info:
 56 Middle Street 1st
 Portsmouth, NH

Client: 56 Middle St. Portsmouth, NH

Sheet Title: Proposed Floor Plans

Sheet Number: A1.1

Scale: 1/4" = 1'-0"

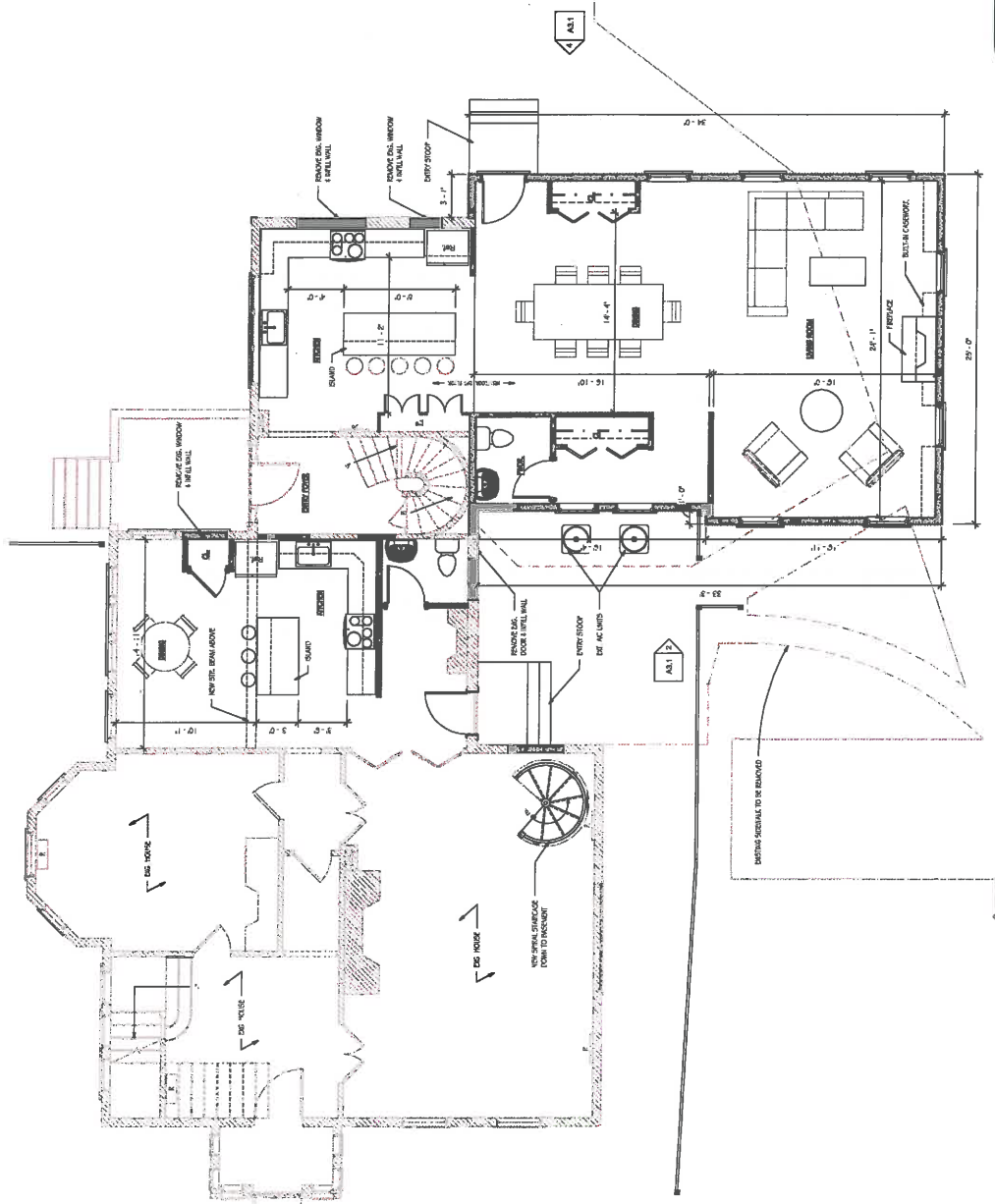
Author: MJK
Checker: JMT
Date: 08/20/14

Project: 56 Middle St. Development

Phase: 100%

Revision: 1

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1. PROPOSED FIRST FLOOR LAYOUT
 1/4" = 1'-0"

Revision Schedule

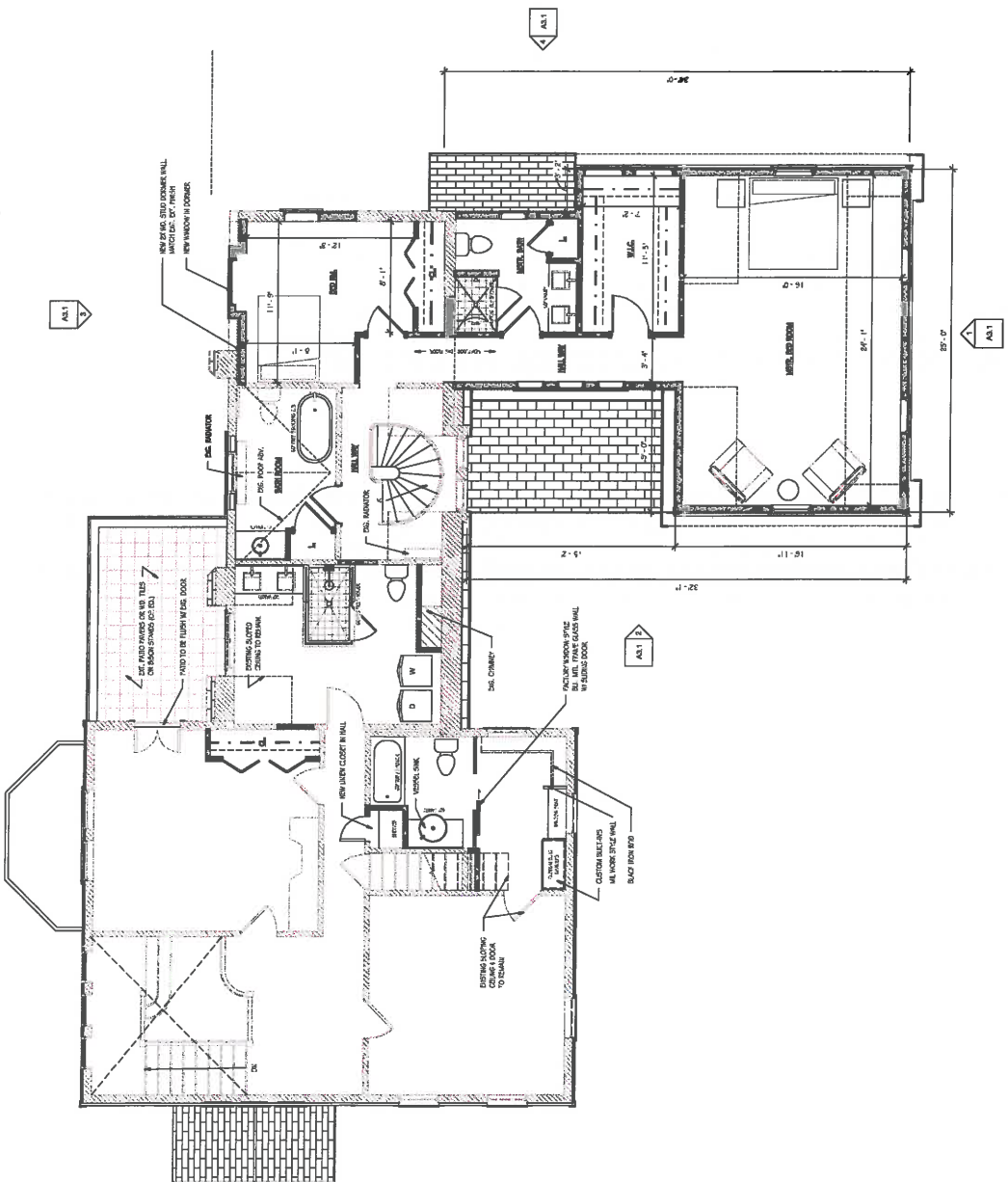
Project Name:
56 Middle Street IIc

56 Middle St.
Portsmouth, NH

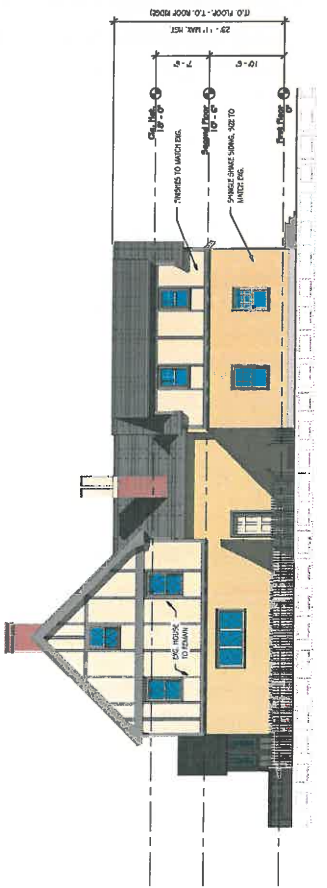
Sheet Title:
Second Floor Plan

Sheet Number:
A1.2

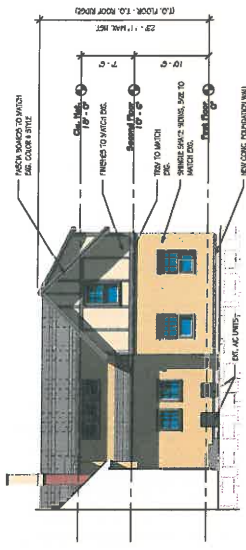
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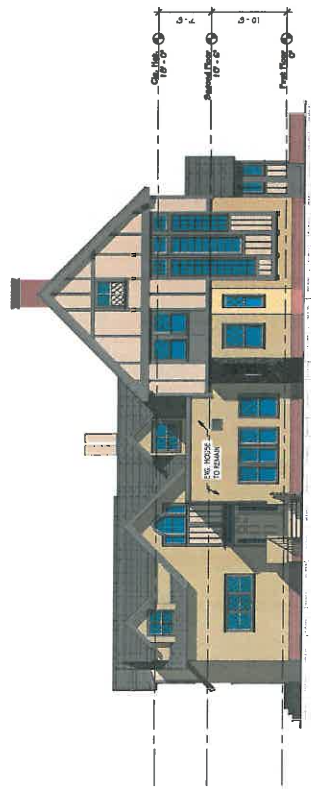
① SECOND FLOOR PLAN
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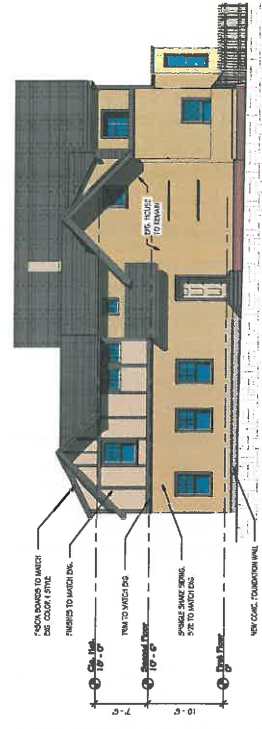
① NORTH EXTERIOR ELEVATION
 1/8" = 1'-0"



② PARTIAL EAST EXTERIOR ELEVATION
 1/8" = 1'-0"



③ SOUTH EXTERIOR ELEVATION
 1/8" = 1'-0"



④ WEST EXTERIOR ELEVATION
 1/8" = 1'-0"

Project Title:
56 Middle Street Ilc

56 Middle St.
 Portsmouth, NH

Client Name:
 Design Development
 10/2/21

Architect:
 T/W Designs
 10/2/21

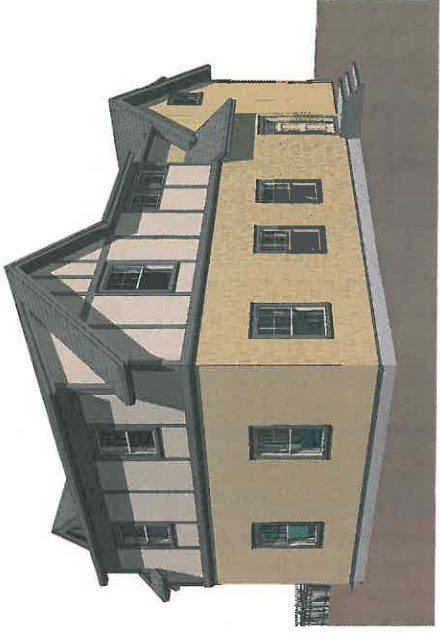
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Sheet Title:
Exterior Elevations

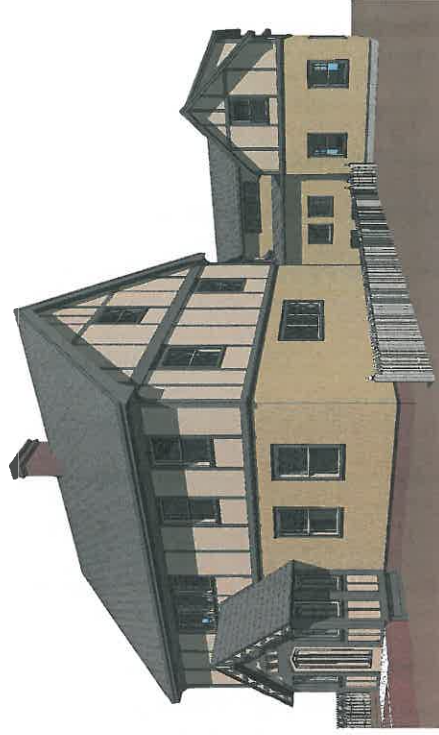
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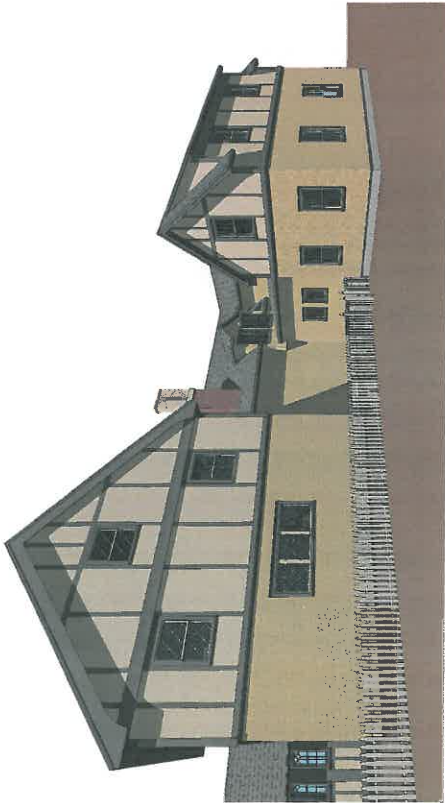




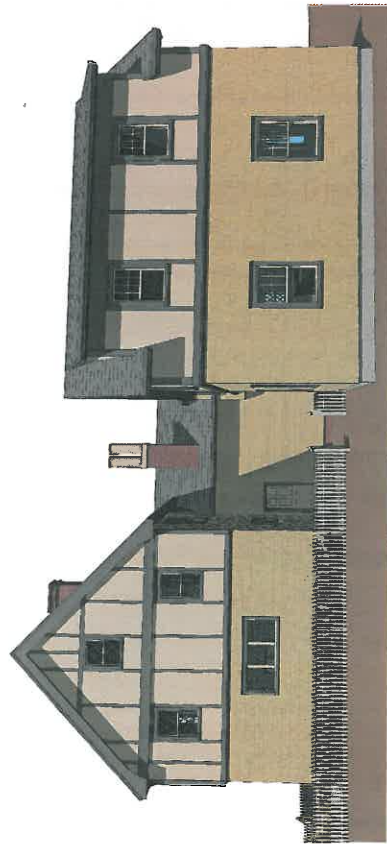
② 3-D VIEW 'B'



① 3-D VIEW 'D'



① 3-D VIEW 'A'



③ 3-D VIEW 'C'

DATE: 08/20/19
 DRAWING: 3-D RENDERINGS

PROJECT NO: 56 Middle Street Ilc
 56 Middle St.
 Portsmouth, NH

CLIENT: 56 Middle Street Ilc
 56 Middle St.
 Portsmouth, NH

DESIGNER: TWD
 DATE: 08/20/19
 SCALE: 1/8" = 1'-0"

SHEET NO: 3-D Exterior Renderings

SHEET NO: R1.1

PRINT DATE: 08/20/19 1:50:55 PM