

LAW OFFICES OF
FLYNN & MCGEE, P.A.
5 GREENLEAF WOODS, #102, PORTSMOUTH, N.H. 03801
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MAILING ADDRESS:
P.O. BOX 507, PORTSMOUTH, NH 03802-0507

JOHN P. MCGEE, JR.

THOMAS E. FLYNN
(1922-1989)

February 27, 2019

HAND-DELIVERED
Portsmouth Board of Adjustment
c/o Planning Department
Portsmouth City Hall
1 Junkins Avenue
Portsmouth NH 03801

re: Application of Phillip J. Stiles, Owner and
John P. McGee, Jr., Application for Variance – 36 Ruby Road

Ladies and Gentlemen:

We have completed the application process for a variance “on line.” The number attached to our application is LU-19-35.

In connection with our application, please find enclosed the following:

1. Check of Attorney Phillip J. Stiles to the City of Portsmouth for \$150.00 for the application fee.
2. An original and 11 copies of the Application itself.
3. An original and 15 copies of Written Statement in Support of Variance Request.
4. Twelve (12) copies of schematic scaled drawing of 36 Ruby Road.
5. Twelve (12) copies of recorded survey plan for Woodbury Heights record as #03098 in the Rockingham County Registry of Deeds.
6. Twelve (12) sets of colored photographs showing the lot from different directions as indicated on the photographs. Each set has four (4) photographs.
7. An original and thirteen (13) copies of Authorization of Phillip J. Stiles, Trustee of the Thirty-Six Ruby Road Trust to John P. McGee, Jr., authorizing him as his attorney to sign any and all documents/form relating to this matter.

Very truly yours,

John P. McGee, Jr., Esquire

JPM/lh
enc.

cc: Phillip J. Stiles, Esquire

CITY OF PORTSMOUTH

Zoning Board of Adjustment Application

Department Use Only		Date	_____
Assessor Plan # _____	Lot # _____	Fee	_____
Zone _____	Lot area _____	By	_____

Fill in below by printing in ink or typing / Complete all Blanks or indicate "N/A" if not applicable

Applicant John P. McGee, Jr. Owner of Record Phillip J. Stiles, Tee
Thirty-Six Ruby Road Trust

Applicant Street Address 5 Greenleaf Woods #102, Ports., NH 03801 Owner Street Address 16 Sampson Rd, Rochester NH 03867

Applicant City / State / Zip _____ Owner City / State / Zip _____

Applicant phone (603) 436-5360 Owner phone (603) 948-1116

Applicant e-mail office@flynnandmcgee.com

Location (street address) of proposed work: 36 Ruby Road

Existing use: vacant lot with foundation to be removed SRB

Undersigned hereby requests:

- | | Article and Section |
|---|---------------------|
| <input type="checkbox"/> Appeal from an Administrative Decision
See Article 2, Section 10.234.30 | |
| <input type="checkbox"/> Special Exception
See Article 2, Section 10.232.20 | |
| <input checked="" type="checkbox"/> Variance
See Article 2, Section 10.233.20 | Section 10.311 |
| | Section 10.521 |
| <input type="checkbox"/> Other _____
See Article 2, Section 10.233.20 | |

To permit the following:

Create residential buildable lot with 11,844 sq.ft. where 15,000 sq. ft. is required for both lot size and per dwelling

The undersigned alleges that the required conditions exist for granting of this request according to the terms of the Zoning Ordinance as demonstrated in the attached submittals.

Only complete applications will be accepted by the deadline date. A complete application shall consist of: a completely filled out application with original signatures, the application fee, and 12 packets of required plans and any supporting documents or photos. Incomplete applications will not be accepted. Applications received after the deadline will be scheduled for the following month. The owner or his/her representative is required to attend the Public Hearing for the above appeal.

Signature of Owner  Date 2/27/19

Please PRINT name here Phillip J. Stiles, Tee Thirty-Six Ruby Road Trust

WRITTEN STATEMENT IN SUPPORT OF

VARIANCE REQUEST

Property for which variance sought: 36 Ruby Road, Portsmouth, New Hampshire
Owner: Phillip J. Stiles, Trustee of the Thirty-Six Ruby Road Trust

Phillip J. Stiles, Trustee of the Thirty-Six Ruby Road Trust, acquired the premises at 36 Ruby Road by Quitclaim Deed of Claire Mangos dated January 18, 2018, recorded in the Rockingham County Registry of Deeds at Book 5887, Page 1535.

The premises were part of an older subdivision known as "Woodbury Heights" which was developed in 1960 by E. A. Ricci. A copy of Plan A of Woodbury Heights recorded in the Rockingham County Registry of Deeds as Plan 03098 is attached.

Current zoning requirements provide a minimum of 15,000 square feet per lot, as well as per dwelling in the SRB District of which 36 Ruby Road is a part. As can be seen from the 1960 Ricci Plan, the lots in this residential subdivision are almost uniformly under the 15,000 square foot current requirements. The square footage of 36 Ruby Road is given as 11,844 square feet.

At the time Mr. Stiles acquired the premises in early 2018, the residential building on it was a "derelict." In fact, by letter dated October 4, 2016, Portsmouth Zoning Officer wrote a letter to the owners, which included the following language:

"The Property has become a source of municipal concern. It is so dilapidated, and unsightly and potentially hazardous in terms of fire risk, the last of structural soundness and being an unattractive nuisance, that the City is compelled to take action. I have personally viewed the property today and have formed the opinion that public interest and safety requires that some action be taken."

Shortly after acquiring title to the premises, Mr. Stiles caused the residential building to be demolished. At the present time, only a foundation remains.

It is the intent of Mr. Stiles to have the old foundation removed and then to market the lot with a view towards having a new home constructed. It should be noted that the currently existing foundation, which will be removed, does not meet current frontage setbacks, and in fact, the lot itself is undersized since current standards are 15,000 square feet for both the lot and per dwelling unit.

That the Table incorporated as Section 10.521 of the current zoning ordinance requires that any lot within the SRB District contain 15,000 square feet and that there be a lot area of the same amount per dwelling unit. Section 10.311 of the current ordinance provides that no structure can be built on a lot which is not conforming to the current zoning ordinance.

Given this, Mr. Stiles must have a variance for the City to recognize under the Zoning Ordinance that 36 Ruby Road is being an acceptable building lot through variance.

While the lot constituting 36 Ruby Road is presently undersized, it does have a building envelope of approximately 2000 square feet, even with current setbacks and allowing for an existing easement. A schematic plan taken from tax map 220 and scaled by Mr. Stiles shows the building envelope with current setbacks. As noted above, it is interesting that the foundation shows a front setback encroachment under the current zoning ordinance.

If any situation "screams" variance, this is such a situation. Without a variance, the owner will have nothing more than a well-tended lawn where the grass would soon grow unruly, making the property an eyesore and an unattractive nuisance.

That Mr. Stiles has made inquiry of Portsmouth City officials and has been advised that a building permit would not be considered and it would be automatically rejected as the lot at 36 Ruby Road is less than 15,000 sq. ft., and therefore, nonconforming. Given this, Mr. Stiles contends that he is entitled to a variance and he presents the following arguments pursuant to Section 10.233.20 et seq. of the Ordinance.

PUBLIC INTEREST (10.233.21):

Allowing an owner to make reasonable use of his land is always in the public interest. Here, the only way to allow the owner to make any use of this land is to grant a variance so that this lot is not nonconforming. Further, with the construction of a residential building, it will help contribute towards Portsmouth's tax base and further add to the housing "stock" which will be a small part in helping to eliminate the sparsity of available home residences.

SPIRIT OF THE ORDINANCE (10.233.22):

The ordinance certainly contemplates allowing owners to make use of their property in a manner which is consistent with the overall application of the ordinance. Here, the variance would allow the construction of a new home on an old undersized lot, which has been used as a residence for over 40 years. The new use will be consistent with the surrounding properties and the lot size will be consistent with surrounding properties as well, most of which do not conform **with the new standard of 15,000 square feet.**

SUBSTANTIAL JUSTICE (10.233.23):

There can be no justice in denying anyone the use of their property, even in a reasonable manner. Mr. Stiles has a right to have a buildable house lot and to deny him that right would be unjust in the extreme, as there are no other reasonable uses.

DIMUNITION OF THE VALUE OF SURROUNDING PROPERTIES (10.233.24):

The surrounding properties will certainly not be affected since their lots are comparable in size to 36 Ruby Road and a new home will simply replace a home which existed for over 40 years in relation to the surrounding properties.

UNNECESSARY HARDSHIP (10.233.25)

Hardship in this situation exists in that without the variance the owner has no buildable lot and the property can be used for virtually nothing. The lot in question is certainly different from the other lots in that they are all currently being used for residential purposes on substandard lots and here, the owner has a substandard lot which, since a building has been demolished, doesn't meet current the current zoning ordinance thereby creating a unique and unreasonable situation for the owner.

Phillip J. Stiles, Trustee of the Thirty-Six Ruby Road Trust,
Owner

by: John P. McGee, Jr., Esquire his Attorney and
Applicant

AUTHORIZATION

I, Phillip J. Stiles, Trustee of the Thirty-Six Ruby Road Trust, hereby authorize John P. McGee, Jr., as my attorney and agent to take any action necessary in applying for a variance so that the lot addressed at 36 Ruby Road, which is presently nonconforming with only 11,844 sq. ft., to become a buildable lot through variance, the current ordinance requiring a minimum of 15,000 sq. ft. per lot and per dwelling. Such authorization shall include the right to sign my name as owner to any form or document required by the Portsmouth Board of Adjustment, as well as to sign any form or document which may be required for an applicant. He shall further be authorized on my behalf to submit any item required in pursuit of the variance.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of February, 2019.



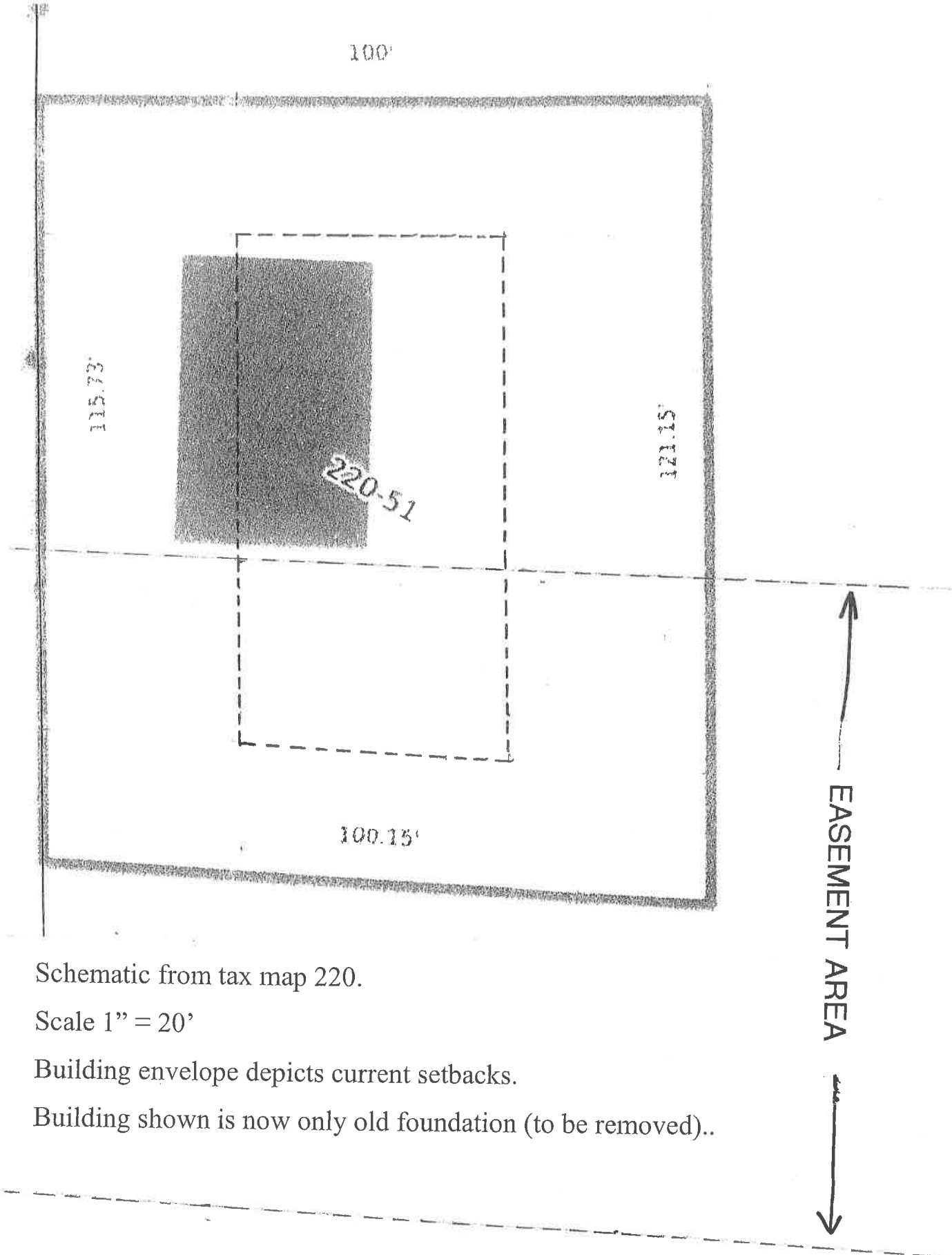
Witness



Phillip J. Stiles, Trustee of the Thirty-Six Ruby Road Trust

2/27/19

RUBY ROAD



Schematic from tax map 220.

Scale 1" = 20'

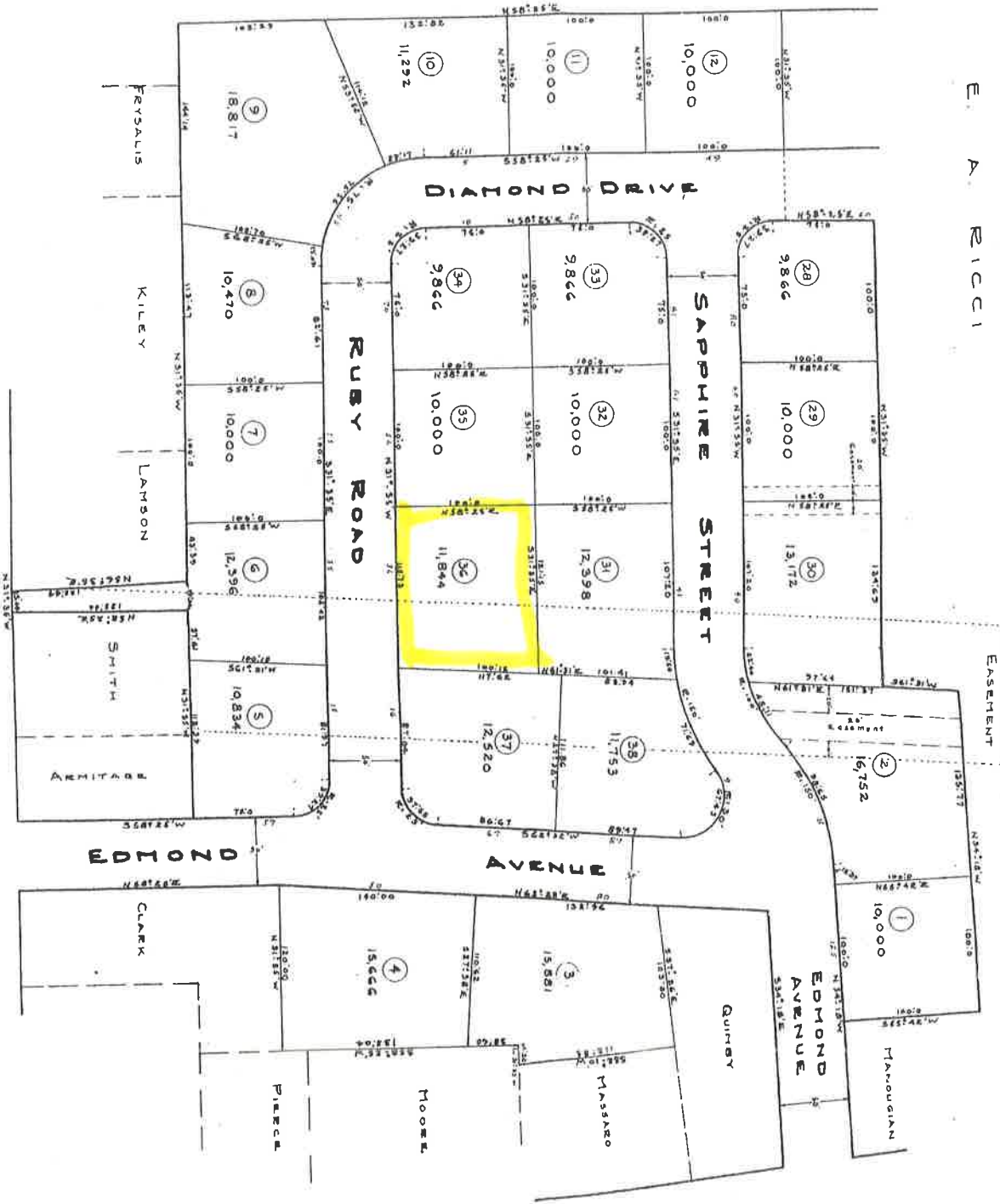
Building envelope depicts current setbacks.

Building shown is now only old foundation (to be removed)..

PLAN "B"

NH ELECTRIC CO. EASEMENT

03098



RCRD PLAN 03098

OWNER: E. A. Ricci, Portsmouth, N.H.
 ZONE: General Residence
 ENGINEERS: John W. Durgin

WOODBURY

AVENUE

DATE: July 7, 1964

APPROVED: *[Signature]*
 JOHN W. DURGIN
 PORTSMOUTH PLANNING BOARD



SCALE IN FEET
 PLAN OF LOTS
 PLAN "A"

WOODBURY HEIGHTS
 PORTSMOUTH, N.H.

FOR E. A. RICCI
 SCALE: 1" = 40 FT. NOV 1960
 JOHN W. DURGIN
 CIVIL ENGINEERS



LOOKING EAST



LOOKING NORTH



LOOKING WEST TOWARDS
STREET



LOOKING NORTHWEST