

**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.**

**August 20, 2024**

**AGENDA**

**I. APPROVAL OF MINUTES**

**A.** Approval of the July 16, 2024 meeting minutes.

**II. NEW BUSINESS**

- A.** The request of **Martha and Brian Ratay (Owners)**, for property located at **0 Broad Street** whereas relief is needed to construct a primary structure and detached garage on a vacant lot which requires the following: 1 ) Variance from Section 10.521 to allow a) 6,101 square feet of lot area where 7,500 is required, b) 6,101 square feet of lot area per dwelling unit where 7,500 is required, c) 60 feet of street frontage where 100 feet are required, d) 31% building coverage where 25% is allowed, e) 5 foot right side yard where 10 feet are required, and f) 2 foot rear yard where 20 feet are required. Said property is located on Assessor Map 221 Lot 96 and lies within the General Residence A (GRA) District. (LU-24-119)
- B.** The request of **Meadowbrook Inn Corporation (Owners)**, for property located at **549 US Route 1 Bypass** whereas relief is needed to construct a 4-story hotel with 116 rooms with requires the following: 1) Special Exception from Section 10.440 use #10.40 to allow a hotel or motel with up to 125 rooms; and 2) Variance from Section 10. 5B41.80 to allow 7.85% community space where 10% is required. Said property is located on Assessor Map 234 Lot 51 and lies within the Gateway Corridor (G1) District. (LU-24-113)
- C.** The request of **Daisy L. and Bert J. Wortel (Owners)**, for property located at **245 Marcy Street** whereas relief is needed to remove the existing 6-foot fence and replace with a new 6 foot fence which requires the following: 1) Variance from Section 10.515.13 to allow a 6 foot fence in the front yard area where 4 feet is allowed. Said

property is located on Assessor Map 103 Lot 13 and lies within the General Residence B (GRB) and Historic Districts. (LU-24-131)

- D.** The request of **Thomas Kressler (Owner)**, for property located at **34 Garfield Road** whereas relief is needed to construct a single-story addition to the front of the existing home which requires the following: 1) Variance from Section 10.521 for a) 24% building coverage where 20% is allowed; and b) a 24.5-foot front yard where 30 feet is required; 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 268 Lot 84 and lies within the Single Residence B (SRB) District. (LU-24-134)
- E.** The request of **Heritage NH LLC (Owner)**, and **SWET Studios LLC (Applicant)**, for property located at **2800 Lafayette Road** whereas relief is needed for a change of use for Unit 17 to a health club including the following special exception from Section 10.440, Use #4.42 to allow a health club greater than 2,000 s.f. of gross floor area. Said property is located on Assessor Map 285 Lot 2 and lies within the Gateway Corridor (G1) District. (LU-24-128)
- F.** The request of **Jared Majcher (Owner)**, for property located at **84 Thaxter Road** whereas relief is needed to construct an attached garage and 1.5-story addition and to demolish an existing detached garage which requires the following: 1) Variance from Section 10.521 to a) allow 22% building coverage where 20% is allowed; b) allow a 15.5 foot front setback where 30 feet is required; 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 166 Lot 34 and lies within the Single Residence B (SRB) District. (LU-24-135)
- G.** The request of **Zeng Kevin Shitan Revocable Trust of 2017 (Owner)**, for property located at **377 Maplewood Avenue** whereas relief is needed to demolish the existing accessory building and construct a new detached accessory dwelling unit which requires the following: 1) Variance from Section 10.521 to a) allow a building coverage of 37.5% where 25% is allowed; b) allow an open space of 24.5% where 30% is required; c) allow a secondary front yard setback of 6 feet where 10 feet is required; d) allow a left yard setback of 4.5 feet where 10 feet is required; e) allow a rear yard setback of 3 feet where 20 feet is required; 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 141 Lot 22 and lies within the General Residence A (GRA) and Historic Districts. (LU-24-133)

- H.** The request of **KR Investments LLC (Owner)**, for property located at **271 Sagamore Avenue** whereas relief is needed to demolish the existing house and construct a new house with an attached garage which requires the following: 1) Variance from Section 10.521 to allow a) 28% building coverage where 25% is allowed; b) lot area of 6,880 s.f. where 7,500 s.f. is required; c) lot area per dwelling unit of 6,880 s.f. where 7,500 s.f. is required; and d) a continuous lot frontage of 60.08 feet where 100 feet is required. Said property is located on Assessor Map 221 Lot 15 and lies within the General Residence A (GRA) District. (LU-24-136)
- I.** The request of **Maxico LLC (Owner)**, and **The Wheel House of New Hampshire LLC (Applicant)**, for property located at **865 Islington Street** whereas relief is needed for a change of use to an instructional studio including the following special exception from Section 10.440, Use #4.42 to allow an instructional studio greater than 2,000 s.f. gross floor area. Said property is located on Assessor Map 172 Lot 11 and lies within the Character District 4-W (CD4-W). (LU-24-139)

### **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\\_pBEFkGzQTVmDyn9lx5iVyw](https://us06web.zoom.us/webinar/register/WN_pBEFkGzQTVmDyn9lx5iVyw)

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

**7:00 P.M.**

**July 16 2024**

**MEMBERS PRESENT:** Beth Margeson, Vice-Chair; Members David Rheaume; Thomas Rossi; Paul Mannle; Jeffrey Mattson; Thomas Nies; and Jody Record, Alternate

**MEMBERS EXCUSED:** Chair Phyllis Eldridge

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

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Chair Eldridge was excused for the evening and Vice-Chair Margeson was Acting Chair. Alternate Ms. Record took a voting seat for all petitions.

**I. APPROVAL OF MINUTES**

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

Acting Chair Margeson abstained from both votes because she was not present at those meetings.

*The June 18 meeting minutes were unanimously **approved** as amended, 6-0.*

The sentence on p. 4: “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.” was changed at the end to read ‘would still be pretty open’.

*The June 25 meeting minutes were unanimously **approved** as presented, 6-0.*

**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)

It was noted that there was an error on the building coverage on the Staff Memo. Ms. Casella said the existing building coverage was 13.69 and not 17 as stated in the Staff Memo.

### **SPEAKING TO THE PETITION**

[Timestamp 4:08] Jeff Kissell of Dockham Builders was present on behalf of the applicant to review the petition. He said a building permit was filed for the deck in May but then he was notified that the home was in the SRA zone and demolition of the deck to be rebuilt was not allowed, which was the reason the variances were necessary. He said 50 square feet would be added to the lot coverage, going from 13.75 percent to a bit over 14 percent. He reviewed the criteria.

The Board had no questions, and Acting Chair Margeson opened the public hearing.

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

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

### **DECISION OF THE BOARD**

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

[Timestamp 9:32] Mr. Rossi said the Board was dealing with a difference in decimal places in terms of lot coverage and thought it was bewildering that the Board even had to discuss a rounding issue because it was currently 14 percent and the new coverage was 14 percent rounded down. He said it was an unfortunate use of the Board's time and the applicant's time. Acting Chair Margeson said the building coverage is 10 percent and a nonconforming use. Mr. Rossi said the change from the existing nonconformity was de minimus. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said there would be no impact on the safety or general wellbeing of the public in making the minor change in the lot coverage. He said substantial justice would be done because there would be no conceivable loss to the general public by replacing the current structure with the new structure, which is behind the main house, not visible from the road, and approximately the same size as the existing structure. He said granting the variances would not diminish the values of surrounding properties because there would be no real change of any substance to the current condition, and the values of the surrounding properties were based on the current condition of the property. Regarding the hardship, he said the applicant's representative pointed out that the lot is a sub-sized one and any change short of completely demolishing and eliminating the structure and replacing it with something else would be out of conformance. Mr. Rheume concurred and said the applicant made an excellent argument that the parcel is an SRB sized parcel, which calls for a depth of 100 feet. He said the parcel was 100'x100' and doesn't have the full 15,000 square feet that an SRB parcel would, but it's far more like an SRB property than an SRA one, and that allows the 20 percent coverage, which made sense for a parcel of that size. He said he felt bad that the resident had to go through that process just to change an

open deck to an enclosed porch with no impact on the zoning characteristics, noting that it cost the applicant time and money, and that he wished there were a better way.

*The motion passed unanimously, 7-0.*

- 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)

### **SPEAKING TO THE PETITION**

[Timestamp 14:00] The owner Avi Magidoff was present to review the petition. He said he wanted a car port because the driveway was 120 feet long and the City did not want to plow it because it was too narrow. He said the City also owned the south side of the property as a deed for snow removal for Pearson Street. He said it was an unusual situation because of the way the property was spaced and that he was at the end of a dead end street. He said the car port would be open and congestion would not be an issue. He said the closest buildings were 121 and 126 State Street and the church was 300 feet away. He said he would also remove 800 square feet of the asphalt driveway and convert it back to a natural state. He said the project would also allow him to convert his garage into a bedroom on the ground floor. He said there were no safety or water runoff issues and that the neighbors were in support. He reviewed the criteria.

[Timestamp 23:41] Mr. Rheume said he didn't see any indication on MapGeo that the City owned any portion of the applicant's property and asked what the basis was for that assertion. Mr. Magidoff said there was a deed for the City to be able to plow that part of the property and that it was also included in the church's deed. Mr. Rheume asked if the City had an easement. Mr. Magidoff said he didn't know. He pointed out on the map where the snow accumulation area was. Mr. Mattson asked why the applicant decided to have the car port on the side of the driveway closer to the side yard setback instead of closer to the house, which would have increased the side yard. Mr. Magidoff said he wasn't aware of that but that there was 19 feet from the edge of the stone wall to the edge of the property, and if he requested 12 feet, it would only give him a 7-ft variance instead of the 8.5 variance he requested. Mr. Mattson clarified that the new location of the car port would be the new end of the driveway and that Mr. Magidoff would not expect to be able to get past it. Mr. Magidoff agreed. Mr. Nies verified that the City had an easement and that it was registered at the Rocking ham County of Deeds.

Acting Chair Margeson opened the public hearing.

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

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

**DECISION OF THE BOARD**

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

[Timestamp 29:27] Mr. Mattson said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed use would not conflict with the explicit or implicit purpose of the ordinance and would not alter the essential characteristics of the neighborhood, threaten public health, safety, or welfare, or injure public rights. He said it was a minor request for an open car port that followed the purpose of the ordinance. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public or other individuals. He said the car port on the dead end street would be far away from any neighboring properties and would have a minimal visual change. He said granting the variance would not diminish the values of surrounding properties, noting that there had been no expert testimony to suggest otherwise. He said the applicant showed that other garages in the neighborhood had not been harmful to property values. He said literal enforcement of the ordinance would result in an unnecessary hardship because of the special conditions of the property that distinguished it from others. He said there was no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property, and the proposed use was a reasonable one. He said it was a reasonable request to have an open car port in a driveway, and the unique aspect of the property was that it was on a dead end street, with minimal street frontage, and the side yard butted up against a very large church property. He said the purpose of the side yard was to preserve light, and privacy would be maintained. Mr. Rheume agreed that the property was unique. He said it was listed as being on Pearson Street but he thought it was probably created for the paper street that was never completed and that the property was reconfigured at some time to be able to be built upon but went out to Pearson Street instead of the paper street. He said the easement helped in terms of any concerns with the neighboring property and that the structure requested was very modest. He said it might be possible to force it a bit farther away from the property line but thought there was nothing in the public purpose of the ordinance that indicated that it was worth putting the applicant through that. He said the proposal was reasonable and would be a positive contribution to the neighborhood. Acting Chair Margeson noted that the Board received 10 letters of support from the neighbors. Mr. Nies said he had a concern about whether access of emergency vehicles to the property would be restricted, but it was resolved by the fact that the car port would be set back 30 feet from the end of the street and there would be enough room for any vehicle to get through.

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

**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)

### **SPEAKING TO THE PETITION**

[Timestamp 35:10] Attorney Chris Mulligan was present on behalf of the applicants Patrick and Wendy Quinn and the owner Bruce Carll, who were also present along with Mr. Carll's attorney Colby Gamester. Attorney Mulligan reviewed the petition in detail, noting that the lot was created by a subdivision in 1918 and had been a standalone lot since then. He said it had not been merged voluntarily or involuntarily but was deficient by today's zoning standards. He said the only relief needed was 50 feet of frontage and under 6,200 sf of lot area and that any use of the lot would require the same relief. He noted that there was a fair amount of material submitted to the Board in opposition to the project but that a lot of it addressed matters that were outside the Board's jurisdiction. He said what was proposed was within the allowed building height and respected all required setbacks and would not set a precedent. Out of the 30 property owners in opposition, he said only five of those properties were fully compliant lots and only 10 had adequate frontage. He said the proposal met environmental factors and safety concerns. [Timestamp 43:03 ] Attorney Mulligan reviewed the criteria in detail. He also noted that some of the comments made in opposition had to do with the 3-story design, so he handed out a tax card for the 44 Melbourne Street property to the Board, a property owned by someone who was in opposition. He said it was a lot with 50 feet of frontage and almost the same lot size as the applicant's lot, with a full 3-story home and had been in place since 2004 yet had no negative effects on the neighborhood. He said the property owner had the right to develop the open space.

[Timestamp 50:28] Mr. Mannle said the 44 Melbourne Street house was built in 1917 and the addition to the third floor was done in 2004, but the zoning had changed since then. Mr. Rheaume said Attorney Mulligan had noted that Lot 233-54 had been an independent lot since it was created, and he asked if it had common ownership with Lot 233-55. Attorney Mulligan said that had been the case for a significant time. He said the lots had never been merged voluntarily by the owner or involuntarily by the City. Mr. Rossi asked how Attorney Mulligan knew that the 50-ft frontage of the property he referenced had no impact on the neighboring ones. Attorney Mulligan said the property values in that neighborhood had not gone down from the time the improvements were made. Mr. Rossi concluded that it was Attorney Mulligan's opinion that as long as the property values were going up, it didn't matter at what rate they went up. Attorney Mulligan said pegging property values was an art and not a science, and was always possible that property values would fluctuate depending on how development occurred, but he said the neighborhood had a significant amount of substandard lots by today's zoning and there was no evidence that any of those lots had a negative impact on surrounding property values or values in general in the vicinity.

Acting Chair Margeson opened the public hearing.

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



[Timestamp 54:21] Attorney Duncan MacCallum was present on behalf of Sheila Reardon of 105 Essex Street. He said he was against the proposal and also spoke for the 35 or so other residents in the vicinity who signed the statement in opposition. He said the applicant was telling less than the full story by calling the property a standalone lot. He said that lot and the one next to it were owned by the same owner and the two properties had been owned by the same family and treated as a single property for at least 60 years. He said the two properties combined were about the same size as most of the surrounding ones. He noted that both properties were conveyed by the same deed and it had always been the intention that the two properties would be for one unit.

William Windham of 57 Rutland Street said he did not oppose the petition and did not see how it would change the neighborhood's character much.

Sheila Reardon of 105 Essex Avenue said she was against the proposal. She said she bought her home in 2009 because she loved the environment of the quaint neighborhood. She said there was nothing like the proposed structure in the neighborhood. She said it would devalue her property and affect her privacy, light and air, and old trees would also be affected.

Kate Beckett of 24 Sheffield Road said she opposed the project; she said the applicant's backyard was not a big one and they wanted to put a 3-story building on it. She said her backyard got very little sun and that the project would block more sun and change how her family lived in the house.

Charles Cormier of 227 Melbourne Street said he agreed with everything Attorney Mulligan said. He said the applicant owned the property and had the right to develop it and he was in support.

Kelly Kahoe of 44 Melbourne Street said she was surprised the lot was even a buildable one and thought the 3-story structure would change the character of the neighborhood.

Mary Chavez of 80 Pine Street said she opposed the project because it was excessive and the disparity was striking. She asked what would happen to the existing home on that lot and whether another 3-story structure would be built. She said the structure would set a precedent.

Rose Sulley of 61 Sheffield Road said she was against the project. She said the total lot size would be 12,579 sf, which was about the median size of the abutters' properties. She said the variances if granted would allow a tiny lot with potentially 35 feet of structure with 50 feet of frontage.

Jim Prendergrast of 70 Sheffield Road she he was against the petition because the lot size, frontage and so on were inadequate.

Mike Wierbonics of 161 Essex Street said he was against the proposal, noting that the lot had been a common one for 60 years and putting a house there would change the neighborhood and remove some green space. He said the neighborhood had a mix of houses that were part of the character from those times and that the proposed house would look like a multi-family one.

Attorney Colby Gamester on behalf of the owners said Mr. Carll supported the application and knew the market and property very well. He said 0 Melbourne Street was a preexisting nonconforming lot of record and that the Carll family had paid two separate tax bills on each property. He said the zoning ordinance applied dimensional regulations to the underlying zoning district at large, which applied to every lot in that district. He said the property was not an outlier and that there were other 50'x100' lots in the area. He said it had enough room to build a single family structure that would still afford privacy between the lots. He said the common ownership was of no consequence and there was nothing stopping Mr. Carll from conveying one lot of the other lot because they were separate lots of record and could be conveyed separately.

Johanna Soris of 14 Sheffield Road said she was a direct abutter and opposed to the project. She compared Mr. Rheume's analysis at an August 2021 hearing of 0 Islington Street, where he said that the proposed structure was in keeping with the neighborhood's characteristics and would keep the rhythmic sense of Islington Street, but he said that if the proposal were on Melbourne Street, he would be more hesitant to approve it because the homes on Melbourne Street were considerably wider. She cited another example of a request for an enclosed porch that was denied because every other porch on the street was open. She said the proposed structure was three stories high and looked like a freestanding garage with a condo unit on top, and that there was no such structure in the immediate area. She said it would disrupt the rhythmic nature of the neighborhood.

Dan Freund of 37 Prospect Street said he was in support of the project because he felt that the property owner had a right to develop the property in a respectful but progressive manner.

Jocelyn Chavez said she was a local realtor who represented the buyers. She said a new home always improved the values of surrounding homes.

Travis Billingham said he was a real estate agent who represented the Carlls. He said the structure would fall within the zoning ordinance with the exception of the two variances requested. He noted that Mr. Carll had been paying taxes on the two properties and that his burden far outweighed any concerns of the neighborhood. He said the new home would improve the neighborhood.

No one else spoke, and Acting Chair Margeson opened the session for Second Time Speakers.

### **Second Time Speakers**

[Timestamp 1:30:36] Attorney MacCallum said the owners had always treated the two pieces of property as a single one and the backyard was always the backyard. He said that was consistent with the neighborhood's character of good-sized properties with single family homes and space in-between consisting of large side and back yards. He said if the variances were granted, there would be two buildings that are too big for the two side-by-side pieces of property, with no back yards, side yards, or front yards. He said it would be inconsistent with the spirit and purpose of the ordinance, which was to prevent overcrowding, and that the proposal should be denied.

Kelly Cioe of 44 Melbourne Street said aesthetics mattered. She said the neighborhood did not have a lot of garages, and if a townhouse style structure was put on top of a garage, it would be a big difference. She said her concern was that it would set a precedent.

Charles Cormier of 227 Melbourne St said a lot of the arguments were very subjective and that the owner had the right to build. He asked how character could be described and thought there was bad character everywhere that a neighbor couldn't or shouldn't control.

Johanna Soris of 14 Sheffield Road said the character of the neighborhood was the same way that it was decades ago.

Sheila Reardon of 105 Essex Avenue said the variances asked for were for the house to be built on less than half of what was required and that the structure would not fit in the neighborhood. She asked that the variances be denied so that the neighborhood could keep its beautiful character.

Attorney Mulligan said the suggestion that if the application were approved, the result would be a property that has no yards was completely false. He said the zoning ordinance regulates the exterior dimensions of buildings through setback, height, lot coverage, and open space requirements and that the applicant's proposal complied with all of those. He said the abutters did not like the proposed design and would prefer to see the lot remain underdeveloped because they enjoyed the open space. He said no matter what got proposed for the lot, it would require the same variances for whatever use and whatever design. He said it was like a textbook definition of hardship.

Attorney MacCallum said he rebutted that remark because the project did not comply with all the zoning restrictions, which were designed with a 15,000 sf plot in mind. He said the variance requests should be denied.

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

## **DISCUSSION OF THE BOARD**

[Timestamp 1:56:12] Mr. Mattson said if the lot wasn't already an existing one, he would not approve it, but it did exist and he was amazed that what was proposed was able to fit entirely within all the side yard setbacks and meet the proposed coverage. He said it came down to the undersized lot and whether anything can be done to it and how that applies to the hardship, particularly how the property can't be used in any reasonable way. Mr. Mannle said the Board had seen other applicants on the other side of Middle Road that had turn-of-the-century development plans and legitimate lots that were 50'x50' or 50'x80'. He said that would be a great argument if that's how the development proceeded and there were houses on each of those lots and they were separate lots. He said the current zoning map didn't show anything like that except for a few exceptions for the Daniels Park's development to give that argument validity. He said the Board approved applications as presented, which included the design, and he thought the proposed dwelling was incongruent with the neighborhood. Mr. Rossi said the comments for and against had been insightful and the

attorneys' arguments on both sides were well framed. He said the Board's task was to weigh opposing aspects of the case and the merits on either side of it and come up with a fair balance to get to a decision. He said he was respectful of individual property rights, the tax history, the family's investment and their right to monetize it but on the other hand, he said zoning exists and counterbalances the unabridged property rights that one might want in the more libertarian viewpoint of the world and that the zoning ordinance ensured that whatever was done with the property fit in with the objectives of the City Council. He said there was the perpetual issue of what is the essential characteristics of a neighborhood and how it's defined. He said there were somewhat subjective elements of judgment that the Board had to make, and he thought that the Board was sometimes advised that the only thing they could consider in regard to the essential characteristics of the neighborhood was the intended use. He said in this case, it's a single family use but he thought there was legitimate consideration to be had around the density and objective of the SRB zoning, which is to develop low-to-medium densities of single family residences with one to three residences per acre. He said the applicant's property had a density that was not consistent with the purpose of SRB zoning, and he also felt that it was inconsistent with the character of the area as it was developed. He said the lots were created in 1918 but buildings looked a lot different then and that it was interesting to note most of the relationship that exists between how buildings and expectations were in 1918 and 2024. He said people weren't expecting to max out the lots back then, so he thought current standards should be applied.

Mr. Rheume said he was quoted and felt that the project had some similarities to a previous application a few years ago for Islington Street. He said he felt at that time that it was a more simple ask and had much more of a rhythm, but in the end what was built was in keeping with the micro neighborhood. He further explained it and said the applicant's area was all SRB and not a transitional neighborhood. He said people back in the day bought up two lots and made their homestead larger, so a lot of the lots were substandard but they were more consistent in regard to street frontage, lot depth and so on and still not fully compliant. He disagreed with the applicant's representative that there was no other usable thing that could be done with the lot. He said it would require merging the two lots but that they could have a higher structure on it, like a garage with an ADU. He said because the proposed structure was on a substantially large lot compared to the SRB, there was only one direction to go and that was up, which was something that would stand out as being different in the neighborhood. He said he believed it was out of character with the neighborhood as it was currently configured and thought the applicant could do other things, but for the lot to become buildable, it would create something that didn't look like other homes in the neighborhood, and he thought that was substantial enough to say that it wasn't meeting the criteria. Mr. Nies said one of the issues is what is the essential character of the neighborhood. He said it was a neighborhood that was developed over a century or so ago, with homes built in 1917, several in the 1950s, and one built recently. He said he looked at the proposed structure as a home that was designed in the 2020s and didn't think it was the Board's mandate to judge how a property owner handled individual lots. He said it would be a different story if the City thought the two lots should be combined. He said the property owner had property rights, and he thought his proposal met all the requirements of the zoning ordinance. He said he wasn't sure that the lot could be used effectively without the variances proposed, at least not for a single family residence that was the

main use of properties in the area. Acting Chair Margeson said the application was a different one and the lot was a separate lot. She said the lot was substandard according to the zoning requirements and the proposal fit within the building envelope. She said the applicant met all the other setback requirements and could not help the things they did not meet. She said she wished it were a different design but felt that it was an improvement to the lot and, without zoning relief, the applicant would not be able to improve the lot in accordance with their ownership rights.

#### **DECISION OF THE BOARD** [Timestamp 2:14:30]

*Mr. Mannle moved to **deny** the petition, seconded by Mr. Rossi.*

Mr. Mannle said he made the motion based on Criteria 10.233.21, not being contrary to the public interest. He said the public interest was clear based on how many neighbors showed up that evening. Mr. Rossi said he supported the motion because he thought that the essential character of the neighborhood is partially defined by the density of development, and placing a home on that lot would change the density of development in the immediate neighborhood and therefore change the essential character of the neighborhood and fail that criterion. Mr. Nies said it wasn't clear to him that the property dramatically changed the density of the area because the area already probably exceeds the density proposed as part of the area and he didn't think the applicant's property alone tipped the scale into exceeding it. Mr. Mattson said the lot already exists and the proposed home is entirely within the setbacks and meets the open coverage requirements, so in terms of preserving light, air and privacy, that would be satisfied. He said there were other lots in the neighborhood of that size and to say that the home would alter the essential character of the neighborhood was a higher bar. Acting Chair Margeson said that being contrary to the public interest was one of the criteria considered in conjunction with the spirit and intent and it really meant that the spirit and intention of the ordinance provision is being respected through the variance request, and whether or not it would be contrary to the spirit and intent of the ordinance, it would substantially alter the essential characteristics of the neighborhood and the public's health, safety, and welfare.

*The motion **failed** by a vote of 2-5, with Mr. Mattson, Mr. Rheaume, Ms. Record, Mr. Nies, and Acting Chair Margeson voting in opposition.*

[Timestamp 2:22:47] *Mr. Nies moved to **grant** the variances for the petition as presented and advertised, with the following **condition**:*

- *The design and orientation of the home and driveway may change as a result of the building permit review and approval.*

*Mr. Mattson seconded.*

Mr. Nies said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance, and would not alter the essential characteristics of the neighborhood. He said the structure would be a single family home, like the others in the neighborhood, and there were various designs that were developed over a century. He said there were some similar sized lots in the neighborhood in terms of overall square footage, and he did not believe there was any real

threat to the public's health, safety and welfare. He said all the setbacks would be met. He said granting the variances would observe the spirit of the ordinance and keep it a single family residential area. He said substantial justice would be done because without the approved variances, the property would be basically unusable for its primary use as a residence. He said the loss to the property owner would not be outweighed by any benefit to the public if the variance were denied. He said the values of surrounding properties would not be diminished, noting that there was little evidence presented that would prove that granting the variances would do so and that two realtors said that was unlikely. Regarding the hardship, he said the special condition of the lot was that it was a small lot for the zoning area, and without the variances, it could not be used to put in a single family residence. He said the proposed structure fit, and owing to the special conditions of the property, the lot could not be reasonably used in strict conformance with the ordinance. Mr. Mattson concurred and had nothing to add.

Mr. Mannle said he would not support the motion because there were very few lots in the neighborhood that had the same design. He said the applicant could use the lot in conjunction with the property before, which was how it had been used since it was purchased, and having a single family house with a decent sized backyard would be more congruent with the neighborhood instead of going up. Mr. Rheume said he would support the motion because it came down to a legal standard, which he further explained. He said the parcel was small relative to the requirements of the zoning. Mr. Rossi said the expectation would be that since the area was intentionally zoned SRB, in due course it would become more and more conforming with the requirements outlined in SRB for lot sizes and density, and he thought the Board was missing the opportunity to help move the area in the intended direction for SRB. He said there was an overarching desire to see the purpose of SRB as articulated in the PCO fulfilled, and he felt that the Board wasn't doing that.

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

**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)

## **SPEAKING TO THE PETITION**

[Timestamp 2:31:40] Attorney Chris Mulligan was present on behalf of the applicant, along with project engineer Neil Hansen. He said Ethos Veterinary Health wanted to install a fence dog run in front of the property that the PDA considered to be an accessory use and an accessory structure. He said they also needed relief from the 70-ft setback. He reviewed the criteria.

[Timestamp 2:36:55] Mr. Rheume asked what exact relief was needed. Attorney Mulligan said the PDA took exception that the use is an accessory use, and an accessory use between the primary building and the right of way is not permitted, so they needed the relief. He said it was essentially a dog run. Mr. Rheume concluded that the applicant needed to put the accessory use in the front yard, a fence in the front yard, and the fence would be closer to the street than allowed. He asked if the client would have the entire structure renovated to their purpose or if there were other tenants in the building. Mr. Hansen said Ethos occupied the entire structure. Mr. Rheume said the applicant noted that one of the advantages of putting it in the front yard was that it would be outside the wetland buffer, but on the GeoMap it appeared that half of the front building is within the 100-ft buffer. Mr. Hansen explained how the 100-ft wetland buffer followed the south and east walls of the building and ran to where an island was, so the entire building was outside the 100-ft buffer and the remainder of the parking lot was in the wetland buffer. He explained why he thought that the wetland shown on MapGeo was outdated.

Acting Chair Margeson opened the public hearing.

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

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

### **DECISION OF THE BOARD**

*Mr. Mattson moved to make a recommendation to the PDA to approve the variances as presented, seconded by Mr. Rheume.*

Mr. Mattson said no adverse effect or diminution of values of surrounding properties would be suffered because it was in the commercial district and the actual proposal barely impedes on the front yard setback and is just a fenced-in area for walking dogs, so there is no reason to believe it would affect the property values. He said granting the variance would be a benefit to the public interest and would allow the building's occupant to better serve the public with this use. He said denial of the variance would result in unnecessary hardship to the person seeking it. He said the property is surrounded by a wetland buffer and the building exists as it does, so the mild encroachment on the front yard setback is required. He said substantial justice would be done because the benefit to the applicant is not outweighed by any potential harm to the general public, and the proposed use is not contrary to the spirit of the zoning rule. He said it is a veterinary clinic proposing an area to walk dogs that are in and out of the ICU, so it is not contrary to the spirit. Mr. Rheume said it was a little unusual, noting that it is an appropriate accessory need to the veterinary clinic and ideally would be situated on the side of the building, but he thought the applicant made a sufficient argument that the front is the only location outside of the wetland buffer where that activity could take place. He said the spirit of the ordinance is to try and keep fences along the property line. He said it would look a little different, but the proposed fence was a decorative one and would look like an architectural element instead of something to prevent people from

trespassing into the area. He said it is consistent with what the spirit is trying to accomplish, which is keeping obvious fenced-in areas from looking like a junk yard in the Pease Development Area.

*The motion passed unanimously, 7-0.*

**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)

### **SPEAKING TO THE PETITION**

[Timestamp 2:45:53] The co-owner Clark McDermott was present to speak to the petition. He said the variance was needed to restore the 1800s property back to residential use. He said it had been difficult since COVID to rent office space downtown since a lot of people were working from home. He reviewed the criteria and said they would be met.

Mr. Rheame asked what the current status of the commercial tenants was. Mr. McDermott said they had four commercial tenants that included the second floor. Mr. Rheame asked if Mr. McDermott was concerned about keeping the tenants or having a hard time refilling the space. Mr. McDermott said commercial square footage value was a lot lower than residential, and the way the building was laid out presented challenges. In response to further questions from Mr. Rheame, Mr. McDermott said their one parking space was on his property and the neighboring building at 78-86 Bow Street was all residential. Mr. Nies asked when the property was last used as a residential one, and Mr. McDermott said it was converted to office space in the 1980s.

Acting Chair Margeson opened the public hearing.

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

Erica Vitas said she was a realtor and represented Mr. McDermott and his father. She said she and had run comparisons on commercial and residential properties and that it was very clear that commercial properties were suffering, so she felt that the best use for the building was residential.

No one else spoke, and Acting Chair Margeson 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. Mannle.*

[Timestamp 2:53:53] Mr. Rheume said on face value, it would seem to be potentially a concern because the CD4 District was set up to create a feel to the downtown, but he thought the applicant made a good argument that most people post-COVID were working from home, and having an office in a restricted structure that was set up as a family residence made sense back in the 1980s but now there was a trend backwards. He said the CD4 was set up to be able to affect new construction, so Portsmouth was seeing lots of new construction, especially close to the applicant's property. He said the point was to activate the streetscape but that it would create more competition for the less desirable property in the office/commercial realm and would only exacerbate it as the downtown area continued to be developed. He said the Board had seen other buildings converted back to residential use and thought it was a reasonable request. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the neighborhood was like a micro hood and that Chapel Street had the feel of a more residential area than other areas of the Downtown Overlay District. He said it was in keeping with the overall character and was clearly an original single family home that was awkwardly converted to an office space and was no longer a saleable point anymore. He said substantial justice would be done because of the benefit to the applicant and there was no concern that the public going past the building would question why the building didn't have offices. He said granting the variances would not diminish the values of surrounding properties, noting that the conversion would not negatively impact all the new properties being developed in full compliance with the zoning. He also noted that it was sort of hidden back and not really in a walkable area. He said the hardship was that the lot was tiny and had an old structure in an area where the zoning thought of new structures as repurposing many structures that traditionally had a business front to them. He said in this case, the building looked like a single family home and completely different than anything around it in a micro hood with residential uses, and he believed it was a reasonable use of the property to be completely residential. Mr. Mannle concurred and had nothing to add.

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

*Mr. Rheume moved to suspend the 10:00 rule, seconded by Mr. Rossi. The motion **passed** unanimously 7-0.*

**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)

## **SPEAKING TO THE PETITION**

[Timestamp 3:01:29] The owner Scott Rafferty was present to review the petition. He said he had a business that used to be residential but there was a condo conversion and the two downstairs units were commercial, with one having a storefront. He said the other unit would fit a studio or one bedroom residential unit. He said one of the issues was that the building access to the subject unit shared an entrance with an upstairs residential unit. He said people couldn't find the office because it looked residential. He said he moved his business to 369A Islington Street and used the other unit as a storage unit, so he thought it was better to turn it into residential. He said the parking situation was also difficult but that going residential would require only one spot. He reviewed the criteria.

[Timestamp 3:06:06] Mr. Rheume said the Staff Memo indicated that the applicant was granted a variance in 2011 equal to what was asked now. Mr. Rafferty said he had only owned the building for five years. He said the market in 2011 changed since COVID and most people worked from home. Mr. Rheume asked if there were other owners for the other three units. Mr. Rafferty said there was one owner for each of the other three units. Mr. Nies said the applicant's letter asked for a variance for parking but that he didn't see it listed. Ms. Casella said normally it would be a Conditional Use Permit but that it wasn't needed in this case because the proposed use is less intensive on the parking side, so the parking demand would go down and a change in parking for a land use was not required.

Acting Chair Margeson opened the public hearing.

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

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

### **DECISION OF THE BOARD**

*Mr. Rheume moved to **grant** the variance for the petition, with the following **condition**:*

- *That the application is approved for 1,147 square feet of lot area per dwelling unit out and not the 918 square feet as advertised and indicated in the Staff Memo.*

*Mr. Nies seconded.*

[Timestamp 3:09:04] Mr. Rheume said the applicant made a good case for converting the business to a residential use. He said the unit really looked like a residential one, whereas the one with the storefront looked a lot more commercial. He said it made more sense to make the unit residential because more people worked from home, and it was an allowed use in the zone. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said there was a strong mix of commercial and residential up and down Islington Street that was allowed by the zoning, and the change in use would be in keeping with that and would not change the streetscape. He said substantial justice would be done because nothing would outweigh the public interest and it would be consistent with the rest of the neighborhood. He said most people would have no idea that the unit went from being a commercial space to a residential one. He said granting the variance would not diminish the values of surrounding properties because

there would be no external changes and the building would look the same, and it would be consistent with the requirements of the zoning and other buildings in the neighborhood. Regarding hardship, he said one of the special conditions of the property was that it had limited parking, and the conversion would improve that situation. He said the building had been back and forth a few times between residential and commercial use. He said the residential use was a reasonable one because the building has unique characteristics that did not indicate that it's a commercial property. Mr. Nies concurred and had nothing to add.

*The motion passed unanimously, 7-0.*

**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)

### **SPEAKING TO THE PETITION**

[Timestamp 3:13:37] Architect Anne Whitney was present on behalf of the applicant. She said they wanted to rebuilt the garage that was tucked int a corner. She said they were asking for zero setbacks but had a variety between .5 and .8 and would have a surveyor reset those points. She said the garage would be converted into a single family residence that would get rid of the existing ell structure. She said the garage was in poor condition and the grade sloped back, which would be remedied by the new structure. She said they would also create an entrance on the driveway side and put a small roof structure over it. She reviewed the criteria.

There were no questions. Acting Chair Margeson opened the public hearing.

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

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

### **DECISION OF THE BOARD**

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

[Timestamp 3:18:29] Mr. Nies said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed use would not conflict with the ordinance nor alter the essential character of the neighborhood, nor threaten the public's health, safety, or welfare or injure other public rights. He said it would do substantial justice because there would be no benefit to the public that would result in denying the variance and that it would be detrimental to the property owner. He said granting the variances would not diminish the values of surrounding properties and thought they might be improved because the decrepit garage would be replaced by a new structure. He said the special conditions of the property were that the lot was very small and there was no other location to put a garage. He noted that the applicant pointed out that the lot was tiny but would be more compliant with the ordinance by the change. Mr. Rheume said he would normally be concerned with zero foot lot line setbacks, even in the south end, but it was a very small property and there was an existing structure that would be rebuilt without increasing its size in any substantial way. He said the applicant was trying to improve the overall conditions of the property and noted that there were lots of other outbuildings tucked into corners throughout the general area, so the project was in keeping with the characteristics of the neighborhood. He said it would not affect light and air negatively.

*The motion passed unanimously, 7-0.*

**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)

### **SPEAKING TO THE PETITION**

[Timestamp 3:22:28] The applicant Ken Racicot was present and said he wanted to build a 10'x20' shed closer to the fence at five feet away from the property line. He reviewed the criteria.

The Board had no questions. Acting Chair Margeson opened the public hearing.

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

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

### **DECISION OF THE BOARD**

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

[Timestamp 3:26:30] Mr. Rheume said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said there were several outbuildings in the

neighborhood and that the applicant had a modest home on a modest parcel and simply wanted to have the same conveniences that some of his neighbors enjoyed, so it was consistent with the neighborhood. He said the applicant only needed under nine feet of setback, and he was asking to be four feet closer at five feet, so it would not make a substantial difference. He said it was a modest shed and not a taller structure, so it would have only a modest impact in terms of light and air. He said substantial justice would be done because the shed would be hidden in the back yard and consistent with the neighborhood. He said there was no general public purpose that would outweigh the applicant's desire to preserve the little bit of backyard he had. He said granting the variance would not diminish the values of surrounding properties because it was a good quality shed and would not have negative impacts on surrounding properties and might even improve them a bit. Relating to hardship, he said the property was unique in that it had a pork chop shape to it, which restricted the area in the backyard where an outbuilding accessory structure could be placed. He said the applicant was trying to preserve as much of the back area as possible yet still have the convenience of a shed. He said it was a reasonable use that was consistent with the neighborhood and was allowed by the ordinance. Mr. Mattson concurred and had nothing to add.

*The motion passed unanimously, 7-0.*

**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)

### **SPEAKING TO THE PETITION**

[Timestamp 3:30:00] The applicant Lindsay Floryan Collier was present and said she wanted to replace an existing 6-ft fence with an 8-ft one. She said the old fence separating both properties blew down in a storm. She said the 403 and 481 Dennett Street owners were in support because it would increase their privacy as well as hers. She reviewed the criteria.

[Timestamp 3:32:49] Acting Chair Margeson said the packet indicated that only the yellow part of the fence would be replaced. Ms. Collier said there would be five panels of 8-ft vinyl fence in the back that would match the fence on the other side of the yard. Acting Chair Margeson asked whether the fence extended around the property. Ms. Collier said there was a retaining wall on the back side of the property, so she would replace the six panels separating the 482 and 491 Dennett Street properties. She said it would not be visible to anyone from the street.

Acting Chair Margeson opened the public hearing.

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

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

**DECISION OF THE BOARD**

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

Mr. Rossi said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the general intention of the fence ordinance and height restrictions was to prevent presenting a closed-off appearance from the street view into various properties. He said since the fence ran in-between two properties and was not visible from the street, it would not conflict with the spirit of the ordinance and would not be contrary to the public interest because it would not really be visible from the street. He said granting the variance would do substantial justice because there would be no real impact or loss to the public by approving the variance, and the loss to the applicant would be the loss of the opportunity to maintain privacy and separation between her property and the adjacent one. He said it would not diminish the values of surrounding properties. He said normally he would be concerned about an 8-ft fence separating the two properties, except that the neighbor approved of it, so he did not see any diminution of property values. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship because the property has special conditions that distinguish it from others in the area due to the slope and nature of the backyards. He said a higher than 6-ft fence was required in order to maintain the desired level of privacy and containment of the animals between yards. Ms. Record concurred and had nothing to add.

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

**III. OTHER BUSINESS**

There was no other business discussed.

**IV. ADJOURNMENT**

The meeting adjourned at 10:37 p.m.

Respectfully submitted,

Joann Breault  
BOA Recording Secretary

## II. NEW BUSINESS

- A. The request of **Martha and Brian Ratay (Owners)**, for property located at **0 Broad Street** whereas relief is needed to construct a primary structure and detached garage on a vacant lot which requires the following: 1 ) Variance from Section 10.521 to allow a) 6,101 square feet of lot area where 7,500 is required, b) 6,101 square feet of lot area per dwelling unit where 7,500 is required, c) 60 feet of street frontage where 100 feet are required, d) 31% building coverage where 25% is allowed, e) 5 foot right side yard where 10 feet are required, and f) 2 foot rear yard where 20 feet are required. Said property is located on Assessor Map 221 Lot 96 and lies within the General Residence A (GRA) District. (LU-24-119)

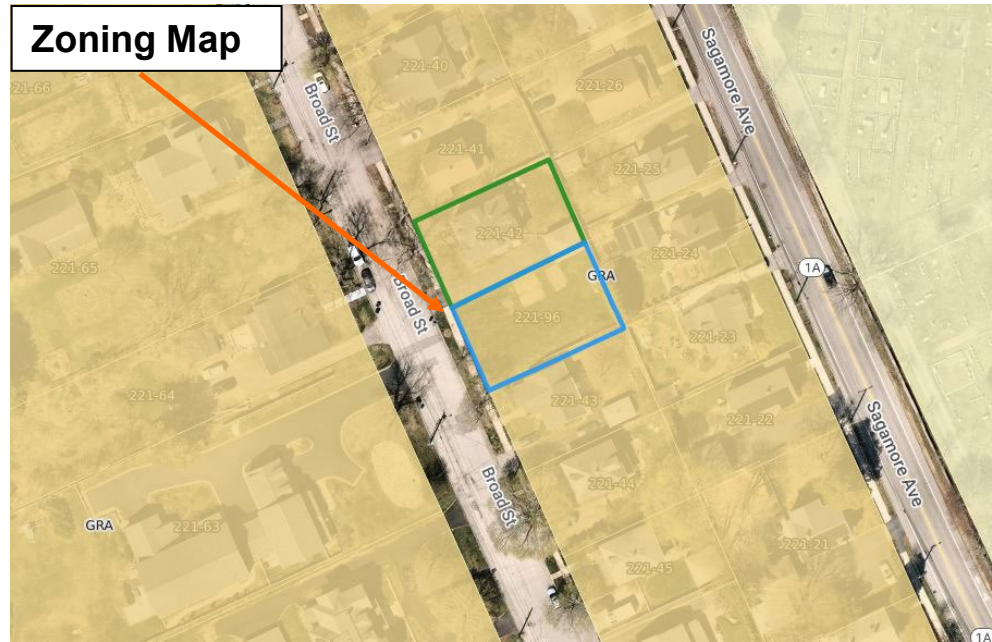
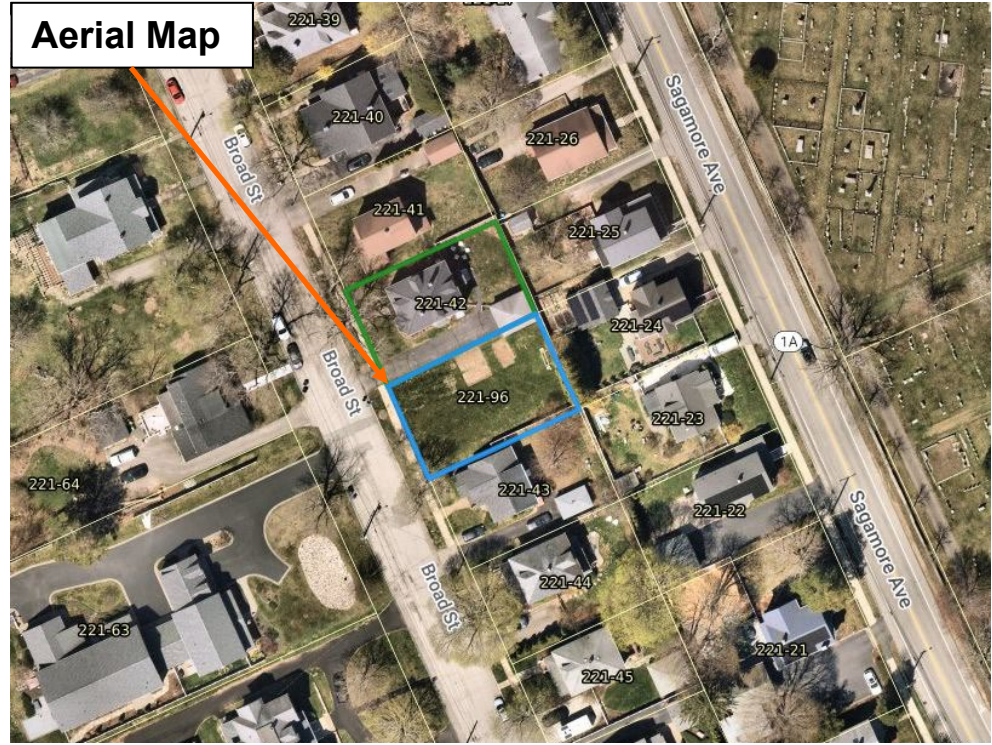
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant Lot	Construct a primary structure and detached garage	Primarily residential
<u>Lot area (sq. ft.):</u>	6,101	6,101	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	n/a	6,101	7,500 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Street Frontage (ft.):</u>	60	60	100 min.
<u>Front Yard (ft.):</u>	n/a	>15	15 min.
<u>Right Yard (ft.):</u>	n/a	House:>10 Proposed Garage: 5	10 min.
<u>Left Yard (ft.):</u>	Existing Garage: 0	House:10 Proposed Garage:>10 Existing Garage: 0	10
<u>Rear Yard (ft.):</u>	Existing Garage: 3.75	House:>20 Proposed Garage:2 Existing Garage: 3.75	20 min.
<u>Height (ft.):</u>	n/a	32.3	35 max.
<u>Building Coverage (%):</u>	2	31	25 max.
<u>Open Space Coverage (%):</u>	100	>30	30 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	n/a	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 relief to construct a primary structure and a detached garage on the existing vacant property. The existing detached garage for the adjacent property (457 Broad St, also owned by the applicants), currently sits 5.5 feet onto the subject property. This is an existing non-conformity, and that portion of the garage (5.5 feet by 20 feet) is included in the existing and proposed building coverage calculations as well as represented in existing and proposed left and rear yards.

## 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.

Brian & Martha Ratay  
LU-24-119 Build Application  
Variance Narrative & Supporting Documentation  
Assessor Map & Lot 0221-0096-0000  
Broad Street

We are Brian and Martha Ratay, and we are submitting this application to the Board of Adjustments.

We have resided in Portsmouth for over 25 years, collectively living on McDonough St, Middle Road, Union Street, Willard Ave and most recent 457 Broad Street. We have 2 children, one who is 13 in 8<sup>th</sup> grade and the other is 19 and headed to University in August. Both sets of our aging parents live in the seacoast, one in Elwin Park and other in Greenland. We are putting forth this application as we would like to build a smaller single-family residence that will also allow for both of us to work remotely from home and have the flexibility to convert space for our aging parents to reside under our future care. We love all of Portsmouth and cherish its uniqueness and history. We have gone through countless design options, modified ideas and attempted to be creative in what we propose to the Board. We have considered the feeling of our neighborhood, our neighbors, the history and aesthetic of Portsmouth and longevity given our own ages and that of our parents and children.

Our application is for 0 Broad Street to build a Single Residential Unit on a vacant and undersized lot which requires the following:

1. A variance from the City of Portsmouth Zoning Ordinance, section 10.521 to allow:
  - a. 6101 sq ft of lot area where 7500 sq ft are required
  - b. 6101 sq ft of lot area per dwelling unit where 7500 are required
  - c. 60 ft of frontage where 100 ft are required
  - d. 31% lot coverage where 25% is allowed
  - e. 5 ft side and 2 ft rear setbacks for the garage where 10 ft and 20 ft are required respectively

Said property is located on assessor map and lot 0221-0096-0000 and lies within General Residence A (GRA) which provides areas for single family, two family and multifamily dwellings, with appropriate accessory uses.

We are requesting relief to build a single-family dwelling on this existing empty lot within the General Residence A (GRA) Zone. The Lot was created and has been taxed as a stand-alone lot by the city. The Lot has never been merged involuntary or involuntary by the city, but it is deficient by today's zoning standards, as we have 60 ft of frontage where 100 is required and 6101 sq ft of lot area where 7,500 is required and 6101 sq ft of lot area where 7,500 is required per dwelling unit. We cannot under any circumstances comply with those requirements as the lot is not large enough. Any use of this lot requires the exact same relief, effectively there are no other uses in the table of uses in the GRA zone other than a single-family residence that would be appropriate for this lot.

We are requesting additional relief for 31% lot coverage in part, because there is a pre-existing structure from lot 0221-0042-0000 that sits partially over the property line on 0 Broad St (Lot 0221-0096-0000) adding an additional 110 sq ft of lot coverage. This preexisting structure pushes the proposed lot coverage for 0 Broad St. from 28% to 31%.

Lastly, we are requesting relief on the rear and side setback for the proposed garage. The proposed garage has setbacks of 5 ft from the right side and 2 ft from the rear, where 10ft and 20ft are required respectively. This proposed garage should not diminish the value of other homes on Broad St. or obstruct views as the proposed garage is consistent in footprint with other homes on this side of Broad St. and many that abut on Sagamore Ave. Most homes have a garage closer than 5 ft to the

existing property lines. The back right corner of the 0 Broad St. lot has a 6ft privacy fence in addition to 6x45 ft Arborvitae Trees along the rear. Also, regarding the rear relief requested, there are 36" wide, open and rising stairs beginning at the left garage side and rising around back, up to the rear door. While these are within the 5 ft zone we originally sought, they are only partially so and are in fact within a 30' x 45' space of sheer and dense Arborvitae. We ask the Board to view the pics of the lot we supplied and apply extra consideration on this point/rear placement. We were very intentional in evaluating plans and design to ensure that the proposed single-family residence and garage were in keeping with the styles and lay out of other homes on the street. We were also very conscious of privacy, including window placement. Please note that the proposed single-family home was designed to be dimensional compliant with all current setbacks and the proposed garage, although non-compliance as proposed, is similar to most homes on this side of Broad Street.

In addition, we would like to share with the Board, that for the renovations and new build of our last 3 homes in Portsmouth, we have never requested a variance. We do not make this request lightly and have considered this project diligently since January of 2024. This is a four-square designed traditional home: 2 floors, 3 bedrooms, approx. 2,200-2,400 with a 1 car garage. Our hope is that the Board will agree, that our basic intent and requested relief, both, are reasonable. While the term modest may differ in exact definition, we are in fact asking to build a modest home and garage, in a space where the same exist and with plans both city and neighbors can support. Additionally, given that this is our first variance request, we also completed many work sessions with different representatives for the city, in advance of this application and hearing: Peter Stich in Planning, Stephanie Casella and Jillian Harris in BOA and Shanti Wolph in Inspections. With their suggestions, we made several alterations and adjustments, including the garage's current location.

We've included a bird's eye view of the homes on our side of Broad Street and Sagamore St, showcasing the numerous garages, side structures and existing setbacks, on over half the neighboring homes, similar lot sizes as 0 Broad St.

Lastly and with regard to the deeded front setback of 20', we have been counseled by the Derek R. Durbin, whom we believe the Board has worked with on many occasions. We discussed the project and deed in depth. He has counseled us that the city may, in fact, only require the existing city setback of 15'. The city has no responsibility or ability to enforce the deed. *That said*, we **are** honoring the deeded setback of 20'. On this issue we also discussed the current city exception of structures under 18" within the existing 15' setback. Derek has confirmed the same logic should be applied to the deeded setback. While not an affidavit, this is our council and we can provide testimony or letter of support, if absolutely necessary.

In addition to the above, and relative to the City Zoning Ordinance, section 10.233.20, our responses to the criteria and rationale for variance authorization are as follows:

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

The requested relief is not contrary to the public interest, as the variance proposal for the property does not impact the health, safety and/or welfare of the public. Also, the visual environment and natural resources are preserved for both the public and the city. The proposed single-family residence and one car garage is consistent with over half the lots on the same side of the Broad

Street which are identical in lot size and frontage, therefore the variance to build a single-family residence and one car garage in the rear corner of the lot are consistent with surrounding homes and the neighborhood. Lastly, we also require the full surface area of the garage roof (hence it's single plane) to adjunct our home roof area for a 2-part solar array, to fully power our new home. This use of renewable energy is also in the best interest of the town and state due to environmental impact and increasing grid demands.

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

The requested relief remains in the spirit of the Ordinance, due to the fact that the proposed single-family residence is within the current setback (one car garage is not), and the lot coverage percentage is minimally over 25% by only 1.5% (preexisting structure from adjacent property sits over the property line). To maintain privacy there is a 6' cedar privacy fence along the rear and right side of the property line, 6x45 ft Arborvitae Trees along the backlot line and a large Japanese Maple on the side lot, which are on either adjacent neighbors' property and both of which grow well over our current lot lines, in the relief requested zone. We mutually maintain these trees with our neighbors. Because of this, the proposed garage will not interfere with the adjoining property's views, property use and privacy. The proposed single-family residence and one car garage were specifically designed to minimally infringe with specific angles, door placement, structure placement and smaller privacy windows on the East side.

**10.233.23 Substantial justice will be done:**

The requested relief will provide substantial justice as this lot has been taxed as a stand-alone lot by the city and the lot has never been merged involuntary or involuntary by the city, but the lot is deficient by today's zoning standards. We cannot under any circumstances comply with those requirements as the lot is not large enough. Any use of this lot requires the exact same relief, effectively there are no other uses in the table of uses in the GRA zone other than a single-family residence that would be appropriate for this lot. Without relief, injustice and inequity will be done.

**10.233.24 The values of the surrounding properties will not be diminished:**

The relief requested does not diminish surrounding properties as the proposed single-family residence and one car garage are consistent with over half the homes on the same side of Broad Street. Each lot on the same side of the street are identical in lot size and frontage so adding a new structure to a lot which is of identical size will be in keeping with the aesthetic and layout of the neighborhood and will not diminish properties in the surrounding neighborhood.

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

Without the relief requested literal enforcement would result in unnecessary hardship. The special conditions of the property do not meet the current requirements as the lot is not large enough. Under no circumstances can said property comply with the requirements. Any use of this property requires the exact same relief, effectively there are no other uses in the table of uses in the GRA zone other than a single-family residence that would be appropriate for this lot and a variance is therefore necessary to enable a reasonable use of it. Without relief to build a single-family residence on this lot we will be placed in a position of unnecessary hardship.



N/T  
WRENTHAM E. WILSON  
CARL E. WILSON  
TAX MAP 221 LOT 26  
R.C.D. BOOK 524 PAGE 1338

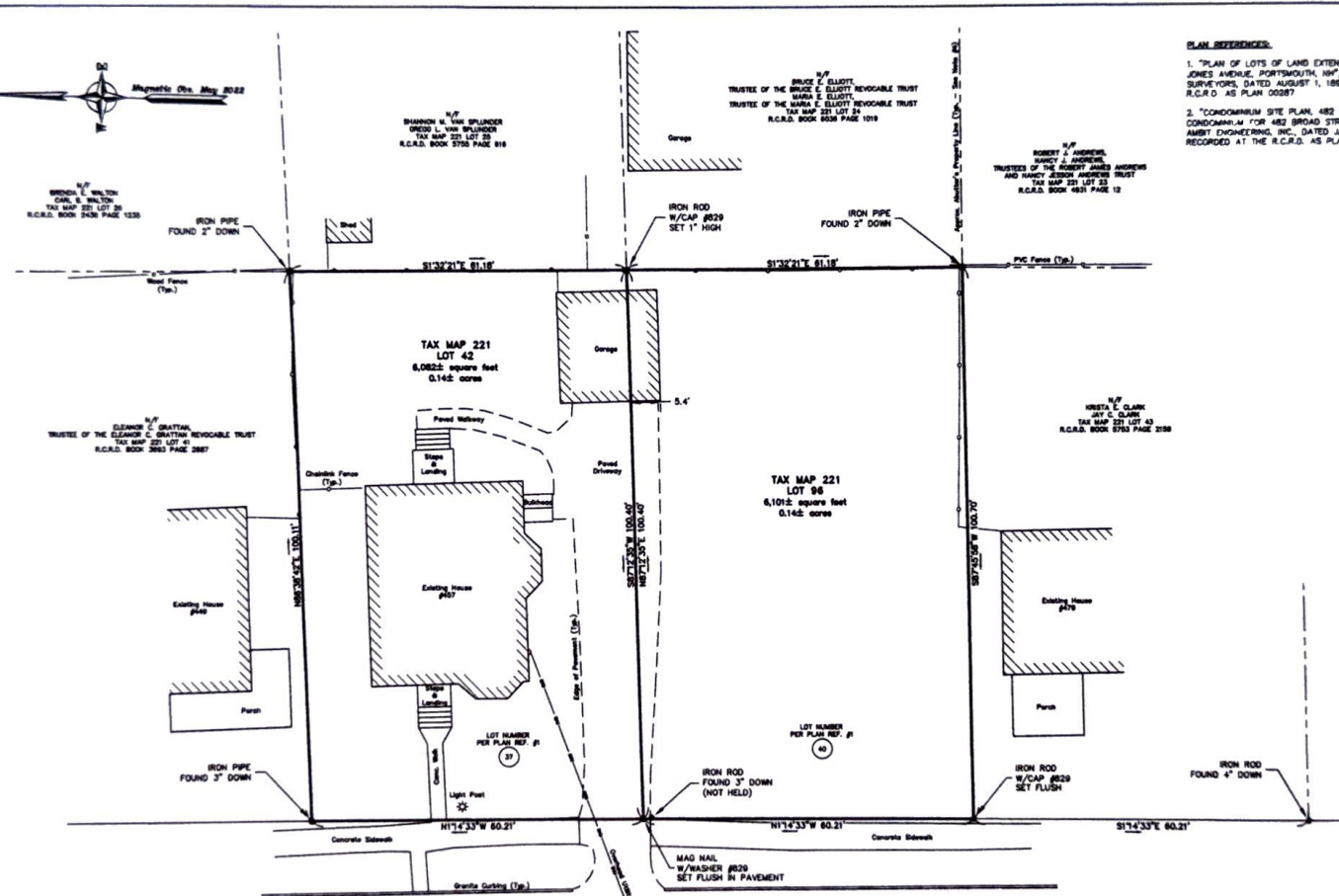
N/T  
SHANNON M. VAN SPLINDER  
DREW L. VAN SPLINDER  
TAX MAP 221 LOT 25  
R.C.D. BOOK 5750 PAGE 816

N/T  
BRUCE E. ELLIOTT  
TRUSTEE OF THE BRUCE E. ELLIOTT REVOCABLE TRUST  
MARIA E. ELLIOTT  
TRUSTEE OF THE MARIA E. ELLIOTT REVOCABLE TRUST  
TAX MAP 221 LOT 25  
R.C.D. BOOK 5258 PAGE 1019

N/T  
ROBERT S. ANDREW  
JANEY T. ANDREW  
TRUSTEES OF THE ROBERT JAMES ANDREW  
AND JANEY T. ANDREW TRUST  
TAX MAP 221 LOT 23  
R.C.D. BOOK 4821 PAGE 12

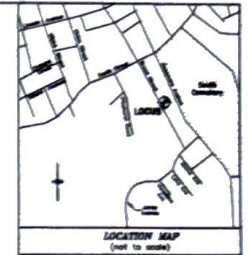
N/T  
WESLEY D. CLARK  
BY C. CLARK  
TAX MAP 221 LOT 43  
R.C.D. BOOK 5753 PAGE 2158

N/T  
ELEANOR C. BRATTAN  
TRUSTEE OF THE ELEANOR C. BRATTAN REVOCABLE TRUST  
TAX MAP 221 LOT 41  
R.C.D. BOOK 3853 PAGE 2887



**PLAN REFERENCES:**

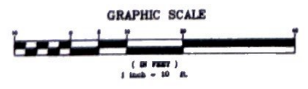
- "PLAN OF LOTS OF LAND EXTENDING FROM SOUTH ROAD TO JONES AVENUE, PORTSMOUTH, NH", PREPARED BY A.C. HOYT, SURVEYORS, DATED AUGUST 1, 1893, AND RECORDED AT THE R.C.D. AS PLAN 00287.
- "CONDOMINIUM SITE PLAN, 482 BROAD STREET, CONDOMINIUM FOR 482 BROAD STREET, L.L.C.", PREPARED BY AMBT ENGINEERING, INC., DATED JANUARY 2018, AND RECORDED AT THE R.C.D. AS PLAN SHEET 1 OF 7 D-4089A.



**NOTES:**

- OWNERS OF RECORD:  
TAX MAP 221 LOTS 42 & 96  
THE FRANCES D. LABEL REVOCABLE TRUST OF 2014,  
C/O THOMAS LABEL,  
R.C.D. BOOK 5514 PAGE 739  
DATED FEBRUARY 10, 2014.
- TOTAL EXISTING PARCEL AREA:  
TAX MAP 221 LOT 42  
6,082.2 Sq. Ft.  
TAX MAP 221 LOT 96  
6,102.2 Sq. Ft.
- BASIS OF BEARING IS PER MAGNETIC OBSERVATION TAKEN IN MAY 2022.
- APPROXIMATE ADJUTER'S LINES SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY AND SHALL NOT BE RELIED UPON AS BOUNDARY INFORMATION.
- EASEMENTS OR OTHER UNWRITTEN RIGHTS MAY EXIST THAT ENCLUMBER OR BENEFIT THE PROPERTY NOT SHOWN HEREON.
- THE BOUNDARY SHOWN HEREON IS DETERMINED FROM WRITTEN RECORDS, FIELD EVIDENCE AND PARCEL TESTIMONY RECOVERED AT THE TIME OF SURVEY AND MAY BE SUBJECT TO CHANGE IF OTHER EVIDENCE BECOMES AVAILABLE.
- LOCUS PARCELS ARE "SUBJECT TO THE CONDITION THAT NO BUILDING OR OTHER STRUCTURE, SHALL EVER BE ERRECTED, OR PLACED, UPON SAID LOT WHICH SHALL IN ANY PART BE LOCATED, OR BEING, WITHIN TWENTY (20) FEET OF THE EASTERLY SIDE LINE OF BROAD STREET". SEE REFERENCE DEED BOOK 5514 PAGE 739.

Survey Markers  
⊙  
Water Color Marker (Top)  
⊙



**BROAD STREET**



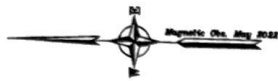
**CERTIFICATION**

"I certify that this survey plot 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."  
I further certify that this survey conforms to the ethics and standards set forth by the New Hampshire Land Surveyors Association for a category 1, condition 1 survey.  
*Peter L. Agodino*  
Peter L. Agodino, L.L.S. #209  
Date: 5/27/2022

**STANDARD PROPERTY**  
FOR PROPERTY AT  
437 Broad Street  
Portsmouth, Rockingham County  
OWNED BY  
**The Frances D. Label Revocable Trust of 2014**  
C/O Thomas Label  
24 Heritage Drive, Rollistons, NH 03063

**EASTERLY SURVEYING**  
SURVEYORS IN N.H. & MAINE  
(207) 439-5335

SCALE	PROJECT NO.	DATE	
1" = 10'	2022	5/27/22	
DRAWING NO.	ISSUE PROP. SURVEY	FIELD BOOK NO.	PORTSMOUTH 007
REV. DATE	STATUS	BY	CHKD. APPD.



N/T  
WILLIAM E. WILSON  
CARL E. WILSON  
TAX MAP 221 LOT 98  
R.C.R.D. BOOK 2438 PAGE 1338

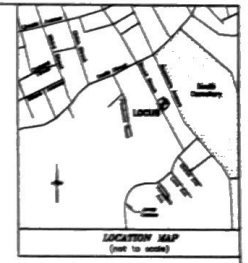
N/T  
SHANNON M. VAN SPILLINGER  
GREGG L. VAN SPILLINGER  
TAX MAP 221 LOT 28  
R.C.R.D. BOOK 2750 PAGE 918

N/T  
ELIZABETH C. GRANTIN  
TRUSTEE OF THE ELIZABETH C. GRANTIN REVOCABLE TRUST  
TAX MAP 221 LOT 41  
R.C.R.D. BOOK 2650 PAGE 2887

N/T  
BRUCE E. ELLIOTT  
TRUSTEE OF THE BRUCE E. ELLIOTT REVOCABLE TRUST  
MARA E. ELLIOTT  
TRUSTEE OF THE MARA E. ELLIOTT REVOCABLE TRUST  
TAX MAP 221 LOT 24  
R.C.R.D. BOOK 2628 PAGE 1018

N/T  
ROBERT S. ANDREWS  
MARY J. ANDREWS  
TRUSTEES OF THE ROBERT S. ANDREWS AND MARY J. ANDREWS TRUST  
TAX MAP 221 LOT 23  
R.C.R.D. BOOK 4821 PAGE 13

N/T  
KRYSTA L. CLARK  
STY C. CLARK  
TAX MAP 221 LOT 43  
R.C.R.D. BOOK 2793 PAGE 2158



**PLAN REFERENCES:**

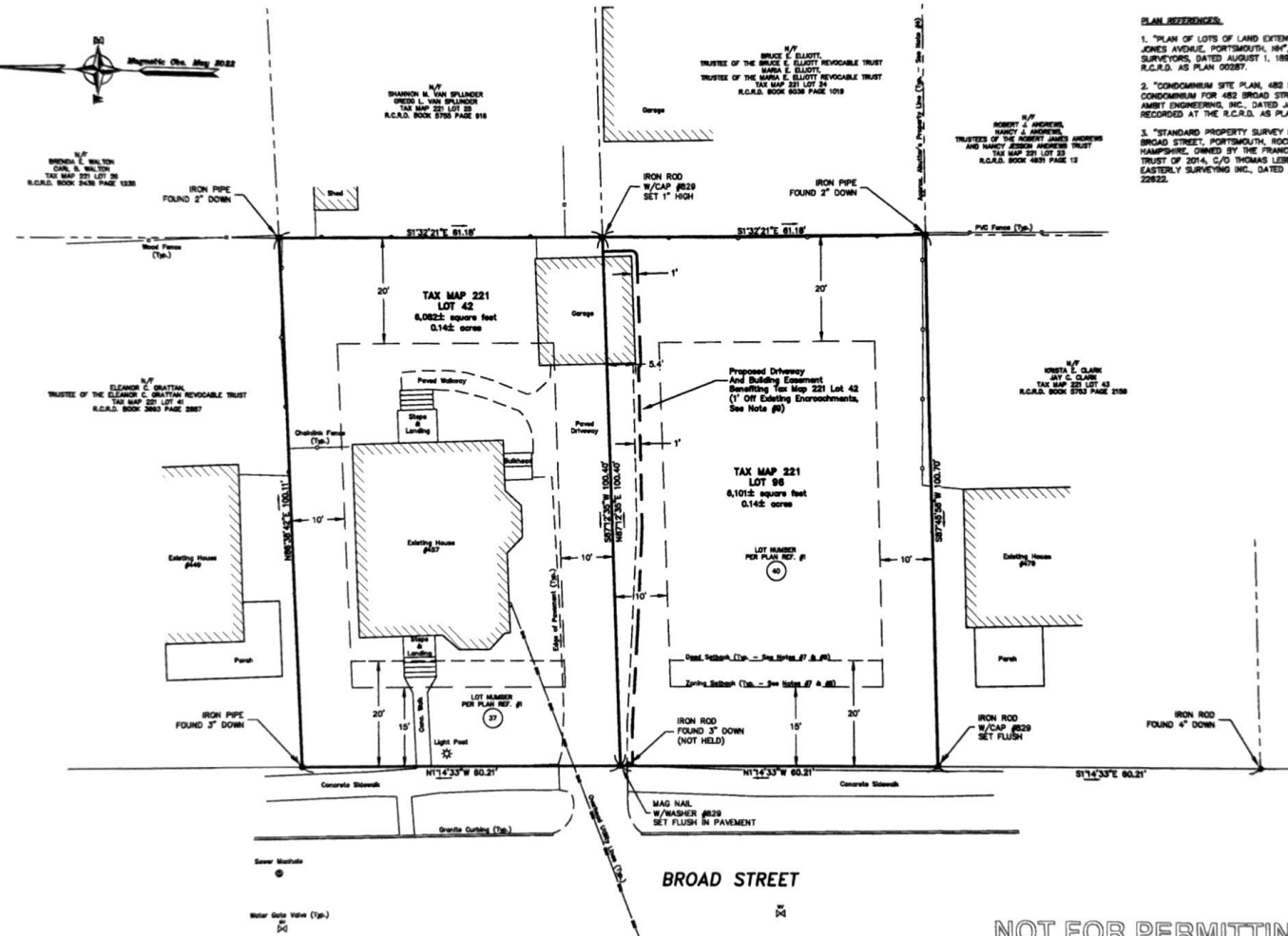
1. "PLAN OF LOTS OF LAND EXTENDING FROM SOUTH ROAD TO JONES AVENUE, PORTSMOUTH, NH", PREPARED BY A.C. HOYT, SURVEYORS, DATED AUGUST 1, 1893, AND RECORDED AT THE R.C.R.D. AS PLAN 00287.
2. "CONDOMINIUM SITE PLAN, 482 BROAD STREET, CONDOMINIUM FOR 482 BROAD STREET, L.L.C.", PREPARED BY AMBT ENGINEERING, INC., DATED JANUARY 2018, AND RECORDED AT THE R.C.R.D. AS PLAN SHEET 1 OF 3--40884.
3. "STANDARD PROPERTY SURVEY FOR PROPERTY AT 457 BROAD STREET, PORTSMOUTH, ROCKINGHAM COUNTY, NEW HAMPSHIRE, OWNED BY THE FRANCES D. LABEL REVOCABLE TRUST OF 2014, C/O THOMAS LABEL", PREPARED BY NORTH EASTERLY SURVEYING INC., DATED MAY 27, 2022, PROJECT No. 22822.

**NOTES:**

1. OWNERS OF RECORD:  
TAX MAP 221 LOTS 42 & 98  
THE FRANCES D. LABEL REVOCABLE TRUST OF 2014,  
C/O THOMAS LABEL  
R.C.R.D. BOOK 2814 PAGE 739  
DATED FEBRUARY 15, 2014.
2. TOTAL EXISTING PARCEL AREA:  
TAX MAP 221 LOT 42  
6,082± square feet  
TAX MAP 221 LOT 98  
6,102± square feet
3. BASIS OF BEARING IS PER MAGNETIC OBSERVATION TAKEN IN MAY 2022.
4. APPROXIMATE ADJUTER'S LINES SHOWN HEREIN ARE FOR REFERENCE PURPOSES ONLY AND SHALL NOT BE RELIED UPON AS BOUNDARY INFORMATION.
5. EASEMENTS OR OTHER UNWRITTEN RIGHTS MAY EXIST THAT ENCLUMBER OR BENEFIT THE PROPERTY NOT SHOWN HEREIN.
6. THE BOUNDARY SHOWN HEREIN IS DETERMINED FROM WRITTEN RECORDS, FIELD EVIDENCE AND PARCEL TESTIMONY RECORDED AT THE TIME OF SURVEY AND MAY BE SUBJECT TO CHANGE IF OTHER EVIDENCE BECOMES AVAILABLE.
7. LOCUS PARCELS ARE "SUBJECT TO THE CONDITION THAT NO BUILDING, OR OTHER STRUCTURE, SHALL EVER BE ERRECTED, OR PLACED, UPON SAID LOT WHICH SHALL IN ANY PART BE LOCATED, OR STAND, WITHIN TWENTY (20) FEET OF THE EASTERLY SIDE LINE OF BROAD STREET". SEE REFERENCE DEED BOOK 2514 PAGE 739.
8. ZONING INFORMATION AND SETBACKS SHOWN HEREIN ARE FOR REFERENCE AND MARKETING PURPOSES; OTHER ZONING ORDINANCES APPLY NOT SHOWN HEREIN. CONFIRM CURRENT ZONING REQUIREMENTS WITH THE CITY OF PORTSMOUTH PRIOR TO DESIGN OR CONSTRUCTION.
9. THE PURPOSE OF THE PROPOSED EASEMENT SHOWN HEREIN IS TO ADDRESS THE EXISTING ENCROACHMENTS (DRIVEWAY AND GARAGE) OF TAX MAP 221 LOT 42 ONTO ADJACENT LOT TAX MAP 221 LOT 98.

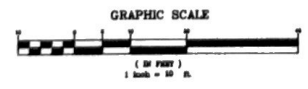
**PURPOSE OF PLAN:**

THE PURPOSE OF THIS PLAN IS TO SHOW A PROPOSED EASEMENT AND EXISTING SETBACKS FOR MARKETING PURPOSES. THIS PLAN IS NOT A STANDARD PROPERTY SURVEY AND IS NOT INTENDED TO BE RECORDED, USED FOR CONVEYANCE, OR ANY OTHER TITLE PURPOSE.



**BROAD STREET**

**NOT FOR PERMITTING  
NOT FOR CONVEYANCE**



REV.	DATE	STATUS	BY	CHKD	APPR.

**EASEMENT EXHIBIT PLAN**  
FOR PROPERTY AT  
457 Broad Street  
Portsmouth, Rockingham County, New Hampshire  
OWNED BY  
**The Frances D. Label Revocable Trust of 2014**  
C/O Thomas Label  
24 Heritage Drive, Portsmouth, NH 03809

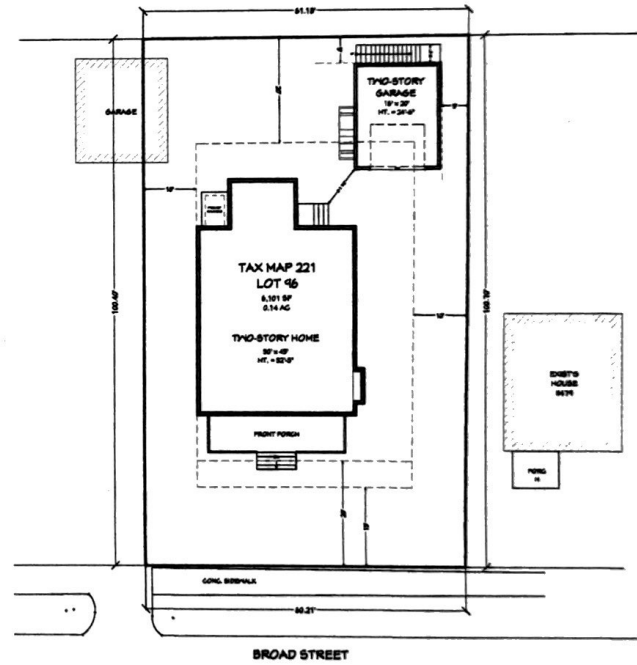
North

**EASTERLY SURVEYING, Inc.**  
SURVEYORS IN N.H. & MAINE 181 STATE ROAD, SUITE #1  
(807) 439-6330 KITTERY, MAINE 03904

SCALE: 1" = 40'  
PROJECT NO: 22822  
DATE: 7/14/23  
SHEET: 1 OF 1  
DRAWN BY: J.S.S.  
CHECKED BY: P.L.A.

ISSUING THIS EASEMENT PLAN  
FIELD BOOK No. "Portsmouth #87"

**Tax Map 221 Lots 42 & 98**



REVISION DATE	REVISION DESCRIPTION

**RATAY RESIDENCE**  
 Broad Street  
 Portsmouth, NH 03801

DRAWINGS PROVIDED BY:

DATE:

7/22/2024

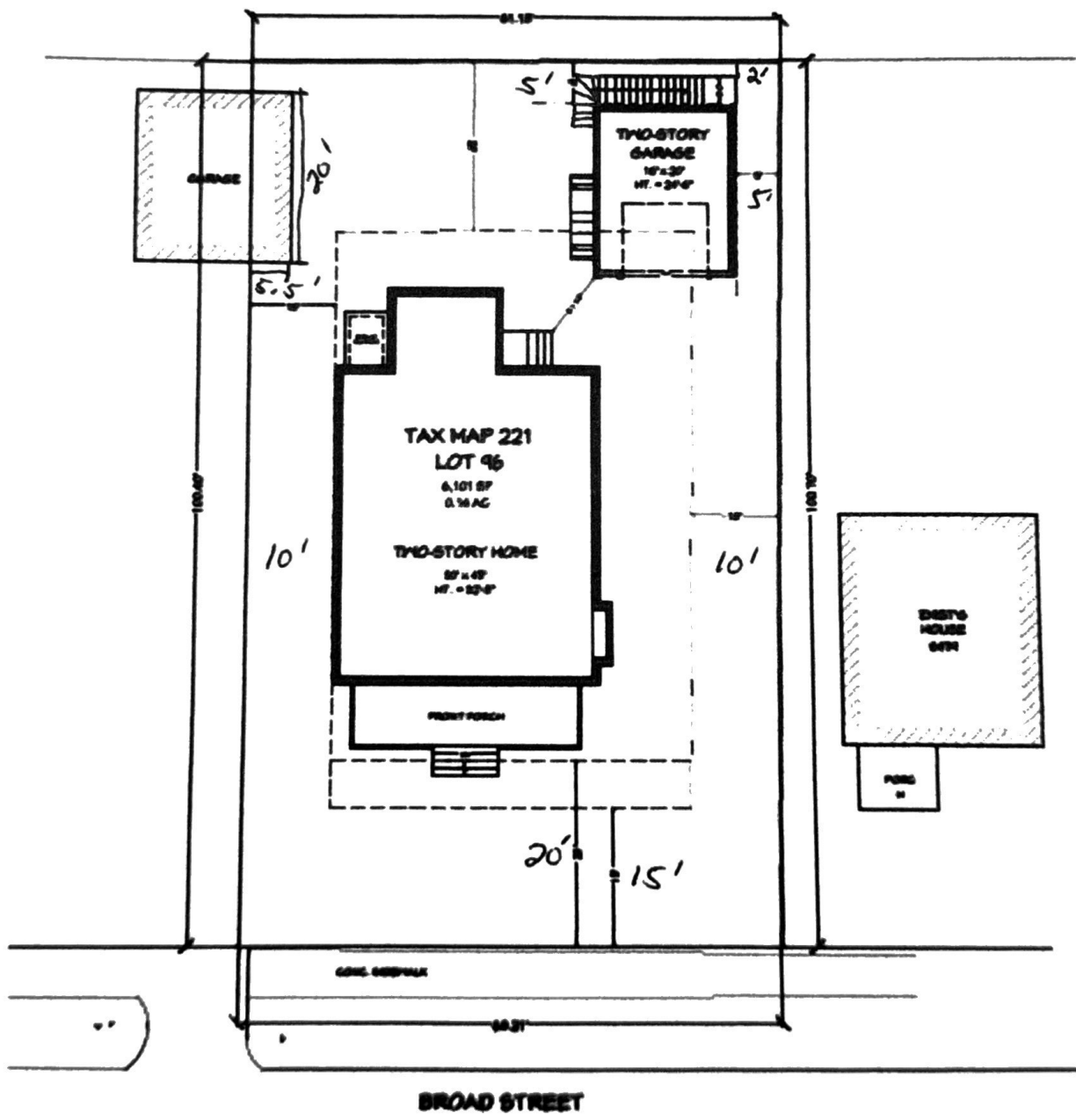
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1" = 10'

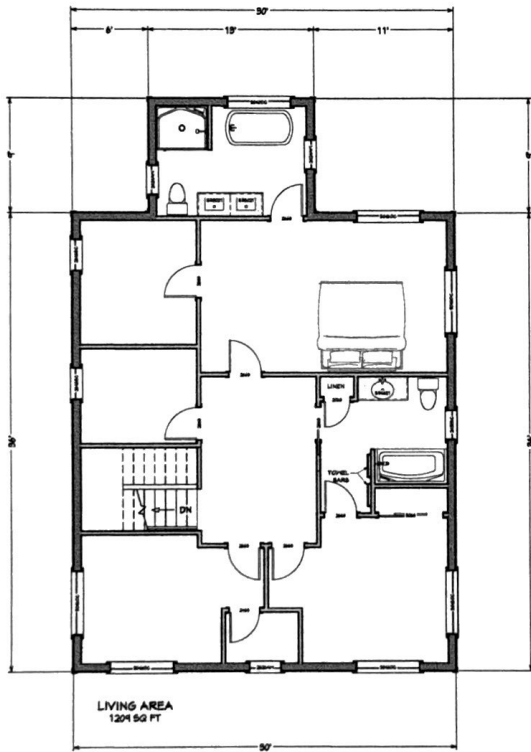
SHEET:

5-1





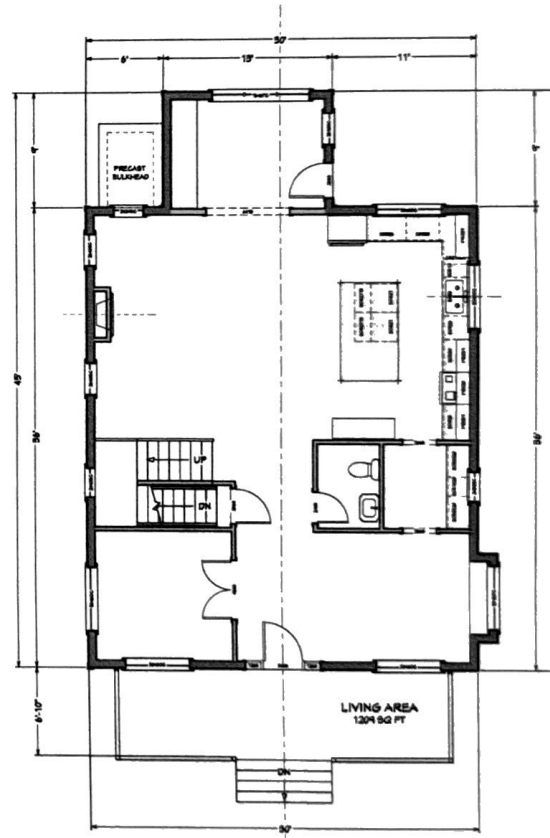
**BROAD STREET**



LIVING AREA  
1204 SQ FT

**SECOND FLOOR PLAN**

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



LIVING AREA  
1204 SQ FT

**FIRST FLOOR PLAN**

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

NO.	REVISION	DATE

**RATAY RESIDENCE**  
Broad Street  
Portsmouth, NH 03801

**FLOOR PLANS**

DRAWINGS PROVIDED BY:

DATE:

6/21/2024

SCALE:

SHEET:

**A-1**



RIGHT SIDE ELEVATION

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



REAR ELEVATION

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



LEFT SIDE ELEVATION

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



FRONT ELEVATION

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



RATAY RESIDENCE  
Broad Street  
Portsmouth, NH 03801

EXTERIOR ELEVATIONS

DRAWING PROVIDED BY:

DATE:

9/21/2024

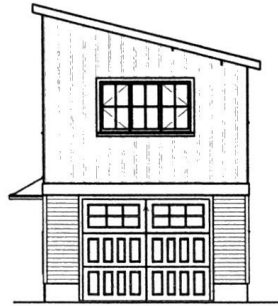
SCALE:

SHEET:

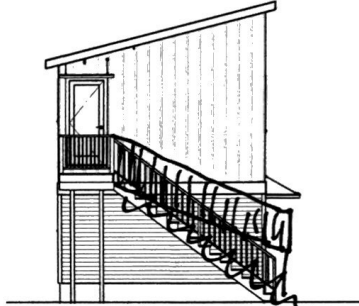
A-2



**LEFT SIDE ELEVATION**  
SCALE: 1/4" = 1'-0"



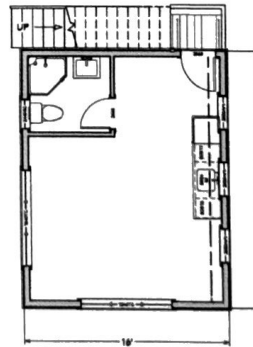
**FRONT ELEVATION**  
SCALE: 1/4" = 1'-0"



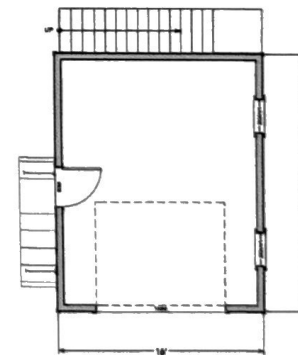
**RIGHT SIDE ELEVATION**  
SCALE: 1/4" = 1'-0"



**REAR ELEVATION**  
SCALE: 1/4" = 1'-0"



**SECOND FLOOR PLAN**  
SCALE: 1/4" = 1'-0"



**FIRST FLOOR PLAN**  
SCALE: 1/4" = 1'-0"

NO.	DATE	DESCRIPTION

**RATAY RESIDENCE**  
Broad Street  
Portsmouth, NH 03801

**DETACHED GARAGE**  
FLOOR PLANS & ELEVATIONS

Drawings prepared by:

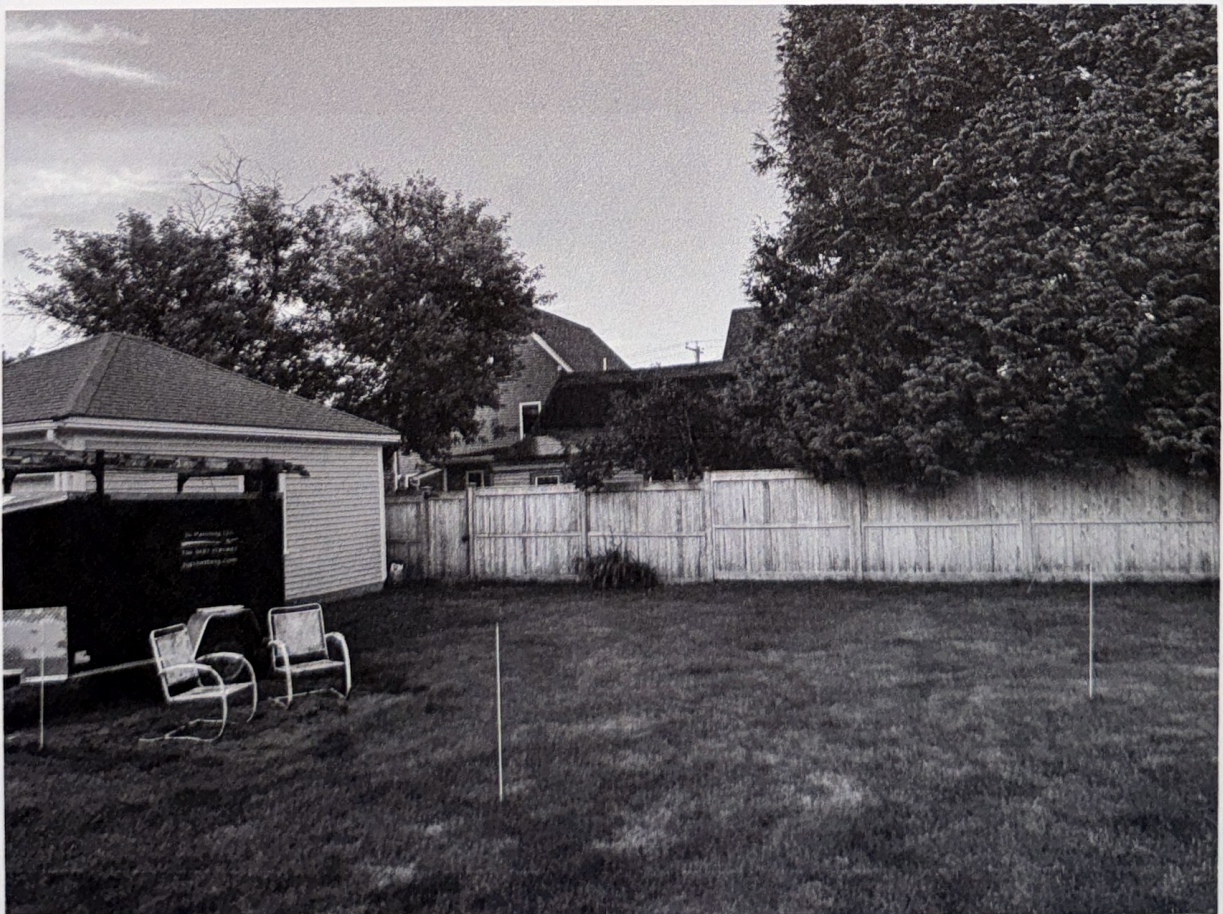
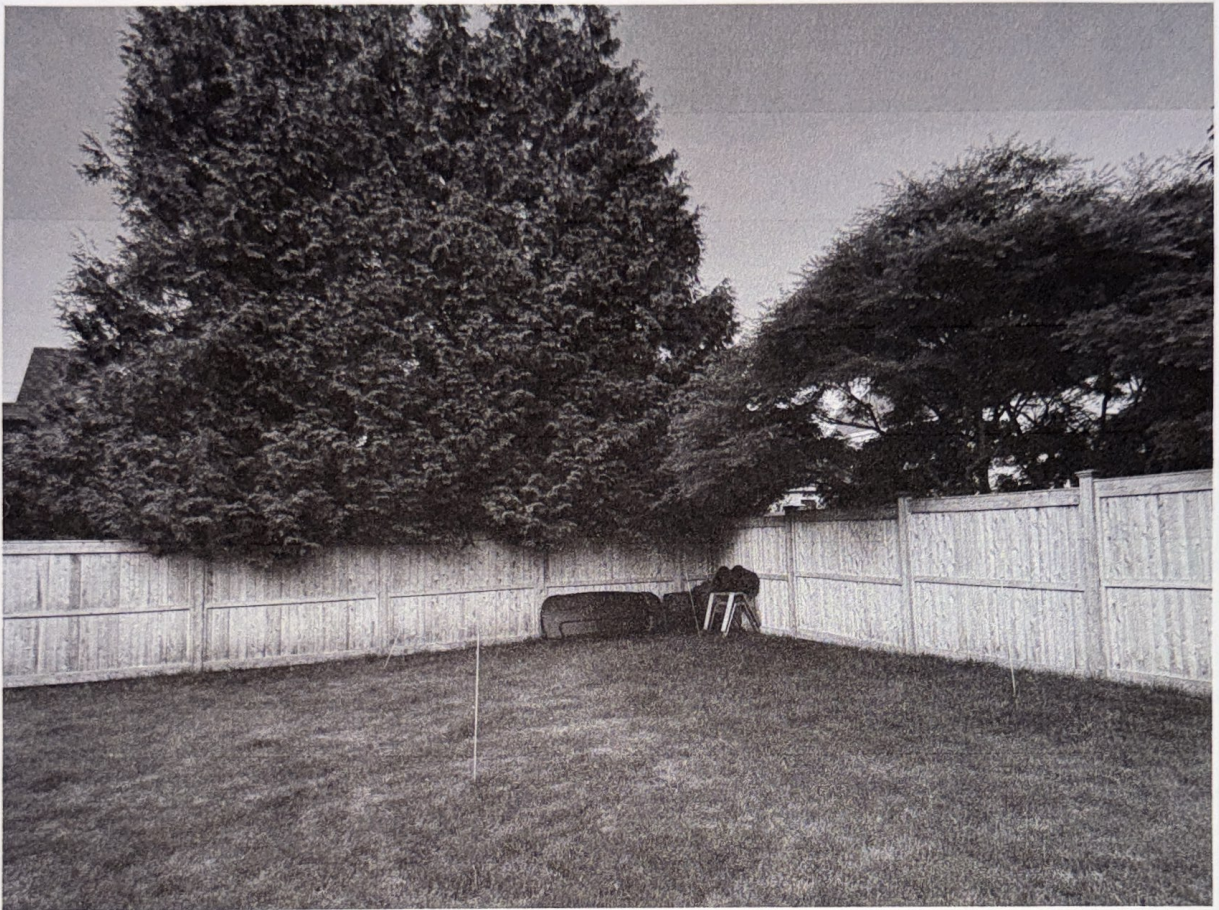
**DATE:**  
6/21/2024

**SCALE:**

**SHEET:**

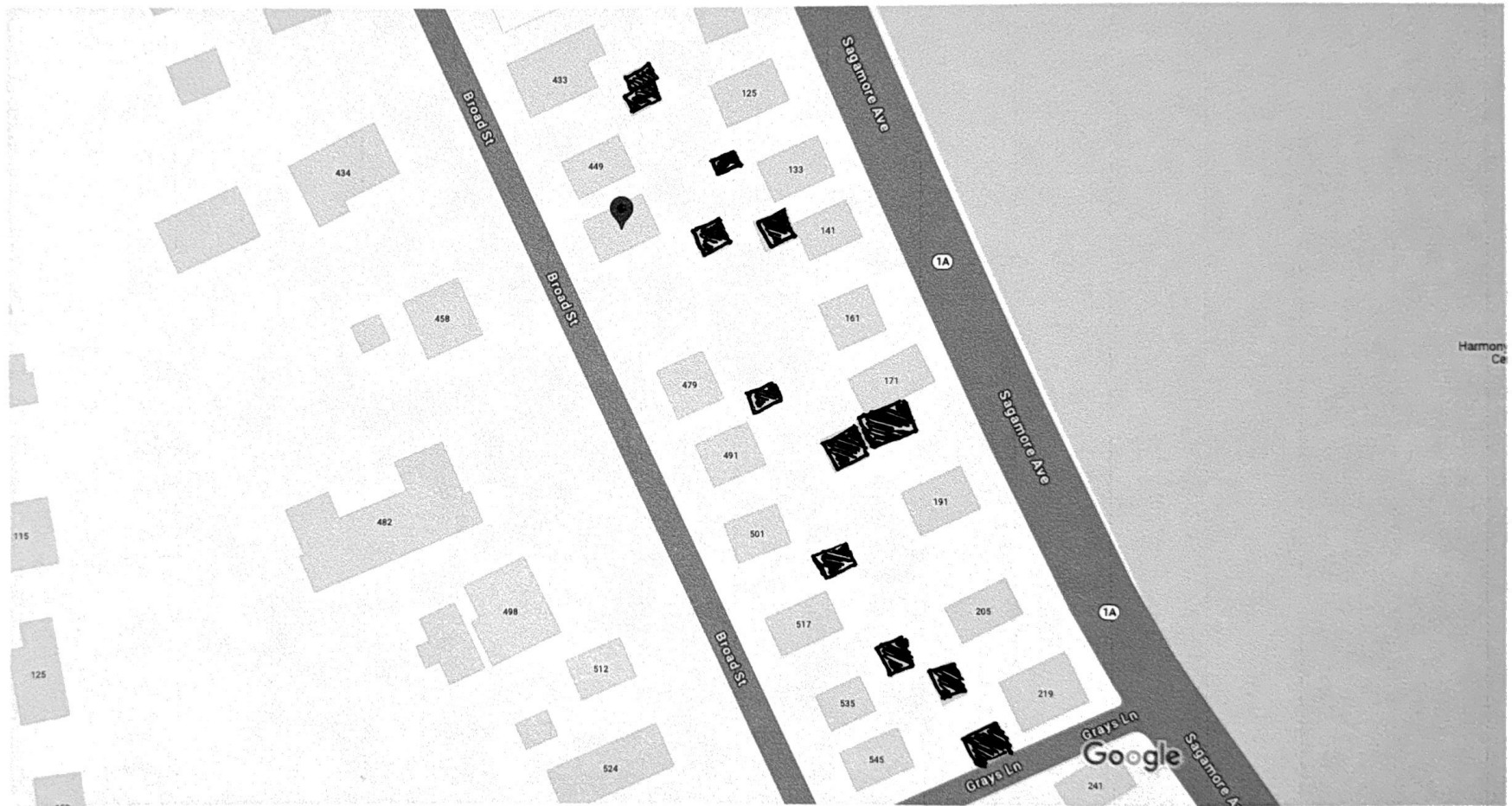
**A-3**







# Google Maps 457 Broad St



Map data ©2024 50 ft



## II. NEW BUSINESS

- B. The request of **Meadowbrook Inn Corporation (Owners)**, for property located at **549 US Route 1 Bypass** whereas relief is needed to construct a 4-story hotel with 116 rooms which requires the following: 1) Special Exception from Section 10.440 use #10.40 to allow a hotel or motel with up to 125 rooms; and 2) Variance from Section 10.5B41.80 to allow 7.85% community space where 10% is required. Said property is located on Assessor Map 234 Lot 51 and lies within the Gateway Corridor (G1) District. (LU-24-113)

### Existing & Proposed Conditions

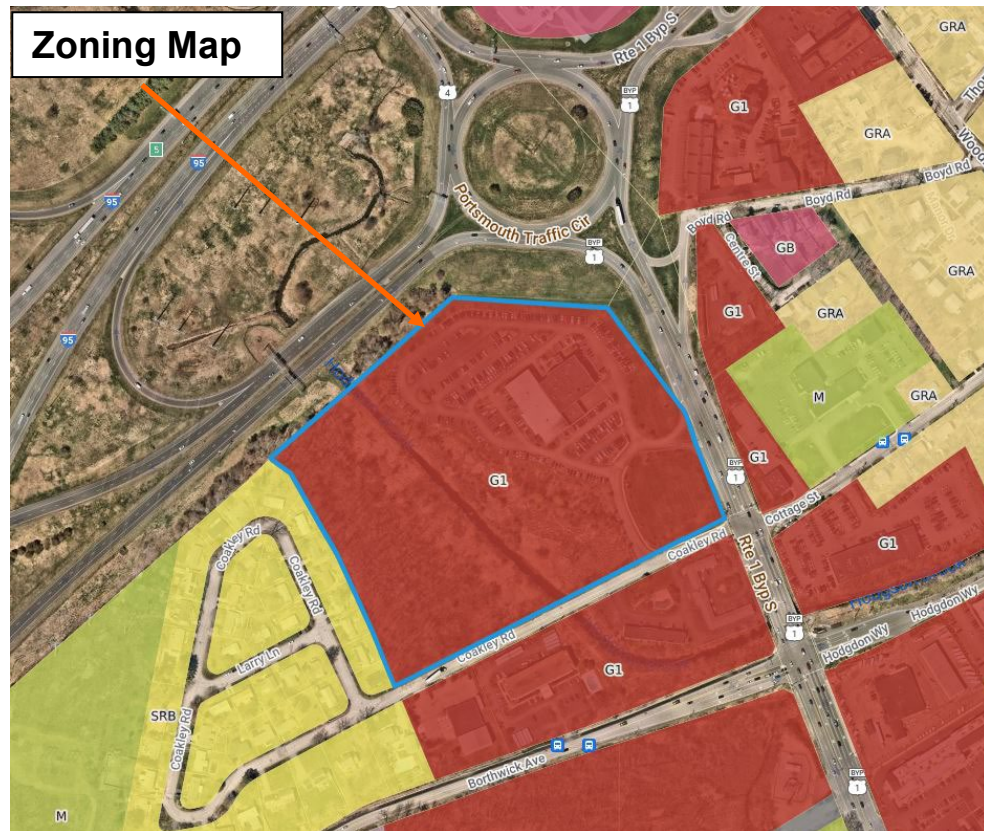
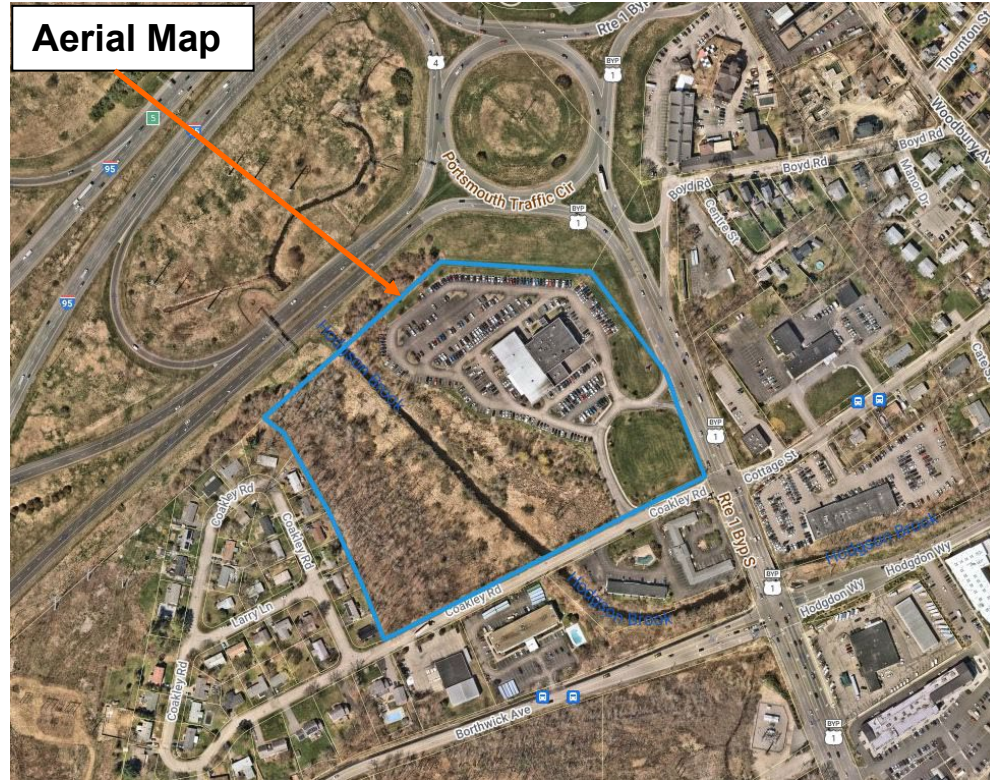
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Car Dealership	*Construct a hotel	Mixed Use District
<u>Community Space Coverage (%):</u>	n/a	7.85	10 min.
<u>Parking</u>	106	269	241
<u>Estimated Age of Structure:</u>	2011	Variance request(s) shown in red.	

\*Hotel is use 10.40 in Section 10.440 and requires a special exception

### Other Permits/Approvals Required

- Site Plan Review & Conditional Use Permit for Development Site (Technical Advisory Committee and Planning Board)
- Wetland Conditional Use Permit (Conservation Commission and Planning Board)
- Building Permit

### Neighborhood Context



## Previous Board of Adjustment Actions

**June 22, 2010** – The Board **denied** the request for a variance to allow the sales, rental, leasing, distribution and repair of vehicles, recreational vehicles, marine craft, manufactured housing and related equipment, including areas for parking, display or storage of vehicles, equipment, goods or materials within 85’ of a residential district, where 200’ is required.

**May 23, 2000** – The Board **granted** the request for a variance to allow 274 parking spaces and an additional gravel parking area for trucks for the existing uses on the property as well as reopening the restaurant in the Meadowbrook Terrace Building.

**June 10, 1986** – The Board reconvened its June 3, 1986 meeting and **granted** the request for a special exception to permit the placement of 9,000 c.f. of earth on the southerly portion of the property.

## Planning Department Comments

The applicant is requesting relief to provide less than the required amount of community space as part of the project and a Special Exception to allow a hotel use in the Gateway District.

This project will also require review by the Technical Advisory Committee and the Conservation Commission before Planning Board review.

## 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.*

## Special Exception Review Criteria

The application must meet all of the standards for a **special exception** (see Section 10.232 of the Zoning Ordinance).

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*

2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
3. *No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*
4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*
5. *No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and*
6. *No significant increase of stormwater runoff onto adjacent property or streets.*

### **10.235 Certain Representations Deemed Conditions**

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

**APPLICATION OF THE MEADOWBROOK INN CORPORATION**  
**549 U.S. ROUTE 1-BYPASS**  
**MAP 234, LOT 51**

**APPLICANT'S NARRATIVE**

**A. The Project.**

The Applicant, The Meadowbrook Inn Corporation owns the parcel where Portsmouth Chevrolet Inc. currently operates an automobile dealership. This large, roughly 18-acre parcel, abuts the Portsmouth Traffic Circle to the north, Coakley Road to the south, and Hodgson Brook to the west. Currently, this large lot is exclusively the home of Portsmouth Chevrolet, an automobile dealership. The southeasterly portion of the lot is largely undeveloped apart from motor vehicle ingress and egress.

The Applicant is seeking to construct a 4-story hotel with a total of 116 rooms in the aforementioned southeasterly corner of the lot. This hotel requires 145 parking spaces, which have been identified and marked on the included Zoning Relief Plan dated May 29, 2024 and prepared by TFMoran, Inc. At the February 29, 2024 Planning Board Meeting, this lot was changed from the General Business (GB) Zone to the Gateway Neighborhood Business (G1). Pursuant to the Zoning Ordinance, a hotel is permitted in the G1 zone by Special Exception. §10.440.10.40. A limited portion of the proposed development will impact the previously developed 100' Wetland Buffer and the Applicant will seek the necessary relief pending the outcome of this Application.

Owing to the fact that parcels in the near vicinity to the Applicant's parcel, including its direct abutter to the south are currently hotels, and that the Applicant believes the proposal meets the criteria necessary for a special exception as required by §10.232.20 of the Zoning Ordinance, it is the Applicant's sincere hope that the Zoning Board of Adjustment grant the requested Special Exception.

Additionally, due to the zoning change, the applicant is seeking a variance from The City of Portsmouth Zoning Ordinance §10.5B41.80, Open Space and Community Space Coverage. While the applicant understands the importance of community space and open space, this lot is substantially covered by wetlands and owing to the fact that impacting wetlands is potentially detrimental, the applicant is seeking relief. Notably, the applicant is attempting to tastefully implement as much community space as the lot will allow without any additional impact to abutting wetlands.

**B. The Special Exception.**

The Applicant believes the proposal meets the criteria for the necessary special exception set forth in the ordinance at §10.232.20.

First, the proposed use, “hotel,” is permitted within this G1 District by special exception, see §10.440 Table of Uses, no. 10.40. §10.232.20.

Second, the proposed use as a hotel will not be a hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials. No explosives or toxic materials will be used or stored at the proposed hotel and the new building will meet all life safety requirements. See §10.232.22.

Third, no detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials. §10.232.23. The project is proposed in a dense commercial area with a number of similar or larger scale hotels in the direct vicinity consisting of approximately the same or more rooms than what is proposed. The proposed hotel directly to the Applicant’s south, owned by Giri Hotel Management, LLC is tentatively proposed to have 115 rooms. The Holiday Inn, located at 300 Woodbury Avenue has 130 rooms, the Best Western, located at 580 US Highway 1-Bypass has 168 rooms, and the Fairfield Inn Portsmouth Seacoast located at 650 Borthwick Avenue, has 102 rooms. The proposed hotel is certainly in keeping with the essential characteristics of the area as it is in keeping with all hotels in the vicinity. Additionally, many of the parking spaces that will be utilized for this proposed hotel are already in place and the additional ones will be of no detriment to the property values in the vicinity or change the essential characteristics of the neighborhood. Moreover, the proposed building is situated tastefully on the lot as to comply with the requisite setbacks and owing to its aesthetically pleasing design, its location and scale will not have a negative impact on property values in the vicinity or change the essential characteristics of the area.

Fourth, there will be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. §10.232.24. As is depicted on the enclosed Zoning Relief Plan, the existing ingresses and egresses both adjacent to Coakley Road and Route 1-Bypass will remain in place with a slight alteration at the Coakley Road location. The current automobile dealership at this location has used these two ingresses and egresses for quite some time and they pose no traffic safety hazard. Consequently, the addition of this hotel will not create a traffic safety hazard. This proposed hotel will have a negligible impact on traffic and will certainly not cause a substantial increase in the level of traffic congestion in the vicinity.

Fifth, no excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools will be caused by this proposed hotel. §10.232.25. While this proposal will impact municipal services, there will be no excessive demand on them. By right, the applicant has the ability to develop this portion of the lot in a manner that would cause significantly more of an impact on municipal services than what is proposed.

Sixth and finally, the project will result in no significant increase of stormwater runoff onto adjacent property and streets. A comprehensive stormwater management plan will be developed by TFMoran and any potential stormwater runoff will be appropriately mitigated and managed as to not cause additional runoff onto adjacent property and streets.

### C. Variance

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

The New Hampshire Supreme Court has made clear in Chester Rod & Gun Club, Inc. v. Town of Chichester, that the requirements that the variance not be “contrary to the public interest” or “injure the public rights of others” are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. To be contrary to the public interest or injurious to the public rights of others, the variance must “unduly, and in a marked degree” conflict with the ordinance such that it violates the ordinance’s “basic zoning objectives.” Id. There are two ways to ascertain whether granting a variance would violate “basic zoning objectives:” (1) whether it would “alter the essential character of the locality; or (2) whether granting the variance would threaten the public health, safety, or welfare. *See id.*

In this instance, the applicant is seeking relief that would neither alter the essential character of the neighborhood or threaten the public health, safety, or welfare. To the contrary, the applicant is seeking to improve public health, safety, and welfare by adding a considerable amount of community space. While in totality, it is not the amount of community space required in this new area of the G1 Zone, it covers a substantial portion of the parcel without negatively impacting the wetlands. The Zoning Ordinance requires 10% of the total site area to be community space and the applicant is proposing 7.85%. The addition of this 61,759 square feet of community space will not alter the essential character of the locality, nor will it threaten the public health, safety, or welfare.

*Substantial Justice will be done in granting the variance.*

“Perhaps the only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice.” 15 P. Loughlin, New Hampshire Practice, Land Use Planning and Zoning §24.11, at 308 (2000); Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102 (2007).

There is no gain to the public by denying this variance request. In fact, a denial would be depriving the public of community space on this site. Without the requested relief, in order to meet the 10% requirement for community space, the applicant would have to impact the vast amount of wetlands that are on the parcel and this would be contrary to their preservation. A denial of the requested relief would be a significant loss to the applicant to make reasonable use of the property.

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

Granting of this variance request would have no impact on surrounding property values. The applicant is simply seeking to reduce the amount of community space required in this zone so as to not interfere with the wetlands. It would be illogical to conclude that surrounding property values will be impacted with such a request.

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

Owing to special conditions of this property, it is distinguishable from other properties in the area and no fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property. Furthermore the proposed use is a reasonable one. Additionally, owing to the special conditions of this property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance.

This parcel contains over 18 acres of land in the G1 District. In this district, 10% of the total site area is required to be community space. This would mean that almost 80,000 square feet would need to be community space. The applicant is proposing almost 62,000 square feet. This lot is unique and distinguishable from other properties in the area for two reasons. First, this parcel is substantially larger than any of the surrounding properties. Secondly, as is depicted on the enclosed Zoning Relief Plan, a large portion of this premises is wetlands. Consequently and because of the vast wetland coverage, this property cannot be reasonably used in strict conformance with the Ordinance. Moreover, the proposed use is a reasonable one and allowed with a Special Exception.

While this community space requirement is new to this area with the recent zoning changes, the applicant understands and appreciates both the intent and the purpose of such a regulation and has pushed the design team to come up with a design that allows for as much community space as possible without altering the land necessary for the function of the existing car dealership, the proposed hotel and the wetland coverage. Literal enforcement of the ordinance in this instance would certainly result in an unnecessary hardship.

**D. Conclusion.**

For the foregoing reasons, the applicant respectfully requests the Board grant the special exception and variance relief as requested.

Respectfully Submitted,

Dated: June 17, 2024

By: /s/ James F. Scully, Jr.  
James F. Scully, Jr., Esq.  
The Meadowbrook Inn Corporation  
Corporate Counsel



Attachments: Zoning Relief Plan  
Owner Authorization

**LEGEND:**

- PRIOR PAVEMENT IN WETLAND BUFFER TO BE REMOVED
- PROPOSED COMMUNITY SPACE AREA
- ROCKINGHAM COUNTY REGISTRY OF DEEDS
- BOOK
- PAGE
- SQUARE FEET
- LIMITED ACCESS RIGHT OF WAY
- SPACES USED FOR CAR DEALERSHIP
- PARKING CALCULATION
- SPACES USED FOR HOTEL PARKING
- CALCULATION
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- EXISTING FENCE
- EXISTING GUARDRAIL
- EXISTING TREELINE
- EXISTING WETLAND
- EXISTING RIPRAP
- SIGN
- CROSSWALK

**SITE DATA**

OWNER OF RECORD OF MAP 234 LOT 51: MEADOWBROOK INN CORP. C/O PORTSMOUTH CHEVROLET, 549 ROUTE 1 BYPASS, PORTSMOUTH, NH 03801  
 DEED REFERENCE TO PARCEL IS BK 2382 PG 1968  
 AREA OF PARCEL = 786,468± SF OR 18.05± ACRES

CURRENT ZONING: GATEWAY-1  
 EXISTING USE: CAR DEALERSHIP  
 PROPOSED USE: CAR DEALERSHIP AND HOTEL (HOTEL USE REQUIRES SPECIAL EXCEPTION)

THE PURPOSE OF THIS PLAN IS TO DEPICT THE LOCATION OF A NEW, MULTI-STORY HOTEL ON THE PROPERTY TO ACCOMPANY AN APPLICATION FOR A VARIANCE AND SPECIAL EXCEPTION LISTED IN THE ZONING REVIEW TABLE. ASSOCIATED IMPROVEMENTS INCLUDE ACCESS, GRADING, STORMWATER MANAGEMENT SYSTEMS, UTILITIES, LIGHTING, AND LANDSCAPING.

TYPICAL HOURS OF OPERATION: CAR DEALERSHIP – 9 AM TO 7 PM  
 HOTEL – 24 HOURS A DAY

**DIMENSIONAL REQUIREMENTS (CURRENT ZONING)**

LOT STANDARDS	REQUIRED:	PROVIDED:
LOT DEPTH	NO REQUIREMENT	1,012 FT
LOT FRONTAGE	100 FT	2667.26 FT
MINIMUM SETBACKS (DEALERSHIP):		
COAKLEY ROAD FRONT	0 FT MIN – 50 FT MAX	403.1 FT (EXISTING)
ROUTE 1 BYPASS FRONT	0 FT MIN – 50 FT MAX	145.5 FT (EXISTING)
REAR	15 FT	626.6 FT (EXISTING)
MINIMUM SETBACKS (HOTEL):		
COAKLEY ROAD FRONT	0 FT MIN – 50 FT MAX	25 FT
ROUTE 1 BYPASS FRONT	0 FT MIN – 50 FT MAX	830.7 FT
REAR	15 FT	
MINIMUM OPEN SPACE COVERAGE	10%	66.58%

**DESIGN STANDARDS:**

MAX BUILDING HEIGHT (DEALERSHIP)	4 STORIES OF 50 FT	29 FT
MAX BUILDING HEIGHT (HOTEL)	4 STORIES OR 50 FT	4 STORIES
MAX BUILDING COVERAGE (EXISTING)	70%	3.96%
MAX BUILDING COVERAGE (PROPOSED)	70%	5.87%
MAX BUILDING FOOTPRINT (HOTEL)	40,000 SF	15,087 SF
MAX BUILDING FOOTPRINT (DEALERSHIP)	40,000 SF	30,968 SF
COMMUNITY SPACE:	10% OF TOTAL SITE AREA (78,647 SF)	7.85% (61,759 SF) (VARIANCE REQUIRED)

**PARKING REQUIREMENTS**

PARKING SPACES (SEE CALCULATION)	241 SPACES	269 SPACES
ACCESSIBLE SPACES (REQ'D BY ADA)	10 SPACES	10 SPACES
PARKING SPACE SIZE	8.5 FT X 19 FT	9 FT X 19 FT
AISLE WIDTH	24 FT	24 FT
LOADING SPACES	3 SPACES	3 SPACES

**PARKING CALCULATIONS**

REQUIRED PARKING RATIO:  
 INN/HOTEL/MOTEL: 1.25 SPACE PER GUEST ROOM PLUS 1 SPACE PER 100 SF OF LOUNGE OR RESTAURANT AREA PLUS 1 SPACE PER 25 SF OF CONFERENCE OR BANQUET FACILITIES

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 TOTAL = 145 SPACES

CAR DEALERSHIP  
 (39,740 SF GFA \* 1 SPACE/600 SF) = 67 SPACES +  
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 \*TOTAL = 106 SPACES \* 0.9 (SHARED PARKING)

TOTAL = 145 SPACES (HOTEL) + 96 SPACES (CAR DEALERSHIP) = 241 SPACES

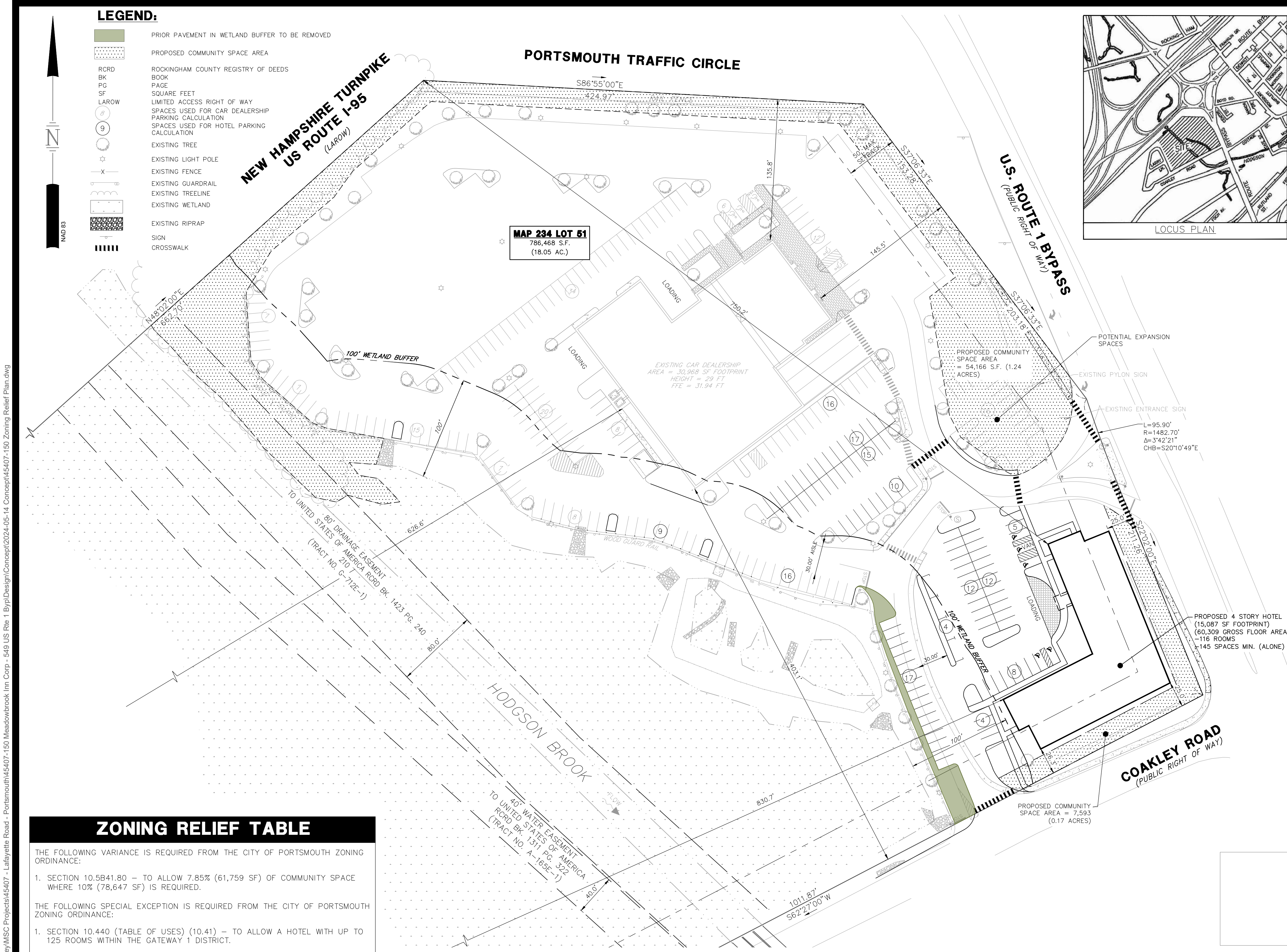
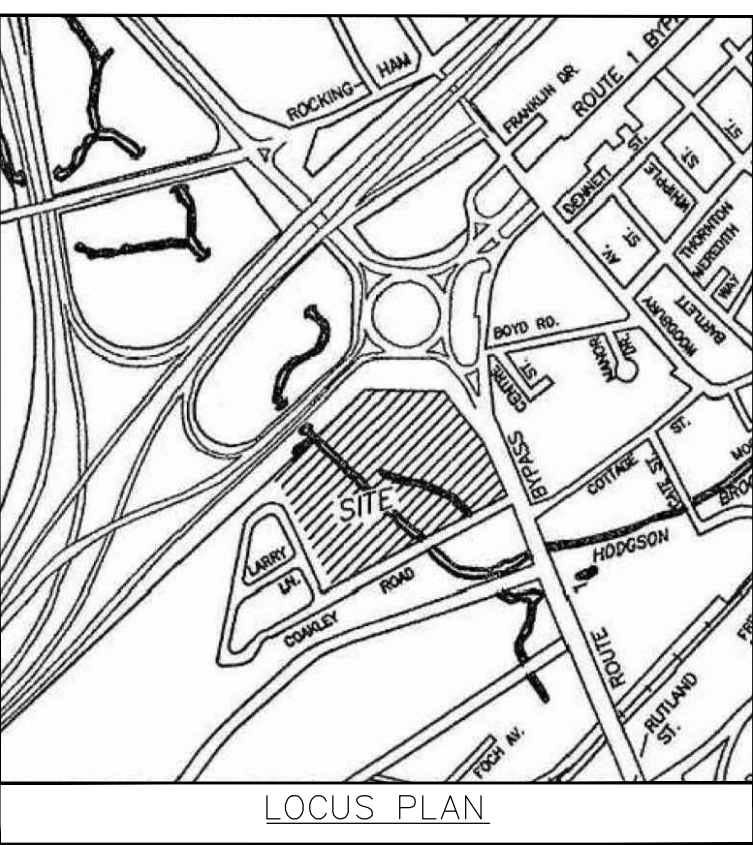
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\* PURSUANT TO SECTION 10.112.60 OF THE PORTSMOUTH ZONING ORDINANCE, RETAIL/SERVICE HAS A 90% OCCUPANCY RATE DURING THE HIGHEST HOTEL OCCUPANCY RATE. THEREFORE THE RETAIL/SERVICE TOTAL REQUIRED PARKING IS 90% OF THE PARKING REQUIREMENT.

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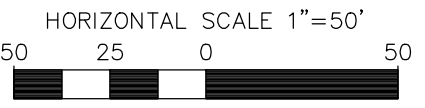
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**REFERENCE PLANS**

- EXISTING CONDITIONS PLAN OF LAND PREPARED FOR THE MEADOWBROOK INN CORPORATION RTE 1 BYPASS PORTSMOUTH, ROCKINGHAM COUNTY, NH DATED APRIL 17, 2024 BY YERKES SURVEY ASSOCIATES, LLC.



REV	DATE	DESCRIPTION	DR	CK

**SITE DEVELOPMENT PLANS**

TAX MAP 234 LOT 51  
**ZONING RELIEF PLAN**  
**PROPOSED HOTEL**  
 549 US ROUTE 1 BYPASS, PORTSMOUTH, NH

OWNED BY  
**MEADOWBROOK INN CORP.**

**1"=100' (11"X17")**  
**SCALE: 1"=50' (22"X34")** **MAY 29, 2024**

Civil Engineers  
 Structural Engineers  
 Traffic Engineers  
 Land Surveyors  
 Landscape Architects  
 Scientists

170 Commerce Way, Suite 102  
 Portsmouth, NH 03801  
 Phone (603) 431-2222  
 Fax (603) 431-0190  
 www.tfmoran.com

FILE	45407.150	DR	FB				
		CK	CADFILE	45407-150 ZONING RELIEF PLAN		C-01	



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Scientists

# Photo Exhibit

**549 US Route 1 Bypass, Portsmouth, NH**

*See attached Photo Orientation Key for reference.*



Photo #1:



Photo #2:



Photo #3:



Photo #4:



Photo #5:



Photo #6:

**LEGEND:**

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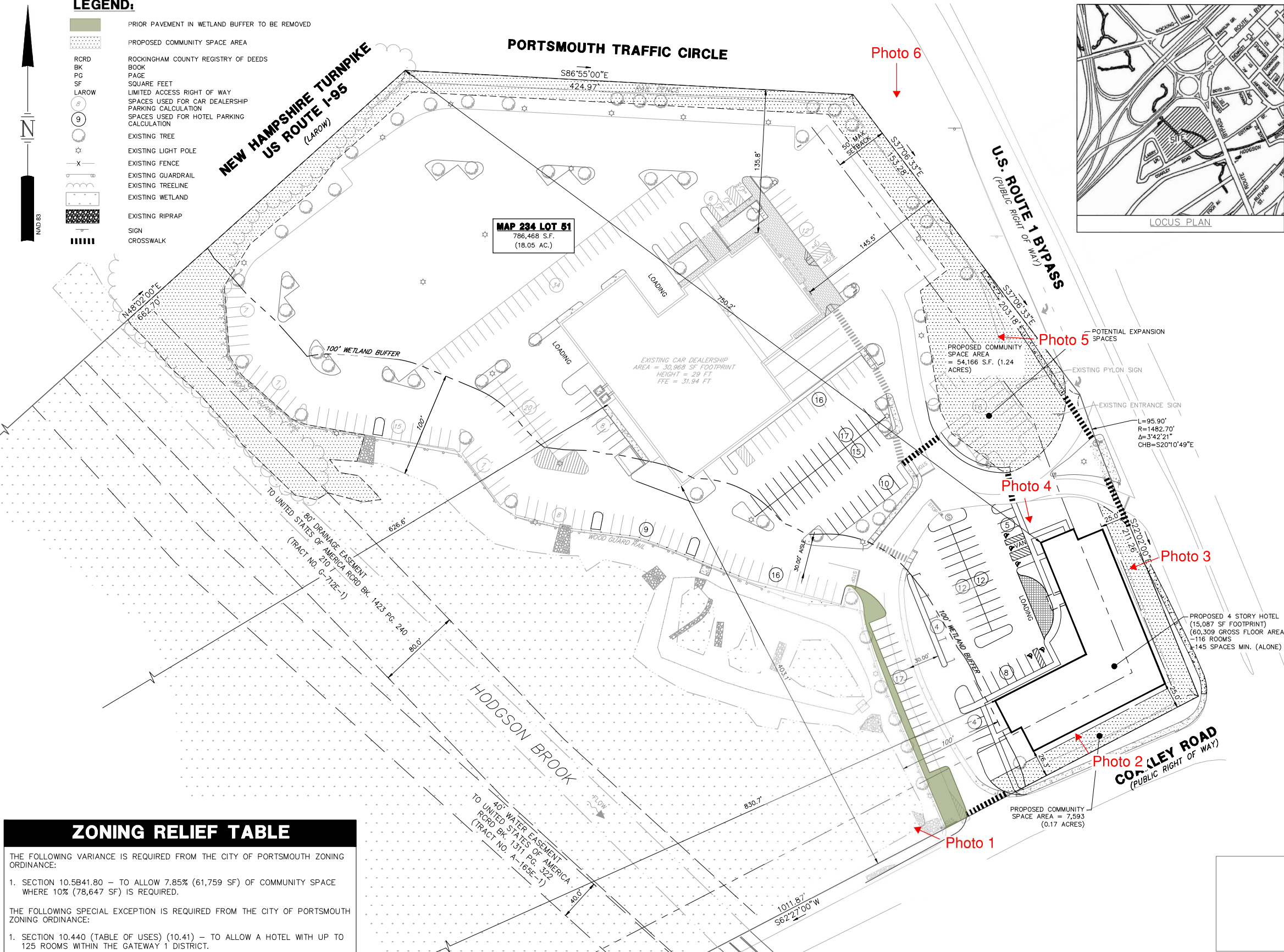
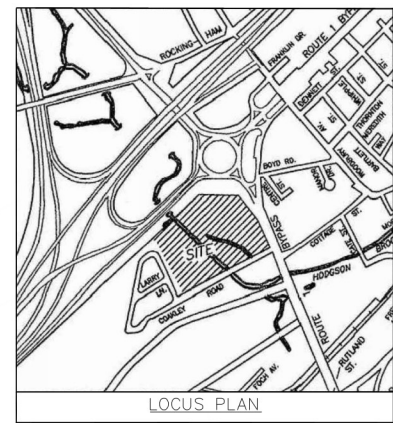
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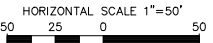
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REV	DATE	DESCRIPTION	DR	CK

FILE	45407.150	DR	FB			
		CK	CADFILE	45407-150 ZONING RELIEF PLAN		C-01

Jun 13, 2024 - 11:03am \\lfm-befordr41\Projects\Civil-Survey\MISC Projects\45407 - Lafayette Road - Lafayette Inn Corp - 549 US Rte 1 Byp\Design\Concept\2024-05-14 Concept\45407-150 Zoning Relief Plan.dwg

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

















**II. NEW BUSINESS**

- C. The request of **Daisy L. and Bert J. Wortel (Owners)**, for property located at **245 Marcy Street** whereas relief is needed to remove the existing 6-foot fence and replace with a new 6 foot fence which requires the following: 1) Variance from Section 10.515.13 to allow a 6 foot fence in the front yard area where 4 feet is allowed. Said property is located on Assessor Map 103 Lot 13 and lies within the General Residence B (GRB) and Historic Districts. (LU-24-131)

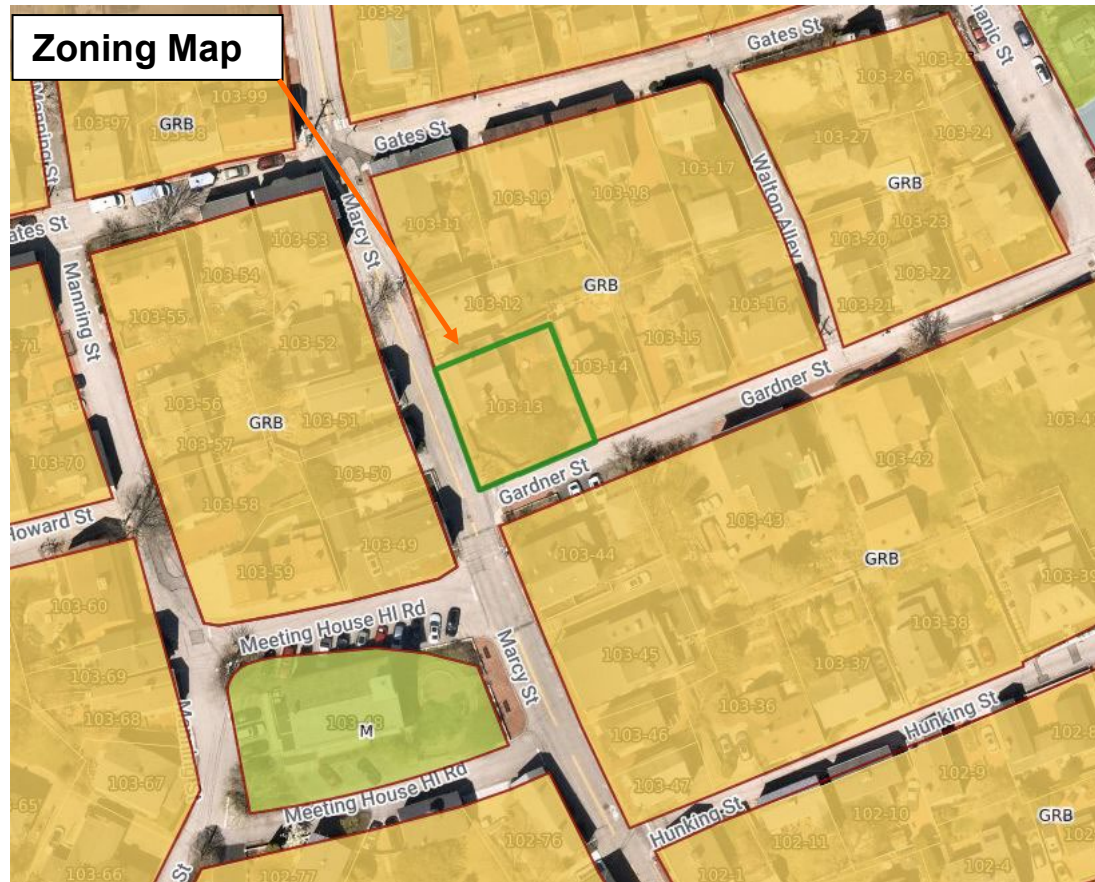
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Residence	Remove existing and broken 6 foot fence and replace with 6 foot fence	Primarily residential
<u>Fence Height (ft):</u>	6	6	4 max.
<u>Estimated Age of Structure:</u>	1750	Variance request(s) shown in red.	

**Other Permits/Approvals Required**

- Historic District Commission Review

### Neighborhood Context



## Previous Board of Adjustment Actions

**September 11, 1979** – The Board **granted** the request for a variance to construct a 55 s.f. addition making the lot coverage 26.4% where 20% is allowed with the following condition:

1. The height of the addition does not exceed the height of the existing roof line.

## Planning Department Comments

The applicant is requesting relief needed to remove the existing 6-foot fence and replace it with a new 6-foot fence. The existing fence is in the primary and secondary front yards of the property and runs along Marcy Street and Gardner Street, respectively.

## 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.



Daisy and Bert Wortel  
245 Marcy Street  
Portsmouth, NH 03801

Dear Board Members,

This letter is in support of our variance application form submitted on 7/19/24.

- Project narrative - introduction of your project, what it is, and why this particular property and location of your project is important.

We purchased the property at 245 Marcy Street in November of 2023. The reason why we decided to purchase this property is because we love Portsmouth and its history. We would like to restore our property to its historic grandeur.

The reason for our submission is to request authorization to replace our perimeter fence like for like. We would like to replace the fence as it was hit by a car last year which resulted in fence posts being broken at ground level and damage of some of the fence panels. We would like to replace the entire fence so that it looks uniform after repair.

We have included photos with our submission that illustrate the current location of the fence and the reasons why we believe that should be allowed to replace the existing fence like for like.

We want to fully support the intent of the code. We have reviewed the analysis criteria and we believe our submission supports the criteria for a variance in this case.

- Analysis Criteria - an application cannot be approved unless the 5 criteria have been met.
  - Analysis Criteria (from section 10.223 of the [Zoning Ordinance](#)):

We understand that in order to authorize a variance, the Board must find that the variance meets all of the following criteria:

The variance will not be contrary to the public interest;

- The 6' fence does proposed does not impact any public interest. The pedestrian and vehicular traffic will not be obstructed on Marcy Street or Gardner Street. The fence will not look out of proportion as it will be replaced exactly the same as it is now.

The spirit of the Ordinance will be observed;

- The 6' fence will be replaced exactly like the fence that has existed on the property for a very long time. The height of the fence will be the same but will now have beautiful landscape (which has already been added) in the corner and will not look out of place.

Substantial justice will be done;

- While the fence addresses the noise of the street and keeps out intruders (on the weekends there is pedestrian traffic touring the Historic District all day and night) the fence does not prevent pedestrians from walking in the area and protects the value of our property. This is one of the main reasons we would like to maintain the fence as it currently exists.

The values of surrounding properties will not be diminished; and

- The fence replacement will not affect the property values of surrounding properties. The surrounding property owners have no objection to the proposed replacement fence. A new fence will be more attractive than a repaired fence.

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

- Without a variance, we would lose privacy in our backyard, access to our bulkhead, lose 3ft all around our property, remove our garden bed by cutting timber (which is 8" x 8" thick), and would result in having to cut down 1 large tree and 1 medium tree.

We appreciate your consideration.

Thank you,

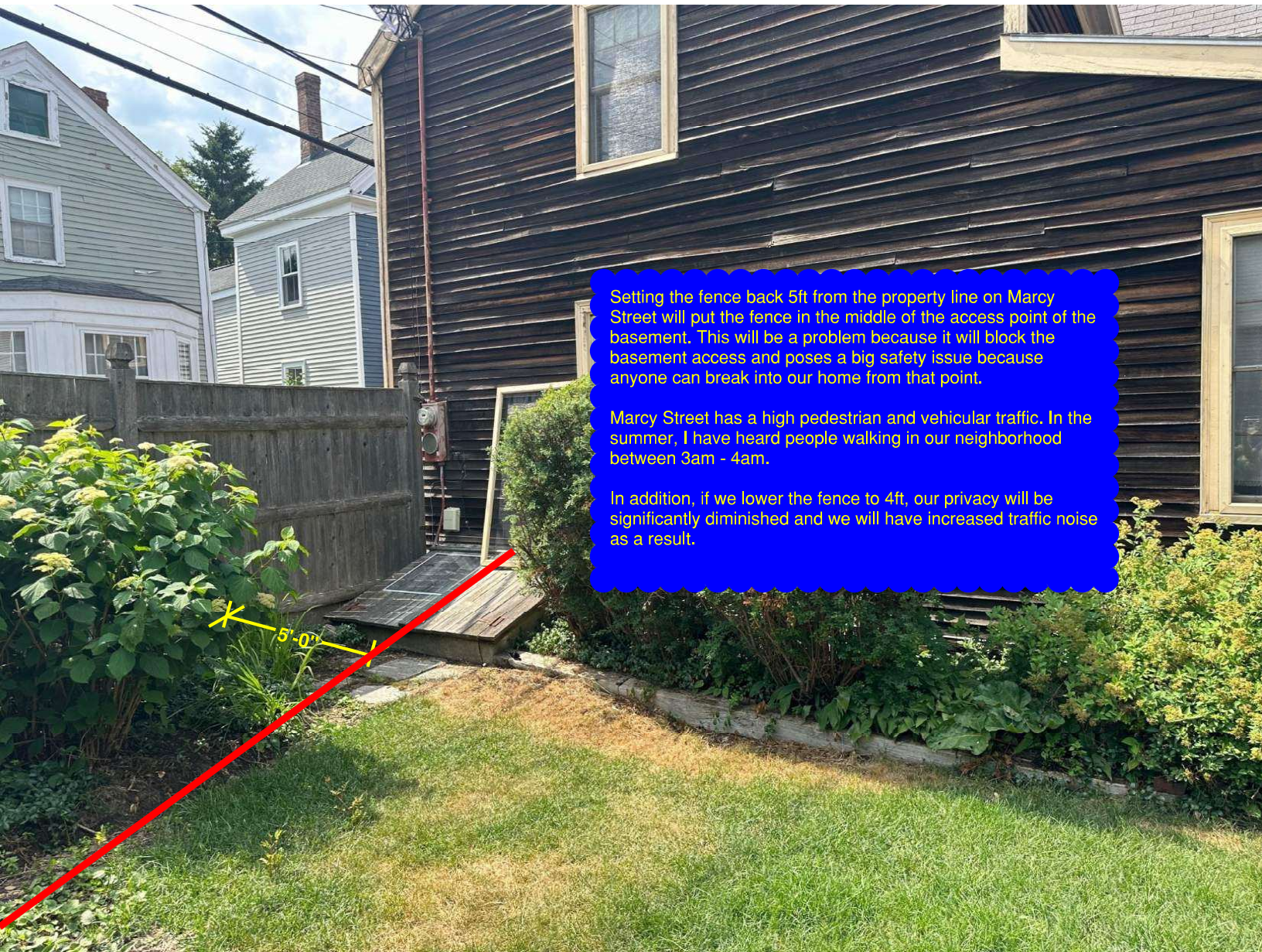
Daisy and Bert Wortel





If we set the fence back 5ft, we will have to remove the 2 trees and raised bed.

5'-0"



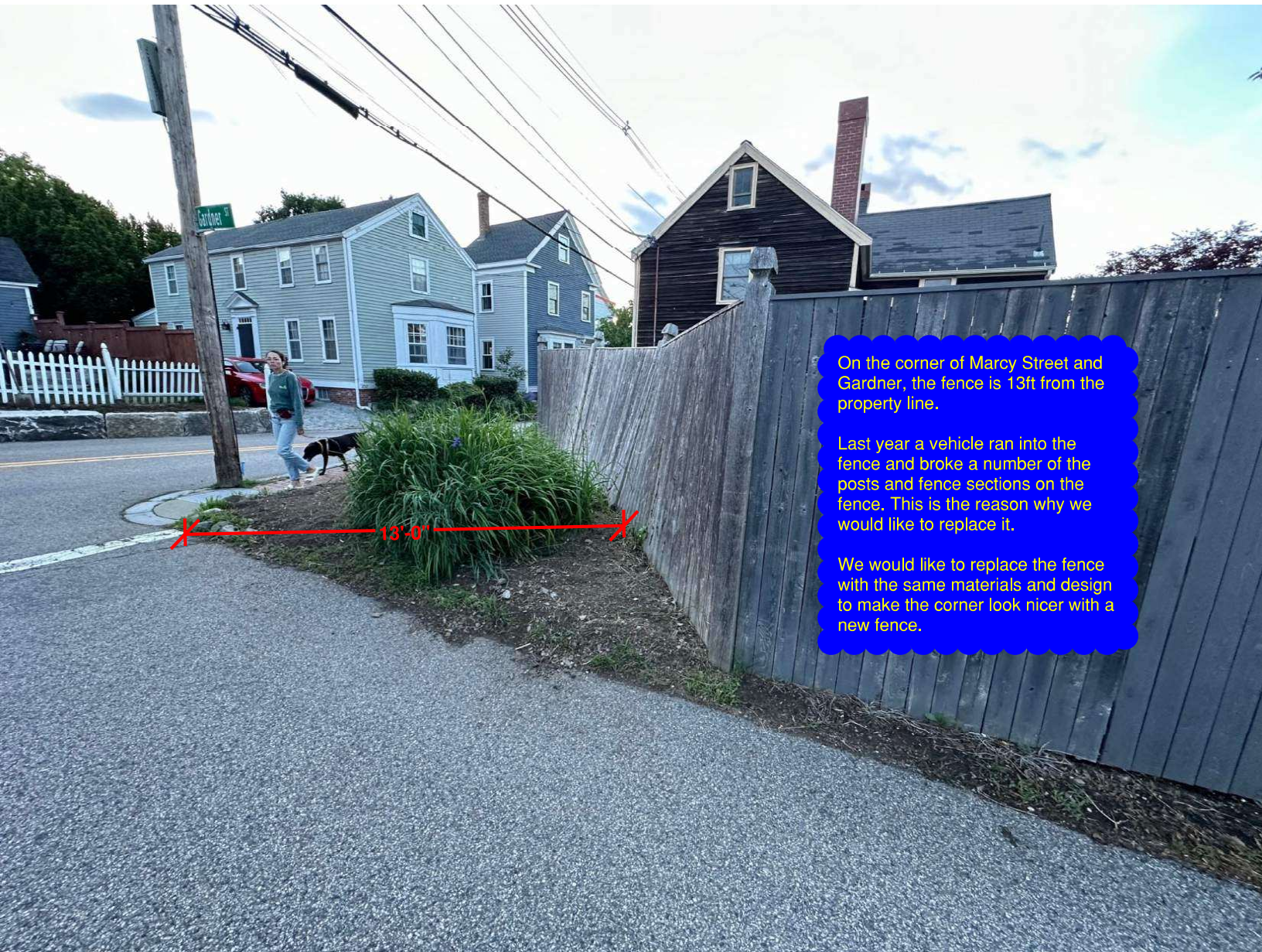
Setting the fence back 5ft from the property line on Marcy Street will put the fence in the middle of the access point of the basement. This will be a problem because it will block the basement access and poses a big safety issue because anyone can break into our home from that point.

Marcy Street has a high pedestrian and vehicular traffic. In the summer, I have heard people walking in our neighborhood between 3am - 4am.

In addition, if we lower the fence to 4ft, our privacy will be significantly diminished and we will have increased traffic noise as a result.



Street view on Marcy Street



On the corner of Marcy Street and Gardner, the fence is 13ft from the property line.

Last year a vehicle ran into the fence and broke a number of the posts and fence sections on the fence. This is the reason why we would like to replace it.

We would like to replace the fence with the same materials and design to make the corner look nicer with a new fence.



Street view of the corner of  
Marcy Street and Gardner

Broken and damaged posts















**II. NEW BUSINESS**

D. The request of **Thomas Kressler (Owner)**, for property located at **34 Garfield Road** whereas relief is needed to construct a single-story addition to the front of the existing home which requires the following: 1) Variance from Section 10.521 for a) 24% building coverage where 20% is allowed; and b) a 24.5-foot front yard where 30 feet is required; 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 268 Lot 84 and lies within the Single Residence B (SRB) District. (LU-24-134)

**Existing & Proposed Conditions**

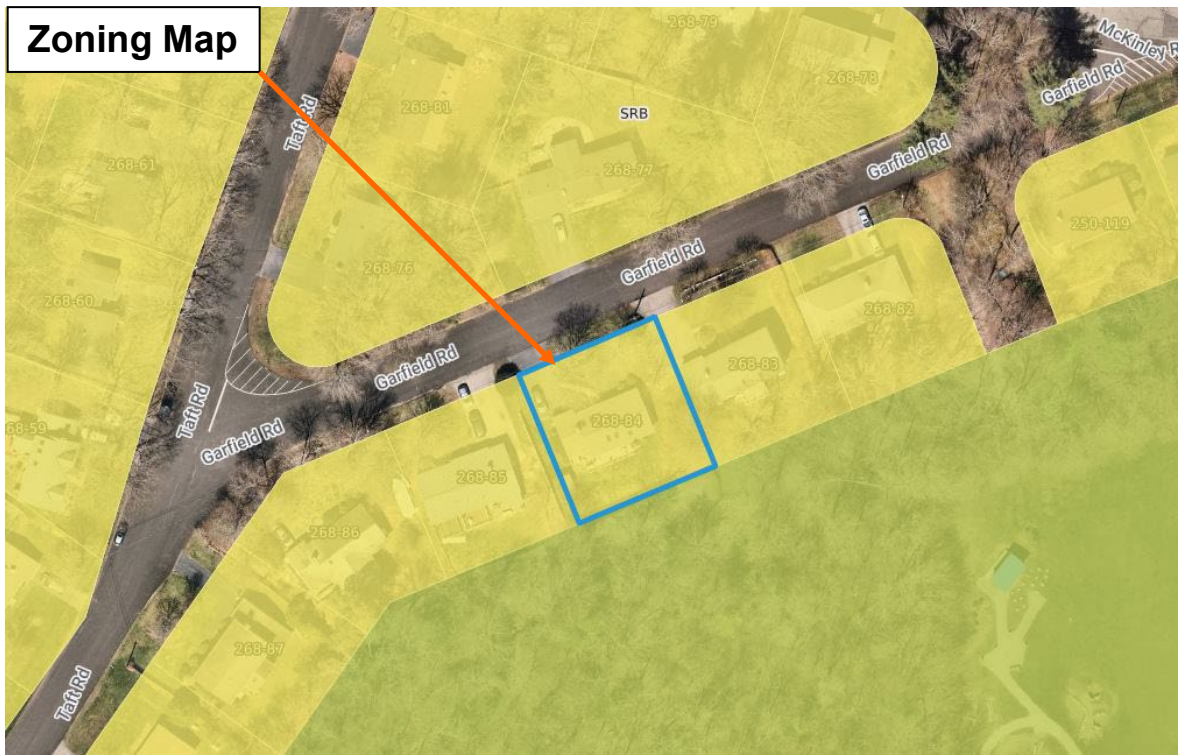
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Residence	*Construct an addition to the primary structure	Primarily residential
<u>Lot area (sq. ft.):</u>	9,058	9,058	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	9,058	9,058	15,000 min.
<u>Lot depth (ft.):</u>	100	100	100 min.
<u>Street Frontage (ft.):</u>	90	90	100 min.
<u>Front Yard (ft.):</u>	33	24.5	30 min.
<u>Right Yard (ft.):</u>	16	16	10 min.
<u>Left Yard (ft.):</u>	18.5	18.5	10
<u>Rear Yard (ft.):</u>	25	25	30 min.
<u>Height (ft.):</u>	<35	<35	35 max.
<u>Building Coverage (%):</u>	22	24	20 max.
<u>Open Space Coverage (%):</u>	>30	68	30 min.
<u>Parking:</u>	2	2	2
<u>Estimated Age of Structure:</u>	1961	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

**May 18, 1999** – The Board granted the request for a variance to allow a 10' x 20' deck with a 25' rear yard where 30' is required.

## Planning Department Comments

The applicant is requesting relief to construct a 13 foot by 14 foot addition to the front of the primary structure. In total this will add 182 square feet of new living space that includes a new closet and bathroom. The proposed addition is within the wetland buffer area and qualifies for the Wetland Conditional Use Permit (CUP) exemption outlined in section 10.1016 (4) of the Zoning Ordinance, therefore a Wetland CUP would not be required.

## 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.

**KALIL & LaCOUNT**  
ATTORNEYS AND COUNSELORS AT LAW

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681 Wallis Road • Rye, NH 03870

Earl L. Kalil, Jr.  
Michelle LaCount  
Joseph R. Russell

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(603) 964-1414  
(603) 964-7717 FAX  
ryelaw@ryelaw.net

Richard R. Rousseau

July 23, 2024

**By View Point and Hand Delivery**

City of Portsmouth  
Attn: Planning Department  
Board of Adjustment  
1 Junkins Avenue  
Portsmouth, NH 03801

Re: Application for Variance Thomas R. Kressler and Lisa M. Lapriore – 34 Garfield Road  
Tax Map 268, Lot 84

To whom it may concern:

This firm represents Thomas R. Kressler and Lisa M. Lapriore, the owners of real property situate at 34 Garfield Road, Portsmouth, New Hampshire. Please find the following materials for consideration of the Zoning Board of Adjustment at the August 20, 2024 meeting:

- Variance Application (filed online via View Point)
- Landowner Authorization
- Narrative of the Variance Request
- Exterior and Floor Plans
- Photographs of the Property
- Existing Site Survey
- Proposed Site Plan
- Tax Map with Zoning Overlay

Should you have any questions, please feel free to contact me.

Sincerely yours,

  
Richard R. Rousseau

RRR/

Enclosures

cc: Thomas Kressler; Lisa M. Lapriore

CITY OF PORTSMOUTH, NEW HAMPSHIRE

IN RE: APPLICATION OF THOMAS R. KRESSLER AND LISA M. LAPRIORE  
34 GARFIELD ROAD, PORTSMOUTH, NH 03801

**APPLICANT'S REQUEST FOR A  
VARIANCE FROM ARTICLE V, SECTION 10.520**

NOW COME the Applicants, Thomas R. Kressler and Lisa M. Lapriore, owners of Tax Map 268, Lot 84, also known as 34 Garfield Road, Portsmouth, New Hampshire (the "Property"), and respectfully requests that the Portsmouth Zoning Board of Adjustment grant their request for a Variance from Article V, Section 10.520 of the applicable Portsmouth Zoning Ordinance and in support thereof states the following:

A. The Property contains approximately 0.2079 acres (approximately 9,058.00 square feet) and is located in the Single Residence B District. The Property currently consists of a single story single family home that is occupied by the owners. *See Existing Conditions Plan* attached hereto. The Applicant wishes to add a small single story addition to the front side of the home on the opposite side of the garage (the "Addition"). *See Variance Plan* attached hereto. The Addition as proposed would be 13 feet by 14 feet, and encompass 182 square feet. *See Proposed Floor Plan* attached hereto. The Addition will add a small bathroom and closet to the master bedroom. *See id.* The Property is uniquely situated as the back of the Property is near wetlands, resulting in substantially all of the .2079 acre lot falling within the 100 foot Wetlands Buffer Zone, including the entirety of the home. Additionally, given the small size of the lot, the existing home is almost completely encased by the front yard setback, rear yard setback, and side yard setback. The proposed location for the Addition is in the front corner of the home furthest away from the wetlands while still being attached to the existing home. The proposed location of the Addition is, however, within the 30 foot front yard setback. It is also notable if the addition was placed on the back of the home it would infringe on the 30 foot back yard setback and would also be closer to the wetlands near the rear of the Property. The Addition also slightly increases the Building Coverage from 21.8% currently to 23.8% of the lot.

B. The Applicant seeks a variance from Article V, Section 10.520 of the Portsmouth Zoning Ordinance, with regard to the front yard 30 foot minimum setback and the maximum building coverage percentage of 20%, in order to allow the small Addition.<sup>1</sup> Specifically with regards to the front yard, the proposed Addition would leave a front yard of 24.5 feet near the front yard facing portion of the Addition, where 30 feet is required. Specifically with regard to the building coverage ratio, the Addition would result in 23.8% coverage where 20% is allowed.

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<sup>1</sup> Note, the Applicants are separately seeking a conditional use permit for the Wetland Buffer encroachment resulting from this proposal. Haley Ward, Inc will handle the conditional use permit application on behalf of the Applicants.

C. This Application meets all five (5) of the statutory tests for a variance:

1. **Granting the variance would not be contrary to the public interest.** The Addition would result in a relatively minor 5.5 foot encroachment on the front yard setback and exceed the building coverage ratio by minuscule amount, 3.8%. These small deviations would not be harmful to the public as the general protections to the public afforded by the ordinances are still intact.
2. **The spirit and intent of the Ordinance will be preserved.** There are two ways of discerning whether a variance violates the basic zoning objectives. "One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would 'alter the essential character of the locality.'" Chester Rod & Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 581 (2005). Another way is to "is to examine whether granting the variance would threaten the public health, safety or welfare." Id. Building setbacks are generally designed to preserve separation between buildings, maintain light and spacing, and protect against the spread of fire. Building Coverage ordinances are typically designed to prevent overcrowding of lots and preserve enough permeable surfaces in the surrounding area for water runoff. Given the proposed Addition is modestly sized, is for residential purposes, and designed to ascetically meld with the rest of the house, said Addition will not alter the essential character of the locality and is a reasonable use of the Property. Furthermore, the Addition does not threaten public health, safety, or welfare as the Addition only encroaches on the setback from the road by 5.5 feet for short span of the yard and only exceeds the building coverage ratio by 3.8%.
3. **Granting the variance will result in substantial justice.** "[T]he only guiding rule [on this factor] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice." Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102, 109 (2007). The current home only has one bathroom. The Addition will add a much needed second bathroom and closet space to the three bedroom home. The deviations from the setback and building coverage requirements that would result from the proposed Addition are minor, therefore, any potential protections to the public by strict compliance are minute. Concurrently the owners would substantially benefit from a more functional home that more adequately meets their needs. Therefore, granting the variance would result in substantial justice because the loss by the property owners by strict compliance is not outweighed by the public interests served.
4. **There will be no diminution in value to surrounding properties.** The improvement to the Property will increase its value. The small Addition

will be attractively designed and not be out of character for the surrounding neighborhood. Furthermore, the Addition does not encroach on either of the side setbacks, and existing arborvitae help block the adjacent neighbors view of the Addition. As such, the Addition would not negatively impact the value of the surrounding properties.

5. **Literal enforcement of the zoning ordinance will result in unnecessary hardship.** Literal enforcement of the zoning ordinances will result in unnecessary hardship due to the small lot size, small home size, location of the wetland, and location of the home tightly squeezed within the setback restrictions. Given these unique characteristics of the Property, there is no other feasible location for a master bathroom and closet adjacent to the home without encroaching on the front, rear, or side setbacks. The existing living space is also relatively small at 1,061 square feet resulting in the need for a minor expansion. The proposed location of the Addition is the furthest from the wetlands, does not encroach on the side setbacks to the neighboring properties, is designed to be as small as possible while still remaining functionality, and the view is obscured from the property nearest the Addition by existing arborvitae. The minor infractions of the front yard setback and building coverage do not usurp the primarily goals of the ordinances. Given the special conditions of this Property no fair and substantial relationship exists between the general purposes of the front yard setback restriction or the coverage limitation and its application to the proposed Addition.

WHEREFORE, the Applicant respectfully requests that the Board of Adjustment grant their request for a variance for the reasons stated herein, and for such other and further relief as may be deemed proper and just.

Respectfully submitted,  
Thomas R. Kressler and Lisa M. Lapriore

By its attorneys,  
KALIL & LaCOUNT

Dated: July 22, 2024

By:




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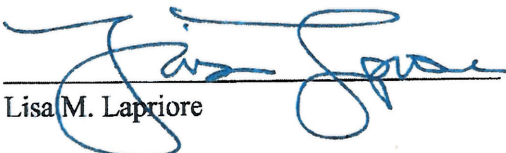
Richard R. Rousseau, Esq.  
Kalil & LaCount  
681 Wallis Road  
Rye, New Hampshire 03870  
(603) 964-1414  
Rich@ryelaw.net  
Bar # 275007

**LANDOWNER AUTHORIZATION**

The undersigned, **Thomas R. Kressler** and **Lisa M. Lapriore**, owners of Tax Map 268, Lot 84, also known as 34 Garfield Road, Portsmouth, New Hampshire, do hereby authorize **Richard R. Rousseau, Esquire**, or any other attorney associated with the law firm **Kalil & LaCount** to file any applications on my behalf and/or appear on my behalf before the City of Portsmouth land use boards in association with said application(s) for the aforementioned property. The undersigned further hereby authorize **Haley Ward, Inc., Stephen Ricker**, or any of their associated agents to file any applications on my behalf and/or appear on my behalf before the City of Portsmouth land use boards in association with said application(s) for the aforementioned property.

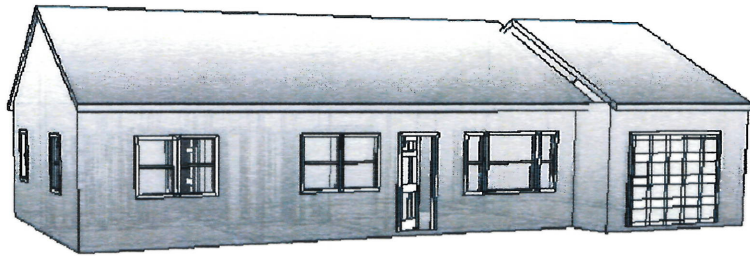
  
\_\_\_\_\_  
Thomas R. Kressler

DATE 6/19/2024

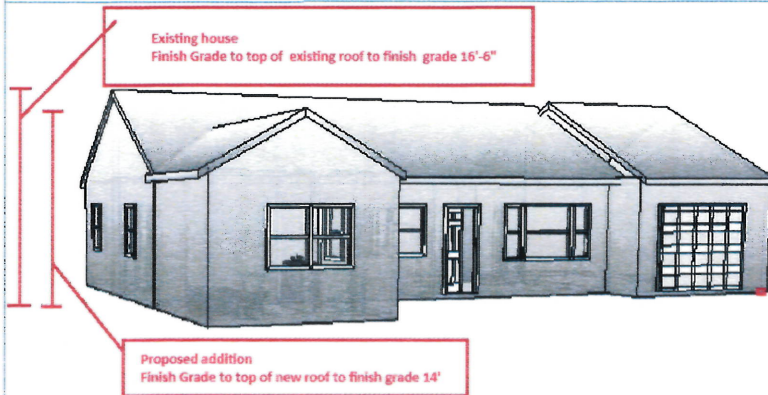
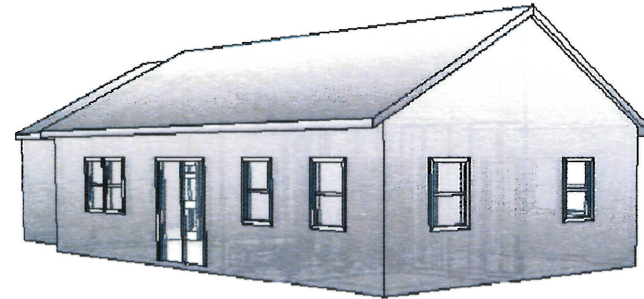
  
\_\_\_\_\_  
Lisa M. Lapriore

DATE 6/19/2024

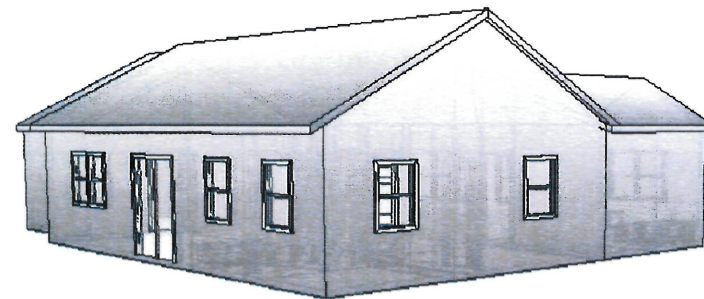
**EXISTING FRONT ELEVATION**



**EXISTING SIDE-REAR ELEVATION**



**PROPOSED FRONT ELEVATION**

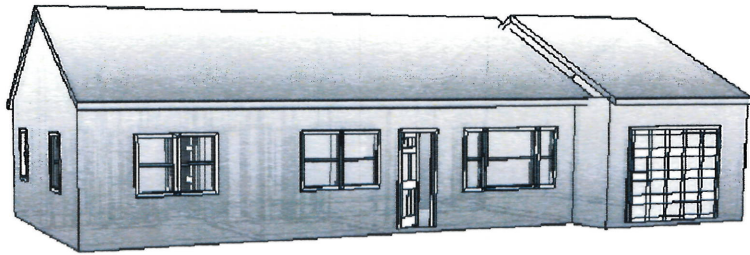


**PROPOSED SIDE-REAR ELEVATION**

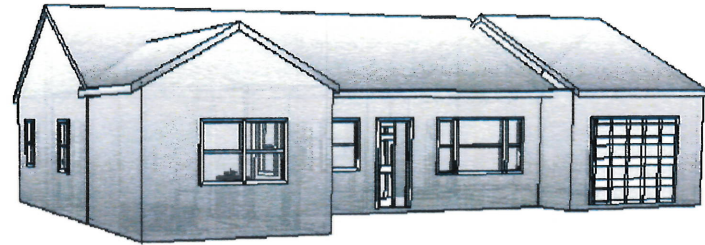
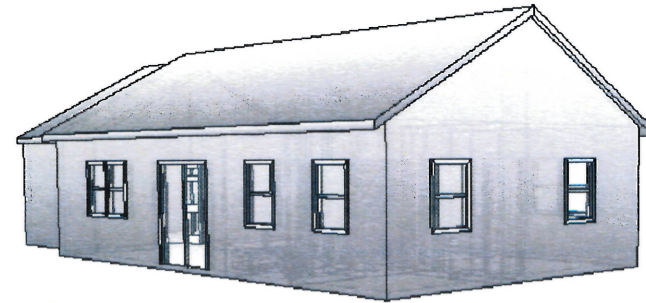
**KRESSLER - LAPRIORE RESIDENCE  
34 GARFIELD DRIVE  
PORTSMOUTH NH 03801**

**PROPOSED 14X10 ADDITION**

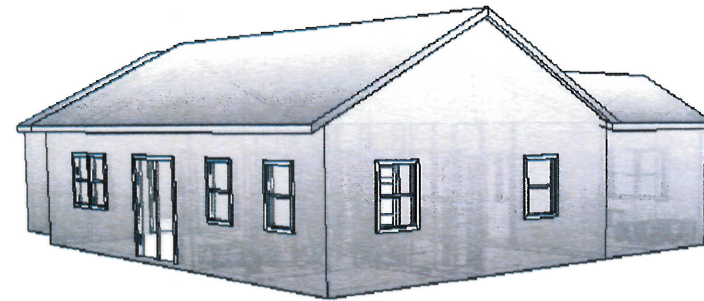
EXISTING FRONT ELEVATION



EXISTING SIDE-REAR ELEVATION



PROPOSED FRONT ELEVATION

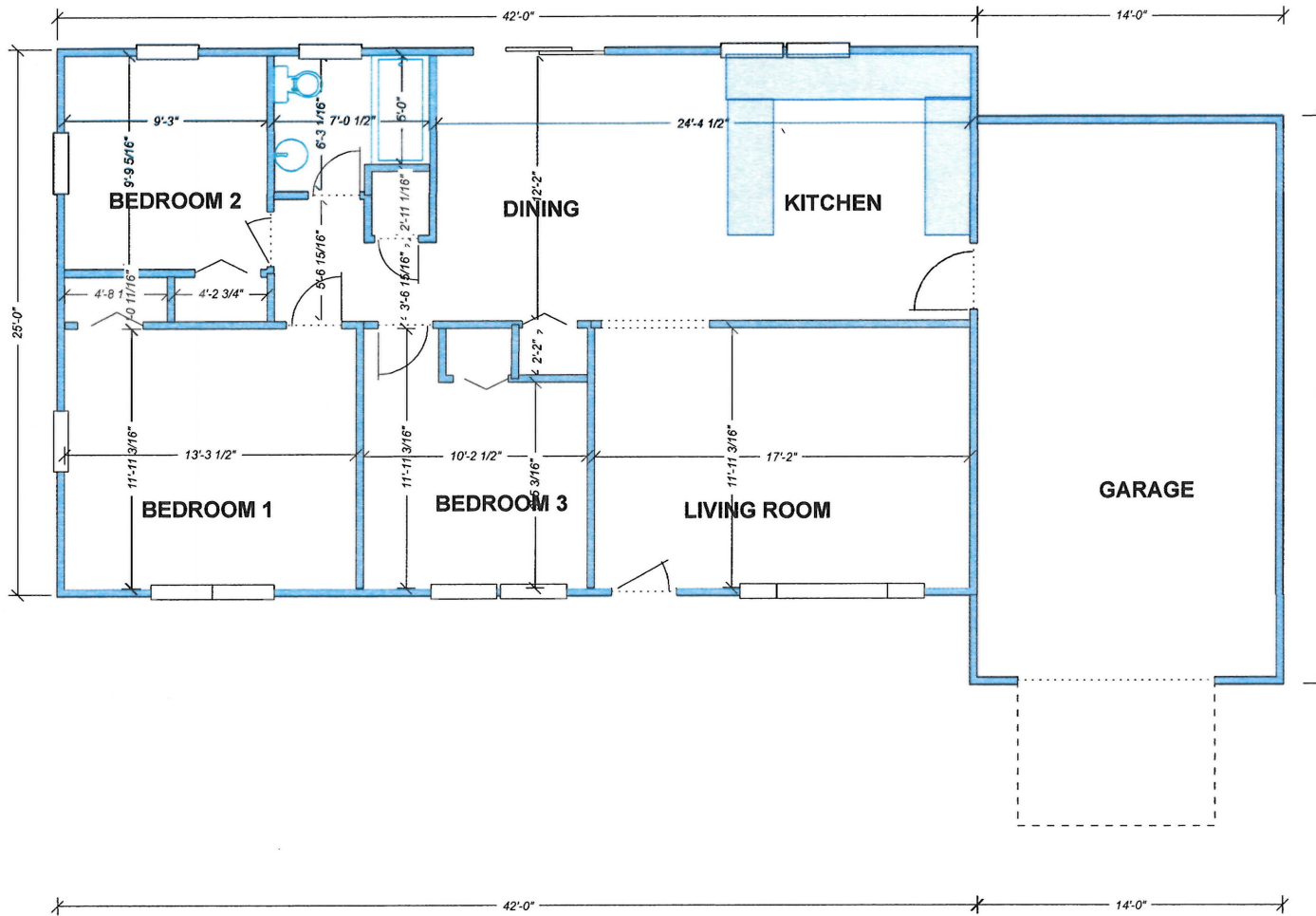


PROPOSDE SIDE-REAR ELEVATION

KRESSLER - LAPRIORE RESIDENCE  
34 GARFIELD DRIVE  
PORTSMOUTH NH 03801

PROPOSED 14X10 ADDITION

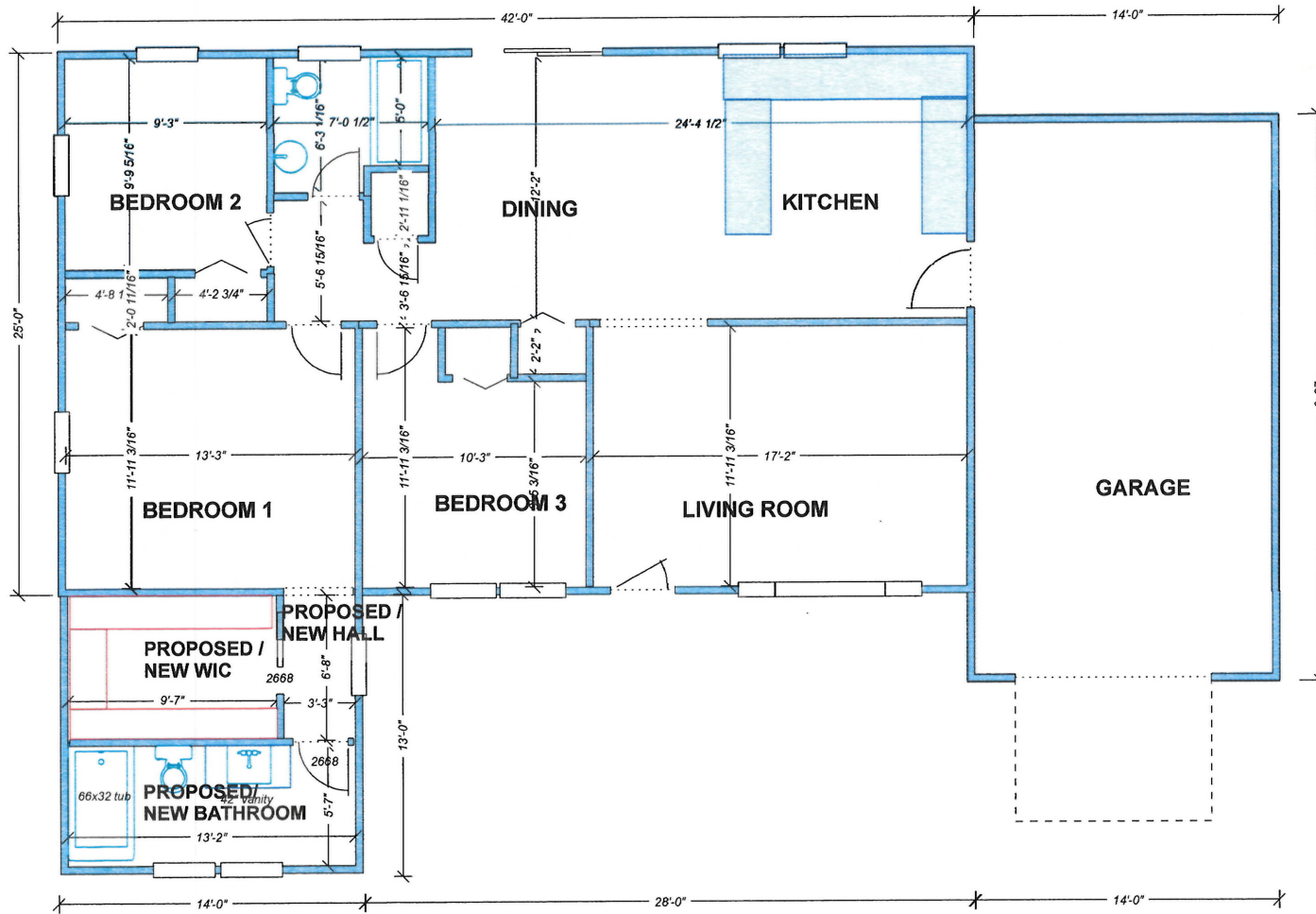




**KRESSLER - LAPRIORE RESIDENCE**  
**34 GARFIELD DRIVE**  
**PORTSMOUTH NH 03801**

**EXISTING FLOOR PLAN**

**SCALE**  
**1/8 INCH = 1 FOOT**



**KRESSLER - LAPRIORE RESIDENCE**  
**34 GARFIELD DRIVE**  
**PORTSMOUTH NH 03801**

**PROPOSED FLOOR PLAN**  
**MASTER BATH ROOM**  
**AND CLOSET ADDITION**

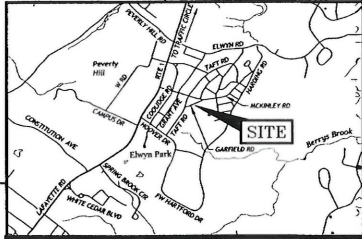
**SCALE**  
**1/8 INCH = 1 FOOT**



Front of House – Close up on area of proposed addition



Front of House



LOCATION MAP SCALE: 1" = 2000'

LEGEND:

N/F	NOW OR FORMERLY
RP	RECORD OF PROBATE
RCRD	ROCKINGHAM COUNTY
REGISTRY OF DEEDS	
MAP 11 / LOT 21	
---	BOUNDARY
---	SETBACK
---	EDGE OF FRESH WATER WETLANDS
○	IRON ROD/PIPE FOUND
D	STORM DRAIN
---	OVERHEAD ELECTRIC/WIRES
---	CONTOUR
---	EDGE OF PAVEMENT
---	WOODS / TREE LINE
---	UTILITY POLE (w/ GUO)
---	GATE VALVE
---	ELECTRIC METER
---	CATCH BASIN
---	SEWER MANHOLE
---	DRAIN MANHOLE
EL	ELEVATION
FF	FINISHED FLOOR
W	WALKWAY
TM	TEMPORARY BENCHMARK
TYP	TYPICAL
LSA	LANDSCAPED AREA
CH	HVAC/HEAT PUMP

WETLAND NOTES:

- WETLAND LINE DELINEATED BY STEVEN D. RIKER, CWS ON 11/29/2022 IN ACCORDANCE WITH THE FOLLOWING STANDARDS:
  - U.S. ARMY CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL, TECHNICAL REPORT Y-87-1 (JAN. 1987), AND REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTHCENTRAL AND NORTHEAST REGION, VERSION 2.0, JANUARY 2012.
  - FIELD INDICATORS OF HYDRIC SOILS IN THE UNITED STATES, VERSION 8.2, USDA-NRCS, 2018 AND (FOR DISTURBED SITES) FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN NEW ENGLAND, VERSION 4, NEMPPCC WETLANDS WORK GROUP (2019).
  - NATIONAL LIST OF PLANT SPECIES THAT OCCUR IN WETLANDS: NORTHEAST (REGION 1), USFWS (MAY 1988).
  - CLASSIFICATION OF WETLANDS AND DEEPWATER HABITATS OF THE UNITED STATES. USFWS MANUAL FWS/OBS-79/31 (1997).
  - "IDENTIFICATION AND DOCUMENTATION OF VERNAL POOLS IN NEW HAMPSHIRE" (1997). NEW HAMPSHIRE FISH AND GAME DEPARTMENT.
- WETLAND FLAGS WERE FIELD LOCATED BY AMBT ENGINEERING, INC.

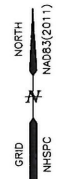
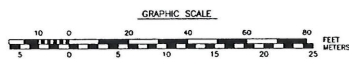
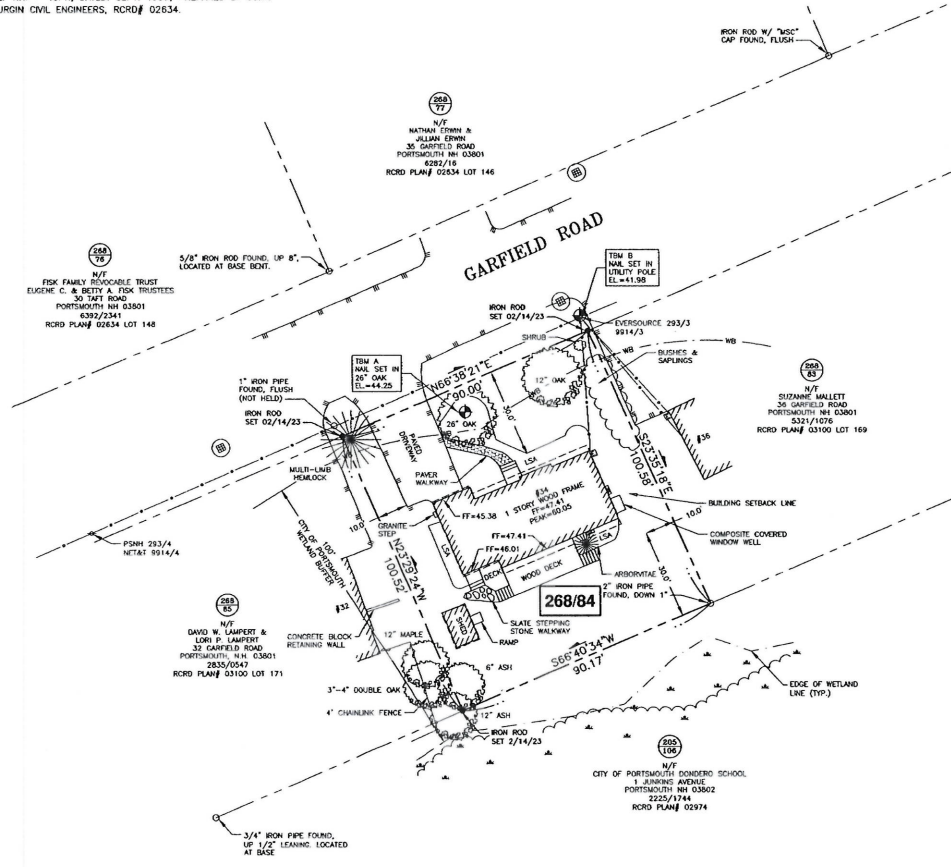
"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

JOHN R. CHAGNON, LLS #738 DATE 5-1-24



PLAN REFERENCES:

- PLAN OF LOTS GARFIELD & TAFT ROADS PORTSMOUTH N.H. FOR E.A. RICCI, SCALE: 1IN. = 60 FT., DATED: DEC. 1960, PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS, RCRD# 03100.
- LAND IN PORTSMOUTH, N.H. E.A. RICCI TO CITY OF PORTSMOUTH, SCALE: 1IN. = 60 FT., DATED: AUGUST 1959, PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS, RCRD# 02974.
- PLAN OF LOTS NOS. 143 TO 148 INCLUSIVE AS SHOWN ON PLAN OF LOTS ELWYN PARK PORTSMOUTH, N.H. FOR E.A. RICCI, SCALE: 1IN. = 40FT., DATED: SEPT. 1957, PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS, RCRD# 02634.



NOTES:

- PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 268 AS LOT 84.
- OWNERS OF RECORD: THOMAS R. KRESSLER & LISA M. LAPRIORE 34 GARFIELD RD PORTSMOUTH, N.H. 03801 R.C.R.D. 5616/0468 R.C.R.D. PLAN# 03100 LOT 170
- PARCEL IS NOT IN A FLOOD HAZARD ZONE AS SHOWN ON FIRM PLAN 33015C0270F DATED 1/29/2021.
- EXISTING LOT AREA: 9,056 S.F. 0.2079 ACRES
- PARCEL IS LOCATED IN THE SINGLE RESIDENCE B DISTRICT (SRB).
- DIMENSIONAL REQUIREMENTS:
 

MIN. LOT AREA:	15,000 S.F.
FRONTAGE:	100 FEET
SETBACKS:	FRONT: 30 FEET
	SIDE: 10 FEET
	REAR: 30 FEET
MAXIMUM STRUCTURE HEIGHT:	35 FEET
MAXIMUM BUILDING COVERAGE:	20%
MINIMUM OPEN SPACE:	40%
- THE PURPOSE OF THIS PLAN IS TO SHOW THE RESULTS OF AN EXISTING CONDITIONS SURVEY OF ASSESSOR'S MAP 268 LOT 84 IN THE CITY OF PORTSMOUTH.
- VERTICAL DATUM IS NAVD83. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS.
- PARCEL IS SUBJECT TO RESTRICTIVE COVENANTS AS SET FORTH IN R.C.R.D. 1561/2017 INsofar AS THE RESTRICTIVE COVENANTS ARE STILL IN EFFECT.

0	05/01/24	ISSUED FOR COMMENT	SJR	JRC
NO.	DATE	DESCRIPTION	BY	CHK.

SITE SURVEY

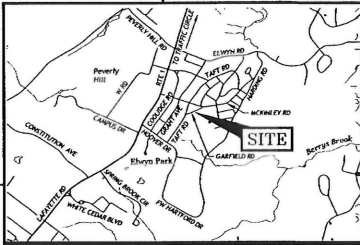


PROJECT: KESSLER / LAPRIORE RESIDENCE 34 GARFIELD ROAD, PORTSMOUTH, N.H. 03801

EXISTING CONDITIONS PLAN

DATE:	DECEMBER 2022	SCALE:	1" = 20'
DESIGNED BY:	SJR	DESIGNED BY:	SJR
CHECKED BY:	JRC	CHECKED BY:	JRC
PROJECT NO.:	5010144_3544	FIELD BOOK & PAGES:	FB 434 PG 68
SHEET NO.:	C1	TOTAL SHEETS:	1

P:\100\1010144\Draw\1010144-3544-01.dwg, Plot Date: 5/1/24, Plot Time: 11:58:44 AM  
 User: jrc@haleyward.com, Plotter: HP DesignJet T1100e, Plot Scale: 1:15000, Plot Size: 36x48, Plot Orientation: Landscape

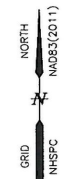


LOCATION MAP SCALE: 1" = 2000'

IMPERVIOUS SURFACE AREAS (TO PROPERTY LINES)		
STRUCTURE	PRE-CONSTRUCTION IMPERVIOUS (S.F.)	POST-CONSTRUCTION IMPERVIOUS (S.F.)
MAIN STRUCTURES	1,422	1,604
SHED	103	103
STAIRS, STEPS, & RAMP	122	122
PAVED DRIVEWAY	648	648
DECK	325	325
WALKWAYS	118	118
TOTAL	2,738	2,920
M	9,058	9,058
% LOT COVERAGE	30.2%	32.2%

**BUILDING COVERAGE:**  
 EXISTING: 1,422+103+122+325=1,972/9,058= 21.8%  
 PROPOSED: 1,604+103+122+325=2,154/9,058= 23.8%

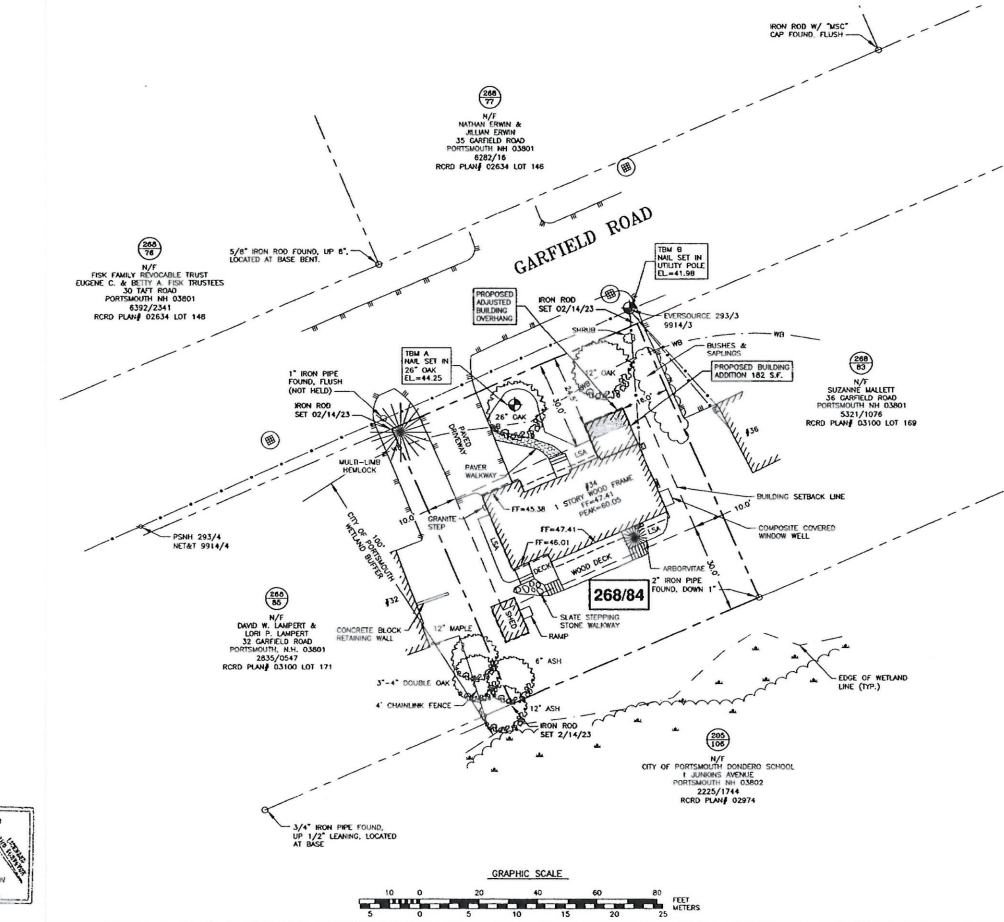
- PLAN REFERENCES:**
- 1) PLAN OF LOTS GARFIELD & TAFT ROADS PORTSMOUTH, N.H. FOR E.A. RICCI, SCALE: 1IN. = 60 FT., DATED: DEC. 1965, PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS, RCRD# 03100.
  - 2) LAND IN PORTSMOUTH, N.H. E.A. RICCI TO CITY OF PORTSMOUTH, SCALE: 1IN. = 60 FT., DATED: AUGUST 1959, PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS, RCRD# 02974.
  - 3) PLAN OF LOTS NOS. 143 TO 148 INCLUSIVE AS SHOWN ON PLAN OF LOTS ELWIN PARK PORTSMOUTH, N.H. FOR E.A. RICCI, SCALE: 1IN. = 40 FT., DATED: SEPT. 1957, PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS, RCRD# 02634.



- NOTES:**
- 1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 268 AS LOT 84.
  - 2) OWNERS OF RECORD: THOMAS R. KRESSLER & LISA M. LAPRIORE 34 GARFIELD RD PORTSMOUTH, NH. 03801 R.C.R.D. 5616/0468 R.C.R.D. PLAN# 03100 LOT 170
  - 3) PARCEL IS NOT IN A FLOOD HAZARD ZONE AS SHOWN ON FIRM PANEL 33015C0270F DATED 1/29/2021.
  - 4) EXISTING LOT AREA: 9,058 S.F. 0.2079 ACRES
  - 5) PARCEL IS LOCATED IN THE SINGLE RESIDENCE B DISTRICT (SRB).
  - 6) DIMENSIONAL REQUIREMENTS:  
 MIN. LOT AREA: 15,000 S.F.  
 FRONTAGE: 100 FEET  
 SETBACKS: FRONT: 30 FEET  
 SIDE: 10 FEET  
 REAR: 30 FEET  
 MAXIMUM STRUCTURE HEIGHT: 35 FEET  
 MAXIMUM BUILDING COVERAGE: 20%  
 MINIMUM OPEN SPACE: 40%
  - 7) THE PURPOSE OF THIS PLAN IS TO SHOW A PROPOSED ADDITION TO AN EXISTING BUILDING LOCATED AT ASSESSOR'S MAP 268 LOT 84 IN THE CITY OF PORTSMOUTH, IN PURSUIT OF A VARIANCE.
  - 8) VERTICAL DATUM IS NAVD83. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS.
  - 9) PARCEL IS SUBJECT TO RESTRICTIVE COVENANTS AS SET FORTH IN R.C.R.D. 1561/207 INSOFAR AS THE RESTRICTIVE COVENANTS ARE STILL IN EFFECT.

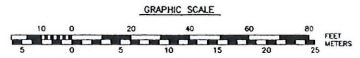
- LEGEND:**
- N/F NOW OR FORMERLY
  - RP RECORD OF PROBATE
  - RCRD RECORDING COUNTY
  - REGISTRY OF DEEDS
  - MAP 11 / LOT 21
  - BOUNDARY
  - SETBACK
  - EDGE OF FRESH WATER WETLANDS
  - IRON ROD/PIPE FOUND
  - STORM DRAIN
  - OVERHEAD ELECTRIC WIRES
  - CONTOUR
  - EDGE OF PAVEMENT
  - WOODS / TREE LINE
  - UTILITY POLE (w/ GW)
  - GATE VALVE
  - ELECTRIC METER
  - CATCH BASIN
  - SEWER MANHOLE
  - DRAIN MANHOLE
  - ELEVATION
  - FINISHED FLOOR
  - INVERT
  - TEMPORARY BENCHMARK
  - TYP. TYPICAL
  - LSA LANDSCAPED AREA
  - HWD/HEAT PUMP

- WETLAND NOTES:**
- 1) WETLAND LINE DELINEATED BY STEVEN D. RIKER, CWS ON 11/29/2022 IN ACCORDANCE WITH THE FOLLOWING STANDARDS:
    - A) U.S. ARMY CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL, TECHNICAL REPORT Y-87-1 (JAN. 1987), AND REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL, NORTHEASTAL AND NORTHEAST REGION, VERSION 2.0, JANUARY 2010
    - B) FIELD INDICATORS OF HYDRIC SOILS IN THE UNITED STATES, VERSION 8.2, USDA-NRCS, 2018 AND (FOR DISTURBED SITES) FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN NEW ENGLAND, VERSION 4. NEWPPCC WETLANDS WORK GROUP (2019).
    - C) NATIONAL LIST OF PLANT SPECIES THAT OCCUR IN WETLANDS: NORTHEAST (REGION 1), USFWS (MAY 1988).
    - D) CLASSIFICATION OF WETLANDS AND DEEPWATER HABITATS OF THE UNITED STATES. USFV MANUAL FWS/OBS-79/31 (1997)
    - E) "IDENTIFICATION AND DOCUMENTATION OF VERNAL POOLS IN NEW HAMPSHIRE" (1997). NEW HAMPSHIRE FISH AND GAME DEPARTMENT.
  - 2) WETLAND FLAGS WERE FIELD LOCATED BY AMBIT ENGINEERING, INC.



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

JOHN R. CHAGNON, LLS #738 DATE 5.1.24



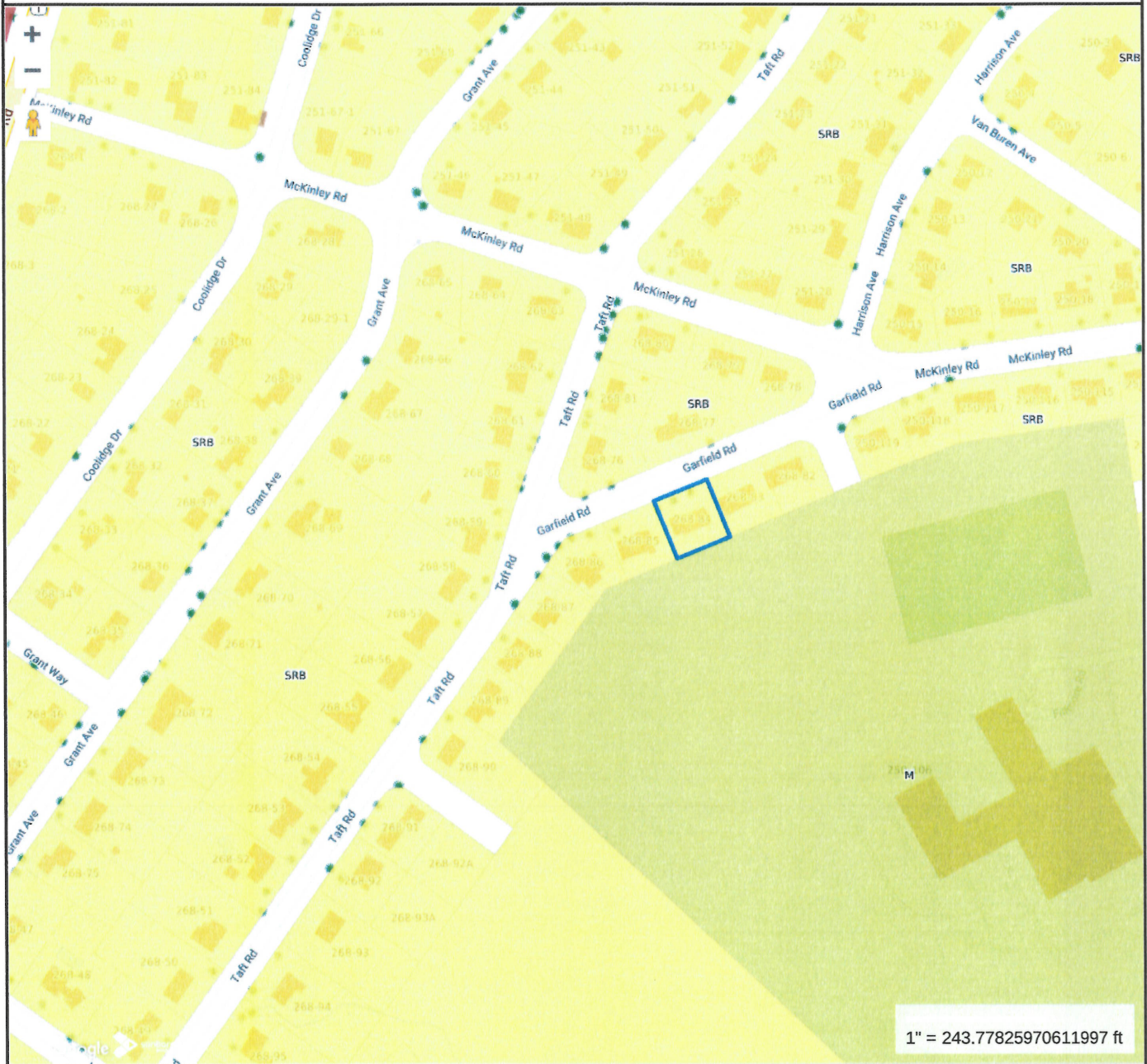
Q	050124	ISSUED FOR COMMENT	SJR	JRC
NO.	DATE	DESCRIPTION	BY	CHK.
SITE PLAN				

**HALEY WARD**  
 ENGINEERING | ENVIRONMENTAL | SURVEYING  
 200 Griffin Rd. Unit 14  
 Portsmouth, New Hampshire 03801  
 603.430.9382

**PROJECT:**  
 KESSLER / LAPRIORE RESIDENCE  
 34 GARFIELD ROAD, PORTSMOUTH, N.H. 03801

**TITLE:**  
 VARIANCE PLAN

DATE	2024.03.20	SCALE	1" = 20'
DESIGNED BY	SJR	PREPARED BY	SJR
CHECKED BY	JRC	FIELD WORK & PLOT	JRC
PROJECT NO.	501014-3544	FIELD BOOK & PLOT	FB 434
DATE		PG.	PG. 08
<b>C2</b>		<b>2</b>	



**Property Information**

**Property ID** 0268-0084-0000  
**Location** 34 GARFIELD RD  
**Owner** KRESSLER THOMAS 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.




# Map Theme Legends

## Zoning

### Residential Districts

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

### Mixed Residential Districts

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

### Business Districts

-  GB General Business
-  B Business
-  WB Waterfront Business

### Industrial Districts

-  OR Office Research
-  I Industrial
-  WI Waterfront Industrial

### Airport Districts

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

### Conservation Districts

-  M Municipal
-  NRP Natural Resource Protection


### Character Districts

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

### Civic District

-  Civic District

### Municipal District

-  Municipal District

### Overlay Districts

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

City of Portsmouth



**II. NEW BUSINESS**

- E. The request of **Heritage NH LLC (Owner) and SWET Studios LLC (Applicant)**, for property located at **2800 Lafayette Road** whereas relief is needed for a change of use for Unit 17 to a health club including the following special exception from Section 10.440, Use #4.42 to allow a health club greater than 2,000 s.f. of gross floor area. Said property is located on Assessor Map 285 Lot 2 and lies within the Gateway Corridor (G1) District. (LU-24-128)

**Existing & Proposed Conditions**

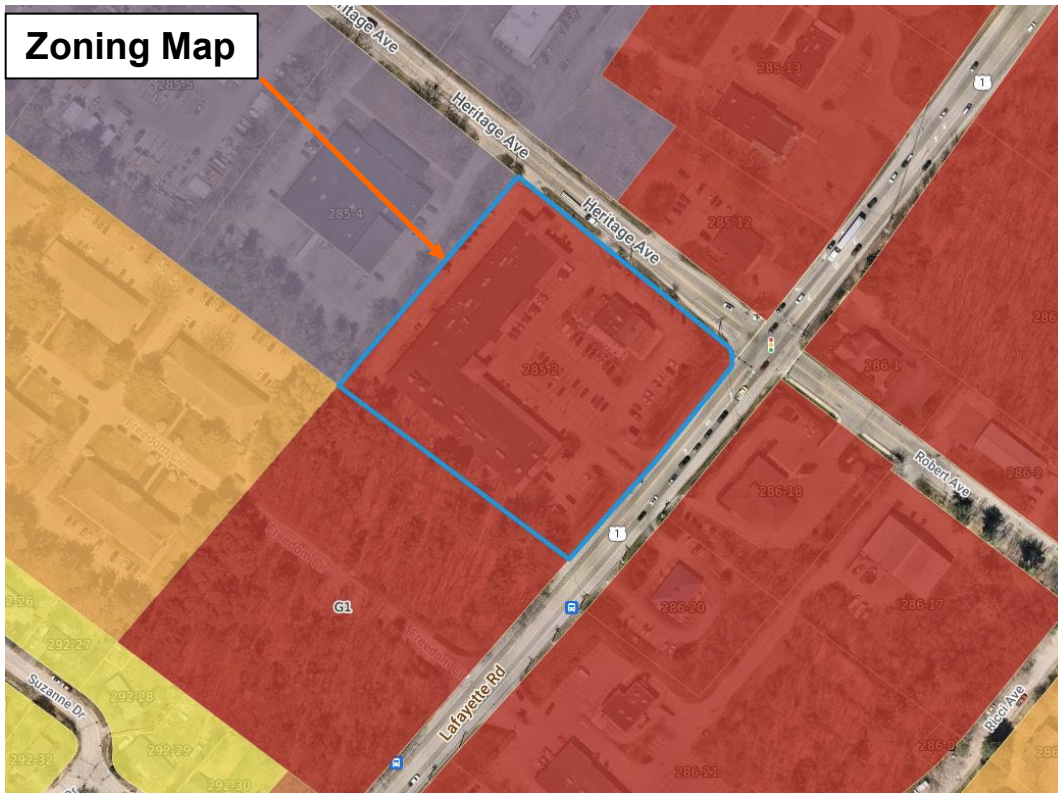
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Health Club / Retail	*Convert Unit 17 to Health Club >2,000 sq.ft. GFA	Primarily Mixed-Use
<u>Parking</u>	34*	>16	16 (1 space per 250 GFA)
	*Combined required parking for original restaurant use in Unit 18 and retail in Unit 17	Variance request(s) shown in red.	

\*Special Exception for a health club use greater than 2,000 SF GFA

**Other Permits/Approvals Required**

- Building Permit

### Neighborhood Context



## Previous Board of Adjustment Actions

- **April 16, 1985** – The Board granted a special exception to allow a temporary structure (construction trailer) to be located on the site for 90 days, with a \$5,000 bond, and to allow construction of an automobile washing facility. The Board granted variances to permit a 30' side yard; construction of a retail and auto washing structure within 100' of property zoned residentially; and parking spaces and access ways to be located within 50' of an adjoining residential district.
- **October 22, 1985** – The Board denied a request to allow the placement of 3 free-standing signs with a total sign area of 367 s.f. where a maximum of 150 s.f. was allowed.
- **January 7, 1986** – The Board tabled a request for variances to permit: a) maximum aggregate sign area of 966 s.f. where 661 s.f. maximum is allowed, b total attached signage of 726 s.f. where a maximum of 661 s.f. was allowed and c) 240 s.f. of free-standing signage where 150 s.f. was the maximum allowed.
- **January 28, 1986** – The Board granted the variances tabled on January 7, 1986.
- **September 16, 1986** – The Board granted a variance to allow a professional office (chiropractic) in a district where professional offices were not allowed.
- **May 3, 1988** – The Board denied a request to Appeal an Administrative Decision regarding denial of permission to construct a drive-up window to a proposed bank. The Board granted a variance to move 11 existing spaces to within 50' of an adjoining residential district.
- **June 16, 1998** – The Board granted a variance to allow a business to occupy a 3,040 s.f. of space for a drop off/pick-up dry cleaning off-site and laundered items on-site where 2,000 s.f. of space was the maximum allowed.
- **March 20, 2007** – The Board granted an Equitable Waiver to allow an existing 36,328 s.f. building with a) a 104.9' front yard where a 105' front yard was required; and b) a 29.6' left side yard where 30' was required.
- **December 21, 2010** – The Board denied a request to allow a third free-standing sign where only two free-standing signs were allowed in a shopping center.
- **December 16, 2014** – The Board granted a special exception to allow a religious place of assembly in a district where the use was allowed by special exception.
- **October 22, 2019** – The Board granted a Special Exception for a change of use to a health club that requires the following Special Exception from Section 10.440, Use #4.40 to allow a health club greater than 2,000 s.f. of gross floor area.

### **Planning Department Comments**

The applicant is requesting a special exception to convert the existing commercial space into workout studio space. The proposal is to convert two existing units, #17 and #18, at the 2800 Lafayette Road Plaza into one unit. Unit #18 was formerly approved as a studio workout space and does not require an approval, however the conversion of unit #17 does require the approval as it would create a gym space larger than 2,000 Square feet.

### **Special Exception Review Criteria**

The application must meet all of the standards for a **special exception** (see Section 10.232 of the Zoning Ordinance).

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*
2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
3. *No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*
4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*
5. *No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and*
6. *No significant increase of stormwater runoff onto adjacent property or streets.*

### **10.235 Certain Representations Deemed Conditions**

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

LU-24-128

SWET STUDIOS LAND USE APPLICATION

7/23/2024

Units 17 & 18

2800 Lafayette Rd

Portsmouth NH 03801

Submitted by SWET Studios LLC and Martini Northern LLC



\WET Studios Special Acceptance Narrative  
Units 17 and 18  
2800 Lafayette Rd. Portsmouth NH

\WET Studios will be a new 3800 square foot fitness center for spin, yoga, and strength classes. The business model revolves around having a designated area for spin classes with a separate multipurpose room for strength and yoga. To create the space that will work around the business model, \WET Studios needs to combine Units 17 and 18 of 2800 Lafayette Rd. They plan to do an interior only renovation that combines Units 17 and 18 of 2800 Lafayette Rd. The goal is to create a spin studio with a lobby, changing area, and restrooms in unit 18 with an interior connection to unit 17 that will be a yoga/fitness room. The spin studio will be 1000 square feet. The yoga/strength room will be 870 square feet. The remaining square footage in the space will be for restrooms, lobby, entrance, locker area, storage, and utilities. The interior renovation will consist of new interior walls, flooring, and paint. Modifications to the HVAC system, fire alarm and sprinkler system to accommodate the new layout. \WET Studios is a women owned and run business that will promote healthy lifestyles within the Portsmouth and Seacoast communities.

1. *Standards as provided by this Ordinance for the particular use permitted by special exception; \WET Studios meets this requirement. The gym space is permitted by this ordinance. We are requesting that the size of the fitness studio greater than 2000sqft be allowed. As we feel that we are still conforming to the district zoning ordinance. The existing space in 18 is already used a 2995 square foot fitness studio, we are looking to add 1,125 square feet to meet the needs of the business model.*
2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials; \WET Studios meets this requirement. This is a gym space with an interior only renovation. There is no additional fire hazard created.*
3. *No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials; \WET Studios meets this requirement. This is an interior only renovation. There will be music played during spin classes but additional sound insulation and drywall will be added around that room to help with the noise. There will be an STC rating of 58 around the spin room.*
4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity; \WET Studios meets this requirement. The proposed business would have most classes outside of normal business hours and will not create traffic beyond the area's designed capabilities.*
5. *No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; \WET Studios meets this*

requirement. This is an interior only renovation and will use the existing restrooms and services that are already in place. There will not be excessive demand of police, fire protection or schools. This is a fitness studio where trained professionals will be instructing the classes to ensure proper technique and safety requirements are being followed.

6. *No significant increase of stormwater runoff onto adjacent property or streets.* S\WET Studios meets this requirement. No changes to the exterior of the building are happening. Stormwater runoff will not be altered.

6/26/24

SWET STUDIOS LLC  
Tara Patten  
Kelsea Stone  
Lauren Belaidi

RE: Letter of Intent, SWET Studios

Dear Heritage NH, LLC,

This letter sets forth the terms and conditions under which Heritage NH LLC **and/or assigns**, (hereinafter referred to as "Landlord") and SWET STUDIOS LLC **and/or assigns**, (hereinafter referred to as "Tenant") are willing to consider entering into a lease agreement for space at the above-referenced location.

Property: 2800 Lafayette Rd  
Unit 17&18  
Portsmouth, NH 03801

Demised premises: The demised premises contain approximately 4,120 +/- SF of leased space, currently split between 2 units, 17 & 18 that will be connected through 1 or more doorways, paid for by the tenant.

Unit 17: This letter and all terms stated are contingent upon the availability of Unit 17 which is currently leased. Unit 17 will be conveyed with all interior belongings removed from the property in broom clean condition by the proposed commencement date. Tenant to pay \$2,500 fee to Landlord at closing to relocate existing Tenant.

Use: Tenant will use the demised premises for a fitness studio doing business under the name SWET and/or SWET Studios and offer scheduled classes that are open to the public and paid for by drop in rate or membership. Classes will be 45 mins and include indoor cycling, strength training, and heated mat based yoga and pilates. There will be approximately 2 heated (90 degrees) classes per day which will require Infrared Heat Panels to be installed and used in the front section of Unit 17. Heat panels will only be in use during the class time and will be on a wifi controlled thermostat. See attached specifications and information.

Base Rent: \$22 per square foot annually, paid monthly, with 3% annual increases.

Lease Term: Five (5) years

Renewal Option: Two, five (5) year options to be exercised, in writing, at least one hundred eighty (180) days prior to the end of the preceding term

Triple Nets: Tenant shall pay \$5 per square foot for all common area expenses, paid monthly.

Lease Commencement Date: The Lease shall commence on August 1, 2024.

Delivery Date: Landlord will deliver possession of the Property on the Lease Commencement Date of August 1, 2024



Deferred Rent & Triple Nets: Monthly base rent and triple nets shall begin 3 months from the lease commencement date.

Security Deposit: Tenant shall pay a security deposit in the amount of \$25,000, with \$15,000 returned at the end of one year if lease is in good standing.

Landlord's Work: Landlord shall convey the property as is with all interior belongings removed from the property EXCEPT all black rubber flooring, white front desk cabinet, white retail metal rack, and all bathroom fixtures and equipment as seen on 5/14/24. Landlord shall fix/repair the leak in the roof as seen on 5/14/24 prior to lease signing.

Tenant's Work: Any and all modifications to the building by Tenant or Tenant's agent shall be submitted to Landlord for its written approval prior to lease signing. Tenant agrees that all work shall be completed in compliance with all applicable state and municipal building codes and ordinances. All such modifications made by or on behalf of Tenant shall be the property of the Landlord, with the exception of standard trade fixtures and heat panels.

Maintenance: Landlord shall convey the premises in good and satisfactory order at the time of commencement. Landlord agrees to maintain and repair the roof, exterior walls, and structure of the building as needed. Tenant shall keep all interior systems in good working order of the same condition as they are in at the commencement of the lease. Tenant shall schedule routine maintenance for HVAC systems and keep records, and make any repairs deemed necessary by regular use and/or by fault of the tenant. Landlord shall replace any system that is no longer in working order, not at the fault of the tenant but due to age as long as there is proven routine maintenance.

Subleasing: Tenant shall have the right to sublease the Property with Landlord's approval of Sublessee.

Non-Compete Landlord will be restricted from entering into lease agreements for any fitness or like-kind business other than what is already in place or their replacements at the lease commencement date.

Signage: Tenant may install signs in, on and about the Property to the maximum extent permitted by the Landlord and local law. This includes the largest sign on the Directory Board (currently blank).

Parking: Landlord agrees to allow Tenant to non-exclusive use of all common parking areas at the property.

Hours of Operation: Tenant agrees that the hours of operation shall be consistent with any state or town regulations.

Insurance: Tenant shall be responsible for taking out any insurance necessary for the operation of their intended uses as required by law.

Permits: Tenant agrees to obtain any and all necessary permits to lawfully operate their business and any aspect of it at the property.

Lease Agreement: These and other terms and conditions will be set forth in detail in a lease to be prepared by the Landlord.

Guarantee:

All owners of Swet Studios, including Tara Patten, Kelsea Stone, Lauren Belaidi shall unconditionally guarantee all of Tenant's obligations under the lease.

Confidentiality:

The existence of this Letter of Intent, as well as its content shall be confidential. The terms and conditions of the Lease shall be confidential, except to the extent that they are: (i) contained in a Notice of Lease; (ii) required to be disclosed to a mortgagee or other secured party; (iii) disclosed by Landlord to a prospective purchaser of the building; or (iv) disclosed by the Tenant to a potential sub-lessor or assignee or other successor, or to another landlord or potential landlord of tenant for purposes of institutionalizing Tenant's lease arrangements.

This letter is intended only as a statement of interest in leasing and for use in preparing a proposed lease. It shall not and is not intended to constitute a legally binding document. The parties' only obligations shall be those contained in a fully executed lease agreement, if such a document is executed, and either party may terminate negotiations at any time and for any reason.

**SEEN AND AGREED TO:**

Lauren Belaidi, Tenant  
By: SWET STUDIOS, LLC  
Its: Member

7/2/2024  
Date

[Signature], Landlord

\_\_\_\_\_  
By: Heritage NH, LLC  
Its: Owner

7.2.2024  
Date



Exhibit A - The Premises (Units 17 & 18)

78'

**General Demo Notes**

- Remove Walls Highlighted in Red

Unit 17 - Current  
Monument Store  
1,125sqft

Unit 18 - Current  
Gym/Fitness Studio.  
2,995 sqft

Remove portion  
of wall for new  
door

Remove Door and  
Reinstall

2800 Lafayette  
Demolition Plan

18'-6"

18'-6"

3'-7"

3'-5"

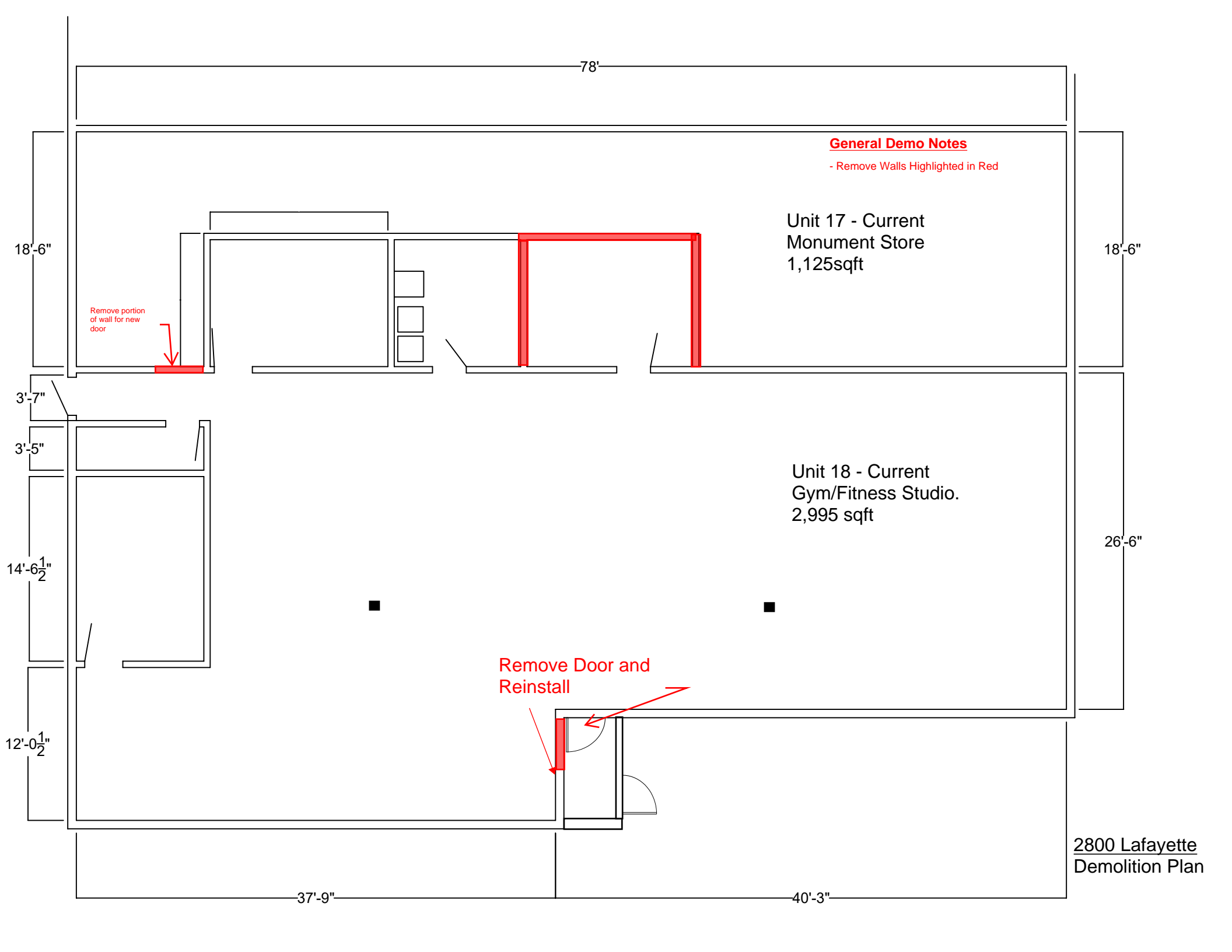
26'-6"

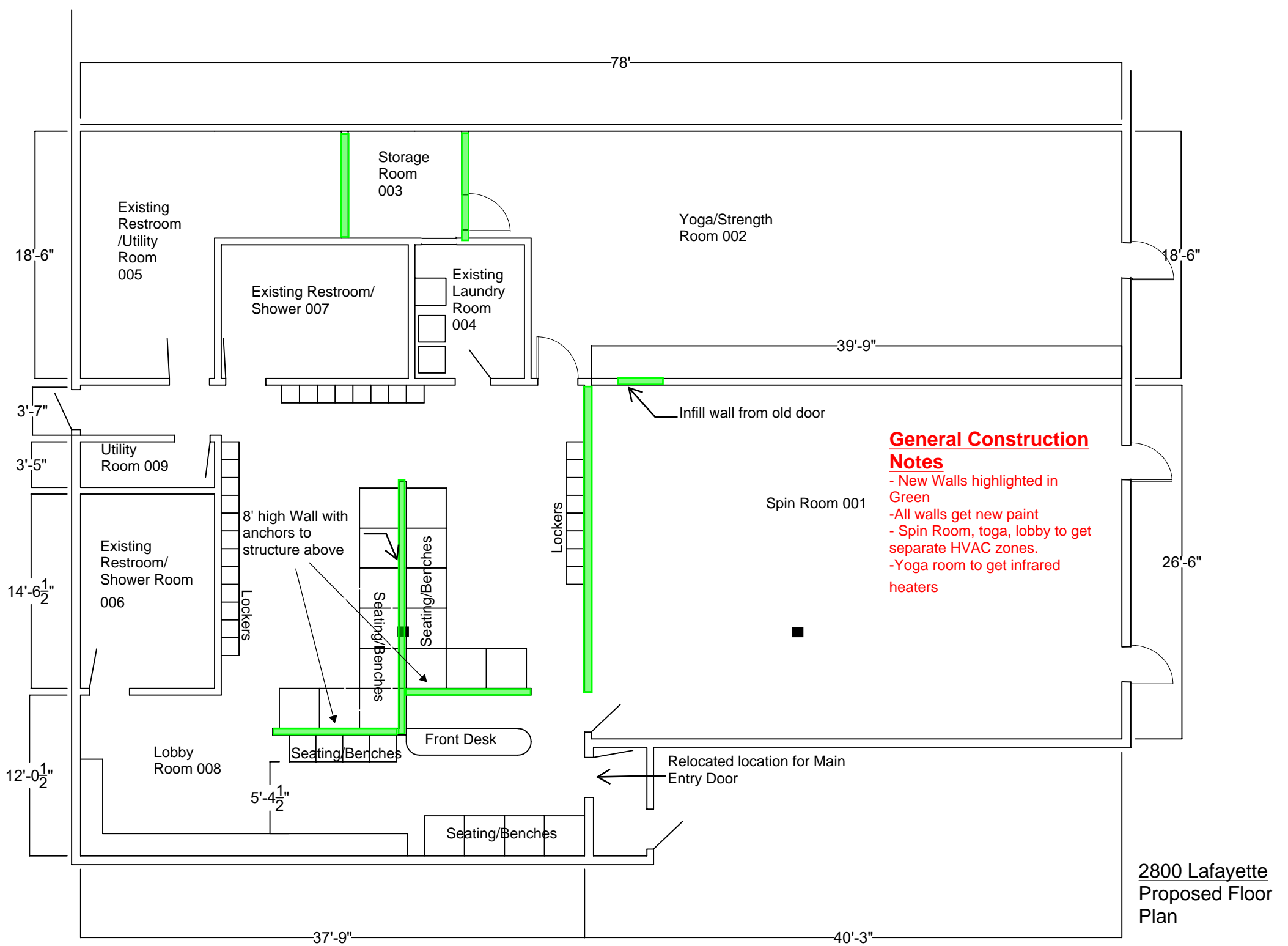
14'-6 $\frac{1}{2}$ "

12'-0 $\frac{1}{2}$ "

37'-9"

40'-3"





**General Construction Notes**

- New Walls highlighted in Green
- All walls get new paint
- Spin Room, toga, lobby to get separate HVAC zones.
- Yoga room to get infrared heaters

2800 Lafayette  
Proposed Floor  
Plan



**II. NEW BUSINESS**

F. The request of **Jared Majcher (Owner)**, for property located at **84 Thaxter Road** whereas relief is needed to construct an attached garage and 1.5-story addition and to demolish an existing detached garage which requires the following: 1) Variance from Section 10.521 to a) allow 22% building coverage where 20% is allowed; b) allow a 15.5 foot front setback where 30 feet is required; 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 166 Lot 34 and lies within the Single Residence B (SRB) District. (LU-24-135)

**Existing & Proposed Conditions**

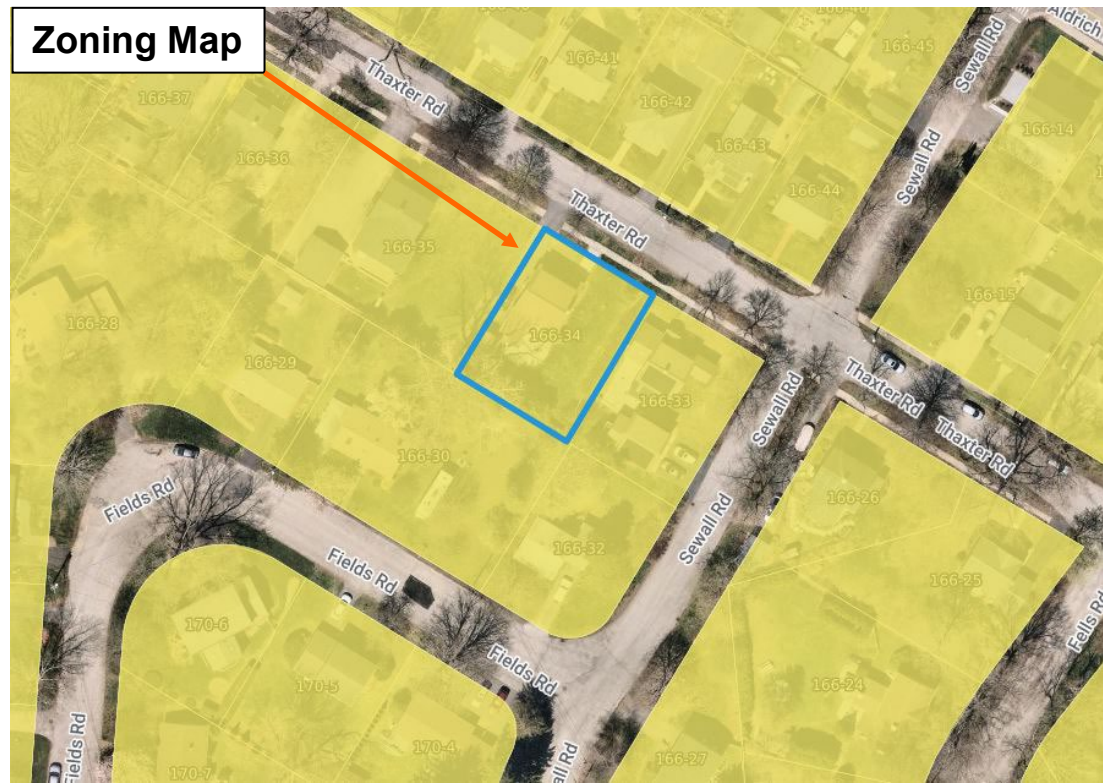
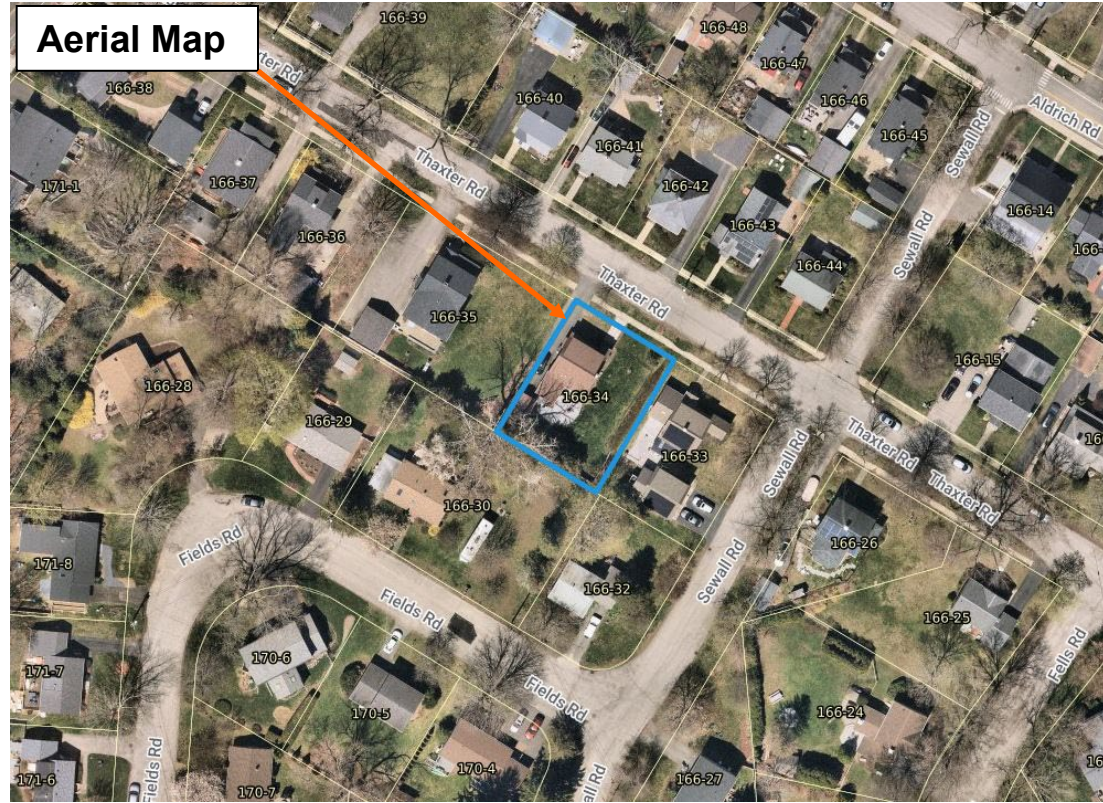
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>	
<u>Land Use:</u>	Single-family Residence	<b>*Construct an addition to the primary structure</b>	Primarily residential	
<u>Lot area (sq. ft.):</u>	7,500	7,500	15,000	min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	7,500	7,500	15,000	min.
<u>Lot depth (ft.):</u>	100	100	100	min.
<u>Street Frontage (ft.):</u>	75	75	100	min.
<u>Front Yard (ft.):</u>	15.5	<b>15.5*</b>	30	min.
<u>Right Yard (ft.):</u>	35	12	10	min.
<u>Left Yard (ft.):</u>	Primary Structure: 11 Detached Garage: 2.5	11	10	min.
<u>Rear Yard (ft.):</u>	Primary Structure: 30 Detached Garage: 7	30	30	min.
<u>Height (ft.):</u>	<35	<35	35	max.
<u>Building Coverage (%):</u>	17	<b>22</b>	20	max.
<u>Open Space Coverage (%):</u>	73	72	40	min.
<u>Parking:</u>	>2	>2	2	min.
<u>Estimated Age of Structure:</u>	1935	<b>Variance request(s) shown in red.</b>		

**\* 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 BOA History found.

## Planning Department Comments

The applicant is proposing to construct a 1.5-story addition to the primary structure that will include an attached garage and additional living space above. A porch will be added to the existing front steps. The applicant is also proposing to demolish the existing detached garage and move the driveway from its existing location to the area in front of the proposed attached garage addition. The existing primary structure is located 15.5 feet from the front property line and the proposed addition has been designed to match the existing roofline and design of the existing home. The addition and porch are proposed to be located within the front setback and will increase the building coverage over the 20% maximum permitted, therefore the applicant is requesting the required relief.

## 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.

**BY: VIEWPOINT & HAND DELIVERY**

July 24, 2024

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

**RE: Variance Application of JP and Allison Majcher  
84 Thaxter Road, Portsmouth (Tax Map 166, Lot 34)**

Dear Stefanie,

Please find a copy of the following submission materials in connection with the variance application filed on behalf of JP and Allison Majcher for property located at 84 Thaxter Road:

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Plans (Site Plan and Architectural Plans);
- 4) Photographs of Property.

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

Sincerely,



Derek R. Durbin, Esq.

**CITY OF PORTSMOUTH**  
**NARRATIVE**  
**TO VARIANCE APPLICATION**

**JP Majcher and Allison Majcher**  
**(“Applicants”)**

**84 Thaxter Road**  
**Tax Map 166, Lot 34**

**INTRODUCTION**

JP Majcher and Allison Majcher own the property located at 84 Thaxter Road (the “Property” or the “Applicants’ Property”). The Property is 0.17 acre in size. There is a one and a half story single-family home on the Property that the Applicants reside in. It is zoned Single Family Residence B (“SRB”). The home on the Property was built in 1935.

The Property consists of one lot and a portion of another. **Exhibit A**. The land is described in the current deed as “the whole of Lot No. 58...and the Northwesterly half of Lot No. 57” on a plan prepared by John W. Durgin, dated July 24, 1924, titled, “Plan of Westfield Park, Portsmouth, N.H.”. **Exhibit B**. The Property has been conveyed with the current land description since at least 1929. The properties on Thaxter Road consisted primarily of 50’ x 100’ lots when the subdivision was created. It was not unusual at the time for lots to be merged or lot lines to be adjusted unilaterally by deed conveyance. There were no subdivision regulations or Planning Board to regulate land subdivisions in 1929. Many properties on Thaxter Road remain in their original configurations, including the four lots across the street from the Applicants’ Property: Tax 166, Lots 41-44. There are no properties on Thaxter Road that comply with the 15,000 square foot lot size requirement applicable to the SRB Zoning District.

**Existing Nonconformities**

<b>Non-Conformity</b>	<b>Requirement</b>	<b>Existing Condition</b>	<b>Feature/</b>
Rear Setback	30’	7.5’ (+/-)	Detached Garage
Right Yard Setback		2.5’ (+/-)	Detached Garage
Front Setback	20’	15.5’ (+/-)	House Steps

## Proposed Conditions

### Garage and Front Porch Additions

The Applicants, who are expecting a baby, would like to construct a one and a half story addition onto the left side of their home to accommodate a single-car garage with living space above. The addition would match the existing roofline and design of the existing home. As part of the exterior renovation of the home, they would also like to add a small porch area onto the front of the home.

### ZONING RELIEF SUMMARY

The Applicants seek the following variances from the Portsmouth Zoning Ordinance (the “Ordinance”):

**Article 10.521:** To allow 22% (+/-) building coverage where 17% (+/-) exists and 20% is allowed.

**Article 10.521:** To allow a 15.5' (+/-) front yard setback where 15.5 (+/-) exists and 30' is required.

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

### VARIANCE CRITERIA

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

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court observed that the requirements that a variance not be "contrary to the public interest" or "injure the public rights of others" are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. 152 N.H. 577 (2005). The Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, "the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives.'" Id. “There are two methods of ascertaining whether granting a variance would violate an ordinance’s basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare.” *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

The primary purpose of the building coverage limitation set forth in the Ordinance is to prevent the overcrowding of structures on land. In the present instance, the Applicants are seeking a 2% deviation from what is allowed by the Ordinance. In the context of the Applicants' Property, this amounts to 150 square feet of building coverage above what the Ordinance allows for, which is the equivalent to a small deck or patio area. The Property itself only has 50% of the lot area that the Ordinance requires. The Applicants have made a conscious effort to reduce the footprint and size of the addition to the minimum necessary to allow for a functional one-car garage and to accommodate the 2<sup>nd</sup> floor living space they need to continue residing in the home long-term, which is their goal. The home is very small for a modern family, particularly when you consider the fact that one of the Applicants primarily works remotely from the house.

While it could be said that the Applicants are creating a new non-conformity on the Property with the requested increase in building coverage, this is arguably offset by the elimination of the existing non-conforming detached garage. The detached garage on the Property has a rear setback of 7.5' (+/-) and a right yard setback of 2.5' (+/-). The entirety of the garage encroaches into the rear and right yard setbacks. The garage itself has little function and acts as a glorified shed for the Applicants. By allowing a single car attached garage, the Applicants will have functional storage space for a car and their personal belongings.

What the Applicants have proposed is consistent with the prevailing character of the neighborhood. The properties that comply with the SRB Zone building coverage limitation in this area of Thaxter Road are the outliers. The few that do comply with the building coverage limitation, such as the abutting property at 64 Thaxter Road (Lot 166-35), are significantly larger. **Exhibit C.**

The neighborhood itself is characterized by substandard single-family home lots that exceed the building coverage requirement and have structures that encroach into one or more setbacks. **Exhibit D.** There are also numerous examples in the surrounding neighborhood of homes with attached garage additions of a similar design to that proposed by the Applicants, including: 145 Thaxter Rd. (Lot 166-16), 175 Thaxter Rd. (Lot 166-17) and 176 Thaxter Road (Lot 166-20).

The proposed additions will not extend further into the front yard setback than the existing home. The additions will have no negative impact upon the light, air and space of any abutting property, consistent with the objectives of the Ordinance, and will eliminate an existing setback non-conformity.

For the foregoing reasons, granting the variances will not alter the essential character of the neighborhood or otherwise have any negative impact upon the public's health, safety or welfare.

***Substantial justice will be done by granting the variances.***

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

The public would not realize any gain by denying the variances. The additions to the home are reasonable and in keeping with the character of the neighborhood. The increase in building coverage above what is permitted by the Ordinance is minimal and will not overcrowd or otherwise overburden the Property. To the contrary, the demolition of the detached non-conforming garage in the rear and the improved appearance of the home with the additions should only benefit the neighbors and the public. Denying the variances would constitute a loss to the Applicants, who have a very small single-family home and need additional living and storage space for their growing family.

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

As stated above, what is proposed is in keeping with the character of the neighborhood and other homes within it. The additions are tasteful and will integrate naturally with the existing design of the home. The improved appearance of the home and the elimination of the non-conforming detached garage in the rear should only add value to surrounding properties. Granting the variances will certainly not take value away from surrounding properties.

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

Current zoning does not reflect the character of the neighborhood, which consists primarily of small lots that exceed the SRB District 20% building coverage limitation. Municipalities have an obligation to have their zoning ordinances reflect the current character of neighborhoods. *Belanger v. Nashua*, 121 N.H. 389 (1981). Absent this, the Board must consider the prevailing character of a neighborhood as part of its hardship analysis.

The Property has special conditions that distinguish it from surrounding properties. It is one of the only properties that has under 20% building coverage. Of the others that have less than 20% building coverage, all are larger lots.

The Applicants' Property was created and developed long before the enactment of current SRB zoning standards. The home and detached garage are quite small by modern standards. Notwithstanding, these structures account for 17% (1,238 sf.) in building coverage. The Applicants cannot reasonably expand upon either structure on the Property without exceeding the 20% coverage threshold.

In the present case, the Applicants are seeking a trade-off in non-conformities by eliminating the detached garage that violates the rear and right yard setbacks and constructing an attached garage with living space above that improves the functionality of their home. The 22% building coverage proposed is consistent with other similarly situated properties in the neighborhood. For these reasons, there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

Finally, the proposed use is reasonable. The Applicants will continue to use the Property as a single-family residence which is encouraged and permitted by right in the SRB Zoning District.

### **CONCLUSION**

In conclusion, the Applicants have demonstrated why their application meets the criteria for granting the variances requested and respectfully request that the Board's approval of the same.

Respectfully Submitted,

Dated: July 24, 2024

JP and Allison Majcher

By and Through Their Attorneys,  
Durbin Law Offices PLLC



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

Return To:



LCHIP	ROA654550	25.00
TRANSFER TAX	RO124026	16,350.00
RECORDING		14.00
SURCHARGE		2.00

**WARRANTY DEED**

KNOW ALL PERSONS BY THESE PRESENTS: That Daniel T. Marchibroda of 84 Thaxter Road, Portsmouth, NH 03801, for consideration paid, grants to Jared Paul Majcher and Allison Mary Moloney Majcher of 84 Thaxter Rd, Portsmouth, NH 03801, as joint tenants with rights of survivorship with WARRANTY COVENANTS:

A certain lot of land, together with the sewer, cement side-walks, grading and buildings therein and/or thereon, situate on the Southeasterly side of Islington Street in said Portsmouth and known as Thaxter Road on a plan entitled "Plan of Westfield Park, Portsmouth, NH and drawn by John W. Durgin, C.E. and recorded in Rockingham Registry of Deeds as Plan #0643. Said parcel is bounded and described as follows, viz:

Beginning at the Northwesterly corner of lot No. 58 at lot No. 59 as shown on said plan, the same being the property now or formerly of Ralph Badger and thence running in a Southeasterly direction by said Thaxter Road, seventy-five (75) feet; thence turning and running in a Southwesterly direction one hundred (100) feet to the Northwesterly side line of lot No. 74 as shown on said plan; thence turning and running in a Northwesterly direction by the side line of said lot No. 74 and lot No. 73 as shown on said plan to lot No. 59 as shown on said plan, the land of said Badger; thence turning and running in a Northeasterly direction one hundred (100) feet to Thaxter Road at the point of beginning.

Meaning and intending hereby to convey the whole of lot No. 58 as shown on said plan and the Northwesterly half of lot No. 57 as shown on said Plan.

Subject to the reservations, conditions and restrictions contained in deeds of R. Clyde Margeson et als. Dated August 27, 1929, and recorded in Rockingham County Registry of Deeds, Book 855, Page 474, and Edward L. Paterson dated August 27, 1929, recorded in said Rockingham County Registry of Deeds in Book 853, Page 164.

Being the same property as conveyed from Alan L. Fleischman, Trustee of the Fleischman Revocable Trust u/t/a dated May 24, 1996, as amended to Daniel T. Marchibroda, a single man, dated December 01, 2016 and recorded on December 09, 2016 in Book 5781 at Page 0292, Rockingham County records.



**WARRANTY DEED**

(continued)

For informational purposes only: 84 Thaxter Rd, Portsmouth, NH 03801.

Tax Parcel # 0166/ 0034/ 0000/ /

TOGETHER WITH and subject to any and all covenants, easements, conditions, stipulations, and restrictions of record, insofar as the same are enforceable and in effect.

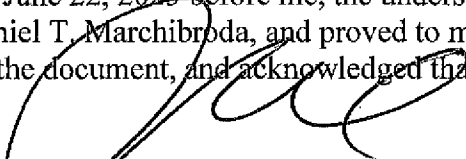
The Grantor hereby releases all rights in homestead.

IN WITNESS WHEREOF, the undersigned have executed this document on this 22<sup>nd</sup> day of June, 2023.

  
\_\_\_\_\_  
Daniel T. Marchibroda

State of NEW HAMPSHIRE  
County of Rockingham

On June 22, 2023 before me, the undersigned notary public, personally appeared the above Daniel T. Marchibroda, and proved to me by license to be the persons whose names are signed on the document, and acknowledged that they did it voluntarily for their its stated purpose.

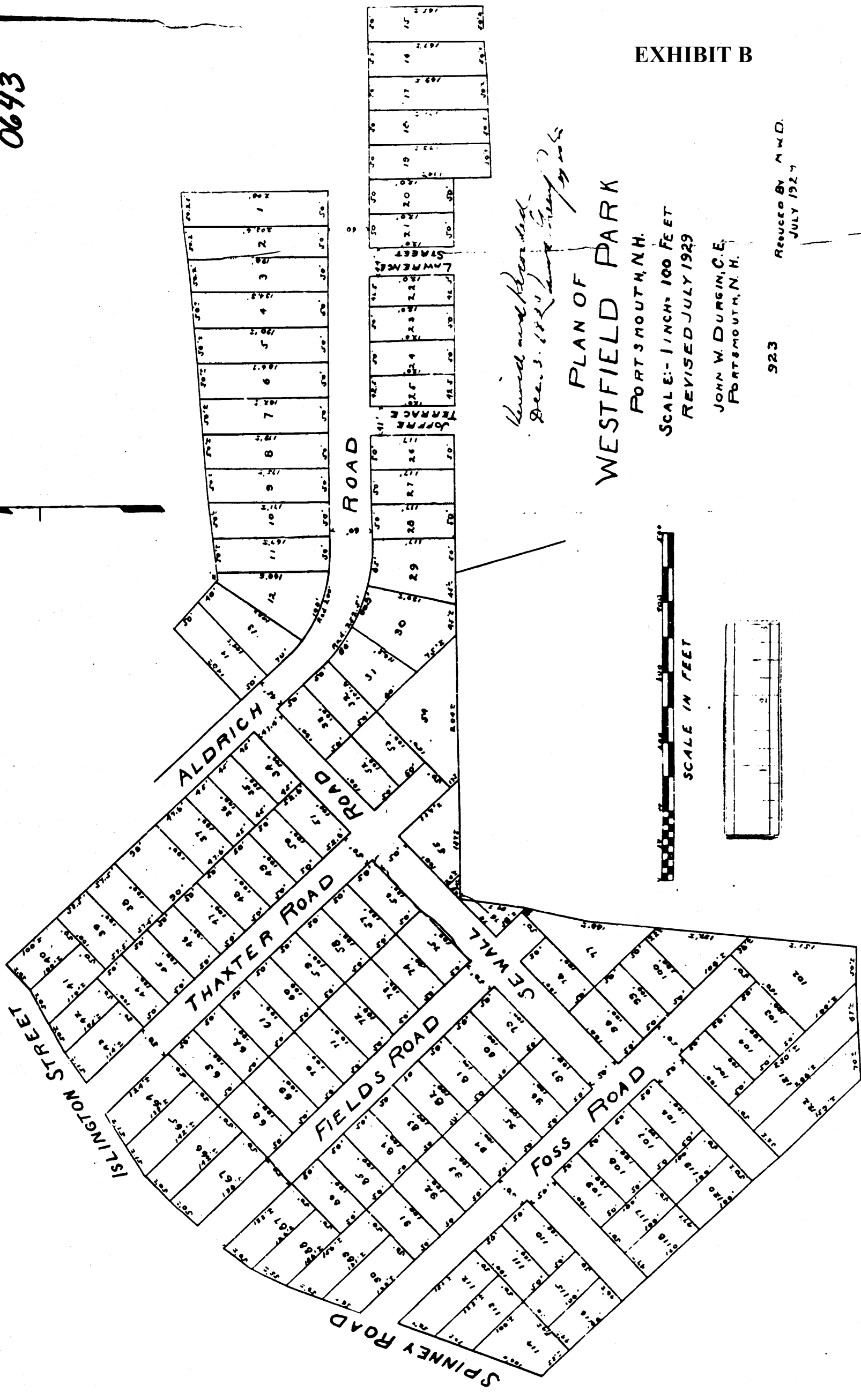
  
\_\_\_\_\_  
Notary Public  
My Commission Expires:

[SEAL]



0643

EXHIBIT B



PLAN OF WESTFIELD PARK

PORTSMOUTH, N.H.

SCALE: 1 INCH = 100 FEET  
REVISED JULY 1929

JOHN W. DURGIN, C.E.  
PORTSMOUTH, N.H.

923

Reduced By A.M.D.  
JULY 1929

See Book 80 Plat 4

# EXHIBIT C

Location to Majcher House	Street #	Street	Owner	Lot Number	Acres	Land Square Footage	Building Coverage	Building Coverage %
same side of Thaxter	98	Thaxter	Steven Katona/Marie Wood	166-33	0.17	7405.0	2321	31.3
right side abutter	64	Thaxter	Jim & Mary Nocas	166-35	0.28	12197.0	1858	15.2
across Thaxter Road	105	Thaxter	James & Regina Flynn	166-44	0.12	5227.0	1134	21.7
across Thaxter Road	93	Thaxter	Kevin Edge & Cindy Bradeen	166-43	0.11	4792.0	1348	28.1
across Thaxter Road	83	Thaxter	Peter & Jean Ward	166-42	0.11	4792.0	1250	26.1
across Thaxter Road	73	Thaxter	Joanne Samuels Revocable Trust	166-41	0.11	4792.0	971	20.3
Behind Property-Fields Road	120	Fields	Nancy Tulois	166-32	0.16	6970.0	1160	16.6
Behind Property-Fields Road	110	Fields	David Caldwell	166-30	0.32	13939.0	1492	10.7
Behind Property-Fields Road	100	Fields	Richard & Janice Trafton	166-29	0.16	6970.0	1488	21.3
same side of thaxter	38	Thaxter	Madison Tidwell & Brendan Barker	166-36	0.17	7405.2	1352	18.3
same side of thaxter	26	Thaxter	Linda & John Leland	166-37	0.14	6098.4	1848	30.3
same side of thaxter (corner of Islington)	954	Islington	Amy Averback	166-38	0.18	7840.8	1766	22.5
same side of thaxter	122	Thaxter	James & Sarah Holly	166-26	0.16	6969.6	1301	18.7
same side of Thaxter	218	Thaxter	Barbara Levenson Revocable Trust	167-12	0.22	9583.2	2632	27.4
							<b>Avg Coverage</b>	<b>22.0</b>
Majcher House (current)	84	Thaxter	Jared & Allison Majcher	166-34	0.17	7405.0	1262	17.0

145 Thaxter Road	House with similar attached garage on the side of the house
175 Thaxter Road	House with similar attached garage on the side of the house
176 Thaxter Road	House with similar attached garage on the side of the house

# EXHIBIT D



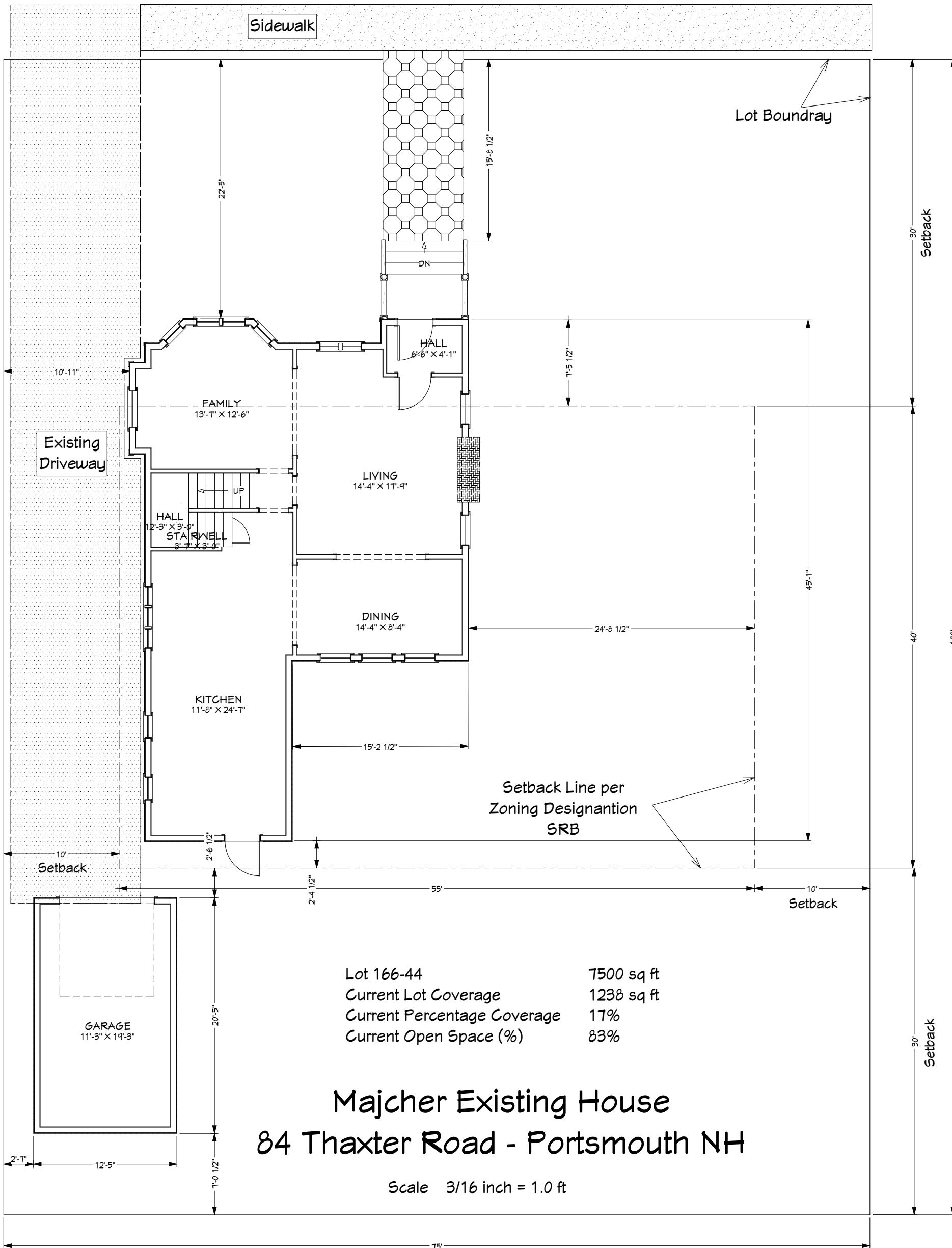
**MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT**

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.

# Thaxter Road

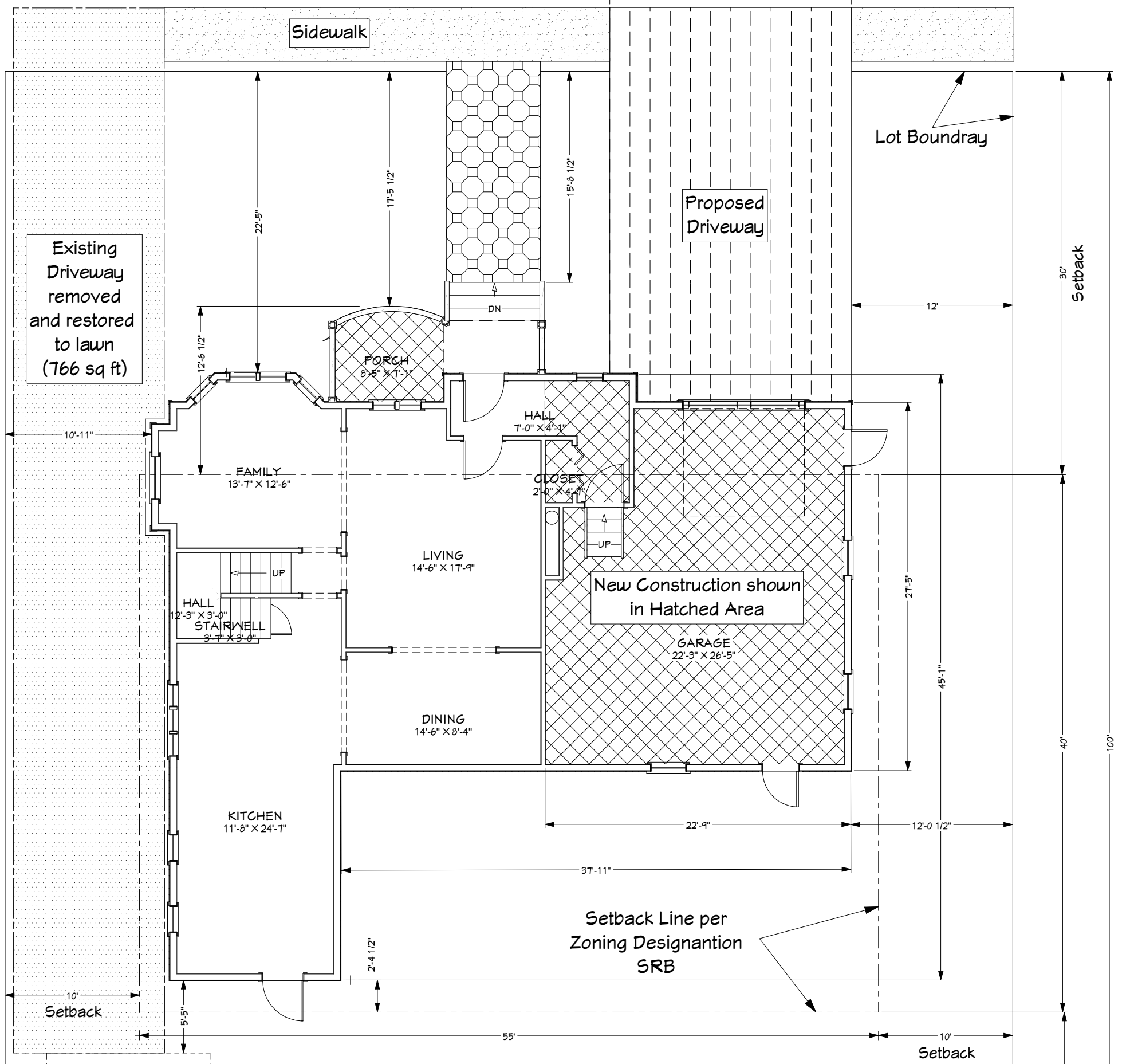


Lot 166-44	7500 sq ft
Current Lot Coverage	1238 sq ft
Current Percentage Coverage	17%
Current Open Space (%)	83%

## Majcher Existing House 84 Thaxter Road - Portsmouth NH

Scale 3/16 inch = 1.0 ft

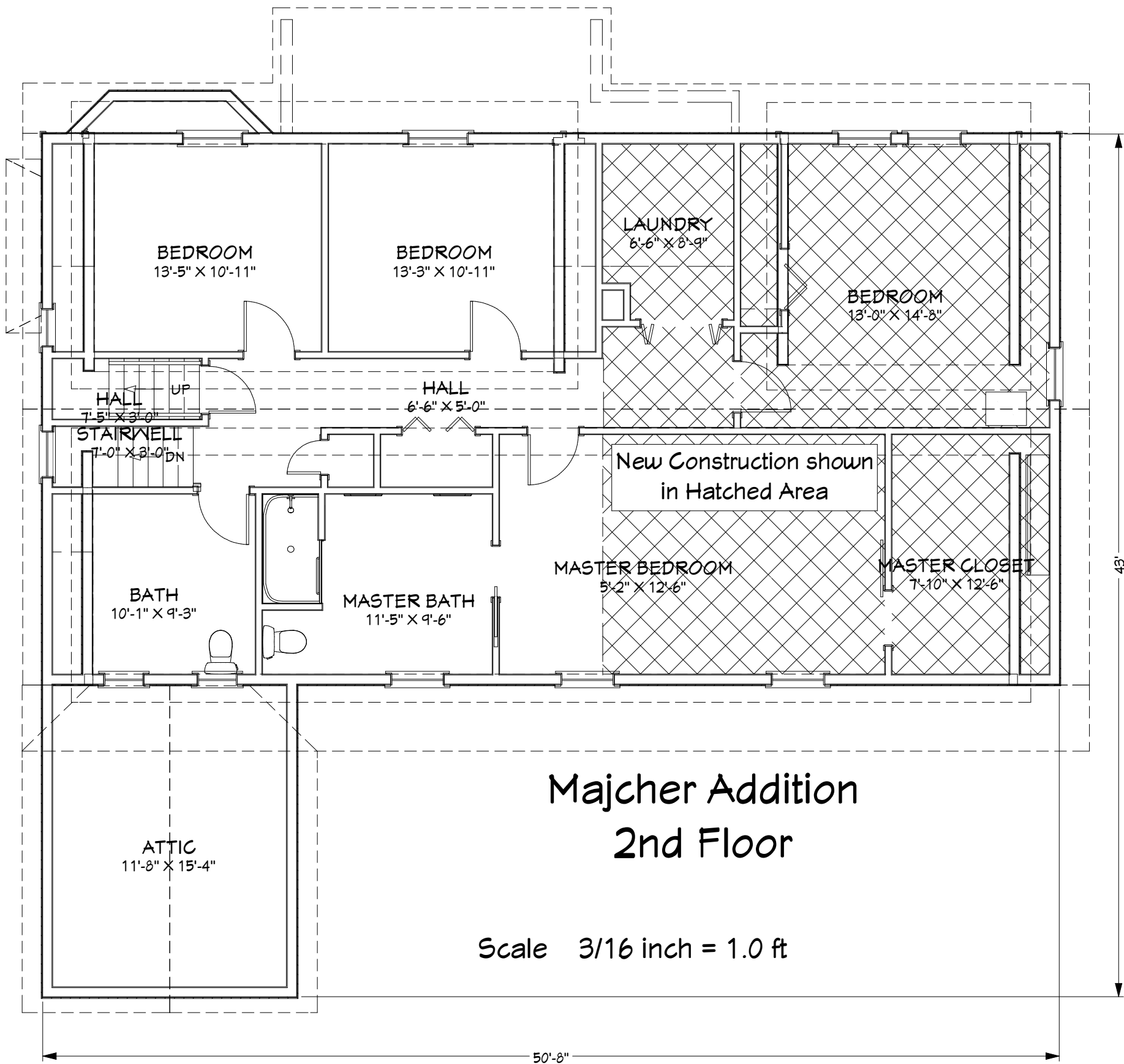
# Thaxter Road



Lot 166-44	7500 sq ft
Current Lot Coverage	1238 sq ft
Current Percentage Coverage	17%
Proposed Lot Coverage	1665 sq ft
Proposed Percentage Coverage	22%
Current Open Space (%)	83%
Proposed Open Space (%)	78%

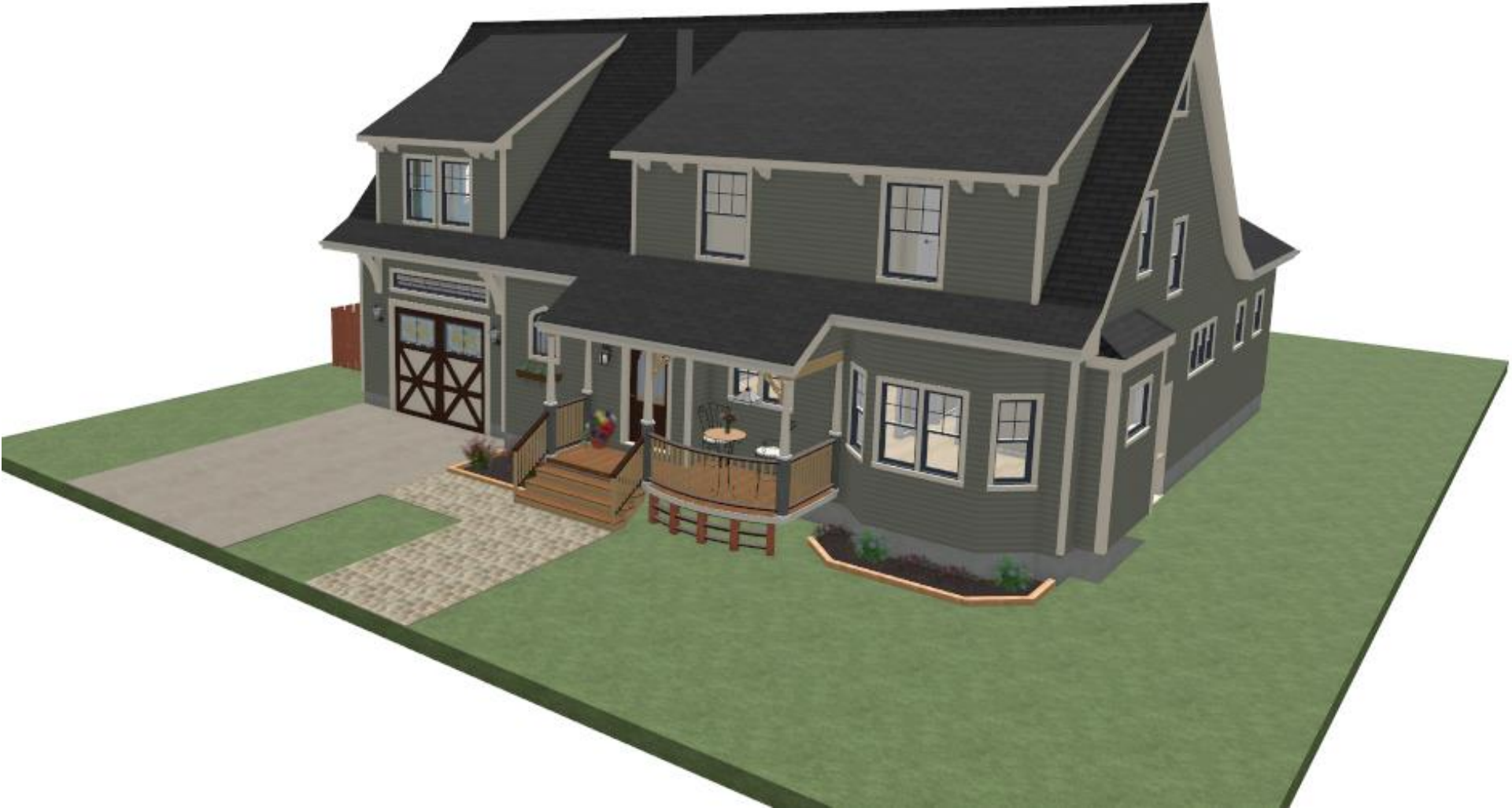
## Majcher Addition 84 Thaxter Road - Portsmouth NH

Scale 3/16 inch = 1.0 ft







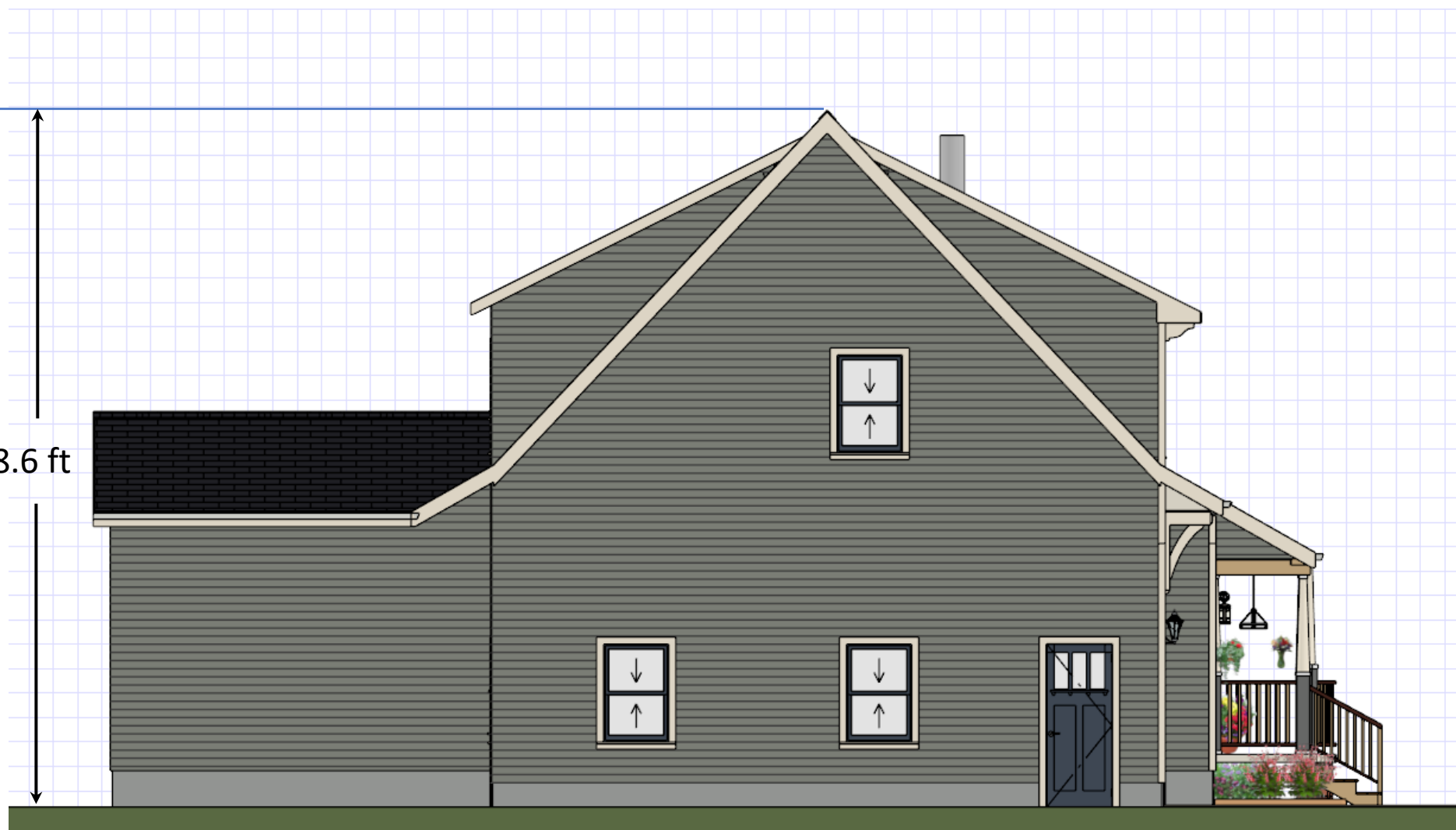






28.6 ft

28.6 ft





**Left – Front View of House**



**Left –Rear View of House**



**Right Side View of House**



**Front View of House**





**Rear Yard / Garage View**



**Property Information**

**Property ID** 0166-0043-0000  
**Location** 93 THAXTER RD  
**Owner** EDGE KEVIN



**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 using  
 this resource.

## II. NEW BUSINESS

- G.** The request of **Zeng Kevin Shitan Revocable Trust of 2017 (Owner)**, for property located at **377 Maplewood Avenue** whereas relief is needed to demolish the existing accessory building and construct a new detached accessory dwelling unit which requires the following: 1) Variance from Section 10.521 to a) allow a building coverage of 37.5% where 25% is allowed; b) allow an open space of 24.5% where 30% is required; c) allow a secondary front yard setback of 6 feet where 10 feet is required; d) allow a left yard setback of 4.5 feet where 10 feet is required; e) allow a rear yard setback of 3 feet where 20 feet is required; 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 141 Lot 22 and lies within the General Residence A (GRA) and Historic Districts. (LU-24-133)

### Existing & Proposed Conditions

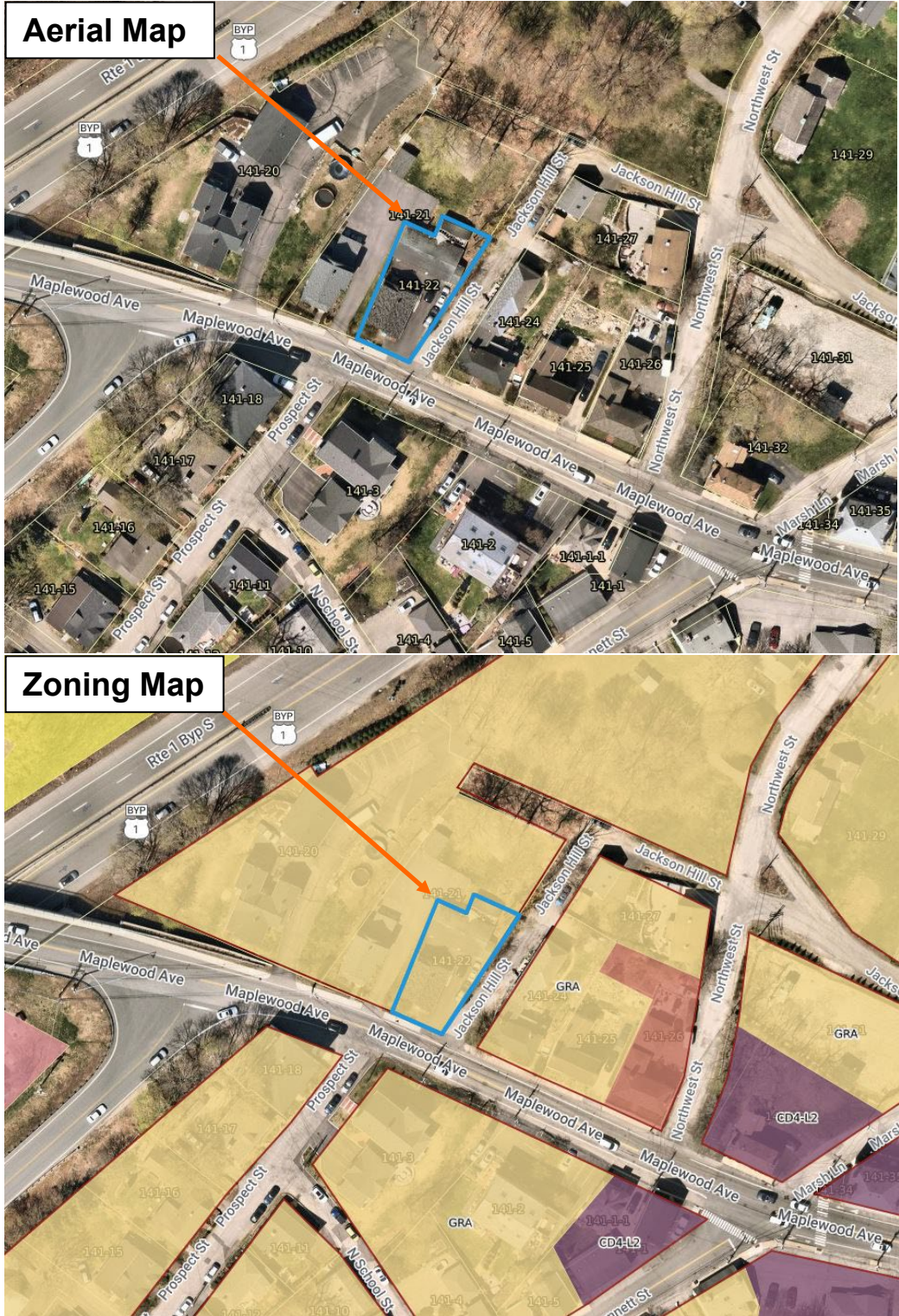
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>	
<u>Land Use:</u>	Single-family	*Demolish existing accessory building and construct new detached accessory dwelling unit	Primarily Residential	
<u>Lot area (sq. ft.):</u>	5,277	5,277	7,500	min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,277	5,277	7,500	min.
<u>Lot depth (ft.):</u>	108	108	100	min.
<u>Street Frontage (ft.):</u>	42	42	70	min.
<u>Front Yard (ft.):</u>	7	7	15	min.
<u>Secondary Front Yard (ft.):</u>	0.2	6	10	
<u>Side Yard (ft.):</u>	House: 2.9 Accessory Building: 4.5	4.5	10	min.
<u>Rear Yard (ft.):</u>	Accessory Building: 2.2	3	20	min.
<u>Building Coverage (%):</u>	45.3	37.5	25	max.
<u>Open Space Coverage (%):</u>	20.5	24.5	30	min.
<u>Parking</u>	3	3	3	
<u>Estimated Age of Structure:</u>	1941	Variance request(s) shown in red.		

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

### Other Permits/Approvals Required

- Building Permit
- Historic District Commission Approval

### Neighborhood Context



## Previous Board of Adjustment Actions

- **September 15, 2020** – The Board denied a variance to demolish an accessory building and construct a new free standing dwelling which requires the following: 1) A Variance from Section 10.513 to allow more than one free standing dwelling on a lot. 2) Variances from Section 10.521 to allow: a) a lot area per dwelling unit of 2,638 square feet where 7,500 is the minimum required; b) 43% building coverage where 25% is the maximum allowed; c) a 4.5' secondary front yard where 15' is required; d) a 3' left side yard where 10' is required; and e) a 5.5' rear yard where 20' is required. 3) A Variance from Section 10.321 to allow a building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

## Planning Department Comments

The applicant is requesting to demolish the existing accessory building and construct a new detached accessory dwelling unit (DADU). The proposed DADU requires dimensional relief for the proposed location and to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

### Fisher vs. Dover

The Board previously denied variances to construct a new free-standing dwelling on the lot with a greater footprint and different design. Staff feels the change to a DADU and reduced footprint is a significant enough change that would not evoke Fisher v. Dover, but the Board may want to consider whether Fisher vs. Dover is applicable before this application is considered.

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

## 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.

**BY: VIEWPOINT & HAND DELIVERY**

July 23, 2024

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

**RE: Variance Application of Kevin Shitan Zeng, Trustee of the Kevin Shitan Zeng Revocable Trust of 2017  
377 Maplewood Avenue, Portsmouth (Tax Map 141, Lot 22)**

Dear Stefanie,

Please find a copy of the following submission materials in connection with the variance application filed on behalf of Kevin Zeng for property located at 377 Maplewood Avenue.

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Site Plan;
- 4) Architectural Plans;
- 5) Photographs of Property.

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

Sincerely,



Derek R. Durbin, Esq.

LANDOWNER LETTER OF AUTHORIZATION

**Kevin Shitan Zeng, Trustee of The Kevin Shitan Zeng Revocable Trust of 2017**, owner of property located at 377 Maplewood Avenue, identified on Portsmouth Tax as Map 141, Lot 22 (the "Property"), hereby authorizes **Durbin Law Offices, PLLC, Brendan McNamara, and TFMoran**, to file any zoning board, planning board, historic district commission or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.

*Kevin Zeng*  
Kevin Zeng (Apr 24, 2024 08:03 EDT)  
Kevin Shitan Zeng, Trustee

April 23, 2024








# Landowner Authorization Form -4-23-2024

Final Audit Report

2024-04-24

Created:	2024-04-23
By:	Derek Durbin (derek@durbinlawoffices.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAx9I4SAUtdmbM-8_VfxidkKmCi6TMyAxv

## "Landowner Authorization Form -4-23-2024" History

-  Document created by Derek Durbin (derek@durbinlawoffices.com)  
2024-04-23 - 2:12:43 PM GMT- IP address: 108.36.120.94
-  Document emailed to Kevin Zeng (kevin158499@gmail.com) for signature  
2024-04-23 - 2:12:46 PM GMT
-  Email viewed by Kevin Zeng (kevin158499@gmail.com)  
2024-04-24 - 12:03:20 PM GMT- IP address: 174.212.38.33
-  Document e-signed by Kevin Zeng (kevin158499@gmail.com)  
Signature Date: 2024-04-24 - 12:03:42 PM GMT - Time Source: server- IP address: 174.212.38.33
-  Agreement completed.  
2024-04-24 - 12:03:42 PM GMT

**CITY OF PORTSMOUTH  
ZONING BOARD OF ADJUSTMENT  
APPLICATION NARRATIVE**

Kevin Shitan Zeng, Trustee  
The Kevin Shitan Zeng Revocable Trust of 2017  
377 Maplewood Avenue  
Portsmouth, NH 03801  
(Owner/Applicant)

**INTRODUCTORY STATEMENT**

**The Property**

Kevin Shitan Zeng is the owner of the property located at 377 Maplewood Avenue, identified on Portsmouth Tax Map 141 as Lot 22 (the “Property” or the “Applicant’s Property”). The Property is zoned General Residence A (“GRA”) and lies within the Historic District. It is a 5,277 square foot parcel of land that contains a small, two-story, single-family home situated close to Maplewood Avenue that was built in 1941. Just to the rear of the existing home in the northerly portion of the Property, there is a detached, wood-framed, single-story building that was built in the early 1900s and is believed to have served as a sailmaking shop and potentially other purposes in its early history. This building has fallen into significant disrepair over many decades. It is missing portions of the exterior walls and floor and is unsafe to enter. It has been determined, in consultation with the City’s Historic District Commission (“HDC”) that it would be infeasible to rehabilitate the building which does not have any unique architectural features.

With the existing buildings on it, the Property is non-conforming in the following respects:

<b>Non-Conformity</b>	<b>Requirement</b>	<b>Existing Condition</b>
Building Coverage	25% (maximum)	45.3%
Open Space	30% (minimum)	20.5%
Rear Setback	20’	2.2’
Primary Front Setback	15’	7.3’ (House)
Secondary Front Yard	10’	0.2’
Left Side Setback	10’	2.9’ (House) 4.5’ (Accessory Building)

In addition to the above non-conformities, the Property does not allow for proper vehicular ingress and egress from the parking spaces.

## **Proposed ADU**

The Applicant would like to demolish the accessory building in the rear of the Property and replace it with a smaller building and attached garage that would serve as an accessory dwelling unit (“ADU”) to the single-family home on the Property. The ADU would have only bedroom and bathroom. In conjunction with the construction of the ADU, the Applicant would be restoring and rehabbing the single-family home, which has also fallen into disrepair. The ADU is designed to be “subordinate” to, but aesthetically consistent to the principal residence. The sense of a utilitarian building is maintained with the exterior reflected look like a simple building in the Carriage House style, with historic type trim detailing and windows and doors.

Vehicular access and parking would also be improved upon so that vehicles are not forced to back into the street, as they often must do now.

The Applicant held a work session with the HDC on June 12, 2024. The HDC had only favorable comments for the proposal and supports the demolition of the existing structure.

## **2020 Variance Application**

The Applicant filed an application with the Board in 2020 that was denied. At the time, the Applicant was seeking to demolish the accessory building on the Property and replace it with a free-standing, single-family dwelling (not ADU). **Exhibit A**. The proposed replacement building would have been significantly larger and contained more amenities and living space than the ADU that is currently proposed. The building footprint of the proposed ADU is 1,104 sf. and would have 749 sf. of grossing living area (“GLA”). The footprint of the previously proposed free-standing second dwelling was 1,402 sf. and would have contained approximately 1,608 sf. of GLA by way of comparison. The existing building has a footprint of 1,506 sf.

The prior proposal required more building coverage, open space and setback relief than what is currently proposed. In addition, the Applicant needed variances for lot area per dwelling unit and to allow a second free-standing single-family dwelling on the Property. A consensus of the Board felt that the prior proposal was too aggressive and that the proposed dwelling was too large and would occupy too much of the available land area of the Property thus creating an unsafe condition for vehicles entering and exiting the Property and traveling on Maplewood Avenue. **Exhibit B**. The stacked parking configuration would have required vehicles to back into Maplewood Avenue due to the lack of turn-around on the Property. Mr. Mulligan “recommended that the Applicant do a redesign that addressed the parking configuration and eliminated the stacked parking backing out onto Maplewood Avenue.” **Id. at Pg. 11**. “He noted that the proposed building was fairly large and that there was room to reduce it and make it more like a detached ADU, which might allow for configuring the parking in a safer way.” **Id.** Other Board Members reiterated this concern in voting against the application, suggesting that a smaller building and a plan to address parking and vehicular access and maneuverability would alleviate their concerns. **Id.** What is clear from the Meeting Minutes is that the Board’s underlying concern with approving the variances related primarily to vehicular access, parking and maneuverability.

The Applicant listened to the Board's concerns and redesigned the proposed building to fully address the concerns raised by the Board when it voted against the prior application on September 15, 2020. The result is a smaller ADU building that is more conforming to the requirements of the Ordinance and allows for adequate parking, vehicular access and maneuverability. The new application is materially different in scale, conformance and level of relief sought and therefore satisfies the standard set by the NH Supreme Court in the case of *Fisher v. Dover*, 120 N.H. 187 (1980).

### **SUMMARY OF ZONING RELIEF**

The Applicant seeks the following variances from the Zoning Ordinance (the "Ordinance"):

#### **Section 10.521 (Table of Dimensional Regulations)**

1. To allow building coverage of 37.5% (+/-) where 45.3% exists and 25% is the maximum allowed.
2. To allow open space of 24.5% (+/-) where 20.5% exists and 30% is required.
3. To allow a secondary front yard setback of 6.1' (+/-) where 0.2' exists and 10' is required.
4. To allow a left yard setback of 4.5'(+/-) where 4.5' exists and 10' is required.
5. To allow a rear yard setback of 3.2'(+/-) where 2.2' exists and 20' is required.

#### **Section 10.440 (1.20) (Table of Uses)**

6. To allow a detached accessory dwelling unit in a new building that does not conform with the dimensional requirements of the Ordinance.

#### **Section 10.321 (Non-Conforming Structures)**

7. To allow a building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

## VARIANCE CRITERIA

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

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court observed that the requirements that a variance not be "contrary to the public interest" or "injure the public rights of others" are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. 152 N.H. 577 (2005). The Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, "the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives.'" "Id." "There are two methods of ascertaining whether granting a variance would violate an ordinance's basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare." *Harborside Assoc v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

The goal of GRA Zoning is "to provide areas for **single-family, two family and multifamily dwellings**, with appropriate **accessory uses**, at *moderate to high densities...[.]*" (*italics added*). See PZO, Section 10.410. The neighborhood itself is densely settled. **Exhibit C**. The properties across Maplewood Avenue consist of condominiums. Of the six immediately surrounding properties on the same side of Maplewood Avenue, the following three have more than one dwelling unit on them:

357 Maplewood Ave (Lot 141-24)  
4 dwelling units  
0.14 acres

33 Northwest Street (141-27)  
2 detached dwelling units  
0.12 acres

399 Maplewood Ave (141-20)  
3 dwelling units  
0.60 acres

The property at 33 Northwest Street (Lot 141/27) has two detached single-family residential units on it. Most of the surrounding properties, if not all of them, have buildings on them that encroach into one or more boundary setbacks.

If approved, the Applicant's plans will result in the following improvements to the existing non-conformities of the Property:

<b>Non-Conformity</b>	<b>Existing Condition</b>	<b>Proposed Condition</b>	<b>Change (+/-)</b>
Building Coverage	45.3%	37.5%	(+) 7.8%
Open Space	20.5%	24.5%	(+) 4.0%
Rear Setback	2.2'	3.2'	(+) 1'
Prim. Front Setback	15'	7.3' (House)	No Change
Sec. Front Yard	0.2'	6.1'	(+) 5.9'
Left Side Setback	2.9' (House) 4.5' (Accessory Building)	2.9' (House) 4.5' (Accessory Building)	No Change

Building coverage restrictions are intended to prevent the overcrowding of buildings on land. The purpose of the setback requirements is to maintain adequate light, air and space between buildings on contiguous properties to address spacing, privacy and fire safety concerns. The Applicant's plans are consistent with these objectives. The Applicant will be improving setback conditions. Moreover, there will be a reduction in lot coverage associated with the new building and an increase in open space.

The addition of an ADU to the Property falls in line with the character of the surrounding area and is consistent with the objectives of GRA Zoning. Overall, the conditions and appearance of the Property will be greatly improved by the demolition and replacement of an unsightly building that is structurally unsound with a tastefully designed ADU that meets current building and life safety codes and is architecturally consistent with the primary residence. Parking and vehicular ingress and egress will also be greatly improved from what exists.

For the foregoing reasons, granting the variances will be beneficial to public health, safety and welfare and will not negatively alter the essential character of the neighborhood.

***Substantial justice will be done by granting the variance relief.***

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

The public would not realize any gain by denying the variances. The rear building on the Property has no functional, historic or aesthetic value and constitutes an eyesore. If the variance relief is denied, the rear building will continue to deteriorate, which represents a loss to the Applicant and the public.

By granting the variances requested, the public benefits from a well-designed building that meets all current codes and adds little additional demand upon municipal services. The design of the proposed ADU has received a favorable review by the HDC and will integrate naturally with the surrounding neighborhood. The new building will achieve greater compliance with the Ordinance's dimensional requirements than the existing building, thus improving the light, air and space for abutting properties.

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

The proposed ADU building will only enhance the value(s) of surrounding properties. If anything, the existing building detracts from the value of the Applicant's property and surrounding properties. The construction of a new, carriage-house style ADU in the rear of the Property that is architecturally consistent with the primary residence on the Property and other similar structures in the neighborhood can only benefit surrounding property values.

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

The Property has several special conditions that distinguish it from surrounding properties. It is one of a few properties in the neighborhood that has more than one building on it. Of the other surrounding properties that do have more than one building on them, the others have two or more dwelling units. As pointed out above, the property at 33 Northwest Street has two single-family detached dwellings on it. What the Applicant is proposing is more consistent with the spirit and intent of the Ordinance, as the use would be accessory to the single-family home on the Property.

The Property is considered a corner lot with primary frontage on Maplewood Avenue and secondary frontage on a "passageway", which the City refers to as Jackson Hill Street on its tax maps. Therefore, the Property is uniquely burdened by two 15' front yard setbacks as opposed to one 15' front yard setback and two 10' side yard setbacks.

The Property has an unusual shape and has only *one* abutting property to the left and rear of it (383 Maplewood Avenue). It appears that these properties were once part of a larger parcel that was subdivided. The property at 383 Maplewood Avenue has only one building on it which is situated to the far left-front portion of the property, a significant distance away from where the ADU is proposed. There would be no buildings to the left or rear of the proposed ADU. Therefore, the construction of a new building in the rear of the Property will have minimal impact upon the property at 383 Maplewood Avenue.

Likewise, the abutting building at 357 Maplewood Avenue (Lot 141-24) is located across Jackson Hill Street, a considerable distance away from where the ADU is proposed, and is at a much higher grade, thus minimizing the impact that a new building would have on that property.

The proposed ADU will achieve greater compliance with the Ordinance and have less visible impact upon abutters and the public than the existing building. For the foregoing reasons, there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

The use is also reasonable and consistent with the objective(s) of GRA Zoning “to provide areas for **single-family**, **two family** and **multifamily dwellings**, with appropriate **accessory uses**, at *moderate to high densities...[.]*” (*italics added*). Adding an accessory dwelling to an area that is already densely settled will not change the character of the neighborhood.

### **CONCLUSION**

In conclusion, the Applicant has demonstrated that his application meets the five (5) criteria for granting the variances requested and respectfully requests that the Board approve his application.

Dated: July 23, 2024

Respectfully Submitted,

Kevin Shitan Zeng, Trustee

By and Through His Attorneys,  
Durbin Law Offices PLLC



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



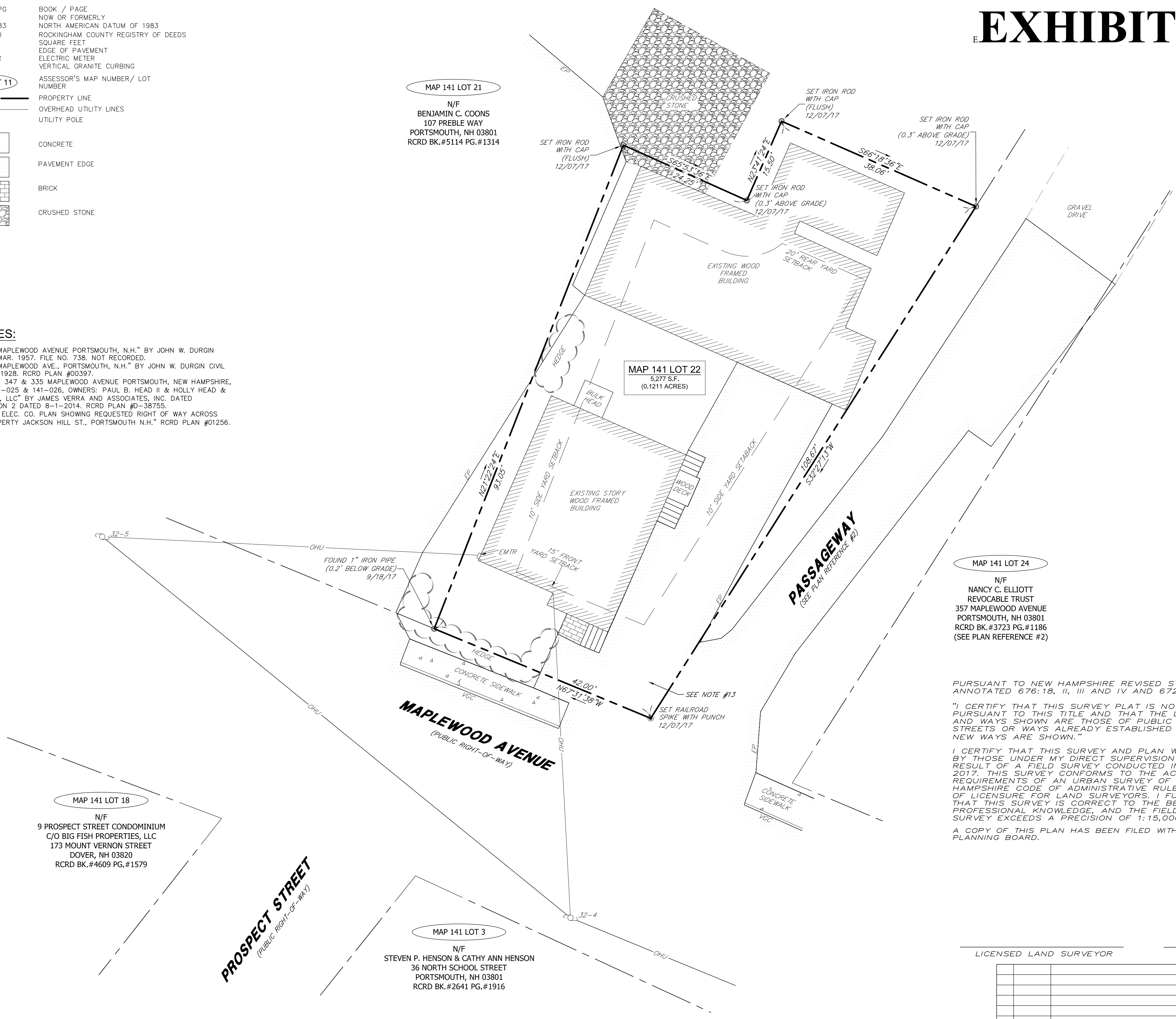
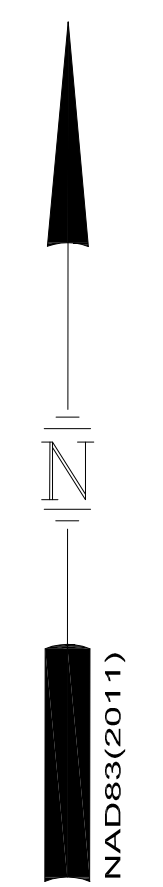
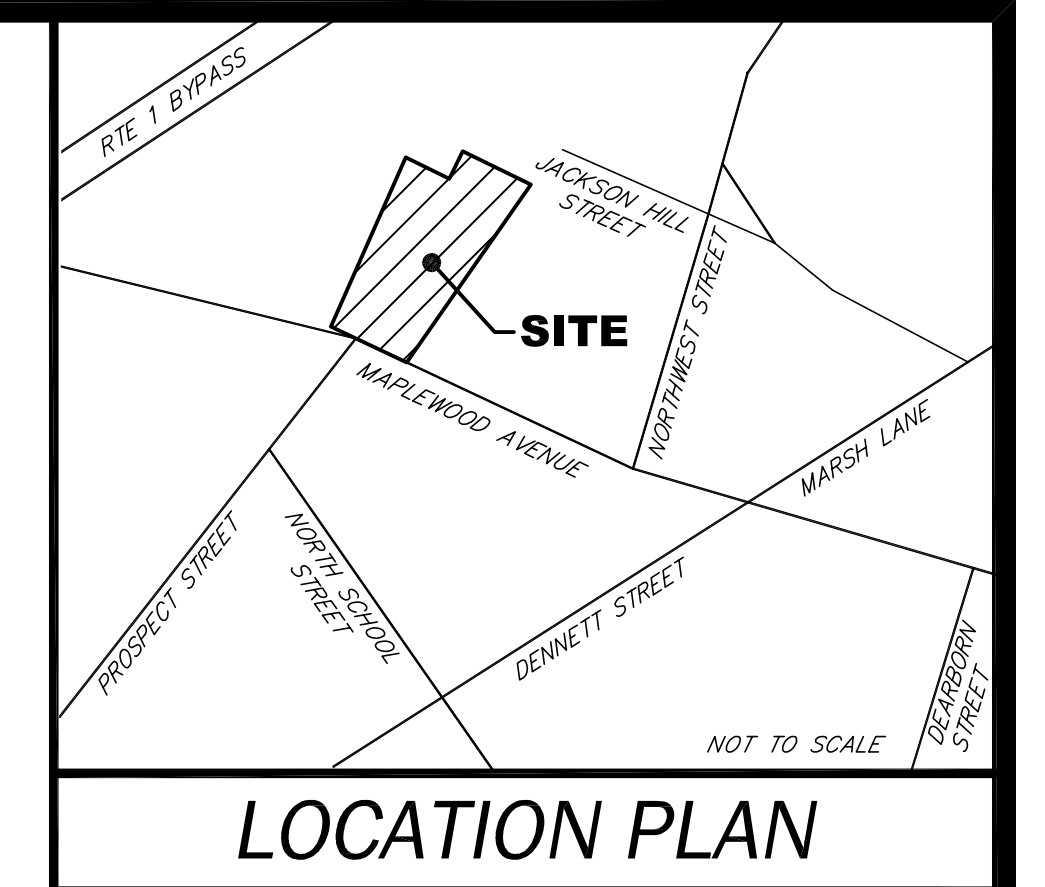
**LEGEND:**

BK/PG	BOOK / PAGE
N/F	NOW OR FORMERLY
NAD83	NORTH AMERICAN DATUM OF 1983
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
S.F.	SQUARE FEET
EP	EDGE OF PAVEMENT
EMTR	ELECTRIC METER
VGC	VERTICAL GRANITE CURBING
MAP 47 LOT 11	ASSESSOR'S MAP NUMBER / LOT NUMBER
OHU	PROPERTY LINE
○	OVERHEAD UTILITY LINES
○	UTILITY POLE
□	CONCRETE
▨	PAVEMENT EDGE
▩	BRICK
▧	CRUSHED STONE

**PLAN REFERENCES:**

- "PLAN OF LOT NO. 377 MAPLEWOOD AVENUE PORTSMOUTH, N.H." BY JOHN W. DURGIN CIVIL ENGINEERS DATED MAR. 1957. FILE NO. 738. NOT RECORDED.
- "PLAN OF LOT NO. 357 MAPLEWOOD AVE., PORTSMOUTH, N.H." BY JOHN W. DURGIN CIVIL ENGINEERS DATED APRIL 1928. RCRD PLAN #0397.
- "LOT LINE REVISION PLAN 347 & 335 MAPLEWOOD AVENUE PORTSMOUTH, NEW HAMPSHIRE, ASSESSOR'S PARCEL: 141-025 & 141-026, OWNERS: PAUL B. HEAD II & HOLLY HEAD & 335 MAPLEWOOD AVENUE, LLC" BY JAMES VERRA AND ASSOCIATES, INC. DATED 10-01-2013 WITH REVISION 2 DATED 8-1-2014. RCRD PLAN #D-38755.
- "NEW HAMPSHIRE GAS & ELEC. CO. PLAN SHOWING REQUESTED RIGHT OF WAY ACROSS MARGUERITE MILLER PROPERTY JACKSON HILL ST., PORTSMOUTH N.H." RCRD PLAN #01256.

# EXHIBIT A



**NOTES:**

- THE PARCEL IS LOCATED IN THE GENERAL RESIDENCE A (GRA) ZONE.
- THE PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 141 AS LOT 22.
- THE PARCEL IS LOCATED IN FLOOD ZONE X AS SHOWN ON FLOOD INSURANCE RATE MAP, ROCKINGHAM COUNTY, NEW HAMPSHIRE, PANEL 259 OF 681, MAP NUMBER 33015C0259E, EFFECTIVE DATE: MAY 17, 2005.
- OWNER OF RECORD:  
MAP 141 LOT 22  
KEVIN SHITAN ZENG  
377 MAPLEWOOD AVENUE  
PORTSMOUTH, NH 03801  
RCRD BK.#5748 PG.#286
- ZONING REQUIREMENTS:  
MINIMUM LOT DIMENSIONS:  
LOT AREA 7,500 S.F.  
LOT AREA PER DWELLING UNIT 7,500 S.F.  
CONTIGUOUS STREET FRONTAGE 100 FT  
DEPTH 70 FT  
MINIMUM YARD DIMENSIONS:  
FRONT 15 FT  
SIDE 10 FT  
REAR 20 FT  
MAXIMUM STRUCTURE DIMENSIONS:  
STRUCTURE HEIGHT 35 FT  
SLOPED ROOF 30 FT  
FLAT ROOF 8 FT  
ROOF APPURTENANCE HEIGHT 25%  
BUILDING COVERAGE 30%  
MINIMUM OPEN SPACE:  
PER THE CITY OF PORTSMOUTH ZONING ORDINANCE ARTICLE V, SECTION 10.520.
- TOTAL PARCEL AREA:  
MAP 141 LOT 22  
5,277 S.F.  
(0.1211 ACRES)
- THE INTENT OF THIS PLAN IS TO SHOW THE LOCATION OF BOUNDARIES IN ACCORDANCE WITH THE CURRENT LEGAL DESCRIPTIONS. IT IS NOT AN ATTEMPT TO DEFINE UNWRITTEN RIGHTS, DETERMINE THE EXTENT OF OWNERSHIP OR DEFINE THE LIMITS OF TITLE.
- HORIZONTAL DATUM IS NAD83 (2011) PER STATIC GPS OBSERVATIONS.
- THE PURPOSE OF THIS PLAN IS TO SHOW THE BOUNDARY LINES AND MAJOR IMPROVEMENTS OF MAP 141 LOT 22.
- EXISTING USE OF THE PROPERTY IS RESIDENTIAL.
- FIELD SURVEY COMPLETED BY TODD C. EMERSON IN SEPTEMBER 2017 USING A TOPCON DS103 AND TOPCON TESLA DATA COLLECTOR.
- EASEMENTS, RIGHTS, AND RESTRICTIONS SHOWN OR IDENTIFIED ARE THOSE WHICH WERE FOUND DURING RESEARCH PERFORMED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS. OTHER RIGHTS, EASEMENTS, OR RESTRICTIONS MAY EXIST WHICH A TITLE EXAMINATION OF THE SUBJECT PARCEL WOULD DETERMINE.
- PARCEL IS SUBJECT TO AN EASEMENT TO THE NEW HAMPSHIRE GAS AND ELECTRIC COMPANY AS DESCRIBED IN BK.#974 PG.#269. SAID EASEMENT IS BASED ON THE LOCATION OF A UTILITY POLE AND ANCHOR THAT NO LONGER EXIST, AND THEREFORE, IS NOT PLOTTABLE. SEE PLAN REFERENCE #4.

PURSUANT TO NEW HAMPSHIRE REVISED STATUTES ANNOTATED 676:18, II, III AND IV AND 672:14:

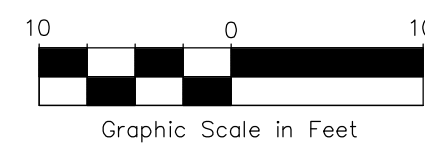
"I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN."

I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY THOSE UNDER MY DIRECT SUPERVISION AND ARE THE RESULT OF A FIELD SURVEY CONDUCTED IN SEPTEMBER, 2017. THIS SURVEY CONFORMS TO THE ACCURACY REQUIREMENTS OF AN URBAN SURVEY OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS. I FURTHER CERTIFY THAT THIS SURVEY IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, AND THE FIELD TRAVERSE SURVEY EXCEEDS A PRECISION OF 1:15,000.

A COPY OF THIS PLAN HAS BEEN FILED WITH THE LOCAL PLANNING BOARD.

LICENSED LAND SURVEYOR DATE

REV.	DATE	DESCRIPTION	DR	CK



Feb. 21, 2018 - 1:36pm F:\MSC\Projects\45926 - Portsmouth Ave - 377 Maplewood Ave\SurveyDrawings\45926.20 SBS.dwg

TAX MAP 141 LOT 22  
**STANDARD BOUNDARY SURVEY**

**377 MAPLEWOOD AVENUE**  
**PORTSMOUTH, NEW HAMPSHIRE**  
**COUNTY OF ROCKINGHAM**

OWNED BY  
**KEVIN SHITAN ZENG**

SCALE: 1" = 10' (22x34)  
1" = 20' (11x17) FEBRUARY 21, 2018

**TFM**

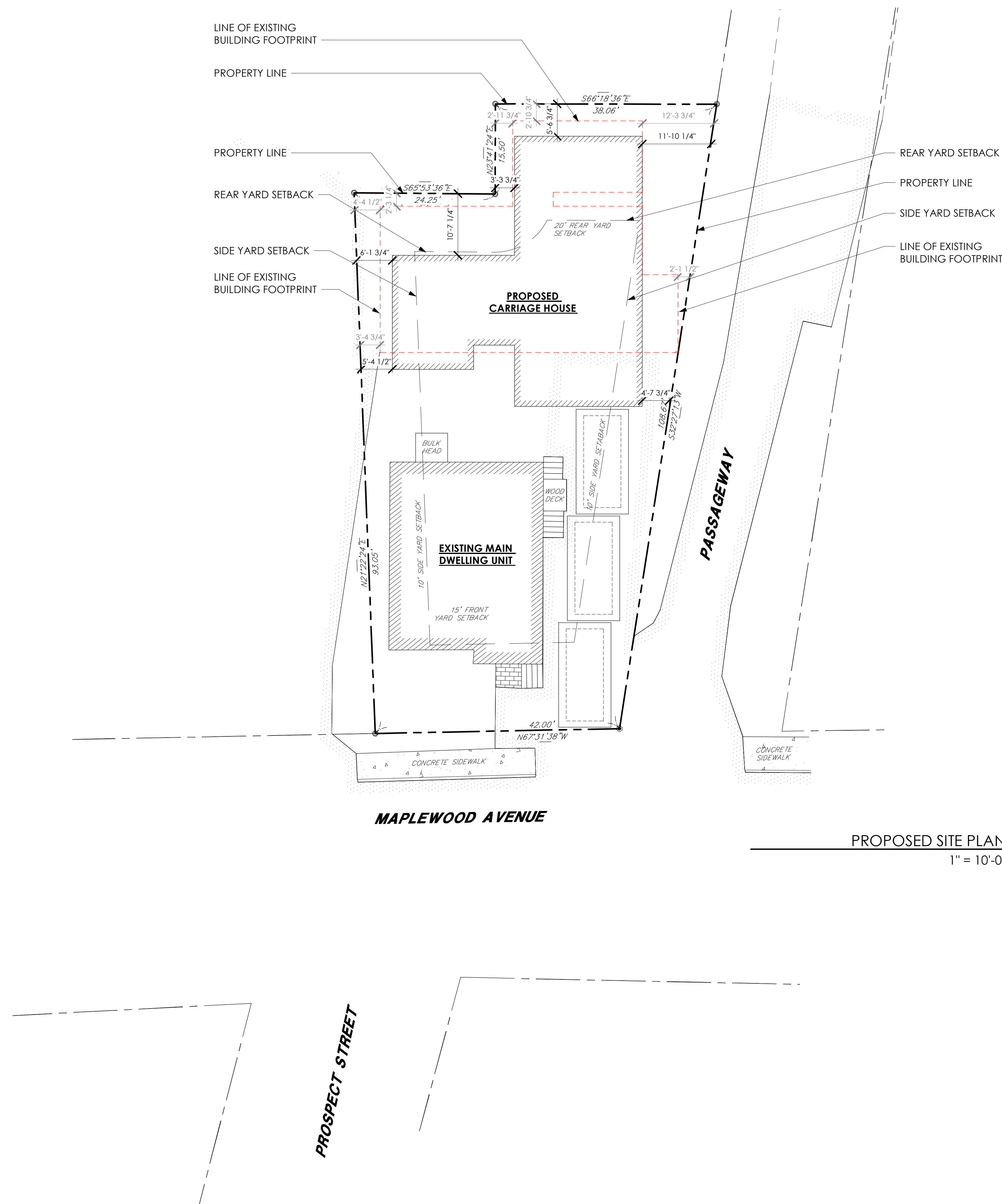
**MSC**

Civil Engineers  
Structural Engineers  
Traffic Engineers  
Land Surveyors  
Landscape Architects  
Scientists

170 Commerce Way, Suite 102  
Portsmouth, NH 03801  
Phone (603) 431-2222  
Fax (603) 431-0910  
www.mscengineers.com

A division of TFMoran, Inc.

45926.20	DR	FB
	CK	CADFILE



PROPOSED SITE PLAN  
1  
1" = 10'-0"

- GENERAL SITE NOTES**
- ELEVATIONS NOTED ARE ARCHITECTURAL WHERE FIRST FLOOR AT EACH BUILDING IS ESTABLISHED AS 100'-0" FOR RELATIVE DIMENSIONING. SEE CIVIL SITE SURVEY BY IFMORAN FOR ACTUAL ELEVATIONS.
  - REFER TO IFMORAN CIVIL SITE SURVEY CONDUCTED IN SEPTEMBER OF 2017, ON SHEET A0.01 FOR ALL SITE INFORMATION NOT PROVIDED BY ARCHITECT.
  - DO NOT SCALE DRAWINGS - DIMENSIONS SHALL GOVERN. VERIFY ALL DIMENSIONS IN FIELD PRIOR TO FINAL PLACEMENT OF MATERIALS. NOTIFY THE ARCHITECT IN WRITING OF ANY DISCREPANCIES.
  - DIMENSIONS ARE AS FOLLOWS UNLESS NOTED OTHERWISE:
    - a. TO FINISH FACE AT EXTERIOR AND INTERIOR LOCATIONS
    - b. TO FINISH FLOOR
    - c. TO FINISH FACE AT CEILING
    - d. TO DRIP EDGE FOR ROOF LINES
- THE PARCEL IS LOCATED IN THE GENERAL RESIDENCE A (GRA) ZONE.
  - THE PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 141 AS LOT 22.
  - THE PARCEL IS LOCATED IN FLOOD ZONE X AS SHOWN ON FLOOD INSURANCE RATE MAP, ROCKINGHAM COUNTY, NEW HAMPSHIRE, PANEL 259 OF 681, MAP NUMBER 33015C0259E, EFFECTIVE DATE: MAY 17, 2005
  - OWNER OF RECORD:  
MAP 141 LOT 22  
KEVIN SHITAN ZENG  
377 MAPLEWOOD AVENUE  
PORTSMOUTH, NH 03801  
RCRD BK. #5748 PG. #286
  - ZONING REQUIREMENTS: ZONE GRA  
MINIMUM LOT DIMENSIONS:  
LOT AREA 7,500 S.F.  
LOT AREA PER DWELLING UNIT 7,500 S.F.  
CONTIGUOUS STREET FRONTAGE 100 FT  
DEPTH 70 FT  
MINIMUM YARD DIMENSIONS:  
FRONT 15 FT  
SIDE 10 FT  
REAR 20 FT  
MAXIMUM STRUCTURE DIMENSIONS:  
STRUCTURE HEIGHT 35 FT  
SLOPED ROOF 30 FT  
FLAT ROOF 8 FT  
ROOF APPURTENANCE HEIGHT 8 FT  
BUILDING COVERAGE: 25%  
MINIMUM OPEN SPACE: 30%  
PER THE CITY OF PORTSMOUTH ZONING ORDINANCE ARTICLE V, SECTION 10.520.
  - TOTAL PARCEL AREA:  
MAP 141 LOT 22  
5,277 S.F.  
(0.1211 ACRES)

LOT COVERAGE	EXISTING	PROPOSED
TOTAL LOT SIZE:	5,277 S.F.	5,277 S.F.
MAIN DWELLING UNIT:	884 S.F.	884 S.F.
REAR STRUCTURE:	1,506 S.F.	1,402 S.F.
TOTAL COVERAGE:	2,391 S.F.	2,286 S.F.
PERCENTAGE LOT COVERAGE:	45.3%	43.3%

Revisions:

#	Description	Date

THE PARCEL IS LOCATED IN THE GENERAL RESIDENCE A (GRA) ZONE.  
 THE PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 141 AS LOT 22.  
 THE PARCEL IS LOCATED IN FLOOD ZONE X AS SHOWN ON FLOOD INSURANCE RATE MAP, ROCKINGHAM COUNTY, NEW HAMPSHIRE, PANEL 259 OF 681, MAP NUMBER 33015C0259E, EFFECTIVE DATE: MAY 17, 2005  
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 MAP 141 LOT 22  
 KEVIN SHITAN ZENG  
 377 MAPLEWOOD AVENUE  
 PORTSMOUTH, NH 03801  
 RCRD BK. #5748 PG. #286

**DIMA**  
**DESTEFANO MAUGEL ARCHITECTS**  
 22 Ladd Street  
 Portsmouth, NH, 03801  
 PH: 603.431.8701  
 DeStefanoMaugel.com

NEW CONSTRUCTION FOR  
**377 MAPLEWOOD AVE.**  
 PORTSMOUTH, NH 03801

Title:  
**PROPOSED SITE PLAN**

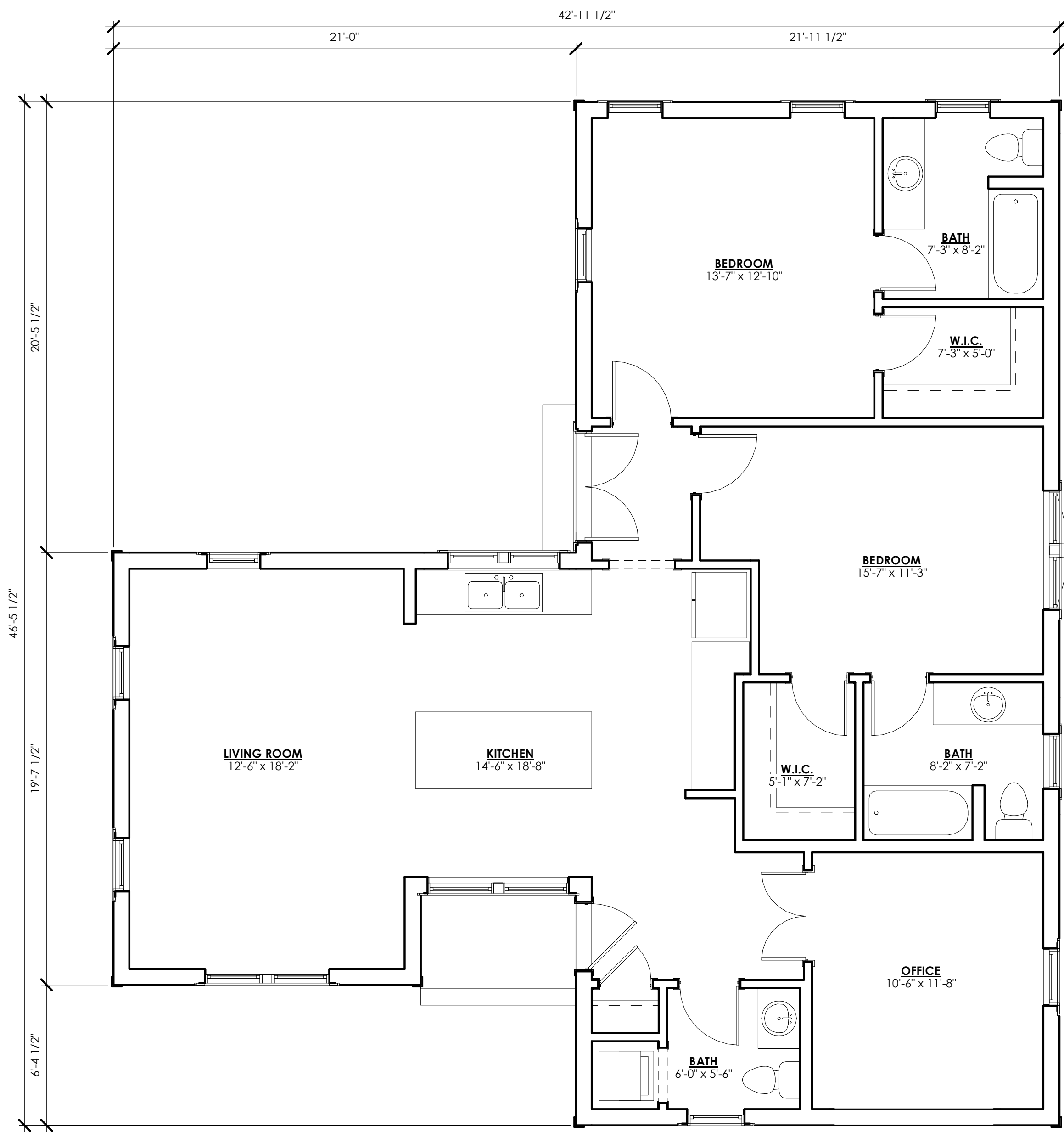
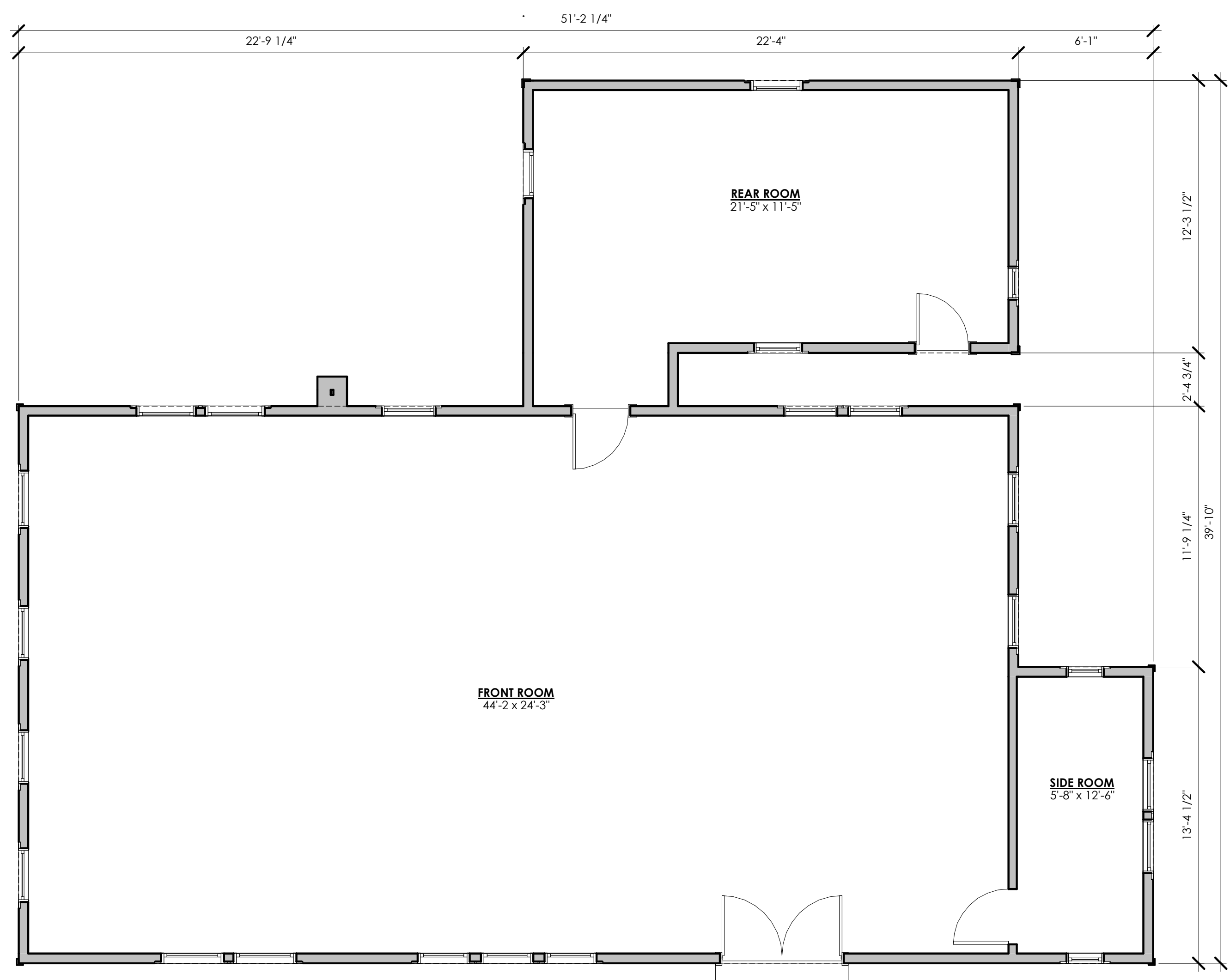
Scale: As indicated  
 Drawn By: AM  
 Checked By: DB  
 Project No.: 202013  
 Date: 15 SEPTEMBER, 2020

**A0.01**

- GENERAL SITE NOTES**
- ELEVATIONS NOTED ARE ARCHITECTURAL WHERE FIRST FLOOR AT EACH BUILDING IS ESTABLISHED AS 100'-0" FOR RELATIVE DIMENSIONING. SEE CIVIL SITE SURVEY BY TFMORAN FOR ACTUAL ELEVATIONS.
  - REFER TO TFMORAN CIVIL SITE SURVEY CONDUCTED IN SEPTEMBER OF 2017, ON SHEET A0.01 FOR ALL SITE INFORMATION NOT PROVIDED BY ARCHITECT.
  - DO NOT SCALE DRAWINGS - DIMENSIONS SHALL GOVERN. VERIFY ALL DIMENSIONS IN FIELD PRIOR TO FINAL PLACEMENT OF MATERIALS. NOTIFY THE ARCHITECT IN WRITING OF ANY DISCREPANCIES.
  - DIMENSIONS ARE AS FOLLOWS UNLESS NOTED OTHERWISE:
    - TO FINISH FACE AT EXTERIOR AND INTERIOR LOCATIONS
    - TO FINISH FLOOR
    - TO FINISH FACE AT CEILING
    - TO DRIP EDGE FOR ROOF LINES

Revisions:

#	Description	Date



**DIMIA**  
**DESTEFANO MAUGEL ARCHITECTS**  
 22 Ladd Street  
 Portsmouth, NH, 03801  
 PH: 603.431.8701  
 DeStefanoMaugel.com

NEW CONSTRUCTION FOR  
**377 MAPLEWOOD AVE.**  
 PORTSMOUTH, NH 03801

Title:  
 EXISTING AND PROPOSED FLOOR PLANS

Scale: As indicated  
 Drawn By: AM  
 Checked By: DB  
 Project No.: 202013  
 Date: 15 SEPTEMBER, 2020

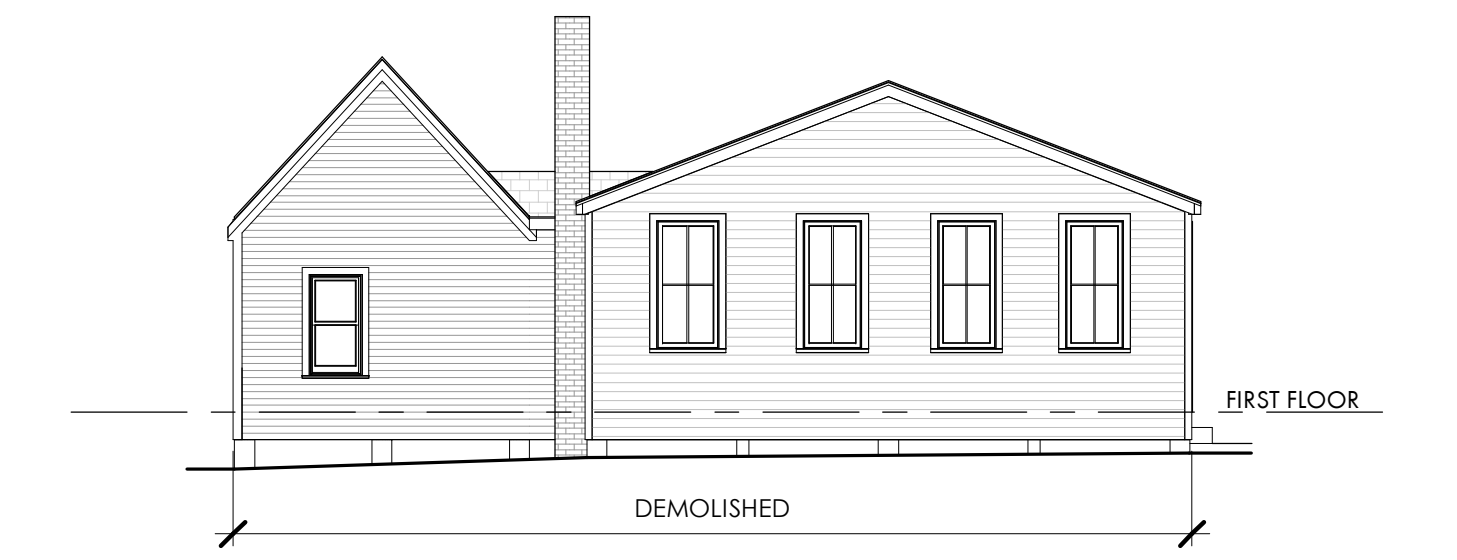
**A0.02**



EXISTING STREET VIEW



PROPOSED STREET VIEW



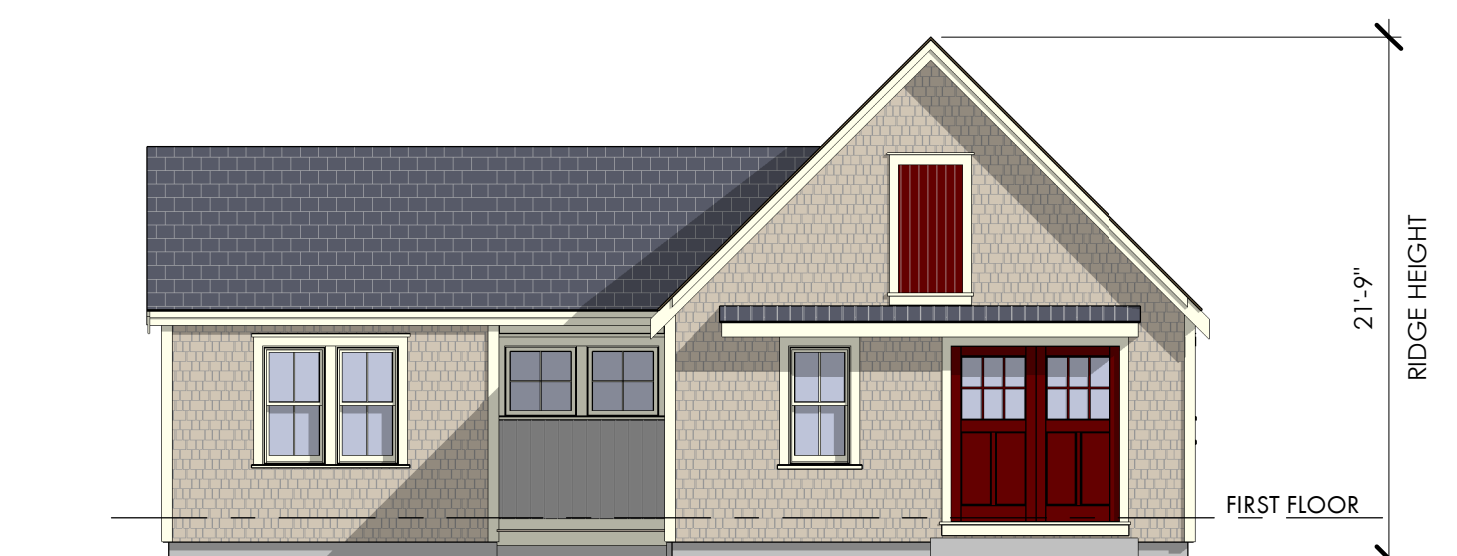
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1/8" = 1'-0"



PROPOSED WEST ELEVATION 4  
1/8" = 1'-0"



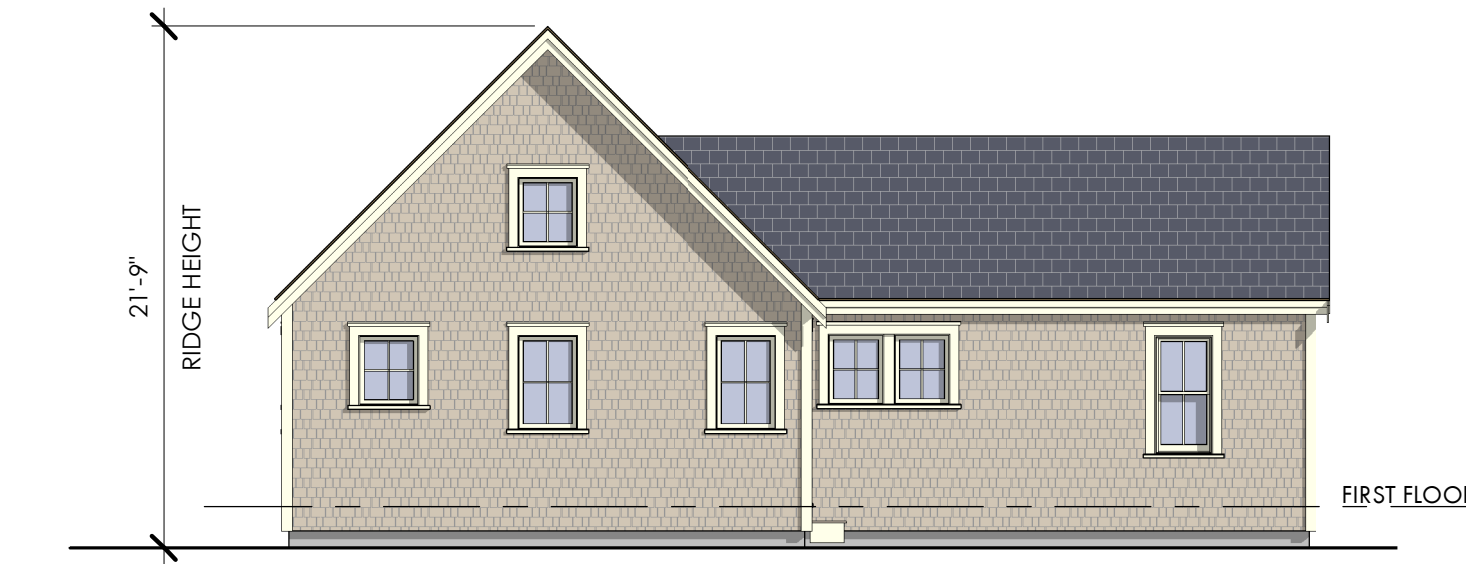
EXISTING SOUTH ELEVATION 7  
1/8" = 1'-0"



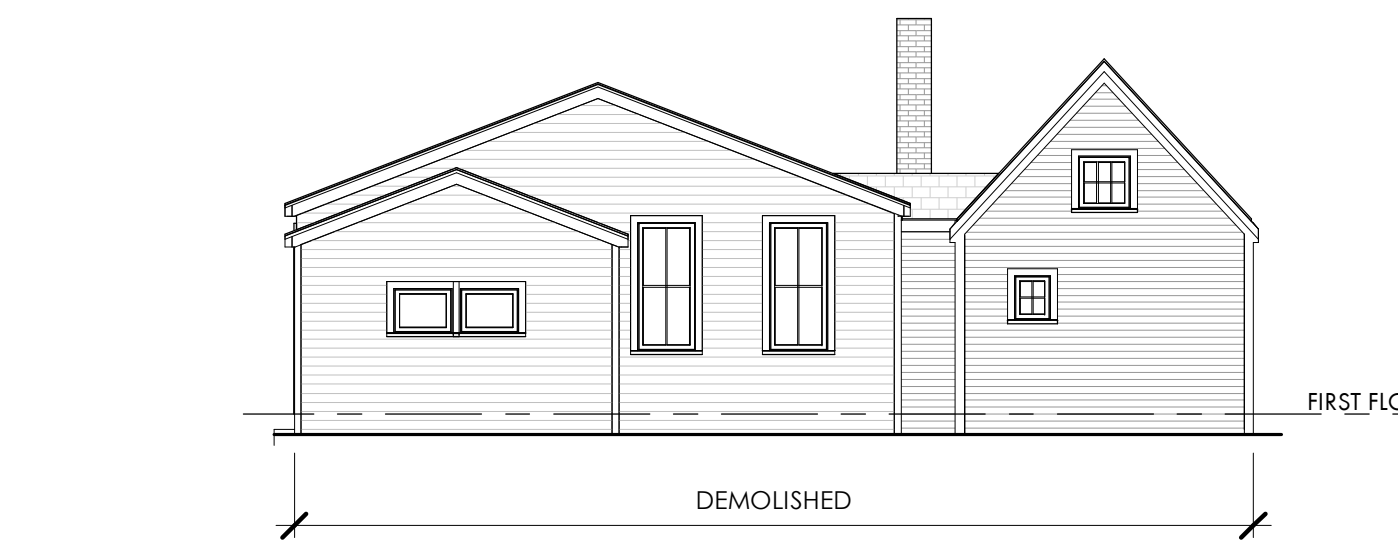
PROPOSED SOUTH ELEVATION 3  
1/8" = 1'-0"



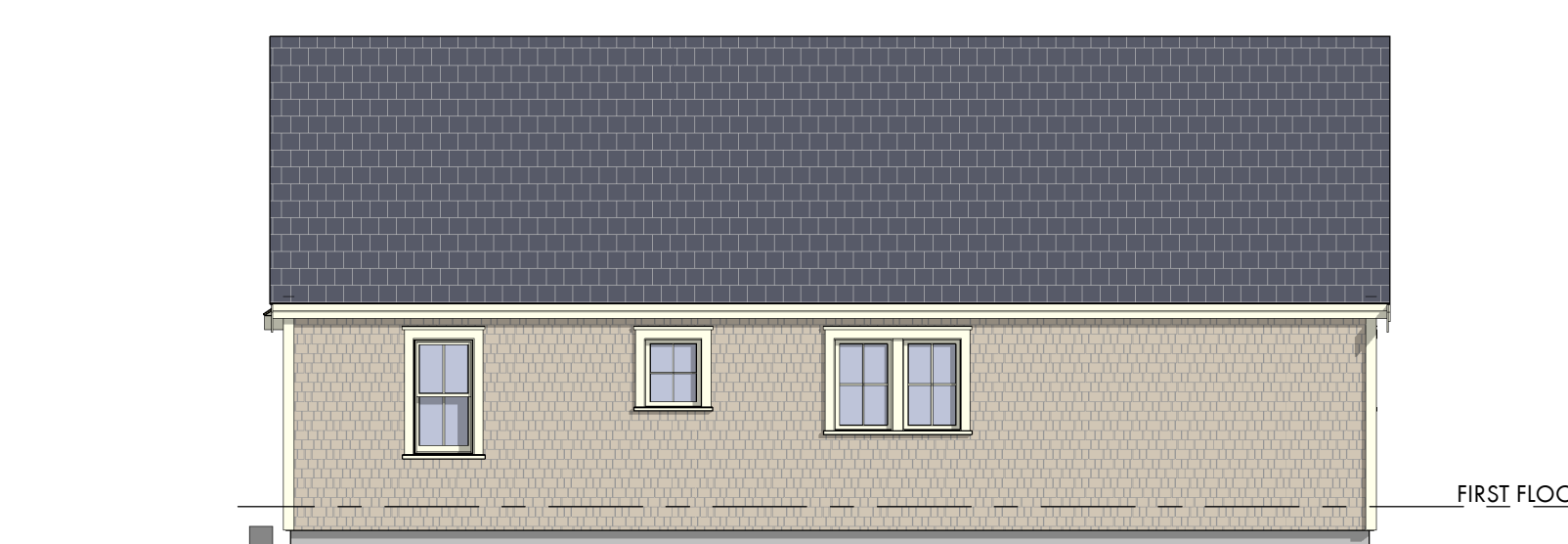
EXISTING NORTH ELEVATION 6  
1/8" = 1'-0"



PROPOSED NORTH ELEVATION 2  
1/8" = 1'-0"



EXISTING EAST ELEVATION 5  
1/8" = 1'-0"



PROPOSED EAST ELEVATION 1  
1/8" = 1'-0"

GENERAL SITE NOTES

1. ELEVATIONS NOTED ARE ARCHITECTURAL WHERE FIRST FLOOR AT EACH BUILDING IS ESTABLISHED AS 100'-0" FOR RELATIVE DIMENSIONING. SEE CIVIL SITE SURVEY BY TFMORAN FOR ACTUAL ELEVATIONS.
2. REFER TO TFMORAN CIVIL SITE SURVEY CONDUCTED IN SEPTEMBER OF 2017, ON SHEET A0.01 FOR ALL SITE INFORMATION NOT PROVIDED BY ARCHITECT.
3. DO NOT SCALE DRAWINGS - DIMENSIONS SHALL GOVERN. VERIFY ALL DIMENSIONS IN FIELD PRIOR TO FINAL PLACEMENT OF MATERIALS. NOTIFY THE ARCHITECT IN WRITING OF ANY DISCREPANCIES.
4. DIMENSIONS ARE AS FOLLOWS UNLESS NOTED OTHERWISE:
  - a. TO FINISH FACE AT EXTERIOR AND INTERIOR LOCATIONS
  - b. TO FINISH FLOOR
  - c. TO FINISH FACE AT CEILING
  - d. TO DRIP EDGE FOR ROOF LINES

Revisions:  
# Description Date

**DIMA**  
DESTEFANO  
MAUGEL  
ARCHITECTS  
22 Ladd Street  
Portsmouth, NH, 03801  
PH: 603.431.8701  
DeStefanoMaugel.com

NEW CONSTRUCTION FOR  
**377 MAPLEWOOD AVE.**  
PORTSMOUTH, NH 03801

Title:  
EXISTING /  
PROPOSED  
ELEVATIONS &  
CONTEXT IMAGE

Scale: As indicated  
Drawn By: AM  
Checked By: DB  
Project No.: 202013  
Date: 15 SEPTEMBER, 2020

A0.03

## EXHIBIT B

### BOARD OF ADJUSTMENT MEETING PORTSMOUTH, NEW HAMPSHIRE

#### Remote Meeting via Zoom Conference Call

7:00 P.M.

SEPTEMBER 15, 2020

#### MINUTES

**MEMBERS PRESENT:** Chairman David Rheaume, Vice-Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, John Formella, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman

**MEMBERS ABSENT:** None

**ALSO PRESENT:** Peter Stith, Planning Department

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Chairman Rheaume noted that Petition C, 50 New Castle Avenue, had been withdrawn by the applicant.

#### I. APPROVAL OF MINUTES

A) Approval of the minutes of the meeting of August 18, 2020

*It was moved, seconded, and passed unanimously (7-0) to **approve** the minutes as presented.*

#### II. OLD BUSINESS

A) Request of **Arbor View & the Pines, Owners**, for property located at **145 Lang Road** for a one year extension of the variances that were granted on November 20, 2018. Said property is shown on Assessor Map 287 Lot 1 and lies within the Garden Apartment/Mobile Home Park (GA/MH) District.

Vice-Chair Johnson recused himself from the petition, and Alternate Ms. Eldridge assumed a voting seat.

Chairman Rheaume noted that the applicant submitted a letter to the Board explaining his reasoning for the one-year extension and that he had no building permit as yet.

*Mr. Mulligan moved to **grant** the one-year extension, and Mr. Parrott seconded.*

Mr. Mulligan said the project was substantial and that it wasn't unreasonable to allow an extension. He noted that the applicant requested it within the two-year timeframe per the ordinance, so he saw no reason not to grant it. Mr. Parrott concurred, adding that the request was

timely and had almost become pro forma. Chairman Rheume cautioned against indicating that two-year extensions were automatically granted, noting that the applicant had two years to get the project done, but he agreed that it was a large project and was no doubt impacted by COVID.

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

### **III. PUBLIC HEARINGS – NEW BUSINESS**

**A)** Petition of **Nathan & Stacey Moss, Owners**, for property located at **5 Pamela Street** wherein relief was needed from the Zoning Ordinance to construct a one-story rear addition which requires the following: 1) A Variance from Section 10.521 to allow 26% building coverage where 20% is the maximum allowed. 2) A 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 shown on Assessor Map 292 Lot 119 and lies within the Single Residence B (SRB) District.

Vice-Chair Johnson resumed his voting seat, and Ms. Eldridge returned to alternate status.

#### **SPEAKING TO THE PETITION**

The applicant Nathan Moss reviewed the petition and criteria and said they would be met.

Mr. Stith reviewed the Board's prior approval of the petition, stating that the applicant was before the Board in 2018 to extend the garage and received a 5-ft side yard setback, but the building coverage was calculated in error. He said there was now a more descriptive tabulation of the lot coverage that showed the existing coverage at 24 percent, so the applicant should have gotten a building coverage setback back in 2018. As a result, the building coverage was going from 24 percent to 26 percent.

There were no questions from the Board. Chairman Rheume opened the public hearing.

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

No one was present to speak, and Chairman Rheume closed the public hearing.

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

*Mr. McDonell moved to **grant** the variances for the petition as presented, and Mr. Parrott seconded.*

Mr. McDonell said the request was straightforward and that it was a small lot with a relatively modest ranch home and a modest addition in terms of square footage, and he didn't think it would change the effect of what was there. He said it was a reasonable request, notwithstanding that the building coverage increase was greater than the actual two percent. He said granting the variances would not be contrary to the public interest or the spirit of the ordinance and the

proposed use would not alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. He said it was a modest addition and that similar additions were done up and down the block, and that it was common for small homes to be added onto over the years. He said substantial justice would be done because the benefit to the applicant was obvious and wasn't outweighed by any harm to the public. He also noted that no neighbors had spoken against it and that he couldn't see that neighbors or the general public would be concerned with an addition like that. He said granting the variances would not diminish the values of surrounding properties, noting that he had heard no testimony to that effect. He said the project would benefit the property, which would result in benefiting surrounding properties. He said literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property that distinguished it from others in the area. He said the property was similar to others in the area, but the lot's size was smaller than the required minimal lot area and the modest addition wouldn't implicate special conditions that the Board could distinguish from other properties in the area. He saw no relationship between the purpose of the building coverage ordinance and the application because the total building coverage in that zone was limited to 20 percent. He said the proposed use was reasonable and would remain what it was, a modest single-family home, and he said the Board should approve the request.

Mr. Parrott concurred, adding that it was obviously a small tasteful addition situated toward the center of the lot and was as far away from the neighbors as it could be, so it would not have a detrimental effect on the neighborhood and easily met all the criteria.

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

**B)** Petition of **Stephen & Bridget Viens, Owners**, for property located at **78 Marne Avenue** wherein relief was needed from the Zoning Ordinance to replace existing 1 car garage with new 2 car garage and mudroom which requires the following: 1) Variances from Section 10.521 to allow a) 27% building coverage where 25% maximum is allowed; b) a 9.5' secondary front yard where 15' is required; and c) an 11.5' rear yard where 20' is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 222 Lot 40 and lies within the General Residence A (GRA) District.

### **SPEAKING TO THE PETITION**

The applicants Stephen and Bridge Viens were present. Mr. Viens reviewed the petition and criteria. He said all his neighbors were in favor of the project.

Mr. Mulligan noted that the driveway came off Marne Avenue and asked if the applicant would abandon that driveway. Mr. Viens said there would only be 10 feet from the street to the garage door, which wouldn't leave much space, and that one of the bays was only 16 feet due to the new mudroom. He said he hoped to keep both driveways.

Mr. Stith said only one driveway per lot was allowed, and if the applicant kept both driveways, he would have to request another variance. Mr. Mulligan asked if the Department of Public Works would have to approve a curb cut for the new driveway, and Mr. Stith agreed. Mr. Mulligan said the plan showed that the new addition would be 11'8" from the rear yard, but the relief advertised was 11'5". Mr. Stith said the Planning Department had been using the half-foot instead of the plus/minus measurement. Vice-Chair Johnson asked the applicant if he had considered putting the new garage more toward the front yard or making it an ell-shaped one, noting that the Cape had an extended addition on both sides that made for a long building. Mr. Viens said he had not considered it because it was all about creating a mudroom.

Chairman Rheume opened the public hearing.

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

No one was present to speak, and Chairman Rheume closed the public hearing.

### **DECISION OF THE BOARD**

*Mr. Mulligan moved to **grant** the variances for the petition as presented and advertised, and Vice-Chair Johnson seconded.*

Mr. Mulligan said the property had been added onto a few times, making the structure long, but it was set back pretty far from Marne Avenue such that there was no usable backyard, so he could understand why the owner wouldn't want an ell-shaped garage. He said it was also a good way to take advantage of the fact that Verdun Avenue wasn't much of a traveled street. He said granting the variances would not be contrary to the public interest or to the spirit of the ordinance because the essential residential character of the neighborhood would remain intact and the public's health, safety, and welfare would not be implicated. He said it would result in substantial justice because the loss to the applicant if the Board were to require strict compliance with the ordinance would outweigh any gain to the public. He said granting the variances would not diminish the value of surrounding properties but would improve them, noting that a mudroom and a two-car garage were amenities normally seen in modern homes. He said the special conditions of the property were that it was a corner lot on two roads that weren't traveled much. He said there was no fair and substantial relationship between the purpose of the setback and building coverage ordinances and their application to the property. He said it was a small amount of relief requested and was a residential use in a residential zone and met all the criteria.

Vice-Chair Johnson concurred, noting that Mr. Mulligan made a good point about the usable space within the yard. He thought a more compliant concept could have been worked out for the front yard, but he realized that it was a tight neighborhood, and it helped that there was an open view across the street. He said the project should be approved.

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



**C) WITHDRAWN** Petition of **Timothy & Alexandra Lieto, Owners**, for property located at **50 New Castle Avenue** wherein relief is needed from the Zoning Ordinance to construct a two-story rear addition which requires the following: 1) A Variance from Section 10.521 to allow a 22' rear yard where 30' is required. 2) A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 101 Lot 33 and lies within the Single Residence B (SRB) District. **WITHDRAWN**

*It was acknowledged by the Board that the applicant had **withdrawn** the petition.*

**D)** Petition of **KSC, LLC, Owner, and Lafayette Animal Hospital, LLC, Applicant**, for property located at **2222 Lafayette Road** wherein relief was needed from the Zoning Ordinance to allow a Veterinary Clinic/Hospital which requires the following: 1) A Special Exception from Section 10.440 Use #7.50 to allow a Veterinary Care use where the use is allowed by Special Exception. Said property is shown on Assessor Map 267 Lot 2 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District.

### **SPEAKING TO THE PETITION**

Attorney Brad Lown was present on behalf of the applicant and reviewed the petition and special exception requirements. He stated that the clinic usually got 4-8 patients per hour for 30-minute visits and rare overnights; there were two veterinarians, 12 staff people and 29 parking spaces; and the clinic was just being moved down the street and across the road to a slightly larger space.

There were no questions from the Board. Chairman Rheaume opened the public hearing.

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

David McGrath said he was the owner of KSC, LLC and was happy to be part of the community.

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

No one else was present to speak, and Chairman Rheaume closed the public hearing.

### **DECISION OF THE BOARD**

*Mr. Lee moved to **grant** the special exception request, and Mr. Parrott seconded.*

Mr. Lee said it was a simple request, just relocating the same business across and down the road to a better location. He said granting the special exception would create no hazard to the public or adjacent properties on account of odors, smoke, noise, fire, explosions, and so on. He said it would create no traffic safety hazards or substantial increase in the level of traffic in the vicinity and no excessive demand on municipal services, as well as no increase in stormwater runoff onto adjacent properties or streets.

Mr. Parrott concurred, noting that the property had been vacant for some time and that it was good to see it getting filled up. He said it was a benign use of the property and would fit in nicely with the neighborhood, and that it satisfied all the requirements and should be approved.

Chairman Rheume said that the only criterion that was potentially marginal was the increase in traffic, but the business would be moved from one side of the street to the opposite in a location suited for a small amount of incoming and ongoing traffic, so he thought it passed all the hurdles.

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

**E)** Petition of **Kenton Slovenski, Owner**, for property located at **175 Grant Avenue** wherein relief was needed from the Zoning Ordinance to construct a two-story addition with an attached accessory dwelling unit which requires the following: 1) A Variance from Section 10.521 to allow a lot area of 13,950 square feet where 15,000 square feet is the minimum required. Said property is shown on Assessor Map 251, Lot 41 and lies within the Single Residence B (SRB) District.

Mr. Parrott recused himself from the petition, and Alternate Mr. Hagaman took a voting seat.

### **SPEAKING TO THE PETITION**

Attorney Derek Durbin on behalf of the owner was present, as was the owner Kenton Slovenski. Attorney Durbin reviewed the petition and said the owner wanted to renovate his one-story ranch home to accommodate an ADU. He said it would be similar to other two-story homes in the area, and the ADU would be fully integrated into the vertical extension and would be living space for a family member. He also noted that the property was deficient and needed a lot of work.

Vice-Chair Johnson asked if there were other multi-family uses in the surrounding area. Attorney Durbin said he knew there were a few duplexes around but not a lot of multi-family uses. He said he had a list of all the ADUs permitted in Portsmouth and that there weren't many because not many lots met the 15,000 s.f. minimum in the ordinance. Mr. Hagaman asked if the purpose of the ADU was to provide housing for a family member rather than renting it out. Attorney Durbin said the goal was to provide an independent living space for the applicant's brother or another family member. Mr. Hagaman said the Board received a letter from someone concerned about the aesthetics of the design and placement of the bumpout, and he asked if the stairs could be put in the back so that no bumpout was required. Attorney Durbin said there was ledge in the back.

Vice-Chair Johnson asked Mr. Stith if the property would be considered a single-family home with an ADU or a two-unit property. Mr. Stith said the applicant would have to get a Conditional Use Permit first. He thought the home would be assessed as an occupancy of two instead of a two-family home, and that the applicant would have to be certified yearly to ensure that the ADU still met the criteria for an ADU. It was further discussed.

Chairman Rheume opened the public hearing.

**SPEAKING IN FAVOR OF THE PETITION**

No one was present to speak in favor of the petition.

**SPEAKING AGAINST THE PETITION**

Amy Dickinson said she was a resident of the neighborhood and was concerned about the ADU because she thought it would set a dangerous precedent for others in the neighborhood to start adding apartments that didn't meet the square footage requirement, would increase traffic, and wouldn't be maintained by a renter as well as it would be by an owner.

Chairman Rheume said the State of New Hampshire passed the ADU law to increase housing stock, and that one of the goals was that all communities must allow ADU units within single-family areas. He said the City was required to develop an ordinance around it to allow ADUs in single resident districts throughout Portsmouth.

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

No one else was present to speak, and Chairman Rheume closed the public hearing.

**DECISION OF THE BOARD**

Vice-Chair Johnson said the applicant's neighborhood was the perfect application of the purpose of the ADU law overall because it had a less dense area infill and a fair amount of space per person as well as modest-sized properties, but he struggled with how to phrase the hardship eloquently. Mr. Hagaman agreed.

*Vice-Chair Johnson moved to **grant** the variance for the application as presented, and Mr. Hagaman seconded.*

Vice-Chair Johnson said he would echo his first few sentences about the application being appropriate. He said he lived in a similar neighborhood where the majority of residential properties came up short of the 15,000 s.f. criterion. He said granting the variance would not alter the essential character of the neighborhood or impact the public's health, safety, or welfare, and the spirit of the ordinance would be observed. He said one could look at this neighborhood and say that having an ADU was not meeting the character of the neighborhood, but the Board had to consider the current ordinances applied to the zone. He said there weren't a lot of properties with ADUs that were seen as a defining character, but the intent was reflected by changes in the ordinance and whether the size and density of the neighborhood were big enough to accept small uses like that. He said it was self-governing by the nature and size of the ADU as to how many people could live there and wasn't much different than everyone living in a single-family home. He said granting the variance would do substantial justice because the loss to the applicant if not granted would be greater than any perceived loss to the public or neighbors. He said the value of surrounding properties would not be diminished because the ADU would be a new addition to the housing stock and it was hard to argue that it wouldn't raise surrounding

property values. He saw no market decrease in values due to an ADU and thought it would increase resale values. He said literal enforcement of the ordinance would result in unnecessary hardship because the applicant had bought into the concept of what a Single Residence B Zone was and what the entitlements were and weren't, and he didn't feel that a one thousand plus or minus difference in square footage of the lot size undermined any of the ordinance's intent. He said it was a proven fact with other residences that a property of that size was capable of housing two units that were both small sizes.

Mr. Hagaman concurred. He said he had leaned heavily on how the hardship was presented by the applicant, and he thought what made the property unique compared to others was that it was positioned to do exactly what the applicant proposed to do. He said that was relatively uncommon, except for it being a relatively smaller lot than what was required. He said the special condition was that it checked all the boxes except for lot size, which was a unique thing not only for the neighborhood but for the city as a whole.

Chairman Rheume said that other New Hampshire communities were perhaps more affected by what the ADU law was trying to do, but that Portsmouth was an old community with a lot of established properties of two-acre lots with single-family homes, which used up a lot of available land to create those sorts of structures. He explained how the current environment was a lack of housing overall and also had an aging population that struggled to find smaller living spaces, and if they remained in their homes because they couldn't find smaller ones, it denied opportunities for younger families. He said the ADU law was designed to create a space that the aging population could take advantage of as well as continue to create housing opportunities for younger people who could serve as part of the workforce. He said if the City held applicants to the rigid standard of 15,000 square feet, they'd run the risk of defying the spirit of the ordinance and the spirit of the law behind the ordinance.

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

**F)** Petition of the **Rhonda Stacy-Coyle Revocable Trust, Owner**, for property located at **36 Richards Avenue** wherein relief was needed from the Zoning Ordinance to install a heat pump unit which requires the following: 1) A Variance from Section 10.521 to allow a 2' right side yard where 10' is required. Said property is shown on Assessor Map 136 Lot 14 and lies within the Mixed Residential Office (MRO) District.

Mr. Parrott resumed his voting seat, and Mr. Hagaman resumed alternate status.

### **SPEAKING TO THE PETITION**

The heating unit consultant Sue Morrison was present on behalf of the applicant and reviewed the petition and criteria. She said the Historic District Commission (HDC) had approved it with a stipulation that a surrounding fence would hide the unit from view. She said she accounted for the spacing that the unit needed from the building structure for adequate air flow

Chairman Rheume opened the public hearing.

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

No one was present to speak, and Chairman Rheaume closed the public hearing.

**DECISION OF THE BOARD**

*Mr. Formella moved to **grant** the variance for the petition as presented, and Mr. Lee seconded.*

Mr. Formella said that granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance because it would not alter the essential character of the neighborhood or threaten the public's health, safety, or welfare. He said no one would even know that the unit was there. He said substantial justice would be done because if the Board didn't grant the variance, it would be a loss to the applicant because the property couldn't have the heating unit, and there would be no gain to the public because they wouldn't have been harmed by the unit. He said granting the variance would not diminish the values of surrounding properties, noting that there was no evidence that it would do so. He said literal enforcement of the ordinance would result in unnecessary hardship to the applicant because special conditions of the property included a small lot, a small amount of outdoor space, and an existing nonconformity on the right sideyard. He said there was just a 2-ft setback where ten feet were required, so the Board wasn't creating any new nonconformity. He said there was no fair and substantial relationship between the purpose of the setback provision and its application to the property and that the proposed use was reasonable and should be granted.

Mr. Lee concurred and had nothing to add. Chairman Rheaume said he would support the motion because the only concerns of the setback relief were the light and air to the neighbors, but the neighbor's property wouldn't be impacted because it was a multi-use one.

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

**G)** Petition of the **Kevin Shitan Zeng Revocable Trust, Owner**, for property located at **377 Maplewood Avenue** wherein relief was needed from the Zoning Ordinance to demolish an accessory building and construct a new free standing dwelling which requires the following: 1) A Variance from Section 10.513 to allow more than one free standing dwelling on a lot. 2) Variances from Section 10.521 to allow: a) a lot area per dwelling unit of 2,638 square feet where 7,500 is the minimum required; b) 43% building coverage where 25% is the maximum allowed; c) a 4.5' secondary front yard where 15' is required; d) a 3' left side yard where 10' is required; and e) a 5.5' rear yard where 20' is required. 3) A Variance from Section 10.321 to allow a building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 141 Lot 22 and lies within the General Residence A (GRA) District.

**SPEAKING TO THE PETITION**

Attorney Derek Durbin was present on behalf of the applicant, as was the project architect Daniel Barton. Attorney Durbin said the existing building behind the main home predated that home and

was believed to have been a sail-making shop in the past, and that they proposed to demolish and replace it with a smaller carriage house structure. He said the HDC had a site visit and determined that the existing building was too structurally unsound to reconstruct. He said there would be two dwellings on the property to house family members. He reviewed the criteria and gave examples of other similar homes in the area that had ADUs.

Mr. Hagaman said the carriage house seemed to be equal to or more dominant than the main house. Mr. Barton noted the work session they had with the HDC, where it was decided that a new structure that was appropriate for the neighborhood should replace the existing one. He said the carriage house might look large but was really a small structure and its size was similar to the existing building. He said they reduced the roof pitch on one side of the building to replicate the front of the existing building and that the ridge height of the new gable wasn't too far off from the requirement. He said the building had a similar relationship in grade to the existing building.

Mr. Mulligan confirmed that the existing structure had not been used for a long time and could have been used as a dwelling before. He said the passageway was part of Jackson Hill Avenue and asked if it was a paper street. Attorney Durbin said it didn't meet the definition of a street but was shown as one on the City map. Mr. Mulligan said the existing conditions plan identified the passageway as a gravel lane and that the proposed stacked parking looked like it would back out into Maplewood Avenue traffic. He said stacked parking wasn't safe or appropriate for the property and asked if there was another way out of the property. Attorney Durbin said the property connected to Jackson Hill Avenue, which he thought the City maintained. He said the stacked parking was an existing condition due to the funky parking layout and that it worked for the property. He said cars would pull out of the lot and go up to Jackson Hill Avenue to the right. Mr. Mulligan asked if that was the way the applicant currently got out of the property, and Attorney Durbin said he wasn't sure. Mr. Mulligan asked what the improvement was in that case and how one would go up the gravel drive at the edge of the passageway and make a right turn. Mr. Barton said the Jackson Hill Avenue passageway was a thruway, but its grade increased in height above the applicant's property as one left Maplewood Avenue. He said the ADU was up against a tall embankment, so pulling into the driveway and being able to loop up through Jackson Hill Avenue would only be feasible if the grade was changed.

Chairman Rheume said the grade difference was apparent. He said the parking situation spoke to the criteria in terms of lot area per dwelling unit and thought the key factor was having two separate dwelling units. He said he had looked at the properties with ADUs that Attorney Durbin had referred to. He said one looked like a converted garage in a second dwelling unit that was quite a bit smaller than the main structure and fit the character of a garage, and another one was an older home with a new addition. He said a carriage house was usually a smaller structure. He said the main house was about 800-900 square feet and the proposed carriage house was 1400-1500 square feet but would be just a single-floor dwelling. He asked if the main house had second-floor space. Mr. Barton said the second floor was more of a loft or attic space. Chairman Rheume said the new structure would be substantially larger than the existing structure and would be more in keeping with the idea of an ADU. It was further discussed.

Chairman Rheume opened the public hearing.

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

No one was present to speak, and Chairman Rheaume closed the public hearing.

**DISCUSSION OF THE BOARD**

Mr. Mulligan referred to his previous comments and said he could not support the proposal because the requested lot area per dwelling was a third of what was required and half of what currently existed. He said jamming another residence into the property was problematic for a lot of reasons, and he recommended that the applicant do a redesign that addressed the parking configuration and eliminated the stacked parking backing out onto Maplewood Avenue. He said the petition met the hardship criteria because the property was unique, but the public's health, safety, and welfare were implicated and substantial justice would not be done. He said the loss to the public if the variances were granted would outweigh the gain to the applicant. Mr. Formella agreed. He said he could find a hardship on the lot area per dwelling unit because another dwelling unit could go there, but he felt that more work could have been done with the existing structure by reducing the footprint more. He noted that the proposed building was fairly large and that there was room to reduce it and make it more like a detached ADU, which might allow for configuring the parking in a safer way. He said there could be a proposal to get another unit on the lot that would require less building coverage. He said he could not support the petition and that he hoped it could be redesigned by reducing the size of the second structure.

Mr. Parrott agreed with Mr. Formella and Mr. Mulligan. He said the proposed building was very ambitious for the small lot, which was odd and challenging due to its topography. He said the proposal seemed to be built on the fact that there was a building there that apparently was never a dwelling before, but that it didn't matter because the issue was the available land. He said he was also concerned about the parking and thought backing out onto that busy part of Maplewood Avenue was very undesirable. He said when something new was designed, it should fix some of the existing problems. He said the proposal was too ambitious for the area and wouldn't work in the location, and that it wouldn't meet all the criteria, especially the first and second because it would be contrary to the public interest and to the spirit of the ordinance.

Mr. McDonell said he had been prepared to support a motion to approve because, given what was allowed as far as a multi-family dwelling in the zone and the lot's special conditions, he felt there was a necessary hardship. He said the dimensional requests for variances were all being decreased a bit, with the exception of the lot area per dwelling unit, and that got into the bigger reasons for the variance request to add another freestanding unit. However, he said he thought about the safety concerns that Mr. Mulligan brought up and agreed that there would be a threat to the public's safety, so he would support a motion to deny the variances.

Chairman Rheaume agreed with Mr. McDonell's argument that the neighborhood was filled with multi-family dwelling-unit single structures but didn't think multi-structures with multiple units were common for the neighborhood. He said the few examples they saw were bigger lots that looked more like they had separate outbuildings. He said the applicant's proposal was to spread the dwelling unit out all over the very small lot and occupy a lot of space, which squeezed the

parking. He said there was a legitimate concern about entering and exiting the driveway, but that the Board would be endorsing the idea that one could get three cars in and out of that driveway on a regular basis. He said there were a lot of negatives, like the slope of the driveway and the street, plus the passage that would add more traffic. He said if the applicant could do an expansion on the main house or an upward expansion, it would allow room to park in or create a turnout, but the property was burdened by being in the HDC and the Commission might not look favorably on that. He said it was admirable that the applicant improved the setback slightly, but they were still asking for a lot of relief. He said what would be more in keeping with the other two examples would be something much more ADU-like, which would reduce some of the burden of the total occupied square footage on the property. He said it was unfortunate that the property was subdivided in such a way that it negatively affected the property's potential development. He said the Board wanted to see the structure replaced by something better, but that he could not support what was proposed.

## DECISION OF THE BOARD

*Mr. Lee moved to **deny** the variances for the petition, and Mr. Formella seconded.*

Mr. Lee said a lot of the criteria were not met, including the spirit of the ordinance and the hardship, which he felt were the most relevant. Mr. Formella said the petition would also be contrary to the public interest because there would be a threat to the public's health, safety, and welfare. He said the requested dimensional relief and the parking configuration created an unsafe situation. He said a hardship could be found when it came to asking for an additional dwelling unit, but he thought it failed on the hardship, given the extent of the dimensional relief asked for, and that it would not be an unnecessary hardship to scale back the proposal and the requested dimensional relief.

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

**H)** Petition of **553-559 Islington Street, LLC, Owner** for property located at **553 Islington Street** wherein relief was needed from the Zoning Ordinance to construct a rear addition in conjunction with reconfiguration of the existing six-unit apartment building which requires the following: 1) A Variance from Section 10.5A41.10A to a lot area per dwelling unit of 1,201 s.f. where 3,000 s.f. per dwelling is required; 2) A Variance from Section 10.5A41.10A to allow 19.5% open space where 25% is the minimum required; 3) A Variance from Section 10.5A41.10A to allow a ground story height of 10' 7.5" where 11' is required; 4) A Variance from Section 10.321 to allow a nonconforming building or structure to be enlarged, reconstructed or extended without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 157 Lot 3 and lies within the Character District 4-L2 (CD4-L2) District.

## SPEAKING TO THE PETITION

Attorney Steven Hyde was present on behalf of the applicant, including project architect Tim Brochu and project engineer John Chagnon. Attorney Hyde reviewed the petition, noting that the



addition would permit the reconfiguration and the addition of a larger central staircase and a corridor to permit ingress and egress. He said the property was unique because it was surrounded by commercial and mixed-use structures. He reviewed the criteria and said they would be met.

Chairman Rheume said he didn't see any dimensions for the former outbuilding on the right-hand side of the property and asked if the applicant exceeded the five feet. Attorney Hyde said they were not within the setback. Chairman Rheume said the driveway was a common one that was once access to a shoe company, and he asked if it meant that the property line was on the opposite side of the driveway and not more than 20 feet. Attorney Hyde said it was a shared 13-ft wide passageway and that their property line was not even halfway across the driveway. Mr. Chagnon said the back of the proposed addition was six feet from the property line. He said the passageway was not part of the lot or the adjacent lot and that it was a dedicated piece of land that was still owned by the former shoe company.

Chairman Rheume opened the public hearing.

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

No one was present to speak, and Chairman Rheume closed the public hearing.

### **DECISION OF THE BOARD**

*Mr. Mulligan moved to **grant** the variances for the application as presented and advertised, and Mr. Parrott seconded.*

Mr. Mulligan said it was a substantial redevelopment of an existing nonconforming property and the required relief mimicked the existing nonconformities. He noted that there were already six grandfathered units on the property that would remain the same, but the applicant would do a full code-compliant renovation that would bring the property into the 21<sup>st</sup> Century. He said it wasn't much relief, given what already existed, so granting the variances would not be contrary to the public interest or the spirit of the ordinance. He said the character of the neighborhood wouldn't be materially affected and the public's health, safety, and welfare would not be implicated. He said the lot area per dwelling wasn't changing but was just getting reconfigured to improve the property and the public's welfare. He said substantial justice would be done because if the Board were to require the applicant to conform to the current zoning, it would likely mean that none of the improvements would take place and the property would be deficient, and the loss to the owner would outweigh any gain to the public. He said granting the variances would not diminish the values of surrounding properties because the most affected abutter was the gas station next door, which he didn't think would be affected one way or the other. He said the values of surrounding properties would be enhanced by bringing the property into substantial code compliance. He said that literal enforcement of the ordinance would result in an unnecessary hardship owing to the property's unique conditions, including abutting a gas station next door and railroad tracks to the rear, which distinguished the property from others in the area. He noted that it was already a pre-existing nonconforming property, which was an additional special condition. He said the property had existed for quite a while as a 6-unit apartment building, so

there was no fair and substantial relationship between the purpose of the provisions of the ordinance and their application to the property.

Mr. Parrott concurred and said the additional footprint represented by the addition, the stoop, and the deck were basically infills to the property, and the new walkway would make it look better. He said all the improvements would be a positive for the applicant and the neighborhood.

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

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

There was no other business.

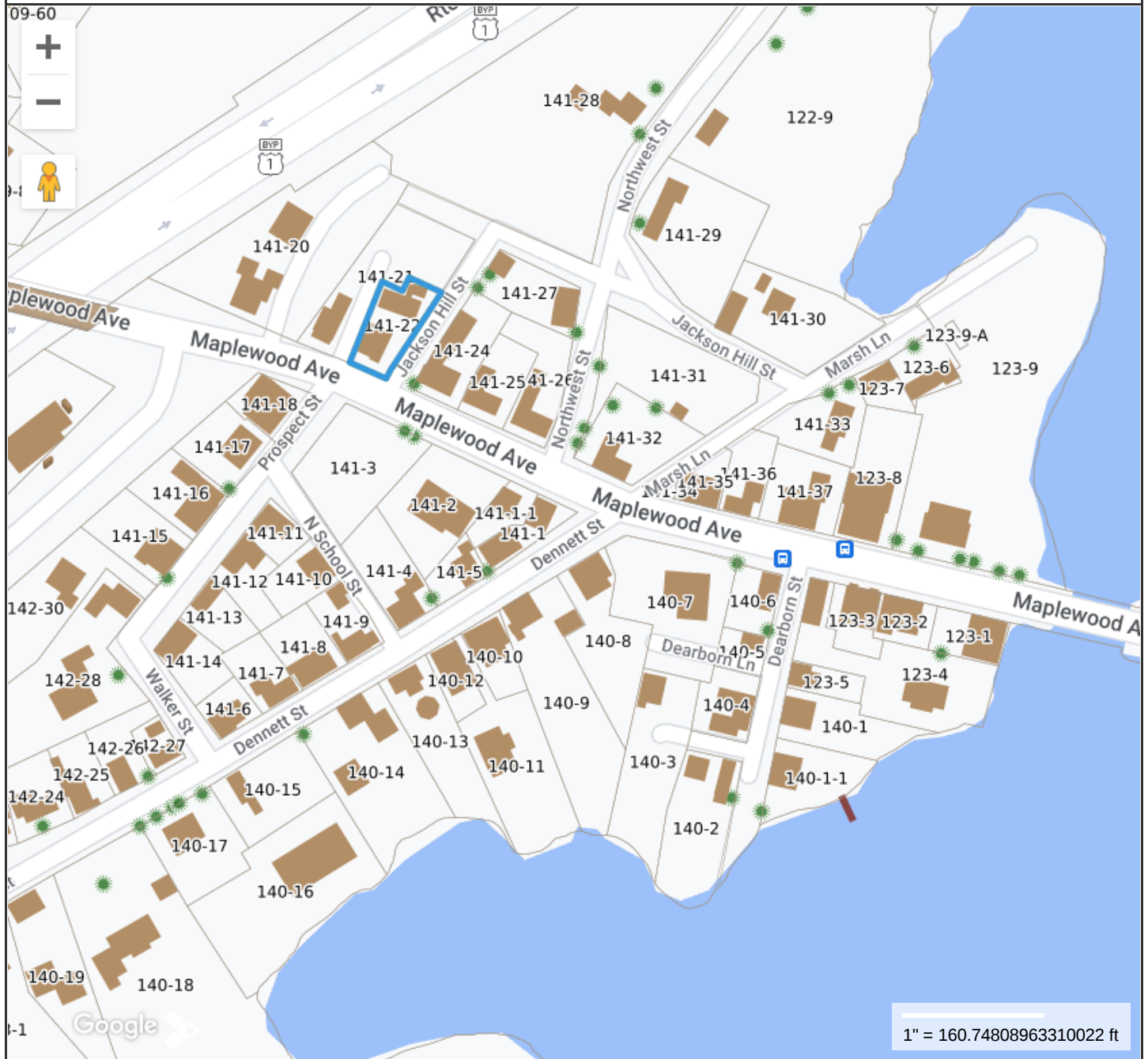
#### **V. ADJOURNMENT**

The meeting was adjourned at 10:15 p.m.

Respectfully submitted,

Joann Breault  
BOA Recording Secretary

# EXHIBIT C



**Property Information**

**Property ID** 0141-0022-0000  
**Location** 377 MAPLEWOOD AVE  
**Owner** ZENG KEVIN SHITAN REVOC TRUST OF 2017



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

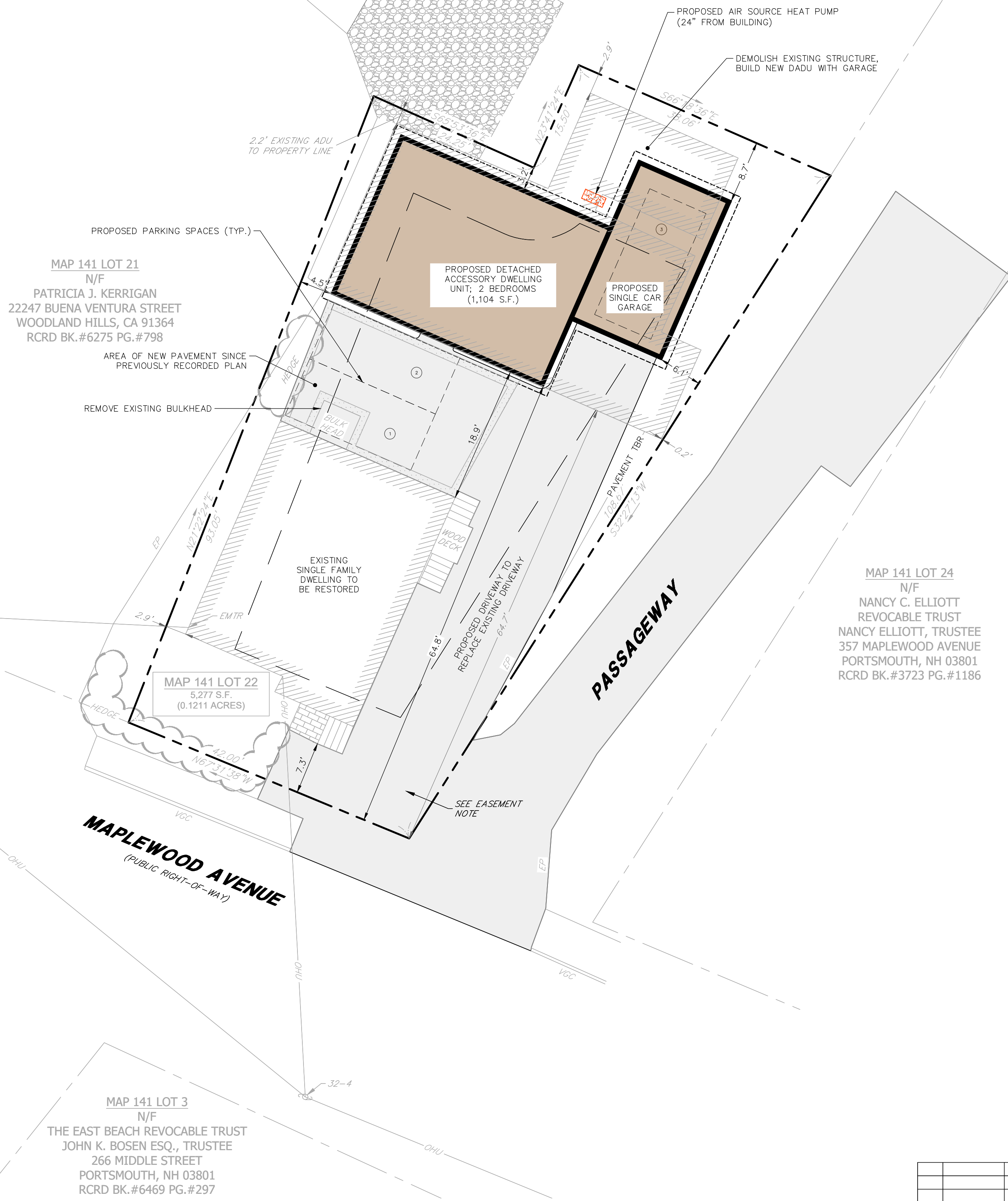
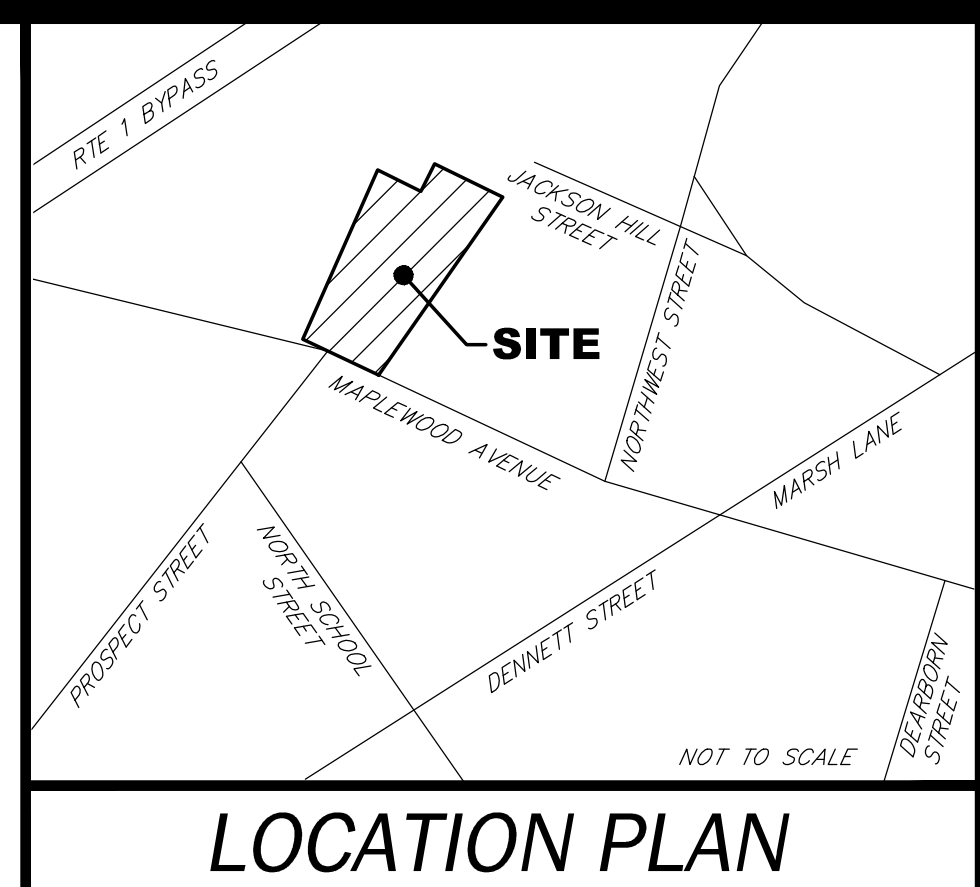
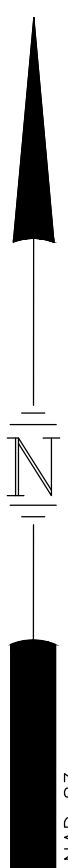
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

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.

**LEGEND:**

BK/PG	BOOK / PAGE
N/F	NOW OR FORMERLY
NAD83	NORTH AMERICAN DATUM OF 1983
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
S.F.	SQUARE FEET
EP	EDGE OF PAVEMENT
EMTR	ELECTRIC METER
VGC	VERTICAL GRANITE CURBING
TBR	TO BE REMOVED
MAP 47 LOT 11	ASSESSOR'S MAP NUMBER/ LOT NUMBER
CHU	PROPERTY LINE
CHU	OVERHEAD UTILITY LINES
CHU	UTILITY POLE
BRICK	BRICK
CRUSHED STONE	CRUSHED STONE
PARKING SPACE	PARKING SPACE



**SITE DATA**

OWNER OF RECORD OF MAP 141 LOT 22: KEVIN SHITAN ZENG REVOCABLE TRUST OF 2017  
 DEED REFERENCE TO PARCEL IS BK 5881 PG 2630  
 AREA OF PARCEL = 5,277± SF OR 0.1211± ACRES

ZONED: GENERAL RESIDENCE A  
 EXISTING USE: SINGLE FAMILY DWELLING  
 PROPOSED USE: SINGLE FAMILY DWELLING WITH DETACHED ACCESSORY DWELLING UNIT

THE PURPOSE OF THIS PLAN IS TO DEPICT THE LOCATION OF A DETACHED ACCESSORY DWELLING UNIT. ASSOCIATED IMPROVEMENTS INCLUDE AND ARE NOT LIMITED TO ACCESS AND PARKING.

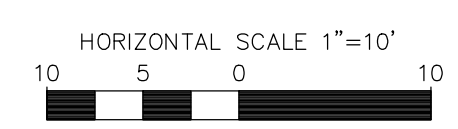
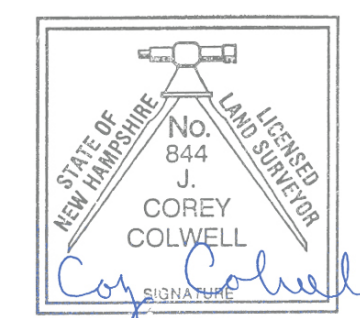
**DIMENSIONAL REQUIREMENTS FOR ACCESSORY DWELLING UNIT (CURRENT ZONING)**

	REQUIRED:	EXISTING:	PROPOSED (FOR DADU):
MINIMUM LOT DIMENSIONS:			
LOT AREA	7,500 SF (0.172± AC)	5,277 SF (0.1211± AC)	5,277 SF (0.1211± AC)
LOT FRONTAGE	100 FT	42.00 FT	42.00 FT
DEPTH	70 FT	108.67 FT	108.67 FT
MINIMUM YARD DIMENSIONS:			
FRONT	15 FT	64.7 FT	64.8 FT
SIDE	10 FT	0.2 FT	4.5 FT
REAR	20 FT	2.2 FT	3.2 FT
MAXIMUM STRUCTURE DIMENSIONS:			
STRUCTURE HEIGHT	35 FT	<35 FT	22 FT
ROOF APPURTENANCE HEIGHT	8 FT	0 FT	0 FT
BUILDING COVERAGE	25%	45.3%	37.5%
MINIMUM OPEN SPACE	30%	20.5%	24.5%
<b>PARKING REQUIREMENTS</b>			
PARKING SPACES (SEE CALCULATION)	3 SPACES	3 SPACES	3 SPACES
PARKING SPACE SIZE	8.5 FT X 19 FT	8.5 FT X 19 FT	8.5 FT X 19 FT
<b>PARKING CALCULATIONS</b>			
REQUIRED PARKING RATIO:			
RESIDENTIAL:	1.3 SPACES PER UNIT > 750 S.F.		
TOTAL REQUIRED = 2 UNITS >750 S.F. * 1.3 SPACES/UNIT = 2.6 SPACES			
TOTAL PROVIDED = 3 SPACES			
<b>EASEMENT NOTE:</b>			
PARCEL IS SUBJECT TO AN EASEMENT TO THE NEW HAMPSHIRE GAS AND ELECTRIC COMPANY AS DESCRIBED IN BK.#974 PG.#269. SAID EASEMENT IS BASED ON THE LOCATION OF A UTILITY POLE AND ANCHOR THAT NO LONGER EXIST, AND THEREFORE, IS NOT PLOTTABLE. SEE PLAN REFERENCE #4.			

**VARIANCE PLAN**

TAX MAP 141 LOT 22  
**VARIANCE PLAN**  
**PROPOSED ACCESSORY DWELLING UNIT**  
**377 MAPLEWOOD AVENUE**  
**PORTSMOUTH, NEW HAMPSHIRE**  
 OWNED BY AND PREPARED FOR  
**KEVIN SHITAN ZENG**

**1"=20' (11"X17')**  
**SCALE: 1"=10' (22"X34')** **JUNE 19, 2024**



REV	DATE	DESCRIPTION	JCC	JCC
1	7/19/2024	ADDITION OF AIR SOURCE HEAT PUMP	JCC	JCC

Seacoast Division

Civil Engineers  
 Structural Engineers  
 Traffic Engineers  
 Land Surveyors  
 Landscape Architects  
 Scientists

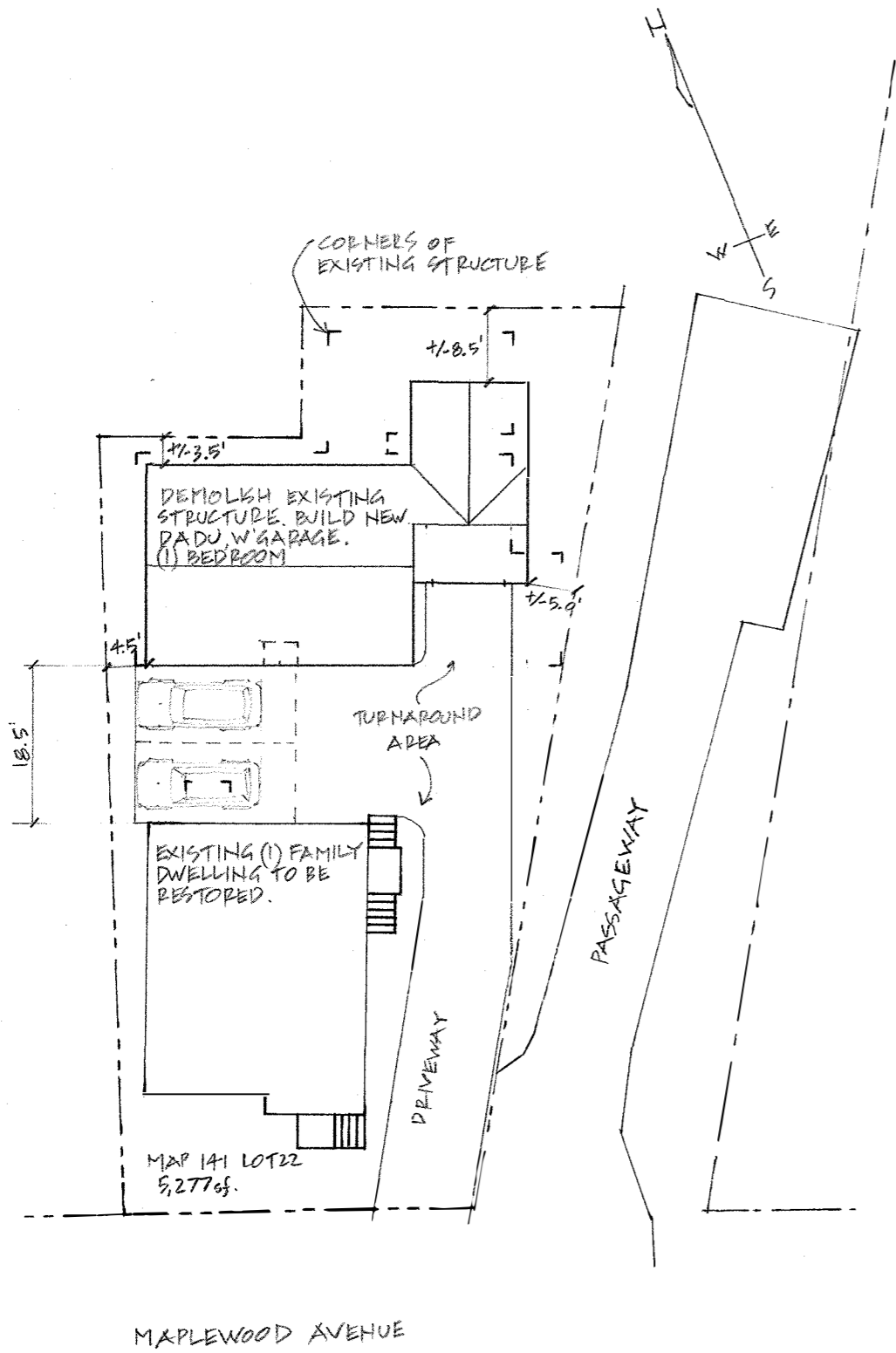
170 Commerce Way, Suite 102  
 Portsmouth, NH 03801  
 Phone (603) 431-2222  
 Fax (603) 431-0910  
 www.tfmoran.com

FILE: 45926.21  
 DR: JCC  
 CK: JCC  
 FB: CADFILE  
 45926-21 SITE PLAN  
 C-01

Jul 19, 2024 - 12:49pm  
 \\TFM-BEDFORDA\Projects\Civil-Survey\MSC Projects\45926 - Portsmouth Ave - Portsmouth\45926-21 Zeng - 377 Maplewood Ave - Portsmouth\45926-21 Site Plan.dwg

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





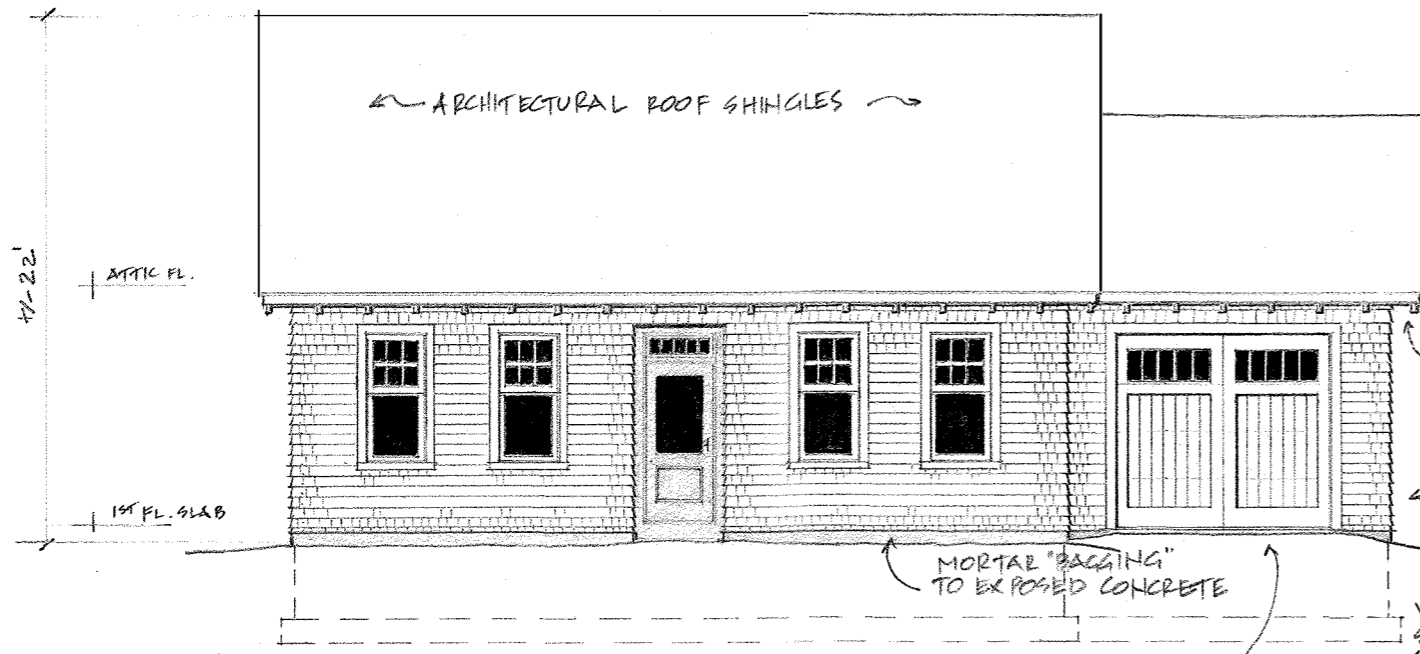
PROPOSED SITE PLAN 1"=20'



NEW ADU AT REAR TITLE: PROPOSED SITE PLAN & EXISTING PHOTOGRAPH  
 OF 377 MAPLEWOOD AVE., SCALE: 1"=20'  
 PORTSMOUTH, NH. DATE: 4.22.2024  
 PAGE XI.

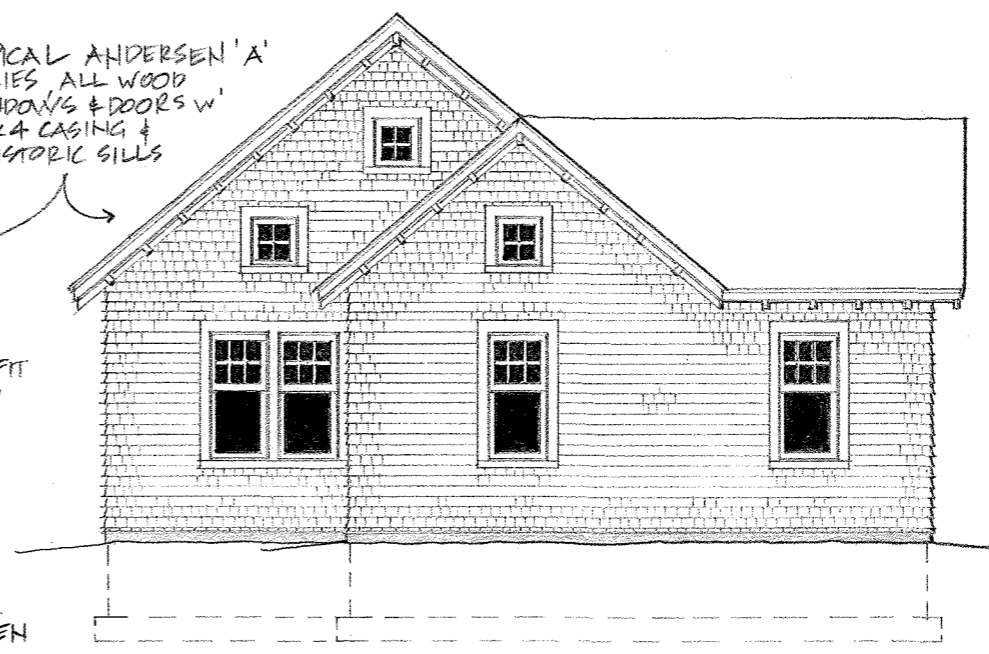
**Brendan McNamara**  
 RESIDENTIAL ARCHITECTURE

603 682 1105 brenmcnamara@comcast.net



SOUTH (FRONT) ELEVATION

TYPICAL ANDERSEN 'A' SERIES, ALL WOOD WINDOWS & DOORS W' 5/4x4 CASING & 2" HISTORIC SILLS

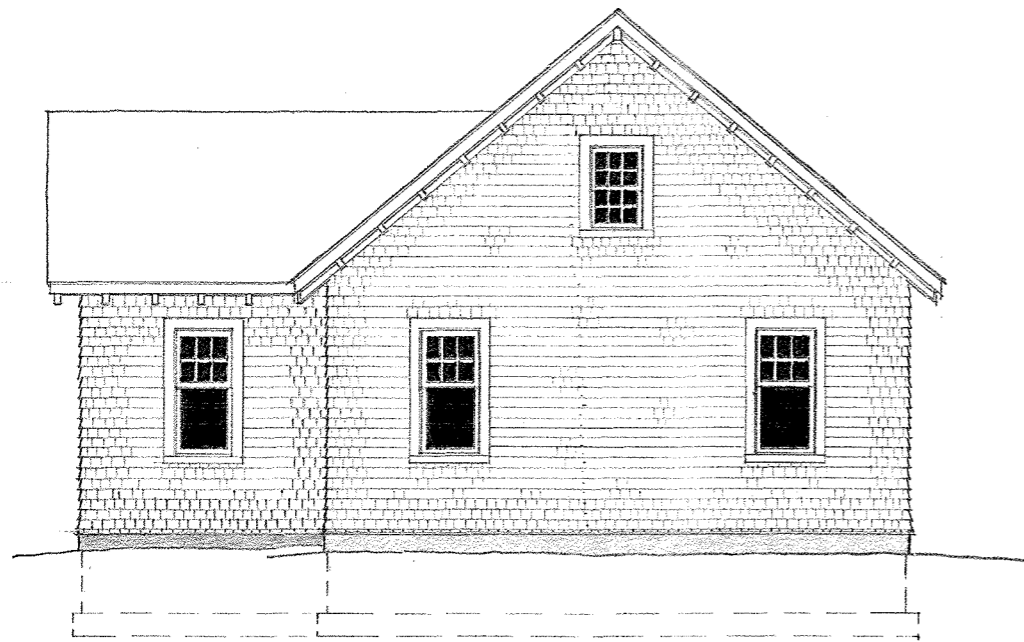


EAST (RIGHT) ELEVATION

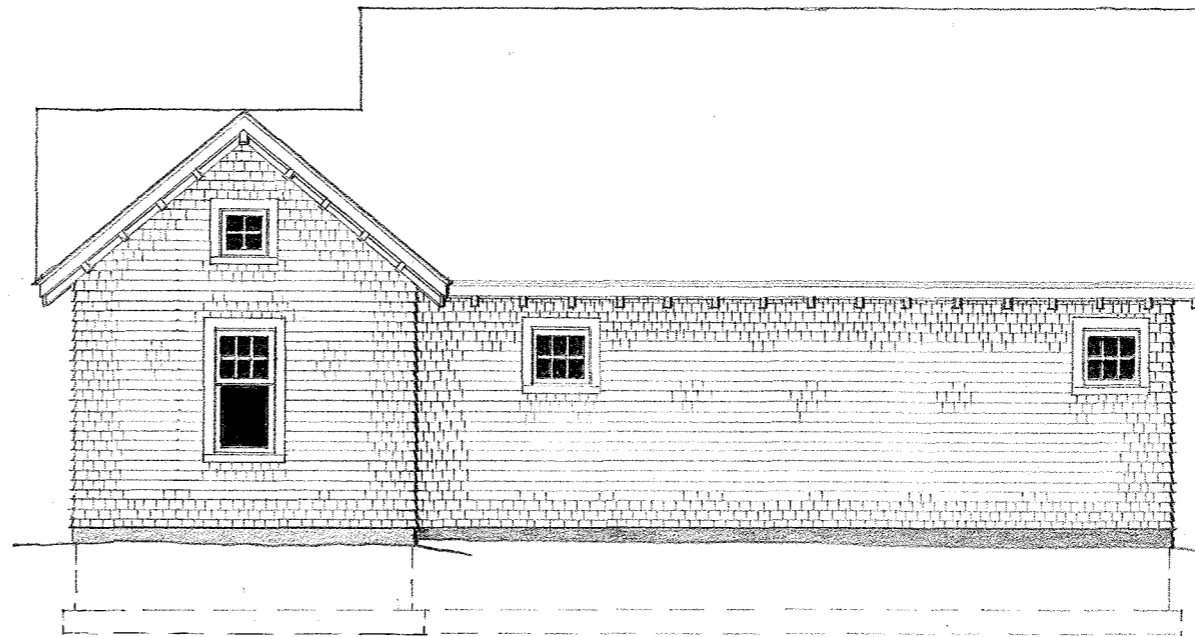
TITLE: PROPOSED SOUTH & EAST ELEVATIONS  
 NEW ADU AT REAR OF 377 MAPLEWOOD AVE., PORTSMOUTH, NH  
 SCALE: 1/8"=1'0"  
 DATE: 4.22.2024

**Brendan McNamara**  
 RESIDENTIAL ARCHITECTURE

603 682 1105 brenmcnamara@comcast.net



WEST (LEFT) ELEVATION



NORTH (REAR) ELEVATION

TITLE: PROPOSED WEST + NORTH ELEVATIONS

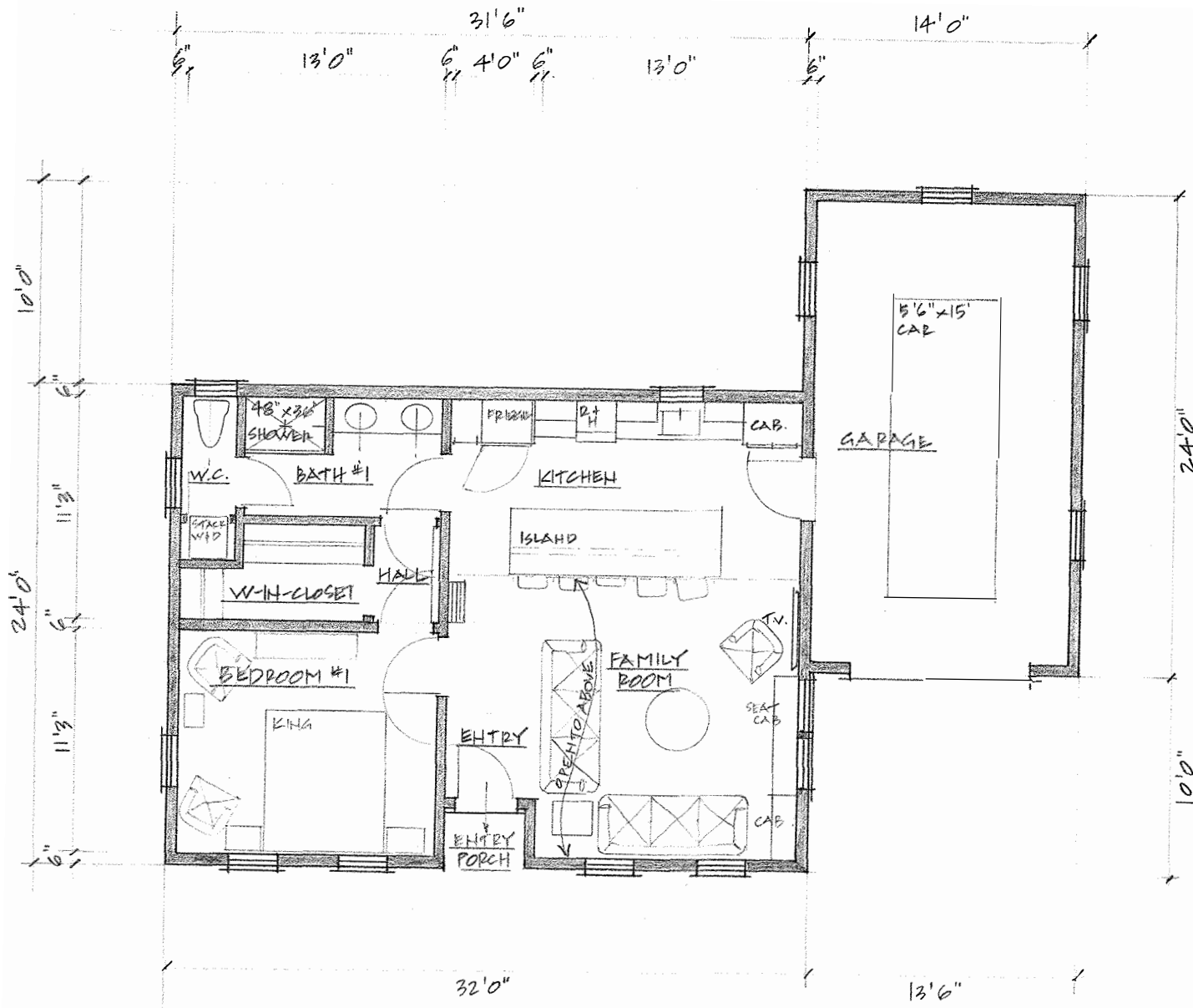
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DATE: 4.22.2024

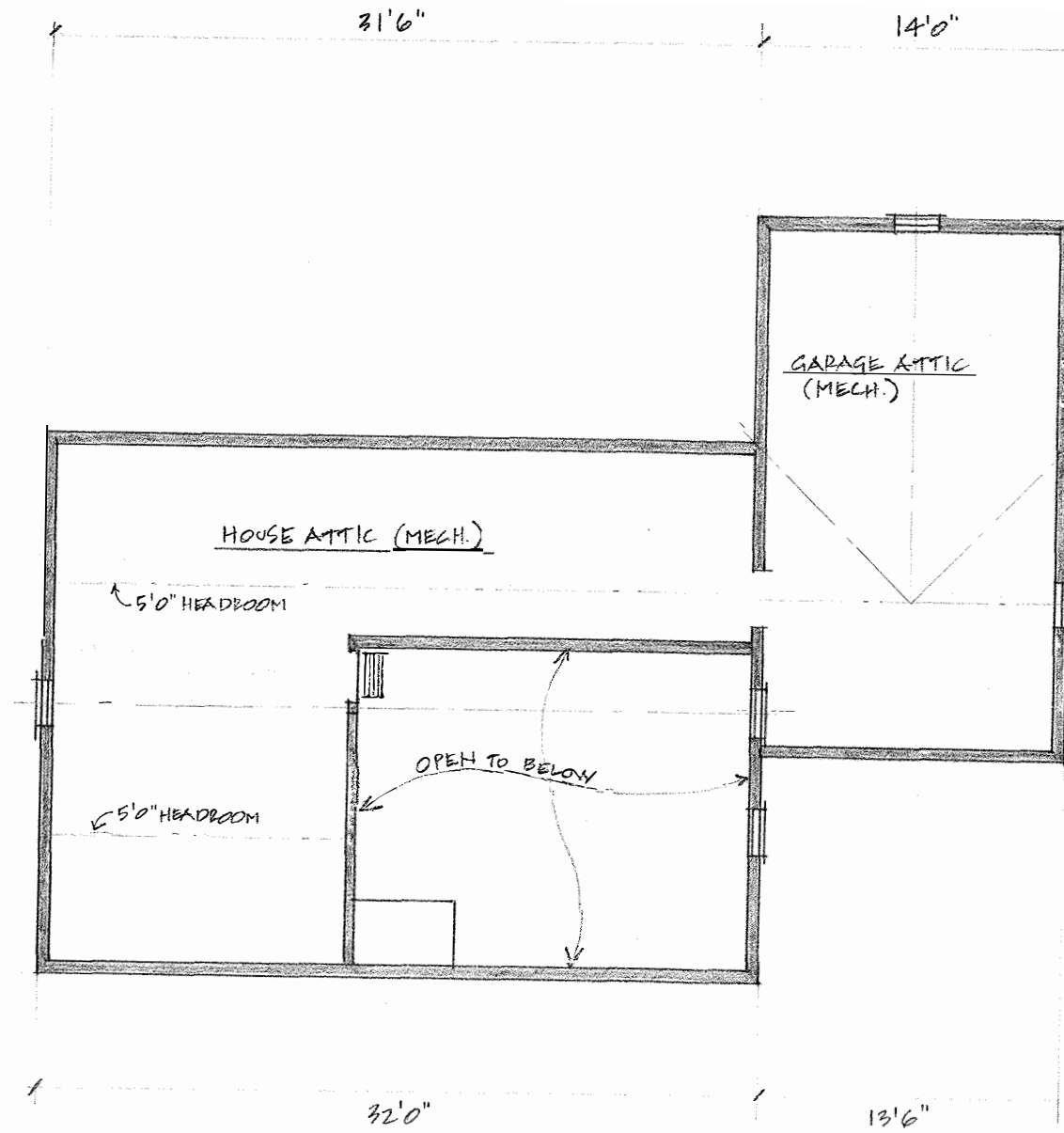
NEW ADU AT REAR

OF 377 MAPLEWOOD AVE.,

PORTSMOUTH, NH



FIRST FLOOR PLAN (SLAB)



ATTIC FLOOR PLAN

TITLE: PROPOSED FLOOR PLANS  
 NEW ADU AT REAR OF 377 MAPLEWOOD AVE.,  
 PORTSMOUTH, NH  
 SCALE: 1/8"=1'0"  
 DATE: 4.22.2024

**Brendan McNamara**  
RESIDENTIAL ARCHITECTURE

603 682 1105 brenmcnamara@comcast.net





**Accessory Building (Front View)**



**Accessory Building (Rear View)**



**Accessory Building**



**Accessory Building**



**Accessory Building – Interior**



**Accessory Building – Interior**



**Accessory Building – Interior**



**Accessory Building – Interior**





**House and Accessory Building – Front / Right Side View**

<b>Subject Lot</b>	Map 141 Lot 22
<b>Total Lot Area (s.f.)</b>	5,277

<b>Existing Conditions</b>		
<b>Structure</b>	<b>Total Area (s.f.)</b>	<b>Description</b>
Existing Home	881	3/4 Story Wood Framed Building
Existing Garage	1510	Existing wood framed building
Decks/Stairs	85	
Bulkhead	28	
Pavement	1654	
Crushed Stone	35	
Open Space	1084	

<b>Total Impervious</b>	<b>Coverage</b>	<b>Open Space</b>
4193	79.5%	20.5%

<b>Proposed Conditions</b>		
<b>Structure</b>	<b>Total Area (s.f.)</b>	<b>Description</b>
Existing Home	881	3/4 Story Wood Framed Building
Proposed ADU	1097	ADU - overhang not included
Proposed ADU Overhang	136	
Decks/Stairs	85	
Bulkhead	28	
Pavement	1719	
Crushed Stone	35	
Utilities	4	Air Condenser at rear of ADU
Open Space	1292	

<b>Total Impervious</b>	<b>Coverage</b>	<b>Open Space</b>
3985	75.5%	24.5%

**II. NEW BUSINESS**

H. The request of **KR Investments LLC (Owner)**, for property located at **271 Sagamore Avenue** whereas relief is needed to demolish the existing house and construct a new house with an attached garage which requires the following: 1) Variance from Section 10.521 to allow a) 28% building coverage where 25% is allowed; b) lot area of 6,880 s.f. where 7,500 s.f. is required; c) lot area per dwelling unit of 6,880 s.f. where 7,500 s.f. is required; and d) a continuous lot frontage of 60.08 feet where 100 feet is required. Said property is located on Assessor Map 221 Lot 15 and lies within the General Residence A (GRA) District. (LU-24-136)

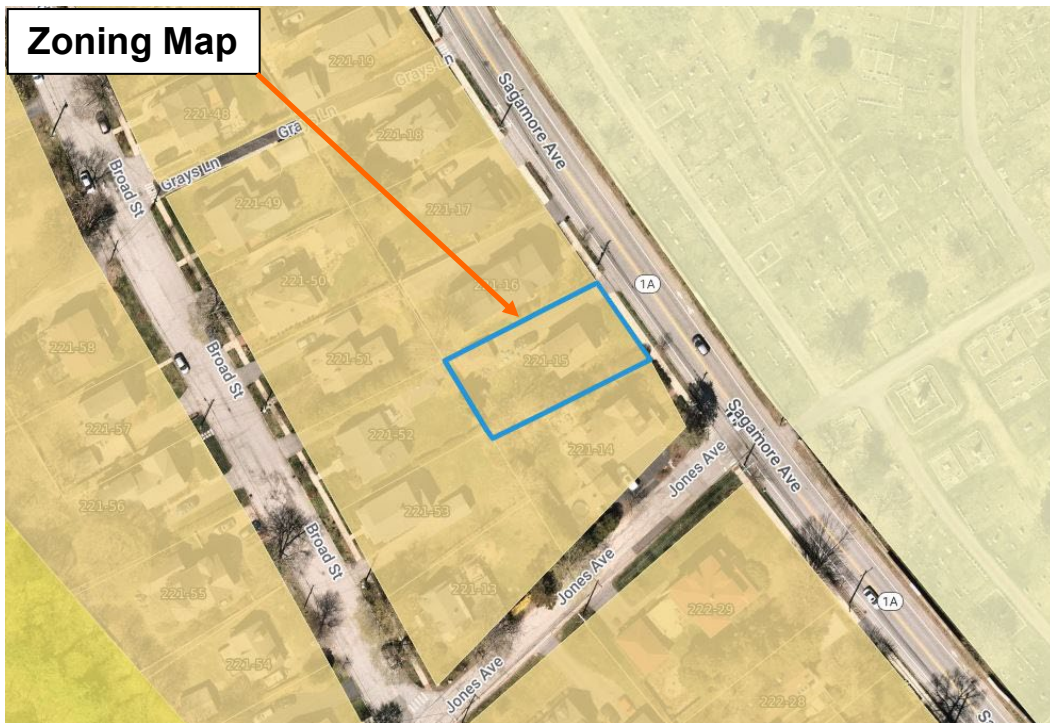
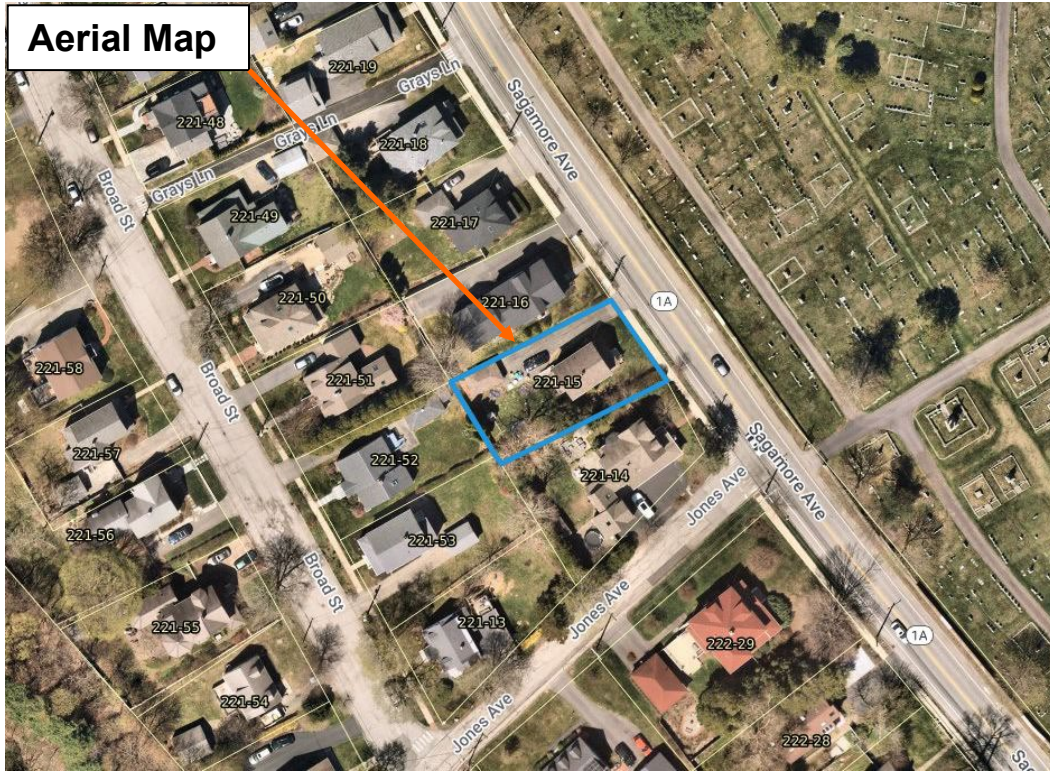
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Residence	Demolish existing SFR and construct new	Primarily Residential
<u>Lot area (sq. ft.):</u>	6,880	6,880	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,880	6,880	7,500 min.
<u>Lot depth (ft.):</u>	113	113	100 min.
<u>Street Frontage (ft.):</u>	60	60	70 min.
<u>Front Yard (ft.):</u>	16	18.5	15 min.
<u>Left Yard (ft.):</u>	Primary: >10 Garage: 4	>10	10 min.
<u>Right Yard (ft.):</u>	14.5	11	10 min.
<u>Rear Yard (ft.):</u>	Primary: >20 Garage: 7.5	22	20 min.
<u>Building Coverage (%):</u>	13	28	25 max.
<u>Open Space Coverage (%):</u>	62	48	30 min.
<u>Parking</u>	>2	>2	2
<u>Estimated Age of Structure:</u>	1919	Variance request(s) shown in red.	

**Other Permits/Approvals Required**

- Building Permit

### Neighborhood Context



## Previous Board of Adjustment Actions

- **August 15, 2023** – The Board granted relief to demolish the existing detached garage and construct an addition with attached garage which required the following:
  - 1) Variance from section 10.521 to allow a) 0.5 foot (6 inch) right yard where 10 feet is required; and b) 28% building coverage where 25% is maximum.

## Planning Department Comments

The applicant is proposing to demolish the existing house and detached garage and replace it with a newly constructed single-family residence with attached garage as part of the new structure. As the existing structures will be demolished, the undersized lot requires relief to build a new structure on the lot with less than the required lot size and frontage per Section 10.311.

## 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.

**KR Investments, LLC  
271 Sagamore Road  
Map 221, Lot 15**

**APPLICATION FOR VARIANCE**

**Introduction**

The property subject to this application is located at 271 Sagamore Road and is depicted on the City's Tax Maps at Map 221, Lot 15. The property is located in the General Residence A ("GRA") Zone. The lot contains an existing single-family house and a garage, where the garage encroaches upon the side and rear setback, with a side setback of 4.2'+/-, where 10' is required and a rear setback of 7.7'+/-, where 20' is required. The total area of these encroachments into these setbacks is 198 +/- sq. ft. The Applicant intends to demolish the existing house and garage and replace the house with a new house that will contain an attached garage as part of the new structure. The proposed plan will remove all side and rear yard setback encroachments, however, the maximum building coverage will be 27.5% from an existing 12.8%, where 25% is permitted. The proposed structure is depicted on the enclosed plan prepared by McEaney Survey Associates, as well as within the building plans submitted herein.

The lot is considered a non-conforming lot as it is comprised of 6,880 sq. ft., where 7,500 sq. ft. is required, and has 60.08' of frontage, where 100' is required. Although the size of the lot will not be altered at all, according to staff and pursuant to Section 10.311, the Applicant has been advised that, in order to build the new proposed house, it will need a variance as to lot size, where GRA Zone requires 7,500 sq. ft. and a variance as to frontage, where the GRA Zone requires 100' of continuous frontage. In addition, the Applicant needs a variance as to maximum building coverage, as it proposes 27.5%, where 25% is permitted. Thus, the Applicant seeks variances from Section 10.520, Table 10.521 – Table of Dimensional Requirements, as to the lot area, continuous street frontage and maximum building coverage requirements.

In summary, the Applicant has identified that the following variances are needed for the project, as proposed:

- 1) Density: Section 10.520, Table 10.521 – Table of Dimensional Requirements permits 25% of building coverage for each lot, where 27.5 % is proposed;
- 2) Lot Size: Section 10.311 requires a lot size of a minimum of 7500 sq ft lot, where 6,880 is provided; and
- 3) Lot Frontage: Section 10.311 requires a continuous lot frontage of 100', where 60.08 is provided.

Additionally, as this Board may recall, in August of 2023, the previous owners of the property, Scott and Alexandra Scott, by and through their agent, applied for and received variances from Section 10.521 to allow a) .5 foot (6 inch) right yard setback where 10 feet is required; and b) 28% building coverage where 25% is the maximum.

For the reasons set forth herein, the Applicant respectfully submits that the grant of the variances is reasonable in light of the previously granted relief and the fact that the proposed structure will be made more conforming within a non-conforming lot, and can be supported by the following evidence:

**Variance Requirements:**

**1. The variance will not be contrary to the public interest.**

The Applicant respectfully submits that the proposed use represents a reasonable use of the property in question. By permitting the use, the public interest is served by permitting orderly development in an area where such development has already occurred. In addition, the proposed plan will result in the removal of all existing encroachments in the side and rear setbacks. All of these reasons are consistent with the purpose behind the General Residence A Zone, which provides for single-family, two-family and multifamily dwellings, with appropriate accessory uses, at moderate to high densities on lots not less than 7,500 square feet. In addition, the location of the single-family residence as depicted on the plan represents a context sensitive design considering the surrounding properties within the area. Given the conformance to the building setbacks, it is respectfully submitted that the proposed dwelling will be consistent with surrounding properties, and more conforming as to setbacks, despite the lack of lot area. As such, the proposed use will not be contrary to the public interest, as the use will not “alter the essential character of the locality.” See Chester Rod and Gun Club, Inc. v. Town of Chester, 152 NH 577 (2005). Granting the variance will permit the use of the lot as intended and consistent with the purposes of the specific zone.

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

The Applicant respectfully submits that if the variances are granted, the spirit of the ordinance would be observed as the use in question is suitable, considering configuration of the lot and the surrounding properties, and therefore results in an encouragement of the most appropriate use of the land. In addition, by allowing the location of the single-family residence as depicted on the plan, the purpose of the zone, allowing for moderate to high density will be observed. To be contrary to the public interest or injurious to the public rights of others, the variance must unduly and in a marked degree conflict with the ordinance, such that it violates the ordinance’s basic zoning objectives. See Chester Rod and Gun Club, Inc. v. Town of Chester, 152 NH 577, at 581 (2005). It is respectfully submitted, that given the reasons set forth above, and the removal of the setback encroachments, the granting of the variances will promote the ordinance’s basic zoning objectives.

**3. Granting the variances will result in substantial justice.**

The grant of the variances would due substantial justice as it would allow the Applicant’s property to be utilized in a similar fashion to other properties located within the area, by allowing the location of a structure, in a location that is consistent with the intent of the ordinance, while removing and avoiding construction within setbacks. This test considers whether the benefit to

the Applicant outweighs the burden to the public. See Farrar v. City of Keene, 158 NH 684, 692 (2009). In this instance, given the proposed location of the structure, there will be no burden to the public whatsoever, and as to the neighbors, there will be a benefit with the removal of setback encroachments. Accordingly, the benefit to the Applicant would exceed the burden to the public, thus resulting in substantial justice being done.

**4. Granting the variances will not diminish the values of the surrounding properties.**

It is respectfully submitted that all of the surrounding properties have a value associated with them that is premised upon the existence of the same type of structure to be located upon the Applicant's property. In this instance, the location of the structure in the area sought by the Applicant will have no negative affect upon any abutter with respect to its property, as the use will be consistent with other uses in the near vicinity, and consistent with the intent of the existing zoning. To the contrary, given compliance with all setbacks, and the addition of an entirely new structure, it is respectfully submitted that the value of surrounding properties will be enhanced.

**5. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. Unnecessary hardship means:**

**Owing to special conditions of the property that distinguish it from other properties in the area,**

**(a) no fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property.**

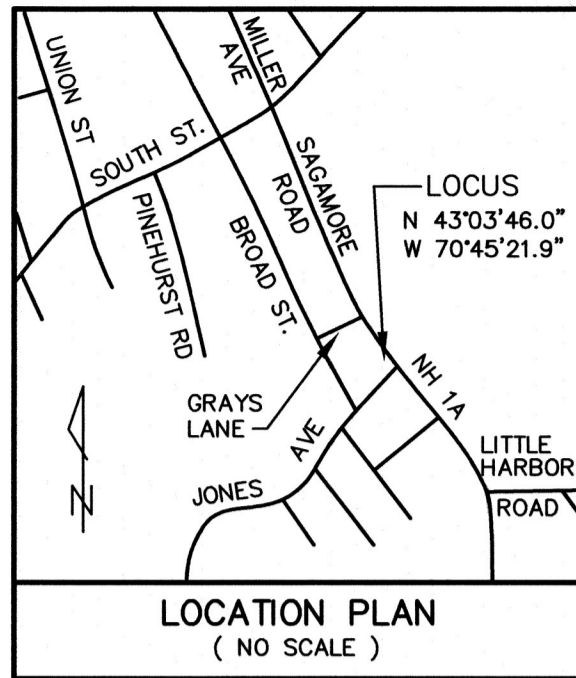
As one can see from the plan, the parcel in this case is unique as it has an irregular shape and has multiple existing encroachments with the setback restrictions within the GRA Zone. As a result of the proposed plan of improvements, the lot is not going to be overcrowded given the structure proposed, as it will meet all applicable setbacks. The general purpose of the ordinance is to promote orderly development and to protect the health, safety and general welfare of the public. In this instance, the Applicant seeks to locate a single-family residence in the area that is also suitable, per the purposes of the specific zone, for single-family, two-family and multifamily dwellings. As such, the purpose of the ordinance and the purposes of the specific restrictions as to lot size, frontage and building coverage will be preserved given the design of the proposed structure, and in considering the context of the surrounding uses. Thus, the Applicant respectfully submits that there is no substantial relationship between the general public purpose of the ordinance, and the specific application of the lot area and frontage restrictions, and the minimal increase in building coverage, given the proposed use submitted by the Applicant.

**and**



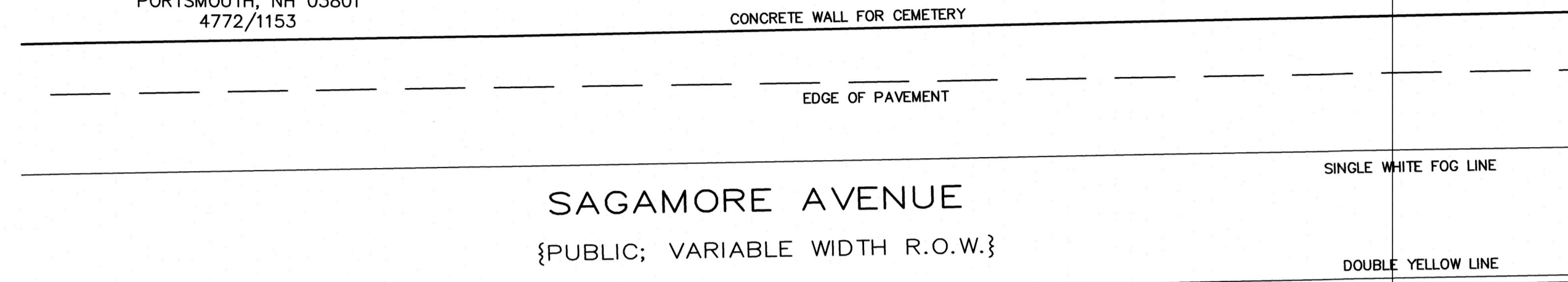
**(b) the proposed use is a reasonable one.**

The proposed use is reasonable as it provides for the location of the single-family residence within an area that is “context sensitive,” given the other homes and dwelling uses within the area. The proposed location will allow the use of the property in a manner that is anticipated within the GRA Zone, and one where the building structure setbacks will be cured, as all such encroachments will be removed, making the use reasonable.

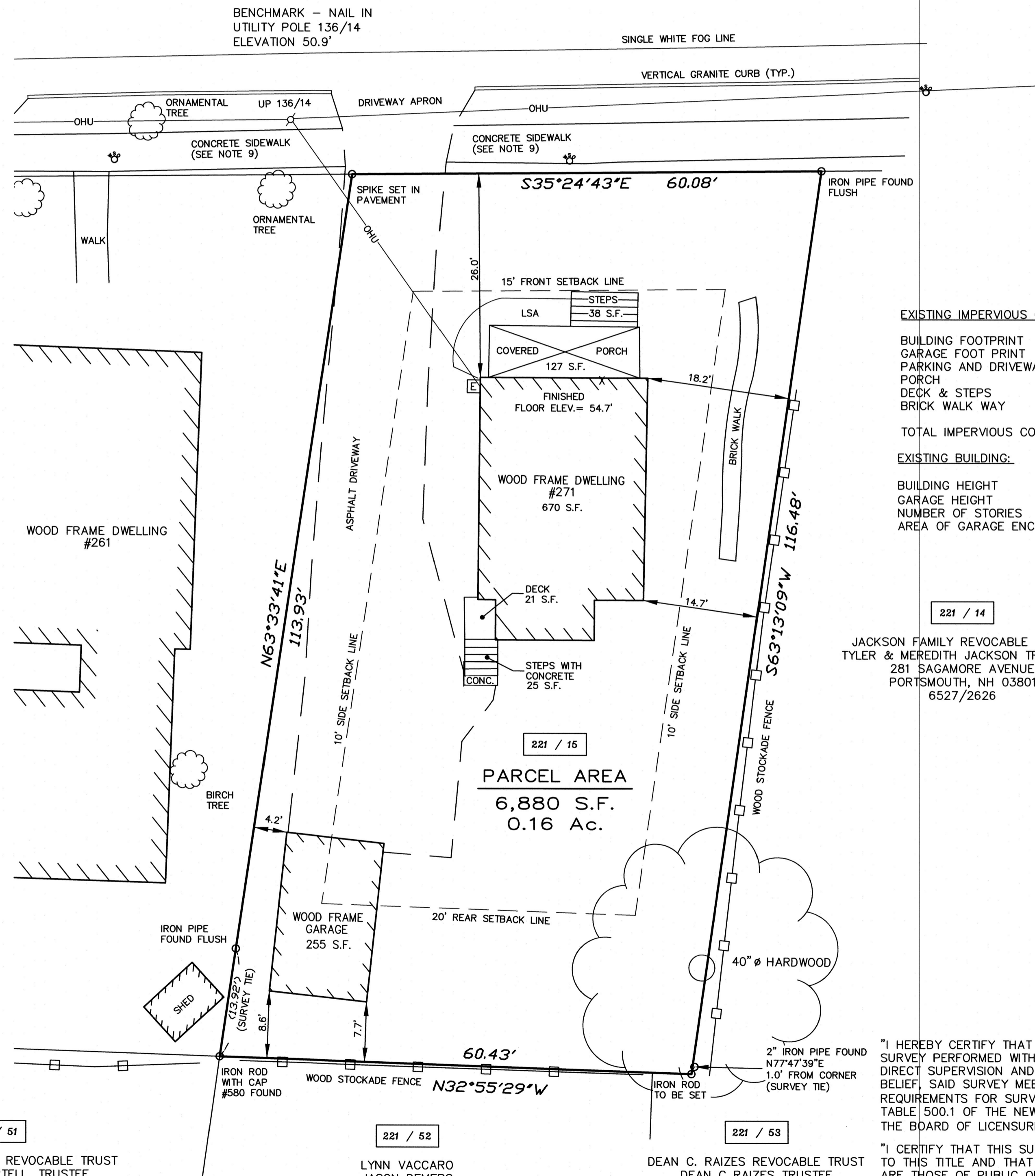


206 / 37  
 CEMETERY REALTY TRUST  
 RUTH L. GRIFFIN, TRUSTEE & TIMOTHY G. GRIFFIN TRUSTEE  
 479 RICHARDS AVENUE  
 PORTSMOUTH, NH 03801  
 4772/1153

CEMETERY



BENCHMARK - NAIL IN  
 UTILITY POLE 136/14  
 ELEVATION 50.9'



**EXISTING IMPERVIOUS CALCULATIONS:**

BUILDING FOOTPRINT	= 670 S.F.
GARAGE FOOT PRINT	= 255 S.F.
PARKING AND DRIVEWAYS	= 1,379 S.F.
PORCH	= 127 S.F.
DECK & STEPS	= 84 S.F.
BRICK WALK WAY	= 74 S.F.
<b>TOTAL IMPERVIOUS COVERAGE</b>	<b>= 2,589 S.F.</b>

**EXISTING BUILDING:**

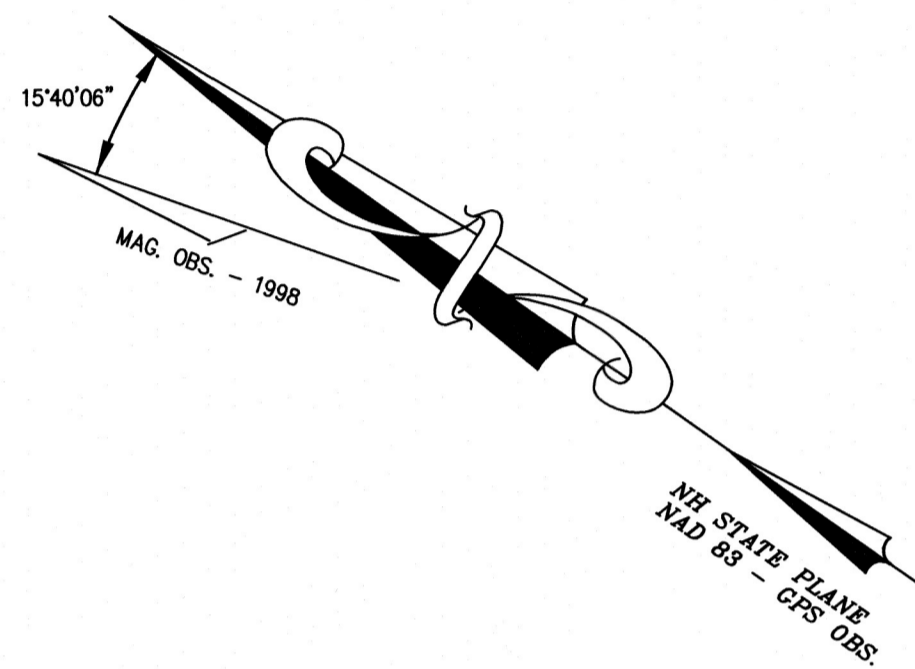
BUILDING HEIGHT	= 29.0' ABOVE GRADE
GARAGE HEIGHT	= 14.0' ABOVE GRADE
NUMBER OF STORIES	= 2
AREA OF GARAGE ENCROACHMENT	= 198 S.F.

**REFERENCE PLANS:**

- BOUNDARY PLAN OF LAND PREPARED FOR ERIC KATZ TAX MAP 221, LOT No.16 251 SAGAMORE ROAD CITY OF PORTSMOUTH, COUNTY OF ROCKINGHAM STATE OF NEW HAMPSHIRE; SCALE: 1" = 10'; DATED: JUNE 15, 2021 BY MCENEANEY SURVEY ASSOCIATES OF NEW ENGLAND
- PLAN OF LOTS OF LAND EXTENDING FROM SOUTH ROAD TO JONES AVENUE, PORTSMOUTH, N.H. SCALE: 1" = 50'; DATED: AUGUST 1, 1893; BY: A.C. HOYT. RECORDED R.C.R.D. PLAN 00287. (SEE SIMILAR PLAN RECORDED AS PLAN 0156).

**NOTES:**

- OWNER OF RECORD:  
ALEXANDER JO & SCOTT ALAN SCOTT  
271 SAGAMORE AVENUE  
PORTSMOUTH, NH 03801  
R.C.R.D. VOLUME 6320, PAGE 1270
- 221 / 15 - DENOTES TAX MAP AND PARCEL NUMBER.
- PARCEL AREA = 6,880 S.F. / 0.16 Ac.
- THE INTENT OF THIS PLAN IS TO DEPICT THE SUBJECT PARCEL BOUNDARIES AND EXISTING CONDITIONS AS OF JULY 9, 2024.
- ZONING DISTRICT: GRA - GENERAL RESIDENCE A  
 MINIMUM LOT DIMENSIONS:  
 LOT AREA = 7,500 S.F.  
 CONTINUOUS STREET FRONTAGE = 100 FEET  
 DEPTH = 70 FEET  
 MINIMUM YARD DIMENSIONS:  
 FRONT = 15 FEET  
 SIDE = 10 FEET  
 REAR = 20 FEET  
 MAXIMUM STRUCTURE DIMENSION:  
 STRUCTURE HEIGHT = 35 FEET  
 SLOPED ROOF = 30 FEET  
 FLAT ROOF = 30 FEET  
 ROOF APPURTENANCE HEIGHT = 8 FEET  
 BUILDING COVERAGE = 25 PERCENT  
 MINIMUM OPEN SPACE = 30 PERCENT
- THE SUBJECT PARCEL IS LOCATED OUTSIDE OF THE 0.2 PERCENT ANNUAL CHANCE FLOODPLAIN AS SHOWN ON FLOOD INSURANCE RATE MAP COMMUNITY NUMBER 330139; PANEL 0259; SUFFIX F; MAP NUMBER 33015C0259F; EFFECTIVE DATE JANUARY 29, 2021.
- BASIS OF BEARING IS NH STATE PLANE (NAD83) BASED ON GPS OBSERVATION DATED JULY 2, 2024.  
VERTICAL DATUM IS NH STATE PLANE (NAD83) BASED ON GPS OBSERVATION DATED JULY 2, 2024.
- THIS PLAN SHOWS ONLY THOSE FEATURES THAT WERE VISUALLY APPARENT ON THE DATE OF THE SURVEY. THE ABSENCE OF SUBSURFACE STRUCTURES, UTILITIES, ETC. FROM THIS PLAN, BUT IN EXISTENCE, IS NOT INTENDED OR IMPLIED.
- GAS MAIN APPEARS TO BE LOCATED ALONG THE BACK EDGE OF THE SIDEWALK FROM MARKINGS FOUND AT OTHER LAND PARCELS ALONG SAGAMORE AVENUE.
- EXISTING BUILDING COVERAGE = 12.8%  
GARAGE = 255 S.F.  
EXISTING DWELLING = 881 S.F.



221 / 16  
 261 SAGAMORE AVENUE, LLC  
 273 CORPORATE DRIVE SUITE 150  
 PORTSMOUTH, NH 03801  
 6297/2333

**LEGEND**

- S.F. - SQUARE FEET
- Ac. - ACRE
- LSA - LANDSCAPED AREA
- (TYP.) - TYPICAL
- OHU - OVERHEAD UTILITIES
- ± - MORE OR LESS
- Ø - DIAMETER
- R.C.R.D. - ROCKINGHAM COUNTY REGISTRY OF DEEDS
- ☼ - WATER SHUT-OFF (CURB STOP)
- ⊕ UP 410/5 - UTILITY POLE W/ I.D. Nos.
- - MONUMENT (SEE DESCRIPTION)
- ⊞ - ELECTRIC METER

NO.	DATE	DESCRIPTION	BY	CHK
REVISIONS				
24-2617	BOUNDARY	24-08	13-14	
PROJECT NO	TYPE	FIELDBOOK & PAGES		

221 / 51  
 BEVERLY A. MARTELL REVOCABLE TRUST  
 BEVERLY A. MARTELL, TRUSTEE  
 585 BROAD STREET  
 PORTSMOUTH, NH 03801  
 5890/2028

221 / 52  
 LYNN VACCARO  
 JASON DEMERS  
 579 SAGAMORE  
 PORTSMOUTH, NH 03801  
 6524/296

221 / 53  
 DEAN C. RAIZES REVOCABLE TRUST  
 DEAN C. RAIZES TRUSTEE  
 603 BROAD STREET  
 PORTSMOUTH, NH 03801  
 6057/936

221 / 14  
 JACKSON FAMILY REVOCABLE TRUST  
 TYLER & MEREDITH JACKSON TRUSTEES  
 281 SAGAMORE AVENUE  
 PORTSMOUTH, NH 03801  
 6527/2626

"I HEREBY CERTIFY THAT THIS PLAN IS BASED ON AN ACTUAL GROUND SURVEY PERFORMED WITH A TOTAL STATION, BY ME OR THOSE UNDER MY DIRECT SUPERVISION AND THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, SAID SURVEY MEETS OR EXCEEDS THE MINIMUM PRECISION REQUIREMENTS FOR SURVEY CLASSIFICATION "U" AS SET FORTH IN TABLE 500.1 OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS."

"I CERTIFY THAT THIS SURVEY PLAT 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." (RSA 676:18)

7/9/24  
 DATE: / KEVIN M. MCENEANEY LLS #661

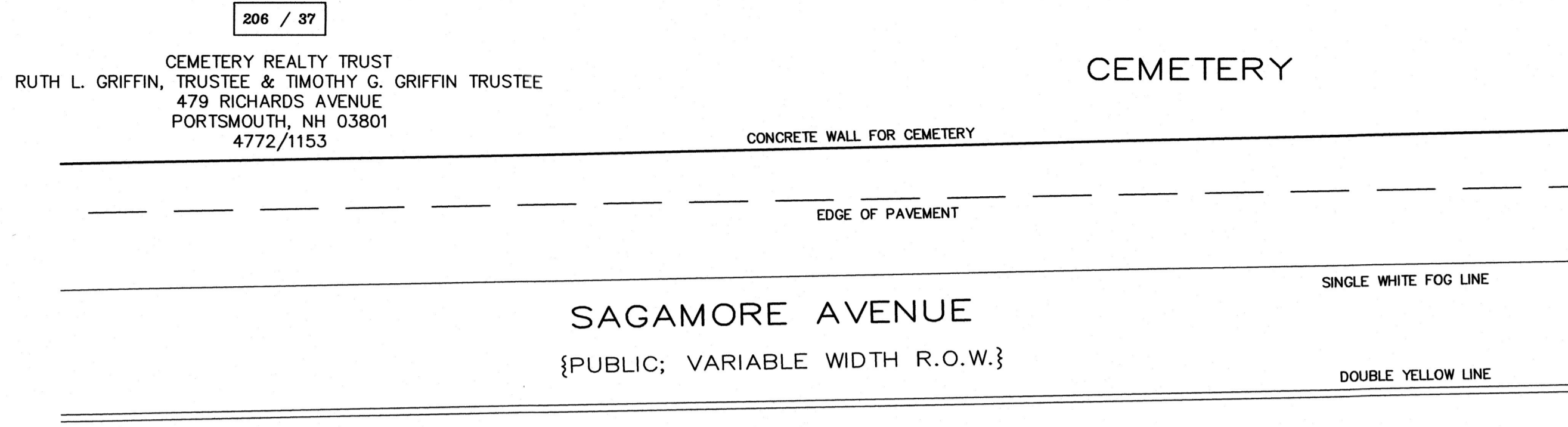
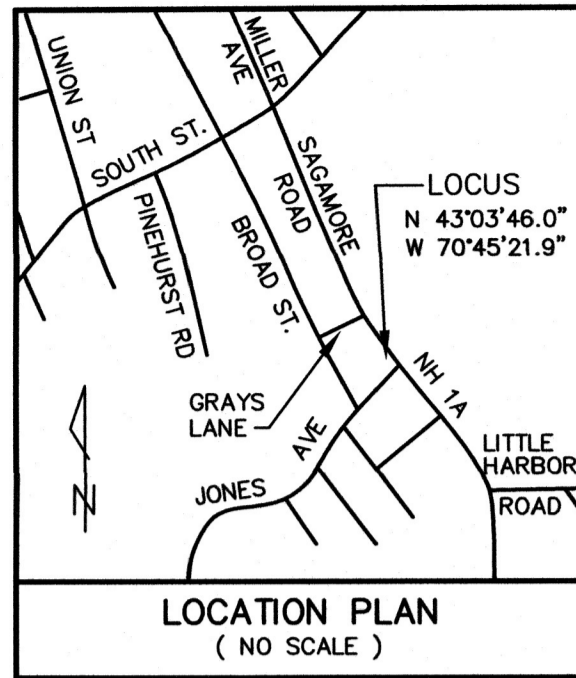
**BOUNDARY PLAN OF LAND**  
 PREPARED FOR  
**KR INVESTMENTS, LLC**  
 TAX MAP 221, LOT No. 15  
**271 SAGAMORE AVENUE**  
**CITY OF PORTSMOUTH**  
**COUNTY OF ROCKINGHAM**  
**STATE OF NEW HAMPSHIRE**

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 SCALE: 1" = 10' DATE: JULY 9, 2024

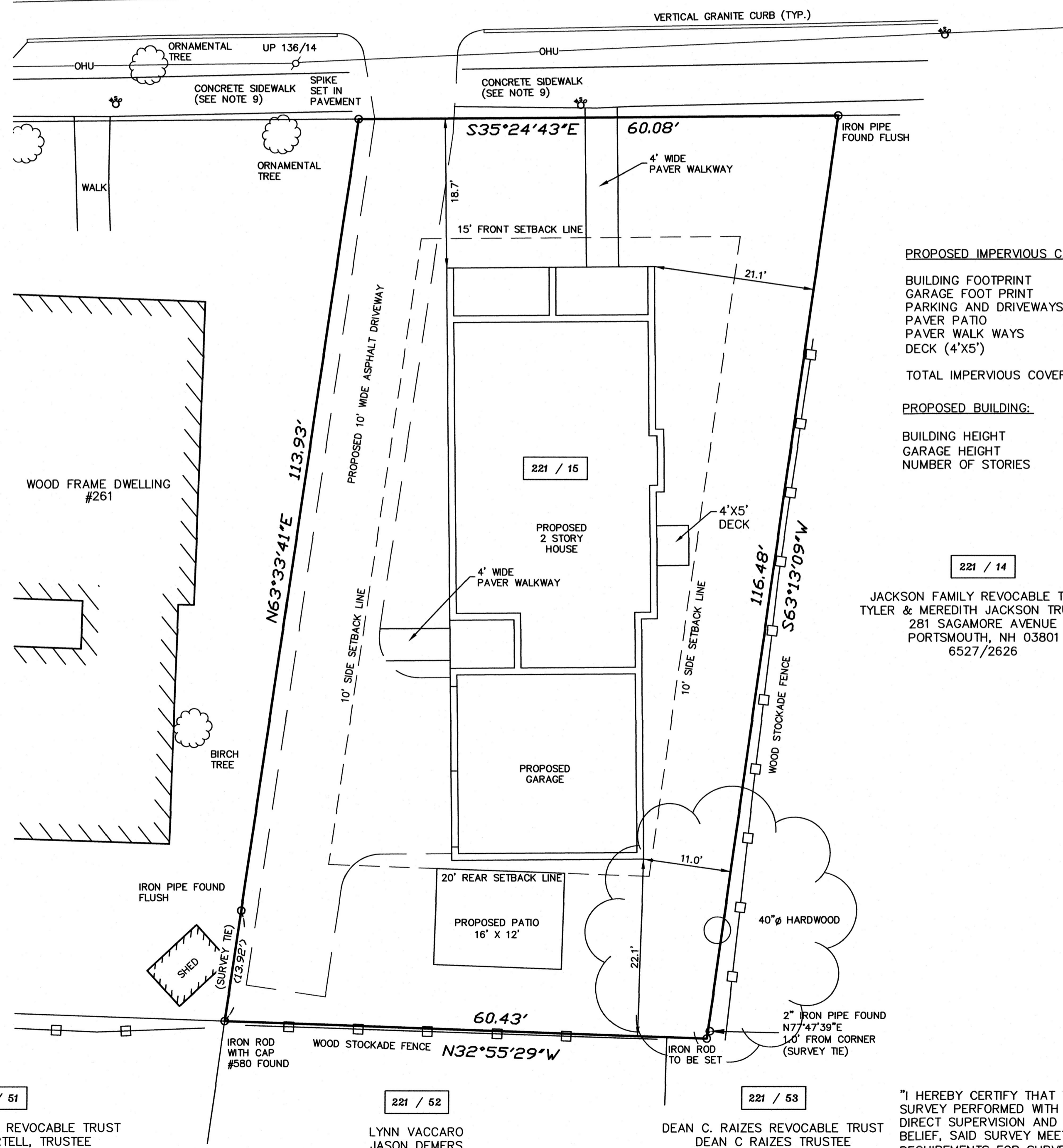
**McEneaney**  
**Survey**  
**Associates**  
 of NEW ENGLAND

P.O. Box 1166 - 181 WATSON ROAD  
 DOVER, NH 03820 (603) 742-0911

SURVEYING - PLANNING - CONSULTING



BENCHMARK - NAIL IN  
UTILITY POLE 136/14  
ELEVATION 50.9'



**PROPOSED IMPERVIOUS CALCULATIONS:**

BUILDING FOOTPRINT	= 1,316 S.F.
GARAGE FOOT PRINT	= 556 S.F.
PARKING AND DRIVEWAYS	= 1,366 S.F.
PAVER PATIO	= 192 S.F.
PAVER WALK WAYS	= 110 S.F.
DECK (4'X5')	= 20 S.F.
<b>TOTAL IMPERVIOUS COVERAGE</b>	<b>= 3,560 S.F.</b>

**PROPOSED BUILDING:**

BUILDING HEIGHT	= 32.6' ABOVE GRADE
GARAGE HEIGHT	= 28.7' ABOVE GRADE
NUMBER OF STORIES	= 2

**REFERENCE PLANS:**

- BOUNDARY PLAN OF LAND PREPARED FOR ERIC KATZ TAX MAP 221, LOT No.16 251 SAGAMORE ROAD CITY OF PORTSMOUTH COUNTY OF ROCKINGHAM STATE OF NEW HAMPSHIRE; SCALE: 1" = 10'; DATED: JUNE 15, 2021 BY MCENEANEY SURVEY ASSOCIATES OF NEW ENGLAND
- PLAN OF LOTS OF LAND EXTENDING FROM SOUTH ROAD TO JONES AVENUE, PORTSMOUTH, N.H. SCALE: 1" = 50'; DATED: AUGUST 1, 1893; BY: A.C. HOYT. RECORDED R.C.R.D. PLAN 00287. (SEE SIMILAR PLAN RECORDED AS PLAN 0156).

**NOTES:**

- OWNER OF RECORD:  
KR INVESTMENTS, LLC  
273 CORPORATE DRIVE SUITE 150  
PORTSMOUTH, NH 03801  
R.C.R.D. VOLUME 6560, PAGE 1340
- 221 / 15 - DENOTES TAX MAP AND PARCEL NUMBER.
- PARCEL AREA = 6,880 S.F. / 0.16 Ac.
- THE INTENT OF THIS PLAN IS TO DEPICT A PROPOSED BUILDING.
- ZONING DISTRICT: GRA - GENERAL RESIDENCE A  
  
MINIMUM LOT DIMENSIONS:  
LOT AREA = 7,500 S.F.  
CONTINUOUS STREET FRONTAGE = 100 FEET  
DEPTH = 70 FEET  
  
MINIMUM YARD DIMENSIONS:  
FRONT = 15 FEET  
SIDE = 10 FEET  
REAR = 20 FEET  
  
MAXIMUM STRUCTURE DIMENSION:  
STRUCTURE HEIGHT = 35 FEET  
SLOPED ROOF = 30 FEET  
FLAT ROOF = 8 FEET  
ROOF APPURTENANCE HEIGHT = 25 PERCENT  
BUILDING COVERAGE = 30 PERCENT  
MINIMUM OPEN SPACE = 30 PERCENT
- THE SUBJECT PARCEL IS LOCATED OUTSIDE OF THE 0.2 PERCENT ANNUAL CHANCE FLOODPLAIN AS SHOWN ON FLOOD INSURANCE RATE MAP COMMUNITY NUMBER 330139; PANEL 0259; SUFFIX F; MAP NUMBER 33015C0259F; EFFECTIVE DATE JANUARY 29, 2021.
- BASIS OF BEARING IS NH STATE PLANE (NAD83) BASED ON GPS OBSERVATION DATED JULY 2, 2024.  
VERTICAL DATUM IS NH STATE PLANE (NAD83) BASED ON GPS OBSERVATION DATED JULY 2, 2024.
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- GAS MAIN APPEARS TO BE LOCATED ALONG THE BACK EDGE OF THE SIDEWALK FROM MARKINGS FOUND AT OTHER LAND PARCELS ALONG SAGAMORE AVENUE.
- PROPOSED BUILDING COVERAGE (HOUSE & GARAGE) = 27.5%  
PROPOSED HOUSE = 1,892 S.F.

**LEGEND**

- S.F. - SQUARE FEET
- Ac. - ACRE
- LSA - LANDSCAPED AREA
- (TYP.) - TYPICAL
- OHU - OVERHEAD UTILITIES
- ± - MORE OR LESS
- Ø - DIAMETER
- R.C.R.D. - ROCKINGHAM COUNTY REGISTRY OF DEEDS
- ⊕ - WATER SHUT-OFF (CURB STOP)
- ⊕ UP 410/5 - UTILITY POLE W/ I.D. Nos.
- - MONUMENT (SEE DESCRIPTION)
- ⊞ - ELECTRIC METER

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6524/296

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603 BROAD STREET  
PORTSMOUTH, NH 03801  
6057/936

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**PROPOSED BUILDING LOCATION PLAN**  
PREPARED FOR  
**KR INVESTMENTS, LLC**  
TAX MAP 221, LOT No. 15  
**271 SAGAMORE AVENUE**  
CITY of PORTSMOUTH  
COUNTY of ROCKINGHAM  
STATE of NEW HAMPSHIRE

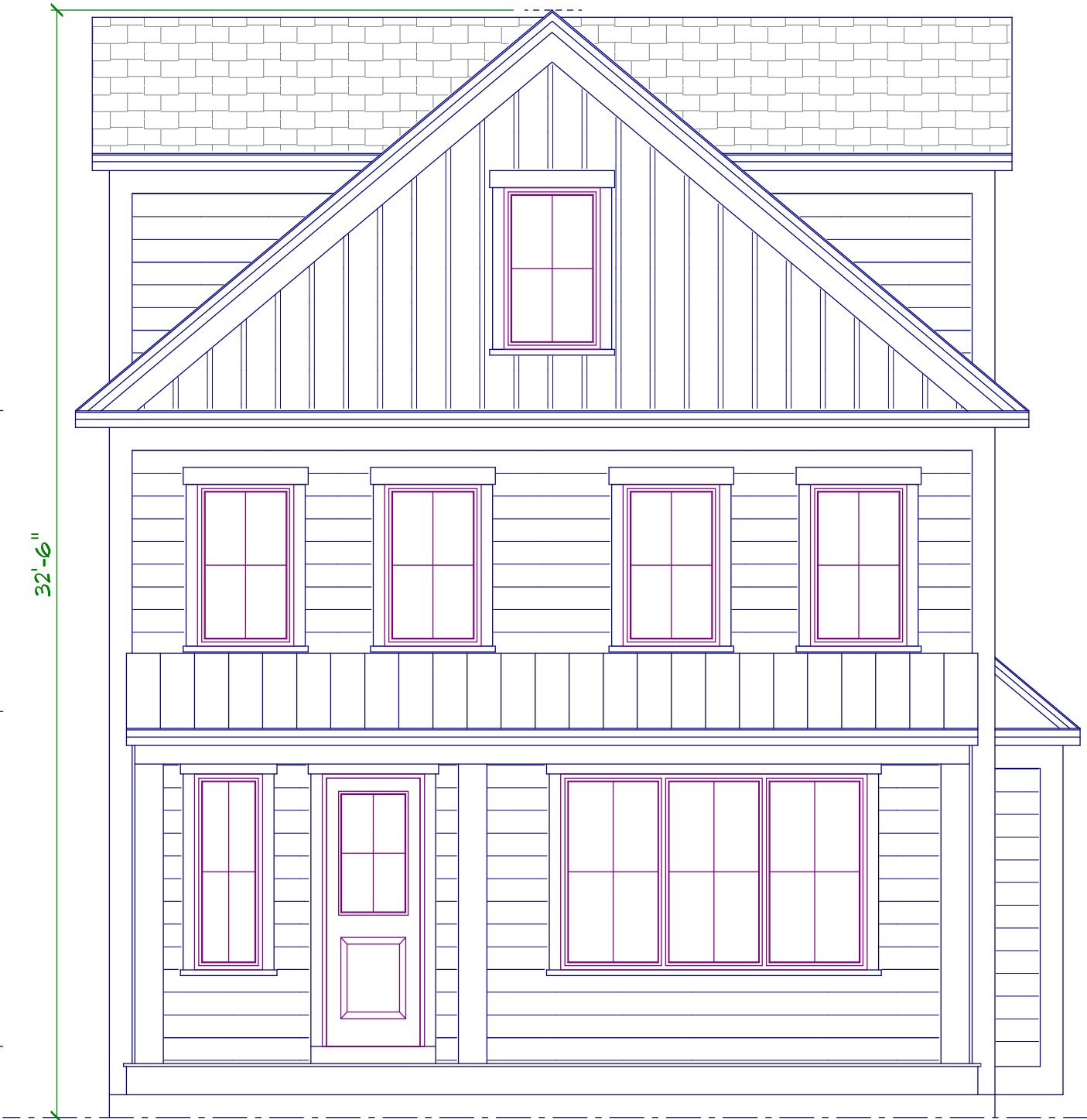
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SCALE: 1" = 10' DATE: JULY 18, 2024

**McNameey Survey Associates**  
of NEW ENGLAND  
P.O. Box 1166 - 181 WATSON ROAD  
DOVER, NH 03820 (603) 742-0911

SURVEYING - PLANNING - CONSULTING

NO.	DATE	DESCRIPTION	BY	CHK
REVISIONS				
24-2617	BOUNDARY	24-08	13-14	
PROJECT NO	TYPE	FIELDBOOK & PAGES		

7/23/2024 14:32:54 File: M:\2617\Drawings\24-2617 PROPOSED.BLDG Layout 2617 PROPOSED.BLDG



32'-6"

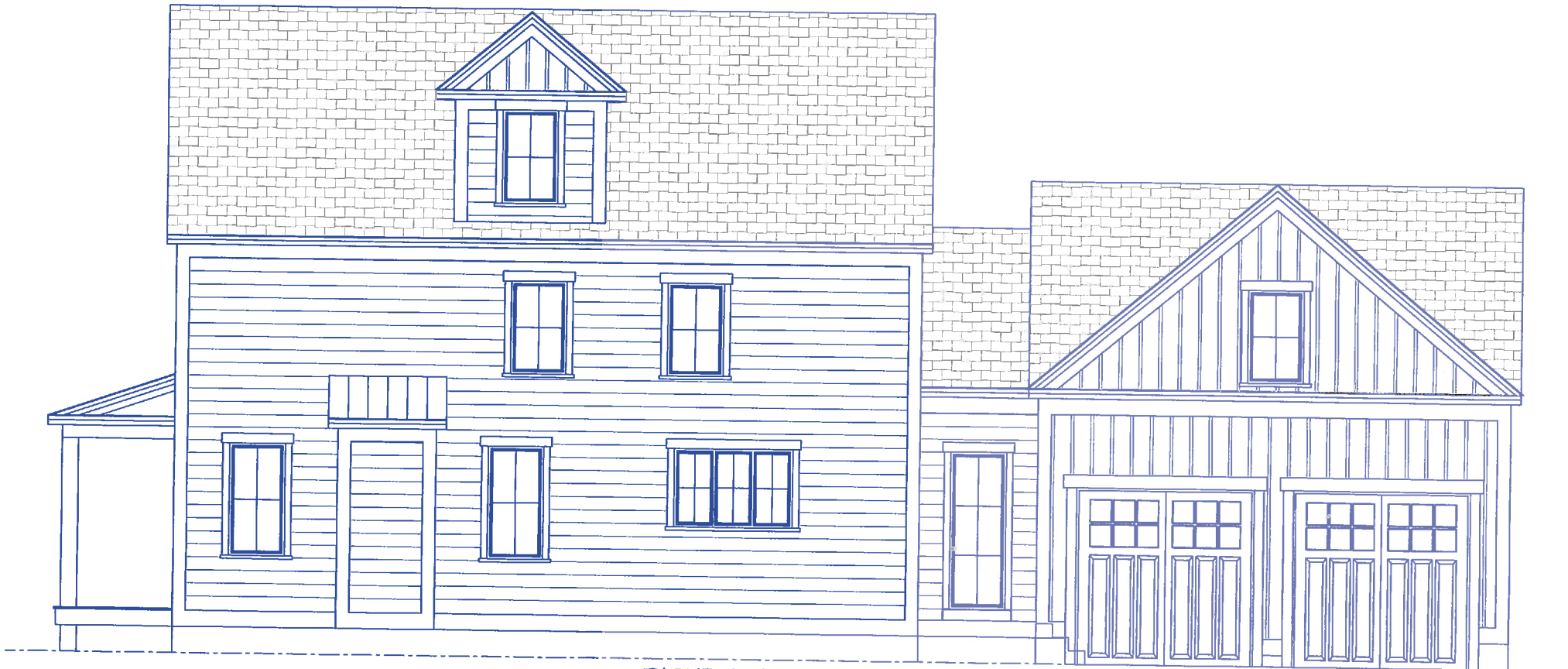
FRONT ELEVATION



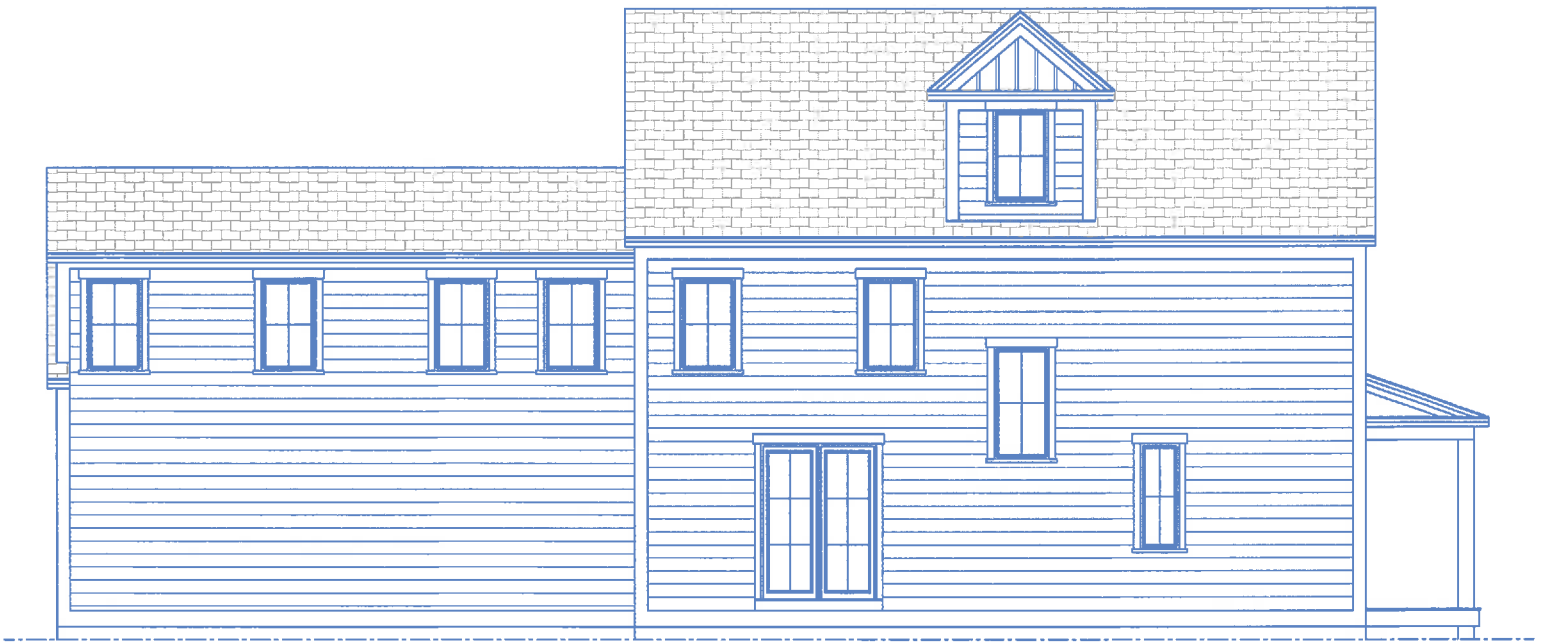
REAR ELEVATION



RIGHT/DRIVEWAY ELEVATION



RIGHT/DRIVEWAY ELEVATION



LEFT ELEVATION





LEFT ELEVATION

PHOTOS OF EXISTING CONDITIONS

**Front view of 271 Sagamore Avenue**



**Right side view of 271 Sagamore Avenue**



**Right side view of House at 271 Sagamore Avenue**



**Right side view of Garage at 271 Sagamore Avenue**



**Left side view of House at 271 Sagamore Avenue**



Left side view of Garage at 271 Sagamore Avenue



**Rear view of 271 Sagamore Avenue**





**II. NEW BUSINESS**

- I. The request of **Maxico LLC (Owner) and The Wheel House of New Hampshire LLC (Applicant)**, for property located at **865 Islington Street** whereas relief is needed for a change of use to an instructional studio including the following special exception from Section 10.440, Use #4.42 to allow an instructional studio greater than 2,000 s.f. gross floor area. Said property is located on Assessor Map 172 Lot 11 and lies within the Character District 4-W (CD4-W). (LU-24-139)

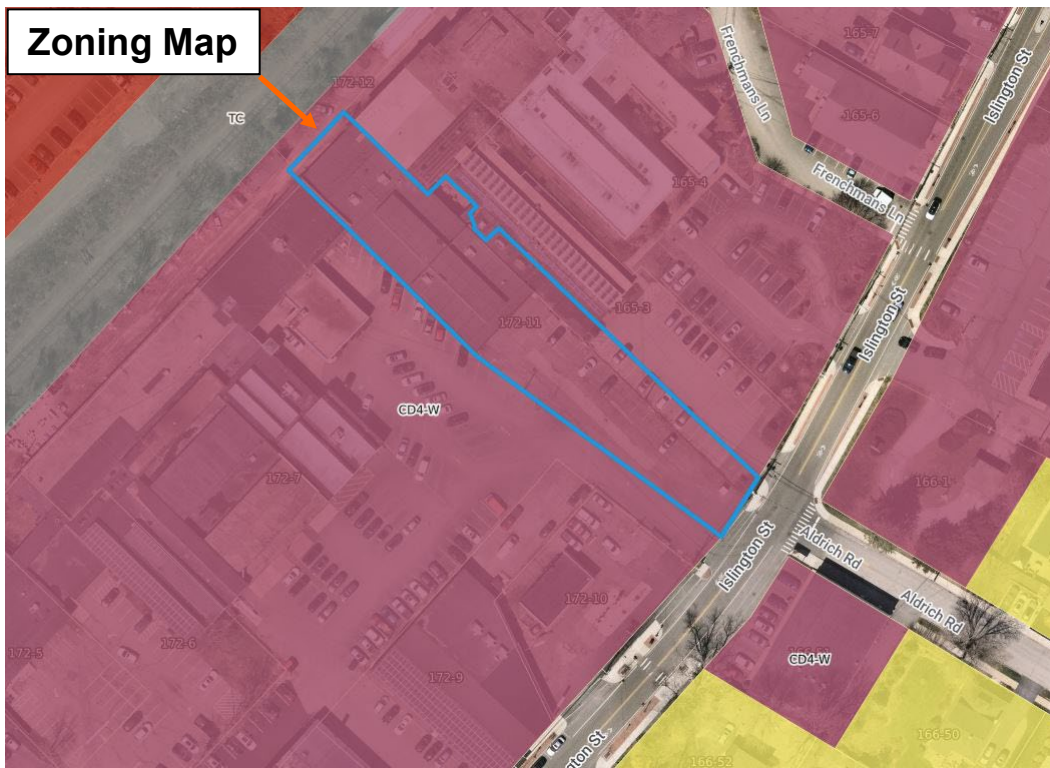
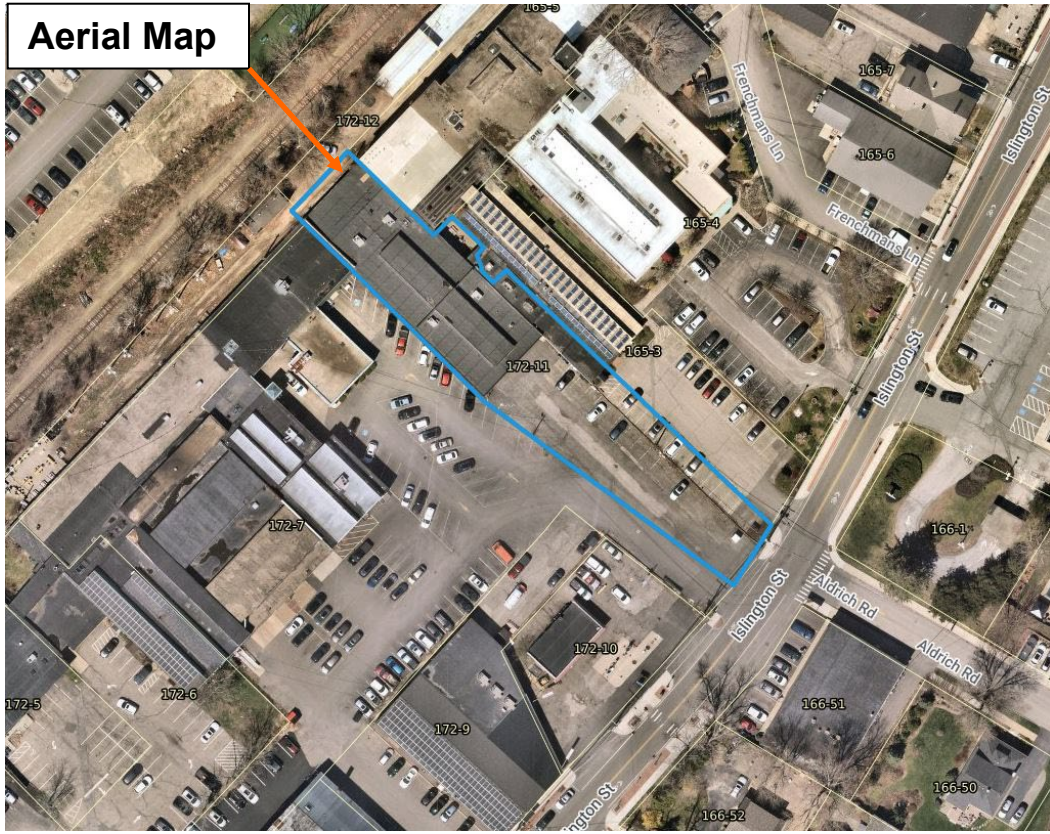
**Existing & Proposed Conditions**

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Retail	*Convert to Instructional Studio >2,000 sq.ft. GFA	Primarily Mixed-Use
<u>Parking</u>	39	>13	13 (1 space per 250 GFA)
		Special Exception request(s) shown in red.	

**Other Permits/Approvals Required**

- Building Permit

### Neighborhood Context



## Previous Board of Adjustment Actions

- **June 15, 1976** – The Board denied a request to operate a used car sales business in an Industrial district and for a 4'x4' free-standing sign set back 5' where approximately 106' was required.
- **July 20, 1976** – The Board denied a Motion for Rehearing on the above.
- **September 11, 1979** – The Board granted a variance to allow a business for the repair of automobile engines with a stipulation that a copy of the lease be sent to the Board of Adjustment limiting the four parking spaces nearest to the building for this business.
- **September 17, 1983** – The Board granted a variance to allow a 28' x 18' 1 story addition, reducing open space from approximately 7.4% to 5.5% where a minimum of 20% was required.
- **January 25, 1983** – The Board granted variances to allow a lot line change with a decrease in lot area from 19,279 s.f. to 13,590 s.f. where a minimum of 2 acres is required, a decrease in lot frontage from 69.07' to 49.59' where 200' minimum is required, 0' side and rear yards where 50' is required and a decrease in open space from approximately 1.6% to 0.6% where 29% minimum is required.
- **November 19, 2009** – The Board granted a Special Exception to allow a veterinary clinic in the Business Zone; and a Variance to allow a veterinary clinic in the Business Zone within 200' of a Residential District.

## Planning Department Comments

The applicant is requesting a special exception to convert the existing commercial space into instructional studio space for ceramic arts. The conversion requires the approval as it would create a studio space larger than 2,000 square feet.

## Special Exception Review Criteria

The application must meet all of the standards for a **special exception** (see Section 10.232 of the Zoning Ordinance).

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*
2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
3. *No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant,*

*noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*

- 4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*
- 5. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and*
- 6. No significant increase of stormwater runoff onto adjacent property or streets.*

#### **10.235 Certain Representations Deemed Conditions**

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

# Pottery Studio at 865 Islington

Dear Members of the Board,

We represent the Wheel House of NH, a new business seeking to augment the growing artistic community in Portsmouth's Creative District by offering studio workspace and instruction for the creation of ceramic arts, including wheel-thrown pottery and clay sculptures.

We will be offering subscriptions for members to use the studio's equipment, materials, and spaces, as well as offering structured classes for people to learn various aspects of ceramic design and production, including throwing, hand-building, firing, glazing, and finishing various works. A typical class size will be approximately 10 students, and we are planning to accommodate up to a dozen members at any one time, typically when classes are not in session. Sessions for either member studio access or classes will typically run about 2 hours, and so that's the expected "linger time" for the typical attendee from the public. We expect our studio hours to run from approximately 10 am through 9 pm most days.

We expect there to be some minimal retail sales of tools and materials to members when they visit to support their work in-house or at home. We will also make the occasional sale of finished work to the public, which we will offer from staff artists, guest artists, and members. Occasionally we may put on a special event outside of normal business hours, to celebrate a holiday season, build the member community as a social group, or highlight the contributions of guest artists.

**We understand our use to be classified as 4.42, an instructional studio over 2000 sq ft.** As such we're seeking a special exception as required by Zoning Ordinance 10.232 and affirm that, in accordance with subsections .21-.26:

A. This use will not pose a hazard to the public or adjacent property on account of increased potential for fire, explosion, or the release of toxic materials;

B. This use will add to, and not detract from, property values in the vicinity as it will add additional creative design synergies with other nearby businesses and we won't be altering external structures or their aesthetics in any significant way;

C. We believe that there will be no significant impact to traffic or congestion in the area;

D. We will use reasonable levels of municipal services with minimal trash, sewer, and waste impact;

E. There will be no change in the stormwater runoff associated with our use, which is only bringing minimal changes to the interior of the building.

Please find included:

- An overhead view of the property among its neighbors
- A floor plan of the space we'll be occupying, 865 Islington St, Suite 200
- A few images which represent the kind of business we'll be doing

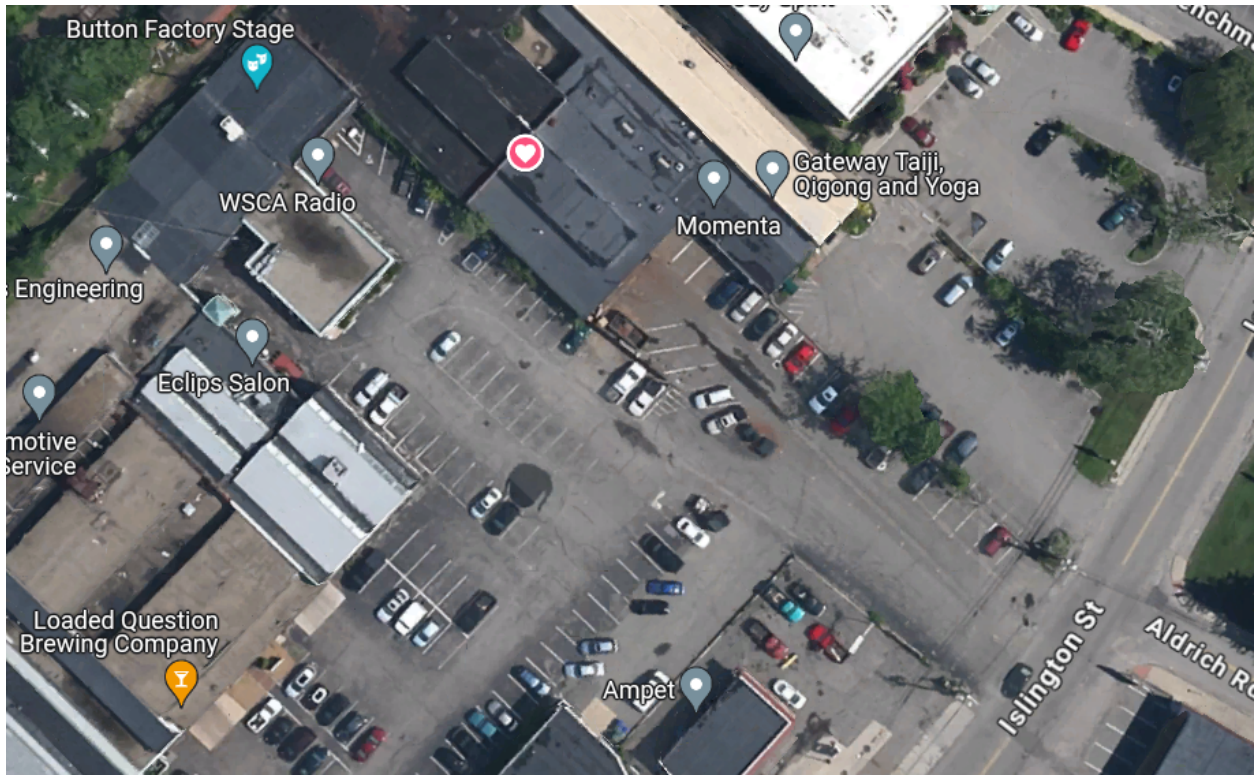
If you have any questions, please don't hesitate to contact:

- Guy Johnson, 408-605-5106, [guy@thewheelhousenh.com](mailto:guy@thewheelhousenh.com)
- Derek Plourde, 603-937-0776, [derek@thewheelhousenh.com](mailto:derek@thewheelhousenh.com)
- Meaghann Johnson, 408-768-6121, [meaghann@thewheelhousenh.com](mailto:meaghann@thewheelhousenh.com)

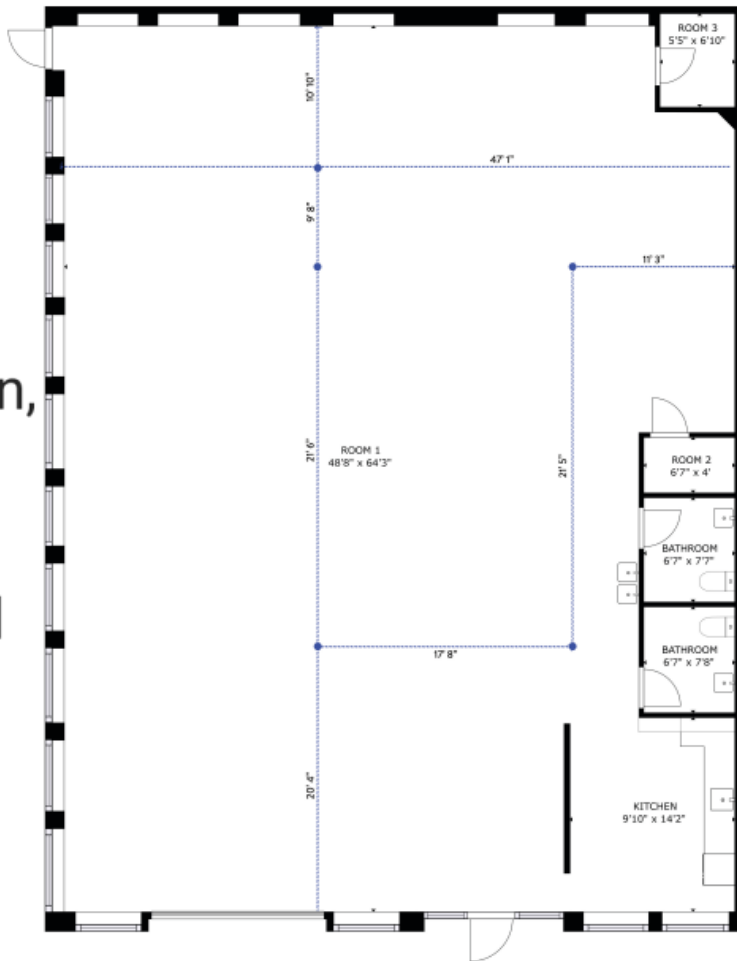
We are on track to configure the space, hire staff, and deploy our studio assets within the month of August, and so we look forward to opening as soon as all city requirements can be met, hopefully as soon as September 1st.

Thank you for your consideration,

Guy, Derek, & Meaghann



Current floor plan,  
 No construction  
 currently needed  
 for tenant fit-up.



GROSS INTERNAL AREA  
 FLOOR 1: 3250 sq ft  
 TOTAL: 3250 sq ft  
 SIZES AND DIMENSIONS ARE APPROXIMATE. ACTUAL MAY VARY.



# The Wheel House NH

Your Community Clay Center



Meaghann & Guy Johnson - Allison & Derek Plourde





