

**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 27, 2026**

**AGENDA**

**I. OLD BUSINESS**

- A. 58 Humphrey's Court** – Request for rehearing (Admin Appeal Abutters)
- B. 58 Humphrey's Court** – Request for rehearing (Admin Appeal Owners)
- C. 58 Humphrey's Court** – Request for rehearing (Variances)

**II. NEW BUSINESS**

- A. 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)
- B. 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)

- C. 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)
- D. 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)
- E. 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)

## II. 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\\_4pUa-RKSQIa5RDrhTl1qUQ](https://us06web.zoom.us/webinar/register/WN_4pUa-RKSQIa5RDrhTl1qUQ)

## I. NEW BUSINESS

B. The request of **Rober M Snover Revocable Trust (Owners of 58 Humphrey's Ct)** to appeal the decision by the BOA to grant the request of **Abutting appellants (Owners of 54, 44, 43, 53, 63, and 75 Humphrey's Ct)** 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 Humphrey's Court**. Said property is located on Assessor Map 101 Lot 47 and lies within the General Residence B (GRB) and Historic Districts. (LU-25-165)

### Planning Department Comments

At the December 16, 2025 Board of Adjustment meeting the Board considered 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 Humphrey's Court**.

The Board voted to **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 at 58 Humphrey's Court. Further, the Zoning Board of Adjustment made no determination on the classification of side lot lines for the proposed subdivision.

A request for rehearing was filed within 30 days of the Board's decision. The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

The meeting materials can be referenced in December 16, 2025 meeting packet found at the following link: <https://www.portsmouthnh.gov/planportsmouth/events/zoning-board-adjustment-46>

**BY: VIEWPOINT & HAND DELIVERY**

January 15, 2026

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

**RE: RSA 677:2 Motions for Rehearing**

**Case: LU-25-165**

**Property: 58 Humphry's Court, Tax Map 101, Lot 47**

**Owners: Robert M. Snover, Darcy Davidson, Trustees of the Robert M. Snover  
Revocable Trust**

Dear Stefanie,

Enclosed, please find two separate RSA 677:2 Motions for Rehearing pertaining to the above referenced property and land use application. The first is an appeal of the ZBA's decision to deny the Applicant's frontage variance. The second relates to the ZBA's decision to approve the Appeal of an Administrative decision filed by the abutters' attorney pertaining to the rear lot line of the subject property.

Copies of both Motions for Rehearing are being delivered to the Planning Department today. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,



Derek R. Durbin, Esq.

**CITY OF PORTSMOUTH  
ZONING BOARD OF ADJUSTMENT**

**RSA 677:2 MOTION FOR REHARING**

Robert M. Snover, Darcy Davidson  
Trustees of the Robert M. Snover Revocable Trust  
(Owners/Appellants)

**58 Humphry's Court,  
Portsmouth, NH 03801  
Tax Map 101, Lot 47**

**LU-25-165**

**NOW COME**, Robert M. Snover and Darcy Davidson (individually and collectively the “Applicant”) by and through their attorneys, Durbin Law Offices, PLLC, pursuant to RSA 677:2, to request a rehearing of the Portsmouth Zoning Board of Adjustment’s (“ZBA”) December 16, 2026 decision, granting the 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 Humphrey’s Court (the “Property”), and in support thereof state as follows:

**GROUNDS FOR REHEARING**

Contrary to the written Notice of Decision issued by the City, the Board did not agree with the Appellants’ interpretation of what constitutes the rear lot line(s). It merely determined that it did not agree with the Planning Director’s interpretation of what constitutes the rear lot line(s) of the Property. The Notice of Decision should be clarified to reflect the true nature of the Board’s decision, or the Board should grant the request for rehearing and reconsider the Appeal.

Regardless of the above, as set forth below, the Applicant avers the Board erred in not upholding the Planning Director’s interpretation of “lot line, rear” and accordingly requests a rehearing of the Appeal.

## **REHEARING LEGAL STANDARD**

Within thirty days after any...decision of the Zoning Board of Adjustment...any party to the action or proceedings,...may apply for rehearing in respect to any matter determined in the action...specifying in the motion for rehearing the grounds therefore; and the Board of Adjustment...may grant such rehearing if in its opinion good reason therefore is stated in the motion.

RSA 677:2 (emphasis added).

A motion for rehearing...shall set forth fully every ground upon which it is claimed that the decision or order is complained of is unlawful or unreasonable. RSA 677:3.I.

The purpose of the statutory scheme is to allow the ZBA to have the first opportunity to pass upon any alleged errors in its decision so that the Court may have the benefit of the Board's judgment in hearing the appeal. Town of Bartlett Board of Selectmen v. Town of Bartlett Zoning Board of Adjustment, 164 N.H. 757 (2013). Rehearing is designed to afford local zoning boards of adjustment an opportunity to correct their own mistakes before appeals are filed with the courts. Fisher v. Boscawen, 121 NH 438 (1981).

## **ARGUMENTS IN SUPPORT OF REHEARING**

Section 10.1530 of the Ordinance provides that a rear lot line is “[a] boundary of a lot that is opposite and most distant from the front lot line. If the rear lot line is less than 10 feet in length, or if the lot forms a point at the rear, the rear lot line shall be deemed to be a line 10 feet in length within the lot, parallel to and at the maximum distance from the front lot line.

With respect to the Applicant's Property, the street wraps around two sides of the Property. As such, there is no true rear boundary, only two sides. In cases like this, the Ordinance creates an artificial rear boundary line by drawing a line 10' in length opposite the front property line. In this instance, the southeast corner of the Property is the logical reference point for drawing the artificial 10' long rear lot line. The Board erred in failing to uphold the Planning Director's interpretation of the Ordinance. Accordingly, the Board should approve the foregoing rehearing request pursuant to RSA 677:2.

Respectfully submitted,



Derek R. Durbin, Esq.  
144 Washington Street  
Portsmouth, NH 03801  
[derek@durbanlawoffices.com](mailto:derek@durbanlawoffices.com)

## I. NEW BUSINESS

A. The request of **Abutting appellants (Owners of 54, 44, 43, 53, 63, and 75 Humphrey's Ct)** to appeal the decision by the BOA to uphold the request of **Robert M Snover Revocable Trust (Owners)**, for property located at **58 Humphrey's Court** 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 Humphrey's Court. Said property is located on Assessor Map 101 Lot 47 and lies within the General Residence B (GRB) and Historic Districts. (LU-26-2)

### Planning Department Comments

At the December 16, 2025 Board of Adjustment meeting the Board considered 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 Humphrey's Court. Said property is located on Assessor Map 101 Lot 47 and lies within the General Residence B (GRB) and Historic Districts. (LU-25-168)

The Board voted to **uphold** the appeal of the appellant and overturn the decision of the Code Official

A request for rehearing was filed within 30 days of the Board's decision. The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

The meeting materials can be referenced in December 16, 2025 meeting packet found at the following link: <https://www.portsmouthnh.gov/planportsmouth/events/zoning-board-adjustment-46>

PORPSMOUTH ZONING BOARD OF ADJUSTMENT

Rehearing Request of

Ben & Andrea St. Jean (54 Humphreys Court)  
Braden & Robyn Ferrari (44 Humphreys Court)  
Bob & Laura Gunning (43 Humphreys Court)  
Mike & Zoe Daboul (53 Humphreys Court)  
Tim & Kim Sullivan (63 Humphreys Court)  
Jamie & Amy Baker (75 Humphreys Court)  
(collectively, the “**Appellants**”)

**REQUEST FOR REHEARING PURSUANT TO RSA 677:2**

Appellants respectfully request a rehearing of the ZBA’s December 16, 2025 decision to grant the administrative appeal filed by the Robert M. Snover Revocable Trust (“**Snover**”) regarding the lot size determination of the Snover property located at 58 Humphreys Court. On December 16, 2025, the ZBA concluded that the land area beneath the travelled portion of the corner of Humphreys Court may be included in the calculation of the Snovers’ lot area. We respectfully disagree with that conclusion.

A ZBA should grant a rehearing if the applicant “can demonstrate that the board committed technical error or that there is new evidence that was not available at the time of the first hearing.” See 15 New Hampshire Practice: Land Use Planning and Zoning, §21.18. For the reasons set forth below, the Appellants respectfully submit that good cause exists for granting this rehearing request.

1. The ZBA Incorrectly Relied on the Metes and Bounds Description in the Snovers’ Deed to Determine the Front Lot Line for Zoning Purposes.

The Board concluded that because the Snovers’ deed defines the property by metes and bounds, those metes and bounds constitute the lot lines, and any area within those lines is includable in the calculation of “lot area.” The Appellants respectfully disagree with this conclusion because although the historic property lines as described in a deed may well establish what the owners hold fee title to, they do not establish lot lines for zoning purposes.

Each lot in the GRB District must have a minimum lot area of 5,000 square feet. See Zoning Ordinance §10.521. “Lot area” is defined as: “The total horizontal area included within the property lines.” Id. §10.1530. Although “property lines” are undefined, the equivalent term, “lot line,” is:

**Lot line:** A property line bounding a lot.

Id. This definition cannot be viewed in isolation, however. Within it, there are three subsections that define the front, side and rear lot lines. Relevant to this matter is the definition of front lot line:

**Lot Line, Front:** “A boundary of lot that separates the lot from a public place...”

**Public Place:** “A streetway, park, pedestrian alleyway or community space that provides public access.”

Id. In its deliberations, the ZBA reviewed the definition of “lot line,” and focused on its reference to a “lot.” The Board then reviewed the definition of a “lot”:

**Lot:** A single parcel of land in the same ownership throughout as shown or defined on a recorded instrument or defined by metes and bounds and having its principal frontage on a street or on such other means of access as may be determined in accordance with the provisions of law to be adequate as a condition of the issuance of a building permit for building on such land.

Id. Based on this definition, the Board concluded that the metes and bounds description in the deed establishes the lot lines for zoning purposes. However, this conclusion was misplaced because it ignores the Ordinance’s definition of a “front lot line,” particularly as it is used in reference to the key term at issue, “lot area.” Pursuant to that definition, the front lot line is the boundary that separates the lot from a public place. There seemed to be no dispute at the December 16 hearing that the rounded corner of Humphreys Court is a public place. The Snovers’ own survey indicates as much referring to it as a “travelled way.” See Exhibit A hereto. Accordingly, that rounded corner provides the boundary by which lot area must be calculated.

The distinction between a lot’s legal boundaries (metes and bounds), and the lot lines for zoning purposes, is consistent with the general presumption throughout the State that landowners own fee title to the centerline of the street. See A Hard Road to Travel, New Hampshire Law of Local Highways, Streets and Trails, p. 19 (2022) (citing Makepeace v. Worden, 1 N.H. 16 (1816)):

The presumption against public ownership under roads is so strong that even when a landowner’s deed has a metes-and-bounds description that does not include the highway (or that recites the nearest highway boundary line as the lot’s boundary line), it is still held to convey title to the center of the highway.

Id. (citing Copp v. Neal, 7 N.H. 275 (1834)). In these cases, the legal or deeded property boundary may be the centerline of the road; however, that centerline is never used for zoning purposes, such as to establish front yard setbacks, lot area, or density calculations.

2. The ZBA Incorrectly Concluded That the Rounded Corner of Humphreys Court is Excludable From Lot Area Only if it Constitutes a “Street”.

The ZBA concluded that the rounded corner of Humphreys Court is part of the lot area because it does not meet the definition of a “street” under the Zoning Ordinance. Respectfully, the Appellants disagree with that conclusion.

As referenced above, Section 10.1530 of the Zoning Ordinance provides the following definitions:

**Lot Line, Front:** “A boundary of lot that separates the lot from a public place...”

**Public Place:** “A streetway, park, pedestrian alleyway or community space that provides public access.”

Accordingly, the rounded corner need not be a “street” to be excluded from the lot area. It must only be a “public place.” The definition of a “public place” in the Ordinance includes “streetways,” and other community spaces that provide public access. The term “streetway” is undefined in the Ordinance, and under traditional rules of statutory construction (which apply to interpretation of zoning ordinances), that term is presumed to have a different meaning than the term “street.” See Appeal of New Hampshire Dep’t of Env’t Servs., 176 N.H. 379, 391–92 (2023) (“When the legislature uses two different words, it generally means two different things”). Accordingly, the corner of Humphreys Court need not meet the Ordinance’s definition of a “street” to establish the location of the front lot line. All of Humphreys Court, including the corner at issue, provides public access. On the ground, the corner at issue is indistinguishable from the remainder of the street and has contained City infrastructure and been paved, maintained and plowed since at least 1960 and likely well before. Therefore, even if the rounded corner is not a “street,” it nonetheless constitutes a “streetway” and/or “public place,” undeniably providing “public access,” and thereby defines the front lot line of the property for zoning purposes.

3. The ZBA Incorrectly Concluded that the Rounded Corner of Humphreys Court is not a Street.

Even if the ZBA were correct that only accepted City streets are excludable from lot area calculations, it erred in concluding that the rounded corner of Humphreys Court is not a public street. The Zoning Ordinance defines a “street” as follows:

**Street:** A thoroughfare or roadway which is either (a) formally accepted by the City, or (b) shown on a subdivision plan approved by the Planning Board and constructed to City subdivision specifications or for which surety has been posted to guarantee construction of all improvements required by the Planning Board.

See Zoning Ordinance §10.1530. The ZBA determined that the rounded corner of Humphreys Court is not a “street” because it has not been formally accepted by the City. Respectfully, this determination was in error.

[A]cceptance [of a public street] may be by express acts that include adopting an offer of dedication by ordinance or formal resolution, or implied by acts such as opening up or improving a street, repairing it, removing snow from it, or assigning police patrols to it.

Hersh v. Plonski, 156 N.H. 511, 516 (2007). Here, the Appellants provided a 1937 Plan (attached hereto as Exhibit B) depicting the rounded corner of the street, with a notation on it that the area for the curve was to be dedicated or conveyed to the City. The plan is signed by a civil engineer who is believed to have been a City employee at that time. The City has exercised exclusive control over the subject area and paved, plowed and maintained the entirety of Humphreys Court, including the corner at issue, for many decades. Mr. Whitehouse's living children each confirmed that the paved curve existed when they started construction on their house in 1960. Such conduct evidences acceptance of the public street under Hersh v. Plonski.

Furthermore, it is very common for public streets to exist even without a formal record of acceptance:

The most important streets in many municipalities may have no written records showing how they became public highways. Nobody doubts that they are highways, but nobody knows of any actual layout, or acceptance, or even in which decade or century to start searching for records. Although the status of each highway is dependent on the facts and circumstances in each case, many of these roads probably qualify as public highways under the legal theory of prescription—actual use for travel for at least 20 years prior to 1968.

See A Hard Road to Travel, New Hampshire Law of Local Highways, Streets and Trails, p. 19 (2022) (citing RSA 229:1). This is common in Portsmouth as well, including such locations as Congress Street and New Castle Avenue. Here, even if the longstanding public use and City maintenance of the corner were insufficient to constitute formal acceptance, the corner still constitutes a public street by virtue of prescription. Therefore, the ZBA erred by concluding the corner is not a public street.

#### 4. The ZBA's Decision Directly Conflicts with New Hampshire Supreme Court Precedent and Carries Broad, Untenable Consequences.

Including the land area beneath the travelled portion of Humphreys Court in the lot area calculation conflicts with general zoning principles and New Hampshire common law. It has broad, untenable consequences for how other properties throughout the City will be treated for future development.

New Hampshire common law is clear that land underlying roads may not be included in lot area calculations. See Mudge v. Precinct of Haverhill Corner, 133 N.H. 881, 887 (1991). In Mudge, a landowner sought to expand a mobile housing park. Id. at 883. One issue was whether the proposed expansion complied with the zoning density restrictions (number of units per acre). Id. The landowner argued that the lot area should be calculated to include the rights of way within the park. Id. However, the Court disagreed:

With respect to Condodemetraky's claim concerning inclusion of the surface area of the rights-of-way in determining density, we adopt what we find to be the better-

reasoned position. “In computing the size of lots, land contained in streets, public or private, which give access to the lot is excluded.””

Mudge, 133 N.H. at 887 (quoting 3 Rathkopf's The Law of Zoning and Planning § 34.04 (4th ed. 1990)). In reaching this conclusion, the Court quoted one of the most respected national treatises on land use law, reflecting that this is a general legal principle across jurisdictions.

As noted above, many streets throughout the State lack a record of formal acceptance by a municipality. City Planning and Legal staff confirmed at the December 16 hearing that the same is true in Portsmouth, notably Congress Street and New Castle Avenue. If the ZBA’s rationale in this case were applied throughout the City, the consequences would be widespread and unintended. All landowners in the City would be entitled to include the land area up to the centerline of the street in their calculation of lot area where there is no formal record of acceptance of the street. This renders the Zoning Ordinance density (and setback) requirements illusory by including an active public thoroughfare in a private lot area calculation.

While we appreciate the ZBA’s thoughtful consideration at the December 16 hearing of all applications regarding this project, we respectfully believe that it committed technical error by misinterpreting the definition of lot area and including the portion of Humphreys Court in the land area calculation for 58 Humphreys Court. Accordingly, we respectfully request that a rehearing be granted in accordance with RSA 677:2.

Respectfully submitted,

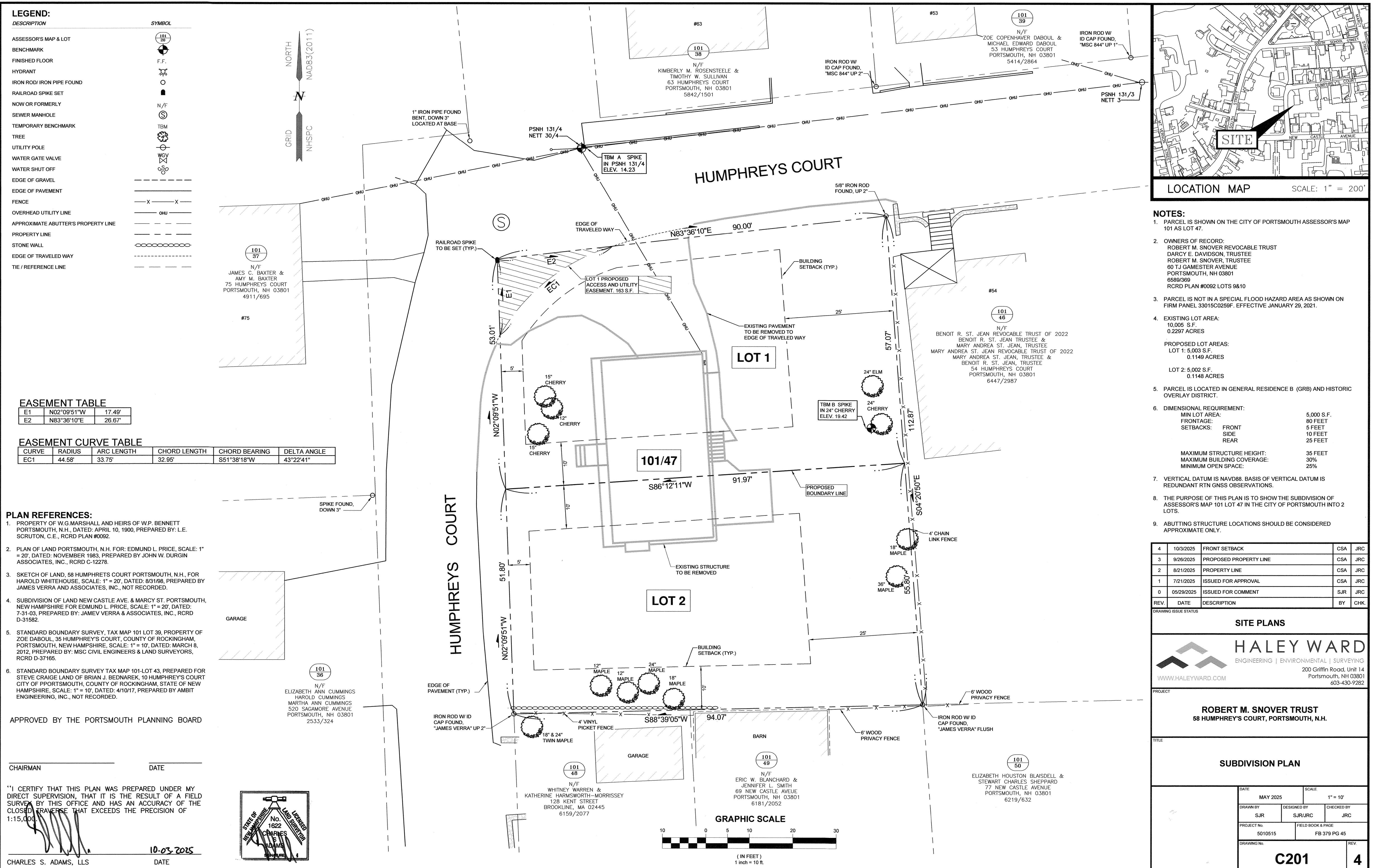
Ben & Andrea St. Jean  
Braden & Robyn Ferrari  
Bob & Laura Gunning  
Mike & Zoe Daboul  
Tim & Kim Sullivan  
Jamie & Amy Baker

By their Attorneys,

ORR & RENO, P.A.

Date: January 14, 2026

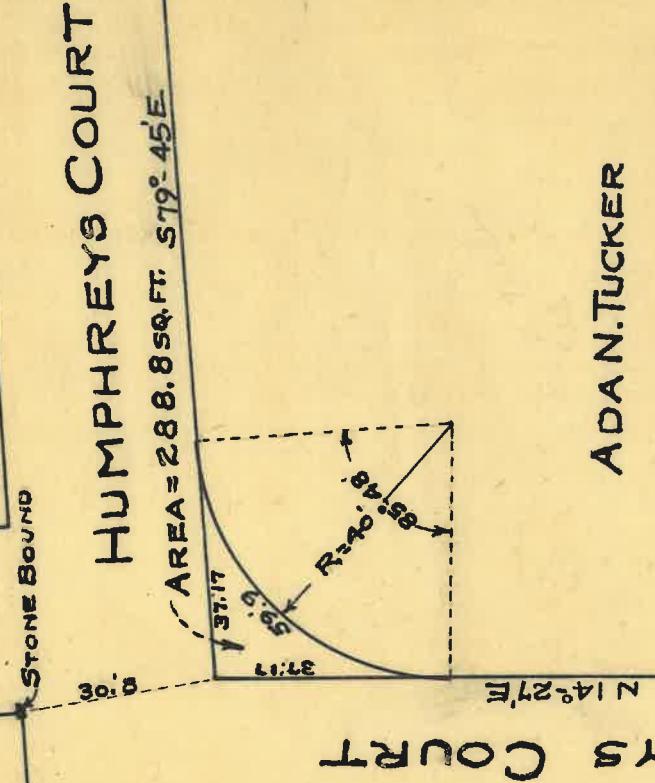
By: /s/ John L. Arnold  
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CITY - HAVEN SCHOOL

ADA N. TUCKER

JAMES P. LEE



MARY M. WOODS

Wm. & Ruth J. Atwell

LAND IN PORTSMOUTH, N.H.  
ADA N. TUCKER  
TO CITY OF PORTSMOUTH, N.H.  
SCALE: - 1 INCH = 30 FEET  
JULY 1937  
John W. Drue  
CIVIL ENGINEER

FILE NO. 1987-0

## I. NEW BUSINESS

C. The request of **Rober M Snover Revocable Trust (Owners of 58 Humphrey's Ct)** to appeal the decision by the BOA to deny the request of **Robert M Snover Revocable Trust (Owners)**, for property located at **58 Humphrey's Court** 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)

### Planning Department Comments

At the December 16, 2025 Board of Adjustment meeting the Board considered the request of **Robert M Snover Revocable Trust (Owners)**, for property located at **58 Humphrey's Court** 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.

The Board voted to **deny** the request as presented and advertised, because the applicant failed to meet the hardship criteria as there is nothing special and unique about the property that differentiates it from the other properties in the immediate area.

A request for rehearing was filed within 30 days of the Board's decision. The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

The meeting materials can be referenced in December 16, 2025 meeting packet found at the following link: <https://www.portsmouthnh.gov/planportsmouth/events/zoning-board-adjustment-46>

**BY: VIEWPOINT & HAND DELIVERY**

January 15, 2026

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

**RE: RSA 677:2 Motions for Rehearing**

**Case: LU-25-168**

**Property: 58 Humphry's Court, Tax Map 101, Lot 47**

**Owners: Robert M. Snover, Darcy Davidson, Trustees of the Robert M. Snover  
Revocable Trust**

Dear Stefanie,

Enclosed, please find two separate RSA 677:2 Motions for Rehearing pertaining to the above referenced property and land use application. The first is an appeal of the ZBA's decision to deny the Applicant's frontage variance. The second relates to the ZBA's decision to approve the Appeal of an Administrative decision filed by the abutters' attorney pertaining to the rear lot line of the subject property.

Copies of both Motions for Rehearing are being delivered to the Planning Department today. Should you have any questions or concerns regarding the enclosed application materials, do not hesitate to contact me at your convenience.

Sincerely,



Derek R. Durbin, Esq.

**CITY OF PORTSMOUTH  
ZONING BOARD OF ADJUSTMENT**

Robert M. Snover, Darcy Davidson  
Trustees of the Robert M. Snover Revocable Trust  
**(Owners/Appellants)**

**58 Humphry's Court,  
Portsmouth, NH 03801  
Tax Map 101, Lot 47**

**LU-25-168**

**RSA 677:2 MOTION FOR REHARING**

**NOW COME**, Robert M. Snover and Darcy Davidson (individually and collectively the “Applicant”) by and through their attorneys, Durbin Law Offices, PLLC, pursuant to RSA 677:2, to request a rehearing of the Portsmouth Zoning Board of Adjustment’s (“ZBA”) December 16, 2026 decision, denying their variance application for property situated at 58 Humphry’s Court, Portsmouth, NH 03801 (Tax Map 101, Lot 47) (the “Property” or the “Applicant’s Property”), and in support thereof state as follows:

**BOARD’S DECISION**

The Zoning Board of Adjustment (the “Board”) voted to deny the following variance request by the Applicant under Section 10.521 the Portsmouth Zoning Ordinance (the “Ordinance”): “To allow 51.8’ (+/-) of continuous street frontage where 80 is required (Proposed Lot 2).”

The Board based its denial of the variance requests on the “unnecessary hardship” criteria set forth in RSA 674:33, I(a)(2)(E), finding that “[t]here is 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.”

**GROUNDS FOR REHEARING**

The Applicant avers that the Board erred in its finding that the application did not meet the unnecessary hardship criteria. The Applicant clearly demonstrated that the Property does have special conditions that distinguish it from surrounding properties such that there is no fair and substantial relationship between the purpose of the continuous street frontage requirement set forth in Section 10.521 of the Ordinance and its application to the Property. Accordingly, on the balance of probabilities, the Board’s decision was unreasonable and/or unlawful.

## **REHEARING LEGAL STANDARD**

Within thirty days after any...decision of the Zoning Board of Adjustment...any party to the action or proceedings,...may apply for rehearing in respect to any matter determined in the action...specifying in the motion for rehearing the grounds therefore; and the Board of Adjustment...may grant such rehearing if in its opinion good reason therefore is stated in the motion.

RSA 677:2 (emphasis added).

A motion for rehearing...shall set forth fully every ground upon which it is claimed that the decision or order is complained of is unlawful or unreasonable. RSA 677:3.I.

The purpose of the statutory scheme is to allow the ZBA to have the first opportunity to pass upon any alleged errors in its decision so that the Court may have the benefit of the Board's judgment in hearing the appeal. Town of Bartlett Board of Selectmen v. Town of Bartlett Zoning Board of Adjustment, 164 N.H. 757 (2013). Rehearing is designed to afford local zoning boards of adjustment an opportunity to correct their own mistakes before appeals are filed with the courts. Fisher v. Boscawen, 121 NH 438 (1981).

## **ARGUMENTS IN SUPPORT OF REHEARING**

The Board based its decision on the Property not having conditions that differentiate it from other surrounding properties. This finding was flawed for two fundamental reasons:

1. The Board improperly focused on the lot areas of surrounding properties in finding that the Applicant's Property did not have special conditions to differentiate it from surrounding properties and failed to discuss or cite any examples of surrounding properties that have a similar frontage situation.
2. In finding that the Property did not have special conditions to distinguish it from surrounding properties, the Board relied upon a tax map exhibit provided to its by the abutters' attorney that included examples of properties in a different zoning district with more stringent dimensional requirements.

## A. Street Frontage

The Applicant submitted a tax map exhibit with its variance application as evidence of how uniquely situated the Property is in comparison with surrounding properties Exhibit 1. The assessing map demonstrates that NO surrounding properties are bound by a street on two sides or have as much continuous street frontage as the Applicant's Property regardless of what zoning district they lie within.<sup>1</sup> This when coupled with the fact that the Property has over twice the amount of lot area (10,005 sq. ft) to subdivide by right, distinguish the Property from surrounding properties in the area. From a zoning perspective, whether this is a corner lot or a lot with continuous frontage on two sides, the Property can be subdivided by right.

What makes the Property so unique, and unusually burdened, is that Section VI.2.A (“Lot Arrangement”) of the Portsmouth Subdivision Regulations discourages (but does not prohibit) lot configurations that are not square or rectangular, which is the reason the Applicant seeks a variance for one of the proposed lots to allow for less than the required continuous street frontage. Section VI.2.A of the Subdivision Regulations states: “In all quadrangular lots, and *so far as practicable* all other lots, the side lines shall be at right angles to straight street lines or radial to curved street lines. An arrangement placing lots at right angles to one another shall be avoided *where practicable*.” (*emphasis added*).

The 52' of continuous street frontage associated with proposed Lot 2 is still consistent with other properties in the neighborhood, as demonstrated by the Applicant's variance application materials. The primary purpose behind the frontage requirement is to encourage a density that is consistent with the goal(s) of GRB Zoning, which is “[t]o 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. P.Z.O. Sec. 10.410. The Applicant's proposed lot configurations meet the goals of the Ordinance while maintaining the existing character and streetscape of the neighborhood.

The Applicant will have to create two triangular-shaped lots without the frontage variance. The Applicant believes it can create two triangularly shaped lots by right, but the City Technical Advisory Committee (“TAC”) and Planning Department have both expressed a desire for the Applicant to have square or rectangular lot configurations. By denying the frontage variance for one of the two lots, the Board has pushed the Applicant back into a two (2) lot subdivision with triangularly shaped lots. These are the special conditions that make it so that there is no fair and substantial relationship between the general purposes of the frontage restriction and its strict application to the Property.

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<sup>1</sup> It is the Applicant's position, as set forth further below, that the “area” of comparison for determining whether a property has special conditions is limited to a neighborhood or area within the same zoning district.

In finding that the Property was not distinguishable from surrounding properties the Board relied primarily upon a tax map exhibit submitted to the Board by Attorney John Arnold, Esq., showing a rather expansive area of the South End of Portsmouth and drew comparisons to properties in a different zoning district. **Exhibit 2**. The exhibit did not show any properties with a similar frontage situation. If anything, the exhibit submitted by Attorney Arnold demonstrates how unique the Property is in its environment.

#### **B. Immediate Area – Unnecessary Hardship**

In relying on the tax map (**Exhibit 2**) submitted by Attorney Arnold, the Board applied an overly expansive interpretation of the term “immediate area” in the context of the unnecessary hardship criteria. The exhibit included and highlighted properties located in a different zoning district with more stringent zoning requirements. Specifically, the properties south of New Castle Avenue that were highlighted and used as comparable examples by the abutters’ attorney and by the Board alike are situated within the SRB Zoning District, which has vastly different zoning requirements than the GRB Zoning District. **Exhibit 3**. The SRB Zoning District requires 100’ of continuous street frontage and 15,000 square feet of land area to subdivide by right under the Ordinance. These properties are situated in a different zoning district because the character of the area in which they are situated is different. The Board’s interpretation of what constitutes the “immediate area” surrounding the Applicant’s Property in the context of the unnecessary hardship criteria was flawed and constitutes grounds for a rehearing.

### **CONCLUSION**

Between the Applicant’s variance application and two related administrative appeals, the Board spent approximately four (4) hours discussing and deliberating on how to apply the Ordinance requirements to the Property due to how unique it is. For the reasons outlined above, the Board’s decision to deny the Applicant’s variance application constitutes reversible error. The Applicant’s request for rehearing should be approved.

Respectfully submitted,



Derek R. Durbin, Esq.  
144 Washington Street  
Portsmouth, NH 03801  
derek@durbinlawoffices.com

## **EXHIBITS**

- Exhibit 1: Tax Map (Submitted with Applicant's Variance Application)**
- Exhibit 2: Tax Map (Submitted by Abutters' Attorney)**
- Exhibit 3: Tax Map with Zoning Overlay**



#### Property Information

Property ID 0101-0047-0000  
 Location 58 HUMPHREYS CT  
 Owner SNOVER ROBERT M REV TR



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

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

Geometry updated 09/26/2024

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

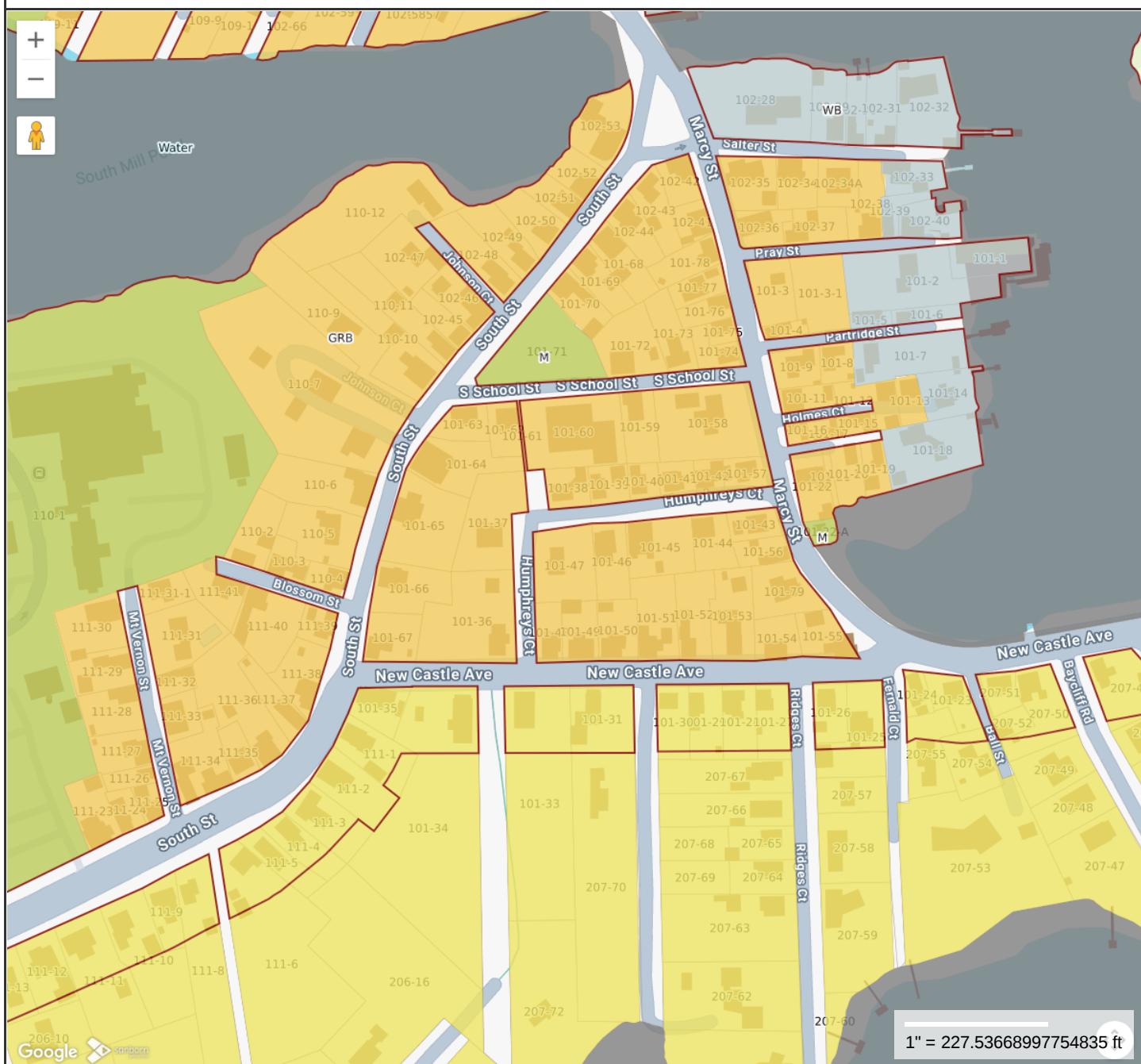


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this resource.

## Map Theme Legends

### Zoning

#### Residential Districts

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

#### Mixed Residential Districts

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

#### Business Districts

	GB	General Business
	B	Business
	WB	Waterfront Business

#### Industrial Districts

	OR	Office Research
	I	Industrial
	WI	Waterfront Industrial

#### Airport Districts

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

#### Conservation Districts

	M	Municipal
	NRP	Natural Resource Protection

#### Character Districts

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

#### Civic District

	Civic District
--	----------------

#### Municipal District

	Municipal District
--	--------------------

#### Overlay Districts

	OLOD	Osprey Landing Overlay District
	Downtown	Overlay District
	Historic	District

City of Portsmouth

## II. NEW BUSINESS

A. 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)

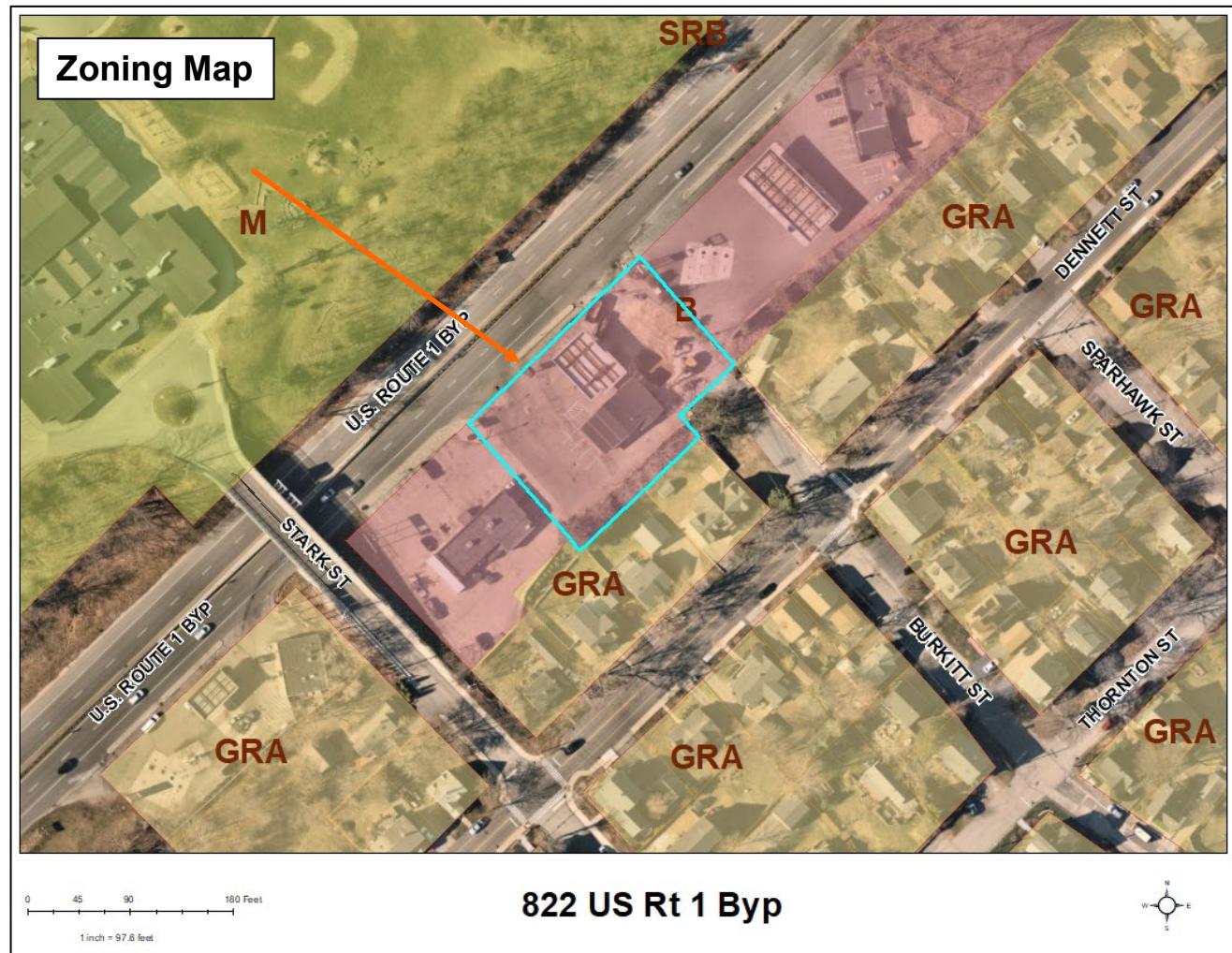
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	Install new freestanding sign	Commercial Sign District 4
<u>Freestanding Sign Setback (ft.):</u>	N/A	2.5	20 min.
<u>Freestanding Sign area (sq.ft.):</u>	0	86	100 max.
<u>Estimated Age of Structure:</u>	2024	Variance request(s) shown in red.	

### Other Permits/Approvals Required

- Sign Permit

## Neighborhood Context



## Previous Board of Adjustment Actions

**April 30, 1968** – The Board **granted** the request to construct a motor vehicle service station on vacant land.

**September 27, 1994** – The Board **granted** a Variance from Article II, Section 10-206(17) to allow the construction of a 36' x 48' gas island canopy with a 10' front yard in a district where a 50' front yard is required with the following condition:

1)The hours of operation be from 6:00 a.m. to 11:00 p.m. seven days a week and on holiday weekends from 6:00 a.m. to 12:00 a.m. (midnight).

**January 23, 2024** – The Board **granted** the request to demolishing the existing structure and constructing a new commercial building which requires the following: 1) Variance from Section 10.1113.20 to allow parking spaces between the principal building and a street; 2) Variance from Section 10.1113.41 for parking located 0 feet from the lot line where 20 feet is required.

## Planning Department Comments

The applicant is requesting relief to install an 86 sq.ft. freestanding sign on an existing sign pole that is 2.5 feet from the property line.

## Variance Review Criteria

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

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

To Whom It May Concern,

Please find this narrative in reference to Land Use Application LU-25-172.

I am requesting a variance for set back of a free-standing sign.

If granted this variance will not be contrary to public interest. The location of the existing sign pole where we intend to put out proposed sign has been in the same location for many years as a free-standing sign for the business that previously occupied this lot. It was never an issue to public interest then, nor should it be now.

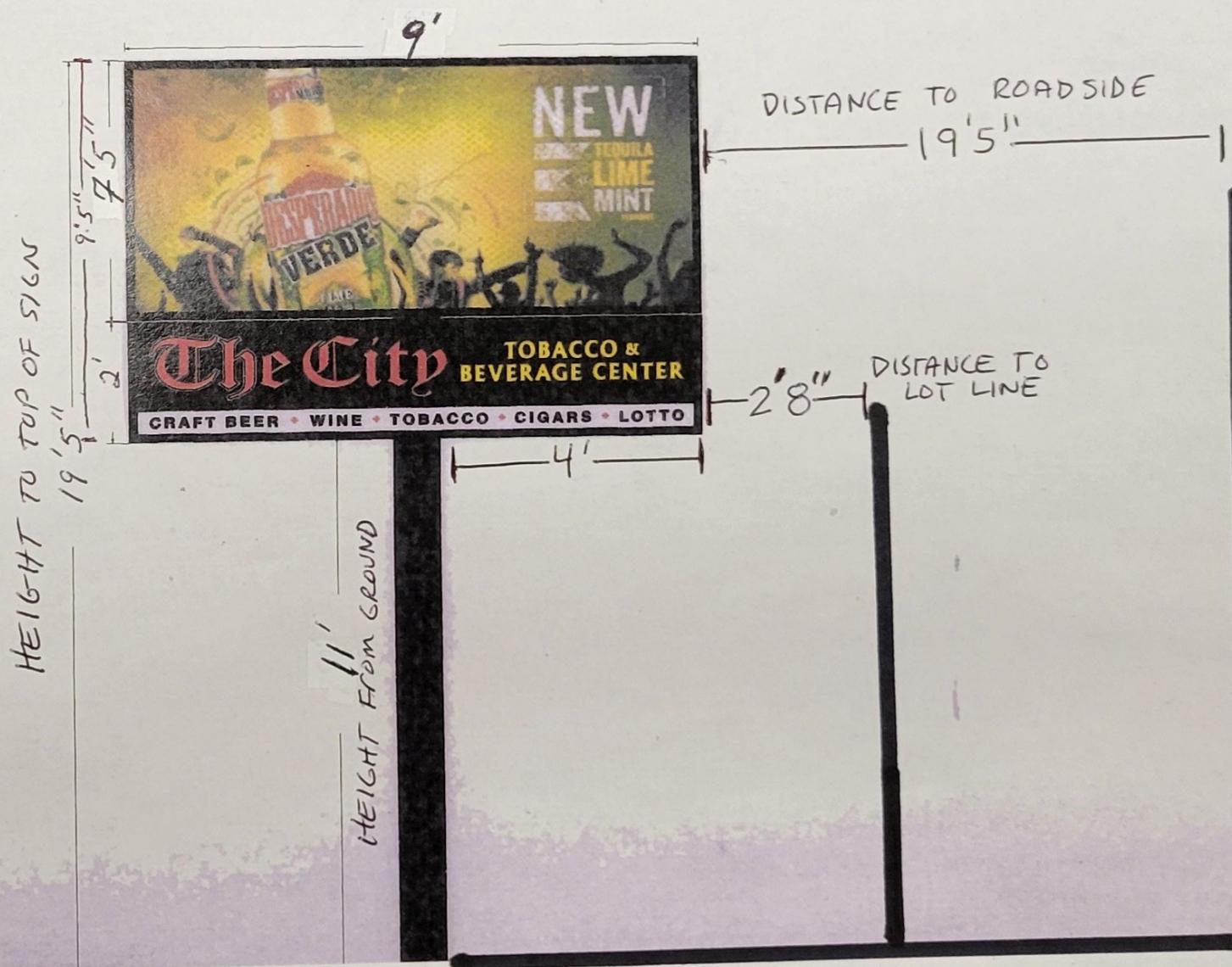
The spirit of the Ordinance will be observed. In this instance the spirit of the Ordinance is to be observed in the manner that we are not erecting a new sign that is not in accordance with the Ordinance. We are proposing the installation of a sign on a pole that is already in place.

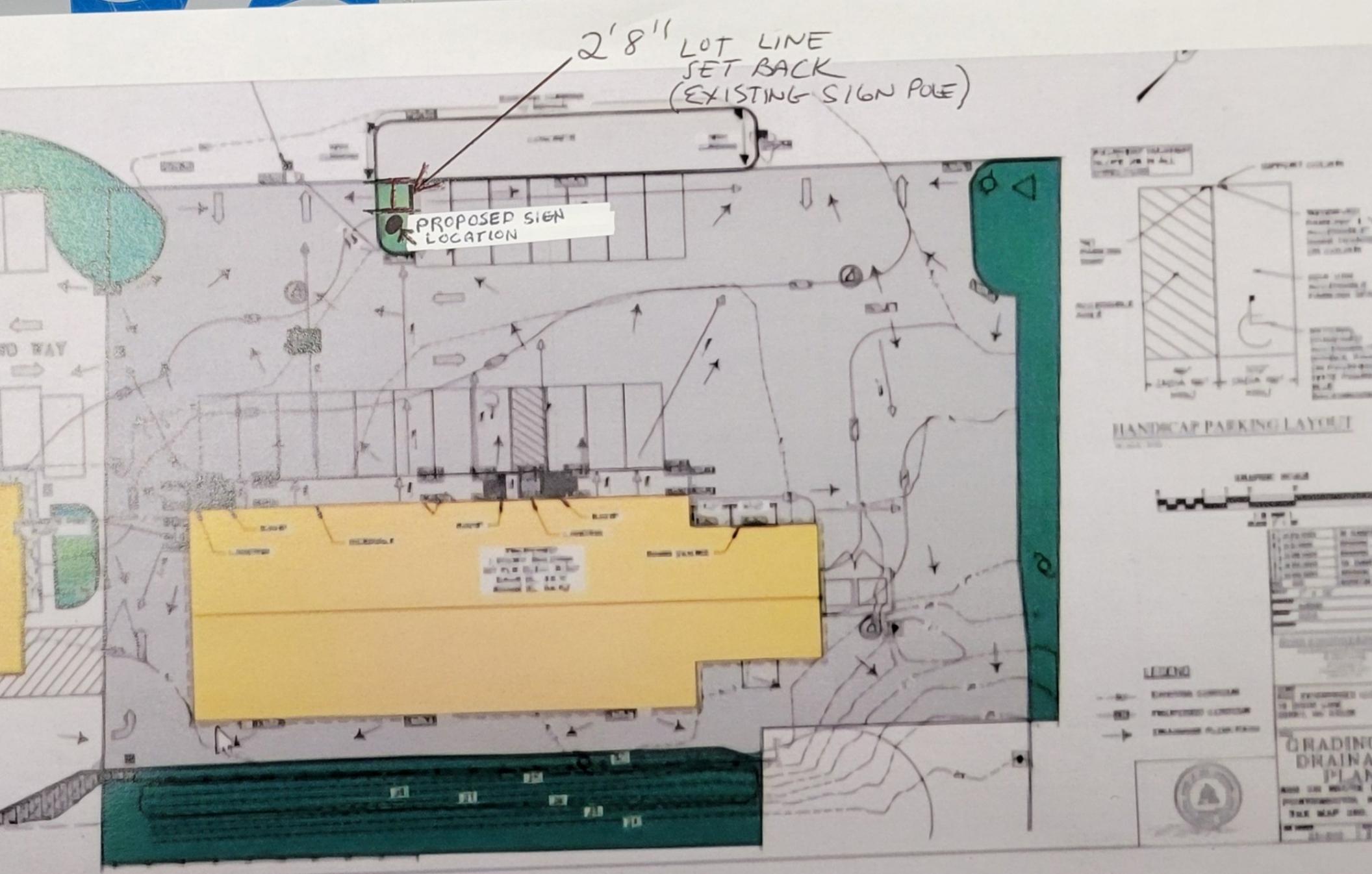
Substantial justice will be done. If this variance is approved, we will be able to move forward with our site plan as expected, and promote our business using this sign as a marketing tool. As do many other businesses on the Bypass. The majority of these free-standing signs are all in line, not meeting the 20-foot setback required in this Ordinance. Including the signs on both adjacent lots.

The values of the surrounding properties will not be diminished by the variance being approved. This sign in its proposed location will have zero effect on any property values.

Literal enforcement of the Ordinance would result in an unnecessary hardship. Should the variance not be approved, we would not be able to utilize a free-standing road side pylon sign as the previous business had done, as well as numerous other businesses do on the Bypass. The ordinance set back of 20 feet would put the pylon in the middle of our parking lot entrance.

822 US ROUTE 1 Bypass





822 US ROUTE BYPASS

## II. NEW BUSINESS

B. 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)

### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant Commercial	*Add 10 new parking spaces	Mixed Use
<u>Parking</u>	39	49	45 (1/250 s.f.) min.
<u>Estimated Age of Structure:</u>	2008	Variance request(s) shown in red.	

\*Relief required to install parking between primary structure and a street (Section 10.5B83.10 and 10.1113.20)

\*Relief required to install parking within 100 feet of a residential zone (Section 10.1113.31)

### Other Permits/Approvals Required

- Building Permit
- Site Plan Review (TAC and Planning Board)

## Neighborhood Context



## Previous Board of Adjustment Actions

**February 22, 1983** – The Board **granted** a Variance to allow the relocation of a greenhouse complex in a General Business district with a front yard of 23' where 70' is required; and, a Special Exception to allow a 14' x 100' greenhouse to be established in a Residential district with the following condition:

- 1) It must go to Site Review

**May 24, 1983** – The Board **granted** a Special Exception to allow an existing commercial greenhouse to be relocated and also a temporary spring greenhouse to be located in a Single Residence II District and a Variance to allow a loading berth to be located closer than 100' to a residential district with the following condition:

- 1) It must go to Site Review

**August 2, 1983** – The Board **granted** variances to allow a 4' x 8' two sided temporary freestanding sign to be placed on the front property line, to permit the placing of a temporary sign for a period of more than 60 days and to allow a temporary sign to remain following the placement of a permanent sign for a time period of more than 60 days with the following conditions:

- 1) The temporary sign be placed for a period of ninety (90) days.

**October 25, 1983** – The Board **granted** the request for a 90 day extension of the temporary sign variance.

**January 24, 1984** – The Board **granted** the request for a 90 day extension of the temporary sign Variance.

**May 8, 1984** – The Board **granted** the request for a 90 day extension of the temporary sign variance. Please note that this extension commences from April 23, 1984.

**July 24, 1984** – The Board **granted** the request dated July 13, 1984, for a 90 day extension of the temporary sign Variance.

**October 23, 1984** – The Board **denied** the request dated October 11, 1984, for a 90 day extension of the temporary sign Variance.

**November 27, 1984** – The Board **granted** a Variance from Article IX, Section 10-906 to allow the following: a) to erect a 48 s.f. free-standing sign where an 8 s.f. free-standing sign is the maximum allowed; b) said sign to be 12' in height where the maximum height allowed is 5'; c) said sign to be 5' from the property line where 15' is the minimum allowed; and d) said sign to be illuminated where illuminated signs are not allowed.

**March 28, 2006** – The Board **denied** the following: 1) a Variance from Article III, Section 10-304(A) to allow a 58'± front yard where 70' is the minimum required, 2) a Variance from Article XII, Section 10-1201(A)(3)(e)(2) to allow up to a 0' front yard for parking spaces with 16 being within the required 40' buffer, 3) a Variance from Article XII, Section 10-201(A)(3)(e)(1) to allow parking spaces and accessways within 100' of a Residential district, 4) a Variance from Article II, Section 10-207 to allow a retail drugstore in a Mixed Residential Business district where such use is not allowed, 5) a Variance from Article XII, Section 10-1201(A)(3)(c)(1) to allow non-residential parking spaces and accessways within 50' from Mixed Residential and Residential lot lines

where 50' is the minimum required, 6) a Variance from Article III, Section 10-304(C)(2) to allow a building within 100' of property zoned residentially where buildings are required to be a minimum of 100' from residentially zoned property, 7) a Variance from Article III, Section 10-304(A) to allow approximately 18±% open space where 20% is the minimum required, 8) a Variance from Article V, Section 10-504(D) to allow a non-residential dumpster in a Mixed Residential Business district where said dumpster are to be located not less than 20' from a Mixed Residential Business district, 9) a Variance from Article XII, Section 10-1203(A)(1) to allow a loading area 100' of a residential district and no screening provided where a 100' setback and screening are required.

The request was denied because of the following:

- 1) The scope of the project is too large in scale;
- 2) A smaller building could be designed that would be totally in the General Business District and not require as much relief from the Ordinance;
- 3) The abutting residential district needs to be protected; and
- 4) No hardship associated with the property has been demonstrated that would preclude all commercial uses other than ones on this scale.

**May 16, 2006** – The Board **denied** a motion for rehearing as correct procedure had been followed in arriving at a decision on the merits and no new information had been provided to warrant a rehearing. The submitted new design could only be considered as a new petition.

**June 27, 2006** – The Board **granted** the request to allow an 11,153± sf irregular shaped building for a pharmacy with prescription drive-thru window: 1) Article III, Section 10-304(A) to allow 192.53±' of street frontage in the general Business district where 200' is the minimum required; 2) Article XII, Section 10-1201(A)(3)(e)(2) to allow a 0' front yard setback where 40' is the minimum required; 3) Article XII, Section 10-1201(A)(3)(e)(1) to allow parking within 100' of property zoned residentially; 4) Article III, Section 10-304(C)(2) to allow a building for a pharmacy within 100' of property zoned residentially; and, 5) Article XII, Section 10-1203(A)(1) to allow a loading area within 100' of property zoned residentially with the following **conditions**:

- 1) That the applicant work with the Planning Department and Planning Board to address height, siding, overall design of the building and hours of operation; and
- 2) That appropriate vegetative screening be provided to shield the business property from the residential abutters on Granite Street.

**June 19, 2007** – The Board **granted** a One-Year Extension of the Variance granted on June 27, 2006. Extension granted through June 26, 2008.

**May 27, 2008** – The Board **denied** a Variance from Article IX, Section 10-908 was requested to allow a 79.81 sf freestanding sign 7'3" from property lines (two) where 20' is the minimum required.

The request was denied because of the following:

- 1) the criteria for granting a variance were not met. There was no hardship in the property demonstrated and a freestanding sign could be placed within the required setbacks.

### Planning Department Comments

The applicant is requesting relief to stripe 10 new parking spaces on existing pavement for a new medical office primary care use that will occupy 7,800 SF of the 11,280 SF building. The location of the proposed parking spaces trigger the need for the variances request, as stated by the applicant. The existing location of the proposed parking spaces is currently a 48.8 foot travel lane.

### 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.

**APPLICATION OF CONVENIENT MD**  
**1303 Woodbury Avenue, Portsmouth, Tax Map 207, Lot 1**

**APPLICANT'S NARRATIVE**

**I. THE PROPERTY:**

The applicant, Convenient MD, is under contract to lease a portion of the building housing the former Rite Aid store at the corner of Woodbury Avenue and Market Street, for the purpose of establishing a primary care facility at that location.<sup>1</sup> The proposed medical office facility would encompass 7,800 square feet of the existing building, which was constructed in 2008, according to city tax records. No significant exterior modifications to the existing structure are proposed, beyond appropriate signage consistent with Convenient MD's branding, painting and additional windows. The existing impervious parking lot surface will remain as is, however, the applicant is proposing to add ten parking spaces on the south side of the building to accommodate its needs. Other than striping and directional arrows, the parking lot will remain as is.

The property is in the G1 zone, however, it is essentially on an island separated from the remainder of the zone by several lanes of traffic of the Market Street connector and the Woodbury Avenue/Market Street intersection. The lot is bounded to the south by Granite Street, and the residential lots across Granite Street are in the SRA zone. The property has existed since in its current, fully developed state, since approximately 2008, when site approval for the Rite Aid was granted. Commercial uses on this site appear to go back to at least 1979, when the former Woodbury Gardens greenhouse opened on the site.

The proposed additional parking spaces would lie on the southern side of the existing building, between the building and Granite Street. This requires relief from Sections 10.5B83.10 and 10.1113.20 to locate parking between the principal building and the street. It also requires relief from Section 10.1113.31 to permit parking within 100 feet of a residential zone.

There presently exists on site 39 parking spaces, which is one over the minimum required for the prior retail use. Repurposing the property for medical office use requires additional parking, per Table 10.1113.3231, as the minimum parking requirement increases from 1 space per 300 square feet to 1 space per 250 square feet. The applicant is proposing ten new spaces, for a total of 49, which is within the range permitted under 10.1112.51 (maximum permitted is 120% of minimum required). Siting additional parking anywhere else on this lot would require at the least the introduction of significant additional impervious surface.

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<sup>1</sup> In contrast to Convenient MD's Urgent Care facilities, such as 599 Lafayette Road, the Primary Care facility functions like a traditional medical practice with primarily scheduled visits with practice patients, as opposed to drop in visits. The company's existing Primary Care facility at 1600 Woodbury Avenue has outgrown that space.

The existing row of mature arborvitae along Granite Street screening the facility from the abutting residences will remain in place. Hours of operation for the primary care facility are anticipated to be 7:30am to 5:00pm, Monday through Friday. The applicant expects approximately 15-18 daily employees at any given time.

## **II. CRITERIA:**

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

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

In this case, were the variances to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. The existing built environment on the site will not be physically altered in any material fashion. Additional parking to accommodate the change in use from retail to medical office will not change the essential character of the neighborhood. Additionally, the proposed use would not create any threat to the public health, safety and welfare. The proposed parking will be adequately screened from the public and adjacent residential properties by the existing landscaping. Siting additional parking elsewhere on the site would require the introduction of additional impervious surface which would have a much more deleterious effect on the health, safety and welfare, and character, of the neighborhood.

**Substantial justice would be done by granting the variance.** Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. The proposal is simply an adaptive reuse of a currently vacant facility. The proposed replacement use requires additional parking and the proposed location for it is the most logical one. This loss to the applicant far outweighs any gain to the public if the variance is denied.

**The values of surrounding properties will not be diminished by granting the variance.** The proposed additional parking is to accommodate the adaptive reuse of a fully developed commercial site in a manner that will require no material external

physical changes. The values of the surrounding properties will not be negatively affected in any way.

**There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship.** The property is a commercial site essentially cut off from the predominant commercial corridor along Woodbury Avenue running towards Newington. It is a fully developed commercial site. It is an unusually large, trapezoidal corner lot, burdened by two front yard setbacks. The existing built environment on the lot lends itself to siting the additional parking as proposed.

**The use is a reasonable use.** The proposed parking is required and falls within the requirements of the zoning ordinance. Medical office uses are permitted by right in the G1 zone.

**There is no fair and substantial relationship between the purpose of the ordinance and its application to this particular property.** The property as it exists already has parking between the building and Woodbury Avenue and the Market Street connector. The visual impact to the public of parking between the building and Granite Street will be negligible, if not non-existent. There is no fair and substantial relationship between the purposes of the parking restrictions and their application to this property.

### **III. Conclusion.**

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

Respectfully submitted,

Dated: December 15, 2025

By: *Christopher P. Mulligan*

Christopher P. Mulligan, Esquire


**Property Information**

**Property ID** 0217-0001-0000  
**Location** 1303 WOODBURY AVE  
**Owner** THREE HUNDRED SEVENTY ONE LOWELL AVENUE REALTY LLC (56.21% INT)



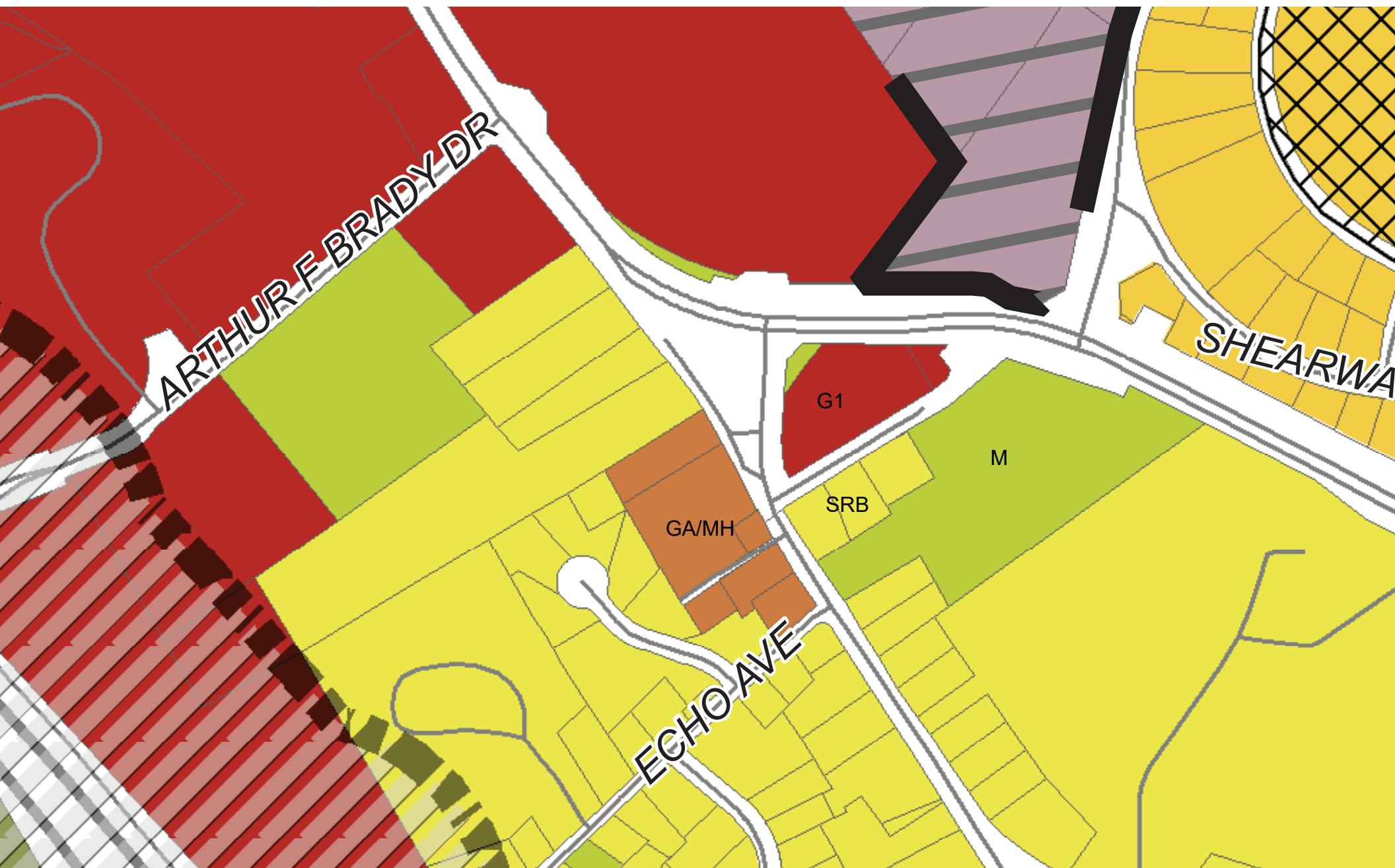
MAP FOR REFERENCE ONLY  
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Geometry updated 10/23/2025

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Portsmouth Zoning Map (excerpt) 9-24-2025





Facing east from Woodbury



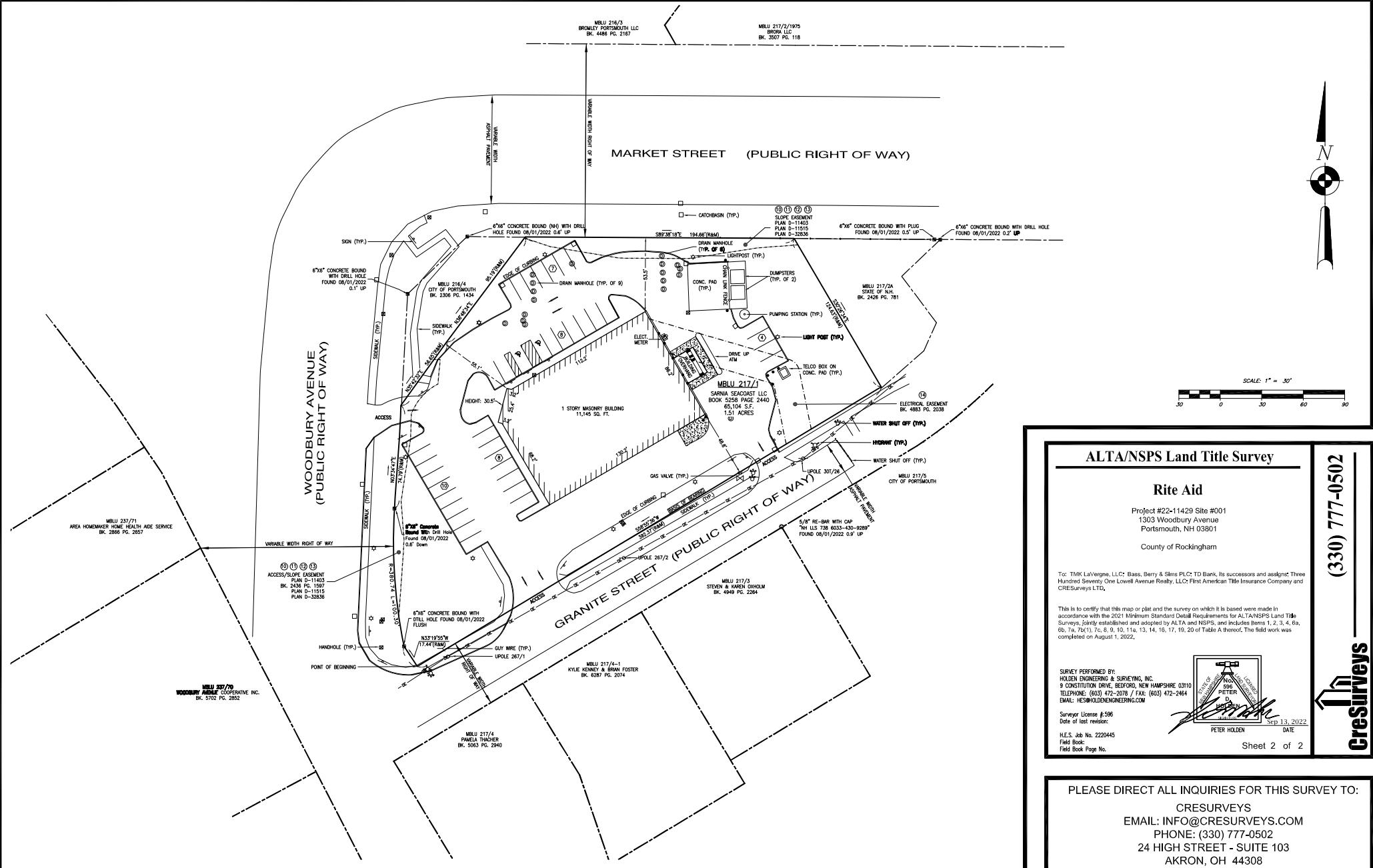
Facing west



Facing north from Granite



Facing south from Market



ALTA/NSPS Land Title Survey

Rite Aid

Project #22-11429 Site #001  
1303 Woodbury Avenue  
Portsmouth, NH 03801

(330) 777-0502

**Cressey Surveys**

PLEASE DIRECT ALL INQUIRIES FOR THIS SURVEY TO:

CRESURVEYS  
EMAIL: [INFO@CRESURVEYS.COM](mailto:INFO@CRESURVEYS.COM)  
PHONE: (330) 777-0502  
24 HIGH STREET - SUITE 103  
AKRON, OH 44308

לעומת הדרישות הנדרש בתקופה קיימת, מטרת הדרישות מוגדרת כדרישת עתיד.

# Market Street Connector (Four Lane Divided Road) (Variable Width, Limited Access Public ROW)

The sketch illustrates a road plan for 'Woodbury Avenue' with the following key features:

- Woodbury Avenue (Four Lane Divided Road):** The main road is a four-lane divided road with a 10' A.D.T. (Average Daily Traffic) and a limited access width.
- Two-way Traffic:** The road is designed for two-way traffic flow.
- Variable Width:** The width of the road varies along the length of the avenue.
- Access:** Limited access is provided to the road.
- Public ROW:** The Public Right-of-Way is indicated along the side of the road.
- Curves:** The sketch shows several curves, including a large curve at the bottom and a smaller curve on the right side.
- Labels:** Labels include 'Woodbury Avenue', 'Two-way Traffic', 'Variable Width', 'Limited Access', '10,000 A.D.T.', 'Divided Road', 'Public ROW', and 'A.D.T.'

WB-65 ATROC  
PATH (TYPE)

## 10 EXISTING SPACES

## 8 EXISTING SPACES

## PROPOSED CONVENIENTMD PRIMARY CARE

7,800 Sq.Ft

FUTUR  
TENAN

3,480 Sq. Ft.

EXIS  
EQUITY

## 4 EXISTING SPACES

A diagram showing a horizontal line and a diagonal line. The angle between the horizontal line and the diagonal line is labeled as  $45^\circ$ . The horizontal line is labeled with the text "19'-0"".

10 PROPOSED SPACES

WB-65 TRUCK  
PATH (TYP)

**Granite Street  
(50 foot Width, Dead End Street)**

## II. NEW BUSINESS

C. 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)

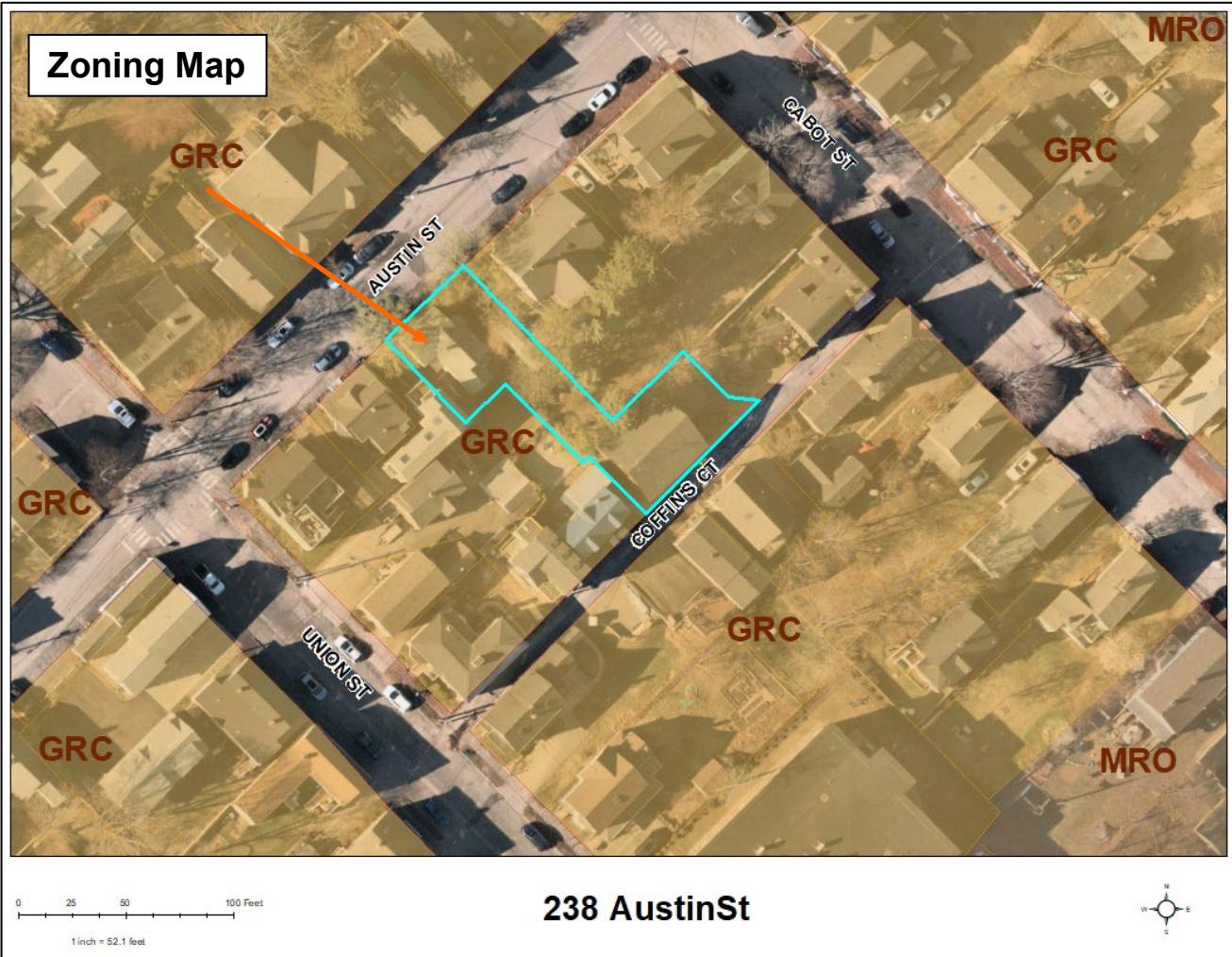
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed Lot 61 (Austin St)</u>	<u>Proposed Lot 61-1 (Coffins Ct)</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Residential Home and Barn	Single Family Home	Single Family Home	Primarily Residential
<u>Lot area (sq. ft.):</u>	6,384	3,500	2,884	3,500 min.
<u>Lot area per dwelling unit(sq. ft.):</u>	6,384	3,500	2,884	3,500 min
<u>Street Frontage (ft.):</u>	Austin St: 49.75 Coffins Ct: 75.36	49.75	75.36	70 min.
<u>Lot depth (ft.):</u>	135.23	87.16	53	50 min.
<u>Front Yard (ft.):</u>	Austin St: 3.5 Coffins Ct: 2.8	5	5	5 max.
<u>Left Yard (ft.):</u>	Shed: 3.1 Barn: 9.95	10	10	10 min.
<u>Right Yard (ft.)</u>	House: 3.2 Barn: 2.3	8.5	10	10 min.
<u>Side Yard (ft.)</u>	House: 8.6 Barn: 1.7	10	5.5	10 min
<u>Rear Yard (ft.):</u>	N/A	>20	18	20 min.
<u>Height (ft.):</u>	House: 14 Barn: 22.5	27	26	35 max.
<u>Building Coverage (%):</u>	40.6	33.3	34.9	35 max.
<u>Open Space Coverage (%):</u>	40.9	58.4	50.7	20 min.
<u>Parking</u>	2	2	2	1 min.
<u>Estimated Age of Structure:</u>	1850	Variance request(s) shown in red.		

### Other Permits/Approvals Required

- Subdivision Review (TAC and Planning Board)
- Building Permit

## Neighborhood Context



## Previous Board of Adjustment Actions

**February 18, 1986** – The Board **granted** the re-subdivision of two existing undersized lots [238 Austin Street and 74 Cabot Street] for property located at 74 Cabot Street - a Variance from Article III, Section 10-302 is requested to allow a decrease in lot area from 6,971 s.f. to 3, 298 s.f. and lying in a district where a minimum lot area of 10,000 s.f. is required.

**June 17, 1997** – The Board **granted** a Variance from Article III, Section 10-302(A) to allow an 8' x 26' combination shed and screened porch to be constructed in the same location as an existing structure that will be demolished with a 1' side yard where 10' is the minimum required with the following **condition**:

- 1) A minimum side yard of 3' be maintained rather than 1' side yard that was advertised.

**January 18, 2000** – The Board **granted** a Variance from Article III, Section 10-302 to allow a 12' x 20' two story addition to an existing barn to be used as a second dwelling on the lot after the demolition of the 12' x 18' two story addition with: a) an 18' front yard where 5' is the minimum required, b) an 18' rear yard where 20' is the minimum required; and c) 46% building coverage where 35% is the maximum allowed with the following **conditions**:

- 1) The existing footprint be used when constructing the new addition.

**December 19, 2000** – The Board **granted** an extension of time for an additional one year time period on approval granted at the January 18, 2000 meeting. The new expiration date is January 18, 2002.

## Planning Department Comments

The applicant is requesting relief to demolish all existing structures on the site, subdivide the lot into two new lots, and construct a single family home on each new lot. Relief is needed for the subdivision, as the proposed lots do not meet the minimum requirements, and dimensional requirements for construction of the new structures.

## 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

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ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801  
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | [www.hpgrlaw.com](http://www.hpgrlaw.com)

December 17, 2025

## **HAND DELIVERED**

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

Re: Owners: Lisa Reyes  
Applicant: Chris Ward  
Property: 238 Austin Street  
Tax Map 135, Lot 61  
General Residence C District

Dear Ms. Casella & Zoning Board Members:

On behalf of the Lisa Reyes (“Owner”) and Chris Ward (“Applicant”) enclosed please find the following in support of a request for zoning relief:

- Viewpoint Land Use Application uploaded today.
- Owner & Applicant Authorizations.
- 12/17/2025 – Memorandum and Exhibits in support of Zoning Relief

We look forward to presenting this application to the Zoning Board at its January 21, 2026 meeting.

Very truly yours,



R. Timothy Phoenix  
Monica F. Kieser

Encl.

cc: Chris Ward  
Garrepy Group, LLC (via email)  
Ross Engineering, LLC (via email)  
Technical Illustrations (via email)

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

### **OWNER'S AUTHORIZATION**

I, Lisa Reyes, Owner of 238 Austin Street, Tax Map 135/Lot 61, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC to represent me before any and all City of Portsmouth Representatives, Boards and Commissions for permitting the project.

Respectfully submitted,

Date: 12/15/2025

Signed by:  
  
Lisa Paige Reyes  
Lisa 618BBD0433A04EF...

**APPLICANT'S AUTHORIZATION**

I, Christopher Ward, Applicant of 238 Austin Street, Tax Map 135, Lot 61, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC to represent me before any and all City of Portsmouth Representatives, Boards and Commissions for permitting the project.

Respectfully submitted,

Date:

12/16/20



Christopher Ward

## MEMORANDUM

**TO:** Portsmouth Zoning Board of Adjustment (“ZBA”)  
**FROM:** R. Timothy Phoenix, Esquire  
Monica F. Kieser, Esquire  
**DATE:** December 17, 2025  
**RE:** Owners: Lisa Reyes  
Applicant: Chris Ward  
Property: 238 Austin Street  
Tax Map 135, Lot 61  
General Residence C District

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

On behalf of Owner Lisa Reyes (“Owner”) and Applicant Chris Ward (“Applicant”), we are pleased to submit this Memorandum and exhibits in support of a an application for relief from the Portsmouth Zoning Ordinance (“PZO” or “Ordinance”) to be considered by the ZBA at its January 21, 2026 meeting.

### I. EXHIBITS

- A. Plan Set – Ross Engineering, LLC.
  - Existing Conditions Plan
  - Proposed Conditions Plan
  - Overlay Plan
  - Neighborhood Building Coverage
- B. Architectural Plans – Technical Illustrations.
  - Austin Street Elevation & Floor Plan
  - Coffins Court Elevation & Floor Plan
- C. Site Photographs.
  - Satellite Views
  - Street Views
- D. Tax Map 135.

### II. PROPERTY

238 Austin Street is a 6,384 square foot “S” shaped parcel with double frontage: 49.75 linear feet of frontage on Austin Street and 75.36 linear feet of frontage on Coffins Court (“the Property”). **(Exhibit A)**. The Property is developed with a small home, shed, and dilapidated barn. **(Exhibit A, C)**. The existing home, shed, and barn do not conform to yard setbacks, or building coverage **(Exhibits A and C)**. Applicant plans to remove the existing structures, subdivide the lot, and construct a new home on each lot largely within the applicable building

envelope while improving building coverage and open space (“the Project”). The Project is a clear benefit given it provides two new homes where two structures have historically existed, greatly improving on existing nonconforming aspects. While the Property is oversized with double frontage, relief from lot size/density is required for the coffins Court lot and relief from frontage is required for the Austin Street lot to maintain the existing 49.75 feet of frontage. Relief is also required to accommodate bulkheads in yard setbacks. Importantly, the subdivided lots accommodate homes while providing compliant building coverage, and open space, and setbacks are only required for bulkhead egress.

### III. RELIEF REQUIRED

<u>Ordinance</u>	<u>Existing</u>	<u>Proposed</u>	
<u>PZO §10.520/Table §10.521 Dimensional Standards</u>		<u>Austin Lot</u>	<u>Coffins Lot</u>
3,500 s.f. Lot area	6,384 s.f.	3,500 s.f. compliant	2,884 s.f.
<u>3,500 s.f. Lot area/dwelling</u>	6,384 s.f./dwelling	3,500 s.f./dwelling compliant	2,884 s.f./dwelling
<u>70 ft. Frontage</u>	49.75' on Austin 75.36' on Coffins	49.75' Austin	75.36' Coffins compliant
<u>35% Building Coverage</u>	40.5% overall	33.3% compliant	35% compliant
<u>Front Yard 5'</u>	house 3.5' barn 2.8'	compliant	compliant
<u>Side Yard 10'</u>	barn 1.7' & 2.3' shed 3.1' house 3.2'	bulkhead 8.7' <sup>1</sup> AC 9.1' house compliant	bulkhead 5.6' AC unit 9.0' house compliant <sup>2</sup>
<u>Rear Yard 20'</u>	compliant	compliant	bulkhead 18.4'

<sup>1</sup> If a bulkhead protrudes into the setback but is less than 18" tall, relief is not required. PZO §10.515.12. We request the relief in an abundance of caution.

<sup>2</sup> Steps may protrude into a side or rear yard setback per PZO §10.516.40.

**IV. ADDITIONAL PERMITS REQUIRED**

- Subdivision Approval
- 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 provides two single-family homes where single-family homes are permitted by right.
2. **The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space** – The irregular "S" shaped lot has long existed and accommodated two nonconforming structures. Creating two lots cures the odd shape of the lot, allowing more efficient use of the land for its permitted use. The Austin Street lot will comply in all respects except for continuous frontage on Austin Street – which has remained 49.75 feet for decades. The requested lot size/lot size per dwelling unit for the single-family home on Coffins provides a permitted single-family home on a lot with area similar to others in the area (**Exhibits A, D**), but with compliant frontage. Each home will be more conforming as to setbacks, building coverage and open space.
3. **The design of facilities for vehicular access, circulation, parking and loading** – Both lots will provide compliant parking.
4. **The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding** – The Project provides a permitted residential use and offers an improvement in stormwater management by providing new structures that more nearly conform to yard setbacks.

5. The preservation and enhancement of the visual environment – The newly constructed homes will improve the visual environment compared to the dated and obsolete structures that exist today.
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 – No wetlands on site/nearby.

Additionally, the General Residence C district is zoned for higher densities according to the zoning ordinance.

To provide areas for single-family, twofamily 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.

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 an oddly shaped, oversized lot that has long existed in a thickly settled area and supported a modest home and large dated barn – a use that is no longer compatible in the area. While corner lots are common, this is the only “through lot” in the area. The existing structures significantly violate setbacks while the Project proposes two homes centered on respective lots, meeting building coverage and open space requirements while greatly improving setbacks – needed to accommodate bulkheads only. The Property is located in an area with many other lots which do not conform to current zoning requirements for frontage, lot size, and lot area/dwelling unit. (**Exhibits A, D**). Accordingly, establishing permitted residential use on two smaller lots among similar developed 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 Owner is constitutionally entitled to the use of the lot as she sees fit, including selling the lot to Applicant for subdivision, subject to the effect of establishing permitted uses in more compliant structures on lots of insufficient size or frontage. “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, frontage, building coverage and/or yard setback requirements. (**Exhibits A, D**).

The existing structures have presented too daunting a renovation project for the last two owners. Granting the requested variances creates opportunity for sorely needed single-family homes centered on more traditionally configured lots in keeping with the area. The Project provides greater yard setbacks, increasing abutters access to air, light, space, and separation, improving stormwater management. Each lot will meet the requirements for building coverage

and open space. The variance for frontage on Austin Street results in no change “on the ground” while the removal of the barn in favor of a new home provides a more open and visually appealing streetscape on Coffins Court.

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, Owner and Applicant will be greatly harmed by denial as Owner will be deprived of her constitutional right to dispose of their property and Applicant will lose the opportunity to reasonably develop the Property. 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 creation of an additional lot to support a permitted use on a lot similar to those in the area will not negatively affect any abutter. The Project removes two dated and obsolete structures while providing new, attractive housing with improved setbacks and stormwater treatment. Providing greater access to air, light, space, and improved stormwater management improves over existing conditions. The Project also increases open space and reduces building coverage even as it adds a single-family home. The benefits are clear and supported by expert testimony. (**Exhibit D**). Accordingly 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/project from others in the area.

The Property is one of the largest on the block and is oddly shaped. It is the only “through lot” in the area. Its configuration of frontage on two streets connected by a narrower corridor prevents it from being utilized more efficiently. The Property contains two significantly nonconforming structures that are obsolete. These factors combine to create special conditions distinguishable from other properties in the area.

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

Lot area, frontage, density limits, and setbacks exist in order to: prevent overburdening/overcrowding of the land; provide sight lines, air, light, and space; and ensure separation between properties to treat stormwater. The Project demonstrates that the Property

can be subdivided into two smaller lots that largely comply with the ordinance and match the surrounding area. The new lots can support new homes that are far more conforming than what currently exists, ensuring adequate air, light, space, and separation so stormwater is managed on each lot. This is a significant improvement compared to existing conditions. Additionally, the Project improves building coverage and open space overall and ensures compliant building coverage and open space on each individual lot, unlike many properties in the area. For these reasons, there is no fair and substantial relationship between the general public purposes of the Ordinance, the lot size, density, frontage, and setbacks proposed are consistent with other lot in the area.

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 GRC 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), much of the area is nonconforming for area, density, frontage, building coverage/open space and setbacks (**Exhibit A, D**). Accordingly, the proposed use is reasonable, and denial would create an unnecessary hardship for Owner and Applicant.

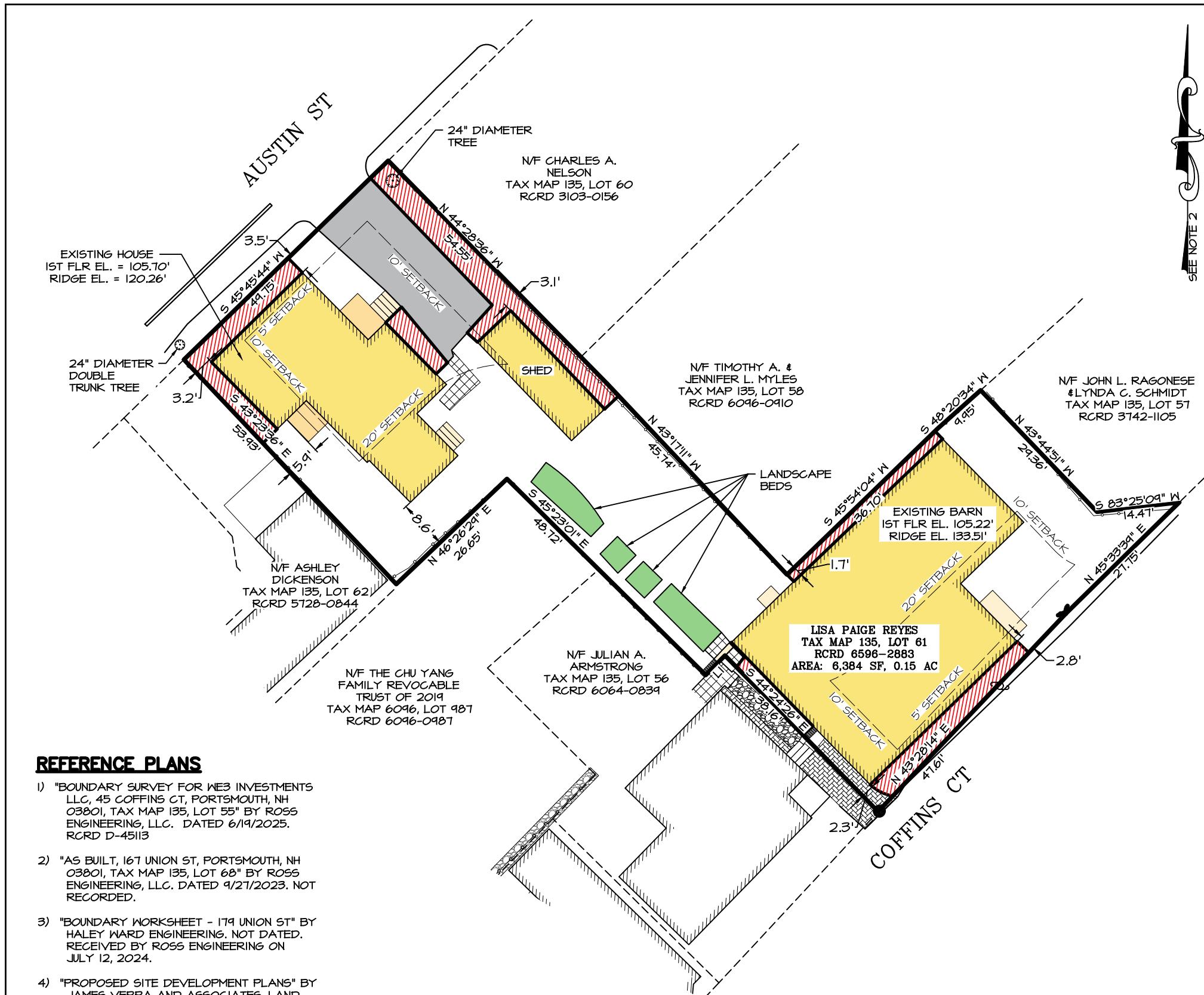
## **VI. CONCLUSION**

For all the reasons stated, Owner and Applicant respectfully request that the Portsmouth Zoning Board of Adjustment grant the requested relief. We look forward to presenting this application at the January 21, 2026 ZBA Meeting.

Respectfully submitted,  
Chris Ward

By:

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

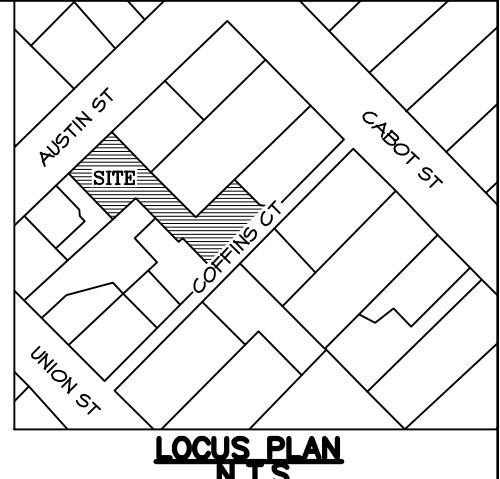


### REFERENCE PLANS

- 1) "BOUNDARY SURVEY FOR WES INVESTMENTS LLC, 45 COFFINS CT, PORTSMOUTH, NH 03801, TAX MAP 135, LOT 55" BY ROSS ENGINEERING, LLC. DATED 6/19/2025. RCRD D-45113
- 2) "AS BUILT, 167 UNION ST, PORTSMOUTH, NH 03801, TAX MAP 135, LOT 68" BY ROSS ENGINEERING, LLC. DATED 9/21/2023. NOT RECORDED.
- 3) "BOUNDARY WORKSHEET - 179 UNION ST" BY HALEY WARD ENGINEERING. NOT DATED. RECEIVED BY ROSS ENGINEERING ON JULY 12, 2024.
- 4) "PROPOSED SITE DEVELOPMENT PLANS" BY JAMES VERRA AND ASSOCIATES, LAND SURVEYORS. DATED MARCH 19, 2020. RCRD D-42277
- 5) "RESUBDIVISION OF LAND PORTSMOUTH, N.H. FOR CONSTANCE S. & WILLIAM T. WARREN & HAROLD C. SWEETSER" BY JOHN W. DURGIN ASSOCIATES, INC. DATED AUGUST 24, 1986. RCRD D-14875
- 6) "PLAN OF ANNIE OLIVER ESTATE" DATED AUGUST 19, 1941. RCRD 048

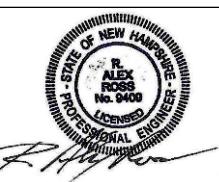
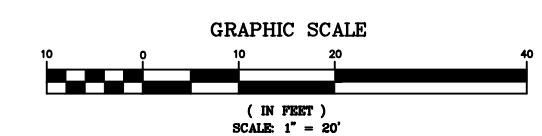
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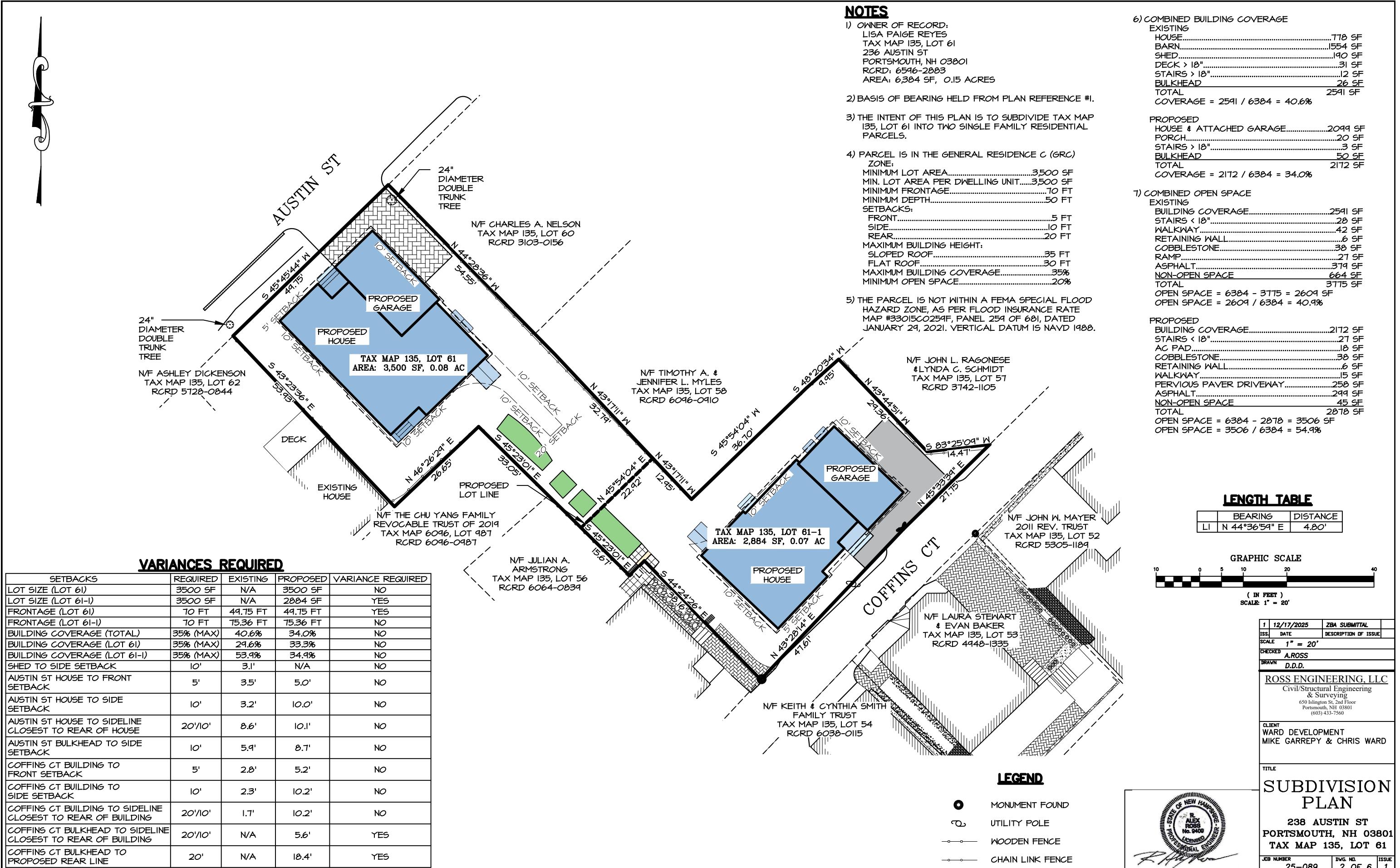
- MONUMENT FOUND
- UTILITY POLE
- WOODEN FENCE
- CHAIN LINK FENCE
- NON-OPEN SPACE

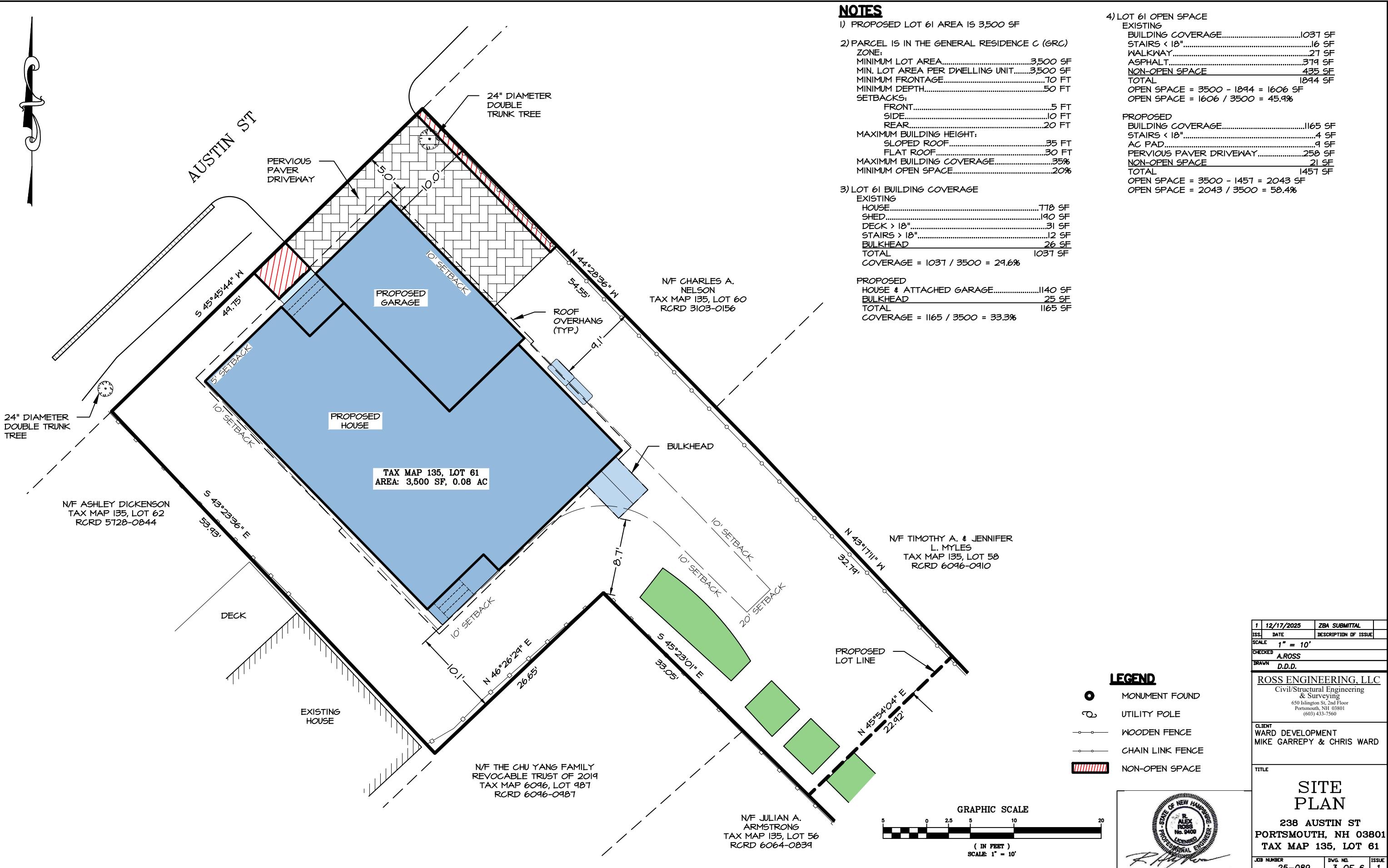


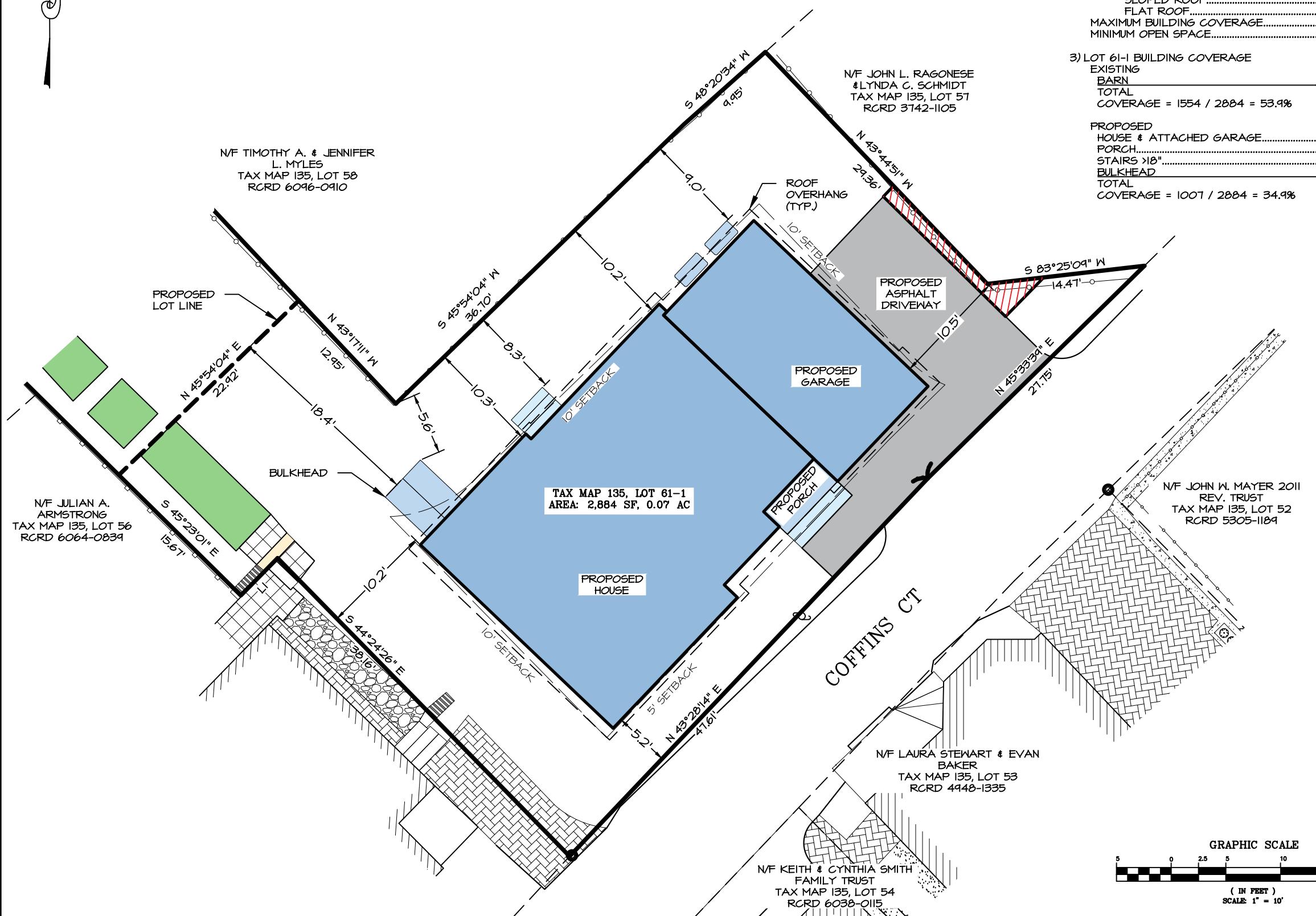
### EXHIBIT A

1	12/17/2025	ZBA SUBMITTAL
ISS. DATE	DESCRIPTION OF ISSUE	
SCALE 1" = 20'		
CHECKED A.ROSS		
DRAWN D.D.D.		
ROSS ENGINEERING, LLC		
Civil/Structural Engineering & Surveying		
650 Idington St, 2nd Floor Portsmouth, NH 03801 (603) 433-7560		
CLIENT		
WARD DEVELOPMENT MIKE GARREPY & CHRIS WARD		
TITLE		
EXISTING CONDITIONS PLAN		
238 AUSTIN ST PORTSMOUTH, NH 03801 TAX MAP 135, LOT 61		
JOB NUMBER 25-089 DVG. NO. 1 OF 6 ISSUE 1		









## **NOTES**

1) PROPOSED LOT 61-1 AREA IS 2,884 SF

2) PARCEL IS IN THE GENERAL RESIDENCE C (GRC) ZONE:  
MINIMUM LOT AREA.....3,500 SF

MIN. LOT AREA PER DWELLING UNIT.....3,500 SF  
MINIMUM FRONTAGE.....70 FT  
MINIMUM DEPTH.....50 FT  
SETBACKS:

LEVEL  
FRONT..... 5 FT  
SIDE..... 10 FT  
REAR..... 20 FT

MAXIMUM BUILDING HEIGHT:  
SLOPED ROOF..... 35 FT  
FLAT ROOF..... 30 FT

FLAT ROOF..... 50 FT  
MAXIMUM BUILDING COVERAGE..... 35%  
MINIMUM OPEN SPACE..... 20%

3) LOT 61-1 BUILDING COVERAGE  
EXISTING  
BARN 1554 SF  
TOTAL 1554 SF

PROPOSED	
HOUSE & ATTACHED GARAGE	959 SF
PORCH	20 SF
STAIRS >18"	3 SF
<u>BULKHEAD</u>	25 SF
TOTAL	1007 SF
COVERAGE = 1007 / 2884 = 34.9%	

4) LOT 61-1 OPEN SPACE

EXISTING	
BUILDING COVERAGE	1554 SF
STAIRS < 18"	12 SF
WALKWAY	15 SF
RETAINING WALL	6 SF
COBBLESTONE	38 SF
RAMP	27 SF
NON-OPEN SPACE	229 SF
TOTAL	1881 SF
OPEN SPACE = 2884 - 1881 = 1003 SF	
OPEN SPACE = 1003 / 2884 = 34.8%	

PROPOSED	
BUILDING COVERAGE.....	1007 SF
STAIRS < 18".....	23 SF
AC PAD.....	9 SF
COBBLESTONE.....	38 SF
RETAINING WALL.....	6 SF
WALKWAY.....	15 SF
ASPHALT.....	299 SF
<u>NON-OPEN SPACE</u>	24 SF
<u>TOTAL</u>	1421 SF
OPEN SPACE = 2884 - 1421 = 1463 SF	
OPEN SPACE = 1463 / 2884 = 50.7%	

## LENGTH TABLE

	BEARING	DISTANCE
11	N 44°36'59" E	480'

### LEGEND

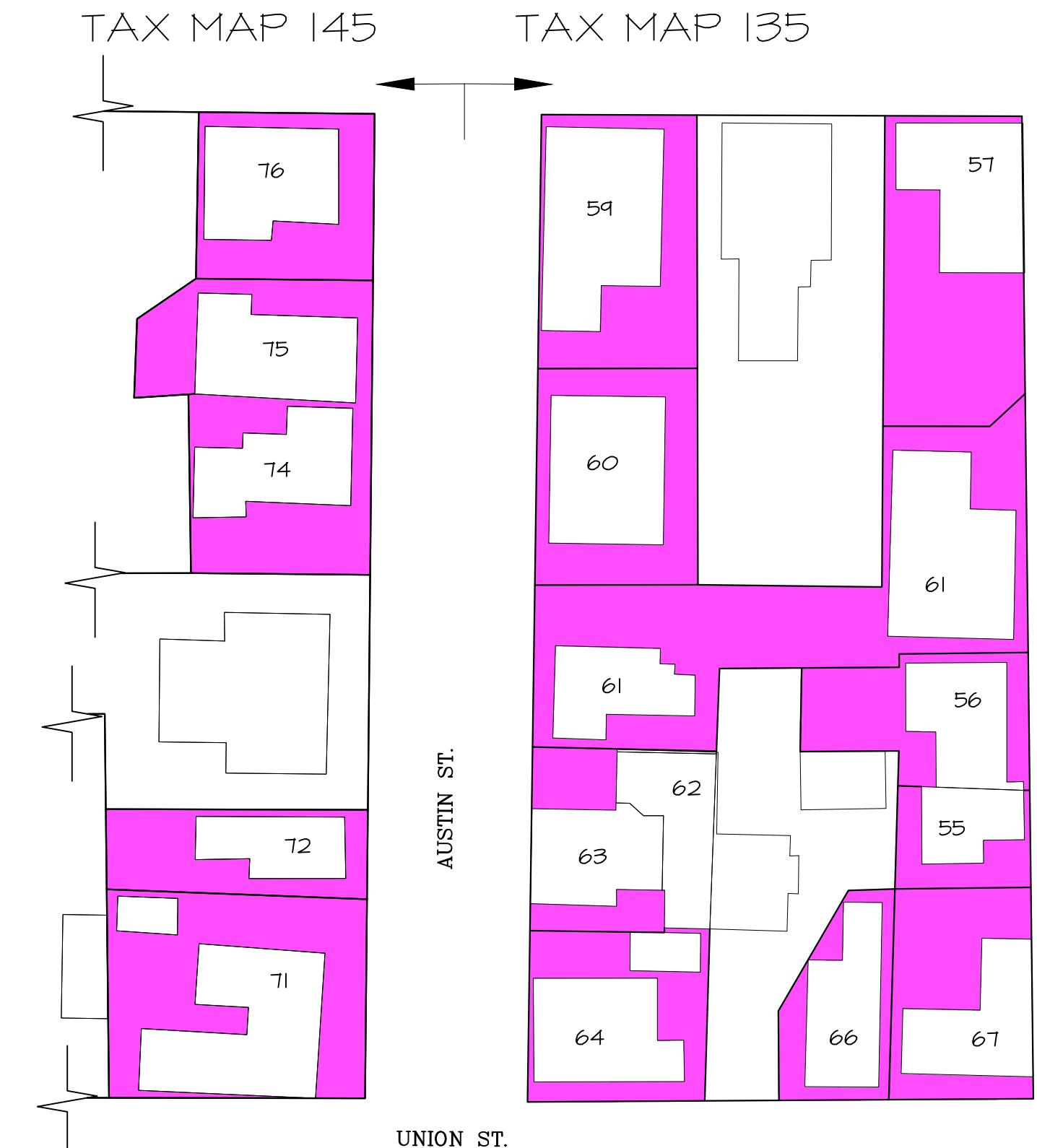
- MONUMENT FOUND
- UTILITY POLE
- WOODEN FENCE
- CHAIN LINK FENCE
- NON-OPEN SPACE

N/F KEITH & CYNTHIA SMITH  
FAMILY TRUST  
TAX MAP 135, LOT 54  
RCRD 6038-0115

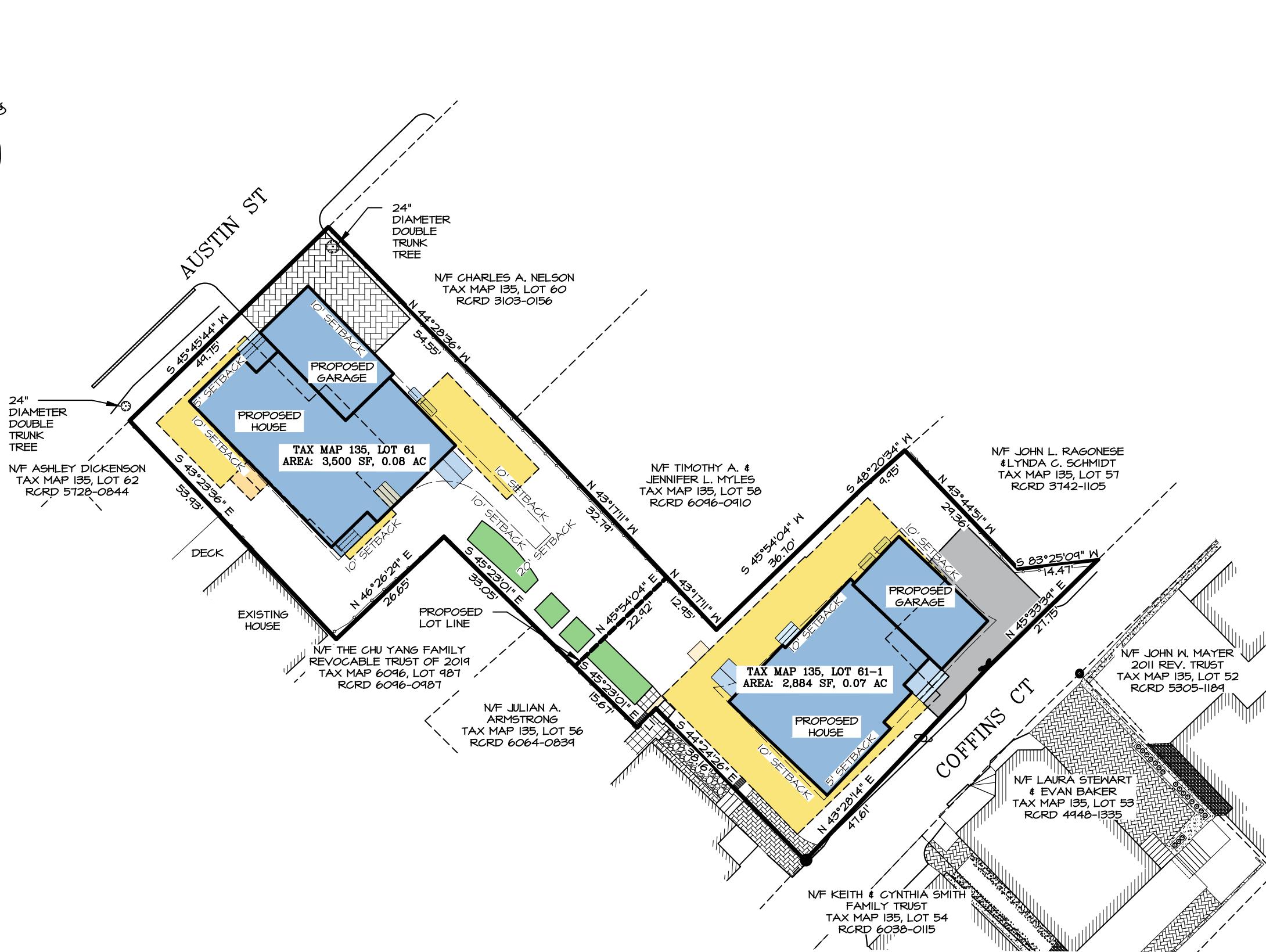
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ISS.	DATE	DESCRIPTION OF ISSUE
SCALE 1" = 10'		
CHECKED A.ROSS		
DRAWN D.D.D.		
<b>ROSS ENGINEERING, LLC</b> Civil/Structural Engineering & Surveying 650 Isenberg Street, 2nd Floor Portsmouth, NH 03801 (603) 433-7560		
<b>CLIENT</b> WARD DEVELOPMENT MIKE GARREPY & CHRIS WARD		
<b>TITLE</b> <b>SITE PLAN</b>		
238 AUSTIN ST PORTSMOUTH, NH 03801 TAX MAP 135, LOT 61		
JOB NUMBER		DWG. NO.
25-089		4 OF 6
		1

19 LOTS WERE REVIEWED  
17 LOTS ARE NONCONFORMING

 BUILDING COVERAGE > 35%



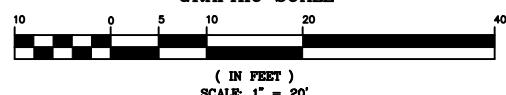
1	12/17/2025	ZBA SUBMITTAL
ISS.	DATE	DESCRIPTION OF ISSUE
SCALE	NTS	
CHECKED	A.ROSS	
DRAWN	D.D.D.	
ROSS ENGINEERING, LLC		
Civil/Structural Engineering & Surveying		
650 Irvington St, 2nd Floor		
Portsmouth, NH 03801		
(603) 433-7560		
CLIENT		
WARD DEVELOPMENT		
MIKE GARREPY & CHRIS WARD		
TITLE		
NEIGHBORHOOD BUILDING COVERAGE		
238 AUSTIN ST		
PORTSMOUTH, NH 03801		
TAX MAP 135, LOT 61		
R. H. Ross		
JOB NUMBER	DWG. NO.	ISSUE
25-089	5	OF 6 1



## LENGTH TABLE

BEARING DISTANCE  
N 44°36'59" E 4.80'

#### GRAPHIC SCALE



### LEGEND

- MONUMENT FOUND
- UTILITY POLE
- WOODEN FENCE
- CHAIN LINK FENCE

## OVERLAY PLAN

238 AUSTIN ST  
PORTSMOUTH, NH 03801  
TAX MAP 135, LOT 61



JOB NUMBER	DWG. NO.	ISSUE
25-089	6 OF 6	1



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

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



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

**AUSTIN STREET**



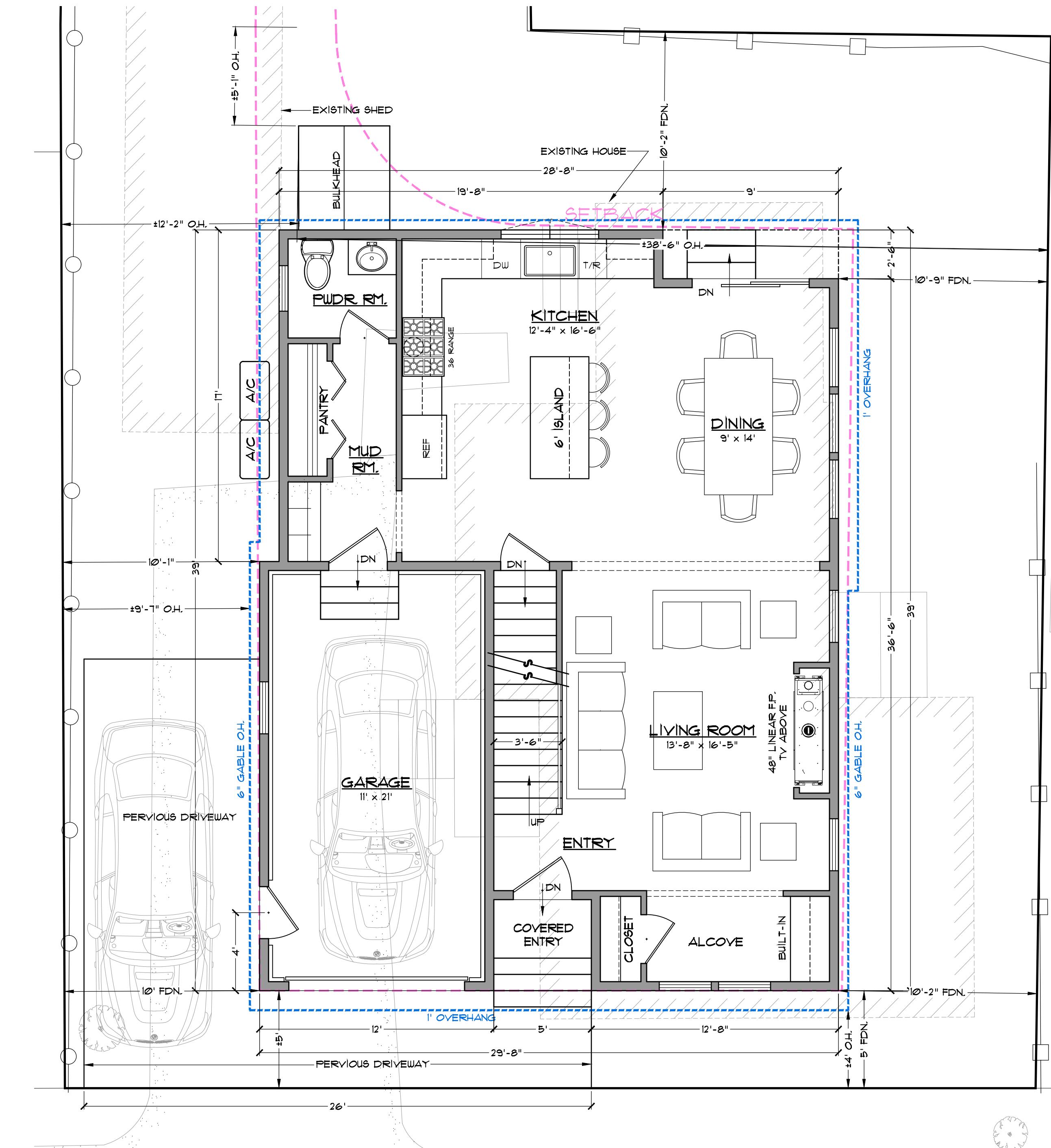
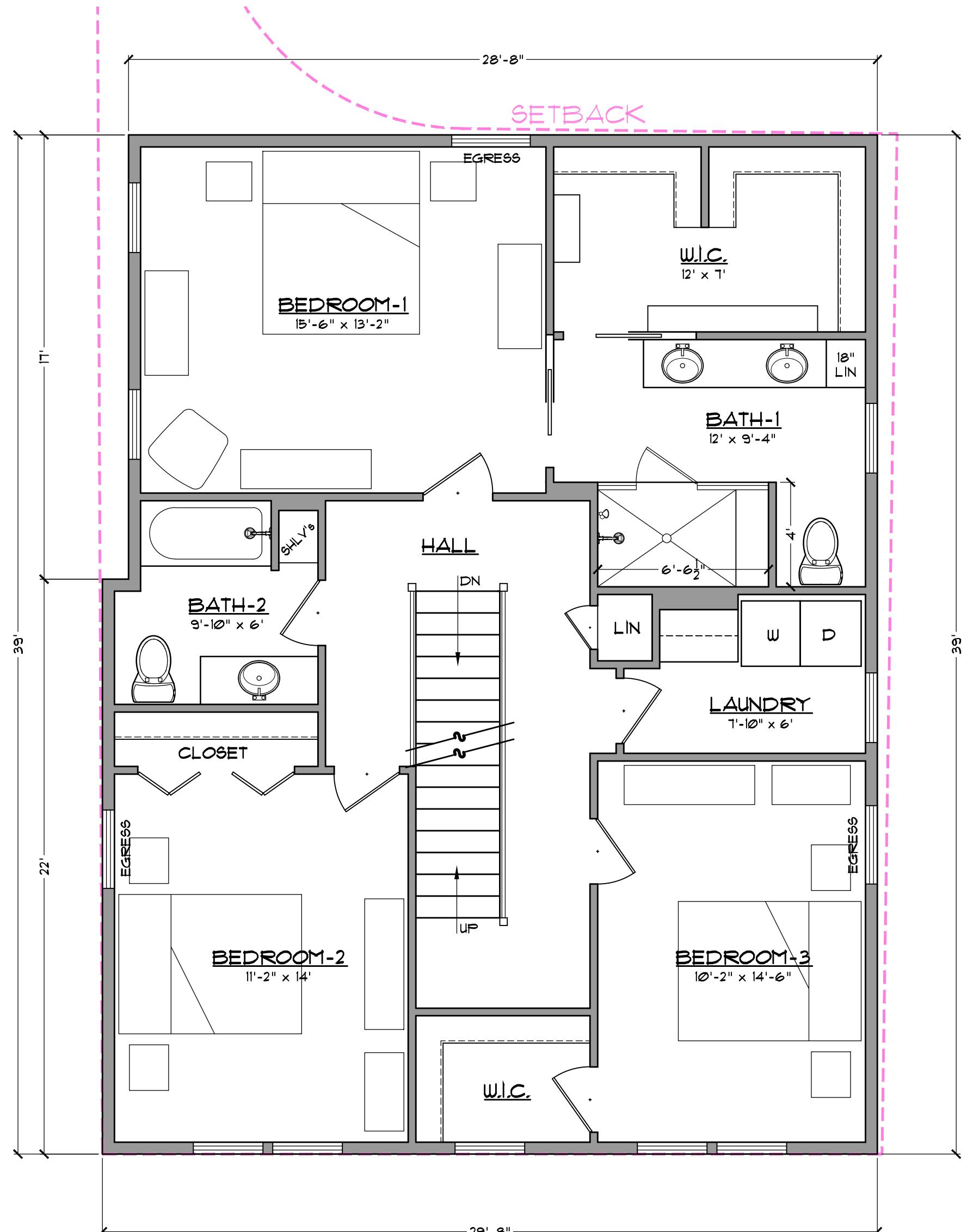
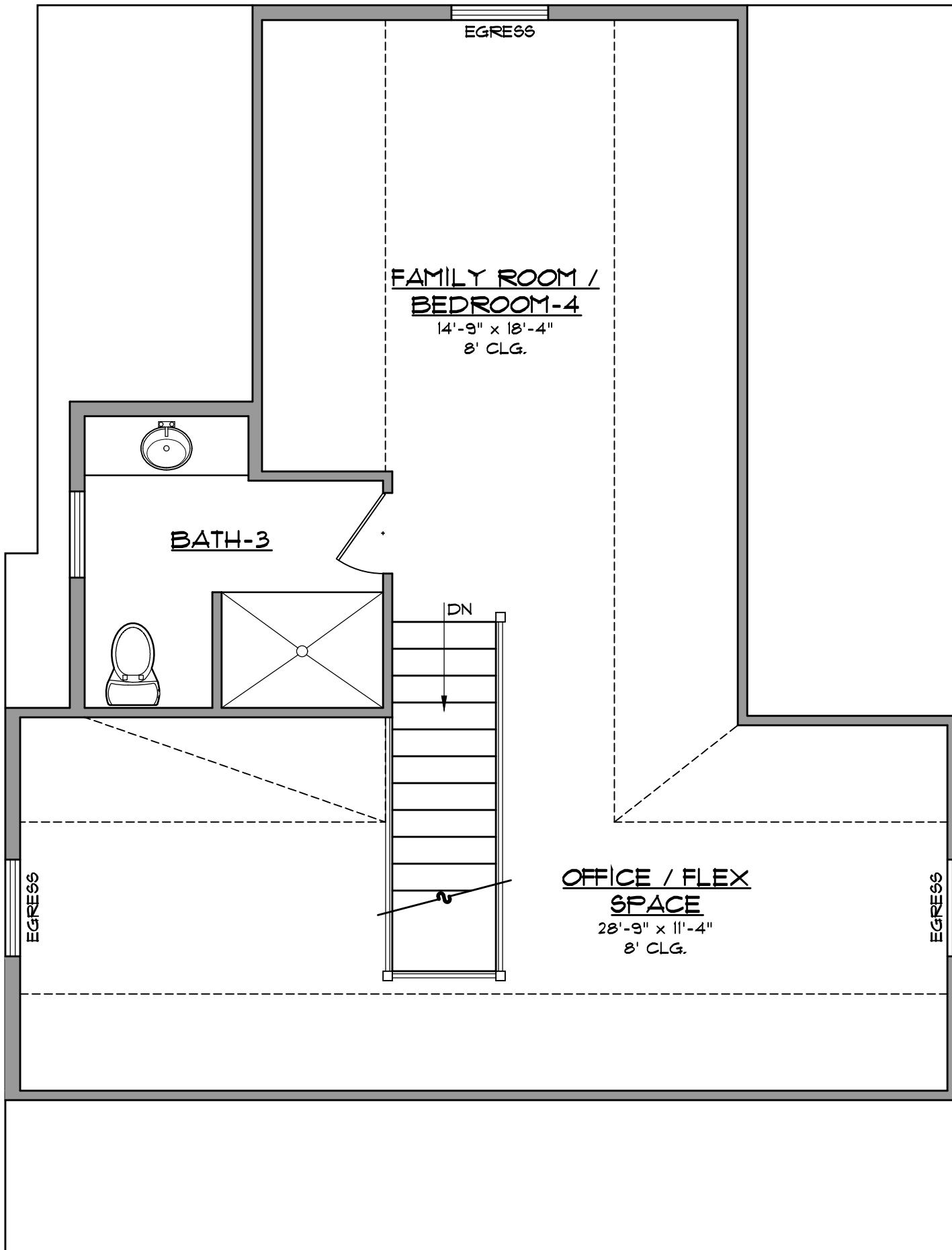
**FRONT ELEVATION**  
1/4" = 1'-0"

**EXHIBIT B**

1. THESE PLANS ARE BUILT TO FOLLOW THE IRC 2021 BUILDING CODE AND STATE FIRE CODE AS ADMINISTERED BY THE TOWN OF PORTSMOUTH, NH.
2. ALL DIMENSIONS ARE FRAMING DIMENSIONS. CONTRACTOR SHALL VERIFY ALL DIMENSIONS PRIOR TO EXCAVATION.
3. DO NOT SCALE DRAWING. WRITTEN DIMENSIONS TAKE PRECEDENCE OVER SCALED DIMENSIONS.

PROJECT:	238 Austin Street (Coffins Ct.) ZBA Portsmouth, NH 03801	
E-mail:	tech-112@comcast.net	Phone: 603-864-1300 Fax: 603-520-1414
Technical Illustrations	DATE: 12-16-25	REVISED:  DWG. NO. 1

ARCHITECTURAL DRAFTING SERVICE  
196 Bunker Hill Ave. Stratham, NH 03885



#### FIRE PREVENTION PLAN

- SMOKE DETECTOR
- SMOKE / CARBON MONOXIDE DETECTOR
- HEAT DETECTOR

1. THESE PLANS ARE BUILT TO FOLLOW THE IRC 2021 BUILDING CODE AND STATE FIRE CODE AS ADMINISTERED BY THE TOWN OF PORTSMOUTH, NH.
2. ALL DIMENSIONS ARE FRAMING DIMENSIONS, CONTRACTOR SHALL VERIFY ALL DIMENSIONS PRIOR TO EXCAVATION.
3. DO NOT SCALE DRAWING, WRITTEN DIMENSIONS TAKE PRECEDENCE OVER SCALED DIMENSIONS.

PROJECT: 238 Austin Street (Coffins Ct.) ZBA Portsmouth, NH 03801		
E-mail: tech-1112@comcast.net		
Phone: 603-864-1300 Fax: 603-580-1414		
DATE: 12-16-25		
REVISIED:		
Technical Illustrations		
ARCHITECTURAL DRAFTING SERVICE		
196 Bunker Hill Ave. Stratham, NH 03885		
DWG. NO. 3		



**RIGHT SIDE ELEVATION**

$\frac{1}{4}$ " = 1'-0"

**REAR ELEVATION**

$\frac{1}{4}$ " = 1'-0"



**LEFT SIDE ELEVATION**

$\frac{1}{4}$ " = 1'-0"

**FRONT ELEVATION**

$\frac{1}{4}$ " = 1'-0"

**COFFINS COURT**

1. THESE PLANS ARE BUILT TO FOLLOW THE IRC 2021 BUILDING CODE AND STATE FIRE CODE AS ADMINISTERED BY THE TOWN OF PORTSMOUTH, NH.

2. ALL DIMENSIONS ARE FRAMING DIMENSIONS. CONTRACTOR SHALL VERIFY ALL DIMENSIONS PRIOR TO EXCAVATION.

3. DO NOT SCALE DRAWING. WRITTEN DIMENSIONS TAKE PRECEDENCE OVER SCALED DIMENSIONS.

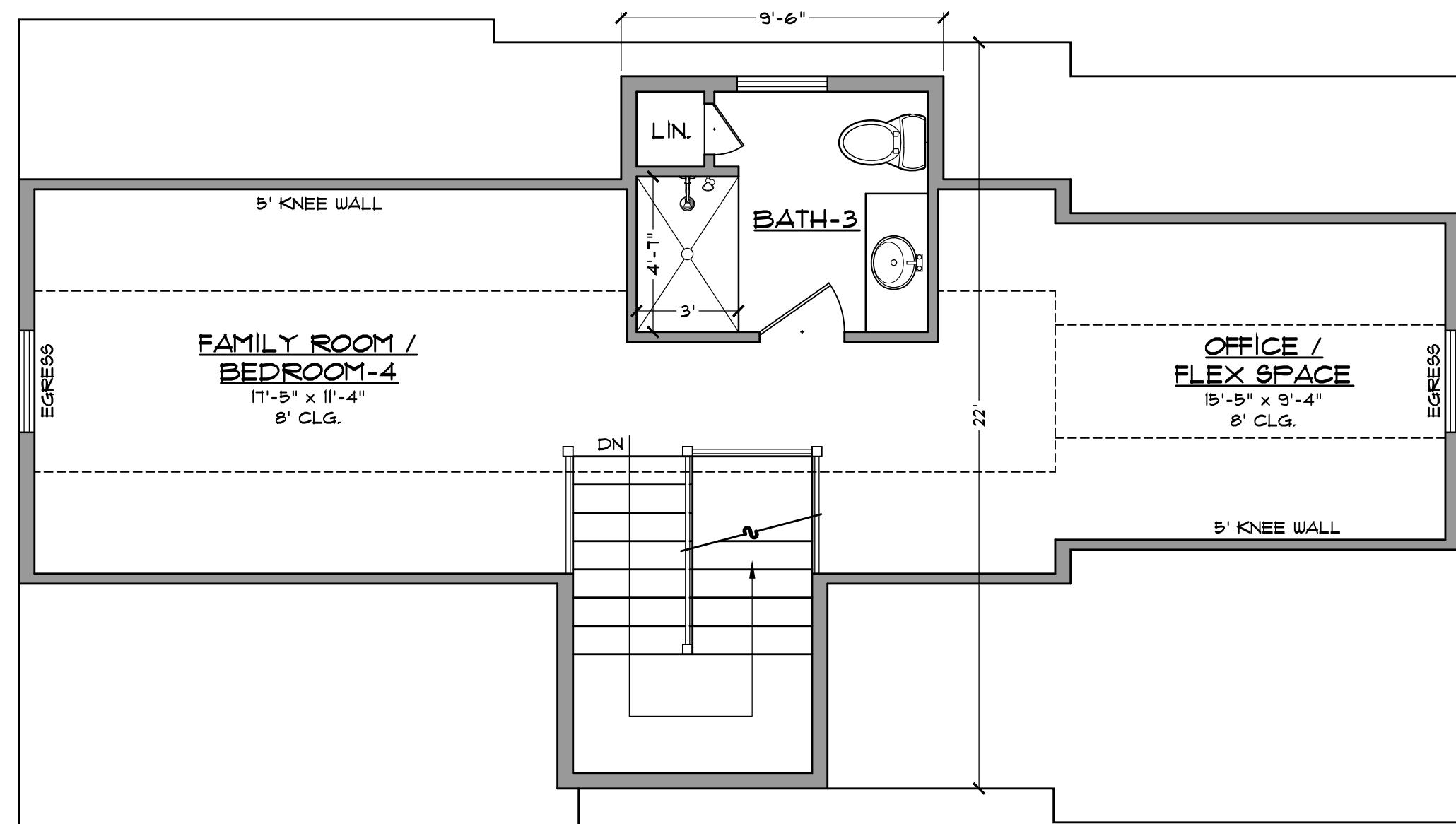
PROJECT: 238 Austin Street (Coffins Ct.) ZBA  
Portsmouth, NH 03801

E-mail: <a href="mailto:tech-112@comcast.net">tech-112@comcast.net</a>	Phone: 603-864-1300	DATE: 12-16-25
Technical Illustrations	Fax: 603-520-1414	REVISED:

ARCHITECTURAL DRAFTING SERVICE

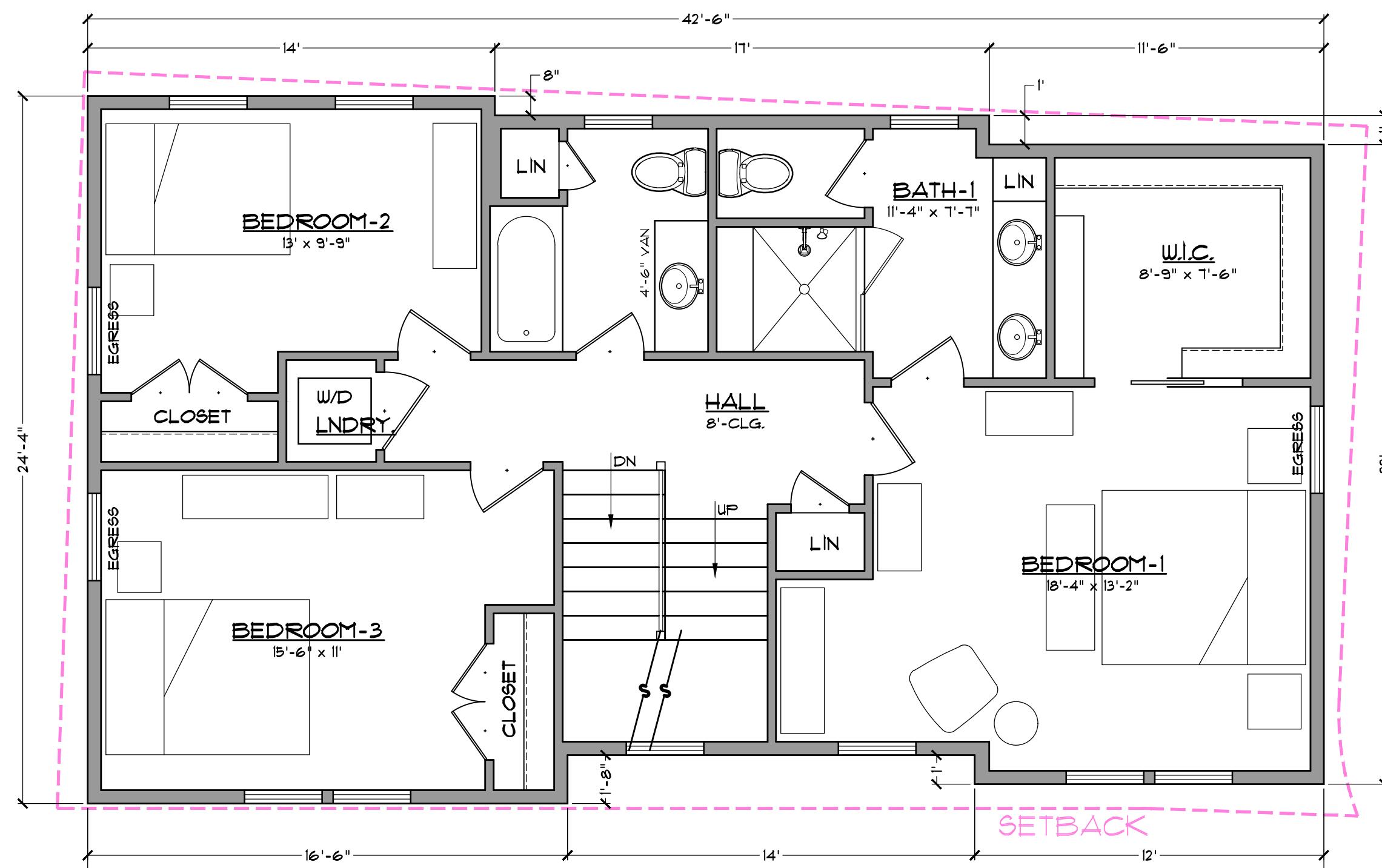
196 Bunker Hill Ave. Stratham, NH 03885

1



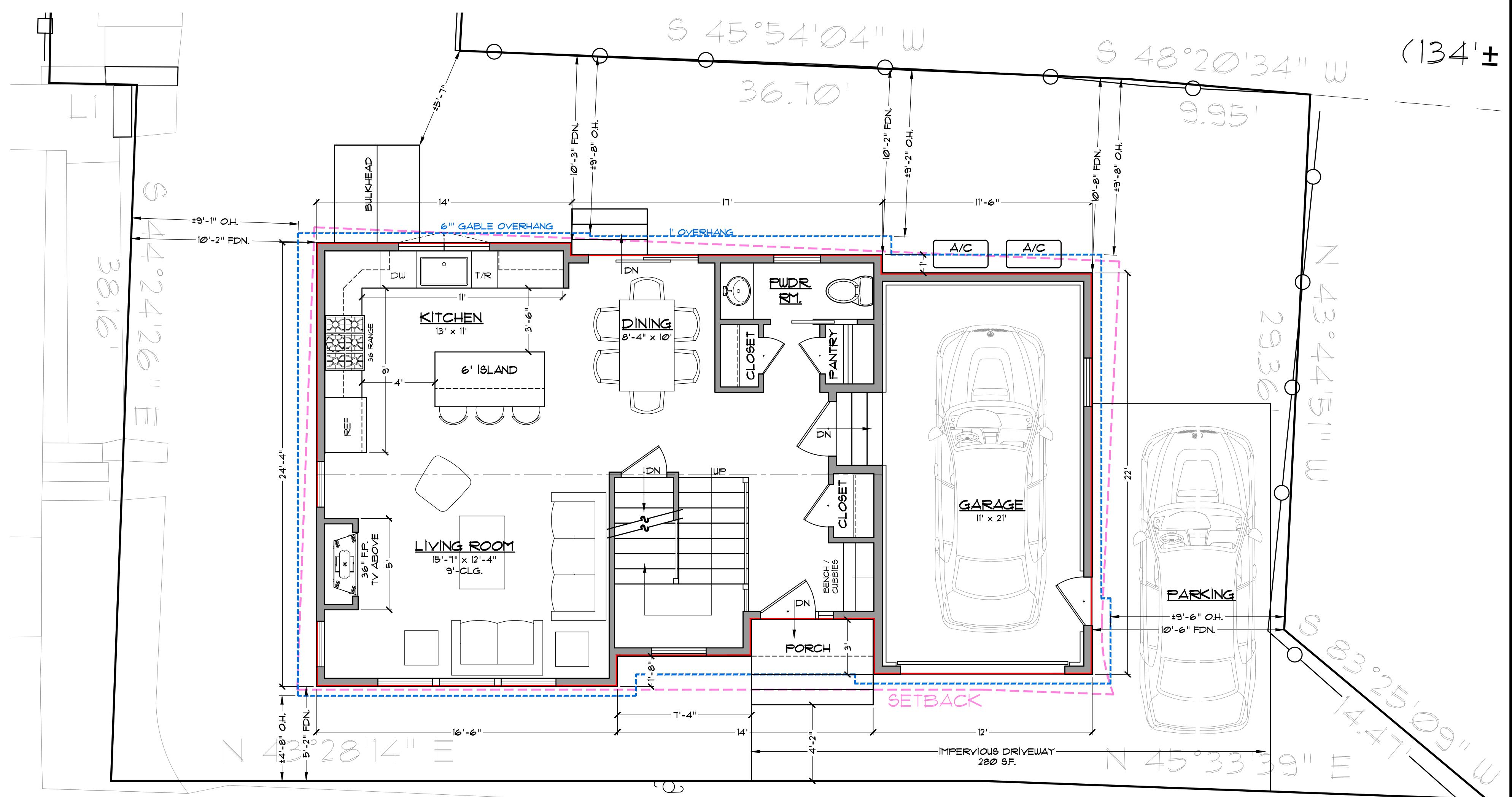
**THIRD FLOOR PLAN**

$\frac{1}{4}'' = 1'-0''$   
HEATED = 486 SF.



**SECOND FLOOR PLAN**

$\frac{1}{4}'' = 1'-0''$   
HEATED = 912 SF.  
60 SF. DEDUCT FOR STAIRS



**FIRST FLOOR PLAN**

$\frac{1}{4}'' = 1'-0''$   
HEATED = 695 SF.  
GARAGE = 265 SF.  
TOTAL = 960 SF.

**S.F. TOTALS**

FIRST FLOOR = 695 SF.  
SECOND FLOOR = 912 SF.  
THIRD FLOOR = 486 SF.  
TOTAL = 2,093 SF.

EXISTING IMPERVIOUS COVERAGE = 1,554 SF.  
PROPOSED IMPERVIOUS COVERAGE = 1,408 SF.  
STRUCTURE = 1,128 SF.  
DRIVEWAY = 280 SF.

**FIRE PREVENTION PLAN**

- SMOKE DETECTOR
- S/CO SMOKE / CARBON MONOXIDE DETECTOR
- HEAT DETECTOR

1. THESE PLANS ARE BUILT TO FOLLOW THE IRC 2021 BUILDING CODE AND STATE FIRE CODE AS ADMINISTERED BY THE TOWN OF PORTSMOUTH, NH.

2. ALL DIMENSIONS ARE FRAMING DIMENSIONS, CONTRACTOR SHALL VERIFY ALL DIMENSIONS PRIOR TO EXCAVATION.

3. DO NOT SCALE DRAWING, WRITTEN DIMENSIONS TAKE PRECEDENCE OVER SCALED DIMENSIONS.

COFFINS CT.

PROJECT:  
238 Austin Street (Coffins Ct.) ZBA  
Portsmouth, NH 03801

E-mail: tech-112@comcast.net  
Phone: 603-864-1300  
Fax: 603-580-1414  
DATE: 12-16-25  
REvised:  
Technical  
Illustrations  
ARCHITECTURAL DRAFTING SERVICE  
196 Bunker Hill Ave.  
Stratham, NH 03885  
DWG. NO. 3

Google Maps

238 Austin St



Imagery ©2025 Google, Imagery ©2025 Airbus, Map data ©2025 20 ft

EXHIBIT C



\*\*\*LOT LINES ARE APPROXIMATE\*\*\*

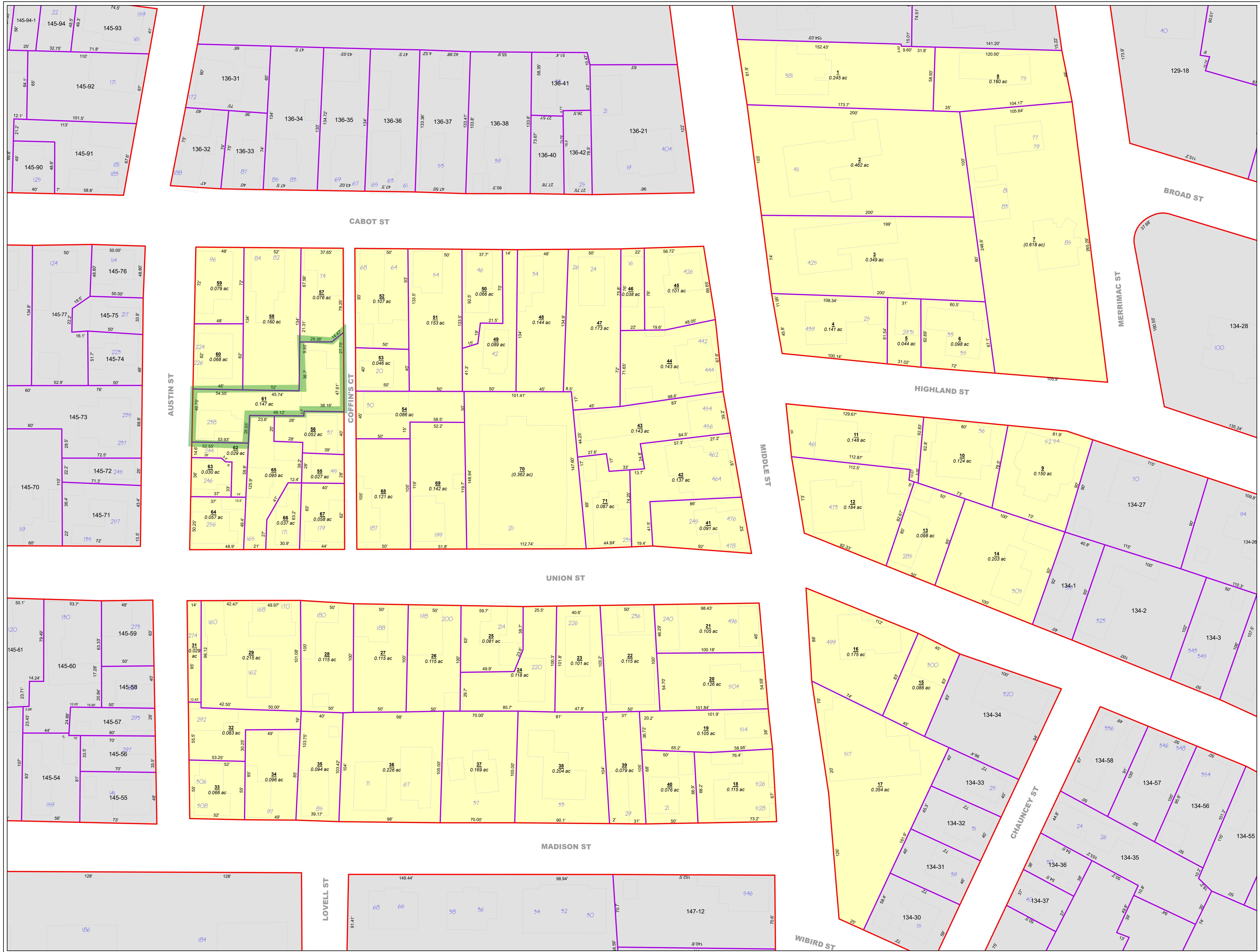
Google Maps

238 Austin St



Image capture: Nov 2024 © 2025 Google





**Tax Map 135**

December 18, 2025

Zoning Board of Adjustment  
City of Portsmouth  
**1 Junkins Avenue**  
**Portsmouth, NH 03801**

Re: 238 Austin Street (Coffins Court) - Variance Proposal.  
Map 135, Lot 61  
General Residence "C" District

Dear Board Members:

The firm of Hoefle, Phoenix, Gormley & Roberts, PLLC has requested my professional opinion on the granting variances for the subject property from the Portsmouth Zoning Ordinance (PZO) and their impact on surrounding property values.

As a New Hampshire real estate licensee and Broker, I have spent over 18 years working in the Seacoast area real estate market. My residence is in downtown Portsmouth, NH, and our local LandVest office, of which I am the Managing Broker, is located on 56 State Street, Portsmouth – less than 1 mile from the subject property. As such, I have reviewed the survey plans, the neighborhood building coverage exhibit prepared by Ross Engineers and the architectural plans for the proposed subdivision. I have also visited the subject property and toured the neighborhood.

The existing condition of the property is somewhat derelict. An empty home void of siding fronts on Austin Street that was the subject of an attempted, yet failed, renovation. The house sits empty, gutted to the studs. To the side of the house sits an old shed. To the "rear" of the property sits an old, dilapidated barn that fronts on Coffins Court. The barn sits close to the road and very close to the abutting property lines – almost covering the entirety of the lot along Coffins Court. The barn sits empty yet appears to be structurally unsound.

The uses in the immediate area are a mix of single-family, duplex, and multi-family homes found on conforming and nonconforming lots of record. On Austin Street: directly abutting the parcel to the north is a two-unit residential structure; to the south, is a single-family home and directly across the street at 235 Austin Street appears a 4-unit, multi-family. The proposed lot on Coffins Court lot is surrounded by single family homes.

The proposed plan is to remove the existing structures, subdivide the existing lot, and construct two new, code compliant, modest homes, largely located within the applicable building envelopes. The result is that it greatly improves yard setbacks, open space, and overall coverage.



The proposed homes are in keeping with the neighborhood in size and architectural style, provide covered garage space and off-street driveway parking.

The relief required for the proposed plan are variances to the PZO Section 10.520/Table 10.521 for creating a lot that is 2,884 sf in size where 3,500 sf is required (Coffins Ct. Lot) and to allow for the Austin Street lot to have 49.75 ft of frontage where 70 ft is required (note that the 49.75 feet is existing). Additionally, side and rear building setbacks are requested for minor intrusions for bulkheads and HVAC units (if applicable). The proposed homes are to be located otherwise entirely within the required building setbacks and the lots will meet the building coverage and open space requirements.

The removal of the existing structures alone would be a vast improvement to the property and the neighborhood. The addition of two new code compliant homes on both Austin Street and Coffins Court, located within the building setbacks would add further improvement and value to the property.

It is my professional opinion, based on my review of the application and two decades of experience working in the local real estate market, that the Board's granting of these variances to allow for two lots to be created and two homes to be built, will not diminish the value of surrounding properties.

Sincerely,

— DocuSigned by:

James (Jim) Nadeau

12/18/2025

James Nadeau – Lic. #063742

## Managing Broker, Portsmouth, NH

LandVest/Christie's International Real Estate

## II. NEW BUSINESS

d. 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)

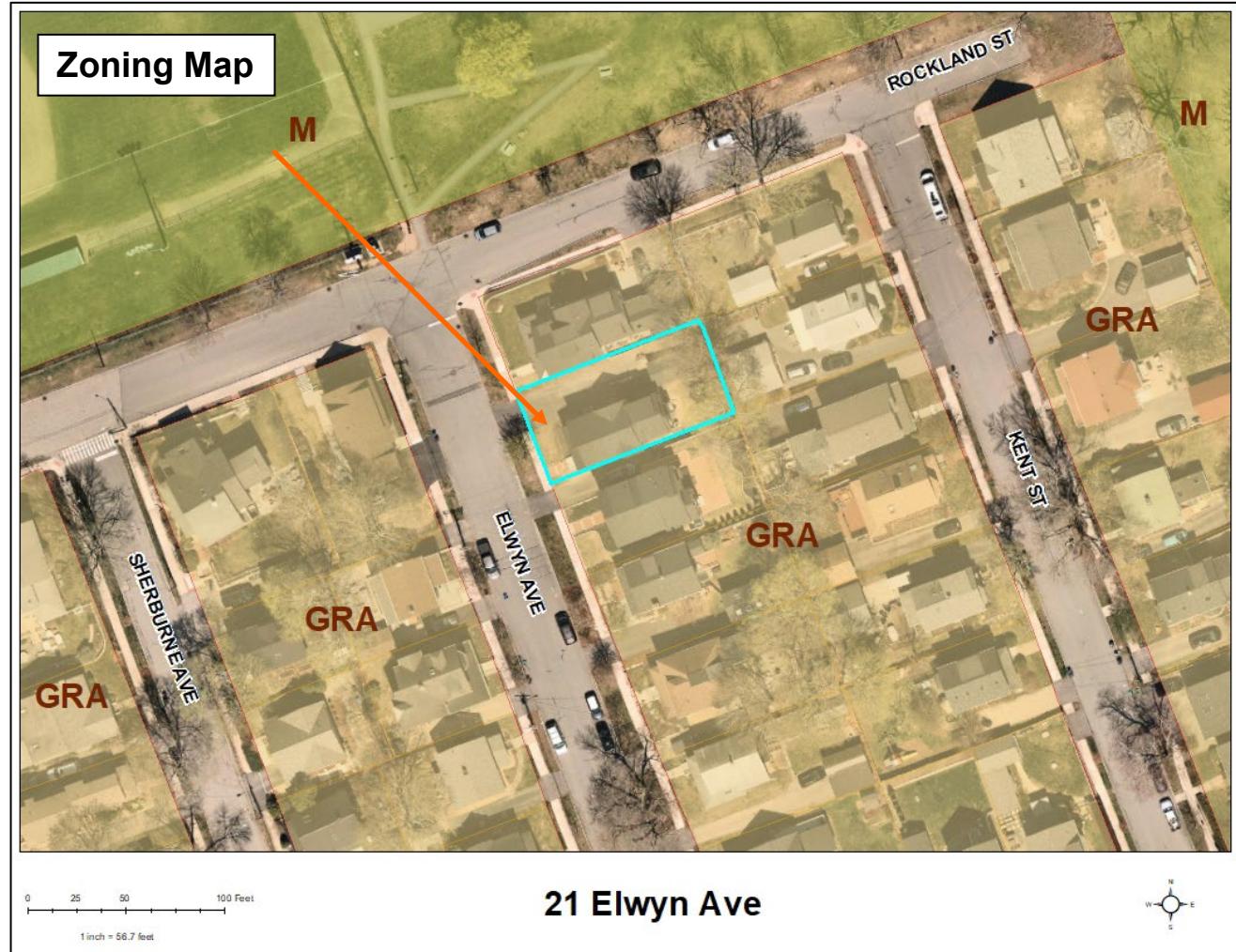
### Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single Family Residential Home	Construct Detached Garage	Primarily Residential
<u>Lot area (sq. ft.):</u>	5,017	5,017	7,500 min.
<u>Front Yard (ft.):</u>	House: 15 Garage: >15	House: 15 Garage/ADU: >15	15 max.
<u>Left Yard (ft.):</u>	Garage: 8	Garage: 6	10 min.
<u>Right Yard (ft.):</u>	House: 2 Garage: >10	House: 2 Garage: >10	10 min.
<u>Rear Yard (ft.):</u>	Garage: 11	Garage: 5	19 (Section 10.573.20) min.
<u>Height (ft.):</u>	(Not available in materials)	Garage: 19	35 max.
<u>Building Coverage (%):</u>	31.4	34.5	25 max.
<u>Open Space Coverage (%):</u>	>30	32	30 min.
<u>Estimated Age of Structure:</u>	1850	Variance request(s) shown in red.	

### Other Permits/Approvals Required

- Building Permit

## Neighborhood Context



## Previous Board of Adjustment Actions

**January 22, 2020** – The Board granted the request for renovation of existing home including front porch reconstruction, kitchen expansion, and second floor addition which requires the following: 1) Variance from Section 10.521 to allow a) 3.5' right side yard where 10' is required; and b) 32% building coverage where 25% is the maximum allowed; 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

## Planning Department Comments

The applicant is requesting relief to demolish the existing single story garage and construct a larger two story garage in its place.

## Variance Review Criteria

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

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

## 10.235 Certain Representations Deemed Conditions

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

**BY: VIEWPOINT & HAND DELIVERY**

December 17, 2025

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

**RE: Variance Application of Bretta Heilbut  
21 Elwyn Avenue, Tax Map 113, Lot 28**

Dear Stefanie,

Please find a copy of the following materials relative to the above referenced variance application filed through Viewpoint for the property located at 21 Elwyn Avenue, Portsmouth:

- 1) Landowner Letter of Authorization
- 2) Narrative to Variance Application with Exhibits
- 3) Plans (Existing/Proposed Conditions, Architectural Plans and Elevations)
- 4) Photographs of Property

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

Sincerely,

Derek R. Durbin, Esq.

LANDOWNER LETTER OF AUTHORIZATION

**Bretta Heilbut** record owner of property located at **21 Elwyn Avenue, Portsmouth NH**, identified on **Portsmouth Tax Map 113, as Lot 28** (the “Property”), hereby authorizes **Durbin Law Offices PLLC** and **MDB Design Build LLC** each to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.

  
\_\_\_\_\_  
Bretta Heilbut (Dec 11, 2025 16:21:07 EST)

**Bretta Heilbut, Owner**

# Letter of Authorization - Heilbut 12-11-2025

Final Audit Report

2025-12-11

Created:	2025-12-11
By:	DARCY PEYSER (darcy@durbinlawoffices.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAhwk5CjBjeJdycHhSOCKjjHn8CjzH1uqx

## "Letter of Authorization - Heilbut 12-11-2025" History

 Document created by Darcy PEYSER (darcy@durbinlawoffices.com)  
2025-12-11 - 8:46:58 PM GMT

 Document emailed to Bretta Heilbut (heilbutb@gmail.com) for signature  
2025-12-11 - 8:47:01 PM GMT

 Email viewed by Bretta Heilbut (heilbutb@gmail.com)  
2025-12-11 - 9:20:32 PM GMT

 Document e-signed by Bretta Heilbut (heilbutb@gmail.com)  
Signature Date: 2025-12-11 - 9:21:07 PM GMT - Time Source: server

 Agreement completed.  
2025-12-11 - 9:21:07 PM GMT



Adobe Acrobat Sign

## **NARRATIVE VARIANCE APPLICATION**

**21 Elwyn Avenue  
Tax Map 113, Lot 28**

**Bretta Heilbut  
(Owner/Applicant)**

### **INTRODUCTION**

#### **The Property – Existing Conditions**

Bretta Heilbut (the “Applicant”), is the owner of the property located at 21 Elwyn Avenue, identified as Portsmouth Tax Map 113, Lot 18 (the “Property”). The Property is located within the General Residence A (“GRA”) Zoning District. It is a 5,017 square foot lot with a two-story single-family residence and 240 square foot detached garage on it. Per the City’s assessing records, the house was constructed in 1850. It is unclear when the garage in the rear of the Property was constructed.

The Property is presently nonconforming with respect to lot area, building coverage, and the side and rear yard setback requirements set forth in the Portsmouth Zoning Ordinance (the “Ordinance”) for the GRA Zoning District (see below).

<b>Provision</b>	<b>Requirement</b>	<b>Existing Condition</b>	<b>Non-Conforming Feature</b>
Lot Area / Lot Area per Dwelling Unit	7,500 sq. ft.	5,017 sq. ft.	Lot
Left Yard Setback	10'	8'	Garage
Rear Setback	20'	11'	Garage
Right Yard Setback	10'	2'	House

#### **2020 Variance Application**

Variance relief was granted to the prior owner of the Property in January 2020 meeting to allow the renovation and a small addition to the house. Nearly all the improvements completed at that time were constructed within the existing footprint. The small addition on the home at that time created a 24 square foot increase in total building coverage (less than 1%) in order to expand the kitchen and in-fill the space above on the second floor and add a master bedroom.

The Applicant’s predecessor in title, a developer, renovated only the single-family home on the Property in 2020 and subsequently sold the Property to the Applicant. Nothing was done with the small, 240 square foot detached garage on the Property. The existing garage is too small to fit most modern vehicles and is primarily used for storage of personal belongings and outdoor items.

## **Proposed Conditions**

The Applicant seeks to demolish the existing, undersized garage and construct a larger, more functional structure in its place. The first floor of the structure will serve as a garage space that a modern vehicle can fit into while the second floor will serve as an artist studio for the owner, who is a professional artist.

The footprint of the proposed garage structure will be 336 square feet, a 96 square foot increase over the existing garage (excluding the exterior stairs). The second floor studio will be accessed by a 3'3" wide set of exterior stairs to the rear of the structure.

The new structure will encroach slightly further into the left and rear yard setbacks than the existing structure. It will encroach by an additional 2' into the left yard setback and 6' into the rear yard setback. However, just over 3' of the additional encroachment into the rear yard setback is associated with the exterior stairs, not the garage itself. Building coverage on the Property will increase from 3% (31.4% to 34.4%). This calculation includes the exterior stairs.

## **ZONING RELIEF SUMMARY**

The Applicant seeks the following variance approvals from the Board:

### **Section 10.521**

1. To allow a 6' (+/-) left yard setback for an expanded garage where 10' is required and 8' (+/-) exists.<sup>1</sup>
2. To allow a 5' (+/-) rear yard setback where 18.75' (+/-) is required and 11' exists.<sup>2</sup>
3. To allow 34.4% (+/-) building coverage where 25% is allowed and 31.4% exists.

### **Section 10.321**

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

## **VARIANCE CRITERIA**

---

<sup>1</sup> Note: The Design Standards Table on the Variance Plan submitted herewith notes a 2' side yard setback. This pertains to the right yard setback associated with the existing home, not the proposed garage. The house is not being modified.

<sup>2</sup> Per Section 10.570 of the Ordinance, "An accessory building or structure more than 10 feet in height or more than 100 square feet in area shall be set back from any lot line at least the height of the building or the applicable yard requirement, whichever is less." The proposed garage is 18'9" in height.

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

In the case of Chester Rod & Gun Club, Inc. v. Town of Chester, the Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, "the variance must 'unduly, and in a marked degree' conflict with the ordinance such that it violates the ordinance's 'basic zoning objectives.'" "Id. The Court observed that "[t]here are two methods of ascertaining whether granting a variance would violate an ordinance's basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare." Id.

The primary purpose of minimum setback standards is to ensure that adequate light, air and space between abutting properties and the structures thereon. The primary purpose of the maximum building coverage standard is to protect against the overcrowding of structures on land.

**Building Coverage Variance / Expansion of a Non-Conforming Structure**

The requested increase in building coverage and the expansion of the existing non-conforming structure is reasonable in light of the existing conditions on the Property and the character of the neighborhood. The Property is undersized at 5,017 square feet. On a compliant property of 7,500 square feet, what is being proposed (1,726 square feet of coverage) would amount to about 23% building coverage. It is important to point out that the GRA Zoning standards are not reflective of the conditions and character of most properties in this area of Portsmouth where lot sizes fall well under the 7,500 sq. ft requirement. A search of properties along Elwyn Avenue turned up only one property, technically located on Lincoln Avenue, which has the requisite lot size (104-112 Lincoln Ave., which has been converted to multiple condominium units). Any reasonably sized addition to either structure on the Property necessitates building coverage relief.

Similar to the relief sought for the main dwelling in 2020, the increase in building coverage in this instance is minimal. The proposed garage accounts for only 96 square feet of additional coverage behind what exists. The stairs account for the rest. The 3% increase in coverage seems larger proportionally due to the small size of the lot. However, the additional space is necessary to make full use of the structure as a modern garage and as an artisan studio above. Many similarly sized properties in the neighborhood, most of which are non-conforming as to building coverage, have 1.5 or 2 story detached garages. This expanded garage, tucked toward the rear of the Property, would be aesthetically in keeping with the surrounding homes and as such have no effect on the essential character of the neighborhood.

**Setback Variances**

The requests for left yard and rear yard setback relief are necessary to allow for the small expansion of the garage footprint. The garage is presently non-conforming as to the left and rear yard setback requirements, so any proposed expansion would necessitate relief.

The Property, as well as the abutting lot to the north, were under common ownership until approximately 2020. The dwelling and garage predate the separate conveyance of each lot as well as the adoption of current zoning standards. They were not sited to conform with the setback requirements when they were constructed. As such the house encroaches substantially into the right yard setback, and the garage lies about 50% within the left and rear yard setbacks. There is no feasible way to expand the garage outside of the setback area as it cannot be moved any closer to the house. The exterior staircase to the rear of the garage leading to the upstairs studio is necessary because the small footprint of the garage does not allow for an interior staircase while also maintaining adequate storage space.

The reconstructed garage will not negatively impact the light, air and space of the abutting properties. The height of the proposed structure will be well below the dimensional requirement and remain clearly subordinate to the dwelling. The neighboring property at 11 Elwyn Avenue has a large, attached garage which lies within only 2-3 feet of the common boundary to the north. The proposed garage will be adjacent to this. The property at 11 Elwyn Avenue has approximately 41% building coverage according to assessing records, along with structures that encroach into the setbacks. If anything, the garage on 11 Elwyn will act as a buffer to any impact which this proposed renovation might have. The owners of that property have expressed their support for the proposed garage.

The Property is naturally buffered from the abutting properties on Kent Street by a dense treeline along the common boundary(ies). The property at 18 Kent Street, which is one of the two abutting properties to the rear, also has a detached garage that encroaches into the rear setback. Accordingly, granting the setback variances will have little impact on the air, light and space of abutters and is in keeping with the character of the neighborhood.

### **Substantial Justice will be done in granting the variances.**

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

It would represent a loss to the Applicant for the Board to deny the variances necessary to modestly expand the existing garage to create a more functional garage and a small artist’s studio on the second floor. The small increase in building coverage and encroachment into the setbacks does not alter the character of the neighborhood, which consists mostly of undersized lots with encroaching structures. Many properties in this area have detached garages, several of which have been converted to 1.5 or 2-story accessory structures. Accordingly, there would be no gain to the

public by denying the variances. In balancing the equities, it would constitute an injustice to deny the variances. It would deprive the Applicant of the ability to make reasonable use of her property.

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

The neighborhood is characterized by undersized lots with detached garages that encroach into one or more of the yard setbacks. The reconstructed garage will only encroach minimally further into the left and rear yard setbacks beyond than the existing garage. It will not negatively impact the light, air and space of the homes on abutting properties, which is the most relevant consideration in the context of determining whether surrounding property values will be negatively impacted. A new, tastefully designed more functional garage should only help to preserve or enhance surrounding property values.

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

The Property has special conditions that distinguish it from surrounding properties such that there is no fair and substantial relationship between the general purposes of the building coverage and setback requirements and their application to the Property.

The small size of the property (5,017 sf.) and the location of the structures on it, and the spatial relation of those structures to structures on the abutting properties, are all special conditions of the Property that drive the location of the proposed garage. It would make little practical sense to relocate the garage to another area of the Property are a result of these special conditions. It would also make little sense aesthetically. The abutting properties have structures close to the boundaries of the Property which minimize the impact of the proposed garage. By way of example, the property at 11 Elwyn Avenue has a large dwelling structure with an attached garage which backs up to the left sideline of the Property. The property at 18 Kent Street also has a garage that backs up against the rear boundary of the Property. The proposed garage is a reasonable expansion of what exists. If the lot met the minimum area requirement (7,500 sf.), the total building coverage of the Property would be only 23%. The practical reality is that the character of the neighborhood is defined by properties that do not comply with the building coverage requirement and have garage or similar structures that are similarly sized and located. **Exhibit A.**

The proposed use of the Property is also reasonable. The Property will continue to be used for single-family residential purposes and the detached structure will be used as a garage and home studio, uses which are all permitted within the GRA Zoning District.

## CONCLUSION

The Applicant, Bretta Heilbut, thanks you for your time and consideration of the application and respectfully requests your approval of the variances being requested.

December 17, 2025

Respectfully Submitted,  
Bretta Heilbut

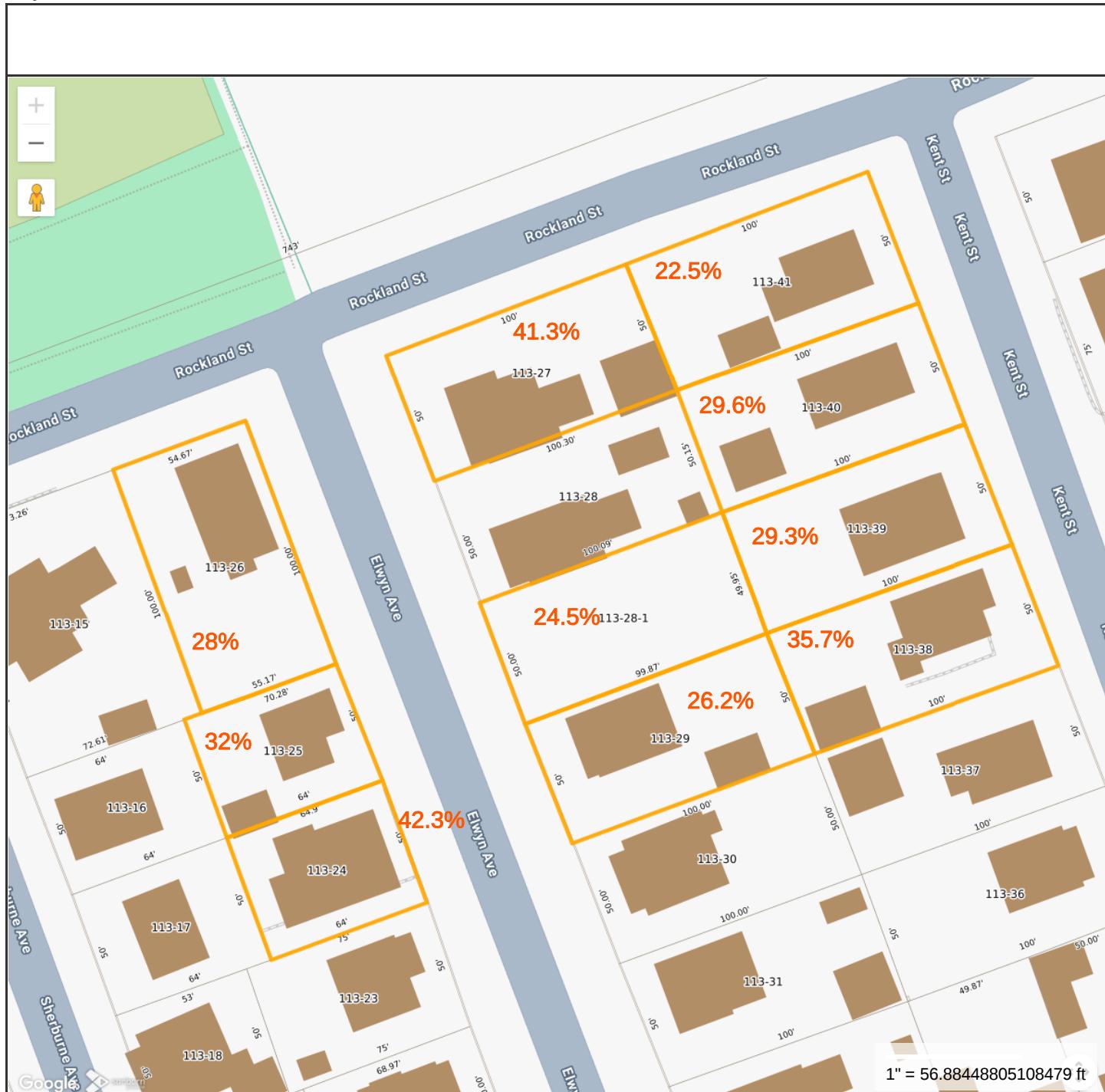


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# EXHIBIT A

City of Portsmouth, NH

December 11, 2025



MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT

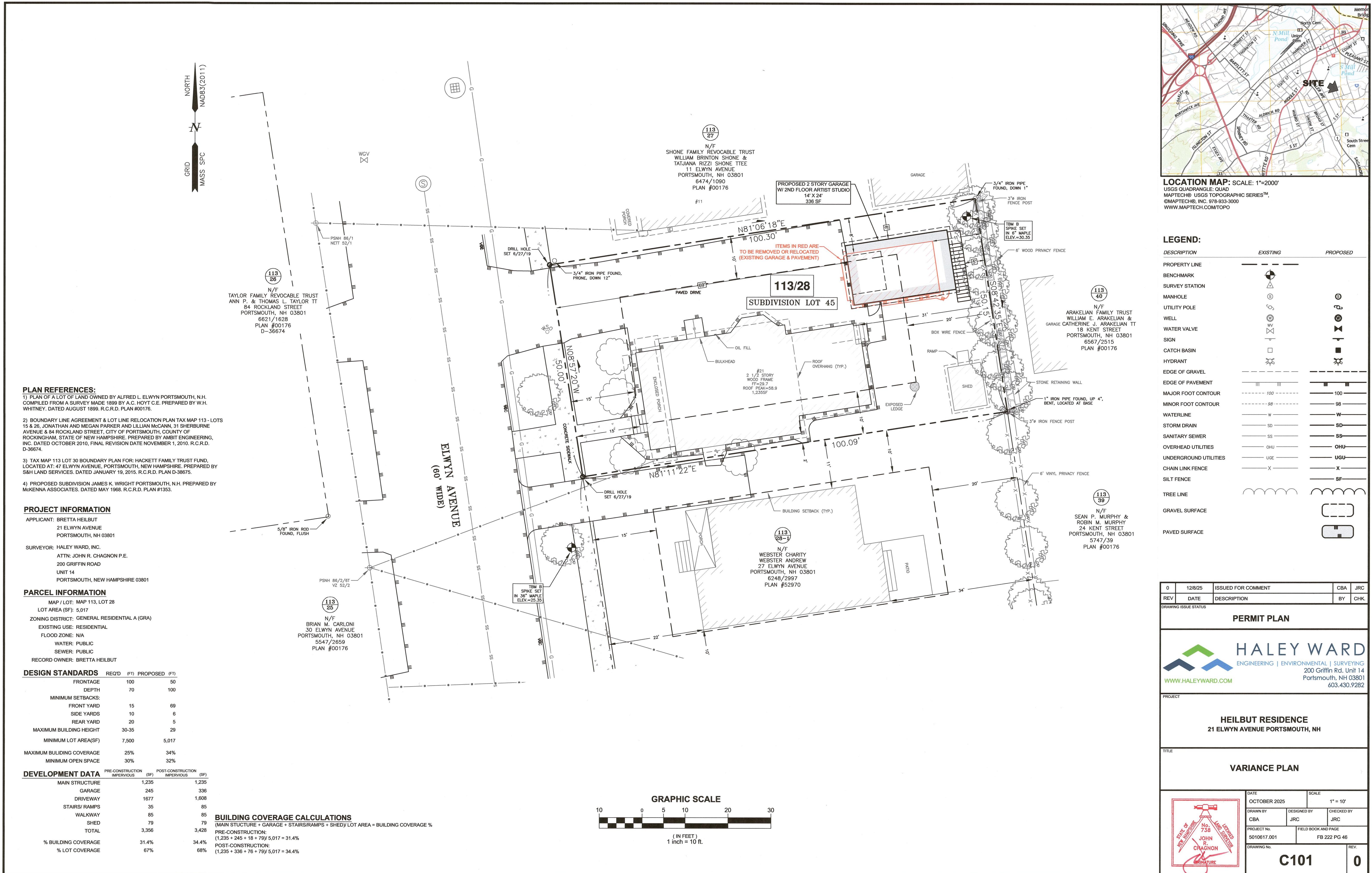
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 10/23/2025

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

### Coverage Analysis: 21 Elwyn Ave

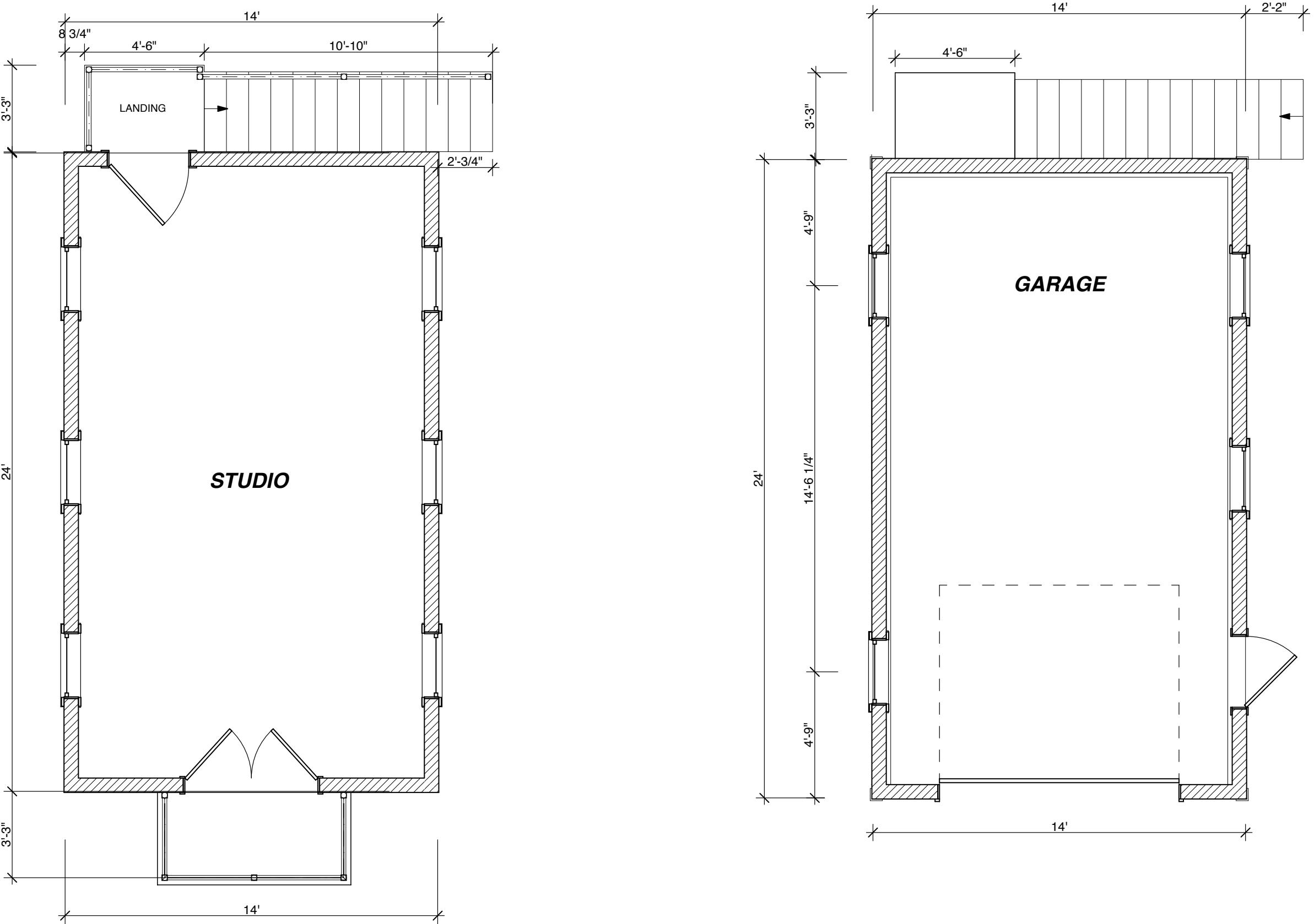
Address	Tax Lot	Zone	Size (AC)	Size (Sq Ft)	Bedroom	Bath	Footprint (w/		Coverage %	Year
							outbuildings)			
11 Elwyn	113-27	GRA	0.11	4791.6	3	2		1977	41.26%	1900
36 Kent	113-38	GRA	0.11	4791.6	3	2		1712	35.73%	1900
24 Kent	113-39	GRA	0.11	4791.6	4	2		1402	29.26%	2002
18 Kent	113-40	GRA	0.11	4791.6	3	2		1419	29.61%	1898
10 Kent	113-41	GRA	0.11	4791.6	3	1		1,079	22.52%	1902
27 Elwyn	113-28-1	GRA	0.11	4791.6	3	2		1176	24.54%	2020
35 Elwyn	113-29	GRA	0.11	4791.6	4	2		1256	26.21%	1909
40 Elwyn	113-24	GRA	0.07	3049.2	4	4		1289	42.27%	1900
30 Elwyn	113-25	GRA	0.07	3049.2	2	1		978	32.07%	1940
84 Rockland	113-26	GRA	0.13	5662.8	3	1		1586	28.01%	1920





## ELEVATIONS

1/4" = 1'-0"



2 STUDIO LEVEL 1/4" = 1'-0"

1 GARAGE LEVEL 1/4" = 1'-0"

	11/10/25	PRELIMINARY DRAWINGS
MARK	DATE	DESCRIPTION

PROJECT NO:  
MODEL FILE:  
DRAWN BY:  
CHK'D BY:  
COPYRIGHT

SHEET TITLE

## PROPOSED PLANS

A1



21 Elwyn Avenue  
(Existing 1-Story Garage)



21 Elwyn Avenue  
(Street View)



21 Elwyn Avenue & 11 Elwyn Avenue  
(Street View)



11 Elwyn Avenue  
(South Elevation)



35 Elwyn Avenue  
(2 story garage)



36 Kent Street  
(1.5 story garage)

## II. NEW BUSINESS

E. 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)

### Existing & Proposed Conditions

	<u>Existing Langdon Lot</u>	<u>Existing Cornwall Lot</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	Commercial	Construct 3 Single Family Dwellings	Mixed Use
<u>Lot area (sq. ft.):</u>	6,958	18,149	25,107	7,500 min.
<u>Lot area per dwelling unit (sq. ft.)</u>	NA	NA	8,369	7,500 min
<u>Street Frontage (ft.):</u>	88	0	<b>88</b>	100 min.
<u>Lot depth (ft.):</u>	80	71	>80	80 min.
<u>Front Yard (ft.):</u>	1	>5	5.4	5 max.
<u>Left Yard (ft.):</u>	1.6	>10	10.2	10 min.
<u>Right Yard (ft.)</u>	>15	5.3	15.5	10 min.
<u>Rear Yard (ft.):</u>	1.6	>15	54.6	15 min.
<u>Height (ft.):</u>	1 Story	1 Story	33 29.5 33	40 max.
<u>Building Coverage (%):</u>	41	8.5	25.6	40 max.
<u>Open Space Coverage (%):</u>	22.7 (For both parcels)		47	25 min.
<u>Estimated Age of Structure:</u>	1810		Variance request(s) shown in red.	

### Other Permits/Approvals Required

- Building Permit
- Site Review (TAC and Planning Board)

## Neighborhood Context



## Previous Board of Adjustment Actions

### No previous history found for 94 Langdon St

#### 98 Cornwall St

**June 29, 1965** – Appeal for permission to construct a garage on your premises now located between Langdon and Cornwall Streets and the B & M right of way will be heard on July 27, 1965.

**July 27, 1965** – The Board **granted** a Variance to the terms of the Zoning Ordinance and wherein you requested to be allowed to construct a new garage within Lots #82, 83, 84, 93, 94, 95 & 103, as shown on Plan 19.

## Planning Department Comments

The applicant is requesting relief to construct 3 new single-family free-standing homes. The applicant proposes to merge the lots located at 94 Langdon St and 98 Cornwall St to make a conforming lot in all dimensions except for frontage.

## 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.

**CITY OF PORTSMOUTH  
ZONING APPLICATION NARRATIVE**

**94 Langdon Street  
(Tax Map 139, Lot 8)  
98 Cornwall Street  
(Tax Map 139, Lot 1)**

**Regan Electric Company, Inc. (Owner)  
Chinburg Development, LLC (Applicant)**

**INTRODUCTION**

**The Property (“Lots”)**

Chinburg Development, LLC (“Chinburg” or “Applicant”) is under agreement to purchase two abutting lots of record located at 94 Langdon Street (Tax Map 139, Lot 8) (the “Langdon Lot”) and 98 Cornwall Street (Tax Map 139, Lot 1) (the “Cornwall Lot”). Both lots are owned by Regan Electric Co, Inc. (“Regan Electric”) which acquired the lots in 1992. The lots have served as the principal place of business for Regan Electric, a local electrical contracting business, since they were purchased. Each lot has one building on it both of which were constructed long before Regan Electric purchased the lots. Much of the remainder of the Property consists of a sea of pavement. The lots lie within the Mixed Residential Business (“MRB”) District. The lots are abutted to the north by the railroad tracks and North Mill Pond, to the west by industrial/commercial uses and to the south and east primarily by residential uses.

**Existing Conditions & Non-Conformities**

**Langdon Lot**

The Langdon Lot has 6,958 square feet of lot area. It has 88' of continuous street frontage on Langdon Street. The existing building on the Langdon Lot is situated in close proximity to the common boundary with the property at 82 Langdon Street. In its existing condition, the Langdon Lot is lawfully non-conforming in the following respects:

<b>Provision</b>	<b>Requirement</b>	<b>Existing Condition</b>	<b>Non-Conforming Feature</b>
Lot Area	7,500 sq. ft.	6,958 sf.	Lot
Street Frontage	100'	88'	Lot
Front Yard Setback	5'	1.0'	Building
Left Yard Setback	10'	1.6'	Building
Rear Yard Setback	15'	1.6'	Building
Building Coverage	40%	41%	Building

### Cornwall Lot

The Cornwall Lot is 18,149 square feet. In its existing condition, it is non-conforming in the following respects:

Provision	Requirement	Existing Condition	Non-Conforming Feature
Street Frontage	100'	0'	Lot
Right Yard Setback	10'	5.3'	Building

The Cornwall Lot is essentially landlocked, although it is presently accessed through the Langdon Lot. While that lot has an address associated with Cornwall Street, the paved public right-of-way ("ROW") terminates at the intersection of McDonough Street and does not carry through to 98 Cornwall Street. The City Assessing Map shows the street carrying through to 98 Cornwall Street and beyond. **Exhibit A (Assessing Map)**. In this respect, it is a paper street, although the prevailing opinion is that any rights the City had in the paper street have lapsed by operation of law which means that the abutting landowners own to the centerline.

### **Zoning & Character of the "Neighborhood"**

There are only four (4) lots within the MRB Zoning District in this area of Portsmouth. **Exhibit B (Zoning Overlay Map)**. It appears that the MRB Zoning for these properties reflects the historical use of these properties more than it reflects a conscious policy decision to zone the area for mixed residential and business uses. Much of the surrounding area is zoned General Residence C ("GRC"), which only allows for residential uses. The area surrounding the Regan Lots is almost entirely comprised of higher density residential development, which is consistent with the spirit and intent of GRC Zoning.

### **Proposed Redevelopment**

Chinburg intends to merge the lots, raze the existing buildings, and construct three (3) separate colonial style single-family dwellings on the merged property. The merged property will have 25,107 square feet of total lot area. Access to the merged property will be achieved from Langdon Street. Merging the lots will bring the properties into almost complete conformance with the dimensional requirements of the Ordinance. The only non-conforming aspect of the land that will remain post-merger, which is a condition that cannot be cured, relates to the amount of continuous street frontage the new merged lot will have (88'). Otherwise, the conditions of the land will be markedly improved. The building setback encroachments referenced above will be eliminated, the merged property will conform to the lot area requirement, and building coverage and impervious surface coverage will be reduced. Impervious surface coverage will be reduced from 73.5% to 52.4% (total of both lots combined).

## SUMMARY OF ZONING RELIEF

The Applicant seeks the following variance from Section 10.521 of the Portsmouth Zoning Ordinance (the “Ordinance”): **to allow 88’ of continuous street frontage where 100’ is required in the MRB Zoning District.**

## VARIANCE CRITERIA

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

In the case of Chester Rod & Gun Club, Inc. v. Town of Chester, the Court noted that since the provisions of all ordinances represent a declaration of public interest, any variance will, in some measure, be contrary to the ordinance, but to be contrary to the public interest or injurious to public rights of others, “the variance must ‘unduly, and in a marked degree’ conflict with the ordinance such that it violates the ordinance’s ‘basic zoning objectives.’” Id. The Court observed that “[t]here are two methods of ascertaining whether granting a variance would violate an ordinance’s basic zoning objectives: (1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative; and (2) examining whether granting the variance would threaten the public health, safety, or welfare.” Id.

### Essential Character of the Neighborhood

Of the four (4) properties that lie within this MRB zoned area of Portsmouth, only one (1) complies with the 100’ frontage requirement – 135 McDonough Street. That property has a significant amount of frontage on McDonough Street. Otherwise, the Langdon Lot is the most nearly conforming property of the MRB zoned properties. The 88’ of continuous street frontage far exceeds the frontage on most, if not all surrounding GRC zoned / residential properties. *See Exhibit B.* The redevelopment of the land will result in abutting properties enjoying greater light, air and space than they presently do. It will also result in a use that is more consistent with most of the properties it is surrounded by and has similar or greater frontage

While not technically germane to the frontage variance being sought, the proposed homes will also be consistent in design and scale to the surrounding residential properties. Coincidentally, in 2017, Chinburg developed the single-family homes that are directly across the street to the east at 81, 91 and 101 Langdon Street. The design of the dwellings proposed on the merged property will be consistent architecturally.

For all of the reasons outlined above, granting frontage variance will not alter the essential character of the neighborhood.

## Public Health, Safety and Welfare

The proposed lot merger and redevelopment of the lots will achieve greater conformance with the requirements of the Ordinance than what exists now. The reduction in impervious surface coverage will also improve the environmental conditions of the Property. Chinburg's due diligence associated with its purchase of the land suggests that there are at least two (2) buried underground storage tanks ("USTs") on the lots. Chinburg will remove any USTs from the merged property and perform any remediation that is required by the NH DES pursuant to a Phase II Environmental Assessment. For these reasons, what is proposed will benefit the public health, safety and welfare. There is no detriment to the public health, safety or welfare with what is proposed. If approved, the merger and redevelopment of the lots will constitute a win for the City, the neighborhood, general public and Applicant alike.

### **Substantial Justice will be done in granting the variance relief sought.**

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

This is a rare example of an application where both the landowner and the public would only suffer a loss by denying the variances. If denied, the lots would remain in their existing non-conforming conditions. Nothing requires the owner or any future purchaser to bring the lots or the buildings thereon into conformance. They could be improved upon as they are. For this reason, there is no benefit to the public associated with denying variance. However, there is a loss to the Applicant associated with denying the variance. There is no way to cure the existing frontage non-conformity associated with the land, whether merged or un-merged. Denying the variance would merely deny the Applicant the opportunity to improve the conditions of the land in a reasonable, more conforming manner that is consistent with the character of the surrounding neighborhood. Accordingly, it would constitute a loss to the Applicant that is not outweighed by any gain to the public to deny the variance.

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

The values of surrounding properties will only benefit from new tastefully designed homes on the merged lots and from the elimination of the setback encroachments associated with the existing buildings. The redevelopment of the lots will result in more air circulation, light and space for the abutting properties than what exists. What is proposed will be a vast aesthetic and environmental improvement over what exists.

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

*The Property has special conditions that distinguish it from surrounding properties such that there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.*

The property in this instance is comprised of two separate lots of record, both of which have unique conditions associated with them. As more specifically outlined above, the Langdon Lot is non-conforming with respect to lot area and frontage. The Cornwall Lot does not have recognized street frontage, which renders it non-conforming in this respect as well. Both lots have structures that encroach into one or more of the yard setbacks. The lack of street frontage is a condition of both lots that cannot be changed, whether they are merged or not.

The Applicant will be taking the two lots and merging them into one more conforming lot. The merger of the two lots into one more conforming lot triggers the need for the frontage variance but the Ordinance itself, particularly Sections 10.320 and 10.330, encourage and strive landowners to bring their properties into greater conformance with the Ordinance when the opportunity exists. What is proposed by the Applicant comports with the purpose and intent of the Ordinance. For these reasons, there is no fair and substantial relationship between the general purposes of the frontage requirement and its application to this property.

*Use is reasonable*

The use of the merged lot for three detached single-family homes is permitted by right in the MRB Zoning District. Therefore, the use is *per se* reasonable under Section 10.440 of the Ordinance.

## **CONCLUSION**

In conclusion, the Applicant has demonstrated that its application satisfies the five (5) criteria for granting the variance requested and respectfully requests the Board's approval. Thank you for your time, effort and consideration of the foregoing variances requests.

Respectfully Submitted,

Dated: December 17, 2025

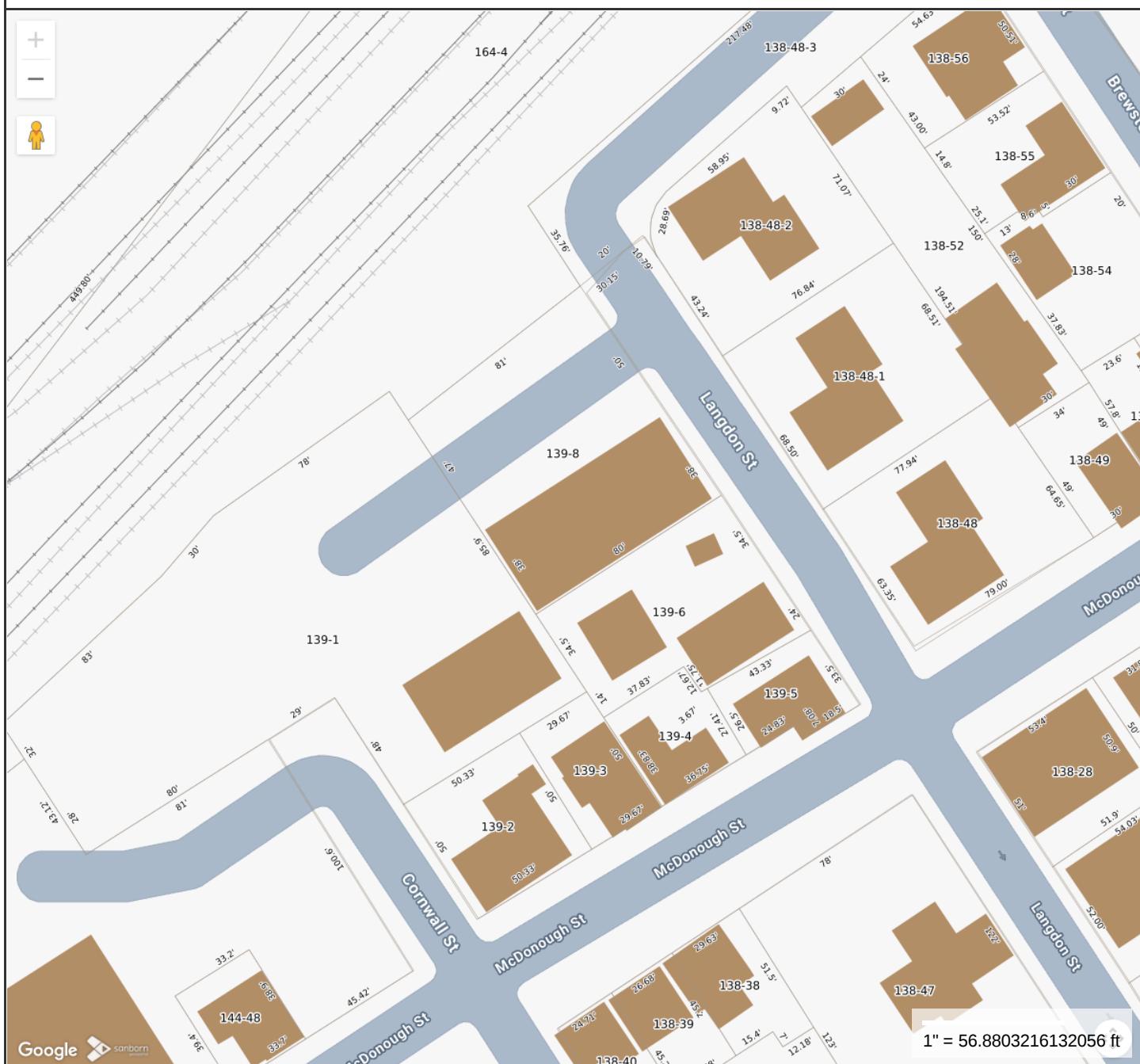
Chinburg Development, LLC

By and Through Its Attorney,

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## EXHIBIT A



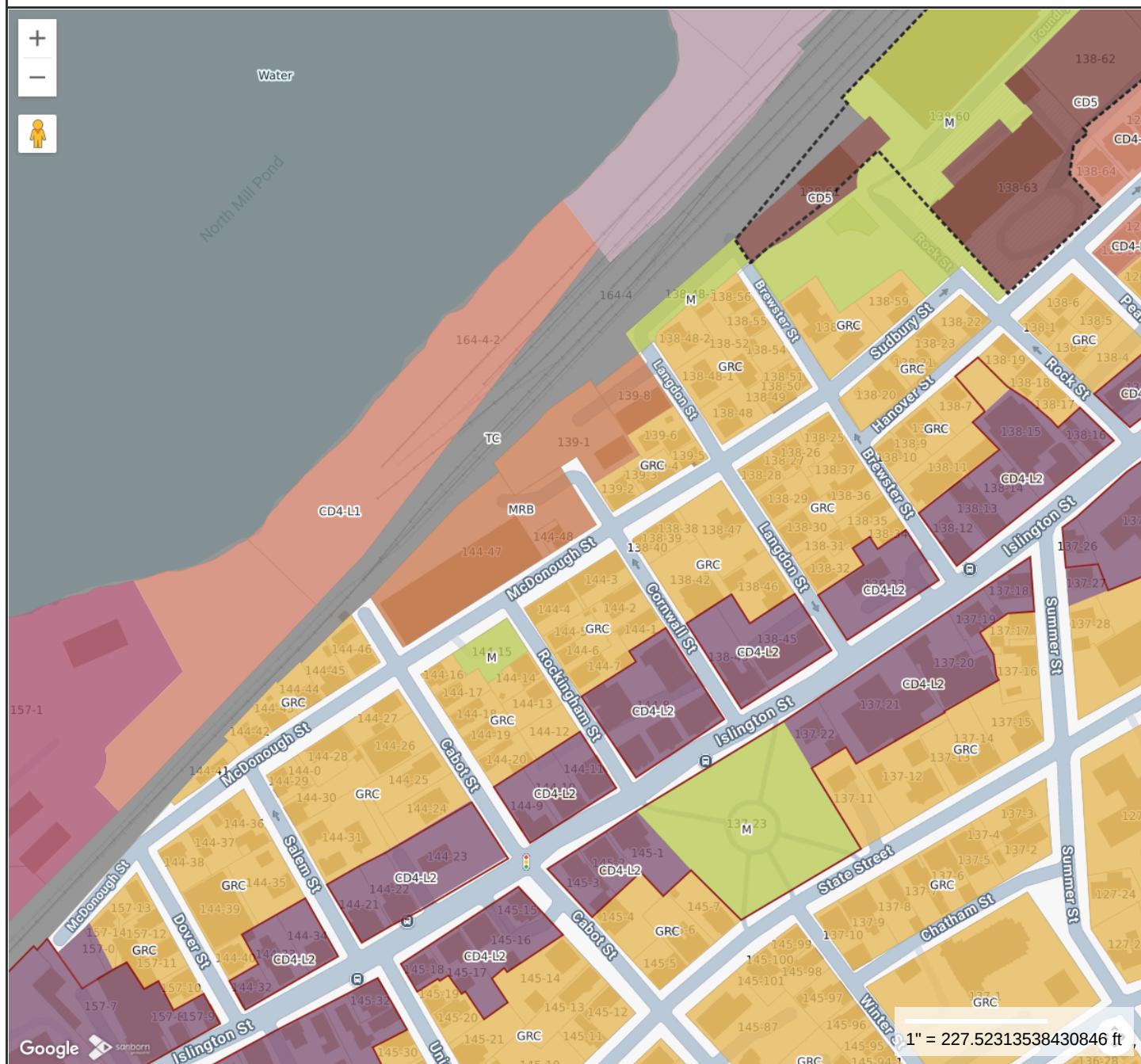
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Geometry updated 10/23/2025

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activities should not be done using  
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## EXHIBIT B



## Map Theme Legends

### Zoning

#### Residential Districts

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

#### Mixed Residential Districts

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

#### Business Districts

	GB	General Business
	B	Business
	WB	Waterfront Business

#### Industrial Districts

	OR	Office Research
	I	Industrial
	WI	Waterfront Industrial

#### Airport Districts

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

#### Conservation Districts

	M	Municipal
	NRP	Natural Resource Protection

#### Character Districts

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

#### Civic District

	Civic District
--	----------------

#### Municipal District

	Municipal District
--	--------------------

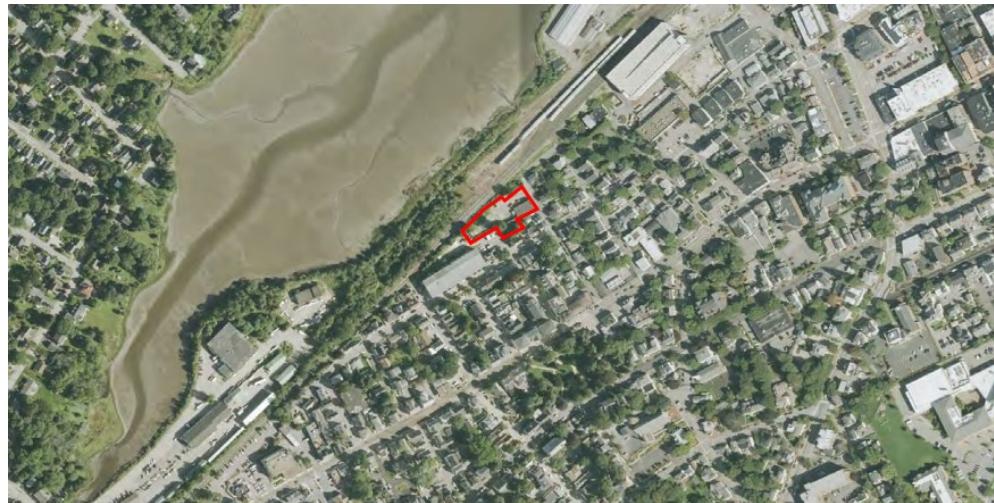
#### Overlay Districts

	OLOD	Osprey Landing Overlay District
	Downtown	Overlay District
	Historic	District

City of Portsmouth



### Photos of 94 Langdon St & 98 Cornwall St



Bird's eye view of area



Aerial view of 94 Langdon St & 98 Cornwall St

---

### Chinburg Properties

3 Penstock Way | Newmarket, NH 03857 | 603.868.5995



View of Property from Langdon St



Garage at 98 Cornwall

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## Chinburg Properties

3 Penstock Way | Newmarket, NH 03857 | 603.868.5995



Northeast facing view.

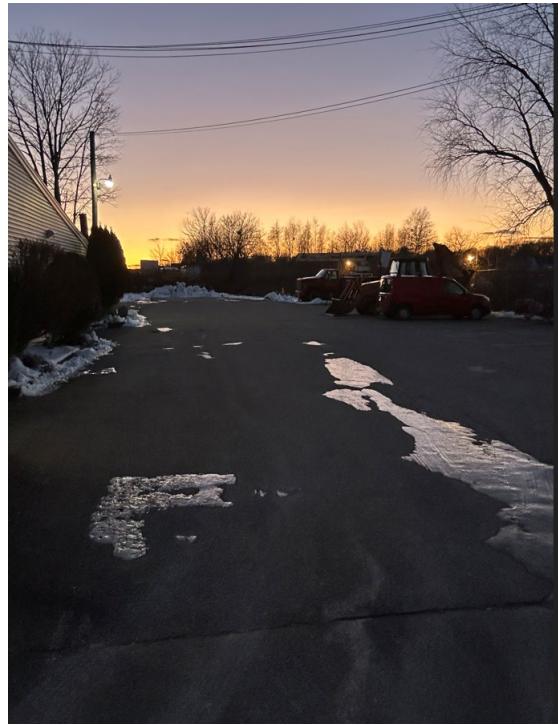


View from Langdon St.

---

## Chinburg Properties

3 Penstock Way | Newmarket, NH 03857 | 603.868.5995



Current existing condition of the site.



Abutting home, (constructed by Chinburg).

---

## Chinburg Properties

3 Penstock Way | Newmarket, NH 03857 | 603.868.5995



More abutting homes (constructed by Chinburg).

---

## Chinburg Properties

3 Penstock Way | Newmarket, NH 03857 | 603.868.5995

# Sherlock

387.124.v26 GL (12/17/2025) - R1

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Art Form Architecture, LLC

603-431-9559



**Dear Builders and Home Buyers,**

In addition to our Terms and Conditions (the "Terms"), please be aware of the following:

This design may not yet have Construction Drawings (as defined in the Terms), and is, therefore, only available as a Design Drawing (as defined in the Terms and together with Construction Drawings, "Drawings"). It is possible that during the conversion of a Design Drawing to a final Construction Drawing, changes may be necessary including, but not limited to, dimensional changes. Please see Plan Data Explained on [www.artform.us](http://www.artform.us) to understand room sizes, dimensions and other data provided. We are not responsible for typographical errors.

Art Form Architecture ("Art Form") requires that our home designs be built substantially as designed. Art Form will not be obligated by or liable for use of this design with markups as part of any builder agreement. While we attempt to accommodate where possible and reasonable, and where the changes do not denigrate our design, any and all changes to Drawings must be approved in writing by Art Form. It is recommended that you have your Drawing updated by Art Form prior to attaching any Drawing to any builder agreement. Art Form shall not be responsible for the misuse of or unauthorized alterations to any of its Drawings.

**Facade Changes:**

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

**Floor plan layout and/or Structural Changes:**

- Structural changes always require the express written consent of Art Form
- If you wish to move or remove walls or structural elements (such as removal of posts, increases in house size, ceiling height changes, addition of dormers, etc), please do not assume it can be done without other additional changes (even if the builder or lumber yard says you can).

# Sherlock

387.124.v26 GL (12/17/2025) - R1

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**Alt Window/Garage Door/Railing Color Option**

# Sherlock

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**Alt Window/Garage Door/Railing Color Option**

**Sherlock**

387.124.v26 GL (12/17/2025) - R1

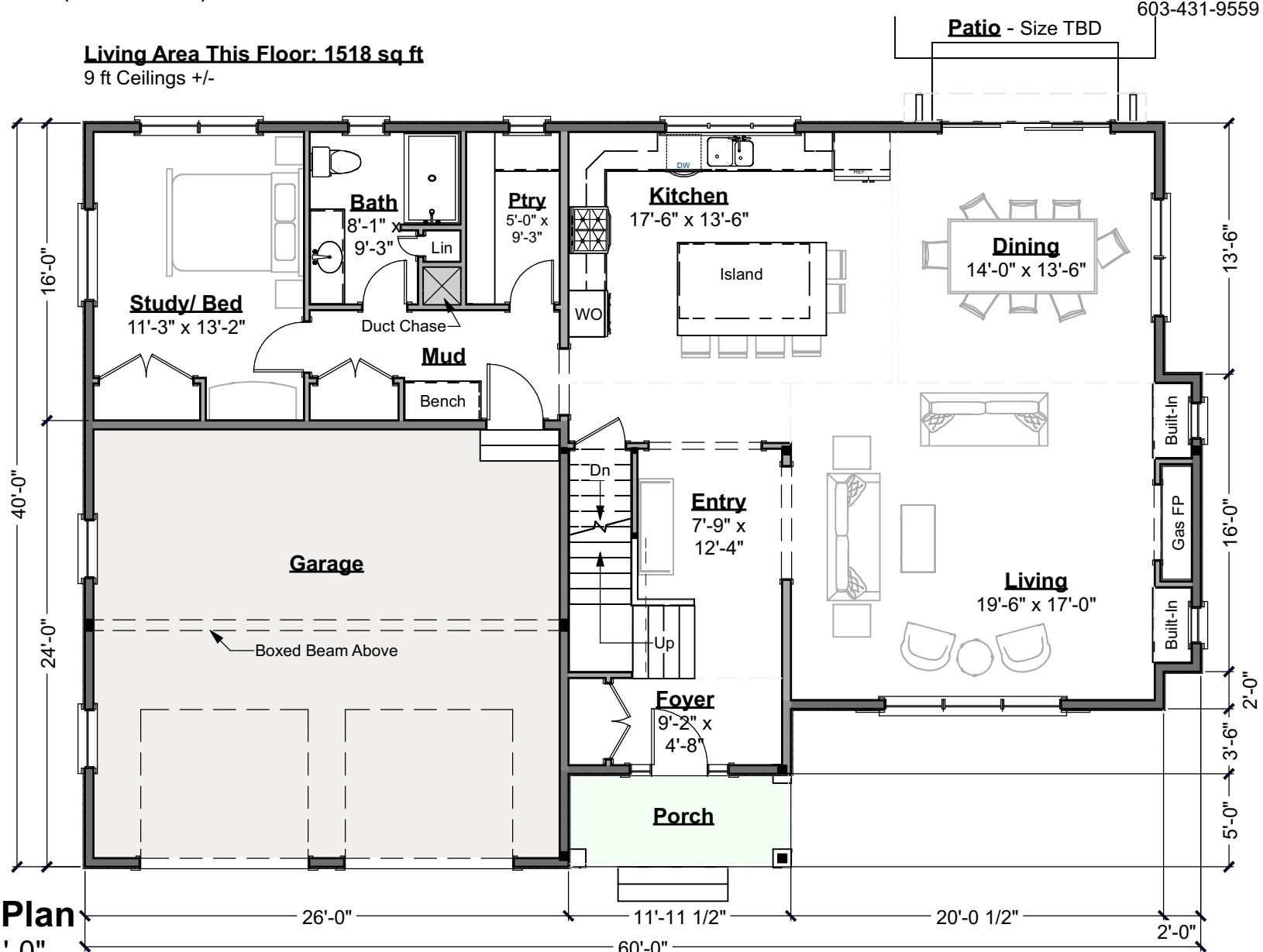
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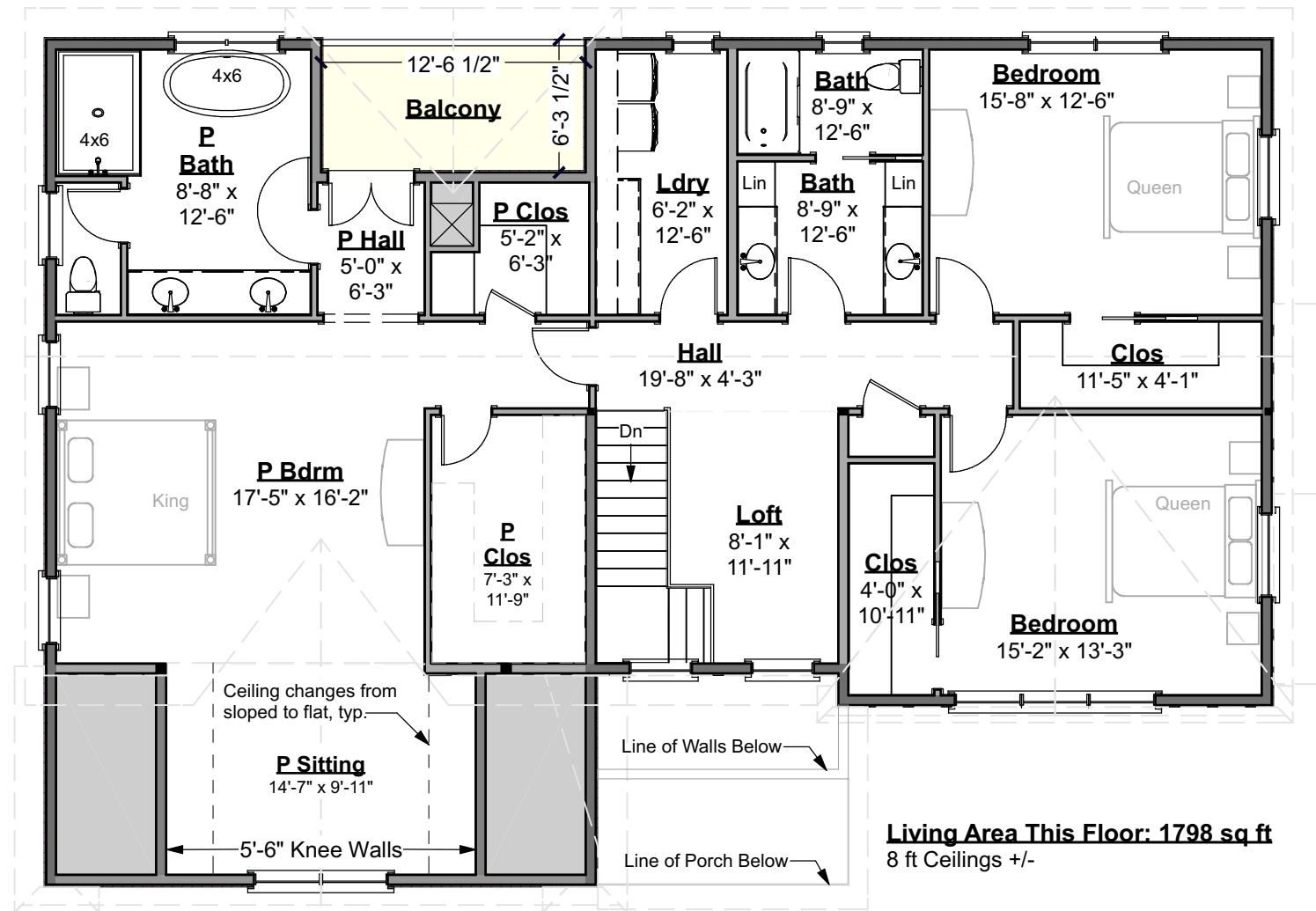
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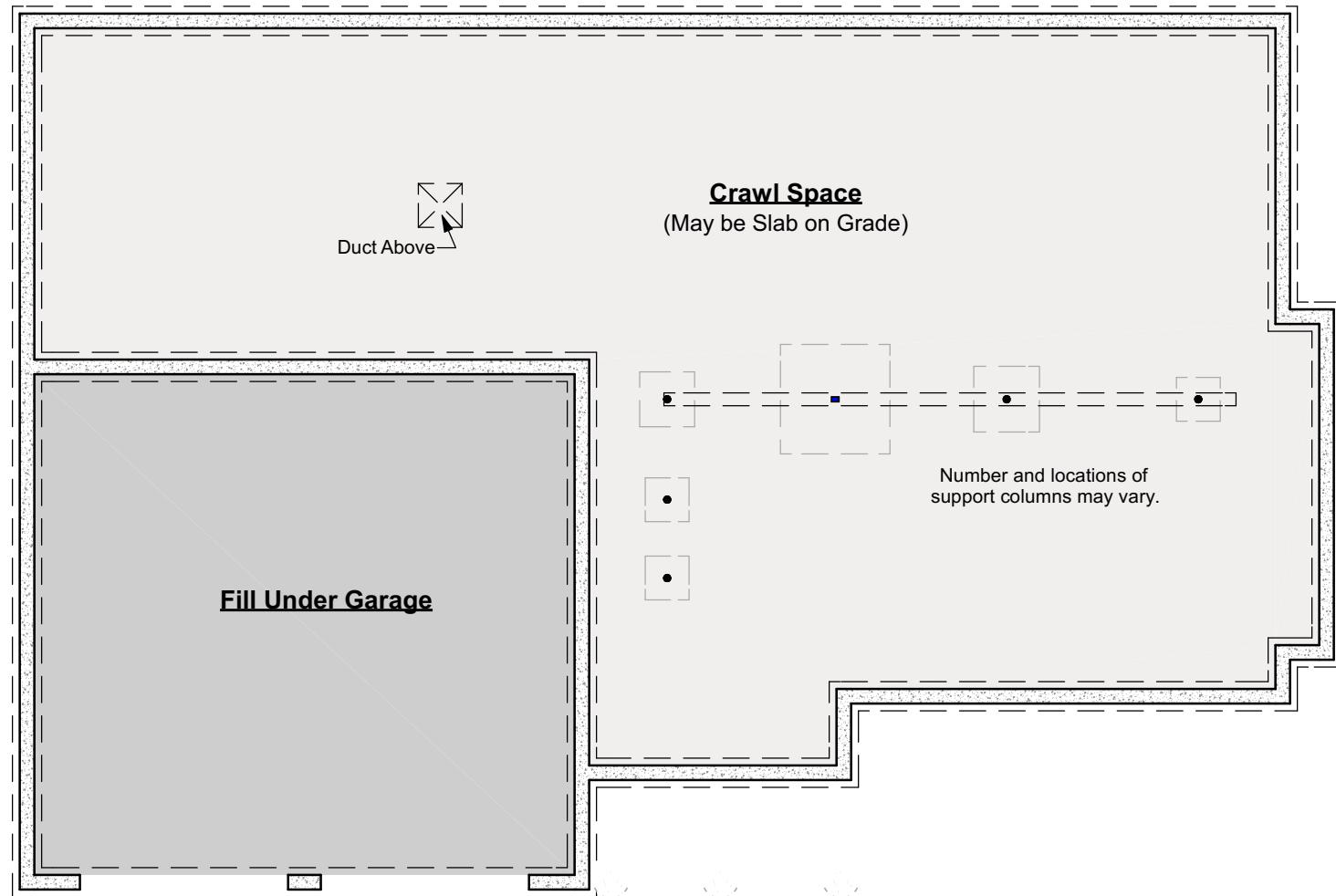
603-431-9559

**Living Area This Floor: 1518 sq ft**  
9 ft Ceilings +/-

**First Floor Plan**

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





## Foundation Plan

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



## Front Elevation

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

CRS 387.124.v26 GL Sherlock



## Right Elevation

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

CRS 387.124.v26 GL Sherlock

# Sherlock

387.124.v26 GL (12/17/2025) - R1

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## Rear Elevation

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

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# Sherlock

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## Left Elevation

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

CRS 387.124.v26 GL Sherlock

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Art Form Architecture ("Art Form") requires that our home designs be built substantially as designed. Art Form will not be obligated by or liable for use of this design with markups as part of any builder agreement. While we attempt to accommodate where possible and reasonable, and where the changes do not denigrate our design, any and all changes to Drawings must be approved in writing by Art Form. It is recommended that you have your Drawing updated by Art Form prior to attaching any Drawing to any builder agreement. Art Form shall not be responsible for the misuse of or unauthorized alterations to any of its Drawings.

**Facade Changes:**

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

**Floor plan layout and/or Structural Changes:**

- Structural changes always require the express written consent of Art Form
- If you wish to move or remove walls or structural elements (such as removal of posts, increases in house size, ceiling height changes, addition of dormers, etc), please do not assume it can be done without other additional changes (even if the builder or lumber yard says you can).

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Elsa 1221.124.v2 GL



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**Alt Window/Garage Door/Railing Color Option**

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Elsa 1221.124.v2 GL

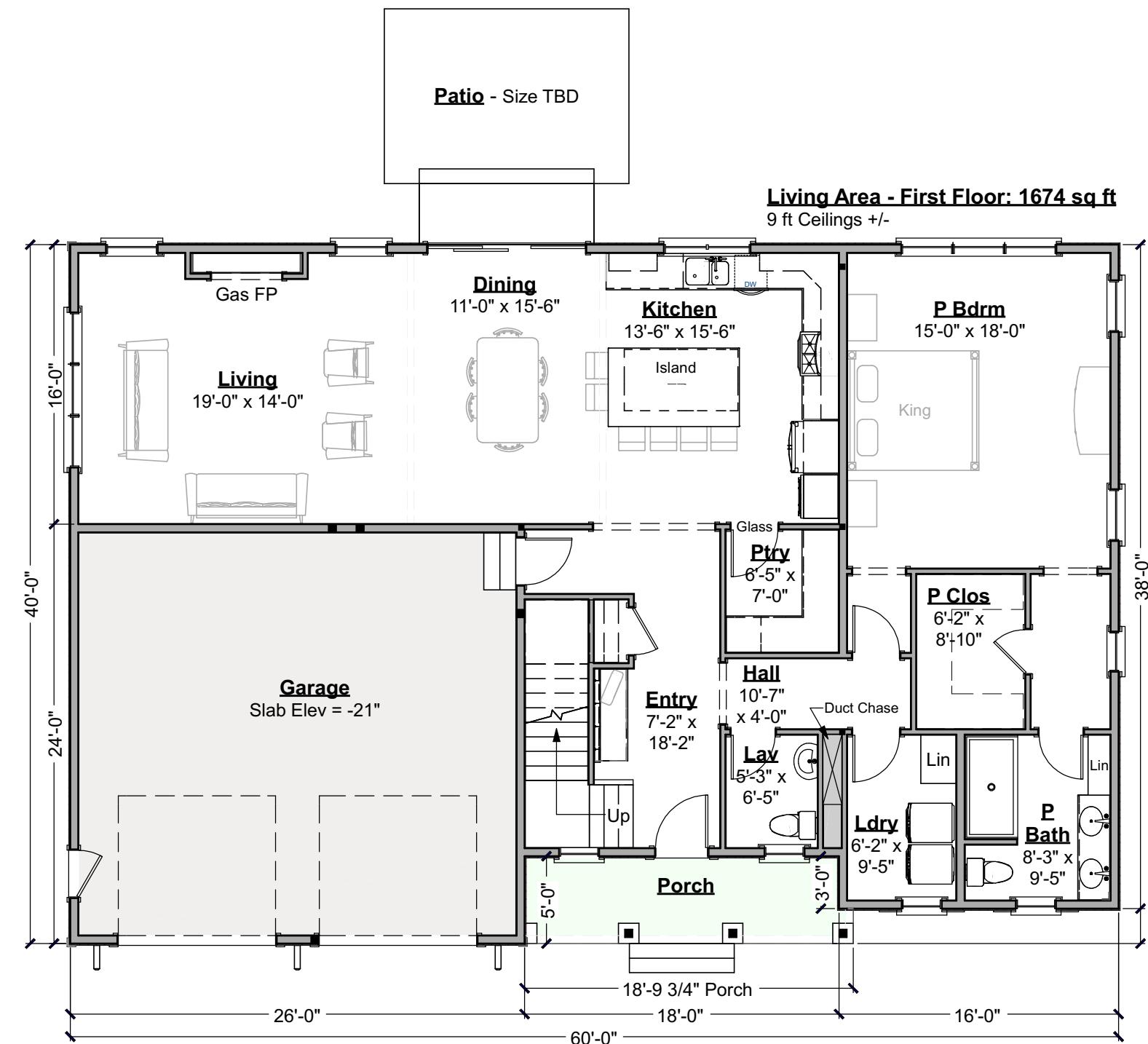


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Elsa 1221.124.v2 GL

**Alt Window/Garage Door/Railing Color Option**

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## First Floor Plan

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

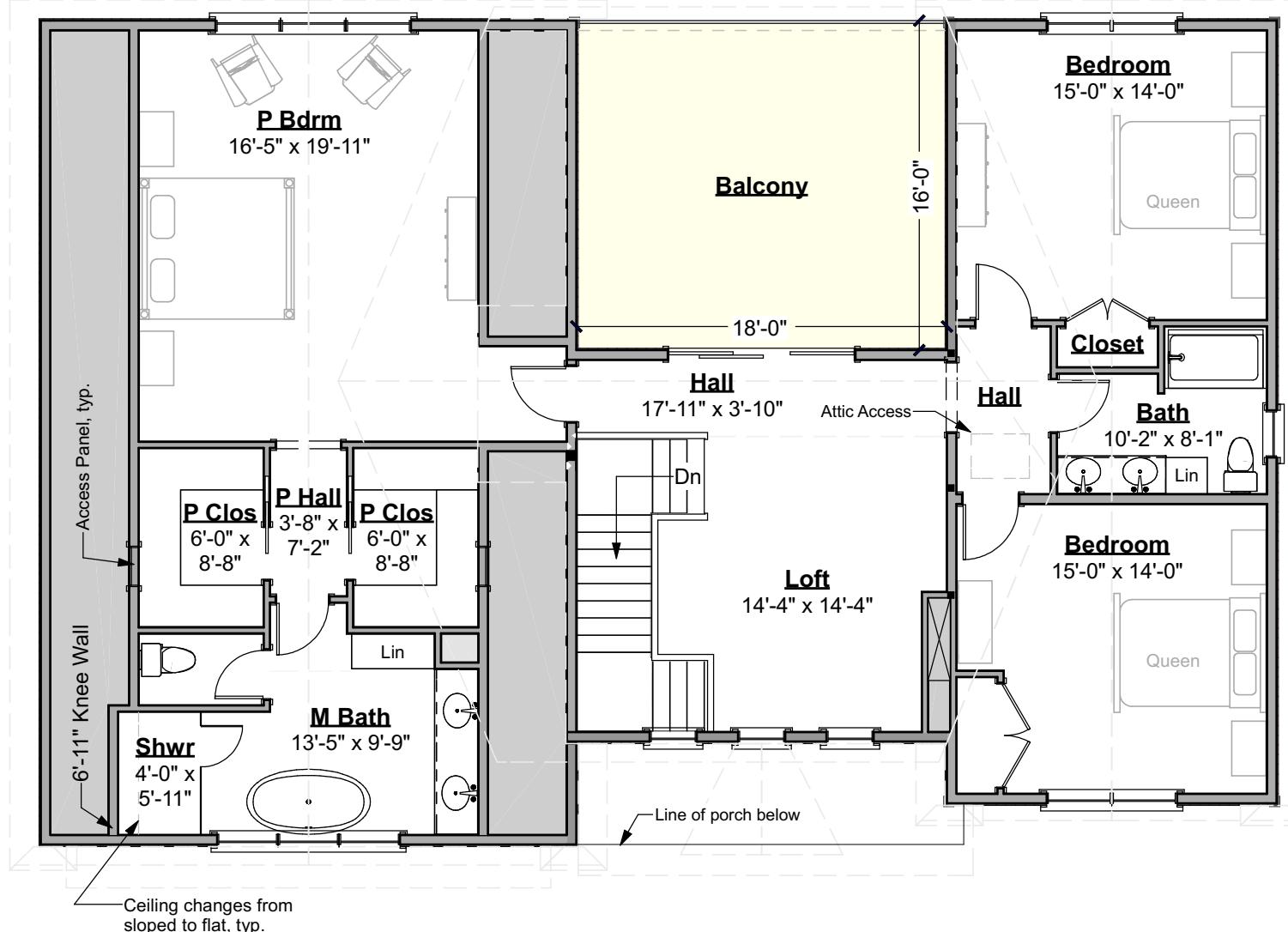
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**Living Area - Second Floor: 1684 sq ft**

8 ft Ceilings +/-



**Second Floor Plan**

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

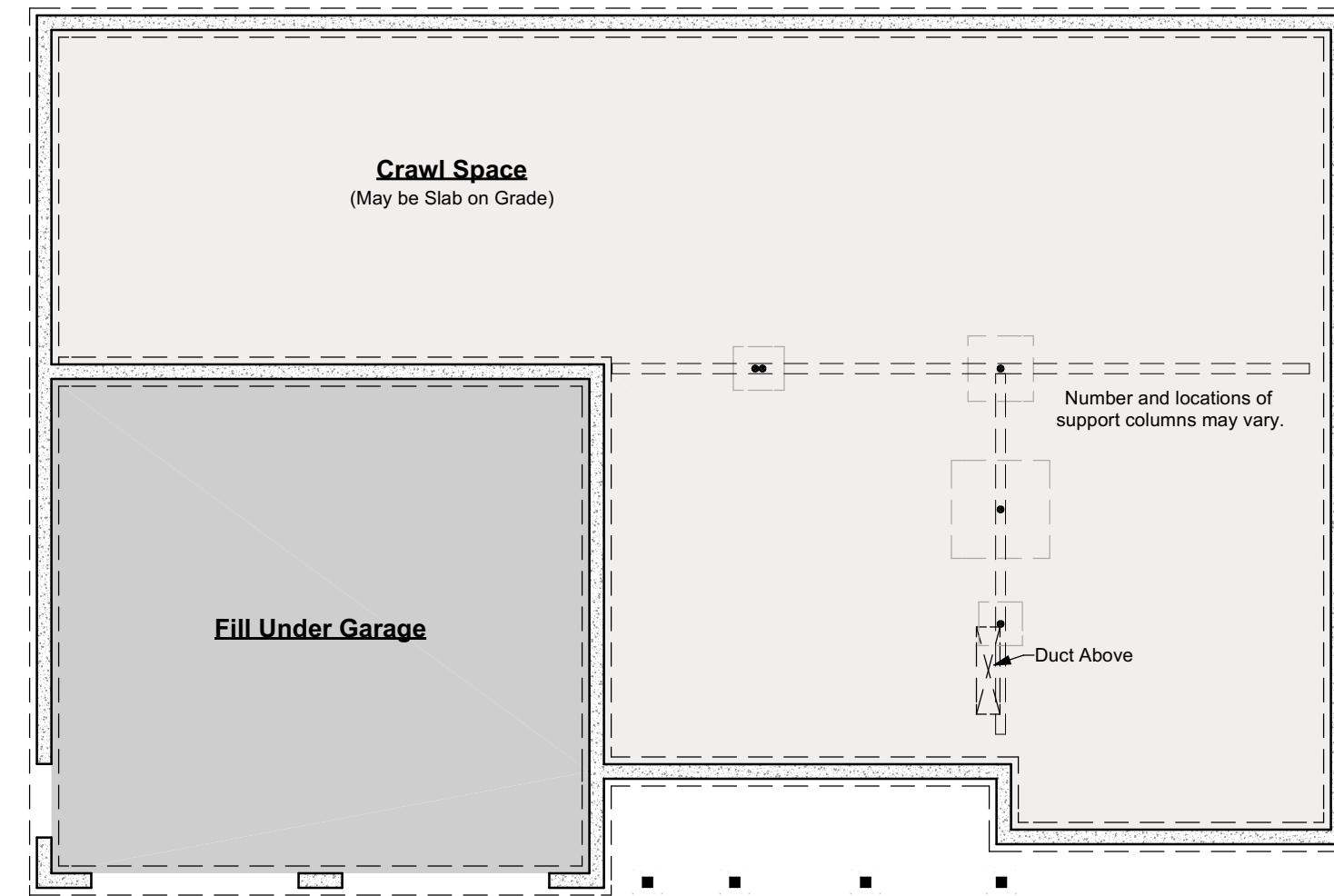
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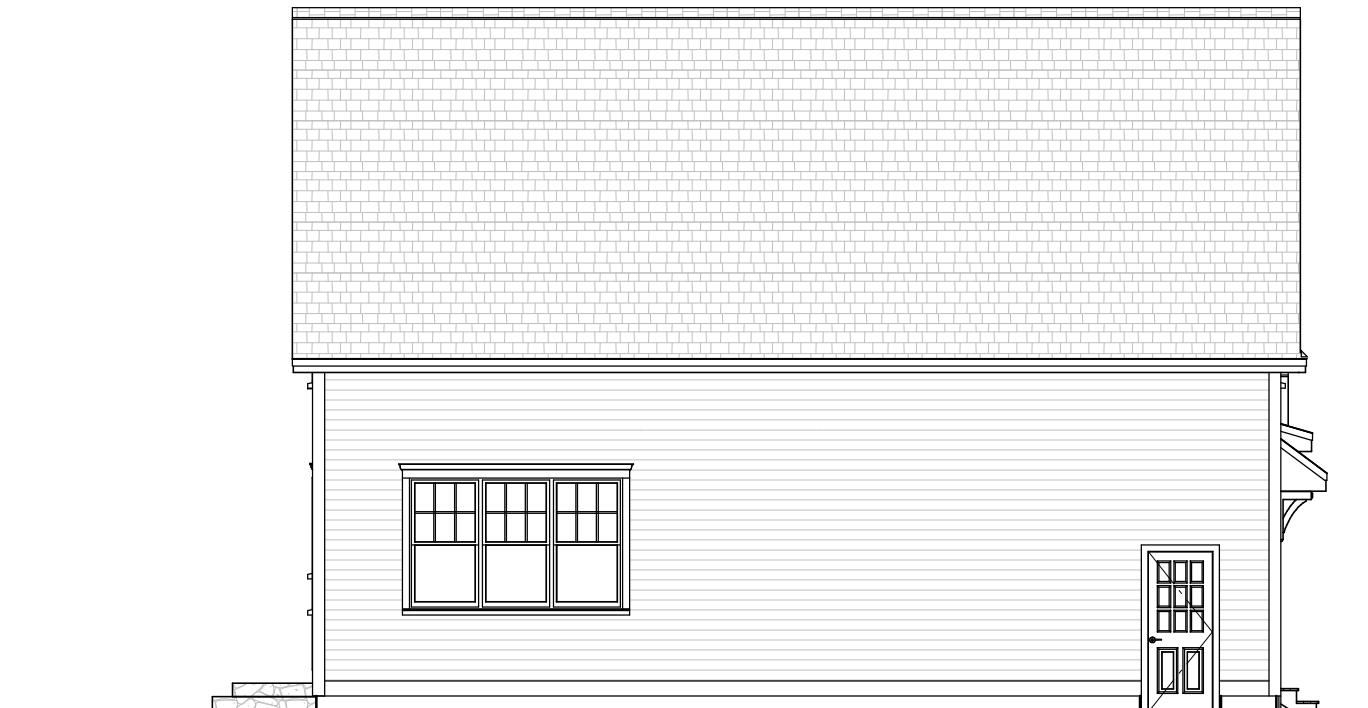
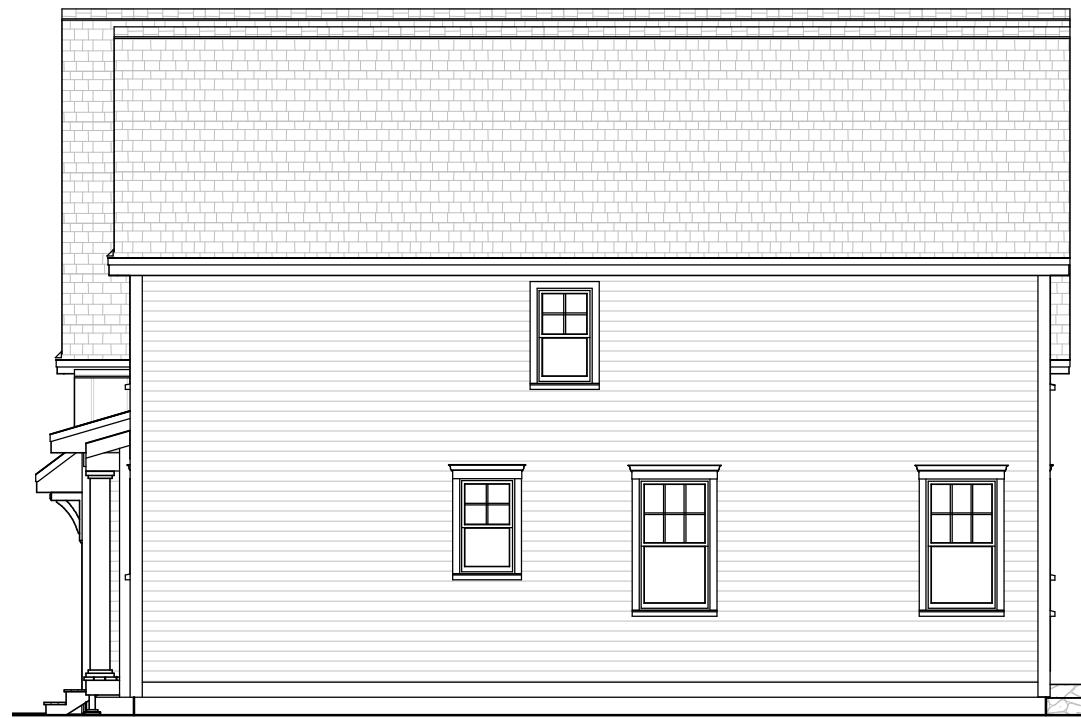
603-431-9559



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

NOTE: To scale as noted only if printed on  
11x17 paper with "no scaling" (do not "Fit").

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**Elevations**

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

# Nathaniel with Sun

529.125 GL (12/17/2025) - R1

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# Nathaniel with Sun

529.125 GL (12/17/2025) - R1

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**Alt Window/Garage Door/Railing Color Option**

# Nathaniel with Sun

529.125 GL (12/17/2025) - R1

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**Alt Window/Garage Door/Railing Color Option**

# Nathaniel with Sun

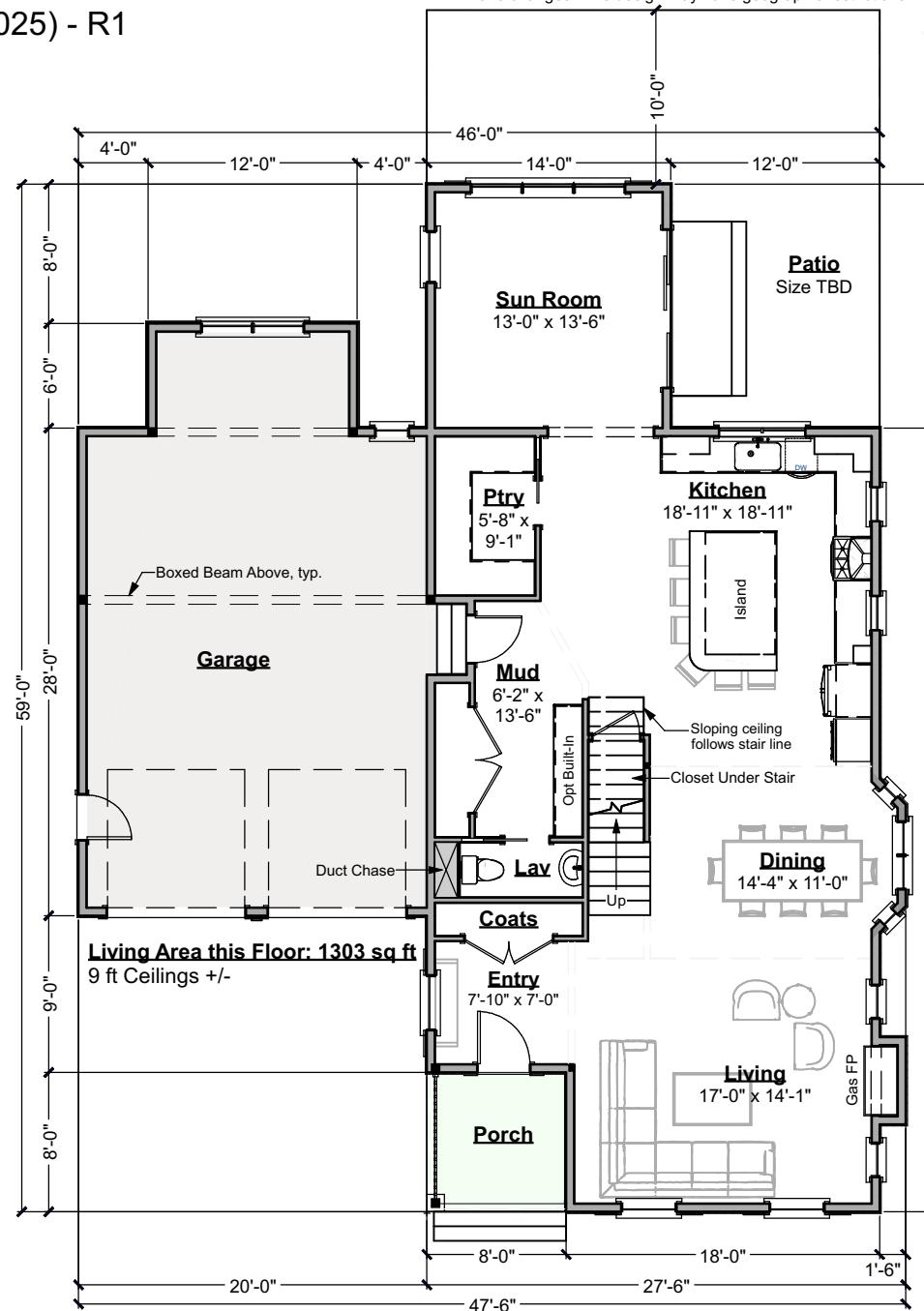
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# Nathaniel with Sun

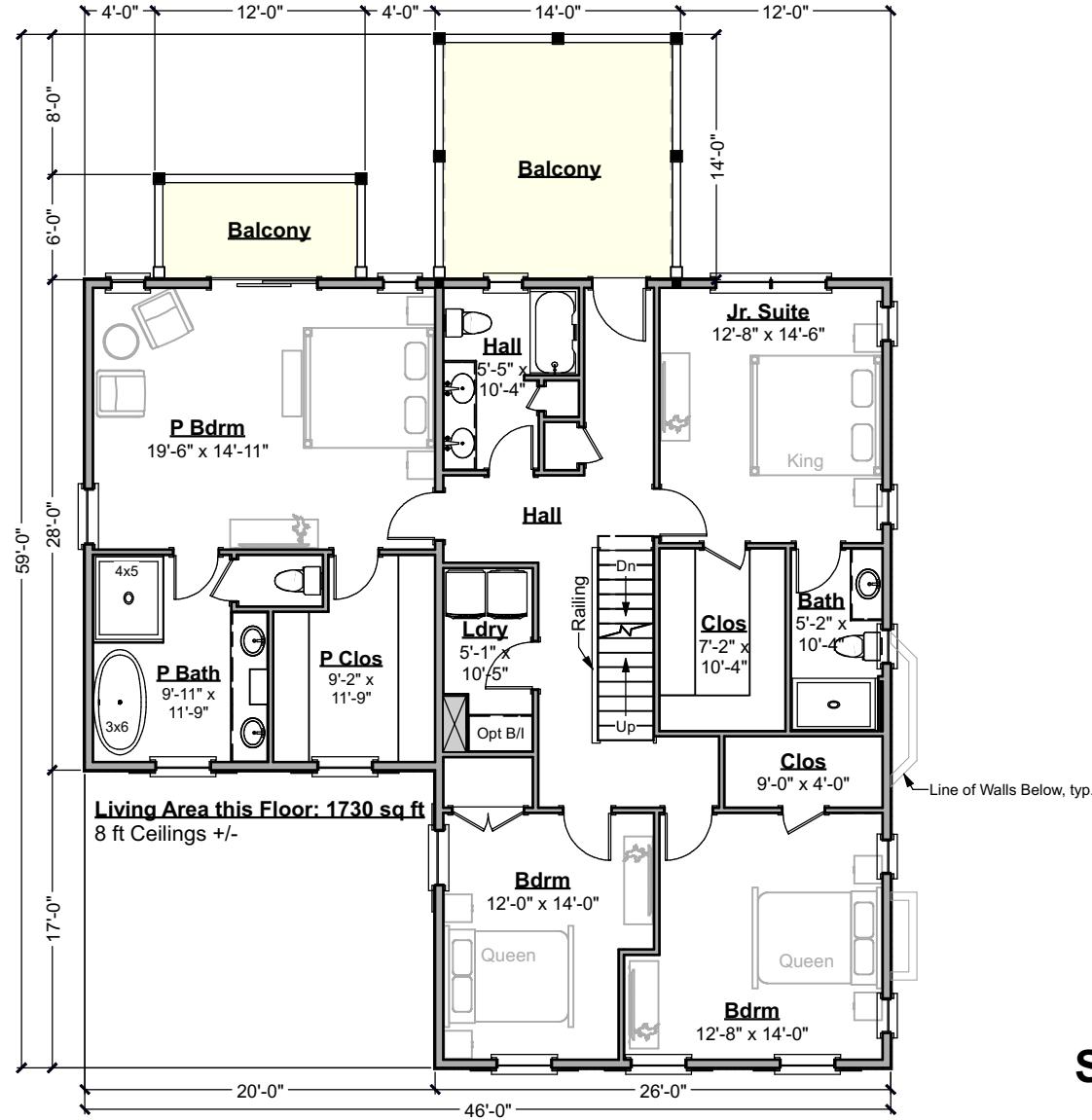
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# Nathaniel with Sun

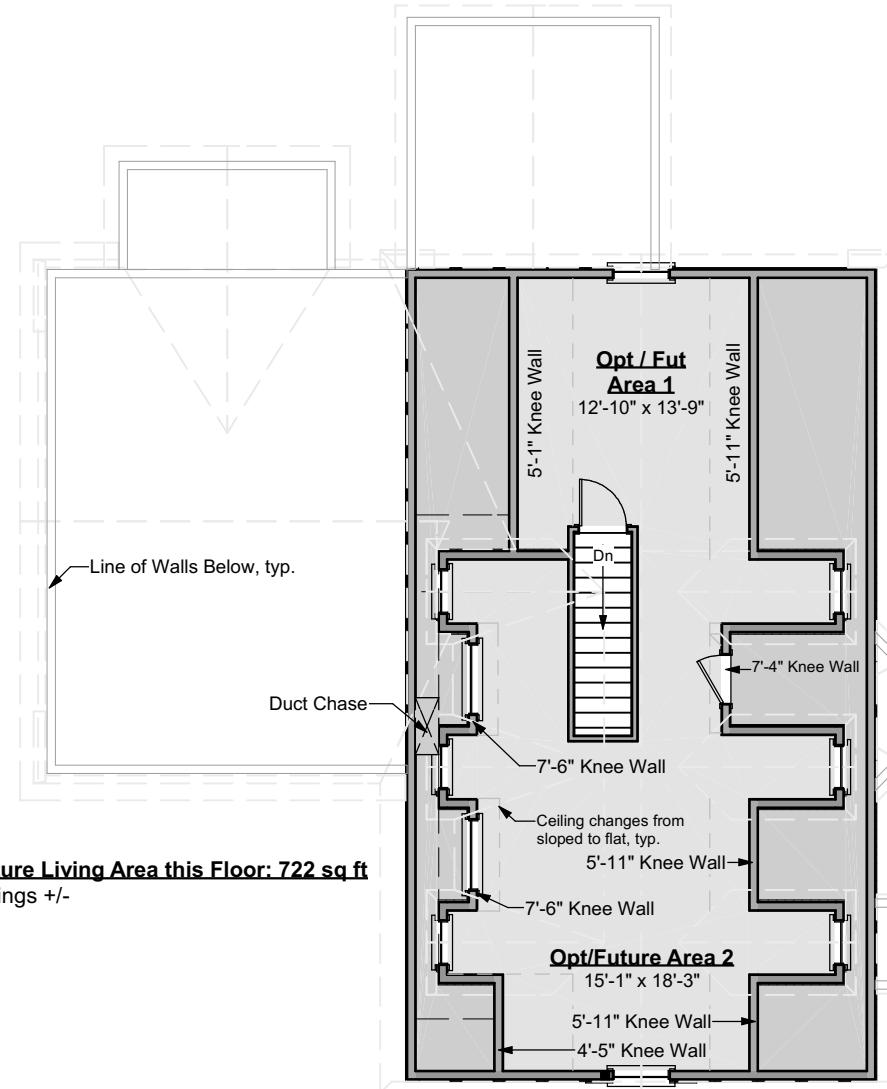
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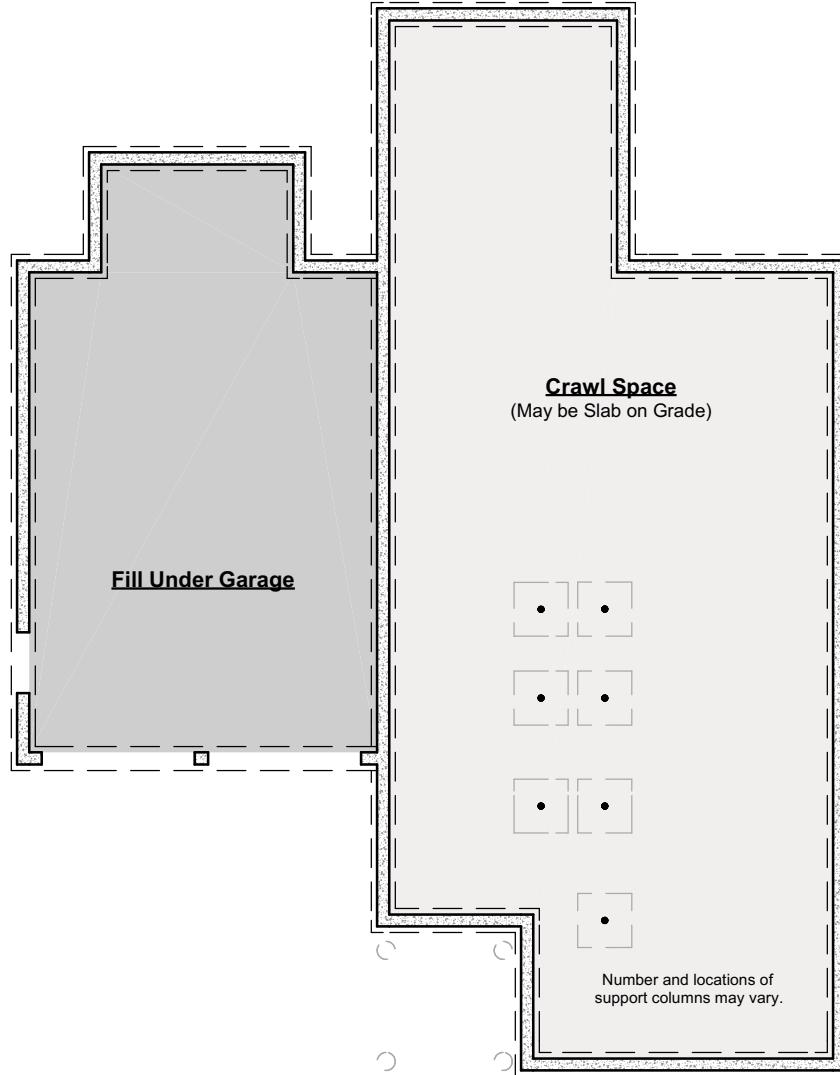
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**Front Elevation**  
Scale: 1/8" = 1'-0"

# Nathaniel with Sun

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**Right Elevation**  
Scale: 1/8" = 1'-0"

# Nathaniel with Sun

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**Rear Elevation**  
Scale: 1/8" = 1'-0"

# Nathaniel with Sun

529.125 GL (12/17/2025) - R1

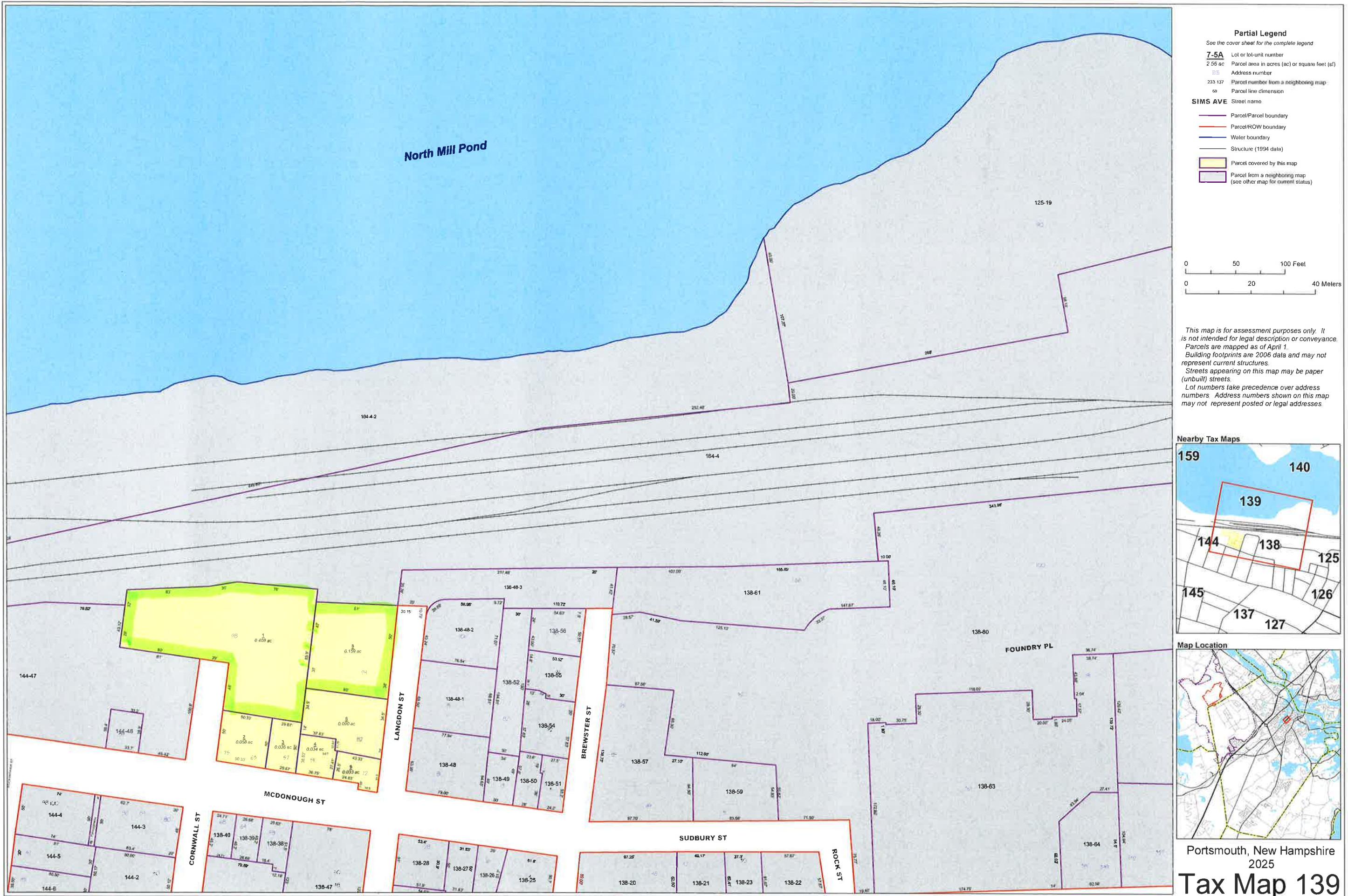
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**Left Elevation**  
Scale: 1/8" = 1'-0"





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

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

Geometry updated 10/23/2025

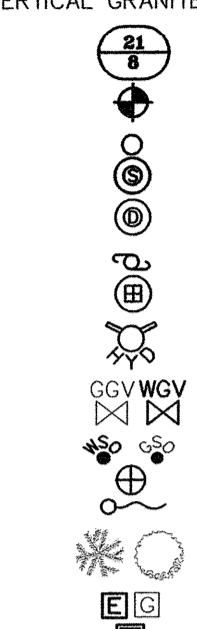
Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

## LEGEND:

DESCRIPTION	EXISTING
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
1234/123	DEED BOOK/PAGE
N/F	NOW OR FORMALLY
TYPE	TYPICAL
ELV.	ELEVATION
FF	FINISHED FLOOR
LSA	LANDSCAPE AREA
VGC	VERTICAL GRANITE CURB
MAP 21 LOT 8	
BENCHMARK	
IRON ROD/PIPE FOUND	
SEWER MANHOLE	
DRAIN MANHOLE	
UTILITY POLE	
CATCH BASIN	
HYDRANT	
GATE VALVE	
GAS/WATER SHUTOFF	
BOLLARD	
FLAGPOLE	
TREES	
GAS/ELECTRIC METER	
AIR CONDITIONER	
SIGN	
PROPERTY LINE	APPROXIMATE EXTERIOR PROPERTY LINE
EDGE OF PAVEMENT	
EDGE OF GRAVEL	
MINOR FOOT CONTOUR	
MAJOR FOOT CONTOUR	
GAS LINE	
WATER LINE	
STORM DRAIN LINE	
SANITARY SEWER LINE	
OVERHEAD UTILITY LINE	
UNDERGROUND ELECTRIC LINE	

## PLAN REFERENCES:

- 1) LOT LINE REVISION PLAN FOR JOHN AHLGREN, PETER HAPPY AND BOSTON AND MAINE CORPORATION, LANGDON STREET, MCDONOUGH STREET & BREWSTER STREET, PORTSMOUTH, NEW HAMPSHIRE. PREPARED BY DOUCET SURVEY INC., SCALE: 1"=20', DATED FEB. 13, 2002, R.C.R.D. D-31107.
- 2) SUBDIVISION PLAN TAX MAP 138 - LOT 48, FOR CHINBURG BUILDERS, INC. ON LAND OF JOHN L. AHLGREN & BESSIE PALMISCIANO, PREPARED BY AMBIT ENGINEERING, INC., SCALE: 1"=20', DATED: 5/7/13 (REV. 4), R.C.R.D. D-39552.
- 3) PLAN OF LAND COR. MCDONOUGH & CORNWALL STS. PORTSMOUTH, N.H. PREPARED BY JOHN W. DURGIN CIVIL ENGINEERS, SCALE: 1"=10'. DATED: DEC. 1966. R.C.R.D. 1869/045.
- 4) PLAN OF THE ROCK FIELD IN THE TOWN OF PORTSMOUTH PREPARED BY BENJAMIN AKERMAN. DATED 1815. R.C.R.D. PLAN 00562.
- 5) STATION MAP-LANDS CONCORD AND PORTSMOUTH R.R. OPERATED BY THE BOSTON AND MAINE R.R. STATION 0-0 TO STATION 33-0, PREPARED BY OFFICE OF THE VALUATION ENGINEER, BOSTON, MASS. DATED: JUNE 30, 1914, SCALE: 1-IN.=100 FT., NOT RECORDED.
- 6) LAND IN PORTSMOUTH, N.H., BOSTON AND MAINE RAILROAD TO PORTSMOUTH FACTORY BUILDING ASSOCIATION. PREPARED BY EW CHAPMAN, DATED: OCT. 1923, SCALE: 1 IN.=20 FT., RCRD #00556.
- 7) LAND IN PORTSMOUTH, N.H., BOSTON AND MAINE RAILROAD TO STATE REALTY CORPORATION, DATED: FEBRUARY 1961, SCALE: 1 IN.=100 FT., RCRD C-160.
- 8) PLAN OF LOT PORTSMOUTH, N.H. FOR THE HEIRS OF FRANK DANIEL, PREPARED BY JOHN W. DURGIN, DATED: MAY 1967, OWNERS: JONATHAN PAINE & GERALDINE M. GAETA 80 LANGDON STREET CITY OF PORTSMOUTH, COUNTY OF ROCKINGHAM, STATE OF NEW HAMPSHIRE, PREPARED BY AMBIT ENGINEERING, INC. A DIVISION OF HALEY & WARD, DATED: FEBRUARY 2023 AND REVISED 10/8/23, SCALE: 1"=10', NOT RECORDED.
- 10) REGAN ELECTRIC CO. PLAN SHOWING AREA RESERVED FOR TRANSFORMER SUBSTATION ON PROPERTY OF CONTINENTAL SHOE CORP., PORTSMOUTH, N.H. SCALE: 1"=30', DATED: 11-27-53, RCRD DEED BOOK 1303 PG 378.



GAS/ELECTRIC METER  
AIR CONDITIONER  
SIGN  
PROPERTY LINE  
APPROXIMATE EXTERIOR PROPERTY LINE  
EDGE OF PAVEMENT  
EDGE OF GRAVEL  
MINOR FOOT CONTOUR  
MAJOR FOOT CONTOUR  
GAS LINE  
WATER LINE  
STORM DRAIN LINE  
SANITARY SEWER LINE  
OVERHEAD UTILITY LINE  
UNDERGROUND ELECTRIC LINE

TABLE OF DIMENSIONAL STANDARDS:

REGULATION	REQUIREMENT	EXISTING	PROPOSED
MIN. LOT AREA	7,500 S.F.	25,107 S.F.	25,107 S.F.
AREA PER DWELLING UNIT	7,500 S.F.	N/A	8,369 S.F.
STREET FRONTAGE	100.0 FEET	88.0 FEET	88.0 FEET <sup>1</sup>
MIN. FRONT SETBACK	5.0 FEET	1.0 FEET	5.4 FEET
MIN. SIDE SETBACK	10.0 FEET	1.6 FEET	10.2 FEET
MIN. R.R. R.O.W. SIDE SETBACK	15.0 FEET	46.7 FEET	15.4 FEET
MIN. REAR SETBACK	15.0 FEET	132.6 FEET	54.6 FEET
MAX. HEIGHT SLOPED ROOF	40.0 FEET	20 FEET	34.0 FEET
MAX. BUILDING COVERAGE	40%	18.0%	25.6%
MIN. OPEN SPACE <sup>2</sup>	25%	22.7%	47.0%

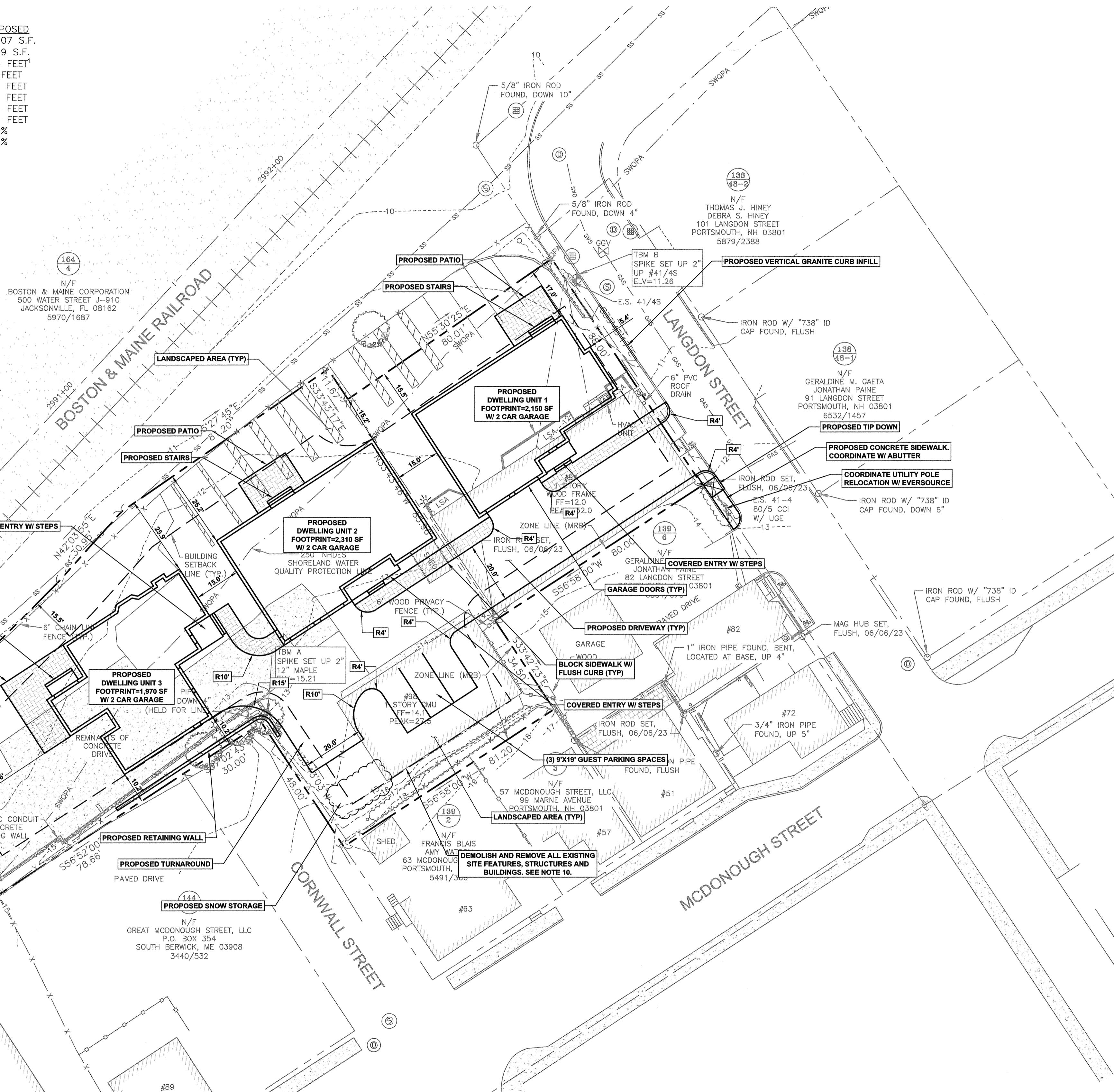
DIMENSIONAL NOTES:

- 1) VARIANCE REQUESTED.
- 2) AREAS LESS THAN 5 FEET IN WIDTH ARE NOT CONSIDERED OPEN SPACE AND ARE EXCLUDED FROM THE CALCULATIONS

IMPERVIOUS SURFACE AREAS:

(TO PROPERTY LINES)

COVERAGE	EXISTING	PROPOSED
PAVEMENT	13,799 S.F.	4,896 S.F.
WALKWAYS	0 S.F.	622 S.F.
PATIOS	0 S.F.	776 S.F.
RETAINING WALL	145 S.F.	130 S.F.
STEPS	0 S.F.	106 S.F.
COVERED ENTRIES	0 S.F.	205 S.F.
BUILDINGS	4,511 S.F.	6,430 S.F.
TOTAL	18,455 S.F.	13,165 S.F.
% LOT COVERAGE	73.5%	52.4%



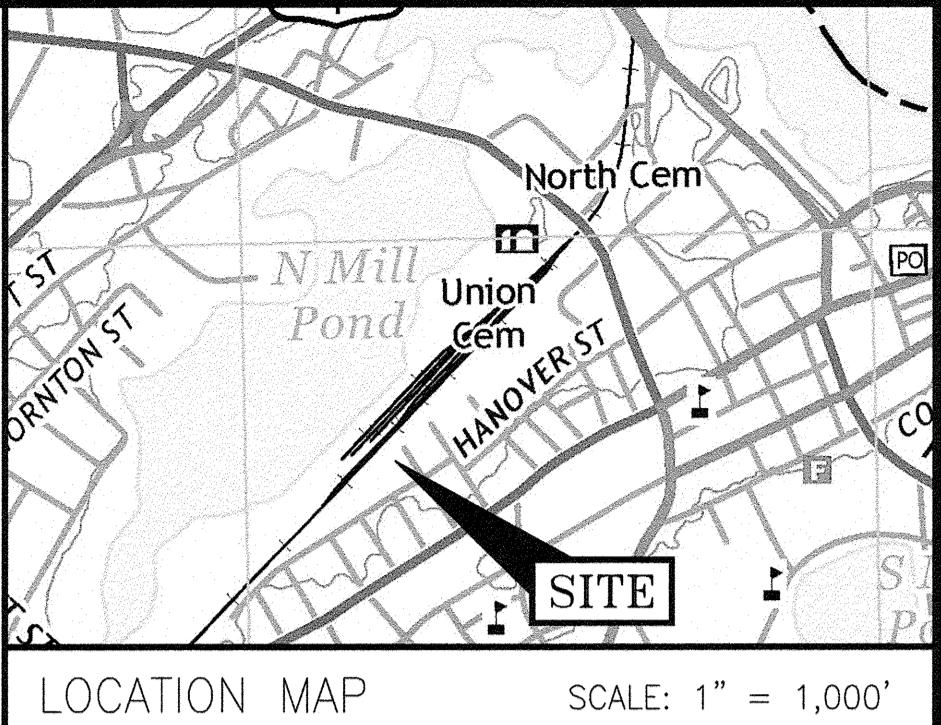
"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

JOHN R. CHAGNON, LLS DATE

APPROVED BY THE PORTSMOUTH ZBA BOARD

CHAIRMAN DATE

NORTH  
NAD83(2011)  
GRID  
NHSPC

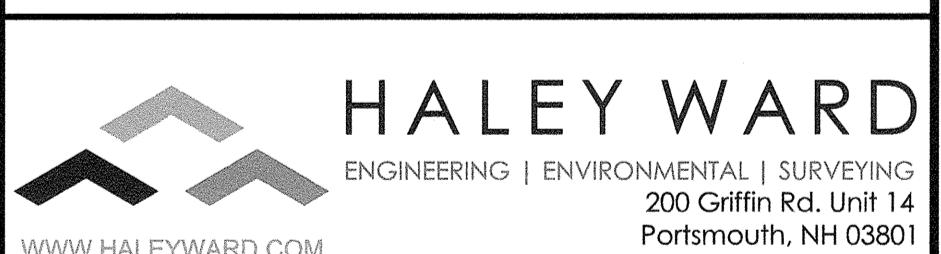


NOTES:

- 1) PARCELS ARE SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S TAX MAP 139 AS LOTS 1 & 8.
- 2) OWNER OF RECORD (MAP 139, LOTS 1 & 8):  
REGAN ELECTRIC CO., INC.  
94 LANGDON STREET  
PORTSMOUTH, NH 03801
- 3) APPLICANT:  
CHINBURG DEVELOPMENT  
3 PENSTOCK WAY  
NEWARK, NH 03857
- 4) PARCELS ARE NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259F. EFFECTIVE JANUARY 29, 2021.
- 5) PARCELS ARE LOCATED IN THE MIXED RESIDENTIAL BUSINESS (MRB) DISTRICT.
- 6) EXISTING LOT AREA:  
LOT 1: 18,149 S.F.  
LOT 8: 6,958 S.F.  
TOTAL = 25,107 S.F.
- 7) THE TWO PARCELS ARE TO BE MERGED AS PART OF THIS PROJECT.
- 8) DIMENSIONAL REQUIREMENTS:  
SEE PORTSMOUTH ORDINANCE FOR REQUIREMENTS.
- 9) REFER TO THE EXISTING CONDITIONS PLAN (DWG NO. V101) FOR ADDITIONAL SITE INFORMATION.
- 10) THE PURPOSE OF THIS PLAN IS TO SHOW A PROPOSED 3 UNIT RESIDENTIAL DEVELOPMENT ON ASSESSOR'S TAX MAP 139, LOTS 1 & 8.
- 11) ALL EXISTING SITE FEATURES, STRUCTURES AND BUILDINGS ON THE SUBJECT PARCELS ARE TO BE DEMOLISHED AND REMOVED AS PART OF THIS DEVELOPMENT.
- 12) PARKING CALCULATION (RESIDENTIAL)  
REQUIRED: 1 SPACE PER UNIT = 3 TOTAL  
PROVIDED: 6 GARAGE + 3 GUEST = 9 TOTAL

1	12/17/2025	ISSUED FOR ZBA	SMT	JRC
0	12/02/2025	ISSUED FOR TAC WORKSHOP	SJR	JRC
DRAWING ISSUE STATUS				BY CHK

PERMIT PLAN



PROPOSED DEVELOPMENT

94 LANGDON STREET & 98 CORNWALL STREET  
PORTSMOUTH, NH 03801

VARIANCE PLAN

DATE DECEMBER 2025		SCALE 1" = 20'
DRAWN BY	DESIGNED BY	CHECKED BY
SJR	SJR	JRC
PROJECT No. 5010220.004		FIELD BOOK AND PAGE FB 443 PG 17
DRAWING No. C201		REV. 1

STATE OF NEW HAMPSHIRE  
SHAWN TOBEY  
No. 14121  
LICENSED PROFESSIONAL ENGINEER  
12/11/25

