

Hand-Delivered

September 12, 2019

David M. Rheume, Chair
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
Hearing Scheduled for September 17, 2019

Dear Mr. Rheume:

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

1. Supplemental Memorandum in support of Application (original and 11 copies)
2. 12 copies of Table of Exhibits and Exhibits
3. 12 copies (11" x 17") of Variance Application Plan (Rev. 9.11.19)
4. 12 copies (11" x 17") of Exterior Elevation Plans
5. 12 copies (11" x 17") of 3D Exterior Renderings
6. 12 copies (11" x 17") of Existing Floor Plans
7. 12 copies (11" x 17") of Proposed Floor Plans
8. 12 copies (11" x 17") of Exterior Views as Approved and as Proposed

We look forward to addressing this application at the September 17, 2019 meeting of the Zoning Board of Adjustment.

Very Truly Yours,


Thomas R. Watson

TRW/ag
Enclosures.

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BY: _____

Cc: Peter M. Stith, AICP (w/ enc.)
Jason N. & Barbara L. Theodore (w/ enc. via email & US Mail)
John R. Chagnon, P.E. (w/ enc. via email)

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John M. Tuttle, AIA (w/ enc. via email)
Christopher P. Mulligan (w/ enc. via email)
Stephen J. Bergeron (w/ enc. via email)
Patrick D. Driscoll (w/ enc. via email)

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BY: _____

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.

Dated: April 4, 2019

56 Middle St LLC

By: 
Jason N. Theodore, Manager

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MEMORANDUM

TO: David M. Rheume, Chair and Members of the Zoning Board of Adjustment
FM: Thomas R. Watson, Esquire
DT: September 12, 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)

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On behalf of 56 Middle St LLC (the “Applicant”), owner of property at 56 Middle Street, Portsmouth (the “Premises”), we are pleased to submit this supplemental memorandum and attached exhibits in support of the Applicant’s request for use variances from the Portsmouth Zoning Ordinance (the “Ordinance”) to permit the Applicant to use the Premises as a residential duplex. This application is scheduled for a public hearing at the Zoning Board of Adjustment (“ZBA”) on September 17, 2019.

NOTE: This memorandum supplements but does not supplant the Applicant’s Memoranda of April 30, 2019 and July 10, 2019 and its Request for Rehearing of August 15, 2019.. Reference is made to those documents for a further discussion of the criteria supporting the Applicant’s request for variances.

A. Property

The Premises 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 Premises consists 10,128 square feet of land on which is situated what was originally a two and a half story single family residence which was most recently used as commercial offices. The Premises 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 Premises abuts the outer boundary of the DOD. The neighborhood in which the Premises 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

The northwesterly corner of the Premises lies adjacent to property at 487 State Street (the “487 State Property”), occupied by the Grey Gull Condominium, a two-unit condominium. The 487 State Property is shown on the tax maps of the City of Portsmouth as Map 126, Lots 17-1 and 17-2. The rear westerly property line of the Premises also serves as the rear easterly property line of the 487 State Property. Situated westerly of the 487 State Property is property at 495 State Street (the “495 State Property”) shown on the tax maps of the City of Portsmouth as Map 126, Lot 16. The rear westerly property line of the 487 State Property also serves as the rear easterly property line of the 495 State Property. [See Exhibit 12]

The Applicant, as owner of the Premises, is the beneficial owner of easements over a portion of the rear yard of the 487 State Property and the rear yard and driveway of the 495 State Property, for purposes of access, parking and drainage. See Griffin Affidavit generally. [Exhibit 21]

B. History of Property

Until the second half of the 20th Century the Premises 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; Exhibit 11, pp. 1-5] 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; Exhibit 11, pp. 4 & 6]. In the 1982 Portsmouth Advocates West-End Survey, the Premises 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].

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

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With the possible exception of a small addition on the rear of the structure added prior to 1947, the structure that exists on the Premises 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 Premises 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 Premises 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 continued until Applicant recently began renovating the building.

Interestingly, after the Premises 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. Also, of interest, at some point, the City of Portsmouth began assessing the Premises as a two-unit property. The practice continues to this day. See Tax Assessor Sheet. [Exhibit 18].

C. Procedural History

In November 2018, the Applicant submitted an variance application to the Zoning Board of Adjustment requesting certain use and dimensional variances from the Ordinance in conjunction with a proposal to restore the Premises as a single family residence and to replace the existing one-story (27' x 17') rear addition to the building with a two-story (24' x 24') addition consisting of a first floor garage and a second floor bedroom suite. Following a public hearing on December 18, 2018, the Board unanimously granted the requested variances including variances from Sections 10.5A32 and 10.642 to allow for residential principal use on the ground floor of a building in the DOD. In granting the variances, the Board made the following findings:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. The required setback relief covers only a short distance along a lengthy property line. Allowing a residential use on the first floor, with nearby residential uses, will not alter the essential character of the neighborhood nor threaten the public's health, safety, or welfare.
- Substantial justice will be done as the loss to the applicant if the petition were denied would not be outweighed by any benefit to the general public.

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- Restoring the property to a single family home will not diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property, which include the fact that it is on the periphery of the Downtown Overlay District and its long historical use as a single family home. Granting the variances will restore the property to its original purpose so that there is no fair and substantial relationship between the purpose of the use limitation and its specific application to the property. With nearby similar properties, this is a reasonable use.

[See Exhibit 20]

In April, 2019, the Applicant submitted a further request for variances to convert the Premises to residential use as a duplex. The proposal called for the existing one-story (27' x 17') rear addition to be demolished and replaced with a two-bedroom, two-story (34' x 25') addition with a new, separate entrance. The Applicant sought both a use variance to allow for a residential duplex in the DOD and a dimensional variance because the enlarged addition caused the total building footprint to exceed the 2,500 s.f. maximum permitted under the Ordinance

On June 12, 2019, the Applicant amended its application to withdraw its request for the dimensional variance after deciding that it would not seek a further enlargement of the rear addition to 34' x 25' but, rather, would confine the size of the new addition to the 24' x 24' footprint approved by the Board in December 2018.

On June 18, 2019, a public hearing was held on the amended application. At that time, following assertions made by the owners of the properties at 487 and 495 State Street that they held rights to shared use of certain of the parking spaces on their properties described in the easements benefiting the Applicant, the Board voted to table the application until the July meeting to allow for the Applicant to submit additional information and documentation relating to those issues.

At the next public hearing held on the application on July 16, 2019, the Applicant introduced documentary evidence demonstrating that it held deeded easement rights for parking, access and drainage over the abutting properties at 487 and 495 State Street **[Exhibit 21]** and intended to avail itself of those rights for parking for residents of the duplex² proposed for the Premises. Applicant proposed to remove the existing parking lot adjacent to State Street and

² It is noteworthy that the proposed use of the Premises as a residential duplex requires no off-street parking. Under Section 10.1115.21 of the Ordinance provides that each structure in the Downtown Overlay District which includes residential use requires 1.3 spaces per dwelling unit. However, Section 10.1115.23 reduces the minimum parking requirements (in this case, three) by 4 spaces.

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landscape the area. Nevertheless, after hearing assertions by abutting property owners that the Applicant's proposed use of parking lot would interfere with their use and enjoyment of their lots, by a divided vote, the Board voted to deny the requested variances for the following reasons:

- All the criteria necessary to grant a variance were not met.
- Substantial justice would not be done, the value of surrounding properties would be diminished, and the use is not a reasonable one given the circumstances of the property and its surroundings. Abutting properties would be adversely impacted by the proposed duplex use.

Finally, by Motion for Rehearing dated August 15, 2019, Applicant requested that the Board set aside its denial of July 15, 2019 and grant a rehearing for reason, among others, to allow the Board to accept newly available evidence not available at the time of the July 16, 2019 hearing. That evidence is an agreement which had just been negotiated by the Applicant with the owners of the 487 State Property and the 495 State Property to clarify and modify the easements impacting the Premises and 487 State and 495 State in a manner that reallocates parking spaces among the owners, removes the right of the owner of the 495 State Property to park vehicles in the driveway on that property at any time, thereby permitting the driveway to serve as an unimpeded exit for all vehicles using the parking lot on a 24 hour per day- 7 days per week basis. The agreement also provides that the owners will share the costs of maintaining and repairing the parking lot. A Term Sheet outlining the principle terms of the agreement, executed by the property owners, was submitted as part of the Motion for a Hearing. **[Exhibit 22]**

This agreement settles the differences between the Applicant and the other owners with a result that the abutters no longer oppose the Applicant's proposed use of the Premises as a duplex. It is anticipated that the abutters will advise the Board that they do not oppose granting the requested variance because they and their properties will benefit from the resolution of the parking and access issues.

Of greater import, the agreement among the property owners removes the very conditions that served as the basis for the Board's denial of the variances. With the parking and access issues solved, abutting properties can no longer claim to be adversely impacted by use of the Premises as a duplex and their values will not be diminished. To the contrary, the resolution of these issues will likely increase the values of the abutters' properties. Similarly, the opening of the driveway at 495 State as a vehicle exit on a 24-hour basis eliminates the Board's concerns about the vehicles

exiting the parking lot into the passageway adjacent to the former public library. This resolution also reinforces a finding that substantial justice will be done in granting the variances.

At its August 27, 2019 public meeting, the Board granted Applicant's request for a rehearing.

The Applicant and the abutters are close to finalizing the terms of a definitive easement clarification agreement. The Applicant anticipates providing a copy of that agreement to the Board at the hearing on September 17, 2019.

D. The Proposal

Applicant proposes to convert the Premises to residential use as a duplex, with one unit in the front portion of the structure and a second unit in the rear portion. In the front unit, a first floor kitchen will be installed to replace that removed when the structure was converted to office use and a first floor bath will be added. In the rear unit, a kitchen will be installed on the first floor and the recently-demolished one-story addition will be replaced by a two-bedroom two-story approximately 24' by 25' addition, consisting of a living room and dining room on the first floor and a master bedroom suite on the second floor. A new, separate will be added to the rear unit.

[Exhibit 16]

On the exterior, Applicant, in addition to generally restoring the faded appearance of the facades, will upgrade the walkways and landscaping throughout the lot and reduce the area dedicated to parking adjacent to State Street. In total, the Applicant has provided for five off-street parking spaces, two in the lot adjacent to State Street, two in the rear northwesterly corner of the Premises and one within the easement area encumbering 487 State Street. **[See Exhibit 12]**

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 Premises as a residential duplex where the Ordinance does not permit duplexes in the Downtown Overlay District.

The Premises lies in the Character District 4 (CD4-L1) zoning district. The proposed use of the Premises 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 Premises 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 Premises. 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. **[Exhibit 20]**

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 TYPE

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 BUILDING 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.

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.

The conversion of a residentially designed and constructed structure on the Premises 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 Premises to residential use as a two-family structure promotes authenticity in that it 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. Moreover, use of the Premises as a residential duplex instead of as commercial offices provides relief from the over-dedication of the side yard adjacent to State Street to automobile

parking associated with office use. The proposed reduction to two parking spaces at that location also promotes authenticity and resiliency at that location.

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 Premises 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 Premises 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.

Of note, in its July 2019 Denial, the Board did not single out either of these criteria as a basis for the denial.

Granting the requested variances 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.

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).

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 Premises 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 Premises 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 Premises 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 Premises 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 Premises as a duplex.

In its July Denial, the Board stated that “substantial justice would not be done.” However, it appears that determination was not based upon a finding of any harm to the public generally. Rather, it appears to be based upon a perception that the abutting property owners at 487 State

Street and 495 State Street will be harmed because of the Applicant's use of its easement rights in light of the conflicting claims of the three property owners. That concern, however, has now been resolved by virtue of the agreement reached with the abutters. The implementation of that agreement not only brings peace among the owners but improves the parking, ingress and egress throughout the easement areas. By all accounts, the abutters and the public generally will be benefited by these improvements.

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

The Applicant's proposal to renovate and restore the former home on the Premises to a duplex will not cause a diminution in the value of surrounding properties. The Premises 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 Premises as a duplex will decrease vehicular traffic, noise, and other adverse side effects of the commercial uses of the Premises. 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. In short, there is nothing about the use of the Premises as a duplex, in contrast for its use for general offices or as a single-family residence, which can support a conclusion that granting this variance will cause a diminution in the value of surrounding properties. This conclusion is supported by the opinion of Sandra Dika, a local real estate broker with familiarity of the Premises and surrounding areas. [Exhibit 19]

Moreover, the new addition will be more architecturally compatible with the existing house, thereby enhancing the appearance of the Premises. This upgrade of the Premises will only have a positive effect on the values of surrounding properties.

In its July Denial, the Board opined that "the value of surrounding properties would be diminished" as "abutting properties would be adversely impacted by the proposed duplex use."

This opinion was, no doubt, based upon the concerns expressed by the abutters about access, traffic flow, maintenance and conflicting claims to parking within the easement areas burdening their lots. These concerns, however, have now been fully addressed, to the satisfaction of the abutters, in the agreement reached between the Applicant and the abutters in August. This agreement, which is contingent upon the Applicant receiving variances to establish a duplex on the Premises brings benefits to the abutters which they have not heretofore had during their ownership of their properties. In the case of 487 State Street, the owner now has an additional parking space exclusively dedicated to that property on a 24-hour, 7-day per week basis. The owner of 495 State Street gains two additional parking spaces exclusively dedicated to that property. All three properties will have uninterrupted use of the driveway on 495 State Street on a 24-hour basis as egress to State Street. All three properties will have easy traffic flow from Middle Street to State Street. Finally, all three properties will have an arrangement put in place for the maintenance and repair of the easement areas with an agreed upon division of the costs therefore.

This resolution of the conflicting interpretations of the rights of the three lot owners in the easement areas will likely add value to, rather than diminish the value of the abutters' properties. The extra parking available to each of the abutters alone will likely improve the values of their 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.

There are a number of special conditions about the Premises 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 Premises was constructed as a residence and served that purpose for most of its existence. Second, because the Premises 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 Premises 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 Premises does not suggest or invite pedestrians seeking commerce. In light of these characteristics, special conditions exist at the Premises.

(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 . . .”

There is no fair and substantial relationship between these general public purposes and the specific application of the prohibition against use of the Premises as a duplex. As previously explained, use of the entire structure on the Premises 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 Premises’ peculiar location and characteristics, its use as a duplex will not adversely impact the economic vitality of the downtown. Stated another way, the proscription against use of the Premises 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.

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.

The use of the Premises as a duplex is one of the least burdensome uses of the Premises 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 Premises 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 Premises 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 Premises as a duplex with ground floor as part of the residences, as proposed by the Applicant, is, by all standards a reasonable one.

Of note, in December 2018, the Board specifically found that use of the property as a single family residence was a reasonable one in granting the variance to allow for that use. The evidence at the earlier public hearings on the current variance application suggests that the difference between using the Premises as a single family residence and using it as a residential duplex are minimal. Certainly, if a single family residence is a reasonable use of the Premises, a duplex, given the size and dimensions of the Premises, is also a reasonable use.

Finally, the fact that the Board previously found that a single family residence was a reasonable use of the Premises in granting the variances in 2018 does not preclude the Board from finding that a duplex is a reasonable use. To suggest otherwise implies that there can only be one reasonable use of a property that justifies a finding of hardship. The opposite is true. Just because one use has been determined to be reasonable, it does not preclude an Applicant from seeking a variance for another reasonable use.

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 Premesis 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.

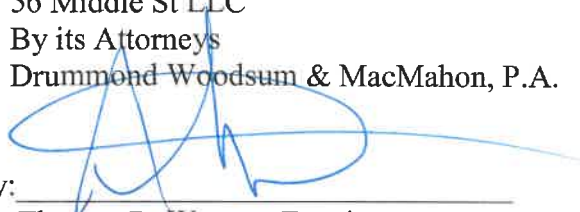
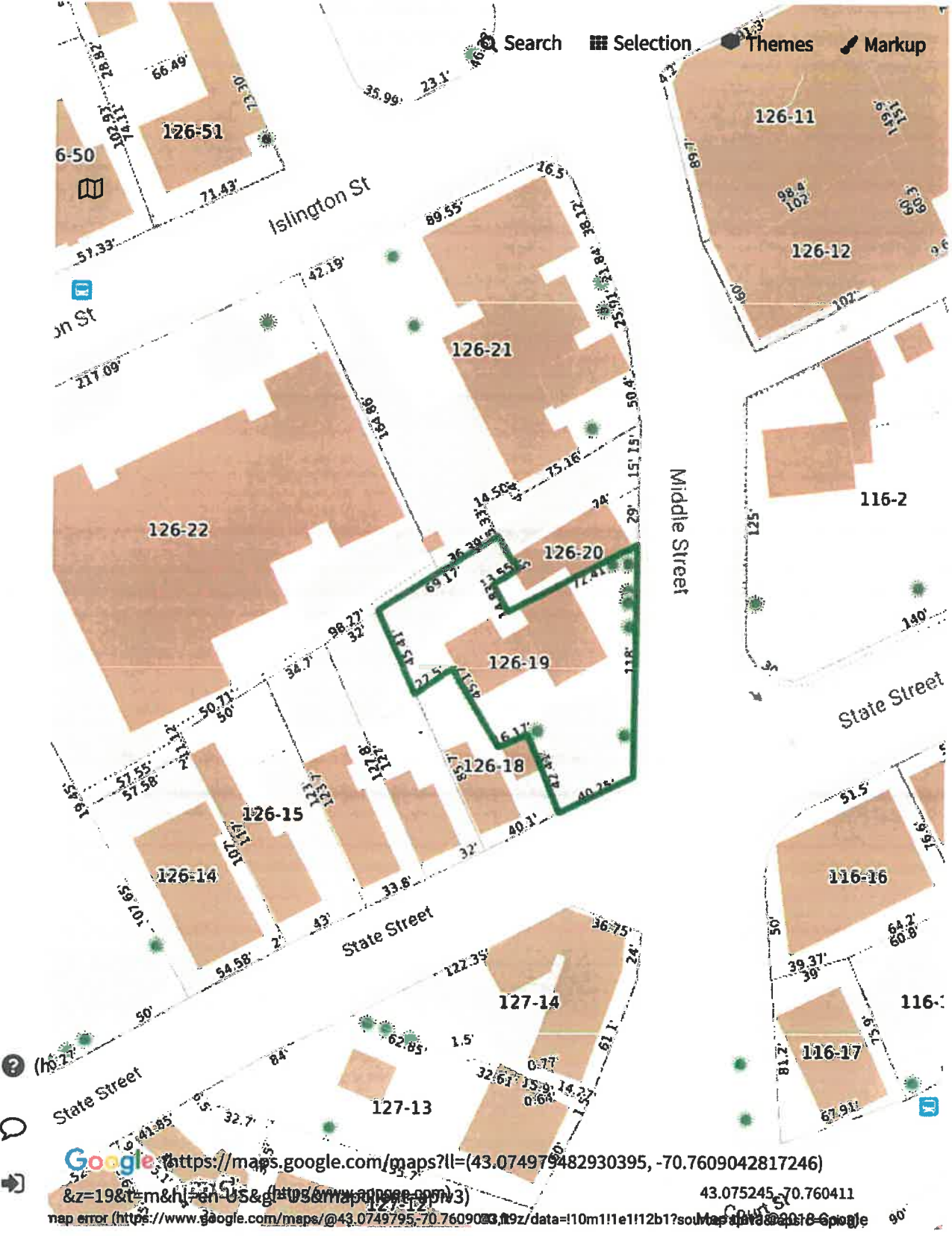
By: 
Thomas R. Watson, Esquire

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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. November 2018 Photos of Subject Property
11. Existing Conditions Photos of Subject Property
12. Variance Application Plan (Rev. 9.11.19)
13. Exterior Elevations Plan
14. 3-D Exterior Renderings
15. Existing Floor Plans
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17. Exterior Views as Approved and as Proposed
18. Portsmouth Assessor Card for Subject Property
19. June 17, 2018 Sandra Dika Letter
20. Dec. 21, 2018 Decision of ZBA
21. Charles A. Griffin Affidavit
22. Term Sheet with Abutters

EXHIBIT
1

City of Portsmouth, NH
Property
Share Print 56 Middle



Google (https://maps.google.com/maps?ll=(43.074979482930395,-70.7609042817246)&z=19&t=m&hl=en-US&gl=US&map=app=spw3) 43.075245 -70.760411
map error (https://www.google.com/maps/@43.0749795,-70.7609043,19z/data=!0m1!1e1!1f12b1?source=app=spw3&hl=en-US&gl=US&map=app=spw3)



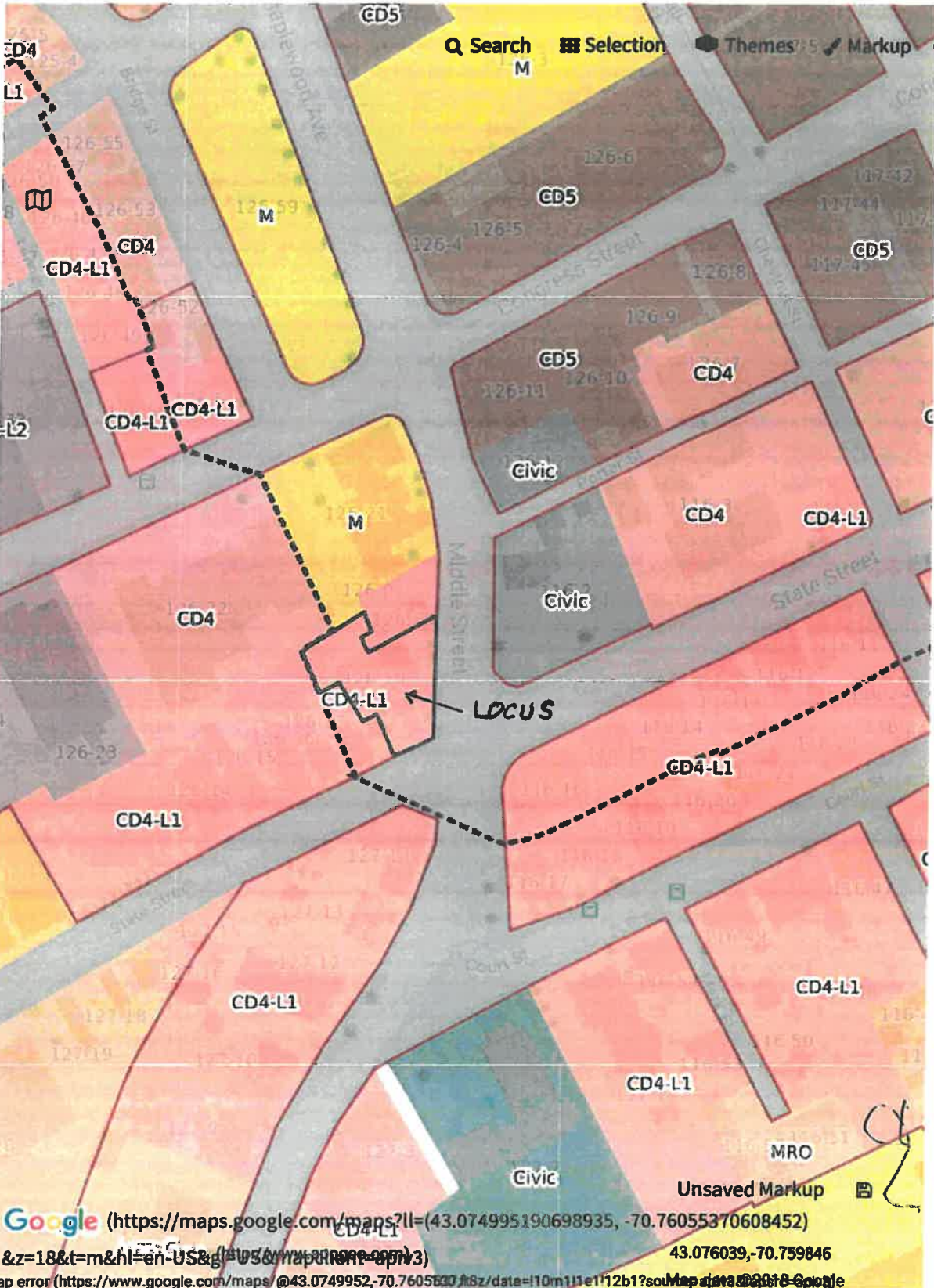
City of Portsmouth, NH

Property

Share

Print

Property



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

&z=18&t=m&hl=en-US&gl=US&mapdata=apn3)

43.076039, -70.759846

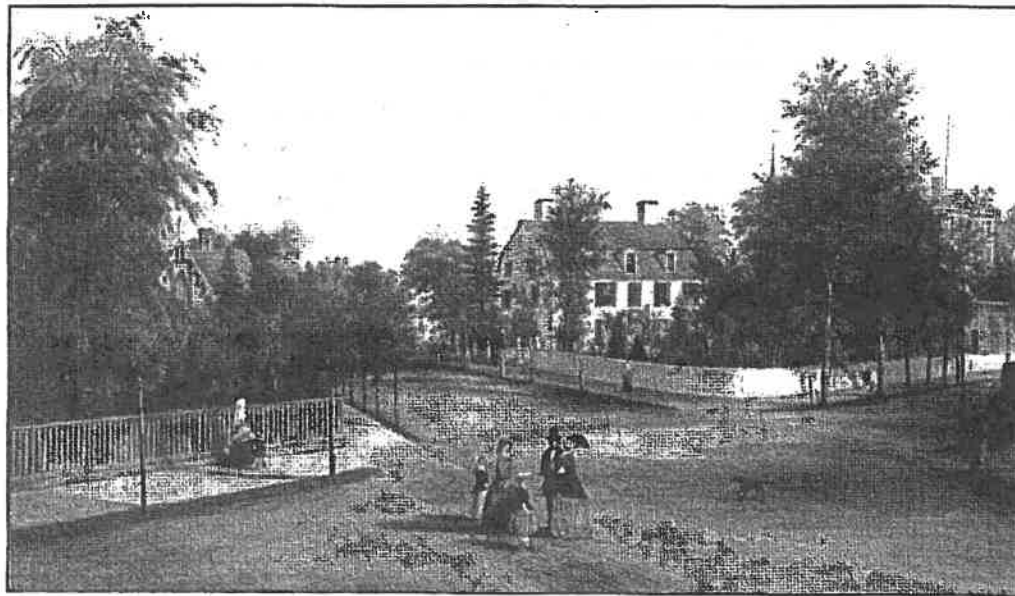
map error (https://www.google.com/maps/@43.0749952,-70.7605537,18z/data=!0m1!1e1!12b1?source=apn3) Map data ©2018 Google



Courtesy Portsmouth Athenaeum
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.

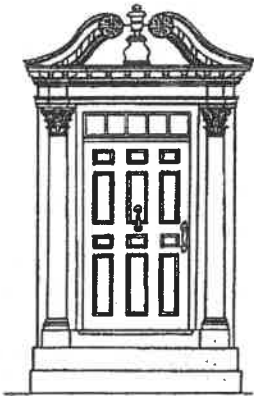
CWD

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

Shantia Anderheggen	SA	Elizabeth Hostutler	EH
Nancy Bertogli	NB	Anne Masury	AM
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Martha Fuller Clark	MFC	Nancy Muller	NM
Claire W. Dempsey	CWD	Woodard Openo	WO
Thomas Denenberg	TD	Jane Porter	JP
Erica Dodge	ED	Martha Pinello	MP
Ellen Fineberg	EF	Diane Rodolitz	DR
James L. Garvin	JLG	Mark J. Sammons	MJS
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Bernard L. Herman	BLH		

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Amy Amidon	Philip Kendrick
Aring-Schroeder	Gabrielle Lanier
Architects	Steven McHenry
Richard M. Candee	William Paarlberg
Erica Dodge	Judy Quinn
Dean Doerrfeld	Elaine Stiles
James L. Garvin	Amy Sundback
David Hart	Philip Tambling
Allen Charles Hill	Nancy Van Dolsen

Cartographers

Robert J. Kozman	William Paarlberg
Eliza McClennen	Barbara Schmidt

EXHIBIT

4



PORTSMOUTH ATHENÆUM



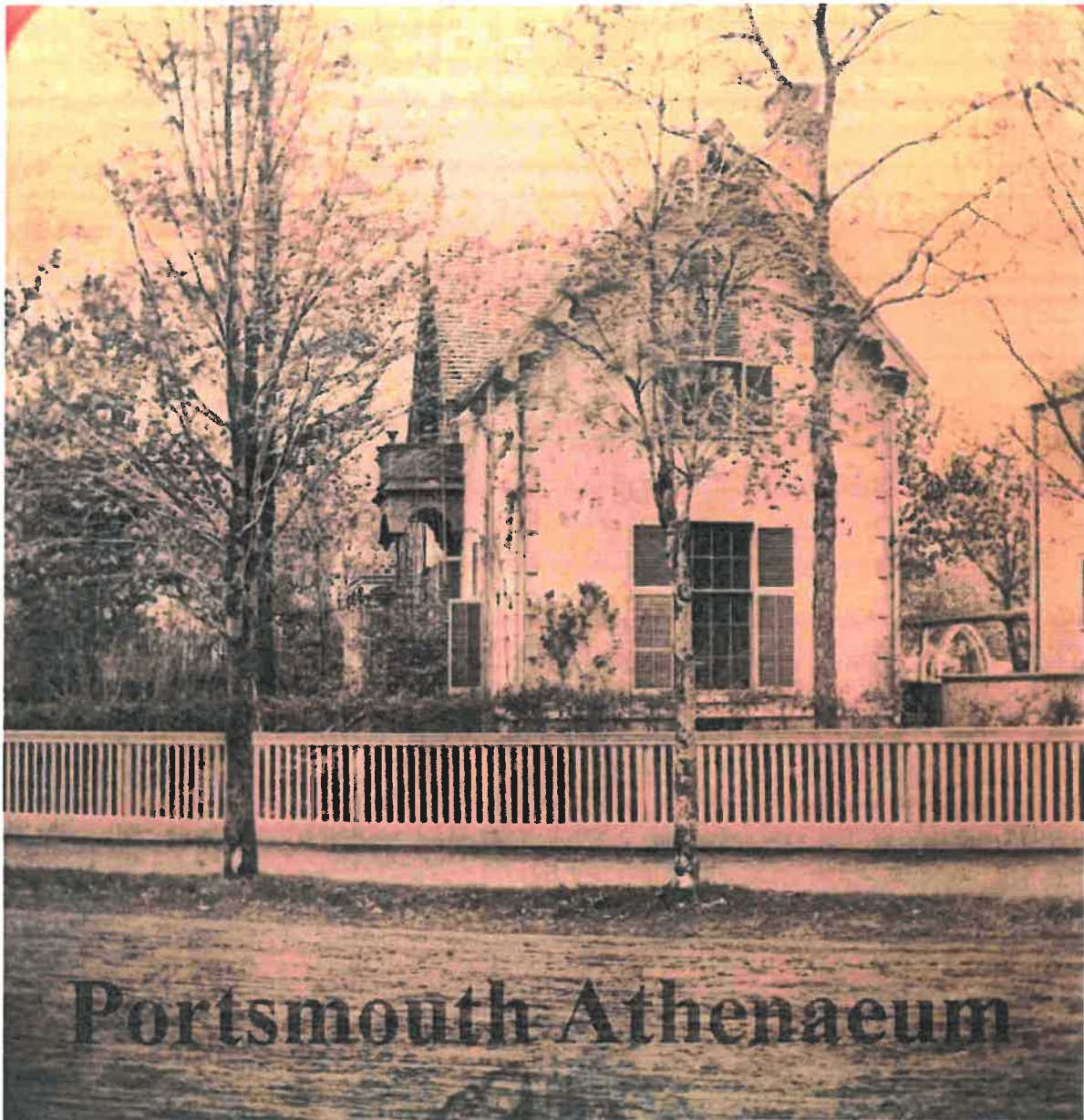
Catalog Number PS2019
Collection Small Photograph Collections
Title Glen Cottage
Year Range from 1870
Year Range to 1879
Description Glen Cottage, corner of Middle and State Streets, Portsmouth.
Object Name Stereograph
Photographer Davis Brothers
Search Terms Middle Street
State Street



Portsmouth Athenaeum

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

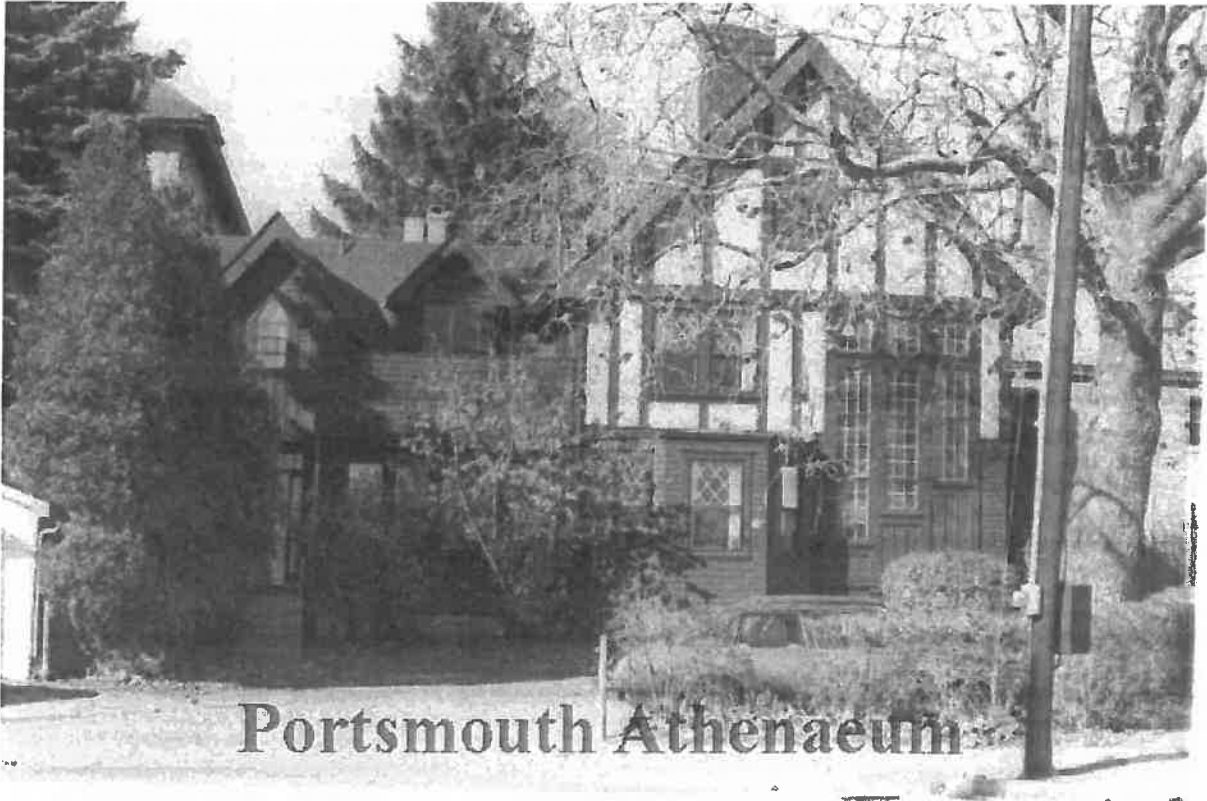
Glenn Cottage, 43 Middle, corner of Middle and State streets, Portsmouth, NH.

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

PORTSMOUTH, N.H. HISTORIC DISTRICT SURVEY

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 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
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 2½ No. of bays _____

2. Overall plan: T-shaped plan.

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

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

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

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

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

8. Outbuildings:

 PORTSMOUTH
ADVOCATES, INC.

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

(over.....

P. 1

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

Outbuildings

facade:
 rear:
 lateral right:
 lateral left:

garage
 barn
 carriage hse.
 other _____

MIDDLE / ISLINGTON STREET CULTURAL RESOURCE SURVEY 1978

Number(s) 36 Street Middle

Architectural Description

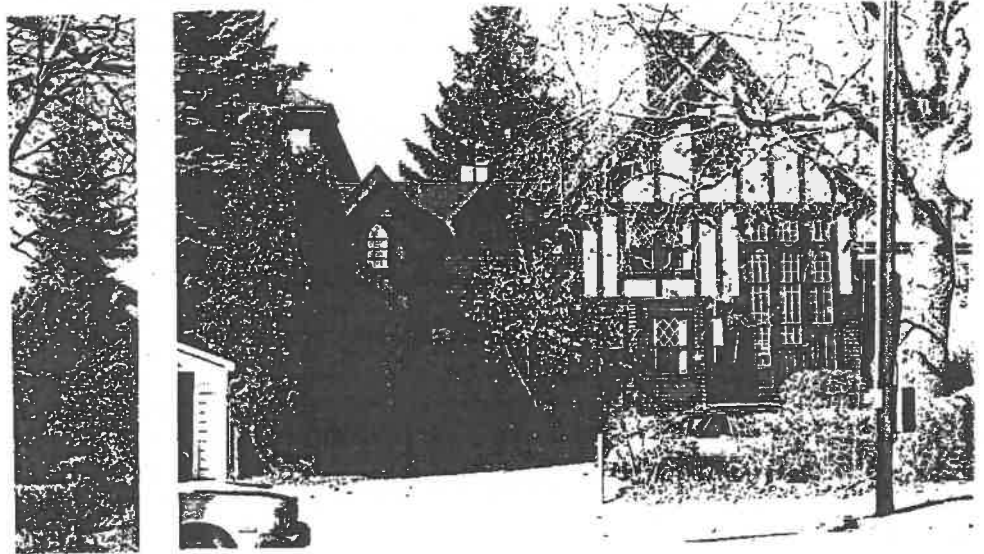
Style/ Type Tudor Revival Date c1840/1900

Significant Features: 2 story Tudor Revival ~~shingled~~
and stucco in imitation of English half-timbering; projecting entry bay with decorative barge board, overhang between floors on front and at attic level on end; stepped stair windows, side bay - near ell is early 19th C Gothic College 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

NO2 - ptg of orig. house (near ell) is in Rudditt - 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 c. 1840 / 1900

Significant Features:

2 story Tudor Revival

~~shingled~~

and stucco in imitation of English half-timbering; projecting entry bay with decorative barge board, overhang between floors and at attic level on end; stepped stair windows, side bay - near ell is early Gothic Cottage of multi entry; Gothic - "palladian" window in ell

Islington Ho

Map History

1813 —

1850 S.R. Cleves

1878 —

1887 DUG

1892 DUG

1910 —



Comments

NOTE - ptg of orig. house (near ell) is in Russett - May House

October 30, 1978

Recorded by: Richard M. Candee

P. 5

Glen Cottage rear 56 Middle, cor. State

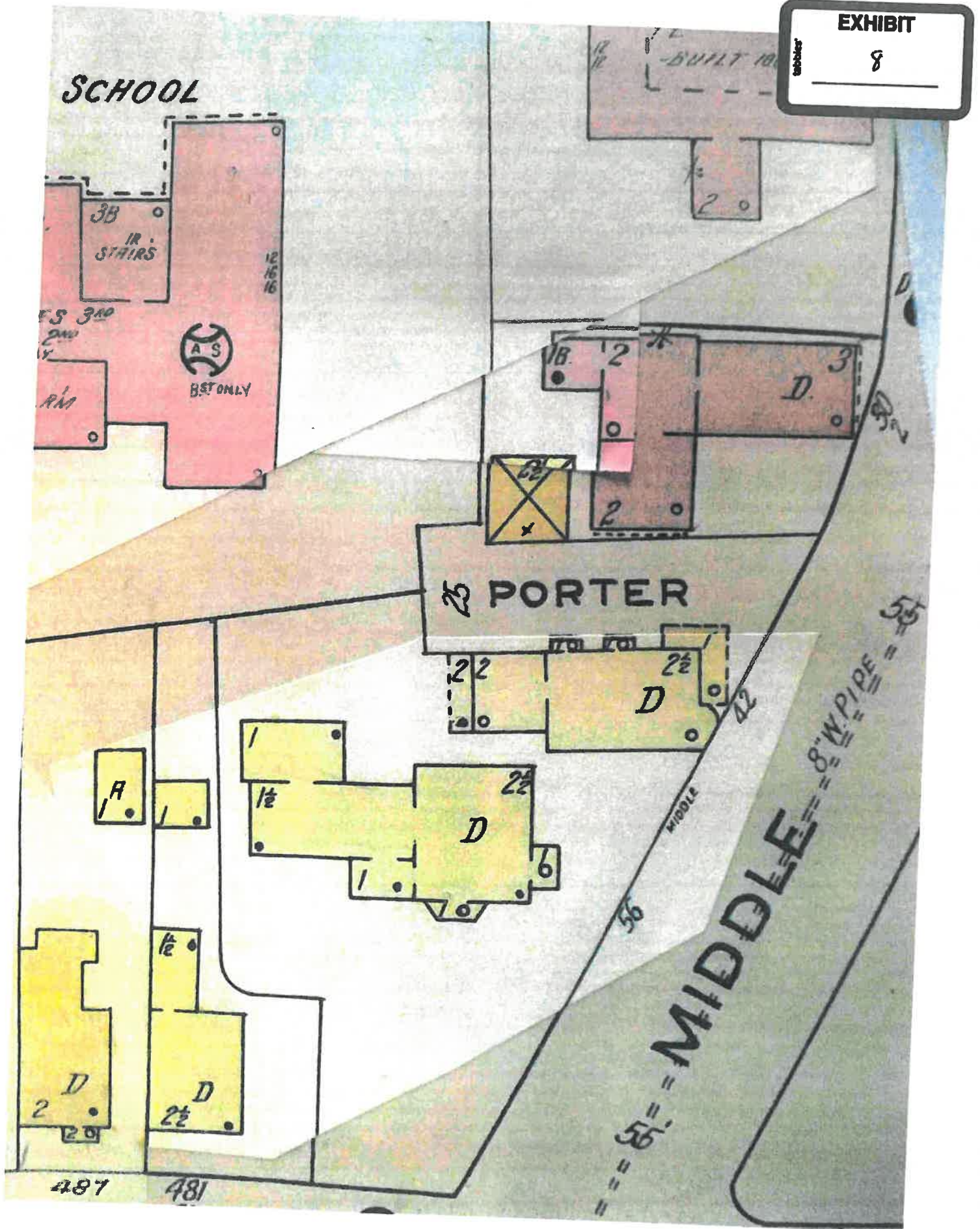
orig. for S. R. Cleaves [Soap Factory owner] (1850 map)

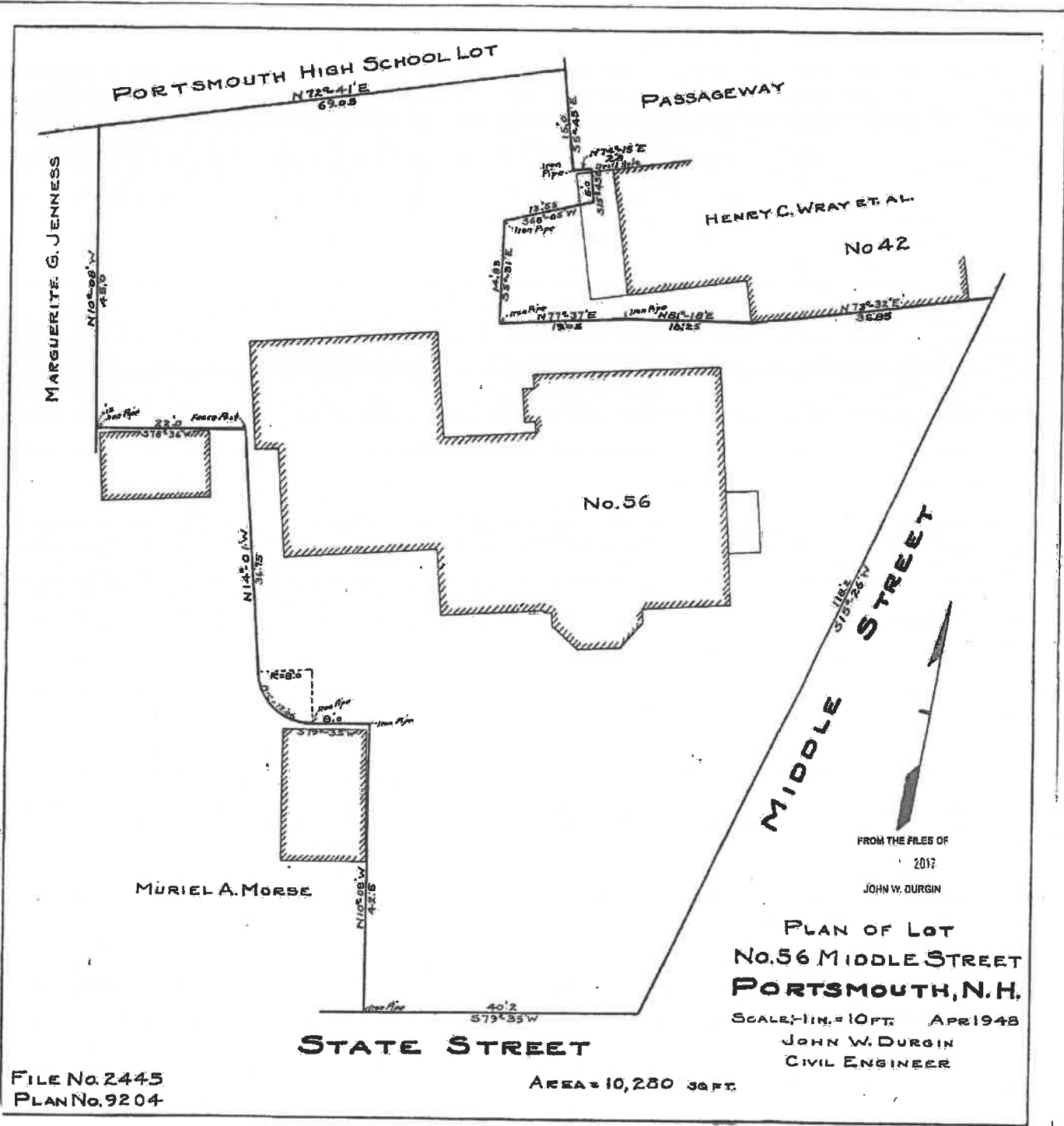
tax: S.R. Cleaves 1844 lot \$374; 1845 house Middle \$1200

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

Nov 2018

P.1

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



Front facade from Middle Street

Nov. 2018

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



Side view from State Street

NOV 2018

**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

Nov 2018

**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

Nov 2018

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

Nov 2018

p. 6

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



Front (East) façade from Middle Street

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



Front (East) façade from Middle Street

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



South side (Tudor structure) view from State Street

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



South side (Gothic addition) view from State Street

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



North side (Tudor structure) view from side yard

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



North side (Gothic structure without addition) view from side yard

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



West (rear) view from backyard

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



First floor living room

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



Proposed first floor dining room

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



Proposed first floor dining room

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



Front foyer

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



Front foyer

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



Proposed first floor kitchen

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



Proposed first floor kitchen

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



Proposed first floor kitchen

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



Rear room adjacent to former addition

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



Rear room adjacent to former addition

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



Proposed second floor bedroom

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



Another view of proposed second floor bedroom

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



Proposed second floor bath and laundry room area

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



Second floor bath & laundry looking toward spiral staircase

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



Proposed second floor bath & laundry

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



Second floor at top of spiral staircase

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



Existing second floor bath

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



Second floor looking down spiral staircase

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



Second floor rear room

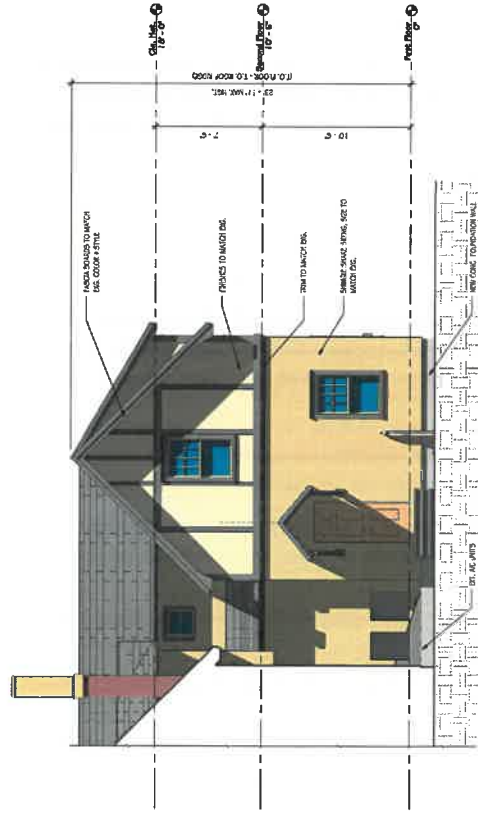
**APPLICATION OF 56 MIDDLE ST LLC
PROPERTY AT 56 MIDDLE STREET, PORTSMOUTH
REQUEST FOR VARIANCE**



Second floor rear room



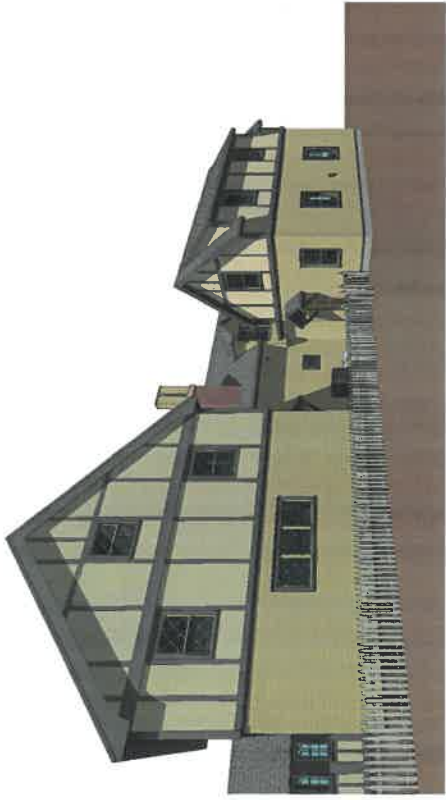
① NORTH EXTERIOR ELEVATION
1/4" = 1'-0"



② PARTIAL EAST EXTERIOR ELEVATION
1/4" = 1'-0"

EXHIBIT
13

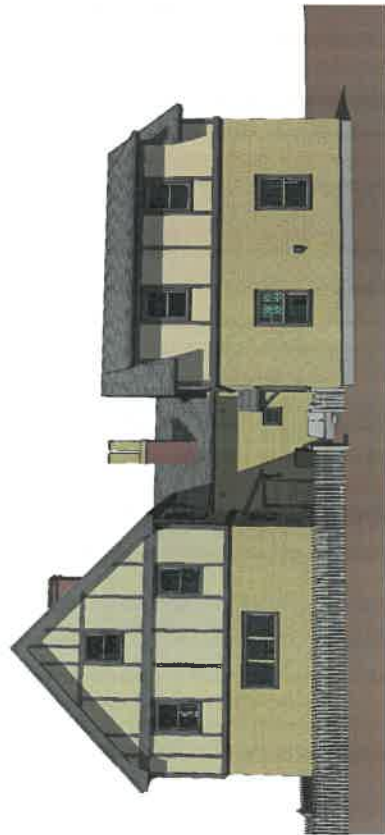
Project: 56 Middle Street IIc	Design: 56 Middle St. Portsmouth, NH	Sheet Title: Exterior Elevations	Sheet Number: A3.1
Design: T W Designs	Design Development: 15037 15037 15037	Scale: 1/4" = 1'-0"	Project No.: 81220219



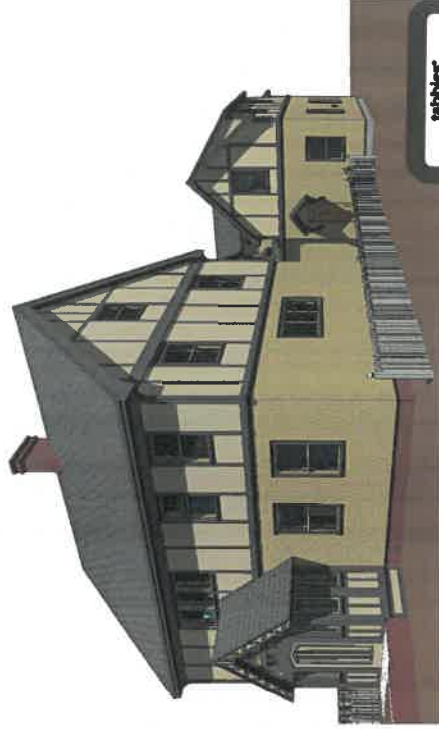
① 3-D VIEW "A"



② 3-D VIEW "B"



③ 3-D VIEW "C"



④ 3-D VIEW "D"

tabbles

EXHIBIT

14

Project Name: 56 Middle Street Ilc	Location: 56 Middle St. Portsmouth, NH
Client Name: C/O City Development 1000 W. 10th St. Ft. Lauderdale, FL 33321 Phone: 954-561-1111 Email: info@twdesigns.com	Sheet Title: 3-D Exterior Renderings
Sheet Number: R1.1	Project Date: 01/20/2019

Project Title:
56 Middle Street IIc

56 Middle St.
Portsmouth, NH

Sheet Status:
Date: 1/18/2019
User: J. Thompson
By: J. Thompson
Scale: 1/8" = 1'-0"
Status: Awaiting
Date: 1/18/2019
Scale: 1/8" = 1'-0"
Status: Awaiting

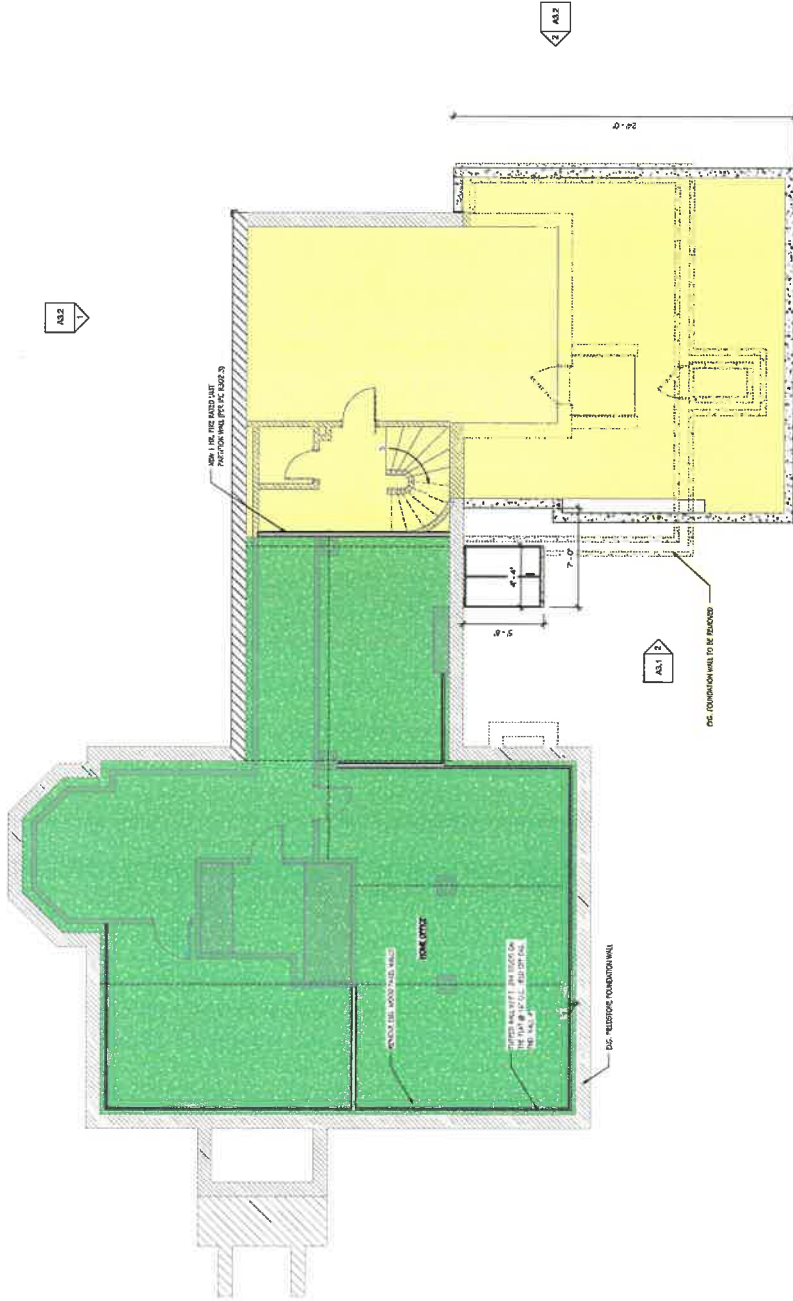
Sheet Title:
Second Floor Plan

Sheet Number:
A1.2

Print No: 01/20/19



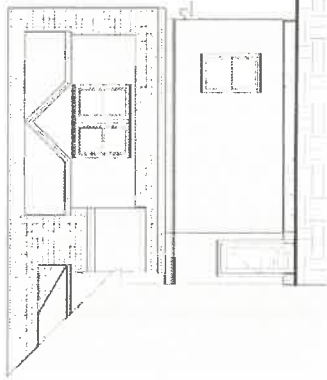
1 SECOND FLOOR PLAN B
1/8" = 1'-0"



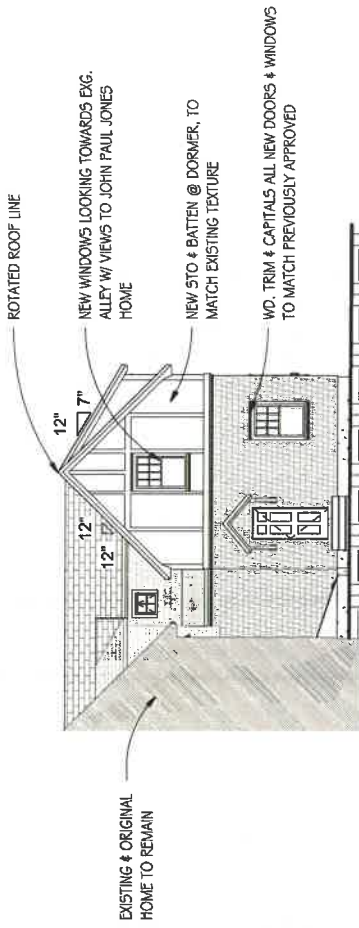
<p>Project: 56 Middle St Street IIc</p> <p>56 Middle St, Portsmouth, NH</p>	<p>Client: Newport Schools</p> <p>Design Development R.D.C.</p> <p>By: [Name] Date: 10/20/17 Scale: 1/4" = 1'-0" Sheet Title: Basement Plan</p> <p>Sheet Number: A1.4</p> <p>Project No.: 17122019</p>
--	--

① BASEMENT PLAN
1/4" = 1'-0"

P-4

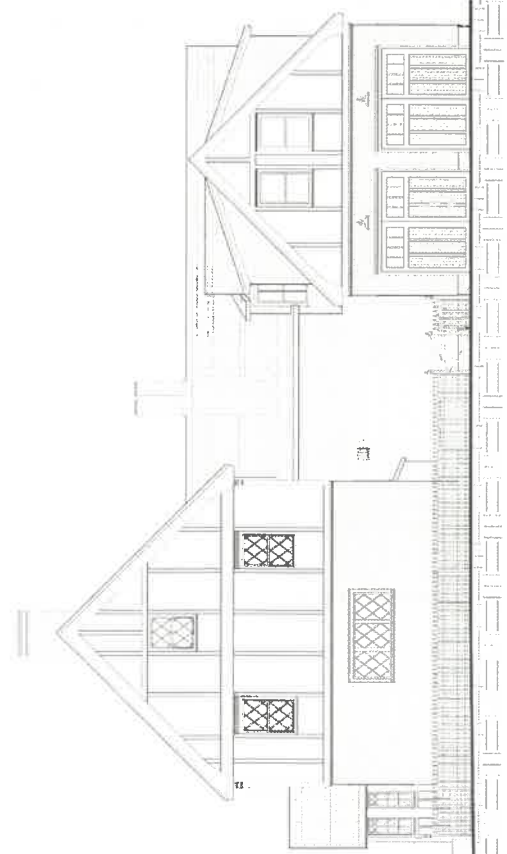


① East Side @ Middle Street (Previously Approved)
3/32" = 1'-0"

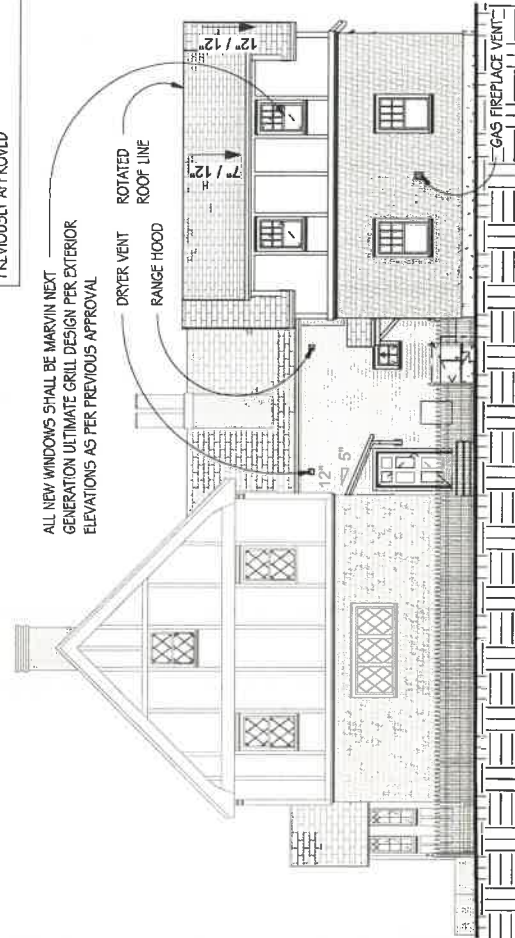


② East Side @ Middle Street (Proposed)
3/32" = 1'-0"

NOTE: ALL WINDOWS TO BE SAME SIZE, MANUFACTURER, MATERIAL & GRD PATTERN AS PREVIOUSLY APPROVED



① North Side (Previously Approved)
3/32" = 1'-0"



④ North Side (Proposed)
3/32" = 1'-0"

ALL NEW WINDOWS SHALL BE MARVIN NEXT GENERATION ULTIMATE GRILL DESIGN PER EXTERIOR ELEVATIONS AS PER PREVIOUS APPROVAL



Sheet Name:
Project Name:

Proposed Exterior Views
56 Middle Street Ilc

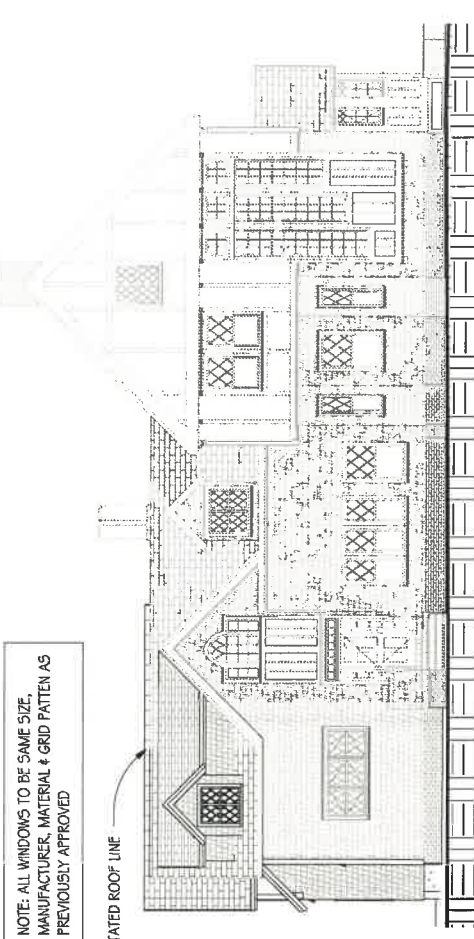
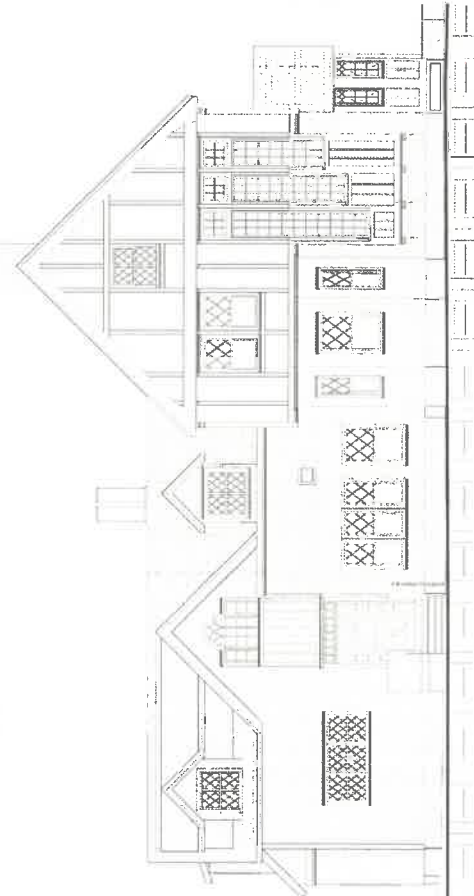
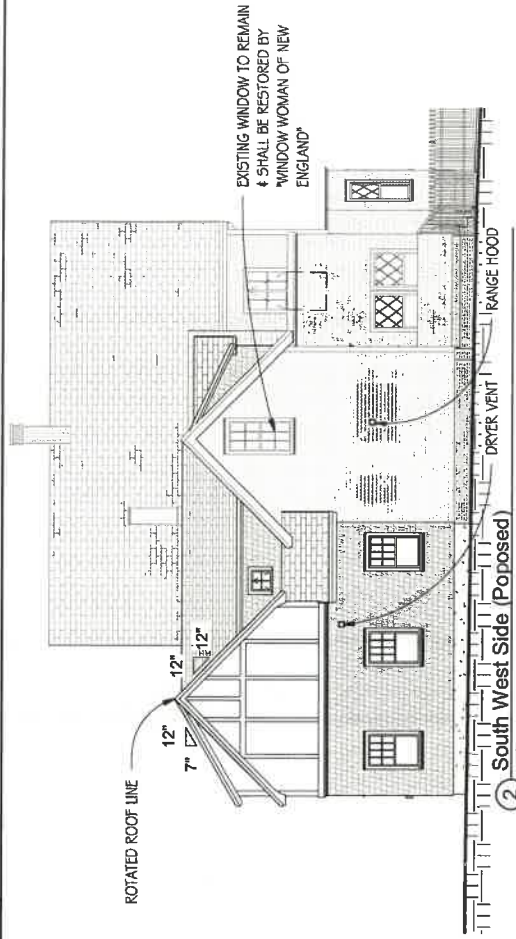
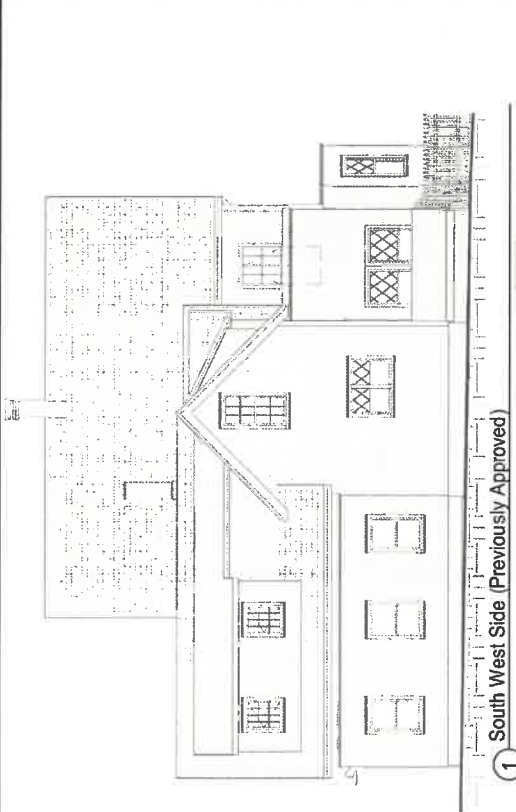
Project Address:
56 Middle St.
Portsmouth, NH

Scale:
3/32" = 1'-0"

Date:
N.F.C.

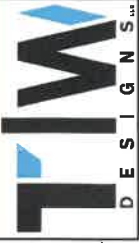
Sheet #:
2





NOTE: ALL WINDOWS TO BE SAME SIZE MANUFACTURER, MATERIAL & GRID PATTERN AS PREVIOUSLY APPROVED

EXISTING WINDOW TO REMAIN & SHALL BE RESTORED BY "WINDOW WOMAN OF NEW ENGLAND"



Sheet Name:
Project Name:

Proposed Exterior Views

56 Middle Street Ilc

Project Address:
56 Middle St.
Portsmouth, NH

Scale:
3/32" = 1'-0"

Date:
N.F.C.

Sheet #:
3

Handwritten signature or initials in blue ink.



56 MIDDLE ST

Location 56 MIDDLE ST

Mblu 0126/ 0019/ 0000/ /

Acct# 38001

Owner 56 MIDDLE ST LLC

PBN

Assessment \$1,125,000

Appraisal \$1,125,000

PID 38001

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2019	\$506,800	\$618,200	\$1,125,000

Assessment			
Valuation Year	Improvements	Land	Total
2019	\$506,800	\$618,200	\$1,125,000

Owner of Record

Owner 56 MIDDLE ST LLC

Sale Price \$1,250,000

Co-Owner

Certificate

Address PO BOX 6668

Book & Page 5943/ 229

PORTSMOUTH, NH 03802

Sale Date 08/31/2018

Instrument 15

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
56 MIDDLE ST LLC	\$1,250,000		5943/ 229	15	08/31/2018
GRIFFIN CHARLES A REVOCABLE TRUST	\$0		4254/2132		02/18/2004
GRIFFIN CHARLES A	\$1		2652/2704		12/30/1986

Building Information

Building 1 : Section 1

Year Built: 1910
Living Area: 4,231
Replacement Cost: \$791,888
Building Percent 64
Good:
Replacement Cost
Less Depreciation: \$506,800

Building Photo

Building Attributes	
Field	Description
STYLE	Office Bldg
MODEL	Commercial
Grade	B-
Stories:	2.5
Occupancy	2
Exterior Wall 1	Wood Shingle
Exterior Wall 2	Stucco/Masonry
Roof Structure	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Drywall/Sheet
Interior Wall 2	
Interior Floor 1	Carpet
Interior Floor 2	Hardwood
Heating Fuel	Gas
Heating Type	Hot Water
AC Type	None
Bldg Use	OFFICE BLD
Total Rooms	
Total Bedrms	
Total Baths	
Kitchen Grd	
1st Floor Use:	
Heat/AC	NONE
Frame Type	WOOD FRAME
Baths/Plumbing	AVERAGE
Ceiling/Wall	CEIL & WALLS
Rooms/Prtns	AVERAGE
Wall Height	9
% Comn Wall	



(<http://images.vgsi.com/photos2/PortsmouthNHPhotos//\002\34\51.jpg>)

Building Layout



(<http://images.vgsi.com/photos2/PortsmouthNHPhotos//Sketches>)

Building Sub-Areas (sq ft)			Legend	
Code	Description	Gross Area	Living Area	
BAS	First Floor	2,205	2,205	
FUS	Upper Story, Finished	1,553	1,553	
FHS	Half Story, Finished	945	473	
FEP	Porch, Enclosed	45	0	
UBM	Basement, Unfinished	2,045	0	
WDK	Deck, Wood	240	0	
		7,033	4,231	



Extra Features

Extra Features		Legend
No Data for Extra Features		

Land

Land Use

Use Code 3400

Land Line Valuation

Size (Acres) 0.23



Description	OFFICE BLD	Frontage	
Zone	CD4-L1	Depth	
Neighborhood	305	Assessed Value	\$618,200
Alt Land Appr	No	Appraised Value	\$618,200
Category			

Outbuildings

Outbuildings	Legend
No Data for Outbuildings	

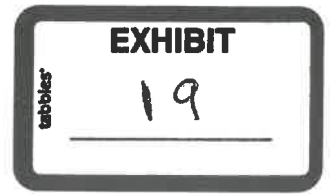
Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2018	\$368,900	\$498,700	\$867,600
2017	\$362,200	\$498,700	\$860,900
2016	\$275,600	\$455,300	\$730,900

Assessment			
Valuation Year	Improvements	Land	Total
2018	\$368,900	\$498,700	\$867,600
2017	\$362,200	\$498,700	\$860,900
2016	\$275,600	\$455,300	\$730,900

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P. 3



Sandra S.

Dika

& Maine

Mountains Realty

Lafayette Rd,

03801

Broker in New Hampshire

Keller Williams Coastal, Lakes &

750

Portsmouth, NH

June 17, 2019

David Rheaume, Chairman

Portsmouth Zoning Board of Adjustment

1 Junkins Ave,

Portsmouth, NH 03801

Re: 56 Middle Street

Dear Chairman and Commissioners of the Zoning Board of Adjustment,

This letter is being written in support of the application for 56 Middle Street LLC for the variance to allow a property originally a single family residential home, but recently an office building to be modified into a duplex.

It is my opinion that the granting of the requested relief will not result in the diminution in value of surrounding properties. Its location on the cusp of the Downtown Overlay District places it within close proximity to many types of buildings impacted by a number of variations in zoning controls. The evolution to two units will not have a detrimental impact on any of its neighbors.

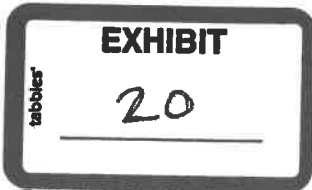
P.1

The proposed use is a reasonable one and if denied would be a loss to the applicant with no discernible gain for the public.

I respectfully request that the relief be granted.

Sincerely, Sandra S. Dika

P. 2



CITY OF PORTSMOUTH

Community Development Department
(603) 610-7281

Planning Department
(603) 610-7216

PLANNING DEPARTMENT

December 21, 2018

56 Middle St LLC
PO Box 6668
Portsmouth, New Hampshire 03801

Re: Property at 56 Middle Street, Permit #35036
Assessor Plan 126, Lot 19

Dear Applicant:

The Board of Adjustment at its regular meeting on December 18, 2018 completed its consideration of your application described as follows:

Application:

5) Case 12-5

Petitioner: 56 Middle St LLC

Property: 56 Middle Street

Assessor Plan: Map 126, Lot 19

Zoning Districts: Character District 4L-1 and the Downtown Overlay District

Description: Restore the property to a single family home,

Requests: Variances and/or Special Exceptions necessary to grant the required

- relief from the Zoning Ordinance including the following variances:
- a) from Section 10.642 and 10.5A32 to allow a residential principal use on the ground floor of a building; and
 - b) from 10.5A41.10A to allow a 1.7'± rear yard where 5' is required.
 - c) from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

Action:

The Board voted to **grant** the petition as presented and advertised.

P.1

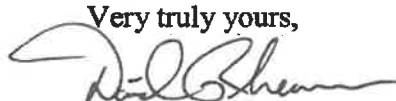
Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. The required setback relief covers only a short distance along a lengthy property line. Allowing a residential use on the first floor, with nearby residential uses, will not alter the essential character of the neighborhood nor threaten the public's health, safety, or welfare.
- Substantial justice will be done as the loss to the applicant if the petition were denied would not be outweighed by any benefit to the general public.
- Restoring the property to a single family home will not diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property, which include the fact that it is on the periphery of the Downtown Overlay District and its long historical use as a single family home. Granting the variances will restore the property to its original purpose so that there is no fair and substantial relationship between the purpose of the use limitation and its specific application to the property. With nearby similar properties, this is a reasonable use.

As provided for in NH RSA Chapter 677, the Board's decision may be appealed 30 days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process. Construction drawings or sketches must be reviewed and approved by the Building Inspector prior to the issuance of a building permit. Approvals by other land use boards may also be required prior to the issuance of a building permit.

The minutes and tape recording of the meeting may be reviewed in the Planning Department.

Very truly yours,

David Rheume, Chairman
Board of Adjustment

mek

c: Robert Marsilia, Chief Building Inspector
Roseann Maurice-Lentz, City Assessor
Thomas R. Watson, Esq.



AFFIDAVIT

I, Charles A. Griffin, upon oath, depose and say as follows:

1. I have personal knowledge, and I am competent to testify to, the matters contained herein.

2. I held an ownership interest, either personally or as trustee of my revocable trust, in the property at 56 Middle Street, Portsmouth, New Hampshire (the "56 Middle Property") from December 1976 until August 2018. The 56 Middle Property is currently shown on the Tax Maps of the City of Portsmouth as Map 126, Lot 19.

3. I acquired my interest in the 56 Middle Property as a tenant in common with James E. Ritzo by Warranty Deed of George L. Lemos, Trustee of the Middle Street Trust dated December 30, 1976 and recorded in the Rockingham Registry of Deeds at Book 2273, Page 738.

4. I held an ownership interest in the property at 487 State Street, Portsmouth, New Hampshire (the "487 State Property") from September 1976 until May 1986. The 487 State Property is currently a two unit condominium and is shown on the Tax Maps of the City of Portsmouth as Map 126, Lot 17-1 and Lot 17-2.

5. I acquired my interest in the 487 State Property as a joint tenant with James E. Ritzo by Warranty Deed of William F. Herrington dated September 10, 1976 and recorded in the Rockingham Registry of Deeds at Book 2265, Page 1768.

6. I held an ownership interest in the property at 495 State Street, Portsmouth, New Hampshire ("495 State Property") from March 1980 to May 1981. The 495 State Property is currently shown on the Tax Maps of the City of Portsmouth as Map 126, Lot 16.

7. I acquired my interest in the 495 State Property with James E. Ritzo as tenants in common by Quitclaim Deed of James E. Ritzo dated March 3, 1980 and recorded in the Rockingham Registry of Deeds at Book 2359, Page 747.

8. A portion of the rear westerly property line of the 56 Middle Property abuts a portion of the rear easterly boundary line of the 487 State Property and a portion of the rear westerly boundary line of the 487 State Property abuts a portion of the rear easterly boundary line of the 495 State Property.

9. At some time prior to July 1980, James Ritzo and I retained Richard P. Millette and Associates to prepare a schematic site plan (the "1980 Plan") showing a proposed parking lot, with an access way, over a portion of the 56 Middle Property, 487 State Property and 495 State Property to benefit the 56 Middle Property.

10. The major purpose of the 1980 Plan was to secure parking for the owners and occupants of the 56 Middle Property, including our law firm, Griffin, Harrington, Brigham, Ritzo, Scott & Swanson, P.A. which operated out of the 56 Middle Property at the time.

11. The 1980 Plan shows a parking lot with 13 numbered parking spaces with a center access way running from the common pass way adjacent to the City of Portsmouth Public Library across the 56 Middle Property and the 487 State Property to a paved drive on the 495 State Property leading to State Street. A copy of the 1980 Plan is attached hereto as Exhibit A.

12. Thereafter, James Ritzo and I caused the parking lot depicted on the 1980 Plan, together with a catch basin and culvert, also depicted on the 1980 Plan, to be constructed on the 56 Middle Property, the 487 State Property and the 495 State Property.

13. In May 1981, James Ritzo and I conveyed the 495 State Property to Gary J. Grant and Jane M. Grant by Warranty Deed dated May 20, 1981 and recorded in the Rockingham Registry of Deeds at Book 2389, Page 820. A copy of that deed is attached hereto as Exhibit B.

14. In the deed to Gary and Jane Grant, Mr. Ritzo and I reserved to ourselves and our heirs and assigns an easement for drainage and parking of motor vehicles and for ingress and egress over a portion of the 495 State Property identified on the 1980 Plan. We also granted to Gary and Jane Grant the right to park their motor vehicles in the parking spaces numbered 8, 9 and 10 on said Plan.

15. I believe that a copy of the 1980 Plan was given to the Grants on or before the closing on the sale of the 495 State Property to them in 1981

16. At the time of the conveyance of the 495 State Property to Gary and Jane Grant, it was my intent in including the easement in their deed, to reserve to the owners and occupants of the 56 Middle Property and their heirs and assigns, then occupied by my law firm, the exclusive right to park vehicles on all parking spaces falling within the boundaries of the 495 State Property, other than spaces 8, 9 and 10. This reservation covered space No.7 and parts of spaces Nos. 6 and 5 on the 1980 Plan.

17. At no time did I advise Mr. or Mrs. Grant that they, or other occupants of the 495 State Property, had the right or were given permission to park motor vehicles in parking spaces Nos.1 through 7 and No. 13 on the 1980 Plan when those spaces were not in use by the owners or occupants of the 56 Middle Property or at any other time.

18. In May 1986, James Ritzo and I sold the 487 State Property to Diane Wesnak by Warranty Deed dated May 1, 1986 and recorded in the Rockingham Registry of Deeds at book 2599, page 2386. A copy of that deed is attached hereto as Exhibit C.

19. In the deed to Ms. Wesnak, Mr. Ritzo and I reserved to ourselves, our heirs and assigns "an easement for ingress and egress, parking and for drainage to a catch basin, over a portion of the premises herein conveyed." We also granted to Ms. Wesnak the right "to the exclusive use of two parking spaces located immediately to the rear of the dwelling on the

conveyed premises." Although we did not identify the spaces by number, our intent was to grant her the exclusive right to use parking spaces Nos. 11 and 12 as shown on the 1980 Plan. As shown on the 1980 Plan, spaces Nos. 11 and 12 are situated immediately to the rear of the house on the ~~847~~ State Property.

487 CNG

20. I believe that a copy of the 1980 Plan was given to Ms. Wesnak on or before the closing on the sale of the 487 State Property to her in 1986.

21. At the time of the conveyance of the 487 State Property to Ms. Wesnak, it was my intent in including the easement in her deed to reserve to the owners and occupants of the 56 Middle Property and their heirs and assigns, then occupied by my law firm, the exclusive right to park vehicles on all parking spaces falling within the boundaries of the 487 State Property, other than spaces Nos. 11 and 12. This reservation covered portions of spaces Nos. 3, 4, 5, 6 and 13 on the 1980 Plan.

22. At no time did I advise Ms. Wesnak that she, or other occupants of the 487 State Property, had the right or were given permission to park motor vehicles in parking spaces Nos. 1 through 7 and No. 13 on the 1980 Plan, when those spaces were not in use by the owners or occupants of the 56 Middle Property or at any other time.

23. In December 1986, James Ritzo conveyed his interest in the 56 Middle Property, as well as the interests in the parking, drainage, and access easements reserved in the deeds to Gary and Jane Grant and to Diane Wesnak to me by two deeds dated December 30, 1986, and recorded in the Rockingham Registry of Deeds at Book 2652, Pages 2703 and 2704.

24. In February 2004, I transferred the 56 Middle property, including the aforementioned easements for drainage, parking and access to my wife Judith and me, as Trustees of The Charles A. Griffin Revocable Trust by Warranty Deed dated February 18, 2004 and recorded in the Rockingham Registry of Deeds at Book 4254, Page 2132.

25. In August 2018, Judith and I, as Trustees of The Charles A. Griffin Revocable Trust, sold the 56 Middle Property with the aforementioned parking, access, and drainage easements over the 487 State Property and the 495 State Property to 56 Middle St LLC by Warranty Deed dated August 31, 2018 and recorded in the Rockingham Registry of Deeds at Book 5943, Page 229. A copy of that deed is attached hereto as Exhibit D.

26. From the time I acquired an interest in the 56 Middle Property in December 1976 until 2012, I operated my law practice in a portion of the 56 Middle Property. During that period of time, I was regularly present on the 56 Middle Property and the adjacent parking lot situated on the 487 State Property and the 495 State Property.

27. I am aware that in August 2018, Gary and Jane Grant conveyed the 495 State property to Patrick D. Driscoll and Stephanie A. Driscoll. I have reviewed the deed to the Driscolls, dated August 17, 2018 and recorded in the Rockingham Registry of Deeds at Book 5940, Page 756. I note that the deed to the Driscolls includes the reservation to Mr. Ritzo and me, and our heirs and assigns, of the easement for drainage and parking of motor vehicles and

ingress and egress that was included in the 1981 deed from Mr. Ritzo and myself to Gary and Jane Grant.

28. At no time during my ownership of an interest in or occupancy of the 56 Middle property did Gary Grant, Jane Grant, or any other occupant of the 495 State property assert that they had a right to park vehicles in spaces Nos. 1 through 7 or No. 13 on the 1980 Plan.

29. In fact, in May 2018, I was contacted by and met with Patrick Driscoll. He informed me that he was considering buying the 495 State Property and was looking to clarify the parking arrangement and rights to use the driveway on the 495 State Property. At that time, I showed Mr. Driscoll a copy of the 1980 plan and confirmed that the owners of the 495 State Property only had the right to park vehicles in spaces Nos. 8, 9, and 10 shown on the 1980 Plan and did not have a right to use any of the other spaces shown on the 1980 Plan.

30. Mr. Driscoll took a photo of a portion of the 1980 Plan showing parking spaces Nos. 8, 9, and 10 on his mobile phone. He also asked me if I would be willing to sell him additional parking spaces to which I replied that I did not want to alter the current parking arrangements because I was planning on putting the 56 Middle Property on the market.

31. I am also aware that Diane Wesnak subsequently converted the 487 State Property into a two-unit condominium known as "Grey Gull Condominium."

32. I have had occasion to read the Declaration of Condominium for the Grey Gull Condominium dated March 12, 1987 and recorded in the Rockingham Registry of Deeds at Book 2666, Page 1063. I note that on pages 1066-1067, Ms. Wesnak included as part of the description of the property that was submitted to condominium ownership a reference to the easement reserved by Mr. Ritzo and me and the allocation of two parking spaces as follows:

Reserving to James E. Ritzo and Charles A. Griffin, their heirs, successors, and assigns, an easement for ingress and egress, parking and for drainage to a catch basin over a portion of the premises above described, which easement description is more fully set forth in the warranty deed of James E. Ritzo and Charles A. Griffin to Diane Wesnak, dated May 1, 1986, recorded in the Rockingham County Registry of Deeds at Book 2599, Page 2386.

Meaning and intending to describe those premises as depicted as 487 State Street on Plan entitled "Condominium Site Plan for The Grey Gull Condominium, Portsmouth, New Hampshire", drawn by David W. Sidmore, licensed land surveyor and recorded in the Rockingham County Registry of Deeds as Plan # D-16185.

Being the same premises however described in warranty deed of James E. Ritzo and Charles A. Griffin to Diane Wesnak, dated May 1, 1986, recorded in the Rockingham County Registry of Deeds at Book 2599, Page 2386.

Included in the property dedicated to condominium usage is the right contained

In the aforementioned deed of Diane Wesnak, her heirs and assigns to the exclusive use of two parking spaces located immediately to the rear of the building on the above-mentioned premises.

A copy of the cover page and pages 1066 and 1067 of the Declaration is attached hereto as Exhibit E.

33. I have also had occasion to review the Condominium Site Plan for the Grey Gull Condominium recorded in the Rockingham County Registry of Deeds as Plan D-16185 and note that it depicts a cross-hatched area in the rear part of the 487 State Property that appears to correspond to the easement area over the 487 State Property shown on the 1980 Plan and is shown on Plan D-16185 as "RESERVED EASEMENT HELD NOW OR FORMERLY BY JAMES E. RITZO AND CHARLES A GRIFFIN. SEE DEED RECORDED ROCKINGHAM REGISTRY BOOK 2599, PAGE 2386." A copy of the Condominium Site Plan is attached hereto as Exhibit F.

34. I am also aware that, subsequent to submitting the 487 State Property to condominium ownership, Ms. Wesnak sold Units 1 and 2 and that Unit 1 subsequently was acquired by Stephen J. Bergeron and Kathleen H. Bergeron by Warranty Deed dated December 12, 2002 and recorded in the Rockingham County Registry of Deeds at Book 3908 , Page 703 and was later transferred by Mr. and Ms. Bergeron to 487 State Street LLC, a company in which the Bergerons have an interest, by Quitclaim Deed dated January 4, 2013 and recorded in the Rockingham County Registry of Deeds at Book 5400, Page 1021. These deeds state that Unit 1 is sold subject to "[a]ll other conditions, restrictions and terms as contained in the Declaration aforementioned and the By-Laws as amended from time to time . . ."

35. I am also aware that Ms. Wesnak sold Unit 2 to the Grey Gull Condominiums and that unit was subsequently acquired by Christopher P. Mulligan by Warranty Deed dated April 27, 2000 and recorded in the Rockingham Registry of Deeds at Book 3470, Page 2802. This deed states that Unit 2 is sold subject to "[a]ll other conditions, restrictions and terms as contained in the Declaration aforementioned and the By-Laws as amended from time to time . . . and "all easements, rights of way and licenses of record."

36. At no time during my ownership or occupancy of the 56 Middle Property did Ms. Wesnak, Mr. Bergeron, Ms. Bergeron, or Mr. Mulligan, or any other owner or occupant of either unit in the Grey Gull Condominium assert or claim to me that he or she believed that they had a right to use parking spaces Nos. 1 through 7 or No. 13 on the 1980 Plan during times in which those spaces were not in use by occupants of the 56 Middle Property or at any other time.

37. During the period of time in which I held an ownership interest in and/or occupied all or a portion of the 56 Middle Property, I and other members or employees of my law firm monitored the parking lot on the 56 Middle Property, the 487 State Property, and the 495 State Property for unauthorized parking in spaces Nos 1 through 7 and No. 13. During those years, it was an ongoing problem with downtown residents or workers parking their vehicles in our parking spaces. During this time, I regularly placed notes to the owners on the windshields of unauthorized vehicles advising their owners that our parking spaces in the parking lot were for

the exclusive use of the occupants and tenants of the 56 Middle Property only, that others using those spaces were doing so illegally, and that I would have the vehicles towed if I found them parking in the lot again. I included my name and telephone number on the notes with a suggestion that the owner of the vehicle call me if he or she had any questions.

38. I also kept a list of license plate numbers of vehicles that were permitted (e.g., law firm employees and tenants at the 56 Middle Property) to park in the parking lot so that I would know which vehicles were authorized and which vehicles were not. At no time during my ownership or occupancy of the 56 Middle Property did I receive a call from Ms. Wesnak, Mr. or Mrs. Grant, Mr. or Mrs. Bergeron, Mr. Mulligan, or any other owner or occupant of either the 487 State Property or the 495 State property complaining about finding notes on their vehicles, or about any of my efforts to rid our parking spaces of unauthorized vehicles or asserting that they had a right, whether exclusive or non-exclusive, to park their vehicles in spaces Nos. 1 through 7 or No. 13.

39. The process of monitoring the parking lot for unauthorized vehicles and giving notices to the owners continued after I moved my law practice out of the 56 Middle Property in 2012. Thereafter, that activity was handled by my tenants, principally, Chris Snow and his office manager. Also, approximately a year before I sold the 56 Middle Property, Mr. Snow, put up signs along the rear property line of each of these properties, next to spaces Nos. 1 through 7, stating that unauthorized parked vehicles would be towed. Copies of photos of these signs are attached hereto as Exhibits G.1 through G.6. Again, not once did I receive a telephone call or any other form of communication from any of the owners or occupants of the 487 State Property or the 495 State Property challenging or objecting to the posting of these signs.

Further, the affiant sayeth not

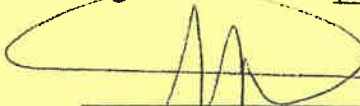
Dated: July 1, 2019

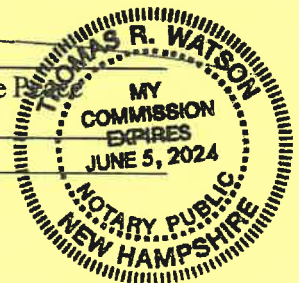

Charles A. Griffin

STATE OF NEW HAMPSHIRE
ROCKINGHAM, S.S.

Personally appeared the above-named Charles A. Griffin who took oath that the foregoing statements are true to the best of his knowledge and belief this 1st day of July, 2019.

Before me,


Notary Public/Justice of the Peace
Print Name: _____
My Commission Expires: _____



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B

KNOW ALL MEN BY THESE PRESENTS, That We, James E. Ritzo, of 85 Merrimac Street, Portsmouth, County of Rockingham, State of New Hampshire and Charles A. Griffin of 210 Hillside Drive, Portsmouth, County of Rockingham, State of New Hampshire.

AK2389 P0820

for consideration paid, grant to Gary J. Grant and Jane M. Grant, husband and wife of 248 Thornton Street, Portsmouth, County of Rockingham, State of New Hampshire, as joint tenants with rights of survivorship.

with ~~expressly reserved~~ A certain parcel of land with the buildings thereon, situate in Portsmouth, County of Rockingham, State of New Hampshire, in the Northerly side of State Street, and bounded and described as follows:

BEGINNING in said Street at the Southeastly corner of land now or formerly of Albert Hunt, and thence running Northerly by said land now or formerly of said Hunt One hundred twenty-three and seven tenths (123.7)feet, more or less, to land of the City of Portsmouth; thence turning and running Easterly by said land of City of Portsmouth, Thirty-four and seven tenths (34.7)feet, more or less, to land now or formerly of Emma G. Jenness; thence turning and running Southerly by said land now or formerly of Jenness, One hundred twenty-seven and eight tenths (127.8)feet to said State Street; thence turning and running Westerly by said State Street, Thirty-three and eight tents (33.8)feet, more or less to the point begun at.

Subject to the rights of occupying tenants.

RESERVING to the Grantors, their heirs and assigns an easement for drainage and the parking of motor vehicles and ingress and egress of the professional association of Griffin, Harrington, Brigham, Ritzo & Swanson, P.A., its successors and assigns as shown on a part of "Schematic Site Plan for Griffin, Harrington, Brigham, Ritzo and Swanson, P.A., State and Middle Streets, Portsmouth, N.H. Scale 1" = 10", July, 1980, Jeremiah Hart House, Portsmouth, N.H.", said easement being over that portion of the premises hereinabove described which may be bounded and described as follows:

BEGINNING on the northerly side of State Street at other land of Grantors and thence running northerly by said land of the Grantors to the fence at land now or formerly of Farragut School Association; thence turning and running westerly along the fence by said Farragut School Assoc. land to land now or formerly of Roland Bergeron; thence turning and running southerly by said Bergeron land to the rear of the dwelling house on the above described premises; thence turning and running easterly by the rear of the dwelling to the easterly side of said house; thence turning and running southerly by the easterly side of said house to said State Street; thence turning and running easterly by said State Street to the point of beginning.

The Grantees their heirs and assigns shall have the right to park their motor vehicles in the parking spaces numbered 8, 9 and 10 on said plan situate in the southwestly corner of said easement and the right of surface drainage to the catch basin of land of said Grantors, the right to use the driveway easterly of the dwelling house leading to State Street for all purposes of ingress and egress, but may not park cars in the said driveway between the hours of 8:00 a.m. to 6:00 p.m. Monday thru Friday.

Being the same premises conveyed to the Grantors by deed of James E. Ritzo dated March 4, 1980 and recorded in the Rockingham County Registry of Deeds, Book 2359, Page 747. For further reference see John A. and Elizabeth A. Gailley to James E. Ritzo dated August 2, 1978 and recorded in said Registry at Book 2317, Page 1302.

THIS IS NOT HOMESTEAD PROPERTY

Witness our hands and seals this 20th day of May, 1981

Witness
Carla G. Rowland
to both
James E. Ritzo
Charles A. Griffin
L.S.
L.S.
L.S.

State of New Hampshire

ROCKINGHAM

ss.:

May 20 A. D. 1981.

Personally appeared James E. Ritzo and Charles A. Griffin

known to me, or satisfactorily proven, to be the persons whose names subscribed to the foregoing instrument and acknowledged that they executed the same for the purposes therein contained.

Before me,

Carla G. Rowland
Justice of the Peace - Ramsey Public

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MAY 20 4 12 PM '81

STATE OF NEW HAMPSHIRE
TAX ON TRANSFER
OF REAL PROPERTY
COMMISSION
188.75
MAY 20 1981

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KNOW ALL MEN BY THESE PRESENTS, That James E. Ritzo of 85 Merrimac Street and Charles A. Griffin of 210 Hillside Drive, both in Portsmouth, County of Rockingham and State of New Hampshire

for consideration paid, grant to Diane Wesnak of 192 NewCastle Avenue, Portsmouth, County of Rockingham and State of New Hampshire

with warranty covenants

A certain lot or parcel of land together with the buildings thereon, situate on the northerly side of State Street in Portsmouth, County of Rockingham and State of New Hampshire, and more particularly bounded as follows:

Beginning at the point in the northerly sideline of State Street at the southeasterly corner of land herein conveyed, at the southwesterly corner of land now or formerly of Muriel A. Morse; thence running westerly by State Street thirty-two feet, more or less, to a corner at land now or formerly of Albert and Alma Gailey; thence turning and running northerly by said land of said Gailey, one hundred twenty-seven feet, more or less, to land now or formerly of the City of Portsmouth; thence turning easterly by said land of the City of Portsmouth, thirty-two feet, more or less, to land now or formerly of William F. Harrington, et al; thence turning and running southerly by said land of William F. Harrington, et al and land now or formerly of Muriel A. Morse, one hundred twenty-seven feet, more or less, to the point of beginning.

Reserving to the grantors, their heirs and assigns, an easement for ingress and egress, parking and for drainage to a catch basin, over a portion of the premises herein conveyed, described as follows:

Beginning at a point where the edge of the parking lot pavement intersects the westerly boundary of the conveyed premises near the northerly end of a stockade fence which runs along said westerly boundary; thence running North by land now or formerly of Albert and Alma Gailey to land now or formerly of the City of Portsmouth; thence turning and running along land now or formerly of the City of Portsmouth, thirty-two feet to other land of grantors; thence turning and running Southerly along other land of grantors to the edge of the pavement; thence turning and running Westerly, Southwesterly, and Westerly along the edge of said pavement to the point of beginning. This reservation is subject, however, to the right of the grantee, her heirs and assigns, to the exclusive use of two parking spaces located immediately to the rear of the dwelling on the conveyed premises.

Being the same premises conveyed to the grantors by Warranty Deed of William F. Harrington, dated September 10, 1976 and recorded in the Rockingham County Registry of Deeds at Book 2265, Page 1768.

This is not Homestead property of either grantor.

and grantors xxx xxx rights of the same and covenants and warranties

Signed this 1 day of May 1986

James E. Ritzo L.S.
Charles A. Griffin L.S.
L.S.

State of New Hampshire

Rockingham ss.

A. D. 1986

Personally appeared James E. Ritzo and Charles A. Griffin

known to me, or satisfactorily proven, to be the person s whose name s

subscribed to the foregoing instrument and acknowledged that they executed the same for the purposes therein contained.

Before me:

Notary Public signature

In Testimony Whereof I have hereunto set my hand and the Seal of my Office at the City of Portsmouth, New Hampshire, this 1st day of May, 1986.

Nov 1 4 19 PM '86
Rockingham County
Registry of Deeds

STATE OF NEW HAMPSHIRE
TAX ON TRANSFER
OF REAL PROPERTY
525.00
MAY 1 1986

STATE OF NEW HAMPSHIRE
TAX ON TRANSFER
OF REAL PROPERTY
525.00
MAY 1 1986

8 8 2 8 1 1

LCHIP ROA422097 25.00
TRANSFER TAX RO082326 18,750.00
RECORDING 18.00
SURCHARGE 2.00



WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that we, Charles A. Griffin and Judith L. Griffin, as Trustees of The Charles A. Griffin Revocable Trust, a New Hampshire Revocable Trust, established pursuant to a revocable trust agreement dated February 18, 2004 by and between Charles A. Griffin as Grantor and Charles A. Griffin and Judith L. Griffin as Trustees, and Charles A. Griffin individually, all presently having an address of 210 Hillside Drive, Portsmouth, New Hampshire 03801, for consideration paid grant to 56 Middle St LLC, a New Hampshire Limited Liability Company, presently having an address of P.O. Box 6668, Portsmouth, New Hampshire 03802, with Warranty Covenants:

A certain tract or parcel of land, together with the buildings thereon, situate in Portsmouth, County of Rockingham and State of New Hampshire, at the corner of State and Middle Streets, and being more particularly bounded and described as follows:

Beginning at the southeasterly corner of the premises at the corner of said Streets; thence running westerly by State Street 40 feet, 3 inches to land now or formerly of the heirs of Thomas Lewis; thence northerly by said Lewis land 42 feet, 5 inches; thence westerly by said Lewis land 16 feet, 2 inches; thence northerly by said Lewis land 45 feet 2 inches; thence westerly by said Lewis land 22 feet, 6 inches to land now or formerly occupied by Charles E. Jenness; thence northerly by said Jenness land 45 feet, 5 inches to land now or formerly of the City of Portsmouth; thence easterly by said City of Portsmouth land 69 feet, 2 inches to land used as a common passageway; thence southerly by said way 15 feet, 5 inches, thence easterly by said way 2 feet- 8 inches to land now or formerly of Sadie P. Silver Bates; thence southerly by said Bates land 5 feet; thence westerly by said Bates land 13.55 feet; thence southerly by said Bates land 14.80 feet; thence easterly by said Bates land 72 feet 5 inches, more or less, to Middle Street; thence by said Middle Street southwesterly 118 feet, more or less, to the point of beginning.

Together with the right to use the passageway 30 feet wide from Middle Street to the premises herein described " and the soil and freehold therein".

Excepting from the above described premises, the premises conveyed to Cynthia W. Storer and Henry C. Wray by deed dated September 25, 1950 recorded in Rockingham County Registry of Deeds Book 1186 Page 199.

Meaning and intending to convey the same premises as conveyed to the Charles A. Griffin Revocable Trust by deed of Charles A. Griffin, said deed dated February 18, 2014 and recorded with the Rockingham County Registry of Deeds at Book 4254 Page 2132.

Also meaning and intending to convey all of the Granter, Charles A. Griffin's interest in and to a certain easement for drainage and parking of motor vehicles and all of my right, title and interest in and to an easement of ingress, egress, parking and drainage as described in deed of James E. Ritzo and Charles A. Griffin to Gary J. Grant and Jane M. Grant dated May 20, 1981, recorded in Rockingham County Registry of Deeds at Book 2389 Page 820 and in deed of James E. Ritzo and Charles A. Griffin to Diane Wesnak dated May 1, 1981, recorded in Rockingham County Registry of Deeds at Book 2599 Page 2386.

See also deed of James E. Ritzo to Charles A. Griffin dated December 30, 1986, recorded in Rockingham County Registry of Deeds Book 2652 Page 2703.

This is not homestead property of any of the Grantors. WITNESS our hands and seals, this 31st day of August, 2018.

The Charles A. Griffin Revocable Trust



Witness



Charles A. Griffin, Trustee



Witness.



Judith L. Griffin, Trustee



Witness



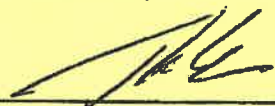
Charles A. Griffin, Individually

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

August 31, 2018

Personally appeared the above named Charles A. Griffin and Judith L. Griffin in their capacities as Trustees of the Charles A. Griffin Revocable Trust and Charles A. Griffin individually, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument and acknowledged the foregoing instrument to be their free act and deed.

Before me,

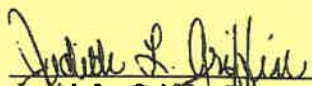


Justice of the Peace/Notary Public My
Commission Expires:

THOMAS M. KEANE, Justice of the Peace
State of New Hampshire
My Commission Expires December 8, 2022

Certificate of Trustee Authority

The undersigned are Trustees under the Charles A. Griffin Revocable Trust of 2004 u/d/t February 8, 2004 and thereto have full and absolute power to convey any interest in real estate and improvements thereon in said Trust and no purchaser or third party shall be bound to inquire whether the Trustees have said power or are properly exercising said power or to see to the application of any Trust asset paid to the Trustees for a conveyance thereof.


Charles A Griffin, Trustee
Judith L. Griffin, Trustee

EXHIBIT

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RK2666 P1063

A. 14920

MAR 13 3 01 PM '87

SEASIDE COUNTY
OF DEEDS

DECLARATION OF CONDOMINIUM OWNERSHIP
AND BY-LAWS

FOR

GREY GULL CONDOMINIUM
487 State Street
Portsmouth, New Hampshire

DECLARANT: Diane Wesnak

RK2666 P1066

DECLARATION

This declaration made this 12th day of March, 1987, by Diane Wesnak sometimes referred to as "declarant" for the purpose of submitting certain property described hereinafter to a condominium usage and ownership in accordance with the provisions of the CONDOMINIUM ACT, New Hampshire RSA 356-B.

WHEREAS, declarant is the owner in fee simple of a certain parcel of land with the buildings thereon constructed principally of wood, and more fully described herein; and,

WHEREAS, the declarant intends to convey units in said hereinafter described property, subject to certain mutually beneficial restrictions, covenants, conditions, equitable servitudes and charges which she desires to impose thereon for the benefit of all condominium units and future unit owners thereof, all subject to the Condominium Act.

NOW, THEREFORE, the declarant hereby makes the following declarations pursuant to Chapter 356-B.

A. NAME.

The name of the condominium shall be Grey Gull Condominium.

B. LOCATION.

The condominium is located in the City of Portsmouth, County of Rockingham.

C. LEGAL DESCRIPTION OF PROPERTY.

A certain tract or parcel of land, with the buildings thereon situate on the northerly side of State Street, so-called, in Portsmouth, County of Rockingham, and State of New Hampshire, more particularly bounded and described as follows: Beginning at a stone bound on the northerly side of said State Street at land now or formerly of Jane M. Grant; thence proceeding N 09° 29' 48" W for a distance of 127.40 feet to an iron rod at a chain-link fence at land now or formerly of the Farragut School Association; thence turning and running N 72° 15' 19" E for a distance of 30.87 feet, more or less, to a fence post at land now or formerly of Charles A. Griffin; thence turning and running S 10° 8' 44" E for a distance of 131.47 feet, more or less, to an iron rod set in the ground at or near the northerly sideline of said State Street; thence turning and running S 79° 50' 04" W along the northerly sideline of said State Street for a distance of 32.04 feet, more or less, to the stone bound which marks the point of beginning.

Reserving to James E. Ritzo and Charles A. Griffin, their heirs, successors, and assigns, an easement for ingress and egress, parking and for drainage to a catch basin, over a portion of the premises above described, which easement

BK2666 P1067

description is more fully set forth in warranty deed of James E. Ritzo and Charles A. Griffin to Diane Wesnak, dated May 1, 1986, recorded in the Rockingham County Registry of Deeds at Book 2599, Page 2386.

Meaning and intending to describe those premises as depicted as 487 State Street on plan entitled "Condominium Site Plan for The Grey Gull Condominium, Portsmouth, New Hampshire", drawn by David W. Sidmore, licensed land surveyor and recorded in the Rockingham County Registry of Deeds as Plan # D-14185.

Being the same premises however else described in warranty deed of James E. Ritzo and Charles A. Griffin to Diane Wesnak, dated May 1, 1986, recorded in the Rockingham County Registry of Deeds at Book 2599, Page 2386.

Included in the property dedicated to condominium usage is the right contained in the aforementioned deed of Diane Wesnak, her heirs and assigns to the exclusive use of two parking spaces located immediately to the rear of the building on the above-described premises.

D. BOUNDARIES.

A description of the boundaries of the units, including the horizontal boundaries as well as the vertical boundaries as shown on the floor plans and specifications prepared by Frank Iebba, Engineer, to be recorded herewith in the Rockingham County Registry of Deeds is as follows:

1. The walls, floors and ceilings shall be the boundaries of the units. All doors, windows, wallboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces thereof shall be deemed a part of such Units. All other portions of such walls, floors and ceilings shall be part of the Common Area.
2. If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lie partially within and partially outside of the boundaries of a Unit, any portions thereof serving only that Unit shall be deemed part of that Unit, while any portion of the Common area.
3. Subject to the provisions of paragraph (2) above, all space, interior partitions, and other fixtures and improvements within the boundaries of a Unit shall be deemed a part of that Unit.
4. Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, and any other apparatus designed to serve a single Unit, but located outside the boundaries thereof, shall be deemed a limited common area appertaining to that unit exclusively.

Mar 13 2 55 PM '87

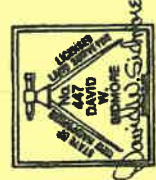
EXHIBIT

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LOCATION SKETCH
SCALE: 1" = 2000'

THE INFORMATION CONTAINED HEREIN IS THE PROPERTY OF DAVID W. SIDMORE, L.L.C. AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. ANY REUSE OR MISUSE OF THIS INFORMATION WITHOUT THE WRITTEN CONSENT OF DAVID W. SIDMORE, L.L.C. IS STRICTLY PROHIBITED.



CONDOMINIUM SITE PLAN FOR THE GREY GULL CONDOMINIUM

PORTSMOUTH, N.H.

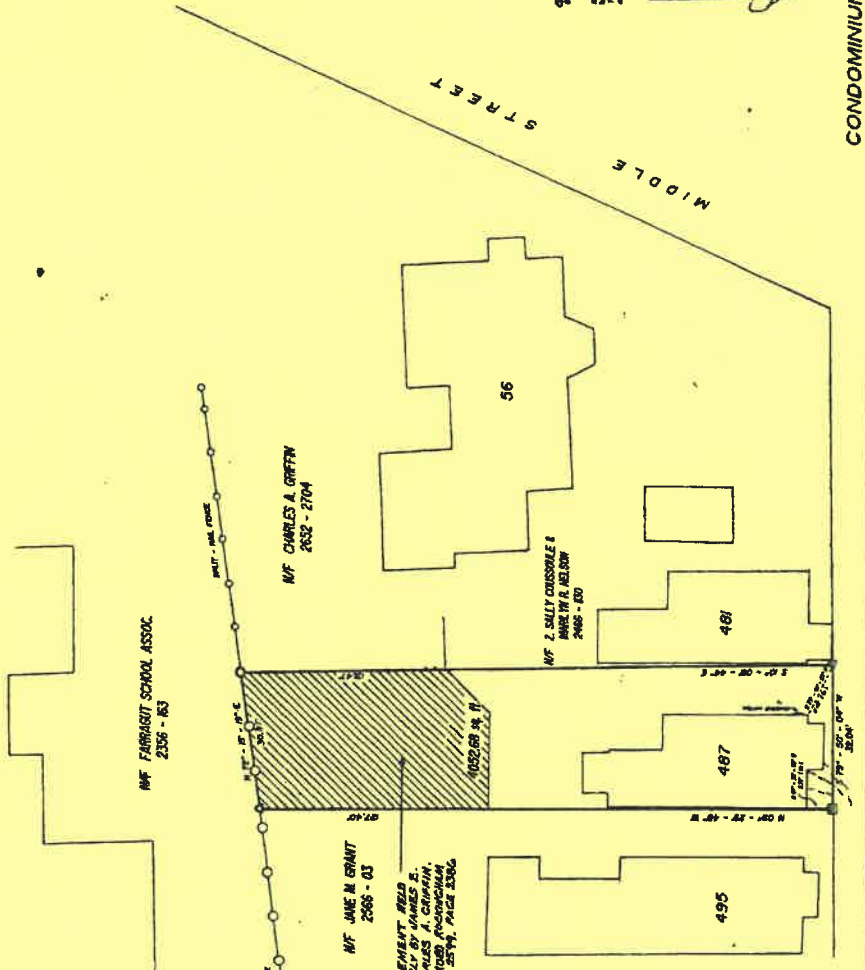
.093 ± Ac. SCALE: 1" = 20'

REF. R.C.R.D. 2599 - 2386



MARCH 1987

6715



STATE STREET

MIDDLE STREET

LEGEND

- ▲ IRON ROD - FOUND
- △ IRON ROD - SET
- STONE SOUND - FOUND
- FENCE POST
- WATER SERVICE
- - - SEWER SERVICE
- GAS SERVICE

I certify that this survey was taken in accordance with the provisions of the laws of the State of New Hampshire and that the lines of streets and lots shown are those of public or private streets or ways already established and that no new lines for public or private streets or ways are shown.

3/12/87 David W. Sidmore, L.L.C. Registered Land Surveyor

REF. PLAN (S):

1. PLAN OF LOTS 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

ACCURACY: 1/28,474

D-16185

SHEET 1 of 2

MF LEIS L. BEVELY, DVM
DAVID W. SIDMORE, L.L.C. 447 DEERFIELD, N.H.

EXHIBIT

tabbler

G.1

**PRIVATE
PARKING**

**LAW OFFICE
56 MIDDLE STREET**

**VIOLATORS WILL BE
TOWED AT OWNERS
EXPENSE**



EXHIBIT
tabbler
G.2



NO PARKING
EXHIBIT

NO PARKING
EXHIBIT

EXHIBIT
G.3

NO PARKING
UNAUTHORIZED
VEHICLES WILL BE
AT VEHICLE
OWNER'S EXPENSE



EXHIBIT
tabbles
G.4

NO PARKING
UNAUTHORIZED
VEHICLES WILL BE
TOWED AWAY
AT OWNER'S EXPENSE

EXHIBIT

G. 5

tabbies



NO PARKING
UNAUTHORIZED
VEHICLES WILL BE

AT VEHICLE
OWNER'S EXPENSE



EXHIBIT

tabbles

G. 6



NO PARKING
UNAUTHORIZED
VEHICLES WILL BE

AT VEHICLE
OWNER'S EXPENSE

TERM SHEET

This Term Sheet summarizes the basic terms of an agreement to be entered into by and between 56 MIDDLE ST LLC of PO Box 6668, Portsmouth, New Hampshire 03802 ("56 Middle"), 487 STATE STREET, LLC of 487 State Street, Portsmouth, New Hampshire 03801 ("487 State"), CHRISTOPHER P. MULLIGAN of 74 Austin Street, Portsmouth, New Hampshire 03801 ("Mulligan") GREY GULL CONDOMINIUM OWNER'S ASSOCIATION of 487 State Street, Portsmouth, New Hampshire 03801 ("Grey Gull") and PATRICK D. DRISCOLL and STEPHANIE A. DRISCOLL of 147 Clarke Road, Rye, New Hampshire 03870 (collectively, "Driscoll") for purposes of clarifying and modifying certain access, drainage and parking easements benefiting and burdening each of the parties' properties in Portsmouth, New Hampshire.

1. References made to that certain Variance Application Plan dated April 2019, revised July 8, 2019, prepared by Ambit Engineering, Inc. and submitted to the Portsmouth Zoning Board of Adjustment ("ZBA") in conjunction with its meeting on July 16, 2019 (the "Plan").

2. The current parking and access easements benefiting and burdening the parties' properties on State Street and Middle Street in Portsmouth shall be modified as follows:

(a) 56 Middle and the future owners of 56 Middle Street, Portsmouth shall have the exclusive right to park motor vehicles on a 24 hour per a day-7 day per a week basis in parking spaces numbered 4 and 13, and a "Proposed 10' x 20' Parking Space" adjacent to the northerly boundary of 56 the Middle Street property, as shown on the Plan;

(b) 487 State and Mulligan and the future owners of Unit 1 and Unit 2 of the Grey Gull Condominium shall have the exclusive rights to park motor vehicles on a 24 hour per a day-7 day per a week basis in parking spaces numbered 5, 11, and 12 on said Plan;

(c) Driscoll and the future owners of 495 State Street property shall have exclusive rights to park their motor vehicles on a 24 hour per a day-7 day per a week basis in parking spaces numbered 6, 7, 8, 9 and 10 on said Plan;

(d) The rights of Driscoll and all future owners of the property at 495 State Street, Portsmouth to park motor vehicles in the driveway easterly of the dwelling house situate on said property leading to State Street between the hours of 6:00 p.m. and 8:00 a.m. shall terminate. Said driveway shall remain open for ingress and egress by all parties hereto on a 24 hour per a day-7 day per a week basis.

(e) 56 Middle, 487 State, Mulligan and Driscoll and the future owners of their respective properties shall have non-exclusive rights, on a 24 hour per day -7 days per week basis to use the access ways in the easements areas of 56 Middle Street, 487 State Street and 495 State

Street and the driveway on 495 State Street, as shown on the Plan, for ingress and egress to their respective parking spaces.

3. The parties agree to share the expenses of maintenance and repair of the access ways, parking spaces and drainage system encompassing the easement areas in the future as follows:

- 30% - 56 Middle and the future owners of the property at 56 Middle Street, Portsmouth
- 15% - 487 State and the future owners of Unit 1 in the Grey Gull Condominium
- 15% - Mulligan and the future owners of Unit 2 in the Grey Gull Condominium
- 40% - Driscoll and the future owners of 495 State Street, Portsmouth property

4. All other terms and conditions of the easements, as presently recorded, not inconsistent with the within Term Sheet, shall remain in full force and effect.

5. This agreement is contingent upon (a) the ZBA (granting the motion for rehearing of 56 Middle with respect to the ZBA's denial of 56 Middle's application for a variance on July 16, 2019 and (b) the ZBA, following a rehearing, granting the application of 56 Middle for a variance to allow for a residential duplex at 56 Middle Street, Portsmouth, in accordance with its application heard on July 16, 2019, without stipulations or conditions that would result in 56 Middle incurring further loss of parking (beyond that allocated in Paragraph 2(a) herein) or otherwise unacceptable to 56 Middle, and that decision becoming final in accordance with Paragraph 8 herein.

6. 487 State, Mulligan, Grey Gull and Driscoll agree to support the motion for rehearing of 56 Middle in the form of letters addressed and delivered to members of the ZBA prior to its consideration of the motion for rehearing advising the ZBA that they have reached an agreement with 56 Middle on the parking issues and are satisfied with the terms of that agreement and now support the proposed variance.

7. 487 State, Mulligan, Driscoll and the Grey Gull Condominium further agree to support the proposed variance request of 56 Middle for a residential duplex at any hearing scheduled after the motion for rehearing is granted in the form of letters addressed and delivered to the ZBA reiterating the contents of the letters so provided in Paragraph 7 herein and by personally appearing and testifying in favor of the proposed variance at the subsequent hearing scheduled on the same.

8. If the ZBA grants 56 Middle's motion for rehearing, the parties agree to cooperate in good faith in negotiating the terms of a more formal agreement, incorporating the terms of this Term Sheet, suitable for recording in the Rockingham Registry of Deeds. If the ZBA thereafter grants the requested variance to 56 Middle allowing for a residential duplex in accordance with Paragraph 5 herein and that decision becomes final, the parties shall execute and record the final agreement in the Rockingham Registry of Deeds with 30 days after that decision becomes final. For purposes of this Term Sheet, a decision of the ZBA becomes final following the expiration of all applicable

appeal periods, without such appeals having been taken, or, in the event of an appeal, the entry of a final order upholding the grant of the variance and the expiration of all appeal periods with respect to such order without further appeals.

9. The exchange of copies of this Agreement and of signature pages by facsimile or by email in Portable Document Format (.pdf) will constitute effective execution and delivery of this Agreement as to the parties, and may be used in lieu of the original Amendment for all purposes. Signatures of the parties transmitted by facsimile or .pdf shall be deemed to be their original signatures for all purposes.


[SIGNATURE PAGES TO FOLLOW]

Witnessed my hand and seal this ___ day of August, 2019.

56 MIDDLE ST LLC



Witness

By: 

Jason N. Theodore, Manager

Witnessed our hands and seals this ____ day of August, 2019.

487 STATE STREET, LLC


Witness

By: 
Stephen John Bergeron, Member

and


Witness

By: 
Kathleen Holden Bergeron, Member

Witness my hand and seal this ____ day of August, 2019.

GREY GULL CONDOMINIUM
OWNER'S ASSOCIATION


Witness

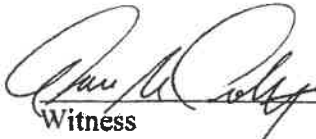
By: 
Its: President

[Please Print Name] *Stephen J. Pedersen*

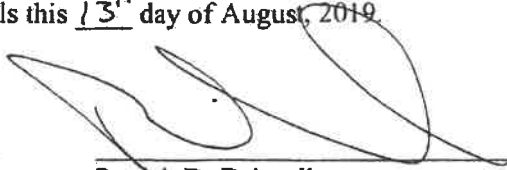
Witness my hand and seal this 13 day of August, 2019.

Diane Cooley Christopher P. Mulligan
Witness

Witnessed our hands and seals this 13th day of August, 2019.



Witness



Patrick D. Driscoll



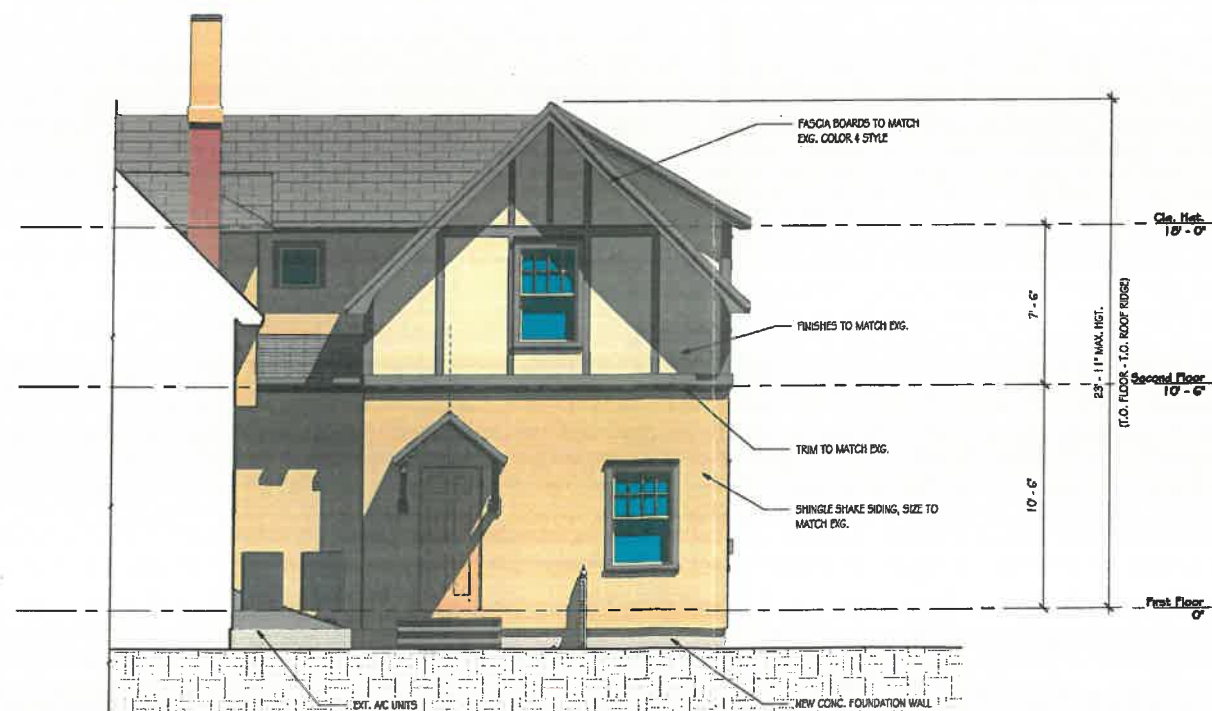
Witness



Stephanie A. Driscoll



① NORTH EXTERIOR ELEVATION
1/4" = 1'-0"



② PARTIAL EAST EXTERIOR ELEVATION
1/4" = 1'-0"

No.	Description	Date
Revision Schedule		

Project Info:
56 Middle Street IIc

56 Middle St.
Portsmouth, NH

Sheet Status:
Label Release:
Design Dev. N.F.C.
Job No: 18037
Drafted: MLN
Checked: JMT
Scale: 1/4" = 1'-0"

Sheet Title:
Exterior Elevations

Sheet Number:
A3.1



① SOUTH EXTERIOR ELEVATION
 1/4" = 1'-0"



② WEST EXTERIOR ELEVATION
 1/4" = 1'-0"

No.	Description	Date
	Revision Schedule	

Project Info:
56 Middle Street I/c

56 Middle St.
 Portsmouth, NH

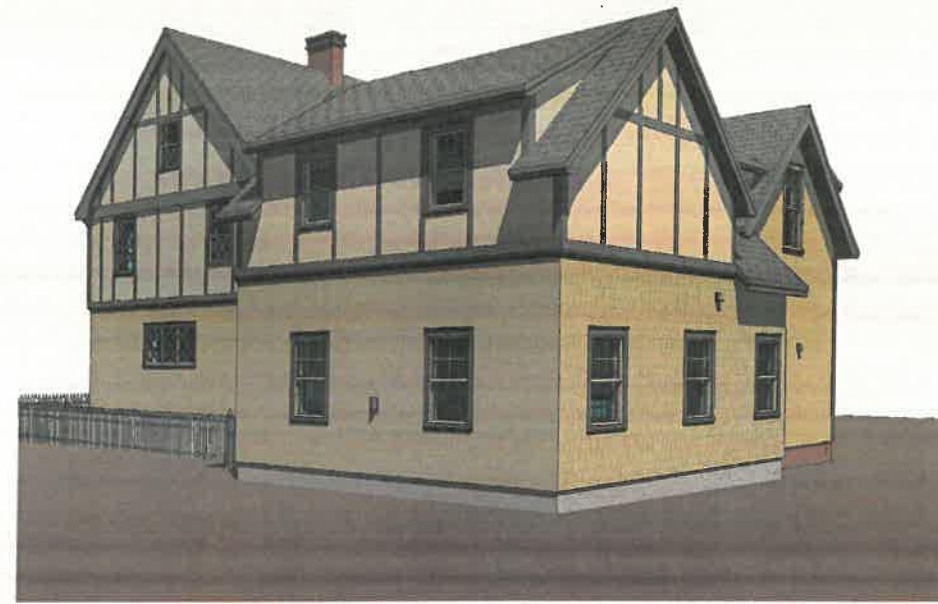
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 JOB NO: 18037
 DRAFTER: MLN
 CHECKER: JMT
 SCALE: 1/4" = 1'-0"

Sheet Title:
Exterior Elevations

Sheet Number:
A3.2



① 3-D VIEW "A"



② 3-D VIEW "B"



③ 3-D VIEW "C"



④ 3-D VIEW "D"

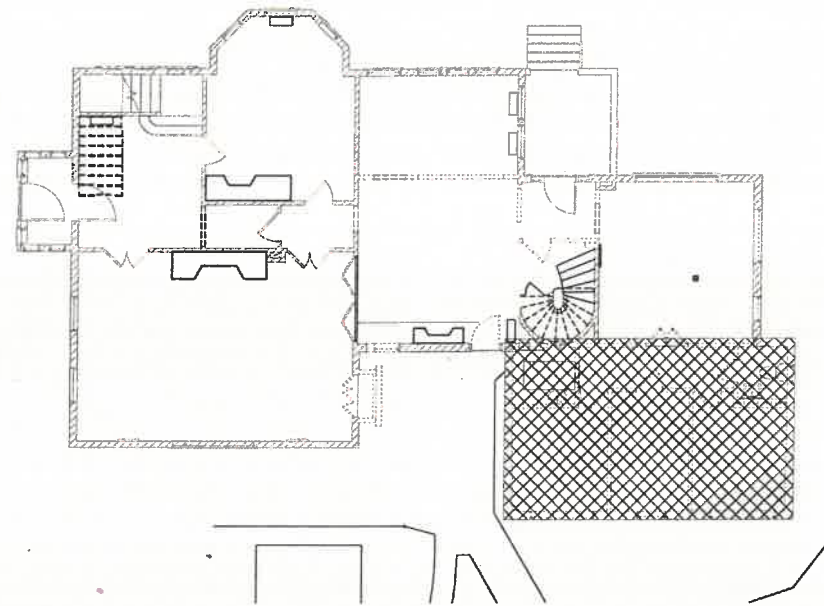
No.	Description	Date
Revision Schedule		

Project Info:
56 Middle Street I/c
 56 Middle St.
 Portsmouth, NH

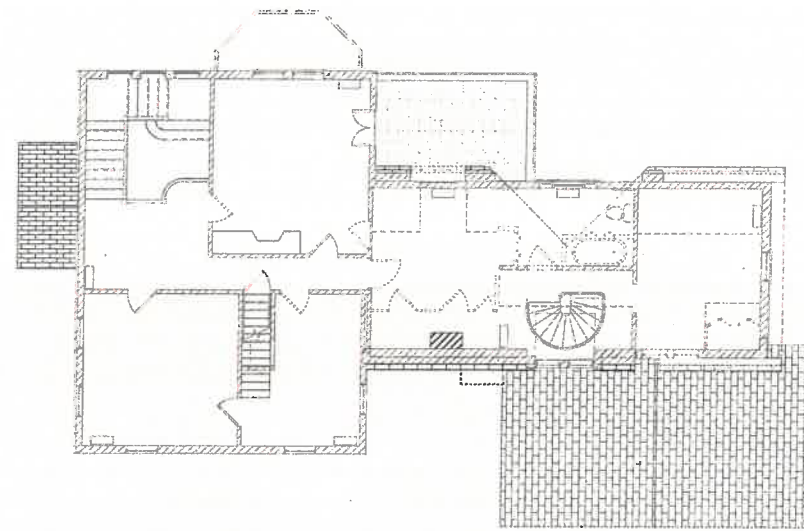
Sheet Status:
 Latest Release:
 Design For: Design Development
 City, State Code: N.F.C.
 JOB NO.: 18037
 DRAWN BY: MLN
 CHECKED BY: JMT

Scale:
 Sheet Title:
3-D Exterior Renderings

Sheet Number:
R1.1



① **FIRST FLOOR PLAN**
 1/8" = 1'-0"



② **SECOND FLOOR PLAN**
 1/8" = 1'-0"

No.	Description	Date
Revision Schedule		

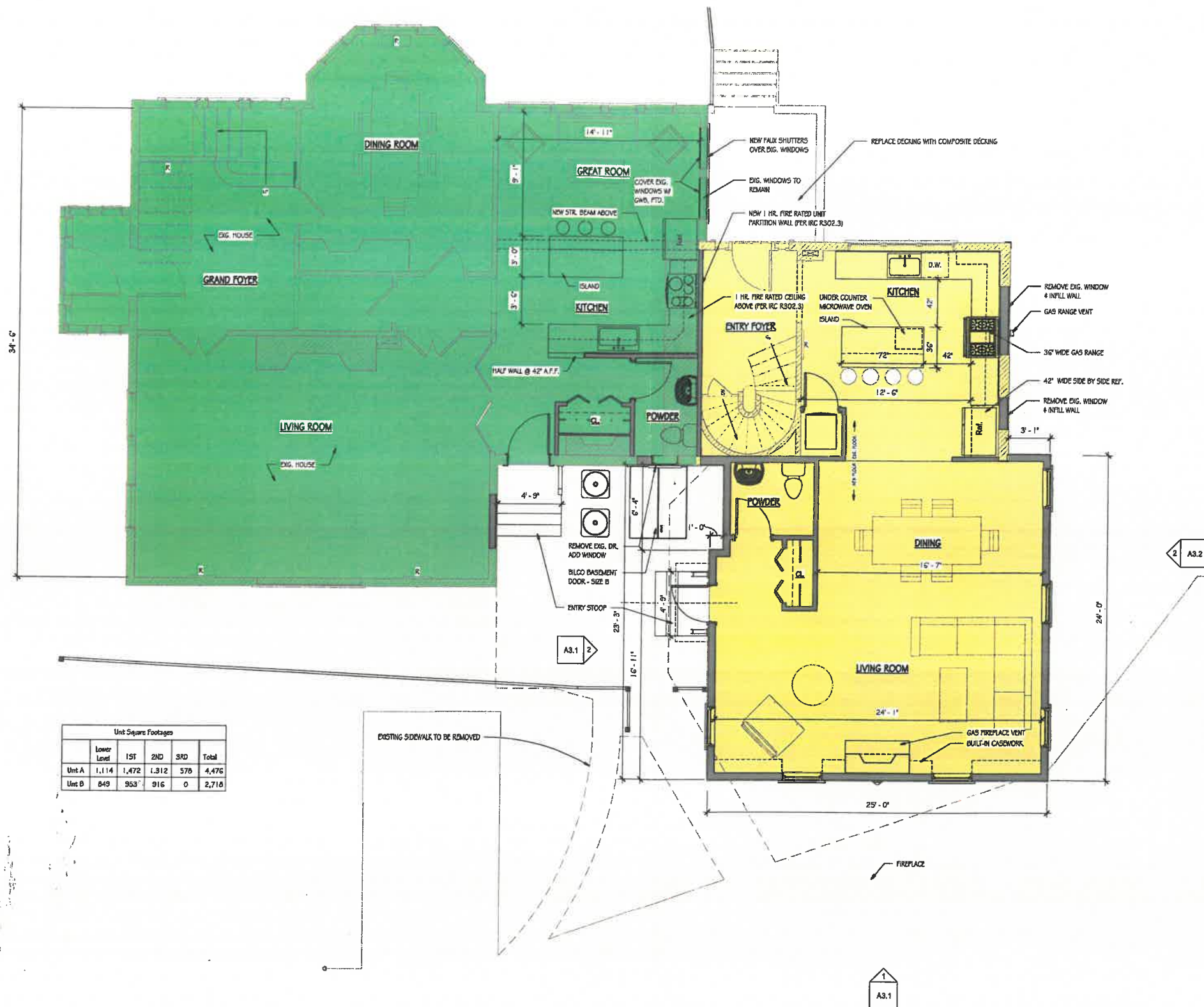
Project Info:
56 Middle Street Ilc

*56 Middle St.
 Portsmouth, NH*

Sheet Status:
 Level: **Ilc**
 Issue For: **Design Development**
 Date: **N.F.C.**
 Job No: **18037**
 Designer: **MELN**
 Checker: **JMKY**
 Scale: **1/8" = 1'-0"**

Sheet Title:
Existing Floor Plans

Sheet Number:
EX.1



Unit Square Footages					
	Lower Level	1ST	2ND	3RD	Total
Unit A	1,114	1,472	1,312	575	4,473
Unit B	849	953	916	0	2,718

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

No.	Description	Date
Revision Schedule		

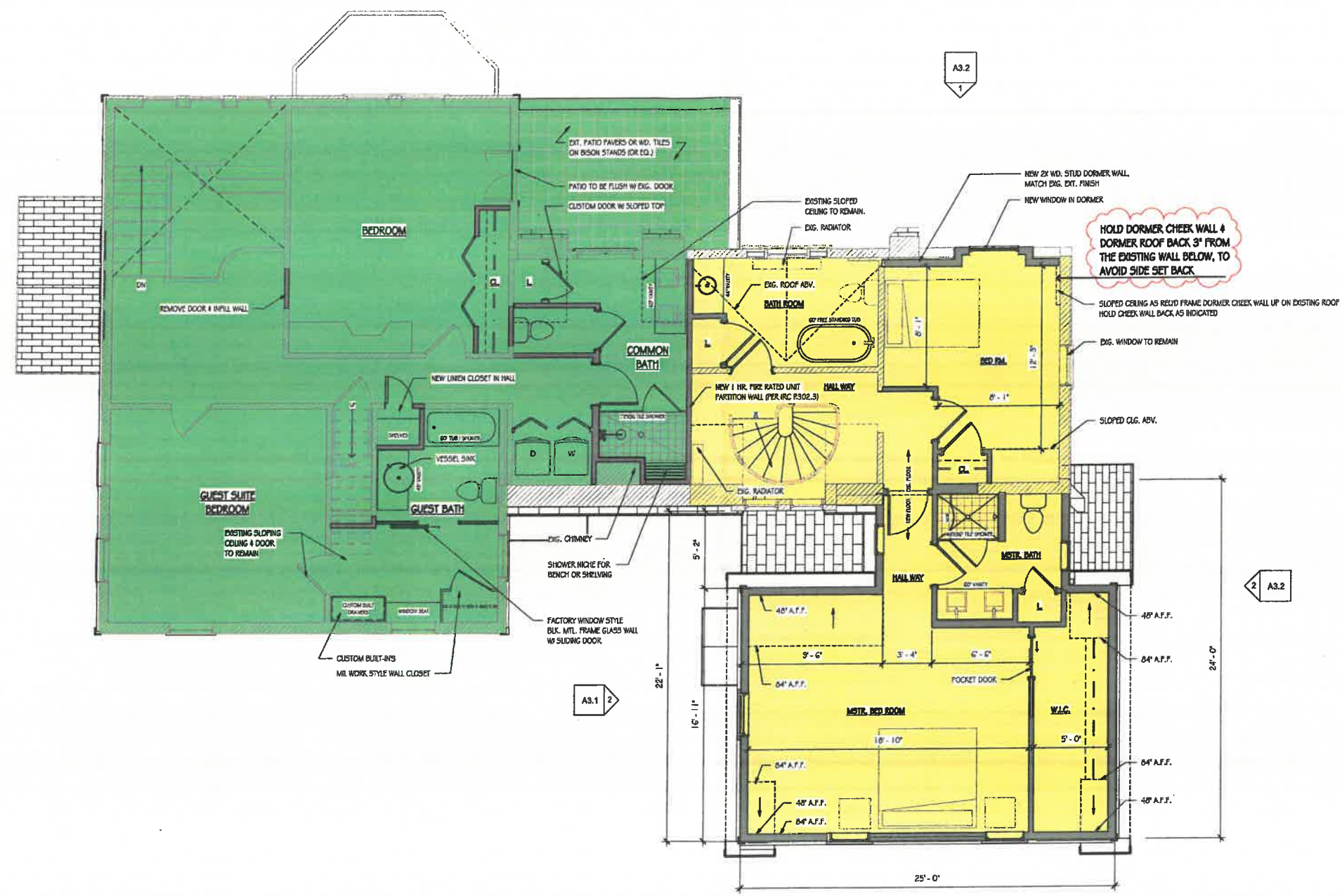
Project Info:
56 Middle Street I/c

56 Middle St.
Portsmouth, NH

Sheet Status:
 Issue Ref: Design Development
 Issue Date: N.F.C.
 Job No: 18037
 Drafted: MLN
 Checked: JMT
 Scale: 1/4" = 1'-0"

Sheet Title:
First Floor Plan

Sheet Number:
A1.1



1	Revision 1	Date 1
No.	Description	Date

Revision Schedule

Project Info:
56 Middle Street Ilc

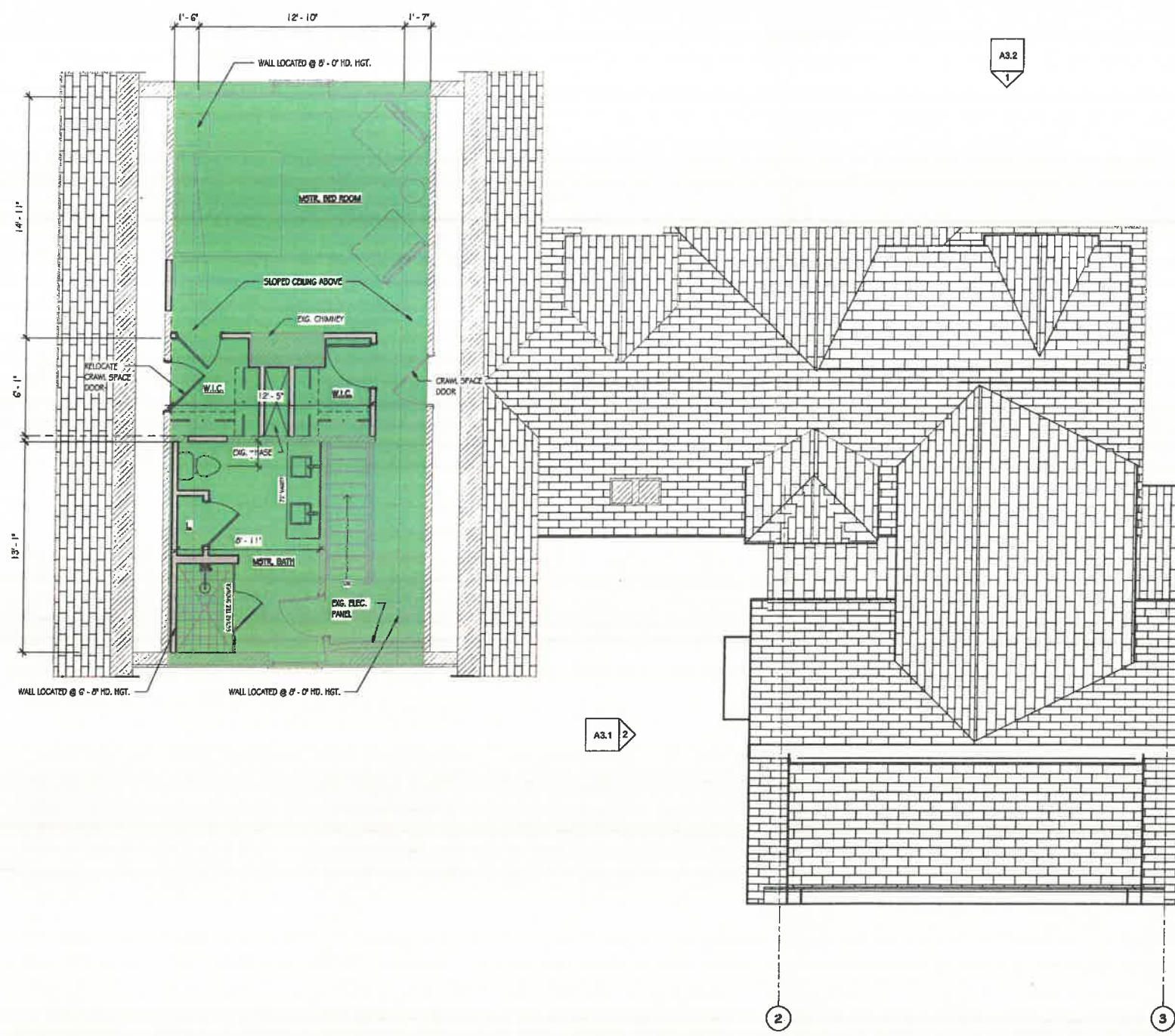
56 Middle St.
Portsmouth, NH

Sheet Status:
 Last Revision: Date 1 - Rev. 1
 Issue For: Design Development
 Orig. Issue Date: N.F.C.
 JOB NO: 18037
 DRAWN BY: MLN
 CHECKED BY: JMT
 SCALE: 1/4" = 1'-0"

Sheet Title:
Second Floor Plan

Sheet Number:
A1.2

① SECOND FLOOR PLAN a
1/4" = 1'-0"



① Attic Level
 1/4" = 1'-0"

No.	Description	Date
Revision Schedule		

Project Info:
56 Middle Street IIc

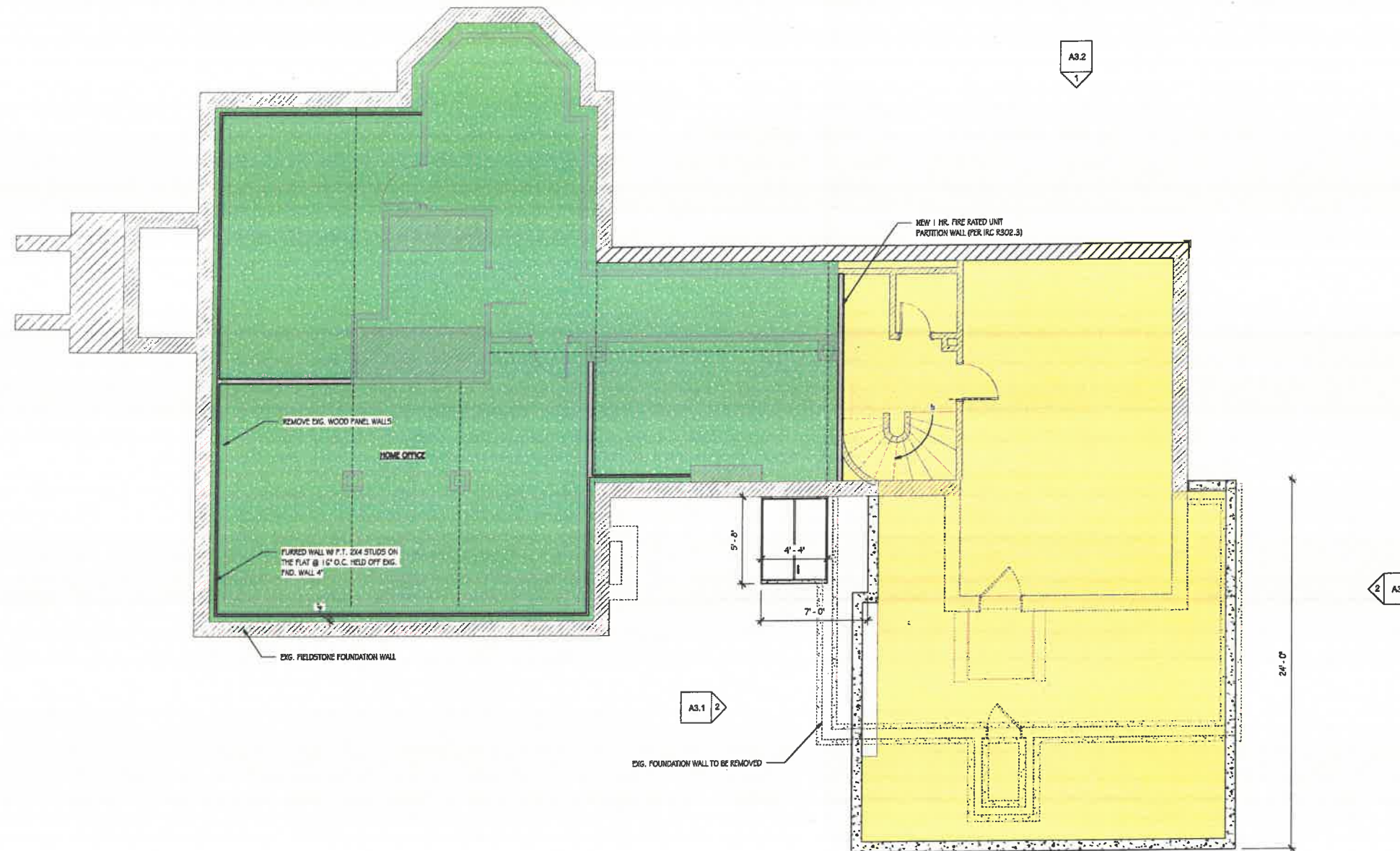
56 Middle St.
 Portsmouth, NH

Sheet Status:
 Issue No.:
 Issue Date:
 Design Development
 N.F.C.

JOB NO: 16037
 DRAFTED: MLN
 CHECKED: JMT
 SCALE: 1/4" = 1'-0"

Sheet Title:
Attic Level Floor Plan

Sheet Number:
A1.3



① **BASEMENT PLAN**
 1/4" = 1'-0"

No.	Description	Date
Revision Schedule		

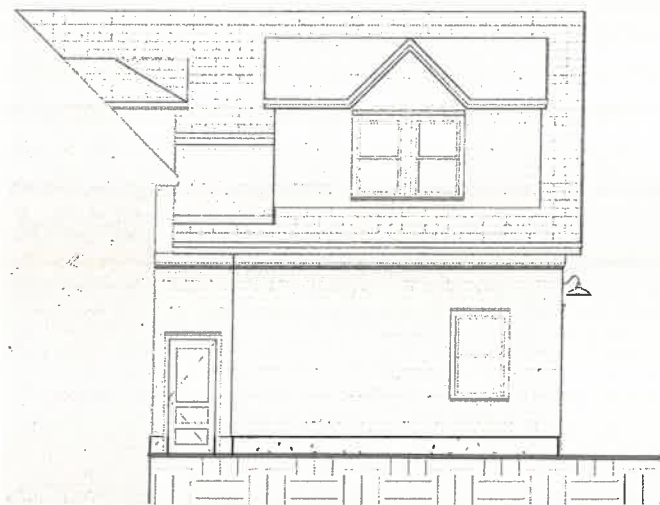
Project Info:
56 Middle Street I/c

 56 Middle St.
 Portsmouth, NH

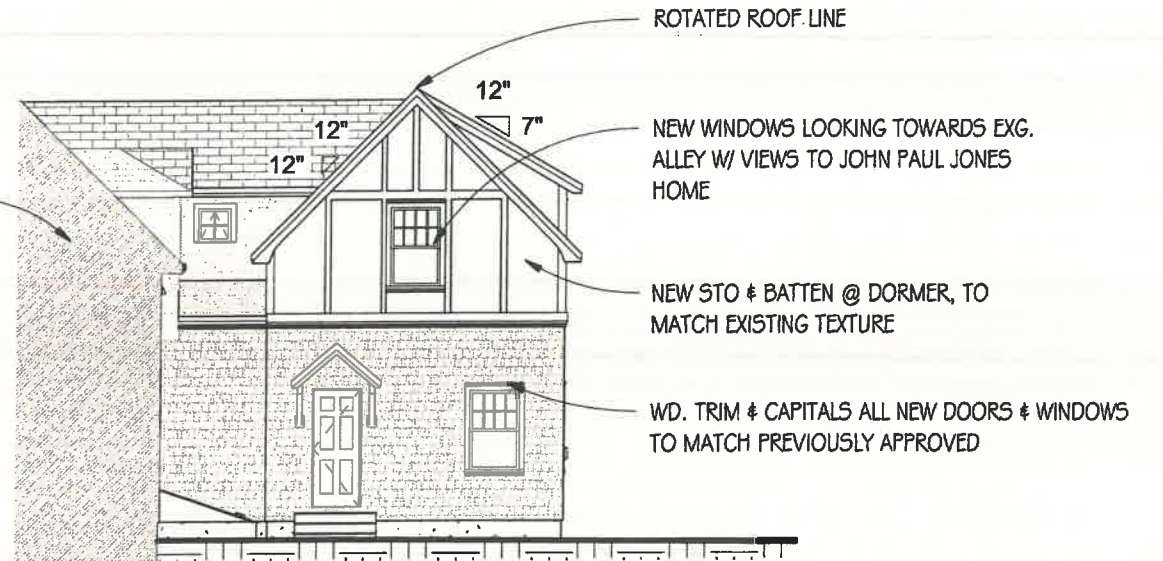
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 Issue: N.F.C.
 Design For: Design Development
 Date: N.F.C.
 Job No: 18037
 Drafted: MLN
 Checked: JMT
 Scale: 1/4" = 1'-0"

Sheet Title:
Basement Plan

Sheet Number:
A1.4



① East Side @ Middle Street (Previously Approved)
3/32" = 1'-0"



② East Side @ Middle Street (Proposed)
3/32" = 1'-0"

NOTE: ALL WINDOWS TO BE SAME SIZE, MANUFACTURER, MATERIAL & GRID PATTEN AS PREVIOUSLY APPROVED



① North Side (Previously Approved)
3/32" = 1'-0"



④ North Side (Proposed)
3/32" = 1'-0"

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Sheet Name:

Project Name:

Proposed Exterior Views

56 Middle Street llc

Project Address:

56 Middle St.
Portsmouth, NH

Scale:

3/32" = 1'-0"

Date:

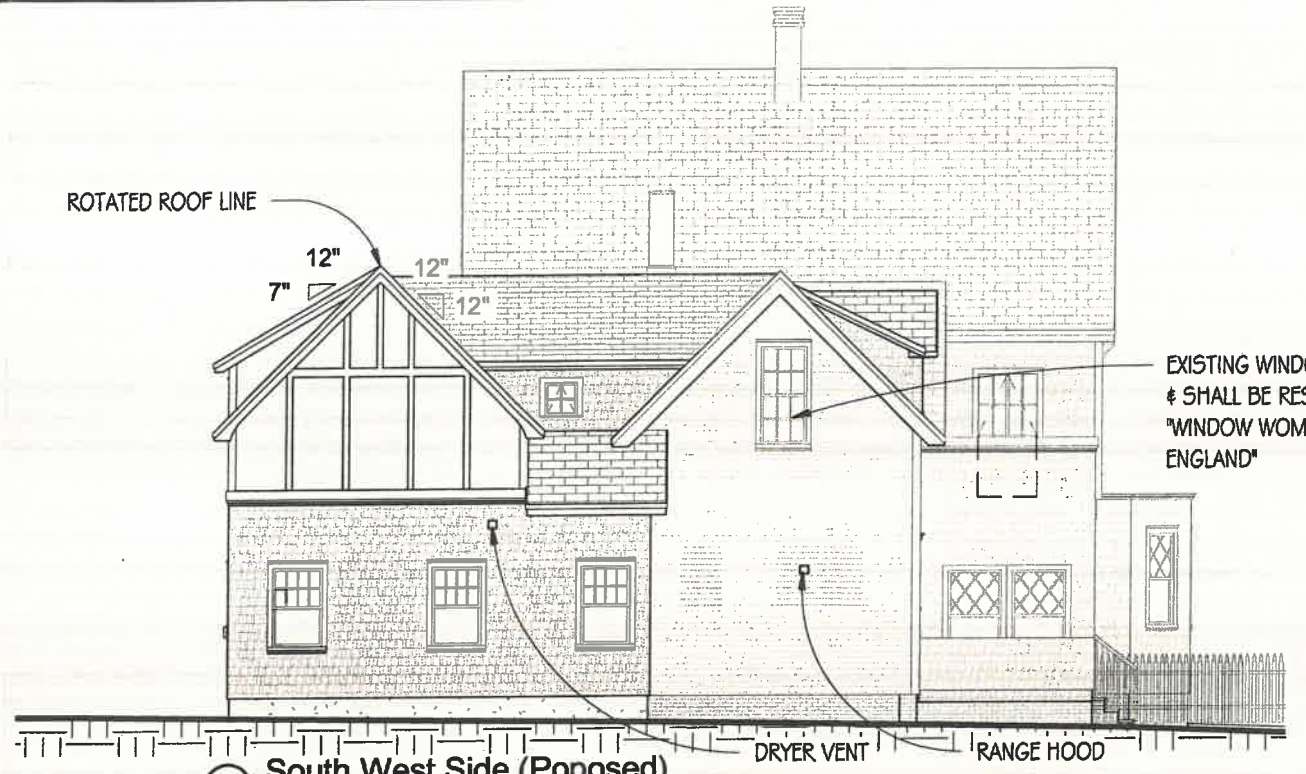
N.F.C.

Sheet #:

2



① South West Side (Previously Approved)
3/32" = 1'-0"



② South West Side (Proposed)
3/32" = 1'-0"

NOTE: ALL WINDOWS TO BE SAME SIZE, MANUFACTURER, MATERIAL & GRID PATTEN AS PREVIOUSLY APPROVED



③ South Side @ State Street (Previously Approved) NOTE: FENCE NOT SHOWN FOR CLARITY.
3/32" = 1'-0"



① South Side @ State Street (Proposed) NOTE: FENCE NOT SHOWN FOR CLARITY.
3/32" = 1'-0"

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Sheet Name:
Project Name:

Proposed Exterior Views

56 Middle Street llc

Project Address:
56 Middle St.
Portsmouth, NH
Scale:
3/32" = 1'-0"

Date:
N.F.C.
Sheet #:
3