

**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.

January 21, 2026

AGENDA

<p><u>PLEASE NOTE:</u> DUE TO THE LARGE VOLUME OF REQUESTS FOR JANUARY, ITEMS (IV. C. THROUGH G.). WILL BE HEARD AT THE JANUARY 27, 2026 ZONING BOARD OF ADJUSTMENT MEETING.</p>

I. ELECTION OF OFFICERS

II. APPROVAL OF MINUTES

- A. Approval of the December 16, 2025 meeting minutes.

III. OLD BUSINESS

- A. **WITHDRAWN** The request of **Kenneth J and Rebecca T Nicholson (Owners)**, for property located at **53 Pray Street** whereas relief is needed to demolish and reconstruct the existing sunroom and roof deck, replace the existing patio and driveway, and replace an 8 foot fence which requires the following: 1) Variance from Section 10.521 to allow a 7.5 right side yard where 30 feet is required; 2) Variance from Section 10.515.13 to allow an 8 foot fence in the front yard where 4 feet is allowed; and 3) Variance from Section 10.516.10 to allow a 6.5 foot front yard where 17 feet is required. Said property is located on Assessor Map 102 Lot 40 and lies within the Waterfront Business (WB) and Historic Districts. **WITHDRAWN (LU-25-166)**
- B. The request of **909 West End LLC and PWED2 LLC (Owners)**, for property located at **909 and 921 Islington Street** whereas relief is needed to construct a sign at 921 Islington Street that will be servicing the businesses located at 909 Islington Street which requires the following: 1) Variance from Section 10.1253.10 to allow a sign setback of 2 feet from a lot line where 5 feet are required; 2) Variance from Section 10.1224.90 to allow a sign advertising a product or service not provided on the lot on

which the sign is located (“off premise sign”); and 3) Variance from Section 10.1252 to allow 27 square feet of sign area where 20 square feet are allowed. Said property is located on Assessor Map 172 Lots 7 & 10 and lies within the Character District 4-W (CD4-W). (LU-25-134)

- C. The request of **Stewart Baker Revocable Trust (Owner)**, for property located at **20 Coffins Court** whereas relief is needed for the construction of a spiral staircase on the left side of the home and dormers on the third floor which requires the following: 1) Variance from Section 10.521 to allow a) 4 foot right side yard and a 5 foot left side yard where 10 feet are required, b) 50.5% building coverage where 35% is allowed; and c) 4.5% open space where 20% is required. Said property is located on Assessor Map 135 Lot 53 and lies within the General Residence C (GRC) District. (LU-25-164)
- D. The request of **Michael R and Isaac M. Roylos (Owners)** and **Christopher Cloutier (Applicant)**, for property located at **25 Sims Avenue** whereas relief is needed to create a buildable lot which requires the following: 1) Variance from section 10.521 to allow a) 5,000 square feet of lot area where 15,000 is required, b) 5,000 square feet of lot area per dwelling unit where 15,000 is required, and c) 50 feet of frontage where 100 feet are required. Said property is located on Assessor Map 233 Lot 71 and lies within the Single Residence B (SRB) District. (LU-25-169)
- E. **POSTPONED TO FEBRUARY** The request of **Chase Home for Children C/O Woodman (Owners)**, for property located at **698 Middle Road** whereas relief is needed to construct a new facility on the property which requires the following: 1) Variance from Section 10.334 to allow the residential care facility use to be extended to another part of the remainder of the land, 2) Variance from Section 10.440 to allow for the construction of a new residential care facility structure. Said property is located on Assessor Map 232 Lot 45 and lies within the Single Residence B (SRB) District. **POSTPONED TO FEBRUARY** (LU-25-167)

IV. NEW BUSINESS

- A. The request of **Howard Family Holding Trust (Owner)**, for property located at **53A Chevrolet Avenue** whereas relief is needed to allow a 5-foot high and 6-foot high fence, after-the-fact, which requires the following: 1) Variance from Section 10.515.13 to exempt a 5-foot high and 6-foot high fence in the front yard where up to 4 feet is allowed. Said property is located on Assessor Map 147 Lot 18-1A and lies within the General Residence A (GRA) District. (LU-25-145)
- B. The request of **Alexandre T and Lauren M LePage (Owners)**, for property located at **53 McNabb Court** whereas relief is needed to demolish a one-story enclosed porch and reconstruct with a three-story addition and to construct an open front porch on the front of the home, which requires the following: 1) Variance from Section 10.521 to allow a) 6.5 foot front yard setback where 15 feet is required, b) 4.5 foot right yard setback where 10 feet is required, c) 9 foot left yard setback where 10 feet is required, and d) 29%

Building Coverage where 25% is allowed. Said property is located on Assessor Map 112 Lot 57 and lies within the General Residence A (GRA) District. (LU-25-170)

THE FOLLOWING ITEMS WILL BE HEARD ON TUESDAY, JANUARY 27, 2026

- C.** The request of **Rigz Enterprises LLC (Owner)**, for property located at **822 US Route 1 Bypass** whereas relief is needed to place a new sign on an existing pole which requires the following: 1) Variance from Section 10.1253.10 to allow a sign setback of 2.5 feet from a lot line where 20 feet are required. Said property is located on Assessor Map 160 Lot 29 and lies within the Business and General Residence A (GRA) Districts. (LU-25-179)
- D.** The request of **Three Hundred Seventy One Lowell Avenue Realty LLC and TMK Lavergne LLC (Owners)** and **Convenient MD (Applicant)**, for property located at **1303 Woodbury Avenue** whereas relief is needed for a change of use from retail to medical office and striping on existing pavement for additional parking which requires the following: 1) Variance from Section 10.5B83.10 to locate parking between the principal building and the street; 2) Variance from Section 10.1113.20 to locate parking between the principal building and the street; and 3) Variance from Section 10.1113.31 to permit parking within 100 feet of a residential zone. Said property is located on Assessor Map 217 Lot 1 and lies within the Gateway Corridor (G1) District. (LU-25-174)
- E.** The request of **Lisa Paige Reyes (Owner)** and **Chris Ward (Applicant)**, for property located at **238 Austin Street** whereas relief is needed to demolish the existing structures, subdivide the lot and construct a new home on each lot which requires the following for the proposed Austin Street Lot: 1) Variance from Section 10.521 to allow a) 49.75 feet of frontage where 70 feet is required; and b) an 8.5 foot right side yard where 10 feet is required. The following is required for the proposed Coffins Court Lot: 1) Variance from Section 10.521 to allow a) 2,884 sq.ft. of lot area where 3,500 sq.ft. is required, b) 2,884 sq.ft. of lot area per dwelling unit where 3,500 sq.ft. is required, c) a 5.5 ft. side yard where 10 feet is required; and d) an 18 foot rear yard where 20 feet is required. Said property is located on Assessor Map 135 Lot 61 and lies within the General Residence C (GRC) District. (LU-25-177)
- F.** The request of **Bretta Heilbut (Owner)**, for property located at **21 Elwyn Avenue** whereas relief is needed to demolish the existing one-story detached garage and construct a new two-story garage which requires the following: 1) Variance from Section 10.521 to allow a) a 6 foot left side yard where 10 feet is required, b) a 5 foot rear yard where 19 feet is required; and c) 34.5% Building Coverage where 25% is allowed. Said property is located on Assessor Map 113 Lot 28 and lies within the General Residence A (GRA) District. (LU-25-176)
- G.** The request of **Regan Electric CO INC (Owner)** and **Chinburg Development (Applicant)**, for property located at **94 Langdon Street** and **98 Cornwall Street**

whereas relief is needed to merge the lots, demolish the existing structures and construct three new single-family dwellings which requires the following: 1) Variance from Section 10.521 to allow 88 feet of frontage where 100 feet is required. Said property is located on Assessor Map 139 Lots 1 and 8 and lies within the Mixed Residential Business (MRB) District. (LU-25-175)

IV. ADJOURNMENT

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

https://us06web.zoom.us/webinar/register/WN_upXv48bDRgC0NOFEy3FwPQ

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

7:00 P.M.

December 16, 2025

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

MEMBERS EXCUSED: None.

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Eldridge read the items that were postponed to the January meeting into the record (the postponements were requested by the applicants early enough so that they did not need motions from the Board). It was Chair Eldridge's last meeting, and the Board wished her well.

I. APPROVAL OF MINUTES

A. Approval of the November 18, 2025 meeting minutes.

Vice-Chair Margeson abstained from the vote.

*Mr. Rossi moved to **approve** the November 18 meeting minutes as amended, seconded by Mr. Nies.*

The amendments were:

Mr. Nies said the November meeting minutes noted a correction on the October minutes incorrectly and that the word "one" should replace "none" so that the sentence reads: "*Mr. Nies concurred and said that one of the public comments received by the Board indicated a concern that the structures would be split into two residences in the future.*"

Mr. Rossi asked that the first paragraph on page 8 have the word "granting" replaced by "exceeding" so that the sentence now reads: "*Mr. Rossi said his concerns were not with the site's appearance from the road but that he did not see a clear case for hardship for exceeding the maximum allowed setback.*" Mr. Rossi asked that the top paragraph on page 13 have the word "pitched" replaced by "pinched" so that the sentence now reads: "*He said the property had an odd pork chop shape, and because of the way the lot line angled toward the house from the front of the property in the area where the porch would be built, it pinched off the right rear corner of the structure.*" Mr. Rossi asked that the words "overall arching" in the motion made be replaced with

the word “overarching” so that the sentence now reads: *“He said the overarching fact was that the footprint of the structure would not change, and the shape and appearance of it would but not in a way that would affect the conformance with the spirit of the ordinance or the public interest.”*

Mr. Mattson asked that the long paragraph on page 6 have the word ‘wetlands’ added to a sentence and that the ending of the sentence be changed to “the applicant’s argument seemed to be why setting it back was good.” The sentence now reads: *“Mr. Mattson said the ordinance would want to have the structure closer to the street and farther away from the wetlands setback, and the applicant’s argument seemed to be why setting it back was good.”*

*The motion **passed** unanimously, 6-0, with Vice-Chair Margeson abstaining from the vote.*

[Timestamp 9:11] Chair Eldridge stated that New Business, Petition E, 609 Middle Rd, was requested to be postponed by the applicant.

*Mr. Rheaume moved to take Item E, 609 Middle Rd, out of order so that it could be postponed. Mr. Nies seconded. The motion **passed** unanimously, 6-0, with Vice-Chair Margeson abstaining from the vote.*

Chair Eldridge read the request to postpone petition into the record.

*Mr. Mannle moved to **postpone** the hearing until the January 21 meeting, seconded by Mr. Rossi. The motion **passed** unanimously, 6-0, with Vice-Chair Margeson abstaining from the vote.*

[Timestamp 11:23] Chair Eldridge said New Business Item D, 53 Pray Street, was requested to be postponed.

*Mr. Rossi moved to take Item D out of order, seconded by Vice-Chair Margeson. The motion **passed** unanimously, 7-0.*

Chair Eldridge read the item into the record. She asked the Board if they needed more time to review the petition, due to all the changes. The Board noted the discrepancies and decided to postpone the item until the applicant made a complete submission to the Board.

DECISION OF THE BOARD [Timestamp 15:41]

*Mr. Rossi moved to **postpone** the petition until such time that a proper and complete packet had been submitted to the Planning Department. Mr. Mannle seconded.*

Mr. Rheaume suggested including a date, and Ms. Casella agreed.

The **amended** motion was:

*Mr. Rossi moved to **postpone** the petition to the January 21 meeting so that a proper and complete packet could be submitted to the Planning Department. Mr. Mannle seconded. The motion **passed** unanimously, 7-0.*

II. OLD BUSINESS

- A. POSTPONE TO JANUARY** The request of **909 West End LLC** and **PWED2 LLC (Owners)**, for property located at **909** and **921 Islington Street** whereas relief is needed to construct a sign at 921 Islington Street that will be servicing the businesses located at 909 Islington Street which requires the following: 1) Variance from Section 10.1253.10 to allow a sign setback of 4 feet from a lot line where 5 feet are required, 2) Variance from Section 10.1224.90 to allow a sign advertising a product or service not provided on the lot on which the sign is located (“off premise sign”); and 3) Variance from Section 10.1252 to allow 27 square feet of sign area where 20 square feet are allowed. Said property is located on Assessor Map 172 Lots 7 & 10 and lies within the Character District 4-W (CD4-W). **POSTPONE TO JANUARY (LU-25-134)**

The petition was **postponed** to the January 21 meeting.

B. 134 Pleasant Street – Rehearing Request (LU-25-138)

[Timestamp 19:05] Mr. Rheume said the Board had an extensive review of the item. He said the points brought up included questioning whether the matter should have gone before the Board at all because it was a historic use and only had to be relocated. He said he believed however that there was a significant change to the property, and the location of the drive-thru was significantly different as well as its orientation and access point. He said the location of the business was also changed because the back building was converted to a new front building, which influenced where the drive-thru would go, and the bank building was converted to a high-use residential building. He said those concerns made it clear that there was a significant change in the use and it made it fair game to say that this was on the property before but the applicant proposed to change it in such a significant manner that it was something that was no longer currently allowed by the zoning and was no longer grandfathered. He said it was nothing the Board should consider having a rehearing for. He said another issue was the nature of the Board’s disapproval, noting that their focus was on the change in what the zoning was trying to accomplish. He said the applicant stated that they were making an existing use better for vehicular traffic flow, but the Board said it was at the cost of pedestrian access at the back building. He said he thought the applicant disagreed with the Board’s ultimate decision but he did not see anything presented that indicated that the Board erred so egregiously that a rehearing was required. Mr. Nies said there were comments in the letter that he could not find the justification for. He said it was mentioned that the Planning Board decided it was better to move the drive-thru to the south side of the lot, but he could not find any comments about that in the Planning Board’s September 18 meeting recording as a recommendation from the Planning Board or Planning Department. He said he had asked at the previous BOA meeting why the location changed, and the applicant’s representative did not mention any recommendation from the Planning Board at that meeting. They said that after reviewing the discussion of the Planning

Board, they decided they would move it to a different location. He said he did not attribute that to a recommendation. He said there were comments in the letter that indicated that the applicant did not think pedestrian flow was an item that the BOA should be looking at, and he disagreed because one of the goals in the character district is to encourage pedestrian-friendly development, which pedestrian flow is a part of. With respect to whether a variance was needed or not, he said the issue was brought up at the Planning Board and one of the Planning Board members said he was disappointed that drive-thrus were still allowed in that district, but the Chair corrected him and said they were not allowed so they would require a variance. He said he did not think the applicant presented a strong argument as to why there was an error, either procedural or law. He said all those points got discussed at the BOA meeting. Vice-Chair Margeson said she believed that the Planning Staff erred. She said the appeal of an administrative Code Official should have been raised at the initial hearing. She said a drive-thru is not allowed in CD4, so the applicant needed a variance for it. She said she did not see that issue being heavily addressed in the motion for rehearing and did not believe that anything needed to be reheard. Mr. Mattson said he did not think there was an error in the way the Board came to their conclusion. Mr. Rossi said he was absent from that meeting but studied the materials. He said one piece that the Board had to be clear about was the appeal stating that the applicant's variance application and testimony at the public hearing demonstrated that the applicant satisfied the three other criteria. He said that assertion was based on the letter from the Planning Department back to the appellant and did not mention the other three criteria as being insufficient. He said it was not the practice of the Board to enumerate every single deficiency in an application, and the fact that the Planning Department was silent about three of the criteria should not assume that the Board felt that those criteria were satisfied. He said it was only necessary to specify one criterion as deficient to turn down an application.

DECISION OF THE BOARD [Timestamp 28:02]

*Mr. Nies moved to **deny** the Request for Rehearing, seconded by Mr. Mannle.*

Mr. Nies said the Board mentioned several points that boiled down to the fact that they did not believe there had been an identification of error, procedural or law, in their decision from that meeting. He referred to the previous discussion. Mr. Mannle concurred and had nothing to add.

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

III. NEW BUSINESS

- A.** The request of **Eric Brassard (Owner)**, for property located at **233 Dennett Street** whereas relief is needed to construct a detached accessory dwelling unit and garage which requires the following: 1) Variance from Section 10.521 to allow a) 4-foot left side yard where 10 feet is required. Said property is located on Assessor Map 142 Lot 7 and lies within the General Residence A (GRA) District. (LU-25-155)

SPEAKING TO THE PETITION

[Timestamp 30:00] The applicant Eric Brassard was present and said he wanted to build a two-car garage with a rental apartment above. He explained why the garage would be a good use of the

space and said the design would be consistent with the rest of the neighborhood. He reviewed the criteria and explained how they were met.

[Timestamp 34:53] Mr. Rheume said the existing house was 760 sf in footprint and Mr. Brassard proposed to build a garage with an apartment above that would be three feet shorter than the existing house. He said it would be like another homelike structure adjacent to the existing house and only four feet away from the property line. He asked why Mr. Brassard would not consider positioning the garage at the back side of the property and have back street access instead. Mr. Brassard said the width of his primary house was 36 feet and the width of the proposed garage was 26 feet, so it would be smaller in scale and would not be as high. He said there was also a grade change, so the first floor of the primary structure would not be on a plane with the slab of the garage. He said the back side of the property was about 120 feet away from the house, so it would be practical use as far as access to the garage from the primary structure. He said eventually he might connect the house to the garage via a breezeway. Mr. Rheume said the proposed structure was a good-sized one but could be pulled farther away from the neighbor's property. He asked what drove the 26 feet. Mr. Brassard said more width would make it easier to get cars in and store lawn equipment. Mr. Rossi asked if the garage could be located closer to the back to stagger it away from the neighbor's house. Mr. Brassard said he was asking to put the front plane of the garage five feet closer so that it would not obscure open air to his neighbors' back yards. There was more discussion. Mr. Mattson said the applicant's request was close to the neighbor's house and that there were viable alternatives. Mr. Brassard said the challenge with pushing the garage back was that it would create a lot of dead space in that area and leave that piece of yard unused. Mr. Mattson asked if the applicant had considered an attached ADU instead. Mr. Brassard said he did, but from a design perspective, it did not reflect the historic style. It was further discussed. Vice-Chair Margeson said the purpose of setbacks was for the circulation of air and light between buildings. She said it appeared that the neighbor's building was between the left yard setback and the applicant's building would be quite into the setback as well, so the concern was that the applicant's proposed garage would impede air and light between the two buildings.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD [Timestamp 47:18]

Mr. Rossi said the case for hardship was weak and that there were several alternatives proposed without requiring the reduced setback from the left property line, including moving the ADU. Mr. Mattson said it seemed that the property could support an ADU and that there might be better solutions, but there was at least justification as to why it was being proposed in that location. Mr. Rheume said he agreed about the hardship. He said the proposed garage was a substantial structure and that the applicant was asking for a lot. He said the applicant did not understand that moving the

structure backwards would also involve moving it to the full ten feet so that the neighbor was only allowed a 10-ft setback. He said the applicant noted that other properties had houses close together, which was true in the older sections of Dennett Street where there was more open space between the houses. He said the applicant was creating a very large structure that would be uncomfortably close to the neighbor. He said the change would be a permanent one, and the Board had an obligation to uphold the ordinance. He said the applicant could return with a revised proposal that required less of a setback relief or no relief at all.

DECISION OF THE BOARD

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

Mr. Rossi said the hardship stated that there should be something unique about the property that argues in favor of the placement of the ADU within the left line setback. He said there really was no hardship because there was nothing unique about the property that said the ADU must go in that location. He said the property was not an exceptionally narrow one and did not have a geometric pattern. He said the proposal was to take a conforming property with regard to the left line setback and make it nonconforming, which he thought was a big ask in any district. He said there were other ways that the property could reasonably be used to accomplish the applicant's objectives, so a hardship did not exist. Mr. Rheume said he also thought the application failed the first two criteria of not being contrary to the public interest and observing the spirit of the ordinance. He said the ordinance was trying to accomplish spacing, and it was more than just buildings but was also the enjoyment of the neighbor's property and the fact that the applicant could not build something right up to the property line or even ten feet back from the property line. He said a more modest one-story structure would work. He said another concern was accessibility to be able to maintain the structure. Mr. Mattson said an ADU could fit on the lot. He said the lot was unique in some ways but that it was a through lot and quite large, which should alleviate the need to put it in the side yard setback. Chair Eldridge agreed.

*The motion to deny **passed** by a vote of 6-1, with Mr. Mannle voting in opposition.*

- B.** The request of **R and J 2100 Corporation (Owner)** and **Radmoto USA (Applicant)**, for property located at **2100 Lafayette Road** whereas relief is needed for a change of use from retail bicycle shop to sales of electric mopeds and motorcycles which requires the following: 1) **Special Exception** from Section 10.440 Use #11.10 to allow Sales, renting or leasing of motorcycles, including accessory repair services. Said property is located on Assessor Map 267 Lot 3 and lies within the Gateway Corridor (G1) District. (LU-25-162)

SPEAKING TO THE PETITION

[Timestamp 57:14] The applicant Chaz Sullivan was present and said he wanted to register E-bikes (electric bicycles) as well as mopeds to grow the business. He said the building would not change. He reviewed the Special Exception criteria and said they would be met.

[Timestamp 1:01:46] Mr. Rheume asked if all the bikes were currently stored indoors. Mr. Sullivan agreed and said they had a warehouse to store them in. Mr. Rheume confirmed that a certain number of vehicles were kept overnight. He said some of the battery capabilities had more amperes and could cause fire concerns. Mr. Sullivan said the building was brought up to code and that the Fire Department was involved before and after the buildout. He said all the batteries were from the manufacturer. Mr. Rossi verified that Mr. Sullivan would continue the same business but needed the special exception because E-bikes were reclassified as electric vehicles. Mr. Sullivan agreed and said they wanted to offer mopeds as well. It was further discussed.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the special exception for the petition as presented and advertised, seconded by Mr. Mattson.*

Mr. Rossi said it was a permitted special exception within the zone. He said granting the special exception would pose no hazard to the public or adjacent properties on account of potential fire, explosion, or release of toxic materials. He said concerns about batteries notwithstanding, the Board had approved the sale and storage of electric vehicles with much larger battery capacities, in other buildings in Portsmouth, and it had all been successfully managed. He said the business was already in operation, so there were no new hazards that would present a problem. He said granting the special exception would pose no detriment to property values in the vicinity or changes in its essential characteristics because it would be the same business with a few new products offered and would have no discernible impacts on the neighborhood. He said it would pose no creation of a traffic safety hazard, noting that he did not see that as a result of allowing the sale of the vehicles in that location. He said it would pose no excessive demand on municipal services because the applicant was currently selling similar items and the demand would not substantially change with the new business. He said the request was being driven in part by a change in regulation and classification of the type of bikes that the business was already selling, so there was no change other than the addition of the mopeds. He said granting the special exception would pose no significant increase in stormwater runoff because there would be no change in the impermeable surfaces or to the external aspects of the building. Mr. Mattson concurred and had nothing to add.

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

Chair Eldridge recused herself from the rest of the agenda, and Vice-Chair Margeson took her seat as Acting Chair.

- C. POSTPONE TO JANUARY** The request of **Stewart Baker Revocable Trust (Owner)**, for property located at **20 Coffins Court** whereas relief is needed for the construction of a spiral staircase on the left side of the home and dormers on the third floor which requires the following: 1) Variance from Section 10.521 to allow a) 4 foot right side yard and a 5 foot left side yard where 10 feet are required, b) 50.5% building coverage where 35% is allowed; and c) 4.5% open space where 20% is required. Said property is located on Assessor Map 135 Lot 53 and lies within the General Residence C (GRC) District. **POSTPONE TO JANUARY (LU-25-164)**

The petition was **postponed** to the January 21 meeting.

- D.** The request of **Kenneth J and Rebecca T Nicholson (Owners)**, for property located at **53 Pray Street** whereas relief is needed to demolish and reconstruct the existing sunroom and roof deck, replace the existing patio and driveway, and replace an 8 foot fence which requires the following: 1) Variance from Section 10.521 to allow a 7.5 right side yard where 30 feet is required; 2) Variance from Section 10.515.13 to allow an 8 foot fence in the front yard where 4 feet is allowed; and 3) Variance from Section 10.516.10 to allow a 6.5 foot front yard where 17 feet is required. Said property is located on Assessor Map 102 Lot 40 and lies within the Waterfront Business (WB) and Historic Districts. (LU-25-166)

DECISION OF THE BOARD

Prior to opening the public hearing, the Board discussed the late submission of materials to the Board and decided to postpone consideration to the January meeting so the Board could have more time to review all the required materials.

Mr. Rosse moved to postpone the petition to January so the applicant can submit a complete packet to the Board, seconded by Mr. Mannle.

- E. REQUEST TO POSTPONE** The request of **Chase Home for Children C/O Woodman (Owners)**, for property located at **698 Middle Road** whereas relief is needed to construct a new facility on the property which requires the following: 1) Variance from Section 10.334 to allow the residential care facility use to be extended to another part of the remainder of the land, 2) Variance from Section 10.440 to allow for the construction of a new residential care facility structure. Said property is located on Assessor Map 232 Lot 45 and lies within the Single Residence B (SRB) District. **REQUEST TO POSTPONE (LU-25-167)**

Mr. Rheume moved to postpone the petition to January, seconded by Mr. Nies. Vice Chair Margeson recused from the vote.

- F.** The request of **Robert M Snover Revocable Trust (Owners)**, for **appeal** of the administrative decision to require a variance for Section 10.1530 pertaining to the lot area of the property located at **58 Humphreys**. Said property is located on Assessor Map 101 Lot 47 and lies within the General Residence B (GRB) and Historic Districts. (LU-25-168)

[Timestamp 1:09:38] Acting Chair Margeson said Deputy City Attorney Trevor McCourt was present to give an overview of how administrative appeals are handled. The Board discussed whether the second appeal should be heard before the variance request. It was decided that the first appeal would be heard and then the variance would be heard, which might change the last appeal.

[Timestamp 1:13:23] Attorney McCourt said he represented the City and the decision of the Board. He discussed how court appeals of administrative officers were handled. In response to the Board's questions, he said it was a public hearing in which the appellant would present first, followed by the administrative official. He said the Board's decision would be the final word.

Acting Chair Margeson read the petition into the record.

SPEAKING TO THE APPEAL

[Timestamp 1:18:43] The appellant's representative Attorney Derek Durbin was present and stated that there was an appeal of Planning Director Peter Britz's determination of October 21 regarding the definition and application of lot areas as it applies to 58 Humphreys Court. He said the appeal involved a 163-sf paved area in the northwest corner of the property that had been used for many decades in conjunction with the Humphreys Court's right-of-way, and as a result of the determination made, the 163-sf area could not be counted as part of the lot area of 58 Humphreys Court. He said his clients were 158 square feet short of what was required to subdivide the property by right. He said the appeal was in conjunction with the variance application as well. He said the language in the zoning ordinance regarding lot area was clear and that the Board was restricted to a literal interpretation of the ordinance and could not look beyond the intent or other sections of the ordinance to determine what the intent of the lot area definition was. He said the lot area as defined in the ordinance is the total horizontal area included within the property lines. He elaborated further and said it was clear that the lot area definition meant the metes and bounds description in a recorded deed or survey plan or other instrument, like a court order. He explained that Exhibit B was the recorded deed and Exhibit C was a plan from the 1900s that showed the two properties that eventually became 58 Humphreys Court. He said the boundaries were consistent with the deed's description and the most recent boundary survey. He said Mr. Britz relied on the phrase "front lot line" and how it is defined for determining that the 160 square feet cannot be counted as lot area. Attorney Durbin said he thought the 160-sf area was part of the parcel. He said his client did not have a formal dedication and it was not part of any subdivision plan approved by the Planning Board. He asked the Board to approve the appeal and reserve Planning Director Britz's direction.

[Timestamp 1:26:00] Acting Chair Margeson said there was a photo in the packet of the street in the northwest corner, and she asked if that was the entire 163-sf area as it extended farther down Humphreys Court. Attorney Durbin said the photo did not show the full extent of it. Acting Chair Margeson asked what the Humphreys Court right-of-way was. Attorney Durbin said it was the street as it was dedicated and accepted and that the paved area did not follow that. Mr. Nies asked if evidence was found that there was an easement granted on the corner by the City, or if there was any transfer of ownership of that slice from the property owner to the City. Attorney Durbin said he did not find any evidence but the title policy supported that it is a 10,005-sf lot. Mr. Nies asked if

the street lines from the 1900s subdivision plan that went from property line to property line on either side of the street were considered a public way. Attorney Durbin said they did. Mr. Nies asked if the property owner ever challenged the measurements on the field card. Attorney Durbin said the current owners were new owners and the former owner was Harold Whitehouse, who had a friendly relationship with the City, so he did not think he ever challenged it. Mr. Mattson asked what the current legal status was in a situation where the public right-of-way crossed private property lines without an easement but was allowed. Attorney Durbin said he thought the City bears the burden to demonstrate that it has prescriptive rights in that area or that it has fee title or there has been a formal dedication acceptance. He said the ordinance did not speak to a situation like that but simply described the lot as what is deeded or shown on a recorded survey. Mr. Rheume asked if the sketch of land show in the subdivision plan was equivalent in stature to a survey, noting that it did not look like a spike was set as part of that. Mr. Chagnon said the sketch was done by another surveyor, who set a pin in the pavement at that point in time. He said his team had not found the pin and the road was repaved. In the course of doing their survey, he said they did a grantee-grantor search to see if anyone deeded away any portion of that description and found that no one had. Acting Chair Margeson said nothing in the chain of title suggested that the prescriptive rights would be dedicated acceptance, and even if there had been a prescriptive easement, the property still belonged to the property owner. Attorney Durbin agreed.

[Timestamp 1:36:28] Planning Director Peter Britz said the City did not have a lot of background research but that it was really the memo they provided and that they relied on the survey provided by the applicant. He said it was clear that there was a 163-sf curved section of the roadway. He said they used the front lot line to define it and that the 163 square feet was part of the parcel's lines but not part of the calculation for the lot area per dwelling unit. He said the City felt that the lot itself was only 9,842 sf of usable space that they could be subdivided into lots, and the appellant was trying to subdivide it into two lots to build two homes on. He said the City had been plowing the paved road for years and that the public used it, but the City did not count that as part of the lot area dwelling calculation. Mr. Rheume asked if there was any documentation that said the City had asserted any legal right to the corner. Mr. Britz said the City had not done that kind of research. Mr. Rheume asked if there was any action underway or being contemplated to do an eminent domain action or to exercise the City's legal rights to take the corner. Mr. Britz said the City could do that but he did not know the exact mechanism. Mr. Rheume asked what the Planning Department's standard was for determining lot area if there was a public easement across the property. Mr. Britz said he could not make an interpretation. Acting Chair Margeson said the City's assertion was, because that part of the lot is not usable, the City would not count that against the lot area and the dwelling unit and that Mr. Britz was saying that it had to be done on a case-by-case basis. Mr. Britz said he was using the term public place and that it was clear in this situation that the 163-sf area was a public place. Mr. Rheume asked Mr. Britz if he was aware of any previous cases before the Planning Staff where they had to consider a possible turnaround that the City had an easement for. Mr. Britz said there was discussion about a parcel that had a City turnaround, and no one ever asked for a lot line adjustment or subdivision. He said they thought they had to keep track of that public place so that the lot area available for future development.

[Timestamp 1:42:30] Mr. Mattson said there might be a conflict in the ordinance. He said Mr. Britz said that it was legally unusable property because it was currently being used by the public, but he asked if the owner could take it back and remove the public portion. Mr. Britz said in this case, it was so common because it had been done for a long time. Attorney McCourt said there were many places in Portsmouth where the City had a public right-of-way that had apparently been on private property for a long time. He said the City would continue to assert its right to continue that public way over that area. Mr. Mattson said the lot line and lot area said one thing, but the front line definition mentioned the public. He asked what the current legal status was and how that usage would be maintained, seeing that there was no easement. Attorney McCourt said when there was competing language in the ordinance, the Statutes should be reviewed by the courts and the BOA to make sense and not lead to an absurd result. Mr. Rossi asked if the City had a formal easement to use that part of the property. Attorney McCourt said they did not. Mr. Nies asked if there was anything in the ordinance that describes a lot area being adjusted for right-of-ways that are not deeded or for land use by the City on an informal basis. Mr. Britz said they were making a definition of lot area per dwelling unit to conform to the zoning. He said the front lot line was the closest in that calculation to determine where a public place was. Mr. Nies asked if Mr. Britz meant that a public place is determined by pavement that has been put down apparently without any authorization, or if a public place was determined by the lot lines determined by a plan performed in the early 1900s. Mr. Britz said the Planning Staff did not contest the survey, but the survey called out the public area that was being plowed and used by the public. He said it was a dangerous corner without the curve. Mr. Nies said TAC had an October meeting in which a drawing appeared to show the carve-out from 1937. He asked if anyone pursued where that came from. Mr. Britz said there were a few conflicting drawings of the parcel and that it would be a long process.

Acting Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE APPEAL

[Timestamp 1:51:60] Attorney John Arnold said he represented a group of 12 property owners, which he named, who objected to the appeal. He said they believed that the City got its zoning determination correct in the lot being under 10,000 square feet. He said the City's determination was based on the definition of lot area defined as the total horizontal area included within the property lines. He said they looked at the definition of lot line and thought Attorney Durbin relied on the first sentence of the definition, "the property line bounding a lot", which is where he stopped. Attorney Arnold said there were three subsections to that definition that defined front lot line, rear line and side line, and that it was critical to look at that, especially the front lot line. He said the public place, the streetway, was the rounded corner of Humphreys Court and that it did not matter whether the City owns the title to the land or whether they have an easement to use that portion of the lot as a public way. He said either way, it was excluded from the definition of lot area by virtue of being inside of the front lot line. He said throughout New Hampshire, there was a legal presumption that abutting lot owners owned the center line of a street because most streets historically were laid out as easements. He said if the appellant's argument was taken as correct, it would lead to a situation where the City would have to consider all abutting lot owners owning the

land all the way to the center line of the street, including the lot area in the definition of lot area, which would not make any sense. He said the corner has existed for several decades. He passed out two documents to the Board. He said there was some contemplation in the 1937 plan that the corner of Humphreys Court would be rounded and given to the City. He said the appellant and the City had found no evidence that there was an actual conveyance of that property, but it was contemplated that it would be used as a public way since the 1930s. Since the 1960s, he said the corner had been maintained and plowed by the City. He said the photos he submitted were recent and noted that the City repaved the corner in the summer. He said the State Statute recognized where roads have been used by the public for a period of 20 years before 1968, and they become a public road and no formal easement or deed is granted. He said his clients did not believe that there was any credibility to the argument that the corner is not a public street. He said anything beyond the front line is not includable in lot area. He said, given the historic use and maintenance of that corner as being a rounded corner, it has become a public way, and public ways by definition are excluded from the calculation of lot area. He said they believed that the City made the correct zoning determination that the lot does not contain more than 10 square feet and that the corner needs to be excluded from the calculation of the lot area.

Sylvia Olson of 41 New Castle Ave said the house was located on a rocky cliff and posed traffic hazards, and she did not know how two houses with driveways would be placed.

Jim Lee of 520 Sagamore Avenue said he was a real estate broker and that he also owned the 39-41 New Castle Avenue property. He said the use of that road for that number of years created a prescriptive easement, which meant the City was using the land and the owner could not do anything with it. He said it could not be counted as part of the lot in terms of size. He said the lot was 9,500 square feet, not 10,000 square feet and that the City Planner's decision should be upheld.

Jamie Baker of 75 Humphreys said it would be an absurd result to say that the corner that had been used for a public way for almost 100 years was somehow usable for purposes of a development.

Acting Chair Margeson asked Mr. Britz if there was a definition of a public right-of-way in the ordinance. Mr. Britz said there was not. She said the definition of "street" had specific requirements and asked if it was the City's position that the corner was somehow part of the street as opposed to just an easement. Mr. Britz said it was being used as a public way, so it was a street in that case. It was further discussed. Attorney Durbin said Acting Chair Margeson may be alluding to the argument about looking at lot area in the context of the individual lot line definitions, specifically the front lot line where it describes anything outside of a public place as being outside the front lot line. He said the public place was the street and was defined in the ordinance specifically as a thoroughfare or roadway that is either formally accepted by the City or shown on a subdivision plan approved by the Planning Board. He said it did not fall within that definition. He said the City historically included those easement areas where there had been a dedication of an easement and that they had not carved out that area from their lot area calculations. He gave two examples and said it was evident that the lot areas included those areas. He said the lot area was being treated

differently in this situation. He said in the 1937 plan, the City took the land by tax collector deed, sold it out, and did not exempt that 163-sf portion of the land. He said it was not a recorded plan.

[Timestamp 2:08:12] Mr. Mattson asked for more clarification about the 163-sf portion taken. Attorney Durbin said the land was conveyed by tax collector deed back to the City, and the City then conveyed it out and sold it after it wasn't redeemed by the land owner and included the 163-sf area as part of the land description. Mr. Rheume said Exhibit C, the old plan, looked like it was recorded at the Rockingham Count of Deeds, and he asked if that was where it was found. Attorney Durbin agreed and said it was a recorded plan. Mr. Rheume asked if the sketch from 1988 in Exhibit D was a recorded plan. Attorney Durbin said it was not. Mr. Rheume said the intent then was that the plan that was put together will be a recorded plan at some point. Attorney Durbin agreed. It was further discussed. Mr. Rossi asked if the property in dispute was or was not a public place. Attorney Durbin said it was not a public place per the zoning ordinance. He said the presumption was that the owner owns that land and the presumption would be on the City to establish that it is a public way across the 163 square feet, which it could do in the future. It was further discussed. Mr. Rossi said Attorney Durbin's point was that a precedent has been established that a public way would still be countable as lot area for the purpose of building lot size. Attorney Durbin said there was precedence that these areas are counted as part of the lot area, and in this situation, it had never been established what the rights are in that corner.

[Timestamp 2:15:28] Attorney Arnold said he agreed that the definition of a street in the ordinance was narrow. He said in the modern area, there was a formal acceptance by the City of streets by way of a City Council. He said there was a precedent in NH law for acceptance by a City according to a City's conduct, like maintenance, but aside from the focus on the street, he said the definition they were looking at for lot area and front lot area refers to a public place, which is a different definition than a street. He said Mr. Britz was correct in saying that it was a public community space that provides public access. He said for that reason, it is also in the definition of a front lot line that gets excluded from lot area.

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

DISCUSSION OF THE BOARD

[Timestamp 2:25:41] Mr. Rheume said it was straightforward and thought the Board and the Planning Director had confused themselves by talking about front lot lines and public places. He said the definition of lot area as shown in Article 15 is the total horizontal area included within the property lines. He said it came down to where the property lines were. He said he thought the appellant identified that the property lines of record say what that description is, and everything they provided indicated that the property lines follow the straight path as shown on the plan that the appellant's representative put together for the subdivision, which indicates the total lot areas as just over 10,000 square feet. He said there was no indication that there are any legal proceedings by the City to take the corner of the property by adverse possession or other legal means. He said the property lines that the Board was concerned about were the straight corner going back that defines a

10,000-sf lot. Mr. Nies agreed but said he found it difficult that the Board had a definition that said how the property lines are determined and to accept that the definition of lot area and lot lines and what a lot is was overruled by an interpretation of where the front lot line is. He said the City made the claim that because they defined the front lot line in a certain way, it overruled the deeded boundaries of the lot. He said it seemed like an illegal overtaking.

DECISION OF THE BOARD

Mr. Mattson moved that the Board uphold the appeal of the appellant and overturn the decision of the Code Official. Mr. Rheume seconded.

Mr. Mattson said the Planning Memo had three definitions: lot line, lot area, and front lot line. He said he thought that both lot area and lot line would imply that this portion of unbuildable property is still part of the lot and lot area, whereas the issue arises in the third definition with front line and public place being mentioned. He said two out of the three definitions would support the administrative appeal. He said the single definition of just the lot area was that it is the person's property, and one would have to go through many definitions to get to the point where it could be established that public place is moving some of the property, but it is still owned by the owner and is unbuildable. He said, however, because it gets paved over, it gets counted as not being the property owner's land. He said as it legally stands, it is part of the owner's land whether or not it is buildable or being used without an easement. Mr. Rheume said the appellant showed that there is information at the Rockingham County Register of Deeds indicating that the property was as represented in the plan. He said to him, that was the property line, which defines lot area and which is used to determine lot area per dwelling unit and allowable lot area as required by the ordinance. He said there was a long-standing precedent that the Code Officials accept plans that are stamped from a licensed surveyor that indicates what the property boundaries are. He said the Board accepted that as a Code Official presenting it to them as a signed plan, and based off the property lines shown, it needed to be accepted. Acting Chair Margeson said she would support the motion because it was clear that the deed and the surveys demonstrate that the lot is 10,005 square feet.

*The motion **passed** unanimously, 6-0, with Chair Eldridge recused.*

- G.** The request of **Robert M Snover Revocable Trust (Owners)**, for property located at **58 Humphreys** whereas relief is needed to subdivide the existing parcel into two parcels which requires the following: 1) Variance from Section 10.521 to allow a) 51.8 feet of continuous street frontage where 80 feet is required, b) 4,840 square feet of lot area where 5,000 square feet are required; and c) 4,840 square feet of lot area per dwelling unit where 5,000 square feet are required. Said property is located on Assessor Map 101 Lot 47 and lies within the General Residence B (GRB) and Historic Districts. (LU-25-168)

SPEAKING TO THE PETITION

[Timestamp 2:39:04] Attorney Durbin was present on behalf of the applicant, along with project engineer John Chagnon. Attorney Durbin said it had been established that the lot was a 10,005-sf lot that contained a single home and had 195 continuous feet of street frontage on Humphreys Court that wraps around the property on two sides, so the only way to subdivide the property without frontage relief was to create two triangular shaped lots with the division line running diagonally through the middle of the property. He said it was proposed before TAC and disfavored by the City under the subdivision regulations due to the square/rectangular shaped lots. He said the applicant then created a new plan that required frontage relief. He reviewed the criteria.

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

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION [Timestamp 2:47:21]

Attorney John Arnold said he represented the same twelve individuals. He said granting the variance would impact the character of the locality and would not observe the public interest. He gave the Board two handouts, one of which was a tax map showing the other properties that were considered to be the locality and were all within 200 feet of the subject property. He said about ten lots in the immediate area were conforming and noted that taking a conforming lot and creating a new nonconforming lot would tip the balance and affect the mix of lots in that area. He said the Board needed to look at those other lots. He said if the other lots sought to build within the setback, the cumulative effects would be significant. He said the crowding and congestion in the area would worsen and the health, safety and welfare of the public would be threatened. He discussed the photos that he passed out that showed kids playing in the street, parallel-parked cars parallel, d and driveways. He said the street was already narrow, and creating a new substandard lot would add to it. He said the some of the undersized and congested lots in the neighborhood were due to the neighborhood's age and were legally protected as grandfathered lots. He said the benefit to the applicant was that he could flip one more lot out an existing one and sell it. He said surrounding property values would be diminished and that there was no hardship. He said a few properties on the tax map showed that the property was not unique.

Ben St. Jean of 54 Humphreys Court said the neighbors were concerned with the aggressive scope of the proposal. He said there would be more traffic and that the proposed two houses would box his house in. He said the applicant's land was higher than his property. He asked how much permeable land would remain and said there was already an issue with water runoff. He said the neighbors had talked to realtors and believed that their property values would suffer.

Jim Lee of 520 Sagamore Avenue said he owned the 39-41 property on New Castle Avenue that was directly across the street from the applicant's property. He said Portsmouth was a desirable place to live and that a lot of people wanted to exploit that. He said the substantial justice criterion

was not satisfied because the project would change the neighborhood's character and cause harm to the neighbors. He asked the Board to deny the variance request.

Hannah Holden of 63 Humphreys said she was a 5th grader and that she and her friends played in the street. She said there would be more driveways and increased traffic that could cause collisions.

Amy Baker of 75 Humphreys Court said cramming an extra house would require both houses to be built much closer to the property lines and would decrease the visibility from the short corner as well as add congestion and traffic. She said the applicant, who would benefit financially.

Zoe Daboul of 53 Humphreys Court said a conforming lot should not be made unconforming.

Rachel Kurshan of 33 Humphreys Court said the variance request met none of the five criteria. She said the additional driveway would add more cars and there would be visibility concerns. She said there would be drainage and waterflow issues, and property values would be diminished.

Robin Ferrari of 44 Humphreys Court said the proposal would create a hardship in perpetuity for everyone who lived on the street. She said visibility was already a problem due to the topography.

Whitney Warren of 59 New Castle Avenue said he had two kids who walked on the street regularly and that he also had concerns about permeable surface. He said a large home would be very close to their property and would decrease their light, and he was concerned about the effect on the trees.

Jamie Baker of 75 Humphreys Court passed out photos to the Board. He said the lot did not meet the standard of having unique characteristics that prevented a reasonable use. He said the fact that the lot wrapped around the second part of the street did not present a hardship. He said there was no surplus space, and it was a high-volume route for pedestrians, especially school kids.

Andrea St. Jean of 54 Humphreys Court said she thought the development should not come at the expense of the residents' quality of life.

Robert Gunning of 43 Humphreys Court (via Zoom) asked the Board to oppose the variance request.

SPEAKING TO, FOR, OR AGAINST THE PETITION [Timestamp 3:28:06]

Attorney Derek Durbin said the concerns the Board heard were out of speculation or fear of what it would become. He said a lot of the concerns were Planning Board ones, like the grading and driveway. He said the argument about public safety and speeding cars were contradictory because cars associated with the property would park on the street and slow traffic down. He said the property was unique with respect to the lot area and continuous street frontage and that it could have two dwellings on it. He noted that the Planning Board thought his client's proposal made the most sense. He said he had evidence from a real estate agent indicating that some surrounding property values would not be diminished, which he gave to the Board.

Jim Lee of 520 Sagamore Avenue said it was likely that surrounding property values would be diminished due to the two new houses. He asked the Board to deny the variance request. ,

Acting Chair Margeson asked why the lot's topography was quite a bit taller than the rest of the lots around it and what the plans for that were. Mr. Chagnon said if the variance went forward, the next step would be to finish the subdivision process with the Planning Board and then do the building permit process. He said the HDC would also weigh in because the lot was in the Historic District. He said there would be some changes to the grade to accommodate a structure. Acting Chair Margeson asked why the grade was bigger and if it could be brought down. Mr. Chagnon said it could and that the property was currently served by a steep driveway, so any redevelopment would involve a driveway closer in grade. Acting Chair Margeson asked Attorney Durbin if any building in the lot would fit within the building envelope if the variance were granted and one of the lots had the substandard street frontage. Attorney Durbin agreed.

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

DISCUSSION OF THE BOARD [Timestamp 3:25:27]

Mr. Mattson said the owner could build a duplex on the property by right, so the discussion of one home vs. two was within that context. He said there would be a common parcel with two homes on it and two lots, one conforming and one not. He said the actual density would meet the lot area and that a decent-sized house could be built within the character of the neighborhood. He said he struggled with the hardship a bit but the lot had a weird shape. Mr. Rheume said it was not the first subdivision and was similar to other applications. He said a two-family home was allowed by right. He said traffic concerns could be taken care of by the Parking, Traffic and Safety Committee, calming tools, and so on. He said adding one home with a car or two would probably not have a significant impact and was not part of the Board's criteria. He said he thought the criteria that it came down to was the hardship and was not very convinced about what the applicant said about the long overall street frontage giving him something special about his lot. He said he wasn't sure that the property was unique and found it hard to argue that property values would be impacted by the change. He said if it was an existing lot of record that had never been merged together, there would be a stronger case that would indicate that it should be a buildable lot. He thought creating a subdivision was a tougher sell. Mr. Rossi said it was a high bar to take a conforming lot or structure and move it into nonconformance. He said what was lacking in the hardship criterion was not so much the reasonable use but the fact that there was no special condition to the lot because it was very similar to the surrounding lots. He said the special conditions did not exist.

DECISION OF THE BOARD [Timestamp 3:44:15]

*Mr. Rossi moved to **deny** the variance application as presented and advertised, seconded by Mr. Mannle.*

Mr. Rossi said the failure of the applicant to demonstrate hardship was the basis of his motion. He said there was nothing special or unique about the property that differentiates it from the other properties in the immediate area surrounding it, so therefore one could not get to the other aspects of hardship that mostly revolve around reasonable use. Mr. Mannle said he agreed and was loath to take a conforming lot and split it into two nonconforming lots, regardless of where it was. He said the hardship argument was weak. He said they heard from realtors and brokers but thought it was a 'what if' because no one knew what the future would be. He said the applicant felt that there would not be a diminution of value, which Mr. Mannle thought would be tough to prove when the values in Portsmouth were going up. He said the applicants were convinced that their properties would be diminished, but that was in the future and all conjecture. He said given the choice between a conforming lot being subdivided into two nonconforming lots against the neighborhood, he would go with the neighborhood. Mr. Nies said he would vote to deny. He said the applicant talked about the spirit of the ordinance and whether it was complied with, and that one of the applicant's arguments was that there were other lots in the area that also did not comply with the existing requirements. He said the zoning ordinance stated that special conditions of the property that distinguish it from others in the area must be present for a variance to be granted, and the existence in the surrounding area of conditions that are similar to the proposed nonconformity shall not be a basis for the granting of a variance. He said the argument that it complies with the spirit of the ordinance because other properties are not in conformance did not fly. In addition, he said the ordinance points out that when there's a requirement that is more stringent than existing conditions, the goal is to make sure you move toward those more stringent conditions. In this case, he said the Board would be going the other way – from a conforming lot to a nonconforming one. He said it would not comply with the hardship approach and questioned whether it would meet the spirit of the ordinance. Mr. Mattson said the GRB zone allowed 5-12 units per acre, and the proposal fell within that, so as an overall lot, it was still in the spirit of the ordinance. He said he thought the property was special because it has conditions that distinguish it, and the fact that it is on the inside of the curve affects the frontage.

*The motion to deny **passed** by a vote of 4-2, with Mr. Mattson and Acting Chair Margeson voting in opposition and Chair Eldridge recused.*

*At this point in the meeting, Mr. Mattson moved to go past ten o'clock, seconded by Mr. Mannle. The motion **passed** unanimously, 6-0.*

H. The request of Ben and Andrea St. Jean, Braden and Robyn Ferrari, Bob and Laura Gunning, Mike and Zoe Daboul, Tim and Kim Sullivan, and Jamie and Amy Baker (Appellants), for appeal of the administrative decision of a zoning determination pertaining to the side and rear lot lines of the property for a proposed subdivision located at 58 Humphreys. Said property is located on Assessor Map 101 Lot 47 and lies within the General Residence B (GRB) and Historic Districts. (LU-25-165)

SPEAKING TO THE APPEAL

[Timestamp 3:51:49] Attorney John Arnold representing the group of 12 residents summarized that their appeal related to Mr. Britz's zoning determination regarding the classification of the front, side, and rear lot lines on the property. He said the ordinance defined lot lines as the front lot line that is along the street, the rear lot line is opposite the front, and the side lot line is anything that is not a front or rear lot line. He said the ordinance stated that the rear lot line is less than 10 feet long or forms a point, and the City imposes an artificial 10-ft line so that there is always a front line. He said there was always a front and rear lot line but there may not be side lines. He said the City determined that there are two front lot lines and two side lot lines and imposes the artificial 10-ft long diagonal across the rear corner of the lot. He said his clients' position was that there are two front lot lines, two rear lines, but no side lot lines. He explained why they thought this was the correct interpretation. He said the significant part was that the rear lot lines impose a 25-ft setback, and the side lot lines impose a 10-ft setback, so the rear property line is important for the neighbors in terms of how close the improvements on this lot could be built. He said his clients would like this determination made and the appeal decided in the event that there was an appeal of denial of the variance, otherwise that categorization is important for that setback.

[Timestamp 3:54:33] Planning Director Peter Britz referred to his memo and explained how the front and rear lot lines were determined.

Mr. Nies said the original subdivision plan had a Humphrey Street Extension and one had it listed just as "street," so it clearly said that there were two streets. He said Mr. Britz's argument that it was only one street was because someone said they would call the street Humphreys Court. He asked whether a corner was defined as where two streets meet. The definition of a corner lot was discussed. Mr. Britz said he did not consider it two streets. He said it was not a corner lot but was a lot with a single continuous frontage. The rear lot line was further discussed. Mr. Rheume said the 10-ft lot line that was created was not parallel to any portion of the front lot line. He asked how that was reconciled. Mr. Britz said the City had to be creative in terms of the parallel aspect. The corner was further discussed. Mr. Rheume asked how the corner impacted the determination of rear lot line. Mr. Britz said it was not a corner lot and explained how the rear lot line was determined.

[Timestamp 4:01:27] Mr. Rossi said the application to subdivide the lot was denied, and he asked why the back corner was indicated as such. Mr. Britz said the frontage was still the entire frontage of Humphreys Court. The hypothetical aspect of it was further discussed. Mr. Mannle asked where the current rear line on the current property was, and Mr. Britz explained it. Acting Chair Margeson said there was a disagreement between the City and the appellant as to what the rear lot line is.

[Timestamp 4:07:27] Attorney Durbin said it was their position that there is no rear lot line in this instance. He said the appellant's argument was premised on the fact that there is always a rear lot line, but it wasn't true. He said they supported the administrative determination, but as to the determination on the lot lines favoring the first appeal, they took the position that there are two side lines and one front line.

Acting Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE APPEAL

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

[Timestamp 4:09:33] Mr. Rheume said that in his 13 years on the Board, he had never seen an application that defined the back property line in this manner and created a rear property line that was at an angle to the rest of the property. He said it was a very unusual interpretation. He said the essence of the fictitious 10-ft rear lot line that the ordinance talks to is really for a more complicated situation and not intended for rectangular lots. He said instead of being two street, Humphreys Court was called one street. He said there were enough similar situations in Portsmouth to update the ordinance, but to somehow say that this was the right solution to that problem struck him as the non-obvious solution. He agreed with the appellant that the Planning Department's determination was not the right one, but he thought the suggestion of the appellant to call them rear lot lines also was not right. He said there was a clearly visible front lot line and a very ambiguous rear lot line. He further explained it. He said the two other boundary lines were defined by either the smaller property or the larger property as a whole due to the unique nature of the street being one contiguous street would in fact be side lot lines.

[Timestamp 4:13:25] It was further discussed at great length. Acting Chair Margeson said she tended to support Mr. Britz's interpretation, but the property had been very difficult for the Board and City to deal with. She said she would ask for a motion to deny the appeal and uphold the decision of the Code Official. It was further discussed and decided that it was a de novo appeal.

DECISION OF THE BOARD [Timestamp 4:23:04]

Mr. Nies moved that the Board disagrees with the Planning Director's determination of the rear lot line of this proposed subdivision of the lot. Mr. Rossi seconded.

Mr. Rheume said the Board had individual ideas on how the matter should be resolved. He said there was consensus among the Board that what was determined was not the right answer. He said his only concern with the motion was that it did not speak to the appeal and that the Board was partially granting the appellant's appeal but leaving silent the answer to what the rear lot line is. He suggested rephrasing the motion in terms of the appeal. It was further discussed.

Mr. Nies withdrew his motion, and Mr. Rossi agreed.

[Timestamp 4:32:07] The motion was further discussed.

The **amended** motion was:

Mr. Rheume moved that the Board grant the appellant's appeal of the zoning determination by Planning Director Peter Britz regarding the classification of the rear lot lines for the proposed

subdivision of 58 Humphreys Court, and that the Board makes no determination of classification of side lot lines for the proposed subdivision. Mr. Nies seconded the motion.

*The motion **passed** unanimously, 6-0, with Chair Eldridge recused.*

- I. POSTPONE TO JANUARY** The request of **Michael R and Isaac M. Roylos (Owners)** and **Christopher Cloutier (Applicant)**, for property located at **25 Sims Avenue** whereas relief is needed to create a buildable lot which requires the following: 1) Variance from section 10.521 to allow a) 5,000 square feet of lot area where 15,000 is required, b) 5,000 square feet of lot area per dwelling unit where 15,000 is required, and c) 50 feet of frontage where 100 feet are required. Said property is located on Assessor Map 233 Lot 71 and lies within the Single Residence B (SRB) District. **POSTPONE TO JANUARY (LU-25-169)**

The petition was **postponed** to the January 21 meeting.

IV. ADJOURNMENT

The meeting adjourned at 11:41 p.m.

Submitted,
Joann Breault
BOA Meeting Minutes Taker

III. OLD BUSINESS

- A. The request of **Kenneth J and Rebecca T Nicholson (Owners)**, for property located at **53 Pray Street** whereas relief is needed to demolish and reconstruct the existing sunroom and roof deck, replace the existing patio and driveway, and replace an 8 foot fence which requires the following: 1) Variance from Section 10.521 to allow a 7.5 right side yard where 30 feet is required; 2) Variance from Section 10.515.13 to allow an 8 foot fence in the front yard where 4 feet is allowed; and 3) Variance from Section 10.516.10 to allow a 6.5 foot front yard where 17 feet is required. Said property is located on Assessor Map 102 Lot 40 and lies within the Waterfront Business (WB) and Historic Districts. (LU-25-166)

Planning Department Comments

The applicant has withdrawn the request.

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

January 5, 2026

HAND DELIVERED

Phyllis Eldridge, Chair
Portsmouth Zoning Board of Adjustment
City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Kenneth & Rebecca Nicholson, Owner/Applicant
Project location: 53 Pray Street
Tax Map 102, Lot 40
LU 25-166/Waterfront Business (WB) District/Historic District Overlay

Dear Chair Eldridge and Zoning Board Member:

With the authority of Applicant Kenneth & Rebecca Nicholson, please accept this letter as our request to withdraw the pending Zoning Relief application. A copy of this letter will be forwarded electronically to Peter Stith and uploaded on viewpoint to LU 25-166.

Sincerely,



Stephanie J. Johnson
R. Timothy Phoenix

cc: Kenneth & Rebecca Nicholson; Eric Weinrieb, Altus Engineering, LLC; Jennifer Ramsey, Auger Building Company; Robbi Woodburn, Woodburn & Company

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

III. OLD BUSINESS

- B.** The request of **909 West End LLC and PWED2 LLC (Owners)**, for property located at **909 and 921 Islington Street** whereas relief is needed to construct a sign at 921 Islington Street that will be servicing the businesses located at 909 Islington Street which requires the following: 1) Variance from Section 10.1253.10 to allow a sign setback of 2 feet from a lot line where 5 feet are required, 2) Variance from Section 10.1224.90 to allow a sign advertising a product or service not provided on the lot on which the sign is located ("off premise sign"); and 3) Variance from Section 10.1252 to allow 27 square feet of sign area where 20 square feet are allowed. Said property is located on Assessor Map 172 Lots 7 & 10 and lies within the Character District 4-W (CD4-W). (LU-25-134)

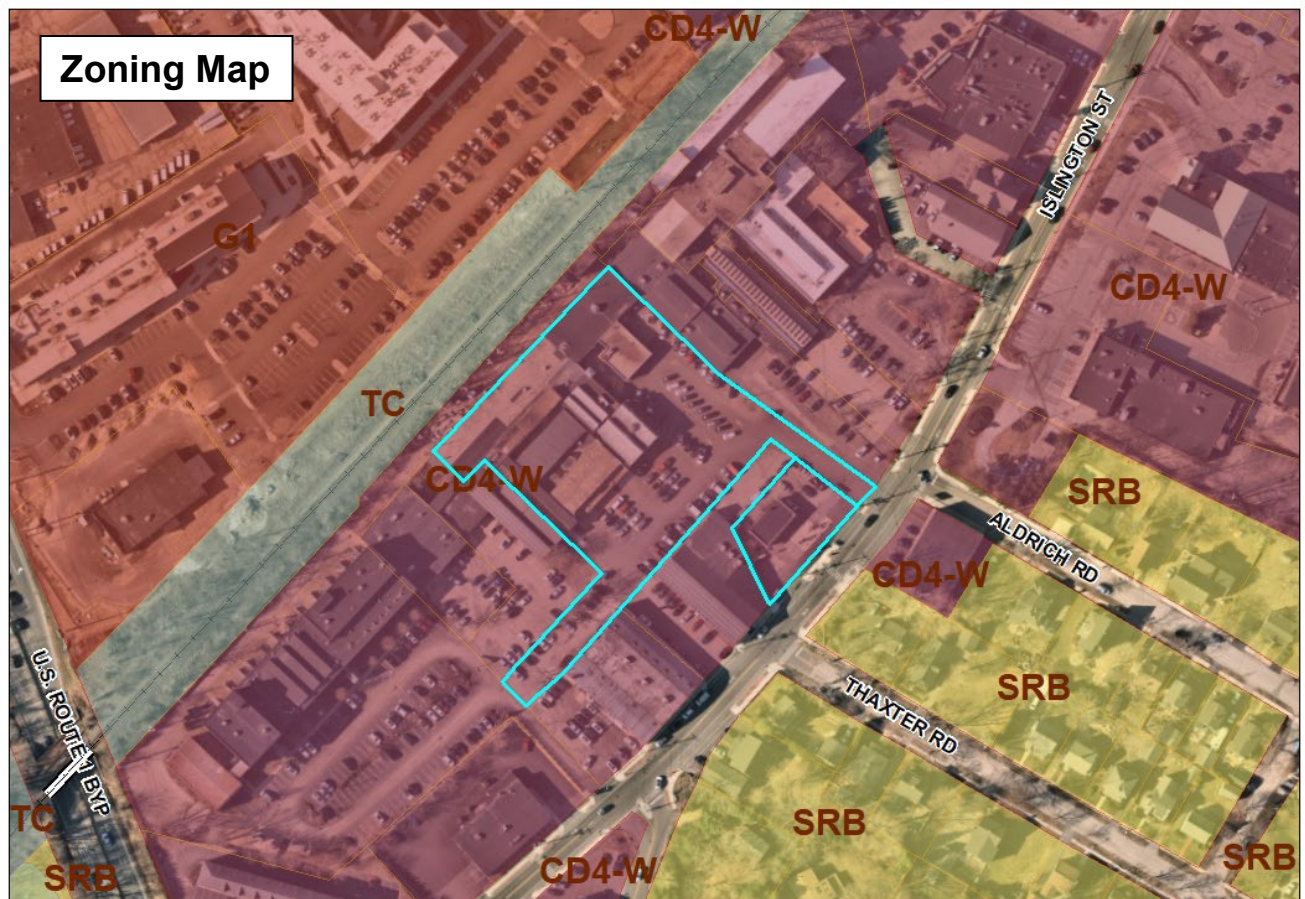
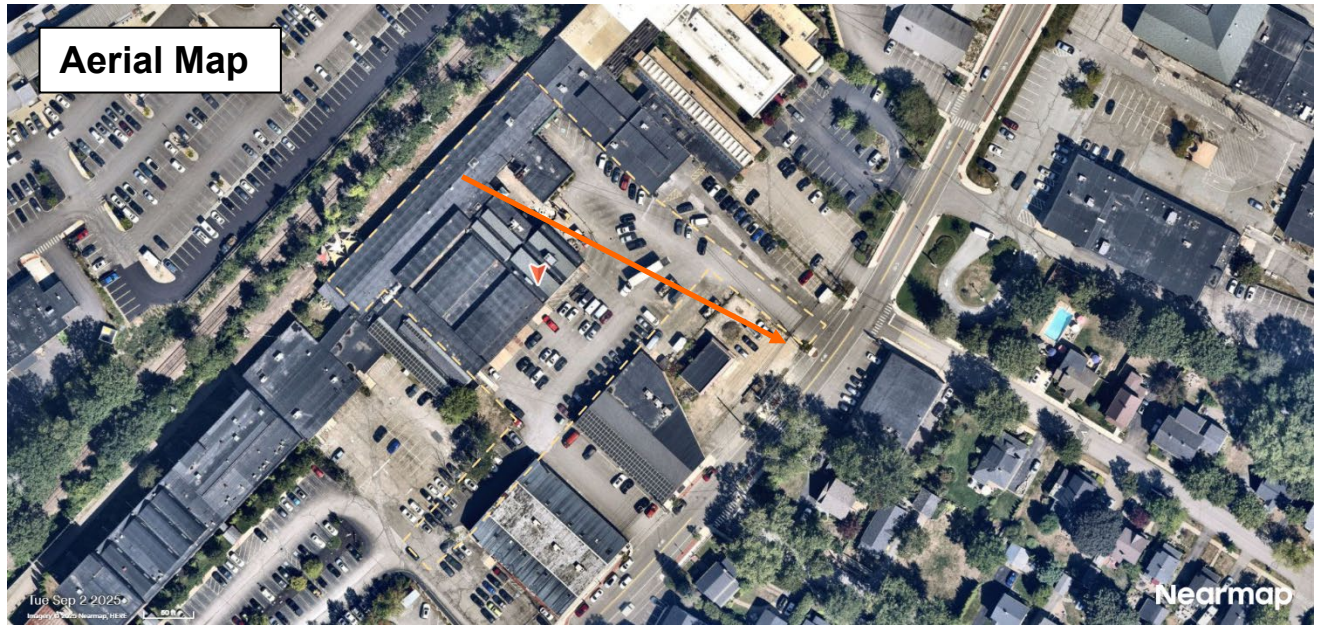
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	Construct a freestanding sign on the adjacent property.	Mixed-Use
<u>Freestanding Sign Setback:</u>	In City ROW	Side: 2 Front: >5	5 (from all lot min. lines)
<u>Off Premises Sign</u>	No	Yes	No min.
<u>Total Sign Area (sq. ft)</u>		27	20
Variance request(s) shown in red.			

Other Permits/Approvals Required

- Building Permit/ Sign Permit

Neighborhood Context



0 65 130 260 Feet
1 inch = 135 feet

909 and 921 Islington Street



Previous Board of Adjustment Actions

Due to the extensive history on file for both properties (909 and 921 Islington St), only items for the last 10 years have been included in this memo. Complete history is available upon request.

909 Islington St:

November 22, 2016 – The Board **granted** a Variance from Section 10.1243 to allow two freestanding signs on a lot where only one freestanding sign is allowed. Variances from Section 10.1253 to allow a freestanding sign to be set back 10'± from the front lot line and 1.5"± from the left side lot line where 20" is required for each.

January 28, 2025 – The Board **granted** the request to allowing a restaurant which requires the following: Special Exception from Section 10.440, Use #9.42 to allow a restaurant with an occupant load from 50 to 250 people where it is allowed by Special Exception.

August 19, 2025 – The Board **granted** the request to add 300 square feet of space to increase seating capacity from 36 to 54 which requires the following: 1) Special Exception from Section 10.440 Use #9.42 to allow occupant load from 50 to 250.

921 Islington St:

July 22, 2025 – The Board **granted** the request for 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.

The Board voted to **grant** the request as presented with the following **conditions**:

- 1)The Board recognizes that the advertisement misstated that there was to be a demolition of the existing structure, which was not the applicant's intent. The current structure will not be completely demolished and the exterior walls will remain at the minimum as a definition of not being fully demolished;
- 2)The location and orientation of the dumpster may change as a result of site review but shall not be located closer to the lot line than what was presented.

Planning Department Comments

The applicant is requesting relief to remove the existing freestanding sign and construct a new freestanding sign on the adjacent property. The proposed sign will be located at 921 Islington Street and will advertise for businesses and services located at 909 Islington Street.

Update for 1-21-2026:

- The applicant provided an updated plan that showed the proposed sign would not impact the bounded areas as defined in section 10.1253.20. However the new plan showed the sign to be closer to the lot line than originally advertised and more than the allowed total sign area square footage. The applicant was informed that the changes would require additional advertising. The application was delayed two

months from the last time the Board saw this application due to the additional advertising and a staff error.

Variance Review Criteria

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

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

AND

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

OR

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

10.235 Certain Representations Deemed Conditions

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



HALEY WARD

200 Griffin Road, Unit 14, Portsmouth, NH 03801
Phone (603) 430-9282

18 November 2025

Phyllis Eldridge, Zoning Board of Adjustment Chair
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: Request for Zoning Relief, 909 and 921 Islington Street, Proposed Site Signage (LU-25-134)

Dear Ms. Eldridge and Zoning Board Members:

On behalf of Chinburg Management, LLC, 909 West End, LLC, and PWED 2, LLC, we are pleased to submit the attached information for **Variance Review** for the above-mentioned project and request that we be placed on the agenda for your **December 16, 2025**, Meeting. The project was reviewed at the October 21, 2025, Zoning Board Meeting where the application was postponed, to provide additional information to the Board for review. The original Application Narrative is included herein, along with the following updated exhibits:

- Application Narrative (Original)
- Site Sign Detail
- Sign and Adjacent Sign Photographs
- Site Plan – Sign Location; Existing and Proposed

The Louis Restaurant sign, shown in the attached photographs, was moved to the site plan location for the proposed multi-tenant sign. Adjacent similar signage is included in the documentation. The sign location plan has been updated to depict the required sight distance triangle showing that the proposed sign will not interfere with vehicle turning movement sight distance. In addition, both existing conditions and proposed conditions site plans, showing sign location and sight distance triangles are attached, since the construction of the sign may proceed the 921 Islington site development construction. The sight distance is maintained in either case.

The applicant respectfully requests the Board grant the variances as requested and re-advertised.

Sincerely,

John Chagnon, PE, LLS
Senior Project Manager

909 & 921 Islington Street Variance - Narrative

THE PROPOSAL:

The reason for this variance request comes from the constraints of the frontage of the 909 Islington St. of 30 feet and being an active driveway for 909 and the right of way drive to 865 Islington St. On the property line of 909 and 921 a sidewalk is being installed to make pedestrian access to these properties safer and with these constraints it does not allow a proper location for signage for the 909 Islington St. businesses.

The applicant Sundance Sign Company for Chinburg properties proposes to remove a non-conforming freestanding sign currently existing in the public right of way. We propose to construct a multi tenant sign for 909 Islington St., this proposed sign due to frontage constraints will need to be placed on 921 Islington Streets lot, which is also owned by Chinsburg property. This would be considered as an off premise advertising sign and we ask for relief from this as well as side setback under 5 feet from the 909 Islington Street lot. This situation is not unique in this area of Islington St as the signage at 1001 is very similar to this situation

THE SITE:

909 Islington St lot 172-7

921 Islington St lot 172-10

VARIANCE REQUESTED:

Relief from section 12 of the Portsmouth regulations

1) Granting the requested variance would benefit the public interest. The general public would benefit by the grant of this variance and that the identification of the businesses at 909 Islington St. Would be made easier having this properly located signage at the roadway. By allowing the signage location as requested the board would improve Traffic Safety in the area and benefit the public by creating safer conditions.

2) The proposal before the board this evening is not excessive and is not contrary to the spirit and intent of the ordinance sign ordinance is to permit and to regulate signs in a manner that protects the public safety and enhances the economic advantages enjoyed by the Portsmouth property owners. The spirit of the ordinance is observed by the size and the style fits within

current sign ordinance provisions; the applicant believes that the signage location as proposed is adequately placed to identify the 909 Islington St. businesses to the general public.

3) Granting. The requested variance. Would result. In substantial justice being done. As board members are well aware., the test for whether or not substantial justice is done, is whether or not the benefit to the general public is denying the variance would outweigh the hardship upon the owner applicant. Seeking the variant. And this is the. Instance. In this instance., there is no benefit to the general public in denying this requested variance, but on the contrary, the public is actually benefited by granting of the variance. Granting the variance will enhance public safety and will not in any way create an eyesore or more confusing. Situation. Since there was no benefit to the public and denying the variance, substantial justice would be done by granting the variance in order to alleviate the hardship upon the owner applicant.

4) No diminution in value of the surrounding properties would result from the granting of the variance. The property in question lies in the midst of the Islington St. commercial district. This signage would in no way diminish surrounding property valuations, as can be seen in the attachment that the style and color of the sign is tastefully done.

5)Hardship. Due to the constraints of the frontage, not allowing this request would create hardship for the tenants not being able to allow their businesses to have proper identification signs to the drivers on Islington street.

CONCLUSION:

In conclusion, it is the position of the Applicant that the five (5) criteria necessary for the Board to grant the requested Variance are met within the application. As such, it is respectfully requested that the board grant the variance as advertised and presented.

Respectfully submitted,
Sundance Sign Company
Michael Leary

OFFICE -	SITESURVEY -	SENT PROOF -	ART APPROVED -	ESTIMATED -	50% DEP REC. -	CONTRACT -	PERMITS -	PLAN -	MATERIALS ORDERED -	APPROVED ARTFILES -	PROD. PACKAGED
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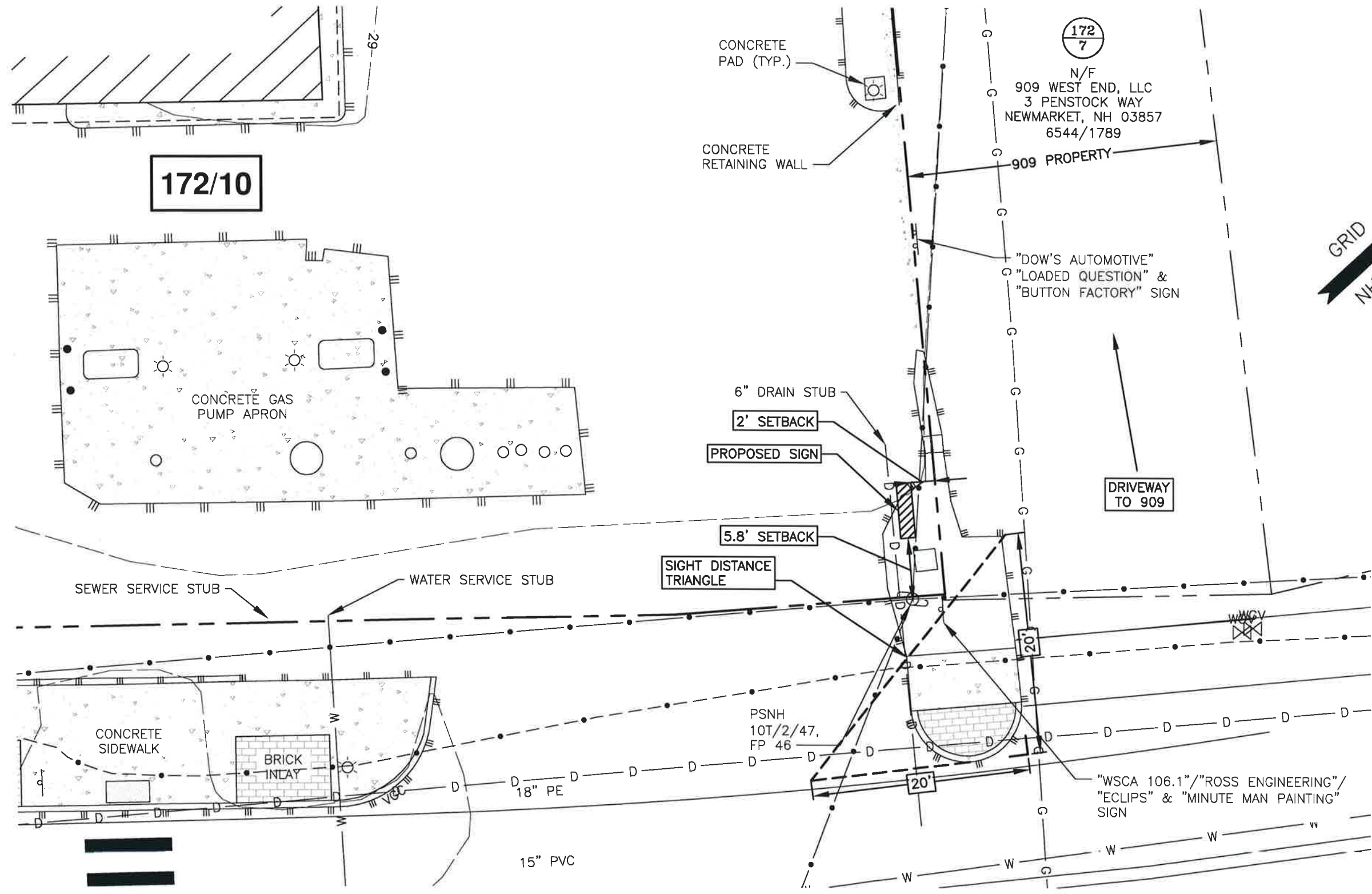
909-921 Islington Street ZBA – Proposed Sign Location





909-921 Islington Street ZBA – Adjacent Property Sign Locations





SIGN LOCATION PLAN—EXISTING CONDITIONS

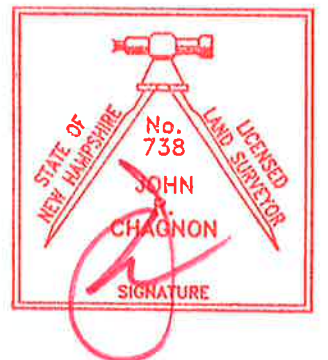
BOA SIGN APPLICATION
FOR 909 ISLINGTON
ON 921 ISLINGTON PROPERTY
PORTSMOUTH, N.H.



SCALE: 1"=10'

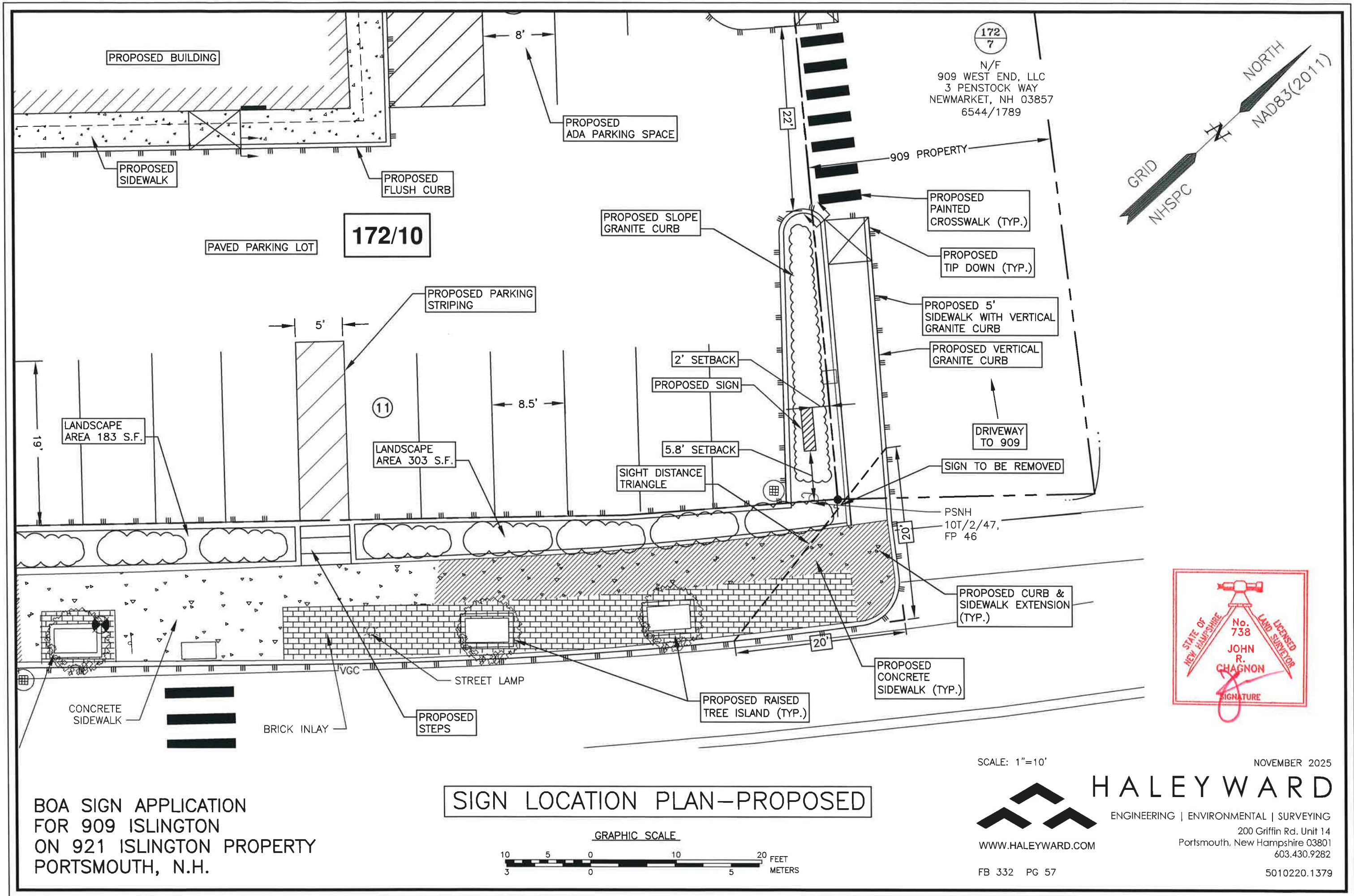
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NOVEMBER 2025
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Portsmouth, New Hampshire 03801
603.430.9282



P:\NH\5010220-Chinburg_Builders\1379-909 Islington Street, Portsmouth-2024 Site Development\02-CAD_Files\Survey\5010220-1379-V-EC.dwg, 11/18/2025 2:12:21 PM

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III. OLD BUSINESS

- C. The request of **Stewart Baker Revocable Trust (Owner)**, for property located at **20 Coffins Court** whereas relief is needed for the construction of a spiral staircase on the left side of the home and dormers on the third floor which requires the following:
- 1) Variance from Section 10.521 to allow a) 4 foot right side yard and a 5 foot left side yard where 10 feet are required, b) 50.5% building coverage where 35% is allowed; and c) 4.5% open space where 20% is required. Said property is located on Assessor Map 135 Lot 53 and lies within the General Residence C (GRC) District. (LU-25-164)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Residential Home	Construct Dormers and Spiral Staircase	Primarily Residential
<u>Lot area (sq. ft.):</u>	2,036	2,036	3,500 min.
<u>Front Yard (ft.):</u>	0	0	5 max.
<u>Left Yard (ft.):</u>	Existing Stairs:1.5	Spiral Stairs: 5 Existing Stairs:1.5	10 min.
<u>Right Yard (ft.)</u>	4.1	4	10 min.
<u>Rear Yard (ft.):</u>	6.9	6.9	20 min.
<u>Height (ft.):</u>	35	35	35 max.
<u>Building Coverage (%):</u>	49.6	50.5	35 max.
<u>Open Space Coverage (%):</u>	5.3	4.5	20 min.
<u>Estimated Age of Structure:</u>	1880	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

January 21, 1992 – The Board **granted** a Special Exception from Article II, Section 10-205(11) to allow a home occupation (Home Health Agency) to be established.

Planning Department Comments

The applicant is requesting relief to construct dormers and a spiral staircase. The livable area will not expand beyond the existing footprint of the home. The new staircase will result in an increase in building coverage and decrease in open space.

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.

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: Stephanie J. Johnson, Esquire
R. Timothy Phoenix, Esquire
DATE: November 17, 2025
Re: Laura Stewart & Evan Baker
20 Coffins Court
Tax Map 135/Lot 53
General Residence C (“GRC”)

Dear Chair Eldridge and Zoning Board Members:

On behalf of the Applicant, Laura Stewart and Evan Baker (“Stewart & Baker”), we are pleased to submit this memorandum and attached exhibits in support of Zoning Relief from the Portsmouth Zoning Ordinance (“PZO”) to allow installation of dormers to increase living space on the third floor and installation of a spiral staircase in the rear of the home to allow outdoor access between the second and third floors (the “Project”). Although the Project is largely confined to the home’s existing footprint, relief is necessary because the existing home encroaches on side, front, and rear setbacks. The Project as proposed reduces open space by 0.7%, requiring additional relief.

I. EXHIBITS

- A. Site Plan Set – Ross Engineering, LLC.
 - Existing Conditions Plan
 - Site Plan
 - Elevations
- B. Architectural Plan Set – Mangel DeStefano Architects.
 - First Floor Plan
 - Second Floor Plan
 - Third Floor Plan
 - Lower Level Floor Plan
 - Elevations – South and West
 - Elevations – North and East
 - Sections & Perspectives
- C. Site Photos.
- D. Tax Map 135.

II. PROPERTY/PROJECT

20 Coffins Court is an undersized 2,036-s.f. lot containing a five-bedroom, two-bathroom single family home with 1,559-s.f. of living area (“the Property”). Due to the size constraints of

the existing lot, Stewart & Baker propose to expand the third floor of their home by adding dormers to increase available living space without expanding their home's footprint. The Project complies with height restrictions. However, because the existing home encroaches on side, front, and rear setbacks, relief is required for expansion via the dormers even though they are within the existing home's perimeter. In addition to the third-floor expansion, Stewart & Baker propose to install a spiral staircase at the rear of the property to allow for outdoor ingress and egress between the existing second and third floor decks, marginally increasing building coverage from 49.6% to 50.3% and decreasing open space on the lot from 5.3% to 4.5%, requiring relief. Although relief is required to proceed with the Project, the increase in indoor living space and improved functionality of the outdoor space blends in with the neighborhood while increasing the Property's value.

III. RELIEF REQUIRED

1. PZO §10.321 – Expansion of nonconforming structure – To permit a construction of a dormer 4.1 feet from the right-side lot line where 4.1 feet exists and 10 feet is required.
2. PZO §10.321 – Expansion of nonconforming structure – To permit construction of an exterior spiral staircase 5.8 feet from the left-side lot line where 1.5 feet exists and 10 feet is required.
3. PZO §10.521 – Table of Dimensional Standards – To permit construction of a dormer 4.1 feet from the right-side lot line where 4.1 feet exists and 10 feet is required.
4. PZO §1.521 – Table of Dimensional Standards – To permit construction of third-floor dormers and an exterior spiral staircase in the rear of the home, increasing building coverage to 50.3% where 49.6% building coverage exists and 35% is permitted.
5. PZO §1.521 – Table of Dimensional Standards – To permit construction of third-floor dormers and an exterior spiral staircase, decreasing open space to 4.5% where 5.3% exists and 20% is required.

IV. VARIANCE REQUIREMENTS

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

The first step in the ZBA's analysis is to determine whether granting the variances are not contrary to the public interest and are consistent with the spirit and intent of the ordinance,

considered together pursuant to Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102 (2007) and its progeny. Upon examination, it must be determined whether granting the variances “would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” Id. “Mere conflict with the zoning ordinance is not enough.” Id.

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

- The use of land, buildings and structures for business, industrial, residential and other purposes – The Property will continue to support a residential use in a residential zone.
- The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The Project is largely contained within the existing home’s footprint, maximizing living space while unnoticeably increasing building area and imperceptibly reducing open space on the lot.
- The design of facilities for vehicular access, circulation, parking and loading – No change.
- The impact on properties on of outdoor lighting, noise, vibration, stormwater runoff and flooding – The Project does not increase the impact of the existing home on outdoor lighting, noise, vibration, stormwater runoff or flooding as it makes use of the home’s existing footprint. The Project improves the aesthetics and livability of the home.
- The preservation and enhancement of the visual environment – The Project increases available living space while maintaining the character of the existing single-family home, rather than tearing it down and replacing it with a modern structure out of character with the surrounding neighborhood.
- The preservation of historic districts and building and structures of historic architectural interest – As previously noted, the Project preserves the existing home, noted in tax records to have been built in 1880, rather than replacing it with a modern structure that would clash with the existing neighborhood’s aesthetic.
- The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – The existing driveway and lower-level patio are made from permeable pavers, ensuring infiltration of stormwater runoff, offsetting the Project’s negligible decrease in open space and scant increase in lot coverage.

The intent of the GRC Zone is to “provide areas for single-family, two family and multifamily dwellings, with appropriate accessory uses, at moderate to high densities (ranging from approximately 5 to 12 dwelling units per acre), together with appropriate accessory uses and limited services.” PZO §10.410. The Project meets the intent of the GRC Zone. It permits the improvement of an existing single-family home consistent with the surrounding area by expanding living space at a code compliant height without further encroachment into setbacks

than the existing structure. The proposed spiral staircase provides additional usability and safety via outdoor ingress and egress between the existing second and third floor decks at the rear of the property. Given these factors, granting the requested variances will not conflict with the basic zoning objectives of the PZO.

In considering whether variances “in a marked degree conflict with the ordinance such that they violate the ordinance’s basic zoning objectives,” Malachy Glen, supra, also held:

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

Coffins Court is a very narrow lane connecting Union Street and Cabot Street. See Exhibit D. Stewart & Baker’s home encroaches on existing setbacks. Exhibits A, D. Four of the nine lots with frontage on Coffins Court are undersized: 37 Coffins Court (single-family home, 2,178-s.f.); 45 Coffins Court (two-family home, 1,306-s.f.), 179 Union Street (three-family home, 2,613-s.f.), and 74 Cabot Street (single-family home, 3,485-s.f.). *Id.* This proposal simply adds third floor dormers within the existing footprint and a spiral staircase at the rear of the structure, is in keeping with the surrounding area. The proposed design is tasteful and maintains the existing neighborhood aesthetic. Granting the variances reasonably permits a height-compliant expansion of living area and a means of outdoor ingress and egress between the existing second and third floor decks. Clearly, the variances neither alter the essential character of the locality nor threaten the public health, safety, or welfare. Accordingly, granting the variances is not contrary to the public interest and observes the spirit of ordinance.

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.

Stewart & Baker are constitutionally entitled to the reasonable use of their land. For all of the reasons previously stated, it is entirely reasonable to expand available living space and install a staircase to provide a means of access between existing outdoor decks without

disturbing the Property's original footprint. "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 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 variances allow a tasteful third floor expansion of existing living space without increasing the footprint of the existing home. The Project is visually consistent with the existing neighborhood's character and appearance. Stewart & Baker have lived in the home for over twenty years. As long-time Portsmouth residents, rather than proposing a replacement home that would stand out, the Project continues to fit the character of the existing neighborhood, honoring their home's original design and aesthetics while providing additional living space and improving functionality of their outdoor space. The addition of a spiral staircase at the rear of the property results in an imperceptible increase in building coverage (0.7%) and decrease in open space (0.8%). Thus, there is no gain to the public from denial of the variances. Conversely, Stewart & Baker will be greatly harmed by denial of any of the variances because they will be unable to reasonably expand their living space supported by the use and safety provided by the exterior staircase connecting their existing decks. Accordingly, substantial justice will be done by granting the variances, while a substantial injustice will be imposed upon Stewart & Baker if denied.

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

The Project provides a small increase in volume within the existing home's perimeter in a thickly settled neighborhood with multiple nonconforming structures. The right side dormer is no closer to the side lot line than the existing home, and the proposed staircase encroaches less than the existing deck on the left side of the lot. Given the limited scope of the request and its imperceptible effect on building coverage and open space, it is clear that granting the 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, at .05 acres, is a very small lot situated in a high-density residential neighborhood. The Property is developed with a 145-year-old, nonconforming structure within the front, side, and rear setbacks. The existing deck and stairs leading to the lower-level patio are entirely within the left side setback. Any change to the Property would require similar relief. Additionally, the Property is located in a densely developed area with many other homes that do not comply with front, side, or rear yard requirements. These circumstances combine to create special conditions.

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

The purpose of setbacks is to prevent overcrowding and overburdening of land, provide sightlines for pedestrians and motorists, ensure adequate light and air circulation, and provide sufficient area for stormwater treatment. None of these purposes are impaired by granting the requested variances. The nonconforming home already exists in the front, side, and rear yard setbacks and the volume related to the dormers is minimal. No relief is required for the left side dormer as the home's left side does not encroach on the setback. The dormers do not expand beyond the existing home's footprint and are compliant with height limitations. Similarly, the spiral staircase, although located within the left side setback, is more conforming than the existing deck and stairs leading to the lower patio. No expansion is proposed beyond the existing footprint is proposed here.

Moreover, the overall neighborhood is similarly densely developed with multiple nearby nonconforming lots and structures. See Walker v. City of Manchester, 107 N.H. 382, 386 (1966) (Hardship may be found where similar nonconforming uses exist within the neighborhood and

the proposed use will have no adverse effect on the neighborhood). See also Belanger v. City of Nashua, 121 N.H. 389 (1981) (Variance proper where ordinance no longer reflects the current character of neighborhood). Balancing the clearly minimal effect upon neighbors against the reasonable request to expand living space while maintaining the existing home's footprint and add an outdoor staircase to connect the existing second and third floor decks at the rear of the Property, there is no fair and substantial relationship between the purposes of the setback, lot coverage, and open space requirements and their application in this instance.

c. The proposed use is reasonable.

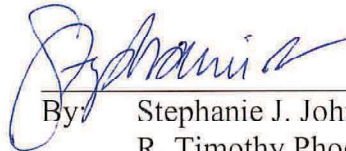
If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Residential use is permitted in the GRC Zone. The Project expands third-floor living space while maintaining the existing footprint of the home, and adds an outdoor staircase for ease of outdoor ingress and egress. The resulting decrease in open space and increase in lot coverage is so miniscule as to be unnoticeable.

V. CONCLUSION

For all of the reasons stated, Stewart & Baker respectfully request that the Portsmouth Zoning Board of Adjustment grant the requested variances.

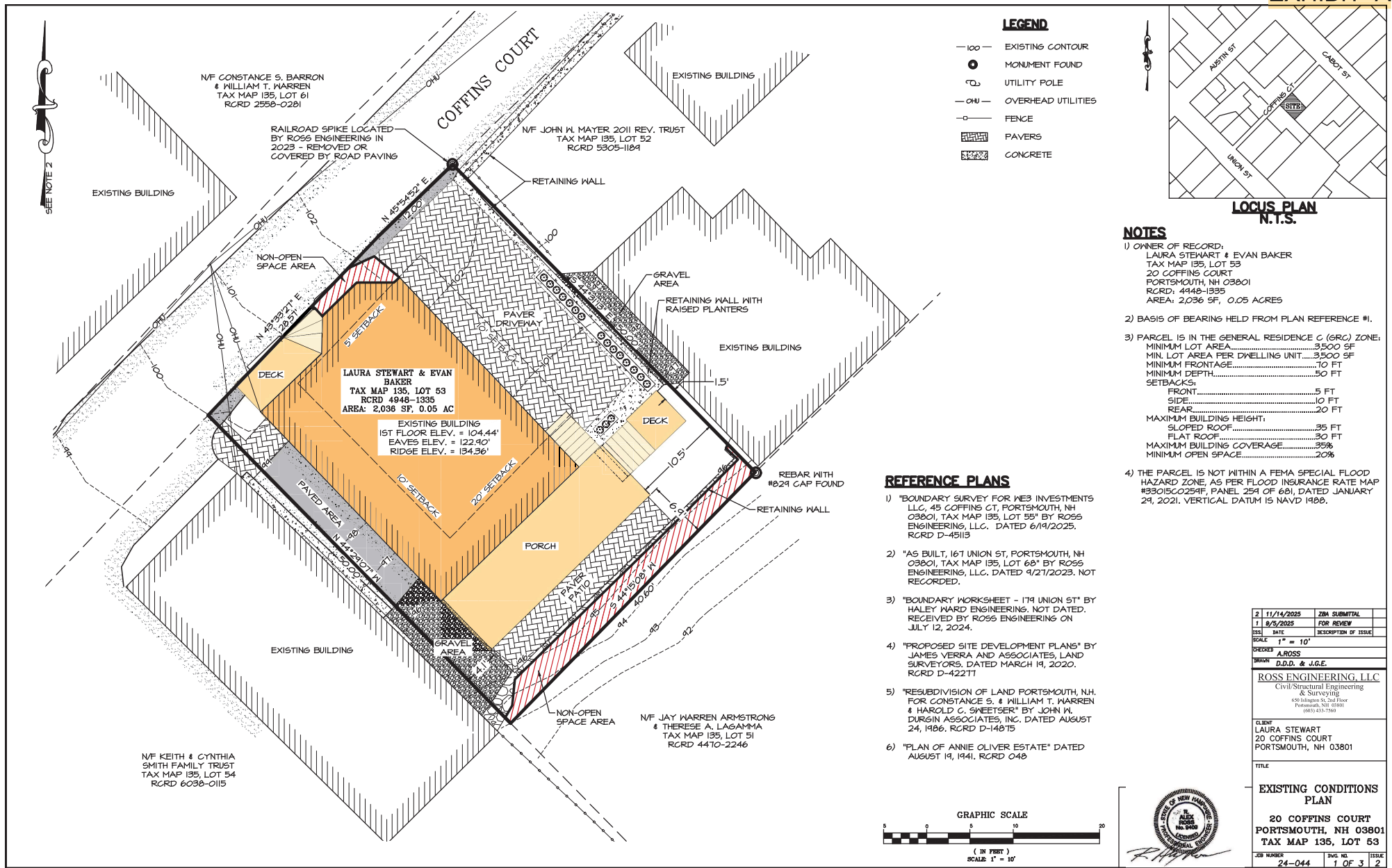
Respectfully submitted,

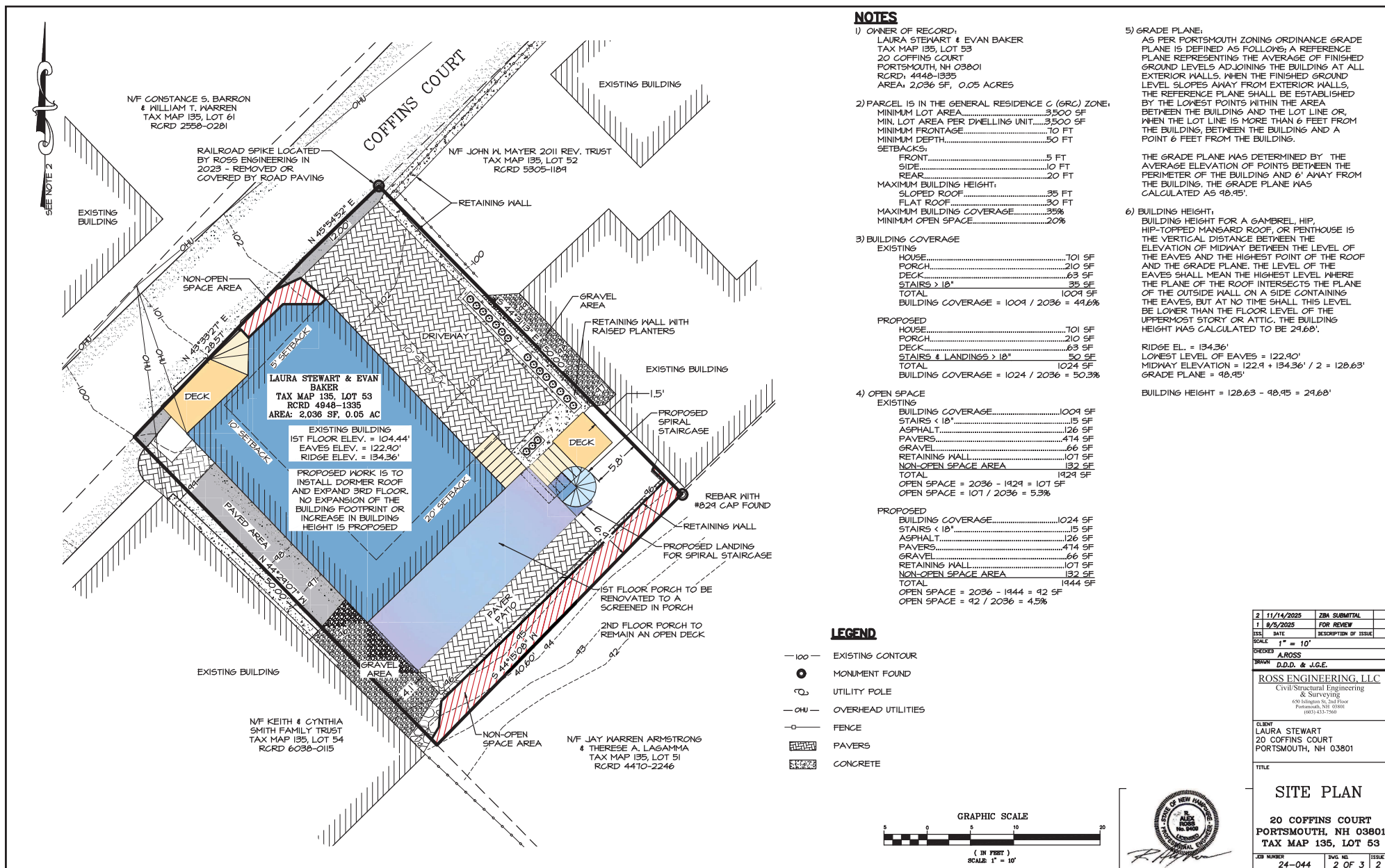
Laura Stewart & Evan Baker

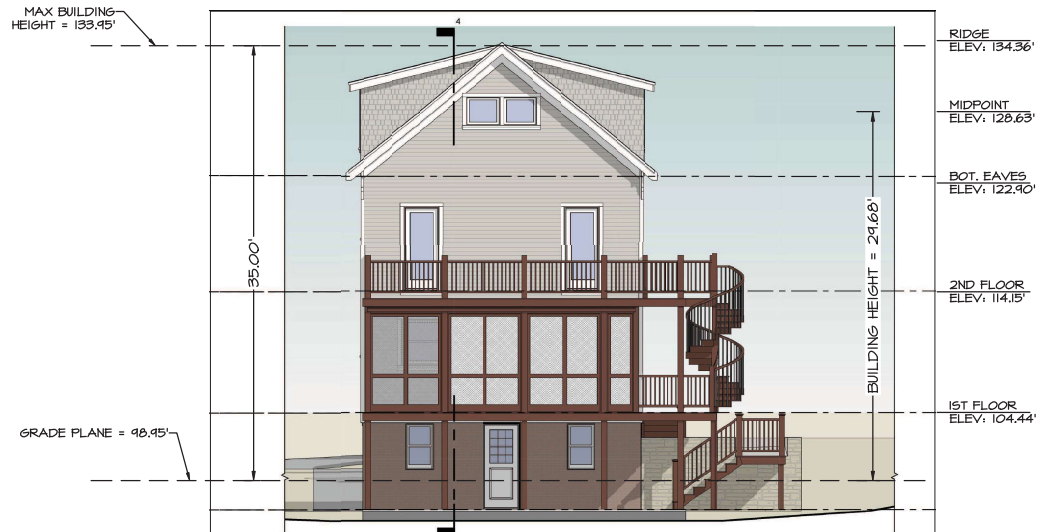


By: Stephanie J. Johnson
R. Timothy Phoenix

EXHIBIT A







PROPOSED NORTH ELEVATION

Scale: 1"=5'

NOTES

1) **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 98.95'.

2) **BUILDING HEIGHT:**
BUILDING HEIGHT FOR A GAMBREL, HIP, HIP-TOPPED MANSARD ROOF, OR PENTHOUSE IS THE VERTICAL DISTANCE BETWEEN THE ELEVATION OF MIDWAY BETWEEN THE LEVEL OF THE EAVES AND THE HIGHEST POINT OF THE ROOF AND THE GRADE PLANE. THE LEVEL OF THE EAVES SHALL MEAN THE HIGHEST LEVEL WHERE THE PLANE OF THE ROOF INTERSECTS THE PLANE OF THE OUTSIDE WALL ON A SIDE CONTAINING THE EAVES, BUT AT NO TIME SHALL THIS LEVEL BE LOWER THAN THE FLOOR LEVEL OF THE UPPERMOST STORY OR ATTIC. THE BUILDING HEIGHT WAS CALCULATED TO BE 29.68'.

RIDGE EL. = 134.36'
LOWEST LEVEL OF EAVES = 122.90'
MIDWAY ELEVATION = $122.9 + 134.36' / 2 = 128.63'$
GRADE PLANE = 98.95'

BUILDING HEIGHT = $128.63 - 98.95 = 29.68'$

2	11/14/2025	ZBA SUBMITTAL	
1	8/5/2025	FOR REVIEW	
ISS.	DATE	DESCRIPTION OF ISSUE	
SCALE:	1" = 10'		
CHECKED:	A.ROSS		
DRAWN:	D.D.D. & J.G.E.		
ROSS ENGINEERING, LLC Civil/Structural Engineering & Surveying 650 Silsbee St., 2nd Floor Portsmouth, NH 03801 (603) 433-7500			
CLIENT LAURA STEWART 20 COFFINS COURT PORTSMOUTH, NH 03801			
TITLE <h2>ELEVATIONS</h2> 20 COFFINS COURT PORTSMOUTH, NH 03801 TAX MAP 135, LOT 53			
JOB NUMBER	24-044	SVG. NO.	3 OF 3
ISSUE			2

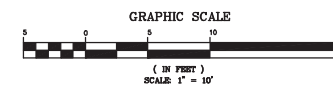
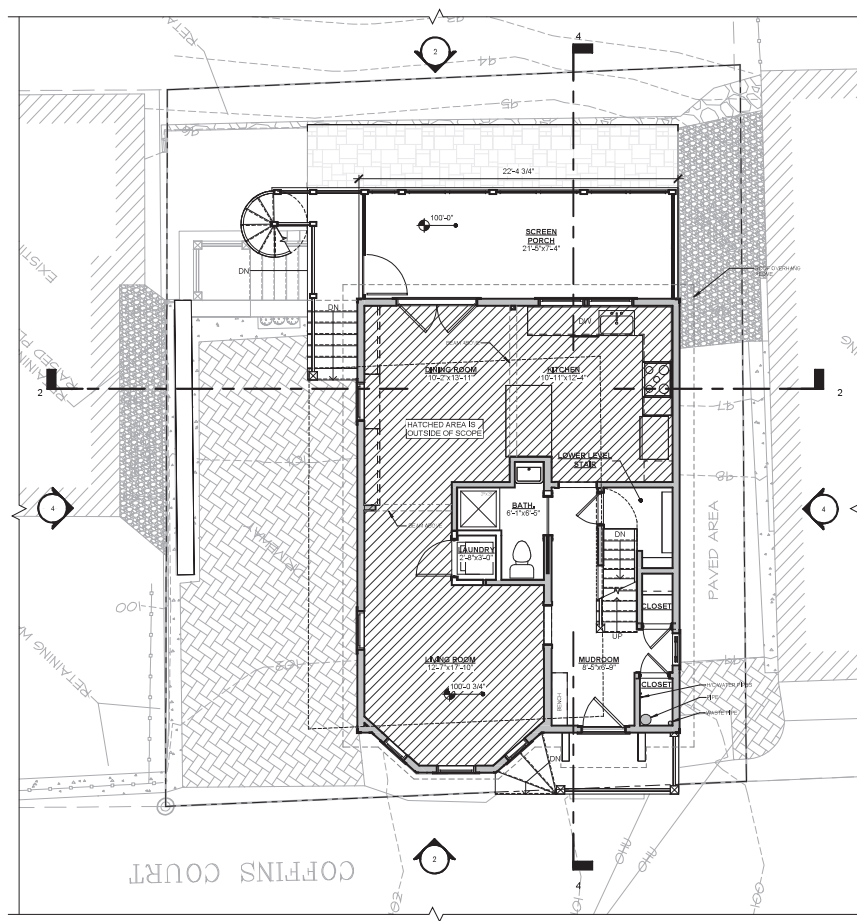
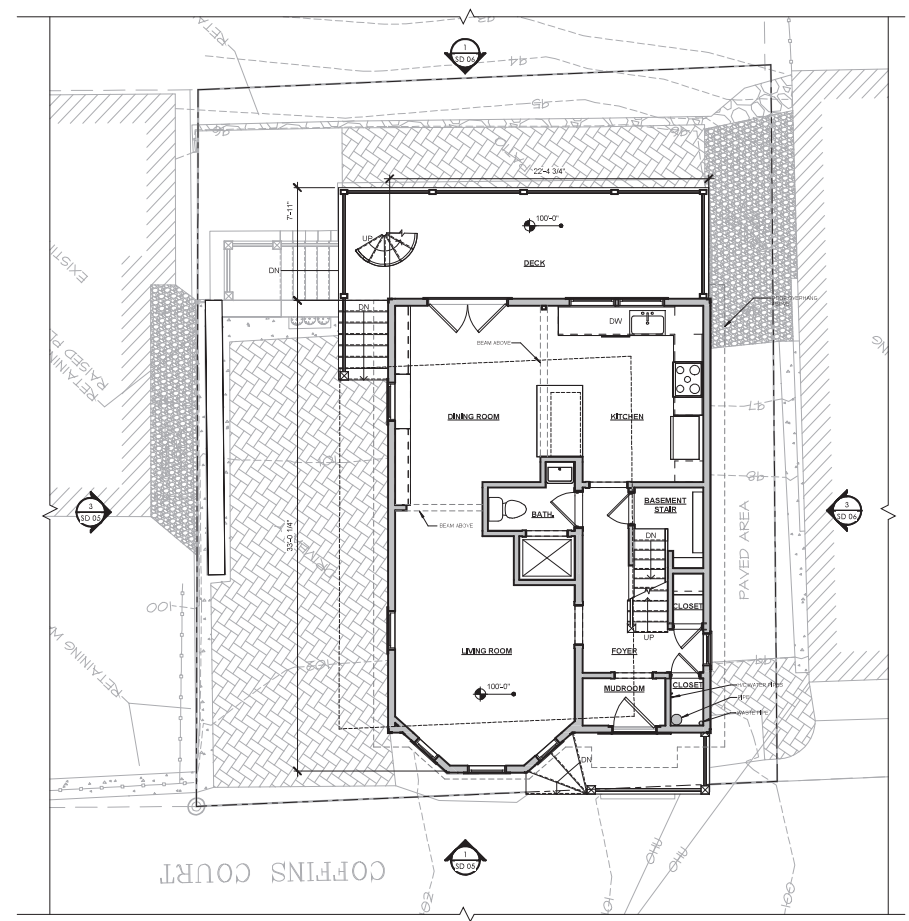


EXHIBIT B



PROPOSED FIRST FLOOR PLAN 2
1/4" = 1'-0"



EXISTING FIRST FLOOR PLAN 1
1/4" = 1'-0"

SCHEMATIC DESIGN
BAKER RESIDENCE

20 COFFINS COURT, PORTSMOUTH NH

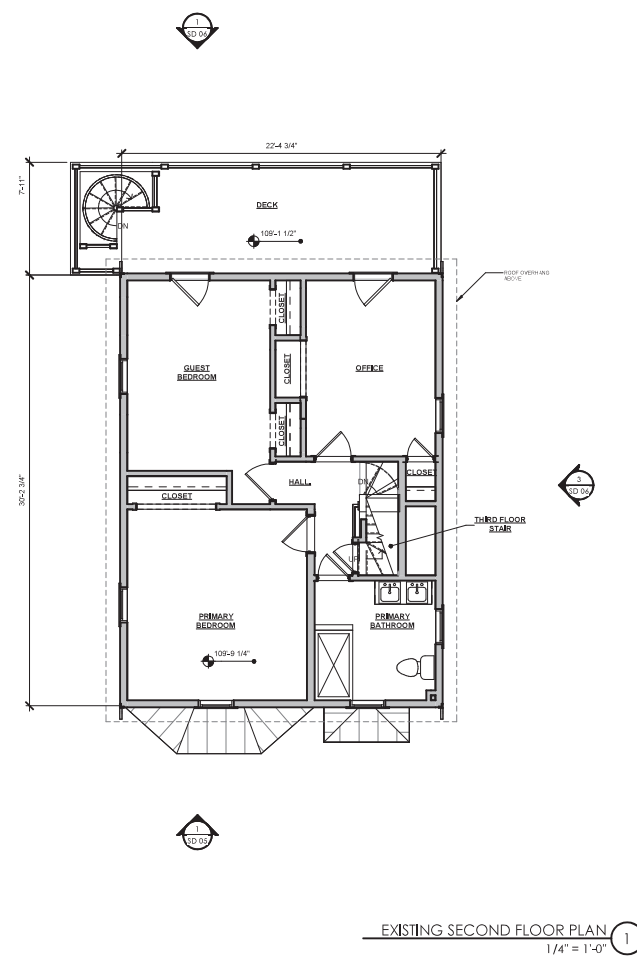
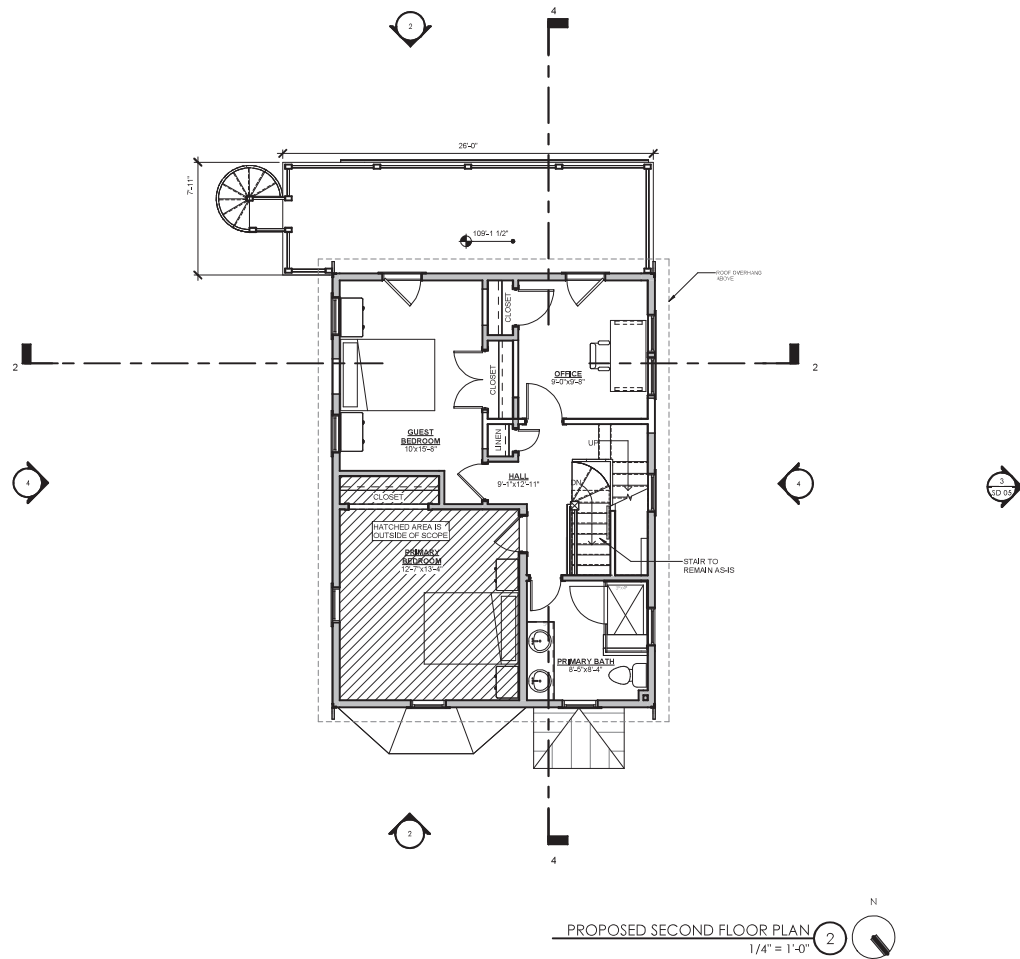
FIRST FLOOR PLAN

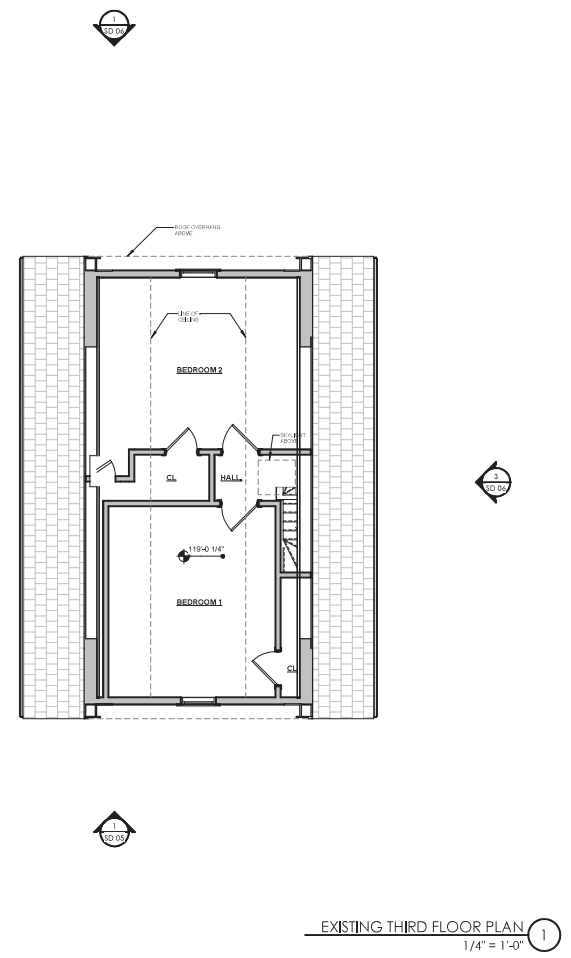
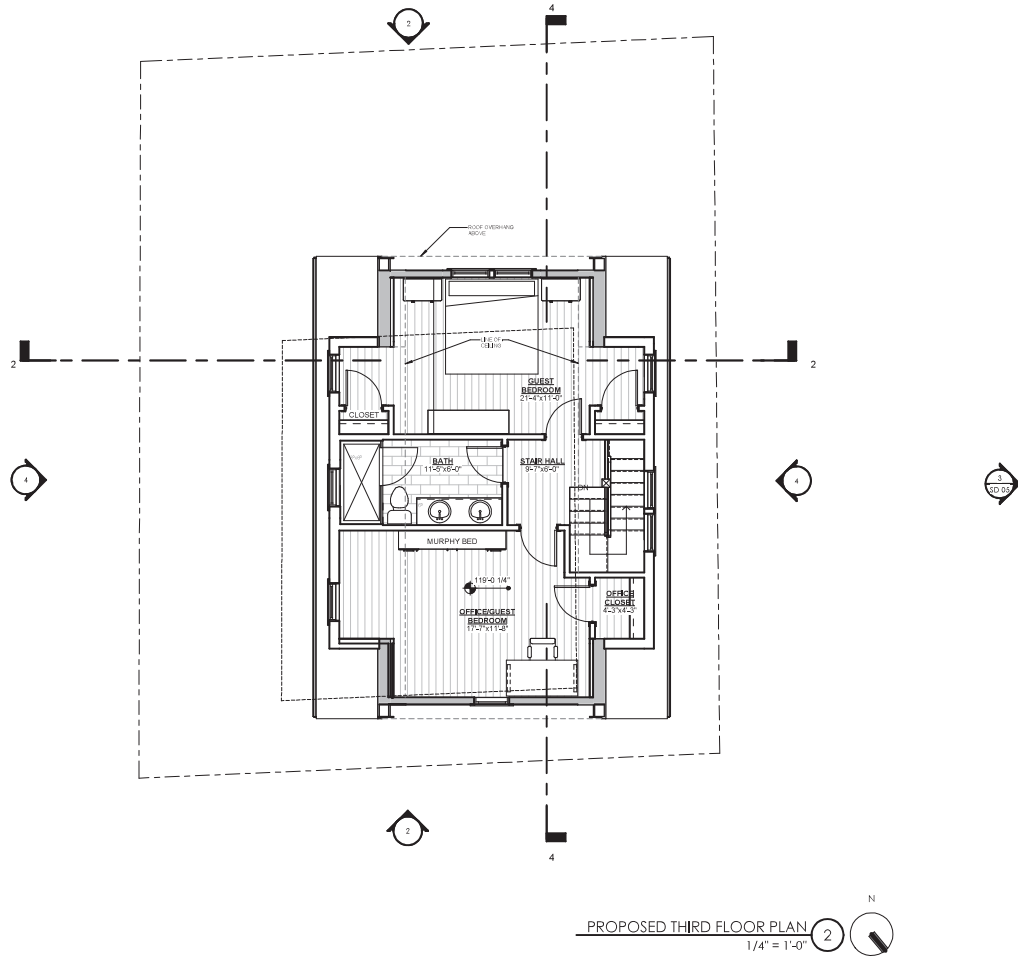
SEPTEMBER 23, 2025

Shaping the Exceptional / 22 Ladd Street / Portsmouth, NH 03801 / 603.431.8701

Project #25039

MAUGEL
DESTEFANO
ARCHITECTS





SCHEMATIC DESIGN
BAKER RESIDENCE

20 COFFINS COURT, PORTSMOUTH NH

THIRD FLOOR PLAN

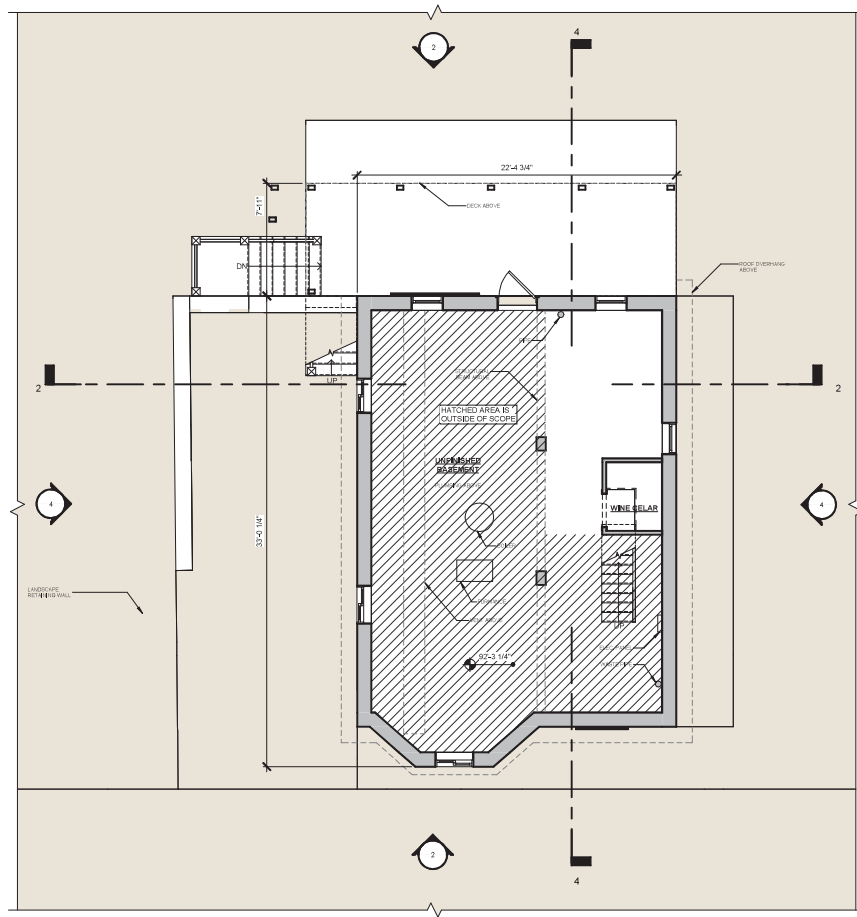
SEPTEMBER 23, 2025

Shaping the Exceptional / 22 Ladd Street Portsmouth, NH 03801 / 603.431.8701

Project #25039

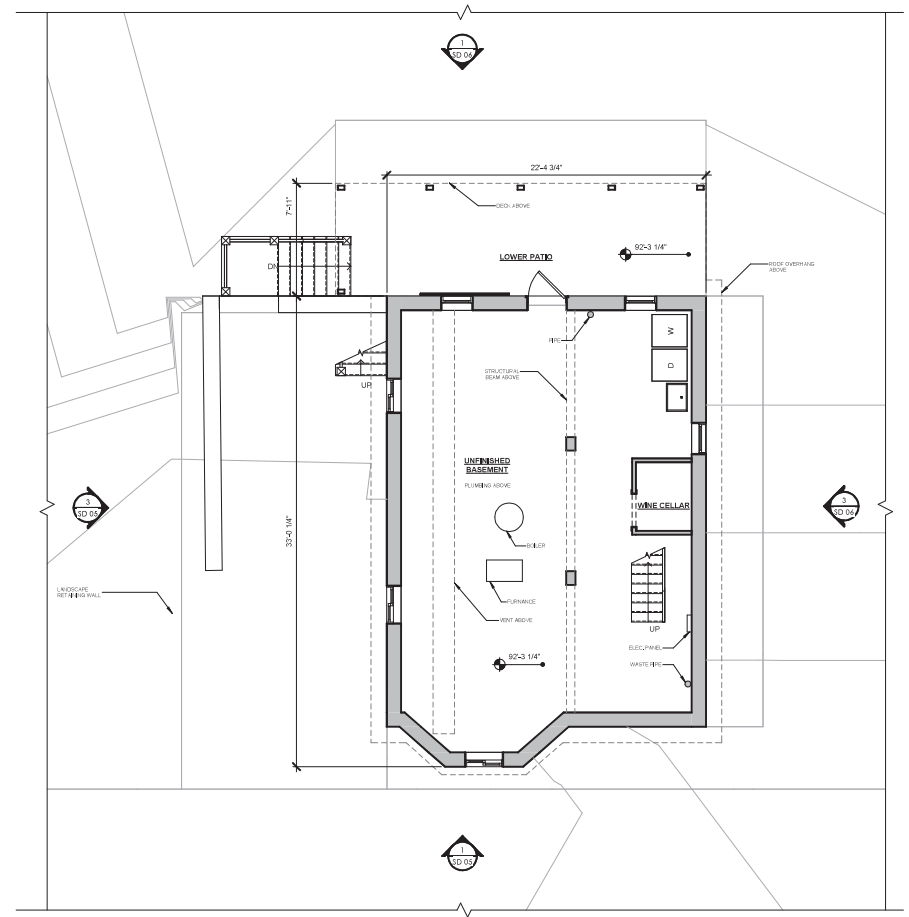
MAUGEL
DESTEFANO
ARCHITECTS

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PROPOSED LOWER LEVEL FLOOR PLAN 2

1/4" = 1'-0"

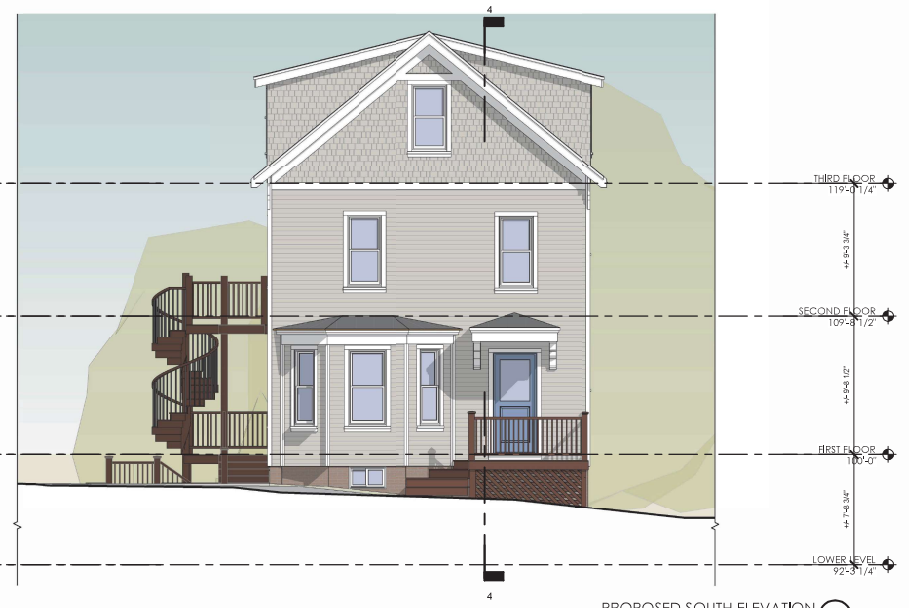


EXISTING LOWER LEVEL FLOOR PLAN 1

1/4" = 1'-0"



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



PROPOSED SOUTH ELEVATION
1/4" = 1'-0" ②



EXISTING WEST ELEVATION
1/4" = 1'-0" ③



EXISTING SOUTH ELEVATION
1/4" = 1'-0" ①

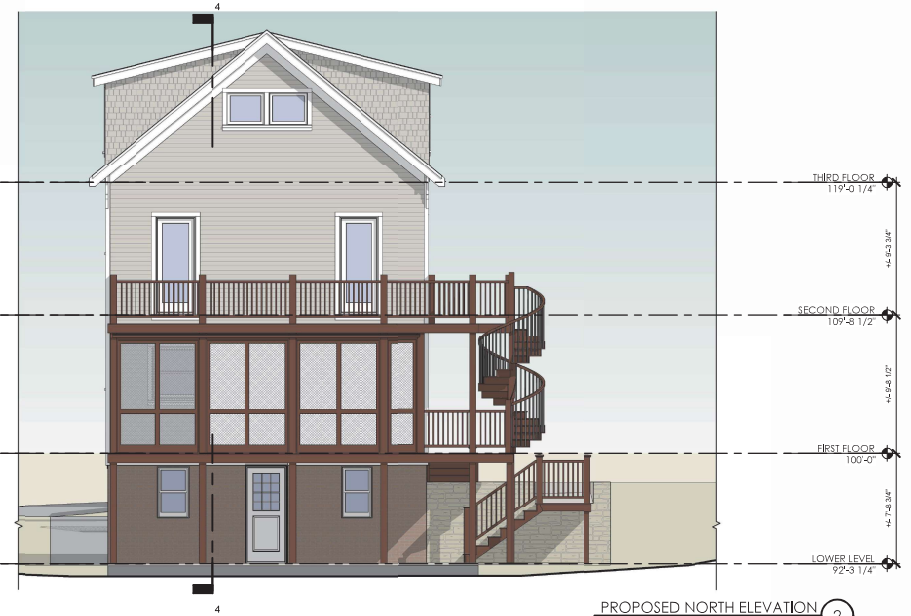
SCHEMATIC DESIGN
BAKER RESIDENCE
20 COFFINS COURT, PORTSMOUTH NH

ELEVATIONS

SEPTEMBER 23, 2025



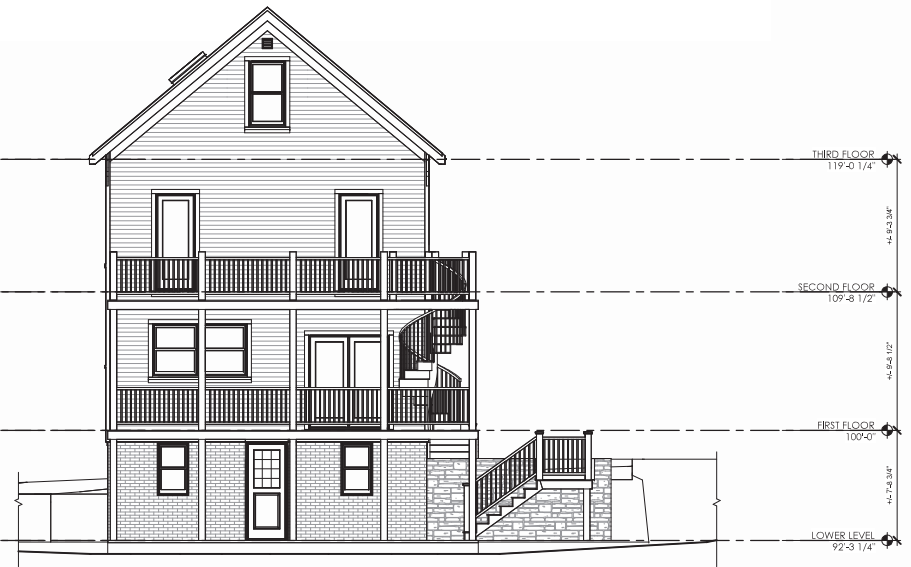
PROPOSED EAST ELEVATION
1/4" = 1'-0" 4



PROPOSED NORTH ELEVATION
1/4" = 1'-0" 2



EXISTING EAST ELEVATION
1/4" = 1'-0" 3



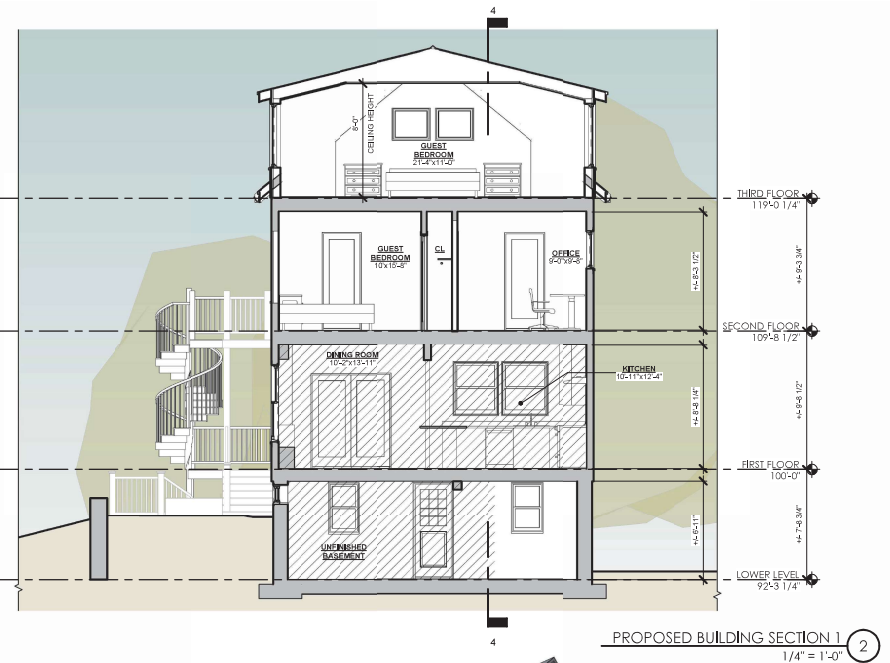
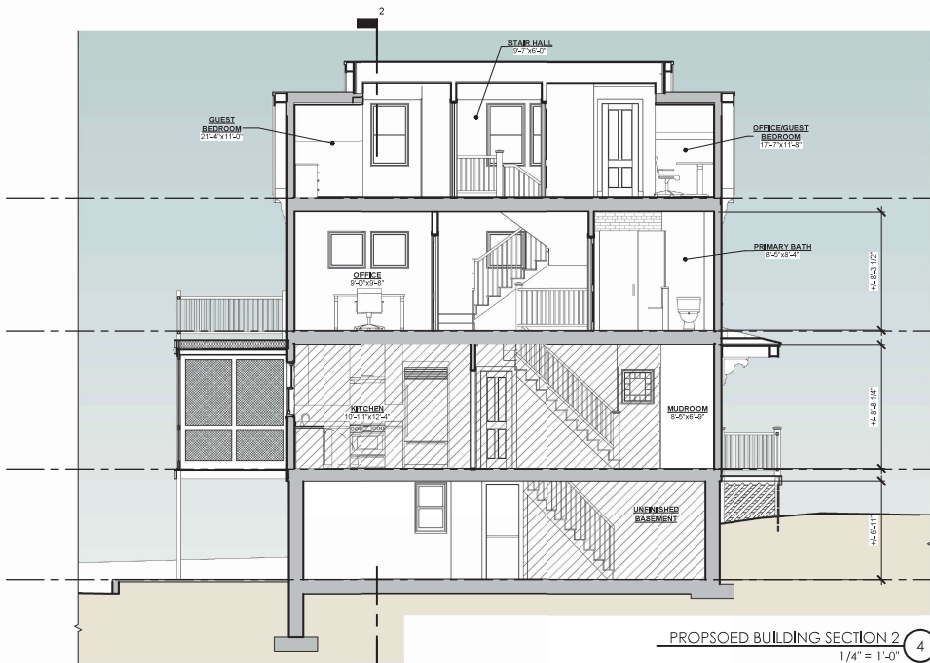
EXISTING NORTH ELEVATION
1/4" = 1'-0" 1

SCHEMATIC DESIGN
BAKER RESIDENCE

20 COFFINS COURT, PORTSMOUTH NH

ELEVATIONS

SEPTEMBER 23, 2025



BACKYARD PERSPECTIVE 3



STREET PERSPECTIVE 1

SCHEMATIC DESIGN BAKER RESIDENCE

20 COFFINS COURT, PORTSMOUTH NH

SECTIONS & PERSPECTIVES

SEPTEMBER 23, 2025

Shaping the Exceptional / 22 Ladd Street / Portsmouth, NH 03801 / 603.431.8701

Project #25039

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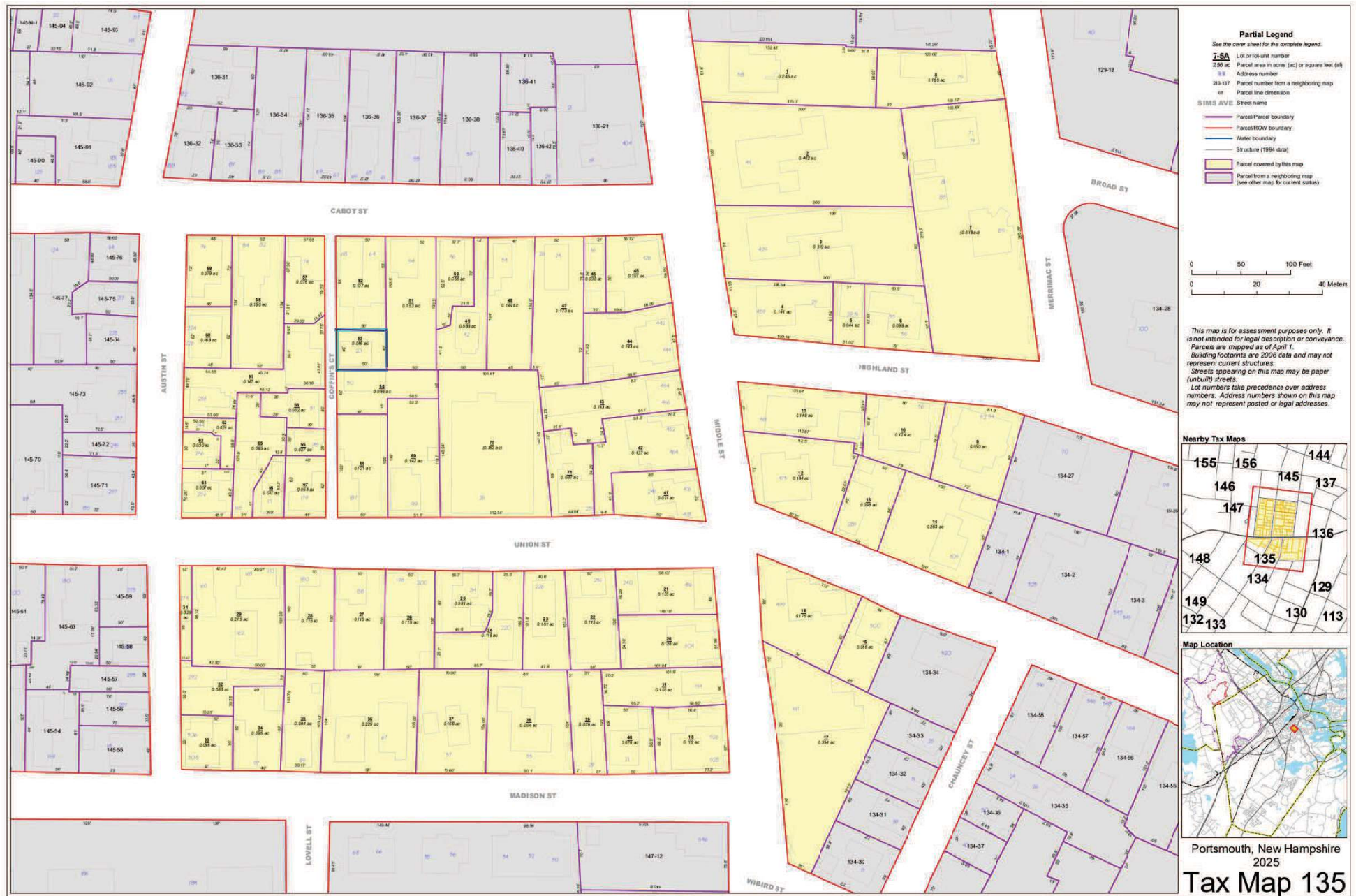


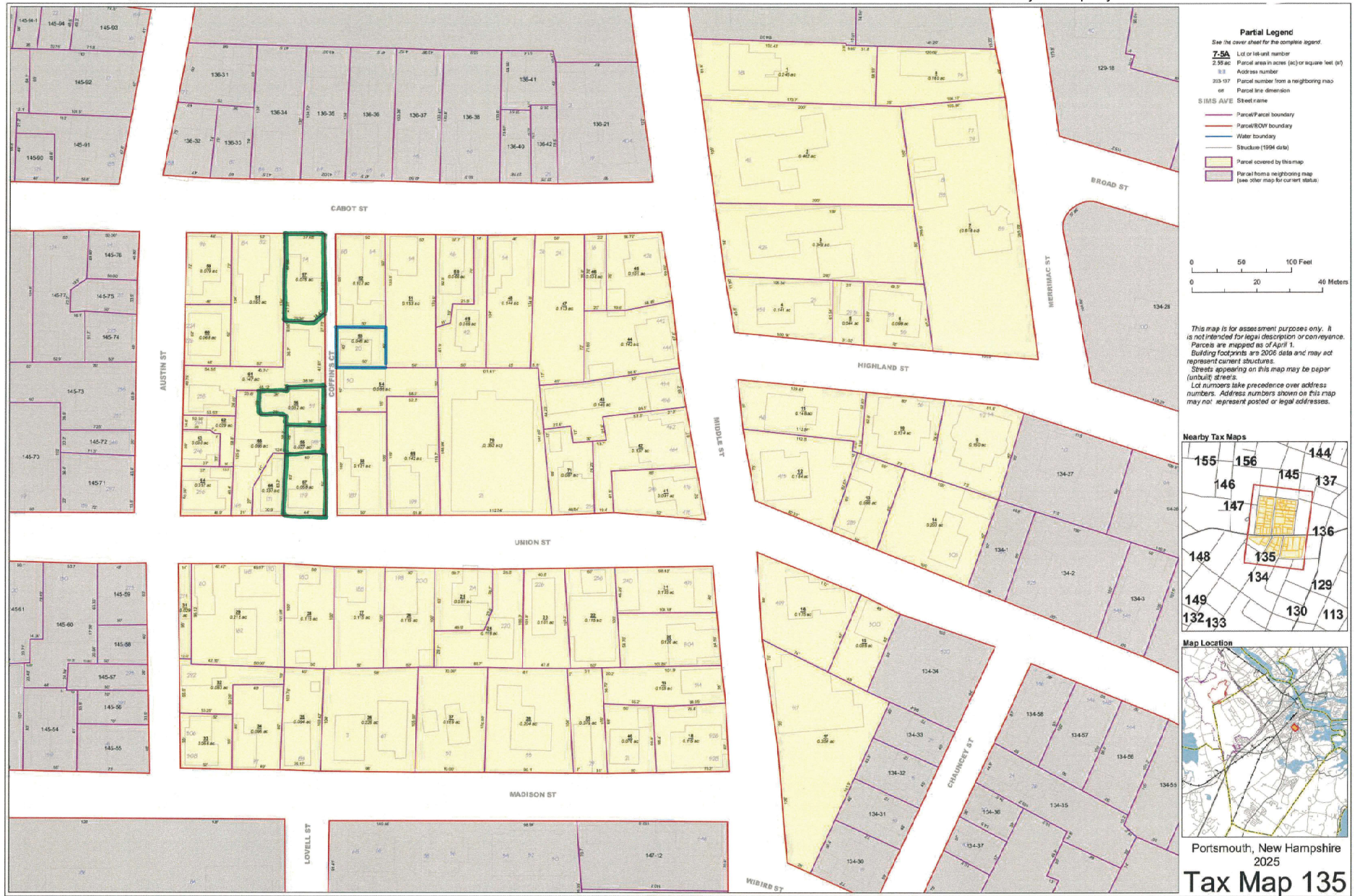












III. OLD BUSINESS

- D. The request of **Michael R and Isaac M. Roylos (Owners) and Christopher Cloutier (Applicant)**, for property located at **25 Sims Avenue** whereas relief is needed to create a buildable lot which requires the following: 1) Variance from section 10.521 to allow a) 5,000 square feet of lot area where 15,000 is required, b) 5,000 square feet of lot area per dwelling unit where 15,000 is required, and c) 50 feet of frontage where 100 feet are required. Said property is located on Assessor Map 233 Lot 71 and lies within the Single Residence B (SRB) District. (LU-25-169)

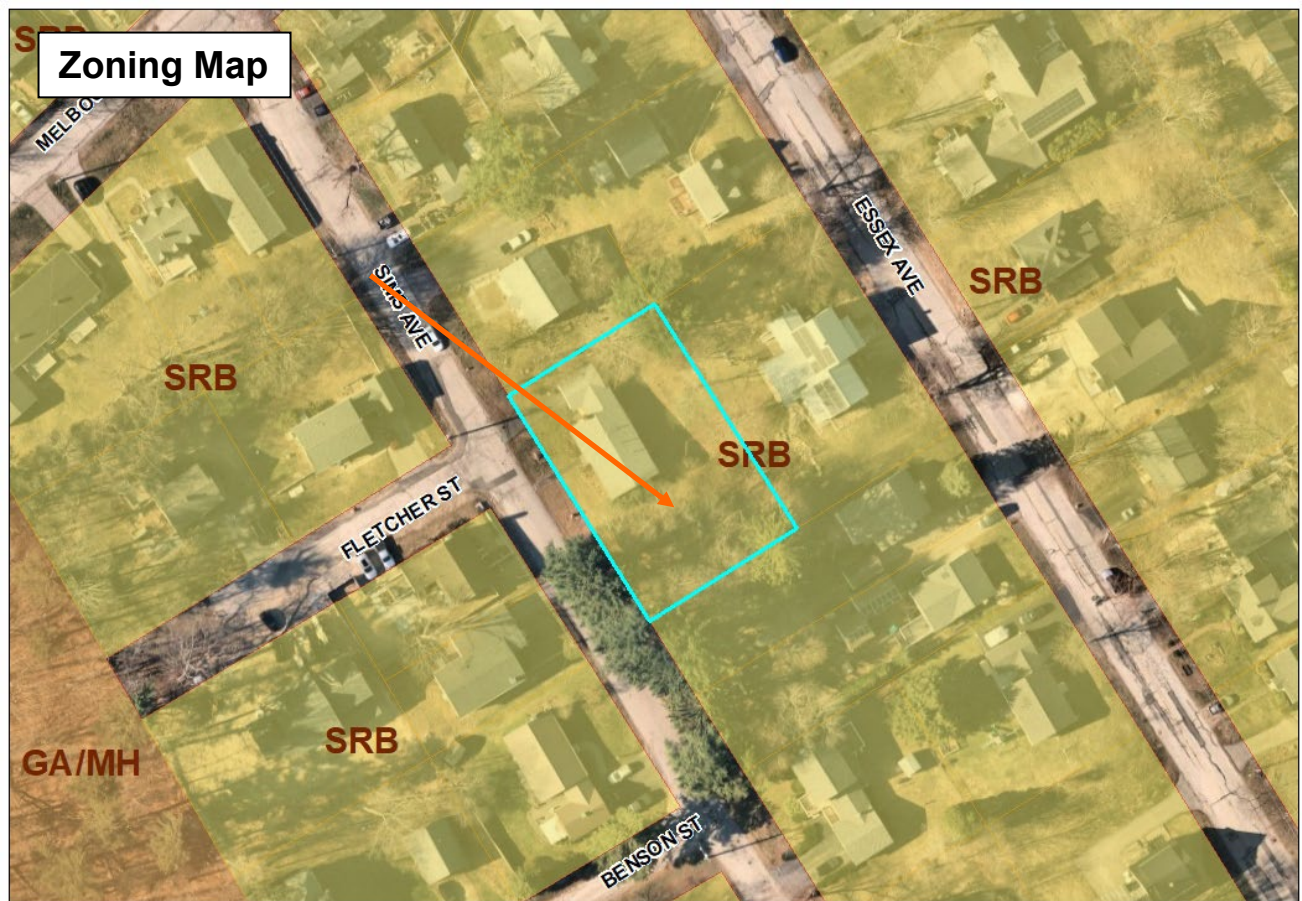
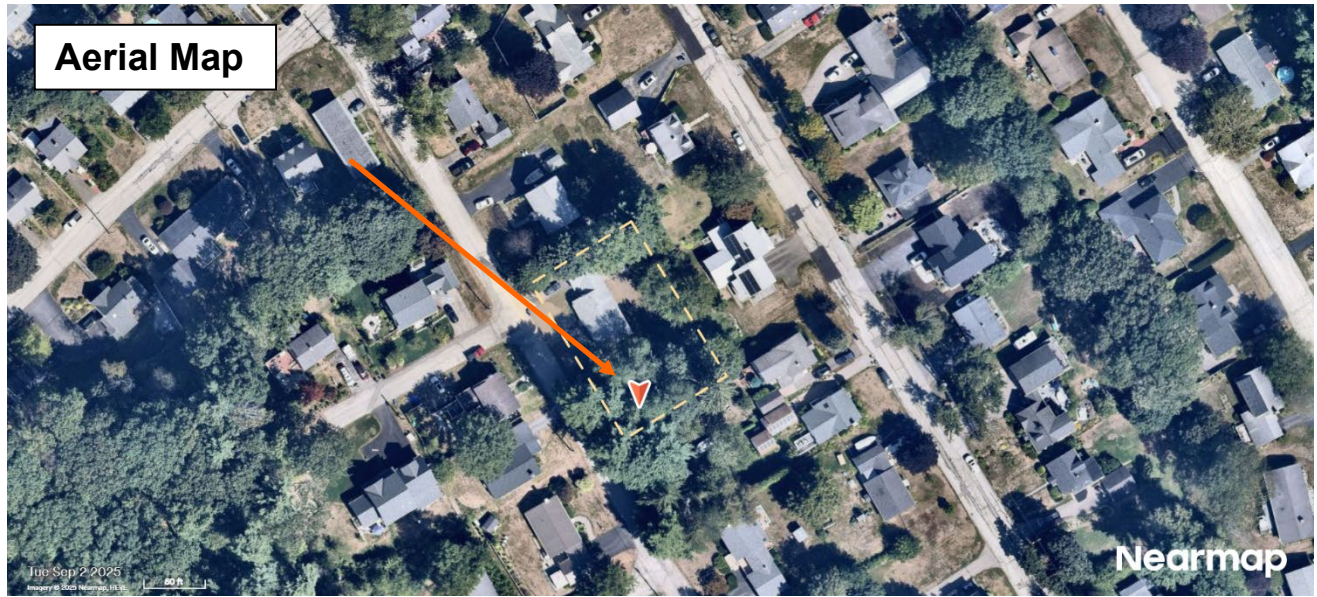
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>	
<u>Land Use:</u>	Vacant Lot	Buildable Lot	Primarily residential	
<u>Lot area (sq. ft.):</u>	5,000	5,000	15,000	min
<u>Lot area per dwelling unit (sq. ft.)</u>	5,000	5,000	15,000	min.
<u>Frontage (ft.)</u>	50	50	100	min.
<u>Depth</u>	100	100	100	min.
		Variance request(s) shown in red.		

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



0 30 60 120 Feet
1 inch = 66.7 feet

25 Sims Ave



Previous Board of Adjustment Actions

No previous BOA history found

Planning Department Comments

The applicant is requesting relief to create a buildable lot. At this time, the applicant has not proposed plans for a structure. Should a structure be proposed, it will need to conform to the dimensional requirements outlined in the Zoning Ordinance. Please note that the aerial imagery and the zoning map parcels do not yet reflect the restoration of the merged lots.

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

November 19, 2025

HAND DELIVERED

Stefanie Casella, Principal Planner
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Owners: Michael & Isaac Roylos
Applicant: Chris Cloutier
Property: 25 Sims Avenue
Tax Map 233, Lot 71¹
Single Residence B District

Dear Ms. Casella & Zoning Board Members:

On behalf of the Roylos Family and Chris Cloutier enclosed please find the following in support of a request for zoning relief:

- See Viewpoint Land Use Application uploaded today.
- Owner Authorization.
- 11/19/2025 – Memorandum and exhibits in support of Zoning Relief

We look forward to presenting this application to the Planning Board at its December 16, 2025 meeting.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Encl.

cc: Chris Cloutier
Emmanuel Engineering/JVA

¹ Note that the lot at issue, known as Lot 44, was recently unmerged and does not yet have its own lot number.

OWNER'S AUTHORIZATION

I, Michael R. Roylos and Isaac M. Roylos, Owners/Applicants of Sims Avenue, Tax Map 233/Lot 71, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC to represent us before any and all City of Portsmouth Representatives, Boards and Commissions for permitting the project.

Respectfully submitted,

Date:

<i>Michael Roylos</i>	dotloop verified 11/16/25 9:33 AM EST N99M-BNZN-MTK1-ONLR
-----------------------	---

Michael R. Roylos

Date:

<i>Isaac Roylos</i>	dotloop verified 11/14/25 7:41 PM EST B1WV-22HN-PMN-CDG0
---------------------	--

Isaac M. Roylos

APPLICANT AUTHORIZATION

I, Christopher Cloutier, Applicant of Sims Avenue, Tax Map 233/Lot 71, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC to represent me before any and all Portsmouth Representatives, Boards and Commissions for permitting the project.

Respectfully submitted,

<i>Chris Cloutier</i>	dotloop verified 11/17/25 12:24 PM EST RMER-EUYL-6PJ0-DCFW
-----------------------	--

Christopher Cloutier

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
Monica F. Kieser, Esquire
DATE: November 19, 2025
RE: Owners: Michael & Isaac Roylos
Applicant: Chris Cloutier
Property: 25 Sims Avenue
Tax Map 233, Lot 71¹
Single Residence B District

Dear Chair Eldridge and Members of the Zoning Board of Adjustment (“ZBA”):

On behalf of Owner Michael & Isaac Roylos and Applicant Chris Cloutier (“Cloutier”), we are pleased to submit this Memorandum and exhibits in support of a requested variance from the Portsmouth Zoning Ordinance (“PZO” or “Ordinance”).

I. EXHIBITS

- A. Existing Conditions Plan – Ambit Engineering,
- B. Site Photographs.
 - Satellite View
- C. Deed.
- D. Rockingham County Registry of Deeds, Plan 0241.
- E. City Council Decision to Unmerge.
- F. Lot 44 in Context.
- G. Tax Map 233.

II. PROPERTY

Lot 44 is the historic designation for the southeasterly third of 25 Sims Avenue. **(Exhibits A, C, and D).** Lot 44 is a 5,003 s.f. undeveloped parcel with 50.03’ feet of frontage located in the Single Residence B District. **(Exhibit A, B).** Lot 44 was acquired by the Roylos family as a single lot in 1965. **(Exhibit C, D).** It was subsequently involuntarily merged by the City of Portsmouth with Lots 42 and 43, the lot upon which the Roylos home was constructed. Upon request of the Roylos Family and in consultation with the Planning Board, the City Council restored Lot 44 to its previously unmerged status as a nonconforming lot. **(Exhibit E).** Cloutier plans to construct a home within the building envelope. Cloutier consulted with City

¹ Note the lot at issue, known as Lot 44, was recently unmerged and does not yet have its own Lot number.

Staff, who opined that relief is required to establish a home on a lot with insufficient area and frontage.

III. **RELIEF REQUIRED**

<u>Variance Section/Requirement</u>	<u>Existing</u>	<u>Proposed</u>
<u>PZO §10.520/Table §10.521: Dimensional Standards</u>		
15,500 s.f. Lot area	5,000 s.f.	5,000 s.f.
15,000 s.f. Lot area/dwelling unit	5,000 s.f./dwelling	5,000 s.f./dwelling
100 ft. Frontage	50'	50'

IV. **ADDITIONAL PERMITS REQUIRED**

- Driveway Permit
- Building Permit

V. **VARIANCE REQUIREMENTS**

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

The first step in the ZBA's analysis is to determine whether granting 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":

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The proposal requests variance for lot size/lot size per dwelling unit for a single-family home on a 5000 s.f. lot where 15000 s.f. is required. The

- lot, size, which is consistent with many other lots in the area (see **Exhibit F**) is a prior nonconforming condition that cannot be changed.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The proposal is to build a home within the existing building envelope.
 3. The design of facilities for vehicular access, circulation, parking and loading – The lot can accommodate off-street parking for a residential use.
 4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – Stormwater management will be evaluated in conjunction with the issuance of a building permit, which requires stormwater be managed on-site. Lighting noise and vibration will be no different than any other single-family home in the neighborhood.
 5. The preservation and enhancement of the visual environment – The establishment of a residential use in a residential zone will not detract from the visual environment.
 6. The preservation of historic districts, and buildings and structures of historic or architectural interest – The Property is not in the Historic District.
 7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – There are not wetlands on site and Lot 44 is not within the wetland buffer.

Based upon the foregoing, the variances do not “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 in a thickly settled area of the City with many lots that are nonconforming size with insufficient frontage. (**Exhibit F**). Accordingly, variances for lot size which cannot be met and is consistent with other lots in the neighborhood will neither “alter the essential character of the locality,” which is significantly single-family nor “threaten the public health, safety or welfare.”

3. Substantial justice is 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.

The Roylos family is constitutionally entitled to the use of the lot as they see fit, including selling the lot, subject to the effect of establishing a permitted use on an undersized lot. “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 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.

A municipality’s ordinance must reflect the current character of the neighborhood, See Belanger v. City of Nashua, 121 N.H. 389, 393 (1981) (upholding reversal of use variance denial where current character of neighborhood had evolved since its original classification as single-family residential). Here, the vast majority of conforming lot are nonconforming as to lot size while many also fail to comply with frontage requirements. **(Exhibit F).**

Granting the requested variances creates opportunity for sorely needed single-family homes. There is no harm to any neighbor or the general public from granting the variances to establish a permitted residential use and certainly no harm to the public who benefits from an increase in housing stock. Conversely, Roylos and Cloutier will be greatly harmed by denial as Roylos will be deprived of their constitutional right to dispose of their property and Cloutier will lose the opportunity to reasonably develop the Property, requesting only relief for conditions (lot size and frontage) that cannot under any circumstances be met. 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 City Council recognized that the merger of Lot 44 was done without action or consent by the Owner and had to be remedied by restoration of the lot to its pre-merger status. The establishment of a permitted residential use within the building envelope on a nonconforming lot of record, among other lots similarly situated and developed, 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.

The Property, having been set out before zoning, is small and narrow. It was further merged for decades without the owner's consent and has just been restored. Because there is no way to make the lot, thus the Project comply with the SRB lot size, frontage, and lot size per dwelling unit requirements, special conditions exist.

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

Lot area and density limits, exist in order to: prevent overburdening/overcrowding of the land; permit areas for stormwater management; and allow for adequate light, air, and sightlines. The establishment of a permitted single-family home on a lot existing for over a century, within its building envelope, provides sorely needed single-family housing. Accordingly, there is no fair and substantial relationship between the general public purposes of the Ordinance, the lot size and frontage are consistent with other lot in the area, and compliance is impossible.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Residential uses are permitted in the SRB Zone. We note also that the New Hampshire Supreme Court case of Walker v. City of Manchester, 107 NH 382 (1966) held that a hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use will have no adverse effect upon the neighborhood. We note that while Walker does not limit or distinguish its analysis based on the underlying cause of the surrounding nonconformity (pre-existing, result of variances, or a planned unit development), a number of nonconforming lots are as they existed on the 1918 Plan. **(Compare Exhibit D to Exhibit G)**. Accordingly, the proposed use is reasonable and denial would create an unnecessary hardship for Roylos and Cloutier.

VI. CONCLUSION

For all the reasons stated, The Roylos Family and Chris Cloutier respectfully request that the Portsmouth Zoning Board of Adjustment the requested relief. We look forward to presenting this application at the December 16, 2025 ZBA Meeting.

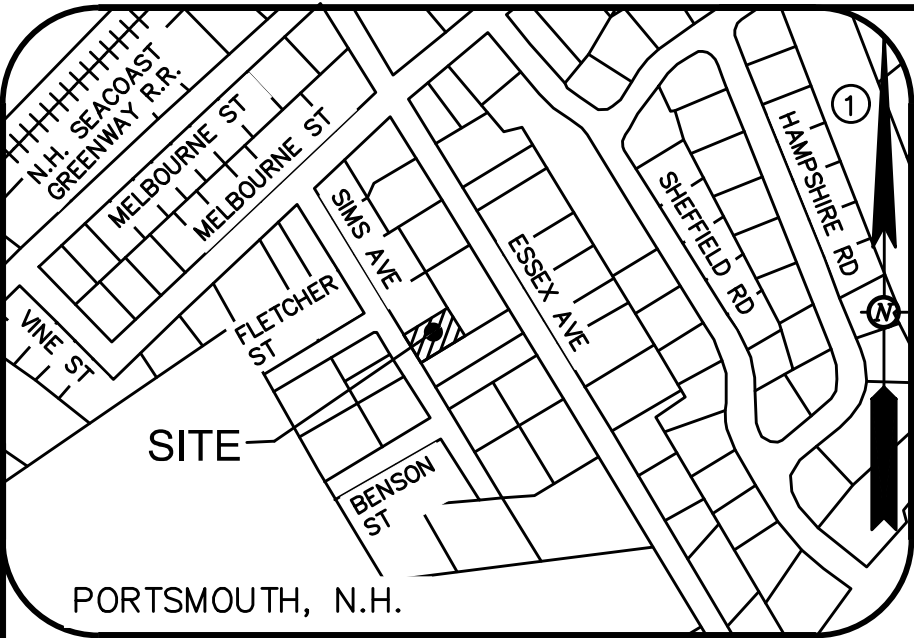
Respectfully submitted,
Chris Cloutier

By:



R. Timothy Phoenix, Esquire
Monica F. Kieser, E

J:\2025 PROJECTS\25-2079 CLOUTIER SIMS AVE LOT 44 PORTSMOUTH NH\DWG\25-2079 EXCON.dwg 2025-11-19

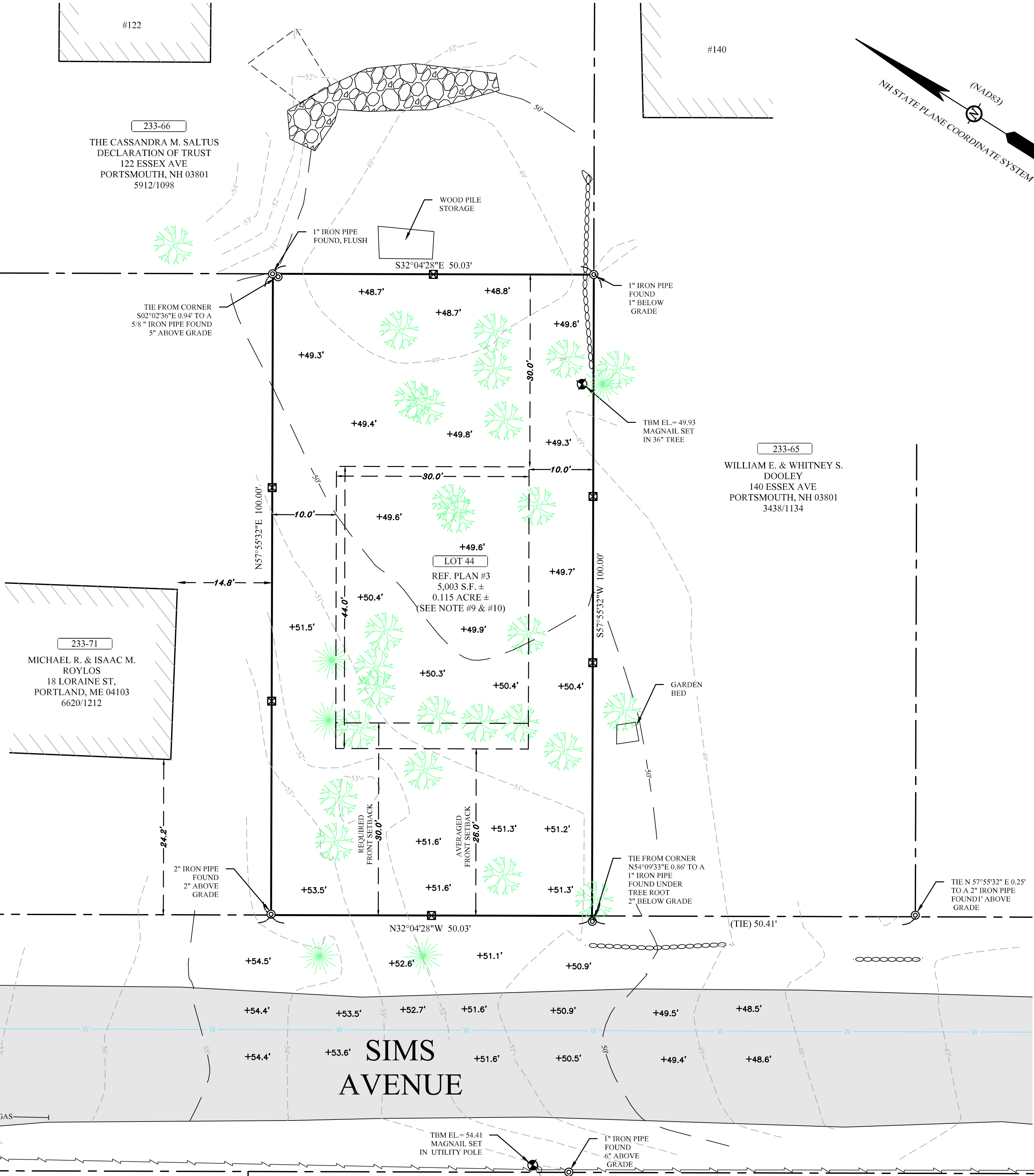
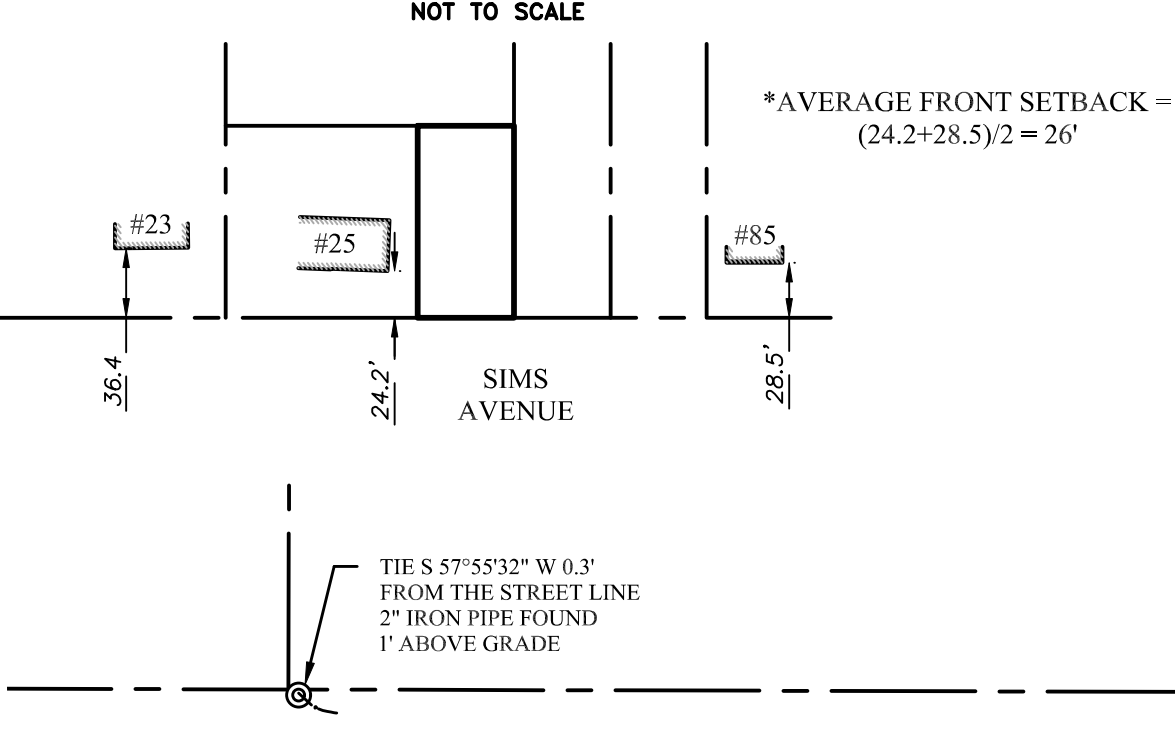


LOCUS
(N.T.S.)

LEGEND

	STONE AREA
	PAVEMENT AREA
	CONTOUR MINOR LINE
	CONTOUR MAJOR LINE
	BOUNDARY LINE
	OVERHEAD WIRE LINE
	BOUNDARY ABUTTERS LINE
	SETBACK LINE
	6" DI WATER LINE
	GAS LINE
	CONIFEROUS TREE
	DECIDUOUS TREE
	UTILITY POLE
	BENCHMARK
	IRON PIPE FOUND
	WOODEN STAKE SET
	SPOT GRADE ELEVATION

DETAIL "A" FRONT SETBACK CALCULATIONS



NOTES:

- OWNER OF RECORD: MICHAEL R. ROYLOS AND ISAAC M. ROYLOS
ADDRESS: 18 LORAIN ST, PORTLAND, MAINE 04103
DEED REFERENCE: BK: 6620 PG: 1214
TAX SHEET / LOT: 233 / 71
- ZONED: SRB - SINGLE RESIDENCE B.
MIN. LOT AREA: 15,000 S.F.
CONTINUOUS STREET FRONTAGE: 100'
DEPTH: 100'
BUILDING COVERAGE: 20%
MIN OPEN SPACE: 40%
HEIGHT: 35'
*AVERAGE FRONT YARD SETBACK: 26' SEE DETAIL "A" FOR CALCULATIONS
FRONT YARD SETBACK: 30' *
SIDE & REAR YARD SETBACK: 10' & 30'
- THE INTENT OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS OF THE SUBJECT PARCELS AND THE IMPROVEMENTS THEREON.
- LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS OF RECORD, AND PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE @ 1-888-DIG-SAFE.
- ZONTAL DATUM: NAD83, VERTICAL DATUM: NAVD88, ESTABLISHED BY SURVEY GRADE GPS OBSERVATIONS. UNITS: US SURVEY FOOT.
- PLAN IS BASED UPON A FIELD SURVEY COMPLETED IN JULY OF 2023 WITH TRIMBLE S5 ROBOTIC TOTAL STATION, CARLSON BRX7 RTK GPS UNITS, PANASONIC FZ-M1/TRIMBLE TSC7 DATA COLLECTORS.
- PARCEL SHOWN HEREON LIES WITHIN ZONE X (AREA OF MINIMAL FLOOD HAZARD) AS IDENTIFIED ON FLOOD INSURANCE RATE MAP, ROCKINGHAM COUNTY, NEW HAMPSHIRE, MAP NUMBER 33015C0259F EFFECTIVE DATE 1/29/2021 BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY.
- CONTRACTOR TO VERIFY SITE BENCHMARKS BY LEVELING BETWEEN 2 BENCHMARKS PRIOR TO THE ESTABLISHMENT OF ANY GRADES OR ELEVATIONS. DISCREPANCIES ARE TO BE REPORTED TO JAMES VERRA AND ASSOCIATES, INC.
- LOT # 44 AS SHOWN ON PLAN RCRD C-15324 WAS SHOWN ON PORTSMOUTH, N.H. TAX MAP AS PART OF TAX MAP 233 LOT 71. IT IS SHOWN ON OTHER GIS MAPS AS #35 SIMS AVE.
- LOTS #42, #43 AND #44, AS SHOWN PLAN RCRD C-15324, WERE INVOLUNTARILY MERGED BY THE CITY OF PORTSMOUTH. LOT #44 WAS UNMERGED FROM LOTS #42 & #43 BY VOTE OF PORTSMOUTH CITY COUNCIL ON APRIL 7, 2025, PURSUANT TO NH RSA 674:39. SEE ITEM #12 IN PORTSMOUTH CITY MEMORANDUM ENTITLED "ACTIONS TAKEN AT PORTSMOUTH CITY COUNCIL MEETING HELD ON APRIL 7, 2025." AS A RESULT OF SAID UNMERGED, LOTS #42 & #43 REMAIN MERGED AS A SINGLE LOT AND LOT #44 IS A SEPARATE AND SINGLE LOT.

REFERENCE PLAN:

- "SUBDIVISION PLAN FOR RUTH P. MERCER, PORTSMOUTH, N.H." DATED APRIL 18, 1986. PREPARED BY EMERY ENGINEERING. R.C.R.D. C-15324.
- "PLAN OF LAND OF DONALD R. & LEE D. PEARL, SIMS AVENUE, PORTSMOUTH, N.H." DATED JANUARY 1979. PREPARED BY MOULTON ENGINEERING CO. R.C.R.D. C-8574.
- "DANIELS PARK, PORTSMOUTH, N.H. BELMONT REALTY CO. PROVIDENCE R.I." DATED JUNE 1918. PREPARED BY C.A. THAYER, ENGINEER. ON THIS FILE IN THIS OFFICE, JWD FILE #441, PLAN #702. R.C.R.D. BK 1 PG 166 PLAN #58
- "PLAN OF LOT #58 DANIELS PARK, PORTSMOUTH, N.H." DATED AUGUST 1973. PREPARED BY JOHN W. DURGIN C.E. ON THIS FILE IN THIS OFFICE, JWD FILE #441, PLAN #L-493.
- "LOT LINE REVISION, PORTSMOUTH, N.H. FOR ALFRED & IRENE BOUTOTE." DATED JULY 1979. PREPARED BY JOHN W. DURGIN ASSOCIATES, INC. ON THIS FILE IN THIS OFFICE, JWD FILE #441, PLAN #4655. R.C.R.D. C-8851.
- "PLAN OF LOT, PORTSMOUTH, N.H. FOR GEO. B. & MARIE R. UNDERWOOD." DATED OCTOBER 1972 & REVISED AUGUST 1977. PREPARED BY JOHN W. DURGIN C.E. ON THIS FILE IN THIS OFFICE, JWD FILE #441, PLAN #3215.
- "PLAN OF LOTS, PORTSMOUTH, N.H. FOR CALLEOPE APOSTOLAKES." DATED NOVEMBER 1972. PREPARED BY JOHN W. DURGIN C.E. ON THIS FILE IN THIS OFFICE, JWD FILE #441, PLAN #4291. R.C.R.D. C-3494.
- WORKSHEETS AND FIELD NOTES OF JOHN W. DURGIN. ON THIS FILE WITH THIS OFFICE, JWD FILE #441.

EXHIBIT A

EXISTING CONDITIONS PLAN
SIMS AVENUE
PORTSMOUTH, NEW HAMPSHIRE
TAX MAP 233 LOT 71
LAND OF: MICHAEL R. ROYLOS AND ISAAC M. ROYLOS
PREPARED FOR: CHRIS CLOUTIER

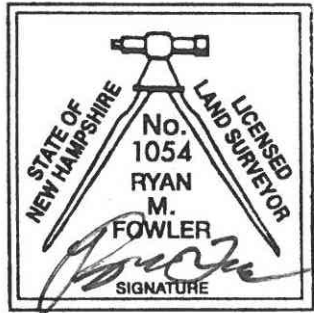
No.	DATE:	REVISION DESCRIPTION	BY	APPR.

SURVEYOR'S CERTIFICATION

"I HEREBY CERTIFY THAT THIS SURVEY AND PLAT WERE PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION AND IS THE RESULT OF AN ACTUAL FIELD SURVEY MADE ON THE GROUND AND HAS AN ERROR OF CLOSURE OF GREATER ACCURACY THAN ONE PART IN FIFTEEN THOUSAND (1:15,000)."

Chris Cloutier
LICENSED LAND SURVEYOR

11/19/2025
DATE



233-76
THE MARK & EMILY
BRODERICK REVOCABLE
TRUST
70 SIMS AVE
PORTSMOUTH, NH 03801
6616/1326

233-75
MARY & SUSAN WHALON
74 SIMS AVE
PORTSMOUTH, NH 03801
6564/1367

233-74
THE STEPHANIE J. LONG
REVOCABLE TRUST OF 2008
80 SIMS AVE
PORTSMOUTH, NH 03801
5205/639

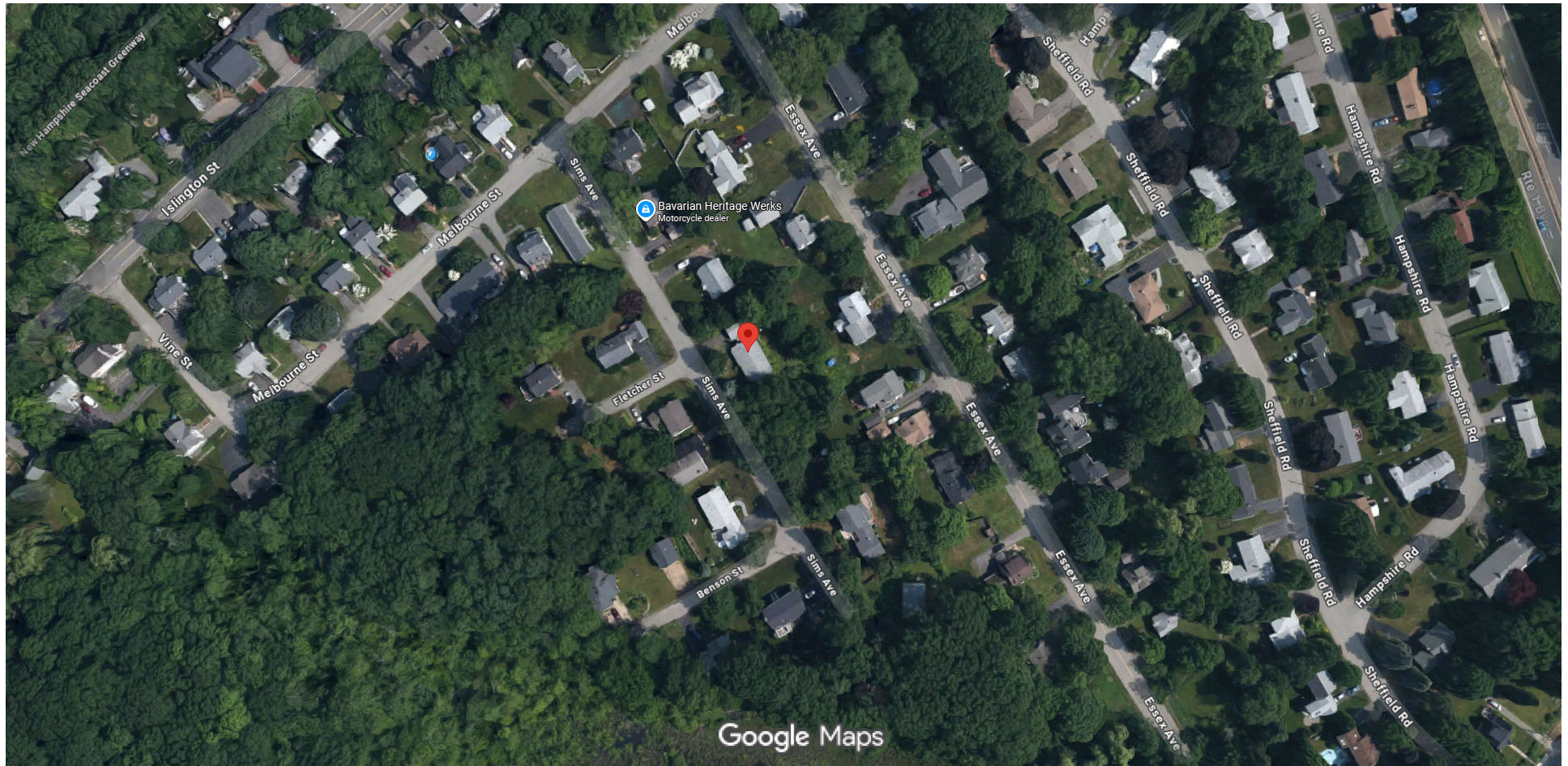
JVA
JAMES VERRA & ASSOCIATES, INC.

100 GRIFFIN WAY, UNIT C
PORTSMOUTH, N.H. 03801
603-436-3557 • ©2025
www.jvasurveyors.com

DATE: 11/19/2025	JOB NO. 25-2079
DRWN BY: DK	CHK'D BY: RMF
DWG NAME: 25-2079 EXCON.DWG	SCALE: 1" = 10'
SHEET: V-1	



25 Sims Ave



Imagery ©2025 Google, Imagery ©2025 Airbus, Maxar Technologies, Map data ©2025 100 ft

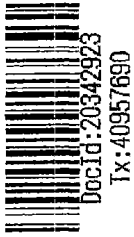
EXHIBIT B

25014535 05/15/2025 11:53:39 AM
Book 6620 Page 1214 Page 1 of 2
Register of Deeds, Rockingham County



LCHIP	ROA706645	25.00
RECORDING		14.00
SURCHARGE		2.00

Return to:
Noucas Law Office
500 Market Street, Suite 8
Portsmouth, NH 03801



FIDUCIARY DEED

THAT, I, **MICHAEL R. ROYLOS**, of 18 Loraine Street, Portland, Maine, duly appointed as the Executor of the Estate of Annette Roylos, deceased, whose Estate was duly admitted to probate in the Probate Court for the County of Rockingham, New Hampshire, (Docket No. 318-2024-ET-00773) by the power conferred by law, and every other power, grant to **MICHAEL R. ROYLOS**, of 18 Loraine Street, Portland, Maine, and **ISAAC M. ROYLOS**, of 6421 SW 78th Street, Gainesville, Florida, as tenants-in-common, each having an undivided one-half interest, the following real estate located in Portsmouth, County of Rockingham, and State of New Hampshire, described as follows:

A certain tract of land, situate on the northeasterly side of Sims Avenue in Portsmouth, County of Rockingham, and State of New Hampshire, more particularly bounded and described as follows:

Beginning at a point on the southwesterly side of Sims Avenue at the westerly corner of land now or formerly of Warren O. Teague, et al; thence in a general northwesterly direction by Sims Avenue, fifty (50) feet to land now or formerly of Bernard F. Woods; thence in a general northeasterly direction by land of Woods, one hundred (100) feet to a point at land now or formerly of Michael Zymaris, et al; thence turning and running in a general southeasterly direction by land of Michael Zymaris, fifty (50) feet, more or less, to a point at land now or formerly of said Teague; thence turning and running in a general southwesterly direction by land of said Teague, one hundred (100) feet, more or less, to the point of beginning.

Said tract of land is otherwise identified as Lot #44 on the Plan of Daniels Park, made by C. A. Thayer, C.E. dated June 1918 and recorded in the Rockingham County Registry of Deeds, Book of Plans No. 1, Page 166 and on Plan 58 of the Portsmouth City Assessor's Plans.

Lots #42, #43 and #44, as shown on the above-described Plan of Daniels Park, were involuntarily merged by the City of Portsmouth. Lot #44 was unmerged from Lots #42 and #43

-2-

by vote of the Portsmouth City Council on April 7, 2025, pursuant to NH RSA 674:39. See Item #12 in Portsmouth City Memorandum entitled "Actions Taken at Portsmouth City Council Meeting Held on April 7, 2025." As a result of said unmerger, Lots #42 and #43 remain merged as a single lot and Lot #44 is a separate and single lot.

Meaning and intending to describe and convey the same premises conveyed to Sophie C. Roylos and Annette Roylos by Warranty Deed of Raymond L. Miller and Virginia D. Miller dated May 15, 1965, and recorded in the Rockingham County Registry of Deeds at Book 1766, Page 084.

Said Sophie C. Roylos having predeceased on February 13, 2013, and her death certificate being recorded herewith.

This property is conveyed subject to any and all mortgages, liens or other encumbrances of record.

This conveyance is exempt from the real estate transfer tax pursuant to NH RSA 78-B:2(XI).

WITNESS my hand this 12th day of May, 2025.

Estate of Annette Roylos

[Signature]
Witness

By

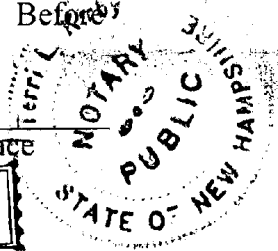
[Signature]
Michael R. Roylos, Executor

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

May 12, 2025

Then personally appeared the above-named, **MICHAEL R. ROYLOS**, in said capacity and acknowledged the foregoing instrument to be his free act and deed. Before me,

[Signature]
Notary Public/Justice of the Peace



Del
\$ 4.00
Saylor
U.S. Rev.
Stamp
1.10

1746 084

1766 084

Know all men by these presents

THAT, We, Raymond L. Miller and Virginia D. Miller both
of Portsmouth Rockingham County, State of
New Hampshire, for consideration paid, grant to Sophie C. Roylos and Annette Roylos both

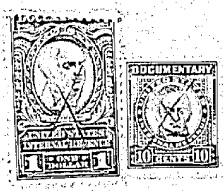
of Portsmouth Rockingham County, State of
and not as tenants in common,
New Hampshire, as joint tenants, with rights of survivorship/ with WARRANTY COVENANTS,

A certain tract of land, situate on the northeasterly side of Simes Avenue in
Portsmouth, County of Rockingham, and State of New Hampshire, more particularly
bounded and described as follows:

Beginning at a point on the southwesterly side of Simes Avenue at the westerly
corner of land now or formerly of Warren O. Teague, etal; thence in a general north-
westerly direction by Simes Avenue, fifty (50) feet to land now or formerly of Ber-
nard F. Woods; thence in a general northeasterly direction by land of Woods, one
hundred (100) feet to a point at land now or formerly of Michael Zymaris, etal;
thence turning and running in a general southeasterly direction by land of Michael
Zymaris, fifty (50) feet, more or less, to a point at land now or formerly of said
Teague; thence turning and running in a general southwesterly direction by land of
said Teague, one hundred (100) feet, more or less, to the point of beginning.

Said tract of land is otherwise identified as Lot #44 on Plan 58 of the Portsmouth
City Assessor's Plans.

Being the same premises which we acquired by Warranty Deed of Henry J. Robbins,
dated February 17, 1958, recorded in Rockingham County Registry of Deeds, Book 1459,
Page 195.



We, Raymond L. and Virginia D. Miller, being husband and wife, ~~notary public~~

our respective
release to said Grantee all rights of dower curtesy and homestead and other interest therein.

WITNESS our hands and seals this 15 day of May, 19 65

Witness:
Charles J. Bryan (T.H.) *Raymond L. Miller*
Virginia D. Miller

The State of New Hampshire
Rockingham, ss. May 15 19 65

Then personally appeared the above named Raymond L. Miller and Virginia D. Miller
and acknowledged the foregoing instrument to be their voluntary act and deed, before me

REC'D & RECORDED MAY 17 1965 9:38 AM
Charles J. Bryan
Notary Public Justice of the Peace.

DANIELS PARK

Portsmouth, N.H.

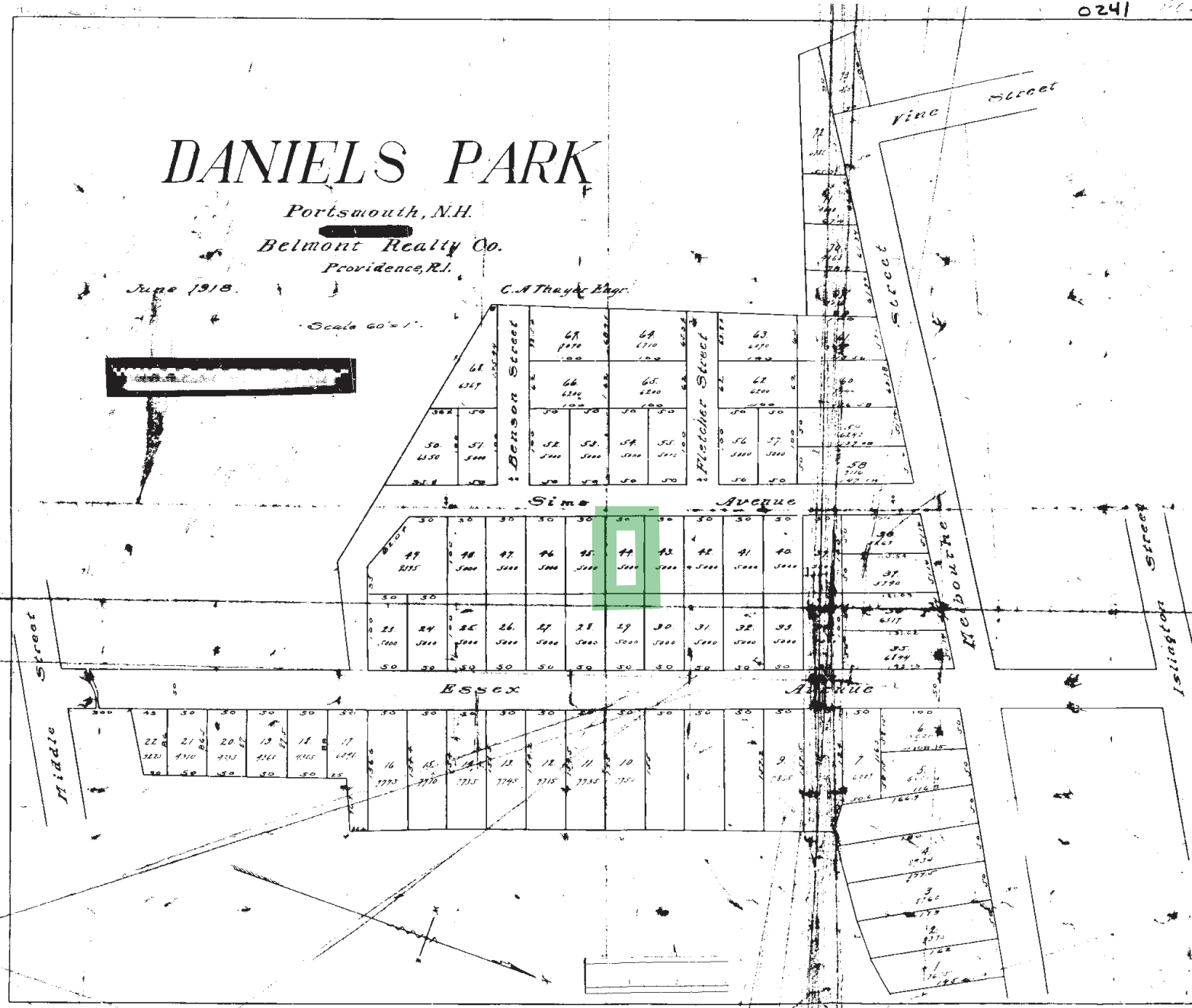
Belmont Realty Co.

Providence, R.I.

June 1918.

C.A. Thayer Eng.

Scale 60' = 1".



CITY COUNCIL MEETING

MUNICIPAL COMPLEX
DATE: MONDAY, APRIL 7, 2025

PORTSMOUTH, NH
TIME: 7:00PM

Councilor Tabor moved to close the Non-Public Session and seal the minutes of the meeting. Seconded by Councilor Moreau and voted.

III. CALL TO ORDER

Mayor McEachern called the meeting to order at 7:07 p.m.

IV. ROLL CALL

PRESENT: Mayor McEachern, Councilors Tabor, Cook, Denton, Blalock, Bagley and Moreau

ABSENT: Assistant Mayor Kelley and Councilor Lombardi

V. INVOCATION

Mayor McEachern asked for a moment of silent prayer.

VI. PLEDGE OF ALLEGIANCE

Mayor McEachern led in the Pledge of Allegiance to the Flag.

MAYOR'S AWARD

1. Recognition of Everett Eaton

Mayor McEachern recognized Everett for his 25 years of service to the Economic Development Commission. He presented Everett with the gift of a door stop for keeping a lot of doors open over the years and guiding the city through many things.

2. Recognition of Andrea Amico

Mayor McEachern recognized Andrea for her leadership and work over the years regarding PFAS and the impact it has on communities.

VII. ACCEPTANCE OF MINUTES *(There are no minutes on for acceptance this evening)***VIII. RECOGNITIONS AND VOLUNTEER COMMITTEE REPORTS**

1. Mary Loane – Mayor's Blue Ribbon Housing Committee

Ms. Loane said the Committee was created to expand housing units in the city. She spoke to the committee about the process and the review of a number of lots. She indicated the overall quality of life was a large concern for them when reviewing lots. Ms. Loane said the Committee is recommending that the city investigate the lower lot of City Hall because of the opportunities available with that parcel. She urged the city to continue its path to bring more residents and housing to the city.

Brian Goetz said this is important to the closeness of the reservoir. He said homes would change the character of the reservoir and said that this is a valuable piece of land and access to the reservoir. He said this goes beyond the price tag.

With no further speakers, Mayor McEachern declared the public hearing closed.

Councilor Blalock said that is a big impact on the city drinking water.

Councilor Cook thanked City Manager Conard and staff for protecting the area and our drinking water. She is concern about federal funds being secured but she feels it is important to support the Resolution.

Mayor McEachern said this is important and where Portsmouth gets its water.

On a unanimous roll call 7-0, motion passed.

XI. CITY MANAGER'S ITEMS WHICH REQUIRE ACTION

A. CITY MANAGER CONARD

1. Report Back and Recommendation from the Planning Board Regarding 25 Sims Avenue

City Manager Conard said the Planning Board reviewed and the applicant initial request was denied because they wanted to merge all three lots, but the new request is to unmerge 1 lot.

Councilor Cook moved to unmerge Lot 44. Seconded by Councilor Bagley and voted.

2. Below Market Rate Housing Trust

City Manager Conard spoke to the new Below Market Rate Housing Trust. She reported that SoBow Square and the City are both contributing \$250,000.00 to this Trust. She stated as part of the review, the city consulted with the Charitable Trust Division of the Attorney General's Office who provided guidance on the appropriate way to handle the investment of public versus private money.

Councilor Tabor moved to authorize the City Manager to execute the Below Market Rate Housing Trust as presented. Seconded by Councilor Moreau.

Councilor Moreau said a great deal of time was put into this and she is pleased with the result.

Motion passed.

3. Friends of Lafayette House PILOT Agreement

City Manager Conard said Assessor Lentz recommended entering into the PILOT Agreement and the Legal Department worked to create the agreement.

Councilor Blalock moved to authorize the City Manager to enter into a PILOT agreement with the Friends of Lafayette House in the amount of \$3,500.00. Seconded by Councilor Denton and voted.

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

7:00 PM Public Hearings begin

March 20, 2025

MEMBERS PRESENT: Rick Chellman, Chairman; Anthony Coviello, Vice-Chair; Karen Conard, City Manager; Joseph Almeida, Facilities Manager; Beth Moreau, City Councilor; Members Paul Giuliano, Andrew Samonas, William Bowen, Ryann Wolf, and Alternate Frank Perier

.....
ALSO PRESENT: Peter Stith, Planning Department Manager

MEMBERS ABSENT: None.
.....

I. APPROVAL OF MINUTES

- A. Approval of the **February 20, 2025** meeting minutes.
- B. Approval of the **February 27, 2025** Work Session minutes.

*Vice-Chair Coviello moved to approve both sets of minutes as presented, seconded by Mr. Almeida. The motion **passed** with all in favor.*

*Vice-Chair Coviello moved to take Section VI. Other Business, Items B, 581 Lafayette Road, and Item A, Co-living Amendments, out of order to bring forward for discussion. Ms. Conard seconded. The motion **passed** with all in favor.*

II. PUBLIC HEARINGS – NEW BUSINESS

- A. The request of **96 State Street LLC (Owner)**, for property located at **96 State Street** requesting a parking Conditional Use Permit from Section 10.1112.14 to allow zero (0) parking spaces where thirty (30) are required. Said property is located on Assessor Map 107 Lot 52 and lies within the Character District 4 (CD-4) and Historic District. (LU-25-28)

SPEAKING TO THE PETITION

[Timestamp 30:36] Attorney Darcy Peyser was present on behalf of the applicant and reviewed the petition. She said the Conditional Use Permit was necessary to allow the applicant to expand and convert the upper second and third floors to a residential use. She said the second floor would be occupied by the restaurant owner and the third floor would be occupied by restaurant employees. She noted that the Historic District Commission (HDC) approved drawings in

more residential looking, with lower profiles. He said they received variances from the BOA that included eliminating the commercial use on the first floor and allowing duplex and rowhouse apartments. He said the Heinemann Building now had 27 residential units and all the necessary parking and there were four additional buildings, which he further described. He reviewed the parking. He said they would return to TAC for a formal review on April 1.

Vice-Chair Coviello moved that the Board accept the application for Design Review and schedule a public hearing at the April 17, 2025 Planning Board meeting. Ms. Conard seconded.

[Timestamp 1:47:59] Mr. Bowen said in the earlier version, a few spaces were below market rate, and he asked if the design change would impact that number. Mr. Wilson said they wound up with some smaller, more affordable units. He said when they went to TAC, they had proposed a multi-modal way that would have allowed a vertical expansion, and that they also found out that it needed to be a modal way for all forms of transportation, which he further explained. Mr. Bowen said the answer was that there would not be any units below market rate. Vice-Chair Coviello asked if a gate blocked the non-multi modal way and if people were allowed to walk through there. Mr. Wilson said the intention was to have a gate allowing limited access for vehicles, but the sidewalk leading to the property would allow pedestrians. Vice-Chair Coviello said there would then be a gate to prevent vehicles other than the residents' vehicles to get there. Mr. Wilson said the building next to them had the right to use their driveway to get to Hanover Street. He said the traffic going through there was untethered so they did not feel that it was good for the residences. He said the traffic study would preclude them from having traffic cut through. Vice-Chair Coviello said pedestrians would then not walk through that area. Mr. Wilson said they would use the property's sidewalk. Chair Chellman told the Board to be prepared to discuss pedestrian and vehicular circulation and multi modal issues at the next meeting. Mr. Perier asked how close the building heights would be to the Rock Street buildings. Mr. Wilson explained why he thought it would be a 33-ft average elevation, with the building set up 1-12 feet off the sidewalk and that the elevations were similar to others in the area. It was further discussed.

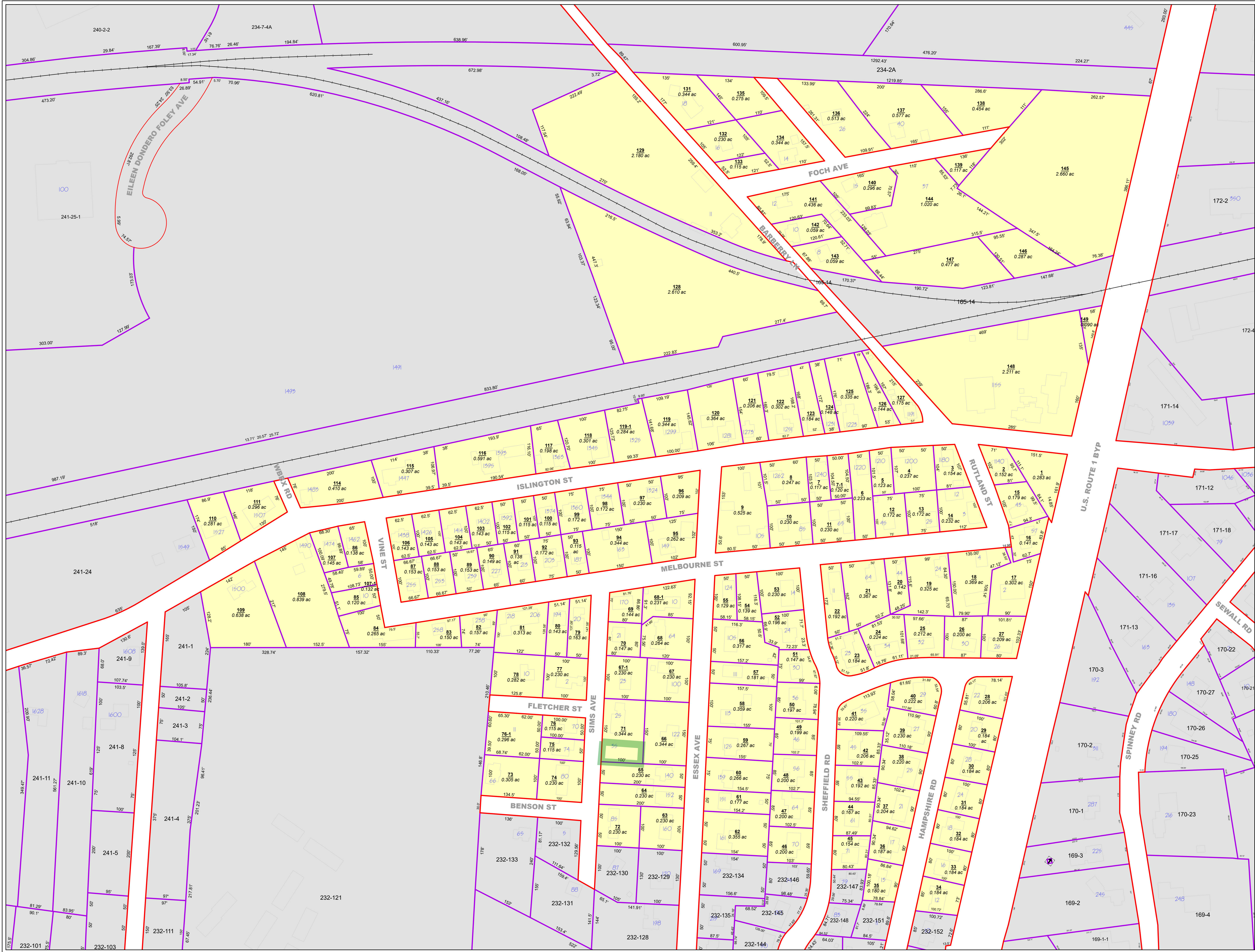
The motion passed by a vote of 8-0, with members Councilor Moreau and Mr. Samonas abstaining.

V. CITY COUNCIL REFERRALS

A. 25 Sims Avenue – Involuntary Merger Reversal (RIML-25-1)

[Timestamp 1:57:40] Mr. Stith said the property used to be three lots and the applicant was requesting to unmerge one of the lots. He said the applicant's aunt owned the property and built a house that crossed two of the houses in the 1960s, and then the third lot was bought. He said the City Assessor merged them all and that the applicant asked that the part of the property that was vacant, the third lot, be unmerged. He said the assessor recommended that the lot be unmerged. He said the City Council referred it to the assessor and the Planning Board for a report back. It was further discussed.

Ms. Conard moved that the Board recommend that the City Council restore Lot 44 only. Councilor Moreau seconded. The motion passed with all in favor.



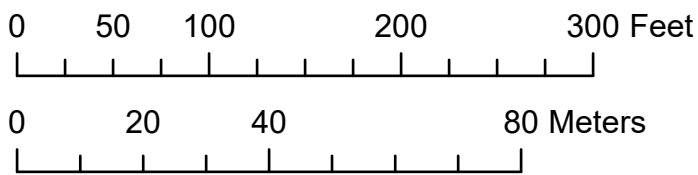
Partial Legend
See the cover sheet for the complete legend.

7-5A Lot or lot-unit number
2.56 ac Parcel area in acres (ac) or square feet (sf)
123 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)

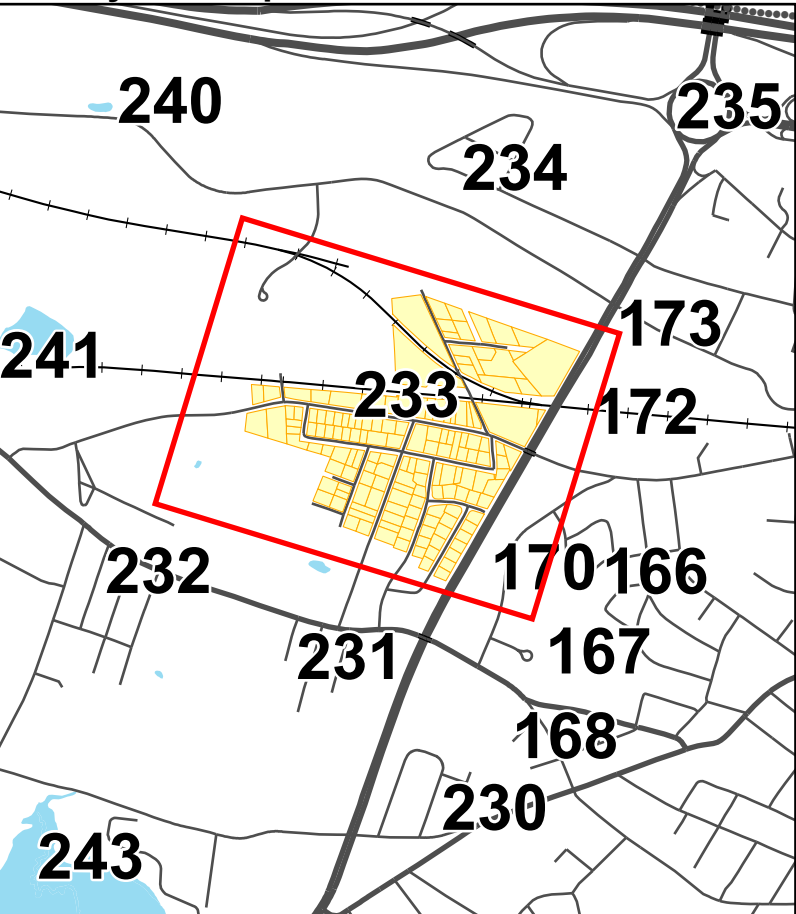
Parcel covered by this map
Parcel from a neighboring map (see other map for current status)

EXHIBIT G

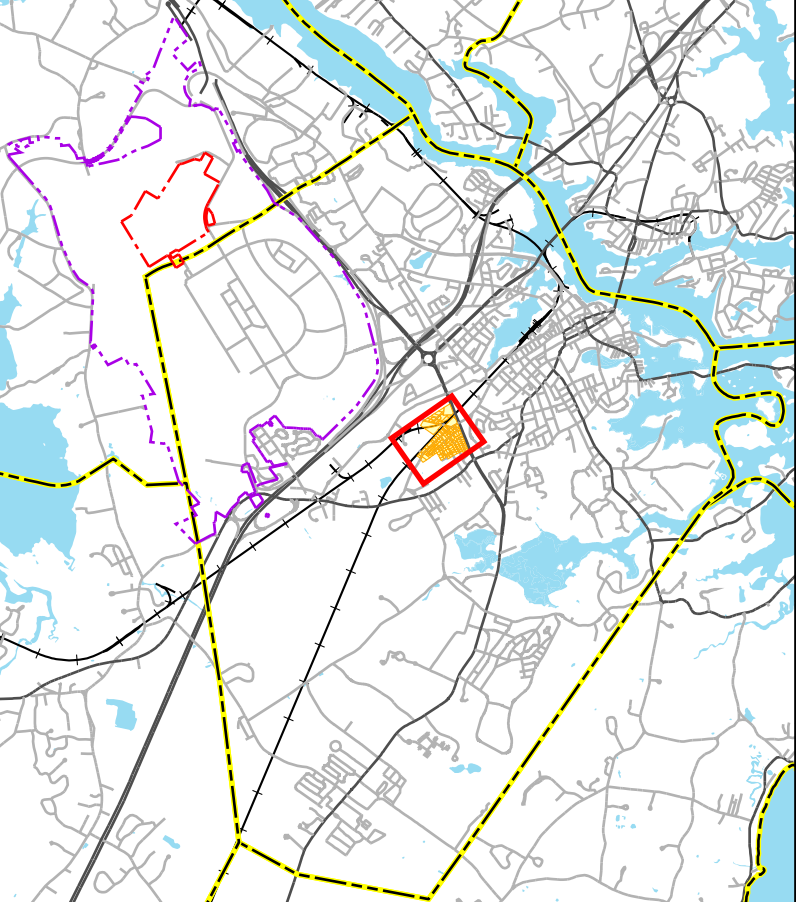


This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.

Nearby Tax Maps



Map Location



III. OLD BUSINESS

- E. The request of **Chase Home for Children C/O Woodman (Owners)**, for property located at **698 Middle Road** whereas relief is needed to construct a new facility on the property which requires the following: 1) Variance from Section 10.334 to allow the residential care facility use to be extended to another part of the remainder of the land, 2) Variance from Section 10.440 to allow for the construction of a new residential care facility structure. Said property is located on Assessor Map 232 Lot 45 and lies within the Single Residence B (SRB) District. (LU-25-167)

Planning Department Comments

The applicant has requested to postpone the application. Per Section VII of the Board of Adjustment Rules and Regulations, the application will be re-advertised prior to the next public hearing.

BY: EMAIL / HAND DELIVERY

January 13, 2026

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

**RE: Continuance Request
Variance Application of Chase Home for Children of Portsmouth, N.H.
698 Middle Road, Tax Map 232, Lot 45**

Dear Stefanie,

Please find a request to continue the public hearing on the above referenced variance application that is scheduled to be heard by the Zoning Board of Adjustment at 7pm on January 21, 2026. The continuance request is being made so that the Applicant and its development team have an opportunity to review and respond to a letter of objection and related materials and exhibits submitted to the Board by the attorney of one of the abutting property owners.

Sincerely,

A handwritten signature in blue ink that reads "Derek Durbin / dep".

Derek R. Durbin, Esq.

IV. NEW BUSINESS

- A.** The request of **Howard Family Holding Trust (Owner)**, for property located at **53A Chevrolet Avenue** whereas relief is needed to allow a 5-foot high and 6-foot high fence, after-the-fact, which requires the following: 1) Variance from Section 10.515.13 to exempt a 5-foot high and 6-foot high fence in the front yard where up to 4 feet is allowed. Said property is located on Assessor Map 147 Lot 18-1A and lies within the General Residence A (GRA) District. (LU-25-145)

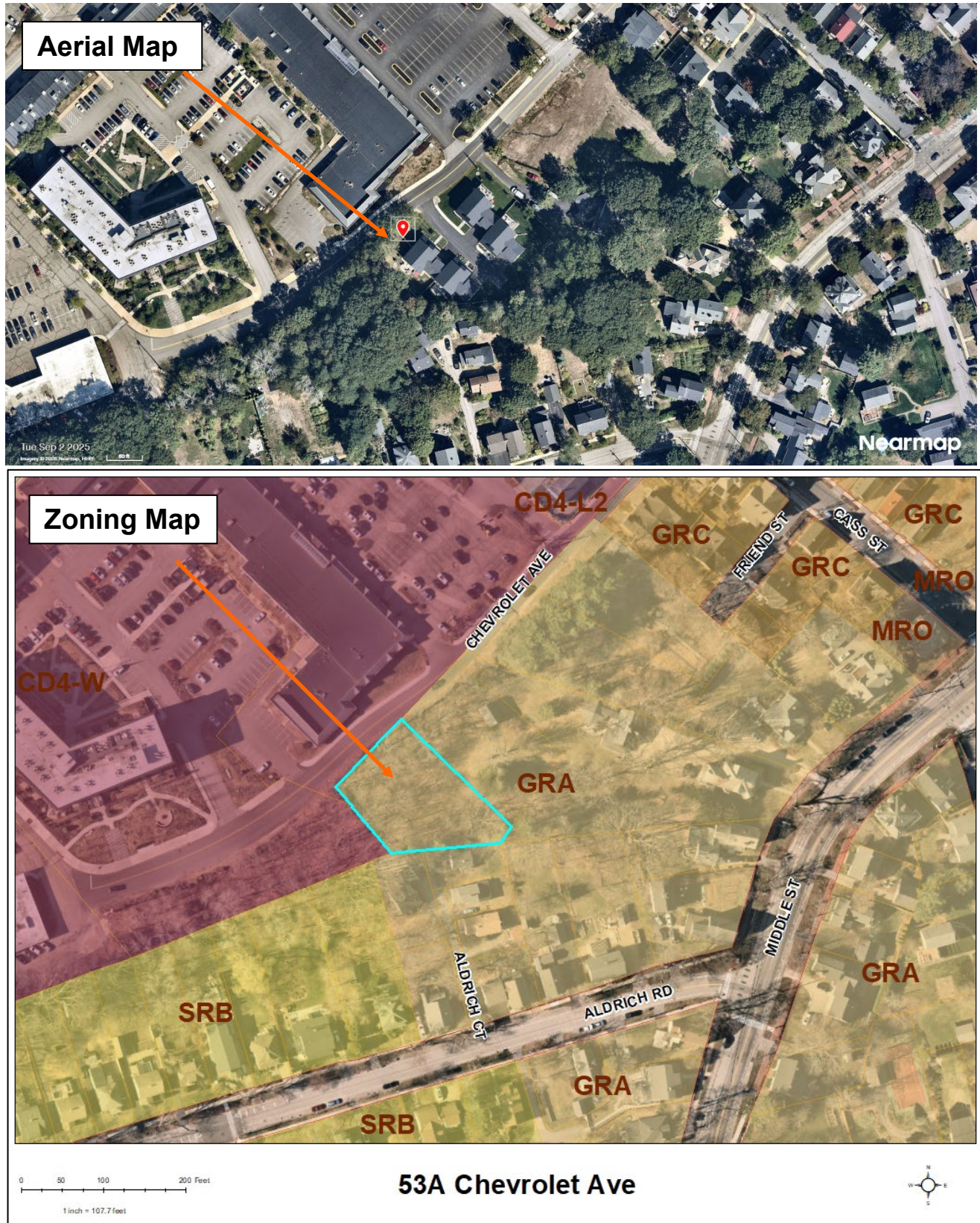
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Duplex	After the fact request for fences over 4 feet	Primarily Residential
<u>Street Frontage (ft.):</u>	113.73	113.73	100 min.
<u>Front Yard (ft.):</u>	Existing Fence: 0	Existing Fence: 0	15 max.
<u>Height of fence in front yard area (ft.):</u>	Parallel to Chevrolet: 6 Perpendicular to Chevrolet: 5	Parallel to Chevrolet: 6 Perpendicular to Chevrolet: 5	4 max.
<u>Estimated Age of Structure:</u>	2023	Variance request(s) shown in red.	

Other Permits/Approvals Required

- None at this time

Neighborhood Context



Previous Board of Adjustment Actions

No previous history found

Planning Department Comments

The applicant is requesting relief for an existing fence that does not conform to the requirements set forth in the Zoning Ordinance. The applicant has two areas of the existing fence that need after the fact relief. The first is the 6-foot portion that runs parallel to Chevrolet Ave. The second is the 5-foot section that runs perpendicular to Chevrolet Ave. Both of these fence heights are in excess of the 4-foot maximum in the front yard area.

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.

53A Chevrolet ave variance narrative

My name is Douglas Howard and I'm applying for a fence variance.

My wife and I purchased 53A Chevrolet Ave in Oct 2024 and we were recently informed by the developer that he was notified by the City of Portsmouth that the side yard fence needs to be cut down to 4' to meet the fence restriction ordinance ZO-10515.13.

The property came with a 6' fence along the property lines on the backyard which is facing woods and the side yard which is facing Chevrolet ave.

Since the purchase of the property, we had a 5' fence installed from the end of the side yard fence to the midpoint of our house. The fence we installed faces the front of the house and has a setback of over 40' from the Private road.

As shown in the pictures attached, the house faces a private way and not Chevrolet ave. I understand that the City of Portsmouth does recognize private streets and therefore should recognize that the front of a house can be viewed as facing a private street.

We've been informed that the city uses the street address when determining the front of the house and not the actual orientation of the structure, but in this instance, we believe this does not meet the intent of the ordinance.

If the fence needs to be cut down to 4', we'd lose our private yard. The other option the ordinance provides is moving the fence so there's a 15' set back but that option would severely shrink the size of the yard, and it would be worse than cutting the existing fence.

Enforcing this ordinance, in this application, would not benefit the city, abutters, or other neighbors, and would only hurt our property value and the usage of our yard.

We agree with this ordinance in the intent and spirit that it was written but we do not believe that this situation meets either the intent or spirit.

Thank you for your consideration,

Douglas Howard

53A Chevrolet ave

Variance Criteria for Approval with responses

53A Chevrolet ave Portsmouth

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

The fence is on my property and is approx. 11' off the street on one end and 7' on the other end and will not be contrary to public interest. There are several trees and bushes growing between the fence and the street.

10.233.22 The spirit of the ordinance will be observed.

The spirit of ordinance ZO 10.515.13 is to restrict the fence height in front of the house to 4' unless there's a 15' set back. In this instance, the front of the house is on a private road and the fence in question is on side of the house.

10.233.23 Substantial justice will be done.

Since the actual front of the house is facing the private street and not Chevrolet Ave, I believe justice will be done by approving this variance.

10.233.24 The value of surrounding properties will not be diminished.

Approval of this variance will not diminish the values of any surrounding properties.

The fence is facing a busy street and a commercial building on the opposite side of the street.

10.233.25 The literal enforcement of the provisions of the ordinance would result in unnecessary hardship.

The enforcement of this ordinance does not meet the intent of which it was written and would transfer a private backyard into a yard that is visible to anyone walking or driving down Chevrolet ave and in return diminishing the value of the home.

TAX MAP 154
LOT 2
PORTSMOUTH WEST END DEVELOPMENT LLC
3 PENSTOCK WAY
NEWMARKET, NH 03857
BK 5970 PG 1281

8"x8" BOUND
3.7' EXPOSED

CHEVROLET AVE.

from edge of road
to fence is approx 11'

location of 6' fence

From edge of road
to fence is approx 7'

RIGHT OF WAY AND
UTILITY EASEMENT PER
PLAN REFERENCE #2

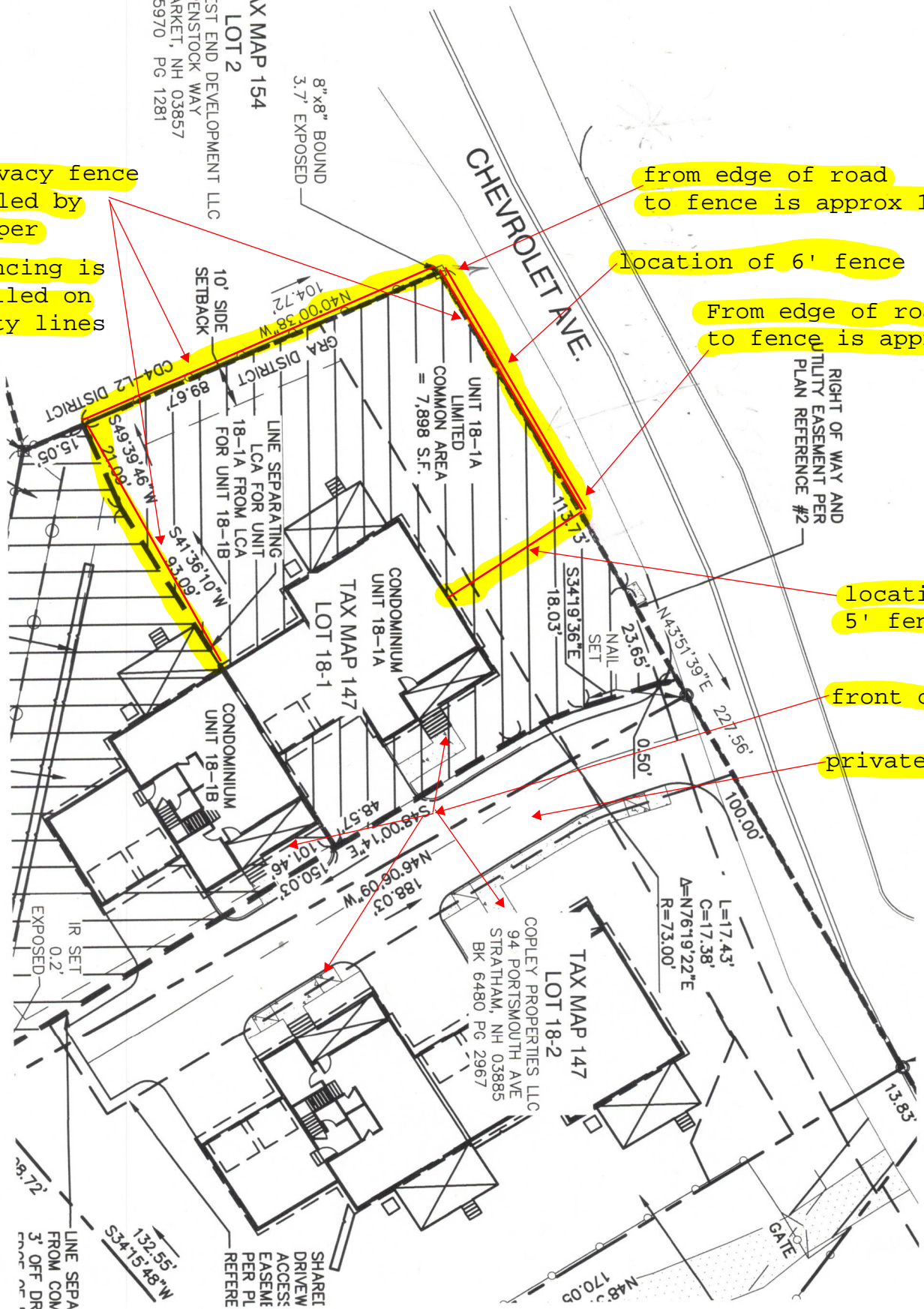
location of
5' fence

front of houses

private street

6' privacy fence
installed by
developer

All fencing is
installed on
property lines




To Whom It May Concern,

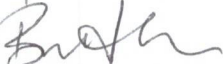
We, Joe and Barb Abdoo, the owners of the property at 53B Chevrolet Ave, have been informed of the variance request for the existing 6' fence along Chevrolet Ave to remain as is, by Pam and Doug Howard of 53A Chevrolet Ave.

The 6' fence in question is on our neighbor's property which is located adjacent and attached to our home. The specific reason for this request is to maintain their privacy and security, which a variance is required due to the height, location, and the city's interpretation of the front of the house.

We have reviewed the situation with Pam and Doug Howard, the owners of 53A Chevrolet Ave, and have no objection to them maintaining their fence as is and support the variance approval.

Sincerely,

Name:  (Joseph R. Abdoo)

Name:  (Barbara J. Abdoo)

Address: ~~51~~B Chevrolet Ave
53

To Whom It May Concern,

We, John and Sherri St. Lawrence, the owners of the property at 51A Chevrolet Ave, have been informed of the variance request for the existing 6' fence along Chevrolet Ave to remain as is, by Pam and Doug Howard of 53A Chevrolet Ave.

The 6' fence in question is on our neighbor's property which is located across from our home. The specific reason for this request is to maintain their privacy and security, which a variance is required due to the height, location, and the city's interpretation of the front of the house.

We have reviewed the situation with Pam and Doug Howard, the owners of 53A Chevrolet Ave, and have no objection to them maintaining their fence as is and support the variance approval.

Sincerely,

Name: *John St Lawrence*

Name: *Sherri St. Lawrence*

Address: 51A Chevrolet Ave

To Whom It May Concern,

We, David and Christina ^{Lusk} ~~Burns~~, the owners of the property at 51B Chevrolet Ave, have been informed of the variance request for the existing 6' fence along Chevrolet Ave to remain as is, by Pam and Doug Howard of 53A Chevrolet Ave.

The 6' fence in question is on our neighbor's property which is located across from our home. The specific reason for this request is to maintain their privacy and security, which a variance is required due to the height, location, and the city's interpretation of the front of the house.

We have reviewed the situation with Pam and Doug Howard, the owners of 53A Chevrolet Ave, and have no objection to them maintaining their fence as is and support the variance approval.

Sincerely,

Name: *David Burns*

Name: *Christina Lusk*

Address: 51B Chevrolet Ave





53
A

WESLEYAN
COLLEGE











IV. NEW BUSINESS

- B.** The request of **Alexandre T and Lauren M LePage (Owners)**, for property located at **53 McNabb Court** whereas relief is needed to demolish a one-story enclosed porch and reconstruct with a three-story addition and to construct an open front porch on the front of the home, which requires the following: 1) Variance from Section 10.521 to allow a) 6.5 foot front yard setback where 15 feet is required, b) 4.5 foot right yard setback where 10 feet is required, c) 9 foot left yard setback where 10 feet is required, and d) 29% Building Coverage where 25% is allowed. Said property is located on Assessor Map 112 Lot 57 and lies within the General Residence A (GRA) District. (LU-25-170)

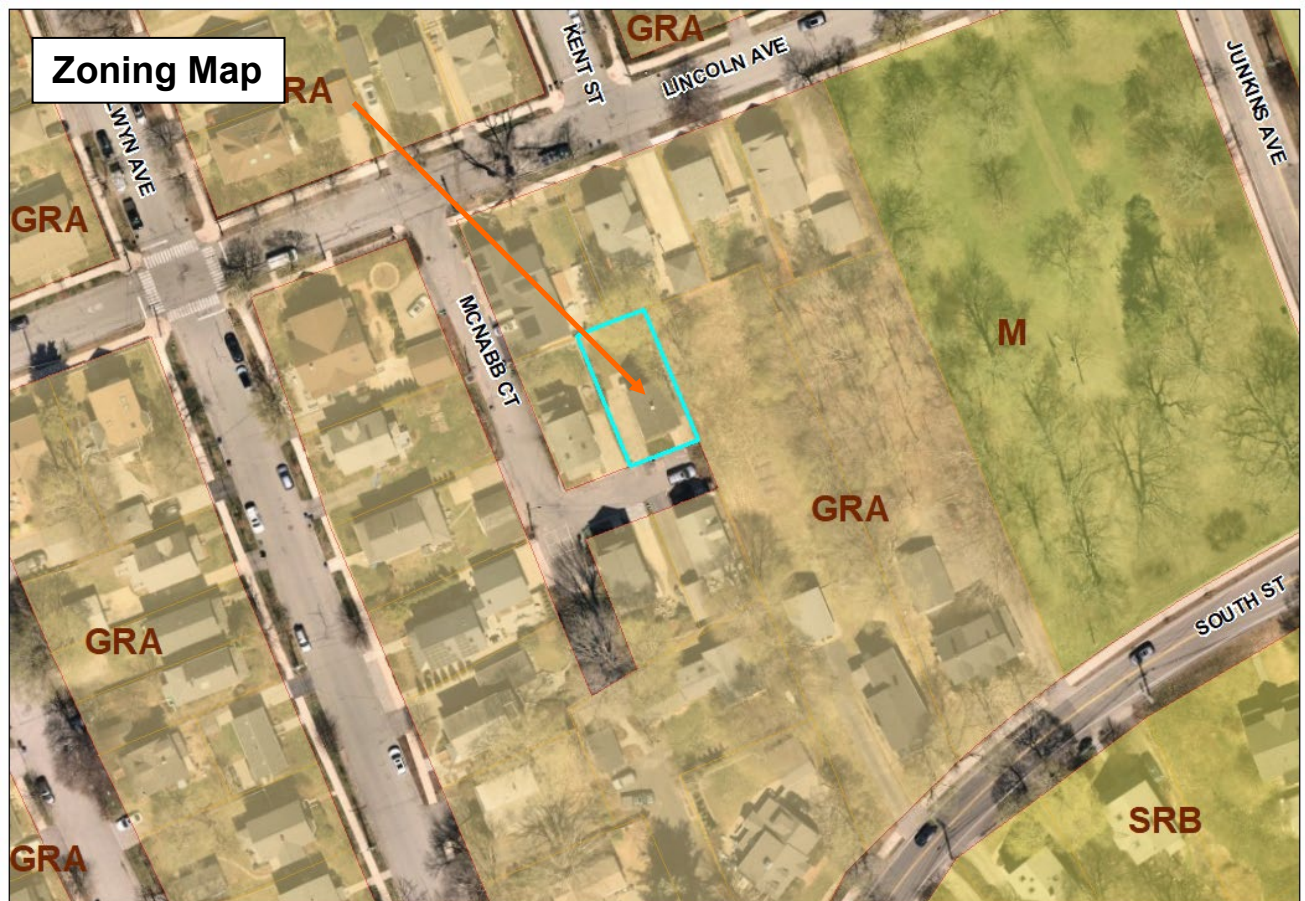
Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Residential Home	Construct rear addition and front porch	Primarily Residential
<u>Lot area (sq. ft.):</u>	3,124	3,124	7,500 min.
<u>Street Frontage (ft.):</u>	40	40	100 min.
<u>Front Yard (ft.):</u>	6.7	6.5	15 max.
<u>Left Yard (ft.):</u>	11.3	9	10 min.
<u>Right Yard (ft.):</u>	4.5	4.5	10 min.
<u>Rear Yard (ft.):</u>	32.5	28.2	20 min.
<u>Height (ft.):</u>	30	30	35 max.
<u>Building Coverage (%):</u>	24.3	29	25 max.
<u>Estimated Age of Structure:</u>	1920	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



0 30 60 120 Feet
1 inch = 67.5 feet

53 McNabb Ct



Previous Board of Adjustment Actions

No previous history found

Planning Department Comments

The applicant is requesting relief to demolish the existing rear one story porch and construct a rear addition as well as a front porch. The relief required as part of this project includes front yard, both side yards, and building coverage.

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.

Variance Application

53 McNabb Ct; Assessor Map 112 Lot 57, General Residence A (GRA) District)

Alexandre LePage and Lauren LePage

Dear Chair Eldridge and Members of the Zoning Board of Adjustment:

We are applying for variances to allow for the renovation of our home. This proposed renovation involves the demolition of an existing one-story enclosed three-season porch 18.4'x7.7' on the rear of the current structure, which would be replaced with a three-story addition to the current structure on a similar footprint 20'x12', as well as the addition of an open front porch 18.11'x4.6' on the front of the home (please see floor plans and existing conditions pictures for more details).

McNabb Ct is a dead-end street with four houses, all built circa ~1920. The other three houses have undergone similar renovations over the years (additions to the back of the main structure and front porches) and ours is the last home that has yet to undergo any significant changes. Our proposed renovation is being done in the same spirit as those already done on McNabb Ct and the variance reliefs are similar to those applied for by our neighbors in the past. Ultimately the goal of the project is to create a better home for our growing family in a way that matches the character of our neighbor's homes while minimizing the impact to our neighbors.

As such, we are requesting the following variances: 1) Section 10.521 to allow for setbacks and building coverage relief (please see details below) and 2) Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

EXISTING AND PROPOSED CONDITIONS

Below are the existing and proposed setbacks and building coverage for our home. Since 53 McNabb Ct is a small, nonconforming lot – the existing structure is already outside of most setbacks. Therefore, the proposed setbacks are modest increases (or decreases, in some cases) and again, reflect very similar renovations done to the other three properties on McNabb Ct.

Provision	Requirement	Existing Condition	Proposed Condition	Non-Conforming Feature
Lot Area / Lot Area per Dwelling Unit	7,500 sq. ft.	3,124 sq. ft.	-	Lot
Frontage	100'	40'	-	Lot
Front Yard Setback	15'	11.7' 6.7'	11.7' 6.9'	House Stairs
Right Yard Setback	10'	4.5' 4.6'	4.5' 5.3'	House Porch
Left Yard Setback	10'	14.1' 11.3'	12.2' 9.1'	House Stairs
Building Coverage	25%	24.3%	28.9%	House

ZONING RELIEF SUMMARY

We are seeking the following variance approvals from the Board:

Section 10.521

- (a) To allow a 6.9' front yard setback for the construction of the proposed front porch stairs where 15 is required. The existing front stairs have a 6.7' front yard setback.
- (b) To allow a 4.5' right yard setback for the construction of the proposed addition and front porch where 10' is required. The existing house has a 4.5' right yard setback.
- (c) To allow a 9.1' left yard setback for the construction of stairs where 10' is required. The existing stairs have a 11.3' right yard setback.
- (d) To allow 28.9% building coverage where 25% is allowed and 24.3% exists.

Section 10.321

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

VARIANCE CRITERIA

We believe our project meets the required variance criteria found in Section 10.223 for the following reasons:

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

The existing small single-family home will remain a small single-family home. There will be no change in the function or purpose of the home and it will continue to have a very similar footprint. There will be no difference for the average pedestrian with the exception of improved aesthetics and conformity with the surrounding neighborhood.

10.233.22 The spirit of the Ordinance will be observed:

Setbacks: Due to the small size of the lot, the existing house already encroaches into the front and right yard setbacks and barely maintains the 10' left yard setback line. The proposed renovations do not increase the setback encroachments for either the front or right yard setbacks. Only the stairs in the proposed renovation encroach on the 10-foot left yard requirement, and even then it is by less than a foot (9.1'). Accordingly, granting the setback variances will not alter the essential character of the neighborhood or negatively affect the public health, safety or welfare.

Building Coverage: The increase in 5.6% building coverage is driven primarily by the diminutive size of the property – at 3,124 sq. ft., any reasonably sized addition to the existing house necessitates building coverage relief. In fact, the other 3 houses on McNabb Ct. have 29% (+/-) building coverage as a result of their renovations to the original structures throughout the years. Also, even with the proposed addition and increase of 5.6% in building coverage, the percent of the lot that is open space will remain at 45.2%, well above the 30% minimum requirement. Much of the “green space” associated with the property will be preserved with the addition. As such, granting the building coverage variance will not alter the essential character of the neighborhood or negatively affect public health, safety or welfare.

10.233.23 Substantial justice will be done:

The benefit to the applicant will not be outweighed by the harm to the public. The public will not notice any difference between how the property is being used currently and the proposed changes. The only differences noticed will be positive – the public will now notice that all four homes on McNabb Ct. follow a more similar design with rear additions and front porches.

10.233.24 The values of surrounding properties will not be diminished:

The changes proposed are small and are designed to improve current impacts to the neighboring property. The addition is tastefully designed and will be handled by a well-respected local builder (Mighty Roots) and will keep with the character of homes and structures on surrounding

properties. Therefore, the proposed improvements should only help to preserve or enhance surrounding property values.

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

The property has special conditions – principally its size and width. The property was created long before current GRA zoning standards were adopted. It has only 3,124 square feet of land area, which is 41.7% of what is required in the GRA Zoning District. Literal enforcement of the ordinance would not serve the property in a fair and substantial way as it would prevent us from using the existing footprint in a sustainable way. The proposed use of the property is reasonable as it will continue to be used for single-family residential purposes.

Sincerely,

Alexandre LePage and Lauren LePage

Owners





View of the front of the property



View of the rear of the property



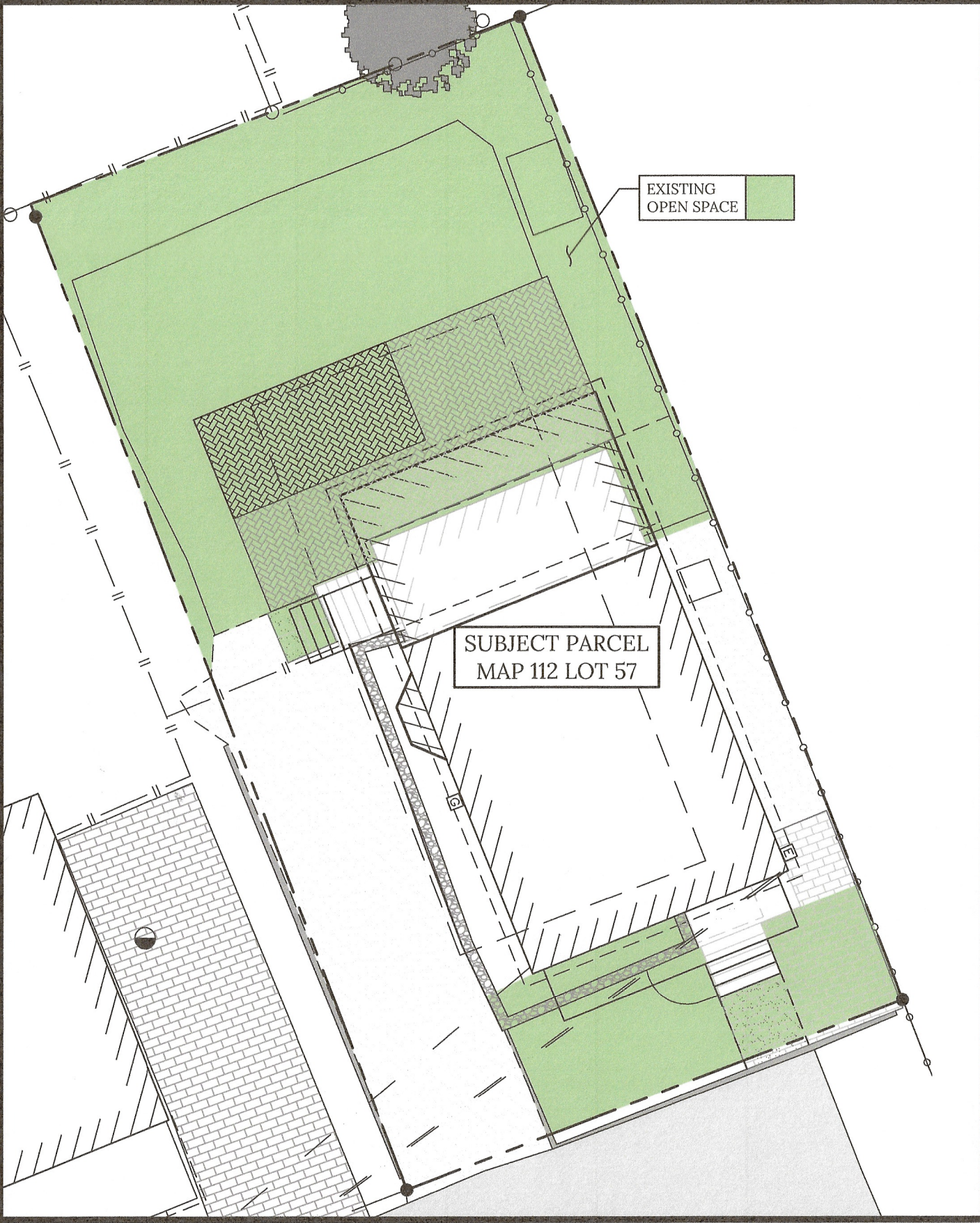
LOCATION MAP
SCALE 1"=500'

OPEN SPACE CALCULATION (TO PROPERTY LINE):
EXISTING:
LAWN & LANDSCAPED AREAS (COMPLIANT WITH SECTION 10.515.20) - 1,224 S.F.
NON-COMPACTED GRAVEL - 46 S.F.
PATIOS & WALKS - 382 S.F.
TOTAL OPEN SPACE-1,652 S.F. (PATIOS & WALKS ARE 23.1% OF OPEN SPACE)
PERCENT OF LOT THAT IS OPEN SPACE - 52.9%

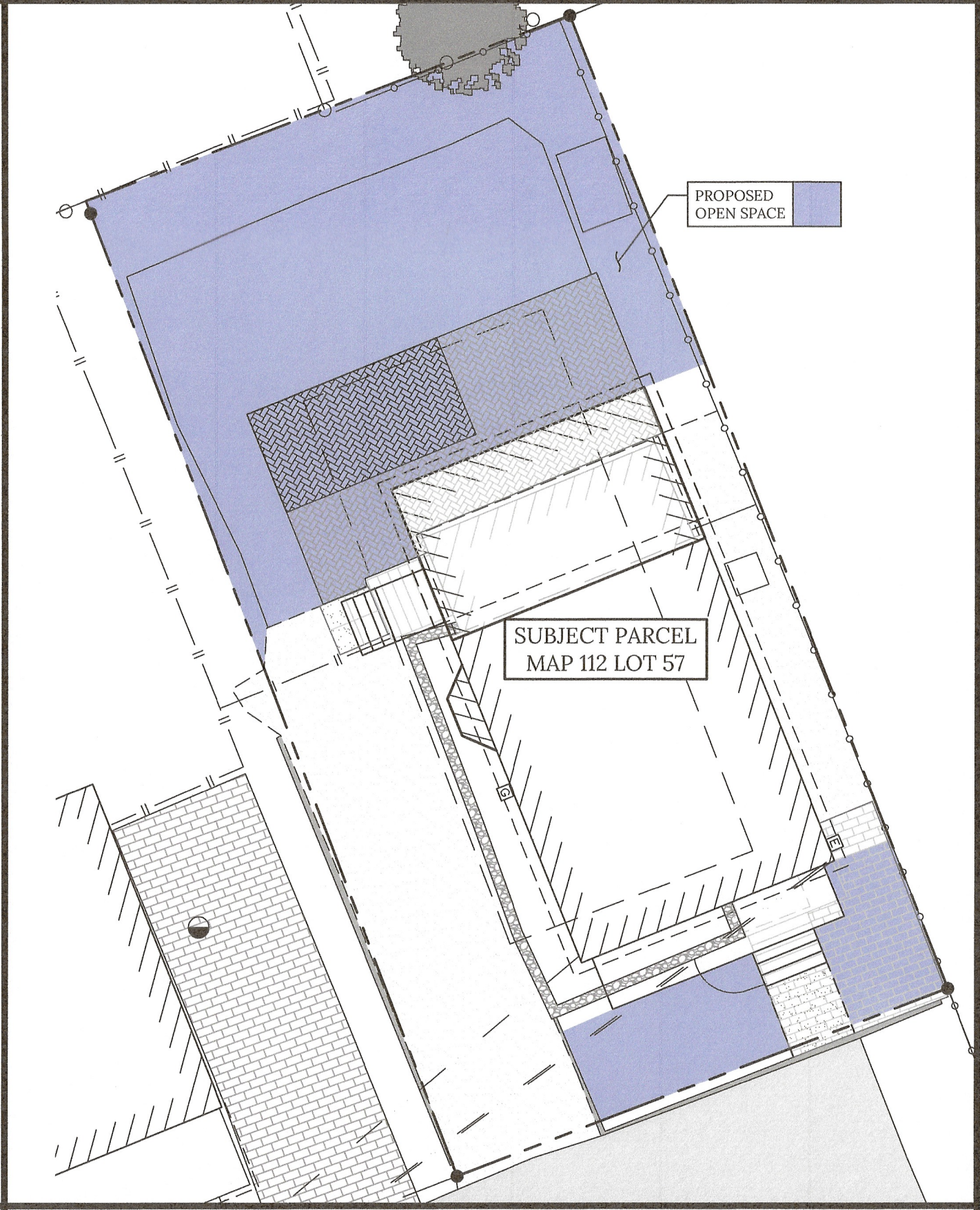
PROPOSED:
LAWN & LANDSCAPED AREAS (COMPLIANT WITH SECTION 10.515.20) - 1,097 S.F.
NON-COMPACTED GRAVEL - 0 S.F.
PATIOS & WALKS - 315 S.F.
TOTAL OPEN SPACE-1,412 S.F. (PATIOS & WALKS ARE 22.3% OF OPEN SPACE)
PERCENT OF LOT THAT IS OPEN SPACE - 45.2%

BUILDING COVERAGE CALCULATION (TO PROPERTY LINE):
EXISTING:
HOUSE - 708 S.F.
PORCHES & STAIRS - 52 S.F.
TOTAL BUILDING COVERAGE- 760 S.F.
BUILDING COVERAGE PERCENTAGE- 24.3%

PROPOSED:
HOUSE - 799 S.F.
PORCHES & STAIRS - 105 S.F.
TOTAL BUILDING COVERAGE - 904 S.F.
BUILDING COVERAGE PERCENTAGE- 28.9%



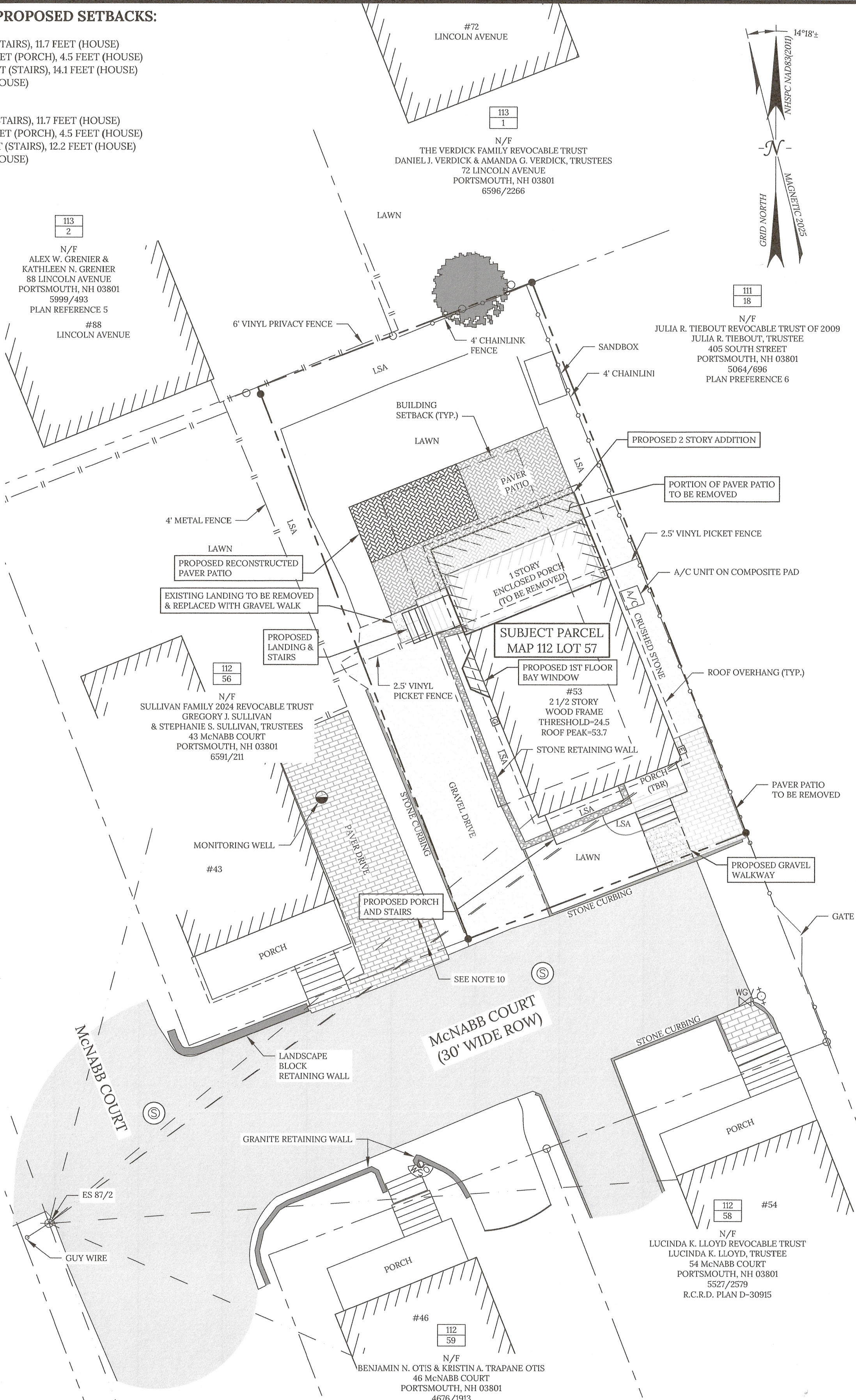
EXISTING OPEN SPACE DETAIL



PROPOSED OPEN SPACE DETAIL

EXISTING & PROPOSED SETBACKS:
EXISTING:
FRONT - 6.7 FEET (STAIRS), 11.7 FEET (HOUSE)
RIGHT SIDE - 4.6 FEET (PORCH), 4.5 FEET (HOUSE)
LEFT SIDE - 11.3 FEET (STAIRS), 14.1 FEET (HOUSE)
REAR - 32.5 FEET (HOUSE)

PROPOSED:
FRONT - 6.9 FEET (STAIRS), 11.7 FEET (HOUSE)
RIGHT SIDE - 5.3 FEET (PORCH), 4.5 FEET (HOUSE)
LEFT SIDE - 9.1 FEET (STAIRS), 12.2 FEET (HOUSE)
REAR - 28.2 FEET (HOUSE)



- NOTES:**
- 1) THE PURPOSE OF THIS PLAN IS TO SHOW A PROPOSED ADDITION AND ASSOCIATED SITE IMPROVEMENTS ON ASSESSOR'S MAP 112 LOT 57 IN THE CITY OF PORTSMOUTH.
 - 2) SUBJECT PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 112 AS LOT 57.
 - 3) OWNERS OF RECORD:
ALEXANDRE T. LePAGE & LAUREN M. LePAGE
53 McNABB COURT
PORTSMOUTH, NH 03801
6330/1980
 - 4) THE SUBJECT PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FEMA FLOOD INSURANCE RATE MAP PANEL 33015C0259F. PANEL EFFECTIVE DATE JANUARY 29, 2021.
 - 5) SUBJECT PARCEL AREA:
3,124 S.F.
0.0717 ACRES
 - 6) SUBJECT PARCEL IS LOCATED IN THE GENERAL RESIDENCE A (GRA) ZONING DISTRICT AND IS SUBJECT TO THE FOLLOWING DIMENSIONAL REQUIREMENTS:

MINIMUM LOT SIZE	7,500 S.F.
FRONTAGE	100 FEET
DEPTH	70 FEET
SETBACKS	FRONT 15 FEET SIDE 10 FEET REAR 20 FEET
MAXIMUM BUILDING HEIGHT	35 FEET
MAXIMUM BUILDING COVERAGE	25%
MINIMUM OPEN SPACE	30%
 - 7) BASIS OF BEARING & HORIZONTAL DATUM IS THE NEW HAMPSHIRE STATE PLANE COORDINATE SYSTEM NAD83(2011). BASIS OF HORIZONTAL DATUM IS POST-PROCESSED STATIC GNSS OBSERVATIONS.
 - 8) FOR COMPLETE EXISTING CONDITIONS AND BOUNDARY INFORMATION SEE PLAN REFERENCE 1.
 - 9) PROPOSED ADDITION FROM PLANS BY MIGHTY ROOTS DATED 9/4/2025.

- PLAN REFERENCES:**
- 1) EXISTING CONDITIONS PLAN, OWNERS OF RECORD ALEXANDRE T. LePAGE & LAUREN M. LePAGE, ASSESSOR'S MAP 112 LOT 57, 53 McNABB COURT, CITY OF PORTSMOUTH, ROCKINGHAM COUNTY, NEW HAMPSHIRE. PREPARED BY STAKE & STONES LAND SURVEYING, LLC. DATED AUGUST 16, 2025, FINAL REVISION DATE, SEPTEMBER 18, 2025.
 - 2) SEE PLAN REFERENCE 1 FOR ADDITIONAL PLAN REFERENCES.

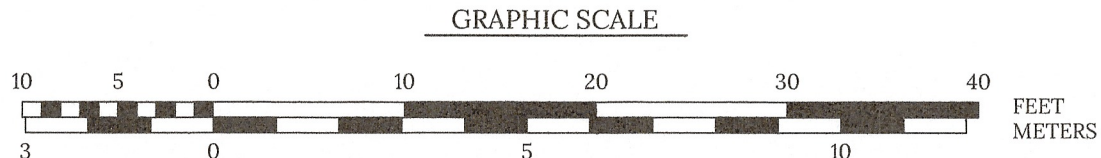
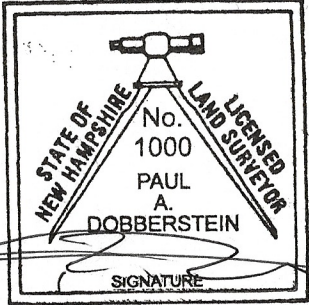
LEGEND:	
N/F	NOW OR FORMERLY
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
1 2	ABUTTER TAX MAP & LOT NUMBER
---	BOUNDARY
---	BUILDING SETBACK
○	IRON ROD/PIPE FOUND
●	IRON ROD SET
---	OVERHEAD ELECTRIC/WIRES
---	EDGE OF PAVEMENT
---	EDGE OF GRAVEL
---	UTILITY POLE
⊕	WATER SHUT OFF/CURB STOP
WG	WATER GATE VALVE
+	HYDRANT
E	ELECTRIC METER
S	SEWER MANHOLE
AC	AIR CONDITIONER UNIT
ELEV.	ELEVATION
FF	FINISHED FLOOR
TYP.	TYPICAL
LSA	LANDSCAPED AREA

BUILDING PERMIT PLAN
OWNERS OF RECORD
ALEXANDRE T. LePAGE & LAUREN M. LePAGE
ASSESSOR'S MAP 112 LOT 57
53 McNABB COURT
CITY OF PORTSMOUTH
ROCKINGHAM COUNTY
NEW HAMPSHIRE

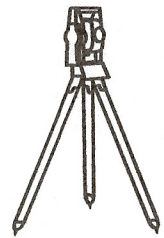
I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000.

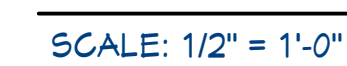
10/1/2025
DATE

PAUL A. DOBERSTEIN, LLS



REVISIONS		
NO.	DESCRIPTION	DATE
1	ADD PROPOSED BAY WINDOW	10/1/25



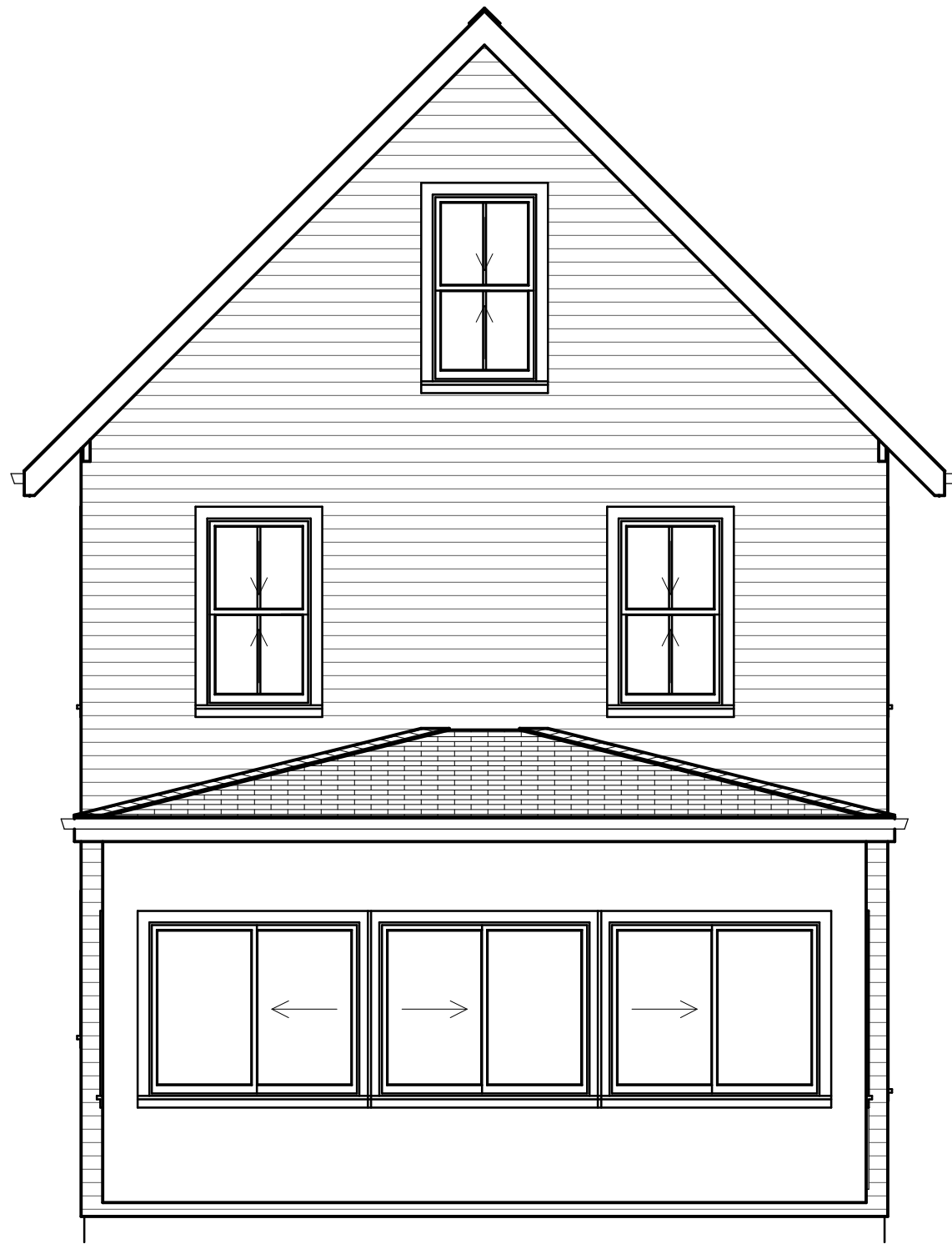


A-1



RIGHT SIDE ELEVATION - EXISTING

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



REAR ELEVATION - EXISTING

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



LEFT SIDE ELEVATION - EXISTING

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



FRONT ELEVATION - EXISTING

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

--

NUMBER	DATE	REVISION TABLE	REVISOR	BY	DESCRIPTION

LEPAGE RESIDENCE
53 McNabb Court
Portsmouth, NH 03801

DRAWINGS PROVIDED BY:
Mighty Roots, LLC
13 Alden Ave.
Greenland, NH 03840

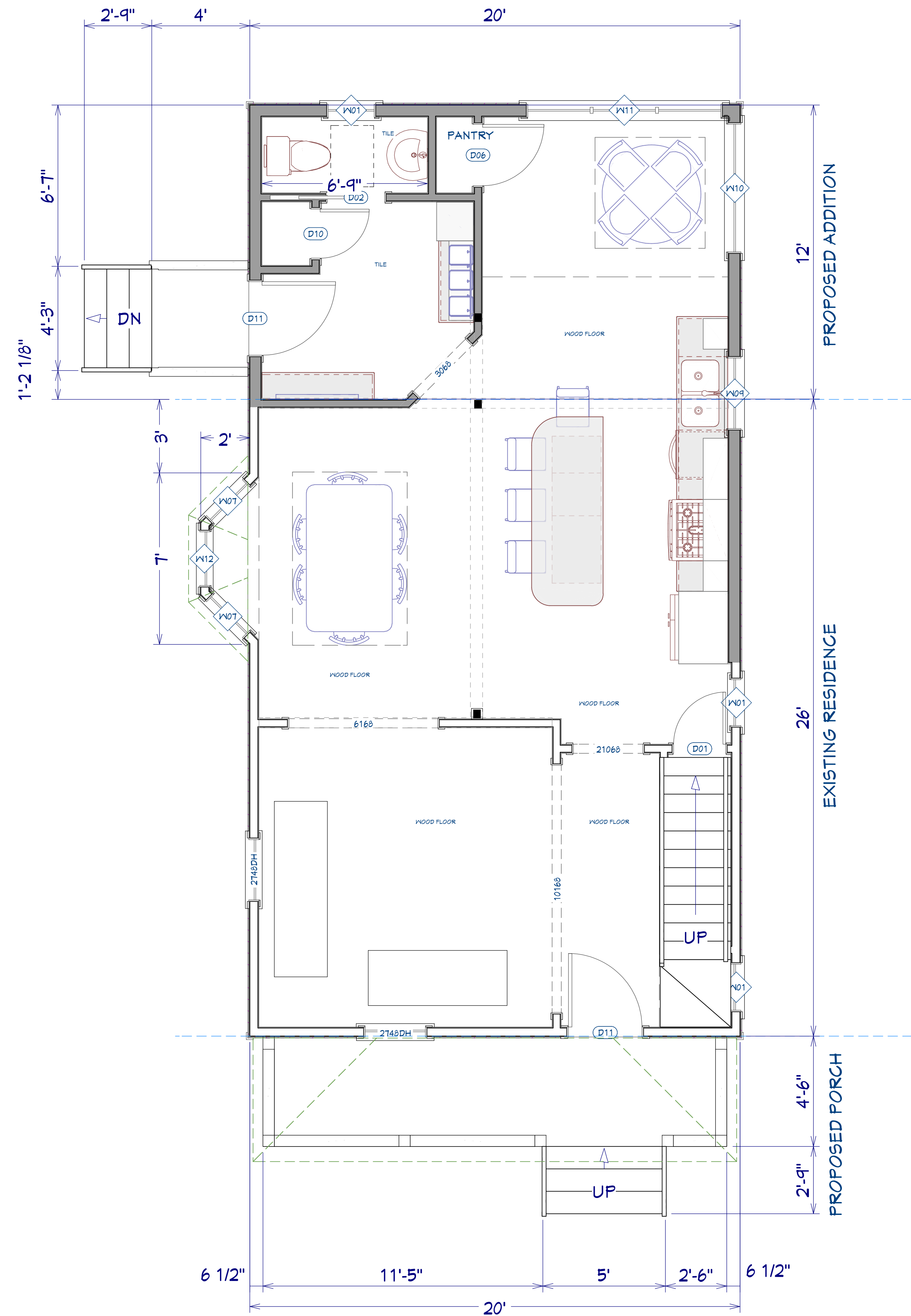
DATE:

9/30/2025

SCALE:

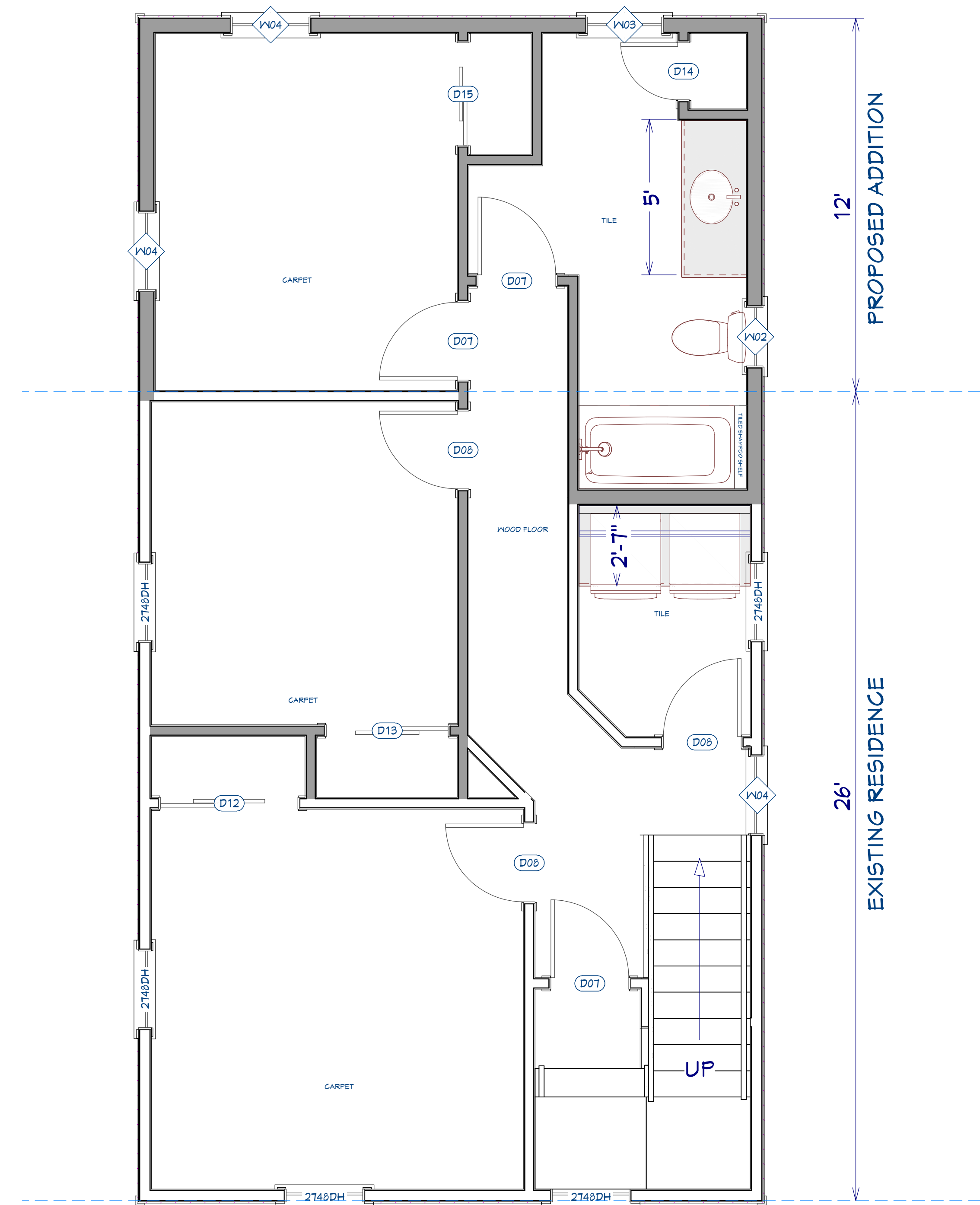
SHEET:

A-2



FIRST FLOOR PLAN - PROPOSED

SCALE: 3/8" = 1'-0"



SECOND FLOOR PLAN - PROPOSED

SCALE: 3/8" = 1'-0"

[illegible]

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Portsmouth, NH 03801

FLOOR PLANS

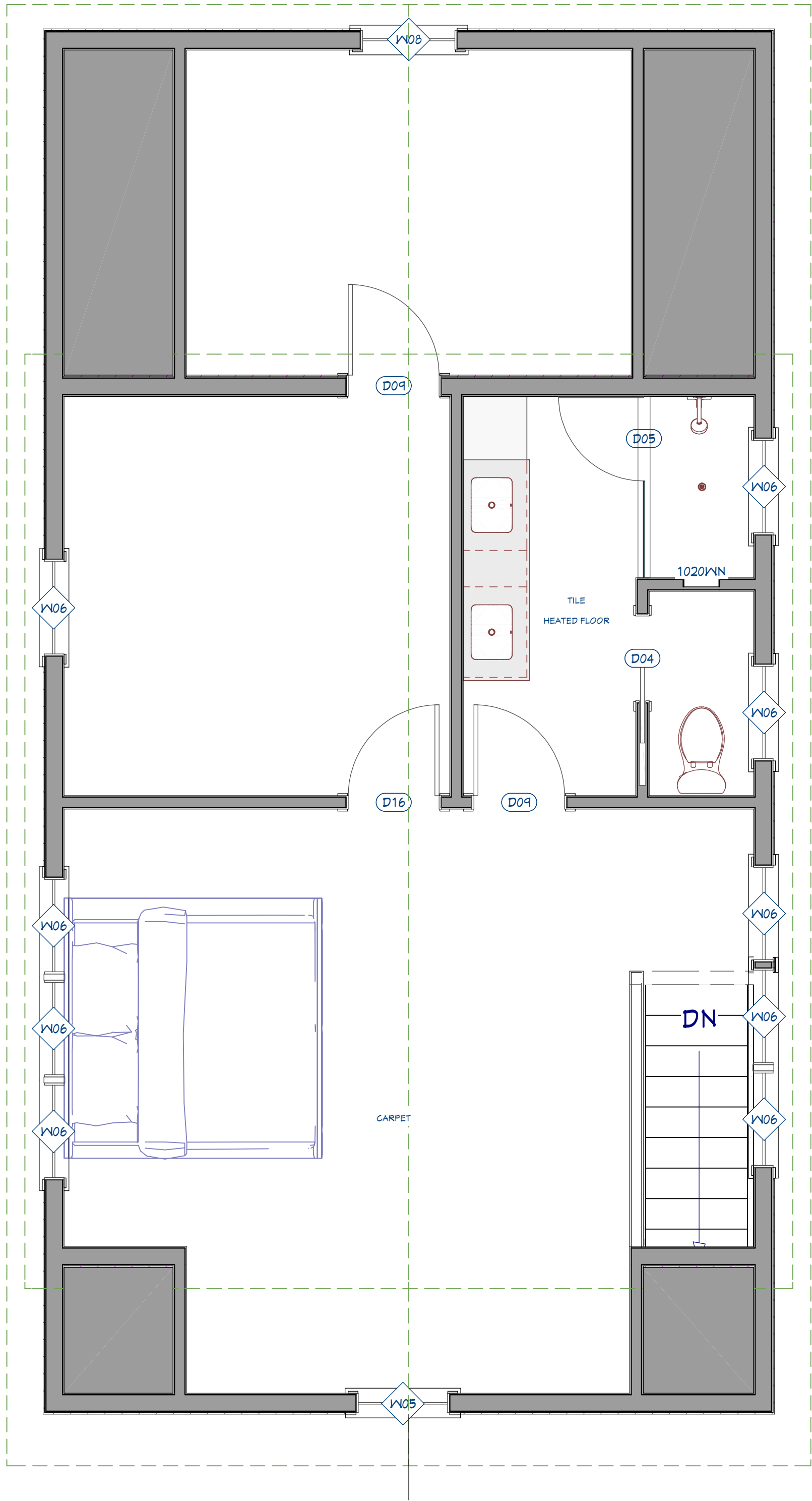
DRAWINGS PROVIDED BY:
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Greenland, NH 03840

DATE:
9/30/2025

SCALE:

SHEET:

A-3



THIRD FLOOR PLAN - PROPOSED

SCALE: 1/2" = 1'-0"

--

REVISION TABLE		NUMBER	DATE	REVISED BY	DESCRIPTION

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FLOOR PLANS

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Greenland, NH 03840

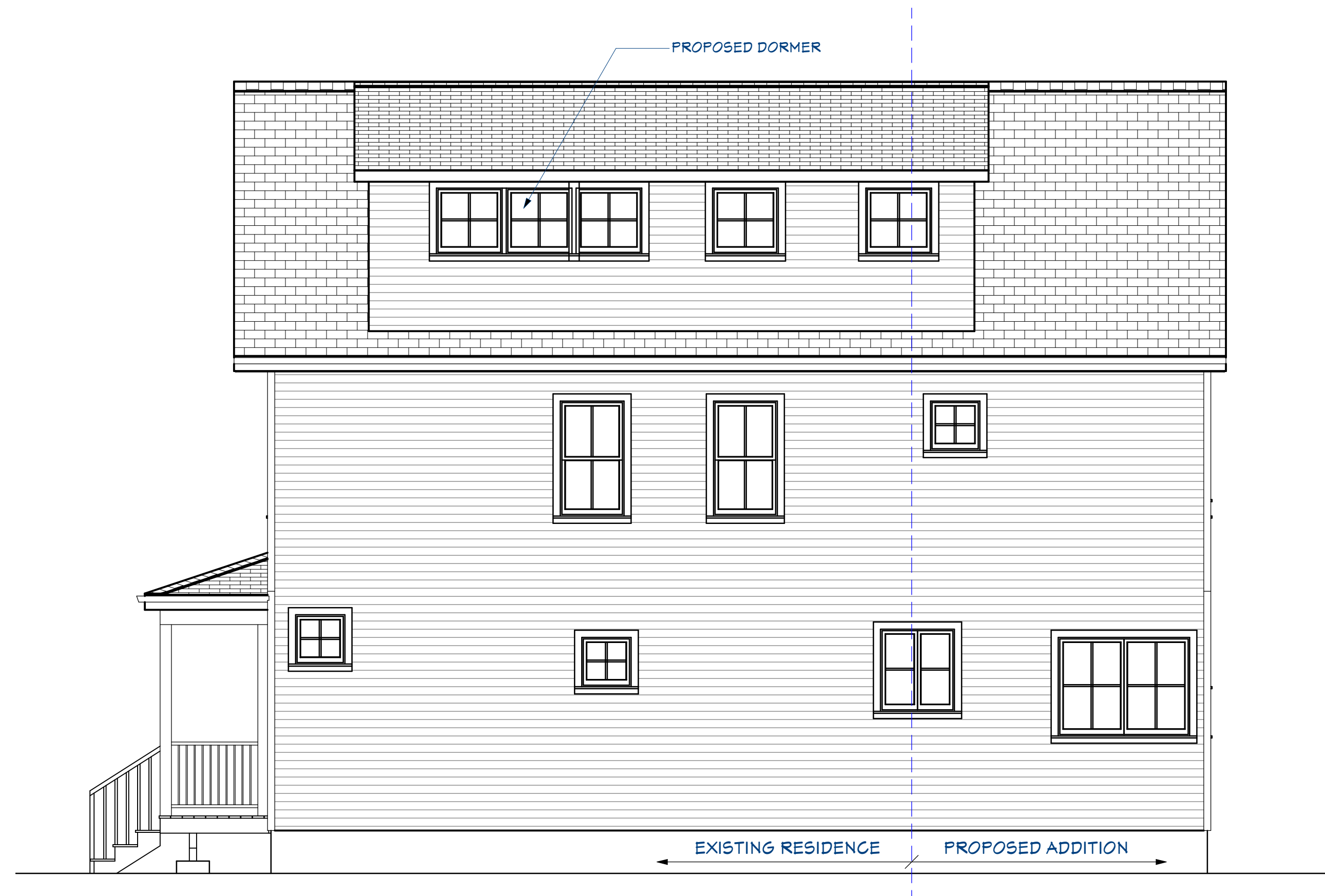
DATE:

9/30/2025

SCALE:

SHEET:

A-4



RIGHT SIDE ELEVATION - PROPOSED

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



REAR ELEVATION - PROPOSED

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



LEFT SIDE ELEVATION - PROPOSED

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



FRONT ELEVATION - PROPOSED

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

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Portsmouth, NH 03801

EXTERIOR ELEVATIONS

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Greenland, NH 03840

DATE:
9/30/2025

SCALE:

SHEET:

A-5