

August 28, 2019

Portsmouth Zoning Board of Adjustment  
Planning Department  
City Hall, 3<sup>rd</sup> Floor  
1 Junkins Ave  
Portsmouth, NH 03801

Re: Variance Application  
Nouria Energy  
786 US Rte 1 Bypass  
Map 161 Lot 42

Dear Board Members:

On behalf of Nouria Energy Corporation, Greenman-Pedersen, Inc (GPI) is hereby filing the attached variance application and supporting documentation for the after-the-fact variance required for the recent fence replacement resulting in a non-conforming 8' high fence located within the rear yard setback. In addition to the online application we have attached the following:

- (12) Copies of the Variance Criteria statement
- (1) Full Sized (24x36) "Plan to Accompany ZBA Application"
- (12) Reduced Size (11x17) "Plan to Accompany ZBA Application"
- (12) Site Photos (4 pages)
- Filing Fee of \$360.00

In addition to the items listed above, we also provide the following narrative statement in support of the application:

This variance request is for an after-the-fact variance for a recently replaced fence located at above mentioned property. The Applicant, Nouria Energy, replaced an existing 6' high wooden stockade fence along the southern (rear) property line in June, 2019 at the request of their residential abutters due to the aging condition of the wood fence. The fence was located along the rear lot line and within the rear yard setback and has existed in this location for a number of years. Being 6' in height, the pre-existing fence was allowed by right to be located within the rear yard setback.

In a good faith effort to be neighborly and accommodating to the residential abutters & surrounding neighborhood, Nouria replaced the 6' high fence with a new 8' high white vinyl fence per the request of the abutters. The fence is in harmony with the recently approved and installed 8' high fence located at 2 Stark Street.

The applicant was not aware that a fence replacement would require the necessary variance relief due to the 8' height prior to installing the fence and has been working to correct this mistake since being notified by City Officials earlier this summer. We believe this after-the-fact variance is a reasonable request as outlined in the attached supporting criteria language.

Please review the attached information and we are prepared to present this information to the Board at the next scheduled meeting. If you have any questions or require further information, please call at your convenience.

Sincerely,  
**MHF Design Consultants, Inc.**  
  
Patrick McLaughlin, P.E.  
Project Engineer

3876 Variance Application Cover Letter 8-28-19  
CR 3876  
cc: Bob Richard – Nouria Energy

**GPI** **GREENMAN - PEDERSEN, INC.**  
Consulting Engineers, Architects & Planners  
325 West Main Street, Babylon, NY 11702  
Ph. 631/587-5060

Signature Bank  
Everett, MA 02149  
53-292/113

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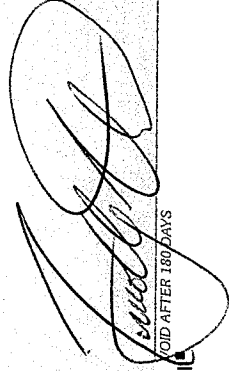
CHECK DATE

July 30, 2019

PAY Three Hundred Sixty and 00/100 Dollars

TO City of Portsmouth  
1 Junkins Avenue  
Portsmouth, NH 03801

AMOUNT 360.00



Security Check features  
Detail on back.

VOID AFTER 180 DAYS

AUTHORIZED SIGNATURE

⑆ 1 7 1 4 7 0 1 ⑆ ⑆ 0 1 1 3 0 2 9 2 0 ⑆ ⑆ 7 4 3 2 4 0 ⑆

## **Variance criteria in support of Nouria Energy proposal at 786 U.S Rte 1 Bypass**

Proposed variance from **Section 10.515.13** of the City of Portsmouth Zoning Ordinance to allow a fence exceeding 6 feet in height (8' recently installed) to be located within the rear yard setback at 0.5' from the rear property line at its closest point where 20' is required for fences over 6' in height.

The following criteria are in accordance with **Section 10.233** of the City of Portsmouth Zoning Ordinance:

**10.233.21 The variance will not be contrary to the public interest because:** The site, which is a commercial gas station/convenience store & has operated as a similar use for many decades, is located within the General Residence A (GRA) Zoning District and is adjacent to residential properties along Stark & Dennett Streets. The subject fence is located long the southern (rear) property line which directly abuts the residential property located at 2 Stark Street (Lot 161-41) and was recently installed as a replacement to the existing 6' high stockade fence located in the same location along the rear property line and within the rear yard setback. The new 8' high fence was installed by Nouria Energy at the request of their residential abutters and matches the height of the recently approved and installed 8' high fence on the 2 Stark Street property which is adjacent to this site. The construction of this fence is in harmony with the residential abutter's new fence and was installed per their request by Nouria Energy in a good faith effort to be a good neighbor to the surrounding residential community. Being located in the rear of the property, the fence does not create any visual obstruction or hazards to motorists traveling along Rte 1 Bypass or entering/exiting the gas station site; therefore, there are no public safety concerns due to the fence exceeding a 6 foot high.

**10.233.22 The spirit of the ordinance is observed because:** The new 8' high fence was installed by Nouria Energy at the request of their residential abutters and matches the height of the recently approved and installed 8' high fence on the 2 Stark Street property. The construction of this fence is in harmony with the residential abutter's new fence and was installed per their request by Nouria Energy in a good faith effort to be a good neighbor to the surrounding residential community. Being located in the rear of the property, the fence does not create any visual obstruction or hazards to motorists traveling along Rte 1 Bypass or entering/exiting the gas station site. The location of the fence within the rear yard setback is consistent with the previous location of the 6' high fence that was replaced and is consistent with the location of fences commonly placed along property line boundaries. A 6 foot high fence in this same location would be allowed by right; however, it would not serve the spirit of the ordinance any greater than the 8' fence because it would not provide the same buffering between the commercial and residential uses. If the 8 foot high fence was located outside of the rear yard setback this would not serve the spirit of the ordinance because it would require modifications to the existing parking lot of the gas station development which would impact onsite circulation and operations of the facility which has been in existence in similar fashion for many decades.

**10.233.23 Substantial justice is done because:** The fence is already installed and was done so by Nouria Energy in a good faith effort to be a good neighbor to the surrounding residential community. The applicant meant no harm by installing the fence within the rear yard setback as they were not aware at that time that a fence replacement required variance relief for the 8 foot height. Approval of this newly installed 8 foot high fence would allow substantial justice because the fence was installed at the request of the residential abutter and is in harmony with the recently approved and installed fence located at 2 Stark Street. Denial of this request would diminish the buffer between the commercial & residential uses and would incur additional expenses on the applicant.

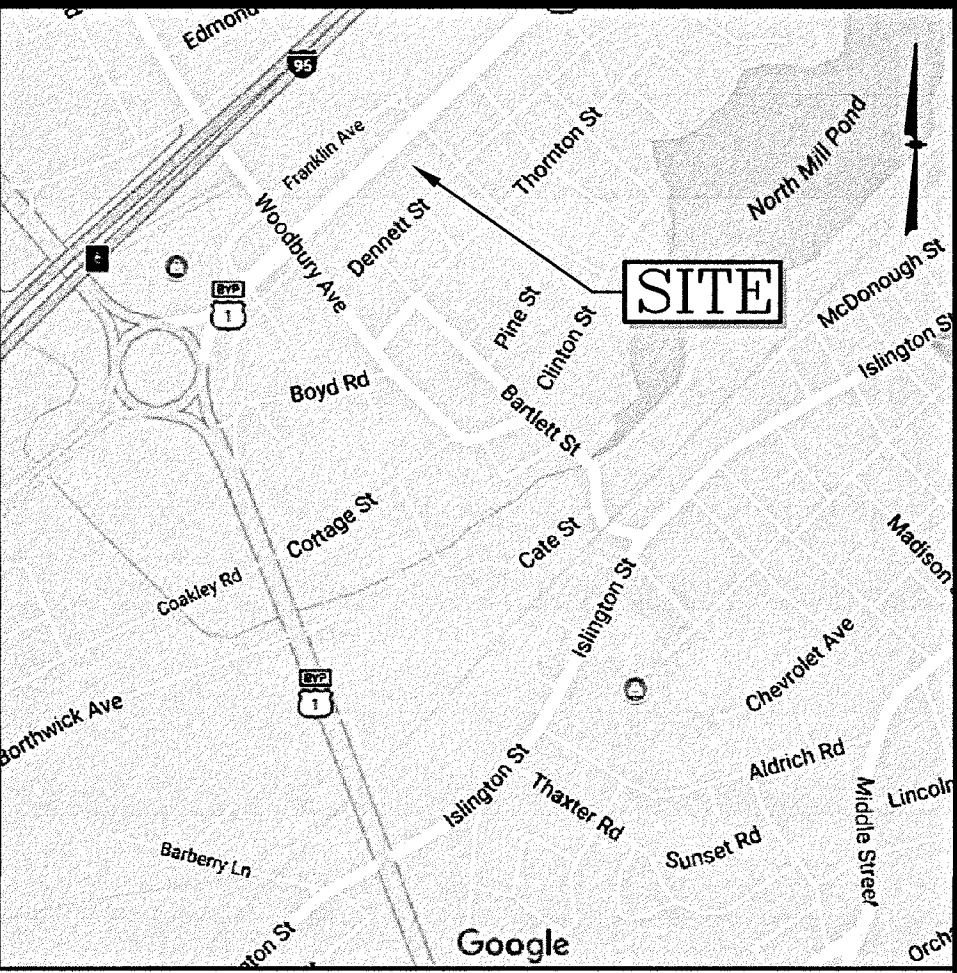
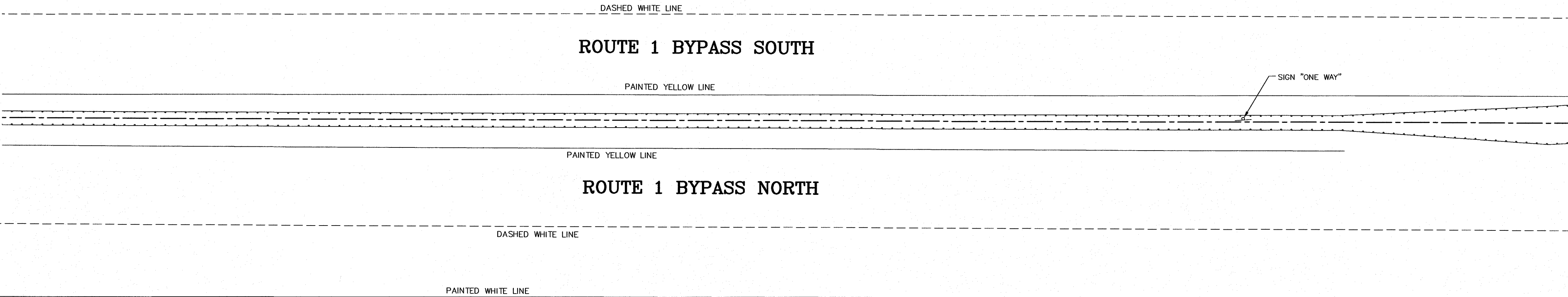
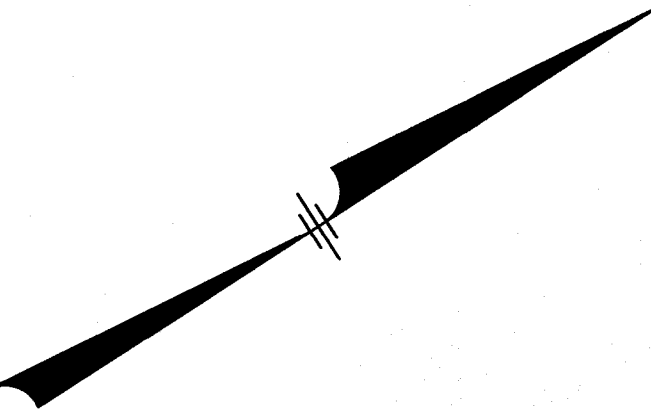
**10.233.24 The values of surrounding properties will not be diminished because:** The 8 foot high fence provides an improved buffer between the commercial & residential uses and is located in the same location as the existing 6 foot fence that was previously located along the rear property line.

**10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship because:**

**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 of the property because:** the subject property is located within the General Residence A (GRA) Zoning District and has operated as a commercial gas station/convenience store use for many decades. This is the only commercial use located in this section of the residential zone. Furthermore, the zone line changes to Business (B) just on the opposite side of Stark Street where there are similar, competitive uses in operation which have significantly more lot depth from front to back off Rte 1 Bypass. Literal enforcement of this provision would require the 8' tall fence to be located 20' from the rear lot line which would further limit the usable area for this lot which has a limited depth from the street to the rear property line. Being a commercial use located within A Residential Zone and directly adjacent to residential uses, the general public purposes of the provision are not applicable to this site since a taller fence would serve as a more substantial buffer between the uses, and moving the fence outside of the rear setback makes the property less usable to applicant.

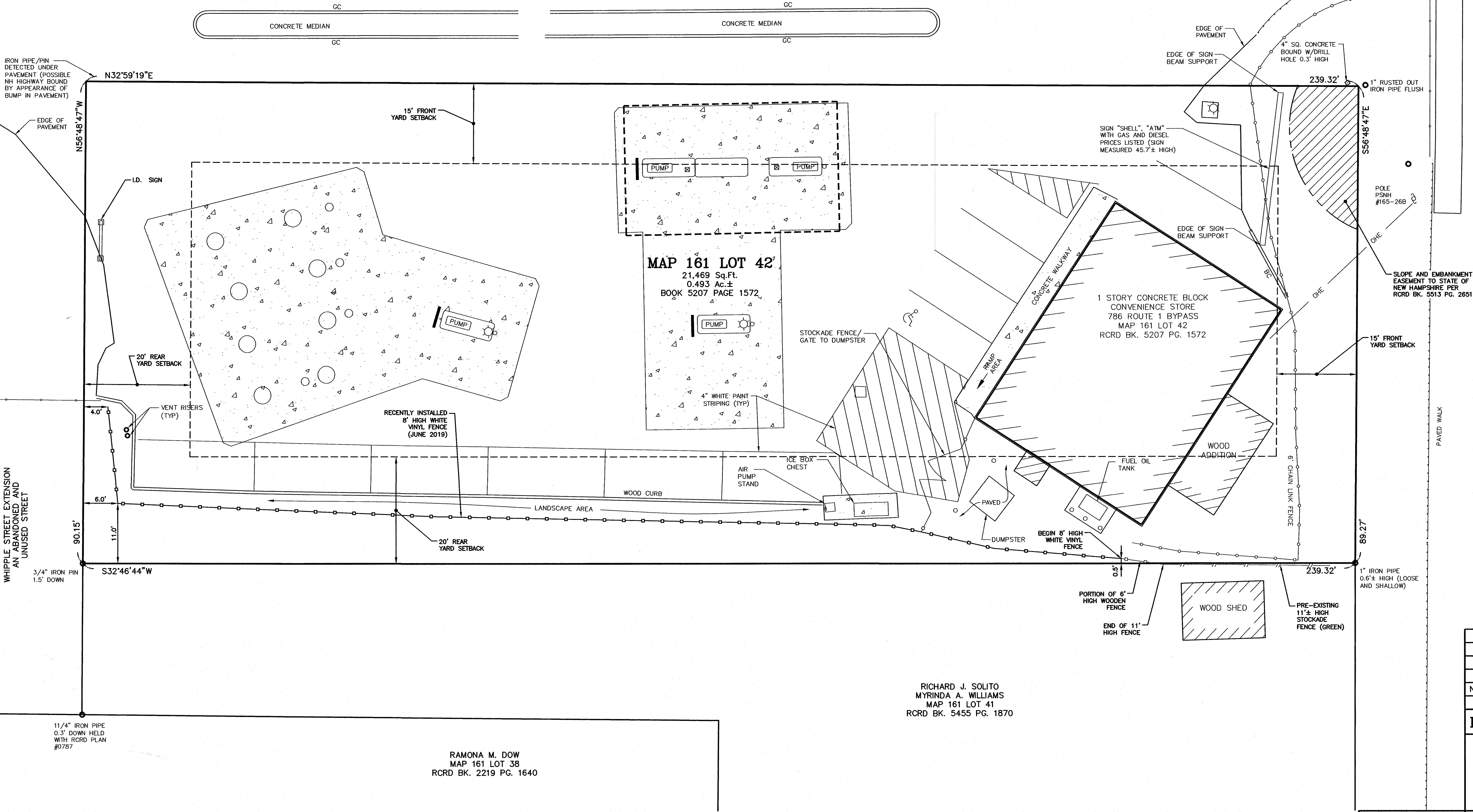
**and (b) the proposed use is a reasonable one because:** the 8' high fence is a more substantial buffer than a 6' high fence and the location within the rear setback is the same as the previous 6' high fence which was replaced. The fence was replaced at 8' high at the request of the abutter and the neighborly act of replacing the fence was reasonable; therefore, the use of the 8' fence at their request is also reasonable.





LOCATION MAP  
(NOT TO SCALE)

STARK STREET BRIDGE



NOTES:

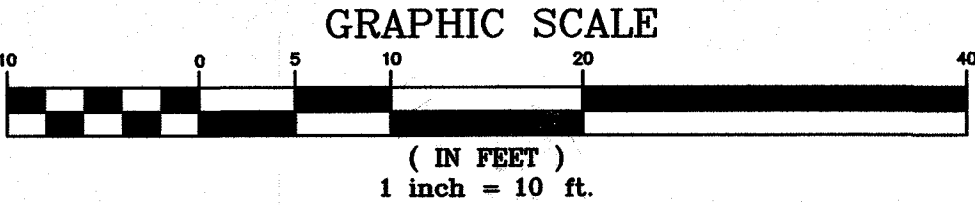
1. THE INTENT OF THIS PLAN IS TO SHOW PARTIAL EXISTING CONDITIONS FOR THE PURPOSE OF IDENTIFYING THE LOCATION OF AN EXISTING 8' TALL FENCE WHICH IS LOCATED WITHIN THE 20' REAR YARD SETBACK FOR LOT 161-42.
2. ZONING DISTRICT: GENERAL RESIDENCE A (GRA)
3. YARD SETBACKS: FRONT=15'  
SIDE=10'  
REAR=20'

PLAN REFERENCES:

- 1) PLAN OF HOUSE LOT, STARK ST., PORTSMOUTH, N.H., OWNED BY ARTIS F SCHURMAN, R.C.R.D. PLAN 0787.
- 2) PLAN OF PROPOSED LEGISLATIVE SPECIAL PROJECT LS 1816, P-1552.

RICHARD J. SOLITO  
MYRINDA A. WILLIAMS  
MAP 161 LOT 41  
RCRD BK. 5455 PG. 1870

RAMONA M. DOW  
MAP 161 LOT 38  
RCRD BK. 2219 PG. 1640



NO.	DESCRIPTION	BY	DATE

PLAN TO ACCOMPANY VARIANCE APPLICATION

ASSESSORS MAP 161 LOT 42  
ROUTE 1 BYPASS SOUTH  
PORTSMOUTH, NEW HAMPSHIRE  
PREPARED FOR:  
**NOURIA ENERGY CORPORATION**  
326 CLARK STREET  
WORCESTER, MA 01606

**GPI** Formerly MHP Design Consultants, Inc.  
603.893.0720 GPINET.COM  
Greenman-Pedersen, Inc.  
44 Stiles Road  
Suite One  
Salem, NH 03079

SCALE: 1"=10'	DATE: AUGUST 27, 2019	DRAWING NO. 38761WS.dwg
DRAWN BY: CCC	CHECKED BY: DRJ/JAC	PROJECT NO. 387615
		SHEET NO. 1 OF 1



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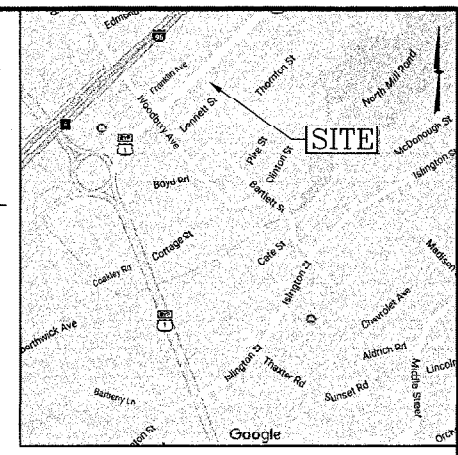
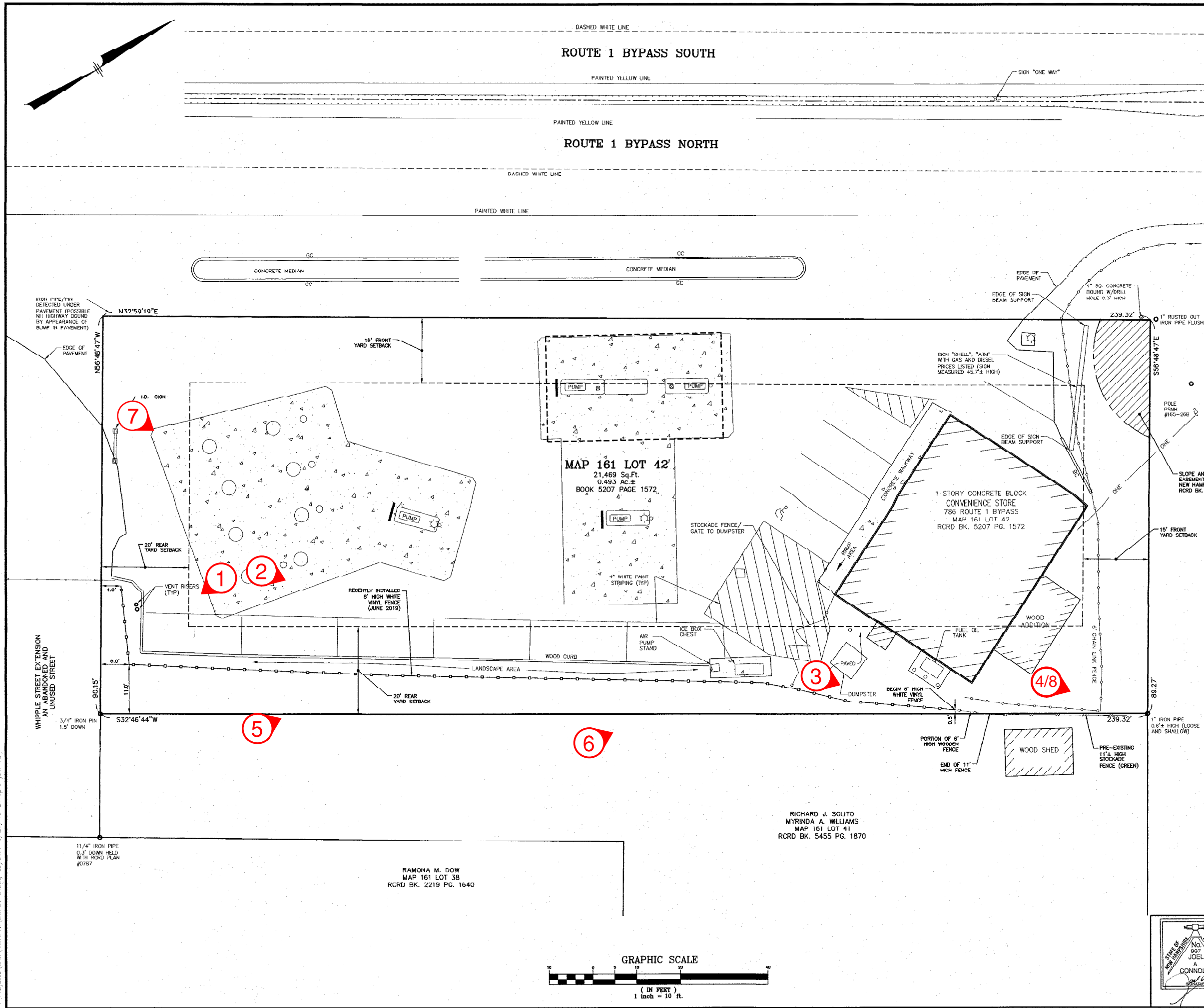
"Old" 6' high wooden stockade fence (circa 2016)



7 Pre-existing 11' high fence (circa 2016)







STARK STREET BRIDGE

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PHOTO LOCATION KEY

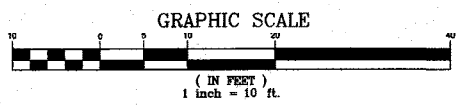
NO.	DESCRIPTION	BY	DATE
REVISIONS			

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PORTSMOUTH, NEW HAMPSHIRE  
PREPARED FOR:  
**NOURIA ENERGY CORPORATION**  
326 CLARK STREET  
WORCESTER, MA 01606

**GPI** Greenman-Pedersen, Inc.  
44 Stiles Road  
Suite One  
Salem, NH 03079  
603.893.0720 GPINET.COM

SCALE: 1"=10'	DATE: AUGUST 27, 2019	DRAWING NO. 387615
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