REGULAR MEETING*
BOARD OF ADJUSTMENT
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE

Members of the public also have the option to join the meeting over Zoom
*(See below for more details)**

7:00 P.M. **January 17, 2023**

AGENDA

I. APPROVAL OF MINUTES

A. Approval of the December 20, 2022 minutes.

II. OLD BUSINESS

A. **Cherie Holmes** and **Yvonne Goldsberry** - **45 Richmond Street** request a 1-year extension to the variances granted on January 19, 2021. (LU-20-249)

B. **67 Ridges Court** - Request for Rehearing (LU-22-199)

C. The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. (LU-22-209)

D. The request of **Nissley LLC (Owner)**, for property located at **915 Sagamore Avenue** whereas relief is needed to demolish the existing building and construct new mixed-use building which requires the following: 1) A Variance from Section 10.440 to allow a mixed-use building where residential and office uses are not permitted. 2) A Variance from Section 10.1113.20 to allow parking to be located in the front yard and in front of

the principal building. 3) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only one is allowed. Said property is located on Assessor Map 223 Lot 31 and lies within the Waterfront Business (WB) District. (LU-22-229)

III. NEW BUSINESS

A. The request of **Sarah M Gardent Revocable Trust (Owner),** for property located at **47 Howard Street** whereas relief is needed for the installation of a mechanical heat pump which requires the following 1) Variance from section 10.515.14 to allow a 8 foot setback where 10 feet is required. Said property is located on Assessor Map 103 Lot 84 and lies within the General Residence B (GRB) and Historic District. (LU-22-242)

B. The request of **Antonio Salema, Trustee of Salema Realty Trust (Owner),** for property located at **199 Constitution Avenue** whereas relief is needed to build a climbing, yoga, and general and specialty fitness studio in an existing building which requires the following 1) Special Exception from Section 10.440 Use #4.42 to allow a health club, yoga studio, martial arts school, or similar use that is greater than 2,000 GFA. Said property is located on Assessor Map 285 Lot 16-301 and lies within the Industrial District. (LU-22-249)

C. The request of **Jesse M Lynch and Sarah L Lynch (Owners),** for property located at **19 Sunset Road** whereas relief is needed to construct a connector structure from primary structure to the garage which requires the following: 1) Variance from Section 10.521 to allow a) 27 foot setback where 30 feet is required; and b) 22 % building coverage where 20% is required. 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 153 Lot 19 and lies within the Single Residence B (SRB) District. (LU-22-250)

D. The request of **Patrick and Nicole Mullaly (Owners),** for property located at **36 Hunters Hill Avenue** whereas relief is needed to construct an addition with a second living unit which requires the following: 1) Variance from Section 10.440 Use #1.30 to allow a two-family dwelling unit is the Business District. 2) Variance from Section 10.531 to allow a 5 foot setback where 10 feet is required. Said property is located on Assessor Map 160 Lot 38 and lies within the Business (B) District. (LU-22-243)

E. The request of **Ashley and Robert T Blackington (Owners),** for property located at **65 Mendum Avenue** whereas relief is needed to construct an addition to the existing primary structure which requires 1) Variance from Section 10.531 to allow a 7 foot setback where 10 feet is required. Said property is located on Assessor Map 148 Lot 11 and lies within the General Residence A (GRA) District. (LU-22-241)

F. The request of **Lucky Thirteen Properties LLC (Owner),** for property located at **147 Congress Street** whereas relief is needed to expand the existing structure which requires 1) Variance from Section 10.5A41.10D to allow 2% open space where 5% is required. Said property is located on Assessor Map 126 Lot 4 and lies within the Character District 5 (CD5) Downtown Overlay and Historic District. (LU-22-192)

G. The request of **Timothy and Rebecca OBrien (Owners),** for property located at **396 Miller Avenue** whereas relief is needed to create a second driveway which requires 1) Variance from Section 10.1114.31 to allow two driveways where only one per lot is permitted. Said property is located on Assessor Map 131 Lot 24 and lies within the General Residence A (GRA) District. (LU-22-211)

H. The request of **Karen Bouffard Revocable Trust and Karen Bouffard Trustee (Owner),** for property located at **114 Maplewood Avenue** whereas relief is needed for the installation of a A/C Condenser Unit which requires the following 1) Variance from section 10.515.14 to allow a 2 foot setback where 10 feet is required. Said property is located on Assessor Map 124 Lot 4 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-22-256)

I. The request of **Thomas E, Marybeth B, James B, and Meegan C Reis (Owners),** for property located at **305 Peverly Hill Road** whereas relief is needed to
Renovate the existing primary dwelling into a two unit dwelling and to construct a new single unit dwelling which requires the following 1) Variance from Section 10.440 Use #1.30 to allow a two unit dwelling in the SRB District. 2) Variance from Section 10.513 to allow more than one free standing dwelling on a lot in the SRB District. Said property is located on Assessor Map 255 Lot 5 and lies within the Single Residence A (SRA); Single Residence B (SRB) and Natural Resource Protection (NRP) District. (LU-22-251)

IV. OTHER BUSINESS

V. ADJOURNMENT

**Members of the public also have the option to join this meeting over Zoom, a unique meeting ID and password will be provided once you register. To register, click on the link below or copy and paste this into your web browser:*

https://us06web.zoom.us/webinar/register/WN_soYwlNLNR3eiKpz-pk5HTg

MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE

7:00 P.M. **December 20, 2022**

MEMBERS PRESENT: Beth Margeson; Paul Mannle; Phyllis Eldridge; Thomas Rossi; David Rheaume; Jeffrey Mattson, Alternate

MEMBERS EXCUSED: David MacDonald

ALSO PRESENT: Stefanie Casella, Planning Department; Peter Stith, Planning Department

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Former Chairman Jim Lee left the Board, and Ms. Margeson was Acting-Chair for the evening. David Rheaume was welcomed to the Board.

I. ELECTION OF OFFICERS

*Mr. Mannle **moved** to elect Ms. Eldridge as Chair, seconded by Mr. Rossi. The motion **passed** by unanimous vote, 6-0.*

II. APPROVAL OF MINUTES

A. Approval of the November 15, 2022 minutes.

Acting-Chair Margeson and Mr. Rheaume abstained from the vote because they were not present at the November 15 meeting.

Mr. Rossi asked that the sentence in the second paragraph on p. 2 be amended to change the phrase 'as always 15.5 feet' to '**was** always 15.5 feet'.

*Mr. Rossi moved to **approve** the November 15 minutes as amended, seconded by Ms. Eldridge. The motion **passed** by unanimous vote, 4-0.*

Acting-Chair Margeson said there were two requests to postpone, Petition B, Old Business, for 635 Sagamore Avenue, and Petition G, New Business, for 915 Sagamore Avenue because Mr. Rossi had to recuse himself from both petition, leaving only five Board members to vote.

*Mr. Mannle moved to **postpone** the two petitions, seconded by Mr. Mattson.*

Mr. Mannle said that the Board typically granted requests to postpone.

*The motion **passed** by unanimous vote, 6-0.*

III. OLD BUSINESS

A. Request for Rehearing - **53 Green Street**. (LU-21-162)

Mr. Rossi said the petition had been heard twice by the Board on two different occasions and with two different Board member compositions and the results had been the same both times. He said he didn't see anything that would cause him to think that it should be reheard.

DECISION OF THE BOARD

*Mr. Rossi moved to **deny** the request for rehearing, seconded by Mr. Mannle.*

Mr. Rheaume said he was not on the Board at the time but had reviewed all the information provided by both parties and watched a substantial portion of the recording. He said he felt that the Board did a full deliberation and agreed with the motion.

*The motion **passed** by unanimous vote, 6-0.*

B. REQUEST TO POSTPONE The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. **REQUEST TO POSTPONE** (LU-22-209)

DECISION OF THE BOARD

*It was moved, seconded, and passed unanimously (6-0) to **postpone** the petition.*

IV. NEW BUSINESS

A. The request of **Ann R Sherpick and Walter F Stewart (Owners)**, for property located at **88 Kensington Road** whereas relief is needed to remove an existing addition and construct a new addition which requires the following: 1) A Variance from Section 10.521 to allow 23% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 152 Lot 22 and lies within the Single Residence B (SRB) District. (LU-22-201)

SPEAKING TO THE PETITION

Project designer Amy Dutton was present on behalf of the applicant and reviewed the petition. She said the structure was falling off the foundation and that they wanted to pour a new foundation to extend the addition five feet. She reviewed the criteria and said they would be met.

There were no questions from the Board. Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Christine McCune of 71 Kensington Road said she lived across the street and was in favor.

No one else spoke, and Acting-Chair Margeson closed the public hearing.

DECISION OF THE BOARD

*Mr. Mannle moved to **grant** the variances for the petition as presented, seconded by Mr. Rossi.*

Mr. Mannle referred to Sections 10.233.21, .22, and .23 of the ordinance and said granting the variances would not be contrary to the public interest, would observe the spirit of the ordinance, and would do substantial justice. He noted that everything else was in the zoning except for a 1-1/2 percent increase in building coverage, which was small. Referring to Section 10.233.24, he said granting the variances would not diminish the values of surrounding properties but would increase them because the house would be renovated and have more room. He noted that the neighbor was also in favor. Referring to Section 10.233.25, he said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because imposing the strict building coverage would be an unnecessary hardship in his estimation.

Mr. Rossi concurred. He referred to Section 10.233.25 and said the special condition of the property was that it had a very small area of 6,098 square feet, where the required area was 15,000 square feet, so it was already nonconforming. He said the suggested change maintained the lot line clearance, but because of the small square footage available on the lot, it easily went over the 20 percent maximum permitted building coverage. He said the use would be quite reasonable for the property. Referring to Sections 10.233.21 and 22, Mr. Rossi said the purpose for the SRB zone was to provide areas for single-family dwellings at low-to-medium densities, approximately 1-3 dwellings per acre and appropriate accessory uses. He said the applicant's house was a single-family dwelling and wasn't being changed from the use, so granting the variances would not be contrary to the public interest and would be consistent with the spirit of the ordinance

Mr. Mattson said if the lot size were the required minimum lot size, they wouldn't need the variance for the coverage, so it was in the spirit of the ordinance. Mr. Rheaume said he also supported the motion. He noted that the adjacent property to the right had an addition that seemed identical to the applicant's and there was a similarly-sized home on the other side, so it wasn't like the applicant was asking for anything out of the ordinary.

*The motion **passed** by unanimous vote, 6-0.*

B. The request of **Ryan and Karen E Baker (Owners)**, for property located at **44 Gardner Street** whereas relief is needed to replace an existing porch with a sunroom addition which requires the following: 1) A Variance from Section 10.521 to allow 34% building coverage where 30% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 103 Lot 42 and lies within the General Residence B (GRB) and Historic District. (LU-22-215)

SPEAKING TO THE PETITION

The applicant Ryan Baker was present. He said the project was approved in April 2020 by the BOA and the Historic District Commission (HDC) but expired in April 2022, so he was resubmitting the petition to construct the sunroom. He reviewed the petition, noting that it had minor updates to the original plan, and he reviewed the criteria.

Mr. Rheaume said similar variances were also granted in September 2021, and he asked what the nature of those variances was and why they were not applicable. Mr. Stith said the prior owner came back with a different location for the mudroom and the variance was still valid but a building permit wasn't pulled for it. He said if Mr. Baker got his approval, he could not pull a building permit for both, otherwise the building coverage would go way up. Mr. Baker said he planned to resubmit it in the future, but he would change the location of the mudroom so it would be a new application. Acting-Chair Margeson asked if the building permit for the variance granted in 2022 would be pulled. Mr. Baker said it would not because that was approved for the previous owner. He said he was before the Board for the sunroom and would submit a new application for the mudroom.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Margeson closed the public hearing.

DECISION OF THE BOARD

*Ms. Eldridge moved to **grant** the variances as presented, seconded by Mr. Rheaume.*

Ms. Eldridge said the change requested was very minor, 30 percent lot coverage that was 33 for many years and now was 34. She said granting the variances would not be contrary to the public interest because there really was no change to the building that had been there a long time. She said it would observe the spirit of the ordinance because it would be in keeping and nothing would change. She said granting the variances would do substantial justice because it would provide the owner with what he wanted without any negative effect on the neighbors. She said if it affected surrounding property values, it would be in a positive manner. She said literal enforcement of the

provisions of the ordinance would result in an unnecessary hardship because no one would be hurt by what would be a benefit to the owner. She said it was a reasonable request.

Mr. Rheaume concurred. He said he was usually hesitant to let an applicant come back for a second bite of the apple, but the applicant was a new homeowner and was still trying to understand the property, so he thought it was a reasonable request to approve. He said the owner could potentially return for additional relief if he saw other needed improvements. He said the portion of the home affected was away from the streetscape, so it wouldn't impact the look and feel of the neighborhood, and the fact that the applicant was barely over the total coverage requirements wouldn't be noticed in the dense neighborhood. He said it would be in keeping with the public interest and the spirit of the ordinance. He also noted that the project was previously approved by the Board with the relatively small amount of coverage increase.

*The motion **passed** by unanimous vote, 6-0.*

C. The request of **Karen and Rick Rosania (Owners),** for property located at **32 Boss Avenue** whereas relief is needed to allow an art studio for classes up to 8 people which requires the following: 1) A Variance from Section 10.440 to allow an art studio where the use is not permitted. Said property is located on Assessor Map 153 Lot 5 and lies within the Single Residence B (SRB) District. (LU-22-217)

SPEAKING TO THE PETITION

The applicant Karen Rosania said she wanted to teach small-scale art classes to adults and children in the studio attached to her home. She said parking was available for four vehicles in her driveway and there was plenty of street parking. She reviewed the criteria and said they would be met.

Mr. Rossi asked if there would be outdoor storage of art supplies or finished projects, and the applicant said there would not. He asked Mr. Stith why the use wasn't permitted under Section 19.10, accessory use to permit a principal use but not including any outdoor storage. Mr. Stith said it was a business use in the Single-Residence Zone and wouldn't qualify as a home occupation use because people would be coming in for the classes. It was further discussed. Acting-Chair Margeson said it was a business use in a residential zone.

Mr. Rheaume asked why there were exit signs and a fire extinguisher shown on the plan if the applicant didn't have an approved use for a business use. Ms. Rosania said her mentor advised her to do so. Mr. Rheaume said the applicant was asking to have a business use in an area that prohibited such business uses and asked why she would teach students in that location vs. finding an approved business location. Ms. Rosania said it had always been her dream to have her art studio attached to her house and make it an inviting space without having to worry about overhead and financial costs. Mr. Rheaume said the illustration showed four parking locations in the driveway. He said there were prescribed dimensions required for parking spaces for a business use. He asked if there was additional information on how the proposed parking spots would meet the City's requirements for a parking space, turning radius, and so forth. Ms. Rosania said she hadn't really thought about it and had hoped that people could just park in front of her home. Mr. Rheaume asked

what was unique about Ms. Rosania's property vs. those of her neighbors if they wanted to start their own businesses. Ms. Rosania said they could start their own businesses and that she was just trying to fulfill a dream. The City's parking requirements were further discussed. Mr. Stith said the Board could add conditions for a home occupation relating to setbacks from abutters and screening.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Sara Lynch of 19 Sunset Road said she was also an art teacher and could attest that the applicant's proposed art studio was small and modest and would not be disruptive to the neighborhood.

Linda Leland of 26 Thaxter Road said she was excited by the studio because it would bring people together as a community to create art and would add value.

Sachiko Akiyama of 161 Aldrich Road said she was a university art professor and thought what the applicant did to her house already increased the value of the neighborhood. She said there was enough parking on the street and that it was expensive to run an arts business in Portsmouth.

Sandra Traverse said she was a board member for Arts In Reach, a youth development organization. She said they didn't have any physical art space and relied on artists like the applicant to donate their time and space.

Sharon Hartford of 59 Boss Avenue said she had concerns about parking because that end of Boss Street tended to get congested. She said she was also concerned that it would set a precedent for others who wanted to have a home business in an area not zoned for it.

Christine Powell of Kensington Street said the studio had good exits, so there was no fear of not being able to get out in case of fire. She said the driveway was big and deep and the street was wide at the bottom. She said she had lots of friends who wanted to attend the classes.

Eric Weinrieb of 9 Middle Street said he lived in the neighborhood and struggled with the location and the use. He said Sunset Street was one of the steepest in the City and had a very dangerous intersection, and there were lots of children in the area. He said if the parking was increased, it would also increase the traffic and would create a safety issue.

No one else spoke, and Acting-Chair Margeson closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Rossi said he had a hard time seeing the hardship criteria satisfied. He confirmed with Mr. Stith that if the applicant only wanted to have people over to engage in the arts and not pay for classes, a permit wouldn't be required. He said the applicant could still fulfill her dreams if it wasn't a commercial enterprise. He also noted that the variance would stay with the property and the next person would be able to engage in a commercial activity in the future. Mr. Stith said it would have

to be for what the variance was approved for but agreed that the variance and permit would stay with the property. Mr. Mattson said he struggled with the hardship for that property.

Mr. Rheaume said the applicant wanted to do a wonderful thing but that it wasn't proposed be in the right place. He said it went back to the ordinance, which was put together by several boards and lots of public input. He said one of the fundamental tenants of the ordinance was that it distinguished between the residential and business areas and the expectation was that the neighbors would do things associated with residential use and one wouldn't see a steady stream of customers coming in to perform something in a space for furthering themselves and/or the owner. He said the City prided itself on being receptive to artists, but there was nothing like that in the ordinance. He said the Board seemed to be asked to create a whole new area of the zoning ordinance by creating a new use called an art studio allowed in residential districts and create parking for it. He noted that there were strict requirements for business parking spots. He said a hardship didn't result from someone building something on their property and saying that the Board had to grant the ability to use the thing that the person just built. He said the project didn't meet the criteria. Mr. Mannle agreed.

DECISION OF THE BOARD

*Mr. Rheaume moved to **deny** the request for a variance, seconded by Ms. Eldridge.*

Mr. Rheaume said the request failed on two criteria and an art studio wasn't recognized by the ordinance. He said there were no businesses allowed in that district or in the most adjacent one, and he didn't see anything that would say that the property had anything unique about it as opposed to anyone else's property in the same district and say that it was qualified to have a business use placed on it. Ms. Eldridge concurred, noting that the art studio would be a good thing but just didn't meet the criteria. Mr. Rheaume said the ordinance should be fluid but it had to go through the legislative process of the Planning Board balancing the needs of all the abutters and neighborhoods and making sure that it made sense and then recommending it to the City Council. He said the Board wanted to promote the arts but it was beyond the purview of the Board, especially for one night and for one short time. Mr. Mannle said he had no problem with the application or the parking issue but he didn't see the hardship.

*The motion **passed** by unanimous vote, 6-0.*

D. The request of **Rudy Storylazy Holding LLC (Owner),** for property located at **96 Chestnut Street** whereas relief is needed for conversion of existing office into residential which requires the following: 1) A Variance from Section 10.5A41, Figure 10.5A41.10A, to allow a) a lot area per dwelling of 2,046 where 3,000 square feet is required; and b) 14% open space where 25% minimum is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 116 Lot 24 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-22-220)

SPEAKING TO THE PETITION

Attorney Chris Mulligan was present on behalf of the applicant. He reviewed the petition, noting that the relief needed was to turn the business property back into a single-family residence. He said they also needed to put a small deck off the rear of the property to access the patio, which would increase the amount of open space coverage. He said the location for the proposed deck currently had two condensers and trash bins and wasn't usable open space. He said the African Burial Ground Memorial took over that portion of Chestnut Street, resulting in the loss of seven parking spaces and creating a pinch point for people visiting the establishment if it remained commercial. He reviewed the criteria and said they would be met.

Mr. Rheaume said he was confused about the planned deck and asked if the intent was to bridge the gap between the opening and the wall. Attorney Mulligan explained that there was a curved bumpout and a sliding door would be installed, so the deck would be over the HVAC condensers. Mr. Mattson said he wasn't sure that there could be condensers under a deck without appropriate clearance for air flow. Mr. Rheaume said the applicant would have to check that.

Acting-Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Eric Weinrieb of 9 Middle Road said his office was across the street from 96 Chestnut Street and that he had seen a lot of change in the area, especially with the African Burial Ground Memorial. He said converting the applicant's building to a residence would add vibrancy to that area by adding ground-floor residential, which the downtown area had lost of lot of lately. He said it would also improve pedestrian safety and remove the transient feel.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one else spoke, and Acting-Chair Margeson closed the public hearing.

DECISION OF THE BOARD

*Mr. Rheaume moved to **grant** the variances for the petition as presented and advertised, seconded by Mr. Mattson.*

Mr. Rheaume said the applicant made a good case. He said the memorial was out of anyone's control and no one would have expected it to be in front of their property and that it did contribute to some of the criteria. He said the use was permitted in the CD4L1 district but the lot size wasn't quite adequate, and the request for additional open space to get out of the house to the patio made sense. He said granting the variances would not be contrary to the public interest because there was a positive public interest with the memorial being there and a business in that area would invite more traffic and cause confusion due to the lack of parking in front of the building. He said the spirit of the ordinance would be met because it was an allowed use for an existing structure on a lot and to say that an existing structure on an existing lot that had been there a long time that was

nonconforming and couldn't have a revised use that was a permitted one would seem to be against what the ordinance tried to accomplish. He said the loss of open space would be to the rear of the property and wouldn't be something the public would perceive. He said granting the variances would do substantial justice because the owner's ability to convert the house to a residential use by adding a way to get over to the existing patio area made more sense, and no public need would prevent the Board from allowing the property owner to take advantage of that. He said granting the variances would not diminish the values of surrounding properties because the changes were minor and the building looked like a residential one. He said the fact that it was an office building was probably more awkward and negative for neighboring properties, and converting it would bring it more in conformance and help surrounding property values. He said the hardship was that it was an existing lot with a structure on it for many years and the structure looked like it was a residence at first and was then converted. He noted that the ordinance now required more conformances and the minimal loss of open space wouldn't be a significant loss. He said it was a reasonable request.

Mr. Mattson concurred and had nothing to add.

*The motion **passed** by unanimous vote, 6-0.*

E. The request of **Stephen A and Kathryn L Singlar (Owners),** for property located at **39 Holmes Court** whereas relief is needed for addition of a shed dormer, heat pump and new paved area which requires the following: 1) Variances from Section 10.521 to allow a) a 2' rear yard where 25' is required; and b) 22% open space where 25% is the minimum required. 2) A Variance from Section 10.515.14 to allow a 0' setback where 10' is required for a heat pump. 3) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 101 Lot 13 and lies within the General Residence B (GRB) and Historic District. (LU-22-226)

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant, along with project engineer Eric Weinrieb and project architect Brendan McNamara via Zoom. Attorney Durbin reviewed the petition, noting that it was a unique property because the public portion of the right-of-way ended at the front boundary of the property and then turned into a private driveway into 43 Holmes Court, which was owned by the same owners. He said the dormer was needed for more livable space. He reviewed the criteria and explained why they would be met.

In response to Mr. Rheaume's questions, Attorney Durbin said 43 Holmes Court ended at the front boundary of 39 Holmes Court and then became private. He said there was an easement across 39 Holmes Court for access to 43 Holmes Court. He said they wanted the 2-ft setback for the dormer out of caution. In answer to further questions from Mr. Rheaume, Mr. McNamara said the dormer was visually recessed from the continuation of the side wall, which was driven by appeals to the HDC. He said the heat pump would be placed on the side of the house vs. the back so that it

wouldn't annoy the neighbors and that there would be sufficient space between the heat pump and the building for air ventilation.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Margeson closed the public hearing.

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variances as presented and advertised, seconded by Mr. Rheaume.*

Mr. Rossi said granting the variances would not be contrary to the public interest, supported by the fact that the design called for the addition of a dormer, which didn't really change the footprint of the structure itself. He said the only place where the change would be visible would be the adjacent property that was owned by the same owner. He said granting the variances would do substantial justice because there would be no gain to the public by denying the request and there would be an advantage to the owner and to the property's value by approving the variances. He said granting the variances would not diminish the values of surrounding properties, noting that the closest affected property was owned by the same owner and he was in the best position to judge whether the changes on one of his properties would diminish its value. He said the special condition of the property was that it was already nonconforming and there was nothing being done that would change the degree of nonconformance other than the heat pumps. He said he did not believe that the intent of the ordinance was to prevent the modernization of HVAC systems in antique homes. Therefore, he said he didn't think there was any relationship between the installation of heat pumps and the intent of the ordinance.

Mr. Rheaume concurred. He said that type of New Englander lent itself to those types of roof dormers and it was a common way for homeowners to add extra square footage. He said normally the Board was concerned about setbacks and light and air to abutting properties, but the applicant owned both properties. He said window units were allowable but tended to be noisier than modern heat pumps condensers. He said zero-foot setbacks made him nervous but in this case it was common ownership and it sounded like the applicant did his research and was trying to make the noise go toward his own property. He said he recommended approval.

*The motion **passed** by unanimous vote, 6-0.*

F. The request of **Stephen A and Kathryn L Singlar (Owners),** for property located at **43 Holmes Court** whereas relief is needed to demolish the existing dwelling and construct a new single-family dwelling which requires the following: 1) Variances from Section 10.531 to allow a) a lot area of 5,353 square feet where 20,000 square feet is required; b) 0 feet of street frontage where 100 feet is required; c) 75' of lot depth where 100 feet is required; d) a 17 foot front yard where 30 feet is required; e) a 14 foot left side yard

where 30 feet is required; and f) a 14 foot right side yard where 30 feet is required. 2) A Variance from Section 10.440, Use # 1.10 to allow a single family dwelling where the use is not permitted. Said property is located on Assessor Map 101 Lot 14 and lies within the Waterfront Business (WB) and Historic District. (LU-22-227)

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant to review the petition, with project architect Brendan McNamara via Zoom and project engineer Erik Weinrieb. He noted that the 1749 single-family home was in poor shape and located in a flood zone. He said it couldn't be raised and that the only feasible thing to do was demolish it. Mr. McNamara said once a level of expenditure was exceeded on a home, it must meet current code and it would have to meet the flood zone requirements. He said lifting it up would exceed the expenditure, which would then initiate the rest of the house to meet existing code. He said the project got favorable feedback from the HDC work session. Attorney Durbin said the only nonconformance that would increase was the front yard setback. He reviewed the criteria and said they would be met.

Mr. Rossi asked if the grayed-out lots on the diagram were waterfront businesses except for one. Attorney Durbin agreed. Mr. Rossi said if the Board granted the variance, they would be continuing to restrict the small amount of waterfront available for business use, and he struggled with the propriety of doing that. Attorney Durbin said the home would be dysfunctional otherwise and would mitigate the flood risk. Mr. Rossi asked if the fact that it was already a residential use was a special condition of the property that created a hardship, and Attorney Durbin agreed. Acting-Chair Margeson said the flood zone was at eight feet and the City added a foot over that. She asked why the applicant didn't apply for a variance for relief for the extra foot to get out of the flood zone. Attorney Durbin said the true intent and best approach was to improve the property by demolishing the home and building a new one at a higher elevation. Mr. Weinrieb said the flood ordinance stated if it there was substantial renovation, the building had to be lifted to one foot above, but new construction was two feet above. He said the buffer wasn't just for the new FEMA ordinances but also climate changes. It was further discussed.

Acting-Chair Margeson said she knew the HDC would deal with the property's demolition, but one of the criteria of the BOA when the property was in the Historic District was preservation of historic structures in the Historic District. She asked why the home had to be demolished. Attorney Durbin said it was in such rough shape that there wasn't a lot to salvage, and there was the floor elevation issue. Mr. McNamara said a site walk was done with the HDC and the exterior appearance of the house was of the late 1800s. He said the house had been reworked a few times and there was very little of the original structure left, except for the interior first floor. He said the concrete foundation was falling apart. He said the building code's requirements drove the need for demolition. Acting-Chair Margeson asked why the building couldn't be converted to a commercial use. Attorney Durbin said it would have to be a small waterfront marine-related use. He said the area felt like a residential neighborhood and the applicant's property would be a nuisance and would have to be accessed via a residential property.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Margeson closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Mr. Rossi said the argument that the building already had a residential use was compelling. Mr. Rheaume said that only so many properties could fall into the waterfront business. He said he was an advocate of protecting every square inch of that waterfront but the applicant's property was so different and so isolated. He said the intent when it and the neighboring property was included in the waterfront district was that there might be some way of redoing it, but from a practical standpoint, he thought it would be negative to squeeze some business from a place that hadn't any had for a very long time. He said the nature of Holmes Court was such that it would be impractical to justify saying that it really contributed to the character of the waterfront businesses. He said it was a great thing for the City to try to preserve as much of the waterfront and keep that vibrancy aspect, but in the applicant's case, it didn't work and it made sense for the property to remain a residential use. (See meeting recording 2:55:07 for full summary). Acting-Chair Margeson said she would not support the application. She said demolition was within the HDC's purview but she didn't find the applicant's argument for demolishing persuasive. She said many buildings had different elements from different time periods and many foundations had to be lifted and replaced with new ones. She said she felt that the application failed the spirit and intent or the ordinance.

*Mr. Rossi moved to **grant** the variances as presented and advertised, seconded by Ms. Eldridge.*

Mr. Rossi said the overarching issue was the fact that the Board was trying to judge the compliance of the residential use property according to the standards of the Waterfront Business Use Zone criteria, which he felt was a misapplication of those standards. He said the property wasn't one that lent itself to the intended purpose of waterfront business, so he thought it should be judged more in accordance with the residential use in the surrounding zone areas. He said that was the relevant fact that spoke to all the variance evaluation criteria and that he wouldn't repeat them one by one. Ms. Eldridge concurred and said granting the variances would not be contrary to the public interest because the residential use on a residential street area seemed appropriate. She said it would observe the spirit of the ordinance and would do substantial justice to what the property had been over the years. She said it didn't seem right to suggest that the property really belonged in another zoning district, given the concerns of the neighborhood and the private road. She said granting the variances would not diminish the values of surrounding properties and would most likely increase them. She said there were the flood plain concerns and the weakness of the structure, and the fact that the HDC had allowed demolition. She said there was a reason that the building could be torn down and she felt that a new building would increase property values. She said the hardships were many. Mr. Rossi added that the special condition of the property was that it was landlocked and the access to it was extremely restricted, which prohibited the use in the way the zoning ordinance spoke to – a waterfront business. Mr. Mannle said if the property was on the next street or on Pickering Avenue, he'd agree with preserving it. He said if the applicant wanted to change it back

to a waterfront business, it would probably fail on 2-3 criteria, even though they could do the waterfront business by right because the surrounding areas had changed so dramatically.

*The motion **passed** by a vote of 5-1, with Acting-Chair Margeson voting in opposition.*

It was moved, seconded, and passed unanimously to hear the meeting past 10:00 p.m.

G. REQUEST TO POSTPONE The request of **Nissley LLC (Owner),** for property located at **915 Sagamore Avenue** whereas relief is needed to demolish the existing building and construct a new mixed-use building which requires the following: 1) A Variance from Section 10.440 to allow a mixed-use building where residential and office uses are not permitted. 2) A Variance from Section 10.1113.20 to allow parking to be located in the front yard and in front of the principal building. 3) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only one is allowed. Said property is located on Assessor Map 223 Lot 31 and lies within the Waterfront Business (WB) District. **REQUEST TO POSTPONE** (LU-22-229)

DECISION OF THE BOARD

*It was moved, seconded, and passed unanimously (6-0) to **postpone** the petition.*

H. The request of **Luke J. Brindamour and Sara C. Brindamour (Owners),** for property located at **653 Greenland Road** whereas relief is needed to add an 8' tall fence which requires the following: 1) A Variance from Section 10.515.13 to allow an 8' tall fence along the property line and not adhering to the required yard setbacks. Said property is located on Assessor Map 259 Lot 31 and lies within the Single Residence B (SRB) District. (LU-22-231)

SPEAKING TO THE PETITION

The applicant Luke Brindamour was present to review the petition. He said he wanted to leverage the existing 6-ft and 8-ft fences for the majority of the property's perimeter and that the abutters were in approval. He reviewed the criteria and said they would be met.

Mr. Mannle asked if the applicant wanted to just connect the gaps in the fence. Mr. Brindamour said he would use the existing parts of the 6-ft and 8-ft fences for the same existing lengths but the height would be 8 feet around the yard's perimeter and then taper off to six feet. Mr. Rheaume said the photo showed the current 8-ft fence abutting the neighbor's property and had a note that said 'new line from survey'. He asked if a survey was done. Mr. Brindamour said he thought it was appropriate to have a survey done to inform his neighbors of the findings. In response to further questions from Mr. Rheaume, Mr. Brindamour said the intent was to move the fence closer to the property line and continue it along the property line with the 8-ft fence as close as practical. Mr. Rheaume asked if the 8-ft fence would mimic the topography and level things out, and Mr. Brindamour agreed. Mr. Rossi asked why the new fence had to be eight feet instead of six feet. Mr.

Brindamour said his neighbor preferred an 8-ft fence. He said it was also a privacy issue for the neighbors and would keep his dog in the yard. It was further discussed.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Margeson closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Mr. Rheaume said there used to be nothing in the zoning board about fence heights but it was added because people were putting up tall fences on compact properties. He said in the case of a large property like the applicant's with a fair division between properties, the difference between six feet and eight feet was probably not that tremendous if the application made reasonable use of the different heights of fencing. Mr. Mattson said it didn't seem to be a 'spite' fence. Ms. Eldridge said it was on a busy street, so it made sense that the former owners put up a tall fence for privacy, and it wasn't taking light from anyone. Acting-Chair Margeson said she would not support the application because she didn't think the applicant had demonstrated a hardship.

*Mr. Rheaume moved to **grant** the variance as presented and advertised, seconded by Ms. Eldridge.*

Mr. Rheaume said granting the variance would not be contrary to the public interest, noting that it was a large lot with a substantial separation between the house and its neighbors, and a 6-ft fence would be allowed by right. He said there was a sense of noise from Greenland Road and the newer road farther away, but in terms of the public saying that the fence would be bothersome in general, he didn't see how that would be the case with a 2-ft difference. He said the neighbors would be in favor of additional privacy and the fence would help with noise elements associated with dogs and kids. He said granting the variance would observe the spirit of the variance, noting that fence control was added to the ordinance to prevent 'spite' fences between neighbors, but he didn't see that in the applicant's case because the applicant was trying to take advantage of the existing fence. He said substantial justice would be done because the public benefit would outweigh the applicant's desire to have the higher fence and ensure additional privacy and so on, and he didn't think there was any public benefit, especially in that wide-open neighborhood. He said granting the variances would not diminish the values of surrounding properties, especially with the large lots involved and the amount of fencing and no indication from the neighbors or public that it would. Relating to hardship, he said the fence ordinance applied across the City and the small properties tended to outweigh the large ones. He said the applicant's property was one of the bigger lots in Portsmouth, which is some ways diminished some of the impact of the very broad requirement in the fence ordinance and was an important factor. He said the applicant had a long-standing fence without seemingly having caused negative aspects to the neighbors, so he felt that there was no substantial relationship by saying that reducing the fence by two feet in those areas would make a big difference. He said the variance request was reasonable and should be approved.

Ms. Eldridge concurred and had nothing to add.

*The motion **passed** by a vote of 4-2, with Mr. Rossi and Acting-Chair Margeson voting in opposition.*

I. The request of **Paula and Joe Lewinski (Owners),** for property located at **187 Union Street** whereas relief is needed for renovation of the existing dwelling including demolition of a small addition and expanding the existing structure which requires the following: 1) A Variance from Section 10.521 to allow a 0' secondary front yard where 2 feet (per Section 10.516.10) is required. 2) A Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 135 Lot 68 and lies within the General Residence C (GRC) District. (LU-22-238)

SPEAKING TO THE PETITION

The applicant Joe Lewinski was present and reviewed the petition and criteria. Mr. Rheaume asked if a survey was done to validate the zero-foot line. Mr. Lewinski said they were just going off the GPS lines. Mr. Rheaume asked Mr. Stith if the foundation would trigger a survey. Mr. Stith said typically the Inspection Department would do an as-built survey for the addition. Mr. Mattson asked if a variance would still be required if the addition on Coffins Court was rebuilt and set back two feet. Mr. Stith said it would not. Mr. Mattson asked Mr. Lewinski if he had considered moving the small addition just two feet from Coffins Court. Mr. Lewinski said he had but decided to keep it along Coffins Court with the rest of the building for aesthetic purposes.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Cari Feingold of 199 Union Street said it made sense to keep it where it was because of aesthetics and that it was part of the change and growth happening in the neighborhood and Portsmouth.

No one else spoke, and Acting-Chair Margeson closed the public hearing.

DECISION OF THE BOARD

*Mr. Mannle moved to **grant** the variances as presented and advertised, seconded by Mr. Rossi.*

Mr. Mannle said granting the variances would not be contrary to the public interest because the improvements, especially on the side of the house, would be a benefit. He said the spirt of the ordinance would be observed because only a 2-ft variance for the back demolition of the house was being asked for, whereas the rest of the house would be there. He said granting the variances would do substantial justice because it was a small request to line up with the rest of the house. He said the of surrounding properties would not be diminished and would most likely increase. He noted that

the property was unique because it was located on the corner of Union Street and a public accessway, and the property had special conditions that distinguished it from other properties in the area. Owing to those special conditions, he said a fair and substantial relationship did not exist between the general public purposes of the ordinance's provisions and their specific application to that provision of the property. He said the proposed use was a reasonable one. Mr. Rossi concurred. He referred to the spirit of the ordinance being observed and said the spirit of General Residence C was for single-family, two-family, and multi-family dwellings, and there was nothing about the proposal that diminished the suitability of the property to meet that purpose. He said a special condition of the property was that it already had a zero clearance all the way up the outline of the building along Coffins Court.

Mr. Rheaume agreed that it was only two feet but thought it was an important two feet. He said the City tried to avoid zero-foot setbacks when they could, and he thought the applicant's new foundation might trigger the need for a survey. He thought the aesthetics of the continuing wall along the streetscape wasn't that critical, but a zero-foot setback when one could have no need for a variance at all was a big ask. He said he would vote in opposition.

*The motion **passed** by a vote of 5-1, with Mr. Rheaume voting against the petition.*

Mr. Rheaume recused himself from the following petition and left the meeting.

J. The request of **Linda J Mayrand (Owner),** for property located at **44-46 Rockingham Street** whereas relief is needed for after the fact variance for a rear deck expansion and stairs which requires the following: 1) Variances from Section 10.521 to allow a) an 8 foot side yard where 10 feet is required; and b) 46% building coverage where 35% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 144 Lot 14 and lies within the General Residence C (GRC) District. (LU-22-230)

SPEAKING TO THE PETITION

Attorney Brian Barrington was present on behalf of the applicant to review the petition. He said the 1830 property was a duplex and that the doors required decks big enough for life and safety code access and handicapped persons. He reviewed the criteria and said they would be met.

Mr. Rossi asked how the petition turned out to be an after-the-fact variance request. The owner Linda Mayrand was present and said sheetrock was put up between the two units around 2002 and she thought the paperwork was done for the permitting but then discovered that it wasn't.

Acting-Chair Margeson opened the public hearing.
SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Acting-Chair Margeson closed the public hearing.

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variances as presented and advertised, seconded by Ms. Eldridge.*

Ms. Eldridge said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said the deck needed to be there and it was only a two percent increase in building coverage and would be behind the house. She said substantial justice would be done because the deck was an essential part of the structure and a smaller deck wouldn't allow for safety concerns. She said granting the variances would not diminish the values of surrounding properties, noting that there was already a deck there. She said literal enforcement or the ordinance would result in an unnecessary hardship. She said two percent was a very slight change to the property coverage and the size of the decks was necessary for the building residents' safety. She said the hardship was that, in order to create a deck to meet the safety standards, the lot coverage had to increase. She said the variances should be approved.

Mr. Rossi concurred and had nothing to add.

*The motion **passed** by unanimous vote, 5-0.*

V. OTHER BUSINESS

There was no other business.

VI. ADJOURNMENT

The meeting adjourned at 11:00 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

II. OLD BUSINESS

A. Cherie Holmes and Yvonne Goldsberry - **45 Richmond Street** request a 1-year extension to the variances granted on January 19, 2021. (LU-20-249)

Project Background

On Tuesday, January 19, 2021 the Board of Adjustment granted the request for the removal of existing garage and rear addition and construct new garage and 2-story addition which requires the following:

1) Variances from Section 10.521 to allow:

a) a 0.5 foot front yard where 5 feet is required;

b) a 4.5 foot rear yard where 15 feet is required; and

c) a 4 foot right side yard where 10 feet is required.

2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

The request was granted with the following stipulation:

1) The rear yard setback shall be 5 feet.

The approvals listed above are scheduled to expire on January 19, 2023. The Ordinance allows for a one-time, one-year extension if the request is acted on prior to the expiration date. The applicant has requested an extension as a building permit has yet to be obtained due to limited availability of the contractor.

ANNE WHITNEY ARCHITECT

11/28/22

Zoning Board of Adjustment
City Of Portsmouth
1 Junkins Ave.
Portsmouth, NH 03801

Re: BOA Extension at 45 Richmond Street

Dear Commission,

I am writing on behalf of Yvonne Goldsberry & Cherie Holmes to request a one year extension to the January 19th 2020, BOA Approval for the Additions & Renovations at 45 Richmond Street.

EcoSound Builders is scheduled to start the construction in March of 2023.

Sincerely,

Anne Whitney
Architect

cc: Yvonne Goldsberry & Cherie Holmes
Ethan Korpi & Peter Robie, EcoSound Builders

801 Islington Street
Suite 32
Portsmouth
NH 03801
603.502.4387
archwhit@aol.com

CITY OF PORTSMOUTH

Planning Department
1 Junkins Avenue
Portsmouth, New
Hampshire 03801

(603) 610-7216

ZONING BOARD OF ADJUSTMENT

January 21, 2021

Cherie Holmes
Yvonne Goldsberry
1087 County Road
Walpole, NH 03608

RE: **Board of Adjustment request for property located at 45 Richmond Street (LU 20-249)**

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, January 19, 2021**, considered your application for removal of existing garage and rear addition and construct new garage and 2-story addition which requires the following: 1) Variances from Section 10.521 to allow: a) a 0.5 foot front yard where 5 feet is required; b) a 4.5 foot rear yard where 15 feet is required; and c) a 4 foot right side yard where 10 feet is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 108 Lot 18 and lies within the Mixed Residential Office (MRO) District. As a result of said consideration, the Board voted to grant your request with the following stipulation:

1) The rear yard setback shall be 5 feet.

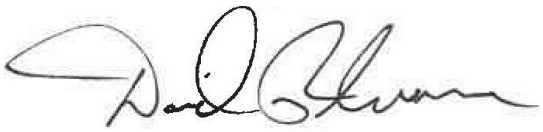
The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,



David Rheaume, Chairman of the Zoning Board of Adjustment

cc: Robert Marsilia, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Anne Whitney

II. OLD BUSINESS

B. The request to rehear the request of **Jeffrey M. and Melissa Foy (Owners),** of the November 15, 2022 decision of the Zoning Board of Adjustment for property located at **67 Ridges Court**. Said property is located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District. (LU-22-199)

Project Background

On Tuesday, November 15, 2022, the Board considered the application of Jeffery M. and Melissa Foy (owners) for property located at 67 Ridges Court whereas relief is needed for construction of a 518 square foot garage addition which requires the following: 1) A Variance from Section 10.521 to allow a 15.5 foot front yard where 19 feet is required per Section 10.516.10. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. A motion to determine that the petition does not fall under Fisher v. Dover failed, therefore the request was not heard.

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, a hearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

> *"When a material change of circumstances affecting the merits of the applications has not occurred or the application is not for a use that materially differs in nature and degree from its predecessor, the board of adjustment may not lawfully reach the merits of the petition. If it were otherwise, there would be no finality to proceedings before the board of adjustment, the integrity of the zoning plan would be threatened, and an undue burden would be placed on property owners seeking to uphold the zoning plan." Fisher v. Dover, 120 N.H. 187, (1980).*

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC
ATTORNEYS AT LAW
127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

December 14, 2022

HAND DELIVERED

Peter Stith, Planner
City of Portsmouth
1 Junkins Ave.
Portsmouth, NH 03801

Re: Jeffrey and Melissa Foy, Owners/Applicant
Property Location: 67 Ridges Court, Portsmouth, New Hampshire, 03801
Tax Map 207, Lot 59, SRB and Wetland Conservation Historic Districts

Dear Peter:

Enclosed please find a **Request for Rehearing** for consideration by the Zoning Board of Adjustment. A copy has been uploaded to Viewpoint.

Please let me know if you have any questions or comments.

Very truly yours,

R. Timothy Phoenix

RTP/msw
Encl.

cc: Jeffrey and Melissa Foy (email)
Ambit Engineering, Inc. (email)
DeStefano Maugel (email)

DANIEL C. HOEFLE
R. TIMOTHY PHOENIX
LAWRENCE B. GORMLEY
STEPHEN H. ROBERTS
R. PETER TAYLOR
KEVIN M. BAUM
GREGORY D. ROBBINS
MONICA F. KIESER
JACOB J.B. MARVELLEY
DUNCAN A. EDGAR
STEPHANIE J. JOHNSON
OF COUNSEL:
SAMUEL R. REID
JOHN AHLGREN

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment ("ZBA")
FROM: R. Timothy Phoenix, Esquire
DATE: December 14, 2022
RE: Request for Rehearing
Jeffrey and Melissa Foy, Owners/Applicants
Property Location: 67 Ridges Court, Portsmouth, NH 03801
Tax Map 207, Lot 59, SRB and Wetland Conservation Historic Districts

Dear Chair Lee and Zoning Board Members:

Now come Jeffrey and Melissa Foy ("Foy" or "Applicant") and request that the Zoning Board of Adjustment ("ZBA") rehear and reverse its November 15, 2022 decision prohibiting presentment of a new zoning application for reduced scope relief.

I. EXHIBITS

1. 11/28/22 Notice of Decision with respect to 11/15/22 hearing.
2. Minutes of 11/15/22 ZBA Meeting.
3. 9/22/22 Plans-by Ambit Engineering (requesting 15.8 foot front setback for 518 sq. ft. addition where13.5'exist and 19 feet is required)
   - Existing Condition
   - Variance Plan
4. 6/27/22 Plans, by Ambit Engineering (requesting 15.8 foot setback for 718 sq. ft. addition where 13.5'exists and 30 feet is required. Considered by the ZBA and denied August 16, 2022)
5. DeStefano/ Maugel Elevation Comparison, 718 sq. ft. addition and 518 sq. ft. addition.
6. View Exhibit Plan set by Ambit Engineering
   - 46 Ridges Ct view shed-718 sq. ft. addition
   - 46 Ridges Ct. view shed 518 sq. ft. addition
   - 56 Ridges Ct. view shed 718 sq. ft. addition
   - 56 Ridges Ct. view shed 518 sq. ft. addition
7. City of Portsmouth, NH Tax Map 207.

II. RELIEF REQUESTED

PZO§10.516-Front Setback -15.8 'where 13.5 feet exist and 19 feet is required.[1]

PZO§10.321- Expansion of nonconforming structure.

[1] Pursuant to PZO§10.521, Table of Dimensional Standards, front setback in SRB zone is 30'; however, PZO§10.516 permits the setback to be the average of homes within 200 feet, here 19 feet as confirmed by Planner Peter Stith.

III. STANDARD OF REVIEW

> Within 30 days after any… decision of the Zoning Board of Adjustment… any party to the action or proceedings… may apply for rehearing in respect to any matter determined in the action specifying in the motion for rehearing the grounds therefor; and the Board of Adjustment may grant such rehearing if in its opinion good reason therefor is stated in the motion. RSA 677:2.
>
> A motion for rehearing. Shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. RSA 677:3, I.

The purpose of the statutory scheme is to allow the ZBA to have the first opportunity to pass upon any alleged errors in its decision so that the court may have the benefit of the board's judgment in hearing the appeal. Town of Bartlett Board of Selectmen v. Town of Bartlett Zoning Board of Adjustment, 164 NH 757 (2013). Rehearing is designed to afford local zoning boards of adjustment an opportunity to correct their own mistakes before appeals are filed with the courts. Fisher v. Boscawen, 121 NH 438 (1981).

IV. RELEVANT FACTS

67 Ridges Court is a 16,500 sq. ft. lot located at the end of Ridges Court on Little Harbor in the SRB Zoning District. Upon the lot is a 1.75 story, 1591 sq. ft. three-bedroom Cape Cod style home with a detached shed on the left/northerly side of the lot, a dock extending into Little Harbor and two driveways (the "Property"). Most of the lot is in the 100 foot tidal buffer zone from Little Harbor, with a corner of the existing home and the right (southerly) paved driveway/parking area within the buffer. The existing home is within the front setback at 13.5 feet. (See footnote 1)

On June 29, 2022, Foy submitted an application for zoning relief requesting a 718 sq. ft. addition 15.8 feet from the front property line where 13.5 feet exist and 30 feet required. The proposed southerly addition was sited over existing pavement and consisted of a two-car garage

with living space and a deck above. (**Exhibit 4**). The requested front setback relief allowed a seamless connection to the existing home and maximized distance between the southeast corner of the addition and the adjacent shoreline which is further north at the rear of the lot than the front. In addition, a shorter driveway connecting to the proposed garage addition reduced impervious coverage. Based on the perceived 30 foot setback requirement in SRB, 450 square feet of the addition was within the front setback. The application was considered by the ZBA on August 16, 2022. There was some neighborhood opposition, driven primarily by claimed loss of views to Little Harbor by the owners of 46 and 56 Ridges Court. There was also opposition by residents who do not reside on Ridges Court or cannot even see Foy's home. The ZBA denied the requested relief, finding essentially without explanation that there was no hardship. The ZBA also stated concerns about building in the wetland buffer; however, wetland buffer issues are not within the purview of the ZBA but are instead within the purview of the Planning Board.

Foy did not appeal the denial of the 718 sq. ft. addition. Instead, in an effort to recognize and address concerns of the immediate neighbors about views, Foy redesigned the project by removing one garage bay and roof top deck and trellis, reducing the square footage to 518 sq.ft. Prior to submission, it was also learned that pursuant to PZO §10.516.10 the required setback is not 30 feet but is only 19 feet, the average of the front setbacks existing within 200 feet of the subject.

Compared to the original project, the reduced size addition:

- Reduced the footprint by 200 ft.[2], a significant 27.9% reduction (718-518=200/718;
- Reduced the square footage of addition in the identified setback from 450 sq. ft.[2] (30 foot setback request) to 68 sq.ft. (19 foot setback request), a significant 84.9% reduction of square footage in the setback (450-68=382/450);
- Reduced the garage from two bays to one bay, a 50% reduction;

[2] Square footages within setback provided by engineer John Chagnon of Ambit Engineering.

- Reduced the variance relief from 15.8 feet where 30 feet was required, a 14.2 foot deviation in the original request to 15.8 feet where 19 feet is required, a significantly less 3.2 foot deviation, a 77.5% reduction in the degree of relief requested (14.2-3.2=11/14.2);
- reduced lot coverage from 26.6% existing, to 25.1% with the larger addition to 23.0% with the smaller addition, an 8% reduction (25.1-23.0=2.1/25.1). Notably, moving the addition to a 19 foot setback would increase impervious surface as the driveway would have to be extended to reach it, and would place the addition closer to Little Harbor;
- Improved 46 and 56 Ridges Ct. views to Little Harbor (**Exhibit 6**), particularly compared to the original 718 ft.² addition, even if that addition was placed at 19 feet.
- Decreases square footage within the wetland buffer by 200 sq. ft. and increases the distance of the addition from Little Harbor.

Despite these significant changes from the application with a 718 sq. ft. addition compared to a 518 sq. ft. addition, a reduced five-member Zoning Board denied consideration of the revised Foy application pursuant to Fisher v. Dover, 120 N.H. 87 (1980) and its progeny on a 2 (Rossi, Mattson in favor) -3 (Lee, Mannle, Eldridge opposed) vote. Relevant comments by board members with respect to permitting the application to proceed pursuant to Fisher v. Dover analysis (see below) include the following: [3]

> 24:20-Member Rossi asked whether Fisher v. Dover applies as a material change if the variances are the same. The conclusion from the discussion, including commentary by City Planner Peter Stith was that if the project is materially changed it can proceed to consideration even if the variance requests are the same.
>
> 25:04-Member Mannle stated that the project is not a material change because all of the reasons the ZBA denied the earlier variances remain the same.
>
> 25:38-Member Lee concurred with Mr. Mannle, commented that it was the "same horse pulling a different buggy", noting that it was reduced to a one car from a two-car garage.
>
> 26:08- Member Rossi offered a counterpoint, noting that the main concern at the first hearing was the sightlines/views. The new proposal was a diligent good faith effort to address those concerns therefore is materially different.

[3] All references are to the time of the November 15,2022 video recording of the hearing. https://www.youtube.com/watch?v=XIM-TR0qqEQ. All comments are paraphrased. The minutes of the November 15 meeting have not yet been published and will be provided when available.

27:02-Member Mattson noted that it was a reduction from two cars to one car, (which as referenced above is a 50% reduction.)

28:40-Member Rossi moved that the reduced scope application should be permitted to proceed, seconded by Mattson. The reasoning of 4 members is set forth above. Acting Chair Eldridge voted no without comment.

V. FISHER V. DOVER ANALYSIS

Consideration of subsequent petitions by a zoning board are limited to those which present a material change in circumstances affecting the application, propose a use materially different in nature or degree, or are implicitly or explicitly invited by the ZBA. Fisher v. Dover, 121 N.H. 187 (1980); Hill-Grant Living Trust v. Kearsarge Lighting Precinct, 159 N.H. 529 (2009). However, the limitation is not to be technically and narrowly imposed. Fisher, citing Bois v. Manchester, 113 N.H. 339, 341 (1973) (holding a youth residential center for 15 boys referred by social services and supervised by 3 live-in staff materially different in nature and degree than a rooming house for 15 court-referred youths)). Material changes also include the changes in law applicable at the time of the application. Brandt Development Company v. City of Somersworth, 162 N.H. 553 (2011) (approving a project identical to one previously denied in light of changes in applicable law resulting from Simplex v. Town of Newington, 145 N.H. 727 (2001).

THE ZBA ERRED, REQUIRING REHEARING, WHEN IT FOUND THAT THE REDUCED PROJECT WAS NOT MATERIALLY DIFFERENT THUS PROHIBITING CONSIDERATION PURSUANT TO FISHER V. DOVER.

Respectfully, those ZBA members who voted that Fisher v. Dover prohibited the new application apparently misunderstand or have misapplied the holding of the decisions with respect to "material change". Contrary to guidance from Peter Stith (video @ 24:20) that material changes in the Project can proceed to consideration even if the noticed relief requested

is the same, Mr. Mannle declined consideration because there is no change to the relief requested other than getting smaller. Member Lee's concurrence also misses the mark for the same reason. While both identified a reduction in the size of the Project, both overlooked the significant reduction in the degree of relief requested (i.e. 68 sq. ft. in front setback instead of 450 sq. ft.) resulting from application of §10.516 and erroneously concluded that the reduction was not material because the relief requested (15.8 ft. from front lot line) was the same. As noted above, changes in circumstances and applicable law are material changes. Fisher v. Dover, supra Brandt Development Company v. City of Somersworth, 162 N.H. 553 (2011). See also Morganstern v. Town of Rye, 147 N.H. 558 (2002)(holding engineering studies and changes in building structure to address ZBA concerns were material changes).

Declining to invoke Fisher v. Dover merely allows a materially different application to proceed to a hearing on the merits. "[W]hat constitutes a 'material difference' turns upon the identified deficiencies in the initial application and the terms of the invitation to reapply" Transfarmations v. Town of Amherst, 2022 WL 17331983 (subject to revision prior to publication). There was neighborhood opposition to the initial proposal due to its alleged view impacts. These concerns were cited by Board Members in deliberations at that time.[4]

At the time of the August denial, the Members were considering a project seeking a variance to permit 450 sq. ft. in the applicable front yard setback and the entire addition was over an existing impervious driveway. Member Eldridge stated that the proposal would not outweigh the harm to the neighbors (video at 1:33:25) and that location in the front setback was not avoiding the wetland buffer (video 1:33:47). She also suggested that the Project could be in the buffer somewhere else with new architectural plans (video 1:33:54). Similarly, Mr. Mannle

[4] See August 16, 2022 video here: https://www.youtube.com/watch?v=f4qL1dYolBw

stated that the wetland buffer was clear at the outset so seeking a variance for a project "fully in [the setback] when you could move it back and eliminate all the emotional responses [of the neighbors]" was not something he could support (video 1:34:22). These remarks are implicit invitations for a revision which addresses these concerns.

The revised application is appropriately considered under an averaged setback requirement based on abutting homes. That change, which is alone material, is coupled with a significant reduction to the addition square footage, which decreases the bulk in the wetland buffer and in neighbor's viewsheds. Accompanied by removal of portions of paved driveway, the revised 518 sq. ft. addition, with just 68 ft. in the applicable yard setback, is better for the wetland and neighbors than the 718 sq. ft. addition even at a compliant 19 feet from the property line. These changes are entirely responsive to earlier concerns raised during the August 16, 2022 meeting.

As noted by Member Rossi, the size reduction allowed greater viewshed for the neighbors compared to the original application thus constituted a material change. A 50% reduction in garage bays, 27.9% reduction in impervious coverage, 84.9% reduction in the square footage of the addition within the setback, 77.5% reduction in the deviation of the proposal from the 30 foot setback to 19 feet, and decrease in the square footage of structure in the wetland buffer each individually, and certainly collectively demonstrate a "material change" entitled to the ZBA's consideration on the merits. The ZBA has not hesitated to find material changes permitting consideration revised Projects on the merits, when revisions have reduced the size or density of a project and/or addressed concerns raised during the initial hearing. Examples of previous analyses of Fisher v. Dover include:

- #2015-9-11, Application of Paul Berton regarding 482 Broad Street.

Initial request for four condominium units which complied with dimensional requirements and preserved significant open space was denied on September 22, 2015. Thereafter, the ZBA declined to invoke Fisher v. Dover to prohibit application of a reduced three unit proposal. In addition to a 25% reduction in units, the revised proposal reduced the driveway by 24% and pavement by 27%.

- #2019-16-13, Application of Tuck Realty for 23 townhouse units was denied. A subsequent application which preserved an existing home on the property, merged the lots, and reduced the number of townhomes to 18 (21% reduction) was not precluded by Fisher v. Dover.

- #2017-8-5, Application of Susan MacDougall to reconstruct/expand a one story addition at 39 Pray Street. The ZBA declined to invoke Fisher v. Dover to prohibit a first floor addition in the yard setback after a previous first floor addition had been denied several years earlier. Noting that the addition was more centered than before and would have lesser impact on abutting owner, the ZBA allowed consideration on the merits.

- LU-22-86, Application of Neila, LLC to redevelop an existing garage as a dwelling unit within yard setbacks. Despite previous denials of density and yard setback relief sought to convert the same garage to a dwelling, changes to the Ordinance coupled with elimination of upward expansion and neighborhood support resulted in the Board determining that Fisher v. Dover did not bar consideration of a revised project requiring nearly identical relief.

These examples illustrate the number of considerations that can be relied upon in determining whether the procedural bar of Fisher v. Dover supports summary dismissal of an application. The New Hampshire Supreme Court, in first deciding Fisher, cited Bois v. City of Manchester, supra at 341 as an example of material change in a project which was entitled to consideration on the merits. There, a residential youth center for 15 boys supervised by 3 live-in staff members was materially different than an application filed two months earlier for a rooming house for 18 people (15 of which were boys 15-17) leased to the Manchester Youth Residential Center. The change in use was minimal, yet Fisher Court used it as an example of a use that material differed in nature and degree. Material changes also include changes in the law, Brandt Development, supra. The change from the application of the original 30 foot setback deviation to 19 feet is also material change.

Here the impact of the reduction addresses viewshed concerns, reduces impervious area on the buffer compared to the previous plan and existing conditions. Coupled with the application of PZO §10.516, these changes are significant enough for the application to be considered on its merits.

VI. CONCLUSION

For all of the foregoing reasons, the subject property owners Jeff and Melissa Foy respectfully request that the Zoning Board of Adjustment find that the reduced scope single-bay addition project is materially different than the original two-bay project thus grant rehearing, followed by consideration of the reduced-scope project.

Respectfully submitted

Jeffrey and Melissa Foy

By: _____
R. Timothy Phoenix

CITY OF PORTSMOUTH
Planning Department
1 Junkins Avenue
Portsmouth, New
Hampshire 03801
(603) 610-7216

EXHIBIT
1

ZONING BOARD OF ADJUSTMENT

November 28, 2022

Jeffery & Melissa Foy
67 Ridges Court
Portsmouth, NH 03801

RE: **Board of Adjustment request for property located at 67 Ridges Court (LU-22-199)**

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, November 15, 2022**, considered your application for the construction of a 518 square foot garage addition which requires the following: 1) A variance from Section 10.521 to allow a 15.5 foot front yard where 19 feet is required per Section 10.516.10. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District. As a result of said consideration, the Board voted to determine if Fisher v. Dover applied to this application. A motion to determine that the petition does not fall under Fisher v. Dover failed, therefore the request was not heard.

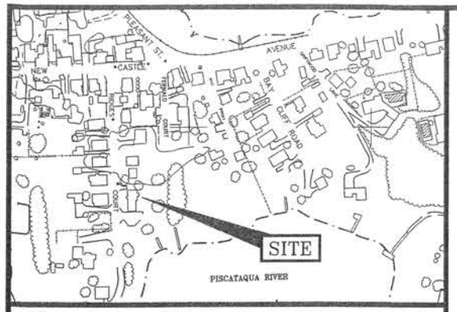
The Board's action may be appealed up to thirty (30) days after the vote. Please contact the Planning Department for more details about the appeals process.

Very truly yours,

Phyllis Eldridge

Phyllis Eldridge, Acting Chair of the Zoning Board of Adjustment

cc: Tim Phoenix, Hoefle, Phoenix, Gormley & Roberts, PLLC



LOCATION MAP SCALE 1" = 200'

LEGEND:

N/F	NOW OR FORMERLY
RP	RECORD OF PROBATE
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
11/21	MAP 11 / LOT 21
	RAILROAD SPIKE FOUND
	IRON ROD/IRON PIPE FOUND
	DRILL HOLE FOUND
	STONE/CONCRETE BOUND FOUND
	RAILROAD SPIKE SET
	IRON ROD SET
	DRILL HOLE SET
	GRANITE BOUND SET
	BOUNDARY
	BUILDING SETBACK
MHW	MEAN HIGH WATER LINE
HOTL	NHDES HIGHEST OBSERVABLE TIDE LINE
PSS	NHDES 50' PRIMARY STRUCTURE SETBACK
TBZ	NHDES 100' TIDAL BUFFER ZONE
NWB	NHDES 150' NATURAL WOODLAND BUFFER
SWQPA	NHDES 250' PROTECTED SHORELAND
FHZ	FEMA SPECIAL FLOOD HAZARD AREA LINE
	OVERHEAD ELECTRIC/WIRES
100	CONTOUR
97x3	SPOT ELEVATION
	EDGE OF PAVEMENT (EP)
	WOODS / TREE LINE
	UTILITY POLE (w/ GUY)
W	WELL
G W E	METER (GAS, WATER, ELECTRIC)
A-1	EDGE OF WETLAND FLAGGING
	SWAMP / MARSH
EL.	ELEVATION
EP	EDGE OF PAVEMENT
FF	FINISHED FLOOR
INV.	INVERT
TBM	TEMPORARY BENCHMARK
TYP.	TYPICAL
LSA	LANDSCAPED AREA

PLAN REFERENCES:

1) PROPOSED ADDITIONS, CHARLES MCLEOD, 67 RIDGES COURT PORTSMOUTH, NH, PROPOSED SITE PLAN. PREPARED BY AMBIT ENGINEERING, INC. DATED SEPTEMBER 2002. NOT RECORDED.

2) PLAN OF LOTS, RIENZI RIDGE. PREPARED BY JOHN W. DURGIN. DATED MARCH 1976. R.C.R.D. PLAN #0188.

WETLAND NOTES:

1) HIGHEST OBSERVABLE TIDE LINE DELINEATED BY STEVEN D. RIKER, CWS ON 7/1/20 IN ACCORDANCE WITH THE FOLLOWING STANDARDS:

A) U.S. ARMY CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL. TECHNICAL REPORT Y-87-1 (JAN. 1987). AND REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION, VERSION 2.0, JANUARY 2012.

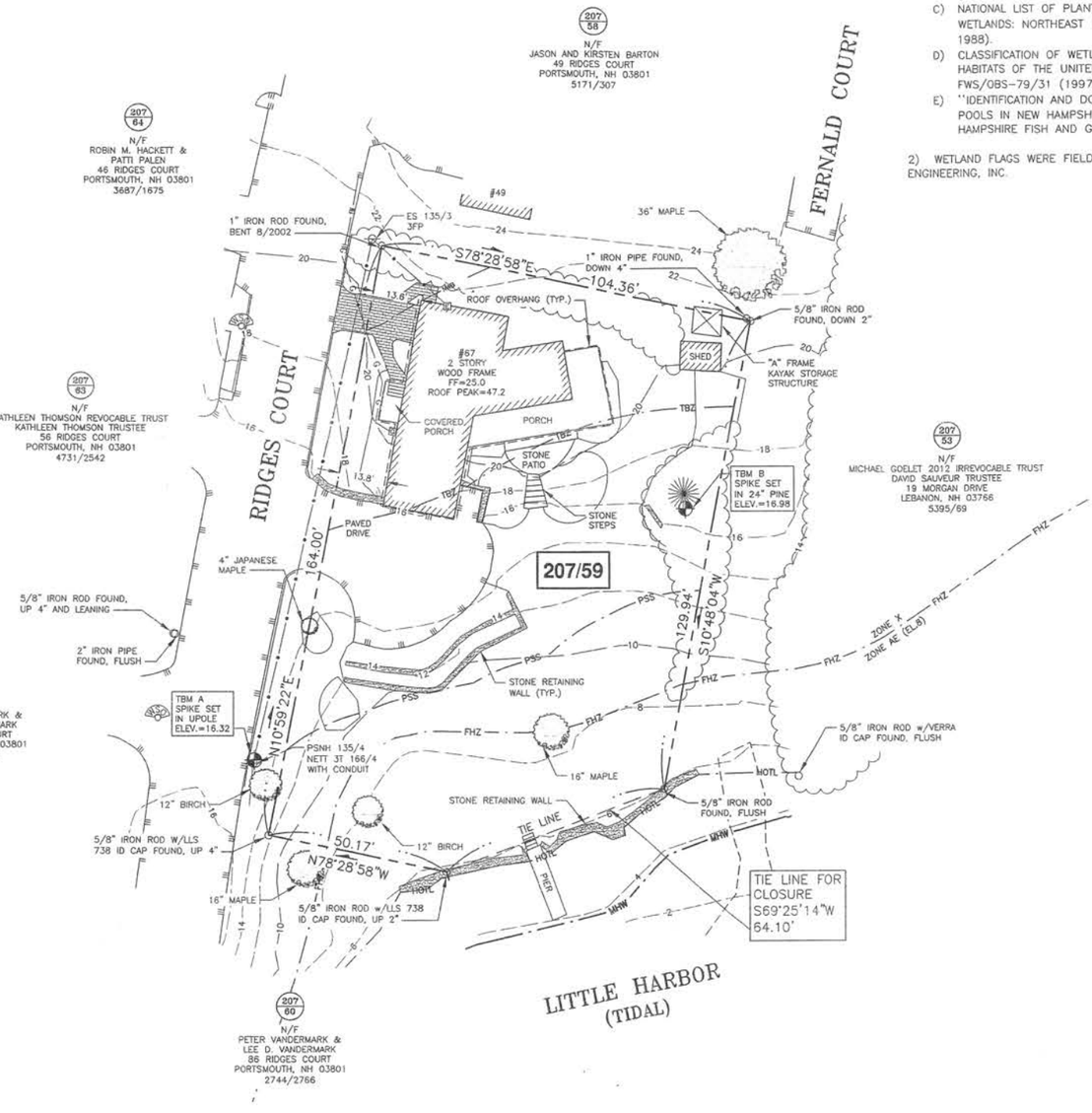
B) FIELD INDICATORS OF HYDRIC SOILS IN THE UNITED STATES, VERSION 8.2, USDA-NRCS, 2018 AND (FOR DISTURBED SITES) FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN NEW ENGLAND, VERSION 4. NEIWPCC WETLANDS WORK GROUP (2019).

C) NATIONAL LIST OF PLANT SPECIES THAT OCCUR IN WETLANDS: NORTHEAST (REGION 1). USFWS (MAY 1988).

D) CLASSIFICATION OF WETLANDS AND DEEPWATER HABITATS OF THE UNITED STATES. USFW MANUAL FWS/OBS-79/31 (1997).

E) "IDENTIFICATION AND DOCUMENTATION OF VERNAL POOLS IN NEW HAMPSHIRE" (1997). NEW HAMPSHIRE FISH AND GAME DEPARTMENT.

2) WETLAND FLAGS WERE FIELD LOCATED BY AMBIT ENGINEERING, INC.



GRAPHIC SCALE

10 0 20 40 60 80 FEET
5 0 5 10 15 20 25 METERS

2002 REF. 1

MAGNETIC NORTH PLAN

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

JOHN R. CHAGNON, LLS — DATE 6.27.22

STATE OF NEW HAMPSHIRE — No. 738 — JOHN R. CHAGNON — LICENSED LAND SURVEYOR

AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road – Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

NOTES:

1) PARCEL IS SHOWN ON THE PORTSMOUTH ASSESSOR'S MAP 207 AS LOT 59.

2) OWNERS OF RECORD:
JEFFREY M. & MELISSA FOY
4 FOX HOLLOW COURT
EAST KINGSTON, N.H. 03827
6325/1066

3) PORTIONS OF THE PARCEL ARE IN A SPECIAL FLOOD HAZARD AREA AE (EL.8) AS SHOWN ON FIRM PANEL 33015C0278F. EFFECTIVE JANUARY 29, 2021.

4) EXISTING LOT AREA:
16,500± S.F. (PLAN REF. 1)
0.3788± ACRES (PLAN REF. 1)

5) PARCEL IS LOCATED IN THE SINGLE RESIDENCE B (SRB) ZONING DISTRICT.

6) DIMENSIONAL REQUIREMENTS:

MIN. LOT AREA:		15,000 S.F.
FRONTAGE:		100 FEET
SETBACKS:	FRONT	30 FEET
	SIDE	10 FEET
	REAR	30 FEET
MAXIMUM STRUCTURE HEIGHT:		35 FEET
MAXIMUM STRUCTURE COVERAGE:		20%
MINIMUM OPEN SPACE:		40%

7) THE PURPOSE OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS ON ASSESSOR'S MAP 207 LOT 59 IN THE CITY OF PORTSMOUTH.

8) VERTICAL DATUM IS NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS (±0.2').

EXHIBIT 3 tabbies

PROPOSED GARAGE
FOY RESIDENCE
67 RIDGES COURT
PORTSMOUTH, N.H.

NO.	DESCRIPTION	DATE
1	ADD FEMA FHZ	6/27/22
0	ISSUED FOR COMMENT	5/18/22

REVISIONS

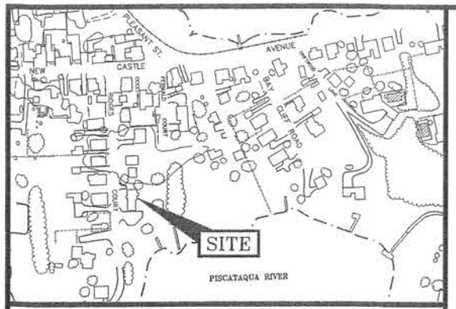
STATE OF NEW HAMPSHIRE — STEVEN D. BIKER — 4/28/22 — No. 219 — CERTIFIED WETLAND SCIENTIST

SCALE 1"=20' MAY 2022

EXISTING CONDITIONS PLAN — C1

FB 222 PG 66

1153.02



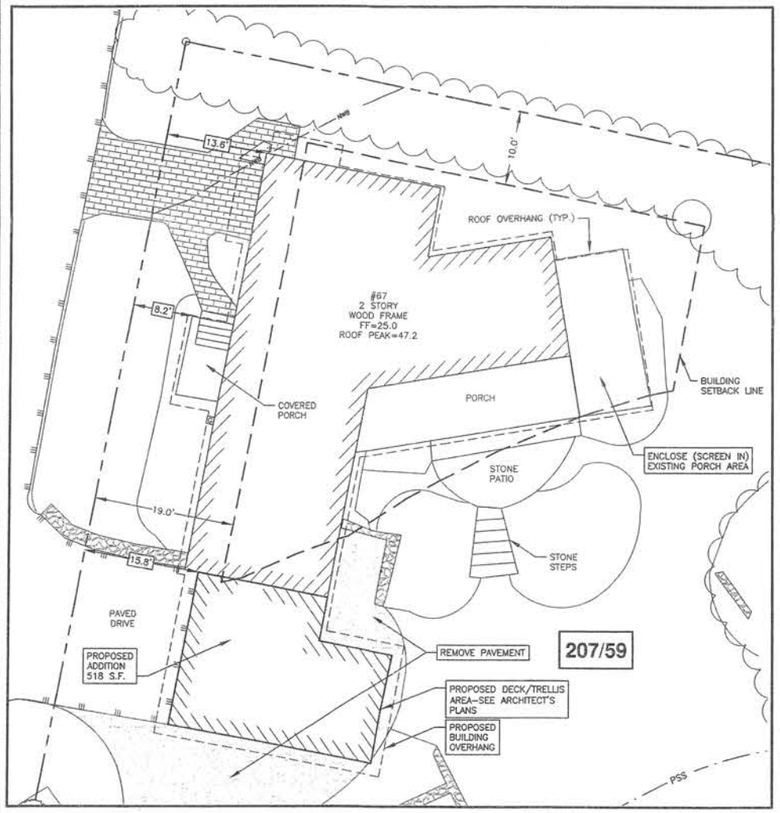
LOCATION MAP SCALE 1" = 200'

IMPERVIOUS SURFACE AREAS
(TO PROPERTY LINE)

STRUCTURE	PRE-CONSTRUCTION IMPERVIOUS (S.F.)	POST-CONSTRUCTION IMPERVIOUS (S.F.)
MAIN STRUCTURE	1,591	2,109
SHED	91	91
PORCHES	513	513
STAIRS	123	123
WALKWAYS	231	231
PAVEMENT	1452	334
RETAINING WALL	212	212
PATIO	109	109
CONCRETE	17	17
EXTERIOR STORAGE	50	50
TOTAL	4389	3789
LOT SIZE	16,500	16,500
% LOT COVERAGE	26.6%	23.0%

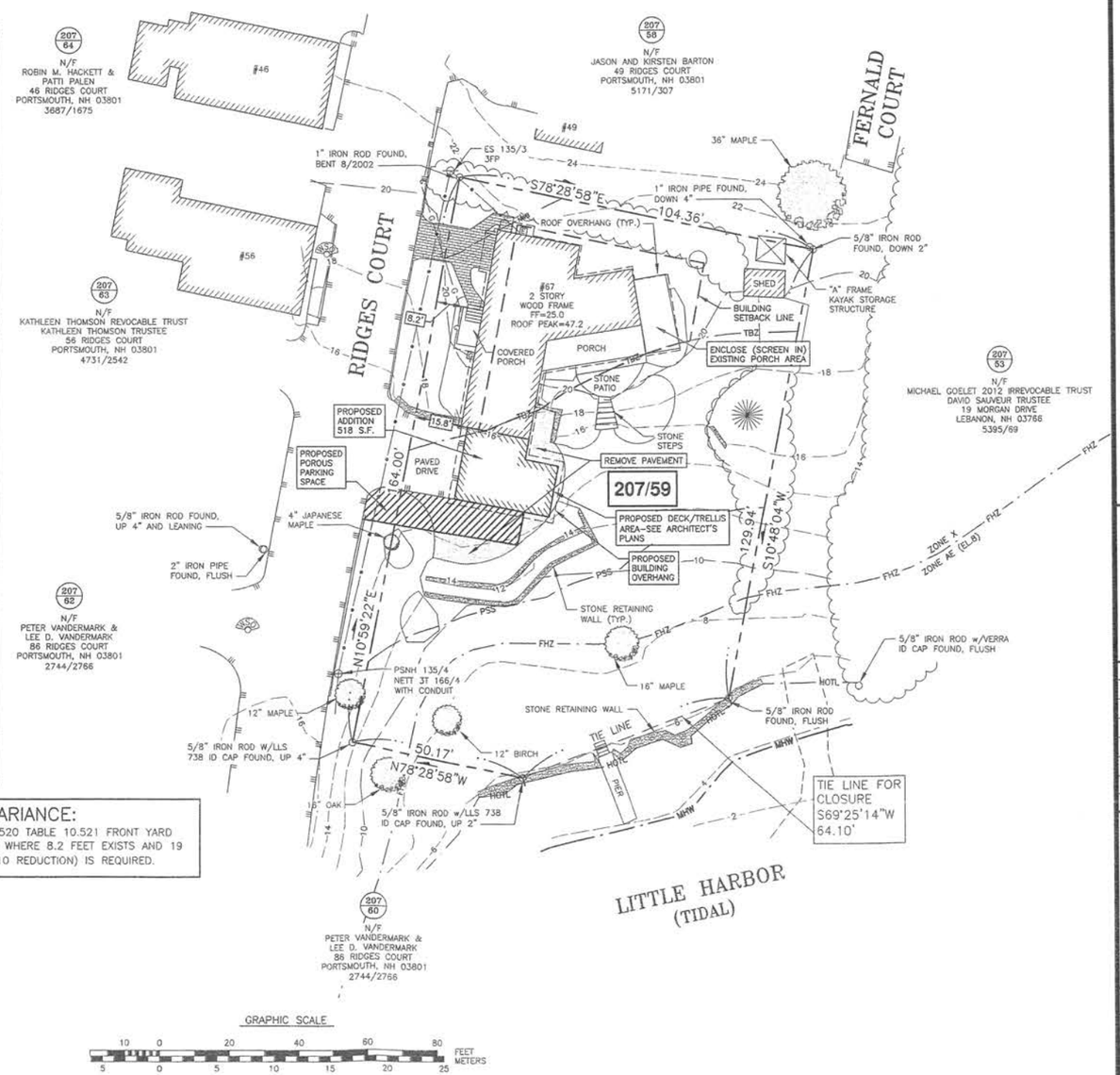
NOTES:
IN ACCORDANCE WITH THE PORTSMOUTH ZONING ORDINANCE, ARTICLE 5, SECTION 10.516.10 FRONT YARD EXCEPTION FOR EXISTING ALIGNMENTS: THE AVERAGE FRONT SETBACK FOR LOT 207/59 IS 19'.

MAP/LOT	SETBACK (FT)	AVG
207/58	13	
207/57	25	
2	38	19



BUILDING DETAIL 1"=10'

GRAPHIC SCALE
10 5 0 10 20 30 40 FEET
3 0 5 10 METERS



GRAPHIC SCALE
10 0 20 40 60 80 FEET
5 0 5 10 15 20 25 METERS

REQUESTED VARIANCE:
ARTICLE 5 SECTION 10.520 TABLE 10.521 FRONT YARD SETBACK OF 15.8 FEET WHERE 8.2 FEET EXISTS AND 19 FEET (SECTION 10.516.10 REDUCTION) IS REQUIRED.

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

10.5.22
JOHN R. CHAGNON, LLS DATE

STATE OF NEW HAMPSHIRE LICENSED LAND SURVEYOR NO. 738 JOHN R. CHAGNON

2002 REF. 1
N
MAGNETIC PLAN

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8) VERTICAL DATUM IS NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS (±0.2').

9) PROPOSED GARAGE FROM PLAN BY DESTEFANO MAGUEL ARCHITECTS DATED SEPTEMBER 28, 2022.

10) OFF SITE STRUCTURE LOCATIONS BASED ON CITY DATABASE LOCATIONS

PROPOSED ADDITIONS FOY RESIDENCE 67 RIDGES COURT PORTSMOUTH, N.H.

NO.	DESCRIPTION	DATE
1	DRIVEWAY WIDTH	10/5/22
0	ISSUED FOR COMMENT	9/28/22
	REVISIONS	

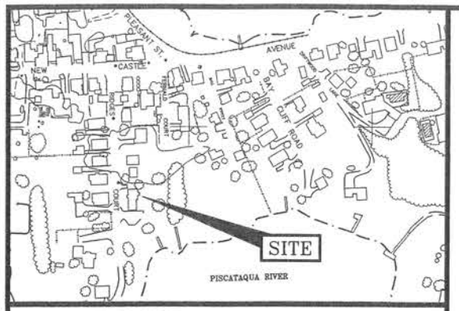
SCALE 1"=20' SEPTEMBER 2022

VARIANCE PLAN

C2

FB 222 PG 66

1153.02



LOCATION MAP SCALE 1" = 200'

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	BOUNDARY
	BUILDING SETBACK
MHW	MEAN HIGH WATER LINE
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TBZ	NHDES 100' TIDAL BUFFER ZONE
NWB	NHDES 150' NATURAL WOODLAND BUFFER
SWQPA	NHDES 250' PROTECTED SHORELAND
FHZ	FEMA SPECIAL FLOOD HAZARD AREA LINE
	OVERHEAD ELECTRIC/WIRES
100	CONTOUR
97x3	SPOT ELEVATION
	EDGE OF PAVEMENT (EP)
	WOODS / TREE LINE
Ø Ø	UTILITY POLE (w/ GUY)
W	WELL
G W E	METER (GAS, WATER, ELECTRIC)
A-1	EDGE OF WETLAND FLAGGING
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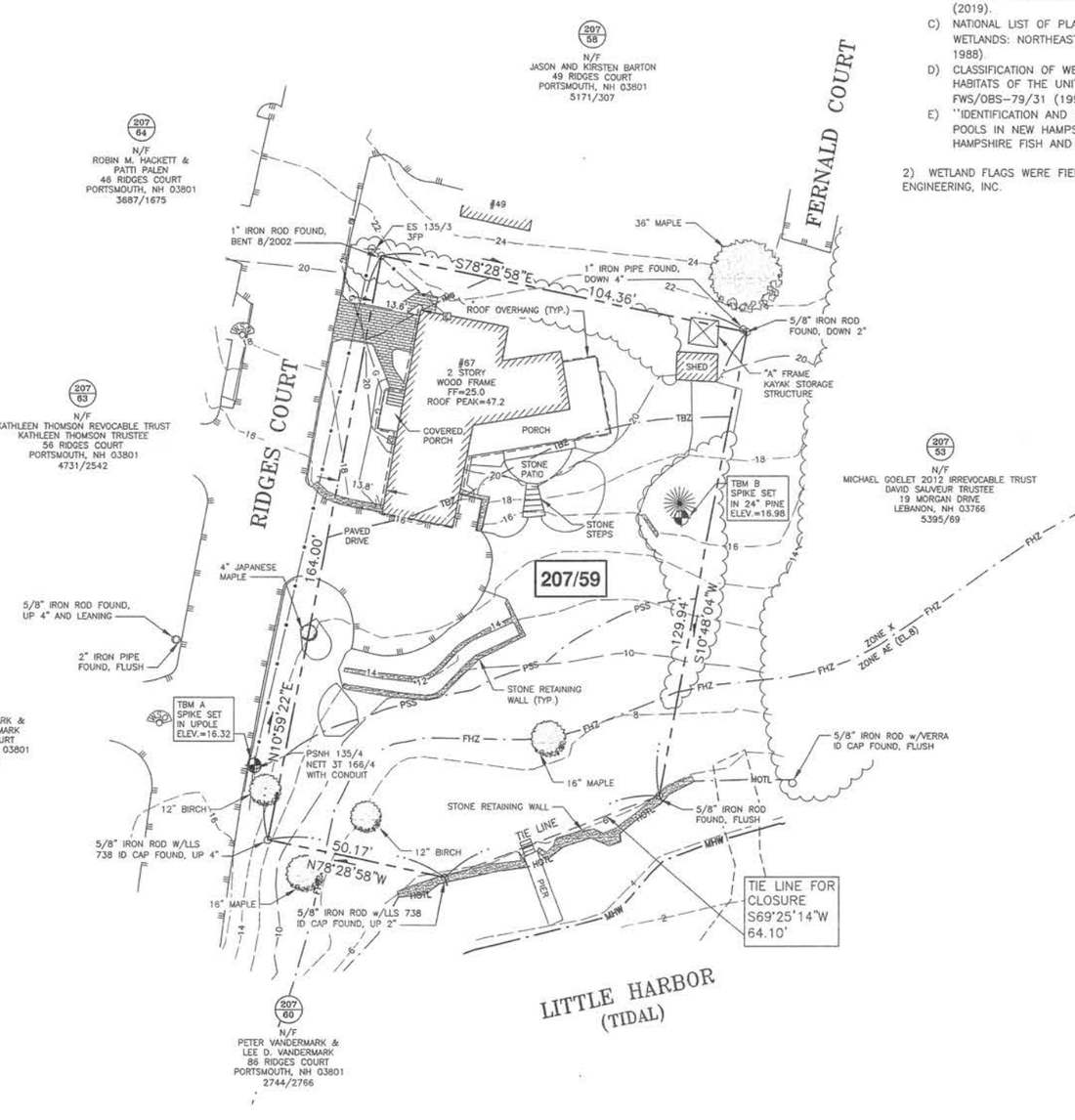
2) PLAN OF LOTS, RIENZI RIDGE. PREPARED BY JOHN W. DURGIN. DATED MARCH 1976. R.C.R.D. PLAN #0188.



GRAPHIC SCALE

10 0 20 40 60 80 FEET
5 0 5 10 15 20 25 METERS

WETLAND NOTES:

1) HIGHEST OBSERVABLE TIDE LINE DELINEATED BY STEVEN D. RIKER, CWS ON 7/1/20 IN ACCORDANCE WITH THE FOLLOWING STANDARDS:

A) U.S. ARMY CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL. TECHNICAL REPORT Y-87-1 (JAN. 1987), AND REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION, VERSION 2.0, JANUARY 2012.

B) FIELD INDICATORS OF HYDRIC SOILS IN THE UNITED STATES, VERSION 8.2, USDA-NRCS, 2018 AND (FOR DISTURBED SITES) FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN NEW ENGLAND, VERSION 4. NEIWPCC WETLANDS WORK GROUP (2019).

C) NATIONAL LIST OF PLANT SPECIES THAT OCCUR IN WETLANDS: NORTHEAST (REGION 1). USFWS (MAY 1988).

D) CLASSIFICATION OF WETLANDS AND DEEPWATER HABITATS OF THE UNITED STATES. USFW MANUAL FWS/OBS-79/31 (1997).

E) "IDENTIFICATION AND DOCUMENTATION OF VERNAL POOLS IN NEW HAMPSHIRE" (1997). NEW HAMPSHIRE FISH AND GAME DEPARTMENT.

2) WETLAND FLAGS WERE FIELD LOCATED BY AMBIT ENGINEERING, INC.

2002 REF. 1
N
MAGNETIC PLAN

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

JOHN R. CHAGNON, LLS — DATE 6.27.22

STATE OF NEW HAMPSHIRE No. 738 JOHN R. CHAGNON LAND SURVEYOR SIGNATURE

AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

NOTES:

1) PARCEL IS SHOWN ON THE PORTSMOUTH ASSESSOR'S MAP 207 AS LOT 59.

2) OWNERS OF RECORD:
JEFFREY M. & MELISSA FOY
4 FOX HOLLOW COURT
EAST KINGSTON, N.H. 03827
6325/1066

3) PORTIONS OF THE PARCEL ARE IN A SPECIAL FLOOD HAZARD AREA AE (EL.8) AS SHOWN ON FIRM PANEL 33015C0278F. EFFECTIVE JANUARY 29, 2021.

4) EXISTING LOT AREA:
16,500± S.F. (PLAN REF. 1)
0.3788± ACRES (PLAN REF. 1)

5) PARCEL IS LOCATED IN THE SINGLE RESIDENCE B (SRB) ZONING DISTRICT.

6) DIMENSIONAL REQUIREMENTS:

MIN. LOT AREA:		15,000 S.F.
FRONTAGE:		100 FEET
SETBACKS:	FRONT	30 FEET
	SIDE	10 FEET
	REAR	30 FEET
MAXIMUM STRUCTURE HEIGHT:		35 FEET
MAXIMUM STRUCTURE COVERAGE:		20%
MINIMUM OPEN SPACE:		40%

7) THE PURPOSE OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS ON ASSESSOR'S MAP 207 LOT 59 IN THE CITY OF PORTSMOUTH.

8) VERTICAL DATUM IS NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS (±0.2').

EXHIBIT 4

PROPOSED GARAGE FOY RESIDENCE 67 RIDGES COURT PORTSMOUTH, N.H.

NO.	DESCRIPTION	DATE
1	ADD FEMA FHZ	6/27/22
0	ISSUED FOR COMMENT	5/18/22

REVISIONS

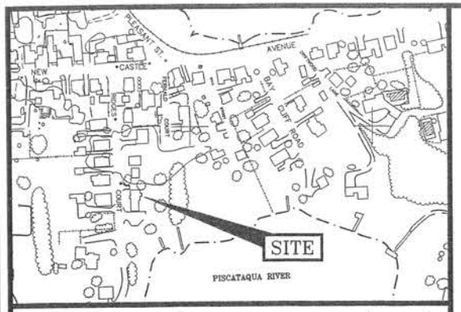
STATE OF NEW HAMPSHIRE STEVEN D. BIKER 6/28/22 No. 219 CERTIFIED WETLAND SCIENTIST

SCALE 1"=20' MAY 2022

EXISTING CONDITIONS PLAN — C1

FB 222 PG 66

1153.02



LOCATION MAP SCALE 1" = 200'

LEGEND:

N/F	NOW OR FORMERLY
RP	RECORD OF PROBATE
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
11/27	MAP 11 / LOT 21
	RAILROAD SPIKE FOUND
	IRON ROD/IRON PIPE FOUND
	DRILL HOLE FOUND
	STONE/CONCRETE BOUND FOUND
	RAILROAD SPIKE SET
	IRON ROD SET
	DRILL HOLE SET
	GRANITE BOUND SET
	BOUNDARY
	BUILDING SETBACK
MHW	MEAN HIGH WATER LINE
HOTL	NHDES HIGHEST OBSERVABLE TIDE LINE
PSS	NHDES 50' PRIMARY STRUCTURE SETBACK
TBZ	NHDES 100' TIDAL BUFFER ZONE
NWB	NHDES 150' NATURAL WOODLAND BUFFER
SWQPA	NHDES 250' PROTECTED SHORELAND
FHZ	FEMA SPECIAL FLOOD HAZARD AREA LINE
	OVERHEAD ELECTRIC/WIRES
100	CONTOUR
97x3	SPOT ELEVATION
	EDGE OF PAVEMENT (EP)
	WOODS / TREE LINE
	UTILITY POLE (w/ GUY)
W	WELL
G W E	METER (GAS, WATER, ELECTRIC)
	EDGE OF WETLAND FLAGGING
	SWAMP / MARSH
EL.	ELEVATION
EP	EDGE OF PAVEMENT
FF	FINISHED FLOOR
INV	INVERT
TBM	TEMPORARY BENCHMARK
TYP.	TYPICAL
LSA	LANDSCAPED AREA

PLAN REFERENCES:

1) PROPOSED ADDITIONS, CHARLES MCLEOD, 67 RIDGES COURT PORTSMOUTH, NH, PROPOSED SITE PLAN. PREPARED BY AMBIT ENGINEERING, INC. DATED SEPTEMBER 2002. NOT RECORDED.

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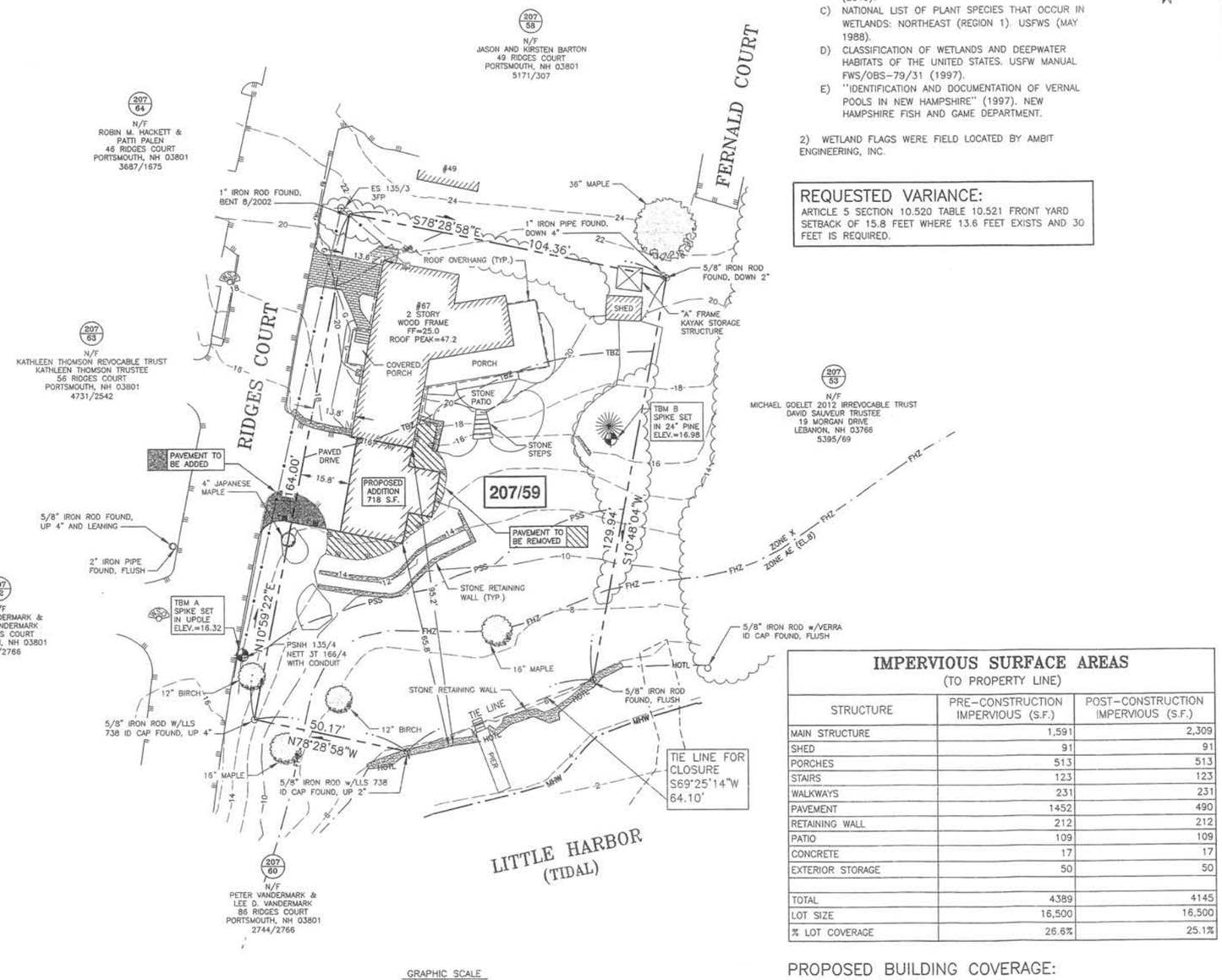

GRAPHIC SCALE
10 0 20 40 60 80 FEET
5 0 5 10 15 20 25 METERS

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

JOHN R. CHAGNON, LLS — DATE 6.27.22

STATE OF NEW HAMPSHIRE — No. 738 JOHN R. CHAGNON — LICENSED LAND SURVEYOR

WETLAND NOTES:

1) HIGHEST OBSERVABLE TIDE LINE DELINEATED BY STEVEN D. RIKER, CWS ON 7/1/20 IN ACCORDANCE WITH THE FOLLOWING STANDARDS:

A) U.S. ARMY CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL. TECHNICAL REPORT Y-87-1 (JAN. 1987). AND REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION, VERSION 2.0, JANUARY 2012.

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E) "IDENTIFICATION AND DOCUMENTATION OF VERNAL POOLS IN NEW HAMPSHIRE" (1997). NEW HAMPSHIRE FISH AND GAME DEPARTMENT.

2) WETLAND FLAGS WERE FIELD LOCATED BY AMBIT ENGINEERING, INC.

REQUESTED VARIANCE:

ARTICLE 5 SECTION 10.520 TABLE 10.521 FRONT YARD SETBACK OF 15.8 FEET WHERE 13.6 FEET EXISTS AND 30 FEET IS REQUIRED.

IMPERVIOUS SURFACE AREAS
(TO PROPERTY LINE)

STRUCTURE	PRE-CONSTRUCTION IMPERVIOUS (S.F.)	POST-CONSTRUCTION IMPERVIOUS (S.F.)
MAIN STRUCTURE	1,591	2,309
SHED	91	91
PORCHES	513	513
STAIRS	123	123
WALKWAYS	231	231
PAVEMENT	1452	490
RETAINING WALL	212	212
PATIO	109	109
CONCRETE	17	17
EXTERIOR STORAGE	50	50
TOTAL	4389	4145
LOT SIZE	16,500	16,500
% LOT COVERAGE	26.6%	25.1%

PROPOSED BUILDING COVERAGE:

MAIN STRUCTURE: 2,309 S.F.
SHED: 91 S.F.
PORCHES: 513 S.F.
STAIRS: 123 S.F.
TOTAL: 3,036 S.F./18.4%

2002 REF. 1
N
MAGNETIC PLAN

AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

NOTES:

1) PARCEL IS SHOWN ON THE PORTSMOUTH ASSESSOR'S MAP 207 AS LOT 59.

2) OWNERS OF RECORD:
JEFFREY M. & MELISSA FOY
4 FOX HOLLOW COURT
EAST KINGSTON, N.H. 03827
6325/1066

3) PORTIONS OF THE PARCEL ARE IN A SPECIAL FLOOD HAZARD AREA ZONE AE (EL. 8) AS SHOWN ON FIRM PANEL 33015C0278F. EFFECTIVE JANUARY 29, 2021.

4) EXISTING LOT AREA:
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0.3788± ACRES (PLAN REF. 1)

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6) DIMENSIONAL REQUIREMENTS:

MIN. LOT AREA:		15,000 S.F.
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	REAR	30 FEET
MAXIMUM STRUCTURE HEIGHT:		35 FEET
MAXIMUM STRUCTURE COVERAGE:		20%
MINIMUM OPEN SPACE:		40%

7) THE PURPOSE OF THIS PLAN IS TO SHOW A PROPOSED ADDITION ON ASSESSOR'S MAP 207 LOT 59 IN THE CITY OF PORTSMOUTH.

8) VERTICAL DATUM IS NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS (±0.2').

9) PROPOSED GARAGE FROM PLAN BY DESTEFANO MAGUEL ARCHITECTS DATED JUNE 14, 2022.

PROPOSED GARAGE
FOY RESIDENCE
67 RIDGES COURT
PORTSMOUTH, N.H.

NO.	DESCRIPTION	DATE
0	ISSUED FOR COMMENT	6/27/22

REVISIONS

STATE OF NEW HAMPSHIRE — STEVEN D. RIKER — 6/27/22 — No. 219 — CERTIFIED WETLAND SCIENTIST

SCALE 1"=20' JUNE 2022

VARIANCE PLAN — C2

FB 222 PG 66 — 1153.02

I:\CIVIL\1153\02\PLANS\1153-02 Building Addition - Wetlands\Plans & Specs\Site\1153-02 - SC-Boundary.dwg 6/28/2022 10:58:10 AM, Canon TX 3030 Desktop

EXHIBIT
tabbies'
5

PROPOSED WEST ELEVATION (2)
1/8" = 1'-0"

718 S.f. addition

PROPOSED WEST ELEVATION (2)
1/8" = 1'-0"

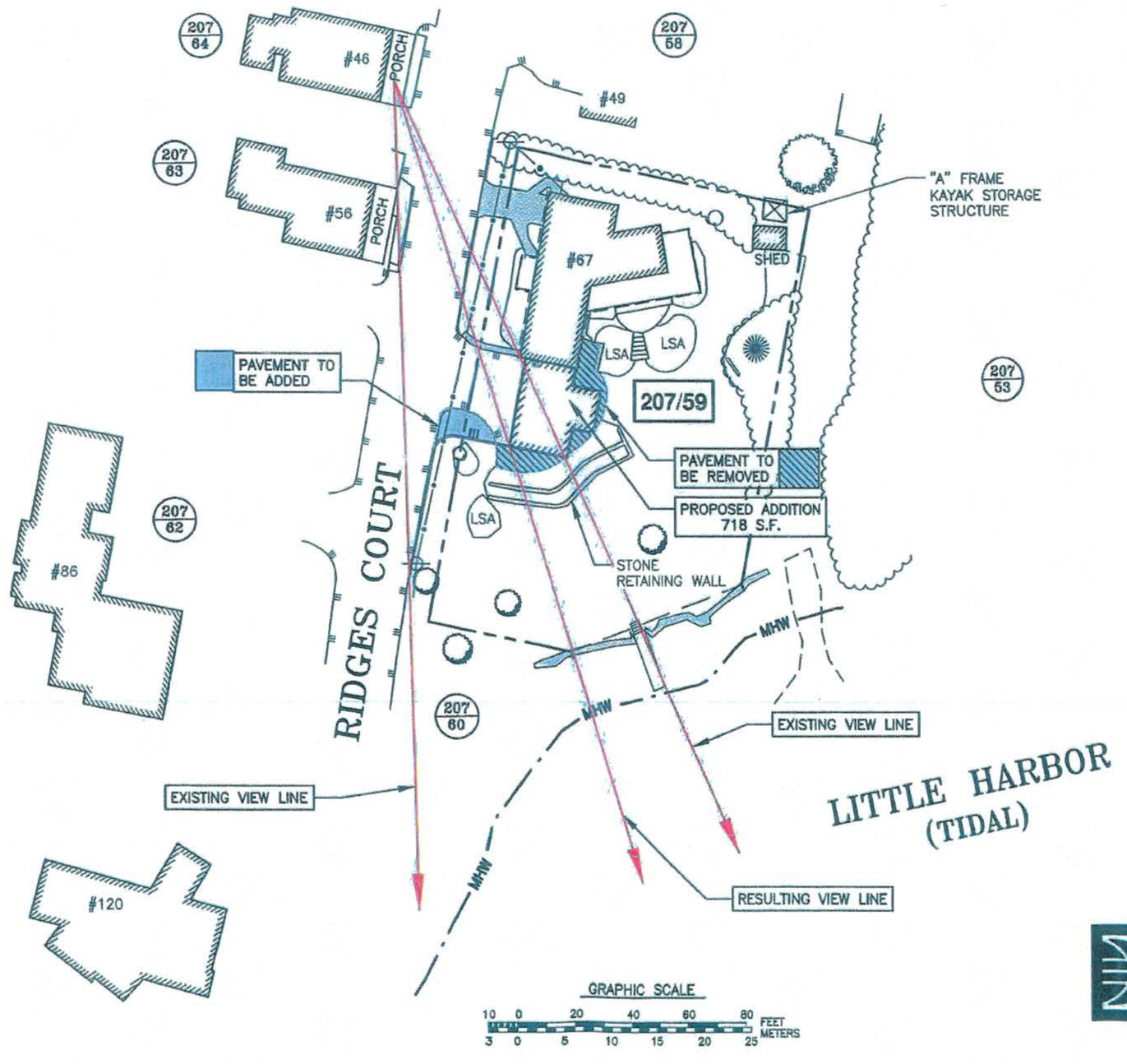
518 S.f. addition

46 RIDGES COURT ABUTTER VIEW SHED

OWNER: JEFFREY M. & MELISSA FOY
PROPERTY LOCATION: 67 RIDGES COURT
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE

EXHIBIT 6

MAGNETIC 2002 REF. 1
N
PLAN



SCALE: 1"=40' 10 AUGUST, 2022

AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 436-9282
Fax (603) 436-2315

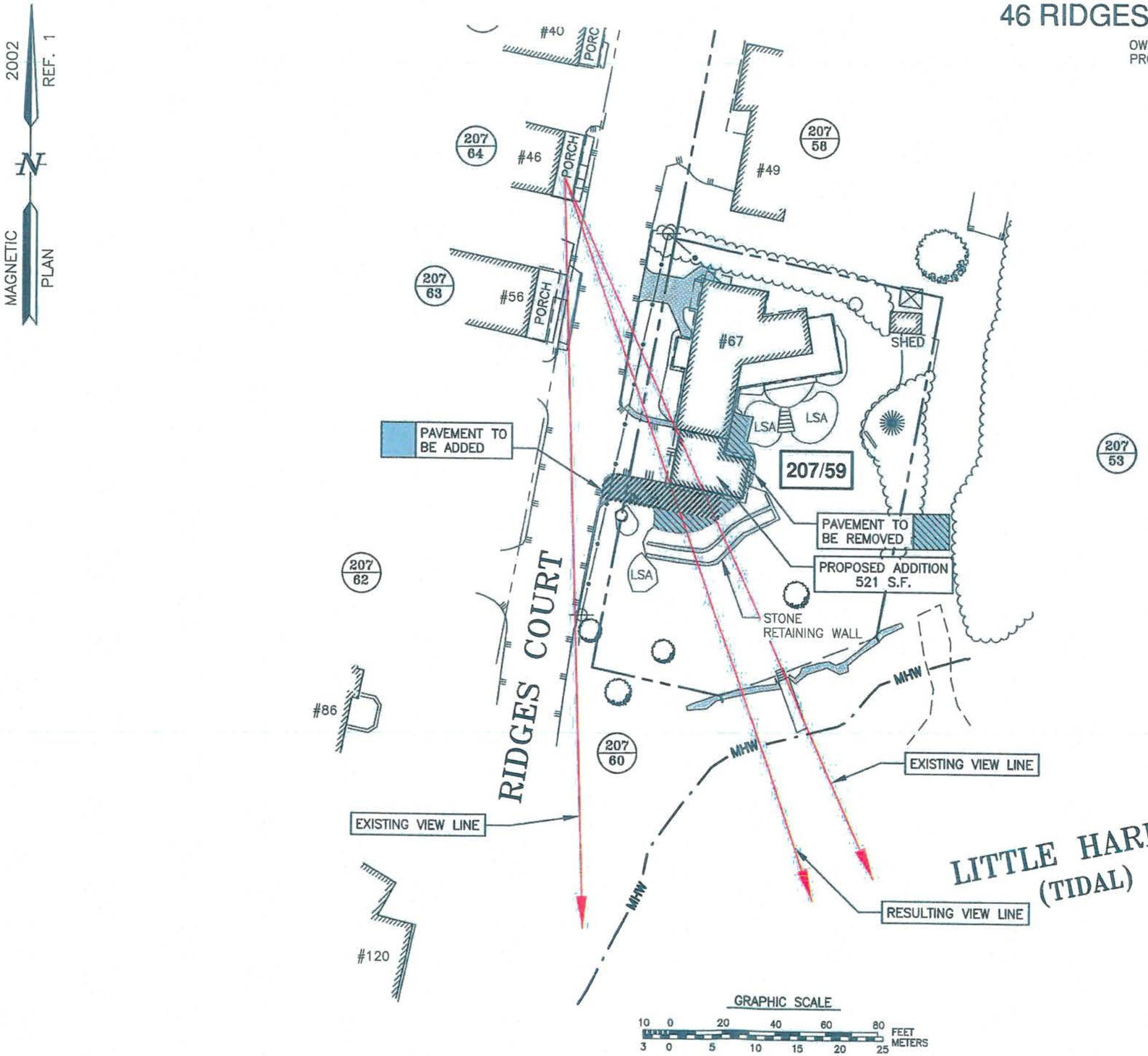
1

FB 222 PG 66 1153.02

J:\JOBS1\VN1100s\Vn1150s\VN1153\2022 Building Addition-Variance\Plans & Specs\Site\1153.02 VIEW SHED.dwg, 8/10/2022 10:02:14 AM, SHARP MX-3071 (0300380X00)

46 RIDGES COURT ABUTTER VIEW SHED

OWNER: JEFFREY M. & MELISSA FOY
PROPERTY LOCATION: 67 RIDGES COURT
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE



SCALE: 1"=40' 1 NOVEMBER, 2022

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Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

3

FB 222 PG 66 1153.02

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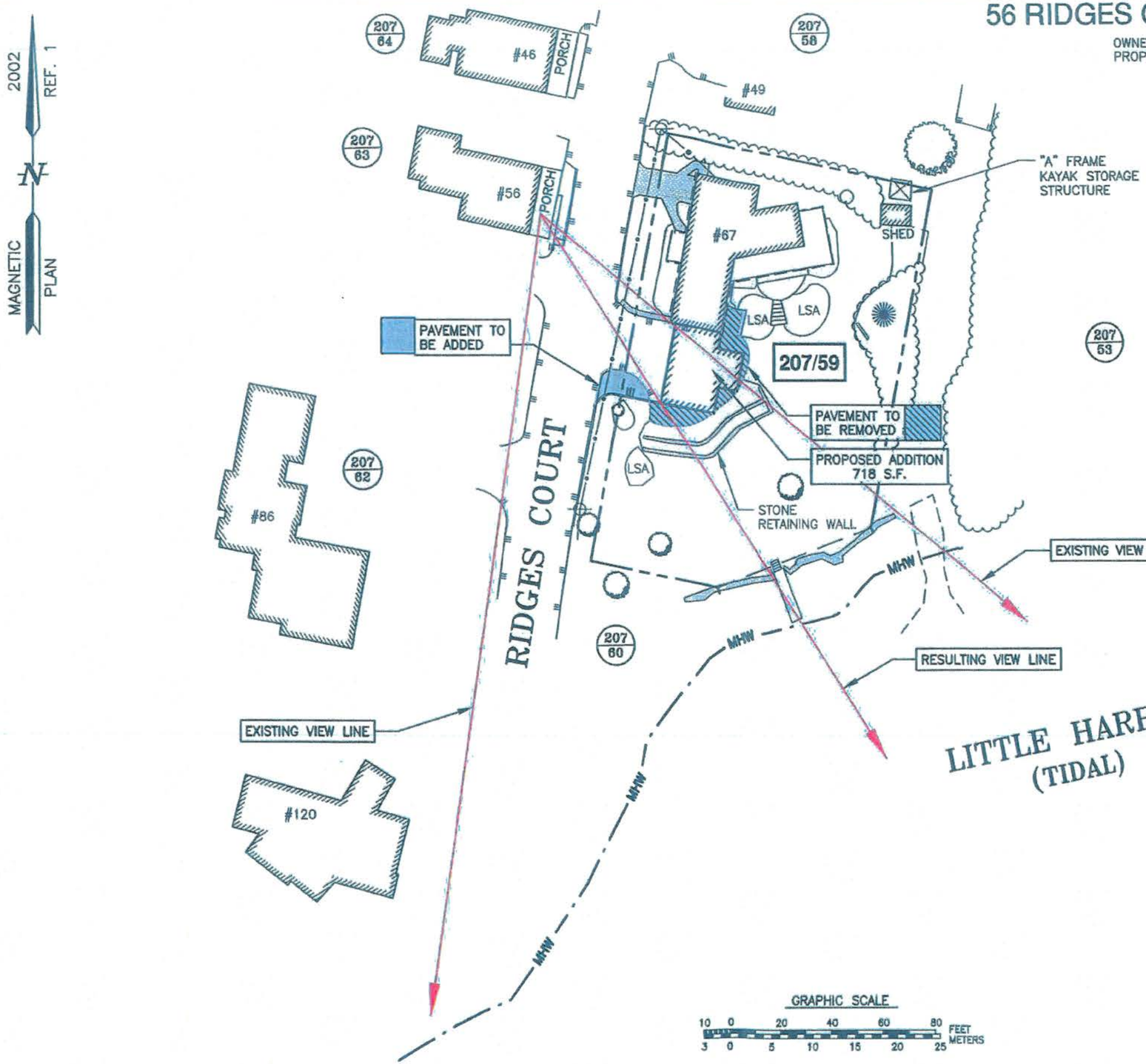
56 RIDGES COURT ABUTTER VIEW SHED

OWNER: JEFFREY M. & MELISSA FOY
PROPERTY LOCATION: 67 RIDGES COURT
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE



SACLE: 1"=40' 10 AUGUST, 2022

AMBIT ENGINEERING, INC.
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200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

2

FB 222 PG 66 1153.02

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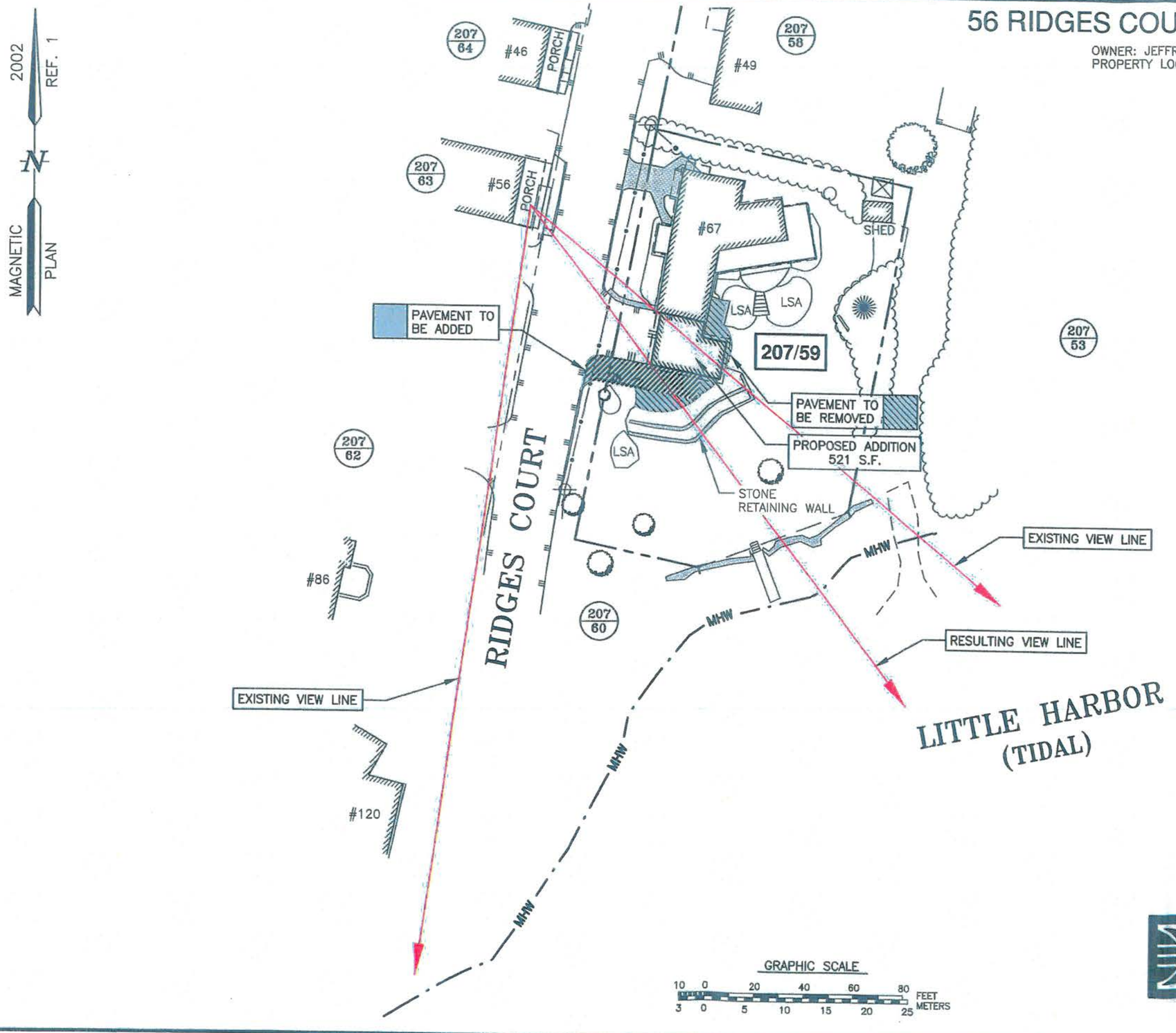
56 RIDGES COURT ABUTTER VIEW SHED

OWNER: JEFFREY M. & MELISSA FOY
PROPERTY LOCATION: 67 RIDGES COURT
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE



SACLE: 1"=40' 1 NOVEMBER, 2022

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4

FB 222 PG 66 1153.02

J:\OBS\1VN1100s\Vn1150s\VN1153\2022 Building Addition-Variance\Plans & Specs\Site\1153.02 VIEW SHED.dwg, 11/1/2022 2:47:16 PM, SHARP MX-3071 (0300380X00)

South Mill Pond
Back Channel
Little Harbor
PLEASANT ST
FRANKLIN ST
WHIDDEN ST
SOUTH MILL ST
SALTER ST
PRAY ST
PARTRIDGE ST
MARCY ST
JOHNSON CT
SOUTH ST
SOUTH SCHOOL ST
HOLMES CT
WHIDDEN ST
HUMPHREY'S CT
BLOSSOM ST
NEW CASTLE AVE
DEER HORN LN
BAYCLIFFE RD
FERNALD CT
RIDGES CT
BOYAN PL
ROBIN LN
MOEBUS TER
PLEASANT POINT DR
BRACKETT RD
CLOUGH DR

Partial Legend

See the cover sheet for the complete legend.

- 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
- 6ft — Parcel line dimension
- SIMS AVE — Street name
- Parcel/Parcel boundary
- Parcel/ROW boundary
- Water boundary
- Structure (1994 data)
- Parcel covered by this map

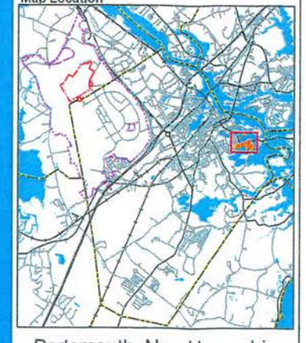
EXHIBIT
tabbies'
7

0 50 100 200 300 Feet
0 20 40 80 Meters

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.

Nearby Tax Maps

Map Location



Portsmouth, New Hampshire
2022

Tax Map 207

ZONING BOARD OF ADJUSTMENT

November 28, 2022

Jeffery & Melissa Foy
67 Ridges Court
Portsmouth, NH 03801

RE: **Board of Adjustment request for property located at 67 Ridges Court (LU-22-199)**

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, November 15, 2022**, considered your application for the construction of a 518 square foot garage addition which requires the following: 1) A variance from Section 10.521 to allow a 15.5 foot front yard where 19 feet is required per Section 10.516.10. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District. As a result of said consideration, the Board voted to determine if Fisher v. Dover applied to this application. A motion to determine that the petition does not fall under Fisher v. Dover failed, therefore the request was not heard.

The Board's action may be appealed up to thirty (30) days after the vote. Please contact the Planning Department for more details about the appeals process.

Very truly yours,

Phyllis Eldridge, Acting Chair of the Zoning Board of Adjustment

cc: Tim Phoenix, Hoefle, Phoenix, Gormley & Roberts, PLLC

II. OLD BUSINESS

C. The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District.

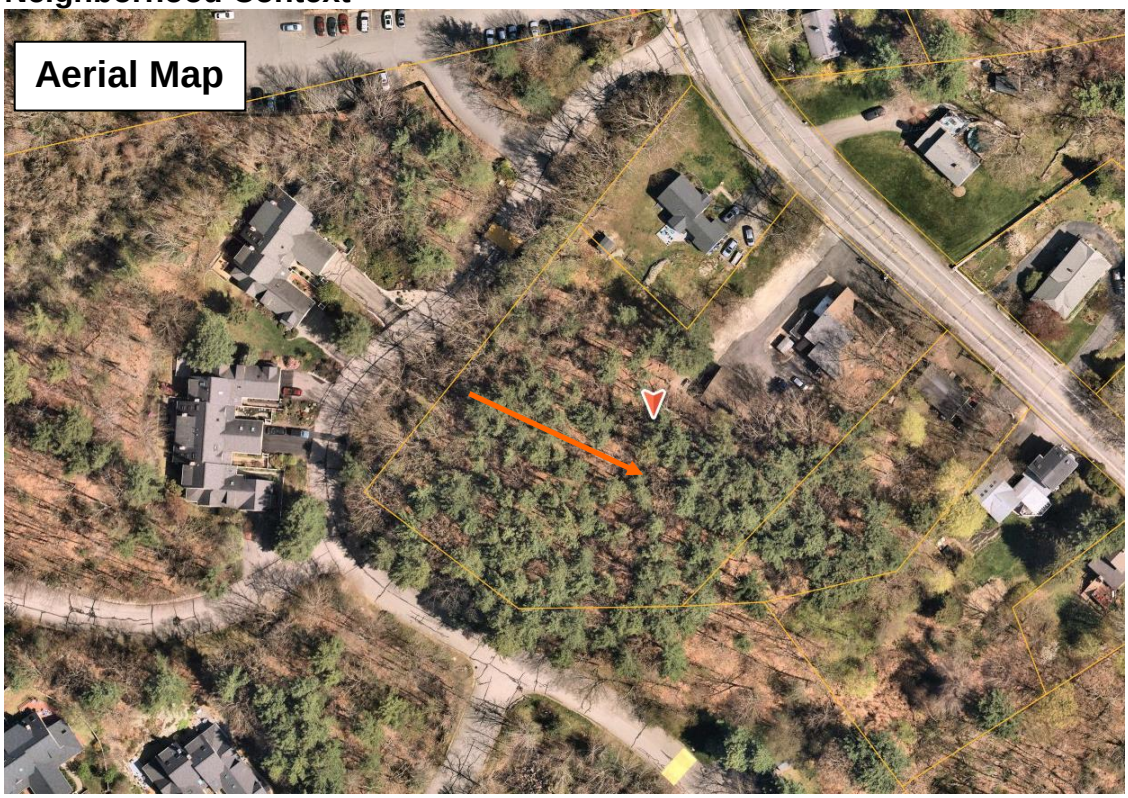
Existing & Proposed Conditions

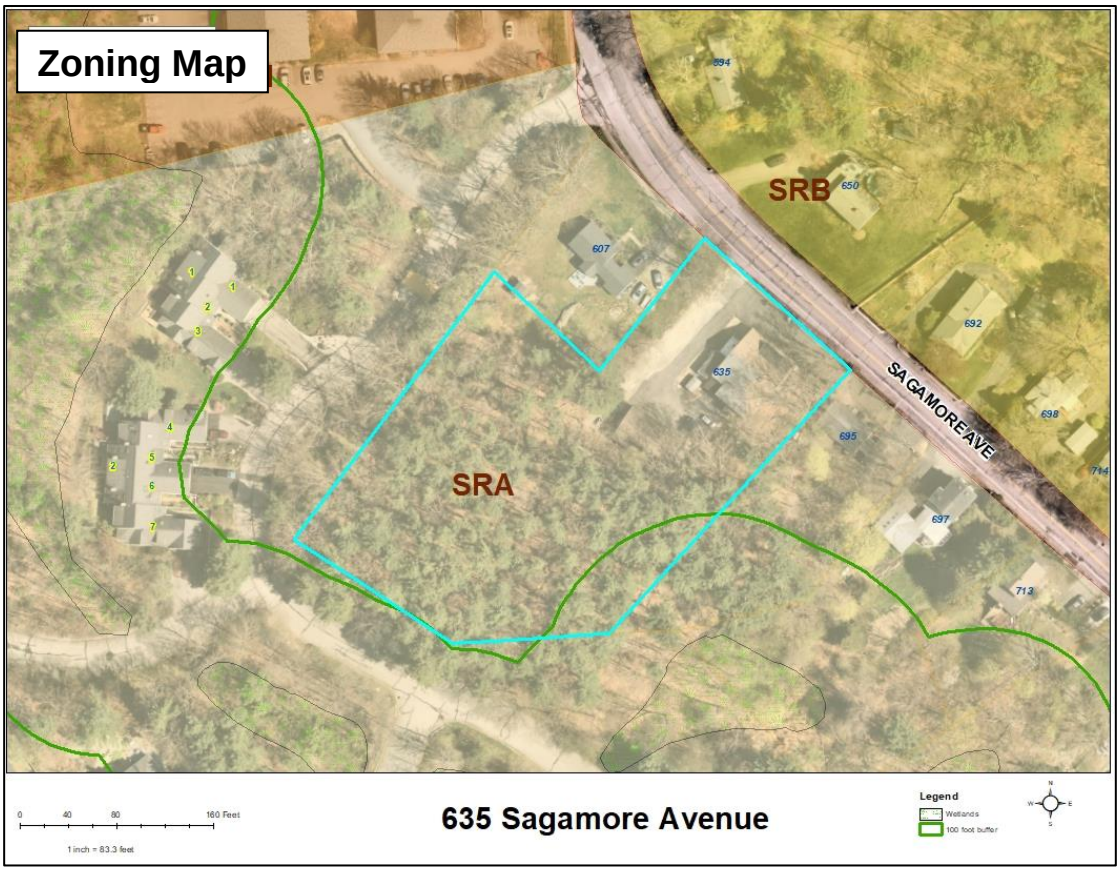
	Existing	Proposed	Permitted / Required	
Land Use:	Commercial w/ 1 apartment	4 single family dwellings	Primarily residential	
Lot area (sq. ft.):	84,795	84,795	43,560	min.
Lot Area per Dwelling Unit (sq. ft.):	84,795	**21,198**	43,560	min.
Lot depth (ft):	358	358	200	min.
Street Frontage (ft.):	160	160	150	min.
Primary Front Yard (ft.):	28	>30	30	min.
Right Yard (ft.):	60	>20	20	min.
Left Yard (ft.):	30	21	20	
Rear Yard (ft.):	219	>40	40	min.
Height (ft.):	<35	<35	35	max.
Building Coverage (%):	4	9.2	10	max.
Open Space Coverage (%):	>50	81	50	min.
Parking:	4+	16	6	
Estimated Age of Structure:	1950	Variance request(s) shown in red.		

Other Permits/Approvals Required

TAC/Planning Board – Site Plan Review

Neighborhood Context





Previous Board of Adjustment Actions

April 19, 2022 – The BOA considered your application for remove existing commercial structure and construct 5 new single-family dwellings which requires the following: 1) A Variance from Section 10.513 to allow 5 principal structures on a lot where only 1 is permitted. 2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 22,389 square feet where 1 acre per dwelling is required. The Board granted your request to **postpone** to the May meeting.

May 17, 2022 – The Board **granted** your request to postpone to the June meeting

June 22, 2022 – The Board voted to acknowledge the **withdrawal** of the application.

Planning Department Comments

As shown in the history above, the applicant was before the Board this past spring with a proposal to construct 5 single family dwellings on one lot. Due to concerns from the abutters, the application was withdrawn so they could work on addressing concerns from the abutters. The new application proposes to demolish the existing structures and construct 4 free standing single family dwellings. The SRA zone requires 1 acre per dwelling unit and only allows 1 principal structure on a single lot. With 4 dwellings, the proposed lot area per dwelling will be 21,198, where 43,560 is required. With the exception of the density, all other dimensional requirements are in compliance with the proposed layout. This will require site plan review before TAC and Planning Board if the variances are granted. If granted approval, staff recommends the following stipulation for consideration:

1. The design and location of the dwellings may change as a result of Planning Board review and approval.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
   (a) The property has special conditions that distinguish it from other properties in the area.
   AND
   (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.
   OR
   Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC
ATTORNEYS AT LAW
127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

October 26, 2022

HAND DELIVERED

Peter Stith, Principal Planner
Portsmouth Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

Re: 635 Sagamore Development, LLC, Owner/Applicant
Project Location: 635 Sagamore Avenue
Tax Map 222, Lot 19
General Residence A (GRA Zone)

Dear Mr. Stith and Zoning Board Members:

On behalf of 635 Sagamore Development, LLC, applicant, enclosed please find the following documents in support of a request for zoning relief:

- Portsmouth Land Use Application uploaded to Viewpoint today.
- Owner Authorization.
- 10/26/2022 – Memorandum and exhibits in support of zoning relief.

Very truly yours,

R. Timothy Phoenix
Monica F. Kieser

Enclosures

cc 635 Sagamore Development, LLC
Jones & Beach Engineers, Inc.
Artform Architecture, Inc.

DANIEL C. HOEFLE
R. TIMOTHY PHOENIX
LAWRENCE B. GORMLEY
STEPHEN H. ROBERTS
R. PETER TAYLOR
KEVIN M. BAUM
GREGORY D. ROBBINS
MONICA F. KIESER
JACOB J.B. MARVELLEY
DUNCAN A. EDGAR
STEPHANIE J. JOHNSON
OF COUNSEL:
SAMUEL R. REID
JOHN AHLGREN

Letter of Authorization

635 Sagamore Development, LLC, owner of property located at 635 Sagamore Avenue in Portsmouth, NH, known as Tax Map 222, Lot 19, do hereby authorize Jones & Beach Engineers, Inc. ("JBE"), Garrepy Planning Consultants, LLC ("GPC"), and Hoefle, Phoenix, Gormley & Roberts, PLLC ("HPGR") to act on its behalf concerning the previously mentioned property.

I hereby appoint JBE, GPC and HPGR as agents to act on behalf of 635 Sagamore Development, LLC in the Planning Board and Zoning Board application process, to include any required signatures.

635 Sagamore Development, LLC

Timothy J. Black, Duly Authorized

January 5, 2022
Date

MEMORANDUM

To: Portsmouth Zoning Board of Adjustment ("ZBA")
From: R. Timothy Phoenix, Esq.
Monica F. Kieser, Esq.
Date: October 26, 2022
Re: 635 Sagamore Development, LLC, Owner/Applicant
Project location: 635 Sagamore Avenue
Tax Map 222, Lot 19
Single Residence A (SRA) District

Dear Chairman Parrott and Zoning Board Members:

On behalf of 635 Sagamore Development, LLC ("635 Sagamore" or "Applicant") we are pleased to submit this memorandum and the attached exhibits in support of zoning relief to be considered by the ZBA at its November 15, 2022 meeting.

I. EXHIBITS

A. Plan Set – by Jones and Beach Engineers
- C1 – Existing Conditions Plan
- C2 – ZBA Site Plan
- C3 – Topographic Site Plan

B. Architectural Elevations and Floor Plans-by ArtForm Architecture, Inc.
- Renderings
- First Floor
- Second Floor
- Foundation Plan
- Elevations

C. Site photographs
D. Tax Assessors Card
E. City GIS Map – identifying nearby zoning districts and surrounding area

II. PROPERTY/BACKGROUND

635 Sagamore Avenue is an 84,795 s.f lot with 150 ft. of frontage containing two buildings in poor condition; the front building contains Luster King, an automobile detailing shop and upstairs apartment, and behind a large service garage (the "Property"). The Luster King building is located partially within the front yard setback, access to it is over the entire frontage, and the use of the Property does not conform to the requirements of the Single Residence A District. 635 Sagamore proposes to remove the existing commercial building and garage and redevelop the Property with four new single-family homes with access via a private roadway from Sagamore Avenue (the "Project"). **(Exhibit A)**. The Project is more compatible

with the neighborhood which includes the westerly abutter, Tidewatch Condominiums with 122 Units, and the Sagamore Court Condominium with 144 Units. **(Exhibit D)**. Other nearby abutters are largely developed with single family residences with similar density as the proposed project. The Luster King building is still served by septic, but municipal sewer service has been extended to the Property which will serve the proposed dwellings.

In March of this year, 635 Sagamore filed a variance application seeking relief from §10.513 and §10.521 (Dimensional Table) to permit five dwellings on the Property where one dwelling is required and 16,959 s.f. per dwelling unit where 43,560 s.f. per dwelling is required. Thereafter, Tidewatch Condominium Association ("Tidewatch") objected, through Counsel Brian Bouchard. 635 Sagamore withdrew the previous application in order to spend time working with Tidewatch to address its concerns. 635 Sagamore now proposes a twenty percent (20%) reduction four-unit residential development which retains a significant tree buffer and adds a mix of trees on the south and west side of the lot (the "Revised Project"). Given the reduction in units and generous plantings, Tidewatch Condominium Association has withdrawn its objection to the Revised Project, provided 635 Sagamore continues to coordinate with Tidewatch on issues related to landscaping and stormwater management.

The Revised Project requires similar relief as before as four dwelling units are proposed on a ±1.947 acre lot (2.06 units per acre or 21,198 s.f. per dwelling). This density is less than nearby densely developed Sagamore Court Condominium (144 units/15.01 acre = 9.59 units per acre or 4,542 s.f. per dwelling) to the north and Tidewatch Condominium (122 units/53.59 acre = 2.27 units per acre or 19,189 s.f. per dwelling) directly to the west. Notably, the SRB Zone, located across Sagamore Avenue, permits a lot area of 15,000 square feet per dwelling unit or approximately 2.9 units per acre. The proposal at 21,198 s.f. square feet per unit falls between the single-family homes opposite the lot and the more densely developed condominium associations. Thus, in addition to cleaning up a long distressed and non-conforming site, including narrowing the current open frontage curb cut, the proposal creates a natural transition between the SRB Zone across Sagamore, the existing multi-building condominium developments to the north and west (rear) of the Property and the nearby single-family home lots.

III. RELIEF REQUIRED

The Project meets setback, lot coverage, and open space requirements. **(Exhibit A)**. Relief is required to allow the proposed structures on a single lot and for lot area per dwelling unit.

1.) **PZO §10.513 One Freestanding Dwelling/Lot** – to permit four dwellings on a 1.947 acre lot.
2.) **PZO §10.521 (Table of Dimensional Standards) Lot Area Per Dwelling Unit** – to permit four dwellings on 1.947 acres (21,198 s.f./dwelling area) where 43,560 s.f. is required for each dwelling.

IV. VARIANCE REQUIREMENTS

1. **The variance will not be contrary to the public interest**
2. **The spirit of the ordinances observed**

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

The Portsmouth Zoning Ordinance was enacted for the general purpose (PZO§10.121) of promoting the health, safety and welfare in accordance with the Master plan by regulating:

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The Property currently houses a non-conforming commercial auto detailing business and service garage. **(Exhibit C)**. The proposal would replace those buildings with brand new, to code, residences consistent with surrounding uses.

2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The Project complies with building coverage, height, yards and open space requirements. The reduced proposal with four dwellings on a single lot, at 2.06 dwelling units per acre is consistent with surrounding properties and less than the density permitted by right across Sagamore Avenue.

3. The design of facilities for vehicular access, circulation, parking and loading- The Project will be served by a private roadway from Sagamore Avenue. **(Exhibit A)**. There is currently no defined curb cut on the property so the redevelopment will improve driveway distances, site lines, and overall traffic safety from the Property compared to the existing commercial and residential use. **(Exhibit D)**. The driveway will undergo further review as part of the Planning Board and NHDOT review processes.

4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – The Property is currently used as a commercial auto detailing facility in the middle of a residential area. The Project will convert the Property to residential use with lighting, noise, and other conditions more appropriate for the neighborhood. A generous buffer will be preserved between the Project and Tidewatch Condominium. The Project maintains 81.3% open space. Stormwater runoff will be improved over the current development which is significantly paved and use of commercial cleaning chemicals will cease.

5. The preservation and enhancement of the visual environment – The Project vastly improves the visual environment for the immediate abutters on either side and across the street. In addition, a generous vegetated buffer is retained for the south/west abutters. Sagamore further screens the developed area with the addition of a significant tree buffer. **(Exhibit A)**.

6. The preservation of historic districts buildings and structures of historic or architectural interest – The Property and the existing structures to be removed are of no known historic or architectural interest.

7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – The Project will significantly improve conditions by terminating the use of commercial grade cleaning chemicals in favor of a compatible residential uses served by municipal sewer.

In considering whether variances "in a marked degree conflict with the ordinance such that they violate the ordinances basic zoning objectives." Malachy Glen, supra, the New Hampshire Supreme Court also held:

> One way to ascertain whether granting the variance would violate basic zoning objectives is to examine 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)

The Property is located on a busy street in a densely developed residential area. While there are some other nearby commercial use properties, they are located closer to Sagamore Creek in the Waterfront Business Zone, are largely less impactful and are more buffered from nearby residences than the current business operations on the Property. The Project would convert a long-standing commercial use that is grossly incompatible with the character of the locality to a residential use consistent with the surrounding area including two large condominium developments. The commercial traffic and the use of commercial grade cleaning chemicals will cease, thus improving the public health, safety and welfare. The wide open curb

cut accessing the lot will be reduced to a controlled entry/exit. The Project creates a natural transition between these condominium developments and the adjoining GRB zone. Thus, permitting four code compliant, single-family dwellings on ±1.947 acres does not alter the essential character of the locality nor will it threaten the public health, safety or welfare.

3. Granting the variances will not diminish surrounding property values

The commercial buildings currently located on the Property are distressed, incongruent with the surrounding residential neighborhood and frankly an eyesore. The Project cleans up the site, removes commercial buildings/uses and replaces them with brand new tastefully designed residences. In consultation with Tidewatch, a generous vegetated buffer is retained, which is supplemented by the addition of a robust landscape buffer plan. Given the termination of the commercial use, removal of the distressed structures, and efforts to screen the residential structures, the Project will increase the value of surrounding properties. Accordingly, this element of the variance criteria is satisfied.

4. Denial of the variances results in an unnecessary hardship

a. Special conditions distinguish the property/project from others in the area-

This portion of the SRA District on the north side of Sagamore Creek is comprised of only seven properties. **(Exhibit E)**. Discounting Tidewatch with 122 units on 53.59 acres, the 1.947 acre L-shaped lot significantly larger than the remaining five properties, yet contains just over the required frontage. Although zoned SRA and subject to a 43,560 s.f. minimum lot area and lot area/dwelling unit requirement, this neighborhood is bounded by the Sagamore Condominium Development with 144 Units on 15.01 acres, a handful of lots in the Waterfront Business District, and the SRB district across Sagamore Avenue with its reduced density requirement of just 15,000 s.f./dwelling unit. 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). The parcel size, shape, and location near other densely developed residential parcels 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 the requirements for one free standing dwelling per lot and lot area per dwelling unit is to prohibit overcrowding, allow for air, light, and separation between neighbors,

and to permit stormwater treatment. The Project meets all lot area, building and open space coverage, height and external setback requirements. Additionally, the proposal provides for voluntary setbacks between each of the four new buildings of at least 20 feet, consistent with the side setback requirement for the district. Thus, adequate area for air, light, separation between neighbors and stormwater treatment is provided. The proposed density is also consistent with the surrounding area, which includes many smaller sized lots with homes located in relatively close proximity. **(Exhibit E)**. Moreover, granting the requested variances will significantly improve the Property and surrounding area by removing two blighted, non-conforming commercial structures and replacing them with four brand new, homes where housing is sorely needed. The Property will be completely redeveloped, thus it follows that there is no reason to apply the strict requirements of the ordinance. This transitional location, located near and adjoining two densely development condominiums and across Sagamore Avenue from the SRB Zone is well suited for the proposed four building single-family development.

c. The proposed use is reasonable

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson,151 NH 747 (2005). The proposal is a residential use in a residential zone and thus is reasonable Accordingly denial would result in an unnecessary hardship.

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

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 right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions." N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that "no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people." Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). "Property" in the constitutional sense has been interpreted to

mean not the tangible property itself, *but rather the right to possess, use, enjoy and dispose of it*. Burrows v. City of Keene, 121 N.H. 590, 597 (1981) (emphasis added). Sagamore is constitutionally entitled to the use of the lot as it sees fit subject only to the effect of the lot size and density requirements.

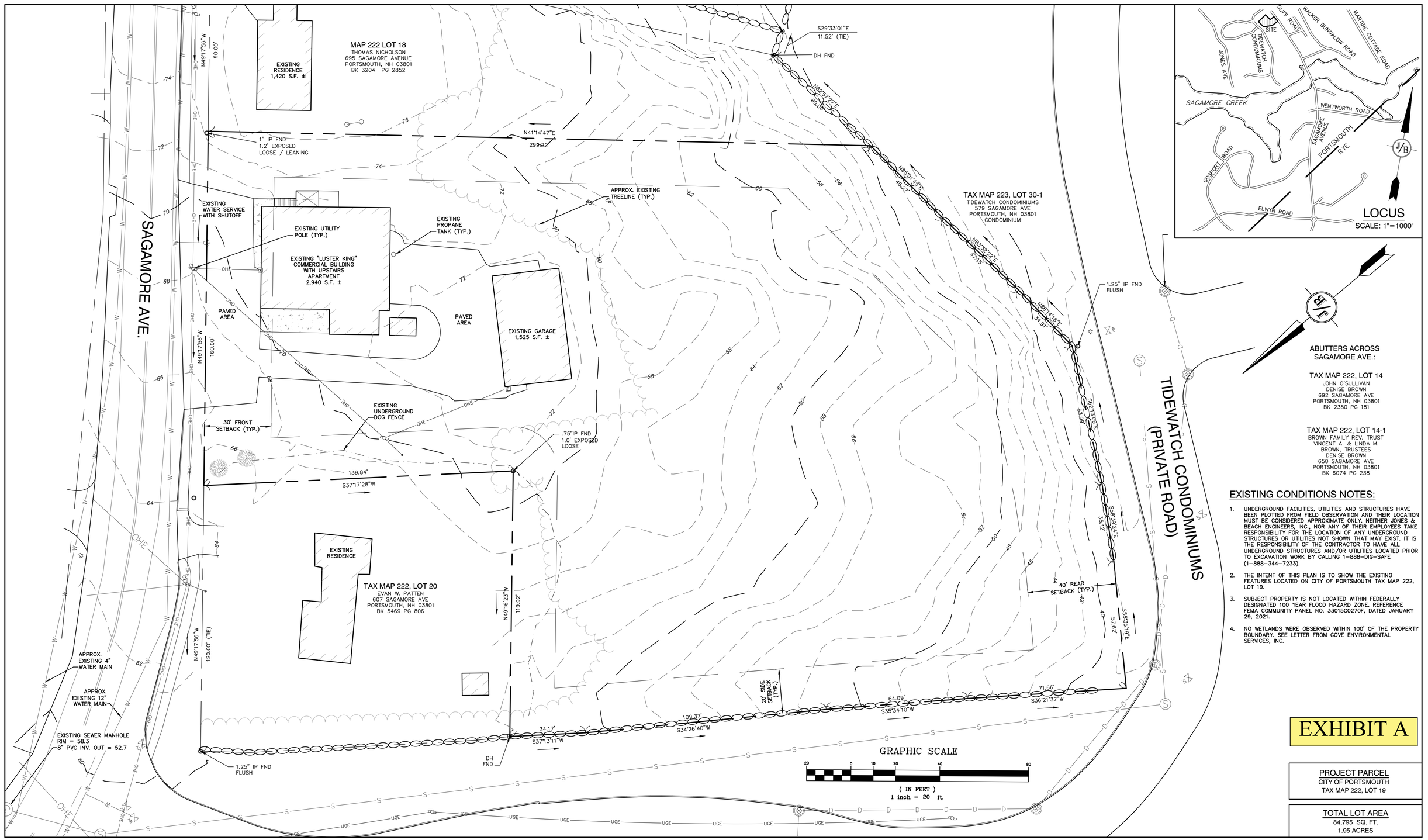
The Project: removes blighted buildings and a nonconforming commercial use; complies with all other dimensional requirements; maintains generous open space and vegetated buffers; provides additional screening with a robust planting plan, there will be no benefit to the public from denial and no harm to the public by granting the variances. Conversely, denial of the variances causes great harm to 635 Sagamore and its abutters by continuing the nonconforming commercial use of the Property. Accordingly, substantial justice is done by granting the variances.

V. CONCLUSION

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

Respectfully submitted,
635 Sagamore Development, LLC

By: _____
R. Timothy Phoenix, Esq.
Monica F. Kieser, Esq.



ABUTTERS ACROSS SAGAMORE AVE.:

TAX MAP 222, LOT 14
JOHN O'SULLIVAN
DENISE BROWN
692 SAGAMORE AVE
PORTSMOUTH, NH 03801
BK 2350 PG 181

TAX MAP 222, LOT 14-1
BROWN FAMILY REV. TRUST
VINCENT A. & LINDA M. BROWN, TRUSTEES
DENISE BROWN
650 SAGAMORE AVE
PORTSMOUTH, NH 03801
BK 6074 PG 238

EXISTING CONDITIONS NOTES:

1. UNDERGROUND FACILITIES, UTILITIES AND STRUCTURES HAVE BEEN PLOTTED FROM FIELD OBSERVATION AND THEIR LOCATION MUST BE CONSIDERED APPROXIMATE ONLY. NEITHER JONES & BEACH ENGINEERS, INC., NOR ANY OF THEIR EMPLOYEES TAKE RESPONSIBILITY FOR THE LOCATION OF ANY UNDERGROUND STRUCTURES OR UTILITIES NOT SHOWN THAT MAY EXIST. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO HAVE ALL UNDERGROUND STRUCTURES AND/OR UTILITIES LOCATED PRIOR TO EXCAVATION WORK BY CALLING 1-888-DIG-SAFE (1-888-344-7233).
2. THE INTENT OF THIS PLAN IS TO SHOW THE EXISTING FEATURES LOCATED ON CITY OF PORTSMOUTH TAX MAP 222, LOT 19.
3. SUBJECT PROPERTY IS NOT LOCATED WITHIN FEDERALLY DESIGNATED 100 YEAR FLOOD HAZARD ZONE. REFERENCE FEMA COMMUNITY PANEL NO. 33015C0270F, DATED JANUARY 29, 2021.
4. NO WETLANDS WERE OBSERVED WITHIN 100' OF THE PROPERTY BOUNDARY. SEE LETTER FROM GOVE ENVIRONMENTAL SERVICES, INC.

EXHIBIT A

PROJECT PARCEL
CITY OF PORTSMOUTH
TAX MAP 222, LOT 19

TOTAL LOT AREA
84,795 SQ. FT.
1.95 ACRES

Design: JAC	Draft: DJM
Checked: JAC	Scale: AS NOTED
Date: 12/07/2021	Project No.: 18134.1
Drawing Name: 18134-CONCEPT-8.dwg	

THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.

REV.	DATE	REVISION	BY
6	10/25/22	REVISED PLAN NAME	DJM
5	6/23/22	REVISED CONCEPTUAL LAYOUT	DJM
4	6/2/22	ADDED UTILITY INFORMATION	DJM
3	3/21/22	REVISED CONCEPTUAL LAYOUT	DJM
2	2/10/22	REVISED CONCEPTUAL LAYOUT	DJM

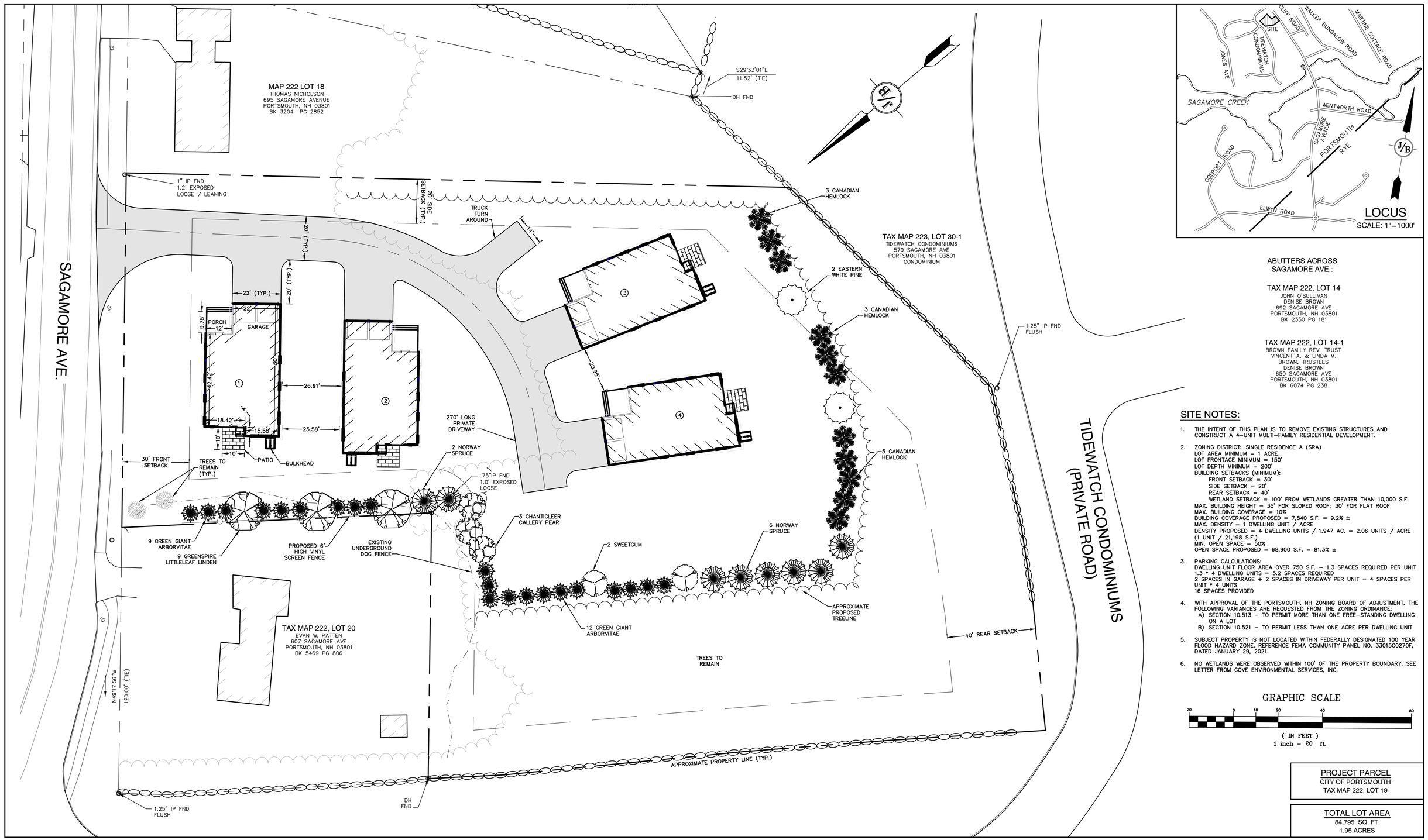
Designed and Produced in NH
Jones & Beach Engineers, Inc.
85 Portsmouth Ave.
PO Box 219
Stratham, NH 03885
Civil Engineering Services
603-772-4746
FAX: 603-772-0227
E-MAIL: JBE@JONESANDBEACH.COM

Plan Name: EXISTING CONDITIONS PLAN

Project: 4-UNIT RESIDENTIAL SITE
635 SAGAMORE AVE., PORTSMOUTH, NH

Owner of Record: 635 SAGAMORE DEVELOPMENT, LLC
3612 LAFAYETTE RD., DEPT 4, PORTSMOUTH, NH 03801 BK 6332 PG 1158

DRAWING No.
C1
SHEET 1 OF 3
JBE PROJECT NO. 18134.1



ABUTTERS ACROSS SAGAMORE AVE.:

TAX MAP 222, LOT 14
JOHN O'SULLIVAN
DENISE BROWN
692 SAGAMORE AVE
PORTSMOUTH, NH 03801
BK 2350 PG 181

TAX MAP 222, LOT 14-1
BROWN FAMILY REV. TRUST
VINCENT A. & LINDA M.
BROWN, TRUSTEES
DENISE BROWN
650 SAGAMORE AVE
PORTSMOUTH, NH 03801
BK 6074 PG 238

SITE NOTES:

1. THE INTENT OF THIS PLAN IS TO REMOVE EXISTING STRUCTURES AND CONSTRUCT A 4–UNIT MULTI–FAMILY RESIDENTIAL DEVELOPMENT.
2. ZONING DISTRICT: SINGLE RESIDENCE A (SRA)
   LOT AREA MINIMUM = 1 ACRE
   LOT FRONTAGE MINIMUM = 150'
   LOT DEPTH MINIMUM = 200'
   BUILDING SETBACKS (MINIMUM):
   FRONT SETBACK = 30'
   SIDE SETBACK = 20'
   REAR SETBACK = 40'
   WETLAND SETBACK = 100' FROM WETLANDS GREATER THAN 10,000 S.F.
   MAX. BUILDING HEIGHT = 35' FOR SLOPED ROOF; 30' FOR FLAT ROOF
   MAX. BUILDING COVERAGE = 10%
   BUILDING COVERAGE PROPOSED = 7,840 S.F. = 9.2% ±
   MAX. DENSITY = 1 DWELLING UNIT / ACRE
   DENSITY PROPOSED = 4 DWELLING UNITS / 1.947 AC. = 2.06 UNITS / ACRE
   (1 UNIT / 21,198 S.F.)
   MIN. OPEN SPACE = 50%
   OPEN SPACE PROPOSED = 68,900 S.F. = 81.3% ±
3. PARKING CALCULATIONS:
   DWELLING UNIT FLOOR AREA OVER 750 S.F. – 1.3 SPACES REQUIRED PER UNIT
   1.3 * 4 DWELLING UNITS = 5.2 SPACES REQUIRED
   2 SPACES IN GARAGE + 2 SPACES IN DRIVEWAY PER UNIT = 4 SPACES PER UNIT * 4 UNITS
   16 SPACES PROVIDED
4. WITH APPROVAL OF THE PORTSMOUTH, NH ZONING BOARD OF ADJUSTMENT, THE FOLLOWING VARIANCES ARE REQUESTED FROM THE ZONING ORDINANCE:
   A) SECTION 10.513 – TO PERMIT MORE THAN ONE FREE–STANDING DWELLING ON A LOT
   B) SECTION 10.521 – TO PERMIT LESS THAN ONE ACRE PER DWELLING UNIT
5. SUBJECT PROPERTY IS NOT LOCATED WITHIN FEDERALLY DESIGNATED 100 YEAR FLOOD HAZARD ZONE. REFERENCE FEMA COMMUNITY PANEL NO. 33015C0270F, DATED JANUARY 29, 2021.
6. NO WETLANDS WERE OBSERVED WITHIN 100' OF THE PROPERTY BOUNDARY. SEE LETTER FROM GOVE ENVIRONMENTAL SERVICES, INC.

GRAPHIC SCALE

20 0 10 20 40 80

(IN FEET)
1 inch = 20 ft.

PROJECT PARCEL
CITY OF PORTSMOUTH
TAX MAP 222, LOT 19

TOTAL LOT AREA
84,795 SQ. FT.
1.95 ACRES

Design: JAC	Draft: DJM	Date: 12/07/2021
Checked: JAC	Scale: AS NOTED	Project No.: 18134.1
Drawing Name: 18134-CONCEPT-8.dwg		

THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.

REV.	DATE	REVISION	BY
6	10/25/22	REVISED PLAN NAME	DJM
5	6/23/22	REVISED CONCEPTUAL LAYOUT	DJM
4	6/2/22	ADDED UTILITY INFORMATION	DJM
3	3/21/22	REVISED CONCEPTUAL LAYOUT	DJM
2	2/10/22	REVISED CONCEPTUAL LAYOUT	DJM

Designed and Produced in NH
Jones & Beach Engineers, Inc.
85 Portsmouth Ave.
PO Box 219
Stratham, NH 03885
Civil Engineering Services
603-772-4746
FAX: 603-772-0227
E-MAIL: JBE@JONESANDBEACH.COM

Plan Name:	ZBA SITE PLAN
Project:	4-UNIT RESIDENTIAL SITE 635 SAGAMORE AVE., PORTSMOUTH, NH
Owner of Record:	635 SAGAMORE DEVELOPMENT, LLC 3612 LAFAYETTE RD., DEPT 4, PORTSMOUTH, NH 03801 BK 6332 PG 1158

DRAWING No.
C2
SHEET 2 OF 3
JBE PROJECT NO. 18134.1

FUTURE 3" HDPE LOW PRESSURE SEWER EXTENDS BEYOND VIEW

FUTURE SEWER MANHOLE C8
3" HDPE LPS INV. IN = 65.7
8" PVC INV. OUT = 68.5

FUTURE 8" PVC SEWER (TYP.)

PROPOSED 4" D.I. WATER MAIN TO PROPOSED GATE VALVE

EXISTING WATER SERVICE WITH SHUTOFF

FUTURE 8" PVC SEWER STUB

PROPOSED 8" PVC SEWER STUB

FUTURE SEWER MANHOLE C7
8" HDPE INV. IN = 58.7
8" PVC INV. OUT = 58.6

FUTURE SEWER MANHOLE C7A
8" PVC INV. IN = 56.1
8" PVC INV. OUT = 56.0

EXISTING SEWER MANHOLE
RIM = 58.3
FUTURE 8" PVC INV. IN = 52.8
EX. 8" INV. OUT = 52.7

EXISTING SEWER MANHOLE

SAGAMORE AVE.

TIDEWATCH CONDOMINIUMS
(PRIVATE ROAD)

GRAPHIC SCALE

20 0 10 20 40 80

(IN FEET)
1 inch = 20 ft.

PROJECT PARCEL
CITY OF PORTSMOUTH
TAX MAP 222, LOT 19

TOTAL LOT AREA
84,795 SQ. FT.
1.95 ACRES

Design: JAC	Draft: DJM	Date: 12/07/2021
Checked: JAC	Scale: AS NOTED	Project No.: 18134.1
Drawing Name: 18134-CONCEPT-8.dwg		

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5	6/23/22	REVISED CONCEPTUAL LAYOUT	DJM
4	6/2/22	ADDED UTILITY INFORMATION	DJM
3	3/21/22	REVISED CONCEPTUAL LAYOUT	DJM
2	2/10/22	REVISED CONCEPTUAL LAYOUT	DJM

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Jones & Beach Engineers, Inc.
85 Portsmouth Ave.
PO Box 219
Stratham, NH 03885
Civil Engineering Services
603-772-4746
FAX: 603-772-0227
E-MAIL: JBE@JONESANDBEACH.COM

Plan Name: ZBA TOPOGRAPHIC SITE PLAN

Project: 4-UNIT RESIDENTIAL SITE
635 SAGAMORE AVE., PORTSMOUTH, NH

Owner of Record: 635 SAGAMORE DEVELOPMENT, LLC
3612 LAFAYETTE RD., DEPT 4, PORTSMOUTH, NH 03801 BK 6332 PG 1158

DRAWING No.
C3
SHEET 3 OF 3
JBE PROJECT NO. 18134.1

1/27/2022

Sea Watch

419.126.v14 GL (1/27/2022)

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Artform Home Plans
603-431-9559

Dear Builders and Home Buyers,

In addition to our Terms and Conditions (the "Terms"), please be aware of the following:

This design may not yet have Construction Drawings (as defined in the Terms), and is, therefore, only available as a Design Drawing (as defined in the Terms and together with Construction Drawings, "Drawings'). It is possible that during the conversion of a Design Drawing to a final Construction Drawing, changes may be necessary including, but not limited to, dimensional changes. Please see Plan Data Explained on www.ArtformHomePlans.com to understand room sizes, dimensions and other data provided. We are not responsible for typographical errors.

Artform Home Plans ("Artform") requires that our Drawings be built substantially as designed. Artform will not be obligated by or liable for use of this design with markups as part of any builder agreement. While we attempt to accommodate where possible and reasonable, and where the changes do not denigrate our design, any and all changes to Drawings must be approved in writing by Artform. It is recommended that you have your Drawing updated by Artform prior to attaching any Drawing to any builder agreement. Artform shall not be responsible for the misuse of or unauthorized alterations to any of its Drawings.

Facade Changes:

• To maintain design integrity, we pay particular attention to features on the front facade, including but not limited to door surrounds, window casings, finished porch column sizes, and roof friezes. While we may allow builders to add their own flare to aesthetic elements, we don't allow our designs to be stripped of critical details. Any such alterations require the express written consent of Artform.

• Increasing ceiling heights usually requires adjustments to window sizes and other exterior elements.

Floor plan layout and/or Structural Changes:

• Structural changes always require the express written consent of Artform

• If you wish to move or remove walls or structural elements (such as removal of posts, increases in house size, ceiling height changes, addition of dormers, etc), please do not assume it can be done without other additional changes (even if the builder or lumber yard says you can).

EXHIBIT B

1/27/2022

Sea Watch

419.126.v14 GL (1/27/2022)

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Artform Home Plans
603-431-9559

1/27/2022

Sea Watch

419.126.v14 GL (1/27/2022)

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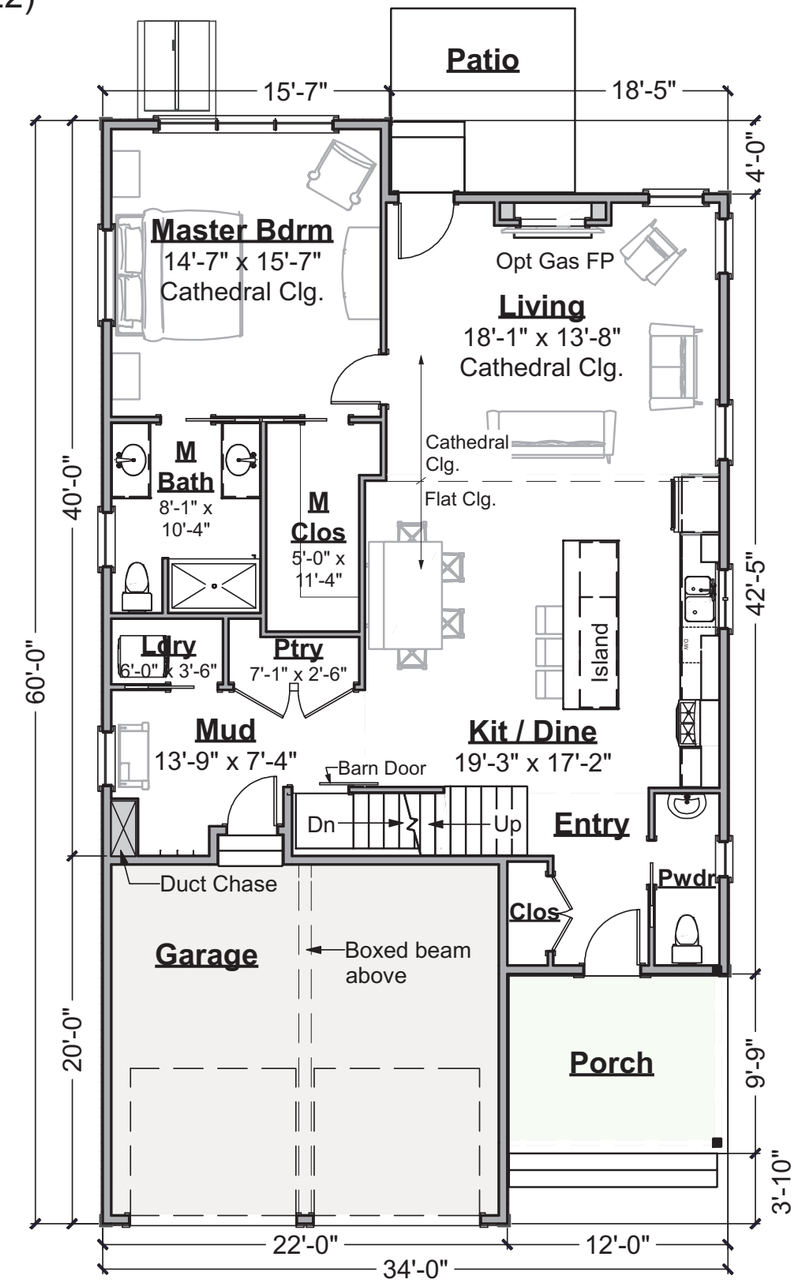
Artform Home Plans
603-431-9559



Living Area This Floor: 1370 sq ft

9 ft Ceilings, unless noted otherwise

First Floor Plan

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

1/27/2022

Sea Watch

419.126.v14 GL (1/27/2022)

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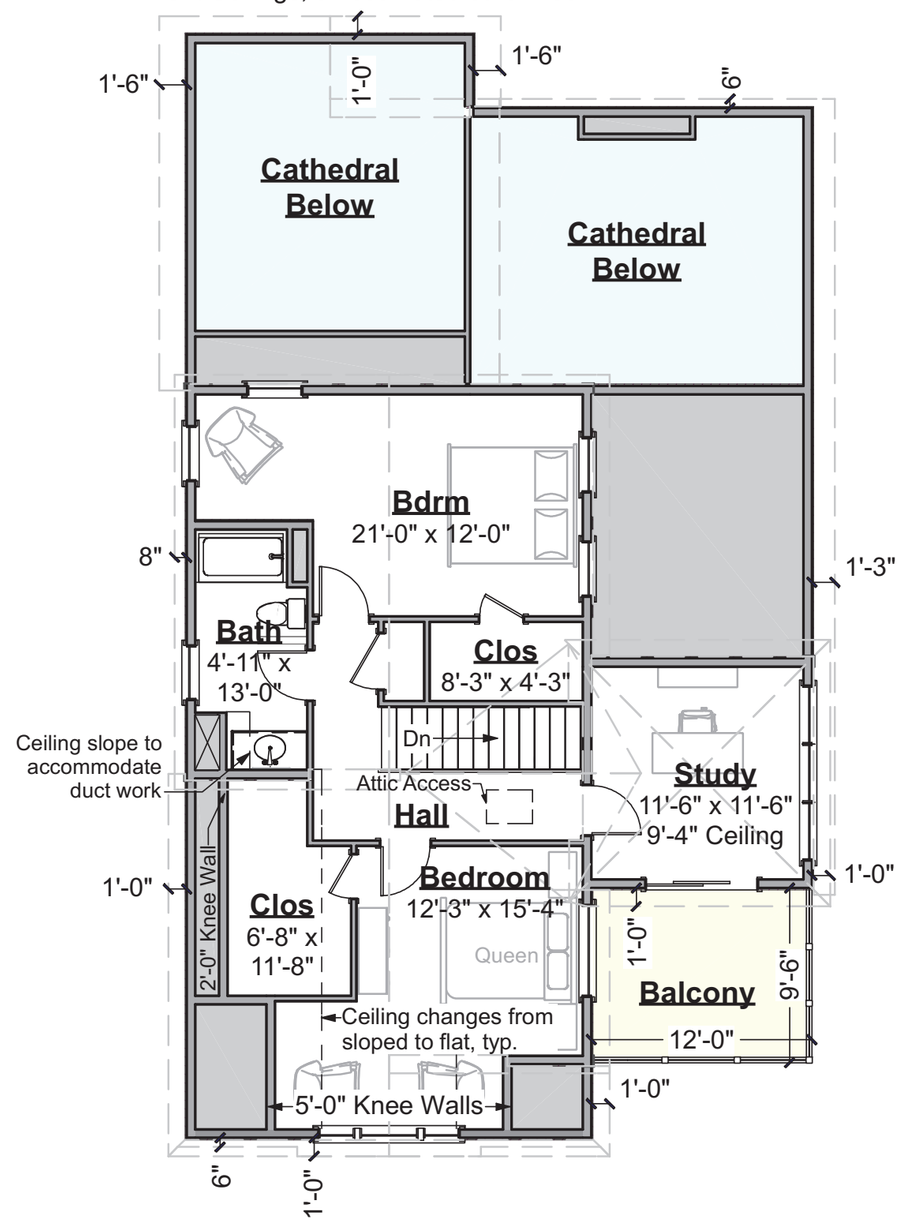
Artform Home Plans
603-431-9559

Living Area This Floor: 979 sq ft

8 ft Ceilings, unless noted otherwise



Second Floor Plan

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

1/27/2022

Sea Watch

419.126.v14 GL (1/27/2022)

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Artform Home Plans
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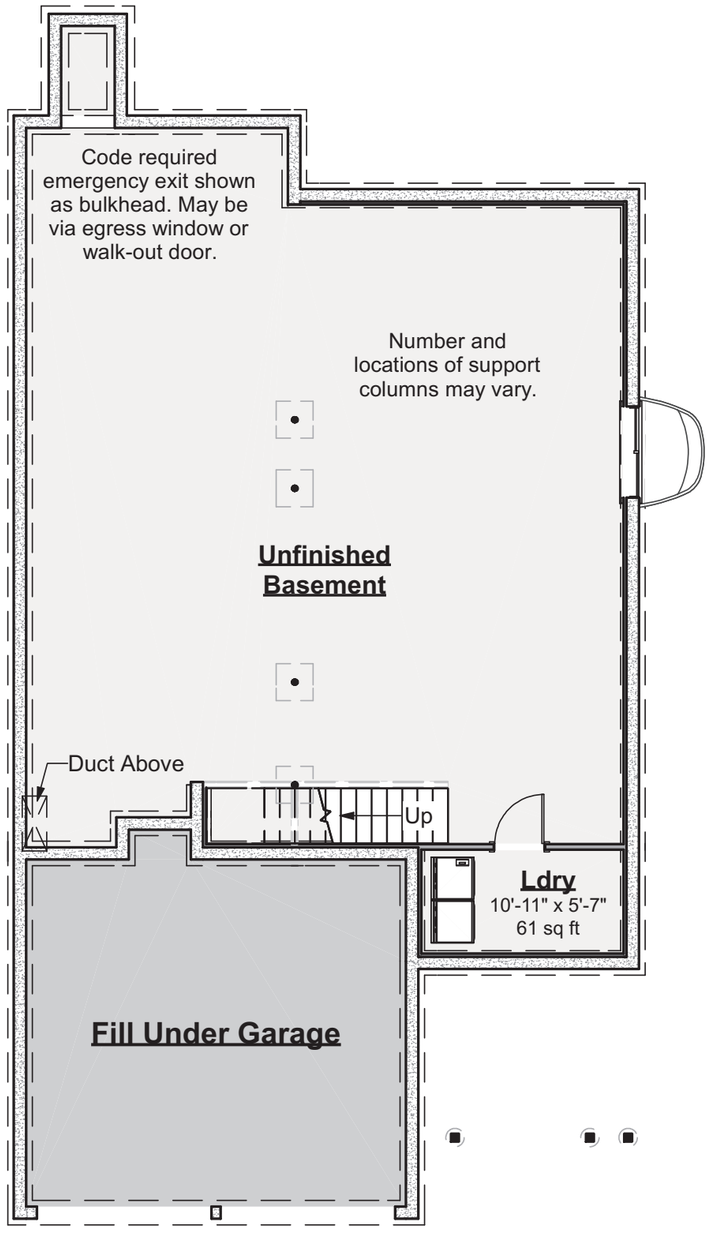

Foundation Plan

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

1/27/2022

Sea Watch

419.126.v14 GL (1/27/2022)

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Artform Home Plans
603-431-9559

Front Elevation

Scale: 1/8" = 1'-0"

1/27/2022

Sea Watch

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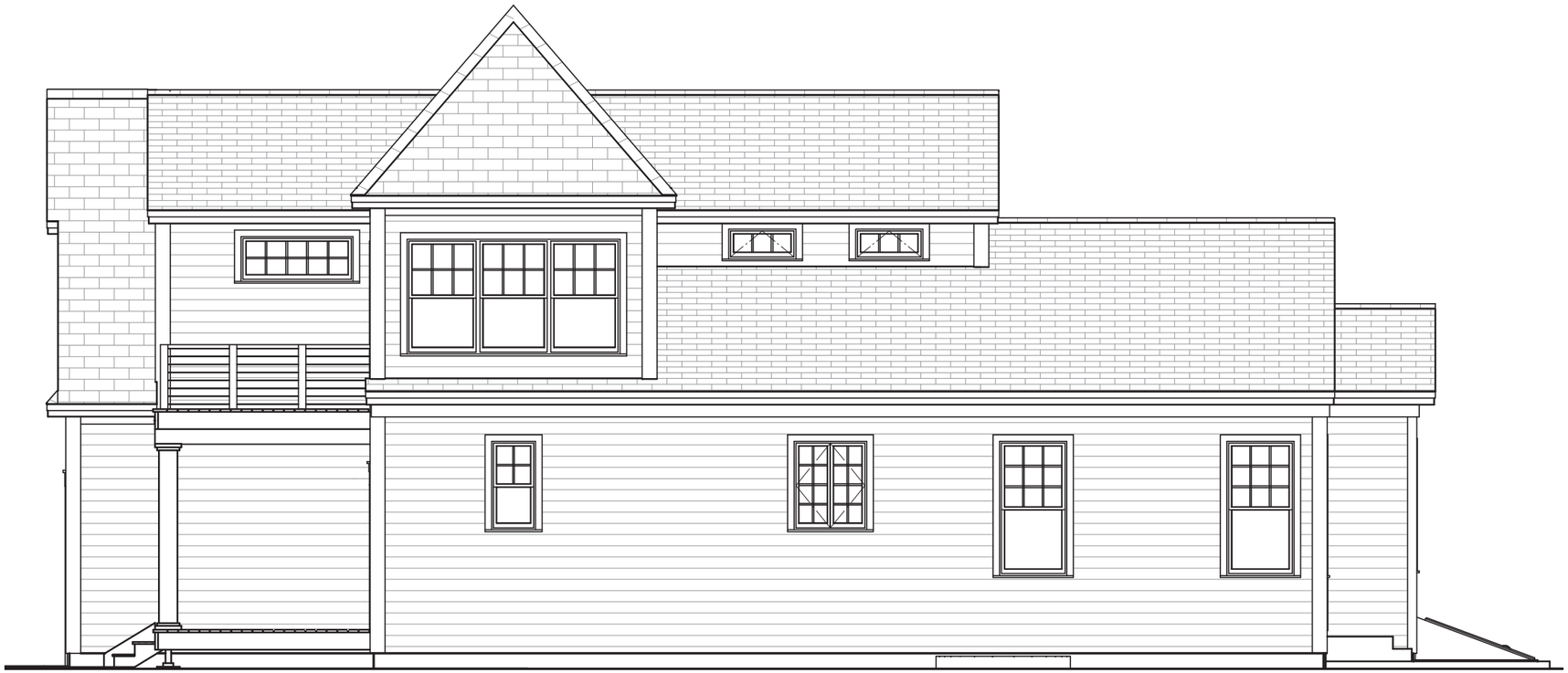
Artform Home Plans
603-431-9559



Right Elevation

Scale: 1/8" = 1'-0"

1/27/2022

Sea Watch

419.126.v14 GL (1/27/2022)

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Artform Home Plans
603-431-9559

Rear Elevation

Scale: 1/8" = 1'-0"

1/27/2022

Sea Watch

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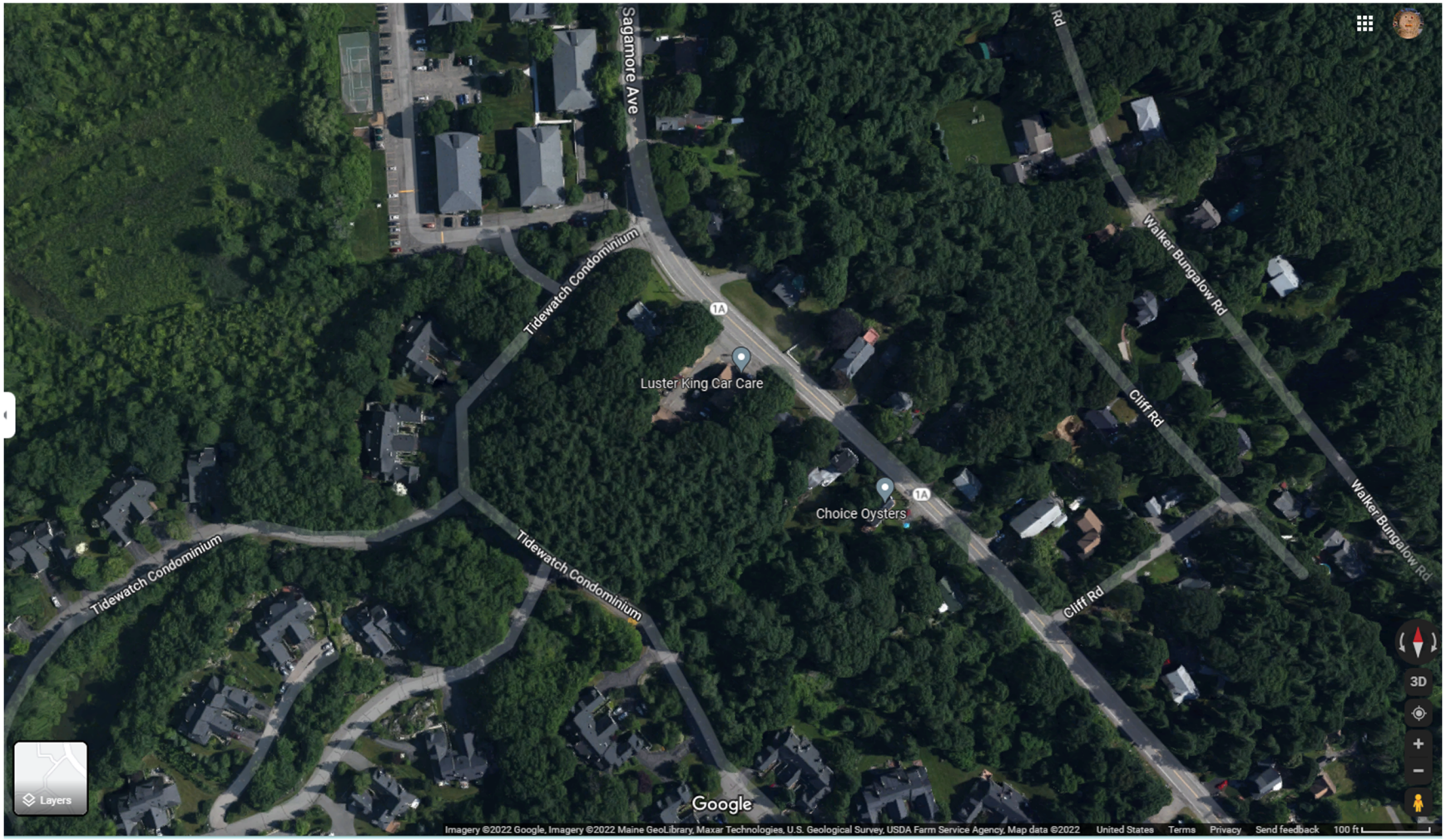
Artform Home Plans
603-431-9559

Left Elevation

Scale: 1/8" = 1'-0"



Aerial view of Property

EXHIBIT C

Front View of Property (Sagamore Ave)

Front View of Property

Front View of Property

Side View of Property

View of Service Garage and Shed

Rear View of Property

1/27/2022

Sea Watch

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Artform Home Plans
603-431-9559

Interior Views

EXHIBIT D

635 SAGAMORE AVE

Location	635 SAGAMORE AVE	**Mblu**	0222/ 0019/ 0000/ /
Acct#	35416	**Owner**	635 SAGAMORE DEVELOPMENT LLC
PBN		**Assessment**	$682,800
Appraisal	$682,800	**PID**	35416
Building Count	2		

Current Value

Appraisal			
Valuation Year	**Improvements**	**Land**	**Total**
2020	$407,600	$275,200	$682,800
Assessment			
Valuation Year	**Improvements**	**Land**	**Total**
2020	$407,600	$275,200	$682,800

Owner of Record

Owner	635 SAGAMORE DEVELOPMENT LLC	**Sale Price**	$387,133
Co-Owner		**Certificate**	
Address	3612 LAFAYETTE RD DEPT 4 PORTSMOUTH, NH 03801	**Book & Page**	6332/1158
		Sale Date	09/24/2021

Ownership History

Ownership History				
Owner	**Sale Price**	**Certificate**	**Book & Page**	**Sale Date**
635 SAGAMORE DEVELOPMENT LLC	$387,133		6332/1158	09/24/2021
HINES FAMILY REVO TRUST	$0		4885/1538	02/11/2008

Building Information

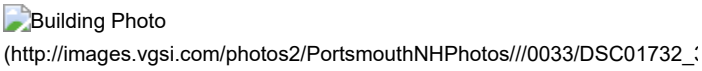
Building 1 : Section 1

Year Built:	1950
Living Area:	4,477

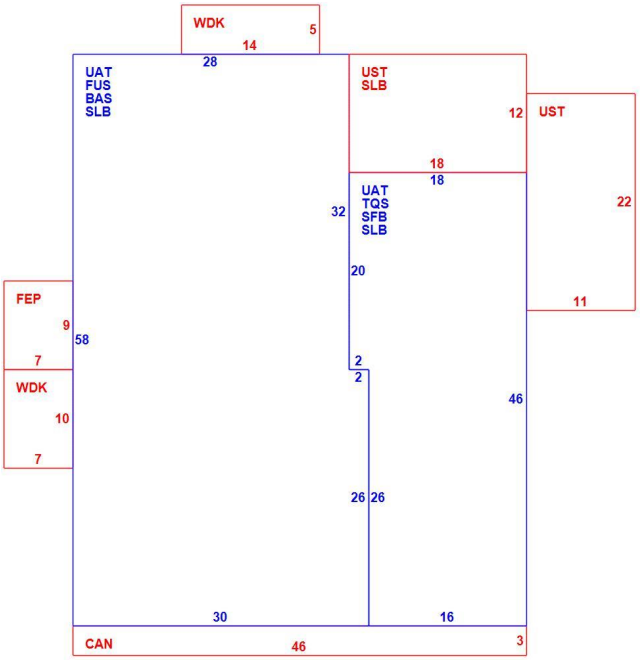
Replacement Cost: $513,721
Building Percent Good: 54
Replacement Cost Less Depreciation: $277,400

Building Attributes	
Field	**Description**
Style:	Retail/Apartment
Model	Commercial
Grade	C
Stories:	2
Occupancy	3.00
Residential Units	
Exterior Wall 1	Vinyl Siding
Exterior Wall 2	Pre-Fab Wood
Roof Structure	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Drywall/Sheet
Interior Wall 2	
Interior Floor 1	Inlaid Sht Gds
Interior Floor 2	Carpet
Heating Fuel	Oil
Heating Type	Hot Water
AC Type	Unit/AC
Bldg Use	PRI COMM
Total Rooms	
Total Bedrms	
Total Baths	
Kitchen Grd	
Heat/AC	NONE
Frame Type	WOOD FRAME
Baths/Plumbing	AVERAGE
Ceiling/Wall	CEIL & WALLS
Rooms/Prtns	AVERAGE
Wall Height	10.00
% Comn Wall	
1st Floor Use:	
Class	

Building Photo



Building Layout



(ParcelSketch.ashx?pid=35416&bid=35416)

Building Sub-Areas (sq ft)			Legend
Code	**Description**	**Gross Area**	**Living Area**
BAS	First Floor	1,676	1,676
FUS	Upper Story, Finished	1,676	1,676
TQS	Three Quarter Story	776	582
SFB	Base, Semi-Finished	776	543
CAN	Canopy	138	0
FEP	Porch, Enclosed	63	0
SLB	Slab	2,668	0
UAT	Attic	2,452	0
UST	Utility, Storage, Unfinished	458	0
WDK	Deck, Wood	140	0
		10,823	4,477

Building 2 : Section 1

Year Built: 2000
Living Area: 1,650
Replacement Cost: $153,450

Building Percent Good: 84

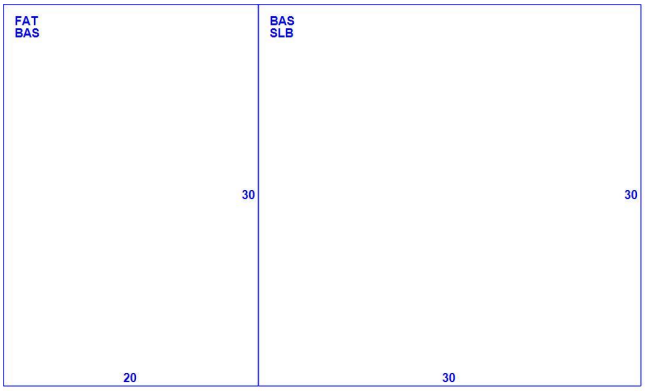
Replacement Cost Less Depreciation: $128,900

Building Attributes : Bldg 2 of 2	
Field	**Description**
Style:	Service Shop
Model	Commercial
Grade	C
Stories:	1
Occupancy	1.00
Residential Units	
Exterior Wall 1	Vinyl Siding
Exterior Wall 2	
Roof Structure	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Drywall/Sheet
Interior Wall 2	
Interior Floor 1	Concr-Finished
Interior Floor 2	Carpet
Heating Fuel	Oil
Heating Type	Hot Water
AC Type	None
Bldg Use	AUTO S S&S
Total Rooms	
Total Bedrms	
Total Baths	
Kitchen Grd	
Heat/AC	NONE
Frame Type	WOOD FRAME
Baths/Plumbing	AVERAGE
Ceiling/Wall	CEIL & WALLS
Rooms/Prtns	AVERAGE
Wall Height	12.00
% Comn Wall	
1st Floor Use:	
Class	

Building Photo

Building Photo
(http://images.vgsi.com/photos2/PortsmouthNHPhotos///0033/DSC01731_

Building Layout



(ParcelSketch.ashx?pid=35416&bid=40140)

Building Sub-Areas (sq ft)			Legend
Code	**Description**	**Gross Area**	**Living Area**
BAS	First Floor	1,500	1,500
FAT	Attic	600	150
SLB	Slab	900	0
		3,000	1,650

Extra Features

Extra Features	Legend

No Data for Extra Features

Land

Land Use

Use Code	0310
Description	PRI COMM
Zone	SRA
Neighborhood	306
Alt Land Appr	No
Category	

Land Line Valuation

Size (Acres)	1.93
Frontage	
Depth	
Assessed Value	$275,200
Appraised Value	$275,200

Outbuildings

Outbuildings						Legend
Code	**Description**	**Sub Code**	**Sub Description**	**Size**	**Value**	**Bldg #**
PAV1	PAVING-ASPHALT			1344.00 S.F.	$1,200	1
SHD1	SHED FRAME			96.00 S.F.	$100	1

Valuation History

Appraisal			
Valuation Year	**Improvements**	**Land**	**Total**
2020	$418,400	$275,200	$693,600
2019	$418,400	$275,200	$693,600
2018	$391,100	$254,800	$645,900

Assessment			
Valuation Year	**Improvements**	**Land**	**Total**
2020	$418,400	$275,200	$693,600
2019	$418,400	$275,200	$693,600
2018	$391,100	$254,800	$645,900

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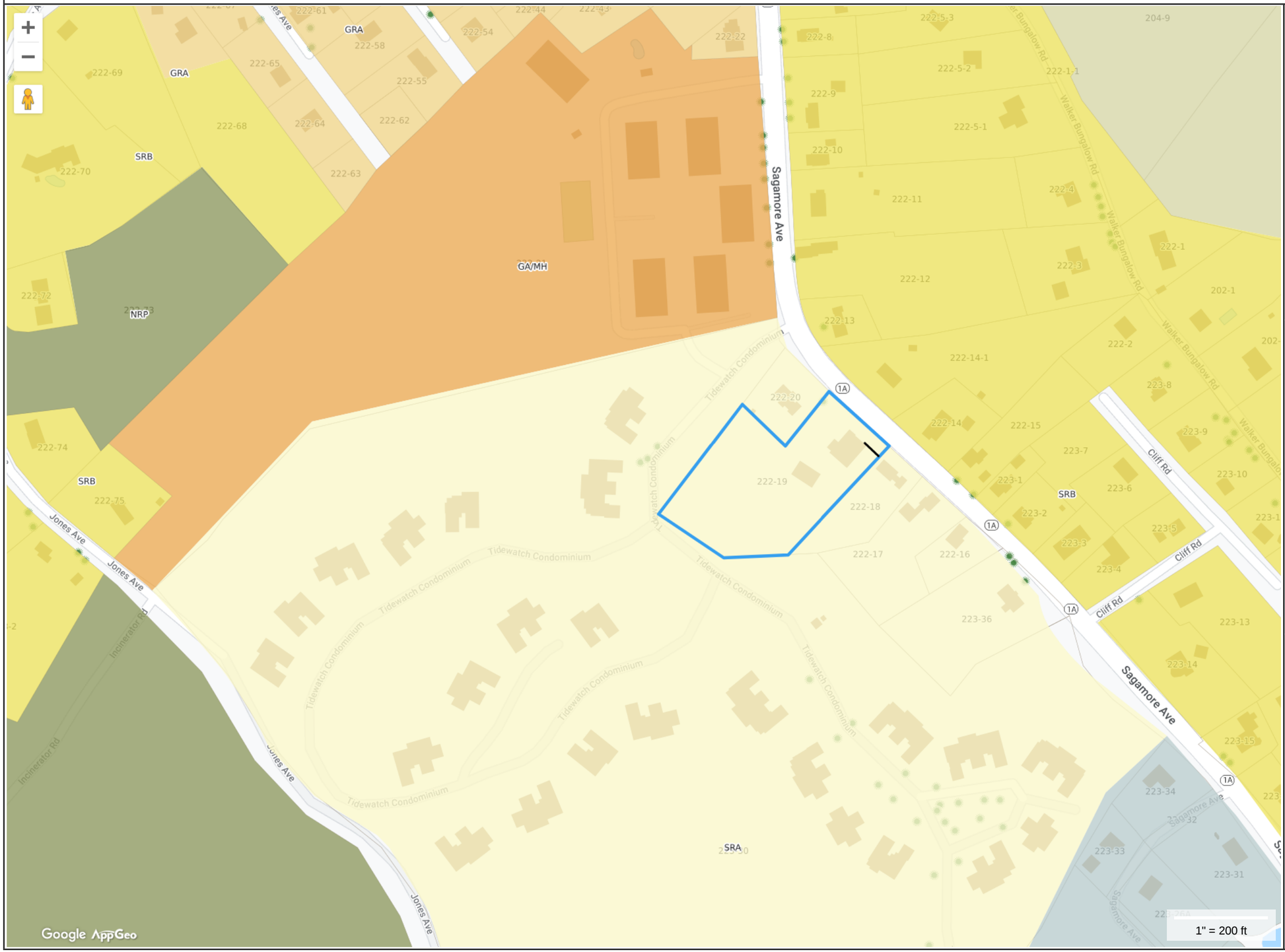
635 Sagamore Avenue



Property Information

Property ID	0222-0019-0000
Location	635 SAGAMORE AVE
Owner	635 SAGAMORE DEVELOPMENT LLC

MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

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 3/9/2022
Data updated 3/9/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

EXHIBIT E

WHITE APPRAISAL

REAL ESTATE APPRAISING & CONSULTING *Brian W. White, MAI, SRA*

October 28, 2022

EXHIBIT F

Timothy Phoenix, Esquire
Hoefle, Phoenix, Gormley & Roberts, PLLC
127 Parrott Avenue
P.O. Box 4480
Portsmouth, NH 03802-4480

RE: The Variance application for a four-unit freestanding single-family development to be located on 635 Sagamore Avenue in Portsmouth, New Hampshire.

Attorney Phoenix:
At your request, I have been asked to investigate the impact on the value of the abutting properties for the proposed four-unit freestanding single-family development to be located on 635 Sagamore Avenue (Map 222, Lot 19) and to prepare an analysis and opinion on the matter. I have reviewed the Portsmouth Zoning Ordinance that addresses the standards for the requested variance. To prepare this letter, I have completed research on the proposed subject property, the neighborhood and the Portsmouth marketplace. The following letter summarizes my analysis, findings and conclusions:

1. ***The Existing Development:***

The subject property is a 1,947-acre parcel of land located on the southern side of Sagamore Avenue in the Single Residence A (SRA) zone. The subject property is currently improved with an older 4,477 square-foot, mixed-use, building that contains a first-floor commercial garage unit and two upper-level apartments and an older 1,650 square-foot, one-story, two-bay, garage building. The improvements were constructed in 1950 and 2000 and they appear to be in below average overall condition for the Sagamore Avenue area. The front portion of the parcel has paved drive and parking areas. The existing development utilizes approximately the front third of the parcel with the central and rear areas of the parcel being treed with a large number of evergreens and some deciduous trees. The terrain for the parcel has a natural downward slope in a northeast to southwest direction. The parcel is serviced with municipal water, electricity, telephone, natural gas, cable and internet. The central and rear portions of the parcel have several rock outcroppings. There are no wetland areas located on the parcel.

2. ***The Proposed Development:***

The two older wood-frame buildings will be razed and a new paved drive will be installed off of Sagamore Avenue in the northeastern portion of the subject's parcel. This paved drive will extend into the central portion of the parcel providing access to four freestanding single-family residences. There will be a vehicle turn-around located at the end of the drive area.

Each of the single-family residences will have a front paved driveway that will provide access to a two-car garage. The residences will each contain two levels of finished living area with the three centrally located residences having a walk-out basement area given the natural sloping terrain. The units will have quality interior and exterior finishes that are commensurate with other similar new construction residences located in Portsmouth. Based on the proposed building plans, the proposed single- family residences will contain from 2,111 square feet to 2,349 square feet (2,230 SF average). The single-family homes will be surrounded by landscaped and grassed areas and there will be a rear patio area. There will be plantings located to the rear of the residences providing additional screening from abutting properties. According to Michael Garrepy, Consultant to the ownership of 635 Sagamore Development, LLC, the anticipated retail prices for the four proposed single-family residences will range from approximately $1,000,000 to $1,200,000.

3. Neighborhood & Abutting Properties:

The subject property is located in a large Single Residence A (SRA) zone and the land located directly across from the subject property on Sagamore Avenue is zoned Single Residence B (SRB). Both of these zones allow for single-family dwellings with a few other uses allowed as a conditional use or a special exception. Directly abutting the subject property on Sagamore Avenue are two single-family residences (Circa 1940 & 1964) that are small two-bedroom residences with a one-car garage. There are three single-family residences (Circa 1890, 1940 & 1985) located across Sagamore Avenue from the subject property. These residences range in size from a 1,248 square foot one-bedroom residence to a 2,861 square foot three-bedroom residence. In general, these abutting and nearby single-family residences are in average to above average overall condition. None of these nearby single-family residences have sold within the past several years. The average assessment for these five nearby single-family residences is approximately $460,000. The Tidewatch Condominium development is a 116-unit single-family condominium development located at 579 Sagamore Avenue. The entry road for this development abuts the rear portion of the subject property to the south of the subject property. These townhouse style units were constructed beginning in the late 1980s and they are generally in above average to good overall condition. Over the past two years, units in this development have sold from $650,000 to $1,240,000 with an average sale price of approximately $815,000.

4. Factors that impact Value and the Application to the Subject Property:

For the subject property, there are three potential factors that could directly impact the market value of the abutting properties. These factors are noise, view and use.

Noise:

It was previously noted that the proposed subject property will contain a single-entry drive and four freestanding single-family residences. Two of the subject's proposed residences will be located in the front third of the parcel along Sagamore Avenue while three of the proposed residences will be located in the center portion of the parcel. The rear third of the parcel will remain undeveloped and treed. At the present time, the subject's improvements contain a mixture of apartment units and two commercial units each containing garage space along with supporting drive and parking areas for business related vehicles. At the present time, the noises emitted from the subject property are from residential tenants entering and

exiting their apartment units and from vehicular traffic entering and exiting from the parking area. There are also likely noises from the car doors opening and closing. In addition, there are noises from the commercial garage work being completed along with the garage doors opening and closing. The subject's proposed residential development will contain a single paved drive (ingress and egress) that will extend into the center portion of the parcel. It is noted that given the sloping terrain of the parcel, the developed areas of the parcel will be located approximately 20 to 30 feet higher than the Tidewatch Condominium access road which is located to the rear of the subject's parcel. The vehicle noise from the proposed development will likely be somewhat similar to that currently emitted by the existing development. One difference is that the subject's proposed development will have a road extending into the center portion of the parcel and another difference is that each residential unit will have a two-car garage. The longer entry drive will bring vehicles into the center portion of the parcel which will likely slightly increase vehicle noise. The fact that each residential unit has a two-car garage will likely decrease the noise from opening and closing of car doors as they will largely be contained in garage areas as opposed to the current situation of many vehicles being parked outside. These differences will likely be off-setting. There will obviously be additional noise from the use and maintenance of the four single-family residences. However, these noises are no different than what is currently heard from the abutting and surrounding residences. The typical buyer of a property located in close proximity to the subject property would be aware of this potential. Considering all of these factors, it is reasonable to conclude that the proposed four-unit single-family development of the subject property will be configured in such a manner that there would not be an increase in non-residential noises that would be over and above that of any other permitted uses in the "SRA" and "SRB" zones.

View:

At the present time, the subject's combined mixed-use (commercial garage, apartments and exterior parking areas) development is very visible from the road traffic and the abutting residences located along Sagamore Avenue. It is visible in the distance with a heavy wooded screen from the Tidewatch Condominium access road and from the front areas of several townhouse-style condominium units in the development. From the front and central portions of the subject property, the two abutting older single-family residences area visible along with the three residences located across Sagamore Avenue to the north, east and west. To the south, the access road for the Tidewatch Condominium development is visible in the distance with a heavy wooded screen.

The existing mixed-use development of the subject property is an average condition development that some would consider to be an eyesore for the mostly above average to good condition residential neighborhood of the subject property. There is no screening of these mixed-use buildings and the supporting drive and parking areas from Sagamore Avenue. The proposed four-unit residential development will have a single paved drive located in the eastern portion of the parcel. The front building will be setback further from Sagamore Avenue than the existing mixed-use building and it will be surrounded by grassed and landscaped areas. A second single-family residence will be located approximately 25' to the rear of the front residence. The proposed subject property will greatly enhance the views from the neighboring single-family residences located along Sagamore Avenue. The subject's two rear detached single-family residences will be located in the central portion of the parcel which is currently undeveloped woods. These two detached residences will be

visible from the rear yard areas of the two abutting single-family residences and they will be visible in the distance from the front parking and building areas of several townhouse-style condominium units located in the Tidewatch Condominium development. The front portion of the development that abuts 607 Sagamore Avenue will contain a new 6' vinyl fence and new screening that will include Giant Arborvitae and Greenspire Littleleaf Linden trees. The western and southern developed areas that face the Tidewatch condominium access road will have additional screening that will include Canadian Hemlock, Eastern White Pine, Norway Spruce, Chanticleer Callery Pear, Sweetgum and Cherry trees. This fencing along with the proposed enhanced screening has been designed to provide additional screening from neighboring properties. Additionally, the rear portion of the property will remain undeveloped leaving the natural wooded screen in place. The views of several nearby residential properties will change but not to the extent that any negative impact will result. It could be argued that the views of the neighboring properties will be enhanced by replacing the older average condition mixed-use development and asphalt drive and parking lot with new construction freestanding single-family residences that will be in very good condition with retail values that will exceed that of all the neighboring properties.

Use:

The subject property is proposed for use as a four-unit freestanding single-family development. In the surrounding neighborhood, the Sagamore Avenue area is developed with a variety of residential uses (single-family, residential condominiums and apartments) and several scattered commercial and mixed-use developments. The interior streets located off of Sagamore Avenue are largely developed with residential uses. The proposed single-family development of the subject property will be in-line with that of the surrounding uses. In the Variance application, it is pointed out that the abutting Tidewatch Condominium development to the south and west is also located in the SRA zone. This townhouse-style condominium development contains 116 units located on 53.59 acres of land. This translates into a density of 2.16-units per acre. Sagamore Court Condominiums to the north of the subject property on Sagamore Avenue is a 144-unit development on 15.01-acres (9.59-units/acre). The subject's proposed 4 units will be located on a 1.947-acre parcel (2.05-units/acre). Considering the density of these abutting and nearby residential condominium developments, the subject's proposed density is reasonably in-line with the existing density in the immediate area. It can reasonably be concluded that the proposed use of the subject property as a four-unit freestanding single-family development is a use that will be compatible with the surrounding neighborhood.

5. Specific Standards – Variances:

The owners are requesting a Variance from the following – Portsmouth Zoning Ordinance – 10.513 - Permitting one freestanding dwelling per lot, where four freestanding single-family units are proposed) and Portsmouth Zoning Ordinance – Table of Dimensional Standards – permitting one dwelling unit per acre, where four dwelling units on a 1.947-acre parcel is proposed (2.05 dwelling units per acre). As Rosann Maurice-Lentz was unavailable for comment, I spoke with Scott Scott, Tax Assessor II for the City of Portsmouth. I wanted to get his opinion on the subject's proposed freestanding single-family development and that of several other recently proposed or recently constructed multi-unit residential developments located in the Sagamore Avenue area. He stated that he is very familiar with the Sagamore Avenue area. He indicated that the fact that the subject's units are freestanding units, and not

multi-unit buildings, makes them more attractive overall. Additionally, he stated that he doesn't "think that this development would bring down the surrounding values and it would more likely bring them up". I have attempted to gather market sales data from the Portsmouth area that would speak to the change in permitted units where freestanding single-family homes were permitted and possible value changes. In the greater Portsmouth area, there is no exactly similar property from which to extract paired-sales. Therefore, only general observations can be made based on my experience in the marketplace. Over the past several years in the greater Sagamore Avenue area of Portsmouth, several new multi-unit residential developments have been constructed or are currently proposed. In general, the addition of these new residential developments has resulted in upgrading the overall condition of the neighborhood and therefore enhancing the overall desirability of the area.

It is my opinion that granting the requested variance for the subject property to be improved with a four-unit freestanding single-family development would not result in the diminution in value of the abutting property values in the immediate vicinity of the subject property and the proposed subject property would not change the characteristics of the neighborhood. In fact, the addition of the proposed subject property will add several attractive and modern single-family residences to the neighborhood that very well could enhance the value of the surrounding properties as it will add a new residential units to a location that is currently under improved for the area.

Respectively submitted,

Brian W. White, MAI, SRA NHCG-#52

ADDENDA

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PHOTOGRAPHS OF THE SUBJECT PROPERTY

Street Scene - Front of the Subject Property
Looking Southeast on Sagamore Avenue - (5/22)

Street Scene - Front of the Subject Property
Looking Southeast on Sagamore Avenue - (5/22)

PHOTOGRAPHS OF THE SUBJECT PROPERTY

Street Scene - Rear of the Subject Property
Looking Southeast on Tidewatch Condominium Access Road - (2/22)

Street Scene - Rear of the Subject Property
Looking Northwest on Tidewatch Condominium Access Road - (5/22)

PHOTOGRAPHS OF THE SUBJECT PROPERTY

Subject Property – Front of the Property
Looking Southwest from across Sagamore Avenue – (5/22)

Subject Property – Front of the Property and the Front Mixed-use Building
Looking Southeast from High Street – (5/22)

PHOTOGRAPHS OF THE SUBJECT PROPERTY

Subject Property – Rear of the Front Mixed-use Building
Looking East from Rear Paved Area – (5/22)

Subject Property – Front of the Rear Garage Building
Looking Southwest from Paved Drive Area – (5/22)

PHOTOGRAPHS OF THE SUBJECT PROPERTY

Subject Property – Rear of the Rear Garage Building
Looking Northeast from Rear Wooded Area – (5/22)

View of the Rear of the Subject Property from Tidewatch Condominium Access Road
Looking Northeast - (5/22)

PHOTOGRAPHS OF THE SUBJECT/SURROUNDING PROPERTIES

View of the Rear of the Subject Property from Tidewatch Condominium Access Road
Looking East - (5/22)

View of Typical Tidewatch Condominium Building
Looking South from Access Road - (5/22)

PHOTOGRAPHS OF THE SUBJECT/SURROUNDING PROPERTIES

View of Tidewatch Access Road from rear of Proposed Residences
Looking South - (5/22)

View of Tidewatch Access Road from rear of Proposed Residences
Looking Southwest - (5/22)

PHOTOGRAPHS OF THE SURROUNDING PROPERTIES

View of Abutting Residence at 607 Sagamore Road
Looking Southwest from Front of the Subject Property - (5/22)

View of Abutting Residence at 695 Sagamore Road
Looking Southeast from Sagamore Road to the Front of the Subject Property - (5/22)

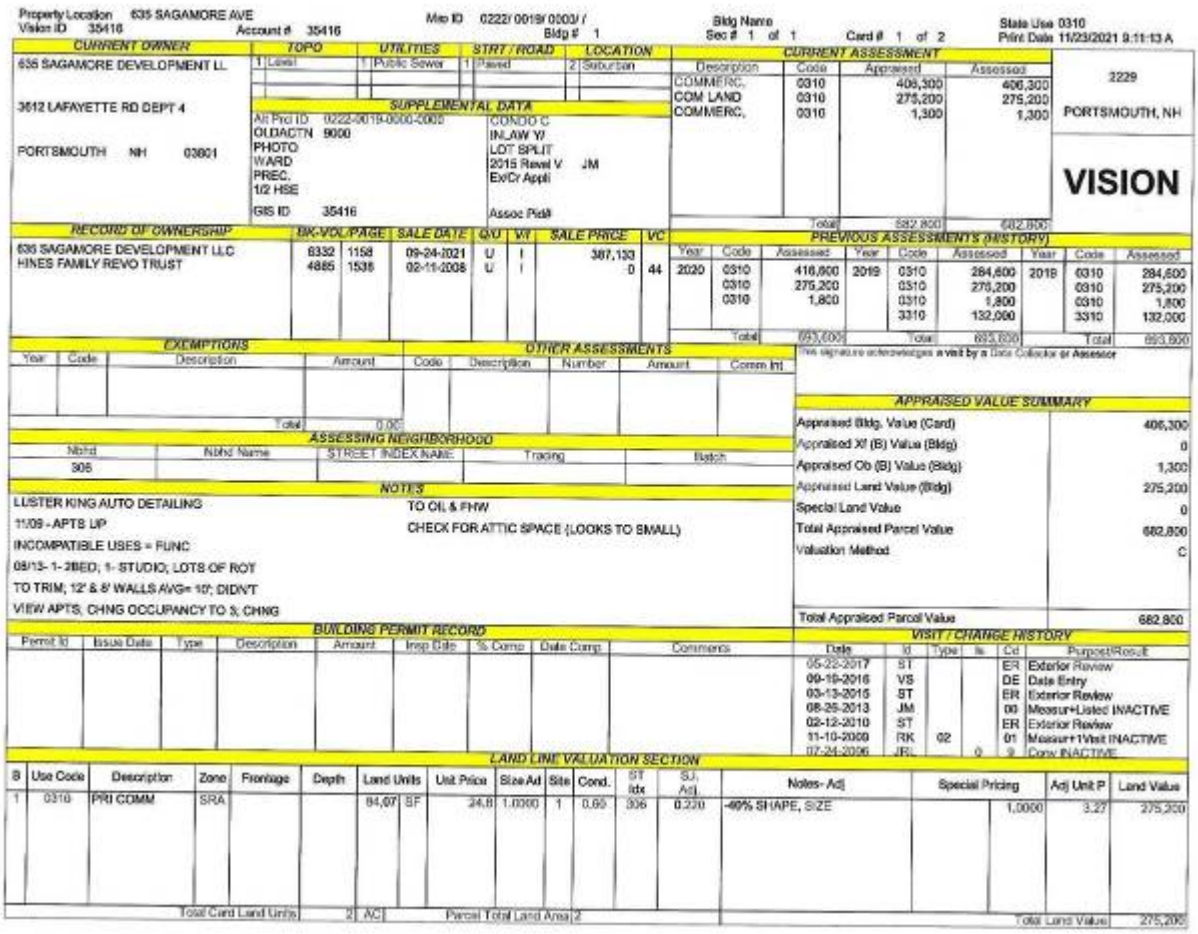
PHOTOGRAPHS OF THE SURROUNDING PROPERTIES

View of Residence located across Sagamore Road - 594 Sagamore Road
Looking North from Sagamore Road to the Front of the Subject Property - (5/22)

View of Residence located across Sagamore Road - 650 Sagamore Road
Looking Northeast from Sagamore Road to the Front of the Subject Property - (5/22)

PHOTOGRAPHS OF THE SURROUNDING PROPERTIES

View of Residence located across Sagamore Road - 692 Sagamore Road
Looking East from Sagamore Road to the Front of the Subject Property - (5/22)



Property Location 635 SAGAMORE AVE
Vision ID 35416 Account # 35416
Map ID 0222/ 0019/ 0000/ /
Bldg # 1
Bldg Name
Sec # 1 of 1
Card # 1 of 2
State Use 0310
Print Date 11/23/2021 9:11:13 A

CURRENT OWNER
635 SAGAMORE DEVELOPMENT LL

3612 LAFAYETTE RD DEPT 4

PORTSMOUTH NH 03801

TOPO	UTILITIES	STRT / ROAD	LOCATION
1 Level	1 Public Sewer	1 Paved	2 Suburban

SUPPLEMENTAL DATA
Alt Prcl ID 0222-0019-0000-0000
OLDACTN 9000
PHOTO
WARD
PREC.
1/2 HSE
GIS ID 35416
CONDO C
IN_AW Y/
LOT SPLIT
2015 Reval V JM
Ext/Cr Appl
Assoc Pid#

CURRENT ASSESSMENT

Description	Code	Appraised	Assessed
COMMERC.	0310	406,300	406,300
COM LAND	0310	275,200	275,200
COMMERC.	0310	1,300	1,300
	Total	682,800	682,800

2229
PORTSMOUTH, NH

VISION

RECORD OF OWNERSHIP
635 SAGAMORE DEVELOPMENT LLC
HINES FAMILY REVO TRUST

BK-VOL/PAGE		SALE DATE	Q/U	V/I	SALE PRICE	VC
6332	1158	09-24-2021	U	I	387,133	
4885	1536	02-11-2008	U	I	0	44

PREVIOUS ASSESSMENTS (HISTORY)

Year	Code	Assessed	Year	Code	Assessed	Year	Code	Assessed
2020	0310	416,900	2019	0310	284,600	2018	0310	284,600
	0310	275,200		0310	275,200		0310	275,200
	0310	1,800		0310	1,800		0310	1,800
				3310	132,000		3310	132,000
	Total	693,900		Total	693,900		Total	693,900

EXEMPTIONS

Year	Code	Description	Amount
		Total	0.00

OTHER ASSESSMENTS

Code	Description	Number	Amount	Comm Int

This signature acknowledges a visit by a Data Collector or Assessor

ASSESSING NEIGHBORHOOD

Nbhd	Nbhd Name	STREET INDEX NAME	Tracing	Batch
305				

NOTES
LUSTER KING AUTO DETAILING
11/09 - APTS UP
INCOMPATIBLE USES = FUNC
08/13- 1- 2BED; 1- STUDIO; LOTS OF ROT
TO TRIM; 12' & 8' WALLS AVG= 10'; DIDN'T
VIEW APTS, CHNG OCCUPANCY TO 3; CHNG
TO OIL & FHW
CHECK FOR ATTIC SPACE (LOOKS TO SMALL)

APPRAISED VALUE SUMMARY

Appraised Bldg. Value (Card)	406,300
Appraised Xf (B) Value (Bldg)	0
Appraised Ob (B) Value (Bldg)	1,300
Appraised Land Value (Bldg)	275,200
Special Land Value	0
Total Appraised Parcel Value	682,800
Valuation Method	C
Total Appraised Parcel Value	682,800

BUILDING PERMIT RECORD

Permit Id	Issue Date	Type	Description	Amount	Insp Date	% Comp	Date Comp	Comments

VISIT / CHANGE HISTORY

Date	Id	Type	Is	Cd	Purpose/Result
05-22-2017	ST			ER	Exterior Review
09-19-2016	VS			DE	Data Entry
03-13-2015	ST			ER	Exterior Review
08-26-2013	JM			00	Measur+Listed INACTIVE
02-12-2010	ST			ER	Exterior Review
11-10-2009	RK	02		01	Measur+Visit INACTIVE
07-24-2006	JR		0	9	Conv INACTIVE

LAND LINE VALUATION SECTION

B	Use Code	Description	Zone	Frontage	Depth	Land Units		Unit Price	Size Adj	Site	Cond.	ST Idx	SJ Adj	Notes-Adj	Special Pricing	Adj Unit P	Land Value
1	0310	PRI COMM	SRA			84,07	SF	24.8	1.0000	1	0.60	306	0.220	-40% SHAPE, SIZE	1.0000	3.27	275,200
		Total Card Land Units		2	AC	Parcel Total Land Area 2										Total Land Value	275,200

Property Location 635 SAGAMORE AVE
Vision ID 35416 Account # 35416
Map ID 0222/ 0019/ 0000/ /
Bldg # 1
Bldg Name
Sec # 1 of 1
Card # 1 of 2
State Use 0310
Print Date 11/23/2021 9:11:13 A

CONSTRUCTION DETAIL

Element	Cd	Description
Style:	80	Retail/Apartment
Model	94	Commercial
Grade	C	C
Stories:	2	
Occupancy	3.00	
Residential Unit		
Exterior Wall 1	25	Vinyl Siding
Exterior Wall 2	13	Pre-Fab Wood
Roof Structure	03	Gable/Hip
Roof Cover	03	Asph/F Gls/Comp
Interior Wall 1	05	Drywall/Sheet
Interior Wall 2		
Interior Floor 1	06	Inlaid Sht Gds
Interior Floor 2	14	Carpet
Heating Fuel	02	Oil
Heating Type	05	Hot Water
AC Type	04	Unit/AC
Bldg Use	0310	PRI COMM
Total Rooms		
Total Bedrms		
Total Baths		
Kitchen Grd		
Heat/AC	00	NONE
Frame Type	02	WOOD FRAME
Baths/Plumbing	02	AVERAGE
Ceiling/Wall	06	CEIL & WALLS
Rooms/Prtns	02	AVERAGE
Wall Height	10.00	
% Comm Wall		
1st Floor Use:		
Class		

CONSTRUCTION DETAIL (CONTINUED)

Element	Cd	Description

MIXED USE

Code	Description	Percentage
0310	PRI COMM	100
		0
		0

COST / MARKET VALUATION

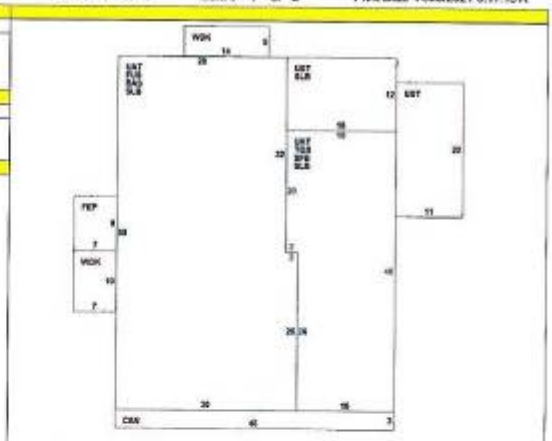
Adj. Base Rate	103.95
RCN	513,721
Year Built	1950
Effective Year Built	1983
Depreciation Code	A
Remodel Rating	
Year Remodeled	
Depreciation %	36
Functional Obsol	10
External Obsol	
Trend Factor	1
Condition	
Condition %	
Percent Good	54
RCNLD	277,400
Dep % Ovr	
Dep Ovr Comment	
Misc Imp Ovr	
Misc Imp Ovr Comment	
Cost to Cure Ovr	
Cost to Cure Ovr Comment	

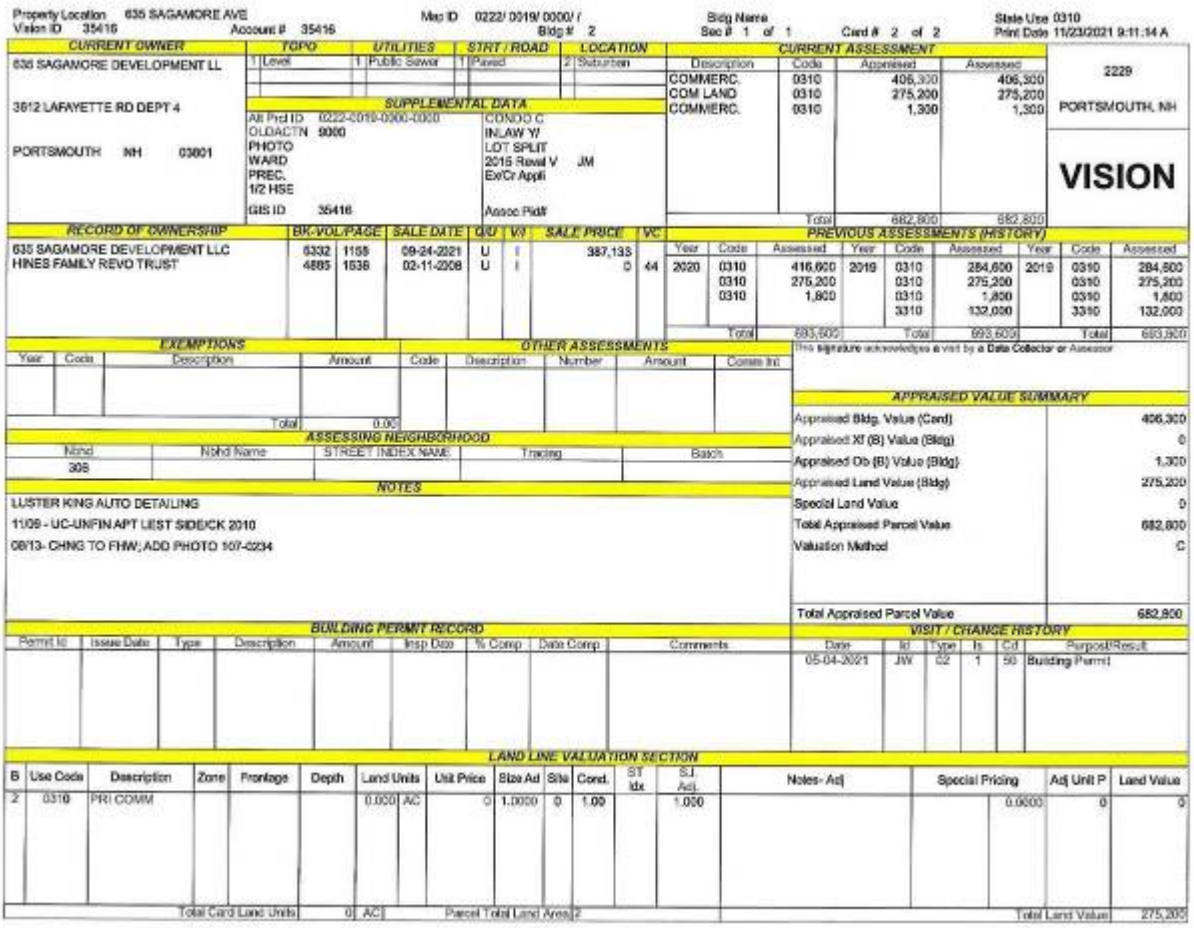
OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)

Code	Description	L/B	Units	Unit Price	Yr Blt	Cond	% Gd	Gr	Gr Adj.	Appr. Value
PAV1	PAVING-ASPHALT	L	1,344	1.75	1965	3	50	C	1.00	1,200
SH01	SHED FRAME	L	96	13.00	1990	P	10	D	0.90	100

BUILDING SUB-AREA SUMMARY SECTION

Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undepreciated Value
BAS	First Floor	1,676	1,676	1,676	103.95	174,220
CAN	Canopy	0	138	28	21.09	2,911
FEP	Porch, Enclosed	0	63	41	67.65	4,262
FUS	Upper Story, Finished	1,676	1,676	1,676	103.95	174,220
SFB	Base, Semi-Finished	543	776	543	72.74	56,445
SLB	Slab	0	2,668	0	0.00	0
TQS	Three Quarter Story	582	776	582	77.98	60,499
UAT	Attic	0	2,452	245	10.39	25,468
UST	Utility, Storage, Unfinished	0	456	137	31.09	14,241
WDK	Deck, Wood	0	140	14	10.40	1,456
	TI Gross Liv / Lease Area	4,477	10,823	4,942		513,721





Property Location 635 SAGAMORE AVE | Map ID 0222/ 0019/ 0000/ / | Bldg Name | State Use 0310
Vision ID 35416 | Account # 35416 | Bldg # 2 | Sec # 1 of 1 | Card # 2 of 2 | Print Date 11/23/2021 9:11:14 A

CURRENT OWNER
635 SAGAMORE DEVELOPMENT LL

3612 LAFAYETTE RD DEPT 4

PORTSMOUTH NH 03801

TOPO	UTILITIES	STRT / ROAD	LOCATION
1 Level	1 Public Sewer	1 Paved	2 Suburban

SUPPLEMENTAL DATA
Alt Prcl ID 0222-0019-0000-0000
OLDACTN 9000
PHOTO
WARD
PREC.
1/2 HSE
GIS ID 35416
CONDO C
IN-LAW Y/
LOT SPLIT
2015 Reval V JM
Ex/Cr Appli
Assoc Pid#

CURRENT ASSESSMENT

Description	Code	Appraised	Assessed
COMMERC.	0310	406,300	406,300
COM LAND	0310	275,200	275,200
COMMERC.	0310	1,300	1,300
		Total	682,800	682,800

2229
PORTSMOUTH, NH

VISION

RECORD OF OWNERSHIP

	BK-VOL/PAGE		SALE DATE	Q/U	V/I	SALE PRICE	VC
635 SAGAMORE DEVELOPMENT LLC	6332	1155	09-24-2021	U	I	387,133	
HINES FAMILY REVO TRUST	4885	1538	02-11-2008	U	I	0	44

PREVIOUS ASSESSMENTS (HISTORY)

Year	Code	Assessed	Year	Code	Assessed	Year	Code	Assessed
2020	0310	416,600	2019	0310	284,600	2018	0310	284,600
	0310	275,200		0310	275,200		0310	275,200
	0310	1,800		0310	1,800		0310	1,800
				3310	132,000		3310	132,000
		Total 693,600			Total 693,600			Total 693,600

EXEMPTIONS

Year	Code	Description	Amount
		Total	0.00

OTHER ASSESSMENTS

Code	Description	Number	Amount	Comm Int

This signature acknowledges a visit by a Data Collector or Assessor

APPRAISED VALUE SUMMARY

Appraised Bldg. Value (Card)	406,300
Appraised Xf (B) Value (Bldg)	0
Appraised Ob (B) Value (Bldg)	1,300
Appraised Land Value (Bldg)	275,200
Special Land Value	0
Total Appraised Parcel Value	682,800
Valuation Method	C
Total Appraised Parcel Value	682,800

ASSESSING NEIGHBORHOOD

Nbhd	Nbhd Name	STREET INDEX NAME	Tracing	Batch
308				

NOTES
LUSTER KING AUTO DETAILING
11/09 - UC-UNFIN APT LEST SIDE/CK 2010
08/13- CHNG TO FHW; ADD PHOTO 107-0234

BUILDING PERMIT RECORD

Permit Id	Issue Date	Type	Description	Amount	Insp Date	% Comp	Date Comp	Comments

VISIT / CHANGE HISTORY

Date	Id	Type	Is	Cd	Purpose/Result
05-04-2021	JW	02	1	50	Building Permit

LAND LINE VALUATION SECTION

B	Use Code	Description	Zone	Frontage	Depth	Land Units	Unit Price	Size Adj	Site	Cond.	ST Idx	SJ Adj	Notes- Adj	Special Pricing	Adj Unit P	Land Value
2	0310	PRI COMM				0.000 AC	0	1.0000	0	1.00		1.000		0.0000	0	0
		Total Card Land Units				0 AC	Parcel Total Land Area	2						Total Land Value		275,200

Property Location 695 SAGAMORE AVE | Map ID 0222/ 0019/ 0003/ / | Bldg Name | State Use 0310
Vision ID 36416 | Account # 36416 | Bldg # 2 | Sec # 1 of 1 | Card # 2 of 2 | Print Date 11/23/2021 9:11:14 A

CONSTRUCTION DETAIL

Element	Cd	Description
Style:	25	Service Shop
Model	94	Commercial
Grade	C	C
Stories:	1	
Occupancy	1.00	
Residential Unit		
Exterior Wall 1	25	Vinyl Siding
Exterior Wall 2		
Roof Structure	03	Gable/Hip
Roof Cover	03	Asph/F Gls/Comp
Interior Wall 1	05	Drywall/Sheet
Interior Wall 2		
Interior Floor 1	03	Concr-Finished
Interior Floor 2	14	Carpet
Heating Fuel	02	Oil
Heating Type	05	Hot Water
AC Type	01	None
Bldg Use	3310	AUTO S S&S
Total Rooms		
Total Bedrms		
Total Baths		
Kitchen Grd		
Heat/AC	00	NONE
Frame Type	02	WOOD FRAME
Baths/Plumbing	02	AVERAGE
Ceiling/Wall	06	CEIL & WALLS
Rooms/Prins	02	AVERAGE
Wall Height	12.00	
% Comn Wall		
1st Floor Use:		
Class		

CONSTRUCTION DETAIL (CONTINUED)

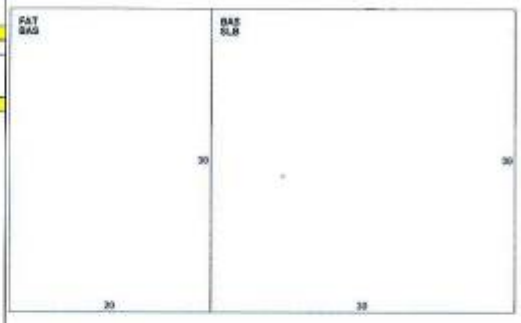
Element	Cd	Description

MIXED USE

Code	Description	Percentage
0310	PRI COMM	100
		0
		0

COST / MARKET VALUATION

Adj. Base Rate	93.00
RCN	153,450
Year Built	2000
Effective Year Built	2003
Depreciation Code	A
Remodel Rating	
Year Remodeled	
Depreciation %	16
Functional Obsol	
External Obsol	
Trend Factor	1
Condition	
Condition %	
Percent Good	84
RCNLD	128,900
Dep % Ovr	
Dep Ovr Comment	
Misc Imp Ovr	
Misc Imp Ovr Comment	
Cost to Cure Ovr	
Cost to Cure Ovr Comment	



OB - OUTBUILDING & YARD ITEMS(L) / XF - BUILDING EXTRA FEATURES(B)

Code	Description	L/B	Units	Unit Price	Yr Blt	Cond	% Gd	Gr	Gr Adj	Appr. Value

BUILDING SUB-AREA SUMMARY SECTION

Code	Description	Living Area	Floor Area	Eff Area	Unit Cost	Undeprec Value
BAS	First Floor	1,500	1,500	1,500	93.00	139,500
FAT	Attic	150	600	150	23.25	13,950
SLB	Slab	0	500	0	0.00	0
	TE Gross Liv / Lease Area	1,650	3,000	1,650		153,450

E # 21060614 09/24/2021 09:32:59 AM
Book 6332 Page 1158 Page 1 of 2
Register of Deeds, Rockingham County
Cathy Ann Stacey

LCHIP	ROA585829	25.00
TRANSFER TAX	RO109828	5,807.00
RECORDING		14.00
SURCHARGE		2.00

Return to:

WARRANTY DEED

KNOW ALL BY THESE PRESENTS, that I, **WILLIAM A. HINES**, married person, **TRUSTEE OF THE WILLIAM A. HINES FAMILY REVOCABLE TRUST** a/k/a The Hines Family Revocable Trust of 2006, of 635 Sagamore Avenue, Portsmouth, New Hampshire 03801, for consideration paid, hereby grant to **635 SAGAMORE DEVELOPMENT, LLC**, a New Hampshire limited liability company with a mailing address of 3612 Lafayette Road, Dept. 4, Portsmouth, New Hampshire 03801 with WARRANTY COVENANTS, the following described premises:

A certain tract of land with the buildings thereon, situate on Sagamore Avenue in said Portsmouth, more particularly described as follows:

Beginning at a point on Sagamore Avenue at land now or formerly of Arnold, thence running Westerly by said Arnold land three hundred (300) feet, more or less, to land now or formerly of W.W. and D.M. Johnston; thence turning and running Northwesterly by said Johnston land one hundred and twenty-four (124) feet; thence turning and running Northerly also by said Johnston land one hundred sixty-two (162) feet to land now or formerly of C.W. Walker; thence turning and running Easterly by said Walker land four hundred nineteen (419) feet to Sagamore Avenue; thence turning and running Easterly one hundred forty (140) feet; thence turning and running along said Sagamore Avenue thirty (30) feet to land of one Smith; thence turning and running Westerly one hundred forty (140) feet; thence turning and running Southerly ninety (90) feet; thence turning and running Easterly one hundred forty (140) feet to Sagamore Avenue; the last three bounds being land of Smith; thence turning running Southerly by said Sagamore Avenue one hundred sixty (160) feet to the point of beginning.

EXCEPTING AND RESERVING to the said William A. Hines and his wife Bonnie Hines a life estate in the above-described property permitting them to reside in the existing residential apartment on the property for the remainder of William A. Hines natural life, plus one year unless Bonne Hincs shall have predeceased.

Meaning and intending to convey the same premises conveyed to the Grantor by deed of William A. Hines dated February 11, 2008 and recorded in the Rockingham County Registry of Deeds at Book 4885, Page 1538.

BY SIGNING BELOW, William A. Hines and Bonnie Hines release all homestead rights to the Premises.

TRUSTEE CERTIFICATE

I, William A. Hines, Trustee of the William A. Hines Family Revocable Trust A/K/A The Hines Family Revocable Trust of 2006, hereby covenant that said Trust is duly organized under the laws of the State of New Hampshire; that I am the sole trustee pursuant to said Declaration of Trust; that said Trust is still in full force and effect; that I have the power thereunder to convey as aforesaid; and that, in making this conveyance, I have, in all respects, acted pursuant to the authority vested in and granted to me therein and no purchaser or third party shall be bound to inquire whether the Trustee has said power or are properly exercising said power or to see to the application of any trust assets paid to the Trustee for a conveyance thereof.

Signed this 3rd day of September, 2021.

William A. Hines, Trustee of the William A. Hines Family Revocable Trust A/K/A The Hines Family Revocable Trust of 2006

Bonnie Hines

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this, the 3rd day of September, 2021, before me, the undersigned Officer, personally appeared William A. Hines, Trustee of the William A. Hines Family Revocable Trust A/K/A The Hines Family Revocable Trust of 2006, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes set forth therein.

Justice of the Peace/Notary Public
My commission expires:

LAURA H. RAMSDELL
MY COMMISSION EXPIRES MAY 20, 2025
NOTARY PUBLIC
NEW HAMPSHIRE

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

On this, the 3rd day of September, 2021, before me, the undersigned Officer, personally appeared Bonnie Hines, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument, and acknowledged that she executed the same for the purposes set forth therein.

Justice of the Peace/Notary Public
My commission expires:

LAURA H. RAMSDELL
MY COMMISSION EXPIRES MAY 20, 2025
NOTARY PUBLIC
NEW HAMPSHIRE

City of Portsmouth, NH

May 24, 2022

AERIAL VIEW

MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

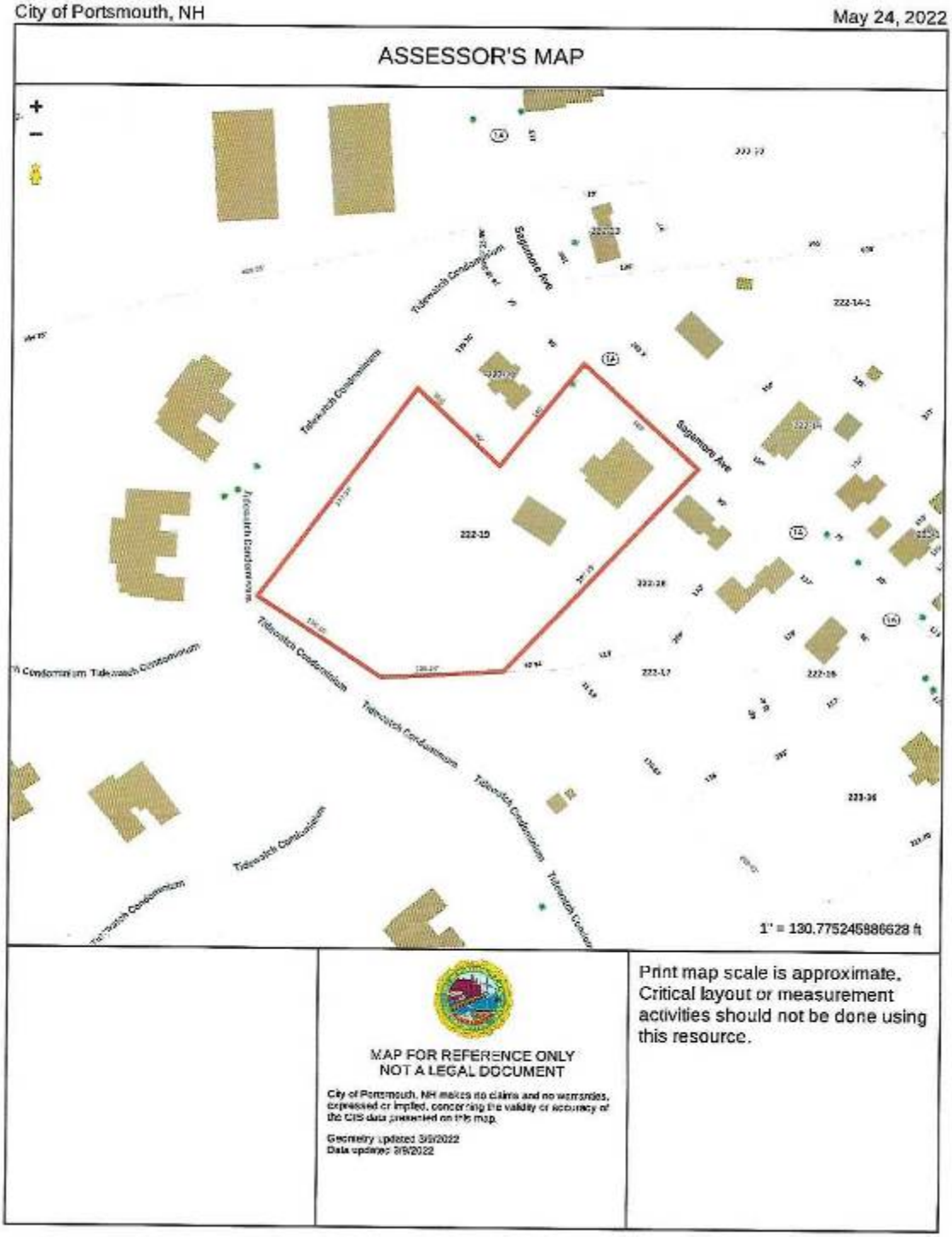
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 3/9/2022
Data updated 3/9/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

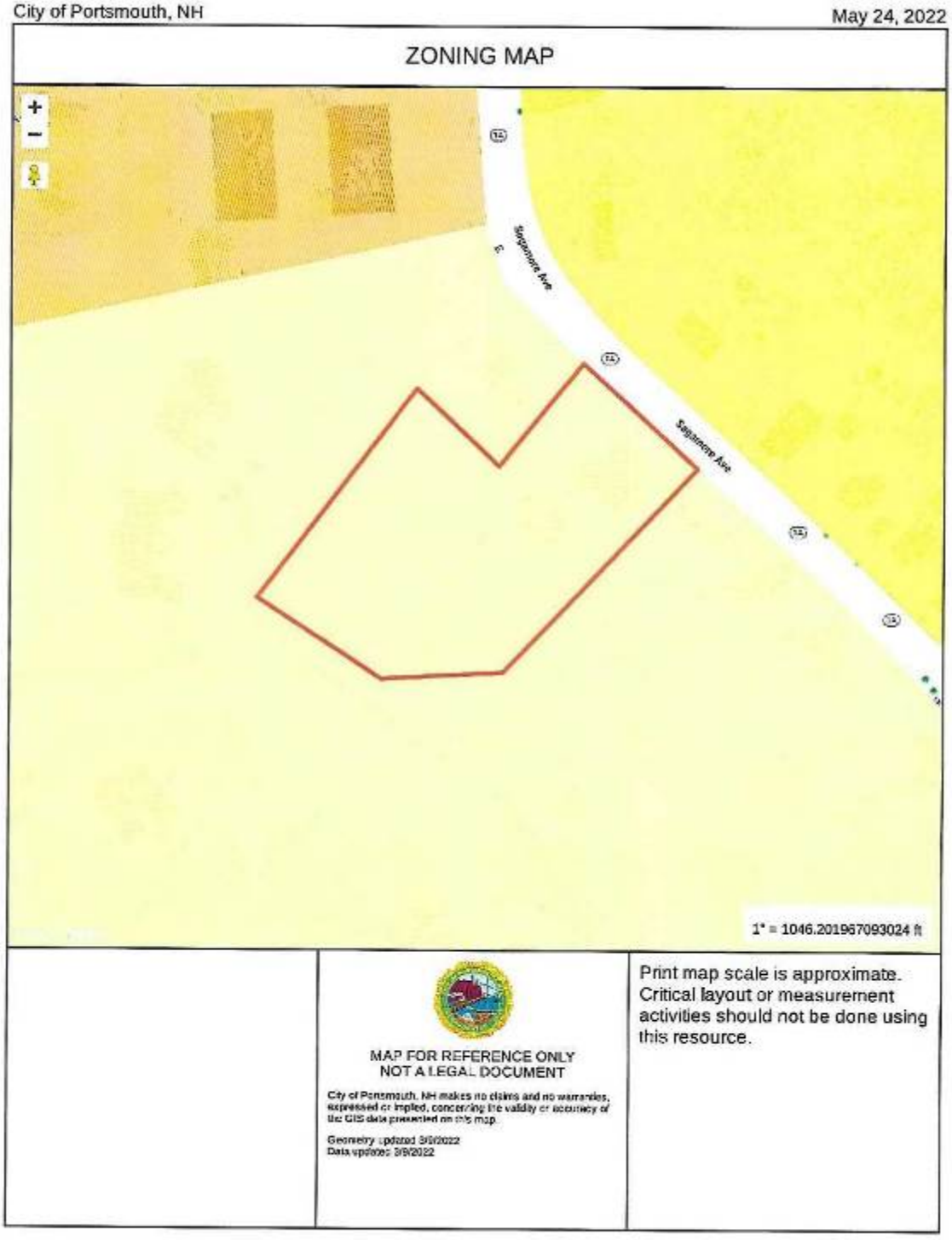
City of Portsmouth, NH

May 24, 2022



City of Portsmouth, NH

May 24, 2022



Map Theme Legends

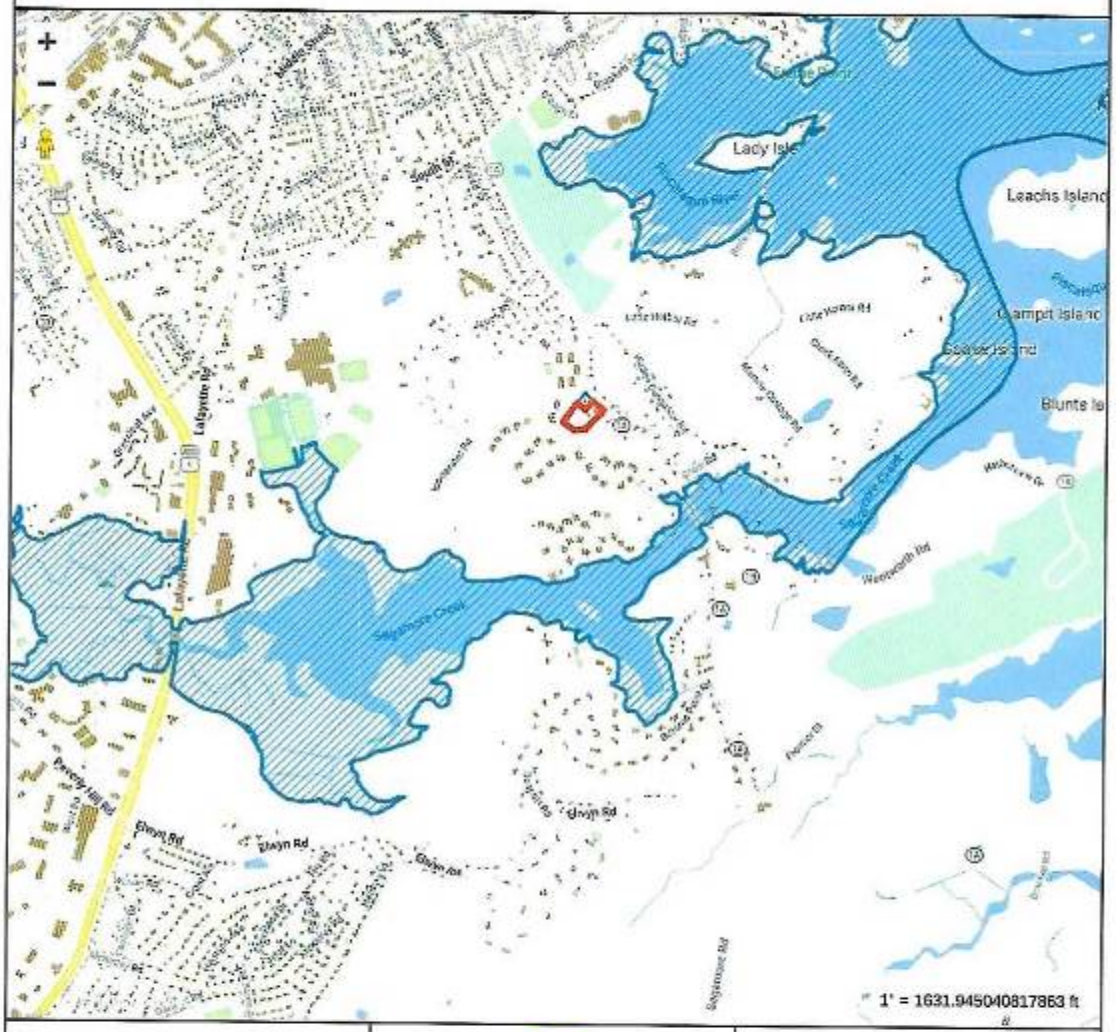
Zoning

City of Portsmouth

City of Portsmouth, NH

May 24, 2022

FLOOD MAP



Property Information

Property ID	0222-0000-0000
Location	607 SAGAMORE AVE
Owner	PATTEN EWAN W

MAP FOR REFERENCE ONLY
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Geometry updated 3/9/2022
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Article 4 Zoning Districts and Use Regulations

Section 10.410 Establishment and Purpose of Districts
Section 10.420 District Location and Boundaries
Section 10.430 Use Regulations
Section 10.440 Table of Uses – Residential, Mixed Residential, Business and Industrial Districts
Section 10.450 Table of Uses – Pease/Airport Districts
Section 10.460 Table of Uses – Municipal and Conservation Districts
Section 10.470 Uses Permitted in the Transportation Corridor District

Section 10.410 Establishment and Purpose of Districts

The City of Portsmouth is hereby divided into the following zoning districts (the statements of purpose are for descriptive purposes and are not regulatory):

District		Purpose
Residential Districts		
Rural Residential	R	To provide areas for **single-family dwellings** and appropriate **accessory uses** at rural densities (up to one **dwelling** per five acres), and limited agricultural **uses**.
Single Residence A Single Residence B	SRA SRB	To provide areas for **single-family dwellings** at low to medium densities (approximately 1 to 3 **dwellings** per acre), and appropriate **accessory uses**.
General Residence A General Residence B General Residence C	GRA GRB GRC	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.
Garden Apartment/ Mobile Home Park	GA/MH	To provide areas for garden apartment **development** at moderate densities (up to 4 **dwelling units** per acre), and to accommodate existing developed mobile home parks.
Mixed Use Districts		
Mixed Residential Office	MRO	To provide areas where a limited range of business **establishments**, including **live/work units**, can be located near or **adjacent** to residential **development**, providing a transition between residential neighborhoods and commercial districts.
Mixed Residential Business	MRB	

P = Permitted S = Special Exception CU = Conditional Use Permit N = Prohibited

Section 10.440 Table of Uses – Residential, Mixed Residential, Business and Industrial Districts

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4-L1	CD4-L2	MRB	CD5 CD4	GB	G1	G2	B CD4-W	WB	OR	I	WI	Supplemental Regulations
1. Residential Uses																		
1.10 **Single family dwelling**	P	P	P	P	N	P	P	P	P	N	P	P	N	N	N	N	N	
1.20 **Accessory dwelling unit**																		10.814 (Accessory Dwelling Units)
1.21 **Attached**	CU	CU	CU	CU	N	CU	CU	CU	CU	N	CU	CU	N	N	N	N	N	
1.22 **Detached**	CU	CU	CU	S	N	N	N	N	N	N	N	N	N	N	N	N	N	
1.25 **Garden Cottage**	CU	CU	CU	CU	N	CU	CU	CU	CU	N	N	N	N	N	N	N	N	10.815 (Garden Cottages)
1.30 **Two-family dwelling**	N	N	P	P	P	P	P	P	P	N	P	P	N	N	N	N	N	10.640 (Downtown Overlay district)
1.40 **Townhouse**	N	N	S	P	P	P	P	P	P	N	P	P	P	N	N	N	N	10.640 (Downtown Overlay district)
1.50 **Multifamily dwelling**																		10.5A32 (Character district permitted uses)
1.51 3 or 4 **dwelling units**	N	N	S	P	P	P	P	P	P	N	P	P	P	N	N	N	N	10.640 (Downtown Overlay district)
1.52 5 to 8 **dwelling units**	N	N	N	S	P	P	P	P	P	N	P	P	P	N	N	N	N	10.813 (Multifamily Dwellings in the Business District)
1.53 More than 8 **dwelling units**	N	N	N	N	P	N	N	N	P	N	P	P	P	N	N	N	N	
1.60 Conversion of a **building** existing on January 1, 1980, with less than the required minimum **lot area** per **dwelling unit** specified in Article 5																		10.640 (Downtown Overlay District)
1.61 To 2 **dwelling units**	N	N	S	S	N	P	P	P	S	N	N	N	N	N	N	N	N	10.812 (Conversion of Existing Dwelling to Multifamily Dwelling)

P = Permitted S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4-L1	CD4-L2	MRB	CD5 CD4	GB	GI	G2	B CD4-W	WB	OR	I	WI	Supplemental Regulations
1.62 To 3 or 4 **dwelling units**	N	N	S	S	N	P	P	P	S	N	N	N	N	N	N	N	N	
1.63 To 5 to 8 **dwelling units**	N	N	N	S	N	S	S	S	S	N	N	N	N	N	N	N	N	
1.64 To more than 8 **dwelling units**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
1.70 **Live/work unit**	N	N	N	E	N	P	P	P	P	N	P	P	P	N	N	N	N	
1.80 **Manufactured housing park**	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N	N	N	10.816 (Manufactured Housing Park Dimensional Standards)
1.90 **Planned unit development (PUD)**																		10.720 (Planned Unit Developments)
1.91 **Open space PUD**	CU	CU	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
1.92 **Residential density incentive PUD**	N	N	CU	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
2. Institutional Residence or Care Facilities																		
2.10 **Assisted living facility**																		
2.11 **Assisted living center**	N	N	N	N	N	N	N	N	P	P	S	S	P	N	N	N	N	
2.12 **Assisted living home**	S	S	S	S	S	S	S	S	N	N	S	S	N	N	N	N	N	
2.20 **Residential care facility**																		
2.21 5 or fewer residents	S	S	S	S	S	S	S	S	N	N	S	S	S	N	N	N	N	
2.22 More than 5 residents	N	N	N	N	N	S	S	S	P	S	S	S	S	N	S	N	N	

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3. Educational, Religious, Charitable, Cultural and Public Uses																		
3.10 **Place of assembly**																		
3.11 Religious	S	S	S	N	N	S	S	S	S	S	S	S	S	N	N	N	N	
3.12 Other nonprofit	N	N	N	N	N	S	S	S	S	S	S	S	S	N	N	N	N	
3.20 School																		
3.21 Primary or secondary	N	N	N	N	N	S	S	P	P	P	S	S	P	P	N	N	N	
3.30 Post-secondary	N	N	N	N	N	S	S	P	P	P	S	S	P	N	P	P	N	
3.30 **Historic preservation building**	S	S	S	S	S	P	P	P	P	P	P	P	P	N	P	N	N	10.821 (Historic Preservation Buildings and Museums)
3.40 **Museum**	N	N	N	N	N	P	P	N	P	P	S	S	P	N	P	N	N	10.821 (Historic Preservation Buildings and Museums)
3.50 **Performance facility**																		
3.51 **Indoor performance facility**																		10.592 (location)
3.511 Occupancy up to 500 **persons**	N	N	N	N	N	N	N	N	P	P	S	S	S	N	N	N	N	10.860 (hours of operation)
3.512 Occupancy more than 500	N	N	N	N	N	N	N	N	S	P	N	N	N	N	N	N	N	
3.52 **Outdoor performance facility**																		10.592 (location)
3.521 Occupancy up to 500 **persons**	N	N	N	N	N	N	N	N	S	S	S	S	N	N	N	N	N	10.822 (yards)
3.522 Occupancy more than 500	N	N	N	N	N	N	N	N	S	S	N	N	N	N	N	N	N	10.860 (hours of operation)

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3.60 Cemetery	S	S	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
3.70 **Club, fraternal or service organization**	N	N	N	N	N	N	S	S	P	S	S	S	S	N	N	N	N	
3.80 Municipally operated park and related activities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	For other municipal uses see Section 10.460 (Municipal districts)
4. Recreational Uses																		
4.10 Religious, sectarian or private non-profit recreational use	N	S	N	N	N	S	S	N	P	P	S	S	P	N	N	N	N	
4.20 Cinema or similar indoor amusement **use** with no live performance	N	N	N	N	N	N	N	N	P	P	S	S	P	N	N	N	N	10.825 (noise) 10.860 (hours of operation)
4.30 Indoor recreation **use**, such as bowling alley or arcade	N	N	N	N	N	N	N	N	P	P	S	S	P	N	N	N	N	10.825 (noise) 10.860 (hours of operation)
4.40 Health club, yoga studio, martial arts school, or similar **use**																		
4.41 Up to 2,000 sq. ft. GFA*	N	N	N	N	N	S	S	P	P	P	P	P	P	N	N	S	N	
4.42 More than 2,000 sq. ft. GFA	N	N	N	N	N	N	N	N	S	P	S	S	S	N	N	S	N	
4.50 **Outdoor recreation use**	N	N	N	N	N	N	N	N	N	S	P	P	N	N	N	N	N	10.592 (location) 10.860 (hours of operation)
4.60 **Amusement park, water park or theme park**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	

*GFA = gross floor area.

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Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4-L1	CD4-L2	MRB	CD5 CD4	GB	G1	G2	B CD4-W	WB	OR	I	WI	Supplemental Regulations
5. Office Uses, Non-Medical																		
5.10 Professional office	N	N	N	N	N	P	P	S	P	P	P	P	P	N	P	P	N	10.833 (Mixed Residential districts)
5.20 Business office (incl. real estate office)	N	N	N	N	N	P	P	P	P	P	P	P	P	N	P	P	N	10.833 (Mixed Residential districts)
5.30 **Financial institution**																		
5.31 **Financial services office**	N	N	N	N	N	P	P	P	P	P	P	P	P	N	P	P	N	
5.32 **Retail bank**	N	N	N	N	N	N	S	P	P	P	P	P	P	N	S	N	N	
5.40 **Social service campus**																		10.823
5.41 Nonresidential	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	
5.42 **Residential**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	
5.50 Media studio																		
5.51 Excluding any transmitting antenna tower	N	N	N	N	N	S	S	S	P	P	S	S	P	N	N	P	N	
5.52 Including accessory transmitting antenna tower	N	N	N	N	N	N	N	N	N	S	N	N	S	N	N	S	N	10.834
5.60 Publishing facility or similar electronic production operation	N	N	N	N	N	S	S	S	P	P	P	P	P	N	P	P	N	
5.70 **Call Center**	N	N	N	N	N	N	N	N	N	P	N	N	N	N	N	S	N	
6. Medical Services and Health Care																		
6.10 **Hospital**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	N	

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6.20 **Medical offices** and **clinics** (outpatient only)	N	N	N	N	N	S	S	S	P	P	P	P	P	N	P	N	N	
6.30 **Clinics** with inpatient care	N	N	N	N	N	N	N	N	N	S	S	N	S	N	S	N	N	
6.40 Ambulatory surgical center	N	N	N	N	N	N	N	N	N	S	S	N	S	N	S	N	N	
6.50 **Substance abuse treatment facility**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
6.60 Psychiatric hospital for the criminally insane	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
7. Services, Other Than Health Care																		
7.10 Day Care																		
7.11 **Family day care facility**	P	P	P	N	N	P	P	P	N	N	P	P	N	N	N	N	N	
7.12 **Group day care facility** including private preschool and kindergarten	S	S	S	S	N	S	S	P	P	P	S	S	P	N	N	N	N	10.824 (group day care facilities) 10.860 (hours of operation)
7.20 **Personal services**	N	N	N	N	N	N	S	S	P	P	P	S	P	N	N	N	N	
7.30 Consumer services such as copy shop, bicycle repair, and pet grooming	N	N	N	N	N	N	S	S	P	P	P	S	P	N	N	N	N	
7.40 Trade, craft and general service **establishments**, such as shops for plumbers, electricians, painters, paper hangers, upholsterers, sign painters and printers	N	N	N	N	N	N	N	S	P	P	P	S	P	N	P	P	P	All storage of materials and equipment shall be located within a building

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7.50 **Veterinary Care**	N	N	N	N	N	N	N	S	N	S	S	S	S	N	S	S	N	10.832
7.60 Laundry and dry cleaning **establishments**																		
7.61 Drop-off/pick-up only for items to be dry cleaned or laundered off site	N	N	N	N	N	P	P	P	P	P	P	P	P	N	S	N	N	
7.62 Self-service laundry for **use** by the general public	N	N	N	N	N	S	S	P	S	P	P	S	P	N	N	N	N	
7.63 Dry cleaning **establishment** with on-site cleaning facilities.	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	
7.70 Undertaking **establishment**, funeral parlor or mortuary chapel, excluding crematorium	N	N	N	N	N	N	N	P	N	P	S	S	P	N	N	N	N	
8. Retail Trade																		
8.10 **Convenience goods**																		10.860 (hours of operation)
8.11 **Convenience 'goods 1**																		
8.111 Hours of operation between 6:00 AM and 11:00 PM	N	N	N	N	N	N	P	P	P	P	P	P	P	N	N	N	N	
8.112 24 hours per day operation	N	N	N	N	N	N	N	N	P	P	S	N	S	N	N	N	N	
8.12 **Convenience goods 2**																		
8.121 Hours of operation between 6:00 AM and 11:00 PM	N	N	N	N	N	N	P	S	P	P	P	P	P	N	N	N	N	

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8.122 24 hours per day operation	N	N	N	N	N	N	N	N	S	S	S	N	S	N	N	N	N	
8.30 **Retail sales** conducted within a **building**																		
8.31 Not **marine-related**	N	N	N	N	N	N	P	S	P	P	P	P	P	N	N	N	N	
8.32 **Marine-related**	N	N	N	N	N	N	N	N	P	P	P	P	P	P	N	N	N	
8.40 **Shopping center**	N	N	N	N	N	N	N	N	P	P	P	P	S	N	N	N	N	
8.50 **Retail sales, large format**	N	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N	N	
8.60 **Fish market**	N	N	N	N	N	N	N	N	P	P	P	P	P	P	N	N	N	10.860 (hours of operation)
8.70 Manufacture of goods sold at retail on the premises, such as crafts, coffee roasting and bakery goods	N	N	N	N	N	N	S	S	P	P	P	P	P	N	N	P	N	Maximum of 5 persons employed in manufacture
8.80 **Sexually oriented business**	N	N	N	N	N	N	N	N	N	S	N	N	N	N	N	N	N	10.930 (Sexually Oriented Businesses)
9. Eating and Drinking Places																		
9.10 **Nightclub** or **bar**																		10.590 (location)
9.11 **Occupant load** less than 250	N	N	N	N	N	N	N	N	P	P	P	S	N	N	N	N	N	
9.12 **Occupant load** from 250 to 500	N	N	N	N	N	N	N	N	S	S	S	S	N	N	N	N	N	
9.13 **Occupant load** greater than 500	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
9.20 **Restaurant**, take-out only	N	N	N	N	N	N	N	N	P	P	P	P	P	N	N	N	N	
9.30 **Restaurant, fast food**	N	N	N	N	N	N	N	N	P	P	P	P	P	N	N	N	N	

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9.40 **Restaurant**, place of public assembly or function room																		10.590 (location) 10.860 (hours of operation)
9.41 **Occupant load** less than 50	N	N	N	N	N	N	P	N	P	P	P	P	P	N	N	N	N	
9.42 **Occupant load** from 50 to 250	N	N	N	N	N	N	N	N	P	P	P	S	S	N	N	N	N	
9.43 **Occupant load** from 250 to 500	N	N	N	N	N	N	N	N	P	S	S	S	N	N	N	N	N	
9.44 **Occupant load** greater than 500	N	N	N	N	N	N	N	N	S	S	N	N	N	N	N	N	N	
9.50 **Permanently moored vessel** used as **restaurant** or **bar** , with **occupant load** less than 250	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
10. Lodging Establishments																		
10.10 **Boarding house**	N	N	N	N	N	N	N	N	N	S	S	N	S	N	N	N	N	
10.20 **Bed and breakfast**																		
10.21 **Bed and Breakfast 1**	N	N	S	N	N	S	S	P	P	N	S	S	P	N	N	N	N	
10.22 **Bed and Breakfast 2**	N	N	N	N	N	S	S	P	P	N	S	S	P	N	N	N	N	
10.30 **Inn**	N	N	N	N	N	N	S	S	P	P	S	S	P	N	N	N	N	
10.40 **Hotel** or **motel**																		10.836 (Office Research districts)
10.41 Up to 125 rooms	N	N	N	N	N	N	N	N	P	S	S	S	N	N	P	N	N	
10.42 126 to 250 rooms	N	N	N	N	N	N	N	N	P	S	S	S	N	N	S	N	N	
10.42 251 to 500 rooms	N	N	N	N	N	N	N	N	P	S	S	N	N	N	N	N	N	
10.43 More than 500 rooms	N	N	N	N	N	N	N	N	P	S	S	N	N	N	N	N	N	

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10.50 Conference **hotel**	N	N	N	N	N	N	N	N	P	P	S	N	N	N	N	N	N	
10.60 Conference center	N	N	N	N	N	N	N	N	P	P	S	N	N	N	N	N	N	
11. Motor Vehicle-Related Uses																		
11.10 Sales, renting or leasing of passenger cars and **light trucks**, motorcycles, tractors, snowmobiles and small power equipment (e.g., lawnmowers), including accessory repair services	N	N	N	N	N	N	N	N	N	P	S	N	S	N	N	N	N	10.592 (location) 10.843 (motor vehicle related uses)
11.20 **Motor vehicle service station**, **motor vehicle repair** or washing facility for passenger cars and **light trucks**	N	N	N	N	N	N	N	N	N	S	S	N	S	N	N	S	N	10.581 (lot area) 10.592 (location) 10.843 (motor vehicle related uses)
11.30 Sales, rental, leasing, distribution, and repair of trucks over 10,000 lb gross vehicle weight (GVW), **recreational vehicles**, marine craft or **manufactured housing**, and related equipment	N	N	N	N	N	N	N	N	N	S	S	N	S	N	N	S	N	10.581 (lot area) 10.592 (location) 10.843 (motor vehicle related uses)
11.40 **Impound lot** (principal or **accessory use**)	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	
11.50 **Truck fueling facility**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	10.581 (lot area) 10.592 (location) 10.843 (motor vehicle related uses)

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11.60 **Truck terminal**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	10.592 (location) 10.843 (motor vehicle related uses)
12. Marine Craft Related Uses																		
12.10 Boat landings, boat docks, boathouses and associated marine **uses**																		
12.11 Non-commercial	P	P	P	P	P	P	P	P	P	P	P	P	P	N	N	N	N	
12.12 **Fishing boat landing 1**	N	S	S	N	N	N	N	N	P	P	N	N	N	P	N	N	P	10.837.10 (Residential districts)
12.13 **Fishing boat landing 2**	N	N	N	N	N	N	N	N	N	S	N	N	N	S	N	N	P	
12.20 **Marina**																		
12.21 With no repair, servicing or fueling facilities	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	N	N	
12.22 With repair, servicing or fueling facilities	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	N	N	10.581 (lot area) 10.592 (location) 10.860 (hours of operation)
12.30 Repair of commercial marine craft and **marine-related structures**	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	S	P	10.581 (lot area) 10.592 (location) 10.860 (hours of operation)
12.40 **Landside support facility** for **commercial passenger vessel**	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	N	P	

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13. Wholesale Trade, Warehousing and Distribution																		
13.10 **Wholesale use**																		
13.11 Not **marine-dependent**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	
13.12 **Marine-dependent**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	
13.20 **Wholesale sales** devoted to, and in the same **establishment** as, a permitted retail use																		
13.21 Occupying up to 20% of **gross floor area** of **establishment**	N	N	N	N	N	N	N	N	P	P	S	N	P	N	N	N	N	
13.22 Occupying 21% to 40% of **gross floor area** of **establishment**	N	N	N	N	N	N	N	N	N	P	N	N	P	N	N	N	N	
13.30 Wholesale lumber yards, lumber and contractor sales																		
13.31 Not **marine-dependent**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	
13.32 **Marine-dependent**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	S	
13.40 Warehousing or distribution of non-flammable, non-hazardous materials, not classified as a **high hazard use**																		
13.41 Not **marine-dependent**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	

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13.42 **Marine-dependent**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	P	P	
14. Industrial Uses																		
14.10 **Light industry**																		
14.11 Not **marine-dependent**	N	N	N	N	N	N	N	N	N	S	S	S	N	N	N	P	N	
14.12 **Marine-dependent**	N	N	N	N	N	N	N	N	N	S	N	N	N	N	N	P	P	
14.20 **Research and development**																		
14.21 Not **marine-dependent**	N	N	N	N	N	N	N	P	N	S	S	N	S	N	S	P	N	
14.22 **Marine-dependent**	N	N	N	N	N	N	N	N	N	S	N	N	S	P	S	P	P	
14.30 **Food processing**																		10.592 (location) 10.851 (use contained in building)
14.31 Not including seafood processing	N	N	N	N	N	N	N	N	N	P	S	N	N	N	N	P	P	
14.32 Including seafood processing	N	N	N	N	N	N	N	N	N	S	N	N	N	N	N	S	S	
14.40 **Electronics manufacturing**	N	N	N	N	N	N	N	N	N	S	S	N	S	N	N	P	N	
14.50 **General manufacturing**																		
14.51 Not **marine-dependent**	N	N	N	N	N	N	N	N	N	N	S	S	N	N	N	P	N	
14.52 **Marine-dependent**	N	N	N	N	N	N	N	N	N	N	N	N	N	P	N	P	S	
14.60 Biological or chemical laboratory																		

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Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4-L1	CD4-L2	MRB	CD5 CD4	GB	G1	G2	B CD4-W	WB	OR	I	WI	Supplemental Regulations
14.61 Not **marine-dependent**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	
14.62 **Marine-dependent**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	S	
14.70 **Recycling facility** or **recycling plant**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	10.592 (locatics) 10.853
14.80 **High hazard use**, including other **uses** listed in this section but not including **uses** described in 14.90	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	10.593 (location)
14.90 Storage (other than normal **accessory use**), processing, disposal, or transfer of petroleum, petrochemicals, natural gas and liquid petroleum products, coal, alcohol, wood pulp, solid or liquid waste, **junk** or hazardous waste as classified by Federal or State law	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
15. Transportation and Utilities																		
15.10 Public or private transformer station, substation, pumping station or automatic telephone exchange, not including any **business office**, storage yard or storage **building**																		
15.11 Essential to service the area in which it is located	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	P	S	

P = Permitted S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4-L1	CD4-L2	MRB	CD5 CD4	GB	G1	G2	B CD4-W	WB	OR	I	WI	Supplemental Regulations
15.12 Providing community-wide or regional service	N	N	N	N	N	N	N	N	N	S	N	N	N	N	N	S	S	
15.20 **Heliport** or **helipad**																		
15.21 **Helipad,** as an **accessory use** to a permitted **hospital use**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	S	S	
15.22 **Heliport**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
16. Wireless Telecommunications Facilities																		
16.10 Satellite dish receiver 42 inches or less in diameter:																		
16.11 **Building**-mounted, maximum height less than or equal to 4 feet from the roof surface	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
16.12 Ground-mounted, complying with all **yard** requirements for the district	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
16.20 Satellite dish receiver more than 42 inches in diameter:																		
16.21 **Building**-mounted, maximum height less than or equal to 4 feet from the roof surface	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	

P = Permitted S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4-L1	CD4-L2	MRB	CD5 CD4	GR	G1	G2	B CD4-W	WB	OR	I	WI	Supplemental Regulations
16.22 Ground-mounted, complying with all **yard** requirements for the district	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
16.30 Whip antenna not more than 30 feet in height	S	S	S	S	S	S	S	S	P	P	S	S	P	P	P	P	P	
16.40 Other **wireless telecommunications facility** not included above	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	10.460 (Municipal districts) 10.920 (Wireless telecommunications facilities)
17. Agricultural Uses																		
17.10 Farm, not including the keeping of **farm animals**	P	P	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
17.20 Keeping of **farm animals**	S	S	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
18. Temporary Uses																		
18.10 **Construction trailer**	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
18.20 **Temporary structure**																		
18.21 Up to 30 days	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
18.22 31 to 90 days	S	S	S	S	S	S	S	S	S	S	S	S	S	S	P	P	P	
18.23 91 to 180 days	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	S	S	
18.24 More than 180 days	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	

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Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4-L1	CD4-L2	MRH	CD5 CD4	GB	G1	G2	B CD4-W	WB	OR	I	W1	Supplemental Regulations
18.30 **Manufactured housing** not on a foundation, as temporary replacement housing for a **dwelling** on the same **lot** destroyed by natural causes, provided that there is an active **building permit** for rebuilding the destroyed **dwelling**																		
18.31 Up to 180 days	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
18.32 More than 180 days	S	S	S	S	S	S	S	S	S	S	S	S	S	S	P	P	P	
18.40 Carts or trailers, including outdoor display area, used for the seasonal sale of dry goods, Christmas trees, flowers, fruits, vegetables, seasonal products and prepared food	N	N	N	N	N	N	N	N	P	P	S	N	P	N	P	P	P	
19. Accessory Uses																		
19.10 **Accessory use** to a permitted **principal use**, but not including any **outdoor storage**	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	10.811 (residential accessory uses)
19.20 **Home occupation**																		
19.21 **Home occupation 1**	P	P	P	P	P	P	P	P	P	P	P	P	P	N	N	N	N	
19.22 **Home occupation 2**	S	S	S	S	N	S	S	P	P	P	P	P	P	N	N	N	N	
19.30 Concessions and services located within the **principal building**	N	N	N	P	P	P	P	P	P	P	P	P	P	P	P	P	P	

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Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4-L1	CD4-L2	MRB	CD5 CD4	GB	G1	G2	B CD4-W	WB	OR	I	WI	Supplemental Regulations
19.40 **Drive-through facility**, as **accessory use** to a permitted **principal use**	N	N	N	N	N	N	N	N	N	CU	CU	N	CU	N	CU	N	N	10.835 (accessory drive-through uses)
19.50 Outdoor dining or drinking area, as **accessory use** to a permitted **principal use**	N	N	N	N	N	N	CU	N	P	P	P	P	CU	N	N	N	N	
20. Accessory Storage																		
20.10 Indoor storage of motor vehicles or boats as an **accessory use**	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
20.20 **Outdoor storage** of registered motor vehicles owned by residents of the premises or business. Such vehicles may include only one **commercial vehicle**, which shall be limited to no more than 2 axles and 6 wheels.	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
20.30 **Outdoor storage** for not more than 9 consecutive months of boats owned by residents of the property:																		
20.31 Not more than one motorboat or sailboat longer than 12 feet	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
20.32 Any number of (a) motorboats or sailboats up to 12 feet in length, or (b) hand-powered craft (canoes and kayaks) without restriction as to length	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	

P = Permitted S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4-L1	CD4-L2	MRB	CD5 CD4	GB	G1	G2	B CD4-W	WB	OR	I	WI	Supplemental Regulations
20.40 **Outdoor storage** of lobster traps, lobster buoys and associated rope	P	P	P	P	P	P	P	P	N	P	P	P	P	P	N	P	P	10.811.20
20.50 **Outdoor storage** of raw or partially finished material																		
20.51 Not **marine-dependent**	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	
20.52 **Marine-dependent**	N	N	N	N	N	N	N	N	N	N	N	N	N	S	N	S	S	
20.60 **Outdoor storage** of machinery, equipment and vehicles																		
20.61 Not **marine-dependent**	N	N	N	N	N	N	N	N	N	S	N	N	S	N	N	S	N	
20.62 **Marine-dependent** (other than allowed by 20.30 or 20.40 above)	N	N	N	N	N	N	N	N	N	S	N	N	S	S	N	S	S	

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC
ATTORNEYS AT LAW
127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

October 26, 2022

HAND DELIVERED

Peter Stith, Principal Planner
Portsmouth Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

Re: 635 Sagamore Development, LLC, Owner/Applicant
Project Location: 635 Sagamore Avenue
Tax Map 222, Lot 19
General Residence A (GRA Zone)

Dear Mr. Stith and Zoning Board Members:

On behalf of 635 Sagamore Development, LLC, applicant, enclosed please find the following documents in support of a request for zoning relief:

- Portsmouth Land Use Application uploaded to Viewpoint today.
- Owner Authorization.
- 10/26/2022 – Memorandum and exhibits in support of zoning relief.

Very truly yours,

R. Timothy Phoenix
Monica F. Kieser

Enclosures

cc 635 Sagamore Development, LLC
Jones & Beach Engineers, Inc.
Artform Architecture, Inc.

DANIEL C. HOEFLE
R. TIMOTHY PHOENIX
LAWRENCE B. GORMLEY
STEPHEN H. ROBERTS
R. PETER TAYLOR
KEVIN M. BAUM
GREGORY D. ROBBINS
MONICA F. KIESER
JACOB J.B. MARVELLEY
DUNCAN A. EDGAR
STEPHANIE J. JOHNSON
OF COUNSEL:
SAMUEL R. REID
JOHN AHLGREN

Letter of Authorization

635 Sagamore Development, LLC, owner of property located at 635 Sagamore Avenue in Portsmouth, NH, known as Tax Map 222, Lot 19, do hereby authorize Jones & Beach Engineers, Inc. ("JBE"), Garrepy Planning Consultants, LLC ("GPC"), and Hoefle, Phoenix, Gormley & Roberts, PLLC ("HPGR") to act on its behalf concerning the previously mentioned property.

I hereby appoint JBE, GPC and HPGR as agents to act on behalf of 635 Sagamore Development, LLC in the Planning Board and Zoning Board application process, to include any required signatures.

635 Sagamore Development, LLC

Timothy J. Black, Duly Authorized

January 5, 2022
Date

MEMORANDUM

To: Portsmouth Zoning Board of Adjustment ("ZBA")
From: R. Timothy Phoenix, Esq.
Monica F. Kieser, Esq.
Date: October 26, 2022
Re: 635 Sagamore Development, LLC, Owner/Applicant
Project location: 635 Sagamore Avenue
Tax Map 222, Lot 19
Single Residence A (SRA) District

Dear Chairman Parrott and Zoning Board Members:

On behalf of 635 Sagamore Development, LLC ("635 Sagamore" or "Applicant") we are pleased to submit this memorandum and the attached exhibits in support of zoning relief to be considered by the ZBA at its November 15, 2022 meeting.

I. EXHIBITS

A. Plan Set – by Jones and Beach Engineers
- C1 – Existing Conditions Plan
- C2 – ZBA Site Plan
- C3 – Topographic Site Plan

B. Architectural Elevations and Floor Plans-by ArtForm Architecture, Inc.
- Renderings
- First Floor
- Second Floor
- Foundation Plan
- Elevations

C. Site photographs
D. Tax Assessors Card
E. City GIS Map – identifying nearby zoning districts and surrounding area

II. PROPERTY/BACKGROUND

635 Sagamore Avenue is an 84,795 s.f lot with 150 ft. of frontage containing two buildings in poor condition; the front building contains Luster King, an automobile detailing shop and upstairs apartment, and behind a large service garage (the "Property"). The Luster King building is located partially within the front yard setback, access to it is over the entire frontage, and the use of the Property does not conform to the requirements of the Single Residence A District. 635 Sagamore proposes to remove the existing commercial building and garage and redevelop the Property with four new single-family homes with access via a private roadway from Sagamore Avenue (the "Project"). **(Exhibit A)**. The Project is more compatible

with the neighborhood which includes the westerly abutter, Tidewatch Condominiums with 122 Units, and the Sagamore Court Condominium with 144 Units. **(Exhibit D).** Other nearby abutters are largely developed with single family residences with similar density as the proposed project. The Luster King building is still served by septic, but municipal sewer service has been extended to the Property which will serve the proposed dwellings.

In March of this year, 635 Sagamore filed a variance application seeking relief from §10.513 and §10.521 (Dimensional Table) to permit five dwellings on the Property where one dwelling is required and 16,959 s.f. per dwelling unit where 43,560 s.f. per dwelling is required. Thereafter, Tidewatch Condominium Association ("Tidewatch") objected, through Counsel Brian Bouchard. 635 Sagamore withdrew the previous application in order to spend time working with Tidewatch to address its concerns. 635 Sagamore now proposes a twenty percent (20%) reduction four-unit residential development which retains a significant tree buffer and adds a mix of trees on the south and west side of the lot (the "Revised Project"). Given the reduction in units and generous plantings, Tidewatch Condominium Association has withdrawn its objection to the Revised Project, provided 635 Sagamore continues to coordinate with Tidewatch on issues related to landscaping and stormwater management.

The Revised Project requires similar relief as before as four dwelling units are proposed on a ±1.947 acre lot (2.06 units per acre or 21,198 s.f. per dwelling). This density is less than nearby densely developed Sagamore Court Condominium (144 units/15.01 acre = 9.59 units per acre or 4,542 s.f. per dwelling) to the north and Tidewatch Condominium (122 units/53.59 acre = 2.27 units per acre or 19,189 s.f. per dwelling) directly to the west. Notably, the SRB Zone, located across Sagamore Avenue, permits a lot area of 15,000 square feet per dwelling unit or approximately 2.9 units per acre. The proposal at 21,198 s.f. square feet per unit falls between the single-family homes opposite the lot and the more densely developed condominium associations. Thus, in addition to cleaning up a long distressed and non-conforming site, including narrowing the current open frontage curb cut, the proposal creates a natural transition between the SRB Zone across Sagamore, the existing multi-building condominium developments to the north and west (rear) of the Property and the nearby single-family home lots.

III. RELIEF REQUIRED

The Project meets setback, lot coverage, and open space requirements. **(Exhibit A).** Relief is required to allow the proposed structures on a single lot and for lot area per dwelling unit.

1.) **PZO §10.513 One Freestanding Dwelling/Lot** – to permit four dwellings on a 1.947 acre lot.
2.) **PZO §10.521 (Table of Dimensional Standards) Lot Area Per Dwelling Unit** – to permit four dwellings on 1.947 acres (21,198 s.f./dwelling area) where 43,560 s.f. is required for each dwelling.

IV. VARIANCE REQUIREMENTS

1. **The variance will not be contrary to the public interest**
2. **The spirit of the ordinances observed**

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

The Portsmouth Zoning Ordinance was enacted for the general purpose (PZO§10.121) of promoting the health, safety and welfare in accordance with the Master plan by regulating:

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The Property currently houses a non-conforming commercial auto detailing business and service garage. **(Exhibit C).** The proposal would replace those buildings with brand new, to code, residences consistent with surrounding uses.

2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The Project complies with building coverage, height, yards and open space requirements. The reduced proposal with four dwellings on a single lot, at 2.06 dwelling units per acre is consistent with surrounding properties and less than the density permitted by right across Sagamore Avenue.

3. The design of facilities for vehicular access, circulation, parking and loading- The Project will be served by a private roadway from Sagamore Avenue. **(Exhibit A).** There is currently no defined curb cut on the property so the redevelopment will improve driveway distances, site lines, and overall traffic safety from the Property compared to the existing commercial and residential use. **(Exhibit D).** The driveway will undergo further review as part of the Planning Board and NHDOT review processes.

4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – The Property is currently used as a commercial auto detailing facility in the middle of a residential area. The Project will convert the Property to residential use with lighting, noise, and other conditions more appropriate for the neighborhood. A generous buffer will be preserved between the Project and Tidewatch Condominium. The Project maintains 81.3% open space. Stormwater runoff will be improved over the current development which is significantly paved and use of commercial cleaning chemicals will cease.

5. The preservation and enhancement of the visual environment – The Project vastly improves the visual environment for the immediate abutters on either side and across the street. In addition, a generous vegetated buffer is retained for the south/west abutters. Sagamore further screens the developed area with the addition of a significant tree buffer. **(Exhibit A)**.

6. The preservation of historic districts buildings and structures of historic or architectural interest – The Property and the existing structures to be removed are of no known historic or architectural interest.

7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – The Project will significantly improve conditions by terminating the use of commercial grade cleaning chemicals in favor of a compatible residential uses served by municipal sewer.

In considering whether variances "in a marked degree conflict with the ordinance such that they violate the ordinances basic zoning objectives." Malachy Glen, supra, the New Hampshire Supreme Court also held:

> One way to ascertain whether granting the variance would violate basic zoning objectives is to examine 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)

The Property is located on a busy street in a densely developed residential area. While there are some other nearby commercial use properties, they are located closer to Sagamore Creek in the Waterfront Business Zone, are largely less impactful and are more buffered from nearby residences than the current business operations on the Property. The Project would convert a long-standing commercial use that is grossly incompatible with the character of the locality to a residential use consistent with the surrounding area including two large condominium developments. The commercial traffic and the use of commercial grade cleaning chemicals will cease, thus improving the public health, safety and welfare. The wide open curb

cut accessing the lot will be reduced to a controlled entry/exit. The Project creates a natural transition between these condominium developments and the adjoining GRB zone. Thus, permitting four code compliant, single-family dwellings on ±1.947 acres does not alter the essential character of the locality nor will it threaten the public health, safety or welfare.

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

The commercial buildings currently located on the Property are distressed, incongruent with the surrounding residential neighborhood and frankly an eyesore. The Project cleans up the site, removes commercial buildings/uses and replaces them with brand new tastefully designed residences. In consultation with Tidewatch, a generous vegetated buffer is retained, which is supplemented by the addition of a robust landscape buffer plan. Given the termination of the commercial use, removal of the distressed structures, and efforts to screen the residential structures, the Project will increase the value of surrounding properties. Accordingly, this element of the variance criteria is satisfied.

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

a. Special conditions distinguish the property/project from others in the area-

This portion of the SRA District on the north side of Sagamore Creek is comprised of only seven properties. **(Exhibit E)**. Discounting Tidewatch with 122 units on 53.59 acres, the 1.947 acre L-shaped lot significantly larger than the remaining five properties, yet contains just over the required frontage. Although zoned SRA and subject to a 43,560 s.f. minimum lot area and lot area/dwelling unit requirement, this neighborhood is bounded by the Sagamore Condominium Development with 144 Units on 15.01 acres, a handful of lots in the Waterfront Business District, and the SRB district across Sagamore Avenue with its reduced density requirement of just 15,000 s.f./dwelling unit. 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). The parcel size, shape, and location near other densely developed residential parcels 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 the requirements for one free standing dwelling per lot and lot area per dwelling unit is to prohibit overcrowding, allow for air, light, and separation between neighbors,

and to permit stormwater treatment. The Project meets all lot area, building and open space coverage, height and external setback requirements. Additionally, the proposal provides for voluntary setbacks between each of the four new buildings of at least 20 feet, consistent with the side setback requirement for the district. Thus, adequate area for air, light, separation between neighbors and stormwater treatment is provided. The proposed density is also consistent with the surrounding area, which includes many smaller sized lots with homes located in relatively close proximity. **(Exhibit E)**. Moreover, granting the requested variances will significantly improve the Property and surrounding area by removing two blighted, non-conforming commercial structures and replacing them with four brand new, homes where housing is sorely needed. The Property will be completely redeveloped, thus it follows that there is no reason to apply the strict requirements of the ordinance. This transitional location, located near and adjoining two densely development condominiums and across Sagamore Avenue from the SRB Zone is well suited for the proposed four building single-family development.

c. The proposed use is reasonable

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson,151 NH 747 (2005). The proposal is a residential use in a residential zone and thus is reasonable Accordingly denial would result in an unnecessary hardship.

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

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 right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions." N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that "no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people." Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). "Property" in the constitutional sense has been interpreted to

mean not the tangible property itself, *but rather the right to possess, use, enjoy and dispose of it.* Burrows v. City of Keene, 121 N.H. 590, 597 (1981) (emphasis added). Sagamore is constitutionally entitled to the use of the lot as it sees fit subject only to the effect of the lot size and density requirements.

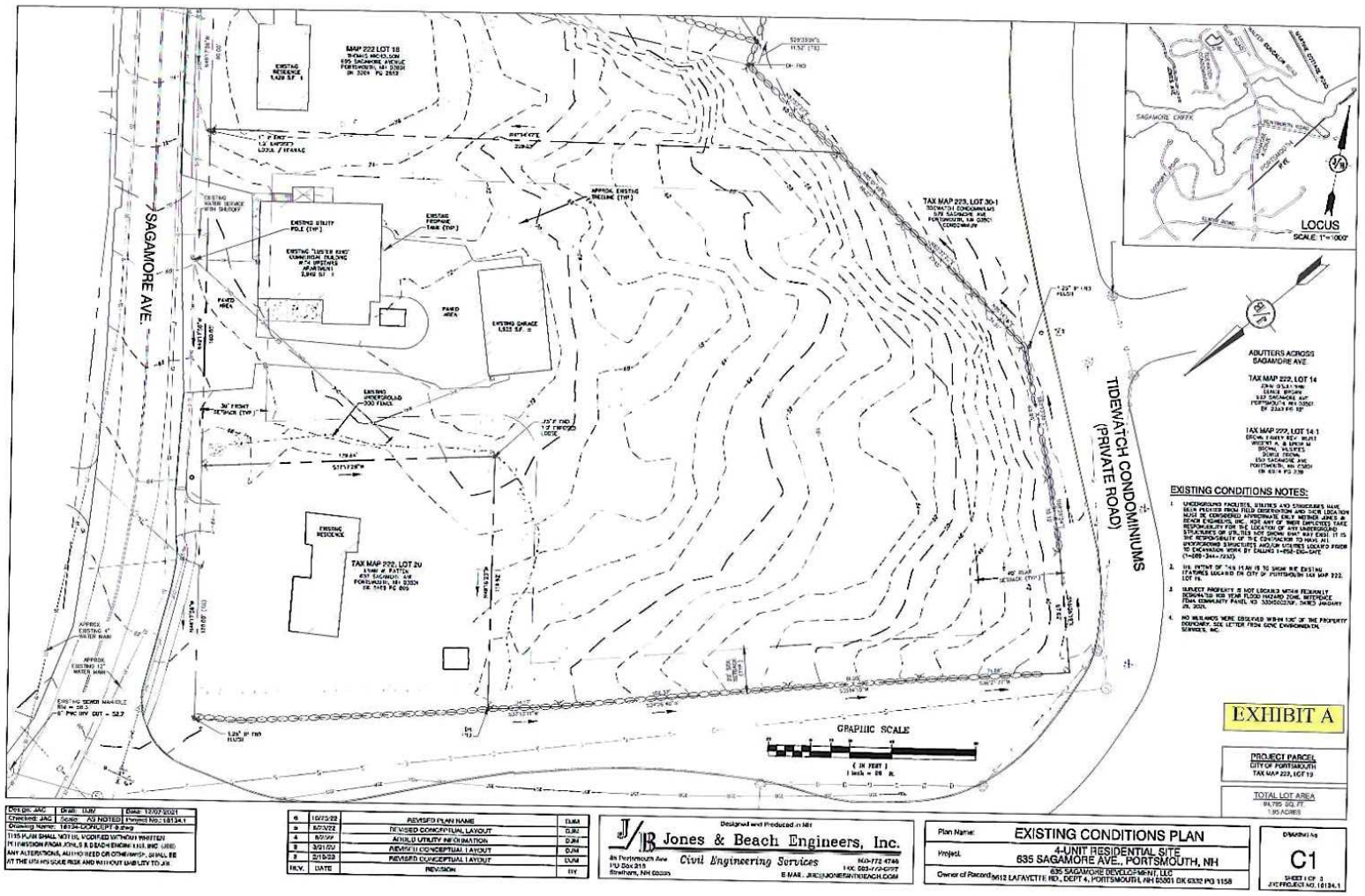
The Project: removes blighted buildings and a nonconforming commercial use; complies with all other dimensional requirements; maintains generous open space and vegetated buffers; provides additional screening with a robust planting plan, there will be no benefit to the public from denial and no harm to the public by granting the variances. Conversely, denial of the variances causes great harm to 635 Sagamore and its abutters by continuing the nonconforming commercial use of the Property. Accordingly, substantial justice is done by granting the variances.

V. CONCLUSION

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

Respectfully submitted,
635 Sagamore Development, LLC

By: _____
R. Timothy Phoenix, Esq.
Monica F. Kieser, Esq.



Dsn'd: JAC	Drwn: DJM	Date: 12/07/2021
Checked: JAC	Scale: AS NOTED	Project No.: 18134.1
Drawing Name: 18134-DONCEPT 8.dwg		

THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. ANY ALTERATIONS, AS-BUILTED OR OTHERWISE, SHALL BE AT THE USERS SOLE RISK AND WITHOUT LIABILITY TO JBE

No.	DATE	REVISION	BY
6	10/13/22	REVISED PLAN NAME	DJM
5	8/31/22	REVISED CONCEPTUAL LAYOUT	DJM
4	8/2/22	ADDED UTILITY INFORMATION	DJM
3	3/21/22	REVISED CONCEPTUAL LAYOUT	DJM
2	2/15/22	REVISED CONCEPTUAL LAYOUT	DJM
1	12/7/21	REVISED PLAN NAME	DJM

Designed and Produced in NH

Jones & Beach Engineers, Inc.

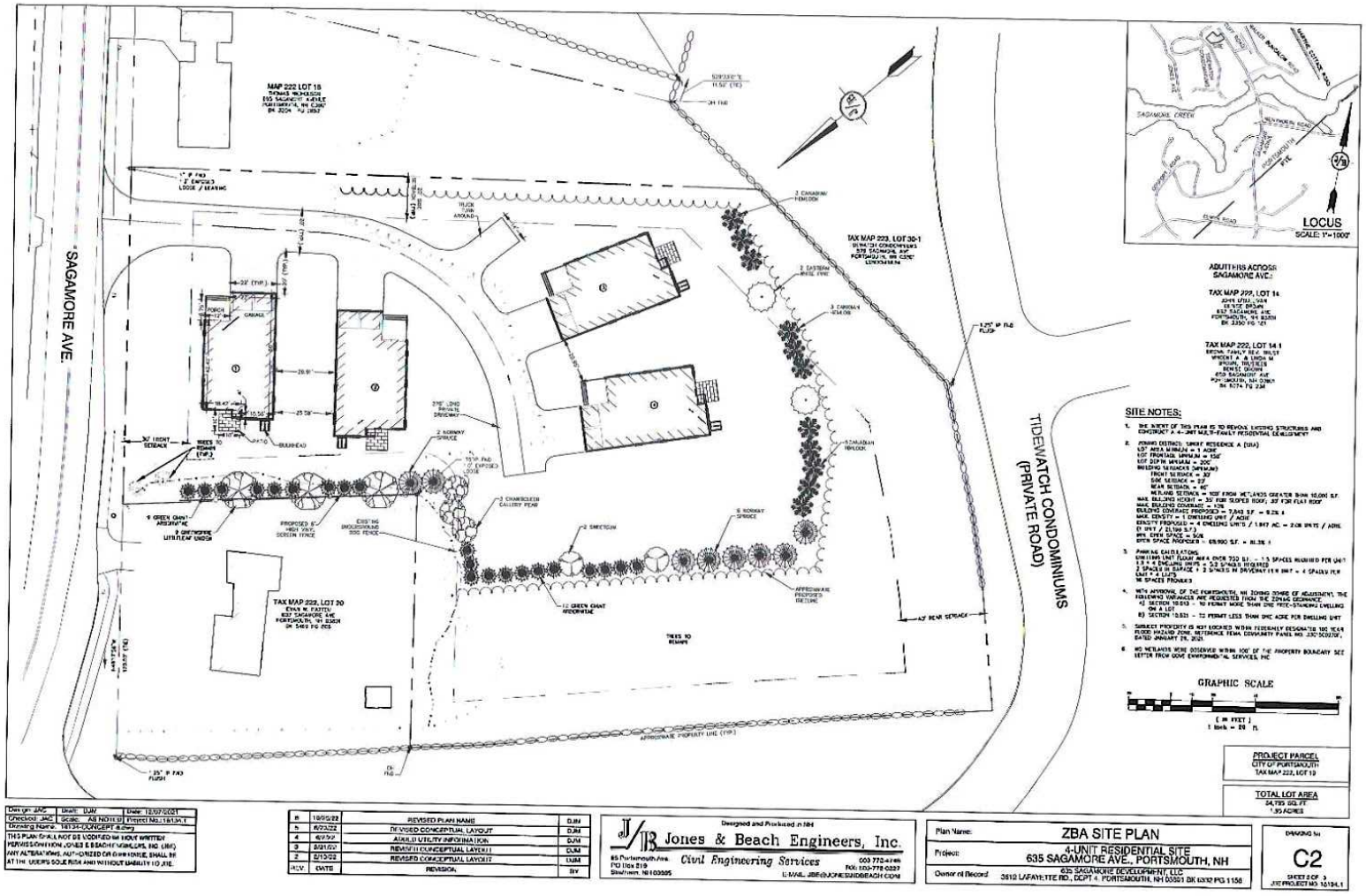
Civil Engineering Services

85 Portsmouth Ave
PO Box 219
Stratham, NH 03885

603-772-4746
FAX: 603-772-0227
E-MAIL: JIM@JONESBEACH.COM

Plan Name:	EXISTING CONDITIONS PLAN
Project:	4-UNIT RESIDENTIAL SITE 635 SAGAMORE AVE., PORTSMOUTH, NH
Owner of Record:	635 SAGAMORE DEVELOPMENT, LLC 3612 LAFAYETTE RD., DEPT 4, PORTSMOUTH, NH 03801 BK 6332 PG 1158

Drawing No.
C1
SHEET 1 OF 2
JBE PROJECT NO. 18134.1



Design: JAC	Draft: DJM
Checked: JAC	Scale: AS NOTED
Drawing Name: 18134-CONCEPT.dwg	Project No.: 18134.1

THIS PLAN SHALL NOT BE MODIFIED IN WHOLE WRITTEN PERMISSION JONES & BEACH ENGINEERS, INC. (JBE) ANY ALTERATIONS, AUTHORIZED OR UNAUTHORIZED, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.

REV.	DATE	REVISION	BY
6	10/05/22	REVISED PLAN NAME	DJM
5	8/23/22	REVISED CONCEPTUAL LAYOUT	DJM
4	6/7/22	ADDED UTILITY INFORMATION	DJM
3	5/31/22	REVISED CONCEPTUAL LAYOUT	DJM
2	5/13/22	REVISED CONCEPTUAL LAYOUT	DJM
1	4/1/22	INITIAL CONCEPTUAL LAYOUT	DJM

Designed and Produced in NH

Jones & Beach Engineers, Inc.

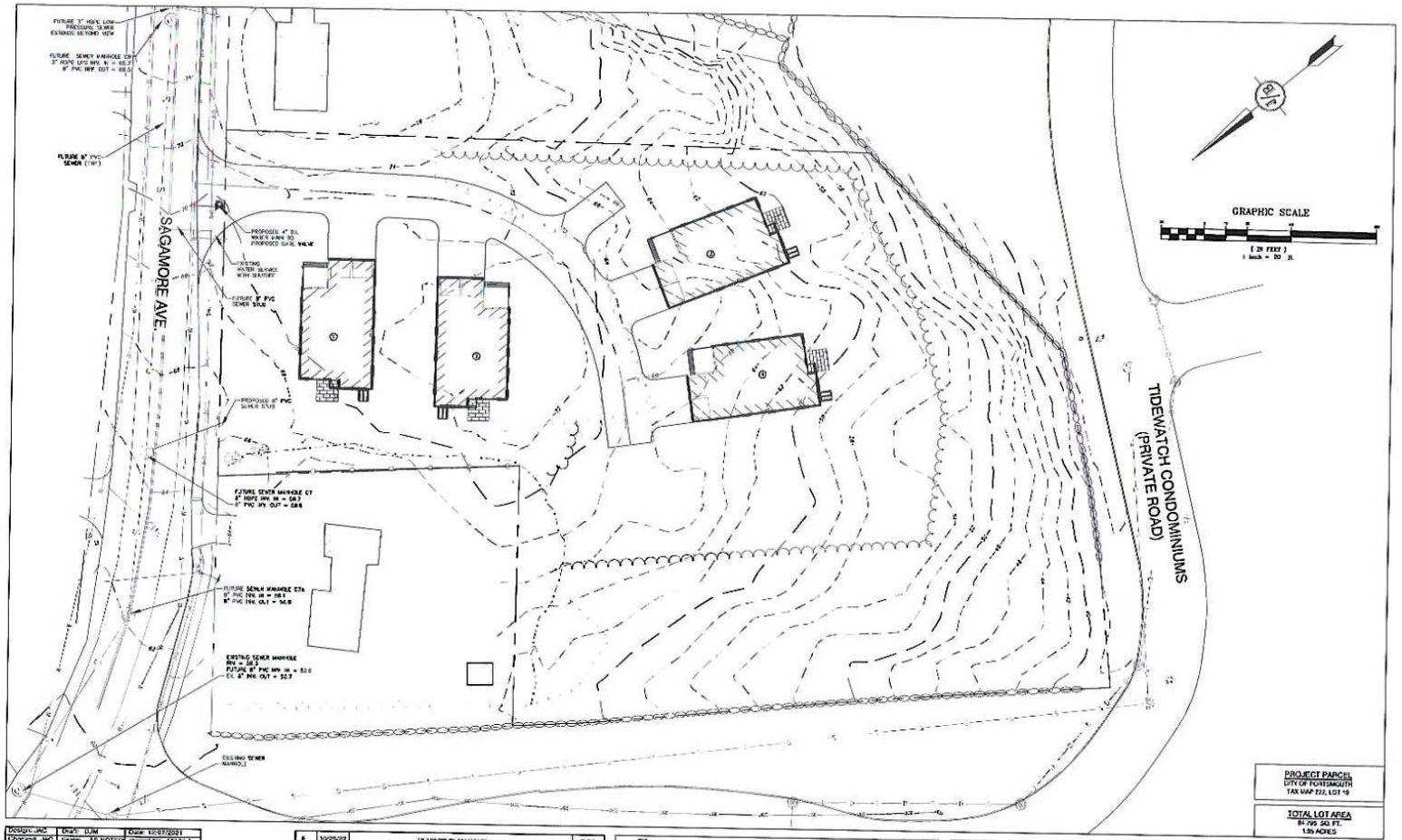
Civil Engineering Services

85 Portsmouth Ave.
PO Box 219
Stratham, NH 03885

603 772-4746
FAX: 603-772-0227
E-MAIL: JBE@JONESBEACH.COM

Plan Name:	ZBA SITE PLAN
Project:	4-UNIT RESIDENTIAL SITE 635 SAGAMORE AVE., PORTSMOUTH, NH
Owner of Record	635 SAGAMORE DEVELOPMENT, LLC 3812 LAFAYETTE RD., DCPT 4, PORTSMOUTH, NH 03801 BK 6302 PG 1158

DRAWING No.
C2
SHEET 2 OF 3
JSE PROJECT NO. 18134.1



Designed: JMC	Chk'd: DJM
Checked: JMC	Scale: AS NOTED
Drawing Name: 18134-SITE(SEPT 8.dwg)	Project No. 18134.1

THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE

NO	DATE	REVISION	BY
6	10/25/22	REVISED PLAN NAME	DJM
5	8/23/22	REVISED CONCEPTUAL LAYOUT	DJM
4	6/2/22	ADDED UTILITY INFORMATION	DJM
3	3/21/22	REVISED CONCEPTUAL LAYOUT	DJM
2	2/10/22	REVISED CONCEPTUAL LAYOUT	DJM
1	12/17/21	REVISED CONCEPTUAL LAYOUT	DJM

Designed and Produced in NH
Jones & Beach Engineers, Inc.
85 Portsmouth Ave
PO Box 219
Stratham, NH 03885
Civil Engineering Services
603-772-4746
FAX 603-772-0227
E-MAIL: JOE@JONESBEACH.COM

Plan Name:	ZBA TOPOGRAPHIC SITE PLAN
Project:	4-UNIT RESIDENTIAL SITE 635 SAGAMORE AVE., PORTSMOUTH, NH
Owner of Record:	635 SAGAMORE DEVELOPMENT, LLC 3612 LAFAYETTE RD., DEPT 1, PORTSMOUTH, NH 03801 BK 6332 PG 1158

DRAWING NO.
C3
SHEET 3 OF 3
JBE PROJECT NO. 18134.1

Sea Watch

419.126.v14 GL (1/27/2022)

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Artform Home Plans

603-431-9559

Dear Builders and Home Buyers,

In addition to our Terms and Conditions (the "Terms"), please be aware of the following:

This design may not yet have Construction Drawings (as defined in the Terms), and is, therefore, only available as a Design Drawing (as defined in the Terms and together with Construction Drawings, "Drawings"). It is possible that during the conversion of a Design Drawing to a final Construction Drawing, changes may be necessary including, but not limited to, dimensional changes. Please see Plan Data Explained on www.ArtformHomePlans.com to understand room sizes, dimensions and other data provided. We are not responsible for typographical errors.

Artform Home Plans ("Artform") requires that our Drawings be built substantially as designed. Artform will not be obligated by or liable for use of this design with markups as part of any builder agreement. While we attempt to accommodate where possible and reasonable, and where the changes do not denigrate our design, any and all changes to Drawings must be approved in writing by Artform. It is recommended that you have your Drawing updated by Artform prior to attaching any Drawing to any builder agreement. Artform shall not be responsible for the misuse of or unauthorized alterations to any of its Drawings.

Facade Changes:

- To maintain design integrity, we pay particular attention to features on the front facade, including but not limited to door surrounds, window casings, finished porch column sizes, and roof friezes. While we may allow builders to add their own flare to aesthetic elements, we don't allow our designs to be stripped of critical details. Any such alterations require the express written consent of Artform.
- Increasing ceiling heights usually requires adjustments to window sizes and other exterior elements.

Floor plan layout and/or Structural Changes:

- Structural changes always require the express written consent of Artform
- If you wish to move or remove walls or structural elements (such as removal of posts, increases in house size, ceiling height changes, addition of dormers, etc), please do not assume it can be done without other additional changes (even if the builder or lumber yard says you can).

EXHIBIT B

Sea Watch
419.126.v14 GL (1/27/2022)

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Artform Home Plans
603-431-9559

Sea Watch
419.126.v14 GL (1/27/2022)

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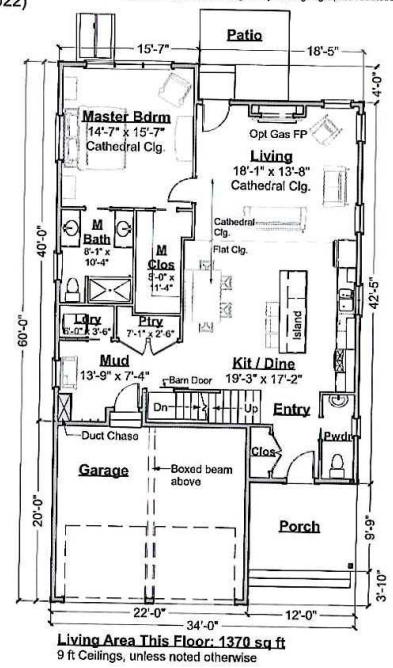
Artform Home Plans
603-431-9559



Living Area This Floor: 1370 sq ft
9 ft Ceilings, unless noted otherwise

First Floor Plan
Scale: 3/32" = 1'-0"

Sea Watch

419.126.v14 GL (1/27/2022)

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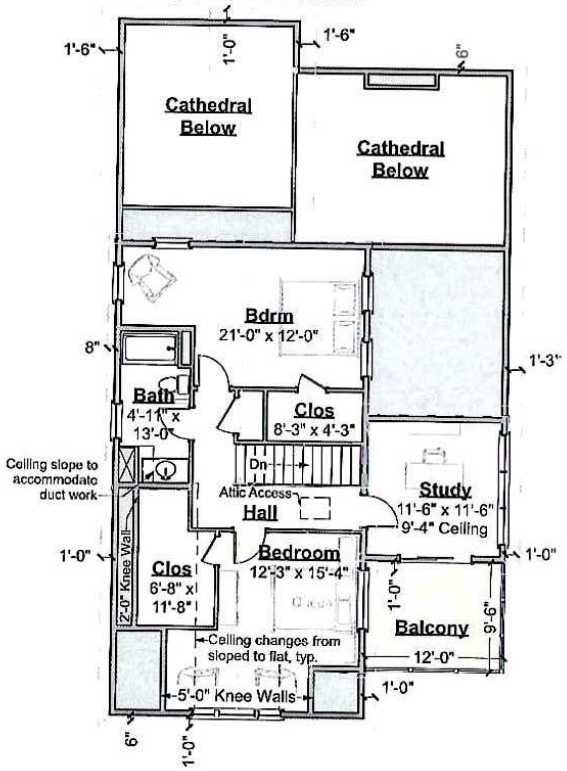
Artform Home Plans
603-431-9559

Living Area This Floor: 979 sq ft
8 ft Ceilings, unless noted otherwise



Second Floor Plan

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

Sea Watch
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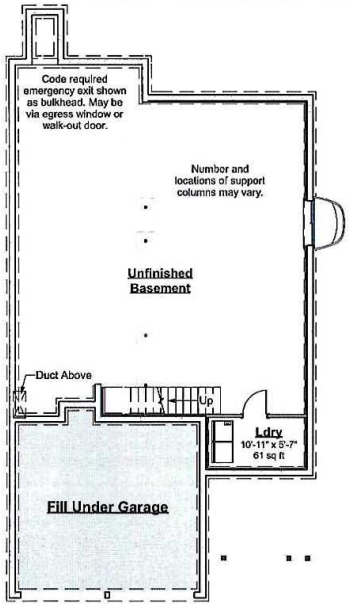
Artform Home Plans
603-431-9559



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

Sea Watch
419.126.v14 GL (1/27/2022)

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Artform Home Plans
603-431-9559

Front Elevation
Scale: 1/8" = 1'-0"

Sea Watch
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Artform Home Plans
603-431-9559

Right Elevation
Scale: 1/8" = 1'-0"

Sea Watch
419.126.v14 GL (1/27/2022)

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Artform Home Plans
603-431-9559

Rear Elevation
Scale: 1/8" = 1'-0"

Sea Watch
419.126.v14 GL (1/27/2022)

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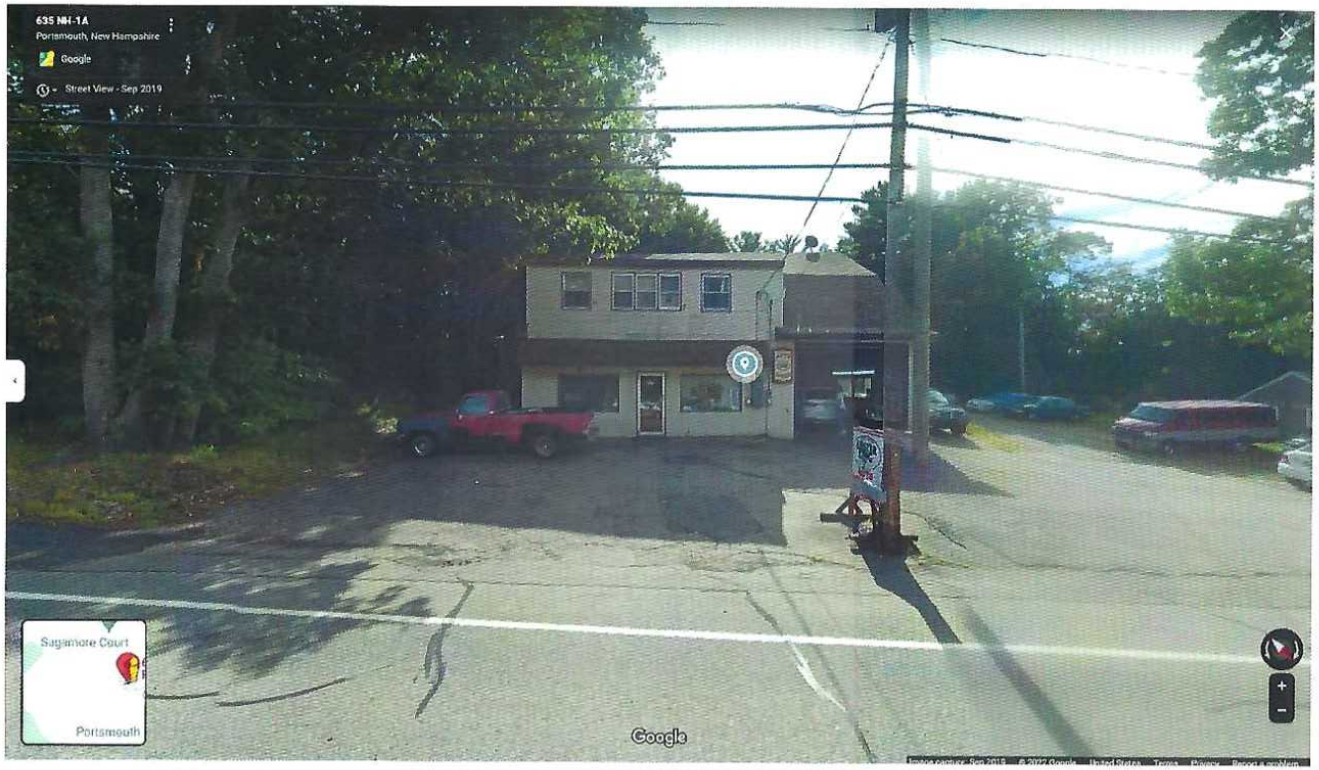
Artform Home Plans
603-431-9559

Left Elevation
Scale: 1/8" = 1'-0"

EXHIBIT C

Aerial view of Property



Front View of Property (Sagamore Ave)

Front View of Property

Front View of Property

Side View of Property

View of Service Garage and Shed

Rear View of Property

Sea Watch
419.126.v14 GL (1/27/2022)

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Artform Home Plans
603-431-9559

Interior Views

EXHIBIT D

635 SAGAMORE AVE

Location	635 SAGAMORE AVE	**Mblu**	0222/ 0019/ 0000/ /
Acct#	35416	**Owner**	635 SAGAMORE DEVELOPMENT LLC
PBN		**Assessment**	$682,800
Appraisal	$682,800	**PID**	35416
Building Count	2		

Current Value

Appraisal			
Valuation Year	**Improvements**	**Land**	**Total**
2020	$407,600	$275,200	$682,800

Assessment			
Valuation Year	**Improvements**	**Land**	**Total**
2020	$407,600	$275,200	$682,800

Owner of Record

Owner	635 SAGAMORE DEVELOPMENT LLC	**Sale Price**	$387,133
Co-Owner		**Certificate**	
Address	3612 LAFAYETTE RD DEPT 4 PORTSMOUTH, NH 03801	**Book & Page**	6332/1158
		Sale Date	09/24/2021

Ownership History

Ownership History				
Owner	**Sale Price**	**Certificate**	**Book & Page**	**Sale Date**
635 SAGAMORE DEVELOPMENT LLC	$387,133		6332/1158	09/24/2021
HINES FAMILY REVO TRUST	$0		4885/1538	02/11/2008

Building Information

Building 1 : Section 1

Year Built:	1950
Living Area:	4,477

Replacement Cost: $513,721
Building Percent Good: 54
Replacement Cost Less Depreciation: $277,400

Building Attributes	
Field	**Description**
Style:	Retail/Apartment
Model	Commercial
Grade	C
Stories:	2
Occupancy	3.00
Residential Units	
Exterior Wall 1	Vinyl Siding
Exterior Wall 2	Pre-Fab Wood
Roof Structure	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Drywall/Sheet
Interior Wall 2	
Interior Floor 1	Inlaid Sht Gds
Interior Floor 2	Carpet
Heating Fuel	Oil
Heating Type	Hot Water
AC Type	Unit/AC
Bldg Use	PRI COMM
Total Rooms	
Total Bedrms	
Total Baths	
Kitchen Grd	
Heat/AC	NONE
Frame Type	WOOD FRAME
Baths/Plumbing	AVERAGE
Ceiling/Wall	CEIL & WALLS
Rooms/Prtns	AVERAGE
Wall Height	10.00
% Comn Wall	
1st Floor Use:	
Class	

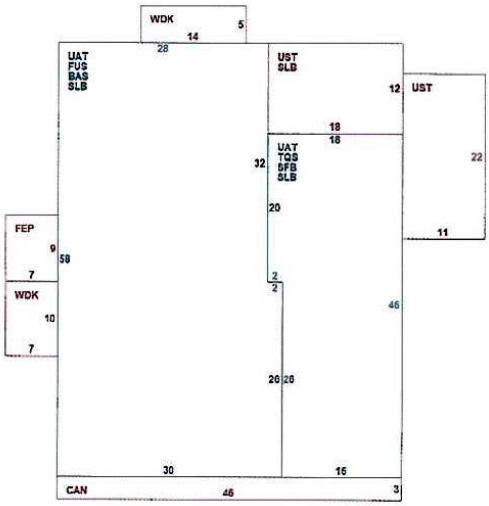
Building 2 : Section 1

Year Built: 2000
Living Area: 1,650
Replacement Cost: $153,450

Building Photo

Building Photo
(http://images.vgsi.com/photos2/PortsmouthNHPhotos///0033/DSC01732_:

Building Layout



(ParcelSketch.ashx?pid=35416&bid=35416)

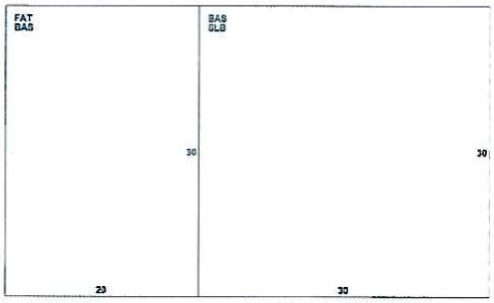
Building Sub-Areas (sq ft)			Legend
Code	**Description**	**Gross Area**	**Living Area**
BAS	First Floor	1,676	1,676
FUS	Upper Story, Finished	1,676	1,676
TQS	Three Quarter Story	776	582
SFB	Base, Semi-Finished	776	543
CAN	Canopy	138	0
FEP	Porch, Enclosed	63	0
SLB	Slab	2,668	0
UAT	Attic	2,452	0
UST	Utility, Storage, Unfinished	458	0
WDK	Deck, Wood	140	0
		10,823	4,477

Building Percent Good: 84
Replacement Cost
Less Depreciation: $128,900

Building Attributes : Bldg 2 of 2	
Field	Description
Style:	Service Shop
Model	Commercial
Grade	C
Stories:	1
Occupancy	1.00
Residential Units	
Exterior Wall 1	Vinyl Siding
Exterior Wall 2	
Roof Structure	Gable/Hip
Roof Cover	Asph/F Gls/Cmp
Interior Wall 1	Drywall/Sheet
Interior Wall 2	
Interior Floor 1	Concr-Finished
Interior Floor 2	Carpet
Heating Fuel	Oil
Heating Type	Hot Water
AC Type	None
Bldg Use	AUTO S S&S
Total Rooms	
Total Bedrms	
Total Baths	
Kitchen Grd	
Heat/AC	NONE
Frame Type	WOOD FRAME
Baths/Plumbing	AVERAGE
Ceiling/Wall	CEIL & WALLS
Rooms/Prtns	AVERAGE
Wall Height	12.00
% Comn Wall	
1st Floor Use:	
Class	

Building Photo

Building Layout



(ParcelSketch.ashx?pid=35416&bid=40140)

Building Sub-Areas (sq ft) Legend			
Code	Description	Gross Area	Living Area
BAS	First Floor	1,500	1,500
FAT	Attic	600	150
SLB	Slab	900	0
		3,000	1,650

Extra Features

Extra Features Legend

No Data for Extra Features

Land

Land Use

Use Code	0310
Description	PRI COMM
Zone	SRA
Neighborhood	306
Alt Land Appr	No
Category	

Land Line Valuation

Size (Acres)	1.93
Frontage	
Depth	
Assessed Value	$275,200
Appraised Value	$275,200

Outbuildings

Outbuildings — Legend

Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
PAV1	PAVING-ASPHALT			1344.00 S.F.	$1,200	1
SHD1	SHED FRAME			96.00 S.F.	$100	1

Valuation History

Appraisal

Valuation Year	Improvements	Land	Total
2020	$418,400	$275,200	$693,600
2019	$418,400	$275,200	$693,600
2018	$391,100	$254,800	$645,900

Assessment

Valuation Year	Improvements	Land	Total
2020	$418,400	$275,200	$693,600
2019	$418,400	$275,200	$693,600
2018	$391,100	$254,800	$645,900

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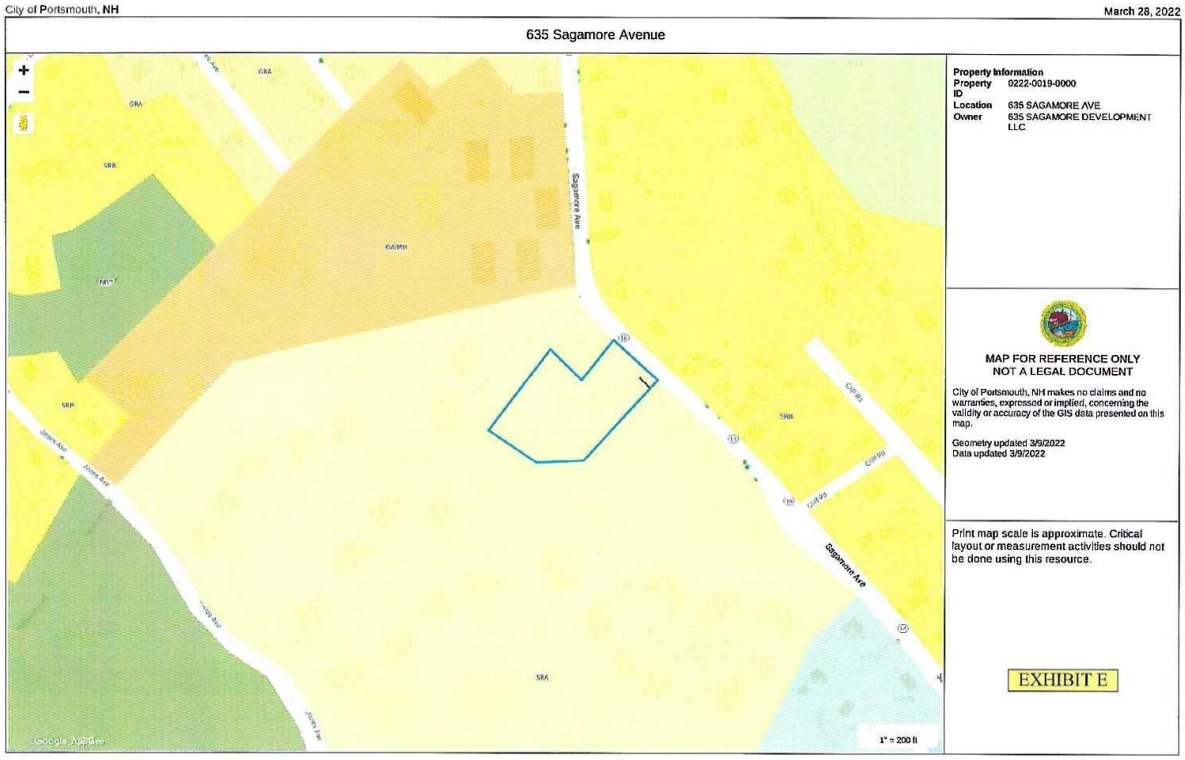

City of Portsmouth, NH
March 28, 2022
635 Sagamore Avenue
Property Information
Property ID 0222-0019-0000
Location 635 SAGAMORE AVE
Owner 635 SAGAMORE DEVELOPMENT LLC
MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.
Geometry updated 3/9/2022
Data updated 3/9/2022
Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.
EXHIBIT E
Sagamore Ave
GRA
SRB
GA/MH
SRA
1" = 200 ft

CERTIFICATE

I do hereby certify that, except as otherwise noted in this report:

1. the statements of fact contained in this report are true and correct;
2. the reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, unbiased professional analyses, opinions and conclusions;
3. I have no present or prospective interest in the property which is the subject of this report and I have no personal interest or bias with respect to the parties involved;
4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment;
5. my engagement in this assignment was not contingent upon developing or reporting predetermined results;
6. my compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal;
7. my analysis, opinions, and conclusions, were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice;
8. Brian W. White, MAI, SRA a made a personal inspection of the property that is the subject of this report;
9. no one has provided significant real property appraisal assistance to the persons signing this certification;
10. I have prepared no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment;
11. the reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics & Standards of Professional Appraisal Practice of the Appraisal Institute;
12. the use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives;
13. as of the date of this report, Brian W. White, MAI, SRA, has completed the continuing education program for Designated Members of the Appraisal Institute.

Respectively submitted,

Brian W. White, MAI, SRA NHCG-#52

130 VARNEY ROAD ▪ DOVER, NEW HAMPSHIRE 03820 ▪ BRIANWMAI@AOL.COM ▪ (603) 742-5925

Professional Designations:

Member, Appraisal Institute (***MAI***) – Awarded by the Appraisal Institute. MAI #9104
Senior Residential Appraiser (***SRA***)

Employment:

1989 to Present	White Appraisal – Dover, NH President – Senior Appraiser Owner of White Appraisal, a commercial and residential real estate appraisal firm. Complete appraisals on all types of commercial and residential properties. Consulting.
1988	Finlay Appraisal Services – Portsmouth, NH Senior Vice President/Chief Operations Officer Oversaw the operation of four appraisal offices. Completed commercial and residential appraisals on all types of properties.
1985	Finlay Appraisal Services – Portsmouth, NH and Appraisal Services Manager – South Portland, ME. Completed commercial and residential appraisals on all types of properties.

Education:

Mitchell College
Associate of Arts, Liberal Studies, 1979

University of Southern Maine
Bachelors of Science, Business Admin., 1984
Bus 022 Real Estate Law
Bus 023 Real Estate Practice
Bus 025 Real Estate Valuation

American Institute of Real Estate Appraisers
1A-1 Real Estate Appraisal Principles, 1985
1A-2 Basic Valuation Procedures, 1985
1B-A Cap. Theory and Technique (A), 1985
1B-B Cap. Theory and Technique (B), 1985
2-3 Standards of Pro. Practice, 1985
Exam #7 Industrial Valuation, 1986

Society of Real Estate Appraisers
101 Intro. To Appraising Real Property, 1986
102 Applied Residential Property Val., 1987
201 Prin. Of Income Property Appraising, 1985
202 Applied Income Property Valuation, 1985

Education (Continued):

USPAP Update- 2017
USPAP Update- 2019
Business Practices & Ethics- 2021
USPAP 2022/2023 Update- 2021

Recent Seminars:

Current Use - 2018
Real Estate Damages Overview - 2018
Understanding and Using Public Data - 2018
Appraising Energy Efficient Residential Properties – 2018
Commercial Real Estate Roundtable – 2019
Appraiser Essentials with CRS and Green Fields – 2019
Land Development & Residential Building Costs – 2019
Myths in Appraiser Liability – 2019
Appraising in Uncertain Times – 2019
Market Trends in NH Real Estate – 2020
Appraising Commercial Properties during a Pandemic – 2020
Defining the Appraisal Problem: Sleuthing for the Approaches to Value- 2021
Forest Valuation- 2021
Appraiser Essentials Paragon MLS- 2021
Residential Building Systems- 2021
2021-2022 NH Market Insights- 2021
Implications for Appraisers of Conservation Easement Appraisals- 2022
NH's Housing Market & Covid: What a Long, Strange Road It's Been!- 2022

Appointments:

Board of Directors – New Hampshire Chapter of the Appraisal Institute - 1991 to 1993; 2000 to 2010 and 2015-2018
Vice President - New Hampshire Chapter of the Appraisal Institute – 2011-2012 & 2019
President – New Hampshire Chapter of the Appraisal Institute – 2013 & 2014

Experience:

Review Chairperson – New Hampshire Chapter of the Appraisal Institute – 1994 to 2010

Licenses:

N.H. Certified General Appraiser #NHCG -52, Expires 4/30/2023

Partial List of Clients:

Banks:	***Attorneys:***	***Others:***
Androscoggin Bank	John Colliander	City of Dover
Granite Bank	Karyn Forbes	Town of Durham
Federal Savings Bank	Michael Donahue	University of New Hampshire
Sovereign Bank	Richard Krans	Wentworth-Douglass
Eastern Bank	Simone Massy	The Homemakers
Century Bank	Samuel Reid	Strafford Health Alliance
TD Bank	Daniel Schwartz	Goss International
Kennebunk Savings Bank	Robert Shaines	Chad Kageleiry
Northeast Federal Credit Union	William Shaheen	Gary Levy
Profile Bank	Steve Soloman	Stan Robbins
Peoples United Bank	Gerald Giles	Daniel Philbrick
Key Bank	Ralph Woodman	Keith Frizzell
Optima Bank and Trust	Gayle Braley	Chuck Cressy
Provident Bank	Fred Forman	John Proulx

State of New Hampshire

Real Estate Appraisers Board

Authorized as
Certified General Appraiser

Issued To

BRIAN W WHITE

License Number: NHCG-52

Issue Date: 01/01/1992
Expiration Date: 04/30/2023

II. OLD BUSINESS

D. The request of **Nissley LLC (Owner),** for property located at **915 Sagamore Avenue** whereas relief is needed to demolish the existing building and construct new mixed-use building which requires the following: 1) A Variance from Section 10.440 to allow a mixed-use building where residential and office uses are not permitted. 2) A Variance from Section 10.1113.20 to allow parking to be located in the front yard and in front of the principal building. 3) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only one is allowed. Said property is located on Assessor Map 223 Lot 31 and lies within the Waterfront Business (WB) District. (LU-22-229)

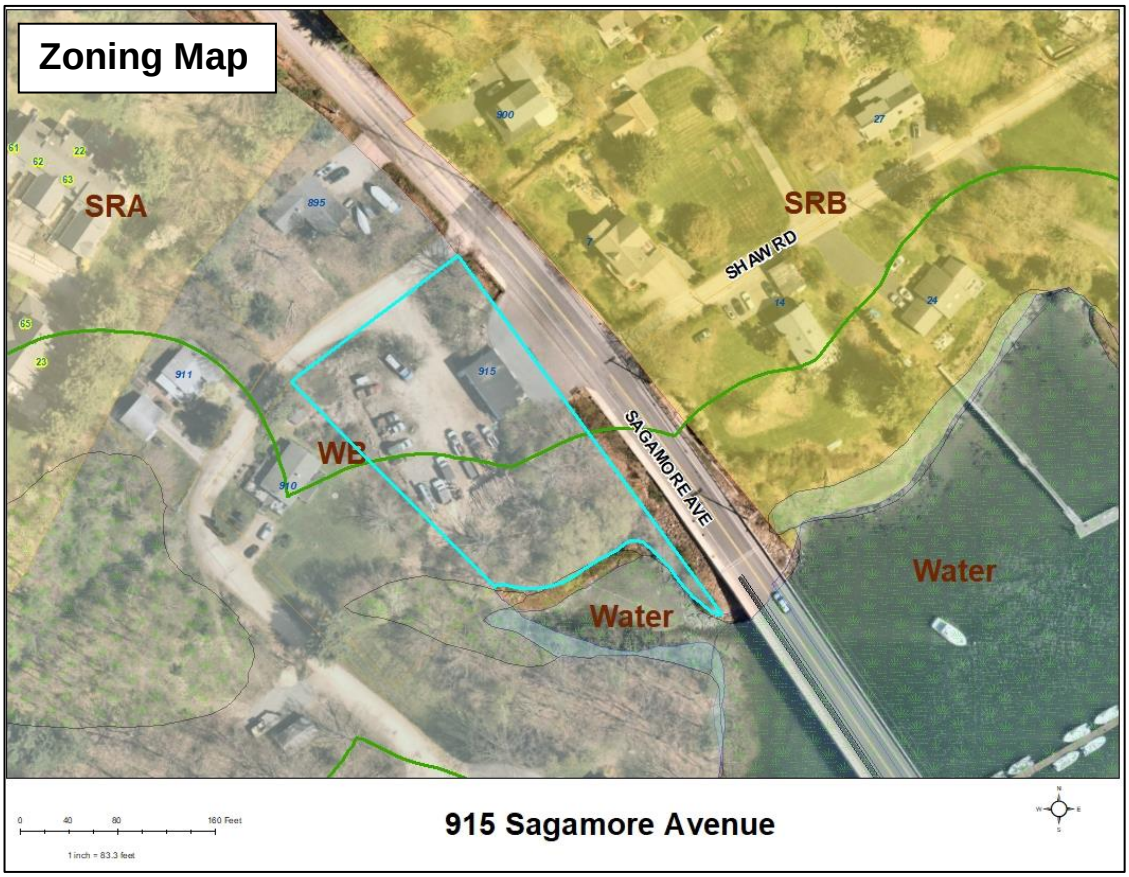
Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required	
Land Use:	Demo existing building	Construct **mixed use building**	Primarily water dependent uses	
Lot area (sq. ft.):	44,431	44,431	20,000	min.
Lot Area per Dwelling Unit (sq. ft.):	NA	3,702	NR	min.
Street Frontage (ft.):	440	440	100	min.
Lot depth (ft.):	145	145	100	min.
Front Yard (ft.):	20	30	30	min.
Left Yard (ft.):	145	>100	30	min.
Secondary Front Yard (ft.):	74	30	30	min.
Rear Yard (ft.):	99	70	20	min.
Height (ft.):	<35	<35	35	max.
Building Coverage (%):	3.5	18	30	max.
Open Space Coverage (%):	>20	>20	20	min.
Parking		34	34 (shared parking)	
Estimated Age of Structure:	1970	Variance request(s) shown in red.		

Other Permits/Approvals Required

Conservation Commission/Planning Board – Wetland CUP
TAC/Planning Board – Site Review

Neighborhood Context



Previous Board of Adjustment Actions

September 19, 1995 – The Board voted to grant the request as presented and advertised.

1. Variance from Article II, Section 10-206(20) is requested to allow use of cellar space for fish processing (frozen west coast cod and haddock, fresh cod, haddock and flounder) and sale to local wholesale of fish and lobsters to local markets and distributed to NY and PA.

Planning Department Comments

The applicant is proposing to demolish the existing scuba shop and construct a three-story mixed use building consisting of office space and 12 residential units. The property is located in the Waterfront Business (WB) district where uses other than water dependent uses, are not permitted. The proposal includes parking in the front of the building and a second driveway, both of which need relief variances. Five out of the eight parcels zoned WB in this area contain residential uses. If the variances are granted, the project will need review by the Conservation Commission and the Technical Advisory Committee prior to going before the Planning Board for a Wetland CUP and Site Plan approval. If granted approval, staff recommends the Board consider the following stipulation:

1. The design and location may change as a result of Planning Board review and approval.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
   (a) The property has special conditions that distinguish it from other properties in the area.
   AND
   (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.
   OR
   Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

DURBIN LAW

Derek R. Durbin, Esq.
603.287.4764
derek@durbinlawoffices.com

BY: VIEWPOINT & HAND DELIVERY

November 21, 2022

City of Portsmouth
Attn: Peter Stith, Planner
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

RE: Variance Application of Nissley LLC
915 Sagamore Avenue, Tax Map 223, Lot 31

Dear Peter,

Enclosed for submission to the ZBA for its December 20th meeting, please find the following materials relative to the proposed improvements for property located at 915 Sagamore Avenue.

1) Landowner Letter of Authorization;
2) Narrative to Variance Application;
3) Site Plan;
4) Wetlands Comparison Plan;
5) Floor Plans and Elevations;
6) Tax Map;
7) Photographs of the Property.

A copy of the application submission is being delivered to the Planning Department. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,

Derek R. Durbin, Esq.

LANDOWNER LETTER OF AUTHORIZATION

Nissley LLC, record owner of property located at 915 Sagamore Avenue, Portsmouth, NH 03801, Tax Map 223, Lot 31 (the "Property"), hereby authorizes **Durbin Law Offices, PLLC** to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.

November 14, 2022

Sign Name

GINGRICH, DAY

Print Name (Member, Duly Authorized)

VARIANCE APPLICATION
NARRATIVE

915 Sagamore Avenue
Tax 223, Lot 31
Portsmouth, NH 03801

Nissley LLC
(Owner / Applicant)

Introduction

Nissley LLC is the owner of property located at 915 Sagamore Avenue, identified on Portsmouth Tax Map 223 as Lot 31 (the "Property"). The Property is located in the Waterfront Business ("WB") Zoning District. The Property is 1.02 acres in size and has approximately 270' of street frontage on Sagamore Avenue. It is also accessed via a 25' wide unpaved right-of-way (ROW) off of Sagamore Avenue, thus it has two access points and parking areas. As a result of the recent improvements to Sagamore Avenue, the Property is now served by municipal water and sewer.

The Property has a significant grade drop from Sagamore Avenue from east to west and from north to south towards Sagamore Creek. The Property contains wetlands along the western boundary, of which an area of approximately 3,603 square feet has been disturbed. A vast majority of the Property is within the regulated buffer. The southern portion of the Property that drops down to Sagamore Creek contains ledge and is wooded with a mixture of deciduous and evergreen trees.

There is a two (2) floor building on the Property that previously served as the business location for Portsmouth Scuba and retains its branding on the front. There is a mooring and/or machine shop business located on the first floor of the building which is accessed in the rear from the dirt/gravel parking area off of the 25' ROW. The second floor of the building contains some type of forestry-related commercial business which is accessed from the front paved parking area directly off of Sagamore Avenue.

There are inoperable vehicles, equipment, lobster traps and debris scattered throughout the Property. The Property as a whole has been neglected and is an "eyesore" in its current condition.

As shown on the map attached as Exhibit A, the Property is zoned WB but is surrounded by a mixture of residential and commercial uses and zoning districts. To the north, east and west, many of the properties are zoned for residential uses. To the south, many of the properties are zoned for business or municipal (public) uses. The mixtures of uses and zoning districts that the Property is surrounded by is reflective of the character of the area which cannot be defined by one particular use.

Proposed Improvements

The Applicant is proposing a three-story mixed-use building on the Property. The building would contain office space on all three floors and twelve residential units of equal dimension (780 sf) in total (4 on each floor). Each residential unit would contain one bedroom and a bathroom. The majority of off-street parking spaces would be located under or to the rear of the proposed building. There would be two ADA compliant parking spaces for the front of the building accessed by Sagamore Avenue. As part of the proposed improvement of the Property, the junk vehicles, equipment and debris will be removed. The approximately 3,602 square foot area of disturbed wetlands would also be restored.

The exact use of the office space has yet to be determined, but it is anticipated that the Applicant will locate his business operations in at least a portion of the space. The combination of residential units and office space in one building lends itself naturally to a future live-work environment. While the Property is "waterfront" per se and has a decent amount of legal frontage on "Sagamore Creek", the water is essentially inaccessible due to the topography of the land. It is anticipated that the southern, forested quadrant of the Property will remain much as it is seen now.

If the variance request being sought by the Applicant is approved, he will also need site plan and conditional use permit approvals from the Planning Board. The improvements proposed for the Property will undergo review and scrutiny from the Conservation Commission in addition to the Planning Board. The Applicant will also need DES approvals for impacts within the wetland and shoreland buffers. The plans for the Property remain conceptual given the various hurdles the Applicant must overcome to develop the land but provide a realistic vision of how the Property would be built upon and utilized in the future.

Variance Criteria

Granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, "the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives." 152 N.H. 577. The Court observed that "[t]here are two methods of ascertaining whether granting a variance would violate an ordinance's basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare." 152 N.H. 577.

The Property is located within a very small pocket of properties zoned WB. The properties within this area are predominantly used for residential purposes. The properties in the adjacent zoning districts are used for a combination of residential and business-related purposes. The Property directly across Sagamore Creek is used for professional office space (Seacoast Mental Health). There is not one particular use that defines the area; however, it can be fairly said that it consists of a mixture of office, business, and residential uses. In the case of *Belanger v. Nashua*, the NH Supreme Court opined: "[w]hile we recognize the desired interrelationship between the establishment of a plan for community development and zoning, we believe that municipalities must also have their zoning ordinances reflect the current character of neighborhoods." 121 N.H. 389 (1981).

It can be fairly argued that the Property and those that immediately surround it are improperly zoned given the mixture of surrounding residential and non-marine business uses. There are very few marine-related uses in the area. The use that is proposed for the Property is consistent with the uses being made of surrounding properties. The size of the residential units and their location will make them inherently affordable to rent in the context of the Portsmouth market. The combination of office space and apartments within the same building lends itself to a future live-work environment. It is in the public's interest to see that more housing opportunities are created within the City of Portsmouth, particularly those that are more affordable in nature. Opportunities such as this in Portsmouth remain scarce.

The topography of the Property and its location makes it inconducive to permitted waterfront business uses. Sagamore Creek is essentially inaccessible from the upland portion of the Property. Without easy access to Sagamore Creek, and the ability to dock boats on the Property, it has limited "waterfront" value. The limited amount of usable upland area also limits the potential marine-related uses that could be made of the Property. Even if the Property could be easily used for a marine-related purpose, that does not mean that it would be compatible to the surrounding area, which is predominantly residential with some business uses mixed in.

The overall conditions of the Property will be improved and the proposed use will be consistent with the character of the area. Access and parking on the Property will be improved beyond what exists and will allow for safe ingress and egress for emergency vehicles. For the foregoing reasons, granting the variance will not alter the essential character of the neighborhood or threaten public health, safety or welfare.

Substantial justice will be done by granting the variance relief.

Any loss to the individual that is not outweighed by a gain to the general public is an injustice. *New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials* (1997); *Malachy Glen Assocs., Inc. v. Town of Chichester,* 155 N.H. 102 (2007).

Because of how it is presently zoned, there are limited uses that can be made of the Property. Most of the uses that are permitted for the Property under the Ordinance are not feasible given its challenging topography and its inaccessibility to Sagamore Creek. Granting the variance relief sought would allow the owner to make reasonable use of the land at little to no cost to the public. In the present case, the equitable balancing test for determining whether substantial justice is done weighs in favor of the Applicant.

The values of surrounding properties will not be diminished by granting the variance.

The Property is an eyesore in its existing condition. Any improvement and clean-up of the Property should only increase surrounding property values not diminish them. The building concept for the Property is tastefully designed and would be an aesthetic improvement over what exists.

Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

The Property has several special conditions that distinguish it from surrounding properties, most notably its topography and location. The Property is "waterfront" by definition and land use designation, but not in reality. The reality is that Sagamore Creek cannot be easily accessed from the Property. To access Sagamore Creek, you have to descend a steep hill comprised primarily of trees and ledge. If the tide is low, you would then have to cross a mudflat to reach the water. This severely restricts what permitted uses can be made of the Property since it is located in the WB Zoning District. The Property itself is quite large when considered in the context of the surrounding area but is almost entirely encumbered by wetland buffers which further restricts what uses can be made of it. The Property is also located in an area that consists primarily of residential and business related uses, including office space. For these reasons, there is no fair and substantial relationship between the general purposes of the Ordinance and its application to the Property.

Finally, the proposed use is reasonable. As stated above, the use is consistent and compatible with the uses of surrounding properties.

Conclusion

In conclusion, the Applicant submits that it has demonstrated that its application meets the five (5) criteria for granting the variance requested. Accordingly, it respectfully requests the Board's approval.

Respectfully Submitted,

Dated: November 21, 2022

Nissley LLC

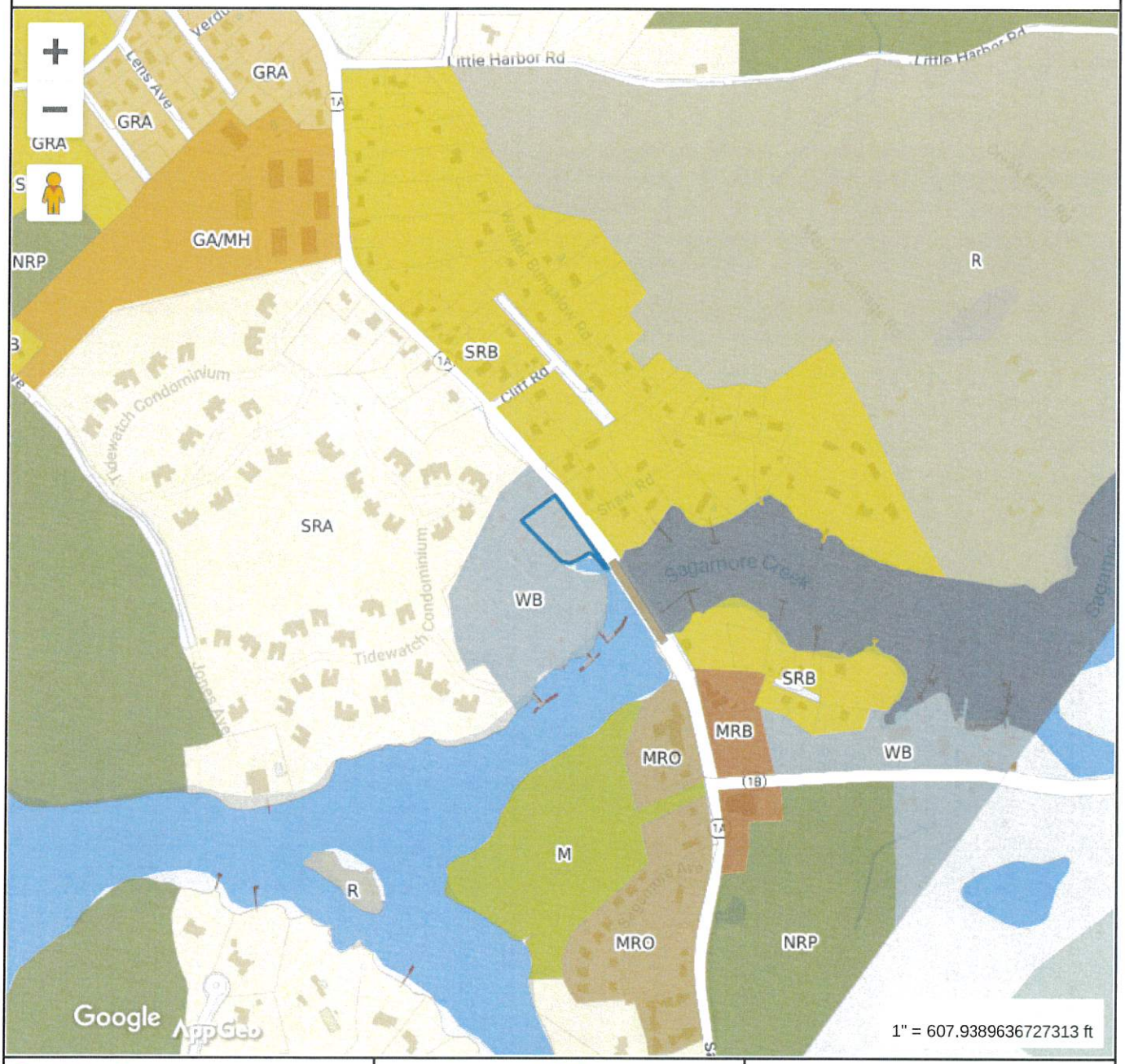
By and Through,
Durbin Law Offices PLLC

By: Derek R. Durbin, Esq.
144 Washington Street
Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com

Exhibit A

City of Portsmouth, NH

November 20, 2022



Property Information

Property ID	0223-0031-0000
Location	915 SAGAMORE AVE
Owner	NISSLEY LLC

MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

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 09/21/2022
Data updated 3/9/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

Map Theme Legends

Zoning

City of Portsmouth

WETLANDS NOTE:

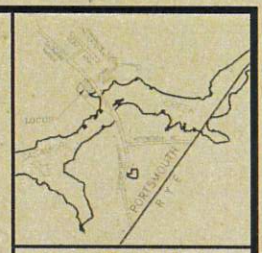
WETLANDS DEPICTED ON THIS PLAN WERE DELINEATED ON SEPTEMBER 27, 2022 BY JASON R. AUBE, CWS #813.
THE WETLANDS WERE DELINEATED ACCORDING TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL (JANUARY 1987) AND THE REGIONAL SUPPLEMENT TO THE U.S. CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION, VERSION 2.0 (JANUARY 2012).

SHORELAND NOTE:

THE HIGHEST OBSERVABLE TIDE LINE (HOTL) DEPICTED ON THIS PLAN WAS DETERMINED ON SEPTEMBER 27, 2022, BY COASTAL PROFESSIONAL, JASON R. AUBE. THE HOTL WAS DETERMINED IN ACCORDANCE WITH THE NHDES WETLANDS BUREAU ADMINISTRATIVE RULES, UNDER ENV-WT 802.23, HIGHEST OBSERVABLE TIDE LINE MEANS A LINE DEFINING THE FARTHEST LANDWARD LIMIT OF TIDAL FLOW, NOT INCLUDING STORM EVENTS, THAT CAN BE RECOGNIZED BY INDICATORS SUCH AS THE PRESENCE OF A STRAND LINE OF FLOTSAM AND DEBRIS, THE LANDWARD MARGIN OF SALT- TOLERANT VEGETATION, OR A PHYSICAL BARRIER THAT BLOCKS INLAND FLOW OF THE TIDE.

PLAN REFERENCES:

1. "PROPOSED ADDITION PORTSMOUTH SCUBA 915 SAGAMORE AVENUE PORTSMOUTH, N.H." BY AMIST ENGINEERING, INC. DATED FEBRUARY 2002, WITH REVISIONS. (PLAN NOT RECORDED).



NOTES:

1. THE PARCEL IS LOCATED IN THE WATERFRONT BUSINESS (WB) ZONING DISTRICT.
2. THE PARCEL IS SHOWN ON THE CITY OF ASSESSOR'S MAP 223 AS LOT 31.
3. THE PARCEL IS LOCATED IN ZONES AE (EL8) & ZONE X, PER NAVD88, AS SHOWN ON NATIONAL FLOOD INSURANCE PROGRAM (NFIP), FLOOD INSURANCE RATE MAPS (FIRM) ROCKINGHAM COUNTY, NEW HAMPSHIRE, PANELS 227F & 256F, OF 651, MAP NUMBER 33015C0651F, WITH AN EFFECTIVE DATE OF JANUARY 29, 2021.
4. DIMENSIONAL REQUIREMENTS:

	REQUIRED
MINIMUM LOT DIMENSIONS:	
LOT AREA:	20,000 S.F.
LOT AREA PER DWELLING UNITS:	NR
CONTINUOUS STREET FRONTAGE:	100'
DEPTH:	100'
MINIMUM YARD DIMENSIONS:	
FRONT:	30'
SIDE:	20'
REAR:	20'
MAXIMUM STRUCTURE DIMENSIONS:	
BUILDING HEIGHT:	35'
ROOF APPURTENANCE HEIGHT:	10'
BUILDING COVERAGE:	30%
FLOOR AREA RATIO:	NR
MINIMUM OPEN SPACE:	20%

5. PARKING CALCULATIONS:
   OFFICE: 1/350 SF (8,000 SF) = 23 SPACES

   MULTI-FAMILY:
   0.5 SP/UNIT (<500 SF UNITS)(0 UNIT) = 0 SPACES
   1.0 SP/UNIT (500 SF TO 750 SF UNITS)(2 UNITS) = 2 SPACES
   1.3 SP/UNIT (>750 SF UNITS)(10 UNITS) = 13 SPACES
   PLUS 1.0 SP./5 UNITS (VISITORS) (5 UNITS) = 3 SPACES

   TOTAL OF 18 SPACES

   DAYTIME SHARED PARKING:
   OFFICE AT 100% = 23 SPACES
   MULTI-FAMILY AT 50% = 11 SPACES

   REQUIRED: 34 SPACES

   PROPOSED: 34 SPACES
6. OWNER OF RECORD:
   MAP 223 LOT 31:
   NISSLEY, LLC
   513 MARCY STREET
   PORTSMOUTH, NH 03801
   RCRD BK.4067 PG.2212

   PARCEL AREA:
   MAP 223 LOT 31:
   1.02 ACRES (PER PLAN REFERENCE 1).
7. THE INTENT OF THIS PLAN IS TO SHOW THE APPROXIMATE LOCATION OF TAX MAP 223 LOT 31. THE APPROXIMATE LOCATION OF TAX MAP 223 LOT 31 AS DEPICTED ON THIS PLAN HAS BEEN COMPILED FROM RECORDED AND UNRECORDED SOURCES AND SOME FIELD EVIDENCE. IT IS NOT THE RESULT OF A COMPLETE BOUNDARY SURVEY AND IT IS NOT AN ATTEMPT TO DEFINE THE EXTENT OF OWNERSHIP OR DEFINE THE LIMITS OF TITLE.

TAX MAP 223 LOT 31

CONCEPTUAL SITE PLAN

PORTSMOUTH SCUBA

915 SAGAMORE AVENUE

PORTSMOUTH, NEW HAMPSHIRE

COUNTY OF ROCKINGHAM

OWNED BY

NISSLEY, LLC

SCALE: 1" = 20' (22x34)
1" = 40' (11x17)

NOVEMBER 08, 2022

This plan is for conceptual purposes only. It is not necessarily the result of a complete on-site survey, nor is it intended for construction uses. Locations of boundaries and wetlands are approximate and not necessarily correct or accurate. Compliance with current regulations must be verified.

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All Construction Plans, Elevations, R.P. 628:19

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This plan is not effective unless signed by a duly authorized officer of Thomas F. Moran, Inc.

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THIS PLAN IS A PRELIMINARY CONCEPTUAL DESIGN FOR SITE LOCATION FEASIBILITY AND DISCUSSION PURPOSES ONLY. ADDITIONAL PERMITS, WAIVERS, AND VARIANCE MAY BE REQUIRED UPON FURTHER DESIGN, REVIEW, AND COORDINATION WITH THE TOWN.

Graphic Scale in Feet

REV.	DATE	DESCRIPTION	BY	CK

Seacoast Division
TFM Moran
Civil Engineers
Structural Engineers
Traffic Engineers
Land Surveyors
Landscape Architects
Scientists
170 Commerce Way, Suite 102
Portsmouth, NH 03801
Phone (603) 431-2222
Fax (603) 431-0910
www.tfmoran.com

JOB	47092-30	DR	MAP	FILE	503
		CK	UNIT	CADFILE	SITE MARGIN

Nov 10, 2022 - 11:12am
P:\MAS Projects\47092 - Sagamore Ave - Portsmouth\47092-30 - Barnsley - 915 Sagamore Ave\Design\Concepts\47092-30 Wetland with Concept 2022-11-08.dwg

WETLANDS NOTE:

WETLANDS DEPICTED ON THIS PLAN WERE DELINEATED ON SEPTEMBER 27, 2022 BY JASON R. AUBE CWS #313.
THE WETLANDS WERE DELINEATED ACCORDING TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL (JANUARY 1987) AND THE REGIONAL SUPPLEMENT TO THE U.S. CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION, VERSION 2.0 (JANUARY 2012).

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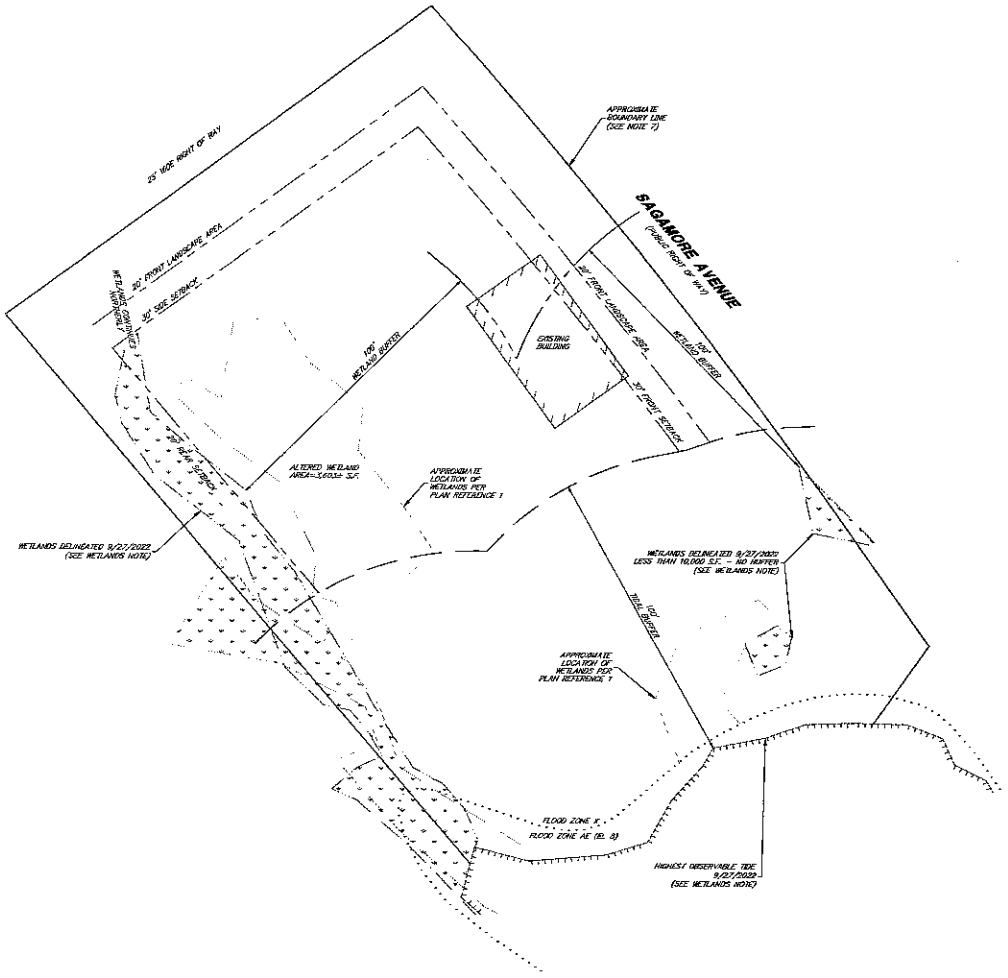

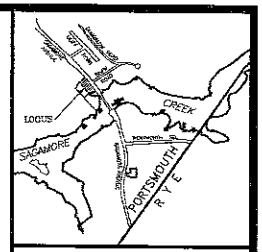

LOCATION PLAN

NOTES:

1. THE PARCEL IS LOCATED IN THE WATERFRONT BUSINESS (WB) ZONING DISTRICT.
2. THE PARCEL IS SHOWN ON THE CITY OF ASSESSOR'S MAP 223 AS LOT 31.
3. THE PARCEL IS LOCATED IN ZONES AE (ELE) & ZONE X, PER NAVD88, AS SHOWN ON NATIONAL FLOOD INSURANCE PROGRAM (NFIP), FLOOD INSURANCE RATE MAPS (FIRM) ROCKINGHAM COUNTY, NEW HAMPSHIRE, PANELS 270F & 286F OF 626, MAP NUMBER 33015C0, WITH AN EFFECTIVE DATE OF JANUARY 29, 2021.
4. DIMENSIONAL REQUIREMENTS:

	REQUIRED:
MINIMUM LOT DIMENSIONS:	
LOT AREA:	20,000 S.F.
LOT AREA PER DWELLING UNIT:	NR
CONTINUOUS STREET FRONTAGE	100'
DEPTH:	100'
MINIMUM YARD DIMENSIONS:	
FRONT:	30'
SIDE:	30'
REAR:	20'
MAXIMUM STRUCTURE DIMENSIONS:	
BUILDING HEIGHT:	52'
ROOF APPURTENANCE HEIGHT:	10'
BUILDING COVERAGE:	30%
FLOOR AREA RATIO:	NR
MINIMUM OPEN SPACE:	20%

5. OWNER OF RECORD:
MAP 223 LOT 31:
NISSLEY, LLC
513 MARCY STREET
PORTSMOUTH, NH 03801
RCRD BK 6091 PG 2312
6. PARCEL AREA:
MAP 223 LOT 31:
1.82 ACRES (PER PLAN REFERENCE 1).
7. THE INTENT OF THIS PLAN IS TO SHOW THE APPROXIMATE LOCATION OF TAX MAP 223 LOT 31. THE APPROXIMATE LOCATION OF TAX MAP 223 LOT 31 AS DEPICTED ON THIS PLAN HAS BEEN COMPILED FROM RECORDED AND UNRECORDED SOURCES AND SOME FIELD EVIDENCE. IT IS NOT THE RESULT OF A COMPLETE BOUNDARY SURVEY AND IT IS NOT AN ATTEMPT TO DEFINE THE EXTENT OF OWNERSHIP OR DEFINE THE LIMITS OF TITLE.
8. THE PURPOSE OF THIS PLAN IS TO SHOW THE APPROXIMATE BOUNDARY LINES, LIMITED SITE CONDITIONS, AND A COMPARISON OF THE WETLANDS PER PLAN REFERENCE ONE AND THE WETLANDS DELINEATED ON SEPTEMBER 27, 2022 ON MAP 223 LOT 31.
9. FIELD SURVEY COMPLETED BY TCE & RJB IN OCTOBER, 2022 USING A LEICA TS-16, A TOPCON HIPER-V AND CARLSON DATA COLLECTION SOFTWARE.
10. HORIZONTAL DATUM IS NAD83 (2011) PER NETWORK RTK GPS OBSERVATIONS.
11. 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.
12. 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:

1. "PROPOSED ADDITION PORTSMOUTH SCUBA 915 SAGAMORE AVENUE PORTSMOUTH, N.H." BY AMBIT ENGINEERING, INC. DATED FEBRUARY 2002, WITH REVISIONS. (PLAN NOT RECORDED).

TAX MAP 223 LOT 31
WETLANDS COMPARISON PLAN
PORTSMOUTH SCUBA
915 SAGAMORE AVENUE
PORTSMOUTH, NEW HAMPSHIRE
COUNTY OF ROCKINGHAM
OWNED BY
NISSLEY, LLC

SCALE: 1" = 20' (22x34)
1" = 40' (11x17)
OCTOBER 19, 2022

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This plan is not effective unless signed by a duly authorized officer of TFMoran, Inc.

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Graphic Scale In Feet: 20 10 0 20

REV	DATE	DESCRIPTION	DR	CK

Seacoast Division
TFM
Civil Engineers
Structural Engineers
Traffic Engineers
Land Surveyors
Landscape Architects
Scientists
170 Commerce Way, Suite 102
Portsmouth, NH 03801
Phone (603) 431-2222
Fax (603) 431-0910
www.tfmoran.com

FILE	47092-30	DR	MP	Fb	593
		CK	RJB	CADFILE	SEE MARGIN

Oct 20, 2022 - 11:09am
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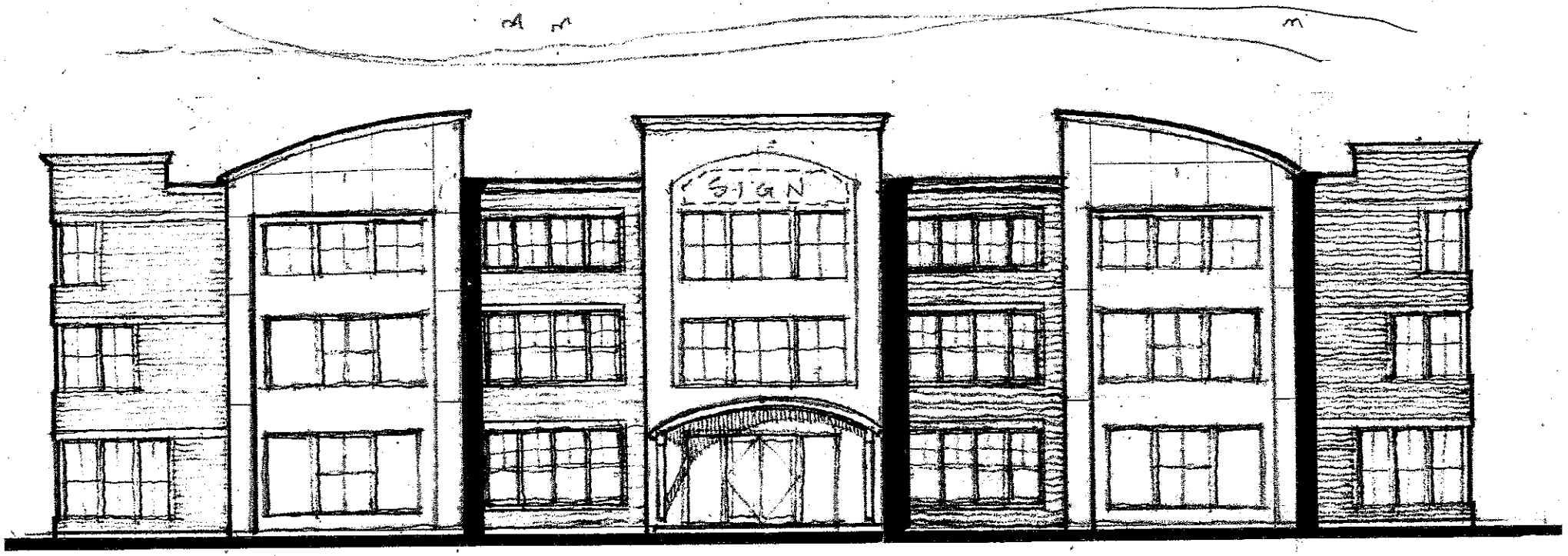


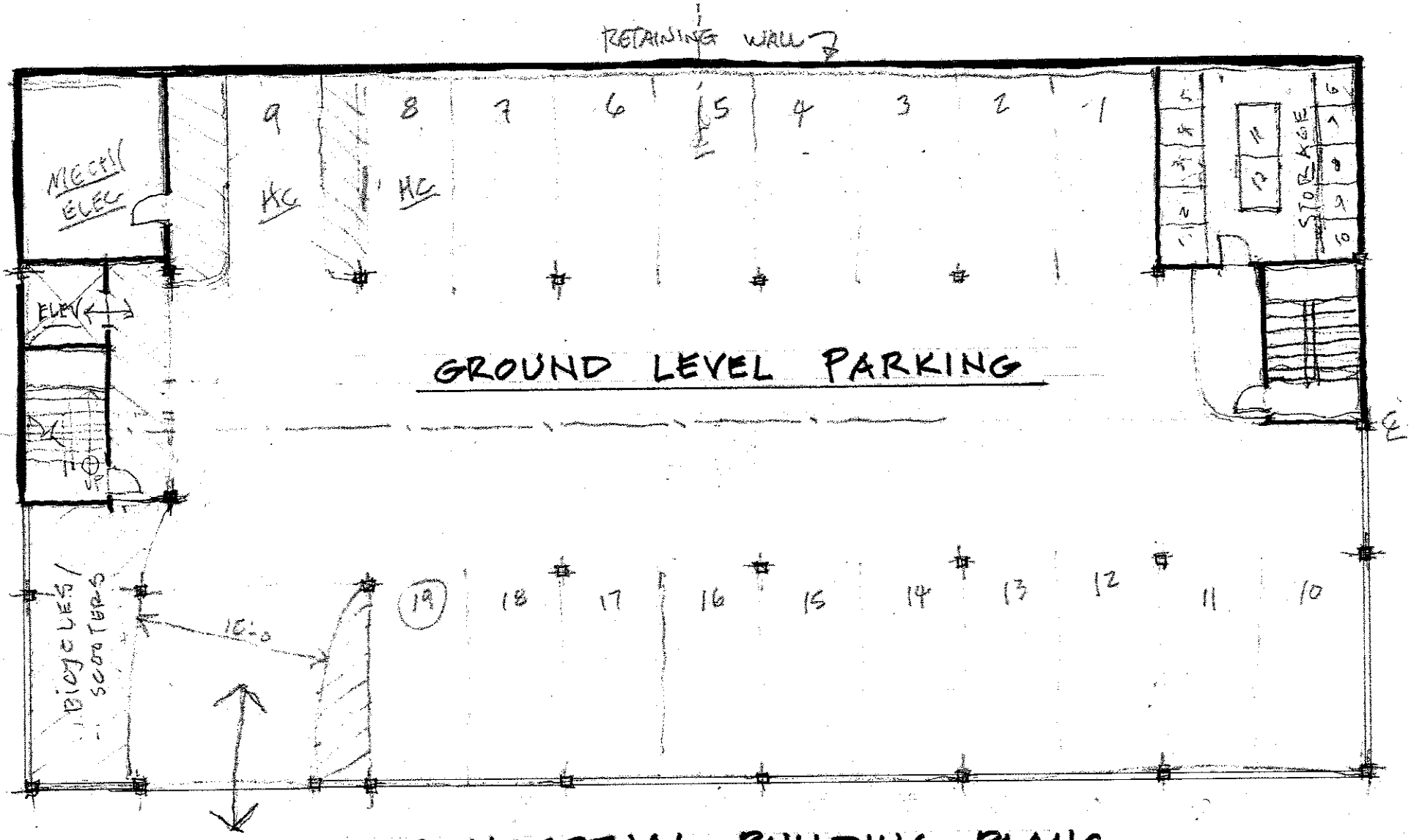
SAGAMORE AVENUE ELEVATION

CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVENUE

OWNER: NISSLEY LLC

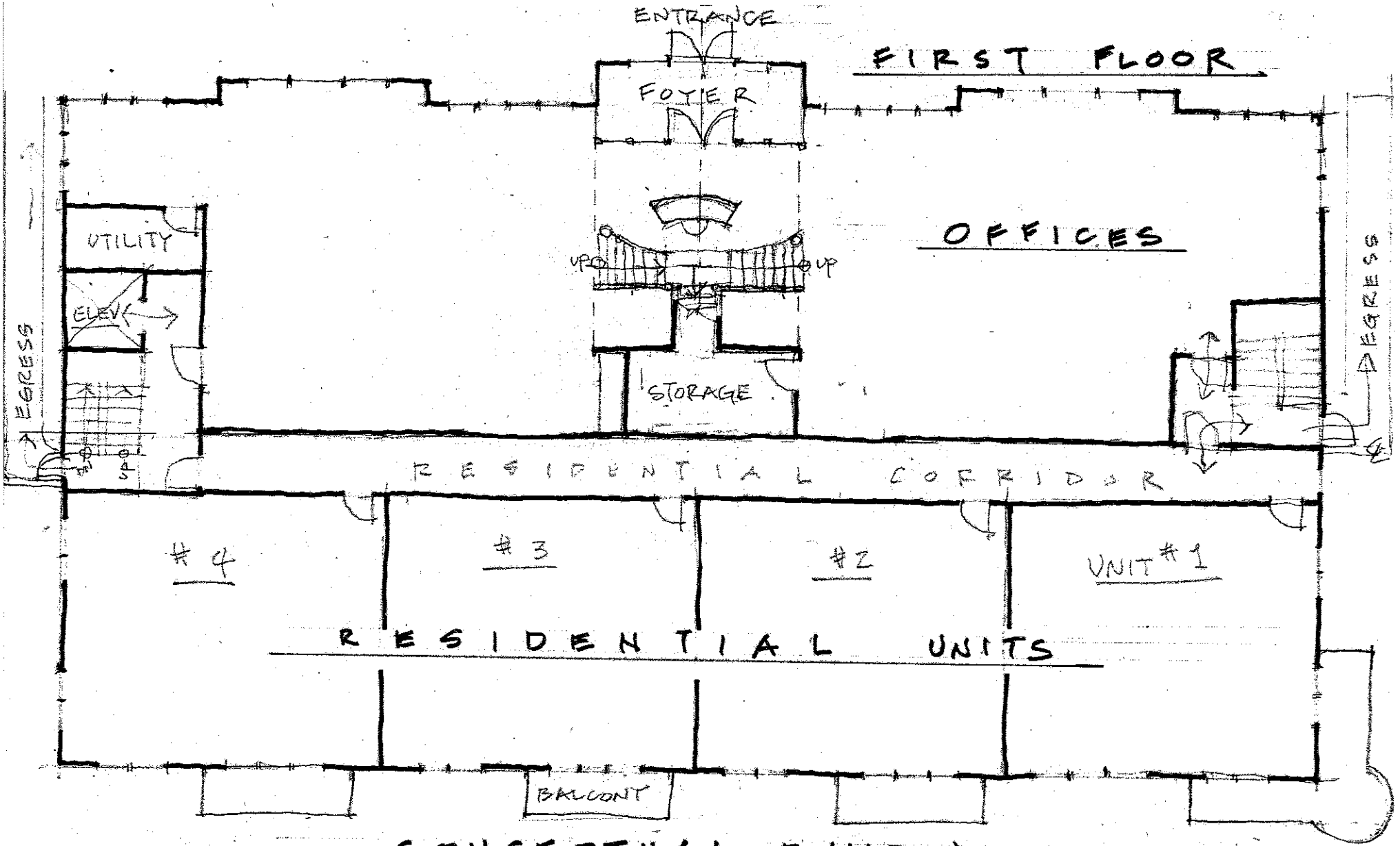
DATE: 17 NOV. 2022



CONCEPTUAL BUILDING PLANS

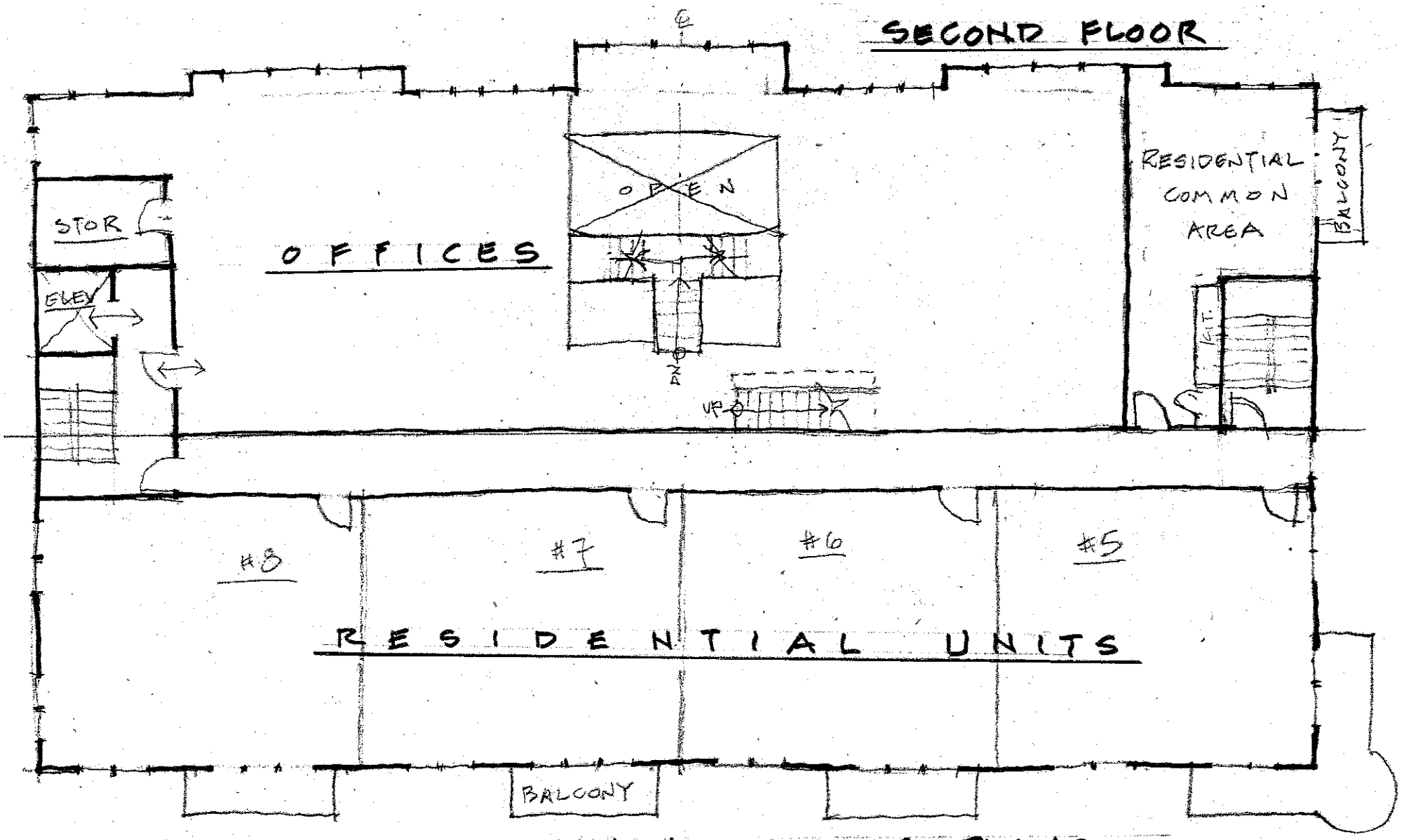
915 SAGAMORE AVENUE

OWNER: NISSLEY LLC 17 NOV 2022



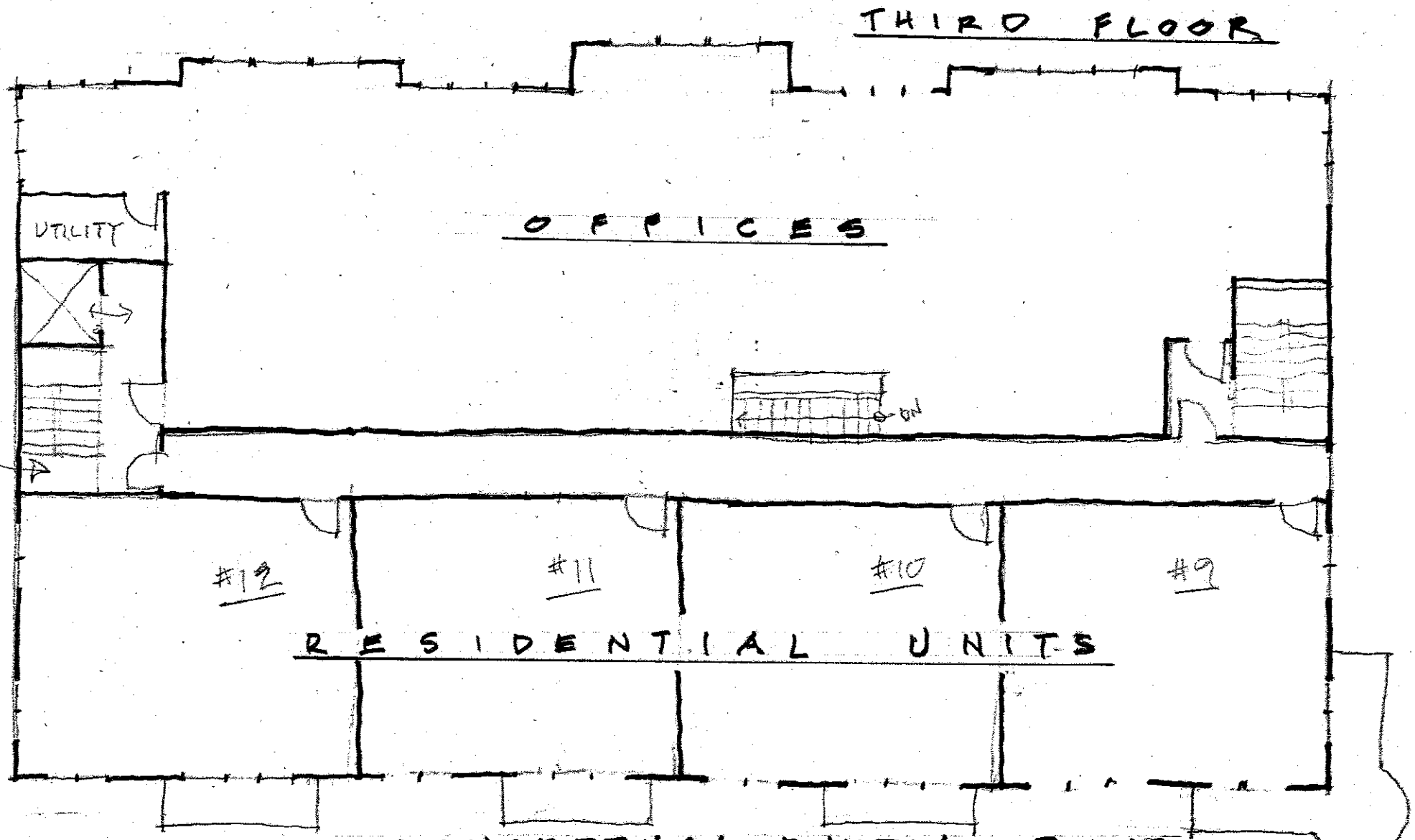
CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVE 17 NOV. 2022



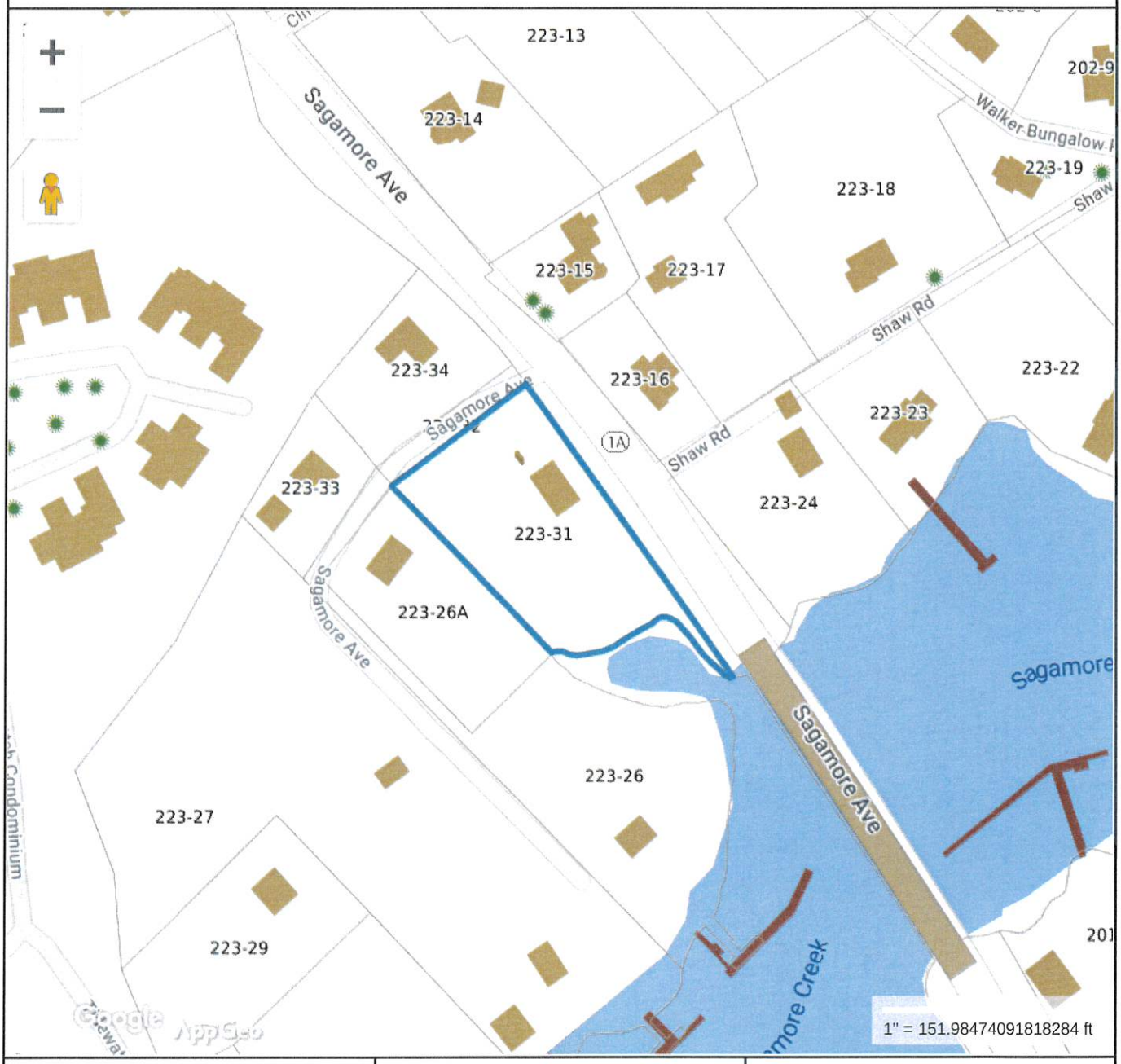
CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVE 17 NOV 2022



CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVE 17 Nov 2022



Property Information

Property ID	0223-0031-0000
Location	915 SAGAMORE AVE
Owner	NISSLEY LLC

MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

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Geometry updated 09/21/2022
Data updated 3/9/2022

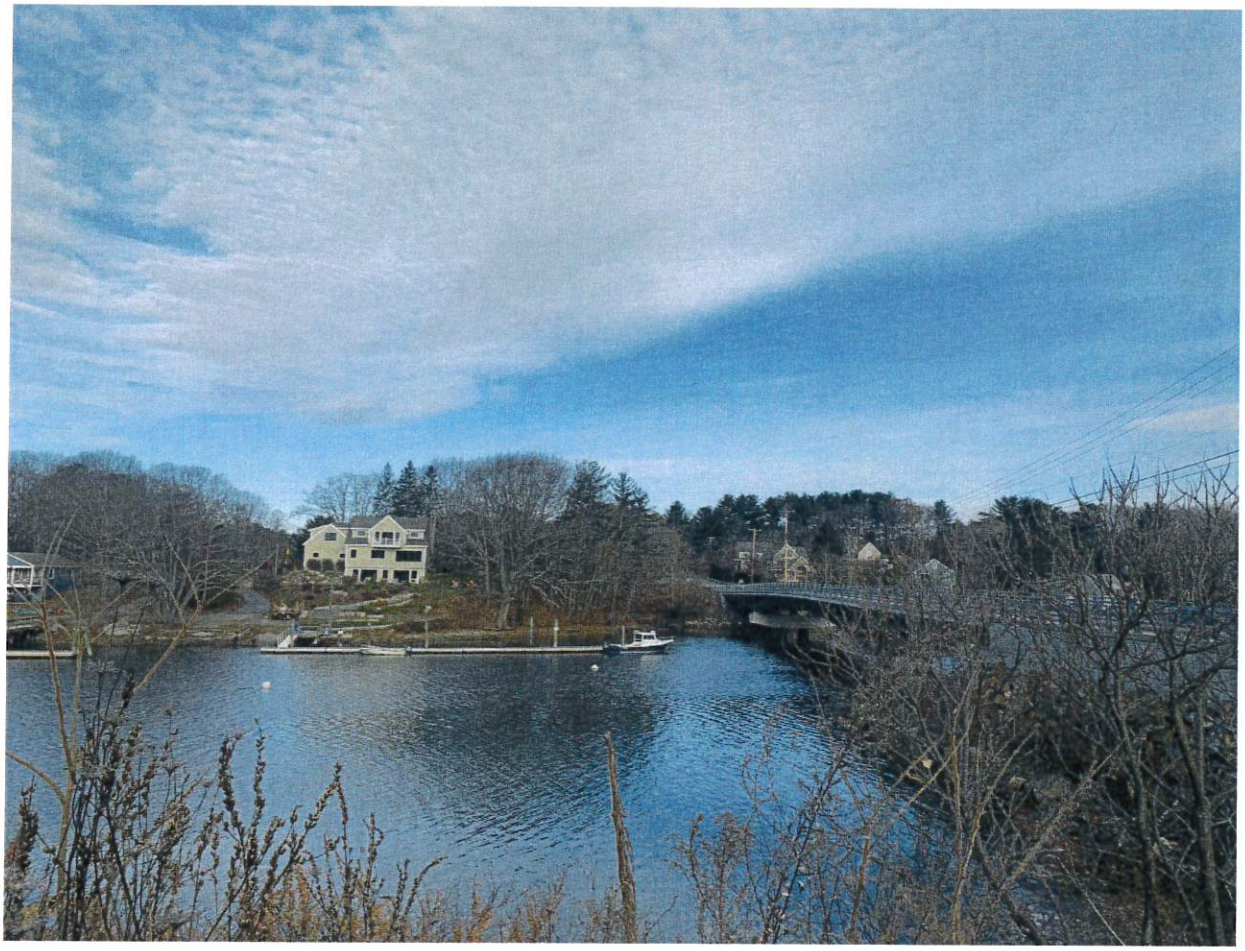
Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

Front Elevation View

Rear Elevation View

Right Elevation View

Right Elevation View



Left Elevation View (Across Water)

View from Sagamore Road

III. NEW BUSINESS

A. The request of **Sarah M Gardent Revocable Trust (Owner),** for property located at **47 Howard Street** whereas relief is needed for the installation of a mechanical heat pump which requires the following 1) Variance from section 10.515.14 to allow a 8 foot setback where 10 feet is required. Said property is located on Assessor Map 103 Lot 84 and lies within the General Residence B (GRB) and Historic District. (LU-22-242)

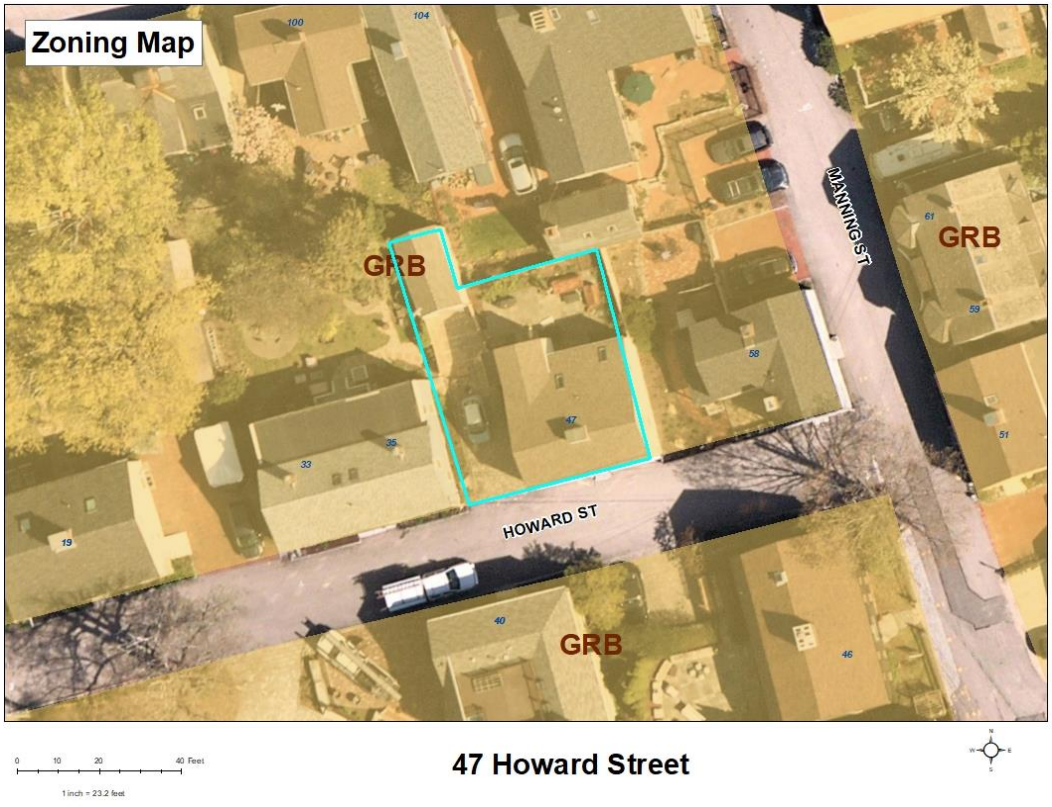
Existing and Proposed Conditions

	Existing	Proposed	Permitted / Required	
Land Use:	Single Family	Mechanical Heat Pump	Primarily residential uses	
Lot area (sq. ft.):	2,619	2,619	5,000	min.
Lot Area per Dwelling Unit (sq. ft.):	2,619	2,619	5,000	min.
Street Frontage (ft.):	44.3	44.3	80	min.
Lot depth (ft.):	53.75	53.75	60	min.
Primary Front Yard (ft.):	0	0	5 (0 feet with averaging)	min.
Left Side Yard (ft.):	0	**8**	10	min.
Right Side Yard (ft.):	0	0	10	min.
Rear Yard (ft.):	0	0	25	min.
Height (ft.):	<35	<35	35	max.
Building Coverage (%):	47	47	30	max.
Open Space Coverage (%):	47	47	25	min.
Parking:	Ok	Ok	1.3	
Estimated Age of Structure:	2007	Variance request shown in red.		

Other Permits/Approvals Required

- Building Permit
- Historic District

Neighborhood Context



Previous Board of Adjustment Actions

July 17, 2007 – The Board voted to grant the request as presented and advertised as follows:

1) Variances from Article III, Section 10-302 (A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 4' x 19.2' one story addition and a 7.7' x 15.4' two story addition to the rear of an existing dwelling with:

a) a 0' right side yard where 10' is the minimum required,
b) 46.7% building coverage where 30% is the maximum allowed; and,
c) 24.8% open space where 25% is the minimum required.

Planning Department Comments

The applicant is requesting relief to allow for the installation of heat pump at the rear of the primary structure. The proposed mechanical unit location is within the 10 foot side yard requirement (Section 10.520 of the Zoning Ordinance) and section 10.515.14 as stated below.

> ***10.515.14***
>
> *A mechanical system (i.e. HVAC, power generator, etc.) that is less than 36 inches above the ground level with a mounting pad not exceeding 10 square feet shall be exempt from yard requirements, but shall be set back at least 10 feet from a property line; and shall not be located closer to the street than the front of the principal structure.*

The house is currently non-conforming and is surrounded on 3 sides with properties that also have existing non-conforming structures.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*

(a) The property has special conditions that distinguish it from other properties in the area.

AND

(b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.

OR

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Section 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

47 Howard Street

Map 103 Lot 84

To permit the following:

1. Heat Pump with a Rear Setback of +/- 8 feet where 10' is required.

The property owner declares that:

2. The small lot with existing structures & site improvements has few locations to locate the required Heat Pump. Moving it an additional two feet from property line cannot be achieved due to our back patio door & granite steps. The location shown is out of any public view and screened by our six foot tall backyard fencing.

Criteria for the Variance:

1. The Variances are not contrary to the public interest in that this location will have no public view of the Heat Pumps and will be fenced in from the Abutter's rear yard(s).

2. The Variances are consistent with the spirit of the ordinance as noted in Item 1.

3. Substantial justice will be done, as this work will allow the upgrade of the existing mechanical system without impacting the neighborhood.

4. This Variances will not diminish the value of surrounding properties.

5. The special condition of this property is the existing non-conforming Rear Setback (structures on property lines), and room for this unit cannot be created without removal of existing back patio door(s) & granite step(s).

12/9/22, Justin Zeimetz & Sarah Gardent

BACK OF HOUSE
PROPOSED ROUTING OF EXTERIOR MECHANICAL LINES.
PROPOSED LOCATION OF EXTERIOR MINI SPLIT UNIT.
EXTERIOR MECHANCIAL LINES TO BE ENCASED & CONCEALED IN WHITE PVC TRIM

BACK OF HOUSE
PROPOSED ROUTING OF EXTERIOR MECHANICAL LINES.
EXTERIOR MECHANCIAL LINES TO BE ENCASED & CONCEALED IN WHITE PVC TRIM

Property Information

Property ID	0109-0019-0000
Location	290 PLEASANT ST
Owner	LIVERMORE CONDO MASTERCARD

MAP FOR REFERENCE ONLY
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Geometry updated 09/21/2022
Data updated 3/9/2022

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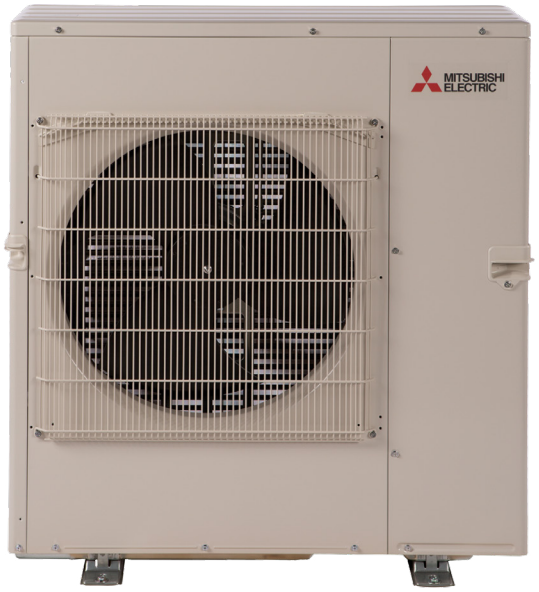
MXZ-5C42NA3
3.5-TON MULTI-ZONE INVERTER HEAT-PUMP SYSTEM

Job Name:	
System Reference:	Date:



FEATURES

- Variable speed INVERTER-driven compressor
- Optional base pan heater
- Quiet outdoor unit operation as low as 56 dB(A)
- High pressure protection
- Compressor thermal protection
- Compressor overcurrent detection
- Fan motor overheating/voltage protection

Specifications are subject to change without notice.

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SPECIFICATIONS: MXZ-5C42NA3

Cooling[1] (Non-Ducted // Mix // Ducted)	Maximum Capacity	BTU/H	43,000 // 43,000 // 43,000
	Rated Capacity	BTU/H	40,500 // 39,000 // 37,500
	Minimum Capacity	BTU/H	12,600 // 12,600 // 12,600
	Maximum Power Input	W	4,775 // 4,775 // 4,775
	Rated Power Input	W	4,403 // 4,286 // 4,112
	Power Factor (208V, 230V)	%	98.9, 98.9 // 98.9, 98.9 // 98.9, 98.9
Heating at 47°F[2] (Non-Ducted // Mix // Ducted)	Maximum Capacity	BTU/H	53,600 // 53,600 // 53,600
	Rated Capacity	BTU/H	45,000 // 43,000 // 41,000
	Minimum Capacity	BTU/H	11,400 // 11,400 // 11,400
	Maximum Power Input	W	6,160 // 6,160 // 6,160
	Rated Power Input	W	3,575 // 3,519 // 3,463
	Power Factor (208V, 230V)	%	98.1, 98.1 // 98.2, 98.2 // 98.2, 98.2
Heating at 17°F[3] (Non-Ducted // Mix // Ducted)	Maximum Capacity	BTU/H	30,500 // 29,800 // 29,100
	Rated Capacity	BTU/H	24,400 // 23,700 // 23,000
	Maximum Power Input	W	4,750 // 4,991 // 5,231
	Rated Power Input	W	2,943 // 2,906 // 2,869
Heating at 5°F[4] (Non-Ducted // Mix // Ducted)	Maximum Capacity	BTU/H	25,000 // 25,000 // 25,000
	Maximum Power Input	W	5,000 // 5,200 // 5,400
Efficiency (Non-Ducted // Mix // Ducted)	SEER		19.7 // 17.4 // 15.2
	EER[1]		9.2 // 9.1 // 9.0
	HSPF (IV)		10.3 // 9.7 // 9.1
	COP at 47°F[2]		3.69 // 3.58 // 3.47
	COP at 17°F at Maximum Capacity[3]		1.88 // 1.75 // 1.63
	COP at 5°F at Maximum Capacity[4]		1.47 // 1.42 // 1.36
	ENERGY STAR® Certified		No // No // No
Electrical	Electrical Power Requirements	Voltage, Phase, Frequency	208/230, 1, 60
	Guaranteed Voltage Range	V AC	187-253
	Voltage: Indoor - Outdoor, S1-S2	V AC	208/230
	Voltage: Indoor - Outdoor, S2-S3	V DC	24
	Short-circuit Current Rating (SCCR)	kA	5
	Recommended Fuse/Breaker Size	A	40
	Recommended Wire Size	AWG	14
	Minimum Circuit Ampacity	A	32.5
	Maximum Overcurrent Protection	A	40
	Fan Motor Full Load Amperage	A	2.43
Outdoor unit	Airflow Rate (Cooling / Heating)	CFM	2,150 / 2,550
	Refrigerant Control		LEV
	Defrost Method		Reverse Cycle
	Heat Exchanger Type		Plate fin coil
	Sound Pressure Level, Cooling[1]	dB(A)	56
	Sound Pressure Level, Heating[2]	dB(A)	58
	Compressor Type		DC INVERTER-driven Twin Rotary
	Compressor Model		MNB33FBTMC-L
	Compressor Rated Load Amps	A	20
	Compressor Locked Rotor Amps	A	28.8
	Compressor Oil Type // Charge	oz.	FV50S // 37.2
	Base Pan Heater		Optional
	Unit Dimensions	W: In. [mm]	37-13/32 [950]
		D: In. [mm]	13 [330]
		H: In. [mm]	41-17/64 [1,048]
	Package Dimensions	W: In. [mm]	41-3/8 [1,050]
		D: In. [mm]	17-3/8 [440]
		H: In. [mm]	46-3/4 [1,190]
	Unit Weight	Lbs.[kg]	189 [86]
	Package Weight	Lbs.[kg]	214 [97]
Outdoor unit operating temperature range	Cooling Intake Air Temp (Maximum / Minimum*A)	°FDB	115 / 14
	Cooling Thermal Lock-out / Re-start Temperatures	°FDB	10.4 / 14
	Heating Intake Air Temp (Maximum / Minimum)	°FWB	65 / 5
	Heating Thermal Lock-out / Re-start Temperatures	°FDB	1.4 / 5
Refrigerant	Charge	Lbs, oz	8.0, 13.0
	Chargeless Piping Length	Ft. [m]	98.0 [30.0]
	Additional Refrigerant Charge Per Additional Piping Length	oz./Ft. [g/m]	0.216 [20]

NOTES:

AHRI Rated Conditions (Rated data is determined at a fixed compressor speed)	[1]Cooling (Indoor // Outdoor)	°F	80 DB, 67 WB // 95 DB, 75 WB
	[2]Heating at 47°F (Indoor // Outdoor)	°F	70 DB, 60 WB // 47 DB, 43 WB
	[3]Heating at 17°F (Indoor // Outdoor)	°F	70 DB, 60 WB // 17 DB, 15 WB
Conditions	[4]Heating at 5°F (Indoor // Outdoor)	°F	70 DB, 60 WB // 5 DB, 4 WB

*Applications should be restricted to comfort cooling only; equipment cooling applications are not recommended for low ambient temperature conditions.
*A 5°F DB - 115°F DB when optional wind baffles are installed

For actual capacity performance based on indoor unit type and number of indoor units connected, please refer to MXZ Operational Performance.
Although the maximum connectable capacity is 130%, the outdoor unit cannot provide more than 100% of the rated capacity. Please utilize this over capacity capability for load shedding or applications where it is known that all connected units will NOT be operating at the same time.

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SPECIFICATIONS: MXZ-5C42NA3

Indoor unit connection	Maximum Number of Connected IDU		5
	Minimum Number of Connected IDU		2
	Minimum connected capacity	BTU/H	12,000
	Maximum connected capacity	BTU/H	51,000
Piping	Liquid Pipe Size O.D. (Flared)	In.[mm]	A,B,C,D,E: 1/4 [A,B,C,D,E: 6.35]
	Gas Pipe Size O.D. (Flared)	In.[mm]	A: 1/2; B,C,D,E: 3/8 [A: 12.72; B,C,D,E: 9.52]
	Total Piping Length	Ft. [m]	262 [80]
	Maximum Height Difference, ODU above IDU	Ft. [m]	49 [15]
	Maximum Height Difference, ODU below IDU	Ft. [m]	49 [15]
	Farthest Piping Length from ODU to IDU	Ft. [m]	82 [25]
	Maximum Number of Bends for IDU		80

NOTES:

AHRI Rated Conditions (Rated data is determined at a fixed compressor speed)	[1]Cooling (Indoor // Outdoor)	°F	80 DB, 67 WB // 95 DB, 75 WB
	[2]Heating at 47°F (Indoor // Outdoor)	°F	70 DB, 60 WB // 47 DB, 43 WB
	[3]Heating at 17°F (Indoor // Outdoor)	°F	70 DB, 60 WB // 17 DB, 15 WB
Conditions	[4]Heating at 5°F (Indoor // Outdoor)	°F	70 DB, 60 WB // 5 DB, 4 WB

*Applications should be restricted to comfort cooling only; equipment cooling applications are not recommended for low ambient temperature conditions.
^A 5°F DB - 115°F DB when optional wind baffles are installed

For actual capacity performance based on indoor unit type and number of indoor units connected, please refer to MXZ Operational Performance.
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OUTDOOR UNIT ACCESSORIES: MXZ-5C42NA3

Air Outlet Guide	Air Outlet Guide (1 Piece)	☐ PAC-SH96SG-E
Ball Valve	Refrigeration Ball Valve - 1/2”	☐ BV12FFSI2
	Refrigeration Ball Valve - 1/4”	☐ BV14FFSI2
	Refrigeration Ball Valve - 3/8”	☐ BV38FFSI2
	Refrigeration Ball Valve - 5/8”	☐ BV58FFSI2
Control Wire	M-Net Control Wire, 1,000’ Roll (16-AWG, Standard, Twisted Pair, Shielded, Jacketed- Plenum rated)	☐ CW162S-1000
	M-Net Control Wire, 250’ Roll (16-AWG, Standard, Twisted Pair, Shielded, Jacketed- Plenum rated)	☐ CW162S-250
Drain Socket	Drain Socket	☐ PAC-SG60DS-E
Hail Guards	Hail Guard	☐ HG-A1
M-NET Converter	M-NET Converter	☐ PAC-IF01MNT-E
Mini-Split Wire	14 Gauge, 4 wire MiniSplit Cable—250 ft. roll	☐ S144-250
	14 Gauge, 4 wire MiniSplit Cable—250 ft. roll	☐ SW144-250
	14 Gauge, 4 wire MiniSplit Cable—50 ft. roll	☐ S144-50
	14 Gauge, 4 wire MiniSplit Cable—50 ft. roll	☐ SW144-50
	16 Gauge, 4 wire MiniSplit Cable—250 ft. roll	☐ S164-250
	16 Gauge, 4 wire MiniSplit Cable—250 ft. roll	☐ SW164-250
	16 Gauge, 4 wire MiniSplit Cable—50 ft. roll	☐ S164-50
	16 Gauge, 4 wire MiniSplit Cable—50 ft. roll	☐ SW164-50
Mounting Pad	Condensing Unit Mounting Pad: 16” x 36” x 3”	☐ ULTRILITE1
	Outdoor Unit 3-1/4 inch Mounting Base (Pair) - Plastic	☐ DSD-400P
Optional Defrost Heater	Optional Defrost Heater	☐ PAC-645BH-E
Port Adapter	Adaptor: 1/2” x 3/8”	☐ MAC-A455JP-E
	Adaptor: 1/2” x 5/8”	☐ MAC-A456JP-E
	Adaptor: 3/8” x 1/2”	☐ MAC-A454JP-E
	Adaptor: 3/8” x 5/8”	☐ PAC-SG76RJ-E
Stand	18” Single Fan Stand	☐ QSMS1801M
	24” Single Fan Stand	☐ QSMS2401M
	Condenser Wall Bracket	☐ QSWB2000M-1
	Condenser Wall Bracket - Stainless Steel Finish	☐ QSWBSS
	Outdoor Unit Stand — 12” High	☐ QSMS1201M

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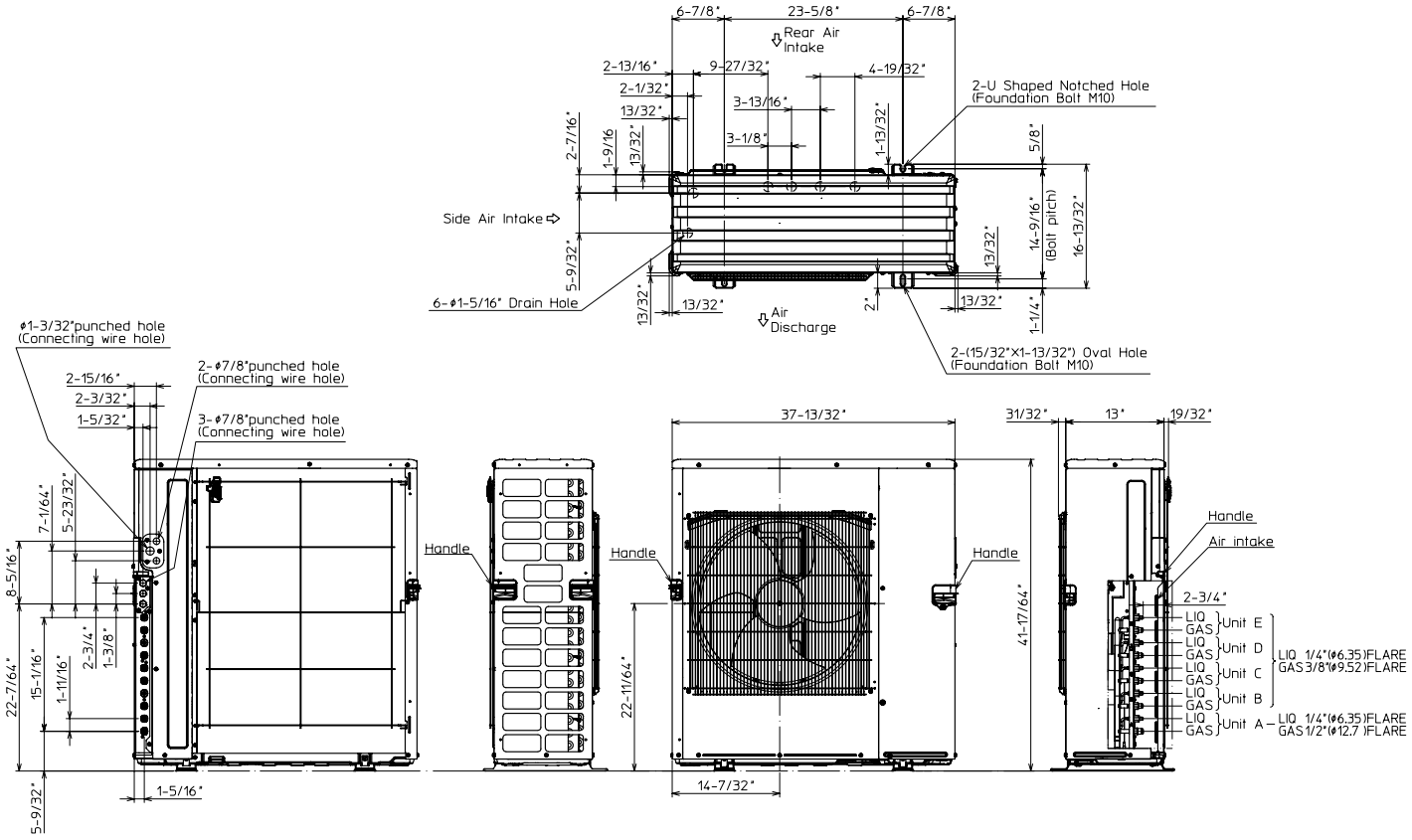
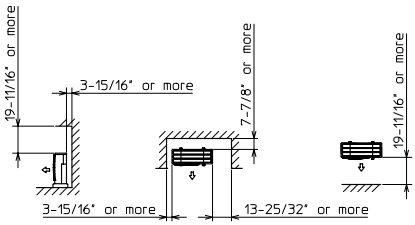
OUTDOOR UNIT DIMENSIONS: MXZ-5C42NA3

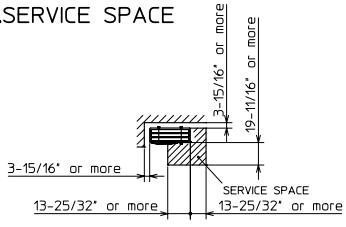
Unit: inch (mm)

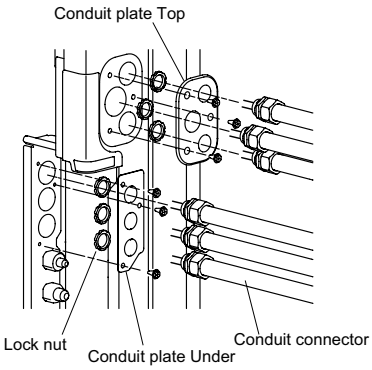


1.FREE SPACE



2.SERVICE SPACE





1340 Satellite Boulevard Suwanee, GA 30024
Toll Free: 800-433-4822 www.mehvac.com

FORM# MXZ-5C42NA3 - 202206

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III. NEW BUSINESS

B. The request of **Antonio Salema, Trustee of Salema Realty Trust (Owner),** for property located at **199 Constitution Avenue** whereas relief is needed to build a climbing, yoga, and general and specialty fitness studio in an existing building which requires the following 1) Special Exception from Section 10.440 Use #4.42 to allow a health club, yoga studio, martial arts school, or similar use that is greater than 2,000 GFA. Said property is located on Assessor Map 285 Lot 16-301 and lies within the Industrial District. (LU-22-249)

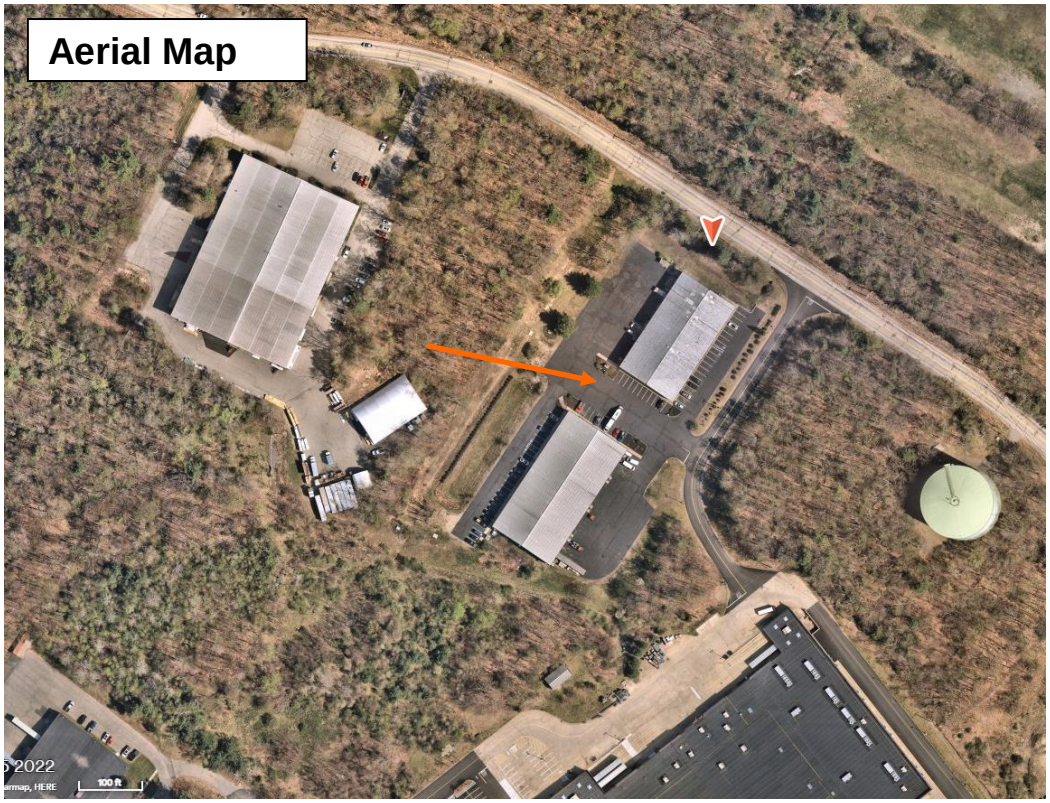
Existing and Proposed Conditions

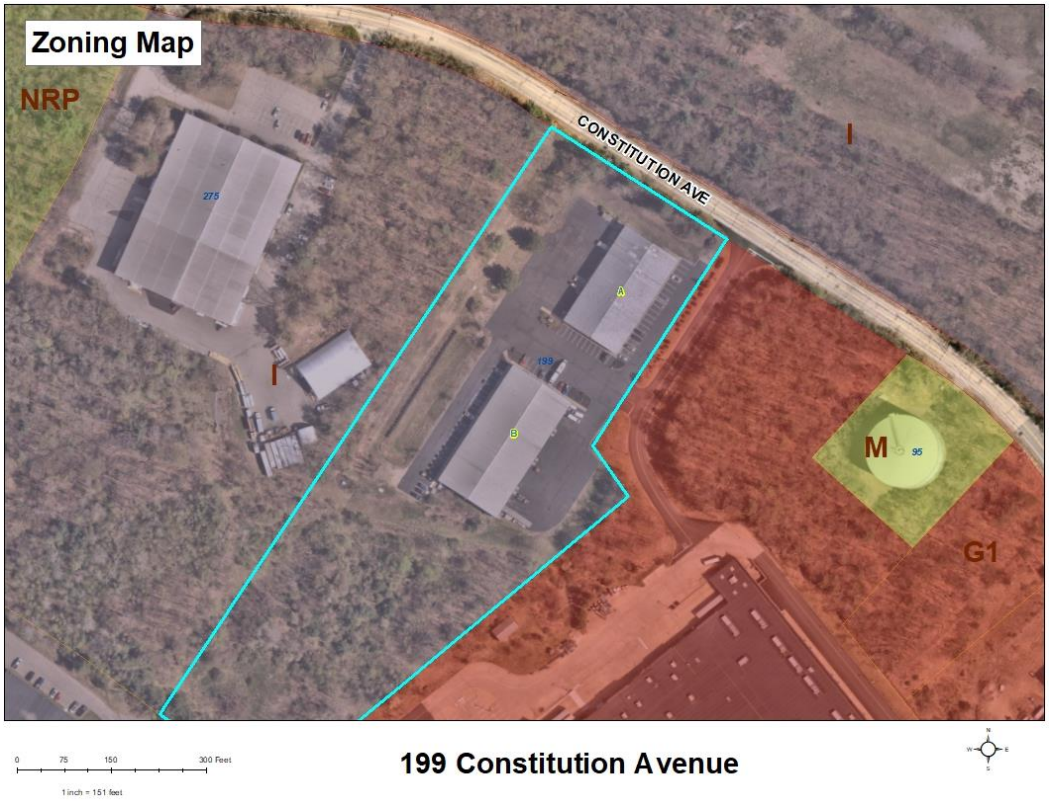
	Existing	Proposed	Permitted / Required	
Land Use:	Industrial	**Health Club**	Warehouse and Office Uses	
Lot area (sq. ft.):	366660	366660	87300 (2 ac)	min.
Lot Area per Dwelling Unit (sq. ft.):	N/A	N/A	N/A	min.
Street Frontage (ft.):	>300	>300	200	min.
Lot depth (ft.):	>1000	>1000	200	min.
Primary Front Yard (ft.):	70	70	70	min.
Left Side Yard (ft.):	>180	>180	50	min.
Right Side Yard (ft.):	50	50	50	min.
Rear Yard (ft.):	>300	>300	50	min.
Height (ft.):	<70	<70	70	max.
Building Coverage (%):	11.5	11.5	50	max.
Open Space Coverage (%):	>55	>55	20	min.
Parking	Ok	67	66	
Estimated Age of Structure:	1998	Variance request shown in red.		

Other Permits/Approvals Required

- Building Permit (Tennent Fit-up)

Neighborhood Context





199 Constitution Avenue

Previous Board of Adjustment Actions

June 3, 1997 – The Board **granted** a variance from Article II, Section 10-209 to allow the following:

1) An indoor recreational facility (dance studio/8 students, climbing wall/24 persons, gymnastics/12 students, tutor center/1 teacher & 2 students, trick blade and board course/20 persons) with associates babysitting service for members in a district where such use is not allowed.

October 21, 1997 – The Board **granted** an amendment to the June 3, 1997 variance as follows:

1) To change the located from Building #1 to Building #2.

January 20, 1998 – The Board **granted** a variance from Article II, Section 10-209(21) to allow the following:

1) The establishment of a 3,000 s.f. millwork sales for both retail and wholesale sales with more than 25% of the space being devoted to retail sales showroom.

June 27, 2000 The Board **granted** the following requests with stipulations:

1) A special exception as allowed in Article II, Section 10-209(35)(b) to place a 24' x 38' modular training trailer for a period of 6 months for use in training existing employees on a new manufacturing process software in a district where temporary structure may be allowed for 180 days by Special Exception, and,

2) A variance from Article III, Section 10-304(A) to allow said trailer within the required 50' rear yard setback where a 50' setback is the minimum required.

These were granted with the following stipulations:

a) The variance be in conjunction with the Special Exception; and,

b) A bond be posted in the amount of $1,000.00 to ensure removal of the trailer.

May 25, 2020 – The Board **denied** the request as follows:

To consider the application for construction of a multifamily dwelling containing 40 - 70 dwelling units in a zone where residential uses are not permitted which requires the following:

1) A Variance from Section 10.440 Use # 1.53 to allow more than 8 dwelling units where the use is not permitted in the district. Said property is shown on Assessor Map 285 Lot 16 and lies within the Industrial (I) District.

Planning Department Comments

The applicant is proposing the installation of a health club that includes climbing, exercise, and yoga facilities. The use is allowed by special exception under Section 10.440 Use # 4.42 of the Zoning Ordinance.

Special Exception Review Criteria

The application must meet all of the standards for a **special exception** (see Section 10.232 of the Zoning Ordinance).

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*

2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;
3. No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;
4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;
5. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and
6. No significant increase of stormwater runoff onto adjacent property or streets.

Section 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

Request for Special Exception pursuant to Section 10.232 of the City of Portsmouth, NH, Zoning Ordinance (the "Zoning Ordinance"), to grant Salt Pump Portsmouth, LLC, as tenant (the "Applicant"), to use a portion of the property at 199 Constitution Ave, further identified as city assessor map 285, lot 16-303 (the "Property"), located within the industrial zoning district, as a "[h]ealth club, yoga studio, martial arts school, or similar use" under 4.40 of Article 4, Section 10.440 of the Zoning Ordinance.

We set forth the requirements set forth in Section 10.232.20 through 10.232.26 of the Zoning Ordinance below and how the Applicant's request meets such requirements. Special Exception shall meet all of the following standards:

1. **Section 10.232.21 Standards as provided by this Ordinance for the particular use permitted by special exception**. Applicant will be leasing 14,500 SF (12,000 SF first floor and 2,500 SF mezzanine) in an existing 18,000 SF footprint building located on the Property, to be used for climbing, yoga, and related general and specialty fitness. The prior tenant of the same space was Little Big Farm Foods, a retail and wholesale producer of various baked food mixes. In addition to Applicant, the building has an existing tenant occupying 4,000 SF of warehouse and 2,000 SF of office space.

   Table 10.1112.321 (use number 4.40) of the Zoning Ordinance requires the Applicant to provide a minimum of fifty-eight (58) parking spaces. The other tenant in the building requires eight (8) spaces. Sixty-six (66) spaces is required in the aggregate. The site plan prepared by Jones & Beach Engineers, Inc., attached hereto as Exhibit A provides for sixty-seven (67) spaces. The following parking calculations are referenced therein:

   Building on Property consists of 4,000 SF warehouse; 2,000 SF office; 14,500 SF Applicant's use:
   - Warehouse – "wholesale use" – 1 space required per 2,000 SF GFA. 4,000 SF/2,000 = 2 spaces required.
   - Office – "professional, business, and financial use" – 1 space required per 350 SF GFA. 2,000 SF/350 = 5.7 ~ 6 spaces required.
   - Applicant's use – "health club" – 1 space per 250 SF GFA. 14,500 SF/250=58 spaces required.
   - 2 + 6 + 58 = 66 spaces required. 67 spaces provided.

2. **Section 10.232.22 No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.** Similar to other health clubs, yoga studios, or similar uses, Applicant's use will not create a hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

3. **Section 10.232.23 No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.** The Applicant will not change the location or scale of buildings and other structures, parking areas, or accessways. Similar to other health clubs, yoga studios, or similar uses, Applicant's use does not create odor, smoke, gas, dust, or other pollutants, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.

4. **Section 10.232.24 No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity**. Applicant will not create a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. The Property is located to the east of Banfield

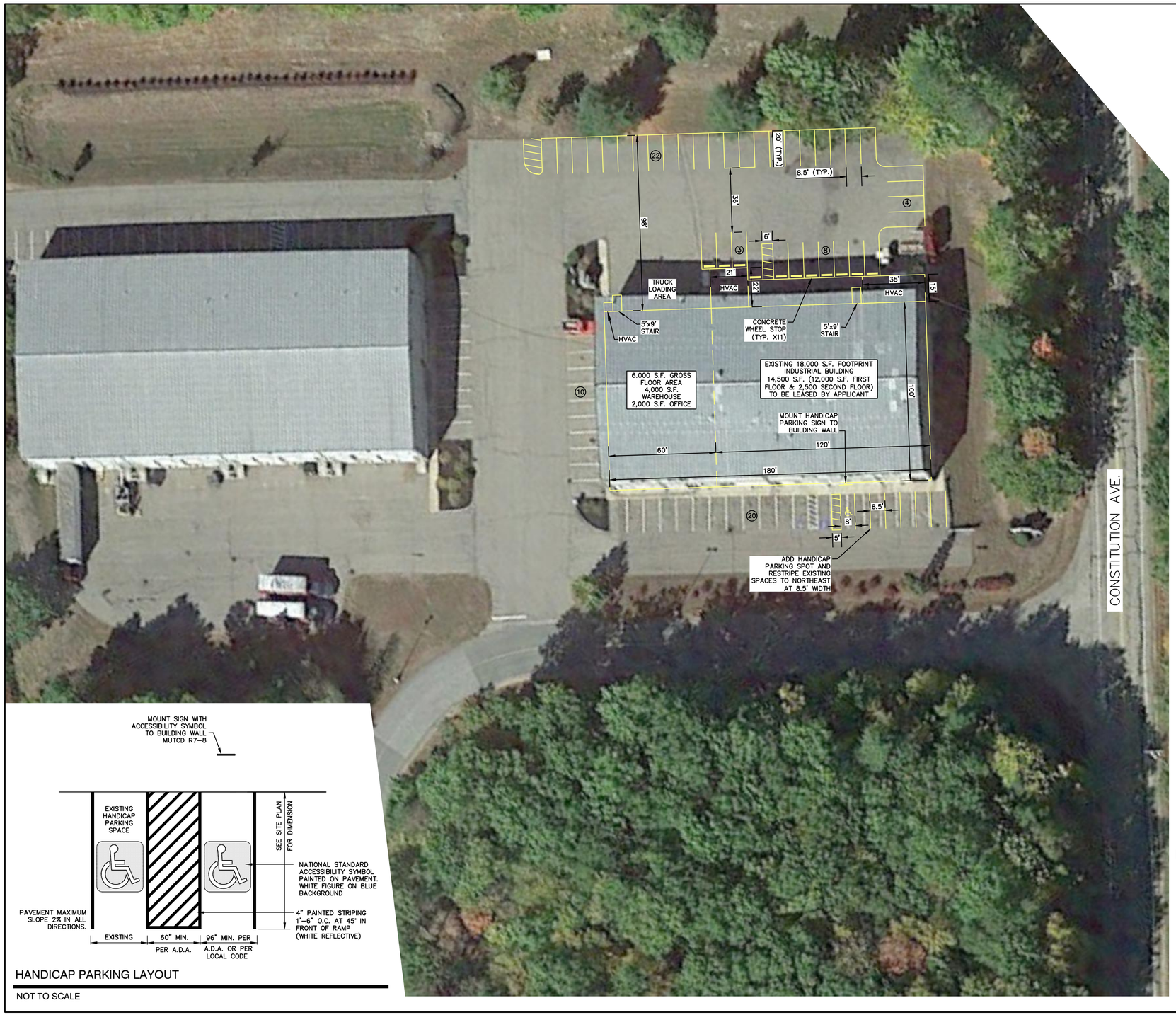
Road and west of Route 1 (Lafayette Road), a Walmart Supercenter, the Veridian Residences, and the Portsmouth Green Shopping Mall, which contains similar fitness offerings such as a pilates, cycling, barre class, and group fitness studios.

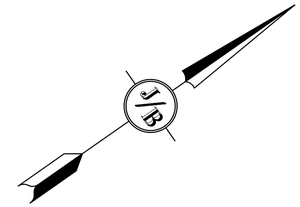
5. **Section 10.232.25 No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools.** Applicant will not create an excessive demand on municipal services. Applicant expects there to be a decrease in water, sewer, and waste disposal use compared to the prior tenant's use.

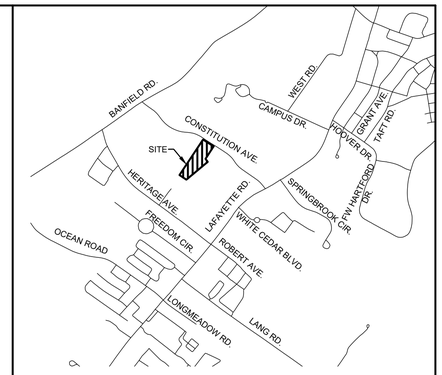
6. **Section 10.232.26 No significant increase of stormwater runoff onto adjacent property or streets.** Applicant will not change the impervious surface area existing today on the Property therefore Applicant's use should not result in any significant increase of stormwater runoff to adjacent property or streets.

A preliminary floor plan of the leased space is attached hereto as Exhibit B.

Applicant respectfully requests that its request for Special Exception be granted.







LOCUS SCALE: 1"=2000'

SITE NOTES:

1. THE INTENT OF THIS PLAN IS TO ADD STRIPED PARKING FOR A NEW INDOOR CLIMBING FACILITY TO LEASE 14,500 S.F IN THE EXISTING INDUSTRIAL BUILDING.

2. ZONING DISTRICT: INDUSTRIAL
   LOT AREA MINIMUM = 2 ACRES
   LOT FRONTAGE MINIMUM = 200'
   BUILDING SETBACKS (MINIMUM):
   FRONT SETBACK = 70'
   SIDE SETBACK = 50'
   REAR SETBACK = 50'
   MAX. BUILDING HEIGHT = 70'
   MIN. OPEN SPACE = 20%

3. PARKING CALCULATIONS:
   4,000 S.F. WAREHOUSE; 2,000 S.F. OFFICE; 14,500 S.F. CLIMBING WALL
   WAREHOUSE – "WHOLESALE USE" – 1 SPACE REQUIRED PER 2,000 S.F. GFA. 4,000 S.F./2000 = 2 SPACES REQUIRED
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   2+6+58 = 66 SPACES REQUIRED
   67 SPACES PROVIDED

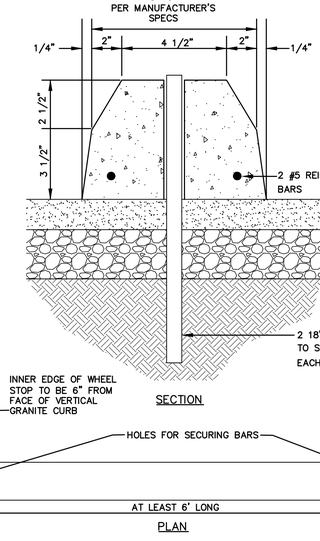
4. THIS PLAN SET HAS BEEN PREPARED BY JONES & BEACH ENGINEERS, INC., FOR MUNICIPAL AND STATE APPROVALS BASED ON AERIAL DATA. NO FIELD SURVEY HAS BEEN PERFORMED.

5. SUBJECT PROPERTY IS NOT LOCATED WITHIN FEDERALLY DESIGNATED 100 YEAR FLOOD HAZARD ZONE. REFERENCE FEMA COMMUNITY PANEL NO. 33015C027OF, DATED JANUARY 29, 2021.

6. ALL SIGNAGE AND PAVEMENT MARKINGS SHALL BE IN ACCORDANCE WITH THE LATEST EDITION OF THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (M.U.T.C.D.) AND NHDOT STANDARDS AND SPECIFICATIONS (NON-REFLECTORIZED PAVEMENT MARKINGS), UNLESS OTHERWISE NOTED.

HANDICAP PARKING LAYOUT

NOT TO SCALE



PRECAST CONCRETE WHEELSTOP

NOT TO SCALE

GRAPHIC SCALE

30 0 15 30 60 120

(IN FEET)
1 inch = 30 ft.

PROJECT PARCEL
CITY OF PORTSMOUTH
TAX MAP 285, LOT 16-3

APPLICANT
SALT PUMP CLIMBING CO.
ATTN: TAKI MIYAMOTO
138 NORTH RIVER ROAD
LEE, NH 03861

TOTAL LOT AREA
370,119 SQ. FT. ±
8.50 ACRES ±

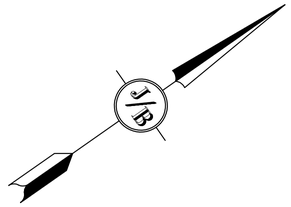
1	12/9/22	MINOR REVISIONS	DJM
0	12/5/22	ISSUED FOR REVIEW	DJM
REV.	DATE	REVISION	BY

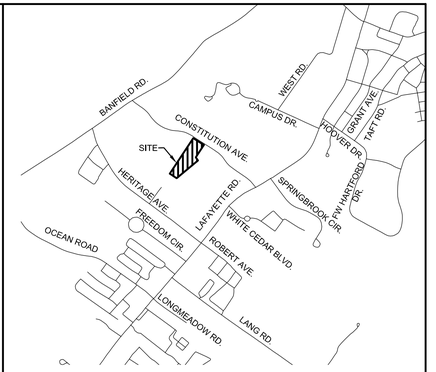
Design: BAJ | Draft: DJM | Date: 12/1/22
Checked: BAJ | Scale: AS NOTED | Project No.: 22259
Drawing Name: 22259-PLAN.dwg
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.

Designed and Produced in NH
Jones & Beach Engineers, Inc.
85 Portsmouth Ave.
PO Box 219
Stratham, NH 03885
Civil Engineering Services
603-772-4746
FAX: 603-772-0227
E-MAIL: JBE@JONESANDBEACH.COM

Plan Name: ZBA SITE PLAN
Project: PARKING PLAN
199 CONSTITUTION AVE., PORTSMOUTH, NH
Owner of Record: SALEMA REALTY TRUST
369 LAFAYETTE RD., HAMPTON, NH 03842

DRAWING No.
C1
SHEET 1 OF 1
JBE PROJECT NO. 22259





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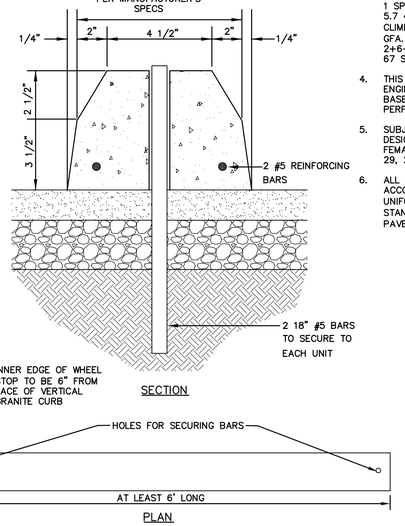
HANDICAP PARKING LAYOUT

NOT TO SCALE



PRECAST CONCRETE WHEELSTOP

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GRAPHIC SCALE

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(IN FEET)
1 inch = 30 ft.

PROJECT PARCEL
CITY OF PORTSMOUTH
TAX MAP 285, LOT 16-3

APPLICANT
SALT PUMP CLIMBING CO.
ATTN: TAKI MIYAMOTO
138 NORTH RIVER ROAD
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REV.	DATE	REVISION	BY
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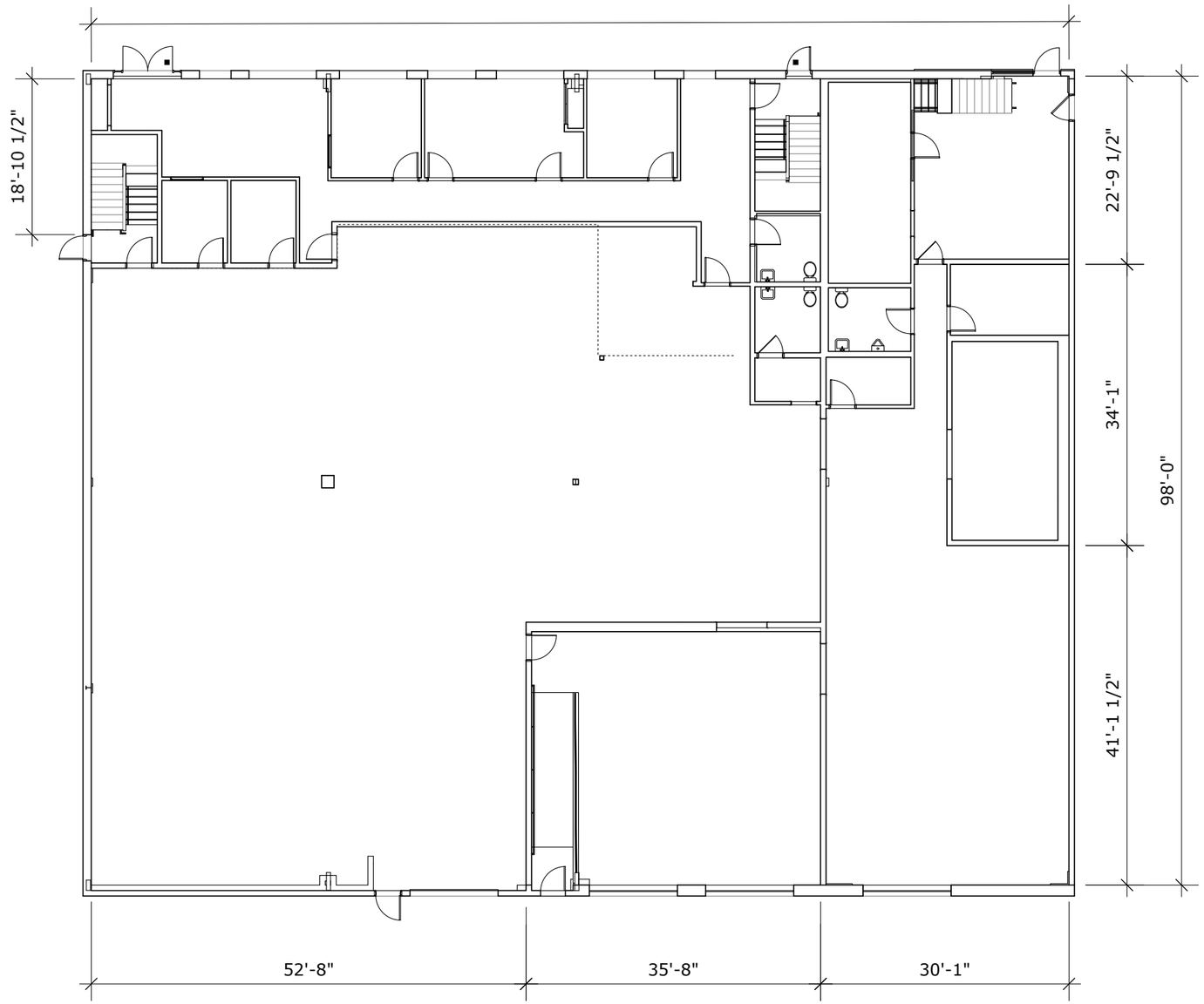
0	12/5/22	ISSUED FOR REVIEW	DJM

Designed and Produced in NH
J/B Jones & Beach Engineers, Inc.
85 Portsmouth Ave.
PO Box 219
Stratham, NH 03885
Civil Engineering Services
603-772-4746
FAX: 603-772-0227
E-MAIL: JBE@JONESANDBEACH.COM

Plan Name:	ZBA SITE PLAN
Project:	PARKING PLAN 199 CONSTITUTION AVE., PORTSMOUTH, NH
Owner of Record:	SALEMA REALTY TRUST 369 LAFAYETTE RD., HAMPTON, NH 03842

DRAWING No.
C1
SHEET 1 OF 1
JBE PROJECT NO. 22259



1 1st Floor EXISTING
A02 Scale: 1/16" = 1'

WWW.RYANSTUDIO.US

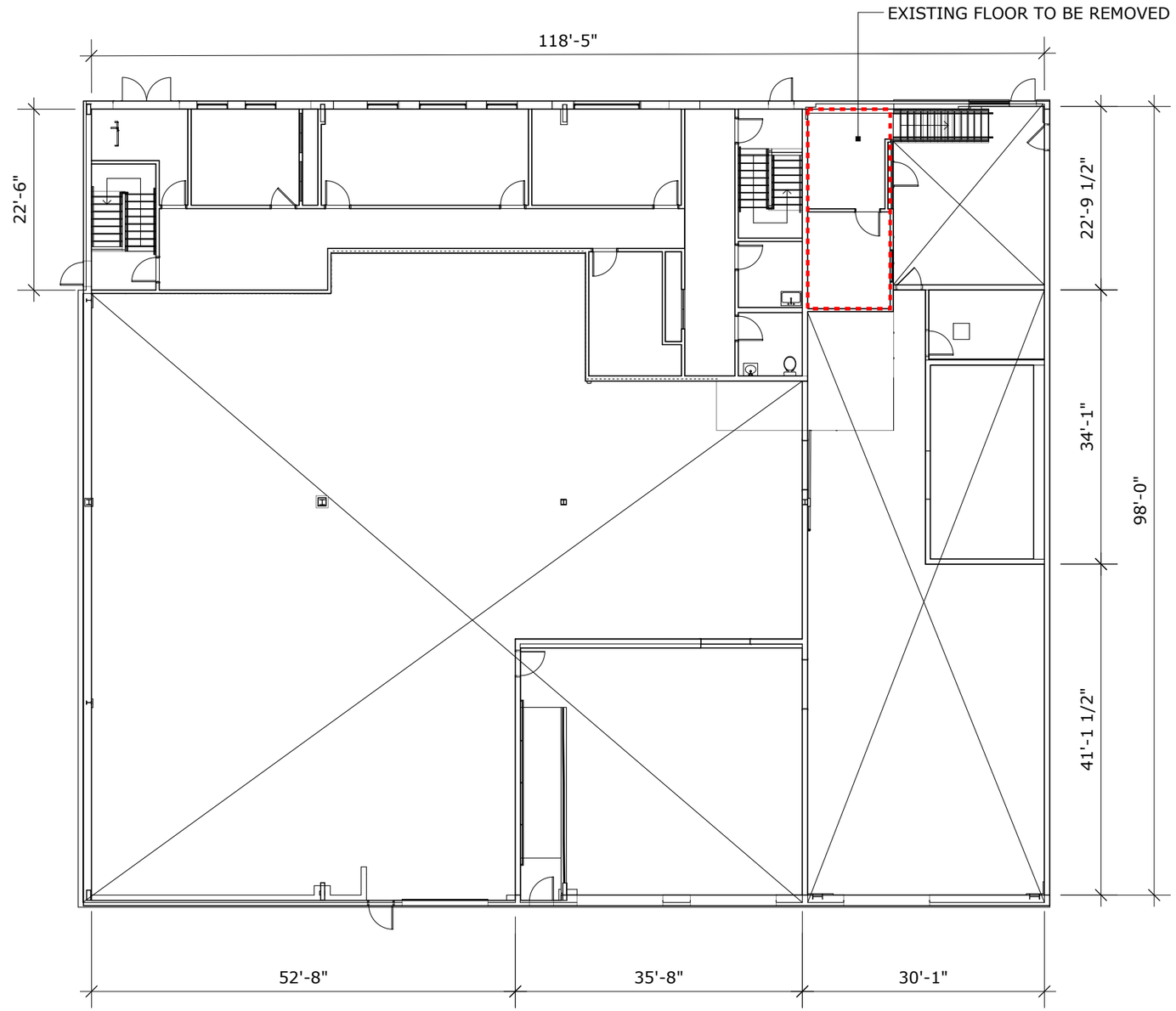
REVISIONS

	MM/DD/YY	REMARKS
1	11/17/22	CONCEPT DESIGN v.2
2	11/28/22	CONCEPT DESIGN v.3
3	12/05/22	CONCEPT DESIGN v.4
4		
5		

SALT PUMP Portmoouth
Concept Design

1st Floor EXISTING

A 02



1 2nd Floor EXISTING
A03 Scale: 1/16" = 1'

WWW.RYANSTUDIO.US

REVISIONS

	MM/DD/YY	REMARKS
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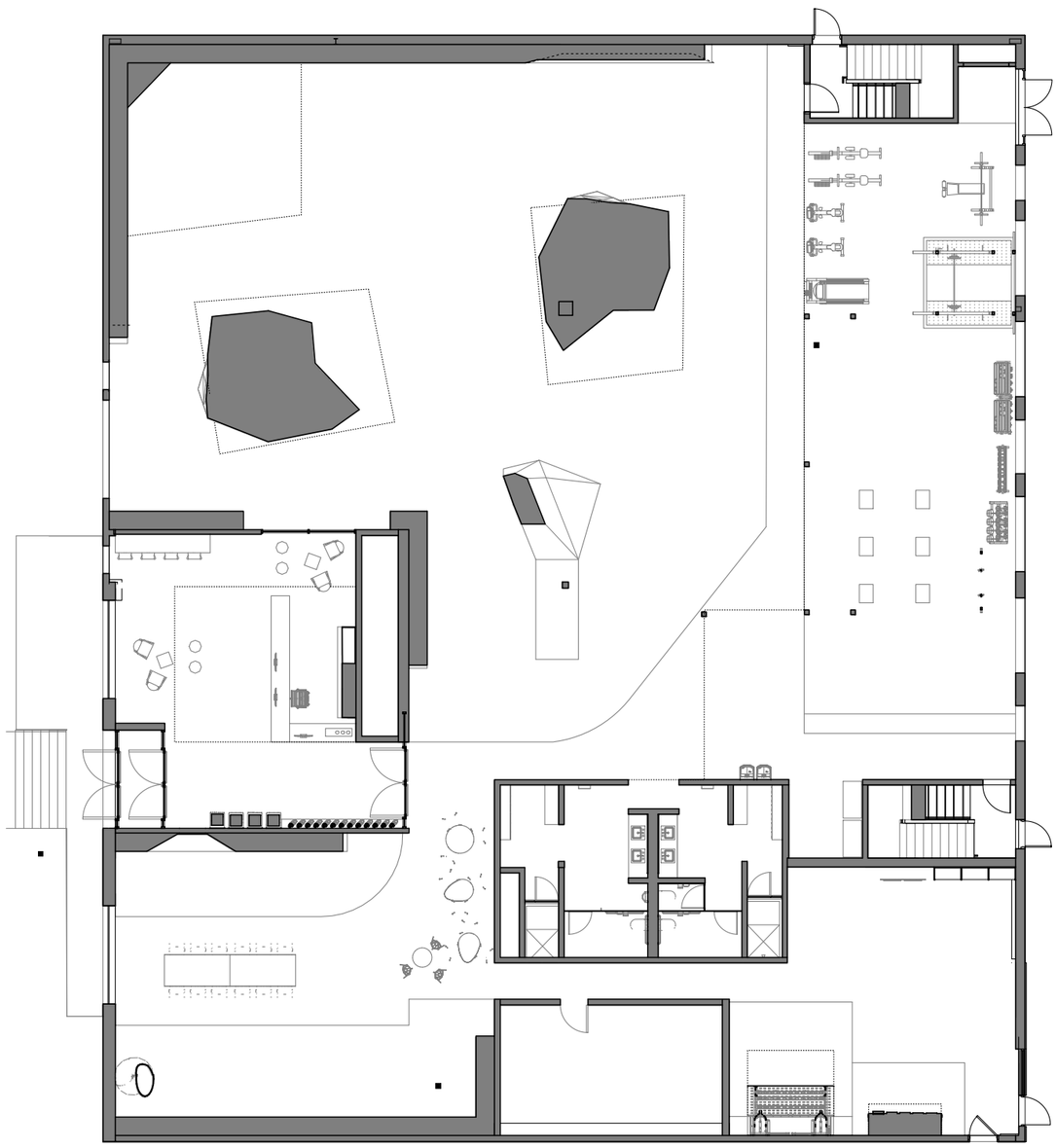
2	11/28/22	CONCEPT DESIGN v.3
3	12/05/22	CONCEPT DESIGN v.4
4		
5		

SALT PUMP Portsmouth
Concept Design

2nd Floor EXISTING

A 03



1 / A08 1st Floor NEW

Scale: 1/16" = 1'

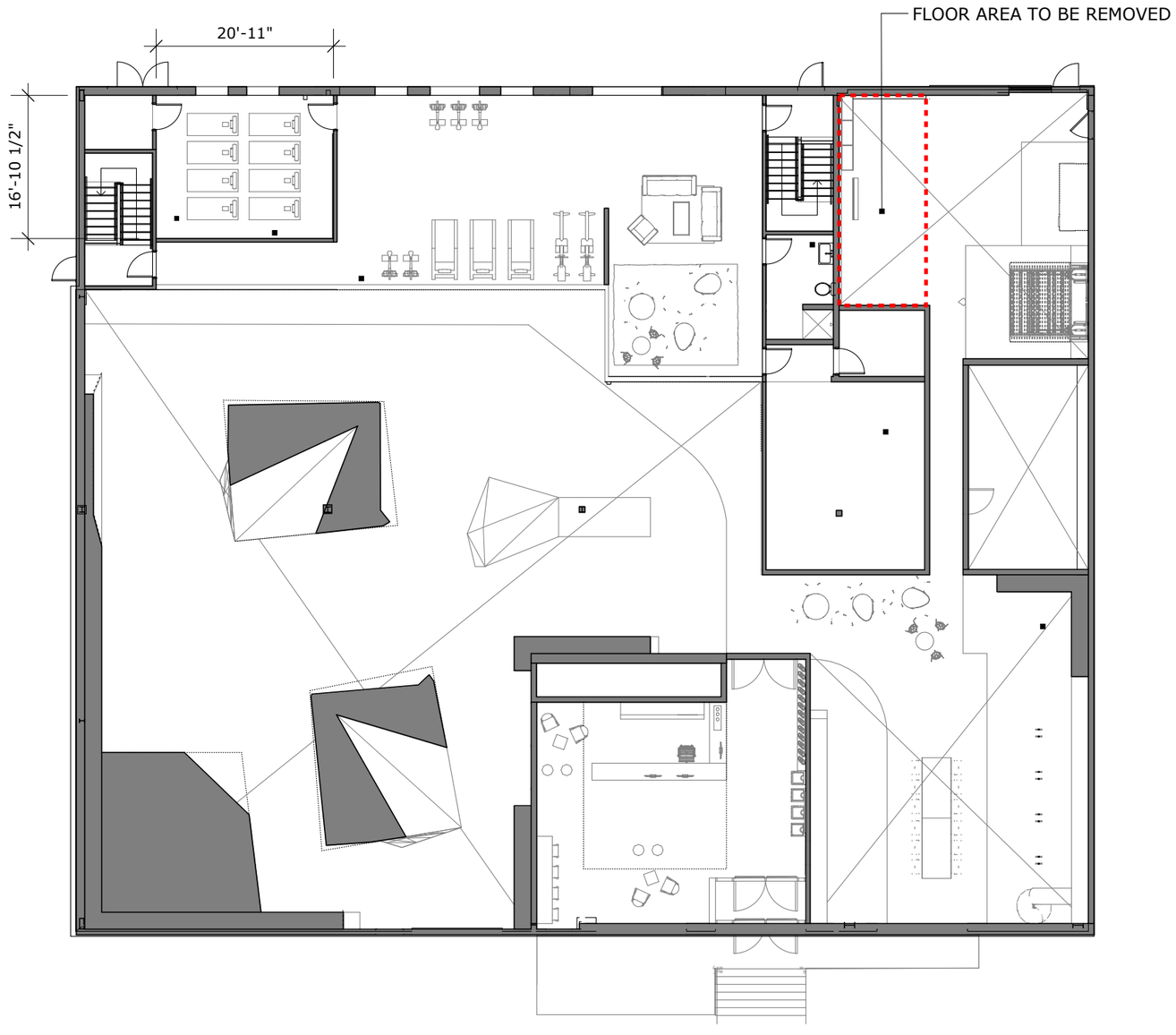
A / 04	1st Floor NEW	**SALT PUMP Portsmouth** Concept Design

REVISIONS

	MM/DD/YY	REMARKS
1	11/17/22	CONCEPT DESIGN v.2
2	11/28/22	CONCEPT DESIGN v.3
3	12/05/22	CONCEPT DESIGN v.4
4		
5		

WWW.RYANSTUDIO.US

RYAN STUDIO VENICES FOR LIFE



1 A09 2nd Floor NEW
Scale: 1/16" = 1'

WWW.RYANSTUDIO.US

REVISIONS

	MM/DD/YY	REMARKS
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2	11/28/22	CONCEPT DESIGN v.3
3	12/05/22	CONCEPT DESIGN v.4
4		
5		

SALT PUMP PORTSMOUTH
Concept Design

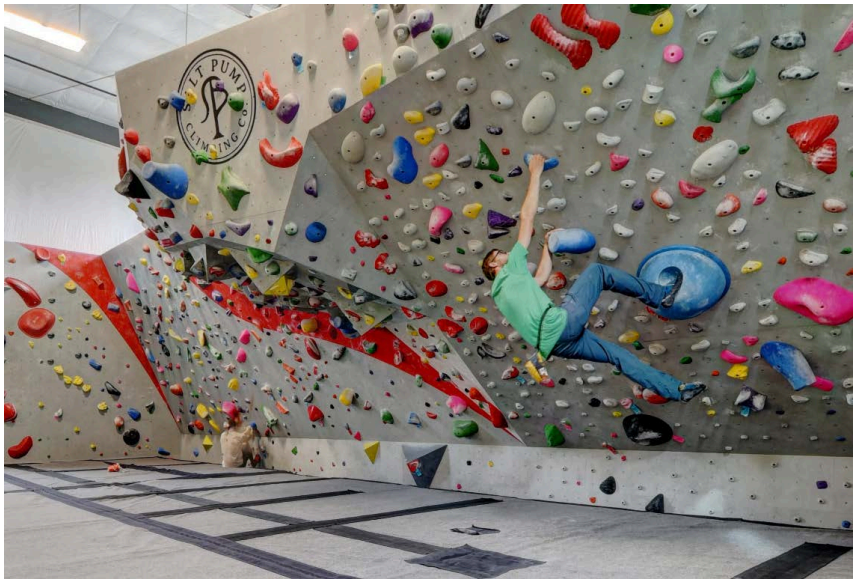
2nd Floor NEW

A 05

Exterior Pictures

Interior Pictures

Pictures of Bouldering Area in Salt Pump Climbing Co. in Scarborough, Maine



To: City of Portsmouth

Re: 199 Constitution Avenue, Portsmouth, NH ("Premises")

Antonio Salema, Trustee of Salema Realty Trust, owner of both units in the 199 Constitution Avenue Condominium and sole Member of the 199 Constitution Avenue Condominium Association, does hereby authorize Takeshi Miyamoto and Salt Pump Portsmouth, LLC, and their engineers, surveyors, consultants and attorneys to to act on our behalf to appear in front on any Board and to submit applications for special exceptions and other permits and approvals as may be required for their intended use of the Premises.

Salema Realty Trust

By: _____
Antonio Salema, Trustee

Dated: December 16, 2022

III. NEW BUSINESS

C. The request of **Jesse M Lynch and Sarah L Lynch (Owners),** for property located at **19 Sunset Road** whereas relief is needed to construct a connector structure from primary structure to the garage which requires the following: 1) Variance from Section 10.521 to allow a) 27 foot setback where 30 feet is required; and b) 22 % building coverage where 20% is required. 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 153 Lot 19 and lies within the Single Residence B (SRB) District. (LU-22-250)

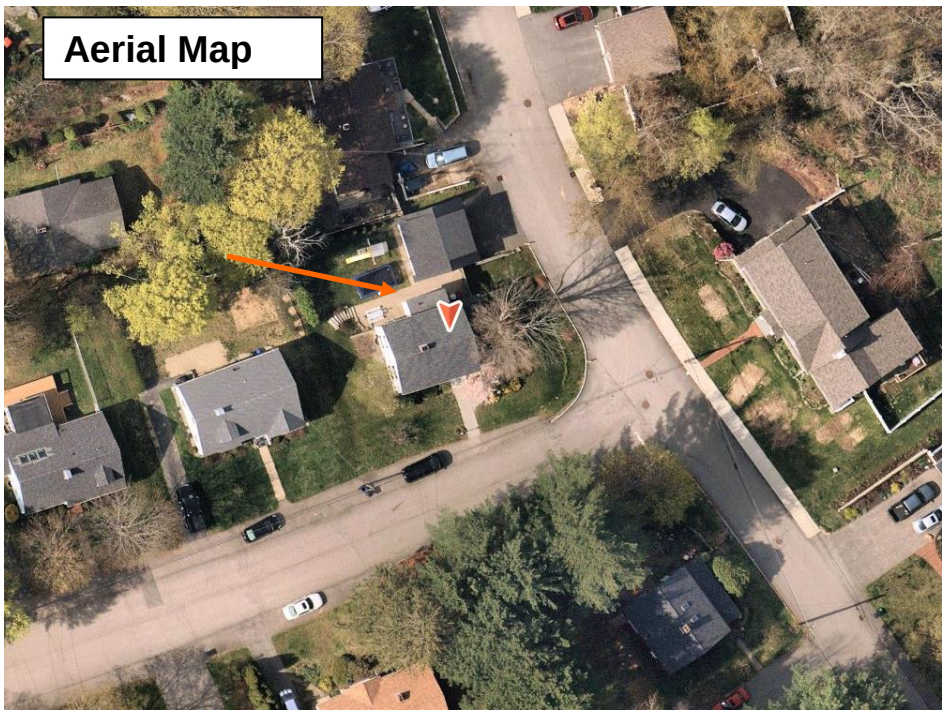
Existing and Proposed Conditions

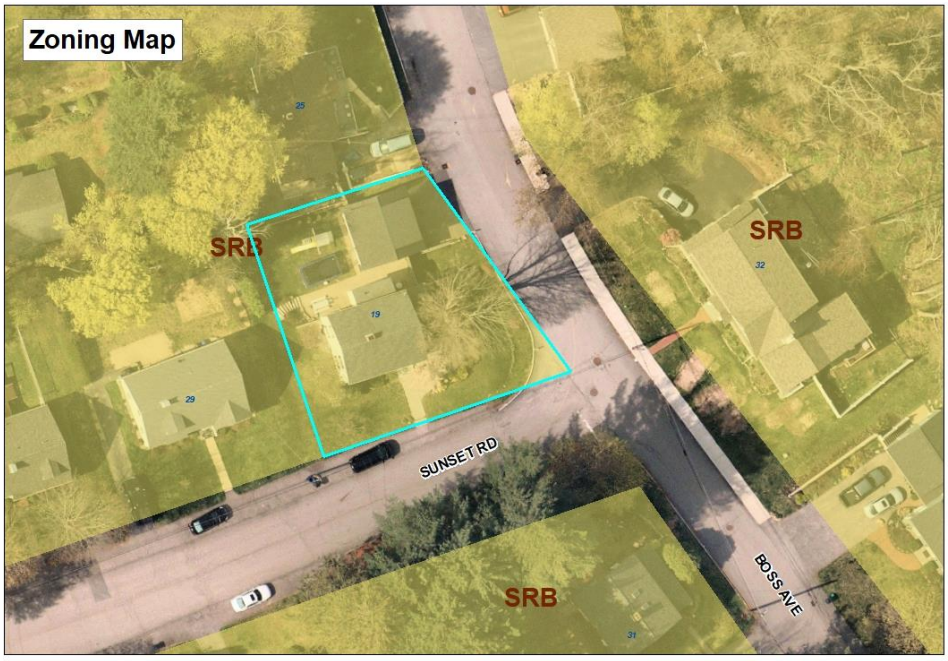
	Existing	Proposed	Permitted / Required	
Land Use:	Single Family	Connector between primary structure and garage	Primarily residential uses	
Lot area (sq. ft.):	7754	7754	15,000	min.
Lot Area per Dwelling Unit (sq. ft.):	7754	7754	15,000	min.
Street Frontage (ft.):	>100	>100	100	min.
Lot depth (ft.):	95.6	95.6	100	min.
Primary Front Yard (ft.):	25	25	30	min.
Secondary Front Yard (ft.):	10.8	10.8 (25 for new connector)	30 (per averaging 16)	min.
Right Side Yard (ft.):	15.1	15.1	10	min.
Rear Yard (ft.):	3.5 – Existing Garage	3.5 – Existing Garage **27 – New Connector Structure**	30	min.
Height (ft.):	25	25	35	max.
Building Coverage (%):	20.3	**22**	20	max.
Open Space Coverage (%):	68.7	66.8	40	min.
Parking	Ok	Ok	2	
Estimated Age of Structure:	1951	Variance request shown in red.		

Other Permits/Approvals Required

- Building Permit

Neighborhood Context





Previous Board of Adjustment Actions

April 18, 2017 – The Board **granted** variances to reconstruct an existing garage in the same footprint and an expansion in height with the following:

1) An accessory structure to be located in the required front yard and closer to the street than the principal structure;
2) A 7' rear yard where 19' was required; and
3) A lawful nonconforming building to be reconstructed or enlarged without conforming to the Ordinance.

June 20, 2017 – Relief from Zoning Ordinance including:

1) Variances from Section 10.521 to allow the following:
    a) a 10.975'± secondary front yard where 30' is required;
    b) 20.30% ± building coverage where 20% is the maximum allowed;
2) Variance from Section 10.571 to allow an accessory building or structure to be located in a required front yard or closer to the street than the principal building;
3) Variance from Section 10.573.20 to allow an accessory building or structure more than 10" in height or 100 s.f. in area to be closer to any property line than the height of the structure;
4) Variance from Section 10.321 to allow a lawful nonconforming building or structure to reconstructed or enlarged without conforming to the ordinance.

Planning Department Comments

Applicant is proposing to construct a connector between the primary structure and the accessory structure. The corner lot has two front yards, with the secondary front located on Boss Avenue. Relief is being requested for the extension of an existing non-conforming structure, exceeding the 20% building coverage threshold and building within 30 feet of the rear lot boundary line. Per the averaging calculation found in section 10.516 of the Zoning Ordinance, as provided below, the yard requirement on the secondary front yard is 16 feet. Therefore, the proposed connector structure meets the requirements of the ordinance when building within 25 feet of the secondary front lot line.

10.516 Exceptions to Yard Requirements

10.516.10 *Front Yard Exception for Existing Alignments*

If existing principal buildings on the same side of the same street, in the same zoning district, and within 200 feet of a lot are located closer to the street than the minimum required front yard specified in this Article, the required front yard for the principal building on such lot shall be the average of the existing alignments of all such principal buildings, rounded to the nearest foot. For the purpose of this provision, buildings on the subject lot shall not be included in the average of existing alignments.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
   (a) The property has special conditions that distinguish it from other properties in the area.
   AND
   (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.
   OR
   Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Section 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

December 14th, 2022

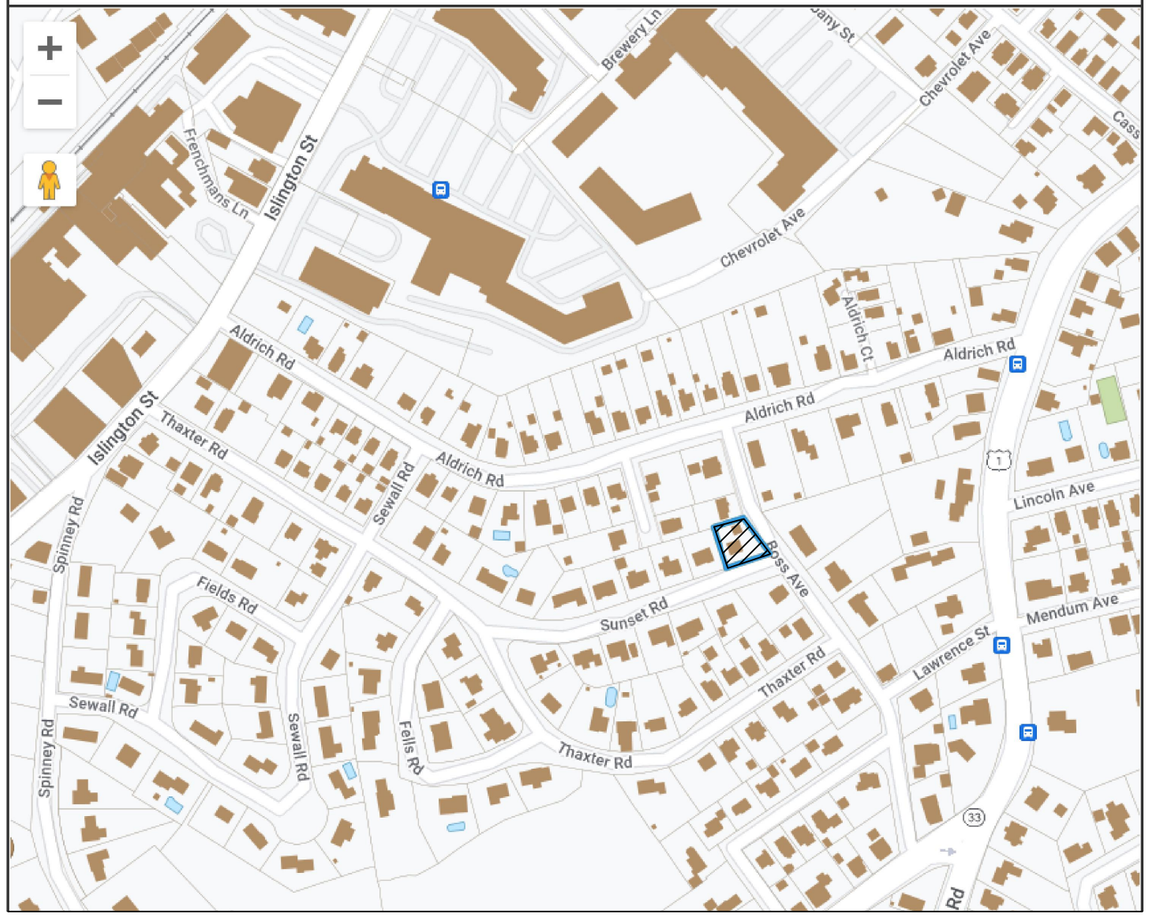
Re: Authorization of Representative for Variance Application

To Whom It May Concern:

Please know that Arilda Densch, of Arilda Design, 9 Adams Lane, #2, Kittery, ME 03904, is hereby authorized to act as the property owner's representative and primary contact for planning applications and permitting regarding the proposed connector from the house to the garage at 19 Sunset Road, Portsmouth, NH

Thank you,

Jesse Lynch
19 Sunset Road
Portsmouth, NH
603-828-2020, 857-998-2553
jmclynch@gmail.com / sarahlibbylynch@gmail.com



NEIGHBORHOOD PLAN – 19 SUNSET ROAD
MAP 153, LOT 19

VARIANCE APPLICATION

LIST OF DRAWINGS:

S0 NEIGHBORHOOD PLAN & OWNERS AUTHORIZATION
S1 EXISTING SITE PLAN
S2 PROPOSED SITE PLAN
A1.1 PHOTOS OF EXISTING HOUSE & GARAGE
A1.2 PHOTOS OF ADJACENT PROPERTIES
A2.1 EXISTING FLOOR PLAN
A2.2 PROPOSED FLOOR & ROOF PLANS
A3.1 PROPOSED BOSS AVENUE ELEVATION
A3.2 PROPOSED REAR OF HOUSE / SIDE OF GARAGE ELEVATION
A3.3 PROPOSED REAR OF GARAGE & CONNECTOR ELEVATION
A4.1 VARIANCE CRITERIA

SARAH & JESSE LYNCH
19 SUNSET ROAD ROAD
PORTSMOUTH, NEW HAMPSHIRE 03801

ARILDA DESIGN
densch@comcast.net / www.arilda.com
9 Adams Lane, Unit 2
Kittery, Maine 03904
207-604-6848

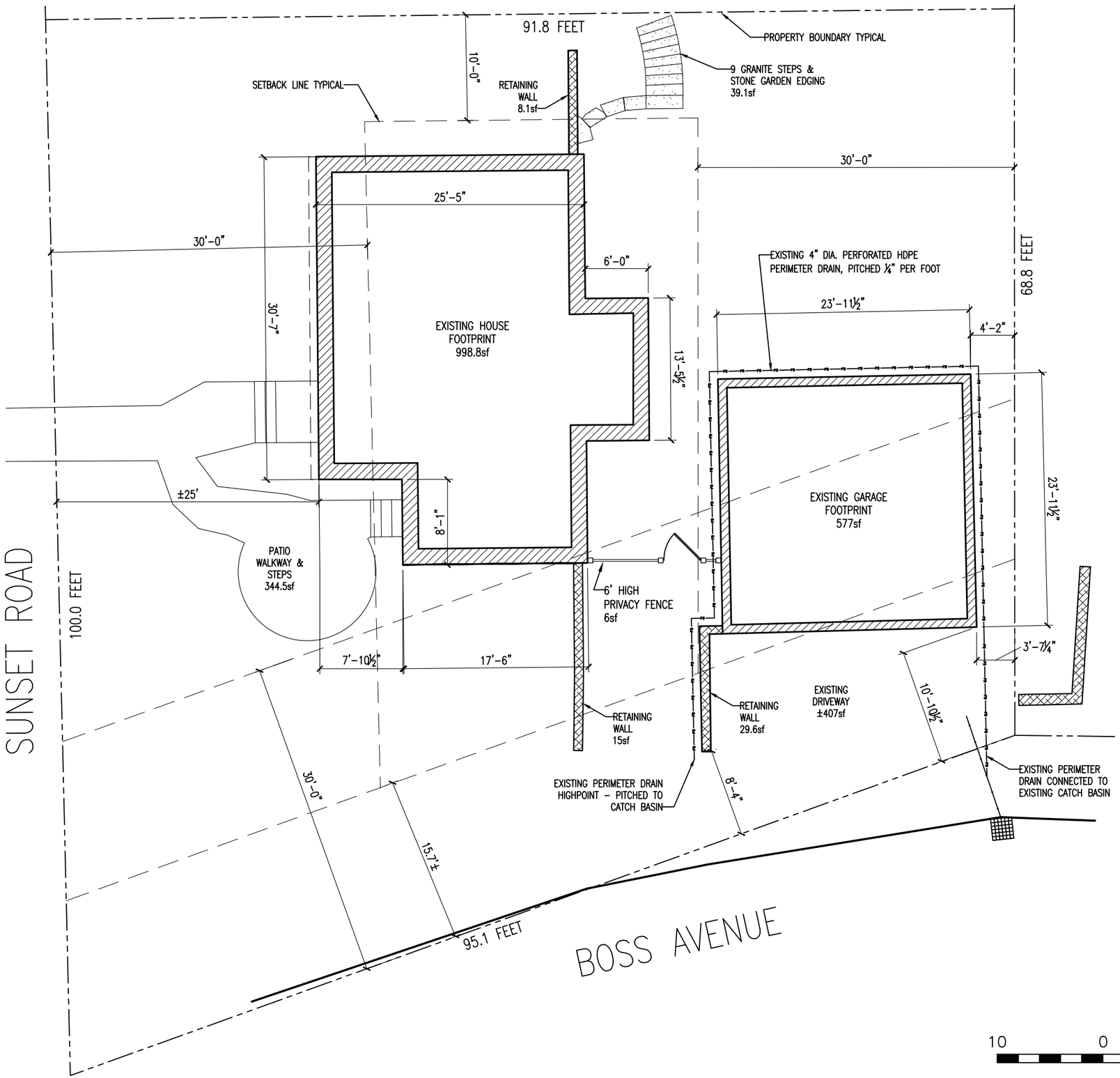
Revisions:

JANUARY 17, 2023 MEETING
NEIGHBORHOOD PLAN
OWNER'S AUTHORIZATION

date: Dec 22, 2022

scale: No Scale

S0



NH STATE PLANE COORDINATE SYSTEM
NAD 1983
N

PLAN REFERENCE:

ALL SITE INFORMATION INCLUDING LOCATION OF EXISTING STRUCTURES AND DIMENSIONAL REGULATIONS REFERENCED FROM:

"LYNCH RESIDENCE GARAGE RENOVATION, 19 SUNSET ROAD, PORTSMOUTH, NH, AS-BUILT SITE PLAN C2" DATED FEBRUARY 15, 2017

PLAN SURVEYED AND EXECUTED BY SEAPORT ENGINEERING LLC, PORTSMOUTH, NH (603)498-8449. WWW.SEAPORTENG.COM

DIMENSIONAL REGULATIONS
ZONE: SINGLE RESIDENCE B (SRB)

LOT DESCRIPTION	REQUIRED	EXISTING
MIN. LOT SIZE	15,000 SF	7,754± SF
MIN. YARD SIZES		
FRONT (SUNSET)	30'	25.0'±
FRONT (BOSS)	15.7±'*	10.8'±
SIDE	10'	15.1'±
REAR	30'	3.5±
MAX. HEIGHT (HOUSE)	35'	25.0±
MAX. HEIGHT (GARAGE)	35'	14.3'±
MAX. STRUCTURE COVER	20%	20.3%±
MIN. OPEN SPACE	40%	68.7%±

*10.516.10 - FRONT YARD EXCEPTION FOR EXISTING ALIGNMENTS
DISTANCES BASED ON CITY OF PORTSMOUTH GIS - MAPGEO
153-21 (16.3'), 153-20 (20.7'), 153-19 (15.8'), 153-10 (9.8'), 152.42 (16.0')
AVERAGE = 15.72'

VARIANCES GRANTED AT JUNE 20, 2017 ZONING BOA HEARING:

10.521 - TABLE OF DIMENSIONAL STANDARDS - BUILDING COVERAGE GREATER THAN 20%
10.571 - ACCESSORY BUILDING CLOSER TO STREET THAN PRINCIPAL BUILDING
10.573.20 - ACCESSORY BUILDING IS GREATER THAN 100 SF AND HIGHER THAN 10 FEET AND NOT SET BACK FROM LOT LINE AT LEAST THE HEIGHT OF THE STRUCTURE.

EXISTING SITE PLAN

GRAPHIC SCALE

10 0 10 20 30 40 FEET

SARAH & JESSE LYNCH
19 SUNSET ROAD ROAD
PORTSMOUTH, NEW HAMPSHIRE 03801

ARILDA DESIGN
densch@comcast.net / www.arilda.com
9 Adams Lane, Unit 2
Kittery, Maine 03904
207-604-6848

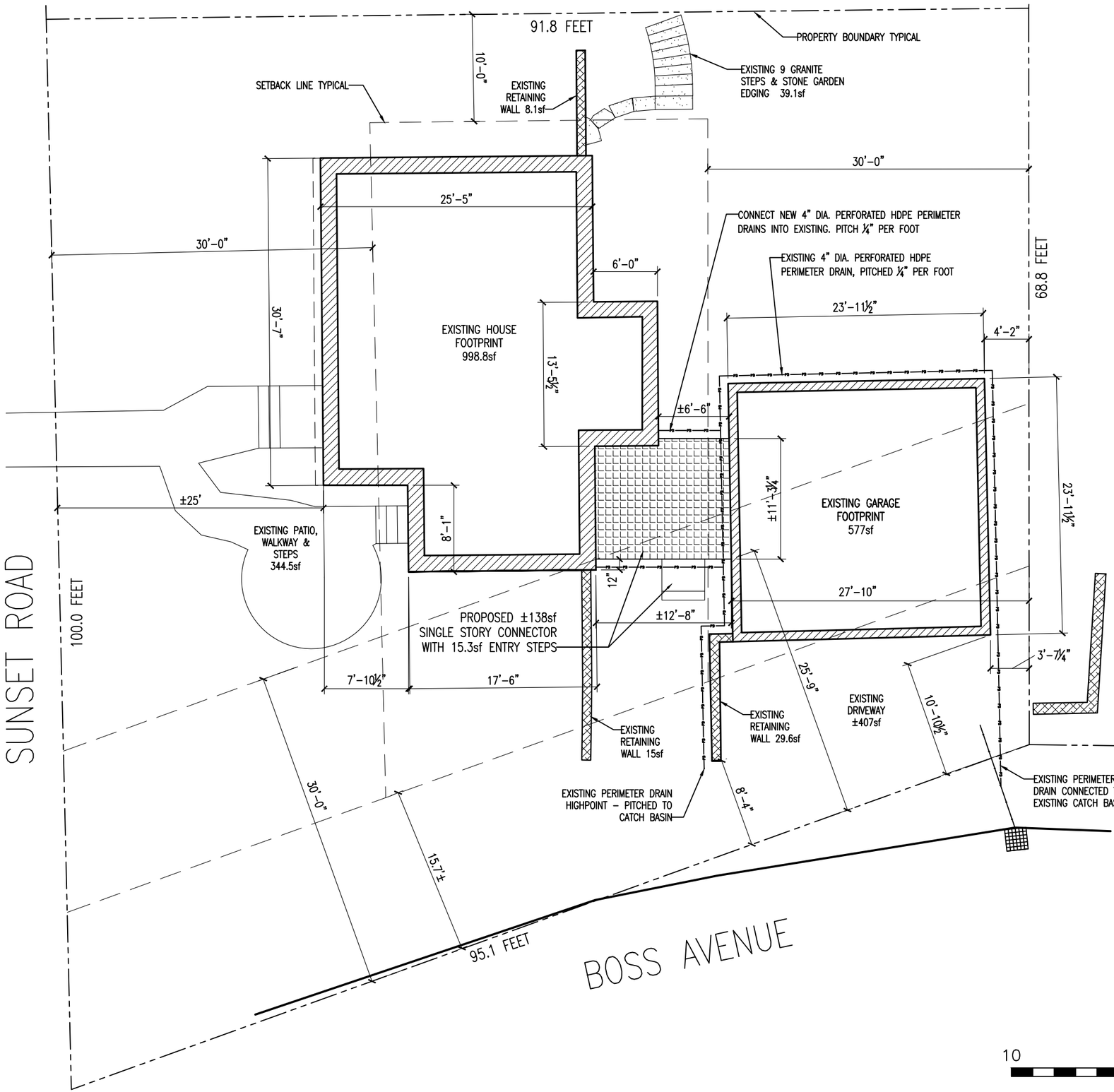
Revisions:

VARIANCE APPLICATION
JANUARY 17, 2023 MEETING
EXISTING SITE PLAN

date: Dec 22, 2022

scale: 1" = 10'

S1



NH STATE PLANE COORDINATE SYSTEM
NAD 1983
N

PLAN REFERENCE:

ALL SITE INFORMATION INCLUDING LOCATION OF EXISTING STRUCTURES AND DIMENSIONAL REGULATIONS REFERENCED FROM:

"LYNCH RESIDENCE GARAGE RENOVATION, 19 SUNSET ROAD, PORTSMOUTH, NH, AS-BUILT SITE PLAN C2" DATED FEBRUARY 15, 2017

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DIMENSIONAL REGULATIONS
ZONE: SINGLE RESIDENCE B (SRB)

LOT DESCRIPTION	REQUIRED	EXISTING	PROPOSED
MIN. LOT SIZE	15,000 SF	7,754± SF	7,754± SF
MIN. YARD SIZES			
FRONT (SUNSET)	30'	25.0'±	25.0'±
FRONT (BOSS)	15.7±'*	10.8'±	10.8'±
SIDE	10'	15.1'±	15.1'±
REAR	30'	3.5±	3.5'±
MAX. HEIGHT (HOUSE)	35'	25.0'±	25.0'±
MAX. HEIGHT (GARAGE /CONNECTOR)	35'	14.3'±	15.9'±
MAX. STRUCTURE COVER	20%	20.3%±	22.1%±
MIN. OPEN SPACE	40%	68.7%±	66.8%±

*10.516.10 – FRONT YARD EXCEPTION FOR EXISTING ALIGNMENTS
DISTANCES BASED ON CITY OF PORTSMOUTH GIS – MAPGEO
153-21 (16.3'), 153-20 (20.7'), 153-19 (15.8'), 153-10 (9.8'), 152.42 (16.0')
AVERAGE = 15.72'

VARIANCES REQUESTED: JANUARY 17, 2023 ZONING BOA HEARING:

10.321 – EXPANSION OF NON-CONFORMING STRUCTURE
10.521 – TABLE OF DIMENSIONAL STANDARDS – BUILDING COVERAGE GREATER THAN 20%
10.521 – TABLE OF DIMENSIONAL STANDARDS – REAR YARD DIMENSION AT CONNECTOR EQUALS 27'-10" WHERE 30' IS REQUIRED AND WHERE A 3'-7¼" REAR SETBACK FOR THE GARAGE WAS PREVIOUSLY APPROVED

PROPOSED SITE PLAN

GRAPHIC SCALE

10 0 10 20 30 40 FEET

SARAH & JESSE LYNCH
19 SUNSET ROAD ROAD
PORTSMOUTH, NEW HAMPSHIRE 03801

ARILDA DESIGN
densch@comcast.net / www.arilda.com
9 Adams Lane, Unit 2
Kittery, Maine 03904
207-604-6848

Revisions:

VARIANCE APPLICATION
JANUARY 17, 2023 MEETING
PROPOSED SITE PLAN

date: Dec 22, 2022

scale: 1" = 10'

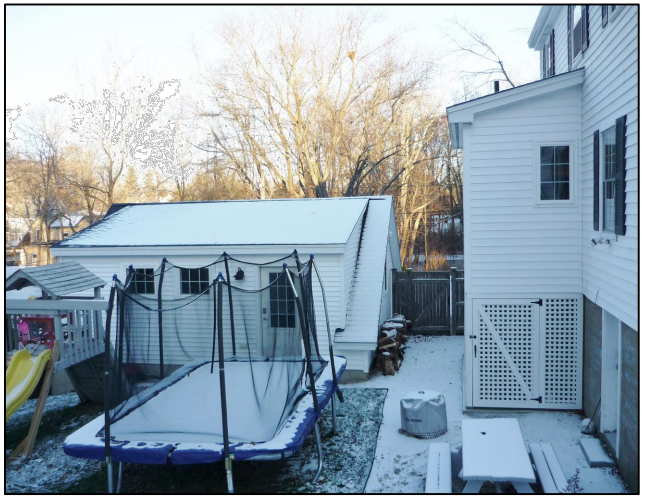
S2

LYNCH – BOSS AVENUE

LYNCH – BOSS AVENUE

LYNCH – SUNSET CORNER

LYNCH – LEFT SIDE



LYNCH – REAR GARAGE

LYNCH – REAR HOUSE

LYNCH FAMILY 19 SUNSET ROAD PORTSMOUTH, NH 03801	ARILDA DESIGN densch@comcast.net / www.arilda.com 9 Adams Lane, Unit 2 Kittery, Maine 03904 207-604-6848	Variance Application January 17, 2023 Meeting Photos Existing Structures	date: Dec 22, 2022	scale: NO SCALE	A1.1

32 BOSS AVENUE 153 – 5

31 BOSS AVENUE 153 – 10

29 SUNSET ROAD 153 – 18

25 BOSS AVENUE 153 – 20

LYNCH FAMILY
19 SUNSET ROAD
PORTSMOUTH, NH 03801

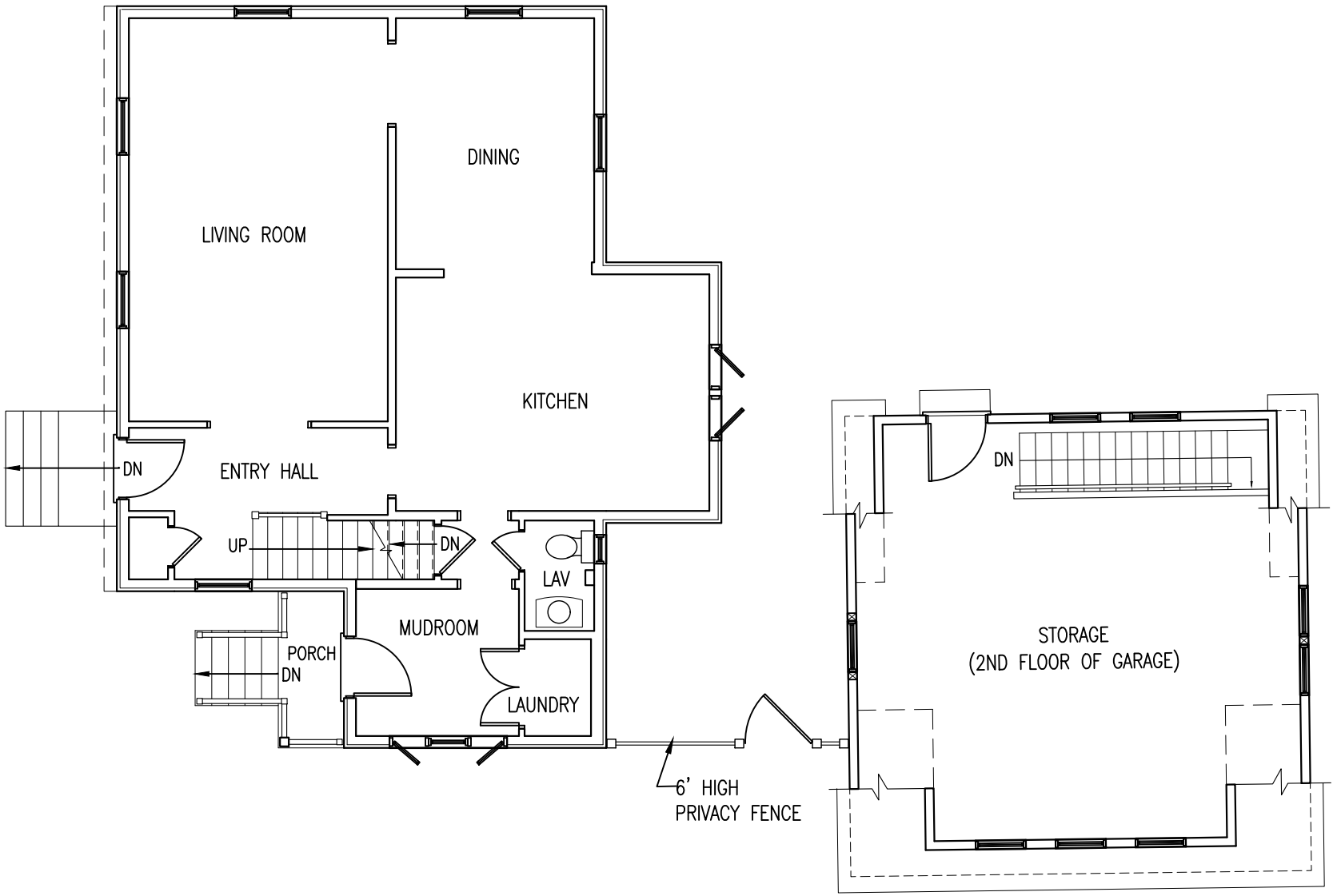
ARILDA DESIGN
densch@comcast.net / www.arilda.com
9 Adams Lane, Unit 2
Kittery, Maine 03904
207-604-6848

Variance Application
January 17, 2023 Meeting
Photos Adjacent Properties

date: Dec 22, 2022

scale: NO SCALE

A1.2



EXISTING FLOOR PLAN

LYNCH FAMILY
19 SUNSET ROAD
PORTSMOUTH, NH 03801

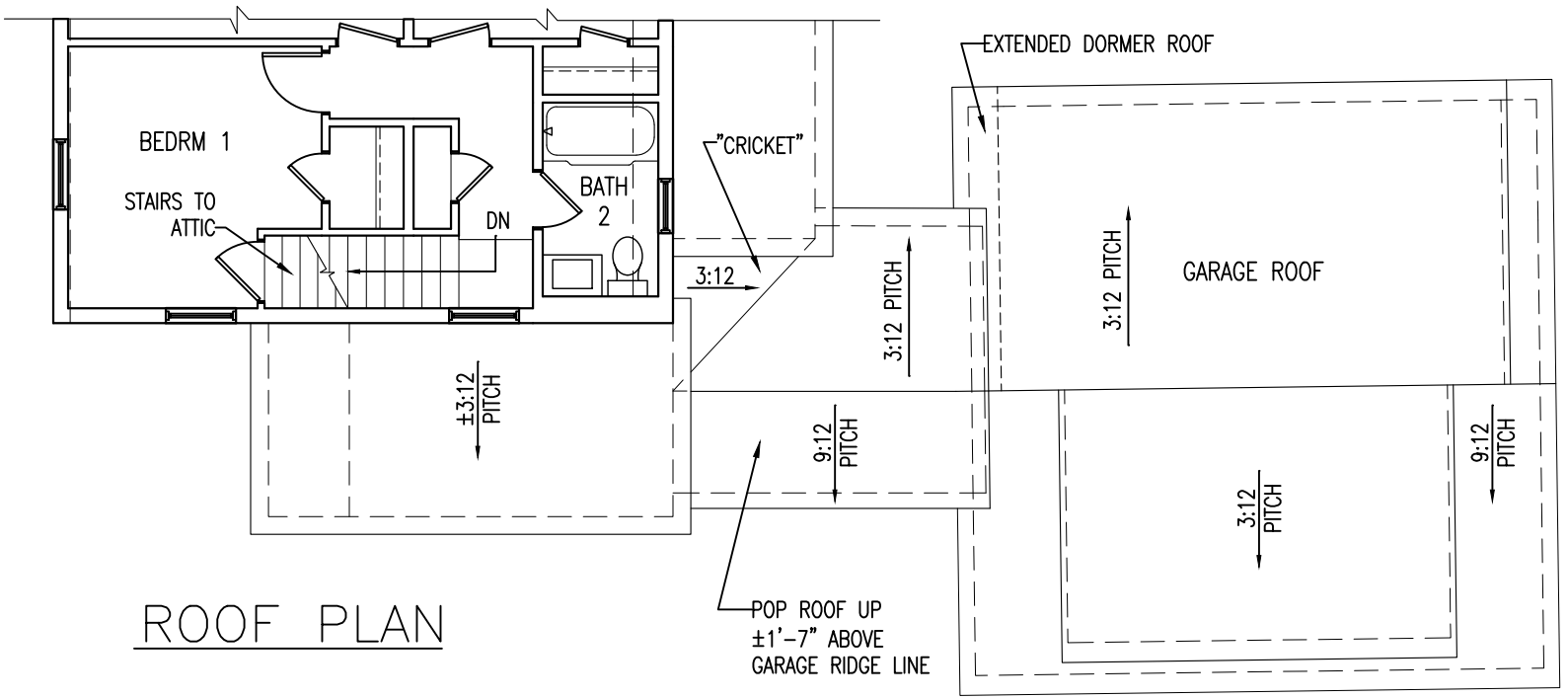
ARILDA DESIGN
densch@comcast.net / www.arilda.com
9 Adams Lane, Unit 2
Kittery, Maine 03904
207-604-6848

Variance Application
January 17, 2023 Meeting
Existing Floor Plan

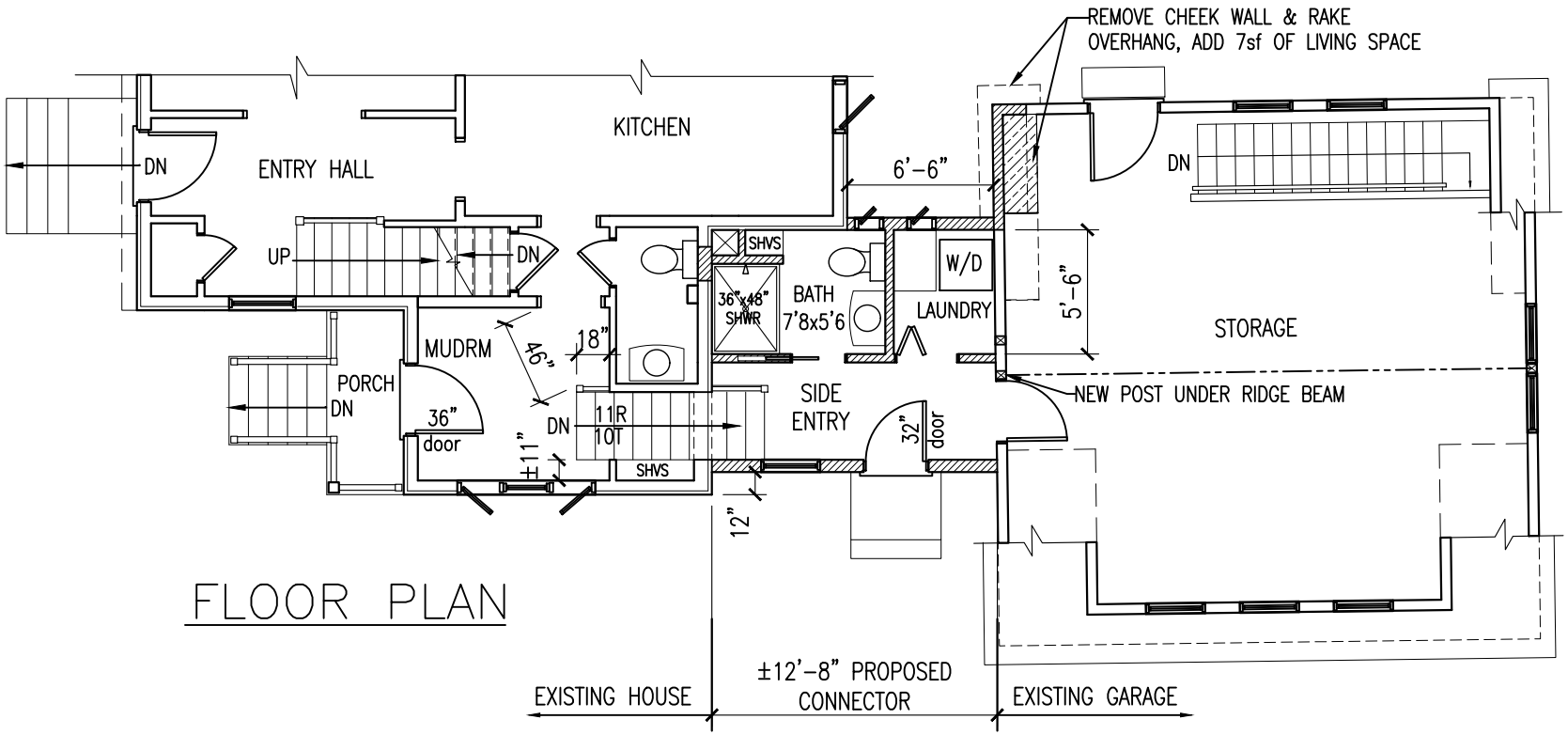
date: Dec 22, 2022

scale: 1/8" = 1'-0"

A2.1



ROOF PLAN



FLOOR PLAN

LYNCH FAMILY
19 SUNSET ROAD
PORTSMOUTH, NH 03801

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densch@comcast.net / www.arilda.com
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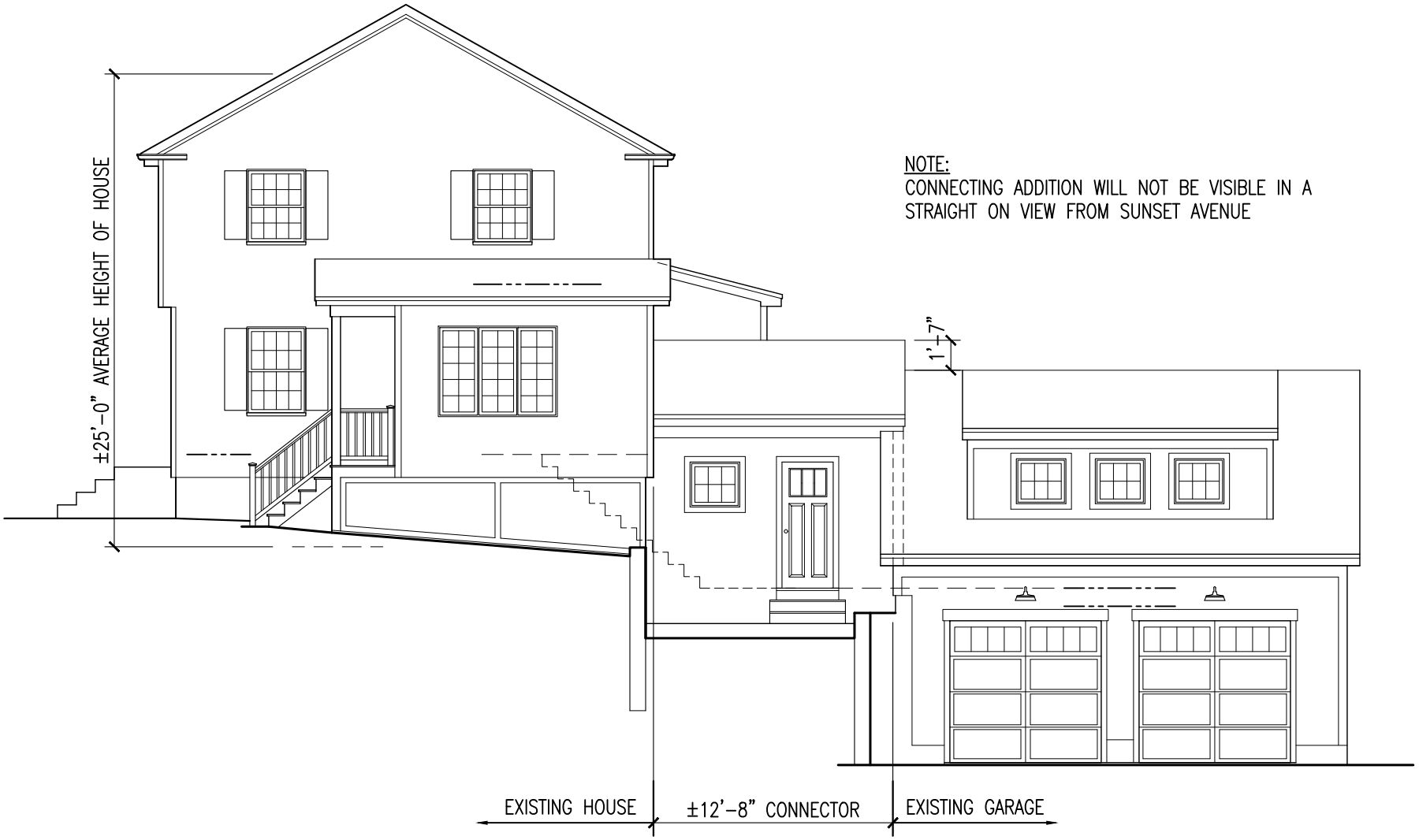
Kittery, Maine 03904
207-604-6848

Variance Application
January 17, 2023 Meeting
Proposed Connector

date: Dec 22, 2022

scale: 1/8" = 1'-0"

A2.2



BOSS AVENUE ELEVATION

LYNCH FAMILY
19 SUNSET ROAD
PORTSMOUTH, NH 03801

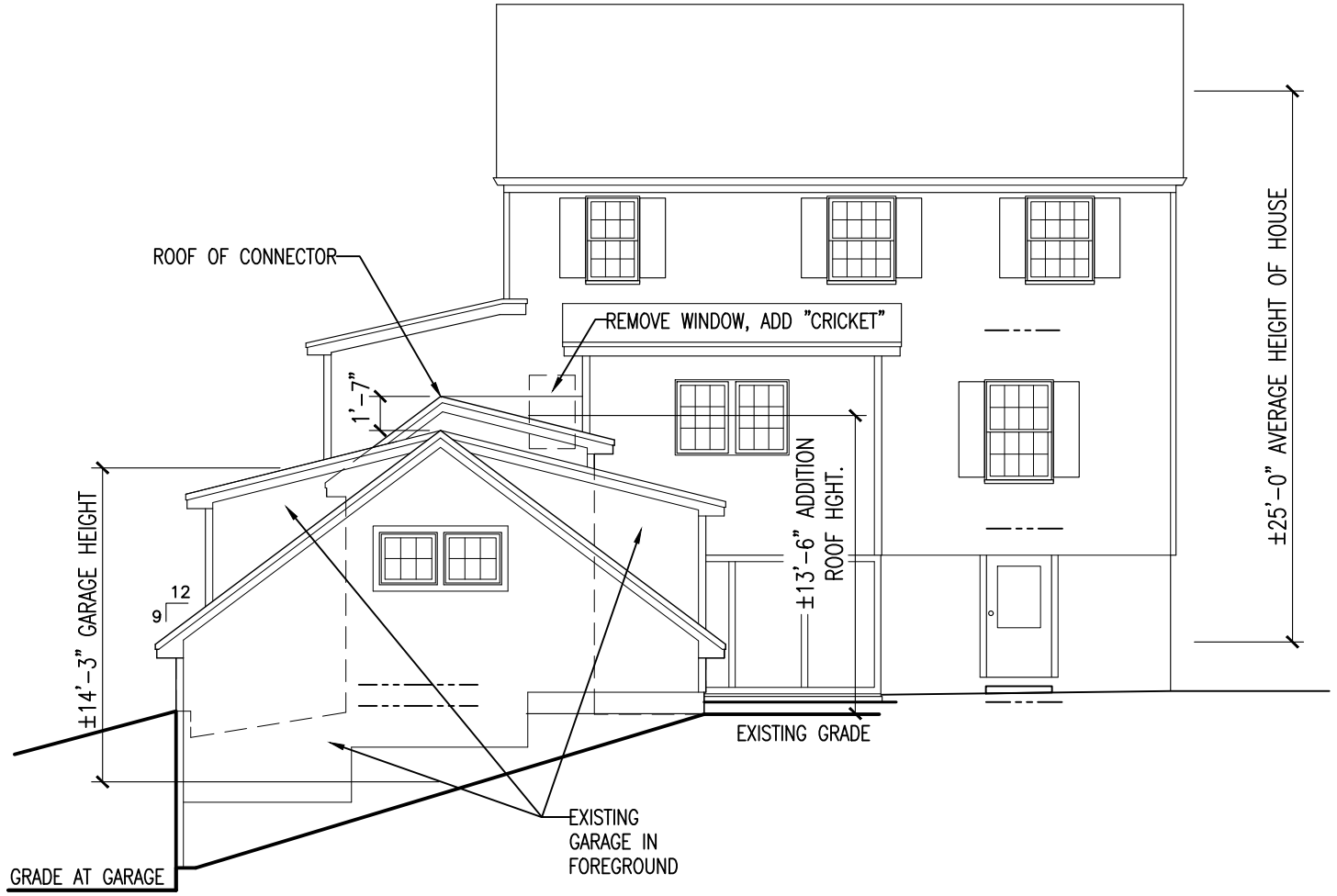
ARILDA DESIGN
densch@comcast.net / www.arilda.com
9 Adams Lane, Unit 2
Kittery, Maine 03904
207-604-6848

Variance Application
January 17, 2023 Meeting
Proposed Connector

date: Dec 22, 2022

scale: 1/8" = 1'-0"

A3.1



REAR OF HOUSE ELEVATION

LYNCH FAMILY
19 SUNSET ROAD
PORTSMOUTH, NH 03801

ARILDA DESIGN
densch@comcast.net / www.arilda.com
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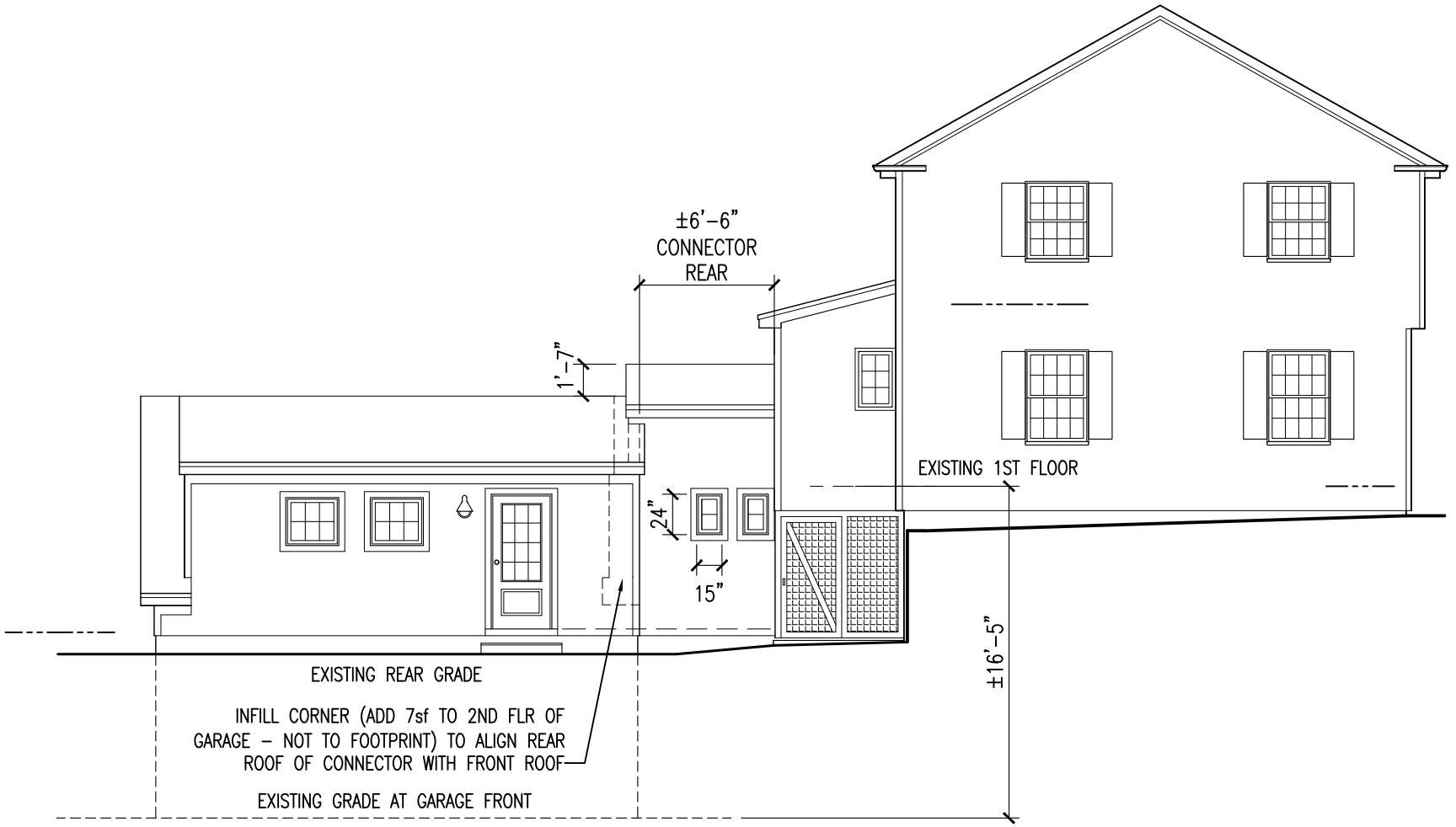
Kittery, Maine 03904
207-604-6848

Variance Application
January 17, 2023 Meeting
Proposed Connector

date: Dec 22, 2022

scale: 1/8" = 1'-0"

A3.2



REAR OF CONNECTOR ELEVATION

LYNCH FAMILY
19 SUNSET ROAD
PORTSMOUTH, NH 03801

ARILDA DESIGN
densch@comcast.net / www.arilda.com
9 Adams Lane, Unit 2
Kittery, Maine 03904
207-604-6848

Variance Application
January 17, 2023 Meeting
Proposed Connector

date: Dec 22, 2022

scale: 1/8" = 1'-0"

A3.3

Zoning Ordinance Criteria to be met, as per City Ordinance Section 10.233.20:

10.233.21 **The variance will not be contrary to the public interest**.
Because the addition is only 138sf, is in a small area between the existing home and Garage, has a low roof and is not closer to any setback lines than the existing structures it should have very little impact, if any, on surrounding properties. New perimeter drains at the addition will tie into an existing stormwater system designed by a licensed engineer and installed in 2017 so no additional runoff onto the Site or street will be created. Because of these points, granting a variance to build this connector will not be contrary to the public interest.

10.233.22 **The spirit of the ordinance will be observed.**
The building coverage will be over the maximum allowed by only 2% and the minimum open space at the property will be 66.8% where 40% minimum is allowed so there will be plenty of pervious surface / open space. In this way, and because of the reasons stated in 10.233.22 above, the request is reasonable and will not impact other properties and so the spirit of the ordinance will be observed.

10.233.23 **Substantial justice will be done.**
The Lynch's have a corner lot. The Garage faces Boss Ave and the front, with both entry doors, faces Sunset Road. There is a dramatic grade change (about 13') between the front façade of the home and the front façade of the Garage. Currently parking in front of the Garage means navigating a steep hillside up to the entry doors, walking in the street or walking up through the Garage, through the backyard to a basement door, through the basement and then up the basement stairs into the house. The result is they still tend to park on the street in front of the house and the Garage goes unused. Granting this variance will enable the Lynch's to utilize their Garage and their designated off-street parking much more safely and easily without impacting neighbors. Thereby substantial justice will be done.

10.233.24 **The values of surrounding properties will not be diminished.**
Because of the points made in 10.233.21 and 10.233.22, the addition should have no impact on surrounding properties and so the values of surrounding properties will not be diminished.

10.233.25 **Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**
10.233.32 Owing to the special conditions of the property literal enforcement of the ordinance would create an unnecessary hardship. These special conditions are: 1. At 7754sf it is almost half the size of the minimum lot size of 15,000sf for zone SRB, so it's not easy to make an addition without a variance; 2. The dramatic change in grade level between the house and Garage makes it difficult to utilize the Garage without a connector. The request to connect ones house to the Garage to make it more accessible and to make walking between living and parking spaces safer and easier is a reasonable one. Therefore, literal enforcement of the provisions of the ordinance would result in an unnecessary hardship for the owners.

LYNCH FAMILY
19 SUNSET ROAD
PORTSMOUTH, NH 03801

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densch@comcast.net / www.arilda.com
9 Adams Lane, Unit 2
Kittery, Maine 03904
207-604-6848

Variance Application
January 17, 2023 Meeting
Criteria 10.223.20

date: Dec 22, 2022

scale: 1/8" = 1'-0"

A4.1

III. NEW BUSINESS

D. The request of **Patrick and Nicole Mullaly (Owners),** for property located at **36 Hunters Hill Ave** whereas relief is needed to construct an addition with a second living unit which requires the following: 1) Variance from Section 10.440 Use #1.30 to allow a two-family dwelling unit is the Business District. 2) Variance from Section 10.531 to allow a 5 foot setback where 10 feet is required. Said property is located on Assessor Map 160 Lot 38 and lies within the Business (B) District. (LU-22-243)

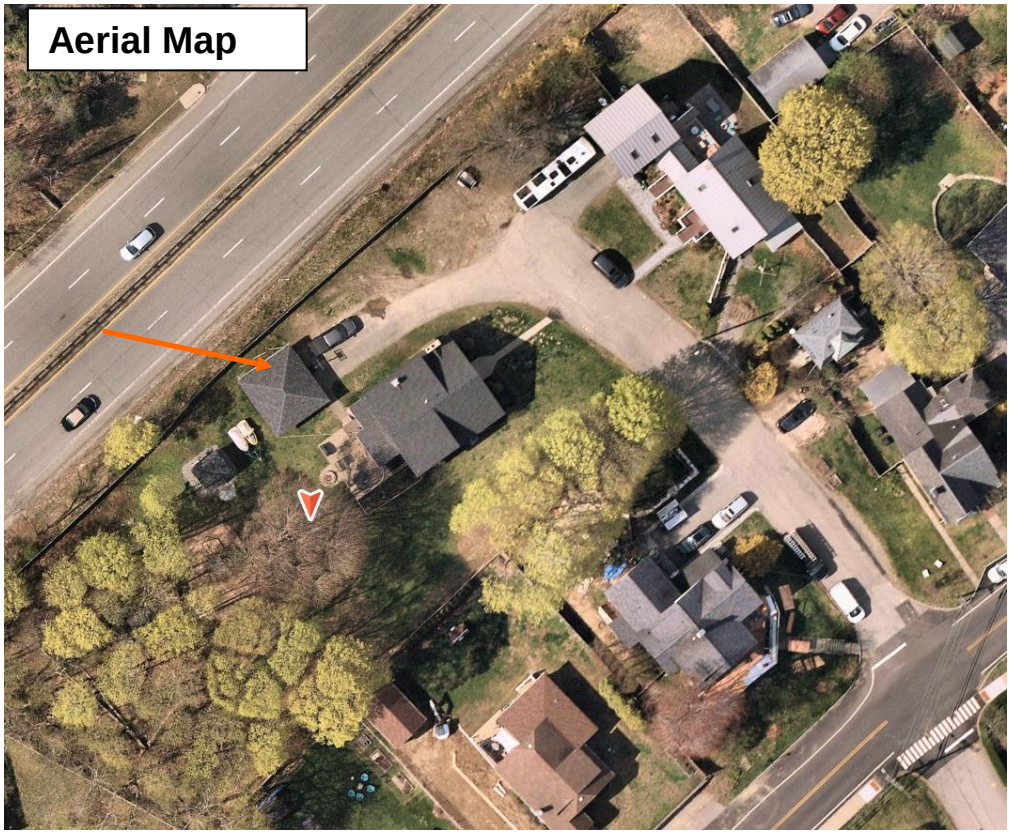
Existing and Proposed Conditions

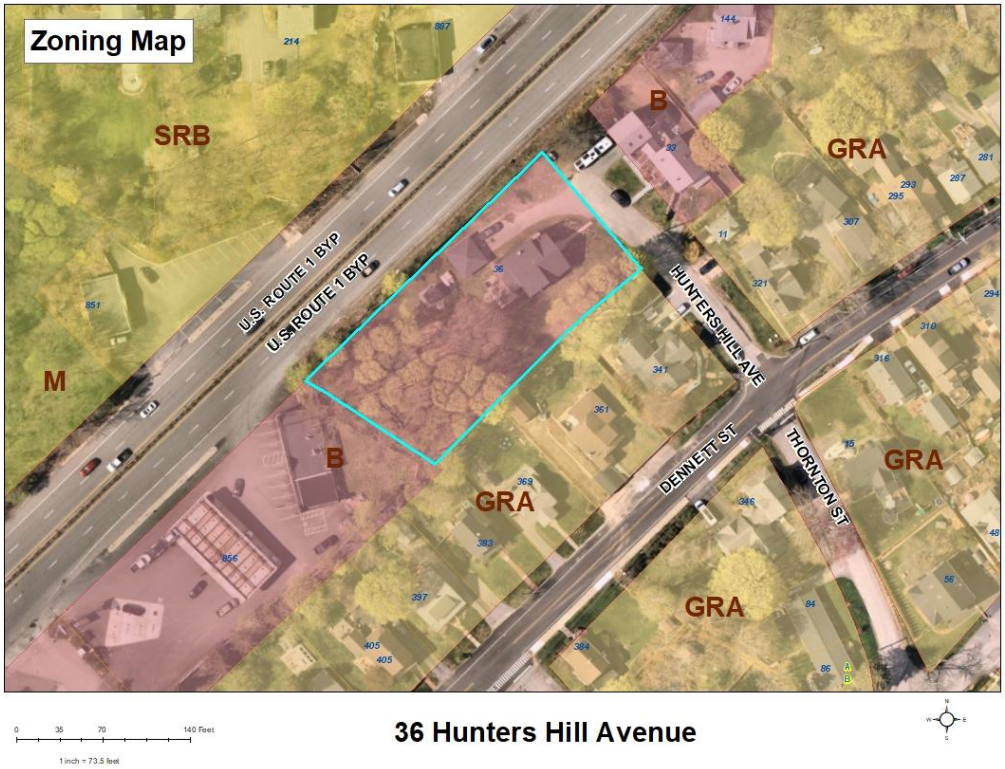
	Existing	Proposed	Permitted / Required	
Land Use:	Single Family	**Addition of a second living unit**	Primarily Commercial Uses	
Lot area (sq. ft.):	26,628	26,628	20,000	min.
Lot Area per Dwelling Unit (sq. ft.):	26,628	13314	2,500	min.
Street Frontage (ft.):	123	123	100	min.
Lot depth (ft.):	265	265	80	min.
Front Yard (ft.):	>20	>20	20	min.
Left Side Yard (ft.):	8.5	**5**	15	min.
Right Side Yard (ft.):	>15	>15	15	min.
Rear Yard (ft.):	>15	>15	15	min.
Height (ft.):	<50	<50	50	max.
Building Coverage (%):	8	10	35	max.
Open Space Coverage (%):	90	89	15	min.
Parking	Ok	3	1.3	
Estimated Age of Structure:	1930	Variance request shown in red.		

Other Permits/Approvals Required

- Building Permit

Neighborhood Context





36 Hunters Hill Avenue

Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposing to demolish the existing detached garage and to construct an addition that will create an additional living unit on the property. The corner of the new structure will no closer than 5 feet from the left side property boundary line with the building tapering back as distance increases towards the front of the property. The left side of the property abuts US Route 1.The property is located within the Business District where 2-family units are not permitted but higher density residential uses including 3-4 family units is permitted by right.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
   (a) The property has special conditions that distinguish it from other properties in the area.
   AND
   (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.
   OR
   Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Section 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

To the Board of Adjustments regarding the property at 36 Hunters Hill Ave:

We are requesting variances on our property so we can tear down our existing non-attached garage and create a new attached garage with a living unit above it for my mother. My mother is currently 87 years old and lives alone and we are attempting to add on to our home so she can move closer to us. With the home prices in the area, it seems to be the only reasonable way to have her move closer to us is by doing this. Our current home would not be set up in a way she could live with us and have her privacy so this would be our attempt at fixing that for her.

Our home was built in the 1920s and in the 1930's it was moved from one side of our garage to the other for the Route 1 Bypass to be put in. That is how/why our property currently does not meet the setback guidelines. This home has been in our family since it was built, as my grandparents lived there with my father, and we are hoping to be able to stay in this home forever. We would like to have my mother closer so she can be with her grandkids and so we don't have to worry about her living alone.

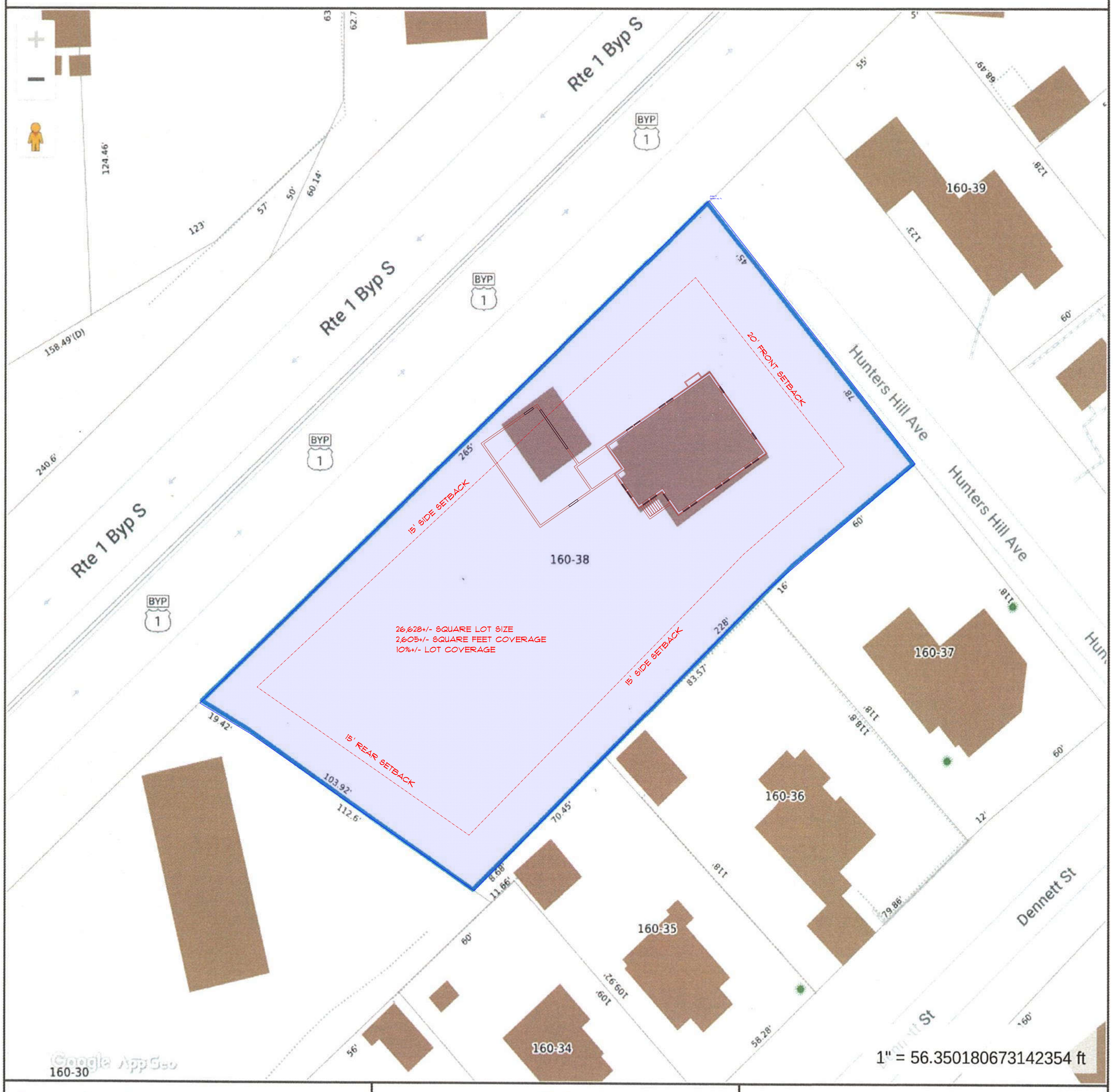
The current garage is about 8 ft from the property line, and the proposed garage will be roughly 6 ft from the property line, so not a huge difference. The only side that will be affected is the bypass as we are well within all our other setbacks.

We do not plan to rent this out after my mother doesn't live there anymore, the most we would do is let our kids live there when they get older.

We want the project to look nice and keep the feel of the neighborhood which I think with the proposed plans it does. The garage and addition will give the city additional tax revenue and it will make our home more welcoming to my mother.

City of Portsmouth, NH

December 1, 2022



Property Information

Property ID	0160-0038-0000
Location	36 HUNTERS HILL AVE
Owner	MULLALY PATRICK L

MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

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 09/21/2022
Data updated 3/9/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

FOOTPRINT DOES NOT REPRESENT A SURVEY
IT SHOWS APPROXIMATE BOUNDARY LINES
WITH BUILDING SETBACKS AND APPROXIMATE
LOCATION OF EXISTING/ENLARGED STRUCTURE

EXISTING FRONT ELEVATION

SCALE: ¼" = 1'-0"

EXISTING LEFT SIDE ELEVATION

SCALE: ¼" = 1'-0"

EXISTING REAR ELEVATION

SCALE: ¼" = 1'-0"

EXISTING RIGHT SIDE ELEVATION

SCALE: ¼" = 1'-0"

ELEVATION GRADES AND FOUNDATION DROPS SHOWN ARE CONCEPTUAL. FOUNDATION DROPS AND GRADE WILL BE DETERMINED ON SITE BY CONTRACTOR

DRAFT PRINT

MEMBER
AIBD
AMERICAN INSTITUTE of BUILDING DESIGN

NEWMARKET PLAINS, LLC.
HOME DESIGN SERVICE
NEWMARKETPLAINSLLC@COMCAST.NET
WWW.NEWMARKETPLAINSLLC.COM
603-659-0985

DESCRIPTION	DATE
DRAFT PLANS	12/05/22
REVISED PLANS	12/08/22
REVISED PLANS	12/12/22
NOT FOR CONSTRUCTION	

PATRICK & NICOLE MULLALY
36 HUNTERS HILL AVENUE
PORTSMOUTH, NH 03801

SHEET NUMBER

A1

PLAN NUMBER

1323

24x36 ARCH D

DRAFT PRINT

FRONT ELEVATION

SCALE: ¼" = 1'-0"

REAR ELEVATION

SCALE: ¼" = 1'-0"

ELEVATION GRADES AND FOUNDATION DROPS SHOWN ARE CONCEPTUAL. FOUNDATION DROPS AND GRADE WILL BE DETERMINED ON SITE BY CONTRACTOR

MEMBER
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HOME DESIGN SERVICE
NEWMARKETPLAINSLLC@COMCAST.NET
WWW.NEWMARKETPLAINSLLC.COM
603-659-0985

DESCRIPTION	DATE
DRAFT PLANS	12/05/22
REVISED PLANS	12/08/22
REVISED PLANS	12/12/22
NOT FOR CONSTRUCTION	

PATRICK & NICOLE MULLALY
36 HUNTERS HILL AVENUE
PORTSMOUTH, NH 03801

SHEET NUMBER
A2

PLAN NUMBER
1323

24x36 ARCH D

LEFT SIDE ELEVATION

SCALE: ¼" = 1'-0"

RIGHT SIDE ELEVATION

SCALE: ¼" = 1'-0"

ELEVATION GRADES AND FOUNDATION DROPS SHOWN ARE CONCEPTUAL. FOUNDATION DROPS AND GRADE WILL BE DETERMINED ON SITE BY CONTRACTOR

DRAFT PRINT

MEMBER
AIBD
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WWW.NEWMARKETPLAINSLLC.COM
603-659-0985

DESCRIPTION	DATE
DRAFT PLANS	12/05/22
REVISED PLANS	12/08/22
REVISED PLANS	12/12/22
NOT FOR CONSTRUCTION	

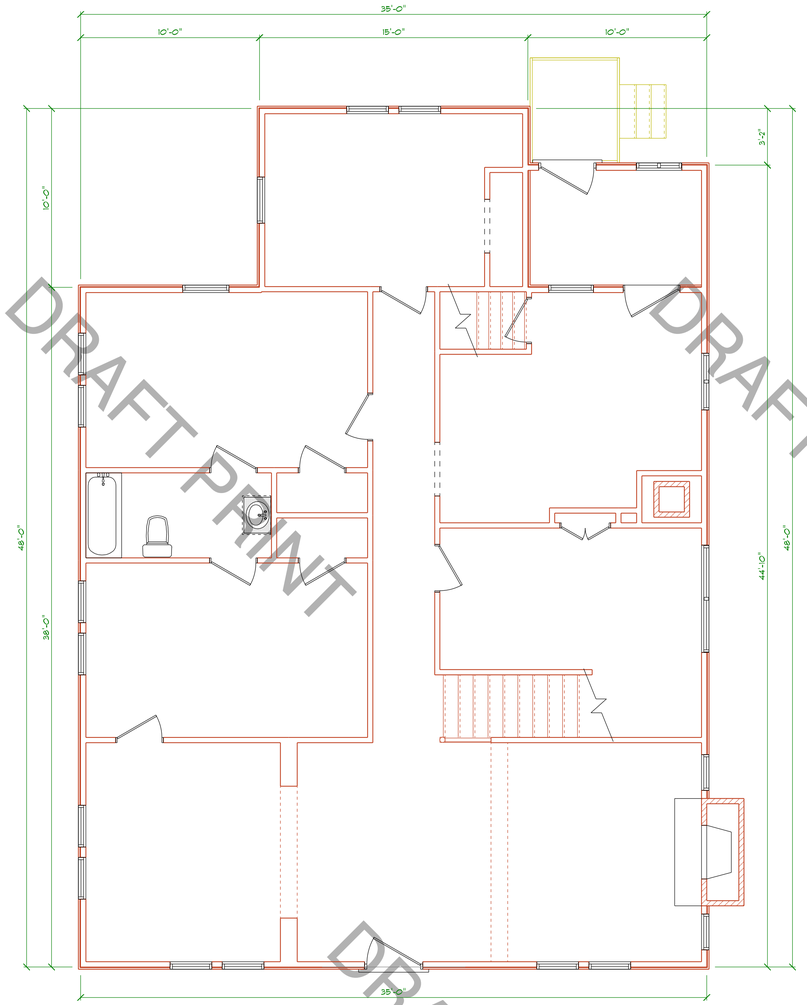
PATRICK & NICOLE MULLALY
36 HUNTERS HILL AVENUE
PORTSMOUTH, NH 03801

SHEET NUMBER
A3

PLAN NUMBER
1323

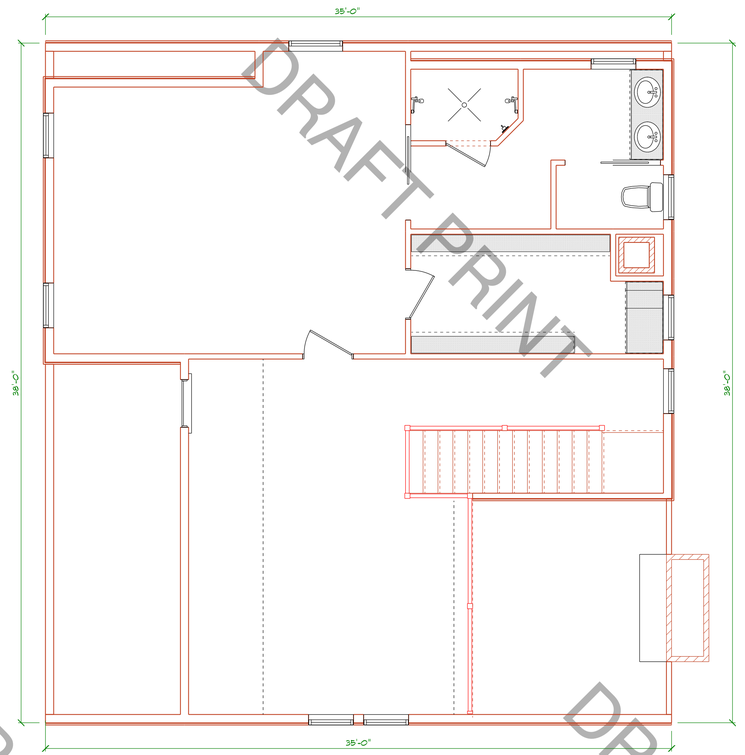
24x36 ARCH D

DRAFT PRINT



EXISTING LEVEL ONE PLAN

1,540 SQUARE FEET
SCALE: ¼" = 1'-0"



EXISTING LEVEL TWO PLAN

930+/- SQUARE FEET
SCALE: 3/16" = 1'-0"

MEMBER
AIBD
AMERICAN INSTITUTE of BUILDING DESIGN

NEWMARKET PLAINS, LLC.
HOME DESIGN SERVICE
NEWMARKETPLAINSLLC@COMCAST.NET
WWW.NEWMARKETPLAINSLLC.COM
603-659-0985

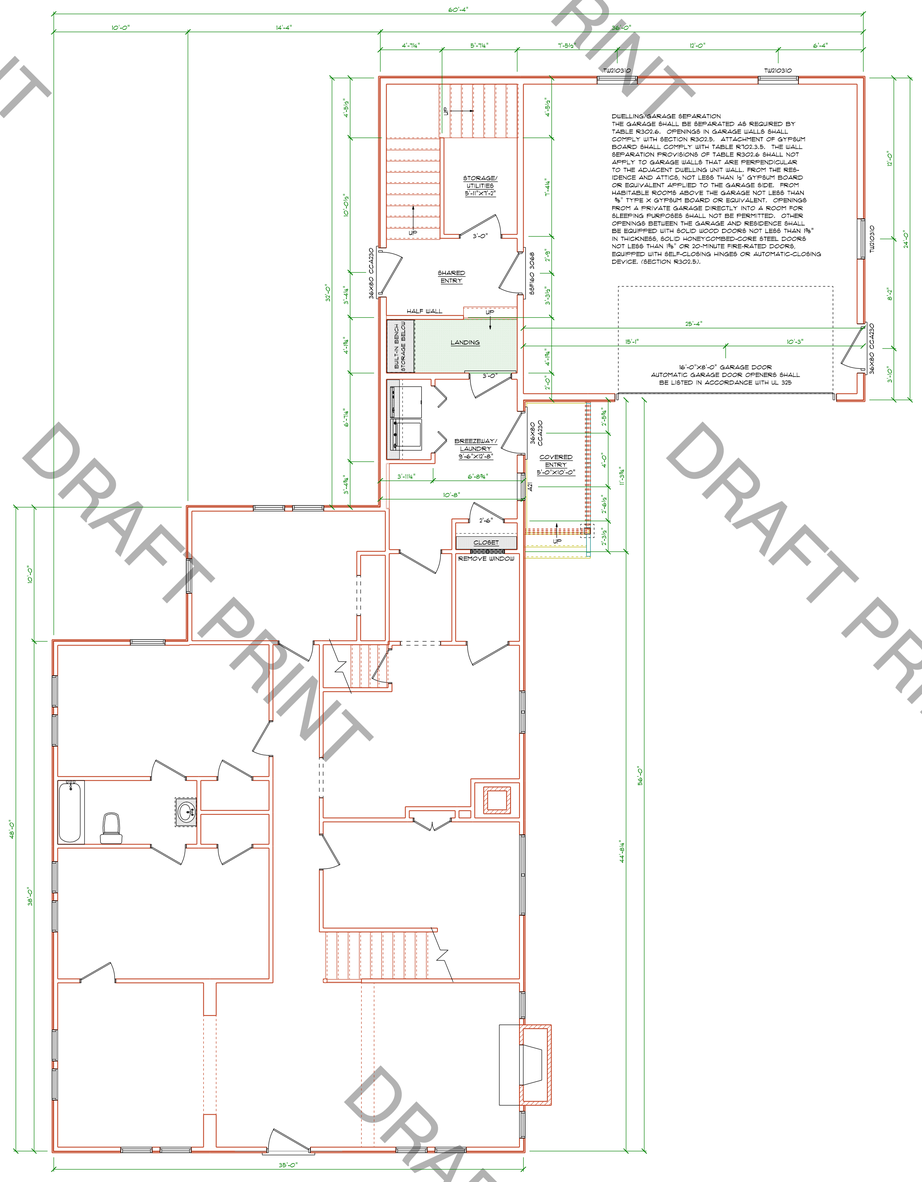
DESCRIPTION	DATE
DRAFT PLANS	12/05/22
REVISED PLANS	12/08/22
REVISED PLANS	12/12/22
NOT FOR CONSTRUCTION	

PATRICK & NICOLE MULLALY
36 HUNTERS HILL AVENUE
PORTSMOUTH, NH 03801

SHEET NUMBER
A4

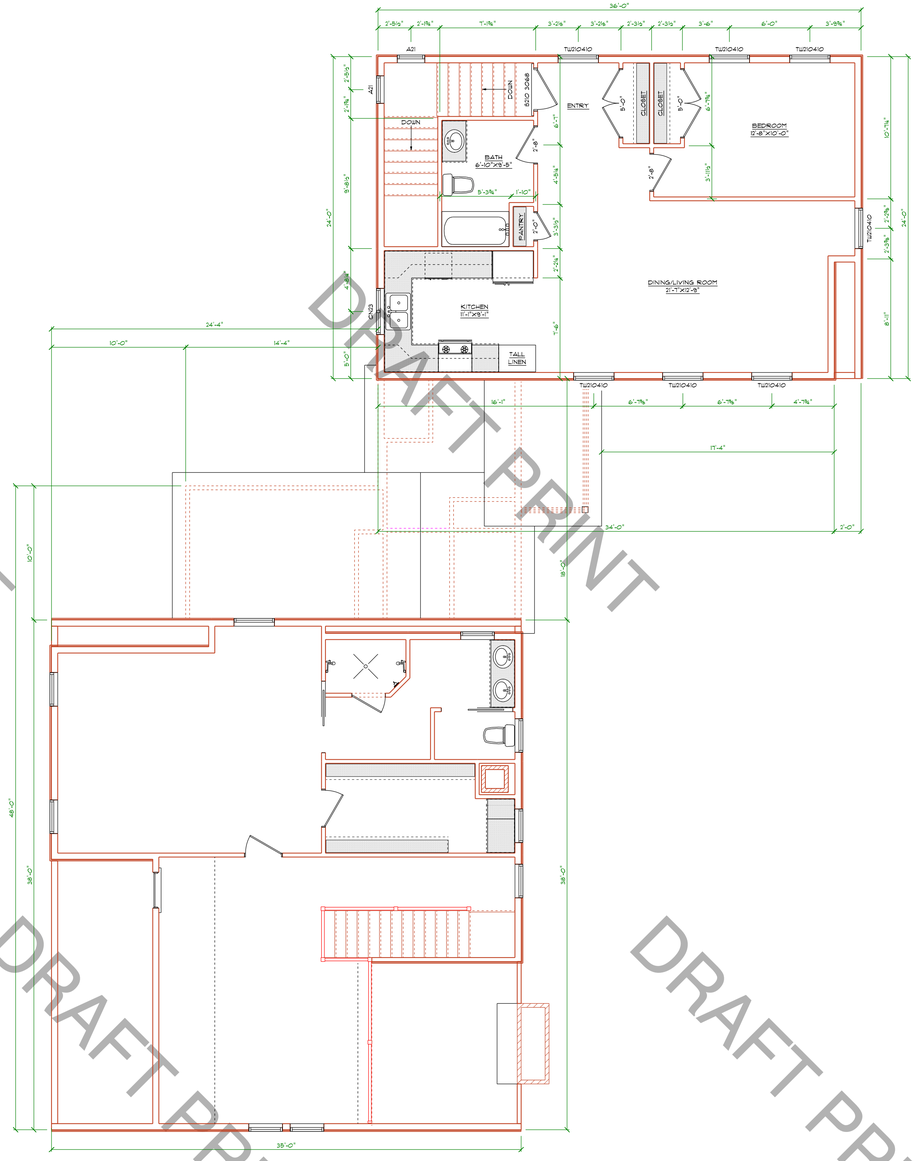
PLAN NUMBER
1323

24x36 ARCH D



LEVEL ONE PLAN

1687 SQUARE FEET
SCALE: ¼" = 1'-0"



LEVEL TWO PLAN

930+/- SQUARE FEET PRIMARY RESIDENCE
750 SQUARE FEET ATTACHED ACCESORY DWELLING UNIT
SCALE: 3/16" = 1'-0"

MEMBER
AIBD
AMERICAN INSTITUTE of BUILDING DESIGN

NEWMARKET PLAINS, LLC.
HOME DESIGN SERVICE

NEWMARKETPLAINSLLC@COMCAST.NET
WWW.NEWMARKETPLAINSLLC.COM
603-659-0985

DESCRIPTION	DATE
DRAFT PLANS	12/05/22
REVISED PLANS	12/08/22
REVISED PLANS	12/12/22
NOT FOR CONSTRUCTION	

PATRICK & NICOLE MULLALY
36 HUNTERS HILL AVENUE
PORTSMOUTH, NH 03801

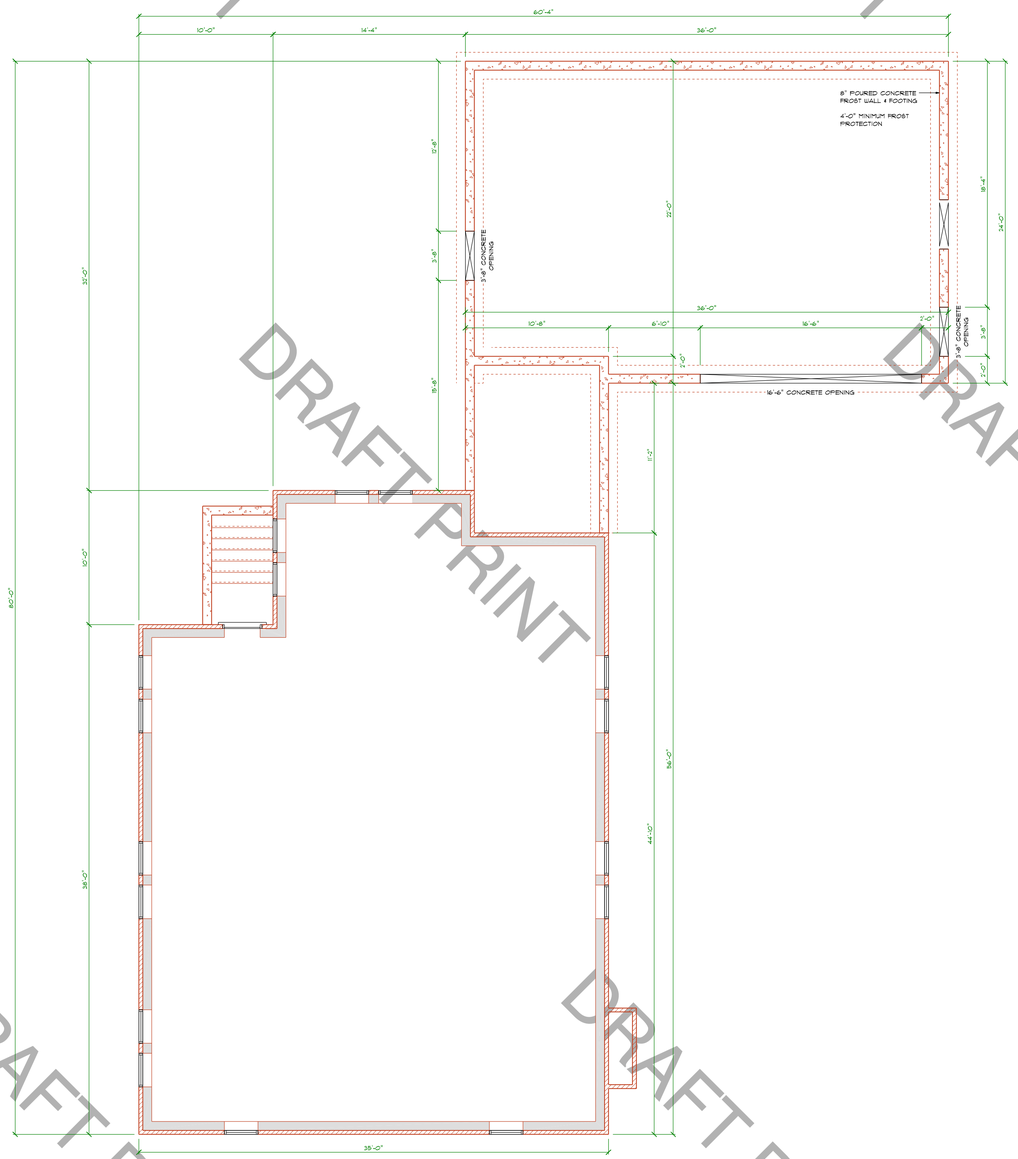
SHEET NUMBER
A5

PLAN NUMBER
1323

24x36 ARCH D

DRAFT PRINT

DRAFT PRINT



FOUNDATION PLAN

SCALE: 3/16" = 1'-0"

ADJUST FOUNDATION DROPS AND LOCATE BASEMENT/CRASH ON SITE PER CONDITIONS

MEMBER
AMERICAN INSTITUTE of BUILDING DESIGN

NEWMARKET PLAINS, LLC.
HOME DESIGN SERVICE

NEWMARKETPLAINSLLC@COMCAST.NET
WWW.NEWMARKETPLAINSLLC.COM
603-659-0985

DESCRIPTION	DATE
REVISED PLANS	12/08/22
REVISED PLANS	12/12/22
NOT FOR CONSTRUCTION	

PATRICK & NICOLE MULLALY
36 HUNTERS HILL AVENUE
PORTSMOUTH, NH 03801

SHEET NUMBER
A6

PLAN NUMBER
1323

24x36 ARCH D

5 Criteria for variance on setback and the request for a 2 family home where our home is zoned currently in a business zone

1: The variance will not be contrary to public interest

The request is consistent with the character of the neighborhood as the addition would only be creating a garage addition and would look within character of surrounding neighbors.

The change does not impact any neighboring properties with sight lines or encroachments as the setback issue the only direct abutter to the property line in question is the Route One bypass.

There are many 2 family homes in our surrounding neighborhood and we have plenty of parking at our property so the additional car this will add will not be an issue as it will be garaged whenever there.

2: The spirit of the ordinance will be observed

The required setback cannot be achieved, as we are currently over that setback and the proposed plan stays very close to that same footprint on that side.

Even though it will be considered 2 family it will look very similar to the way it does not with just an attached garage and living space for my elderly mother

The issue of the setbacks from the bypass shouldn't be a large issue as our home was moved in the 1930's to allow for the bypass to be put in-our home used to be on the other side of our garage and was moved

3: Substantial justice will be done

Granting the variance will add tax revenue to the city

A moderate change to the existing structure allows for our mother to move closer and for us to be able to stay in Portsmouth

4: Values of the surrounding properties will not be diminished

Direct abutters include two 1 family homes and another 2 family home (home with unattached studio apartment), and the route one bypass and a gas station

Extended neighbors include several commercial buildings like gas stations, a gun exchange, adult video sales and no expected detriment to any of these surrounding properties is expected

5: Literal enforcement of the provisions of the ordinance would result in unnecessary hardship

There is no way for us to achieve the setback requirement as our current garage is already non-compliant

If we are unable to get the approvals my mother would not be able to live with us and we would have to find alternate solutions for housing for her

III. NEW BUSINESS

E. The request **of Ashley and Robert T Blackington (Owners),** for property located at **65 Mendum Avenue** whereas relief is needed to construct an addition to the existing primary structure which requires 1) Variance from Section 10.531 to allow a 7 foot setback where 10 feet is required. Said property is located on Assessor Map 148 Lot 11 and lies within the General Residence A (GRA) District. (LU-22-241)

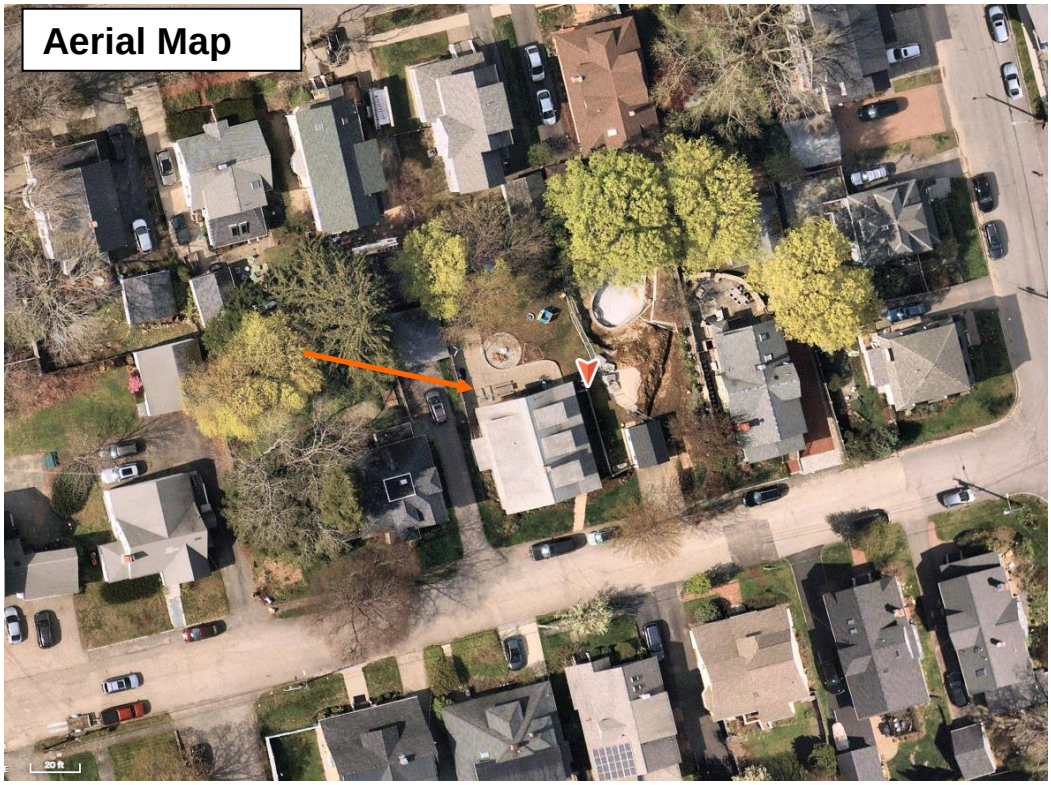
Existing and Proposed Conditions

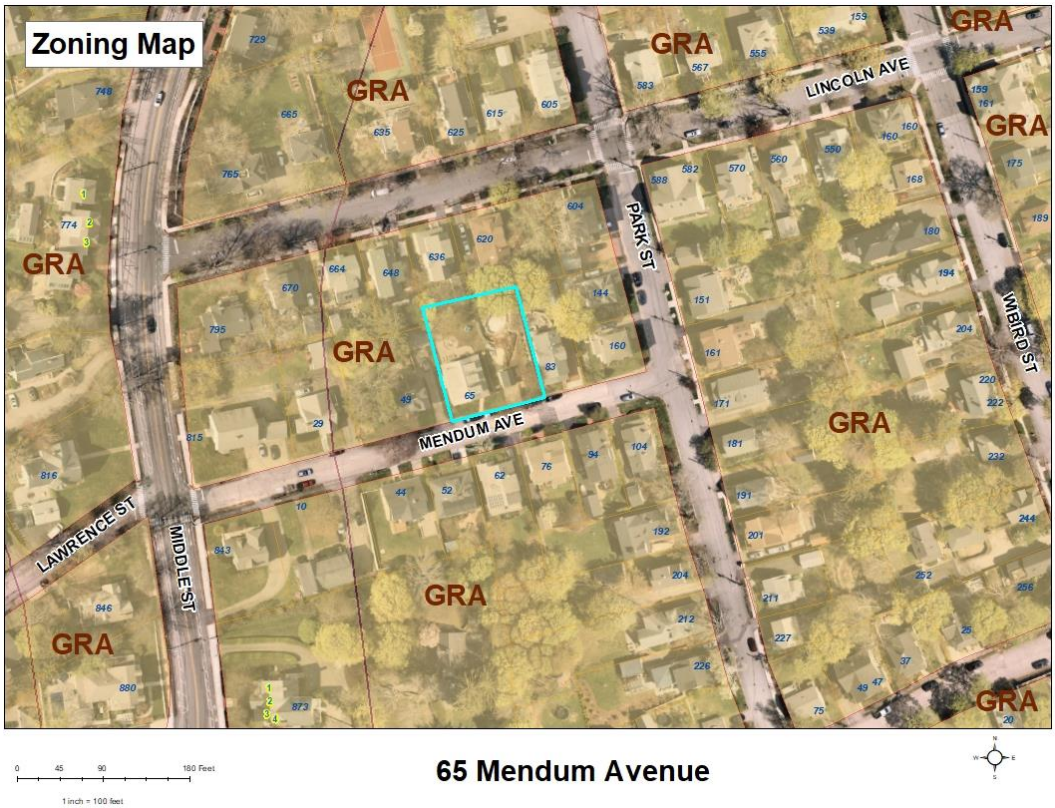
	Existing	Proposed	Permitted / Required	
Land Use:	Single Family	Addition to rear of primary structure	Primarily residential uses	
Lot area (sq. ft.):	11,574	11,574	7,500	min.
Lot Area per Dwelling Unit (sq. ft.):	11,574	11,574	7,500	min.
Street Frontage (ft.):	99.47	99.47	100	min.
Lot depth (ft.):	102.97	102.97	70	min.
Primary Front Yard (ft.):	15	15	15	min.
Left Side Yard (ft.):	1	1 **(7 for the addition)**	10	min.
Right Side Yard (ft.):	>10	>10	10	min.
Rear Yard (ft.):	>20	>20	20	min.
Height (ft.):	<35	<35	35	max.
Building Coverage (%):	15.5	16.5	25	max.
Open Space Coverage (%):	>30	>30	30	min.
Parking	Ok	Ok	2	
Estimated Age of Structure:	1912	Variance request shown in red.		

Other Permits/Approvals Required

- Building Permit

Neighborhood Context





65 Mendum Avenue

Previous Board of Adjustment Actions

April 21, 2015 – The Board acknowledged receipt of your request to **withdraw** the following petition to construct a second dwelling unit above a detached garage which would require the following:

1) A Variance from Section 10.513 to allow a second free-standing dwelling unit on a lot.

2) A Variance from Section 10.521 to allow a lot area per dwelling unit of 5,787± s.f. where 7,500 s.f. per dwelling unit is required.

November 17, 2015 – The Board of Adjustment completed its consideration of the **appeal** by the owners of an abutting property of the action taken by the Portsmouth City Council to restore involuntarily merged lots for this property under RSA 674:39. The Board voted to **grant** the petition as presented and advertised which had the effect of reversing the City Council's action to restore the lots to their pre-merger status. The Board determined that the lots had been voluntarily merged by overt action or conduct of the owners in the chain of title indicating that the owners regarded the lots as merged; and that, as a result, there had been no involuntary merger under RSA 674:39

January 19, 2016 – The Board of Adjustment completed its consideration of your Motion for **Rehearing**. The Board voted to **deny** the Motion for Rehearing. The Board found it made no errors in procedure or application of the law in their action taken at the November 17, 2015 meeting.

Planning Department Comments

The applicant is proposing to construct an addition onto the rear of the existing structure which will put the exterior wall at 7 feet from the left side boundary line where 10 is required. The existing primary structure is existing non-conforming with an existing exterior wall located at about 1 foot from the left side boundary line.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
   (a) The property has special conditions that distinguish it from other properties in the area.
   AND
   (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.

OR
Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Section 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

Todd & Ashley Blackington
65 Mendum Ave
Portsmouth NH, 03801

City of Portsmouth, NH
Planning Department
1 Junkins Ave, 3rd floor
Portsmouth, NH 03801

To Members of the Board of Adjustment,

We are requesting a variance to construct a 7'*16.5' addition on the back of our house for a bathroom/laundry space and to move the back door to improve access to our backyard. The variance meets all requirements with 10.233.20 as listed below:

10.233.21 The variance will not be contrary to the public interest- The addition of a bathroom/ laundry space at the rear of our private home will have no contraindications for our neighbors or in public interest.

10.233.22 The spirit of the Ordinance will be observed- Relocating the rear door to access the yard to the addition will bring it into conformity with the existing requirements, whereas it currently is not.

10.233.23 Substantial justice will be done- The addition will be designed to be congruent with our current home to match style and design as well as our neighborhood.

10.233.24 The values of surrounding properties will not be diminished- The addition is located at the rear of our home and will not diminish the value of surrounding homes.

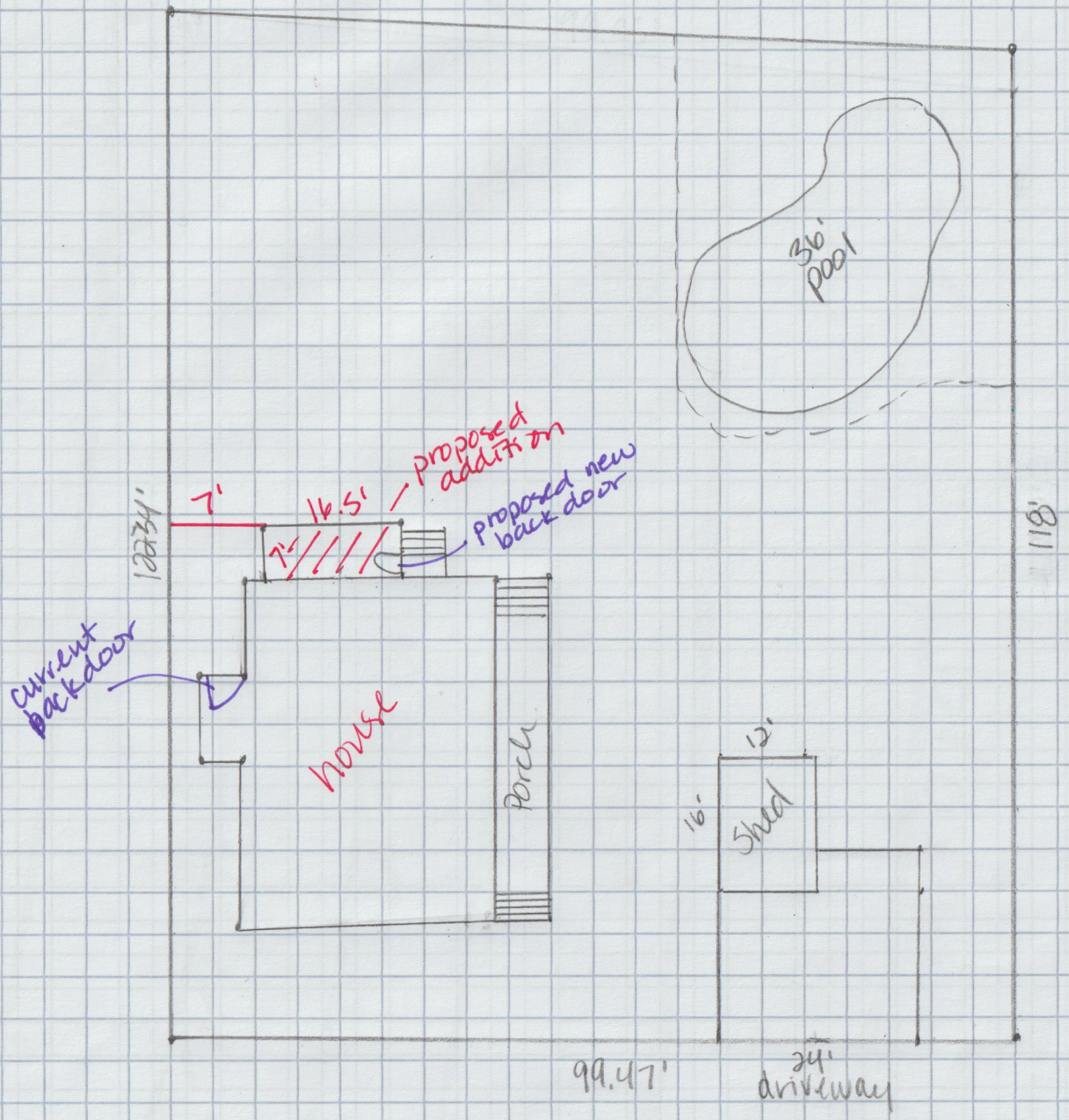
10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship- The location of our current rear door will be removed during our kitchen renovation from it's current location along our property line. It will be moved to the rear of the house with the addition to be moved to 21' from the lot line.

The special exception we are requesting is the left side of the addition is 7' from the lot line where 10' is required. The current rear door is located along the lot line and will be moved to the addition and away from its current position to then be 21' from the lot line.

Thank you for your consideration,

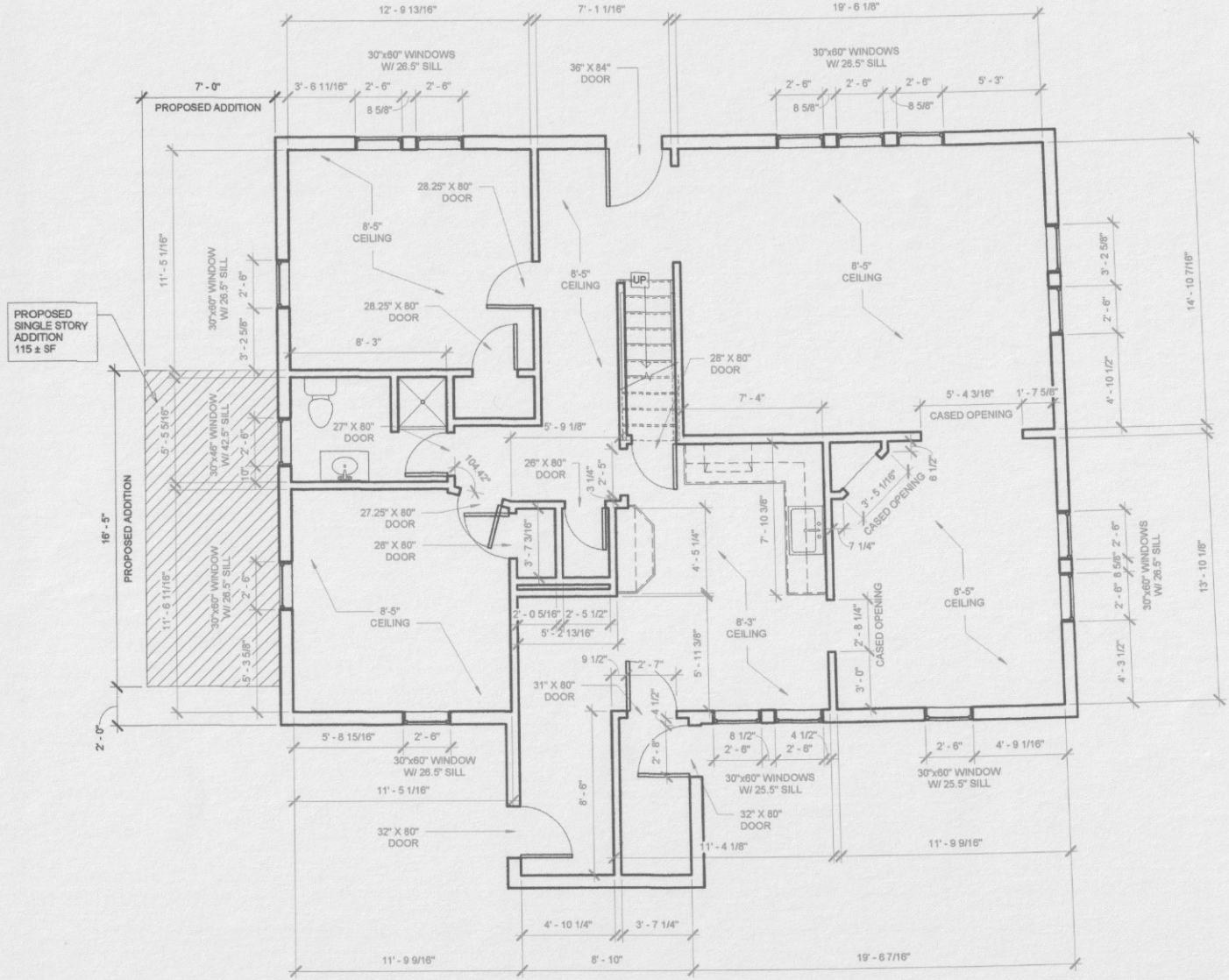
Ashley Blgh

Todd & Ashley Blackington

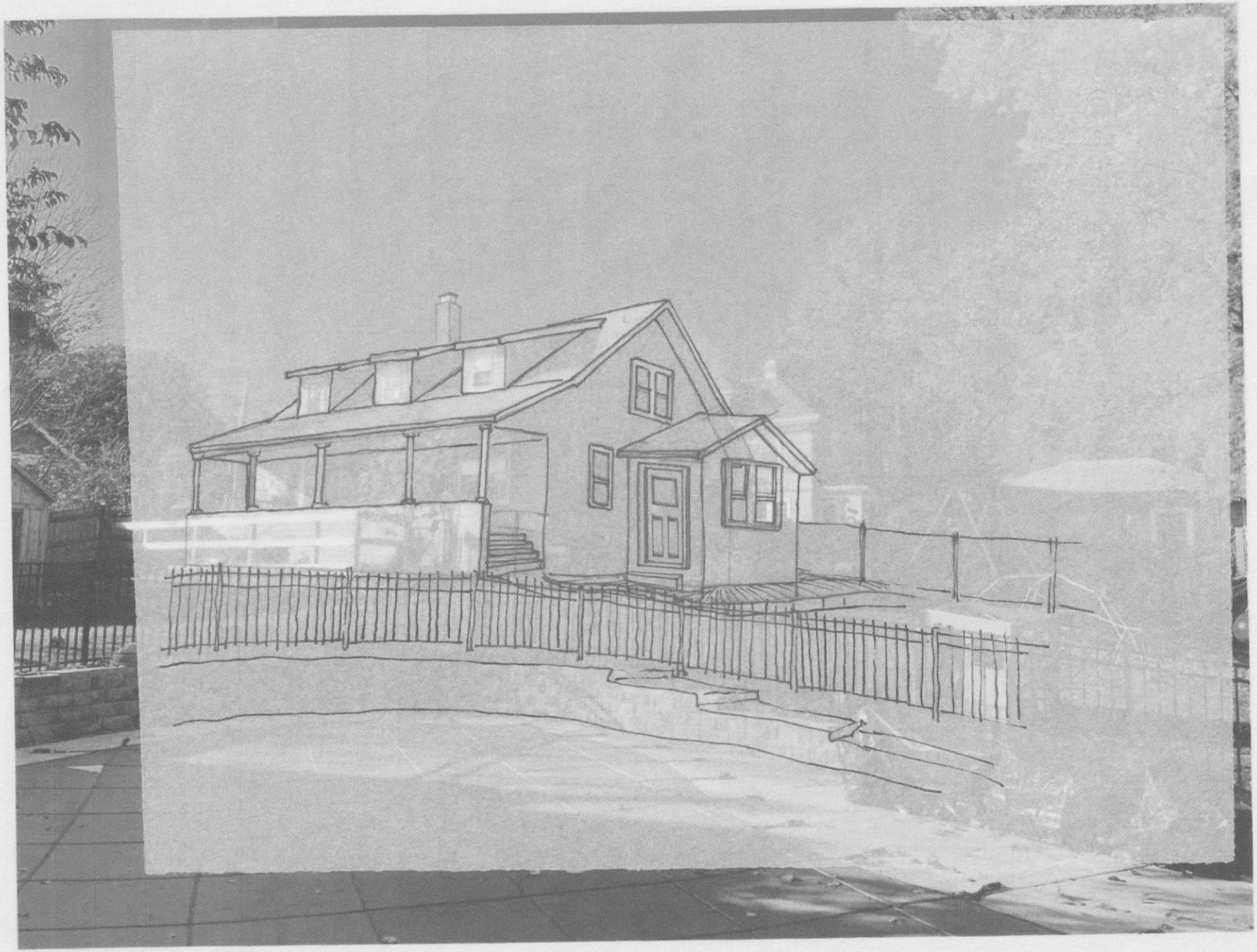


65 Mendum Ave
proposed 7x16.5 addition

1/17/2023 meeting.



BLACKINGTON RESIDENCE
EXISTING FIRST FLOOR PLAN
65 MENDUM AVE.
PORTSMOUTH, NH 03801



PROPOSED ADDITION SKETCH

III. NEW BUSINESS

F. The request of **Lucky Thirteen Properties LLC (Owner),** for property located at **147 Congress Street** whereas relief is needed to expand the existing structure which requires 1) Variance from Section 10.5A41.10D to allow 2% open space where 5% is required. Said property is located on Assessor Map 126 Lot 4 and lies within the Character District 5 (CD5), Downtown Overlay and Historic District. (LU-22-192)

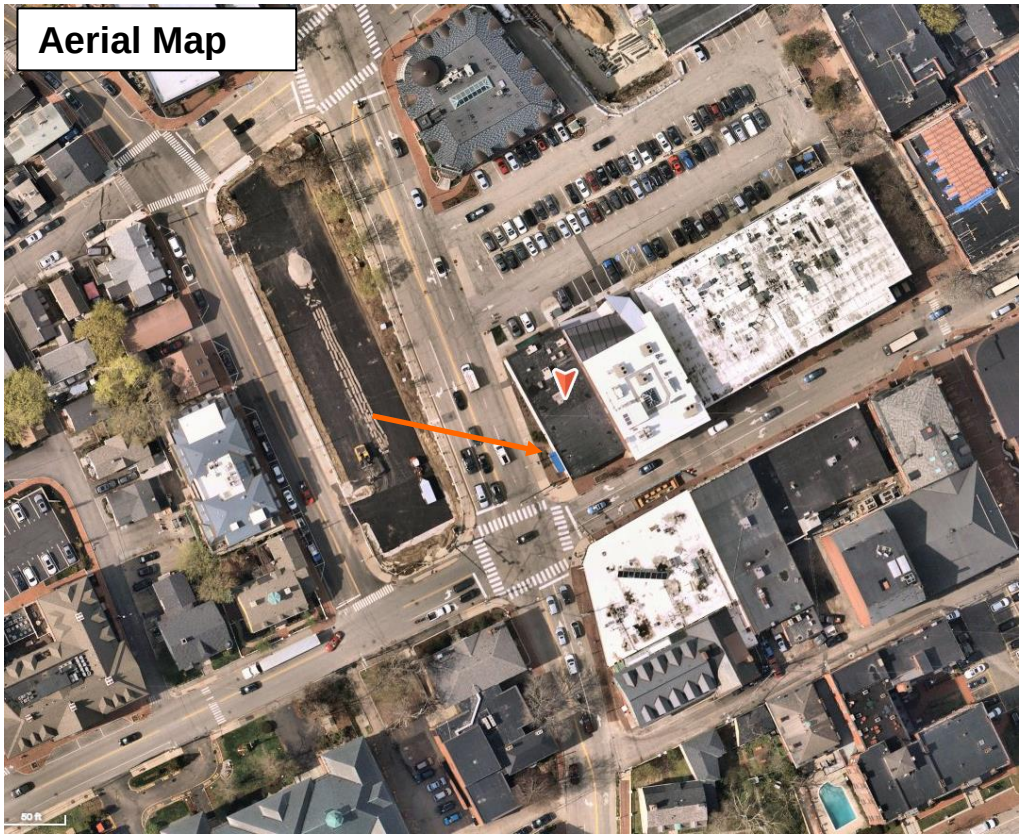
Existing and Proposed Conditions

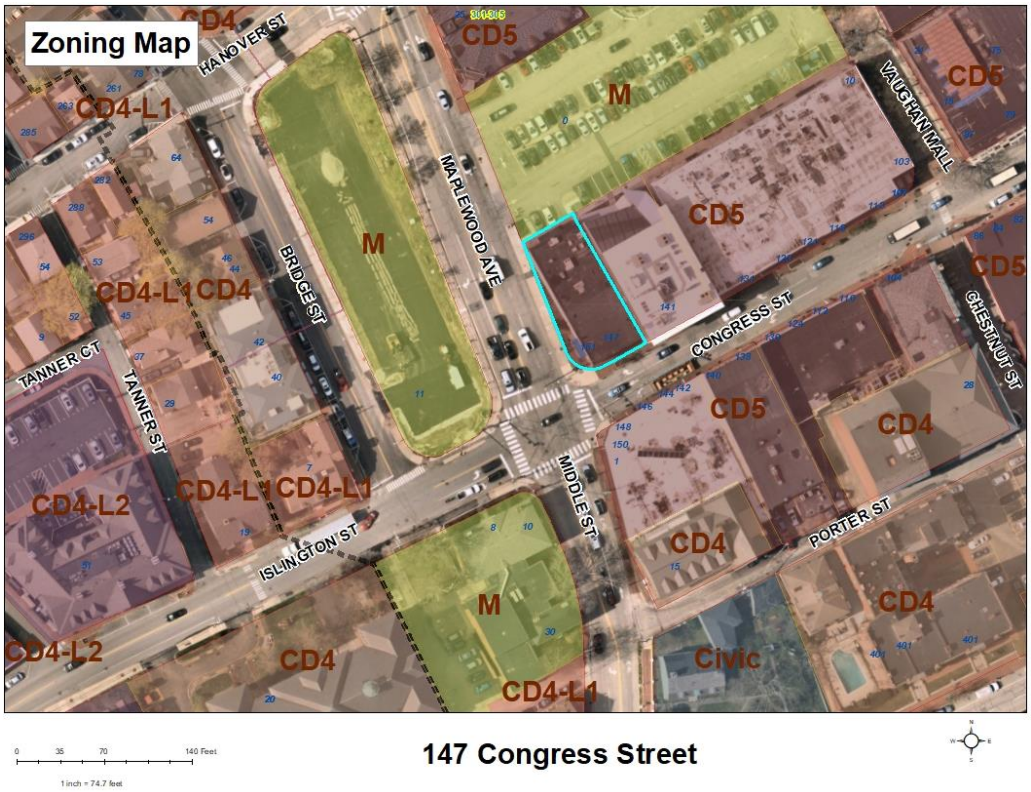
	Existing	Proposed	Permitted / Required	
Land Use:	Commercial	Addition	Primarily Commercial Uses	
Lot area (sq. ft.):	6,245	6,245	Not Required	min.
Lot Area per Dwelling Unit (sq. ft.):	Not Required	Not Required	Not Required	min.
Minimum Front Lot Line Buildout (ft.):	>80	>80	80	min.
Max Building Block Length (ft.):	<225	<225	225	max.
Front Yard (ft.):	5	5	5	max.
Left Side Yard (ft.):	0	0	Not Required	min.
Right Side Yard (ft.):	0	0	Not Required	min.
Rear Yard (ft.):	<5	<5	5	max.
Height (ft.):	<40	<40	2-3 Stories, 40’	max.
Building Coverage (%):	78	94.6	95	max.
Open Space Coverage (%):	18.5	**2**	5	min.
Parking	Ok	Ok	Not required in the Downtown Overlay	
Estimated Age of Structure:	1950	Variance request shown in red.		

Other Permits/Approvals Required

- Historic District Commission Certificate of Approval
- Building Permit
- Site Review (TAC/Planning Board)

Neighborhood Context





147 Congress Street

January 17, 2023 Meeting

Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

Applicant is proposing an addition to the existing structure to accommodate for the proposed redevelopment on the inside of the structure. The addition will reduce the open space to 2% where 5% is required.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
   (a) The property has special conditions that distinguish it from other properties in the area.
   AND
   (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.
   OR
   Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Section 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

DURBIN LAW

Derek R. Durbin, Esq.
603.287.4764
derek@durbinlawoffices.com

BY: VIEWPOINT & HAND DELIVERY

December 26, 2022

City of Portsmouth
Attn: Peter Stith, Planner
Zoning Board of Adjustment
1 Junkins Avenue
Portsmouth, NH 03801

RE: Variance Application of Lucky Thirteen Properties LLC
147 Congress Street, Tax Map 126, Lot 4

Dear Peter,

Our Office represents Lucky Thirteen Properties LLC, owner of the property located at 147 Congress Street, Portsmouth. Enclosed for submission to the ZBA for its January meeting, please find the following materials relative to the proposed improvements for 147 Congress Street.

1) Landowner Letter of Authorization;
2) Narrative to Variance Application (photos included as Exhibit D);
3) Site Plan and Open Space Plan;
4) Floor Plans and Elevations;

A copy of the application submission is being delivered to the Planning Department. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,

Derek R. Durbin, Esq.

LANDOWNER LETTER OF AUTHORIZATION

Lucky Thirteen Properties LLC, record owner of property located at 147 Congress Street, Portsmouth, NH 03801, Tax Map 126, Lot 4 (the "Property"), hereby authorizes **Durbin Law Offices, PLLC** to file any zoning, planning or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.

Michael Labrie, Duly Authorized

December 19, 2022

CITY OF PORTSMOUTH
ZONING APPLICATION NARRATIVE

Lucky Thirteen Properties LLC
(Owner/Applicant)
Tax Map 126, Lot 4
147 Congress Street
Portsmouth, NH 03801

The Property

The Property at 147 Congress Street, Portsmouth (the "Property") is located in the Character District 5 (CD5) Zoning District and Downtown Overlay District ("DOD"). **Exhibit A**. The Property has a land area of approximately 6,245 square feet. It contains a 2-story commercial building with a finished basement level. The building was originally constructed in the year 1950 per the City's assessing records. The building consists of vacant space on the first floor. The bottom floor serves primarily as storage space but has some office space for the employees at Jimmy's Jazz Club. Until recently, the Portsmouth Health Food Store occupied the first floor. The second floor consists of four (4) office spaces, one of which is presently occupied by a yoga studio.

As you will see by looking at the Tax Map attached as **Exhibit B**, the Property is a long, narrow, corner lot which puts it at a disadvantage for retail, restaurant, and similar uses. The purpose of the DOD is "to promote the economic vitality of the downtown by ensuring continuity of pedestrian-oriented business **uses** along **street**s." When translated into the layperson's vernacular, the DOD is intended to encourage retail, restaurant and like business uses on the ground floors of downtown buildings. The existing long, narrow building on the Property may be perfectly suitable for commercial office space, but the resulting floor plan is generally incompatible with retail and restaurant-related uses given the lack of window frontage (storefront) along the sidewalk and street. Given the high tax assessments attributed to the downtown properties, maximizing the amount of retail and restaurant related space on the ground floors of buildings is critically important since this type of space commands the highest rents.

The current owner of the Property, Lucky Thirteen Properties LLC (Michael Labrie, Member), would like to repurpose, renovate and add onto the Maplewood Avenue side of the building following the departure of the Portsmouth Health Food Store. Given the lack of available land area, in order to accomplish this goal, Mr. Labrie needs to utilize the landscaped sliver of land that runs between the sidewalk and building along Maplewood Avenue. This will allow him to take advantage of the long, narrow configuration of the building and its frontage on both Maplewood Avenue and Congress Street. As it stands now, the westerly side of the building along Maplewood Avenue consists of a relatively monolithic white brick wall. The building itself is from the Urban Renewal period and has a Cold War Era appearance. The proposed renovations will result in a more attractive, code-compliant building that will activate the sidewall along Maplewood Avenue. Mr. Labrie will be repurposing an existing building to improve its function and appearance, which will benefit the public, as opposed to tearing it down and building something much larger in its place.

The landscaping that would be removed and infilled with the proposed addition consists of a mixture of vegetation, including some zebra grass, flowering plants and smaller shrubbery. The utility meters are also located on this side of the building within the landscaped area. Objectively speaking, the landscaping serves very little purpose and is not overly attractive in its current state. Moreover, its location immediately between the building and sidewalk means that it tends to collect debris and trash and is difficult to maintain.

Summary of Zoning Relief

In order to construct the proposed addition, Mr. Labrie needs a variance from Section Figure 10.5A41.10D of the Ordinance to allow for 2.3% open space where 5% is the minimum required.

Variance Criteria

Granting the variances will not be contrary to the spirit and intent of the Zoning Ordinance or the public interest.

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, "the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives." "*Id.* The Court observed that "[t]here are two methods of ascertaining whether granting a variance would violate an ordinance's basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare." 152 N.H. 577.

Per Figure 10.5A41.10D of the Ordinance, the CD5 District *consists of a high density center with a mix of **building** types and residential, retail and other commercial **use**s. There are no **front yard**s or **side yard**s, and limited **landscaping** and public parking facilities. **Street**s have **sidewalk**s and trees or other pedestrian amenities, and define small to medium **block**s.*

A significant portion of downtown, and the areas around the North Mill Pond commonly referred to as the "Northern Tier", are zoned CD5 and fall within the DOD. **Exhibit C**. These are the areas with the greatest density of existing and proposed retail and restaurant uses. Restaurant and retail related uses are the predominant ground floor uses throughout the CD5 Zoning District and DOD, consistent with the City's vision for the downtown and Northern Tier.

As evidenced by Figure 10.5A41.10D, the Ordinance intends for near maximum build out of properties zoned CD5. It specifically encourages build-out to the front and side yard property lines which is consistent with the goal of promoting ground floor retail, restaurant and related uses within the downtown. By the way it was written, it appears that the Ordinance contemplates open space being primarily situated to the rear of buildings within the CD5 Zoning District. Otherwise, the Ordinance would not have been written to encourage near maximum side and front lot line buildouts.

Aside from the properties, such as Vaughn Mall, that are owned by the City, a majority of the properties that surround 147 Congress Street have no green space and are otherwise consistent in appearance to what is proposed. **Exhibit D**. The Property is situated at the end of a city block where there is little or no separation between buildings or landscaping other than the trees that have been planted in and around the sidewalk areas of the City right-of-way. The landscaping along the Maplewood Avenue side of the Property is actually somewhat of an oddity when you consider the lack of landscaped areas around surrounding buildings in this block of Portsmouth.

In the case of *Belanger v. Nashua*, the NH Supreme Court opined: "[w]hile we recognize the desired interrelationship between the establishment of a plan for community development and zoning, we believe that municipalities must also have their zoning ordinances reflect the current character of neighborhoods." 121 N.H. 389 (1981).

"Open space" is defined by Section 10.1530 of the Ordinance as follows:

> Land area vertically open to the sky, free of all **structure**s, parking area/lots, **driveway**s and other **use**s which preclude attractive **landscaping** in such area. **Open space** shall be predominantly pervious, may be landscaped with lawn, trees, shrubs or other planting, and may include walks and terraces. For the purposes of this definition, water areas are considered to constitute **open space**.

Requiring that the Property meet the 5% open space threshold serves no legitimate purpose in the present case, as a majority of other properties surrounding it have been built out to the properties lines and have no green space at all. Because of how the term *open space* is defined by the Ordinance and has been interpreted by the City, many areas of the Property that would otherwise be considered in the calculation are discounted for one reason or another. For example, the City has interpreted the definition to preclude areas that are less than 5' in width to be used in the calculation regardless of the fact that they are *open to the sky*. In the present case, the proposed design results in several areas that are less than 5' in width that are not counted. If counted, 4.5% of the Property is *open to the sky* and otherwise meets the definition of *open space*. Moreover, areas that are landscaped with vegetation or would otherwise count towards the open space requirement but have a canopy over all or a portion of them are not *open to the sky* and cannot be used in the calculation. This results in an apparent contradiction with what the Ordinance intended, as sidewalks that are *open to the sky* can be counted as *open space* but areas that are nicely landscaped with vegetation but have a canopy over them cannot. If the proposed canopied areas of the building could be counted in the open space computation, the Property could meet the 5% *open space* requirement. The proposed canopies are strongly favored by the HDC and add very attractive design features to the building.

The term open space is nebulously defined and ultimately leaves interpretation to the City. It is a term that has not been consistently interpreted by the City since it was defined. Therefore, it is incumbent to look at the spirit and intent of the Ordinance and the character of the area in which a property is located.

What is proposed for an addition will actually make the Property more compliant with respect to the primary and secondary front yard setback provisions of the Ordinance. Therefore, while the goal behind one requirement of the Ordinance (open space) is not strictly achieved, as interpreted by the City, others (i.e. lot line buildout) are more closely met.

With the proposed renovation, there will be several life safety improvements that would have not been mandated otherwise, including a new sprinkler system on all three (3) floors and fire rated stairwells and hallways. In addition, Mr. Labrie intends to grant easements to the City over portions of the Congress Street and Worth Lot sidewalks which are privately held. The 100' long concrete sidewalk along Maplewood Avenue will be replaced with red brick at Mr. Labrie's cost.

For the foregoing reasons, granting the variances will not alter the essential character of the area or negatively impact public health, safety or welfare. The aesthetic and functional improvements made to the Property will be a benefit to the City and the public and be consistent with the spirit and intent of the Ordinance.

B. Substantial Justice will be done in granting the variance relief sought.

To determine whether substantial justice is done, the Board must balance the equities between the rights of a private landowner and the public interest in deciding whether to grant or deny a variance request. The "only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997); *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102 (2007).

Ultimately, the question is whether or not preserving the existing landscaping along the Maplewood Avenue side of the building is more important than improving and expanding upon the building and the City obtaining easements over portions of the sidewalk that are presently owned by Mr. Labrie. In the present case, there is no gain to the public by denying the variance to the open space requirement. To the contrary, denying the variance would be a detriment to the public, and would constitute a loss to the Applicant. Granting the variance will result in a much-improved building aesthetically and otherwise at no cost to the public.

C. Surrounding property values will not be diminished by granting the variance.

The Board is justified in relying upon its own knowledge and expertise to reach the conclusion that surrounding property values will only be improved with the proposed renovation and building addition. The landscaping that will be removed and replaced by the addition adds no value to the building. The improved appearance of the building will benefit surrounding properties and their values. The HDC approves of the current design, which is further evidence of the fact that granting the variance will not diminish surrounding property values.

D. Denying the variance would constitute an unnecessary hardship.

The Property has some obvious special conditions that distinguish it from surrounding properties. It is a relatively small, rectangular corner lot with a long, narrow building on. The lack of linear (window) frontage along Congress Street makes the ground floor of the building ill-suited for retail restaurant uses related which are the predominant (and encouraged) uses in this area of Portsmouth and throughout the CD5 District and DOD. In addition, the Property has frontage on two different public streets, Maplewood Avenue and Congress Street. However, the existing building has a long, brick wall with no access via Maplewood Avenue. Therefore, the Applicant is unable to take advantage of the secondary frontage on Maplewood Avenue due to the existing condition of the building.

Reducing the open space to less than what is required in the CD5 Zoning District will render the Property non-conforming in this respect. However, this is offset by the build-out of the Property along Maplewood Avenue, which will bring it into greater conformance with the *minimum* secondary front yard setback requirement set forth in Figure 10.5A41.10D.

The reduction in green space will actually make the Property more consistent in appearance to surrounding properties. Thus, owing to the special conditions of the Property there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

Finally, the proposed use of the Property will remain consistent with CD5 zoning. Therefore, it is reasonable per se.

Conclusion

In conclusion, the five (5) criteria for granting the variance are met. Accordingly, the Applicant respectfully requests your approval.

Respectfully Submitted,

Dated: December 26, 2022

Lucky Thirteen Properties LLC

By: Derek R. Durbin, Esq.
DURBIN LAW OFFICES PLLC
144 Washington Street
Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com

Exhibit A

Property Information

Property ID	0126-0004-0000
Location	147 CONGRESS ST
Owner	LUCKY THIRTEEN PROPERTIES LLC

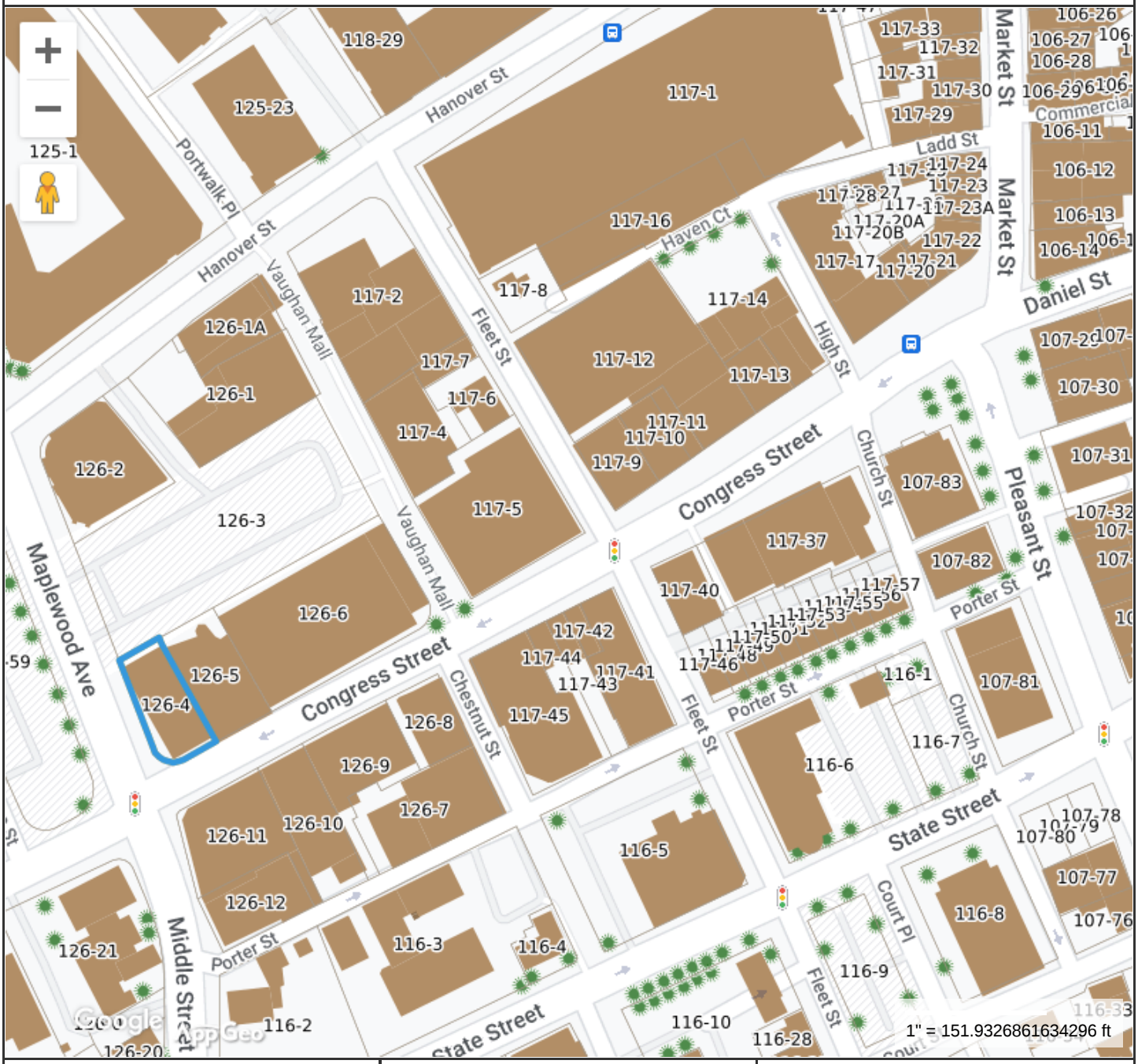
MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

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 09/21/2022
Data updated 3/9/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

Exhibit B



Property Information

Property ID	0126-0004-0000
Location	147 CONGRESS ST
Owner	LUCKY THIRTEEN PROPERTIES LLC

MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

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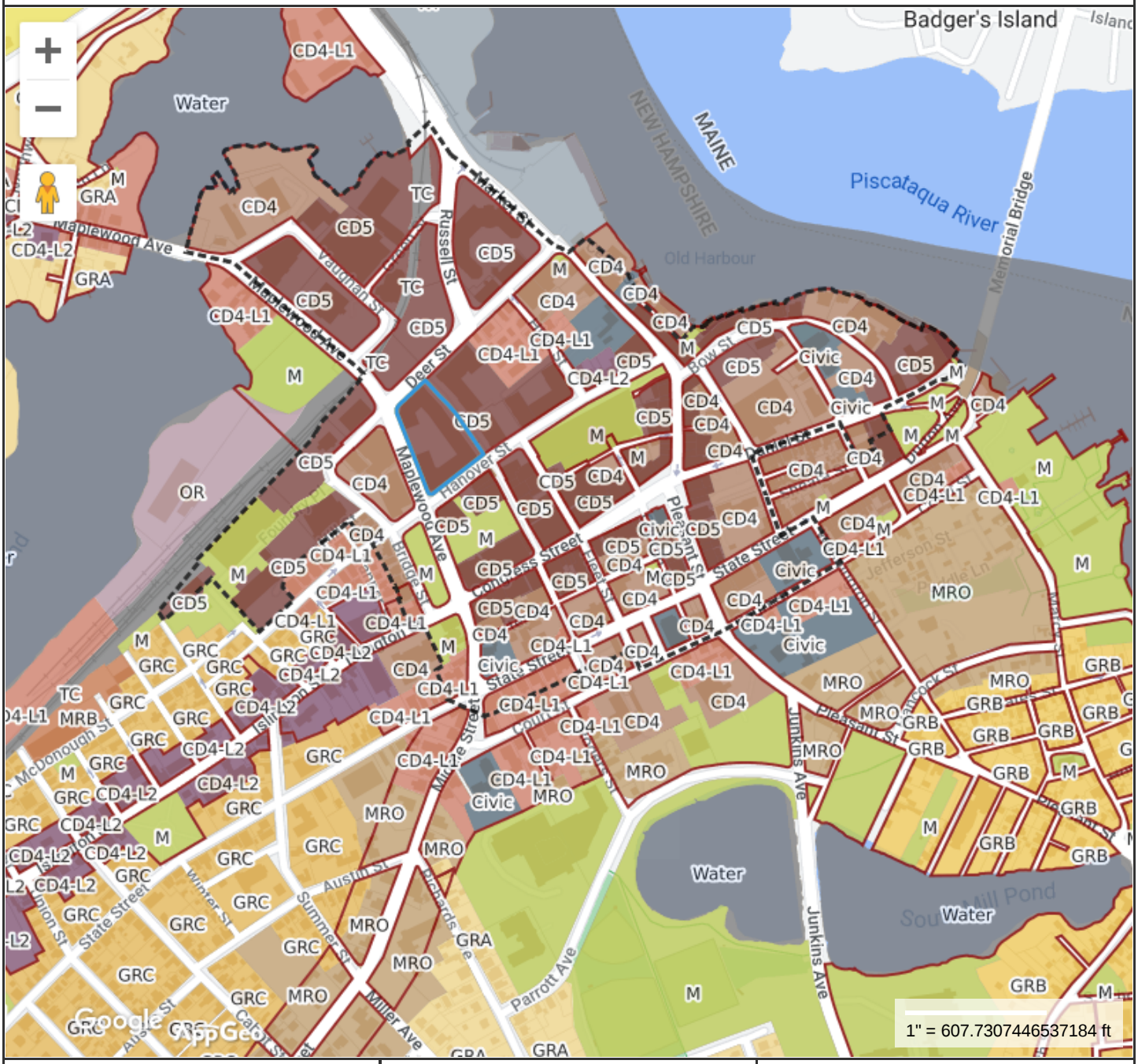
Geometry updated 09/21/2022
Data updated 3/9/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

Exhibit C



Property Information

Property ID	0125-0001-0000
Location	195 HANOVER ST
Owner	PARADE OFFICE LLC

MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

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Geometry updated 09/21/2022
Data updated 3/9/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

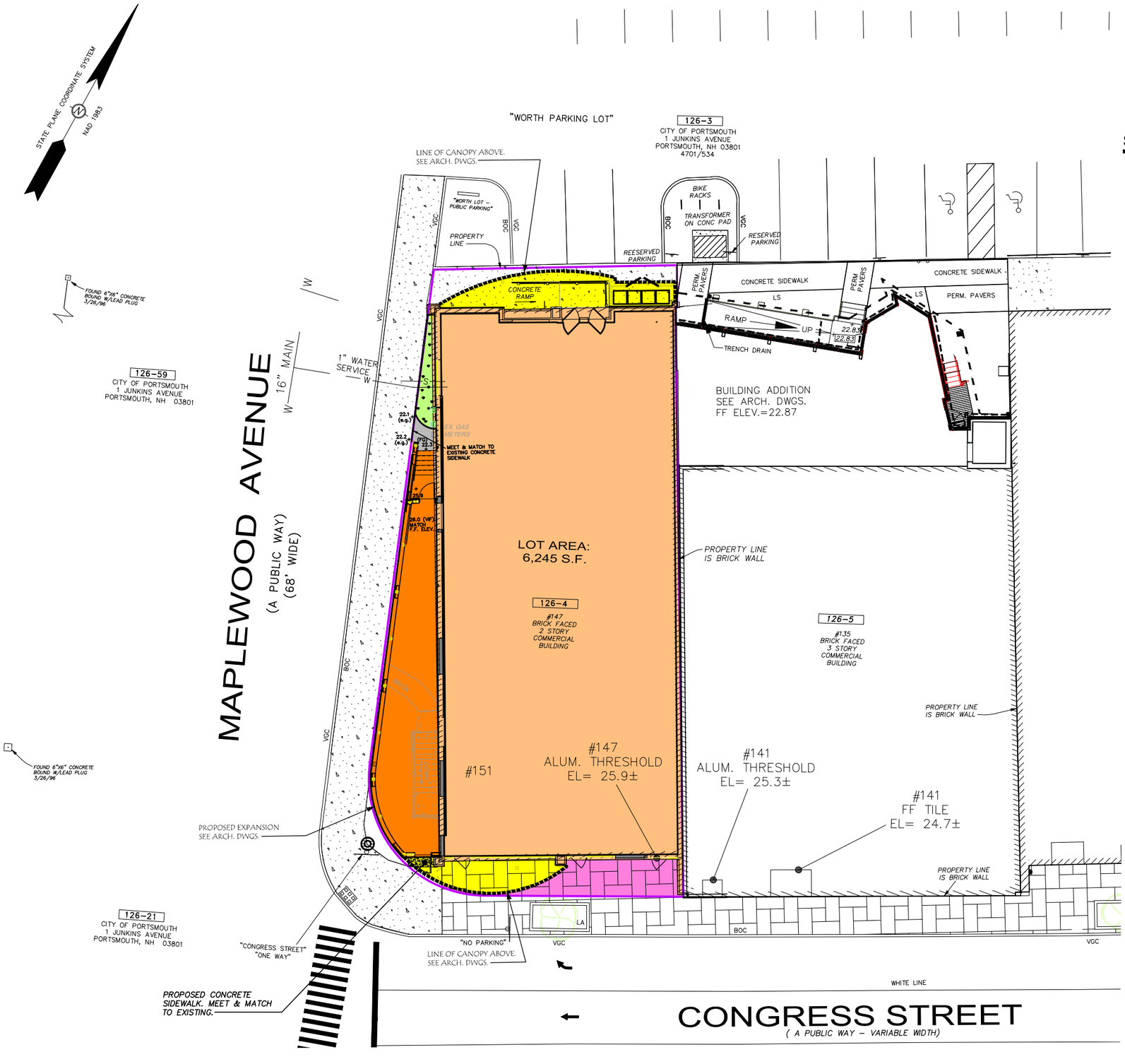
View of Block from Corner of Maplewood Ave. and Congress Street (North)

View of Block from Corner of Maplewood Ave. and Congress Street (South)

View of Block (Congress St) from Vaughn Mall

View of Landscaping on Maplewood Ave Side of Building at 147 Congress Street

View of Worth Parking Lot from Vaughn Mall



SITE NOTES

1. DESIGN INTENT – THIS PLAN SET IS INTENDED TO DEPICT THE EXPANSIONS & IMPROVEMENTS OF THE SITE FOR A MIXED USE.
2. APPROXIMATE LOT AREA: 6,245 S.F.±
3. ZONE: HISTORIC DISTRICT CD5, DOWNTOWN OVERLAY DISTRICT
4. DIMENSIONAL REQUIREMENTS:

MIN. LOT AREA:	NR	
MAX. BLDG BLOCK LENGTH:	225'	
FRONT SETBACK:	5' MAX.	
SIDE SETBACK:	NR	
REAR SETBACK:	5' MIN.	
MAX. BUILDING HEIGHT:	2-3 STORIES, 40' ALLOWED	
MIN. GROUND STORY HT:	12'-0" (±11' EXISTING)	
REQUIRED FACADE TYPE:	SHOPFRONT	
MAX. BLDG. COVERAGE:	95% (±78% EXISTING)	94.6% PROPOSED (5,910 SF)
MIN. OPEN SPACE:	5% (±18.5% EXISTING)	2.3% PROPOSED (146 SF)
OPEN TO SKY:	NR (±22% EXISTING)	4.5% PROPOSED (282 SF)
MAX. BLDG. FOOTPRINT:	20,000 S.F.	
MAX. ENTRANCE SPACING:	50'	
MIN. FRONT LOT LINE B.O.:	80%	

PARKING REQUIREMENTS (SECTION 10.1115):
RESTAURANT: NO REQUIREMENT
RETAIL: NO REQUIREMENT

5. THERE ARE NO WETLANDS ON OR WITHIN THE VICINITY OF THE PARCEL.
6. PAVEMENT MARKINGS AND SIGNS SHALL CONFORM TO THE REQUIREMENTS OF THE "MANUAL ON UNIFORM TRAFFIC DEVICES," "STANDARD ALPHABETS FOR HIGHWAY SIGNS AND PAVEMENT MARKINGS" AND THE AMERICANS WITH DISABILITIES ACT (ADA), LATEST EDITIONS.
7. ALL CONSTRUCTION SHALL MEET THE MINIMUM STANDARDS OF THE CITY OF PORTSMOUTH & NHDOT'S STANDARD SPECIFICATION FOR ROAD & BRIDGE CONSTRUCTION, LATEST EDITIONS. THE MORE STRINGENT SPECIFICATION SHALL GOVERN.
8. CLEAN AND COAT VERTICAL FACE OF EXISTING PAVEMENT AT SAWCUT LINES WITH RS-1 IMMEDIATELY PRIOR TO PLACING NEW BITUMINOUS CONCRETE.
9. ALL BONDS AND FEES SHALL BE PAID/POSTED PRIOR TO INITIATING CONSTRUCTION.
10. THE CONTRACTOR SHALL VERIFY ALL BENCHMARKS AND TOPOGRAPHY IN THE FIELD PRIOR TO CONSTRUCTION.
11. THE CONTRACTOR SHALL VERIFY ALL BUILDING DIMENSIONS WITH THE ARCHITECTURAL AND STRUCTURAL PLANS PRIOR TO CONSTRUCTION. ALL DISCREPANCIES SHALL BE IMMEDIATELY BROUGHT TO THE ATTENTION OF THE ARCHITECT AND ENGINEER FOR RESOLUTION.
12. BUILDING AREA SHOWN IS BASED ON FOOTPRINT MEASURED TO THE EDGE OF FOUNDATIONS AND/OR SLABS. ACTUAL INTERIOR SPACE WILL DIFFER.
13. ALL SITE LIGHTING WILL BE BUILDING MOUNTED.

LEGEND

- PROPERTY LINE
- EXISTING BUILDING
- PROPOSED ADDITION – SEE ARCH. DWGS.
- PROPOSED CANOPY – SEE ARCH. DWGS. (OPEN BELOW)
- EXISTING BRICK SIDEWALK (OPEN TO SKY)
- EXISTING CONCRETE SIDEWALK (OPEN TO SKY)
- PROPOSED CONCRETE SIDEWALK (CANOPY ABOVE)
- PROPOSED LANDSCAPING – SEE ARCH. DWGS. (CANOPY ABOVE)

GRAPHIC SCALE
10 0 5 10 20 40
(IN FEET)

P5392

ALTUS ENGINEERING
133 Court Street Portsmouth, NH 03801
(603) 433-2335 www.altus-eng.com

NOT FOR CONSTRUCTION

ISSUED FOR:
BOARD OF ADJUSTMENT

ISSUE DATE:
DECEMBER 21, 2022

REVISIONS

NO.	DESCRIPTION	BY	DATE
0	INITIAL SUBMISSION	EDW	11/01/22
1	INITIAL BOA SUBMISSION	EDW	12/21/22

DRAWN BY: RLH
APPROVED BY: EDW
DRAWING FILE: 5392.dwg

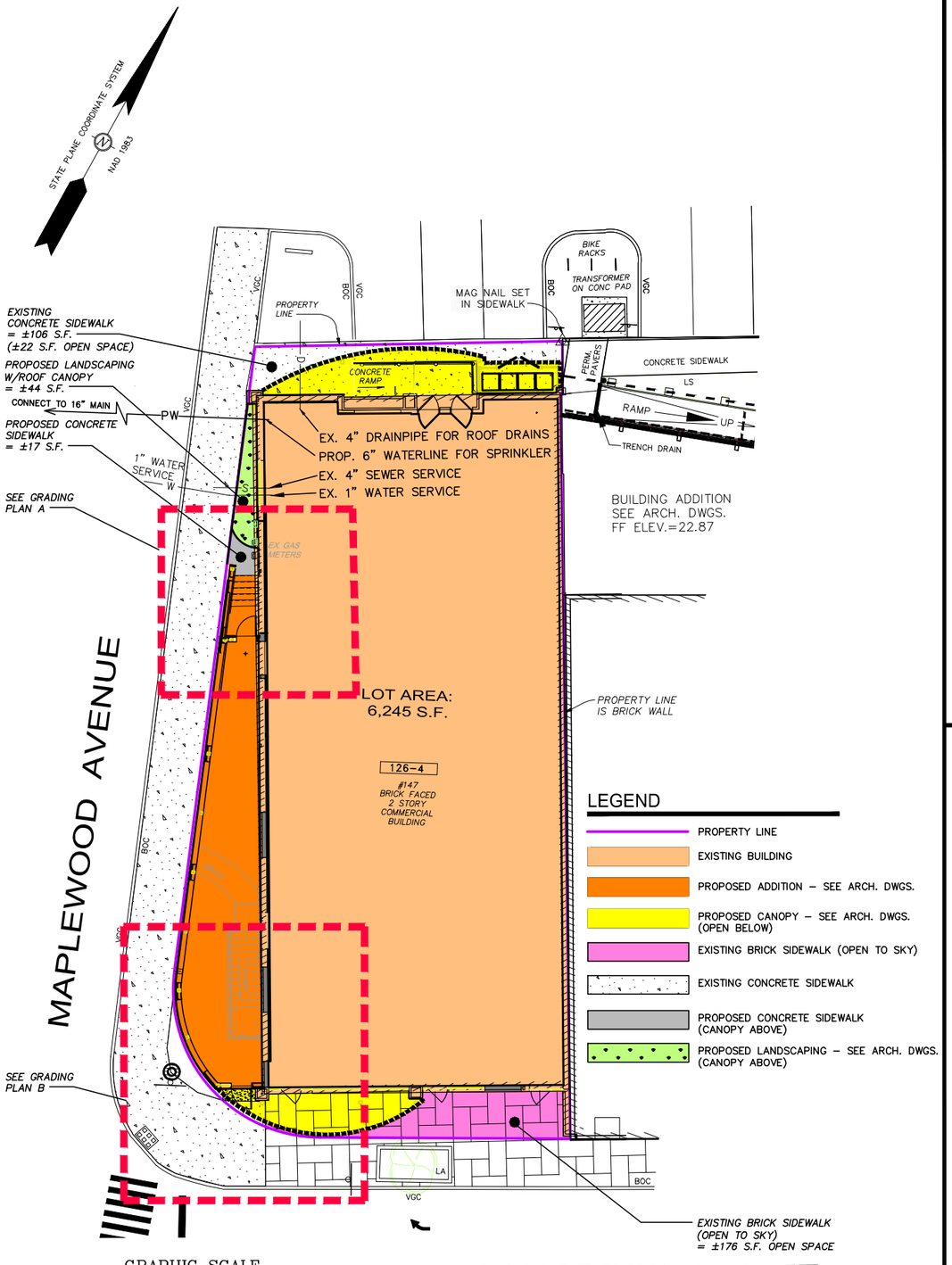
SCALE:
22" x 34" – 1" = 10'
11" x 17" – 1" = 20'

OWNER/APPLICANT:
LUCKY THIRTEEN PROPERTIES, LLC
P.O.BOX 300
RYE, NH 03870-0300

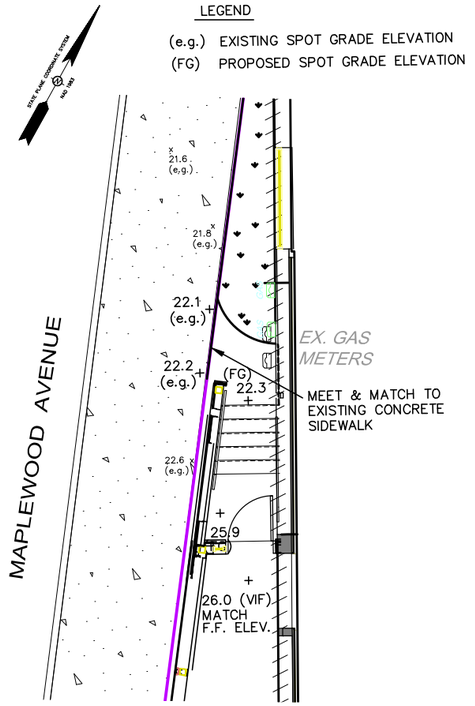
PROJECT:
PROPOSED REDEVELOPMENT
TAX MAP 126, LOT 4
147 CONGRESS STREET
PORTSMOUTH, NH

TITLE:
SITE PLAN

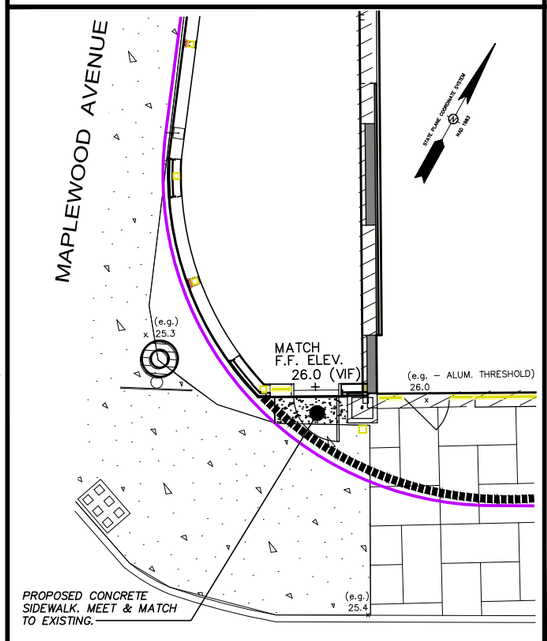
SHEET NUMBER:
C-1



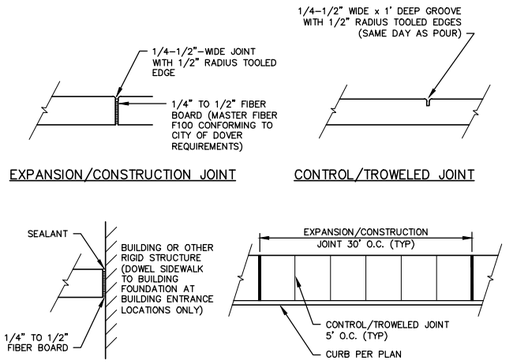
OPEN SPACE PLAN
SCALE: 1" = 10'



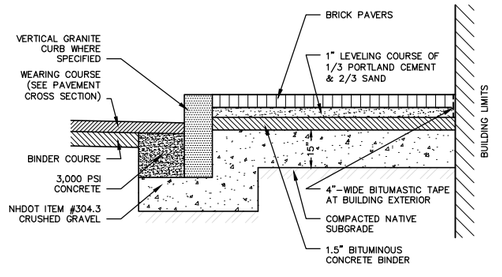
GRADING PLAN - A
SCALE: 1" = 5'



GRADING PLAN - B
SCALE: 1" = 5'



CONCRETE SIDEWALK DETAIL NOT TO SCALE



BRICK SIDEWALK DETAIL NOT TO SCALE

P5392

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ISSUE DATE:
DECEMBER 21, 2022

REVISIONS

NO.	DESCRIPTION	BY	DATE
0	INITIAL SUBMISSION	EDW	11/01/22
1	BOA SUBMISSION	EDW	12/21/22

DRAWN BY: RLH
APPROVED BY: EDW
DRAWING FILE: 5392.dwg

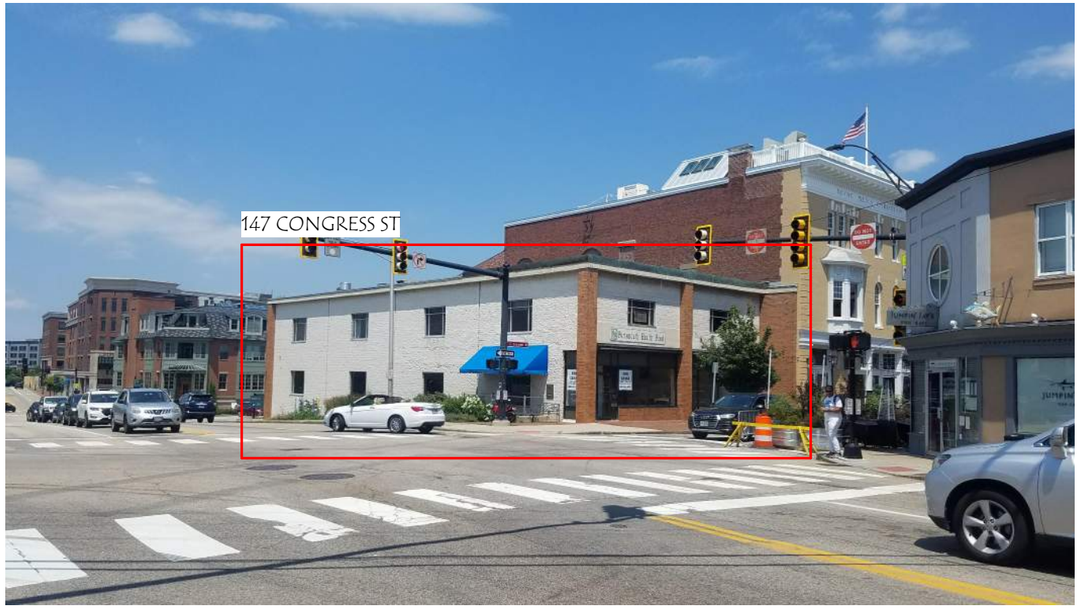
SCALE:
22" x 34" – AS SHOWN
11" x 17" – AS SHOWN

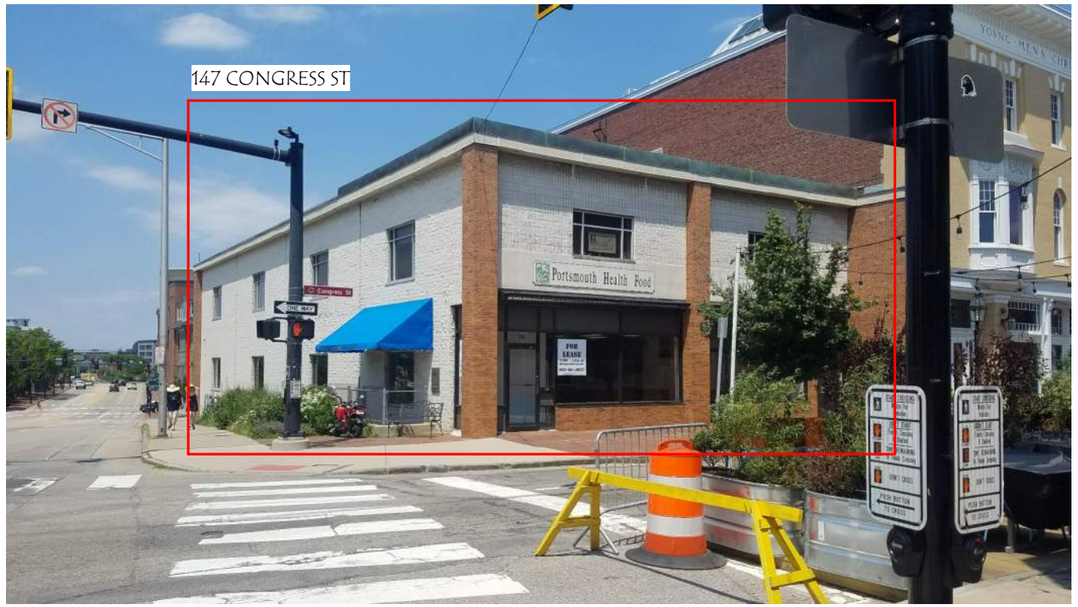
OWNER/APPLICANT:
LUCKY THIRTEEN PROPERTIES, LLC
P.O.BOX 300
RYE, NH 03870–0300

PROJECT:
PROPOSED REDEVELOPMENT
TAX MAP 126, LOT 4
147 CONGRESS STREET
PORTSMOUTH, NH

TITLE:
OPEN SPACE PLAN & GRADING PLANS

SHEET NUMBER:
C-2





PREVIOUSLY APPROVED

MARKET SQUARE ARCHITECTS
104 Congress St. STE 203
Portsmouth, NH 03801
PH: 603.501.0202

HISTORIC DISTRIC COMMISSION
ADMINISTRATIVE APPROVAL
DECEMBER 2022

147 CONGRESS

147 Congress St
Portsmouth, NH 03801

Revisions:
#	Description	Date

SCALE:
DRAWN BY: SNH
CHECKED BY: RJH
PROJECT NO.: 202209
DATE: 11/18/22

TITLE: EXISTING CONTEXT

2

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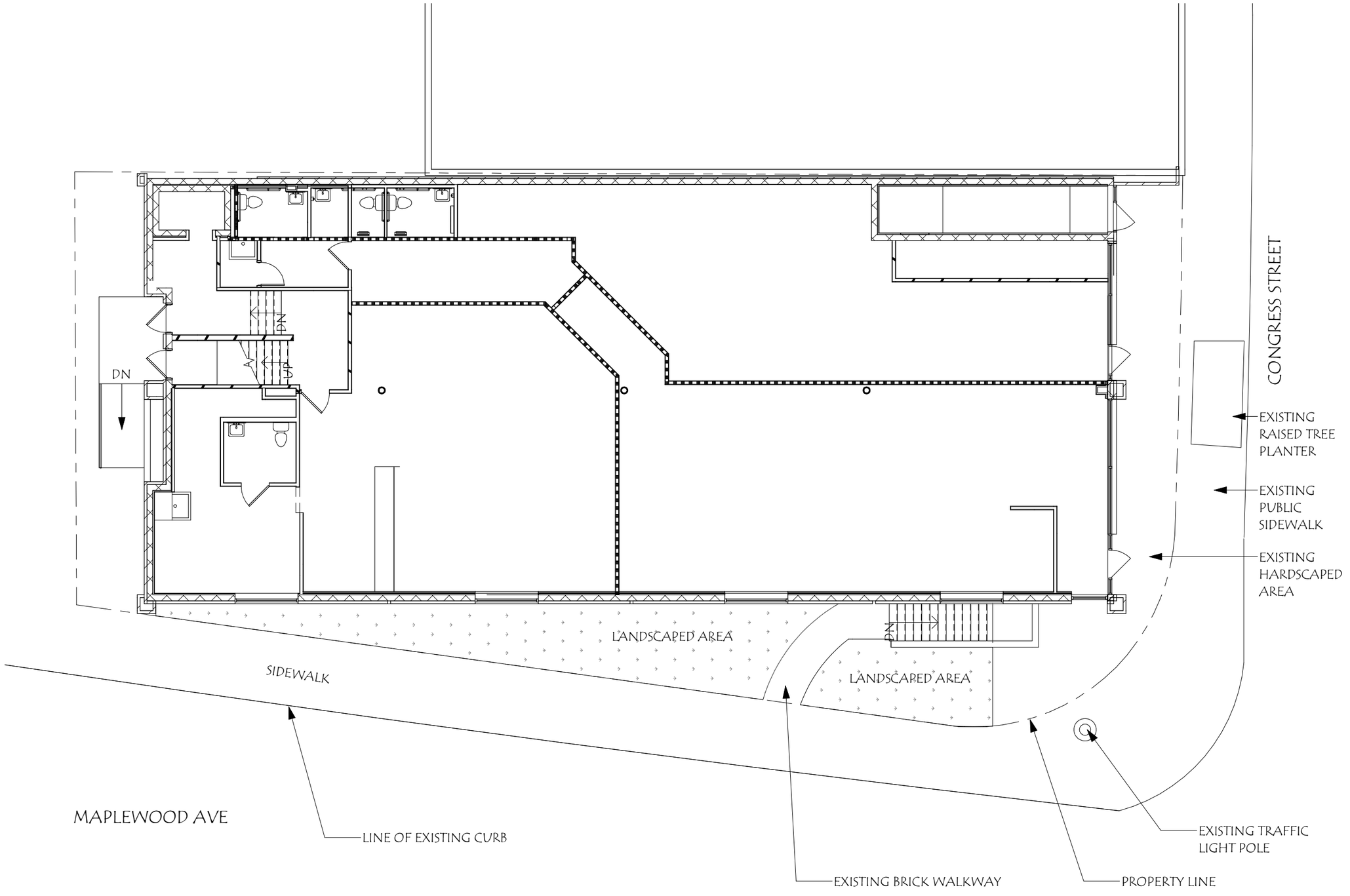
12/25/2022 8:28:01 PM



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104 Congress St. STE 203
Portsmouth, NH 03801
PH: 603.501.0202

HISTORIC DISTRIC COMMISSION
ADMINISTRATIVE APPROVAL
DECEMBER 2022

147 CONGRESS

147 Congress St
Portsmouth, NH 03801

Revisions: #	Description	Date

SCALE: 3/32" = 1'-0"
DRAWN BY: SNH
CHECKED BY: RJH
PROJECT NO.: 202209
DATE: 11/18/22

TITLE: EXISTING PLAN

3

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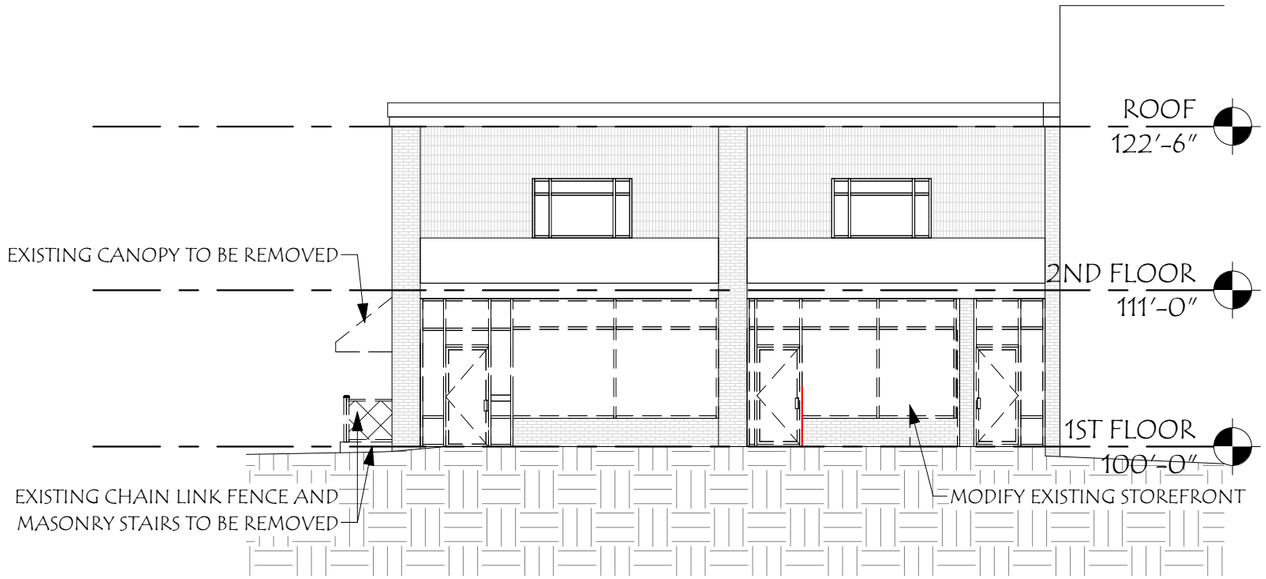
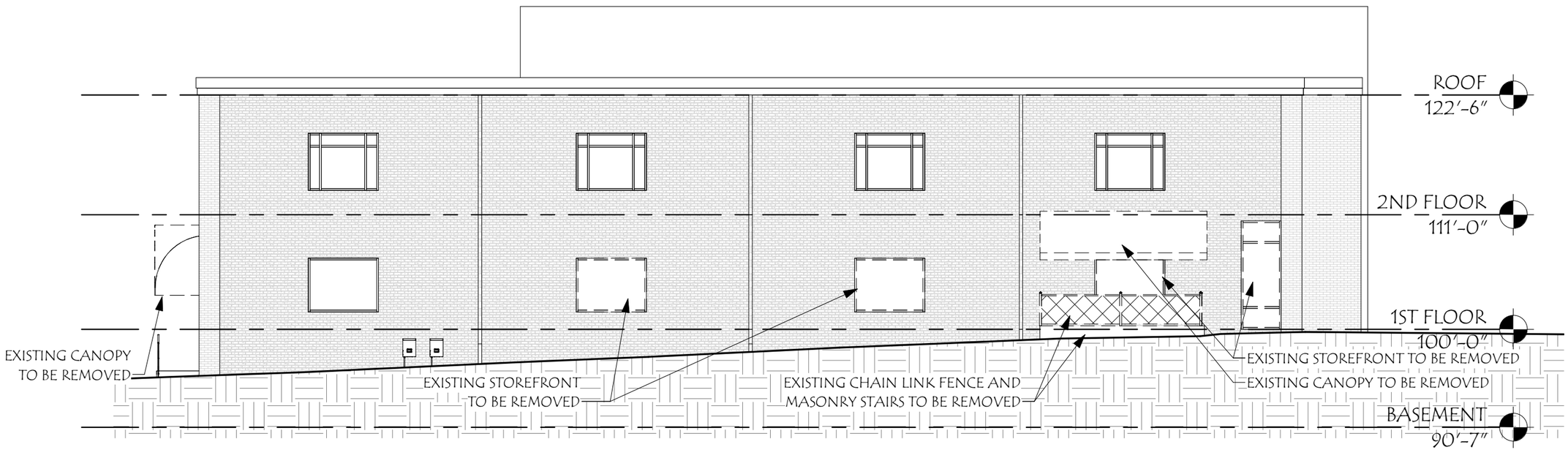


SOUTH ELEVATION



WEST ELEVATION

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DECEMBER 2022

147 CONGRESS

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Portsmouth, NH 03801

Revisions:
Description Date

SCALE: 3/32" = 1'-0"
DRAWN BY: SNH
CHECKED BY: RJH
PROJECT NO.: 202209
DATE: 11/18/22

TITLE: DEMO ELEVATIONS

4

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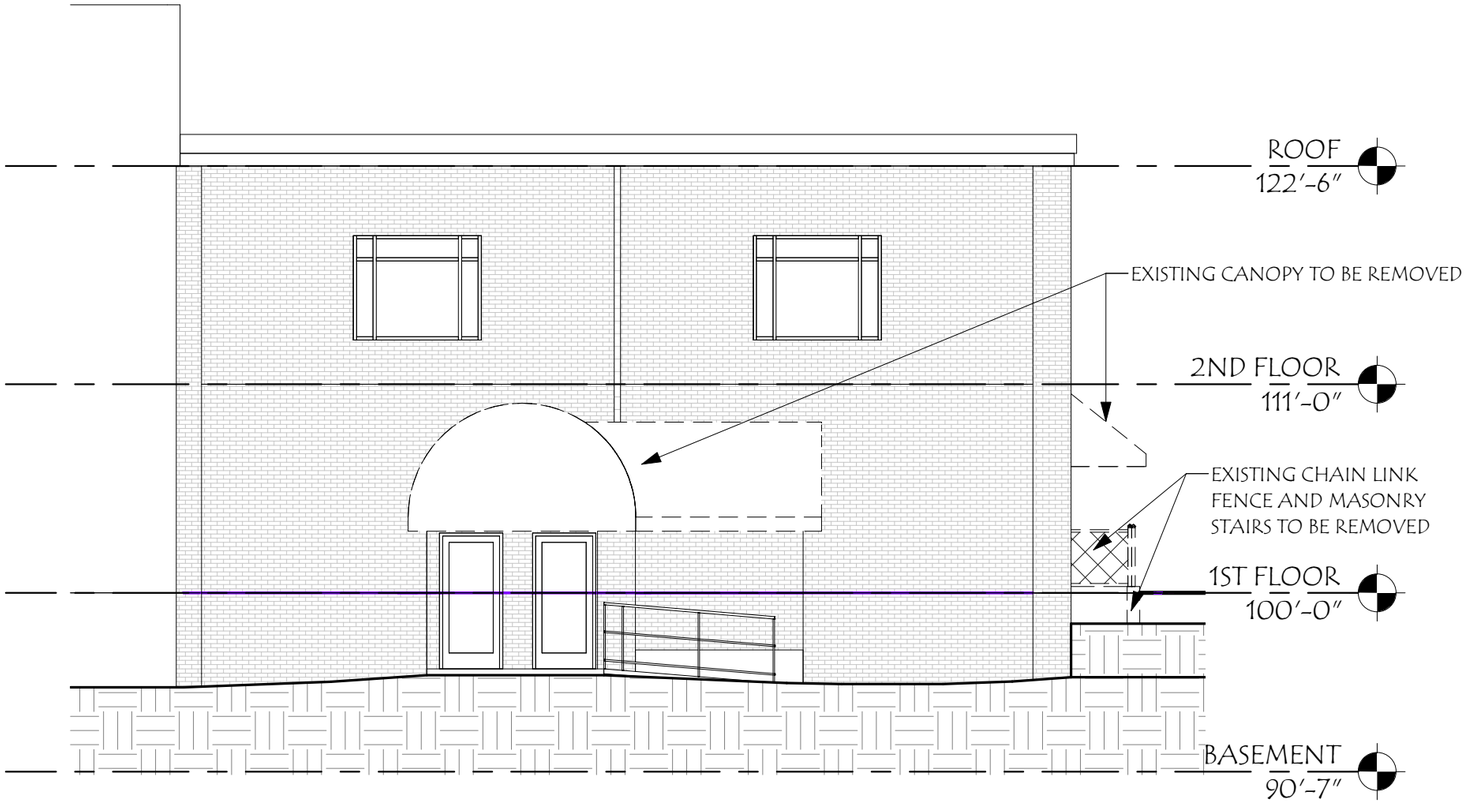

NORTH ELEVATION

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PH: 603.501.0202

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147 CONGRESS

147 Congress St
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Revisions:
Description Date

SCALE: 1/8" = 1'-0"
DRAWN BY: SNH
CHECKED BY: RJH
PROJECT NO.: 202209
DATE: 11/18/22

TITLE: DEMO ELEVATIONS

5

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PROPOSED

TITLE: PROPOSED CONTEXT	SCALE:	Revisions: # Description Date	147 CONGRESS
7	DRAWN BY: Author CHECKED BY: Checker PROJECT NO.: 202209 DATE: 11/18/22		147 Congress St Portsmouth, NH 03801

HISTORIC DISTRIC COMMISSION
ADMINISTRATIVE APPROVAL
DECEMBER 2022

MARKET SQUARE ARCHITECTS
104 Congress St., STE 203
Portsmouth, NH 03801
PH: 603.501.0202

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PROPOSED

TITLE: PROPOSED CONTEXT	SCALE:	Revisions: # Description Date	147 CONGRESS	HISTORIC DISTRIC COMMISSION ADMINISTRATIVE APPROVAL DECEMBER 2022	MARKET SQUARE ARCHITECTS 104 Congress St., STE 203 Portsmouth, NH 03801 PH: 603.501.0202
9	DRAWN BY: Author		147 Congress St Portsmouth, NH 03801		
	CHECKED BY: Checker				
	PROJECT NO.: 202209				
	DATE: 11/18/22				

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PROPOSED

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Portsmouth, NH 03801
PH: 603.501.0202

HISTORIC DISTRIC COMMISSION
ADMINISTRATIVE APPROVAL
DECEMBER 2022

147 CONGRESS

147 Congress St
Portsmouth, NH 03801

Revisions:
#	Description	Date

SCALE:
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PROJECT NO.: 202209
DATE: 11/18/22

TITLE: PROPOSED CONTEXT

10

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HISTORIC DISTRIC COMMISSION
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DECEMBER 2022

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ARCHITECTS
104 Congress St. STE 203
Portsmouth, NH 03801
PH: 603.501.0202

Revisions:
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SCALE:
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PROJECT NO.: 202209
DATE: 11/18/22

TITLE:
PROPOSED CONTEXT

11

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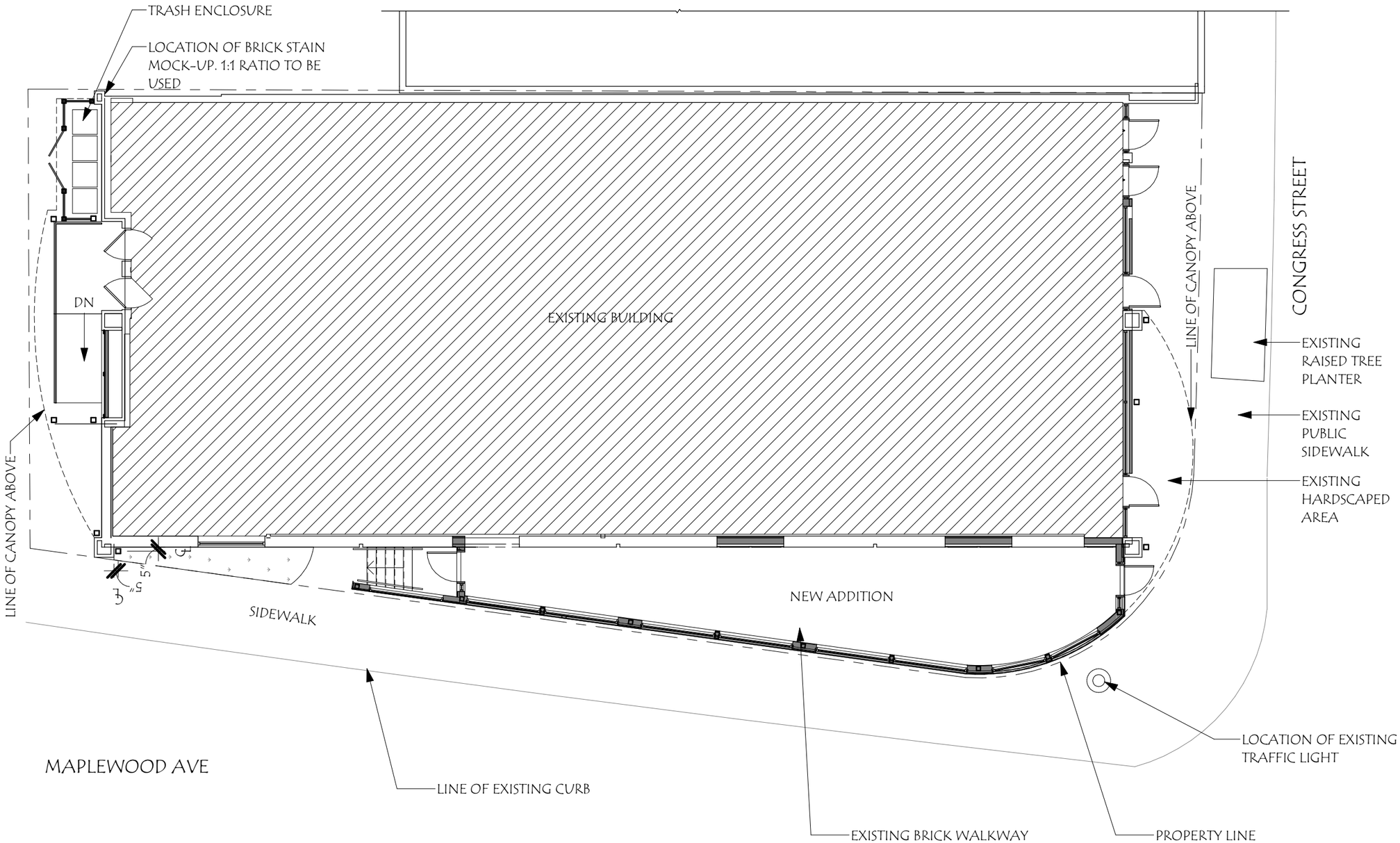

FLOOR PLAN

PROPOSED

MARKET SQUARE ARCHITECTS
104 Congress St. STE 203
Portsmouth, NH 03801
PH: 603.501.0202

HISTORIC DISTRIC COMMISSION
ADMINISTRATIVE APPROVAL
DECEMBER 2022

147 CONGRESS

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Portsmouth, NH 03801

Revisions:
Description Date

SCALE: 3/32" = 1'-0"
DRAWN BY: SNH
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PROJECT NO.: 202209
DATE: 11/18/22

TITLE: PROPOSED PLAN

12

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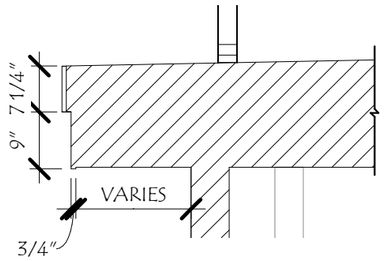
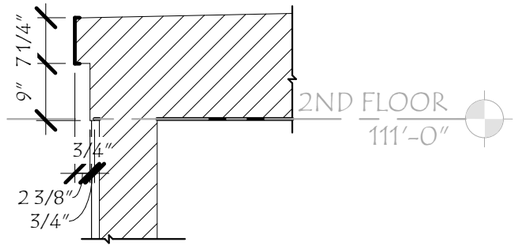
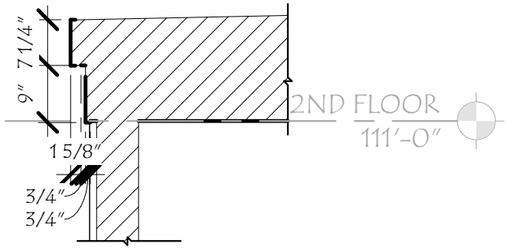
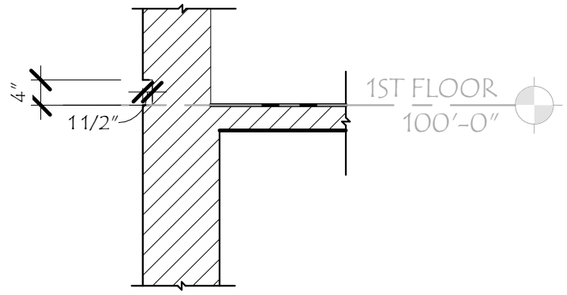


DETAIL 3

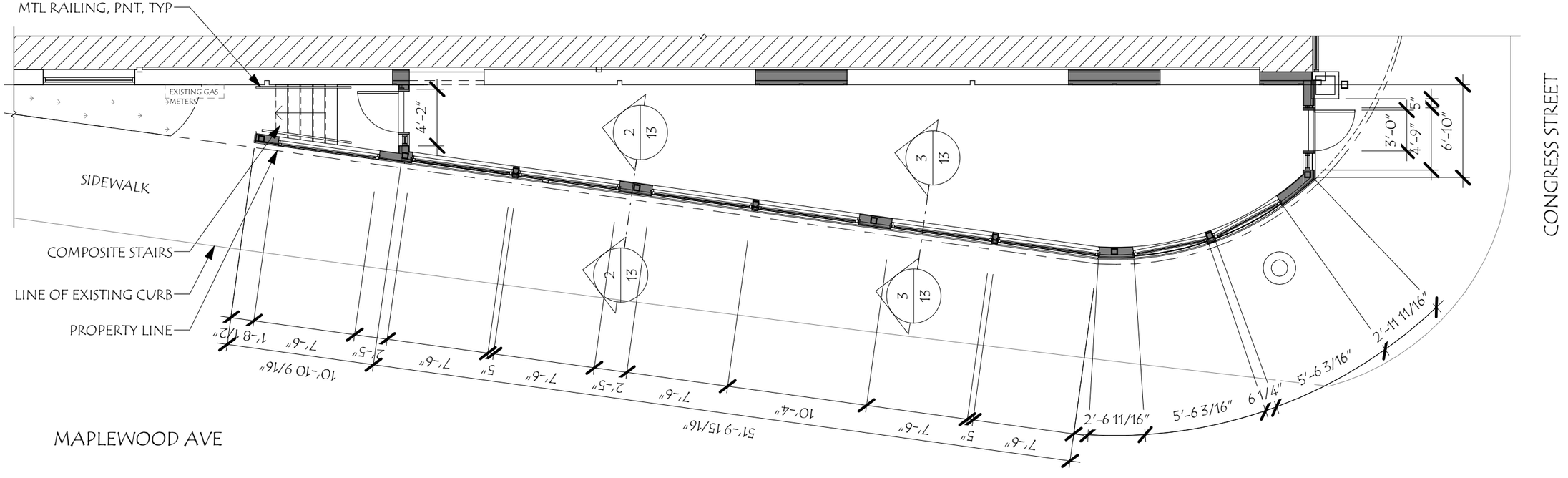


DETAIL 2





DETAIL 1



ENLARGED WEST ADDTION PROPOSED

MARKET SQUARE ARCHITECTS
104 Congress St. STE 203
Portsmouth, NH 03801
PH: 603.501.0202

HISTORIC DISTRIC COMMISSION
ADMINISTRATIVE APPROVAL
DECEMBER 2022

147 CONGRESS

147 Congress St
Portsmouth, NH 03801

Revisions: #	Description	Date

SCALE:	As indicated
DRAWN BY:	SNH
CHECKED BY:	RJH
PROJECT NO.:	202209
DATE:	11/18/22

TITLE: ENLARGED PLAN

13

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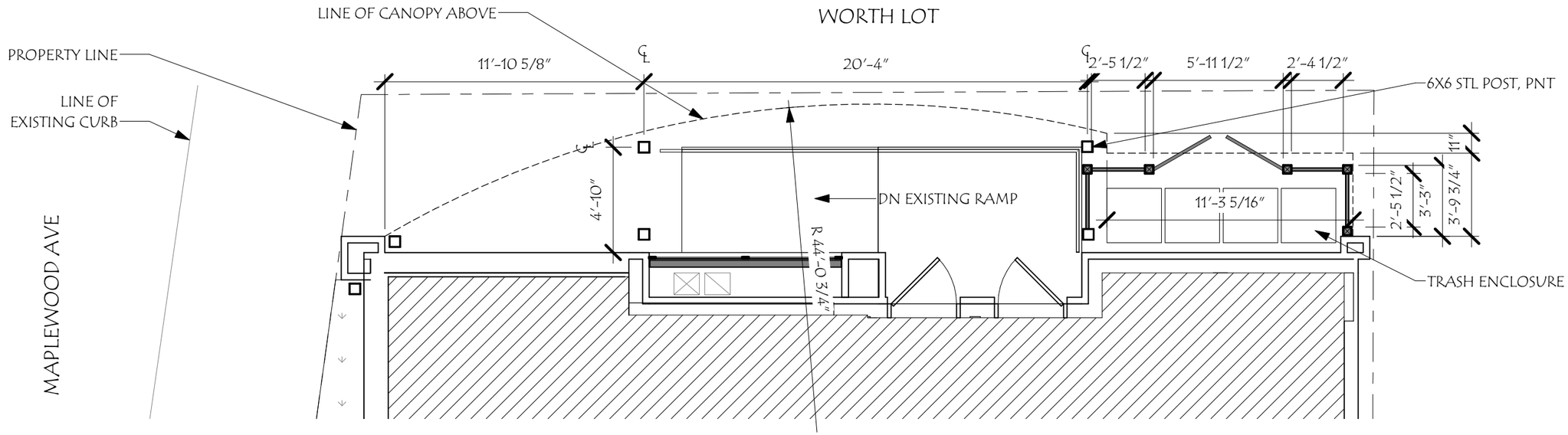
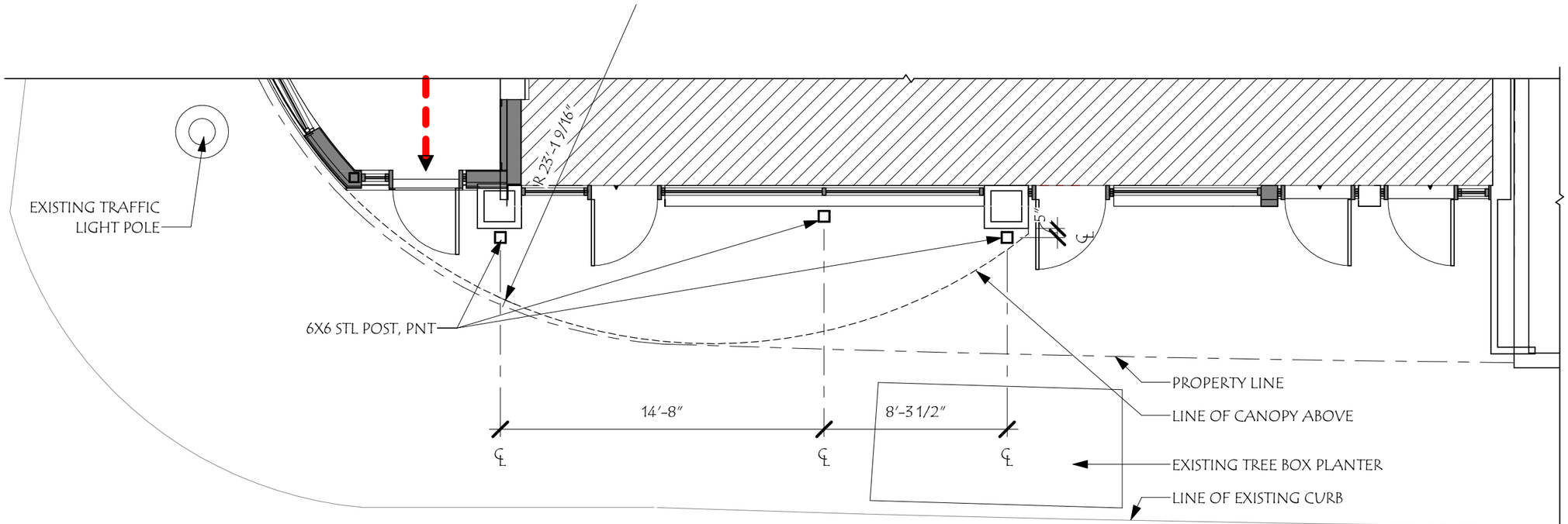


ENLARGED NORTH CANOPY PLAN



ENLARGED SOUTH CANOPY PLAN

CONGRESS STREET **PROPOSED**

MARKET SQUARE ARCHITECTS
104 Congress St, STE 203
Portsmouth, NH 03801
PH: 603.501.0202

HISTORIC DISTRIC COMMISSION
ADMINISTRATIVE APPROVAL
DECEMBER 2022

147 CONGRESS

147 Congress St
Portsmouth, NH 03801

Revisions:
Description Date

SCALE: 3/16" = 1'-0"
DRAWN BY: SNH
CHECKED BY: RJH
PROJECT NO.: 202209
DATE: 11/18/22

TITLE: ENLARGED PLAN

14

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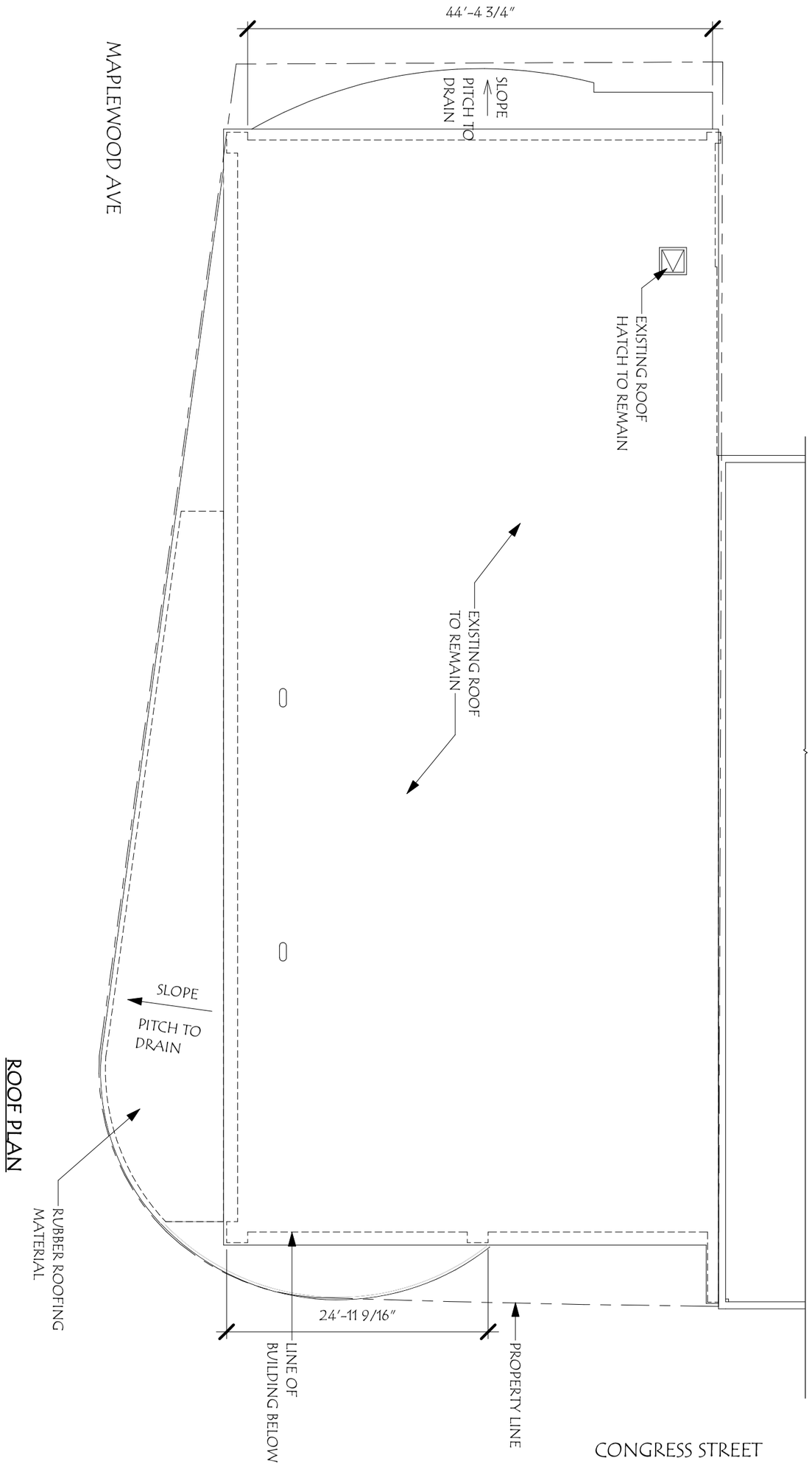

ROOF PLAN

PROPOSED

TITLE: ROOF PLAN	SCALE: 3/32" = 1'-0"	Revisions: # Description Date	147 CONGRESS
15	DRAWN BY: SNH		147 Congress St Portsmouth, NH 03801
	CHECKED BY: RJH		HISTORIC DISTRIC COMMISSION ADMINISTRATIVE APPROVAL DECEMBER 2022
	PROJECT NO.: 202209		MARKET SQUARE ARCHITECTS 104 Congress St., STE 203 Portsmouth, NH 03801 PH: 603.501.0202
	DATE: 11/18/22		

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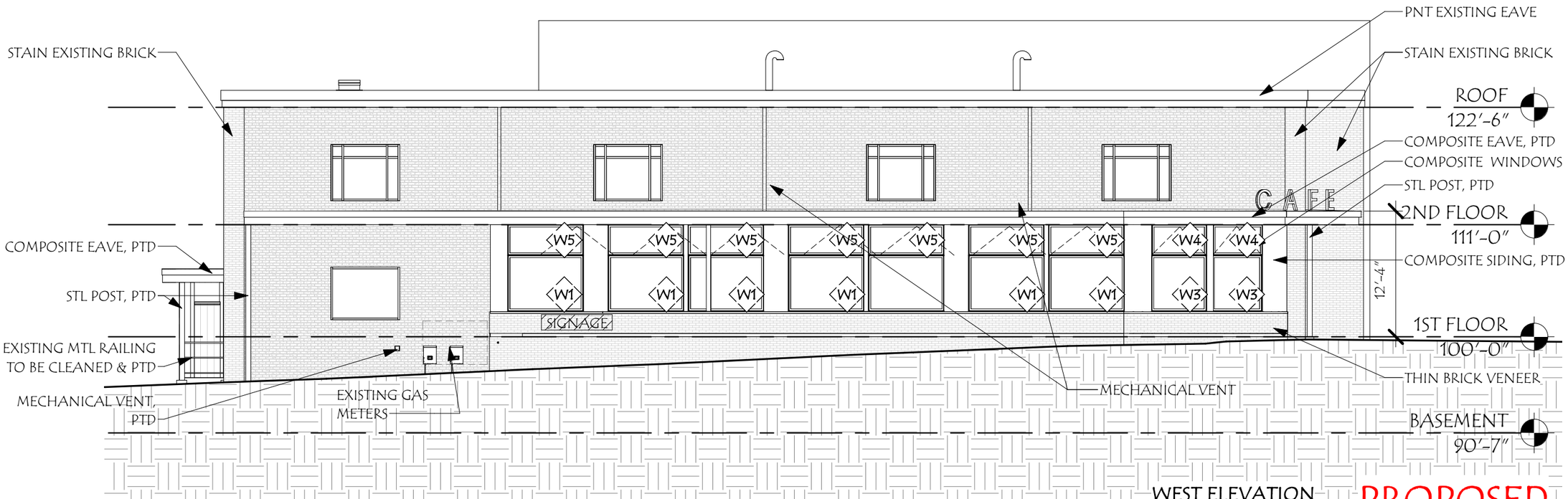
INSPIRATION IMAGES AND MATERIALS



WEST ELEVATION

PROPOSED

MARKET SQUARE ARCHITECTS
104 Congress St. STE 203
Portsmouth, NH 03801
PH: 603.501.0202

HISTORIC DISTRIC COMMISSION
ADMINISTRATIVE APPROVAL
DECEMBER 2022

147 CONGRESS

147 Congress St
Portsmouth, NH 03801

Revisions: #	Description	Date

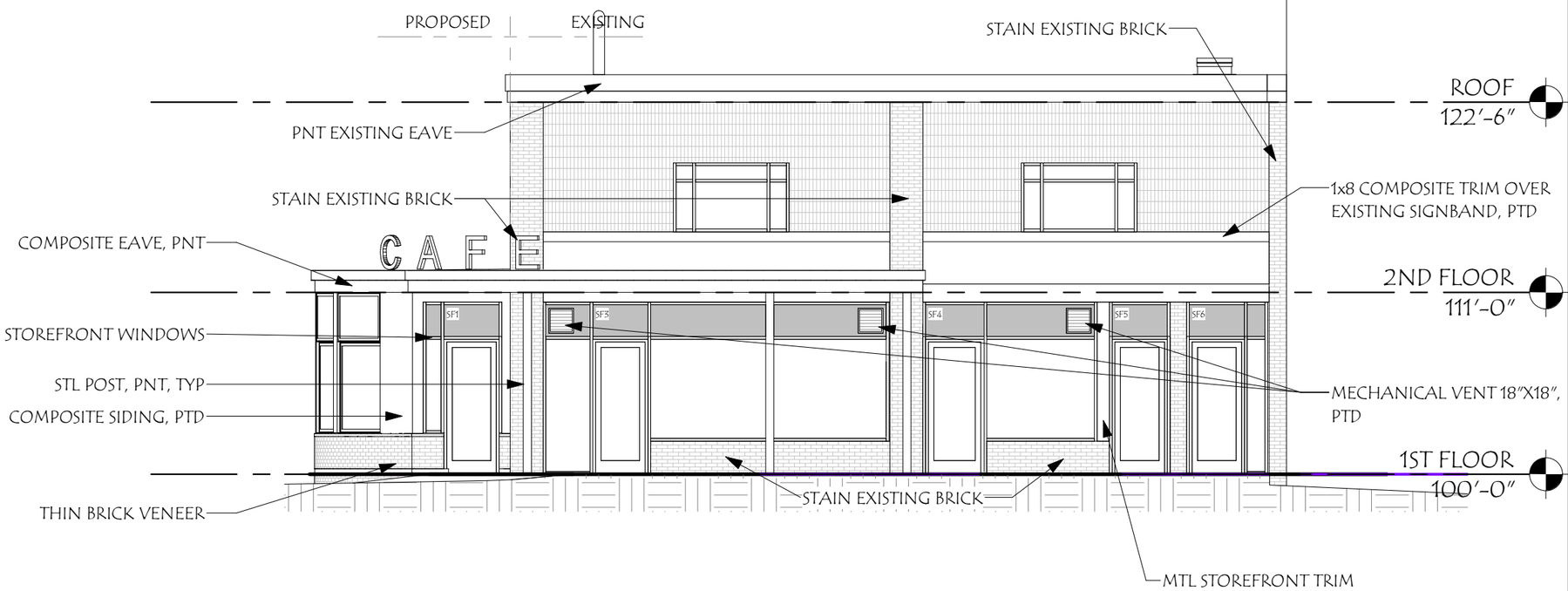
SCALE:	3/32" = 1'-0"
DRAWN BY:	SNH
CHECKED BY:	RJH
PROJECT NO.:	202209
DATE:	11/18/22

TITLE: PROPOSED ELEVATIONS

16

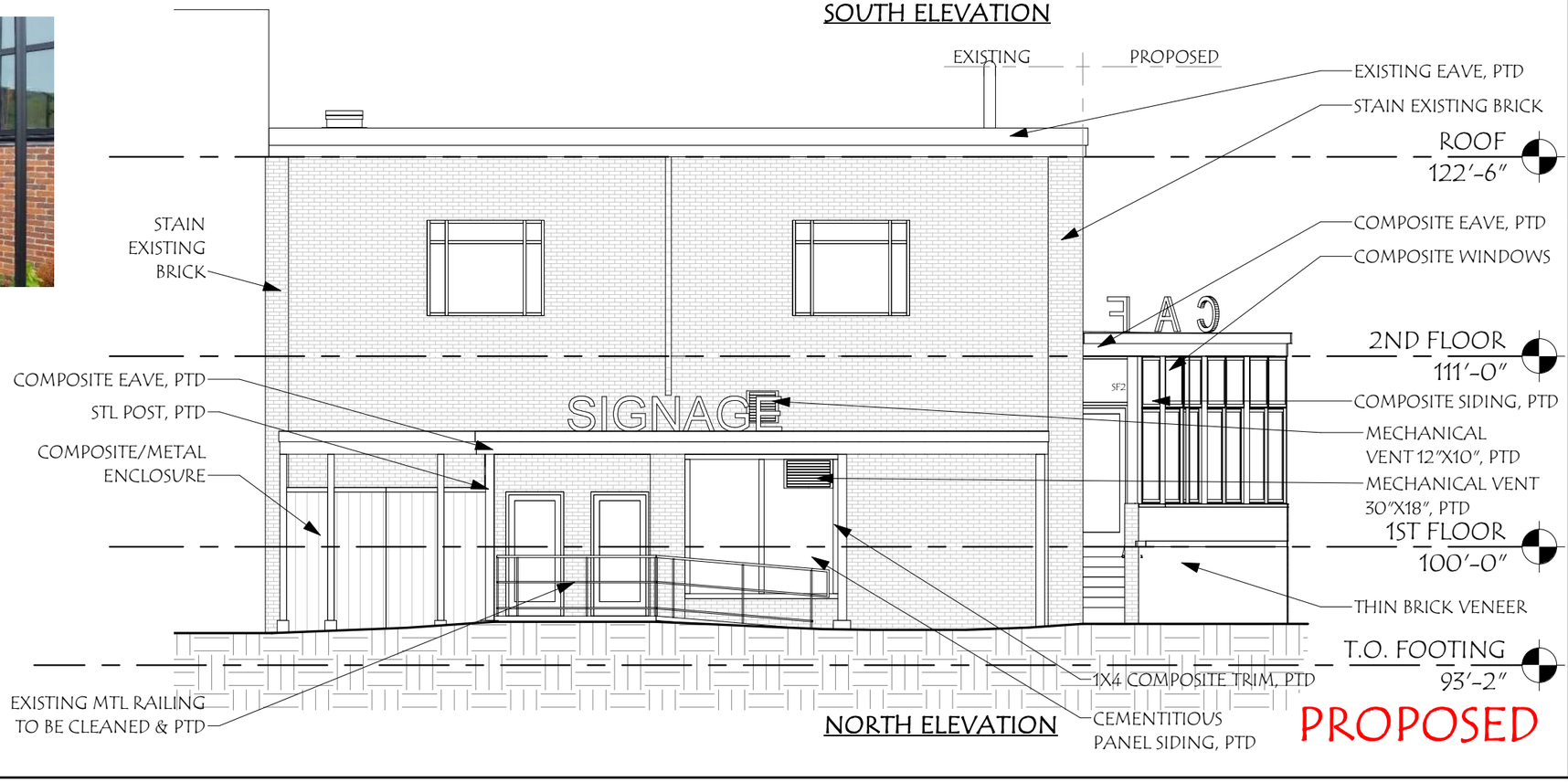
* 2022 Market Square Architects

12/23/2022 8:28:08 PM



SOUTH ELEVATION

ENCLOSURE INSPIRATION



NORTH ELEVATION

PROPOSED

MARKET SQUARE ARCHITECTS
104 Congress St. STE 203
Portsmouth, NH 03801
PH: 603.501.0202

HISTORIC DISTRIC COMMISSION
ADMINISTRATIVE APPROVAL
DECEMBER 2022

147 CONGRESS

147 Congress St
Portsmouth, NH 03801

Revisions: #	Description	Date

SCALE:	1/8" = 1'-0"
DRAWN BY:	SNH
CHECKED BY:	RJH
PROJECT NO.:	202209
DATE:	11/18/22

TITLE: PROPOSED ELEVATIONS

17

* 2022 Market Square Architects

12/23/2022 8:28:10 PM

III. NEW BUSINESS

G. The request of **Timothy and Rebecca OBrien (Owners)**, for property located at **396 Miller Avenue** whereas relief is needed to create a second driveway which requires 1) Variance from Section 10.1114.31 to allow two driveways where only one per lot is permitted. Said property is located on Assessor Map 131 Lot 24 and lies within the General Residence A (GRA) District. (LU-22-211)

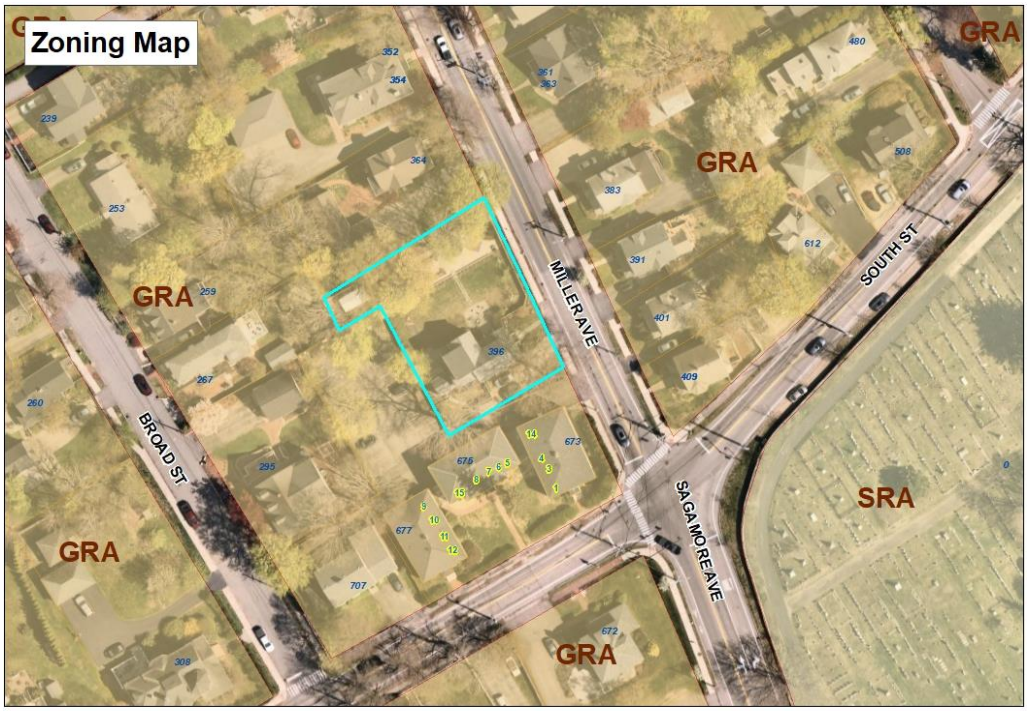
Existing and Proposed Conditions

	Existing	Proposed	Permitted / Required	
Land Use:	Single Family	**Addition of a second driveway**	Primarily residential uses	
Lot area (sq. ft.):	13,640	13,640	7,500	min.
Lot Area per Dwelling Unit (sq. ft.):	13,640	13,640	7,500	min.
Street Frontage (ft.):	134.53	134.53	100	min.
Lot depth (ft.):	96	96	70	min.
Front Yard (ft.):	22.6	22.6	15	min.
Left Side Yard (ft.):	11.4	11.4	10	min.
Right Side Yard (ft.):	24.1	24.1	10	min.
Rear Yard (ft.):	8.1	8.1	20	min.
Height (ft.):	<35	<35	35	max.
Building Coverage (%):	13	13	25	max.
Open Space Coverage (%):	86	86	30	min.
Parking	Ok	Ok	1.3	
Estimated Age of Structure:	1870	Variance request shown in red.		

Other Permits/Approvals Required

- DPW Driveway Permit

Neighborhood Context



396 Miller Avenue

Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposing to create a second driveway to access the property in order to address growing safety concerns. The City Transportation Engineer in the Department of Public Works has done a preliminary review and has no issues with proposed design.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
   (a) The property has special conditions that distinguish it from other properties in the area.
   AND
   (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.
   OR
   Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Section 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

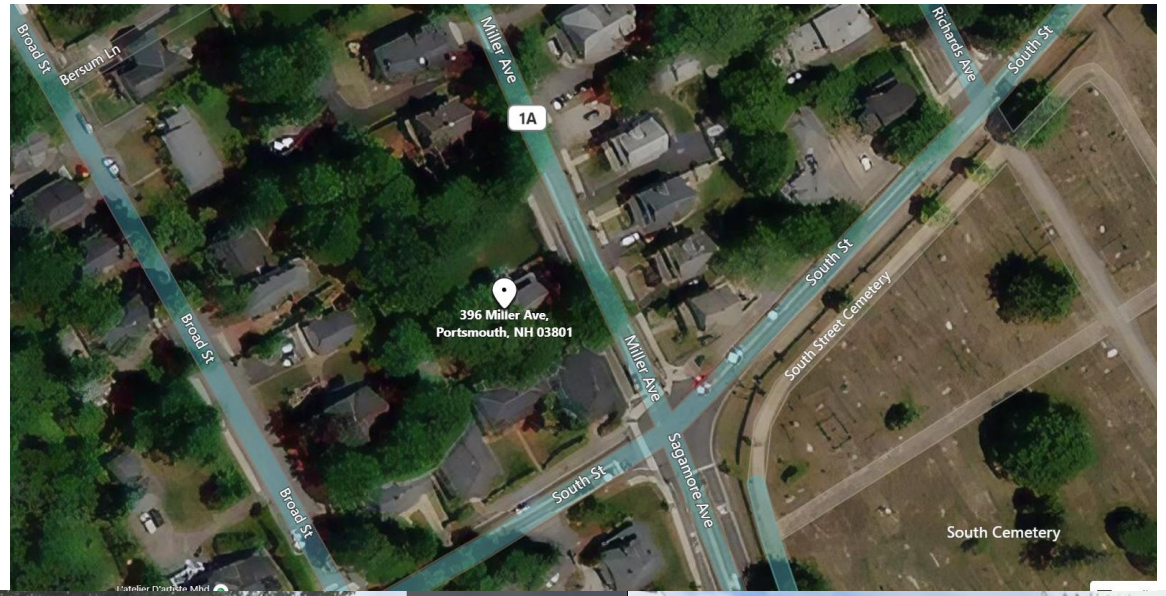
2nd Driveway Cut Variance Request

396 Miller Ave

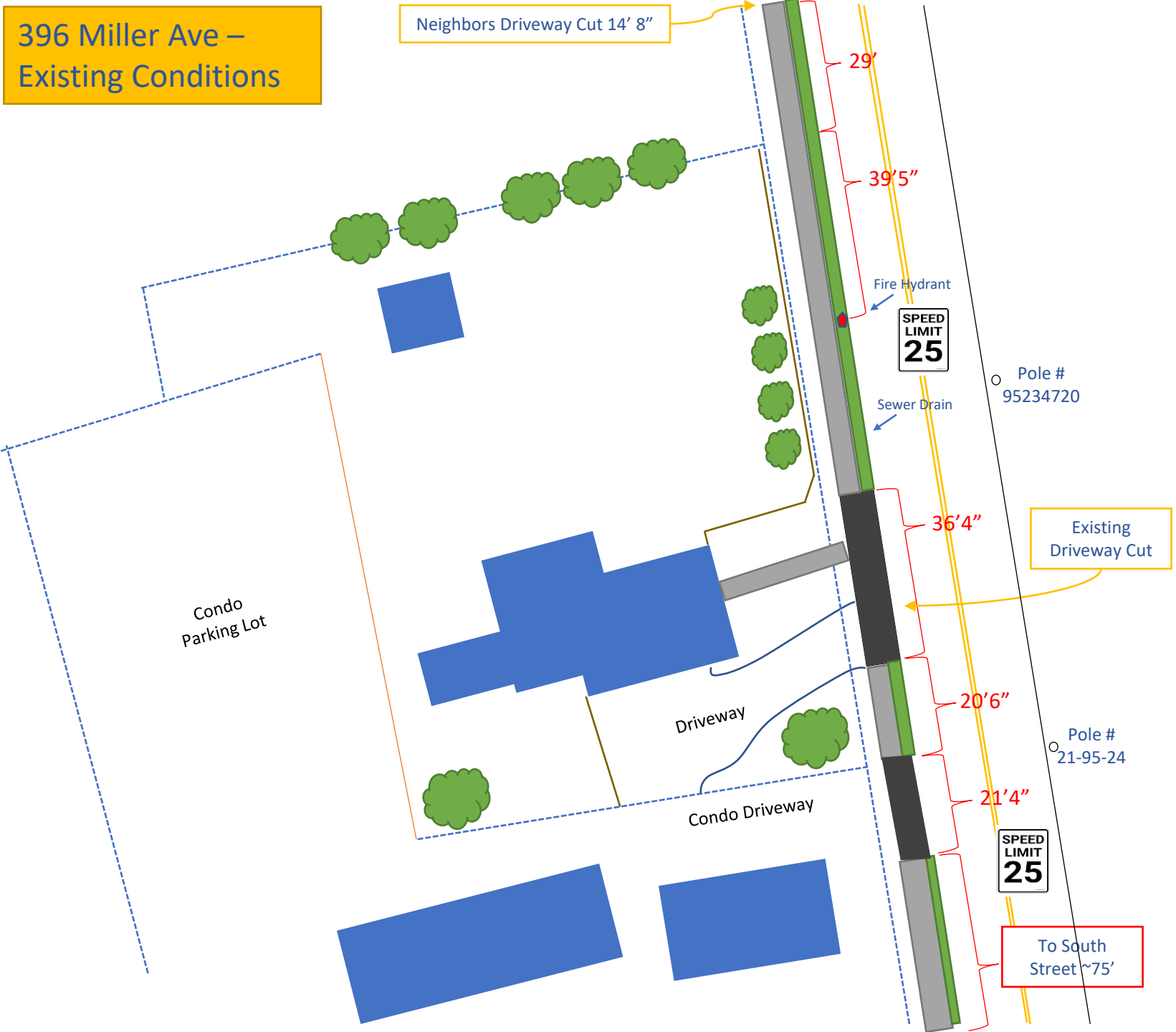
Summary

- Request to add a second driveway cut where a single cut exists
  - Reduce existing cut from 36’ to 13’
  - Add second 13’ cut on opposite end of 134’ road frontage.
- Address need for additional driveway capacity while:
  - Reducing reversing into busy intersection
  - Eliminate need for on-street parking
  - Alleviate risk of/past damage and disruption from on-street parking.

396 Miller Ave – Existing Conditions

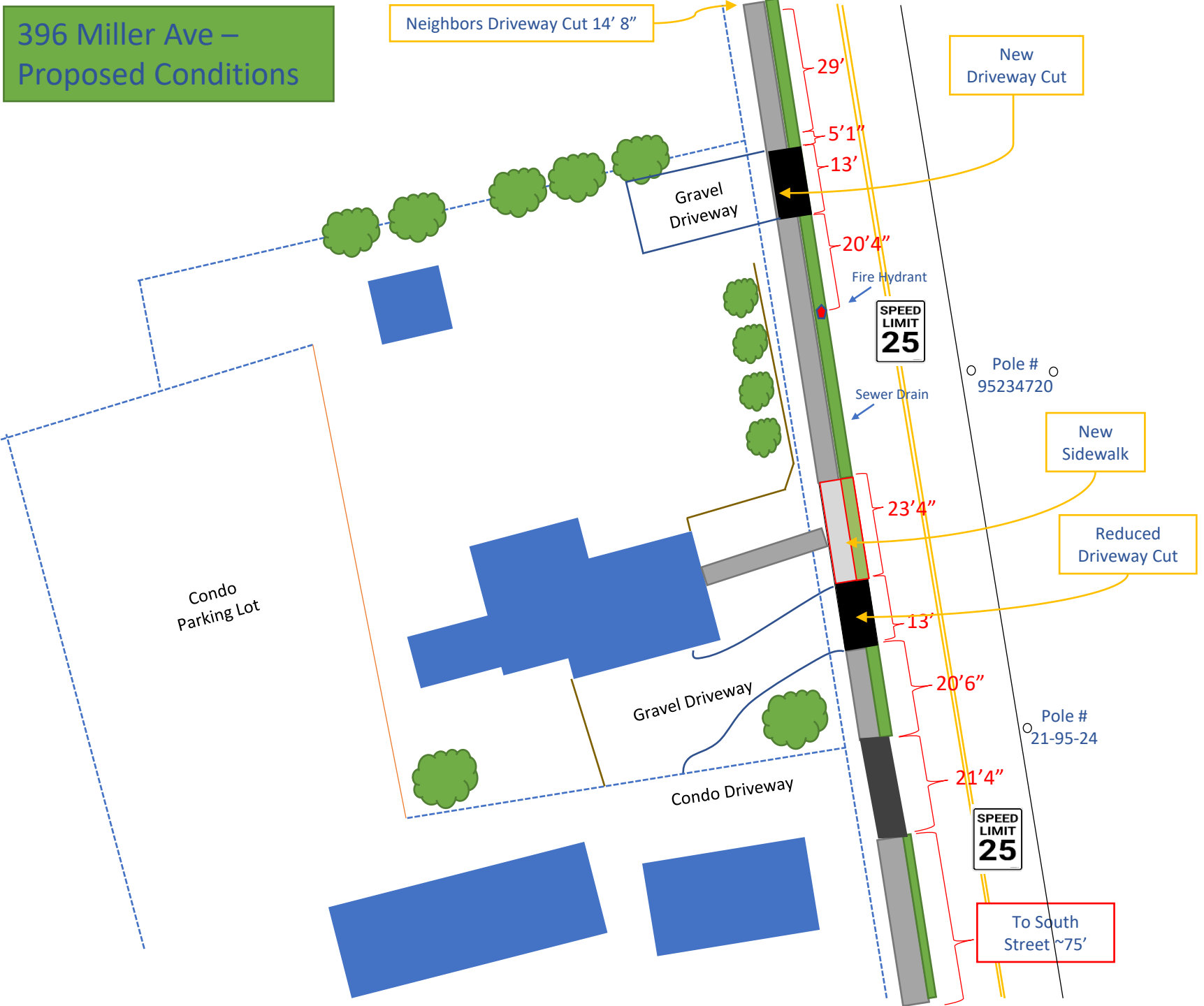


396 Miller Ave – Existing Conditions



- Single 36’4” Driveway cut with an effective 13’ usable driveway
- Shape and size take into consideration the preservation of (2) 150+ yr old Oak trees.
- Movement of vehicles requires either
  - parking on driveway cut blocking pedestrian traffic or;
  - multiple reverses into oncoming traffic for dangerous South/Middle intersection
- On-street parking is legal but a safety, traffic and neighbor concern.

396 Miller Ave – Proposed Conditions



- Reduce existing driveway cut from 36’4” to 13’
- Add new 13’ driveway cut at north end of Miller frontage
- Reduce overall driveway cut by 10’4”

396 Miller Ave – Proposed Conditions

- Reduce existing driveway cut from 36’4” to 13’
- Add new 13’ driveway cut at north end of Miller frontage
- Reduce overall driveway cut by 10’4”

10.233.21 - The variance will not be contrary to the public interest

- Moves majority of “reversing” traffic further away from busy and dangerous intersection.
- Reduces parked cars on south end of Miller. Has resulted in traffic congestion and neighbor complaints
- Improves sightlines for traffic coming from Sagamore or turning from South.

10.233.22 - The spirit of the Ordinance will be observed

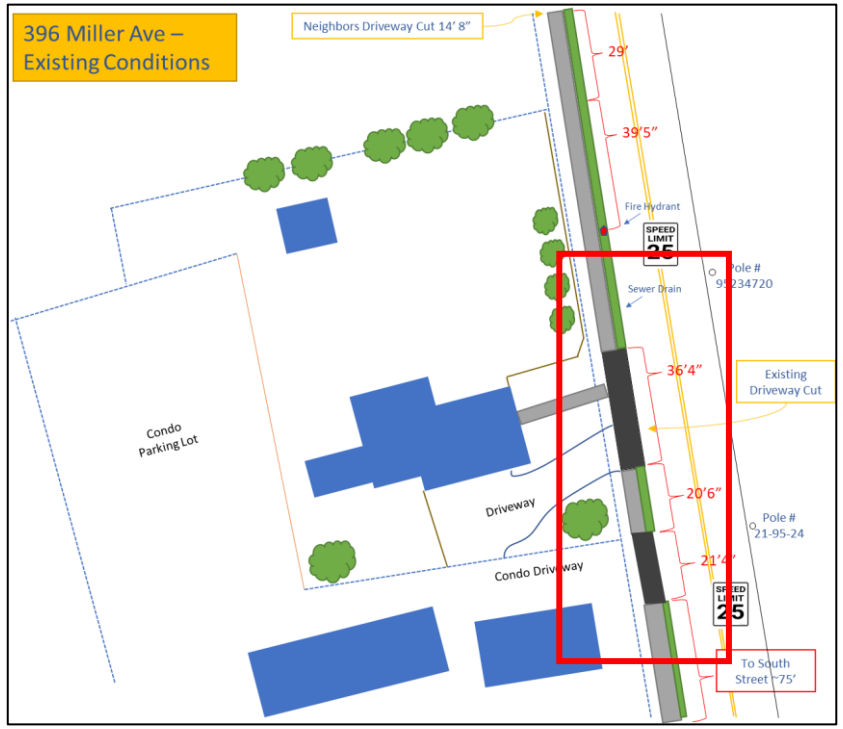
- Reduces sum of driveway cut from 36’4” to 26’
- Large road frontage (134’) and smaller cuts maintain sidewalk to driveway ratio similar or greater than surrounding neighborhoods.
- Fits within structure of existing lots within the larger neighborhood.

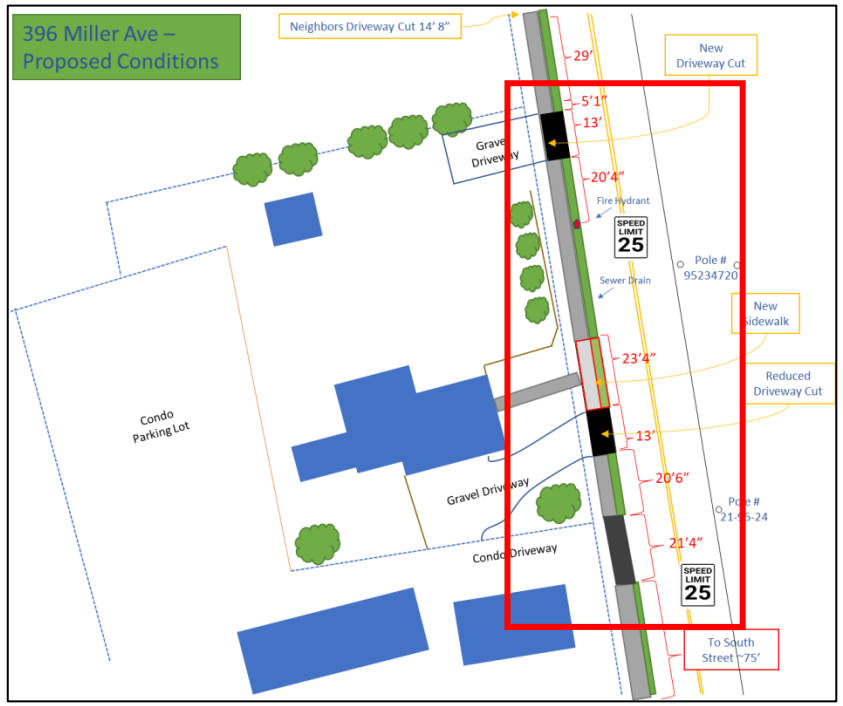
10.233.23 Substantial justice will be done

- On-street parking is legal/allowed but doing so creates traffic challenges and agitates neighbors due to the road width and traffic volumes.
- Reversing cars into oncoming traffic and traffic with hindered visibility creates the potential for traffic incidents. The amount of reversing will increase as licensed drivers in the family increases.
- Parking on-street has resulted in:
  - 2 Cars Totaled
  - 1 Smashed rear windshield
  - 2 Broken Rear windows
- Current Driveway does not provide for additional off-street parking for a family of 6. Expansion threatens viability of 2 heritage Oak trees which are > 170 years old.
- Despite large lot, placement of house on lot and location of the driveway prevents addition of an otherwise acceptable garage.

10.233.24 The values of surrounding properties will not be diminished;

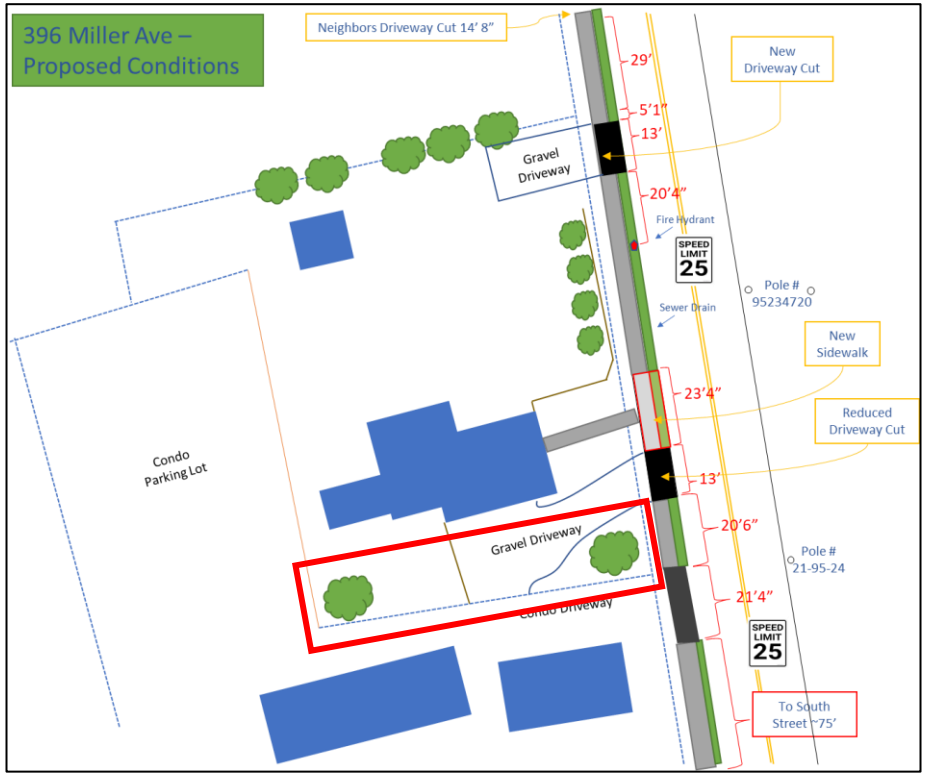
- Reduces overall driveway cuts creating two small driveways similar in size and spacing to other properties
- Removes “landing” pad in front of house and allows for more presentable landscaping while preventing use as a loading zone for deliveries.
- Increases handicap accessibility by creating more contiguous sidewalk and reducing frequency of blocked sidewalk due to large driveway cut being utilized for parking/deliveries.





10.233.25 - Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

- Lot size and current building coverage is adequate, but a garage addition is prevented by:
  - house position on the lot
  - driveway cut in relation to house position and
  - the necessity to preserve (2) 170+ yr old legacy Oak Trees
- Removal or Expansion of existing drive reduces property value and usability:
  - Either change threatens vitality of (2) 170+ yr old legacy Oak Trees each providing significant value to 396 Miller and the entire neighborhood.
  - Removal moves all access for deliveries, guests and other needs a significant distance from home (100 ft for driveway, 150+ ft for on-street parking.



396 Miller Ave – Building Dimensions

City of Portsmouth, NH

Property / 396 MILLER AVE

Zoom To | Share | Property Quick Search

Back To Property

- Google Maps Link
- City of Portsmouth
- Property Data
- Market Delineation

Details | Print

Property

Location	396 MILLER AVE
Map-Lot	0131-0024-0000
Vision Account Number	33828

Ownership

Owner	OBRIEN TIMOTHY W OBRIEN REBECCA R
Address	396 MILLER AVE, PORTSMOUTH, NH 03801

Valuation

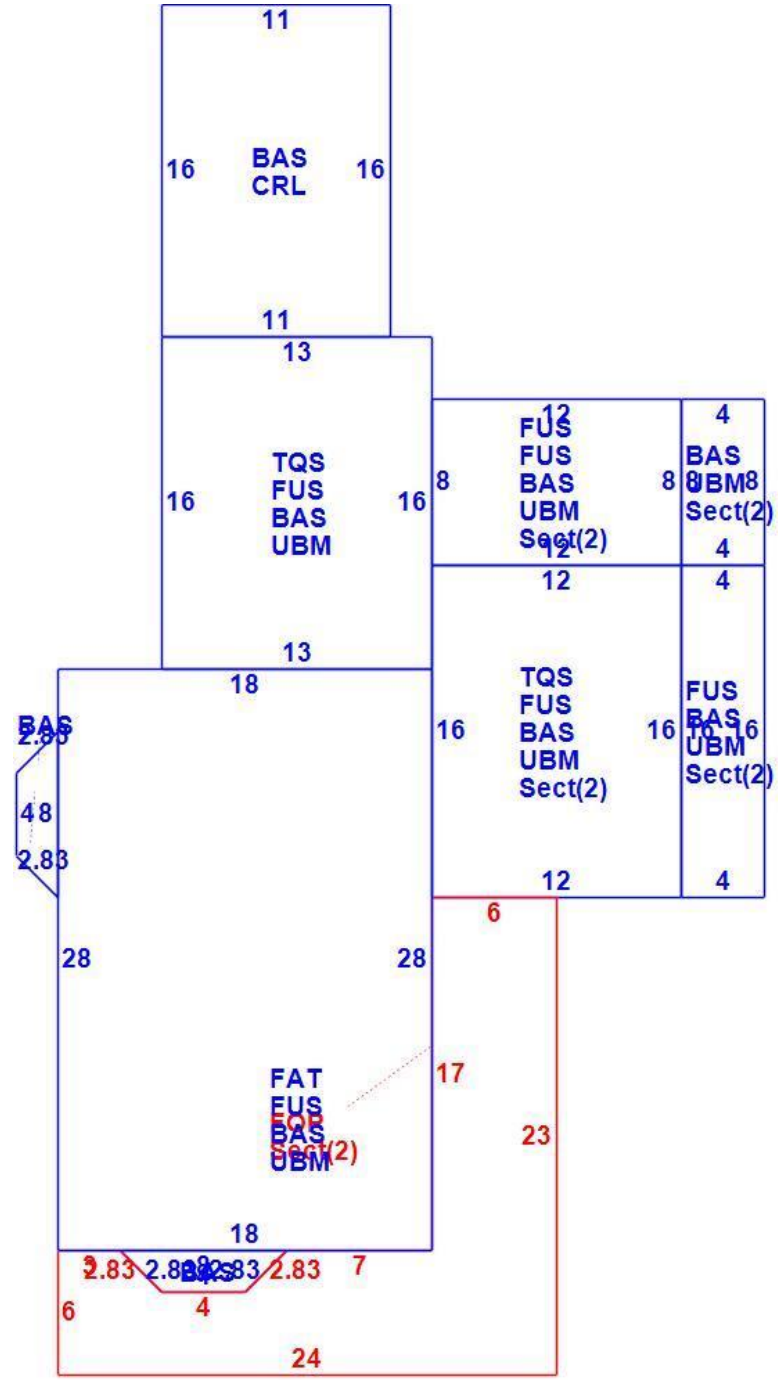
Total	$937,300
Last Sale	$415,000 on 2013-04-16
Deed Date	2013-04-16
Book/Page	5429/1353

Land

Parcel Area (AC)	0.31

Zoning

Zoning
GRA



PLAN REFERENCES:

1.) "SOUTH COMMON CONDOMINIUM SITE PLAN FOR HIGH STREET ASSOCIATES 673, 675, 677, SOUTH STREET, PORTSMOUTH N. H." BY RICARD P. MILLETTE AND ASSOCIATES, DATED 6-22-84 SHEET 1 OF 4, RCRD PLAN #D-14148.

2.) "LOT LINE RELOCATION & LOT LINE RATIFICATION PLAN FOR WILLIAM H. BROOKE, JR., RUTH A. FERNALD & SOUTH COMMON CONDOMINIUM ASSOCIATION, SOUTH STREET & BROAD STREET, PORTSMOTH, N. H." BY AMBIT SURVEY, DATED AUG. 10, 1989, RCRD PLAN #D-19952.

3.) "SITE PLAN FOR DOUG BEAN 364 MILLER AVENUE, TAX MAP 131 LOT 25, PORTSMOUTH, N. H." BY ROSS ENGINEERING, PROJECT #13-043, REVISED 6-13-2013, NOT FOUND RECORDED.

4.) "THE CONDOMINIUMS AT LINCOLN HILL MANOR SITE PLAN 352 & 354 MILLER AVENUE, TAX MAP 131 LOT 26, PORTSMOUTH, N. H." BY ROSS ENGINEERING, CERTIFIED 3-26-2018, RCRD PLAN #D-40723.

NOW OR FORMERLY
JOSHUA & HOLLY COLLINS
364 MILLER AVENUE
PORTSMOUTH, N. H. 03801
R.C.R.D. VOL. 5910 PG. 2391
TAX MAP 131 LOT 25

3/8" IRON PIN FOUND
0.1'± UNDERGROUND
(INSIDE IRON PIPE PER
PLAN REFERENCE #3

N76°44'54"E 134.00'

11.4'±

10' SIDE SETBACK (TYP.)

IRON PIN W/CAP
SET 4-23-19
0.6'± HIGH

NOW OR FORMERLY
KENDALL P. & SARAH N. FAULSTITCH
267 BROAD STREET
PORTSMOUTH, N. H. 03801
R.C.R.D. VOL. 3507 PG. 622
TAX MAP 131 LOT 18

N09°31'37"W 24.03'

3/8" IRON
PIN FOUND
0.1'± HIGH

S73°46'20"W 34.15'

S73°46'20"W 35.00' (SURVEY TIE)

IRON PIN W/CAP
SET 4-23-19
0.9'± HIGH

1" IRON PIPE
FOUND 0.6'±
HIGH

N11°32'28"W 52.79'

1 ST. WD
SHOP

MAP 131
LOT 24

20' REAR SETBACK

15' FRONT SETBACK

S09°31'37"E 134.53'

6'± WOOD STOCKADE FENCE

CONCRETE SIDEWALK

MILLER AVENUE

WV

PAVERS

PEA STONE

21/2 ST. WD.
HOUSE #396

8.1'±

22.6'±

N11°37'07"W 52.04'

24.1'±

PEA STONE
PARKING AREA

40"± OAK

48"± OAK

96.04'
S81°05'09"W

10.9'±

PAVED DRIVEWAY

IRON PIN W/CAP
SET 4-23-19
FLUSH

MAG NAIL
SET 4-23-19
IN PAVEMENT

PAVED
PARKING
AREA

NOW OR FORMERLY
SOUTH COMMON CONDOMINIUM ASSOCIATION
675 SOUTH STREET
PORTSMOUTH, N. H. 03801
R.C.R.D. PLAN D-19952
TAX MAP 131 LOT 22

NOW OR FORMERLY
SOUTH COMMON CONDOMINIUM ASSOCIATION
673 SOUTH STREET
PORTSMOUTH, N. H. 03801
R.C.R.D. PLAN D-19952
TAX MAP 131 LOT 23

BEARINGS PER
RCRD D-19952

CERTIFICATION

I CERTIFY THAT THE DETAILS DEPICTED ON THIS PLAN ARE SHOWN ACCURATELY RELATIVE TO THE LOT LINES AND THAT THIS PLAN SHOWS EXISTING CONDITIONS AS OF TIME OF AN INSTRUMENT FIELD SURVEY CONDUCTED UNDER MY SUPERVISION ON APRIL 16, 2019.

STATE OF NEW HAMPSHIRE LICENSED LAND SURVEYOR No. 802 G. DAVIDSON HISLOP, JR.

APRIL 26, 2019

G. DAVIDSON HISLOP, JR. LLS #802 DATE

LEGEND

PROPERTY LINE	
CITY SETBACK LINE	
IRON PIPE OR PIN	
UTILITY POLE	WV
WATER SHUTOFF	
EDGE OF PAVEMENT	
WOOD STOCKADE FENCE	
GRANITE CURB	
ROCKINGHAM CNTY. REG.	DEEDS RCRD
OVERHEAD ELECTRIC	OHE
GAS METER	
ELECTRIC METER	E G
SURVEY TIE LINE	22.6'±
DECIDUOUS TREE	
CATCH BASIN	
FIRE HYDRANT	
SIGN	

PLAN REFERENCES:

1.) SUBJECT LOT IS LOCATED IN CITY OF PORTSMOUTH ZONE "GENERAL RESIDENCE A" THE ZONING REQUIREMENTS AND EXISTING ARE AS FOLLOWS:

	REQUIRED	EXISTING
LOT AREA	7,500 SQ. FT.	13,640 SQ. FT.
CONTINUOUS STREET FRONTAGE	100 FEET	134.53'
LOT DEPTH	70 FEET	96'
FRONT SETBACK	15 FEET	22.6'±
SIDE SETBACK	10 FEET	24.1'± (11.4'± SHOP ON POSTS)
REAR SETBACK	20 FEET	8.1'±
OPEN SPACE	30%	86%
BUILDING COVERAGE	25%	13%

2.) THIS PLAN REFLECTS EXISTING SITE CONDITION DETAILS WHICH ARE THE RESULTS OF AN ON THE GROUND INSTRUMENT FIELD SURVEY PERFORMED BY KNIGHT HILL LAND SURVEYING SERVICES, INC. ON APRIL 16, 2019. UNADJUSTED TRAVERSE 1/96,300.

3.) THIS PROPERTY DOES NOT LIE IN A FLOOD ZONE AS INDICATED ON THE FLOOD INSURANCE RATE MAP (FIRM) FOR ROCKINGHAM COUNTY, PORTSMOUTH, N. H. FIRM #33015C0259E. WITH AN EFFECTIVE DATE OF MAY 17, 2005.

4.) SUBJECT LOT IS SERVICED BY MUNICIPAL SEWER AND WATER.

5.) BEARINGS SHOWN ARE 1984 MAGNETIC PER PLAN REFERENCE 2.

SITE DATA

TAX MAP 131 LOT 24

RECORD OWNER: TIMOTHY W. O'BRIEN
REBECCA R. O'BRIEN
396 MILLER AVENUE
PORTSMOUTH, N. H. 03801

RECORD DEED: R.C.R.D. BK. 5429 PG. 1353

AREA: EXISTING AREA = 13,640± SQ.FT./0.31 AC.

EXISTING CONDITIONS PLAN

for land OWNED by

TIMOTHY W. & REBECCA R. O'BRIEN

known as

TAX MAP 131 LOT 24

located along

396 MILLER AVENUE

PORTSMOUTH, N.H.

COUNTY OF ROCKINGHAM

APRIL 26, 2019 SCALE 1" = 10' PROJECT # 2185PNTS

PREPARED FOR:
TIM O'BRIEN
396 MILLER AVE.
PORTSMOUTH, N.H., 03801
603-502-7031
timo439@yahoo.com

PREPARED BY:
KNIGHT HILL LAND
SURVEYING SERVICES, INC.
c/o DAVE HISLOP
34 OLD POST ROAD
NEWINGTON, N. H. 03801
(603) 436-1330
dave@khlandsurveying.com

GRAPHIC SCALE

10 0 5 10 20 40

(IN FEET)
1 inch = 10 ft.

2185PNTS

III. NEW BUSINESS

H. The request of **Karen Bouffard Revocable Trust and Karen Bouffard Trustee (Owner),** for property located at **114 Maplewood Avenue** whereas relief is needed for the installation of a A/C Condenser Unit which requires the following 1) Variance from section 10.515.14 to allow a 2 foot setback where 10 feet is required. Said property is located on Assessor Map 124 Lot 4 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-22-256)

Existing and Proposed Conditions

	Existing	Proposed	Permitted / Required	
Land Use:	Mixed Use	AC Condenser	Mixed Use	
Lot area (sq. ft.):	5,057	5,057	3000	min.
Lot Area per Dwelling Unit (sq. ft.):	1,685	1,685	3000	min.
Front Yard (ft.):	2	2	15	max.
Left Side Yard (ft.):	1.8	1.8	5	min.
Right Side Yard (ft.):	2.5	2.5	5	min.
Rear Yard (ft.):	1	**2**	5 10 feet (for HVAC unit)	min.
Height (ft.):	<35	<35	2 Stories, 35’	max.
Building Coverage (%):	35	35	60	max.
Open Space Coverage (%):	>25	>25	25	min.
Parking	4	4	5	
Estimated Age of Structure:	2022	Variance request shown in red.		

Other Permits/Approvals Required

- Building Permit
- Historic District Commission

Neighborhood Context

114 Maplewood Avenue

Previous Board of Adjustment Actions

July 23, 2019 – The Board voted to **grant** the petition as presented and advertised as follows:

1) Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 10.5A41.10A to allow the following:

a) an 1.8' left side yard where 1.5' exists and 5' is the minimum required;
b) a 2.5' rear yard where 0' exists and 5' is the minimum required; and
c) a lot area per dwelling unit of 1.685 s.f. where 3,000 s.f. is required. and
d) from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

Planning Department Comments

The applicant is proposing the installation of a mechanical unit to the rear of the structure where it will be located 2 feet from the rear boundary line where 10 feet is required.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*

   (a)The property has special conditions that distinguish it from other properties in the area.

   AND

   (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.

   OR

   Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Section 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

114 Maplewood Ave.
Map 124 Lot 4

To permit the following:

1. AC Condenser with a Rear Setback of +/- 2.25 feet where 10' is required.

The undersigned agrees that the following circumstances exist.....

1. This new building replaces the existing that was built on the rear property line. The new building is still non-conforming but, set back from that rear line. The abutting property that shares the rear yard, has several AC Units in this area & seemed the best location for the proposed unit, that will be screened with fencing.

Criteria for the Variance:

1. The Variances are not contrary to the public interest in that this location will have no the public view & will be fenced from the Abutter's rear yard.

2. The Variances are consistent with the spirit of the ordinance as noted in Item 1.

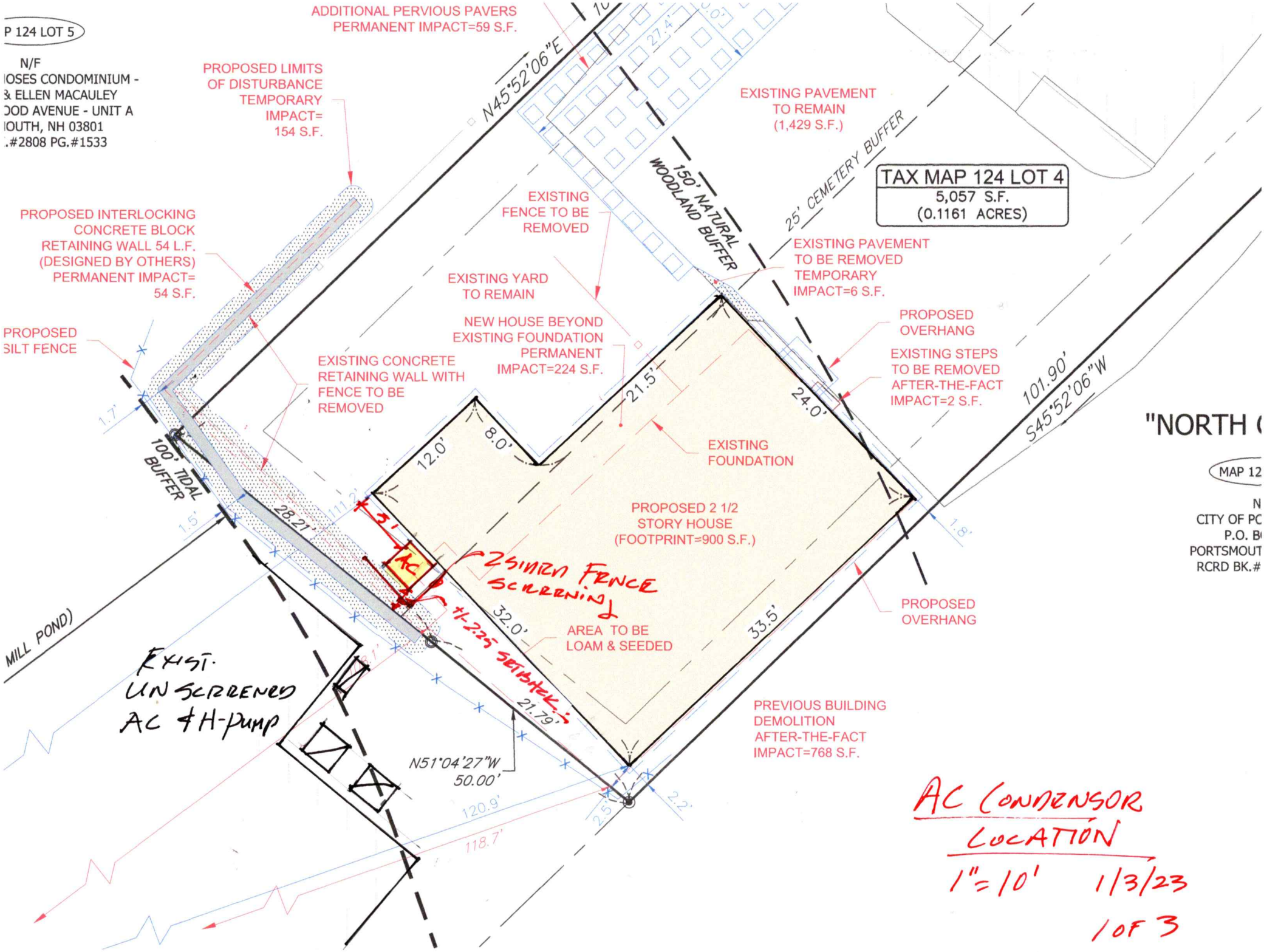
3. Substantial justice will be done, as this location has several unscreened AC Units at the rear of the Abutters Building.

4. This Variances will not diminish the value of surrounding properties.

5. The special condition of this property is the existing non-conforming Rear & Left Side Setback & the small Right Side Yard.,

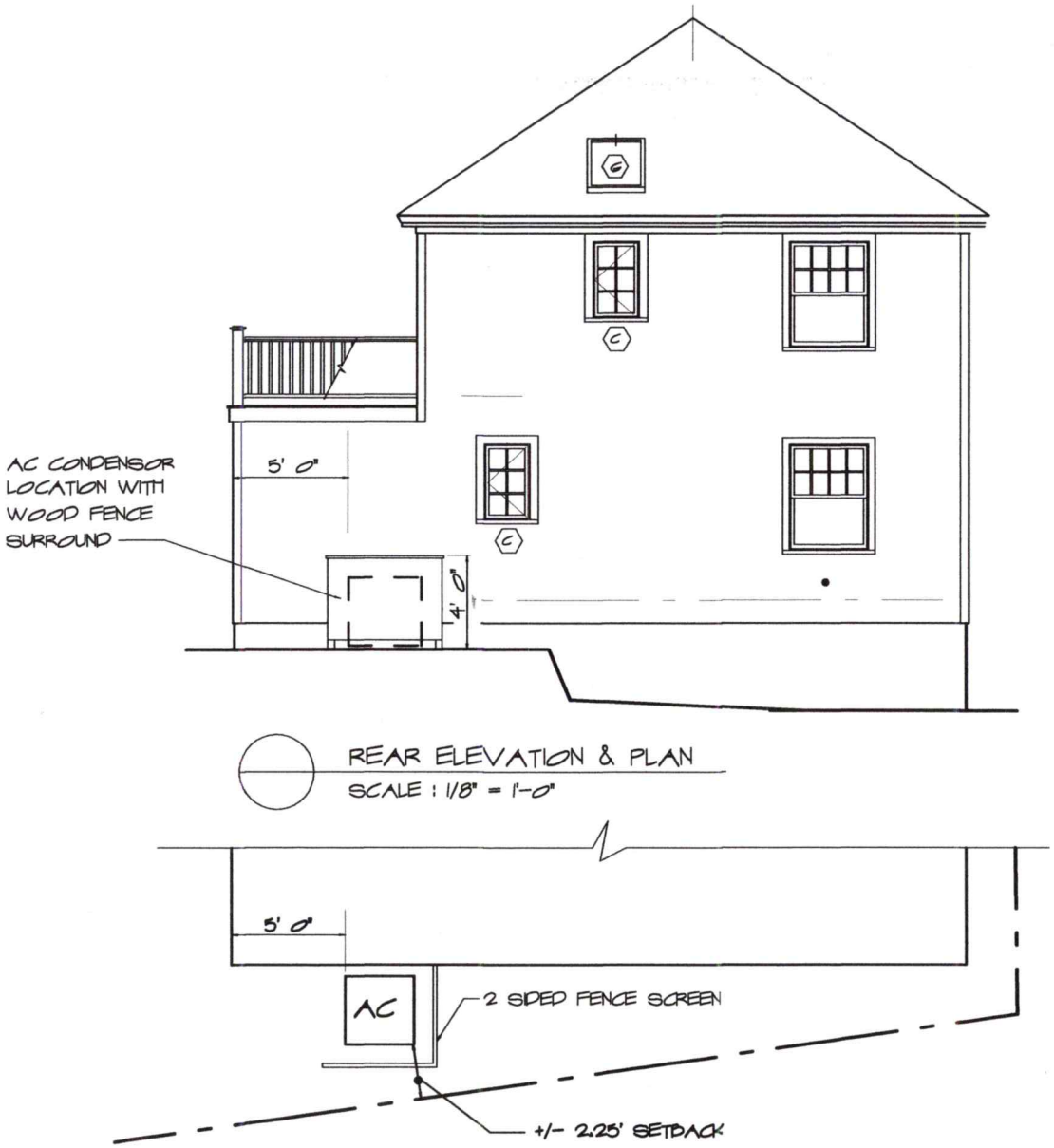
1/3/23, Anne Whitney Architect

For: Karen Bouffard


P 124 LOT 5
N/F
OSES CONDOMINIUM -
& ELLEN MACAULEY
OOD AVENUE - UNIT A
OUTH, NH 03801
.#2808 PG.#1533
ADDITIONAL PERVIOUS PAVERS
PERMANENT IMPACT=59 S.F.
PROPOSED LIMITS
OF DISTURBANCE
TEMPORARY
IMPACT=
154 S.F.
N45°52'06"E
EXISTING PAVEMENT
TO REMAIN
(1,429 S.F.)
150' NATURAL
WOODLAND BUFFER
25' CEMETERY BUFFER
TAX MAP 124 LOT 4
5,057 S.F.
(0.1161 ACRES)
EXISTING
FENCE TO BE
REMOVED
PROPOSED INTERLOCKING
CONCRETE BLOCK
RETAINING WALL 54 L.F.
(DESIGNED BY OTHERS)
PERMANENT IMPACT=
54 S.F.
EXISTING YARD
TO REMAIN
EXISTING PAVEMENT
TO BE REMOVED
TEMPORARY
IMPACT=6 S.F.
NEW HOUSE BEYOND
EXISTING FOUNDATION
PERMANENT
IMPACT=224 S.F.
PROPOSED
OVERHANG
PROPOSED
SILT FENCE
EXISTING CONCRETE
RETAINING WALL WITH
FENCE TO BE
REMOVED
EXISTING STEPS
TO BE REMOVED
AFTER-THE-FACT
IMPACT=2 S.F.
101.90'
S45°52'06"W
21.5'
24.0'
12.0'
8.0'
EXISTING
FOUNDATION
"NORTH
MAP 12
N
CITY OF PO
P.O. B
PORTSMOUT
RCRD BK.#
100' TIDAL
BUFFER
28.21'
PROPOSED 2 1/2
STORY HOUSE
(FOOTPRINT=900 S.F.)
AC
2 SIDED FENCE
SCREENING
+/-2.25 SETBACK
32.0'
33.5'
AREA TO BE
LOAM & SEEDED
PROPOSED
OVERHANG
MILL POND)
EXIST.
UNSCREENED
AC & H-PUMP
21.79'
N51°04'27"W
50.00'
PREVIOUS BUILDING
DEMOLITION
AFTER-THE-FACT
IMPACT=768 S.F.
120.9'
118.7'
AC CONDENSOR
LOCATION
1"=10'
1/3/23
1 OF 3

REAR ELEVATION AT AC UNIT

ADJACENT ABUTTER AC & HEAT PUMP UNITS



REAR ELEVATION & PLAN

SCALE : 1/8" = 1'-0"

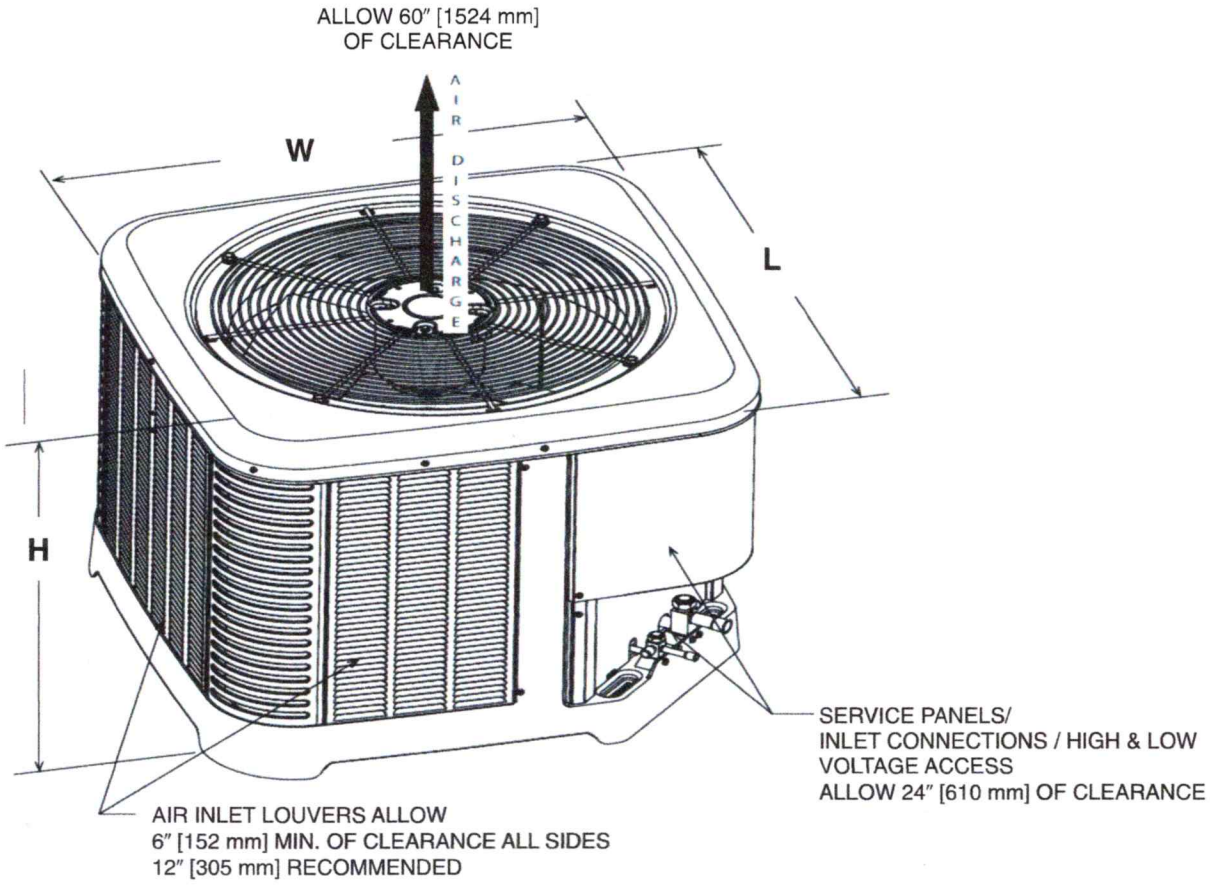
801 Islington St, Suite 32
Portsmouth, NH 03801
603-502-4387
archwhit@aol.com

ANNE WHITNEY ARCHITECT

Project:	Date:	
#1904	1/3/23	2 OF 3

Unit Dimensions

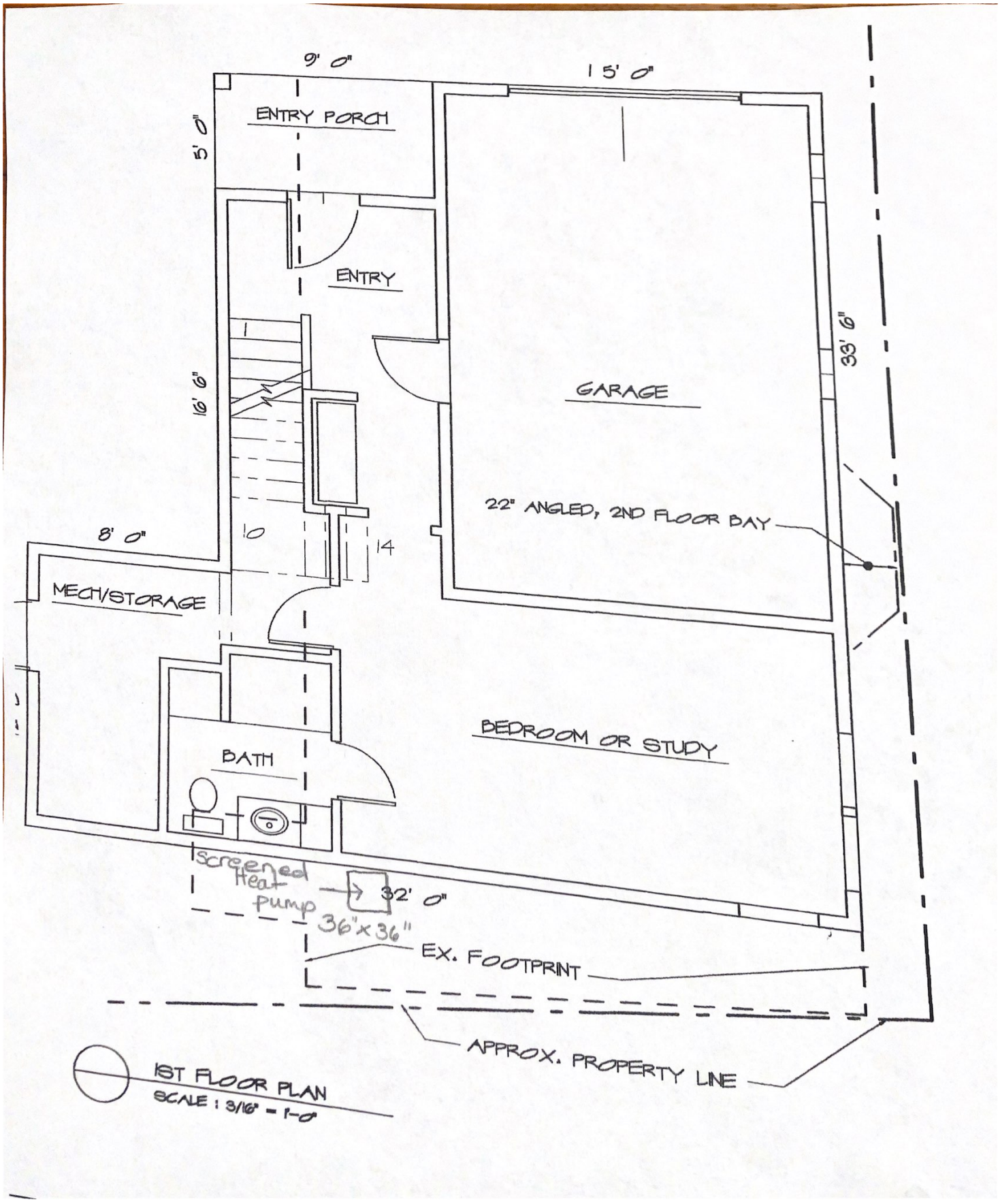
MODEL NO.	OPERATING						SHIPPING					
	H (Height)		L (Length)		W (Width)		H (Height)		L (Length)		W (Width)	
	INCHES	mm	INCHES	mm	INCHES	mm	INCHES	mm	INCHES	mm	INCHES	mm
RA1318	27	685	29.75	755	29.75	755	28.75	730	32.38	822	32.38	822
RA1324	25	635	29.75	755	29.75	755	26.75	679	32.38	822	32.38	822
RA1330	25	635	29.75	755	29.75	755	26.75	679	32.38	822	32.38	822
RA1336	27	685	29.75	755	29.75	755	28.75	730	32.38	822	32.38	822
RA1342	31	787	29.75	755	29.75	755	32.75	831	32.38	822	32.38	822
RA1348	27	685	33.75	857	33.75	857	28.75	730	36.38	924	36.38	924
RA1360	31	787	35.75	908	35.75	908	32.75	831	38.38	974	38.38	974



[ ] Designates Metric Conversions

ST-A1226-02-00

3 OF 3


9' 0"
15' 0"
ENTRY PORCH
5' 0"
ENTRY
16' 6"
GARAGE
33' 6"
22" ANGLED, 2ND FLOOR BAY
8' 0"
10
14
MECH/STORAGE
BEDROOM OR STUDY
BATH
Screened Heat pump
36"x36"
32' 0"
EX. FOOTPRINT
APPROX. PROPERTY LINE
1ST FLOOR PLAN
SCALE : 3/16" = 1-0"

III. NEW BUSINESS

I. The request of **Thomas E, Marybeth B, James B, and Meegan C Reis (Owners),** for property located at **305 Peverly Hill Road** whereas relief is needed to renovate the existing primary dwelling into a two unit dwelling and to construct a new single unit dwelling which requires the following 1) Variance from Section 10.440 Use #1.30 to allow a two unit dwelling in the SRB District. 2) Variance from Section 10.513 to allow more than one free standing dwelling on a lot in the SRB District. Said property is located on Assessor Map 255 Lot 5 and lies within the Single Residence A (SRA); Single Residence B (SRB) and Natural Resource Protection (NRP) District. (LU-22-251)

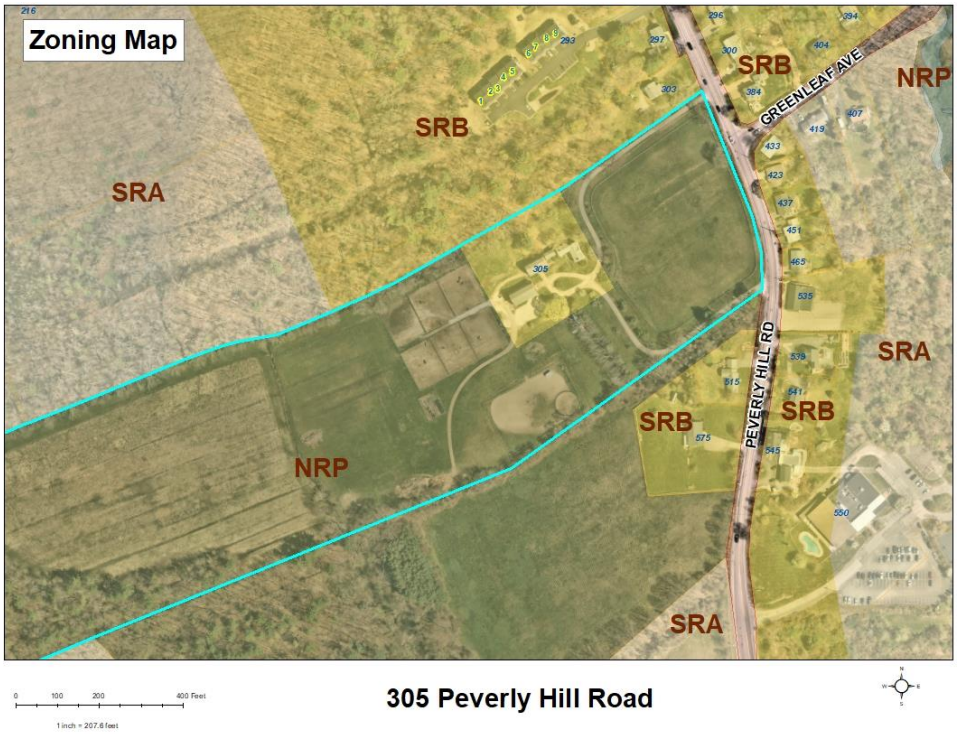
Existing and Proposed Conditions

	Existing	Proposed	Permitted / Required	
Land Use:	Single Family	**Addition of an second unit to the existing structure and the new construction of a free standing single-living unit**	Primarily residential uses	
Lot area (sq. ft.):	1,732,905 (39.7 ac)	1,732,905 (39.7 ac)	43,650 (1 ac)	min.
Lot Area per Dwelling Unit (sq. ft.):	1,732,905 (39.7 ac)	577,635 (13.23 ac)	43,650 (1 ac)	min.
Street Frontage (ft.):	500	500	150	min.
Lot depth (ft.):	>200	>200	200	min.
Primary Front Yard (ft.):	>30	>30	30	min.
Left Side Yard (ft.):	>20	>20	20	min.
Right Side Yard (ft.):	>20	>20	20	min.
Rear Yard (ft.):	>40	>40	40	min.
Height (ft.):	<35	<35	35	max.
Building Coverage (%):	<20	<20	20	max.
Open Space Coverage (%):	>40	>40	40	min.
Parking	4	4	4	
Estimated Age of Structure:	1810	Variance request shown in red.		

Other Permits/Approvals Required

- Site Plan Review
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

August 18, 2015 – The Board voted to **grant** the petition as presented and advertised noting that the variance was from Section 10.440, Use #1.20 to allow a second dwelling unit on a lot. As follows:

1) A Variance from Section 10.513 to allow a second free-standing dwelling on a lot where a second free-standing dwelling is not allowed in this district.

August 15, 2017 – The Board voted to **grant** a one year extension of the variance granted August 18, 2015.

Planning Department Comments

Applicant is proposing to create two living units in the existing single family structure and construct one free standing single family unit to create 3 units in 2 structures. The property exceeds all dimensional requirements and is the only working farm in the City.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*

(a) The property has special conditions that distinguish it from other properties in the area.

AND

(b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.

OR

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Section 10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

DTC Lawyers
Dedicated to Clients

CELEBRATING OVER 35 YEARS OF SERVICE TO OUR CLIENTS

LIZABETH M. MACDONALD
JOHN J. RATIGAN
DENISE A. POULOS
ROBERT M. DEROSIER
CHRISTOPHER L. BOLDT
SHARON CUDDY SOMERS
DOUGLAS M. MANSFIELD
KATHERINE B. MILLER
CHRISTOPHER T. HILSON
HEIDI J. BARRETT-KITCHEN
JUSTIN L. PASAY
ERIC A. MAHER
CHRISTOPHER D. HAWKINS
VASILIOS "VAS" MANTHOS
ELAINA L. HOEPPNER
WILLIAM K. WARREN

RETIRED
MICHAEL J. DONAHUE
CHARLES F. TUCKER
ROBERT D. CIANDELLA
NICHOLAS R. AESCHLIMAN

HAND DELIVERED

December 22, 2022

Jim Lee, Chair
Zoning Board of Adjustment
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: 305 Peverly Hill Road, Map 255, Lot 5
Thomas & Marybeth Reis and James & Meegan Reis

Dear Chair Lee and Board Members:

Enclosed please find supporting materials to accompany the information submitted via the City's on-line permitting system for variance relief regarding the above referenced property. Please note that certain elements in the electronic filing, specifically the footprint of the structures, are based upon information contained on the tax card. We reserve the right to supplement this application if more detailed information becomes available to us.

We respectfully request that this matter be placed on the Board's January 17, 2023 agenda. In the meantime, if you have any questions or require additional information do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC

Sharon Cuddy Somers

Sharon Cuddy Somers
SCS/sac
Enclosures

cc: Thomas & Marybeth Reis
James & Meegan Reis

THOMAS & MARYBETH REIS AND JAMES & MEEGAN REIS
305 PEVERLY HILL ROAD
VARIANCE APPLICATION

The Applicant requests variances from Article 4, Section 10.440, 1.30 to permit a two family dwelling in the SRB zone and Article 5, Section 10.513 to permit more than one free standing dwelling on a lot in the SRB zone.

Introduction

Jim and Meegan Reis, together with Jim's brother Tom and Jim's sister-in-law Marybeth Reis, collectively own what is known as the "Hett Farm" located at 305 Peverly Hill Road and which lies in the Single Family B zone. The property contains what is believed to be the last working farm in the City of Portsmouth, and the entire family, including the children of Jim and Meegan Reis, actively assist in the running of the farm. The property was purchased in 2014 and it was the intention to construct a separate home on the portion of the property reserved for the farmhouse, hereafter referred to as the "Farmhouse Lot" for Jim and Meegan Reis and their family and to allow Tom and Marybeth Reis to reside in the existing farmhouse. In 2015, the owners obtained a variance from Article 5, Section 10.513 which indicates that "...no more than one free standing dwelling shall be built on any lot in a Rural, Single Family A or B or General Residence District A or B..." Unfortunately, that variance expired before the separate home could be constructed and so a variance is being sought again from this provision of the zoning ordinance.

Additionally, subsequent to obtaining the 2015 variance, Betsy Zehnder, the sister of Jim and Tom Reis, has also decided to reside on the property and assist with farming activities. In order to provide a private dwelling for Betsy Zehnder, the owners propose that the breezeway attached to the existing farmhouse be renovated to create a dwelling. The result would be to transform the existing farmhouse and breezeway into a two family structure. In turn, because the Single Family Residence (SRB) zone does not allow for a two family dwelling on the lot, then a variance from Article 4, Section 10.440, 1.30 is also required.

Set forth below is a discussion of the property, the conservation easement applicable to the property and the arguments which support why each of the variance criteria are met for both of the ordinance provisions, along with reference to relevant enclosures. Following your review of the submitted materials, we respectfully request that both variances be granted as presented.

The Property

The Reis property is located at 305 Peverly Hill Road. It consists of 39.7 acres and all but 2.1 of those acres are subject to a conservation easement deed which is held by the City of Portsmouth. The area reserved from the conservation easement, hereinafter referred to as the "Farmhouse Lot" is situated at the crest of a hill on the property and is zoned SRB, while the remainder of property subject to the conservation easement is zoned Natural Resource Protection District. The property currently contains an existing farmhouse constructed in 1810 as well as several

outbuildings, some of which are visible from the street. The last owner of the property, John Hett also constructed a barn in the early 1990's after the conservation easement was created and at a time when he was in his late 90's; he did so in an effort to ensure that farming operations would continue on site.

The property has approximately 500 feet of frontage and contains fields, pasture, and forest. The Farmhouse Lot, with 91,476 sq. ft., contains enough space to allow for three dwellings where density of 15,000 sq. ft. is required. No setback or other dimensional relief is required for the creation of the proposed two family dwelling or the freestanding dwelling.

The Conservation Easement

It would be difficult to truly appreciate the unique nature of this property without having a complete understanding of the conservation easement which burdens all of the property except the Farmhouse Lot. The variance application of 2015 prepared by Attorney Peter Loughlin contains extensive information concerning the property. Reference to the history of the property can be found in Attorney Loughlin's application, but the highlights of the history include the fact that the Hett Farm is the last working farm in Portsmouth and was first farmed starting in the 1630's by Thomas Walford. In 1940, the late John and Maud Hett acquired the property and John Hett farmed the property until close to the time of his death.

In 1989, John and Maud Hett were able to consummate their efforts to preserve the farm from future development efforts by others and submitted all but the Farmhouse Lot to the conservation easement conveyed to the City in 1989[1]. The use of the portion of the property subject to the conservation easement is limited to agriculture and forestry.

SECTION I
TWO FAMILY DWELLING VARIANCE
FROM ARTICLE 4, SECTION 10.440, 1.30

1. The Variance will not be contrary to the public interest

Granting the variance will not be contrary to the public interest. To be contrary to the public interest, the variance must unduly, and to a marked degree, violate the relevant ordinance's basic zoning objectives. Determining whether the basic objective of the ordinance is violated can be measured by whether the variance will alter the essential character of the locality, or by whether it would threaten public health, safety or welfare.

The purpose of the SRB district described in Article 4, Section 10.410 is "...to provide areas for single family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre).

[1] The total acreage of the conservation easement is 55.4 acres. Of that, 37.7 acres of the Reis property is subject to the conservation easement. The remaining 17.7 acres subject to the conservation easement are located on the abutting Map 255, Lot 3 currently owned by the Walter Hett Trust.

The objective of the ordinance is arguably to keep the category of housing limited to single family homes but also to regulate the density of housing. The character of the locality, as shown on Exhibit 2, is comprised of single family homes along with a residential condominium and several small businesses situated on the easterly side of Peverly Hill Road. The Reis family proposes to have one building which will contain two dwellings, the existing dwelling in the existing farmhouse together with a renovated breezeway which will become the second dwelling. The configuration of the existing farmhouse and the proposed second dwelling is such that it will replicate what is present on site currently, and therefore will not alter the essential character of the locality.

Renovating the existing breezeway to create a second dwelling, while retaining the existing farmhouse such that both dwellings will be in one dwelling will not threaten the public health, safety or welfare.

2. The spirit of the Ordinance will be observed

Under New Hampshire law, this variance criteria is essentially merged with the "public interest" criteria. As stated above, the spirit of the ordinance is to regulate density. For the reasons stated above, the spirit of the ordinance will be observed if the variance is granted.

3. The values of surrounding properties are not diminished

Granting the variance to allow a two family dwelling will not diminish property values. The existing farmhouse has been on the property for many years and the breezeway portion of the existing farmhouse will be replaced with the attached second dwelling which should have little to no visual impacts to abutting property. As a result, no property values will be diminished.

The applicant is not aware of any information or evidence that would suggest that the presence of a second dwelling will decrease the value of surrounding property.

4. Substantial justice will be done

The relevant analysis under this element of the variance criteria is whether the benefit to the applicant of granting this variance will be outweighed by a detriment or loss to the individual or to the public at large. Here the benefit to the applicant in granting the variance is that allowing a two family dwelling within the Farmhouse Lot will provide adequate space and privacy for all those who currently, or in the future, are residing on site and who may assist with agricultural activities.

Conversely, there is no known detriment to any individuals. There is adequate parking on site to accommodate the needs for the two family dwelling and no significant traffic will be added to Peverly Hill Road by virtue of the second dwelling to be added. Individuals on neighboring properties will be unable to discern any real difference in having a second dwelling because it will simply replace the existing "breezeway" structure which is currently attached to the existing farmhouse and the height of the second dwelling will be consistent with that of the existing

farmhouse. Further, as shown on Exhibit 2, the distance between the proposed second dwelling and the abutting properties is over 350 feet, so it is unlikely that the second dwelling will even be visible to any individuals.

There is also no known detriment to members of the public by allowing the variance.

5. **Unnecessary Hardship**:

A. Owing to special conditions of the property that distinguish it from other properties:

The lot on which the Farmhouse Lot sits is extraordinarily large in comparison to neighboring properties and consists of 37.9 acres. In addition to the physical aspects of the property which make it unique, there are also special conditions related to the use of the property which make it unique. The uses of the land burdened by the conservation easement are limited to agriculture and forestry as further described in Use Limitations, Section (A) (i) of the conservation easement and the overarching goal of the conservation easement is to preserve open space.

The nature of the conservation easement restrictions means that, as a practical matter, the fee owners of the conservation easement and Farmhouse Lot, and the City, as easement holder, can reasonably expect that those residing on the Farmhouse Lot would likely participate in the management of whatever agricultural or forestry activities may be occurring with the conservation easement. Additionally, given the sheer size of the land area to be managed, it is reasonable to expect that there is a need for a healthy number of people to perform the management and that those people can most effectively manage if they reside on site. Collectively, these factors constitute special conditions regarding the use of the property and such special conditions distinguish it from other properties.

B. 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

The general public purpose of the ordinance is to provide for single family dwellings with low to moderate density of 1-3 dwellings per acre. As applied to the 2.1 acre portion of the property known as the "Farmhouse Lot", a two family dwelling will still be adhering to the rule of low to moderate density of 1-3 dwellings and therefore there is no fair and substantial relationship which exists between the public purpose of the ordinance and the specific application of the ordinance to this property.

C. The proposed use is reasonable

The property is subject to a conservation easement which benefits the City of Portsmouth by keeping intact the promise of open space and by providing in the twenty first century the opportunity to pursue agriculture and forestry at the last working farm in Portsmouth. The Reis family is committed to providing the labor necessary to keep agriculture and forestry alive, but they need appropriate accommodations to do so. Therefore, the addition a two family dwelling is reasonable. Further, even if a future owner of the property chose not to engage in agriculture or

forestry, the size of the property, the distance to abutting properties and the compliance with density objectives all means that the request for a second dwelling is reasonable.

SECTION II
MORE THAN ONE FREE STANDING DWELLING PER LOT VARIANCE FROM ARTICLE 5, SECTION 10.513

1. The Variance will not be contrary to the public interest

Granting the variance will not be contrary to the public interest. To be contrary to the public interest, the variance must unduly, and to a marked degree, violate the relevant ordinance's basic zoning objectives. Determining whether the basic objective of the ordinance is violated can be measured by whether the variance will alter the essential character of the locality, or by whether it would threaten public health, safety or welfare.

The ordinance is silent as to the purpose behind restricting the number of free standing dwellings within the SRB district. However, looking at the purpose of the SRB district itself as described in Article 4, Section 10.410 is helpful. Here, the purpose of the district is "...to provide areas for single family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre). The objective of the ordinance is arguably to keep the category of housing limited to single family homes but also to regulate the density. The minimum lot area in the SRB district is 15,000 sq. ft. Here, there will be 576,444 sq. ft. per dwelling unit on the entire lot and 29,040 sq. ft. per dwelling unit if you exclude the area subject to the conservation easement; nearly twice the required lot area per dwelling unit.

The presence of an additional free standing dwelling unit on the property will not threaten the public health, safety or welfare.

2. The spirit of the Ordinance will be observed

Under New Hampshire law, this variance criteria is essentially merged with the "public interest" criteria. As stated above, the spirit of the ordinance is to regulate density. For the reasons stated above, the spirit of the ordinance will be observed if the variance is granted.

3. The values of surrounding properties are not diminished

Granting the variance to allow more than one free standing dwelling on the property will not diminish property values. The proposed free standing dwelling unit on the property as shown on Exhibit 1 will be a residential use consistent with the existing use on site as well as existing uses on surrounding properties. Further, the location of the free standing dwelling will be over 350 feet from surrounding residential properties and therefore will have little visibility. The footprint and height of the proposed free standing dwelling will be consistent with existing structures, thus not standing out in any way, and will likely appear to be one of the structures associated with the farmhouse and barns.

The applicant is not aware of any information or evidence that would suggest that having more than one free standing dwelling situated on the "Farmhouse Lot" portion of the property will diminish surrounding property values.

4. **Substantial justice will be done**

The arguments presented for substantial justice for the two family dwelling variance apply with equal force to the variance for a free standing dwelling. Therefore, the arguments presented on this topic for the two family variance are restated and incorporated into the presentation for the free standing dwelling.

5. **Unnecessary Hardship**:

The arguments presented for unnecessary hardship for the two family dwelling variance apply with equal force to the variance for unnecessary hardship. Therefore, the arguments presented on this topic for the two family dwelling variance are restated and incorporated into the presentation for the free standing dwelling.

verly Hill Road
cations for the two new buildings.

Exhibit 1

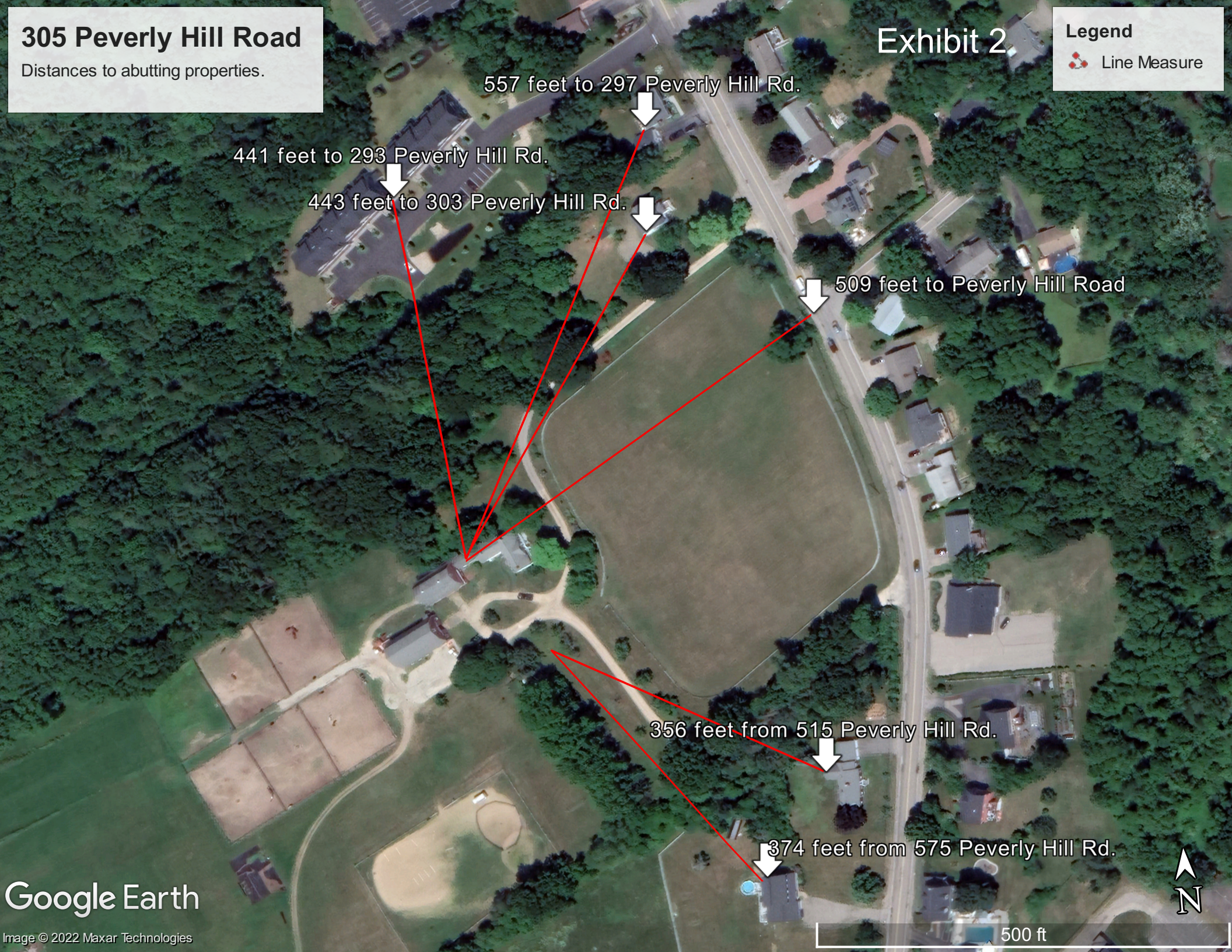
305 Peverly Hill Road

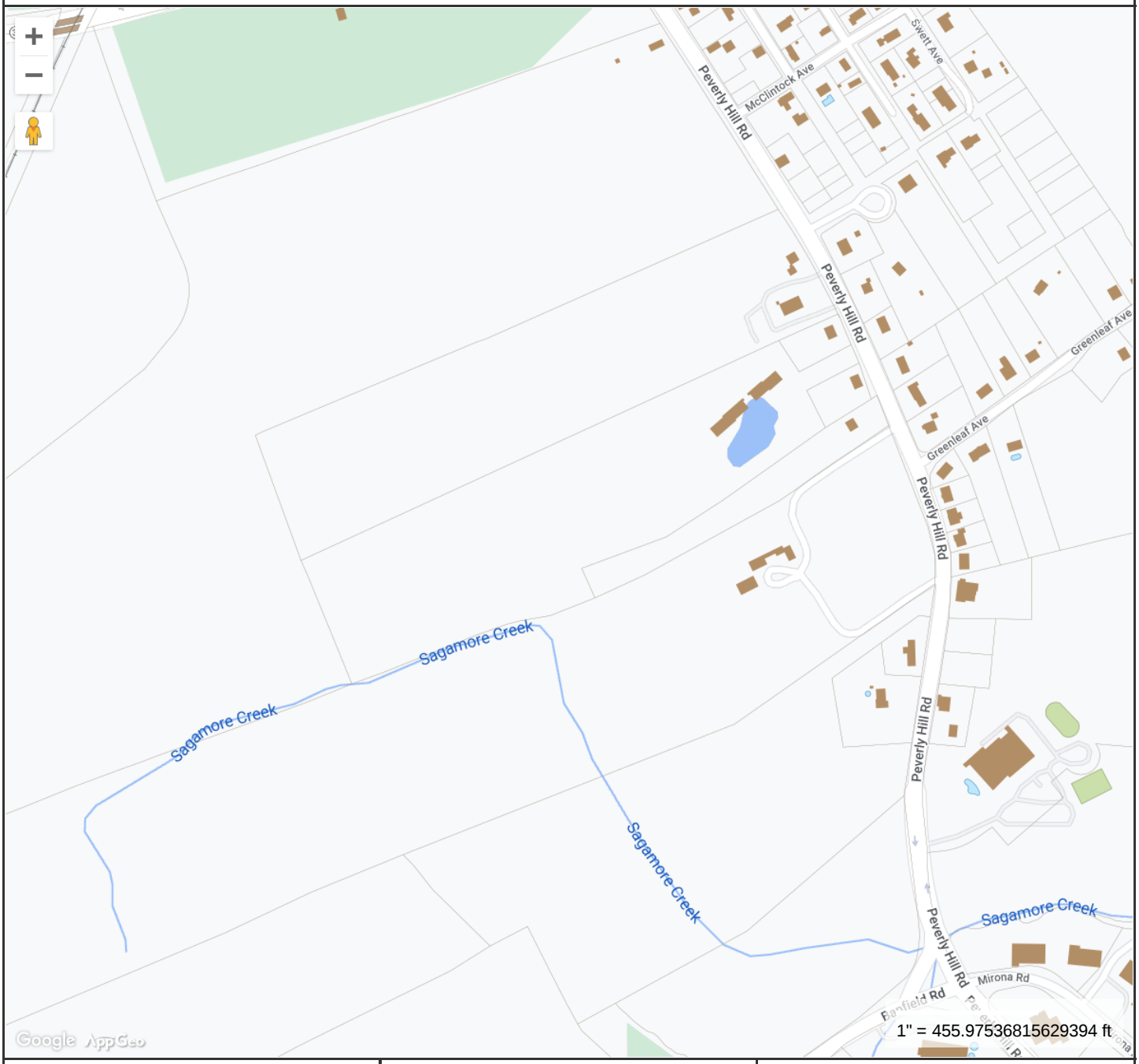
Distances to abutting properties.

Exhibit 2

Legend

Line Measure



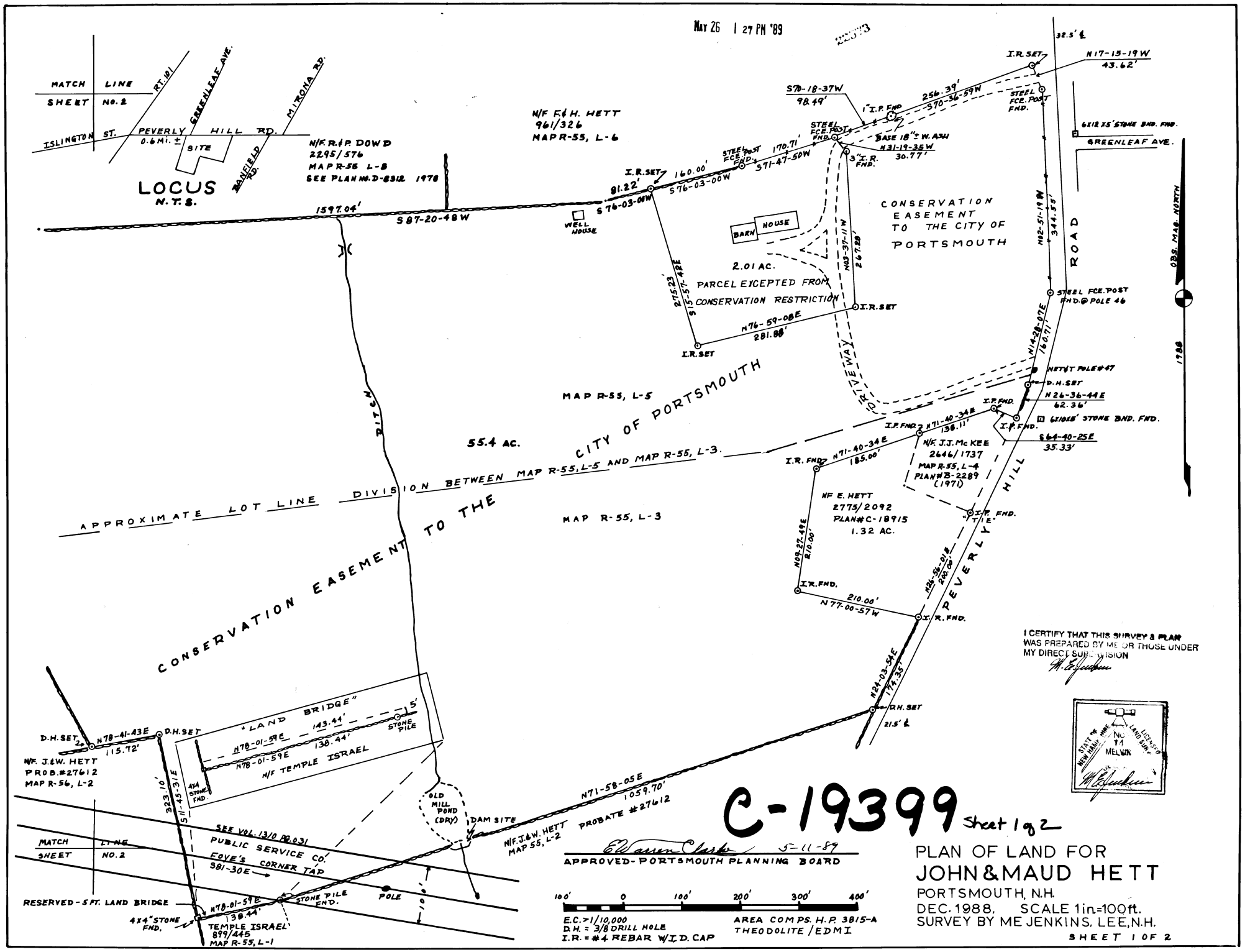


MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

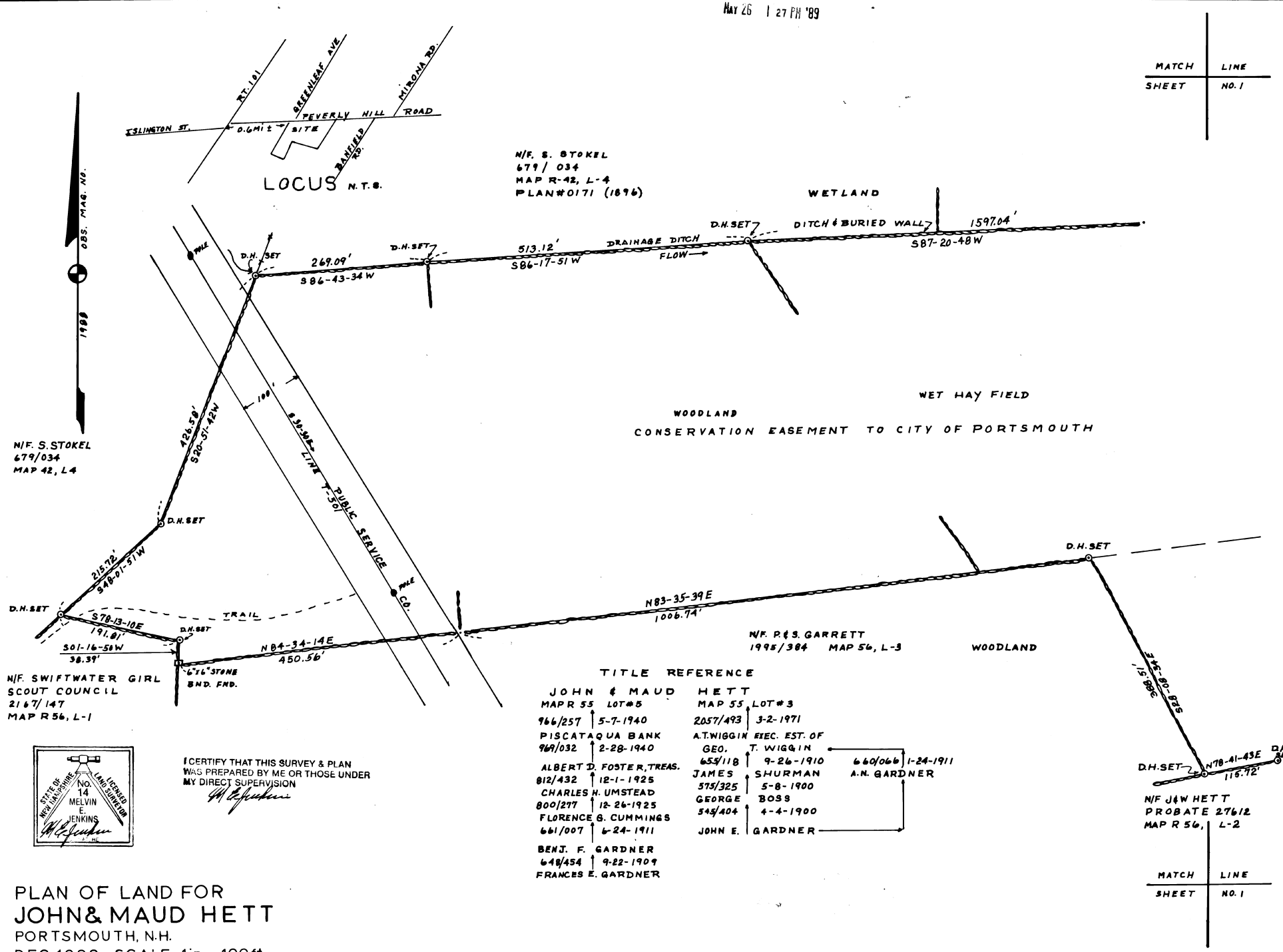
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 09/21/2022
Data updated 3/9/2022

Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.


MAY 26 1 27 PM '89
MATCH LINE SHEET NO. 2
RT. 101
GREENLEAF AVE.
MIRONA RD.
ISLINGTON ST.
PEVERLY HILL RD.
0.6 MI. ±
SITE
DANIELS RD.
LOCUS
N.T.S.
N/F R. & P. DOWD
2295/576
MAP R-55 L-8
SEE PLAN NO. D-8312 1978
N/F F. & H. HETT
961/326
MAP R-55, L-6
I.R.SET
160.00'
S76-03-00W
81.22'
S76-03-00W
1597.04'
S87-20-48W
WELL HOUSE
STEEL FCE. POST FND.
170.71'
S71-47-50W
S78-18-37W
98.49'
1" I.P. FND
S70-36-59W
256.39'
I.R. SET
N17-15-19W
43.62'
32.5' ℄
STEEL FCE. POST FND.
6X12 XS' STONE BND. FND.
GREENLEAF AVE.
BASE 18" ± W. ASH
N31-19-35W
30.77'
3" I.R. FND.
CONSERVATION EASEMENT TO THE CITY OF PORTSMOUTH
BARN
HOUSE
2.01 AC.
PARCEL EXCEPTED FROM CONSERVATION RESTRICTION
S15-57-48E
275.23'
N03-37-11W
267.28'
I.R.SET
N76-59-08E
281.88'
I.R.SET
DRIVE WAY
N02-51-19W
344.35'
STEEL FCE. POST FND. @ POLE 46
OBS. MAG. NORTH
1988
ROAD
N14-28-07E
160.71'
NET & T POLE #47
D.H. SET
N26-36-44E
62.36'
I.P. FND.
6X6X6' STONE BND. FND.
I.P. FND.
S64-40-25E
35.33'
I.P. FND.
N71-40-34E
138.11'
I.R. FND.
N71-40-34E
185.00'
N/F J.J. McKEE
2646/1737
MAP R-55, L-4
PLAN #B-2289
(1971)
N/F E. HETT
2775/2092
PLAN #C-18915
1.32 AC.
I.P. FND.
N09-27-49E
210.00'
I.R. FND.
210.00'
N77-00-57W
I.R. FND.
N24-59-01E
200.00'
PEVERLY HILL
N21-03-54E
174.35'
I.R. SET
21.5' ℄
MAP R-55, L-5
55.4 AC.
CITY OF PORTSMOUTH
DIVISION BETWEEN MAP R-55, L-5 AND MAP R-55, L-3.
APPROXIMATE LOT LINE
CONSERVATION EASEMENT TO THE
MAP R-55, L-3
DITCH
I CERTIFY THAT THIS SURVEY & PLAN WAS PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION
M. E. Jenkins
STATE OF NEW HAMPSHIRE
No. 11
MELVIN
LICENSED LAND SURVEYOR
M. E. Jenkins
D.H. SET
N78-41-43E
115.72'
D.H. SET
N/F J. & W. HETT
PROB. #27612
MAP R-56, L-2
"LAND BRIDGE"
15'
N78-01-59E
143.44'
N78-01-59E
138.44'
STONE PILE
N/F TEMPLE ISRAEL
4X4 STONE FND.
323.10'
S11-45-31E
OLD MILL POND (DRY)
DAM SITE
N71-58-05E
1059.70'
N/F J. & W. HETT
MAP 55, L-2
PROBATE #27612
SEE VOL. 1310 PG. 031
PUBLIC SERVICE CO.
EOVE'S CORNER TAP
S81-30E
MATCH LINE SHEET NO. 2
RESERVED - 5 FT. LAND BRIDGE
N78-01-59E
138.44'
4X4" STONE FND.
STONE PILE END.
POLE
TEMPLE ISRAEL
899/445
MAP R-55, L-1
C-19399
Sheet 1 of 2
E. Warren Clarke 5-11-89
APPROVED - PORTSMOUTH PLANNING BOARD
100' 0 100' 200' 300' 400'
E.C. 1/10,000
D.H. = 3/8 DRILL HOLE
I.R. = #4 REBAR W/I.D. CAP
AREA COMPS. H.P. 3815-A
THEODOLITE / EDMI
PLAN OF LAND FOR
JOHN & MAUD HETT
PORTSMOUTH, N.H.
DEC. 1988, SCALE 1 in. = 100 ft.
SURVEY BY ME JENKINS, LEE, N.H.
SHEET 1 OF 2

MAY 26 1 27 PM '89



TITLE REFERENCE

JOHN & MAUD HETT

MAP R 55 LOT #5
966/257 | 5-7-1940
PISCATAQUA BANK
969/032 | 2-28-1940
ALBERT D. FOSTER, TREAS.
812/432 | 12-1-1925
CHARLES H. UMSTEAD
800/277 | 12-26-1925
FLORENCE G. CUMMINGS
661/007 | 6-24-1911
BENJ. F. GARDNER
648/454 | 9-22-1909
FRANCES E. GARDNER

MAP 55 LOT #3
2057/493 | 3-2-1971
A.T. WIGGIN EXEC. EST. OF
GEO. T. WIGGIN
655/118 | 9-26-1910
660/066 | 1-24-1911
JAMES SHURMAN A.N. GARDNER
575/325 | 5-8-1900
GEORGE BOSS
545/404 | 4-4-1900
JOHN E. GARDNER

STATE OF NEW HAMPSHIRE LICENSED LAND SURVEYOR NO. 14 MELVIN E. JENKINS

I CERTIFY THAT THIS SURVEY & PLAN WAS PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION

PLAN OF LAND FOR
JOHN & MAUD HETT

PORTSMOUTH, N.H.
DEC. 1988 SCALE 1in. = 100ft.
SURVEY BY M.E. JENKINS, LEE, N.H.

SHEET 2 OF 2

C-19399 Sheet 2 of 2

E. Warren Clarke 5-11-89
APPROVED - PORTSMOUTH PLANNING BOARD

View from proposed
house site

View from Peverly Hill Road

View from Peverly Hill Road

View from Peverly Hill Road

View from 515 Peverly Hill Road

View from 575 Peverly Hill Road

LETTER OF AUTHORIZATION

We, Thomas Reis, Marybeth Reis, James Reis and Meegan Reis, owners of property depicted on Tax Map 255, Lot 5, do hereby authorize Donahue, Tucker and Ciandella, PLLC, to execute any land use applications to the City of Portsmouth and to take any action necessary for the application and permitting process, including but not limited to, attendance and presentation at public hearings, of the said property.

Dated: December 14, 2022

/s/ Thomas E. Reis
Thomas Reis

/s/ Marybeth Reis
Marybeth Reis

/s/ James B. Reis
James Reis

/s/ Meegan C. Reis
Meegan Reis

S:\RA-RL\REIS, JAMES, MEEGAN, THOMAS & MARYBETH\ZBA MATERIALS\LETTER OF AUTHORIZATION.DOCX