

**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.**

**February 28, 2023**

**AGENDA**

**I. APPROVAL OF MINUTES**

- A.** Approval of the January 24, 2023 meeting minutes.

**II. NEW BUSINESS**

- E. REQUEST TO POSTPONE** The request of **The Griffin Family Corporation (Owners)**, and **LoveWell Veterinary Services, LLC (Applicant)**, for property located at **800 Islington Street Unit 1B** whereas relief is needed to allow a veterinary clinic which requires the following: 1) Special Exception from Section 10.440, Use #7.50 to allow a veterinary clinic where the use is permitted by Special Exception. Said property is located on Assessor Map 154 Lot 1 and lies within the Character District 4-W (CD4W) District. (LU-23-8) **REQUEST TO POSTPONE**
- F.** The request of **Cate Street Development LLC (Owner)**, and **Rarebreed Veterinary Partners (Applicant)**, for property located at **350 US Route 1 Bypass** whereas relief is needed to allow an urgent care veterinary clinic which requires the following: 1) Special Exception from Section 10.440, Use #7.50 to allow a veterinary clinic where the use is permitted by Special Exception. Said property is located on Assessor Map 172 Lot 2 and lies within the Gateway Corridor (G1) and Transportation Corridor (TC) District. (LU-23-9)
- G.** The request of **Aviation Avenue Group, LLC (Applicant)**, and **Pease Development Authority (Owners)**, for property located at **80 Rochester Avenue** whereas relief is needed for the construction of an advanced manufacturing facility which requires the

following: 1) Variance from Article 304.03 (e) to allow a 28 foot rear yard where 50 feet is required. Said property is located on Assessor Map 308 Lot 1 and lies within the Pease Industrial District (PI). (LU-22-210)

- H.** The request of **Andrea Hurwitz (Srebnik) (Owner)**, for property located at **129 Aldrich Road** whereas relief is needed for the installation of a mechanical unit which requires the following: 1) Variance from Section 10.515.14 to allow a 4 foot side yard where 10 feet is required Said property is located on Assessor Map 153 Lot 35 and lies within the Single Residence B (SRB) District. (LU-23-10)
- I.** The request of the **RTM Trust and Ryan T Mullen and Heidi E K Trustees (Owners)**, for property located at **253 Odiorne Point Road** whereas relief is needed for the installation of a mechanical unit which requires the following: 1) Variance from Section 10.515.14 to allow the mechanical unit to be located closer to a street than the principal structure. Said property is located on Assessor Map 224 Lot 10-19 and lies within the Single Residence A (SRA) District. (LU-23-11)
- J.** The request of the **Black Heritage Trail of New Hampshire (Owner)**, for property located at **222 Court Street** whereas relief is needed to install one 24 by 28 foot mural and one 3 by 2 foot sign which requires the following: 1) Variance from Section 10.1251.10 to allow max aggregate sign area of 686 square feet where 36 square feet is allowed; 2) Variance from Section 10.1251.20 to allow max area for individual sign of 678 where 16 square feet is allowed; and 3) Variance from Section 10.1242 to allow more than one sign on building facing the street; and 4) Variance from Section 10.1271 to allow a sign on the side of the building that is not facing a street. Said property is located on Assessor Map 116 Lot 33 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-23-12)m

### **III. OTHER BUSINESS**

### **IV. 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\\_-vJ9UxEeQT2XQYdvvxXiEQ](https://us06web.zoom.us/webinar/register/WN_-vJ9UxEeQT2XQYdvvxXiEQ)



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

**7:00 P.M.**

**January 24, 2023**

**MEMBERS PRESENT:** Phyllis Eldridge, Chair; Beth Margeson, Vice-Chair; Paul Mannle; Thomas Rossi; David MacDonald; David Rheaume; Jeffrey Mattson, Alternate

**MEMBERS EXCUSED:** None.

**ALSO PRESENT:** Stefanie Casella, Planning Department

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Chair Eldridge called the meeting to order at 7:00 p.m.

**III. NEW BUSINESS – *Continued from January 17, 2023***

- 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)

**SPEAKING TO THE PETITION**

The applicant Ashley Blackington reviewed the petition, noting that the addition would have a bathroom and mudroom. She said the back door to the backyard was along the property line and that granting the variance would make it more in conformance with the current setback requirements. She reviewed the criteria and said they would be met.

In response to Vice-Chair Margeson's questions, Ms. Blackington said the current back door was between the fence and the side of the house and would move to the right side of the addition. In response to Mr. Rheaume's questions, Ms. Blackington said they did not plan to tear down the current entrance and exit along the side and would just move the door, leaving a space that would become a pantry. [She said they would add a window and the bumpout would not be demolished. She clarified that there originally was just one door on the bumpout and they put a second one in for access to the backyard. Mr. Rossi said the reason the applicant needed the variance was because the proposed addition infringed on the 10-ft setback, and he asked why it was proposed there instead of to the right where it would be ten feet or more from the lot line instead of seven feet. Ms. Blackington said the bulkhead was on the right side of the house and the stairs went down from the

back door, which was necessary to have space for the laundry and bathroom, so they ended up with seven feet instead of ten feet.

Chair Eldridge opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one spoke and Chair Eldridge closed the public hearing.

### **DECISION OF THE BOARD**

*Mr. Mannle moved to **grant** the variance request as presented, seconded by Mr. Rossi.*

Mr. Mannle said Mendum Avenue was nonconforming, like most avenues and houses in Portsmouth. Citing Section 10.223.21 of the zoning ordinance, Mr. Mannle said granting the variance would not be contrary to the public interest because the public wouldn't even know about the addition because it would be behind the house. Referring to Section 10.233.22, he said granting the variance would observe the spirit of the ordinance because the setback would be greater than what was currently there. He said it would still be nonconforming by three feet but it was a small request. Referring to Section 10.233.23, he said substantial justice would be done because the simple addition would provide better access to the backyard. Referring to Section 10.233.24, he said granting the variance would not diminish the values of surrounding properties because the addition would be useful and would likely increase property values. Referring to Section 10.233.25: literal enforcement of these provisions would result in an unnecessary hardship. The property has special conditions that distinguish it from other properties in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public purpose of the ordinance's provision and its specific application to that provision to the property. 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 the variance is therefore necessary. Mr. Mannle said anyone could argue that they could do it here or there, but it wasn't allowed in the front of the house. He noted that the applicant said the back door would stay, so it seemed like the only logical place, and enforcing the variance would be a hardship. He said those were the reasons for his motion to approve.

Mr. Rossi concurred. He said the location of the bulkhead made it not possible to locate the addition within the setback specified by the ordinance, which is a hardship of the property that militates toward allowing the variance. With regard to observing the spirit of the ordinance, he said the purpose of the setbacks was to avoid overcrowding neighboring properties with excessive massing, and since it was set back farther than the existing wall of the main structure, he didn't see that as an issue and thought it did observe the spirit of the ordinance as intended.

*The motion **passed** by unanimous vote, 7-0.*

- 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)

## **SPEAKING TO THE PETITION**

Attorney Derek Durbin was present on behalf of the applicant, along with the owner Michael Labrie. Attorney Durbin reviewed the petition, pointing out that the industrial-looking building was presently a two-story commercial one and the plan was to repurpose it and add onto the left side to bring it more in line with the character of the other buildings. He said the renovations would activate the Maplewood Avenue side of the building and utilize the strip of landscaped land that ran alongside the building. He reviewed the criteria and said they would be met.

Mr. Mannle asked what would happen to the second entrance to the basement. Mr. Labrie said it would be eliminated and another entrance would be added on the Congress Street side. Vice-Chair Margeson asked if a café would be going into the space. Mr. Labrie said a Thai restaurant would go in. Vice-Chair Margeson said that one of Attorney Durbin's rationales was that the project would encourage retail and like business use, but the applicant was putting a restaurant in there. She said Attorney Durbin had said that the narrow building would make that difficult. Attorney Durbin said he meant that the activation of that side of the building made it very realistic, noting that the front of the building had only 30 feet of frontage and limited the window marketing or visibility associated with any business that went into that space. He said the Maplewood Avenue side of the building would draw people in and was conducive to a use like that. Mr. Labrie said the restaurant would be one of three tenants on the street level and would be small. He said there would be four entrances on Congress Street, one for each ground-floor tenant and an entrance to the second-level. Vice-Chair Margeson said that seemed to undercut the argument that the amount of frontage made it hard to use that space. Mr. Labrie said it allowed then to get a new entry into the basement, which would expand the use there, and would also allow them to break what was a single tenant into three tenants on that floor and make a more varied and dynamic use of the building.

Vice-Chair Margeson said open space was well defined in the ordinance, stating that it had to be free of all structures. She said the canopy was a structure. In terms of the special conditions, she said the storefronts on Congress Street were all narrow. Attorney Durbin said some of them did, but on that particular block, with the exception of The Lounge, the frontages were longer and wider than what their building had. He said he had done a rough calculation from the tax map and found that the buildings on the applicant's particular block did have more frontage than the applicant's lot, which was one of the smallest lots by land area. Vice-Chair Margeson said it was great that the applicant was giving the City an easement for the sidewalks but that it was typically done and that getting the easements did not rely on the variances. Attorney Durbin said it was part of the process and was discussed with City Staff. He said it wasn't a reason for the variance requests but was just one of the improvements that would be made. He said if the canopies were removed, they would be very close to the open space requirement, but the problem was that the canopies were integral to the

building's design that the Historic District Commission (HDC) was willing to approve. He said he believed that the open space had been interpreted by the city in different ways, and the interpretation that there had to be five feet in width to constitute open space wasn't defined anywhere in the ordinance. He said areas around them that were considered to be open space were sidewalks and looked no different, but that didn't preclude landscaping. He noted that open space could be sidewalks with planters on them. Mr. Rossi asked if there was additional egress or ingress on the Maplewood Avenue side, and Mr. Labrie pointed it out on the diagram.

Mr. Rheume asked if the glazing was permanent or able to be opened. Mr. Labrie said there were awning windows above that were operable. He said they previously had double hungs on the lower floors but the HDC wanted more modern glass, so the reason for the canopies was to add an arc that would wrap around the corner of the building and soften that corner and bring more of a modern flair. Mr. Rheume said the sidewalk was technically part of the property. Mr. Labrie agreed and said that was the reason why the easement was so important. Mr. Rheume asked where the project was in the HDC process. Attorney Durbin said they had been approved. He said the area where the canopy arced around to the Congress Street side was the open space area and was where the two percent came from. He said the buildout on the side that they wanted to add onto was a request to offset with greater conformity on that side in terms of the property line offset by a loss of open space. Mr. Rheume said the new trash enclosure could not be counted as open space.

Mr. Mattson clarified that the intention was to activate the streetscape on the Maplewood Avenue side. He said even if the applicant could have an entrance on Congress Street, their intention was to have it on the Maplewood Avenue side to activate the streetscape. Attorney Durbin agreed and said it was to create a linkage with the rest of Maplewood Avenue, that would make it more pedestrian friendly. Vice-Chair Margeson asked if the current door on Maplewood Avenue went down to the basement. Attorney Durbin agreed. Vice-Chair Margeson noted that the HDC gave approval for the project before variance approval. Attorney Durbin said the calculations regarding open space had gone back and forth between the City and project engineers due to the two percent requested relief being the most conservative approach, and that was the reason that the HDC may have granted approval. Mr. Mannle asked Ms. Casella if canopies were considered part of the structure. Ms. Casella said the variance was not for the existence of the canopy, it was for the lack of open space, which the canopy inhibited. It was further discussed. Attorney Durbin said the canopy areas were considered open space as part of their existing open space calculation.

Chair Eldridge opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one spoke, and Chair Eldridge closed the public hearing.

### **DISCUSSION OF THE BOARD**

Vice-Chair Margeson said she didn't find the ordinance confusing and she thought it was clear how open space was defined, so she didn't see that there was a hardship to the application. She said she understood Mr. Labrie's desire to make maximum use of the lot, but she didn't see a hardship or

a persuasive case for reducing the open space on the lot. She said she was aware that there was a strip on the side and utilities on the back, but she thought the loss of open space around that corner would be a loss to the public that would not be outweighed by a benefit to the applicant. Mr. Rossi said he disagreed and thought the application met the criteria because it fulfilled the intended purpose of the ordinance, particularly in allowing pedestrian access to the building from the Maplewood Avenue side for commercial purposes. In regard to the special conditions of the property, he said it was an oddly shaped lot and because of that, any rectangular building on the property would end up with a long wedge-shaped space along the Maplewood Avenue side because of the angle of that street. He said he did agree that the definition of open space was clear in the ordinance but it did state that unless you have at least five feet of width, at some point in that wedge, you can't count it as open space. He said the special conditions of the property were the angular and irregular shape of the lot, bringing it out of compliance with the requirements that were quite clear for open space. He also noted that although the open space requirement was not satisfied, the building coverage was not in excess of the maximum allowed, so the actual coverage of the building was ever so slightly below the 95 percent maximum, which reinforced the nature of the shape of the lot, pushing it out of compliance as opposed to an excessive use of lot.

Mr. Rheume asked what the public interest was in not allowing the design. He said it was an oddly-shaped lot driven by the fact that the building predated the creation of Maplewood Avenue during the urban renewal project. He said that creation was viewed as a better way for traffic flow but created an odd situation. He said the small bit of green space along Maplewood Avenue wasn't very inviting to a pedestrian and the property owner wasn't obligated to maintain it as green space but would meet the five percent requirement put in place by the Character District, so he didn't think there was anything about a loss of green space. He said the proposed addition would help activate the Maplewood Avenue streetscape by having the entrance, large windows, lights, and activity. He said it would be a great step in the improvement of the area by bringing a more pedestrian feel to it. He said the definition of open space in the ordinance was clear and the applicant was asking for an exception from it. He asked if the balance was between the benefit of that slight open space and preserving an area of open sidewalk. He said the canopy was minimal and the feel would be natural and people wouldn't think it was overbuilt. He said the project was appealing overall and in the end, whatever little loss that the public would feel from the supposed loss of three percent of open space would be more than compensated for by the other added benefits of the project, such as brining the streetscape on the Maplewood Avenue side to life and providing an architecturally attractive and pleasing result. He said he was very supportive of the project.

Mr. Mattson said that, in addition to the esthetics, he was a fan of the canopies and thought they were also functional in protecting people from the weather. He said it was a way to do that without increasing the building coverage, which was under 95 percent.

## **DECISION OF THE BOARD**

*Mr. Rheume moved to **grant** the variance as presented and advertised, seconded by Mr. Mattson.*

Mr. Rheume referred to his earlier discussion and said granting the variance would not be contrary to the public interest because there was public interest in trying to improve the streetscape along Maplewood Avenue and attempting to create more of a connection with passersby in that area. He said there was an architecturally aesthetic being sought that had been refined through an arduous process with the HDC to ensure that the final result would be something that would withstand the test of time and be consistent with all the requirements of the HDC. He said he trusted the HDC's judgment and also seconded it from an amateur perspective that the resulting design, while it did require compromises in the absolute letter of open space, would provide a substantial public benefit that validates that the variance would be in the public interest. He said granting the variance would observe the spirit of the ordinance, noting that the five percent open space was probably not being reflected by any of the other properties along that area of Congress Street. He said all the buildings there were built out to the maximum extremes for a long time, and the Downtown Overlay District headed in the applicant's direction and was what the board was looking for. He said the Character Districts were created to include more variety and did include minimal open space. He said the applicant's property was not built out completely to the property line and there were places that the public could access and still have a sense of freedom. He said granting the variance would do substantial justice because it would allow the applicant to make full use of the square footage created by the oddity of Maplewood Avenue cutting through after buildings were taken down. He asked if there was really any public interest in not having that additional three percent of open space when there would still be sidewalks. He said the back part of the property had areas that might have been counted as open space but couldn't be due to the strict determination that the applicant had for ensuring that they were being as prescriptive as possible as to what the potential impacts of their project were. He said granting the variance would not diminish the values of surrounding properties because it was an area of relatively small lots with open space in a downtown area that was built out to the property lines and probably wouldn't be perceived at all. He said the overall increase and improvement of the property and the ability to make Maplewood Avenue more pedestrian friendly would only enhance the desired nightlife that drew most people to that area of downtown. He said the hardship was that the existing building was on an oddly-shaped lot and the applicant was trying to make use of that lot but with it came architectural hindrances, like the HDC insisting on rounded canopies to reflect the rounded nature of the lot. He said the request was a reasonable one because it was minor and was the only relief that the applicant was asking for. He said nothing would be gained by the public in preventing the applicant from trying to create the new building that would outweigh any benefit that the public would get. He said he recommended approval.

Mr. Mattson concurred. He said the spirit of the ordinance for that district and the downtown in general was that it was desirable to have the lots fully built out and to promote the pedestrian experience. He said the project would activate the streetscape on the Maplewood Avenue side, where it was essentially a blank façade and not very inviting. He said the design was tastefully done, which would also be a benefit to the public. He said he was initially concerned about the sight line of vehicles turning right at Congress Street, but after visiting the site, he wasn't concerned any longer because of the stop lights. He said he knew the Technical Advisory Committee (TAC) would also review the application, so he didn't see it as an issue.

*The motion **passed** by a vote of 6-1, with Vice-Chair Margeson voting in opposition.*

- G.** The request of **Timothy and Rebecca O'Brien (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)

## **SPEAKING TO THE PETITION**

The applicant Timothy O'Brien was present to review the petition. He said Miller Avenue was a dangerous street and there had been many accidents in the past, which he gave a few examples of. He said exiting his driveway was dangerous and they needed a second driveway to increase their parking space, reduce the multiple car shuffle of 3-4 drivers backing into the street, and eliminate on-street parking. He noted that the property was unique because it had a long frontage. He reviewed the criteria and said they would be met.

Vice-Chair Margeson asked if the existing gravel driveway would be removed. Mr. O'Brien said they would keep that driveway and reduce it from 36'4" to 13 feet. He said they would add a 13-ft driveway cut with a gravel parking pad at the end. Vice-Chair Margeson asked if the applicant would use the existing driveway as a driveway. Mr. O'Brien agreed but said it would not be the primary driveway. He said the new driveway would allow them to reduce how much they backed out into the intersection and would also allow them to park a car or two on the other driveway. He said they didn't have enough space to turn around in the existing gravel driveway. Vice-Chair Margeson asked why the applicant would not eliminate the gravel driveway, given the safety concerns, and make the new driveway bigger. Mr. O'Brien said it would make a whole section of the yard unusable. Mr. Rossi asked if there was any intention in the future to change the shed into a garage. Mr. O'Brien said he had no plans to do so at the present time. Mr. Rossi asked why the new driveway couldn't be made big enough to turn a car around and exit the driveway frontwards instead of backwards. Mr. O'Brien said they'd have to sacrifice a lot of the yard.

Mr. Rheume asked if the 'landing pad' was part of the property when the applicant bought it. Mr. O'Brien said it was and that the area was paved over completely. Mr. Rheume said the applicant eliminated all that pavement but that part of that pavement's purpose was to allow parking maneuvering and park three cars. Mr. O'Brien said it would have allowed parking for three cars but not maneuvering. Mr. Rheume said he didn't see that a lot of issues with the current gravel driveway were resolved other than allowing the applicant one additional parking spot. He asked if the applicant considered trying to recreate some of the existing driveway to have more maneuvering room and create additional parking. Mr. O'Brien said he hadn't because it wouldn't fit the neighborhood. He said parking in the street was not acceptable in the neighborhood or by people driving by, noting that there had been a lot of honking, obscenities, and vehicle damage. Vice-Chair Margeson said she drove by the property. She asked what was behind the fence. Mr. O'Brien said there was a shed and a small courtyard. Vice-Chair Margeson said the applicant could remove the

fence to make more of a driveway. Mr. O'Brien said the section was about 20 feet wide, so it still wouldn't allow turning room for a car.

Chair Eldridge opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one spoke, and Chair Eldridge closed the public hearing.

### **DISCUSSION OF THE BOARD**

Mr. Rossi said he drove by there frequently and it was a hazard where there were cars parking along the curb because one couldn't get around it without crossing the double yellow line. He said he'd like to see something done to relieve that. Mr. Mattson said the applicant's lot was twice as wide as the neighboring lots, so two driveways would be similar spacing of curb cuts as the other lots. He agreed that the parking on the street was a safety concern and thought off-street parking would be a huge advantage to the applicant because even if the applicant had to back onto the street, the issue was more about the narrowness of the road, so parking on the street was a bigger issue than backing out. He said there could be a way for some type of three-point turning situation for the new driveway, but for the existing one, it wasn't about making it deeper and being able to turn the vehicle around because it just wasn't wide enough between the house and the property line.

Vice-Chair Margeson said she was torn because there were safety concerns, but the applicant would continue to use that driveway. She thought Miller Avenue was problematic for traffic and on-street parking, but that was the condition shared by every other house on the street. She said she didn't see why the applicant couldn't expand the driveway in the new position and just use that as a driveway. She said the lot was bigger than some of the other lots on the street. Mr. Rheume said he was also torn. He said he didn't see that what was proposed would improve safety and thought it was really about the applicant wanting additional parking and off-street parking. He thought perhaps the Parking, Traffic and Safety Committee could do something about it. He understood the desire from the applicant to have additional off-street parking but thought there would not be justification for just that benefit. He thought Mr. Mattson's point about the rhythm of the neighborhood and going contrary to the public interest had a lot to do with the nature of the neighborhood. He said the applicant had one benefit from a hardship standpoint, an unusually large lot, and what the applicant was asking for was in conformance with the driveways across the street. As far as presenting something atypical for the neighborhood in terms of entrances and exits onto the street, he said he didn't think that was a problem. He said he was supportive of the project solely for the reason of getting cars off the street and allowing the applicant adequate parking. He said there was a positive aspect to having a minimal amount of gravel along the streetscape as well.

### **DECISION OF THE BOARD**

*Mr. Rossi moved to **grant** the variance as presented and advertised, seconded by Mr. Mattson.*



Mr. Rossi said granting the variance would not be contrary to the public interest. He said the public interest was supported by the traffic considerations that the board discussed as well as the safety considerations. He said granting the variance would promote the public interest with regard to traffic safety in that stretch of Miller Avenue. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the public. He said denying the application would not result in any benefit to the public and in fact would eliminate a potential safety benefit to the public. He said granting the variance would not diminish the values of surrounding properties, noting that the board had not been presented with anyone from the neighborhood who made a claim that the project would infringe upon their property values. He said literal enforcement of the ordinance would result in unnecessary hardship, noting that the hardship of the property was the unusual size of it and the fact that along that stretch of road, one would normally see an additional driveway in that amount of frontage. He said it was a reasonable use and fit within the character of the neighborhood, and that the criteria was supported and satisfied. Mr. Mattson concurred and said that in addition to the lot being large, it was relatively wide and shallower than the others. He said the house's location on the lot could also create some hardship for a driveway location.

Mr. Rossi noted the two oak trees precluded expanding the driveway width-wise to allow better turnaround, which was also a hardship. Mr. Mannle said he had mixed feelings. He said he knew how it was to live on a busy street and try to back out of one's driveway, but he didn't know if a second driveway would accomplish that. He said he knew that the corner of the lot could have a garage in the future, but he thought the applicant would have been better served if he had proposed a circular driveway around his trees instead so that he wouldn't have to worry about backing into traffic. Vice-Chair Margeson said the purpose and intent of the zoning ordinance is that this is a single-family residence in a single-family district and all permitted accessory uses are allowed. She said a driveway is subordinate to the use of a single-family residence, and as a single-family residence, it seemed clear that the applicant wanted one driveway. She said she would not support the application. Chair Eldridge said she used to live on Miller Avenue and knew that everyone had to back out of their driveways, but the applicant's location was a difficult one. She said agreed with Mr. Mattson about the rhythm of the driveways with the applicant's larger lot.

*The motion **passed** by a vote of 6-1, with Vice-Chair Margeson voting in opposition.*

- 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 an 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)

## **SPEAKING TO THE PETITION**

The project architect Anne Whitney was present on behalf of the applicant. She reviewed the petition and explained why the back location was the most feasible for the a/c condenser unit. She said it would be concealed from the abutters. She reviewed the criteria and said they would be met.

In response to Vice-Chair Margeson's questions, Ms. Whitney said the a/c unit was for the new construction and the three existing units belonged to the neighbors. Mr. Rheaume noted that the applicant was before the board in 2019 to request that the property lines be moved, and he asked why it wasn't recognized at that time that a condenser would be needed. Ms. Whitney said the mechanical systems hadn't been designed at that time and the owner had decided on a more conventional heating and a/c system then.

Chair Eldridge opened the public hearing.

### **SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one spoke, and Chair Eldridge closed the public hearing.

### **DECISION OF THE BOARD**

Mr. Rossi said that looking at the area from the cemetery, it was clear where the compressor unit belonged. He said it was like a utility plaza between the two structures and was visually much more crowded than one would think when looking at the diagram. He said the addition of the fence would shield the units from the cemetery. He said he was supportive of the application.

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

Mr. Mannle said the board got several requests like those and the fact that the existing was one foot and was being made less nonconforming went a long way. He said given the situation with the immediate abutter, it would be an improvement. Referring to the relevant sections of the ordinance, he said granting the variance would not be contrary to the public interest. He said the public would have no interest in seeing the back side of the house. He said it would observe the spirit of the ordinance since the lot was nonconforming and would be less nonconforming, and it would do substantial justice. He said granting the variance would not diminish the values of surrounding properties and that the rebuild could only enhance those values. Relating to the hardship, he said the property had special conditions, given the location of the building and owing to those special conditions a fair and substantial relationship did not exist between the general public purpose of the ordinance and its specific application. He said it was probably the only place to put the condenser unit, and given the nature of what was behind it, he thought it was a great location.

Mr. Rossi concurred and had nothing to add.

Mr. Rheaume said he would support the application because it was the right place to put the condenser, although he was somewhat disappointed that it was previously presented before the board that there would be an improvement in the setbacks but the applicant was back to nibble a bit more. He cautioned the board members that they had to be careful when being presented with information that did not fully reflect what the ultimate plan would be.

*The motion by unanimous vote, 7-0.*

- 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)

## **SPEAKING TO THE PETITION**

Attorney Sharon Somers was present on behalf of the applicant, along with the owners Jim and Meegan Reis. Attorney Somers noted that there was a conservation easement on the property. Mr. Reis reviewed the history of the property and the reasons why they wanted the primary dwelling renovated into a two-unit dwelling and why a new single unit was needed. Mr. Reis said that Rhoda Stevens was the immediate abutter and was in favor of the project, as were several other neighbors. He said they also wanted to improve the back field and drainage so that they could plant crops and keep the farm a working farm. Attorney Somers reviewed the criteria and said they would be met.

Mr. Rossi asked for more information on the property's history with regard to the interaction with the zoning board. Attorney Somers said they received the variance in 2015 and didn't get to it before it expired. Mr. Reis explained that it was just him, his wife, his brother and two children when he went before the board in 2015 but a lot of life circumstances had happened since then that impacted their ability to move forward with construction at the time. He said they got an extension but a few other things happened, like his sister Betsy moving in.

Mr. Rheume noted that there was a fair amount of drama trying to transfer the property into conservation and that it was a precious asset for the City. He said the board did previously grant relief for a second dwelling unit on the property, but now the applicant wanted three dwelling units. He said his concern was that a nefarious purpose could be made by a future owner that would not be as in keeping with the spirit. He asked the applicant what they thought about the board stipulating that the three dwelling units must be occupied by a familial relation or someone who's a full-time employee on the farm to preserve the precious asset. Attorney Somers said she was reluctant to agree to that because she didn't think there would be nefarious activity taking place due to the nature of the property, and the only thing that could happen would be in the two-acre portion of the parcel. She said if the owners departed in the future and three unrelated people chose to live in each of the dwellings, she didn't see that there would be any impact on the purpose of the ordinance, which was to prevent an excess impact on density. She said she could see that employees managing the forestry and agriculture might want to live there, but in terms of marketing the property in the future to restrict it to that, she didn't think she would want to impose that restriction on her client.

Vice-Chair Margeson said the multi-family dwellings were 3 or 4 dwellings that were not permitted in the Single-Family Residence A and B zones. She said if a stipulation was acceptable, she asked whether it could say that no more than three dwellings would be allowed on the lot. Mr. Reis said it

would be fine. Attorney Somers said that would be acceptable because it would go to the root of Mr. Rheume's concerns of a colony of dwellings being developed.

Chair Eldridge opened the public hearing.

### **SPEAKING IN FAVOR OF THE PETITION**

Rhonda Stevens of 303 Peverly Hill Road said she was an abutter and that her family used to live on the applicant's property from 1944, starting with her grandparents. She referenced the letter that she submitted to the board and said she called her father before the meeting. She said his concern was that no building would be done outside of the two acres on top of the hill and that he was happy to see that a family would be part of the project. She said it was reasonable to have three units even if there were three owners and that it would be no hardship to her as a neighbor. She said it was consistent with her family's vision of what they wanted to see happen on that property.

### **SPEAKING IN OPPOSITION TO OR SPEAKING TO, FOR, OR AGAINST THE PETITION**

No one else spoke, and Chair Eldridge closed the public hearing.

### **DECISION OF THE BOARD**

*Vice-Chair Margeson moved to **grant** the variances with the following **stipulation**:*

- 1. No more than three dwelling units will be allowed on the lot.*

*Mr. Mannle seconded the motion.*

Vice-Chair Margeson said the variance is not contrary to the public interest and the spirit of the ordinance is observed. She said the public interest and the spirit of the ordinance analyses were intertwined, and for the purpose of the motion, she would combine the two variance requests for the two-family dwelling and for the more-than-one dwelling per lot. She said the explicit or implicit purposes of the ordinance is that the huge lot is contained in the Single Residence A and Single Residence B District and the restriction is for no more than one dwelling per lot and no more than two dwelling units, per Section 10.440.130 in the board's table of uses, to prevent excessive congestion and density. She said the applicant had a huge lot, and the buildable part of the lot is only 2.1 acres, but the total lot is 39.7 acres with the conservation easement part taken into account. She said it was in the Single Residence A and Single Residence B District but there were no nearby neighbors, so the excessive density of the lot would not actually alter the essential character of the neighborhood, and she felt that the applicant had successfully proven those two criteria. She said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public or other individuals. She said the public, through its zoning ordinance, would like to density on lots, so she did not believe this was the case here, noting that it was a farm on a huge lot that wasn't really in a neighborhood *per se*, so she did not believe there would be any harm to the general public by granting the variance. She said the values of

surrounding properties would not be diminished, noting that the board did not get testimony as to that, but using their common sense, the addition of the second unit and the construction of a freestanding single unit would not harm the surrounding properties, especially given how far away they were from the subject property. She said literal enforcement of the ordinance would result in unnecessary hardship, pointing out that the hardship referred to the property's special conditions that distinguished it from others in the area and there was no fair and substantial relationship between the general public purpose of the ordinance provisions and the special application of that provision to the property, and the proposed use is a reasonable one. She said this is truly a case where there were special conditions – a farm that has 39.7 acres in Single Residence A and Single Residence B zones. She said she did not see any fair and substantial relationship between not allowing the addition of the second unit to the existing structure and the new construction of the freestanding single unit applied to that property. She said the proposed use was a reasonable one because it was a house used as a single residence use in the Single Residence A and Single Residence B District.

Mr. Mannle concurred and had nothing to add.

Mr. Rheume said he could not support the motion because he thought the stipulation was a toothless one. He said if the board approved three dwelling units that night, that would be allowed going forward. He said putting a stipulation that it would be a maximum of three units didn't address his concerns. He said the City had not done a great job in keeping that stretch of Peverly Hill Road close to single residences, noting that larger lots were developed out to a maximum and additional housing units were put in place. As part of the natural resource protection area, he thought maybe it was something the board could live with, but there was something special created there and he appreciated everything the applicant was trying to do to continue what was created. He said his fear was that they were starting to roll down the hill in having something that will go in complete opposition to what people worked very hard to do. He noted that in only five years since the board approved and extended the original application, the applicant went from two dwelling units to three, and without some kind of conditional stipulation, it could be going from 3 to 4, and so on. He said what was intended could be lost, and without something more to control it, he was concerned about the long-term nature of the unique aspect. Vice-Chair Margeson said it was a point well taken but she meant that no more than three dwelling units would be allowed on the entire lot. Mr. Rheume said the natural resource protection that was unbuildable was his concern.

Mr. Rossi said he would support it, with all due respect to the long-term considerations. He referred to a saying that stated that 'it was great to manage long term, but if you don't manage the short term, you don't have a long term'. He said in the short term, it was necessary for the family to make it a viable agricultural effort and he didn't believe that making this accommodation was appropriate for the long term. Chair Eldridge said she would support it because it was a reasonable request and density wasn't an issue. She said the three dwelling units might have some teeth but in fifteen years a future BOA could make a different decision, and she hoped they followed the rules and did it with a good intention. Mr. MacDonald said it was an exceptional instance and everything about it was commendable. He said the pressures of the economic market would be applied in the most dramatic

ways to a piece of property like that because it was spectacular. He said the cracks would eventually be found by clever lawyers from somewhere else who will find a way to own that property and then develop it again with variances that none of the board members ever imagined. He said the United States was the offspring of the United Kingdom, where development of the world had always been an imperative. He discussed it further and said he didn't think development would stop just because the board took everything into account when they voted.

*The motion **passed** by a vote of 5-2, with Mr. Rheame and Mr. MacDonald voting in opposition.*

#### **IV. OTHER BUSINESS**

There was no other business.

#### **V. ADJOURNMENT**

The meeting adjourned at 9:28 p.m.

Respectfully Submitted,

Joann Breault  
BOA Recording Secretary

### III. NEW BUSINESS

- E. **REQUEST TO POSTPONE** The request of **The Griffin Family Corporation (Owners), and LoveWell Veterinary Services, LLC (Applicant)**, for property located at **800 Islington Street Unit 1B** whereas relief is needed to allow a veterinary clinic which requires the following: 1) Special Exception from Section 10.440, Use #7.50 to allow a veterinary clinic where the use is permitted by Special Exception. Said property is located on Assessor Map 154 Lot 1 and lies within the Character District 4-W (CD4W) District. (LU-23-8)  
**REQUEST TO POSTPONE**

#### **Staff Recommendation**

Staff recommends postponing this request due to an error in the application that resulted in improper notice.

### III. NEW BUSINESS

- F. The request of **Cate Street Development LLC (Owner), and Rarebreed Veterinary Partners (Applicant)**, for property located at **350 US Route 1 Bypass** whereas relief is needed to allow an urgent care veterinary clinic which requires the following: 1) Special Exception from Section 10.440, Use #7.50 to allow a veterinary clinic where the use is permitted by Special Exception. Said property is located on Assessor Map 172 Lot 2 and lies within the Gateway Corridor (G1) and Transportation Corridor (TC) District. (LU-23-9)

#### Existing & Proposed Conditions

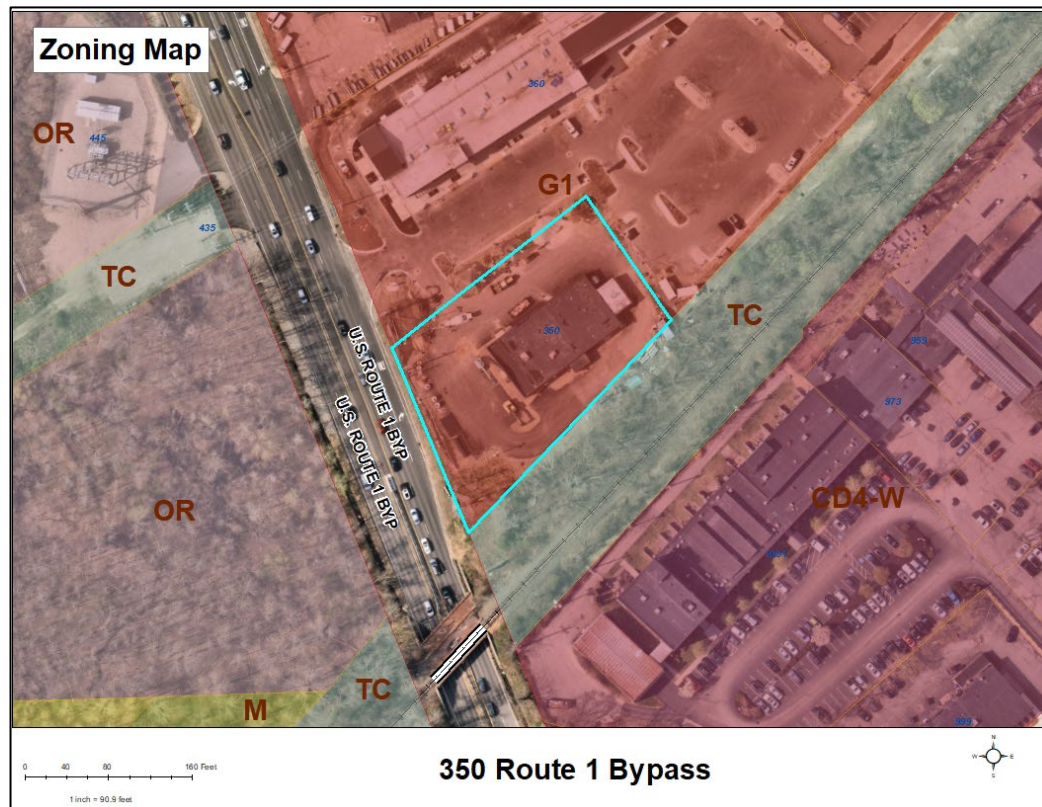
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Small Commercial Buidling	<b>Veterinary Urgent Care Clinic</b>	Mixed Uses
<u>Lot area (sq. ft.):</u>	42,340	42,340	NR min.
<u>Street Frontage (ft.):</u>	196	196	50 min.
<u>Lot depth (ft.):</u>	235	235	NR min.
<u>Front Yard (ft.):</u>	80	80	0-20 max.
<u>Left Yard (ft.):</u>	53	53	10 min.
<u>Right Yard (ft.):</u>	30	30	10 min.
<u>Rear Yard (ft.):</u>	20	20	15 min.
<u>Height (ft.):</u>	1 Story	1 Story	3 Stories or 40 max.
<u>Building Coverage (%):</u>	19	19	70 max.
<u>Open Space Coverage (%):</u>	12	12	10 min.
<u>Parking</u>	624	624	511 (shared parking)
<u>Estimated Age of Structure:</u>	1950	<b>Special Exception request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Building Permit (Tennant Fit-Up)
- Sign Permit



## Neighborhood Context



## Previous Board of Adjustment Actions

No previous BOA history found.

## Planning Department Comments

The applicant is proposing the use of a veterinary clinic in the Gateway 1 district. The use is allowed by special exception under Section 10.440 Use #7.50 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.*

## 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.



January 31, 2023

Phyllis Eldridge, Chair  
Portsmouth Zoning Board of Adjustment  
1 Junkins Avenue  
Portsmouth, NH 03801

Re: Rarebreed Veterinary Partners, Tenant/Applicant  
Project Location: 350 US Route 1 BYP  
Tax Map 172, Lot 2-0  
Gateway Mixed Use Corridor (G1) Zone

Dear Chair Eldridge and Zoning Board Members:

On behalf of Rarebreed Veterinary Partners, applicant, enclosed please find the following documents in support of a Special Exception regarding the proposed veterinary urgent care clinic at the above referenced property.

- City of Portsmouth Land Use Application uploaded to Viewpoint
- Owner & Applicant Authorization
- Narrative and exhibits in support of Special Exception

We respectfully request that this matter be placed on the Board's February 22, 2023 agenda. In the meantime, if you have any questions or require additional information please do not hesitate to contact me.

Respectfully submitted,

John Harden, AIA LEED AP  
**OLSON LEWIS + ARCHITECTS**

Nicholas AJ Collins  
**BLUE SKY ARCHITECTS**  
**OLSON LEWIS + ARCHITECTS**



**APPLICATION FOR SPECIAL EXCEPTION**  
Rarebreed Veterinary Partners (Applicant)

On behalf of Rarebreed Veterinary Partners, applicant, we are pleased to submit this narrative and the attached exhibits in support of a Special Exception to be considered by the Zoning Board of Adjustment at its February 22, 2023 meeting.

**EXHIBITS**

1. Basis-of-Design Template Plan
2. Realtor Site Plan
3. Site Photographs
4. City GIS Tax Map 172

**INTRODUCTION**

Rarebreed Veterinary Partners ("Rarebreed") requests a Special Exception to operate a Veterinary Urgent Care Clinic at 350 US Route 1 BYP, Portsmouth NH ("the Property"). The Property is 4,000sf of retail tenant space located in the Gateway Neighborhood Mixed Use Corridor (G1) Zoning District. Pursuant to Section 10.440 (7.50), of the City of Portsmouth Zoning Ordinance, the use of the Property for these purposes is permitted, subject to the issuance of a Special Exception from the Board of Adjustment.

**PROJECT DESCRIPTION**

Similar to human urgent care, veterinary urgent care seeks to treat illness or injuries that are not immediately life threatening but require medical attention that cannot wait for regular veterinarian hours. This new walk-in clinic will provide after-hours, weekend, and holiday care for pets in a comfortable outpatient setting. The majority of anticipated patients will be dogs, cats, and other small domestic pets. No large animals, such as horses or livestock will be treated at this facility. There will be no crematory on site and no sale or commercial boarding of animals in kennels. There will be no animals held overnight at this clinic.

The attached floor plan (Exhibit 1) shows a preliminary floor plan for the proposed clinic.

Customers will have access to the following areas only:

- |                     |                          |
|---------------------|--------------------------|
| • Entry Vestibule   | • Exam Rooms (5-6 total) |
| • Lobby / Reception | • Restroom               |

The remainder of the facility shall only be accessible to staff and includes:

- |                  |                  |
|------------------|------------------|
| • Treatment Area | • Vet Office     |
| • Pharmacy / Lab | • Break Room     |
| • Surgery / Pack | • Staff Restroom |
| • X-Ray Room     | • Utility Room   |
| • Animal Holding |                  |

Proposed hours of operation are:

Monday – Friday: 2:00 pm – 11:00 pm

Saturday – Sunday: 10:00 am – 7:00 pm

## COMPLIANCE WITH SPECIAL EXCEPTIONS STANDARDS

Pursuant to section 10.232.20 *"Special Exceptions shall meet all of the following standards:"*

### **10.232.21 Standards as provided by this Ordinance for the particular use permitted by special exception;**

**RESPONSE** – The proposed Veterinary Urgent Care Clinic meets all standards as provided by the City of Portsmouth Zoning Ordinance for the particular use of veterinary care. Pursuant to Section 10.440 (7.50) of the Ordinance, Veterinary Care facilities are permitted by Special Exception within the G1 Zoning District. Additional standards specifically applying to this use listed in the Zoning Ordinance are Section 10.832, requiring that all kennels be located within an enclosed building, and Section 10.592, which requires 200 ft minimum distance between any lot with a veterinary hospital with kennels and any Residential or Mixed Residential district or Character District 4-L1.

Section 10.1530 of the Ordinance defines "Kennel" as *"An establishment in which a primary use is housing dogs, cats, or other household pets, and/or grooming, breeding, training, or selling of animals."*

As defined by the Ordinance, the proposed clinic will not have kennels. Rarebreed intends that all animal-holding areas will be utilized for short-term, post-treatment recovery for sick or injured animals requiring veterinary monitoring.

### **10.232.22 No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;**

**RESPONSE** – The proposed Veterinary Urgent Care Clinic will meet all applicable building codes and will be operated in accordance with all health and safety regulations particular to veterinary facilities. Specific areas of consideration unique to this use are as follows:

**MEDICAL GAS:** All medical gas systems (oxygen, waste gas, suction) will be designed in conformance with local and state fire codes to minimize hazards of fire or explosion.

**X-RAY:** All required x-ray safety procedures, shielding, controls, maintenance, and calibration will conform with the New Hampshire Rules of the Control of Radiation.

**MEDICATION CONTROL:** Medication stored in the pharmacy area will be controlled by a locked distribution system with access granted only to authorized staff members.

### **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;**

**RESPONSE** – The essential characteristics of the area will remain the same with no detriment to property values. The proposed use will not emit odor, smoke, gas, dust, or other pollutant, noise, glare, heat, or vibration. There will be no outdoor storage of equipment, vehicles, or other materials.

Providing an isolated and calm environment is critical for the wellbeing of animals being treated within a veterinary facility. As such, interior partitions and ceilings will be designed to reduce transmission of sound to prevent interior noise becoming a nuisance or exterior noise becoming stressful for patients. Proper air circulation is an essential component in the design of animal care facilities to aid in the health of animals as well as avoiding propagation of odors. As such, mechanical systems (HVAC) will be designed to provide adequate fresh air exchanges to prevent the noticeable presence of pet odor.

**10.232.24 No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;**

**RESPONSE** – The proposed use will not adversely impact traffic patterns or the commercial-oriented character of the area in general. Rarebreed anticipates that loading and delivery operations will occur approximately once or twice per week depending on need. Biohazard or animal waste will be removed by a dedicated service and properly disposed of off-site. Any animal cadavers will be temporarily stored on-site in a chest freezer and removed as needed by a dedicated crematory service.

Pursuant to Section 10.1112.32, the existing retail trade use of the Property requires a total of 13 off-street parking spaces (1 per 300 sf GFA). The Ordinance requires a total of 8 off-street parking spaces (1 per 500 sf GFA) for Veterinary care facilities and results in a decreased number of parking spaces. Rarebreed anticipates a regular staff of 7-10 with the ability to serve 3-5 patients. The existing off-street parking of 214 shared commercial parking spaces located on the site is more than sufficient for Rarebreed's intended use and complies with the requirements outlined in the City of Portsmouth Zoning Ordinance.

**10.232.25 No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and**

**RESPONSE** – Rarebreed does not anticipate excessive demand on municipal services with this proposed use. The existing building is currently serviced by public water and sewer adequate for the requirements of a veterinary clinic. Rarebreed anticipates very little, if any, demand on police and fire protection, and will cause no impact to schools.

**10.232.26 No significant increase of stormwater runoff onto adjacent property or streets.**

**RESPONSE** – As the proposed use will be an interior build-out, and does not propose changes to the site, no increase of stormwater runoff is anticipated.

## CONCLUSION

For all the reasons herein stated, Rarebreed respectfully submits that Special Exception standards listed within Section 10.232.20 have been satisfied and that the Portsmouth Zoning Board of Adjustment grant the requested Special Exception.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J Harden', with a stylized, flowing script.

John Harden, AIA LEED AP  
**OLSON LEWIS + ARCHITECTS**

A handwritten signature in black ink, appearing to read 'Nicholas Collins', with a stylized, flowing script.

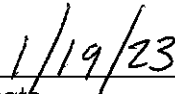
Nicholas AJ Collins  
**BLUE SKY ARCHITECTS**  
**OLSON LEWIS + ARCHITECTS**

**LETTER OF AUTHORIZATION**

Cate Street Development LLC, owner of property located at 350 US Route 1 BYP, in Portsmouth, NH, known as Map-Lot 0172-0002-0000, do hereby authorize Rarebreed Veterinary Partners to apply for a Special Exception from the Portsmouth Zoning Board of Adjustment to operate a Veterinary Urgent Care Clinic at the previously mentioned property.



Signed



Date



**LETTER OF AUTHORIZATION**

Rarebreed Veterinary Partners, potential tenant at 350 US Route 1 BYP, in Portsmouth, NH, known as Map-Lot 0172-0002-0000, do hereby authorize OLSON LEWIS + Architects to act on its behalf concerning the previously mentioned property.

I hereby appoint OLSON LEWIS + Architects as agent to act on behalf of Rarebreed Veterinary Partners in the Zoning Board of Adjustment application process, to include any required signatures.



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James Baron, Duly Authorized  
Rarebreed Veterinary Partners

Jan 19, 2023

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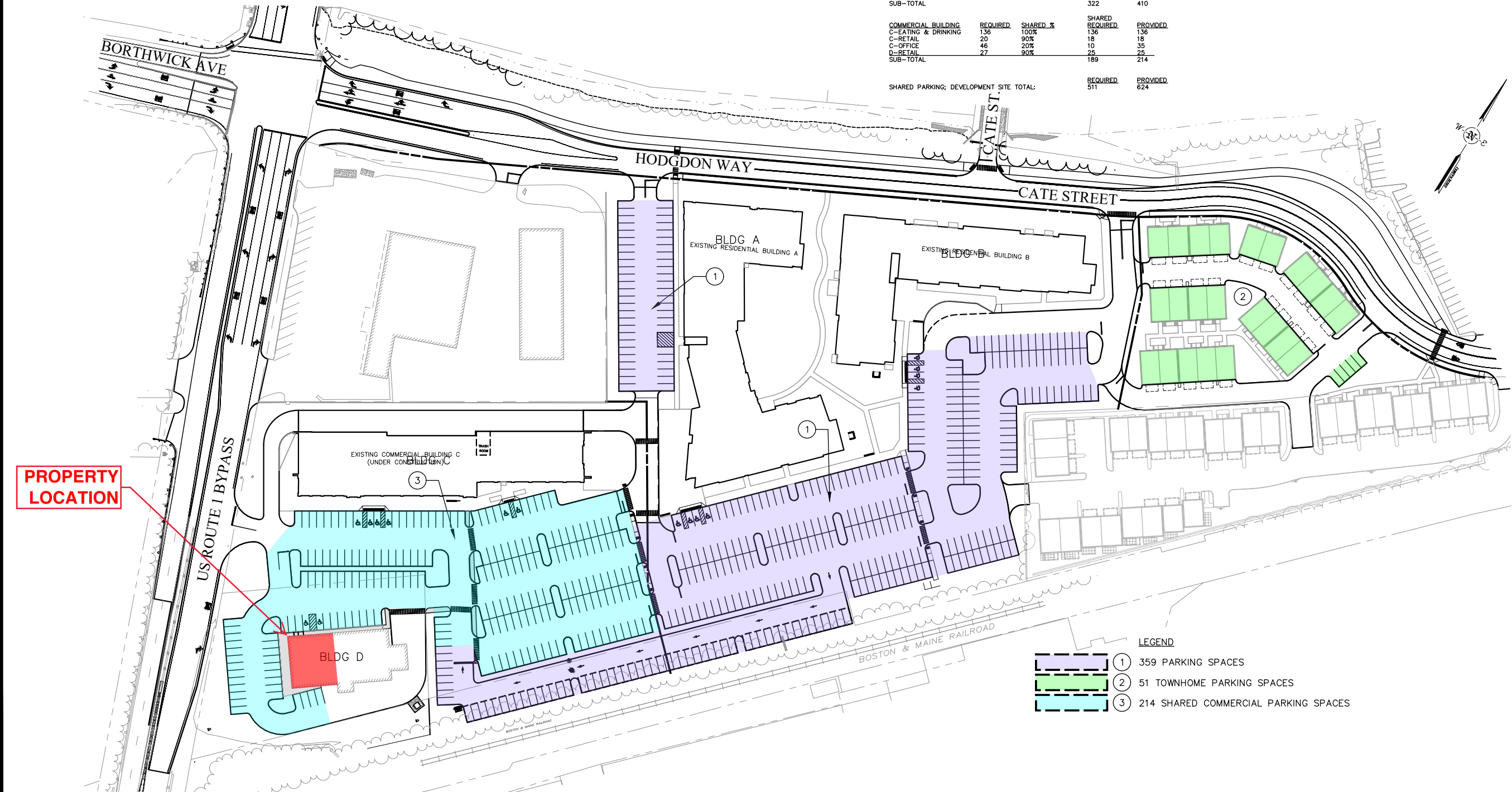
Date

Exhibit 1



## Exhibit 2

1. PARKING CALCULATIONS PER 10.1112.30:					
<u>RESIDENTIAL A AND B:</u>		<u>UNITS</u>	<u>REQUIREMENT</u>	<u>REQUIRED</u>	<u>PROVIDED</u>
UNITS <500 SQ. FT.		71	0.5 SPACE/UNIT	36	---
UNITS 500-750 SQ. FT.		107	1 SPACE/UNIT	107	---
UNITS >750 SQ. FT.		72	1.3/UNIT	94	---
VISITOR		250	1 SPACE/5 UNITS	50	---
SUB-TOTAL				287	359
BICYCLE PARKING IS INTERNAL HANDICAP ACCESSIBLE = 8					
<u>TOWNHOMES:</u>		<u>UNITS</u>	<u>REQUIREMENT</u>	<u>REQUIRED</u>	<u>PROVIDED</u>
UNITS >750 SQ. FT.		23	1.3/UNIT	30	46
VISITOR		23	1/5 UNITS	5	5
SUB-TOTAL				35	51
(EACH TOWNHOME HAS A 2 CAR GARAGE) (BICYCLE PARKING IS INTERNAL)					
<u>COMMERCIAL BUILDING</u>		<u>AREA</u>	<u>REQUIREMENT</u>	<u>REQUIRED</u>	<u>PROVIDED</u>
C-EATING & DRINKING		13,600SF	1/700 SF	136	---
C-RETAIL		5,800 SF	1/300 SF	20	---
C-OFFICE		15,900 SF	1/350 SF	46	---
D-RETAIL		7,832 SF	1/300 SF	27	---
SUB-TOTAL				229	214
BICYCLE PARKING		1/10 PARKING		23	23
HANDICAP ACCESSIBLE = 8					
PER 10.1112.30 DEVELOPMENT SITE TOTAL:				<u>REQUIRED</u>	<u>PROVIDED</u>
				551	624
2. SHARED PARKING CALCULATIONS: COLUMN C WEEKDAY EVENINGS, PER 10.1112.60:					
		<u>REQUIRED</u>	<u>SHARED %</u>	<u>SHARED</u>	<u>PROVIDED</u>
RESIDENTIAL A AND B:		287	100%	287	359
TOWNHOMES		35	100%	35	51
SUB-TOTAL				322	410
<u>COMMERCIAL BUILDING</u>		<u>REQUIRED</u>	<u>SHARED %</u>	<u>SHARED</u>	<u>PROVIDED</u>
C-EATING & DRINKING		136	100%	136	136
C-RETAIL		20	90%	18	18
C-OFFICE		46	20%	10	35
D-RETAIL		27	90%	25	25
SUB-TOTAL				189	214
				<u>REQUIRED</u>	<u>PROVIDED</u>
SHARED PARKING; DEVELOPMENT SITE TOTAL:				511	624

[illegible]



**Exhibit 3.1 - Side View from US-1 Bypass (South)**





**Exhibit 3.2 - Front View from US-1 Bypass (Southwest)**





**Exhibit 3.3 - Front View from US-1 Bypass (West)**



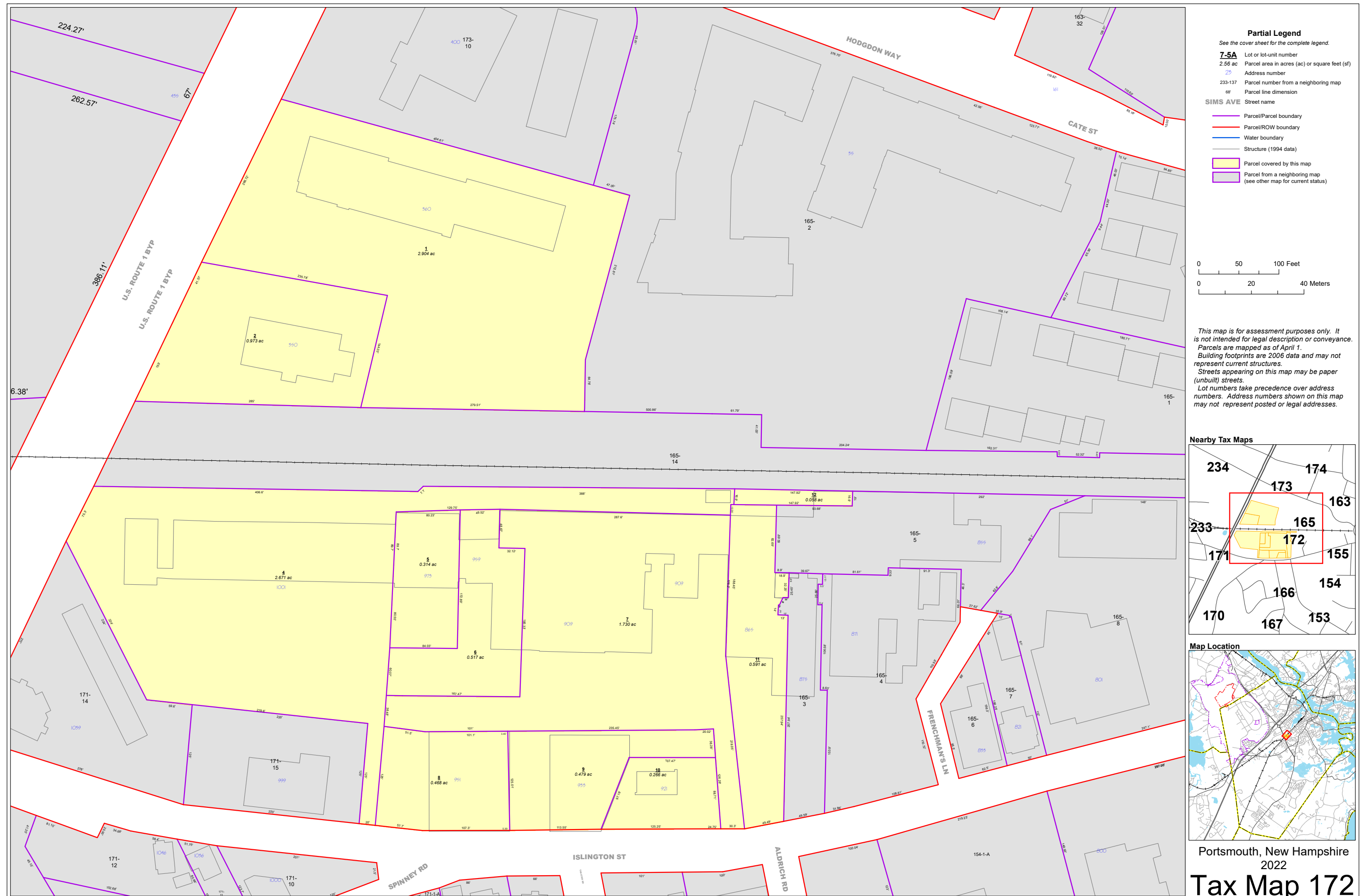


**Exhibit 3.4 - Side View from Parking Lot (North)**





## Exhibit 4





### III. NEW BUSINESS

- G.** The request of **Aviation Avenue Group, LLC (Applicant), and Pease Development Authority (Owners)**, for property located at **80 Rochester Avenue** whereas relief is needed for the construction of an advanced manufacturing facility which requires the following: 1) Variance from Article 304.03 (e) to allow a 28 foot rear yard where 50 feet is required. Said property is located on Assessor Map 308 Lot 1 and lies within the Pease Industrial District (PI). (LU-22-210)

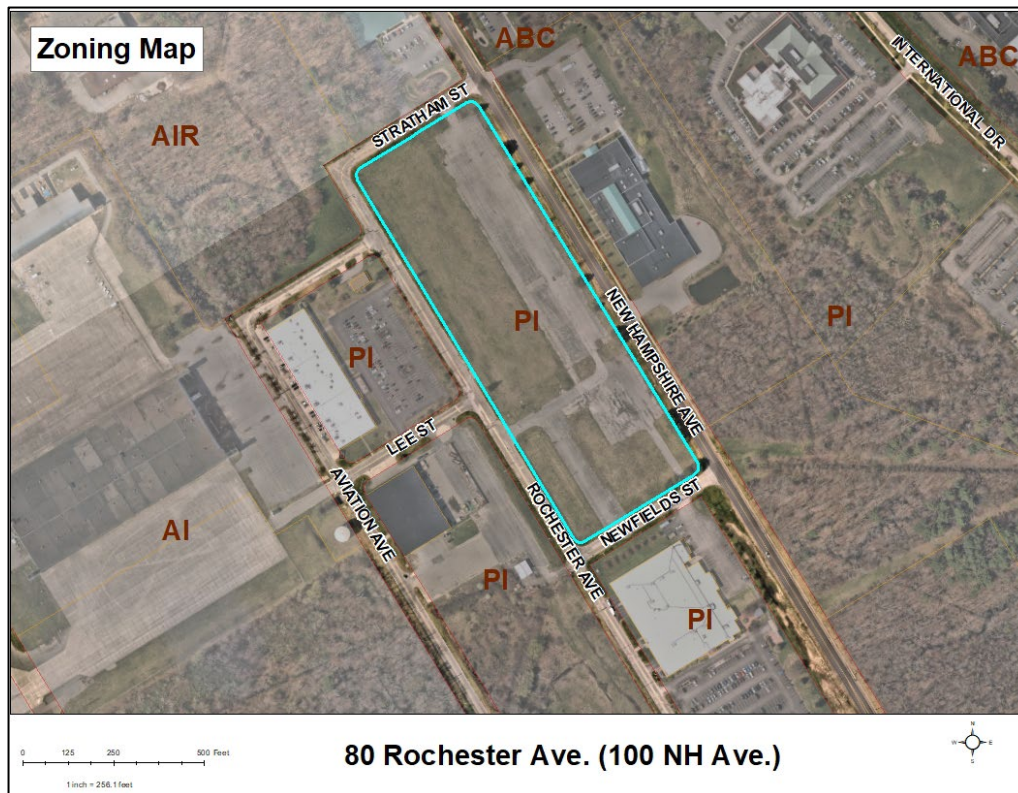
#### Existing & Proposed Conditions

	<u>Existing/</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant	New construction	Primarily Industrial
<u>Lot area (acres):</u>	11.4	11.4	10 acres min.
<u>Street Frontage (ft.):</u>	1,200	1,200	200 min.
<u>Primary Front Yard (ft.):</u>	NA	51 (previously recommended for approval)	70 min.
<u>Left Yard (ft.):</u>	NA	202 (previously recommended for approval)	50 min.
<u>Right Yard (ft.):</u>	NA	330	50 min.
<u>Rear Yard (ft.):</u>	NA	<b>28</b>	50 min.
<u>Height (ft.):</u>	NA	36 (previously recommended for approval)	Not to exceed FAA criteria
<u>Open Space Coverage (%):</u>	>25	35 (previously recommended for approval)	25 min.
<u>Parking:</u>	NA	147	147
<u>Estimated Age of Structure:</u>	NA	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Pease Development Authority
- Site Review – TAC/Planning Board
- Building Permit

## Neighborhood Context



## **Previous Board of Adjustment Actions**

November 15, 2022 – the Board **recommended approval to the PDA Board** for the application for construction of an advanced manufacturing facility which requiring:

- 1) A Variance from Part 304.03(c) to allow a 51' front yard where 70' is required.

## **Planning Department Comments**

The applicant is seeking to construct a new building to house an advance manufacturing facility. The applicant was before the BOA and received a positive recommendation in November and through the Technical Advisory Committee review the project evolved and now requires additional relief for the rear yard. This parcel is identified as 80 Rochester in the City's tax records, but the applicant is in the process of changing the address to 100 New Hampshire Avenue, where the principal frontage will be located.

The PDA has its own land use and zoning regulations and is exempt from the City's regulations. For certain parcels in Pease, variance requests are sent to the City for a recommendation from the BOA. A motion to approve or deny will be a recommendation and the recommendation will become an approval by the PDA Board after 14 days unless the applicant or PDA Board member requests a hearing (see Part 317.03(f) below).

The Chapter in the Pease Land Use Controls regarding the process for a variance is below. Part 317.03(c) states the BOA will use apply the standards in Part 317.01(c) in its review of the application. These standards are attached hereto under Review Criteria.

317.03 Zoning Variances Referred to Local Municipalities for Administration

(a) For parcels located within the Industrial Zone, Business and Commercial Zone, Natural Resource Protection Zone or portions of the Airport Industrial Zone not acquired by the Pease Development Authority pursuant to Section 13(g) of the Surplus Property Act, requests for a variance from the provisions of this zoning rule shall be referred to the zoning board of adjustment for the municipality in which the parcel is situated for administration in accordance with the provisions of this section.

55

(b) Applications for a variance for parcels referred to in Subsection (a) shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board and referred to the applicable zoning board of adjustment.

(c) The zoning board of adjustment to which the application for a variance has been referred shall, in its review of the request, apply the substantive provisions of this Chapter.

(d) Recommendations to the Board regarding requests for a zoning variance shall be made by the applicable zoning board of adjustment within sixty (60) days of referral. Notice of the recommendation shall be provided to the applicant and the Board within 48 hours of the decision.

(e) The recommendation of the applicable zoning board of adjustment shall be forwarded to the Board along with a written report detailing the reasons for any recommendation for denial or approval with conditions.

(f) A recommendation of the applicable zoning board of adjustment shall be deemed a final decision of the Board upon the expiration of fourteen (14) days from the date of notice, unless the applicant/developer or a member of the Board requests a hearing by the Board.

(g) Where a hearing has been requested, the Board shall conduct a hearing and render a final decision on the variance request within thirty (30) days.

(h) At the discretion of the Board the time period for rendering a final decision may be extended an additional thirty (30) days, or such additional time as may be consented to by the applicant.

(i) The Board may approve, conditionally approve or deny the application notwithstanding the recommendation of the applicable zoning board of adjustment. In the case of denial of any application by the Board or where the Board elects not to follow the recommendation of the applicable zoning board of adjustment, the ground(s) for such action shall be stated in writing.

## Review Criteria

This application must meet the criteria for a **variance** of Part 317.01(c) of the Pease Land Use Controls below.

### **PART 317. VARIANCES FROM ZONING PROVISIONS**

#### 317.01 General Provisions

- (a) Requests for a variance from the provisions of this zoning rule shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board.
- (b) Applications for zoning variance approval shall set forth the specific provision of the rule or regulation involved and reasons why a variance should be granted.
- (c) A variance shall not be approved or recommended for approval unless it is in harmony with the general purpose and intent of these regulations and meets the following criteria:
  - (1) No adverse effect or diminution in values of surrounding properties would be suffered.
  - (2) Granting the variance would be of benefit to the public interest.
  - (3) Denial of the variance would result in unnecessary hardship to the person seeking it.
  - (4) Granting the variance would be substantial justice.
  - (5) The proposed use would not be contrary to the spirit of this zoning rule.
- (d) Reasonable conditions necessary to meet one or more of the standards in subsection (c) above may be attached to approval of a variance.



Pease Development Authority  
55 International Drive, Portsmouth, NH 03801, (603) 433-6088



**Request for Appeal/Variance Application**

For PDA Use Only:			
Date Submitted: _____	Municipal Review: _____	Fee: _____	
Application Complete: _____	Date Forwarded: _____	Paid: _____	Check #: _____

Action Requested (please check one):	Appeal from Administrative Decision: [ ]	Variance: [ ]
--------------------------------------	--	---------------

**Applicant Information**

Applicant: Aviation Avenue Group, LLC	Contact Name: John K. Bosen, Esq.
Address: 210 Commerce Way, Ste. 300 Portsmouth NH 03801	Business Phone: 603-427-5500
	Mobile Phone: 603-205-5171
	Fax: 603-427-5510

**Site Information**

Address: 100 New Hampshire Ave		Frontage: 51
Description of Property:		Left Side: 202
		Right Side: 202
Zone(s) Location: Industrial	Lot #: 1	Rear: 28.4
Assessors Plan #: 308	Lot Area: 10.9 acres	
Existing Use: vacant	Proposed Use: manufacturing	

**Request for Appeal from Administrative Decision:**

Applicable Rule/Regulation/Code Provision: _____
Applicable Zoning Regulation: _____
Interpretation Claimed: _____
_____
_____
_____
Administrative Decision from which appeal is sought: _____
_____
_____
_____
_____

**Variance:**

Zoning Regulation(s) from which Variance is Sought: 304.03 (c)
_____
_____
Reason(s) Why Variance Should Be Granted Including Circumstances Which Constitute Unnecessary Hardship: See attached
_____
_____
_____
_____
_____
_____

Please attach any required site plans or drawings to this application with a fee of \$ \_\_\_\_\_. All forms must be completely filled out and signed by the applicant or their agent before they will be accepted. Additional sheets may be attached if required. Completed forms must be returned to the PDA for a hearing by the PDA Zoning Adjustment and Appeals Committee or referral to the appropriate municipality. The applicant or their agent is required to attend the Public Hearing for the Appeal/Variance. If you have any questions, please contact the PDA Engineering Department at 603-433-6088.

**Certification**

I hereby certify under the penalties of perjury that the foregoing information and accompanying plans, documents, and supporting data are true and complete to the best of my knowledge.	
10/25/22 Date	John STETSBE Signature of Applicant Printed Name

**APPLICATION OF AVIATION AVENUE GROUP, LLC**

100 New Hampshire Avenue, Tax Map 308, Lot 1

**APPLICANT'S NARRATIVE**

**I. THE PROPERTY/PROJECT.**

The Applicant Aviation Avenue Group, LLC proposes to build a manufacturing facility at 100 New Hampshire Avenue located in the PDA Industrial Zone.

The property is currently a vacant 11.4-acre parcel that will be redeveloped for an "Advanced Manufacturing" facility, which will feature robotized assembly and create dynamic job opportunities, including many highly skilled and highly compensated positions.

This project received a variance from this Board by written decision dated November 21, 2022, from Article 304.03(c) of the Pease Development Authority Zoning Ordinance for a front yard setback of 51 feet, where 70 feet is required. Subsequent to the receipt of this variance, more detailed plans were prepared, and the Applicant became aware of a problem with the rear setback due to the location of the existing Rochester Avenue Right of Way and its utilities.

**II. RELIEF REQUESTED.**

The Applicant is seeking an additional variance from the provisions of Article 304.03(e) of the Pease Development Authority Zoning Ordinance for a rear yard setback of 28.4 feet, where 50 feet is required. In order to keep the existing Rochester Avenue Right of Way in its current location and maintain its utilities within the Right of Way while preserving the proposed building's structural column layout and the 2-to-1 length-to-width ratio ideal for Advanced Manufacturing tenants, we are requesting a rear yard setback variance to allow for a rear setback of approximately 28.4 feet. The Applicant did meet with the Pease Development Authority on January 9, 2023 and receive a recommendation for this variance per the letter attached from Paul E. Brean, Executive Director dated January 9, 2023.

The proposal meets all other requirements of the zoning ordinance.

**III. ARGUMENT.**

It is the Applicant's position that the five criteria necessary for the granting of the requested variances as set forth in Article 317.01(c) of the PDA Zoning Ordinance are met by the within Application.

1. No adverse effect or diminution in values of surrounding properties would be suffered.

Granting the requested variance would not in any way diminish the value of surrounding properties. All surrounding properties are Industrial/Commercial in nature and have similar setbacks to what the applicant is proposing, which in no way effect surrounding property values.

2. Granting the variance would be of benefit to the public interest.

Granting the requested variance would not substantially alter the characteristics of the neighborhood nor would granting the variance threaten public health, safety, or welfare. The Property sits in the Industrial Zone where manufacturing is permitted and consistent with other uses in this zone. Thus, granting the variance would not be contrary to the spirit and intent of the ordinance and it would be a benefit to the public interest.

3. Denial of the variance will result in unnecessary hardship to the person seeking it.

Owing to special conditions of this property that distinguish it from other properties in the area, no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of that provision to this property.

The Special conditions of the property are the fact that the property is burdened with wetlands that could be compromised if the building were pushed back further to accommodate the setbacks. Also, the Right of Way is 80 feet wide which is approximately 20 feet wider than a typical Right of Way. The combination of these two factors is unique and creates special conditions from other properties in the area. Because of these special conditions, the property cannot be reasonably

used in strict conformance with the ordinance and a variance is therefore necessary to enable the property to have a reasonable use.

4. Granting the variance would be substantial justice.

Granting the requested variance will result in substantial justice being done. The hardship upon the Applicant were the variance to be denied is not outweighed by some benefit to the general public in denying the requested variance.

5. The proposed use would not be contrary to the spirit of this zoning rule.

The Property sits in the Industrial Zone where manufacturing is permitted and consistent with other uses in this zone. Thus, granting the variance would not be contrary to the spirit and intent of the ordinance.



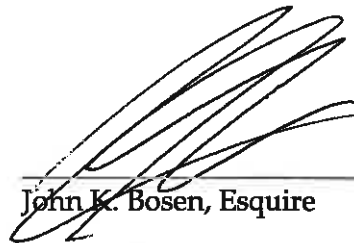
**IV. CONCLUSION.**

For the foregoing reasons, the applicant respectfully requests the Board recommend the variance be approved as requested and advertised.

Respectfully submitted,

Dated: January 30, 2023

By:

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

## MEMORANDUM

To: Paul E. Brean, Executive Director *PEB*  
From: Michael R. Mates, PE, Engineering Manager *MRM*  
Date: October 13, 2022  
Subject: 100 New Hampshire Avenue Concept Approval

In January of this year, the PDA Board of Directors authorized entry into an Option Agreement with Aviation Avenue Group, LLC, regarding potential development at 14 Aviation Avenue, 7 Lee Street, and 100 New Hampshire Ave. Consistent with the intent of the agreement, staff recently received concept plans from the developer regarding a development on 100 New Hampshire Avenue. The developer is proposing to create a parcel of approximately 11.4 acres and construct a 209,750 square foot building as shown on the attached plans. An end user has not been identified at this juncture as explained by the developer in the attached correspondence. The intended uses include 18,144 square feet of office space and 191,606 square feet of advanced manufacturing space, both of which are allowed uses in the Industrial Zone.

The site will be accessed from both New Hampshire Avenue and Rochester Avenue. New Hampshire Avenue will serve as the main entrance for general passenger vehicles and Rochester Avenue will be used for access to the loading areas. Sidewalk access has been provided along the entire frontage on New Hampshire Avenue as well as along Stratham Street with two connections to the building at the north and south ends. In addition, site improvements include six loading docks at both the north and south ends of the facility, 147 parking stalls, utilities, lighting, landscaping, and other appurtenances. As part of the site design, stormwater management and treatment measures will be provided by filtration best management practices in accordance with NHDES and PDA rules and regulations. A Traffic Impact Assessment (attached) was conducted by Tighe & Bond, Professional Engineers licensed in NH, who estimate that the development is expected to generate 149 passenger vehicle trips and 6 truck trips during the weekday, peak hour. This estimate is based on formulas and data presented in the Institute of Transportation Engineers (ITE) Handbook for historical manufacturing and office uses. The actual number of trips may differ once a specific end user is identified. If the Board grants conceptual approval for this development, PDA will engage VHB, our on call transportation engineer, to complete a third party peer review of the assessment.

There are no wetlands on the subject parcel so there will be no wetland or wetland buffer impacts associated with this proposal. Parking and open space requirements have been met.

One variance is requested to reduce the front yard setback from 70' to 51'±. According to the project memo submitted by the applicant and attached hereto, the most common layout for these types of advanced manufacturing buildings includes 50' x 50' bays and a building footprint with a 2 to 1 length to width ratio. It is for this reason the applicant is seeking relief from the front yard setback.

Staff has reviewed the proposal and we believe the use is appropriate for this site and the development can be constructed in conformance with PDA's Land Use Controls with the exception of the front yard setback. If received favorably by the PDA Board, Aviation Avenue Group, LLC will continue with design work and, with staff concurrence, submit plans for a variance, as well as subdivision and site review applications to the City of Portsmouth for consideration.

Representatives from Aviation Avenue Group, LLC will be at the October meeting to present the project and answer questions.

At the October PDA Board of Directors meeting, please ask the Board to provide concept approval for the proposed development at 100 New Hampshire Avenue.

N:\\ENGINEER\\Board Memos\\2022\\100 NH Ave Concept.docx



Last Save Date: January 24, 2023 5:03 PM By: CML  
Plot Date: Wednesday, January 25, 2023 Plotted By: Craig M. Langdon  
288 File Location: J:\V0595 Pro Con General Proposals\0595-015 100 NH Avenue\Drawings Figures\AutoCAD\Sheet\0595-015 Design.DWG Layout Tab O-Site

- SITE NOTES:**
1. STRIPE PARKING AREAS AS SHOWN, INCLUDING PARKING SPACES, STOP BARS, ADA SYMBOLS, PAINTED ISLANDS, CROSS WALKS, ARROWS, LEGENDS AND CENTERLINES SHALL BE THERMOPLASTIC MATERIAL. THERMOPLASTIC MATERIAL SHALL MEET THE REQUIREMENTS OF AASHTO M249. (ALL MARKINGS EXCEPT CENTERLINE AND MEDIAN ISLANDS TO BE CONSTRUCTED USING WHITE TRAFFIC PAINT. CENTERLINE AND MEDIAN ISLANDS TO BE CONSTRUCTED USING YELLOW TRAFFIC PAINT. ALL TRAFFIC PAINT SHALL MEET THE REQUIREMENTS OF AASHTO M248 TYPE "F").
  2. ALL PAVEMENT MARKINGS AND SIGNS TO CONFORM TO "MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES", "STANDARD ALPHABETS FOR HIGHWAY SIGNS AND PAVEMENT MARKINGS", AND THE AMERICANS WITH DISABILITIES ACT REQUIREMENTS, LATEST EDITIONS.
  3. SEE DETAILS FOR PARKING STALL MARKINGS, ADA SYMBOLS, SIGNS AND SIGN POSTS.
  4. CENTERLINES SHALL BE FOUR (4) INCH WIDE YELLOW LINES. STOP BARS SHALL BE EIGHTEEN (18) INCHES WIDE.
  5. PAINTED ISLANDS SHALL BE FOUR (4) INCH WIDE DIAGONAL LINES AT 3'-0" O.C. BORDERED BY FOUR (4) INCH WIDE LINES.
  6. THE CONTRACTOR SHALL EMPLOY A NEW HAMPSHIRE LICENSED LAND SURVEYOR TO DETERMINE ALL LINES AND GRADES.
  7. CLEAN AND COAT VERTICAL FACE OF EXISTING PAVEMENT AT SAW CUT LINE WITH RS-1 EMULSION IMMEDIATELY PRIOR TO PLACING NEW BITUMINOUS CONCRETE.
  8. ALL MATERIALS AND CONSTRUCTION SHALL CONFORM WITH APPLICABLE FEDERAL, STATE, AND LOCAL CODES & SPECIFICATIONS.
  9. COORDINATE ALL WORK WITHIN PUBLIC RIGHT OF WAY WITH THE CITY OF PORTSMOUTH AND PEASE DEVELOPMENT AUTHORITY.
  10. CONTRACTOR TO SUBMIT AS-BUILT PLANS IN DIGITAL FORMAT (.DWG AND .PDF FILES) ON DISK TO THE OWNER AND ENGINEER UPON COMPLETION OF THE PROJECT. AS-BUILTS SHALL BE PREPARED AND CERTIFIED BY A NEW HAMPSHIRE LICENSED LAND SURVEYOR.
  11. SEE ARCHITECTURAL/BUILDING DRAWINGS FOR ALL CONCRETE PADS & SIDEWALKS ADJACENT TO BUILDING.
  12. ALL WORK SHALL CONFORM TO THE CITY OF PORTSMOUTH DEPARTMENT OF PUBLIC WORKS, STANDARD SPECIFICATIONS AND WITH THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION, "STANDARD SPECIFICATIONS OF ROAD AND BRIDGE CONSTRUCTION", CURRENT EDITION.
  13. CONTRACTOR TO PROVIDE BACKFILL AND COMPACTION AT CURB LINE AFTER CONCRETE FORMS FOR SIDEWALKS AND PADS HAVE BEEN STRIPPED. COORDINATE WITH BUILDING CONTRACTOR.
  14. COORDINATE ALL WORK ADJACENT TO BUILDING WITH BUILDING CONTRACTOR.
  15. ALL DIMENSIONS ARE TO THE FACE OF CURB UNLESS OTHERWISE NOTED.
  16. THE SITE ENGINEER SHALL OBSERVE THE CONSTRUCTION AND SHALL SUBMIT TO THE PDA A LETTER STATING THAT THE PROJECT WAS COMPLETED IN ACCORDANCE WITH THE PLANS.
  17. CONSTRUCTION CANNOT BEGIN UNTIL A DETERMINATION OF NO OBJECTION IS ISSUED BY FAA. TO OBTAIN THE FAA DETERMINATION, THE CONTRACTOR/DEVELOPER MUST SUBMIT TO FAA A NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION FORM 7460-1, AVAILABLE AT "https://www.faa.gov/documentLibrary/media/Form/FAA\_Form\_7460-1\_042023.pdf".
  18. PROPERTY MANAGER WILL BE RESPONSIBLE FOR TIMELY SNOW REMOVAL FROM ALL PUBLIC WALKS, DRIVES, AND AIRSIDE PAVEMENT AREAS ON-SITE. SNOW SHALL BE HAULED OFF-SITE AND LEGALLY DISPOSED OF, WHEN NECESSARY, WHEN SNOW STORAGE AREAS HAVE REACHED CAPACITY.
  19. RETAINING WALL SHALL BE DESIGNED AND STAMPED BY A NEW HAMPSHIRE LICENSED PROFESSIONAL ENGINEER AND SHALL BE SUBMITTED TO PEASE DEVELOPMENT AUTHORITY FOR REVIEW.

**SITE DATA:**  
LOCATION: TAX MAP 308, LOT 1  
80 ROCHESTER AVENUE  
PORTSMOUTH, NEW HAMPSHIRE

ZONING DISTRICT: INDUSTRIAL / WAREHOUSE  
ALLOWED USE: INDUSTRIAL / WAREHOUSE

DIMENSIONAL REQUIREMENTS:	REQUIRED	PROPOSED
MINIMUM LOT AREA:	10 ACRES	±10.9 ACRES
MINIMUM STREET FRONTAGE:	200 FT	±1,200 FT
MINIMUM SETBACKS:		
• FRONT:	70 FT	±51 FT <sup>(1)</sup>
• SIDE:	50 FT	±202 FT
• REAR:	50 FT	±28.4 FT <sup>(2)</sup>
MAXIMUM BUILDING HEIGHT:	PER FAA	36 FT
MINIMUM OPEN SPACE:	25%	±30%

- (1) - ON NOVEMBER 15, 2022 THE CITY OF PORTSMOUTH ZONING BOARD OF ADJUSTMENT VOTED TO RECOMMEND APPROVAL TO THE PDA BOARD FOR A VARIANCE FROM PART 304.03(C) TO ALLOW A 51 FOOT FRONT YARD WHERE 70 FEET IS REQUIRED.
- (2) - VARIANCE REQUIRED FROM PART 304.03(E) OF THE PEASE INTERNATIONAL TRADEPORT ZONING ORDINANCE TO ALLOW FOR A ±28.4 FOOT REAR YARD WHERE 70 FEET IS REQUIRED.

**PARKING REQUIREMENTS:**  
PARKING STALL LAYOUT:  
• STANDARD 90°

SF)

DRIVE AISLE WIDTH:  
• 90° (2-WAY TRAFFIC)

**PARKING SPACE REQUIREMENTS:**  
**INDUSTRIAL:**  
2 / 3 EMPLOYEES (LARGEST SHIFT)  
+ 1 / COMPANY-OWNED-VEHICLE  
= 161 EMPLOYEES x 2/3 EMPLOYEES)  
+ 2 COMPANY-OWNED-VEHICLE =

**OFFICE:**

1 / 2 EMPLOYEES  
= 73 EMPLOYEES x (1 / 2 EMPLOYEES) =  
TOTAL REQUIRED PARKING:

(1) - SIX (6) ADA SPACES PROVIDED

**REQUIRED**

WIDTH: 8.5' MIN

AREA: 160 SF MIN

**PROPOSED**

9' X 18' (162

24 FT

24 FT (MIN)

110 SPACES

37 SPACES

147 SPACES

147 SPACES<sup>(1)</sup>

**LEGEND**

PROPOSED LEASE LINE

PROPOSED CONCRETE

PROPOSED STANDARD DUTY

PAVEMENT SECTION

PROPOSED HEAVY DUTY

PAVEMENT SECTION

PROPOSED RECLAIM AND RE-PAVE

PROPOSED MILL AND OVERLAY

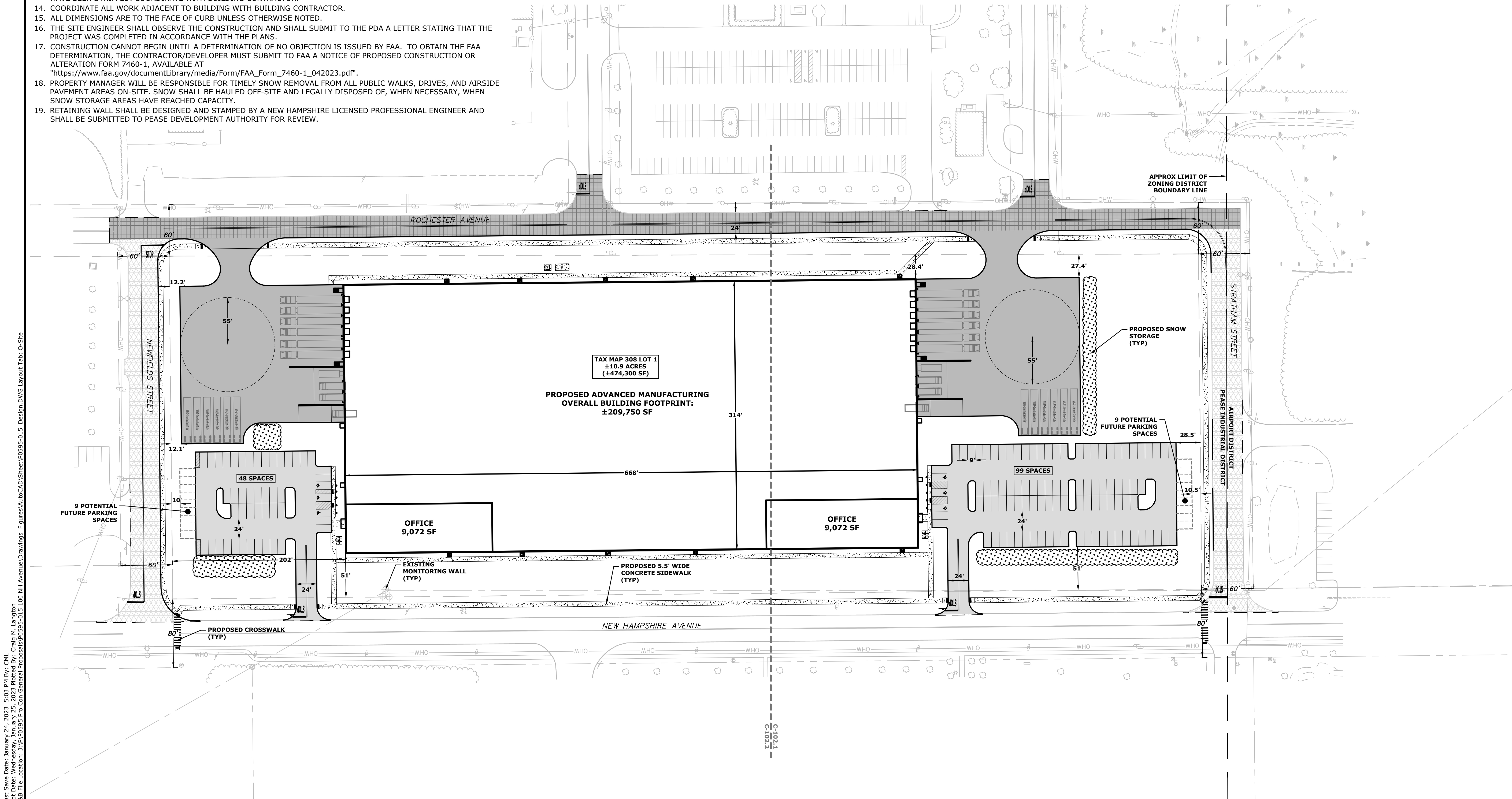
PROPOSED SNOW STORAGE AREA

APPROXIMATE LIMIT OF SAWCUT

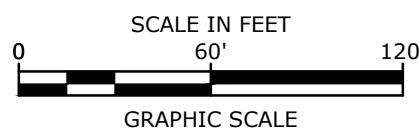
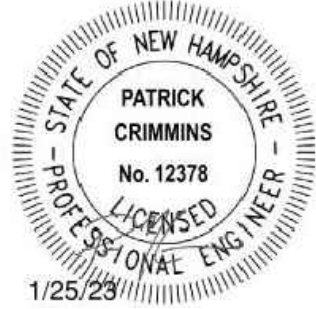
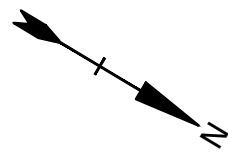
PROPOSED LIGHT POLE BASE

EXISTING PROPOSED SIGN

PROPOSED BOLLARD



**Tighe&Bond**



**Proposed  
Advanced  
Manufacturing  
Facility**

Aviation Avenue  
Group, LLC

100 New Hampshire  
Avenue  
Portsmouth, NH

B	1/25/2023	TAC Resubmission
A	12/19/2022	TAC Submission
MARK	DATE	DESCRIPTION
PROJECT NO:	P0595-015	
DATE:	12/19/2022	
FILE:	P0595-015_DESIGN.DWG	
DRAWN BY:	CML	
CHECKED:	NAH	
APPROVED:	PMC	

OVERALL SITE PLAN

SCALE: AS SHOWN

C-102

### III. NEW BUSINESS

- H. The request of **Andrea Hurwitz (Srebnik) (Owner)**, for property located at **129 Aldrich Road** whereas relief is needed for the installation of a mechanical unit which requires the following: 1) Variance from Section 10.515.14 to allow a 4 foot side yard where 10 feet is required Said property is located on Assessor Map 153 Lot 35 and lies within the Single Residence B (SRB) District. (LU-23-10)

#### Existing & Proposed Conditions

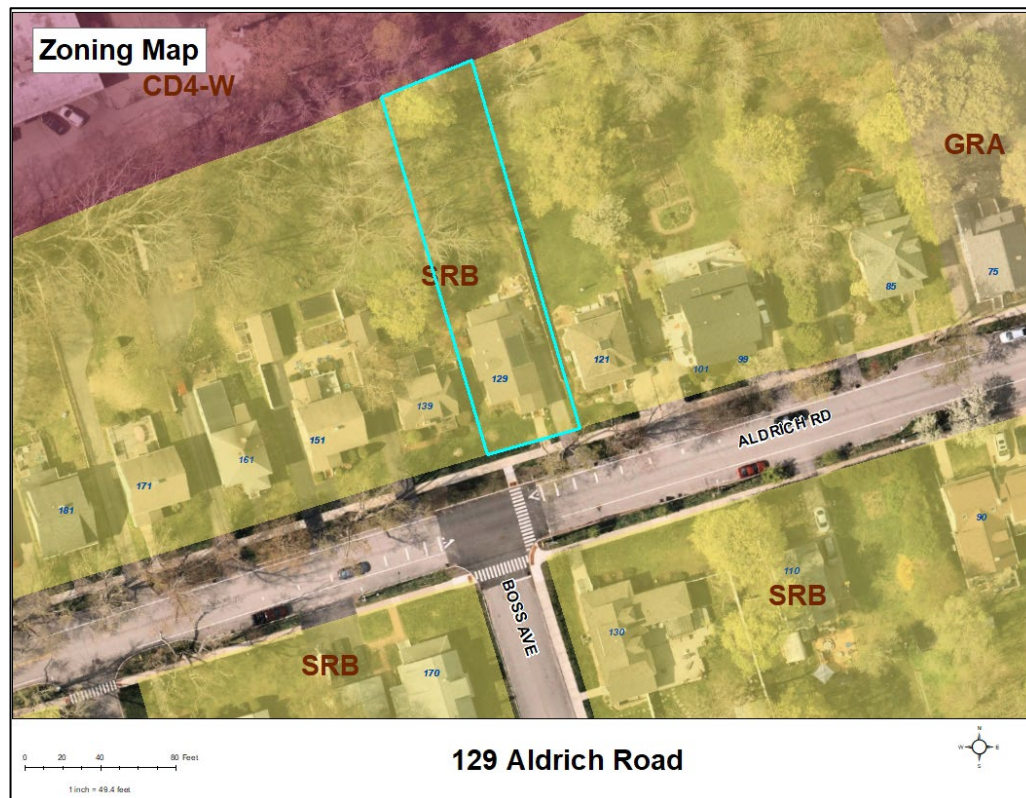
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Living Unit	Install AC Condenser	Primarily residential
<u>Lot area (sq. ft.):</u>	10,018	10,018	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,018	10,018	15,000 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.):</u>	198	198	100 min.
<u>Front Yard (ft.):</u>	15	15	30 min.
<u>Left Yard (ft.):</u>	5.7	4	10 min.
<u>Right Yard (ft.):</u>	10.7	10.7	10 min.
<u>Rear Yard (ft.):</u>	92.25	92.25	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u> :	18.7	19.7	20 max.
<u>Open Space Coverage (%)</u> :	25.5	25.5	40 min.
<u>Parking</u>	OK	OK	1.3
<u>Estimated Age of Structure:</u>	1920	Variance request(s) shown in red.	

#### Other Permits/Approvals Required

- Building Permit



## Neighborhood Context



## Previous Board of Adjustment Actions

May 17, 2022 – the Board **granted** the application for a second-floor addition with rear addition and deck requiring the following:

- 1) Variance from Section 10.521 to allow a 5.5' left side yard where 10' is required.
- 2) 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.

## Planning Department Comments

The applicant is requesting relief to allow for the installation of an AC condenser. The proposed mechanical unit location is within the 10 foot left side yard requirement (Section 10.520 of the [Zoning Ordinance](#)). Section 10.515.14 is 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.*

## 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.*

## 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.

February 1, 2023

City of Portsmouth, NH  
Planning Department  
1 Junkins Ave. 3<sup>rd</sup> Flr  
Portsmouth, NH 03801

To Members of the Board of Adjustment,

I am writing to you as a representative of Matt & Annie Srebnik, owners of 129 Aldrich Road. I am currently working on a new addition/renovation project at their home, which was previously approved by this board. This application is speaking only to a replacement of an existing condenser that sits within the left yard setback area. The new condenser will be smaller than the existing unit as shown on the attached plans. This request complies with the requirements of Article 2, section 10.233.20 of the Zoning Ordinance as outlined below.

***10.233.21 The variance will not be contrary to the public interest.*** – Replacing the existing condenser with a new, smaller one will not affect the neighbors or the public interest.

***10.233.22 The spirit of the ordinance will be observed.*** – The spirit of the ordinance will be observed as the new condenser will not negatively impact the neighbors to the left of the property.

***10.233.23 Substantial justice will be done.*** – In our opinion, substantial justice will be done because we are replacing the old condenser with a smaller unit.

***10.233.24 The values of surrounding properties will not be diminished.*** – The new condenser will not have a negative impact on the values of the surrounding properties. Condensers of this type and size are quite common on the homes in this neighborhood.

***10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.*** – An unnecessary hardship would be incurred if the Ordinance was literally enforced because the cost to move it to a new location would be prohibitive.

Thank you for your consideration,

Chris Redmond

Chris Redmond  
Mighty Roots, LLC





View from street

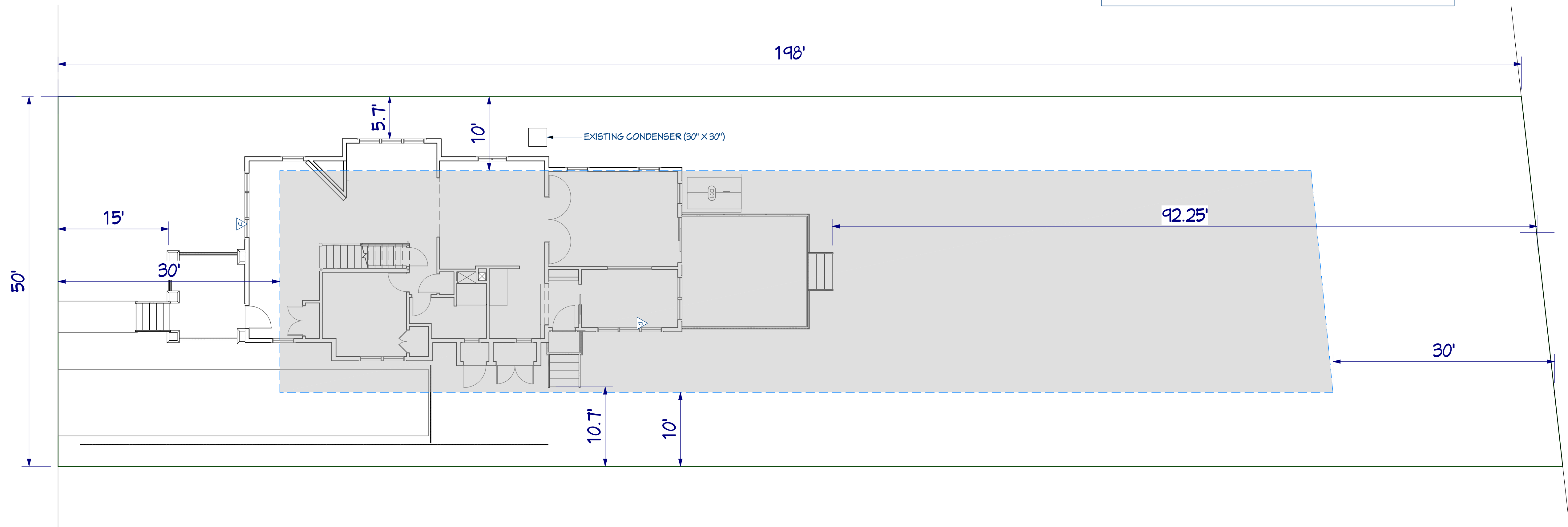


View from left property line



View from rear of property

ALDRICH ROAD



## SITE PLAN

Scale: 1/8" = 1'-0" (1/16" = 1'-0" on 11x17 paper)

### SITE INFO:

Map - 153 Lot - 0035

Zone: SRB

#### Dimensional Requirements

Front Setback - 30'

Rear Setback - 30'

Side Setbacks - 10'

Bldg Coverage - 20%

Min. Open Space - 40%

#### Actual Dimensions

Front Setback - 15.0'

Rear Setback - 92.25'

Right Side Setback - 10.7'

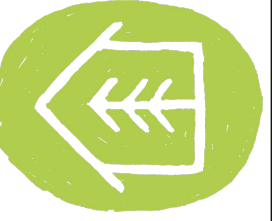
Left Side Setback - 5.7'

Bldg Coverage - 19.7%

Lot Area - 10,018 sf

Lot Coverage - 2,564 sf

Open Space - 25.5%



NUMBER	DATE	REVISION	TABLE	REVISOR	DESCRIPTION

DRAWINGS PROVIDED BY:  
MIGHTY ROOTS  
13 ALDEN AVE.  
GREENLAND, NH 03840

SREBNIK RESIDENCE  
129 Aldrich Rd  
Portsmouth, NH 03801

SITE PLAN

DATE:

2/1/2023

SCALE:

AS NOTED

SHEET:

S-1





DRAWINGS PROVIDED BY:  
MIGHTY ROOTS  
13 ALDEN AVE.  
GREENLAND, NH 03840

**FIRST FLOOR  
HEADER PLAN**

CLIENT: SREBNIK RESIDENCE  
129 ALDRICH ROAD  
PORTSMOUTH, NH

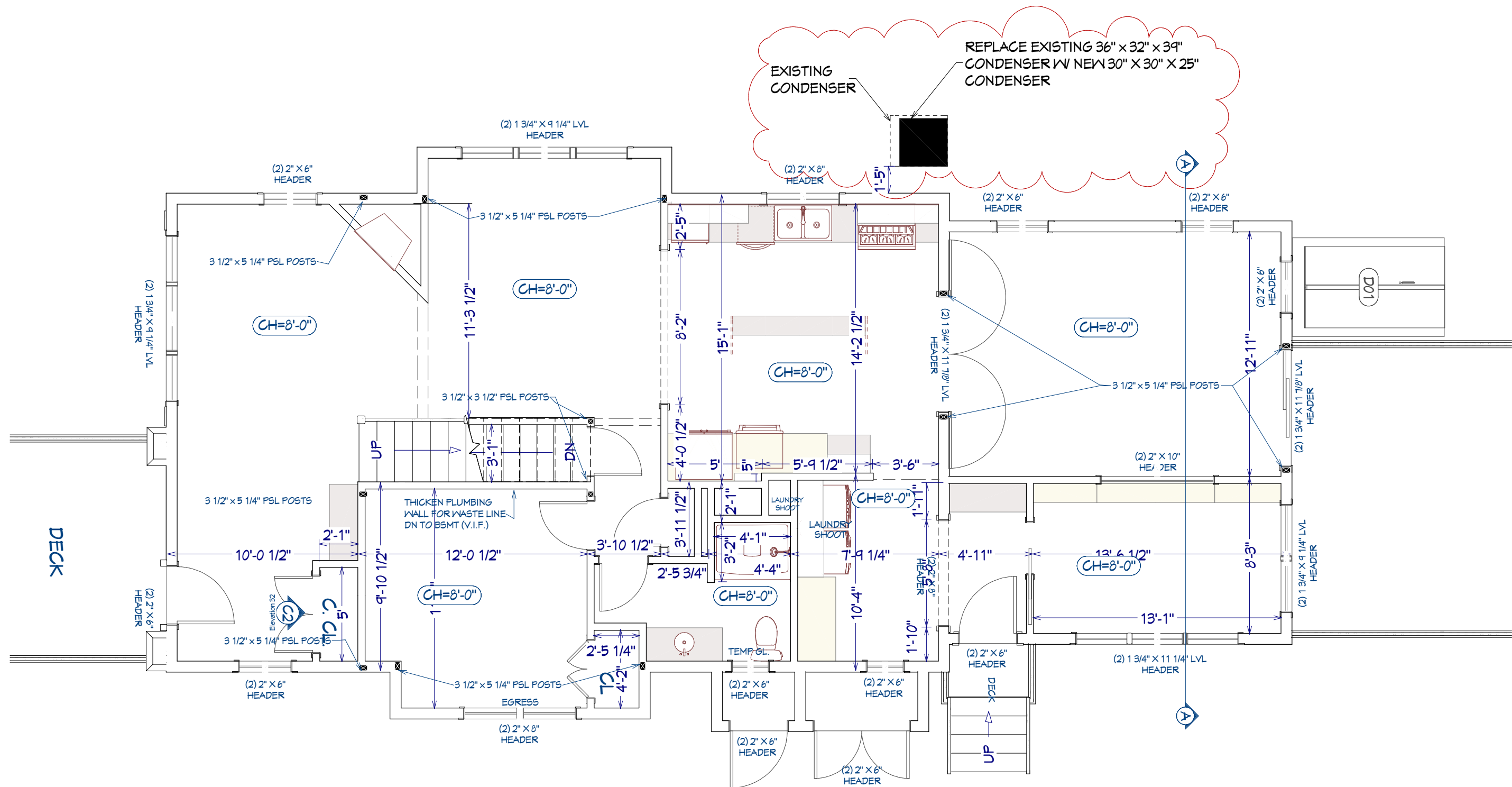
DATE:  
2/1/2023

SCALE:  

---

3/8" = 1'-0"

SHEET:  
**S-3**



## FIRST FLOOR HEADER PLAN



REVISION TABLE		DESCRIPTION
NUMBER	DATE	REVISION BY

DRAWINGS PROVIDED BY:  
MIGHTY ROOTS  
13 ALDEN AVE.  
GREENLAND, NH 03840

ELEVATION  
FOR WINDOWS

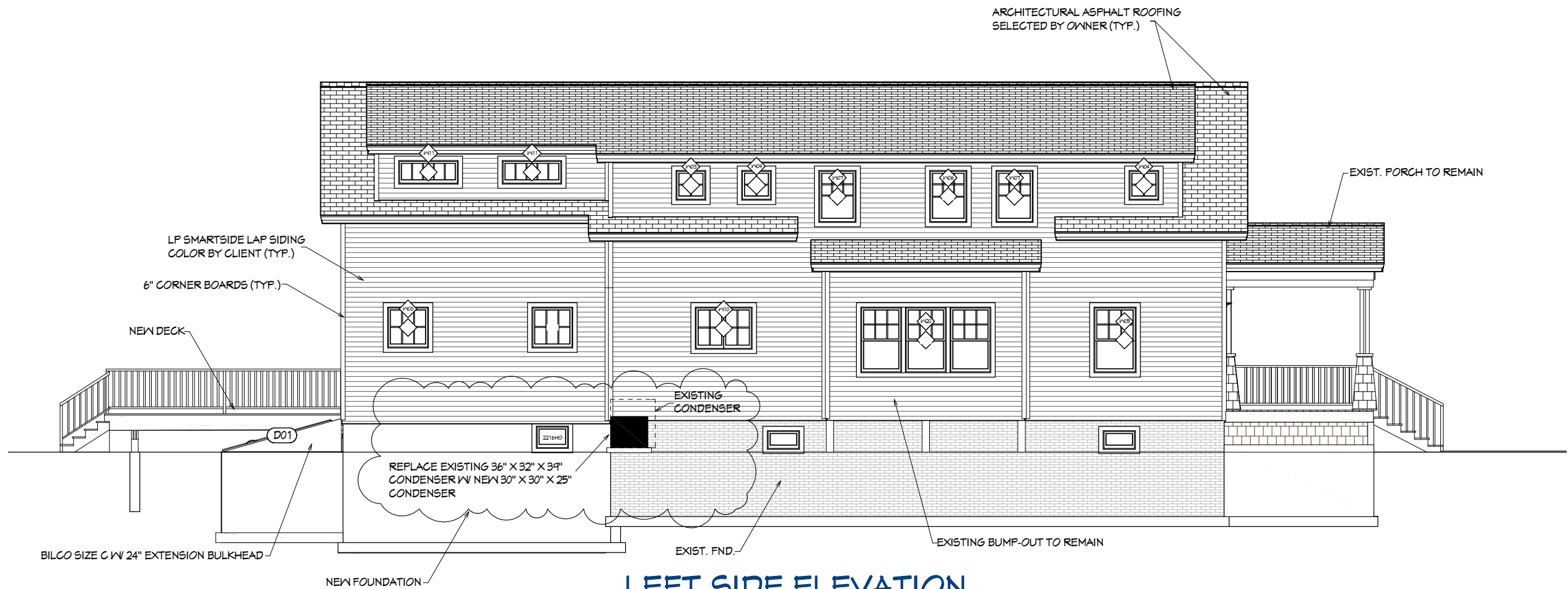
CLIENT:  
SREBNIK RESIDENCE  
129 ALDRICH ROAD  
PORTSMOUTH, NH

DATE:  
2/1/2023

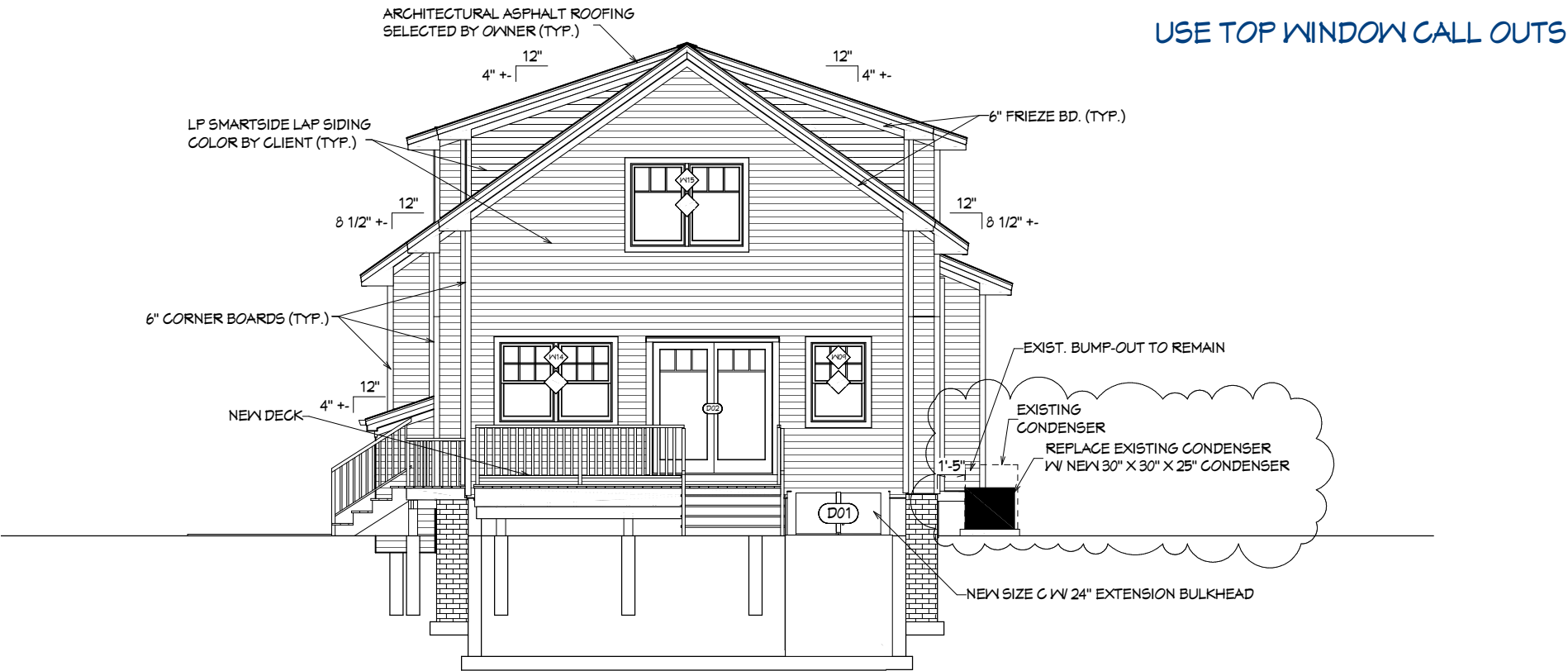
SCALE:

SHEET:

S-13



LEFT-SIDE ELEVATION



REAR ELEVATION

USE TOP WINDOW CALL OUTS

ELEVATIONS FOR WINDOWS

### III. NEW BUSINESS

- I. The request of the **RTM Trust and Ryan T Mullen and Heidi E K Trustees (Owners)**, for property located at **253 Odiorne Point Road** whereas relief is needed for the installation of a mechanical unit which requires the following: 1) Variance from Section 10.515.14 to allow the mechanical unit to be located closer to a street than the principal structure. Said property is located on Assessor Map 224 Lot 10-19 and lies within the Single Residence A (SRA) District. (LU-23-11)

#### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Living Unit	<b>Install generator</b>	Primarily residential
<u>Lot area (sq. ft.):</u>	87,300	87,300	43,650 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	87,300	87,300	43,650 min.
<u>Street Frontage (ft.):</u>	>400	>400	150 min.
<u>Lot depth (ft.):</u>	100	100	200 min.
<u>Front Yard (ft.):</u>	30	30	30 min.
<u>Secondary Yard (ft.):</u>	90	90	30 min.
<u>Right Yard (ft.):</u>	>250	>250	20 min.
<u>Rear Yard (ft.):</u>	40	40	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%)</u>	3	3	10 max.
<u>Open Space Coverage (%)</u>	>50	>50	50 min.
<u>Parking</u>	OK	OK	1.3
<u>Estimated Age of Structure:</u>	2000	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Building Permit



## Neighborhood Context



## Previous Board of Adjustment Actions

No previous BOA history found.

## Planning Department Comments

The applicant is requesting relief to allow for the installation of an AC condenser located closer to a street than the primary structure (Section 10.520 of the [Zoning Ordinance](#)). Section 10.515.14 is 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.*

## 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.*

## 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.



# CITY OF PORTSMOUTH NH LAND USE APPLICATION ATTACHMENT

## 253 ODIORNE POINT ROAD, PORTSMOUTH, NH

**PROJECT NARRATIVE:** The residential property and single-family structure located at 253 Odiorne Point Road in Portsmouth, New Hampshire (NH) was constructed in the year 2000 and most recently purchased in November of 2022. The heating, ventilation, and air conditioning (HVAC) mechanical systems of the structure were original and were at the end of their useful life. The HVAC mechanical system is being replaced with a 20 SEER (seasonal energy efficiency ratio) Bosch heat pump system, which is powered by electricity only. A Viessman water heater/boiler powered by liquified petroleum gas (LPG) will provide backup heat to the HVAC mechanical system in extremely low temperatures when the Bosch heat pumps are not considered to be efficient. It's estimated the Bosch heat pump mechanical system will provide HVAC to the structure 95% of the time, but the Bosch heat pump mechanical system is powered by electricity only therefore a power outage would render the Bosch heat pump HVAC mechanical system unusable. Consequently, the property owner respectfully requests approval from the City of Portsmouth to permanently install a 26 kilowatt Generac residential backup LPG fueled generator to provide backup electric power directly to the structure's electrical system during an electricity power outage. The 26 kilowatt Generac generator is 48" long by 25" wide by 29" high (specification document will be attached) and is rated for 67 decibels (dB) at 23 feet. According to the inverse square law, it can be shown that for each doubling of distance from a point source, the sound pressure level decreases by approximately 6dB. The closest residential structure to the proposed location of the generator is 119 Gosport Road at 110 feet. That said, if an individual was standing at the edge of the structure located at 119 Gosport Road, they would be subjected to an approximate dB level of 28, which per the American Academy of Audiology, would sound soft like a whisper to faint like leaves rustling. Please see the below American Academy of Audiology chart regarding the levels of noise in dB as a reference.

LEVELS OF NOISE In decibels (dB)		
<b>PAINFUL &amp; DANGEROUS</b>		
Use hearing protection or avoid	140	• Fireworks • Gun shots • Custom car stereos (at full volume)
	130	• Jackhammers • Ambulances
<b>UNCOMFORTABLE</b>		
Dangerous over 30 seconds	120	• Jet planes (during take off)
<b>VERY LOUD</b>		
Dangerous over 30 minutes	110	• Concerts (any genre of music) • Car horns • Sporting events
	100	• Snowmobiles • MP3 players (at full volume)
	90	• Lawnmowers • Power tools • Blenders • Hair dryers
Over 85 dB for extended periods can cause permanent hearing loss.		
<b>LOUD</b>		
	80	• Alarm clocks
	70	• Traffic • Vacuums
<b>MODERATE</b>		
	60	• Normal conversation • Dishwashers
	50	• Moderate rainfall
<b>SOFT</b>		
	40	• Quiet library
	30	• Whisper
<b>FAINT</b>		
	20	• Leaves rustling

**OCTOBER IS NATIONAL AUDIOLOGY AWARENESS MONTH  
AND NATIONAL PROTECT YOUR HEARING MONTH**  
Visit [www.HowsYourHearing.org](http://www.HowsYourHearing.org) to learn more about audiology and hearing loss.

Think you may have a hearing loss? Click on the "Find an Audiologist" link of the Web site to locate and set up an appointment with an audiologist in your area to get your hearing tested.



## **CITY OF PORTSMOUTH NH LAND USE APPLICATION ATTACHMENT 253 ODIORNE POINT ROAD, PORTSMOUTH, NH**

The residential property and single-family structure located at 253 Odiorne Point Road in Portsmouth has two (2) unique features. The first unique feature is that nearly the entire structure is located within the 100 foot Wetlands Buffer, which can prove challenging when maintaining, improving, and renovating the structure to include it's building envelope and mechanical systems while also protecting the structure from damage resulting from storm water runoff and collection. A screen shot (Exhibit #1) of the City of Portsmouth MapGeo satellite view of the property, which includes the Wetlands line and the 100 foot Wetlands buffer (both colored green) was inserted below for reference.

**Exhibit #1, City of Portsmouth MapGeo Satellite View of 253 Odiorne Point Road**





## **CITY OF PORTSMOUTH NH LAND USE APPLICATION ATTACHMENT 253 ODIORNE POINT ROAD, PORTSMOUTH, NH**

Immediately west of the structure is the driveway, which is separated from the Wetlands by a rock retaining wall. There is a small area (outlined below in red) of grass adjacent to the structure and the driveway, but the entire portion of that small grass area is within the one hundred (100) foot Wetlands buffer, and placing a generator there would require a Wetland conditional use permit. Furthermore, a significant portion of that small grass area is located within twenty-five (25) feet of the edge of the Wetland and mechanical systems are not permitted in that area per the Zoning Ordinance, Section 10.1016 Permitted Uses, Subsection (6). Additionally, the pedestrian door to the garage as well as windows positioned south of the garage doors along the west wall of the structure do not allow for the appropriate sixty (60) inches of clearance required when positioning a generator along the edge of the structure. To complicate matters, snow removal from the driveway into that small grass area would prove problematic to any mechanical item positioned anywhere within the small grass area. A photograph (Exhibit #2) of the west side of the residence was inserted below for reference. The air conditioning condenser in the photograph has been removed and will be replaced with a Bosch heat pump, which will be relocated to the east side of the structure for the same reasons as identified above.

**Exhibit #2, Photograph of the East Side of 253 Odiorne Point Road**





## **CITY OF PORTSMOUTH NH LAND USE APPLICATION ATTACHMENT 253 ODIORNE POINT ROAD, PORTSMOUTH, NH**

Immediately south of the structure is a patio and garden area, which is prone to storm water runoff and collection because the grade of that area is only six (6) to twelve (12) inches above the wetlands and standing water. The building envelope adjacent to the grade sustained significant water damage resulting from years of mismanaged storm water runoff and collection. The placement of any mechanical systems to include a generator in the area south of the structure would not be feasible primarily due to the risk of storm water damage, which would also pose a safety risk relating to electrocution, but secondarily because there are numerous doors and windows positioned along the entire south side of the structure, which would prevent a feasible and suitable location to permanently install a generator. Photographs (Exhibit #3) of the south side of the structure depicting storm water runoff and collection as well as improperly positioned soil/patio grade levels at and above the building envelope siding were inserted below for reference.

### **Exhibit #3, Photographs of the South Side of City of 253 Odiorne Point Road**



**Storm Water Runoff  
And Collection**



**Improperly Positioned  
Soil/Patio Grade Levels  
At And Above Siding**

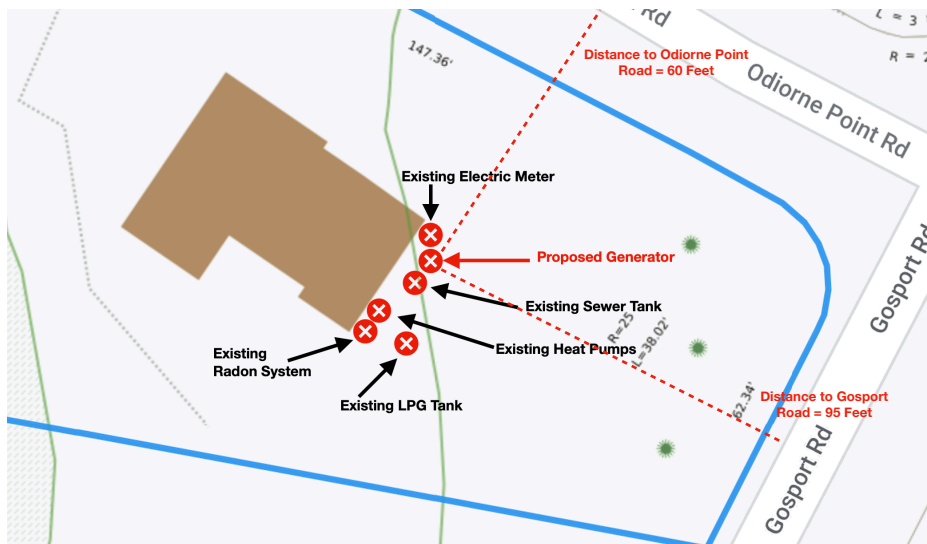
## CITY OF PORTSMOUTH NH LAND USE APPLICATION ATTACHMENT 253 ODIORNE POINT ROAD, PORTSMOUTH, NH

The east side of the structure is an ideal location for the existing and proposed mechanical equipment. There are no doors on the east side of the structure and the windows are positioned well above grade. There are no storm water runoff or collection problems on the east side of the structure. The existing electric meter is affixed to the east side of the structure. The existing radon pump and vent are affixed to the east side of the structure. The existing sewer tank is buried along the east side of the structure. The existing LPG tank is buried along the east side of the structure. The new Bosch heat pumps are positioned along the east side of the structure as detailed in approved building permit BLDG-22-1035 and approved mechanical permit PMGR-23-65. Furthermore, the existing shrubs and trees in the Spring and Summer seasons (Exhibit #4) make it nearly impossible to view the existing mechanical systems from any vantage point and the property owner anticipates planting additional shrubs and fencing if necessary to obscure the proposed generator. Consequently, the east side of the structure is an ideal location for the proposed generator to be permanently installed. Specifically, it's proposed the generator be permanently installed in the northern portion of the east side of the structure with the recommended clearances from the other mechanical systems and the windows. The installation location of the generator will be approximately sixty (60) feet from Odiorne Point Road and ninety-five (95) feet from Gosport Road. Please see the below Exhibit #5 for the approximate locations of the existing mechanical equipment identified above as well as the proposed location of the generator and the approximate distances to Odiorne Point Road and Gosport Road.

### Exhibit #4, Existing Shrubs and Trees in Spring and Summer Seasons



### Exhibit #5, Locations of Existing Mechanical Equipment and Proposed Generator



# **CITY OF PORTSMOUTH NH LAND USE APPLICATION ATTACHMENT**

## **253 ODIORNE POINT ROAD, PORTSMOUTH, NH**

Unfortunately, a second unique feature of the property and structure is that it's considered a corner lot by the City of Portsmouth therefore per the Zoning Ordinance Section 10.515 Measurement Rules, Subsection 10.515.11, "For a corner lot or through lot, all requirements related to the front yard shall apply to the principal front yard and all secondary front yards." Furthermore, Zoning Ordinance Section 10.515 Measurement Rules, Subsection 10.515.14 states that, "A power generator "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 north and east sides of the structure are considered the "front of the principle structure" and the backup electric generator cannot be permanently installed "closer to the street than the front of the principal structure" on the east side of the structure. Consequently, and per The City of Portsmouth, NH Zoning Ordinance Section 10.233 Variances, the property owner of 253 Odiorne Point Road in Portsmouth, NH respectfully requests The City of Portsmouth, NH Zoning Board approve a variance from the terms of the Zoning Ordinance with regard to Section 10.515 Measurement Rules, 10.515.10 Yards, 10.515.14 and allow the property owner to permanently install a backup electric generator along the east side of the residence as referenced in Exhibit 5 where all of the external existing mechanical systems and utilities are currently located.

Based on the above detailed information and the justifications provided below, the property owner believes the below referenced five (5) "Analysis Criteria" from section 10.223 of the Zoning Ordinance have been met. Per Section 10.233.20, The Board may authorize upon appeal in specific cases a variance from the terms of this Ordinance. In order to authorize a variance, the Board must find that the variance meets all of the following criteria:

1. 10.233.21: The variance will not be contrary to the public interest
  - Justification: An approved variance to install the generator between the structure and the existing shrubs and trees would make it nearly impossible to view the generator from any vantage point during the Spring and Summer seasons. Furthermore, the property owner anticipates planting additional shrubs and fencing if necessary to completely obscure the generator from view during the Fall and Winter seasons. Additionally, the generator is rated for 67 decibels (dB) at 23 feet and the closest neighbor at 119 Gosport Road would be subjected to an approximate dB level of 28, which per the American Academy of Audiology, would sound soft like a whisper to faint like leaves rustling. Consequently, an approved variance to install and operate the generator will not be contrary to the public interest.
2. 10.233.22: The spirit of the Ordinance will be observed
  - Justification: An approved variance to install the generator in the only feasible location on the east side of the property would satisfy a reasonable social and moral consensus the property owner is not installing the generator in the literal front yard of the property where it may be construed to disfigure the landscape in clear violation of the letter of the Zoning Ordinance.
3. 10.233.23: Substantial justice will be done
  - Justification: An approved variance to install the generator will allow the property owner to enjoy full use of the structure and its mechanical systems during a power outage thereby satisfying a standard of fairness and allowing for a substantial justice to be done.
4. 10.233.24: The values of surrounding properties will not be diminished
  - Justification: An approved variance to install the generator will not diminish the values of the surrounding properties because its unlikely anyone not physically located on the property will see and/or hear the generator and consequently pass negative judgement regarding the values of the surrounding properties.
5. 10.233.25: Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.
  - Justification: If the provisions of the Zoning Ordinance were literally enforced, the property owner would be unable to install the generator and operate the generator during power outages. Consequently, the property owner would be unable to efficiently cool and heat the structure, which would result in unnecessary physical and financial hardship.



# 26 kW

# GENERAC®

## GUARDIAN® SERIES Residential Standby Generators Air-Cooled Gas Engine

26 kW

1 of 6

### INCLUDES:

- True Power™ Electrical Technology
- Two-line multilingual digital LCD Evolution™ controller (English/Spanish/French/Portuguese)
- 200 amp service rated transfer switch available
- Electronic governor
- Standard Wi-Fi® connectivity
- System status & maintenance interval LED indicators
- Sound attenuated enclosure
- Flexible fuel line connector
- Natural gas or LP gas operation
- 5 Year limited warranty
- Base fascia
- Listed and labeled for installation as close as 18 in (457 mm) to a structure.\*  
*\*Must be located away from doors, windows, and fresh air intakes and in accordance with local codes.*

### Standby Power Rating

G007290-0, G007291-0 (Aluminum - Bisque) - 26 kW 60 Hz



QUIET-TEST™



Note: CETL or CUL certification only applies to unbundled units and units packaged with limited circuit switches. Units packaged with the Smart Switch are ETL or UL certified in the USA only.

## FEATURES

- **INNOVATIVE ENGINE DESIGN & RIGOROUS TESTING** are at the heart of Generac's success in providing the most reliable generators possible. Generac's G-Force engine lineup offers added peace of mind and reliability for when it's needed the most. The G-Force series engines are purpose built and designed to handle the rigors of extended run times in high temperatures and extreme operating conditions.
- **TRUE POWER™ ELECTRICAL TECHNOLOGY:** Superior harmonics and sine wave form produce less than 5% Total Harmonic Distortion for utility quality power. This allows confident operation of sensitive electronic equipment and micro-chip based appliances, such as variable speed HVAC systems.
- **TEST CRITERIA:**
  - ✓ **PROTOTYPE TESTED**
  - ✓ **SYSTEM TORSIONAL TESTED**
  - ✓ **NEMA MG1-22 EVALUATION**
  - ✓ **MOTOR STARTING ABILITY**
- **MOBILE LINK® CONNECTIVITY:** FREE with select Guardian Series Home standby generators, Mobile Link Wi-Fi allows users to monitor generator status from anywhere in the world using a smartphone, tablet, or PC. Easily access information such as the current operating status and maintenance alerts. Users can connect an account to an authorized service dealer for fast, friendly, and proactive service. With Mobile Link, users are taken care of before the next power outage.
- **SOLID-STATE, FREQUENCY COMPENSATED VOLTAGE REGULATION:** This state-of-the-art power maximizing regulation system is standard on all Generac models. It provides optimized FAST RESPONSE to changing load conditions and MAXIMUM MOTOR STARTING CAPABILITY by electronically torque-matching the surge loads to the engine. Digital voltage regulation at  $\pm 1\%$ .
- **SINGLE SOURCE SERVICE RESPONSE** from Generac's extensive dealer network provides parts and service know-how for the entire unit, from the engine to the smallest electronic component.
- **GENERAC TRANSFER SWITCHES:** Long life and reliability are synonymous with GENERAC POWER SYSTEMS. One reason for this confidence is that the GENERAC product line is offered with its own transfer systems and controls for total system compatibility.

GENERAC  
PROMISE



\*Assembled in the USA using domestic and foreign parts.

## 26 kW

## Features and Benefits

**Engine**

- Generac G-Force design
- “Spiny-lok” cast iron cylinder walls
- Electronic ignition/spark advance
- Full pressure lubrication system
- Low oil pressure shutdown system
- EPA Certified for non-emergency applications
- High temperature shutdown

Maximizes engine “breathing” for increased fuel efficiency. Plateau honed cylinder walls and plasma moly rings help the engine run cooler, reducing oil consumption and resulting in longer engine life.

Rigid construction and added durability provide long engine life.

These features combine to assure smooth, quick starting every time.

Pressurized lubrication to all vital bearings means better performance, less maintenance, and longer engine life. Now featuring up to a 2 year/200 hour oil change interval.

Shutdown protection prevents catastrophic engine damage due to low oil.

Allows unit to be used for demand response applications.

Prevents damage due to overheating.

**Generator**

- Revolving field
- Skewed stator
- Displaced phase excitation
- Automatic voltage regulation
- UL 2200 listed

Allows for a smaller, light weight unit that operates 25% more efficiently than a revolving armature generator.

Produces a smooth output waveform for compatibility with electronic equipment.

Maximizes motor starting capability.

Regulating output voltage to  $\pm 1\%$  prevents damaging voltage spikes.

For your safety.

**Transfer Switch (if applicable)**

- Fully automatic
- NEMA 3R
- Integrated load management technology
- Remote mounting

Transfers vital electrical loads to the energized source of power.

Can be installed inside or outside for maximum flexibility.

Capability to manage additional loads for efficient power management.

Mounts near an existing distribution panel for simple, low-cost installation.

**Evolution™ Controls**

- AUTO/MANUAL/OFF illuminated buttons
- Two-line multilingual LCD
- Sealed, raised buttons
- Utility voltage sensing
- Generator voltage sensing
- Utility interrupt delay
- Engine warm-up
- Engine cool-down
- Programmable exercise
- Smart battery charger
- Main line circuit breaker
- Electronic governor

Selects the operating mode and provides easy, at-a-glance status indication in any condition.

Provides homeowners easily visible logs of history, maintenance, and events up to 50 occurrences.

Smooth, weather-resistant user interface for programming and operations.

Constantly monitors utility voltage, setpoints 65% dropout, 80% pick-up, of standard voltage.

Constantly monitors generator voltage to verify the cleanest power delivered to the home.

Prevents nuisance start-ups of the engine, adjustable 2-1500 seconds from the factory default setting of 5 seconds by a qualified dealer.

Verifies engine is ready to assume the load, setpoint approximately 5 seconds.

Allows engine to cool prior to shutdown, setpoint approximately 1 minute.

Operates engine to prevent oil seal drying and damage between power outages by running the generator for 5 minutes every other week. Also offers a selectable setting for weekly or monthly operation providing flexibility and potentially lower fuel costs to the owner.

Delivers charge to the battery only when needed at varying rates depending on outdoor air temperature. Compatible with lead acid and AGM-style batteries.

Protects generator from overload.

Maintains constant 60 Hz frequency.

**Unit**

- SAE weather protective enclosure
- Enclosed critical grade muffler
- Small, compact, attractive

Sound attenuated enclosures ensure quiet operation and protection against mother nature, withstanding winds up to 150 mph (241 km/h). Hinged key locking roof panel for security. Lift-out front for easy access to all routine maintenance items. Electrostatically applied textured epoxy paint for added durability.

Quiet, critical grade muffler is mounted inside the unit to prevent injuries.

Makes for an easy, eye appealing installation, as close as 18 in (457 mm) away from a structure.

**Installation System**

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>● 14 in (35.6 cm) flexible fuel line connector</li> </ul> | <p>Listed ANSI Z21.75/CSA 6.27 outdoor appliance connector for the required connection to the gas supply piping.</p> |
| <ul style="list-style-type: none"> <li>● Integral sediment trap</li> </ul>                       | <p>Meets IFGC and NFPA 54 installation requirements.</p>   |

**Connectivity (Wi-Fi equipped models only)**

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>● Ability to view generator status</li> </ul>                       | <p>Monitor generator with a smartphone, tablet, or computer at any time via the Mobile Link application for complete peace of mind.</p> |
| <ul style="list-style-type: none"> <li>● Ability to view generator Exercise/Run and Total Hours</li> </ul> | <p>Review the generator's complete protection profile for exercise hours and total hours.</p>   |
| <ul style="list-style-type: none"> <li>● Ability to view generator maintenance information</li> </ul>      | <p>Provides maintenance information for the specific model generator when scheduled maintenance is due.</p>                             |
| <ul style="list-style-type: none"> <li>● Monthly report with previous month's activity</li> </ul>          | <p>Detailed monthly reports provide historical generator information.</p>   |
| <ul style="list-style-type: none"> <li>● Ability to view generator battery information</li> </ul>          | <p>Built in battery diagnostics displaying current state of the battery.</p>  |
| <ul style="list-style-type: none"> <li>● Weather information</li> </ul>                                    | <p>Provides detailed local ambient weather conditions for generator location.</p>   |



### 26 kW

#### Generator

Model	G007290-0 G007291-0 (26 kW)
Rated maximum continuous power capacity (LP)	26,000 Watts*
Rated maximum continuous power capacity (NG)	22,500 Watts*
Rated voltage	240
Rated maximum continuous load current – 240 volts (LP/NG)	108.3 / 93.8
Total Harmonic Distortion	Less than 5%
Main line circuit breaker	110 amp
Phase	1
Number of rotor poles	2
Rated AC frequency	60 Hz
Power factor	1.0
Battery requirement (not included)	12 Volts, Group 26R 540 CCA minimum or Group 35AGM 650 CCA minimum
Unit weight (lb / kg)	518 / 235
Dimensions (L x W x H) in / cm	48 x 25 x 29 / 121.9 x 63.5 x 73.7
Sound output in dB(A) at 23 ft (7 m) with generator operating at normal load**	67
Sound output in dB(A) at 23 ft (7 m) with generator in Quiet-Test™ low-speed exercise mode**	57
Exercise duration	5 min

#### Engine

Engine type	GENERAC G-Force 1000 Series
Number of cylinders	2
Displacement	999 cc
Cylinder block	Aluminum w/ cast iron sleeve
Valve arrangement	Overhead valve
Ignition system	Solid-state w/ magneto
Governor system	Electronic
Compression ratio	9.5:1
Starter	12 VDC
Oil capacity including filter	Approx. 1.9 qt / 1.8 L
Operating rpm	3,600
Fuel consumption	
Natural gas	ft <sup>3</sup> /hr (m <sup>3</sup> /hr)
1/2 Load	188 (5.32)
Full Load	333 (9.43)
Liquid propane	ft <sup>3</sup> /hr (gal/hr) [L/hr]
1/2 Load	75 (2.06) [7.78]
Full Load	132 (3.63) [13.73]

Note: **Fuel pipe must be sized for full load.** Required fuel pressure to generator fuel inlet at all load ranges - 3.5–7 in water column (0.87–1.74 kPa) for NG, 10–12 in water column (2.49–2.99 kPa) for LP gas. For BTU content, multiply ft<sup>3</sup>/hr x 2500 (LP) or ft<sup>3</sup>/hr x 1000 (NG). For Megajoule content, multiply m<sup>3</sup>/hr x 93.15 (LP) or m<sup>3</sup>/hr x 37.26 (NG).

#### Controls

Two-line plain text multilingual LCD	Simple user interface for ease of operation.
Mode buttons: AUTO	Automatic start on utility failure. Weekly, Bi-weekly, or Monthly selectable exerciser.
MANUAL	Start with starter control, unit stays on. If utility fails, transfer to load takes place.
OFF	Stops unit. Power is removed. Control and charger still operate.
Ready to Run/Maintenance messages	Standard
Engine run hours indication	Standard
Programmable start delay between 2–1500 seconds	Standard (programmable by dealer only)
Utility Voltage Loss/Return to Utility adjustable (brownout setting)	From 140-171 V / 190-216 V
Future Set Capable Exerciser/Exercise Set Error warning	Standard
Run/Alarm/Maintenance logs	50 events each
Engine start sequence	Cyclic cranking: 16 sec on, 7 rest (90 sec maximum duration).
Starter lock-out	Starter cannot re-engage until 5 sec after engine has stopped.
Smart Battery Charger	Standard
Charger Fault/Missing AC warning	Standard
Low Battery/Battery Problem Protection and Battery Condition indication	Standard
Automatic Voltage Regulation with Over and Under Voltage Protection	Standard
Under-Frequency/Overload/Stepper Overcurrent Protection	Standard
Safety Fused/Fuse Problem Protection	Standard
Automatic Low Oil Pressure/High Oil Temperature Shutdown	Standard
Overcrank/Overspeed (@ 72 Hz)/rpm Sense Loss Shutdown	Standard
High Engine Temperature Shutdown	Standard
Internal Fault/Incorrect Wiring protection	Standard
Common external fault capability	Standard
Field upgradable firmware	Standard

Rating definitions – Optional Standby: Applicable for supplying backup power for the duration of the utility power outage with correct maintenance performed.

\* No overload capability is available for this rating. (All ratings in accordance with BS5514, ISO3046, UL2200, and DIN6271). Maximum kilovolt amps and current are subject to and limited by such factors as fuel BTU/Megajoule content, ambient temperature, altitude, engine power and condition, etc. Maximum power decreases approximately 3.5% for each 1,000 ft (304.8 m) above sea level and approximately 1% for each 10 °F (6 °C) above 60 °F (16 °C). \*\*Sound levels are taken from the front of the generator. Sound levels taken from other sides of the generator may be higher depending on installation parameters. U.S. EPA certified for non-emergency applications.

## 26 kW

## Switch Options

### Service Rated Automatic Transfer Switch Features

- Intelligently manages up to four air conditioner loads with no additional hardware.
- Up to eight additional large (240 VAC) loads can be managed when used in conjunction with Smart Management Modules (SMMs).
- Electrically operated, mechanically-held contacts for fast, clean connections.
- Main breakers are rated for 80% continuous load.
- 2-pole, 250 VAC contactors.
- Service equipment rated, dual coil design.
- Rated for both aluminum and copper conductors.
- Main contacts are silver plated or silver alloy to resist welding and sticking.
- NEMA/UL 3R aluminum outdoor enclosure allows for indoor or outdoor mounting flexibility.

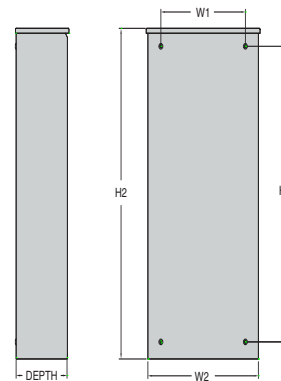
Model	G007291-0 (26 kW)
No. of poles	2
Current rating (amps)	200
Voltage rating (VAC)	120/240, 1Ø
Utility voltage monitor (fixed)*	
-Pick-up	80%
-Dropout	65%
Return to Utility*	Approx. 13 sec
ETL or UL listed	Standard
Enclosure type	NEMA/UL 3R
Circuit breaker protected	22,000
Lug range	250 MCM - #6

\*Function of Evolution controller  
Exercise can be set to weekly, bi-weekly, or monthly

### Dimensions

200 Amps 120/240, 1Ø Open Transition Service Rated					
	Height		Width		Depth
	H1	H2	W1	W2	
in	26.8	30.1	10.5	13.5	6.9
cm	67.95	76.43	26.67	34.18	17.5

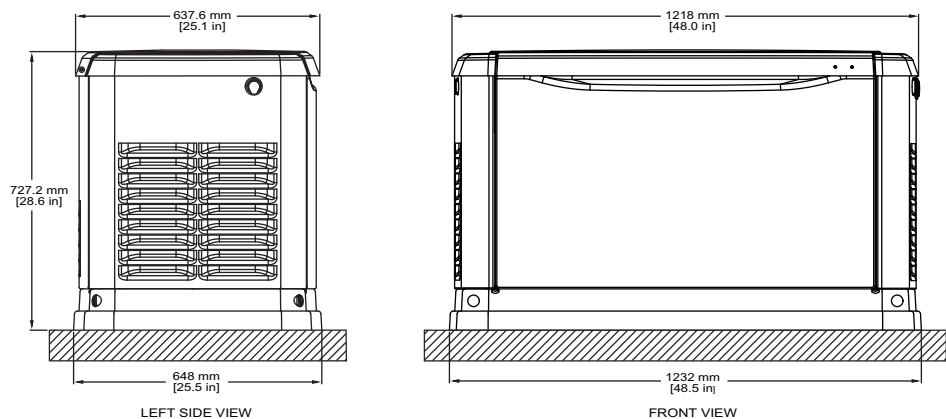
Wire Ranges		
Conductor Lug	Neutral Lug	Ground Lug
250 MCM - #6	350 MCM - #6	2/0 - #14



Model #	Product	Description
G007101-0	Battery Pad Warmer	Pad warmer rests under the battery. Recommended for use if temperature regularly falls below 0 °F (-18 °C). (Not necessary for use with AGM-style batteries).
G007102-0	Oil Warmer	Oil warmer slips directly over the oil filter. Recommended for use if temperature regularly falls below 0 °F (-18 °C).
G007103-1	Breather Warmer	Breather warmer is for use in extreme cold weather applications. For use with Evolution controllers only in climates where heavy icing occurs.
G005621-0	Auxiliary Transfer Switch Contact Kit	The auxiliary transfer switch contact kit allows the transfer switch to lock out a single large electrical load that may not be needed. Not compatible with 50 amp pre-wired switches.
G007027-0 - Bisque	Fascia Base Wrap Kit	The fascia base wrap snaps together around the bottom of the new air-cooled generators. This offers a sleek, contoured appearance as well as offering protection from rodents and insects by covering the lifting holes located in the base.
G005703-0 - Bisque	Touch-Up Paint Kit	If the generator enclosure is scratched or damaged, it is important to touch up the paint to protect from future corrosion. The touch-up paint kit includes the necessary paint to correctly maintain or touch up a generator enclosure.
G006485-0	Scheduled Maintenance Kit	Generac's scheduled maintenance kit provides all the items necessary to perform complete routine maintenance on a Generac automatic standby generator (oil not included).
G007005-0	Wi-Fi LP Tank Fuel Level Monitor	The Wi-Fi enabled LP tank fuel level monitor provides constant monitoring of the connected LP fuel tank. Monitoring the LP tank's fuel level is an important step in verifying the generator is ready to run during an unexpected power failure. Status alerts are available through a free application to notify users when the LP tank is in need of a refill.
G007000-0 (50 amp) G007006-0 (100 amp)	Smart Management Module	Smart Management Modules (SMM) are used to optimize the performance of a standby generator. It manages large electrical loads upon startup and sheds them to aid in recovery when overloaded. In many cases, using SMM's can reduce the overall size and cost of the system.
G007169-0 - 4G LTE G007170-0 - Wi-Fi/ Ethernet	Mobile Link® Cellular Accessories	The Mobile Link family of Cellular Accessories allow users to monitor generator status from anywhere in the world, using a smart phone, tablet, or PC. Easily access information such as the current operating status and maintenance alerts. Users can connect an account with an authorized service dealer for fast, friendly, and proactive service. With Mobile Link, users are taken care of before the next power outage.
G007220-0 - Bisque	Base Plug Kit	Base plugs snap into the lifting holes on the base of air-cooled home standby generators. This offers a sleek, contoured appearance, as well as offers protection from rodents and insects by covering the lifting holes located in the base. Kit contains four plugs, sufficient for use on a single air-cooled home standby generator.

## Dimensions & UPCs

Model	UPC
G007290-0	696471087307
G007291-0	696471087314



Dimensions shown are approximate. See installation manual for exact dimensions. DO NOT USE THESE DIMENSIONS FOR INSTALLATION PURPOSES.

### III. NEW BUSINESS

- J. The request of the **Black Heritage Trail of New Hampshire (Owner)**, for property located at **222 Court Street** whereas relief is needed to install one 24 by 28 foot mural and one 3 by 2 foot sign which requires the following: 1) Variance from Section 10.1251.10 to allow max aggregate sign area of 686 square feet where 36 square feet is allowed; 2) Variance from Section 10.1251.20 to allow max area for individual sign of 678 where 16 square feet is allowed; and 3) Variance from Section 10.1242 to allow more than one sign on building facing the street; and 4) Variance from Section 10.1271 to allow a sign on the side of the building that is not facing a street. Said property is located on Assessor Map 116 Lot 33 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-23-12)

#### Existing & Proposed Conditions

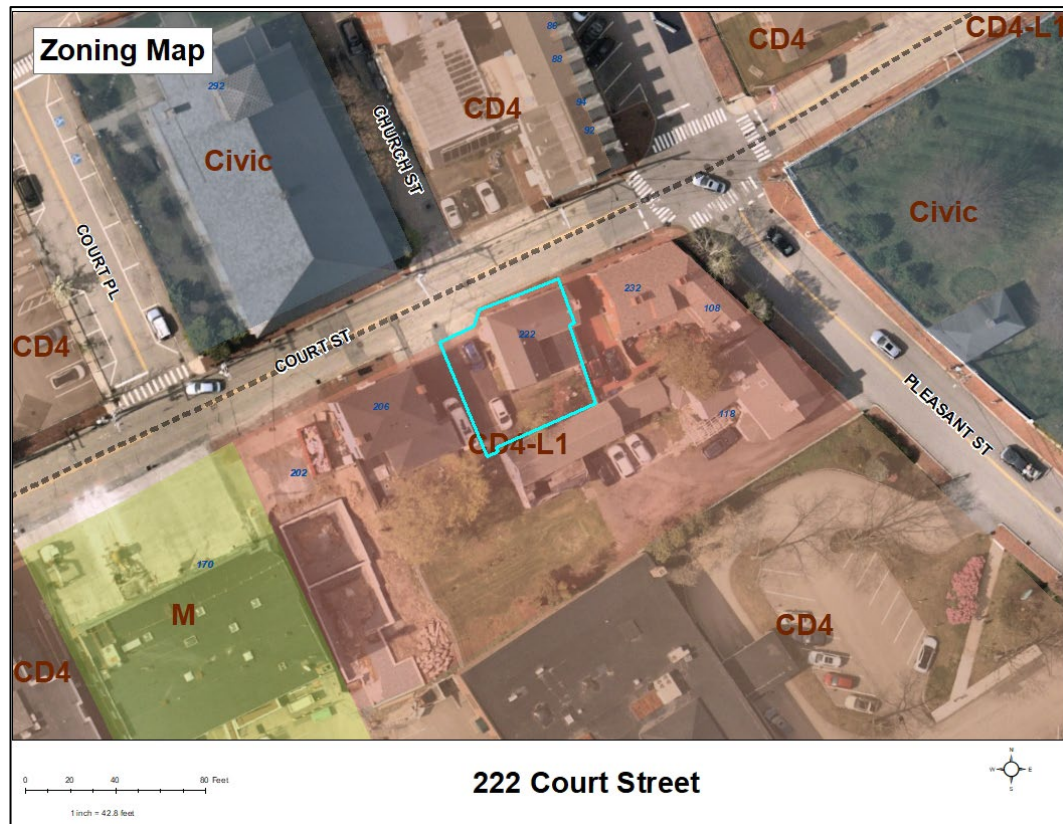
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Office Building	<b>Mural Creation</b>	Mixed uses
<u>Aggregate Sign Area (sq. ft.):</u>	7.25	686	36 Max.
<u>Individual Sign (sq. ft)</u>	4.75, 2.5	678	16
<u>Front Wall Sign Area (sq. ft.):</u>	7.25	678	16 Max.
<u>Left side wall Sign Area (sq. ft.):</u>	0	672	0 Max.
<u>Signs on a building facing the street:</u>	2	3	1 Max.
<u>Signs on side of building not facing the street:</u>	0	1	0 Max.
<u>Estimated Age of Structure:</u>	1749	<b>Variance request(s) shown in red.</b>	

#### Other Permits/Approvals Required

- Historic District Commission Review
- Sign Permit



## Neighborhood Context



## Previous Board of Adjustment Actions

May 30, 1974 – the Board granted the application to construct a one-story addition, 17.5' x 16', to the rear of the existing building.

## Planning Department Comments

Applicant is proposing to create a mural on the left side of the building which will be accompanied by smaller sign located on the front of the building describing the details of the piece.

The mural is considered a sign in the [Zoning Ordinance](#), and would be added to the structure along with the additional sign and the existing signs for the property. The proposed project is located on a side of the structure that is not facing the street, exceeds the maximum size for an individual sign, exceeds the maximum area of total signs for the property, and to allow more than one sign on the side of the building facing the street.

If granted approval, staff recommends the Board consider the following stipulation:

- 1. The exact image and locations may change as a result of Historic District Commission review and approval.**

## 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.*

## 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.



## **Application for Zoning Variance to Allow for a Mural to be Installed on the West Façade of 222 Court Street Honoring Ona Marie Judge Staines**

### **Details of the Property and Proposed Signage Dimensions**

Property: 222 Court Street | Assessor Map: 116/0033

Property: CD4 L1 | Historic District

Sign District: 2

Variances: 1) From Section 10.1251.10:

- Max Allowed aggregate sign area shall be no greater than (1) square foot x Frontage (36 feet)
- Building frontage is approximately 36 feet x 1 = 36 square feet.
- Existing Aggregate Sign Area = 8 square feet, two small signs on the street front
- New Aggregate Sign Area, West facade = 692 square feet
- Total New Aggregate Sign Area, North and West facades = 702 square feet

2) From Section 10.1251.20

- Max Allowed sign area for individual signs = 16 square feet

Existing signage to remain: Black Heritage Trail of New Hampshire: 22" x 32"

- Proposed Individual Sign Areas:

24 x 28 feet on the west façade – image

3 x 2 feet on the north façade (facing Court St.) Explanatory text for mural

3) From Section 10.1242:

- Each side of a building facing a street may have one wall sign above the ground floor

4) From Section 10.1271:

- To allow signs on a side of a building that does not face a street or does not have a public entrance

### **Introduction**

222 Court Street is located opposite the intersection of Church St., and Court St, approximately 50 feet west of the intersection of Pleasant Street and Court Street. It is located immediately behind the South Church, and is three doors

east of the Portsmouth Fire Station, and approximately 300 yards east of the African Burying Ground Memorial Park. The two-story building contains retail and office spaces, and has signs on its north façade indicating the approximate date of the building (which has been proven to be false according to recent research for a Preservation Assessment which is nearing completion), and a sign for the Black Heritage Trail of New Hampshire. One office on the 2<sup>nd</sup> floor is occupied by Rain for the Sahel and Sahara; they have no signage on the exterior of the building.

The Black Heritage Trail of New Hampshire, Inc., is the owner of the building. In the summer of 2021, we first became aware of the plans of the nonprofit organization, The Friends of Ruth Blay Inc. (FoRB) to promote the installation of murals throughout the city “to bring awareness of the lives of some of the prominent women of Portsmouth’s storied history.”

The project, entitled “History Through Art” began with the installation of a mural at 165 Court Street honoring Ruth Blay (1737-1768). The FoRB created a list of other potential honorees, and sent out a call to see if property owners or organizations would be interested in being the locations for murals highlighting these women’s lives. BHTNH began discussions with FoRB about a mural honoring Ona Judge Staines (ca. 1773-1848) for the west façade of our 222 Court Street headquarters in September of 2021.

Since those initial discussions, BHTNH has been focusing on further study of the 222 Court Street building, including a Preservation Assessment. Architectural historian Mae Williams, architect Tracy Kozak, and preservation masonry specialist John Wastrom were enlisted as the team to conduct the Preservation Assessment, and at this time their work is nearly complete. The conclusion is that building was built sometime between 1797 and 1819, and that the west brick façade was probably added to the building in response to fire damage (visible in the roof framing) incurred during the 1813 fire which originated across the street and spread to the north and east. The west brick façade shows evidence of many layers of paint, and is of a type of brick originally intended to be painted. Our proposal is to paint this wall again, to preserve the brick and previous layers of paint evidence in accordance with John Wastrom’s specifications. The proposed mural of Ona Judge Staines would be painted on the west façade on top of that protective layer of paint.

Ona Judge Staines was born enslaved, and was held in bondage by Martha Washington, wife of president George Washington. Ona Judge was a skilled seamstress, and the daughter of Martha Washington’s personal enslaved servant. She traveled with the Washingtons to Philadelphia during George’s presidency, returning home to Mount Vernon just often enough to subvert Pennsylvania laws that allowed any enslaved person resident in the state for 6 months, to obtain their freedom. While in Philadelphia Ona became acquainted with many free Black people who gave her guidance on how she might escape to freedom.

Whilst they were packing up to go to Virginia [at the end of Washington’s presidency], I was packing to go, I didn’t know where; for I knew that if I went back to Virginia, I never should get my liberty. I had friends among the colored people of Philadelphia, had my things carried there before hand and left while they were eating dinner. (Granite Freeman, May 22, 1845, as reprinted in Erica Armstrong Dunbar, *Never Caught: The Washingtons’ Relentless Pursuit of their Runaway Slave Ona Judge* (New York: Simon & Schuster, 2017).)

Ona Judge was carried to Portsmouth on a ship captained by John Bolles. She had been here for several months when she was recognized, probably by young Elizabeth Langdon, John Langdon’s daughter, and the Washingtons learned where she was. The Washingtons sent their nephew, Burwell Bassett, to Portsmouth to convince her to return. By this time Ona had married to a mariner who was at sea, Jack Staines and had an infant daughter. Warned about Bassett’s intention to force her to return to Virginia, she and her infant child left Portsmouth to reside with a free Black family in Greenland, NH. Although the Washingtons tried many times to find her, and her whereabouts known to members of the community, she was never caught and remained free until the end of her life. Her story is one of immense courage and tells us of the strength of the free Black community in Portsmouth in the late 18<sup>th</sup> and early 19<sup>th</sup> centuries.

The Portsmouth Zoning Ordinance categorizes murals as signage. 222 Court Street is in a mixed commercial residential district and is in a Character District and Sign District 3. This request is made to ask for a variance of the required dimensional standards for signage within Sign District 3. The proposed location of the mural is not on a wall with street frontage.

The Ordinance's stated purpose is to "...maintain and enhance the character of the city's commercial districts and residential neighborhoods and to protect the public from hazardous and distracting displays." The proposed mural does not meet all of the dimensional and location requirements, but we believe that it will be an image that enhances the experience of people visiting Portsmouth because of its rich history. The image itself will be stunning, but simple.

Please refer to the following pages relevant project information and variance criteria. Artist's renderings are submitted as an appendix.

The Black Heritage Trail is proposing to, in conjunction with the restoration of the east brick façade of our headquarters at 222 Court Street, add a mural honoring Ona Marie Judge Stains to that façade.

### **Variance Criteria**

1. The variance is not contrary to the public interest.

2. The spirit of the ordinance is observed.

- Eclectic mixed-use neighborhood surrounded by office, retail, municipal and residential uses
- Variety of signage, graphics, statues, and memorials in the immediate area (Fire Station and African Burial Grounds memorials)
- Enhances the character of the city by promoting its rich history
- Location not on street frontage does not create a hazard or distraction

3. Substantial justice is done.

- There is no obvious harm to the public that would be created by the installation of this mural (see above comments for 1. and 2.)
- There would be a benefit to the public due to the educational components of the mural.
- There would be a benefit to the public because the mural will be a significant work of art designed and installed by a local NH artist who has done other murals throughout the state.

4. The values of surrounding properties are not diminished.

- This is a mixed-use neighborhood with an abundance of signage, colorful graphics, statues, memorials, etc.
- The addition of this mural into the neighborhood context would not alter or diminish the property values within the surrounding neighborhood. We have been in contact with the residents of the house that directly faces the mural, and they are delighted that we are doing the mural and believe that it will enhance the value of their property.

5. Literal enforcement of the ordinance would result in unnecessary hardship.

Unnecessary hardship means:

Because of special conditions of the property that distinguish it from other properties in the area:

- a. There is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property; and
- b. The proposed use is a reasonable one.

Alternatively, unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance.

- Building location between two residential buildings, means that observers/passersby would only encounter the mural as they come within about 30 feet of the building.
- The purpose of the mural is too be viewed and be comprehensible from the public way – due to the west façade's proximity to the abutter's driveway, all text describing the significance of the mural we propose to include on a small 2 x 3 foot sign to be placed on the front (North) façade of the building adjacent to the current sign identifying the building as the headquarters of the Black Heritage Trail of NH. The small sign identifying the original date the building was built will be removed because the information has been found to be incorrect.
- Rate of travel on Court Street is relatively slow. The mural will not create a hazard. In fact, it may help by slowing traffic a bit more.
- The proposed use is reasonable and fits harmoniously with the surrounding context.
- The proposed mural will be a significant addition to the public art within the City of Portsmouth, and will be harmonious with other examples of public art on Court Street, including public sculpture at the Fire Station and the African Burying Ground Memorial Park, as well as the mural honoring Ruth Blay. It will also become a significant part of the legacy and commemoration of the Portsmouth's 400<sup>th</sup> effort.

Black Heritage Trail of New Hampshire, 222 Court Street, Portsmouth, NH 03801



*Figure 1.* Black Heritage Trail of NH (BHTNH) Headquarters, 222 Court Street, Portsmouth, NH. Often referred to as the Arthur Browne House, the building has now been determined to have been built probably about 1810 by or Joseph S. Ayres. The Arthur Browne house stood directly across the street, and was one of the first houses to be destroyed by the Portsmouth fire of 1813. The hastily applied brick façade on the east side of 222 Court Street was probably constructed after the fire. Evidence of charring in the roof timbers suggests that the house was partially damaged by the 1813 fire.



*Figure 2.* BHTNH HQ, East façade, showing brick end wall and one story addition.



*Figure 3.* BHTNH HQ, East façade, showing full brick end wall and chimney of original section of building. The mural probably would be installed on the front lower quarter of the façade (lower right in this photo), but we do not yet have the artist's full proposal. Note evidence of surviving paint on the soft brick, suggesting that the wall was painted for at least a century after it was built, and possibly longer.







