

**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.**

**July 16, 2024**

**AGENDA**

**I. APPROVAL OF MINUTES**

- A.** Approval of the June 18, 2024 *and* June 25, 2024 meeting minutes.

**II. NEW BUSINESS**

- A.** The request of **Dawn P. Sirois (Owner)**, for property located at **485 Ocean Road** whereas relief is needed to demolish the existing rear deck and construct a new screened in porch which requires the following: 1) Variance from Section 10.521 to allow 14% building coverage where 10% is allowed; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 283 Lot 32 and lies within the Single Residence A (SRA) District. (LU-24-103)
- B.** The request of **Avi Magidoff (Owner)**, for property located at **133 Pearson Street** whereas relief is needed to construct a car port which requires the following: 1) Variance from Section 10.573.20 to allow a 4 foot side yard where 8.5 feet is required. Said property is located on Assessor Map 232 Lot 103 and lies within the Single Residence B (SRB) District. (LU-24-107)
- C.** The request of **Bruce R Carll (Owner) and Patrick and Wendy Quinn (Applicants)**, for property located at **0 Melbourne Street** whereas relief is needed to construct a single residential unit on a vacant and undersized lot which requires the following: 1) Variance from Section 10.521 to allow a) 6,197 sf of lot area where 15,000 sf are required, b) 6,197 sf of lot area per dwelling unit where 15,000 sf are required, and c) 50 ft of frontage where 100 ft are required. Said property is located on Assessor Map 233 Lot 54 and lies within the Single Residence B (SRB) District. (LU-24-109)

- D.** The request of **231 Corporate Drive, LLC (Owner)**, for property located at **231 Corporate Drive** whereas relief is needed to add a fenced area between the building and the front lot line, for the use associated with dog walking which requires the following: 1) from Section 305.02(a) of the Pease Development Ordinance for an accessory use located in the front yard and: 2) from Section 304.04(c) of the Pease Development Ordinance for being located within 70 feet of the front lot line. Said property is located on Assessor Map 314 Lot 2 and lies within the Airport Business Commercial (ABC) District. (LU-24-114)
- E.** The request of **132 Chapel Street, LLC (Owner)**, for property located at **132 Chapel Street** whereas relief is needed to convert an existing commercial building back to a single residential unit which requires the following: 1) Variance from Section 10.440 Use #1.10 to allow a single family dwelling where it is not permitted; 2) Variance from Section 10.5A41.10C to allow a House building type where it is not permitted; and 3) Variance from Section 10.642 to allow a residential use on the ground floor where it is not permitted. Said property is located on Assessor Map 106 Lot 6 and lies within the Character District 4 (CD4) and Historic District and the Downtown Overlay District (DOD). (LU-24-115)
- F.** The request of **Islington Properties, LLC (Owner)**, for property located at **371 Islington Street** whereas relief is needed to convert an existing commercial space into a residential unit which requires the following: 1) Variance from Section 10.5A41.10A to allow 918 sf of lot area per dwelling unit where 3,000 sf are required. Said property is located on Assessor Map 144 Lot 22-3 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-24-106)
- G.** The request of **Katherine Ann Bradford 2020 Revocable Trust (Owner)**, for property located at **170-172 Gates Street** whereas relief is needed to demolish the existing garage and the small rear addition, and construct a new garage in the same location as the existing garage and construct a side entryway roof which requires the following: 1) Variance from Section 10.521 to allow a) 45% building coverage where 30% is required, and b) 0 foot right side yard where 10 feet is required; 2) Variance from Section 10.573.20 to allow a 0 foot rear yard where 10.5 feet is required; 3) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 103 Lot 19 and lies within the General Residence B (GRB) and Historic District. (LU-24-116)
- H.** The request of **Kenneth Racicot and Kelly Ann Racicot (Owners)**, for property located at **34 Marne Avenue** whereas relief is needed to construct a shed behind the primary structure which requires the following: 1) Variance from Section 10.573.20 to allow a 5 foot side yard where 10 feet is required. Said property is located on Assessor Map 222 Lot 33 and lies within the General Residence A (GRA) District. (LU-24-66)

- I. The request of **Lindsay Floryan** and **Brian Collier (Owners)**, for property located at **493 Dennett Street** whereas relief is needed to construct an 8 foot fence which requires the following: 1) Variance from Section 10.515.13 to allow an 8 foot fence where 6 feet is the maximum. Said property is located on Assessor Map 161 Lot 45 and lies within the General Residence A (GRA) District. (LU-24-78)

### **III. OTHER BUSINESS**

### **IV. ADJOURNMENT**

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

[https://us06web.zoom.us/webinar/register/WN\\_vxxp0Rq6RFmuD3FqbeNH9Q](https://us06web.zoom.us/webinar/register/WN_vxxp0Rq6RFmuD3FqbeNH9Q)

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

**7:00 P.M.**

**June 18, 2024**

**MEMBERS PRESENT:** Phyllis Eldridge, Chair; David Rheume; Thomas Rossi; Paul Mannle; Jeffrey Mattson; Thomas Nies; ML Geffert, Alternate

**MEMBERS EXCUSED:** Beth Margeson, Vice Chair; Jody Record, Alternate

**ALSO PRESENT:** Jillian Harris, Planning Department

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Chair Eldridge called the meeting to order at 7:00 p.m. She said Petitions F through J would be heard at the June 25 meeting and that Alternate ML Geffert would take a voting seat.

**I. APPROVAL OF MINUTES**

**A. Approval of the May 21, 2024 and May 28, 2024 meeting minutes.**

**May 21 Minutes:**

Mr. Nies said that he wanted to add the following paragraph on page 7, under Decision of the Board and before the motion was made: “Mr. Nies questioned why the applicant needed a new variance. He said the proposed fence is in the same location and is the same height as what was previously approved and it is not connected to the retaining wall to form one structure, so the height of the two should not be combined. Staff explained that the project was significantly changed by the addition of the retaining wall from what was previously approved and so needed to be reauthorized”.

Mr. Nies asked that on page 8, in the last sentence of the first paragraph, the phrase “and the fence’s height hasn’t changed” replace the phrase “and it hasn’t changed” to clarify that it was the fence that had not changed. The sentence was amended to read as follows: “He said the way the property increased in back in height is really a condition that makes it difficult to construct a fence that provides privacy and safety without having it relatively high from the street, and the fence’s height hasn’t changed since the last variance was granted.”

**May 28 Minutes:**

Mr. Nies asked that on page 11, in the second line of the paragraph under Speaking To, For, or Against the Petition, the word ‘raising’ be changed to ‘razing’ so that the sentence now reads:

*“Attorney Mulligan said the property was not in the Historic District and the owner would be within his rights to make substantial changes up to and including razing the structure”.*

Mr. Nies asked that on page 12, at the end of the first paragraph, the following sentence be added: “Mr. Nies also noted that even the applicant’s attorney admitted it was possible to fully comply with the ordinance by putting four residences into one building consistent with the provisions of the zoning ordinance. Therefore, the property could be used in strict conformance with the ordinance”.

*Mr. Mannle moved to **approve** both sets of minutes as **amended**, seconded by Mr. Rossi. The motion **passed** unanimously, 6-0, with Ms. Geffert abstaining from the motion.*

## II. NEW BUSINESS

Chair Eldridge recused herself from the following petition.

*Mr. Rossi nominated Mr. Rheume as Acting Chair, seconded by Ms. Geffert. The motion **passed** unanimously, 6-0.*

- A. The request of **Kimberly Rosensteel and Timothy Sullivan (Owners)**, for property located at **63 Humphreys Court** whereas relief is needed to install a mini-split air conditioning system, which requires the following relief: 1) Variance from Section 10.515.14 to install a mechanical unit 2.5 feet from the side property line whereas 10 feet is required. Said property is located on Assessor Map 101 Lot 38 and lies within the General Residence B (GRB) and Historic Districts. (LU-24-71)

### SPEAKING TO THE PETITION

[Timestamp 6:18] The applicant Tim Sullivan was present and reviewed the petition. He said there were three potential locations for the air conditioning system’s external unit, which he described. He reviewed the criteria and said they would be met.

[Timestamp 10:58] Mr. Nies asked why the applicant did not want to place the unit on the west side of his property. Mr. Sullivan said the unit would be an eyesore to the community garden. Acting Chair Rheume asked if there was a preference for either location from a mechanical standpoint. Mr. Sullivan said the air conditioning company said either location would be possible and neither location would have a significant impact on the line sets. He said he preferred to put the unit farther north because of the lines and because it would fall behind a small fence to make it less noticeable. Acting Chair Rheume asked if the unit would be 10 feet or more away from the property line. Mr. Sullivan said he wasn’t sure but even if it was within 10 feet, he thought the effect on the neighbor’s property would be less noisy than the current air conditioning system. Acting Chair Rheume said the ordinance stated that the unit had to be 10 feet away from all property lines and it was currently advertised for the right side property line. He asked if the applicant could place it 10 feet away from the back property line. Mr. Sullivan agreed and said he could put the unit in a more forward location and move the fence up so that the unit was minimally noticeable from the street.

Acting Chair Rheume opened the public hearing.

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

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

### **DECISION OF THE BOARD**

Acting Chair Rheume noted that the Planning Staff's recommendation was that any motion include that the location of the unit may change as a result of the review and approval of the permit as long as it is consistent with the side setback, as depicted in the application materials. He said the Board had a concern with the back setback as well and that the unit would have to conform with that.

*Mr. Mannle moved to **grant** the variance for the petition as presented, with the following Staff condition:*

- 1. The location of the unit may change as a result of the review and approval of the permit as long as it is consistent with the side setback, as depicted in the application materials.*

*Mr. Mattson seconded the motion.*

Mr. Mannle said it was a typical request, especially from the south end. He said the applicant did his due diligence regarding the best place to locate the unit and the unit having the least impact but still being of benefit. He said the request was minimal and the structure was already noncompliant. 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 was doing his best to shield the unit from public view. He said it would do substantial justice and would not diminish the values of surrounding properties, noting that the neighbor had a similar unit. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property had special conditions that distinguished 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 property, and the proposed use is a reasonable one; or owing to the special conditions, the property cannot be reasonably used in strict conformance with the ordinance and the variance is therefore necessary. He said he believed that the property does have special conditions, given what's already on the property. He noted that those special conditions applied to nearly every property in the south end. For those reasons, he said the variance should be granted with the Staff's recommended condition.

Mr. Mattson said the lot is undersized and, based on the location of the structure of the property, those special conditions justify granting the variance and gives two potential options for putting it on the side yard. Acting Chair Rheume said he thought having the unit on the opposite side would be an advantage because it was more of an open area and not up against a neighboring property, but he said the unit was a substantial double decker and had more of a sight aspect to it than more

traditional condenser units, so he thought it made sense that the applicant found a location that would tuck the unit in and keep its visual aspect to a minimum.

*The motion passed unanimously, 6-0.*

Chair Eldridge returned to her seat and Acting Chair Rheame returned to member status.

- B.** The request of **Madeline Lockwood and Drew Morgan (Owners)**, for property located at **42 Sewall Road** whereas relief is needed for a second-story addition and construction of a front porch to the existing home, which requires the following relief: 1) Variance from Section 10.521 to a) allow a 20 foot front yard where 30 feet is required; b) to allow a building coverage of 21.5% where 20% is the maximum permitted; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 170 Lot 13 and lies within the Single Residence B (SRB) District. (LU-24-70)

## **SPEAKING TO THE PETITION**

[Timestamp 22:55] The owners Madeline Lockwood Morgan and Drew Morgan were present. Ms. Morgan reviewed the petition. She noted that they were growing out of their current home and needed to expand. She said the footprint would not change. Mr. Morgan reviewed the criteria.

[Timestamp 26:26] Mr. Rossi said he understood the aesthetic that the applicants wanted and how the front porch added to it. He asked Planning Staff member Ms. Harris if it would be reasonable to stipulate that the front porch could not be enclosed at a future date. He said the setbacks were to ensure that people didn't have view obstructions, and without an enclosed front porch, the view would still pretty be open. Ms. Harris agreed. Mr. Rheame said the site plan showed that there were about two feet of the existing house in the right yard 10-ft setback. He said the existing garage looked like it had a much taller roof and asked if part of the expansion would cover the garage. The applicant said it would not and that it would be the same height as what it currently was. Mr. Rheame asked what was unique about the property's characteristics in terms of hardship. Ms. Morgan said she didn't know what made the property unique other than other people in the neighborhood wanted to do the same thing. Mr. Rheame said that was one of his concerns. He asked what the setback distance from the road was of the Spinney Road house that was shown as an example. Ms. Morgan said she didn't know. Mr. Rheame said it looked like it was set back farther.

Chair Eldridge opened the public hearing.

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

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

## **DISCUSSION OF THE BOARD**

[Timestamp 31:05] Chair Eldridge said the Board had two letters of support. Mr. Rossi said one of the letters was not helpful because it said the neighbor would like to do the same thing. He said the Board would be allowing a reasonably conforming structure to be substantially nonconforming in regard to the front yard setback, where the other properties in the immediate neighborhood were also reasonably conforming, so there was not only a potential but a likelihood that the Board would be setting a domino chain reaction in effect within an area that would lead to more nonconformance. Regarding the question of hardship, he said there were two things that were of interest about the applicant's property in that regard and it may also apply to some but not all of the neighboring properties pertaining to the reason for the setback being to preserve sight lines, open air, space and so on. He said the lot area is smaller than what is permitted or required in this zone, so that in and of itself is a condition that can't be changed and is pertinent to the lot area coverage and is a special condition of the property that weighs in favor of that particular variance. He said the property is also the last one that's kind of in a straight line, noting that the property to the left of it is angled, so the sight line issue from that house is irrelevant. He said if the Board stipulated that the porch can't be enclosed at a future date, they would really not impact the sight lines of the neighborhood, so he would be comfortable supporting the variance request on that basis. Mr. Mattson said the virtual conference he saw about setting a precedent and so on noted that the Board wasn't supposed to consider the 'what ifs' about establishing a precedent. He said the property was very undersized and it wouldn't take much to put it over the building coverage limit, and even at that, it was a modest ask. Regarding the hardship, he said it was a reasonable use. Mr. Rheaume said each case came before the Board as an individual one and that nothing the Board did specifically set a precedent, but it was important for the Board from a hardship criteria to look at what was unique about the property that set it apart from others, both in the zone and in the general area. He said in this case, the property was well aligned with others in the neighborhood. He said he was empathetic to what the applicant was asking for and agreed that there should be the condition that the porch cannot be enclosed because it would create far more of a feeling of bringing the house forward onto the street. He said, however, that it was a full-length porch and a substantial increase in the size of the property, so he still wasn't sure that the hardship criteria would be met.

## **DECISION OF THE BOARD**

*Mr. Rossi moved to **approve** the variances as presented and advertised, with the following condition:*

- 1. The porch cannot be enclosed.*

*Ms. Geffert seconded.*

[Timestamp 37:20] Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, as stated with the condition and knowing that the ordinance is trying to prevent massing too close to the street. He said he thought the open porch observes the spirit of the ordinance adequately. He said substantial justice would be done because there would be no loss to the public that would counterbalance the potential loss to the applicant for not being able to proceed with the modification to their home. He said granting the variances would



not diminish the values of surrounding properties, noting that there were letters from the neighbors who believed that the renovation would be an upgrade for the neighborhood and would bring other properties greater value by improving the overall aesthetic of the neighborhood. He said literal enforcement of the ordinance would result in unnecessary hardship because the property has special conditions that distinguish it from others in the area. He said the lot area is already noncompliant, therefore any addition to the footprint of the house is likely to go over the lot coverage percentage specified in the ordinance, and that is not a changeable condition for the property, so it is a hardship of the property. He said the other special condition was the property's location, particularly to the house to the left property line that was angled away from the applicant's property, making the potential for obstructing sight lines from that neighboring property irrelevant and non-existing. He said it was another special condition to be weighed in considering whether this is a reasonable modification to the property, and given those conditions, he believed that the use and the renovation including the condition were reasonable. Ms. Geffert concurred.

Mr. Nies said the other thing that he thought was a special condition was that the property is already nonconforming on the front setback, which limits the ability of the property owner to make any changes to the house without adversely impacting the setback even more, so he thought it was a reasonable modification. Mr. Mannle said he echoed Mr. Rossi's comments. He said the hardship was the fact that the property, along with others near it, was zoned incorrectly. He said the house was already violating it, so he thought all the requests were reasonable. Mr. Mattson noted that the hardship criteria relating to sight lines, air, light and so on, included the property next door where the structure was angled away and related specifically to the property's location on the road and the fact that the curvature of the road made the property unique from the others.

*The motion passed unanimously, 7-0.*

- C. The request of **Christopher Blaudschun and Katie Gilpatrick (Owners)**, for property located at **411 Ocean Road** whereas relief is needed to renovate the front façade of the existing house, including construction of new dormers, bay window skirting and a new front door portico, which requires the following: 1) Variance from Section 10.521 to allow an 11.5 foot front yard where 30 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 293 Lot 7 and lies within the Single Residence A (SRA) District. (LU-24-91)

## **SPEAKING TO THE PETITION**

[Timestamp 43:24] Project architect Shannon Alther was present on behalf of the applicant and reviewed the petition. He said the house was built in 1857 and the road was probably a carriage trail at the time, so the proximity of the house to the road was unique compared with the other homes next to it. He said they wanted to add a front portico over the front door to help with water management and to allow the applicant's children to wait for the bus in inclement weather. He said

they also wanted to add articulation to the front elevation to help with water management. He reviewed the criteria and said they would be met.

[Timestamp 47:14] Mr. Rossi asked if the portico would extend farther out toward the road than the existing granite steps. Mr. Alther said it would extend about seven inches to cover the platform and that the granite step would be moved farther out into the walkway about seven inches. Mr. Rheume said the packet showed 16 feet as the distance to the front property line and asked if that was the distance to the flat façade or the current bay windows. Mr. Alther said it was the flat façade and explained it further. Mr. Rheume asked if the current front entryway steps were not any closer to 16 feet or not higher than 18 inches. Mr. Alther said they might be close to 18 inches but that he had not measured it. He said they would maintain the 7-inch step down from the first floor to the new granite stoop and that he would verify that the main landing is less than 18 inches. Mr. Rheume asked what was driving the 11.75 feet for the proposed entry stoop. Mr. Alther explained that 4.9” was the edge of the new step location, which matched the 11.75 ft setback. He said the 11.75 ft setback was from the property line to the first step, which they would slide a bit forward.

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**

[Timestamp 51:08] The Board briefly further discussed the dimensions and agreed that they were fine.

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

Mr. Mannle said the lot was one of the few conforming lots on Ocean Road as far as size. He said the SRA zone had a minimum of one acre, but the applicant’s house was built prior to zoning, so no matter what the applicant did, he would have to come before the Board. He said a hardship did exist, especially for what the applicant wanted to do since his house was closer to Ocean Road than any of the surrounding ones. He said granting the variances would not be contrary to the public interest, would observe the spirit of the ordinance, and would do substantial justice because the applicant was doing his best to make his front porch safer and more accessible for his children. He said it would not diminish the values of surrounding properties. He said the hardship included the special conditions of the property being closer to Ocean Road. Mr. Rossi concurred. He said it seemed like the Board frequently had proposals come before them with antique homes. He said he believed that the antique home was placed before the road was built and was a special condition of the property. He said it was gratifying for the Board to have a proposal that preserves the antique home instead of tearing it down, noting that it always causes the Board angst when the character of the town was being altered by losing some of its antique properties. He said the location of the

home based on its historic nature was a hardship and the only way the applicant could change the front façade was to address the substantial structural issues of water damage and seepage.

*The motion passed unanimously, 7-0*

- D.** The request of **Doty Seavey Family Revocable Trust and J W Seavey and Doty Seavy Trustees (Owners)**, for property located at **17 Whidden Street** whereas relief is needed to construct a fence 8 feet in height within the rear and side yards, which requires relief from the following: 1) Variance from Section 10.521 to a) allow a 0.5 foot rear yard where 25 feet is required; and b) to allow a 0.5 foot side yard where 10 feet is required. Said property is located on Assessor Map 109 Lot 5 and lies within the General Residence B (GRB) and Historic Districts (LU-24-85)

### **SPEAKING TO THE PETITION**

[Timestamp 58:53] The applicant was not present.

### **DECISION OF THE BOARD**

*Mr. Rheume moved to postpone the petition to the end of the agenda. Mr. Mannle seconded. The motion passed unanimously, 7-0.*

Note: At the end of the meeting, the applicant was still not present.

*Mr. Rheume moved to postpone the petition to the June 25 meeting, seconded by Mr. Mannle. The motion passed unanimously, 7-0.*

- E.** The request of **Lonza Biologics (Owner)**, for property located at **101 International Drive** to add four (4) above ground storage tanks which requires relief from the following: 1) from Section 308.02(c) of the Pease Development Ordinance to allow an above ground storage tank (AST) exceeding a 2,000-gallon capacity per facility. Said property is located on Assessor Map 305 Lot 6 and lies within the Airport Business Commercial (ABC) District. (LU-23-108)

### **SPEAKING TO THE PETITION**

[Timestamp 1:00:20] Attorney Eric Mayer was present on behalf of the applicant, with project engineer Mike Feeney of Lonza Biologics and Neil Hansen of Tighe and Bond. Attorney Mayer reviewed the petition. He noted that the 'Iron Parcel' had been the subject of a two-phased development and that both phases were approved in 2023. He said the two structures included the Vertex Building that represented a partnership with Lonza Biologics of groundbreaking cell theory to treat Type 1 diabetes and had to be conducted in a highly-controlled environment. He said the smaller building was the utility building and there were four generator units to maintain 24-hour power. He explained that they needed a field source capable of providing the power, which was why there was a request for four 4,400-gallon aboveground storage tanks.

[Timestamp 1:05:10] Mr. Feeney reviewed the technical specifications. He explained how the tanks would be designed and why they would be their proposed size and volume of fuel. He said it would be an engineering system that would provide the least amount of risk for an environmental spill. Attorney Mayer reviewed the Pease Development Authority ordinance criteria and said they would be met [timestamp 1:09:03].

[Timestamp 1:15:14] Mr. Rheume said the applicant answered his concern about why it would make more sense to have a central tank. He said he understood the risk and that it was clear that the massive backup generators with a requirement for 4,000-lb tanks were integral to every process at Lonza. He asked if the reasoning behind the 2,000 gallon limit at the Pease Development Authority (PDA) would change in the future. Attorney Mayer said they couldn't control the regulations that the PDA enacted but thought it could be amended sometime in the future. Mr. Nies said it was unclear where the tanks were going. Mr. Feeney said the tanks would be within the structure of the generators and would be called 'belly tanks'. Mr. Mattson asked why the 2,000 gallon limit was 2,000 gallons. Attorney Mayer said he thought it had something to do with not having large scale fuel above-ground storage tanks relating to commercial uses. He said it was a provision of general applicability across all zones in the PDA, so he thought it had to do more with the run-of-the-mill commercial office spaces as opposed to large scale industrial manufacturing facilities.

Chair Eldridge opened the public hearing.

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

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

#### **DECISION OF THE BOARD**

*Mr. Rheume moved that the Board recommend to the Pease Development Authority that the variance from their zoning provisions be granted for the application. Mr. Rossi seconded.*

[Timestamp 1:19:06] Mr. Rheume emphasized that it was just a recommendation by the Board. He said the PDA was an interesting public/private government coalition that was created by the Pease Air Force Base being closed and redeveloped for other uses. He said granting the variance would have no adverse effect on or diminution of values of surrounding properties. He said the applicant made a good argument that this is a very large site, even by Pease standards, and the tanks are well within the confines of that. He said the tanks were a natural component of the type of management done at Pease throughout their substantial piece of property and would not look out of place. He said therefore that it was difficult to see where any diminution in the values of surrounding properties would occur. He said granting the variance would be of benefit to the public interest. He noted it was a balancing test similar to what the Board had for their regular criteria and that there was really nothing that the public would say is a negative with respect to the larger size of the tanks. He said there was perhaps some increased risk for a larger spill, but the applicant made it clear that the tanks are well engineered. He said one of the driving criteria from the risk analysis is that these are prepackaged engineered systems of a small capacity than pooling them all together in a larger tank, so there is an overall benefit to the public as part of this necessary business model for

this manufacturing company to have a 4,000-gallon tank versus a 2,000-gallon one. He said granting the variance would not result in an unnecessary hardship to the person seeking it. He said it was integral to the PDA's business model and thought a 24-hour run time was probably a realistic and logical timeframe to refuel the tanks in the absence of a commercial public source. He said it would be a hardship to stay that they were only limited to 2,000-gallon tanks. He said granting the variance would do substantial justice in favor of the company because there was really no competing interest on the part of the public or the PDA to say that this should not take place. He said the proposed use would not be contrary to the spirit of the zoning rule. He noted that it was somewhat unclear as to exactly what the genesis of the 2,000-gallon limit was and thought it was perhaps sensitivity on the part of the Air Force to not allow large tanks on the property that could result in a negative underground spill of some sort. He said there was a wildlife area in the back end of the Pease property that also needed to be protected, but the particular part of the property with the storage tanks was set far away from that and closer to highways and other types of uses. He thought the spirit of what it was trying to accomplish was probably preserved, even though the tanks were more than double what they previously were. He noted that it was also reasonable to meet one or more of the standards in Subsection C. He said the Board should recommend approval.

[Timestamp 1:23:22] Mr. Rossi said Lonza as a company is an established corporate resident in the PDA and has a track record of responsible stewardship of their facility and its safe management. He said they're a large firm with sophisticated engineering and safety resources available to them, and he therefore thought that any risk to the public in recommending approval for the oversized (by the ordinance) tanks is very minimal. Mr. Nies said he would support the motion but wanted to make a pedantic point of what the PDA actually sent the Board. He said on page 82 there was a motion that said they will approve the tanks 'assuming that Lonza secures the requisite variance from the City of Portsmouth'. He said the Board does not grant them a variance and suggested that the Planning Staff remind the PDA Staff that the Board only gives a recommendation. Chair Eldridge said it was written more clearly in the past and thought it was unusual.

*The motion passed unanimously, 7-0.*

### **III. OTHER BUSINESS**

There was no other business discussed.

### **IV. ADJOURNMENT**

The meeting adjourned at 8:30 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.**

**June 25, 2024**

**MEMBERS PRESENT:** Phyllis Eldridge, Chair; David Rheume; Thomas Rossi; Paul Mannle; Jeffrey Mattson; Jody Record, Alternate; ML Geffert, Alternate

**MEMBERS EXCUSED:** Beth Margeson, Vice Chair; Thomas Nies

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

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Chair Eldridge called the meeting to order at 7:00 p.m. She said the applicant for New Business Item C, 86 Farm Lane, had withdrawn the petition.

**I. OLD BUSINESS**

- A.** The request of **Doty Seavey Family Revocable Trust and J W Seavey and Doty Seavy Trustees (Owners)**, for property located at **17 Whidden Street** whereas relief is needed to construct a fence 8 feet in height within the rear and side yards, which requires relief from the following: 1) Variance from Section 10.521 to a) allow a 0.5 foot rear yard where 25 feet is required; and b) to allow a 0.5 foot side yard where 10 feet is required. Said property is located on Assessor Map 109 Lot 5 and lies within the General Residence B (GRB) and Historic Districts (LU-24-85)

**SPEAKING TO THE PETITION**

[Timestamp 5:30] The applicant John Seavey was present to review the petition. He said Wentworth Senior Living removed some trees, which changed their parking lot dynamics that previously prevented people from parking on his side of the fence, so he wanted to replace the existing picket fence with an 8-ft tongue and groove one to regain his privacy. He said the fence would go along the back of his property and to the side that faced the parking lot and would be compatible with the neighbor's fence. He noted that Wentworth Senior Living would also remove two sections of fence on the Whidden side of the property. He said all the neighbors and Wentworth Senior Living were in support of his petition. He reviewed the criteria and said they would be met.

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 variances for the application as presented and advertised, seconded by Mr. Mannle.*

[Timestamp 14:28] Mr. Rossi referred to Sections 10.233.21 and .22 and said granting the variance would not be contrary to the public interest. He said the public interest as expressed in the zoning ordinance with regard to fences was really to prevent the creation of unsightly fences along streetways and walkways that substantially block the view of the property from the street and instead create an unsightly wall. He said that was not the case with this application because, due to the location of the fence, it is between the property and a very busy parking lot, and therefore there is really no loss to the public interest. Referring to Section 10.233.23, he said substantial justice would be done because the homeowner is suffering a notable loss of privacy being next to a very busy commercially utilized parking lot that no longer has any effective shielding between the applicant's property and the parking lot, so there's a great deal of value to the homeowner to do this. He said there would be no loss to the adjacent property or the public in creating this fence, therefore substantial justice is achieved. Referring to Section 10.233.24, he said granting the variance would not diminish the values of surrounding properties, noting that the Board had the attestation by the Wentworth property owners that they were fine with it. He said if anyone were to be impacted by the fence, Wentworth would be the property most directly affected. Referring to Section 10.233.25, he said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said there must be some unique aspect of the property that makes the particulars of the zoning ordinance regarding the fence height and location not applicable in this case, and the unique aspect of this property is its very close proximity to a commercial parking lot. He said therefore there really is no substantial relationship between the purpose of the fence ordinance and the fence being proposed here, so this criterion is also satisfied.

Mr. Mannle concurred and had nothing to add. *The motion **passed** unanimously, 7-0.*

## **II. NEW BUSINESS**

- A.** The request of **Jay Anthony Clark and James A Link (Owners)**, for property located at **64 Haven Road** whereas relief is needed for the construction of a shed and after-the-fact construction of an addition to the primary structure which requires the following: 1) Variance from Section 10.521 to allow a 4 foot left side yard where 10 feet is required; 2) Variance from Section 10.515.14 to allow a 4 foot setback for 2 mechanical units where 10 feet is required for each; 3) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance; 4) Variance from Section 10.573.20 to allow a 5 foot side yard where 10 feet is required; and 5) A Variance from Section 10.571 to allow an accessory structure to be located closer to the street than the principal building. Said property is

located on Assessor Map 206 Lot 30 and lies within the Single Residence B (SRB) District. (LU-22-121)

### **SPEAKING TO THE PETITION**

[Timestamp 19:10] Jay Pruitt was present to introduce the project designer Brendan McNamara, who was on Zoom. Mr. McNamara reviewed the petition, noting that he did the original submittal in 2022 when they received a variance for the work that was near completion. He said they were now before the Board because the original submission did not have a survey, but that they recently received a survey that showed a dimensional anomaly due to the proximity on the left side and the nonalignment of the house on the right side boundary. He said the house is eight inches farther to the left than originally shown. He explained in detail how the setback dimensions were different. He reviewed the criteria and said they would be met.

[Timestamp 24:57] Mr. Rheume verified that the discrepancies seen between the as-built foundation survey and the original plan is exclusively the result of the difference between what the applicant thought was the property line and what was actually the property line, and the construction that was done is in full compliance with the drawings that were previously approved and that nothing was constructed differently. Mr. McNamara agreed and said it was purely an issue of the discrepancy in the location of the existing building, so there was no change other than the appearance of how the house sits on the lot. Mr. Rheume said the two mechanical units were not dimensioned but the Staff Memo had them at four feet from the property line. Mr. McNamara agreed that it should be four feet. Mr. Rheume said they were then no farther out than the chimney in terms of a need for a setback, and Mr. McNamara agreed. Mr. Rheume said the request to restore the shed on the property was previously approved in 2021, but there was no action taken to get a building permit for it. He asked why a building permit was not pursued then and what had changed so that the applicant was pursuing it now Mr. McNamara said the owner from the original approval delayed it so that it would take place with the house's renovation. Mr. Rheume verified that there was not a recognition that the owner had to get a building permit for it or that the authorization from the Board would expire. Mr. McNamara agreed.

Chair Eldridge opened the public hearing.

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

Jeff Demers of 80 Haven Road said he was an adjacent neighbor and that the project affected him the most. He said the lot lines and the frontage were ambiguous, given the ordinances for the SRA at the zoning board level, and he asked why it wasn't required to have a survey, particularly when the setbacks and area and lot coverage were the things that were the most challenged. Ms. Casella said it wasn't one of the requirements but applicants did move forward with the understanding that if what is built is not to the dimension that is required, they would have to come back. She suggested that Mr. Demers get in touch with her to further discuss it.

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



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

## **DECISION OF THE BOARD**

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

[Timestamp 32:15] Mr. Rossi said, in this case, the Board was dealing with a very minor change from an application that was previously approved and that is driven by an updated understanding of the lot lines and the fact that the lot setbacks have changed by less than one foot in any direction. He said, in that context, that granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said that, as much as the property had already received a granting of the variance for this construct in the past, there is no loss to the public interest in continuing to honor that variance, even in spite of the small change in lot line clearance. He said substantial justice would be done, noting that the property owner invested substantial funds into constructing the addition as it had been previously approved, and therefore a reversal of that approval, or non-approval of this application, would have a substantial impact on the property owner and would need to be outweighed by a very substantial loss to the public should this project continue. He said there is no loss to the public for this project continuing, so this criterion was also satisfied. He said granting the variances would not diminish the value of surrounding properties, noting that the most affected abutter attested that there is no loss perceived to their property's value. He said it also made sense. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship and that the property has special conditions that distinguish it from other properties in the area. He said he agreed with the applicant that the special condition is that the house and its location predate the current zoning ordinance, and that is a special condition that really cannot be altered. He said the house is not exactly parallel with the lot lines, but that was just the way it is. He said due to that special condition, the variance is required so that the property owner can proceed with any addition to the existing structure.

Mr. Mannle concurred. He said he was normally hesitant about granting after-the-fact variances but felt that there was clearly no malice or intent on the part of the applicant. He said the request for the shed is the same one the Board approved, which ran out, and he could understand how it just slipped, considering what the applicant was doing with the foundation. He agreed that the difference between the original application is a matter of inches.

*The motion **passed** unanimously, 7-0.*

- B. WITHDRAWN** The request of **Jeanette McMaster (Owner)**, for property located at **86 Farm Lane** whereas relief is needed to subdivide the existing property into 3 separate lots. Proposed lots 1 and 2 require the following: 1) Variance from Section 10.521 to allow a) 0 feet of continuous street frontage where 100 feet is required, b) 13,125 square feet of lot area where 1,500 square feet is required, c) 13,125 square feet of lot area per dwelling where 15,000 square feet are required; and 2) Variance from Section 10.512 to allow the creation

of a lot without access to a public street or an approved private street for future construction of a structure. The proposed remaining parent lot requires the following: 1) Variance from Section 10.521 to allow a 14 foot rear yard where 30 feet is required. Said property is located on Assessor Map 236 Lot 74 and lies within the Single Residence B (SRB) District. **WITHDRAWN** (LU-24-99)

The petition was withdrawn by the applicant.

- C. The request of **Liam Hoare and Reese C Green (Owners)**, for property located at **189 Wibird Street** whereas relief is needed to demolish the existing rear deck and construct an addition and new deck at the rear of the structure which requires the following: 1) Variance from Section 10.521 to allow an 8.5 foot right yard where 10 feet is required; 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 133 Lot 51 and lies within the General Residence A (GRA) District. (LU-24-98)

### **SPEAKING TO THE PETITION**

[Timestamp 38:00] Attorney Colby Gamester representing the applicants was present, along with the owners Liam Hoare and Reese Green. He said the project architect Amy Dutton could not be present, nor could their surveyor. He reviewed the petition, noting that the two-story New Englander was on a 8,524 sf lot and the house had 1,174 square feet of building coverage, which was 14 percent of the lot. He reviewed the property's three pre-existing nonconformities and said the plan was to remove the rear deck and build a 588-sf two-story addition, a 243-sf deck with stairs, and a small side porch to service the new driveway. He said the addition would have a two-car garage below grade and the mechanicals would be housed under the rear deck. He said they had the support of several abutters and neighbors, although a few neighbors had concerns about stormwater and the trees on the property. He said his client was aware that the addition of the driveway and the addition itself would increase the impervious surfaces, so they would mitigate the water issues. He said a site contractor was hired to determine what could be done in terms of mitigation and it was also confirmed with the Department of Public Works that there are currently tie-ins on Wibird Street and with the direct rear abutter at 500 Union Street. He said they installed a stormwater catch basin at the rear of the yard going in a certain direction, but if there were complications, they could go in the opposite direction. He said the window schedule was revised due to an abutter's concerns, and he distributed a new set of plans to the Board. He said the main change on the addition's southerly portion was the removal of three double hung windows. He said his client intended to hire a professional landscaper to assess the tree issue. He reviewed the criteria.

[Timestamp 51:58] Mr. Rheume said it was a substantially-sized addition close to the size of the current house. He asked what the driving factor was for requiring the proposed width. Attorney Gamester said he had asked the architect Ms. Dutton if the side could be trimmed in a bit, but she said that, given the connection from the original house to the new addition and the floor plan that was desired, if they were to take a foot and a half off the southerly side, she thought the most

appropriate architectural thing to do would be to take a foot and a half off the northerly side off the addition to create a consistent roof line and not have strange massing. He said removing that three or so feet would significantly change the floor plan and also threaten the two-car garage and whether it could hold a car and have walk-around distance. Mr. Rossi asked why the applicant thought the project was consistent with the essential character of the neighborhood. Attorney Gamester said the essential character of the neighborhood was that it is a single-family one and the applicant has a single-family residence that they would maintain as such. He said the enlargement of the structure could not be seen from pedestrian and vehicular traffic, and any other type of addition would have to become more of an ell-shaped one, which he felt would change the essential character of the neighborhood. He said there was currently a rectangular lot that is a pass-through in terms of sightlines to the Union Street properties, and his client wanted to keep the sightlines so that there wasn't a walled look to the property. He said the abutter to the north was six inches from the property line, and if the two structures were taken together with a different type of addition like an ell-shaped one, it would look very crowded and closed in.

Chair Eldridge opened the public hearing.

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

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

### **DECISION OF THE BOARD**

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

[Timestamp 56:17] Mr. Rheume said it was a substantial addition to the existing property lot but thought the neighbors were probably happy that the applicant wasn't tearing down the structure. He said the project would respect the characteristics of the neighborhood, like maintaining the front of the existing home and reusing it and continuing to maintain the street façade. He said the applicant was well below the maximum lot coverage and that it was encouraging that the applicant worked diligently with the abutters to incorporate their comments and concerns and that he was also appeared to be working diligently in resolving water concerns. He said the applicant had a good argument about the roof pitch lines and so on to help keep the back of the home symmetrical. He said the real driver was the desire for the below-surface garage, which would have advantages for the applicant and the neighborhood. He said there was room on the lot, which was wider than some of the other lots, and the home's location was a factor. He said granting the variances 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 the relief asked for is minor and consistent with the other homes in the neighborhood. He said the Board saw lots of similar cases and that the original home predated the zoning, and he didn't see anything that would change the neighborhood's essential characteristics. He said the applicant also made a good argument that all the new construction will be toward the back end of the home and not widely visible to the streetscape, and due to the nature of the way it was planned, what would be visible would seem comfortable with the other homes in the neighborhood. He said substantial justice would be done because there was nothing about enforcing

the additional foot and a half of setback that would outweigh the benefits to the applicant or the general public in terms of the garage and the addition's floor layout. He said granting the variances would not diminish the values of surrounding properties because it was a relatively minor encroachment and a tastefully designed addition, and the applicant had a desire to be a good steward to the property and the neighborhood, which all weighed in favor that property values would not be negatively affected. Relating to hardship, he said the applicant indicated that the original home predated zoning and is configured in such a way that it's to one side of the lot, and any logical building extension would require some level of relief. He said the relief requested is a reasonable one and is relatively small and consistent overall with the character of the neighborhood. He said it was a continuation of a single-family home by extending onto the existing home and continuing the streetscape that had been there for years. Mr. Mattson concurred and said a major factor for him was that the addition would be farther from the side yard than the existing home, which would help retain light, air, and privacy. He said he also favorably viewed the proposed stormwater management that would be a benefit to surrounding properties.

*The motion passed unanimously, 7-0.*

Mr. Rossi recused himself from the following petition.

- D.** The request of **Argeris Karabelas and Eloise Karabelas (Owners)**, for property located at **461 Court Street** whereas relief is needed to demolish the rear 1-story portion of the existing structure and construct a 2-story addition which requires the following: 1) Variance from Section 10.5A41.10A to allow a 1 foot side yard where a minimum of 5 feet is required; 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 105 Lot 7 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-24-87)

## **SPEAKING TO THE PETITION**

[Timestamp 1:03:12] Architect Anne Whitney was present on behalf of the applicant to review the petition. She said there was currently a one-story portion of the house that was flush with the existing right side setback that they would remove and replace with a two-story addition. She said the proposed 21'x30' addition would be set back from the existing residence by 12 inches and would have a 3-ft setback for 18 of the 21 feet. She said the site plan showed a little jog in the survey, so there was a 3-ft section that would have the 1-ft setback and the rest of the addition would have the 3-ft setback. She said the property adjacent on the right side was a common passageway that was not owned by anyone and not a taxed lot and was used by the applicant and the property next door as well as the residents of the two nearby condominium buildings. She said the passageway provided more of a buffer for the setback. She said there was a 9-ft setback from the passageway to the addition and the abutting lot was 12 feet wide. She said there was a successful work session with the Historic District Commission (HDC). She said the addition will make the building more accessible due to the elevator and will create some living space. She noted that most of the properties on State Street were taller than the proposed addition and that the scale of the two-story addition would not produce a hardship for the abutters. She reviewed the criteria.

[Timestamp 1:10:31] Mr. Rheume asked if the jog at the back end was really in the common passageway, making the passageway a few feet wider, and Ms. Whitney agreed. Mr. Rheume said there was also an addition of a stockade fence that provided a benefit to the applicant in terms of access to that area. Ms. Whitney agreed and said the fence would probably have to be altered and go to the corner, but it would be an HDC issue. Mr. Mattson asked who owned the passageway, and Ms. Whitney said no one did. She said the history was complicated and went back to the 1800s but that it was just a common passageway and not a named street.

Chair Eldridge opened the public hearing.

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

No one spoke.

### **SPEAKING IN OPPOSITION TO THE PETITION**

[Timestamp 1:13:14 ] Attorney Doug MacDonald was present on behalf of Russell and Sprague LLC, owners of the 46 State Street property and a direct abutter to the rear of 461 Court Street. He said his client's concerns were the scale and sizing of the expansion. He referred to photos attached to his submitted letter that showed what the expansion would look like from his client's kitchen, bedroom, and deck. He said his client had a small yard that was an important living space and felt that the massing would not only bring the building 21 feet closer to their property but would also remove some of the older established trees that provided screening. He said the project did not meet the criteria of not being contrary to the public interest and observing the spirit of the ordinance. He said expanding a nonconforming use in the Historic District involved different provisions of the zoning ordinance, and his client felt that the scale, mass, and location of the addition was not the most appropriate or a reasonable use of the rear space and that it consumed almost the entire current backyard and affected the screening. He said his client paid a premium to gain outdoor space, which was limited in downtown Portsmouth. He said he also submitted a letter from local realtor Jim Giampa, who believed that the project if approved would have an adverse effect on his client's property. He noted that another abutter had concerns about his property's value. He said he had not been able to determine any special or unique aspect of the applicant's property that would satisfy the hardship criterion.

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

Ms. Whitney showed the property that Attorney MacDonald represented. She said her client was conforming to the rear setback and building coverages, and the only variance requested other than the expansion of a nonconforming structure was the right side property line. She said they were conforming to the 5-ft rear setback, and there was only one point that was at that five feet.

The owner Eloise Karabelas said they had lived in the house since 1989 and had seen firewalls go up in all the houses around them, which blocked out the sky and sun for them. She said the neighbor behind her had a very large deck built in the 1990s that almost touched her fence and that she never saw a variance for. She said the trees were on her property and were deciduous ones with leaves

only four months out of the year, so she was the one with no privacy. She said she had a 200-year-old Federal home in a neighborhood of McMansions and was interested in maintaining its historic character. She said Attorney MacDonald never contacted her or her husband. She said the reason for the addition was her husband's severe health issues and the need for him to have an elevator, and they could not stay in the house if they didn't get the elevator, which was a hardship.

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

## **DECISION OF THE BOARD**

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

[Timestamp 1:22:23] Mr. Rheume said what was before the Board was solely the question of whether the applicant could build two feet closer to the passageway for most of its length and with a tiny jog. He said otherwise, everything else proposed was fully in compliance with the zoning ordinance and the zoning requirements associated with the parcel. He said it was a minor ask and thought the applicant would benefit from the unusual common passageway between their house and some of the surrounding properties. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the addition on the back end of the house would be largely unseen by most of the public, and the Board was really concerned with only a small portion of the addition and its impact on the surrounding properties, so in that sense it was consistent. He said it was continuing with the existing structure line and actually moved in slightly and was also slightly more relief than the principal structure relative to the property line, so in those terms, nothing asked for would look unusual or would alter the neighborhood's characteristics and was in keeping with what the Board tried to do with light and air, especially with respect to the common passageway. He said it would do substantial justice, which was a balancing test of the applicant's desire to create a few feet of wide strip on their addition vs. what the general public would have for potential concerns. He said it was an addition in the back end and a modest request that was just adding a small amount of additional size to the addition and was nothing that the general public would have an objection to. He said granting the variance would not diminish the values of surrounding properties. He said there had been some indication that it would, but in specific reference to what was being asked for relief for the specific portion and not with regards to the entire addition, there was nothing where the addition being slightly closer to the passageway would negatively affect those property values. Relating to the hardship, he asked what the unique characteristics of the property was that separate it from others and indicate that it's a unique situation and should have different zoning requirements. He said the biggest factor was the common passageway and that the whole area affected the passageway. He said the applicant gave the sense that they were being respectful of the passageway, and he noted that the jog created the tight spot at the back end of the addition and the applicant's imposition on the passageway was not significant. He said it gave the property a unique set of circumstances relative to the other properties that said the zoning ordinance should not be strictly applied in this case. He said it would be a reasonable use because it would continue an expansion of an existing single-family use with a very minor impact relative to what was being asked for in terms of relief.

Mr. Mattson said it is a single-family home in a very dense downtown neighborhood backing up to properties with buildings that are taller than it and attached on the sides with no setbacks. He said it was just a small addition to a single-family home and the only relief being asked for does not have to do with coverage or the rear yard but is just the right yard setback that has a unique situation with the underdeveloped and unclaimed property that adds an ever larger side yard to it.

Ms. Geffert said the Board had a letter from a realtor in town that said he believed that the relief requested by the applicant will significantly diminish the values of the surrounding properties, based on his experience. She said that was the one thing the Board had in evidence about value, and in terms of the Board's deliberations, she did not think it was very particular or gave them appraised values and did not rise to the level of specificity that the Board would have to take cognizance of under the zoning law. Mr. Mannle said in the past, when successful abutters or applicants used the diminishing of surrounding property values argument, they had certified appraisals to justify their claims. He said there was none of that here except a letter from a realtor. It was further discussed.

*The motion passed unanimously, 6-0.*

Mr. Rossi resumed his voting seat.

- E. The request of **Tyler and Susan Moore (Owners)**, for property located at **26 Harding Road** whereas relief is needed to construct a shed at the rear of the property which requires the following: 1) Variance from Section 10.521 to allow 29% building coverage where 20% is the maximum permitted. Said property is located on Assessor Map 247 Lot 16 and lies within the Single Residence B (SRB) District. (LU-24-96)

### **SPEAKING TO THE PETITION**

[Timestamp 1:31:50] The applicant Susan Moore said she wanted to put an 8'x12' shed in the back corner of her property. She said her property abutted woods and that the shed would be five feet from the woods and five feet from her residence. She said the shed was needed for her family's outdoor equipment and recreational items and that it would match the house's color. She said the neighbor who had the woods on his property was fine with the proposal. She 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**

*Ms. Geffert moved to **grant** the variance for the petition as presented and advertised, seconded by Mr. Mannle.*

[Timestamp 1:37:21] Ms. Geffert said the variance was for building coverage on the lot. She said granting the variance would not be contrary to the public interest, noting that the applicant demonstrated that it would remove lawn equipment from the lawn and put it in the shed. She said it would observe the spirit of the ordinance because the spirit would not significantly be violated by the one percent coverage difference. She said granting the variance would do substantial justice, noting that the applicant made a reasonable case why having a shed on the property would help her and there was no indication that it would harm anyone else. She said granting the variance would not diminish the values of surrounding properties, noting that there was no evidence that it would have any impact at all on surrounding properties. She said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. She said the property is special because it backs up onto undeveloped woods, and because of that, literal enforcement of the ordinance to preserve a lot coverage ratio that is only minimally affected by the shed seems like an unnecessary hardship on the owner. She said due to those special conditions, a fair and substantial relationship does not exist between the general public purpose of the ordinance and its coverage ratio requirements and the special application of that provision to the property. Mr. Mannle said it was an undersized lot in the GRB, so the building coverage percentage was a bit sketchy for him.

*The motion **passed** unanimously, 7-0.*

### **III. ADJOURNMENT**

The meeting adjourned at 8:45 p.m.

Respectfully submitted,

Joann Breault  
BOA Recording Secretary



## II. NEW BUSINESS

- A. The request of **Dawn P. Sirois (Owner)**, for property located at **485 Ocean Road** whereas relief is needed to demolish the existing rear deck and construct a new screened in porch which requires the following: 1) Variance from Section 10.521 to allow 14% building coverage where 10% is allowed; and 2) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 283 Lot 32 and lies within the Single Residence A (SRA) District. (LU-24-103)

### Existing & Proposed Conditions

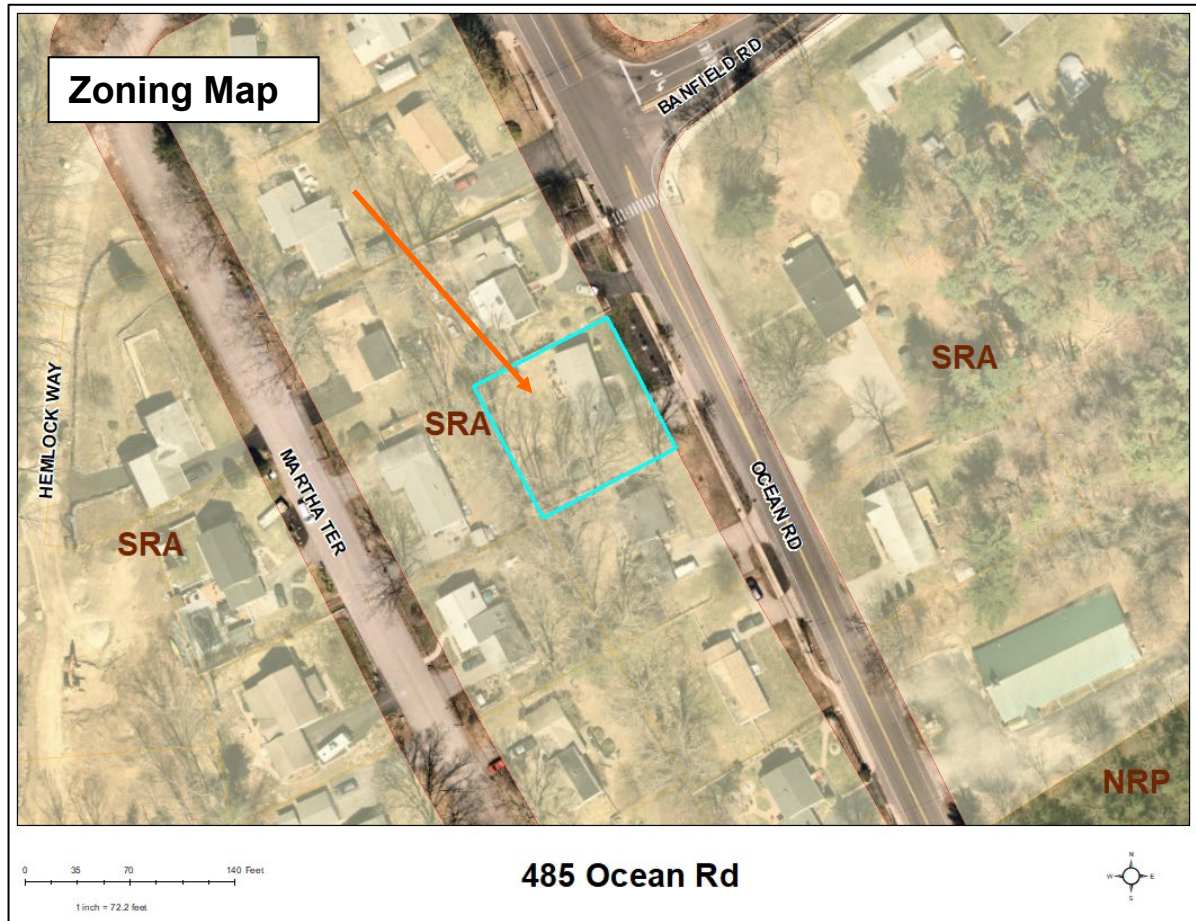
	Existing	Proposed	Permitted / Required
<u>Land Use:</u>	Single-family	*Construct a screened in porch	Primarily residential
<u>Lot area (sq. ft.):</u>	10,019	10,019	43,560 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	10,019	10,019	43,560 min.
<u>Lot depth (ft.):</u>	100	100	200 min.
<u>Street Frontage (ft.):</u>	100	100	150 min.
<u>Front Yard (ft.):</u>	17	17	30 min.
<u>Right Yard (ft.):</u>	House: 7 Porch: 27	House: 7 Porch: 22	20 min.
<u>Left Yard (ft.):</u>	>20	>20	20
<u>Rear Yard (ft.):</u>	51	51	40 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	17	14	10 max.
<u>Open Space Coverage (%):</u>	>50	>50	50 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1963	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

No previous history found

## Planning Department Comments

The applicant is requesting relief for the demolition of the existing rear 10' by 10' porch and to construct a 10' by 15' covered porch in its place. The dimensions of the structure conform to all setback requirements, however the relief requested is to allow for the increase in building coverage on the lot.

## Variance Review Criteria

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

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

## 10.235 Certain Representations Deemed Conditions

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

May 29, 2024

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

RE: Variance Application of Dawn P. Sirois, 485 Ocean Road, Tax Map 283, Lot 32

Dear Stefanie,

Please find a copy of the following submission materials in connection with the variance application being filed on Dawn Sirois' behalf for property located at 485 Ocean Road:

- 1) Letter of Authorization
- 2) Narrative to Variance Application
- 4) Design Plans
- 5) GIS Map of Property
- 6) Photographs of Property

If you have any questions or concerns regarding the application or any of its materials, please contact Dockham Builders Inc.

Sincerely,

*Jeffrey L. Kisiel*

Jeffrey L. Kisiel  
Dockham Builders Inc

LETTER OF AUTHORIZATION

I, Dawn P. Sirois, property owner of 485 Ocean Road, Tax Map 283, Lot 32, Portsmouth, NH, hereby authorizes Dockham Builders Inc to file any zoning, planning or other municipal permit applications and to appear before its land use boards with the City of Portsmouth.

*Dawn P. Sirois*

Dawn P. Sirois

May 29, 2024

Date

## NARRATIVE TO VARIANCE APPLICATION

In early May, Dockham Builders applied for a Building Permit to remove the existing 10' x 10' rear deck at 485 Ocean Road and replace it with a 10' x 15' screen porch. We were informed by the Building Department with the following message:

*“According to the Zoning Ordinance section 10.321, if something is demoed then it looses its non conforming rights and can not be replaced. This structure is non-conforming due to building coverage, and a demolition of the deck to rebuild is not allowed under the current zoning ordinance.*

*If you keep the existing deck and build the screened in porch from there you would not need any extra approvals, however if you would like to continue with the original scope of work a variance would be needed.”*

After receiving this notice from the Building Department, we consulted with the homeowner and have decided to pursue a Variance for Building Coverage.

### **Existing Conditions**

The Property is a 10,018.80 (+/-) square foot or 0.23-acre lot along Ocean Road in Portsmouth, NH. The Property contains a relatively small single-family Ranch residence with an attached one car garage. The home is approximately 1276 square feet with a 96 square foot deck, totaling 1372 square feet of building coverage. It is zoned Single-Family Residence A.

### **Proposed Conditions**

The Applicant would like to remove the existing 96 square foot deck and replace it with a 10'x15' screen porch with stairs leading to a patio. This would increase our building coverage to 1426 square feet or 14.23%.

### **Zoning Relief Summary**

The Applicant seeks the following variances from the Board: Article 10.521 Building Coverage – to allow 14.23% (+/-) building coverage where 13.69% (+/-) exists and 10% is allowed. See chart below:

Existing	1,372.00 sf	13.69%
Proposed	1,426.00 sf	14.23 %
Allowed	1,001.88 sf	10.00 %

## VARIANCE CRITERIA

The applicants believe the Application meets the criteria necessary for the Board to grant the requested variance.

1. Granting the Variance will not be contrary to the spirit and intent of the ordinance, nor will it be contrary to the public interest.
2. Granting the Variance would observe the Spirit of the ordinance.

The characteristics of the neighborhood would not be altered in any fashion by this project, nor does it threaten the health, safety, and welfare of the public. The existing structure and lot are already noncompliant with the existing SRA zoning.

3. Granting the variance would do Substantial justice.

Yes, it would. This property is a noncompliant lot that is incorrectly and unfairly zoned for this neighborhood. There is no benefit to the public in denying the variances that are not outweighed by the hardship upon the owner.

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

The new sunroom is a nice addition and investment into the existing property. This will increase the value of the applicant's property and those around it. An improvement to livable space will only help the property values of the surrounding properties. The values of surrounding properties will not be negatively affected in any way.

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

The existing structure as it stands today would not be allowed to be built on this property under the current zoning. The SRA zoning provides a Hardship for any sort of improvement to be completed as the property is unfairly and incorrectly zoned.



**Property Information**  
**Property ID** 0283-0032-0000  
**Location** 485 OCEAN RD  
**Owner** SIROIS DAWN P



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

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

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

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





**Property Information**  
**Property ID** 0283-0032-0000  
**Location** 485 OCEAN RD  
**Owner** SIROIS DAWN P



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**Property Information**  
**Property ID** 0283-0032-0000  
**Location** 485 OCEAN RD  
**Owner** SIROIS DAWN P

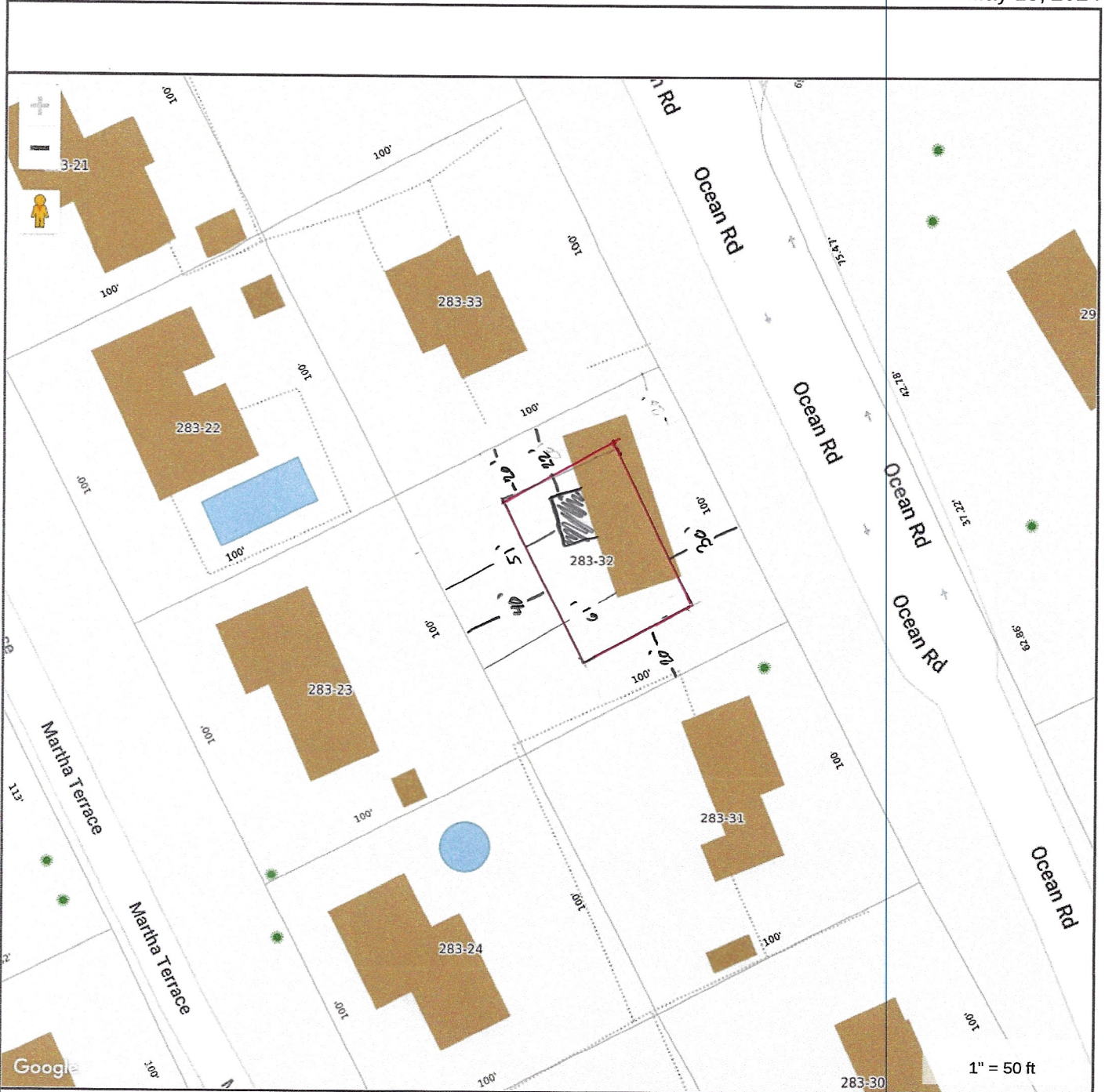


MAP FOR REFERENCE ONLY  
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Geometry updated 08/24/2023  
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— SETBACKS

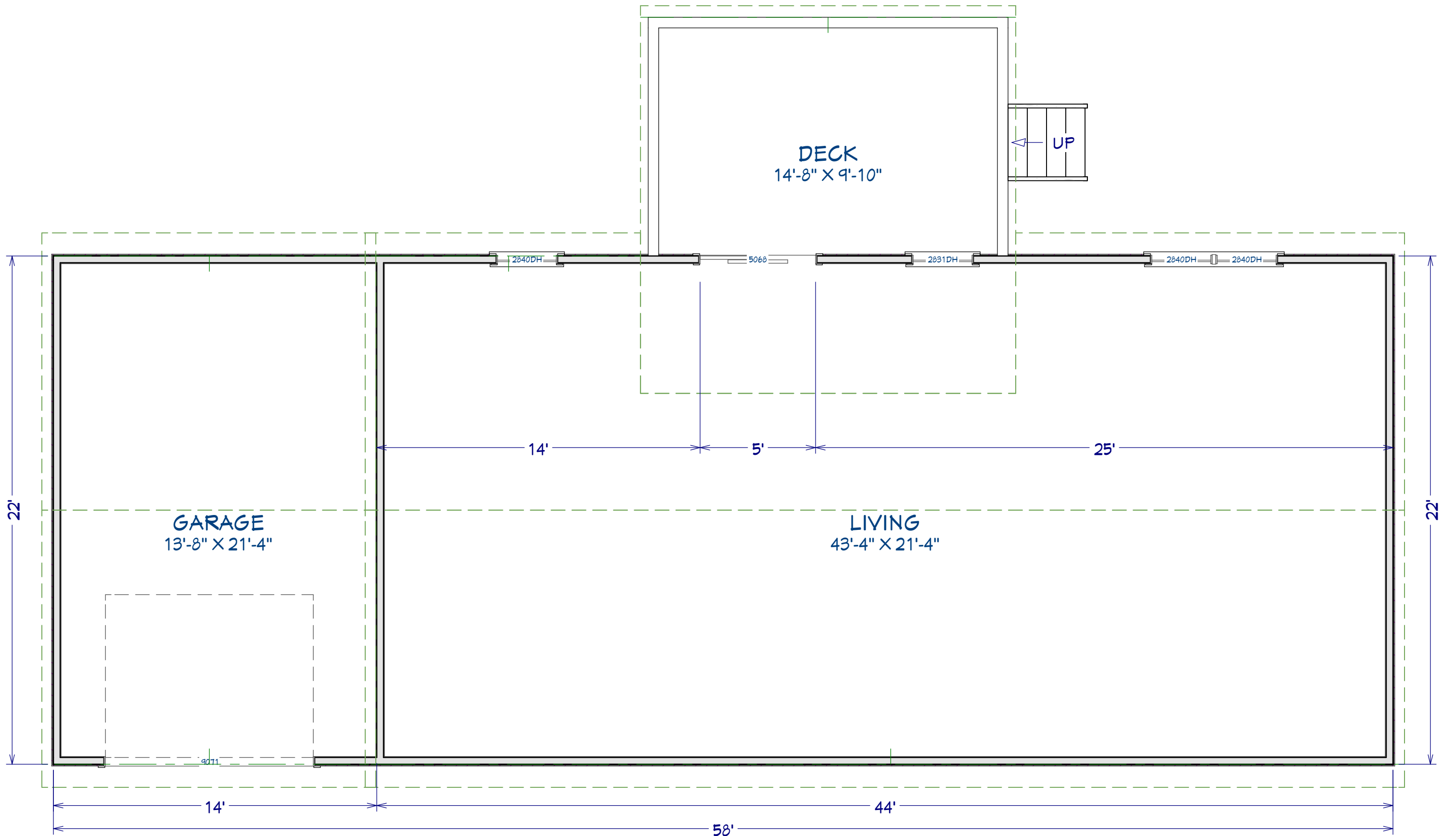


MAP FOR REFERENCE ONLY  
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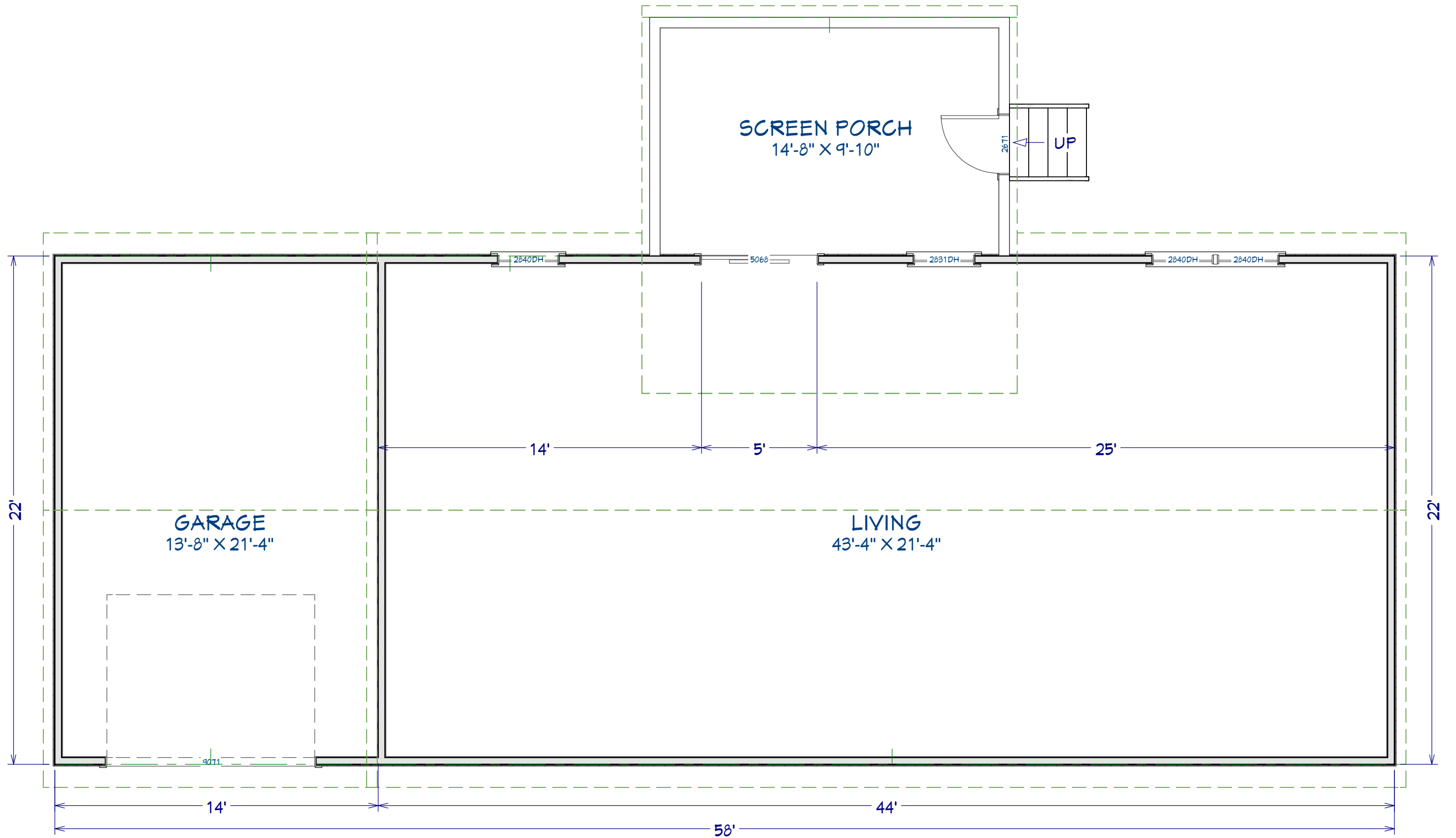


**GARAGE**  
13'-8" X 21'-4"

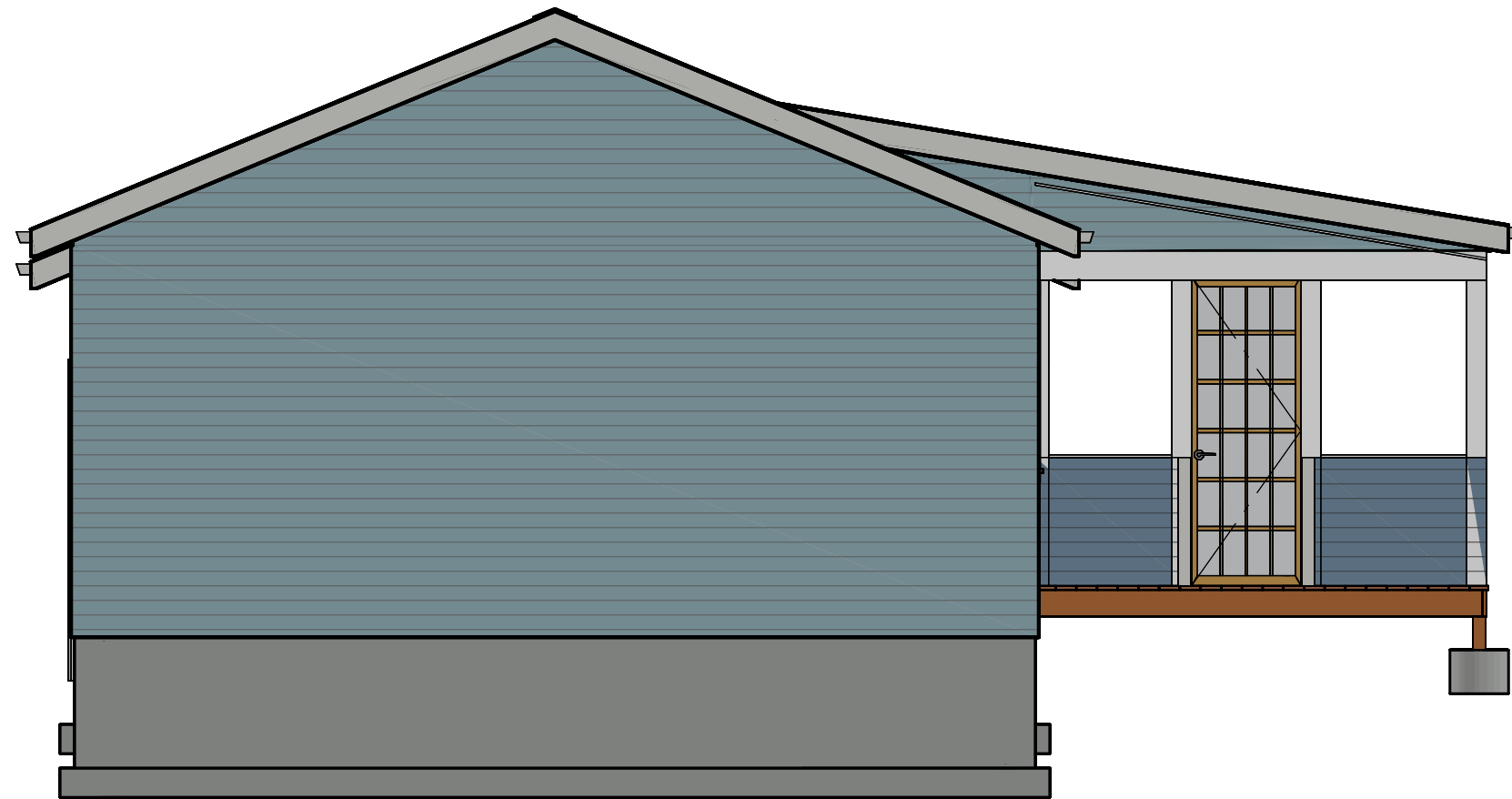
**DECK**  
14'-8" X 9'-10"

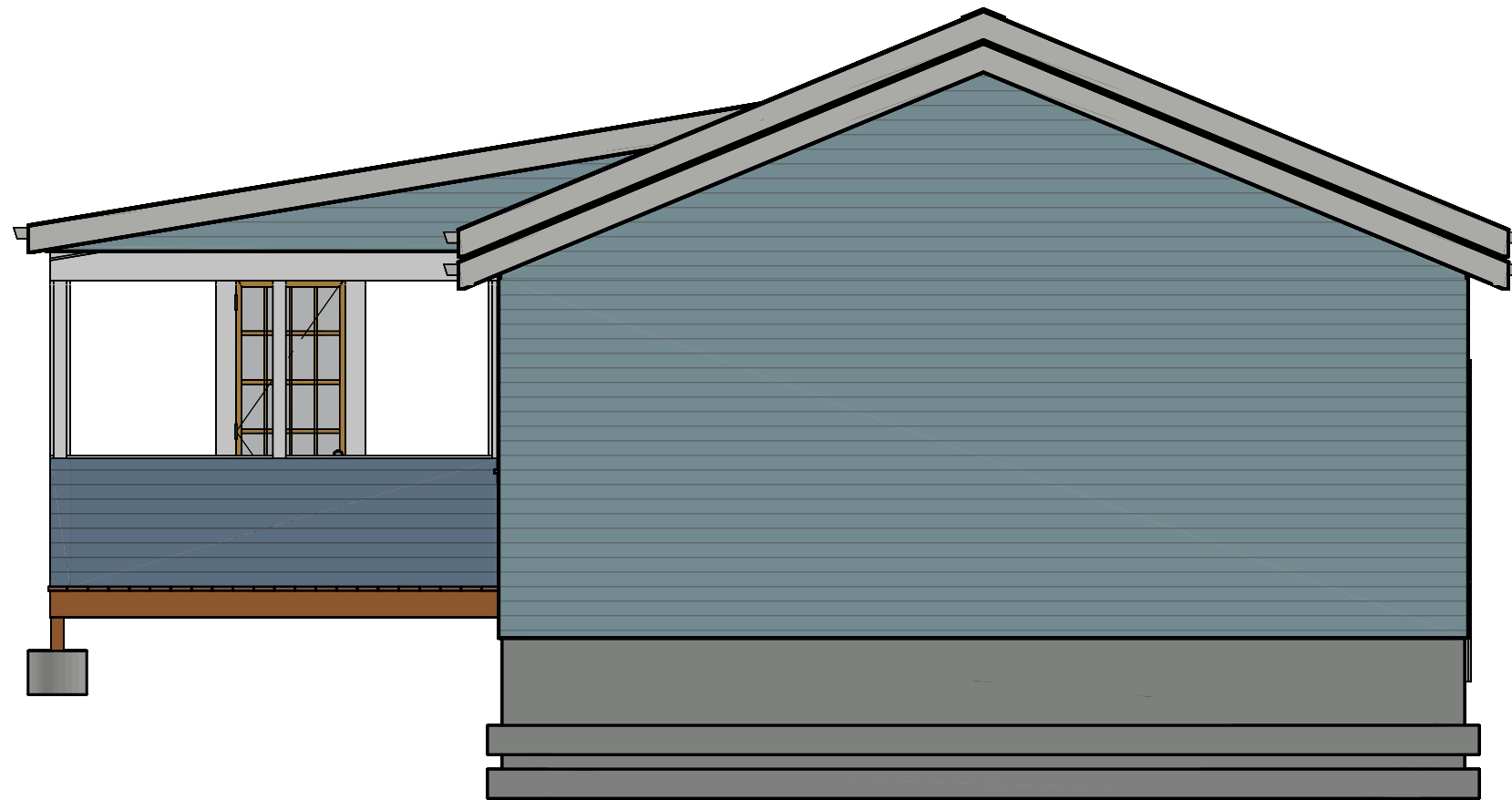
**LIVING**  
43'-4" X 21'-4"

**LIVING AREA**  
968 SQ FT



LIVING AREA  
968 SQ FT















## II. NEW BUSINESS

- B. The request of **Avi Magidoff (Owner)**, for property located at **133 Pearson Street** whereas relief is needed to construct a car port which requires the following: 1) Variance from Section 10.573.20 to allow a 4 foot side yard where 8.5 feet is required. Said property is located on Assessor Map 232 Lot 103 and lies within the Single Residence B (SRB) District. (LU-24-107)

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	<b>Construct a detached car port</b>	Primarily residential
<u>Lot area (sq. ft.):</u>	22,216	22,216	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	22,216	22,216	15,000 min.
<u>Street Frontage (ft.):</u>	22	22	100 min.
<u>Lot depth (ft.)</u>	93	93	100 min.
<u>Front Yard (ft.):</u>	House: 16	House:16 Carpport: 30	30 min.
<u>Left Yard (ft.):</u>	House: >10	House:>10	10 min.
<u>Right Yard (ft.):</u>	House: >10	House:>10 <b>Carpport: 4</b>	8.5 min.
<u>Rear Yard (ft.):</u>	House: 20	House: 20 Carpport: >30	30 min.
<u>Carpport Height</u>	n/a	8.5	max.
<u>Building Coverage (%):</u>	6.4	7.5	20 max.
<u>Open Space Coverage (%):</u>	>40	>40	40 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1938	<b>Variance request(s) shown in red.</b>	

### Other Permits/Approvals Required

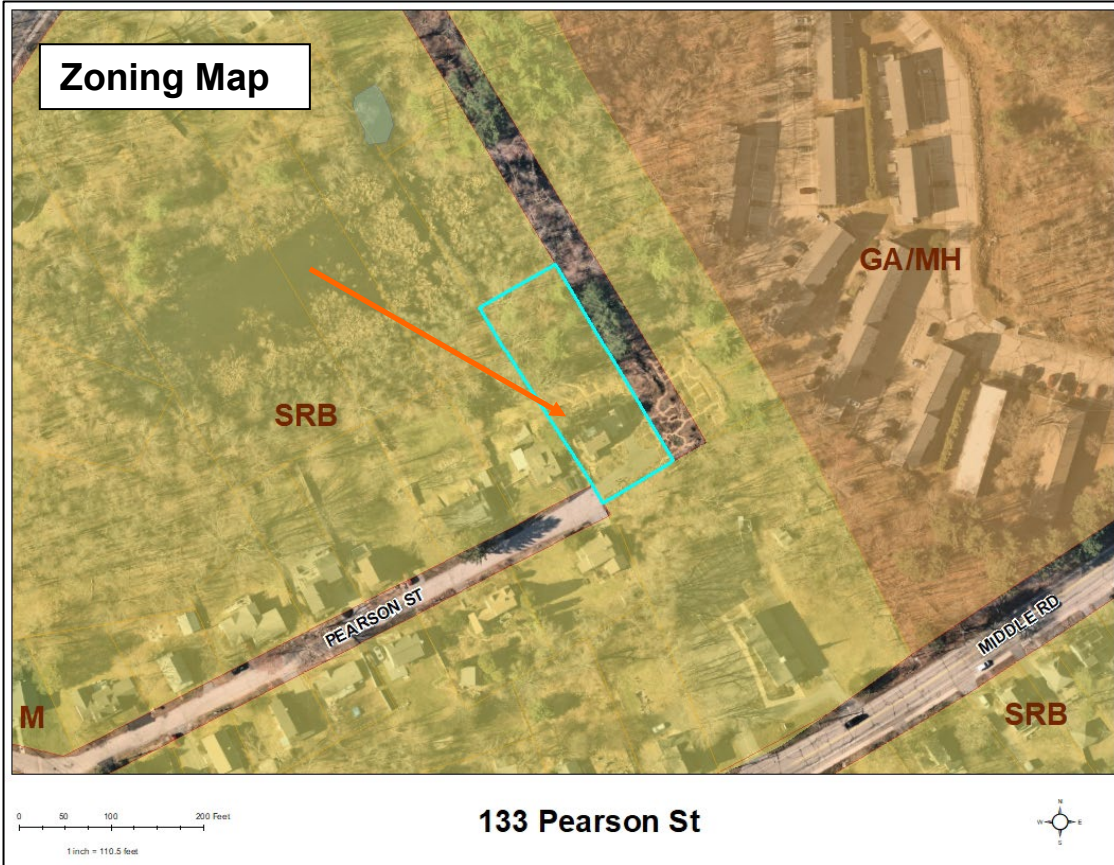
- Building Permit

### Neighborhood Context

**Aerial Map**



**Zoning Map**



## Previous Board of Adjustment Actions

**October 21, 2008** – The Board **denied** the petition for a Variance from Article II, Section 10-206(12) to allow an acupuncture office (114 sf) as a Home Occupation II requiring one parking space on the lot where two parking spaces are provided for the residence and no additional parking is provided for the office.

## Planning Department Comments

The applicant is requesting relief to construct a detached car port in the existing driveway. The carport is to be located within the required side yard and on top of the existing paved 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 special conditions that distinguish it from other properties in the area.*

**AND**

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

**OR**

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

## 10.235 Certain Representations Deemed Conditions

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

133 Pearson Street

Request for Variance to build an open-sided carport

By Avi Magidoff, owner

June 5, 2024

The request is for a variance to build a carport with a 4 foot setback from the side property line.

This is a unique non-conforming lot, at the end Pearson, a dead-end street. The driveway is, in fact, a continuation of the street. The property has only a 22 foot frontage with the street (of the full 200 foot western property line).

The southern property line, where the variance is being requested, borders on the back of the Seventh Day Adventist Church (861 Middle Road). Thus it borders not another side yard but the very far reaches of the back of that property. Further, this section of the church property is deeded to the city for snow removal purposes.

The closest neighboring buildings (121 Pearson, or 126 Pearson) are over 50 feet away. Both of these neighbors have been consulted and have given their approval.

The proposed carport will be 20 feet away from the house on the property. Being an open structure, and 7 feet tall at the base of the roof and 10 feet at the peak, it will not obstruct the flow of air or light, as it is basically a pergola.

Using the already paved section of the driveway, the carport will not create water flow issues and will not affect water drainage. Further, it will allow for the restoration of the asphalt portion past the carport to be removed and restored to natural soil and vegetation.

The carport will allow me, the owner, to stay in my home ("age in place") as it will create a far more manageable snow removal situation (currently no snow removal professional can plow the full driveway due to the narrow angle of its turn), and allow for the garage to be converted to a ground level bedroom.

Neighbors on the street have been consulted. There has been no objection from the neighbors including, specifically, the ones abutting the property (121 and 126 Pearson Street).





### **Not contrary to the public interest (10.233.21)**

- This is a unique lot, at the end of a dead-end street. It has only 22 feet of street frontage. The so-called right-side property line, does not border another side yard, but rather the back yard of 861 Middle Road, and that portion of the property is deeded to the City and used for snow removal.
- Abutting neighbors will not be disturbed, as the closest building is over 50 feet away, thus not disturbing any air, light, or water drainage flow. On May 31, the abutters have been consulted and have approved the carport design.
- The structure itself (12x20) is small. With a peak height of 10'3", and 30 feet from the street, it will barely be seen by anyone except the two last houses on the street (121 & 126 Pearson). The projected view from the street is shown. The hip-roof design was specifically selected to reduce the appearance of the height and allow for the least imposing structure.
- Being open-sided, the carport has minimal effect on the flow of air, light, nor will affect drainage as it is placed on an existing impervious asphalt driveway, thus not adding impervious spaces.

The driveway now:



The driveway with the proposed carport



Current view of the driveway from two houses down the street



Same view of the driveway with the carport from down the street  
(note the carport can barely be seen from just two houses down the street)



### **Spirit of the Ordinance will be Observed (10.233.22)**

- The proposed carport does not threaten the health, safety, nor welfare of the general public, neighbors.  
Its placement is on an existing driveway. Therefore, not creating further asphalt covers. It will allow the removal of almost 800 ft of asphalt, restoring it to a natural state.
- Fire safety will be ensured by the distance of over 50 ft between the proposed carport and the nearest structure on the abutting neighbor's lot, and over 20 feet from the existing house on my own lot.

## **Substantial Justice will be Done (10.233.23)**

- As it does not threaten the health, safety, nor welfare of the general public, nor the current or future owners and neighbors.
- The driveway on this property is extremely long. There is a garage on the eastern end of the house, making the total length of the driveway over 100 ft. Snow removal professionals have repeatedly refused to plow the curved section as they are unable back drag the snow and turn due to the driveway being too narrow.
- As an older person, I am unable to clear such a long driveway, and I intend to convert the garage into a bedroom, so I can age in place and remain in my house as I age.
- The carport will also allow for solar panels for an electric vehicle in the future, thus reducing carbon footprint.
- The carport will allow for the removal of some 800 square feet of the asphalt driveway beyond it, allowing it to be restored to natural vegetation, and improving soil water absorption.

## Values of Surrounding Properties will not be Diminished (10.233.24)

- There is no reasonable prediction that a well-designed carport that has little exposure to public view (and specifically chosen for the most pleasing view) could possibly decrease property values
- I have made significant improvements on the house (including a geothermal pump and solar panels), and have established extensive gardens, increasing the value of the homes in the neighborhood
- The carport will facilitate the eventual conversion of the existing garage into a ground floor bedroom, thus increasing the property value of this property and by extension, surrounding properties.
- Keeping the home owner-occupied increases property values and this is only possible if I am able to age in place and not worry about an extraordinary long driveway and snow removal.
- Most of the properties in the neighborhood, and specifically on my street do not conform to the setbacks and have structures on, or just a foot or two away from the property line, including my own abutters (see map below). The fact that most of the properties in the neighborhood do not adhere to either front or side setbacks, does not seem to affect property values.
- While most of those structures had been grandfathered, side-setback variances have been granted on my street (65 Pearson) for an enclosed garage with a dwelling unit above it and a 4 ft side-setback. That is a way more imposing structure than an open-sided carport (see picture). The abutting neighbors (at 75 Pearson) are clear that this has not been an issue for them.  
Similarly an enclosed two car garage with a 4 ft variance was granted last year on 1344 Islington Steet, again a far more imposing structure. None of these have lowered property values.

Half of the properties on Pearson Street already have structures that do not meet the 10ft side setback requirement, and only one meets the 30ft front setback. Therefore property values cannot be dependent on adherence to side setbacks, especially not on this unique property at the end of the street



The red Xs mark structures less than 10ft from side property lines



10 years ago a 3.5-foot variance was granted at 65 Pearson Street

A year ago a 4-foot variance was granted at 1344 Islington Street

Home prices in the neighborhood have not gone down in the past 10 years, nor in the past year.

This is clear track record that these additions do not negatively affect property values.

3.5 ft side setback approved at 65 Pearson Street with an enclosed garage and unit above.



4 foot side setback approved at 1344 Islington (enclosed garage)





## **Literal enforcement of the provisions of the Ordinance would result in Unnecessary Hardship (10.233.25)**

- There are special conditions of the property that distinguish it from other properties in the area. It is a non-conforming lot at the end of a dead-end street, with little street frontage, and a side setback bordering on the very far reaches of a neighboring property that is actually deeded to the city for snow removal. No fair and substantial relationship exists between the general public's purposes of the Ordinance's provision for the side setback and the specific application of that provision to my property given its unique setting. The carport will be 50 feet away from any existing structure. The proposed use of a carport is a reasonable one. It is using an already existing driveway, not creating further impervious surfaces.
- A carport, closer to the street (and still 30 ft away) is essential for my ability to keep the house as I age.
- I am senior citizen. I already do not have the physical capacity to clear the snow on such a long driveway and contractors have refused to plow the driveway due to the narrow-angle back-turn they would have to make. It is also likely that at some point I may not have the physical capacity to clear snow from my car during the winter or be subjected to extreme heat in the car during the summer if it is left exposed without cover.
- I have explored other options, and chose the one with the most minimal impact, using an open-sided carport and by placing it on the existing asphalt driveway, opting not to use an enclosed structure that has greater impact on the surroundings.



DUE TO THE PROPERTY LOCATION AT THE END OF PEARSON STREET THE NAMING OF PROPERTY LINES ARE ALTERED. THE WEST PROPERTY LINE IS REFERRED TO AS THE FRONT. THE SOUTH LINE IS THE SIDE PROPERTY LINE AND THE EAST IS THE REAR PROPERTY LINE.

**133 PEARSON ST**

**Location** 133 PEARSON ST      **Mblu** 0232/ 0103/ 0000/ /

**Acct#** 30245      **Owner** MAGIDOFF AVI

**PBN**      **Assessment** \$410,900

**Appraisal** \$410,900      **PID** 30245

**Building Count** 1

**Owner of Record**

**Owner** MAGIDOFF AVI  
**Co-Owner**  
**Address** 133 PEARSON ST  
 PORTSMOUTH, NH 03801

**Sale Price** \$300,000  
**Certificate**  
**Book & Page** 4745/1419  
**Sale Date** 12/15/2006  
**Instrument** 00

**Building Information**

**Building 1 : Section 1**

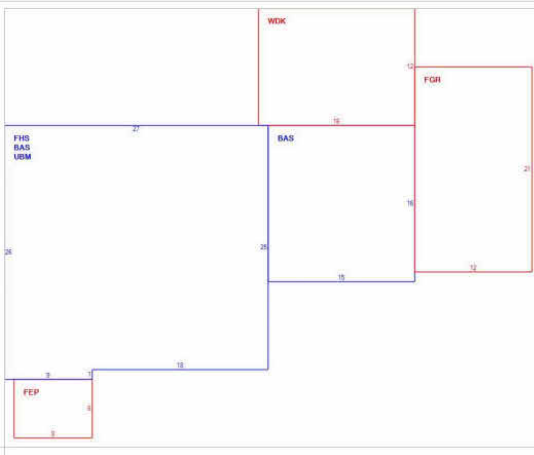
**Year Built:** 1938  
**Living Area:** 1,266  
**Replacement Cost:** \$221,227  
**Building Percent Good:** 83

Building Attributes	
Field	Description
Style:	Cape Cod
Model:	Residential
Grade:	C
Stories:	1.5
Occupancy:	1
Exterior Wall 1:	Vinyl Siding
Exterior Wall 2:	
Roof Structure:	Gable/Hip
Roof Cover:	Asph/F Gls/Cmp
Interior Wall 1:	Drywall/Sheet
Interior Wall 2:	
Interior Flr 1:	Inlaid Sht Gds
Interior Flr 2:	Hardwood
Heat Fuel:	Geo Thermal
Heat Type:	Warm Air
AC Type:	None
Total Bedrooms:	2 Bedrooms
Total Bthrms:	1
Total Half Baths:	1
Total Xtra Fixtrs:	0
Total Rooms:	7
Bath Style:	Avg Quality
Kitchen Style:	Avg Quality
Kitchen Gr:	
WB Fireplaces:	0
Extra Openings:	0
Metal Fireplaces:	1
Extra Openings 2:	0
Bsmt Garage:	



(https://images.vgsi.com/photos2/PortsmouthNHPhotos/100102104136.jpg)

**Building Layout**



Building Sub-Areas (sq ft)			
Code	Description	Gross Area	Living Area
BAS	First Floor	924	924
FHS	Half Story, Finished	684	342
FEP	Porch, Enclosed	48	0
FGR	Garage, Attached	252	0
UBM	Basement, Unfinished	684	0
WDK	Deck, Wood	192	0
		2,784	1,266

**Land**

**Land Use**

**Use Code** 1010  
**Description** SINGLE FAM MDL-01  
**Zone** SRB  
**Neighborhood** 123  
**Alt Land Appr** No  
**Category**

**Land Line Valuation**

**Size (Acres)** 0.51  
**Frontage**  
**Depth**  
**Assessed Value** \$226,800  
**Appraised Value** \$226,800

**Avi Magidoff**

**133 Pearson Street**  
**Portsmouth, NH,**  
**03801**  
**603-531-3130**  
**avimagidoff@gmail.com**

Consultant  
 Address  
 Address  
 Phone  
 Fax  
 e-mail

Consultant  
 Address  
 Address  
 Phone  
 Fax  
 e-mail

No.	Description	Date

**PROJECT: UNATTACHED CARPORT**

**PROPERTY INFORMATION**

**A0.S1**

Project number CP2024  
 Date 5/30/2024  
 Drawn by Author  
 Checked by Checker

Scale

6/2/2024 9:12:32 PM

Avi Magidoff

133 Pearson Street  
 Portsmouth, NH,  
 03801

603-531-3130

avimagidoff@gmail.com

Consultant  
 Address  
 Address  
 Phone  
 Fax  
 e-mail

Consultant  
 Address  
 Address  
 Phone  
 Fax  
 e-mail

No.	Description	Date

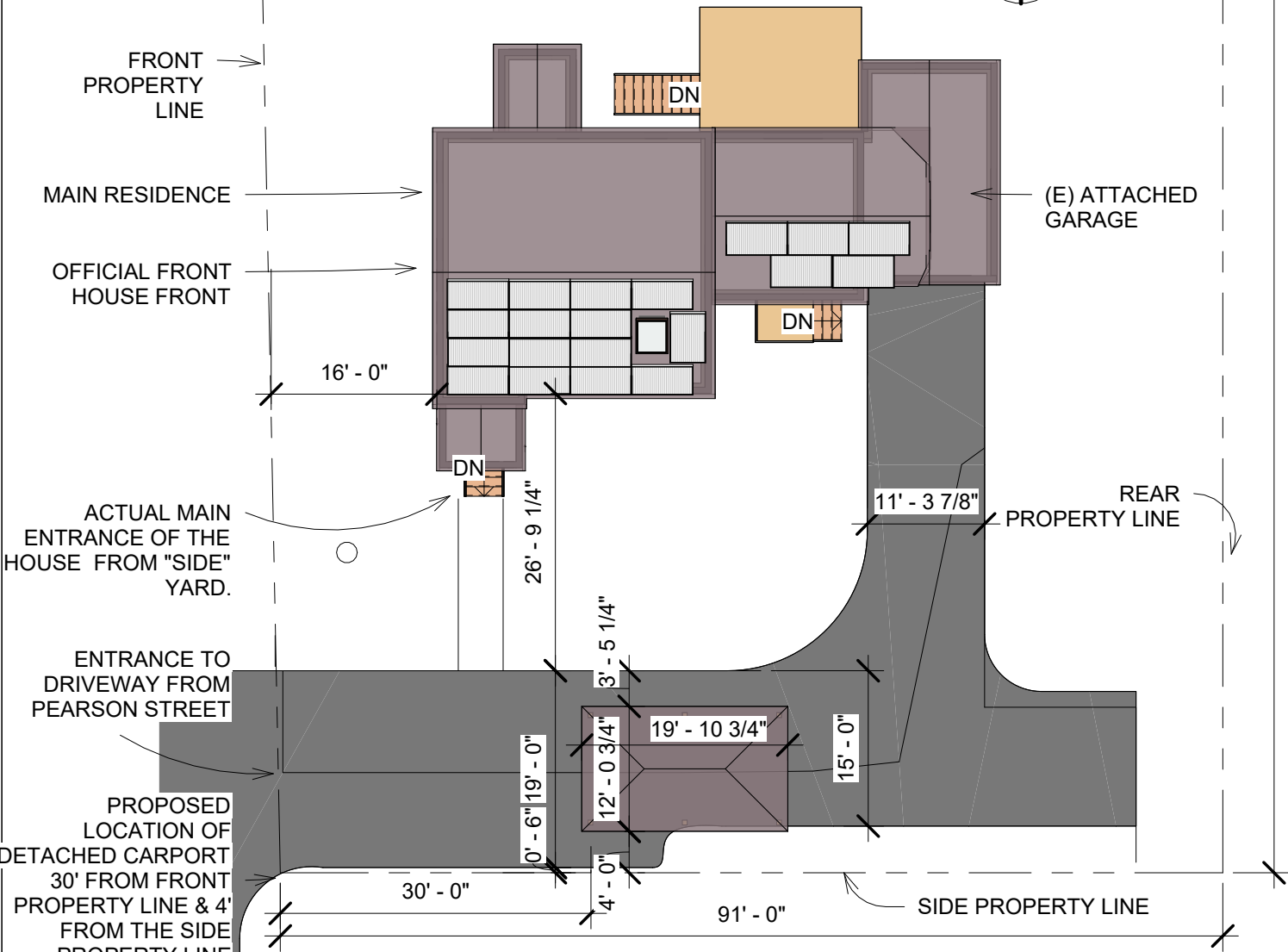


ACTUAL FOTO OF THE CARPORT

SIDE YARD

96' - 0"

249' - 11 5/8"



1 PROPOSED SITE PLAN  
 1/16" = 1'-0"

PROJECT: UNATTACHED CARPORT

PROPOSED SITE PLAN

A0.S2

Project number	CP2024
Date	5/30/2024
Drawn by	Author
Checked by	Checker

Scale 1/16" = 1'-0"

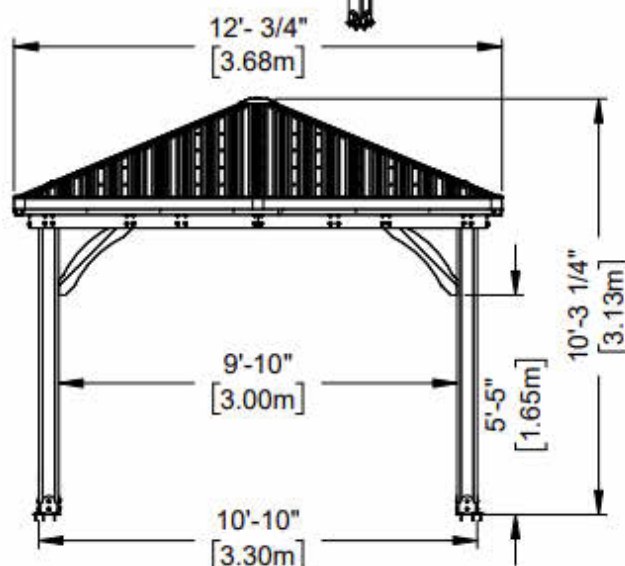
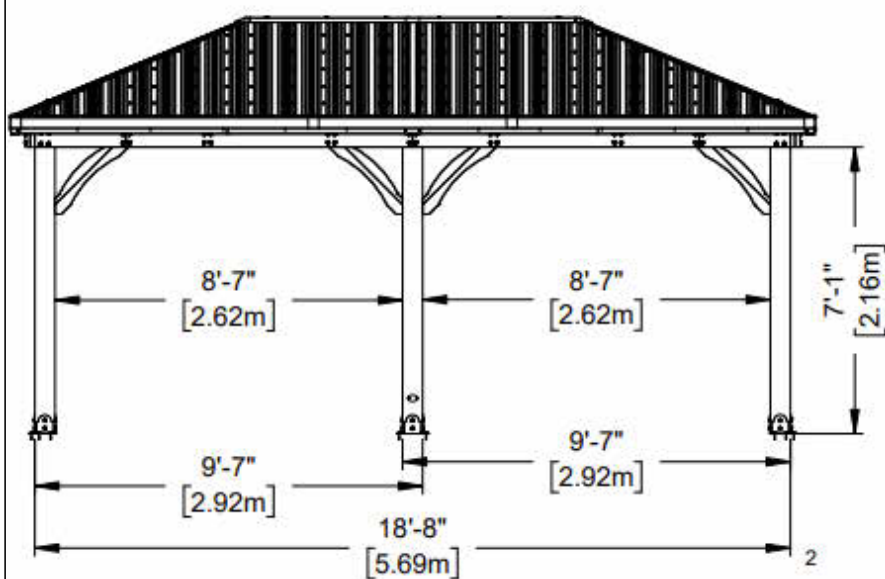
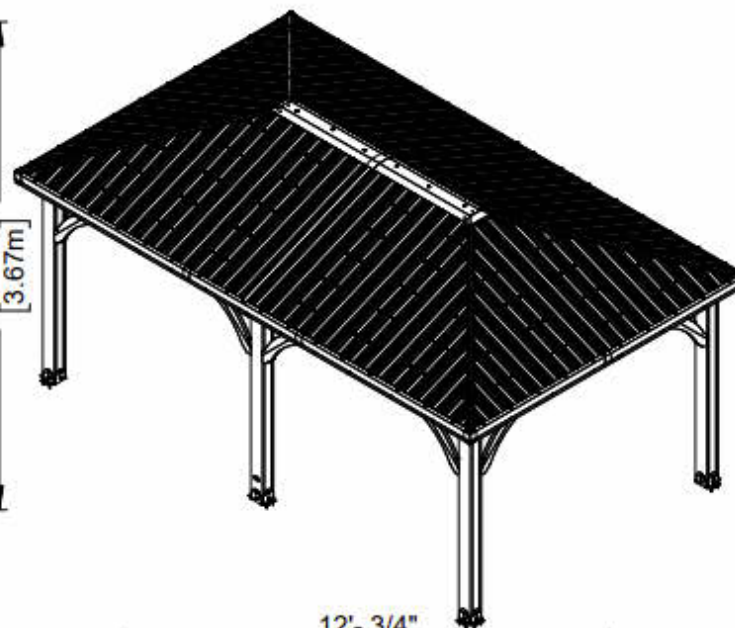
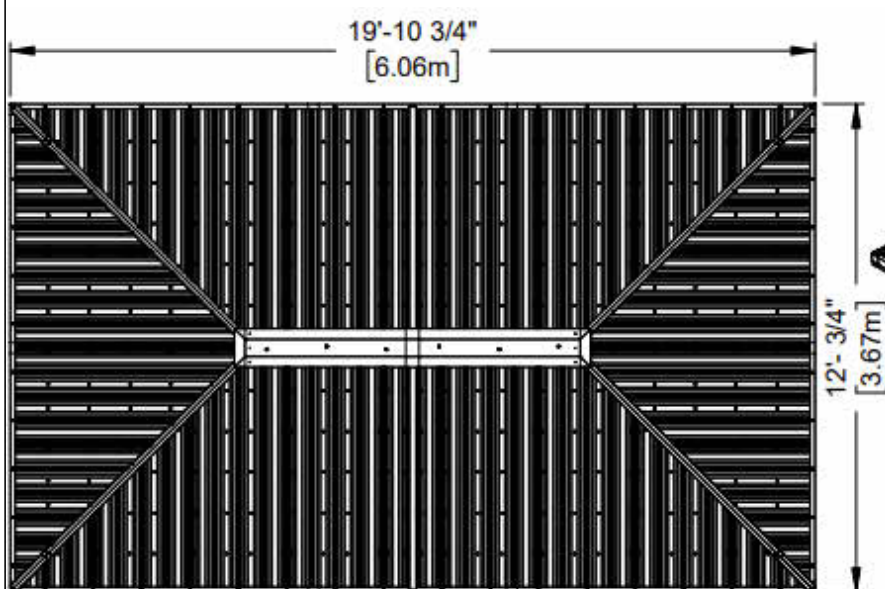
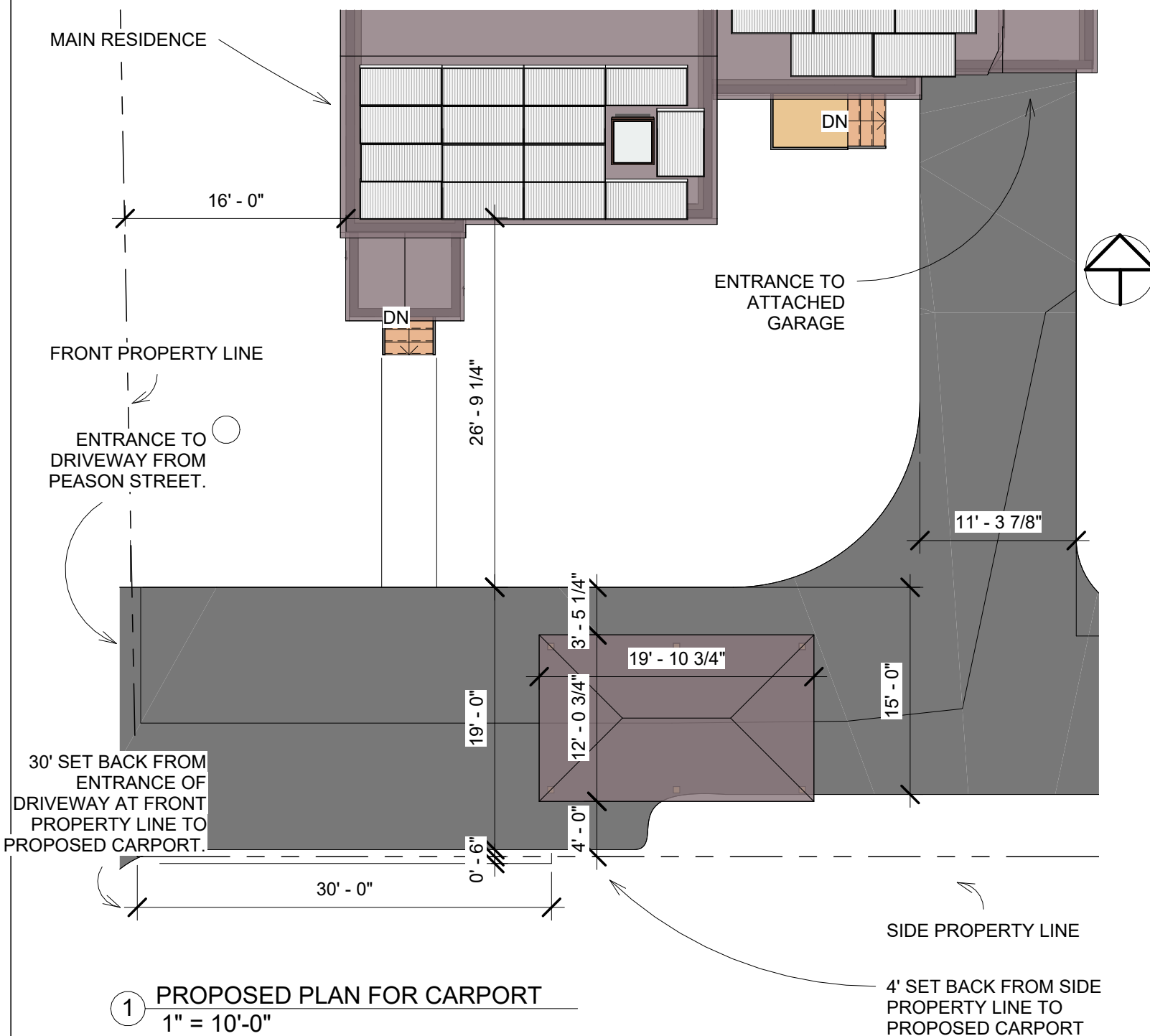
Avi Magidoff

133 Pearson Street  
Portsmouth, NH,  
03801  
603-531-3130  
avimagidoff@gmail.com

Consultant  
Address  
Address  
Phone  
Fax  
e-mail

Consultant  
Address  
Address  
Phone  
Fax  
e-mail

No.	Description	Date



PROJECT: UNATTACHED CARPORT

PROPOSED CARPORT PLAN  
& ELEVATION  
A1.A

Project number CP2024  
Date 5/30/2024  
Drawn by GAF  
Checked by GAF

Scale 1" = 10'-0"

## II. NEW BUSINESS

- C. The request of **Bruce R Carll (Owner) and Patrick and Wendy Quinn (Applicants)**, for property located at **0 Melbourne Street** whereas relief is needed to construct a single residential unit on a vacant and undersized lot which requires the following: 1) Variance from Section 10.521 to allow a) 6,197 sf of lot area where 15,000 sf are required, b) 6,197 sf of lot area per dwelling unit where 15,000 sf are required, and c) 50 ft of frontage where 100 ft are required. Said property is located on Assessor Map 233 Lot 54 and lies within the Single Residence B (SRB) District. (LU-24-109)

### Existing & Proposed Conditions

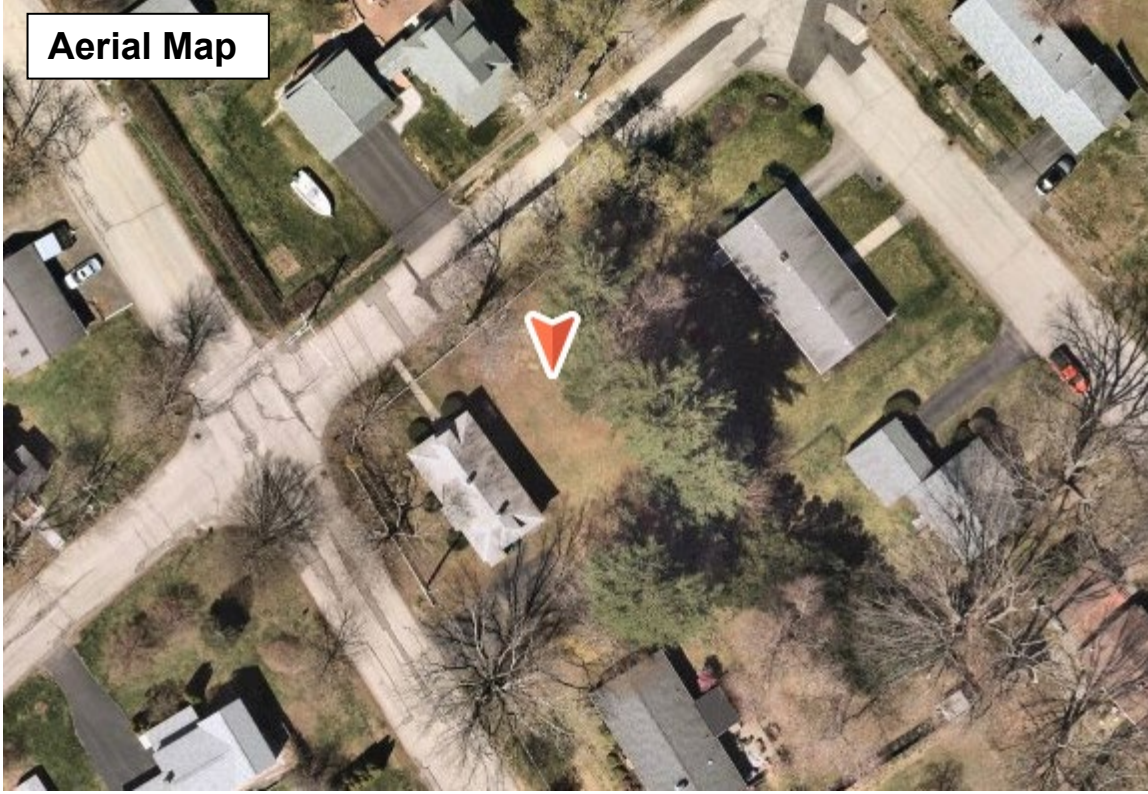
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant Lot	Construct single family home	Primarily residential
<u>Lot area (sq. ft.):</u>	6,197	6,197	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,197	6,197	15,000 min.
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.)</u>	112	112	100 min.
<u>Front Yard (ft.):</u>	n/a	30	30 min.
<u>Left Yard (ft.):</u>	n/a	10	10 min.
<u>Right Yard (ft.):</u>	n/a	10	10 min.
<u>Rear Yard (ft.):</u>	n/a	30	30 min.
<u>Height (ft.):</u>	n/a	35	35 max.
<u>Building Coverage (%):</u>	0	18.5	20 max.
<u>Open Space Coverage (%):</u>	100	40	40 min.
<u>Parking</u>	0	2	2
<u>Estimated Age of Structure:</u>	n/a	Variance request(s) shown in red.	

### Other Permits/Approvals Required

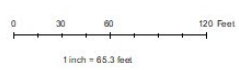
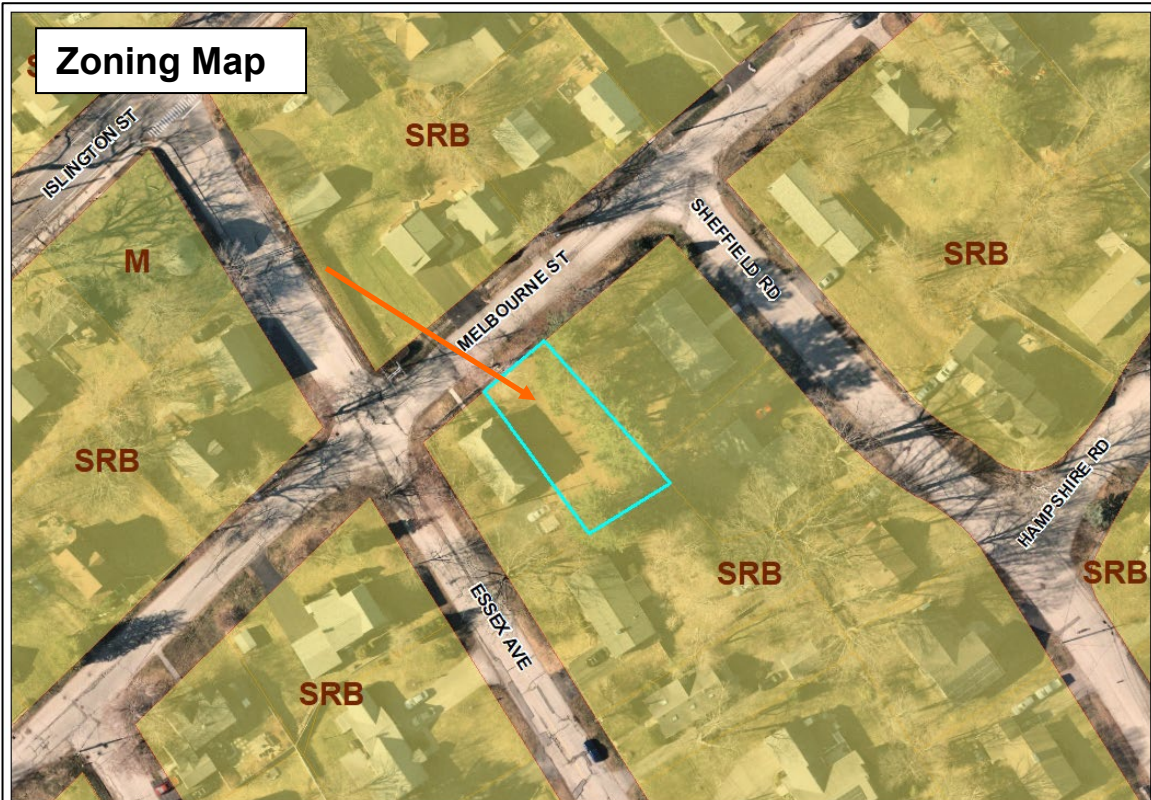
- Building Permit

### Neighborhood Context

**Aerial Map**



**Zoning Map**



**0 Melbourne St**



## Previous Board of Adjustment Actions

No previous history found.

## Planning Department Comments

The applicant is requesting relief to construct a single-family home on an undersized vacant lot. The variances requested are specific to the lot non-conformities. The applicant has submitted preliminary designs that may change as they further develop the project. However, the applicant has committed to creating a structure that conforms to Zoning.

Should the Board approve the requests, Staff suggest the following condition of approval or similar:

1. *The design and orientation of the home and driveway may change as a result of the Building Permit review and approval.*

## Variance Review Criteria

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

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

**AND**

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

**OR**

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

## 10.235 Certain Representations Deemed Conditions

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

**APPLICATION OF PATRICK and WENDY QUINN**  
**0 Melbourne Street**  
**Map 233, Lot 54**

**APPLICANT'S NARRATIVE**

I. **THE PROPERTY:**

The applicants, Patrick and Wendy Quinn, are under contract to acquire the above-referenced property, which is an existing vacant lot of record in the SRB Zone, upon which they seek to build a single-family residence.

Under current zoning, this lot is deficient as to minimum lot size and frontage, and, should a single-family dwelling be placed upon it, it would be deficient as to lot area per dwelling. Accordingly, in order to proceed, the applicant is requesting relief from Section 10.521 as follows:

To permit lot area and lot area per dwelling of 6,197 sf where 15,000 sf are required; and

To permit 50 feet of continuous street frontage where 100 feet is required.

The lot is shown as Lot 5 on the Daniels Park subdivision plan dated June 1918 which is submitted herewith and has been a lot of record since that time. It lies on the southeastern side of Melbourne Street, between Essex Avenue and Sheffield Road, where it is the middle of three lots. The proposed dwelling would be the only one with a driveway onto Melbourne Street between Essex and Sheffield on that side of the street. The single-family home proposed is effectively the only use permitted on this lot in the SRB zone.

The applicant has submitted herewith a site plan and building plans which demonstrate *possible* building design elements. The exact location and dimensions of the driveway access would need to be finalized in connection with the Inspection Department and Public Works. Final decisions as to the exact location of the proposed new dwelling have not been made, but the applicant will stipulate that the proposed building envelope for the new home shown in the site plan will not change. However, the proposed dwelling will meet all applicable setback, height and lot coverage requirements. The dwelling footprint will be within the 20% building coverage requirement. The dwelling will have a height no greater than 35 feet. The dwelling will require no relief from the setback, height and open space requirements.

It is understood that, should the variance requested here be granted, the Inspection Department will need to review and approve all construction drawings and sketches prior to issuing a building permit to the applicant.



## II. CRITERIA:

The applicant believes the within Application meets the criteria necessary for the Board to grant the requested variances.

A. **Granting the requested variance will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest.** The “public interest” and “spirit and intent” requirements are considered together pursuant to Malachy Glen Associates v. Chichester, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

In this case, were the variances to be granted, there would be no change in the essential characteristics of the neighborhood, nor would the public health, safety or welfare be threatened. An additional single-family dwelling on this property is entirely appropriate and consistent with the existing residential neighborhood in which it sits. The proposal will meet all dimensional requirements of the ordinance save for those that are impossible to comply with. Thus, the essentially residential character of the neighborhood will not be altered. A single-family dwelling, which is permitted by right in this zone, and which will feature modern, code-compliant construction, will not threaten the health, safety and welfare of the public in any manner.

B. **Substantial justice would be done by granting the variance.** Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property. There is no other permitted use in this zone that the applicants could put the property to that fits with character of the neighborhood, and in any event, any use would require the exact same relief as is requested here.

In this case, there is no benefit to the public in denying the variances that is not outweighed by the hardship upon the owner.

C. **The values of surrounding properties will not be diminished by granting the variance.** A newly constructed, fully code-compliant home with appropriate landscaping, vegetation and screening will increase property values in the neighborhood. The values of the surrounding properties will not be negatively affected in any way by the relief requested. To the contrary, values would be enhanced if this project were to be approved.

D. **There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship.** The property in question is smaller and

more narrow than most lots in the immediate vicinity. It is an existing lot of record that has less than the currently required lot area and frontage, deficiencies which cannot be rectified. Because there is no way to make the lot and this proposal complies with these requirements, special conditions that distinguish the property from others in the area exist.

**The use is a reasonable use.** Residential use is permitted in this zone and is identical in character and consistent with the existing use of the adjacent and abutting properties. If the use is permitted, it is deemed reasonable (Vigeant v. Hudson, 151 NH 747 (2005)).

**There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property.** There is no way for the applicant to comply with the lot area and frontage requirements. These requirements exist to prevent the overburdening/overcrowding of land. Other than frontage and lot area, this proposal will be entirely dimensionally compliant. There is no permitted use available to applicant that would not require identical relief. Thus, there is no fair and substantial relationship between the purpose of the lot area and frontage restrictions and their application to this property.

E. Alternatively, if the board deems the criteria in subparagraph (D) are not established, an unnecessary hardship nevertheless exists because, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

As noted above, the applicant cannot remedy the lot area and frontage deficiencies on this lot no matter what use they propose. By definition, a variance is necessary to enable the reasonable use of this lot for single family residential purposes.

### **III. Conclusion.**

For the foregoing reasons, the applicant respectfully requests the Board grant the variances as requested and advertised.

Respectfully submitted,

Dated: 6-13-2022

By: *Christopher P. Mulligan*  
Christopher P. Mulligan, Esquire

# MELBOURNE ST

---

**Location** MELBOURNE ST

**Mblu** 0233/ 0054/ 0000/ /

**Acct#** 30420

**Owner** CARLL BRUCE R

**PBN**

**Assessment** \$204,300

**Appraisal** \$204,300

**PID** 30420

**Building Count** 1

## Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2023	\$0	\$204,300	\$204,300

Assessment			
Valuation Year	Improvements	Land	Total
2023	\$0	\$204,300	\$204,300

## Owner of Record

---

**Owner** CARLL BRUCE R

**Sale Price** \$0

**Co-Owner**

**Address** 2224 S BRENTWOOD DR  
PALM SPRINGS, CA 92264

**Certificate**

**Book & Page** 6202/987

**Sale Date** 12/01/2020

**Instrument** 38

**Ownership History**

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
CARLL BRUCE R	\$0		6202/987	38	12/01/2020
CARLL MARY J REVOC LIV TRUST	\$0		4530/0598		05/02/2005

**Building Information****Building 1 : Section 1****Year Built:**

**Living Area:** 0

**Replacement Cost:** \$0

**Building Percent Good:****Replacement Cost**

**Less Depreciation:** \$0

Building Attributes	
Field	Description
Style:	Vacant
Model	
Grade:	
Stories:	

Occupancy	
Exterior Wall 1	
Exterior Wall 2	
Roof Structure:	
Roof Cover	
Interior Wall 1	
Interior Wall 2	
Interior Flr 1	
Interior Flr 2	
Heat Fuel	
Heat Type:	
AC Type:	
Total Bedrooms:	
Total Bthrms:	
Total Half Baths:	
Total Xtra Fixtrs:	
Total Rooms:	
Bath Style:	
Kitchen Style:	
Kitchen Gr	
WB Fireplaces	
Extra Openings	
Metal Fireplaces	
Extra Openings 2	
Bsmt Garage	

## Building Photo



(<https://images.vgsi.com/photos2/PortsmouthNHPhotos/\00\00\31\22.JPG>;

## Building Layout

(ParcelSketch.ashx?pid=30420&bid=30420)

Building Sub-Areas (sq ft)	<u>Legend</u>
No Data for Building Sub-Areas	

## Extra Features

Extra Features	Legend
No Data for Extra Features	

## Land

### Land Use

**Use Code** 1310  
**Description** RES ACLNPO  
**Zone** SRB  
**Neighborhood** 123  
**Alt Land Appr Category** No

### Land Line Valuation

**Size (Acres)** 0.14  
**Frontage**  
**Depth**  
**Assessed Value** \$204,300  
**Appraised Value** \$204,300

## Outbuildings

Outbuildings	Legend
No Data for Outbuildings	

## Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2023	\$0	\$204,300	\$204,300
2022	\$0	\$204,300	\$204,300

2021	\$0	\$204,300	\$204,300
------	-----	-----------	-----------

<b>Assessment</b>			
<b>Valuation Year</b>	<b>Improvements</b>	<b>Land</b>	<b>Total</b>
2023	\$0	\$204,300	\$204,300
2022	\$0	\$204,300	\$204,300
2021	\$0	\$204,300	\$204,300

---

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**Property Information**  
**Property ID** 0233-0054-0000  
**Location** MELBOURNE ST  
**Owner** CARLL BRUCE R



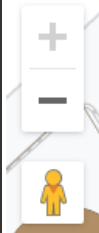
**MAP FOR REFERENCE ONLY  
 NOT A LEGAL DOCUMENT**

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

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

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

1" = 44.13327225382417 ft





# DANIELS PARK

Portsmouth, N.H.

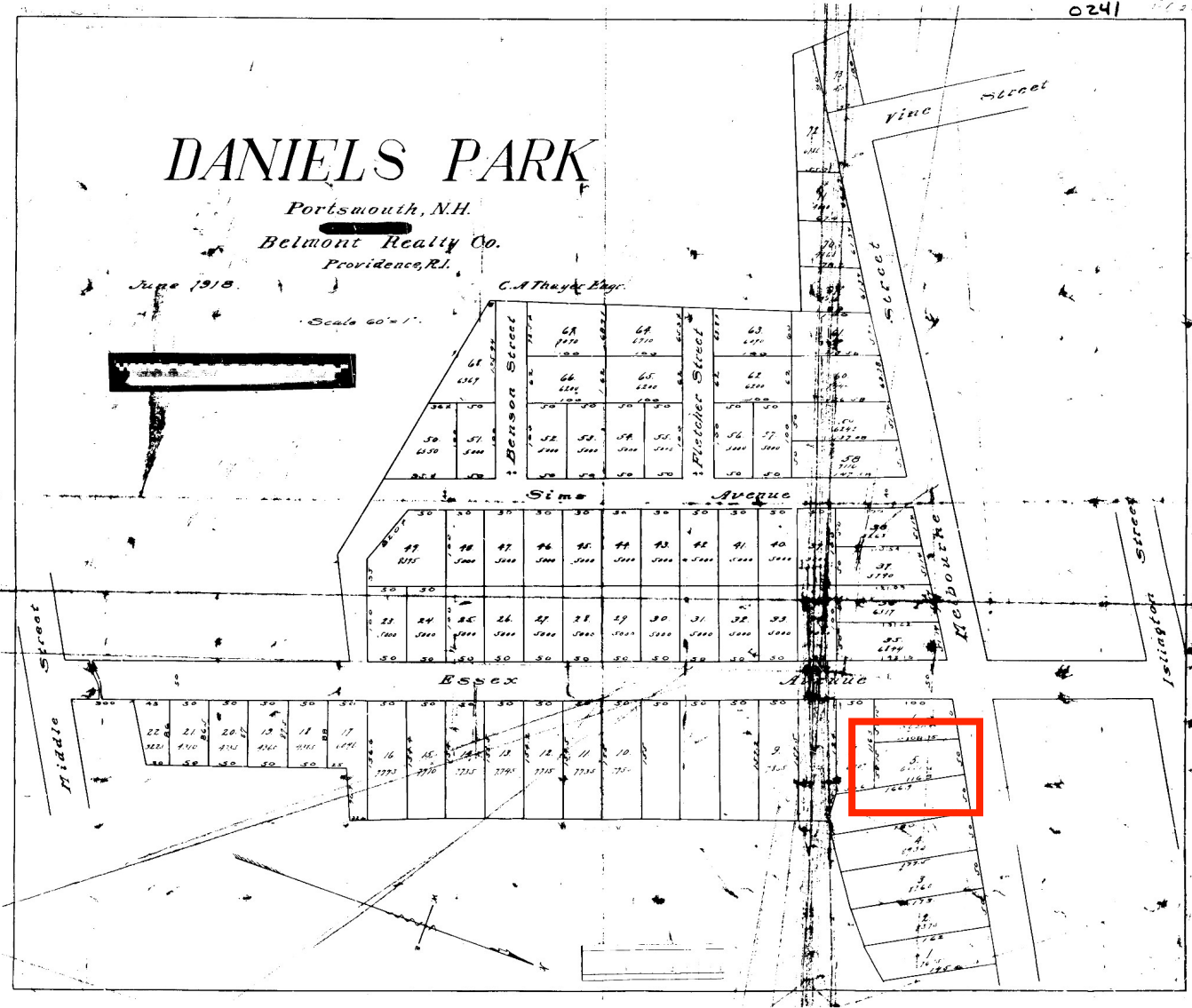
Belmont Realty Co.

Providence, R.I.

June 1918.

C. A. Thayer, Engr.

Scale 60' = 1".



0241





TAX MAP 233 LOT 9  
 WILLIAM CHAMBERLIN  
 DENISE CHAMBERLIN  
 105 MELBOURNE ST  
 PORTSMOUTH, NH 03801

TAX MAP 233 LOT 53  
 JOHANNA SORIS  
 BARBARA SORIS  
 14 SHEFFIELD RD  
 PORTSMOUTH, NH 03801

TAX MAP 233 LOT 52  
 BECKETT MILLER REVOC TRUST  
 24 SHEFFIELD RD  
 PORTSMOUTH, NH 03801

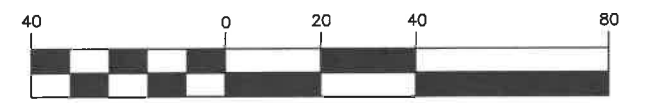
TAX MAP 233 LOT 56  
 SHEILA REARDON  
 105 ESSEX AVE  
 PORTSMOUTH, NH 03801

TAX MAP 233 LOT 55  
 BRUCE CARLL  
 2224 S BRENTWOOD DR  
 PALM SPRINGS, CA 92264

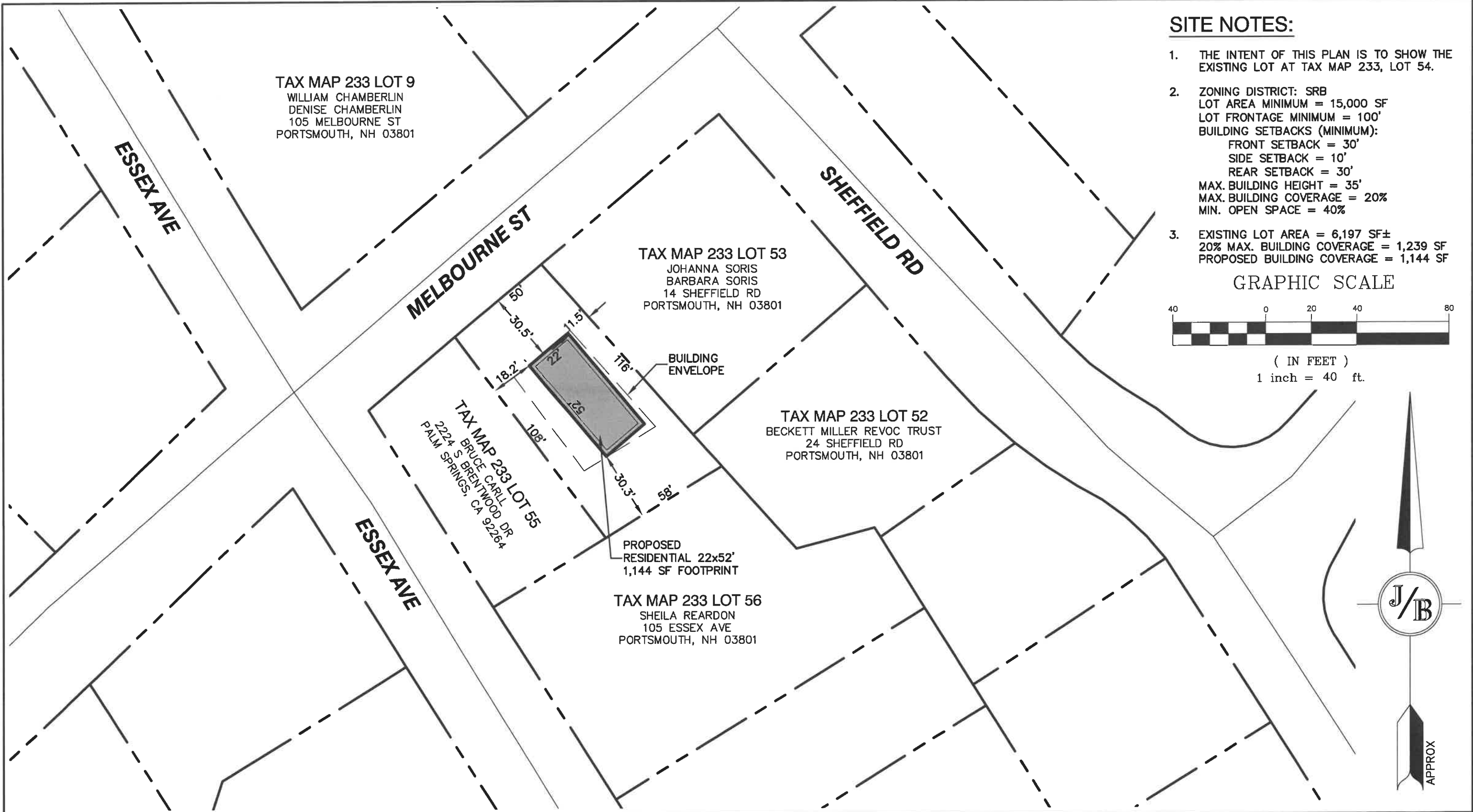
**SITE NOTES:**

1. THE INTENT OF THIS PLAN IS TO SHOW THE EXISTING LOT AT TAX MAP 233, LOT 54.
2. ZONING DISTRICT: SRB  
 LOT AREA MINIMUM = 15,000 SF  
 LOT FRONTAGE MINIMUM = 100'  
 BUILDING SETBACKS (MINIMUM):  
 FRONT SETBACK = 30'  
 SIDE SETBACK = 10'  
 REAR SETBACK = 30'  
 MAX. BUILDING HEIGHT = 35'  
 MAX. BUILDING COVERAGE = 20%  
 MIN. OPEN SPACE = 40%
3. EXISTING LOT AREA = 6,197 SF±  
 20% MAX. BUILDING COVERAGE = 1,239 SF  
 PROPOSED BUILDING COVERAGE = 1,144 SF

**GRAPHIC SCALE**



( IN FEET )  
 1 inch = 40 ft.



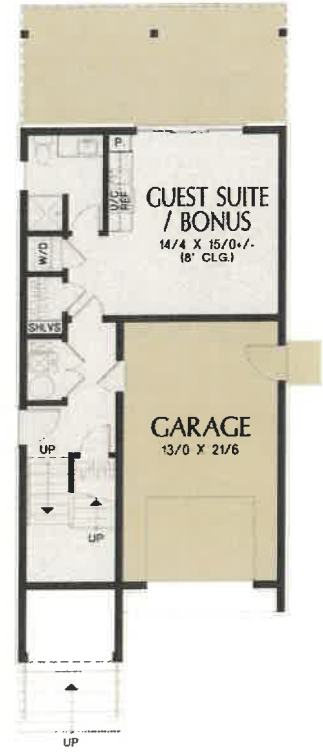
Design: XXX	Draft: XXX	Date: 05/30/24
Checked: XXX	Scale: AS SHOWN	Project No.: XXXXX
Drawing Name: XXXXX-DWGNAME.dwg		
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.		

Rev.	Date	Revision	By
0	5/30/24	ISSUED FOR REVIEW	EJH

**J/B** Jones & Beach Engineers, Inc.  
 Civil Engineering Services  
 85 Portsmouth Ave. PO Box 219 Stratham, NH 03885  
 603-772-4746  
 E-Mail: JBE@jonesandbeach.com

Drawing Name:	<b>EXHIBIT PLAN</b>
Project:	<b>124 MELBOURNE ST PORTSMOUTH, NH</b>
Owner of Record:	<b>CLIENT NAME CLIENT ADDRESS</b>

DRAWING No.	<b>C1</b>
SHEET 1 OF 1	
JBE PROJECT No.	XXXXXX



Shop



Sign In



Favorites

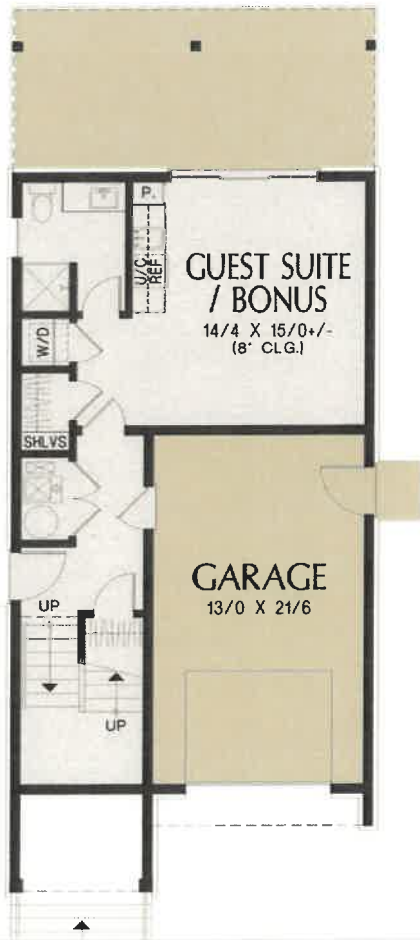


Cart



Chat

FIRST FLOOR



**In-Law Suite**  
**Master Up**



**Front Entry Garage**



**Kitchen Island**  
**Open Floor Plan**



**Laundry Lower Level**  
**Laundry Second Floor**



**Front Porch**  
**Rear Porch**



**Bonus Room**  
**Flex Room**



Shop



Sign In



Favorites



Cart



Chat

MAIN FLOOR



Shop



Sign In



Favorites

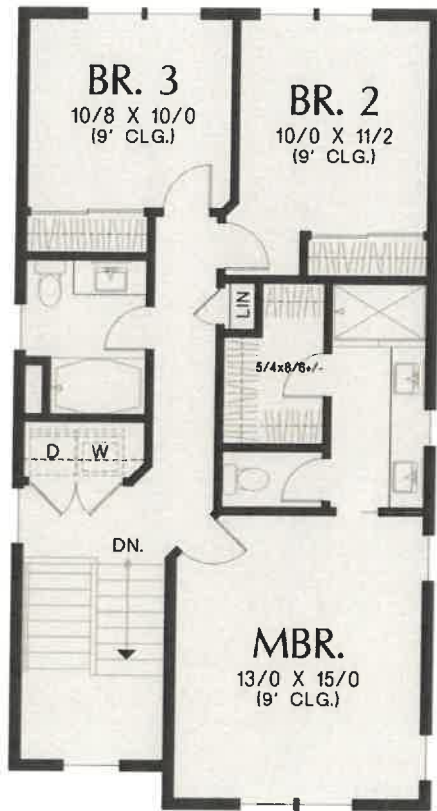


Cart



Chat

THIRD FLOOR



Images copyrighted by the designer.



Shop



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## DETAILS

### HEATED SQ FT

TOTAL HEATED AREA:	<b>2,197 sq. ft.</b>
FIRST FLOOR:	<b>497 sq. ft.</b>
SECOND FLOOR:	<b>879 sq. ft.</b>
THIRD FLOOR:	<b>821 sq. ft.</b>

### UNHEATED SQ FT

GARAGE:	<b>300 sq. ft.</b>
FLOORS:	<b>3</b>
BEDROOMS:	<b>4</b>
BATHROOMS:	<b>3</b>
HALF BATHS:	<b>1</b>

GARAGES:	<b>1 car</b>
WIDTH:	<b>22ft.</b>
DEPTH:	<b>54ft.</b>
HEIGHT:	<b>29ft.-4in.</b>

FOUNDATION:	<b>Slab Foundation Basement Foundation</b>
-------------	--

MAIN ROOF PITCH:	<b>10:12</b>
------------------	--------------

EXTERIOR FRAMING:	<b>2x6</b>
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### CEILING HEIGHTS

BASEMENT:	<b>8 feet</b>
-----------	---------------

FIRST FLOOR:	<b>9 feet</b>
--------------	---------------

SECOND FLOOR:	<b>9 feet</b>
---------------	---------------

## WHAT'S INCLUDED IN THESE PLANS?

- **Exterior Elevations** - all at 1/4" scale and - usually two sheets.



Shop



Sign In



Favorites



Cart



Chat

**II. NEW BUSINESS**

D. The request of **231 Corporate Drive, LLC (Owner)**, for property located at **231 Corporate Drive** whereas relief is needed to add a fenced area between the building and the front lot line, for the use associated with dog walking which requires the following: 1) from Section 305.02(a) of the Pease Development Ordinance for an accessory use located in the front yard and: 2) from Section 304.04(c) of the Pease Development Ordinance for being located within 70 feet of the front lot line. Said property is located on Assessor Map 314 Lot 2 and lies within the Airport Business Commercial (ABC) District. (LU-24-114)

**Existing & Proposed Conditions**

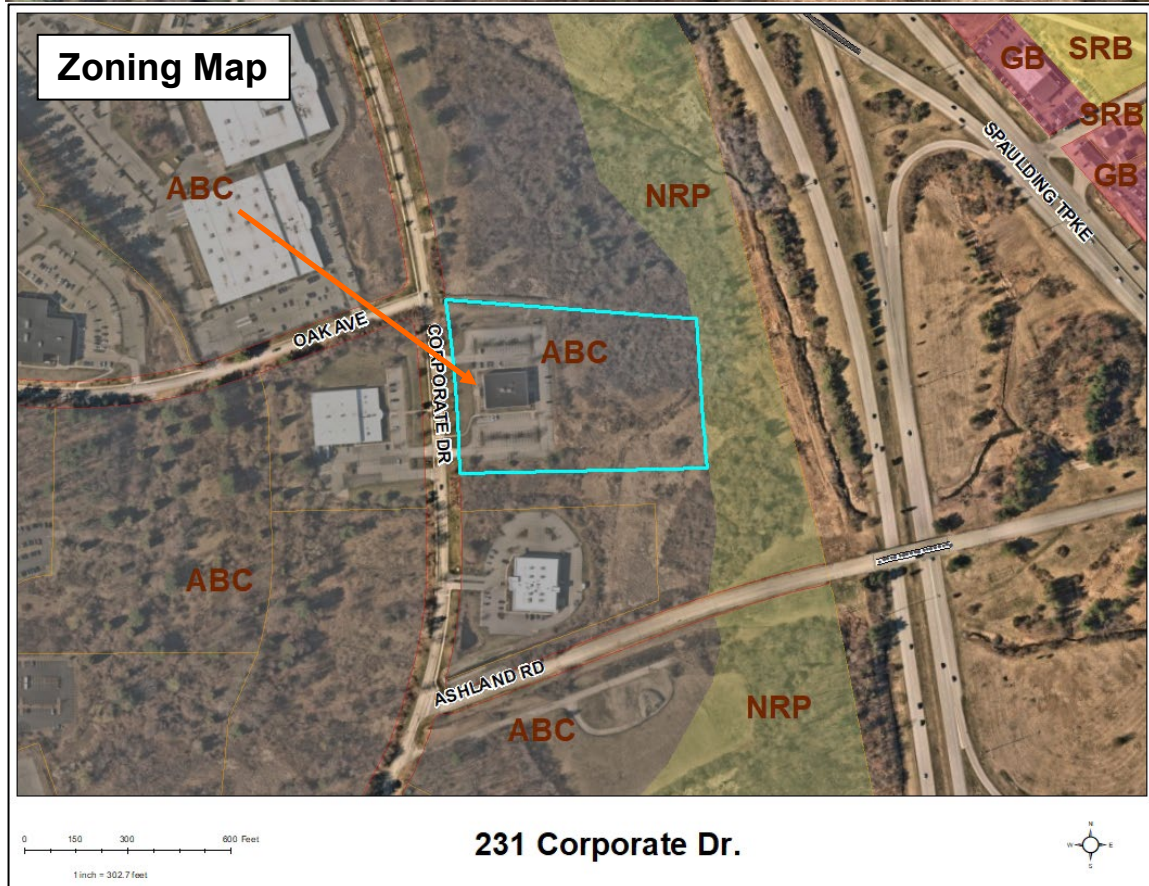
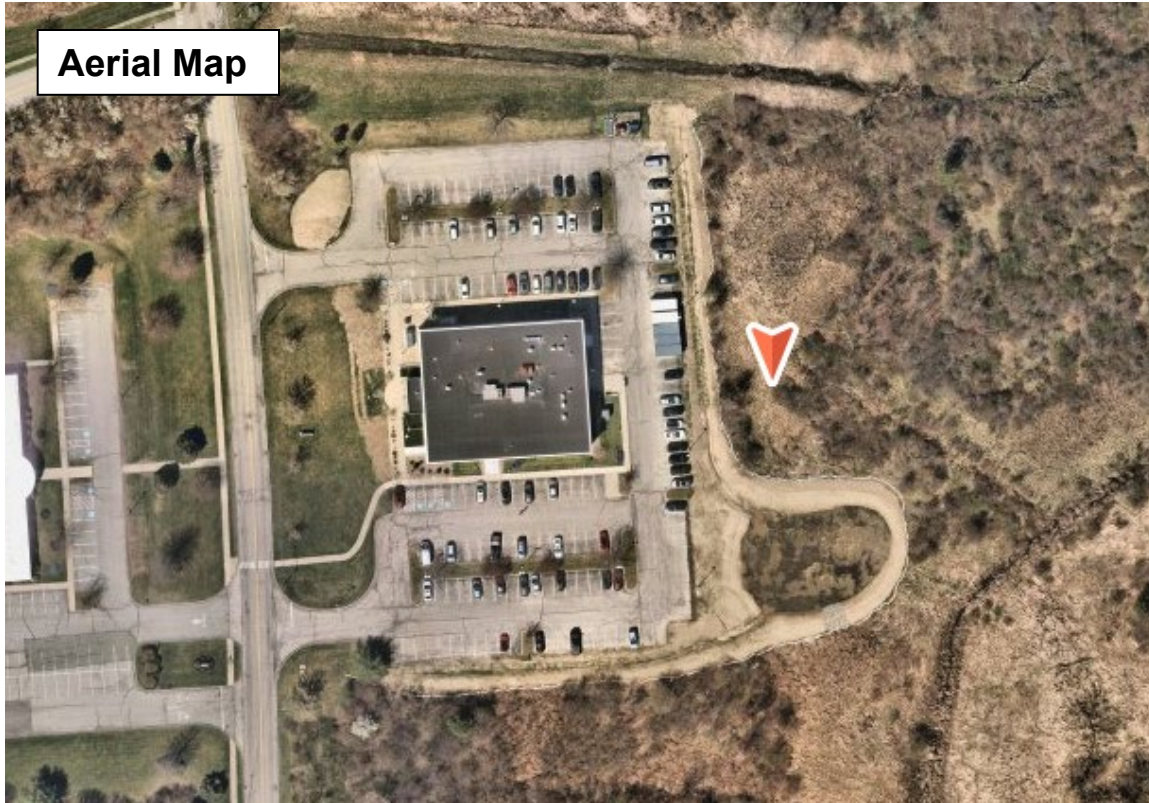
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Veterinary Office	*Construct fenced in dog walking area	Mixed business and commercial
<u>Front Yard (ft.):</u>	71	67	70 max.
<u>Estimated Age of Structure:</u>	2004	Variance request(s) shown in red.	

\*Relief needed to create an accessory use in the front yard area

**Other Permits/Approvals Required**

- Site Plan Review (Technical Advisory Committee and Planning Board)
- Building Permit
- Pease Development Authority (PDA)

### Neighborhood Context



**Previous Board of Adjustment Actions**

No previous history found.

**Planning Department Comments**

The applicant is requesting to install a dog walking area in front of the existing veterinary office building.

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

317.03      Zoning Variances Referred to Local Municipalities for Administration

- (a) For parcels located within the Industrial Zone, Business and Commercial Zone, Natural Resource Protection Zone or portions of the Airport Industrial Zone not acquired by the Pease Development Authority pursuant to Section 13(g) of the Surplus Property Act, requests for a variance from the provisions of this zoning rule shall be referred to the zoning board of adjustment for the municipality in which the parcel is situated for administration in accordance with the provisions of this section.
- (b) Applications for a variance for parcels referred to in Subsection (a) shall be filed with the Pease Development Authority Building Inspector on forms prescribed by the Board and referred to the applicable zoning board of adjustment.
- (c) The zoning board of adjustment to which the application for a variance has been referred shall, in its review of the request, apply the substantive provisions of this Chapter.
- (d) Recommendations to the Board regarding requests for a zoning variance shall be made by the applicable zoning board of adjustment within sixty (60) days of referral. Notice of the recommendation shall be provided to the applicant and the Board within 48 hours of the decision.
- (e) The recommendation of the applicable zoning board of adjustment shall be forwarded to the Board along with a written report detailing the reasons for any recommendation for denial or approval with conditions.
- (f) A recommendation of the applicable zoning board of adjustment shall be deemed a final decision of the Board upon the expiration of fourteen (14) days from the date of notice, unless the applicant/developer or a member of the Board requests a hearing by the Board.
- (g) Where a hearing has been requested, the Board shall conduct a hearing and render a final decision on the variance request within thirty (30) days.

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- (h) At the discretion of the Board the time period for rendering a final decision may be extended an additional thirty (30) days, or such additional time as may be consented to by the applicant.
- (i) The Board may approve, conditionally approve or deny the application notwithstanding the recommendation of the applicable zoning board of adjustment. In the case of denial of any application by the Board or where the Board elects not to follow the recommendation of the applicable zoning board of adjustment, the ground(s) for such action shall be stated in writing.

## Variance Review Criteria

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

**PART 317. VARIANCES FROM ZONING PROVISIONS**

317.01 General Provisions

58

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

**APPLICATION OF ETHOS VETERINARY HEALTH**

231 Corporate Drive, Tax Map 314, Lot 2

**APPLICANT'S NARRATIVE**

**I. THE PROPERTY.**

The Applicant Ethos Veterinary Health is renovating an existing building for a Veterinary Hospital at 231 Corporate Drive in the located in the PDA Business and Commercial Zone. As part of the buildout, the Applicant needs two (2) fenced in dog walking areas as shown on the plans prepared by Tighe & Bond. These fences are approximately 4' in front of the existing building and will be 6' in height. The fences will be located a minimum of 67.1 feet from the front lot line, where 70 feet is required.

The proposed dog fenced in areas are off the Intensive Care Unit and will be used primarily for ICU patients, 1 dog at a time. The fenced in areas will not be for play areas or other activities that promote barking. These patients are sick, maybe bleeding, wearing a cone, etc. The area will allow the animals to get outside after a medical procedure to relieve themselves.

**II. RELIEF REQUESTED.**

The Applicant is seeking variances from the provisions of Article 305.02 (c) and 304.04 (c) of the Pease Development Authority Zoning Ordinance to allow the fences to be located between the building and the front lot line, for the use associated with dog walking, and for being located with 70 feet of the front lot line. The fences must be located near the ICU ward which is in the front of the building.

**III. ARGUMENT.**

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

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

Granting the requested variance would not in any way diminish the value of surrounding properties. All surrounding properties are Commercial in nature and will not be negatively impacted by the location of the fence areas.

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

Granting the requested variance would not substantially alter the characteristics of the neighborhood nor would granting the variance threaten public health, safety, or welfare. The Property sits in the Commercial Zone where animal hospitals are permitted. A Fenced area for animals is a medically necessary amenity to the hospital. Thus, granting the variance would not be contrary to the spirit and intent of the ordinance and it would be a benefit to the public interest.

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

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

The Special conditions of the property are driven by the fact that the building is surrounded on three (3) sides by a wetlands buffer. The applicant is trying to reduce impervious surfaces by pulling the building away from the wetland buffer and locating the dog walk area outside of the wetland buffer. Also, the building is designed in such a fashion that the existing elevator is driving the interior layout with the emergency department on the first floor and the ICU area positioned next to the elevator. These are the spaces needing easy access to the outdoor area for injured or sick patients. The location will also utilize the existing concrete walkways so that no new impervious surfaces are added to the site for the dog walk areas.

4. Granting the variance would be substantial justice.

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

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

The Property sits in the Commercial Zone where hospitals are permitted. Thus, granting the variance would not be contrary to the spirit and intent of the ordinance.

#### IV. CONCLUSION.

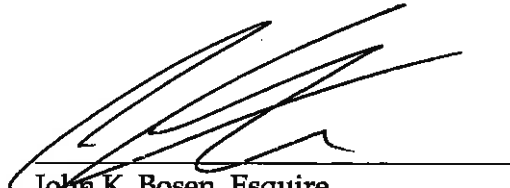
For the foregoing reasons, the applicant respectfully requests the Board recommend the variance be approved as requested and advertised.



Respectfully submitted,

Dated: June 17, 2024

By:



John K. Bosen, Esquire

**SITE DATA:**  
 LOCATION: TAX MAP 314, LOT 2  
 231 CORPORATE DRIVE  
 PORTSMOUTH, NEW HAMPSHIRE  
 ZONING DISTRICT: BUSINESS & COMMERCIAL  
 ALLOWED USE: PROFESSIONAL / BUSINESS OFFICE

**DIMENSIONAL REQUIREMENTS:**

REQUIRED/ALLOWED	PROPOSED/PROVIDED
MINIMUM LOT AREA 5 ACRES	±7.7 ACRES
MINIMUM LOT FRONTAGE 200 FEET	±504 FEET
MINIMUM FRONT YARD 70 FEET	±73 FEET (EXISTING)
MINIMUM SIDE YARD 30 FEET	±156 FEET (EXISTING)
MINIMUM REAR YARD 50 FEET	±507 FEET (EXISTING)
MAXIMUM BUILDING HEIGHT F&A CRITERIA	30 FEET
MINIMUM OPEN SPACE 25% OF LOT AREA	±65%

**PARKING SPACES REQUIREMENTS:**

PARKING STALL LAYOUT:  
 • STANDARD 90°

WIDTH: 8.5' MIN	AREA: 160 SF MIN	49' X ±18' (162 SF)
DRIVE AISLE WIDTH: • 90° (2-WAY TRAFFIC)	24 FT	24 FT

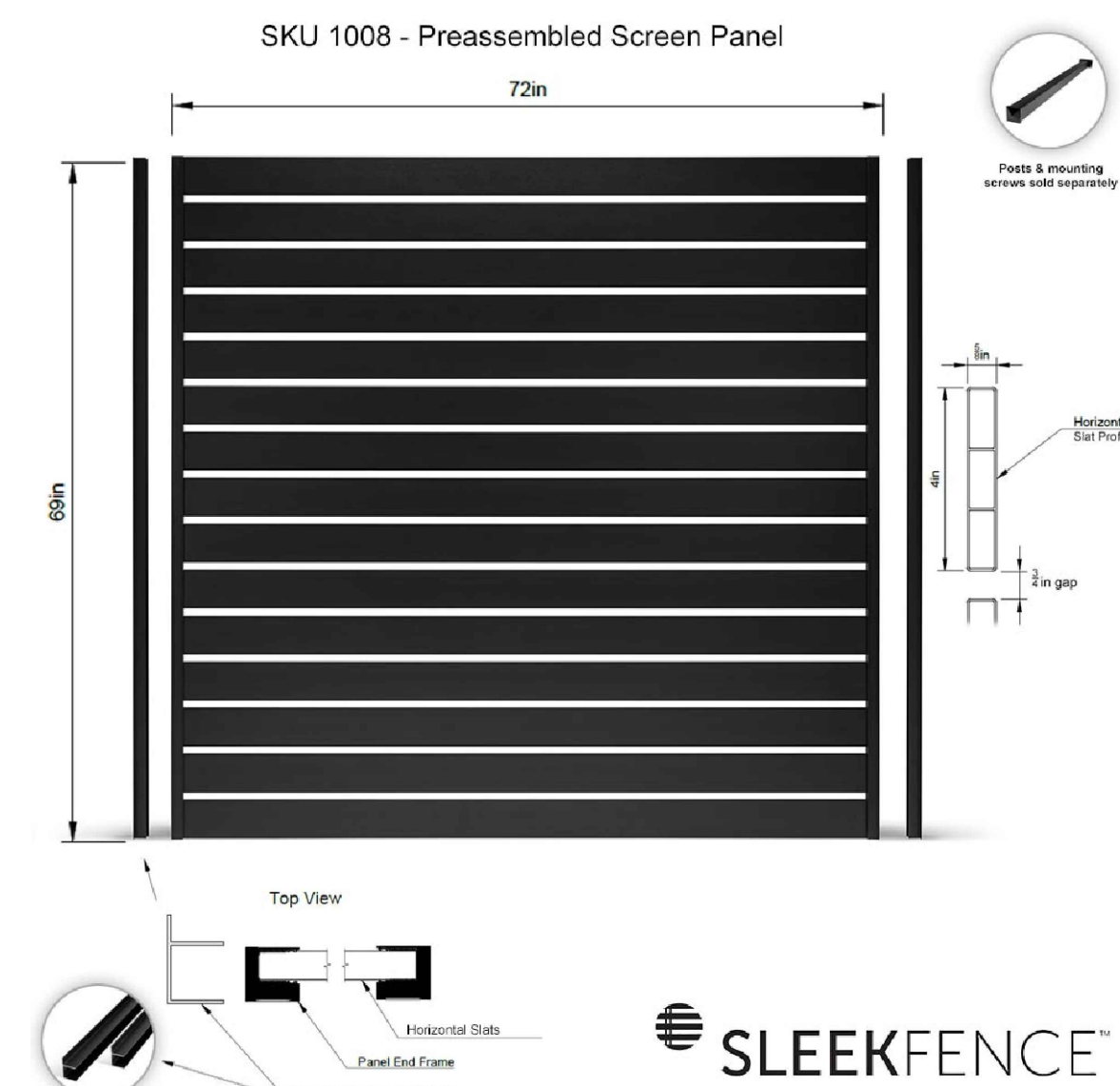
**PROFESSIONAL OFFICE:**  
 3 / EACH PROFESSIONAL EMPLOYEE  
 +1 / EACH STANDARD EMPLOYEE  
 = 15 PROFESSIONAL EMPLOYEES x 3  
 +30 STANDARD EMPLOYEES x 1  
 = 75 SPACES

169 SPACES\*

\* - INCLUDES SIX (6) ADA PARKING SPACES

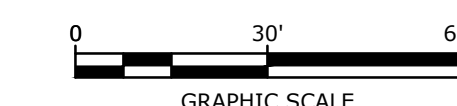
ALL EXCESS SOIL RESULTING FROM THE CONSTRUCTION SHALL REMAIN ON SITE.

TAX MAP 303, LOT 6  
 PEASE DEVELOPMENT AUTHORITY  
 WASTEWATER TREATMENT PLANT  
 135 CORPORATE DR  
 PORTSMOUTH, NH 03801



- NOTES:**
- DOG WALK ENCLOSURE FENCE SHALL BE SLEEKFENCE ALUMINUM SCREEN FENCE PANELS - 72" WIDE x 69" HIGH OR EQUAL.
  - FENCE TO BE INSTALLED PER MANUFACTURES RECOMMENDATIONS.

**DOG WALK ENCLOSURE FENCE**  
 NO SCALE



**Proposed Veterinary Office**

Ethos Veterinary Health

231 Corporate Drive  
 Portsmouth, New Hampshire

MARK	DATE	DESCRIPTION
B	4/18/24	Fence Variance Submission
A	12/4/23	Rev per PDA Comments

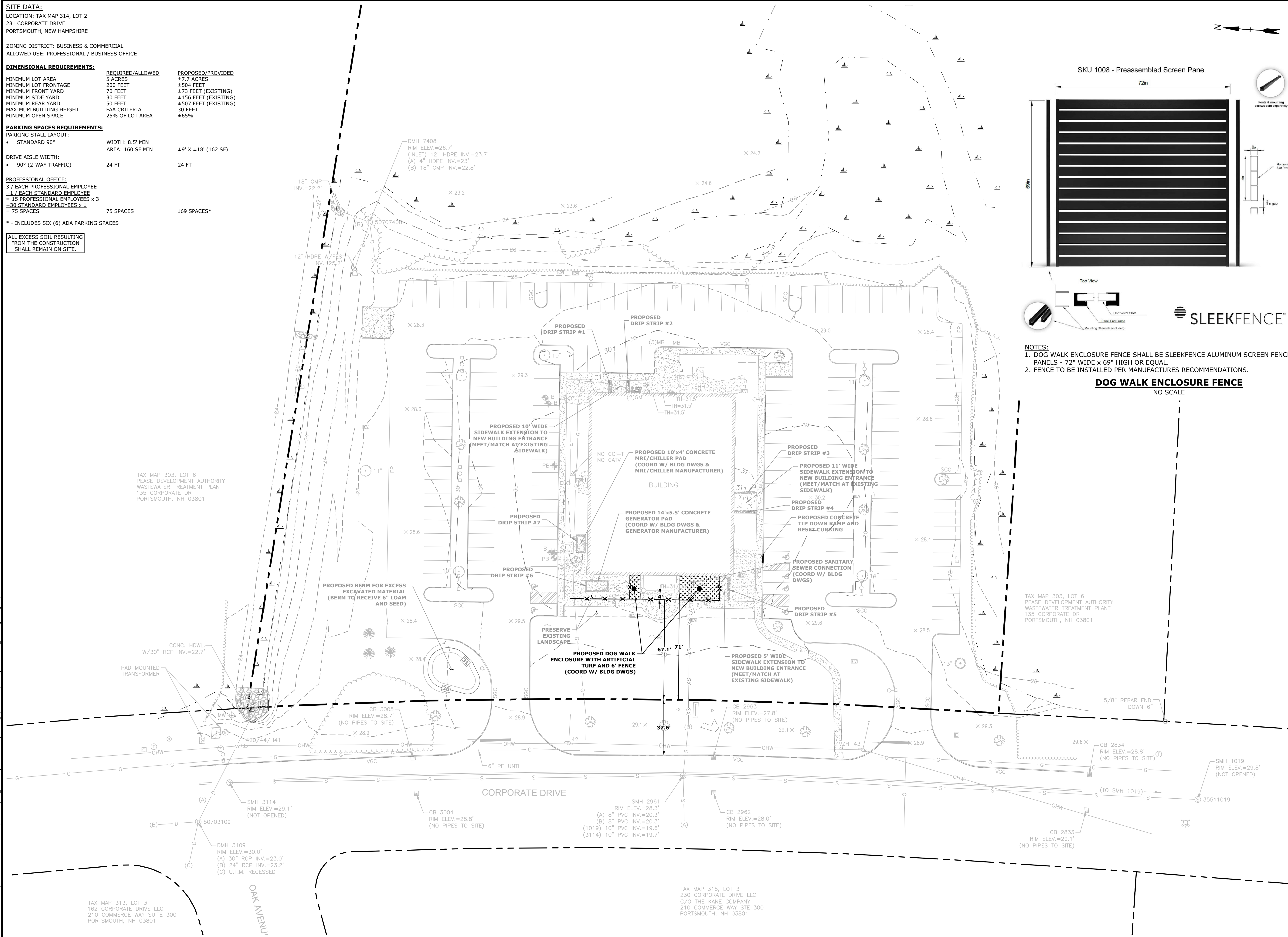
PROJECT NO: E5065-001  
 DATE: 11/21/2023  
 FILE: E5065-001\_C-DESIGN.DWG  
 DRAWN BY: CML  
 CHECKED: NAH  
 APPROVED: PMC

**SITE, GRADING, UTILITIES, & LANDSCAPE PLAN**

SCALE: AS SHOWN

C-101

Last Save Date: March 18, 2024 1:59 PM BY: MATANSEN  
 Plot Date: Thursday, April 18, 2024 Plotted By: Neil A. Hansen  
 P&E File Location: J:\E5065 Ethos Veterinary Health\001\_231 Corporate Drive\Drawings\AutoCAD\Sheet\E5065-001\_C-Design.dwg Layout Tab: Site - ZBA



TAX MAP 313, LOT 3  
 162 CORPORATE DRIVE LLC  
 210 COMMERCE WAY SUITE 300  
 PORTSMOUTH, NH 03801

TAX MAP 315, LOT 3  
 230 CORPORATE DRIVE LLC  
 C/O THE KANE COMPANY  
 210 COMMERCE WAY STE 300  
 PORTSMOUTH, NH 03801



617.875.0786 Boston, MA



FENCE PERSPECTIVE

No.	Description	Date

231 CORPORATE DR.

FENCE PERSPECTIVE

Project number	Project Number
Date	03/11/2024
Drawn by	LAB
Checked by	NC

SK-08

Scale

**II. NEW BUSINESS**

- E. The request of **132 Chapel Street, LLC (Owner)**, for property located at **132 Chapel Street** whereas relief is needed to convert an existing commercial building back to a single residential unit which requires the following: 1) Variance from Section 10.440 Use #1.10 to allow a single family dwelling where it is not permitted; 2) Variance from Section 10.5A41.10C to allow a House building type where it is not permitted; and 3) Variance from Section 10.642 to allow a residential use on the ground floor where is it not permitted. Said property is located on Assessor Map 106 Lot 6 and lies within the Character District 4 (CD4) and Historic District and the Downtown Overlay District (DOD). (LU-24-115)

**Existing & Proposed Conditions**

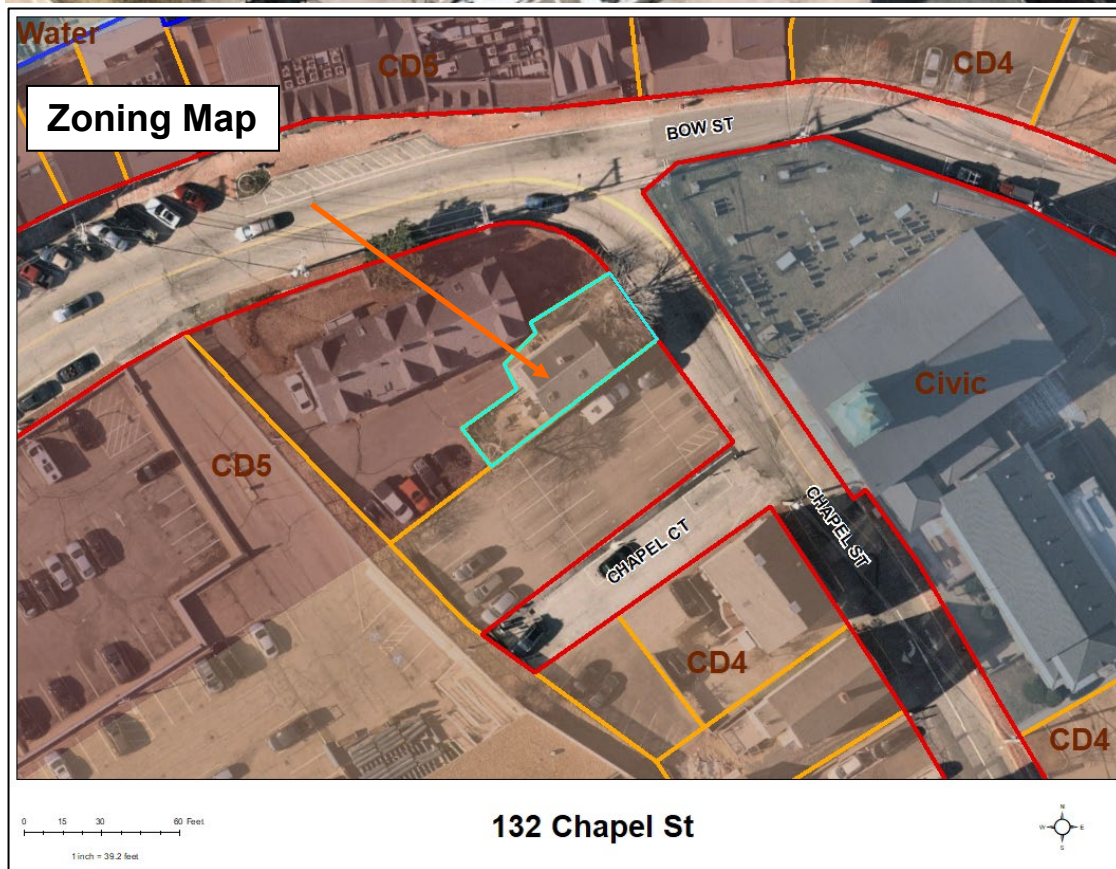
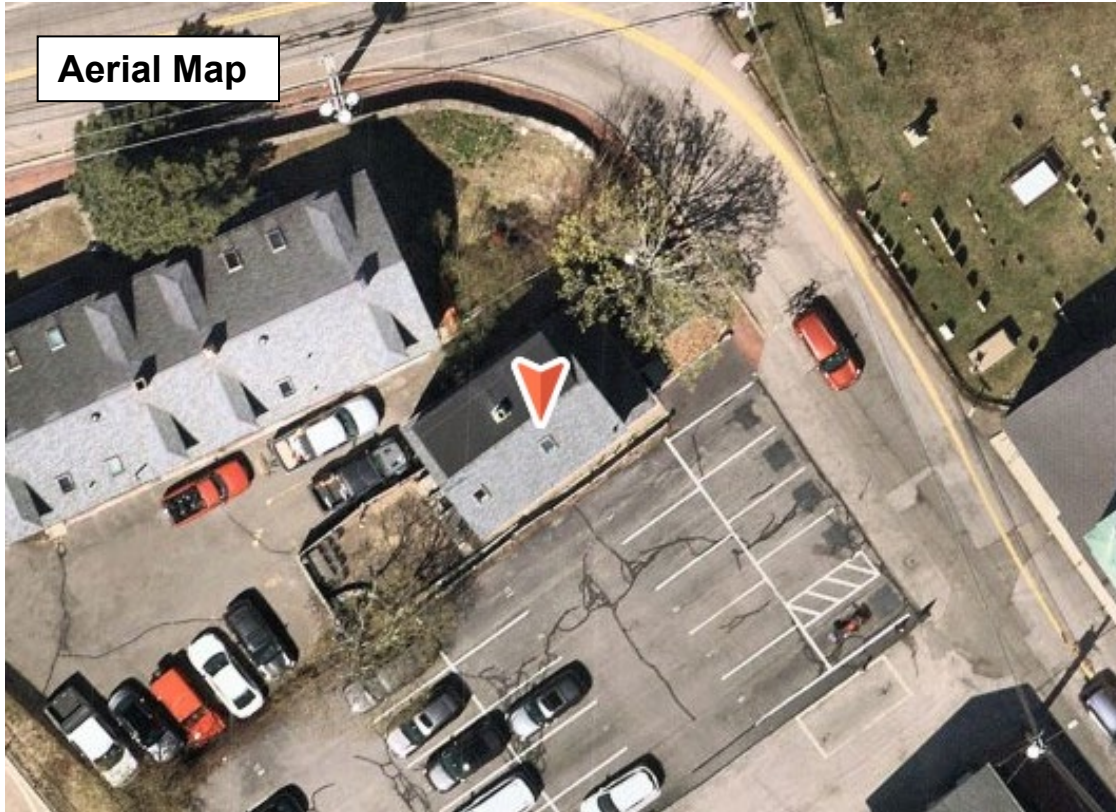
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	*Convert to residential	Mixed-Use
<u>Lot area (sq. ft.):</u>	2,178	2,178	NR min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,178	2,178	NR min.
<u>Parking</u>	0	0	0
<u>Estimated Age of Structure:</u>	1882	Variance request(s) shown in red.	

\*Relief needed to establish a residential use on the first floor of a building in the downtown overlay district and to allow a house building type in the CD4

**Other Permits/Approvals Required**

- Building Permit
- Historic District Commission Approval

### Neighborhood Context



## Previous Board of Adjustment Actions

No previous history found.

## Planning Department Comments

The applicant is requesting to convert the existing commercial structure into a single residential unit. The applicant is not proposing any exterior changes and the house structure will remain unchanged from the outside.

The property requires 2 parking spaces however it is located within the Downtown Overlay District (DOD) which provides a 4 space credit, see Section 10.1115.23 of the [Zoning Ordinance](#). An additional requirement of the DOD is a non-residential use on the ground floor. This conversion would create a residential use on the ground floor and therefore, relief is needed.

The requirements of the CD4 district can be found in Section 10.5A41.10C of the [Zoning District](#). You will see that a “house” is not a permitted building type and as such, relief is needed for this conversion.

## Variance Review Criteria

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

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

**AND**

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

**OR**

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

## 10.235 Certain Representations Deemed Conditions

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

132 Chapel St. LLC  
P.O. Box 366  
North Berwick, ME 03906

June 20, 2024

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

Subject: Request for Residential Variance

Dear Members of the Portsmouth Zoning Board of Adjustment,

We are requesting a variance to restore our property at 132 Chapel Street back to residential use. The application in addition to this letter includes photos of the property and surrounding area. There is 1 existing parking space. We do not have plans to add or subtract any parking. I know in the past, tenants of the building typically used street parking, used the Hanover Garage with a monthly pass, walked to the building or rode a bicycle. There's also a large patio in the back for scooter, moped or bicycle parking.

This request for a variance is justified based on the following points:

1. Public Interest: Restoring the property to residential use supports the local community by maintaining a balanced and vibrant neighborhood, promoting economic stability, and fostering community spirit.
2. Spirit of the Ordinance: This change respects the primary goals of the zoning ordinance by preserving the historical and residential character of the area, thus promoting a stable and family-friendly environment.
3. Substantial Justice: Approving the variance achieves a fair outcome for both the property owner and the community. It addresses the current underutilization of the property and enhances its aesthetic and functional appeal, without imposing any undue burden on the public.
4. Property Values: The proposed residential use will not diminish the value of surrounding properties. Instead, it is likely to enhance property values by contributing positively to the neighborhood's residential character.
5. Unnecessary Hardship: The current zoning restrictions create an undue hardship by limiting the property's best use. The variance allows a reasonable and historically consistent use of the property, aligning with its characteristics and the neighborhood's overall character.

We believe this variance request meets all the necessary criteria and respectfully ask for your approval.

Sincerely,

Clark L. McDermith  
132 Chapel St. LLC



132

132 Chapel Street  
Call for more information  
www.realtor.com





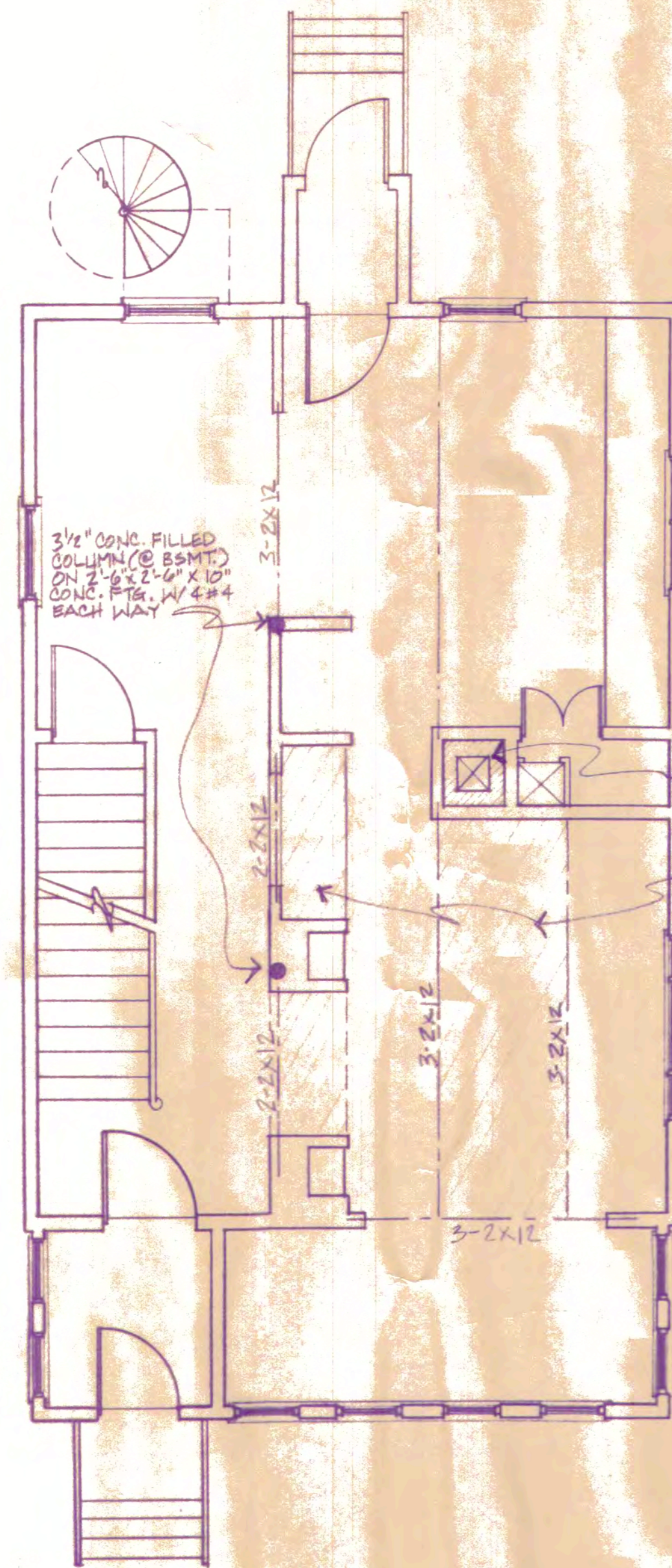




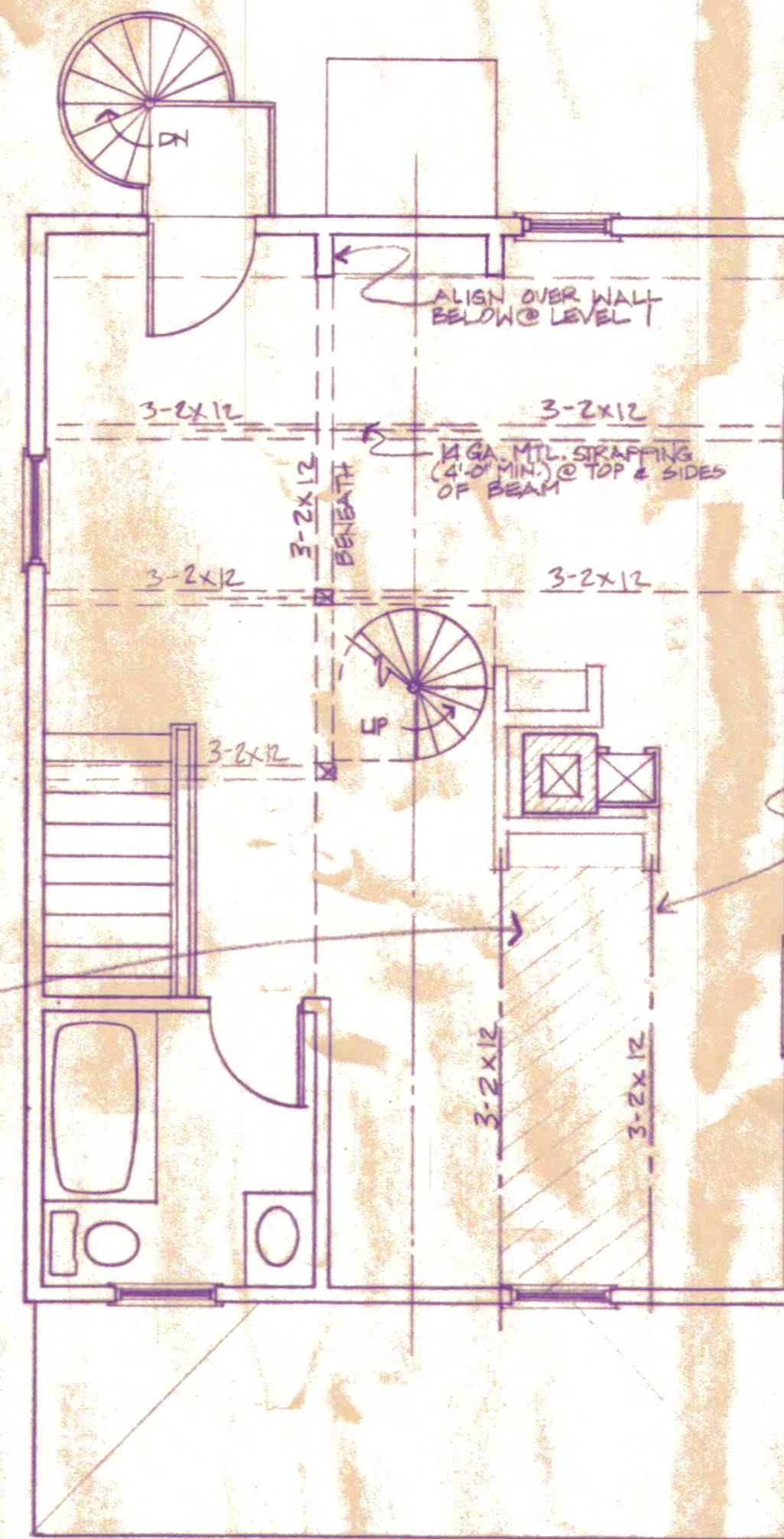
LPP LIC  
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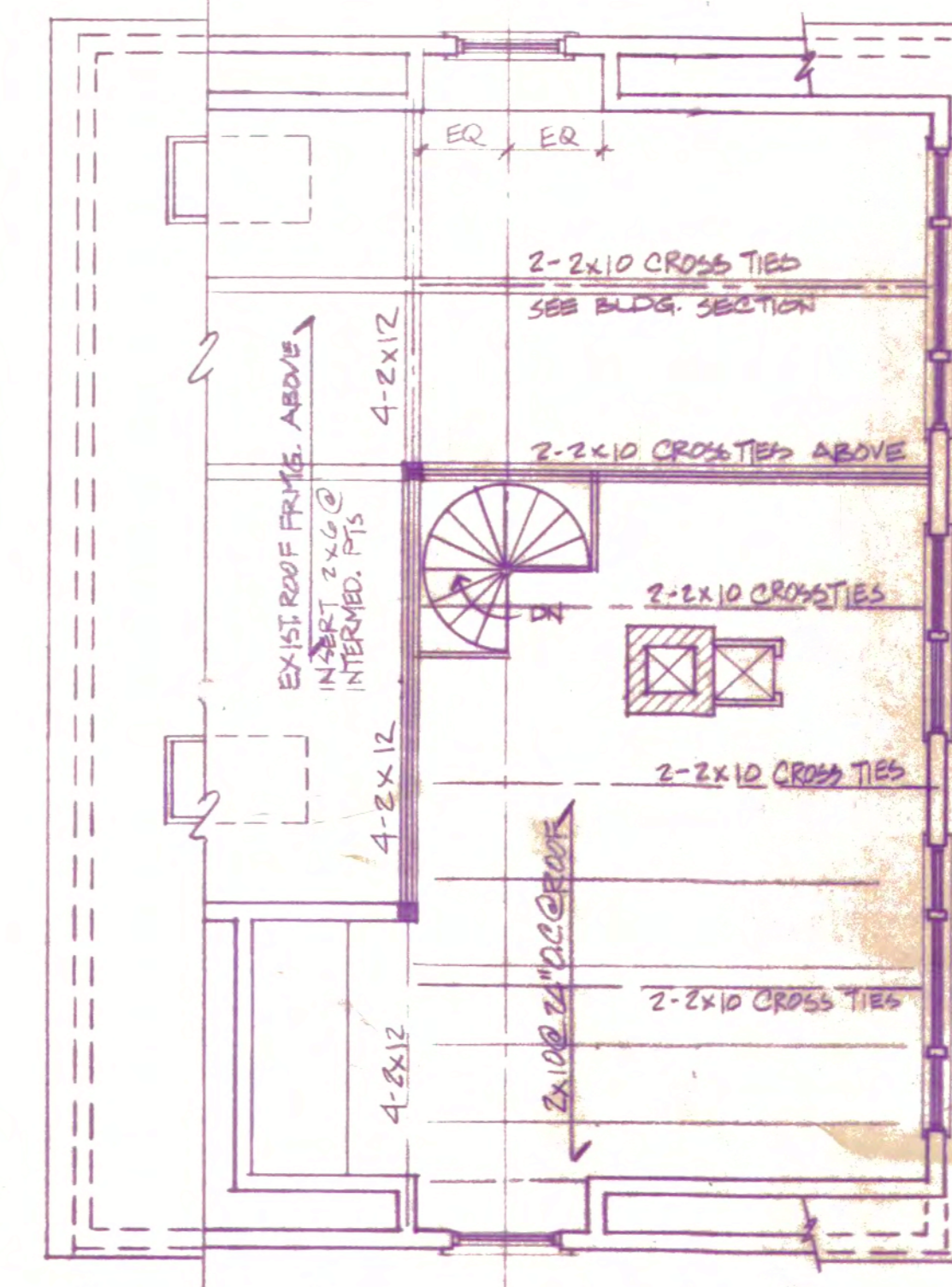
Existing Floor Plans



**1** LEVEL ONE FRAMING PLAN  
SCALE 1/4"=1'-0"



**2** LEVEL TWO FRAMING PLAN (CEILING)  
SCALE 1/4"=1'-0"



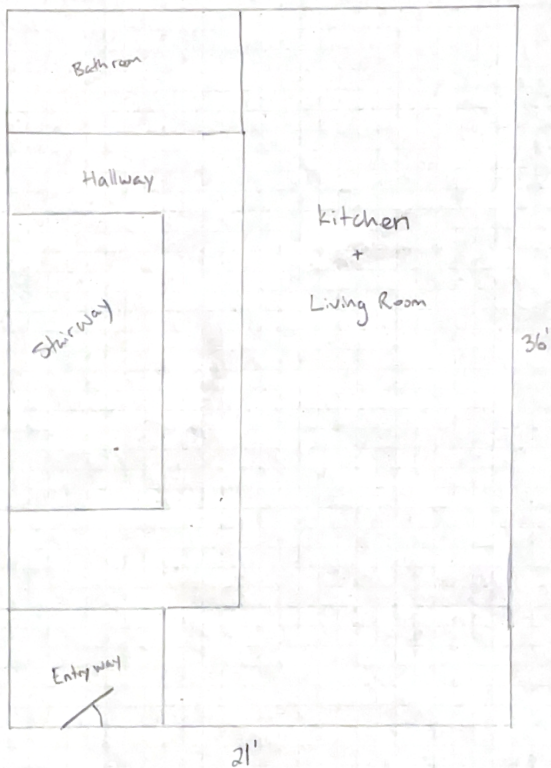
**3** LOFT/ROOF FRAMING PLAN  
SCALE 1/4"=1'-0"

NOTE: THESE FRAMING PLANS ARE PRELIMINARY. ONCE EXISTING FLOOR & ATTIC JOIST SIZES ARE KNOWN, A MORE THOROUGH STRUCTURAL ANALYSIS WILL BE COMPLETED.

132 Chapel St.

1st Floor

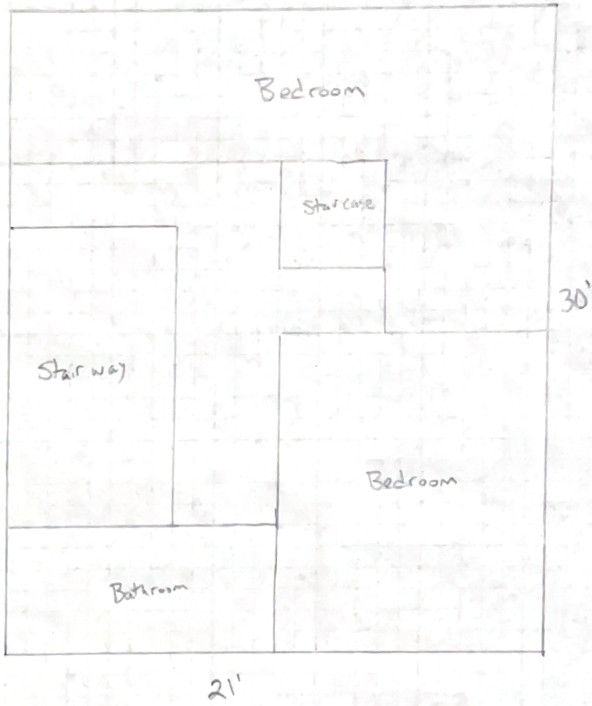
Proposed Floor Plan



132 Chapel St.

2nd Floor

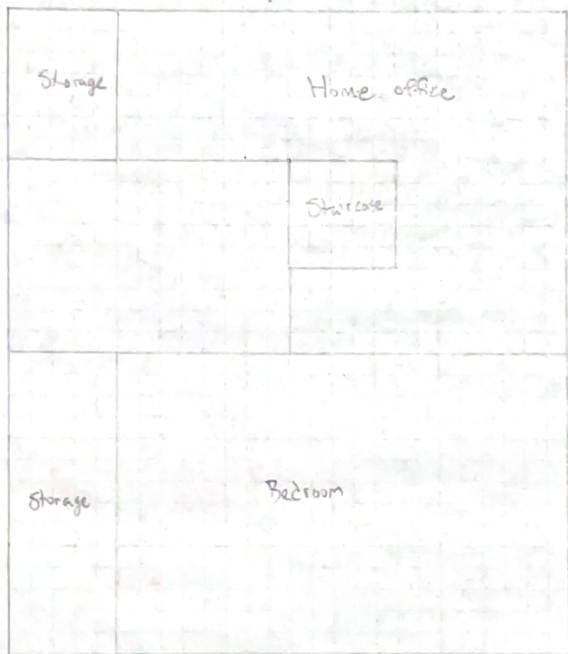
Proposed Floor Plan



132 Chapel St

3rd Floor

Proposed Floor Plan



30'

21'



**II. NEW BUSINESS**

- F. The request of **Islington Properties, LLC (Owner)**, for property located at **371 Islington Street** whereas relief is needed to convert an existing commercial space into a residential unit which requires the following: 1) Variance from Section 10.5A41.10A to allow 918 sf of lot area per dwelling unit where 3,000 sf are required. Said property is located on Assessor Map 144 Lot 22-3 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-24-106)

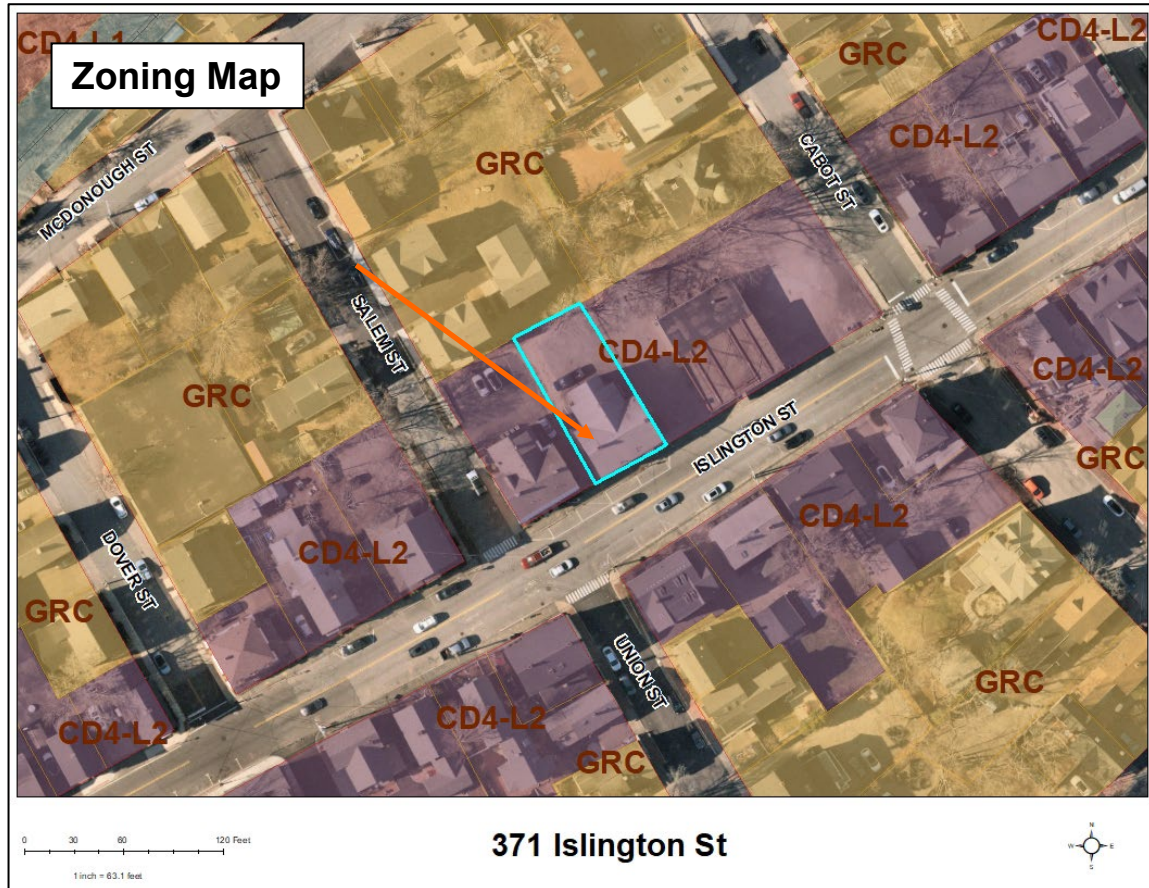
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Mixed-Use	Convert a commercial unit to residential	Mixed-Use
<u>Lot area (sq. ft.):</u>	4,591	4,591	3,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1530	1,148	3,000 min.
<u>Parking</u>	6	6	8
<u>Estimated Age of Structure:</u>	1880	Variance request(s) shown in red.	

**Other Permits/Approvals Required**

- Building Permit
- Historic District Commission Approval

### Neighborhood Context



## Previous Board of Adjustment Actions

- July 22, 1976 – The Board **denied** a request to paint advertising signage on both sides of the existing structure where the sign area permitted in the Ordinance is exceeded.
- August 12, 1976 – The Board **granted** a Rehearing on the above request.
- August 24, 1976 – The Board voted to *rescind the vote of August 12, 1976* regarding the motion for rehearing and the motion for rehearing stood as **denied**.
- July 19, 2011 – The Board **granted** a Variance from Section 10.521 to allow a lot area per dwelling unit of 918 s.f.± where 7,500 s.f. per dwelling unit is required; and a Variance from Section 10.1112.30 (1) to allow conversion to residential units without the required parking.
- March 20, 2012 – The Board **denied** a Variance from Section 10.1251 to permit an aggregate signage of 59± s.f. where 40 s.f. is the maximum allowed.

## Planning Department Comments

The applicant is requesting to convert unit # 371 A from commercial space to residential use. The applicant has applied for and been advertised for 918 sf of lot area per dwelling unit, however, upon further review by staff it appears that only 1,148 sf of lot area needs to be requested as there are 4 residential units and 1 commercial unit proposed and not 5 residential units.

Should the Board find that the application should receive approval of the request, Staff recommend the following or a similar condition of approval:

1. The applicant is approved for 1,148 square feet of lot area per dwelling unit, not 918 as advertised.

## Variance Review Criteria

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

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

**AND**

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

**OR**

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

**10.235 Certain Representations Deemed Conditions**

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

**Presenter:**

**Scott Rafferty**

*Owner of Islington Properties LLC*

*371 Islington Street, Suite A, Portsmouth, NH 03801*

**INTRODUCTION**

Islington Properties LLC is asking for the following variances to be granted in order to change a 734 sq ft commercial unit with a full unfinished basement to a residential one bedroom, one bathroom apartment.

The two variances being sought are regarding the below Sections of the Zoning Ordinances:

- SECTION 10.5A41: Development Standards Development, structures and lots within Character districts (CD4-L2) shall comply with the applicable general description and standards set forth in Figures 10.5A41.10A-D (Development Standards) and elsewhere in Article 5A. Minimum lot area per dwelling unit is 3,000SF.

Islington Properties LLC is asking that 918SF per dwelling unit be allowed. This would be no more or less than what currently exists.

- SECTION 10.112.30: Specifically SECTION 10.1112.311. The required minimum number of off-street parking spaces for uses 1.10 through 1.90, including dwelling units in mixed-use developments, shall be based on the gross floor area of each dwelling unit, as follows: Dwelling Unit Floor Area Required Parking Spaces Less than 500 sq. ft. 0.5 spaces per unit, 500-750 sq. ft. 1.0 space per unit, Over 750 sq. ft. 1.3 spaces per unit.

Currently there are six(6) off street parking spots as part of the Islington Place Condominium Association

Current Units to meet today's zoning regulations(5 total):

1. 369A, 785 sq ft, commercial - retail (1 per 300 SF required) - 2.6 spaces required
2. 369B, 816 sq ft, residential - 1.3 spaces required
3. 371A, 734 sq ft, commercial **\*\*subject property\*\*** - 2.4 space required
4. 371B, 816 sq ft, residential - 1.3 spaces required
5. 373, 960 sq ft, residential - 1.3 spaces required

**Total spaces required = 8.9 (rounds up to 9 spaces required for the site)**

Proposed Units(5 total):

- 369A, 785 sq ft, commercial - retail (1 per 300 SF required) - 2.6 spaces required
- 369B, 816 sq ft, residential - 1.3 spaces required
- 371A, 734 sq ft, residential **\*\*subject property\*\*** - 1 space required (for residential conversion)
- 371B, 816 sq ft, residential - 1.3 spaces required

373, 960 sq ft, residential - 1.3 spaces required

**Total spaces required = 7.5 (rounds up to 8 spaces required for the site)**

**10.233.21 The variance will not be contrary to the public interest**

The variance will not be contrary to the public interest. The existing exterior site dimensions of the property and structure would not be changed.

**10.233.22 The spirit of the Ordinance will be observed**

The spirit of the Ordinance will be observed to turn unit 371A from commercial condominium unit to residential condominium unit. The space will not be altering the front of the existing structure on the outside, leaving the current building facade unchanged. There are already three(3) residential units at this location, all under 960 FINISHED SQ FT of living area, and adding one more does not negatively impact the abutters or surrounding properties as it would demand less parking than the current use. Also the proposed unit would be a one bedroom apartment making the impact to utilities minimal. The current ordinance allows residential uses in this district, CD4-L2.

**10.233.23 Substantial justice will be done**

By converting this unit into a residential space it will provide additional housing in a location where mixed use is allowed. The space will be put to better use by becoming a housing option in an area where there are limited options open for rent or purchase. The Association speaks in favor of allowing this change, as it would minimize daily activity around the property, enable better security as the entrance to commercial space shares a residential entrance with unit 371B, and relieve current parking demands.

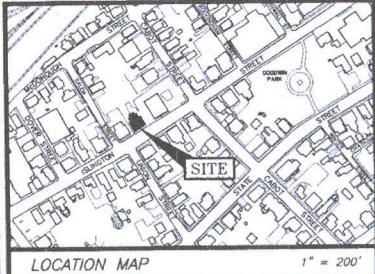
**10.233.24 The values of surrounding properties will not be diminished; and**

The values of the surrounding properties will not be diminished because there are already three(3) residential units in the building offering higher resale values than the subject commercial unit. The front door to the apartment is currently shared with another residential unit, 371B. Changing the commercial space to residential would allow for better security as the entrance to the already existing residential unit would now not be open to the public. Also, the area already has several residential properties surrounding the subject unit. The Association itself is also made up of a majority of residential uses, 3 out of the 5. As for parking, each residential unit will have one (1) off street parking space to be assigned. Removing this commercial unit would relieve parking pressures for both the Association and surrounding properties.

### **10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship**

Enforcement of the provisions of the Ordinance would cause unnecessary hardship because this would allow for public access to one of the residential units using a shared entrance as the subject commercial space. If this space is forced to be used as commercial, that would allow for the current entrance to be less secure for the existing residential unit, especially considering the building is located on a busy street, Islington Street.

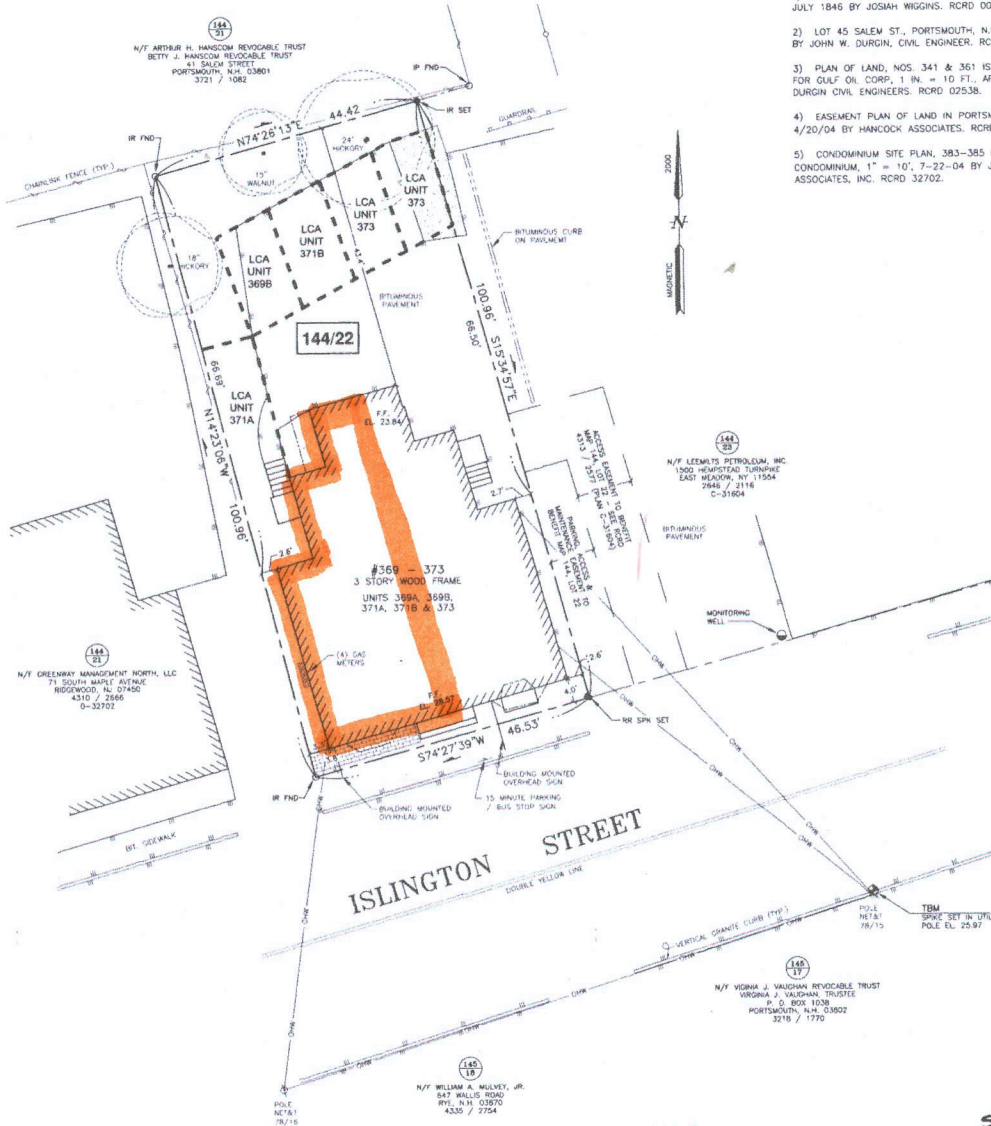
Secondly, having a business come in to use the space would result in the parking situation continuing to be a challenge. The average business to use this unit would need a demand for about 3+ parking spaces daily. A one bedroom apartment, under 750 sq ft, would need one parking space regularly, which is currently provided by the Association. For each residential unit there is one(1) parking space to be used. There are 6 total off street spots. Each unit has one(1) spot with an additional shared guest spot for the use of the Association. Changing the unit from commercial to residential will help with the limited parking available. We have spoken to all of the current Association members and they are all on board with the plans to change this unit to residential.



LOCATION MAP 1" = 200'

**LEGEND:**

- N/F HOW OR FORMERLY RECORD OF PROBATE
- R/C RD ROCKINGHAM COUNTY REGISTRY OF DEEDS
- MAP 11/LOT 21
- RR SPM FND RAILROAD SPIKE FOUND / SET
- OR FND IRON ROD FOUND / SET
- OP FND IRON PIPE FOUND / SET
- OH FND DRILL HOLE FOUND / SET
- SBND W/HN BOUND WITH DRILL HOLE
- ST BND W/HN STONE BOUND WITH DRILL HOLE
- OHN OVERHEAD ELECTRIC WIRES
- EP LIMITED COMMON AREA (LCA) BOUNDARY
- U P UTILITY POLE
- WS WATER SHUT OFF/CURB STOP



**PLAN REFERENCES:**

- 1) PLAN OF A TRACT OF LAND IN THE TOWN OF PORTSMOUTH, JULY 1846 BY JOSIAH WIGGINS, RCRD 00561.
- 2) LOT 45 SALEM ST., PORTSMOUTH, N.H., 1" = 20'±, DEC. 1938 BY JOHN W. DURGIN, CIVIL ENGINEER, RCRD 0889.
- 3) PLAN OF LAND, NOS. 341 & 361 ISLINGTON ST., SURVEYED FOR GULF OIL CORP., 1 IN. = 10 FT., APR. 1936 BY JOHN W. DURGIN CIVIL ENGINEERS, RCRD 02538.
- 4) EASEMENT PLAN OF LAND IN PORTSMOUTH, N.H., 1" = 20', 4/20/04 BY HANCOCK ASSOCIATES, RCRD C-31604.
- 5) CONDOMINIUM SITE PLAN, 383-385 ISLINGTON STREET CONDOMINIUM, 1" = 10', 7-22-04 BY JAMES VERRA and ASSOCIATES, INC. RCRD 32702.



**AMBIT ENGINEERING, INC.**  
Civil Engineers & Land Surveyors  
299 Griffiths Road - Unit 3  
Portsmouth, N.H. 03801-7114  
743 6903 620-1022  
Fax 603 435-2315

**NOTES:**

- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSORS MAP 144 AS LOT 22.
- 2) OWNER OF RECORD: GHAMAMI REVOCABLE TRUST OF 2005, 238 PARSONS ROAD, RYE, N.H. 03870, 4517 / 1608
- 3) PARCEL IS NOT IN A FLOOD HAZARD ZONE AS SHOWN ON FIRM PANEL 33015C0259E, EFFECTIVE MAY 17, 2005.
- 4) EXISTING LOT AREA: 4,591 S.F., 0.1054 AC.
- 5) PARCEL IS LOCATED IN THE MIXED RESIDENTIAL BUSINESS & HISTORIC DISTRICTS.
- 6) THE PURPOSE OF THIS PLAN IS TO SHOW A 5 UNIT CONDOMINIUM ON THE PROPERTY AS PROVIDED IN RSA 356: B-20.
- 7) DATUM: MEAN SEA LEVEL, BENCHMARK: SPIKE SET IN POLE NET#1 78/15 (PSNH 2/21). ELEVATION: 25.97
- 8) OFFSETS SHOWN HEREON ARE PERPENDICULAR TO BOUNDARY LINES AND ARE TO THE FACE OF THE BUILDING.
- 9) SEE AGREEMENT OF LICENSE AT RCRD 1427 / 41 AND TERMINATION, REVOCATION AND CANCELLATION OF AGREEMENT OF LICENSE AT RCRD 4414 / 2034.

I, JOHN R. CHAMON, LICENSED LAND SURVEYOR, HEREBY CERTIFY:  
 A) THAT THIS SITE PLAN ACCURATELY DEPICTS THE LOCATION AND DIMENSIONS OF THE IMPROVEMENTS SHOWN HEREON, SPECIFICALLY UNITS 369A, 369B, 371A, 371B & 373, AND  
 B) THAT SAID UNITS 369A, 369B, 371A, 371B & 373 HAVE BEEN SUBSTANTIALLY COMPLETED, AND  
 C) THAT THIS PLAN COMPLIES WITH THE PROVISIONS OF RSA 356-B: 20.

*[Signature]*  
 J. R. CHAMON, L.S. #738

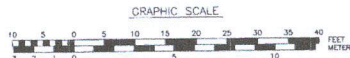
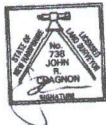
11/2/05  
 DATE

THIS PLAN IS A CONDOMINIUM INSTRUMENT UNDER RSA CHAPTER 356-B AND IS NOT A SUBDIVISION OF LAND.

I CERTIFY THAT THIS SURVEY PLAN IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN.

*[Signature]*  
 JOHN R. CHAMON, L.S. #738

11/2/05  
 DATE

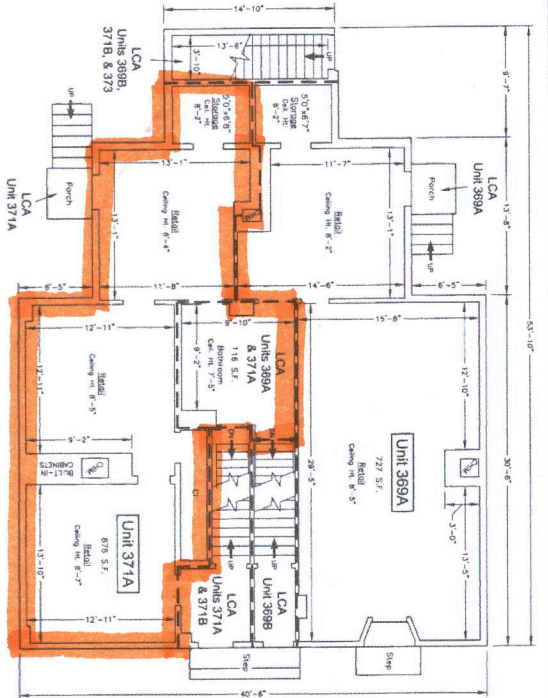


Sheet 1 of 2  
**D-34059**

NO.	DESCRIPTION	DATE
0	ISSUED FOR COMMENT	11/2/05
REVISIONS		

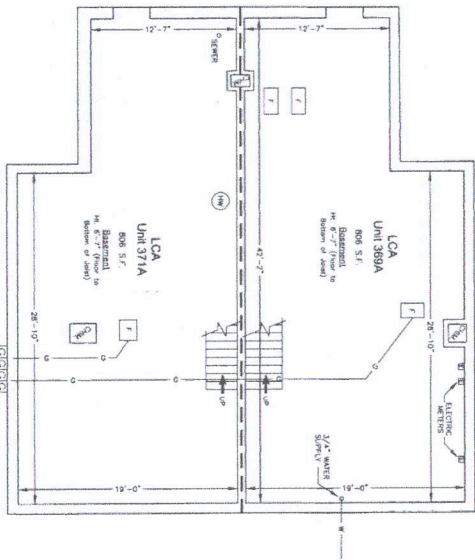
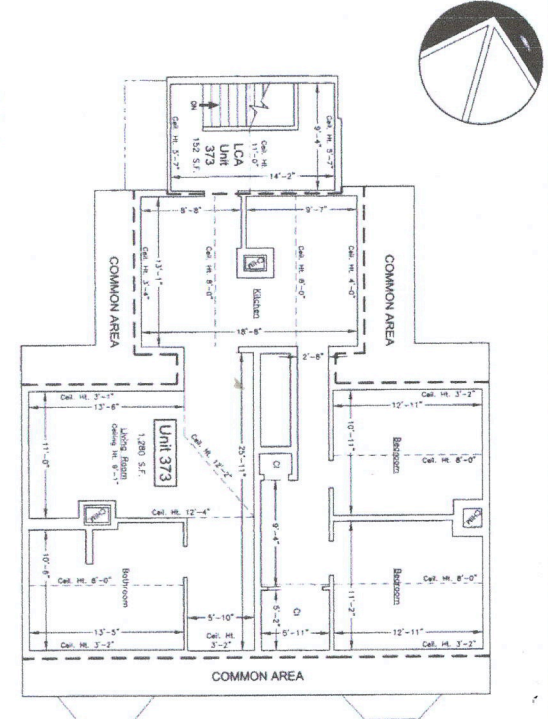
**CONDOMINIUM SITE PLAN**  
**369 - 373 ISLINGTON STREET**  
**CONDOMINIUM**  
**TAX MAP 144 LOT 22**  
 FOR  
**THE GHAMAMI REVOCABLE TRUST**  
**369 - 373 ISLINGTON STREET**  
**CITY OF PORTSMOUTH**  
 COUNTY OF ROCKINGHAM  
 STATE OF NEW HAMPSHIRE



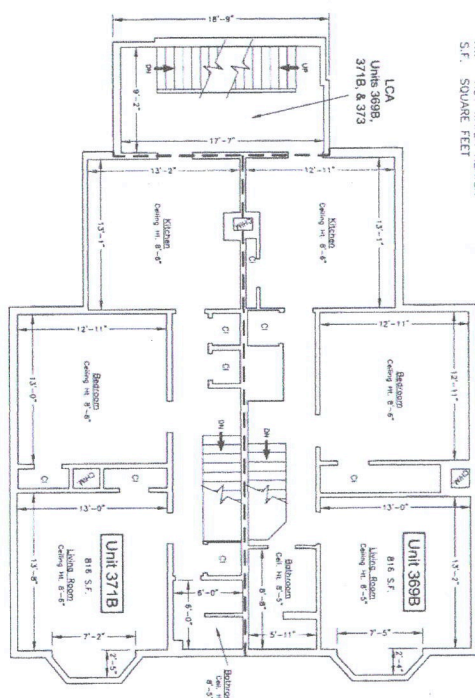


- UNIT AREAS:**  
 UNIT 369A: 727 S.F.  
 UNIT 369B: 816 S.F.  
 UNIT 371A: 676 S.F.  
 UNIT 371B: 816 S.F.  
 UNIT 373: 1,280 S.F.

- LEGEND:**  
 CA LIMITED COMMON AREA  
 CA COMMON AREA  
 CL CLOSET  
 W WASHER  
 D DRYER  
 F FURNACE  
 HW HOT WATER HEATER  
 S.F. SQUARE FEET



**BASEMENT**  
F.F. ELEVATION 21.06

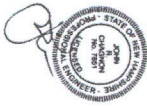


**SECOND FLOOR**  
F.F. ELEVATION 39.06

Sheet 2 of 2  
**D-34059**

**AMBIT ENGINEERING, INC.**  
 Civil Engineers & Land Surveyors  
 500 GORHAM ROAD, SUITE 314  
 PORTSMOUTH, NH 03801  
 TEL: (603) 883-2828  
 FAX: (603) 883-2810

- NOTES:**  
 1) UNIT AREAS ARE CALCULATED FROM OUTSIDE FACE OF WALL TO CENTRAL LINE OF WALL.  
 2) ALL DIMENSIONS ARE TO THE NEAREST INCH.  
 3) DATE: 11/21/05  
 4) USED: MEAN SEA LEVEL, 1929  
 5) BENCHMARK: SPMS SET IN HOLE NEAR 78/75 (PSNH 2/21) ELEVATION: 23.97



JOHN R. CONDON, PROFESSIONAL ENGINEER,  
 A) THAT THIS FLOOR PLAN ACCURATELY DEPICTS THE LOCATION AND DIMENSIONS OF THE APARTMENTS 371A, 371B, & 371 AND  
 B) THAT SAID UNITS 369A, 369B, 371A, 371B, & 373 C) THAT THIS PLAN COMPLETS WITH THE PROVISIONS OF RSA 333-B: 20

DATE: 11/21/05

NO.	DESCRIPTION	DATE
0	ISSUED FOR COMMENT	11/21/05
	REVISIONS	

CONDOMINIUM FLOOR PLAN  
 369 - 373 ISLINGTON STREET  
 CONDOMINIUM  
 TAX MAP 144 LOT 22  
 FOR  
 THE GHAWAMI REVOCABLE TRUST  
 369 - 373 ISLINGTON STREET  
 CITY OF PORTSMOUTH  
 COUNTY OF ROCKINGHAM  
 STATE OF NEW HAMPSHIRE

SCALE: 3/16" = 1'  
 JOB: 02 - PG. 51  
 OCTOBER 2005  
 1481





Open Concept Contracting

CABINETS CONSTRUCTION

BUILDER

Open Concept Contracting  
383 Commercial Street  
03.380.7151  
GRANDCO.COM

37 A B

369 B



**R**  
Open Concepts  
Realty

etty













371-B  
Tydemans





**II. NEW BUSINESS**

**G.** The request of **Katherine Ann Bradford 2020 Revocable Trust (Owner)**, for property located at **170-172 Gates Street** whereas relief is needed to demolish the existing garage and the small rear addition, and construct a new garage in the same location as the existing garage and construct a side entryway roof which requires the following: 1) Variance from Section 10.521 to allow a) 45% building coverage where 30% is required, and b) 0 foot right side yard where 10 feet is required; 2) Variance from Section 10.573.20 to allow a 0 foot rear yard where 10.5 feet is required; 3) Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 103 Lot 19 and lies within the General Residence B (GRB) and Historic District. (LU-24-116)

**Existing & Proposed Conditions**

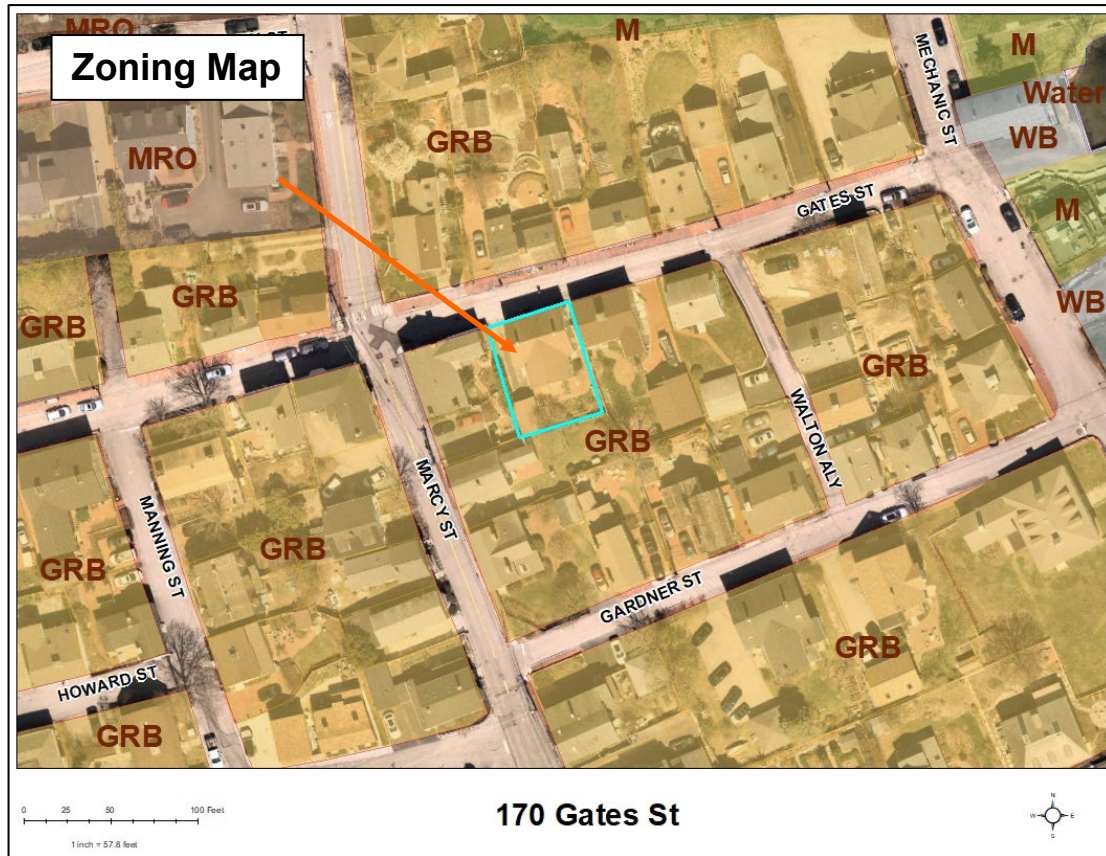
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	*Demolish and reconstruct garage and construct roof over side entryway	Mixed-Use
<u>Lot area (sq. ft.):</u>	3,393	3,393	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,393	3,393	5,000 min.
<u>Front Yard (ft.):</u>	1.5	1.5	5 min.
<u>Left Yard (ft.):</u>	5	5	10 min.
<u>Right Yard (ft.):</u>	0	0	10 min.
<u>Rear Yard (ft.):</u>	0	0	10.5 min.
<u>Garage Height (ft.):</u>	10.5	10.5	35 max.
<u>Building Coverage (%):</u>	46	45	30 max.
<u>Open Space Coverage (%):</u>	>25	>25	25 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1780	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
- Historic District Commission Approval

### Neighborhood Context



## Previous Board of Adjustment Actions

No previous history found.

## Planning Department Comments

The applicant is requesting to demolish the existing garage and reconstruct it in the same location. As part of this project, the applicant will also be removing a small portion of the existing primary structure and constructing a roof over the side entryway.

## Variance Review Criteria

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

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

**AND**

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

**OR**

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

## 10.235 Certain Representations Deemed Conditions

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

**170-172 Gates Street  
Map 103 Lot 14**

**Rebuild Existing Detached Garage**

**To permit the following:**

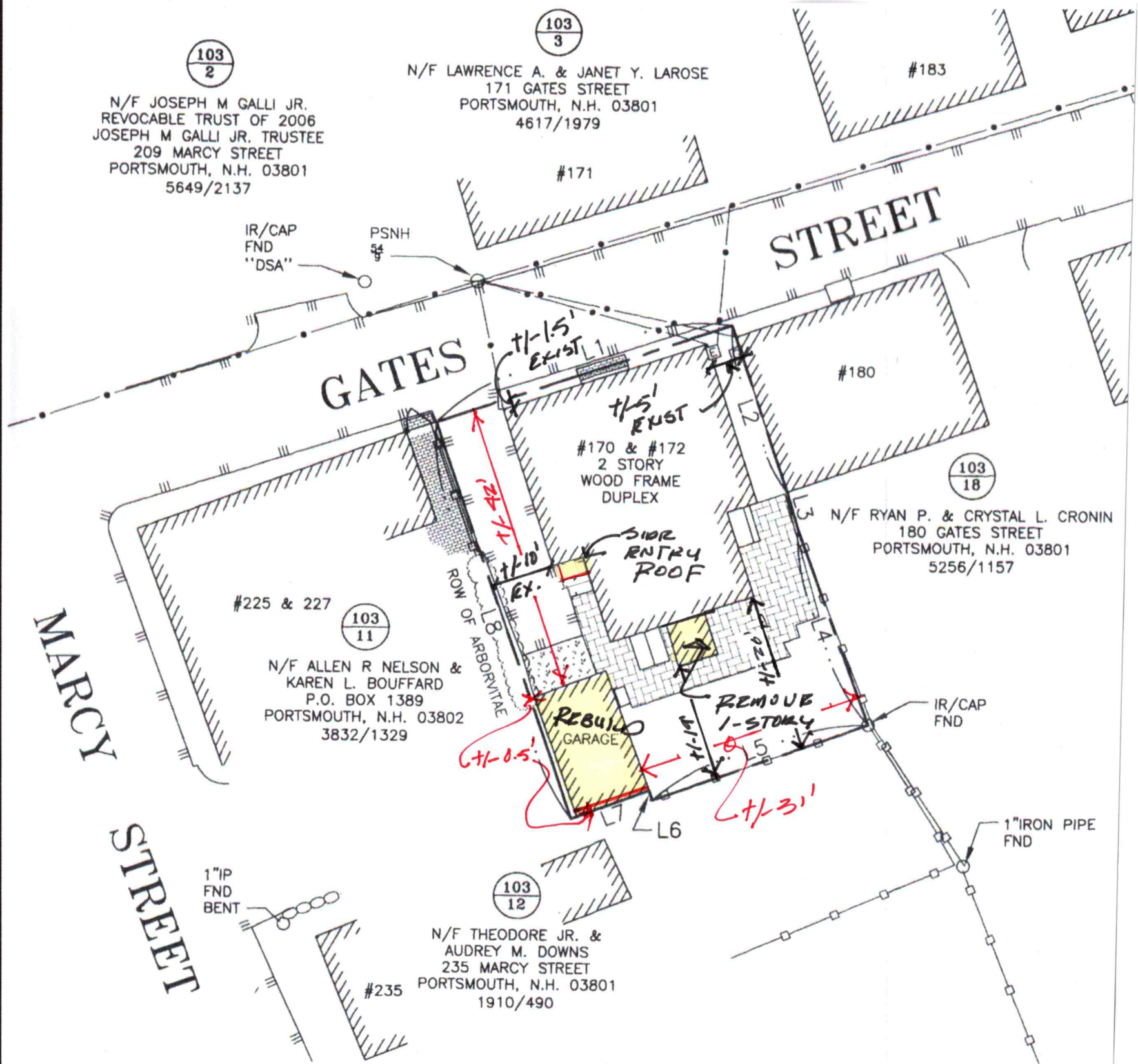
1. Building Coverage of 45% where 46% is existing & 30% is allowed.
2. Garage Right Side Yard Setback of +/-0.5' where 10' is required
3. Garage Rear Yard Setback of +/- 0.5' where 25' is required
4. Rebuild of a non-conforming structure

**The undersigned agrees that the following circumstances exist.....**

1. The Existing Garage is in very poor condition with a collapsed wood framed floor. Plus the grade rises towards the rear and the current structure is raised with a large concrete apron at the end of the driveway. The proposed Garage will be on a floating slab with a raised concrete wall at the rear & side, so the Garage can be lowered to eliminated the large concrete apron. There is no room on site to relocate the Garage.
3. The Existing Residence is non-conforming to Building Coverage (46%) and removing the rear 1-Story Ell will make the Residence conforming to the rear yard setback & will reduce the Building coverage to 45%.

**Criteria for the Variance:**

1. The Variances are not contrary to the public interest in that many properties in this neighborhood are non-conforming to Building Area & Setbacks. The Garage will be rebuilt over the existing footprint
2. The Variances are consistent with the spirit of the ordinance in that it will allow this current Garage Use to be continued.
3. Substantial justice will be done, as the Variances will not expand the building coverage.
4. These Variances will not diminish the value of surrounding properties. The rebuilt Garage will replace a dilapidated structure.
5. The special condition of this property is the non-conformity of the Existing Garage and Lot. The Lot at 3393sf is just 67% of the required 5000sf in this Zone.



**RENOVATIONS & GARAGE REBUILD**  
 170-172 GATES STREET PORTSMOUTH, NH  
 FOR: KATHERINE BRADFORD

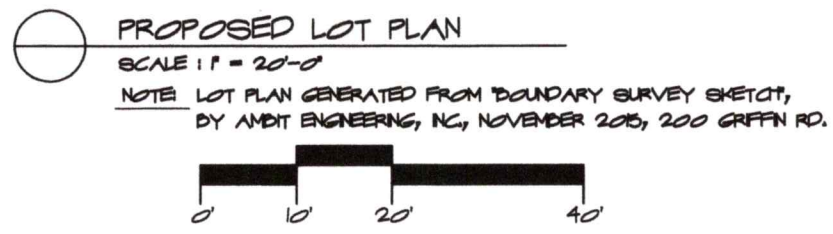
MAP 103 LOT 19  
 GENERAL RESIDENCE B (GRB)  
 LOT AREA 3393 SF

ALLOW. BUILDING COVERAGE 30%

EXISTING BUILDING COVERAGE	
EXISTING RESIDENCE	1254 SF
1-STORY REAR ADDITION TO BE REMOVED	49 SF
EXISTING GARAGE	256 SF
<hr/>	
	1559 SF (46%)
PROPOSED BUILDING COVERAGE	
EXISTING RESIDENCE	1254 SF
REBUILT GARAGE	240 SF
SIDE ENTRY ROOF	15 SF
<hr/>	
	1509 SF (45%)



ONE STORY ELL TO BE REMOVED

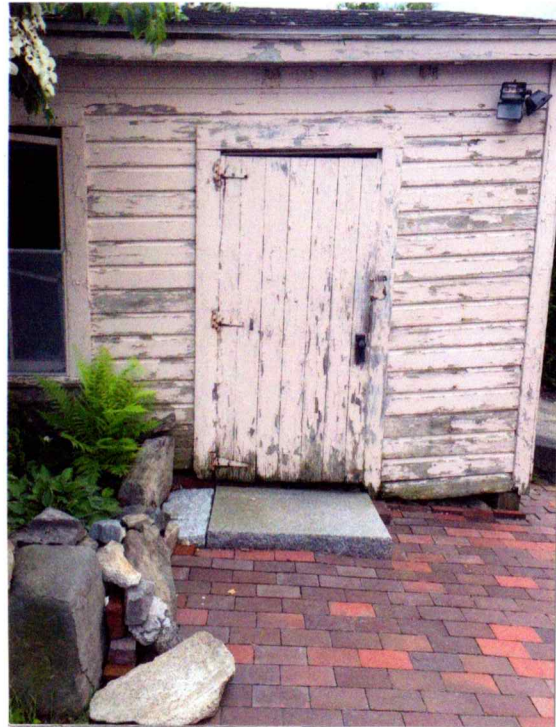


<b>PROPOSED LOT PLAN</b> RENOVATIONS & GARAGE REBUILD, BRADFORD RESIDENCE 170 - 172 GATES STREET PORTSMOUTH, NH	801 Islington St, Suite 32 Portsmouth, NH 03801 603-502-4387 archwhit@aol.com	Project: 2304 Revisions:	Date: 6/18/24 1 OF 3
	<b>ANNE WHITNEY ARCHITECT</b>		





GARAGE EXIST LEFT SIDE



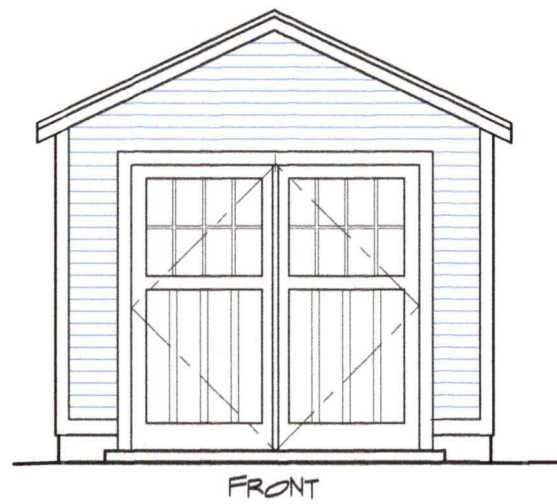
GARAGE EXIST FRONT



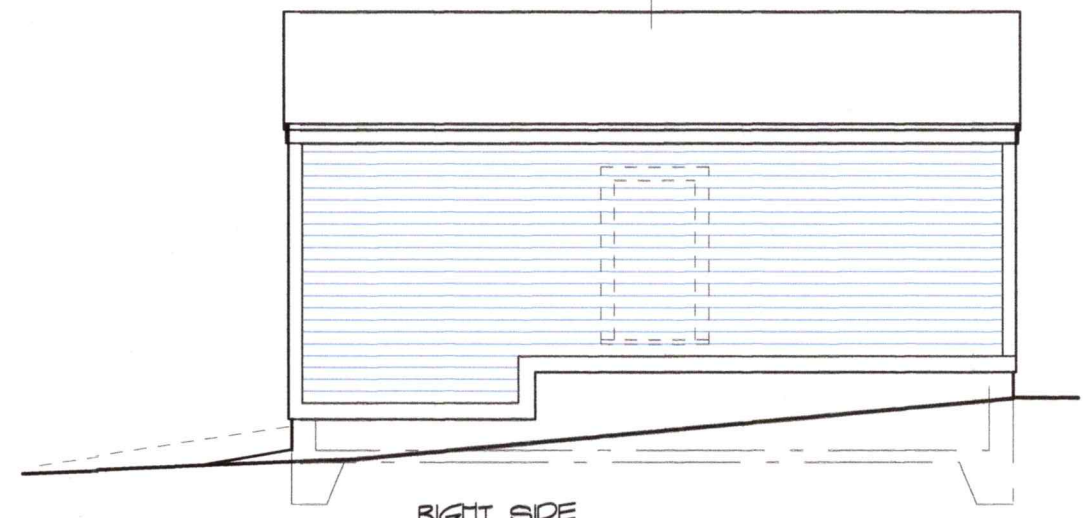
GARAGE EXIST RIGHT SIDE



LEFT SIDE



FRONT



RIGHT SIDE

REBUILT GARAGE ELEVATIONS  
SCALE: 3/16" = 1'-0"

Schematic DESIGN

801 Islington St, Suite 32  
Portsmouth, NH 03801  
603-502-4387  
archwhit@aol.com

AW

Project: #2304

Date: 6/18/24

Revisions:

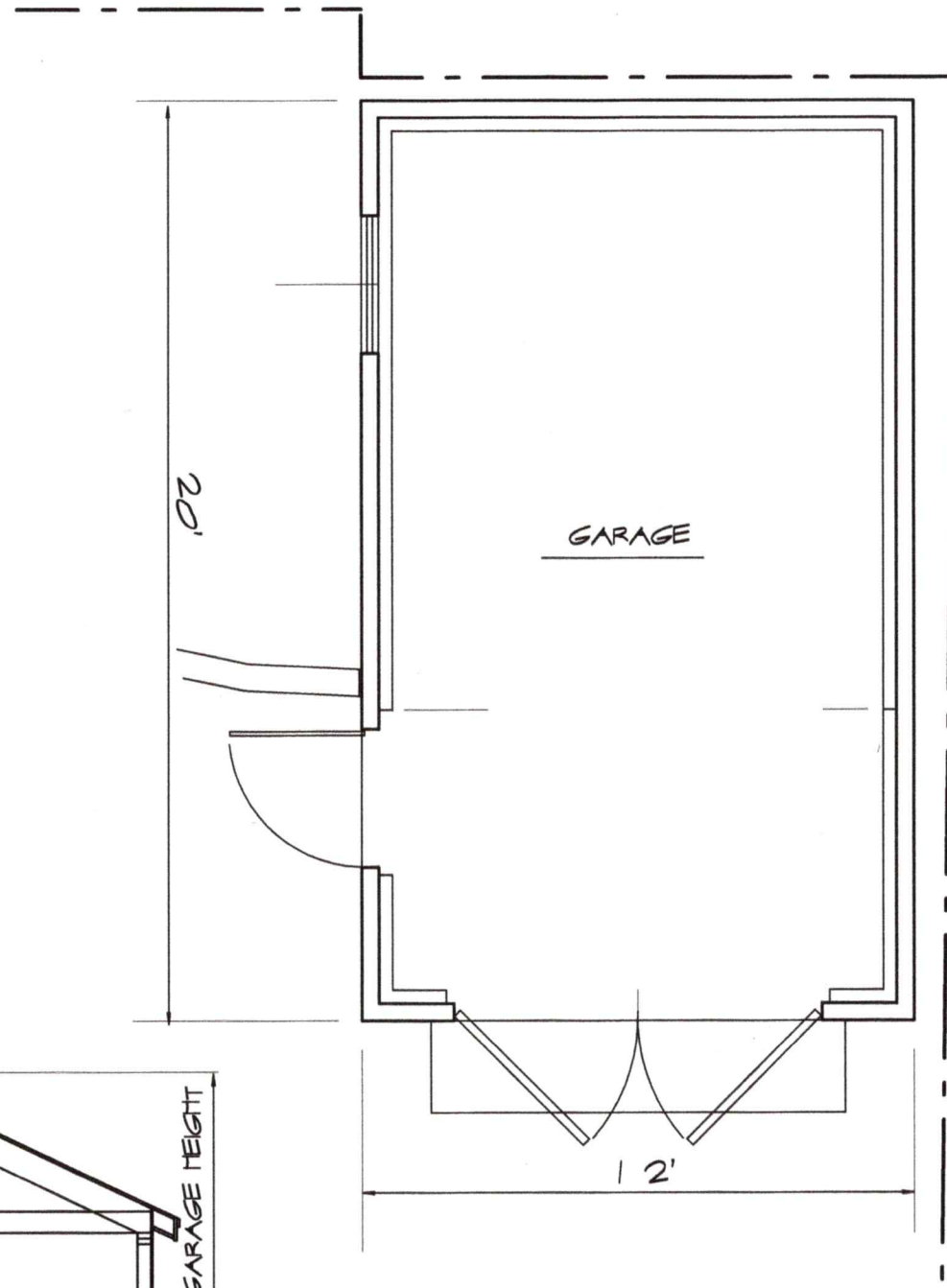
ANNE WHITNEY ARCHITECT

RENOVATIONS & GARAGE REBUILD, BRADFORD RESIDENCE

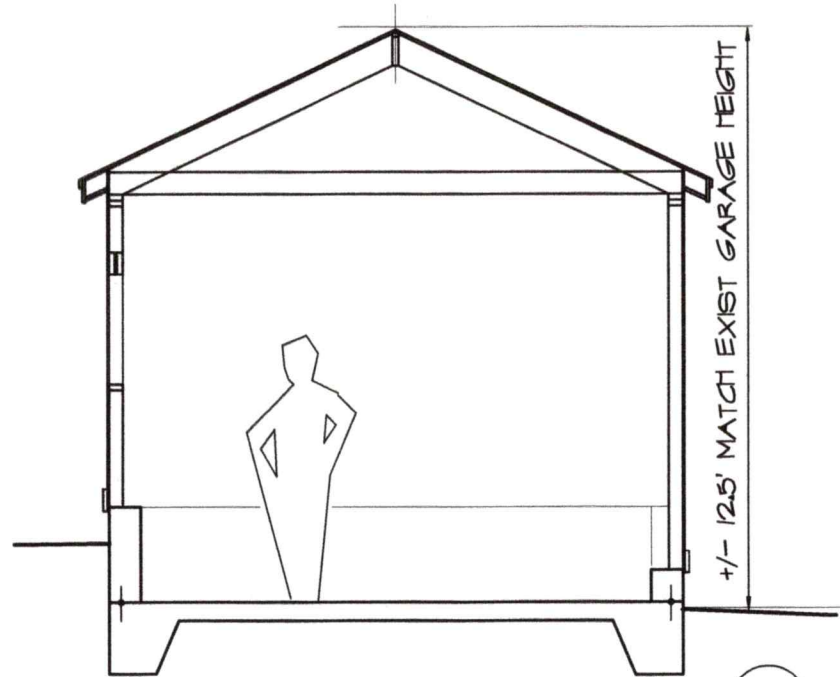
110 - 112 GATES STREET

PORTSMOUTH, NH

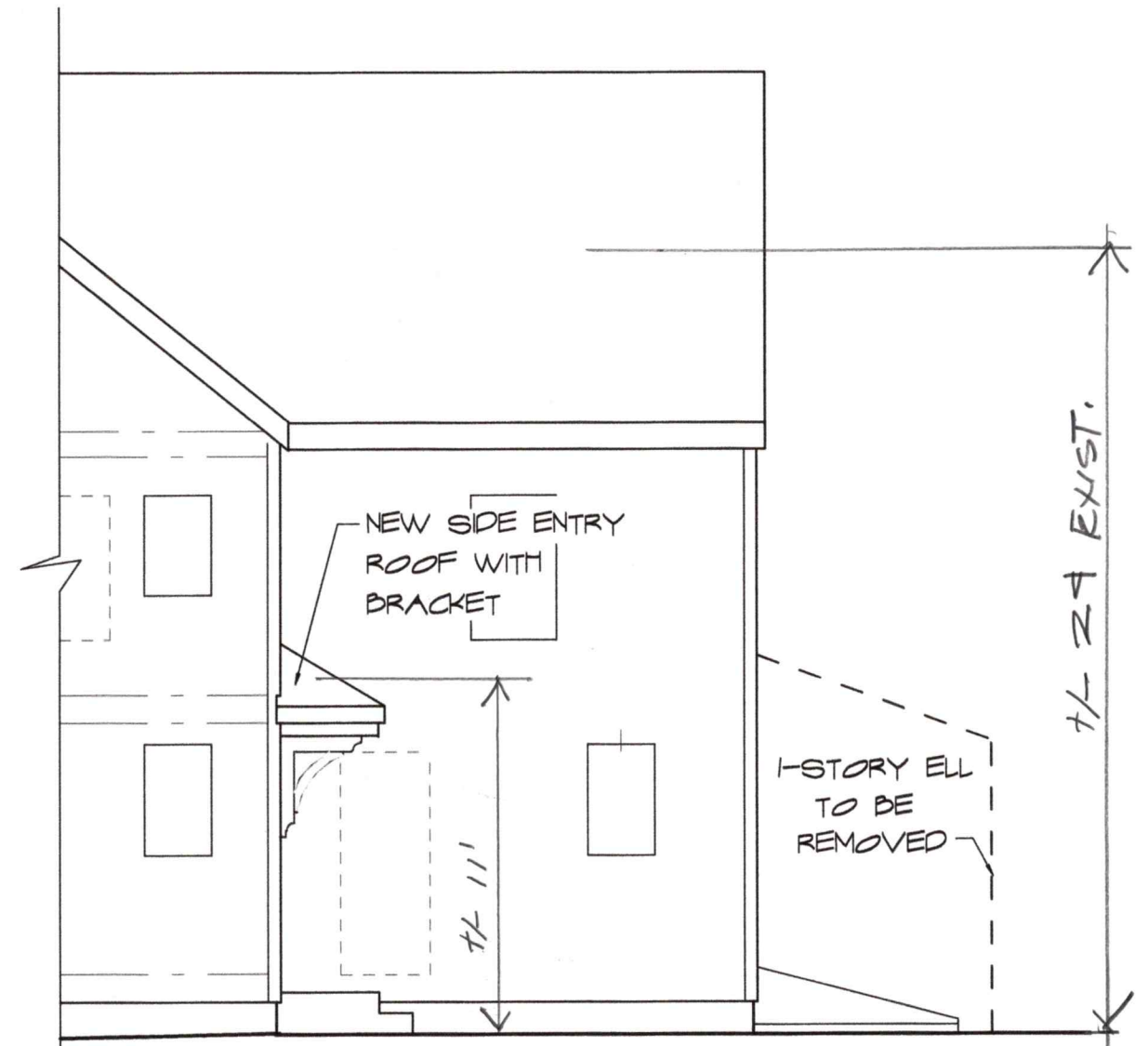
2 OF 3



GARAGE PLAN  
SCALE: 1/4" = 1'-0"



GARAGE SECTION  
SCALE: 1/4" = 1'-0"



PARTIAL RIGHT SIDE ELEVATION  
SCALE: 3/16" = 1'-0"

<b>SCHEMATIC DESIGN</b> RENOVATIONS & GARAGE REBULD, BRADFORD RESIDENCE 170 GATES STREET PORTSMOUTH, NH	801 Islington St, Suite 32 Portsmouth NH 03801 603-502-4387 archwhit@aol.com	Project: # 2304 Revisions:	Date: 6/18/24
	<b>ANNE WHITNEY ARCHITECT</b>		<b>3 OF 3</b>

## II. NEW BUSINESS

- H. The request of **Kenneth Racicot and Kelly Ann Racicot (Owners)**, for property located at **34 Marne Avenue** whereas relief is needed to construct a shed behind the primary structure which requires the following: 1) Variance from Section 10.573.20 to allow a 5 foot side yard where 10 feet is required. Said property is located on Assessor Map 222 Lot 33 and lies within the General Residence A (GRA) District. (LU-24-66)

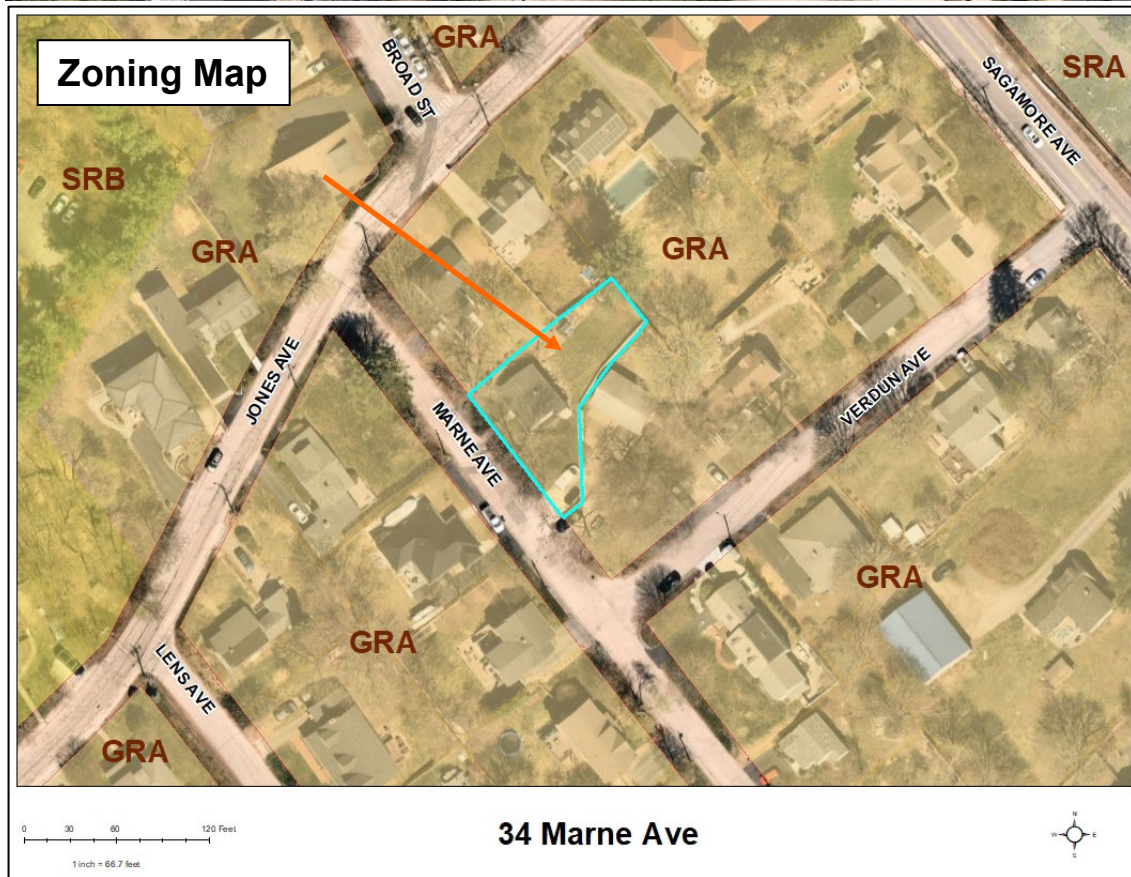
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Construct a shed	Mixed-Use
<u>Lot area (sq. ft.):</u>	7,405	7,405	7,500 min.
<u>Front Yard (ft.):</u>	19	19	15 max.
<u>Left Yard (ft.):</u>	Shed: n/a	Shed: 5	8'9" min.
<u>Right Yard (ft.):</u>	Shed: n/a	Shed: 21	8'9" min.
<u>Rear Yard (ft.):</u>	Shed: n/a	Shed: 28	20 min.
<u>Height (ft.):</u>	Shed: n/a	Shed: 8'9"	max.
<u>Building Coverage (%):</u>	11.9	13.5	25 max.
<u>Open Space Coverage (%):</u>	>30	>30	30 min.
<u>Parking</u>	2	2	2
<u>Estimated Age of Structure:</u>	1956	Variance request(s) shown in red.	

### Other Permits/Approvals Required

- Building Permit

### Neighborhood Context



## Previous Board of Adjustment Actions

September 22, 2015 – The Board **granted** a Variance from Section 10.521 to allow a lot area and a lot area per dwelling unit of 7,461± s.f. where 7,500 s.f. is required for both.

## Planning Department Comments

The applicant is proposing to construct a shed in the back yard of the property.

The application was advertised to require a setback at 10 feet from the side and rear, however after the advertisement it was calculated that the height, as measured by the Portsmouth Zoning Ordinance, measures 8'9" which requires the equivalent for the side and rear setbacks.

## Variance Review Criteria

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

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

## 10.235 Certain Representations Deemed Conditions

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

June 20, 2024

**HAND DELIVERED**

Jillian Harris, AICP  
Principal Planner  
Planning and Sustainability Department  
1 Junkins Avenue  
Portsmouth, NH 03801

**Project:** Request for zoning relief for a storage shed 5' from property line

**Owner/Applicant:** Kenneth Racicot & Kelly A. Racicot

**Project Location:** 34 Marne Ave; Tax Map 222; MapGeo Map Lot 0222-0033-0000  
GRA Zone

Dear Jillian Harris & Zoning Board Members,

I am pleased to submit the following documents in support of a request for zoning relief.

1. Portsmouth Land Use Application – previously uploaded and given LU-24-66 designation
2. Memorandum & Addendum in support of zoning relief (original & three (3) copies).

I look forward to presenting this application to the Zoning Board of Adjustment at its July 16, 2024 meeting.

Kenneth Racicot  
Owner/Applicant 34 Marne Avenue

---

**To:** Portsmouth Zoning Board of Adjustment

**From:** Kenneth Racicot (Owner/Applicant)

**Date:** June 20, 2024

**Project Location:** 34 Marne Avenue. Portsmouth, NH 03801. Tax Map 222; MapGeo Map Lot 0222-0033-0000; GRA Zone

**Project:** Request for zoning relief for a storage shed 5' from property line

Dear Zoning Board Members:

I am pleased to submit this memorandum and attached addendum in support of Zoning Relief to be considered by the Zoning Board of Adjustment at its July 16, 2024 meeting.

### **I. Contents in Addendum**

- A. City of Portsmouth Tax information and MapGeo locator images
- B. Existing site photographs - site photos from two angles on property
- C. Shed Information: proposed SF, dimensions, style, and vendor
- D. Proposed location superimposed on MapGeo – with shed dimensions & relief
- E. Proposed location superimposed on site photos
- F. Site prep information (as recommended by Reeds Ferry Shed)

### **II. Property /Project:**

34 Marne Avenue is a 7,405 SF (square feet) lot holding a 852 SF 2- bedroom single family home. The applicant is proposing to add a (10'WX20'LX11'1"H) 200 SF storage shed (where currently no shed exists), built and installed by Reeds Ferry Shed, in the back yard on the west side of the property line abutting property on 61 Jones Avenue. Current City of Portsmouth Land Use guideline states that a setback for an accessory structure that is greater than 100 SF or greater than 10' in height is at least the height of the building or the applicable setback requirement, whichever is less.

### **III. Relief Required:**

Portsmouth Zoning Ordinance states that a setback for an accessory structure that is greater than 100 SF or greater than 10' in height is at least the height of the building or the applicable setback requirement, whichever is less. Relief is required in order to a) provide a storage shed of adequate size to accommodate a much smaller than average primary home currently with no garage, no storage shed, and limited access attic storage; and b) to place the shed in a location only 5', not the required 10', from property line. along the west side of the property so that it would be much less obtrusive to backyard activities.

### **IV. Variance Requirements:**

- 1. Granting the variance will not be contrary to the public interest.**
- 2. Granting the variance would observe the spirit of the Ordinance.**

The Portsmouth Zoning Ordinance was enacted for the general purpose of promoting the health, safety & welfare in accordance with the Master Plan by regulating:

- a. The use of land, buildings and structures for business, industrial, residential and other purposes - The existing small home currently with no garage or storage shed limits storage of necessary yard maintenance tools and equipment, as well as outdoor activity equipment. Those items are currently stored outside, with partial or no cover at all, exposed to the elements resulting in a somewhat unattractive sight for those neighbors that can see.
- b. The intensity of land use, including lot sizes, building coverage, building height & bulk, yards and open space – The single family home use will remain intact. The addition of 200 SF of storage shed is requested. It will be compliant with lot size & open space requirements.
- c. The design of facilities for vehicular access, circulation, parking and loading - The proposal does not impact any traffic flow, or parking for any of the main or accessory streets around the property of 34 Marne Avenue.
- d. The impacts on properties of outdoor lighting, noise, vibration stormwater runoff and flooding - No adverse impacts will exist.
- e. The preservation and enhancement of the visual environment - The aesthetics of the home & grounds *will be improved* with the addition of a storage shed. Items that are currently stored outside and exposed to the elements will be stored safely and neatly. This will allow for yard tools, yard maintenance equipment, as well as outdoor activity equipment (bicycles, kayaks, mopeds, yard games) to be stored safely out of sight of neighbors' view (which can be seen from Borad Ave).
- f. The preservation of historic districts, and buildings and structures of historic or architectural interest - The property is not in the historic district, but consideration was given to the aesthetics of the proposed shed which will be professionally built and installed, and have cedar siding.
- g. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality - The new shed will not adversely affect natural resources.

This proposal maintains the primary single family use of the property.

**3. *Granting the variance would do substantial justice.***

Granting the variance would allow for proper storage of yard tools, equipment, and outdoor activity equipment in a manner that would minimize damage from the elements and provide a much more neat and aesthetically pleasing view for owner/applicant and neighbors.

**4. *Granting the variance will not diminish the surrounding property values.***

Removal from sight and neat storage of current yard equipment, tools, bicycles, mopeds, is expected to improve neighborhood aesthetics. The shed will be professionally built and installed. Thus, it will not harm surrounding property values.

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



a. The property has special conditions that distinguish it from other properties in the area - The lot shape is a distinguishing feature. Due to the lot line revision of 2016, 34 Marne has a unique somewhat 'triangular' shape, lending to wide street frontage (101') but a much more narrow back yard (34').

b. Owing to these conditions, a fair & 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 - The size of the shed proposed at 200 SF was deemed minimum necessary to accommodate storage to support family lifestyle, yard equipment and outdoor activity equipment. However, the primary provision request is for the location of the shed, which at current zoning of 10' setback from the property line on any of the bordering properties in the back yard would place the shed in a cumbersome, intrusive and unsightly location in the backyard. Therefore, this provision request to set the shed at 5' from the property line would alleviate some of that intrusiveness and placed on the west side of property of 34 Marve Ave where a current fence line exists, would minimize the shed view from Broad Street.

**V. Conclusion:**

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

Kenneth Racicot  
Owner/Applicant 34 Marne Avenue

---

**Addendum to (LU-24-66)** application for storage shed for 34 Marne Avenue  
Portsmouth, NH

Kenneth Racicot  
Kelly A. Racicot  
34 Marne Avenue  
Portsmouth, NH 03801

Addendum Contents

Tax info from City of Portsmouth website.....Pg2  
City of Portsmouth; MapGeo 34 Marne Ave.....Pg3  
Current photo of backyard with landmarks identified.....Pg4  
Proposed shed size, dimensions, style, and vendor .....Pg 5  
Proposed location on MapGeo.....Pg 6  
Proposed location virtual image #1 with shed .....Pg 7  
Proposed location virtual image #2 with shed .....Pg 8  
Proposed location site preparation information .....Pg 9



## Portsmouth, NH



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### 34 MARNE AVE

- [Sales](#)
- [Print](#)
- [Map It](#)

**Location** 34 MARNE AVE

**Mblu** 0222/ 0033/ 0000/ /

**Acct#** 29628

**Owner** RACICOT KELLY ANN

**PBN**

**Assessment** \$363,500

**Appraisal** \$363,500

**PIN** 29628

#### Building Information

##### Building 1 : Section 1

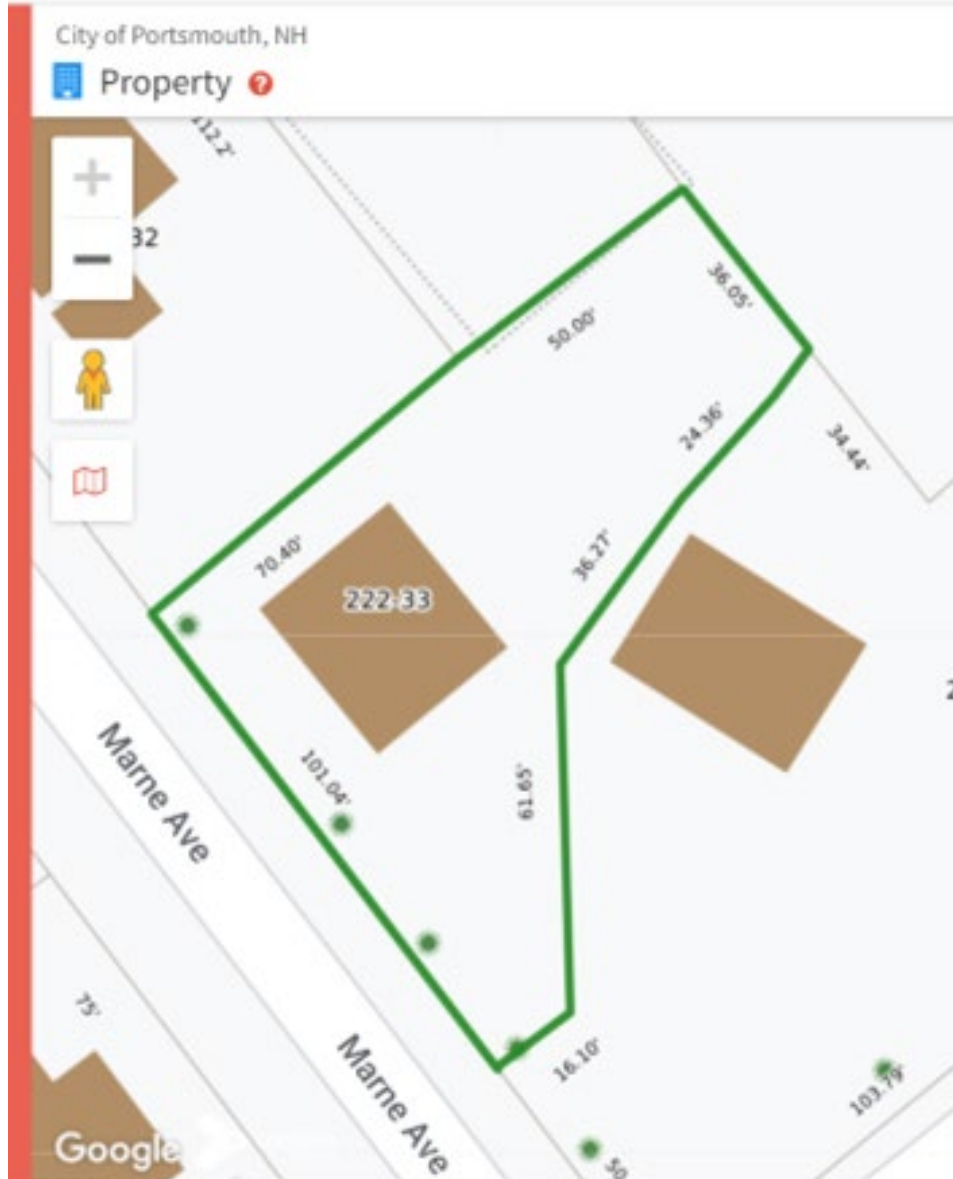
**Year Built:** 1956  
**Living Area:** 858  
**Replacement Cost:** \$162,470  
**Building Percent Good:** 84  
**Replacement Cost Less Depreciation:** \$136,500

Building Attributes	
Field	Description
Style:	Ranch
Model	Residential
Grade:	C
Stories:	1
Occupancy	1

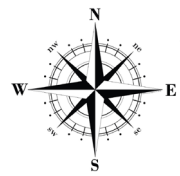
#### Building Photo



# City of Portsmouth – MapGeo – 34 Marne Avenue, Portsmouth, NH



- Lot size: 7,405 sq ft
- 101' frontage on Marne Ave
- Primary Residence is approximately 33' X 26' = 850 sq ft



Current view: backyard of 34 Marne Avenue

★ = standing

▶ = looking

1



2



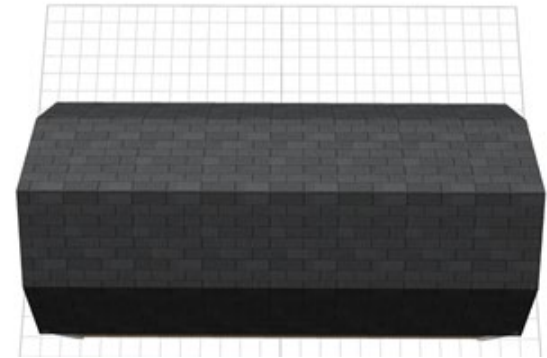
View standing on the West side looking NE towards Sagamore Ave. A 5' cedar fence along the West side of property.



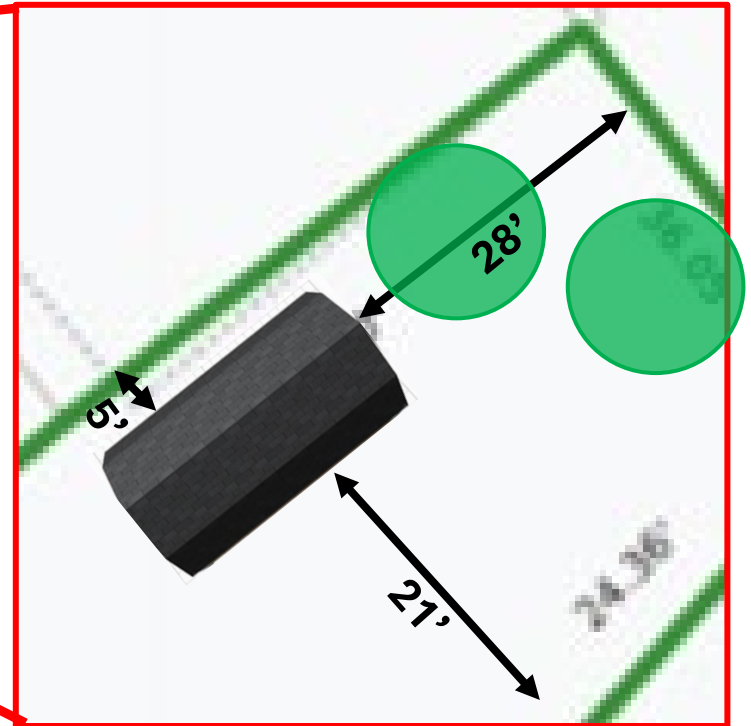
View standing on the East side looking NW towards Broad St. A 5' cedar fence along the West side of property.

# Proposed Shed Size and Style – Reeds Ferry Shed (<https://www.reedsferry.com/>)

- Traditional Gambrel 10' X 20' = 200 sq ft
- 11' 1" height to roof peak
- Cedar Tongue and Groove
- Black Shutter
- Black Shingle
- Layout: double-door facing SW, single door facing SE



# Proposed location – lengthwise on the west side of property



# Proposed location – virtual image #1



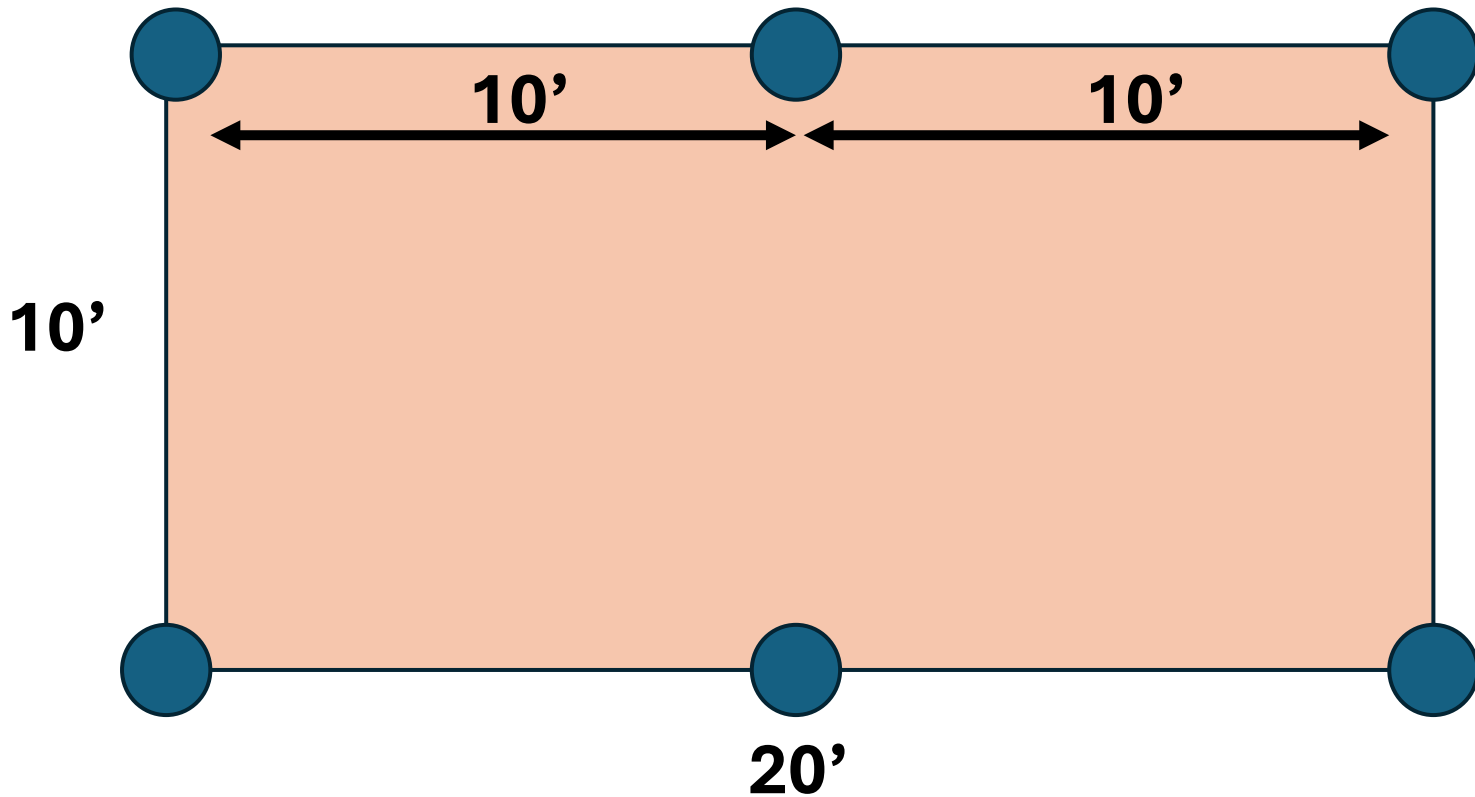


## Proposed location – virtual image #2



## Proposed location – site preparation

- As of Mar2024, the area has been cleared of shrubs, bushes, grass, and any other organic material
- Site will be prepped according to Reed Ferry suggestions (<https://www.reedsferry.com/site-preparation/>)
- 6 concrete footings using 6 SonoTube (size chosen by Reeds recommendation)
- 5000psi Quikrete will be used
- 4" deep of  $\frac{3}{4}$ " diameter crushed stone will be used under shed to minimize growth



**II. NEW BUSINESS**

- I. The request of **Lindsay Floryan and Brian Collier (Owners)**, for property located at **493 Dennett Street** whereas relief is needed to construct an 8 foot fence which requires the following: 1) Variance from Section 10.515.13 to allow an 8 foot fence where 6 feet is the maximum. Said property is located on Assessor Map 161 Lot 45 and lies within the General Residence A (GRA) District. (LU-24-78)

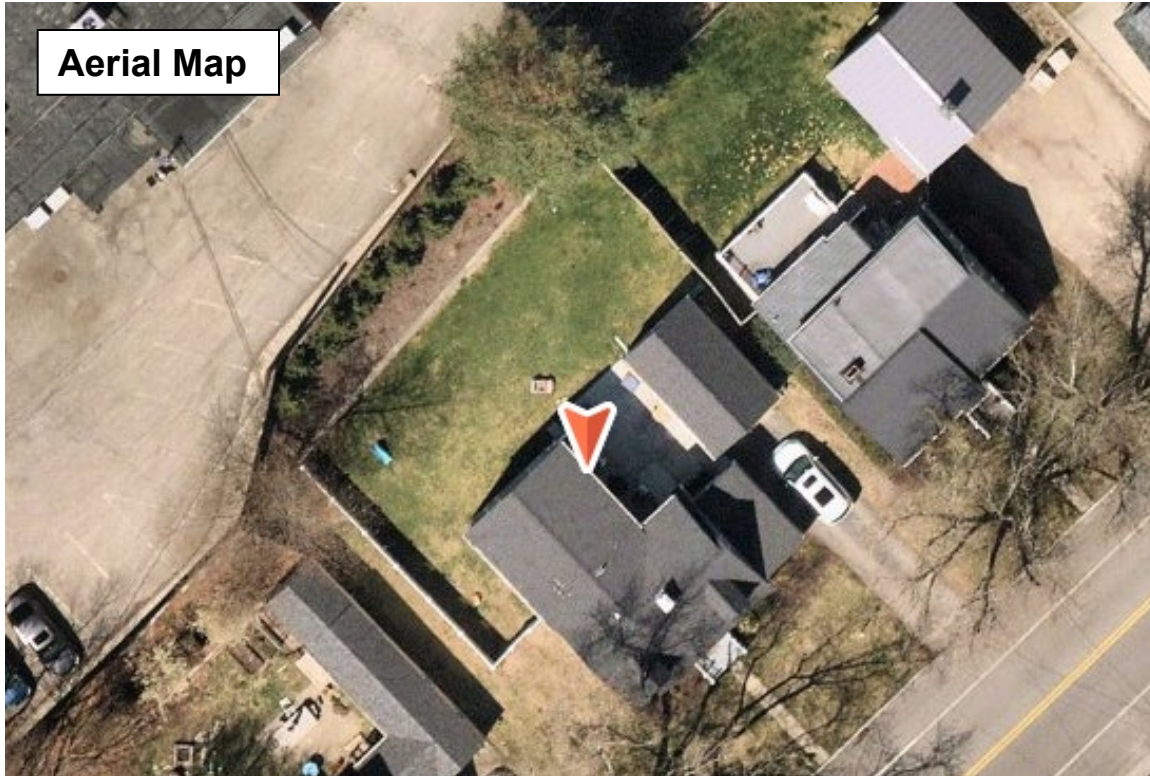
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family	Construct an 8 foot fence	Mixed-Use
<u>Fence Height</u>	6	8	6 min.
<u>Estimated Age of Structure:</u>	1941	Variance request(s) shown 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 to replace a portion of the rear 6 foot fence with an 8 foot fence.

Please note, fences 6 feet and shorter do not need a building permit. As this is an 8 foot fence, a building permit will be required to construct the fence.

### Variance Review Criteria

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

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

### 10.235 Certain Representations Deemed Conditions

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

## **1. Executive Summary:**

- Requesting the City of Portsmouth Planning Board’s approval for the replacement of the existing 6-foot wooden boundary fence that separates the properties located at 493 and 481 Dennett Street Portsmouth NH. The proposal is to upgrade to a more durable and taller 8-foot vinyl fence which will benefit both homeowners with increased privacy.

## **2. Background and Rationale:**

- The existing fence as damaged badly in the last storm we had. Both property owners agree that replacing the existing 6ft fence with and 8 ft fence will provide more privacy based on the grade of the road. This project will consist of 8’x8’ white vinyl fence material, which will match the existing fence as seen below in photos. We are going to be using Central Fence for installation of the new fencing

## **3. Project Scope:**

- Please review the image from MapGeo of our properties. The yellow line reflects the section of fence that we are going to be replacing.

This is an image of the current fence, as shown in this photo due to the grade of the road there is very little privacy for 481Dennett street as we can see directly into their kitchen window. We feel that replacing the existing 6ft fence with an 8ft fence will also help with things such as toys and ballons going over the fence that could potentially harm the dogs that reside at 481 Dennett Street.

**Project Title:** 493 /481 Dennett Street, Fence Variance

**Date:** 7/16/2024

**Prepared by:** Lindsay Collier

**Prepared for:** City of Portsmouth, Planning Board



**Property** Zoom To Share

**493 DENNETT ST**

Location 493 DENNETT ST  
Map-Lot 0161-0045-0000  
Vision Account Number 35029

**Ownership**

Owner FLORYAN LINDSAY COLLIER BRIAN  
Address 493 DENNETT ST, PORTSMOUTH, NH 03801-3691

**Valuation**

Total \$626,300  
Last Sale \$399,000 on 2017-03-17  
Deed Date 2017-03-17  
Book/Page 5804/2599

**Land**

Land Use 1010  
Land Use Description SINGLE FAM MDL-01  
Market Delineation 131  
Local District R  
Parcel Area (AC) 0.17

**Zoning**

Zoning  
GRA

[Show On Map](#)

## 5. Proposed Solution:



- Seeking the planning board approval to replace existing fence with 8' x 8' white vinyl fencing to match the other side of 493 Dennett's fencing as shown in the image below



**Project Title:** 493 /481 Dennett Street, Fence Variance

**Date:** 7/16/2024

**Prepared by:** Lindsay Collier

**Prepared for:** City of Portsmouth, Planning Board

## **Quote from Central Fence:**

Order No. \_\_\_\_\_

**Central Fence**  
**Home Improvement Agreement: Proposal for Fencing Installation**  
 6 Lafayette Rd. • Hampton Falls, NH 03844  
 603-910-5199

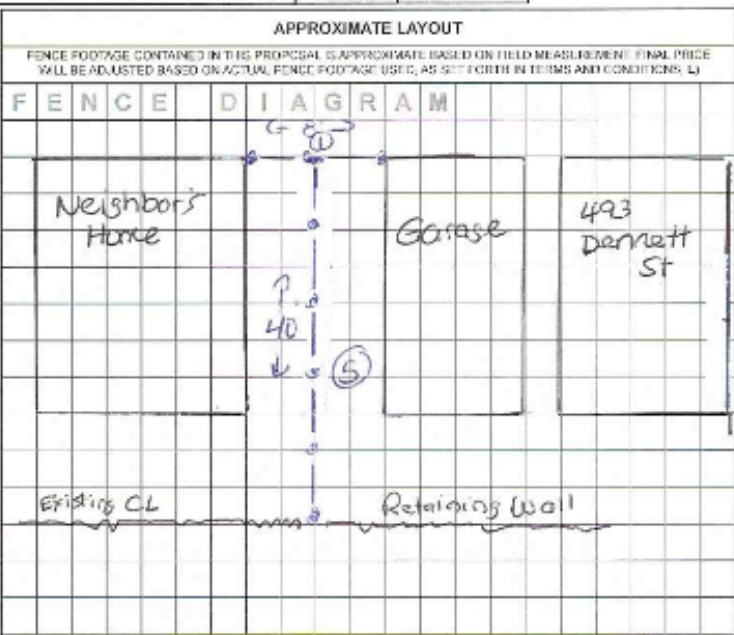
Customer's Last Name: Collier, Brian & Lindsey Date: 4, 23, 24  
 First Name: \_\_\_\_\_  
 Service Address: 493 Dennett St PRICE IS VALID FOR 30 DAYS FROM DATE OF PROPOSAL.  
 City: Portsmouth State: NH Zip: 03801  
 City: 860-377-3860 State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Customer's Daytime Phone No. Customer's Evening Phone No. Customer's E-mail Address: brianrcollier@gmail.com

Nearest Cross Street \_\_\_\_\_

PERMIT/INSPECTION INFORMATION 8' tall fencing - need variance

Permit required?  Yes  No  Homeowner to obtain permit (Installation Professional requires copy of permit before installation)  Installation professional to obtain permit

Selection	\$4470
ADDITIONAL COST OPTIONS ADD THE PRICES IN THIS COLUMN TO THE SELECTION	
TAKE DOWN AND HAUL AWAY OLD FENCE	\$
PERMIT COST	\$
DISC	-370
SUB TOTAL	\$4100
SALES TAX	\$
DEPOSIT <u>4103</u>	\$2050
BALANCE DUE (UPON COMPLETION)	\$2050



CASH  
 CHECK # \_\_\_\_\_  
 CREDIT 4103 VISA 2015 061021  
 DEBIT

Design Approved by Customer

FENCE INSTALLATION RELATED TO GRADE: PLEASE INITIAL ONE

<input type="checkbox"/> FENCE TO BE LEVEL WITH HIGHEST GRADE (CUSTOMER TO FILL IN GAPS)	<input type="checkbox"/> SLIGHTLY UNEVEN GRADE WITH FENCE FOLLOWING FLOW OF THE GROUND - FENCE WILL BE UNEVEN AT TOP	<input type="checkbox"/> SLOPE FLARE (WHERE FENCE CANNOT TRACK SLOPE TO FULLY GRADE AND MUST BE STAMPED. HEIGHT MUST BE 42" OVER GRADE FENCE - POINTS TO BE IN GRADE)
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Product: <u>Vision Full Privacy</u>	Style: <u>Decorated Haven</u>	Height: <u>8'</u>
Footage: <u>48'</u>	If Gates: <u>—</u>	
Post Cap: <u>NE</u>	Color: <u>WTR</u>	
Rail Type: _____	Post Type: <u>SX5</u>	
Picket Type: _____		\$4470

Product	Style:	Height:
Footage:	If Gates:	
Post Cap:	Color:	
Rail Type:	Post Type:	
Picket Type:		\$

Product	Style:	Height:
Footage:	If Gates:	
Post Cap:	Color:	
Rail Type:	Post Type:	
Picket Type:		\$

Customer has the right to cancel project within 7 days of signing contract and/or making deposit. After that the deposit is non-refundable.  
 DISTRIBUTION: White - Central Fence Copy Yellow - Customer Copy Pink - Installation Professional Copy

6. Timeline:

- Fence Installation will be scheduled immediately following the Planning Board meeting 7/16/2024 assuming variance is approved.

## 7. Analysis Criteria:

1. Analysis Criteria (from section 10.223 of the [Zoning Ordinance](#)):

2. 10.233.21 The variance will not be contrary to the public interest.

Proposed replacement of existing fence will not impact the public or serve as a nuisance. Both Parties 493 and 481 Dennett agree of the replacement. Please see yellow line on map above, where existing fence stands.

3. 10.233.22 The spirit of the Ordinance will be observed;

Proposed replacement of the current 6ft fence would provide 481 Dennett additional privacy. The current fence is 6ft high, at this height the owners of 493 Dennett has clear view into the kitchen of 481 Dennett, based on the grade of the road. Also, there has been instances where a toy or ball has made it over the fence which has potential to cause harm to the owner's dogs at 481 Dennett.

4. 10.233.23 Substantial justice will be done;

Both parties, 481 and 493 Dennett will benefit from the replacement. The current fence is 6ft high, at this height the owners of 493 Dennett have clear view into the kitchen of 481 Dennett Street when standing in their back yard based on the grade of the road. Also, there has been instances where a toy or ball has made it over the fence which has potential to cause harm to the owners' dogs at 481 Dennett.

5. 10.233.24 The values of surrounding properties will not be diminished.

Replacement of existing fence will not diminish the value of either property but will improve curb appeal as it will match the existing fence on 493 Dennett.

6. 10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

With the current height the owners of 493 Dennett have a clear view into the kitchen of 481 Dennett due to the grade of the road. Also, there has been instances where a toy or ball has made it over the fence which has potential to cause harm to the owners' dogs at 481 Dennett.