

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

*Members of the public also have the option to join the meeting over Zoom
(See below for more details)**

7:00 P.M.

July 15, 2025

AGENDA

<p><u>PLEASE NOTE:</u> DUE TO THE LARGE VOLUME OF REQUESTS FOR JULY, ITEMS (IV. A. THROUGH E.). WILL BE HEARD AT THE JULY 22, 2025 ZONING BOARD OF ADJUSTMENT MEETING.</p>

I. APPROVAL OF MINUTES

- A. Approval of the June 17, 2025 meeting minutes.

II. OLD BUSINESS

- A. The request of **Harborside Property Management LLC (Owner)**, for property located at **92 Brewster Street** whereas relief is needed to demolish the existing structure and construct a single-family home with Accessory Dwelling Unit which requires the following: 1) Variance from Section 10.521 to allow a) 2,884 s.f. of lot area where 3,500 s.f. are required, b) 2,884 s.f of lot area per dwelling unit where 3,500 s.f. are required, c) 52.33 feet of continuous street frontage where 70 feet are required, d) 9.5 foot right side yard where 10 feet are required, and e) 10 foot rear yard where 20 feet are required. Said property is located on Assessor Map 138 Lot 54 and lies within the General Residence C (GRC) District. (LU-25-25)
- B. The request of **Colbea Enterprises LLC (Owners)**, for property located at **1980 Woodbury Avenue** whereas relief is needed to demolish and redevelop an existing gas station and convenience store which requires the following: 1) Variance from Section 10.5B33.20 to allow for a front lot line build out of 0% where a minimum of 75% is required for a commercial building; 2) Variance from Section 10.5B34.60 to allow for a front setback from the lot line of 27 feet on Woodbury Avenue and 53.5 feet on Gosling

Road where a maximum of 20 feet is required; 3) Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street; 4) Variance from Section 10.835.31 to allow outdoor service facilities to be located within 34.5 feet and 40.5 of a lot line where 50 feet is required. 5) Variance from Section 10.835.32 to allow for drive-through lanes, bypass lanes and stacking lanes to be located within 13 feet of the property line where 30 feet is required; 6) Variance from Section 10.843.33 to allow for pump islands to be located within 34.5 feet of the lot lines where 40 feet is required; 7) Variance from Section 10.1251.10 to allow for an aggregate sign area of 309 s.f. where a maximum of 223.5 s.f. is allowed; 8) Variance from Section 10.1251.20 to allow a 134 s.f. freestanding sign where a maximum of 100 s.f. is allowed; and 9) Variance from Section 10.1253.10 to allow for a freestanding sign at a height of 26.5 feet where a maximum of 20 feet is allowed. Said property is located on Assessor Map 239 Lot 11 and lies within the Gateway Corridor (G1) District. (LU-25-39)

C. REQUEST TO WITHDRAW The request of **Mezansky Family Revocable Trust (Owners)**, for property located at **636 Lincoln Avenue** whereas relief is needed to demolish an existing detached garage and to construct an addition to the primary structure which requires the following: 1) Variance from Section 10.521 to a) allow a 2 foot left side yard setback where 10 feet is required; b) allow a 12.5 foot rear yard setback where 20 feet is required; c) allow 39% building coverage where 25% is the maximum 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 148 Lot 17 and lies within the General Residence A (GRA) District. (LU-25-27) **REQUEST TO WITHDRAW**

D. The request of **Life Storage LP C/O Sovran Self Storage (Owner)**, for property located at **70 Heritage Avenue** whereas relief is needed for after-the-fact installation of mini-storage units which requires the following: 1) Variance from Section 10.531 to allow a 2-foot rear setback where 50 feet is required; and 2) Variance from Section 10.330 to allow the expansion of a nonconforming use where it is not permitted. Said property is located on Assessor Map 285 Lot 11-B and lies within the Industrial (I) District. (LU-25-36)

E. The request of **Port Hunter LLC (Owner)**, for property located at **361 Miller Avenue** whereas relief is needed to demolish the existing detached garage and construct a new detached garage which requires the following: 1) Variance from Section 10.521 to allow a building coverage of 26% where a maximum of 25% is permitted; 2) Variance from Section 10.573.20 to a) allow an accessory building with a 10.5 foot rear setback where 20 feet is required; and b) a 6 foot left side yard setback where 10 feet is required. Said property is located on Assessor Map 131 Lot 33 and lies within the General Residence A (GRA) District. (LU-25-76)

III. OTHER BUSINESS

- A. Chair's Item to Discuss Time Change for Scheduled Meetings

THE FOLLOWING ITEMS WILL BE HEARD ON TUESDAY, JULY 22, 2025

IV. NEW BUSINESS

- A. The request of **AAM Portsmouth Residences LLC C/O AAM 15 Management LLC (Owner)**, for property located at **184 Madison Street** whereas relief is needed for the addition of 22 parking spaces which requires the following: 1) Variance from Section 10.1113.20 to allow off-street parking to be located between the principal building and the street. Said property is located on Assessor Map 146 Lot 16 and lies within the General Residence C (GRC) District. (LU-25-83)
- B. The request of **Shannon M & Stephen E Parsons (Owners)**, for property located at **160 Essex Avenue** whereas relief is needed to demolish the existing garage and construct a new 2 bay, 2 story garage which requires the following: 1) Variance from Section 10.521 to a) allow a 7 foot right side yard where 10 feet are required, b) allow a 17 foot front yard where 30 feet are required, and c) allow a 28.5% building coverage where 20% is maximum 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 233 Lot 63 and lies within the Single Residence B (SRB) District. (LU-25-92)
- C. The request of **One Twenty Four Group Inc (Owner)**, for property located at **124 Heritage Avenue** whereas relief is needed to establish a batting instruction facility greater than 2,000 s.f. of GFA which requires the following: 1) Special Exception from Use # 4.42 to allow a health club, yoga studio, martial arts school, or similar use with more than 2,000 s.f. of GFA. Said property is located on Assessor Map 284 Lot 8 and lies within the Industrial (I) District. (LU-25-85)
- D. The request of **Stephen W Sanger Rev Trust (Owner)**, for property located at **52 Mendum Avenue** whereas relief is needed to construct an 11.25 s.f. addition to the left side of the structure which requires the following: 1) Variance from Section 10.521 to a) allow a 3 foot left side yard where 10 feet are required, b) allow 35% building coverage where 25% is maximum 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 149 Lot 58 and lies within the General Residence A (GRA) District. (LU-25-95)

- E.** The request of **Ampet Inc (Owner)**, for property located at **921 Islington Street** whereas relief is needed for the demolition of the existing structure and the construction of a new building to be used for a restaurant which requires the following: 1) Variance from Section 10.575 to allow a dumpster to be located within 20 feet of a Residential or Mixed Residential zoned lot or within 10 feet of any lot line; and 2) Variance from Section 10.1113.20 to allow off-street parking to be located between the principal building and the street. Said property is located on Assessor Map 172 Lot 10 and lies within the Character District 4-W (CD4-W). (LU-25-96)

V. ADJOURNMENT

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

https://us06web.zoom.us/webinar/register/WN_VL0b_PTyQ3ueOYFLDNSinw

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

7:00 P.M.

June 17, 2025

MEMBERS PRESENT: Beth Margeson, Vice Chair; David Rheame; Paul Mannle; Jeffrey Mattson; Thomas Nies

MEMBERS EXCUSED: Phyllis Eldridge, Chair; Thomas Rossi

ALSO PRESENT: Jillian Harris, Planning Department

Vice-Chair Margeson was Acting Chair for the evening and called the meeting to order at 7:00 p.m. Mr. Mannle arrived at approximately 7:24 p.m.

I. APPROVAL OF MINUTES

A. Approval of the **May 20, 2025** meeting minutes.

*Mr. Rheame moved to **approve** the minutes with the following amendments:*

Regarding the sentence at the bottom of page 3: “Mr. Rheame said the signs were also modest ones and more like those found in Sign District 2 rather than Sign District 4, and Sign District 2 requires a 5-ft setback, and the applicant did not want to require a 5-ft setback in a Sign District 2”. Mr. Rheame asked that the phrase at the end of the sentence stating that “the applicant did not want to require a 5-ft setback in a Sign District 2” be removed.

On page 5, top paragraph: “From a hardship standpoint, he said the applicant had shown that there were some existing layouts set up many years ago that forced signage closer than the 20 square feet, which was subsequently applied when the property lines were set up differently”. Mr. Rheame asked that the words “square feet” be replaced by “foot setback”, so the sentence now reads: “From a hardship standpoint, he said the applicant had shown that there were some existing layouts set up many years ago that forced signage closer than the 20 foot setback, which was subsequently applied when the property lines were set up differently.”

On page 8, top paragraph: “Mr. Rheame said the marquee sign and the square footage associated with it seemed quite a bit larger than what the Board allowed, but the overall square footage was sort of overestimated by the way it was looked at from a zoning ordinance standpoint.” Mr. Rheame asked that the word “Board” be changed to “ordinance”, so the sentence now reads: “Mr.

Rheaume said the marquee sign and the square footage associated with it seemed quite a bit larger than what the ordinance allowed, but the overall square footage was sort of overestimated by the way it was looked at from a zoning ordinance standpoint.”

On page 9, middle of the page: “Mr. Rheaume explained that the motion was different because it helped clarify the intent of the Board”. Mr. Rheaume asked that the words “in his opinion” be added so that the sentence now reads: “Mr. Rheaume explained that in his opinion the motion was different because it helped clarify the intent of the Board.”

*Mr. Mattson seconded. The motion to approve the minutes as amended **passed** 3-0, with Acting Chair Margeson abstaining.*

B. Approval of the May 27, 2025 meeting minutes.

*Mr. Mattson moved to **approve** the minutes, seconded by Mr. Nies.*

Mr. Nies asked that on page 1, as a comment to his recusal, that the sentence “The applicant agreed to present the application to the five remaining Board members” be added.

Mr. Rheaume asked that the following sentence on page 15 be amended: “He said when the original barn was converted into a living room previously, the Board stipulated that the northerly and westerly facades would not have any windows, which appeared to have occurred, but Ms. Freedman was proposing to add a window on the addition.” Mr. Rheaume asked that the words “living room” be changed to “living space” and that the phrase “westerly façade of the” be added in front of the phrase “Ms. Freedman was proposing to add a window on the addition”. The sentence now reads: “He said when the original barn was converted into a living space previously, the Board stipulated that the northerly and westerly facades would not have any windows, which appeared to have occurred, but Ms. Freedman was proposing to add a window on the westerly façade of the addition.

*The motion to approve the minutes as amended **passed** unanimously, 4-0.*

[Timestamp 13:00] At this point in the meeting, there were only four members. Acting Chair Margeson stated that there was a quorum but any application that went before the Board would require all four votes. She said the applicants had the option to postpone.

She noted that the petitions for 636 Lincoln Avenue and 92 Brewster Street would have only three voting members due to recusals, so they would have to be postponed. She read Old Business, Petition II.A, 92 Brewster Street, into the record and then stated that it would be postponed to the July 15th meeting. She then read Old Business, Petition II.C, 636 Lincoln Avenue, into the record and said the applicant’s request for withdrawal would be considered at the July 15th meeting.

Mr. Rheume made a point of order to suggest that the Board suspend the rules to take all applications out of order and let each applicant tell the Board if they would be taking the option to postpone their applications or if they wish to proceed at tonight's meeting.

Acting Chair Margeson then read all the other applications into the record. She said the applicants would decide if they wished to proceed or postpone to the July meeting.

She read Old Business Petition II.B, 1980 Woodbury Avenue, into the record. The applicant's representative Attorney Chris Drescher was present and asked to postpone it to the July meeting.

*Mr. Mattson moved to **postpone** the petition to the July 15th meeting, seconded by Mr. Rheume. The motion **passed** unanimously, 4-0.*

Acting Chair Margeson read New Business Petition III.A for 70 Heritage Avenue into the record. The applicant's representative Attorney Kevin Baum was present and asked that the petition be postponed to the July meeting.

*Mr. Rheume moved to **postpone** the petition to the July 15th meeting, seconded by Mr. Mattson. The motion **passed** unanimously, 4-0.*

[Timestamp 23:06] At this point in the meeting Mr. Mannle arrived, so there were five voting members. Acting Chair Margeson explained that the applicant would still require four affirmative votes for approval. She then read the rest of the petitions into the record.

She read New Business Petition III.B, 35 Boss Avenue, into the record. The applicant was present and said he would proceed.

Acting Chair Margeson then read New Business Petition III.C, 361 Miller Avenue, into the record. The applicant was not present.

*Mr. Rheume moved to **hear** the petition at the end of the meeting to allow the applicant time to arrive. (There was no second or vote).*

Acting Chair Margeson read New Business Petition III.D, 239 Broad Street, into the record. The owner Daniel Indoe was present and said he would proceed.

Acting Chair Margeson read New Business Petition III.E, 89 Brewery Lane, into the record. The applicant's representative Attorney Kevin Baum was present and asked that the petition be postponed to the August meeting instead of the July meeting because a project team member would not be available in July.

*Mr. Rheume moved to **postpone** the meeting to the August 19th meeting, seconded by Mr. Mattson. The motion **passed** unanimously, 5-0.*

The Board then addressed New Business Petition III.B, 35 Boss Avenue.

II. OLD BUSINESS

- A. The request of **Harborside Property Management LLC (Owner)**, for property located at **92 Brewster Street** whereas relief is needed to demolish the existing structure and construct a single-family home with Accessory Dwelling Unit which requires the following: 1) Variance from Section 10.521 to allow a) 2,884 s.f. of lot area where 3,500 s.f. are required, b) 2,884 s.f of lot area per dwelling unit where 3,500 s.f. are required, c) 52.33 feet of continuous street frontage where 70 feet are required, d) 9.5 foot right side yard where 10 feet are required, and e) 10 foot rear yard where 20 feet are required. Said property is located on Assessor Map 138 Lot 54 and lies within the General Residence C (GRC) District. (LU-25-25)

DECISION OF THE BOARD

The petition was **postponed** to the July 15th meeting.

- B. The request of **Colbea Enterprises LLC (Owners)**, for property located at **1980 Woodbury Avenue** whereas relief is needed to demolish and redevelop an existing gas station and convenience store which requires the following: 1) Variance from Section 10.5B33.20 to allow for a front lot line build out of 0% where a minimum of 75% is required for a commercial building; 2) Variance from Section 10.5B34.60 to allow for a front setback from the lot line of 27 feet on Woodbury Avenue and 53.5 feet on Gosling Road where a maximum of 20 feet is required; 3) Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street; 4) Variance from Section 10.835.31 to allow outdoor service facilities to be located within 34.5 feet and 40.5 of a lot line where 50 feet is required. 5) Variance from Section 10.835.32 to allow for drive-through lanes, bypass lanes and stacking lanes to be located within 13 feet of the property line where 30 feet is required; 6) Variance from Section 10.843.33 to allow for pump islands to be located within 34.5 feet of the lot lines where 40 feet is required; 7) Variance from Section 10.1251.10 to allow for an aggregate sign area of 309 s.f. where a maximum of 223.5 s.f. is allowed; 8) Variance from Section 10.1251.20 to allow a 134 s.f. freestanding sign where a maximum of 100 s.f. is allowed; and 9) Variance from Section 10.1253.10 to allow for a freestanding sign at a height of 26.5 feet where a maximum of 20 feet is allowed. Said property is located on Assessor Map 239 Lot 11 and lies within the Gateway Corridor (G1) District. (LU-25-39)

DECISION OF THE BOARD

The petition was **postponed** to the July 15th meeting.

- C. REQUEST TO WITHDRAW** - The request of **Mezansky Family Revocable Trust (Owners)**, for property located at **636 Lincoln Avenue** whereas relief is needed to demolish an existing detached garage and to construct an addition to the primary structure which requires the following: 1) Variance from Section 10.521 to a) allow a 2 foot left side yard setback where 10 feet is required; b) allow a 12.5 foot rear yard setback where 20 feet is required; c) allow 39% building coverage where 25% is the maximum 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 148 Lot 17 and lies within the General Residence A (GRA) District. (LU-25-27) - **REQUEST TO WITHDRAW**

DECISION OF THE BOARD

The request for withdrawal was **postponed** to the July 15th meeting.

III. NEW BUSINESS

- A.** The request of **Life Storage LP C/O Sovran Self Storage (Owner)**, for property located at **70 Heritage Avenue** whereas relief is needed for after-the-fact installation of mini-storage units which requires the following: 1) Variance from Section 10.531 to allow a 2-foot rear setback where 50 feet is required; and 2) Variance from Section 10.330 to allow the expansion of a nonconforming use where it is not permitted. Said property is located on Assessor Map 285 Lot 11-B and lies within the Industrial (I) District. (LU-25-36)

DECISION OF THE BOARD

The petition was **postponed** to the July 15th meeting.

- B.** The request of **Suzanne S. Dargie (Owner)**, for property located at **35 Boss Avenue** whereas relief is needed to construct a two-story addition to the existing single-family home which requires the following: 1) Variance from Section 10.521 to a) allow a 8.5 foot right side yard where 10 feet is required and b) 22.5% building coverage where a maximum of 20% is permitted. Said property is located on Assessor Map 152 Lot 42 and lies within the Single Residence B (SRB) District. (LU-25-72)

SPEAKING TO THE PETITION

[Timestamp 29:01] Project contractor Chad Danusis of Christian Persson Contractors was present on behalf of the applicant. He reviewed the petition and said they wanted to add two more bathrooms. He reviewed the criteria.

[Timestamp 32:50] Mr. Rheume asked if the new downstairs bathroom would have a sink, and the applicant agreed. Mr. Rheume noted that the site plan showed a new entryway and asked if it was to provide an easier way into the house from the driveway side. The applicant agreed.

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 [Timestamp 34:33]

*Mr. Mannle moved to **grant** the variance for the petition as presented, seconded by Mr. Nies.*

Mr. Mannle cited Sections 10.233.21 and .22 of the ordinance and said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the request was for an addition with a 1-1/2 ft variance for the right side setback and 2-1/2 percent over the 20 percent building coverage, which were both slight. Per Section 10.233.23, he said granting the variance would do substantial justice, noting that the requests were small. Per Section 10.233.24, he said granting the variance would not diminish the values of surrounding properties and would probably enhance them because it was a new addition on the house. Per Section 10.233.25, he said literal enforcement of the ordinance would result in an unnecessary hardship. He said what the applicant asked for was very minimal and would place an unnecessary hardship on him if it were not granted. He said the property had special conditions that distinguished it from others in the area and owing to those special conditions, a fair and substantial relationship does not exist between the general public purpose of the ordinance's provision and the specific application of that provision to the property, and the proposed use is a reasonable one, or the property cannot be reasonably used in strict conformance with the ordinance and the variance is therefore necessary to enable reasonable use of it. He said that was where it got tricky because the owner could use the property as it existed but the addition would enhance the property and the variance requests were very minimal. Mr. Nies concurred. He said the lot was a corner one, so there were two front yards, a primary and a secondary front yard, and the home was not centered on the lot. He said if the owner tried to expand the home in any other direction, it would require more zoning relief, therefore the way the home was located and the setback requirements for the two front yards were special conditions and there was no relationship between the strict adherence to the ordinance and the minimal variances being requested.

*The motion **passed** unanimously, 5-0.*

- C. The request of **Port Hunter LLC (Owner)**, for property located at **361 Miller Avenue** whereas relief is needed to demolish the existing detached garage and construct a new detached garage which requires the following: 1) Variance from Section 10.521 to allow a building coverage of 26% where a maximum of 25% is permitted; 2) Variance from Section 10.573.20 to a) allow an accessory building with a 10.5 foot rear setback where 20 feet is required; and b) a 6 foot left side yard setback where 10 feet is required. Said property is located on Assessor Map 131 Lot 33 and lies within the General Residence A (GRA) District. (LU-25-76)

[Timestamp 51:05] Attorney Colby Gamester was present on behalf of the applicant and asked that the petition be postponed to the July meeting.

DECISION OF THE BOARD

*Mr. Rheume moved to **postpone** the petition to the July 15th meeting, seconded by Mr. Mattson. The motion **passed** unanimously, 5-0.*

- D.** The request of **Maureen A Rousseau and Daniel A Indoe (Owner)**, for property located at **239 Broad Street** whereas relief is needed to remove an existing detached accessory structure and to construct an addition to the primary structure which requires the following:
- 1) Variance from Section 10.521 to allow a secondary front yard setback of 6 feet where 15 feet is required. Said property is located on Assessor Map 131 Lot 15 and lies within the General Residence A (GRA) District. (LU-25-75)

SPEAKING TO THE PETITION

[Timestamp 38:59] The owner Daniel Indoe reviewed the petition. He said he wanted to remove an existing detached accessory structure and add a mudroom to the house by closing in half of the farmers porch and adding the modest 35 sf addition. He said the lot coverage would be 50 square feet and would not go over the 25 percent maximum lot coverage. He explained that he lived on a nonconforming lot where the house was only six inches from the right setback and 2-1/2 feet from the left, which was also a secondary frontage. He reviewed the criteria and said they would be met.

[Timestamp 45:16] Mr. Nies asked Mr. Indoe if he did not consider a shed for storage space because it would not be convenient to access the items from the home. Mr. Indoe agreed and said the storage space was for things like coats, bikes, scooters, and so on.

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 variance for the petition as presented and advertised, seconded by Mr. Mannle.*

[Timestamp 46:59] Mr. Nies said it was a very modest addition to the home and its location would be almost unnoticeable by anyone who had not seen the house before it was built and that it would fit in very well. He said granting the variance would not be contrary to the public interest and would

observe the spirit of the ordinance. He said it would have no effect on the health, safety, and welfare of the neighborhood and would not modify its essential characteristics. He said it would remain a single family home and have no impact on light and air. He noted that the addition would be on the Bersum Lane side and would not go all the way to the farthest extent of the home. He said granting the variance would do substantial justice because there would be no benefit to the public that would accrue by denying the variance but there would be a substantial loss to the applicant because he would have to figure out another place to store the items, which would be a hardship. Mr. Nies said there was no evidence presented that granting the variance would diminish the values of surrounding properties. He said it would at least maintain them, if anything. He said there were special conditions to the property in that the house was located very close to the left side lot line, which was actually a secondary front yard because of Bersum Lane, and the house essentially filled the entire width of the lot. He said there was no real place to put anything in the house that would provide storage with ready access, noting that a shed would not have ready access for the type of items to be stored. Due to those special conditions, he said there was no fair and substantial relationship between the strict enforcement of the ordinance and its application to the property. Mr. Mannle concurred and had nothing to add.

Mr. Rheume said he would support the motion. He said the addition was a very modest one-story one that would close in a bit of the porch area, but the applicant would remain within the building coverage, which he thought was amazing to do on such a small lot.

*The motion **passed** unanimously, 5-0.*

- E. The request of **Greengard Center for Autism (Owner)**, for property located at **89 Brewery Lane** whereas relief is needed for a change of use from an assisted living home with 5 residents to an assisted living center with 6 residents which requires the following:
- 1) Variance from Section 10.440, Use #2.11 for an assisted living center where it is not permitted. Said property is located on Assessor Map 146 Lot 26 and lies within the Character District 4-L2 (CD4-L2). (LU-25-77)

DECISION OF THE BOARD

The petition was **postponed** to the August 19th meeting.

IV. ADJOURNMENT

The meeting adjourned at 7:52 p.m.

Submitted,

Joann Breault
BOA Meeting Minutes Taker

II. OLD BUSINESS

- A.** The request of **Harborside Property Management LLC (Owner)**, for property located at **92 Brewster Street** whereas relief is needed to demolish the existing structure and construct a single-family home with Accessory Dwelling Unit which requires the following: 1) Variance from Section 10.521 to allow a) 2,884 s.f. of lot area where 3,500 s.f. are required, b) 2,884 s.f of lot area per dwelling unit where 3,500 s.f. are required, c) 52.33 feet of continuous street frontage where 70 feet are required, d) 9.5 foot right side yard where 10 feet are required, and e) 10 foot rear yard where 20 feet are required. Said property is located on Assessor Map 138 Lot 54 and lies within the General Residence C GRC District. (LU-25-25)

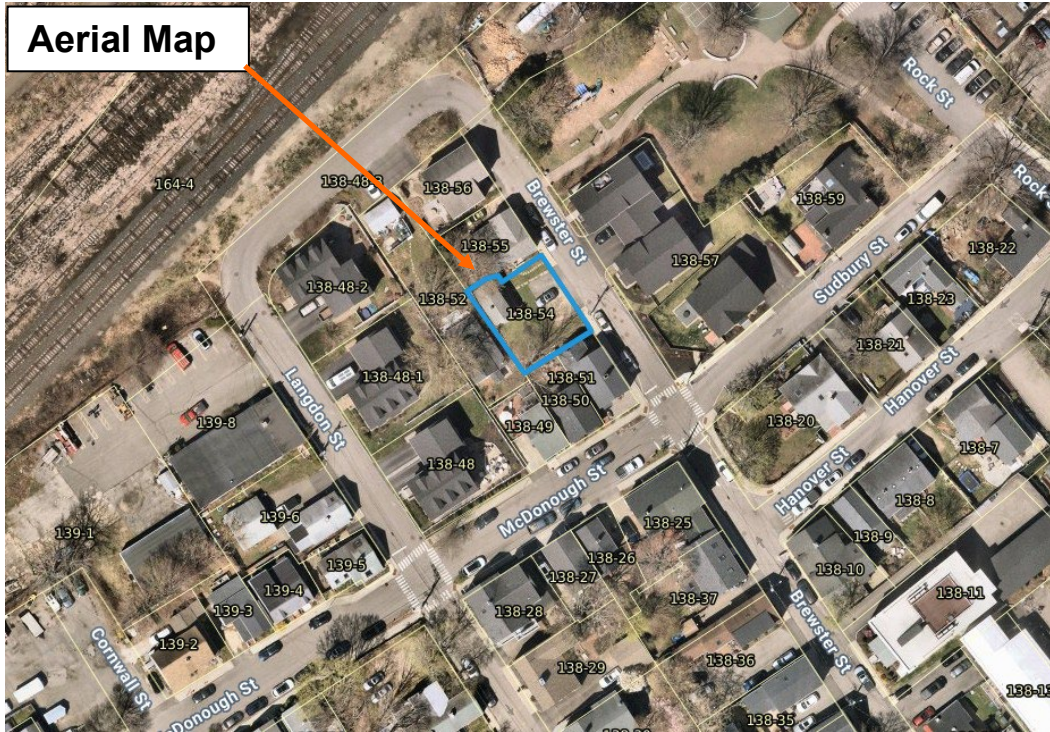
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single family dwelling	Demolish and construct new SF dwelling with ADU	Primarily residential
<u>Lot area (sq. ft.):</u>	2,884	2,884	3,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	2,884	2,884	3,500 min.
<u>Street Frontage (ft.):</u>	52	52	70 min.
<u>Lot depth (ft.)</u>	51	51	50 min.
<u>Front Yard (ft.):</u>	31.5	1.4	1 min. (Sec. 10.516.10)
<u>Left Yard (ft.):</u>	32	10	10 min.
<u>Right Yard (ft.):</u>	2.7	9.5	10 min.
<u>Rear Yard (ft.):</u>	3	10	20 min.
<u>Height (ft.):</u>	<35	30	35 max.
<u>Building Coverage (%):</u>	14.7	32.9	35 max.
<u>Open Space Coverage (%):</u>	57	45.9	20 min.
<u>Parking</u>	3	3	3
<u>Estimated Age of Structure:</u>	1790	Variance request(s) shown in red.	

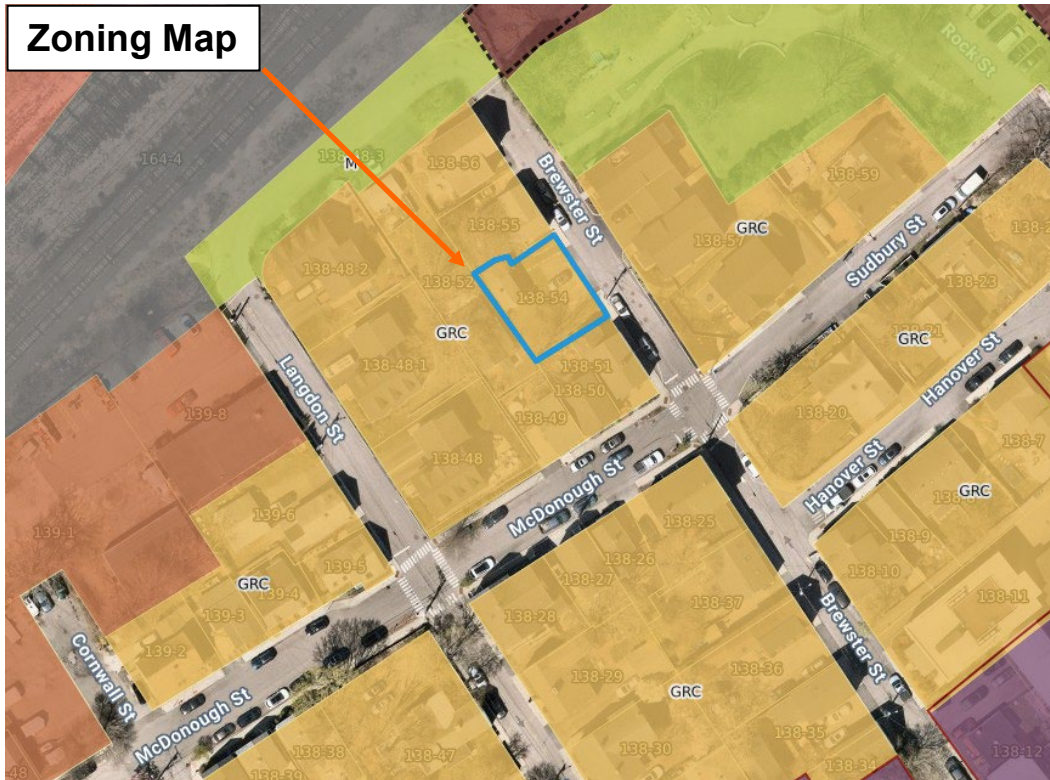
Other Permits/Approvals Required

- Building Permit
- ADU – Administrative Approval

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **September 10, 1985** – A variance from Article II, Section 10-205 to convert an existing single family residence into a contractor's office in a residential district where neither business or professional offices are an allowed use; and, 2) a Special Exception as allowed in Article XII, Section 10-1201(1) (a) to permit two of the required three parking spaces to be located on another lot in common ownership and within 300' of the property line of the lot in question. Said property is shown on Assessor Plan U-38 as Lots 53 and 54 and lies within Apartment and Historic B districts. Application was **Withdrawn** by applicant.

Planning Department Comments

The applicant proposes to demolish the existing single-family residential structure and construct a new single-family home with an attached Accessory Dwelling Unit (ADU). Historic deeds indicate the property was once two parcels that have since been merged.

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.

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

March 3, 2025

HAND DELIVERED

Stephanie Casella, Planner
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Harborside Property Management, LLC
92 Brewster Street, Tax Map 138, Lot 54
General Residence C Zone

Dear Ms. Casella & Zoning Board Members:

On behalf of Harborside Property Management, LLC ("Harborside" or "Applicant"), enclosed please find the following in support of an application for zoning relief.

- Digital application package uploaded to Viewpoint.
- Owner's Authorization.
- 2/28/2025 – **REVISED** Memorandum and Exhibits in support of Variance Application.

We look forward to presenting this application to the Zoning Board at its March 18, 2025 meeting.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Enclosure

cc: George Hails
Ross Engineering, LLC
Art Form Architecture

DANIEL C. HOEFLE	ALEC L. MCEACHERN	PETER V. DOYLE	STEPHEN H. ROBERTS 2007-2023
R. TIMOTHY PHOENIX	KEVIN M. BAUM	MONICA F. KIESER	OF COUNSEL:
LAWRENCE B. GORMLEY	JACOB J.B. MARVELLEY	STEPHANIE J. JOHNSON	SAMUEL R. REID
R. PETER TAYLOR	GREGORY D. ROBBINS	KAREN W. OLIVER	JOHN AHLGREN

OWNER'S AUTHORIZATION

I, George Hails, manager of Harborside Property Management, L.L.C, Owner/Applicant of 92 Brewster Street, Tax Map 138/Lot 54, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC to represent me before any and all City of Portsmouth Representatives, Boards and Commissions for permitting the project.

Respectfully submitted,

Harborside Property Management, L.L.C.

Date: 2/28/24 George Hails, Manager

A handwritten signature in black ink, appearing to read "George Hails", is written over a horizontal line.

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
Monica F. Kieser, Esquire
DATE: February 19, 2025 (revised 2/28/2025)
RE: Harborside Property Management, LLC
92 Brewster Street, Tax Map 138, Lot 54
General Residence C Zone

Dear Chair Eldredge and Zoning Board Members:

On behalf of Harborside Property Management, LLC through its Manager George Hails (“Hails”), we are pleased to submit this memorandum and attached exhibits in support of Hails’ request for zoning relief for consideration by the Zoning Board of Adjustment (“ZBA”) at its March 18, 2025 meeting.

I. EXHIBITS

- A. Deeds.
- B. Sanborn Fire Insurance Map 1920.
- C. Plan of 92 & 96 Brewster Street by John Durgin August, 1940.
- D. Plan Set – issued by Ross Engineering, LLC.
- E. Architectural Plan Set – Art Form Architecture.
- F. Site Photographs.
 - a. Satellite View
 - b. Street View
- G. Tax Map 138.

II. PROPERTY/PROJECT

92 Brewster Street is comprised of two historic lots since merged to a 2,884 square foot property with 52.33 feet of frontage with a curb cut width of 31.8 feet (“the Property”). The Property contains a truly tiny, dated, one-bedroom home occupying a footprint of 334 square feet plus a 90 square feet porch. The home is tucked into the northwest corner less than a foot from the north side lot line and 2.7 feet from the rear lot line, while the balance of the lot is used for parking. The south side of the Property is burdened by a 6 foot wide right-of-way favoring lot 52.

Hails plans to remove the nonconforming home in favor of a newly constructed single-family home with incorporated one-car garage and ADU (“the Project”). The Project sites the home in a more conforming location, respects the easement, shrinks the curb cut, and

accommodates three off-street parking spaces. The Project meets building coverage limits and provides more than twice the minimum required open space. Relief is nonetheless required from yard requirements and, because the existing home is removed, staff has opined that the Project also needs relief for lot area, frontage, and lot area/dwelling until requirement.

III. PURSUANT TO PORTSMOUTH ZONING ORDINANCE §10.311 AND §10.321, THE PROPOSED PROJECT REQUIRES NO VARIANCE FOR LOT SIZE & FRONTAGE

We disagree that relief from lot size and frontage should be required to reestablish a permitted single-family use on an existing lot with a single-family home.

Mary Caswell acquired an irregular shaped lot and building from the Mitrook family in 1949. The lot had 20 feet of frontage on Brewster Street. In 1964, Caswell then acquired a second lot with 37 feet of frontage on Brewster from Mary Herlihy. (**Exhibit E**). The two lots, combined totaling 2,884 square feet, have been conveyed together since 1964 and have been treated by the City as one parcel for decades.

PZO §10.311 provides:

Any lot that has less than the minimum lot area or street frontage required by this ordinance shall be considered to be nonconforming and no use or structure shall be established on such lot unless the Board of Adjustment has granted a variance from the applicable requirements of this ordinance. (Emphasis added)

At the outset, from its plain wording, this section establishes that if a lot is nonconforming, it is permissible as a building lot without a variance for the nonconforming lot size provided variances for the use or structure are obtained. To determine otherwise would render the underlined language “applicable requirements of this ordinance” meaningless, contrary to general principles of statutory interpretation. Here, the residential use pre-dates zoning and is not changing. Additionally, the Project proposed does seek the necessary relief from rear and side yard requirements to accommodate the proposed structure.

The above interpretation is further buttressed by §10.320 Nonconforming Buildings and Structures, specifically §10.321, which provides:

A lawful nonconforming building or structure may continue and be maintained or repaired, but may not be extended, reconstructed or enlarged unless such extension, reconstruction or enlargement conforms to all the regulations of the district in which it is located.

In the instant case, we have a presently nonconforming building which will be removed and reconstructed with a new building. The new home will more nearly conform with the Ordinance requirements and, with the requested relief for yard setbacks, meets §10.321.

Lastly, RSA 674:19 provides that

an ordinance....shall not apply to existing structures or to the existing use of any building. It shall apply to any alteration of a building for use for a purpose or in a manner which is substantially different from the use to which it was put before alteration.

Coupled with the language of §10.311 and §10.321 above, it is clear that a lot established with a residential use before zoning may continue to support structures as long as those structures comply with §10.321, receive a variance pursuant to section §10.311 and are not put to a substantially different use.

In an abundance of caution, Smith requests all variances below.¹

IV. **RELIEF REQUIRED:**

<u>Ordinance Section</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
<u>PZO Table §10.521</u> <u>Dimensional Standards</u>			
• Lot Area	3,500 s.f.	2,884 s.f.	2,884 s.f.
• Frontage	70 ft.	52.33'	52.33'
• Lot Area/Dwelling Unit	3,500 s.f./dwelling unit	2,884 s.f./dwelling unit	2,884 s.f./dwelling unit ²
• Side Yard	10' side yard	0.9' overhang/2.7' wall	9.4'/9.7 overhang
• Rear Yard	20' rear yard	2.7' overhang/3.2' wall	9.3' overhang/10.3 wall

V. **OTHER PERMITS REQUIRED**

- Building Permit
- DPW Approval of driveway

¹ If the variance is granted, this argument will be withdrawn upon expiration of the 30 days appeal period.

² Accessory Dwelling Unit does not require additional relief from frontage, lot area, or lot area/dwelling unit than a single-family home in the same zone.

VI. VARIANCE REQUIREMENTS

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

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

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

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The Project establishes a permitted use on an undersized lot of record.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – A substandard tiny home is replaced with a modern single-family home compliant with height and building coverage limits and affords double the minimum required open space.
3. The design of facilities for vehicular access, circulation, parking and loading – The Project provides three compliant parking spaces. One in the garage and two tandem spots next to the home.
4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – The uses proposed are permitted and compatible with the neighborhood. The Project does not undermine these purposes.
5. The preservation and enhancement of the visual environment – The Project replaces a dated home with a new code-compliant home similar to other redevelopment/improvement in the neighborhood.
6. The preservation of historic districts buildings and structures of historic or architectural interest – The Property and the existing structure to be removed is not in the historic district and is of no known historic or architectural interest.
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – The property will be served by municipal water and sewer. There are no wetlands in the area, accordingly these purposes are served by granting the variances.

Variances are required because the Property is small and narrow. The permitted single-family home proposed complies with building coverage and height restrictions while maintaining generous open space and improving the rear and north side yard setback. Relief is only required to establish the use on a nonconforming lot of record and to permit the home in the rear yard

setback and very slightly in the north side yard setback. Granting the variances on these facts does not “in a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” Malachy Glen, supra, which also held:

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

The Project is compatible with the density of the other lots in the area and reestablishes the same single-family use on a nonconforming lot of record while beautifying the lot, improving side and rear yard setbacks and accommodating required parking. Accordingly, granting the addition will neither “alter the essential character of the locality nor threaten the public health, safety or welfare.”

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

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

Hails is constitutionally entitled to the use of the lot as he sees fit; including redevelopment for a permitted single-family home with an incorporated garage and ADU subject only to the effect of the home on the dimensional requirements. “The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). “Property” in the constitutional sense has been interpreted to mean not the tangible property

itself, but rather the right to possess, use, enjoy and dispose of it. Burrows v. City of Keene, 121 N.H. 590, 597 (1981). (emphasis added).

The Supreme Court has also held that zoning ordinances must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of the regulation. Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001); Chesterfield at 69.

Granting the requested variance allows for tasteful redevelopment of a dated, tiny, single-family home on an existing 2,884 square foot lot of record in a manner consistent with the lot sizes in the surrounding area. There is absolutely no harm to any neighbor or the general public from granting variances. It follows that there is no benefit to the public from denial. Conversely, Hails will be greatly harmed by denial as he will lose the opportunity to reasonably redevelop the Property with permitted use significantly improving existing conditions. Accordingly, there is no benefit to the public from granting the variance that outweighs the harm to the owner from denial.

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

The Project improves Property with a new code-compliant single-family home with incorporated ADU accommodating all required parking. The redevelopment is consistent with the density and yard setbacks of the surrounding area. Under these circumstances, granting variances will not diminish surrounding property values.

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

a. Special conditions distinguish the property from others in the area.

The Property is small, shallow, narrow, and encumbered by an access easement in favor of the rear abutter. The Property also exists in a densely developed area of the City with numerous other nonconforming lots developed with single family homes or duplexes located in rear or side yard setbacks. The Property's size, width, easement, and location among other densely developed residential parcels combine to create special conditions.

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

Density requirements and yard requirements exist to prevent overcrowding and to ensure adequate air, light, space, and separation between neighbors. The Project replaces a dated tiny home with a modern, permitted single-family home with ADU, accommodating required off

street parking. The density and yard setback relief required is consistent with the surrounding area. Accordingly, the purposes of these regulations are met and there is no reason to apply the strict density requirements of the zoning ordinance.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). The Project proposes a modern single-family home with incorporated ADU and garage on a nonconforming lot of record while providing three off-street parking spaces. Accordingly, the use is reasonable.

VII. CONCLUSION

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

Respectfully submitted,
**George Hails &
Harborside Property Management, LLC**



By: R. Timothy Phoenix
Monica F. Kieser

Return to:



LCHIP	ROA477236	25.00
TRANSFER TAX	RO094070	5,985.00
RECORDING		14.00
SURCHARGE		2.00

EXHIBIT A

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That James S. Remick, as Successor Trustee of the Linette S. Remick Revocable Trust of 2000, u/d/t dated June 15, 2000, as amended, with a mailing address of 326 Brackett Road, Rye, New Hampshire 03870 and James S. Remick, as Trustee of the James S. Remick Revocable Trust of 2000, u/d/t dated June 15, 2000, as amended, with a mailing address of 326 Brackett Road, Rye, New Hampshire 03870, for consideration paid grants to Harborside Property Management, LLC, a New Hampshire limited liability company having a mailing address of 1636 Seabreeze Drive, Tarpon Springs, Florida 34689 with WARRANTY COVENANTS:

The land and building located at 92 Brewster Street, Portsmouth, New Hampshire shown as Parcel 1 and Parcel 2 on a plan of land entitled "Boundary Survey for 92 & 96 Brewster St., Portsmouth, NH 03801" drawn by Ross Engineering & Surveying, dated December 2, 2019, Scale: 1" = 10', recorded as Plan No. D-41920, on December 20, 2019, with the Rockingham County Registry of Deeds, (the "Plan") being more particularly described as follows:

Parcel 1

The land beginning at the northwesterly corner of Parcel 1 shown on the Plan, thence running N 73° 13' 02" E a distance of 13.00 feet to a point along the northerly boundary of Parcel 1; thence running S 85° 44' 58" W a distance of 8.60 feet to a point; thence running S 16° 46' 58" E a distance of 5.00 feet to a point; thence turning and running N 73° 12' 58" E a distance of 31.74 feet to a point at the northeasterly corner of Parcel 1; thence turning and running S 17° 40' 25" E a distance of 20.00 feet to a point at the southeasterly corner of Parcel 1; thence turning and running S 73° 19' 30" W a distance of 52.28 feet to a point at the southeasterly corner of Parcel 1; thence turning and running N 18° 31' 02" W a distance of 28.00 feet to the point of beginning. Parcel 1 containing 1,202 square feet according to the Plan.

Parcel 2

The land beginning at the southwesterly corner of Parcel 2 shown on the Plan; thence running N 73° 19' 30" E a distance of 51.76 to a point at the southeasterly corner of Parcel 2; thence turning and running N 17° 40' 25" W a distance of 32.33 feet to a point at the northeasterly corner of Parcel 2; thence turning and running S 73° 19' 30" W a distance of 52.28 feet to a point at the northwesterly corner of Parcel 2; thence turning and running S 18° 35' 52"

E a distance of 32.35 feet to the point of beginning. Parcel 2 containing 1,682 square feet according to the Plan.

Meaning and intending to describe and convey the portion of premises conveyed to Linette S. Remick, Trustee of the Linette S. Remick Revocable Trust of 2000 by Deed dated June 28, 2001, recorded with Rockingham County Registry of Deeds at Book 3610, Page 2895.

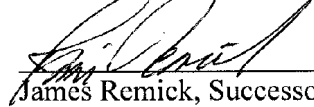
TRUSTEE'S CERTIFICATION:

I, James Remick, Successor Trustee of the Linette S. Remick Revocable Trust of 2000, created by Linette S. Remick, under trust agreement dated June 15, 2000, as amended and as Trustee of the James S. Remick Revocable Trust of 2000, created by James S. Remick, under trust agreement dated June 15, 2000 am the sole Trustee of said trust and have full and absolute power under said trust agreement to convey any interest in real estate and improvements thereon held in said trust and no purchaser or third party shall be bound to inquire whether the Trustee has said power or is properly exercising said power or to see to the application of any trust asset paid to the trustee for a conveyance thereof.

This is not homestead property.

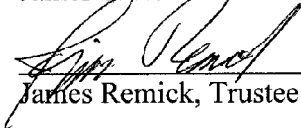
Executed this 30 day of December, 2019.

Linette S. Remick Revocable Trust of 2000



James Remick, Successor Trustee

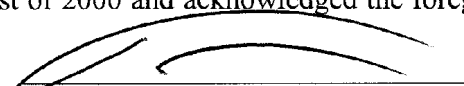
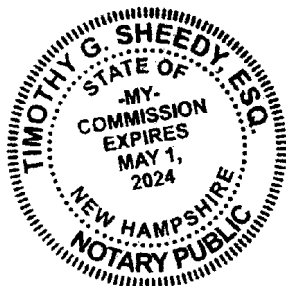
James S. Remick Revocable Trust of 2000



James Remick, Trustee

State of New Hampshire
County of Rockingham

Then personally appeared before me on this 30 day of December, 2019, the said James Remick, Successor Trustee of the Linette S. Remick Revocable Trust of 2000 and in his capacity as Trustee of the James S. Remick Revocable Trust of 2000 and acknowledged the foregoing to be his voluntary act and deed.


Notary Public

Commission expiration:

049844

QUITCLAIM DEED

I, Linette S. Remick of 326 Brackett Road, Rye, Rockingham County, New Hampshire for consideration paid, grant to Linette S. Remick, Trustee of the Linette S. Remick Revocable Trust of 2000, a revocable trust, of 326 Brackett Road, Rye, Rockingham County, New Hampshire

with Quitclaim Covenants

all my right, title and interest, being an undivided 90% interest, in the following described real estate in Portsmouth, County of Rockingham and State of New Hampshire and being more particularly bounded and described as follows:
Two parcels of land each situated in Portsmouth, County of Rockingham, and State of New Hampshire, bounded and described as follows:

Parcel 1: A certain lot or parcel of land, with the buildings thereon, lying, situated and being in the City of Portsmouth, in the County of Rockingham and the State of New Hampshire, on the westerly side of the public highway now known as Brewster Street, being now numbered 92 thereon, bounded and described as follows:

Beginning in the westerly sideline of said Brewster Street at land now or formerly of Mary Herlihy, and thence running by said Herlihy land S 67° 15' W, 50.2 feet, at land now or formerly of Frank Arric; thence turning and running by said Arric land N 24° 41' W, 28 feet to land now or formerly of the heirs of Kateny Mitrook; thence turning and running by said last named land N 67° 07' E, 13 feet; thence N 88° 09' E, 8.6 feet; thence S 22° 53' E, 5 feet; thence N 67° 07' E, 30 feet to said Brewster Street, thence turning and running S 22° 53' E by said Brewster Street, 20 feet to the point of beginning.

Parcel 2: A certain lot of land in Portsmouth, County of Rockingham, and State of New Hampshire, lying on the westerly side of Brewster Street, bounded and described as follows:

Easterly by said Brewster Street, 37 feet, 10 inches, more or less; northerly by land now or formerly of Mary E. Caswell, 50 feet, more or less; westerly by land now or formerly of Angelina Arric, 37 feet, 10 inches, more or less; southerly by a common passageway in common with the occupants of the lot next south of the same.

Being a portion of the same premises conveyed to the Grantor and James S. Remick by deed from Jonathan Kilroy dated July 17, 1985 recorded in Rockingham County Registry of Deeds Book 2558 Page 2349.


2001 JUL 11 AM 11:41

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

Also being a portion of the same premises conveyed by James S. Remick to the Grantor by deed to be recorded herewith in Rockingham County Registry of Deeds.

The premises hereby conveyed are not homestead property.


Signed this 28th day of June, 2001.


Linette S. Remick

State of New Hampshire
Rockingham, SS

June 28, 2001

Personally appeared the above named Linette S. Remick, known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same for the purposes therein contained.


Notary Public/Justice of the Peace
Conn E



#2558 P2349

KNOW ALL MEN BY THESE PRESENTS, That Jonathan Kilroy, sometimes also called Jonathon Kilroy, of 126 Atlantic Avenue, North Hampton, County of Rockingham and State of New Hampshire,

for consideration paid, grants to James S. Remick and Linette S. Remick, husband and wife, of 326 Brackett Road, Rye, County of Rockingham, New Hampshire, as joint tenants with right of survivorship.

with warranty covenants

Two parcels of land, each situated in Portsmouth, County of Rockingham, and State of New Hampshire, bounded and described as follows:

PARCEL 1: A certain lot or parcel of land, with the buildings thereon, lying, situated and being in the City of Portsmouth, in the County of Rockingham and the State of New Hampshire, on the westerly side of the public highway now known as Brewster Street, being now numbered 92 thereon, bounded and described as follows:

Beginning in the westerly sideline of said Brewster Street at land now or formerly of Mary Herlihy, and thence running by said Herlihy land S 67° 15' W, 50.2 feet, at land now or formerly of Frank Arric; thence turning and running by said Arric land N 24° 41' W, 28 feet to land now or formerly of the heirs of Kateny Mitrook; thence turning and running by said last named land N 67° 07' E, 13 feet; thence N 88° 09' E, 8.6 feet; thence S 22° 53' E, 5 feet; thence N 67° 07' E, 30 feet to said Brewster Street, thence turning and running S 22° 53' E by said Brewster Street, 20 feet to the point of beginning.

For title reference see Deed of Russell Mitrook to Mary Elizabeth Caswell, dated July 8, 1949 and recorded in the Rockingham County Registry of Deeds at Book 1135, Page 38.

PARCEL 2: A certain lot of land in Portsmouth, County of Rockingham, and State of New Hampshire, lying on the westerly side of Brewster Street, bounded and described as follows:

Easterly by said Brewster Street, 37 feet, 10 inches, more or less; northerly by land now or formerly of Mary E. Caswell, 50 feet, more or less; westerly by land now or formerly of Angelina Arric, 37 feet, 10 inches, more or less; southerly by a common passageway in common with the occupants of the lot next south of the same.

For title reference see Deed of Mary Herlihy to Mary E. Caswell, dated May 21, 1964 and recorded in the Rockingham County Registry of Deeds at Book 1716, Page 189.

Meaning and intending to convey the same premises conveyed to the grantor herein by deed of Gail M. Seagren, dated April 18, 1985 and recorded in the Rockingham County Registry of Deeds at Book 2541, Page 1443.

This is not homestead property.

37990

AUG 16 3 50 PM '85

Rockingham County
Registry of Deeds

1044244 STATE OF NEW HAMPSHIRE
TAX ON TRANSFER
OF REAL PROPERTY
10000 AND FIVE 300.26

Signed this 17th day of July, 1985

Jonathan Kilroy, sometimes also
called Jonathon Kilroy L.S.

July 17 A.D. 1955

Before me, [Signature]
~~Justice of the Peace~~ - Notary Public

KNOW ALL MEN BY THESE PRESENTS, That Gail M. Seagren, of Campbell's Lane, New Castle, County of Rockingham, and State of New Hampshire

for consideration paid, grant s to Jonathon Kilroy, of 126 Atlantic Avenue, North Hampton, County of Rockingham, and State of New Hampshire,

with warranty covenants

Two parcels of land, each situated in Portsmouth, County of Rockingham, and State of New Hampshire, bounded and described as follows:

PARCEL 1: A certain lot or parcel of land, with the buildings thereon, lying, situate and being in the City of Portsmouth, in the County of Rockingham and the State of New Hampshire, on the westerly side of the public highway now known as Brewster Street, being now numbered 92 thereon, bounded and described as follows:

Beginning in the westerly sideline of said Brewster Street at land now or formerly of Mary Herlihy, and thence running by said Herlihy land S 67° 15' W, 50.2 feet, at land now or formerly of Frank Arric; thence turning and running by said Arric land N 24° 41' W, 28 feet to land now or formerly of the heirs of Kateny Mitrook; thence turning and running by said last named land N 67° 07' E, 13 feet; thence N 88° 09' E, 8.6 feet; thence S 22° 53' E, 5 feet; thence N 67° 07' E, 30 feet to said Brewster Street; thence turning and running S 22° 53' E, by said Brewster Street, 20 feet to the point of beginning.

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For title reference see Deed of Mary Herlihy to Mary E. Caswell, dated May 21, 1964 and recorded in the Rockingham County Registry of Deeds at Book 1716, Page 189.

Meaning and intending to convey the same premises conveyed to the grantor herein by deed of Mary E. Caswell, dated May 25, 1978 and recorded in the Rockingham County Registry of Deeds at Book 2311, Page 1886.

This is not homestead property.

15014
Apr 18 1 19 PM '85
Rockingham County
Registry of Deeds

said grantee, husband, wife of said grantor, release to
all rights of homestead and other interests therein. BX2541 P1444

Signed this 18th day of April, 1985



Gail M. Seagren L.S.

_____ L.S.

State of New Hampshire
ROCKINGHAM ss.

April 18, A.D. 1985

Personally appeared Gail M. Seagren

known to me, or satisfactorily proven, to be the person whose name is
subscribed to the foregoing instrument and acknowledged that s/he executed the same
for the purposes therein contained.

Before me,

John P. M. 1/
Justice of the Peace - Notary Public

13626
MAY 25 4:06 PM
REC'D ROCKINGHAM COUNTY
REGISTRY OF DEEDS

KNOW ALL MEN BY THESE PRESENTS, That I, MARY E. CASWELL of 92 Brewster Street,
Portsmouth, County of Rockingham and State of New Hampshire, A Single Woman,
2311-1886

for consideration paid, grant to GAIL M. SEAGREN of Campbell's Lane, New Castle,
County of Rockingham and State of New Hampshire,

with ~~warranty~~ covenants to the said Gail M. Seagren, the following described real
estate:

Two parcels of land, each situated in Portsmouth, County of Rockingham and
State of New Hampshire, bounded and described as follows:

PARCEL I: A certain lot or parcel of land, with the buildings thereon, lying, sit-
uate and being in the City of Portsmouth, in the County of Rockingham and the State
of New Hampshire, on the westerly side of the public highway now known as Brew-
ster Street, being now numbered 92 thereon, bounded and described as follows:

Beginning in the westerly sideline of said Brewster Street at land now or formerly
of Mary Herlihy, and thence running by said Herlihy land S 67°15'W, 50.2 feet to
land now or formerly of Frank Arric; thence turning and running by said Arric land
N 24°41'W, 28 feet to land now or formerly of the heirs of Kateny Mitrook; thence
turning and running by said last named land N 67°07'E, 13 feet; thence N 88°09'E,
8.6 feet; thence S 22°53'E, 5 feet; thence N 67°07'E, 30 feet to said Brewster Street;
thence turning and running S 22°53'E by said Brewster Street, 20 feet to the point of
beginning.

For title reference see Deed of Russell Mitrook to Mary Elizabeth Caswell, dated
July 8, 1949 and recorded in the Rockingham County Registry of Deeds at Book 1135,
Page 38.

PARCEL II: A certain lot of land in Portsmouth, County of Rockingham and State
of New Hampshire, lying on the westerly side of Brewster Street, bounded and de-
scribed as follows:

Easterly by said Brewster Street, 37 feet, 10 inches, more or less; northerly by
land now or formerly of Mary E. Caswell, 50 feet, more or less; westerly by land now
or formerly of Angelina Arric, 37 feet, 10 inches, more or less; southerly by a common
passageway in common with the occupants of the lot next south of the same.

For title reference see Deed of Mary Herlihy to Mary E. Caswell, dated May 21,
1964 and recorded in the Rockingham County Registry of Deeds at Book 1716, Page 189.



~~scribes and acknowledges the foregoing instrument and the contents thereof~~

Witness My hand and seal this 25th day of May, 1978

[Signature]

Mary E. Caswell
MARY E. CASWELL

L.S.

L.S.

State of New Hampshire

ROCKINGHAM ss.

May 25th D. 1978

Personally appeared Mary E. Caswell

known to me, or satisfactorily proven, to be the person whose name is
subscribed to the foregoing instrument and acknowledged that she executed the same
for the purposes therein contained.

Before me,

[Signature]

Know all Men by these Presents:

THAT I, Mary Herlihy a widow of Portsmouth, County of Rockingham,
State of New Hampshire
for consideration paid, grant to Mary E. Caswell, a widow of Portsmouth, County of
Rockingham, State of New Hampshire
with warranty covenants to the said Mary E. Caswell

A certain lot of land in said Portsmouth lying on the Westerly
side of Brewster Street bounded and described as follows:

Easterly by said Brewster Street thirty-seven feet ten inches,
more or less; northerly by land of Mary E. Caswell fifty feet, more
or less; westerly by land of Angelina Arric thirty-seven feet ten
inches, more or less; southerly by a common passageway in common
with the occupants of the lot next south of the same.

a portion of
Being the same premises conveyed to the grantor herein by
deed of Walter H. Page dated June 2, 1919, recorded in Rockingham
Registry of Deeds, Book 727, Page 415.



XX
XX

XX
XX

Witness my hand and seal this 21 day of May 1964

WITNESS:

J. Wholey

Mary Herlihy

STATE OF NEW HAMPSHIRE

COUNTY OF ROCKINGHAM, SS.

On this the 21st day of May, 1964, before me, John J. Wholey
the undersigned officer, personally appeared Mary Herlihy
known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instru-
ment and acknowledged that She executed the same for the purpose therein contained.

In witness whereof I herunto set my hand and official seal.

J. Wholey
Justice of the Peace.

REC'D & RECORDED MAY 22 1964 12:35 Pm.

Del.
J. J. Wholey
U.S. Rev.
STAMP
.55

1135-038

Consideration
less Than \$100.00
1135 038

Know all Men by these Presents,

That I, Russell Mitrook, of Portsmouth, in the County of Rockingham
and The State of New Hampshire

for and in consideration of the sum of One Dollar and other valuable considerations
to me in hand before the delivery hereof, well and truly paid by Mary Elizabeth Caswell, of Ports-
mouth, in the County of Rockingham and The State of New Hampshire

the receipt whereof I do hereby acknowledge, have granted, bargained, and sold, and by these presents do give, grant, bargain,
sell, alien, enfeof, convey, and confirm unto the said Mary Elizabeth Caswell and her

heirs and assigns, forever, a certain lot or parcel of
land, with the buildings thereon, lying, situate and being in the City
of Portsmouth, in the County of Rockingham and The State of New Hampshire,
on the Westerly side of the public highway now known as Brewster Street,
being now numbered ninety-two (92) thereon, bounded and described as
follows, viz:- Beginning in the Westerly side-line of said Brewster
Street at land now or formerly of Mary Herlihy and thence running by
said Herlihy land South 67 degrees, 15 minutes West fifty and two tenths
(50.2) feet to land now or formerly of Frank Arrie; thence turning and
running by said Arrie land North 24 degrees, 41 minutes West twenty-eight
(28) feet to land of the heirs of Kateny Metrook; thence turning and
running by said last named land North 67 degrees, 07 minutes East
thirteen (13) feet; thence North 88 degrees, 09 minutes East eight and
six tenths (8.6) feet; thence South 22 degrees, 53 minutes East five
(5) feet; thence North 67 degrees, 07 minutes East thirty (30) feet
to said Brewster Street; thence turning and running South 22 degrees,
53 minutes East by said Brewster Street twenty (20) feet to the point
of beginning.

Title of the said Russell Mitrook in the above described
premises is derived in part from his mother, Kateny Metrook, who acquired
the premises by deed of Harry Cohen, dated July 12, 1919, recorded in
Rockingham County Registry of Deeds, Book 733, Page 77; in part by deed
from Edgar A. Blanchard, Guardian of Alice Mitrook, Anthony Mitrook and
Andrew Mitrook, dated January 24, 1941, recorded in said Registry of
Deeds, Book 967, Page 138; and in part by deed of Marie Metrook, Ethel
Metrook Sutton, Annie Metrook Fortin and John Metrook dated December 9,
1940, recorded in said Registry of Deeds, Book 980, Page 123.

TO HAVE AND TO HOLD the afore-described premises, with all the privileges and appurtenances to the same belonging to her
the said Mary Elizabeth Caswell and her heirs and assigns to her
and their only proper use and benefit forever. And I the said Russell Mitrook
for myself and my heirs, executors and administrators, do hereby covenant, grant, and agree to and with the said
grantee and her heirs and assigns, that until the delivery hereof I am the lawful owner
of the said premises, and I am seized and possessed thereof in my own right in fee simple and have full power
and lawful authority to grant, and convey the same in manner aforesaid; that the said premises are free and clear from all and every
incumbrance whatsoever; and that I will and my heirs, executors, and administrators shall warrant and defend
the same to the said Mary Elizabeth Caswell and her heirs and assigns against the lawful
claims and demands of any person or persons whomsoever.

And I, Margaret G. Mitrook, wife of said Russell Mitrook in consideration
aforesaid, do hereby relinquish my right of dower in the before mentioned premises.

And we each of us do hereby release, discharge, and waive all such rights of exemption from attachment and levy or sale on execution, and such other rights
whatsoever in said premises and in each and every part thereof, as our Family Homestead, as are reserved or secured to us, or either of us, by Chapter 214 of the Public
Laws of New Hampshire, or by any amendments thereto.

IN WITNESS WHEREOF we have hereunto set our hand and seal this eighth
July in the year of our Lord, one thousand nine hundred and forty-nine.

Signed, sealed and delivered in presence of

Oliver W. Marvin

Russell Mitrook
Margaret Mitrook

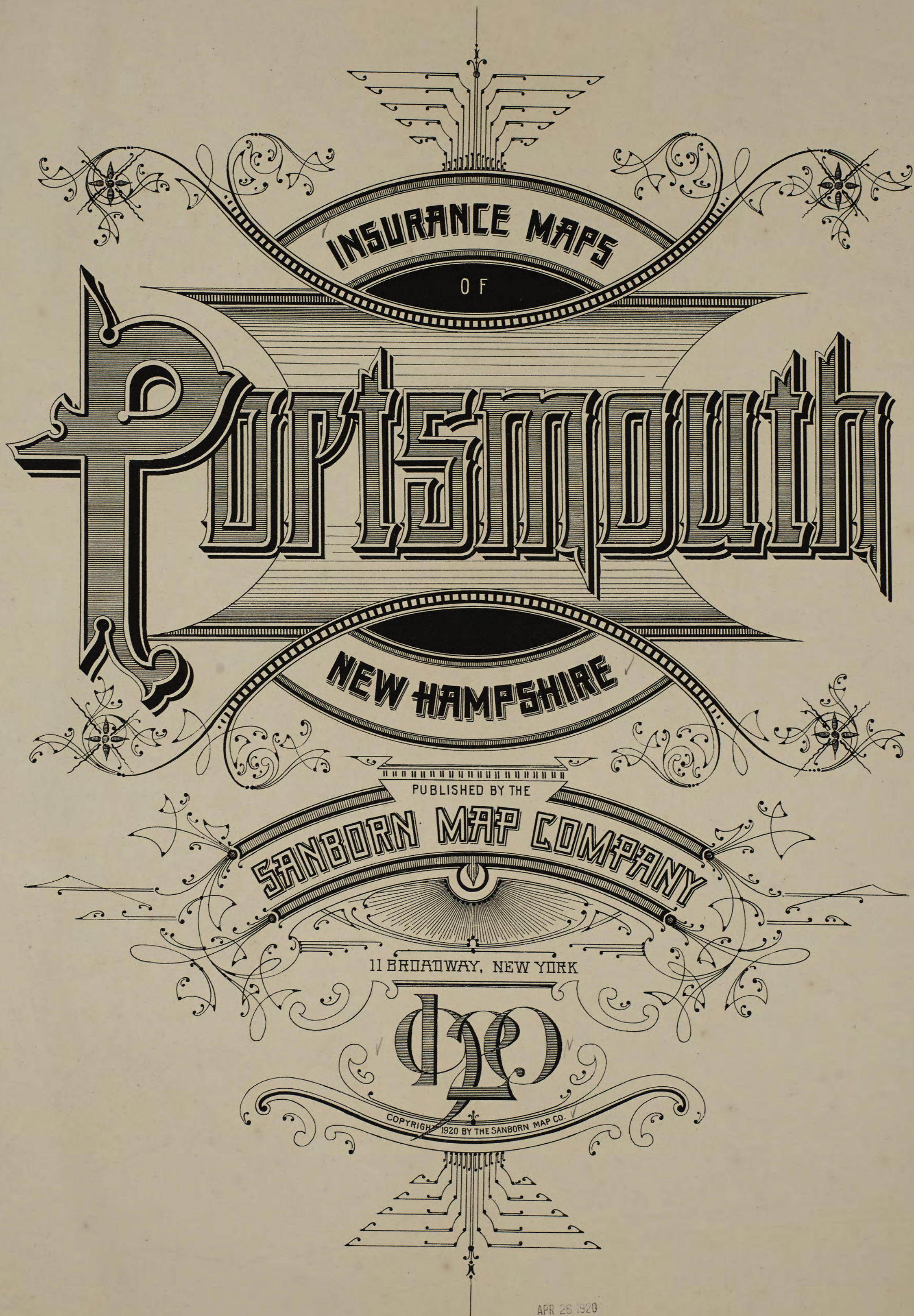


STATE OF NEW HAMPSHIRE
Rockingham, ss. July 8, A. D. 1949
Personally appeared the above named Russell Mitrook and Margaret G. Mitrook

and acknowledged the above instrument to be their voluntary act and deed.

Before me,
Oliver W. Marvin, Justice of the Peace.

My commission expires October 9, 1952.
Received and recorded July 11, 9 A.M., 1949.

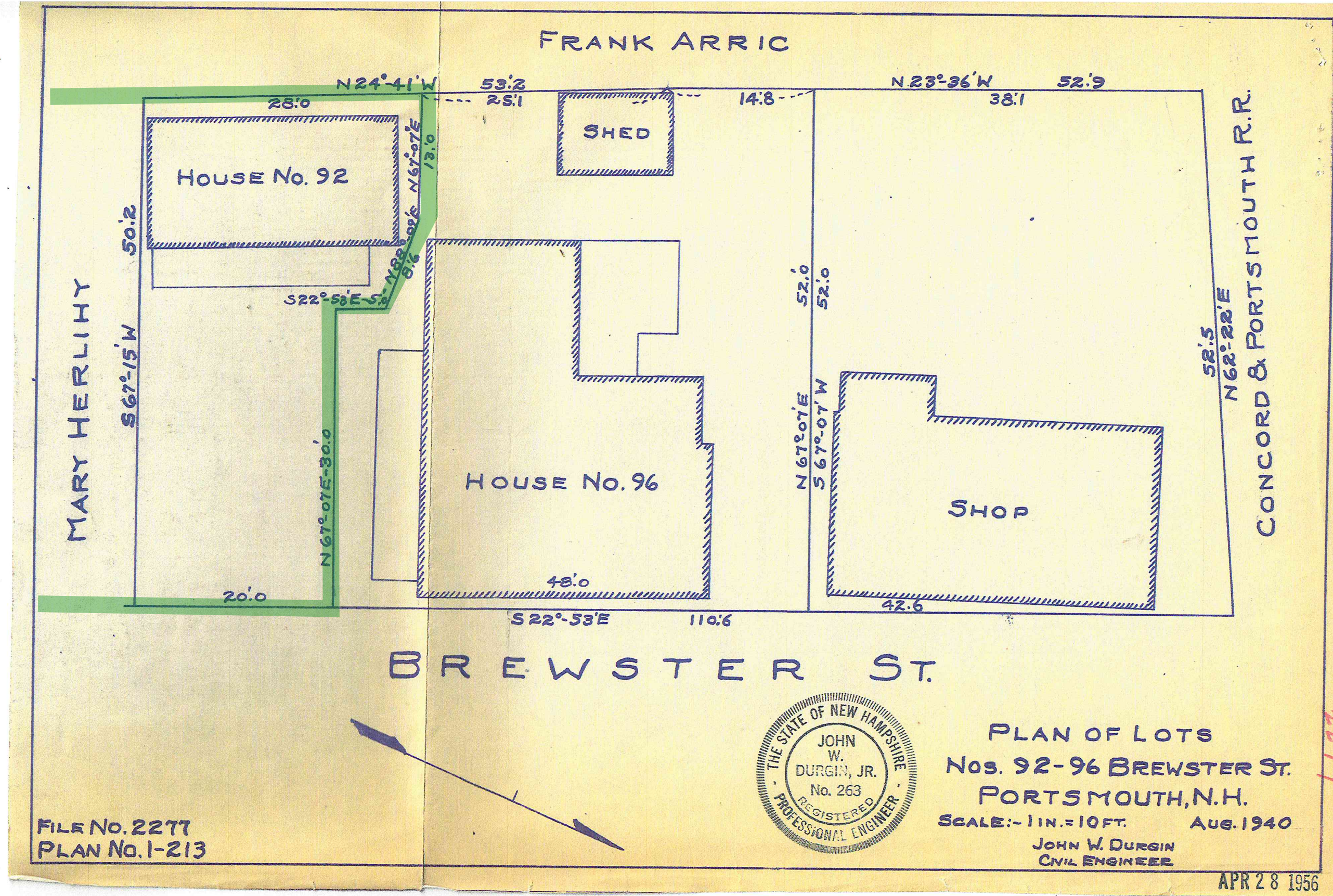


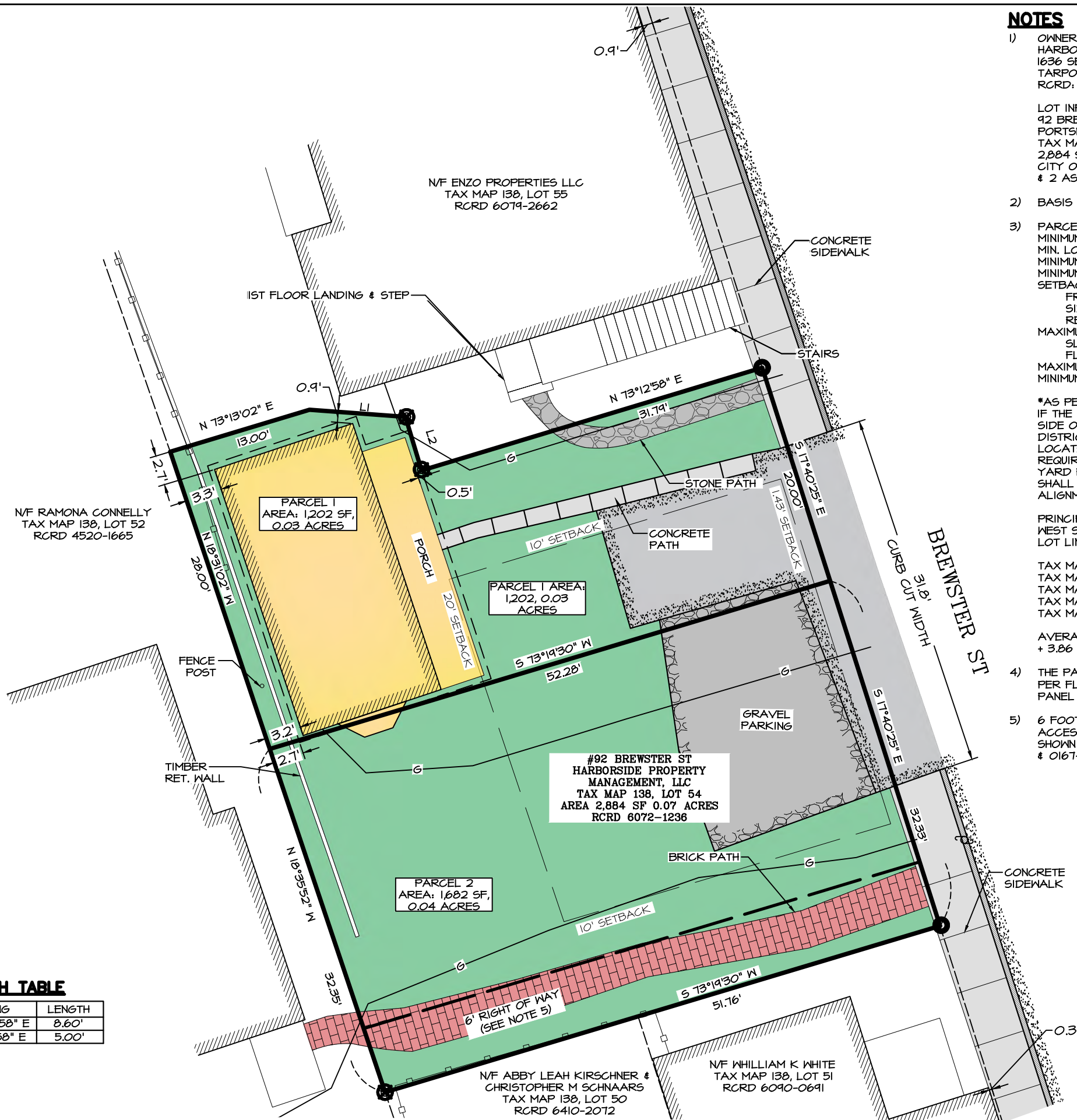


Scale of Feet.

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Geography and Map Division
Library of Congress





NOTES

- 1) OWNER OF RECORD:
HARBORSIDE PROPERTY MANAGEMENT, LLC
1636 SEABREEZE DR
TARPON SPRINGS, FL 34689
RCRD: 6072-1236
- LOT INFORMATION:
92 BREWSTER STREET
PORTSMOUTH, NH 03801
TAX MAP 138, LOT 54
2.884 SF 0.07 ACRES
CITY OF PORTSMOUTH TAX MAP SHOWS PARCELS 1
& 2 AS ONE LOT

- 2) BASIS OF BEARING HELD FROM PLAN REFERENCE #4.

- 3) PARCEL IS IN GENERAL RESIDENCE C ZONE (GRC)
 MINIMUM LOT AREA.....3,500 SF
 MIN. LOT AREA PER DWELLING UNIT.....3,500 SF
 MINIMUM FRONTAGE.....70 FT
 MINIMUM DEPTH.....50 FT
 SETBACKS:

FRONT.....1.43 FT*
SIDE.....10 FT
REAR.....20 FT

MAXIMUM BUILDING HEIGHT:
SLOPED ROOF.....35 FT
FLAT ROOF.....30 FT
MAXIMUM BUILDING COVERAGE.....35%
MINIMUM OPEN SPACE.....20%

*AS PER PORTSMOUTH ZONING ORDINANCE 10.516.10 IF THE EXISTING PRINCIPAL BUILDINGS ON THE SAME SIDE OF THE SAME STREET, IN THE SAME ZONING DISTRICT, AND WITHIN 200 FEET OF A LOT ARE LOCATED CLOSER TO THE STREET THAN THE MINIMUM REQUIRED FRONT YARD, THEN THE REQUIRED FRONT YARD FOR THE PRINCIPAL BUILDING ON SUCH LOT SHALL BE THE AVERAGE OF THE EXISTING ALIGNMENTS OF ALL SUCH PRINCIPAL BUILDINGS.



PRINCIPAL BUILDINGS WITHIN 200' OF LOT 54 ON
WEST SIDE OF BREWSTER ST - DISTANCE TO FRONT
LOT LINE

TAX MAP 138, LOT 56 - 1.86'
TAX MAP 138, LOT 55 - 0.90'
TAX MAP 138, LOT 51 - 0.30'
TAX MAP 138, LOT 25 - 0.24'
TAX MAP 138, LOT 37 - 3.86'

$$\text{AVERAGE FRONT YARD} = 1.86 + 0.90 + 0.30 + 0.24 + 3.86 / 5 = 1.43'$$

- 4) THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0259F, PANEL 259 OF 681, DATED JANUARY 29, 2021.
- 5) 6 FOOT WIDE RIGHT OF WAY EXISTS TO ALLOW ACCESS TO LOT 52 FROM BREWSTER STREET. THIS IS SHOWN ON THE 1979 TAX MAP. SEE RGRD 0722-0190 & 0167-0433.

LEGEND

-  DRILL HOLE FOUND
-  REBAR WITH CAP FOUND
-  RAILROAD SPIKE FOUND

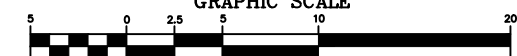
100x00 SPOT ELEVATION

FENCE

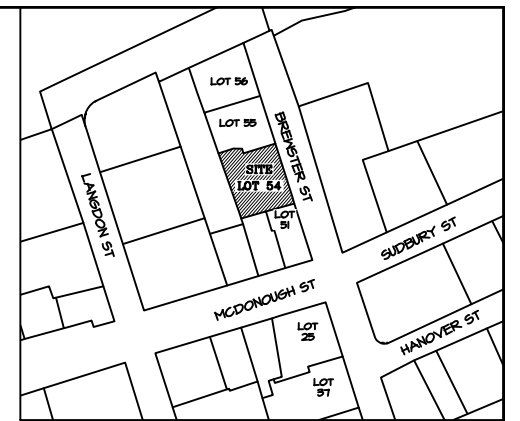
VERTICAL GRANITE CURB

GAS

GRAPHIC SCALE



(IN FEET)
SCALE: 1" = 10'



LOCUS PLAN
N.T.S.

REFERENCE PLANS

- 1) "PLAN OF LOTS NOS. 92-96 BREWSTER ST. PORTSMOUTH, N.H." BY JOHN W. DURGIN. DATED AUG. 1940. FILE NO. 2277, PLAN NO.. 1-213
- 2) "BOUNDARY SURVEY FOR CITY OF PORTSMOUTH" BY ROSS ENGINEERING, DATED SEP. 25, 2003. RCRD D-31009
- 3) "EASEMENT PLAN TAX MAP 138 - LOT 48 JOHN L. AHLGREN TO THE CITY OF PORTSMOUTH" BY AMBIT ENGINEERING, INC. DATED MAY 7, 2013. RCRD 38725
- 4) "SUBDIVISION PLAN TAX MAP 138 - LOT 48 FOR CHINBURG DEVELOPMENT, LLC ON LAND OF JOHN L. AHLGREN & BESSIE PALMISCIANO" BY AMBIT ENGINEERING, INC. DATED FEB. 26, 2016. RCRD 34552
- 5) "LOT LINE RELOCATION AND EASEMENT PLAN TAX MAP 138 - LOTS 60 & 61." BY AMBIT ENGINEERING, INC. DATED MAY 2, 2017. RCRD 40491
- 6) "BOUNDARY SURVEY FOR 92 & 96 BREWSTER ST. PORTSMOUTH, NH 03801" BY ROSS ENGINEERING LLC. DATED DEC 20, 2019. RCRD 41920

EXHIBIT D

7	3/3/2025	ZBA SUBMITTAL	
6	2/19/2025	ZBA SUBMITTAL	
5	1/31/2025	PRELIMINARY	
4	9/25/2024	PRELIMINARY	
ISS.	DATE	DESCRIPTION OF ISSUE	
SCALE	1" = 10'		
CHECKED	A.ROSS		
DRAWN	D.D.D.		
CHECKED			

ROSS ENGINEERING

**Civil/Structural Engineering
& Surveying**
909 Islington St.
Portsmouth, NH 03801
(603) 433-7560

CLIENT
GEORGE HAILS
92 BREWSTER STREET.
PORTSMOUTH, NH 03801

TITLE	EXISTING CONDITIONS PLAN
-------	--------------------------------

92 BREWSTER ST
PORTSMOUTH, NH 03801
TAX MAP 138, LOT 54

JOB NUMBER	DWG. NO.	ISSUE
23-095	1 OF 2	6

NOTES

1) OWNERS OF RECORD:
HARBORSIDE PROPERTY MANAGEMENT, LLC
1636 SEABREEZE DR
TARPOON SPRINGS, FL 34689
RCRD: 6072-1236

LOT INFORMATION:
92 BREWSTER STREET
PORTSMOUTH, NH 03801
TAX MAP 138, LOT 54
2,884 SF, 0.07 ACRES
CITY OF PORTSMOUTH TAX MAP SHOWS
PARCELS 1 & 2 AS ONE LOT

2) PARCEL IS IN GENERAL RESIDENCE C ZONE (GRC)
MINIMUM LOT AREA.....3,500 SF
MIN. LOT AREA PER DWELLING UNIT.....3,500 SF
MINIMUM FRONTAGE.....70 FT
MINIMUM DEPTH.....50 FT
SETBACKS:
FRONT.....1.43 FT
SIDE.....10 FT
REAR.....20 FT
MAXIMUM BUILDING HEIGHT:
SLOPED ROOF.....35 FT
FLAT ROOF.....30 FT
MAXIMUM BUILDING COVERAGE.....35%
MINIMUM OPEN SPACE.....20%

3) COVERAGES
BUILDING COVERAGE
EXISTING
HOUSE.....334 SF
PORCH.....90 SF
COVERAGE 424 SF/2,884 SF = 14.7%

PROPOSED
HOUSE.....899 SF
PORCH.....49 SF
COVERAGE 948 SF/2,884 SF = 32.9%

OPEN SPACE
EXISTING
BUILDING COVERAGE.....424 SF
GRAVEL.....301 SF
ASPHALT.....245 SF
BRICK PATH.....178 SF
CONCRETE PATH.....44 SF
CONCRETE SIDEWALK.....11 SF
STONE PATH.....35 SF
TOTAL LOT COVERAGE 1,238 SF
OPEN SPACE 2,884 - 1,238 = 1,646 SF
OPEN SPACE 1,646 / 2,884 = 57.1%

PROPOSED
BUILDING COVERAGE.....948 SF
LANDING & STEPS < 18".....22 SF
BULKHEAD.....23 SF
ASPHALT.....382 SF
BRICK PATH.....178 SF
CONCRETE SIDEWALK.....8 SF
TOTAL LOT COVERAGE 1,561 SF
OPEN SPACE 2,884 - 1,561 = 1,323 SF
OPEN SPACE 1,323 / 2,884 = 45.9%

4) GRADE PLANE:
AS PER PORTSMOUTH ZONING ORDINANCE
GRADE PLANE IS DEFINED AS FOLLOWS: A
REFERENCE PLANE REPRESENTING THE
AVERAGE OF FINISHED GROUND LEVELS
ADJOINING THE BUILDING AT ALL EXTERIOR
WALLS. WHEN THE FINISHED GROUND LEVEL
SLOPES AWAY FROM EXTERIOR WALLS, THE
REFERENCE PLANE SHALL BE ESTABLISHED BY
THE LOWEST POINTS WITHIN THE AREA BETWEEN
THE BUILDING AND THE LOT LINE OR, WHEN THE
LOT LINE IS MORE THAN 6 FEET FROM THE
BUILDING, BETWEEN THE BUILDING AND A POINT
6 FEET FROM THE BUILDING.
THE GRADE PLANE WAS DETERMINED BY THE
AVERAGE ELEVATION OF POINTS BETWEEN THE
PERIMETER OF THE BUILDING AND 6' AWAY
FROM THE BUILDING. THE GRADE PLANE WAS
CALCULATED AS 93.69'.

GRADE PLANE = 93.69'

5) BUILDING HEIGHT:
BUILDING HEIGHT FOR A GAMBREL, HIP, OR
HIP-TOPPED MANSARD ROOF IS CALCULATED
AS THE VERTICAL MEASUREMENT FROM THE
GRADE PLANE TO THE MIDWAY POINT
BETWEEN THE LEVEL OF THE EAVES AND THE
HIGHEST POINT ON THE ROOF RIDGE AS PER
PORTSMOUTH ZONING ORDINANCE. THE LEVEL
OF THE EAVES IS PROPOSED TO BE 120.90'.
THE HIGHEST RIDGE IS 126.48'. THE MIDPOINT
IS 123.69'.

THE BUILDING HEIGHT OF THE BUILDING WAS
CALCULATED TO BE 30.00', USING A GRADE
PLANE OF 93.69' AND A MIDPOINT ROOF EL.
OF 123.69'.

BUILDING HEIGHT = 123.69' - 93.69' = 30.00'

6) PARKING
AS PER PORTSMOUTH ZONING ORDINANCE
10.1112.311 THE REQUIRED MINIMUM NUMBER OF
OFF-STREET PARKING SPACES FOR DWELLING
UNITS OVER 750 SF IN FLOOR AREA IS 1.3
SPACES.

AS PER PORTSMOUTH ZONING ORDINANCE
10.814.26 1 OFF-STREET PARKING SPACE
SHALL BE PROVIDED FOR AN ADU IN
ADDITION TO THE SPACES THAT ARE
REQUIRED FOR THE PRINCIPAL
SINGLE-FAMILY DWELLING.

REQUIRED PARKING = 1.3 SPACES (DWELLING)
+ 1 SPACE (ADU) = 2.3 = 3 SPACES REQUIRED

3 PARKING SPACES HAVE BEEN PROVIDED, 2
SPACES ON THE LEFT SIDE OF THE
PROPOSED HOUSE, AND ONE INSIDE THE
GARAGE.

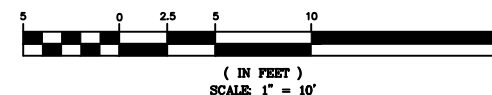
VARIANCE REQUESTED

ITEM	REQUIRED	EXISTING	PROPOSED
REAR PROPERTY LINE TO HOUSE	20 FT	3.2 FT	10.3 FT
REAR PROPERTY LINE TO OVERHANG	20 FT	2.7 FT	9.3 FT
RIGHT SIDE PROPERTY LINE TO OVERHANG	10 FT	0 FT	9.4 FT

LENGTH TABLE

	BEARING	LENGTH
L1	S 85°44'58" E	8.60'
L2	S 16°46'58" E	5.00'

GRAPHIC SCALE



7	3/3/2025	ZBA SUBMITTAL	
6	2/19/2025	ZBA SUBMITTAL	
5	1/31/2025	PRELIMINARY	
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CHECKED			

ROSS ENGINEERING
Civil/Structural Engineering
& Surveying
909 Islington St.
Portsmouth, NH 03801
(603) 433-7560

CLIENT
GEORGE HAILS
92 BREWSTER STREET.
PORTSMOUTH, NH 03801

TITLE

SITE PLAN

92 BREWSTER ST
PORTSMOUTH, NH 03801
TAX MAP 138, LOT 54

JOB NUMBER	DWG. NO.	ISSUE
23-095	2 OF 2	6

LEGEND

- DRILL HOLE FOUND
- ⊗ REBAR WITH CAP FOUND
- ⊙ RAILROAD SPIKE FOUND
- 100x00 SPOT ELEVATION
- FENCE
- VERTICAL GRANITE CURB
- GAS
- UTILITY POLE
- DRAINAGE FLOW PATH

Heloise

992.120.v2 GL

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603-431-9559



Dear Builders and Home Buyers,

In addition to our Terms and Conditions (the "Terms", available on ArtformHomePlans.com), please be aware of the following:

As defined in the Terms, this is a Design Drawing and may not yet have Construction Drawings (CDs) or the CDs may not reflect design changes. During the conversion of a Design Drawing to Construction Drawings, changes may be necessary including, but not limited to, dimensional changes or changes to the framing and structural supports.

We require that our designs be built substantially as shown in the Drawings. Markups agreed to by Builder and Home Buyer must still be approved by Artform, and may require additional changes, such as structural updates. While we attempt to accommodate requested changes where possible and reasonable, including considerations of design integrity, any and all changes to Drawings must be approved in writing by Artform. It is recommended that you have your Design Drawings updated by Artform prior to attaching any Drawing to any builder agreement. Artform shall not be responsible for the misuse of or unauthorized alterations to any of its Drawings.

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

We are not responsible for typographical errors. Home Buyer shall give thoughtful consideration to all drawings and documents provided to them and shall be solely responsible for ensuring that they understand features in the home that are important to them.

1/31/2025

Heloise

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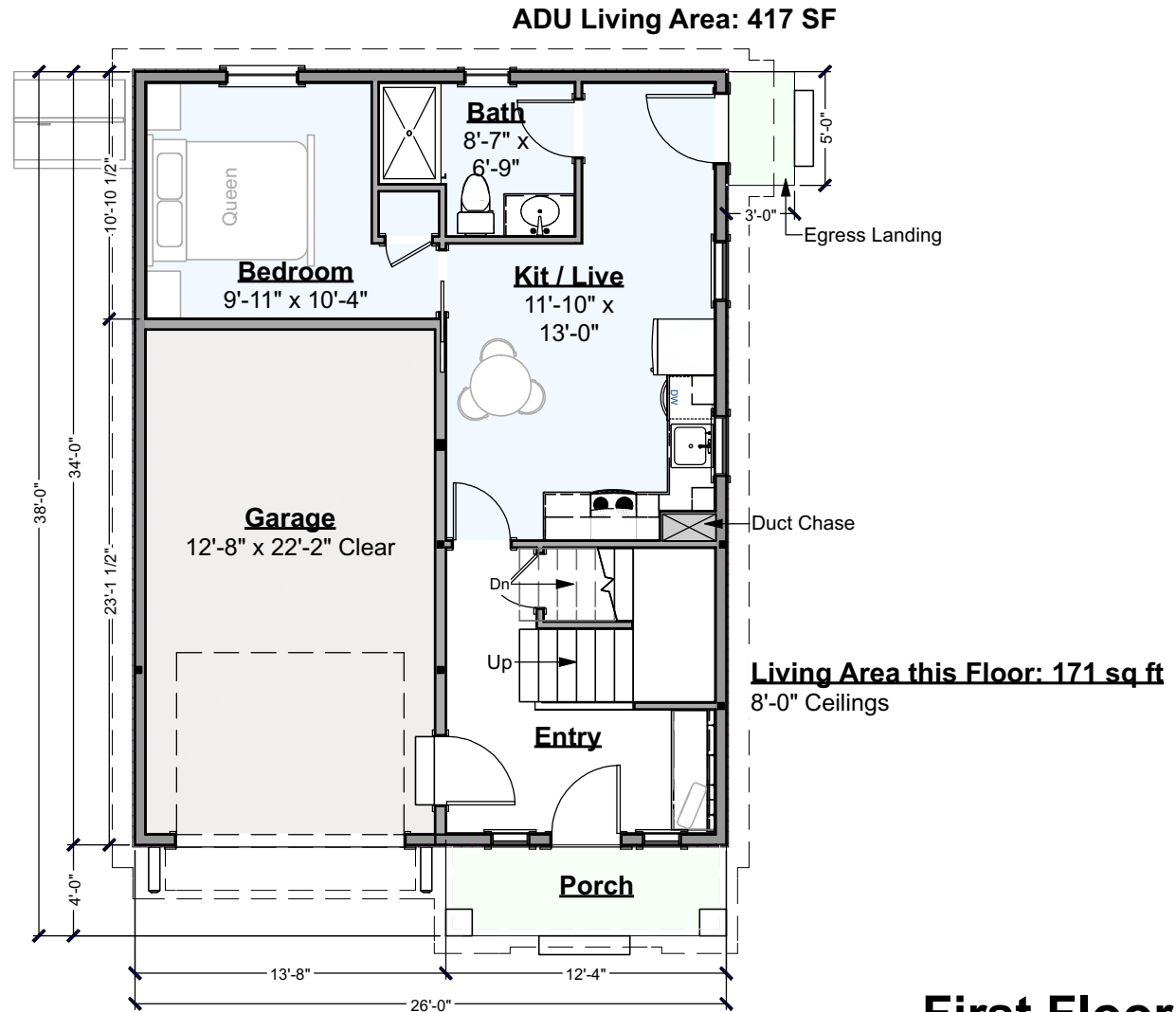
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First Floor Plan
Scale: 1/8" = 1'-0"

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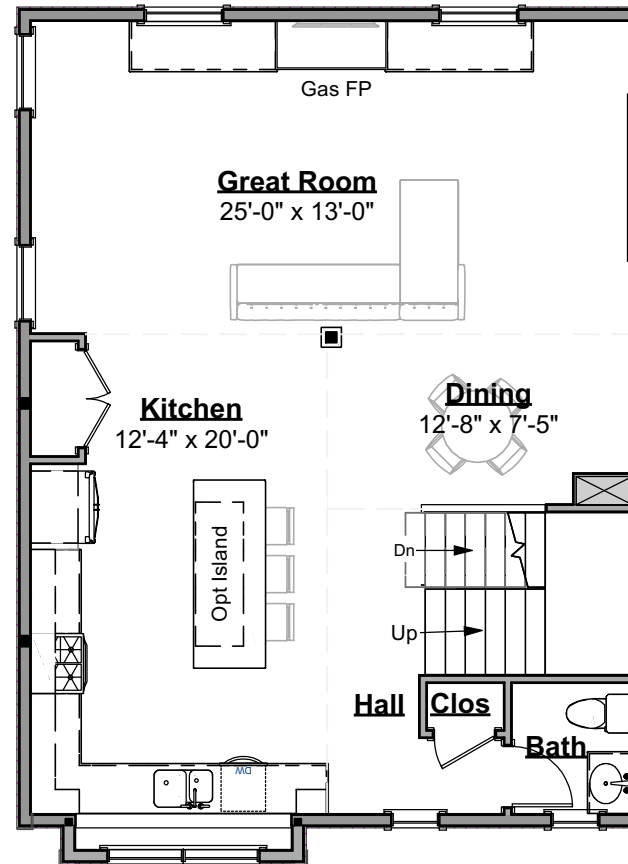
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603-431-9559

Living Area this Floor: 899 sq ft

8'-6" Ceilings



Second Floor Plan

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

1/31/2025

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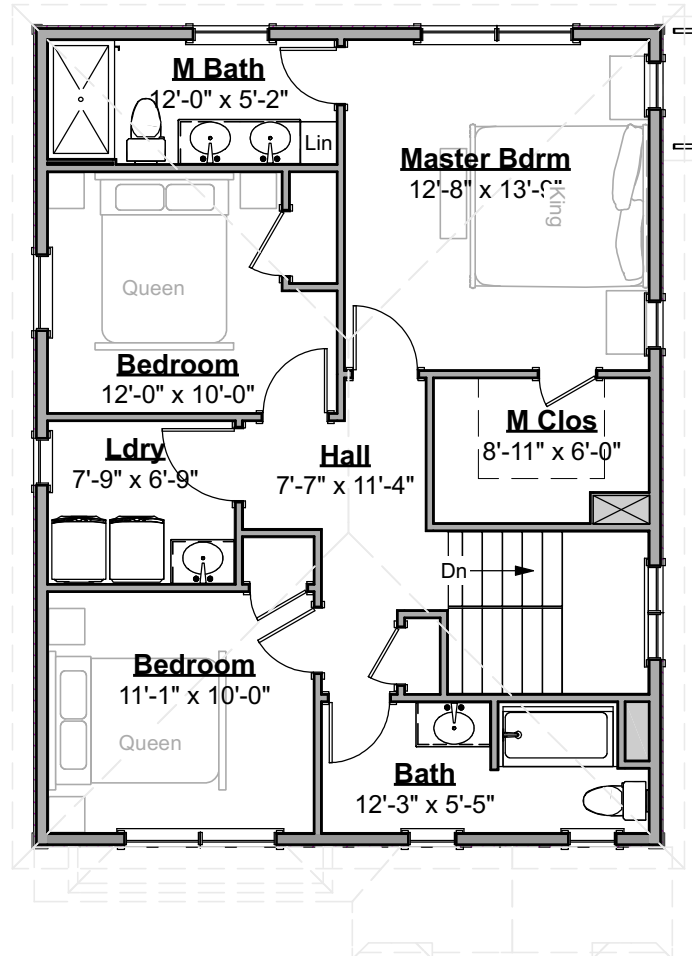
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603-431-9559

Living Area this Floor: 884 sq ft

8'-0" Ceilings



Third Floor Plan

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

1/31/2025

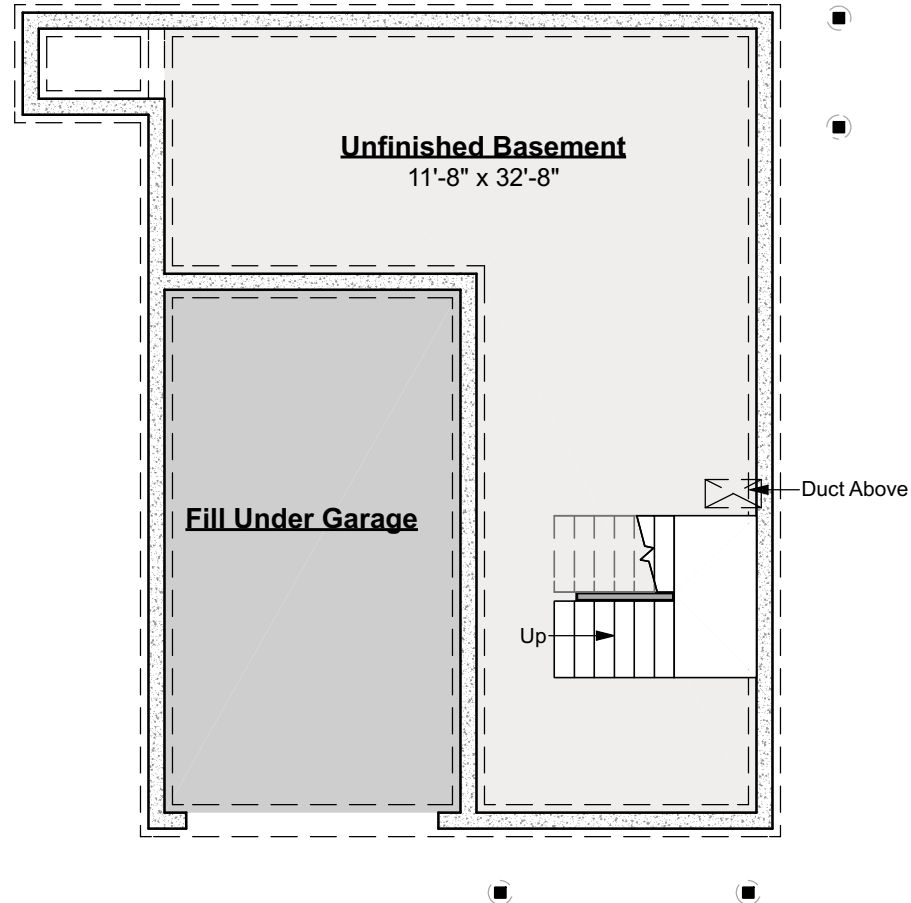
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603-431-9559



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

1/31/2025

Heloise

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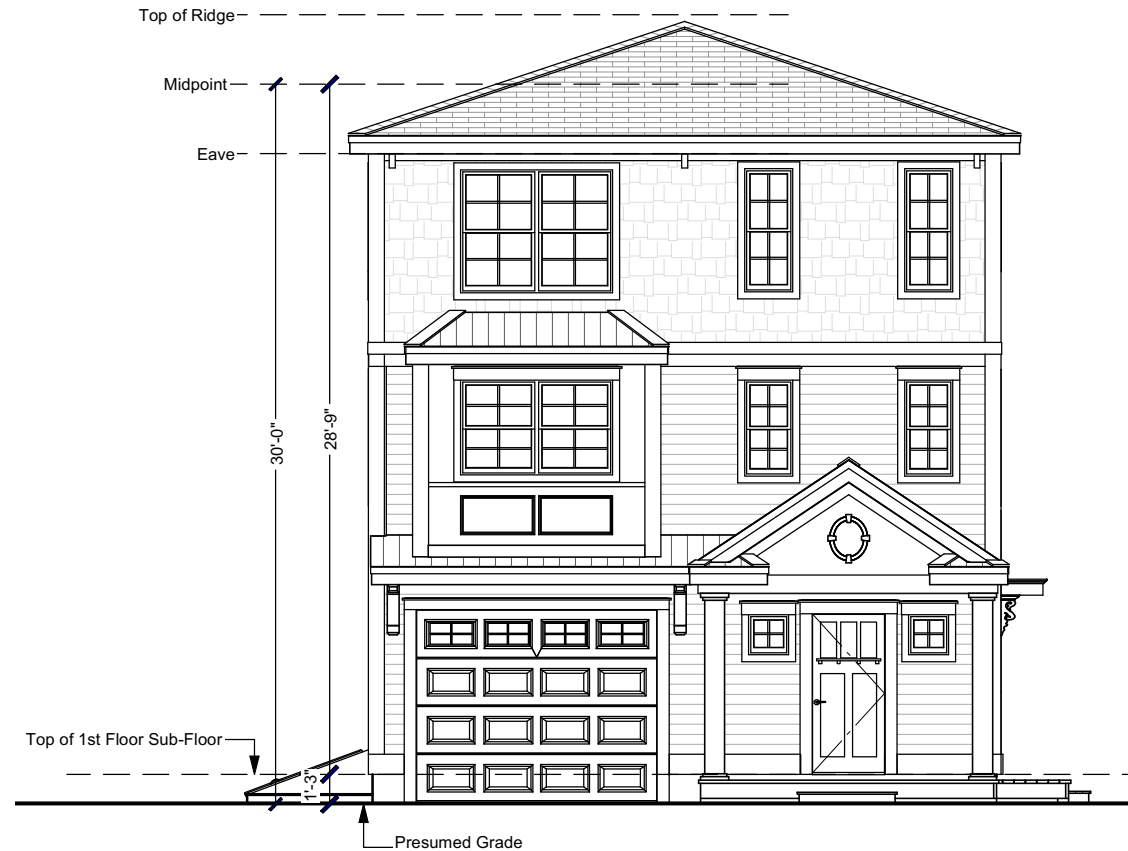
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Front Elevation
Scale: 1/8" = 1'-0"

1/31/2025

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Right Elevation

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

1/31/2025

Heloise

992.120.v2 GL

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603-431-9559



Rear Elevation

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

1/31/2025

Heloise

992.120.v2 GL

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

1/31/2025

Heloise

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Interior Views

92 Brewster St



Imagery ©2025 Google, Imagery ©2025 Airbus, Maxar Technologies, Map data ©2025 50 ft

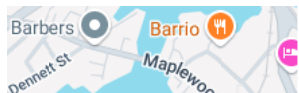
EXHIBIT F

Google Maps

85 Brewster St



Image capture: Nov 2024 © 2025 Google



II. OLD BUSINESS

B. The request of **Colbea Enterprises LLC (Owners)**, for property located at **1980 Woodbury Avenue** whereas relief is needed to demolish and redevelop an existing gas station and convenience store which requires the following: 1) Variance from Section 10.5B33.20 to allow for a front lot line build out of 0% where a minimum of 75% is required for a commercial building; 2) Variance from Section 10.5B34.60 to allow for a front setback from the lot line of 27 feet on Woodbury Avenue and 53.5 feet on Gosling Road where a maximum of 20 feet is required; 3) Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street; 4) Variance from Section 10.835.31 to allow outdoor service facilities to be located within 34.5 feet and 40.5 of a lot line where 50 feet is required. 5) Variance from Section 10.835.32 to allow for drive-through lanes, bypass lanes and stacking lanes to be located within 13 feet of the property line where 30 feet is required; 6) Variance from Section 10.843.33 to allow for pump islands to be located within 34.5 feet of the lot lines where 40 feet is required; 7) Variance from Section 10.1251.10 to allow for an aggregate sign area of 309 s.f. where a maximum of 223.5 s.f. is allowed; 8) Variance from Section 10.1251.20 to allow a 134 s.f. freestanding sign where a maximum of 100 s.f. is allowed; and 9) Variance from Section 10.1253.10 to allow for a freestanding sign at a height of 26.5 feet where a maximum of 20 feet is allowed. Said property is located on Assessor Map 239 Lot 11 and lies within the Gateway Corridor (G1) District. (LU-25-39)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Gas Station and Convenience Store	Gas Station and Convenience Store* Site Redevelopment	Mixed Uses
<u>Lot area (sq. ft.):</u>	38,399	38,399	10,000 min. (Sec. 10.5B42.40)
<u>Street Frontage (ft.):</u>	375.2	375.2	100 min. (Sec. 10.5B32.30)
<u>Lot depth (ft.):</u>	200	200	NR min.
<u>Front Yard (Woodbury Ave) (ft.):</u>	10.4	27	0-20 max.
<u>Secondary Front Yard (Gosling Rd.) (ft.):</u>	>20	53.5	0-20 max.
<u>Left Yard (ft.):</u>	>10	34.8	10 min.
<u>Rear Yard (ft.):</u>	13	37.5	15 min.
<u>Height (ft.):</u>	18.4	<40	40 max.
<u>Building Coverage (%):</u>	19.3	18.5	70 max.

<u>Building Footprint (SF):</u>	7,402	4,600	10,000	max
<u>Open Space Coverage (%)</u> :	19	19.6	10	min.
<u>Front Lot Line Build Out (%)</u>	9	0	75	min.
<u>Facade Orientation</u>	Perpendicular	Parallel	Parallel	
<u>Drive-through, Bypass, Stacking Lanes setback (ft.)</u>	N/A	13	30	min.
<u>Outdoor Service Facilities setback (ft.)</u>	N/A	34.5 & 40.5	50	min.
<u>Pump Islands setback (ft.)</u>	23	34.5	40	min.
<u>Parking</u>	19	19**	12	min.
<u>Estimated Age of Structure:</u>	1995	Variance request(s) shown in red.		

*Special Exception for Convenience Goods 2 use 24 hours per day in the G1 District granted April 22, 2025.

** Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street.

Signs Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Building Frontage (ft.):</u>	210	149	
<u>Wall Sign (SF)</u>	N/A	84	200 max.
<u>Freestanding Sign (SF)</u>	N/A	134	100 max.
<u>Freestanding Sign Setback (ft.)</u>	N/A	11.2	10 min.
<u>Freestanding Sign Height (ft.)</u>	N/A	26.5	20 max.
<u>Canopy Sign (SF)</u>	N/A	16 (x 2)	20 max.
<u>Aggregate Sign area (SF)</u>	N/A	309	223.5 max. (1.5x bldg. frontage)
		Variance request(s) shown in red.	

Other Permits/Approvals Required

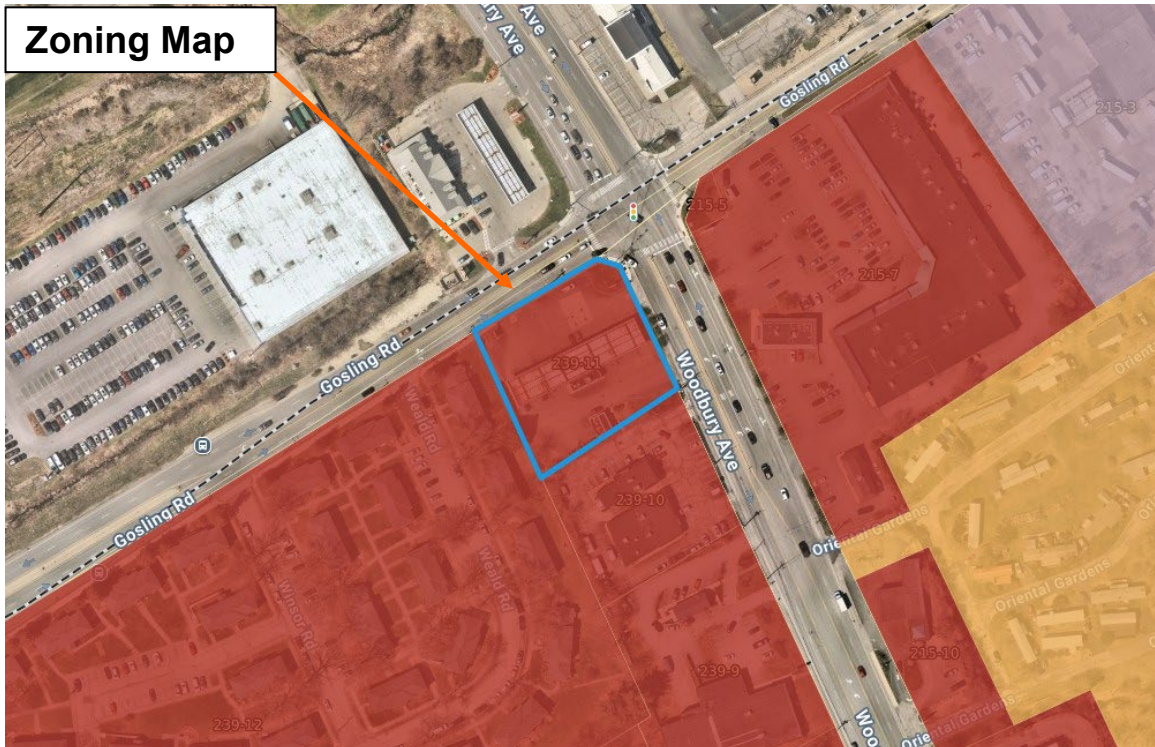
- TAC / Planning Board Site Plan Review
- Planning Board - Conditional Use Permit (Motor Vehicle Service Station and Drive-through Uses)
- Sign Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **July 18, 1995** – 1) A Special Exception as allowed in Article II, Section 10-206(17) to construct an entire new gasoline service station facility with a 40' x 45' convenience store, a 36' x 175.85' canopy and a 10' x 24' storage building, and 2) a Variance from Article II, Section 10-302 to allow the canopy: a) a 67.3' front yard where 70' is the minimum required, b) a 14.3' right side yard where the minimum is 30', and; c) a 9.2' left yard where the minimum is 30', 3) a Variance from Article II, Section 10-402(1) to allow the storage building a 6' rear yard where 10' is the minimum required, 4) a Variance from Article II, Section 10-206 to allow the outdoor storage of two 1000 gallon propane tanks where such use is not allowed, and; 5) a Variance from Article IX, Section 10-901 to allow: a) a 72.3 s.f. freestanding sign at the corner of Gosling Road and Woodbury Avenue with a 10' setback where 35' is required, and; b) a 72.3 s.f. freestanding sign abutting Gosling Road on the right side of the property with 0' front and 25'± side yards where 35' is the minimum required. The Board voted to **grant** the request for a Special Exception and Variances #2 and #3 as advertised and presented. The Board voted to **grant** the request for Variance #5 with the **stipulation**:
 - That the 72.3 s.f. freestanding sign abutting Gosling Road on the right of the property be maintained with a 5' front yard rather than a 0' front yard.

The Board voted to **deny** the request for Variance #4 as advertised and presented.

Planning Department Comments

The applicant is requesting to redevelop the existing gas station and convenience store site at the intersection of Woodbury Ave. and Gosling Rd. on the Newington town line. The Board granted a Special Exception for a Convenience Goods 2 use operating 24 hours per day at the April 22, 2025 meeting and postponed consideration of the Variances with the expectation that the applicant address significant concerns of the Board related to the variances associated with the drive-thru and either eliminate it or provide substantial justification as to why it would not impact the adjacent residential property; what could be done to mitigate the signage variances by either eliminating them or describing why they were critical to the property's operation of the gas stations use; and for the remaining variances, either eliminate them or provide a better explanation of why the objectives of the Gateway District could not be fully met if it remained as a gas station and Convenience Store 2 use.

The proposed Motor Vehicle Service Station and Drive-through Facility uses require a Conditional Use Permit from the Planning Board. The proposed project is to construct a single-story, 4,600 s.f. convenience store with drive-thru and four fueling islands and requires relief from several dimensional requirements as proposed. The applicant is also proposing replacement of all signage on the property as part of the redevelopment and is seeking relief from Article 12 for the proposed sign package.

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

 - (b) *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.



Christopher B. Drescher
Admitted in NH

May 21, 2025

City of Portsmouth
Board of Adjustment
1 Junkins Ave.
3rd Floor
Portsmouth, NH 03801

RE: Colbea Enterprises LLC: property located at 1980 Woodbury Ave. (LU-25-39)

Update ZBA on amendments to Site Plan

Dear Honorable Zoning Board of Adjustment ("ZBA"),

I write to you on behalf of our client, Colbea Enterprises, LLC, to provide some background as to the changes that we implemented to the proposed project in light of suggestions and concerns raised by the ZBA back on April 22, 2025, at our first meeting.

First, we address the concerns raised relative to the Drive-Thru by bringing the speaker box closer to building thereby increasing the distance between proposed speaker and abutting residences (*originally 38.7' from the lot line to 41.0' from the lot line*). Additionally, an eight (8) foot stockade fence, as well as plantings are being proposed to run along the westerly side of the Property to add additional buffering and screening in the interests of mitigating the noise for the abutters to the west

Second, we address issues raised with respect to the signage. Under the revised Plan, we are removing the monument sign along Gosling Road. We are reducing the overall signage on-site from 453.25 sf to 308.11 sf. The proposed pylon sign is relocated to match the existing pylon location and, in doing so, we no longer need a variance for 10-foot sign setback as the new location will be 11.2 feet from the lot line. We are also offering to include a "Welcome to Portsmouth" sign to be placed at the intersection. This would be within the right-of-way and Colbea would coordinate with the City to establish design.

Third, in order to demonstrate compliance with the Gateway District's mission statement, we are proposing an outdoor dining area next to the convenience store and another one along Gosling Road. The addition of sidewalks throughout the site to provide interconnectivity and

allow pedestrians to navigate between Gosling and Woodbury without going to the main intersection. We are Proposing stamped concrete sidewalks at pedestrian crossings to raise awareness for drivers. Finally, we are adding a bike rack on-site.

Fourth, we are providing a Landscape Plan in an effort to demonstrate how we will turn the site from primarily pavement with minimal landscaping to that of a greener site with many plantings.

Fifth, and final, we have conducted a Sound Study to demonstrate that the noise level of the proposed project will not only comply with the Portsmouth Zoning Ordinance but also demonstrate that the noise level from the Drive-Thru will not have a negative impact to the abutting property.

Should you need us to provide anything else please do not hesitate to ask.

Very Truly Yours,

CRONIN BISSON & ZALINSKY, P.C.

By: 

Christopher B. Drescher, Esq.
722 Chestnut Street
Manchester, NH 03104
(603)-624-4333
cdrescher@cbzlaw.com

VARIANCE #1 from PZO 10.5B33.20

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section 10.5B33.20*, to allow for a Front Lot Line build out of 0 feet where a minimum of 127.5 feet would be the required 75% build out as required by the PZO for commercial and mixed-use buildings. However, the proposed project is outside the required 20-foot setback for this provision of the PZO to apply.

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance (“PZO”) Section 10.5B33.20

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it is important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for Front Lot Line Build Out of 0 feet where the PZO would otherwise require 127.5 feet.

The ask is minimal. The Lot is small and, given that there will be fuel pumps and drive through lanes, the Store will have to be placed in the middle of the Lot. There is no reason to have the Store closer to the front line of the Property and to do so would not make sense for a convenience store fueling station.

That said, the Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. This relief would be required for any similar convenience store and fueling use, much as it sits today or for any similar use in the future.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a Front Lot Line Build Out of 0 feet because the Store is setback beyond the required 20 feet from the Front Line of the Property.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a

much needed 'face-lift' and overall modernization of all of the convenience store and fueling components, bringing the fueling systems up to date with state of the art technology that is much safer to use and operate than the current system that is likely 25+ years old.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store on site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

"Hardship," under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. '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,' **which can be said another way that if the variance is granted would it unreasonably frustrate the purpose ordinance;** and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherent of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” See NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance is to avoid overcrowding, and life and safety. More specifically, the City of Portsmouth desires to control the size of buildings along the Front Lot Line as it is preferred under the PZO to have buildings flush against the Front Lot Line for aesthetics.

Here, it does not make sense to have the front of the Store up against the Front Lot Line. This is not a historic building and fueling stations/convenience stores generate short visits by the public so the Front Lot Line should be clear, the building setback, and the fuel pumps prevalent.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

VARIANCE #2 from PZO 10.5B34.60

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section 10.5B34.60*, to allow for a Front Setback from the lot line of 0 feet where a maximum of 20 feet is required.

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance (“PZO”) Section 10.5B34.60

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for Front Building Setback of 0 feet where the PZO would otherwise require a maximum of 20 feet.

The ask is minimal. The Lot is small and, given that there will be fuel pumps and drive through lanes, the Store will have to be placed in the middle of the Lot. There is no reason to have the Store closer to the front line of the Property and to do so would not make sense for a convenience store fueling station.

That said, the Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. This relief would be required for any similar convenience store and fueling use, much as it sits today or for any similar use in the future.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a Front Building Setback of 0 feet because the Store is setback well beyond the required maximum of 20 feet from the Front Lot Line of the Property.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed ‘face-lift’ and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘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,’ which can be said another way that if the variance is granted *would it unreasonably frustrate the purpose ordinance*; and,

c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherit of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” *See* NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it *unreasonably frustrate the purpose of the PZO.*

The purpose and goals of the applicable ordinance is to avoid overcrowding, and life and safety. More specifically, the City of Portsmouth desires to control the location of commercial buildings to be close to the Front Lot Line and likely encourage parking behind the commercial property for both aesthetics and to thwart overcrowding the neighborhood.

Here, it does not make sense to have the front of the Store up against the Front Lot Line. This is not a historic building and fueling stations/convenience stores generate short visits by the public so the Front Lot Line should be clear, the building setback, and the fuel pumps prevalent.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

VARIANCE #3 from PZO 10.5B83.10

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section 10.5B83.10*, to allow for parking spaces to be located between the Principal building and the street.

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance (“PZO”) Section 10.5B83.10

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for off street parking to be present between the principal Building (aka the Store) and the front Property line.

The ask is minimal. The Lot is small and, given that there will be fuel pumps and drive through lanes, the Store will have to be placed in the middle of the Lot. There is no reason to have the Store closer to the front line of the Property and to do so would not make sense for a convenience store fueling station.

That said, the Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. This relief would be required for any similar convenience store and fueling use, much as it sits today or for any similar use in the future.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for off street parking to occur between the front Property line and the Store. Generally, any fueling station is setup so people pull into the site and park in front of the convenience store to enter – not park around back only to walk around front.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed ‘face-lift’ and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘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,’ which can be said another way that if the variance is granted *would it unreasonably frustrate the purpose ordinance*; and,

c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherit of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” *See* NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it *unreasonably frustrate the purpose of the PZO.*

The purpose and goals of the applicable ordinance is to avoid motor vehicles parking in front of buildings in a neighborhood where the Zoning is tailored to keep buildings close to the Front Lot line likely for aesthetics. More specifically, the City of Portsmouth desires to control the location of commercial buildings to be close to the Front Lot Line and likely encourage parking

behind the commercial property for both aesthetics and to thwart overcrowding the neighborhood.

Here, it does not make sense to have the front of the Store up against the Front Lot Line. This is not a historic building and fueling stations/convenience stores generate short visits by the public so the Front Lot Line should be clear, the building setback, and the fuel pumps prevalent.

As such, it is far more logical to allow the parking to take place between the Store and the Front Lot line.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

VARIANCE #4 from PZO 10.835.31

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section 10.835.31*, to allow for outdoor service facilities (transaction windows, menu boards, speakers, *etc.*) to be within the required setback of 50 feet – approximately 34.8 feet and 40.8 feet from the applicable lot lines.

The variance is needed for two locations that are both marked on the “variance plan” by a “4” – one is located by the proposed menu board along the westerly side of the main building (40.8’/41.0’) and the other is located along the southerly side at the drive through window (34.8’).

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the

same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today's standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance ("PZO") Section 10.835.31

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it is important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for outdoor service facilities (transaction windows, menu boards, speakers, etc.) to encroach into the required 50-foot setback and come within 34.8 feet and 40.8 feet at two locations from the applicable lot lines.

The ask is minimal. The Lot is small and, given that there will be fuel pumps and drive through lanes, the Store will have to be placed in the middle of the Lot. Indeed, the dimensional

constraints are such that this section of the PZO would be difficult, if not impossible, to comply with.

That said, the Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. This relief would be required for any similar convenience store and fueling use, much as it sits today or for any similar use in the future.

The outdoor service facilities are common for any drive-through and there are other drive-throughs in the vicinity of the Property.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a minor encroachment into a setback for the standard outdoor service facilities that are inherit with fueling stations and similarly situated businesses.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed ‘face-lift’ and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘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,’ **which can be said another way that if the variance is granted *would it unreasonably frustrate the purpose ordinance***; and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherit of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is quite literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Finally, the main building has been moved slightly more away from the lot to the west. Additionally, a tall stockade fence (8' tall), as well as some additional plantings have been added to further screen the abutting lots.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” *See* NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance provide for buffering between the Property line and the activity of a drive-through and, in this case, its outdoor services facilities. This is done for both aesthetics and life and safety.

Here, there is already some buffering between the proposed drive-through lanes and the abutting western property line. Furthermore, the corner of the Property where this activity will be located is the furthest point from any other activity taking place on site. The Applicant has also enhanced the lot line with tall fence and some plantings to further screen the westerly neighbors.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

VARIANCE #5 from PZO 10.835.32

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (***“PZO”***) ***Section 10.85.32***, to allow for drive-through lanes, bypass lanes and stacking lanes (*collectively the “drive-through lanes”*) to come within 13 feet of the required 30-foot setback from the applicable lot lines.

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance (“PZO”) Section 10.835.32

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it is important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for drive-through lanes, bypass lanes, and stacking lanes to encroach into the required 30-foot setback up to 13 feet along the westerly side of the Property.

The Lot is small and given those constraints the Store will have to be placed in the middle of the Lot. Approximately 30 feet from the westerly side of the Property is where the edge of the logical location for the Store.

Despite this ask, there is buffering between the Property and the abutting property to the west. Traffic will enter from either entrance and circle around behind the Store at the most remote part of the Property from the intersections of Gosling Road and Woodbury Avenue. In

doing so, the ‘action’ from the drive-through will be as pushed as far back as possible in light of the dimensional constraints of the Property.

The Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. It is common for such businesses as the one being proposed to have a drive-through component and this relief would be required for any similarly situated business. Notably, there is a drive-through on the abutting property to the south (*Dunkin*) that, presumably, also does not comply with the applicable section of the PZO. Therefore, a drive-through – even one encroaching into the applicable setback – is consistent with the neighborhood.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for an encroachment into a setback to accommodate a common and typical drive-through component to a fueling station.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed ‘face-lift’ and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘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,’ **which can be said another way that if the variance is granted *would it unreasonably frustrate the purpose ordinance***; and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherit of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” *See* NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance provide for buffering between the Property line and the activity of a drive-through. This is done for both aesthetics and life and safety.

Here, there is already sufficient buffering between the proposed drive-through lanes and the abutting western property line. Furthermore, the corner of the Property where this activity will be located is the furthest point from any other activity taking place on site.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

VARIANCE #6 from PZO 10.843.33

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section 10.843.33*, to allow for fuel pumps to come within 28 feet of the required 40-foot setback from the applicable lot lines.

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance (“PZO”) Section 10.843.33

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for fuel pumps to encroach into the required 40-foot setback within 28 feet along the easterly side of the Property. Otherwise, all other sides of the Property comply with this section of the PZO.

The Lot is small and given those constraints the Store will have to be placed in the middle of the Lot and the fuel pumps will logically go in front of the Store. Notably, there will be fewer pumps than are currently on site today and, moreover, one can see on the current conditions plan that the configuration of the fuel pumps does not presently conform to this section of the PZO. Despite the aforesaid non-conformity, the current encroachment has not, to the best of our knowledge, ever caused any problems.

The Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at

the Property for decades. It is common for such businesses as the one being proposed to have a drive-through component and this relief would be required for any similarly situated business. Notably, there is another fueling station across Gosling Road in the abutting Town.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for the fuel pumps to encroach into a setback that would result in the Property being more conforming. Currently, Mobil has more fuel pumps than what the Applicant is proposing and, furthermore, does not conform to this section of PZO on multiple sides of the Property whereas, here, the ask is only relative to the front Property line.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed ‘face-lift’ and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘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,’ **which can be said another way that if the variance is granted would it unreasonably frustrate the purpose ordinance;** and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherit of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” *See* NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance provide for buffering between the Property line and the activity at the fuel pumps. This is done for both aesthetics and life and safety.

Here, what is being proposed is more conforming than what is on site today. Fuel pumps are clearly a normal aspect of any fueling station and the relief sought is minor distance from Woodbury Avenue. Otherwise, no relief is needed from any other setback relative to the fuel pumps.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

VARIANCE #7 from PZO 10.1251.10

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section PZO 10.1251.10*, to allow for a greater aggregate sign area than the maximum area of 1.5’ per linear foot of the building frontage per establishment. Under the PZO, 223.50 square feet is allowed and the Applicant requests relief to allow for an aggregate sign area of 308.11 square feet. This request is down from an ask of 453.26 square feet that was previously requested in order to address some of the Honorable Board’s comments.

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the

site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e.*, *Heavenly Donuts*, *Mary Lou’s Coffee*, *Honeydew Coffee*, *etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming

at one time, the lot is not conforming under today's standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance ("PZO") Section PZO 10.1251.10

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it is important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for a maximum aggregate sign area of 308.11 square feet where 223.50 square feet is allowed.

The surrounding area contains many commercial properties and, likewise, many signs. The proposed project contains within it several businesses such as the co-brand food/beverage service, a drive-through, fuel pumps, and a convenience store.

The proposed sign is the Applicant's standard sign. Although 'standard' what makes the needs of this sign different is, as discussed above, the number of items that must be displayed as

there are multiple businesses and services that are being proposed. Additionally, the Applicant has an obligation to post the ever-changing fuel prices that must be displayed in a manner where drivers can read in an instant said pricing information, as well as be informed as to what businesses and services are being offered at the site.

The proposed sign will be appropriate for the Zone and it will not alter the overall esthetic of the area since the area is commercial.

The Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. It is common for such businesses as the one being proposed to have a drive-through component and this relief would be required for any similarly situated business. Notably, there is another fueling station across Gosling Road in the abutting Town.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years and there are many large signs in the area.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and

reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a slightly larger aggregate sign area.

A fueling station requires a sign of appropriate size to help customers find the business and see it from a distance so they have ample time to be in the correct lane to turn into the fueling station. Moreover, the sign needs to accurately convey the various businesses and amenities that will be available at the Property.

If the sign cannot be seen from a distance, the customers may not be able to enter the station in time and end up driving by or they may attempt to reach the station by cutting through multiple lanes, turning around in another business' driveway, etc.

The proposed sign will help bring in customers to the Property and it will not block any views, obstruct sightlines, or block any other abutting commercial properties.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed 'face-lift' and overall modernization of all of the Store and fueling components,

bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘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,’ **which can be said another way that if the variance is granted would it unreasonably frustrate the purpose ordinance;** and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherent of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is quite literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

The sign needs to be large enough so a driver can ascertain what amenities are present at the Property within a short span of time. Moreover, the sign has a lot of information to convey. First, the gas prices need to be displayed prominently – a requirement and staple of all gas stations. Second, there is a convenience store, the gas itself (Shell), and the co-brand business. As such, the extra square footage is needed to convey all the businesses and amenities.

As stated above, the Applicant has reduced this request from 453.26 square feet to 308.11 square feet to minimize this request.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” *See* NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance is to ensure that signage does not get too large, too many, too unsightly, or cause any too many distractions.

Here, despite the extra square footage the sign will not be abnormally large in comparison to many signs in the area. We contend the sign will be attractive as the Applicant has several similar businesses located throughout New England.

The sign's extra square footage is needed so that the Applicant can fit all the various businesses and amenities that will be offered in a manner that can be read safely by drivers who will only have a short span of time to ascertain the sign's verbiage.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

VARIANCE #8 from PZO 10.1251.20

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section PZO 10.1251.20*, to allow for a larger sign area of 135 square feet where the PZO allows for a maximum sign area of 100 square feet.

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance (“PZO”) Section PZO 10.1251.20

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for a maximum sign area of 135 square feet where 100 square feet is allowed.

The surrounding area contains many commercial properties and, likewise, many signs. The proposed project contains within it several businesses such as the co-brand food/beverage service, a drive-through, fuel pumps, and a convenience store.

The proposed sign is the Applicant’s standard sign. Although ‘standard’ what makes the needs of this sign different is, as discussed above, the number of items that must be displayed as there are multiple businesses and services that are being proposed. Additionally, the Applicant has an obligation to post the ever-changing fuel prices that must be displayed in a manner where drivers can read in an instant said pricing information, as well as be informed as to what businesses and services are being offered at the site.

The proposed sign will be appropriate for the Zone and it will not alter the overall esthetic of the area since the area is commercial.

The Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. It is common for such businesses as the one being proposed to have a slightly larger sign conveying multiple businesses, as well as an array of information. Notably, there is another fueling station across Gosling Road in Newington that has signs much larger and taller than what is currently on the Property.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years and there are many large signs in the area.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a slightly larger sign area.

A fueling station requires a sign of appropriate size to help customers find the business and see it from a distance so they have ample time to be in the correct lane to turn into the fueling station. Moreover, the sign needs to accurately convey the various businesses and amenities that will be available at the Property.

If the sign cannot be seen from a distance, the customers may not be able to enter the station in time and end up driving by or they may attempt to reach the station by cutting through multiple lanes, turning around in another business' driveway, etc.

The proposed sign will help bring in customers to the Property and it will not block any views, obstruct sightlines, or block any other abutting commercial properties. Moreover, it would be consistent with the neighborhood when considering the size of the Cumberland Farms signs across Gosling Road.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed 'face-lift' and overall modernization of all of the Store and fueling components, bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘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,’ **which can be said another way that if the variance is granted *would it unreasonably frustrate the purpose ordinance***; and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherent of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

The sign needs to be large enough so a driver can ascertain what amenities are present at the Property within a short span of time. Moreover, the sign has a lot of information to convey. First, the gas prices need to be displayed prominently – a requirement and staple of all gas stations. Second, there is a convenience store, the gas itself (Shell), and the co-brand business. As such, the extra square footage is needed to convey all the businesses and amenities.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” *See* NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance is to ensure that signage does not get too large, too many, too unsightly, or cause any too many distractions.

Here, despite the extra square footage the sign will not be abnormally large in comparison to many signs in the area. Indeed, as stated above the Cumberland Farm signs across the street are

significantly larger than signs at the Property now. We contend the sign will be attractive as the Applicant has several similar businesses located throughout New England.

The sign's extra square footage is needed so that the Applicant can fit all the various businesses and amenities that will be offered in a manner that can be read safely by drivers who will only have a short span of time to ascertain the sign's verbiage.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

VARIANCE #9 from PZO 10.1253.10

Relief Requested

The Applicant (*Colbea, LLC*) request a variance from the *Portsmouth Zoning Ordinance* (*“PZO”*) *Section PZO 10.1253.10*, to allow for a sign height of 26.25 feet where the PZO allows for a maximum sign height of 20 feet.

Background/Facts

The Applicant is the owner of 1980 Woodbury Avenue in Portsmouth, NH, which is sometimes referred to as Tax Map 239, Lot 11 (the “Property”).

The Property is zoned Gateway Corridor (“G1” (*a Mixed Residential District*)) and sits right on the border of Portsmouth and Newington, NH. The Property is currently developed with a Mobil Fueling Station that is leased by the Applicant.

The Applicant intends to take the Property back from the Lessee and construct its own fueling station under its in-house brand, Season’s Corner Market. Notably, the Applicant is a family-owned company that retains and maintains its businesses as opposed to selling their businesses off post approvals. They operate many similar facilities in NH (Nashua, Hooksett and Tilton) along with some 55+ sites in MA and NH.

The Property is currently surrounded by almost entirely commercial businesses save a residential multi-family housing development, which sits in the same zone, that directly abuts the site to the East off of Gosling Road where a large wooden fence, as well as a chain link fence and some vegetation provide screening and a buffer.

The Property is a corner lot with ingress/egress along both Gosling Road, as well as Woodbury Avenue.

Notably, there is a fire hydrant at the southwest corner of the Property very close to a utility pole.

The current Mobil Fueling Station has a convenience store, a large canopy that extends out both sides of the store, and there are eight (8) fueling islands with a total of twelve (12) fuel pumps. The Applicant intends to reduce the scope of the canopy, as well as reduce the number of fueling pumps to four (4) fueling islands with a total of eight (8) fuel pumps.

Additionally, the convenience store building (the “Store”) will be oriented to be flush against and, present facing to, Woodbury Avenue. Currently, the one entrance for Mobil faces Woodbury Avenue but is obscured by the large canopy.

The Applicant intends to have a ‘drive-through’ lane, which will be relative to ‘co-brand’ business (*i.e., Heavenly Donuts, Mary Lou’s Coffee, Honeydew Coffee, etc.*) that would be subordinate to the Store and fueling uses.

According to a quick registry search the Property was conveyed from a previous owner (*Duncan Construction Company, Inc.*) in 2010 to Greenback Security, LLC. *See* Rockingham County Registry of Deeds at Book 5089, Page 870. Prior to the 2010 conveyance the Property was owned by Duncan Construction Company, Inc., since October 22, 1958, according to the same deed. The 1958 deed is recorded at Book 2461, Page 58, and appears to be too old to view online. Portsmouth adopted Zoning in 1926 and, while this Property may have been conforming at one time, the lot is not conforming under today’s standards, which is readily evident from all the dimensional relief needed to replace one fueling station with another fueling station.

Variance Criteria

Portsmouth Zoning Ordinance (“PZO”) Section PZO 10.1253.10

1. Granting the variance would not be contrary to the public interest because:

The standard for prongs one and two of the variance criteria is whether the requested relief, if granted, will *alter the essential character of the neighborhood* or *negatively impact the health, welfare, and safety of the surrounding area* and *mere conflict with the terms of the ordinance is insufficient* as all variance requests are somewhat averse to an ordinance, hence why the relief is sought in the first instance. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

Furthermore, it important to note that prong 1 is in the negative. That is to say that it does not require the Applicant to prove that the proposed use is IN the public interest, but only to prove that it is NOT CONTRARY TO the public interest.

Here, the immediate ask is to allow for a maximum sign height 26.25 feet where the PZO allows for 20 feet.

The surrounding area contains many commercial properties and, likewise, many signs. The proposed project contains within it several businesses such as the co-brand food/beverage service, a drive-through, fuel pumps, and a convenience store.

The proposed sign is the Applicant’s standard sign. Although ‘standard’ what makes the needs of this sign different is, as discussed above, the number of items that must be displayed as there are multiple businesses and services that are being proposed. Additionally, the Applicant has an obligation to post the ever-changing fuel prices that must be displayed in a manner where drivers can read in an instant said pricing information, as well as be informed as to what businesses and services are being offered at the site.

The proposed sign will be appropriate for the Zone and it will not alter the overall esthetic of the area since the area is commercial.

The Property has been historically used as a fueling station, which is an allowed use and, despite the need for a Special Exception to allow for a convenience store, such use has been at the Property for decades. It is common for such businesses as the one being proposed to have a slightly larger sign conveying multiple businesses, as well as an array of information. Notably, there is another fueling station across Gosling Road in the abutting Town that has signs much larger and taller than what is currently on the Property.

Consequently, there is no reason to believe that by granting this variance it would *alter the essential character of the neighborhood* since a fueling station/convenience store has been in place for so many years and there are many large signs in the area.

Similarly, given that the same use has been active on this Property for so many years there is no reason to suspect or to conclude that an approval would *negatively impact the health, welfare, and safety of the surrounding area*. Indeed, there is simply no evidence to point to that would suggest the public is at any risk.

Moreover, the minimal ask is only in *mere conflict* with the PZO.

2. If the variance were granted, the spirit of the ordinance would be observed because:

As a matter of law, the analysis for both prongs one and two of the Variance criteria are the same. As such, the Applicant incorporates and repeats the narrative of Prong 1 (above) and reiterates the same for Prong 2. Harborside Associates, L.P. v. Parade Residence Hotel, LLC, 162 N.H. 508 (2011).

3. Granting the variance would do substantial justice because:

Perhaps the only guiding rule [on this standard] is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Malachy Glen Assocs. v. Town of Chichester, 155 N.H. 102, 109 (2007).

Here, the loss to the Applicant in not approving this variance would far outweigh any benefit to the general public.

The ask here is fairly minimal – to allow for a slightly larger taller sign than is allowed by the PZO.

A fueling station requires a sign of appropriate size to help customers find the business and see it from a distance so they have ample time to be in the correct lane to turn into the fueling station. Moreover, the sign needs to accurately convey the various businesses and amenities that will be available at the Property.

If the sign cannot be seen from a distance, the customers may not be able to enter the station in time and end up driving by or they may attempt to reach the station by cutting through multiple lanes, turning around in another business' driveway, etc.

The proposed sign will help bring in customers to the Property and it will not block any views, obstruct sightlines, or block any other abutting commercial properties. Moreover, it would be consistent with the neighborhood when considering the size of the Cumberland Farms signs across Gosling Road.

As such, by granting the variance the Applicant can make the most of their investment and improve the Property, as well as give the commercial use that currently exists at the Property a much needed 'face-lift' and overall modernization of all of the Store and fueling components,

bringing the fueling systems up to date with state-of-the-art technology that is much safer to use and operate than the current system at the Property.

If denied, the public gains nothing, as this Proposal will be an improvement as to what is currently on site and said improvements will aid in the Property living up to its highest taxpaying potential.

4. If the variance were granted, the values of the surrounding properties would not be diminished because:

The surrounding area is zoned to allow for the fueling station and there has been a convenience store in site for decades and, moreover, there is another convenience store/fueling station directly across the street on the Newington side of Gosling Road. As such, this is an appropriate use for the area.

Very plainly, there is no evidence to suggest that granting this relief would negatively impact the surrounding property values.

5. Unnecessary Hardship:

“Hardship,” under NH RSA 674:33, I (b) (1) (A) and (B) is a straight forward three step analyses;

- a. What are the special conditions of the property, if any;
- b. ‘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,’ **which can be said another way that if the variance is granted would it unreasonably frustrate the purpose ordinance;** and,
- c. Is the proposed use reasonable?

First, the special conditions (a) are satisfied due to the small size of the Property and the use that has historically existed at this location for decades.

The Property is a corner lot that is well suited for the in/out traffic that is inherent of a fueling station/convenience store.

What is being proposed is slightly smaller than what exists today because the amount of fuel pumps will be reduced by 50%.

To the extent that any residential areas will be impacted by the Proposal there is already adequate screening. This Property is quite literally the Gateway from Newington into Portsmouth and is surrounded by several other commercial properties that would be expected to be in the vicinity of a fueling station.

The sign needs to be large enough so a driver can ascertain what amenities are present at the Property within a short span of time. Moreover, the sign has a lot of information to convey. First, the gas prices need to be displayed prominently – a requirement and staple of all gas stations. Second, there is a convenience store, the gas itself (Shell), and the co-brand business. As such, the extra height and square footage is needed to convey all the businesses and amenities.

Next is (b), whether “[n]o fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.” *See* NH RSA 674:33, *et seq.* Or, again, if the variance is granted will it **unreasonably frustrate the purpose of the PZO.**

The purpose and goals of the applicable ordinance is to ensure that signage does not get too large, too many, too unsightly, or cause any too many distractions.

Here, despite the extra height the sign will not be abnormally large in comparison to many signs in the area. Indeed, as stated above, the Cumberland Farm signs across the street are significantly larger than signs at the Property now. We contend the sign will be attractive as the Applicant has several similar businesses located throughout New England.

The sign's extra height is needed so that the Applicant can fit all the various businesses and amenities that will be offered in a manner that can be read safely by drivers who will only have a short span of time to ascertain the sign's verbiage.

Overall, we contend that what the Applicant is asking for with respect to this relief will not unreasonably frustrate the purpose of the PZO and is, indeed, appropriate for a fueling station.

Lastly (c), the proposed use for the Property is for a fueling station and the applicable Zone allows for that use and, to the extent further relief is needed for the convenience store piece, such a use has been present for so long that the proposed use is reasonable.

May 30, 2025 - 11:50am
F:\MISC Projects\46077 - Woodbury Ave - Portsmouth\46077-16 Colbea Ent LLC - 1980 Woodbury Ave, Portsmouth, NH\Design\Exhibits\46077-16 Variance Plan.dwg

EASEMENTS & RESTRICTIONS:

COMMONWEALTH LAND TITLE INSURANCE COMPANY TITLE COMMITMENT FILE NO. 200LT0055-NH, DATED DECEMBER 16, 2020 WAS EXAMINED AS PART OF THIS SURVEY. SURVEY EXCEPTIONS CONTAINED IN SCHEDULE B PART II OF THAT COMMITMENT WHICH THE SUBJECT PROPERTY IS SUBJECT TO AND/OR HAS THE BENEFIT OF ARE AS FOLLOWS:

- ITEM 11 - NOTICE OF CONDEMNATION, EASEMENT RIGHTS, AND LIMITATION ON ACCESS AS DESCRIBED IN THE AMENDED NOTICE OF CONDEMNATION DATED 9/14/83 AND RECORDED IN VOLUME 2461, PAGE 163. (SEE PLAN REFERENCE 9)
- ITEM 12 - THE FOLLOWING MATTERS DEPICTED ON BOUNDARY AND TOPOGRAPHIC PLAN, ASSESSORS MAP R-39-L0T11, WOODBURY AVE. & GOSLING ROAD, PORTSMOUTH, NEW HAMPSHIRE, PREPARED FOR MOBIL OIL CORPORATION DATED 12/6/1991 AND RECORDED AS PLAN D21731.
- A - MOBIL SIGN TRAVERSING THE NORTHERLY BOUNDARY. (SIGN SINCE HAS BEEN RELOCATED AND RESIDES ON THE PROPERTY, SHOWN HEREON)
 - B - CATCH BASIN AND PIPES TRAVERSING THE NORTHERLY BOUNDARY. (AS SHOWN ON THE PLAN)
 - C - CURBING AND CONCRETE WALKWAY, TRAVERSING THE NORTHERLY, EASTERLY AND SOUTHERLY BOUNDARIES.
 - D - OBSERVATION WELL LOCATED WITHIN THE PROPERTY.
 - E - ELECTRIC POLE SUPPORT POLE TRAVERSING THE EASTERLY BOUNDARY.
- ITEM 13 - NOTICE OF RESTRICTIONS, INCLUDING RESTRICTIONS ON THE USE OF GROUNDWATER, AS RECORDED IN VOLUME 4011, PAGE 1268. (RESTRICTION NOT PLACEABLE AND THEREFORE NOT PLOTTED).
- ITEM 14 - TERMS AND PROVISIONS OF LEASE BY AND BETWEEN DUNCAN CONSTRUCTION COMPANY, INC. AND MOBIL OIL CORPORATIONS AS EVIDENCED BY A NOTICE OF LEASE DATED 2/25/1992 AND RECORDED IN VOLUME 2836, PAGE 1157, AS AFFECTED BY SUPPLEMENTAL NOTICE OF LEASE RECORDED IN VOLUME 3113, PAGE 1212. ASSIGNMENTS OF THE LEASE ARE RECORDED IN VOLUME 3046, PAGE 2323 AND VOLUME 3688, PAGE 1466. ALLIANCE ENERGY CORP. CONVERTED TO ALLIANCE ENERGY LLC AS EVIDENCED AT VOLUME 4929, PAGE 2060. (NOT PLOTTABLE)

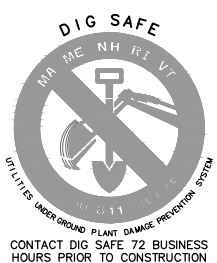
ENCROACHMENTS:

- ON THE SOUTH, WALKWAY EVIDENCE OF PASSAGE BETWEEN SUBJECT PARCEL AND TAX MAP 239 LOT 10;
- ON THE WEST, STOCKADE FENCE OVER RECORD LINE;
- ON THE NORTH, OVERHEARD UTILITY WIRE OVER RECORD LINE;
- ON THE NORTH, UTILITY POLE SUPPORT WIRE OVER RECORD LINE;
- ON THE NORTH, LANE DIRECTORY SIGN OVER RECORD LINE;

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HORIZONTAL SCALE 1"=20'
20 10 0 20

REV	DATE	DESCRIPTION	DR	CK
1	4/28/2025	REVISED PER ZONING BOARD COMMENTS	JKC	CRR

NOTES

CURRENT ZONING IS GATEWAY CORRIDOR (G1) MIXED RESIDENTIAL DISTRICT. REQUIRED	PROPOSED
USE: SMALL COMMERCIAL BUILDING	
MIN. LOT SIZE:	1.1 AC.
MIN. LOT FRONTAGE:	50'
MIN. BUILDING SETBACKS:	
FRONT	0' MIN/20' MAX.'
SIDE	10'
REAR	15'
MAX. BUILDING HEIGHT:	27.4±'
MAX. BUILDING COVERAGE:	34.8±%
MIN. OPEN SPACE:	40.7'
	<40%
	18.8±%
	13.6±%

PARKING CALCULATIONS: (8.5'X19'X24')
REQUIRED:
MOTOR VEHICLE SERVICE STATION:
2 SP.+ 1/400 SF GFA (4,580 SF) = 12 SPACES

PROPOSED: 19 SPACES & 9 STACKING

SPECIAL EXCEPTION

THE CONVENIENCE GOODS USE WILL REQUIRE A SPECIAL EXCEPTION WHICH IS VOTED ON BY THE ZONING BOARD OF ADJUSTMENT.

VARIANCES REQUIRED

- PZO 10.5B33.20 - ALL BUILDINGS MUST HAVE A FRONT LOT LINE BUILD OUT OF AT LEAST 75% FOR COMMERCIAL AND MIXED-USE BUILDING TYPES.
- PZO 10.5B34.60 - FRONT BUILDING SETBACK FROM LOT LINE: 0 FT MIN. TO 20 FT MAX.
- PZO 10.5B83.10 - REQUIRED OFF-STREET PARKING SPACES SHALL NOT BE LOCATED BETWEEN A PRINCIPAL BUILDING AND A STREET.
- PZO 10.835.31 - ALL OUTDOOR SERVICE FACILITIES (INCLUDING TRANSACTION WINDOWS, MENU BOARDS, SPEAKERS, ETC.) SHALL BE LOCATED A MINIMUM OF 50 FEET FROM ANY LOT LINE.
- PZO 10.835.32 - ALL DRIVE-THROUGH LANES, BYPASS LANES, AND STACKING LANES SHALL BE LOCATED A MINIMUM OF 30 FEET FROM ANY LOT LINE.
- PZO 10.843.33 - ALL PUMP ISLANDS SHALL BE SET BACK AT LEAST 40 FEET FROM ALL LOT LINES.
- PZO 10.1251.10 - THE MAXIMUM AGGREGATE SIGN AREA SHALL BE AS FOLLOWS: 1.5' PER LINEAR FOOT OF BUILDING FRONTAGE PER ESTABLISHMENT.
- PZO 10.1251.20 - THE MAXIMUM SIGN AREA FOR INDIVIDUAL FREESTANDING SIGNS SHALL BE 100 S.F.
- PZO 10.1253.10 - THE MAXIMUM AND MINIMUM HEIGHTS AND MINIMUM SETBACKS FOR SIGNS IN EACH SIGN DISTRICT SHALL BE AS SET FORTH IN THE FOLLOWING TABLE, EXCEPT AS OTHERWISE PROVIDED HEREIN: MAXIMUM HEIGHT = 20', MINIMUM SETBACK FROM LOT LINE = 10'.

VARIANCE TABLE

NUMBER (SEE ABOVE)	REQUIRED	EXISTING	REQUESTED AT APRIL MEETING	CURRENTLY REQUESTED
1	127.5' MIN	0'	0'	0'
2	20' MAX	10.4	27.4'	27.4
3	NO PARKING	YES	YES	YES
4	50' MIN	N/A	34.8' & 38.7'	34.8' & 40.8'
5	30' MIN	N/A	13.0'	13.0'
6	40' MIN	23.1'	34.7'	34.7'
7	223.50 S.F. (149'x1.5')	-	453.26 S.F.	308.11 S.F.
8	100 S.F. MAX	-	134 S.F.	134 S.F.
	20' MAX HEIGHT	-	26.25'	26.25'
9	10' MIN	-	3.4' FROM PL >10.1' FROM TRAVELWAY	11.2' (VARIANCE NO LONGER REQD.)

SITE DEVELOPMENT PLANS

TAX MAP 239 LOT 11

VARIANCE PLAN

PROPOSED GAS STATION & CONVENIENCE STORE

1980 WOODBURY AVENUE
PORTSMOUTH, NEW HAMPSHIRE

OWNED BY
COLBEA ENTERPRISES, LLC

1"=40' (11"X17')

SCALE: 1"=20' (22"X34')

MARCH 19, 2025

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	46077.16	DR	JKC	FB	-	C-01
REV	DATE	DESCRIPTION	DR	CK		

May 30, 2025 - 11:50am
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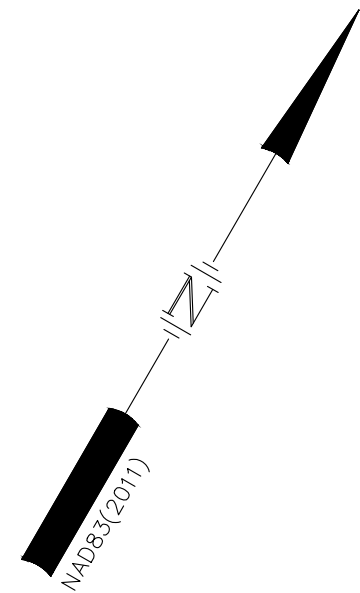
CONTACT DIG SAFE 72 BUSINESS HOURS PRIOR TO CONSTRUCTION

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HORIZONTAL SCALE 1"=20'
20 10 0 20

REV	DATE	DESCRIPTION	DR	CK
1	4/28/2025	REVISED PER ZONING BOARD COMMENTS	JKC	CRR

<div>Seacoast Division</div> <div><div>®</div></div>				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		
F I N I S H	46077.16		DR CK	JKC CRR	FB CADFILE	- 46077-16 VARIANCE PLAN	C-02

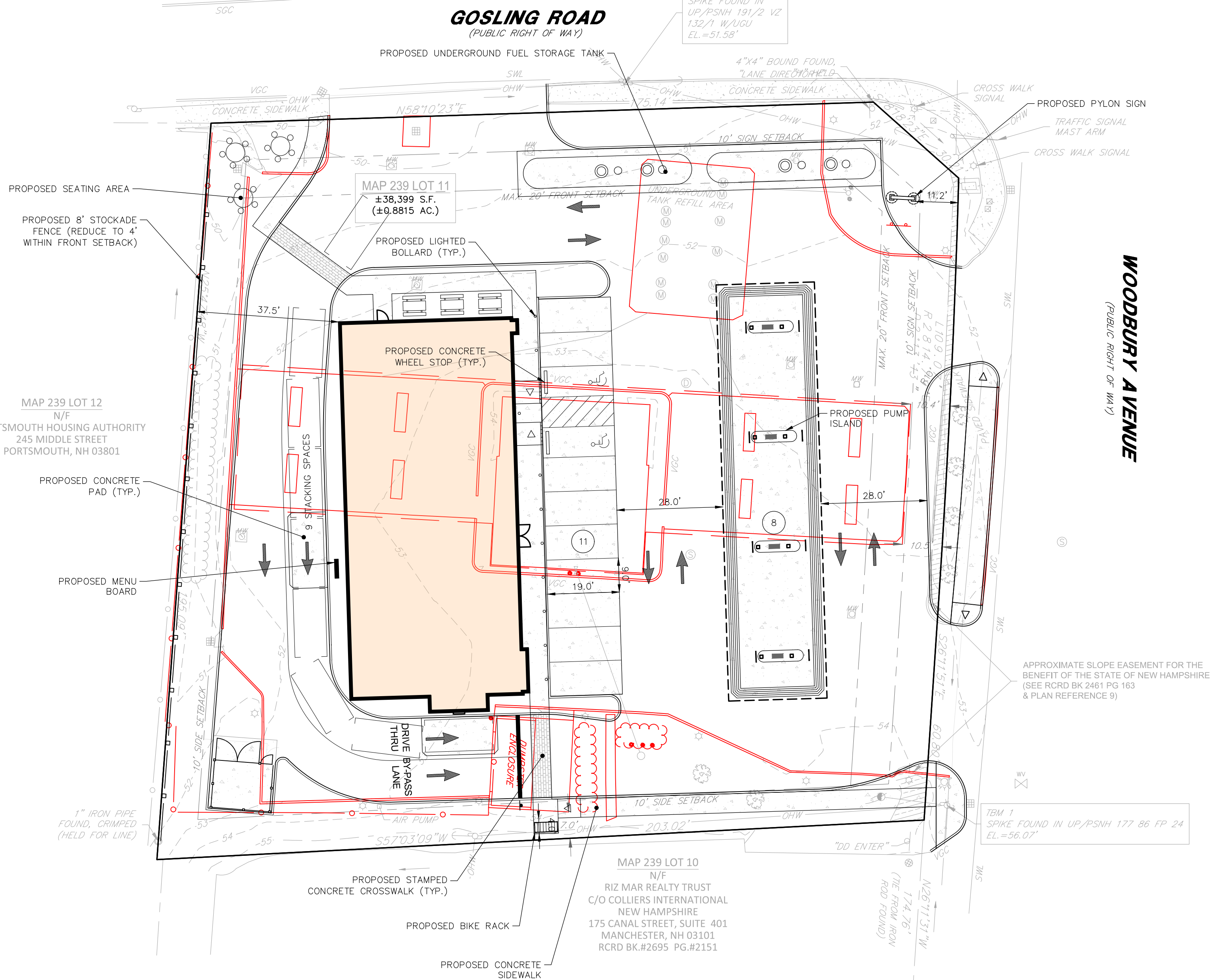


NEWINGTON
MAP 34 LOT 3-1
(BUILDING ONLY)
N/F
MAG RE HOLDINGS-NEWINGTON, LLC
777 WASHINGTON STREET
NEWTON, MA 02460

NEWINGTON
MAP 34 LOT 2
N/F
CFI PROPCO, LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01851
RCRD BK.#6110 PG.#2160

NEWINGTON
MAP 34 LOT 1
N/F
NEWINGTON CROSSING, LLC
291 CARL BROGG HIGHWAY
LEBANON, NH 04027
RCRD BK.#6578 PG.#43

LEGEND:
EXISTING FEATURE TO BE DEMOLISHED





N/F
MAG RE HOLDINGS-NEWINGTON, LLC
777 WASHINGTON STREET
NEWTON, MA 02460

CFI PROPCO, LLC
165 FLANDERS ROAD
WESTBOROUGH, MA 01851
RCRD BK.#6110 PG.#2160

PORTSMOUTH HOUSING AUTHORITY
245 MIDDLE STREET
PORTSMOUTH, NH 03801


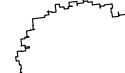





MAP 239 LOT 1
±38,399 S.F.
(±0.8815 AC.)

PROPOSED GAS STATION
CONVENIENCE STORE
4,600 S.F.
19 SPACES
*SPECIAL EXCEPTION
REQUIRED

RIZ MAR REALTY TRUST
C/O COLLIER'S INTERNATIONAL
NEW HAMPSHIRE
175 CANAL STREET, SUITE 401
MANCHESTER, NH 03101
RCRD BK.#2695 PG.#2151

WOODBURY AVENUE
(PUBLIC RIGHT OF WAY)

LANDSCAPE LEGEND

SYMBOL	QTY	BOTANICAL NAME COMMON NAME	SIZE	REMARKS	MATURE HEIGHT/ SPREAD	GROWTH HABIT
	6	ACER RUBRUM 'BOWHALL' BOWHALL RED MAPLE	2" TO 2 1/2" CAL.	B&B	40' TO 60' 10' TO 15'	UPRIGHT
	2	AMELANCHIER X GRANDIFLORA 'ROBIN HILL' ROBIN HILL SERVICEBERRY	2" TO 2 1/2" CAL.	B&B	15' TO 20' 10' TO 15'	UPRIGHT
	7	JUNIPERUS HORIZONTALIS 'BAR HARBOR' BAR HARBOR JUNIPER	1 GAL.	CONT.	6" TO 12" 6' TO 8'	GROUND COVER
	27	JUNIPERUS VIRGINIANA 'MANHATTAN BLUE' MANHATTAN BLUE EASTERN RED CEDAR	5' TO 6'	B&B	10' TO 15' 6' TO 8'	PYRAMIDAL
	31	PANICUM VIRGATUM 'SHENANDOAH' SHENANDOAH SWITCH GRASS	1 GAL.	CONT.	3' TO 4' 3' TO 4'	CLUMPING
	5	PHYSOCARPUS O. 'TINY WINE GOLD' TINY WINE GOLD NINEBARK	3 GAL.	CONT.	4' TO 5' 4' TO 5'	MOUNDED
	30	THUJA OCCIDENTALIS 'TECHNY' MISSION ARBORVITAE	5' TO 6'	B&B	10' TO 15' 6' TO 8'	PYRAMIDAL

LANDSCAPE NOTES

(SEE DETAILS FOR ADDITIONAL NOTES)

GENERAL

1. THE CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE RULES, REGULATIONS, LAWS, AND ORDINANCES HAVING JURISDICTION OVER THIS PROJECT SITE.
2. PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING ALL UNDERGROUND UTILITIES AND NOTIFY OWNER'S REPRESENTATIVE OF CONFLICTS.
3. THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING ALL QUANTITIES SHOWN ON PLANS BEFORE PRICING THE WORK. ANY DIFFERENCE IN QUANTITIES SHALL BE BROUGHT TO THE ATTENTION OF THE LANDSCAPE ARCHITECT FOR CLARIFICATION. LANDSCAPE QUANTITIES SHOWN ON THE PLAN SHALL SUPERCEDE QUANTITIES LISTED IN LANDSCAPE LEGEND.
4. THE CONTRACTOR SHALL CONTACT THE LANDSCAPE ARCHITECT PRIOR TO STARTING WORK AND VERIFY THAT THE PLANS IN THE CONTRACTOR'S POSSESSION ARE THE MOST CURRENT PLANS AVAILABLE AND ARE THE APPROVED PLAN SET FOR USE IN CONSTRUCTION.
5. ALL PLANT MATERIALS INSTALLED SHALL MEET OR EXCEED THE SPECIFICATIONS OF THE AMERICAN NURSERY AND LANDSCAPE ASSOCIATION (ANLA) [FORMERLY THE AMERICAN ASSOCIATION OF NURSEYRME]N IN THE AMERICAN STANDARD FOR NURSERY STOCK (AS AMENDED) [ANSI Z60.1-1996].
6. ALL PLANTS SHALL BE FIRST CLASS AND SHALL BE REPRESENTATIVE OF THEIR NORMAL SPECIES AND/OR VARIETIES. ALL PLANTS MUST HAVE GOOD, HEALTHY, WELL-FORMED UPPER GROWTH AND A LARGE, FIBEROUS, COMPACT ROOT SYSTEM.
7. ALL PLANTS SHALL BE FREE FROM DISEASE AND INSECT PESTS AND SHALL COMPLY WITH ALL APPLICABLE STATE AND FEDERAL LAWS PERTAINING TO PLANT DISEASES AND INFESTATIONS.
8. ALL TREES SHALL BE BALLED AND BURLAPPED (B & B) UNLESS OTHERWISE NOTED OR APPROVED BY LANDSCAPE ARCHITECT.
9. ALL LANDSCAPED AREAS INCLUDING LAWNS SHALL BE PROVIDED WITH UNDERGROUND IRRIGATION. SEE IRRIGATION NOTES.
10. IF APPLICABLE, THE CONTRACTOR SHALL HAVE ALL FALL TRANSPLANTING HAZARD PLANTS DUG IN THE SPRING AND STORED FOR FALL PLANTING.
11. ALL INVASIVE PLANT SPECIES FROM THE "NEW HAMPSHIRE PROHIBITED INVASIVE PLANT SPECIES LIST", TO BE REMOVED SHALL BE DONE SO IN ACCORDANCE WITH THE "INVASIVE SPECIES ACT, HB 1258-FN."

GUARANTEE

1. THE LANDSCAPE CONTRACTOR SHALL GUARANTEE ALL LANDSCAPE WORK FOR A PERIOD OF ONE YEAR, BEGINNING AT THE START OF THE MAINTENANCE PERIOD.

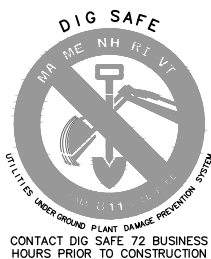
IRRIGATION NOTES

1. THE IRRIGATION SYSTEM SHALL BE DESIGNED BY AN APPROVED IRRIGATION DESIGN/BUILD CONTRACTOR ACCEPTABLE TO THE OWNERS REPRESENTATIVE.
2. THE CONTRACTOR IS RESPONSIBLE FOR SUBMITTING THE IRRIGATION SYSTEM DESIGN AND SHOP DRAWINGS TO THE OWNER 30 DAYS PRIOR TO THE START OF CONSTRUCTION.
3. THE CONTRACTOR SHALL VERIFY LOCATIONS OF ALL EXISTING AND PROPOSED UTILITIES AND NOTIFY THE OWNER'S REPRESENTATIVE OF CONFLICTS.
4. THE IRRIGATION CONTRACTOR IS RESPONSIBLE FOR A COMPLETE AND OPERABLE IRRIGATION SYSTEM AND SHALL FOLLOW ALL APPLICABLE CODES.
5. REFER TO ARCHITECTURAL PLANS FOR LOCATION OF THE IRRIGATION SYSTEM'S BUILDING CONNECTION AND CONTROLS.
6. FOLLOW ALL MANUFACTURER'S INSTRUCTIONS AND PRODUCT SPECIFICATIONS FOR INSTALLATION.


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HORIZONTAL SCALE 1"=20'



A horizontal scale bar with alternating black and white segments. The segments are labeled 20, 10, 0, and 20 from left to right, indicating distances in feet.

[illegible]

SITE DEVELOPMENT PLANS

TAX MAP 239 LOT 11

LANDSCAPE PLAN

PROPOSED GAS STATION & CONVENIENCE STORE

**1980 WOODBURY AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

OWNED BY

COLBEA ENTERPRISES, LLC

1"=40' (11"x17")

SCALE: 1"=20' (22"X34")



- Civil Engineers
- Structural Engineers
- Traffic Engineers
- Land Surveyors
- Landscape Architects
- Scientists

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FILE	46077.16
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DR	JKC	FB
CK	CRR	CADFILE

46077-16 LANDSCAPE

C-04



MAG RE HOLDINGS-NEWINGTON, LLC
777 WASHINGTON STREET
NEWTON, MA 02460

PORTSMOUTH HOUSING AUTHORITY
245 MIDDLE STREET
PORTSMOUTH, NH 03801

(± 0.8815 AC.)

STONE ON
LANDSCAPE
FABRIC (TYP.)

LOAM & SEED
(TYP.)







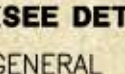
4,600 S.F.
19 SPACES
*SPECIAL EXCEPTION
REQUIRED

RIVE BY-PASS
HRU LANE

BARK MULCH
(TYP.)

WOODBURY AVENUE
(PUBLIC RIGHT OF WAY)

LANDSCAPE LEGEND

SYMBOL	QTY	BOTANICAL NAME COMMON NAME	SIZE	REMARKS	MATURE HEIGHT / SPREAD	GROWTH HABIT
	6	ACER RUBRUM 'BOWHALL' BOWHALL RED MAPLE	2" TO 2 1/2" CAL.	B&B	40' TO 60' 10' TO 15'	UPRIGHT
	2	AMELANCHIER X GRANDIFLORA 'ROBIN HILL' ROBIN HILL SERVICEBERRY	2" TO 2 1/2" CAL.	B&B	15' TO 20' 10' TO 15'	UPRIGHT
	7	JUNIPERUS HORIZONTALIS 'BAR HARBOR' BAR HARBOR JUNIPER	1 GAL.	CONT.	6" TO 12" 6' TO 8'	GROUND COVER
	27	JUNIPERUS VIRGINIANA 'MANHATTAN BLUE' MANHATTAN BLUE EASTERN RED CEDAR	5' TO 6'	B&B	10' TO 15' 6' TO 8'	PYRAMIDAL
	31	PANICUM VIRGATUM 'SHENANDOAH' SHENANDOAH SWITCH GRASS	1 GAL.	CONT.	3' TO 4' 3' TO 4'	CLUMPING
	5	PHYSOCARPUS O. 'TINY WINE GOLD' TINY WINE GOLD NINEBARK	3 GAL.	CONT.	4' TO 5' 4' TO 5'	MOUNDED
	30	THUJA OCCIDENTALIS 'TECHNY' MISSION ARBORVITAE	5' TO 6'	B&B	10' TO 15' 6' TO 8'	PYRAMIDAL

LANDSCAPE NOTES

(SEE DETAILS FOR ADDITIONAL NOTES)

GENERAL

1. THE CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE RULES, REGULATIONS, LAWS, AND ORDINANCES HAVING JURISDICTION OVER THIS PROJECT SITE.
2. PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING ALL UNDERGROUND UTILITIES AND NOTIFY OWNER'S REPRESENTATIVE OF CONFLICTS.
3. THE LANDSCAPE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING ALL QUANTITIES SHOWN ON PLANS BEFORE PRICING THE WORK. ANY DIFFERENCE IN QUANTITIES SHALL BE BROUGHT TO THE ATTENTION OF THE LANDSCAPE ARCHITECT FOR CLARIFICATION. LANDSCAPE QUANTITIES SHOWN ON THE PLAN SHALL SUPERCEDE QUANTITIES LISTED IN LANDSCAPE LEGEND.
4. THE CONTRACTOR SHALL CONTACT THE LANDSCAPE ARCHITECT PRIOR TO STARTING WORK AND VERIFY THAT THE PLANS IN THE CONTRACTOR'S POSSESSION ARE THE MOST CURRENT PLANS AVAILABLE AND ARE THE APPROVED PLAN SET FOR USE IN CONSTRUCTION.
5. ALL PLANT MATERIALS INSTALLED SHALL MEET OR EXCEED THE SPECIFICATIONS OF THE AMERICAN NURSERY AND LANDSCAPE ASSOCIATION (ANLA) [FORMERLY THE AMERICAN ASSOCIATION OF NURSERYMEN] IN THE AMERICAN STANDARD FOR NURSERY STOCK (AS AMENDED) [ANSI 260.1-1996].
6. ALL PLANTS SHALL BE FIRST CLASS AND SHALL BE REPRESENTATIVE OF THEIR NORMAL SPECIES AND/OR VARIETIES. ALL PLANTS MUST HAVE GOOD, HEALTHY, WELL-FORMED UPPER GROWTH AND A LARGE, FIBEROUS, COMPACT ROOT SYSTEM.
7. ALL PLANTS SHALL BE FREE FROM DISEASE AND INSECT PESTS AND SHALL COMPLY WITH ALL APPLICABLE STATE AND FEDERAL LAWS PERTAINING TO PLANT DISEASES AND INFESTATIONS.
8. ALL TREES SHALL BE BALLED AND BURLAPPED (B & B) UNLESS OTHERWISE NOTED OR APPROVED BY LANDSCAPE ARCHITECT.
9. ALL LANDSCAPED AREAS INCLUDING LAWNS SHALL BE PROVIDED WITH UNDERGROUND IRRIGATION. SEE IRRIGATION NOTES.
10. IF APPLICABLE, THE CONTRACTOR SHALL HAVE ALL FALL TRANSPLANTED HAZARD PLANTS DUG IN THE SPRING AND STORED FOR FALL PLANTING.
11. ALL INVASIVE PLANT SPECIES FROM THE "NEW HAMPSHIRE PROHIBITED INVASIVE PLANT SPECIES LIST", TO BE REMOVED SHALL BE DONE SO IN ACCORDANCE WITH THE "INVASIVE SPECIES ACT, HB 1258-FN."

GUARANTEE

1. THE LANDSCAPE CONTRACTOR SHALL GUARANTEE ALL LANDSCAPE WORK FOR A PERIOD OF ONE YEAR, BEGINNING AT THE START OF THE MAINTENANCE PERIOD.

IRRIGATION NOTES

1. THE IRRIGATION SYSTEM SHALL BE DESIGNED BY AN APPROVED IRRIGATION DESIGN/BUILD CONTRACTOR ACCEPTABLE TO THE OWNERS REPRESENTATIVE.
2. THE CONTRACTOR IS RESPONSIBLE FOR SUBMITTING THE IRRIGATION SYSTEM DESIGN AND SHOP DRAWINGS TO THE OWNER 30 DAYS PRIOR TO THE START OF CONSTRUCTION.
3. THE CONTRACTOR SHALL VERIFY LOCATIONS OF ALL EXISTING AND PROPOSED UTILITIES AND NOTIFY THE OWNER'S REPRESENTATIVE OF CONFLICTS.
4. THE IRRIGATION CONTRACTOR IS RESPONSIBLE FOR A COMPLETE AND OPERABLE IRRIGATION SYSTEM AND SHALL FOLLOW ALL APPLICABLE CODES.
5. REFER TO ARCHITECTURAL PLANS FOR LOCATION OF THE IRRIGATION SYSTEM'S BUILDING CONNECTION AND CONTROLS.
6. FOLLOW ALL MANUFACTURER'S INSTRUCTIONS AND PRODUCT SPECIFICATIONS FOR INSTALLATION.


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



HORIZONTAL SCALE 1"=20'

A horizontal scale bar with a black background and white markings. The markings are labeled 20, 10, 0, and 20 from left to right. The bar is divided into segments by white lines.[illegible]

SITE DEVELOPMENT PLANS

TAX MAP 239 LOT 11

LANDSCAPE PLAN

PROPOSED GAS STATION & CONVENIENCE STORE

1980 WOODBURY AVENUE

PORTSMOUTH, NEW HAMPSHIRE

OWNED BY

COLBEA ENTERPRISES, LLC

1"=40' (11"x17")

SCALE: 1"=20' (22"X34")



- 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

F I L	46077.16
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DR	JKC	FB
CK	CPB	CADILLAC

16077	16 LAND
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ESCAPE PLAN

C-04

CORNER MARKET CAFÉ

WARM ME UP: SANDWICHES

BLT	5.99
BLT with Bacon	6.99
BLT with Avocado	6.99
BLT with Cheese	6.99
BLT with Ham	6.99
BLT with Turkey	6.99
BLT with Chicken	6.99
BLT with Beef	6.99
BLT with Pork	6.99
BLT with Lamb	6.99
BLT with Fish	6.99
BLT with Shellfish	6.99
BLT with Vegetables	6.99
BLT with Herbs	6.99
BLT with Spices	6.99
BLT with Fruits	6.99
BLT with Nuts	6.99
BLT with Seeds	6.99
BLT with Grains	6.99
BLT with Legumes	6.99
BLT with Dairy	6.99
BLT with Eggs	6.99
BLT with Meat	6.99
BLT with Fish	6.99
BLT with Shellfish	6.99
BLT with Vegetables	6.99
BLT with Herbs	6.99
BLT with Spices	6.99
BLT with Fruits	6.99
BLT with Nuts	6.99
BLT with Seeds	6.99
BLT with Grains	6.99
BLT with Legumes	6.99
BLT with Dairy	6.99
BLT with Eggs	6.99
BLT with Meat	6.99

COOL ME DOWN: SMOOTHIES & BREAD

Smoothie	5.99
Smoothie with Fruit	6.99
Smoothie with Vegetables	6.99
Smoothie with Herbs	6.99
Smoothie with Spices	6.99
Smoothie with Fruits	6.99
Smoothie with Nuts	6.99
Smoothie with Seeds	6.99
Smoothie with Grains	6.99
Smoothie with Legumes	6.99
Smoothie with Dairy	6.99
Smoothie with Eggs	6.99
Smoothie with Meat	6.99
Smoothie with Fish	6.99
Smoothie with Shellfish	6.99
Smoothie with Vegetables	6.99
Smoothie with Herbs	6.99
Smoothie with Spices	6.99
Smoothie with Fruits	6.99
Smoothie with Nuts	6.99
Smoothie with Seeds	6.99
Smoothie with Grains	6.99
Smoothie with Legumes	6.99
Smoothie with Dairy	6.99
Smoothie with Eggs	6.99
Smoothie with Meat	6.99

SMOOTHIES & PROTEIN DRINKS

Smoothie	5.99
Smoothie with Fruit	6.99
Smoothie with Vegetables	6.99
Smoothie with Herbs	6.99
Smoothie with Spices	6.99
Smoothie with Fruits	6.99
Smoothie with Nuts	6.99
Smoothie with Seeds	6.99
Smoothie with Grains	6.99
Smoothie with Legumes	6.99
Smoothie with Dairy	6.99
Smoothie with Eggs	6.99
Smoothie with Meat	6.99
Smoothie with Fish	6.99
Smoothie with Shellfish	6.99
Smoothie with Vegetables	6.99
Smoothie with Herbs	6.99
Smoothie with Spices	6.99
Smoothie with Fruits	6.99
Smoothie with Nuts	6.99
Smoothie with Seeds	6.99
Smoothie with Grains	6.99
Smoothie with Legumes	6.99
Smoothie with Dairy	6.99
Smoothie with Eggs	6.99
Smoothie with Meat	6.99

QUALITY COFFEE & SMOOTHIES
FRESHLY MADE FOOD

FRESH COFFEE,
GREAT FOOD,
CLOSE TO HOME.



CORNER MARKET

QUALITY COFFEE

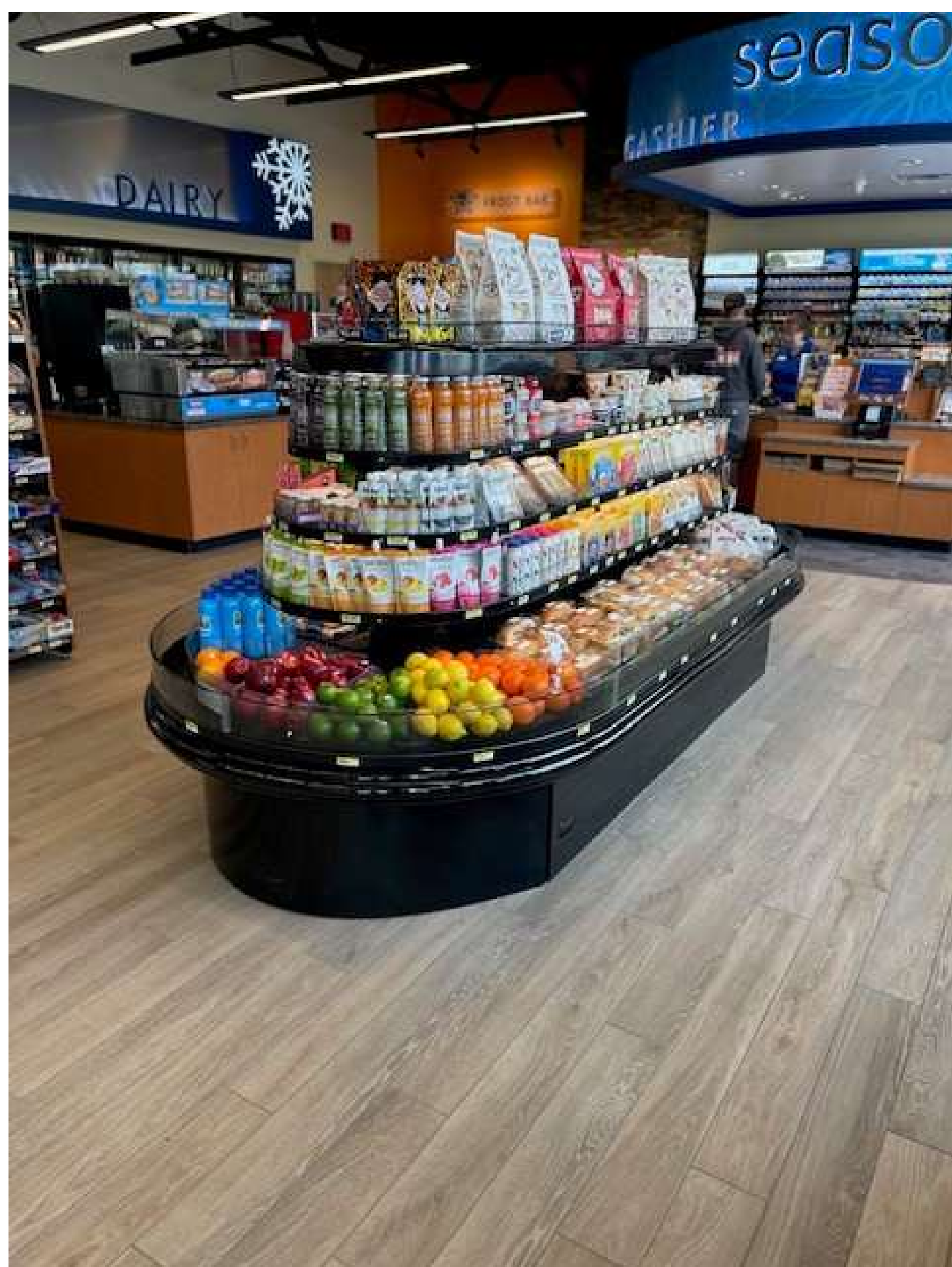
FRESHLY MADE SANDWICHES

JUICE & SMOOTHIES

BAGGED ICE

ICE











May 16, 2025

Mr. Michael Gazdacko
Director of Construction
Colbea Enterprises, LLC
695 George Washington Highway
Lincoln, Rhode Island 02865

RE: Sound Study - Environmental Review Letter
Proposed Seasons Corner Market
1980 Woodbury Avenue, Portsmouth, NH

Dear Mr. Gazdacko:

Tg2 Solutions Inc. was retained by Colbea Enterprises, L.L.C./Seasons Corner Market ("Colbea/Seasons") to provide a review of sound related to the proposed development of a Seasons Corner Market facility at the above-referenced property. The scope of the sound review was twofold:

- Establish data related to the existing sound levels at the current facility (a Mobil-branded gasoline station/kiosk store) during the day and evening; and,
- Compare the existing sound levels at the current facility to those of a recently constructed Seasons Corner Market with a drive through coffee/window in the rear of the property.

The goal of the study is to compare the sound levels of an operating Seasons Corner Market with a drive through window and provide an estimation of the effect of a similar development in Portsmouth with respect to the baseline current sound levels.

This letter report provides a summary of the data collected from both locations and compares that data to the sound study data for proposed development in Portsmouth to evaluate the potential impact of sound along the property boundaries. Since approximately 2021, Tg2 has been retained by Colbea/Seasons to complete various sound surveys of existing and/or recently constructed facilities. These data have been presented to various local agencies as part of development permitting and/or post-construction occupancy permitting. The data collected in Scituate, RI is part of a previous study from 2021, whereas the data collected in Portsmouth, NH was collected on Monday May 12, 2025.

Sound Study - 34 Hartford Avenue, Scituate, RI

Tg2 performed a sound study in March 2021 at a Colbea facility with a drive-through located at 34 Hartford Avenue, Scituate, Rhode Island. The facility is located along US Route 6 and the building layout is a similar to the proposed layout for the property at 1980 Woodbury Avenue. A photograph of the property in Scituate is displayed in the photo below.





The sound study in Scituate was designed to document the following:

- General background sound conditions at study locations, primarily related to traffic-related sound and background sound levels; and,
- Sound carry distance from drive through window coffee shop ordering/pickup speaker systems.

For the sound study, the means and procedures of the data collection included positioning a calibrated tripod-mounted sound meter at the front (along Route 6) and rear (behind the station building near the drive-through), documenting sound readings over a set period of time.

Table 1 - Front/Rear Ambient Sound Readings - Scituate, RI

Location	Time	Average Sound Reading (dB)	Maximum Sound Reading (dB)
Front (North)	Mid-Day	76.2	81.5
Front (North)	Evening	52.1	58.1
Rear (South)	Mid-Day	49.9	52.8
Rear (South)	Evening	47.5	51.0

The difference between the average reading from the front of the property off the road and the average reading from the rear of the property is 26.3 dB for the mid-day reading, which is a 34% reduction in of sound from the front to the rear. The difference for the front and rear of the

property for the evening reading is 4.6 dB, which is a 9% reduction in of sound from the front to the rear. Separately, Tg2 collected sound readings during drive through operations measuring the sound carry (detectable above 1 decibel - dB) from the drive through window speaker system and associated automobile idling at the drive through. Results of the sound carry measurement documented detectable sound (1 decibel above background) during drive through operations extending to a distance of 52 feet from the drive through lane/ordering window.

Table 2 – Detectable Sound Carry – Scituate, RI (>1dB)

Location	Drive Through Speaker (Max Distance, ft)
34 Hartford Ave, Scituate, RI	52'

Ft – Distance in feet

Sound Study – 1980 Woodbury Avenue, Portsmouth, NH

On May 12, 2025, a sound study was completed at 1980 Woodbury Avenue, Portsmouth, NH at approximately 3:30 PM and 9:00 PM. The location at 1980 Woodbury Avenue is an active Mobil branded gasoline station with a kiosk store situated in the middle of the canopy and four double sided dispensers on both sides of the convenience store building.

The sound study was completed by Mr. Daniel Belair, a Project Scientist for Tg2. The study was completed using a Svantek Class 1 Sound Level Meter SV 917A. Prior to the study, the sound meter was calibrated with a 120 decibel (dB) calibration sound generator. The study was designed to measure the following at the following locations.

- Ambient sound levels over an hour at approximately mid-day and evening by the front and rear of the property; and,
- Maximum sound levels at the same time frame.

The study was completed by mounting the decibel meter on a tripod at an approximate height of four feet above grade and recording sound readings during that time period. Weather at the time of the study was clear skies with no precipitation and light wind. The study was designed to determine the degree of ambient sound at each location. Specifically, the study was designed to determine the approximate impact of sound to nearby residential receptors. The nearest receptor to the property is the Portsmouth Housing Authority (PHA) located adjacent to the property at 245 Middle Street. The PHA home is situated 37 feet from the property boundary with the Mobil station, approximately 65 feet from the proposed drive through lane, and approximately 75 feet from the speaker/menu board of the proposed drive through. See the attached **Figure 1** for the proposed facility layout. Sound readings are provided in **Table 3**, below.

Table 3 - Front/Rear Ambient Sound Readings - Portsmouth, NH

Location	Time	Average Sound Reading (dB)	Maximum Sound Reading (dB)
Front off Woodbury Ave	Mid-Day	72.9	74.9
Front off Woodbury Ave	Evening	65.4	67.8
Rear	Mid-Day	58.7	59.6
Rear	Evening	56.4	57.1

The difference between the average reading from the front of the property off of Woodbury Avenue and the average reading from the rear of the property is 14.2 dB for the mid-day reading, which is a 19% reduction in of sound from the front to the rear. The difference for the front and rear of the property for the evening reading is 4.6 dB, which is a 13% reduction in of sound from the front to the rear.

Conclusions and Discussion

This sound study was completed in order to document ambient sound levels at the property, to provide an evaluation of sound emanating from the proposed drive-through window at 1980 Woodbury Avenue and evaluate those as they relate to the proximity to nearby residential receptors. The following offers findings from this study:

- The primary source of sound at the Portsmouth location, like most gasoline station facilities, is related to traffic noise from the street. The sound fades with distance from the main street. Tg2 has found in completing studies at many facilities in RI, MA and NH, traffic count and traffic speed combined are the main drivers of sound at gasoline convenience store facilities, with higher speeds on the main road directly resulting in higher sound levels.
- Operational noise at gasoline convenience stores is typically minor and includes vehicles, customers, and speaker systems for drive through windows.
- The placement of a building and size/shape of a building have a pronounced effect on the mitigation of roadway sound extending from the primary street. Larger buildings with pitched roofs provide higher sound attenuation from the front to the rear of the facility than smaller, flat roofed buildings.
- The detectable sound carry from the proposed drive through speaker system in Portsmouth has a maximum expected carry distance of 52' as documented by the readings completed in Scituate, RI. The proposed drive through is approximately 65' from the nearest residential receptor home (the PHA house). Based on these data, the sound generated from the drive through speaker system is unlikely to be detectable at the nearest residence under normal atmospheric conditions similar to those during the two studies (clear skies, light wind, moderate humidity).

- Tg2 has noted that the size and shape of buildings between the main sound source (the road) and receptors behind proposed gasoline stations/convenience stores is the size and shape of the building. The existing facility in Portsmouth is a flat-roofed kiosk store located central to the property under the canopy measuring 1,800 square feet. The proposed building for the Seasons Corner Market is a 4,600 square foot building with a pitched, shingled roof. Presently, the sound reduction from the front of the property to the rear is approximately 16% based on distance and sound blocking from the existing structures. The analogous property in Scituate, RI shows a more than doubling of sound attenuation from the front to the rear of 34%. It can be expected that the construction of the proposed Seasons Corner Market will have the effect of significantly reducing the sound levels at the PHA housing compared to the existing store as it represents a larger and more effective sound barrier to roadway noise than the existing structure.

Furthering sound reduction can be achievable with the installation of fencing and plantings between the proposed facility and the PHA housing. While Tg2 does not presently have data sets that provide a quantitative reduction in sound with the placement of fencing/plantings at analogous gasoline station/convenience stores, published data document that fencing typically reduces sound levels by 6-10 dB. Published data from additional scientific studies notes that planting of broadleaf trees or evergreen shrubs can reduce sound by an additional 5dB.

In summary, it is Tg2's opinion that the proposed development with a larger store and pitched roof will have the effect of reducing sound levels from Woodbury Ave to the PHA housing in the rear. The proposed drive through window/speaker/vehicle operations are not expected to be detected at a distance beyond 52 feet based on analogous site data. As the PHA housing is located 65 feet from the proposed drive through, it is Tg2's opinion that sound from the drive through operation will not affect the residents at the PHA housing behind the proposed development. Finally, the applicant's proposal for fencing and plantings is expected to further reduce sounds to the PHA housing. It is therefore Tg2's opinion that this proposed development will in fact have a net reduction in sound affecting the PHA housing than the current existing site conditions.

Sincerely,



Eric D. Simpson, P.G., LSP
Owner

Attachments:
Figure 1
Field Notes - May 12, 2025 Sound Study - Portsmouth, NH

May 15, 2025 - 1:42pm
\\TFM-BEDFORDA\Projects\Civil-Survey\MSC Projects\46077 - Woodbury Ave - Portsmouth, NH\Design\Exhibits\46077-16 Variance Plan.dwg

EASEMENTS & RESTRICTIONS:

- COMMONWEALTH LAND TITLE INSURANCE COMPANY TITLE COMMITMENT FILE NO. 200LT0055-NH, DATED DECEMBER 16, 2020 WAS EXAMINED AS PART OF THIS SURVEY. SURVEY EXCEPTIONS CONTAINED IN SCHEDULE B PART II OF THAT COMMITMENT WHICH THE SUBJECT PROPERTY IS SUBJECT TO AND/OR HAS THE BENEFIT OF ARE AS FOLLOWS:
- ITEM 11 - NOTICE OF CONDEMNATION, EASEMENT RIGHTS, AND LIMITATION ON ACCESS AS DESCRIBED IN THE AMENDED NOTICE OF CONDEMNATION DATED 9/14/83 AND RECORDED IN VOLUME 2461, PAGE 163. (SEE PLAN REFERENCE 9)
- ITEM 12 - THE FOLLOWING MATTERS DEPICTED ON 'BOUNDARY AND TOPOGRAPHIC PLAN, ASSESSORS MAP R-39-L0T11, WOODBURY AVE. & GOSLING ROAD, PORTSMOUTH, NEW HAMPSHIRE, PREPARED FOR MOBIL OIL CORPORATION' DATED 12/6/1991 AND RECORDED AS PLAN D21731:
- A - MOBIL SIGN TRAVERSING THE NORTHERLY BOUNDARY. (SIGN SINCE HAS BEEN RELOCATED AND RESIDES ON THE PROPERTY, SHOWN HEREON)
 - B - CATCH BASIN AND PIPES TRAVERSING THE NORTHERLY BOUNDARY. (AS SHOWN ON THE PLAN)
 - C - CURBING AND CONCRETE WALKWAY, TRAVERSING THE NORTHERLY, EASTERLY AND SOUTHERLY BOUNDARIES.
 - D - OBSERVATION WELL LOCATED WITHIN THE PROPERTY.
 - E - ELECTRIC POLE SUPPORT POLE TRAVERSING THE EASTERLY BOUNDARY.
- ITEM 13 - NOTICE OF RESTRICTIONS, INCLUDING RESTRICTIONS ON THE USE OF GROUNDWATER, AS RECORDED IN VOLUME 4011, PAGE 1268. (RESTRICTION NOT PLACEABLE AND THEREFORE NOT PLOTTED).
- ITEM 14 - TERMS AND PROVISIONS OF LEASE BY AND BETWEEN DUNCAN CONSTRUCTION COMPANY, INC. AND MOBIL OIL CORPORATIONS AS EVIDENCED BY A NOTICE OF LEASE DATED 2/25/1992 AND RECORDED IN VOLUME 2836, PAGE 1157, AS AFFECTED BY SUPPLEMENTAL NOTICE OF LEASE RECORDED IN VOLUME 3113, PAGE 1212. ASSIGNMENTS OF THE LEASE ARE RECORDED IN VOLUME 3046, PAGE 2323 AND ALLIANCE 3688, PAGE 1466. ALLIANCE ENERGY CORP. CONVERTED TO ALLIANCE ENERGY LLC AS EVIDENCED AT VOLUME 4929, PAGE 2060. (NOT PLOTTABLE)

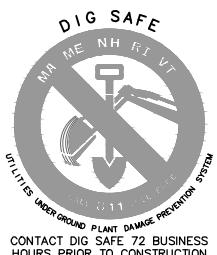
ENCROACHMENTS:

- ON THE SOUTH, WALKWAY EVIDENCE OF PASSAGE BETWEEN SUBJECT PARCEL AND TAX MAP 239 LOT 10;
- ON THE WEST, STOCKADE FENCE OVER RECORD LINE;
- ON THE NORTH, OVERHEARD UTILITY WIRE OVER RECORD LINE;
- ON THE NORTH, UTILITY POLE SUPPORT WIRE OVER RECORD LINE;
- ON THE NORTH, LANE DIRECTORY SIGN OVER RECORD LINE;

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THIS PLAN IS A PRELIMINARY CONCEPTUAL DESIGN FOR SITE LOCATION FEASIBILITY AND DISCUSSION PURPOSES ONLY. ADDITIONAL PERMITS, WAIVERS, AND VARIANCE MAY BE REQUIRED UPON FURTHER DESIGN, REVIEW, AND COORDINATION WITH THE CITY.

HORIZONTAL SCALE 1"=20'
20 10 0 20

PROGRESS
PRINT
date: 5.15.2025

REV	DATE	DESCRIPTION	DR	CK
1	4/28/2025	REVISED PER ZONING BOARD COMMENTS	JKC	CRR

NOTES

CURRENT ZONING IS GATEWAY CORRIDOR (G1) MIXED RESIDENTIAL DISTRICT.	REQUIRED	PROPOSED
USE: SMALL COMMERCIAL BUILDING		
MIN. LOT SIZE:	1.1 AC.	0.88 AC.
MIN. LOT FRONTAGE:	50'	>100'
MIN. BUILDING SETBACKS:		
FRONT	0' MIN/20' MAX.1	27.4±'
SIDE	10'	34.8±'
REAR	15'	40.7'
MAX. BUILDING HEIGHT:	40'	<40'
MAX. BUILDING COVERAGE:	70%	18.8±%
MIN. OPEN SPACE:	10%	13.6±%
PARKING CALCULATIONS: (8.5'X19'X24')		
REQUIRED:		
MOTOR VEHICLE SERVICE STATION:		
2 SP.+ 1/400 SF GFA (4,580 SF) = 12 SPACES		
PROPOSED: 19 SPACES & 9 STACKING		

SPECIAL EXCEPTION

THE CONVENIENCE GOODS USE WILL REQUIRE A SPECIAL EXCEPTION WHICH IS VOTED ON BY THE ZONING BOARD OF ADJUSTMENT.

VARIANCES REQUIRED

- PZO 10.5B33.20 - ALL BUILDINGS MUST HAVE A FRONT LOT LINE BUILD OUT OF AT LEAST 75% FOR COMMERCIAL AND MIXED-USE BUILDING TYPES.
- PZO 10.5B34.60 - FRONT BUILDING SETBACK FROM LOT LINE: 0 FT MIN. TO 20 FT MAX.
- PZO 10.5B83.10 - REQUIRED OFF-STREET PARKING SPACES SHALL NOT BE LOCATED BETWEEN A PRINCIPAL BUILDING AND A STREET.
- PZO 10.835.31 - ALL OUTDOOR SERVICE FACILITIES (INCLUDING TRANSACTION WINDOWS, MENU BOARDS, SPEAKERS, ETC.) SHALL BE LOCATED A MINIMUM OF 50 FEET FROM ANY LOT LINE.
- PZO 10.835.32 - ALL DRIVE-THROUGH LANES, BYPASS LANES, AND STACKING LANES SHALL BE LOCATED A MINIMUM OF 30 FEET FROM ANY LOT LINE.
- PZO 10.843.33 - ALL PUMP ISLANDS SHALL BE SET BACK AT LEAST 40 FEET FROM ALL LOT LINES.
- PZO 10.1251.10 - THE MAXIMUM AGGREGATE SIGN AREA SHALL BE AS FOLLOWS: 1.5' PER LINEAR FOOT OF BUILDING FRONTAGE PER ESTABLISHMENT.
- PZO 10.1251.20 - THE MAXIMUM SIGN AREA FOR INDIVIDUAL FREESTANDING SIGNS SHALL BE 100 S.F.
- PZO 10.1253.10 - THE MAXIMUM AND MINIMUM HEIGHTS AND MINIMUM SETBACKS FOR SIGNS IN EACH SIGN DISTRICT SHALL BE AS SET FORTH IN THE FOLLOWING TABLE, EXCEPT AS OTHERWISE PROVIDED HEREIN: MAXIMUM HEIGHT = 20', MINIMUM SETBACK FROM LOT LINE = 10'.

VARIANCE TABLE

NUMBER (SEE ABOVE)	REQUIRED	EXISTING	ORIGINALLY PROPOSED	CURRENTLY PROPOSED
1	127.5' MIN	0'	0'	0'
2	20' MAX	10.4	27.4'	27.4
3	NO PARKING	YES	YES	YES
4	50' MIN	N/A	34.8' & 38.7'	34.8' & 40.8'
5	30' MIN	N/A	11.2'	11.2'
6	40' MIN	23.1'	34.7'	34.7'
7	223.50 S.F. (149'x1.5')	-	453.26 S.F.	308.11 S.F.
8	100 S.F. MAX	-	134 S.F.	134 S.F.
9	20' MAX HEIGHT	-	26.25'	26.25'
	10' MIN	-	3.4' FROM PL >10.1' FROM TRAVELWAY	11.2' (VARIANCE NO LONGER REQD.)

SITE DEVELOPMENT PLANS

TAX MAP 239 LOT 11

VARIANCE PLAN

PROPOSED GAS STATION & CONVENIENCE STORE

1980 WOODBURY AVENUE
PORTSMOUTH, NEW HAMPSHIRE

OWNED BY
COLBEA ENTERPRISES, LLC

1"=40' (11"x17')

SCALE: 1"=20' (22"x34')

MARCH 19, 2025

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

F I E	46077.16	DR JKC FB	CK CRR CADFILE	46077-16 VARIANCE PLAN	C-01
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Field Notes	
Date: 5/12/2025	
Project #:	Project Manager:
Weather: Sunny/ 70 Degrees F	Signature: 
Facility	
1980 Woodbury Avenue Portsmouth NH	

Position	Employee	Start Time	End Time	Total Hours
Project Scientist	Dan Belair	12:00 PM	12:00 AM	12

Comments
-- No notes found --

VEHICLES/MACHINES/EQUIPMENT	QTY	Comments
Field Vehicle	1	2023 Toyota Tacoma
Svantek 971	2	
SUPPLIES/MATERIALS	QTY	Comments

Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Sample Location	Time	Decibels	Svantek ID
Rear(DT)	3:30	57.1	Day_DT
	3:40	59.6	
	3:50	58.8	
	4:00	58.7	
	4:10	58.9	
	4:20	59.0	
	4:30	59.0	
Front/Street	3:50	72.3	Day_ST
	4:00	70.3	
	4:10	74.9	
	4:20	73.9	
	4:30	73.1	
	4:40	73.1	
	4:50	72.6	

Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Field Notes

04:36 PM - Svantek ID for data extraction: Day_DT refers to daytime sound level readings recorded at the proposed drive thru location in the rear of proposed building. Recording equipment faces Woodbury Ave. Day_ST refers to daytime sound level readings recorded at the "Street" location facing Woodbury Avenue. To conduct study, two sound level meters (Svantek 971) were tripod mounted approximately 4 FT above finished grade, facing Woodbury Avenue. Decibel readings (dB) were recorded every 10 minutes.

Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Photo Logs

1980 Woodbury Avenue Portsmouth NH-Rear (Drive Through)



1980 Woodbury Avenue Portsmouth NH-Rear (Drive Through)



Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Photo Logs

1980 Woodbury Avenue Portsmouth NH-Front/ Street



1980 Woodbury Avenue Portsmouth NH-Front/Street



Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Sample Location	Time	Decibels	Svantek ID
Rear (DT)	9:00 PM	55.3	NI_DT
	9:10 PM	56.5	
	9:20 PM	57.1	
	9:30 PM	56.5	
	9:40 PM	56.6	
	9:50 PM	56.4	
	10:00 PM	56.3	
Front/Street	9:00 PM	67.8	NI_ST
	9:10 PM	65.8	
	9:20 PM	65.7	
	9:30 PM	65.2	
	9:40 PM	65.0	
	9:50 PM	64.7	
	10:00 PM	65.3	

Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Field Notes

09:34 PM - SvanTek ID for data extraction: NI_DT refers to nighttime drive thru sound level readings recorded at the proposed drive thru location in the rear of the proposed building location. Recording equipment faces Woodbury Avenue. NI_ST refers to nighttime sound level readings recorded at the "street location" facing Woodbury Avenue. To conduct sound level study (nighttime) two sound level meters (SvanTek 971) were tripod mounted approximately 4FT above finished grade facing Woodbury Avenue. Decibel readings (dB) were recorded every 10 minutes.

Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Photo Logs

1980 Woodbury Avenue Portsmouth NH-Front/Street(Nighttime)



1980 Woodbury Avenue Portsmouth NH-Front/Street (Nighttime)



Field Screening Data Table

Inspector Name: Dan Belair

Date: 5/12/2025

Facility: 1980 Woodbury Avenue Portsmouth NH

Photo Logs

1980 Woodbury Avenue Portsmouth NH-Rear (Drive thru night)



1980 Woodbury Avenue Portsmouth NH-Rear (Drive thru night)



II. OLD BUSINESS

C. REQUEST TO WITHDRAW The request of **Mezansky Family Revocable Trust (Owners)**, for property located at **636 Lincoln Avenue** whereas relief is needed to demolish an existing detached garage and to construct an addition which requires the following: 1) Variance from Section 10.521 to a) allow a 2 foot left side yard setback where 10 feet is required; b) allow a 16 foot rear yard setback where 20 feet is required; c) allow 39% building coverage where 25% is the maximum 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 148 Lot 17 and lies within the General Residence A (GRA) District. (LU-25-27) **REQUEST TO WITHDRAW**

Planning Department Comments

At the May 27, 2025 meeting, the Board postponed the request to the June 17th meeting pending the submission of a surveyed plan. The applicant has indicated they will be submitting a request for the Board to consider suspending the rules to allow the applicant to withdraw the application.

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

June 13, 2025

VIA ELECTRONIC AND HAND DELIVERY SUBMISSION

Phyllis Eldridge, Chair
Portsmouth Zoning Board of Adjustment ("ZBA")
1 Junkins Ave.
Portsmouth, NH 03801

RE: Request to Withdraw Variance Application
Mezansky Family Revocable Trust (Owner)
636 Lincoln Ave., Portsmouth NH 03801
Tax Map 148, Lot 17, GRA District, LU-25-27

Dear Chair Eldridge and Zoning Board members:

Please accept this letter in support of a request to withdraw the above-referenced variance application, or for alternative relief as set forth herein, initially considered by the ZBA at its 5/27/25 meeting. The undersigned was in attendance at that meeting, but did not at that time represent the owner/applicant, Mezansky Family Revocable Trust ("Mezansky"). The undersigned has also reviewed the entire video of the presentation, discussion and deliberations.

For ease of reference, the Mezansky application, presented by Amy Dutton, requested removal of an existing old garage in close proximity to the rear and left property lines, in favor of a new one-story addition, moved forward and attached to the home. Relief was required for: expansion of a nonconforming building; 2 foot left side setback where 10 feet is required; 12.5 foot rear setback where 20 feet is required, and 39% building coverage where 25% is the maximum allowed. (**See attached 5/27/25 Agenda**). The building coverage was approximately 3% (+/-96 sf) over existing conditions based upon lot size estimated without benefit of a formal survey. Rear setback was a significant improvement over the existing garage setback of 1-2 feet (5/27/25 ZBA Video at 0:15:55); left side setback at +/- 2 feet was approximately the same as the existing garage (Video at 0:13:47), again without benefit of formal survey.

DANIEL C. HOEFLE	ALEC L. MCEACHERN	PETER V. DOYLE	STEPHEN H. ROBERTS In Memoriam
R. TIMOTHY PHOENIX	KEVIN M. BAUM	MONICA F. KIESER	OF COUNSEL:
LAWRENCE B. GORMLEY	JACOB J.B. MARVELLEY	CHRISTOPHER P. MULLIGAN	SAMUEL R. REID
R. PETER TAYLOR	GREGORY D. ROBBINS	KAREN W. OLIVER	JOHN AHLGREN

The project went forward after Mezansky approved five (5) voting members due to a refusal. Prior to the hearing, several abutters, including the neighbor immediately to the left of Mezansky, submitted a letter of support. One objection was filed by the rear neighbor, where the rear setback was significantly improved. After presentation by Ms. Dutton on behalf of Mezansky, neither any abutter, nor any member of the public, offered testimony in opposition to the project.

The primary topic of discussion by the board during and after presentation was the fact that no formal survey was submitted in support of the application. This raised concerns among board members as to the accuracy of the coverage and setback relief required, as those numbers were based upon information gleaned by Ms. Dutton from her investigation but without benefit of a formal survey. Specific Board member comments include:

- Ms. Margeson – Concern over light and air (Video at 0:20:59 and 0:22:00)
Concern that survey was not completed (Video at 0:22:25)
Moved to postpone to the June meeting pending survey, with ability to further continue pending survey (Video at 0:30:45)
- Mr. Rossi- Concern about further increase in lot coverage over 25% limit and character of the neighborhood (Video at 0:12:05)
Lot is small, do not know the boundaries. (Video at 0:28:24)
Concern about approval under circumstances even with survey (Video at 0:28:24 and 0:33:15)
- Mr. Rheaume- Survey questions (Video at 0:13:47)
Not sure whether survey would affect decision but one has to be done at some point in any event (Video at 0:26:33)
Leaning toward support because 1 story (Video at 0:26:33), and only a few coverage percent over existing conditions (Id)
- Mr. Mattson- If approved, could a survey be obtained after the fact confirming numbers and it improper, return to ZBA? (Video at 0:26:20)
Not opposed to postponement for survey (Video at 0:31:00)
- Chair Eldridge- Generally in favor noting improvement over existing garage location, denial could be problematic under Fisher v. Dover, continue for survey (Video at 29:55)

In summary, in order to permit a survey, the Board unanimously continued the matter to the June, 2025 meeting, with further continuance permitted if survey was not yet completed. Mezansky has ordered a survey but it is not yet ready and will likely not be ready by the date of the July, 2025 meeting. While a formal vote was not taken, it appears to the undersigned that some board members were generally in favor of the project, while others were not, but all considered it reasonable to continue the project in order to obtain a survey which would provide specific accuracy to the dimensional relief requested. The questions, comments and action of the board continuing the application demonstrate that essentially, the application as filed was incomplete.

This request is required by the Portsmouth Zoning Board of Adjustment's Rules and Regulations, Rule VII (2) which provides in pertinent part that once an application has opened for presentation, the board shall reach a decision. The applicants were advised by planning staff that the option exists to request that the ZBA suspend the rules to allow withdrawal of the application.¹

The questions and concerns of the zoning Board primarily revolved around the fact that dimensional relief (side and rear setbacks and building coverage) was based upon estimates because a survey had not been completed-in essence, the application was incomplete and could not reasonably be considered until a survey was provided. We respectfully submit that the better course for the board to have taken was to require the survey prior to formal presentation of the application.

Additionally, Mezansky has thoughtfully considered the questions and comments of the board members. Mezansky has determined that they do not presently need the addition, so desire to withdraw the requests for the relief, instead considering primarily internal changes to their home which would at this time avoid the need for removal of the existing garage in favor of the addition. Notwithstanding this decision, Mezansky seeks to preserve all rights in the future.

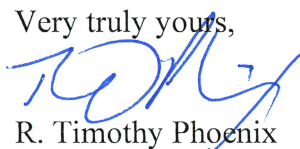
¹ Mezansky respectfully reserves their rights with respect to the constitutionality/legality of a rule which does not permit, under the circumstances of this application, withdrawal before a decision is made.

Considering the application and the discussions at the 5/27/25 hearing, the incomplete application followed by this request for withdrawal of the application means that there is nothing for the ZBA to consider. Under all the circumstances, it is fair and reasonable presently to permit withdrawal of the application without Mezansky or their successors in interest being limited or prohibited in the future due to the application of Fisher v. Dover. Allowing withdrawal or other non-precedential determination will relieve the Board of further time, the applicant of further time and expense, and the possibility of additional time and expense occasioned by an appeal if denied on the merits.

Based upon the foregoing, Mezansky respectfully requests that the ZBA:

1. Grant Mezansky's request for withdrawal of the pending application without prejudice; or in the alternative.
2. Deny Mezansky's variance request as incomplete, without prejudice; or in the alternative.
3. Continue the application to the August, 2025 Zoning Board meeting in order to complete a survey at which time more precise dimensional relief needed can be determined, followed by approval of the zoning request.

The undersigned will appear at the 6/17/25 ZBA meeting prepared to address the zoning board with respect to the issues set forth herein.

Very truly yours,

R. Timothy Phoenix

cc: (via email)
Clients
Amy Dutton

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

*Members of the public also have the option to join the meeting over Zoom
(See below for more details)**

7:00 P.M.

May 27, 2025

AGENDA

I. OLD BUSINESS

- A. The request of **Mezansky Family Revocable Trust (Owners)**, for property located at **636 Lincoln Avenue** whereas relief is needed to demolish an existing detached garage and to construct an addition to the primary structure which requires the following: 1) Variance from Section 10.521 to a) allow a 2 foot left side yard setback where 10 feet is required; b) allow a 12.5 foot rear yard setback where 20 feet is required; c) allow 39% building coverage where 25% is the maximum 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 148 Lot 17 and lies within the General Residence A (GRA) District. (LU-25-27)

II. NEW BUSINESS

- ~~A. The request of **Jeannette MacDonald (Owner)**, for property located at **86 Farm Lane** whereas relief is needed to subdivide the existing property into 3 separate lots. The proposed parent lot requires the following: 1) Variance from Section 10.521 to allow a) 28-foot rear yard setback where 30 feet is required; and b) 23-foot secondary front yard where 30 feet is required. Proposed lot 1 requires the following: 2) Variance from Section 10.521 to allow a) 10,664 s.f. of lot area where 15,000 s.f. is required; b) 10,664 s.f. of lot area per dwelling unit where 15,000 s.f. is required; and c) 75 feet of continuous street frontage where 100 feet is required. Proposed lot 2 requires the following: 3) Variance from Section 10.521 to allow a) 11,250 s.f. of lot area where 15,000 s.f. is required; b) 11,250 s.f. of lot area per dwelling unit where 15,000 s.f. is required; and c) 75 feet of continuous street frontage where 100 feet is required. Said property is located on Assessor Map 236 Lot 74 and lies within the Single Residence B (SRB) District. (LU-25-67)~~

II. OLD BUSINESS

- A.** The request of **Life Storage LP C/O Sovran Self Storage (Owner)**, for property located at **70 Heritage Avenue** whereas relief is needed for after-the-fact installation of mini-storage units which requires the following: 1) Variance from Section 10.531 to allow a 2-foot rear setback where 50 feet is required; and 2) Variance from Section 10.330 to allow the expansion of a nonconforming use where it is not permitted. Said property is located on Assessor Map 285 Lot 11-B and lies within the Industrial (I) District. (LU-25-36)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial, mini-storage, Warehouse	After-the-fact mini-storage units*	Primarily Industrial Uses
<u>Lot area (acres):</u>	7.44	7.44	2 min.
<u>Street Frontage (ft.):</u>	>200	>200	200 min.
<u>Lot Depth (ft.):</u>	>200	>200	200 max.
<u>Primary Front Yard (ft.):</u>	70	70	70 max.
<u>Left Yard (ft.):</u>	49.9	49.9	50 min.
<u>Right Yard (ft.):</u>	50.4	50.4	50 min.
<u>Rear Yard (ft.):</u>	68.5	2	50 min.
<u>Building Coverage (%)</u>	<50	<50	50 max.
<u>Open Space Coverage (%)</u>	~20	~20	20 min.
<u>Estimated Age of Structure</u>		Variance request(s) shown in red.	

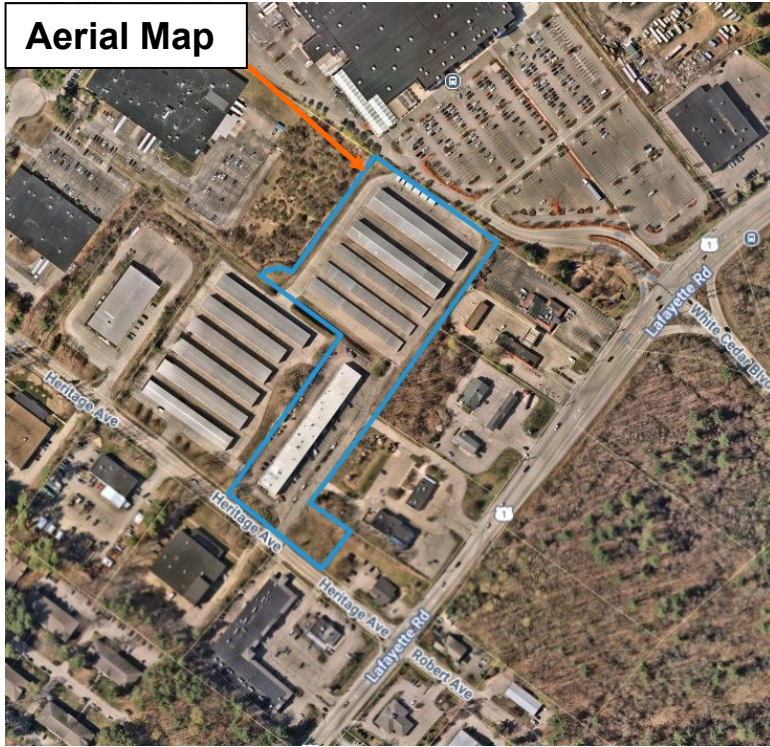
*Expansion of a non-conforming use

Other Permits/Approvals Required

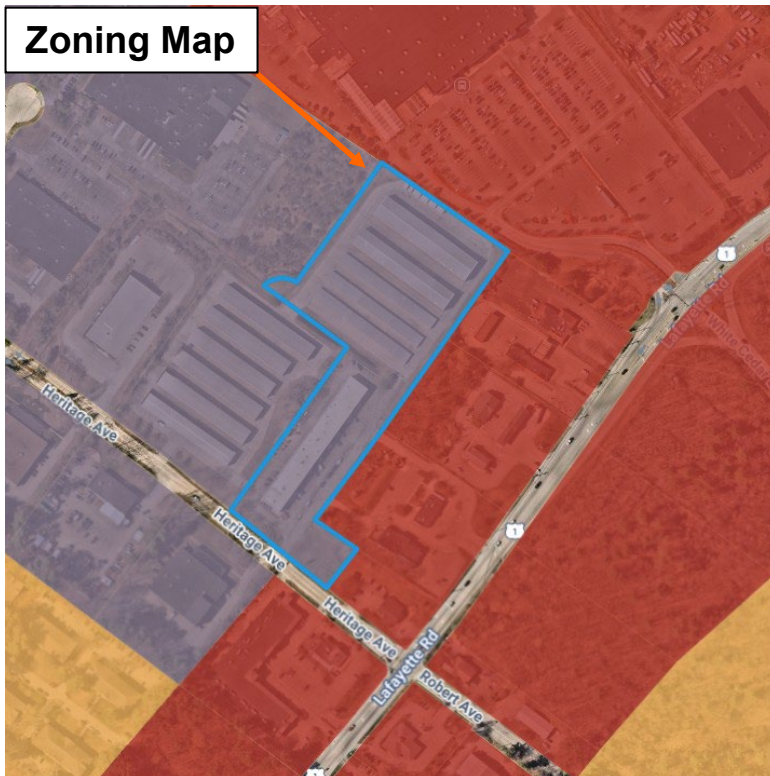
- TAC / Planning Board Amended Site Plan Review

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

- **July 22 1986** – 1) a Variance from Article II, Section 10-206 to permit the construction of a structure (approximately 280' x 30') for use as a mini-storage facility in a business district where warehouses are not an allowed use; and 2) a Variance from Article II, Section 10-206 (23)(d) to permit a residential unit to be constructed for use by the Manager in this structure. The Board voted to **deny** the request as presented and advertised.
- **October 20, 1987** – 1) A Variance from Article III, Section 10-301 (10) and NH RSA 674: 40-41 to allow the subdivision of an existing 7.3 acre lot resulting in Lot B having no access on an accepted public street or an approved private street; and 2) a Variance from Article III, Section 10-302 (Table 5) to allow the creation of said lot with no continuous frontage where minimum continuous frontage of 200' is required. The Board voted to **deny** the request as presented and advertised, because it is a conforming lot that has frontage; it has access; and other buildings can be built on the lot and therefore no hardship.
- **January 5, 1988** – A Variance from Article II, Section 10-207 to allow 7200 s.f. of an industrial structure to be used for warehousing, retail sales and display space in a district where retail sales are not an allowed use. The Board voted to **grant** the request with the following condition:
 - 1) With the understanding that no more than 550 square feet to be used for retail space.
- **March 15, 1988** – A Variance from Article II, Section 10-207 to allow a 6000 s.f. with an additional 400 s.f. mezzanine of an industrial building to be used for retail sales in a district where retail sales are not allowed. The Board voted to **deny** the request as presented and advised. The Board felt that the Variance goes with the land and it is up to the property owner to show a hardship that the space cannot be leased out for industrial use. They feel that a reasonable use can be made of this land in an Industrial Zone and that all criteria for granting the Variance had not been met.
- **May 17, 1988** - A Variance from Article II, Section 10-207 to allow a 6000 s.f. of an existing industrial structure and 400 s.f. of a mezzanine area to be used for retail sales in a district where retail sales are not allowed. The Board voted to **grant** the request with the following **condition**:
 - 1) That the retail sales area be limited to 1920 s.f. (30%) of the total 6400 s.f. gross area to be leased by the applicant.
- **July 17, 1990** - An action is submitted to Appeal an Administrative Decision by the Building Inspector in the interpretation of Article I, Section 10-102 and Article II, Section 10-207 for the occupancy of Dantran, Inc. in a unit at the storage facility for use as a workshop to service and perform light maintenance on it's own trucks. The Board voted to **uphold** the Building Inspectors decision. Notwithstanding the above, if the Appeal of the Administrative Decision is denied, then, the following request is hereby made: a Special Exception as allowed by Article II, Section 10-207 (8) to permit the repair and maintenance of heavy vehicles including large straight trucks and tractor trailers. The Board voted to **grant** the request as presented with the following conditions:
 - 1) That the hours of operation be from 8:00 a.m. to 5:00 p.m;
 - 2) That there be no outside storage;
 - 3) That the property be used for Dantran trucks only (owned or leased); and
 - 4) That the business be located in a 50' x 50' area as indicated on the plan which has been signed and dated by Attorney Mark Beliveau, the Attorney for Magnolia Corporation.

- **August 24, 1993** – An Appeal of an Administrative Decision in the interpretation of Article II, Section 10-207 to allow use of 2,000± s.f. of space within an Industrial district for a coin-operated laundry. The Board voted to **uphold** the Building Inspectors decision. Notwithstanding the above, if the Appeal from Article II, Section 10-207 is denied, then, the following request is hereby made: a Variance from Article II, Section 10-207, is requested to allow a coin-operated Laundromat (retail store) to occupy approximately 2,000 s.f. of structure, in a district where a retail use is not allowed. The Board voted to **grant** the request as presented and advertised.
- **August 24, 1993** – A Variance from Article II, Section 10-207 for 12 months temporary use of 3,600± s.f. of building space (units 4, 5 & 6) within an Industrial district by a non-profit organization for the purpose of teaching gymnastics to students under 13 years of age. The Board voted to **grant** the request as presented with the following **condition**:
 - 1) That the temporary use of the building space be effective September 1, 1993 until September 1, 1994.
- **September 20, 1994** – A request for an Extension of Time for an additional one year period. The Board voted to **grant** the extension of time for one year effective September 20, 1994 until September 21, 1995.
- **August 15, 1995** - A request for an Extension of Time. The Board voted to **grant** the extension of time for an additional one year.
- **November 21, 1995** – An Appeal of an Administrative Decision in the interpretation of Article II, Section 10-207(3) to allow the operation of a design center and showroom for the display and sale of doors, windows and cabinets and for the computer layout of kitchens and baths in Unit 13. The Board voted to **uphold** the Building Inspector's decision. Notwithstanding the above, if the Appeal of an Administrative Decision is denied, then a Variance from Article II, Section 10-207(3) is requested to allow the operation of a design center and showroom for the display and sale of doors, windows and cabinets and for the computer layout of kitchens and baths in Unit 13. The Board voted to **grant** the request as presented and advertised.
- **September 17, 1996** - A request for an Extension of Time for the Seacoast Family YMCA. The Board voted to **grant** the extension of time for an additional one year period effective September 17, 1996 until September 18, 1997.
- **August 19, 1997** - A request for an Extension of Time. The Board voted to **grant** the extension of time for an additional one year to expire September 30, 1997.
- **September 15, 1998** - A request for an Extension of Time for the Seacoast Family YMCA. The Board voted to **grant** the extension of time for an additional one year to expire September 30, 1999.
- **October 19, 1999** - A request for an Extension of Time for the Seacoast Family YMCA. **Withdrawn** by applicant.
- **April 18, 2000** – A Variance from Article II, Section 10-209 to allow the conversion of an existing 50' x 300' building from general industrial warehouse use to a mini storage facility in a district where such use is not allowed. The Board voted to **grant** the request as presented and advertised.

- **March 20, 2001** – A Variance from Article II, Section 10-209 to allow the conversion of a 60' x 300' building from general industrial warehouse use to a mini storage facility in a district where such use is not allowed. The Board voted to **grant** the request as presented and advertised.
- **May 20, 2008** – A Variance from Article II, Section 10-209 was requested to allow the sale of sporting goods (primarily lacrosse equipment) and lacrosse and circuit training in a district where such uses are not allowed. The Board voted to **grant** the request as presented and advertised.
- **October 21, 2008** – A Variance from Article II, Section 10-209 was requested to convert a 7,200 sf portion of an existing building into two levels (14,400 sf total area) of self storage in a district where such use is not allowed. The Board voted to **deny** the request as it does not meet the criteria necessary to grant a variance. There is nothing inherent in the land presenting a hardship and the zoning restriction does not interfere with a reasonable use of the property.
- **April 19, 2011** – To allow Motor Vehicle Repair/automotive glass replacement as a special exception use, which requires the following: Special Exception under Section 10.440, Use #11.20, to permit Motor Vehicle Repair in the Industrial district. The Board voted to **grant** the request as presented and advertised.
- **February 26, 2013** – Outdoor retail use with pool display and outdoor storage area, 4' x 8' sign installed on the fence surrounding the pool display area, and outdoor storage which requires the following: 1) a Variance from Section 10.440 and Section 10.434.40 to allow the outdoor display and outdoor retail sale of pools and related materials. 2) A Variance from Section 10.531 to allow a front yard setback of 36'± where 70' is required. 3) A Variance from Section 10.531 to allow 17%± open space where 20% is required. 4) The Variance(s) necessary to allow a 32 s.f. sign to be erected on a fence. 5) A Special Exception under Section 10.440, Use #20.61 to allow the outdoor storage of pool related materials. The Board voted to **grant** the request as presented, with the following conditions:
 - 1) That the distance from the front property line on Heritage Avenue to the pools in the display area will be no less than 50'.
 - 2) That the area of the proposed sign be erected on the fence will be no greater than 18 s.f.
- **April 23, 2013** – Tanning booth in existing laundromat facility, which requires the following: 1) a Variance from Section 10.440, Use #7.20 to allow a use that is not permitted in this district. 2) A Variance from Section 10.331 to allow a lawful nonconforming use to be extended, enlarged or changed in a manner that is not in conformity with the Zoning Ordinance. The Board voted to **grant** the request as presented and advertised.

Planning Department Comments

The subject property is an industrial property that contains one commercial building, three one-story mini-storage buildings, and two large industrial warehouse buildings. In January 2025 it came to the attention of Planning staff that the property owner had installed several mini-storage units in the rear of the property without the benefit of approvals and permits. The applicant submitted an after-the-fact building permit application in February 2025 and was notified that the storage unit structures would require land use approvals to be placed in the rear yard and for the expansion of a nonconforming use.

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

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

10.235 Certain Representations Deemed Conditions

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

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801

Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgirlaw.com

May 19, 2025

HAND DELIVERED

Stefanie Casella, Principal Planner
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Life Storage, LP
70 Heritage Avenue
Tax Map 285/Lot 11-B
Industrial ("I") Zone

Dear Ms. Casella, Chair Eldridge & Zoning Board Members:

On behalf of LP Storage, LP, enclosed please find the following in support of a request for zoning relief:

- See Viewpoint Land Use LU-25-26 Application Package uploaded today.
- Owner Authorization.
- 5/19/2025 – Memorandum and exhibits in support of Zoning Relief

We look forward to presenting this application to the Zoning Board at its June 17, 2025 meeting.

Very truly yours,



Kevin M. Baum, Esq.

Encl.

cc: Life Storage, LP

DANIEL C. HOEFLE

ALEC L. MCEACHERN

PETER V. DOYLE

STEPHEN H. ROBERTS In Memoriam

R. TIMOTHY PHOENIX

KEVIN M. BAUM

MONICA F. KIESER

OF COUNSEL:

LAWRENCE B. GORMLEY

JACOB J.B. MARVELLEY

CHRISTOPHER P. MULLIGAN

SAMUEL R. REID

R. PETER TAYLOR

GREGORY D. ROBBINS

KAREN W. OLIVER

JOHN AHLGREN

AUTHORIZATION

The undersigned authorized representative of Life Storage, LP Space Storage of 110 Haverhill Road, Amesbury, Massachusetts, 01913, owner of property located at 70 Heritage Avenue, Portsmouth, New Hampshire, Tax Map 285, Lot 11B (“the Property”). Hereby authorize Hoefle, Phoenix, Gormley & Roberts, PLLC to file documents and appear before the Portsmouth Zoning Board of Adjustment, Planning Board, Conservation Commission and/or Technical Advisory Committee in all matters relating to applications for the Property.

Life Storage, LP

Dated:

By: *Brian Leavitt*
Brian Leavitt
Duly authorized

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: Kevin M. Baum, Esquire
DATE: May 19, 2025
Re: Applicant: Life Storage, LP
Property: 70 Heritage Road
Tax Map 285, Lot 11B
Industrial (“I”) Zoning District

Dear Chair Eldridge and Zoning Board Members:

On behalf of Life Storage, LP (“Life Storage”), we are pleased to submit this Memorandum and exhibits in support a variance for limited dimensional relief to permit a multi-family residential development site on the above-referenced property (the “Property”).

I. EXHIBITS

- A. Site Plan – Holden Engineering.
- B. Structure Plans.
- C. City GIS Map – showing the property and surrounding area zones.
- D. Site Photographs.
 - Satellite
 - Street View
- E. Tax Map 285.

II. PROPERTY/PROJECT

70 Heritage Avenue is an approximately 7.44-acre parcel located in the Industrial Zone, directly abutting the Walmart Parking Lot in the Gateway 1 (“G1”) District (“the Property”). The Property contains one commercial building, three one-story mini-storage buildings, and two large industrial warehouse buildings. **(Exhibit A)**. An abutting parcel, 100 Heritage Avenue also contains storage units owned by Life Storage, LP, but is not the subject of this application. The storage use at 70 Heritage Avenue largely predates the current zoning ordinance, with conversion to storage space permitted in the past (2001) and outdoor storage of pool items (2013).

Life Storage, LP has installed a collection of portable mini-units on the parcel at the rear of the Property. **(Exhibit A)**. The mini-storage units are 20 feet long by 10 feet wide, and approximately 8.5 feet tall. **(Exhibit B)**. The mini-units are located on a paved area close to the rear lot line, which abuts the Walmart parking lot/access drive and Gateway District 1. The

mini-units cannot be placed any farther from the rear lot line as it would impede the turning radius behind and around the existing rear storage building. While the mini-units are readily disassembled and removable, the City Planning Department has determined they are permanent structures subject to the applicable setback requirements. Accordingly, Life Storage, LP seeks after-the-fact relief to allow the mini-units to remain within the rear yard setback (“the Project”).

II. RELIEF REQUIRED

Portsmouth Zoning Ordinance §10.440 – to permit expansion of the nonconforming storage unit use where the use is not permitted.

Portsmouth Zoning Ordinance §10.530 – to permit the placement of mini-storage units 2-4 feet from the rear lot line where 50 feet is required.

III. VARIANCE REQUIREMENTS

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

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

The purpose of the Portsmouth Zoning Ordinance as set forth in PZO §10.121 is “to promote the health, safety and the general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan... [by] regulating”:

- The use of land, buildings and structures for business, industrial, residential and other purposes – The Project adds portable mini-storage units, slightly expanding the self-storage facility use where the use has long existed.
- The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The mini-units are placed over paved area, so there is no change to open space and building coverage is far below the 50% limit.
- The design of facilities for vehicular access, circulation, parking and loading – The vehicular access and circulation will not change because the mini-units are located over 45 feet from the closest large storage building.

- The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – The Property is currently used as a storage facility. The addition of a handful of mini-units will not negatively affect these factors compared to existing conditions.
- The preservation and enhancement of the visual environment – The Property and mini-units are located in the Industrial Zone separated from the Walmart parking lot/access drive by a row of trees. The mini-units will not be seen from Heritage Avenue.
- The preservation of historic districts, and buildings and structures of historic or architectural interest – Not applicable.
- The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – The Project is in the Industrial Zone abutting the Gateway 1 District. The area is intensely developed, and the proposed mini-units are not located close to any natural resource.

Based upon the foregoing, none of the variances “in a marked degree conflict with the ordinance such that they violate the ordinance’s basic zoning objectives.” Malachy Glen, supra, which also held:

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

The Property is located on Heritage Road near the Lafayette Road (Route 1) intersection and is surrounded by commercial properties. The slight expansion of the storage use resulting from the addition of the mini-units will not alter the intensely commercial area. The placement of the mini-units closer to the rear lot line also maintains sufficient access lane and turning radius around the rear of the existing storage building on the site. The mini-units are sited at the rear of the Property, screened from the Walmart parking lot/access drive by trees. It is unlikely that any structures will be located on that portion of the Walmart lot in the foreseeable future. Even in the event of future development of the Walmart parking lot, that property is located in the G1 District, which permits limited and in some cases no side yard setbacks. Accordingly, granting each requested variance will neither “alter the essential character of the locality,” nor “threaten the public health, safety or welfare.”

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

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

Life Storage is constitutionally entitled to the use of the lot as they see fit, subject to the effect upon the expansion restrictions and rear yard requirements. “The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). “Property” in the constitutional sense has been interpreted to mean not the tangible property itself, *but rather the right to possess, use, enjoy and dispose of it*. Burrows v. City of Keene, 121 N.H. 590, 597 (1981). (emphasis added).

The Supreme Court has also held that zoning ordinances must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of the regulation. Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001); Chesterfield at 69.

The Property currently supports a self-storage facility in the Industrial zone, abutting the Gateway 1 District and intensive commercial uses. The mini-units are low profile structures placed on pavement. There is no increase in impervious surface, and the units will not be seen from Heritage Avenue nor noticed behind the trees bordering the Walmart parking lot/access drive. Accordingly, there is no harm to the public from permitting the slight expansion for structures in the rear yard setback; however, Life Storage will be harmed by denial of the variances as they will be unable to accommodate demand for services from its long existing business. For these reasons, substantial justice will be done by granting the variances.

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

As noted, the Project slightly expands the existing self-storage use by adding a collection of portable mini-storage units at the rear of the lot, which abuts the Walmart parking lot/access drive. This area is already developed with extensive commercial and industrial units. The units are low profile, behind a tree border, and will not draw any attention. In light of these factors, granting the requested variance will not diminish surrounding property values.

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

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

Although the Property is quite large, the lot is relatively long and irregularly shaped with an oversized rear yard abutting a commercial access drive. Storage use already exists through grandfathering and prior zoning relief. The structures are located immediately adjacent to the G1 District, which permits limited to no structure setbacks. These factors combine to create special conditions.

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

Use regulations/expansion restrictions exist to keep similar uses together and to prevent conflicts among incompatible uses. Yard setbacks exist to promote air, light, and space for stormwater treatment. They also exist to maintain sightlines for pedestrians and motorists. The slight expansion of the longstanding nonconforming use fits the commercial area. The mini-units are only 8.5 feet tall and screened by a row of trees so neighbors' access to air and light remains unchanged. There will be no increase in impervious surface, so stormwater volume and drainage patterns will not be negatively affected. Additionally, while the mini-units are close to the rear lot line abutting the Walmart parking lot/access drive, there is no entry or exit from the Property to the access drive and therefore no risk of decreased visibility. Additionally, the Property abuts the G1 Zone which allows limited setbacks. For all these reasons, there is no fair and substantial relationship between the general public purposes of these PZO provisions and their specific application to the Property.

c. The proposed use is reasonable.

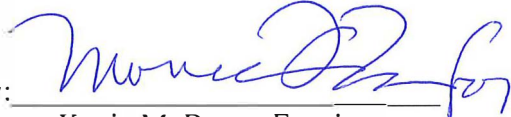
While self-storage is not a permitted use in the Industrial Zone, this self-storage facility has long existed and is a fixture in the neighborhood. The slight expansion in an underutilized

area along a commercial access drive and in accordance with both the intent of the PZO. The proposed placement of the mini-units will result in no noticeable impact to the nearest abutting property and will result in little to no visual impact. Accordingly, the use is reasonable, and denial will result in an unnecessary hardship to Life Storage.

IV. CONCLUSION

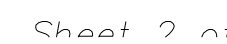
For all the reasons stated, Life Storage respectfully requests that the Portsmouth Zoning Board of Adjustment grant the submitted variance requests. We look forward to presenting this application on June 17, 2025.

Respectfully submitted,
LIFE STORAGE, LP

By: 
Kevin M. Baum, Esquire



A-01



MASS UNITS MIX DATA

UNIT	C.C. DOWN/OUT		C.C. DOWN/IN		UP IN	C.C. UP IN		TOTAL	% of UNITS	NET SQ.FT.
	DOWN/OUT	DOWN/IN	DOWN/IN	DOWN/IN		UP IN	UP IN			
5x5	16	0	0	0	0	0	0	16	42	400
5x10	12	0	0	0	0	0	0	12	32	600
10x10	10	0	0	0	0	0	0	10	26	1,000
	38	0	0	0	0	0	0	38	100	2,000

NET RENTABLE 2,000
 AVG. UNIT SIZE 53
 20X10 MASS UNIT (QTY).....10 (Standard Building)

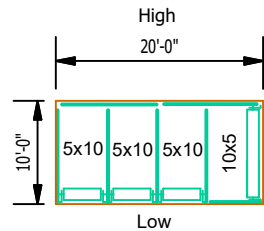
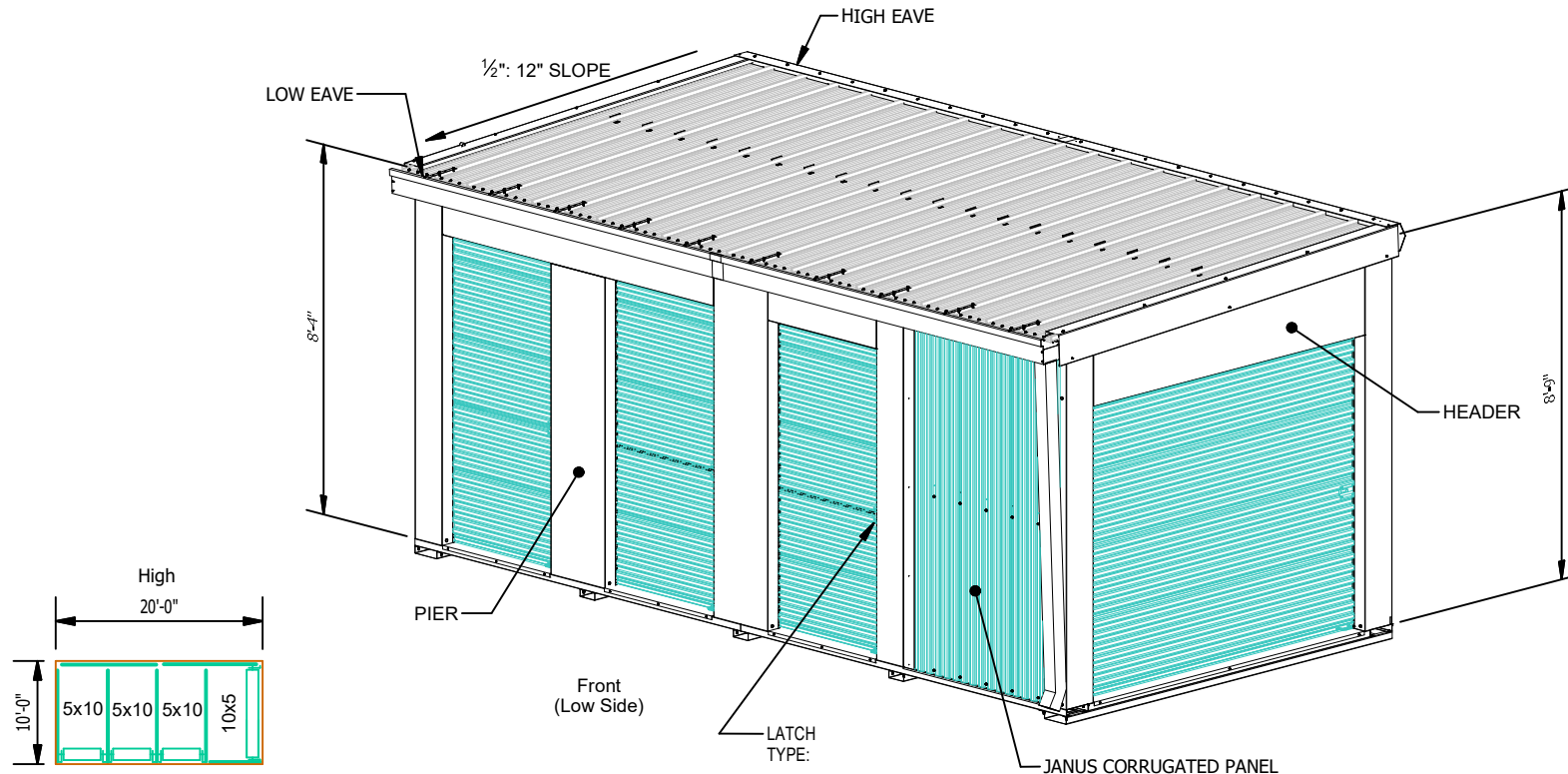
**NOTES: FIELD VERIFY DIMENSIONS PRIOR TO INSTALLATION.
ANY UTILITY MAINTENANCE EASEMENTS TO BE VERIFIED W/
LOCAL UTILITY COMPANY AS NEEDED. DRAWINGS ARE FOR
REFERENCE AND MUST NOT BE USED AS FINAL CONSTRUCTION
DOCUMENT.**

THESE DRAWINGS ARE FOR REFERENCE USE ONLY AND ARE **NOT FOR CONSTRUCTION**. ARCHITECT TO USE THESE DRAWINGS FOR REFERENCE ONLY. ARCHITECT/ENGINEER IS RESPONSIBLE FOR VERIFYING ALL DIMENSIONS AND CODE REQUIREMENTS AS REQUIRED BY LOCAL JURISDICTIONS.

1
A01 EXTERIOR CONVADD LAYOUT (NORTHEAST SIDE)
SCALE: 1"=40'-0"

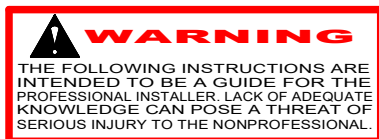
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MASS PORTABLE BUILDING COMPONENT



ONE UNIT CONFIGURATION
(3) 5X10 & (1) 10x5
UNIT ENTRY

BUILDING LOADS PER IBC 2012, 2015, 2018	
ROOF LIVE LOAD	20PSF
ROOF SNOW LOAD	30PSF
FLOOR LOAD (Equally distributed)	125PSF
DESIGN WIND SPEED	115mph



Janus International Corporation

134 East Luke Road Temple, GA. 30179 770.562.2850 Janusintl.com

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SCALE: 1:50	PART NUMBER	MANUFACTURED or PURCHASED MANUFACTURED	REVISION DATE:
DATE: 2/5/2024	DESCRIPTION 20x10 Mass LEF W-(3) door front & (1) 10x5 door RS		
DRAWN BY: STID M.	DRAWING FILE NUMBER: A		
CHECKED BY: TARIK A.	NUMBER OF SHEETS 1 OF 27		

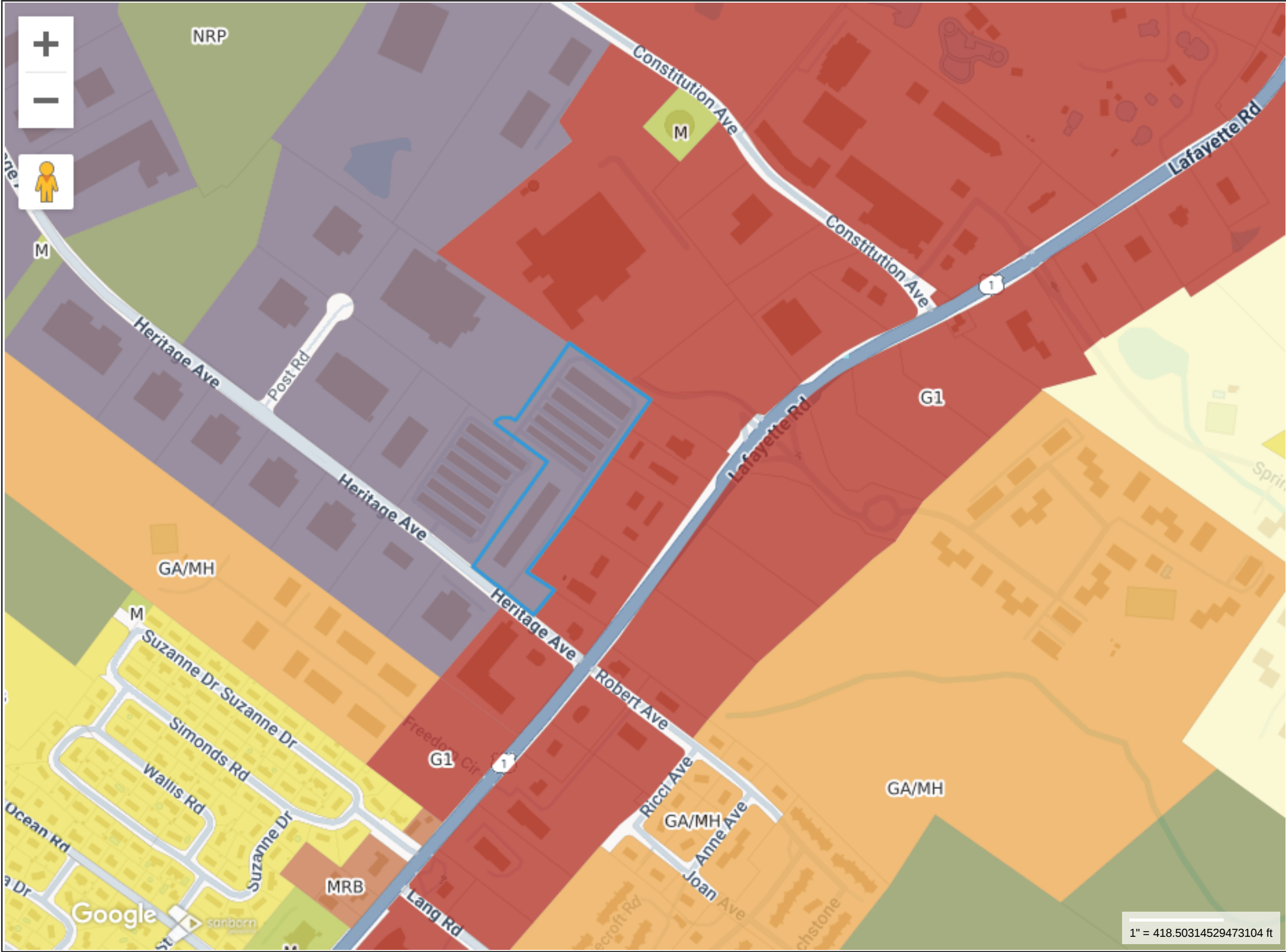
EXHIBIT B

20X10 MASS PORTABLE BUILDING

NOTE: WHEN ORDERING REPLACEMENT PARTS SPECIFY PART NUMBER & DESCRIPTION
[DO NOT USE MARK NUMBER]

- Step 1) Getting Started
PICK A LARGE CLEAR AND LEVEL AREA TO UNPACK YOUR PARTS. USE CARE AS YOU UNPACK, AS TO NOT TO SCRATCH OR DENT THE PRE FINISHED ITEMS.
- 2) Safety First
USE CAUTION WHEN LIFTING, MOVING OR ASSEMBLING THE METAL PARTS & PANELS AS THEIR EDGES CAN BE SHARP. MECHANICS GLOVES ARE RECOMMENDED. READ ALL THE INSTRUCTIONS PRIOR TO STARTING ANY WORK.
- 3) Tools Required
C-CLAMPS OR WELDERS VISE GRIPS, DRILL WITH BITS, CARPENTERS SQUARE, LINE UP TOOL, MAGNETIC 4' LEVEL, SCREW DRIVERS, SCREW GUN W/HEX BITS, SHEET METAL SNIPS, TAPE MEASURE, UTILITY KNIFE, WRENCHES, VISE GRIPS, CIRCULAR SAW, SOCKETS AND RATCHET.
- 4) Inventory Your Parts
UNPACK THE PARTS AT THIS TIME. REFER TO THE PARTS LIST FOR THE COMPLETE COMPONENT INVENTORY; NOTE ANY SHORTAGES.

70 Heritage in Context



Property Information
Property ID 0285-0011-000B
Location 70 HERITAGE AVE
Owner LIFE STORAGE LP



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

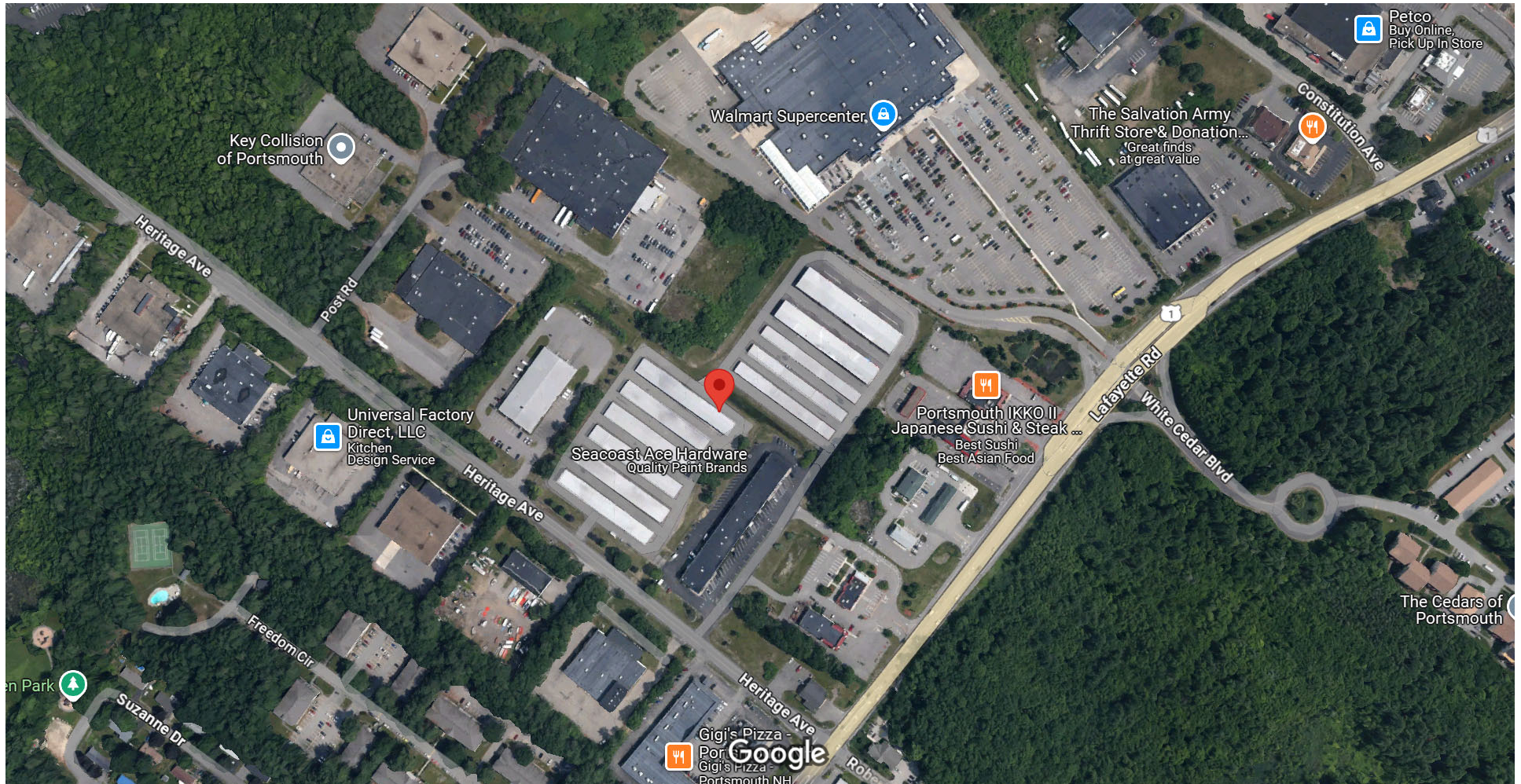
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 09/26/2024

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

EXHIBIT C

70 Heritage Ave



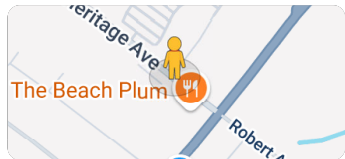
Imagery ©2025 Google, Imagery ©2025 Airbus, CNES / Airbus, Maxar Technologies, USDA/FPAC/GEO, Map data ©2025 200 ft

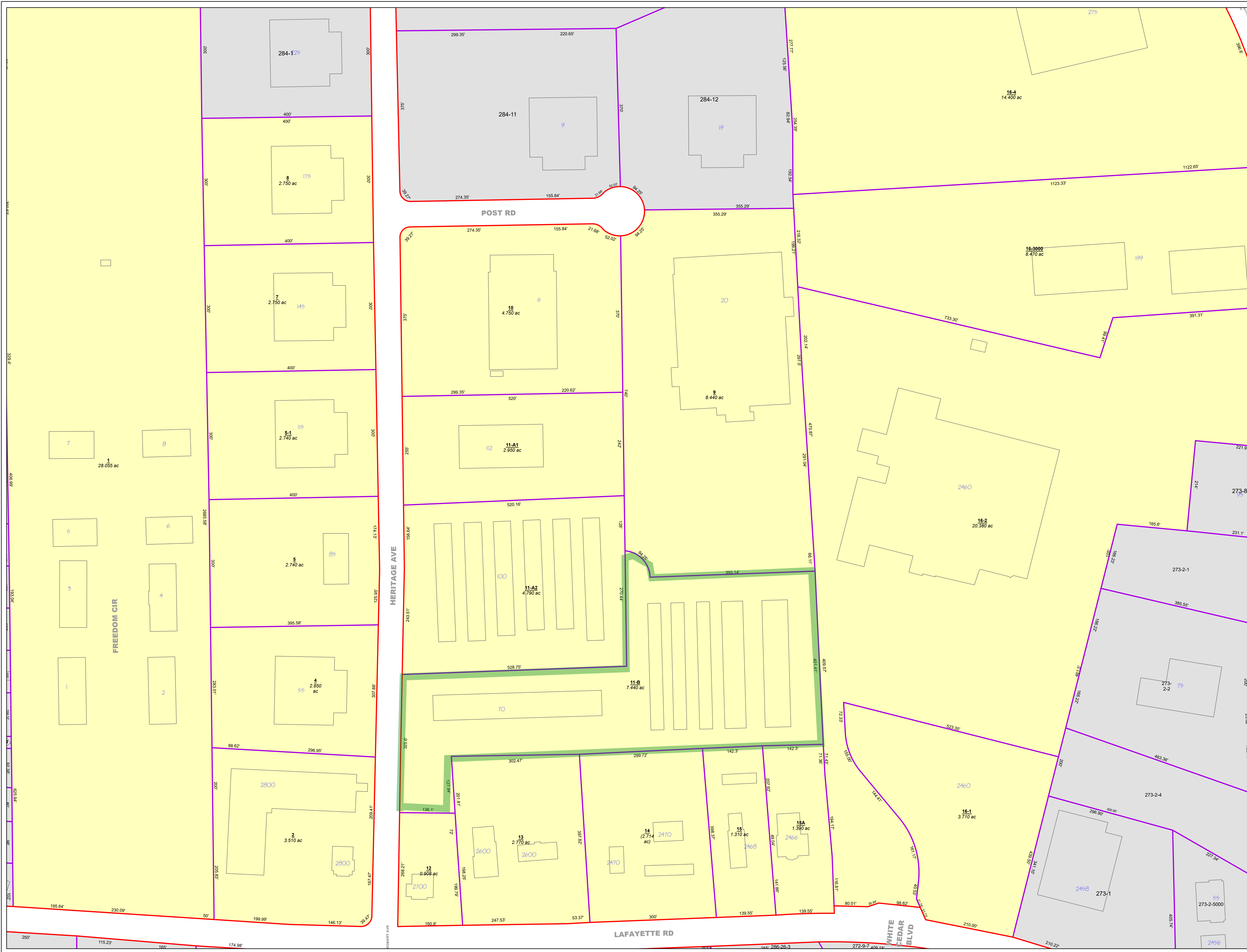
EXHIBIT D

Portsmouth, New Hampshire



Image capture: Nov 2024 © 2025 Google

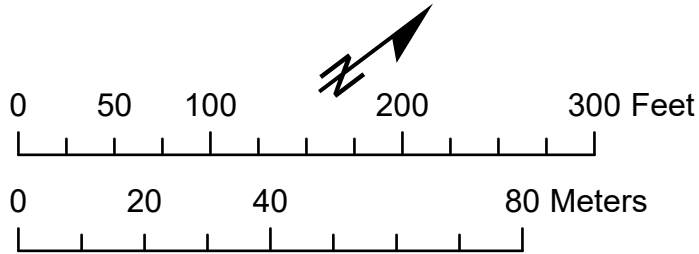




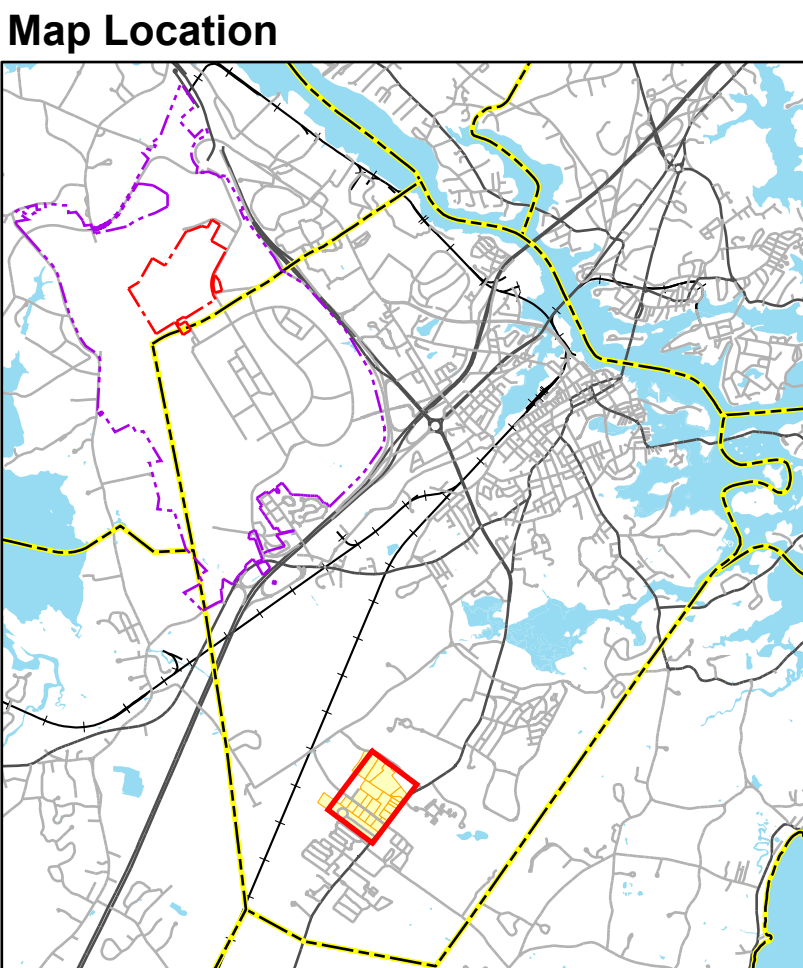
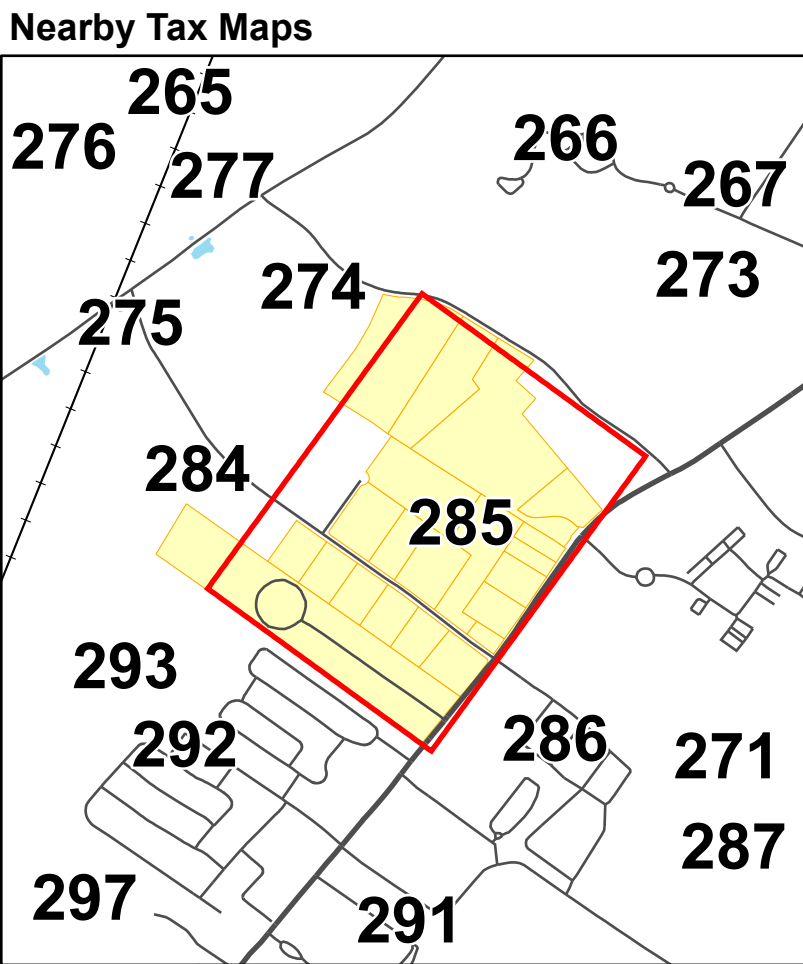
Partial Legend
See the cover sheet for the complete legend.

- 7-5A** Lot or lot-unit number
- 2.56 ac** Parcel area in acres (ac) or square feet (sf)
- 125** Address number
- 233-137** Parcel number from a neighboring map
- 68'** Parcel line dimension
- SIMS AVE** Street name
- Parcel/Parcel boundary
- Parcel/ROW boundary
- Water boundary
- Structure (1994 data)
- Parcel covered by this map
- Parcel from a neighboring map (see other map for current status)

EXHIBIT E



This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.



II. OLD BUSINESS

- B.** The request of **Port Hunter LLC (Owner)**, for property located at **361 Miller Avenue** whereas relief is needed to demolish the existing detached garage and construct a new detached garage which requires the following: 1) Variance from Section 10.521 to allow a building coverage of 26% where a maximum of 25% is permitted; 2) Variance from Section 10.573.20 to a) allow an accessory building with a 10.5 foot rear setback where 20 feet is required; and b) a 6 foot left side yard setback where 10 feet is required. Said property is located on Assessor Map 131 Lot 33 and lies within the General Residence A (GRA) District. (LU-25-76)

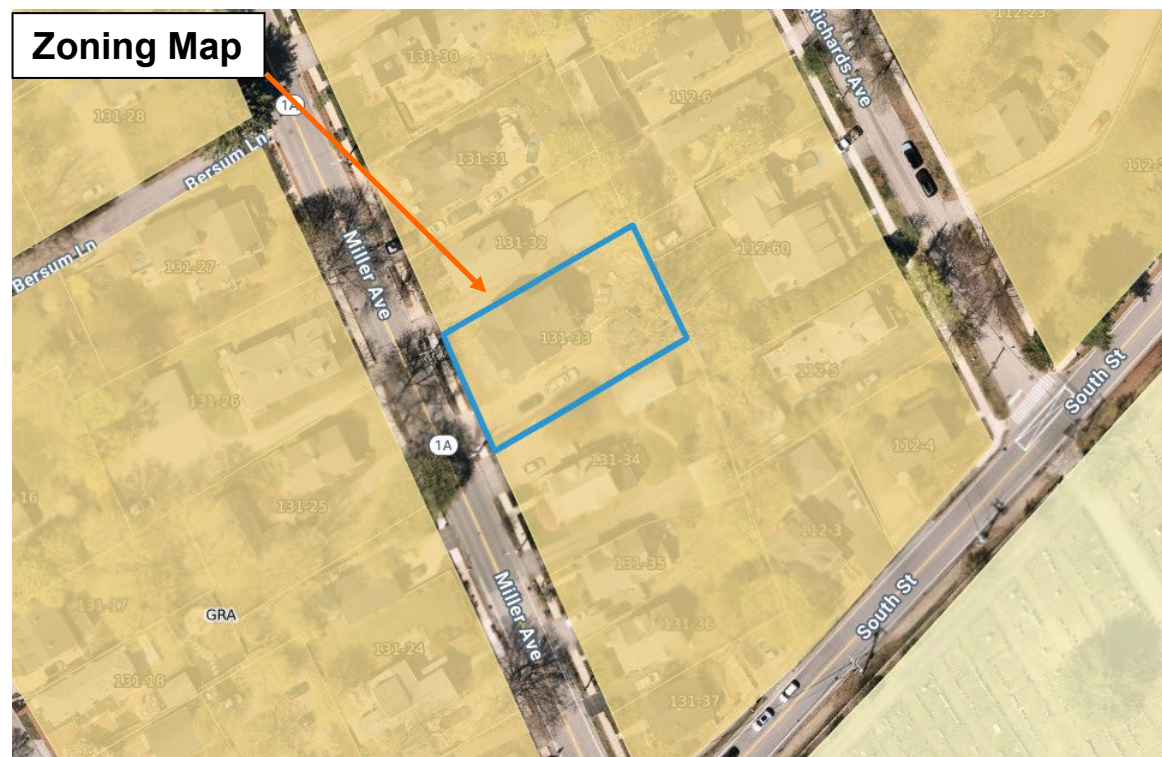
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	6-unit Multi-family	Demo existing detached garage and construct new detached garage in new location	Primarily Residential
<u>Lot area (sq. ft.):</u>	9,921	9,921	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	1,653.5	1,653.5	7,500 min.
<u>Lot depth (ft.):</u>	131.5	131.5	100 min.
<u>Street Frontage (ft.):</u>	75.8	75.8	70 min.
<u>Front Yard (ft.):</u>	>15	>15	15 min.
<u>Right Side Yard (ft.):</u>	Garage: 4	Garage: >10	10 min.
<u>Left Side Yard (ft.):</u>	Garage: >10	Garage: 6	10 min.
<u>Rear Yard (ft.):</u>	Garage: 21	Garage: 10.5	20 min.
<u>Building Coverage (%):</u>	23.9	26	25 max.
<u>Open Space Coverage (%):</u>	39.5	34.6	30 min.
<u>Height (ft.):</u>	Garage: <35	Garage: 22	35 max.
<u>Parking</u>	8	9	8
<u>Estimated Age of Structure:</u>	1880	Variance request(s) shown in red.	

Other Permits/Approvals Required

- TAC / PB Amended Site Plan Approval
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

- No previous BOA history.

Planning Department Comments

The applicant is proposing to demolish the existing dilapidated one-story detached garage on the property and to construct a new 24' x 24', two-story, two-car garage in the northeasterly corner of the property. The relocation of the new garage is proposed to improve the conditions of a large 210-year-old silver maple tree located directly behind the existing detached garage. The proposed garage requires relief for left side yard setback, rear yard setback and building coverage greater than the maximum allowed.

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.

COLBY T. GAMESTER

Attorney At Law

144 Washington Street
Portsmouth, New Hampshire 03801

(603)-427-0000
colby@gamesterlaw.com

May 21, 2025

SUBMITTED VIA VIEWPOINT & HAND DELIVERED

City of Portsmouth
Zoning Board of Adjustment
Attn: Phyllis Eldridge, Chairwoman
1 Junkins Avenue
Portsmouth, NH 03801

**Re: Variance Application of Port Hunter, LLC
361 Miller Avenue, Portsmouth, NH (Tax Map 131, Lot 33)**

Dear Chairwoman Eldridge:

My office represents Port Hunter, LLC, the owner of property located at 361 Miller Avenue. Enclosed herewith are the following materials for submission to the Zoning Board of Adjustment for consideration at the next regularly scheduled meeting:

1. Landowner Letter of Authorization
2. Narrative to Variance Application
3. Exhibit A - Existing Conditions Plan
4. Exhibit B - Photographs
5. Exhibit C - Letter from Northeast Shade Tree
6. Exhibit D - Certification from New Hampshire Big Tree Program
7. Exhibit E - Site Plan
8. Exhibit F - Architectural Renderings

Should there be any questions, comments or concerns regarding the enclosed application and materials then please do not hesitate to contact me.

Kindest Regards,



Colby T. Gamester, Esq.

Enclosures

Cc: file; Clients; Ross Engineering LLC; Tuscher Design Group (via email only)

LANDOWNER LETTER OF AUTHORIZATION

I, the Undersigned, Elizabeth Pesce, as a member of Port Huner, LLC, the record owner of real property located at 361 Miller Avenue, Portsmouth, New Hampshire 03801, identified on Portsmouth Tax Map 131 as Lot 33 (the "Property"), hereby authorize Gamester Law Office, and its attorneys and representatives, Ross Engineering, LLC, and its representatives, and Tuscher Design Group, and its representatives, to file any document with the City of Portsmouth (the "City"), communicate and correspond with City staff and officials, and submit applications with and appear before the City's land use boards all regarding the Property. This Letter of Authorization shall be valid until expressly revoked in writing.


Elizabeth Pesce, Member


Date

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

Owner and Applicant

Port Hunter, LLC
56 Piscataqua Street
New Castle, NH 03854

For Property Located At:

361 Miller Avenue
Portsmouth, NH 03801

Introduction and Relevant Historical Information

Port Hunter, LLC (“Owner”) is the owner of real property located at 361 Miller Avenue, identified on Portsmouth Tax Map 131 as Lot 33 (the “Property”). The Property is located in the General Residence A (“GRA”) zoning district, is 0.23 acres, or 9,921 square feet, and contains one (1) residential multi-family dwelling structure, containing six (6) dwelling units, a two-car garage, and no other structures, creating a footprint of approximately 2,387 square feet, or approximately 23.90% building coverage. The Property has 75.86 feet of frontage solely on Miller Avenue.

The Property contains four (4) preexisting nonconformities: 1) frontage of 75.86 feet where 100 feet is required, 2) six (6) dwelling units with each requiring a minimum lot area of 7,500 square feet, 3) along its northern boundary an approximate 5-6 foot side yard setback where 10 feet required, and 4) along its southern boundary an approximate 4-5 foot side yard setback where 10 feet is required

These existing conditions can be seen on a plan entitled “Existing Conditions Plan, 361 Miller Ave., Portsmouth, NH 03801, Tax Map 131, Lot 33” drawn by Ross Engineering, LLC, dated May 10, 2024, which is enclosed herewith as **Exhibit A**.

The Property was created by the recording of a plan of land of Emery, Boynton and Griffin, made by C.E. Scruton, C.E., October, 1898, and was, from that plan, Lot No. 2 and the northerly half of Lot No. 1. The aforementioned plan is not available online through the Rockingham County Registry of Deeds.

According to the City’s assessing records the dwelling structure was constructed in 1880. It is unknown when the existing two-car garage was constructed, but given its construction it is believe to have been built in the 1950’s of 1960’s. The main structure was originally a duplex and after conversation with a gentlemen who grew up in one of the sides of the duplex, the Owner learned that it was most likely converted to six dwellings in the 1950’s. There are no planning

files for the Property in the Planning Department and the file in the Inspection Department has records beginning only in 1980 which indicate six units.

The Owner, namely Elizabeth, Tim and Jameson Pesce, the underlying members of the Port Hunter, LLC, purchased the Property in June 2021. Not longer after their purchase, they undertook an extensive interior and exterior renovation of the structure and all six units so as to update all features of the structure and units, including bringing all aspects of the building into current building code compliance.

The aforementioned 20.5' x 20.5' two-car garage has been in disrepair for quite some time, The Property has, and, moreover, generally can, vastly benefit from a garage for parking and storage purposes; however, in its current condition the garage is not safe for storage, let alone parking. Not only is the wood frame and structure in disrepair but the concrete slab upon which it sits is failing, which is most likely a primary contributor to the issues with the wood frame and overall structure. The necessary repairs to reconstruct or rebuild in place would entail excavation and concrete work. Enclosed herewith as **Exhibit B-1** is a picture of the existing garage.

In addition to the structures onsite, the Property contains a fair amount of old, deteriorating macadam that has been used as a driveway and parking area, as well as a substantial amount of macadam that covers a majority of the backyard which was partially visible and partially covered with dirt, loam and vegetative growth from over the years. The macadam in the back yard results in severe drainage issues and standing water after rain events affecting the Property and its abutters. Enclosed herewith as **Exhibit B-2** pictures of the driveway, backyard and the macadam.

The Property is also home to an enormous and magnificent silver maple tree directly behind the existing garage in the southeast corner of the Property. The Owners knew even before their purchase that a primary goal of theirs would not only be to keep the tree, but to make sure that it is as healthy as it can be well into the future. With this in mind, as well as with their desire to reconstruct the garage, the Owners consulted with several landscape professionals and arborists about the health of the tree.

The Owner primarily dealt with Northeast Shade Tree LLC, and enclosed herewith as **Exhibit C** is a letter from David Steadman of Northeast Shade Tree LLC indicating that the tree is approximately 210 years old and with the recommendation to not perform any sort of major construction or excavation that would be required to rebuild the garage in its current location. The age of the tree is most likely older than 210 years given its difficult living conditions.

The Owner also received certification of the tree through the New Hampshire Big Tree Program. The Certification, attached as **Exhibit D**, indicates that the silver maple is 90 feet tall, has an average crown spread of 88 feet, a circumference of 210 feet, and is one of the largest trees in Rockingham County. Big trees, as stated in the accompanying letter from Carolyn Enz Page of the New Hampshire Big Tree Program, provides essential benefits to our climate, water, wildlife and people, and great care should be taken to keep it safe and healthy. The Owner was informed

that the tree is the oldest silver maple on record in Portsmouth, and the third oldest silver maple on record in Rockingham County.

Also enclosed herewith as **Exhibit B-3** are pictures of the garage and tree and the proximity of each to one another. The more than likely culprit of the deteriorating concrete slab of the existing garage is the growth of the tree and its root system.

This background is what leads us to the reasons why the Owner submitted this variance application.

In addition to completely renovating the six dwelling units, the Owner desires to make the other portions of the Property work better, look better, and to protect the tree. The Owner would like to perform the following work:

1. Remove the existing garage and concrete slab and create a bed of crushed stone around the base of the tree.
2. Remove the existing macadam leading into and in the backyard.
3. Regrade the backyard.
4. Add new pervious pavement for better drainage and for the health of the tree.
5. Add a stormwater catch basin in the backyard that would remove additional stormwater runoff to the City's stormwater line in Miller Avenue.¹
6. Create more usable open space.
7. And relocate the garage with the construction of a new 24' x 24', two-story, two car garage in the northeasterly corner of the Property.

The ability to perform all this work would:

- A. Protect the tree and ultimately make it healthier and stronger.
- B. Improve drainage on and for the Property and abutting properties.
- C. Improve snow management and removal.
- D. Improve parking and traffic management.
- E. Provide for indoor parking.
- F. Provide for additional storage space.
- G. Provide for more usable open space.

These proposed conditions can be seen on a plan entitled "Site Plan, 361 Miller Ave., Portsmouth, NH 03801, Tax Map 131, Lot 33" drawn by Ross Engineering, LLC, dated May 21, 2025, which is enclosed herewith as **Exhibit E**.

¹ It is unclear at this time if the Owner will 1) install pervious pavement for the entire driveway or just in the rear yard, or 2) install the stormwater catch basin, or 3) perform both.

Also enclosed herewith as **Exhibit F** are the architectural renderings, elevations and floor plans of the proposed garage drawn by Brayden Tuscher of Tuscher Design Group, as well as **Exhibit B-5** showing the current photographs of where the proposed garage will be located.

Zoning Relief Requested

In summary, the Owner would like to demolish the existing garage, relocate and construct a new 24' x 24', two story, two car garage in the northeasterly corner of the Property and, as such, seek the following variances from the Zoning Ordinance:

1. A variance from Article 10.521-Table of Dimensional Standards in the GRA Zoning District to allow a maximum Building Coverage of 25.6% as proposed, where a Building Coverage of 23.9% currently exists, and where a maximum Building Coverage of 25% is required.
2. A variance from Article 10.573.20 to allow an accessory building to be set back from any lot line at least the height of the building or the applicable yard requirement, whichever is less (20 feet), within the rear yard setback where 20 feet is required and 10.7 feet is proposed.
3. A variance from Article 10.573.20 to allow an accessory building to be set back from any lot line at least the height of the building or the applicable yard requirement, whichever is less (10 feet), within the side yard setback where 10 feet is required and 6.0 feet is proposed.

Variance Criteria

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

“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, 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 zoning relief requested herein will not alter the essential character of the neighborhood, nor will it create any negative impact to the public health, safety, or welfare.

First and foremost, the Property currently has a two-car garage which has been onsite for many years. Second, the Property exists in a residential neighborhood, which contains single family homes and multi family dwelling structures, the majority of which contain garages. Simply relocating and constructing a new garage in the proposed location will not alter the essential character of the neighborhood; rather, it will continue a feature of the Property which helps create and speaks to the essential character of the neighborhood.

Given the condition of the existing garage and the current visibility of the same from neighbors and pedestrian and vehicular traffic, the ability of the Owner to essentially “tuck away” the garage will also improve site lines for abutters across the street and directly behind the Property, exposing more of the surrounding area, open space, and the tree. The streetscape will be enhanced by the removal of the existing garage and construction of the new garage in the proposed location.

The construction of a new garage enables the Owner to design an accessory structure that not only looks and functions better but is also architecturally consistent with the dwelling structure, which benefits the neighboring properties that will see the garage as seen in the architectural renderings.

Finally, the purpose of setbacks and building coverage regulations is to create uniform lots, when possible, create uniform building envelopes, and to prevent overcrowding on lots that could affect surrounding properties by disturbing abutters’ light, air and space.

The Property, and its neighboring properties on either side, are already nonconforming with respect to its side yard setbacks, so the idea of proposing a new garage in the setbacks is not foreign to this Property nor its abutters. The existing garage currently abuts another nonconforming accessory structure located on the property to the right, and its proposed location will abut an accessory structure on the property to the left which previously received zoning relief.

The increase in the footprint of the proposed garage increases building coverage by 1.7%, which results in a minor overage of 0.6% of the maximum allowed building coverage standard. The existence of the proposed garage, though in the setbacks and increasing the building coverage, still speaks to and preserves the interests that the Zoning Ordinance seeks to protect, and as described in more detail below, will not disturb the light, air and space for abutters.

B. 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 Assoc. Inc v. Town of Chichester*, 155 N.H. 102 (2007).

In this instance, the loss to the Owner is clear if the variance relief sought is denied. The Owner would be forced to either protect the tree at all costs and eliminate the garage from the Property, thus affecting parking and storage benefits, or reconstruct the garage in its existing location which would incredibly threaten the health to the point of killing it, negatively impact parking and traffic flow, and negatively impact snow removal and management.

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

Granting the requested relief will not diminish the value of surrounding properties. As previously stated, many properties in the surrounding area benefit from accessory structures, and many surrounding properties also contain non-conformities related to setbacks and building coverage. The location of the existing garage in its current condition is an eyesore for anyone who can see it. The proposed location of the new garage will abut an existing garage on the neighboring property to the left thus creating a pocket, sort of speak, of accessory structures. And, as previously mentioned, the design of the garage will be architecturally consistent with the main dwelling structure and, as such, will be more pleasant to look at than the existing garage. Similarly, the removal of the existing garage will create better site lines for the abutters and expose more of the new open space and the tree.

Moreover, in conjunction with this proposed project, the Owners desire to regrade the driveway and backyard and perform additional work that will alleviate and mitigate the current drainage issues the Property and the abutters experience.

It is reasonable to state that the proposed improvements would have more of a positive, as opposed to negative, impact on surrounding property values.

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

1. There are special conditions that distinguish the Property from surrounding properties.

The Property has special conditions that distinguish it from surrounding properties. The most obvious special condition is the 200+ year old tree that is in need of special care and protection. Reconstructing the garage in its current location, specifically the excavation and foundation/slab work, would significantly and negatively impact the tree. This can easily be seen in the photographs enclosed herewith showing that the garage is not only close to the tree, but it will soon be bumping up to the trunk of the tree. Similarly, even if there was a way to repair the garage without addressing the issues with its concrete slab, then the tree and its root system will only continue to grow, thus impacting the foundation even more over time, which would then, in turn, further impact the frame and structure of the garage.

Even if the tree concerns could be mitigated, reconstructing the garage in its current location creates, or maintains, a pinch point between the garage and primary structure that prevents use of the backyard for parking needs. As previously mentioned, the Property has maintained six residential units for quite some time, but the parking has not been uniform, and often tenants would

utilize stacked parking. By relocating the garage, the pinch point is eliminated and the backyard can be incorporated into a formal parking scheme.

Finally, given the way the property was developed over the years, the grade of the backyard and the amount of macadam created drainage issues which is evidence by the photographs provided. Allowing the Owners to relocate the garage enables them to approach the entire Property in a more wholistic manner by addressing parking and storage needs with the new garage itself, addressing parking and traffic flow, addressing drainage concerns for the Property and abutters, addressing the need and desire for usable open space, and, finally, addressing the health and longevity of the tree.

2. There is no fair and substantial relationship between the general purposes of the ordinance and their specific application to the Property.

The Property was created by the recording of a plan of land from 1898 and the Owner has every reason to believe that the Property has maintained its original structure since its construction in 1880 according to the City's records. The Property was created and the main structure was constructed prior to the City's first enactment of any zoning regulation and, therefore, certainly predates any of the current dimensional requirements of the GRA District; and the Property has hosted six dwelling units since, approximately, the 1950s.

As previously stated, the purpose of setbacks and building coverage, as well as other dimensional standards, is to create uniform lots, when possible, create uniform building envelopes, and to prevent overcrowding on lots that could affect surrounding properties. In this instance, the Property currently encroaches into the left side yard setback and the proposed location of new garage would encroach no farther into the setback than the main structure already does. This new encroachment would abut the neighboring property's garage which is even closer to the shared lot line.

Though the proposed garage is creating a new encroachment into the rear yard setback, it is being done so with taste and respect. The proposed location is not on top of the shared lot line, and the design of the garage is consistent with the architecture of the main structure. Given the size of the Property and the main structure, as well as the location of the tree, the Owner is severely limited as to where a new accessory structure could be located. The location is therefore a reasonable location and is consistent with the objectives and spirit of the Zoning Ordinance by not further frustrating the interests of direct abutters which the Zoning Ordinance seeks to protect. Strictly applying the current zoning standards to the Property that pre-date the adoption of any, including current, zoning standards is impractical in relation to the requested relief.

3. The Proposed Use is Reasonable.

The Property is in the GRA District and is used as a multi-family residence and this use will remain the same. Accessory structures, such as garages, are typical and customary with all

types of residential properties. The Applicant is requesting relief in order to demolish the existing garage and construct a garage in a new location with a design that is consistent with the current architecture of the main structure.

Proposed Stipulations

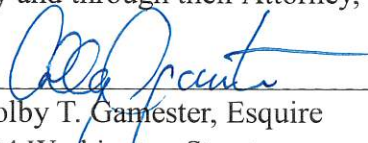
None at this time.

Finally, the Owner has met with the directly affected abutters to the left and the rear and can state that they have received favorable support from the Steinbergs at 353 Miller Avenue, the Steins at 470 Richards Avenue, and from the condominiums located at 452 Richards Avenue.

In conclusion, the Owner has demonstrated that its application meets the five (5) criteria for each of the variances ought and respectfully requests that the Board approves this application.

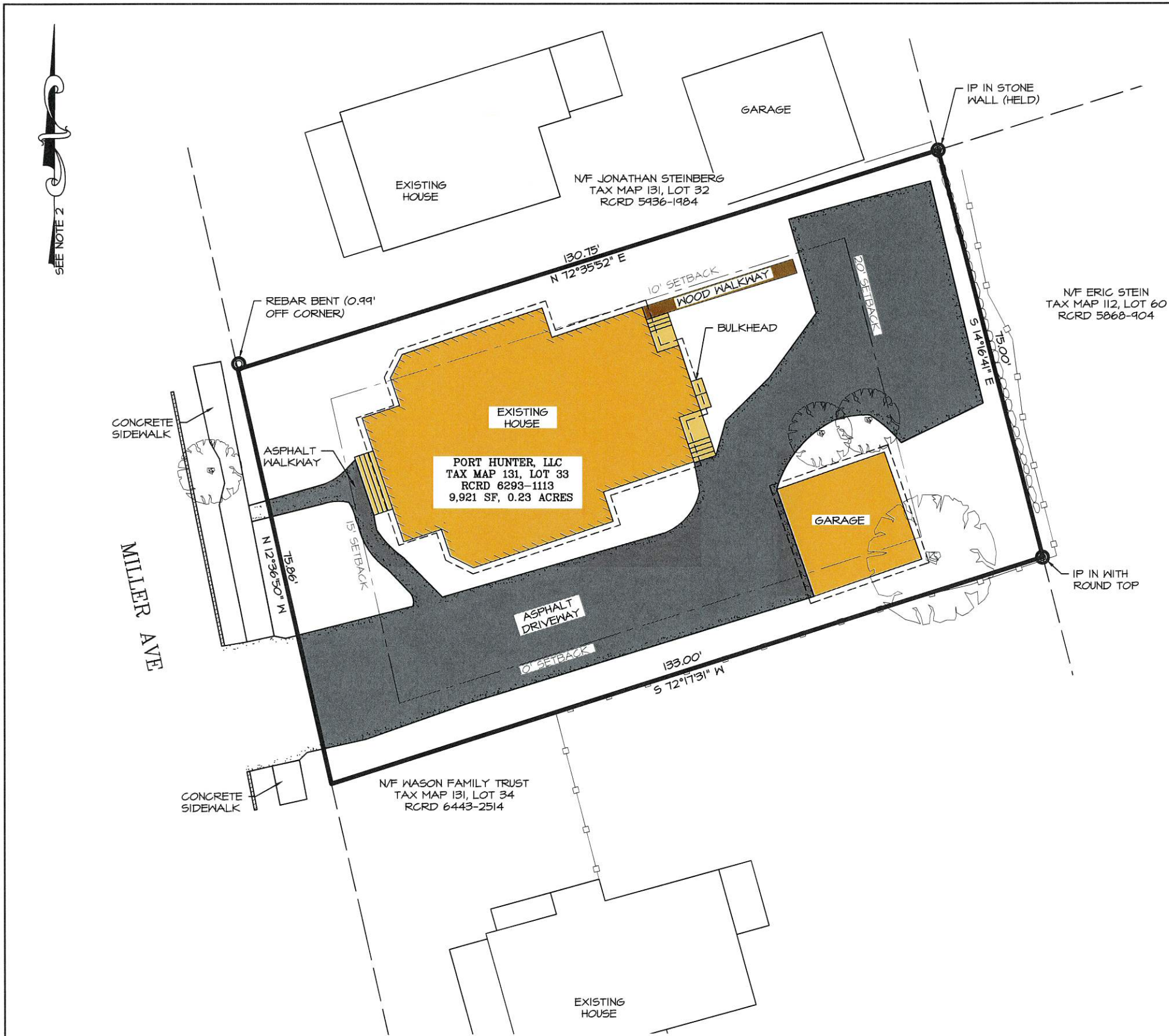
Dated: May 21, 2025

Respectfully submitted,
PORT HUNTER, LLC
By and through their Attorney,



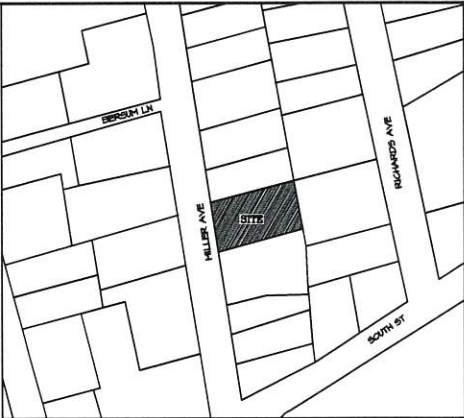
Colby T. Gamester, Esquire
144 Washington Street
Portsmouth, NH 03801
603-427-0000, colby@gamesterlaw.com

EXHIBIT A



LEGEND

- MONUMENT FOUND
- WOODEN FENCE
- VERTICAL GRANITE CURB
- STONE WALL



LOCUS PLAN
N.T.S.

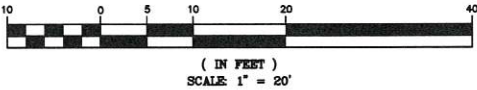
NOTES

- OWNER OF RECORD:
PORT HUNTER, LLC
TAX MAP 131, LOT 33
361 MILLER AVE
PORTSMOUTH, NH 03801
RCRD: 6293-1113
AREA: 9,921 SF, 0.23 ACRES
- BASIS OF BEARING HELD FROM PLAN REFERENCE #1.
- PARCEL IS IN GENERAL RESIDENCE A ZONE (GRA):
MINIMUM LOT AREA.....7,500 SF
MIN. LOT AREA PER DWELLING UNIT.....7,500 SF
MINIMUM FRONTAGE.....100 FT
MINIMUM DEPTH.....70 FT
SETBACKS:
FRONT.....15 FT
SIDE.....10 FT
REAR.....20 FT
MAXIMUM BUILDING HEIGHT:
SLOPED ROOF.....35 FT
FLAT ROOF.....30 FT
MAXIMUM BUILDING COVERAGE.....25%
MINIMUM OPEN SPACE.....30%
- THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0254F, PANEL 259 OF 681, DATED JANUARY 29, 2021. VERTICAL DATUM IS NAVD 1988.

REFERENCE PLANS

- "PLAN SHOWING PROPERTY OF EMERY BOYNTON & GAIFFIN, PORTSMOUTH NH" DATED OCTOBER 1898 BY L.E. SCRUTON. RCRD 00125.
- "PLAN OF LOTS IN PORTSMOUTH NEW HAMPSHIRE FOR M.J. GRIFFIN" BY W.N.A. GROVER. DATED MARCH 31, 1914. RCRD 062.
- "STANDARD PROPERTY SURVEY, TAX MAP 112 LOT 6, PROPERTY OF THE MCAULIFFE FAMILY REVOCABLE TRUST OF 2011, 452 & 460 RICHARDS AVENUE PORTSMOUTH, NEW HAMPSHIRE COUNTY OF ROCKINGHAM" BY MSC CIVIL ENGINEERS & LAND SURVEYORS, INC. DATED SEPTEMBER 14, 2012. NOT RECORDED.
- "THE CONDOMINIUMS AT LINCOLN HILL MANOR SITE PLAN 352&354 MILLER AVE" FOR WILLIAM H HOAGLAND & LEAH A ORTON, KENNETH & BEVERLY BELLEVUE & KAREN M DRISCOLL" BY ROSS ENGINEERING. DATED MARCH 26, 2018 RCRD D-40723.

GRAPHIC SCALE



3	5/21/2025	ZBA SUBMITTAL	
2	5/10/2024	FOR REVIEW	
ISS.	DATE	DESCRIPTION OF ISSUE	
SCALE	1" = 20'		
CHECKED	A.ROSS		
DRAWN	D.D.D.		
ROSS ENGINEERING, LLC			
Civil/Structural Engineering & Surveying 909 Islington St Portsmouth, NH 03801 (603) 433-7560			
CLIENT			
ELIZABETH PESCE 361 MILLER AVE PORTSMOUTH, NH 03801			
TITLE			
EXISTING CONDITIONS PLAN			
361 MILLER AVE PORTSMOUTH, NH 03801 TAX MAP 131, LOT 33			
JOB NUMBER	DWG. NO.	ISSUE	
23-035	1 OF 2	3	

Exhibit B-1
Existing Garage



Exhibit B-2
Driveway, Backyard, Macadam
Generally



Exhibit B-2
Driveway, Backyard, Macadam
Generally



Exhibit B-2
Driveway, Backyard, Macadam
Generally



Exhibit B-3
Proximity of Garage and Tree



Exhibit B-3
Proximity of Garage and Tree



Exhibit B-3
Proximity of Garage and Tree



Exhibit B-4
Pinch point



Exhibit B-5
Location of
Proposed Garage



Exhibit B-5

Location of Proposed Garage



P.O. Box 4434
Portsmouth, N.H.
03802



EXHIBIT C

David Steadman
ISA Certified Arborist
603-436-4804

Northeast Shade Tree LLC

Elizabeth Pesce
361 Miller Ave
Portsmouth NH 03801

Hi Elizabeth,

It is my professional opinion that measures should be taken to protect the root system of your mature, approximately 210 year old, Silver maple that is located adjacent to the existing garage. Care should be taken to not disrupt or damage the existing root system while removing the structure.

Due to the age and significance of this tree, I do not recommend any sort of major construction or excavation that would be required to rebuild the garage in its current placement. Because the tree has adapted to its environment over the years, any potential damage to the root system may cause a disruption in its ability to uptake necessary water and nutrients, and therefore cause irreversible stress and decline. The safest solution to preserve and protect this ancient tree, would be to remove the garage and reconstruct it as far away from the tree's canopy as possible.

Please feel free to contact me if you have any questions.

Kind regards,

David Steadman
Northeast Shade Tree
603-436-4804



EXHIBIT D

The Sponsors of the
New Hampshire Register of Big Trees
Proudly present this certificate of appreciation to:

Timothy & Elizabeth Pesce

As steward of the following impressive Big Tree, as of this date, one of the
largest reported specimens of its species growing in your county.

Acer saccharinum

Scientific Name

90 feet

Height

88 feet

Average Crown Spread

322

Total Points



Silver Maple

Common Name

210 feet

Circumference

Portsmouth/Rockingham

Town & County

October 4, 2024

Date

Mary Lero Davis

Natural Resources Field Specialist
Urban Forestry
UNH Cooperative Extension

Sponsored by:
UNH Cooperative Extension
Society for the Protection of NH Forests
NH Division of Forests and Lands

John C. Wallace

NH Big Tree Program Coordinator



DIVISION OF
FORESTS AND LANDS



University of
New Hampshire
Cooperative Extension

New Hampshire Big Tree Program

UNH Cooperative Extension
Mary Tebo Davis
603-629-9494 ext 140
<http://cenfo.unh.edu>

Division of Forests & Lands
AJ Dupere
603-431-6774
aj.dupere@dnr.state.nh.us

NH Big Tree State Coordinator
John Wallace
603-969-2688
crawford@mv.fairpoint.net

County Coordinators:

Belknap - Michael Callaghan
dairnac3t@yaho.com

Carroll - Kamal Nath
kamalendunath@yahoo.com
Wendy Scribner
wendy.scribner@unh.edu

Cheshire - Larry Michalov
larrymich@hotmail.com
Norman Spicher
npspicher@gmail.com

Coos - Sam Stoddard
ssoddard3@gmail.com
Dave Govatski
david.govatski@gmail.com

Grafton - Brian Beaty
brian.beaty@dartmouth.edu

Hillsborough - Anne Krantz
annekrantz@comcast.net

Merrimack - Linda Meserve
Linda.meserve@yahoo.com

Rockingham - Kevin Martin
kevinmartin16@comcast.net

Strafford - Charles Tatham
ctatham@hotmail.com

Sullivan - Dode Gladders
dode.gladders@unh.edu

Elizabeth & Timothy Pesce
PO Box 332
56 Piscataqua Street
New Castle, NH 03854

January 15, 2025

Dear Mr. & Mrs. Pesce,

Congratulations for being the steward of a **very significant Silver Maple**, one of the largest in Rockingham County. Your tree was measured by Kekvin Martin for the NH Big Tree Program. It has the number 1309 in the state database.

As stewards of this fine specimen, we ask you to take good care of it by keeping it safe and healthy. For tree care information, please call your Cooperative Extension County Forester or find an arborist in your area by going to <http://extension.unh.edu/Forests-Trees>.

Big Tree Program representatives may remeasure the tree periodically. Please keep us informed if something happens to your tree. If the ownership of the property should change, please inform the new owners of their role as stewards of this impressive tree and have them identify themselves to a member of the Big Tree Team. Thank you.

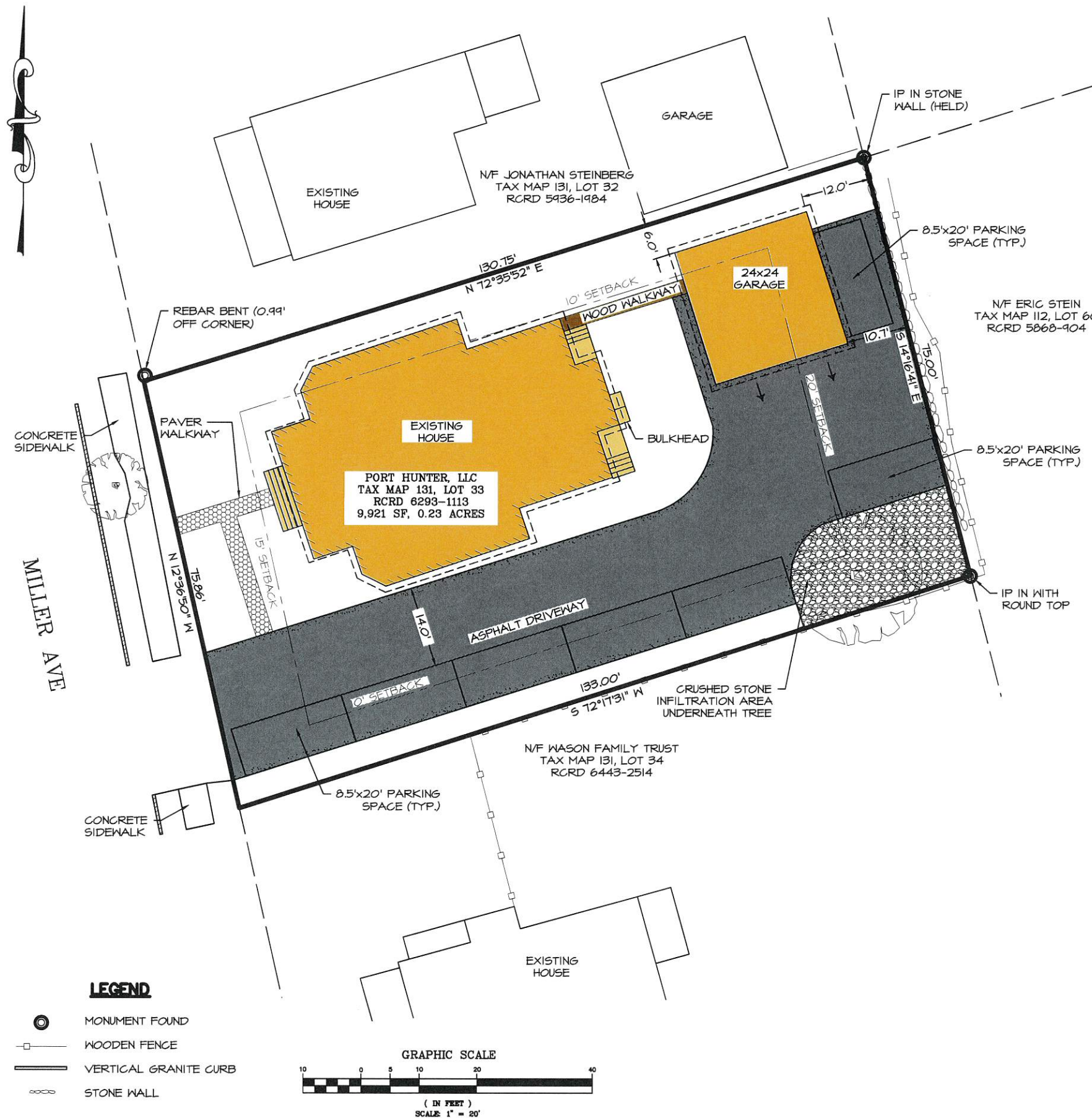
We hope that you will continue to be on the lookout for other Big Trees in your town, in the county and around the state. For more information on the New Hampshire Big Tree Program, you can go to www.nhbigtrees.org. Information on the national program is available at www.americanforests.org.

The mission of the New Hampshire Big Tree Program is to locate and document the largest specimens of each tree species in the state and by doing so call attention to the essential benefits of trees to our climate, water, wildlife and people. We believe all trees are champions for our environment.

Sincerely,

Carolyn Enz Page
Secretary
carolynenzpage@gmail.com

EXHIBIT E



NOTES

1) OWNER OF RECORD:
PORT HUNTER, LLC
361 MILLER AVE
PORTSMOUTH, NH 03801
RCRD: 6293-1113
AREA: 9,921 SF, 0.23 ACRES

2) PARCEL IS IN GENERAL RESIDENCE A ZONE (GRA):

MINIMUM LOT AREA.....	7,500 SF
MIN. LOT AREA PER DWELLING UNIT.....	7,500 SF
MINIMUM FRONTAGE.....	100 FT
MINIMUM DEPTH.....	70 FT
SETBACKS:	
FRONT.....	15 FT
SIDE.....	10 FT
REAR.....	20 FT
MAXIMUM BUILDING HEIGHT:	
SLOPED ROOF.....	35 FT
FLAT ROOF.....	30 FT
MAXIMUM BUILDING COVERAGE.....	25%
MINIMUM OPEN SPACE.....	30%

3) COVERAGES:

BUILDING COVERAGE
EXISTING BUILDING COVERAGE

HOUSE.....	1,883 SF
DECKS & STAIRS 18".....	65 SF
BULKHEAD.....	11 SF
<u>GARAGE</u>	<u>412 SF</u>
EXISTING STRUCTURE	2,371 SF
BUILDING COVERAGE	2,371 / 9,921 = 23.9%

PROPOSED BUILDING COVERAGE	
HOUSE.....	1,883 SF
DECKS & STAIRS > 18".....	.65 SF
BULKHEAD.....	.11 SF
<u>GARAGE</u>	<u>576 SF</u>
PROPOSED STRUCTURE	2,535 SF
BUILDING COVERAGE	2,535 / 9,921 = 25.6%

OPEN SPACE

EXISTING OPEN SPACE	
BUILDING COVERAGE.....	2371 SF
OVERHANGS.....	160 SF*
STAIRS < 18".....	32 SF
ASPHALT.....	3371 SF
WOOD WALKWAY.....	70 SF
TOTAL LOT COVERAGE	6,004 SF
EXISTING OPEN SPACE = $9,921 - 6,004$	= 3,917 SF
EXISTING OPEN SPACE = $3,917 / 9,921$	= 39.5%

PROPOSED OPEN SPACE	
BUILDING COVERAGE.....	2,535 SF
OVERHANG.....	132 SF*
STAIRS < 18".....	32 SF
ASPHALT.....	3,618 SF
PAVER WALKWAY.....	115 SF
WOOD WALKWAY.....	54 SF
TOTAL LOT COVERAGE	6,486 SF
PROPOSED OPEN SPACE =	$9,921 - 6,486 = 3,435$ SF
PROPOSED OPEN SPACE =	$3,435 / 9,921 = 34.6\%$

*OVERHANG SHOWN IS THE ROOF OVERHANG THAT IS ABOVE PERVIOUS SURFACES. OVERHANG THAT IS OVER AN IMPERVIOUS SURFACE HAS NOT BEEN INCLUDED, SO AS TO NOT DOUBLE COUNT IMPERVIOUS AREAS.

4) PARKING REQUIRED AS PER 10.1112.30
 -DWELLING UNIT FLOOR AREA > 750 SF = 1.3 SPACES PER UNIT
 -DWELLING UNIT FLOOR AREA 500-750 SF = 1.0 SPACE PER UNIT
 -A LOT CONTAINING MORE THAN 4 DWELLING UNITS SHALL PROVIDE ONE VISITOR PARKING SPACE FOR EVERY 5 DWELLING UNITS.
 -OFFICE SPACE = 1 SPACE PER 350 SF GFA

2 DWELLING UNITS >750 SF = 1.3 X 2 = 2.6 SPACES
4 DWELLING UNITS 500-750 SF = 1.0 X 4 = 4 SPACES
>4 DWELLING UNITS - 1 VISITOR SPACE
OFFICE SPACE <350 GFA = 1 SPACE
TOTAL SPACES REQUIRED = 8.6 SPACES = 9 SPACES

5) PARKING PROVIDED
7 PARKING SPOTS HAVE BEEN PROVIDED IN THE PROPOSED ASPHALT DRIVEWAY. 2 SPACES WILL BE PROVIDED IN THE PROPOSED GARAGE. 9 TOTAL SPACES HAVE BEEN PROVIDED.

3	5/21/2025	ZBA SUBMITTAL	
2	5/10/2024	FOR REVIEW	
ISS.	DATE	DESCRIPTION OF ISSUE	
SCALE 1" = 20'			
CHECKED A.ROSS			
DRAWN D.D.D.			

ROSS ENGINEERING, LLC
Civil/Structural Engineering
& Surveying
909 Islington St.
Portsmouth, NH 03801
(603) 433-7560

CLIENT
ELIZABETH PESCE
361 MILLER AVE
PROTSMOUTH, NH 03801

TITLE

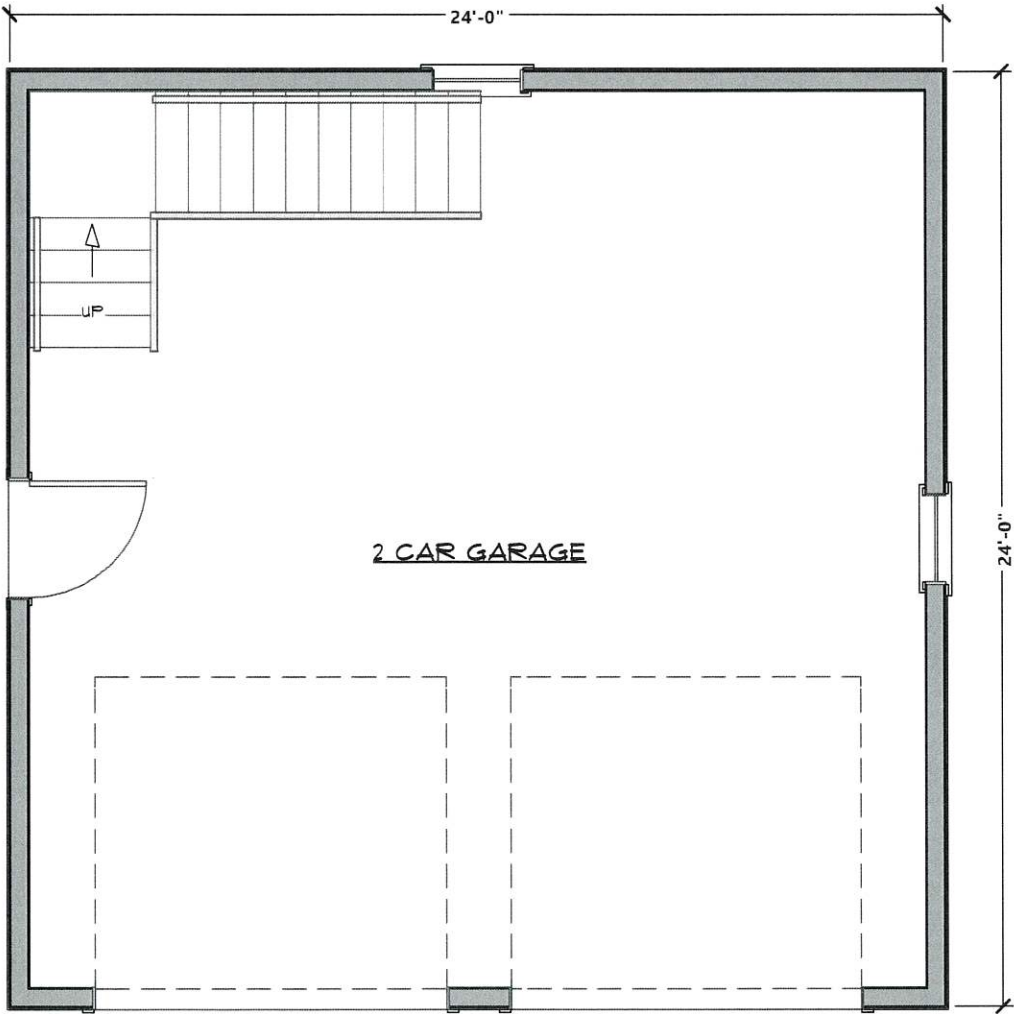
SITE PLAN

361 MILLER AVE
PORTSMOUTH, NH 03801
TAX MAP 131, LOT 33

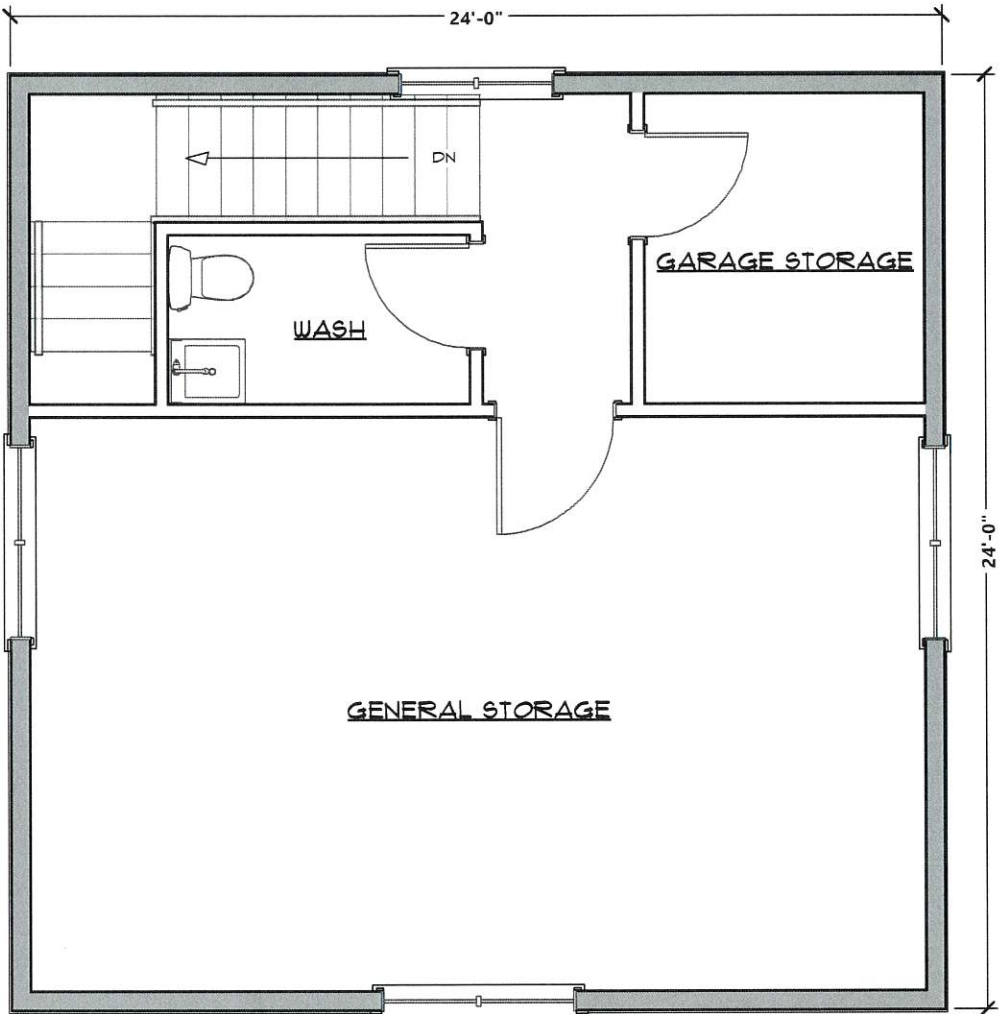
JOB NUMBER	DWG. NO.	ISSUE
23-035	2 OF 2	3



EXHIBIT F



1) FIRST FLOOR PLAN
1/4" = 1'-0"



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

PROJECT STATUS: SCHEMATIC

REVISION SCHEDULE

DATE: 05/19/2024

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

SHEET NUMBER:

PROJECT INFO:

PROJECT TITLE:

DATE: 05/19/2024

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

SHEET NUMBER:

PROJECT INFO:

PROJECT TITLE:

DATE: 05/19/2024

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

SHEET NUMBER:

PROJECT INFO:

PROJECT TITLE:

DATE: 05/19/2024

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

SHEET NUMBER:

VAKOTA

architecture, pllc

41 East 11th St. 11th Floor

New York, New York 11225

212.655.9875

PORT HUNTER, LLC

GARAGE

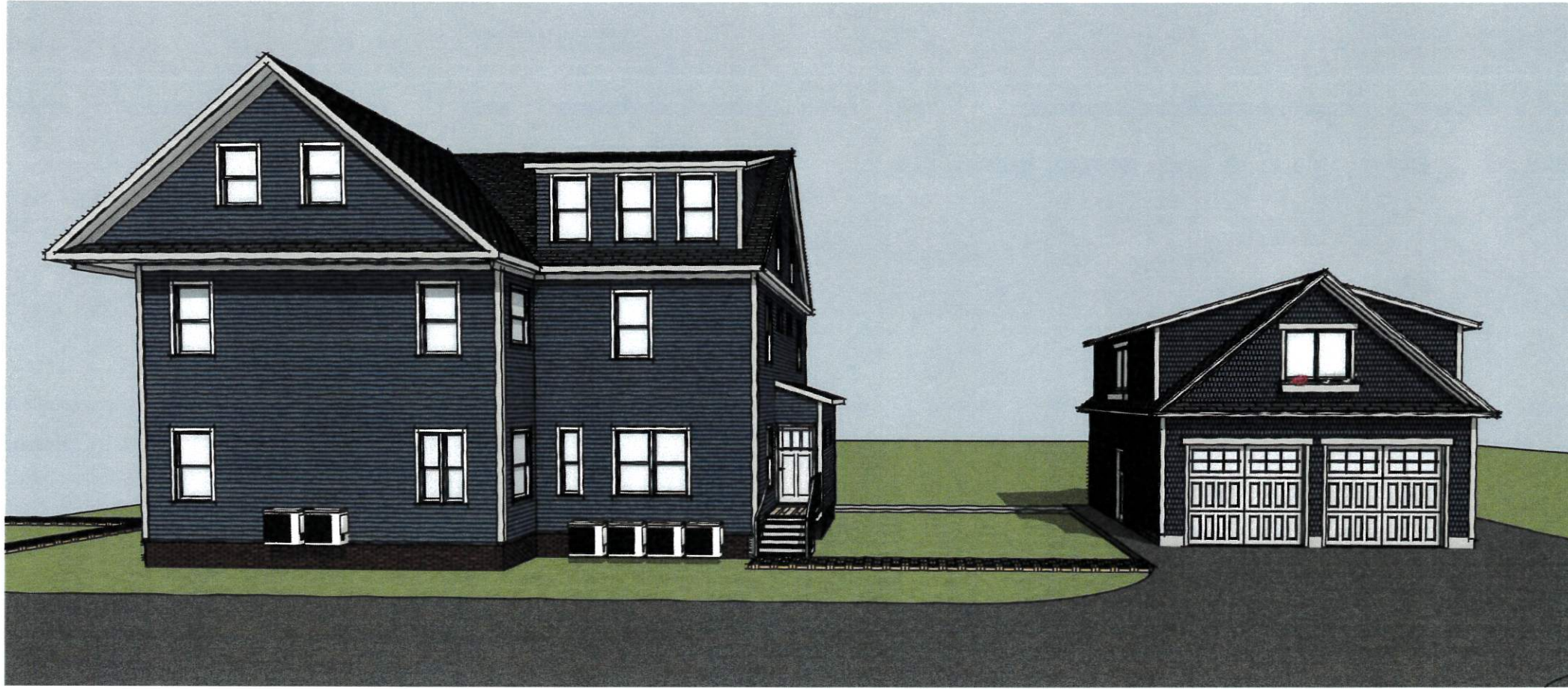
361 MILLER AVE

PORTSMOUTH, NEW HAMPSHIRE

PROPOSED

FLOOR PLANS

A2

[illegible]

DATE: 05/19/2024
SCALE: NTS
SHEET NUMBER:

A3

PROJECT INFO:

SHEET TITLE:

PROPOSED PERSPECTIVE

**PORT HUNTER, LLC
GARAGE**

361 MILLER AVE
PORTSMOUTH, NEW HAMPSHIRE

VAKOTA

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