

# HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

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ATTORNEYS AT LAW

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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 Mangel (email)

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DANIEL C. HOEFLE  
R. TIMOTHY PHOENIX  
LAWRENCE B. GORMLEY  
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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 where 13.5’ 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/ Mangel 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.<sup>1</sup>

**PZO§10.321- Expansion of nonconforming structure.**

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<sup>1</sup> 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.<sup>2</sup>, a significant 27.9% reduction (718-518=200/718;
- Reduced the square footage of addition in the identified setback from 450 sq. ft.<sup>2</sup> (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;

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<sup>2</sup> 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.<sup>2</sup> 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:<sup>3</sup>

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.

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<sup>3</sup> 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.<sup>4</sup>

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

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<sup>4</sup> 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.

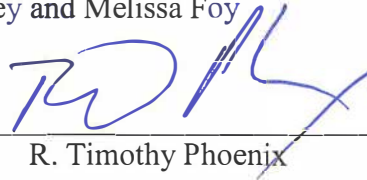
**VI. CONCLUSION**

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

## 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:

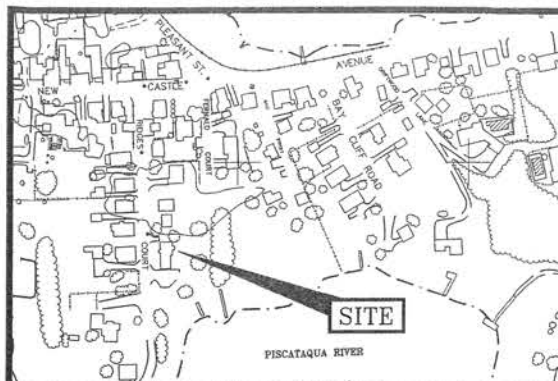
The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, November 15, 2022**, considered your application for the construction of a 518 square foot garage addition which requires the following: 1) A variance from Section 10.521 to allow a 15.5 foot front yard where 19 feet is 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



LOCATION MAP

SCALE 1" = 200'

LEGEND:

- N/F  
RP  
RCRD
- 11  
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  
MEAN HIGH WATER LINE  
NHDES HIGHEST OBSERVABLE TIDE LINE  
NHDES 50' PRIMARY STRUCTURE SETBACK  
NHDES 100' TIDAL BUFFER ZONE  
NHDES 150' NATURAL WOODLAND BUFFER  
NHDES 250' PROTECTED SHORELAND  
FEMA SPECIAL FLOOD HAZARD AREA LINE  
OVERHEAD ELECTRIC WIRES  
CONTOUR  
SPOT ELEVATION  
EDGE OF PAVEMENT (EP)  
WOODS / TREE LINE  
UTILITY POLE (w/ GUY)  
WELL  
METER (GAS, WATER, ELECTRIC)  
EDGE OF WETLAND FLAGGING  
SWAMP / MARSH  
ELEVATION  
EDGE OF PAVEMENT  
FINISHED FLOOR  
INVERT  
TEMPORARY BENCHMARK  
TYPICAL  
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 1975. 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: NORTHEASTAL 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, USFWS 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  
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:

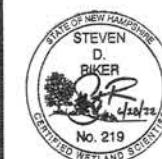
- 1) PARCEL IS SHOWN ON THE PORTSMOUTH ASSESSOR'S MAP 207 AS LOT 59.
- 2) OWNERS OF RECORD:  
JEFFREY M. & MELISSA FOY  
4 FOX HOLLOW COURT  
EAST KINGSTON, N.H. 03827  
6325/1066
- 3) PORTIONS OF THE PARCEL ARE IN A SPECIAL FLOOD HAZARD AREA AE (EL.8) AS SHOWN ON FIRM PANEL 33015C0278F, EFFECTIVE JANUARY 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

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		



SCALE 1"=20'

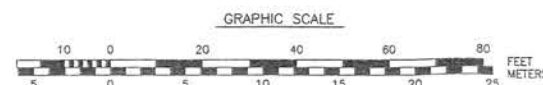
MAY 2022

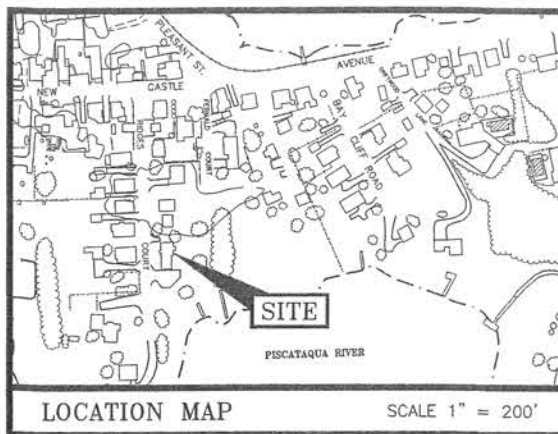
EXISTING CONDITIONS  
PLAN

C1

"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, L.L.S.  
DATE 6-27-22





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%

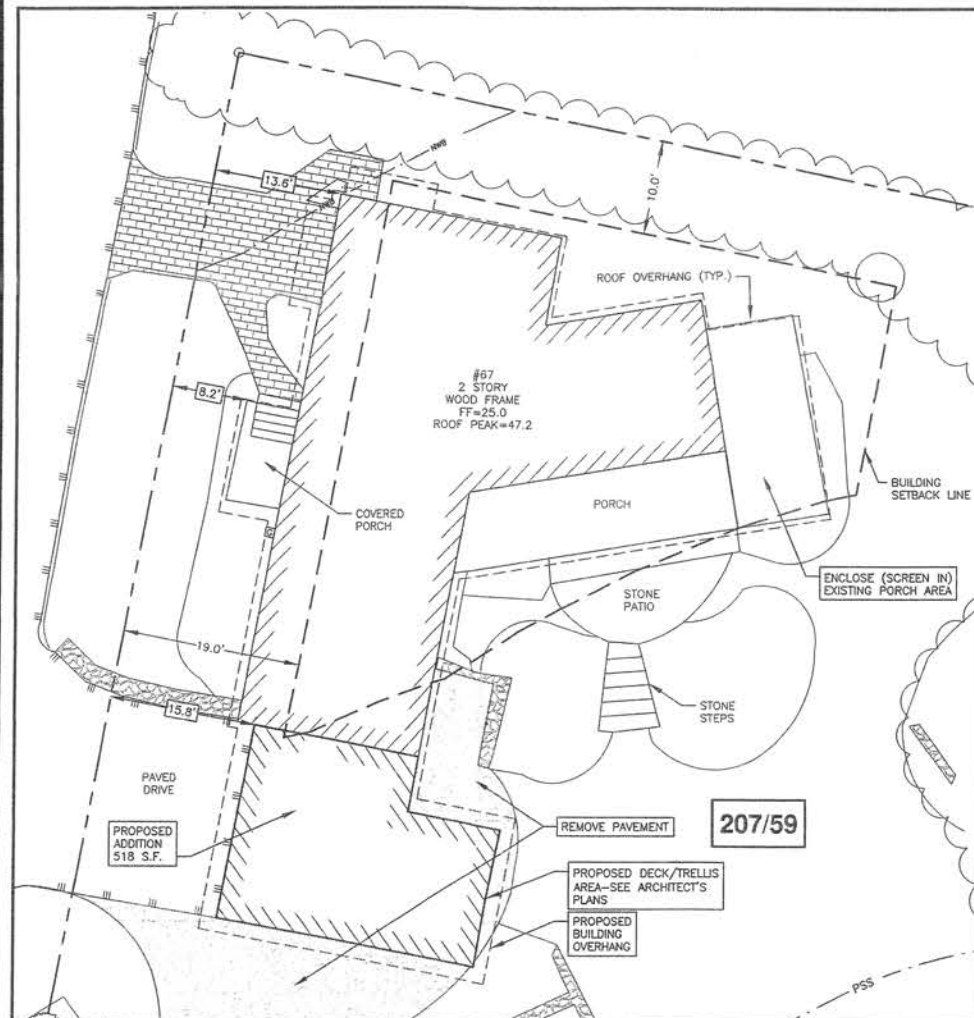
NOTES:  
IN ACCORDANCE WITH THE PORTSMOUTH ZONING ORDINANCE,  
ARTICLE 5, SECTION 10.516.10 FRONT YARD EXCEPTION FOR  
EXISTING ALIGNMENTS: THE AVERAGE FRONT SETBACK FOR  
LOT 207/59 IS 19'.

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

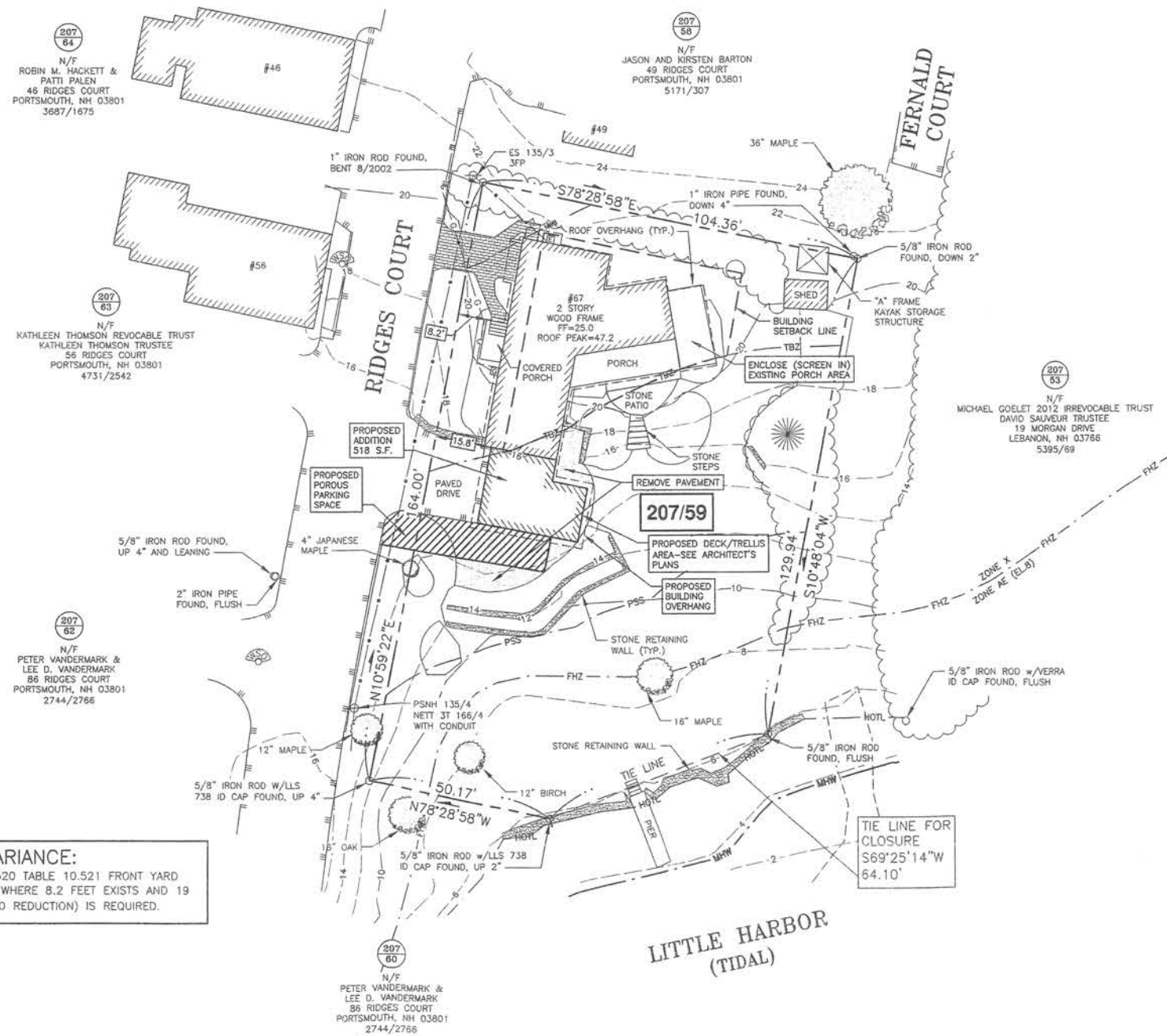
2002  
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200 Griffin Road - Unit 3  
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- NOTES:
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MINIMUM OPEN SPACE: 40%
  - 7) THE PURPOSE OF THIS PLAN IS TO SHOW A PROPOSED ADDITION ON ASSESSOR'S 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 SEPTEMBER 28, 2022.
  - 10) OFF SITE STRUCTURE LOCATIONS BASED ON CITY DATABASE LOCATIONS.



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."

JOHN R. CHAGNON, LLS  
DATE 10.5.22



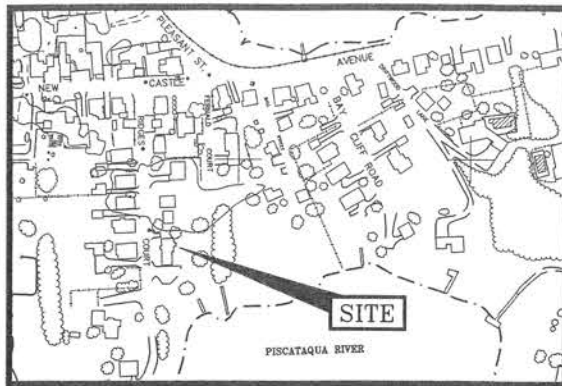
## PROPOSED ADDITIONS FOY RESIDENCE 67 RIDGES COURT PORTSMOUTH, N.H.

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



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
○	MEAN HIGH WATER LINE
○	NHDES HIGHEST OBSERVABLE TIDE LINE
○	NHDES 50' PRIMARY STRUCTURE SETBACK
○	NHDES 100' TIDAL BUFFER ZONE
○	NHDES 150' NATURAL WOODLAND BUFFER
○	NHDES 250' PROTECTED SHORELAND
○	FEMA SPECIAL FLOOD HAZARD AREA LINE
○	OVERHEAD ELECTRIC/WIRES
○	CONTOUR
○	SPOT ELEVATION
○	EDGE OF PAVEMENT (EP)
○	WOODS / TREE LINE
○	UTILITY POLE (w/ GUY)
○	WELL
○	METER (GAS, WATER, ELECTRIC)
○	EDGE OF WETLAND FLAGGING
○	SWAMP / MARSH
○	ELEVATION
○	EDGE OF PAVEMENT
○	FINISHED FLOOR
○	INVERT
○	TEMPORARY BENCHMARK
○	TYPICAL
○	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: NORTHEASTAL 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  
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:

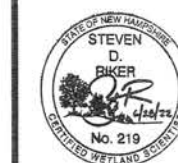
- 1) PARCEL IS SHOWN ON THE PORTSMOUTH ASSESSOR'S MAP 207 AS LOT 59.
- 2) OWNERS OF RECORD:  
JEFFREY M. & MELISSA FOY  
4 FOX HOLLOW COURT  
EAST KINGSTON, N.H. 03827  
6325/1066
- 3) PORTIONS OF THE PARCEL ARE IN A SPECIAL FLOOD HAZARD AREA AE (EL.8) AS SHOWN ON FIRM PANEL 33015C0278F. EFFECTIVE JANUARY 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.

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



SCALE 1"=20'

MAY 2022

EXISTING CONDITIONS  
PLAN

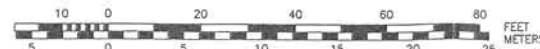
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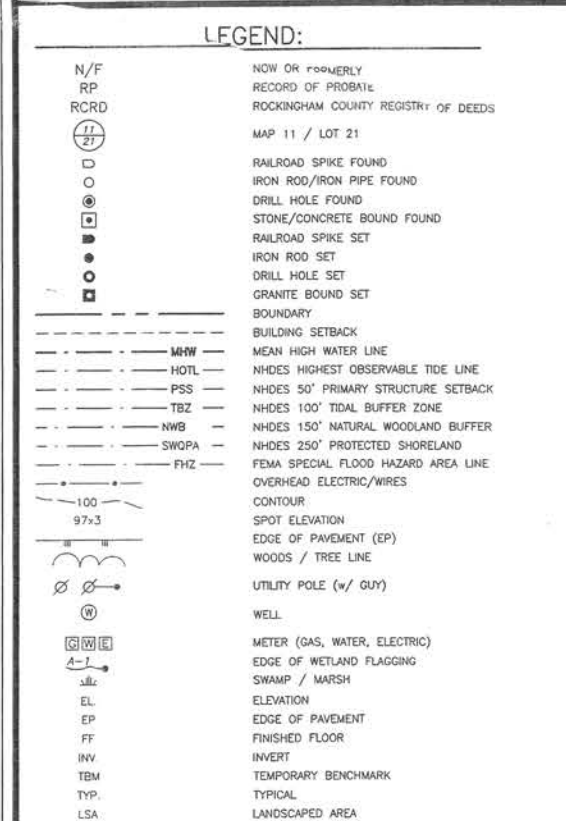
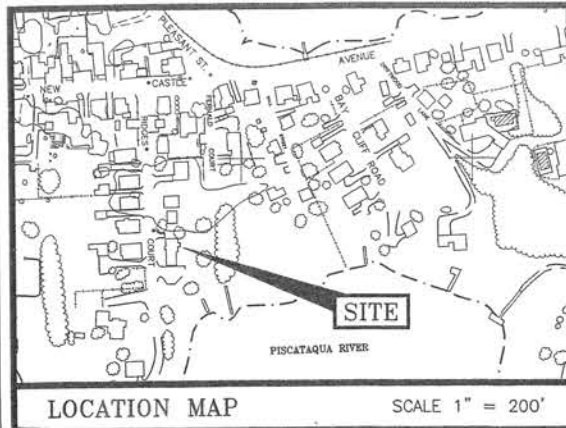
"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

JOHN R. CHAGNON, L.S.  
DATE 6.27.22

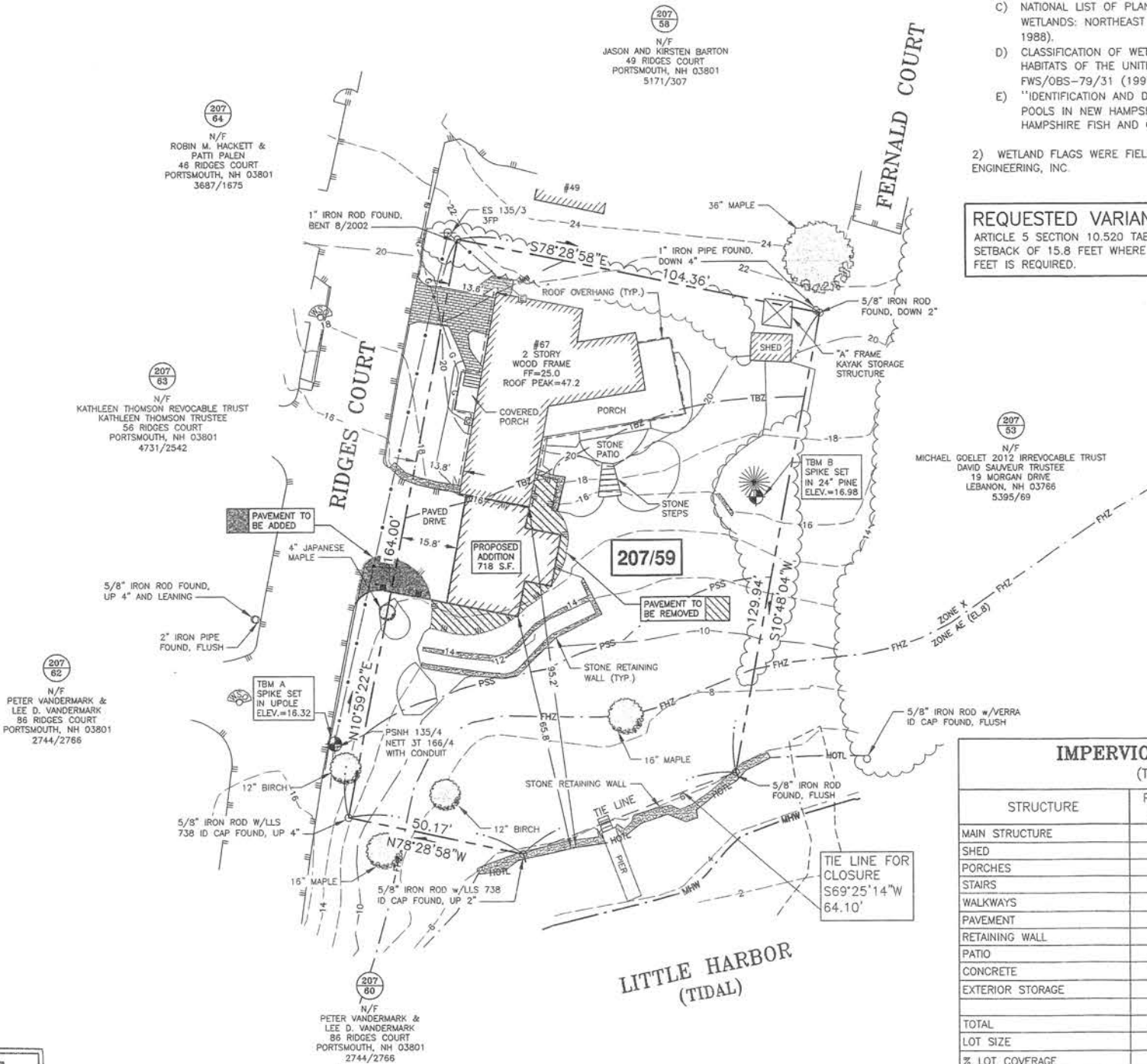


GRAPHIC SCALE





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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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	1,452	490
RETAINING WALL	212	212
PATIO	109	109
CONCRETE	17	17
EXTERIOR STORAGE	50	50
TOTAL	4,389	4,145
LOT SIZE	16,500	16,500
% LOT COVERAGE	26.6%	25.1%

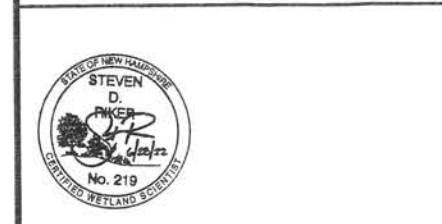
PROPOSED BUILDING COVERAGE:  
MAIN STRUCTURE: 2,309 S.F.  
SHED: 91 S.F.  
PORCHES: 513 S.F.  
STAIRS: 123 S.F.  
TOTAL: 3,036 S.F./18.4%

AMBIT ENGINEERING, INC.  
Civil Engineers & Land Surveyors  
200 Griffin Road - Unit 3  
Portsmouth, N.H. 03801-7114  
Tel (603) 430-8282  
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  
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9) PROPOSED GARAGE FROM PLAN BY DESTEFANO MAGUEL ARCHITECTS DATED JUNE 14, 2022.

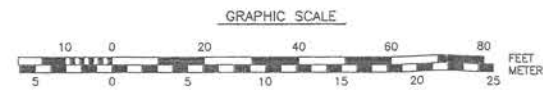
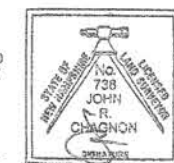
PROPOSED GARAGE  
FOY RESIDENCE  
67 RIDGES COURT  
PORTSMOUTH, N.H.

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



SCALE 1"=20' JUNE 2022  
VARIANCE PLAN  
C2

"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





718 S.f. addition

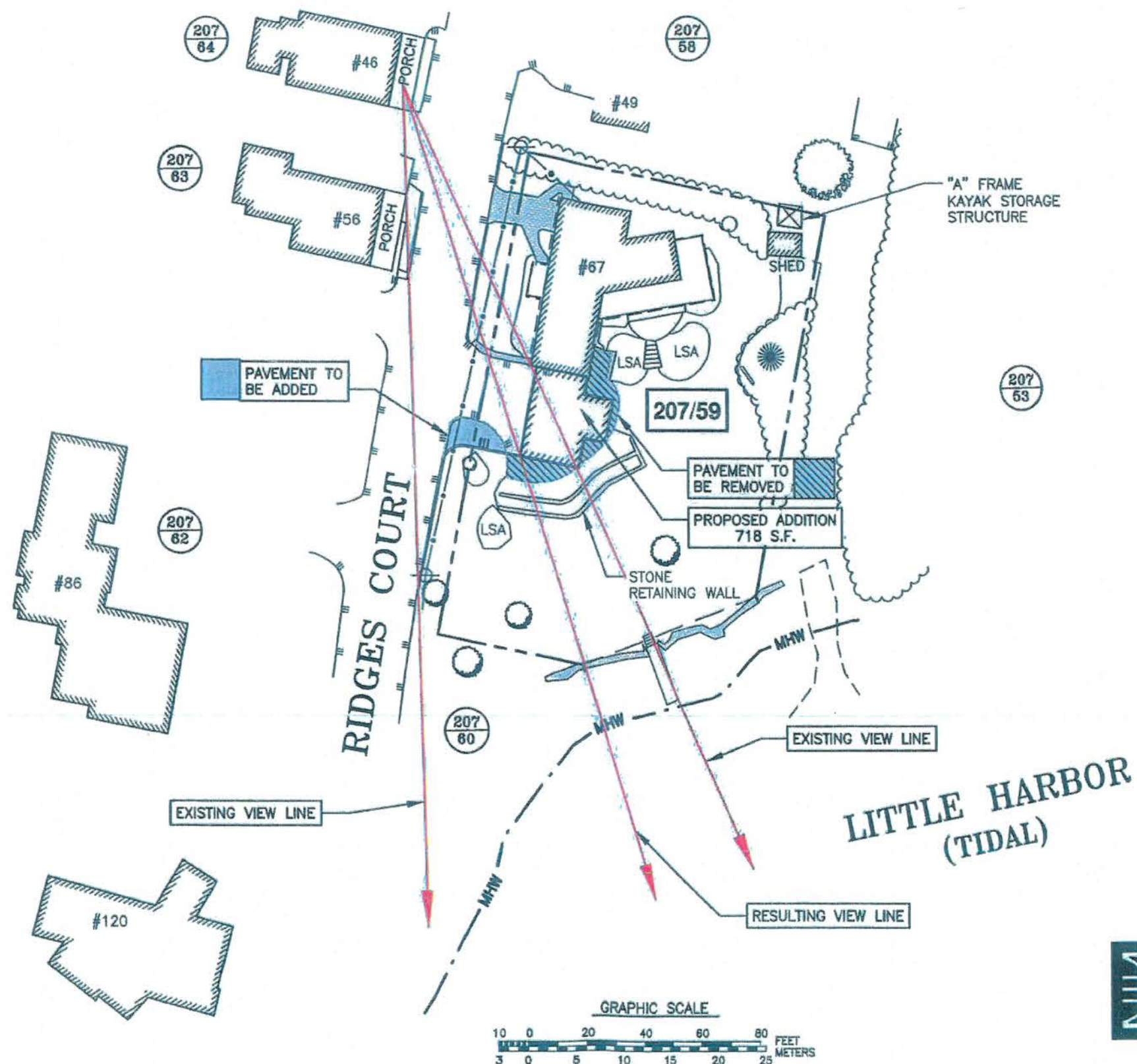


518 S.f. addition

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

## EXHIBIT

6



SCALE: 1"=40'

10 AUGUST, 2022



**AMBIT ENGINEERING, INC.**  
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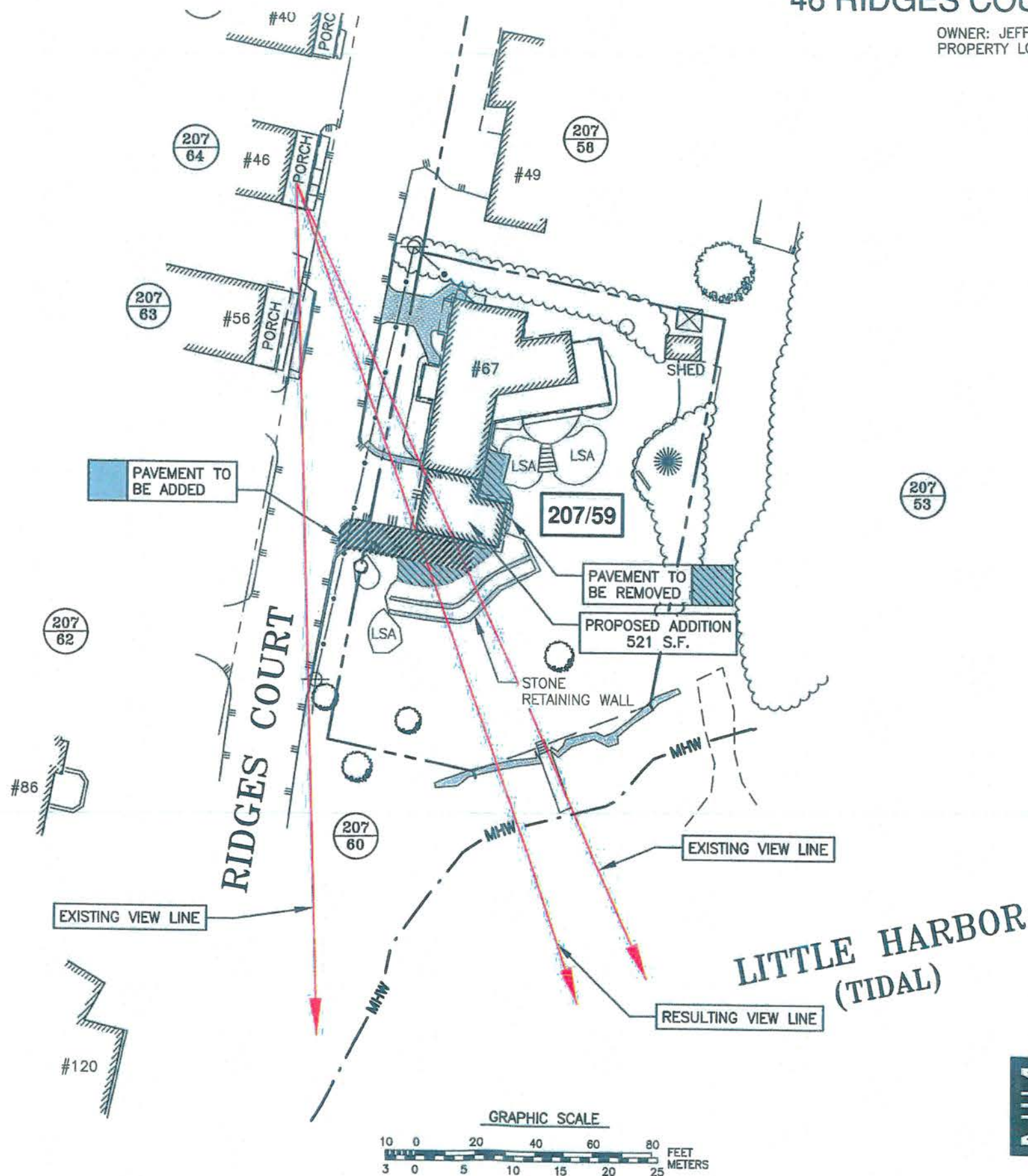
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## 46 RIDGES COURT ABUTTER VIEW SHED

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

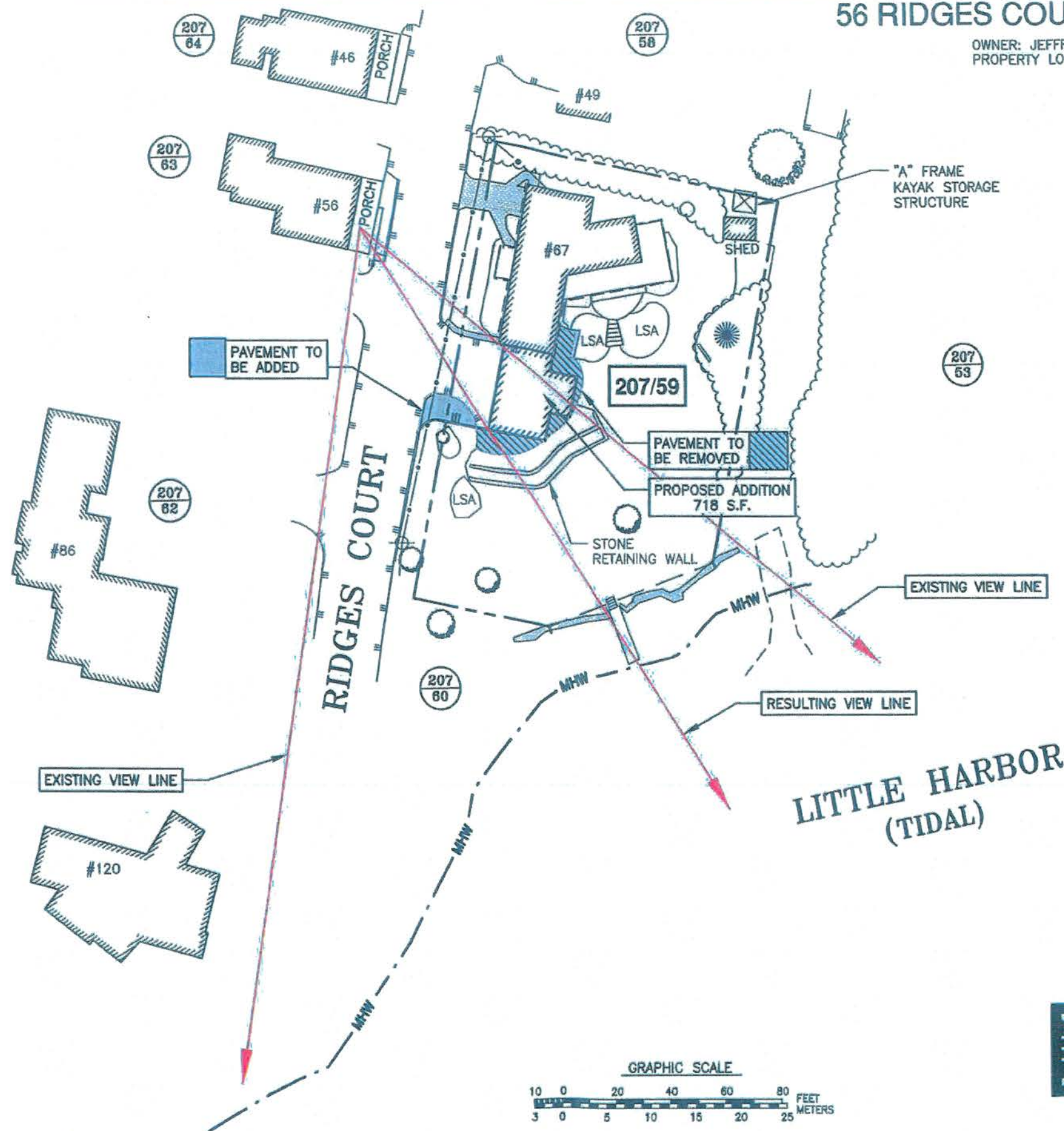


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Fax (603) 436-2315

3

J:\OBS\1100s\1150s\1153\2022 Building Addition-Variance\Plans & Specs\Site\1153.02 VIEW SHED.dwg, 8/10/2022 10:12:22 AM, SHARP MX-3071 (0300380X00)



## 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.**  
Civil Engineers & Land Surveyors

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Portsmouth, N.H. 03801-7114  
Tel (603) 430-9282  
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2

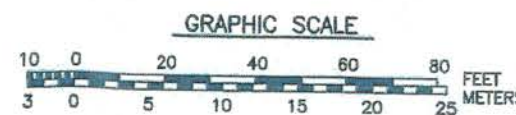
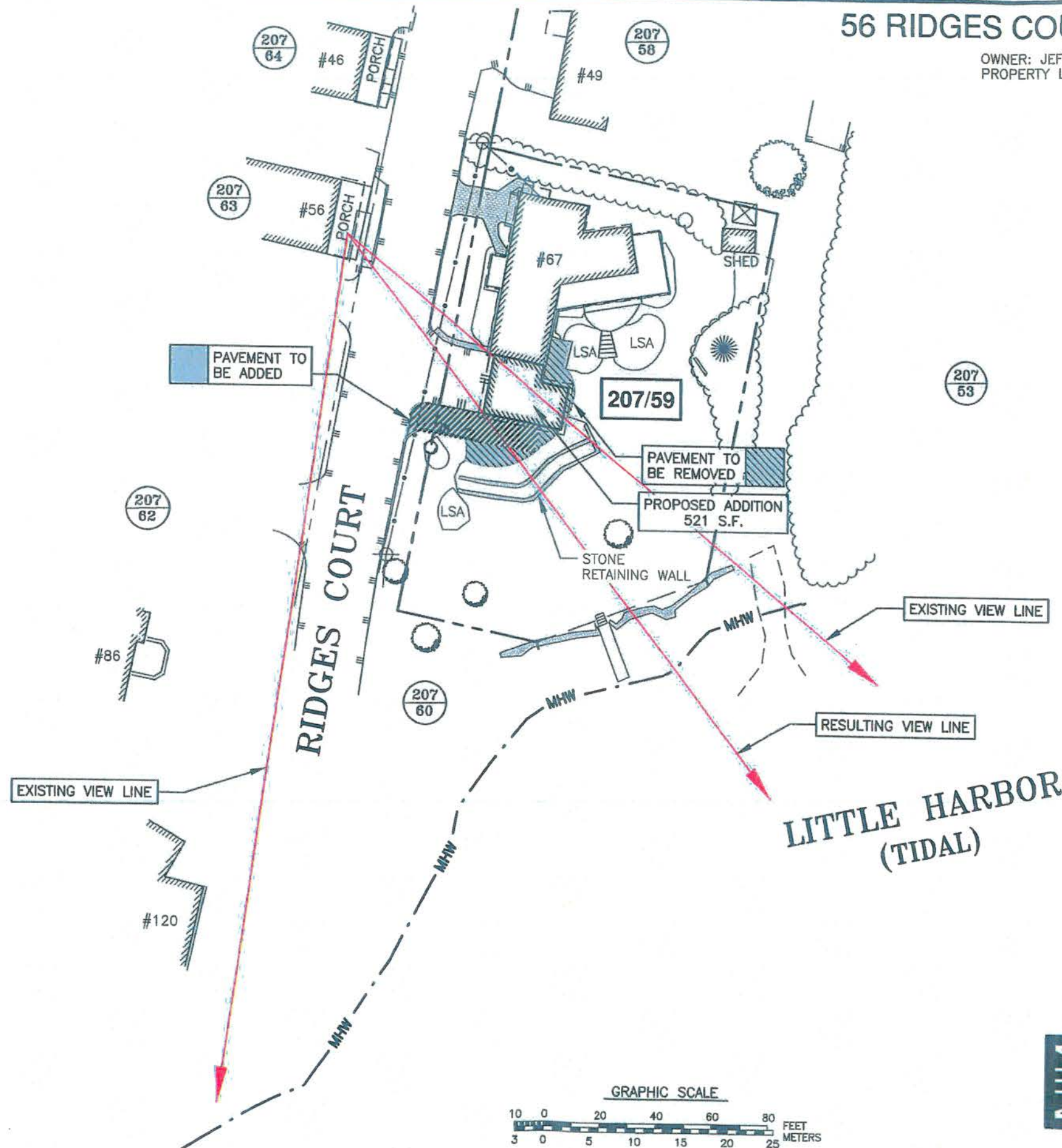
FB 222 PG 66 1153.02

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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



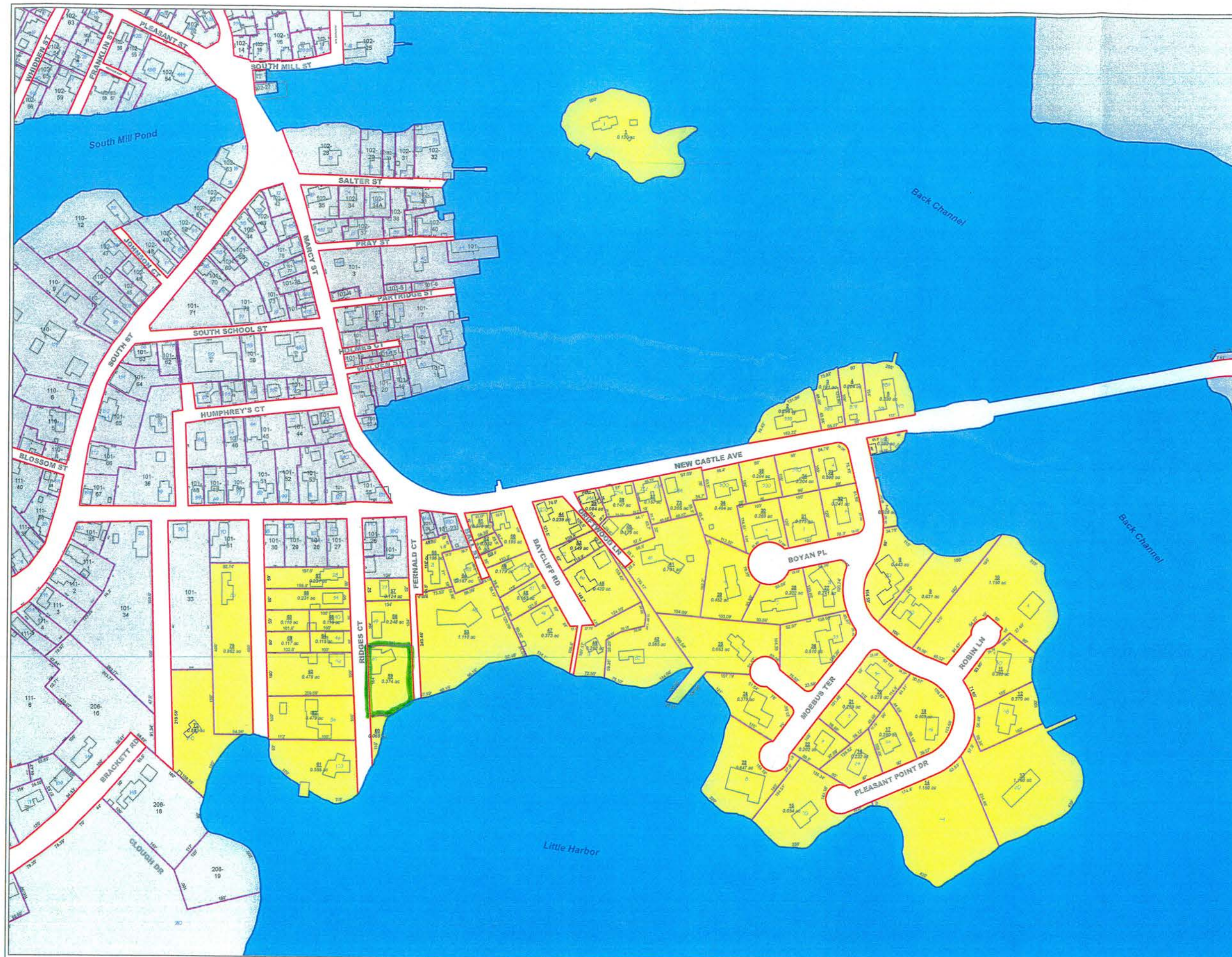
SACLE: 1"=40' 1 NOVEMBER, 2022



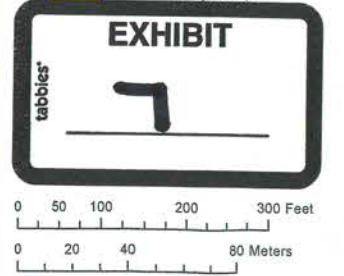
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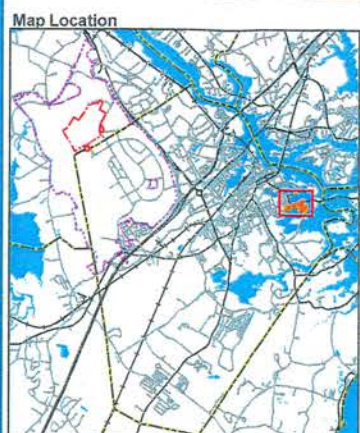
4



- 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)
  - 27 Address number
  - 233-137 Parcel number from a neighboring map
  - 66 Parcel line dimension
  - SIMS AVE Street name
  - Parcel/Parcel boundary
  - Parcel/ROW boundary
  - Water boundary
  - Structure (1994 data)
  - Parcel covered by this map



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.



## **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,

A handwritten signature in cursive script that reads "Phyllis Eldridge".

Phyllis Eldridge, Acting Chair of the Zoning Board of Adjustment

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