

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.

March 21, 2023

AGENDA

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| <p><u>PLEASE NOTE:</u> ITEMS (III.) C. THROUGH (III.) L. WILL BE HEARD AT THE WEDNESDAY, MARCH 29, 2023 BOARD OF ADJUSTMENT MEETING IN CONFERENCE ROOM A</p> |
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I. APPROVAL OF MINUTES

- A. Approval of the February 22, 2023 minutes.
- B. Approval of the February 28, 2023 minutes.

II. OLD BUSINESS

- A. **1 Raynes Avenue - Appeal** - As ordered by the Superior Court on February 2, 2023, the Board will “determine, in the first instance, whether it has jurisdiction over the issues presented” by Duncan MacCallum (Attorney for the Appellants) in the January 14, 2022 appeal of the December 16, 2021 decision of the Planning Board for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** which granted the following: a) site plan approval b) wetlands conditional use permit; and c) certain other, miscellaneous approvals, including an approval related to valet parking. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)
- B. The request of **635 Sagamore Development LLC (Owner)**, for property located at **635 Sagamore Avenue** whereas relief is needed to remove existing structures and construct 4 single family dwellings which requires the following: 1) A Variance from Section 10.513 to allow four free-standing dwellings where one is permitted. 2) A Variance

from Section 10.521 to allow a lot area per dwelling unit of 21,198 square feet per dwelling where 43,560 square feet is required. Said property is located on Assessor Map 222 Lot 19 and lies within the Single Residence A (SRA) District. (LU-22-209)

- C. The request of **Nissley LLC (Owner)**, for property located at **915 Sagamore Avenue** whereas relief is needed to demolish the existing building and construct new mixed-use building which requires the following: 1) A Variance from Section 10.440 to allow a mixed-use building where residential and office uses are not permitted. 2) A Variance from Section 10.1113.20 to allow parking to be located in the front yard and in front of the principal building. 3) A Variance from Section 10.1114.31 to allow 2 driveways on a lot where only one is allowed. Said property is located on Assessor Map 223 Lot 31 and lies within the Waterfront Business (WB) District. (LU-22-229)
- D. The request of **The Griffin Family Corporation (Owners)**, and **LoveWell Veterinary Services, LLC (Applicant)**, for property located at **738 Islington Street, Unit 1B** (previously advertised as 800 Islington 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 155 Lot 13 (previously advertised as Assessor Map 154 Lot 1) and lies within the Character District 4-W (CD4-W) District. (LU-23-8)
- E. 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)

III. NEW BUSINESS

- A. The rehearing of the request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for construction of a 518 square foot garage addition and expansion of front dormer which requires the following: 1) A variance from Section 10.521 to allow a 14 foot front yard where 19 feet is required per Section 10.516.10. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District. (LU-22-199)
- B. The request of **William Camarda (Owner)**, for property located at **809 State Street** whereas relief is needed to Extend the existing deck which requires the following: 1) Variances from Section 10.521 to allow a) a 10 foot rear yard where 20 feet is required;

and b) 46% building coverage where 35% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 145 Lot 11 and lies within the General Residence C (GRC) District. (LU-23-6)

THE FOLLOWING ITEMS WILL BE HEARD ON WEDNESDAY, MARCH 29, 2023

- C. The request of **Michael Knight (Owner)**, for property located at **55 Mangrove Street** whereas relief is needed to replace existing 6 foot chain link fence with 8 foot cedar fence which requires the following: 1) A Variance from Section 10.515.13 to allow an 8 foot fence on the rear and side lot lines where a 6 foot maximum is allowed. Said property is located on Assessor Map 219 Lot 7 and lies within the Single Residence B (SRB) District. (LU-23-15)
- D. The request of **John T McDonald III and Mary R McDonald (Owners)**, for property located at **74 Sunset Road** whereas relief is needed for an addition of a chimney bump out which requires the following: 1) Variances from Section 10.521 to allow a) a 6.5 foot left yard where 10 feet is required; and b) 26.6% building coverage where 20% is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be expanded, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 153 Lot 14 and lies within the Single Residence B (SRB) District. (LU-22-182)
- E. The request of **Katherine L Cook (Owner)**, for property located at **199 Clinton Street** whereas relief is needed to demolish the existing dwelling and construct a new single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 4,917 where 7,500 is required for each; b) 54 feet of frontage where 100 feet is required; c) a 4 foot front yard where 15 feet is required; d) a 9 foot right side yard where 10 feet is required; and e) 28% building coverage where 25% is the maximum allowed. Said property is located on Assessor Map 159 Lot 26 and lies within the General Residence A (GRA) District. (LU-23-23)
- F. The request of **Joshua Wyatt and Erin Hichman (Owners)**, for property located at **196 Aldrich Road** whereas relief is needed to demolish existing garage and construct new garage and construct new addition over existing side porch which requires the following: 1) Variances from Section 10.521 to allow a) a secondary front yard of 3 feet where 30 feet is required; b) a 6 foot rear setback where 10 feet 7 inches is required; c) 23% building coverage where 20% is the maximum allowed. 2) A Variance from Section 10.571 to allow an accessory structure to be 10 feet from the front lot line and located in the front yard. 3) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to

the requirements of the Ordinance. Said property is located on Assessor Map 153 Lot 25 and lies within the Single Residence B (SRB) District. (LU-23-24)

- G.** The request of **Colmax LLC (Owner)**, for property located at **411 The Hill #6-14 (411 Deer Street)** whereas relief is needed to convert building into a single family dwelling which requires the following: 1) A Variance from Section 10.642 to allow residential use on the ground floor in the Downtown Overlay District where is not permitted. 2) a Variance from Section 10.5A41.10A to allow a house in the Downtown Overlay District where it is not permitted. Said property is located on Assessor Map 118 Lot 26-1 and lies within the Character District 4-L1 (CD4-L1) in the downtown Overlay District.. (LU-23-21)
- H.** The request of **Mark N Franklin and Julie S Franklin (Owners)**, for property located at **168 Lincoln Avenue** whereas relief is needed for demolition of the existing detached garage and porch and construction of a new attached garage and wrap-around porch which requires the following: 1) Variances from Section 10.521 to allow a) a 7.5 foot front yard where 15 feet is required; b) a 9 foot secondary front yard where 15 feet is required; c) 38% building coverage where 25% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 113 Lot 6 and lies within the General Residence A (GRA) District. (LU-23-25)
- I.** The request of **Murdock Living Trust (Owner)**, for property located at **15 Lafayette Road** whereas relief is needed to subdivide one lot into two lots which requires the following: 1) A Variance from Section 10.521 to allow 73.8 feet of continuous street frontage where 100 feet is required for the remainder lot. Said property is located on Assessor Map 152 Lot 2 and lies within the General Residence A (GRA) and Historic District. (LU-23-26)
- J.** The request of **Seacoast Management Consulting LLC (Owner)**, for property located at **3 Walton Alley** whereas relief is needed to add an AC unit and relocate landing and steps which requires the following: 1) A Variance from Section 10.515.14 to allow a 1 foot side setback where 10 feet is required. 2) A Variance from Section 10.521 to allow a) an 8.5 foot setback where 25 feet is required; and b) 38.5% building coverage where 30% is the maximum allowed. Said property is located on Assessor Map 103 Lot 20 and lies within the General Residence B (GRB) and Historic District. (LU-23-22)
- K.** The request of **Jared J Saulnier (Owner)**, for property located at **4 Sylvester Street** whereas relief is needed to subdivide one lot into two lots which requires the following: Proposed Lot 1: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 9,645 square feet where 15,000 is required for each; b) 80 feet of lot depth where 100 feet is required; and c) a 9 foot right side yard where 10 feet is

required. Proposed Lot 2: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling unit of 6,421 square feet where 15,000 is required for each; b) 40 feet of street frontage where 100 feet is required; and c) 80 feet of lot depth where 100 feet is required. Said property is located on Assessor Map 232 Lot 36 and lies within the Single Residence B (SRB) District. (LU-23-27)

- L.** The request of **Cynthia Austin Smith and Peter (Owners)**, for property located at **9 Kent Street** whereas relief is needed to demolish the existing two-family and construct a single-family dwelling which requires the following: 1) Variances from Section 10.521 to allow a) a lot area and lot area per dwelling of 5,000 square feet where 7,500 square feet is required for each; b) 53% building coverage where 25% is the maximum allowed; c) a 4.5 foot rear yard where 20' is required; d) a 0.5 foot side yard where 10 feet is required; e) a 0 foot front yard where 11 feet is allowed under Section 10.516.10; and f) a 9.5 foot secondary front yard where 13 feet is allowed under Section 10.516.10. 2) A Variance from Section 10.515.14 to allow a 1.5 foot setback for a mechanical unit where 10 feet is required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. (LU-23-28)

IV. OTHER BUSINESS

V. ADJOURNMENT

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

https://us06web.zoom.us/webinar/register/WN_slqimWyEQRuezmgYHEPITQ

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

6:15 P.M. - Non-Public Session (*Conf. Rm. A*)

February 22, 2023

7:00 P.M. - Regular meeting begins

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Paul Mannle; Thomas Rossi (via Zoom); David MacDonald; David Rheaume; Jeffrey Mattson, Alternate

MEMBERS EXCUSED: None.

ALSO PRESENT: Stefanie Casella, Planning Department

**PLEASE NOTE: ITEMS (III.) E. THROUGH J. WILL BE HEARD
AT THE FEBRUARY 28, 2023 BOARD OF ADJUSTMENT MEETING.**

*Mr. Mannle moved to close the 6:15 non-public session, seconded by Mr. Mattson. The motion **passed** by unanimous vote, 7-0.*

Chair Eldridge called the regular meeting to order at 7:03 p.m.

I. APPROVAL OF MINUTES

A. Approval of the January 17, 2023 meeting minutes.

The following amendments to the January 17 minutes were requested:

Page 5, second paragraph, first line: The sentence should read: Mr. Rheaume said Attorney Durbin included a tax map and that he indicated that the property was unfairly burdened by being in the Waterfront Business District because its waterfront was not useful.

Page 12, first line: The sentence should read: He said the public had no outweighing concerns that would make what the applicant was looking for unjust.

Page 10, fifth line from the top: The phrase should read: 'She said the applicant met these criteria'.

Page 12, first line of last paragraph: The sentence should read: Mr. Rossi asked if the addition was being considered as an attached accessory dwelling unit.

*Mr. Mannle moved to **approve** the January 17 minutes as amended, seconded by Mr. MacDonald. The motion **passed** by unanimous roll call vote, 7-0.*

II. OLD BUSINESS

A. Request for Rehearing – 32 Boss Avenue. (LU-22-217)

DECISION OF THE BOARD

*Vice-Chair Margeson moved to **deny** the request for rehearing. She said the ZBA did not make any errors or misapprehend any law or fact in denying the variance. Mr. Rheume seconded.*

Vice-Chair Margeson said the application was for a use variance for an art studio that is not permitted in the zoning ordinance, and the ZBA is unable to give a use variance for something that is not allowed in the zoning ordinance. Mr. Rheume said the applicant did not make any arguments that indicated that the board made an error or that there was information that wasn't presented at the time of the application. He said the applicant did include additional information and/or changes to his application but that it would be a new application that the board could take under review and determine whether Fisher v. Dover applied. He said the applicant also made an argument as to the fairness of the decision and whether the ordinance should better reflect an art studio type of use. Mr. Rheume said he believed that the ordinance was remiss on that count but that the current zoning was in place and thought the board correctly made a suitable interpretation of the zoning ordinance. Mr. Mattson said the request for rehearing made an interesting point regarding the fact that the zoning ordinance should probably allow art classes and favor the arts in regard to the Master Plan, but it didn't address the issue of hardship with that particular property, which was the main concern, and that had not changed. Chair Eldridge said she had the same thoughts as Mr. Rheume and Mr. Mattson and would support the motion.

*The motion to deny **passed** by a vote of 7-0.*

B. Request for Reconsideration of Rehearing Request – 67 Ridges Court. (LU-22-199)

Mr. Macdonald recused himself as an abutter.

DECISION OF THE BOARD

*Vice-Chair Margeson moved to **reconsider** the request for rehearing, based on the arguments raised in Attorney Phoenix's memo about Mr. MacDonald not recusing himself as an abutter. Mr. Rheume seconded the motion.*

Vice-Chair Margeson said Mr. MacDonald recused himself and a new vote could be taken on the matter. Mr. Rheume agreed that it was the correct approach.

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

Mr. Rheume said the applicant previously came before the board and was denied, after which the applicant reworked the application and was denied based on the decision that Fisher v. Dover applied. Mr. Rheume said he thought it was a close vote of an undersized board at the time and it was brought up that Fisher v. Dover should not apply, which was the motion that was made and was the opposite of the normal motion that would be made to invoke Fisher v. Dover. He said it was further compounded by the nature of the discussion surrounding that motion, so he did not think the applicant got a full understanding of the board's reasons for invoking Fisher v. Dover. He said the application should be reheard to allow the board to look at it again and definitively decide and explain their thinking.

*Mr. Rheume moved that the board **grant** the Request for Rehearing to be held at the March 21 meeting, seconded by Mr. Mattson.*

Vice-Chair Margeson said the meeting was held on a day that she was ill, but that she watched the video and that she would vote in favor of the motion in this instance to remove any procedural errors for purposes of this application. Chair Eldridge agreed.

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

Mr. Macdonald resumed his voting seat.

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

The petition was postponed to the March meeting. (There was no vote taken).

Mr. Rossi recused himself from the following petition.

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

DECISION OF THE BOARD

Ms. Casella noted that it was a continued discussion to decide among three options, as noted on the City Staff memo. Vice-Chair Margeson said the application was heard at the previous meeting and that it was tabled or postponed for the purpose of allowing the applicant to return. She said the board had three options as to which way they would want the application to be heard. She said she objected at the previous meeting to the application being postponed or tabled because she hadn't felt that it met the criteria for that. She said she believed that the board should vote the application up or down based on the information that was presented to them. She said the application did not lack sufficient information to take action, which would be the third option of denying without prejudice. She said the board should choose Option 2 on the information presented at the January 17 meeting and vote to approve with stipulations or deny the application. Mr. Rheume said he didn't understand what the defect was in the motion that was made. He said that, in similar circumstances when the board reconsidered an application, it was a noticed item on the agenda and they voted at that point in time whether or not they felt that the public hearing should be reopened. He asked if the applicant had resubmitted anything. Ms. Casella said the applicant resubmitted information to the City Staff after consulting with the Legal Department. She said it was advised that the board not be provided with that submission until a decision was made on whether the board wanted to see that new information. Mr. Mattson said he was inclined to not re-open the public hearing because he didn't see the benefit. He suggested Option 3, denying without prejudice, but was open to the discussion for Option 2 to make a decision on it that night. He said Option 3 was more in line with the intention of tabling the vote.

Assistant City Attorney Trevor McCourt was present and explained that the vote taken to table the application occurred after the public hearing closed, and that was the reason City Staff interpreted the vote to mean that the application would be postponed, which would preclude a public hearing or acceptance of any new information on the application. He said the applicant did submit more information but the board could not accept that information unless there was a public hearing that would be to be noticed. He said Option 3 would provide the board the opportunity to deny without prejudice and would get around the Fisher v. Dover issue. He said the applicant could resubmit a similar application but that it would require a finding of fact by the board that there is some other additional information that the board needs to reach in its conclusion. Mr. Rheume asked what the Legal Department thought would have been a better motion to avoid this situation. Attorney McCourt said the public hearing could have been reopened at that time and then the application could have been continued to a certain date, which would have avoided the need to re-notice it, but the public hearing was closed, and to reopen it and would require a suspension of the rules. Vice-Chair Margeson said she interpreted it at that time of the public hearing that the board would have denied the application without prejudice because they made the finding that they lacked the sufficient information to take action. She said her objection is that she didn't think the board lacked sufficient information and that she felt that the applicant was encouraged to revise the application based on the comments the board made while they were deliberating, and she thought that was improper.

Mr. Rheume said he didn't think the issue was the lack of sufficient information because it would have implied that the applicant had not met all the zoning board requirements for information to be submitted for the board to have full and proper understanding of the case. He said he believed that the applicant provided the board with sufficient information and thought the concern was that there was a recognition

that there was some merit to the case, but there were elements of it that were unsatisfactory and could be remedied by the applicant. He said another opportunity could have been given to the applicant to make the necessary changes to get an approval, but it was unclear if those changes would constitute something that wouldn't invoke Fisher v. Dover if the board denied it. He said it seemed an opportunity to get to the right answer, however. He said in the past, the board had done that and the application would be re-noticed, and if the applicant provided new information, the application would be reheard.

*Vice-Chair Margeson **moved** to make a decision on the information presented at the January 17 meeting (Option 2) and that the board should vote to approve with stipulations or deny the application. Mr. Mannle seconded the motion.*

Vice-Chair Margeson referred to her previous comments. She said she felt like this was not a situation where the board lacked sufficient information and she thought it was the most appropriate thing for the board to vote on the application as it was presented. Mr. Mannle concurred, saying the applicant came before the board with a full packet and the board had all the information to vote. He said the applicant wasn't there to take the temperature of the board, like at a work session, and that it would be unfair to other applicants if the board let the applicant make adjustments to get approval. He said he favored Option 2. Mr. Rheume said it wasn't as black and white. Due to the sensitivities associated with the Waterfront Business District and the questions the applicant was bringing forward in terms of its appropriate applicability of his specific application, Mr. Rheume thought there was enough concern to give the application additional opportunity. He said the board was there to work with the applicant and deal with the shades of gray involved with each application and to treat each one individually.

*The motion **passed** by a vote of 5-1, with Mr. Rheume voting in opposition.*

*Vice-Chair Margeson then moved to **postpone** voting on the application to the March 21 meeting so that all the members could re-read the applicant's materials, rewatch the deliberations, and make an informed decision based on the presentation and discussions. Mr. Rheume seconded the motion.*

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

III. NEW BUSINESS

Mr. Rossi resumed his voting seat.

- A. The request of **Valway Living Trust and William P and Elizabeth Valway Trustees (Owners)**, for property located at **51 Spinney Road** whereas relief is needed to construct a new detached garage which requires the following: 1) Variance from Section 10.573.20 to allow a) 4 foot side yard setback where 10 feet is required; and b) 4 foot rear yard setback where 10 feet is required. 2) Variance from Section 10.521 to allow 27% building coverage where 20% is required. Said property is located on Assessor Map 171 Lot 9 and lies within the Single Residence B (SRB) District. (LU-22-235)

SPEAKING TO THE PETITION

The owner William Valway was present. He reviewed the petition and criteria and said the criteria would be met. He noted that the garage would replace the existing shed.

In response to Mr. Rheume's questions, Mr. Valway said 80 feet was the circumference around the building and was intended to show the garage's location. He said there would not be a straight line into the garage because there was a maple tree in the way. He said he couldn't meet the 10-ft requirement for square footage at the back of the property line because it would be too close to the tree, and if he flipped the garage door opening, it would impact the garden. He said a substantial storage area was needed because the fieldstone foundation could not store anything, and having basic storage in the garage along with room for one car would be ideal. Vice-Chair Margeson asked if the garage's depth would accommodate the car. Mr. Valway agreed and said it would be 16 feet deep.

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. Rheume said he was torn because it was new construction and the board wanted to hold to the setback requirements unless there were compelling reasons, like a hardship or something unique. He said the applicant indicated that the tree and garden were unique factors but was asking for both a garage and a storage area to replace a small storage area. He said one of the applicant's arguments was that the lot was small, which was a hardship. Mr. Rheume said there were all kinds of small lots in Portsmouth and most didn't have garages. He said, however, that the abutting properties would have light and air if the garage were allowed. He also noted that the garage was essentially a two-car garage but only half would be used for a car but thought it could be smaller and more respectful of the setbacks. Mr. Mattson said the lot was less than a third of the size of the required minimum lot size for a single-family residence, so it was smaller than was intended for that zone. He said it would be great if the structure could be placed on one of the two setback requirements, but he saw the challenges with that. He said the neighbors expressed support but he agreed with the point of it being new construction and hoped it could be achieved without needing relief. Vice-Chair Margeson said she also had concerns and but thought the applicant addressed them. She noted that the property was smaller than the adjoining ones and said she was inclined to grant the variance request but thought the structure could be smaller. Mr. Rossi said it was a close call but thought it was a large variance being requested with regard to building coverage percentage and lot line clearance. He said he felt that the proposal overburdened the property for what it was and didn't think the property had the capacity to take on the garage in that location. He said he would not support the variance request. It was further discussed. Chair Eldridge said she would support the application because she felt the change in coverage from 20 to 27 percent wasn't that significant. She said even though the proposed garage was bigger than the shed, it would be far enough from the nearby buildings and would not affect the neighbors' light and air.

DECISION OF THE BOARD

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

Mr. Rheume said granting the variances would not be contrary to the public interest because the garage would be situated at the rear side of the property and wouldn't be seen by the public. He said the overall coverage, while somewhat higher than allowed by the ordinance, would be much smaller than what the ordinance envisioned compared to some of the neighbors' properties that had a fair amount of street frontage taken up by buildings with attached garages. He said a passerby would not perceive the lot to be overburdened with too much structure, and there was positive reinforcement received from some of the abutters. He noted that the old growth tree and garden would not be impacted as well. He said granting the variances would meet the spirit of the ordinance because the applicant's total building coverage even at 27 percent would be perceived as much less than what could be allowed with a much bigger lot. He noted other factors that were discussed in terms of setback and said there would be no negative impact on the neighbors' light and air. He said granting the variances would do substantial justice because it would weigh in favor of the applicant. He said there wasn't enough weight to say that the applicant couldn't build the somewhat large square footage but not terribly high garage/storage area, so he thought what the applicant was asking for was reasonable. He said granting the variances would not diminish the values of surrounding properties and would probably increase them because a garage was a highly sought-after amenity. He said the property had characteristics relative to the others around it and in the zone that made for a hardship because the lot was smaller than what was expected by the zone and the 20 percent requirement for coverage envisioned a much larger lot. He said other hardship factors were the existing trees, which forced the garage backwards, and even if the applicant submitted a smaller plan from a footprint standpoint, it would probably still be shoved back toward the back property line. He said the only sunlit space in the backyard for gardening and other activities would be negatively impacted if the garage were pushed ten feet away. He said making the garage smaller might help, but there wasn't enough to say that pushing it away from that property line would really accomplish anything further than allowing the applicant the relief.

Mr. Mannle concurred. He said he was familiar with the lot, and given the size of it and what it was zoned for, he felt it was in itself a hardship. He said the building coverage didn't bother him because even a 10'x10' shed would require a variance. He said all the setbacks were four feet instead of 10, and he didn't see that it was a big problem given the nature of the lot and the support of the direct abutter.

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

- B. The request of Paulsen Family Revocable Trust 2017 Christian Paulsen and Anja Paulsen Trustees (Owners), for property located at 55 Thornton Street** whereas relief is needed to construct a second story addition over the existing first floor which requires the following: 1) Variance from Section 10.521 to allow an 8.5 foot front yard setback where 15 feet is required. 2) Variance from Section 10.321 to allow the extension and enlargement of a non-conforming structure. Said property is located on Assessor Map 143 Lot 19 and lies within the General Residence A (GRA) District. (LU-23-2)

SPEAKING TO THE PETITION

The applicant Christian Paulsen was present to speak to the petition. He said he wanted to add two small bedrooms above the first floor. He reviewed the criteria and said they were met.

Mr. Rheaume referred to the image in the packet and asked if the dark-shaded area was the only thing encroaching into the setbacks. Mr. Paulsen pointed it out on the drawing and highlighted the existing and proposed items.

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 requests as presented, seconded by Mr. Mattson.*

Mr. Mannle said it was not a big ask, given the criteria, and that it would make the second floor less conforming. He said granting the variances would not be contrary to the public interest because the public would not be affected. He noted that there were three letters of support from the direct abutters. He said granting the variance requests would observe the spirit of the ordinance. He said the applicant had already redone some of the house and had a growing family. He said substantial justice would be done because it would make the second floor addition less nonconforming. He said granting the variances would not diminish the values of surrounding properties and in this case would be an improvement because it would be a bigger house with a brand new structure and would enhance the surrounding properties. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the property had special conditions that distinguish it from others in the area, and so on. He said the applicant had a growing family and just wanted to increase the size of his house, and the only thing holding him back was the setback rules, and the lot was already nonconforming. For those reasons, he said the variances should be granted.

Mr. Mattson concurred and said it seemed like the reason for the variance was because it was an existing home built before the zoning existed, and it was nonconforming and not realistic to pick up and move the house. He said anything that would have been done to the house would require a variance, and in this case, what's being asked for would make it less nonconforming. He said the hardship was that the existing home was built before zoning and that it made sense to approve the application.

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

- C. The request of **Michiyo Bardong and Shawn Bardong (Owners)**, for property located at **39 Dearborn Street** whereas relief is needed to construct a second story over the existing 1.5 story building, remove and expand the front porch, and remove and expand the existing mudroom on the eastern side of the structure which requires the following: 1) Variance from Section 10.521 to allow a) 2 foot rear yard where 20 feet is required; and b) 9 foot side yard where 10 feet is required. 2) Variance from Section 10.321 to allow the extension and

enlargement of a non-conforming structure. Said property is located on Assessor Map 140 Lot 3 and lies within the General Residence A (GRA) and Historic District. (LU-23-5)

SPEAKING TO THE PETITION

Project architect Amy Dutton was present on behalf of the applicant and reviewed the petition and the criteria in detail.

Mr. Rossi noted that there was a stipulation for the view easement area in the April 21, 2015 variance, and Ms. Dutton showed the property on the map and the view easement was discussed. Mr. Rheume asked if the existing foundation could withhold the structure, and Ms. Dutton agreed and said the intent was to reuse the existing foundation. Mr. Rheume asked why a Dutch colonial architecture was chosen and if the applicant felt that it provided an advantage in terms of the overall height. Ms. Dutton said she did. She said the house didn't look like a cape and that the attic space would only go up four feet. She said the current roof system was failing. Mr. Rheume said it could be rebuilt. He asked what the cape's historic background was. Ms. Dutton said it was an 1800s cottage. Mr. Rheume asked about the reference to a Dearborn Lane behind the property that wasn't a city street and if there were any easements on Lots 140-5 and -7 that would indicate that it was something the city retained rights to. Mr. Bardong said there was no street and that the land went into the backyard of the Planet Fitness gym. He said there was no Dearborn Lane and that their street was Dearborn Street.

Vice-Chair Margeson asked if the connector would go into the shed. Ms. Dutton said it would touch the shed but that it couldn't be accessed. She said the shed was like a garage but wasn't currently used like one and the intention was to have one car parked in it. Mr. Bardong said it had a poured foundation and could fit a small car. Vice-Chair Margeson asked if the easement was done when the variance was granted for that. Mr. Bardong said there was a long history of the previous owner storing his equipment and the shed sat in the easement and obstructed views. Vice-Chair Margeson said she was confused about the fact that the right yard was two feet, but the variance granted for the shed noted that it would be five feet. Ms. Dutton said the two feet was the rear.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Michael Stasiuk of 33 Dearborn Street said he was the abutting neighbor with the shed issues. He said he had close neighbors on three sides of his house and a tiny backyard. He said the applicant stated that there was no encroachment, but the mudroom designed to be an addition was built toward his house. He said the proposal also indicated that the changes could not be seen by the neighbors, but the roofline would be seven feet higher, which would block his view of the sky from his kitchen window and his sun in the summer. He said he had been firm about the shed being only a storage space and that connecting it to the house was a red flag. He said the addition would impact his view of Mill Pond, and if the house

were seven feet higher, he would be surrounded by houses on all four sides, which would be a hardship. He said he was also surprised that a cape in the Historic District could be turned into a Dutch colonial.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mr. Bardong said his lot coverage was 12.3 to 12.5 percent of the lot and the other houses were built to a hundred percent of their property lines. He said everyone had to deal with hardship because it was a tight neighborhood. He said when he and his wife purchased the property, they knew there were a lot of people around them but didn't know that there was a disagreement around the property and how it impinged on Mr. Stasiuk's view to the pond. He said that was why the view easement was agreed upon and the shed was built. He said the cape had gone through a lot of renovations through the years and the intent for the Dutch colonial was to get more use of the second floor.

Vice-Chair Margeson said she thought Ms. Dutton said the family room would be attached to the shed and it would be open. Mr. Bardong said it would just be attached. Vice-Chair Margeson said that, in terms of the roofline and the existing structure, building a second floor wasn't necessary and the roof could just be fixed. Mr. Bardong said the roof wasn't up to code and that more interior space would be lost to bring it up to code. Ms. Bardong added that the reason for the second floor was because they only had two bedrooms for a family of five and they needed the space in addition to fixing the roof, which was why they wanted to raise the roofline. Vice-Chair Margeson asked when the Bardongs bought the property and was told it was in October 2022.

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

DISCUSSION OF THE BOARD

Mr. Rheume said the applicant was asking for three pieces. One piece was to make the family room the center connection between the shed and the home. He said that just barely crossed over the left-hand property side and was far west from the main home. He said the roofline of that was much lower than the shed and the 2017 addition, so that addition wasn't that concerning and had almost no impact on setbacks and its height relative to neighbors. He said the second piece was the mudroom/entryway, a one-story structure that was slightly nonconforming but would be more conforming. He said the third piece was to expand the original cape vertically 7.5 feet taller than before and replace the traditional gable by a Dutch colonial. He said it would be about 7.5 feet higher than the gable roof and would be the most encroaching portion of what the applicant was asking for. He said it would most affect the other property owners as well. He said the structures on Lots 140-2 and -4 were two-story ones, and Lot 8 was probably not a buildable lot. He said the board wasn't the HDC and agreed with some of the abutter's concerns regarding the nature of the design changes but didn't think the board had purview over the historical aspects. He said he didn't like the look of the proposed structure because it felt more massive than existing, but because of the unique character of the surrounding properties and the issues of light and air and so on, he didn't think there was enough to say that the variances shouldn't be approved.

Vice-Chair Margeson disagreed. She said the general purpose and intent of the zoning ordinance under Section 10.212.6 is the preservation of historic districts and buildings and structures of historical interest and that she did apply that criteria to variance requests to structures within the Historic District. She said

it was a 1700s structure, and raising and putting a Dutch colonial on top of it violated the spirit and intent of the ordinance. She said she found the extension of the family room to the shed made the shed not an accessory structure. She said the applicant said they would not use it or extend it from the family room into the shed, but that made it not an access structure and also violated the 2025 variance application. She said the applicants knew what they wanted when they bought the property in 2022, which weighed on her mind in terms of hardship and necessary reasonable use of the property. She said she would not support the request.

Mr. Mattson said he agreed with both. He said what was being applied for was relative to the setbacks, which were not becoming any more nonconforming. He said the spirit of the ordinance applied to the whole ordinance but the board could give extra weight to what the variance is actually for. He said it was a tough decision and he appreciated the abutter's concerns, but there was no needed variance for height. He said he was also torn about the historic aspect. Mr. Mannle agreed but didn't see the variance requests as a large ask. He said he appreciated the historic aspect of the house but it was an 18th century property, and he asked if that fit in 2023 without reconstruction or renovation, especially for a growing family. He said the roof was failing and the architectural design was for the HDC to decide. He said if the structure was no longer useful, he didn't see the downside to renovating it or building a second story, especially if it was still below the maximum height. Vice-Chair Margeson said the roof could be repaired without getting the second floor. She said the purpose and intent was the preservation of buildings and structures of historic or architectural interest. She said the addition would impact the historic house, and extending the family room would make it no longer an accessory structure. Mr. Rheume said he had strong reservations about the project. He said the zoning ordinance in general talked about preservation and historic districts but he wasn't sure it pointed out where those responsibilities lie. He said if the board saw something that negatively impacted a neighborhood, then he thought the board would have more of a say. He said the HDC was better suited to preserve history.

Mr. Rossi said that, regarding the prior stipulation about the view easement, there was nothing in the proposal encroaching on the view easement, so he thought that was good. He said there may have been ancillary understandings but they didn't result in restrictions to the property. He said as long as the property was not infringing on the view easement, he didn't see it in violation of prior arguments. He said part of preserving historic buildings was to make sure they were still contemporarily useful, and if they ceased to be useful to people who owned and occupied them, they would no longer be preserved and would fall into disrepair, as the applicant's had already started to do. He said there were a lot of ways of looking at the responsibility for preserving historic structures.

DECISION OF THE BOARD

*Vice-Chair Margeson moved to **deny** the variance request. No one seconded.*

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

Mr. Rheume said the board saw a lot of people in Portsmouth who bought property with a pretty view but a less desirable house on it, and then it turned into something quite different than what was there before. He said it was a sign of the prosperity Portsmouth had and that he had regrets about that aspect of the project but was trying to be as fair as he could to the purview of the board. He said granting the

variances would not be contrary to the public interest, noting that two aspects had minimal impacts on encroachment in terms of anything the public could notice. He said it was really the vertical expansion of an existing structure using an existing foundation tight up against one corner of the proposed property, and the total percentage of lot coverage was much smaller than required for the zoning area, so it was the positioning of the home from the 1800s and how the property got formed around it, leaving tight setbacks, which he thought was the most egregious aspect to it. He said the property was well hidden from the public and it was a 7-ft change, and a Dutch colonial felt more imposing than if the roof was simply raised, but the total imposition was not such that it would be outside of what the public would have a greater interest in than the applicant would. He said it would observe the spirit of the ordinance. He said it was a significant change to the required setbacks but it was a very old home on an old property and predated the ordinance. He said it wasn't realistic for the applicant to put the expansion in any other location due to the foundation. He said the two properties around it most affected by the setbacks had characteristics that made the light and air concerns less significant. He said granting the variances would do substantial justice because it was a balancing test of the public's interests, outside of the historic aspects. He said in terms of the board's purview, there were no factors that outweighed the neighboring properties. He said those properties also had tower structures and the applicant's property wasn't close to the side of the properties on Dearborn Street. He said the balancing test was in favor of the applicant. He said granting the variances would not diminish the values of surrounding properties because an improvement would be a positive aspect and there was nothing proposed that would have a negative impact on surrounding properties in terms of their values. He said the main hardship was the foundation that went back a century or more before zoning existed, and he also thought the applicant was benefited by some of the unique nature of the surrounding properties, including their buildability and topography. In the sense of the areas most affected by the vertical expansion, he said there were some things in favor that did distinguish the property from surrounding properties. He said it was a reasonable use for continuing a residential use in a residential neighborhood, and with all those criteria met, he recommended approval. Mr. Mannle concurred and had nothing to add.

Chair Eldridge agreed with Mr. Rheume. She said it was the HDC's scope of approval for the nature and design of the building and that the building didn't have to be compared with anything else in the neighborhood. She said the current building coverage was only 17 percent of the property and still covered a small portion of its lot. Mr. Mattson said there was a view easement in place for the pond also.

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

- D.** The request of **Sean Morin (Owner)**, for property located at **67 Madison Street** whereas relief is needed to construct a 122 square foot covered front porch which requires the following: 1) Variance from Section 10.521 to allow a) 3 foot front yard setback where 5 feet is required; and b) 36% building coverage where 35% is maximum allowed. 2) Variance from Section 10.321 to allow the extension and enlargement of a non-conforming structure. Said property is located on Assessor Map 135 Lot 36 and lies within the General Residence C (GRC) District. (LU-23-4)

Note: Ms. Casella said there was an error in the advertising and the structure was conforming, so Variance 2 wasn't needed.

SPEAKING TO THE PETITION

The applicant Sean Morin was present and explained why he wanted a porch. He reviewed the criteria and said they would be met.

Mr. Rheume said there was already a screened porch at the rear of the property and asked what advantage a front porch would offer. Ms. Morin said he and his wife spent a lot of time sitting on the front steps watching their granddaughters and interacting with the neighbors, and the porch would allow them to be more part of the neighborhood community. In response to further questions from Mr. Rheume, Mr. Morin said the proposed width of the porch was 7'6" and that the porch needed to be deeper than the neighbor's porch because he was a big guy.

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. Rheume said two years after the structure was built, a developer looked at the zoning requirements and maxed it out by merging two good-sized structures and allowing them to connect, which the applicant was now taking full advantage of. He said the applicant didn't worry about a porch two years ago when they bought the property. He said the amount of relief was minimal, although the front setback was going in by two feet, which was the reason he suggested a narrower porch. He said the coverage was up by one or two percent, which were small numbers. Vice-Chair Margeson said she didn't have a problem with the application, given that the variance request was so minimal. She said the other unit had a porch, so it would provide some symmetry.

*Mr. Mattson moved to **grant** the variance request, seconded by Mr. MacDonald.*

Mr. Mattson said granting the variance would not be contrary to the public interest because the front porch was in the character of the neighborhood and would not conflict with the purpose of the ordinance. He said granting the variance would observe the spirit of the ordinance because the applicant was asking for a small relief for the front yard setback, from 5 ft to 3 ft, and from 35 to 36 percent coverage. He said substantial justice would be done because the front of the house would be improved and more useful and would not be harmful to the public. He said granting the variance would not diminish the values of surrounding properties because the porch addition improvement would not change and might even increase the value of the home and surrounding properties. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the property had special conditions that distinguished it from others in the area, and owing to those special conditions, a fair and substantial relationship did not exist between the general public purposes of the ordinance provisions and their specific application to the property, and the proposed use is a reasonable one. He said it was reasonable to have a front porch deep enough so that the small amount of relief asked for would make the porch more useful.

Mr. Macdonald concurred and had nothing to add.

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

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting adjourned at 9:54 p.m.

Respectfully Submitted,

Joann Breault
BOA Recording Secretary

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

7:00 P.M. *(Continued from February 22, 2023)*

February 28, 2023

MEMBERS PRESENT: Phyllis Eldridge, Chair; Paul Mannle; Thomas Rossi; David MacDonald; Jeffrey Mattson, Alternate

MEMBERS EXCUSED: David Rheume; Beth Margeson, Vice Chair

ALSO PRESENT: Stefanie Casella, Planning Department

I. APPROVAL OF MINUTES

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

On page 4, third paragraph, second line toward the end. The sentence should read: 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. (The phrase 'was to' was originally repeated twice and was omitted).

On page 9, second paragraph, end of the second line. The sentence should read: 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. (The phrase 'he know' was replaced with 'he knew').

On page 9, second paragraph, last line. The sentence should read: She said she agreed with Mr. Mattson. (The word 'she' was missing).

*Mr. Rossi moved to **approve** the January 24 minutes as amended, seconded by Mr. Mannle. The motion **passed** by a unanimous vote of 5-0.*

Chair Eldridge announced that there were only five board members present and that an applicant could choose to postpone their petition.

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**

Chair Eldridge noted that the request to postpone was due to improper notice.

DECISION OF THE BOARD

*Mr. Mannle moved to **postpone** the petition to the March meeting, seconded by Mr. MacDonald. The motion **passed** by a unanimous vote of 5-0.*

- 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)

SPEAKING TO THE PETITION

Architect Nick Collins was present on behalf of the applicant and said the clinic would be a walk-in one that would treat dogs, cats, and other small animals and would house six exam rooms, a pharmacy, an x-ray room, an office, and so on. He said there would be no crematory or commercial boarding. He reviewed the special exception criteria.

Mr. Mattson asked if the parking was owned by the same parcel, and Mr. Collins said it was.

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 moved to **grant** the special exception for the application as presented and advertised, seconded by Mr. Mannle.*

Mr. Rossi said the use is permitted by special exception within the ordinance and complies with all the design and intended use and complies with all the requirements for a veterinary facility, so it meets the first standard. Regarding the second standard, there will be no hazard to the public or adjacent properties on account of fire, explosion, or release of toxic materials. He said the applicant

had taken care to ensure the proper handling of gasses such as oxygen that could present such a hazard and would do that in compliance with all applicable regulations, guidelines, and standards. He said granting the special exception would pose no detriment to property values in the vicinity or change in the essential characteristics because the building is located in an area that has a lot of commercial uses. He said there would be no creation of traffic safety hazards because there is easy access from the road. He noted that the road was a heavily traveled one and it would be very surprising if the traffic ingress and egress from a veterinary facility would add in any substantial way to the traffic conditions in that vicinity. He said there would be no excessive demand on municipal services, noting that the applicant stated that the existing supply of water and wastewater extraction were adequate for his purposes. He said the applicant would not create any new police or fire protection hazards and that the building wasn't near enough to a school to be of any concern. He said the property already had a great deal of impervious surface and the proposed use would not add to it, so there would be no increase of stormwater runoff onto adjacent properties or street.

Mr. Mannle concurred. He said the applicant met all six criteria easily. He noted that the old Suzuki dealership used to be in that location and that the proposed use couldn't be more detrimental than that. He said it was a commercial use in a commercial area and that he would support the petition.

*The motion **passed** by a unanimous vote of 5-0.*

- 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)

The applicant's representative was present and said they wished to postpone the petition.

*Mr. Mannle moved to **postpone** the petition, seconded by Mr. Mattson. The motion **passed** by a unanimous vote of 5-0.*

- 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)

SPEAKING TO THE PETITION

The applicant's representative Chris Redmond was present via Zoom. He said the original request was that the current condenser be replaced by a smaller condenser in the same location, but the neighbor on the left side of the property asked that the condenser be moved about 10 feet back

toward the rear of the property so that it would be farther away from their kitchen window and behind some bushes. He said his client was fine with moving the condenser to the rear of the home. He reviewed the criteria and said they would be met.

Mr. Rossi said the proposal showed that the existing unit is 5'7" away and the proposed is 4 feet away from the left side lot line, but in the diagram it looked like the new location was actually farther from the left side lot line. Mr. Redmond said it showed that the condenser was moving farther away from the property line but was still within the side setback, so either way, the 10-ft side setback went up to the wall of the residence. Mr. Rossi asked what specific relief was asked for in the revised plan. Mr. Redmond said it was relief from the side setback, just like in the existing plan. He said they were moving it 12 inches farther away than it was in the application, from 5'7" to 6'7". Ms. Casella said five feet would be the new request. Mr. Rossi asked what prevented locating the unit at the rear of the property. Mr. Redmond said it was the bulkhead and the deck.

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. Mattson moved to **grant** the variance for the petition as presented, seconded by Mr. MacDonald.*

Mr. Mattson said granting the variance would not be contrary to the public interest because the proposal was to replace an existing condenser with a newer and quieter one that needed less relief because it would be farther away from the property line and in the side yard, where it wouldn't be easily visible from the street. He said the spirit of the ordinance would be observed for the same reason, there would be no impairment to the public's health, safety, or welfare, and the essential characteristics of the neighborhood would not be altered. He said granting the variance would do substantial justice because it was a needed improvement for updating the home and energy efficiency and there was no viable alternate location, and there would be no detriment to the public. He said the values of surrounding properties would not be diminished because there was no reason why replacing an old condenser with an improved one would harm property values. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship because the property has special conditions that distinguish it from others in the area, and owing to those conditions, a fair and substantial relationship does not exist between the general purpose of the ordinance's provision and the specific application of that provision to the property, and the proposed use is a reasonable one. He said the lot was half the width of the required minimum lot for a single family residence and the overall lot size is undersized, and given the location of the home and the driveway, it imposed a hardship that would justify the condenser's location. He added a **stipulation** that the advertised request for relief was for a 4-ft setback and the revised application involves asking for less relief due to the 5-ft setback from the property line, which is farther.

The **amended** motion was:

*Mr. Mattson moved to **grant** the variance for the petition, with the following **stipulation**:*

1) The mechanical unit is located according to the updated plan presented to the Board at the February 28, 2023 meeting which positions the unit 5 feet from the left yard setback instead of 4 feet as advertised.

Mr. MacDonald concurred and had nothing to add.

Mr. Mannle noted that when the applicant came before the board for the building variance, the condenser was the closest thing to the side yard. He said he thought they swapped out the size of the condensers because of the two different plans. He said when the applicant applied for the variance before the building variance, the condenser was already four feet from the line with no variance.

*The motion **passed** by a unanimous vote of 5-0.*

- 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)

SPEAKING TO THE PETITION

The applicant Ryan Mullen was present and reviewed the application and criteria in detail. The board had no questions. 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 as presented, seconded by Mr. Mattson.*

Mr. Mannle said the applicant went through a painstaking process to find another location for the condenser and presented great reasons why it couldn't be located anywhere else. He said the best reason was that it was in the Wetlands Protection Zone. He said the property, like every property in Portsmouth that's located on a corner, suffers from a hardship. He said he understood the city's motivation for doing it, but if the address is already on Gosport Road, that was the front of the house regardless of what's on the other side. He said the proposed generator would be located exactly where logic said it should be, along with all the other existing systems to the house, and was farther away from Gosport Rd than Odiorne Point Rd. He said granting the variance would not be

contrary to the public interest because the public would barely see it and there would be more shrubbery around it. He said it would observe the spirit of the ordinance because a generator was a good idea for someone who wanted the house to be listed as on Odiorne Point Rd. He said granting the variance would do substantial justice owing to the hardship and would not diminish the values of surrounding properties and would most likely increase them because the owner's property will be worth more. He said literal enforcement of the provisions of the ordinance would result in unnecessary hardship. He said the hardship was the corner lot and that the applicant already went through the due diligence to show that other locations were bad ideas. For those reasons, he said the variance request should be granted. Mr. Mattson concurred. He said the applicant made a compelling case because if the lot wasn't a corner lot, a variance wouldn't be needed because the condenser was on the side of the house. He said the wetlands were also a factor that affected the property. He said the generator would be quite far from the neighbors and any of the streets and that noise would not be an issue. Mr. Rossi said he had experience with that type of generator and knew the noise was very minimal. He said the applicant would find himself going out the first few weeks to make sure the unit was running through its test cycle because he wouldn't hear it.

*The motion **passed** by a unanimous vote of 5-0.*

- 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)

SPEAKING TO THE PETITION

Barbara Ward of 16 Nixon Park said she was the senior grant writer and coordinator of special projects at the Black Heritage Trail of New Hampshire at 222 Court Street. She said in 2021, they became aware of the plans of The Friends of Ruth Blay organization to promote the installation of murals throughout the city to bring awareness to prominent women of Portsmouth's storied history, and one of the women on the list was Ona Judge Staines, the seamstress for Martha Washington. She said a team of Portsmouth architects was enlisted to conduct the preservation assessment and the request was submitted to the NH Preservation Alliance as well. She said the building was built between 1797 and 1819 and the mural would be painted on the west wall, which was a firewall and wasn't integral to the building. She noted that there would be a protective layer between the appropriate chosen paint and the mural itself. She said the sign would be placed on the street frontage to provide historical background on the mural. She said the neighbors were in support. She reviewed the criteria in detail.

Mr. Mannle clarified that the new 3'x2' sign would replace the old sign in the same location and would have the information for the mural and no advertisement on it. Ms. Ward agreed and said the sign on the front of the building would have the History Through Art logo. Mr. Rossi said the hardship criteria was the most difficult one to put into words and started with the concept that the property is burdened by a restriction in a manner that's distinct from other similarly situated properties. He asked what made the property different in a way that was relevant to the application compared to the surrounding properties. Ms. Ward said the building was an office building in a mixed-use residential area, and because they were between residences, it caused issues relative to the business. She said it was a difficult one to put into words because of the size of the lot and that they didn't have a lot of options. Chair Eldridge noted that Figure 3 indicated that the mural would be installed on the front lower quarter of the façade, yet the next photo showed that the mural took up the entire wall. Mr. Ward said it was her mistake, noting that it was a two-step process in submitting the application. Mr. Rossi clarified that the entire wall was 686 feet. Ms. Ward agreed and said it was a little bit above the ground level and stopped at the eaves. Mr. Rossi asked if the wording of the variance request was accurate to the intention or was based on the misstatement. Ms. Ward said it was a misstatement based on the two-step process. Mr. MacDonald said there were other examples of public art similar in kind throughout Portsmouth, like the Whaling Wall that was painted years ago and suffered over time due to exposure to the elements. He asked who would maintain the mural and where the funding would come from. Ms. Ward said the Black Heritage Trail organization would maintain it, but in the far future, someone may want to remove it. She said they also wanted to protect the brick underneath so that the removal of the mural wouldn't damage anything. She noted that the Black Heritage Trail organization had no intention of moving and were dedicated to the building and to the story of Ona Judge.

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. Mannle said his daughter had a part in painting the Whaling Wall and thought its deterioration was the city's responsibility because they used the cheaper sealer instead of the one recommended by the painters. He said he had no problem with the front of the house and the signs since the mural wasn't like the murals at Toscana, which were advertisements of what was depicted in the store. He said the proposed mural was art and not an advertisement. He said there was no mention of murals or paintings in the zoning ordinance, but it did refer to advertisements quite a bit. Since the proposed mural had no advertisement, he said he didn't consider it a sign. He said the hardship was the zoning ordinance, in his opinion. Chair Eldridge said the Ruth Blay mural was approved under the same circumstances. Mr. Mannle said he had a hard time with a mural that has no advertisement, no names, and no lettering because it was just art work on a wall to be called a sign and to fall under the sign ordinance. Chair Eldridge said there was no writing on the Ruth Blay mural. Ms. Ward said the size of the signs with the writing and the image of Ruth Blay were

indicated as separate signs in their application. Ms. Ward said there were discussions of having an ordinance related to murals. Mr. Rossi said his concern was that, once the board approved a sign of that size, the Black Heritage Trail of NH was the current property owner and there won't be a 'forever'. At some point, he said the variance stays with the property and it may not be public art work but a giant advertisement or political slogan, which would put a completely different character on what the board was being asked to approve. Ms. Casella said the board was approving what was presented and if the design were to change, it would need to come before the board.

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variances with the following **stipulation**:*

- 1. That the sign will be an artistic image only of Ona Judge and will not be altered for any other purpose.*

Mr. Mannle seconded the motion.

Mr. Rossi said granting the granting the variances is not contrary to the public interest and the spirit of the ordinance is observed. He said that particular zone allowed a permitted use for a museum, and what the Black Heritage Trail of NH was doing was creating a free-to-the-public art display that he would consider being akin to an open access museum for anyone to see, which was consistent with the spirit of the ordinance. He said granting the variances would do substantial justice because there would be no loss to the public. He said a compelling case could be made that it would be an enrichment for the public, so there would be no gain to be had by the owners of the property that would be outweighed by a loss to the public. He said the values of surrounding properties would not be diminished. He said the abutter seemed to have no objection to the mural, noting that the abutter would be in a position to make an objection if he thought there was an impact to his property values. He said he took the absence of any public comment of that nature to be support for the idea that the proposal will not have a negative impact on surrounding properties. Relating to hardship of the property, he said the special condition of the property was that it contains the brick wall that was placed there at some time in history, and that wall needs to be preserved by applying a coat of paint anyway. Therefore, making an artistic use of it is very consistent, and a unique aspect of the property is that it needs to have paint on the wall in order to preserve it, so that's the special condition that justifies the use in this manner.

Mr. Mannle concurred and said he was glad the stipulation was added. He advised the applicant that something should be applied on the mural once it was completed so that it could be easily cleaned if it was vandalized. Mr. Mattson said that the project was interesting and unique because of the property's history and because of the fire that changed that whole area. He said the unique conditions made the wall ideal for a mural. Chair Eldridge said she was also in favor of the petition. She noted that the motion was very well put in terms of the mural and signage being like an outdoor museum. She said it was an ongoing project that was very much within the spirit of the ordinance.

*The motion **passed** by a unanimous vote of 5-0.*

III. OTHER BUSINESS

There was no other business.

IV. ADJOURNMENT

The meeting adjourned at 8:30 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

II. OLD BUSINESS

- A. **1 Raynes Avenue - Appeal** - As ordered by the Superior Court on February 2, 2023, the Board will “determine, in the first instance, whether it has jurisdiction over the issues presented” by Duncan MacCallum (Attorney for the Appellants) in the January 14, 2022 appeal of the December 16, 2021 decision of the Planning Board for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** which granted the following: a) site plan approval b) wetlands conditional use permit; and c) certain other, miscellaneous approvals, including an approval related to valet parking. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)

Staff Comments

The Planning Board decision of December 16, 2021 was appealed to the Zoning Board and a separate request for a rehearing to the Planning Board was filed by the appellants. The Planning Board granted the request for rehearing. In February 2022, both matters were taken to Superior Court where a stay was issued on February 15, 2022. just recently issued an Order, which is included in the packet. The Order states the Court will not determine what matters are properly before the Board of Adjustment but has sent the January 14th appeal back to the Board to determine if it has any jurisdiction over any of the counts raised in the appeal. At this time, that is the only decision the Board should make with respect to this appeal. The counts raised in the appeal include the following:

- 1) Granting site plan approval.
- 2) Granting a Wetlands Conditional Use Permit; and
- 3) Granting certain other, miscellaneous approvals including an approval related to valet parking.

The Board should vote on the three counts above, further outlined in the appeal, and decide if the Board has jurisdiction over any or all of the counts. A memo from the Legal Department has been provided outlining the Board’s jurisdiction.

CITY OF PORTSMOUTH

LEGAL DEPARTMENT

MEMORANDUM

DATE: MARCH 16, 2023

TO: PETER STITH, PLANNING MANAGER
STEFANIE CASELLA, PLANNER

FROM: TREVOR P. MCCOURT, ASSISTANT CITY ATTORNEY *TPM*

RE: ZONING BOARD OF ADJUSTMENT JURISDICTION
APPEALS FROM THE PLANNING BOARD

The following memorandum provides an overview of the Zoning Board of Adjustment's (BOA) jurisdiction over appeals from the Planning Board, and is provided in response to a request from the Planning Manager to this Department in light of such an appeal.

If an applicant or other person with standing seeks to challenge a decision of the Planning Board, the general rule is that appeals must be timely filed in Superior Court. RSA 676:5, III, which appears below, provides a narrow exception for appeals which must first be taken to the BOA. Those appeals must involve a decision or determination of the Planning Board which "is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance". The statute further directs appeals involving innovative land use controls, including conditional use permits, directly to Superior Court.

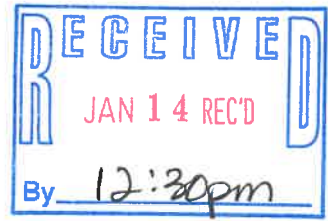
Therefore, only questions involving the "construction, interpretation, or application of the zoning ordinance" are properly within the BOA's jurisdiction, and any claims outside of those parameters should be dismissed.

RSA 676:5, III states as follows:

If, in the exercise of subdivision or site plan review, the planning board makes any decision or determination which is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance, which would be appealable to the board of adjustment if it had been made by the administrative officer, then such decision may be appealed to the board of adjustment under this section; provided, however, that if the zoning ordinance contains an innovative land use control adopted pursuant to RSA 674:21 which delegates administration, including the granting of conditional or special use permits, to the planning board, then the planning board's decision made pursuant

to that delegation cannot be appealed to the board of adjustment, but may be appealed to the superior court as provided by RSA 677:15.

cc: Susan Morrell, City Attorney
Peter Britz, Director of Planning and Sustainability



THE STATE OF NEW HAMPSHIRE

ZONING BOARD OF ADJUSTMENT
OF THE CITY OF PORTSMOUTH

**In re Application of North Mill Pond Holdings, LLC,
One Raynes Ave, LLC, 31 Raynes Ave, LLC, and
203 Maplewood Ave, LLC, regarding the properties
located at 1 Raynes Avenue, 203 Maplewood Avenue,
and 31 Raynes Avenue, and known familiarly as**

The Raynes Avenue Project

APPEAL OF DECISION OF
PORTSMOUTH PLANNING BOARD

Pursuant to RSA 676:5, III, James A. Beal, Fintan (“Finn”) Connell, Joseph R. Famularo, Jr., Philippe Favet, Charlotte Gindele, Julia Gindele, Linda Griebisch, Catherine L. (“Kate”) Harris, Roy W. Helsel, Elizabeth Jefferson, and Donna Pantelakos (collectively referred-to hereinafter as “the appellants”), all of whom are citizens, residents and/or property owners in the City of Portsmouth, hereby appeal the December 16, 2021 decision of the Portsmouth Planning Board, in which said Board (a) granted site plan approval to the owner-applicants’ above-referenced project, which is proposed to be prosecuted at their adjoining properties located at 1 Raynes Avenue, 31 Raynes Avenue, and 203 Maplewood Avenue; (b) granted a wetlands conditional use permit to the owner-applicants for that purpose; and (c) granted certain other, miscellaneous approvals, including an approval relating to valet parking. The movants ask that the Zoning Board of Adjustment reverse the Planning Board’s decision, rescind the wetlands

conditional use permit which has been granted, and enter a new decision disapproving the applicants' site plan.

STANDARD OF REVIEW OF PLANNING BOARD DECISIONS

The legal standard for review of Planning Board decisions by the Zoning Board of Adjustment is de novo. Ouellette v. Town of Kingston, 157 N.H. 604, 608-12, 956 A.2d 286, 290-93 (2008); 15 Peter J. Loughlin, New Hampshire Practice: Land Use Planning & Zoning § 33.02 n.10 (4th ed. 2010 & Supp. 2020). This Zoning Board of Adjustment is required to consider the applicants' petitions anew, and the ZBA is not required to give any deference to any of the findings and conclusions reached by the Planning Board. Id. In fact, this Board (viz., the ZBA) may substitute its own judgment in toto for that of the Planning Board, if it is so inclined. Id.

GROUND FOR APPEAL

The appellants assign the following, specific grounds for their appeal, consisting of ways in which the Planning Board misconstrued, misinterpreted, misapplied, or, in some instances, altogether failed to observe and follow the provisions of the Portsmouth Zoning Ordinance:

1. An ineligible member of the Planning Board, who was improperly appointed to that Board, participated in consideration of the applicants' site plan review and voted to approve it. Therefore, under the teachings of the New Hampshire Supreme Court's decision in Winslow v. Town of Holderness Planning Bd., 125 N.H. 262, 480 A.2d 114 (1984), the Planning Board's decision granting site plan approval, issuing a wetlands conditional use permit, and granting other approvals is absolutely void. In the Winslow case, the court ruled that the participation of a single ineligible member in a land use board's decision invalidates the entire decision because "it

[is] impossible to estimate the influence one member might have on his associates”. 125 N.H. at 268, 480 A.2d at 117. More particularly:

2. Planning Board member Raymond Pezzullo was and is ineligible to sit on the Planning Board because he was improperly appointed pursuant to a provision in Portsmouth’s local Administrative Code which directly conflicts with a New Hampshire state statute. Therefore, the local Administrative Code provision is void.

3. More specifically, RSA 673: 2 provides that in cities having a city manager form of local government, the planning board is to consist of nine members, two of whom are to be ex officio members and the other seven of whom are to be appointed by the mayor and confirmed by the city council. Of the two ex officio members, one is to be the city manager or someone whom he or she chooses to appoint to serve in his or her place, and the other is to be a member of the city council, selected by the city council itself. By contrast, section 1.303 of Portsmouth’s local Administrative Code, pursuant to which Mr. Pezzullo was ostensibly appointed, conflicts with this statutory scheme, in that it purports to authorize the city manager to appoint a third Planning Board member, selected from the City administrative staff, as an ex officio member, increasing the number of ex officio members from two to three and decreasing the number of Planning Board members appointed by the mayor and confirmed by the City Council from seven to six. RSA 673:2 neither provides for nor permits the appointment of a third ex officio member. Therefore, section 1.303 of the City’s Administrative Code is in direct conflict with statutory scheme established by RSA 673:2 and is therefore void, and Mr. Pezzullo’s appointment to the Planning Board was unlawful. (The conflict between the state statute and local Administrative Code is explained more fully in a letter dated December 1, 2021 from Planning Board member Rick Chellman to City Attorney Robert P. Sullivan, a copy of which is appended hereto as

Attachment A, and in a subsequent letter dated December 29, 2021 from the movants' under-
signed counsel to former Planning Board Chairman Dexter Legg, a copy of which is appended
hereto as Attachment B.)

4. Mr. Pezzullo's participation in the December 16, 2021 decision was especially egregious, for his lack of eligibility to sit on the Planning Board was timely called to the Board's attention by another member of the Planning Board itself, Rick Chellman, at the start of the meeting on that date. Mr. Chellman had previously written a letter to City Attorney Bob Sullivan on December 1, 2021, raising the issue and explaining why Mr. Pezzullo's appointment violated state law (see Attachment A hereto), and he re-raised it verbally with the chairman and the other Planning Board members at the start of the December 16, 2021 meeting. However, his protests were ignored.

5. In addition to violating state law, Portsmouth's method of selecting a third ex officio member also creates an obvious conflict of interest on the part of the appointee. As noted above, section 1.303 of Portsmouth's Administrative Code provides that the third ex officio member is appointed by the city manager and selected from the City's administrative staff. As a member of the city administration, the appointee is a city employee and thus is beholden to the city manager for his job; she has the power of hiring and firing over the former. Under such circumstances, the appointee will be loath to publicly express an opinion that is contrary to the opinion, stance, or wishes of the city manager, and he is not likely to vote against an application or measure that she supports. Almost invariably, he will vote in favor of whatever she votes for, and he will vote against whatever she votes against. In this situation, there is no chance that the appointee in question will ever exercise independent judgment. The practical effect of section 1.303 is that the city manager gets two votes on the Planning Board--her own, and the vote of the ex officio

member whom she has appointed from the City's administrative staff--whereas the regular members appointed by the mayor and confirmed by the City Council get only one.

6. Finally, Mr. Pezzullo's purported membership on the Planning Board did not even comply with the Administrative Code itself, for as an ex officio member his term of office was to have expired at the time of the retirement of the appointing authority who had appointed him, which was former City Manager John Bohenko. Following City Manager Bohenko's retirement two years ago, Mr. Pezzullo was never reappointed by the current city manager nor confirmed by the City Council. (For further discussion, see Attachments A and B hereto.) He has simply continued to sit after his term of office as an ex officio member had ended. Under any scenario, therefore, he has been sitting on the Planning Board unlawfully.

7. For all of the foregoing reasons, Mr. Pezzullo was ineligible to sit on the Planning Board; he was appointed to that Board unlawfully; and under the teachings of Winslow v. Town of Holderness Planning Bd., 125 N.H. 262, 480 A.2d 114 (1984), the Planning Board's decision of December 16, 2021 was absolutely void. For that reason, this Board should reconsider its decision and conduct a full rehearing on the developers' application.

8. Several of the members of the Planning Board who voted to grant site plan approval and, in particular, who voted to grant a wetlands conditional use permit employed palpably erroneous legal reasoning and committed clear legal error in applying section 10.1017.50 of the Zoning Ordinance, which sets forth the six criteria for the granting of wetlands conditional use permits. These six criteria are mandatory, yet four of the members of the Planning Board, including its chairman, openly expressed the view that these six criteria were merely "factors" to be weighed against one another and that the criteria were "negotiable". The vice-chairwoman flatly--and totally erroneously--stated that an applicant does not necessarily have to meet all six

of the criteria in order to qualify for a wetlands conditional use permit. The chairman at one point opined that the six criteria are “open to interpretation”. Two other members made similar comments evincing an extremely cavalier attitude toward the six criteria.

9. All of this constituted clear and obvious legal error. The criteria for the granting of a conditional use permit are indeed mandatory, and the applicants’ proposal did not satisfy at least two of those criteria. Section 10.1017.50 of the Zoning Ordinance sets forth the six criteria which must be met in order for a wetlands conditional use permit to be issued. They are:

(1) The land is reasonably suited to the **use**, activity or **alteration**.

(2) There is no alternative location outside the **wetland buffer** that is feasible and reasonable for the proposed **use**, activity or **alteration**.

(3) There will be no adverse impact on the **wetland** functional values of the site or surrounding properties;

(4) **Alteration** of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals; and

(5) The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this Section.

(6) Any area within the **vegetated buffer strip** will be returned to a natural state to the extent feasible.

(Boldfacing in original.) Section 10.1017.41 of the Zoning Ordinance makes clear that these criteria are mandatory and that all six must be satisfied in order for a wetlands conditional use permit to be issued. That section states:

The Planning Board shall grant a conditional use permit provided that it finds that all other restrictions of this Ordinance are

met and that proposed **development** meets all the criteria set forth in section 10.1017.50 or 10.1017.60, as applicable.¹

(Boldfacing in original; other emphasis added.)

10. The above-quoted sections of the Zoning Ordinance make clear that these criteria are not merely “factors” to be taken into consideration and to be weighed against one another in deciding whether to issue a permit, nor that an exceptionally strong showing of compliance with one of these criteria may be used to offset or excuse noncompliance with another. Four members of this Planning Board erred in so regarding them. There is no question but that the applicants’ pro-proposal fails to meet subsections (2) and (5) of section 10.1017.50: It would have been “feasible and reasonable” for the developers to erect a building and paved driveway within the site yet outside the 100’ wetlands buffer, § 10.1017.50(2), simply by reducing the size of the proposed building; and therefore the developers’ proposal is not the alternative with “the least adverse impact to” the wetlands buffer, the North Mill Pond, and its surroundings. Zoning Ordinance § 10.1017.50(5). Four members of this Board committed clear error by averring that these six criteria were nonbinding, “open to interpretation,” and the like, and by using such observations as a basis for granting site plan approval.

11. In addition to misinterpreting the criteria for the issuance of wetlands conditional use permits, the Planning Board also made other, unrelated errors in ultimately granting site plan approval. For one thing, that Board acted prematurely and committed error in refusing to wait until after the Historic District Commission had acted on the application that was before it, re-

1. Section 10.1017.60, mentioned in the quoted section above, is inapplicable here, inasmuch as it pertains to public and private utilities and rights-of-way in wetlands and wetlands buffers. There are no public or private utilities at issue here.

lating to the same project. The Planning Board should have waited to see what the developers' plan was going to look like after having been vetted by the HDC. More generally, there were many other unanswered questions which came to light during the December 16, 2021 hearing, and the Planning Board should have waited until they were resolved. For example, it was never settled who was going to be responsible for paying for valet parking in perpetuity and who was going to be responsible for enforcing the stipulation that such valet parking be provided, as the existing on-site parking provided-for by the developers' plan was and is admittedly inadequate.

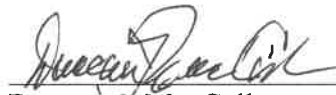
12. As part of his remarks in support of the project during the Board's deliberations, the chairman totally misquoted a member of the Conservation Law Foundation who had spoken before the Planning Board previously at its April 15, 2021 meeting, and he claimed that she had said that "this project [is] going to improve the quality of North Mill Pond water." In reality, she had said just the opposite. Attached hereto as Attachment C is a copy of a letter issued by the Conservation Law Foundation and dated December 23, 2021, in which the CLF, having learned what had transpired at the Planning Board's December 16, 2021 meeting, took issue with the chairman's misuse of its representative's words. While praising the developers' stormwater run-off treatment program, the CLF representative had condemned the project in general because of the intrusion into the wetlands buffer zone. (See Attachment C.)

13. Finally, the Planning Board erred in failing to adopt the recommendation of the Conservation Commission, which had disapproved the project in question. At the proceedings before the Planning Board, the developers boasted that they had worked closely with the Conservation Commission and that they had had five meetings with the latter in which they had modified their project in order to respond to the comments, criticisms, and feedback which the Commission had

given. Yet, after five meetings the Conservation Commission was still dissatisfied with the applicants' project and issued a negative recommendation concerning same. The Planning Board should have heeded the Conservation Commission's recommendation and denied site plan approval.

CONCLUSION

For all of the foregoing reasons, the Planning Board's decision of December 16, 2021 should be reversed, the conditional use permit should be rescinded, and this Zoning Board of Adjustment should enter a directive that the applicants' site plan is disapproved.




Duncan J. MacCallum
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(603) 431-1230
madbarrister@aol.com
Attorney for Appellants

CERTIFICATE OF SERVICE

The undersigned, Duncan J. MacCallum, Attorney for Appellants in the within proceeding, hereby certifies that on this 14th day of January, 2022, true and correct copies of the foregoing Appeal of Decision of Portsmouth Planning Board were served upon the applicants both via e-mail and by forwarding same by first class mail, postage prepaid, to each of the following counsel of record:

Michael D. Ramsdell, Esquire
Brian J. Bouchard, Esquire
Sheehan Phinney Bass & Green, P.A.
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Manchester, New Hampshire 03101

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Duncan J. MacCallum

ATTACHMENT A



TND ENGINEERING

TRAFFIC, TND, TRANSPORTATION AND CONSULTING

224 State Street
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Email: Chellman@TNDEngineering.com

Mr. Robert P. Sullivan, Esq.
City Attorney, City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

December 1, 2021

Re: Planning Board Members

Dear Bob:

As we discussed recently in your office, and I briefly reviewed with Trevor by telephone last week, it has recently come to my attention that the current makeup of the Planning Board, which includes an ex-officio member appointed by the City Manager, is apparently not in conformance with the enabling statutes.

You asked that I reduce some of my thoughts about, and research into, this matter to writing and in compliance with that request, I offer this letter.

Beginning with the City's Code, Section 1.303 A contains the relevant City guidance:¹

Section 1.303: PLANNING BOARD

- A. Membership: The Planning Board of the City shall consist of nine (9) members and two (2) alternate members, specifically; (Adopted 1/23/95)
1. The City Manager, or the designee of the City Manager with the approval of the City Council, who shall be an ex-officio member;
 2. An administrative official of the City selected by the City Manager who shall be an ex-officio member;
 3. A member of the City Council selected by the Mayor with the approval of the Council, who shall be an ex-officio member;
 4. Six residents of the City appointed by the Mayor with the approval of the City Council.
 5. Two (2) alternates who shall be residents of the City appointed by the Mayor with the approval of the City Council. (Adopted 1/23/95)

Figure 1: Section 1.303 of City Code

¹ Rather than retyping reference materials, I will use image-copy inserts in this letter to reduce the likelihood of typographical errors.

Based on a review of City Minutes, the previous City Manager appointed a City employee to an ex-officio position on the Planning Board in September, 2018. While not cited in the Council minutes, since it was an informational item only, I assume this appointment was in accordance with 1.303 A: 2, above.

While you obviously have all of the statutes readily at hand, to make this letter stand-alone in case you find yourself reviewing it away from your desk, the relevant statute is 673:2 (I grayed out the section not used in Portsmouth):

Appointment and Terms of Local Land Use Board Members

Section 673:2

673:2 Planning Board. –

I. (a) In cities, the planning board shall consist of 9 members:



(b) Alternatively, the local legislative body in a city with a city council-city manager form of government may establish a planning board with membership as provided in paragraph I-a.

I-a. In cities with a city council-city manager form of government, the planning board may consist of the following 9 members:

(a) The city manager, or with the approval of the local legislative body the city manager's designee, who shall be an ex officio member;

(b) A member of the city council selected by the council, who shall be an ex officio member; and

(c) Seven persons appointed by the mayor, if the mayor is an elected official, or such other method of appointment or election as shall be provided for by the local legislative body or municipal charter.

Figure 2: NH RSA 673:2

It is immediately apparent that while the current statute provides for only two ex-officio members on the Planning Board, the Manager and a Councilor, the City's Code adds another appointed by the Manager.

I have not researched the origin of 1.303 of the City's Code as I think that is not particularly relevant to our current discussion. In fact, I think it likely that 1.303 was in conformance with earlier statutes or at least accepted practices in or about 1980. My reason for this thinking is gleaned in part from the City of Concord's past history with this specific topic, and its Ordinance #1396, bearing a date of 7/14/80 that contains almost the same language as Portsmouth's Code's Section 1.303. Concord's Ordinance #1396, superseded more than once since 1980 follows on the next page.

CITY OF CONCORD

In the year of our Lord one thousand nine hundred and
AN ORDINANCE Amending Section 32.5 of the Administrative Code,
relative to Planning Boards.

The City of Concord ordains as follows:

Section One: Amend Section 32.5 of the Municipal Code of Ordinances,
Administrative Code, Planning Board by striking the whole thereof
and substituting in its place the following new section:

32.5 Planning Board. The Planning Board shall consist
of nine members, namely, the City Manager, one of the
administrative officials of the city who shall be select-
ed by the manager, and a member of the council who shall
be selected by it, as members ex officio, and six (6)
persons to be appointed by the Mayor, subject to con-
firmation by the City Council. The Mayor shall also
appoint, subject to confirmation by the City Council,
three (3) alternate members. Whenever a regular member
shall be absent the chairman shall designate an alternate
if an alternate is present to act in the absent member's
place.

The Planning Board shall perform all functions provided
for by Chapter 56 of the New Hampshire Revised Statutes
as amended and be subject to all provisions of said
chapter.

Section Two: This ordinance shall take effect upon its passage.

Figure 3 City of Concord Ordinance #1396 from 1980

Concord revised its Ordinance #1396 in 1986, 2001 and again most recently
earlier this year with its current version being Ordinance No. 3084, that is
attached for reference.

Concord's current Ordinance tracks the current statutory provisions of RSA 673:2
by providing for two ex-officio members, and seven members appointed by the
Mayor and confirmed by the Council.

Like you, I am more focused on the statutory provisions than what other cities
may or may not have enacted, but I found Concord's example to be informative.²

I am of course more focused on the provisions of land use regulations
themselves than I am with enabling legislation, so when you were away on
vacation last week, I took the opportunity to review this topic with two private

² The Cities of Manchester and Rochester have provisions similar to Concord's but neither provides for a Manager appointment of
an ex-officio member.

attorneys I work with and also with the NH Municipal Association Counsel.³

In each instance, it was quickly apparent to these attorneys that Portsmouth's current Code is out of date and not in conformance with the current statutory scheme.

I would like to note with specific emphasis that my concerns are not in any way personal or related to the specific individuals currently or recently involved with this matter. My concerns are that this topic relates to the basic makeup of a Planning Board on which I serve myself and I strive to ensure compliance with pertinent requirements- I feel the City and the applicants before the Board deserve no less.

That thinking led me to consider the possible ramifications of not correcting what I believe was originally common practice but has now been revealed to be an outdated mistake that has only very recently been discovered by these discussions with you and others.

The Planning Board has many functions, but for this discussion we need to focus on its quasi-judicial functions, where interested parties are furnished notice, public hearings are held, and evidence is considered before a decision is reached. These quasi-judicial functions at least include the Board's review of subdivisions, site plans, and conditional use permits. These sorts of reviews occur very regularly, sometimes many times each month.

From my own review of this, it appears that at about the time of the enactment of Concord's Ordinance #1396, above, and possibly of Portsmouth's 1.303 (which may very well pre-date the Concord Ordinance), even the NH Supreme Court had a different opinion on the possible effects of one member's participation in a Board decision where that member may later be found to be disqualified.

In ***Totty V. Grantham Planning Board***, 120 NH 390 (1980), the Court reviewed a case where two of the five voting members on a subdivision application were abutters, and the Court held that those two members were therefore disqualified. However, the Court also held that since the other three members voting in the unanimous Board decision were "concededly qualified" and that since there "was no indication" the disqualified members participation determined the outcome of the vote, the vote was held to be valid.

Just four years later the Court demonstrated that we all can make mistakes, in ***Winslow v. Holderness Planning Board*** 125 NH 262 (1984), the Court stated that with respect to ***Totty*** that "[w]e now believe this to be a misstatement of the

³ Mr. Natch Greyes, Esq.

law".⁴

In the **Winslow** case, the matter of a member's disqualification and the implications of a Planning Board member are discussed at some length. Noting that when Boards act in a quasi-judicial manner, the Court cited as relevant the NH Constitution which "demands" that all judges be "as impartial as the law of humanity will admit".

Under the current makeup of the Portsmouth Planning Board, one member (the "extra ex-officio member discussed above) is appointed by, and reports to another member who is that member's employer or supervisor (the Manager).

I think it impossible to contemplate and satisfactorily reconcile all of the possible problems such a situation can present under the current regulatory frameworks.

The pressure on the employee to agree with their employer/supervisor is one obvious possibility. However, what if -for example- the employee happens to speak first during deliberations, could that result in an undue influence on the Manager simply because of the employer/employee relationship that exists outside the Board?

The Court in **Winslow** also noted it would "reach the same result" in applying the test for members of zoning boards of adjustment to meet the standards required of jurors.

Here, and as you agreed in your office earlier this week, we have a situation where the City's Code does not conform with the current statute. I submit it also does not conform with current policy and best practices as enumerated in case law and followed by other cities. There can be no valid argument for allowing the manager or anyone else to appoint an "extra" ex-officio member without that falling into the realm of an ultra vires action.

I now turn to a sense of urgency in this matter as we have a Planning Board meeting scheduled for later this month. If I, the NH Municipal Association's counsel and others I have reviewed this matter with are all correct, then this "extra" member is not qualified as a Board member.

Finally, and again in the Winslow case, the NH Court stated (citing the Rollins Court) that "mere participation by one disqualified member was sufficient to invalidate the tribunal's decision because it was impossible to estimate the influence one member might have on his associates (emphasis added)".

⁴ This case also cites a much earlier case, *Rollins v. Connor* 74 NH 456 (1908) which also held that the participation in a "judicial action by a tribunal" by a disqualified member is voidable.

Again, please understand that this is not a matter focused on any individual person, but in a framework that has created a Planning Board membership scheme that does not conform to current Statutes.

If I am correct, then every quasi-judicial decision the Board reaches with such a member's participation runs the risk of being declared invalid. If I am incorrect, then the only risk is one less administrative official on the Board and the City's administrative officials have ample other opportunities to provide input to the planning processes in the City.

If you would care to discuss this further, I am at your service in that regard.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Rick C. Hellman', with a stylized, cursive script.

Chester "Rick" C. Hellman, P.E., L.L.S.

Email only copies to:
Synthia Ravell (to print for Bob)
Trevor McCourt, Esq.

ATTACHMENT B

DUNCAN J. MACCALLUM

ATTORNEY AT LAW

536 STATE STREET
PORTSMOUTH, NEW HAMPSHIRE 03801-4327
(603) 431-1230
TELECOPIER: (603) 431-1308

ALSO ADMITTED IN NY, PA, OHIO & MA

December 29, 2021

Dexter Legg, Chairman
Portsmouth Planning Board
City of Portsmouth
One Junkins Avenue
Portsmouth, New Hampshire 03801

Re: Ineligibility of Raymond Pezzullo

Dear Mr. Legg:

This will constitute my formal request that Raymond Pezzullo be disqualified from sitting on the Planning Board at its upcoming December 30, 2021 meeting and that he in any event refrain from participating in the consideration of, or voting on, any of the applications that are to be entertained at that meeting.

The basis for my request is that Mr. Pezzullo is ineligible to sit on the Planning Board and was unlawfully appointed thereto, for in a city manager form of local government New Hampshire state law allows for the appointment of only two ex officio members to a planning board: the city manger (or his or her designee) and a member of the City Council. RSA 673:2. All other members of the planning board are to be appointed by the mayor and confirmed by the City Council. Id.

Mr. Pezzullo was neither designated by the city manager to sit on the Planning Board in her place nor chosen by the City Council to be its delegate to that Board (inasmuch as he is not a member of the City Council in the first place). Rather, he was purportedly appointed to the Planning Board as an additional ex officio member by the city manger, acting under color of section 1.303 of the City's Administrative Code. Section 1.303, however, clashes with the above-cited New Hampshire state statute and is therefore invalid. Ergo, Mr. Pezzullo is ineligible to sit on the Planning Board (or, at least, he is ineligible to sit as an ex officio member; he theoretically could still be appointed by the mayor and confirmed by the City Council), and he is presently holding his seat unlawfully.

You, of course, already have quite a bit of familiarity with this issue, inasmuch as it was publicly raised by Planning Board member Rick Chellman at the Planning Board's December 16,

2021 meeting and was the subject of some discussion between Mr. Chellman and yourself at that time. Further, at that meeting you also indicated that you were already aware of Mr. Chellman's letter of December 1, 2021 to City Attorney Bob Sullivan and that in fact you had already discussed it with the latter, even if you had not yet been provided with a copy. (In case you still have not received one, I enclose a copy of the letter herewith, as well as copies of its attachments.) To my knowledge, the December 16, 2021 meeting marked the first public disclosure of the fact that Mr. Pezzullo's eligibility to serve on the Planning Board was in question. But in any event, it seems clear that you yourself were already well aware of the issue.

As I'm also quite sure you're aware, the root of the reason why that issue has arisen is that there is a conflict between the relevant New Hampshire state statute, RSA 673:2, and one of the provisions of the City's Administrative Code, § 1.303. I deem it to be a proposition so obvious as to require no citation to legal authority, that if there is a conflict between a state statute and a local ordinance, the state statute prevails and the conflicting provisions of the local ordinance must yield.

RSA 673:2 establishes the framework for the planning board and prescribes the composition of its membership. In cities with a city manager form of government, there are to be nine regular members and, as already noted above, two of those members are to be ex officio members, consisting of (a) the city manager or his/her designee, and (b) a member of the City Council, chosen by the latter body. (There may also be alternates. See RSA 673:6.) The remaining seven regular members are to be appointed by the mayor and confirmed by the City Council. There is no provision in the statute for a third ex officio member.

RSA 673:2 states in pertinent part:

I. (a) In cities, the planning board shall consist of 9 members:

(1) The mayor of the city, or with the approval of the local legislative body the mayor's designee, who shall be an ex officio member;

(2) An administrative official of the city selected by the mayor, who shall be an ex officio member;

(3) A member of the city council selected by the council, who shall be an ex officio member; and

(4) Six persons appointed by the mayor, if the mayor is an elected official, or such other method of appointment or election as shall be provided for by the local legislative body or municipal charter.

(b) Alternatively, the local legislative body in a city with a city council-city manager form of government may establish a planning board with membership as provided in paragraph I-a.

I-a. In cities with a city council-city manager form of government, the planning board may consist of the following 9 members:

(a) The city manager, or with the approval of the local legislative body the city manager's designee, who shall be an ex officio member;

(b) A member of the city council selected by the council, who shall be an ex officio member; and

(c) Seven persons appointed by the mayor, if the mayor is an elected official, or such other method of appointment or election as shall be provided for by the local legislative body or municipal charter.

In neither RSA 673:2, I nor I-a is there any provision for a third ex officio member on the planning board. The portion of the statute providing for the number of planning board members is expressed in the mandatory term "shall": "In cities, the planning board shall consist of 9 members[.]" RSA 673:2, I(a) (quoted above) (emphasis added). Subsection I-a(c) of the statute provides that by charter or by local legislative action, the municipality may alter the method of appointment of the non-ex officio members, but the subsection does not augment the total number of members who may be appointed, either regular or ex officio.

Section 1.303 of the Portsmouth Administrative Code is both internally inconsistent and in conflict with this statutory scheme, and therefore that section is void to the extent of the conflict. Section 1.303 provides:

A. Membership: The Planning Board of the City shall consist of nine (9) members and two (2) alternate members, specifically;

1. The City Manager, or the designee of the City Manager with the approval of the City Council, who shall be an ex-officio member;
2. An administrative official of the City selected by the City Manager who shall be an ex-officio member;
3. A member of the City Council selected by the Mayor with the approval of the Council, who shall be an ex-officio member;
4. Six residents of the City appointed by the Mayor with the approval of the City Council.
5. Two (2) alternates who shall be residents of the City appointed by the Mayor with the approval of the City Council.

B. Term: All Planning Board members shall serve as such without compensation and the appointed members shall hold no other municipal office except ward official, election official and check-list supervisors. The term of each appointed member shall be three (3) years. The Mayor shall apportion appointments so that no more than three appointments occur annually.

Section 1.303 unlawfully provides for a planning board which includes three ex officio members, rather than two, contrary to the statutory scheme laid out in RSA 673:2. It also reduces the number of citizen board members appointed by the mayor to six members, rather than seven. Conversely, it increases the number of members who may be appointed by the city manager (including herself) from one to two. It also purports to authorize the city manager to appoint a member who holds another municipal office other than ward official, election official, or check-list supervisor, contrary to Section 1.303's own provisions.

Finally, it throws the terms of office of ex officio members into a state of confusion. According to what Mr. Chellman says in his letter to City Attorney Sullivan--and I have no reason to doubt it--Mr. Pezzullo was appointed to the Planning Board as an ex officio member by then-City Manager John Bohenko, acting under color of the above-quoted section 1.303 of the Administrative Code. Was Mr. Pezzullo appointed to a three-year term? As an ex officio

member, one would have expected his term of office to have expired with the expiration of the term of the official or other authority that appointed him, and former City Manager Bohenko retired two years ago. Was Mr. Pezzullo reappointed by our current city manager, Karen Conard, within these past two years since the time that she took office? If so, I doubt very much that he was confirmed by our current City Council, headed by Mayor Rick Becksted.

Absent some evidence that Mr. Pezzullo, an ex officio member, was reappointed by City Manager Conard and his reappointment confirmed by the City Council, it is clear that he is presently sitting on the Planning Board unlawfully, even under the terms of the City's own Administrative Code.

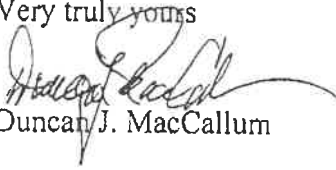
Finally, as Planning Board member Rick Chellman has ably pointed out in his letter of December 1, 2021 to City Attorney Bob Sullivan, the system laid out in section 1.303 of the Administrative Code, wherein the city manager appoints a Planning Board member selected from the City administrative staff, creates a situation of obvious conflict of interest on the part of the appointee (in this case Mr. Pezzullo). As a member of the city administration, the appointee is a city employee and thus is beholden to the city manager for his job; she has the power of hiring and firing over the former. The appointee is going to be loath to publicly express an opinion that is contrary to the opinion, stance, or wishes of the city manager, and he is not likely to vote against an application or measure that she supports. Almost invariably, he will vote in favor of whatever she votes for, and he will vote against whatever she votes against.

In practical effect, under this arrangement the city manager gets two votes: her own, and the vote of the ex officio member whom she has separately appointed from City administrative staff pursuant to section 1.303(A)(2). Any notion of independence of thought or action on the part of the appointee is a pipe dream, and in any event the arrangement does violence to the statutory scheme established by RSA 673:2, I and I-a.

Dexter Legg, Planning Board Chairman
December 29, 2021
Page 6

For all of the foregoing reasons, I ask that Mr. Pezzullo be disqualified from sitting as a Planning Board member at the upcoming December 30, 2021 meeting and at all future meetings.

Very truly yours


Duncan J. MacCallum

DJM/eap

Enclosures

cc. Robert P. Sullivan, Esquire (w/o enclosures)
Karen Conard, City Manager
Rick Becksted, Mayor
Rick Chellman (w/o enclosures)

HAND DELIVERED

ATTACHMENT C



For a thriving New England

CLF New Hampshire 27 North Main Street
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December 23, 2021

Chairman Dexter Legg and Planning Board Members
City of Portsmouth Planning Board
1 Junkins Avenue
Portsmouth NH 03801

Re: 1&31 Raynes Avenue Project, Conditional Use Permit Hearing

Dear Chairman Legg and Planning Board Members,

We write to you with concerns about comments made at the Planning Board meeting on December 16, 2021 in which the Board considered a conditional use permit (CUP) to allow the proposed 1&31 Raynes Avenue project to build within the 100 foot wetlands buffer. At that meeting, Chairman Legg referred to comments made by CLF's Great Bay-Piscataqua Waterkeeper, Melissa Paly, at an April 15, 2021 hearing on a different project as justification to support and approve a CUP.

At the April 15 hearing referenced by Chairman Legg, Ms. Paly provided comments regarding a project at 105 Bartlett Street, which was also seeking a variance from the 100-foot buffer. The first part of those comments commended elements of the project related to stormwater management that would enhance water quality in North Mill Pond. However, the second part of Ms. Paly's comments addressed the importance of buffers and concerns about reducing the 100-foot wetlands buffer.¹ During deliberations, several Planning Board members focused solely on the first part of Ms. Paly's comments related to stormwater management yet overlooked her concerns about encroachment on the wetland buffer.

¹ In her April 15 comments, Ms. Paly brought to the Board's attention a recent report called *Buffer Options on the Bay*, released by a consortium including the NH Department of Environmental Services, The Nature Conservancy, the Great Bay National Estuarine Research Reserve and others, that includes recommendations on buffer width to meet different objectives. Ms Paly stated:

One of the recommendations to really reduce runoff and stabilize banks is a minimum of 164 feet recommended in this report.... I'd like you to consider that a 100-foot buffer is a *minimum* to protect habitat, water quality and other things, so certainly granting a waiver will compromise the benefits that it's intended to produce.... There will be impacts as you chip away at that buffer.



At the December 16 hearing on the 1&31 Raynes Avenue project, Chairman Legg referred to Ms. Paly's April 15 comments, again focusing on her statements about stormwater management while ignoring those related to the importance of wetland buffers.² We want to clarify that (1) we have provided no public comment on the Raynes Avenue project, (2) any comments we provide on one project – which will always be based on site-specific characteristics – cannot fairly be invoked for, and applied to, *other* projects, and (3) the Chairman's comments ignored a critical element of the Waterkeeper's April 15 testimony about the dual importance of both stormwater management *and* buffers to improving water quality.

We respectfully request that any comments provided by CLF and/or its Waterkeeper program in one context not be applied to other projects for which they were not intended. Furthermore, we request that the Waterkeeper's comments be viewed fully rather than parsed to justify encroachments into critically important wetland buffers. Finally, we request that this letter be shared with both current and incoming members of the Planning Board who will, no doubt, continue deliberations on the Raynes Avenue project.

Sincerely,

/s/ Melissa Paly

Melissa Paly
Great Bay-Piscataqua Waterkeeper

/s/ Tom Irwin

Tom Irwin
CLF Vice President for New Hampshire

² <https://www.cityofportsmouth.com/planportsmouth/planning-board>
December 16, 2021 at 4:17

DUNCAN J. MACCALLUM

ATTORNEY AT LAW

**536 STATE STREET
PORTSMOUTH, NEW HAMPSHIRE 03801-4327
(603) 431-1230
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ALSO ADMITTED IN NY, PA, OHIO & MA

January 14, 2022


Beverly Mesa Zendt, Planning Director
City of Portsmouth
One Junkins Avenue
Portsmouth, New Hampshire 03801

Re: Raynes Avenue Project

Dear Ms. Zendt:

Enclosed for filing are the original and fifteen copies of our Motion for Rehearing/
Reconsideration.

Very truly yours


Duncan J. MacCallum

DJM/eap
Enclosures

HAND DELIVERED

SHEEHAN PHINNEY

Boston • Concord • Manchester • Portsmouth • Upper Valley

Brian J. Bouchard, Esq.
Direct Dial: 603-627-8118
bbouchard@sheehan.com

1000 Elm Street, 17th Floor
P. O. Box 3701
Manchester, NH 03105-3701

January 25, 2022

Via Hand Delivery

Peter Stith, Principal Planner
Zoning Board of Adjustment of the City of Portsmouth
1 Junkins Ave., 3rd Floor
Portsmouth, NH 03801

Re: In re Application of North Mill Pond Holdings, LLC, One Raynes Ave, LLC, 31 Raynes Ave, LLC, and 203 Maplewood Ave, LLC, regarding the properties located at 1 Raynes Avenue, 203 Maplewood Avenue, and 31 Raynes Avenue, and known familiarly as The Raynes Avenue Project

Dear Mr. Stith:

Enclosed for filing in the above-referenced matter, please find 11 copies of Applicants North Mill Pond Holdings, LLC, One Raynes Ave, LLC, 31 Raynes Ave, LLC, and 203 Maplewood Ave, LLC's Motion To Dismiss Appeal Of Decision Of Portsmouth Planning Board.

I thank you for your attention to this matter.

Very truly yours,

/s/ Brian J. Bouchard

Brian J. Bouchard

Enclosure

THE STATE OF NEW HAMPSHIRE

ZONING BOARD OF ADJUSTMENT
OF THE CITY OF PORTSMOUTH

In re Application of North Mill Pond Holdings, LLC, One Raynes Ave, LLC, 31 Raynes Ave, LLC, and 203 Maplewood Ave, LLC, regarding the properties located at 1 Raynes Avenue, 203 Maplewood Avenue, and 31 Raynes Avenue, and known familiarly as The Raynes Avenue Project

MOTION TO DISMISS APPEAL OF DECISION OF PORTSMOUTH PLANNING BOARD

Applicants North Mill Pond Holdings, LLC, One Raynes Ave, LLC, 31 Raynes Ave, LLC, and 203 Maplewood Ave, LLC move to dismiss Appellants' Appeal of Decision of Portsmouth Planning Board for the following reason:

This Board lacks jurisdiction over Appellants' appeal because none of Appellants' claims involve the interpretation or application of the zoning ordinance other than the Wetlands Condition Use Permit, and the Board lacks jurisdiction over the Wetlands CUP claim.

THE ZBA'S JURISDICTION

Appellants admit, as they must, that their appeal is taken pursuant to RSA 676:5, III. RSA 676:5, III states as follows:

If, in the exercise of subdivision or site plan review, the planning board makes any decision or determination which is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance, which would be appealable to the board of adjustment if it had been made by the administrative officer, then such decision may be appealed to the board of adjustment under this section; provided, however, that if the zoning ordinance contains an innovative land use control adopted pursuant to RSA 674:21 which delegates administration, including the granting of conditional or special use permits, to the planning board, then the planning board's decision made pursuant to that delegation cannot be appealed to the board of adjustment, but may be appealed to the superior court as provided by RSA 677:15.

Thus, this Board's jurisdiction over an appeal of a Planning Board decision is limited to "*any decision or determination which is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance.*" RSA 676:5, III also

expressly excludes the Planning Board's grant of a conditional use permit from the appellate jurisdiction of the ZBA.

APPELLANTS' CLAIMS

Appellants' appeal raises only the following claims:

1. An ineligible member of the Planning Board participated in the Planning Board proceeding.
2. The Planning Board erred when it granted the Wetlands Conditional Use permit;
3. The Planning Board made other "unrelated" errors, including: (a) failing to wait until the Historic District Commission acted on the application; and (b) leaving unanswered questions relating to paying for and enforcing a valet parking condition;
4. The Planning Board chairman misquoted the Conservation Law Foundation's opinion about the impact on the wetlands buffer zone and North Mill Pond; and
5. The Planning Board failed to adopt the Conservation Commission's failure to recommend approval of the project.

NONE OF APPELLANTS' CLAIMS INVOLVES INTERPRETATION OR APPLICATION OF THE ZONING ORDINANCE OTHER THAN THE WETLANDS CUP

None of Appellants' claims involves interpretation or application of the zoning ordinance other than the Wetlands CUP. In fact, the only provisions of the zoning ordinance mentioned in the appeal are 10.1017.50 (criteria for approval of Wetlands CUP), 10.1017.41 (conditions for approval of Wetlands CUP), and 10.1017.60 (installation of utilities in wetland – Appellants agree is inapplicable). There are no other zoning provisions cited in Appellants' appeal.

No other zoning ordinance provisions are cited because none of the claims involves the zoning ordinance other than the Wetlands CUP. Issue (1) involves the composition of the Planning Board which is a matter of state law and Portsmouth's Administrative Code. There is no zoning provision that requires Historic District Commission approval of this development prior to Planning Board approval as alleged in issue (3). The "unanswered questions" in issue (3) do not invoke the zoning ordinance. There is no zoning provision that requires the Planning

Board to adopt the Conservation Commission's recommendation, which relates only to the Wetlands CUP, as alleged in issue (5).

The two remaining claims invoke only the Wetlands CUP. Issue (2) argues only that the Planning Board erred when it granted the Wetlands CUP. Issue (4) argues that the CLF was misquoted, and the CLF's letter plainly states that the comments were made when "the [Planning] Board considered a conditional use permit (CUP) to allow the proposed 1&31 Raynes Avenue project to be built within the 100-foot wetlands buffer."

THE BOARD LACKS JURISDICTION OVER THE APPEAL

The Board lacks jurisdiction over claims (1), (3), and (5) enumerated above because none of the claims involves "*any decision or determination which is based upon the terms of the zoning ordinance, or upon any construction, interpretation, or application of the zoning ordinance.*" RSA 676:5, III. The Board lacks jurisdiction over claims (2), (4), and (5) enumerated above because those claims involve a conditional use permit over which the Planning Board has exclusive jurisdiction. RSA 676:5, III.

Because the Board lacks jurisdiction over Appellants' claims, the appeal must be dismissed.

WHEREFORE, North Mill Pond Holdings, LLC, One Raynes Ave, LLC, 31 Raynes Ave, LLC, and 203 Maplewood Ave, LLC respectfully request that the Portsmouth Zoning Board of Adjustment dismiss Appellants' Appeal of Decision of Portsmouth Planning Board.

Respectfully submitted,

NORTH MILL POND HOLDINGS LLC,
ONE RAYNES AVE, LLC,
31 RAYNES AVE, LLC, and
203 MAPLEWOOD AVE, LLC

By their counsel,

Dated: January 25, 2022

By /s/ Michael D. Ramsdell

Michael D. Ramsdell (Bar No. 2096)
Brian J. Bouchard (Bar No. 20913)
Sheehan Phinney Bass & Green, P.A.
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Manchester, NH 03105-3701
(603) 627-8117; (603) 627-8118
mramsdell@sheehan.com
bbouchard@sheehan.com

CERTIFICATE OF SERVICE

On January 25, 2022, this Motion to Dismiss Appeal of Decision of Portsmouth Planning Board was forwarded via email to Portsmouth City Attorney Robert P. Sullivan and Duncan J. MacCallum, Esq.

By: /s/ Michael D. Ramsdell

Michael D. Ramsdell

The State of New Hampshire

ROCKINGHAM COUNTY

SUPERIOR COURT

NORTH MILL POND HOLDINGS LLC, et al.

v.

CITY OF PORTSMOUTH

Docket No.: 218-2022-CV-00093

ORDER ON PENDING MOTIONS

Petitioners North Mill Pond Holdings LLC and One Raynes Ave LLC (“Petitioners”) appeal a January 27, 2022 decision by the Planning Board (the “Board”) for Defendant City of Portsmouth (the “City”). See Docs. 1 (Compl.), 7 (Am. Compl.) (also seeking declaratory relief). Petitioners now move for summary judgment. Docs. 16 (Pets.’ Mot. Summ. J.); 17 (Pets.’ Mem. Law). A group of City residents (the “Intervenors”) object. Docs. 35 (Intervenors’ Obj.); 36 (Intervenors’ Mem. Law).¹ The Court held a hearing on Petitioners’ motion on December 21, 2022, at which time the City orally joined in the Intervenors’ objection. After the hearing, the Intervenors moved to dismiss the Petition as moot. See Docs. 43 (Intervenors’ Mot. Dismiss); 44 (Intervenors’ Mem. Law); see also Doc. 47 (Pets.’ Obj.); Doc. 48 (Intervenors’ Response to Doc. 47); Doc. 50 (City’s Limited Response to Doc. 43) (indicating the City does not join in or assent to the Intervenors’ Motion to Dismiss). For the reasons that follow, the Intervenors’ Motion to Dismiss is **DENIED**, and Petitioners’ Motion for Summary Judgment is **GRANTED IN PART** and **DENIED IN PART**.

¹ At the hearing, the Court struck as untimely the Intervenors’ December 21, 2022 “Supplemental Memorandum,” see Doc. 42, and on that basis does not consider it herein.

Background

The relevant facts are not in dispute. See Doc. 37 (Statement of Material Facts). A more detailed account of the facts underlying this case was set forth in the Court's Order denying the City's Motion to Dismiss, see Doc. 14 (Order, August 10, 2022), and need not be fully restated here. On December 16, 2021, the Board held a public hearing on and ultimately granted Petitioners' application for Site Plan Review Approval, a Wetlands Conditional Use Permit, and a parking Conditional Use Permit. See Doc. 37 ¶¶ 5–7. On January 14, 2022, the Intervenor filed a Motion for Rehearing/Reconsideration. See id. ¶ 10; Doc. 17 Ex. 2; C.R. at 113–21. Also on January 14, 2022, the Intervenor filed an "Appeal of Decision of Portsmouth Planning Board" with the City's Zoning Board of Adjustment (the "ZBA"). See Docs. 37 ¶ 11; 17, Ex. 3.

On January 27, 2022, the Board voted (5-4) to grant the motion for rehearing. See Doc. 37 ¶¶ 19, 23; C.R. at 222. On February 9, 2022, Petitioners brought this appeal, arguing, inter alia, the Board improperly granted the Intervenor's motion for rehearing, so that decision should be voided. See Docs. 1, 7. On February 15, 2022, the Court (Wageling, J.) granted certiorari and ordered that "[p]roceedings upon the decision appealed from are stayed." Doc. 3. As far as the Court can discern from the record before it, the ZBA took no action on the Intervenor's appeal before the Court stayed those proceedings.

Analysis

I. Intervenor's Motion to Dismiss

The Intervenor argues that Petitioners' claims should be dismissed as moot. See Doc. 44. The Intervenor argues that when the Board initially granted Petitioners'

application, the site plan approval and conditional use permits would expire after one year unless Petitioners obtained a building permit or an extension of time to obtain one. See id. Because Petitioners failed to do so, the Intervenor maintain that reinstating the Board's December 16, 2021 approval by way of voiding its decision to rehear the application would have no legal effect. See id. Accordingly, the Intervenor argue that Petitioners' appeal of the Board's decision to grant a rehearing is moot. See id.

"Generally . . . a matter is moot when it no longer presents a justiciable controversy because issues involved have become academic or dead." In re Juvenile 2005–212, 154 N.H. 763, 765 (2007). "A petition for declaratory judgment becomes moot when any event occurs after the petition is filed which terminates the adverse claim." Real Estate Planners, Inc. v. Town of Newmarket, 134 N.H. 696, 701 (1991).

As Petitioners correctly point out, the February 15, 2022 Certiorari Order from this Court provided, among other things, that "[p]roceedings upon the decision appealed from are stayed." Doc. 46 ¶¶ 9–10 (quoting Doc. 3). In the Court's view, the February 15, 2022 stay of proceedings applied to the tolling of Petitioners' one-year window for obtaining a building permit.² In light of this conclusion, the issues presented in the Petition are not "academic or dead." See In re Juvenile 2005–212, 154 N.H. at 765. Accordingly, Intervenor's Motion to Dismiss the Petition as moot is **DENIED**.

II. Petitioners' Motion for Summary Judgment

In their Petition and in their motion for summary judgment, Petitioners argue that the Board erred in granting the Intervenor's Motion for Rehearing by "(1) asserting jurisdiction over a motion for rehearing after its decision had been appealed to the ZBA

² Notably, the Intervenor have cited no authority which might undermine the Court's conclusion that the stay applied to Petitioners' window for obtaining a building permit.

[in violation of RSA 676:6]; and (2) granting a rehearing more than 30 days after its initial decision.” See Doc. 17 at 5–6. Petitioners further contend that they are entitled to summary judgment as to their claim that the ZBA lacked jurisdiction over the Intervenor’s appeal. See id. at 8–12 (arguing that the issues appealed to the ZBA do not involve the interpretation of zoning ordinances or are statutorily excluded from the ZBA’s purview).

For their part, the Intervenor’s argue that the filing of their ZBA appeal did not divest the Board of jurisdiction to correct its own errors. See Doc. 36 at 8–10. In particular, the Intervenor’s contend that the purpose of RSA 676:6 is to “maintain the status quo,” which, in this case, would be preventing Petitioners from engaging in construction while an appeal is pending. Id. The Intervenor’s further argue that “[t]he thirty-day period is the period within which the Intervenor’s were required to file their motion, not the period within which the Planning Board was required to act on it.” Id. at 4–5 (citing RSA 677:2–3, which govern appeals of a ZBA decision to the Superior Court and motions for rehearing before the ZBA).

“Jurisdiction of the courts to review procedural aspects of planning board decisions and actions shall be limited to consideration of compliance with applicable provisions of the constitution, statutes and regulations.” RSA 676:4, IV. “When reviewing a planning board decision, the trial court must determine on the record before it whether the decision is unreasonable or erroneous as a matter of law.” Route 12 Books & Video v. Town of Troy, 149 N.H. 569, 574 (2003) (citation omitted). Where, as here, a party moves for summary judgment in connection with the Court’s review of a planning board decision, the typical standard governing such motions applies: i.e.,

summary judgment shall be granted where “there is no genuine issue as to any material fact” and “the moving party is entitled to judgment as a matter of law.” RSA 491:8-a, III. In ruling on such a motion, the Court must consider the evidence, and all reasonable inferences therefrom, in the light most favorable to the non-moving party. See Stewart v. Bader, 154 N.H. 75, 85 (2006).

In this case, the inquiry before the Court is whether, and if so to what extent, the Board had the authority to grant the Intervenor’s request for rehearing under the circumstances described above. “Cities and towns have only such powers as the State grants them.” 74 Cox St., LLC v. City of Nashua, 146 N.H. 228, 231 (2007) (cleaned up). In 74 Cox St., the Supreme Court considered whether a zoning board of adjustment had the authority to reconsider its prior denial of a request for rehearing. See id. Although the 74 Cox St. court recognized that “RSA 677 does not set out any procedure by which a ZBA may reconsider a decision to deny rehearing,” the court concluded that “when the legislature authorized the ZBA to grant or deny requests for rehearing . . . that statutory grant included the authority to reconsider decisions to deny rehearing . . . during the time period allotted by statute for parties to appeal those same decisions.” Id. Notably, however, the 74 Cox St. court clarified that “the ZBA was entitled to exercise its inherent power to reconsider its decision only during the statutory appeal period.” Id. at 233 (emphasis added).

Although there is no statute or rule expressly providing a planning board with the authority to rehear an application, see RSA 677:3 (providing for rehearings by boards of adjustment), the Court concludes (and Petitioners do not dispute) that planning boards have some inherent authority to reconsider their own decisions. See 74 Cox St., 146

N.H. at 231. However, similar to the Supreme Court’s reasoning in 74 Cox St., the Court concludes that a planning board is only entitled to reconsider its decision during the statutory appeal period associated with that decision.

As Petitioners point out, “[t]he deadline for filing an appeal of a planning board decision [to the Superior Court] is thirty days from the ‘date upon which the Board voted to approve or disapprove the application.’” Id. (quoting RSA 677:15). However, under RSA 676:5, I, “[a]ppeals to the board of adjustment concerning any matter within the board’s powers as set forth in RSA 674:33 may be taken by any person aggrieved . . . within a reasonable time.” Thus, consistent with the reasoning set forth in 74 Cox St., planning boards have the inherent authority to reconsider decisions appealable to the Superior Court within thirty days, and inherent authority to reconsider decisions appealable to the ZBA “within a reasonable time.” Cf. Route 12 Books & Video, 149 N.H. at 576 (“When a party is aggrieved by a planning board decision that interprets both planning regulations and zoning ordinances and wishes to appeal issues involving both, the party is obligated to file separate appeals with the superior court and zoning board of adjustment.” Id. at 576.

In this case, the parties disagree as to which aspects (if any) of the Board’s December 16, 2021 decision were appealable to the ZBA. Upon review, the Court concludes that it need not (and should not) resolve that dispute at this time. To the extent any of the issues the Intervenors raised were directly appealable to this Court, the Board could not grant a rehearing in connection with those issues after January 15,

2022.³ Thus, to the extent the Board's January 27, 2022 decision to grant a rehearing was predicated on issues which could have been (but were not) directly appealed to this Court, that decision was legally erroneous. See 74 Cox St., 146 N.H. at 231; RSA 677:15 (providing 30 days to appeal certain decisions by a planning board to the Superior Court); Route 12 Books & Video, 149 N.H. at 574 ("When reviewing a planning board decision, the trial court must determine on the record before it whether the decision is unreasonable or erroneous as a matter of law.").

To the extent the Board's January 27, 2022 decision was predicated on issues which were appropriately appealed to the ZBA, the Board's decision to grant the Intervenor's request for a rehearing was also legally erroneous. As previously noted, by the time the Board granted the Intervenor's request for a rehearing, the Intervenor had already appealed the Board's December 16, 2021 decision to the ZBA. Under RSA 676:6, which is entitled "Effect of Appeal to the Board," "[a]n appeal of any order or other enforcement action shall stay all proceedings under the action appealed from unless the officer from whom the appeal is taken certifies . . . that . . . a stay would . . . cause imminent peril to life, health, safety, property, or the environment." RSA 676:6. The Intervenor does not contend that such a risk is present here, and the Court cannot discern one from the record. Accordingly, to the extent the Intervenor's request for rehearing was predicated on issues which were appropriately appealed to the ZBA, the Court concludes that the Intervenor's filing of such an appeal deprived the Board of

³ The Court notes the record reflects that the Board also understood that it had thirty days to decide whether to grant the request for rehearing, but erroneously determined that it granted Petitioner's application on December 30, 2021, when it actually granted the application on December 16, 2021. See C.R. at 221 (discussing that the rehearing decision should be made within thirty days of the original decision and stating that the decision was made on December 30, 2021); but see id. at 104–09 (granting Petitioner's Conditional Use Permits and Site Plan approval at the Board's December 16, 2021 meeting).

jurisdiction. See id.

In summary, the Court concludes that the Board did not timely grant rehearing on any grounds which were appealable to the Superior Court, and the Board lacked jurisdiction to grant rehearing on any grounds which the Intervenors appropriately appealed to the ZBA. In either case, the Board's decision to grant the Intervenors' request for rehearing was erroneous as a matter of law. See Route 12 Books & Video, 149 N.H. at 574. In light of the foregoing, the Court need not reach the other grounds upon which Petitioners argue that the Board's decision to grant rehearing was improper. See Canty v. Hopkins, 146 N.H. 151, 156 (2001). Rather, for the reasons outlined above, Petitioners' motion for summary judgment is **GRANTED** with respect to their claim that the Board committed an error of law in granting the Intervenors' rehearing request. As a result, the Board's decision is hereby **VACATED**.

Notably, Petitioners also seek summary judgment with respect to their request for declaratory relief as to the aforementioned dispute regarding which aspects of the Board's December 16, 2021 decision were appropriately appealed to the ZBA. See Doc. 17 at 8–12. As set forth above, the thirty-day window in which the Intervenors' could have filed an appeal concerning matters which were directly appealable to the Superior Court lapsed on January 16, 2022. As such, any such issues are not preserved for further review. Nevertheless, the Court declines to determine, at this juncture, which issues (if any) the Intervenors appropriately appealed to the ZBA. See Pederson v. Brook, 151 N.H. 65, 69 (2004) (remanding to permit the lower court to apply the proper legal standard in the first instance). In the Court's view, the ZBA should, in the first instance, determine whether it has jurisdiction over the issues raised

in the Intervenor's January 14, 2022 appeal. Accordingly, Petitioners' Motion for Summary Judgment is **DENIED** as to its claim for declaratory relief regarding the ZBA's jurisdiction. Further, the Court's February 15, 2022 Stay is **LIFTED** so that the ZBA can determine, in the first instance, whether it has jurisdiction over the issues presented in the Intervenor's appeal.

III. Attorney's Fees

As a final matter, Petitioners seek an award of attorney's fees as to their appeal and declaratory judgment action, see Doc. 7 at 23, and as to their response to the Intervenor's Motion to Dismiss, see Doc. 46 ¶ 20. The Intervenor's object. See Docs. 27 (Ans.), 48 (Intervenor's Reply to Pet.'s Obj. Mot. Dismiss). While the City joined in most of the Intervenor's positions in this case, see Doc. 21, the City expressly did not join in or assent to the Intervenor's Motion to Dismiss, see Doc. 50.

"Where an individual is forced to seek judicial assistance to secure a clearly defined and established right, which should have been freely enjoyed without such intervention, an award of counsel fees on the basis of bad faith is appropriate." Harkeen v. Adams, 117 N.H. 687, 691 (1997). Given the complex procedural nature of this case, the Court cannot conclude that a general award of attorney's fees is appropriate. However, the Court concludes that Petitioners are entitled to reasonable attorney's fees incurred in connection with their response to the Intervenor's Motion to Dismiss. The Court's Certiorari Order unambiguously stayed proceedings from the Board's decision granting the rehearing, see Doc. 3, and the Intervenor has failed to provide a good faith basis through which the Court could reach a different result. See Doc. 44; see also Doc. 48. As the City did not join in that motion, such fees shall only

be assessed against the Intervenor. Petitioners' request for attorney's fees is thus **GRANTED IN PART** and **DENIED IN PART**.

CONCLUSION

Consistent with the foregoing, the Intervenor's Motion to Dismiss is **DENIED**. The Board's January 27, 2022 decision granting the Intervenor's Motion for Rehearing/ Reconsideration is **VACATED**. The Court's February 15, 2022 Order staying proceedings below is **LIFTED**, so that the ZBA can determine, in the first instance, whether it has jurisdiction over the issues presented in the Intervenor's January 14, 2022 appeal.

Petitioners' request for reasonable attorney's fees is **GRANTED** as to fees incurred in connection with the Intervenor's Motion to Dismiss (such fees to be assessed only against the Intervenor) but is otherwise **DENIED**. Within ten (10) days of the date on the Clerk's notice of decision accompanying this Order, Petitioners shall file a schedule of their costs and reasonable attorneys' fees accrued in connection with the Intervenor's Motion to Dismiss, see Doc. 43. The Intervenor will thereafter be afforded ten (10) days in which to respond.

SO ORDERED.

Date: February 2, 2023

Clerk's Notice of Decision
Document Sent to Parties
on 02/02/2023

A handwritten signature in black ink, appearing to read 'D. St. Hilaire', is written over the printed name of the Presiding Justice.

Hon. Daniel I. St. Hilaire
Presiding Justice

II. OLD BUSINESS

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

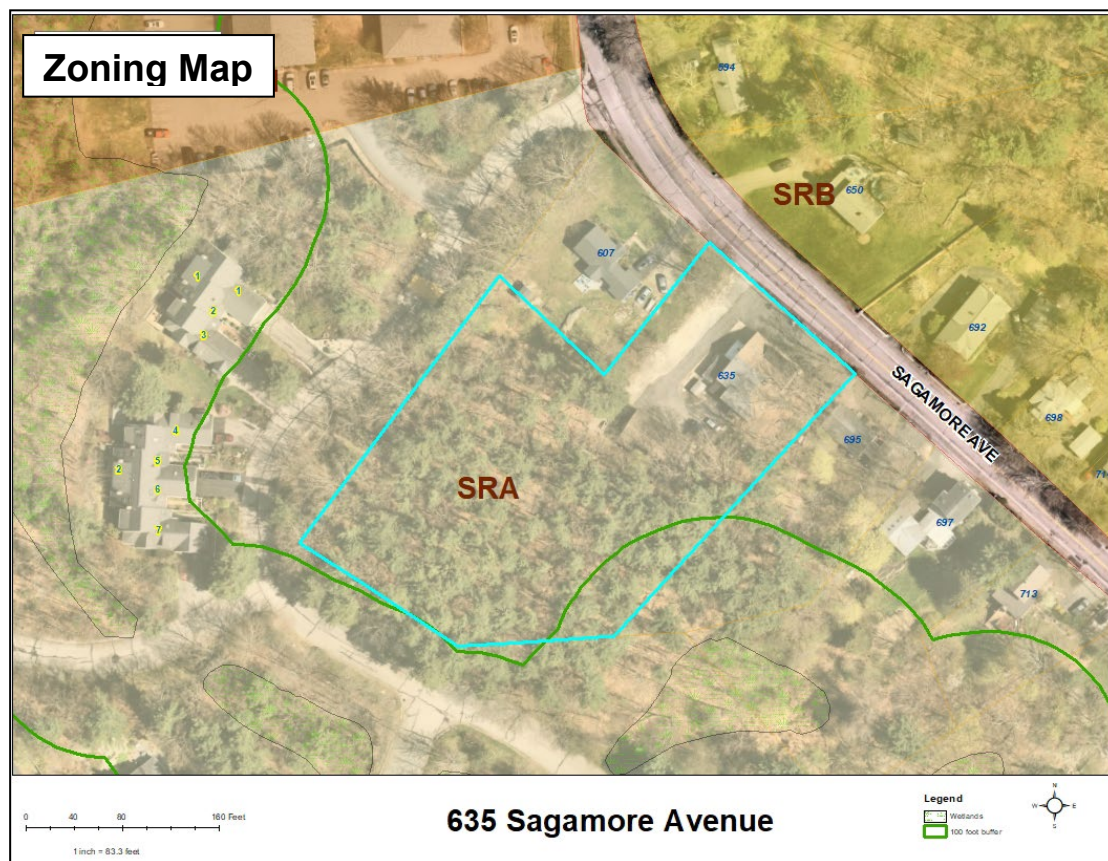
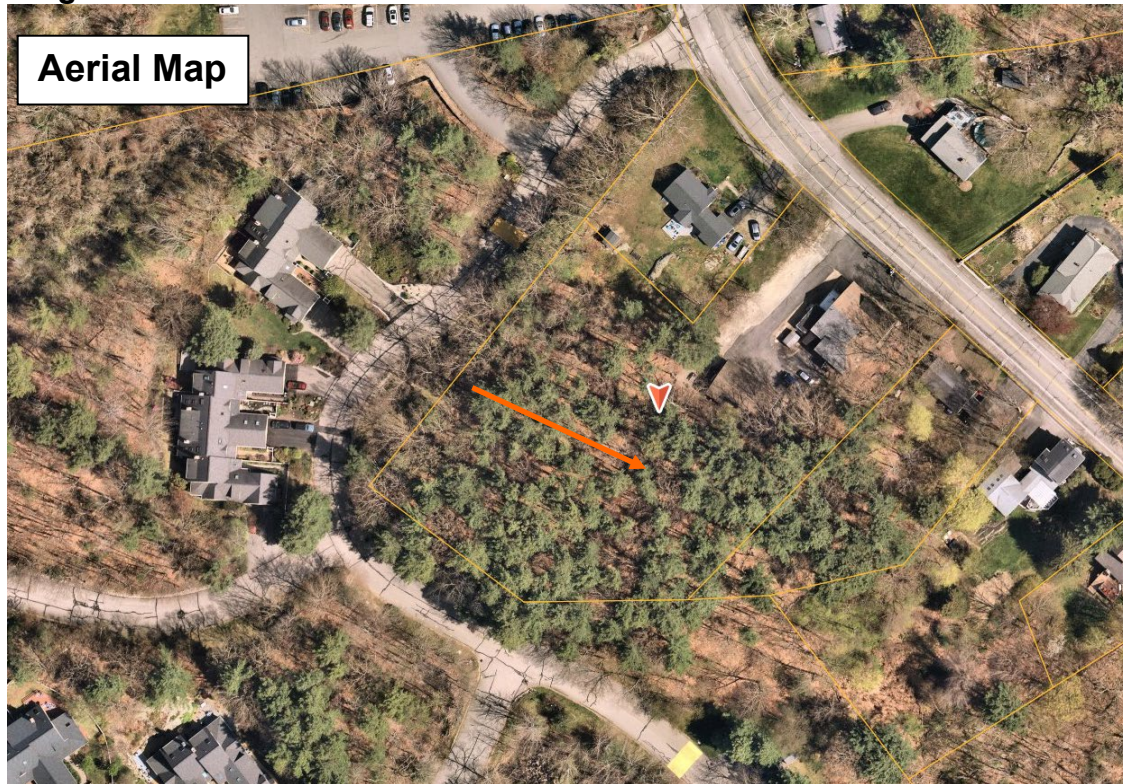
Existing & Proposed Conditions

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

Other Permits/Approvals Required

TAC/Planning Board – Site Plan Review

Neighborhood Context



Previous Board of Adjustment Actions

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

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

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

November 15, 2022 - The Board **granted** a request to postpone to the June meeting.

December 20, 2022 - The Board **granted** a request to postpone to the June meeting.

January 17, 2023 - The Board **granted** a request to postpone to the March meeting.

Planning Department Comments

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

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

Review Criteria

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

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

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

OR

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

10.235 Certain Representations Deemed Conditions

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

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

October 26, 2022

HAND DELIVERED

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

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

Dear Mr. Stith and Zoning Board Members:

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

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

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Enclosures

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

DANIEL C. HOEFLE
R. TIMOTHY PHOENIX
LAWRENCE B. GORMLEY
STEPHEN H. ROBERTS

R. PETER TAYLOR
KEVIN M. BAUM
GREGORY D. ROBBINS
MONICA F. KIESER

JACOB J.B. MARVELLEY
DUNCAN A. EDGAR
STEPHANIE J. JOHNSON

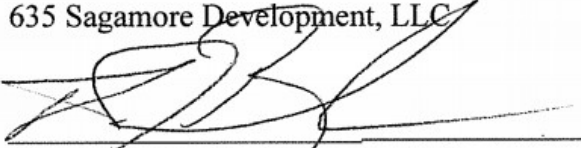
OF COUNSEL:
SAMUEL R. REID
JOHN AHLGREN

Letter of Authorization

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

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

635 Sagamore Development, LLC



Timothy J. Black, Duly Authorized

January 5, 2022

Date

MEMORANDUM

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

Dear Chairman Parrott and Zoning Board Members:

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

I. EXHIBITS

- A. Plan Set – by Jones and Beach Engineers
 - C1 – Existing Conditions Plan
 - C2 – ZBA Site Plan
 - C3 – Topographic Site Plan
- B. Architectural Elevations and Floor Plans–by ArtForm Architecture, Inc.
 - Renderings
 - First Floor
 - Second Floor
 - Foundation Plan
 - Elevations
- C. Site photographs
- D. Tax Assessors Card
- E. City GIS Map – identifying nearby zoning districts and surrounding area

II. PROPERTY/BACKGROUND

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

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

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

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

III. RELIEF REQUIRED

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

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

IV. VARIANCE REQUIREMENTS

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

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

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

1. **The use of land, buildings and structures for business, industrial, residential and other purposes** – The Property currently houses a non-conforming commercial auto detailing business and service garage. **(Exhibit C)**. The proposal would replace those buildings with brand new, to code, residences consistent with surrounding uses.
2. **The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space** – The Project complies with building coverage, height, yards and open space requirements. The reduced proposal with four dwellings on a single lot, at 2.06 dwelling units per acre is consistent with surrounding properties and less than the density permitted by right across Sagamore Avenue.
3. **The design of facilities for vehicular access, circulation, parking and loading-** The Project will be served by a private roadway from Sagamore Avenue. **(Exhibit A)**. There is currently no defined curb cut on the property so the redevelopment will improve driveway distances, site lines, and overall traffic safety from the Property compared to the existing commercial and residential use. **(Exhibit D)**. The driveway will undergo further review as part of the Planning Board and NHDOT review processes.

4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – The Property is currently used as a commercial auto detailing facility in the middle of a residential area. The Project will convert the Property to residential use with lighting, noise, and other conditions more appropriate for the neighborhood. A generous buffer will be preserved between the Project and Tidewatch Condominium. The Project maintains 81.3% open space. Stormwater runoff will be improved over the current development which is significantly paved and use of commercial cleaning chemicals will cease.
5. The preservation and enhancement of the visual environment – The Project vastly improves the visual environment for the immediate abutters on either side and across the street. In addition, a generous vegetated buffer is retained for the south/west abutters. Sagamore further screens the developed area with the addition of a significant tree buffer. **(Exhibit A).**
6. The preservation of historic districts buildings and structures of historic or architectural interest – The Property and the existing structures to be removed are of no known historic or architectural interest.
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – The Project will significantly improve conditions by terminating the use of commercial grade cleaning chemicals in favor of a compatible residential uses served by municipal sewer.

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

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

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

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

3. Granting the variances will not diminish surrounding property values

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

4. Denial of the variances results in an unnecessary hardship

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

This portion of the SRA District on the north side of Sagamore Creek is comprised of only seven properties. **(Exhibit E)**. Discounting Tidewatch with 122 units on 53.59 acres, the 1.947 acre L-shaped lot significantly larger than the remaining five properties, yet contains just over the required frontage. Although zoned SRA and subject to a 43,560 s.f. minimum lot area and lot area/dwelling unit requirement, this neighborhood is bounded by the Sagamore Condominium Development with 144 Units on 15.01 acres, a handful of lots in the Waterfront Business District, and the SRB district across Sagamore Avenue with its reduced density requirement of just 15,000 s.f./dwelling unit. See Walker v. City of Manchester, 107 N.H. 382, 386 (1966) (hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use will have no adverse effect on the neighborhood). The parcel size, shape, and location near other densely developed residential parcels combine to create special conditions.

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

The purpose of the requirements for one free standing dwelling per lot and lot area per dwelling unit is to prohibit overcrowding, allow for air, light, and separation between neighbors,

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

c. The proposed use is reasonable

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

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

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, supra at 109.

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

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

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

V. CONCLUSION

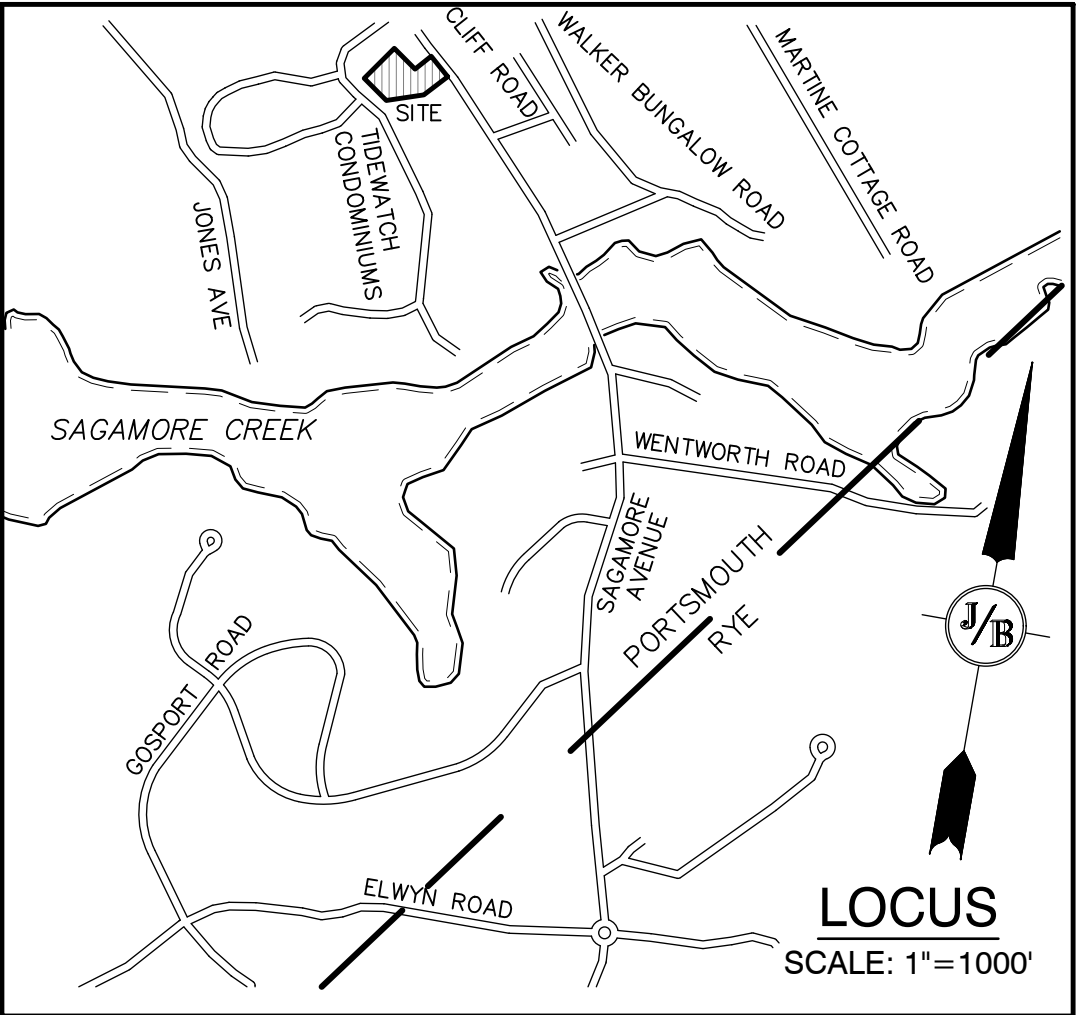
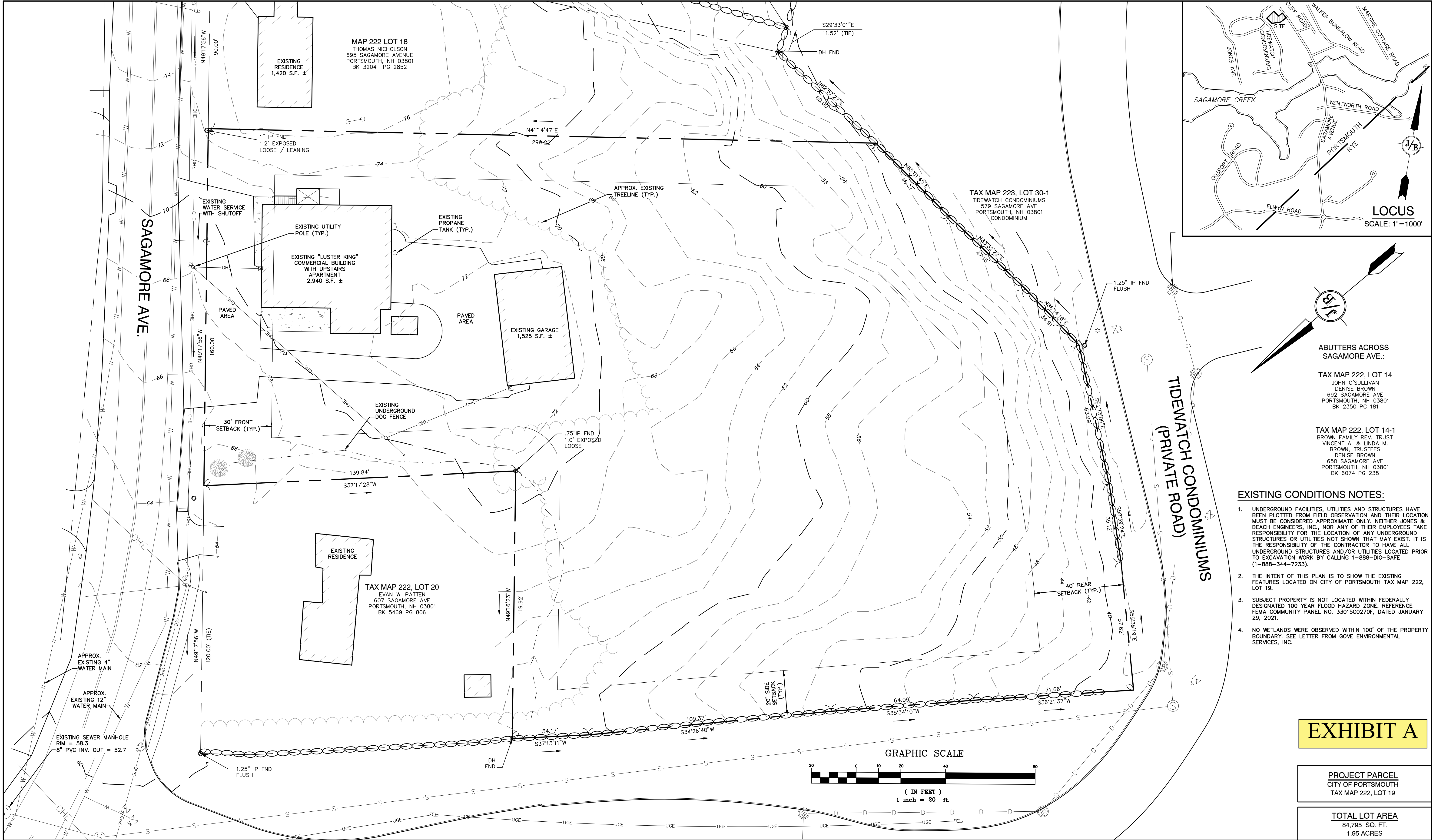
For all of the reasons herein stated, Sagamore respectfully requests that the Portsmouth Zoning of Adjustment grant the requested variances.

Respectfully submitted,
635 Sagamore Development, LLC

By:



R. Timothy Phoenix, Esq.
Monica F. Kieser, Esq.



ABUTTERS ACROSS
SAGAMORE AVE.:

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

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

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

EXHIBIT A

PROJECT PARCEL
CITY OF PORTSMOUTH
TAX MAP 222, LOT 19

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

| | | |
|---|-----------------|----------------------|
| Design: JAC | Draft: DJM | Date: 12/07/2021 |
| Checked: JAC | Scale: AS NOTED | Project No.: 18134.1 |
| Drawing Name: 18134-CONCEPT-8.dwg | | |
| THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE. | | |

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

J/B Jones & Beach Engineers, Inc.

Designed and Produced in NH

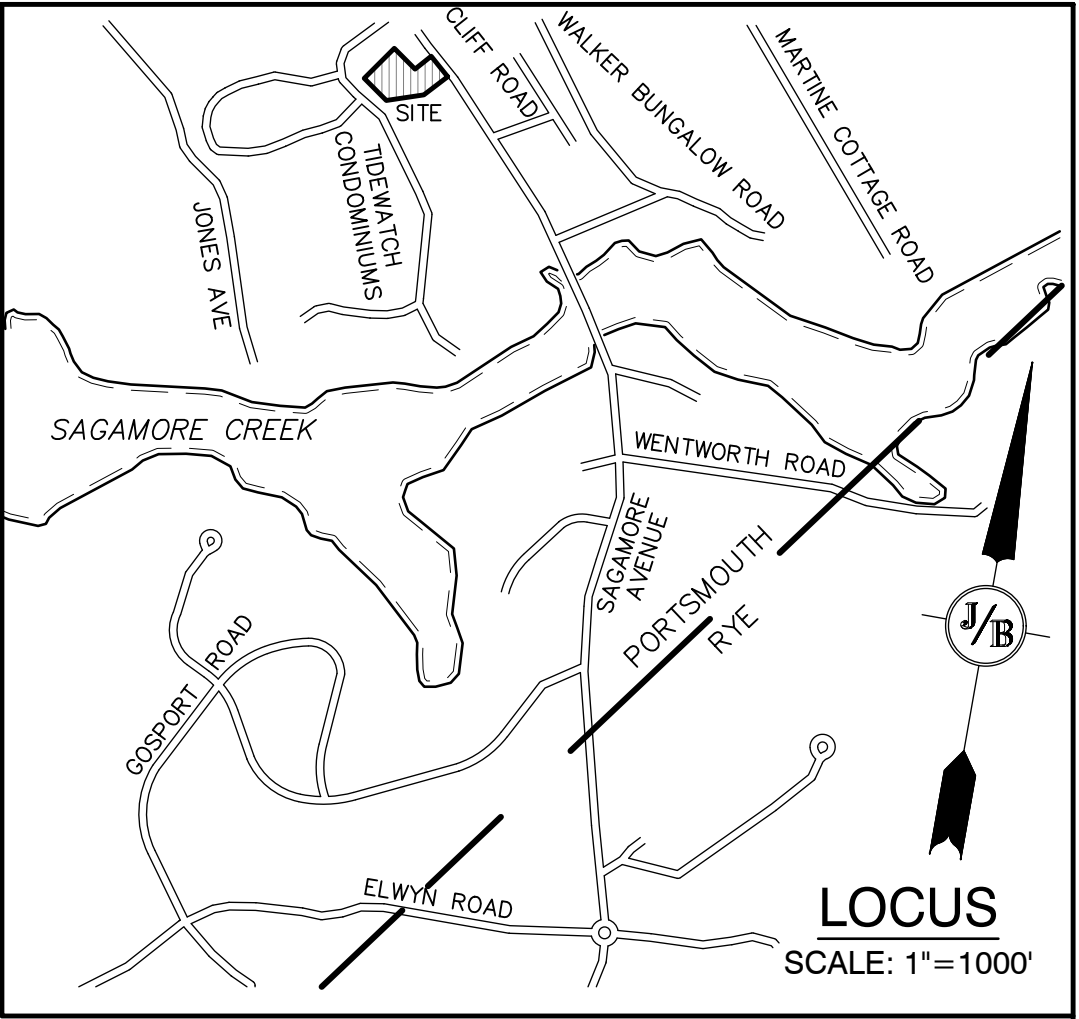
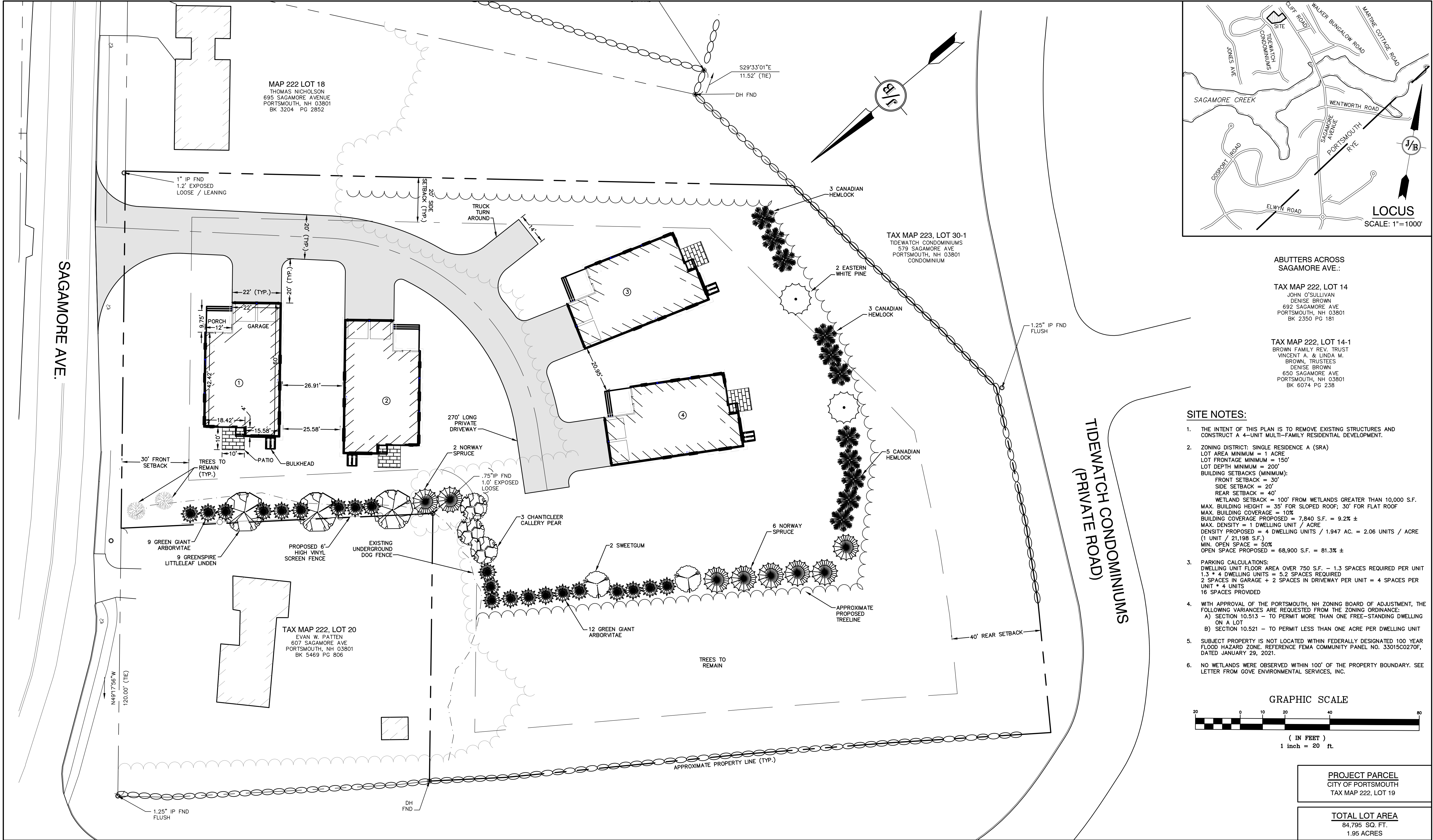
85 Portsmouth Ave.
PO Box 219
Stratham, NH 03885

Civil Engineering Services

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

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

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



ABUTTERS ACROSS
SAGAMORE AVE.:

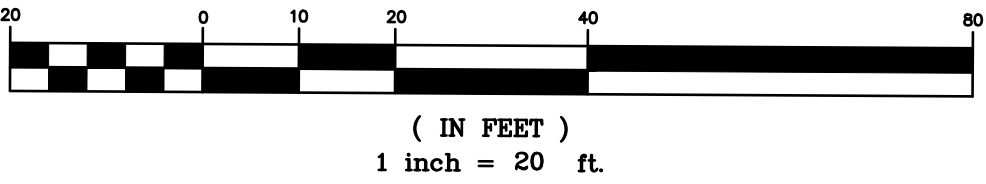
TAX MAP 222, LOT 14
JOHN O'SULLIVAN
DENISE BROWN
692 SAGAMORE AVE
PORTSMOUTH, NH 03801
BK 2350 PG 181

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

SITE NOTES:

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

GRAPHIC SCALE



PROJECT PARCEL
CITY OF PORTSMOUTH
TAX MAP 222, LOT 19

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

| | | |
|---|-----------------|----------------------|
| Design: JAC | Draft: DJM | Date: 12/07/2021 |
| Checked: JAC | Scale: AS NOTED | Project No.: 18134.1 |
| Drawing Name: 18134-CONCEPT-8.dwg | | |
| THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE. | | |

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

J/B

Jones & Beach Engineers, Inc.

Designed and Produced in NH

85 Portsmouth Ave.
P.O. Box 219
Stratham, NH 03885

Civil Engineering Services

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

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

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



| | | |
|---|-----------------|----------------------|
| Design: JAC | Draft: DJM | Date: 12/07/2021 |
| Checked: JAC | Scale: AS NOTED | Project No.: 18134.1 |
| Drawing Name: 18134-CONCEPT-8.dwg | | |
| THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE. | | |

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

J/B

Jones & Beach Engineers, Inc.

Designed and Produced in NH

85 Portsmouth Ave.
PO Box 219
Stratham, NH 03885

Civil Engineering Services

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

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

DRAWING No.

C3

SHEET 3 OF 3
JBE PROJECT NO. 18134.1

| |
|---|
| PROJECT PARCEL CITY OF PORTSMOUTH TAX MAP 222, LOT 19 |
| TOTAL LOT AREA 84,795 SQ. FT. 1.95 ACRES |

1/27/2022

Sea Watch

419.126.v14 GL (1/27/2022)

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603-431-9559



Dear Builders and Home Buyers,

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

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

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

Facade Changes:

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

Floor plan layout and/or Structural Changes:

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

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Sea Watch

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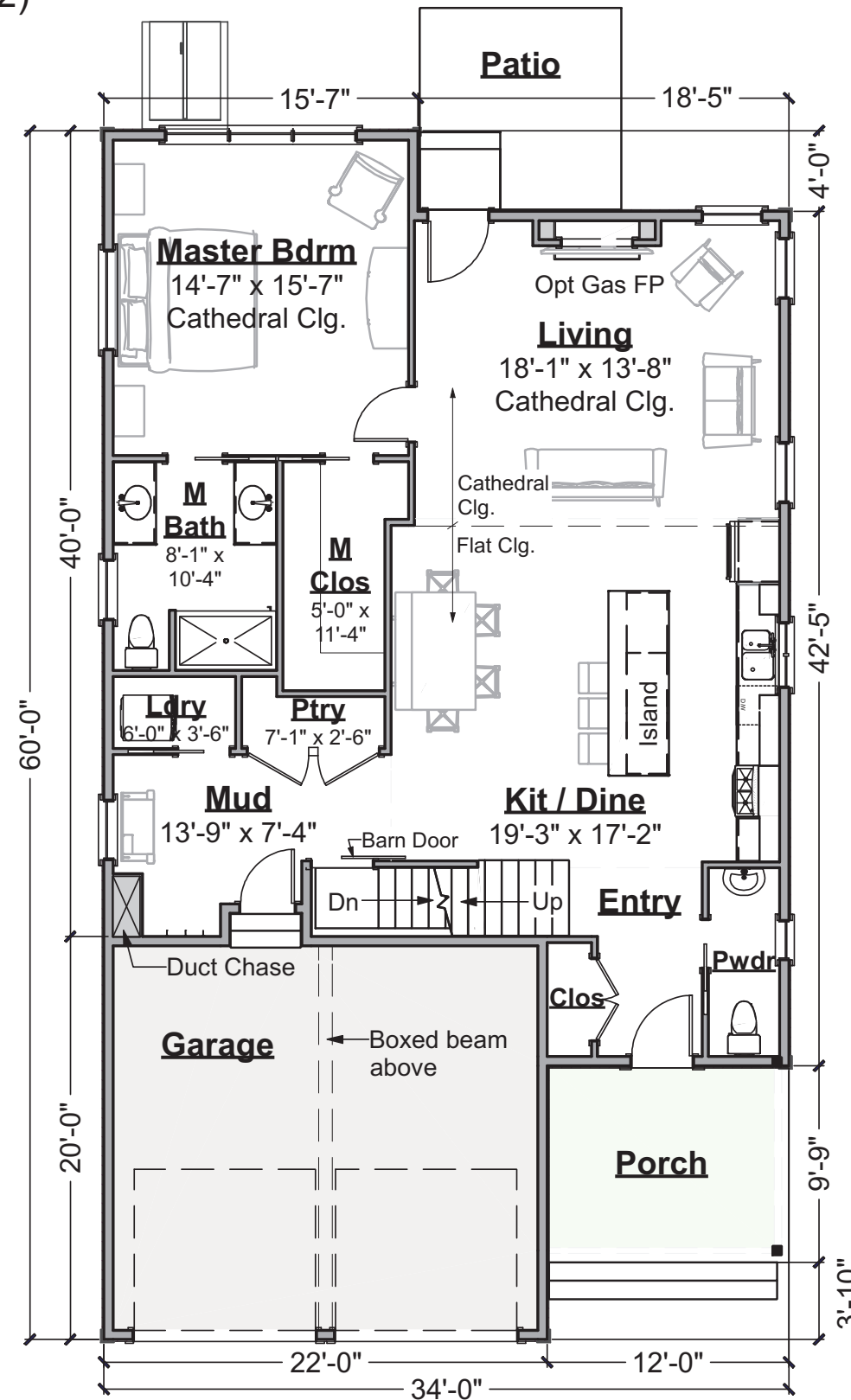
Sea Watch

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603-431-9559



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

CRS 419.126.v14 GL Sea Watch

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

1/27/2022

Sea Watch

419.126.v14 GL (1/27/2022)

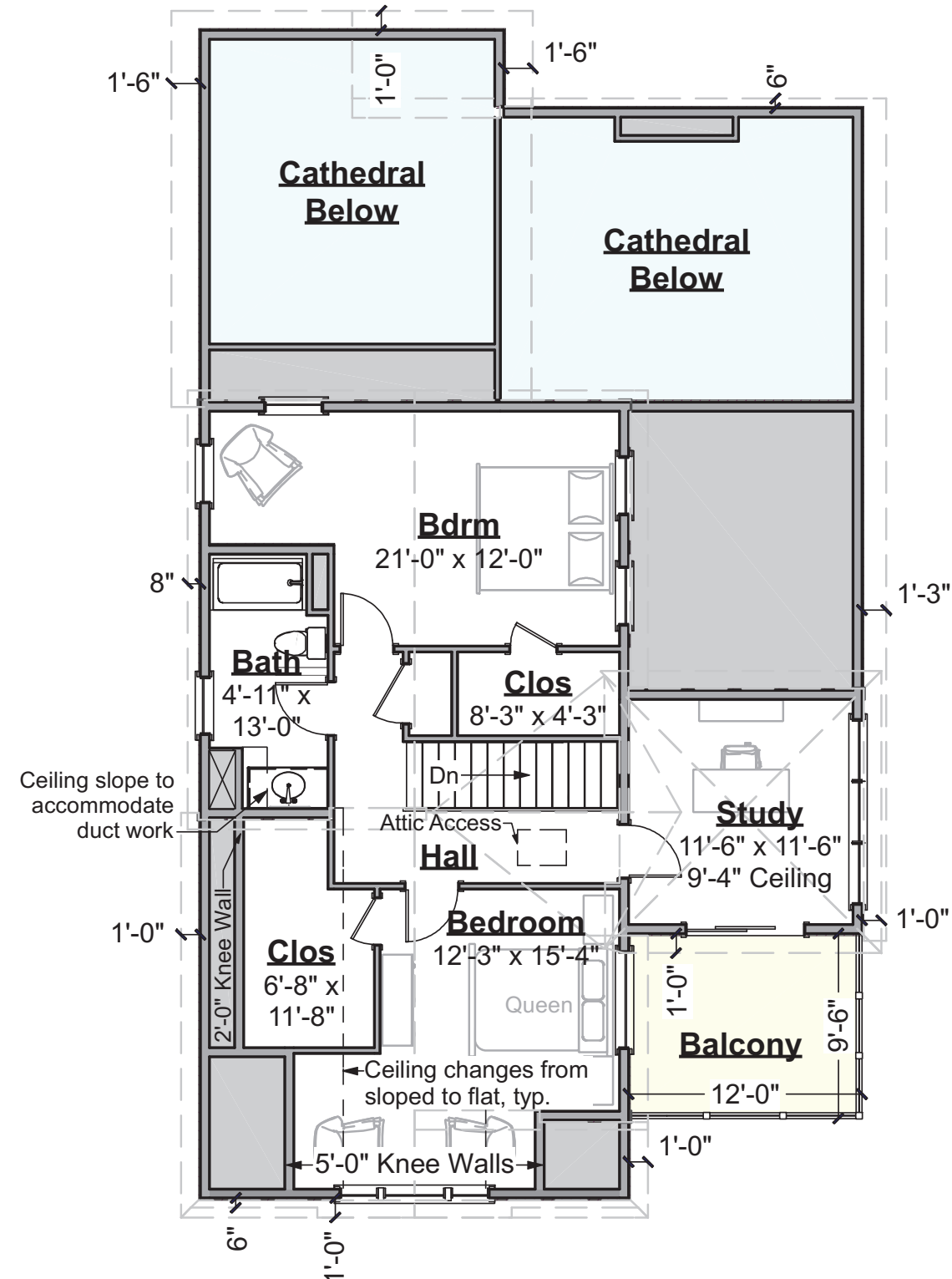
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Living Area This Floor: 979 sq ft

8 ft Ceilings, unless noted otherwise



Second Floor Plan

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

1/27/2022

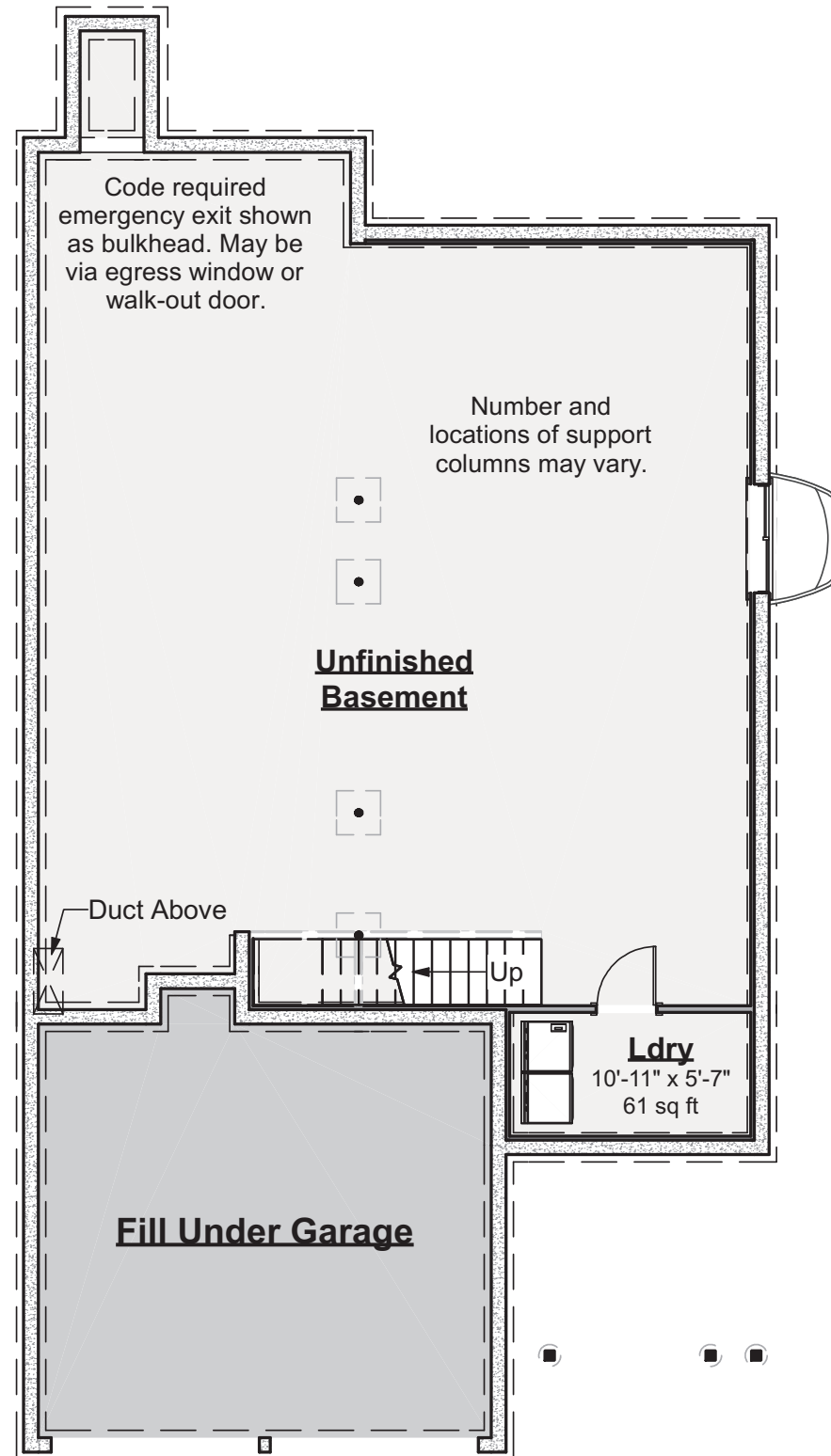
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603-431-9559



Foundation Plan

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

1/27/2022

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Front Elevation

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

1/27/2022

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

1/27/2022

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Rear Elevation

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

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Sea Watch

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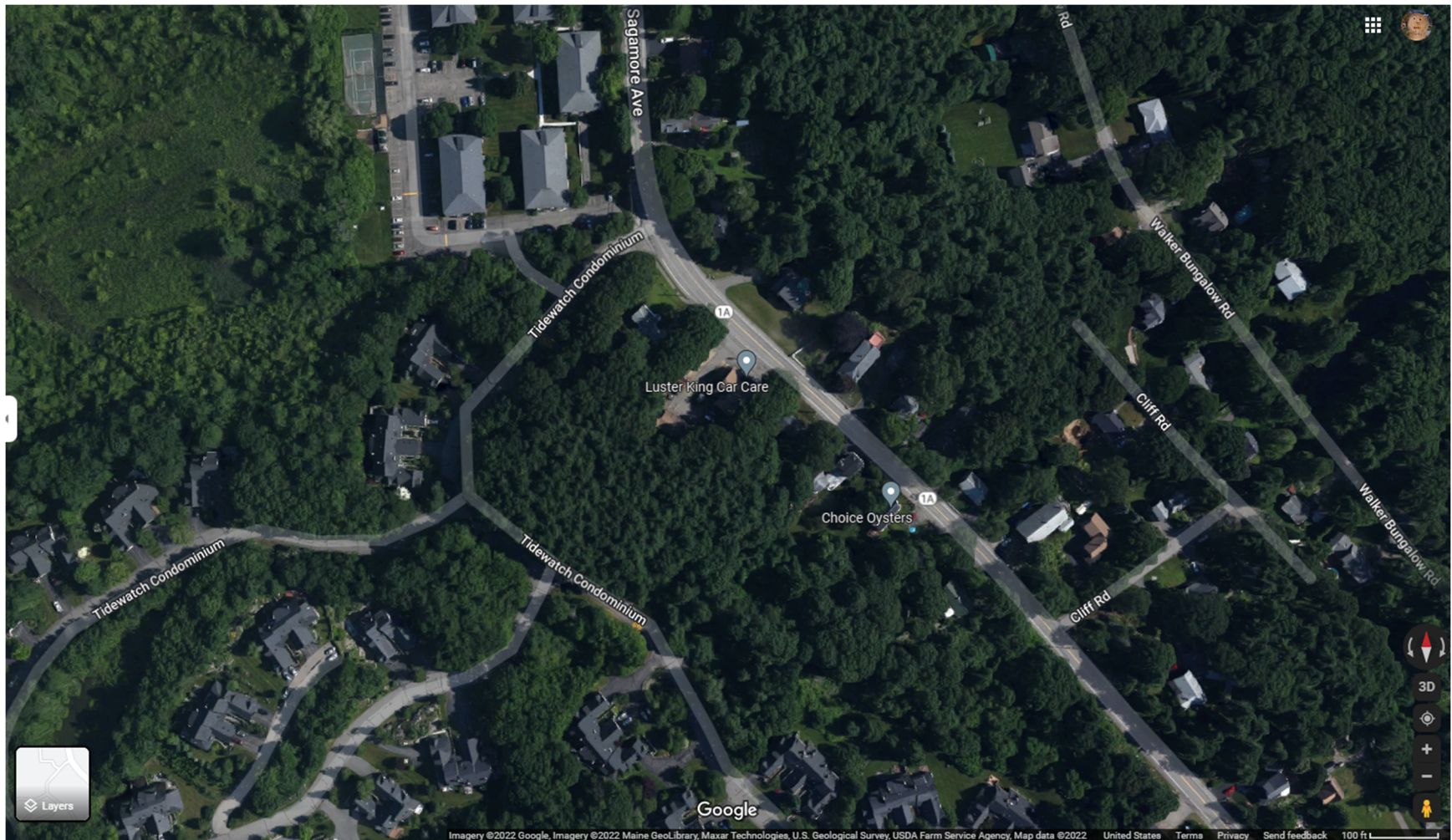


603-431-9559



Left Elevation

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



Aerial view of Property



Front View of Property (Sagamore Ave)



Front View of Property



Front View of Property



Side View of Property



View of Service Garage and Shed



Rear View of Property

1/27/2022

Sea Watch

419.126.v14 GL (1/27/2022)

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603-431-9559



635 SAGAMORE AVE

Location 635 SAGAMORE AVE

Mblu 0222/ 0019/ 0000/ /

Acct# 35416

Owner 635 SAGAMORE
DEVELOPMENT LLC

PBN

Assessment \$682,800

Appraisal \$682,800

PID 35416

Building Count 2

Current Value

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

Owner of Record

Owner 635 SAGAMORE DEVELOPMENT LLC
Co-Owner
Address 3612 LAFAYETTE RD DEPT 4
PORTSMOUTH, NH 03801

Sale Price \$387,133
Certificate
Book & Page 6332/1158
Sale Date 09/24/2021

Ownership History

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

Building Information

Building 1 : Section 1

Year Built: 1950
Living Area: 4,477

Replacement Cost: \$513,721

Building Percent Good: 54

Replacement Cost

Less Depreciation: \$277,400

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

Building 2 : Section 1

Year Built: 2000

Living Area: 1,650

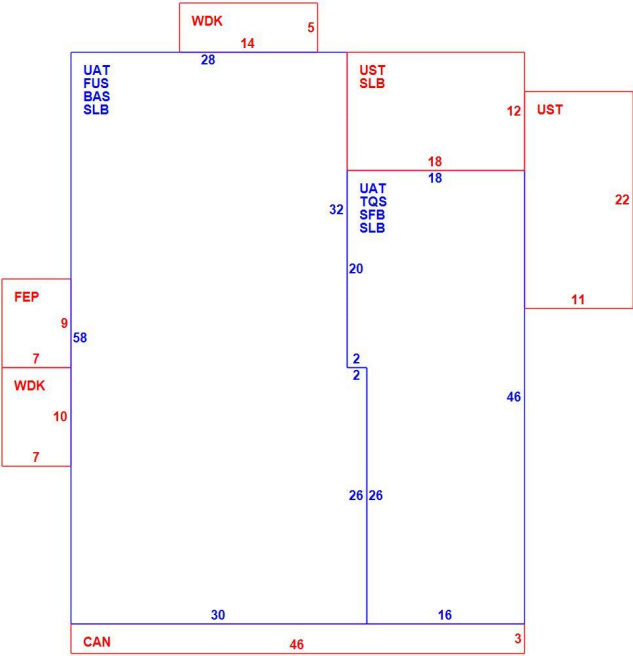
Replacement Cost: \$153,450

Building Photo

 Building Photo

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

Building Layout



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

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

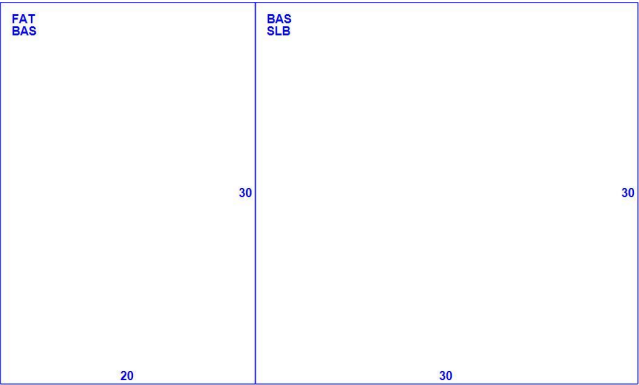
Building Percent Good: 84
Replacement Cost
Less Depreciation: \$128,900

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

Building Photo

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

Building Layout



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

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

Extra Features

| Extra Features | <u>Legend</u> |
|----------------|---------------|
|----------------|---------------|

Land

Land Use

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

Land Line Valuation

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

Outbuildings

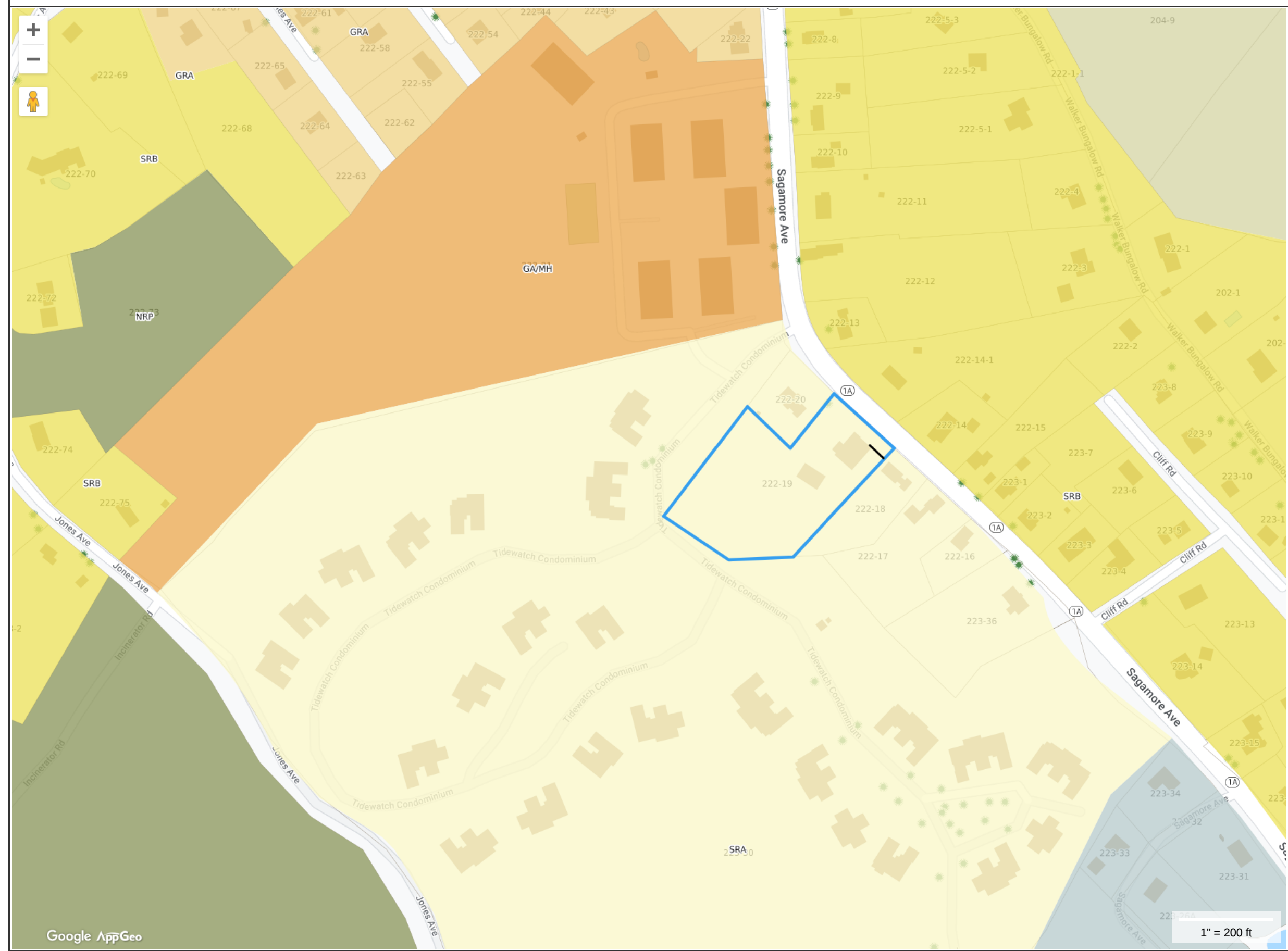
| Outbuildings | | | | | | <u>Legend</u> |
|--------------|----------------|----------|-----------------|--------------|---------|---------------|
| Code | Description | Sub Code | Sub Description | Size | Value | Bldg # |
| PAV1 | PAVING-ASPHALT | | | 1344.00 S.F. | \$1,200 | 1 |
| SHD1 | SHED FRAME | | | 96.00 S.F. | \$100 | 1 |

Valuation History

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

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

635 Sagamore Avenue



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



MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT

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

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

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

EXHIBIT E

$$1'' = 200 \text{ ft}$$

WHITE APPRAISAL

REAL ESTATE APPRAISING & CONSULTING

Brian W. White, MAI, SRA



October 28, 2022

EXHIBIT F

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

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

Attorney Phoenix:

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

1. The Existing Development:

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

2. The Proposed Development:

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

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

3. Neighborhood & Abutting Properties:

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

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

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

Noise:

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

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

View:

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

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

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

Use:

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

5. *Specific Standards – Variances:*

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

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

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

Respectively submitted,


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

ADDENDA

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PHOTOGRAPHS OF THE SUBJECT PROPERTY



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



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

PHOTOGRAPHS OF THE SUBJECT PROPERTY



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



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

PHOTOGRAPHS OF THE SUBJECT PROPERTY



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



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

PHOTOGRAPHS OF THE SUBJECT PROPERTY



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



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

PHOTOGRAPHS OF THE SUBJECT PROPERTY



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



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

PHOTOGRAPHS OF THE SUBJECT/SURROUNDING PROPERTIES



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



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

PHOTOGRAPHS OF THE SUBJECT/SURROUNDING PROPERTIES



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



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

PHOTOGRAPHS OF THE SURROUNDING PROPERTIES



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



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

PHOTOGRAPHS OF THE SURROUNDING PROPERTIES



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



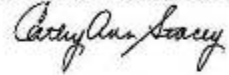
View of Residence located across Sagamore Road - 650 Sagamore Road
Looking Northeast from Sagamore Road to the Front of the Subject Property - (5/22)

PHOTOGRAPHS OF THE SURROUNDING PROPERTIES



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

State Use 0310
Print Date 11/23/2021 9:11:13 A

Return to:

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

WARRANTY DEED

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

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

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

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

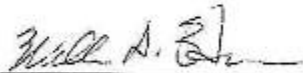
Meaning and intending to convey the same premises conveyed to the Grantor by deed of William A. Hines dated February 11, 2008 and recorded in the Rockingham County Registry of Deeds at Book 4885, Page 1538.

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

TRUSTEE CERTIFICATE

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

Signed this 3rd day of September, 2021.



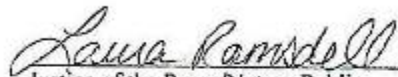
William A. Hines, Trustee of the William A. Hines Family Revocable Trust A/K/A The Hines Family Revocable Trust of 2006



Bonnie Hines

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

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

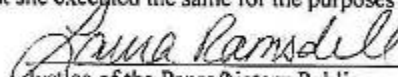


Justice of the Peace/Notary Public
My commission expires: _____



STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

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

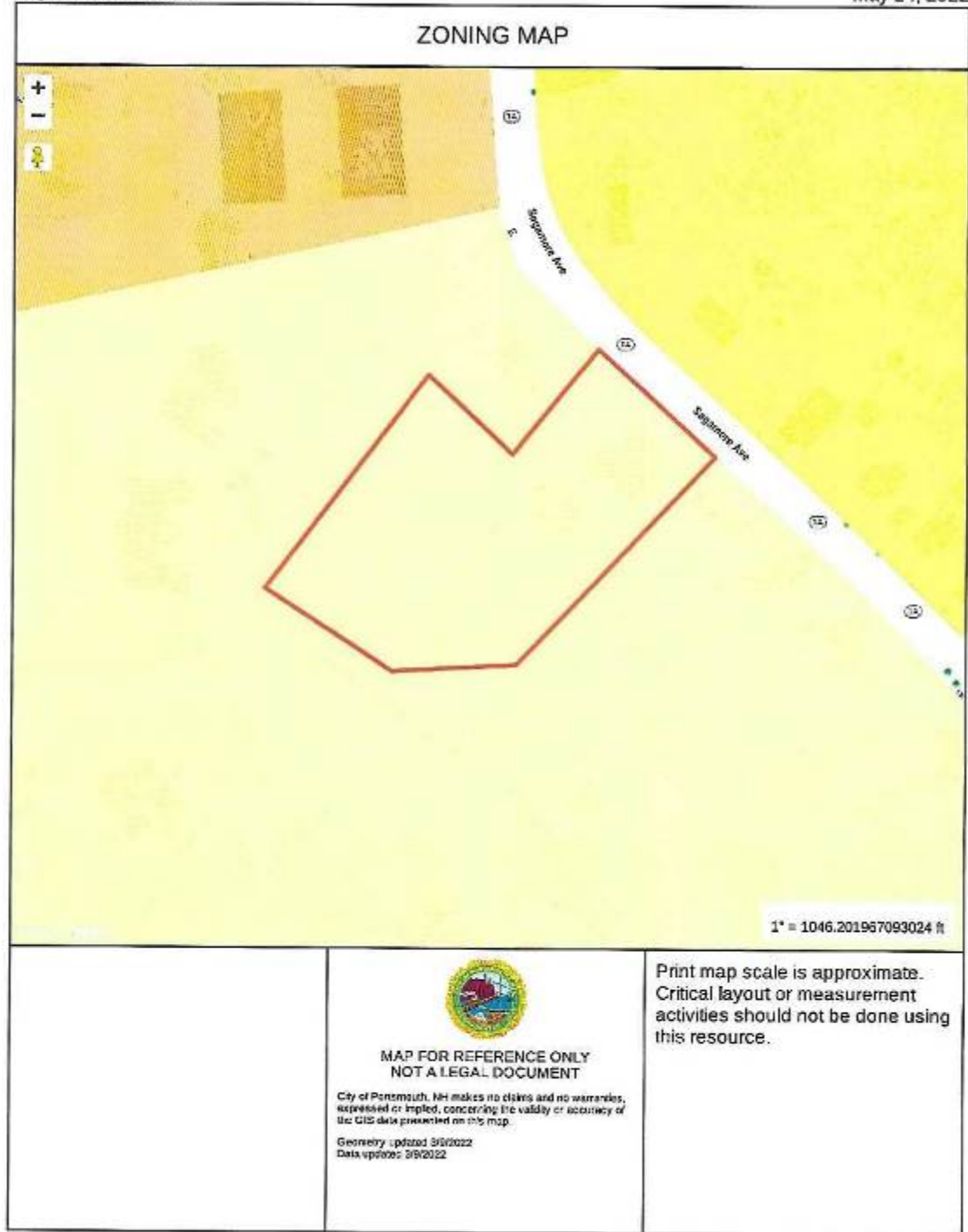


Justice of the Peace/Notary Public
My commission expires: _____







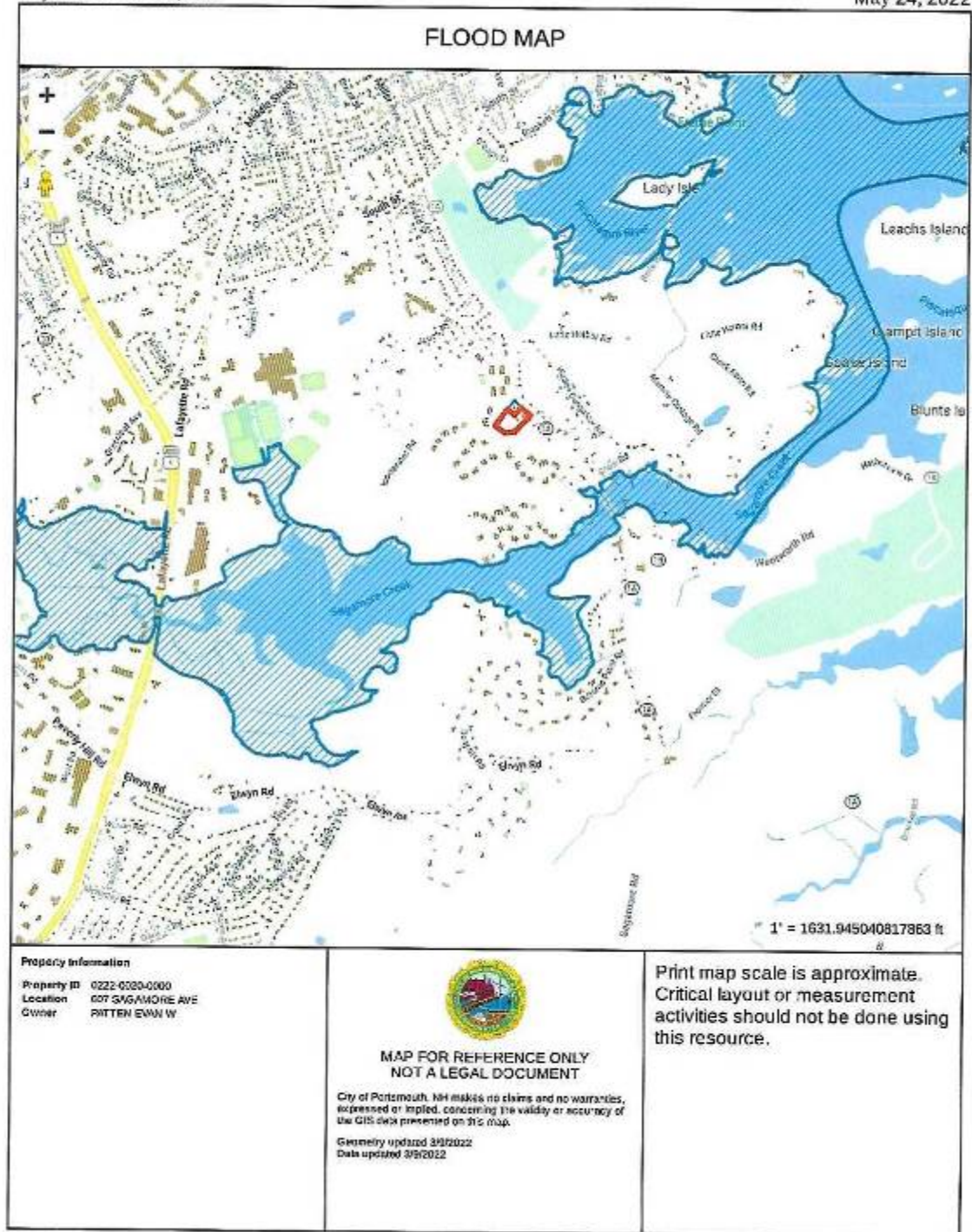


Map Theme Legends

Zoning

| Residential Districts | |
|-----------------------------|--|
| | R Rural |
| | SRA Single Residence A |
| | SRB Single Residence B |
| | GRA General Residence A |
| | GRB General Residence B |
| | GRC General Residence C |
| | GAWH Garden Apartments/Wickfield Home Park |
| Mixed Residential Districts | |
| | MRO Mixed Residential Office |
| | MRB Mixed Residential Business |
| | C1 Gateway Center |
| | C2 Gateway Center |
| Business Districts | |
| | CB Central Business |
| | B Business |
| | WB Woods Hole Business |
| Industrial Districts | |
| | OR Office Research |
| | I Industrial |
| | WI Waterfront Industrial |
| Airport Districts | |
| | AIR Airport |
| | AI Airport Industrial |
| | PI Pleasant Industrial |
| | ABC Airport Business Commercial |
| Conservation Districts | |
| | M Municipal |
| | NRP Natural Resource Preservation |
| Character Districts | |
| | CD6 Character District 6 |
| | CD4 Character District 4 |
| | CD4B Character District 4-B |
| | CD4-L1 Character District 4-L1 |
| | CD4-L2 Character District 4-L2 |
| Civic District | |
| | CD Civic District |
| Municipal District | |
| | MD Municipal District |
| Overlay Districts | |
| | DLOD Dipsey Landing Overlay District |
| | DOD Downtown Overlay District |
| | HD Historic District |

City of Portsmouth



Article 4 Zoning Districts and Use Regulations

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

Section 10.410 Establishment and Purpose of Districts

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

| District | Purpose |
|---|---|
| Residential Districts | |
| Rural Residential R | To provide areas for single-family dwellings and appropriate accessory uses at rural densities (up to one dwelling per five acres), and limited agricultural uses. |
| Single Residence A SRA | To provide areas for single-family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre), and appropriate accessory uses . |
| Single Residence B SRB | |
| General Residence A GRA | To provide areas for single-family, two-family and multifamily dwellings , with appropriate accessory uses , at moderate to high densities (ranging from approximately 5 to 12 dwelling units per acre), together with appropriate accessory uses and limited services. |
| General Residence B GRB | |
| General Residence C GRC | |
| Garden Apartment/ Mobile Home Park GA/MP | To provide areas for garden apartment development at moderate densities (up to 4 dwelling units per acre), and to accommodate existing developed mobile home parks. |
| Mixed Use Districts | |
| Mixed Residential Office MRO | To provide areas where a limited range of business establishments , including live/work units , can be located near or adjacent to residential development , providing a transition between residential neighborhoods and commercial districts. |
| Mixed Residential Business MRB | |

As Amended Through December 16, 2019

4-1

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

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

| Use | R | SRA SRB | GRA GRB | GRC (A) | GA/ MH | MRO CD4- L1 | CD4- L2 | MRB | CD3 CD4 | GB | G1 | G2 | B CD4- WB OR W | I | WI | Supplemental Regulations |
|--|----|------------|------------|------------|-----------|-------------------|------------|-----|------------|----|----|----|----------------------------|---|----|--|
| 1. Residential Uses | | | | | | | | | | | | | | | | |
| 1.10 Single family dwelling | P | P | P | P | N | P | P | P | P | N | P | P | N | N | N | |
| 1.20 Accessory dwelling unit | | | | | | | | | | | | | | | | 10.814 (Accessory Dwelling Units) |
| 1.21 Attached | CU | CU | CU | CU | N | CU | CU | CU | CU | N | CU | CU | N | N | N | |
| 1.22 Detached | CU | CU | CU | N | N | N | N | N | N | N | N | N | N | N | N | |
| 1.25 Garden Cottage | CU | CU | CU | CU | N | CU | CU | CU | CU | N | N | N | N | N | N | 10.815 (Garden Cottages) |
| 1.30 Two-family dwelling | N | N | P | P | P | P | P | P | P | N | P | P | N | N | N | 10.640 (Downtown Overlay district) |
| 1.40 Townhouse | N | N | S | P | P | P | P | P | P | N | P | P | P | N | N | 10.640 (Downtown Overlay district) |
| 1.50 Multifamily dwelling | | | | | | | | | | | | | | | | 10.5A32 (Character district permitted uses) |
| 1.51 3 or 4 dwelling units | N | N | S | P | P | P | P | P | P | N | P | P | P | N | N | 10.640 (Downtown Overlay district) |
| 1.52 5 to 8 dwelling units | N | N | N | S | P | P | P | P | P | N | P | P | P | N | N | 10.813 (Multifamily Dwellings in the Business District) |
| 1.53 More than 8 dwelling units | N | N | N | N | P | N | N | N | P | N | P | P | P | N | N | |
| 1.60 Conversion of a building existing on January 1, 1980, with less than the required minimum lot area per dwelling unit specified in Article 5 | | | | | | | | | | | | | | | | 10.640 (Downtown Overlay District) |
| 1.61 To 2 dwelling units | N | N | S | S | N | P | P | P | S | N | N | N | N | N | N | 10.812 (Conversion of Existing Dwelling to Multifamily Dwelling) |

As Amended Through December 16, 2019

4-7

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

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|---|---|------------|------------|------------|-----------|-------------------|------------|-----|------------|----|----|----|----------------|----|----|---|----|--|
| Use | R | SRA SRB | GRA GRB | GRC (A) | GA/ MH | MRO CD4- L1 | CD4- L2 | MRB | CD5 CD4 | GB | G1 | G2 | B CD4- W | WB | OR | I | W1 | Supplemental Regulations |
| 3. Educational, Religious, Charitable, Cultural and Public Uses | | | | | | | | | | | | | | | | | | |
| 3.10 Place of assembly | | | | | | | | | | | | | | | | | | |
| 3.11 Religious | S | S | S | N | N | S | S | S | S | S | S | S | S | N | N | N | N | |
| 3.12 Other nonprofit | N | N | N | N | N | S | S | S | S | S | S | S | S | N | N | N | N | |
| 3.20 School | | | | | | | | | | | | | | | | | | |
| 3.21 Primary or secondary | N | N | N | N | N | S | S | P | P | P | S | S | P | P | N | N | N | |
| 3.30 Post-secondary | N | N | N | N | N | S | S | P | P | P | S | S | P | N | P | P | N | |
| 3.30 Historic preservation building | S | S | S | S | S | P | P | P | P | P | P | P | P | N | P | N | N | 10.821 (Historic Preservation Buildings and Museums) |
| 3.40 Museum | N | N | N | N | N | P | P | N | P | P | S | S | P | N | P | N | N | 10.821 (Historic Preservation Buildings and Museums) |
| 3.50 Performance facility | | | | | | | | | | | | | | | | | | |
| 3.51 Indoor performance facility | | | | | | | | | | | | | | | | | | |
| 3.511 Occupancy up to 500 persons | N | N | N | N | N | N | N | N | P | P | S | S | S | N | N | N | N | 10.592 (location) 10.860 (hours of operation) |
| 3.512 Occupancy more than 500 | N | N | N | N | N | N | N | N | S | P | N | N | N | N | N | N | N | |
| 3.52 Outdoor performance facility | | | | | | | | | | | | | | | | | | |
| 3.521 Occupancy up to 500 persons | N | N | N | N | N | N | N | N | S | S | S | S | N | N | N | N | N | 10.592 (location) 10.822 (yards) |
| 3.522 Occupancy more than 500 | N | N | N | N | N | N | N | N | S | S | N | N | N | N | N | N | N | 10.860 (hours of operation) |

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|---|---|------------|------------|------------|-----------|-------------------|------------|-----|------------|----|----|----|----------------|----|----|---|----|---|
| Use | R | SRA SRB | GRA GRB | GRC (A) | GA/ MH | MRO CD4- L1 | CD4- L2 | MRB | CD5 CD4 | GB | G1 | G2 | B CD4- W | WB | OR | I | W1 | Supplemental Regulations |
| 3.60 Cemetery | S | S | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | |
| 3.70 Club, fraternal or service organization | N | N | N | N | N | N | S | S | P | S | S | S | S | N | N | N | N | |
| 3.80 Municipally operated park and related activities | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | P | For other municipal uses see Section 10.460 (Municipal districts) |
| 4. Recreational Uses | | | | | | | | | | | | | | | | | | |
| 4.10 Religious, sectarian or private non-profit recreational use | N | S | N | N | N | S | S | N | P | P | S | S | P | N | N | N | N | |
| 4.20 Cinema or similar indoor amusement use with no live performance | N | N | N | N | N | N | N | N | P | P | S | S | P | N | N | N | N | 10.825 (noise) 10.860 (hours of operation) |
| 4.30 Indoor recreation use, such as bowling alley or arcade | N | N | N | N | N | N | N | N | P | P | S | S | P | N | N | N | N | 10.825 (noise) 10.860 (hours of operation) |
| 4.40 Health club, yoga studio, martial arts school, or similar use | | | | | | | | | | | | | | | | | | |
| 4.41 Up to 2,000 sq. ft. GFA* | N | N | N | N | N | S | S | P | P | P | P | P | P | N | N | S | N | |
| 4.42 More than 2,000 sq. ft. GFA | N | N | N | N | N | N | N | N | S | P | S | S | S | N | N | S | N | |
| 4.50 Outdoor recreation use | N | N | N | N | N | N | N | N | N | S | P | P | N | N | N | N | N | 10.592 (location) 10.860 (hours of operation) |
| 4.60 Amusement park, water park or theme park | N | N | N | N | N | | | | N | N | N | N | N | N | N | N | N | |

*GFA = gross floor area.

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

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| P = Permitted S – Special Exception CU = Conditional Use Permit N = Prohibited | | | | | | | | | | | | | | | | | | |
|---|---|------------|------------|------------|-----------|-------------------|------------|-----|------------|----|----|----|----------------|----|----|---|----|---|
| Use | R | SRA SRB | GRA GRB | GRC (A) | GA/ MH | MRO CD4- L1 | CD4- L2 | MRB | CD5 CD4 | GB | G1 | G2 | B CD4- W | WB | OR | I | WI | Supplemental Regulations |
| 6.20 Medical offices and clinics (outpatient only) | N | N | N | N | N | S | S | S | P | P | P | P | P | N | P | N | N | |
| 6.30 Clinics with inpatient care | N | N | N | N | N | N | N | N | N | S | S | N | S | N | S | N | N | |
| 6.40 Ambulatory surgical center | N | N | N | N | N | N | N | N | N | S | S | N | S | N | S | N | N | |
| 6.50 Substance abuse treatment facility | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | |
| 6.60 Psychiatric hospital for the criminally insane | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | |
| 7. Services, Other Than Health Care | | | | | | | | | | | | | | | | | | |
| 7.10 Day Care | | | | | | | | | | | | | | | | | | |
| 7.11 Family day care facility | P | P | P | N | N | P | P | P | N | N | P | P | N | N | N | N | N | 10.824 (group day care facilities) 10.860 (hours of operation) |
| 7.12 Group day care facility including private preschool and kindergarten | S | S | S | S | N | S | S | P | P | P | S | S | P | N | N | N | N | |
| 7.20 Personal services | N | N | N | N | N | N | S | S | P | P | P | S | P | N | N | N | N | |
| 7.30 Consumer services such as copy shop, bicycle repair, and pet grooming | N | N | N | N | N | N | S | S | P | P | P | S | P | N | N | N | N | |
| 7.40 Trade, craft and general service establishments, such as shops for plumbers, electricians, painters, paper hangers, upholsterers, sign painters and printers | N | N | N | N | N | N | N | S | P | P | P | S | P | N | P | P | P | All storage of materials and equipment shall be located within a building |

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|--|---|------------|------------|------------|------------|-------------------|------------|-----|------------|----|----|----|----------------|----|----|---|----|-----------------------------|
| Use | R | SRA SRB | GRA GRB | GRC (A) | GA/ MII | MRO CD4- L1 | CD4- L2 | MRB | CD5 CD4 | GB | G1 | G2 | B CD4- W | WB | OR | I | WI | Supplemental Regulations |
| 7.50 Veterinary Care | N | N | N | N | N | N | N | S | N | S | S | S | S | N | S | S | N | 10.832 |
| 7.60 Laundry and dry cleaning establishments | | | | | | | | | | | | | | | | | | |
| 7.61 Drop-off/pick-up only for items to be dry cleaned or laundered off site | N | N | N | N | N | P | P | P | P | P | P | P | P | N | S | N | N | |
| 7.62 Self-service laundry for use by the general public | N | N | N | N | N | S | S | P | S | P | P | S | P | N | N | N | N | |
| 7.63 Dry cleaning establishment with on-site cleaning facilities. | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | P | N | |
| 7.70 Undertaking establishment, funeral parlor or mortuary chapel, excluding crematorium | N | N | N | N | N | N | N | P | N | P | S | S | P | N | N | N | N | |
| 8. Retail Trade | | | | | | | | | | | | | | | | | | |
| 8.10 Convenience goods | | | | | | | | | | | | | | | | | | 10.860 (hours of operation) |
| 8.11 Convenience goods 1 | | | | | | | | | | | | | | | | | | |
| 8.111 Hours of operation between 6:00 AM and 11:00 PM | N | N | N | N | N | N | P | P | P | P | P | P | P | N | N | N | N | |
| 8.112 24 hours per day operation | N | N | N | N | N | N | N | N | P | P | S | N | S | N | N | N | N | |
| 8.12 Convenience goods 2 | | | | | | | | | | | | | | | | | | |
| 8.121 Hours of operation between 6:00 AM and 11:00 PM | N | N | N | N | N | N | P | S | P | P | P | P | P | N | N | N | N | |

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| P = Permitted S = Special Exception CU = Conditional Use Permit N = Prohibited | | | | | | | | | | | | | | | | | | |
|--|---|------------|------------|------------|-----------|-------------------|------------|-----|------------|----|----|----|----------------|----|----|---|----|--|
| Use | R | SRA SRB | GRA GRD | GRC (A) | GA/ MH | MRO CD4- L1 | CD4- L2 | MRB | CD5 CD4 | GB | G1 | G2 | B CD4- W | WB | OR | I | W1 | Supplemental Regulations |
| 8.122 24 hours per day operation | N | N | N | N | N | N | N | N | S | S | S | N | S | N | N | N | N | |
| 8.30 Retail sales conducted within a building | | | | | | | | | | | | | | | | | | |
| 8.31 Not marine-related | N | N | N | N | N | N | P | S | P | P | P | P | P | N | N | N | N | |
| 8.32 Marine-related | N | N | N | N | N | N | N | N | P | P | P | P | P | P | N | N | N | |
| 8.40 Shopping center | N | N | N | N | N | N | N | N | P | P | P | P | S | N | N | N | N | |
| 8.50 Retail sales, large format | N | N | N | N | N | N | N | N | N | S | N | N | N | N | N | N | N | |
| 8.60 Fish market | N | N | N | N | N | N | N | N | P | P | P | P | P | P | N | N | N | 10.860 (hours of operation) |
| 8.70 Manufacture of goods sold at retail on the premises, such as crafts, coffee roasting and bakery goods | N | N | N | N | N | N | S | S | P | P | P | P | P | N | N | P | N | Maximum of 5 persons employed in manufacture |
| 8.80 Sexually oriented business | N | N | N | N | N | N | N | N | N | S | N | N | N | N | N | N | N | 10.930 (Sexually Oriented Businesses) |
| 9. Eating and Drinking Places | | | | | | | | | | | | | | | | | | |
| 9.10 Nightclub or bar | | | | | | | | | | | | | | | | | | 10.590 (location) |
| 9.11 Occupant load less than 250 | N | N | N | N | N | N | N | N | P | P | P | S | N | N | N | N | N | |
| 9.12 Occupant load from 250 to 500 | N | N | N | N | N | N | N | N | S | S | S | S | N | N | N | N | N | |
| 9.13 Occupant load greater than 500 | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | |
| 9.20 Restaurant, take-out only | N | N | N | N | N | N | N | N | P | P | P | P | P | N | N | N | N | |
| 9.30 Restaurant, fast food | N | N | N | N | N | N | N | N | P | P | P | P | P | N | N | N | N | |

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|--|---|------------|------------|------------|-----------|-------------------|------------|-----|------------|----|----|----|----------------|----|----|---|----|--|
| Use | R | SRA SRB | GRA GRB | GIC (A) | GA/ MH | MRO CD4- L1 | CD4- L2 | MRB | CD5 CD4 | GB | G1 | G2 | B CD4- W | WB | OR | I | W1 | Supplemental Regulations |
| 9.40 Restaurant, place of public assembly or function room | | | | | | | | | | | | | | | | | | 10.590 (location) 10.860 (hours of operation) |
| 9.41 Occupant load less than 50 | N | N | N | N | N | N | P | N | P | P | P | P | P | N | N | N | N | |
| 9.42 Occupant load from 50 to 250 | N | N | N | N | N | N | N | N | P | P | P | S | S | N | N | N | N | |
| 9.43 Occupant load from 250 to 500 | N | N | N | N | N | N | N | N | P | S | S | S | N | N | N | N | N | |
| 9.44 Occupant load greater than 500 | N | N | N | N | N | N | N | N | S | S | N | N | N | N | N | N | N | |
| 9.50 Permanently moored vessel used as restaurant or bar, with occupant load less than 250 | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | |
| 10. Lodging Establishments | | | | | | | | | | | | | | | | | | |
| 10.10 Boarding house | N | N | N | N | N | N | N | N | N | S | S | N | S | N | N | N | N | |
| 10.20 Bed and breakfast | | | | | | | | | | | | | | | | | | |
| 10.21 Bed and Breakfast 1 | N | N | S | N | N | S | S | P | P | N | S | S | P | N | N | N | N | |
| 10.22 Bed and Breakfast 2 | N | N | N | N | N | S | S | P | P | N | S | S | P | N | N | N | N | |
| 10.30 Inn | N | N | N | N | N | N | S | S | P | P | S | S | P | N | N | N | N | |
| 10.40 Hotel or motel | | | | | | | | | | | | | | | | | | 10.836 (Office Research districts) |
| 10.41 Up to 125 rooms | N | N | N | N | N | N | N | N | P | S | S | S | N | N | P | N | N | |
| 10.42 126 to 250 rooms | N | N | N | N | N | N | N | N | P | S | S | S | N | N | S | N | N | |
| 10.42 251 to 500 rooms | N | N | N | N | N | N | N | N | P | S | S | N | N | N | N | N | N | |
| 10.43 More than 500 rooms | N | N | N | N | N | N | N | N | P | S | S | N | N | N | N | N | N | |

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|--|---|------------|------------|------------|-----------|-------------------|------------|-----|------------|----|----|----|----------------|----|----|---|----|---|
| Use | R | SRA SRB | GRA GRB | GRC (A) | GA/ MH | MRO CD4- L1 | CD4- L2 | MRB | CD5 CD4 | GB | G1 | G2 | H CD4- W | WB | OR | I | W1 | Supplemental Regulations |
| 10.50 Conference hotel | N | N | N | N | N | N | N | N | P | P | S | N | N | N | N | N | N | |
| 10.60 Conference center | N | N | N | N | N | N | N | N | P | P | S | N | N | N | N | N | N | |
| 11. Motor Vehicle-Related Uses | | | | | | | | | | | | | | | | | | |
| 11.10 Sales, renting or leasing of passenger cars and light trucks, motorcycles, tractors, snowmobiles and small power equipment (e.g., lawnmowers), including accessory repair services | N | N | N | N | N | N | N | N | N | P | S | N | S | N | N | N | N | 10.592 (location) 10.843 (motor vehicle related uses) |
| 11.20 Motor vehicle service station, motor vehicle repair or washing facility for passenger cars and light trucks | N | N | N | N | N | N | N | N | N | S | S | N | S | N | N | S | N | 10.581 (lot area) 10.592 (location) 10.843 (motor vehicle related uses) |
| 11.30 Sales, rental, leasing, distribution, and repair of trucks over 10,000 lb gross vehicle weight (GVW), recreational vehicles, marine craft or manufactured housing, and related equipment | N | N | N | N | N | N | N | N | N | S | S | N | S | N | N | S | N | 10.581 (lot area) 10.592 (location) 10.843 (motor vehicle related uses) |
| 11.40 Impound lot (principal or accessory use) | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | S | N | |
| 11.50 Truck fueling facility | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | S | N | 10.581 (lot area) 10.592 (location) 10.843 (motor vehicle related uses) |

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|---|---|------------|------------|-------------|-----------|-------------------|------------|-----|------------|----|----|----|----------------|----|----|---|----|---|
| Use | R | SRA SRB | GRA GRB | GR/C (A) | GA/ MH | MRO CD4- L1 | CD4- L2 | MRB | CD5 CD4 | GB | GI | G2 | B CD4- W | WB | OR | I | WI | Supplemental Regulations |
| 11.60 Truck terminal | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | S | N | 10.592 (location) 10.843 (motor vehicle related uses) |
| 12. Marine Craft Related Uses | | | | | | | | | | | | | | | | | | |
| 12.10 Boat landings, boat docks, boathouses and associated marine uses | | | | | | | | | | | | | | | | | | |
| 12.11 Non-commercial | P | P | P | P | P | P | P | P | P | P | P | P | P | N | N | N | N | |
| 12.12 Fishing boat landing 1 | N | S | S | N | N | N | N | N | P | P | N | N | N | P | N | N | P | 10.837.10 (Residential districts) |
| 12.13 Fishing boat landing 2 | N | N | N | N | N | N | N | N | N | S | N | N | N | S | N | N | P | |
| 12.20 Marina | | | | | | | | | | | | | | | | | | |
| 12.21 With no repair, servicing or fueling facilities | N | N | N | N | N | N | N | N | N | N | N | N | N | P | N | N | N | |
| 12.22 With repair, servicing or fueling facilities | N | N | N | N | N | N | N | N | N | N | N | N | N | S | N | N | N | 10.581 (lot area) 10.592 (location) 10.860 (hours of operation) |
| 12.30 Repair of commercial marine craft and marine-related structures | N | N | N | N | N | N | N | N | N | N | N | N | N | S | N | S | P | 10.581 (lot area) 10.592 (location) 10.860 (hours of operation) |
| 12.40 Landside support facility for commercial passenger vessel | N | N | N | N | N | N | N | N | N | N | N | N | N | P | N | N | P | |

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|--|---|------------|------------|------------|-----------|-------------------|------------|-----|------------|----|----|----|----------------|----|----|---|----|--------------------------|
| Use | R | SRA SRB | GRA GRB | GRC (A) | GA/ MH | MRO CD4- L1 | CD4- L2 | MRB | CD5 CD4 | GB | G1 | G2 | B CD4- W | WB | OR | I | WI | Supplemental Regulations |
| 13. Wholesale Trade, Warehousing and Distribution | | | | | | | | | | | | | | | | | | |
| 13.10 Wholesale use | | | | | | | | | | | | | | | | | | |
| 13.11 Not marine-dependent | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | P | N | |
| 13.12 Marine-dependent | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | P | P | |
| 13.20 Wholesale sales devoted to, and in the same establishment as, a permitted retail use | | | | | | | | | | | | | | | | | | |
| 13.21 Occupying up to 20% of gross floor area of establishment | N | N | N | N | N | N | N | N | P | P | S | N | P | N | N | N | N | |
| 13.22 Occupying 21% to 40% of gross floor area of establishment | N | N | N | N | N | N | N | N | N | P | N | N | P | N | N | N | N | |
| 13.30 Wholesale lumber yards, lumber and contractor sales | | | | | | | | | | | | | | | | | | |
| 13.31 Not marine-dependent | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | P | N | |
| 13.32 Marine-dependent | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | P | S | |
| 13.40 Warehousing or distribution of non-flammable, non-hazardous materials, not classified as a high hazard use | | | | | | | | | | | | | | | | | | |
| 13.41 Not marine-dependent | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | P | N | |

| P = Permitted S = Special Exception CU = Conditional Use Permit N = Prohibited | | | | | | | | | | | | | | | | | | |
|--|---|------------|------------|------------|-----------|-------------------|------------|-----|------------|----|----|----|----------------|----|----|---|----|---|
| Use | R | SRA SRB | GRA GRB | GRC (A) | GA/ MH | MRO CD4- L1 | CD4- L2 | MRB | CD5 CD4 | GB | G1 | G2 | B CD4- W | WB | OR | I | WI | Supplemental Regulations |
| 13.42 Marine-dependent | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | P | P | |
| 14. Industrial Uses | | | | | | | | | | | | | | | | | | |
| 14.10 Light industry | | | | | | | | | | | | | | | | | | |
| 14.11 Not marine-dependent | N | N | N | N | N | N | N | N | N | S | S | S | N | N | N | P | N | |
| 14.12 Marine-dependent | N | N | N | N | N | N | N | N | N | S | N | N | N | N | N | P | P | |
| 14.20 Research and development | | | | | | | | | | | | | | | | | | |
| 14.21 Not marine-dependent | N | N | N | N | N | N | N | P | N | S | S | N | S | N | S | P | N | |
| 14.22 Marine-dependent | N | N | N | N | N | N | N | N | N | S | N | N | S | P | S | P | P | |
| 14.30 Food processing | | | | | | | | | | | | | | | | | | |
| 14.31 Not including seafood processing | N | N | N | N | N | N | N | N | N | P | S | N | N | N | N | P | P | 10.592 (location) 10.851 (use contained in building) |
| 14.32 Including seafood processing | N | N | N | N | N | N | N | N | N | S | N | N | N | N | N | S | S | |
| 14.40 Electronics manufacturing | N | N | N | N | N | N | N | N | N | S | S | N | S | N | N | P | N | |
| 14.50 General manufacturing | | | | | | | | | | | | | | | | | | |
| 14.51 Not marine-dependent | N | N | N | N | N | N | N | N | N | N | S | S | N | N | N | P | N | |
| 14.52 Marine-dependent | N | N | N | N | N | N | N | N | N | N | N | N | N | P | N | P | S | |
| 14.60 Biological or chemical laboratory | | | | | | | | | | | | | | | | | | |

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|---|---|------------|------------|------------|-----------|-------------------|------------|-----|------------|----|----|----|----------------|----|----|---|----|-----------------------------|
| Use | R | SRA SRB | GRA GRB | GRC (A) | GA/ MH | MRO CD4- L1 | CD4- L2 | MRB | CD3 CD4 | GB | G1 | G2 | B CD4- W | WB | OR | I | WI | Supplemental Regulations |
| 14.61 Not marine-dependent | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | S | N | |
| 14.62 Marine-dependent | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | S | S | |
| 14.70 Recycling facility or recycling plant | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | S | N | 10.592 (location) 10.853 |
| 14.80 High hazard use, including other uses listed in this section but not including uses described in 14.90 | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | S | N | 10.593 (location) |
| 14.90 Storage (other than normal accessory use), processing, disposal, or transfer of petroleum, petrochemicals, natural gas and liquid petroleum products, coal, alcohol, wood pulp, solid or liquid waste, junk or hazardous waste as classified by Federal or State law | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | N | |
| 15. Transportation and Utilities | | | | | | | | | | | | | | | | | | |
| 15.10 Public or private transformer station, substation, pumping station or automatic telephone exchange, not including any business office, storage yard or storage building | | | | | | | | | | | | | | | | | | |
| 15.11 Essential to service the area in which it is located | S | S | S | S | S | S | S | S | S | S | S | S | S | S | S | P | S | |

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

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

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

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

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

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC
ATTORNEYS AT LAW

127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

October 26, 2022

HAND DELIVERED

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


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

Dear Mr. Stith and Zoning Board Members:

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

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

Very truly yours,


R. Timothy Phoenix
Monica F. Kieser

Enclosures

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

DANIEL C. HOEFLE
R. TIMOTHY PHOENIX
LAWRENCE B. GORMLEY
STEPHEN H. ROBERTS

R. PETER TAYLOR
KEVIN M. BAUM
GREGORY D. ROBBINS
MONICA F. KIESER

JACOB J.B. MARVELLEY
DUNCAN A. EDGAR
STEPHANIE J. JOHNSON


OF COUNSEL:
SAMUEL R. REID
JOHN AHLGREN

Letter of Authorization

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

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

635 Sagamore Development, LLC


Timothy J. Black, Duly Authorized

January 5, 2022
Date

MEMORANDUM

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

Dear Chairman Parrott and Zoning Board Members:

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

I. EXHIBITS

- A. Plan Set –by Jones and Beach Engineers
 - C1 – Existing Conditions Plan
 - C2 – ZBA Site Plan
 - C3 – Topographic Site Plan
- B. Architectural Elevations and Floor Plans–by ArtForm Architecture, Inc.
 - Renderings
 - First Floor
 - Second Floor
 - Foundation Plan
 - Elevations
- C. Site photographs
- D. Tax Assessors Card
- E. City GIS Map – identifying nearby zoning districts and surrounding area

II. PROPERTY/BACKGROUND

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

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

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

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

III. RELIEF REQUIRED

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

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

IV. VARIANCE REQUIREMENTS

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

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

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

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The Property currently houses a non-conforming commercial auto detailing business and service garage. (Exhibit C). The proposal would replace those buildings with brand new, to code, residences consistent with surrounding uses.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The Project complies with building coverage, height, yards and open space requirements. The reduced proposal with four dwellings on a single lot, at 2.06 dwelling units per acre is consistent with surrounding properties and less than the density permitted by right across Sagamore Avenue.
3. The design of facilities for vehicular access, circulation, parking and loading– The Project will be served by a private roadway from Sagamore Avenue. (Exhibit A). There is currently no defined curb cut on the property so the redevelopment will improve driveway distances, site lines, and overall traffic safety from the Property compared to the existing commercial and residential use. (Exhibit D). The driveway will undergo further review as part of the Planning Board and NHDOT review processes.

4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – The Property is currently used as a commercial auto detailing facility in the middle of a residential area. The Project will convert the Property to residential use with lighting, noise, and other conditions more appropriate for the neighborhood. A generous buffer will be preserved between the Project and Tidewater Condominium. The Project maintains 81.3% open space. Stormwater runoff will be improved over the current development which is significantly paved and use of commercial cleaning chemicals will cease.
5. The preservation and enhancement of the visual environment – The Project vastly improves the visual environment for the immediate abutters on either side and across the street. In addition, a generous vegetated buffer is retained for the south/west abutters. Sagamore further screens the developed area with the addition of a significant tree buffer. (Exhibit A).
6. The preservation of historic districts buildings and structures of historic or architectural interest – The Property and the existing structures to be removed are of no known historic or architectural interest.
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – The Project will significantly improve conditions by terminating the use of commercial grade cleaning chemicals in favor of a compatible residential uses served by municipal sewer.

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

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

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

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

3. Granting the variances will not diminish surrounding property values

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

4. Denial of the variances results in an unnecessary hardship

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

This portion of the SRA District on the north side of Sagamore Creek is comprised of only seven properties. (**Exhibit E**). Discounting Tidewatch with 122 units on 53.59 acres, the 1.947 acre L-shaped lot significantly larger than the remaining five properties, yet contains just over the required frontage. Although zoned SRA and subject to a 43,560 s.f. minimum lot area and lot area/dwelling unit requirement, this neighborhood is bounded by the Sagamore Condominium Development with 144 Units on 15.01 acres, a handful of lots in the Waterfront Business District, and the SRB district across Sagamore Avenue with its reduced density requirement of just 15,000 s.f./dwelling unit. See Walker v. City of Manchester, 107 N.H. 382, 386 (1966) (hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use will have no adverse effect on the neighborhood). The parcel size, shape, and location near other densely developed residential parcels combine to create special conditions.

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

The purpose of the requirements for one free standing dwelling per lot and lot area per dwelling unit is to prohibit overcrowding, allow for air, light, and separation between neighbors,

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

c. The proposed use is reasonable

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

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

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, supra at 109.

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

October 26, 2022

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

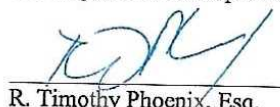
The Project: removes blighted buildings and a nonconforming commercial use; complies with all other dimensional requirements; maintains generous open space and vegetated buffers; provides additional screening with a robust planting plan, there will be no benefit to the public from denial and no harm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

V. CONCLUSION

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

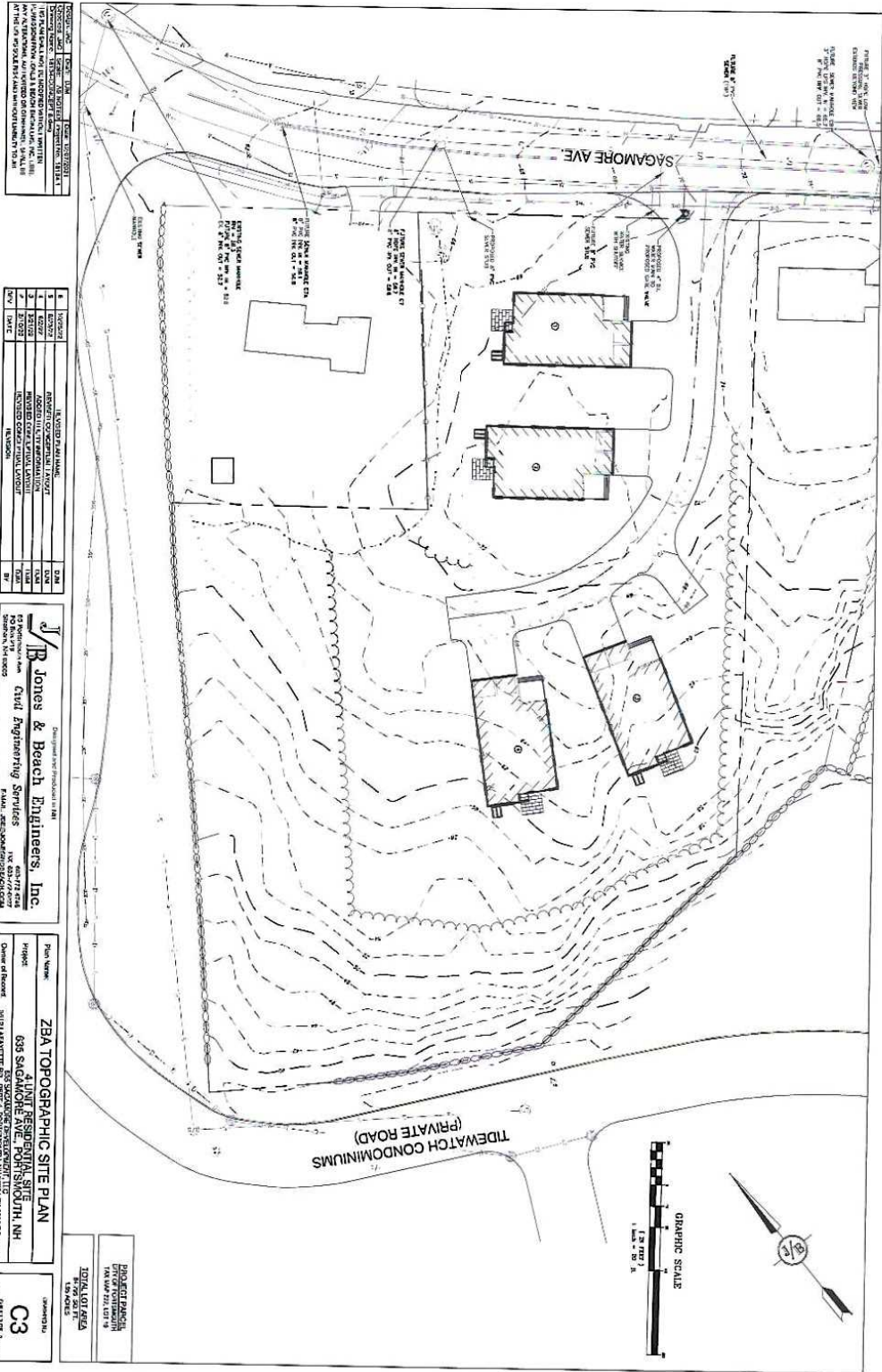
Respectfully submitted,
635 Sagamore Development, LLC

By:



R. Timothy Phoenix, Esq.
Monica F. Kieser, Esq.





Sea Watch

419.126.v14 GL (1/27/2022)

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Artform Home Plans

603-431-9559



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

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

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- Structural changes always require the express written consent of Artform.

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

EXHIBIT B

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

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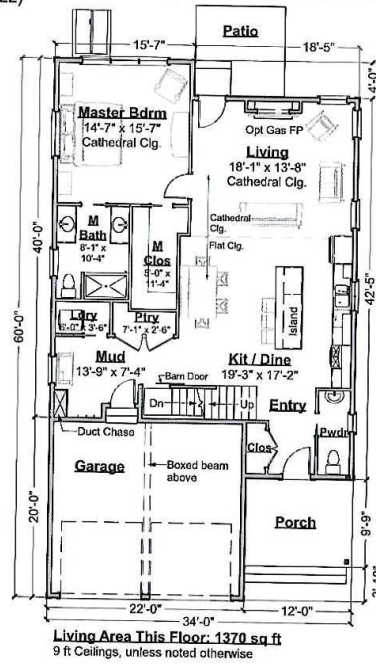
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Sea Watch
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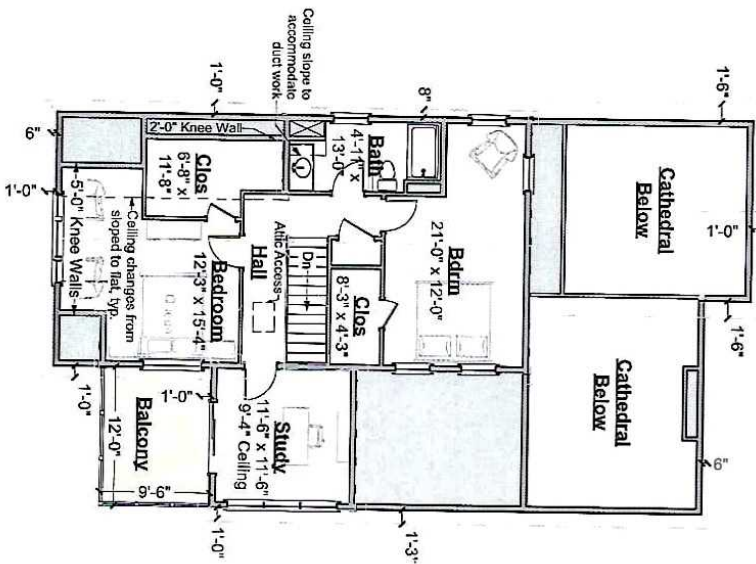


First Floor Plan
Scale: 3/32" = 1'-0"

Sea Watch
419.126.V14 GL (1/27/2022)

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



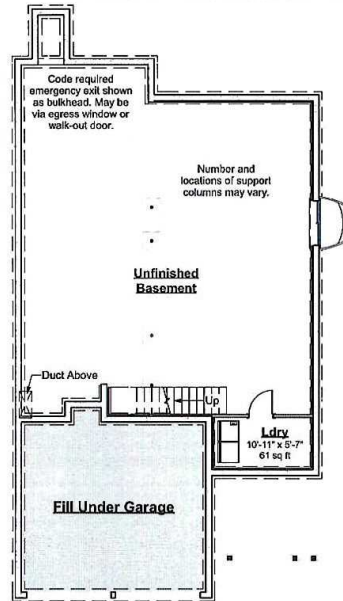
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Second Floor Plan
Scale: 3/32" = 1'-0"

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

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

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

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

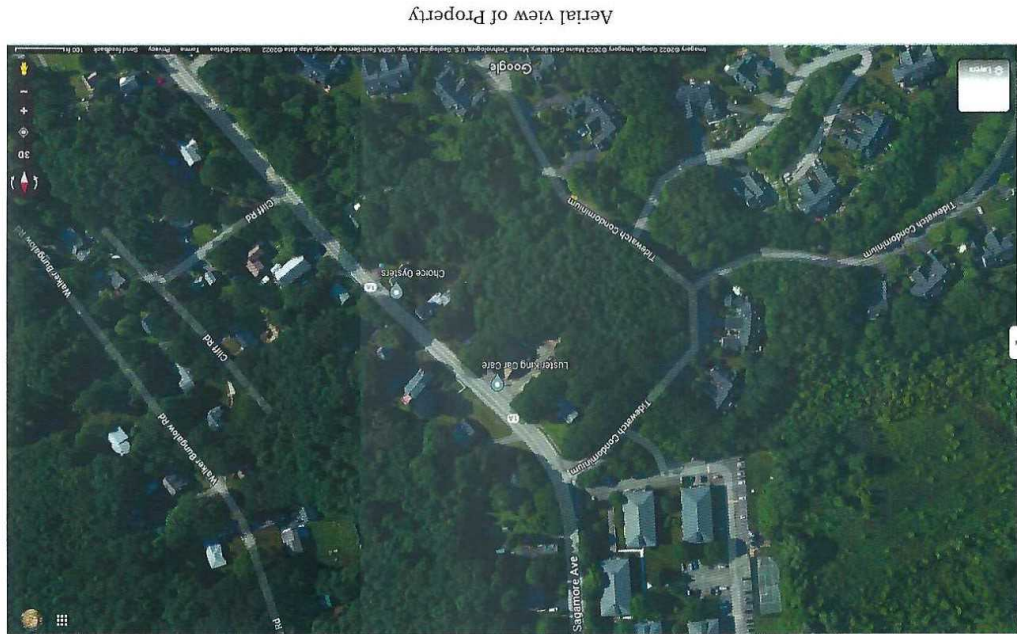
Sea Watch
419.126.v14 GL (1/27/2022)

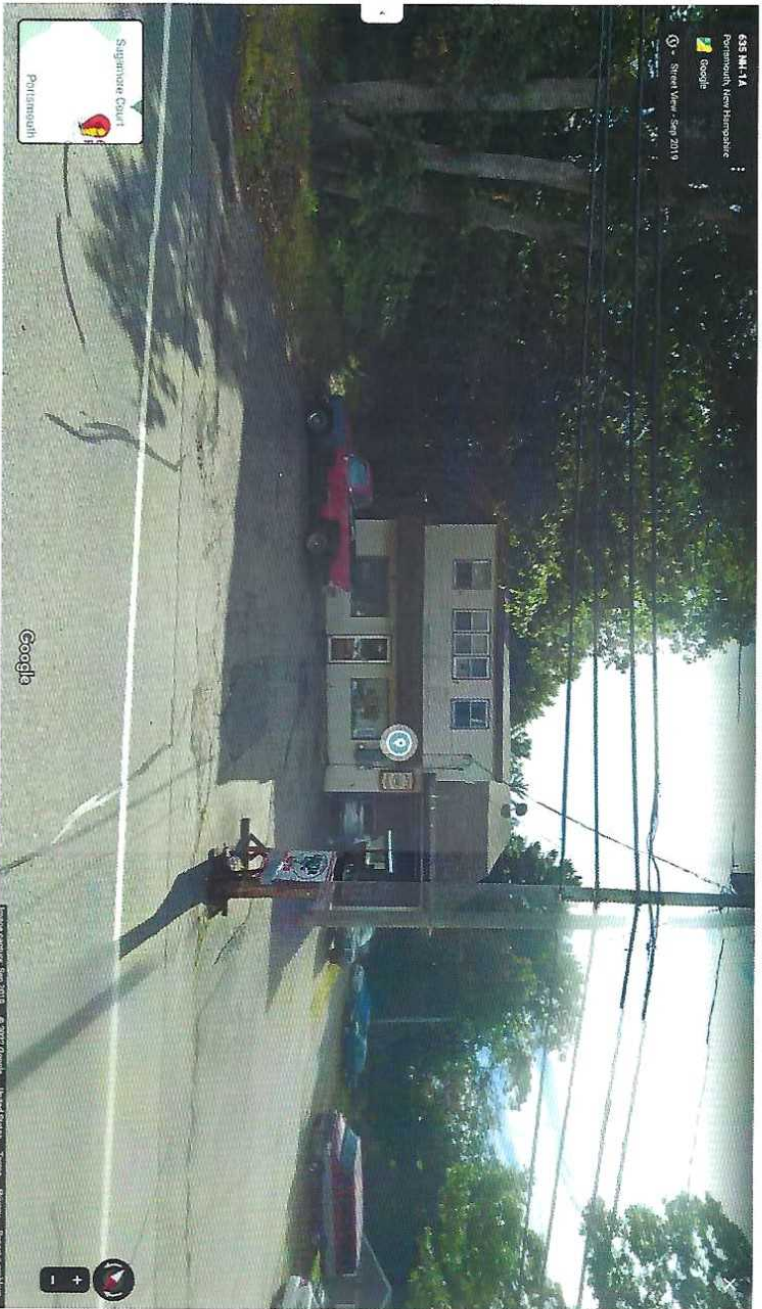
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Left Elevation
Scale: 1/8" = 1'-0"





Front View of Property (Sagamore Ave)



Front View of Property



Front View of Property



Side View of Property



View of Service Garage and Shed



Rear View of Property

Sea Watch
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Interior Views

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

| Appraisal | | | |
|----------------|--------------|-----------|-----------|
| Valuation Year | Improvements | Land | Total |
| 2020 | \$407,600 | \$275,200 | \$682,800 |

| Assessment | | | |
|----------------|--------------|-----------|-----------|
| Valuation Year | Improvements | Land | Total |
| 2020 | \$407,600 | \$275,200 | \$682,800 |

Owner of Record

Owner 635 SAGAMORE DEVELOPMENT LLC
Co-Owner
Address 3612 LAFAYETTE RD DEPT 4
 PORTSMOUTH, NH 03801

Sale Price \$387,133
Certificate
Book & Page 6332/1158
Sale Date 09/24/2021

Ownership History

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

Building Information**Building 1 : Section 1**

Year Built: 1950
Living Area: 4,477

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

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

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

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

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

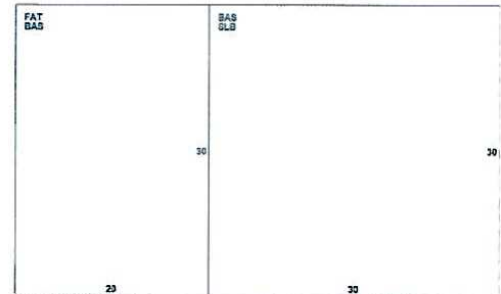
Building Percent Good: 84
Replacement Cost
Less Depreciation: \$128,900

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

Building Photo

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

Building Layout



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

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

Extra Features

| Extra Features | Legend |
|----------------|--------|
|----------------|--------|

No Data for Extra Features

Land

Land Use

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

Land Line Valuation

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

Outbuildings

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

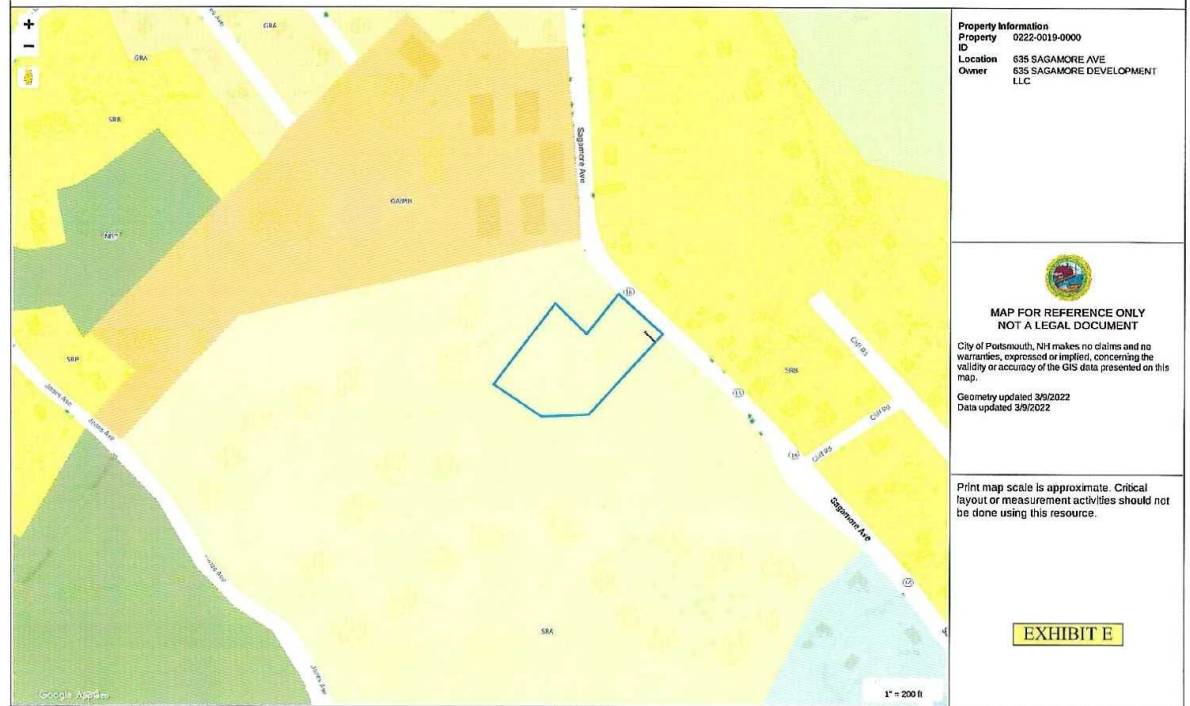
Valuation History

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

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

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635 Sagamore Avenue





WHITE APPRAISAL

REAL ESTATE APPRAISING & CONSULTING



Brian W. White, MAI, SRA

CERTIFICATE

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

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Brian W. White', written over a horizontal line.

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

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

Qualifications of the Appraiser

Brian W. White, MAI, SRA

Professional Designations:

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

Employment:

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

Education:

Mitchell College
Associate of Arts, Liberal Studies, 1979

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

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

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

Education (Continued):

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

Recent Seminars:

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

Appointments:

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

Experience:

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

Licenses:

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

Partial List of Clients:

Banks:

Androscoggin Bank
Granite Bank
Federal Savings Bank
Sovereign Bank
Eastern Bank
Century Bank
TD Bank
Kennebunk Savings Bank
Northeast Federal Credit Union
Profile Bank
Peoples United Bank
Key Bank
Optima Bank and Trust
Provident Bank

Attorneys:

John Colliander
Karyn Forbes
Michael Donahue
Richard Krans
Simone Massy
Samuel Reid
Daniel Schwartz
Robert Shaines
William Shaheen
Steve Soloman
Gerald Giles
Ralph Woodman
Gayle Braley
Fred Forman

Others:

City of Dover
Town of Durham
University of New Hampshire
Wentworth-Douglass
The Homemakers
Strafford Health Alliance
Goss International
Chad Kageleiry
Gary Levy
Stan Robbins
Daniel Philbrick
Keith Frizzell
Chuck Cressy
John Proulx

State of New Hampshire



Real Estate Appraisers Board

Authorized as
Certified General Appraiser

Issued To

BRIAN W WHITE

License Number: NHCG-52

Issue Date: 01/01/1992
Expiration Date: 04/30/2025

II. OLD BUSINESS

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

Existing & Proposed Conditions

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

Other Permits/Approvals Required

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

Neighborhood Context



Previous Board of Adjustment Actions

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

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

December 20, 2022 – The Board granted a request to postpone to the January meeting.

January 17, 2023 - The Board voted to postpone to the February meeting.

February 22, 2023 - The Board voted to 1) make a decision on the information presented at the January 17 meeting (Option 2) and that the board should vote to approve with stipulations or deny the application; and 2) to **postpone** voting on the application to the March 21 meeting so that all the members could re-read the applicant's materials, rewatch the deliberations, and make an informed decision based on the presentation and discussions.

Planning Department Comments

The applicant is proposing to demolish the existing scuba shop and construct a three-story mixed use building consisting of office space and 12 residential units. The property is located in the Waterfront Business (WB) district where uses other than water dependent uses, are not permitted. The proposal includes parking in the front of the building and a second driveway, both of which need relief variances. Five out of the eight parcels zoned WB in this area contain residential uses.

At the February meeting, the Board voted to consider the initial application proposal submitted for the January meeting.

If the variances are granted, the project will need review by the Conservation Commission and the Technical Advisory Committee prior to going before the Planning Board for a Wetland CUP and Site Plan approval. If granted approval, staff recommends the Board consider the following stipulation:

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

Review Criteria

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

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*

4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

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

OR

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

10.235 Certain Representations Deemed Conditions

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

BY: VIEWPOINT & HAND DELIVERY

November 21, 2022

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

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

Dear Peter,

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

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

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

Sincerely,



Derek R. Durbin, Esq.

LANDOWNER LETTER OF AUTHORIZATION

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



Sign Name

G R G R I C H J A Y

Print Name (Member, Duly Authorized)

November 14, 2022

VARIANCE APPLICATION NARRATIVE

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

Nissley LLC
(Owner / Applicant)

Introduction

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

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

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

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

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

Proposed Improvements

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

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

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

Variance Criteria

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

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

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

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

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

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

Substantial justice will be done by granting the variance relief.

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

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

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

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

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

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

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

Conclusion

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

Dated: November 21, 2022

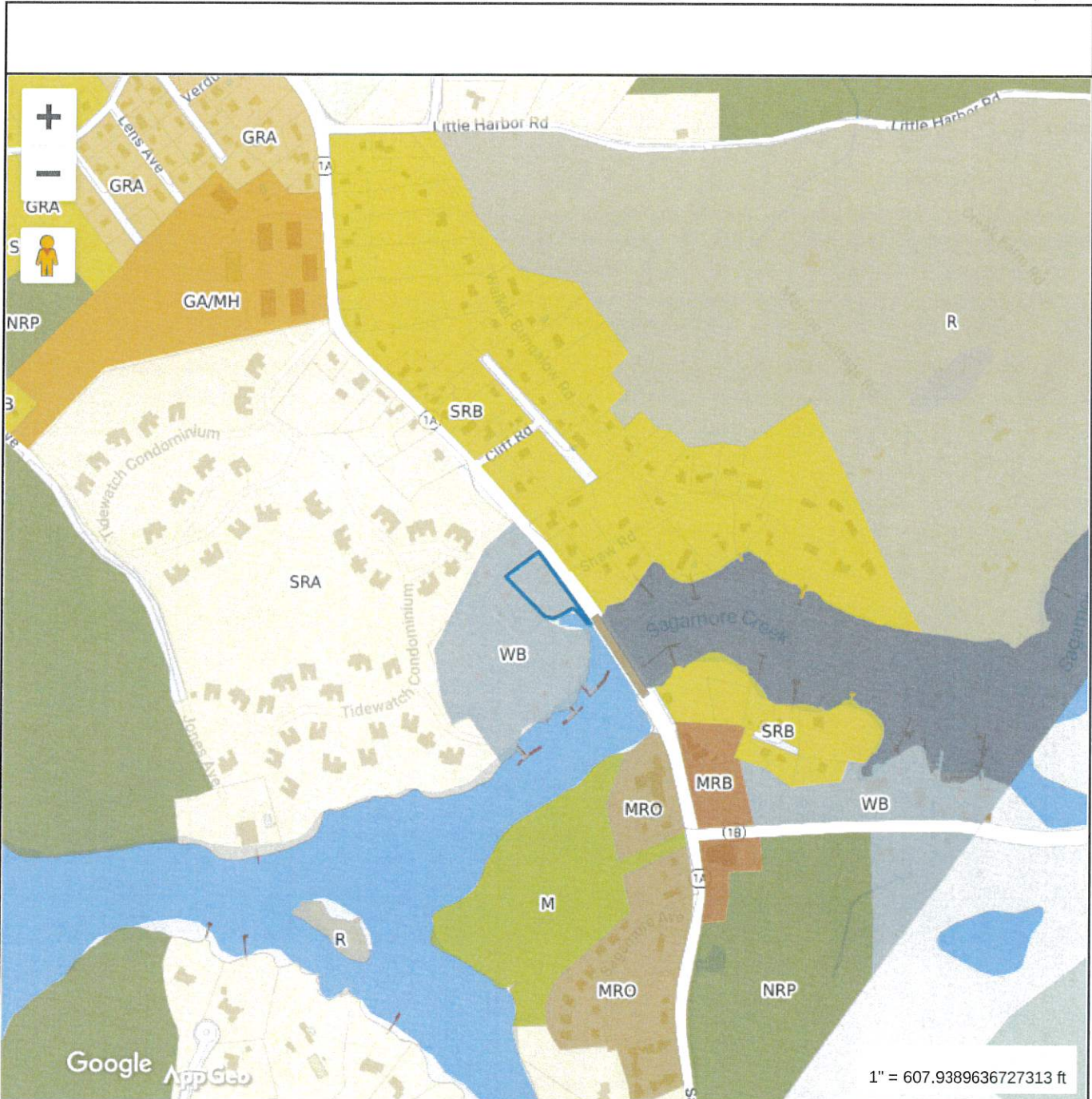
Respectfully Submitted,

Nissley LLC

By and Through,
Durbin Law Offices PLLC



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



Property Information

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



**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

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

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

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

Map Theme Legends

Zoning

Residential Districts

| | |
|-------|-----------------------------------|
| R | Rural |
| SRA | Single Residence A |
| SRB | Single Residence B |
| GRA | General Residence A |
| GRB | General Residence B |
| GRC | General Residence C |
| GA/MH | Garden Apartment/Mobile Home Park |

Mixed Residential Districts

| | |
|-----|----------------------------|
| MRO | Mixed Residential Office |
| MRB | Mixed Residential Business |
| G1 | Gateway Corridor |
| G2 | Gateway Center |

Business Districts

| | |
|----|---------------------|
| GB | General Business |
| B | Business |
| WB | Waterfront Business |

Industrial Districts

| | |
|----|-----------------------|
| OR | Office Research |
| I | Industrial |
| WI | Waterfront Industrial |

Airport Districts

| | |
|-----|-----------------------------|
| AIR | Airport |
| AI | Airport Industrial |
| PI | Pease Industrial |
| ABC | Airport Business Commercial |

Conservation Districts

| | |
|-----|-----------------------------|
| M | Municipal |
| NRP | Natural Resource Protection |

Character Districts

| | |
|--------|-------------------------|
| CD5 | Character District 5 |
| CD4 | Character District 4 |
| CD4W | Character District 4-W |
| CD4-L1 | Character District 4-L1 |
| CD4-L2 | Character District 4-L2 |

Civic District

| | |
|--|----------------|
| | Civic District |
|--|----------------|

Municipal District

| | |
|--|--------------------|
| | Municipal District |
|--|--------------------|

Overlay Districts

| | |
|------|---------------------------------|
| OLOD | Osprey Landing Overlay District |
| | Downtown Overlay District |
| | Historic District |

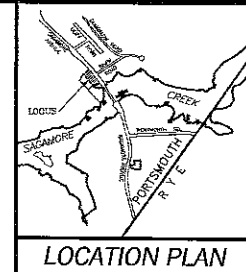
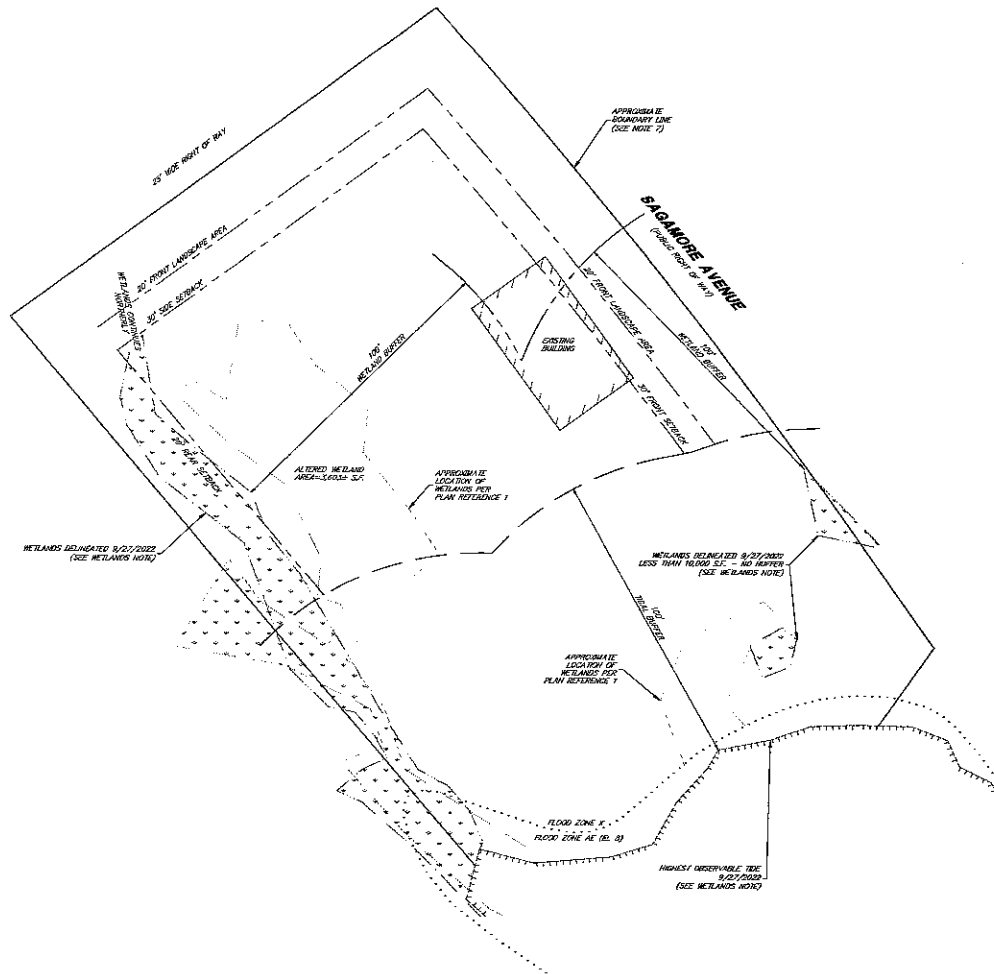
City of Portsmouth

WETLANDS NOTE:

WETLANDS DEPICTED ON THIS PLAN WERE DELINEATED ON SEPTEMBER 27, 2022 BY JASON R. ALBRECHT, P.E. THE WETLANDS WERE DELINEATED ACCORDING TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL (JANUARY 1987) AND THE REGIONAL SUPPLEMENT TO THE U.S. CORPS OF ENGINEERS WETLAND DELINEATION MANUAL (NORTHEASTAL AND NORTHEAST REGION, VERSION 2.0 (JANUARY 2012)).

SHORELAND NOTE:

THE HIGHEST OBSERVABLE TIDE LINE (NOTE) DEPICTED ON THIS PLAN WAS DETERMINED ON SEPTEMBER 27, 2022 BY COASTAL PROFESSIONAL JASON R. ALBRECHT, P.E. THE HIGHEST OBSERVABLE TIDE LINE WAS DETERMINED IN ACCORDANCE WITH THE WADSWORTH BUREAU ADMINISTRATIVE RULES UNDER 88X-WT 602.02L HIGHEST OBSERVABLE TIDE LINE MEANS A LINE DEFINING THE FARTHEST LANDWARD LIMIT OF TIDAL FLOW NOT INCLUDING STORM SURGES THAT CAN BE RECOGNIZED BY INDICATORS SUCH AS THE PRESENCE OF A STRAND LINE OF FLOTTAM AND DEBRIS, THE LANDWARD MARGIN OF SALT-TOLERANT VEGETATION, OR A PHYSICAL BARRIER THAT BLOCKS INLAND FLOW OF THE TIDE.



NOTES:

1. THE PARCEL IS LOCATED IN THE WADSWORTH BUSINESS (WB) ZONING DISTRICT.
2. THE PARCEL IS SHOWN ON THE CITY OF ASSESSOR'S MAP 223 AS LOT 31.
3. THE PARCEL IS LOCATED IN ZONES AE (0.01) & ZONE X PER WADSWORTH AS SHOWN ON NATIONAL FLOOD INSURANCE PROGRAM (NFIP) FLOOD INSURANCE RATE MAPS (FIRM) ROCKINGHAM COUNTY, NEW HAMPSHIRE, PAVELS 270 & 285 OF 501, MAP NUMBER 32022L, WITH AN EFFECTIVE DATE OF JANUARY 20, 2022.
4.

| THRESHOLD REQUIREMENTS: | REQUIREMENTS: |
|-------------------------------|---------------|
| MINIMUM LOT DIMENSIONS: | 20,000 S.F. |
| LOT AREA: | 100' |
| CONTINUOUS SELECT FRONTAGE: | 100' |
| DEPTH: | 100' |
| MINIMUM YARD DIMENSIONS: | |
| FRONT: | 30' |
| SIDE: | 30' |
| REAR: | 30' |
| MINIMUM STRUCTURE DIMENSIONS: | |
| BUILDING HEIGHT: | 20' |
| ROOF APPURTEINANCE HEIGHT: | 10' |
| BUILDING COVERAGE: | 10% |
| FLOOR AREA RATIO: | NR |
| MINIMUM OPEN SPACE: | 20% |
5. OWNER OF RECORD:
MAP 223 LOT 31
NISSELY, LLC
513 MARCY STREET
PORTSMOUTH, NH 03801
R000 004001 P042301
6. PARCEL AREA:
MAP 223 LOT 31
1.02 ACRES (PER PLAN REFERENCE 1).
7. THE INTENT OF THIS PLAN IS TO SHOW THE APPROXIMATE LOCATION OF TAX MAP 223 LOT 31. THE APPROXIMATE LOCATION OF TAX MAP 223 LOT 31 AS DEPICTED ON THIS PLAN HAS BEEN COMPILED FROM RECORDED AND UNRECORDED SOURCES AND SOME FIELD EVIDENCE. IT IS NOT THE RESULT OF A COMPLETE SURVEY AND IT IS NOT AN ATTEMPT TO DETERMINE THE EXTENT OF OWNERSHIP OR DEFINE THE LIMITS OF TITLE.
8. THE PURPOSE OF THIS PLAN IS TO SHOW THE APPROXIMATE BOUNDARY LINES, LIMITED SITE CONDITIONS, AND A COMPARISON OF THE WETLANDS PER PLAN REFERENCE ONE AND THE WETLANDS DELINEATED ON SEPTEMBER 27, 2022 ON MAP 223 LOT 31.
9. FIELD SURVEY COMPLETED BY TCE & BUE IN OCTOBER, 2022 USING A LODA TS-16, A TOPCON HYPER-V LINE COLLIMATOR DATA COLLECTION SOFTWARE.
10. HORIZONTAL DATUM IS NAD83 (2011) PER NETWORK RIN GPS OBSERVATIONS.
11. EASEMENTS, RIGHTS, AND RESTRICTIONS SHOWN OR OTHERWISE ARE THOSE WHICH WERE FOUND DURING RESEARCH PERFORMED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS. OTHER RIGHTS, EASEMENTS, OR RESTRICTIONS MAY EXIST WHICH A TITLE EXAMINATION OF SUBJECT PARCELS WOULD DETERMINE.
12. THE LOCATION OF ANY UNDERGROUND UTILITY INFORMATION SHOWN ON THIS PLAN IS APPROXIMATE. TCE & BUE MAKES NO CLAIM TO THE ACCURACY OR COMPLETENESS OF UNDERGROUND UTILITIES SHOWN PRIOR TO ANY EXCAVATION ON SITE THE CONTRACTOR SHALL CONTACT DIG SAFE.

PLAN REFERENCES:

1. "PROPOSED ADDITION PORTSMOUTH SCUBA 915 SAGAMORE AVENUE PORTSMOUTH, N.H." BY AMET ENGINEERING, INC. DATED FEBRUARY 2022, WITH REVISIONS (PLAN NOT RECORDED).

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

SCALE: 1" = 20' (22x34)
1" = 40' (11x27)

OCTOBER 19, 2022

Geospatial Division

TCE & BUE

Civil Engineers
Geotechnical Engineers
Traffic Engineers
Land Surveyors
Landscape Architects
Scientists

170 Commerce Way, Suite 102
Portsmouth, NH 03801
Phone (603) 431-2222
Fax (603) 431-0810
www.tceandbue.com

| | | | | |
|----------|----|-----|-------|----------|
| 47092-30 | SP | MAP | FR | SS |
| | CH | BNK | CHAPL | SEE MAPS |

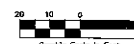
Copyright 2022 © TCE & BUE, Inc.
48 Constitution Drive, Bedford, NH 03110

All rights reserved. These plans and materials may not be copied, reproduced, modified or otherwise reproduced in any form without the prior written permission of TCE & BUE, Inc.

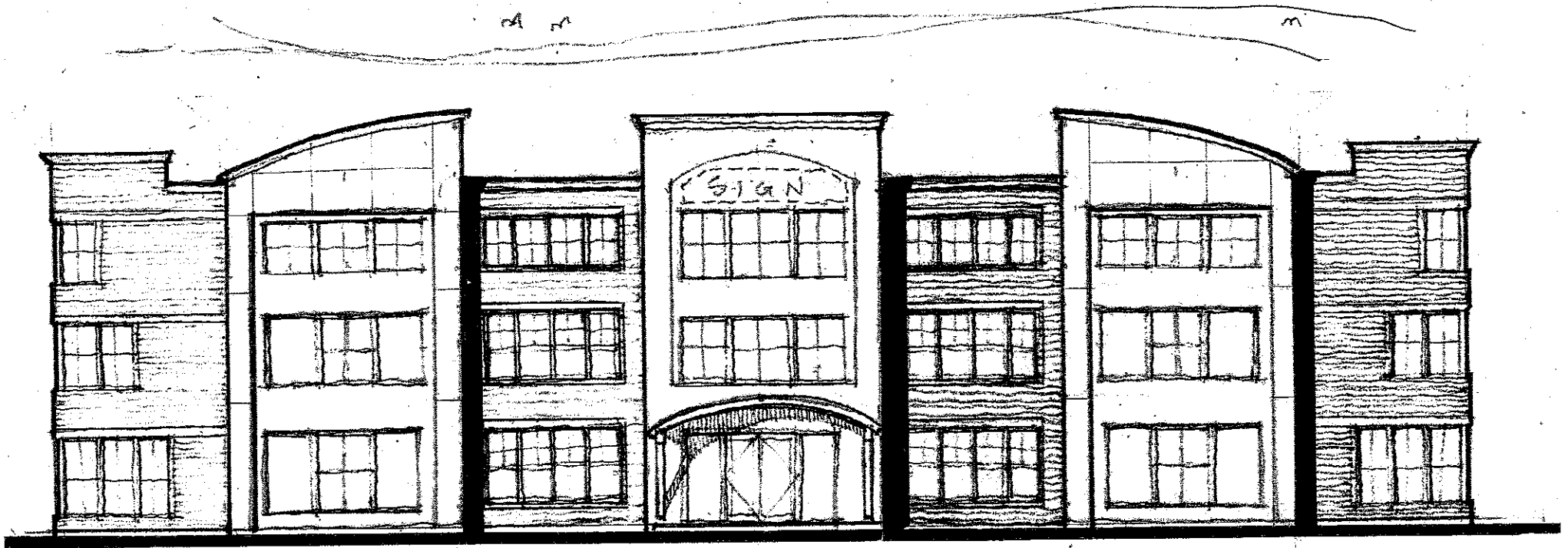
This plan is not effective unless signed by a duly authorized officer of TCE & BUE, Inc.



CONTACT DIG SAFE 72 HOURS PRIOR TO CONSTRUCTION



| REV | DATE | DESCRIPTION | BY | CHK |
|-----|------|-------------|----|-----|
| | | | | |
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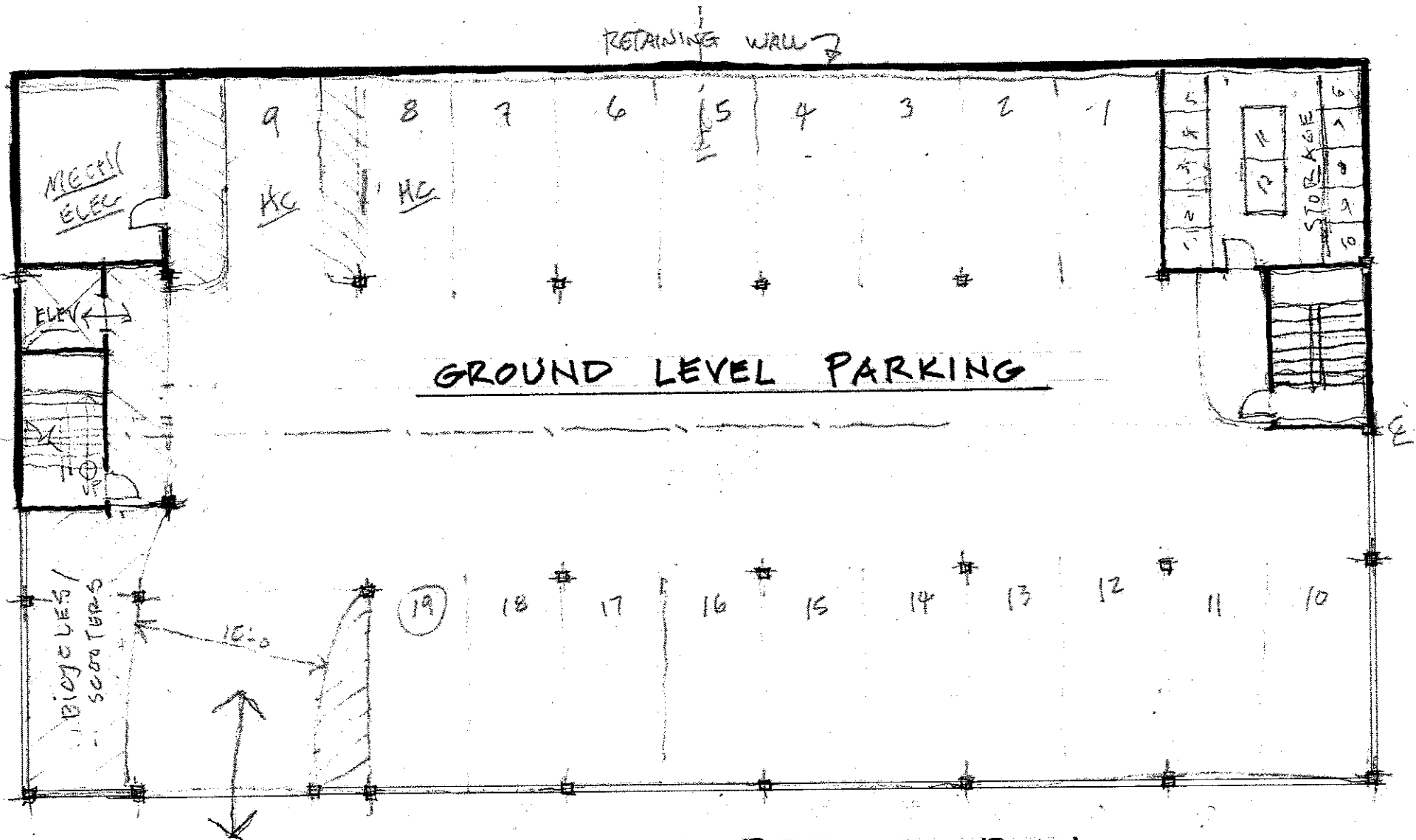
SAGAMORE AVENUE ELEVATION

CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVENUE

OWNER: NISSLEY LLC

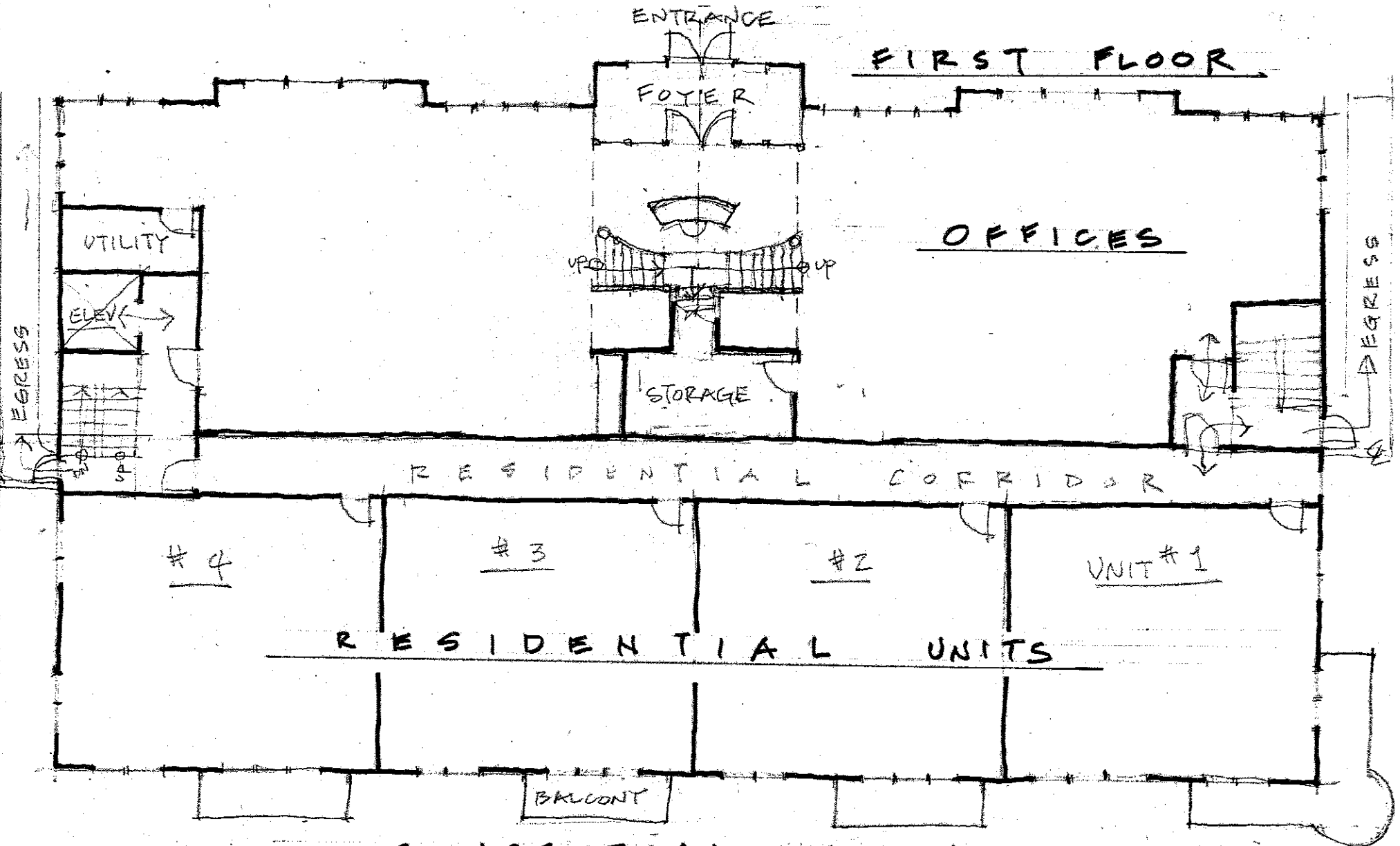
DATE: 17 NOV. 2022



CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVENUE

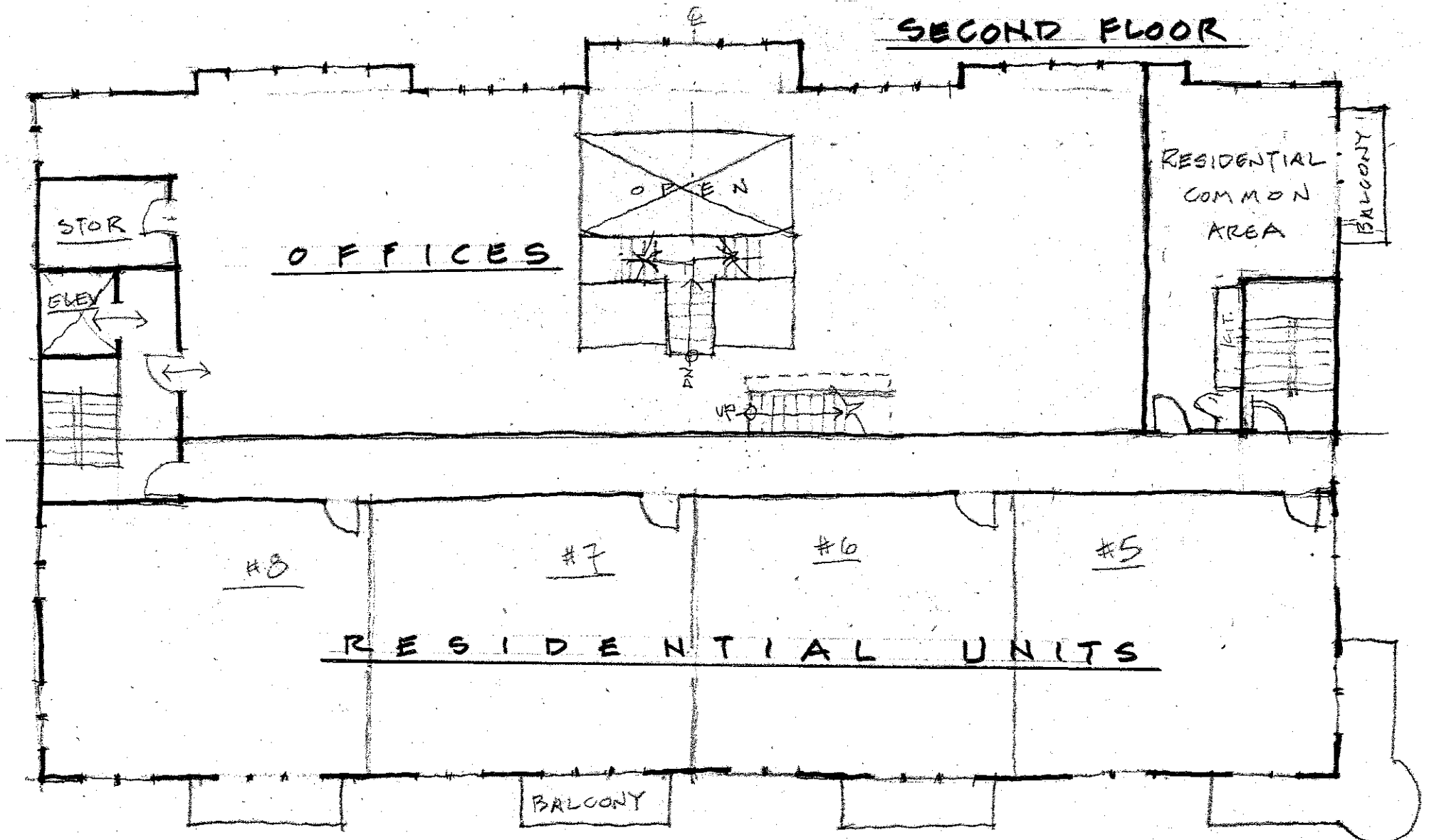
OWNER: NISSLEY LLC 17 NOV 2022



CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVE

17 NOV. 2022

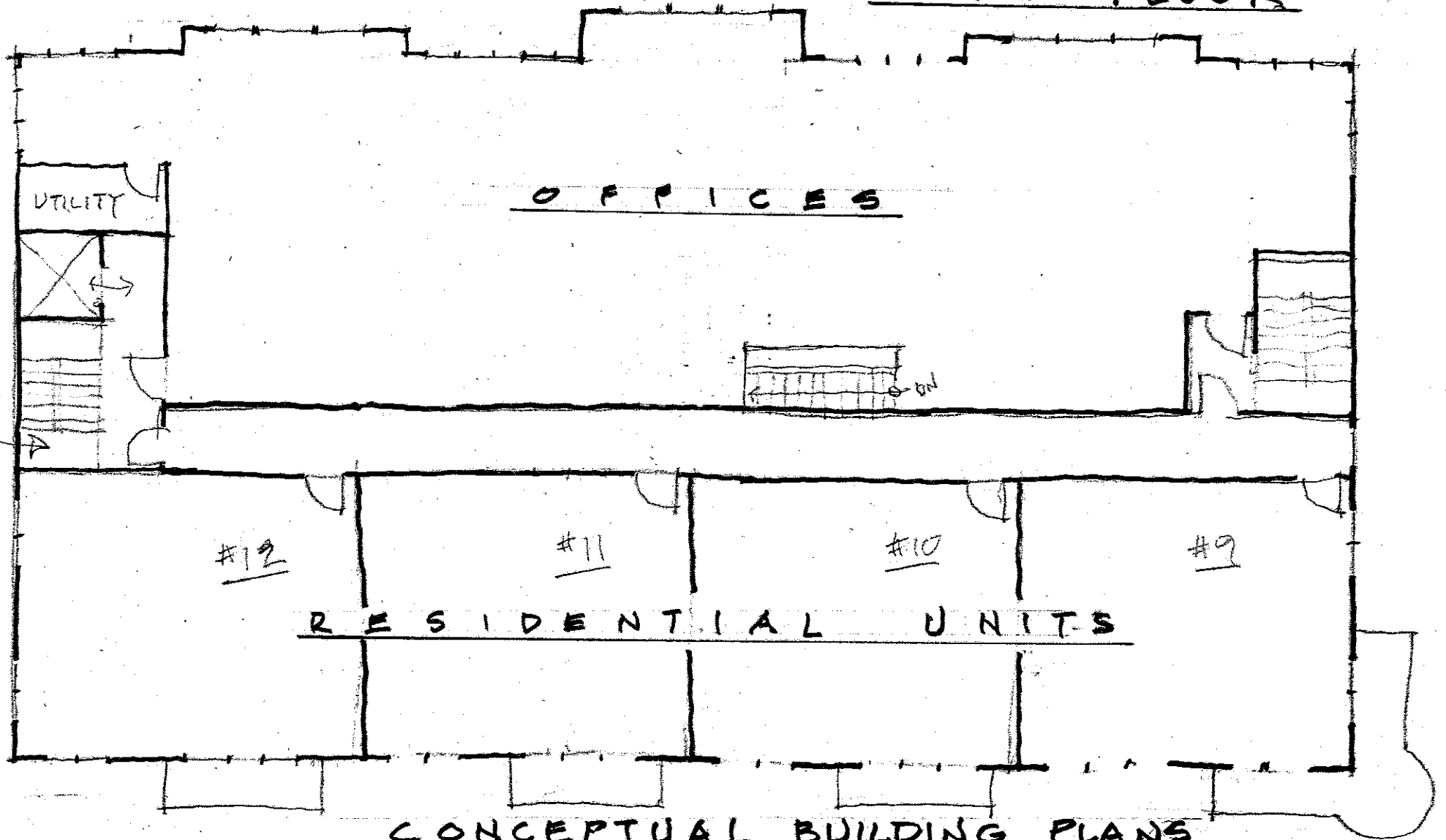


CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVE

17 NOV 2022

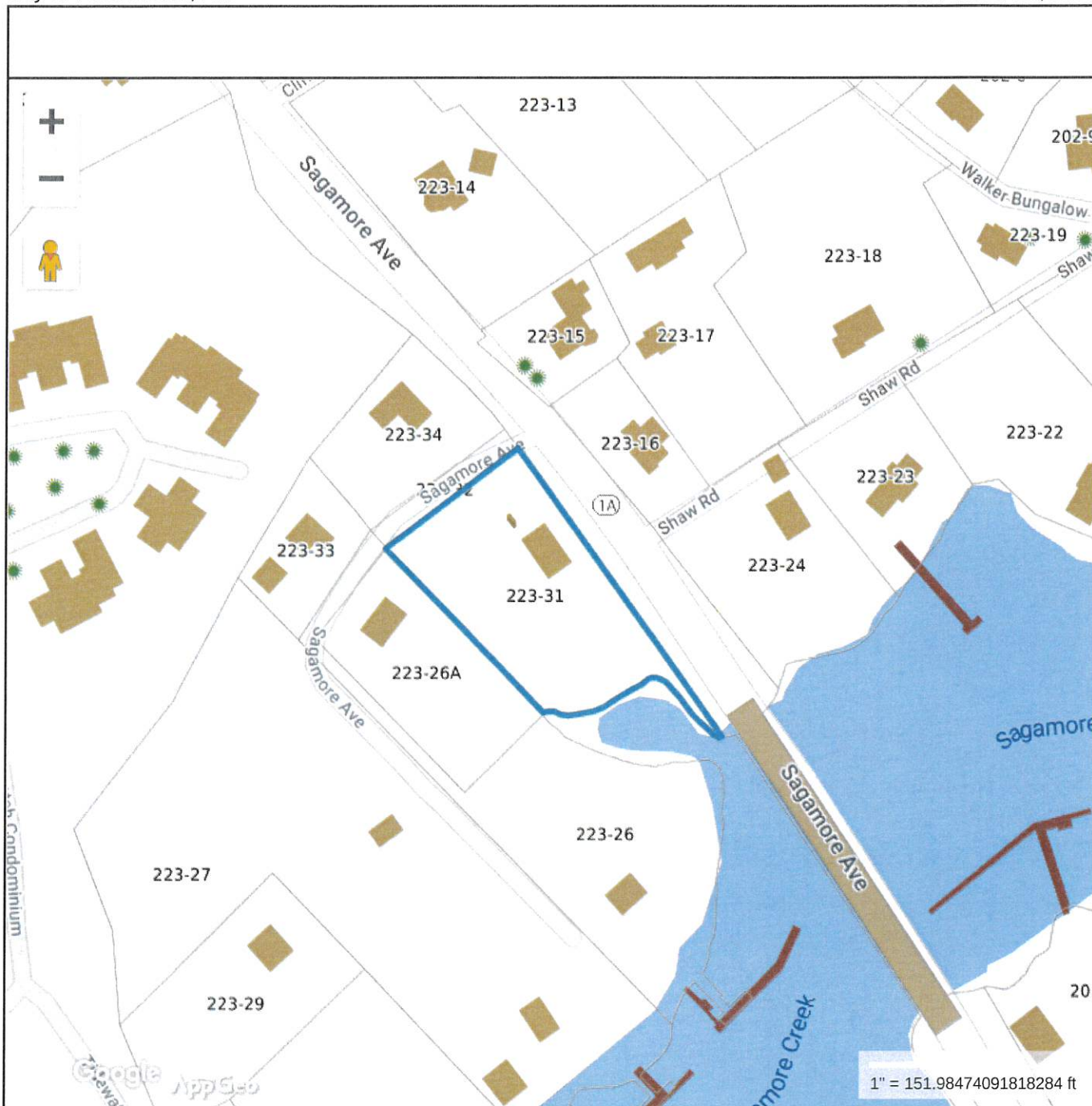
THIRD FLOOR



CONCEPTUAL BUILDING PLANS

915 SAGAMORE AVE

17 NOV 2022

**Property Information**

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

**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

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

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

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



Front Elevation View



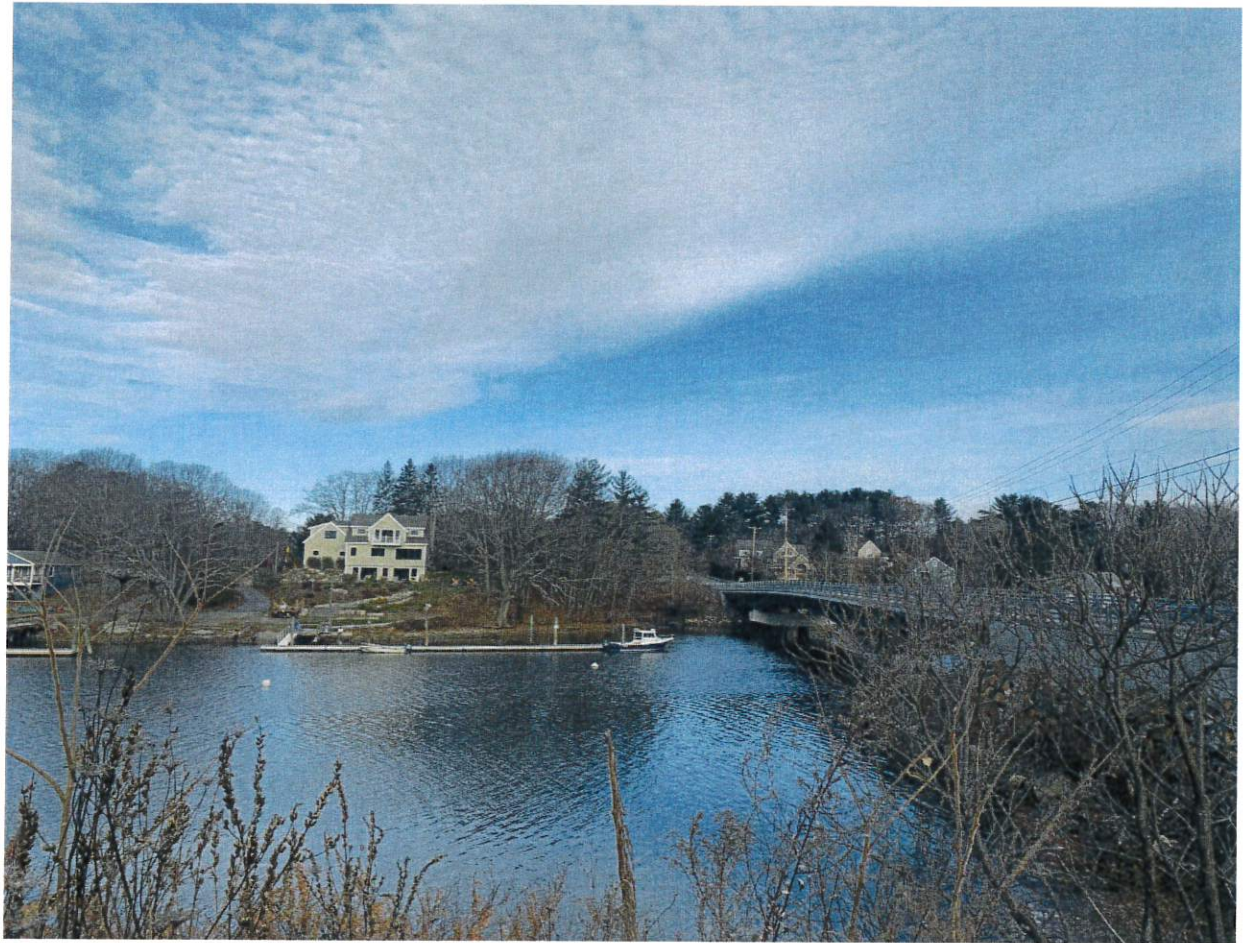
Rear Elevation View



Right Elevation View



Right Elevation View



Left Elevation View (Across Water)



View from Sagamore Road

II. OLD BUSINESS

- D. The request of **The Griffin Family Corporation (Owners), and LoveWell Veterinary Services, LLC (Applicant)**, for property located at **738 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)

Existing & Proposed Conditions

| | <u>Existing</u> | <u>Proposed</u> | <u>Permitted / Required</u> |
|--|-----------------|---|-----------------------------|
| <u>Land Use:</u> | Commercial | Veterinary Clinic | Mixed Uses |
| <u>Lot area (sq. ft.):</u> | 114,363 | 114,363 | 5,000 min. |
| <u>Lot Area per Dwelling Unit (sq. ft.):</u> | NA | NA | 2,500 min. |
| <u>Lot depth (ft.):</u> | >100 | >100 | 100 min. |
| <u>Front Yard (ft.):</u> | 40 | 40 | 10 max. |
| <u>Left Yard (ft.):</u> | OK | OK | NR min. |
| <u>Right Yard (ft.):</u> | OK | OK | NR min. |
| <u>Rear Yard (ft.):</u> | >5 | >5 | 5 min. |
| <u>Height (ft.):</u> | <35 | <35 | 2-3 Stories (45') max. |
| <u>Building Coverage (%)</u> : | 21.9 | 21.9 | 60 max. |
| <u>Open Space Coverage (%)</u> : | 12.2 | 12.2 | 15 min. |
| <u>Parking</u> | 350 | 350 | 374 |
| <u>Estimated Age of Structure:</u> | 1996 | Special Exception request(s) shown in red. | |

Other Permits/Approvals Required

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

Neighborhood Context



Previous Board of Adjustment Actions

February 19, 2008 – The Board **granted** a Variance from Section 10-208(54)(b) to allow a 12' x 20' exterior produce cooler to be temporarily located during internal renovations of the grocery store.

April 18, 1995 – the Board **granted** a Special Exception to allow the erection of a 50' x 150' tent for a Home Show for 5 days with the stipulation that a \$100.00 bond be posted to ensure removal of the tent.

November 9, 1982 – the Board **granted** a Special Exception to place a temporary 8' x 40' one story storage trailer behind the building with a stipulation that the placement not exceed 90 days from the date of the meeting.

April 20, 2021 – the Board **granted** a Variance from Section 10.1251.20 to allow an 86.21 square foot wall sign where 40 square feet is the maximum allowed in Sign District 3 to replace existing wall sign with new sign. The Board voted to grant variance as presented and advertised.

Planning Department Comments

The applicant is proposing the use of a veterinary clinic in the CD4-W 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.

Portsmouth City Zoning Board

RE: Proposed veterinary clinic for 738 Islington street, Unit 1B, Portsmouth NH 03801

Special Exception request: veterinary clinic in the Business CD4-W district. (Article 4: section 10.440, use 7.5)

To the members of the zoning board:

I, Nicole Giusto DVM, am writing as a resident of the town of Portsmouth, Veterinarian and a proprietor of LoveWell Veterinary Services LLC, to seek a special exception to open a small animal veterinary clinic at 738 Islington Street, Unit 1B. The business was granted a special exception veterinary use in May 2022 to occupy 650 Islington street unit CH1. This location fell through.

The purpose of this business is to care for the health of our local pet population in an easily accessible and walkable in-town location.

I have discussed the nature of the veterinary clinic with the building owner and they have no objection to this type of business.

This letter serves to indicate that the space will meet the standards of Article 2, 10.232.20 of the Zoning Administration and enforcement.

With respect to the ordinances:

Special Exception:

10.232.21 Standards as provided by this Ordinance for the particular use permitted by special exemption

The space will be used as a one doctor small animal veterinary clinic. It will serve patients and their owners during regular business hours (8AM-6PM) and will not provide kennel, or overnight hospitalization services. The business will not deal in training, grooming or sale of animals. Veterinary use is listed as a special exception in the CD4-W zone. (Article 4: section 10.440, use 7.5) This business will not have kennel services (as outlined in the ordinance definitions section, 15-22) no exterior additions or changes are planned to the building (supplemental regulation 10.832)

10.232.22 No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic chemicals.

The space will not represent hazard to the public or adjacent properties. No external changes are planned as outlined in submitted plans.

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 material.

There will be no expected detriment to property values. The business will likely increase property values due to demand for veterinary services in this extremely pet friendly location. None of the above-mentioned negative factors are expected to occur in the proposed capacity.

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

There will be no substantial increase in traffic as the space will only accommodate 3 in person patient visits at any one time. The practice promotes telemedicine visits and day patients will be dropped off by their owners at the space, limiting parking usage. There is adequate parking to accommodate 3 patient visits at a time. The centrality of this location (Frank Jones Apartments, West End Yards, West End and North End neighborhoods) will allow many clients to walk from their homes, decreasing traffic and parking demands. Thus, this business will promote the Business CD4-W district goal of walkability and mixed use. (Article 4, section 10.410)

Parking analysis shows that 324 spaces are required for all the businesses in the 800 Islington plaza, including the veterinary business. The 800 Islington plaza has an excess of parking with 347 total parking spots. In addition, a veterinary business of this size requires 5.07 parking spaces : 1 space per 500 sf GFA (10.1112 : 7.5). The previous business to occupy this unit, Portsmouth Vacuum Company, required 8.45 parking spaces based on retail usage : 1 space per 300 sf GFA (10.1112 : 8.10-8.90) There will be a decreased parking demand by the veterinary business.

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

There will be no significant increase in demand on municipal services. This is a small animal wellness clinic- providing general health care and treatment of minor animal illness.

10.232.26 No significant increase of storm water runoff onto adjacent property or streets.

There will be no change in storm drain runoff. There is no planned external or plumbing change that would result in an increase.

Thank you for your consideration in this matter. Please feel free to reach out with any and all questions,

Sincerely,

Nicole Giusto, DVM

Door = ———

Wall = ———

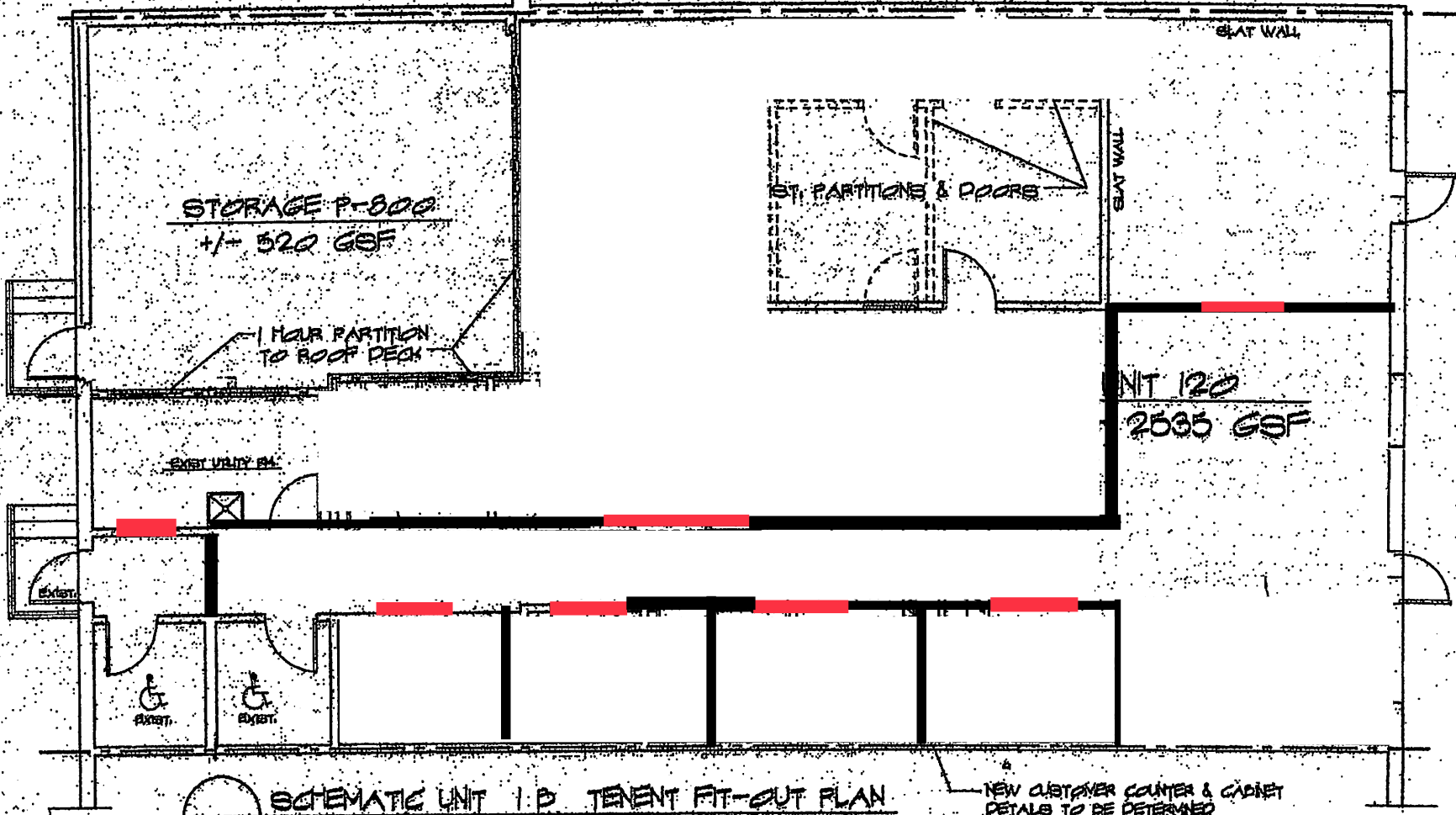
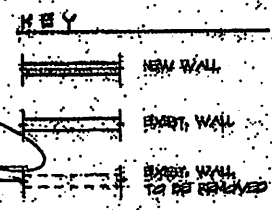


EXHIBIT 3

SCHEMATIC UNIT 1B TENENT FIT-OUT PLAN
SCALE 1/8" = 1'-0"

NOTE: REMOVE EXISTING ENTRY COUNTERS
AND LOW WALLS (NOT SHOWN)



UNIT 1B
PLAZA 800

| | | |
|--|--------|--------|
| 98 Charles Street Cambridge MA 02142 | | |
| ANN WHITNEY ARCHITECT | | |
| Project | Date | Sheet |
| 1419 | 8/6/14 | 1 OF 1 |

RCV



EXIT

Portsmouth
VACUUM CO.

SEBO

Miele

Miele

The Vacuum That
Truly Cleans.
And Lasts.

Miele

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Portsmouth
VACUUM CO.

Go Green - Large Format
Posters & Banners

Graphic Design

Mailing Services

CLOSED

18

18

LAUNDRY
HELP
PANTS

clearly

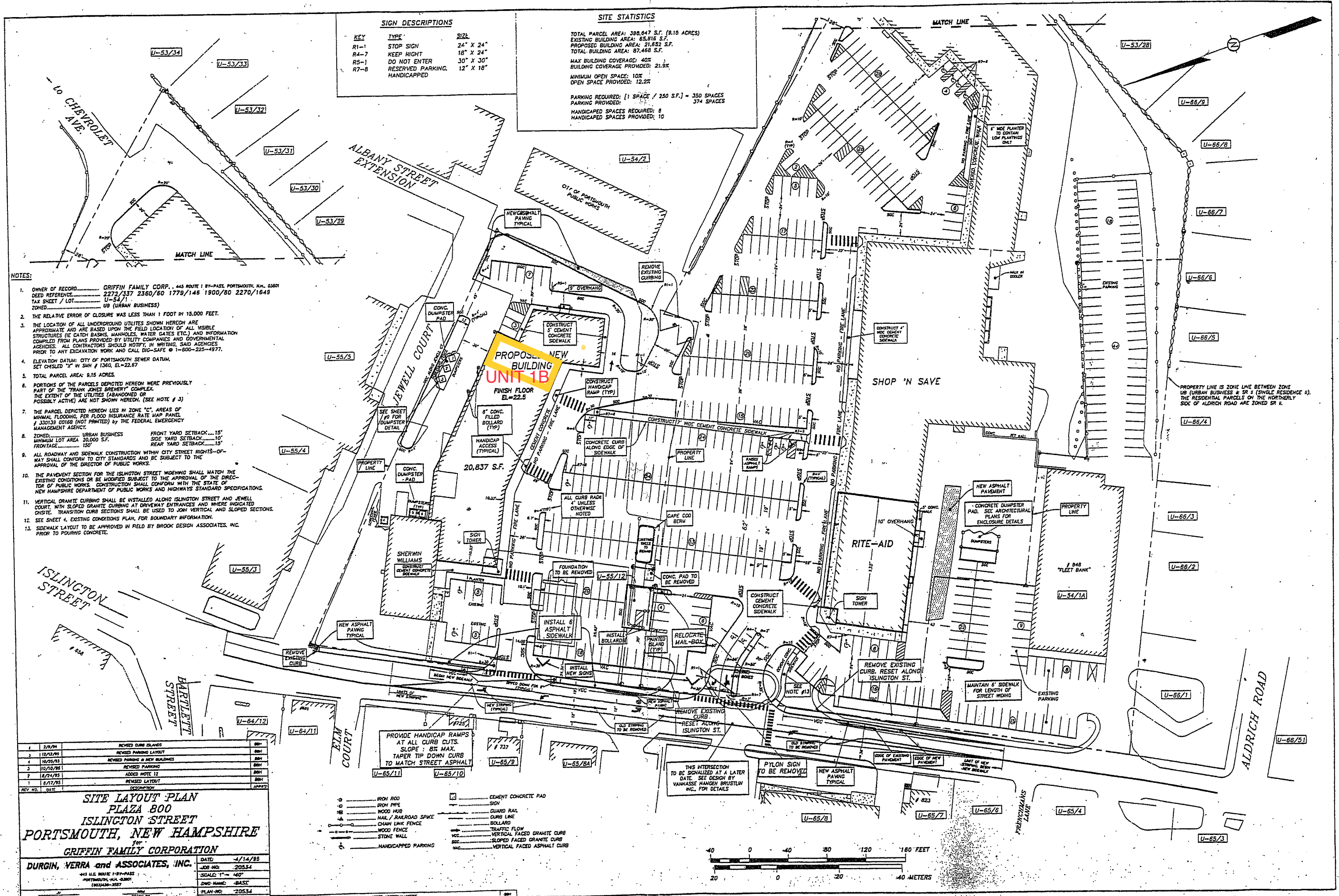
A-Z



STORAGE

TROIANO
WASTE SERVICES
767-2070
1-800-310-2070

| Name | sq footage | parking/sq foot | parking required |
|-------------------|------------|-----------------|------------------|
| Cleary Cleaners | 3790 | 1/500 | 7.6 |
| Barre and Soul | 2120 | 1/250 | 8.5 |
| Blaze | 3178 | 1/250 | 12.7 |
| Flote | 2420 | 1/400 | 6.1 |
| Printing | 3092 | 1/300 | 10.3 |
| NH Liquor | 7529 | 1/300 | 25 |
| Rite AID | 10660 | 1/300 | 35.5 |
| Hannaford | 31132 | 1/300 | 103.8 |
| Edible Arrange | 2000 | 1/300 | 8 |
| Gary's Guitars | 1000 | 1/300 | 4 |
| Dogland | 2135 | 1/300 | 8.5 |
| Sherwin Williams | 5000 | 1/300 | 20 |
| Cafe Espresso | 3220 | 1/100 | 32.2 |
| Portsmouth Pizza | 1500 | 1/100 | 15 |
| Ohana | 1100 | 1/100 | 11 |
| Man Cave | 800 | 1/400 | 2 |
| Herbal Nails | 800 | 1/400 | 2 |
| Unlocked Learning | 2465 | 1/400 | 6.1 |
| LoveWell Veterin | 2535 | 1/500 | 5.1 |
| | | | 323.4 |



II. OLD BUSINESS

- E. 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)

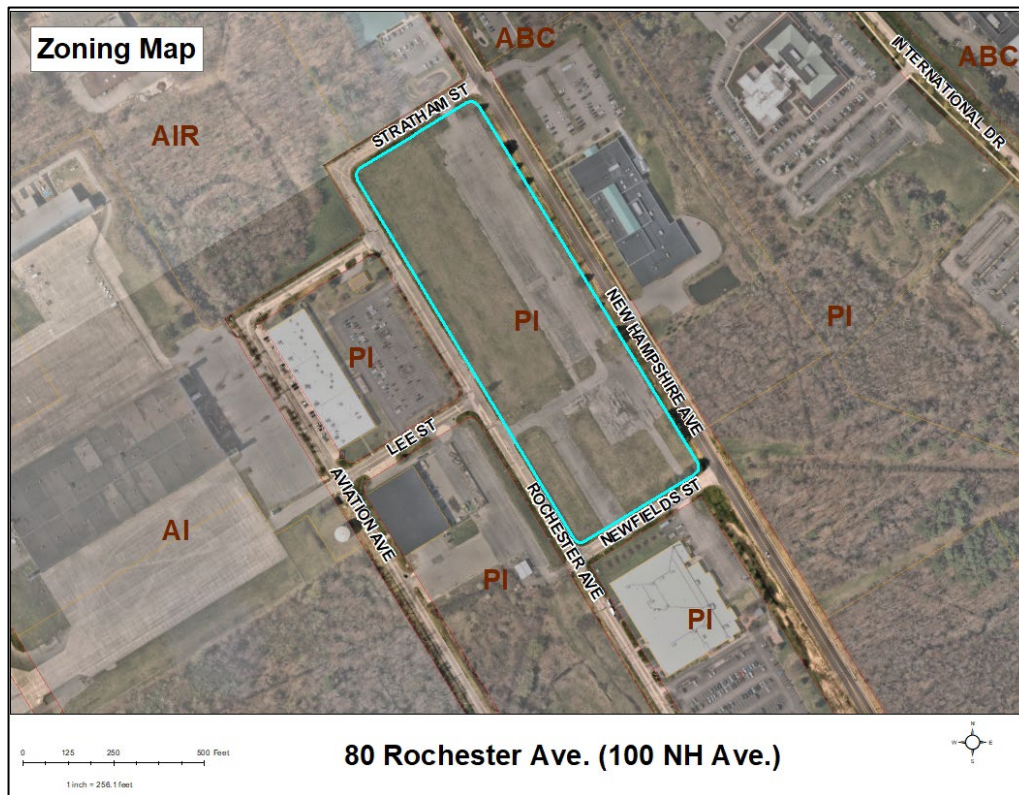
Existing & Proposed Conditions

| | <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 | 28 | 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 | Variance request(s) shown in red. | |

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.

February 28, 2023 – The Board voted to postpone to the March meeting.

Planning Department Comments

The applicant is seeking to construct a new building to house an advanced 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.

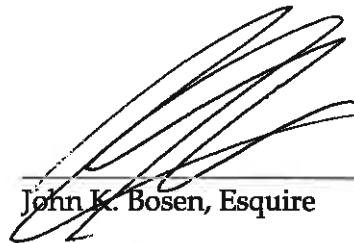
IV. CONCLUSION.

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
248 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 ⁽¹⁾ |
| • SIDE: | 50 FT | ±202 FT |
| • REAR: | 50 FT | ±28.4 FT ⁽²⁾ |
| 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: 147 SPACES 147 SPACES⁽¹⁾

(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

LEGEND

PROPOSED LEASE LINE

PROPOSED CONCRETE

PROPOSED STANDARD DUTY
PAVEMENT SECTION

PROPOSED HEAVY DUTY
PAVEMENT SECTION

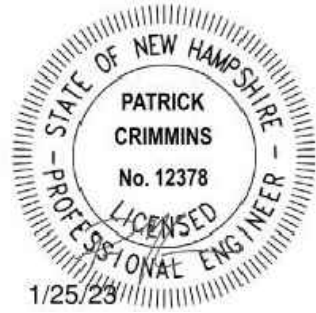
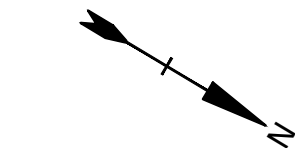
PROPOSED RECLAIM AND RE-PAVE

PROPOSED MILL AND OVERLAY

PROPOSED SNOW STORAGE AREA

APPROXIMATE LIMIT OF SAWCUT
PROPOSED LIGHT POLE BASE
EXISTING PROPOSED SIGN
PROPOSED BOLLARD

Tighe&Bond



SCALE IN FEET
0 60' 120'
GRAPHIC SCALE

Proposed Advanced Manufacturing Facility

Aviation Avenue
Group, LLC

100 New Hampshire
Avenue
Portsmouth, NH

| MARK | DATE | DESCRIPTION |
|----------------------------|------------|------------------|
| B | 1/25/2023 | TAC Resubmission |
| A | 12/19/2022 | TAC Submission |
| 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

- A.** The rehearing of the request of **Jeffrey M. and Melissa Foy (Owners)**, for property located at **67 Ridges Court** whereas relief is needed for construction of a 518 square foot garage addition and expansion of front dormer which requires the following: 1) A variance from Section 10.521 to allow a 14 foot front yard where 19 feet is required per Section 10.516.10. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 207 Lot 59 and lies within the Single Residence B (SRB) District. (LU-22-199)

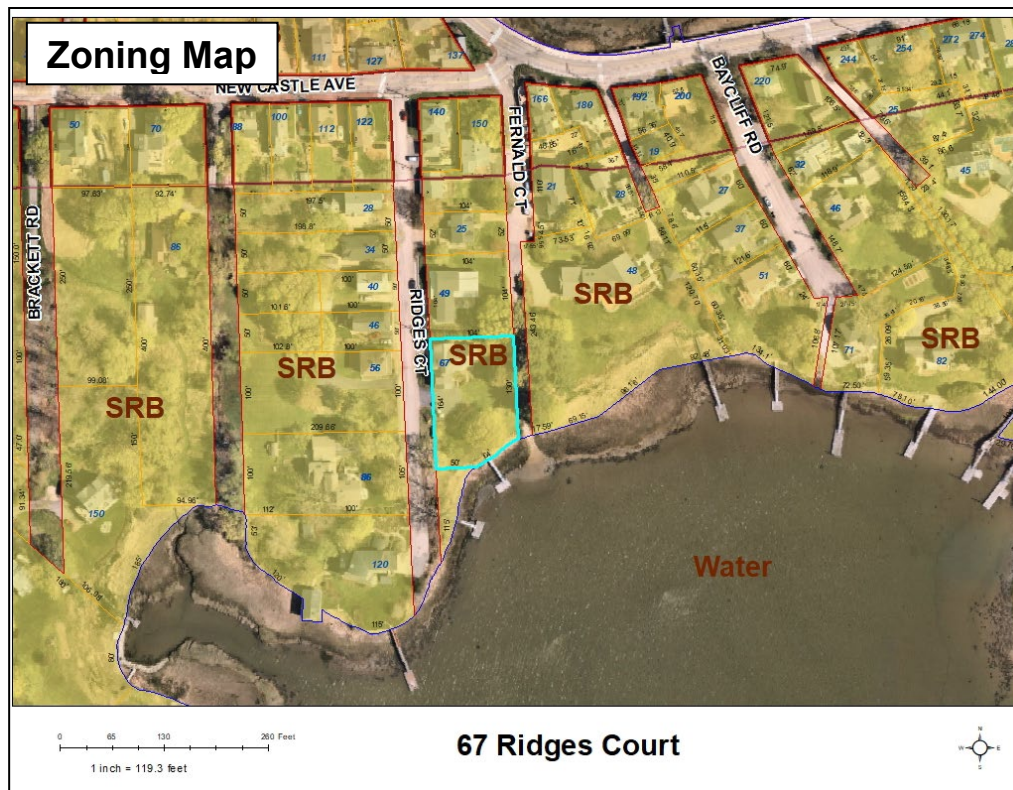
Existing & Proposed Conditions

| | <u>Existing</u> | <u>Proposed</u> | <u>Permitted / Required</u> |
|---|-----------------|-----------------------------------|---|
| <u>Land Use:</u> | Single family | Garage addition | Primarily single residence |
| <u>Lot area (sq. ft.):</u> | 16,500 | 16,500 | 15,000 min. |
| <u>Lot area per dwelling (sq. ft.):</u> | 16,500 | 16,500 | 15,000 min. |
| <u>Lot depth (ft.):</u> | 109 | 109 | 100 min. |
| <u>Street Frontage (ft.):</u> | 164 | 164 | 100 min. |
| <u>Primary Front Yard (ft.):</u> | 8 | 14 | 30 *(19 feet per front yard averaging) min. |
| <u>Left Yard (ft.):</u> | 10 | 9.5 | 10 min. |
| <u>Right Yard (ft.):</u> | 95 | >67 | 10 |
| <u>Rear Yard (ft.):</u> | 40 | 40 | 30 min. |
| <u>Height (ft.):</u> | <35 | <35 | 35 max. |
| <u>Building Coverage (%):</u> | 14 | 17.5 | 20 max. |
| <u>Open Space Coverage (%):</u> | 73 | 77 | 40 min. |
| <u>Parking:</u> | 4 | 4 | 2 |
| <u>Estimated Age of Structure:</u> | 2002 | Variance request(s) shown in red. | |

Other Permits/Approvals Required

Conservation Commission & Planning Board – Wetland CUP

Neighborhood Context



Previous Board of Adjustment Actions

July 15, 1986 – the Board **granted** a Variance to permit the construction of a 20' x 20' addition onto an existing single family dwelling with a front yard of 9' where a 30' front yard is required.

August 20, 2002 – The Board considered request for the following Variance: Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) is requested to allow a 5'9" x 10'3" front porch/entry with an 8'1" front yard where 30' is the minimum required The Board voted the request be **granted** as advertised and presented.

October 15, 2002 – The Board considered request for the following Variance: Article III, Section 10-302(A) is requested to allow the existing single family dwelling to be demolished and rebuilt with a 13'11" front yard where 30' is the minimum required The Board voted the request be **granted** as advertised and presented.

July 19, 2022 - Relief is needed to construct a 718 square foot garage addition with living space and deck above which requires the following:

- 1) A Variance from Section 10.521 to allow a 15.5' front yard where 30' is required.
- 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 2074 Lot 59 and is located within the single residence B (SRB) District.

The Board voted to **grant** the request to **postpone** to the August meeting.

August 16, 2022 The Board voted to **deny** the request of July 19, 2022 because there was no hardship.

September 27, 2022 – The Board voted to **grant** the following with the exception of item "b" which was determined to not be required:

- 1) Section 10.521 to allow a) an 8' front yard where 30' is required to expand the existing front porch; b) a 13.5 foot front yard where 30 is required to expand the main roof of the house; c) a 13.5 foot front yard where 30 feet is required for a new roof over an existing

doorway; and d) a 9.5 foot left side yard where 10 feet is required for a new rood over an existing doorway.

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

October 18, 2022 – The Board voted to postpone to the November meeting.

November 15, 2022 - The Board voted to determine if Fisher v. Dover applied to this application. A motion to determine that the petition does not fall under Fisher v. Dover failed, therefore the request was not heard.

Planning Department Comments

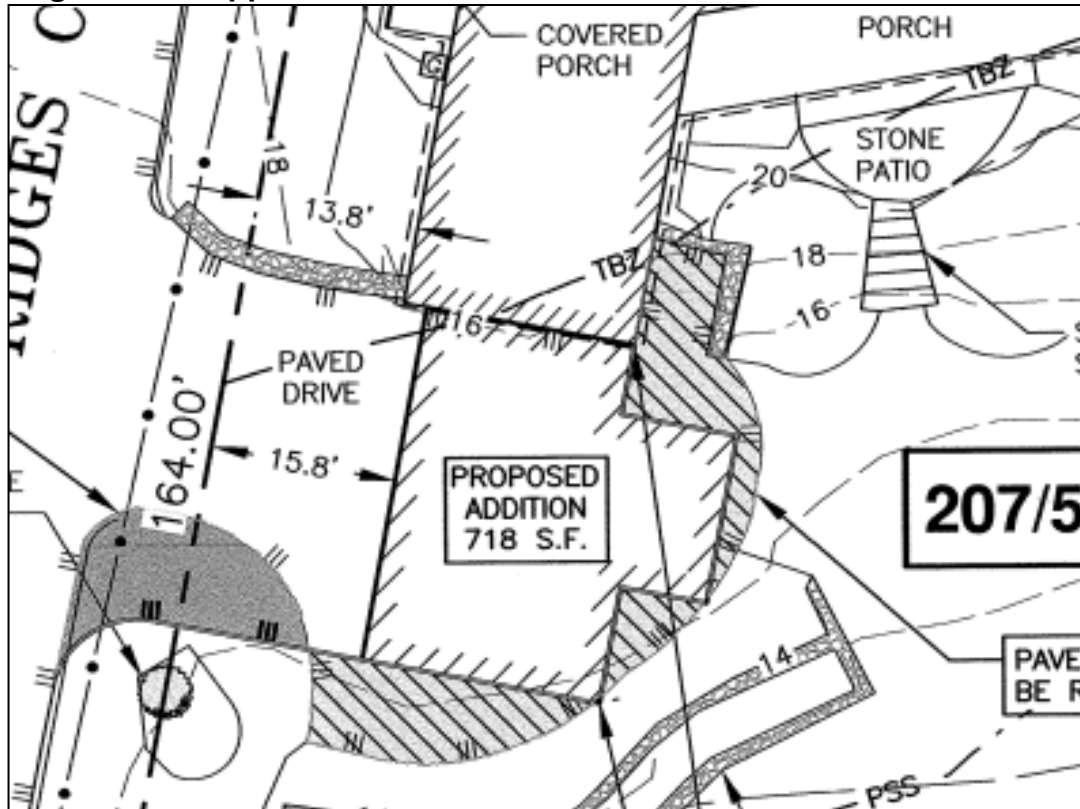
Staff feels this is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether Fisher vs. Dover is applicable before this application is considered.

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

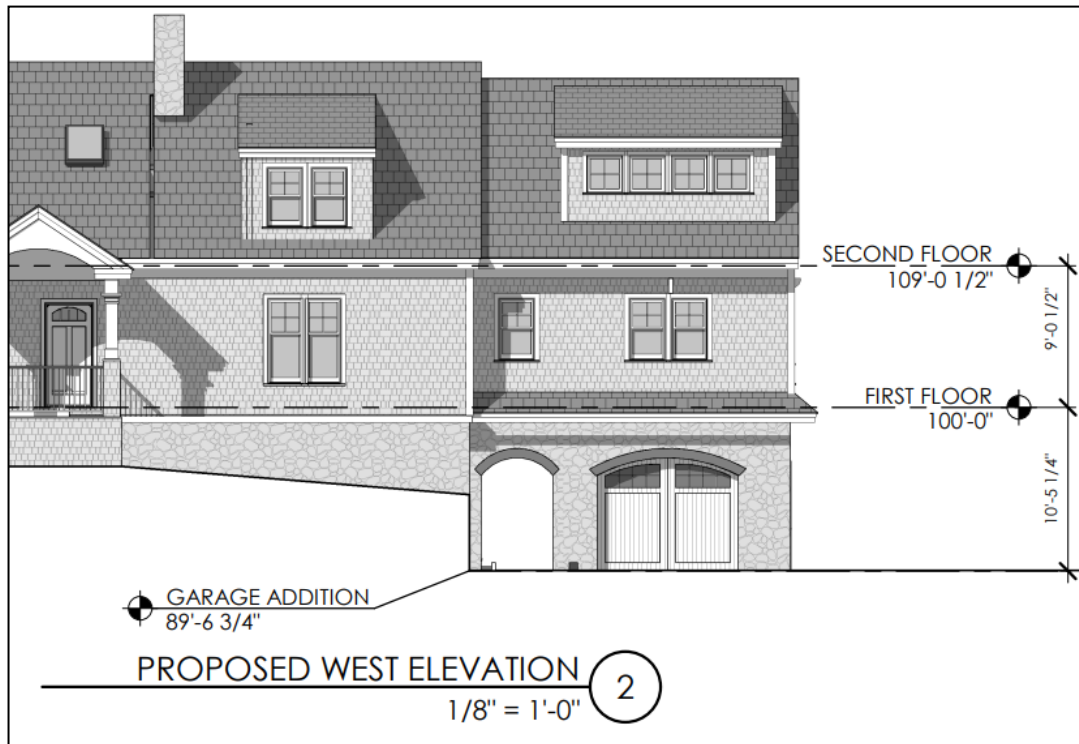
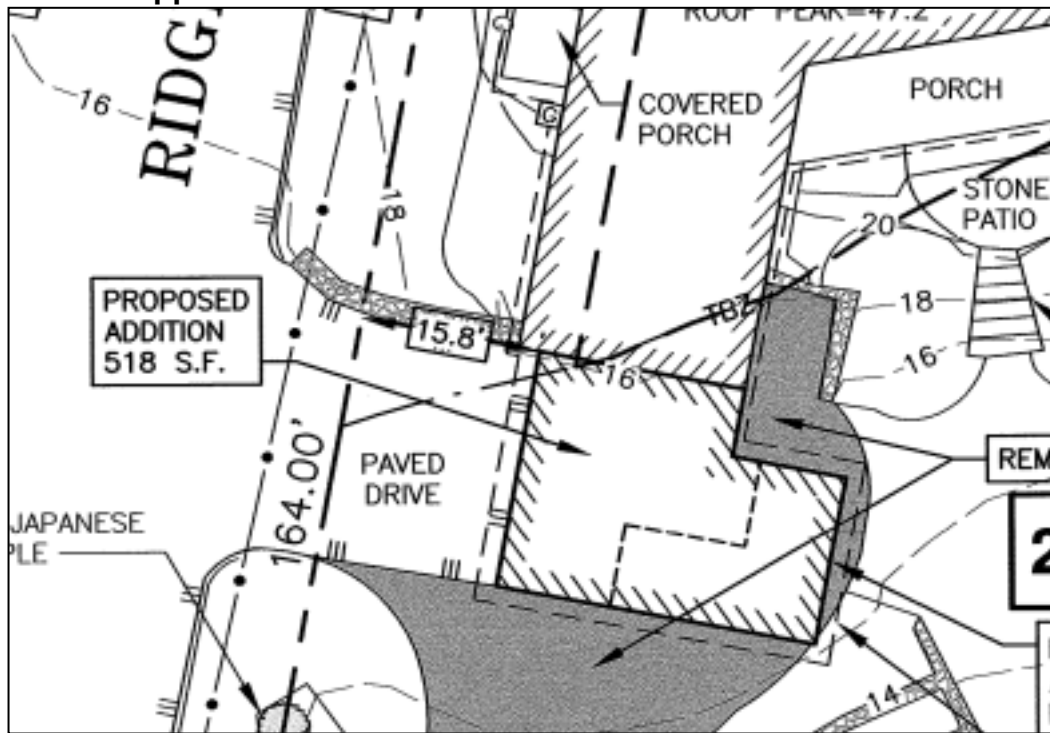
The applicant was before the Board in August for a garage addition that was subsequently denied by the Board. The applicant has revised the scope of work from a 718 square foot two car garage to a 518 square foot one car garage addition. On the original plan there was a deck

After the current application was submitted, a survey of the front yards of adjacent properties was completed to determine the average front yard under Section 10.516.10. The results show an average front yard of 19 feet. The applicant is proposing to enlarge the existing front yard, which requires a variance. This was not part of the original application in October.

August 2022 Application:



Current Application:



Review Criteria

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

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

OR

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

10.235 Certain Representations Deemed Conditions

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

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

October 11, 2022

HAND DELIVERED

Peter Stith, Principal Planner
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Jeffrey and Melissa Foy, Owner/Applicant
67 Ridges Court
Tax Map 207/Lot 59
Single Residence B District

Dear Mr. Stith & Zoning Board Members:

On behalf of Jeffrey and Melissa Foy ("Foy"), enclosed please find the following in support of a request for zoning relief:

- 10/5/2022 – Revised Memorandum and exhibits in support of Variance Application

This revision corrects errors in the original Memorandum and incorporates minor plan changes in Exhibits A and B; there is no change to the relief requested.

We look forward to presenting this application to the Zoning Board at its October 18, 2022 meeting.

Very truly yours,



R. Timothy Phoenix

Encl.

cc: Jeffrey and Melissa Foy
Ambit Engineering, Inc.
Destefano Mangel

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

OWNER'S AUTHORIZATION

We, Jeffrey & Melissa Foy, Owners/Applicants of 67 Ridges Court, Tax Map 207/Lot 59, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC to represent me before any and all Portsmouth Representatives, Boards and Commissions for permitting the project.

Respectfully submitted,

Date:

Jeffrey Foy



Date:

Melissa Foy



MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
DATE: October 11, 2022
Re: Jeffrey and Melissa Foy, Owner/Applicant
Property Location: 67 Ridges Court
Tax Map 207, Lot 59
Single Residence B (“SRB”)

Dear Chairman Parrott and Zoning Board Members:

On behalf of Jeffrey and Melissa Foy, Owner/Applicant (“Foy”), we are pleased to submit this memorandum and attached exhibits in support of zoning relief to allow a reduced garage addition at 67 Ridges Court, to be considered by the Portsmouth Zoning Board of Adjustment (“ZBA”) at its October 18, 2022 meeting.

I. EXHIBITS

- A. 10.5.2022 Site Plan Set – issued by Ambit Engineering, Inc.
 - Existing Conditions Plan
 - Variance Plan
- B. Architectural Plan Set – issued by Destefano Mangel.
 - Elevations – North and West
 - Elevations – South and East
 - Front & Rear Perspectives
 - Lower Level Floor Plans
 - First Floor Plans
 - Second Floor Plans
- C. Site Photographs.
- D. Tax Map 207.

II. PROPERTY/PROJECT

67 Ridges Court is a 16,500 s.f. lot located at the end of Ridges Court on Little Harbor in the Single Residence B Zoning District. Upon the lot is a 1.75 story, 1,591 s.f., 3-bedroom, 3 ½ bathroom Cape Cod style home and detached shed located on the left/northerly side of the lot, a dock extending into Little Harbor, and two driveways (the “Property”). Most of the lot is located in the 100 ft. tidal buffer zone from Little Harbor with a corner of the existing home and one of the paved driveways in the tidal buffer zone. The existing home also encroaches on the required front yard. Foy plans intends a 518 s.f. addition incorporating a lower level garage, expanded living room with rear deck and trellis, an additional master bedroom above (the “Project”). This

addition is significantly smaller than the addition previously proposed and denied by the ZBA on August 16, 2022.

The 518 s.f. addition is placed over a portion of paved driveway and is accompanied by significant removal of surrounding pavement in the tidal buffer, replacing a small area with porous parking. The Project meets building coverage requirements, reduces impervious coverage, and complies with open space requirements. In advance of required Conservation Commission Review and Planning Board Approval of a Conditional Use Permit, Foy seeks a variance for an addition 15.8 ft. from the front lot line where 19 ft. is required.¹

III. RELIEF REQUIRED

| <u>Variance Section</u> | <u>Required</u> | <u>Existing</u> | <u>Proposed</u> |
|--|------------------------|--------------------------|-----------------|
| <u>PZO §10.521</u> <u>Table of Dimensional Standards –</u> <u>Minimum Yard Dimensions</u> | Front 19' ² | 13.6' Home 8.2' Porch | 15.8' Addition |
| <u>PZO §10.321</u> <u>Expansion of Nonconforming Structure</u> | | | |

IV. FISHER V. DOVER ANALYSIS

As stated, the ZBA previously considered and denied the prior owner's application for variances in August. Based on the notices of decision and the August 16, 2022 Minutes, ZBA Members heard from abutting lot owners about the impact of the addition on their viewsheds and environmental impacts. The ZBA has no jurisdiction over environmental impacts, which will be the addressed by the Conservation Commission and Planning Board with a Conditional Use Permit, but determined there was no hardship.

In Fisher v. City of Dover, 120 N.H. 187, 190 (1980), the Supreme Court held that once an applicant makes a request to the ZBA and is denied, the ZBA may hear a subsequent variance request only upon a finding "a material change of circumstances" or unless it "materially differs in nature and degree from its predecessor." The court based its decision on concerns that absent a material change in circumstances or the application, there would be no finality to ZBA

¹ PZO §10.516 provides for a yard setback requirement based on the average setback derived from houses within 200 ft. of the lot. We have measured the front setbacks of the three properties within 200 ft. of Foy on the left side of Ridges Court and confirmed with Planner Stith that the required setback is 19 ft.

² PZO §10.516.

proceedings, thus threatening “the integrity of the zoning plan.” *Id.* In cases subsequent to *Fisher*, however, the court clarified that this restriction does not apply to “a subsequent application explicitly or implicitly invited by the ZBA and modified to address its concerns.” *Hill-Grant Living Trust Small v. Kearsarge Lighting Precinct*, 159 N.H. 529, 536 (2009) (citing *Morgenstern v. Town of Rye*, 147 N. H. 558 (2002)).

In contrast to the previous proposal, the revised Foy Project proposing a 518 s.f. addition is a significant reduction from the previously proposed 718 s.f. addition. It removes one garage bay and relocates the deck and trellis to the rear, presenting less visual impact. Furthermore, removal of pavement reduces impervious coverage compared to existing conditions. In addition, the application of PZO §10.516 exception to the yard setback results Foy’s request for a 3.2 ft. deviation from the required 19 ft. Accordingly, today’s application meets the “material difference” requirement of *Fisher v. Dover* allowing this Board to consider Foy’s requested relief.

V. VARIANCE REQUIREMENTS

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

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

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

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The intended use of the property is and will remain residential. The requested relief will allow Foy to add a single garage and increase living space while meeting building coverage and open space requirements. The Project also reduces impervious coverage compared to existing conditions.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The lot and intensity of its use will not change, as it will continue to be used as a single-family residence. The addition is set

- back further from the front lot line than the existing home, preserving pedestrian and sight lines on the dead-end street. Building coverage requirements and open space requirements are also met by the Project, which reduces impervious coverage compared to existing conditions.
3. The design of facilities for vehicular access, circulation, parking and loading – The garage will be located where the current paved driveway is situated, ensuring a straight route to the street, eliminating the need for turning radius and additional impervious surfaces. Additional paved surfaces will be removed, with a portion replaced with porous surfaces to accommodate guest parking on the narrow, dead end street.
 4. The impact on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – There will be no increase in noise or lighting. The Project constructs a smaller addition on an already paved area, removes asphalt, replacing a small section with porous material. As a result, overall impervious coverage is decreased improving stormwater management. The existing stone walls and landscaping on the Property will not be disturbed by the garage addition.
 5. The preservation and enhancement of the visual environment – The design places the garage on the lower level and incorporates a deck and trellis behind the addition, preserving sightlines to Little Harbor.
 6. The preservation of historic districts and building and structures of historic architectural interest – The Property is not in the Historic Overlay District.
 7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – Granting the variances will not undermine these purposes of the Ordinance where the existing landscaping will not be disturbed by the Project and impervious coverage will be reduced from 26.6% to 23.0%, well below the required 40% open space minimum requirement.

The intent of the SRB Zone is to “provide areas for single-family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre), and appropriate accessory uses.” PZO §10.410. The Property, like many in the neighborhood, contains a home which does not comply with front setback requirements. **(Exhibit C & D)**. The proposal meets the intent of the SRB Zone because it does not change the intensity of the use and allows Foy to add covered parking and gain more living space. Given these factors, granting the requested variance will not conflict with the basic zoning objectives of the PZO.

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

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

There are numerous other properties in the immediate area that include main or accessory structures that encroach on front, side, or rear setbacks. **(Exhibits C & D)**. The garage will be placed in the current paved driveway area and is accompanied by removal of impervious asphalt decreasing impervious coverage and increasing open space. The Project is located further back from the front lot line than the existing home located on the last residentially developed lot on the east side of this dead-end street . Given the number of buildings in the area encroaching on front, side, or rear setbacks, the proposal is in keeping with the surrounding area. The minimal relief required to accommodate the reduced addition on the last house of a dead end street will not jeopardize sightlines for pedestrians or motorists. Granting the variance neither alters the essential character of the locality nor threatens the public health, safety, or welfare. Accordingly, granting the variance to allow construction of a garage and increased living space is not contrary to the public interest and observes the spirit of the ordinance.

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

The Project adds covered parking/storage, a main bedroom suite, and increases indoor and outdoor living space, thus improving the value of the Property and those around it. The reduced Project incorporating the deck and trellis behind the home retains viewsheds enjoyed by abutting lot owners. The addition is more conforming than the existing home. The 3.2 ft. deviation from the 19 ft. front yard requirement matches the setback of the surrounding homes and will not negatively affect access to air and light. Accordingly, the variances will not diminish surrounding property values.

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

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

More than half the Property is burdened by the 100 ft. tidal buffer zone, and the existing home located on the far left/northern side of the lot in the front yard setback and at the left side setback. These factors drive the location of the proposed addition and combine to create special conditions.

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

The purpose of setback and expansion requirements is to prevent overbulking and overburdening of land and to ensure sightlines for pedestrians and motorists, adequate light and air, and sufficient area for stormwater treatment. The Project is located further back from the lot

line than the existing porch and home in the front yard setback and incorporates a deck/trellis behind allowing ample open space and light and preventing overbulking. Given its location at the end of a dead-end street with minimal traffic, adequate sight lines for pedestrian and vehicular access are maintained. The Project also removes excess asphalt on the Property, reducing impervious coverage and improving stormwater management compared to existing conditions.

Moreover, the neighborhood overall is similarly densely developed with multiple nearby parcels non-conforming for setbacks. See Walker v. City of Manchester, 107 N.H. 382, 386 (1966) (Hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use will have no adverse effect on the neighborhood). See also Belanger v. City of Nashua, 121 N.H. 389 (1981) (Variance proper where ordinance no longer reflects the current character of neighborhood). Accordingly, there is no fair and substantial relationship between the purposes of the ordinance and its application in this instance.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Residential use is permitted in the SRB Zone and includes accessory buildings incidental to the permitted use. The proposed addition is reasonably sized, and accompanied by site improvements which reduce impervious compared to existing conditions. Accordingly, the proposed use is reasonable, and denial will result in an unnecessary hardship to Foy.

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

If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” Malachy Glen, supra at 109.

Foy is constitutionally entitled to the use of the lot as they see fit; including the addition of a garage and expansion of living space, subject only to its effect on the dimensional requirements. “The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the

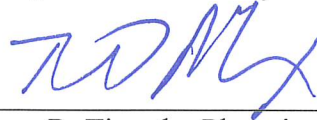
people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). “Property” in the constitutional sense has been interpreted to mean not the tangible property itself, *but rather the right to possess, use, enjoy and dispose of it*. Burrows v. City of Keene, 121 N.H. 590, 597 (1981) (emphasis added).

The Project retains the same use and offers additional covered parking and expanded living space indoors and out while complying with building coverage and reducing impervious coverage. In addition, the Project preserves access to air and light, while maintaining sight lines on a waterfront lot at the end of a dead-end street, so there is no harm to the public in granting the variance. Conversely, Foy will be greatly harmed by denial of the variance because they will be unable to expand parking, storage, and living space. Accordingly, substantial justice will be done by granting the variance.

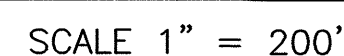
VI. CONCLUSION

For all of the reasons stated, Jeffrey and Melissa Foy respectfully request that the Portsmouth Zoning Board of Adjustment grant the requested variance.










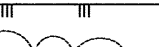







Respectfully submitted,
Jeffrey and Melissa Foy



By: R. Timothy Phoenix



LEGEND:

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

PLAN REFERENCES:

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

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

WETLAND NOTES:

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

- A) U.S. ARMY CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL. TECHNICAL REPORT Y-87-1 (JAN. 1987). AND REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION, VERSION 2.0, JANUARY 2012.
- B) FIELD INDICATORS OF HYDRIC SOILS IN THE UNITED STATES, VERSION 8.2, USDA-NRCS, 2018 AND (FOR DISTURBED SITES) FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN NEW ENGLAND, VERSION 4. NEWPCC WETLANDS WORK GROUP (2019).
- C) NATIONAL LIST OF PLANT SPECIES THAT OCCUR IN WETLANDS: NORTHEAST (REGION 1). USFWS (MAY 1988).
- D) CLASSIFICATION OF WETLANDS AND DEEPWATER HABITATS OF THE UNITED STATES. USFW MANUAL FWS/OBS-79/31 (1997).
- E) "IDENTIFICATION AND DOCUMENTATION OF VERNAL POOLS IN NEW HAMPSHIRE" (1997). NEW HAMPSHIRE FISH AND GAME DEPARTMENT.

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

AMBIT ENGINEERING, INC.

Civil Engineers & Land Surveyors

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

NOTES:

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

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

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

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

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

6) DIMENSIONAL REQUIREMENTS:

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

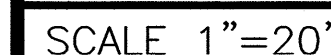
7) THE PURPOSE OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS ON ASSESSOR'S MAP 207 LOT 59 IN THE CITY OF PORTSMOUTH.

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

EXHIBIT A

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

| | | |
|-----------|--------------------|-----------|
| | | |
| | | |
| | | |
| | | |
| 1 | ADD FEMA FHZ | 6/27/2018 |
| 0 | ISSUED FOR COMMENT | 5/18/2018 |
| NO. | DESCRIPTION | DATE |
| REVISIONS | | |



MAY 2022

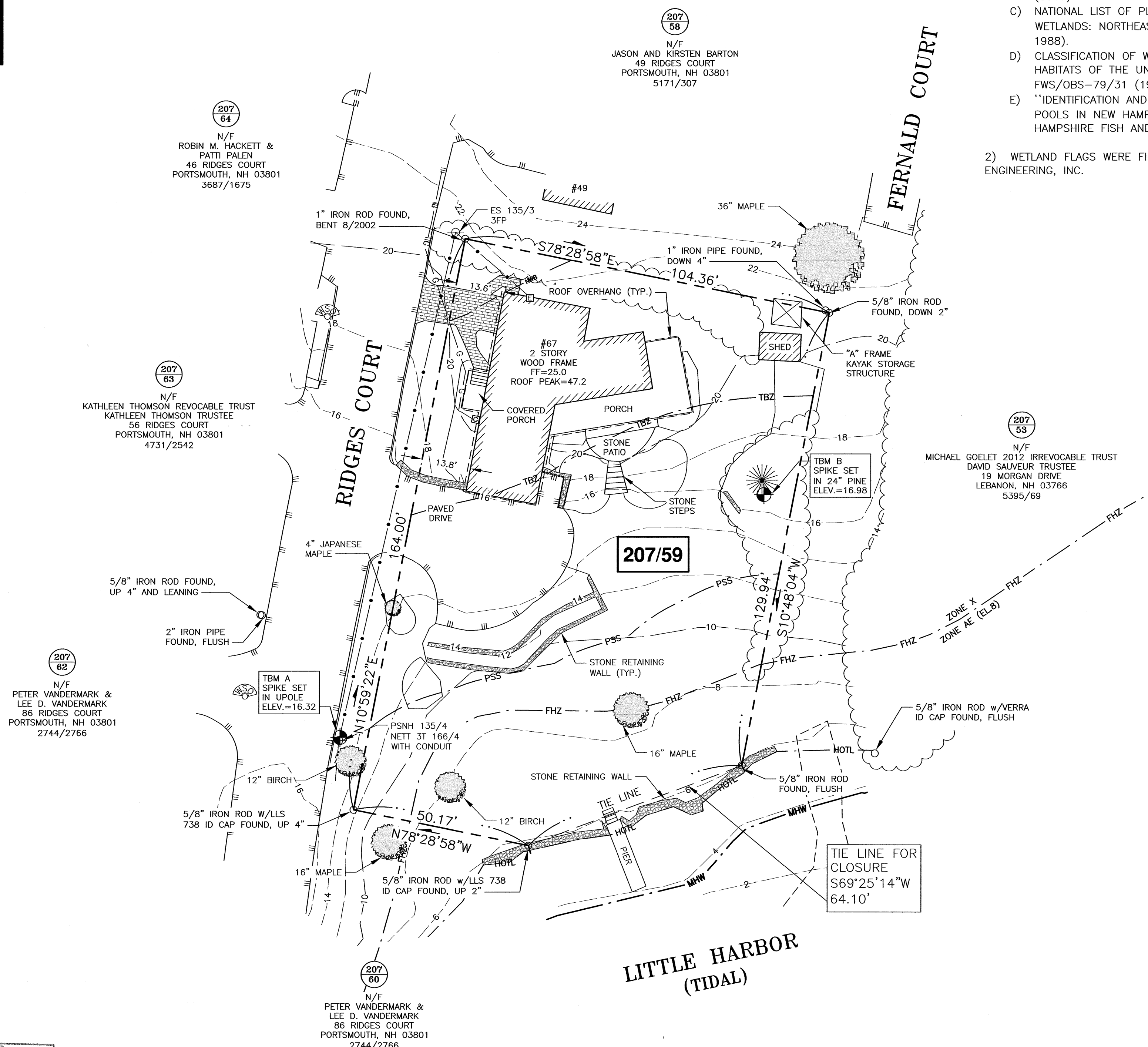
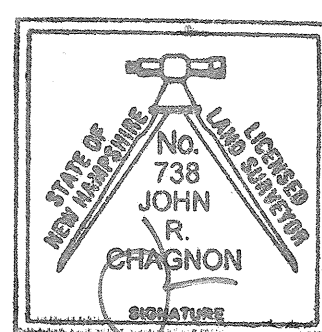
EXISTING CONDITIONS PLAN

C1

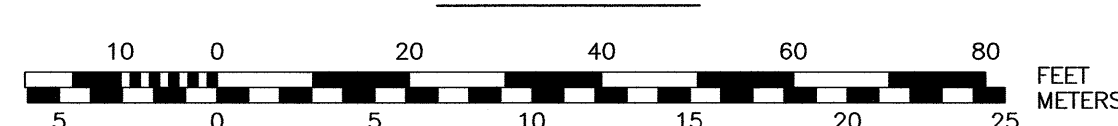
"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSURE TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

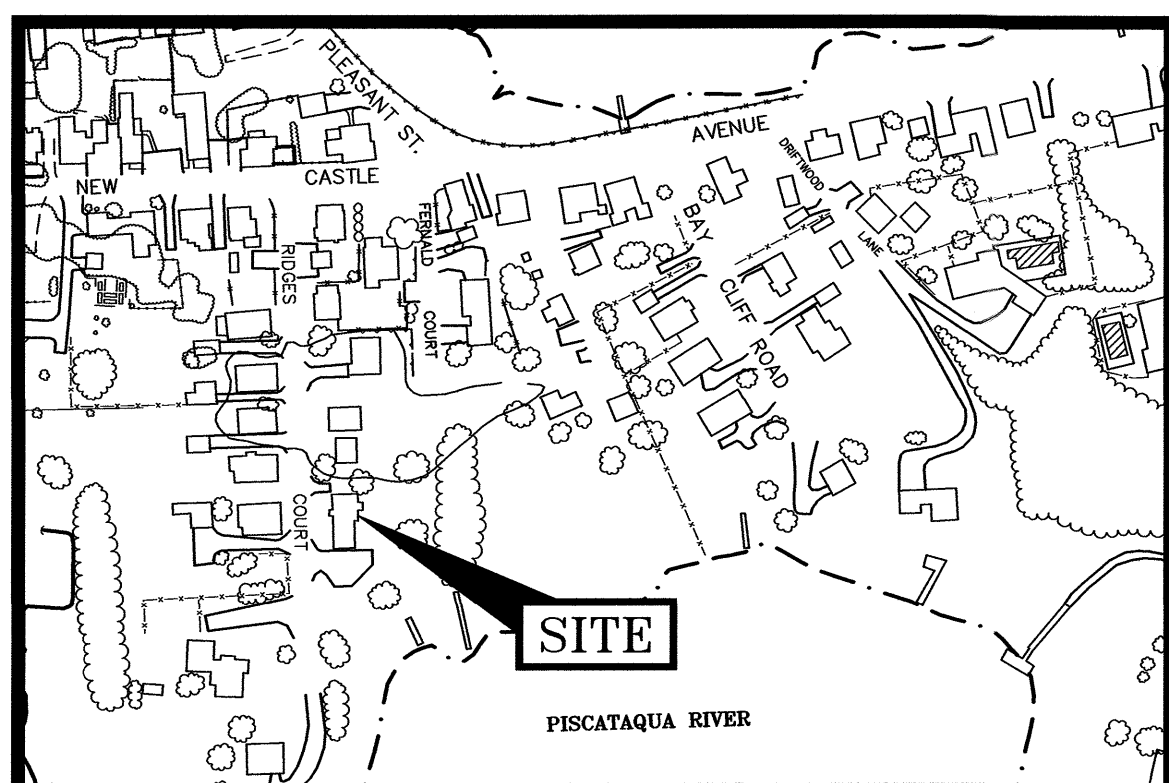
JOHN R. CHAGNON, ILS

6.27.22
DATE



GRAPHIC SCALE





LOCATION MAP

SCALE 1" = 200'

IMPERVIOUS SURFACE AREAS

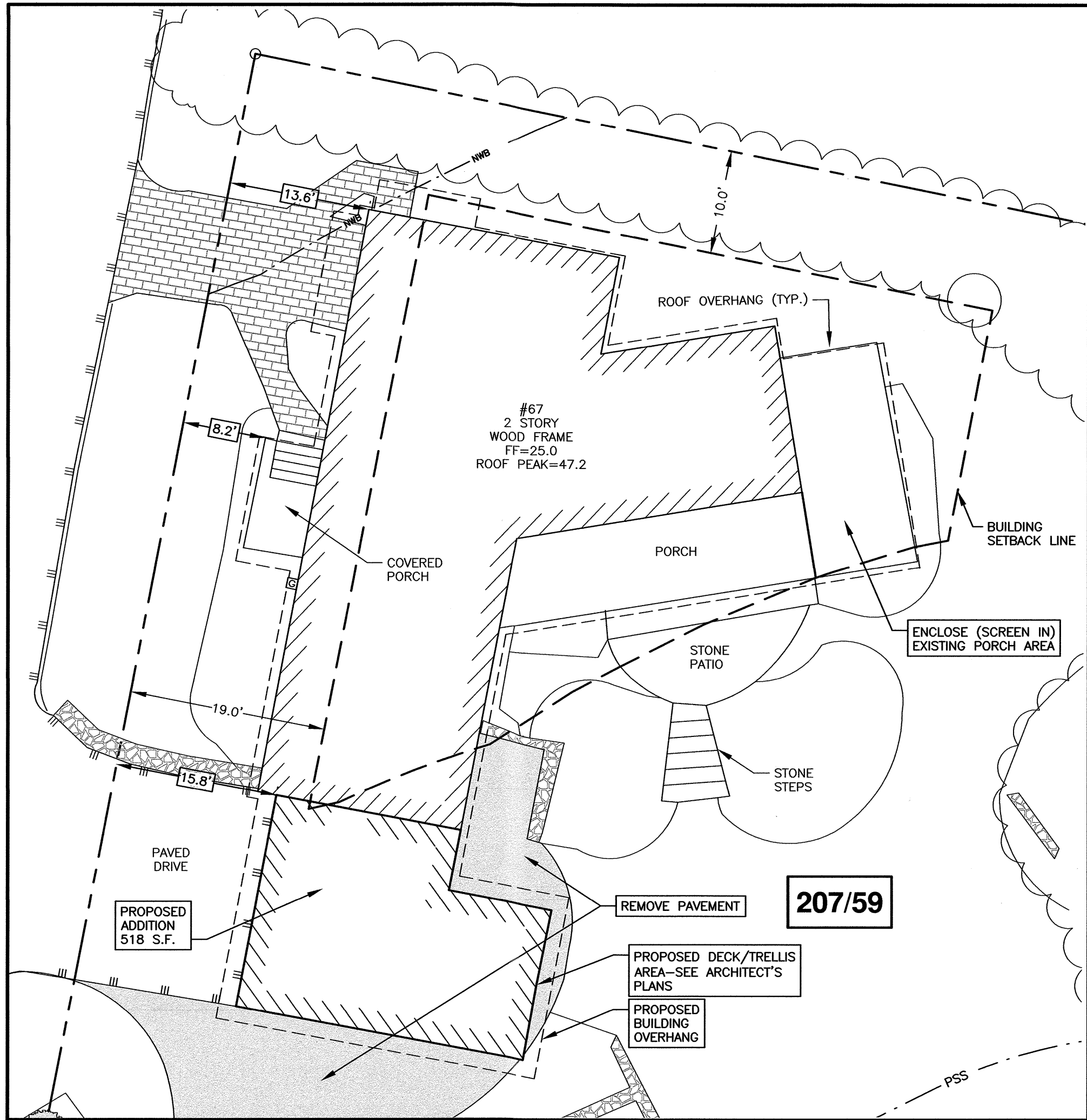
(TO PROPERTY LINE)

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

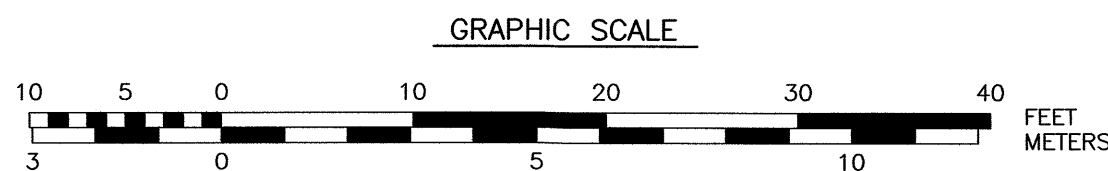
NOTES:

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

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

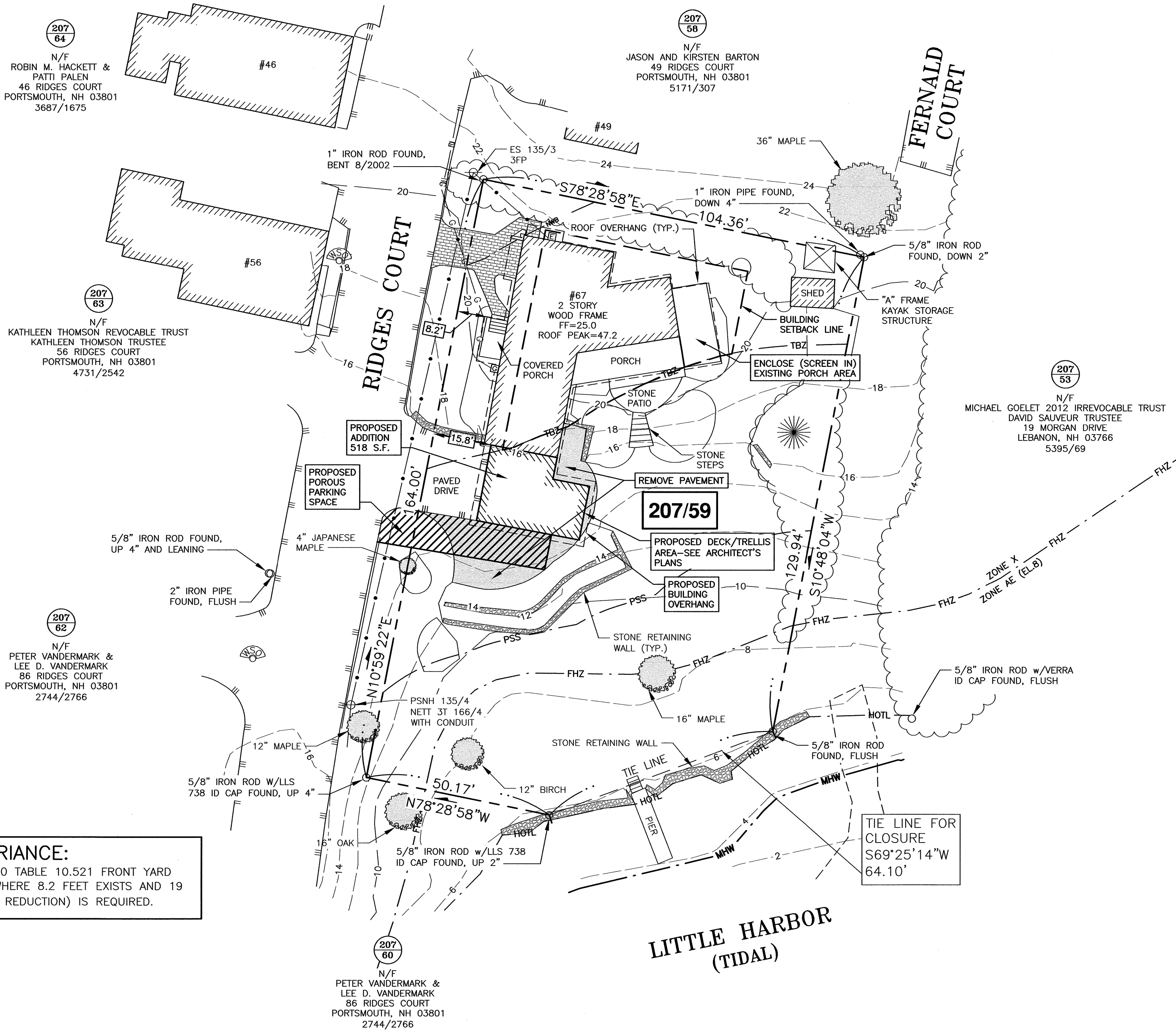


BUILDING DETAIL 1"=10'

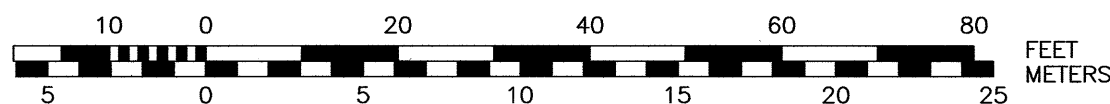


REQUESTED VARIANCE:

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

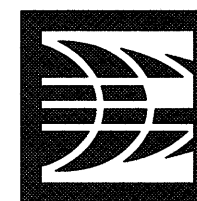
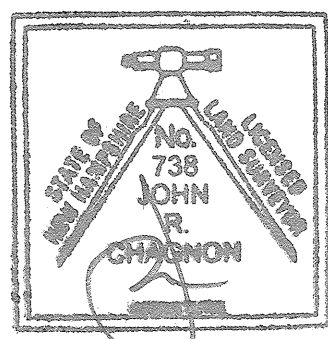


GRAPHIC SCALE



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

JOHN R. CHAGNON, LLS
DATE 10-5-22



AMBIT ENGINEERING, INC.

Civil Engineers & Land Surveyors

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

NOTES:

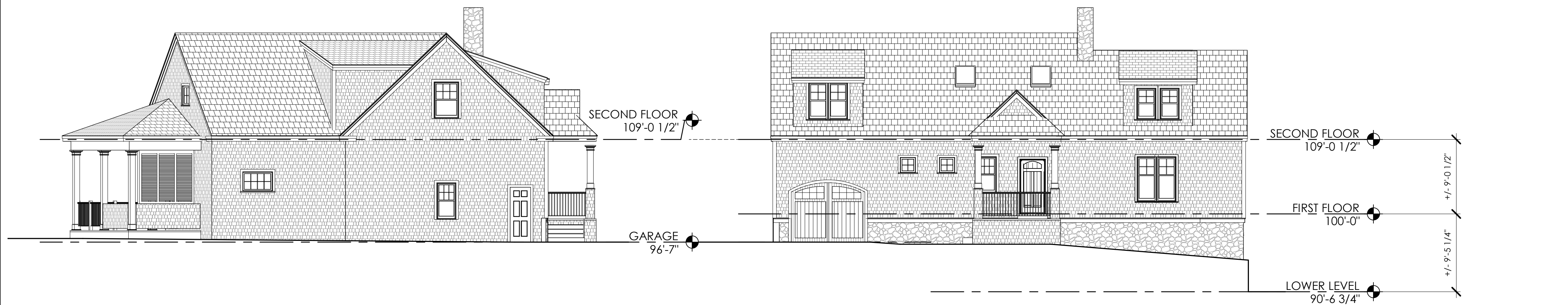
- 1) PARCEL IS SHOWN ON THE PORTSMOUTH ASSESSOR'S MAP 207 AS LOT 59.
- 2) OWNERS OF RECORD:
JEFFREY M. & MELISSA FOY
4 FOX HOLLOW COURT
EAST KINGSTON, N.H. 03827
6325/1066
- 3) PORTIONS OF THE PARCEL ARE IN A SPECIAL FLOOD HAZARD AREA ZONE AE (EL. 8) AS SHOWN ON FIRM PANEL 33015C0278F. EFFECTIVE JANUARY 29, 2021.
- 4) EXISTING LOT AREA:
16,500± S.F. (PLAN REF. 1)
0.3788± ACRES (PLAN REF. 1)
- 5) PARCEL IS LOCATED IN THE SINGLE RESIDENCE B (SRB) ZONING DISTRICT.
- 6) DIMENSIONAL REQUIREMENTS:
MIN. LOT AREA: 15,000 S.F.
FRONTAGE: 100 FEET
SETBACKS: FRONT 30 FEET
SIDE 10 FEET
REAR 30 FEET
MAXIMUM STRUCTURE HEIGHT: 35 FEET
MAXIMUM STRUCTURE COVERAGE: 20%
MINIMUM OPEN SPACE: 40%
- 7) THE PURPOSE OF THIS PLAN IS TO SHOW A PROPOSED ADDITION ON ASSESSOR'S MAP 207 LOT 59 IN THE CITY OF PORTSMOUTH.
- 8) VERTICAL DATUM IS NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS (±0.2').
- 9) PROPOSED GARAGE FROM PLAN BY DESTEFANO MAGUEL ARCHITECTS DATED SEPTEMBER 28, 2022.
- 10) OFF SITE STRUCTURE LOCATIONS BASED ON CITY DATABASE LOCATIONS.

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

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

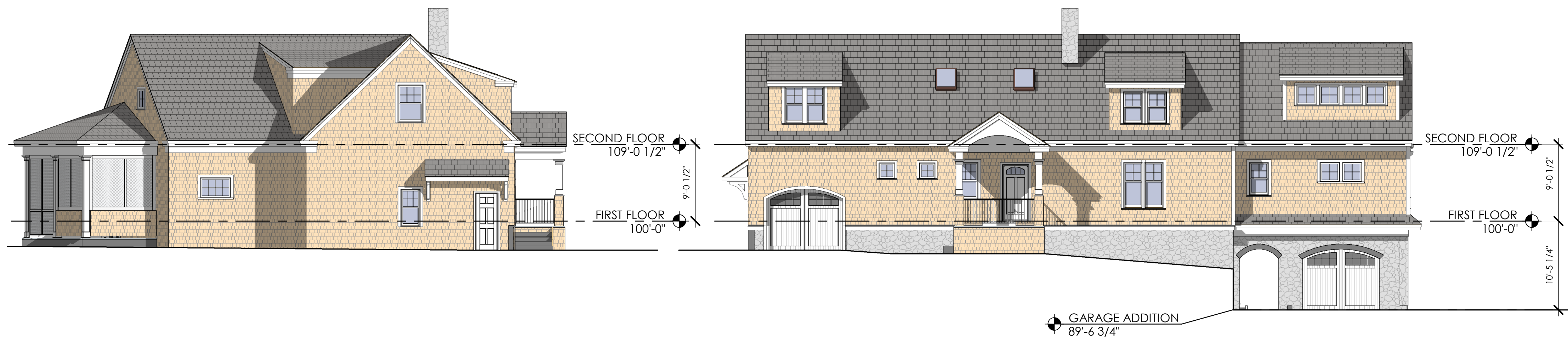
| | | |
|---------------|--|----------------|
| SCALE 1"=20' | | SEPTEMBER 2022 |
| VARIANCE PLAN | | C2 |

FB 222 PG 66



EXISTING NORTH ELEVATION

EXISTING WEST ELEVATION



PROPOSED NORTH ELEVATION
1/8" = 1'-0" 1

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

EXHIBIT B - REV. 2

SCHEMATIC DESIGN FOR
FOY RESIDENCE
67 RIDGES CT
PORTSMOUTH, NH

ELEVATIONS
1/8" = 1'-0"

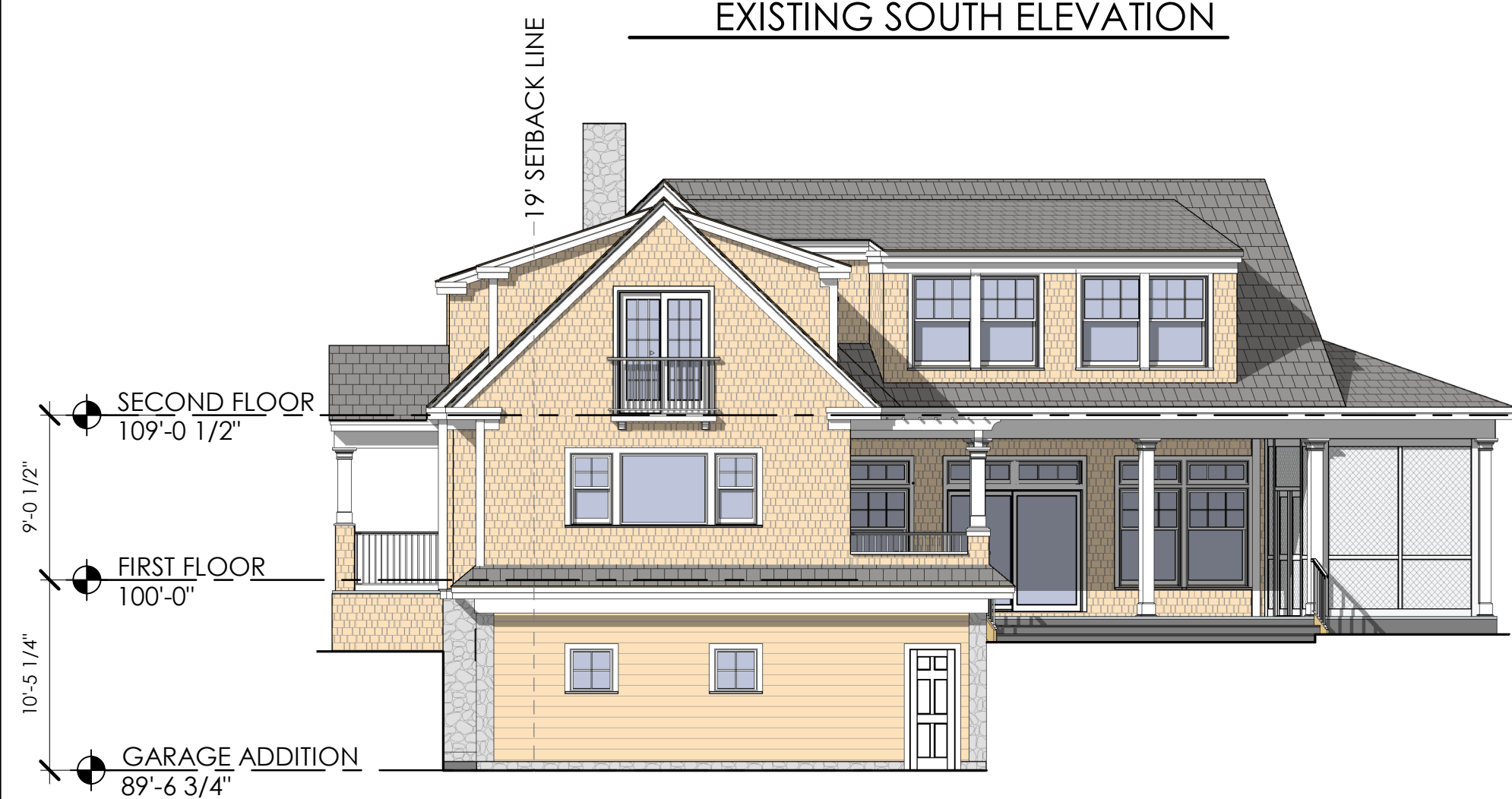
OCTOBER 11, 2022



EXISTING SOUTH ELEVATION



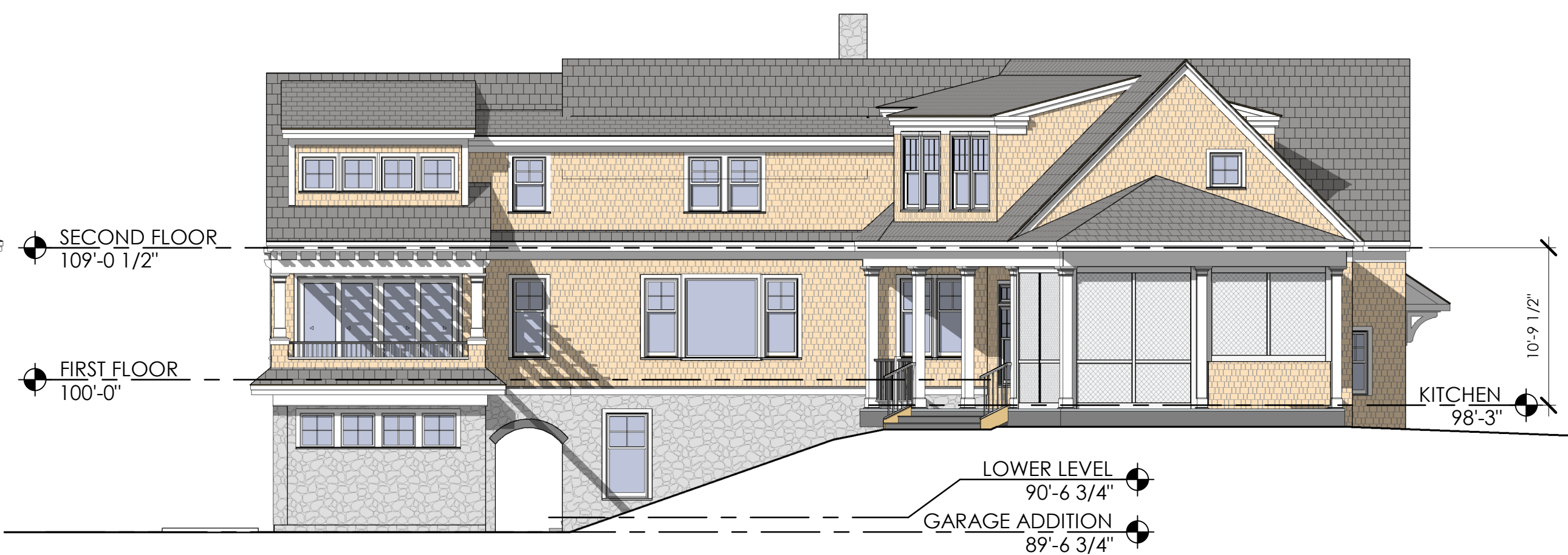
EXISTING EAST ELEVATION



PROPOSED SOUTH ELEVATION

1/8" = 1'-0"

3



PROPOSED EAST ELEVATION

1/8" = 1'-0"

4

SCHEMATIC DESIGN FOR
FOY RESIDENCE

67 RIDGES CT
PORTSMOUTH, NH

ELEVATIONS

1/8" = 1'-0"

OCTOBER 11, 2022

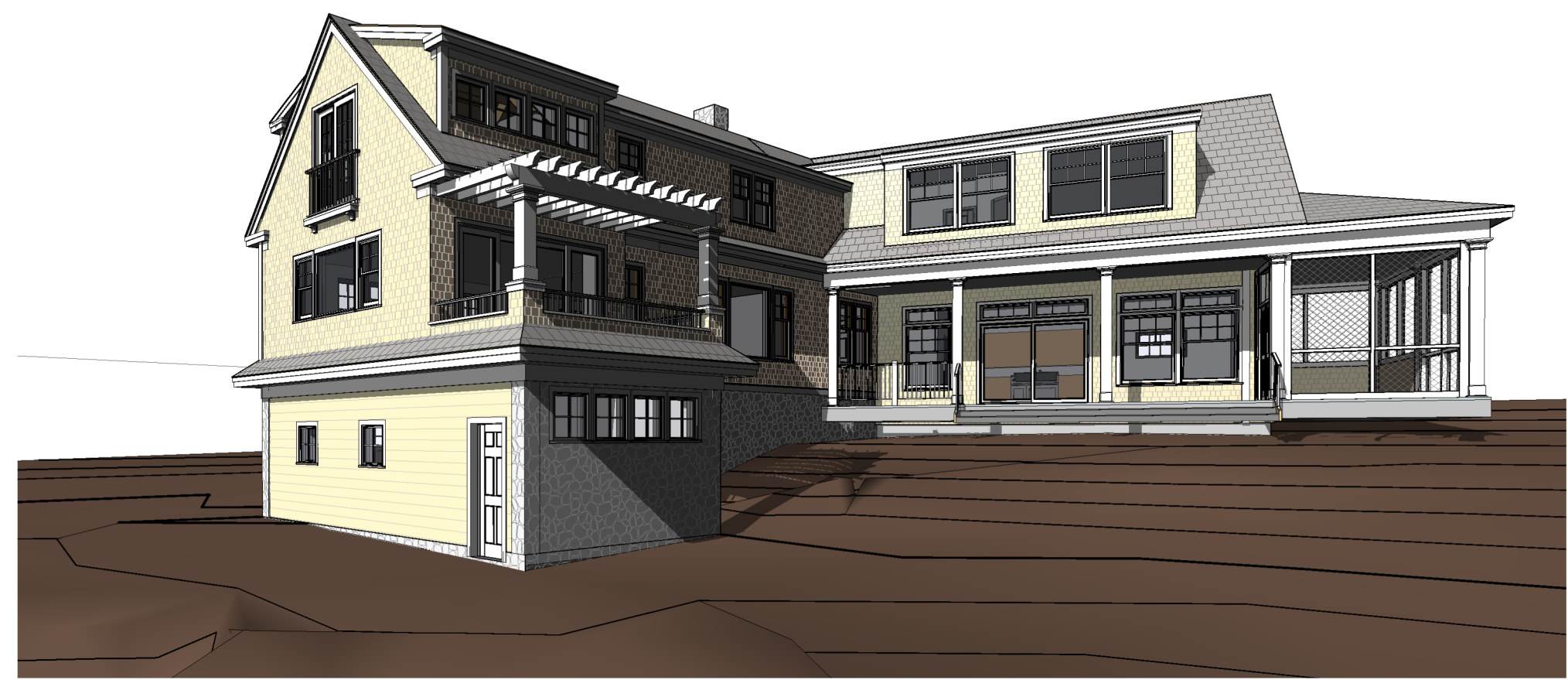
21177

D|M|A
DESTEFANO
MAUGEL
ARCHITECTS

© 2022



PROPOSED FRONT VIEW



PROPOSED REAR PERSPECTIVE

SCHEMATIC DESIGN FOR
FOY RESIDENCE
 67 RIDGES CT
 PORTSMOUTH, NH

PERSPECTIVES

OCTOBER 11, 2022

21177

D|M|A
 DESTEFANO
 MAUGEL
 ARCHITECTS

© 2022

SCHEMATIC DESIGN FOR FOY RESIDENCE

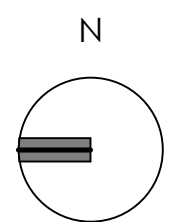
67 RIDGES CT
PORTSMOUTH, NH

FLOOR PLAN

1/8" = 1'-0"

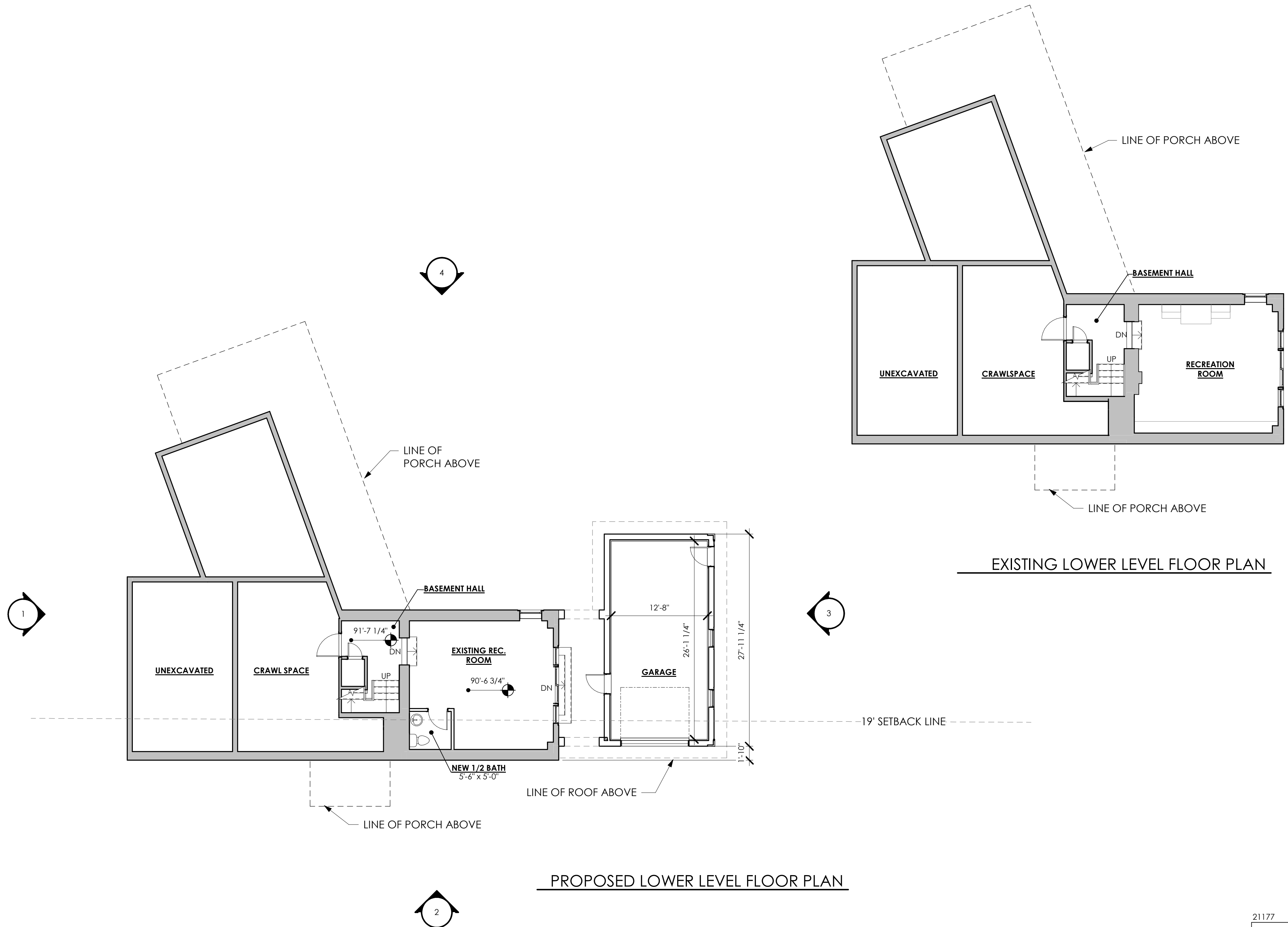
OCTOBER 11, 2022

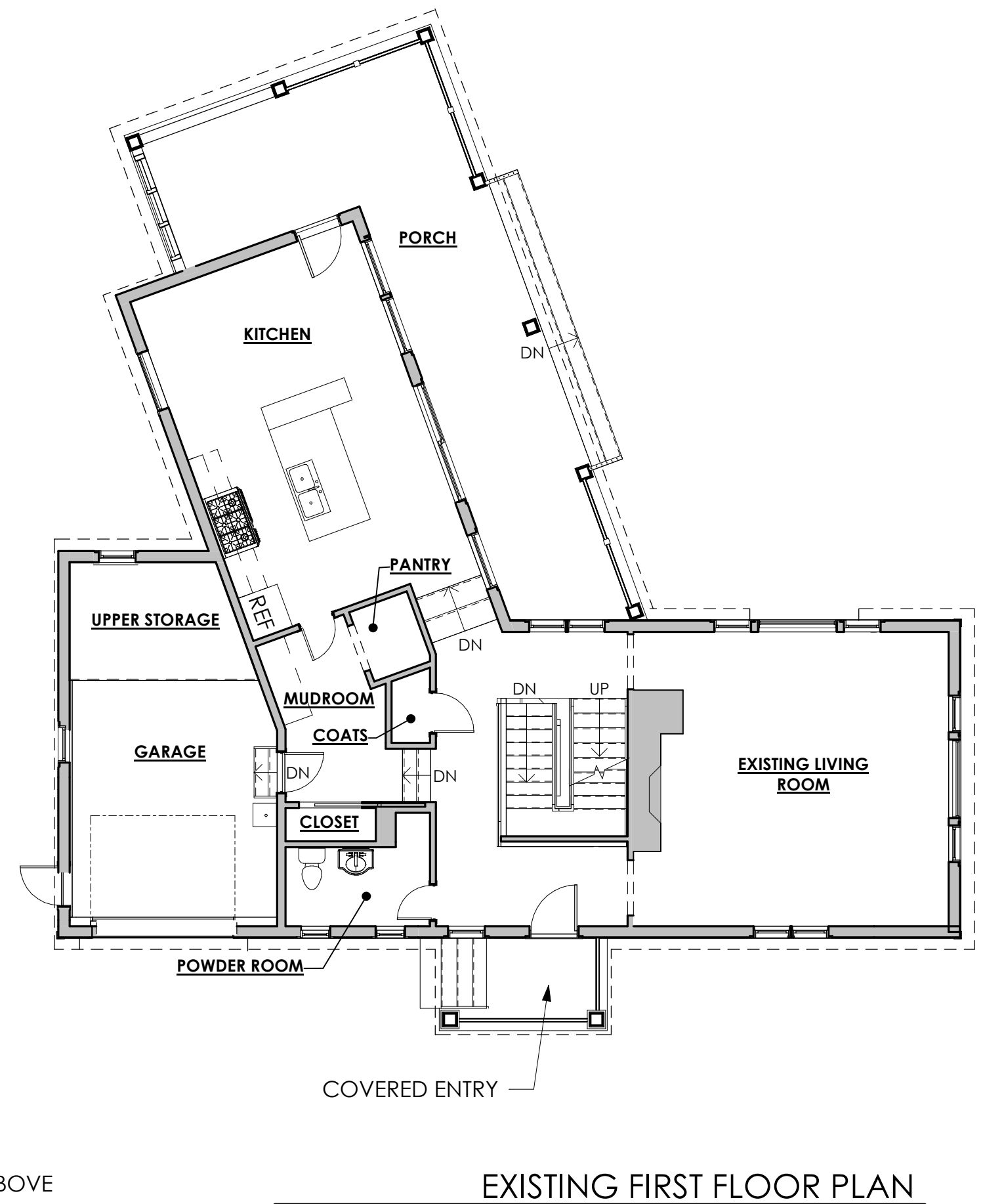
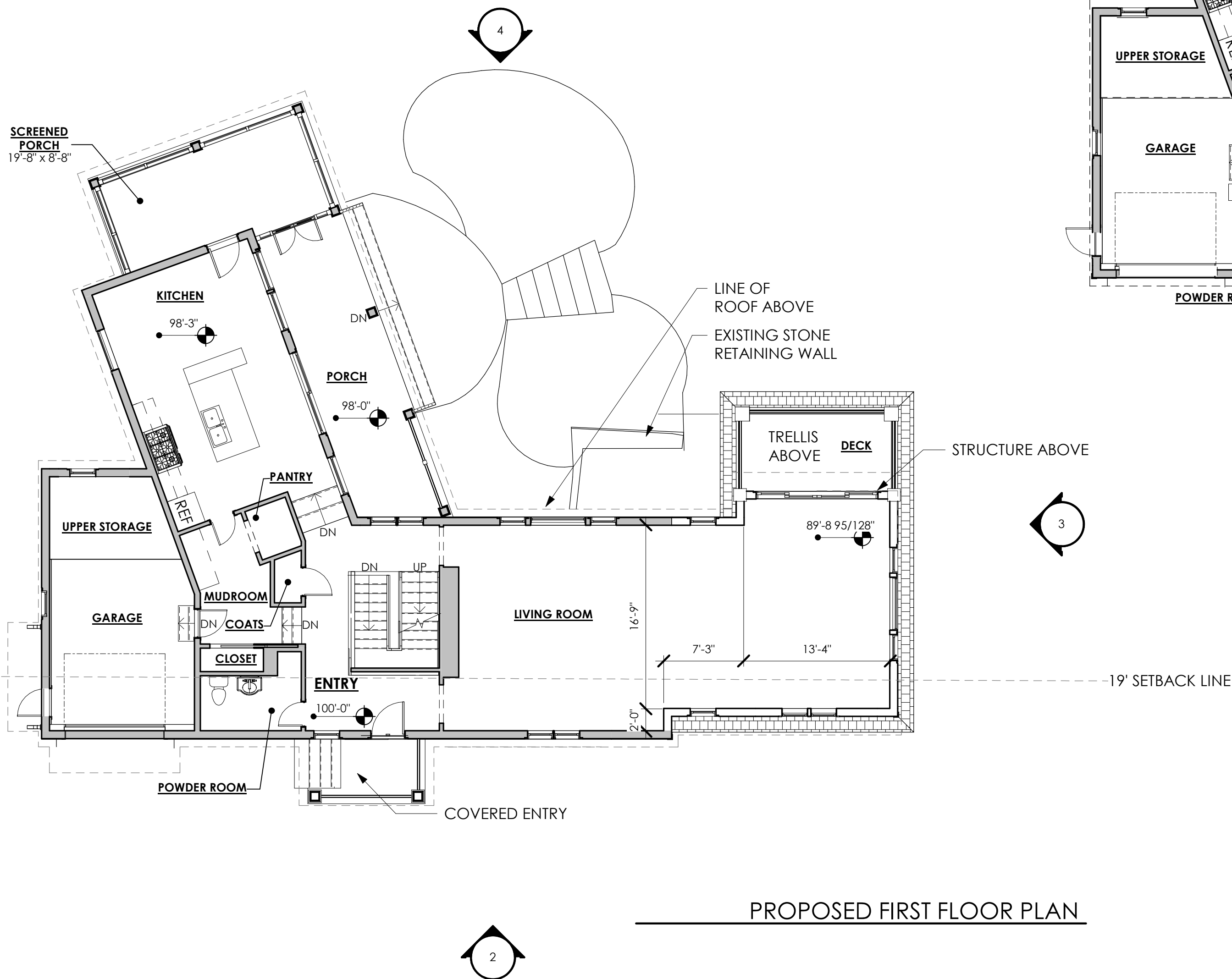
21177



D|M|A
DESTEFANO
MAUGEL
ARCHITECTS

© 2022

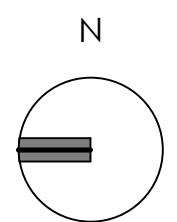




SCHEMATIC DESIGN FOR
FOY RESIDENCE
67 RIDGES CT
PORTSMOUTH, NH

FLOOR PLAN
1/8" = 1'-0"

OCTOBER 11, 2022



21177
DMA
DESTEFANO
MAUGEL
ARCHITECTS

SCHEMATIC DESIGN FOR
FOY RESIDENCE
 67 RIDGES CT
 PORTSMOUTH, NH

FLOOR PLAN
 1/8" = 1'-0"

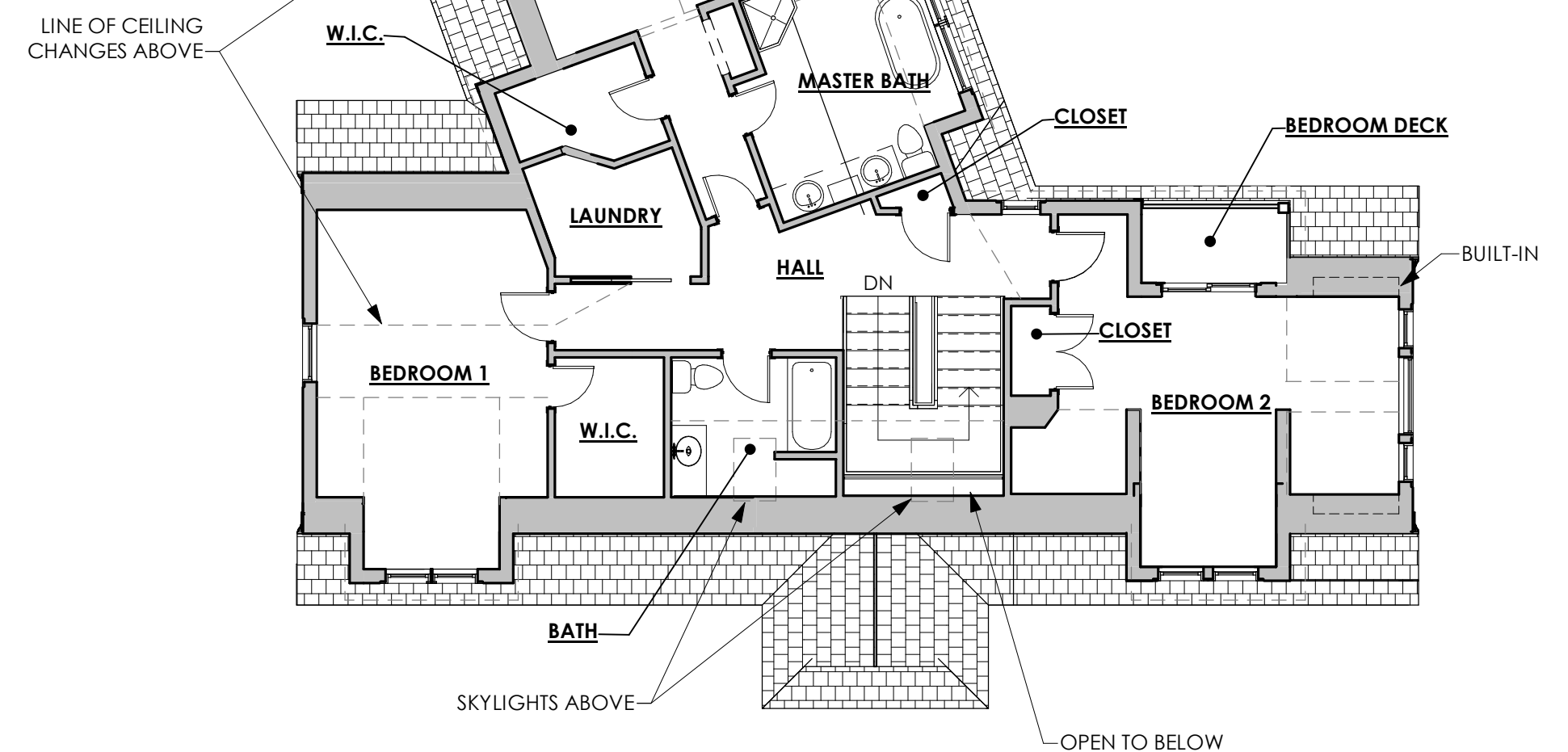
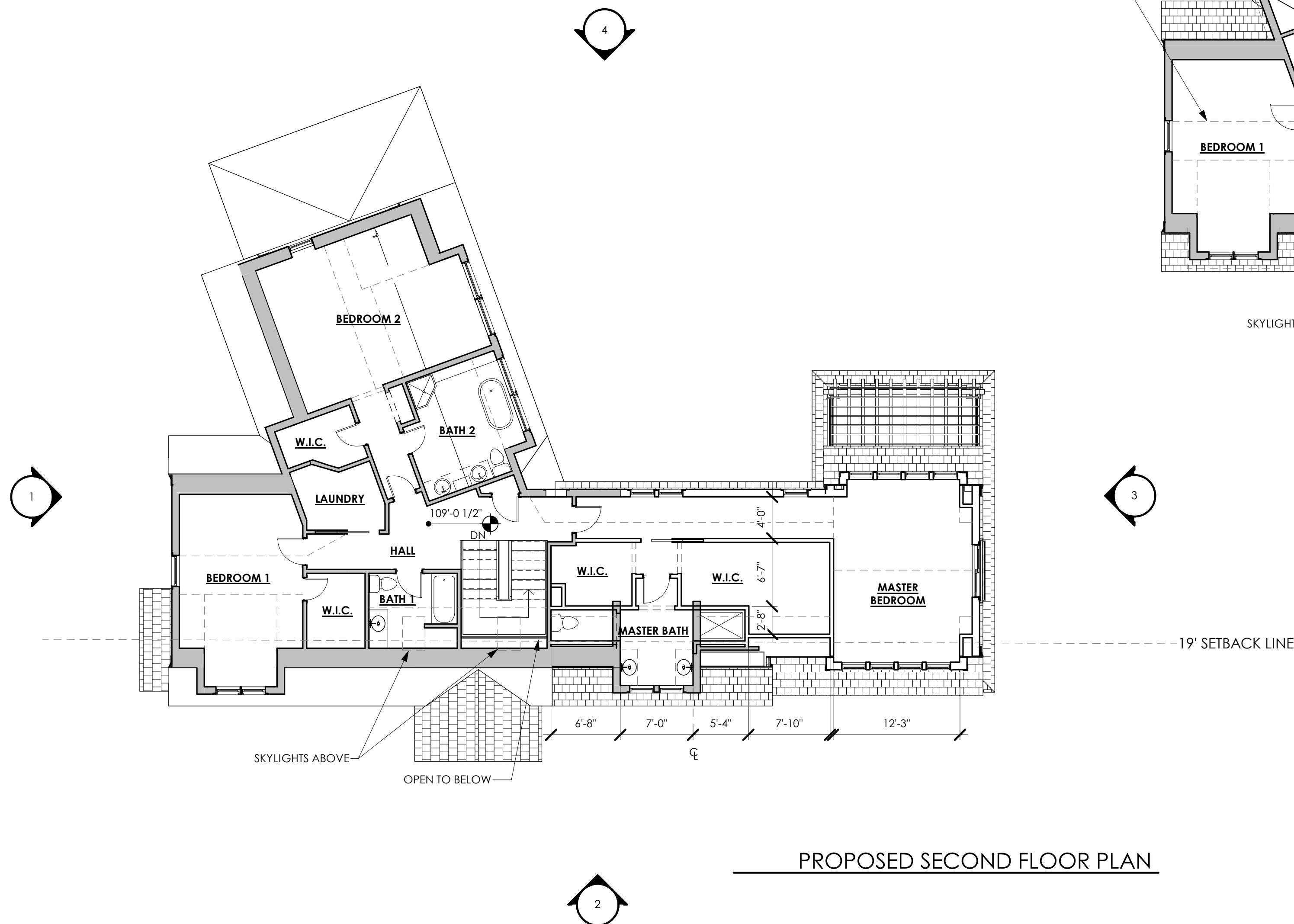
OCTOBER 11, 2022

21177

N

D|M|A
 DESTEFANO
 MAUGEL
 ARCHITECTS

© 2022





Imagery ©2022 Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, Map data ©2022 50 ft

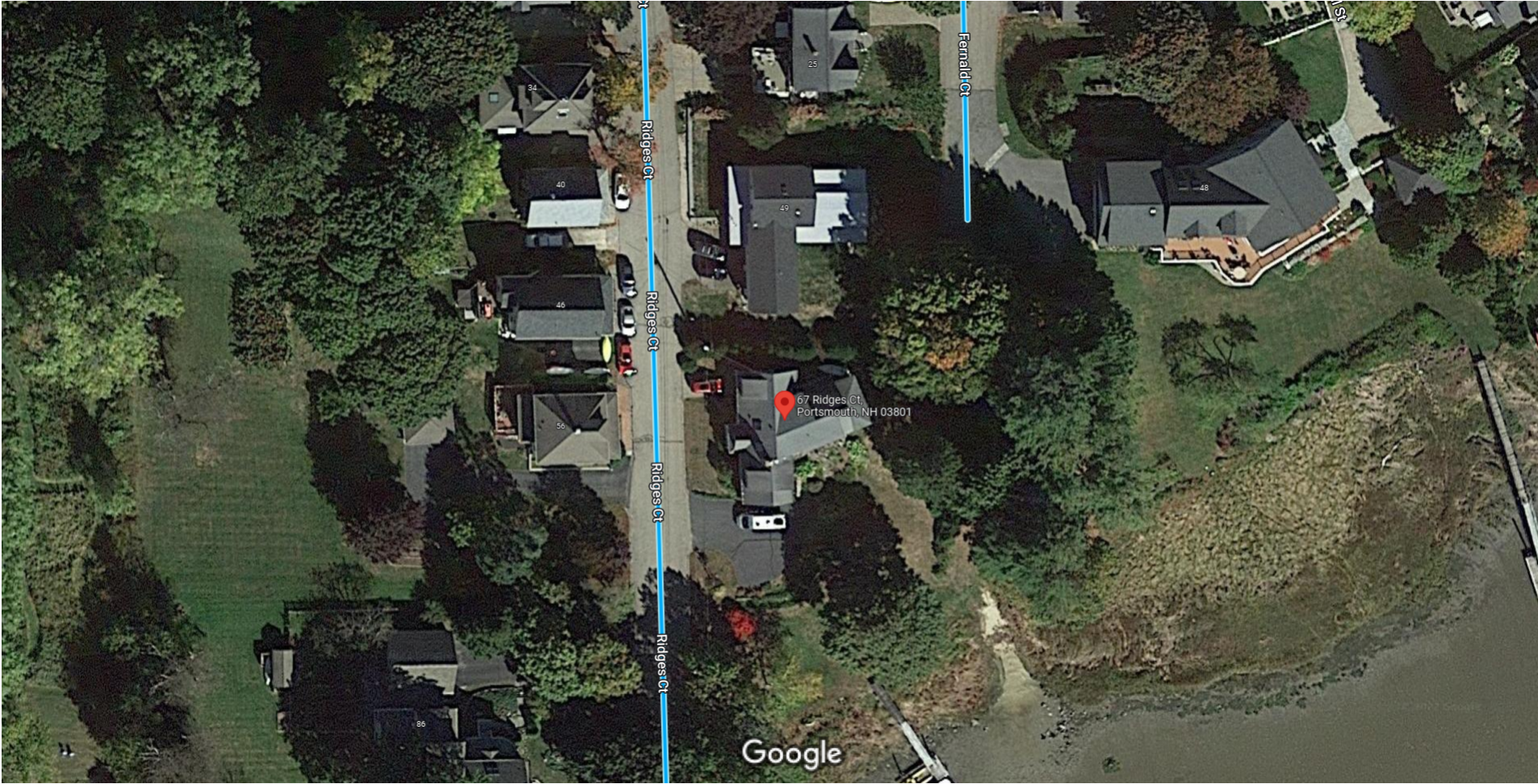




Image capture: Sep 2011 © 2022 Google

Portsmouth, New Hampshire

Google

Street View - Sep 2011



Image capture: Sep 2011 © 2022 Google

Portsmouth, New Hampshire

Google

Street View - Sep 2011

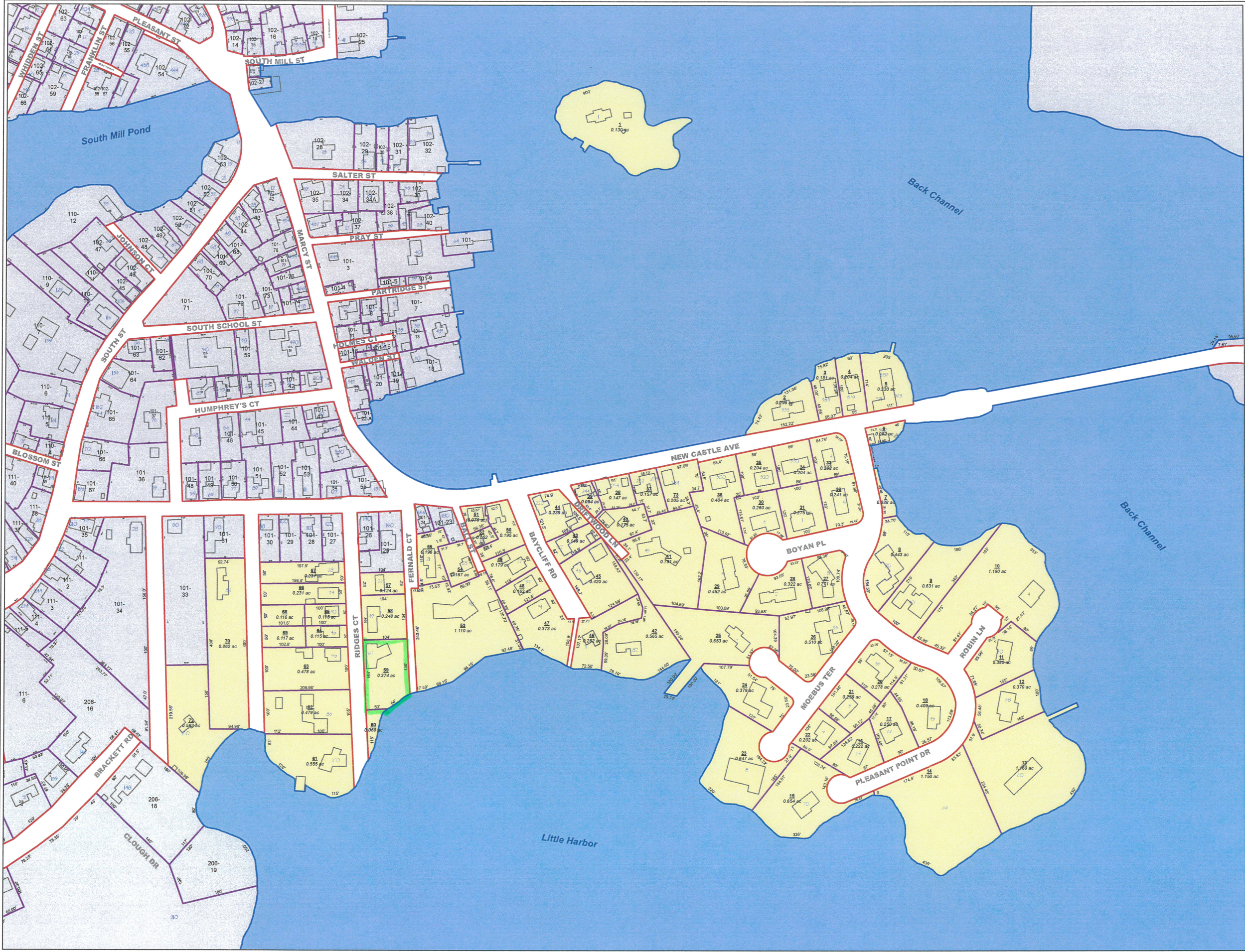


Image capture: Sep 2011 © 2022 Google

Portsmouth, New Hampshire

Google

Street View - Sep 2011



Partial Legend
See the cover sheet for the complete legend.

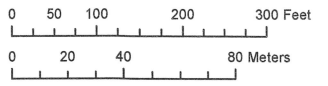
7-5A Lot or lot-unit number
2.56 ac Parcel area in acres (ac) or square feet (sf)
75 Address number
233-137 Parcel number from a neighboring map
88 Parcel line dimension

SIMS AVE Street name

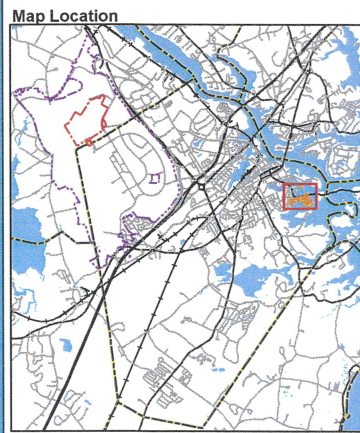
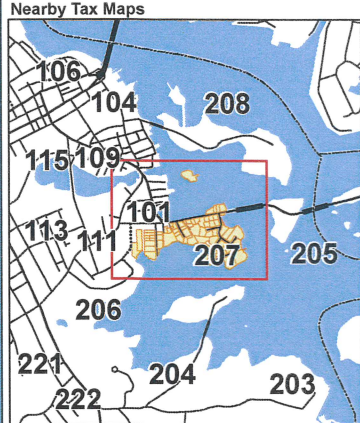
Parcel/Parcel boundary
Parcel/ROW boundary
Water boundary
Structure (1994 data)

Parcel covered by this map
Parcel from a neighboring map (see other map for current status)

EXHIBIT D



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



HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

November 4, 2022

HAND DELIVERED

Peter Stith, Principal Planner
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Jeffrey and Melissa Foy, Owner/Applicant
67 Ridges Court
Tax Map 207/Lot 59
Single Residence B District
LU-22-199

Dear Mr. Stith & Zoning Board Members:

On behalf of Jeffrey and Melissa Foy ("Foy"), enclosed please find the following in support of a request for zoning relief:

- **EXHIBIT B-Rev. 2** 10/11/2022 Architectural Plans (interior changes & color renderings).
- 11/4/2022 – Supplemental Memorandum and Exhibits in Support of Variance Application.

For your convenience, we will upload an updated complete application to Viewpoint.

We look forward to presenting this application to the Zoning Board at its November 15, 2022 meeting.

Very truly yours,



R. Timothy Phoenix

Encl.

cc: Jeffrey and Melissa Foy (via email)
Ambit Engineering, Inc. (via email)
Destefano | Mangel (via email)
Durbin Law (via email)

DANIEL C. HOEFLE
R. TIMOTHY PHOENIX
LAWRENCE B. GORMLEY
STEPHEN H. ROBERTS

R. PETER TAYLOR
KEVIN M. BAUM
GREGORY D. ROBBINS
MONICA F. KIESER

JACOB J.B. MARVELLEY
DUNCAN A. EDGAR
STEPHANIE J. JOHNSON

OF COUNSEL:
SAMUEL R. REID
JOHN AHLGREN

SUPPLEMENTAL MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
DATE: November 4, 2022
Re: Jeffrey and Melissa Foy, Owner/Applicant
Property Location: 67 Ridges Court
Tax Map 207, Lot 59
Single Residence B (“SRB”)

Dear Chairman Parrott and Zoning Board Members:

On behalf of Jeffrey and Melissa Foy, Owner/Applicant (“Foy”), we are pleased to submit this Supplemental Memorandum and attached exhibits, which responds to the October 17, 2022 Letter submitted to the ZBA by Attorney Darcy Peyser on behalf of Kathleen Thompson.

I. EXHIBITS

- E. View Exhibit Plan Set – issued by Ambit Engineering, Inc.
 - 1. 46 Ridges Court Viewshed – June 29th application
 - 2. 56 Ridges Court Viewshed – June 29th application
 - 3. 46 Ridges Court Viewshed – September 28th application
 - 4. 56 Ridges Court Viewshed – September 28th application
- F. 8/14/2022 Letter – Real Estate Broker Robin Valeri.
- G. 8/15/2022 Technical Analysis Report – by Peter Stanhope, NH Certified General Appraiser.

II. FISHER V. DOVER

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

Given the legal framework governing subsequent petitions to the ZBA, the previous

concerns articulated by the ZBA and the changes presented in the current proposal, Foy's application meets the requirements of Fisher v. Dover and its progeny and therefore merits consideration. The Board denied Foy's June application representing a 14.5 ft. deviation from the Ordinance. **(July and August Staff Memo)**. With the applicable averaging, Foy's September 28th application represents a 3.5 ft. deviation from the Ordinance, a material change in circumstances. Additionally, the reduction in size removes nearly half the bulk from front yard setback compared to the June application, and it increases the distance from any impervious surface to Little Harbor. Contrary to Thomson's assertions, Foy's current proposal does not increase impervious coverage, it decreases impervious coverage compared to existing conditions and the June application. Foy's June application proposed 25.1% overall lot coverage, a reduction from the existing 26.6% lot coverage; Foy now proposes a further reduction to 23.0% through conversion of an area the impervious paving to a porous parking area for guests. Accordingly, there has been a material change in circumstances and Foy's current application is worthy of consideration. Fisher v. Dover, 121 N.H. 187 (1980).

When deliberating on the June application, the ZBA heard evidence on the effect of the addition on abutters' viewsheds and expressed concern about buffer impacts with a majority determining there was no hardship. While no abutter is entitled to a particular view absent an easement, the reduced proposal is less impactful because of its reduced size and because it represents minimal deviation from the Ordinance requirements. **(Compare Exhibit E1/E2 to E3/E4)**. Wetland buffer impacts, though not within the ZBA's purview, are also reduced by Foy's current proposal, which increases distance to the harbor and utilizes porous materials benefitting the Harbor even when compared to existing conditions. The current proposal is therefore responsive to the concerns raised by the ZBA and warrants full consideration. Hill-Grant Living Trust v. Kearsarge Lighting Precinct, 159 N.H. 529 (2009).

With respect to the submission of multiple applications, Attorney Phoenix was clear in his presentation to the ZBA on September 27th that two minor details requiring zoning relief were erroneously excluded from the June 29th variance application despite their presence on the plan set submitted with that application. **(Exhibit B to June 29, 2022 submission)**. The items requiring relief were a roof overhang on the left side of the existing home and a roof overhang in front of the existing front garage door; both were approved by the ZBA on September 27th. The left-side overhang is depicted on the current application, while the garage overhang remains

under consideration. Attorney Phoenix clearly advised the ZBA that Foys would be returning with a smaller addition the following month, but sought to “clean-up” the minor requests related to the two overhangs. The minor requests, the absence of any effect of those minor requests on Thomson, and Attorney Phoenix’s candor to the ZBA clearly disprove Thomson’s claim that Foy employed an improper strategy.

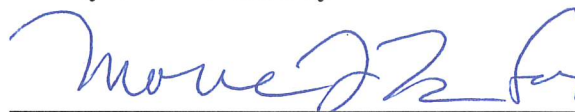
III. OPINION REGARDING PROPERTY VALUES

Realtor Robin Valeri and NH Certified Appraiser Peter Stanhope submitted reports demonstrating that the larger addition previously sought would not diminish the value of surrounding properties. Those expert opinions are equally applicable to the reduced proposal presently before the ZBA and are attached for the Board’s consideration. **(Exhibits F, G).**

IV. CONCLUSION

For all the reasons stated here and in our September 28, 2022 submission, we urge the ZBA to consider Foy’s variance application on the merits and grant the requested front yard setback relief. We look forward to presenting the Project on November 15, 2022.

Respectfully submitted,
Jeffrey and Melissa Foy



By: R. Timothy Phoenix

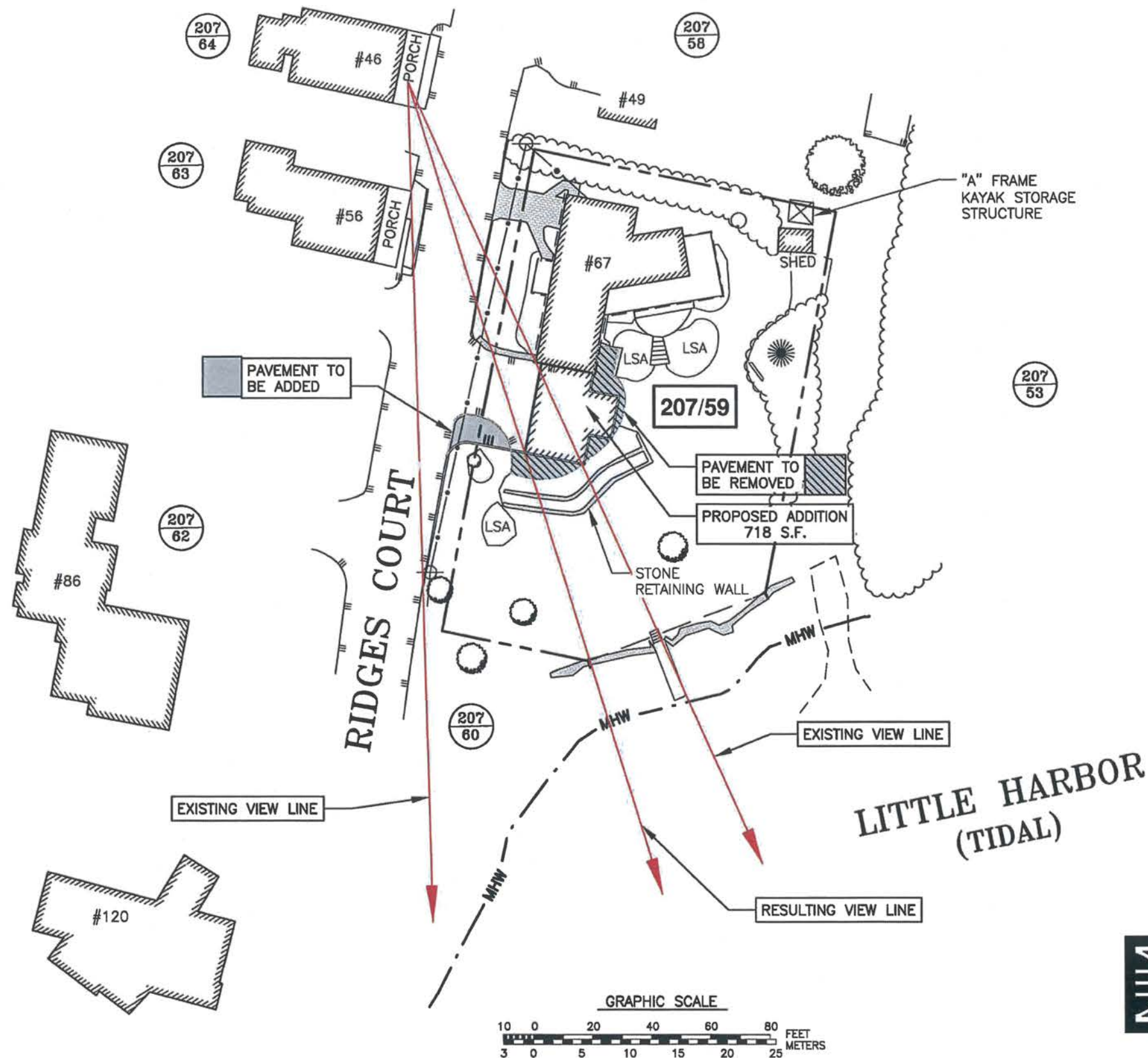
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46 RIDGES COURT ABUTTER VIEW SHED

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

EXHIBIT E



SCALE: 1"=40' 10 AUGUST, 2022



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors

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

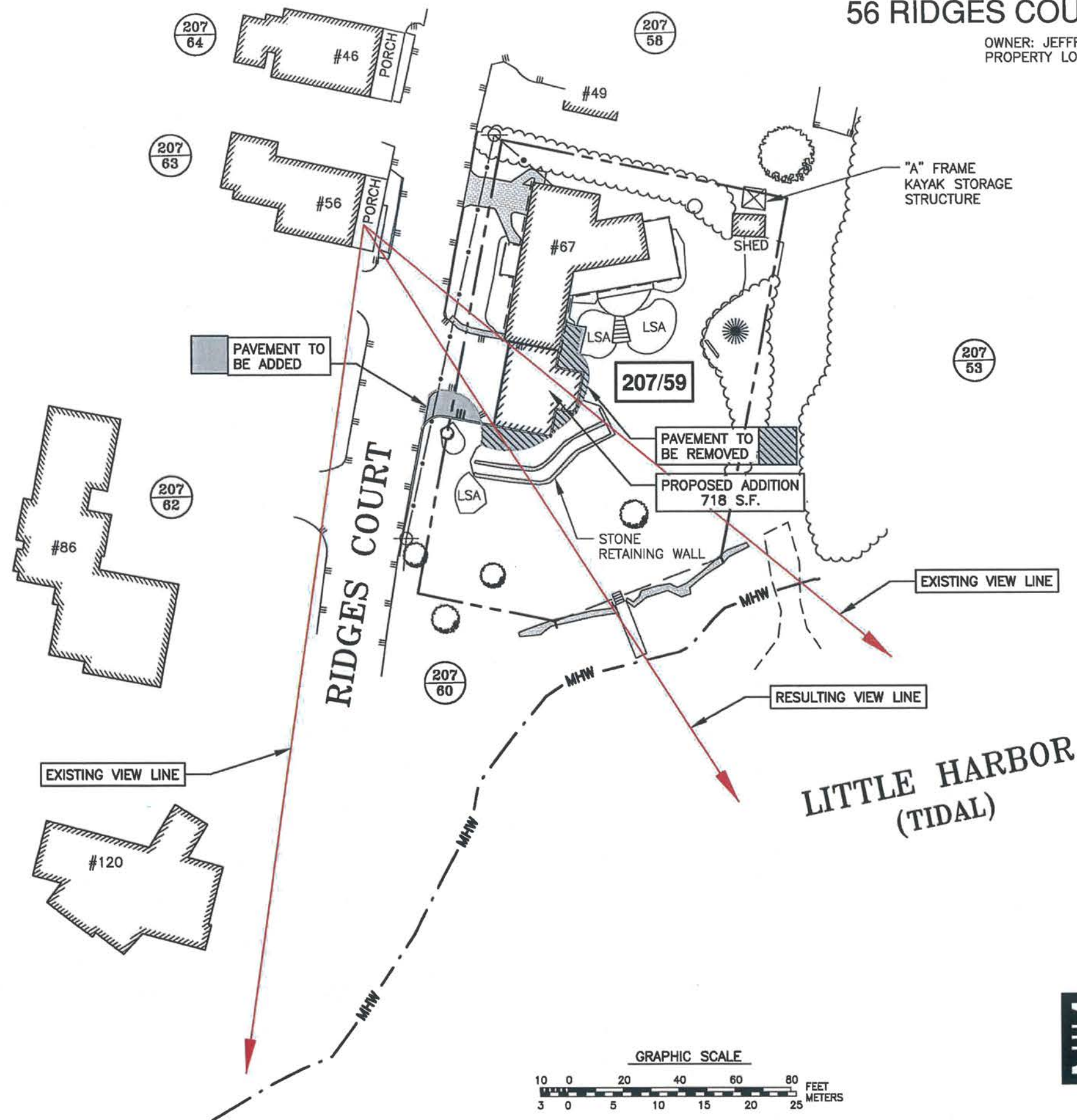
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56 RIDGES COURT ABUTTER VIEW SHED

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



SACLE: 1"=40'

10 AUGUST, 2022



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors

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

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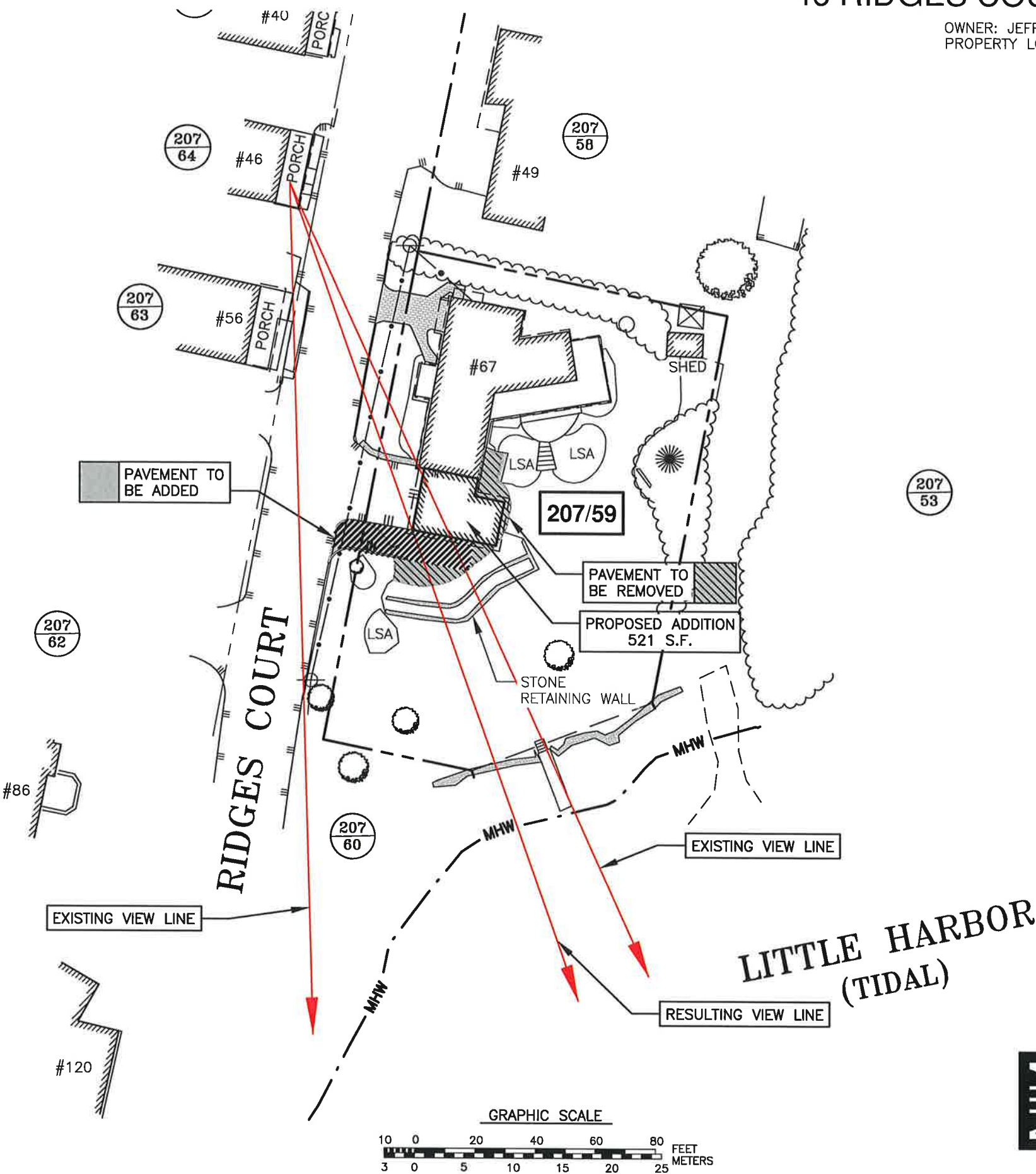
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46 RIDGES COURT ABUTTER VIEW SHED

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



SCALE: 1"=40' 1 NOVEMBER, 2022



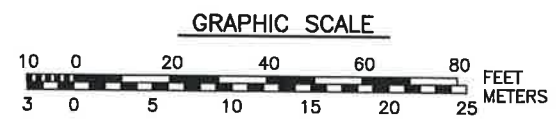
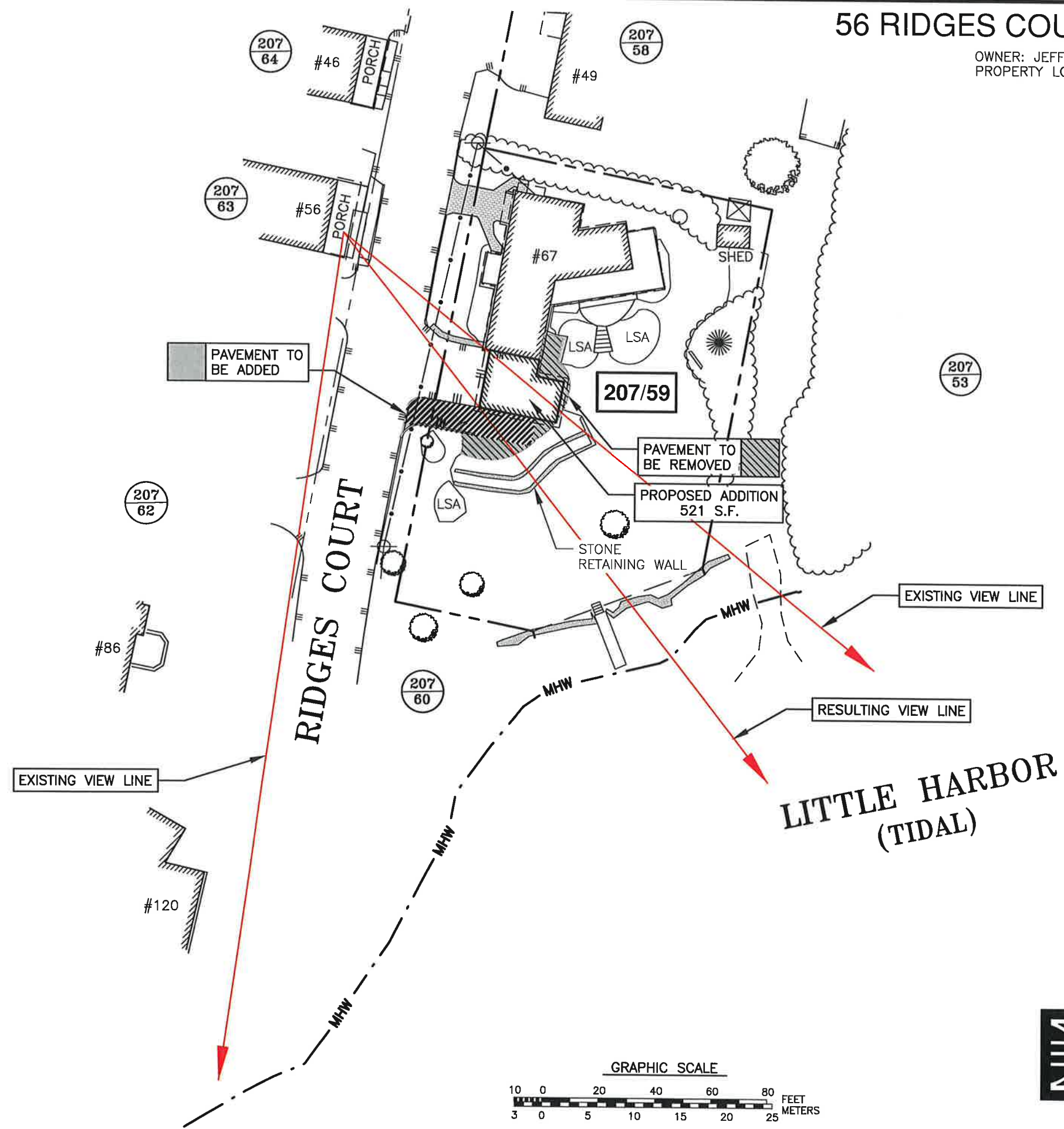
AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors

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

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56 RIDGES COURT ABUTTER VIEW SHED

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



SACLE: 1"=40' 1 NOVEMBER, 2022



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 438-2315



750 Lafayette Rd, Ste 201
Portsmouth, NH 03801
Direct: (603) 610-8560

August 14, 2022

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

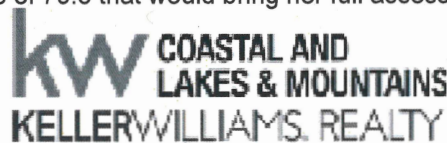
Dear Zoning Board of Adjustment Members,

I am writing as a Broker familiar with the Portsmouth area as I live in the city, and have been with Keller Williams Coastal and Lakes & Mountain Realty for the past seven years. I was the buyer's real estate broker for the Foy's purchase of 67 Ridges Court in 2021.

There are several reasons as to why their proposed construction should be approved. First, the letter from Mrs. Thomson's real estate broker stating that the addition will "directly block the water views" is incorrect as the entire view will not be blocked. However, as the property has never been deeded as a water view easement, there should be no diminishment to her property value as it can not be marketed as ever having a deeded view. Mrs. Thomson has a view through the Foy's property and that has never been guaranteed, as construction or vegetation may occur at any time and the price for her home needs to be reflective of this. Whenever a home is being contemplated or shown, this fact is always part of any real estate conversation. For example, if someone is interested in purchasing a property abutting conservation land or land that is in current use, I always make certain that the potential buyers are aware that it is not their land and whoever owns the land can, within zoning laws, develop or sell the land however they want. Unless there is a view easement, a view is not guaranteed.

In addition, any neighbor had ample time to speak and negotiate with the previous owner of 67 Ridges when the property was on the market for over 85 days prior to going under contract, to purchase a water view easement. There was plenty of notice as there was a large sign stating the home was for sale. According to city records, Mrs. Thomson has lived in her home for many years and has had plenty of time to secure an easement for water view from the previous owners of 67 Ridges if she was so concerned about her view as there is nothing in the deed that secures water view rights.

Mrs. Thomson's real estate broker wrote there would be a diminished property value of \$800,000 to \$1 million dollars if her water view across the Foy's property was partially lost. This does not seem realistic based on recent comparable sales in the South End. The Foy's are increasing the value of their home which in turn has a positive impact on comparables in that neighborhood. The Foy's also pay in property taxes for their water frontage and view. They live on 0.374 acres and pay over \$26,000, whereas Mrs. Thomson lives directly across the street on 0.48 acres and pays approximately \$11,000. When reviewing the Portsmouth tax assessment records, I found Mrs. Thomson's home at 56 Ridges Court plus two additional adjacent vacant land parcels to be assessed for just under \$800,000. When applying the 2021 Portsmouth equalization ratio of 79.5 that would bring her full assessed market value to just under \$1M.



Main Office: (603) 610-8500

Each Office is Independently Owned and Operated

This is not intended as a solicitation if your home is currently listed.



750 Lafayette Rd, Ste 201
Portsmouth, NH 03801
Direct: (603) 610-8560

Desirable properties in Portsmouth in the current real estate market are generally selling for higher than full assessed market value even after applying the equalization ratio. For example, the Foy's home at 67 Ridges Court has a tax assessment of just under \$1.8M. After applying the equalization ratio, their full assessed market value would be just over \$2.25M. The Foy's bought their home for \$2.65M or roughly 17-18% higher than the full assessed value.

If I were to apply the same percentage to Mrs. Thomson's property, her property would be worth in today's market just under \$1.2M or perhaps as high as \$1.3M, although I have never been inside the home to know the current condition of the property or the systems. I know the Foy's home was fully updated in 2002. Therefore, I feel the market value of Ms. Thomson's home is between \$1.2M - \$1.3M and that value of \$1.2M or \$1.3M would not diminish with a partial loss of water view.

In conclusion, it is my opinion that the Foy's proposed construction will definitely not diminish home values and should only have a positive effect on bringing up property values and enhancing the desirability of the neighborhood.

Sincerely,

Robin Valeri

Broker

Keller Williams Coastal and Lakes & Mountain Realty

TECHNICAL ANALYSIS REPORT

PROBABILITY OF DIMINUTION IN VALUE BY EXPANDING THE FOOTPRINT OF REAL ESTATE LOCATED AT MAP 207 LOT 59, 57 RIDGES COURT, PORTSMOUTH, NH.

Prepared for

R. Timothy Phoenix, Esquire
Hoefle, Gormley, Phoenix & Roberts, PLLC
127 Parrott Avenue
Portsmouth, NH 03801

Prepared by

Peter E. Stanhope, NHCG-31
The Stanhope Group, LLC
500 Market Street, Unit 1C
Portsmouth, NH 03801
File #220591

CLIENT: R. Timothy Phoenix, Esquire for Jeffrey & Melissa Foy

INTENDED USERS: Client, Jeffrey & Melissa Foy, Portsmouth Zoning Board of Adjustment

PROBLEM TO BE SOLVED: The purpose of this report is to determine if diminution in market value is evident within the submarket to abutters 56 & 46 Ridges Court, Portsmouth, NH 03801 based upon proposed 718 SF (+/-) garage addition added to Lot 207/59.

INTENDED USE: The intended use includes assisting the client in determining if any diminution is recognized within the submarket. The appraiser does not intend use of this report by any other party than those disclosed above, or for any other purpose by the client.

DATE OF INSPECTION: August 8th, 2022

DATE OF REPORT: August 15th, 2022

USPAP COMPLIANCE: As there is no individual parcel of real estate appraised, this analysis is not a USPAP Standard 1 or Standard 2 Appraisal Report.

DEFINITION OF MARKET VALUE

As defined by the Federal Register and FIERRA (1989) (12 C.F.R. Part 34.42(g); 55 *Federal Register* 34696, August 24, 1990, as amended at 57 *Federal Register* 12202, April 9, 1992; 59 *Federal Register* 29499, June 7, 1994) as follows:

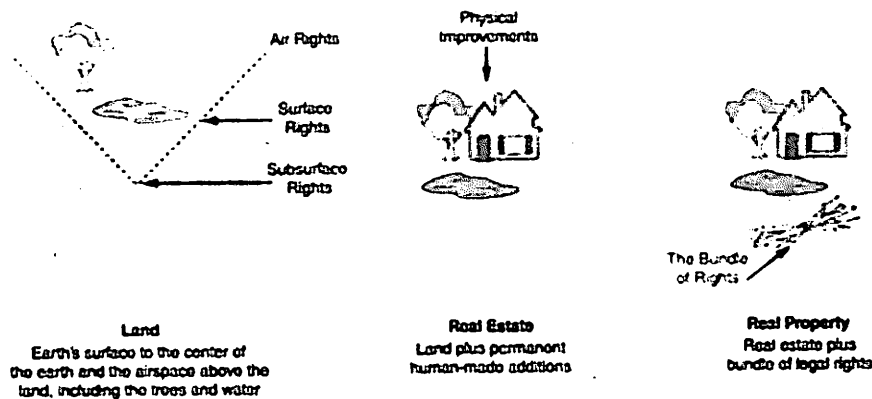
The most probable price which a property should bring in a competitive and open market under all condition's requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. The buyer and seller are typically motivated;
2. Both of the parties are well informed or well advised, and are each acting in what they consider to be their own best interest;
3. A reasonable period of time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U. S. dollars or in terms of financial arrangement comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

LAND, REAL ESTATE AND REAL PROPERTY

As defined in Real Estate Practice, 19th edition, real estate is defined as land plus all human-made improvements to the land that are permanently attached to it. Real property is the interest, benefits, and rights that are automatically included in the ownership of real estate. Ownership rights of real property are included in bundle of legal rights, which include the following rights:

- **Right to possession;**
- **Right to control the property within the framework of the law;**
- **Right of enjoyment (to use the property in any legal manner),**
- **Right of exclusion (to keep others from entering or using the property);**
- **Right of disposition (to sell, will, transfer, or otherwise dispose of or encumber the property).**



Addition to the bundle of rights, land is defined as the earth's surface extending downward to the center of the earth, and upward to infinity (Filmore, G.; Wellington, A.; Robert, K. 19th ed. Modern Real Estate Practice). This includes subsurface rights, as well as air rights, or view rights. This is particularly important in the practice of real estate when dealing with easements, which is the right to use the land of another for a particular purpose. An easement is created by a written agreement between the parties that establishes the easement right.

No noted view easements on legal description of either 56 Ridges Court, Portsmouth, NH 03801 or 46 Ridges Court, Portsmouth, NH 03801. See attached legal descriptions.

SCOPE OF WORK:

I have visited the subject neighborhood and am familiar with its character having previously resided on the adjoining street.
I have interviewed Realtors, assessors and appraisers to form my concluded opinion.

**BASIS OF
CONCLUSIONS:**

The “right of a view” of natural air and light has been debated by government agencies, Realtors and before courts for many years. More recently a number of states have adapted view descriptions with this language for non-owned or non-eased views: **a landowner has no right of light or natural air over adjoining property.**

A review of deeds for real estate located on the westerly side of Ridges Court with any view over map 207 lot 59 identified no easements to view over this lot. These views are sometimes referred to Territorial Views or views that can be seen from the subject but are subject to interruption.

Everyone is entitled to a territorial view from owned real estate but ownership acquires no view right over the non-owned property of others.

Not all views are equal. The following view description are often used:

- Peek-A-Boo View, a sliver over only one limited area of property and not widely visible.
- Partial View, typically obstructed by other buildings, landscaping and natural growth but not similar to non-owned or non-eased views from real estate on the westerly side of Ridges Court over the easterly side real estate.
- Panoramic View, typically wide non-obstructed owned views from all areas of a site. In the case of Ridges Court, waterfront real estate.

View impact on market value of the fee simple interest in national published data for owned or eased views vary widely depending on what is viewed. The range for owned or eased is reported to be 1% to 2.5% for open space to 10%-30% for panoramic ocean or sunset views. These are the premium over non-view properties.

There is no consistent published data for a premium for real estate having a non-owned or non-eased territorial view as these views are not included in the fee simple bundle of rights owned.

A visit to the subject neighborhood and a review of plans prepared by AMBIT Engineering, Inc. shows a non-owned or non-eased views over lots 207/59 and 207/60 to the end of Ridges Court and beyond. The proposed improvements to lot 207/59 make a small reduction on what is visible water from porch areas of lots 207/63 and 64. The area of these views over a second lot, lot 207/60 is a narrow strip of area on the east side of Ridges Court that fails to have development potential. Without landscaping modification to this lot, a portion of non-owned or non-eased territorial views has the potential to be preserved. This portion of the view along with the non-owned or non-eased view area of lot 207/59 are not included in the fee simple bundle of rights of 207/63 and 64 due to the shape and zoning requirements. Non-owned and non-eased views cannot be included in the valuation of either lots 207/63 and 64 in fee simple. To

represent that these properties have owned or eased views is a misrepresentation. The appraisal of either parcels of real estate in fee simple would exclude any non-owned or non-eased right to view natural air and light or in this case, the water.

**REALTOR ESTIMATED
LOSS IN VALUE:**

An opinion of a Realtor has been put on the record that approval for an increase in the size of the footprint of lot 207/59 would impact the fair market value of 207/63 and 64 parcels by a reduction of \$1,000,000. First, lots 207/63 and 64 do not own either the view over lot 207/59 or lot 207/60, therefore you cannot lose what you don't own. The Realtor is quoted in The Durbin Law Variance Application as 207/63 having "6 parcels". The municipal tax records and mapping are inconsistent with 6 lots. In addition to the approved lot 207/63, there are two additional owned lots on a ROW to the rear of the improved lot. They are 207/68 and 69. These are also valuable parcels of real estate and may have been included in the \$2,300,000 estimate. They are not influenced by the view issue and are excluded from consideration here.

Even if lots 207/63 and 64 had owned or eased view rights, the \$1,000,000 loss in value is not supported. What the Realtor's opinion lacks is sufficient data supporting their conclusion. I have independently examined the data and cite the following in regards to their conclusion:

The following is relevant data that demonstrates the \$2,300,000 is not supported, nor is the \$1,000,000 supported.

EXTRAORDINARY ASSUMPTIONS

The term Extraordinary Assumption is defined by USPAP (2017-2018 Edition) as "an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions." USPAP explains further by stating that "Extraordinary Assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of a property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis."

The appraiser has used an extraordinary assumption that the abutter property to the subject located at 56 Ridges Court is of average interior conditions and quality.

DECRPTION OF ABUTTER 56 RIDGES COURT

56 Ridges Court, Portsmouth, NH 03801 abuts the subject to the West, across Ridges Court, - Tax Map-207/Lot 63, legal description Book 4731; Page 2542-2543, total site area of approximately 0.48 acres (+/-), with no owned waterfront access and partial views of Little Harbor. **No view or water easement noted on legal description.** Per public records, the dwelling is a colonial build, constructed in 1927, consisting of 3 bedrooms, 1 bath, and 1596 SF (+/-) of gross living area. Based on exterior inspection from the street, original characteristics of the dwelling were observed, including brick

foundation and clapboard siding. The exterior of the dwelling is of fair-average quality based off exterior inspection from the street. Interior quality and conditions noted as average based upon an extraordinary assumption that the exterior and interior updating is of equivalent nature. Public tax assessments records indicate interior conditions as average.



ABUTTER'S DATA

| | |
|---------------------|--|
| LOCATION: | 56 Ridges Court, Portsmouth, NH 03801 |
| ACCESS: | East on New Castle Ave, turn right onto Ridges Court |
| HIGHEST & BEST USE: | Residential Use |
| SALE DATE: | None |
| LIST PRICE: | None |
| SALE PRICE: | None |
| SALE PRICE/SF: | None |
| DEED TYPE | Quitclaim |
| VIEW EASEMENTS: | None noted on legal description |

| | |
|------------------|--|
| SALE CONDITIONS: | No recent sales |
| STATUS AT SALE: | No recent sales |
| SOURCES: | Public records |
| CONFIRMED BY: | Monica Rose Marcheterre (08/10/2022) |
| MAP/LOT: | Tax Map 207/Lot 63 |
| LOT SIZE: | .48 acres (+/-) |
| WATER FRONTAGE: | No direct water access |
| SHAPE: | Mostly rectangular |
| TOPOGRAPHY: | Moderately flat |
| CHARACTER: | Partial water view |
| IMPROVEMENTS: | Original construction |
| VISIBILITY: | Partial views of Little Harbor |
| COMMENTS: | No identified recent sales of abutter 56 Ridges Court, Portsmouth, NH 03801 per public records. Exterior inspection from street notes partial views of Little Harbor from front of dwelling. |

SALES COMPARISON APPROACH & MARKET DATA

The value of partial-water views within the marketplace is highly subjective, with quantitative data not available using the extraction method. This is due to the nature of the contributions, with other contributing factors of real property that influence value, (i.e., improvements, location, amenities, land) within the subject's submarket of high end valued real estate. It is known to the appraiser through research, the appraiser's knowledge, competency, and experience within the area, that a property with owned waterfront would sell for a significant premium over a property with partial water views within the marketplace. Due to limited inventory within the subject's and abutters submarket, waterfront and partial water-view sales are limited. Properties with partial territorial water views within the submarket of Portsmouth have been analyzed, studied, and applied within this report. Each sale chosen will be analyzed for property rights conveyed, market conditions, date and time of sale, location, design of build, quality of construction, age of construction, gross living area, bedroom and bath counts, functional utility, views, and amenities. The sales below are the comparable sales to 56 Ridges Court, Portsmouth, NH 03801 based upon an extraordinary assumption.



SALE #1:

| | |
|---------------------|---|
| LOCATION: | 39 Holmes Court, Portsmouth, NH 03801 |
| ACCESS: | North on Marcy Street, turn right onto Holmes Court |
| HIGHEST & BEST USE: | Residential Use |
| SALE DATE: | 03/22 |
| LIST PRICE: | \$800,000 |
| SALE PRICE: | \$800,000 |
| SALE PRICE/SF: | \$663.90/SF |
| SALE CONDITIONS: | Cash/none |
| STATUS AT SALE: | Improved residential |
| SOURCES: | Public records |
| CONFIRMED BY: | Monica Marcheterre (08/11/2022) |
| MAP/LOT: | Map 0207- Lot 0062 |
| LOT SIZE: | 0.48 acre |
| WATER FRONTAGE: | No direct water frontage |
| SHAPE: | Mostly rectangular |
| TOPOGRAPHY: | Moderately flat |

CHARACTER:
IMPROVEMENTS:
VISIBILITY:
SCHOOL DISTRICT:
COMMENTS:

Partial water views
Original construction
Partial views of Piscataqua River
Little Harbor
Recent sale of 39 Holmes Court, Portsmouth, NH 03801
on 03/22/2022 for \$800,000 (NEREN MLS#4902025).
Sold as a package deal with 43 Holmes Court, Portsmouth,
NH 03801 for a total of \$2,000,000. 43 Holmes Court has
direct water access. Realtor confirmation of direct water
views from third floor of 38 Holmes Court. This is kept in
the appraiser's work file.



SALE #2:

| | |
|---------------------|---|
| LOCATION: | 43 Whidden Street, Portsmouth, NH 03801 |
| ACCESS: | SE on Pleasant Street, take right onto Whidden Street |
| HIGHEST & BEST USE: | Improved residential |
| SALE DATE: | 05/13/2022 |
| LIST PRICE: | \$1,430,000 |
| SALE PRICE: | \$1,430,000 |
| SALE PRICE/SF: | \$816.21/sf |
| SALE CONDITIONS: | Conventional/none |
| STATUS AT SALE: | Improved residential |
| SOURCES: | Public records |
| CONFIRMED BY: | Monica Rose Marcheterre (08/11/2022) |
| MAP/LOT: | Map 0109/0002 |
| LOT SIZE: | 2,613 SF (+/-) |

| | |
|-------------------------|---|
| WATER FRONTAGE: | No direct water frontage |
| SHAPE: | Mostly square |
| TOPOGRAPHY: | Mostly flat |
| CHARACTER: | Partial water views South Mill Pond |
| IMPROVEMENTS: | Original construction |
| VISIBILITY: | Partial water views |
| SCHOOL DISTRICT: | Little Harbor |
| COMMENTS: | Recent sale of 43 Whidden Street, Portsmouth, NH 03801, in local NEREN MLS #4909895 sold on 05/13/2022 for \$1,430,000. Partial water views disclosed on listing and noted by appraiser from exterior site inspection. |



LISTING #3:

| | |
|---------------------|---|
| LOCATION: | 260 Marcy Street, Portsmouth, NH 03801 |
| ACCESS: | SE on Pleasant Point Drive, turn left onto Marcy Street |
| HIGHEST & BEST USE: | Improved residential |
| SALE DATE: | Active |
| LIST PRICE: | \$1,750,000 |
| SALE PRICE: | Active listing |
| SALE PRICE/SF: | N/A |
| SALE CONDITIONS: | N/A |
| STATUS AT SALE: | N/A |
| SOURCES: | Public records |
| CONFIRMED BY: | Monica Rose Marcheterre (08/11/2022) |
| MAP/LOT: | Map 0103/Lot 0049 |
| LOT SIZE: | 3,049 SF (+/-) |
| WATER FRONTAGE: | No direct water frontage |
| SHAPE: | Mostly square moderately |
| TOPOGRAPHY: | Flat |
| CHARACTER: | Partial water views |

IMPROVEMENTS:

VISIBILITY:

SCHOOL DISTRICT:

COMMENTS:

Original construction

Partial water views

Little Harbor

An active listing within the submarket of Portsmouth, NH with accessibility to Little Harbor School district. 260 Marcy Street is listed on local NERENMLS# 4901665 for \$1,750,000 with 142 days on market. This listing is confirmed to have partial water views from the second and third floor of the dwelling by the listing broker. This is kept in the appraisers work file.

Two other properties were considered. See map and comments below.

The appraiser has selected comparable sales to the subject property that are competing properties. The appraiser conducted an extensive search of comparable properties (up to 18 months), that were similar style, location, GLA, age, utility and similar partial water views to 56 Ridges Court, Portsmouth, NH 03801. Consideration given to all comparables, all located under 1 mile from subject.



Comparable 1 a 1900's New Englander, noted with 3 bedrooms, 1 full bath, 1 half bath, 1205 SF (+/-) of living area, and partial water views. Comparable 2 noted as a 1760 colonial build, with 2 bedrooms, 2 full baths, 1 half bath, 1752 SF (+/-) of living area, and partial water views. Comparable 3 noted with 3 bedrooms, 2 full baths, 1 half bath, 2,210 SF (+/-) of living area, and partial water views from second and third floor. All comparables with accessibility to Little Harbor School.

Two other considered sales, 491 Marcy Steet, Portsmouth, NH 03801 NERENMLS#4898626, an active listing within 1 mile distance, listed for \$895,000 DOM 170, with partial water views disclosed on listing. Not further weighted due to utility differences, a single family converted into a two-unit. This listing is a 1750's colonial build, with 1800 SF (+/-), with partial water views similar to subject. This listing was noted and analyzed.

1B Jackson Hill Street, Portsmouth, NH 03801 NERENMLS#4924378 also considered, an active listing within 1 mile distance, listed for \$1,399,000 DOM 4, with water views and water access. This is a 1725 colonial build with original characteristics. This was chosen for similar attributes to 56 Ridges Court, with similar gross living area noted at 1374 SF (+/-). This listing is noted with superior water access, however, was noted and analyzed for other similarities.

These sales are the best market data properties identified to 56 Ridges Court, Portsmouth NH 03801. All comparables within 1-mile, similar age, style, partial water views, and would attract a similar purchaser in the marketplace. **Based on these comparable properties, the Realtor's estimated fair market value of \$2,300,000 for 56 Ridges Court, Portsmouth NH 03801 is not supported based upon an extraordinary assumption the dwelling is of average interior conditions. The appraiser's conclusions are supported by sales, listings, and pending properties within the submarket of Portsmouth, and stated in this report.**

I have considered the math in the Realtor's conclusions. First, even using the \$2,300,000 which is not supported, if the total view was lost, again this is not the case in this situation, a loss of \$100,000 would indicate a no view value of \$1,300,000. South End Portsmouth properties in similar high value neighborhoods are demanding price premiums without views substantially higher than the \$1,300,000. The only conclusion that can be drawn from this is the \$2,300,000 and \$1,000,000 are unfounded.

RECONCILIATION

There is no market evidence that suggests a partial loss of a partial view within the marketplace would result in a diminution of value. A purchaser of 56 Ridges Court, Portsmouth, NH would pay the same premium price for a partial territorial view, with and without the addition garage added to 67 Ridges Court.

The garage addition to 67 Ridges Court, Portsmouth suggests no negative influence on surrounding property values based on relevant data. Remodeling and upgrading dwellings is supported by the theory of the principle of progression and regression, which suggests that

superior high-quality builds will have a positive influence on values and marketability on inferior quality dwellings within the immediate area. Additionally, both the abutters lots will have additional, unobstructed territorial water views from Tax Map 207/ Lot 60, a 0.07-acre lot which does not meet current zoning requirements for future development.

FINAL CONCLUSIONS

Granting of the variance will not result in diminution in fair market value to any neighborhood property for partial loss of non-owned or non-eased views.

I can find no support for lot 207/63 Realtor valuation conclusions.

Respectfully,

A handwritten signature in black ink, appearing to read "Peter E. Stanhope".

Peter E. Stanhope, NHCG-31

Enclosures: Addenda
Curriculum Vitae
NH Certification

REPORT ADDENDA

COMMENTS:

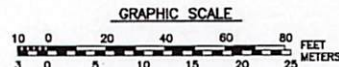
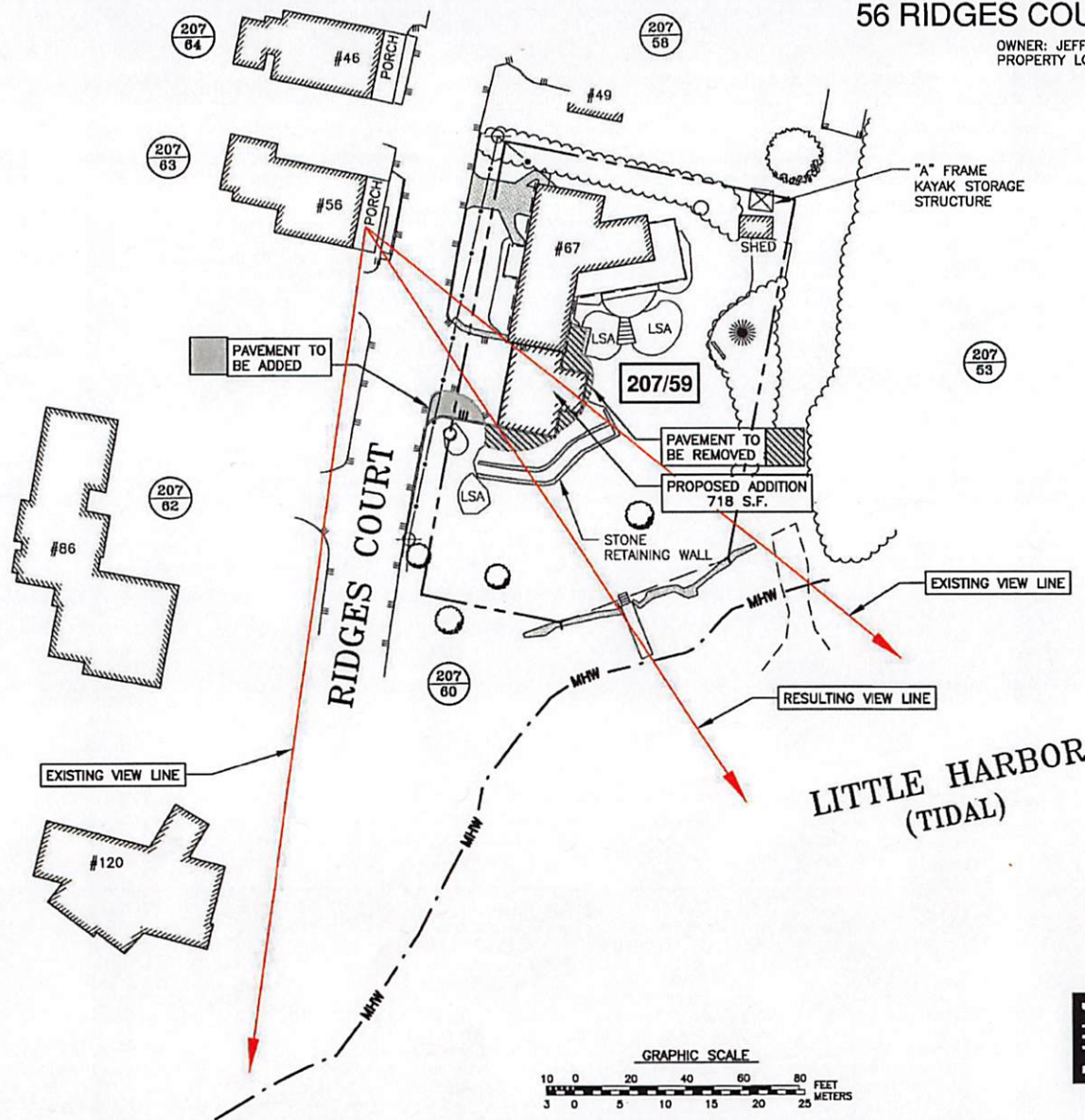
67 Ridge's Court was originally listed for \$2,950,000 on 05/27/2021, with 94 days on market, and closed on 09/03/2021 for \$2,650,000 through cash transaction. Market conditions during listing months were increasing at 1% a month, 12 % annually rounded. The subjects market value was identified by recent sale, and estimated at \$2,650,000 retrospectively at time of sale.

603.431.4141

2002
REF. 1
N
MAGNETIC
PLAN

56 RIDGES COURT ABUTTER VIEW SHED

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



SACLE: 1"=40' 10 AUGUST, 2022

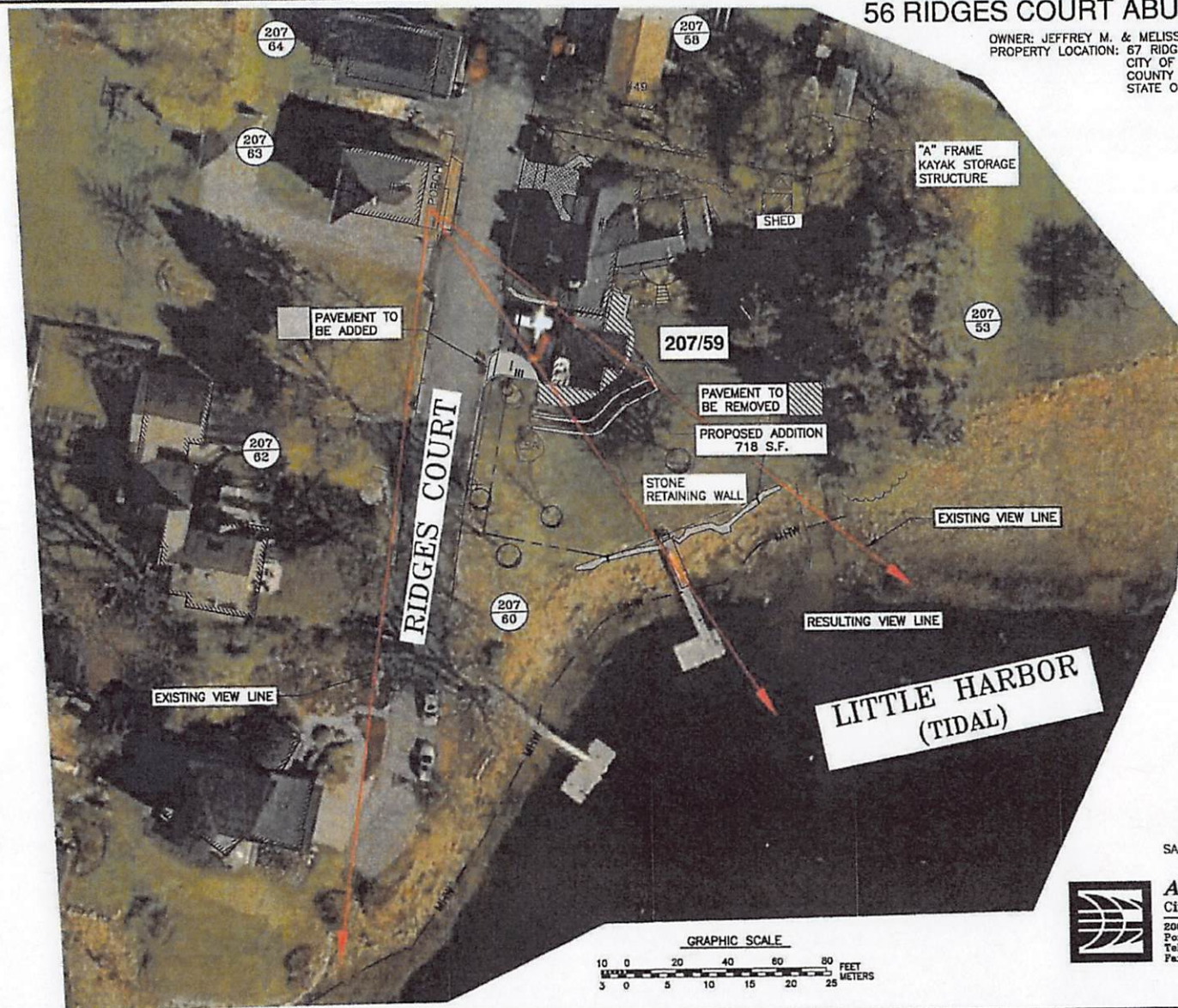


AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

2002
MAGNETIC
PLAN
REF. 1

56 RIDGES COURT ABUTTER VIEW SHED

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



SACLE: 1"=40'

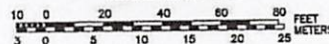
10 AUGUST, 2022



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors

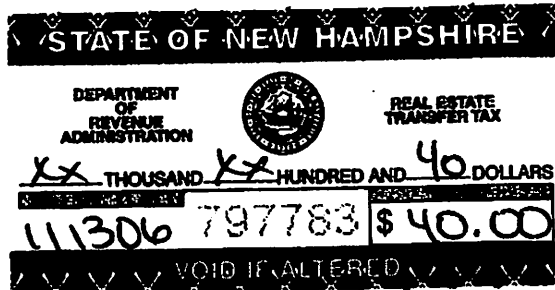
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 430-2316

GRAPHIC SCALE



FB 222 PG 66

1153.02

**QUITCLAIM DEED**

KNOW ALL PERSONS BY THESE PRESENTS, THAT I, KATHLEEN Y. THOMSON, single, of 56 Ridges Court, Portsmouth, Rockingham County, New Hampshire, 03801

For consideration paid, grant to **KATHLEEN Y. THOMSON, TRUSTEE OF THE KATHLEEN Y. THOMSON REVOCABLE TRUST OF 2006**, u/d/t November 7, 2006, of 56 Ridges Court, Portsmouth, Rockingham County, New Hampshire, 03801

With Quitclaim Covenants,

Four certain lots of land with the buildings thereon, situate in said Portsmouth, being Lots number 41, 42, 55 and 56 on a Plan of Lots owned by Rienzi Ridge, and recorded in Rockingham County Registry of Deeds, Plan Book 1, Page 77. Said lots described as one parcel are bounded and described as follows:

Beginning in the Easterly side of a proposed new street as shown on said Plan, leading southerly from New Castle Avenue, at a point 313 feet southerly from the southerly sideline of said Avenue, thence running easterly by Lot 43 and 54 on said Plan 207.32 feet, more or less, to another proposed new street, as shown on said Plan, at a point 313 feet southerly from said southerly sideline of said Avenue; thence turning and running southerly by said proposed new street 100 feet to Lot 57 on said Plan; thence turning and running westerly by Lots 57 and 40 on said Plan 209.66 feet, more or less, to said first named proposed new street, and then northerly by said new street 100 feet to the point begun at.

Being the same premises described in deed of William A. Thomson, Jr., Executor of the Estate of Florence M. Thomson to William A. Thomson and Kathleen Thomson, dated August 31, 1976, recorded in Rockingham County Registry of Deeds, Book 2265, Page 79. William A. Thomson died June 17, 1995, at Boston, Massachusetts. See death certificate recorded herewith.

This is a non-contractual transfer pursuant to NH RSA 78-B.

070093

2006 NOV 13 PM 12:30

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

Signed this 7th day of November, 2006.


Kathleen Y. Thomson

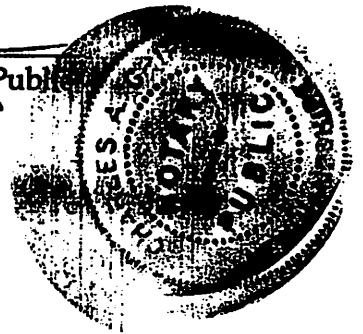
STATE OF NEW HAMPSHIRE
ROCKINHAM, SS

Personally appeared KATHLEEN Y. THOMSON before me this 7th day of November, 2006, known to me or satisfactory proved to be the person whose name is subscribed to the foregoing instrument and executed the same for the purposes therein contained.

Before me,


Charles A. Griffin, Notary Public

My commission expires: 02/11/09



56 RIDGES CT

Location 56 RIDGES CT

Mblu 0207/ 0063/ 0000/ /

Acct# 28716

Owner THOMSON KATHLEEN Y
REVOC TRUST 2006

PBN

Assessment \$757,200

Appraisal \$757,200

PID 28716

Building Count 1

Current Value

| Appraisal | | | |
|----------------|--------------|-----------|-----------|
| Valuation Year | Improvements | Land | Total |
| 2021 | \$227,300 | \$529,900 | \$757,200 |
| Assessment | | | |
| Valuation Year | Improvements | Land | Total |
| 2021 | \$227,300 | \$529,900 | \$757,200 |

Owner of Record

Owner THOMSON KATHLEEN Y REVOC TRUST 2006
Co-Owner THOMSON KATHLEEN Y TRUSTEE
Address 56 RIDGES CT
PORTSMOUTH, NH 03801

Sale Price \$0
Certificate
Book & Page 4731/2542
Sale Date 11/13/2006

Ownership History

| Ownership History | | | | |
|-------------------------------------|------------|-------------|-------------|------------|
| Owner | Sale Price | Certificate | Book & Page | Sale Date |
| THOMSON KATHLEEN Y REVOC TRUST 2006 | \$0 | | 4731/2542 | 11/13/2006 |

Building Information

Building 1 : Section 1

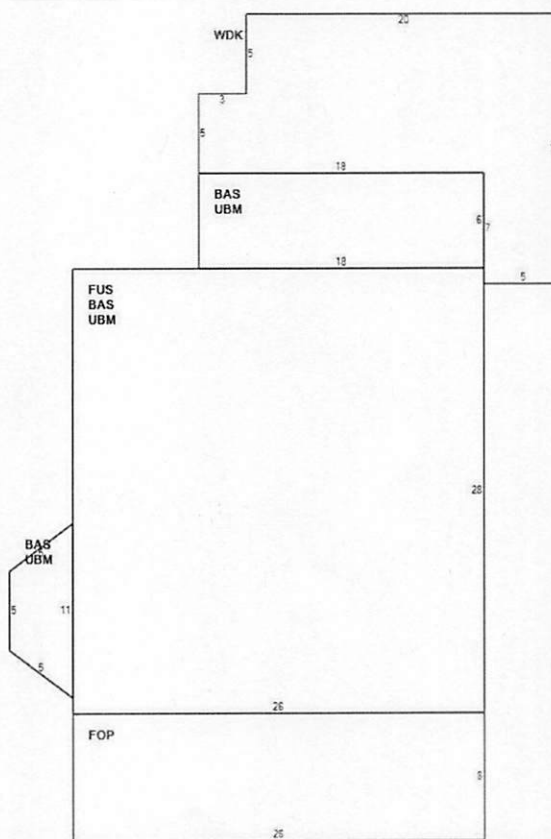
Year Built: 1927
Living Area: 1,596
Replacement Cost: \$333,824
Building Percent Good: 65

| | |
|--------------------|-----------|
| Less Depreciation: | \$217,000 |
|--------------------|-----------|

| Building Attributes | |
|---------------------|----------------|
| Field | Description |
| Style | Conventional |
| Model | Residential |
| Grade: | B |
| Stories: | 2 |
| Occupancy | 1 |
| Exterior Wall 1 | Asbest Shingle |
| Exterior Wall 2 | |
| Roof Structure: | Gable/Hip |
| Roof Cover | Asph/F Gls/Cmp |
| Interior Wall 1 | Plastered |
| Interior Wall 2 | |
| Interior Flr 1 | Carpet |
| Interior Flr 2 | Hardwood |
| Heat Fuel | Gas |
| Heat Type: | Steam |
| AC Type: | None |
| Total Bedrooms: | 3 Bedrooms |
| Total Bthrms: | 1 |
| Total Half Baths: | 1 |
| Total Xtra Fixtrs: | 1 |
| Total Rooms: | 6 |
| Bath Style: | Avg Quality |
| Kitchen Style: | Avg Quality |
| Kitchen Gr | |
| WB Fireplaces | 0 |
| Extra Openings | 0 |
| Metal Fireplaces | 0 |
| Extra Openings 2 | 0 |
| Bsmt Garage | |

A black and white photograph of a two-story house with a brick foundation and a full-width porch. The house has multiple windows, some with flower boxes underneath. A large bush is in the foreground.

Building Layout



| Building Sub-Areas (sq ft) | | | Legend |
|----------------------------|-----------------------|------------|-------------|
| Code | Description | Gross Area | Living Area |
| BAS | First Floor | 868 | 868 |
| FUS | Upper Story, Finished | 728 | 728 |
| FOP | Porch, Open | 208 | 0 |
| UBM | Basement, Unfinished | 868 | 0 |
| WDK | Deck, Wood | 250 | 0 |
| | | 2,922 | 1,596 |

Extra Features

| Extra Features | | | | Legend |
|----------------|-------------|-------------|---------|--------|
| Code | Description | Size | Value | Bldg # |
| REC | REC ROOM | 140.00 S.F. | \$2,300 | 1 |

Land

Land Use

Use Code 1012
 Description SFR WATERINFL
 Zone SRB
 Neighborhood 101
 Alt Land Appr No
 Category

Land Line Valuation

Size (Acres) 0.48
 Frontage
 Depth
 Assessed Value \$529,900
 Appraised Value \$529,900

Outbuildings

| Outbuildings | | | | | | Legend |
|--------------|-------------|----------|-----------------|-------------|---------|--------|
| Code | Description | Sub Code | Sub Description | Size | Value | Bldg # |
| FGR1 | GARAGE-AVE | 02 | DETACHED | 440.00 S.F. | \$6,800 | 1 |
| SHD1 | SHED FRAME | | | 180.00 S.F. | \$1,200 | 1 |

Valuation History

| Appraisal | | | |
|----------------|--------------|-----------|-----------|
| Valuation Year | Improvements | Land | Total |
| 2020 | \$227,300 | \$529,900 | \$757,200 |
| 2019 | \$227,300 | \$529,900 | \$757,200 |
| 2018 | \$203,300 | \$463,200 | \$666,500 |

| Assessment | | | |
|----------------|--------------|-----------|-----------|
| Valuation Year | Improvements | Land | Total |
| 2020 | \$227,300 | \$529,900 | \$757,200 |
| 2019 | \$227,300 | \$529,900 | \$757,200 |
| 2018 | \$203,300 | \$463,200 | \$666,500 |



July 13, 2022

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

Dear Zoning Board of Adjustment Members,

I am writing on behalf of Kathleen Thomson, owner of 56 Ridges Court, Portsmouth, NH. 56 Ridges Court is located directly across the street from 67 Ridges Court.

Mrs. Thomson and four generations of the Thomson family have enjoyed nearly 100 years of scenic water views of Little Harbor from their home at 56 Ridges Court. In recent years, the property and home across the street at 67 Ridges Court has evolved significantly, with each new owner expanding the overall square footage and footprint of the home as well as different garage configurations. The addition proposed by the Foy's in the current variance request is the most ambitious renovation proposed to date. If this proposed addition is erected it will, for the first time, directly block the water views from Mrs. Thomson's property, as well as views from several neighbors. The proposed expansion will diminish sight lines / water views between Mrs. Thomson's front porch, living room, dining room, and bedrooms and Little Harbor. The proposed expansion also reduces the overall ambience and openness to the water, which been a unique neighborhood feature for this cluster of homes that dead-end into Little Harbor.

Water views are highly coveted in the Seacoast area. Therefore, the substantial change in water views also has a significant impact in the market value of these neighboring properties and has the most direct impact on the market value of Mrs. Thomson's home. The average price difference between a home with a water view and a similar home in the same neighborhood with no water view is between \$800,000 and \$1 million dollars. Based on comparable sales in the South End from the past 18 months, Mrs. Thomson's fair market value for her home on 6 parcels is \$2.3 million. Should the Foy's variance be granted, Mrs. Thomson's market value would decrease to \$1.4 million. That is a significant amount of lost value.

In sum, the Foy's proposed expansion at 67 Ridges Court will be highly detrimental to the neighborhood, result in loss of property value for 56 Ridges Court, and diminish the enjoyment that Mrs. Thomson and her family have treasured from Little Harbor views for nearly a century.

Sincerely,

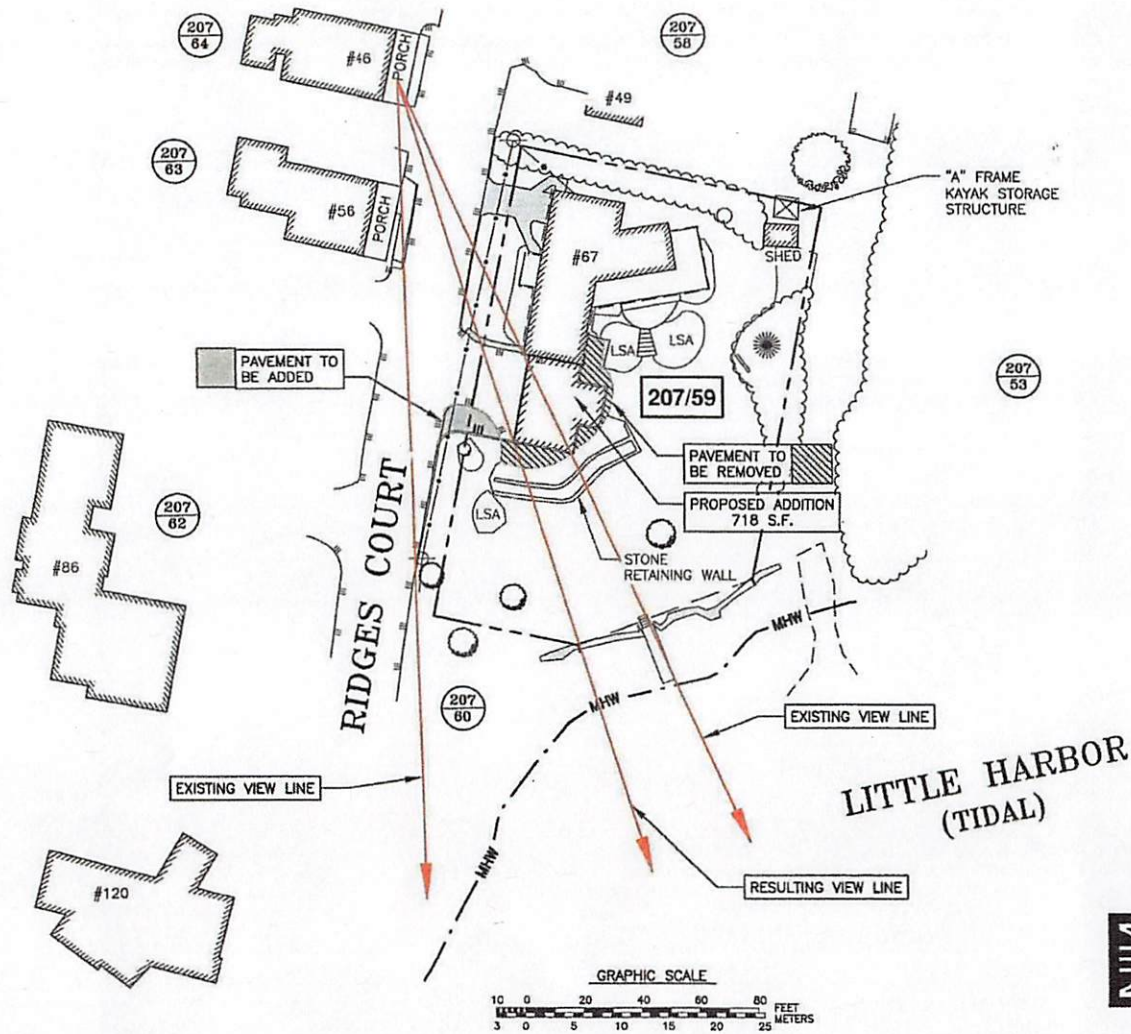
A handwritten signature in cursive script that reads "Ali Goodwin".

Ali Goodwin, Realtor® • Luxury Division
Haven Homes + Lifestyle at Keller Williams Coastal and Lakes & Mountains Realty
Cell: 603-957-8466 • Email: ali@aligoodwin.com

2002
MAGNETIC
PLAN
REF. 1

46 RIDGES COURT ABUTTER VIEW SHED

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



SCALE: 1"=40' 10 AUGUST, 2022



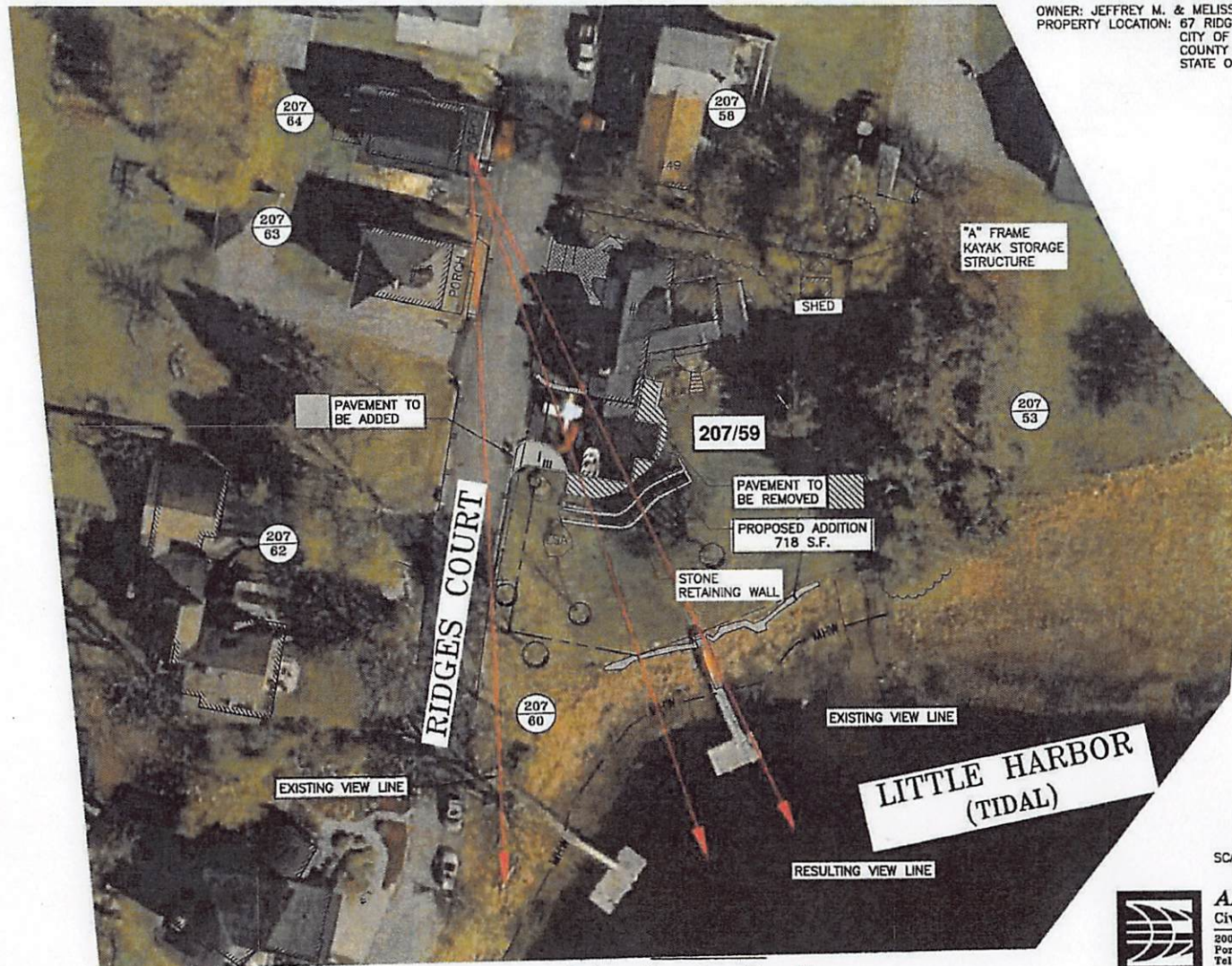
AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 438-2315

FB 222 PG 66 1153.02

46 RIDGES COURT ABUTTER VIEW SHED

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

2002
MAGNETIC
PLAN
REF. 1



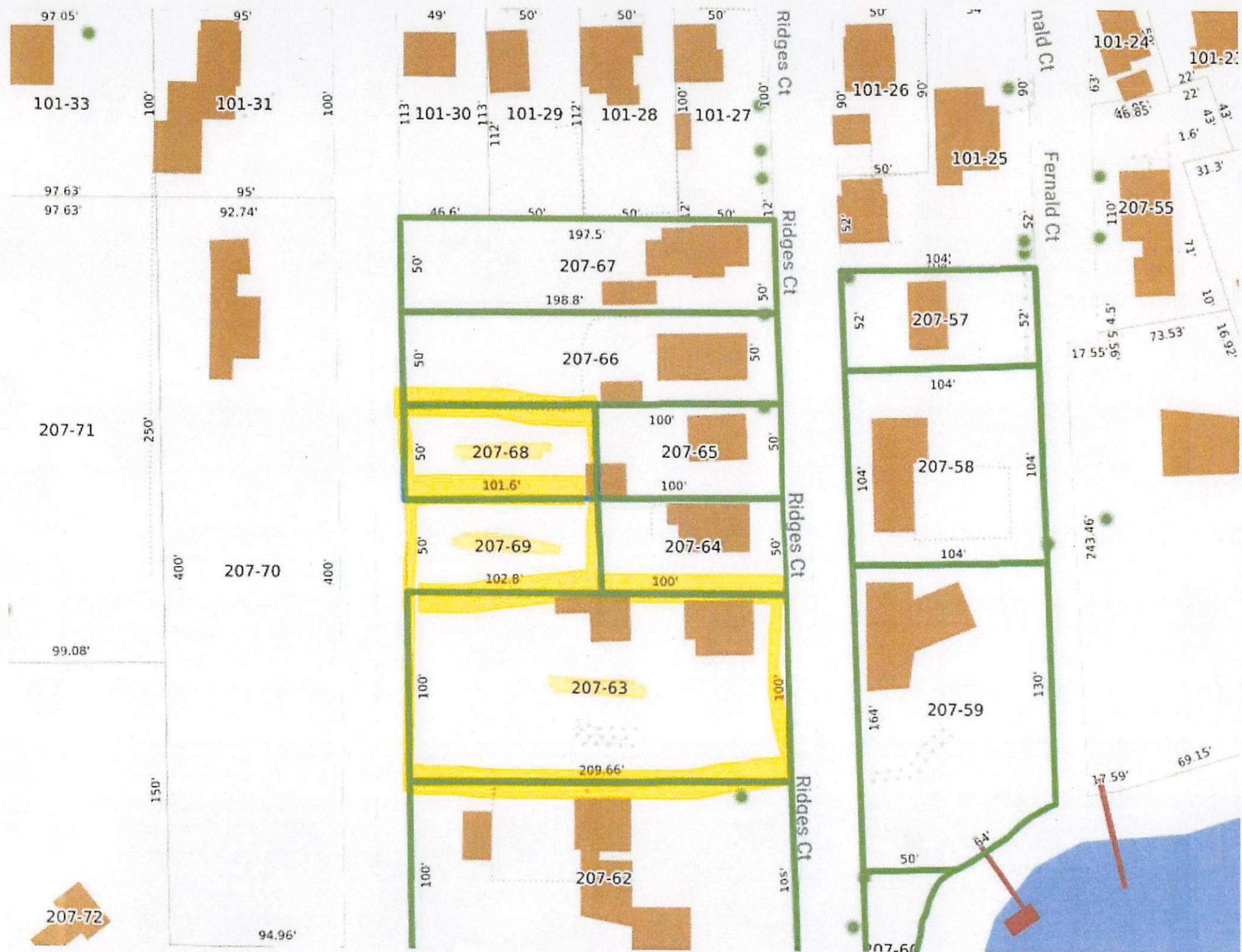
10 0 20 40 60 80 FEET
3 0 5 10 15 20 25 METERS

SCALE: 1"=40' 10 AUGUST, 2022



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

FB 222 PG 66 1153.02



Peter E. Stanhope, Certified General Appraiser
(NHCG-31 and MECG-647)

EDUCATION:

| | |
|--|-------------|
| American Institute of Real Estate Appraisers | 1980 - 1984 |
| University of New Hampshire | 1960 - 1964 |

EXPERIENCE:

| | |
|--------------------------------------|----------------|
| The Stanhope Group - Chief Appraiser | 1967 - Present |
|--------------------------------------|----------------|

Appraisal of complex residential, industrial and commercial real estate throughout northern New England for corporations, government agencies, financial institutions, law firms, and private individuals.

RELATED EXPERIENCE:

| | |
|--|-------------|
| Adjunct Faculty, University of New Hampshire | 1981 - 1999 |
| Adjunct Faculty, Real Estate Center, University of Maine | 1983 - 1990 |

ADDITIONAL EXPERIENCE:

National Business Institute
Foreclosure: Appraisal Review, Webinar Speaker
Appraisals in Estate Planning and Administration, Webinar Speaker
Maine Public Television
Format development and moderator of a six hour television special on residential and income property valuation
New Hampshire Commercial Investment Board of Realtors
Program presenter for "A Look at the Rate Value Relationship"
New Hampshire Bar Association
Program presenter for "The Appraisal In Tax Abatement", "Introduction and Overview of Divorce Litigation", and "Use of Experts in Divorce Litigation"
New Hampshire Trial Lawyers Association
Program presenter for the Annual Family Law Forum
Expert Witness (Testimony Before):
State of New Hampshire
Circuit Courts and Superior Courts
Board of Taxation and Land Appeal
State of Maine - York and Cumberland Superior Courts
U.S. Bankruptcy Court - Manchester, NH; Rutland, VT and Portland, ME
U.S. District Court - Concord, NH; Boston, MA, Worcester, MA

DESIGNATIONS, CERTIFICATIONS & AFFILIATIONS:

Appraisal Institute
Practicing Affiliate Member
National Association of Realtors, Appraisal Section
General Accredited Member
State of New Hampshire
Certified General Real Estate Appraiser
Licensed Real Estate Broker
State of Maine
Certified General Real Estate Appraiser

OFFICERSHIPS, COMMITTEES & ACTIVITIES:

New Hampshire Mortgage Banker's Association
Former Board of Directors Member
New Hampshire Commercial and Industrial Realtors
Former Board of Directors Member
New Hampshire Housing Finance Authority
Reverse Elderly Equity Loan Study Committee, Single Family Committee
National Association of Realtors
National Appraisal Committee Appraisal Section, Former NH Delegate
City of Portsmouth Economic Development Loan Program
Former Loan Review Board Member
Strafford County Regional Planning Commission Former Member
Town of Durham
Historic District Commission (Chairman 2012 - 2017) 2011 - 2018
Oyster River Advisory Committee
NH Rivers Management and Protection Program 2011 - 2012

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

March 7, 2023

HAND DELIVERED

Peter Stith, Principal Planner
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Jeffrey and Melissa Foy, Owner/Applicant
67 Ridges Court
Tax Map 207/Lot 59
Single Residence B District
LU-22-199

Dear Mr. Stith & Zoning Board Members:

On behalf of Jeffrey and Melissa Foy ("Foy"), enclosed please find the following in support of our pending request for zoning relief:

Exhibit B-Rev.3- 3/21/23 Architectural Plans-by DeStefano Mangel Architects

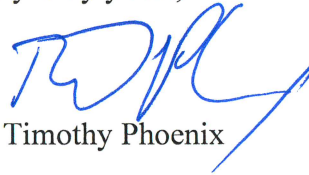
This plan set brings the architectural design up to date. The primary changes from the previously submitted architectural plans are a rear deck, which requires no zoning relief, and an expanded front dormer in the roofline to the right of the main entryway. See page 1 of the exhibit for the Site Plan view, and page 2, Proposed West Elevation for the building elevation view. The dormer is expanded to create space for a master bath.

Relief is required because slightly over 50% of the expanded 16 foot wide dormer is within the 19 foot front setback, although no closer than other areas such as the front entryway which has previously been granted relief. The dormer is approximately 14 feet from the front lot line, with the front of the home approximately 13.5 feet.

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

The arguments supporting compliance with the 5 variance requirements are essentially the same as addressed in our previous memoranda, which we will address at the hearing scheduled for March 21, 2023.

Very truly yours,

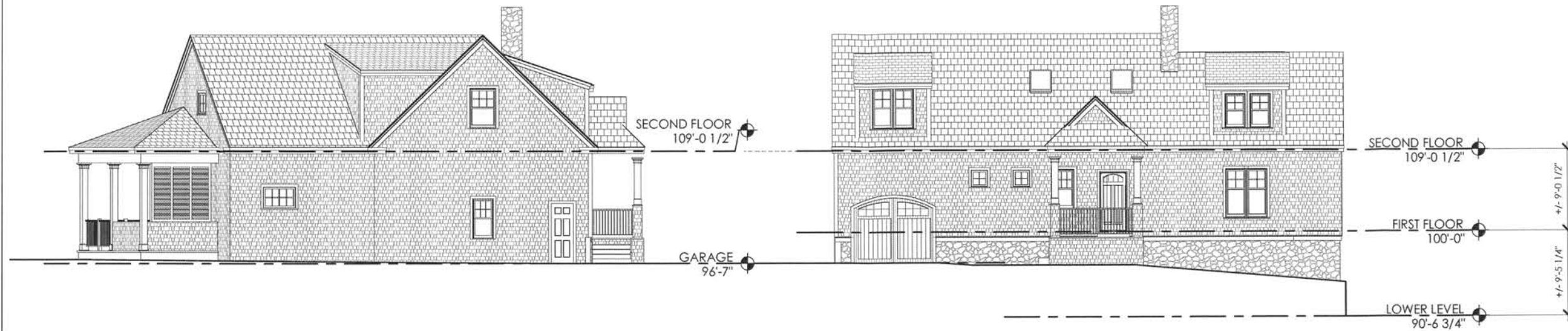


R. Timothy Phoenix

Encl.

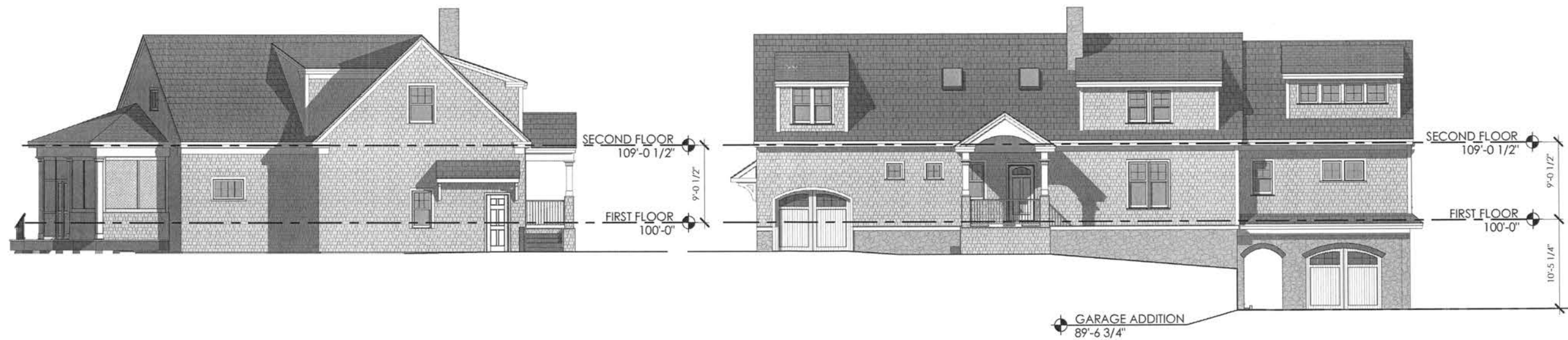
cc: Client (via email)
Ambit Engineering, Inc. (via email)
DeStefano | Mangel (via email)





EXISTING NORTH ELEVATION

EXISTING WEST ELEVATION



PROPOSED NORTH ELEVATION
1/8" = 1'-0" 1

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

SCHEMATIC DESIGN FOR
FOY RESIDENCE
67 RIDGES CT
PORTSMOUTH, NH

ELEVATIONS
1/8" = 1'-0"

MARCH 21, 2023

21177
D|M|A
DESTEFANO
MAUGEL
ARCHITECTS



EXISTING SOUTH ELEVATION



EXISTING EAST ELEVATION



PROPOSED SOUTH ELEVATION 3
1/8" = 1'-0"



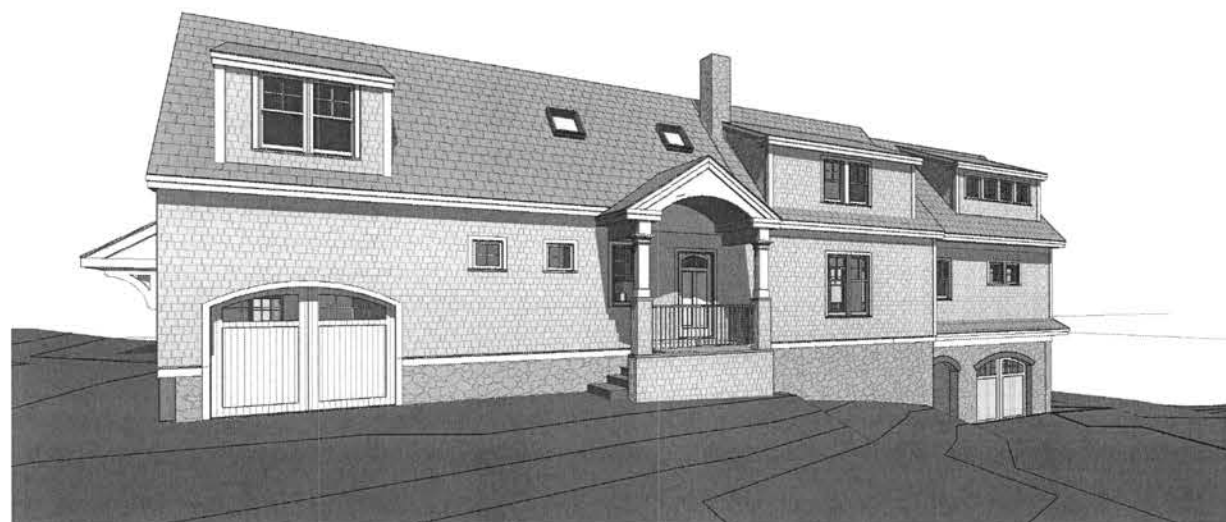
PROPOSED EAST ELEVATION 4
1/8" = 1'-0"

SCHEMATIC DESIGN FOR
FOY RESIDENCE
67 RIDGES CT
PORTSMOUTH, NH

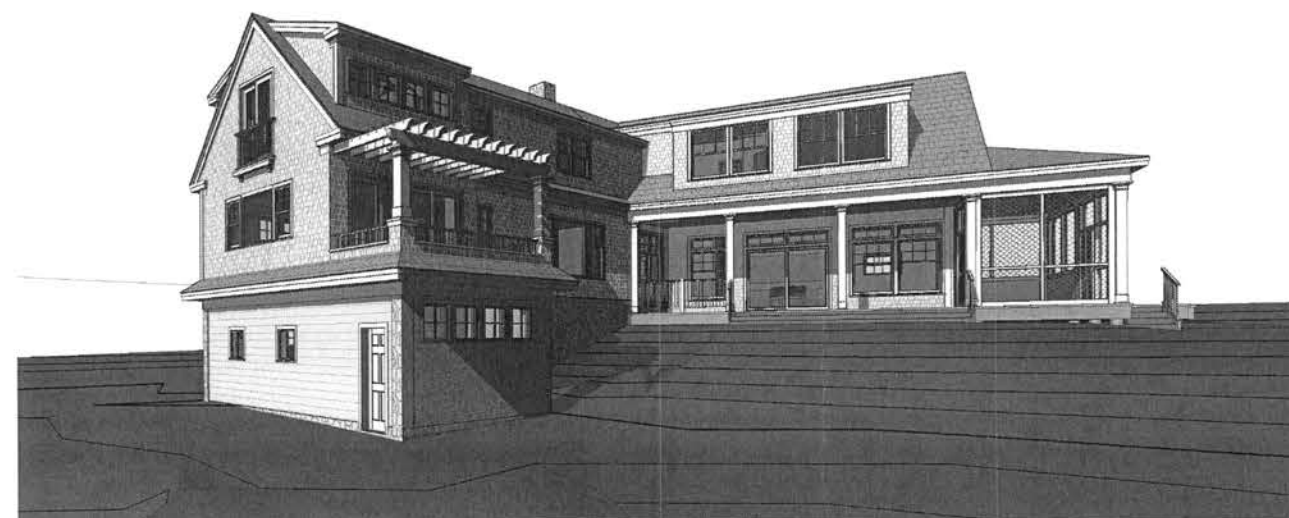
ELEVATIONS
1/8" = 1'-0"

MARCH 21, 2023

21177
D|M|A
DESTEFANO
MAUGEL
ARCHITECTS



PROPOSED FRONT VIEW



PROPOSED REAR PERSPECTIVE

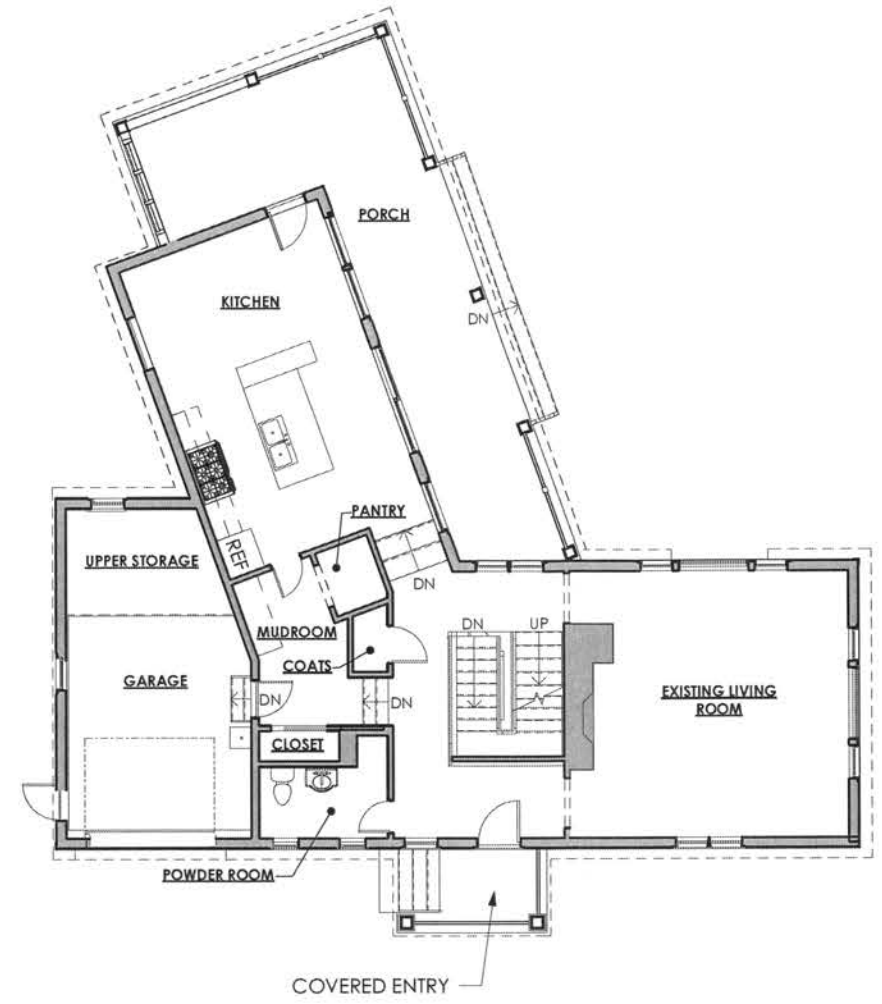
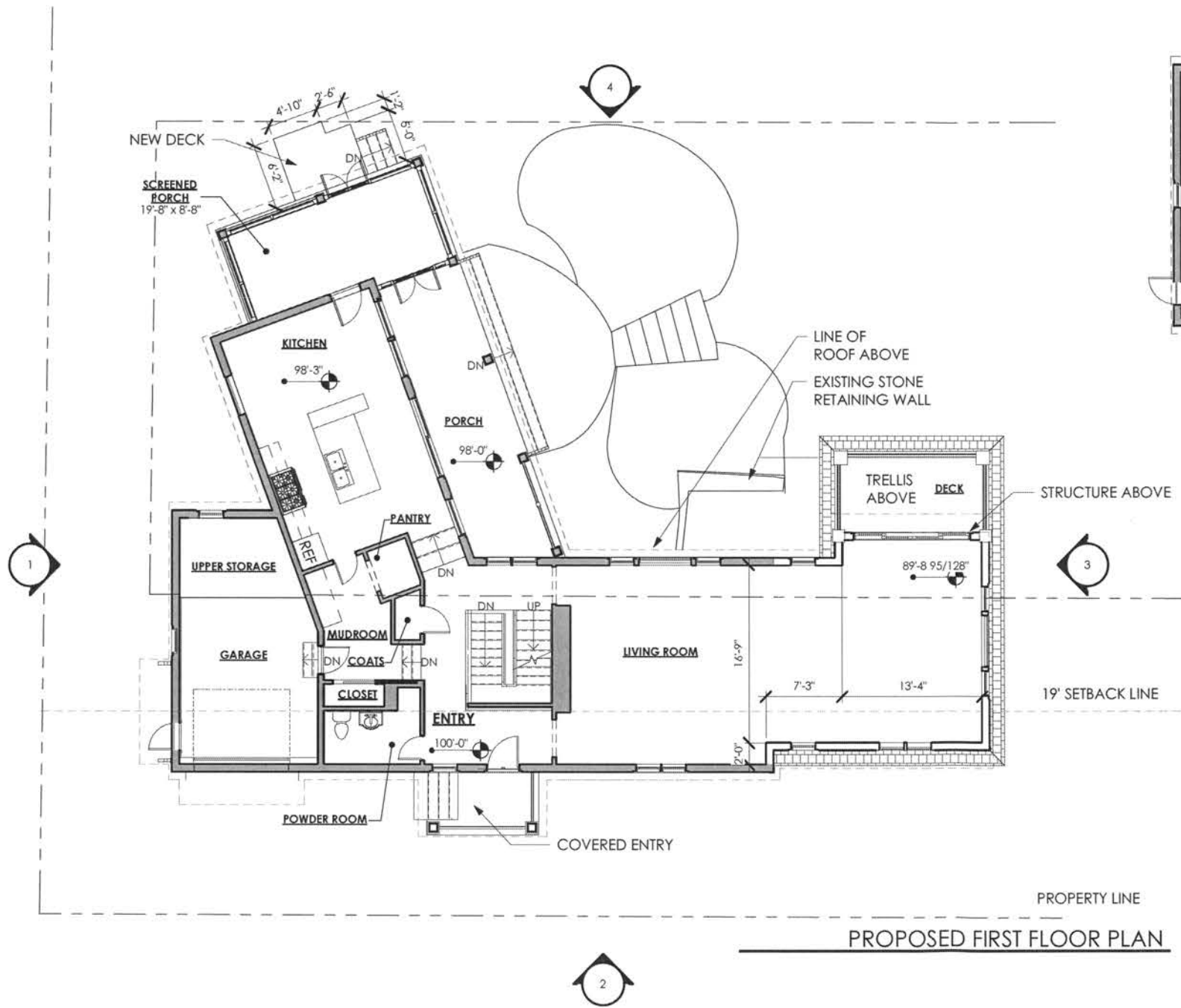
SCHEMATIC DESIGN FOR
FOY RESIDENCE
 67 RIDGES CT
 PORTSMOUTH, NH

PERSPECTIVES

MARCH 21, 2023



© 2022



SCHEMATIC DESIGN FOR
FOY RESIDENCE
 67 RIDGES CT
 PORTSMOUTH, NH

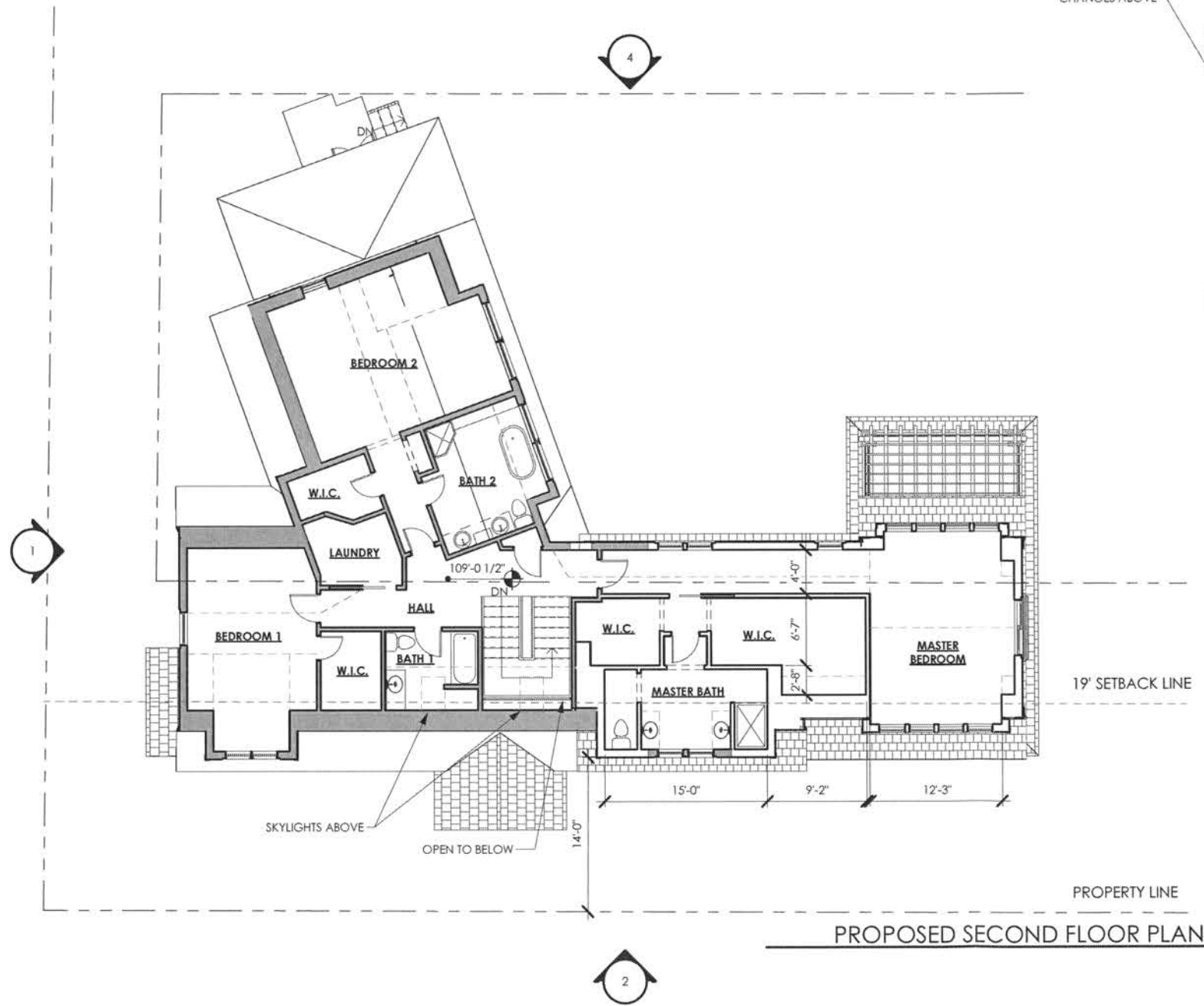
FLOOR PLAN
 1/8" = 1'-0"

MARCH 21, 2023

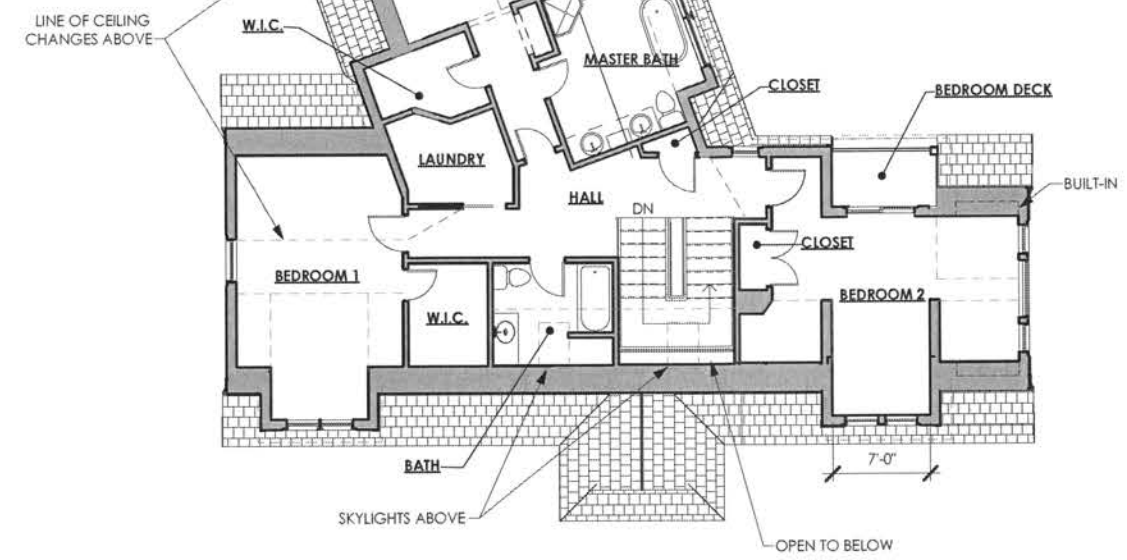
21177

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D|M|A
 DESTEFANO
 MAUGEL
 ARCHITECTS



PROPOSED SECOND FLOOR PLAN



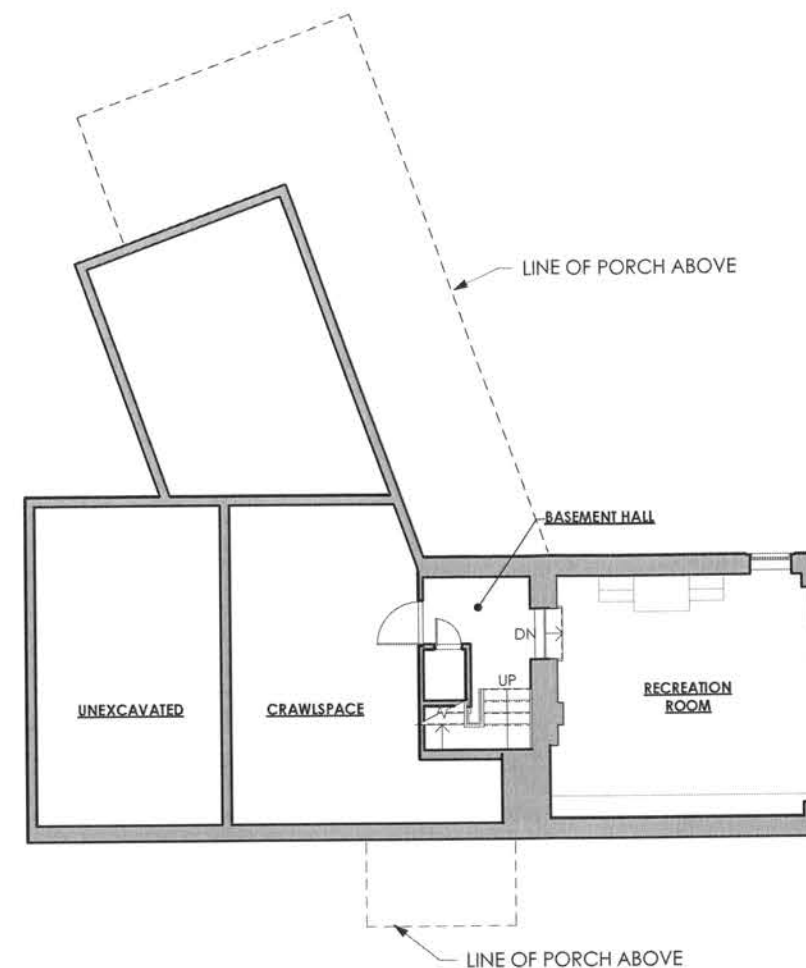
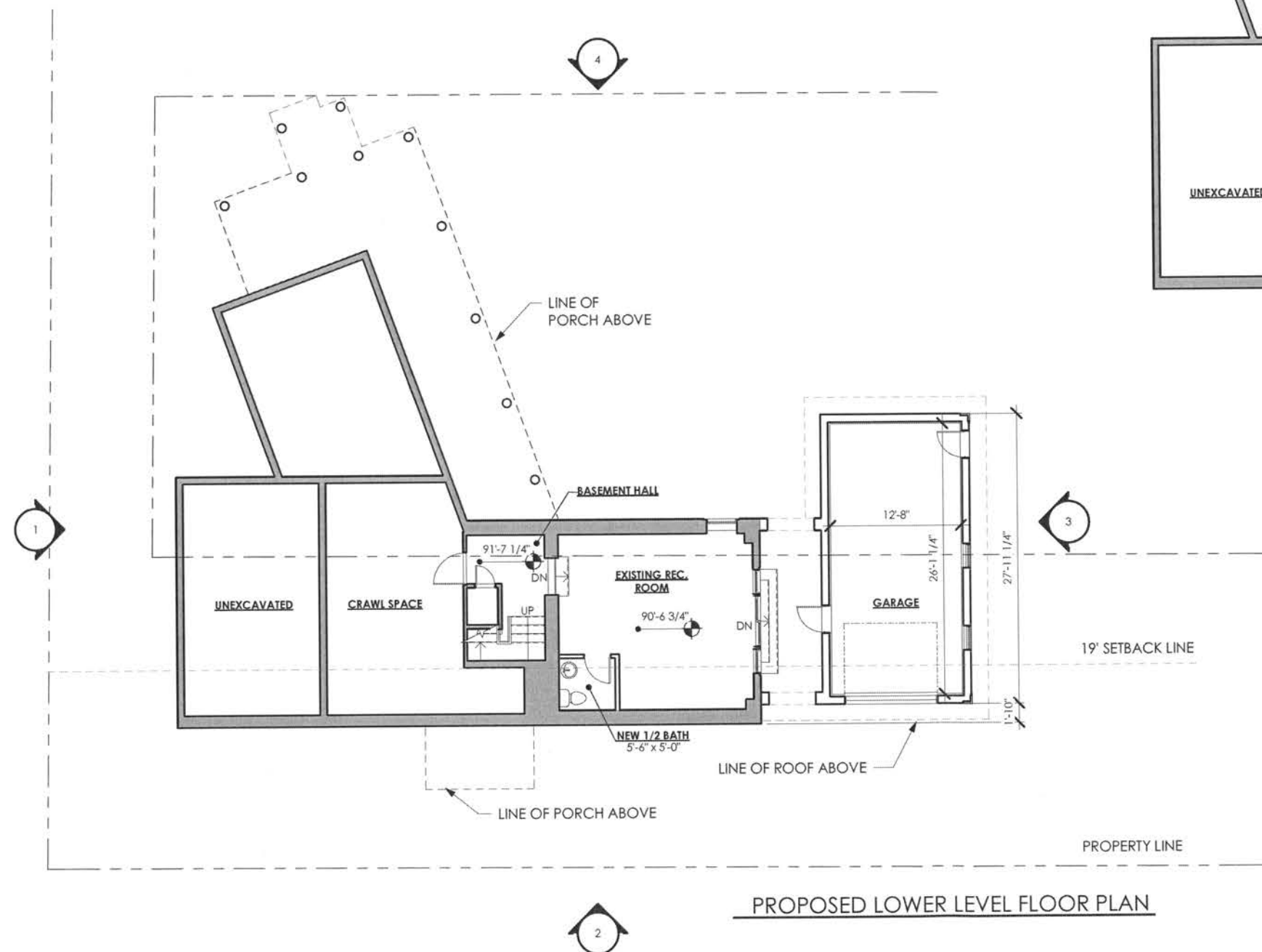
EXISTING SECOND FLOOR PLAN

SCHEMATIC DESIGN FOR
FOY RESIDENCE
 67 RIDGES CT
 PORTSMOUTH, NH

FLOOR PLAN
 1/8" = 1'-0"

MARCH 21, 2023

21177
 N
D|M|A
 DESTEFANO
 MAUGEL
 ARCHITECTS



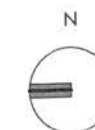
EXISTING LOWER LEVEL FLOOR PLAN

PROPOSED LOWER LEVEL FLOOR PLAN

SCHEMATIC DESIGN FOR
FOY RESIDENCE
 67 RIDGES CT
 PORTSMOUTH, NH

FLOOR PLAN
 1/8" = 1'-0"

MARCH 21, 2023



21177
D|M|A
 DESTEFANO
 MAUGEL
 ARCHITECTS

III. NEW BUSINESS

- B. The request of **William Camarda (Owner)**, for property located at **809 State Street** whereas relief is needed to Extend the existing deck which requires the following: 1) Variances from Section 10.521 to allow a) a 10 foot rear yard where 20 feet is required; and b) 46% building coverage where 35% is the maximum allowed. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 145 Lot 11 and lies within the General Residence C (GRC) District. (LU-23-6)

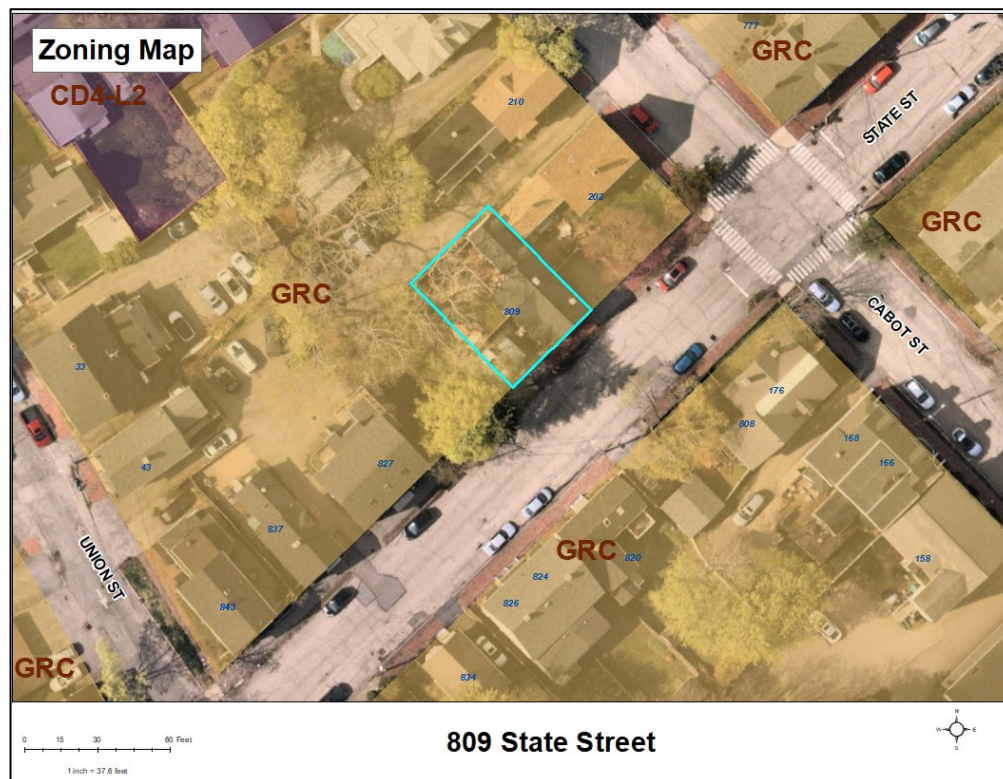
Existing & Proposed Conditions

| | <u>Existing</u> | <u>Proposed</u> | <u>Permitted / Required</u> |
|--|--------------------|-----------------------------------|-----------------------------|
| <u>Land Use:</u> | Single Living Unit | Deck extension | Primarily residential |
| <u>Lot area (sq. ft.):</u> | 2,614 | 2,614 | 3,500 min. |
| <u>Lot Area per Dwelling Unit (sq. ft.):</u> | 2,614 | 2,614 | 3,500 min. |
| <u>Street Frontage (ft.):</u> | 45 | 45 | 70 min. |
| <u>Lot depth (ft.):</u> | 60 | 60 | 50 min. |
| <u>Front Yard (ft.):</u> | 0 | 0 | 5 min. |
| <u>Left Yard (ft.):</u> | 20 | 20 | 10 min. |
| <u>Right Yard (ft.):</u> | 0 | 0 | 10 min. |
| <u>Rear Yard (ft.):</u> | 2 | 10 | 20 min. |
| <u>Height (ft.):</u> | <35 | <35 | 35 max. |
| <u>Building Coverage (%)</u> : | 42 | 46 | 35 max. |
| <u>Open Space Coverage (%)</u> : | >20 | >20 | 20 min. |
| <u>Parking</u> | 2 | 2 | 2 |
| <u>Estimated Age of Structure:</u> | 1882 | Variance request(s) shown in red. | |

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 extend the existing deck 4 feet. The house and deck are within the front, right side and rear yards, making any expansion nearly impossible without some sort of relief. The applicant's building coverage calculation did not include the shed, thus the reason why the request is for 46% coverage versus what was requested in the application.

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.

Bill Camarda + Bennett Travers
809 State Street, Portsmouth NH 03801
Seeking Variance for Extending Existing Side Deck
03.01.23

To The Board,

We are seeking two (2) variances to allow a 4' 2" extension to the depth of the side deck on 809 State Street. Specifically, we would like to request:

1. **Variance to Maintain The Existing Setback:** Carry forward today's 10' deck setback to the extended deck – where 20' is standard.
 - a. When we purchased 809 State Street, the home came with a side deck built by a previous owner that only had 10' of clearance between the deck and the back of the property (backing up to the parking lot of 210 Cabot Street).
 - b. When extending this deck, we would like to maintain the existing 10' setback to the back of the property while extending the deck towards the side of the property by 4' 2" (*no side property line variance needed*).
2. **Variance to Increase the Existing Lot Coverage:** Increase the existing coverage from 42.2% to 44.7% – where 35% is standard.
 - a. When we purchased 809 State Street, the percentage of property footprint taken up by the house was 42.2%, which is over the existing 35% limit.
 - i. 1,141 ft. (870' First Floor + 55' Front Porch + 216' Wood Deck) / 2,700 ft. property (45' x 60')
 - b. As extending the existing wood deck by 4' would increase the property footprint to 1,207 ft., we would like to request a variance to increase our home footprint to 44.7% — an additional 2.5%.

Below is how we will meet the criteria for this variance.

10.233.21 - The variance will not be contrary to the public interest

- The deck is pre-existing from previous owners. The 4' 2" extension of the existing deck will be into our own yard. There is over 20' of clearance towards two of our property lines (827 State Street and State Street itself). The two property lines where there is under 20' of clearance include 202 Cabot Street to the right of us – who cannot see the existing deck through the house nor will they see the new deck through our property – and 210 Cabot Street – a condo unit only who's back parking lot would observe the deck.

10.233.22 - The spirit of the Ordinance will be observed

- The existing deck width extension of 4' 2" will only increase lot coverage by 2.5% and will not increase nor change any existing setbacks. Additionally the length and height of the deck will not change. We will not be encroaching on our neighbors properties in any meaningful way.

10.233.23 - Substantial justice will be done

- The benefit to us at 809 State St. will not come at the expense of our neighbors, as the deck already exists and will only extend an additional 4' into our own yard, buffered by existing

setbacks.

10.233.24 - The values of the surrounding properties will not be diminished

- The extension of the existing deck will not diminish the value of the surrounding properties. If anything, it should help our neighbors' property values increase if we are actively investing to improve our own property and level up the neighborhood.

10.233.25 - Literal enforcement of the provisions of the Ordinance would result in unnecessary hardship

- We are solely trying to improve the functionality of our outdoor space, as the depth of the existing deck makes it difficult to use, impacting both our use of the property as we grow our family in this home and the value of the property itself.

Thank you very much for taking the time, as my fiancé and I are excited to continue to build our lives here in the West End!

Sincerely,
Bill Camarda and Bennett Travers

60 feet

fence + driveway = length of property

Driveway
State Street

Deck clearance
= 30+ feet

Yard

25' Clearance
to fence side

Deck clearance =
10' ~~clearance~~

Back of property
existing shed

16' 6"

Deck Extension

4' 2"

8' 4"
existing deck

Existing Deck from
previous owner

23.5' long

↓ House ↓

Stairs

House



Deck
extension



Deck extension



Driveway