

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
DATE: October 30, 2019
Re: Stanley E. & Michelle Brandon, Applicants
492 Union Street
Tax Map 133/Lot 43
Zoning District General Residence A (“GRA”)

Dear Chairman Rheame and Zoning Board Members:

On behalf of the Applicants, Stanley & Michelle Brandon (“Brandon”), we are pleased to submit this memorandum and attached exhibits in support of Zoning Relief to allow construction of a nonconforming detached garage to the property at 492 Union Street, to be considered by the ZBA at its November 19, 2019 meeting.

I. EXHIBITS

- A. Photographs
 - Satellite view
 - Front view
 - Shed #1
 - Shed #2
- B. Variance Plan Set – issued by MSC/TF Moran
 - Existing Conditions Plan
 - Proposed Conditions Plan
- C. Map Geo Overview.
- D. Tax Map 133.

II. PROPERTY/PROJECT

Brandon is the new owner of this 5,966-s.f. lot upon which exist a single-family residence, and two nonconforming sheds: 74-s.f. plastic shed and deteriorating 54-s.f. shed wooden shed (“the Property”). (**Exhibit A**). The house has a small basement, but no access to it from the outside. Brandon intends to remove both sheds (128-s.f.) and add a 24ft. by 24ft. (576-s.f.) garage at the rear of the property and extend the existing driveway to connect to the garage. (**Exhibit B**). The placement of the garage will be less nonconforming than the existing sheds.

The surrounding area is entirely residential. As the Tax Map and Map Geo view demonstrate, there appear to be numerous homes in the area which do not meet front, rear and/or side setbacks and/or have accessory buildings that do not meet rear or side setbacks. (**Exhibit C & D**). The proposed project will improve the aesthetics of the Property and provide additional

parking. Brandon's proposal is reasonable, with the existing home retaining a density consistent with other properties in the surrounding area.

III. RELIEF REQUIRED

<u>Variance Section</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
<u>PZO §10.520 Building Coverage</u>	25%	16.3%	26.0%
<u>PZO§10.520, Table PZO§10.521¹</u>			
Left-side setback	10'	0.1' (shed #1) 3.4' (shed#2)	4.0' garage
Rear setback	20'	6.4' (shed #2)	7.0' garage

IV. VARIANCE REQUIREMENTS

- 1. The variances will not be contrary to the public interest.**
- 2. The spirit of the ordinance is observed.**

The first step in the ZBA's analysis is to determine whether granting the variances are not contrary to the public interest and are consistent with the spirit and intent of the ordinance, considered together pursuant to Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102 (2007) and its progeny. Upon examination, it must be determined whether granting the variances "would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives." Id. "Mere conflict with the zoning ordinance is not enough." Id.

Portsmouth Zoning Ordinance ("PZO") Section 10.121 identifies the general purposes and intent of the ordinance "to promote the health, safety and general welfare of Portsmouth...in accordance with the...Master Plan" This is accomplished by regulating:

- The use of land, buildings and structures for business, industrial, residential and other purposes – The intended use of the property is and will remain residential. The requested relief will satisfy the need additional storage and enclosed parking.
- The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The lot is comparable in size to others in the area and the intensity of use will not change. While building coverage is just over

¹ See also PZO§10.573 An accessory building or structure more than 10 feet in height or more than 100 square feet in area shall be set back from any lot line at least the height of the building or the applicable yard requirement, whichever is less.

- 25%, open space remains generous at 41.2% where a minimum of 30% is required.
3. The design of facilities for vehicular access, circulation, parking and loading – The garage addition and driveway expansion will be code compliant and affords additional off-street parking.
 4. The impact on properties on of outdoor lighting, noise, vibration, stormwater runoff and flooding – The proposal sites the garage at the back of the lot away from houses next to and behind the property. Open space remains well above the minimum required 30%. Accordingly, granting the variances for an accessory building will not impact surrounding properties.
 5. The preservation and enhancement of the visual environment – Replacing two sheds with a new code compliant garage further from the side lot line will enhance the visual environment.
 6. The preservation of historic districts and building and structures of historic architectural interest – The Property is not in the Historic Overlay District.
 7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – Open space remains compliant, accordingly granting the variances will not negatively affect natural resources.

The intent of the GRA Zone is to “provide areas for single-family, two family and multifamily dwellings, with appropriate accessory uses, at moderate to high densities (ranging from approximately 5 to 12 dwelling units per acre), together with appropriate accessory uses and limited services.” PZO §10.410 (emphasis added). The proposal meets the intent of the GRA Zone. It permits the improvement of an existing single-family residence with a density consistent with that of the surrounding area. The Property, like many in the neighborhood, contains a home and accessory buildings which do not comply with respect to the front, rear, and side setbacks. Proposed is replacement of two offending sheds with a garage that is further from the left-side and rear lot lines than both existing sheds and as far from abutting homes as possible. Given these factors, granting the requested variances will not conflict with the basic zoning objectives of the PZO.

In considering whether variances “in a marked degree conflict with the ordinance such that they violate the ordinance’s basic zoning objectives,” Malachy Glen, supra, also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to determine whether it would alter the essential character of the locality... . Another approach to [determine] whether granting the variance violates basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare. (emphasis added)

Notably, there are many other properties in the immediate area that are similarly sized and include an accessory structure encroaching on side or rear setbacks. Reviewing just the 55 yellow parcels on Tax Map 133, approximately 21 (38%) have accessory buildings appearing to encroach on side or rear setbacks. **(Exhibit D)**. A broader view of the surrounding area demonstrates that of 135 properties, approximately 46 (34%) contain accessory structures appearing to violate side or rear setbacks. **(Exhibit C)**. Accordingly, this proposal, which improves existing setbacks through removal of two encroaching sheds, is in keeping with the surrounding area. There will also be no threat to the public health, safety or welfare by granting the requested variances, which will merely permit a detached accessory structure in a location similar to many other accessory buildings in the neighborhood. This allows Brandon, who has no exterior access to the basement of the existing home, to gain additional storage and parking with a new code compliant garage while improving the appearance of the property through removal of the offending sheds. The requested dimensional relief is limited. The result is an improved building with density and setbacks consistent with the surrounding area. Clearly, the requested variances neither alter the essential character of the locality nor threaten the public health safety or welfare. Accordingly, the variances are not contrary to the public interest and observe the spirit of the ordinance.

3. Granting the variances will not diminish surrounding property values.

The proposal will remove two nonconforming sheds and replace them with a single garage in a more compliant location, while maintaining consistency with the surrounding area. Given the limited scope of the requests, the variances will not diminish surrounding property values.

4. Denial of the variances results in an unnecessary hardship.

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

The Property, at 5,966 +/- s.f. is small, narrow shaped, and located in a densely developed area. The two existing sheds are nonconforming with respect to the left-side and rear setbacks, while the home itself does not comply with the front and right-side setbacks. The lot shape, and location of the current driveway limit the garage location, while the size of the lot makes it difficult to add a 2-car garage remain compliant with the 25% building coverage. These circumstances combine to create special conditions.

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

The purpose of setbacks and building coverage requirements is to prevent overcrowding and overburdening of land, improve sightlines for pedestrians and motorists, ensure adequate light and air circulation, and provide sufficient area for stormwater treatment. None of these purposes are impaired by granting the requested variances. The proposed garage is a single story located at the rear of the property. Building coverage increases to just 1% over the permitted 25%, and open space is well over the minimum 30%. Moreover, the neighborhood overall is similarly densely developed with multiple nearby parcels non-conforming for setbacks. See Walker v. City of Manchester, 107 N.H. 382, 386 (1966) (Hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use will have no adverse effect on the neighborhood). See also Belanger v. City of Nashua, 121 N.H. 389 (1981) (Variance proper where ordinance no longer reflects the current character of neighborhood). Accordingly, there is no fair and substantial relationship between the purposes of the ordinance and its application in this instance.

- c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Residential use is permitted in the GRA Zone and includes accessory buildings incidental to the permitted use. The proposed accessory building complements the existing residence and affords additional storage and parking. Given the New England winters and lack of access to the existing basement, it is reasonable seek accessible storage and interior parking.

5. Substantial justice will be done by granting the variances.

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, supra at 109. The requested variances allow for a more functional home. Thus, Brandon will be greatly harmed by denial of any of the variances while there will be no gain to the general public by denial. Without question, substantial justice will be done by granting the variances while a substantial injustice will be done by denying it.

VI. CONCLUSION

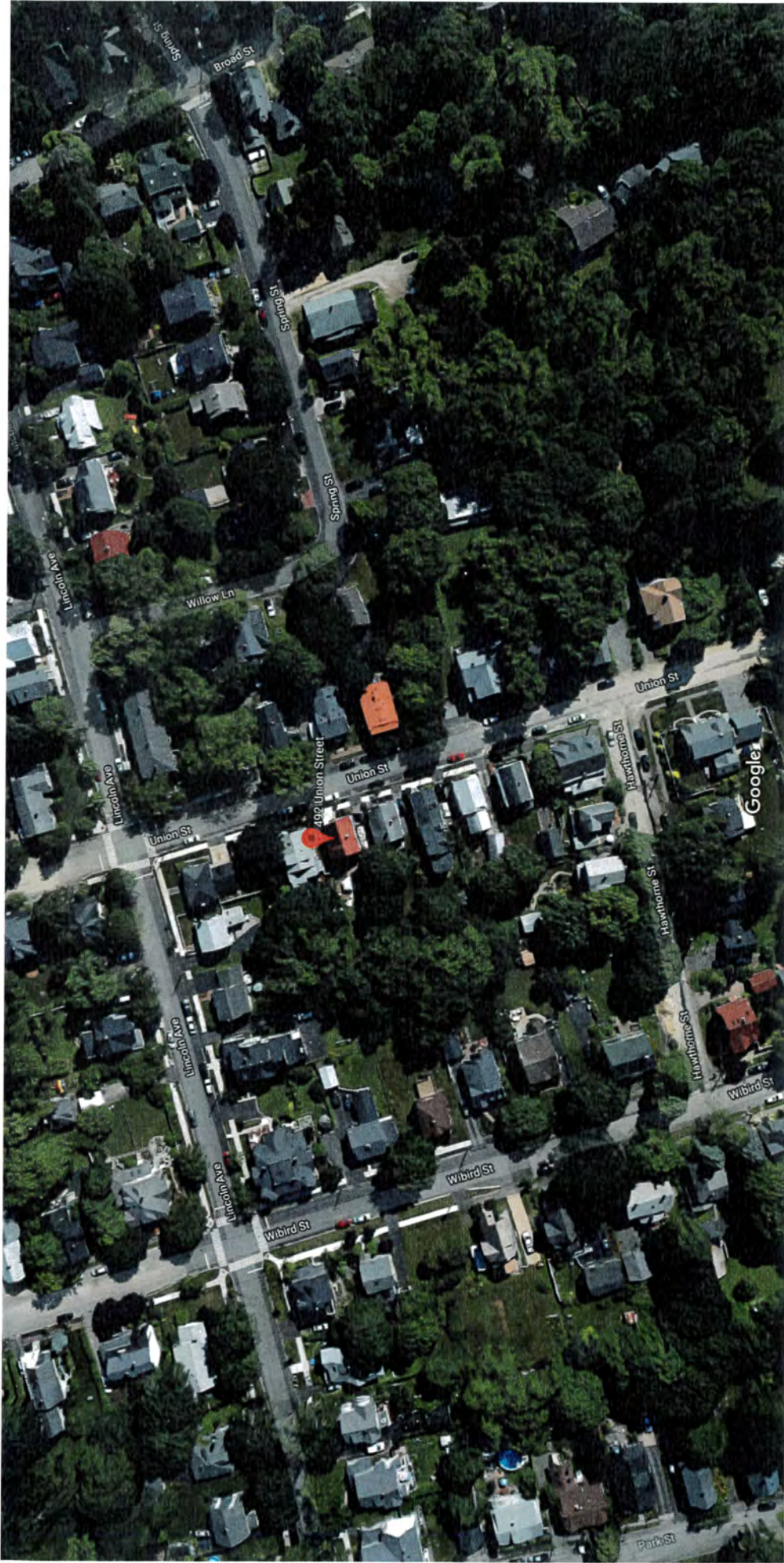
For all of the reasons stated, Brandon respectfully requests that the Portsmouth Zoning Board of Adjustment grant the requested variances.

Respectfully submitted,

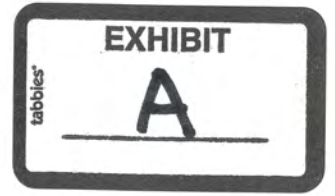
Stanley E. & Michelle Brandon



By: R. Timothy Phoenix
Monica F. Kieser
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(603) 436-0666

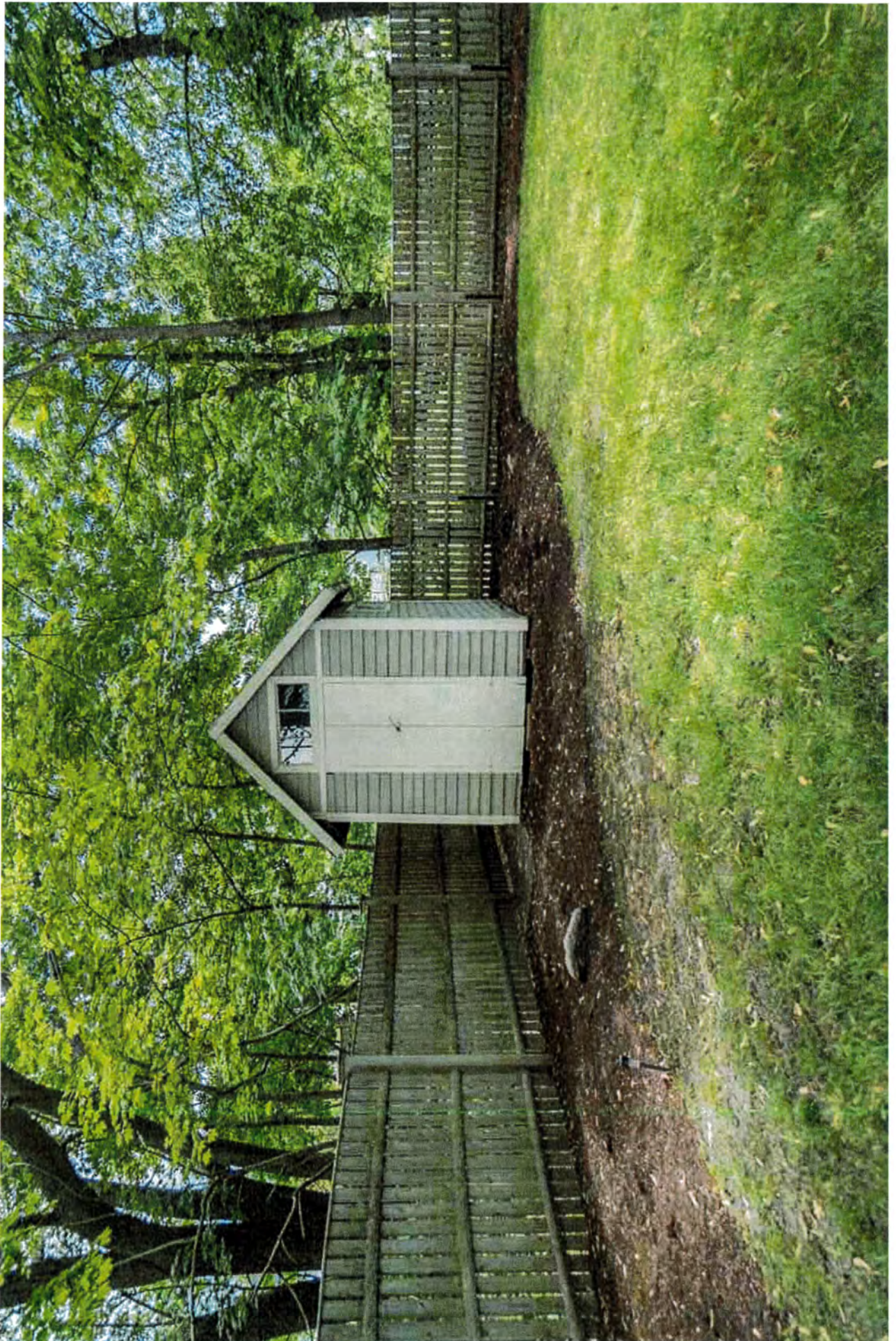


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GENERAL INFORMATION

OWNER/APPLICANT

STANLEY E. & MICHELLE BRANDON
492 UNION STREET
PORTSMOUTH, NH 03801
(603) 953-4158

RESOURCE LIST

PLANNING DEPARTMENT
JULIET WALKER, PLANNING DIRECTOR
1 JUNKINS AVENUE, 3RD FLOOR
PORTSMOUTH, NH 03801
(603) 610-7296

ATTORNEY

TIMOTHY PHOENIX
HOEFLE, PHOENIX, GORMLEY & ROBERTS P.A.
127 PARROTT AVENUE
PORTSMOUTH, NH 03801
(704) 436-0666

SITE IMPROVEMENT PLANS

VARIANCE PLAN SET

STANLEY E. & MICHELLE BRANDON

**492 UNION STREET
PORTSMOUTH, NH**

OCTOBER 29, 2019

INDEX OF SHEETS

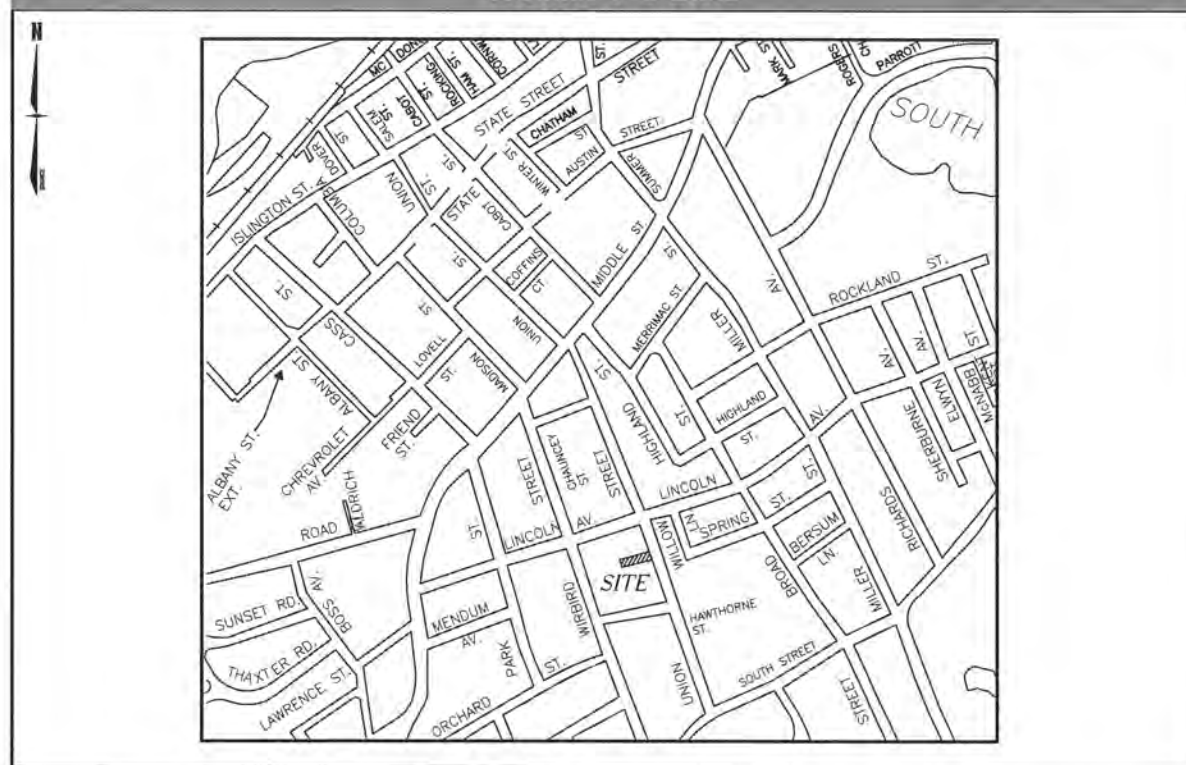
SHEET	SHEET TITLE
S-0	COVER SHEET
S-1	EXISTING CONDITIONS
S-2	PROPOSED CONDITIONS



PERMITS / APPROVALS

	NUMBER	APPROVED	EXPIRES
BOARD OF ADJUSTMENTS	PENDING		

VICINITY PLAN



Civil Engineers
Structural Engineers
Traffic Engineers
Land Surveyors
Landscape Architects
Scientists

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Fax (603) 431-0910
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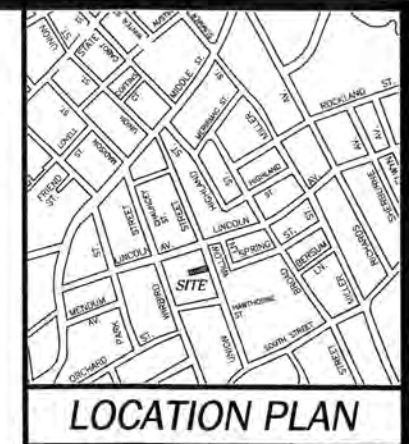
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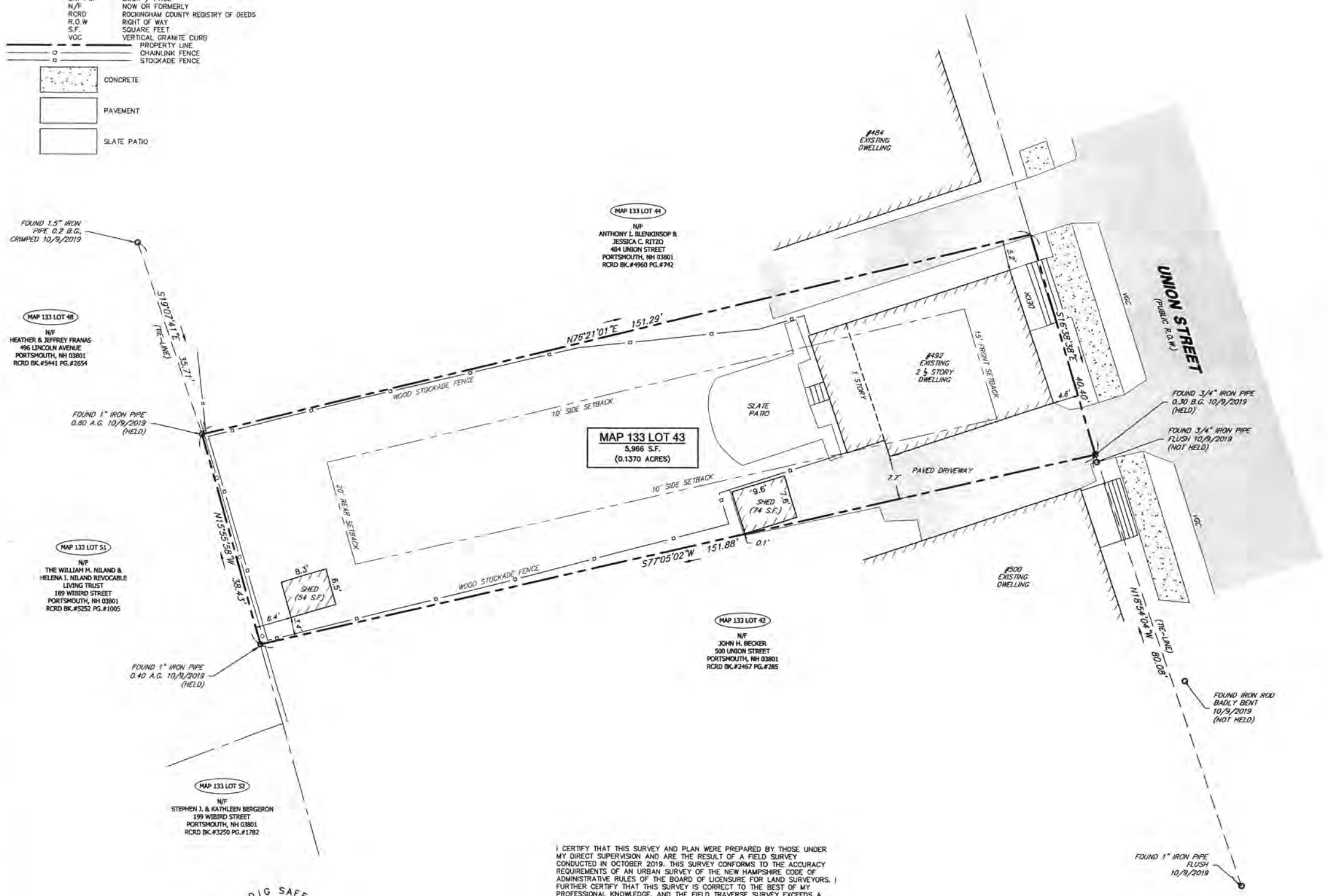
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		CK	BMK	CADFILE		



LOCATION PLAN

LEGEND:

MAP 13 LOT 68	ASSESSORS MAP AND LOT NUMBER
A.G.	ABOVE GRADE
B.G.	BELOW GRADE
BK. PG.	BOOK / PAGE
N/F	NOW OR FORMERLY
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
R.O.W.	RIGHT OF WAY
S.F.	SQUARE FEET
VOC	VERTICAL GRANITE CURB
---	PROPERTY LINE
---	CHAINLINK FENCE
---	STOCKADE FENCE
[Pattern]	CONCRETE
[Pattern]	PAVEMENT
[Pattern]	SLATE PATIO



NOTES:

- THE PARCEL IS LOCATED IN THE GENERAL RESIDENCE A (GRA) ZONING DISTRICT.
- THE PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 133 AS LOT 43.
- THE PARCEL IS LOCATED IN ZONE X AS SHOWN ON NATIONAL FLOOD INSURANCE PROGRAM (NFIP), FLOOD INSURANCE RATE MAP (FIRM) ROCKINGHAM COUNTY, NEW HAMPSHIRE, PANEL 259 OF 681, MAP NUMBER 3301500259E, WITH AN EFFECTIVE DATE OF MAY 17, 2005.
- DIMENSIONAL STANDARDS:**

	GRA REQUIRED:	EXISTING:
MINIMUM LOT DIMENSIONS:	7,500 S.F.	5,966 S.F.
LOT AREA:	7,500 S.F.	5,966 S.F.
CONTINUOUS STREET FRONTAGE:	100'	40.40'
DEPTH:	70'	151.55'
MINIMUM YARD DIMENSIONS:		
FRONT:	15'	4.6'
SIDE:	10'	5.2'
REAR:	20'	108.3'
ACCESSORY BUILDINGS SIDE/REAR:	5'	0.1'/6.4'
MAXIMUM STRUCTURE DIMENSIONS:		
STRUCTURE HEIGHT SLOPED/FLAT:	35'/30'	
BUILDING COVERAGE:	25%	16.4%
MINIMUM OPEN SPACE:	30%	67.8%
- PER THE CITY OF PORTSMOUTH ZONING ORDINANCE SECTION 10.521.
*SEE SECTION 10.573.10
- OWNER OF RECORD:
MAP 133 LOT 43:
STANLEY E. & MICHELLE BRANDON
492 UNION STREET
PORTSMOUTH, NH 03801
RCRD BK.#6042 PG.#1715
- PARCEL AREA:
MAP 133 LOT 43:
5,966 S.F.
(0.1370 ACRES)
- THE INTENT OF THIS PLAN IS TO SHOW THE LOCATION OF BOUNDARIES IN ACCORDANCE WITH THE CURRENT LEGAL DESCRIPTIONS. IT IS NOT AN ATTEMPT TO DEFINE THE EXTENT OF OWNERSHIP OR DEFINE THE LIMITS OF TITLE.
- THE PURPOSE OF THIS PLAN IS TO SHOW THE BOUNDARY LINES, CURRENT SITE CONDITIONS AND PROPOSED IMPROVEMENTS OF MAP 133 LOT 43.
- FIELD SURVEY COMPLETED BY TODD C. EMERSON IN OCTOBER, 2019 USING A TOPCON DS103 AND A TOPCON FC-5000 DATA COLLECTOR.
- HORIZONTAL DATUM IS NAD83 (2011) PER STATIC GPS OBSERVATIONS.
- EASEMENTS, RIGHTS, AND RESTRICTIONS SHOWN OR IDENTIFIED ARE THOSE WHICH WERE FOUND DURING RESEARCH PERFORMED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS. OTHER RIGHTS, EASEMENTS, OR RESTRICTIONS MAY EXIST WHICH A TITLE EXAMINATION OF SUBJECT PARCEL(S) WOULD DETERMINE.
- THE LOCATION OF ANY UNDERGROUND UTILITY INFORMATION SHOWN ON THIS PLAN IS APPROXIMATE. TFMORAN, INC. MAKES NO CLAIM TO THE ACCURACY OR COMPLETENESS OF UNDERGROUND UTILITIES SHOWN. PRIOR TO ANY EXCAVATION ON SITE THE CONTRACTOR SHALL CONTACT DIG SAFE.

PLAN REFERENCES:

- "PLAN OF LOTS OF LAND ON WIBIRD STREET BELONGING TO JOHN F. SHILLABER", RCRD PLAN# 00276.
- "CONDOMINIUM SITE PLAN FOR THE H. DONALD JR. & MARIE C. KENNEDY CONDOMINIUM PORTSMOUTH, N.H." PREPARED BY DAVID W. SIDMORE, DATED APRIL 1987. RCRD PLAN# D-17285.

TAX MAP 133 LOT 43
EXISTING CONDITIONS PLAN
BRANDON RESIDENCE
492 UNION STREET
PORTSMOUTH, NEW HAMPSHIRE
COUNTY OF ROCKINGHAM
 OWNED BY
STANLEY E. & MICHELLE BRANDON

SCALE: 1" = 10' (22x34)
1" = 20' (11x17)

OCTOBER 29, 2019

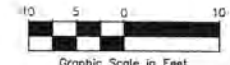
I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY THOSE UNDER MY DIRECT SUPERVISION AND ARE THE RESULT OF A FIELD SURVEY CONDUCTED IN OCTOBER 2019. THIS SURVEY CONFORMS TO THE ACCURACY REQUIREMENTS OF AN URBAN SURVEY OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS. I FURTHER CERTIFY THAT THIS SURVEY IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, AND THE FIELD TRAVERSE SURVEY EXCEEDS A PRECISION OF 1:15,000.



LICENSED LAND SURVEYOR
DATE 10-29-19



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REV.	DATE	DESCRIPTION	DR	CK

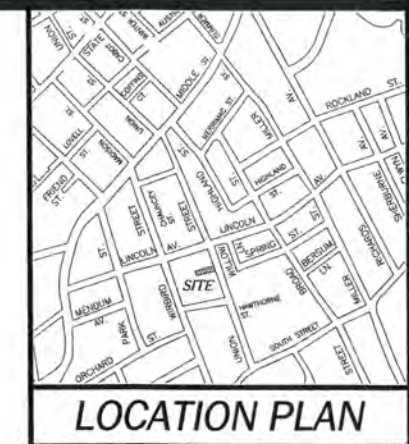
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 DR: MFP
 CK: BMK
 FB: CADFILE
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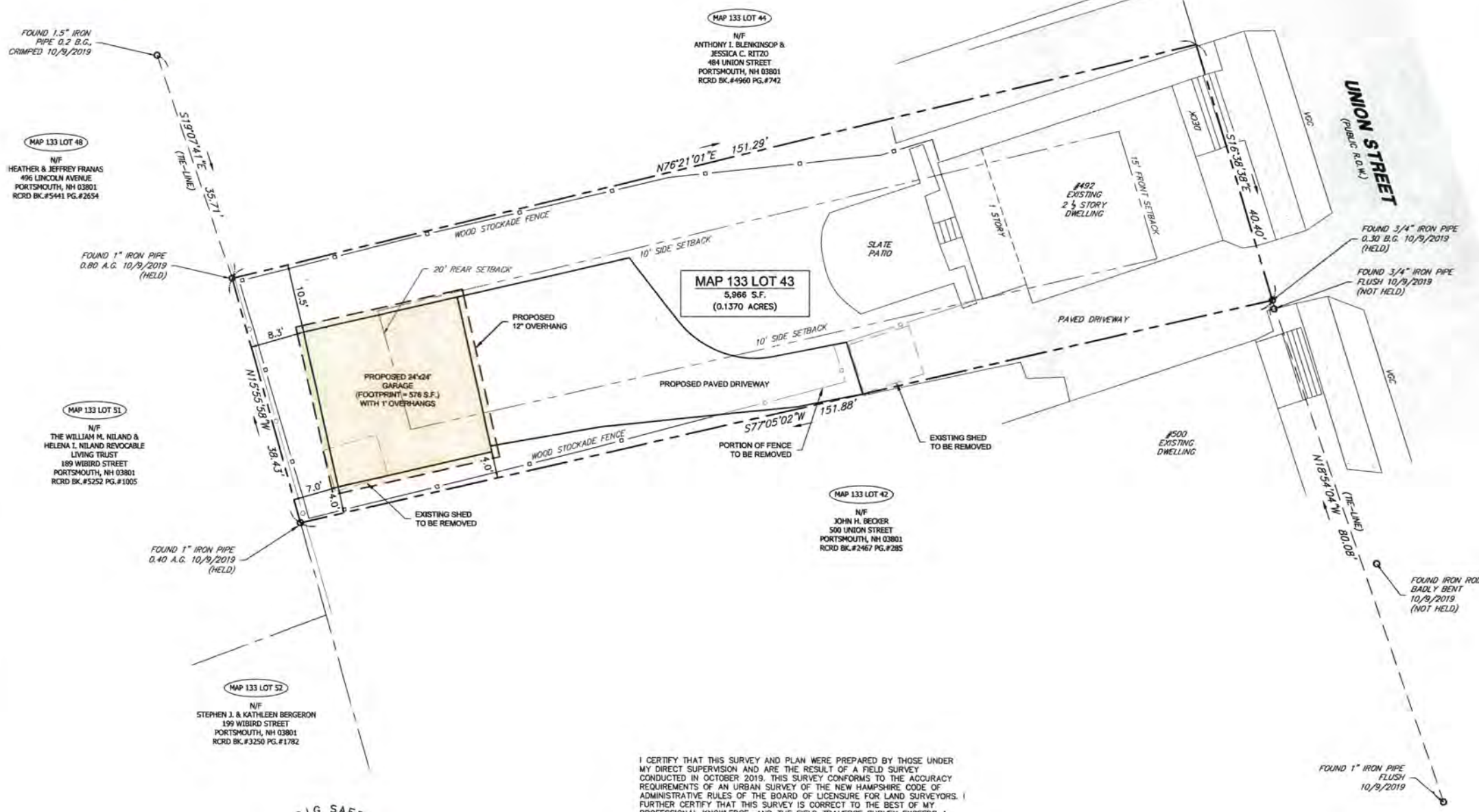
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LOCATION PLAN

LEGEND:

MAP 13 LOT 68	ASSESSOR'S MAP AND LOT NUMBER
A.G.	ABOVE GRADE
B.G.	BELOW GRADE
BK, PG.	BOOK / PAGE
N/F	NOW OR FORMERLY
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PER THE CITY OF PORTSMOUTH ZONING ORDINANCE SECTION 10.521.
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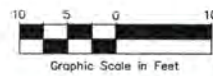
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LICENSED LAND SURVEYOR 10-29-19
DATE



REV.	DATE	DESCRIPTION	DR	CK

Oct 29, 2019 - 2:24pm F:\MSC Projects\47171 - Union Street - Portsmouth\47171-20 - Brandon - 492 Union Street\Carlison Survey\DWG\47171-20_Survey.dwg

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47171-20	DR	MVP	FB	561	S-2
	CK	BMK	CADFILE		

Civil Engineers
 Structural Engineers
 Traffic Engineers
 Land Surveyors
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 Scientists

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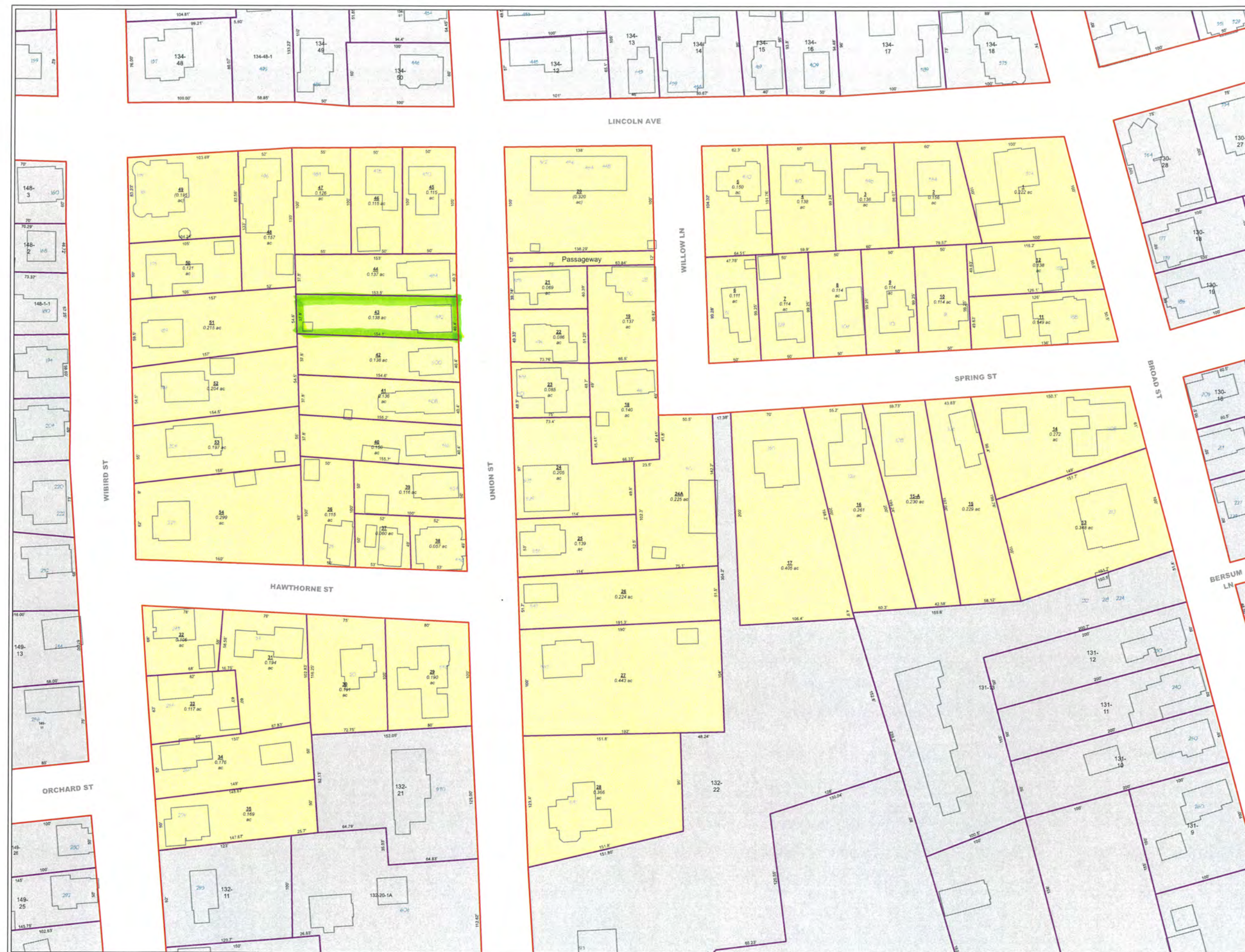
492 Union Street



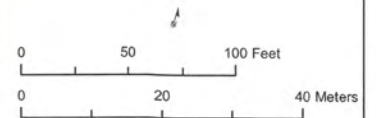
MAP FOR REFERENCE ONLY
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City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

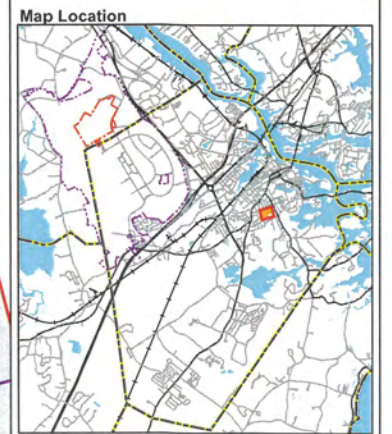
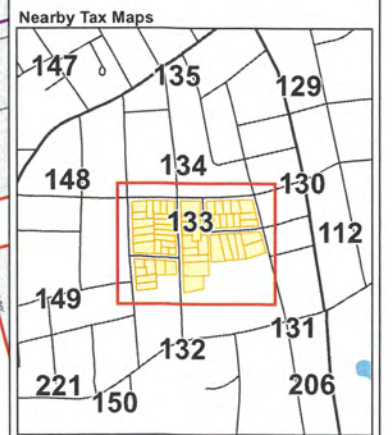
Geometry updated 4/1/2019
Data updated 7/17/2019



- Part
See the cover sheet
- 7-5A Lot or lot-unit number
 - 2.56 ac Parcel area in acres (ac) or square feet (sf)
 - 25 Address number
 - 233-137 Parcel number from a neighboring map
 - 68 Parcel line dimension
 - SIMS AVE Street name
- Parcel/Parcel boundary
 - Parcel/ROW boundary
 - Water boundary
 - Structure (1994 data)
 - Parcel covered by this map
 - Parcel from a neighboring map (see other map for current status)



This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.



STANLEY AND MICHELLE BRANDON
492 UNION ST, PORTSMOUTH, NH

EXHIBIT
tabbies B-1

