

**APPLICATION OF DPF 1600 WOODBURY AVENUE, LLC**  
**1600 Woodbury Avenue (Durgin Plaza), Portsmouth, Tax Map 238, Lot 16**

**APPLICANT'S NARRATIVE**

**I. THE PROPERTY:**

The applicant, DPF 1600 Woodbury Avenue, LLC is embarking upon a substantial redevelopment of the Durgin Plaza shopping center on Woodbury Road to accommodate the introduction to Portsmouth of a major national supermarket chain, which will take over the former Shaw's supermarket space, which has been vacant since February, 2019.

Submitted herewith are the following Exhibits:

- |                  |                                      |
|------------------|--------------------------------------|
| A.               | Existing Conditions Plan (excerpt);  |
| B-1 through B-3. | Proposed Site Plans;                 |
| C-1 through C-3. | Proposed elevations and renderings;  |
| D.               | Proposed freestanding sign plan; and |
| E.               | Proposed floor plan.                 |

The Durgin Plaza shopping center consists of three buildings on an approximately 16 acre lot. The Plaza has frontage on Woodbury Avenue in two distinct places, as well as frontage along Durgin Lane, and an additional frontage which provides access via Arthur Brady Drive. The Plaza has been substantially developed since 1993 and was most recently upgraded with lighting and landscaping improvements in 2016. The larger shopping center structure at the rear of the site has TJMaxx as its southern anchor tenant. The Shaw's supermarket space will be home to the new grocery chain tenant as the northern anchor.

In order to accommodate its new tenant, the applicant must make certain changes to the site. First, the existing retail structure at 1618 Woodbury Avenue (Map 239, Lot 2), which is separately owned by an entity that is affiliated with and controlled by the applicant, will be demolished<sup>1</sup>. The Woodbury Avenue entrance to 1618 will be modified to a safer "right in, right out" driveway configuration.

The existing supermarket space vacated by Shaw's shall be repurposed into 4,147 square feet of separate, unrelated retail space, and 41,980 square feet of supermarket space, including up to 1000 square feet of café space as an accessory use, and up to 58 outdoor seating spaces, as shown on the floor plan submitted as Exhibit E.

No change to the existing footprint of the main shopping center building is proposed. The approximately 2800 square foot building and freestanding sign on 1618 Woodbury will be removed, resulting in a reduction in the intensity of the use on the site.

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<sup>1</sup> This building is shown on "Tract Two" on the existing conditions plan submitted herewith as Exhibit A. A demolition permit application for this building is pending.

The site has more than adequate parking for all of the uses located upon it. New wall signage is proposed which will comply with sections 10.1251.10 and 10.1251.20 as to aggregate and individual sign area.

A new freestanding sign is proposed adjacent to the proposed new driveway, however, the new sign will be on the larger lot, 1600 Woodbury. There are currently four pre-existing freestanding signs on the site. The introduction of the new sign triggers the need for variance relief, as it exceeds the maximum sign area permitted, see Exhibit D. Additionally, one of the existing signs (Qdoba/My Reis) is non-conforming as to height.

The property is within the G-1 Gateway District and Sign District 5. The proposed new freestanding sign will comply with the setback, height and site line requirements of sections 10.1253.10 and 10.1253.20 respectively. In consultation with the Planning Department, the applicant understands that the City will consider the new driveway through 1618 Woodbury to be a "secondary driveway" for the site for purposes of section 10.1243. The new sign would otherwise meet the size and height requirements for a primary sign, see sections 10.1251.20 (max sign area 100 sq ft) and 10.1253 (max height 20 ft). The new sign will be the fifth free standing sign on the site. A site with multiple driveways may have more than one freestanding sign (section 10.1243), however, the secondary signs must comply with the requirements of Section 10.1243 and 10.1251.30.

Because of prior relief obtained from this board, only one of the pre-existing free standing signs will not comply with these provisions of the ordinance, as shown below:



DURGIN LANE FREESTANDING SIGN  
10.1251.30 FULLY COMPLIANT



**WOODBURY ROAD FREESTANDING SIGN  
COMPLIANT - Variance granted previously**



WOODBURY AVE FREESTANDING SIGN  
COMPLIANT - Variance granted previously



#### WOODBURY AVE FREESTANDING SIGN

10.1243	NON-COMPLIANT	- No associated secondary driveway
10.1251.30	NON-COMPLIANT	- Exceeds maximum height (>12 feet)
	COMPLIANT	- 36 square feet sign area (40 sf max permitted)

Accordingly, the applicant needs relief from Section 10.1243 to permit the above freestanding sign unassociated with a secondary driveway, and from Section 10.1251.30 to permit the above sign to exceed 12 feet in height. In addition, relief from Section 10.1251.30 for the proposed new freestanding sign is requested for sign area of 99.32 square feet where 40 square feet is the maximum allowed.

#### II. CRITERIA:

The applicant believes the within Application meets the criteria necessary for the Board to grant the requested variances.

**Granting the requested variance will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest.** The “public interest”

and “spirit and intent” requirements are considered together pursuant to Malachy Glen Associates v. Chichester, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

In this case, were the variances to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. This property has been home to a constellation of retail and commercial enterprises for over twenty five years and is within the Gateway zone where the uses here proposed are permitted by right. It is bounded on all sides by existing retail and commercial operations.

The health, safety and welfare of the public will not be threatened, nor will the essential characteristics of the neighborhood change in any way by virtue of the introduction of the new free standing sign.

**Substantial justice would be done by granting the variance.** Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property. Here, the applicant is actually reducing the gross square footage of retail space by eliminating the building at 1618 Woodbury. The freestanding sign on that parcel is also eliminated. The freestanding sign that would be deemed non-compliant has been in existence for a significant period of time with no deleterious effect on the public. The new sign is sited at what must practically be considered the "primary driveway" for the new proposed establishment, and meets the sign area criteria for primary signage, and in fact, is far shorter than the 20 feet allowed.

In today’s retail climate, visibility and brand recognition are primary drivers to attracting and maintaining tenants and their clientele. In order to release vacancies to strong national tenants, the ability to add signage is of paramount importance. The physical location of the building itself (setback from the road, behind outparcels) and the property (the queue for both traffic lights on Woodbury Avenue adjacent to the site are located on an incline as the property is at the top rear of the hill) are such that the new tenant requires a prominent sign in order to secure and maintain effective and reasonable sight lines.

The City has a compelling interest in encouraging large commercial properties not remain dormant and unused for significant periods of time. It would be an injustice to the applicant to deny the variances here requested.

**The values of surrounding properties will not be diminished by granting the variance.** The surrounding properties and those in the vicinity will not be negatively

affected in any way by this relief. The proposal will facilitate the highly anticipated arrival in Portsmouth of a major national retail grocery chain. This is far preferable to leaving the property vacant, a condition which, over time, leads to blight.

**There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship.** The property for which relief is sought is unique. It is a large, irregularly shaped lot with significant frontage in two separate places on Woodbury Avenue, and on Durgin Lane, as well as access frontage on a third right of way, Arthur Brady Drive. The non-conforming signage is pre-existing and has not caused any negative impacts on the surrounding properties. The property is bounded on all sides by existing commercial uses.

As noted above, the proposed new freestanding sign is sited at what must practically be considered the "primary driveway" for the new proposed establishment, and meets the criteria for primary signage, and in fact, is far shorter than the 20 feet allowed. The tradeoff between height and size is entirely reasonable for this location. The building to be served by the new sign is setback from the road, behind outparcels and the property is at the top rear of a hill such that the queue for both traffic lights on Woodbury Avenue adjacent to the site are located on an incline. These are special conditions of the property which counsel for a prominent sign in order to secure and maintain effective and reasonable sight lines.

**The use is a reasonable use.** The uses proposed are permitted within this district and are compatible with the surrounding retail and commercial enterprises.

**There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property.** The purpose of the sign ordinance is to maintain and enhance the character of the city's commercial districts and to protect the public from hazardous and distracting displays. Section 10.1211. Neither the proposed new signage nor the pre-existing non-compliant signage do anything to distract from the character of this district and there is nothing hazardous or distracting about them. There is no fair and substantial relationship between these purposes and this property.

### III. **Conclusion.**

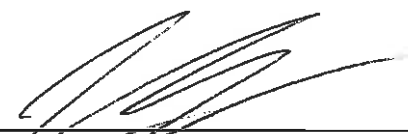
For the foregoing reasons, the applicant respectfully requests the Board grant the variances as requested and advertised.

Respectfully submitted,

Dated:

12/5/19

By:

  
\_\_\_\_\_  
John K. Bosen, Esquire



MATCH LINE-SEE SHEET 3

MATCH LINE-SEE SHEET 3

ARTHUR BRADY DRIVE  
(PUBLIC - VARIABLE WIDTH)

DURGIN LANE  
(PUBLIC - VARIABLE WIDTH)

WOODBURY AVENUE  
(PUBLIC - VARIABLE WIDTH)

"TRACT ONE"  
MAP 238 LOT 16  
LOT AREA  
694,376 SQ. FT.  
15.941 ACRES

"TRACT FOUR"  
EASEMENTS

"TRACT THREE"  
EASEMENTS

"TRACT TWO"  
MAP 239 LOT 2  
LOT AREA  
15,111 SQ. FT.  
0.347 ACRES

MAP 238 LOT 17  
1550 WOODBURY AVE.  
N/F  
EAMES & SIMPSON  
REAL ESTATE LLC  
BK. 5276 PG. 2194

MAP 238 LOT 17  
1574 WOODBURY AVE.  
N/F  
FUSEONI, RICHARD  
BK. 4452 PG. 881

MAP 239 LOT 3  
1650 WOODBURY AVE.  
N/F  
FEDERAL SAVINGS BANK  
BK. 3140 PG. 2686

LEGEND OF SYMBOLS & ABBREVIATIONS

BK. PG.	DEED BOOK/PAGE		BUILDING
BIT. CONC.	BITUMINOUS CONCRETE		EASEMENT LINE
C.L.F.	CHAIN LINK FENCE		LOCUS BOUNDARY LINE
C.P.	CONCRETE PAD		FENCE
BCC	BIT. CONC. CURB		OVERHEAD WIRES
CONC.	CONCRETE SURFACE		BOLLARD
EDP	EDGE OF PAVEMENT		CATCH BASIN
FP	FLAG POLE		DRAIN MANHOLE
(F)	FOUND		LIGHT POLE
GC	GRANITE CURB		FIRE HYDRANT
N/F	NOW OR FORMERLY		GUY WIRE
CC	CONCRETE CURB		ELECTRIC MANHOLE
O.H.	OVERHANG		TELEPHONE MANHOLE
P.O.B.	POINT OF BEGINNING		SEWER MANHOLE
R.O.W.	RIGHT-OF-WAY		SIGN
(S)	SET		UTILITY POLE
	HANDICAP PARKING		WATER GATE VALVE
(22)	NUMBER OF PARKING SPACES		POST INDICATOR VALVE
DH	DRILLHOLE		MONITORING WELL
LP	IRON PIN/IRON PIPE		UNIDENTIFIED MANHOLE
SB/DH	STONE BOUND/DRILLHOLE		GAS GATE VALVE
	ENCROACHMENT SYMBOL		ELECTRIC TRANSFORMER
(B)	SCHEDULE B EXCEPTION ITEM		

SIGNIFICANT OBSERVATIONS

- TRAFFIC SIGNAL POST LOCATED ON INSURED PREMISE AS SHOWN BY APPROXIMATELY 10.3 FEET.
- BITUMINOUS CONCRETE PARKING LOT EXTENDS ON TO INSURED PREMISES AS SHOWN BY APPROXIMATELY 4.2 FEET.

EXISTING CONDITIONS 1/3

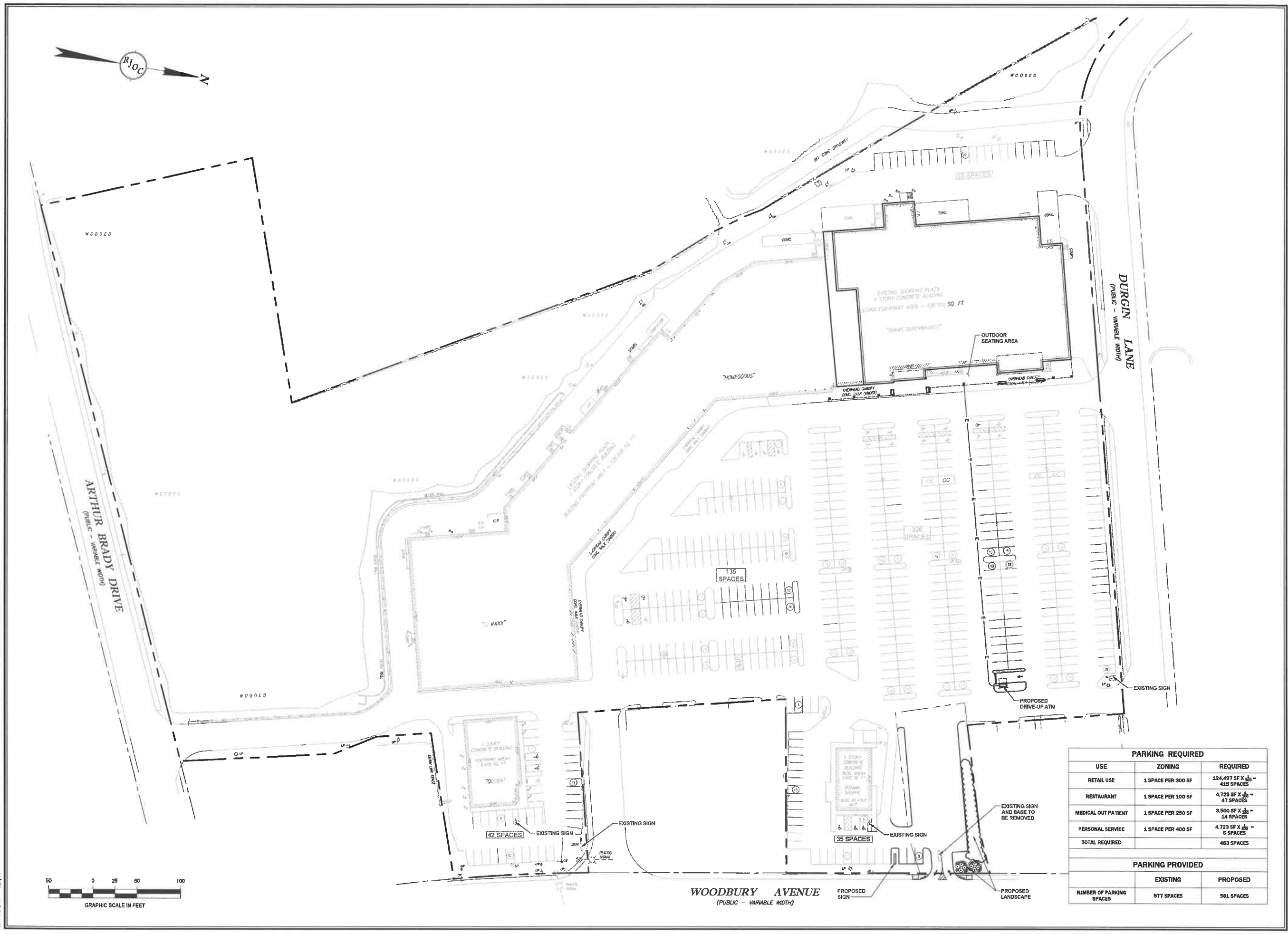


ALTA/ACSM LAND TITLE SURVEY  
DPF DURGIN SQUARE  
DURGIN LANE AND WOODBURY AVENUE, PORTSMOUTH, NH  
DATE: MAY 16, 2014 SHEET 2 OF 4



Bock & Clark's National Surveyors Network  
National Coordinators of ALTA/ACSM Land Title Surveys  
537 North Cleveland-Massillon Road, Akron, Ohio 44333  
Phone: (800) SURVEYS (787-8397), Fax: (330) 666-3608 www.bockandclark.com





NO.	DATE	REVISION

PREPARED BY:  
**RJO'CONNELL & ASSOCIATES, INC.**  
CIVIL ENGINEERS, SURVEYORS & LAND PLANNERS  
80 MONTVALE AVENUE, SUITE 201 STONEHAM, MA 02180  
PHONE: 781.279.0180 RJOCONNELL.COM

PREPARED FOR:  
**KEYPOINT PARTNERS**  
*Unlocking Value in Commercial Real Estate*  
ONE BURLINGTON WOODS DRIVE  
BURLINGTON, MA 01803  
781-418-6203

PROJECT NAME:  
**DPF DURGIN SQUARE**  
PORTSMOUTH, NH

SEAL:

DESIGNED BY: SPG  
DRAWN BY: MCR  
REVIEWED BY: SPG  
SCALE: 1" = 50'  
DATE: 11/19/2019  
DRAWING NAME:

**OVERALL SITE PLAN**

DRAWING NUMBER:  
**OS-1**

PROJECT NUMBER: 16030

PARKING REQUIRED		
USE	ZONING	REQUIRED
RETAIL USE:	1 SPACE PER 300 SF	124,497 SF X $\frac{1}{300}$ = 415 SPACES
RESTAURANT	1 SPACE PER 100 SF	4,723 SF X $\frac{1}{100}$ = 47 SPACES
MEDICAL OUT PATIENT	1 SPACE PER 250 SF	3,530 SF X $\frac{1}{250}$ = 14 SPACES
PERSONAL SERVICE	1 SPACE PER 400 SF	4,723 SF X $\frac{1}{400}$ = 6 SPACES
<b>TOTAL REQUIRED</b>		<b>483 SPACES</b>

PARKING PROVIDED		
	EXISTING	PROPOSED
<b>NUMBER OF PARKING SPACES</b>	577 SPACES	561 SPACES

Drawing name: G:\NH\Portsmouth\KeyPoint\Durgin Square\Main\0600\_08-1 Overall Site Plan.dwg  
Nov 19, 2019 - 14:21pm

EXHIBIT	
tabbies B-2	
NO.	DATE
REVISION	NO.
NO.	DATE

PREPARED BY:  
**RJO'CONNELL & ASSOCIATES, INC.**  
 CIVIL ENGINEERS, SURVEYORS & LAND PLANNERS  
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PREPARED FOR:  
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*Unlocking Value in Commercial Real Estate*  
 ONE BURLINGTON WOODS DRIVE  
 BURLINGTON, MA 01803  
 781-418-6203

PROJECT NAME:  
**DPF DURGIN SQUARE**  
 PORTSMOUTH, NH

SEAL:

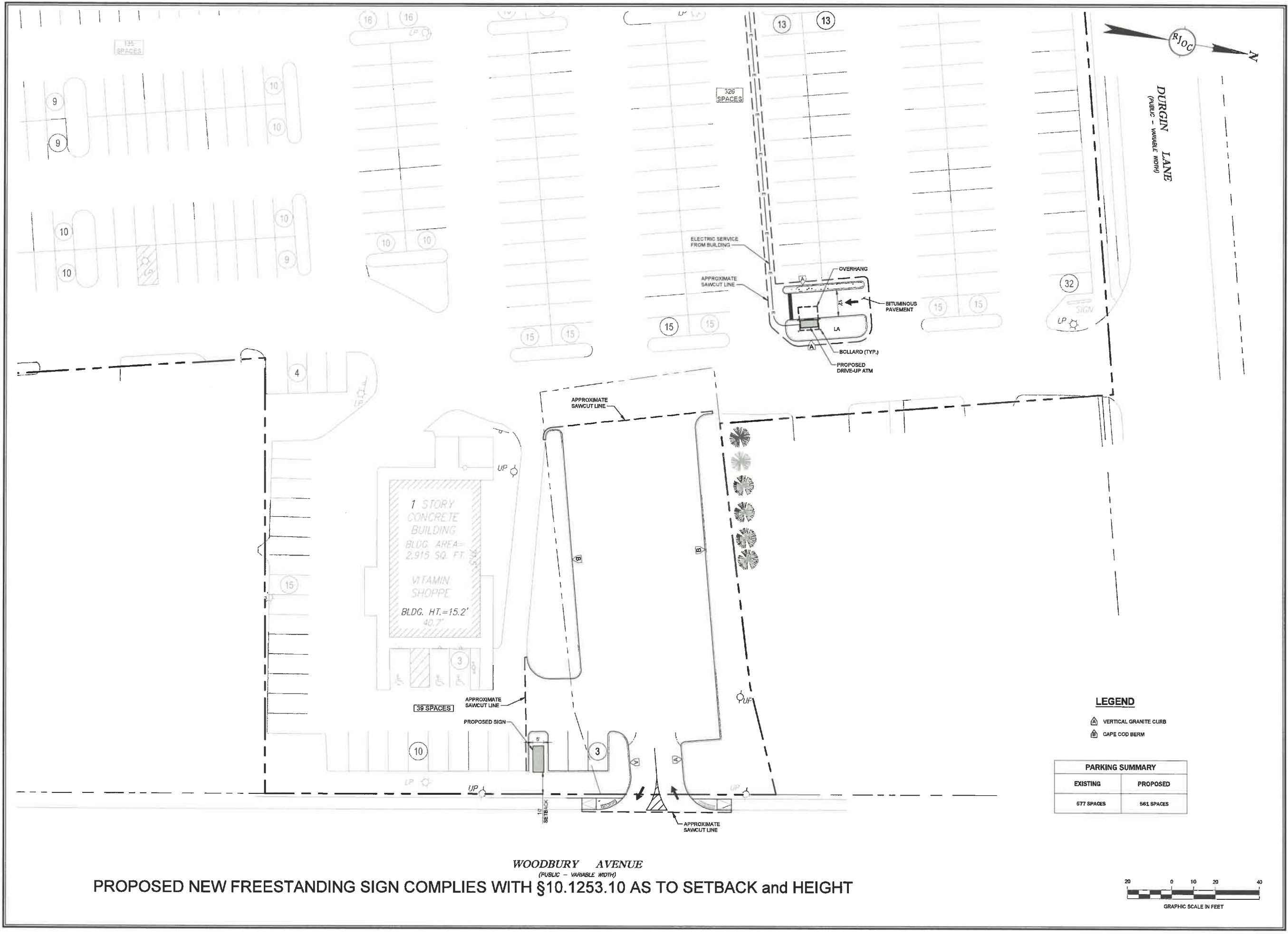
DESIGNED BY: SPG  
 DRAWN BY: MCR  
 REVIEWED BY: SPG  
 SCALE: 1" = 20'  
 DATE: 10/10/2019  
 DRAWING NAME:

**SITE PLAN**

DRAWING NUMBER: **SP-1**

PROJECT NUMBER: 16030

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**LEGEND**

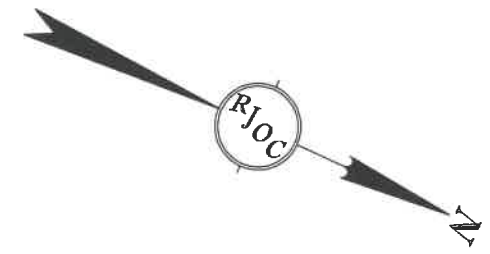
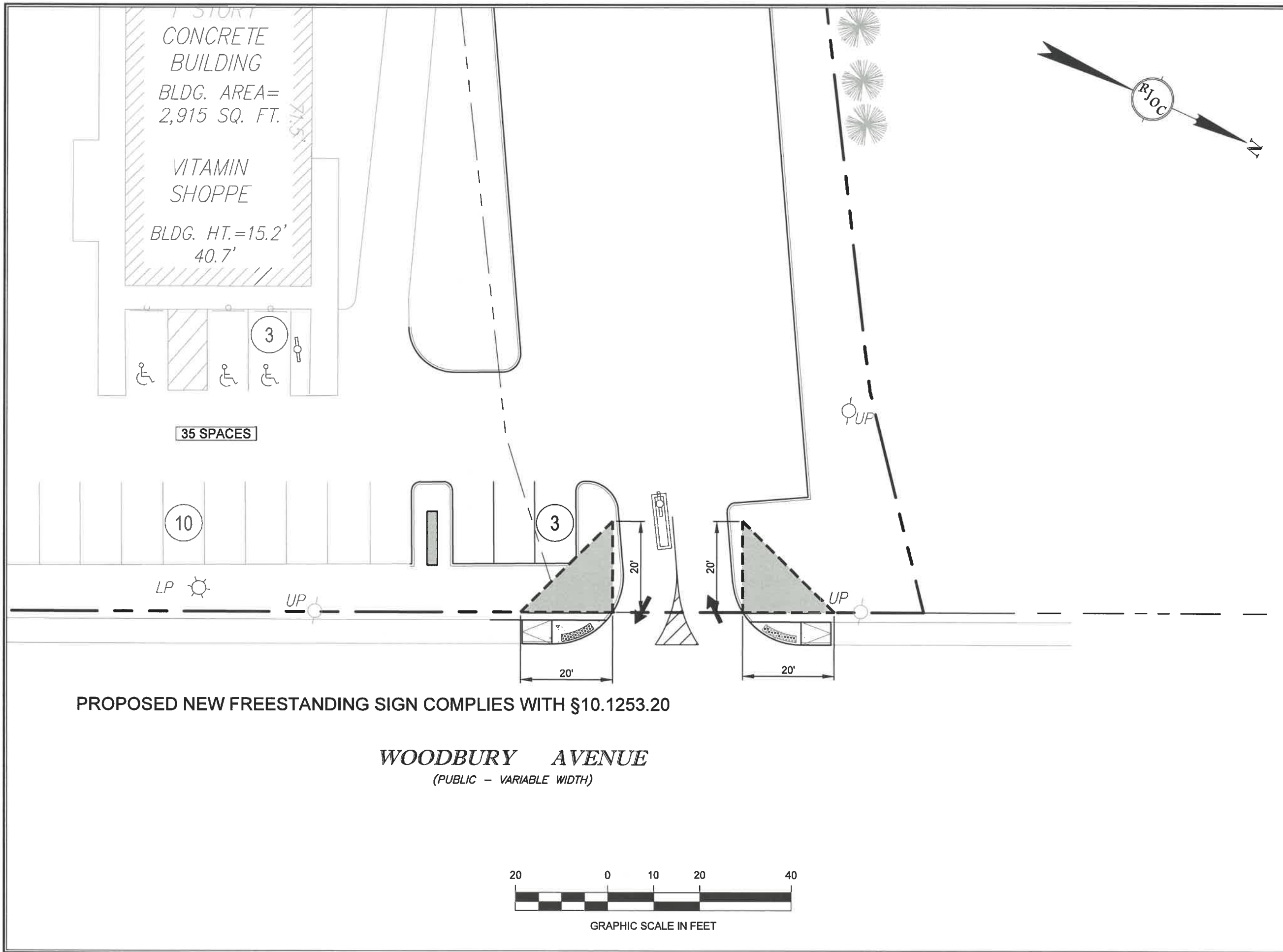
- VERTICAL GRANITE CURB
- CAPE COD BERM

PARKING SUMMARY	
EXISTING	PROPOSED
577 SPACES	561 SPACES

**PROPOSED NEW FREESTANDING SIGN COMPLIES WITH §10.1253.10 AS TO SETBACK and HEIGHT**

Drawing name: C:\Users\johnd\OneDrive\Work\Projects\Durgin Square\Main\16030\_SP-1\_Site Plan.dwg  
 Oct 11, 2019 - 10:07am

Drawing name: G:\NH\Portsmouth\KeyPoint\Durgin Square\Exhibits\16030\_Site Distance Exhibit.dwg  
Nov 14, 2019 - 11:59am



**RJOC**

EXHIBIT  
B-3

NO.	REVISION

PREPARED BY:  
**RJO'CONNELL & ASSOCIATES, INC.**  
 CIVIL ENGINEERS, SURVEYORS & LAND PLANNERS  
 80 MONTVALE AVENUE, SUITE 201  
 STONEHAM, MA 02180  
 PHONE: 781.279.0180  
 RJOCONNELL.COM

PREPARED FOR:  
**KEYPOINT PARTNERS**  
*Unlocking Value in Commercial Real Estate*  
 ONE BURLINGTON WOODS DRIVE  
 BURLINGTON, MA 01803  
 781-418-6203

PROJECT NAME:  
**DPF DURGIN SQUARE**  
 PORTSMOUTH, NH

DESIGNED BY: JIR  
 DRAWN BY: JIR  
 REVIEWED BY: SPG  
 SCALE: 1" = 30'  
 DATE: 11/14/2019

DRAWING NAME:  
**SIGN LOCATION EXHIBIT**

DRAWING NUMBER:  
**C-1**

PROJECT NUMBER:  
**16030**  
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**BLACK CREEK GROUP**

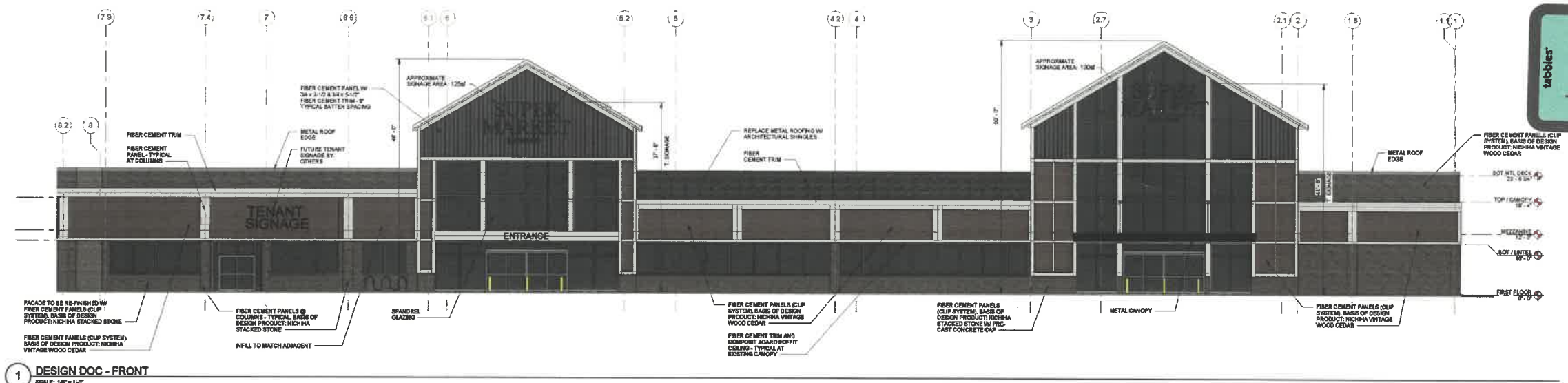
**DURGIN SQUARE PORTSMOUTH, NH**

**Proposed View From Third Entrance**

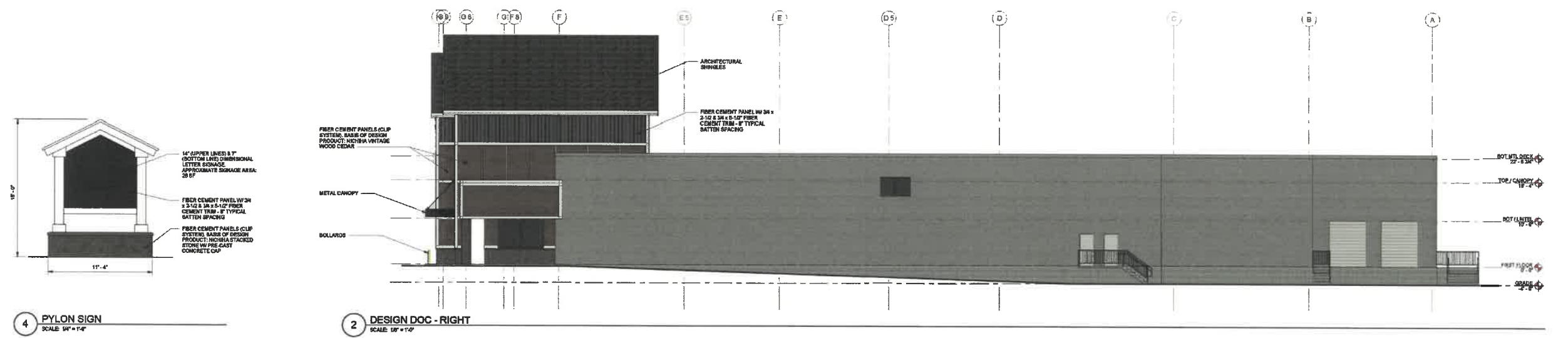
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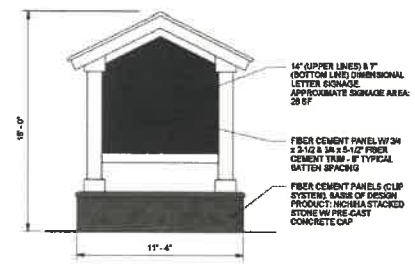




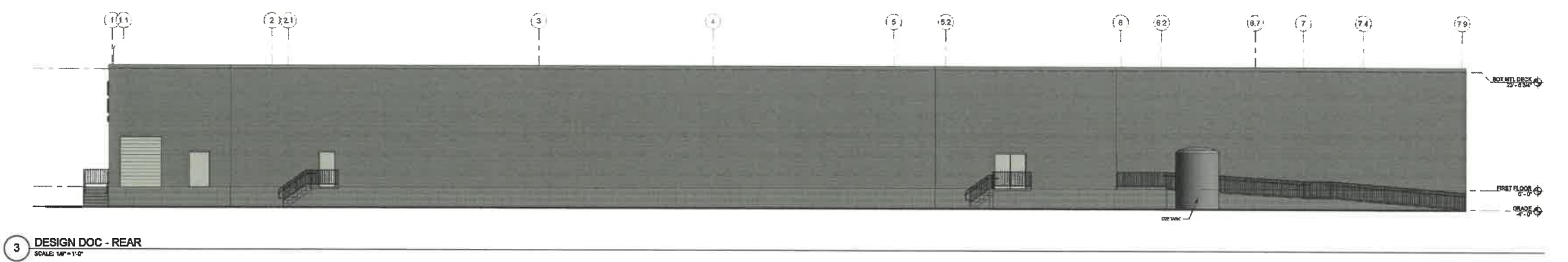
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2 DESIGN DOC - RIGHT  
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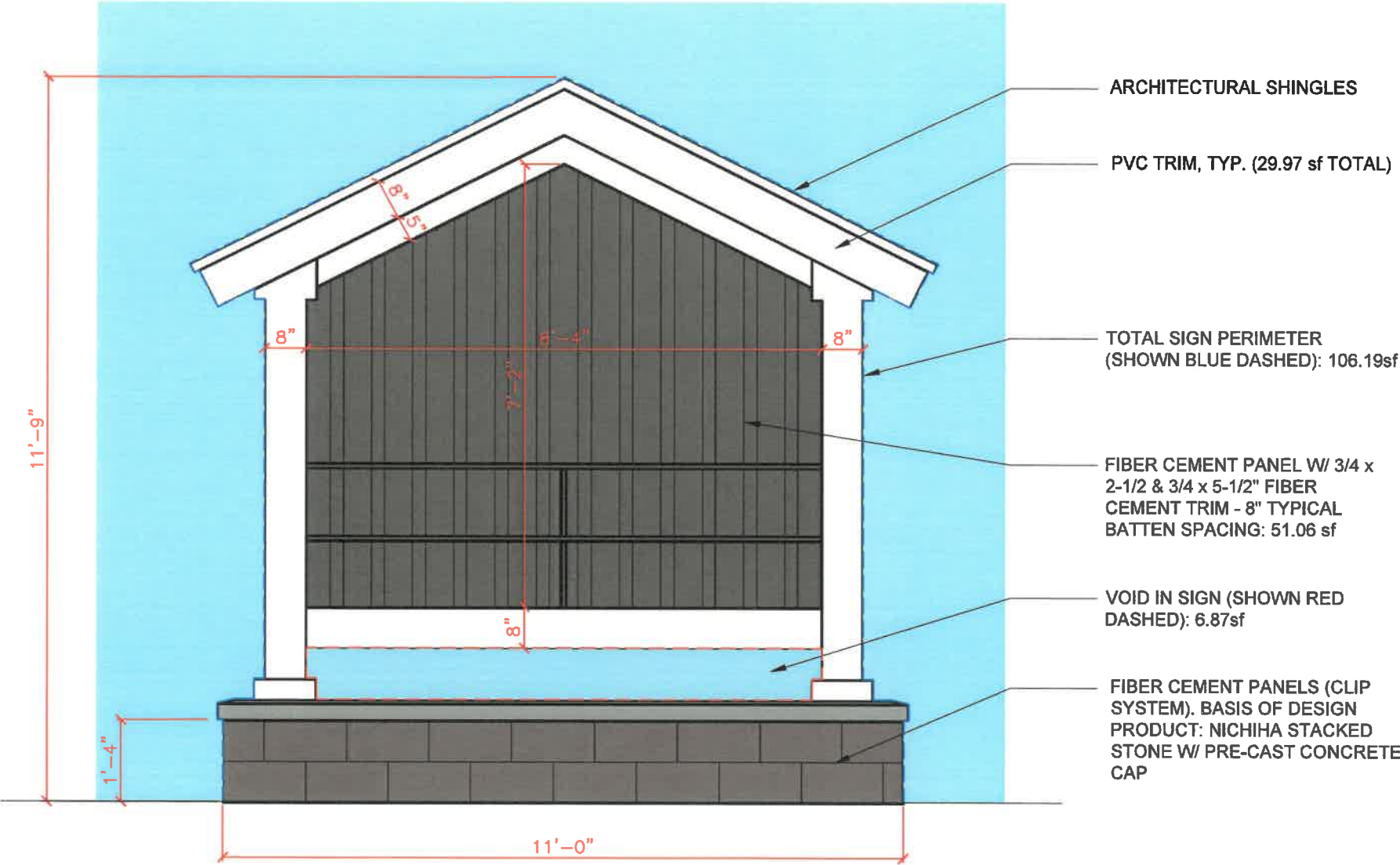
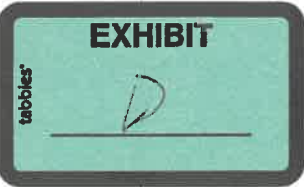


4 PYLON SIGN  
SCALE: 1/4" = 1'-0"



3 DESIGN DOC - REAR  
SCALE: 1/8" = 1'-0"

PROPOSED NEW FREESTANDING SIGN



**PYLON SIGN ELEVATION**

SIGN PERIMETER:	106.19 sf
SIGN VOID AREA:	6.87 sf
<b>TOTAL PYLON SQUARE FOOTAGE:</b>	<b>99.32 sf</b>



