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. May 21, 2024

AGENDA

I. APPROVAL OF MINUTES

A. Approval of the April 16, 2024 and April 30, 2024 meeting minutes.

II. OLD BUSINESS

A. The request of Kerrin J Parker Revocable Trust of 2012 (Owner), for property located at 86 Haven Road whereas relief is needed to construct an addition to the existing structure which requires the following: 1) Variance from Section 10.521 to a) allow a 7.5 foot front yard where 10 feet is required by front yard averaging; b) to allow a building coverage of 26% where 20% is allowed; and 2) Variance from Section 10.321 to allow of nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 206 Lot 27 and lies within the Single Residence B (SRB) District. (LU-23-192)

*The Board will reopen the public hearing to accept new information.

- **B.** The request of **Atlas Commons LLC (Owner)**, for property located at **581 Lafayette Road** whereas relief is needed for after-the-fact installation of an awning sign which requires the following: 1) Variance from Section 10.1251.20 to allow a 32 square foot awning sign whereas 20 square feet is allowed. Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor (G1) District. (LU-24-1)
- **c. REQUEST TO WITHDRAW** The request of Giri Portsmouth **505 Inc. (Owner)**, for property located at **505 US Route 1 Bypass** whereas relief is needed to demolish the existing structure and construct a new hotel with a drive thru restaurant which requires the following: 1) Special Exception from 10.440 Use #10.40 hotel where it is permitted by Special Exception; 2) Variance from Section 10.835.32 to allow 5 feet between the lot line

and drive-thru and bypass lanes where 30 feet is required for each; 3) Variance from Section 10.835.31 to allow 18 feet between the menu and speaker board and the front lot line where 50 feet is required; 4) Variance from Section10.5B22.20 to allow up to 60 feet in building height within 50 feet of the street right-of-way line whereas up to 45 feet is permitted; 5) Variance from Section 10.5B34.70 to allow up to 60 feet in building height whereas 50 feet is permitted; 6) Variance from Section 10.5B34.60 to allow a 30 foot setback for a small commercial building whereas a maximum of 20 feet is permitted; 7) Variance from Section 10.5B33.20 to allow less than 75 percent front lot line buildout whereas a minimum of 75 percent is required for commercial buildings. Said property is located on Assessor Map 234 Lot 5 and lies within the Gateway Neighborhood Corridor (G1) District. (LU-24-44) **REQUEST TO WITHDRAW**

III. NEW BUSINESS

- A. The request of Ryan Leibundgut (Owner), for property located at 137 Walker Bungalow Road whereas relief is needed to demolish the front deck and construct a new deck on the front of the existing home which requires the following: 1) Variance from Section 10.521 to allow a 20 foot front yard where 30 feet is required; 2) Variance from Section 10.321 to allow of nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 202 Lot 4 and lies within the Single Residence B (SRB) (LU-24-10)
- **B.** The request of **John C. Wallin** and **Jeanine M. Girgenti (Owners)**, for property located at **5 Cleveland Drive** to amend the Variances granted on July 18, 2023 to install a 6 foot fence along the primary and secondary front of the property to include the following: 1) Variance from Section 10.515.13 to allow a 6 foot fence to be installed on top of a 3.5 foot tall retaining wall to create a total structure height of 9.5 feet where 4 feet is allowed. Said property is located on Assessor Map 247 Lot 74 and lies within the Single Residence B (SRB) District. (LU-23-92)
- C. The request of Edmund R. St. Pierre (Owner), for property located at 15 Mariette Drive whereas relief is needed to create a second driveway in front of the existing garage which requires the following: 1) Variance from Section 10.1114.31 to allow two driveways on a single lot where only one is allowed per section 3.3.2.3 of the Site Review Regulations. Said property is located on Assessor Map 292 Lot 167 and lies within the Single Residence B (SRB) District. (LU-24-57)
- **D.** The request of **Elizabeth M.** and **Torben O. Arend (Owners)**, for property located at **1 Rockaway Street** whereas relief is needed to construct a porch and mudroom onto the front of the existing structure which requires the following: 1) Variance from Section 10.521 to allow a 24 foot front yard where 30 feet is required. Said property is located on

Assessor Map 230 Lot 11 and lies within the Single Residence B (SRB) District. (LU-24-46)

IV. ADJOURNMENT

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

 $\underline{https://us06web.zoom.us/webinar/register/WN_M5znRV1-RQufUEHGWcXhdQ}$

MINUTES OF THE

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

7:00 P.M. April 16, 2024

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Members David

Rheaume, Thomas Rossi, Paul Mannle, Jeffrey Mattson, Thomas

Nies; Jody Record, Alternate; ML Geffert, Alternate

MEMBERS EXCUSED: None.

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m. She noted that the 865 Islington Street petition was withdrawn by the applicant.

I. APPROVAL OF MINUTES

A. Approval of the March 19, 2024 and the March 26, 2024 minutes.

March 19 Minutes

Mr. Nies requested the following changes: Regarding the approval of the February 21 minutes (page 1), he said that he and Chair Eldridge abstained from the vote. On page 3, second paragraph, he said the 20.4 percent was rounded down to 20 percent and not 2 percent. Mr. Rheaume referred to the last paragraph on page 4 and said the word "terns" should be "terms".

Mr. Rheaume moved to **approve** the March 19 minutes as **amended**, seconded by Ms. Record. The motion **passed** unanimously, 7-0.

March 26 Minutes

Mr. Rossi moved to **approve** the March 26 minutes as **presented**, seconded by Mr. Mannle. Ms. Geffert abstained. The motion **passed** unanimously, 7-0.

II. OLD BUSINESS

A. 550 Sagamore Avenue - Rehearing Request (LU-24-9)

Mr. Rossi recused himself from the rehearing request and Ms. Record took a voting seat.

DISCUSSION OF THE BOARD

[Video Timestamp 6:18] Mr. Nies said there were two votes taken at the previous meeting, one to approve the variances and one to deny the variances and that both votes failed. He said it seemed to leave the applicant hanging and thought it conflicted with some of the guidance that the NH manual gave. Vice-Chair Margeson said all zoning boards of adjustment in New Hampshire except for Portsmouth had five voting members instead of seven, so aspects of the Statute and the NH Planning and Land Use regulations and guidance were not applicable to the Board. Mr. Nies said he would feel more comfortable with a vote that was a firm decision. Mr. Rheaume said at that particular previous meeting it was unlikely to get a motion that would garner four votes. He said the reason why the approval wasn't granted was not explained in detail, but the key factor was to make sure there was sufficient information for the applicant to understand why the approval wasn't granted. He explained the history behind it. Vice-Chair Margeson said she chaired that meeting and agreed that the minutes did not reflect the robust discussion the Board had but thought there was enough in the record to justify the decision. Mr. Nies said his concern with the voting issue is that the Board did not stop with the failed motion to approve, and if they had, then the applicant would have been denied the variance. He said the confusion was that a second vote was taken, which also failed. Vice-Chair Margeson said the subsequent motion to deny failed to get four votes and that she did not solicit comments because she felt that there was enough in the record to support it. Mr. Mattson said he accepted that a failure to pass is a denial based on the Board's rules but that he could get on board with rehearing the petition because of both votes tying. It was further discussed.

DECISION OF THE BOARD

Mr. Nies moved to **grant** the rehearing request. Mr. Mattson seconded.

[Timestamp 17:39] Mr. Nies said the reason for the rehearing was that in effect there was no decision. He said the argument that the Board followed their rules is not accurate because they should have stopped with the denied variance and not voted a second time. If the motion to approve the variance failed, then in accordance with their rules, that stood as a denial, so therefore there wasn't a need for another follow-up motion. He said because the second motion failed as well, he thought it clouds the issue because now there is a motion to pass that failed and a motion to deny that failed, and it raised the question of what the Board's decision really was because neither motion passed. He said that was why he would argue for a rehearing solely on that point and thought it was a process issue. Mr. Mattson said his reasoning for seconding the motion was subtly different in that he accepted that the Board's rules mean that the applicant was denied, but due to the infrequent nature of an affirmative and a negative failing to pass, he could see the usefulness of a clarifying vote of more affirmatively passing or being denied.

Vice-Chair Margeson said she would not support the vote. She thought the rules said if the motion to grant a variance for a special exception resulted in a tie vote, the resulting decision is denial unless a subsequent motion is made that receives at least four affirmative votes. Mr. Mannle said if the motions were reversed and the motion for approval came first and ended up in a 3-3 tie, the Board would entertain a motion for denial and that both motions would end up not getting four votes each. He said the majority of any process was needed to move forward. Mr. Nies said if it had stopped at the first motion, it would have been consistent with the rules and clear that it was denied.

He said the second vote confused the result. Mr. Rheaume said the NH Office of Planning and Development was a recommendation and not a law, but it did say that if a motion to grant failed by a two in favor three opposed margin in the case of five members, that did not mean that the variance was automatically disapproved. In such case, he said one of the members who disapproved the motion should propose their own new motion to disapprove the application and state the reason for denial. He said he thought the Board was consistent with that and further explained why. [Timestamp 23:47]. He said the Board could consider in the future whether they should make an effort to postpone until they had a full board. He said he would support the motion because Mr. Nies brought up the issue and he did not think the Board's discussion was fully captured in the minutes or findings of fact. He said the Board should have been more diligent to state that to the applicant, and he thought that the combination of those two deficiencies in the Board's review of the application could rise to the level of saying that a rehearing was warranted. Vice-Chair Margeson asked if the certified record was the transcript of the hearing or the meeting minutes. Ms. Casella said any written record on file was sent and a transcript could be requested. Vice-Chair Margeson said she would not change her mind, especially given that a certified record of the transcript could be provided.

The motion to grant the request for rehearing **failed** by a vote of 3-4, with Ms. Record, Vice-Chair Margeson, Mr. Mannle, and Chair Eldridge voting in opposition to the motion.

Vice-Chair Margeson moved to **deny** the request for rehearing, seconded by Mr. Nies. The motion to deny **passed** by a vote of 4-3, with Mr. Rheaume, Mr. Nies, and Mr. Mattson voting in opposition to the motion.

B. REQUEST TO POSTPONE The request of Kerrin J Parker Revocable Trust of 2012 (Owner), for property located at 86 Haven Road whereas relief is needed to construct an addition to the existing structure which requires the following: 1) Variance from Section 10.521 to a) allow a 9 foot front yard where 10 feet is required by front yard averaging; b) to allow a building coverage of 29% where 20% is allowed; and 2) Variance from Section 10.321 to allow of nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 206 Lot 27 and lies within the Single Residence B (SRB) District. **REQUEST TO POSTPONE** (LU-23-192)

Mr. Rossi returned to his voting seat and Ms. Record returned to alternate status.

DECISION OF THE BOARD

Mr. Mannle moved to postpone the petition to the May 21 meeting, seconded by Mr. Mattson.

Mr. Mannle said the Board routinely granted requests to postpone. Mr. Mattson said the applicant was working to make it a better application. Mr. Rheaume said the applicant was looking for a one-month continuance to the May meeting, so the motion to postpone it to May 21 was appropriate, also noting that the Board allowed the postponement at the previous meeting.

The motion passed unanimously, 7-0.

C. REQUEST TO POSTPONE The request of Atlas Commons LLC (Owner), for property located at **581** Lafayette Road whereas relief is needed for after-the-fact installation of an awning sign which requires the following: 1) Variance from Section 10.1251.20 to allow a 32 square foot awning sign whereas 20 square feet is allowed. Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor (G1) District. (LU-24-1) REQUEST TO POSTPONE

DECISION OF THE BOARD

Mr. Rheaume said the Board only had information from the Staff Memo and nothing from the applicant, and he asked what additional information the City Staff looked for. Ms. Casella said the staff requested that the applicant provide the existing signage square footage on the site.

Mr. Rossi moved to **grant** the request to postpone, seconded by Mr. Mannle.

Mr. Rossi said if the applicant was not ready to proceed before the Board, it didn't do the Board any good to force them to come and make a presentation. He said there was really no reason not to grant the request. Ms. Casella said the applicant was fine with a one-month postponement because they had to re-notice due to an error. Mr. Nies said it was the second postponement for a property that was out of compliance and that he hoped the applicant would be ready the next time. Mr. Rheaume said the Board should be given the full application or whatever condition it was in by the City Staff the next time and review it based on the merits at that time.

The motion passed unanimously, 7-0.

III. NEW BUSINESS

A. The request of Chinburg Development LLC (Owner), for property located at 6 Boyd Road whereas relief is needed to demolish the existing structure and construct a new primary dwelling which requires the following: 1) Variance from Section 10.521 to allow a) 6,703 square feet of lot area where 7,500 square feet are required; b) 6,703 square feet of lot area per dwelling unit where 7,500 square feet are required; c) 85 feet of frontage where 100 feet are required; and d) 68 feet of lot depth where 70 feet are required. Said property is located on Assessor Map 175 Lot 13 and lies within the General Residence A (GRA) District. (LU-24-23)

SPEAKING TO THE PETITION

[Timestamp 40:40] Attorney Monica Kaiser was present on behalf of the applicant. She reviewed the petition, noting that the proposed new home itself required no variances except for being proposed on a lot that did not meet the criteria for the existing house. She reviewed the criteria.

[Timestamp 49:28] Vice-Chair Margeson said the Board approved the variance two years before for the eight-condo units, and at that point, 6 Boyd Road was considered for redevelopment. She asked why that wasn't included in the original variance application. Attorney Kaiser said the ownership

changed. Mr. Rheaume said it wasn't clear to him because there were four properties in the defined area that included the next petition to be heard, and the applicant's client owned at least two of those four properties. He asked if they owned the lot being developed with the condo complex. Attorney Kaiser said she believed they did. Mr. Rheaume said the lot depth is described as 68 feet but that he did not see any drawing dimension in the Board's packet, and he asked how that dimension was calculated. Attorney Kaiser said she thought it was the average of the two side lot lines. Mr. Rheaume said when he did it, he came up with a much larger number than 68. Attorney Kaiser said the measurements might have to be taken at certain intervals along the lot or maybe a mistake was made. Mr. Rheaume said that in terms of depth, the applicant might be closer to the requirement. He said the applicant was running about 700 square feet short, so if the client owned both properties, he wondered why there was no way to resolve that lot area issue. He said it would have been ideal at the time that the condo complex was proposed if that action was taken to make the lot more conforming, but the client owned all the property lines other than the one against Boyd Road and the two hotels. He said he wanted to understand the client's perspective on why they weren't trying to make this more conforming and require less relief from the Board. Attorney Kaiser said the existing home violated the rear setback and there was a proposal to construct a new home that conforms and pulls itself further away from that lot line. She said there was no difference between a single-family home there now and a new one, and what was proposed would be an improvement on the rear setback. Ms. Casella said the lot depth requirement is the average between the front and the rear, and that she discovered that the property records had not been updated to reflect the new lot lines. She said if the applicant could not support a request they made, the Board could consider removing that portion of the request. It was further discussed. Ms. Casella said her concern was that the Board would grant relief for something that didn't exist. Mr. Rossi said the Board wasn't sure of the lot's depth, so they didn't have the information they needed. Attorney Kaiser said there must be a mistake and offered to withdraw the request for the lot's depth. Mr. Rossi said he thought the lot's shape was a distorted trapezoid and the left lot line was at an angle that would measure much longer than the lot's natural depth, so he suspected that the 68 feet was a straight shot back from the front line to the parallel rear lot line. He said he was reluctant not to consider the 68 feet just because the Board wasn't sure how it was calculated and thought the 68 feet reflected the current condition. Mr. Rheaume asked Attorney Kaiser if she was confident that 6,703 square feet was the correct lot area. Attorney Kaiser agreed.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Chris Randall of 80 Diamond Drive said when his grandparents purchased 212 Woodbury Avenue in 1923, it was an intergenerational home. He said his uncle owned the bungalow at 216 Woodbury Avenue and his grandfather sold the ranch at 214 Woodbury Avenue to his nephew. He said he had a hard time understanding how Portsmouth had a tremendous housing shortage and the fact that those three homes were considered unsubstantial. He said there was no hardship.

Phyllis Randell of 99 Boyd Road said when the project for the corner of Woodbury Avenue and Boyd Road was put forward, part of the agreement was that the homes on Boyd Avenue and adjacent homes on Woodbury Avenue would be renovated. She said the neighborhood had to endure the neglect of the house on Woodbury Avenue for years and now the developers were about to renege on the original plan. She said the new owner should be held to the original agreement and that there was no reason for the homes to be demolished except for corporate greed.

Martin Ryan of 221 Woodbury Avenue gave the Board members a handout with photos of the site and said the neighborhood had a wonderful history. As an abutter, he said he was against any further intensification of construction activities at the Chinburg construction site. He said that, after living with an abandoned house for over two decades, he wanted a win for the neighborhood so he had agreed to the previous developer's proposal. He said the neighborhood lost a one-of-a-kind Victorian and now the developer was proposing to remove a classic bungalow house and a house that had been part of the neighborhood's fabric for years. He said the contract and developer had not been good neighbors and asked that the Board deny any further demolitions.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Mark Ayotte of 9 Garden Street said the former owner Mr. Bailey was given a variance for the four pieces of property and wondered if that variance governed what happened on those four lots now. He said it wasn't a positive process for the neighbors for applicants to get approvals and then go back to the Board and change them whenever they wanted to.

Sharon Kempy of 55 Boyd Road said there was nothing wrong with the homes and that she didn't understand how construction companies could change the rules in place.

Karen Foye of 79 Boyd Road said she was opposed to tearing down the homes because the agreement was to renovate them. She said Portsmouth had a housing crisis and many homes were being torn town and million-dollar ones were taking their place.

Attorney Kaiser said the Board had to focus on the variance being requested. She said the site plan indicated that one variance was granted to allow eight dwellings on the adjacent property, and she did not believe relief was granted for 6 Boyd Avenue or for the other Woodbury Avenue property petition. She said as the subsequent purchasers of the development, Chinburg had to proceed in accordance with the submitted plans for that adjacent property and that there was no condition on the relief granted on that property that said what had to be done with the properties on adjacent sides. She said Chinburg had done a lot of work restoring mill buildings and she didn't think it was fair to call out the demolition of other structures as if it was something they did all the time. She said every property owner had the right to build up his property or tear his house down, and she noted that every one of the properties purchased was sold by a long-term community member.

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

DISCUSSION OF THE BOARD

[Timestamp 1:31:22] Mr. Rossi said he was one of the people who voted against the development of the commercial property as it is today but that it was irrelevant to the current discussion except that he wanted to acknowledge the concerns of the neighbors, who he thought all raised interesting points. He said it was worth going back to the variance request for the commercial property and seeing what was promised because when the Board approved variances, they approved them as presented and advertised. He said it was an interesting lesson for everyone with regard to the two properties being presented for variances. He said the written application indicated that there would be improvements to the existing homes/lots, which was lawyer's speak for being able to do whatever they wanted, so he did not think that there was anything in the original application for the variance that said the purchaser promised they would keep the homes as existing on the lot. He said the purchaser may have made other promises to individuals but that it wasn't what was presented to the Board and was not approved. He said one of the rationales for the commercial property was to present the opportunity for moderately priced homes in Portsmouth, which obviously had not happened, but that had no bearing on the current application. He said maybe it was a lesson learned for the Board because the members were often told that if they approved variances that pertained to the density of development, it would increase the housing stock in certain locations and bring prices down in Portsmouth, but he thought it did not seem to work that way. He said the Board did not change the lot lines or how the lots were allocated in the original application, and the only variance that was presented and approved was regarding the density of development and how many dwellings could be put on a single lot. He said the Board focused on the specific variance being requested and in this case, it was simply that they would allow the same use of the property, which was a single-family residence, and that it would be on an existing lot that was already nonconforming for that use. He said it was not in the Board's jurisdiction to make a judgment on the developer's competence and how they were managing the site. He said the proposed variance was to simply allow the continuation of that use with a new building that performs the same function and that he was in favor of granting the variance.

Mr. Nies verified that the meeting was held in April 2022 and was a request from Tuck. He noted that the written request granting the variance would not diminish surrounding property values, and also indicated that the closest abutters to the eight units were three remaining single family units to be purchased by Tuck and renovated. He said it went on to say that the three existing homes to remain were intended to be rehabilitated and their adjoining yards cleaned up. He noted that it said homes and not properties, which he interpreted as support for the idea that Tuck said they were not going to remove the homes. He asked what it meant when the Board said certain representations made at the meeting are considered to be conditions of granting the variance. Vice-Chair Margeson explained that in April 2022 the homes were identified by their lot numbers, and anything that the applicant says is considered conditions upon which the variance is granted as presented and advertised. She said they did not place stipulations in their variances and everything said in the presentation was considered a condition. Mr. Rossi said the sentence read that eight reasonablypriced homes would be provided and include vegetative screenings and significant improvements of the three existing homes/lots, which he read as the lot would be improved by demolishing and rebuilding a house, but he noted that it pertained to a variance made two years ago and that he did not know to what extent the Board could hold the other two properties. He said it wasn't really an enforceable item to them because there were two different properties that could be owned by two different people, even though they were not, and he didn't see how it was in the Board's iurisdiction to say that because an adjacent property had certain representations, those representations would be binding to the owners of the current properties under consideration. Vice-Chair Margeson said it was clear when the application came before the Board in 2022 what the applicant would do with the other three lots and that they would be improved. She said it wasn't part of the variance criteria because they were separate lots. She said her concern was with common ownership, and she did not agree with the variance the Board approved. She said the application before the Board was a completely different one and her concern was that the lots were all going to be merged into one lot or one homeowners association. Mr. Mannle said he voted for the development because he assumed that what the applicant said about the two houses in question being be renovated or improved would be true. He said he disagreed with Attorney Kaiser's comment that everyone would sell their lots to developers because he didn't see the market being high for a single-family house that abuts an 8-unit construction site, which would decrease the value of that home and would have been a good reason to deny that variance, but it didn't happen. He said the sole owner of the entire block had made no effort to make the specific lot more conforming, and he did not see the hardship.

Chair Eldridge said the Board always approved that type of request and that the house would not take up more space than the existing house took up and would have the same lack of depth. She said the ask was small and separate from the 8-unit request. Mr. Rheaume said the Board had to be careful in saying that they always approved that type of situation because each application was unique. He said the lot was not meeting the zoning ordinance requirements, and he had concerns about a recent and still viable opportunity for the property to be brought into a lot more compliance in terms of the overall square footage. He said the applicant, through the previous variance on the adjoining lot, got their cake, and requesting the additional variance on this lot that was not presented as part of the original package would have them eat their cake too. He said he was concerned about the condos being very close to the lot and impinging upon it. He noted that there used to be more open space around the lot, which made its substandard condition more acceptable, and he felt that the applicant had an opportunity to get the property cleaner and not have as many units and could have made it more of a conforming use with just a frontage issue. He said he didn't think it met the hardship criteria or the overall spirit of the ordinance and couldn't see how the Board could legitimately grant the variances. He noted that Chinburg was a conscientious developer and didn't think the range was beyond their ability to renovate. Mr. Mattson said the applicant could ask to change the lot lines but in this case the owner happened to own the adjacent lot, which isn't always the situation. He thought the Board should not consider the neighboring lots and treat the application as a standalone one because a lot of what was being discussed was not relevant. Chair Eldridge said she didn't see how it was a standalone application because there was a piece of land that was undersized and the applicant wanted to build a house on their land that is limited.

DECISION OF THE BOARD

Mr. Rossi moved to **grant** the variance for the application as presented and advertised, seconded by Vice-Chair Margeson.

[Timestamp 1:53:10] Mr. Rossi said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said he did not see any impact on the public interest with regard to safety or even creating a more overcrowded condition within the

neighborhood. He did not think there was anything in the petition that was the general character of the area and he believed it satisfied Sections 10.233.21 and .22. He said granting the variance would do substantial justice, noting that even though there was a feeling among some of the abutters that they were losing a piece of history, it really was not what was being considered unless it was part of the Historic District. He said substantial justice in this case meant that there would be a tangible loss to the public that would outweigh the benefit to the owner, and he could not see nor did he hear in the comments any substantial loss to the public that would outweigh the rights of the owner to build on the property as they saw fit. He said granting the variance would not diminish the values of surrounding properties because most of the surrounding properties were the condo units, which were the immediate abutters, and he saws no impact on those. He said they were all owned by the same person, and in this case it was relevant because he did not believe that the owner would change the lot in a manner that would reduce the value of his other holdings in the neighborhood. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said a hardship was defined in a particular way for the purpose of land use determinations, and that it was whether something about the property made it hard to use in full compliance with the zoning ordinance. He said the property's hardship is its preexisting lack of conformity with the variances being requested, like the depth, the frontage, and the total lot area. He said those things could not be changed, and to continue the nonconforming use, one would really have to consider those things to be a hardship for the property. He said he believed that Section 10.233.25 of the ordinance was satisfied by the existing nature of the lot.

Vice-Chair Margeson concurred. She said the request was for the frontage and the lot depth, and the lot depth was 68 feet and probably didn't even require the 68 feet, and the street frontage was 85 feet. She said there was nothing the owner of the lot could have done to increase the street frontage as a result of the condo development next to it, which led to the hardship, and that the hardship was that the previous variance granted was for one single lot that precluded actually increasing the street frontage on the lot, so therefore the interpretation of the enforcement of the provisions for the street frontage did not make sense for this lot. Mr. Rossi noted that the applicant requested relief from Section 10.311, which he thought was not appropriate because the Board would be saying that the lot did not require a variance in order to be developed. He said that didn't make sense because they were granting the variance that is required. Vice-Chair Margeson said that related to the minimum lot area and the street frontage. She said another condition of the lot was that it was undersized. Mr. Rossi said the applicant was getting the variance on Section 10.521. Ms. Casella said she addressed that issue in her memo and that the request from the applicant was for Section 10.311. She said she didn't believe that was applicable because it was the provision that said variances are required if the other dimensions can't be met. She said the applicant was requesting those variances, so that eliminated that need. She said she spoke to the applicant and that it was removed and not put into the notice. Mr. Rossi said he was just acknowledging that he believed the Board was correct.

Mr. Rheaume said he would not support the motion because he was concerned that the argument for hardship was that it was something that existed, so therefore it constituted a hardship. He said that wasn't how the Board's criteria worked. He said the Board was saying that it couldn't be changed when it was possible to get it changed. He said the main thing the Board was looking at was the proper amount of spacing between residential properties, and by building right up against the property line, a situation was created for relief for the property for a new use was not appropriate.

The motion **passed** by a vote of 4-3, with Mr. Rheaume, Mr. Nies, and Mr. Mannle voting in opposition.

Note: At this point in the meeting, Ms. Geffert left the meeting.

B. The request of **Chinburg Development LLC (Owner)**, for property located at **216 Woodbury Avenue** whereas relief is needed to demolish the existing structure and construct a new primary dwelling which requires the following: 1) Variance from Section 10.521 to allow 66 feet of frontage where 100 feet are required. Said property is located on Assessor Map 175 Lot 3 and lies within the General Residence A (GRA) District. (LU-24-24)

SPEAKING TO THE PETITION

[Timestamp 2:09:55] Attorney Monica Kaiser was present on behalf of the applicant. She reviewed the petition, noting that the lot had 66 feet of frontage that had not been changed by the lot line adjustment. She said the new owner wanted to build a home that would comply with all dimensional requirements except for the frontage. She reviewed the 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. Rossi moved to **grant** the variance for the application as presented and advertised, seconded by Mr. Mattson.

[Timestamp 2:16:39] Mr. Rossi said granting the variance would not be contrary to the public interest or to the spirit of the ordinance. He said the lot is in a zone where the use is the correct one and the proposed single-family residence would replace the existing single-family residence, so there would be no change in serving the public interest with the new structure v. the one that was currently there. He said substantial justice would be done because the lot would be used in the exact manner in which the variance is being proposed and will continue to be proposed, so there would be no loss to the public by continuing that use. He said it would not diminish the values of surrounding properties because the applicant's property was abutted on one side by a hotel and on the other side by the same owner's property, so it was illogical to assume that the proposed redevelopment of the lot would dimmish the value of either the hotel or the property owned by the same person on the other side of the lot. Relating to hardship, he said the special condition of the property is that it is bounded on two sides by developed lots and the side lot lines cannot be moved without bringing some other property equally out of conformance, therefore the 68-ft front lot line is unalterable in any way that would bring the lot in conformance for this purpose. He said the hardship was the nature of the property and the lot that could not be altered to come into full compliance with the

ordinance for the already existing use, so it was unreasonable to apply the ordinance's strict requirements for continuing this use.

Mr. Mattson concurred. He said regarding the hardship, the general public purposes of the ordinance's provision for the specific application regarding the street frontage, and as with the street frontage in the other yards' dimensional requirements, was to preserve light, air, and privacy. He said in this case, even with the inadequate street frontage, the dwelling would still be entirely within the setbacks and meet that purpose, so there was no fair and substantial relationship for this situation. Mr. Rheaume said he would support the motion. He said the lot was reconfigured by the applicant's predecessor to be fully compliant in every way other than the street frontage. He said one of the other aspects of the hardship was that it was bordered by a large open space associated with the hotel use on the next property over, so in terms of the true intent of public concerns with the ordinance as to the feel of overcrowding, that helped provide relief on that side.

The motion passed unanimously, 7-0.

C. The request of Cyrus Beer and Erica Gardner Beer (Owners), for property located at 64 Mount Vernon Street to amend the Variances granted on March 19, 2024 for the demolition of the existing detached shed and construction of a new shed to include the following: 1) Variance from section 10.521 to allow a 2 foot side yard where 10 feet is required. Said property is located on Assessor Map 111 Lot 30 and lies within the General Residence B (GRB) and Historic Districts. (LU-24-20)

SPEAKING TO THE PETITION

[Timestamp 2:22:20] The applicant Cyrus Beer said he made a mistake by missing the point in the corner that was less than five feet when he asked for a 5-ft side setback. He said he thought it was a side setback but that it actually wrapped around the corner, so he was requesting a change of a 2-ft setback. He said it would still be five feet along the south wall but would allow that corner to be built. He said the location or size of the shed would not change, and he reviewed the criteria. 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

Vice-Chair Margeson moved to **grant** the variance for the petition as presented and advertised, seconded by Mr. Mannle.

[Timestamp 2:27:10] Vice-Chair Margeson referred to Sections 10.233.21 and .22 and said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. She said the Board often looked at side yard setbacks to preserve light, air, and space between properties, but in this case it was only for a shed in the back of the property and not for any

kind of bigger structure, so she found that the spirit and public interest or the ordinance were met. Referring to Section 10.233.23, she said substantial justice would be done because the public would not lose by the granting of the variance for a minimal setback for a shed. Referring to Section 10.233.24, she said granting the variance would not diminish the values of surrounding properties. She said the Board previously granted it for five feet and it was just a loss of another three feet, and the surrounding properties would not be harmed but in fact would gain by improvements made to the applicant's property. Referring to Section 10.233.25, she said literal enforcement of the provision of the ordinance would result in unnecessary hardship. She said the property has special conditions that distinguish it from other properties in the area, and owing to those special conditions, a fair and substantial relationship does not exist between the general public purposes of the ordinance's provision and the specific application of that provision to this property, and the proposed use is reasonable. She said the shed was an accessory structure to a house in a residential area and the property did have special conditions because the property's topography began to trend upward as one got further away from the side yard lot line, making it difficult to put the shed further in from the lot line. She said it was just a certain corner of the shed that meets a jog on the property line and was a de minimis request. Mr. Mannle concurred and had nothing to add.

Mr. Nies asked if the ownership changed, would it mean that the new owner could enlarge the shed up to two feet from the property line without coming before the Board. Ms. Casella said if a new owner said the variance was granted for two feet, they would have to prove that they could meet the two feet. She said that wasn't the case with this application and the five feet still stands on the back and the other side yard. Mr. Rheaume said that was his concern as well, and he recommended a stipulation saying that it is a 2-ft dimension from the jog in the property line and not the overall side yard. Vice-Chair Margeson and Mr. Mannle accepted the stipulation.

The **amended** motion was:

Vice-Chair Margeson moved to **grant** the variance for the petition as presented and advertised, with the following **condition**:

1. The 2-ft side yard setback only pertains to the area of the jog.

Mr. Mannle seconded the motion. The motion passed unanimously, 7-0.

D. The request of **O'Brien Family Revocable Trust of 2018 (Owner)**, for property located at **3 Moebus Terrace** whereas relief is needed demolish the existing structure and construct a new primary structure which requires the following: 1) Variance from Section 10.521 to allow a) 10,823 square feet of lot area where 15,000 square feet is required; and b) 10,823 square feet of lot area per dwelling unit where 15,000 square feet is required. Said property is located on Assessor Map 207 Lot 21 and lies within the Single Residence B (SRB) District. (LU-24-40)

SPEAKING TO THE PETITION

[Timestamp 2:36:30] Attorney John Bosen was present on behalf of the applicant, with the owners, architect Carla Goodnight, and engineer Eric Weinberg. Attorney Bosen reviewed the application,

noting that the existing home was old and was served by a private septic system near Little Harbor. He said the plan was to replace the home with a single-family one that met all the dimensional requirements except for the pre-existing lot area deficiency. He reviewed the criteria in detail.

The Board had no questions. Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPOSITION TO THE PETITION

Betsy Tabor of 55 Pleasant Point Drive said she and her husband loved being able to look out and see in all directions. She said the 1958 planners of the neighborhood built the houses close together but adhered to a vision of creating view corridors between the houses, which would not be possible if she or the next-door neighbors built two-story additions out to their lot lines. She said the proposed house footprint was 43 percent greater than the original on an already nonconforming lot, and the new plans were for 67-1/2 feet of length because the garage was going from underneath the house to the side. She said increasing the footprint from 1400 sf to 2,000 sf and two stories high would give her a walled-in effect and take away her view. She said she could not understand the need for such a larger house and that losing her view corridor was a loss for her.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Attorney Bosen submitted photos to the Board showing the view from the front and back of Ms. Tabor's home, a view that had a lot of vegetation and was covered by an 8-ft fence. He asked if that particular view was one to enjoy looking at the water. He said there were no view easement or view corridors on record at the Register of Deeds and that the Tabors' objection didn't have anything to do with the variances requested. He said the zoning relief requested was because the lot was small, and all the dimensional aspects of the zoning ordinance were met. He said there were six lots in the area, five of which needed the same relief that the applicant was requesting because they were all small lots. He said he believed that all the zoning criteria were met.

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

DECISION OF THE BOARD

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

[Timestamp 2:48:42] Mr. Rheaume said he understood the applicant's concern about the loss of a view and noted that the Board had several arguments over the years about views being disrupted by a proposed change, but he said it was necessary to place some type of restriction of a subject parcel to preserve that view. He said if there was a master plan put in place to preserve certain view sheds when the subdivision occurred, it had to be recorded as part of the deeds of each of the properties

going forward. He said even if the applicant kept the current home, they had a right to add an expanded garage and place it in any perceived view shed of any abutting property. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the applicant made a good argument that there is an overall characteristic to the neighborhood. He said when the subdivision was created, the same sized lots were created with homes placed on them, and the applicant was not proposing to do anything different by placing another single-sized family home on the lot and making it slightly more conforming. He said it would conform with the other setback requirements of the ordinance. He said substantial justice would be done, noting that the purpose of the ordinance in this case was to prevent overcrowding. He said the established neighborhood was designed around the applicant's sized lot and the applicant was not proposing to change any of that but simply wanted to take advantage of the allowed zoning characteristics of the lot and to build a new home within those characteristics. He said granting the variance would not diminish the values of surrounding properties because the applicant was building out and would be in conformance with the ordinance on a lot with similar characteristics to the other lots around it, so it would not negatively impact other property values. Relating to the hardship, he said it was a macro look of the characteristics of the envisioned lot in this particular zone compared to what is here and was substandard in terms of total square footage but was representative of a micro area, so he did not think it was different than what the overall zoning objectives are. He said there were unique characteristics to the property relative to the overall expectations of the zone that it happened to lie in, which indicated that it was not truly fair to apply the requirements of that zone on this parcel. He said the property could not be reasonably used in strict conformance with the ordinance. He said the applicant was not proposing to change the use of a single-family home, although the size and dimensions were different, but the applicant could have placed an addition on the existing home that would have those same characteristics. Mr. Rossi said the Board saw a lot of cases of an existing use like this that will continue, but it was a nonconforming lot and there was no basis for denying a variance request in many of those circumstances. He said several suggestions were made concerning things not in the zoning ordinance, but unless there was some modification made to the ordinance stating that other things that could be considered with some kind of formula about how large or tall of a house could be put on a nonconforming lot where all the setbacks are still conforming, there really was nothing the Board could say was correct or not correct, so within the limitation of the ordinance as it stands, he thought the Board's decision was correct.

Vice-Chair Margeson said she would not support the motion because the lot and anything that needed to be built on it did not need to have relief due to the size of the lot, but it was almost two-thirds less than what was needed for the SRB zone, so that building coverage is 19.8 percent, which is close to 20 percent but the 20 percent goes with the 15,000 square feet and not with the 10,823 square feet. She said the renderings of the house showed it without much elevation, and when she toured the area she found that the house was high up. She said the proposal would alter the essential character of the neighborhood. Mr. Rheaume said he didn't think there was any indication that the applicant would be getting extra coverage and said it met the 20 percent requirement. Chair Eldridge said she didn't think the neighborhood had an essential character because there were many different types of architecture in it, including new additions. She said the house was high and would be noticeable but that it met all dimensional criteria. Mr. Mattson said it was interesting that a property could meet both the street frontage and lot depth but still be too small in lot size.

The motion **passed** by a vote of 5-2, with Vice-Chair Margeson and Mr. Mannle voting in opposition.

E. WITHDRAWN BY APPLICANT The request of Maxico LLC (Owner), for property located at 865 Islington Street whereas relief is needed to establish a yoga studio with more than 2,000 square feet of gross floor area which requires a Special Exception from Section 10.440, Use #4.41 where it is permitted by Special Exception. Said property is located on Assessor Map 172 Lot 11 and lies within the Character District 4-W (CD4-W). (LU-24-41) WITHDRAWN BY APPLICANT

The petition was withdrawn by the applicant.

IV. OTHER BUSINESS

- **A.** Training Opportunities
 - i. NH OPD Spring 2024 Planning and Zoning Conference May 11, 2024
 - ii. OPD Planning Lunch Webinar "Welcome to the Board" April 18, 2024

Chair Eldridge said the conference was worthwhile. Ms. Casella said the lunch webinar was part of the monthly webinar series that OPD did.

V. ADJOURNMENT

The meeting adjourned at 10:03 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. April 30, 2024

MEMBERS PRESENT: Beth Margeson, Vice Chair; Paul Mannle; Thomas Nies; Thomas

Rossi; Jody Record, Alternate; ML Geffert, Alternate

MEMBERS EXCUSED: Phyllis Eldridge, Chair; David Rheaume; Jeffrey Mattson

ALSO PRESENT: Jillian Harris, Planning Department

Acting-Chair Margeson called the meeting to order at 7:00 p.m. Alternates Ms. Record and Ms. Geffert took voting seats for the evening. Acting-Chair Margeson stated that originally there were only supposed to be five voting members present and the applicants were told before the meeting that they would have the option to postpone according to the rules. She said even though there were now six members, the applicants could still postpone because they were told that there would only be five Board members present.

I. NEW BUSINESS

A. The request of Elizabeth Coursen (Owner), for property located at 229 Pleasant Street, Unit 4 whereas relief is needed for the following: 1) Variance from Section 10.515.14 to install a mechanical unit 5.5 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 108 Lot 6 and lies within the Mixed Residential Office (MRO) and Historic District. (LU-24-42)

SPEAKING TO THE PETITION

[Timestamp 4:00] The applicant Beth Coursen was present and chose not to postpone the petition. She said she lived in and owned the carriage house on the property and could see other mini splits from several properties around her that did not seem to meet the regulations for the district. She reviewed the petition and the criteria.

[Timestamp 8:14] Mr. Nies asked the applicant why she thought the chosen location was the best one for the use. Ms. Coursen said that she submitted an application for a mini split the previous year that called for it to be in the front of the carriage house but was told that its efficiency would be diminished because the lines to the inside units would be longer. She said both the front and the back of the house were visible from Richmond Street and that the mini split's new location between her property and the adjoining one would only be visible to the adjoining property owner.

Mr. Rossi referred to the memo from Brigitte Bailey and the condominium association and asked if both the properties referenced in the memo were part of the condo association. Ms. Coursen said the Morrow property was not part of the condo association but was the adjoining property on Richmond Street and that the owner submitted a letter stating that she had no objection.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

[Timestamp 11:10] Mr. Rossi said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the general purpose of the setback requirements in the zoning ordinance was to preserve open space and light between structures, and the mini split was a low profile unit that would not cast any shadows in any significant bulking way or infringe upon the open space between the applicant's property and the adjoining one. He said it would do substantial justice because there would be no loss to the public due to the unit being placed out of sight of the general public, so it would not have a detrimental impact on the character of the Historic District. He said, therefore, that denying the variance would create a burden for the applicant that would not be properly counterbalanced by a loss to the public for approving the variance. He said granting the variance would not diminish the values of surrounding properties, noting that the most adjacent abutter submitted a letter of support for the variance, which indicated that the person in the best position to estimate the impact on the value of their property has determined that it would not have a negative impact on the value of their property. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the hardship of the property was its location in a crowded area with substandard-sized lots, and the purpose of the ordinance is not to prevent modernization of HVAC units within a residential community like the applicant's, therefore the literal enforcement of the ordinance does not have any bearing on the purpose of the ordinance. Mr. Mannle concurred. He said these types of variance requests, especially for mechanical units, are quite common in a city that is 400 years old and that the Board should approve it. Ms. Geffert said she wanted to encourage mini splits as long as there was no real dimensional change because they were a great replacement for air conditioning.

The motion **passed** unanimously, 6-0.

B. The request of Giri Portsmouth **505 Inc. (Owner)**, for property located at **505 US Route 1 Bypass** whereas relief is needed to demolish the existing structure and construct a new hotel with a drive-thru restaurant which requires the following: 1) Special Exception from 10.440 Use #10.40 hotel where it is permitted by Special Exception; 2) Variance from Section 10.835.32 to allow 5 feet between the lot line and drive-thru and bypass

lanes where 30 feet is required for each; 3) Variance from Section 10.835.31 to allow 18 feet between the menu and speaker board and the front lot line where 50 feet is required; 4) Variance from Section10.5B22.20 to allow up to 60 feet in building height within 50 feet of the street right-of-way line whereas up to 45 feet is permitted; 5) Variance from Section 10.5B34.70 to allow up to 60 feet in building height whereas 50 feet is permitted; 6) Variance from Section 10.5B34.60 to allow a 30 foot setback for a small commercial building whereas a maximum of 20 feet is permitted; 7) Variance from Section 10.5B33.20 to allow less than 75 percent front lot line buildout whereas a minimum of 75 percent is required for commercial buildings. Said property is located on Assessor Map 234 Lot 5 and lies within the Gateway Neighborhood Corridor (G1) District. (LU-24-44)

SPEAKING TO THE PETITION

Attorney John Bosen was present on behalf of the applicant and said they wished to postpone the petition, given the makeup and size of the Board that evening

DECISION OF THE BOARD

Acting-Chair Margeson noted that she told the applicants before the meeting that there would only be five voting members, so the applicants had the option to postpone

Mr. Mannle moved to **postpone** the petition to the May 21 meeting, seconded by Ms. Geffert. The motion **passed** unanimously, 6-0.

C. The request of **Joshua P. Lanzetta (Owner)**, for property located at **255 McKinley Road** whereas relief is needed to construct additions to an existing single-family residence which requires the following: 1) Variances from Section 10.521 to allow a) a front yard of 18 feet where 30 feet is required; b) a rear yard of 14 feet where 30 feet is required; and c) 23% building coverage where 20% is the maximum allowed. Said property is located on Assessor Map 250 Lot 16 and lies withing the Single Residence B (SRB) District. (LU-24-38)

SPEAKING TO THE PETITION

[Timestamp 19:00] The applicant Joshua Lanzetta was present to review the petition. He said his home was small and that he wanted to expand the western side of the house to make the living room larger, add a front and back landing, and add a mud room and potentially an office space. He showed the neighborhood context and said it had 80 percent nonconformity and that he wanted to mimic the existing setbacks for the front and back abutting properties. He said he had four letters of support from his closest neighbors as well as support from other neighbors. He showed a realtor's comp appraisal and the concept of the architectural design and he reviewed the criteria. [Timestamp 37:33] Mr. Mannle asked why the maps shown by the applicant during his presentation were not part of the packet. Ms. Harris said the presentation was given to her prior to the meeting

and that it looked like it had all the items that were in the packet, along with mapgeo maps. Mr. Mannle said the packet did not have area maps or specific maps for the lot. Ms. Harris said that was new information. The applicant further explained why it was late. Mr. Mannle said it was traditional to include everything the applicant was going to present at the meeting. He asked if the existing one-car garage would be eliminated. Mr. Lanzetta said the garage would be brought forward 20 feet, which would leave four parking spots in front of the garage and some on the sides. Mr. Mannle said the side lot variances in the SRB zone were 10 feet. He said the applicant had eight feet in the front, 13 feet on the property's right side, and at least 15 or more feet off the back side of the property, so he would not have to incur any variances. Mr. Lanzetta said the structure and architecture would be expensive and that they wouldn't be able to use any of the existing structure as far as open space and would be cutting brick and putting high beams for supports. He said the entire layout of the house would have to be reconfigured. He said there was space on the east side that did nothing with the existing structure of the house for the family, which was why they needed more space on the west side. Mr. Mannle said the house was a brick ranch so there were no interior bearing walls. Mr. Lanzetta disagreed and said the bisecting hallway in the house had load bearing walls. Mr. Mannle asked if the current garage would be used as living space. Mr. Lanzetta said it would be a bedroom and that the existing door at the rear had a lintel that would allow entrance into the rear addition. Mr. Mannle verified that the proposed rear addition was for rear entrance and an office and the proposed front addition was for a garage and front entrance. Mr. Lanzetta said the living room would be expanded to allow space for a dining table. Mr. Mannle asked if the brick wall would be removed. Mr. Lanzetta said it would not because of the bay window, the front door, and a header that spanned the entire opening, and he further explained it.

[Timestamp 45:28] Acting-Chair Margeson said renderings were included as part of the presentation, but the representations made for the building with the flat roof and peak roof were considered conditions upon which the variance might be granted, and if they changed, the applicant would have to return. Mr. Lanzetta said he had wanted to ascertain whether the structures would be permitted and that he intended to work with an architect and do the peak roof. He said he wanted approval to not go above the existing ridgeline. Acting-Chair Margeson said the request could be for the pitched or flat roof but the variance was conditioned upon everything presented. She said it would have been better to present an entire application to the Board.

[Timestamp 48:28] Mr. Rossi said when the Board looked at front setbacks, there was usually a provision to look at the average setback on neighboring properties. He asked if the Board knew what that was and if it was consistent with the neighborhood. He said it looked like the house to the right of the applicant's lot line was substantially farther set back than the proposed front building addition. He said the applicant was referencing a single point, which was a corner of an outbuilding on the left property line, so it wasn't really apples to apples. He asked Ms. Harris what the average setback in the neighborhood was. Ms. Harris said she didn't have a specific number but knew that the front yard averaging was not working in favor of the proposed setback. Mr. Lanzetta said it was a short block and the two homes to the east were at the depth that his house was in, about 38 feet, so the formula really didn't do much, and he further explained it. Mr. Rossi asked Ms. Harris if her assessment of the front yard setback included the properties across the street from the applicant. Ms. Harris said it would just be on the same side of the street within 200 feet of the property.

Acting-Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD

[Timestamp 54:02] Mr. Rossi said the variance requests were big asks and big encroachments on the front and back yard setbacks. He said the applicant presented a decent rationale as to why the rear addition had to be on the back side of the lot, but he was still concerned about the front yard setback because it was a significant deviation from what was already there. Mr. Mannle said he could not support the application, even though the lot was oddly shaped and had inherent hardship because the current building was 23 feet away from the back lot where the standard was 30 feet. He referred to McKinley Road on the Geo map that showed the two houses on either side as basically the same setback as the applicant's house, and he said the house that directly abutted had an addition that went along the larger side of the triangular lot. He said he did not believe that relief for the back addition to be moved to the other side could be given since it was just an office and a doorway was necessary to get to that office. Referring to the proposed front addition, he said the applicant wanted a variance of 20 feet but was keeping the one-car garage and 20 feet was a lot for one car. Mr. Mannle said he did not see any reason why the garage couldn't be moved back to have less of an impact on the front side of the lot. He said the applicant had options but wanted to add 1,000 sf to a house that was already nonconforming. Mr. Rossi said usually an application where something was becoming more nonconforming had an offset benefit where another aspect of the property became less nonconforming. Acting-Chair Margeson said she initially had problems with the application, like why the applicant couldn't go up and why the addition on the back couldn't go on the other side of the house, but she felt that the applicant answered those issues.

[Timestamp 1:00:48] Ms. Geffert read the statute, which stated that if the Board determines that it lacks sufficient information to make a final decision on an application and the applicant does not consent to an extension, the applicant can submit a new application for the same or substantially similar request for relief. She said if the Board followed that course of action, they would not create a Fisher v. Dover concern. Acting-Chair Margeson said the issue was that the Board did not have enough information. Ms. Geffert said if the Board determined that they lacked sufficient information to make a decision, they could deny without prejudice and allow the applicant to return, as opposed to a formal denial that would create a Fisher v. Dover situation. It was further discussed.

DECISION OF THE BOARD

Mr. Mannle moved to **deny** without prejudice because it lacks sufficient information to make a final decision.

[Timestamp 1:03:16] He said the applicant could resubmit the same application with more information or submit a brand new application and that Fisher v. Dover would not be a consideration. Acting-Chair Margeson said that was different from Section 674.33 Section 8 in that

if the Board moved to deny without prejudice due to the need for additional information, she did not think it meant that the applicant could submit a new application but would need to supplement the existing application. Ms. Harris agreed and said the motion needed to include what information was lacking. It was further discussed.

Amended motion:

Mr. Mannle moved that the Board **deny** the application without prejudice for lack of information, including maps of the neighborhood, photos of the current structure from all angles of the lot, photos of the neighborhood, complete renderings of what the architecture will look like when it is built, and an averaging calculation of the neighborhood. Mr. Rossi seconded the motion.

[Timestamp 1:06:18] There was further discussion regarding how important it is for an applicant to submit all relevant information in advance of the meeting so that the Board is aware of it; any deviations from the application would require the applicant to return before the Board; and if the application is denied without prejudice and the applicant submits a new application for the same or substantially similar request for relief, there could be minor changes when it comes back.

The motion passed unanimously, 6-0.

II. ADJOURNMENT

The meeting adjourned at 8:15 p.m.

Respectfully submitted,

Joann Breault BOA Recording Secretary

II. OLD BUSINESS

A. The request of Kerrin J. Parker Revocable Trust of 2012 (Owner), for property located at 86 Haven Road whereas relief is needed to construct an addition to the existing structure which requires the following: 1) Variance from Section 10.521 to a) allow a 7.5 foot front yard where 10 feet is required by front yard averaging; b) to allow a building coverage of 26% where 20% is allowed; and 2) Variance from Section 10.321 to allow of nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 206 Lot 27 and lies within the Single Residence B (SRB) District. (LU-23-192)

Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required	
Land Use:	Single family dwelling	*Second floor expansion and front deck addition	Primarily residential	
Lot area (sq. ft.):	7,889	7,889	15,000	min.
Lot Area per Dwelling Unit (sq. ft.):	7,889	7,889	15,000	min.
Street Frontage (ft.):	86	86	100	min.
Lot depth (ft.)	72	72	100	min.
Front Yard (ft.):	12	7.5	10 (per 10.516.10)	min.
Left Yard (ft.):	13	13	10	min.
Right Yard (ft.):	Garage: 1 House: 15	Garage: 1 House: 15	10	min.
Rear Yard (ft.):	20	20	30	min.
Height (ft.):	<35	25.5	35	max.
Building Coverage (%):	25	26	20	max.
Open Space Coverage (%):	>40	>40	40	min.
Parking	2	2	2	
Estimated Age of Structure:	1941	Variance request(s) shown in red.		

^{*} Relief needed to construct an addition to the already non-conforming primary structure that would further impact the non-conformity.

Other Permits/Approvals Required

Building Permit

Neighborhood Context





Previous Board of Adjustment Actions

- October 27, 1981 the Board granted a variance to allow a 12' x 22' garage with a 1' Right Side yard where 10' is the minimum required.
- <u>April 26, 1983</u> the Board **granted** a variance to allow a variance from Article III, Section 10-302 to construct a 12' x 24' addition with a Front Yard of 19' where 30' is required and a Rear Yard of 29' where 30' is required.
- March 22, 2005 the Board granted a variance to allow a variance from Article III Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow a 14' x 24' one story addition with a) a 20'8" rear setback for the addition and a 19'8" rear setback for the steps from the addition where 30' is the minimum required; and b) 25% building coverage where 20% is the maximum allowed.
- March 19, 2024 The Board voted to continue the request a variance from Section 10.521 to a) allow a 9' front yard where 10' is required by front yard averaging; b) to allow a building coverage of 29% where 20% is allowed; and 2) Variance from Section 10.321 to allow of nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.
- <u>April 16, 2024</u> The Board granted the applicants request for a one-month postponement to the May 21, 2024 meeting to gather additional information requested by the Board.

Planning Department Comments

The applicant is requesting relief for the addition to the front of the primary structure. The proposed second floor conforms to minimum yard requirements and does not require relief; however the addition of the front porch will encroach into the front yard area and will increase the existing non-conforming building coverage.

At the March 19, 2024 BOA meeting, the Board closed the public hearing and voted to postpone the application, asking the applicant to come back with more information and specific details on property boundaries.

The applicant has submitted to the Board a stamped survey that represents a proposed setback of 7.7' in the front (which has been conservatively rounded to 7.5') and 26% building coverage. The request was readvertised per the BOA rules and regulations and the new front yard and building coverage were represented in this most recent advertisement and noticing. For reference, the original request was for a 9 foot front yard and 29% building coverage.

To accept and consider the new information, the Board must vote to suspend the rules and accept the new information prior to any presentation or discussion with the applicant. The Board should then reopen the public hearing prior to taking action on 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 <u>special conditions</u> 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

May 1, 2024

City of Portsmouth Attn: Stefanie Casella, Planner Zoning Board of Adjustment 1 Junkins Avenue Portsmouth, NH 03801

RE: Variance Application of Kerrin J. Parker, Trustee of the Kerrin J. Parker **Revocable Trust of 2012** 86 Haven Road, Tax Map 206, Lot 27

Dear Stefanie.

Please find a copy of the following submission materials in connection with the variance application being filed on Kerrin Parker's behalf for property located at 86 Haven Road:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Existing and Proposed Conditions Site Plan;
- 4) Architectural Plans;
- 5) GIS Map of Property; and
- 6) Photographs of Property.

A copy of the above application materials 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

Kerrin J. Parker, **Trustee of the Kerrin J. Parker Revocable Trust**, record owner of the property located at 86 Haven Road, Tax Map 206, Lot 27, Portsmouth, NH (the "Property"), hereby authorizes **Durbin Law Offices**, **PLLC** to file any zoning, planning or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.

Kerrin J. Parker Revocable Trust

January 10, 2024

Kerrin J. Parker, Trustee

CITY OF PORTSMOUTH

NARRATIVE TO VARIANCE APPLICATION

Kerrin J. Parker Revocable Trust of 2012 Kerrin J. Parker, Trustee ("Applicant")

> 86 Haven Road Tax Map 206, Lot 27

Introduction

Existing Conditions

The Property is a 7,889 square foot improved parcel of land situated at the very end of Haven Road owned by Kerrin J. Parker, as Trustee of the Kerrin J. Parker Revocable Trust of 2012 (the "Property"). The Property contains a relatively small single-family residence that Kerrin resides in with her two children. It is zoned Single-Family Residence B. The Property is abutted by single-family homes to the north and east. To the south and west, it is abutted by Little Harbor School and related City land.

The single-family home on the Property was originally built in 1941. There is a also a small shed and detached garage on the Property. The existing home was originally one-story in height and consisted of only the front of the house facing Haven Road. In 1983, the Zoning Board of Adjustment ("Board") granted the variances necessary to construct a small two-story addition to the rear. The resulting addition is not a full two-stories in height. It is closer to 1.5 stories in height. The front of the home remains one-story in height and then transitions to approximately 1.5 stories in height in the rear. In 2005, relief was granted to allow another small, one-story living room addition to the rear of the home.

Proposed Conditions

Second Floor Expansion

The Applicant would like to create a full second floor on the home to allow for safer, more adequate headroom and to accommodate an additional bedroom and bathroom. Presently, the Applicant shares a bathroom with her two daughters on the second floor of the home.

Porch Addition

In addition to creating a full second floor over the existing footprint of the home, the Applicant would like to construct a farmer style porch onto the front of the home to improve its architectural appeal and functionality. The new porch would connect the existing front entryway to the north (right) to the existing side deck and entryway to the south (left).

Zoning Relief Summary

The Applicant seeks the following variances from the Board:

Article 10.521

- a) Building Coverage to allow 26% (+/-) building coverage where 23% (+/-) exists and 20% is allowed;
- b) Front Yard Setback allow for a 7.7'(+/-) front yard setback where 7.7' exists and 30' is required.¹

Section 10.321: To allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Variance Criteria

Granting the variances will not be contrary to the spirit and intent of the Zoning Ordinance or the public interest.

In the case of <u>Chester Rod & Gun Club, Inc. v. Town of Chester</u>, 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." "<u>Id</u>. 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." <u>Id</u>.

Second Floor Expansion

The vertical expansion of the second floor of the home will be located outside of the applicable building setbacks and contained entirely over the footprint of the existing home. The area of the existing home above which the expansion is proposed by itself does not violate the building coverage limitation in the Ordinance as the footprint is 1,044 square feet. The second-floor expansion has been included in the request for variance relief under Section 10.321 out of an abundance of caution due to the Property itself being non-conforming with respect to building coverage; however, this limitation does have a direct correlation to the proposed second-floor expansion and should not apply under the circumstances.

The public interest is observed by allowing for a code-compliant, aesthetically appealing expansion of the second floor of the home. It is also consistent with the spirit of the Ordinance, which in this case relates to total building coverage and is to protect against the overcrowding of land. Aside from the new farmer's porch, which is discussed below, there will be no expansion to the footprint of any existing structures on the Property.

¹ Based on the average alignment of primary structures within 200' on the same side of Haven Drive, the required front yard setback is approximately 10' pursuant to Section 10.516.10 of the Ordinance. **Exhibit A.**

Farmer's Porch

The proposed farmer's porch does constitute an expansion to the existing footprint of the building, thus increasing the building coverage by just under 4%. In addition, at least a portion of it will encroach into the front setback. The porch will follow and wrap around the front façade of the home. It will have a setback of 7.7' at its closest point to the front boundary along the northern elevation of the Property to 9.8' at its farthest point to the front boundary along the southern elevation of the Property. The existing home, including front entryway, has a setback of 7.7' to 15.6' by way of comparison.

The appearance of the home will be aesthetically improved with the modifications made to the roofline and façade the home. Having a wrap-around farmers-style porch that connects the entryway to the south with the entryway to the north will also improve the functionality of the home and allow for more social interaction with the neighborhood while not altering the essential character of the neighborhood or having any negative impact upon the public interest. The proposed building coverage will be consistent with about half of the other properties along Haven Road.

The purpose of minimum setback standards is to ensure that there is adequate light, air and space between abutting properties and the structures thereon. Front setback restrictions are also often utilized to promote a uniform streetscape. In this instance, based on the City GIS, the average alignment of principal buildings on the same side of the street (within 200') is 10'. The proposed setback is 7.7' - 9.8', which is consistent with surrounding structures. The spirit of the Ordinance will be observed, as the proposed farmer's porch will not have any impact upon the light, air and space of any abutting property and will maintain a consistent streetscape on Haven Road.

Substantial Justice will be done in granting the variances.

To determine whether substantial justice is done, the Board must balance the equities between the rights of a private landowner and the public interest in deciding whether to grant or deny a variance request. The "only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." New Hampshire Office of State Planning, The Board of Adjustment in New Hampshire, A Handbook for Local Officials (1997); *Malachy Glen Assocs., Inc. v. Town of Chichester*, 155 N.H. 102 (2007).

There is no conceivable gain to the public by denying the variance relief as it relates to the expansion of the second floor or the proposed farmer's porch. It would constitute a loss to the Applicant to deny the request for the expansion of the second floor, as it will allow for a second bathroom and sufficient bedroom space for the Applicant and her two daughters. The farmer's porch adds aesthetic and functional value without negatively impacting any abutting properties. For the foregoing reasons, it would constitute an injustice to deny the application in whole or in part.

Surrounding property values will not be diminished by granting the variance.

It would be illogical to conclude that surrounding property values would be negatively affected in any way by the proposed improvements to the Property. The proposed improvements will be in keeping with the character of the neighborhood and improve the Property aesthetically. The second-floor expansion and proposed farmer's porch will only add value to the Property and hence, surrounding properties.

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

The Property has special conditions that distinguish it from surrounding properties. It is uniquely situated at the end of Haven Road, which is abutted by City land that consists of open green space (field(s)) to the south and west. The Property does not see a lot of foot or vehicular traffic. The Property has 53% of the lot area required under SRB Zoning. Based on the area of the lot (7,889 sf.) and the 20% building coverage limitation, only 1,578 sf. of the Property can be occupied by structure. In addition, the Property is irregularly shaped. It has a panhandle or "logger's boot" shape. It is 86' in width in the front and narrows to 10' in width at the rear lot line. Once the applicable building setbacks (10'/30') are applied to the Property, there is very little area available for development. The original home on the Property was constructed in 1941, prior to current zoning, and did not account for the needs of a family in the 21st century.

The Property is uniquely situated and burdened in comparison with surrounding properties, such that there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

As argued above, it is undersigned counsel's opinion that the *expansion of the second floor* should be exempt from needing variance relief under Section 10.321 and 10.521 of the Ordinance since it only involves a vertical expansion that does not further extend any existing non-conformities of the Property.

The proposed use is reasonable. The existing single-family use of the Property will continue and is encouraged and permitted by right in the SRB zoning district. The modifications to the Property will allow for a more modern, comfortable living environment that complies with the current building code and allows for safer, more adequate ceiling height and headroom on the second floor of the home.

Conclusion

The Applicant has demonstrated that her application meets the five (5) criteria for granting each of the variances requested. She thanks the Board for its time and consideration of her application and respectfully requests your approval.

Respectfully Submitted

Dated: May 1, 2024 Kerrin J. Parker, Trustee of the Kerrin J. Parker Revocable Trust of 2012

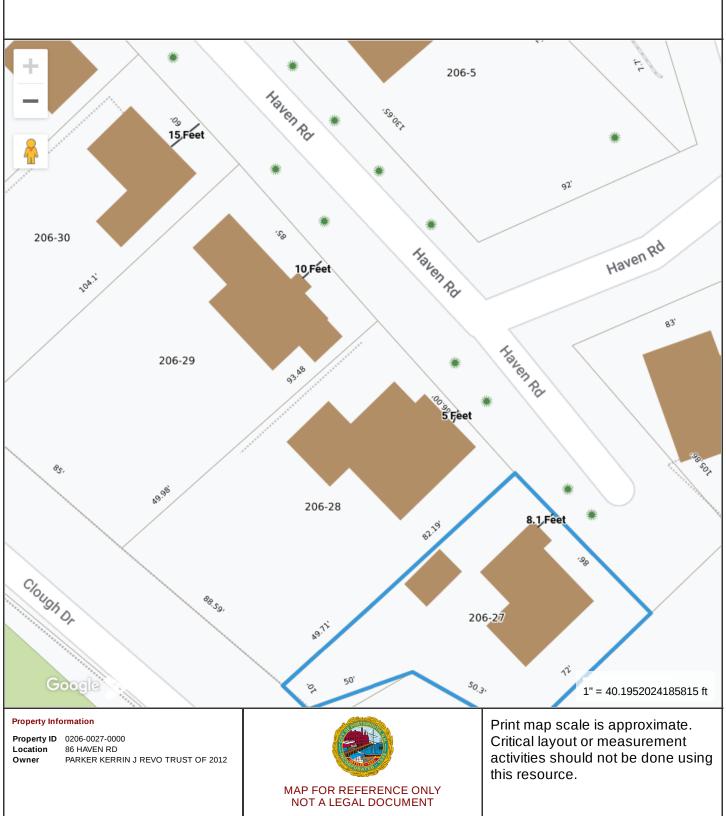
By: Derek R. Durbin, Esq.

DURBIN LAW OFFICES PLLC

Deul R. Dunt

144 Washington Street Portsmouth, NH 03801

(603)-287-4764



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.

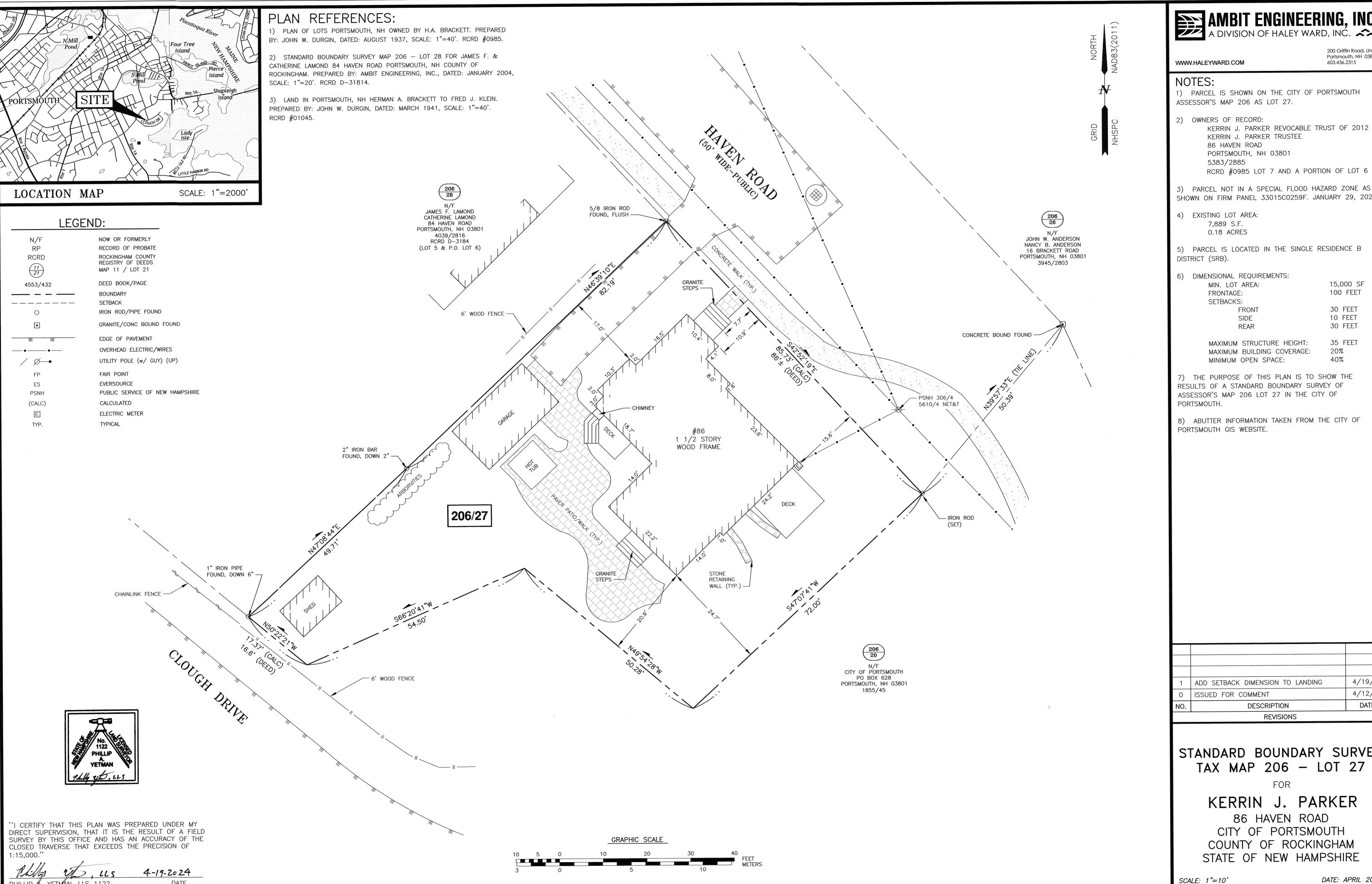
Geometry updated 08/24/2023 Data updated 3/9/2022

Map Theme Legends

Wetlands



City of Portsmouth



AMBIT ENGINEERING, INC. ADIVISION OF HALEY WARD, INC.

200 Griffin Road, Unit 3 Portsmouth, NH 03801 603.436.2315

1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH

RCRD #0985 LOT 7 AND A PORTION OF LOT 6

3) PARCEL NOT IN A SPECIAL FLOOD HAZARD ZONE AS SHOWN ON FIRM PANEL 33015C0259F. JANUARY 29, 2021.

5) PARCEL IS LOCATED IN THE SINGLE RESIDENCE B

15,000 SF 100 FEET 30 FEET 10 FEET 30 FEET

35 FEET 20% 40%

RESULTS OF A STANDARD BOUNDARY SURVEY OF ASSESSOR'S MAP 206 LOT 27 IN THE CITY OF

8) ABUTTER INFORMATION TAKEN FROM THE CITY OF

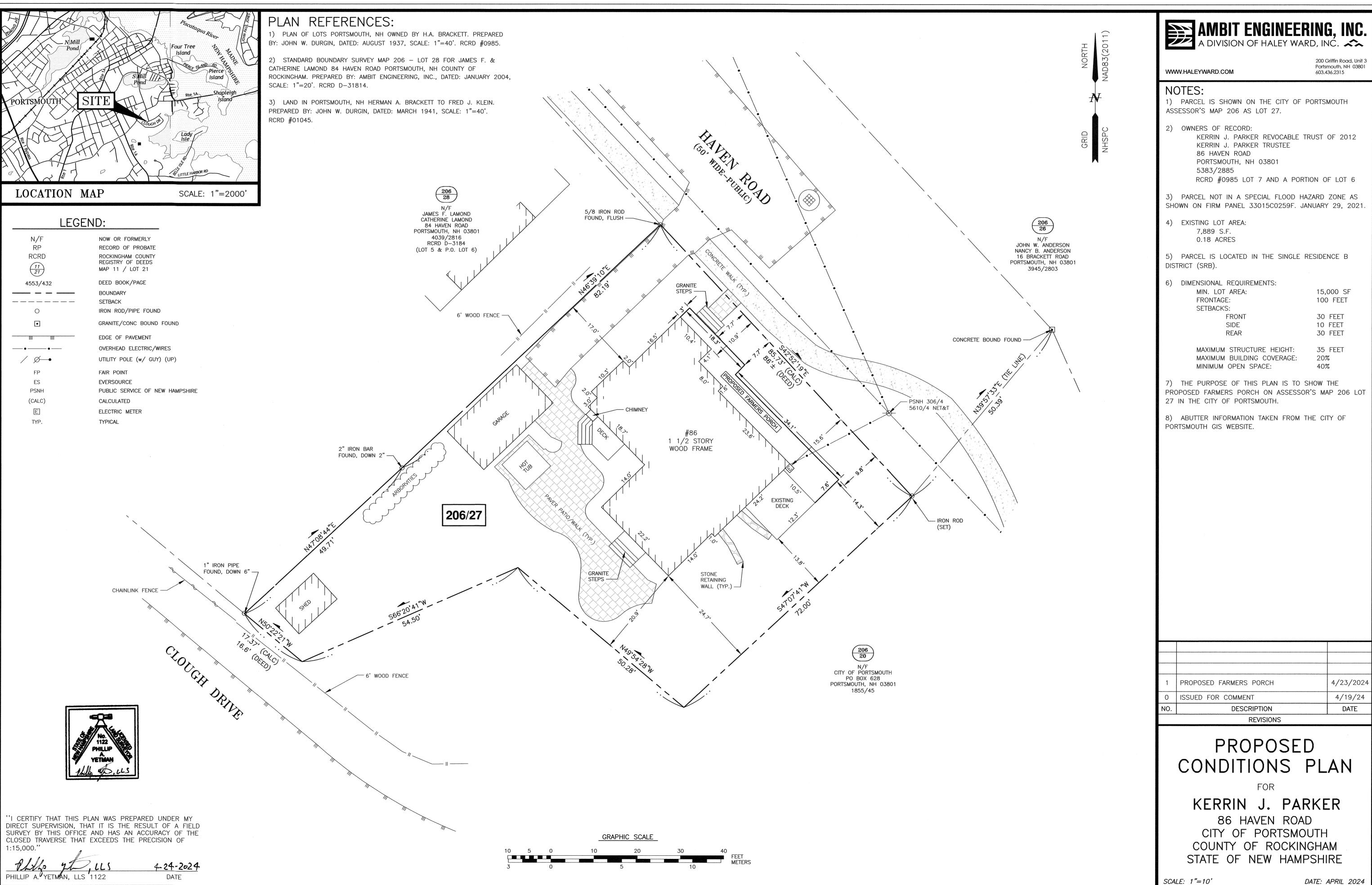
4/19/24 ADD SETBACK DIMENSION TO LANDING 4/12/24 DATE

STANDARD BOUNDARY SURVEY TAX MAP 206 - LOT 27

> KERRIN J. PARKER 86 HAVEN ROAD CITY OF PORTSMOUTH COUNTY OF ROCKINGHAM STATE OF NEW HAMPSHIRE

SCALE: 1"=10'

DATE: APRIL 2024



200 Griffin Road, Unit 3 Portsmouth, NH 03801

603.436.2315

1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH

KERRIN J. PARKER REVOCABLE TRUST OF 2012

RCRD #0985 LOT 7 AND A PORTION OF LOT 6

3) PARCEL NOT IN A SPECIAL FLOOD HAZARD ZONE AS SHOWN ON FIRM PANEL 33015C0259F. JANUARY 29, 2021.

5) PARCEL IS LOCATED IN THE SINGLE RESIDENCE B

15,000 SF 100 FEET 30 FEET 10 FEET

> 30 FEET 35 FEET

20% 40%

7) THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED FARMERS PORCH ON ASSESSOR'S MAP 206 LOT

8) ABUTTER INFORMATION TAKEN FROM THE CITY OF

4/23/202 4/19/24 DATE

PROPOSED CONDITIONS PLAN

KERRIN J. PARKER 86 HAVEN ROAD CITY OF PORTSMOUTH COUNTY OF ROCKINGHAM STATE OF NEW HAMPSHIRE

DATE: APRIL 2024

FB 440 & PG 5

5010438

DRAWN BY:
MARTHA MACINNIS
58 REGENT AVE.
BRADFORD, MA. 01835
(978)374-8719

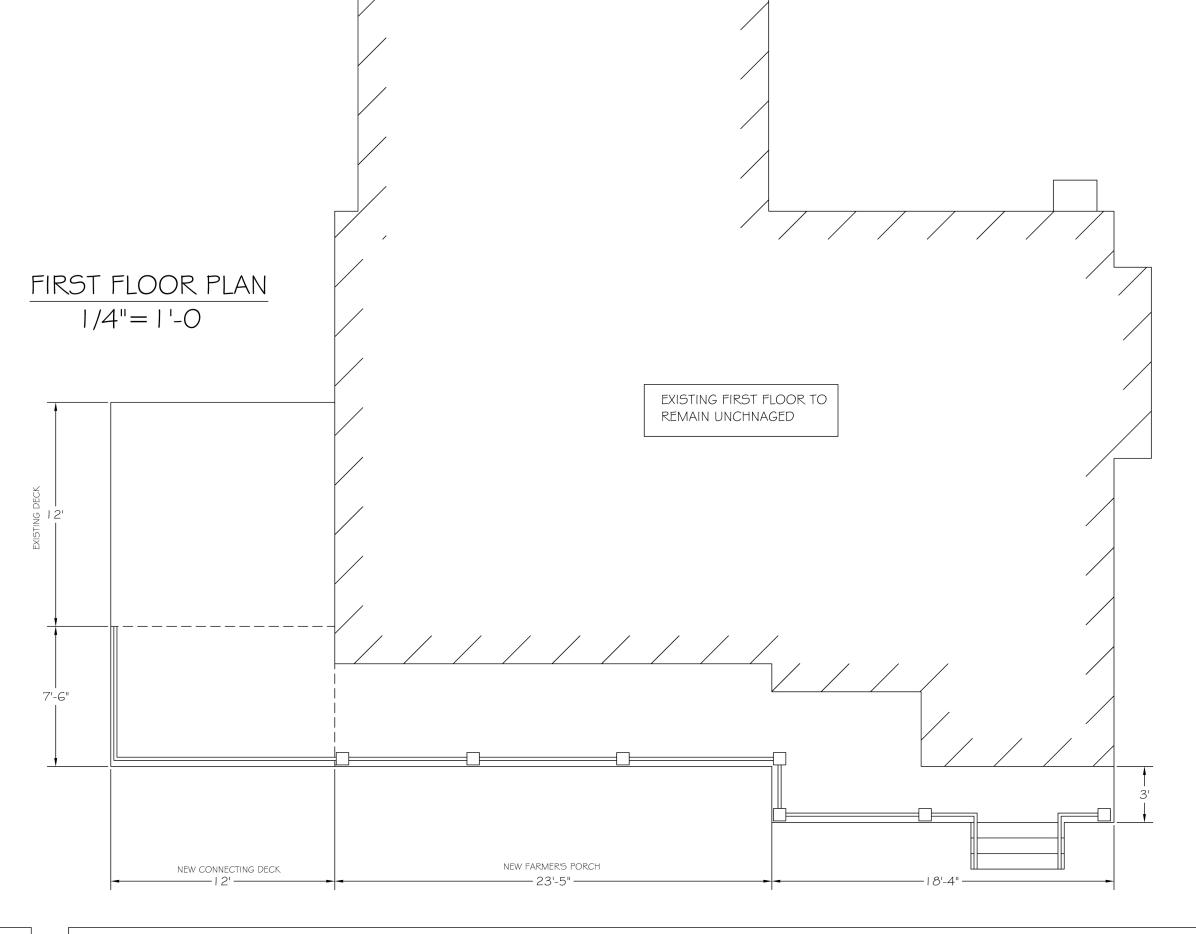
PROPOSED ADDITIONS & RENOVATIONS
86 HAVEN ROAD
PORTSMOUTH, NH





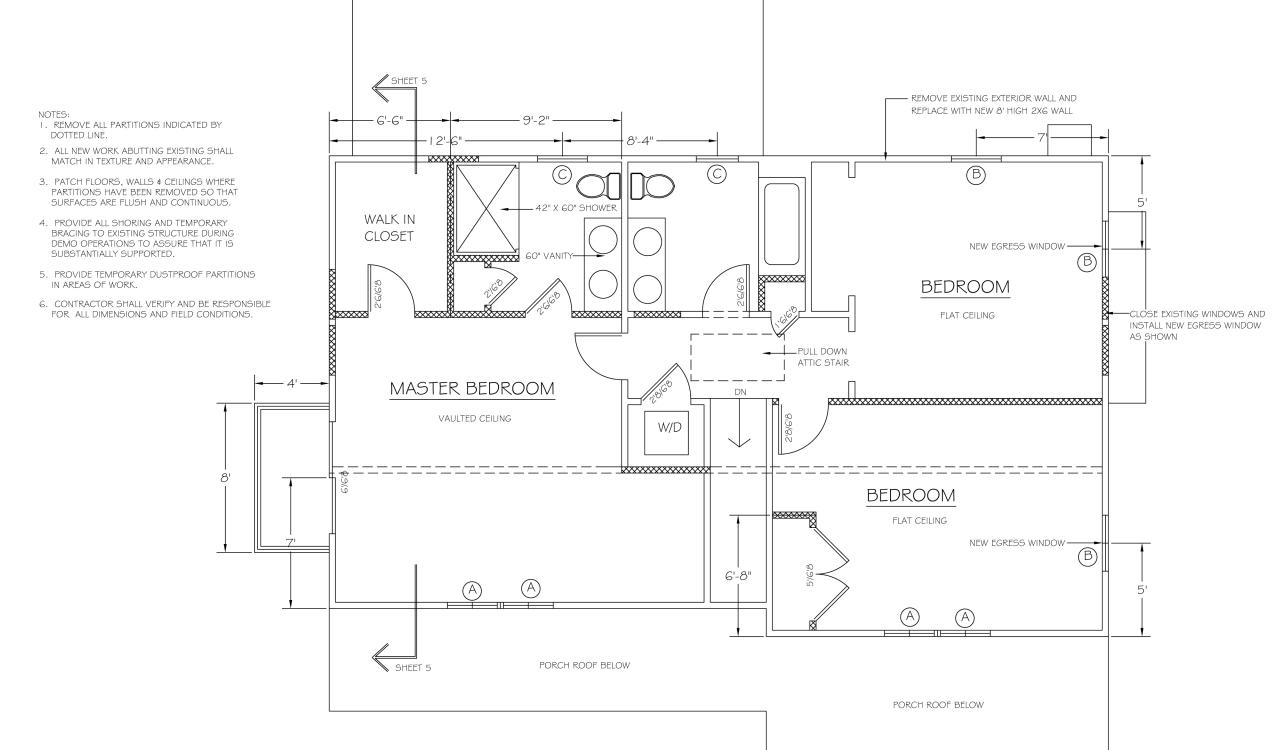
 $\frac{\text{RIGHT SIDE ELEVATION}}{1/4"=1"-0}$





DRAWN BY:
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BRADFORD, MA. 01835
(978)374-8719

PROPOSED ADDITIONS & RENOVATIONS
86 HAVEN ROAD
PORTSMOUTH, NH



NOTE: MODEL NUMBERS SHOWN FOR WINDOWS ARE FOR THOSE AS MANUFACTURED BY ANDERSEN

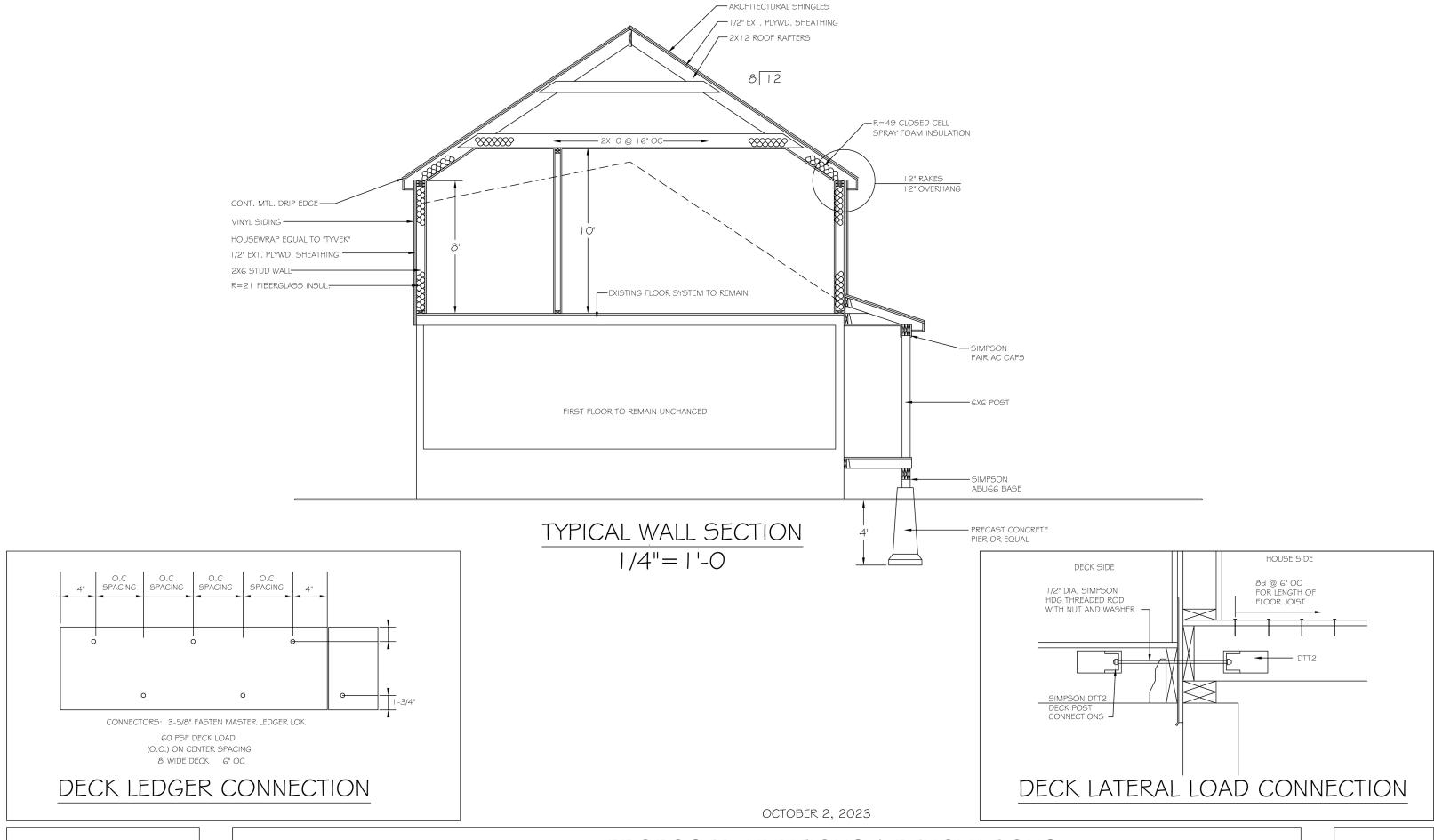
WINDOW SCHEDULE						
No	Model	TYPE	RO			
Α	2842	DH	2'-10 1/8" x 4'-4 7/8"			
В	30410	DH	3'-2 1/8" x 5'-0 7/8"			
С	2832	DH	2'-10 1/8" x 3'-4 7/8"			

SECOND FLOOR PLAN
1/4"=1'-0

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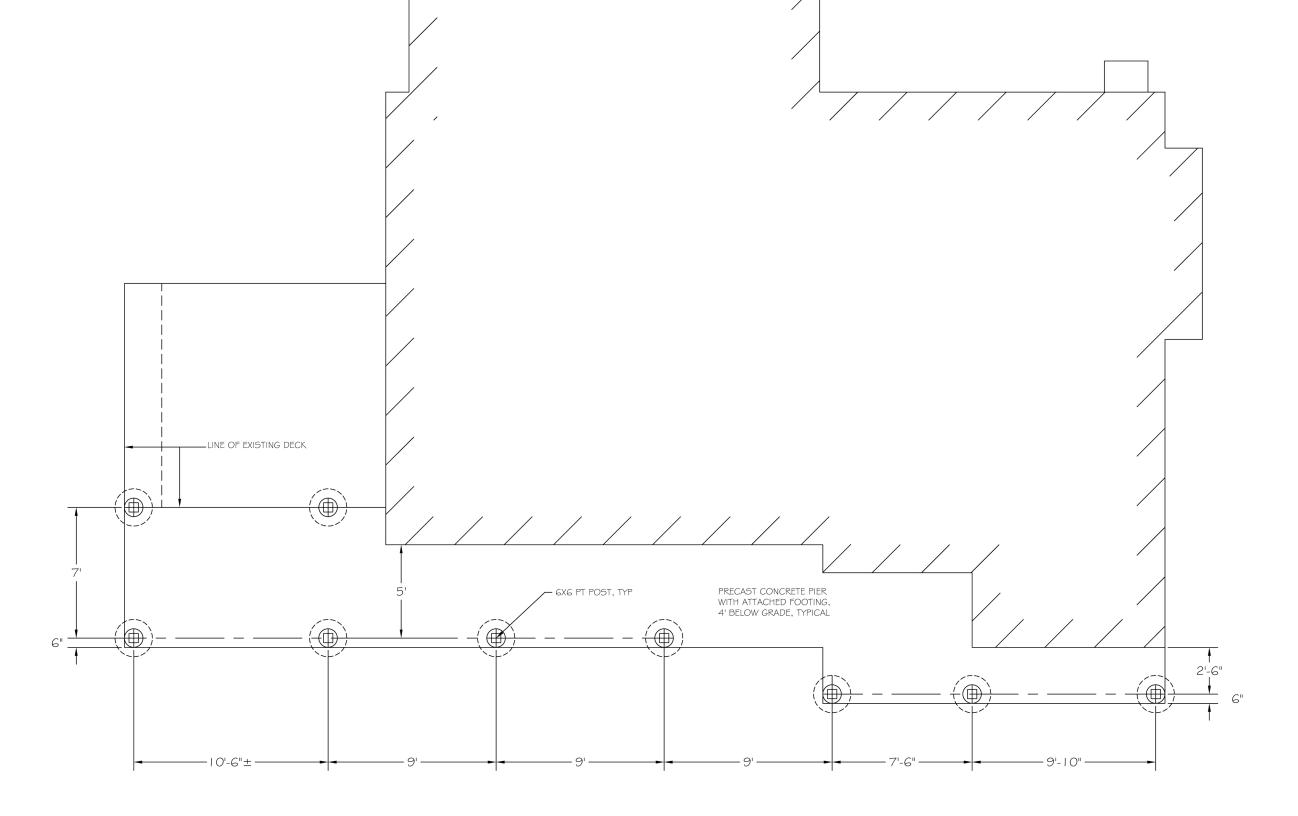
PROPOSED ADDITIONS & RENOVATIONS
86 HAVEN ROAD
PORTSMOUTH, NH





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PROPOSED ADDITIONS & RENOVATIONS
86 HAVEN ROAD
PORTSMOUTH, NH



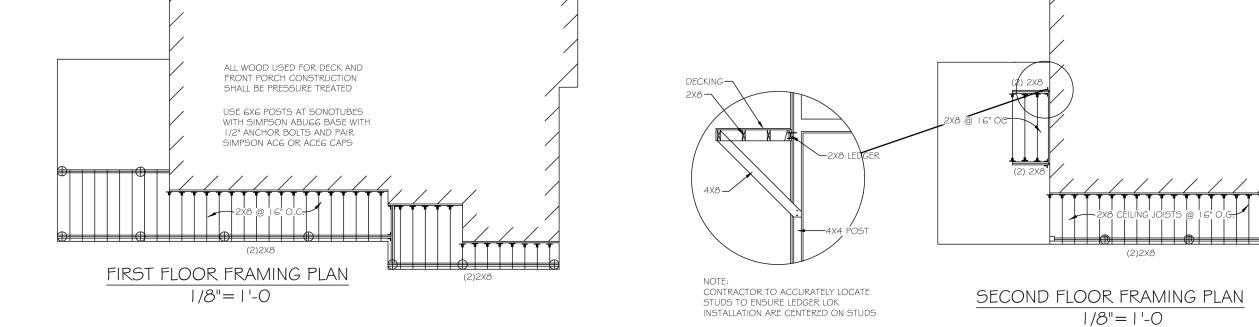
 $\frac{\text{FOUNDATION PLAN}}{1/4"=1"-0}$

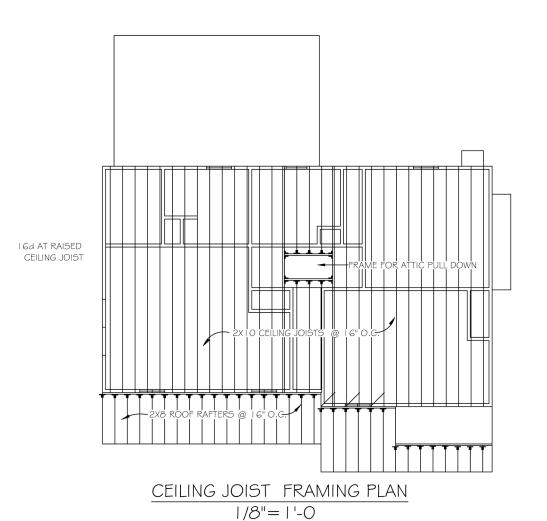
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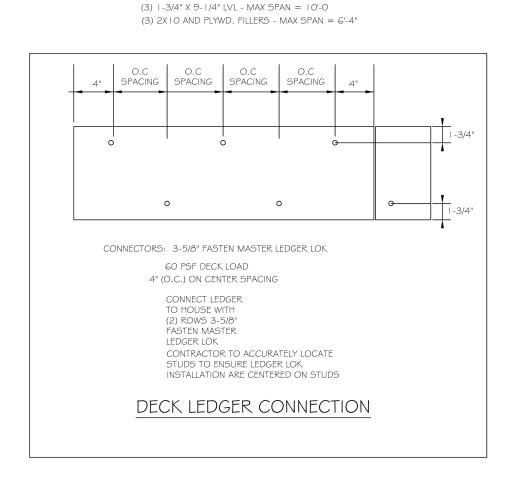
PROPOSED ADDITIONS & RENOVATIONS
86 HAVEN ROAD
PORTSMOUTH, NH

OCTOBER 2, 2023

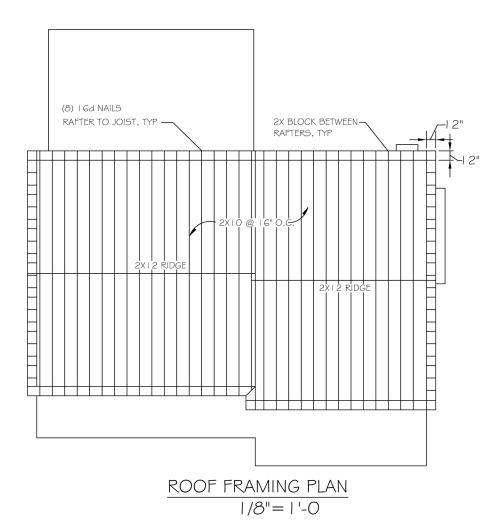








(3) 2X6 AND PLYED. FILLERS - MAX SPAN = 4'-4''(3) 2X8 AND PLYWD. FILLERS - MAX SPAN = 5'-6''

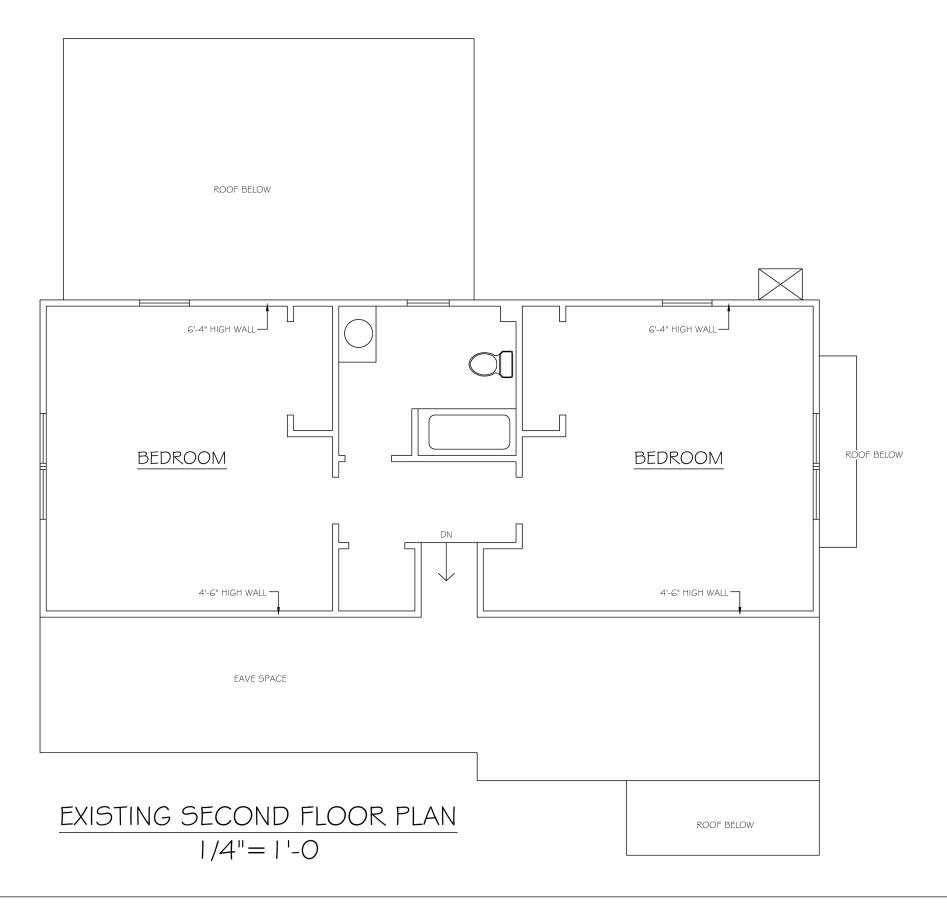


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PROPOSED ADDITIONS & RENOVATIONS
86 HAVEN ROAD
PORTSMOUTH, NH

OCTOBER 6, 2023

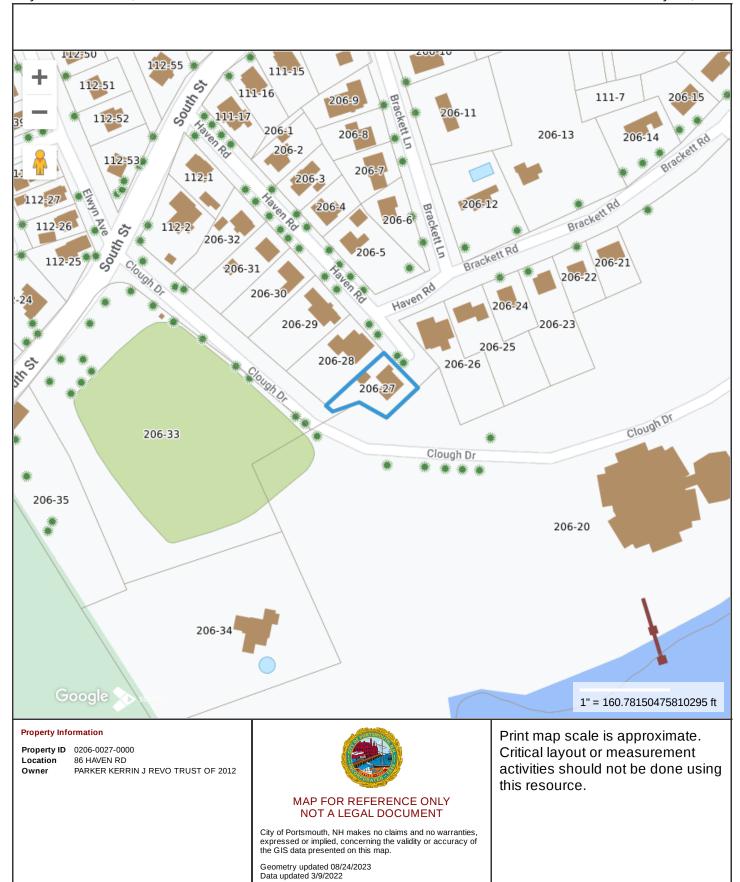
7



DRAWN BY:
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58 REGENT AVE.
BRADFORD, MA. 01835
(978)374-8719

PROPOSED ADDITIONS & RENOVATIONS
86 HAVEN ROAD
PORTSMOUTH, NH

















II. OLD BUSINESS

B. The request of Atlas Commons LLC (Owner), for property located at 581 Lafayette Road whereas relief is needed for after-the-fact installation of an awning sign which requires the following: 1) Variance from Section 10.1251.20 to allow a 32 square foot awning sign whereas 20 square feet is allowed. Said property is located on Assessor Map 229 Lot 8B and lies within the Gateway Corridor (G1) District. (LU-24-1)

Existing & Proposed Conditions

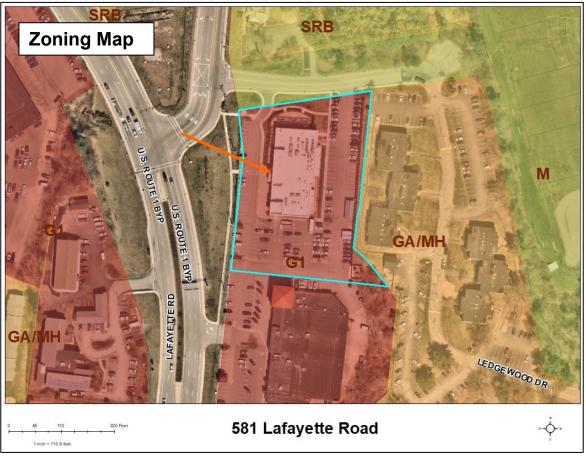
	Existing	Proposed	Permitted / Required	
Land Use:	Commercial	Commercial	Mixed-Use Corridor	
Awning Sign Area (sq. ft.):	32	32	20	max
Northern facing façade building frontage(ft.):	90	90		
Western facing façade building frontage (ft.):	125	125		
Northern facing façade sign area (sq. ft.)	75	75	135	max.
Western facing façade sign area (sq. ft.):	58.2	58.2	187.5	max.
Estimated Age of Structure:	1972	Variance request(s) shown in red.		

Other Permits/Approvals Required

Sign Permit

Neighborhood Context





Previous Board of Adjustment Actions

- <u>September 22, 2015 -</u> The Board **approved** the following to allow a restaurant with associated parking:
 - 1. A Special Exception under Section 10.440, Use #9.52 to allow a restaurant with 492 seats where 250 to 500 seats are allowed by Special Exception.
 - 2. A Variance from 10.593.10 to allow a restaurant to be located 92.1' from a residential district where 200' is required.
 - 3. A Variance from 10.531 to allow 16.5% open space where 11% exists and 20% is required.
 - 4. A Variance from Section 10.1112.50 to allow 154 off-street parking spaces where 184 exist and 132 are the maximum allowed.
 - 5. A Variance from Section 10.1113.20 to allow parking in the front yard or between a building and a street for 34 spaces where 38 exist and 0 spaces are permitted.
 - 6. A Variance from 10.1113.10 to allow 28 existing and 30 proposed off-street parking spaces to be partially located on a lot separate from that of the principal use.
 - 7. A Variance from Section 10.1114.21 to allow 10 off-street parking spaces to be 17.5' in length where 19' is required.
 - 8. A Variance from 10.1124.20 to allow off-street loading or maneuvering areas to be 87.7' from an adjoining Residential or Mixed Residential District where 100' is required.
- May 18, 2021 The Board granted the request to add an indoor golf simulators in an existing restaurant which required the following: 1) A Special Exception from Section 10.440 Use #4.30 to allow an indoor recreation use where the use is permitted by Special Exception.

Planning Department Comments

The applicant is requesting relief to appropriately permit an awning sign that has already been installed at the front entrance on the western facing facade.

The property is located in Sign District 5 (Section 10.232) which allows a maximum awning sign area of 20 square feet (Section 10.1251.20). The awning sign in need of relief is 32 square feet.

Maximum aggregate sign area allowed in Sign district 5 is 1.5 square feet per linear foot of building frontage (Section 10.1251). The western façade measures 125 feet, which gives the applicant a maximum of 187.5 square feet of aggregate sign area on that side of the building. The addition of the awning sign brings the total aggregate sign area on the western facing façade to 58.2 square feet.

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 <u>special conditions</u> 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.

Written Reason for Equitable Labor Variance.

581 Lafayette RD Portsmouth NH

TOUR GOLF & GRILL

The reason we are asking for a Variance is, The owner of Tour was unaware, that the <u>previously hired Sign Company</u> was not following the legislature and rules, by checking the Town laws and following procedure. (for sizing of lettering on awning, nor did they apparently pull a permit.) The prior Sign Company told him they were following the correct steps.

We are here now asking that due to the circumstances of the Hardship of replacing such an Awning would be unnecessary cost of thousands of dollars at this time. Cost wise for our client in this economy we ask that this variance allowed to keep the size as was installed. 10.233.25

The neighbors will not be harmed nor will property values or assets be diminished from this black and white, classic, non illuminated lettering. Also it might actual help as a wayfinding point for travelers passing through or for direction purposes in an already busy intersection. 10.233.24/.21

The Awning size is just a minor bit larger than the allotted size and we hope that due to the distance of our neighbors, and viewing capacity. That you allow us this variance and to keep the awning as is. We will not enlarge or change what is there, and will observe all aspects of the allowed variance.10.233.22

This will help our client to continue his endeavors, focused on creating amazing restaurants and event places where we can gather and grow our community.10.233.23

Tour Golf is now aware and remedied its future with Signage, by in trusting his Signage creation and development with us at Signs East LLC. As you can ask your constituents, we insist on directly following and filing correct paperwork, and permits. Focus on prompt replies and presentation of documents. As well as we maintain our reputation with high end quality products, while installation upon legitimate legal Signage per town allowances.

Thank you for your time,

Tor Larson

Signs East LLC.

SignsEast.com



11/1/2023

RE: TOUR Sign Installation

Please let it be known that TOUR, LLC has contracted Signs East of Kingston, NH to design, build, and install new signage at our 581 Lafayette Rd, Portsmouth, NH location.

Signs East has our permission to file for and pull a sign permit with the City of Portsmouth.

Please direct any questions to Ryan Lent, owner of TOUR, LLC. I can be reached at 603-812-7775 or ryan@nnehospitality.com.

Thank you,

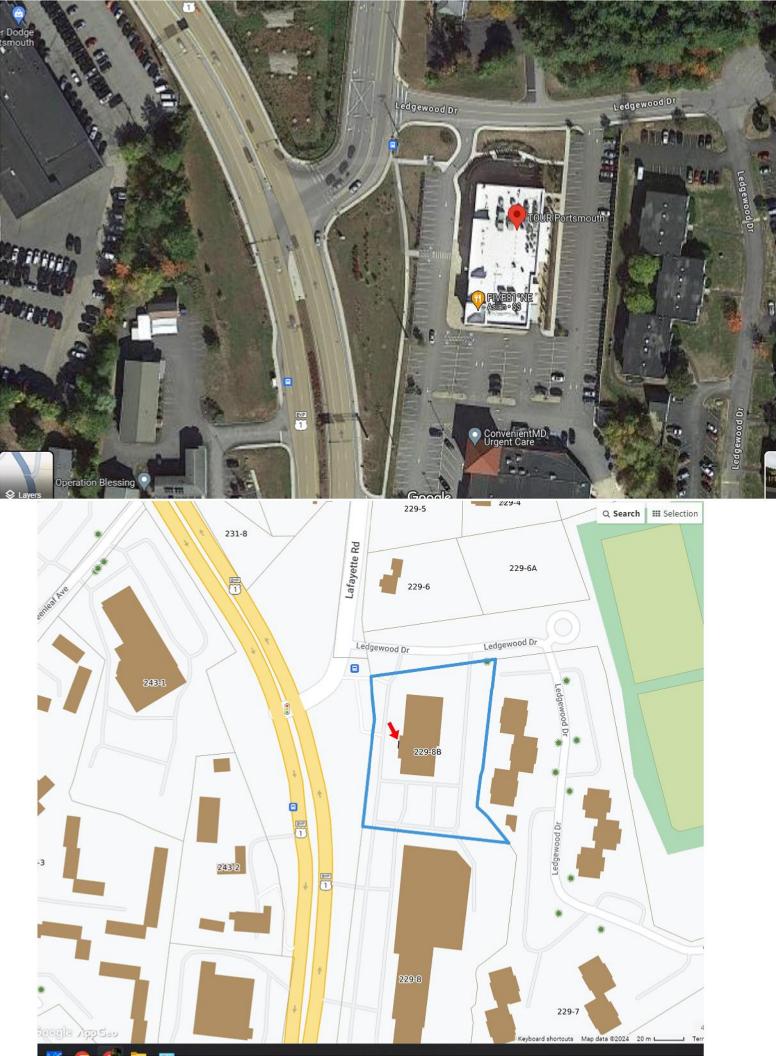
Ryan Lent

President

NNE Hospitality Group







II. OLD BUSINESS

C. **REQUEST TO WITHDRAW** The request of **Giri Portsmouth 505 Inc.** (Owner), for property located at 505 US Route 1 Bypass whereas relief is needed to demolish the existing structure and construct a new hotel with a drive thru restaurant which requires the following: 1) Special Exception from 10.440 Use #10.40 hotel where it is permitted by Special Exception; 2) Variance from Section 10.835.32 to allow 5 feet between the lot line and drivethru and bypass lanes where 30 feet is required for each; 3) Variance from Section 10.835.31 to allow 18 feet between the menu and speaker board and the front lot line where 50 feet is required; 4) Variance from Section 10.5B22.20 to allow up to 60 feet in building height within 50 feet of the street right-of-way line whereas up to 45 feet is permitted; 5) Variance from Section 10.5B34.70 to allow up to 60 feet in building height whereas 50 feet is permitted; 6) Variance from Section 10.5B34.60 to allow a 30 foot setback for a small commercial building whereas a maximum of 20 feet is permitted; 7) Variance from Section 10.5B33.20 to allow less than 75 percent front lot line buildout whereas a minimum of 75 percent is required for commercial buildings. Said property is located on Assessor Map 234 Lot 5 and lies within the Gateway Neighborhood Corridor (G1) District. (LU-24-44) REQUEST TO WITHDRAW

Planning Department Comments

The applicant is requesting to withdraw the request that was noticed and advertised.



John K. Bosen Admitted in NH & MA

Christopher P. Mulligan Admitted in NH & ME

> Molly C. Ferrara Admitted in NH & ME

> > Austin Mikolaities Admitted in NH

Bernard W. Pelech 1949-2021

May 13, 2024

Phyllis Eldridge, Chair City of Portsmouth Zoning Board of Adjustment One Junkins Ave Portsmouth, NH 03801

Re: 505 US Route 1 BYO (LU-23-199)

Dear Ms. Eldridge:

Please be advised that the Applicant has decided to withdraw its Application for a Special Exception and variances with regard to the above, without prejudice. Thank you.

Vol. y (10g) 3.3 (10g),

John K. Bosen, Esquire

cc: Giri Portsmouth 505 Inc.

Patrick Crimmins, Tighe & Bond

III. NEW BUSINESS

A. The request of Ryan Leibundgut (Owner), for property located at 137 Walker Bungalow Road whereas relief is needed to demolish the front deck and construct a new deck on the front of the existing home which requires the following: 1) Variance from Section 10.521 to allow a 20 foot front yard where 30 feet is required; 2) Variance from Section 10.321 to allow of nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 202 Lot 4 and lies within the Single Residence B (SRB) (LU-24-10)

Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required	
Land Use:	Single family dwelling	*Demolish the existing front deck and construct a new deck	Primarily residentia	ıl
Lot area (sq. ft.):	20,037.6	20,037.6	15,000	min.
Lot Area per Dwelling Unit (sq. ft.):	20,037.6	20,037.6	15,000	min.
Street Frontage (ft.):	100	100	100	min.
Lot depth (ft.)	200	200	100	min.
Front Yard (ft.):	20	20	30	min.
Left Yard (ft.):	6 (garage) >20 (existing porch)	6 (garage) >20 (proposed porch)	10	min.
Right Yard (ft.):	21	21	10	min.
Rear Yard (ft.):	125	125	30	min.
Height (ft.):	<35	<35	35	max.
Building Coverage (%):	10.4	11.2	20	max.
Open Space Coverage (%):	>40	>40	40	min.
<u>Parking</u>	2	2	2	
Estimated Age of Structure:	1957	Variance request(s) shown in red.		

^{*}Relief needed to construct an addition to the already non-conforming primary structure that would further impact the non-conformity.

Other Permits/Approvals Required

- Wetland Conditional Use Permit (Conservation Commission and Planning Board)
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

<u>February 15, 1994</u> – The Board granted the variance from Article III, Section 1—302 to allow the construction of a 3' x 19' handicapped ramp from front door to driveway with a 17' front yard where a 30' front yard is required.

Planning Department Comments

The applicant is requesting relief for demolition of the existing front porch and construction of a new front porch that will span the length of the front of the primary structure. The existing deck is 105 square feet and the new deck will be 273 square feet.

There is a wetland in the rear of the property and the proposed work is located within the 100-foot wetland buffer area. The applicant will be required to obtain a wetland conditional use permit which requires review by the Conservation Commission and approval by the Planning Board.

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 <u>special conditions</u> 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.

137 Walker Bungalow Rd

We are proposing an enhancement to our residence by extending the current porch along the entire frontage of the house. This project is an expansion of the existing structure (7'x 16') to span a total of 44 feet across the front of the house, extending 6.5 feet from the house.

Additionally, the project includes the extension of a dormer above the porch to create a covered area. This feature is designed to complement the extended porch, offering shelter and enhancing the facade of the house. The integration of the dormer with the porch extension ensures a cohesive appearance and functionality- tying in the dormer ridge with the existing ridge from the past addition in the rear of the house to make the house look more complete and a continuation of the existing framing. The space left underneath the dormer on the interior of the house can be used as a small storage area but not a living space, the area is too small.

Our aim with this project is to enrich the usability and appearance of the home while respecting its original architecture and the surrounding neighborhood. The extension is carefully designed to match the existing structure and add a more welcoming feel to the home, without completely changing the original framing and layout of the current house.

Addressing the analysis criteria the variance meets;

Public interest: The variance is not contrary to the public interest, it not only adds a dimension of impressiveness to the house but it doesn't encroach any neighboring property lines- nor does it add any height to the total building structure/ obstruct neighboring views. While the variance is for road setback relief, there is still the same amount of distance between the road and the current porch attached to the home.

The Spirit of the Ordinance: respecting the need to not have homeowners encroach the road with building is important. The variance were seeking does not encroach the road anymore than the current porch does- we are only looking to extend the foundation of the porch across the rest of the house.

Substantial Justice will be done: In order to make sure we comply with all of the bounds we're seeking we will have a site manager at all times who's proficient in the setback code making sure we follow the exact draft of how we've drawn up the addition.

The value of the surrounding properties will not be diminished: The goal of the addition as part of a series of other renovations is to make the home look more up to date in a subtle, respectful way. We do not encroach the neighbors property with this addition (Porch), nor will it be disrupting their land, view, or ecosystems. I believe the final product of the home will be a positive addition to the surrounding properties

Enforcement of the ordinance would result in unnecessary hardship: The addition to the home that was added ~ 10 years ago looks incomplete viewed from the front of the house. The current porch wasn't built properly and I'm looking to rebuild using the original idea of a porch but in a way to make the house look complete and in a way that complements the overall home.



FRONT ELEVATION

%SCALE: %" = 1'-0"

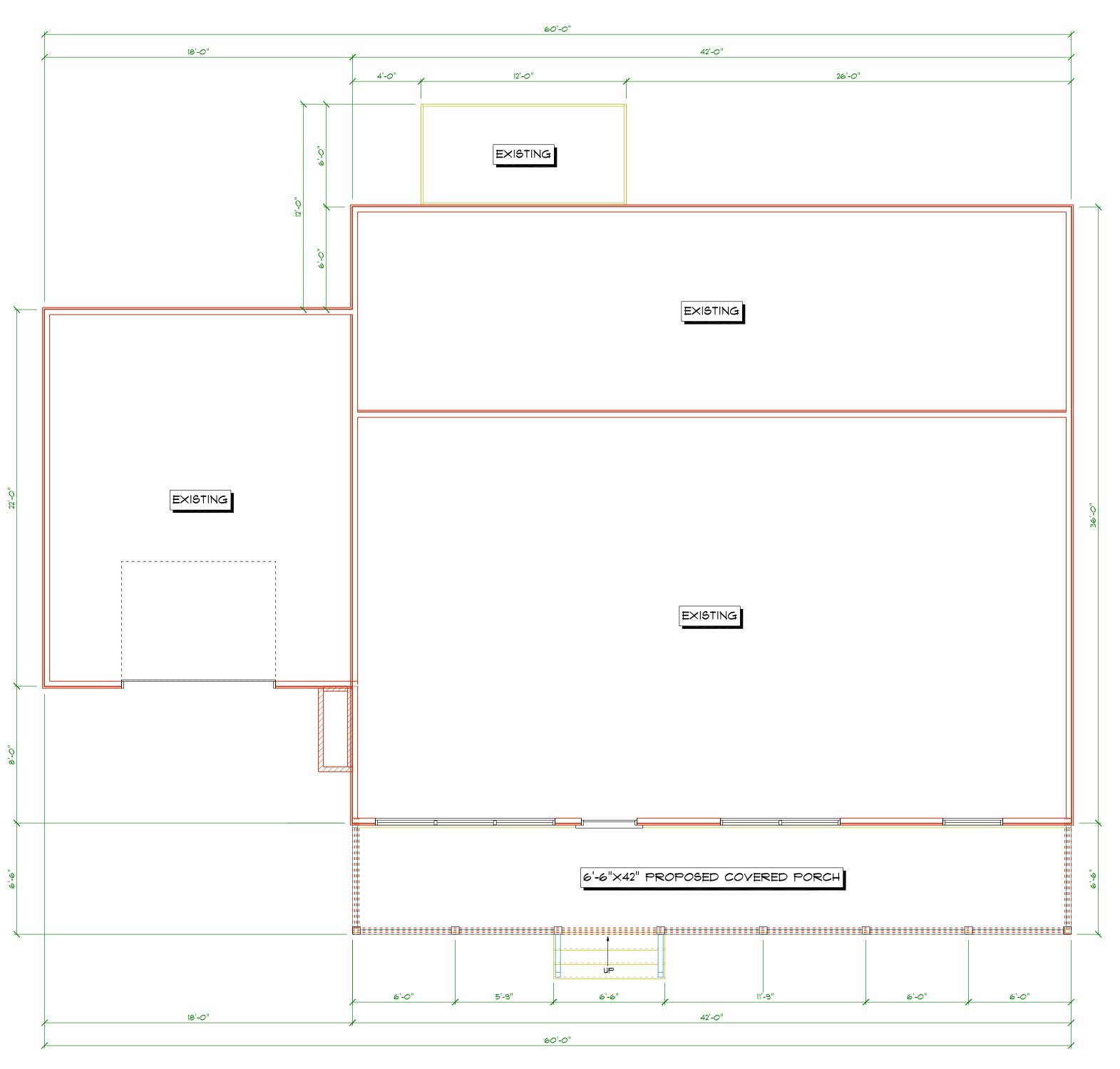


EXISTING

ELEVATION GRADES AND FOUNDATION DROPS SHOWN ARE CONCEPTUAL. FOUNDATION DROPS AND GRADE WILL BE DETERMINED ON SITE BY CONTRACTOR

A B D AMERICAN INSTITUTE of BUILDING DESIGN NEWMARKET PLAINS, LL HOME DESIGN SERVICE SHEET NUMBER PLAN NUMBER

1381



COVERED PORCH FOOTPRINT

SCALE: 14" = 1'-0"

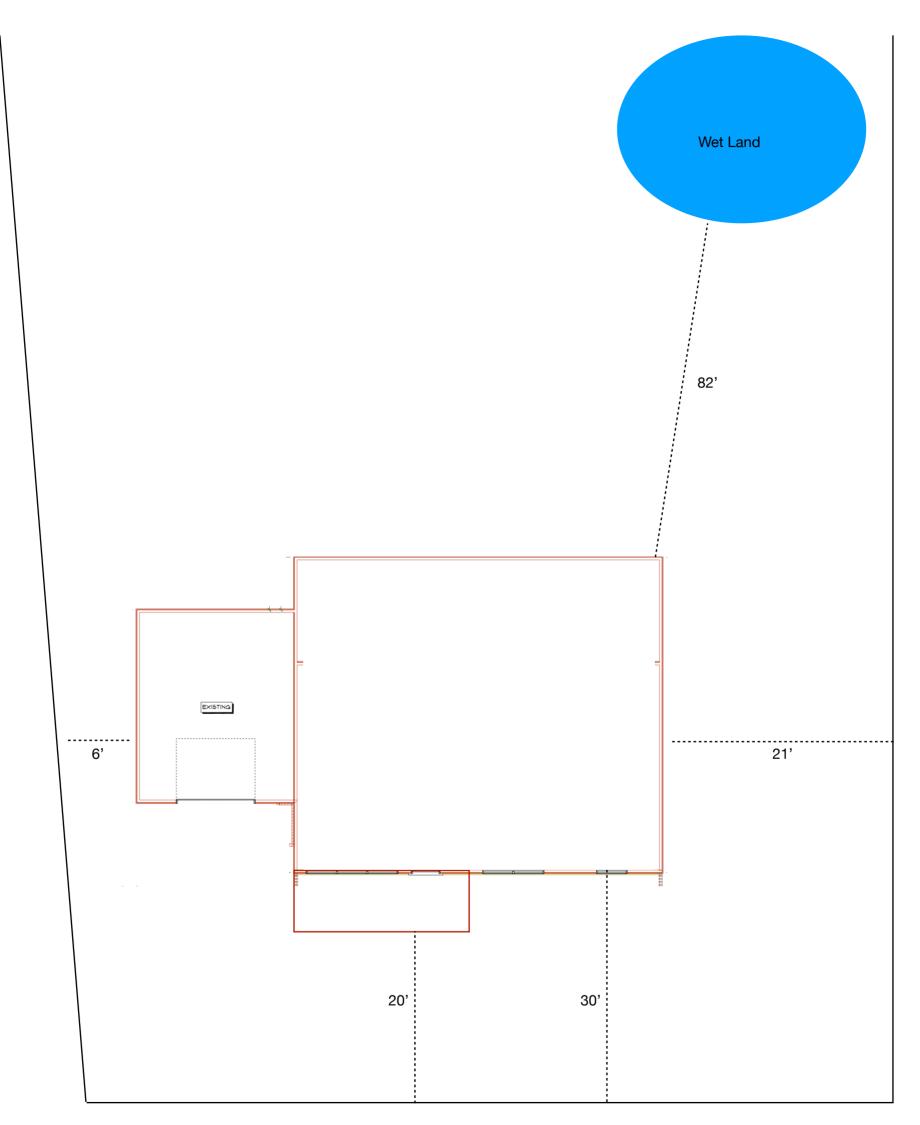
AMERICAN INSTITUTE of BUILDING DESIGN

SHEET NUMBER

A

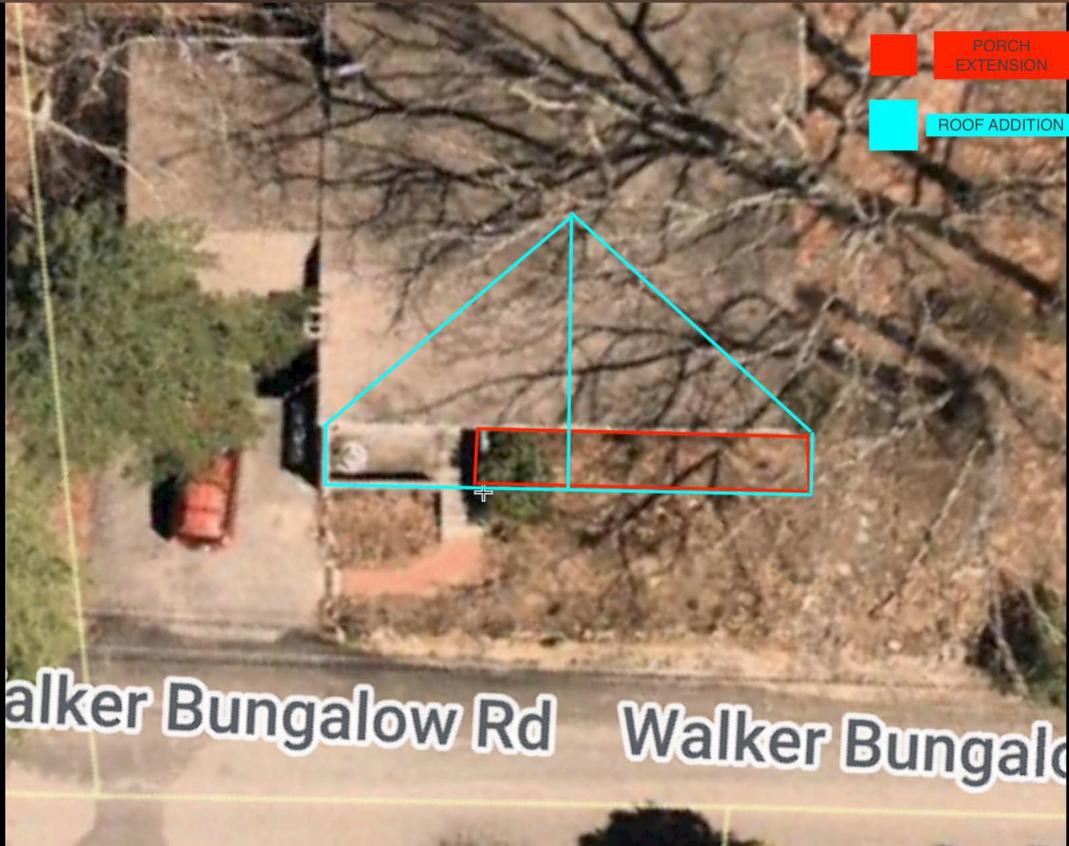
PLAN NUMBER

1381









III. NEW BUSINESS

B. The request of John C. Wallin and Jeanine M. Girgenti (Owners), for property located at 5 Cleveland Drive to amend the Variances granted on July 18, 2023 to install a 6 foot fence along the primary and secondary front of the property to include the following: 1) Variance from Section 10.515.13 to allow a 6 foot fence to be installed on top of a 3.5 foot tall retaining wall to create a total structure height of 9.5 feet where 4 feet is allowed. Said property is located on Assessor Map 247 Lot 74 and lies within the Single Residence B (SRB) District. (LU-23-92)

Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required		
Land Use:	Single- family	*Installation of 6 foot fence on top of a 3.5 foot wall	Primarily residential		
Lot area (sq. ft.):	13,095	13,095	15,000	min.	
Lot Area per Dwelling Unit (sq. ft.):	13,095	13,095	15,000	min.	
Lot depth (ft.):	105	105	100	min.	
Street Frontage (ft.)	>200	>200	100	min.	
Primary Front Yard (Cleveland Dr) (ft.):	20	20	30	min.	
Left Yard (ft.):	15	15	10	min.	
Secondary Front Yard (Taft Rd) (ft.):	30 (Primary Structure)	12 (Fence) 30 (Primary Structure)	30	min.	
Height (ft.):	<35	<35	35	max.	
Building Coverage (%):	18	18	20	max.	
Open Space Coverage (%):	>30	>30	30	min.	
<u>Parking</u>	2	2	2		
Estimated Age of Structure:	1962	Variance request(s) shown in red.			

^{*}Installation of a fence structure higher than 4 feet in the front yard area requires relief from Section 10.515.13.

Other Permits/Approvals Required

Building Permit

Neighborhood Context





Previous Board of Adjustment Actions

February 20, 2001 – The Board denied the application for a Variance from Article II, Section 10-206(12) and Article XII, Section 10-1201(A)(3)(a)(3&4) to allow 200+ s.f. in an existing single family dwelling to be used for a nail salon with the existing driveway being provided for parking, having vehicles park one behind another and back out onto the street.

<u>July 18, 2023</u> – The Board **granted** the request to install a 6-foot fence along the primary and secondary front of the property which required a Variance from Section 10.515.13 to allow a 6-foot fence where 4 feet is allowed.

Planning Department Comments

The applicant is requesting to amend the previously granted variance for a 6-foot fence in the secondary front yard of the property. The original variance request was heard and granted at the July 18, 2023 BOA meeting where it was presented that the fence would serve the purpose of enclosing the inground pool. During pool construction a retaining wall was added to the scope of work. The inspection department put a hold on work until the proper building code requirements could be met for the retaining wall and notified planning staff of the change. The addition of the 3.5 foot retaining wall underneath the 6-foot fence creates a total height of 9.5 feet in a front yard setback area.

The new scope of work is both different and higher than what was originally approved. Height is measured from the lowest reference point, either original grade or finished grade to the highest reference point. Please see relevant definition from the **Zoning Ordinance** below.

Structure (including roof structure)

Any production or piece of work, artificially built up or composed of parts and joined together in some definite manner. Structures include, but are not limited to, buildings, fences over 4 feet in height, signs, and swimming pools. (See also: temporary structure.)

Structure height

See building height.

Building height

The greatest vertical measurement between the lower and upper reference points as defined below. This measurement shall be the building height for the purposes of the Ordinance.

(a) For buildings located outside the urban districts, the lower reference point shall be the average existing grade or average finished grade, whichever is lower, measured along the perimeter of the entire building. For buildings located inside the urban districts the lower perimeter of the reference point shall be established from the average existing grade or average finished grade, whichever is

lower, along street-facing façade of all lot lines adjoining a public place. In the case of a corner lot, through lot or waterfront lot the provisions of Section 5A.21.21 shall apply. The vertical distance between the lower and upper reference points shall not exceed the maximum number of stories or building height. ...

Average existing grade

For all buildings located outside the urban districts, the average existing grade shall be the average ground levels adjoining the building at all exterior walls measured every five feet around the perimeter of the building. For all buildings located inside the urban districts, the average existing grade shall be the average existing ground level measured every five feet along the street-facing façade of all lot lines adjoining a public place. (See also: building height.)

Average finished grade

For all buildings located outside the urban districts the average finished grade shall be the average ground levels adjoining the building at all exterior walls measured every five feet around the perimeter of the building. For all buildings located inside the urban districts, the average finished grade shall be the average finished ground level measured every five feet along street-facing façade of all lot lines adjoining a public place. (See also: building height.).

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 <u>special conditions</u> 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.

April 15, 2024

Zoning Board of Adjustment Phyllis Eldridge, Chair City of Portsmouth 1 Junkins Avenue Portsmouth, New Hampshire

Re: 5 Cleveland Drive Pool Fence

Amended Variance Request (Building Permit Application BLDG-22-309)

(Land Use Application LU-23-92)

Dear Members of the Zoning Board of Adjustment,

On July 18, 2023, the Zoning Board of Adjustment granted us a variance from Section 10.515.13 to allow a 6-foot fence to be installed along the primary and secondary front of our property where a 4-foot fence is allowed ("July 2023 Variance"). We initially requested the Variance because our lot is uniquely situated at the intersection of Taft Road and Cleveland Drive and has a resulting street frontage which accounts for more than three-quarters of our total property line. Our home is situated facing Cleveland Drive, with the rear of our house (our "backyard") facing the front yards of our neighbors on Taft Road. The Variance allowed us to install the 6-foot fence along the street of our backyard, providing privacy and security for an inground pool.

After receiving the Variance, we installed the inground pool and ground level patio in our backyard. Brentwood Fence was scheduled to install the 6-foot fence along our property line and Taft Road, in accordance with the Variance. However, in November of 2023, we received notice from Planner Stefanie Casella that we needed to request an amended variance because the retaining wall, constructed with the patio portion of the project, was not consistent with the Variance granted by this Board. Ms. Casella instructed us that we could not install the fence unless we took down the retaining wall or requested an amended variance.

As shown in the pictures of our property along Taft Road (part of the July 2023 Variance and included again here), our backyard slopes downward toward the street. When construction began on the inground pool in August of 2023, Northern Pool and Spa informed us that they needed to dig away soil from this natural slope because the excavator and dump trunk were slipping down the slope when entering the backyard to dig the hole for the inground pool. As such, the slope was dug away to create a road for the trucks to enter the backyard.

After the hole was dug and the pool was installed, Landscapes by Aurelindo began installing the patio around the pool. The original plan, as noted in the July Variance, was to install a natural rock wall with the 6-foot privacy fence at the height of the inground pool (see sample photo submitted with initial variance application and included again here). However, Landscapes by Aurelindo said that a natural rock wall would not be strong enough for the patio project and recommended an Allan Block wall be installed instead. We took this advice and the Allan Block wall was installed instead of the natural rock wall, but in the same approximate location.

We met with Ms. Casella in November of 2023 and explained the above, and that our plan was to put back the soil removed by the pool company to get the trucks into the backyard. After this meeting, we

decided to wait until spring to request the amended variance because Ms. Casella stated that the final height of the retaining hall may decide the need for an amended variance.

This spring, we returned soil to the front of the wall, but the weather conditions have made it difficult to ascertain the final height of the wall above ground. The final height of the wall will be 38 inches but currently measures 38-40 inches due to the heavy rainfall moving the soil. We contacted Ms. Casella with the final height of the wall after returning the soil, but she informed us that we needed to file an amended variance.

Please note that in June of 2023, we requested a variance to install a 6-foot fence at the top of our backyard, not at street level. This is similar to the location that the previous owner had a chain link fence (see attached Google Map photo). It was never our intention to install a 6-foot fence at the bottom of the slope of our backyard as it would not have provided any security or privacy for the inground pool which was installed at the height of the yard that aligns with the house and the previously installed deck attached to the house.

By way of this Amended Request for a Variance, we are requesting to finish the project and install a 6-foot fence instead of a 4-foot fence along our property line and Taft Road to provide privacy, safety and a more aesthetic yard for our neighbors and pedestrians to enjoy. If approved, the 6-foot fence will be located at the top of our backyard, behind and slightly above/at the level of the 38-inch retaining wall. We reiterate the following from our initial Variance:

This fence would run along the Taft Road side of our property, coming as close as 12-feet from the edge of the road, measured 24 feet to the center of Taft Road (see diagram, attached with addition of a dotted line to show the retaining wall). Based on the natural curve of Taft Road, this is the closest the fence would be to the road with other parts of the fence being 20 feet or further from Taft Road. The fence will join with the side of the existing house, to provide a seamless, aesthetic, secure barrier between pedestrians and the pool, consistent with the requirements and intent of the building code.

Because our property sits lower than our neighbors on the Taft Road side of our property, a four-foot fence would not provide a decent amount of coverage.

We have spoken with the abutters, and they do not object to a 6-foot privacy fence consistent with the many other improvements we have made to our property since purchasing it in 2015.

This request respects the five principles variance enforcement as follows:

1. Section 10.233.20:10.233.21 The variance will not be contrary to the public interest.

As the map shows, the proposed fence would not limit light or circulating air to the abutters on 5 Cleveland Drive as their houses are set back considerably from our property line and one of them is set substantially higher than the proposed fence line. The fence and attendant landscaping would additionally provide them a more attractive view than a lower fence which would provide unobstructed views of the pool, equipment and personal effects.

Elwyn Park is a residential neighborhood without sidewalks, and erecting a higher fence will additionally provide privacy and safety for those walkers and joggers who come into the yards to avoid vehicle traffic.

Many other homes within the Elwyn Park neighborhood already have six-foot or higher fences which are much closer to the roads, and this fence will not be "overly tall" or obstruct views other than those intended to provide privacy for our neighbors.

2. 10.233.22 The spirit of the Ordinance will be observed.

The spirit of the Ordinance, to prevent unsightly, tall, fences which obstruct or interfere with abutting properties, full access to air and light will be respected. The uniqueness of the plot having no backyard, as well as having abutting homes built at a higher level than our property, renders a four-foot fence insufficient to meet the substantial needs of privacy and security offered by a six-foot fence. The intent is to provide similar privacy that an orthodox plot would benefit from and improve the lives of neighbors and pedestrians by providing sufficient separation between the pool and personal effects at 5 Cleveland and our neighbors full use and enjoyment of their properties. At the same time, the additional height of the fence offers no impairment to abutters rights.

3. 10.233.23 Substantial justice will be done.

This request is substantiated by the unorthodox nature of the lot design and situation of the building on the property at time of construction, and not by the special need of the owner or disagreement with the ordinance.

4. 10.233.24 The values of surrounding properties will not be diminished.

The values of the surrounding properties will be improved by looking at an aesthetic fence consistent with the character of the neighborhood rather than a neighbor's personal effects that would typically be in a backyard. Likewise, they will enjoy increased security and privacy with a higher fence providing adequate separation between our proposed improvement and their front-facing windows and doors. All mechanicals for the pool will be at a height which is sufficiently below the proposed six-foot fence, hiding them from view.

5. 10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

The literal enforcement of the ordinance would not provide the privacy and security offered by a six-foot fence along Taft Road. It would effectively render this unorthodox lot without the privacy and utility of a traditional backyard. The privacy and safety of a six-foot fence is desirable to both the property owner and abutters. Because of the orientation of the home on the lot, and the spacing between the one directly abutting neighbor, there is no other way to create a backyard with a six-foot fence that would respect the setback.

We appreciate your time in consideration of this request.

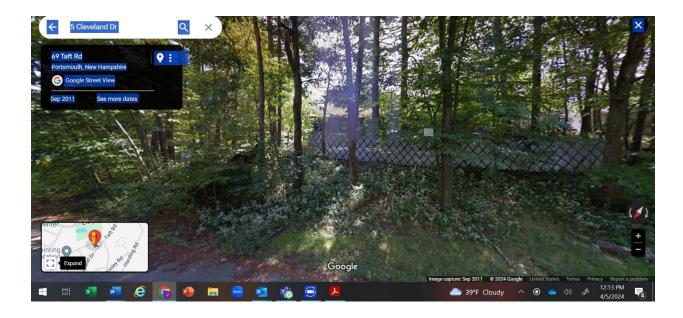
Respectfully submitted, John Wallin & Jeanine Girgenti 5 Cleveland Drive Portsmouth, NH







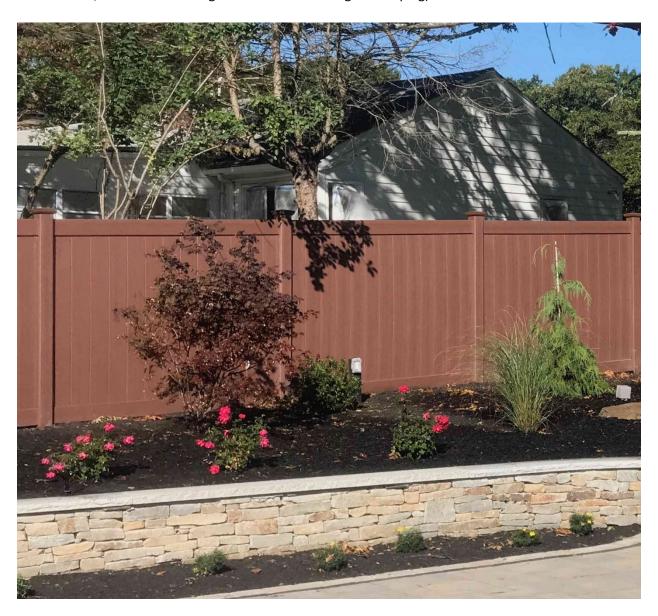
This is an image from Google Maps of the chain link fence at approximately the same height respective to the road that existed when we purchased the home in 2015. In addition, this image shows the natural slope of the yard downward toward the street. This soil was removed to facilitate construction of the pool and replaced after the construction of the retaining wall. The proposed fence is further from Taft Road than the pre-existing fence and sits at the same height respective to the road.



This is the sample image from the July 2023 Variance of proposed fencing with the natural rock wall.



These are sample images of the current plan to install the fence behind the Allan Block wall with plants to be installed in front of the fence (thought these photos are not exact, they were selected to show the fence behind/above the retaining wall and the intending landscaping).





These are three images of the currently constructed/installed retaining wall, which is approximately 38 inches – 40 inches above soil. The frequent and intense weather conditions, including rainfall and recent snow, have caused the final calculation of the retaining wall above ground to fluctuate. But the final result is planned to be 38 inches of retaining wall above ground with plantings in front of the fence and the wall.

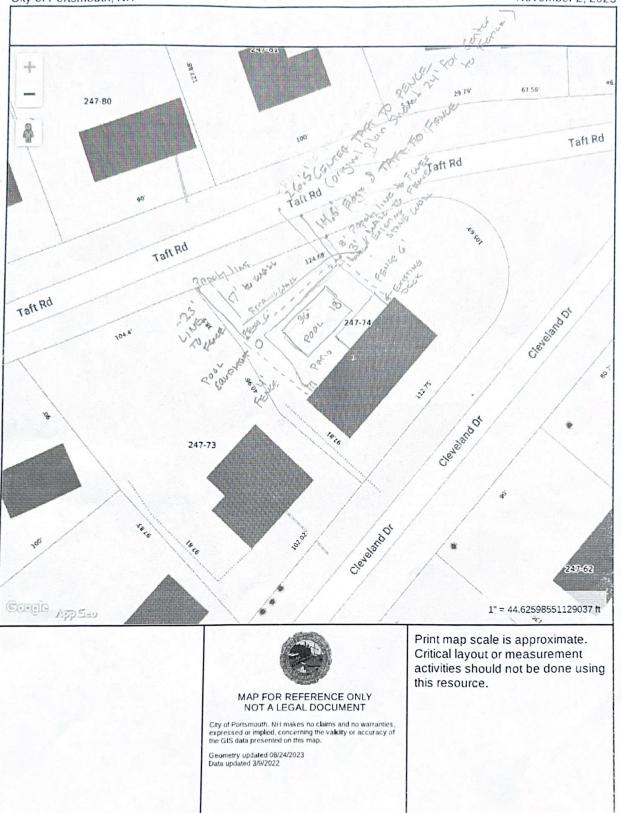






Sketch of site plan with dotted line added to show location of fence in relation to retaining wall.











CITY OF PORTSMOUTH

Planning Department 1 Junkins Avenue Portsmouth, New Hampshire 03801

(603) 610-7216

ZONING BOARD OF ADJUSTMENT

July 25, 2023

John C. Wallen and Jeanine M. Girgenti 5 Cleveland Drive Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 5 Cleveland Drive (LU-23-92)

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, July 18, 2023**, considered your application for installing a 6 foot fence along the primary and secondary front of the property which requires a Variance from Section 10.515.13 to allow a 6 foot fence where 4 feet is allowed. Said property is shown on Assessor Map 247 Lot 74 and lies within the Single Residence B (SRB) District. As a result of said consideration, the Board voted to to **approve** the request as presented and advertised.

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

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

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

The Findings of Fact associated with this decision are available: attached here <u>or</u> as an attachment in the Viewpoint project record associated with this application <u>and</u> on the Zoning Board of Adjustment Meeting website:

https://www.cityofportsmouth.com/planportsmouth/zoning-board-adjustment/zoning-board-adjustment-archived-meetings-and-material

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

Very truly yours,

David Rheaume, Acting Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

III. NEW BUSINESS

C. The request of Edmund R. St. Pierre (Owner), for property located at 15 Mariette Drive whereas relief is needed to create a second driveway in front of the existing garage which requires the following: 1) Variance from Section 10.1114.31 to allow two driveways on a single lot where only one is allowed per section 3.3.2.3 of the Site Review Regulations. Said property is located on Assessor Map 292 Lot 167 and lies within the Single Residence B (SRB) District. (LU-24-57)

Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required	
Land Use:	Single family dwelling	*Construct a second driveway to detached garage	Primarily residential	
Lot area (sq. ft.):	17,424	17,424	15,000	min.
Street Frontage (ft.):	147	147	100	min.
Open Space Coverage (%):	>40	>40	40	min.
Parking	2	2	2	
Estimated Age of Structure:	1956	Variance request(s) shown in red.		

^{*}Section 10.1114.31 of the Zoning Ordinance refers to the Site Review regulations where driveways are limited to one per lot.

Other Permits/Approvals Required

Driveway Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous history found.

Planning Department Comments

The applicant is requesting relief to construct a second driveway. The second driveway will be used to access a detached garage which sits in an area of land that was previously a paper street.

Please see Zoning Ordinance Section 10.1114.30 below.

10.1114.30 Vehicular Circulation

10.1114.31 Access to and egress from all parking areas shall be only via driveways which meet the standards for "General Accessway and Driveway Design" in the Site Plan Review Regulations

The applicant had originally prepared two driveway designs for staff to review. In consulting with Eric Eby, city traffic engineer, Plan A was the preferred driveway orientation and is the proposal that is currently before the Board. See message for Eric Eby below.

Plan A, with the driveway coming out directly into the intersection, would be the better of the two. While not desirable to have vehicles backing into an intersection, these are low volume streets and this condition already exists at other intersections in the neighborhood. There is a catch basin there that he will have to account for when constructing a driveway.

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 <u>special conditions</u> 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.

Portsmouth ZBA

1 Junkins Ave.

Portsmouth NH 03801

Re: Zoning relief for driveway 15 Mariette Dr.

Good Day,

I have recently moved to Portsmouth from Hampton NH. In Hampton, I was able to serve my community as a member of the Zoning Board for over 12 years. I now live in a vibrant neighborhood (Maple Haven) and enjoy the atmosphere. I enjoy your City and appreciate what you (ZBA) do for the community.

I recently was granted a building permit to expand the current garage structure on my property (see Exhibit "E"). I plan to expand the footprint and convert one stall to a workshop. The current garage structure was permitted in October of 1983. The only way to access this garage is to cross the grass. This is not an ideal situation.

I am asking for Zoning relief to put a driveway on my extra parcel. Specifically, I am asking for an exception to Article 3.9 of "Driveway Rules and Procedures" (DPW) where NO driveways can be granted within 30 feet of an intersection and 10.114.31 (Site Regulations) where only one driveway is allowed per lot. There is no way to access this garage from the current house lot. Further, Parcel A and Parcel B only have 71 feet of frontage. Since Parcel A was designated for the "Mariette Drive Extension" the 50 feet of frontage directly abuts the intersection. Parcel B was designated for sidewalks and only contains 20 feet of frontage. There is not enough frontage to site the driveway 30 feet from the intersection. Note that every abutter to my property on Mariette Drive has a driveway that is either in the intersection (#13), or within 30 feet of the intersection (#10, #17). Also, house #17 was allowed an extra driveway on what was once part of the "Mariette Drive Extension".

The 2-car garage stall exists 35 feet from the road. I feel that this is a reasonable request as a "hardship" exists. Further, the technicality is that this accessory lot (Parcel A) was involuntarily merged with the house lot when it was conveyed separately to my predecessor in title (see Exhibit "C"). By Ordinance each lot is allowed a separate driveway. The "spirit" of the ordinance is observed. That is all that I am asking. There is no further relief needed on this project. Thank You for your consideration of this matter.

Edmund R St. Pierre

15 Mariette Drive

Five Criteria needed for granting variance request:

1) The variance will not be contrary to the public interest:

It would be hard to deem a 12' driveway on a parcel designed for a 50' public street as contrary to the public interest.

2) The spirit of the ordinance will be observed:

This is a unique parcel which was deemed to be for a public road. The ordinance allows for one driveway to each lot. The spirit of the ordinance is observed.

3) Substantial justice will be done:

I will be able to access my updated garage/workshop without driving on the grass. The structure on this parcel was built early 1980's.

4) The value of surrounding properties will NOT be diminished:

I have already invested in improvements to the property. There will be substantial improvements to the current site in the coming months. NO diminished values will occur from this proposal.

5) Literal enforcement of the provisions of the Ordinance will result in an unnecessary hardship:

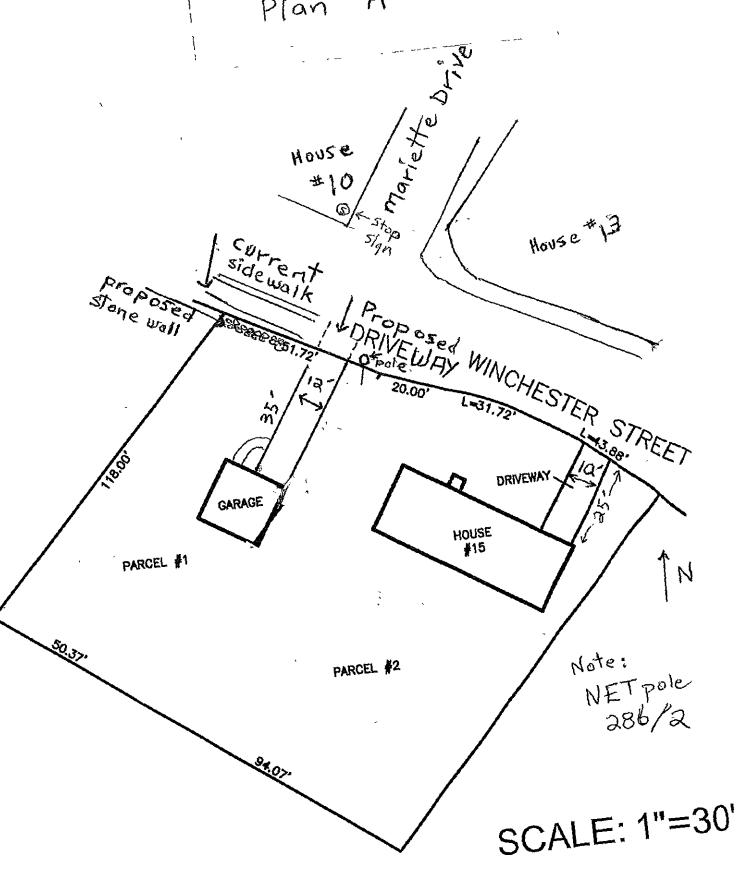
The burden to the applicant is of much greater weight than any effect on the public. It is reasonable to request paved access to this building. I can see no benefit to the public in denying this request. I have offered "off-site" improvements to improve the safety at the site.

Special conditions of the property: "Unnecessary Hardship"

Owing to special conditions of the property: 1) separate parcel that was involuntarily merged, it was designed for a public road 2) a garage structure exists on parcel 35' from the road 3) the ordinance allows for 1 driveway to each "lot". I find that NO fair and substantial relationship exists between the purposes of the ordinance with respect to its' application to this property. I feel the proposed use is a reasonable one (garage/workshop). Further, the property next door has a separate driveway on the other piece of Mariette Drive Extension.

Owing to special conditions on the property, the property cannot be used in strict conformance with the Ordinance. The current 2 stall garage cannot be accessed by using the existing driveway. It is unreasonable to have to drive over grass to access a garage that has existed for over forty years. The use (garage/workshop) is permitted under the Ordinance.

Plan "A"



REQUESTED BY:

WARRANTY DEED

I, HILDA G. BUSH, being unmarried, of Portsmouth, Rockingham County, New Hampshire,

for consideration paid,

grant to EDMUND R. ST. PIERRE,

WITH WARRANTY COVENANTS,

A tract of land, with the buildings thereon, situate in Portsmouth, Rockingham County, State of New Hampshire, bounded and described as follows:

Beginning at the southerly corner of the premises and on the northwesterly line of land now or formerly of Harvey Moulton and on land now or formerly of John Gerasis; thence North 39° 28' West by land now or formerly of Gerasis ninety-four and seven hundredths (94.07) feet to an access street leading to land now or formerly of said Gerasis; thence North 57° 31' East by said access street one hundred and two and thirty-two hundredths (102.32) feet; thence easterly by said street by a curve to the right having a radius of twenty-five (25) feet, a distance of thirty-three and thirty-five hundredths (33.35) feet; thence South 46° 3' 24" East by an access street leading to land now or formerly of said Moulton, now known as Mariette Drive, thirty-one and seventy-one hundredths (31.71) feet; thence continuing southeasterly by said Drive by a curve to the right having a radius of one hundred and eighty-five (185) feet, a distance of forty-three and eighty-three hundredths (43.83) feet; thence South 57° 31' West by land now or formerly of said Moulton one hundred, twenty-seven and eight tenths (127.8) feet to the point of beginning.

Said premises are known as Lot No. 80, as shown on Plan "C", Maple Haven, Lots 67 to 78 and 80 to 90, made by Albert Moulton, C. E., dated February 17, 1959, said premises being subject to the restrictions on said plan.

Exhibit "B"

Two certain lots or parcels of land situated in Maple Haven, in the City of Portsmouth, County of Rockingham and State of New Hampshire, being a portion of that parcel of land shown as "Mariette Drive Extension", on a plan entitled "Plan of Lots, Maple Haven, Rev. "A", Lots 75 to 78 and Lots 80 to 83", prepared by Moulton Engineering Company and more fully described as follows:

Parcel A:

Beginning at a point in the westerly corner of Lot 80 as shown on said plan, thence N 39° 28" W by land now or formerly of the heirs of John Gerasis, fifty and thirty-seven hundredths (50.37) feet to a point at the Southerly corner of Lot 81 on said plan; thence N 57° 31" E by the sideline of said Lot 81 one hundred eighteen (118) feet to a point in the sideline of Mariette Drive, thence S 45° 43' 20" E, fifty-one and seventy-two hundredths (51.72) feet to a point in the sideline of Lot 80, thence S 57° 31' W by the sideline of Lot 80, one hundred twenty-five (125) feet to the point of beginning.

Parcel B:

Beginning at a point in the Westerly sideline of Lot 80, which point is 102.32 feet, a direction of N 57° 31' E from the Southwesterly corner of Lot 80, thence by a curve to the right whose radius is 25 feet, an arc length of 33.35 feet to a point on the Westerly sideline of Mariette Drive, thence N 45° 43' 20" W a distance of 20 feet more or less, thence S 57° 31' W to the point of beginning, meaning and intending to describe a triangular parcel of land on the Northwesterly corner of Lot 80.

Parcel A and Parcel B are sold subject to the restriction that no structure shall be built or located on the premises other than a structure accessory to an existing building on Lot 80 as shown on said Plan.

I hereby terminate and release any and all Homestead Rights in said property and further certify under the pains and penalties of perjury that there are no other persons entitled to claim Homestead Rights in said property.

Being the same premises conveyed to the grantor herein by deed recorded with the Rockingham County Registry of Deeds in Book 2549, Page 2886, Deed recorded with the Rockingham County Registry of Deeds in Book 2947, Page 0478 and Corrected Deed recorded with said Registry dated October 22, 1992, Book 2950, Page 0109.

[Signatures on next page]

BK2358 P0198

QUITCIAIM DEED

KNOW ALL MEN BY THESE PRESENTS. That the City of Portsmouth, a municipal corporation having its usual place of business in Portsmouth, County of Rockingham and State of New Hampshire, for consideration paid, grants to Martin L. Bush and Hilda G. Bush, of said Portsmouth, as joint tenants with rights of survivorship, a certain lot or parcel of land with quictain covenants situated in Maple Have in the City of Portsmouth, County of Rockingham and State of New Hampshire, being a portion of that parcel of land shown as "Mariette Drive Extension", on a plan entitled "Plan of Lots, Maple Haven, Rev. "A", Lots 75 to 78 and Lots 80 to 83", prepared by Moulton Engineering Company and more fully described as follows:

Beginning at a point i. the westerly corner of Lot 80 as shown on said plan, thence N 39° 28" W by land now or formerly of the Heirs of John Gerasis, fifty and thirty seven hundredths (50.37) feet to a point at the Southerly corner of Lot 81 on said plan, thence N 57° 31" E by the sideline of said Lot 81 one hundred eighteen (118) feet to a point in the sideline of Mariette Drive, thence S 45° 43' 20" E, fifty-one and seventy-two hundredths (51.72) feet to a point in the sideline of Lot 80, thence S 57° 31" W by the sideline of Lot 80, one hundred twenty-five (125) feet to the point of beginning.

The within premises are sold subject to the restriction that no structure shall be built or located on the premises other than a structure accessory to an existing building on Lot 80 as shown on said Plan.

This deed is executed on behalf of the City of Portsmouth by Calvin A. Canney, City Manager, on the 35 day of

19 کور . .

WITNESS:

CITY OF PORTSMOUTH

Calvin A.

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

The foregoing instrument was acknowledged before me this 25 day of) Arthur , 19 50, by Calvin A. Canney, City Manager of the (City of Portsmouth, New Hampshire, a municipal corporation, on behalf of the corporation.

Cuely L Hanscom

STATE OF NEW HAMPSHIRE

TAX ON TRANSPER

OF REAL PROPERTY

RE-FOIL

TAX

INSE

TO 0 0

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, That the City of Portsmouth, a municipal corporation having its usual place of Liminess in Portsmouth, County of Rockingham and State of New Hampshire, for consideration paid, grants to Martin L. Rush and Hilds G. Bush, of said Portsmouth, as joint tenants with rights of survivorship, a certain lot or parcel of land with quitclaim covenants situated in Maple Haven in the City of Portsmouth, County of Rockingham and State of New Hampshire, being a portion of that parcel of land shown as "Mariette Drive Extension", on a plan entitled "Plan of Lots, Maple Haven, Rev. "A", Lots 75 to 78 and Lots 80 to 83", prepared by Moulton Engineering Company and more fully described as follows:

Beginning at a point in the Westerly sideline of Lot 80, which point is 102.32 feet, a direction of N 57° 31'E from the Southwesterly corner of Lot 80, thence by a curve to the right whose radius is 25 feet, an arc length of 33.35 feet to a point on the Westerly sideline of Mariette Drive, thence N 45° 43' 20" W a distance of 20 feet more or less, thence S 57° 31' W to the point of beginning, meaning and intending to describe a triangular parcel of land on the Northwesterly corner of Lot 80.

This deed is executed on behalf of the City of Portsmouth by Calvin A. Canney, City Manager, on the 20th day of Manager

, 197**9**.

City Manager

WITNESS:

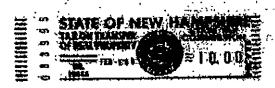
CITY OF PORTSMOUTH

Canney-

STATE OF NEW HAMPSHIRE ROCKINGHAM, SS

The foregoing instrument was acknowledged before me this 20 day of 1977, by Calvin A. Canney, City Manager of the City of Portsmouth, New Hampshire, a municipal corporation, on behalf of the corporation,

Wints



W Elduck

0.17.

of Portsmouth, Rockingham

County, New Hampshire

for consideration paid, grant to

Grante: Martin Luther Bush and Hilda G. Bush, husband and wife,

of 19 Lilac Lane, Portsmouth, Rockingham

Grantor: Raymond J. Bailey, Jr. and Kathleen E. Bailey,

County, New Hampshire

as JOINT TENANTS, with rights of survivorship, with WARRANTY COVENANTS,

ECT POCK NGHAM GOUNTY

Portsmouth MH (80)
A tract of land, with the buildings thereon, situate in
Portsmouth, Rockingham County, New Hampshire, bounded and described
as follows:-

Beginning at the moutherly corner of the premises and on the northwesterly line of land now or formerly of Harvey Moulton and on land of John Gerasis; thence N. 39° 28' W. by land of Gerasis 94.07 feet to an access street leading to land of said Gerasis; thence N. 57° 31' E. by said access street 102.32 feet; thence easterly by said street by a curve to the right having a radius of 25 feet, a distance of 33.35 feet; thence S. 46° 3' 24" E. by an access street leading to land of said Moulton, now known as Mariette Drive, 31.71 feet; thence continuing southeasterly by said Drive by a curve to the right having a radius of 185 feet, a distance of 43.83 feet; thence S. 57° 31' W. by land of said Moulton 127.8 feet to the point of beginning.

Said premises are known as Lot No. 80, as shown on Plan "C", Maple Haven, Lots 67 to 78 and 80 to 90, made by Albert Moulton, C. E., dated February 17, 1959, said premises being subject to the restrictions as shown on said plan.

Being the same premises conveyed to Raymond J. Bailey, Jr. and Kathleen E. Bailey by Cornelius J. Collins, Jr. and Elizabeth A. Collins by deed dated April 10, 1968.

The grantor(s) are husband and wife, and

xxx yearners, release to said grantee all rights of curtesy, dower and homestead and other interests therein.

WITNESS OUR. hand and seal this 23rd day of February, 1973.

Signed, sealed and delivered in the presence of:

Calculated Color Garden Galler Galler

STATE OF NEW HAMPSHIRE

TAX ON TRANSFER

OF REAL PROPERTY

AND TRANSFER

OF REAL PROPERTY

OF REAL P

Notary Partic With the Partic S. D. PETERSON, LT. JACC, USHR Notorial Powers per New Hampshire Rev. Stats. Annotated, Ch. 456 12(1968)

4/2/24, 8 26 AM

Exhibit "E"

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City of Portsmouth **Building Permit**

Inspection Department 1 Junkins Avenue Portsmouth, NH 03801 603-610-7243

Use Group

Constr. Type

Permit Number. BLDG-23-856 Date of Issue November 6, 2023 Expires: November 5, 2024 Const. Cost \$ 12,000

ST PIERRE EDMUND R Applicant

Edmund St Pierre
Ed St Pierre, ESP Construction Phone # 978 766 7748 Contractor

15 MARIETTE DR Location

Description of Work Residential detached garage renovation. This stage of the job does not include adding a second floor. Extend the front garage foundation by 5', the roof overhang to extend an additional 2' Proposed changes are 33' from front lot line, 21' from right side setback, 88' from left setback, and 58' from rear setback. The existing footprint is 20' x 20' w 2' apron. Proposed footprint is 20' x 25'. Convert right side stall to workshop with with 1/2 bath 36"x82" Fiberglass door and 36"x 36" window to match house. Siding details will match house. Install 2" rigid Styrofoam around the penmeter to frost protect the slab foundation

0292--0167--0000-

Occupancy Classification Residential Other- (See R-3) Accessory

to Residential

Design Occupancy Load Total # of Dwelling Units. Remarks. * Per City Ord, Sec. 11 502 (F) Street/Unit Number must be affixed to Main Structure as to be plainly visible from the street. Construction sites must post the address clearly on the property. No site activity allowed before 7:00AM or after 6:00PM. No weekend construction allowed.

IRC Edition 2018 Bldg. Code

Detached Accessory Structure (Shed/Garage)

-*-*-*Please call 603-610-7243 to schedule inspections

* Separate electrical, plumbing and mechanical permits required

* Per Section R109 4 Approval Required. Work shall not be done beyond the point indicated in each successive inspection without first obtaining the approval of the building official. Do not cover or conceal until authorized by the building official

The PERMIT HOLDER has read this permit, the permit application, and the Building Official's marked-up plans and agrees to perform the work authorized including any conditions or requirements indicated thereon, and any stipulations imposed by a Land Use Board in conjunction with the project. The CONTRACTOR shall be responsible for notifying the inspection Department 48 hours in advance, for FOUNDATION, FRAMING, and FINAL inspections. A Certificate of Occupancy is required for all Building Permits. Buildings shall not be occupied until ALL inspections (BUILDING, ELECTRICAL, PLUMBING, MECHANICAL, and FIRE) are complete and Occupancy has been issued. By signing this pennit, the owner or his/her representative (Permit Holder), authorizes property access by city officials to conduct interior and exterior inspections and property tax assessments during and/or after the construction process

The Permit Card Shall Be Posted and Visible From the Street During Construction.

* Per City Ord Sec. 11.502 (F) Street/Unit Number must be affixed to Main Structure as to be plainly visible from the street. Construction sites must post the address clearly on the property. No site activity allowed before 7 00AM or after 6 00PM. No weekend construction allowed

Code Official

This is an e-permit. To learn more, scan this barcode or

visit portsmouthnh viewpointcloud com/#/records/77044

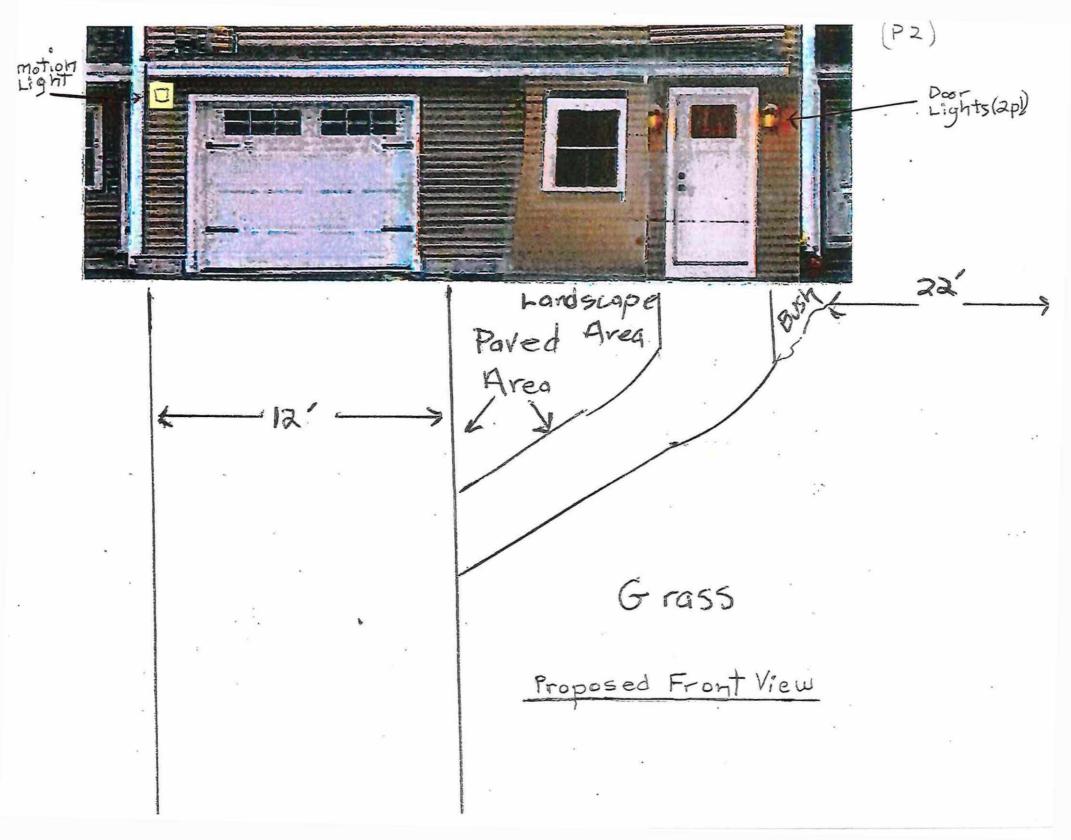


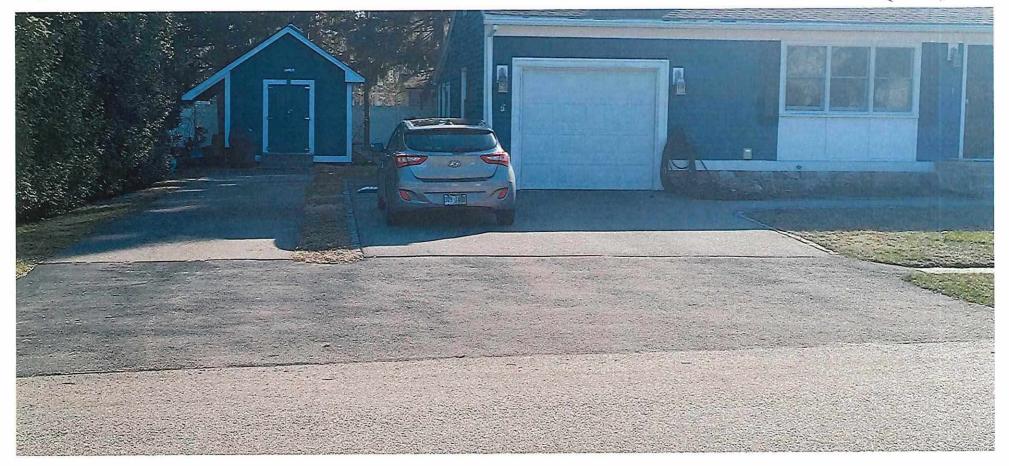


1 House lot conveyed 3/73 Exibit D

1 Parcel B 15 Mariette Dr conveyed 12/79 Existing Conditions Exibit C2

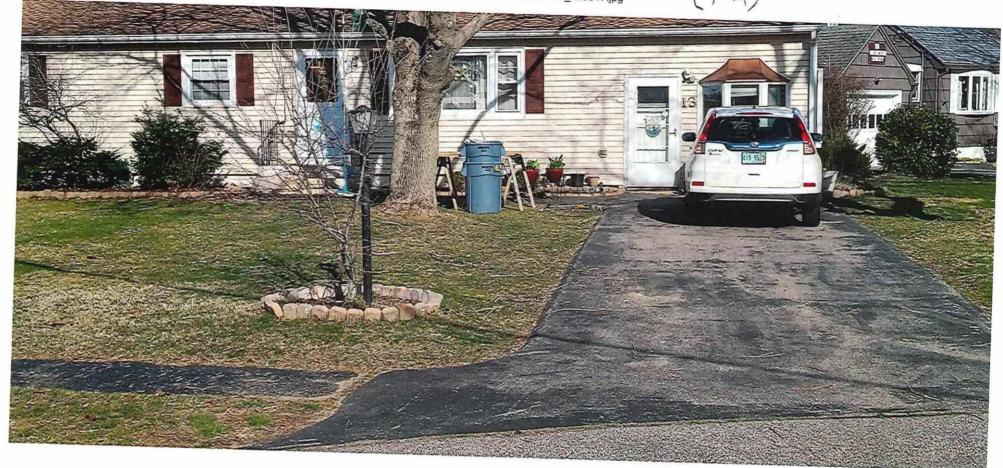
1 Parcel A conveyed 1/80 Exibit C





#17 Accessory

#17 Mariette Dr 20 feet



#13 Mariette Dr > 20ft

10 Winchester



10 Mariette Dr. 11.5 feet

III. NEW BUSINESS

D. The request of Elizabeth M. and Torben O. Arend (Owners), for property located at 1 Rockaway Street whereas relief is needed to construct a porch and mudroom onto the front of the existing structure which requires the following: 1) Variance from Section 10.521 to allow a 24 foot front yard where 30 feet is required. Said property is located on Assessor Map 230 Lot 11 and lies within the Single Residence B (SRB) District. (LU-24-46)

Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required	
Land Use:	Single family dwelling	*Construct an addition and front porch to the front of the primary structure	Primarily residential	
Lot area (sq. ft.):	31,363	31,363	15,000	min.
Lot Area per Dwelling Unit (sq. ft.):	31,363	31,363	15,000	min.
Street Frontage (ft.):	100	100	100	min.
Lot depth (ft.):	121	121	100	min.
Front Yard (ft.):	30	24	30	min.
Left Yard (ft.):	>10	>10	10	min.
Right Yard (ft.):	20	20	10	min.
Rear Yard (ft.):	>40	>40	30	min.
Height (ft.):	<35	<35	35	max.
Building Coverage (%):	6.5	7	20	max.
Open Space Coverage (%):	>40	>40	40	min.
Parking	2	2	2	
Estimated Age of Structure:	1933	Variance request(s) s	hown in red.	

Other Permits/Approvals Required

Building Permit

Neighborhood Context





Previous Board of Adjustment Actions

No previous history found.

Planning Department Comments

The applicant is requesting relief to construct a front porch addition which will consist of a 6' by 9' 6" mudroom and a 6' by 19' 6" covered porch. This addition is proposed to be located 24 feet from the front lot line.

Variance Review Criteria

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

- 1. Granting the variance would not be contrary to the public interest.
- 2. Granting the variance would observe the spirit of the Ordinance.
- 3. Granting the variance would do substantial justice.
- 4. Granting the variance would not diminish the values of surrounding properties.
- 5. The "unnecessary hardship" test:
 - (a) The property has <u>special conditions</u> 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.

Re: 1 Rockaway Street ZBA Application

Dear Chairperson and Board Members,

My client and homeowner Torben Arend at 1 Rockaway Street is seeking your approval for a front setback relief to allow for a mudroom addition and front covered porch to his home.

The existing structure is a single-family residence with approximately 2,950 s.f. of living space within a cape style home with a one car attached garage. The lot is approximately .72 acres (31,363 s.f.) in the Single Residence B (SRB) zoning district. The existing structure conforms with all current zoning dimensional requirements for the SRB district.

The new 6-foot addition on the front of the existing house would create a new proposed front setback of 24 feet where 30 feet is required. Currently there is no mudroom or front entry area and as you can imagine in older cape homes the front door is typically right in front of the stairs to the second floor making it very crowded to navigate around. The new mudroom is only 6 feet deep by 9 feet – 6 inches wide and will allow a much more comfortable transition of an entry space into the home. The remainder of the 6-foot front addition will be an open covered porch to keep the style and feel of the cape house intact as well as providing relief from weather upon entering the home. The structure will also remain a single-family residence.

We feel the variance will not be contrary to the public interest because the design and style is harmonious with the current house and looks as though it belongs naturally from the beginning. The house is also on the end of a dead-end street with very minimal traffic.

The spirit of the ordinance will be observed in that all of the neighboring homes are also 20 feet or less from their front property line so it will fit in with the rest of the neighborhood.

We also believe this is why substantial justice will be done and the values of surrounding properties will not be diminished if this application is approved because all of the surrounding properties are similar in scale and depth to the street or are even closer than 24 feet and this new addition will therefore fit in seamlessly with the neighborhood and not be more detrimental.

Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship in that the new entryway provides a much easier way to navigate through the front entry of the home as well as a closer travel distance from the street, especially as the homeowner plans to age in place. A small ramp could also be added to the side of the covered porch in the future to allow easier accessibility to the home. Also, again, we feel it would only be fair for the homeowner to have the same rights as his neighbors to have his structure closer to the street.

We appreciate your time and consideration for this application.

Sincerely,

Chris Crump CWC Design LLC 978-397-3233 chris@cwc-design.com

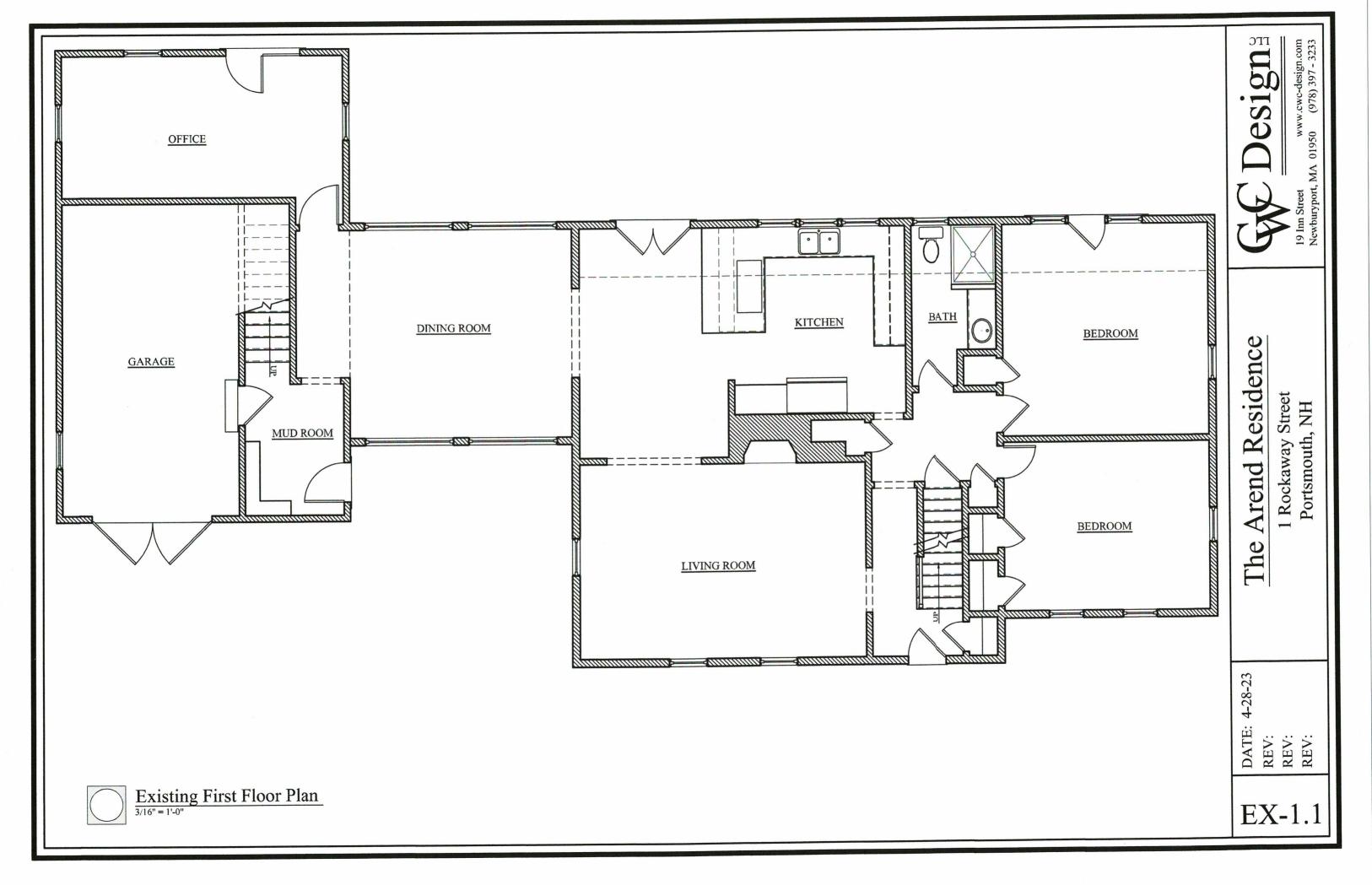
The Arend Residence

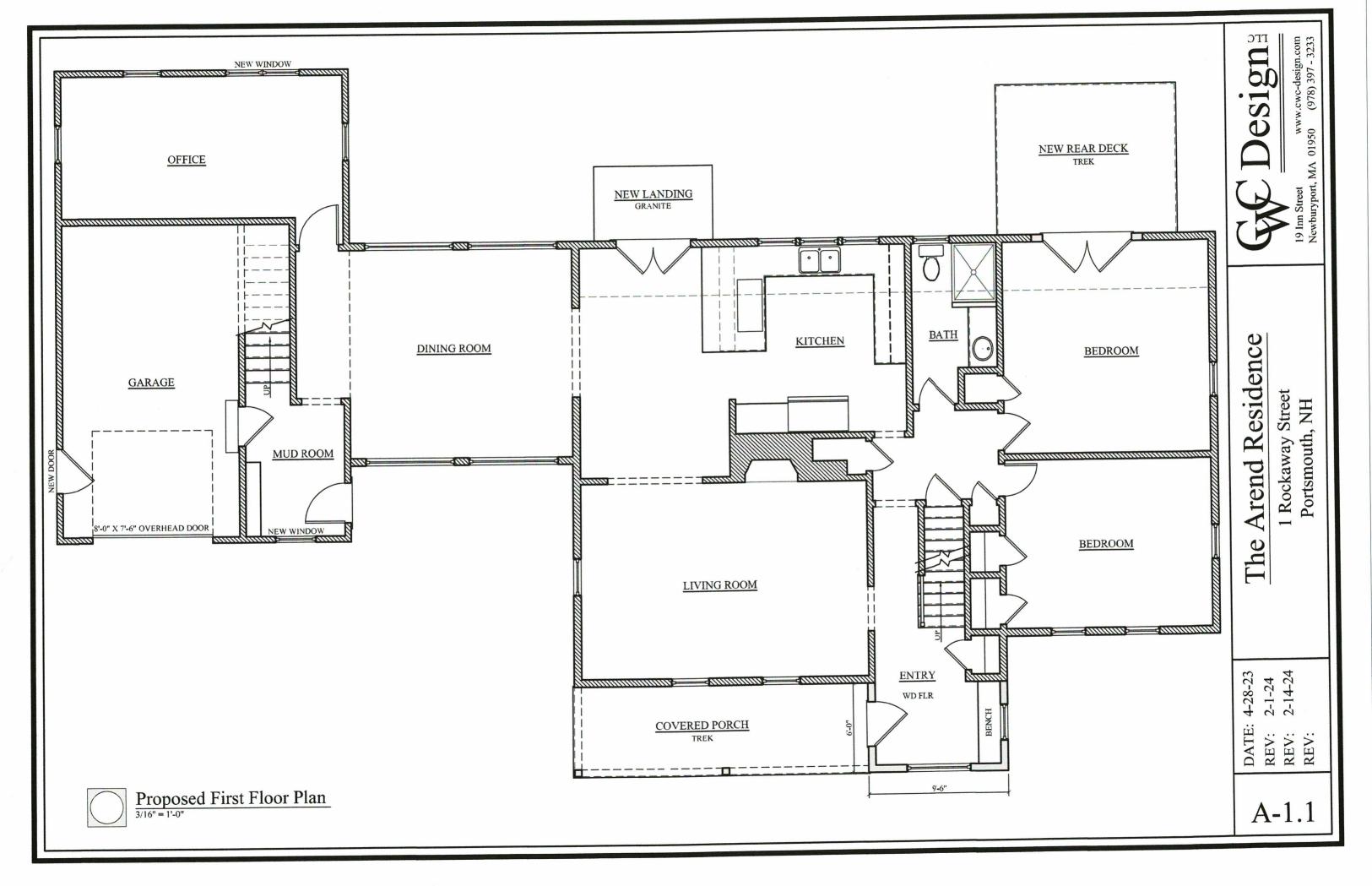
1 Rockaway Street Portsmouth, NH

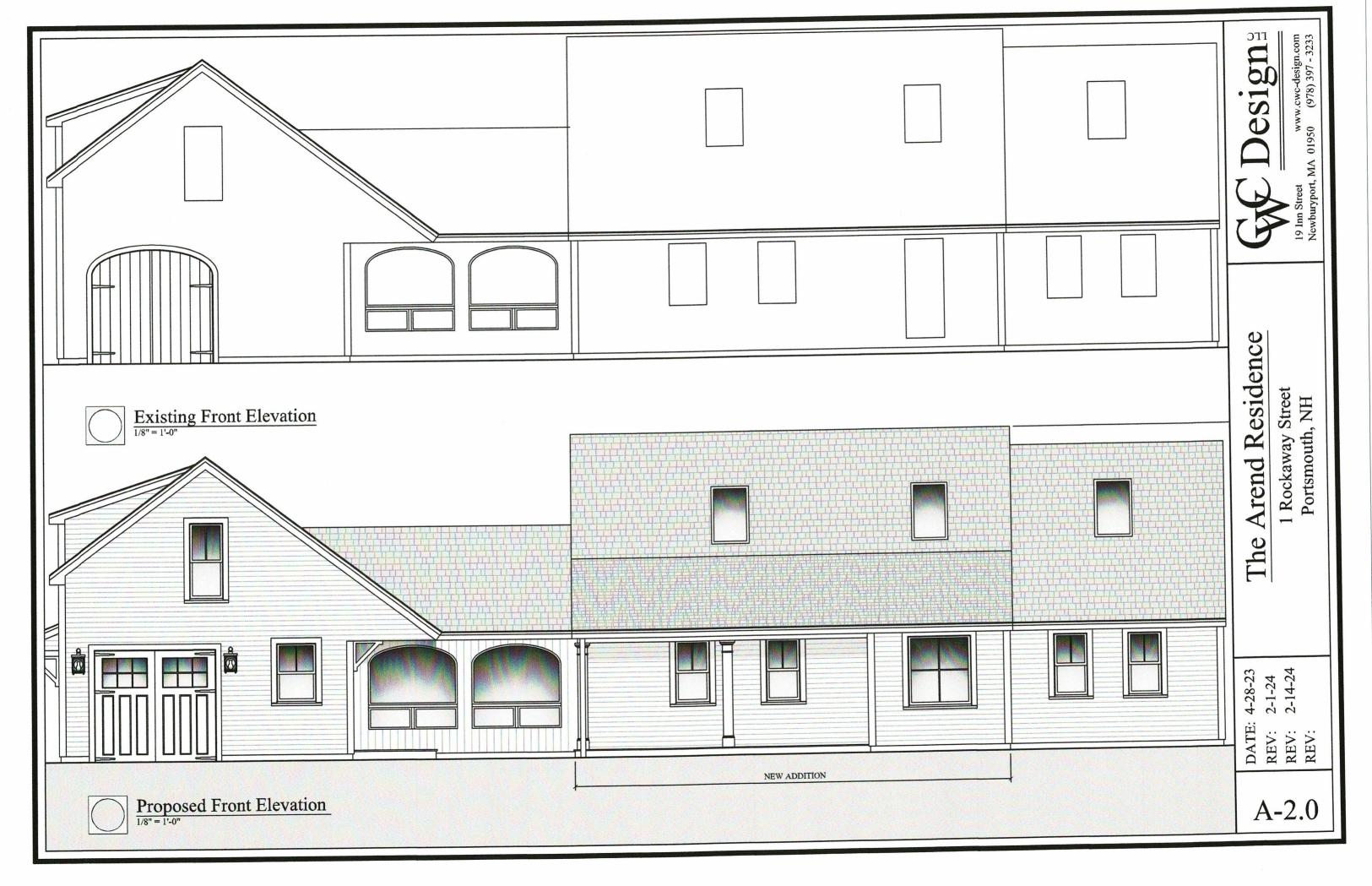
> Design Set February 14, 2024

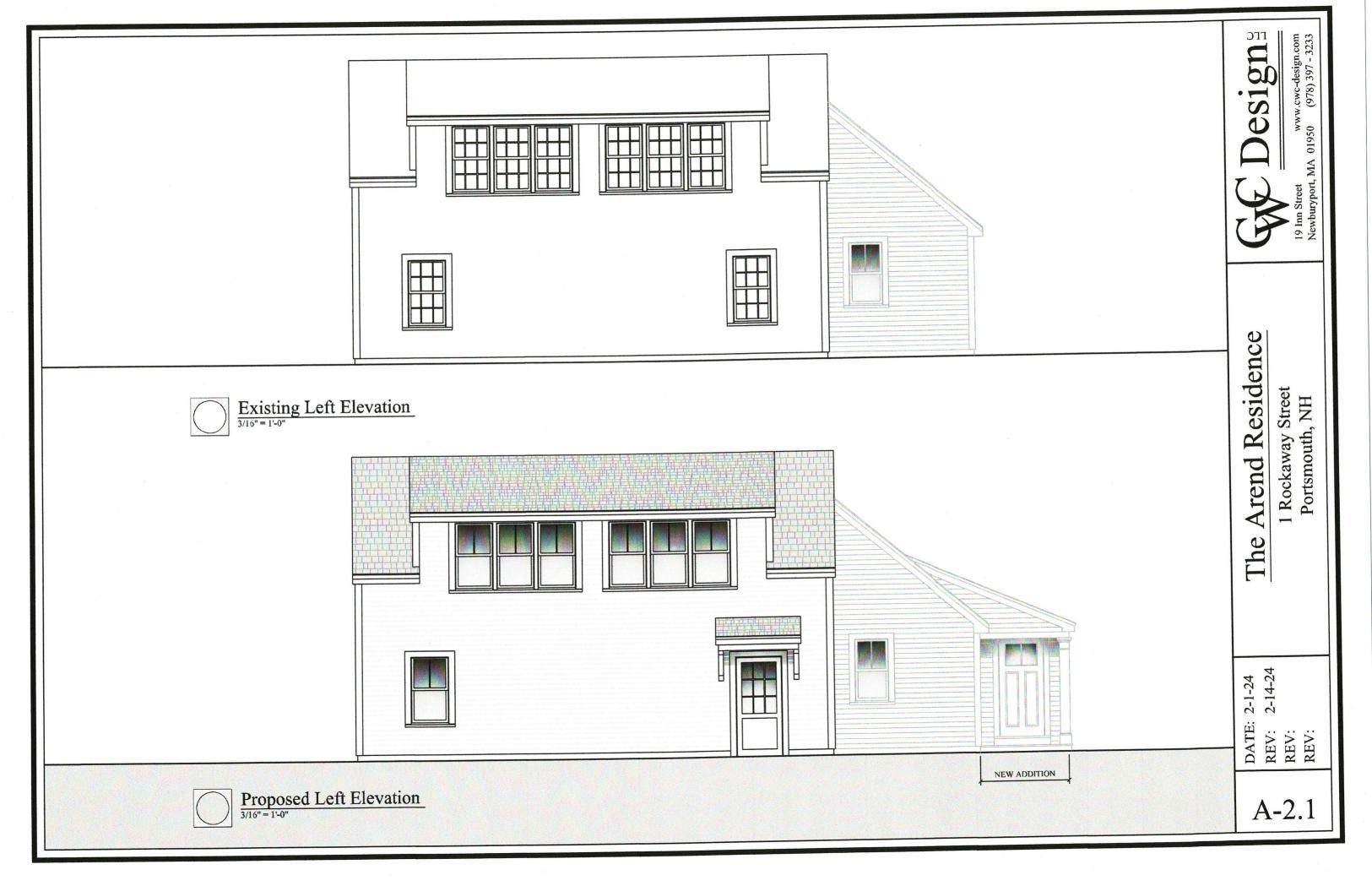


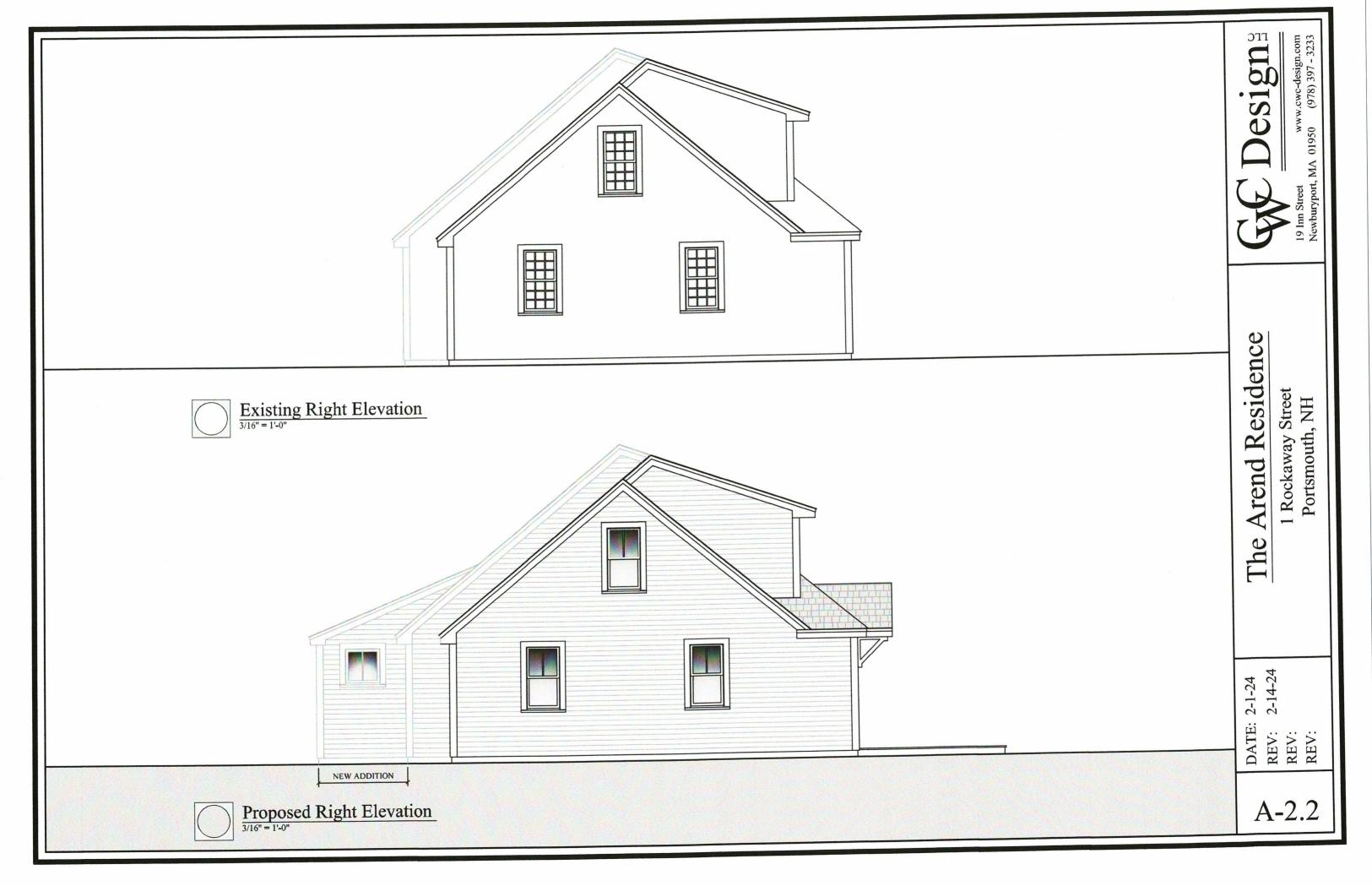
19 Inn Street www.c Newburyport, MA 01950 (9

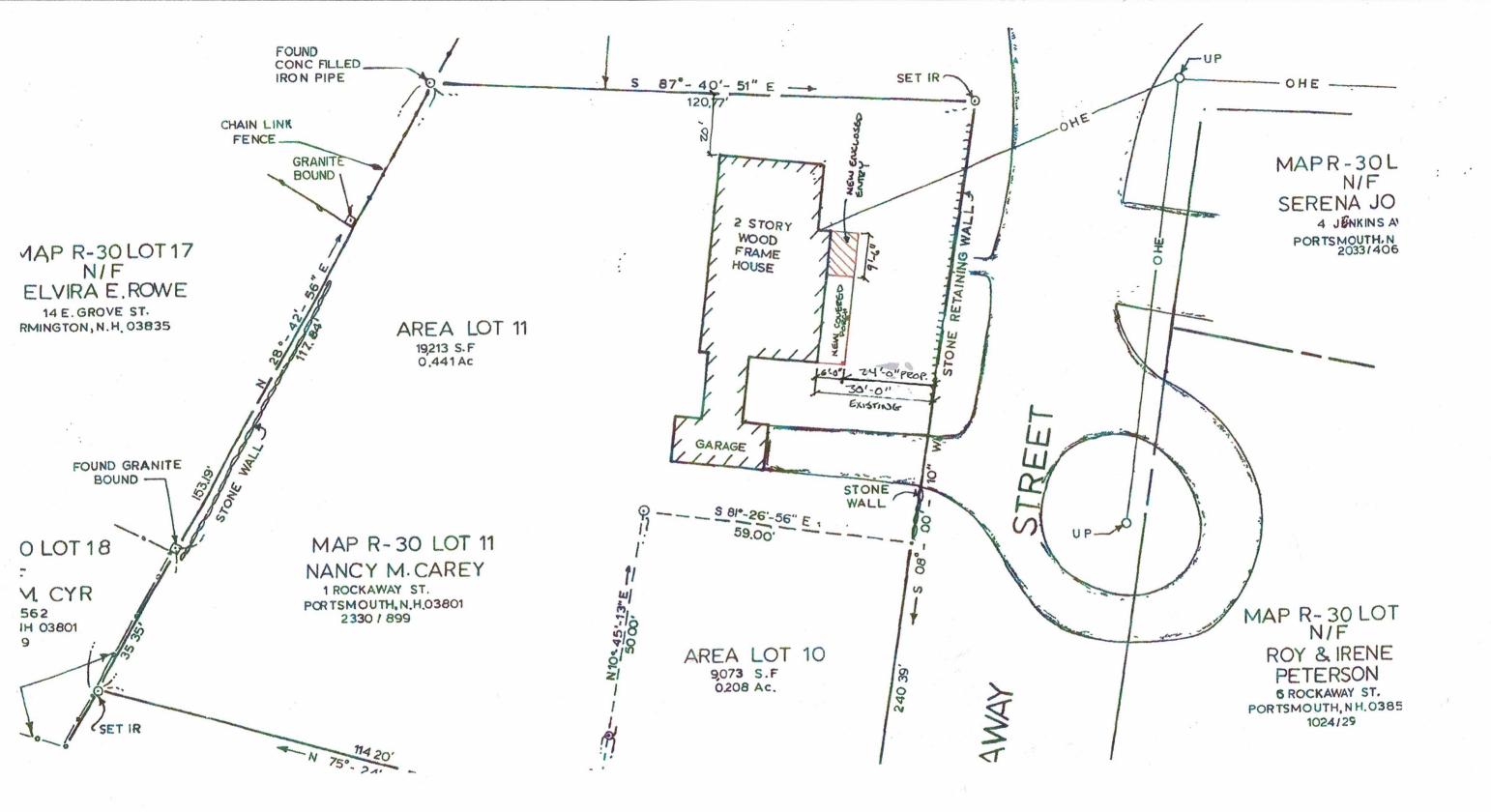












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