

**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.

April 21, 2026

AGENDA

<p><u>PLEASE NOTE:</u> DUE TO THE LARGE VOLUME OF REQUESTS FOR APRIL, ITEMS (III. C. THROUGH G.). WILL BE HEARD AT THE APRIL 28, 2026 ZONING BOARD OF ADJUSTMENT MEETING.</p>
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I. APPROVAL OF MINUTES

- A. Approval of the March 17, 2026 meeting minutes.
- B. Approval of the March 24, 2026 meeting minutes.
- C. Approval of the March 31, 2026 Work Session minutes.

II. OLD BUSINESS

- A. **238 Austin Street – Rehearing Request**
- B. The request of **William and Virginia Osborn (Owners)**, for property located at **133 Miller Avenue** whereas relief is needed to demolish the existing one-story garage and construct a new two-story attached garage which requires the following: 1) Variance from Section 10.521 to allow a) a 6-foot rear yard where 20 feet is required; and b) 3-foot left side yard where 10 feet is required. Said property is located on Assessor Map 129 Lot 26 and lies within the General Residence A (GRA) District. (LU-26-21)
- C. The request of **John C and Janice D Carpenter (Owners)**, for property located at **614 Broad Street** whereas relief is needed to construct a front porch and rear addition to the primary dwelling, to demolish the existing detached garage and construct a new two-story garage with Accessory Dwelling Unit above which requires the following: 1) Variance from Section 10.521 to allow a) a 0.5 foot rear yard where 20 feet is required;

b) 2.5 foot left side yard where 10 feet is required; and c) 34% building coverage where 25% is the maximum. Said property is located on Assessor Map 221 Lot 54 and lies within the General Residence A (GRA) District. (LU-26-24)

III. NEW BUSINESS

- A.** The request of **Anita Koury and Theodore Constantino (Owners)**, for property located at **302 Miller Avenue** whereas relief is needed to construct an addition to the existing garage, which requires the following: 1) Variance from Section 10.520 to allow a) 30% building coverage where 25% is maximum allowed; and 2) Variance from Section 10.573.20 to allow a 4 foot rear yard where 10 feet are required. Said property is located on Assessor Map 130 Lot 11 and lies within the General Residence A (GRA) District. (LU-26-32)
- B.** The request of **Road to the West, LLC (Owner)**, for property located at **140 West Road** whereas relief is needed to create an outdoor dining area, which requires the following: 1) Variance from Section 10.440 Use #19.50 to allow an outdoor dining or drinking area, as accessory use where it is not allowed. Said property is located on Assessor Map 252 Lot 2-13 and lies within the Industrial (I) District. (LU-26-34)

THE FOLLOWING ITEMS WILL BE HEARD ON TUESDAY, APRIL 28, 2026

- C.** The request of **Lonza Biologics INC (Owner)**, for property located at **34 Harvest Way** whereas relief is needed to install two illuminated wall signs and one illuminated monument sign, which requires relief from the following: 1) from Section 306.01(d) of the Pease Development Ordinance to allow signs to exceed a maximum aggregate area of two (2) square feet of sign area for each linear foot of street frontage up to a maximum of 200 square feet. Said property is located on Assessor Map 305 Lot 5 and lies within the Airport Business Commercial (ABC) District. (LU-26-12)
- D.** The request of **Port Hunter LLC (Owner)**, for property located at **361 Miller Avenue** whereas relief is needed to construct a detached garage with a professional office space on the second floor, which requires the following: 1) Variance from Section 10.573.20 to allow a) 6 foot side yard where 10 feet are required, and b) 10 foot rear yard where 20 feet are required; and 2) Variance from Section 10.440 Use #5.10 to allow a professional office use where it is not permitted. Said property is located on Assessor Map 131 Lot 33 and lies within the General Residence A (GRA) District. (LU-25-76)
- E.** The request of **Kristina Logan Revocable Trust (Owner)**, for property located at **220 South Street** whereas relief is needed to build a chicken coop and have chickens, which requires the following: 1) Special Exception from Section 10.440 Use #17.20 to allow the keeping of farm animals where it is allowed by Special Exception. Said property is located on Assessor Map 111 Lot 1 and lies within the Single Residence B (SRB) and Historic Districts. (LU-26-39)

- F.** The request of **Hope for Tomorrow Foundation (Owner)**, for property located at **315 Banfield Road** whereas relief is needed to construct an addition to the existing school on the property, which requires the following: 1) Variance from Section 10.334 to allow the existing primary and secondary school use (Use #3.21) to be extended to another part of the remainder of the land. Said property is located on Assessor Map 266 Lot 5 and lies within the Industrial (I) District. (LU-26-41)
- G.** The request of **Brent and Susanne Morrill (Owners)**, for property located at **651 Woodbury Avenue** whereas relief is needed to construct a second driveway which requires the following: 1) Variance from Section 10.1114.31 to allow a second driveway on the lot where only one is permitted. Said property is located on Assessor Map 220 Lot 12 and lies within the Single Residence B (SRB) District. (LU-26-38)

IV. ADJOURNMENT

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

https://us06web.zoom.us/webinar/register/WN_RJbCiZALS1adbXkiIitwNg

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

7:00 P.M.

March 17, 2026

MEMBERS PRESENT: Beth Margeson, Chair; Jeffrey Mattson, Vice Chair; David Rheame; Paul Mannle; Thomas Nies; Thomas Rossi; Robert Sullivan; Mike Lucas, Alternate

MEMBERS EXCUSED: None.

ALSO PRESENT: Stefanie Casella, Planning Department

I. APPROVAL OF MINUTES

A. Approval of the **February 18, 2026** meeting minutes.

*Mr. Rossi moved to **approve** the February 18 minutes as amended, seconded by Mr. Rheame.*

Mr. Rossi asked that the word “access” on page 14 of the minutes be changed to “axis”. The sentence now reads: “He said what is unique about the property is that the lot itself is somewhat of an irregular-shaped one where the front lot line and rear lot line don’t run in a parallel direction and the house itself is not oriented on the same axis as the rear line, so the part of the new structure that intrudes on the rear yard setback is really a point and not the entire broad side of the structure.”

*The motion **passed** unanimously, 7-0, with Mr. Nies abstaining.*

II. OLD BUSINESS

Mr. Rheame recused himself from the following petition, and Alternate Mr. Lucas took a voting seat.

- A.** 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)

SPEAKING TO THE PETITION [Video timestamp 13:55]

Attorney Derek Durbin was present on behalf of the applicant Chinburg Development, along with Shawn Tobey of Haley Ward and Shawna Sammis and Alex Monterosso of Chinburg Development. Attorney Durbin reviewed the petition and explained how they proposed to merge the two properties, raise the existing buildings, and build three Colonial single-family dwellings.

[Timestamp 17:34] Mr. Nies asked how high the retaining wall near Unit 3 was. Mr. Tobey said they graded it out and that it would now be a 6-inch curb. Mr. Nies asked how high the steps at the back of Units 1 and 2 were. Attorney Durbin said they were under 18 inches above the average grade. Mr. Mannle asked what the ownership status for the three single-family homes would be. Attorney Durbin said they would be under the same owner once the lots were merged and would be condominiums. Attorney Durbin then reviewed the criteria and said they would be met. Chair Margeson asked Ms. Casella to describe the view corridor. Ms. Casella read Section 10.5842.40 of the ordinance regarding the North Mill Pond public view corridors: "All new buildings or structures located within 400 feet of the North Mill Pond shall be located in such a way as to maintain existing public views with a terminal vista of the North Mill Pond with the intersecting streets of Dover St, Cabot St, Cornwall St, and Langdon St. Except for existing obstructions, the public view shall be maintained for a minimum width of the existing public right-of-way of the nearest intersecting street as listed above." Chair Margeson concluded that anything that exists now is fine but it cannot be expanded. Mr. Nies asked whether what appeared to be a side yard for Unit 3 would not be allowed to have a fence over four feet at the end of the Cornwall St Extension to protect the view. Ms. Casella agreed and said that, according to the definition of structure, it includes fences over four feet in height.

Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION [Timestamp 23:58]

Geraldine Gaeta of 91 Langdon St said she was an abutter on two sides and thought the design of the condos was beautiful and would be an improvement over what was currently there.

Elizabeth Bratter of 159 McDonough Street said the new design would include the Cornwall St view corridor, which benefitted many in the neighborhood. She noted that the proposed condos were similar to ones that already existed on Langdon Street. She said the 88 feet of frontage existed for years and that keeping it would have little or no impact on the neighborhood. She said the lot was much longer than wider on the frontage side and allowed for three homes with lots of space between them. She said values of surrounding properties would not be diminished and that adding much-needed single-family homes with great views would only increase values. She said the applicant could have had a much larger commercial space but chose not to. She asked the Board to approve the project and to ask the developer to consider adding a door to face Langdon St to continue the front steps motif of Islington Creek.

SPEAKING IN OPPOSITION TO THE PETITION

No one spoke.

SPEAKING TO, FOR, OR AGAINST THE PETITION [Timestamp 28:00]

David Rheume of 81 Langdon Street noted that Section 6 Paragraph 14 of the BOA Rules and Regulations indicated that a Board member may only speak when recused and if they were a direct abutter, which he was. He said he was neither for or against the petition. He said Chinburg Development reached out to some of the most affected abutters, including himself, and that the abutters had the opportunity to provide feedback that was mostly positive. He said making it a residential area instead of a business one would be a positive for the neighborhood and would also reflect the changes that were happening in the neighborhood. He noted that the parcel was one of the last remaining ones in the MRB district. He said he was disappointed that there was no use of the end of Cornwall St to provide access to the parcels. He said the applicant's explanation was that the City determined that Cornwall St may not have been an accepted street and therefore could not be used as an access point, particularly for Buildings 2 and 3, which then placed their driveways coming out onto Langdon St. He said it was something that the neighbors were continuing to research. He said older City maps showed homes on that portion of Cornwall St and Cornwall St extending to the railroad tracks. He said he found the City's decision curious but that it was satisfactory for the purposes of the Board if they chose to approve the requested relief. He said it was also an issue that could be addressed through the site plan review process. He said the view corridors were an interesting aspect to the zoning ordinance that came out of the 105 Bartlett St project due to a lot of concerns with establishing very tall projects that would impact those view corridors for the neighborhood. He said the project took that into consideration.

Chair Margeson said there was a question from one of the members about the status of Cornwall Street. Ms. Casella said Cornwall St is not maintained by the City or built to City standards, so for that reason it does not count as frontage. Chair Margeson said that would affect the access to it as part of the applicant's project. Ms. Casella said she would have to research it more. Mr. Sullivan said it would be difficult to determine the status of a historical street such as this one that was created prior to the area of having a Planning Board that approved such things and one that would unlikely have a deed or direct dedication to the City and later accepted by the City. He said it was a historical question that really could not be answered unless someone had done all the research.

Elizabeth Bratter of 159 McDonough Street said Cornwall St was called a paper street but in the 35 years that she lived there, part of the street was plowed by the City. She said there were City parking spaces on that street that were enforced by the neighborhood parking program. She said people were told that they could park on McDonough Street because it was a public area. She said it was not really a paper street until it got beyond the property where Regan Electric was.

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

DECISION OF THE BOARD [Timestamp 34:24]

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

Mr. Nies said it is a commercial area right now that is not very attractive or well developed and has a lot of asphalt as well as a few buildings on it. He said the proposal would result in improvements to the area and will turn what is a commercial/industrial area into more of a residential neighborhood. He noted that residences are allowed in the MRB zone. He said the design preserves the view corridors and meets all the required setbacks and leaves plenty of light and space. He said granting the variance would not be contrary to the public interest and would not affect the health, safety, and welfare of the neighborhood. He said the design was a well thought-out one that preserves the view corridors and that the buildings as spaced will not restrict light and air. He said the project was residential in nature and would improve the essential characteristics of the neighborhood. He said granting the variance will observe the spirit of the ordinance for the same reasons, as well as the use changing to residential. He said substantial justice would be done because the developer will benefit from the conversion into three residences, but if it were to be denied, there would be no benefit to the general public that would outweigh the loss to the applicant. He said granting the variance would not diminish the values of surrounding properties, noting that no evidence was presented that anyone was concerned that it would and that granting the variance would if anything likely improve the values of surrounding properties. He said it was a request for a modest variance in street frontage of 12 feet. He said the special conditions were that one lot having access to a street would be combined with a lot that has limited street frontage. He said the street frontage issue cannot be rectified due to the locations of the lots and the railroad. He said the purpose of street frontage was largely to prevent crowding, and the way the project was proposed meets the goal of the ordinance in not providing crowding. He noted that there was also a railroad track on one side, so there really was no issue with the fact that the street frontage is less than desired, which would lead to crowding. He said owing to those special conditions, there is no fair and substantial relationship between the purposes of the ordinance and enforcing the street frontage requirement to this specific property. Mr. Mannle concurred and had nothing to add. Mr. Sullivan said it was not even a close case and that he could not find any way that the application did not meet the criteria.

Chair Margeson asked if the Board wanted to include a stipulation about Cornwell Street and they said they did not. Chair Margeson said she would support the application because it did more to bring the property into compliance with the purposes of the ordinance.

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

Mr. Rheume returned to his voting seat for the following petition. Chair Margeson recused herself, and Vice-Chair Mattson took the Acting Chair seat. Alternate Mr. Lucas took a voting seat.

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

SPEAKING TO THE PETITION [Timestamp 40:28]

Attorney Derek Durbin was present on half of the Chase Home for Children. He asked for 10 extra minutes for his presentation.

*Mr. Rheume moved to grant the applicant a total of 25 minutes to speak, considering the complex nature of the application. Mr. Nies seconded. The motion **passed unanimously**, 7-0.*

Attorney Durbin introduced Executive Director of the Chase Home for Children, Mimi Wheeler, Shawn Tobey of Haley Ward, and project architect Mark Pelletier. He said several trustees were also present, including architect Lisa DeStefano. Attorney Durbin said the property was one of the largest in Portsmouth and surrounded by several different zoning districts. He said a significant portion of the property consisted of a wetland buffer and that the only developable part of the property was the existing developed part of the area closest to Middle Road. He reviewed the history of the Chase Home and said that after 109 years, the building had outlived its useful life and failed to meet the needs of the organization and residents, so a new and more functional building was needed to provide the same level of services. He said they had two design meetings and site walks and numerous one-on-one meetings with abutters and neighbors for public input which resulted in significant changes in design, mass, and so on that minimized the impact that the proposed new building would have on the area. Ms. Wheeler reviewed the background of the Chase Home and the programs they ran, the largest of which was residential treatment services for children who have trauma. She said there were 34 staff members and that the facility was open 24 hours. She described the living spaces for the residents and said the building had a poor layout and an aging infrastructure. She said the new building was the only option that would be in the best interest of the residents and that would not disrupt their care. She said the bedrooms would decrease from 22 to 20 and that staffing would remain the same. Project architect Mark Pelletier said he had been involved with the project for over two years. He said he was asked to evaluate whether the existing building supported the Chase Home's mission and found that it did not, due to significant renovation challenges. He said any upgrades would trigger code compliance and require major structural renovations and high costs. He described the existing building's interior and its problems. He said to prevent the children from living through a major renovation, they proposed a new building that increased the square footage to 31,500 sf. He said a large portion of the new building was on the upland portion of the site and constrained by a wetland and buffers, and they tried to minimize the building's visual impact and increase the setback from the neighbors.

[Timestamp 1:03:30] Attorney Durbin reviewed the criteria. He said the new building would be larger by about 9,000 sf but the impact would remain the same. He said a conforming 10-lot residential subdivision would have a much greater impact in terms of daily traffic in and out of the building and the overall intensity of use. He said substantial justice would be done because there was no feasible way to upgrade the property. He said surrounding property values would not be diminished, noting that he submitted a report from Brian White, a licensed appraiser in the area, who said it would not result in a diminution of abutting property values nor change the characteristics of the neighborhood. He said the property had special conditions that included being a historical vested nonconforming use of a property as a residential care facility that predated current zoning. He said the only developable area was closer to Middle Road and surrounded by a mix of different uses and zoning districts.

[Timestamp 1:09:29] Mr. Rheume said it was stated that demolishing the existing structure for a new one was something that was not desirable. He asked if anything was looked at in terms of providing temporary accommodation for the services, like temporary encampments, during the renovation of the existing building. Attorney Durbin said there was not, given the background of the residents, many of which had suffered trauma in their lives. He said that placing them into an environment like that would be detrimental to their well-being. Mr. Rheume asked whether an alternate site was considered to use as a temporary one. Attorney Durbin said every option was explored and that the proposed one made the most sense. Mr. Rheume said the widest section of the property had a portion in its center that was not either in the wetlands or the buffer and was separated by the rest of the property by a wetlands area. He said the Board had seen other developers who allowed access across the wetlands area to a buildable area, like the one off Banfield Road. He asked if that was considered and if so, why it was not viewed as something that could work. Attorney Durbin said everything had been considered. In terms of the isolated pockets of upland, he said there was one area in the middle of the property that would require crossing wetlands. He said that was not a desirable or viable option and that it would have a huge wetland disturbance impact. Mr. Tobey said significant grade changes were made in that pocket and other areas. He said it would cause significant road construction, culverts, and so on and that the existing grades would still slope. He said it would be a cost constraint and would have an impact on wildlife. He said the team felt that the best location would be right off the existing structure. Mr. Rheume said the applicant's application about potential property values did not appear to change. He asked if anything had changed from last December. Attorney Durbin said no. Mr. Rheume asked what the plan was for the existing building and whether anything happened in the past few months regarding the vision for that building. Attorney Durbin said nothing had happened and that it was difficult to save it. He said there was hope in the future that the building could be adapted and reused and would likely be reconstructed in that footprint. He said there was no guarantee that it would come to the City's attention and could require further zoning relief. He said it was better to identify and plan around it than not to, but he did not believe that the building was likely to be saved. Mr. Nies said there was a suggestion in the application that the ultimate plan was to either rebuild or tear the building down and put in a new building. He said with the addition of the parking requirements based on 42 beds, he was having a difficult time reconciling what was being proposed. He said the applicant stated that the intensity of use would remain the same, but he asked how the

applicant could make that argument if they went up to more than 40 beds. Attorney Durbin said that was the maximum intensity if the building were to be reconstructed in the future and that it was more for transparency purposes. He said what was proposed was the proposed building and that the applicant was not asking relief for the existing building. He said there would not be 42 beds in this proposal. Mr. Nies said the site plan showed parking based on 42 beds, and he asked if the applicant planned on building that parking now. Attorney Durbin said it was not determined yet but thought it would be better to build that parking. He said a consultant told them that 13 cars are parked on the property daily. He said if parking had to be reduced, however, it could be. Mr. Nies said one of those lots was close to a house on Sylvester Street. He asked what the plan for lighting was. Attorney Durbin said everything would have to be dark-sky compliant and would not shine on abutting properties. Mr. Nies referred to the appraisal report and said a comparison was made to a number of properties. He asked how close the residential properties were made to that development, noting that some were within 64 feet up to 100 feet.

[Timestamp 1:20:50] Brian White, owner/operator of White Appraisal of Dover, said the Durham Riverwood property was a large one on Route 128. He said he did not measure the distances from the building to the nearest residence but knew it would be farther away from what was proposed for the applicant's development. He said the two Dover properties were more in built-up residential areas and that the distance would probably be 50-100 feet in some instances but that he did not measure them. Mr. Mannle asked if City Staff or the Conservation Commission was approached about accessing the large parcel of buildable land in the back of the property. Attorney Durbin said he wasn't aware of it. Mr. Sullivan asked if the applicant felt that if the variances requested were granted, the applicant would be able to continue the use of the existing building as a matter of right. Attorney Durbin said no, that it would come under the City's purview should anything be proposed with respect to that building if it were to be demolished. Mr. Sullivan said therefore the current building would be empty if the residents moved into the new building. Mr. Rossi said in the assessment of potential impact on surrounding property values, several phone calls were placed to various places up and down the Seacoast. He asked if Mr. White spoke to the Portsmouth City Tax Assessor to find out if there would be a reduction in the assessment of the surrounding properties. Mr. White said he talked to an assistant who indicated that hypothetical did not come up and that the concentration was more on whether there had been any diminution of value identified with the existing property and its use and any plans for tax abatement. Mr. Rossi asked if Mr. White specifically asked, with regard to the proposed new structure, whether the more immediately abutting properties would be expected to see a reduction in their tax assessed values. Mr. White said he may have asked that and that he often did but that every assessor had the same answer. He said they only dealt with facts based on sales. Mr. Rossi asked if that data was included in Mr. White's report. Mr. White said it was not but that it was online. Mr. Rossi concluded that there was no reduction in value as a result of these facilities being built. Mr. White agreed.

Acting Chair Mattson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION [Timestamp 1:28:39]

Lisa DeStefano of 153 Lafayette Rd and 23 High Street said she had done many projects but none meant more to her than the applicant's. She said she served on the Board of Trustees for nearly 10 years and witnessed the dedication and compassion that the Board showed the children of the Chase Home. She said the facility did not meet any building codes and that the space was never designed to support the level of need for the young people who came in every day. She asked the Board to allow the facility to be located on the parcel, saying that it was an investment not just in the building but in the future of the City's most vulnerable youth.

Jason Corkum of 726 Middle Street said he lived at the Chase Home in the 1980s and early 90s and was grateful to be a productive member of the community. He said he learned a lot of integrity and got a lot of moral support. He said the Chase Home was important to deter homelessness, addiction, and so on and that it brightened up the kids' lives.

SPEAKING IN OPPOSITION TO THE PETITION [Timestamp 1:34:27]

Attorney Krista Gennell with Lyons Law Offices said she represented Taylor Power and Rosalie Andrews of 1 Sylvester Street, direct abutters of the Chase Home. She said the application to expand a nonconforming use must be denied, noting that NH law stated that a nonconforming use shall not be expanded and zoning ordinance 10.331 prohibited it. She said the applicant did not apply for a variance from Section 10.331 because it prohibited granting the variance. She said the proposed building was 9,000 sf more and the location would be upland and visible from Middle Rd and Sylvester Street. She said the 13 parking spaces would be increased to 34 or 42 and that the woodland area would be eliminated. She said sidewalks, three roof decks, a storage shed, and exterior lighting were proposed, which would be a new institutional campus.

Paul Roggenbuck of 2 Sylvester Street said he bought his home in April 2024 and that three of the homes on the street were sold within the last two years. He said everyone had been selling their homes and getting out. He said the appraisal might be right but people would not buy properties there. He said currently the hill filling was changing the profile of the valley and that there were stormwater effects. He said the parking and increase in transportation would also be impacts. He said the proposed size seemed strange and that it would be more of a mixed use of expanded office, training, and residential spaces. He said it was hard to believe that dark-sky lighting would be placed on a parking lot built up to 15 feet.

Becky McBeath of 243 Middle Road said the applicant was asking for two variances that would significantly impact the neighborhood and the City. She said it was unreasonable to consider the Chase Home's 1951 mission as the same unlawful nonconforming use suggested today. She asked the Board to deny the variance based on the fact that the applicant was asking for approval to be a residential care facility, which was not the status in the past.

Rosalie Andrews of 1 Sylvester Street said her home directly abutted the project. She said the plan was flat and did not have a good grasp of the side yard, which was the setback from Chase Home to her home. She said the new building would begin at 15 feet up compared to where her house was,

which was not a continuation of the existing use but was a substantial enlargement and intensification of the use. She said the zoning ordinance did not allow nonconforming uses to evolve into something fundamentally larger and more intrusive. She said the building would evolve into a large institutional complex visible from Middle and Sylvester Roads and would not be consistent with the area's residential character. She said the applicant had not decided what to do with the existing building.

Liza Hewitt of 726 Middle Rd (via Zoom) said she abutted the Chase Home. She said the project would not meet two of the criteria, the literal enforcement of the ordinance resulting in unnecessary hardship and surrounding properties not being diminished. She said it was not true that the 100-ft wetland buffer encumbered a significant portion of the land and that the only remaining development of the area was where the new building was proposed because the area abutting the front of the current building was dry and buildable. She said there was also a one-acre cleaned up area behind the building. She said there were also two dry paper roads to the middle of that property. She said there was no hardship. She said surrounding property values would be diminished because the new building was proposed to be only 125 feet from Middle Road. She said it would look more like a giant medical office park in a neighborhood of 100-year-old New Englanders. She said four local realtors attested to the diminution of the surrounding homes. She said Mr. White was a commercial appraiser and that none of the properties he used as comparisons was in Portsmouth.

Taylor Powell of 1 Sylvester Street said the project would negatively affect her property's value. She said she asked Mimi Wheeler why the new building could not be in the front of the existing one and was told that they did not want to overshadow the current building. She said that new building would overshadow her property, though.

SPEAKING TO, FOR, OR AGAINST THE PETITION [Timestamp 2:04:53]

Attorney Durbin said there was a technical issue raised that they had not applied for relief from Section 10.331 but that it was referenced in the applicant's materials. He said they initially did apply for that as well as a variance from Section 10.334 but City Staff determined that 10.331 was not needed because it was encompassed within the variance for 10.334. He said a variance from Section 10.440 was probably not needed because it was a residential care facility use of the property, which already exists. He said they applied for it in case it was needed. He said regarding whether it was a residential care facility use, it had been treated that way historically by the City. He said the new building could not be constructed immediately in front or behind the existing building because it would disrupt the infrastructure of the property and there was a wetland buffer in back. He said the issue of the law of nonconforming uses was erroneous because his client applied for the proper relief using the proper avenue of a variance process.

Second Time Speakers

Attorney Krista Gennell referred to Attorney Durbin's reference to Section 10.331 and said it was intentionally omitted to not apply for that variance because they would not get it. She said it was clearly an expansion of a nonconforming use in a residential district. She said four Portsmouth real estate professionals concluded that the expansion would diminish the values of surrounding properties. She said Mr. White's format was prepared for the client and not intended for third-party reliance and that there was no quantitative methodology used. She said Mr. White's comparisons were all adult senior care facilities and that he never visited or inspected any of the abutting properties. She said he acknowledged that there could be potential buyers of surrounding properties that would prefer not to be in the area of the new Chase Home but said the group would not be large enough to negatively impact market values, which contradicted experts who said otherwise.

Becky McBeath of 243 Middle Road said she spoke with Chris Reese in the Commercial Appraiser's Department who said the data was decided based on sales and not diminution of value of surrounding homes. She said the comparison properties were located next to highways or there were no nearby residential properties.

Liza Hewitt via Zoom said the placement of the proposed new building, given the overall size of 26 acres, was a hard pill to swallow. She asked the Board to carefully consider the wetlands map and imagine a 31,000-sf building next to their home or in their single-family neighborhood.

Brian White said his charge was to see if he could find data that could prove a diminution of value and looking for comparables in the New Hampshire market. He said he started by interviewing the assessors and looking at the most comparable properties he could find and that he looked at the ones nearest to Portsmouth. He said he found no data that indicated a diminution of property values.

Becky McBeath said the property was on a high slope, and she explained how green space played an important part in the neighborhood.

Attorney Krista Gennell said no one disputed the mission of the Chase Home, but a 31,000-sf building with two new parking lots, deforestation, and so on in a single-home residential district is not a modest continuation of an existing use.

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

DISCUSSION OF THE BOARD [Timestamp 2:35:46]

Mr. Rheume said the Chase Home's mission was important but not a factor the Board was considering. He said what the Chase Home wanted to do with their property was a completely different thing than what they might provide for the community and society. He said the applicant made a good argument that the current facility is not meeting their needs and that it was up to them if they wanted to remedy that, but it was for the Board to figure out if what the applicant was asking for is acceptable or not. He said the parcel is massive and left over from a large farm in the mid-1800s. He said much of the land was sold off since then, but the applicant's large parcel remained

and was zoned as a single residence parcel. He said if it was zoned as Gateway One, the use would be allowed by special exception, but based off the information the applicant provided, the Planning Board said it fell into the SRB zone category. He said the applicant had logical reasons for creating a new building but he was concerned that the Board did not have a good sense of what the future plans were for the property in terms of reusing the existing building or demolishing it and something new coming in. He said there were a few ideas out there but the Board was not getting the full picture, and he was concerned that the Board was not given a full assessment of the applicant's plan. He said the property was burdened by wetlands but recent development in Portsmouth created ways of dealing with that. He said the applicant was sort of shoving the nonconforming use of the SRB district into the portion of the property that is narrower and more SRB-centric and was more the portion of the property to keep the characteristics of SRB as much in view as possible. He said the farther back it could be from Middle Rd and the narrow section of the property, the better. He said he struggled with being able to say that the locus of the nonconforming use would be moved that much closer to that portion of the property. He said it brought in negative consequences of making it less applicable to what the zoning ordinance was trying to accomplish with the SRB district and putting it into an area where it was important to have more of those characteristics rather than less. Mr. Rossi said it came down to a single issue of whether the proposal impacted the values of surrounding properties or not. He said the Board was presented with an expert report that was really based on an absence of evidence rather than an evidence of absence of impact, which were two different things, so the Board was left with an expert report saying they could not find any evidence that it would, and realtors were saying that it obviously would, so there was a push and pull. He said the Board was left with making their own judgement, and he thought it was inconceivable that this size of a facility in this location at that elevation relative to the rest of the surrounding homes would not diminish the values of those properties. He said if the application failed on that, it failed everything. Mr. Lucas said the proposed new building was more on the commercial scale, which would have a substantial impact on the neighborhood. He said he researched group home styles and found that they typically have a neutral positive impact on property values but commercial-scale ones have a negative one. He said buyers leave the neighborhood and homes sit longer, so there is a real risk that property values will be decreased and the nature of the neighborhood is affected. Mr. Sullivan said everyone in the City should be proud that the Chase Home is here, and for more than 100 years, they performed wonderful services and provided a social benefit that someone needs to do. However, he said it was a zoning issue, and one of the purposes of a zoning ordinance is to protect the neighbors from harming each other. He said that if someone drives by on Middle Road and looks in the direction of the Chase Home, they see trees. He said if the project were to be built, it would substantially change what one sees when looking in that direction, so therefore it would have a dramatic negative effect on the neighbors. For that reason, he said he agreed with the public speakers who were opposed to the petition.

Mr. Nies asked Ms. Casella a question about the issue of a residential care facility. He said the Legal Notice published said that the variances being requested were for a residential care facility use to be extended to another part of the remaining land, but the Staff table in the memo said the land use is a group care facility, which is a term that was not defined in the zoning ordinance. He said it indicated that the proposed use is a new building for a group care facility. He said he wanted

to make sure that the Board was talking about a residential care facility, which is defined in the ordinance. Ms. Casella said it was a residential care facility and that the term new building per group care facility was a mistake on her part. Mr. Nies said that, related to the residential care facility, it was interesting to him that if the Board listens to the things done at the Chase Home now, part of it is a residential care facility, but there were also off-site things done that he wasn't sure applied to a residential care facility. He said the Chase Home seemed to fit more into the idea that it is more Social Services Campus Residential, which is defined in the ordinance, and not just focused on care for residents. He said if the Board was considering authorizing a nonconforming use, they had to be careful how they specified it and make sure they capture what is really being done. He said he was not sure that the Residential Care Facility definition captured everything being done in the facility. He said he was also concerned that the Board did not really know how much this nonconforming use would expand in the future. He said he thought the proposed building's location depended on what the future plans might be. He said if there was talk about rebuilding the current Chase Home, then putting the building more forward might make some sense, but the Board did not really know what was happening there and what the overall future plans for the property were.

Mr. Mannle said he agreed with his fellow Board members. He said no one would criticize the Chase Home who did great work, but it was a zoning issue. He said he was dismayed that the applicant did not try to talk to City Staff and the Conservation Commission about the parcel, which is slightly smaller than the rectangle close to Middle Road. He said the applicant said there was a big drop off, but the elevation map showed the top of that buildable area as the same elevation as the front of the Chase Home at 52 feet and that it was incorrect to say that it was lower. He said the elevation did drop down before getting to the buildable parcel, but developers all over town were making that type of parcel buildable. He said the extension of the wetlands was tiny, and the 100-ft buffer came out from there. He said he could not support the petition. He said the unknown of the future was weighing heavily on the Board. He said if the applicant came in with the parcel they had and proposed to demolish the current home and a build a brand new facility set back where it is, that would probably be approved, but the Board did not know what would happen. He said the size of the Chase Home was currently being tripled. Mr. Nies said he thought the current building was closer to 22,000 sf, so it was more like a third of an increase. He said he walked by the property twice and went down Sylvester Street twice and it was difficult for him to fully understand what the proposal looks like and exactly what the property looks like. He said he would have preferred having a site walk. He said it was difficult to understand exactly how much of a drop off there was behind the existing building and what the view would be like from the home looking down at the properties. He said a person got a sense from Sylvester Street of what it would look like looking up at the property but did not know the other way. He asked if the Board had an interest in doing a site walk. Mr. Rossi said he did not.

DECISION OF THE BOARD [Timestamp 2:58:00]

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

Mr. Rossi said the application only had to fail one criterion in order for it to fail to be approved, and that was Section 10.233.24, granting the variance would not diminish the value of surrounding properties. He said the Board heard compelling evidence that there is a strong possibility that

including this structure at its size in this location would likely negatively impact the value of nearby properties, like Middle Rd and Sylvester St and others that perhaps the Board didn't hear about. On that basis, he said he moved to deny the application. Mr. Sullivan concurred and had nothing to add. Mr. Rheume said he would support the motion. He said he thought the first two criteria, not being contrary to the public interest and observing the spirit of the ordinance, were not met. He said it went back to the essential characteristics of the neighborhood. He said what concerned him was the proposal to move the locus of the nonconforming use closer to Middle Rd, where there was an established pattern of house on narrow but deep lot. He said the current use was partly geography and partly because it was pretty far away from Middle Road and did not disturb that rhythm. He said there was enough evidence put forward that such a large structure that much closer to the road would move a nonconforming use that much closer to an area where it would disrupt the general characteristics of the neighborhood. Mr. Nies said he recognized the concerns that were raised but would not support the motion to deny. He said he wished the Board had received more information before they made their decision.

The motion to deny passed by a vote of 5-2, with Mr. Nies and Acting Chair Mattson voting in opposition.

Chair Margeson returned to her seat as Chair, and Acting Chair Mattson returned to Vice-Chair status. Mr. Lucas returned to his alternate status.

Mr. Nies moved to extend the meeting past 10:00, seconded by Mr. Rheume. The motion passed unanimously, 7-0.

III. NEW BUSINESS

- A. The request of **Kenneth J and Rebecca T Nicholson (Owners)**, for property located at **53 Pray Street** whereas relief is needed to demolish the covered porch, fence, and bulkhead and construct a three-season room with a roof deck and bulkhead in the same footprints which requires the following: 1) Variance from Section 10.521 to allow a) 6 foot front yard (bulkhead) and 15 foot front yard (structure) where 17 feet are required, b) 7 foot side yard where 30 feet are required, and c) 36% building coverage where 30% is permitted; and 2) Variance from Section 10.515.13 to allow a) a 6 foot fence where 4 feet is allowed, and b) 8 foot arbor gate where 4 feet is allowed. Said property is located on Assessor Map 102 Lot 40 and lies within the Waterfront Business (WB) and Historic Districts. (LU-26-13)

SPEAKING TO THE PETITION [Timestamp 3:03:14]

Attorney Tim Phoenix representing the owners was present, with landscape architect Robbie Woodburn, design architect Jen Ramsey, and project engineer Eric Weinrieb. Attorney Phoenix reviewed the petition.

[Timestamp 3:09:46] Mr. Nies asked what the 8-ft fence as shown in the packet with an outside and inside elevation represented. Ms. Woodburn said the fence would be on the property line, where 8-ft fences were allowed. Mr. Nies said it was labeled as a 6-ft fence on the site plan. Ms. Woodburn

said there was an 8-ft fence along the top of the property and a 6-ft fence on the side of the property but that the 8-ft fence would be on the property line. Mr. Nies said the BOA approved 39 percent of the coverage in 2012 but that the current coverage was only 36 percent. Attorney Phoenix said his colleague inspected the City files and found that no as-builts were done. He said the Staff Memo that addressed the history of it noted that there was a 12'x20' deck approved in 2012 but that he did not see one physically there, so he assumed there were changes that were not built that resulted in a different number or that there may have been another structure like a shed. Mr. Nies asked Ms. Casella if the Board still needed to grant the applicant another variance for 36 percent coverage. Ms. Casella said by removing the sunroom covered deck, the applicant was removing the nonconformity that required the variance. Mr. Rheume said the front setback in the Waterfront District was 30 feet but that the site plan had an asterisk on the table that noted that the average of abutting properties determined the 17-ft setback. Attorney Phoenix agreed. Mr. Rheume said a 17-ft side setback was needed where 30 feet was required, which sounded like a lot of relief, but it was up against the fact that the property line and the northeasterly corner of the property had a deck and boathouse that happened to fall outside of the applicant's property. Attorney Phoenix agreed and said those structures were over the water. Chair Margeson said she saw the property and that it did not look like the Existing Conditions Plan but looked like there was a block structure next to the house. She asked if it was a covered porch that had been torn down. Ms. Ramsey said there used to be a deck with a roof on it and that part of the deck was still there, along with a ramp going up to the existing doorway. Chair Margeson said the front of the property was set back at four feet and the reason for having that was that things were not closed off. She asked if there was a need for it to go up to six feet. Attorney Phoenix said the setback for the four feet is to the front of the house and that the existing fence is not at the front of the house. He said the photo showed the fence that was there today and that the top of the covered porch could be seen as it was when he took the photo. He said it was only fair to let someone put back a 6-ft fence because it would not close anyone off other than the owner, who was next to a lobster pound. He said the purpose of the 4-ft limitation did not exist there and that rights were established to continue with the 6-ft fence. It was further discussed.

[Timestamp 3:21:55] Attorney Phoenix reviewed the criteria.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 3:28:35]

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

Mr. Rossi said the overarching consideration was that the entire project was replacing like with like or like with very similar, with regard to the 3-season room and the roof deck. He said granting the

variance would not be contrary to the public interest and the spirit of the ordinance would be observed. He said, to the extent that the proposed use does not conflict with the explicit or implicit purposes of the ordinance, the purpose of setbacks was to preserve light and air. He said there would be no further impingement by allowing the project to proceed, therefore any loss to the applicant at all would fly against substantial justice. He said granting the variance would not diminish the values of surrounding properties, noting that there was no way that replacing the older structures with remodeled and refurbished ones in a very similar if not identical configuration would reduce the values of surrounding properties. Regarding the hardship, he said there were unique aspects to the property in that it is a very small lot, which was not necessarily unique within this particular small area but was very far off of the required lot size in the zone, so relative to the entire zone, it is a special aspect of the property. He said it is uniquely located directly adjacent to the lobster pound, which required a small amount of privacy and explained the fencing. For those reasons, he said the petition satisfied the five criteria. Mr. Nies concurred. He said there were rules about the fencing to keep the property from looking like a walled-off compound, but the fence was very short and set back 15 feet from the property line and that much of the property line was occupied by a house or a garage, so the property would not look like a walled-off compound. He said privacy was an issue that supported allowing the fence.

The motion passed unanimously, 7-0.

- B.** The request of **Madison Commercial Group LLC (Owner)** and **The Manchester Esthetic Services LLC, DBA Art of Eyebrows (Applicant)**, for property located at **72 Mirona Road** whereas relief is needed for a change of use from professional office to esthetic services which requires the following: 1) Special Exception from Section 10.440 Use #7.20 to allow Personal services. Said property is located on Assessor Map 253 Lot 3 and lies within the Gateway Center (G2) District. (LU-26-11)

SPEAKING TO THE PETITION [Timestamp 3:33:41]

The owner Madison Commercial Group's representative Patricia Wright was present and reviewed the petition and criteria.

[Timestamp 3:36:30] Mr. Rheume noted that the floor plan and the photo differed and said there were double doors on one end and a single door on the opposite end. He asked which end the customers would enter through. Ms. Wright said they would enter through the double doors. Mr. Rheume asked if the offices on the right would remain. Ms. Wright said there were two offices there now and that a 1600-sf third office would be built. Mr. Rheume asked if the back corner shown with hatching through it was part of another business. Ms. Wright agreed. She said the third new office would be used as a private treatment room. Mr. Sullivan had some questions clarifying treatments.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 3:29:21]

*Mr. Nies moved to **grant** the special exception for the petition as requested and advertised, seconded by Mr. Sullivan.*

Mr. Nies said per the standards provided by the ordinance, it was an allowed use for a special exception. He said all activity would take place inside, so the project would pose no hazard to the public or adjacent properties. He said it would comply with all fire rules and there would be no exposure to or release of toxic material. He said there would be no detriment to property values in the vicinity or change in the essential characteristics because it is a commercial area that would not be changed in any way. He said there would not be smoke, gas, dust, or other pollutants, noise, glare, heat and so on. He said the project would pose no traffic safety hazard. He said it was a busy street in a commercial area where that was expected, and the parking lot was huge. He said the project would pose no excessive demand on municipal services because it would take place in an existing commercial establishment. He said there would be no significant increase in stormwater runoff because there would be no changes made to the facility.

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

IV. ADJOURNMENT

The meeting adjourned at 10:41 p.m.

Submitted,
Joann Breault
BOA Minutes Taker

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

7:00 P.M.

March 24, 2026

MEMBERS PRESENT: Jeffrey Mattson, Vice Chair; David Rheame; Paul Mannle; Thomas Rossi; Robert Sullivan

MEMBERS EXCUSED: Beth Margeson, Chair; Thomas Nies; Mike Lucas, Alternate

ALSO PRESENT: Jillian Harris, Planning Department

Vice Chair Mattson was Acting Chair for the evening. He explained that only five Board members were present and that applicants had the option to postpone to the next meeting.

*Mr. Rossi moved to take New Business Petitions 2B, 133 Miller Avenue, and 2D, 614 Broad Street, out of order. Mr. Rheame seconded. The motion **passed** unanimously, 5-0.*

*Mr. Rossi moved to **suspend the rules** to take Petitions 2B and 2D out of order. Mr. Rheame seconded. The motion **passed** unanimously, 5-0.*

Acting Chair Mattson read Petition 2B, 133 Miller Avenue, into the record.

*Mr. Rheame moved to **postpone** the petition to the April 21st meeting, seconded by Mr. Sullivan.*

Mr. Rheame said there were only five members present and that it required four members to grant a request, so the applicant was allowed to defer.

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

Acting Chair Mattson read Petition 2D, 614 Broad Street, into the record.

*Mr. Mannle moved to **postpone** the petition to the April 21st meeting, seconded by Mr. Rossi.*

Mr. Mannle said it was a simple request, given the makeup of the Board.

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

I. OLD BUSINESS

Mr. Rossi recused himself from the following request.

A. 238 Austin Street – Rehearing Request [Video timestamp 7:00]

The request of **John W. Mayer, Debora D. Mayer, John Ragonese, Lynda Schmidt, Evan Baker, Laura Stewart, Keith Smith and Cindy Smith** for property located at **238 Austin Street** to rehear the granted Variances from the February 18, 2026 BOA meeting.

Acting Chair Mattson read the rehearing request into the record.

DISCUSSION OF THE BOARD

Mr. Rheume said the Board was required to take some kind of action, knowing that there were only four voting members. He said the Board's rules stated that a minimum of three affirmative votes was required to grant the appeal. He said the Board received the appeal the day before in the early afternoon and then received information on the original property owner's rebuttal shortly before noon that day. He said he reviewed all the information but thought it would be fairer to postpone consideration until the April meeting. Mr. Mannle agreed. Mr. Sullivan noted that there could be a problem because the Statute gave the City a certain amount of time to respond to a request for a rehearing. Mr. Rheume said an action by the Board could include staying the decision. Acting Chair Mattson said it made sense to stay the order, which would still be an action on the Board's part, and continue the request to the April meeting.

DECISION OF THE BOARD

Mr. Rheume moved to stay the decision complained of pending further consideration to the April 21st meeting. Mr. Mannle seconded.

Mr. Rheume said there was a lot of important information relating to the appeal and that it would behoove the Board to consider it carefully. He said it was the logical course because there was a short Board that evening. Mr. Mannle concurred and had nothing to add.

*The motion **passed** unanimously, 4-0, with Mr. Rossi recused.*

Mr. Rossi returned to his voting seat.

II. NEW BUSINESS

- A. The request of **Gregory Sheive and Diane Lamprey (Owners)**, for property located at **893 Woodbury Avenue** whereas relief is needed to construct a 168 square foot addition to the rear of the structure which requires the following: 1) Variance from Section 10.521 to allow a) 27.5 foot rear yard where 30 feet are required, and b) 23% building coverage

where 20% is maximum allowed. Said property is located on Assessor Map 219 Lot 36 and lies within the Single Residence B (SRB) District. (LU-26-8)

SPEAKING TO THE PETITION [Timestamp 13:58]

The owner Greg Sheive was present. He said his home was not suitable for aging in place, and he reviewed the petition and criteria.

Mr. Rheaume said there was no elevation information provided in the package, and he asked if the proposed 12 x'14' addition was one story. Mr. Sheive said it was 16 feet. Mr. Rheaume asked what the photo in the package depicted. Mr. Sheive said it was a ChatGPT photo that showed what he intended to have built. Mr. Rossi asked what differentiated Mr. Sheive's property from other properties in the neighborhood, noting that hardship was not about whether the home was suitable for the applicant's desired use for aging in place and that there should be a unique aspect of the property that argued in favor of having the variance request granted. The co-owner Diane Lamprey said their property had less square footage than most of the properties in the neighborhood.

Acting Chair Mattson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD

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

Mr. Rossi said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the purpose of the setbacks is to provide adequate light, space, and air between adjacent properties, but that was not really a problem in this case because the addition would not be the farthest point back in the building structure and would not infringe at all on light, air, and space for the surrounding properties. He said granting the variance would do substantial justice, meaning that a loss to the property owner would not be counterbalanced by a gain to the public. He said there would be no gain to the public in denying the variance because primarily it would involve construction of an addition outside of public view and would result in no conceivable loss to the public, therefore substantial justice would be done. He said granting the variance would not diminish the values of surrounding properties because the proposed addition was a typical one to homes of that age, and the same usage that was currently on the property would remain and would be consistent with the rest of the neighborhood. Relating to the unnecessary hardship test, he said the special condition of the property was related to the lot size. For the zoning area, he said it had an undersized square footage lot and due to that, some relief in terms of setbacks would be reasonable in order to accommodate the continued residential use of the building. Mr. Mannle concurred and had nothing to add.

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

- B. POSTPONE TO APRIL** The request of **William and Virginia Osborn (Owners)**, for property located at **133 Miller Avenue** whereas relief is needed to demolish the existing one-story garage and construct a new two-story attached garage which requires the following: 1) Variance from Section 10.521 to allow a) a 6-foot rear yard where 20 feet is required; and b) 3-foot left side yard where 10 feet is required. Said property is located on Assessor Map 129 Lot 26 and lies within the General Residence A (GRA) District.
POSTPONE TO APRIL (LU-26-21)

DECISION OF THE BOARD

*The petition was **postponed** to the April 21st meeting.*

- C.** The request of **Emily and Michael Glynn (Owners)**, for property located at **387 Richards Avenue** whereas relief is needed for the construction of a two-story addition in place of an existing deck structure which requires the following: 1) Variance from Section 10.521 to allow a) a 4-foot left side yard where 10 feet is required. Said property is located on Assessor Map 112 Lot 17 and lies within the General Residence A (GRA) District. (LU-26-23)

SPEAKING TO THE PETITION [Timestamp 23:15]

The applicant's representative Chris Atwood was present. He said they wanted to build an addition in place of the existing deck but planned to maintain the home as a single-family one. He said they proposed to add 96 square feet of footprint to the property. He reviewed the criteria.

Mr. Rossi said his only concern was that the house was extended toward the back and naturally pinched off the left side. He asked if it reached the beginning of the structure on the left side of the property line and affected its light and air. Mr. Atwood said there would be daylight between the two structures. He explained that the existing deck structure came out a little shy of the point of the building on the other side. Mr. Rossi said the existing deck structure did not obstruct light and air because it was low to the ground, but the proposed structure was a 2-story addition.

Acting Chair Mattson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 29:47]

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

Mr. Rheume said he shared Mr. Rossi's concern. He said the applicant's representative said that the only thing they were replacing within the setback was the existing deck, but the proposed addition was a 2-story one and was quite a bit of height compared to a deck that was not very high. He said, however, that the actual amount of square footage that was going additionally into the setback would not be excessive because it would just be 6'x12' and not very impactful. He said what the applicant was trying to accomplish by adding more room into the kitchen was a common addition that people want in their homes and that expanding an existing footprint was the only way these days to accommodate additional desired features, in this case a larger kitchen that the applicant currently did not have and a bedroom suite on the second floor. He said it was a reasonable action for the circa-1900 house and that the applicant's request for relief was within the allowed square footage of the lot. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said the pattern of doing extensions on the back of the home was a common one. He said the MapGEO and the satellite view showed that many of the surrounding homes had extensions toward the back, which was not surprising given that the lots were narrow and deep. He said the extension would not really be obvious from the front property line, so what the applicant was asking to do was in keeping with the general characteristics of the neighborhood. He said granting the variance would do substantial justice because there would not be anything that the general public would get out of not allowing the applicant to build onto the back end that would be more important than the benefits the homeowner would get from the more modern amenities to their home, and the addition would not be very visible. He said granting the variance would not diminish the values of surrounding properties, noting that it was a small imposition on the setback and that it was a relatively short additional dimension. He said there was some structure there now that it would expand on vertically, but it was not anything that had not already been done there before. He said he did not see how it would negatively impact the neighborhood's property values. He said the unique characteristics relative to the requirements of the zone were that narrow and deep lots were common in the neighborhood, and the applicant's property had the same setup as the other properties did. He said one of the things that helped the property was that the applicant's property characteristics ran through the neighborhood. He said the neighboring property had a structure that seemed to be a garage, so he thought the light and air impact from the proposed modestly-sized addition would be minimal on the surrounding property. He said it would be at an angle and would not change things too much. He said it would still go a bit closer to the property line but not significantly so, and he did not think that sort of general characteristic was anything that should be counted against the applicant's request. He said there was a hardship and he recommended approval. Mr. Sullivan concurred. He said Mr. Rossi's questions were very relative and well founded. He said if there had been any evidence presented to the Board either in writing or in person that raised issues or supported the issues that were raised, it would have given it a great weight that perhaps would have led to a different result, but the Board received no such evidence and therefore there was nothing to give weight to, so he supported the motion.

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

D. REQUEST TO POSTPONE The request of **John C and Janice D Carpenter (Owners)**, for property located at **614 Broad Street** whereas relief is needed to construct a front porch and rear addition to the primary dwelling, to demolish the existing detached garage and construct a new two-story garage with Accessory Dwelling Unit above which requires the following: 1) Variance from Section 10.521 to allow a) a 0.5 foot rear yard where 20 feet is required; b) 2.5 foot left side yard where 10 feet is required; and c) 34% building coverage where 25% is the maximum. Said property is located on Assessor Map 221 Lot 54 and lies within the General Residence A (GRA) District. **REQUEST TO POSTPONE (LU-26-24)**

DECISION OF THE BOARD

*The petition was **postponed** to the April 21st meeting.*

Ms. Harris noted that a workshop was scheduled on March 31st and that several topics submitted by Chair Margeson would be discussed. She said the Board members could submit topics beforehand that they particularly wanted addressed.

III. ADJOURNMENT

The meeting adjourned at 7:40 p.m.

Submitted.

Joann Breault
BOA Minutes Taker

**MINUTES OF THE
BOARD OF ADJUSTMENT WORK SESSION
CONFERENCE ROOM A
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

6:00 P.M.

March 31, 2026

MEMBERS PRESENT: Beth Margeson, Chair; Jeffrey Mattson, Vice Chair; David Rheaume; Paul Mandle; Thomas Nies; Thomas Rossi; Robert Sullivan; Mike Lucas, Alternate

MEMBERS EXCUSED: None.

ALSO PRESENT: Stefanie Casella, Planning Department; Jillian Harris, Planning Department; Peter Stith, Planning Department; Trevor McCourt, Deputy City Attorney

I. WORKSHOP

A. Discussion with Planning Staff [Video timestamp 12:29]

Mr. Stith reviewed the zoning updates that were adopted starting from 2024 as follows:

- May 2024 – Electric vehicle charging (EVC) stations had two definitions added, EV Fueling Space A and B. Fueling Space A is a typical residential electric service, and Space B is more like what would be seen in a gas station.
- June 2024 –Due to a request from the artists community who wanted to have classes in their homes, an amendment was made to the Home Occupation ordinance. Occupation 1 will allow for up to two clients or visitors at any one time, and Occupation 2 will be allowed by a Conditional Use Permit (CUP) for up to six clients at any one time.
- July 2024 – Amendments were made to solar in the Historic District Commission (HDC). Certain exemptions are allowed if the panels are not visible and pertain to roof-mounted solar.
- November 2024 – A Gateway Neighborhood Overlay District for Commerce Avenue and Portsmouth Boulevard was adopted that allows for an overlay to create housing modeled after the Gateway zoning and includes three options for work force housing with incentives.

- March 2025 – The section for mechanical units was removed and changes were made to fence heights so that an 8-ft fence can be on side and rear yards. One-family and two-family dwellings are allowed to have up to a 124-sf shed or structure that is exempt from zoning. It can be in setbacks and does not have to count toward building coverage. Saunas and hot tubs are exempt.
- May 2025 – Co-living was accepted as a use and a section on co-living was adopted.
- February 2026 – It was clarified that mechanical units are exempt from yard and building coverage. Power generators must be set back five feet to be consistent with the fire code.
- A definition was created for ground-mounted solar to distinguish between whether it is an accessory use or a principal use and where it is allowed in the City. As a principal use, it requires a Conditional Unit Permit (CUP).
- July 2026 – Accessory Dwelling Units (ADUs) are not treated as a single-family dwelling and the minimum and maximum are set at 750 square feet. An ADU has to be owned by the property owner and have a parking space and cannot be placed in front of the house.
- The Parking Statute states that more than one parking space per dwelling unit cannot be required for residential dwelling units. It was amended to have half a space up to 500 sf and one space for anything 500 sf or more.
- Albacore asked to change their zone to Single Residence B in the Gateway District and allow their museum as a permitted use. The Planning Board recommended changing it to Gateway 2 and changed the museum from special exception to permitted in Gateways 1 and 2.
- Map amendments were made. In 2024, properties were rezoned from the Commercial District to the Gateway District. Another ten parcels mainly along Lafayette Road will be considered.
- The Planning Board is working on removing parking regulations from the zoning ordinance and putting them into site plan regulations so that someone could ask for a waiver to have less parking than required. There will be other definitional changes made in the coming months for front lot line and lot area to make it clear what the City's intent is in measuring lot area.

[Timestamp 24:20] Mr. Rheume asked if the State law said residential had to be allowed in the Commercial and Industrial Districts. Mr. Stith said the City had not addressed it but it would go into effect in July. He said there were changes being made to that law. He said only Office Research, General Business, and perhaps another district did not allow residential. Mr. Nies asked if the Special Exception conditions in Section 10.232.38 meant that the BOA can impose off street parking and loading spaces in excess of the minimum requirements of the ordinance. He said it seemed inconsistent to allow the BOA to do that if the parking regulations were being moved somewhere else. Mr. Stith said it would have to be discussed further at the Planning Board level. Mr. Mannle asked what the status was on murals. Mr. Stith said he would recommend to the

Planning Board that they look into it. It was further discussed. Mr. Mannle asked if Ocean Road was being considered for rezoning, noting that 80-90 percent of the properties were zoned incorrectly. Mr. Stith said the Master Plan consultant was researching that issue and that it would likely be addressed at the Master Plan April 22nd meeting. Mr. Nies asked how the BOA provided feedback to the Planning Board about potential changes to the ordinance. Attorney McCourt said the most effective way would be for the two boards to meet and discuss the issues and then City Staff could help Chair Margeson write a letter to Chair Chellman to memorialize the thoughts in an organized way. Mr. Rheume said another method was to have a joint work session. Mr. Stith said if the same issues kept coming up, there might need to be a change in the ordinance.

[Timestamp 36:33] Mr. Rossi said de minimis changes came before the BOA and that he wasn't sure if it was a zoning issue as much as a Planning Department process issue. He said it might be reasonable to say that, for certain dimensional requirements, lot coverage and so on, a variance within a certain type of percentage would not be required being elevated to the BOA for review and approval. He said the ordinance did not state 25.0 percent lot coverage but said it was 25 percent lot coverage, so unless the last digit changed, it was not a change relevant to the ordinance. It was further discussed. Ms. Harris said if it was something like 25.6 percent, they rounded it up.

[Timestamp 42:08] The application process was discussed. Ms. Casella reviewed the process. She said the applicant would go to other boards if appropriate to get their building permit, and she explained the building permit process.

[Timestamp 45:47] Mr. Nies referred to the boiler plate language in Section 10.235 related to the consistency review. He said the Board noted at meetings that their variance granting was based on what they saw in front of them. He said sometimes what went to a different board was different than what the BOA saw. He asked how that section was interpreted and applied, and if it meant that anything could be changed as long as it did not conflict with a variance, or whether it was related to a particular project's design. Ms. Casella said every project and situation was different. She said they went back to the minutes and video tape to see how a motion was contemplated.

[Timestamp 50:01] Mr. Rheume asked how the Planning Board's interactions with DPW worked because they still had the authority to grant certain things like a driveway cut, and it had caused issues in the past. Mr. Stith said it was usually run by Eric Eby, the City's Parking, Transportation, and Planning Engineer. Ms. Casella said the online system also helped because it was fast and all connected. Mr. Mannle said there was often information in the application that either contradicted what was being asked for or contradicted what the applicant was telling the BOA. He said that was an instant denial for him. He recommended that the Planning Department Staff remove anything that the Board would not vote for from those kinds of applications before they came to the Board as well as any additional information that might add more questions from the Board. He also noted that a professional who represented the applicant should have stricter rules about not having things in the application that were not relevant to it. Chair Margeson said she would like to see more simplicity when the Board members were making motions and that the members should go be clear about how their findings match the criteria as well as make sure that the member who seconded the

motion aligns with the person who made the motion. She said a denial of an application was even more of a problem. It was further discussed. Ms. Casella said the first motion should list which criteria failed and then the Board could discuss it. Relating to a motion to amend, she said it would be clearer if it was part of the ultimate motion that was made. Attorney McCourt said it was helpful to him if all the reasons why the request for a variance failed were listed and not just one criterion. He said the factual rationale was important, especially if he had to go to court. Mr. Rheume said he might second a motion and feel that the motion maker did not capture everything in the criteria review. He asked how that would work. Attorney McCourt said the maker of the motion made the motion and the second seconded, then the motion maker went through their rationale. The Chair then asked if the second had anything to add, and then the second added their rationale and hopefully they agreed. Ms. Casella said it was important to make it clear. It was further discussed. Mr. Rossi said sometimes Board members expounded too much on matters of opinion, and he thought discussions should focus on fact and not hypotheticals. Vice-Chair Mattson asked if it was better to take the first two criteria together. Attorney McCourt said it was allowed. Ms. Casella said it only became an issue if they were taken together but only one was elaborated on. Mr. Rheume said the Board had to be diligent about reciting back to the Board after their discussion prior to the vote exactly what the Board was voting for. He said the Handbook for Local Officials noted that the Board did not have to reach a decision the same night but could render it for a later time. Attorney McCourt said the Statute allowed 90 days from the day of an application's receipt for the Board to make a decision, so the Board was within their right to move it to another night. He said the Board could also ask for more information or ask another City department or a consultant.

[Timestamp 1:20:31] Board member etiquette and member responsibilities were discussed. Attorney McCourt said it was not inappropriate to spend more time working through things in a complex application using a high degree of precision and that it was within the Board's judgement as to whether they spend more time talking through the issue to ensure that they got it right. He said it was also within the Chair's judgment.

[Timestamp 1:22:26] Mr. Rossi asked Attorney McCourt if he could provide periodic information to the Board about any of their prior decisions if they were being challenged in court and what the arguments were, and whether they were being supported or overturned. Attorney McCourt said he could give the Board written updates of appeals or talk to them. Mr. Rheume asked that the Board be notified of a court decision so that they could review it.

[Timestamp 1:24:17] Ms. Casella and Attorney McCourt explained the MapGeo process.

The following two items were merged.

B. Discussion with Deputy City Attorney Trevor McCourt

C. Q & A with City Staff

[Timestamp 1:31:13] The differences between the BOA and the Planning Board relative to the time allowed for the public to speak was discussed. Mr. Rheume asked City Staff to make sure the applicant provided his plans appropriately in either Landscape or Portrait mode.

[Timestamp 1:33:05] Mr. Rheume mentioned a case to the City's former attorney, Attorney Sullivan, in which Mr. Sullivan was concerned about the applicant's ability to come back to the Board due to Fisher v. Dover. He said he wanted to understand more about it. Mr. Sullivan explained that the application was close to a denial and that the discussion indicated that, with some small changes, the application might be approved. He said if the Board denied it due to Fisher v. Dover, the applicant could not return with small changes, so he suggested giving the applicant a month to amend the application and return. He said the application had to have a substantial change in order to come back to the Board, and with minor changes, the denial might turn into an approval.

[Timestamp 1:35:50] Mr. Rheume asked where the demolition ordinance and its enforcement stood. Attorney McCourt said the purpose behind the demolition ordinance was if a building got demolished anywhere in the City, there should be some forum where people have a chance to come out and express their views. He said the public had a chance to discuss it before the BOA, HDC, and Planning Board. He said the Demolition Review Committee was conceived as the gap filler for those buildings to be demolished that were not subject to site plan review approval, did not need a variance, or were outside of the Historic District. Mr. Rheume said the representation on the Demolition Committee reflected some strengths that the BOA did not have, like the Portsmouth Advocates. He said in the past, through the Demolition Review Committee process, compromises were made based on the historic nature of the properties or photos or documentation and he didn't think the BOA was equipped like that or wanted to spend the time working on it. Attorney McCourt said that wasn't the way it was currently set up. Mr. Rheume asked if the BOA would legally have a standing or could make a stipulation to say that the ability to appeal to the Demolition Committee would not be negated by an action that the Board is taking. Attorney McCourt said that would be contrary to the terms of the ordinance. Mr. Rossi asked if the Board would have any standing to deny an application for a variance based on their opinion that it had the possibility of demolishing a structure. Attorney McCourt suggested discussing the topic in a nonpublic setting.

[Timestamp 1:41:38] Mr. Rheume said sometimes applicants brought things that the Board thought were brought before TAC or the Planning Board for site plan review or subdivision review that he was not always sure was something the Board could look at. It was further discussed. Ms. Casella said the Planning Department could work on a cheat sheet.

[Timestamp 1:45:37] Time limits for speakers was discussed, as well as a better way to make sure the speakers were more concise to try to give equal balance to others. The issue of the applicant handing in additional written information at the meeting was discussed.

[Timestamp 1:51:31] Mr. Nies said he was uncomfortable waiting until the public meeting to ask for a site walk because it would push the applicant back a month. He suggested asking the Chair if there should be a site walk, which would give her control and the City Staff would not get

bombarded by individual members asking for or objecting to a site walk. Chair Margeson said it should be done before hearing the application and that it should be run through Ms. Casella first. It was further discussed. Mr. Nies asked what the agenda order was based on, noting that he felt sorry for a special exemption request that was heard later in the evening. Ms. Casella said the petitions could be taken out of order. Mr. Stith said the applicant was told that the sooner they got their application in, the higher on the agenda it would be. It was decided that the easiest thing to do would be to take the applications out of order at the meeting. Mr. Nies asked if there was training available for the revised Ethics ordinances. Attorney McCourt said it was being rolled out to new members as they were inducted on the boards but wasn't sure how that process was playing out in practice. He said he brought it to the attention of the Deputy City Manager. Chair Margeson said members of every board should be trained on the revised Ethics ordinance.

II. OTHER BUSINESS

There was no other business discussed.

III. ADJOURNMENT

The meeting adjourned at 8:00 p.m.

Submitted,

Joann Breault
BOA Minutes Taker

II. OLD BUSINESS

A. 238 Austin Street – Rehearing Request

Planning Department Comments

At the February 18, 2026 Board of Adjustment meeting the Board considered 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.

*The Board voted to **grant** the variances as presented and advertised.*

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or stay the decision pending further consideration. If the Board votes to grant the request, a hearing will be scheduled for next month's Board meeting or at another time to be determined by the Board.

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 past application can be referenced in February 18, 2026 meeting packet found at the following link:

https://files.portsmouthnh.gov/files/planning/apps/AustinSt_238/AustinSt_238_BOA_02182..pdf

This item was postponed at the March 24, 2026 BOA meeting.

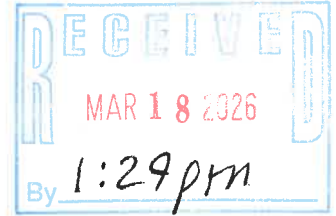
THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, ss.

CITY OF PORTSMOUTH

ZONING BOARD OF ADJUSTMENT

**In re Application of Lisa Paige Reyes and Chris Ward
regarding the property located at 238 Austin Street**



MOTION FOR REHEARING

Pursuant to RSA 677:2, John W. Mayer, Debora D. Mayer, John Ragonese, Lynda Schmidt, Evan Baker, Laura Stewart, Keith Smith, and Cindy Smith, all of whom are abutters or near-abutters of the property at 238 Austin Street which is the subject of the above-referenced application and who will be directly affected by this Board's decision, respectfully move this Board to reconsider its decision of February 18, 2026, in which the Board granted variances from the area, coverage, and setback requirements of section 10.521 of the Zoning Ordinance and also granted the applicants other relief, and to conduct a rehearing on the applicants' petition. As grounds in support of their motion, the movants state the following:

1. The movants have received conflicting information from this Board and the Planning Department concerning the role of the city's Demolition Committee and concerning the movants' options in opposing demolition of the old barn which sits on the subject property at 238 Austin Street. During the February 18, 2026 hearing, several members of this Board volunteered the observation that the applicants' project "still has to go through Demolition" and the like, meaning, the project still had to go before the Demolition Committee and that therefore the movants

and other opponents will have ample opportunity to voice their concerns concerning the proposed demolition of the subject building at that juncture. However, the movants have been told by the Planning Department that once the Zoning Board of Adjustment grants a variance, the granting of that variance has the effect of approving demolition and renders moot the role of the Demolition Committee. In addition, the movants have received reliable information that the Demolition Committee has not held a meeting in almost four years.

2. Thus, by simply deferring to the Demolition Committee on the question of whether the old barn should be demolished, this Board abdicated its responsibilities. The Board should have entertained and considered the issue of whether demolition of the barn is appropriate, and that issue should have informed this Board's decision, especially in the light of the barn's historical significance.

3. Further, at the February 18, 2026 hearing some of the citizen opponents, including some of the movants herein, specifically asked this Board for an explanation of the Demolition Committee's role and the procedure for bringing this project before the latter, and such an explanation was not forthcoming.

4. For these reasons, a rehearing by this Board is warranted so that the Board can fully vet and consider the issue of whether demolition of the barn is appropriate.

5. On that same subject, the applicants' assertion, articulated through their attorney at the February 18, 2026 hearing, that it would be impossible and/or infeasible to rehabilitate, renovate, and restore the old barn, and that therefore demolition is necessary, is simply untrue. It is, indeed, feasible and entirely possible to rehabilitate and restore the barn. The movants are submitting concurrently herewith a letter from Drew Bedard, an experienced general contractor, carpenter, and historic preservationist, who has personally examined the barn and who concludes

that it is entirely feasible, financially and otherwise, to rehabilitate, renovate, and restore the old barn. The applicants' representation to the contrary was incorrect.

6. In addition, in the letter which is being submitted Mr. Bedard also explains the importance of the barn from a historic preservation standpoint. Among other things, the barn in question is "an extremely rare example of an urban barn" and, moreover, preserving it helps maintain the essential character of the neighborhood. At the February 18, 2026 hearing, this Board failed to consider the historic significance of the barn, and indeed that significance was downplayed by the applicants' misleading representation that the barn could not be saved and that there was no choice but to demolish it.

7. Finally, as the chairwoman correctly noted during the February 18, 2026 hearing, the city's policy of promoting historic preservation extends not only to buildings that are located within the historic district, but to all buildings that have historical significance, no matter where situated.

8. For all of these reasons, a rehearing should be conducted so that the Board can substantively consider the issues of whether the applicants should be allowed to demolish the barn and, if demolished, whether the loss of the barn will change the character of the neighborhood.

9. There is absolutely no hardship associated with the subject property which would justify the granting of a variance. There is no reason why the property cannot be utilized for the purpose for which it is zoned while complying with all of the requirements of the Zoning Ordinance, including the area, coverage, and setback requirements. It is perfectly feasible for the applicants to erect a structure that complies with all of those requirements. Therefore, no relief from the requirements of the Zoning Ordinance is justified.

10. Further, no hardship exists for another reason: The subject property is perfectly typical of the other properties in the neighborhood and in the zoning district in general, similarly compelling the conclusion that no hardship exists. There is nothing unique about the subject property which differentiates it in any meaningful way from the surrounding properties and the others in the neighborhood, and thus no "special conditions" exist which serve as the basis for a finding of hardship. In terms of its size, the subject property falls roughly in the middle of the spectrum of sizes of the surrounding properties. The subject property has an area of 6,384 sq. ft., according to the tax map. In the surrounding neighborhood, the number of lots which are larger than that--as many as 9,147 sq. ft., in one instance--is roughly the same as the number of ones that are smaller. (Appended hereto as Attachment A is a list of a large sampling of properties in the immediate area, together with their sizes in terms of square feet. Appended hereto as Attachment B is a copy of the relevant portion of the tax map, with these properties highlighted.) Although a plausible argument can be made that the subject property at 238 Austin Street is irregularly shaped, it is equally true that many, if not most, of the properties on the same block and in the same neighborhood are irregularly shaped. (See Attachment B.) Presumably the City Council, with the input, advice, and recommendations of the Planning Department, took these circumstances into consideration when it chose to zone the district General Residence C and to impose a minimum lot size of 3,500 sq. ft. per dwelling unit. Ergo, the fact that the subject parcel is irregularly shaped serves as no principled basis for distinguishing it from the other properties in the neighborhood or for finding that a hardship exists.

11. The demolition of the barn and the Austin Street house and the replacement of same with two three-story residential dwellings will fundamentally change the character of the neighborhood. By now it is well settled that when the effect of the granting of a variance would

fundamentally change the character of the property's surroundings, the variance must be denied. Malachy Glen Assocs., Inc. v. Town of Chichester, 155 N.H. 102, 920 A.2d 1192 (2007). Thus, this Board erred in granting the variances requested by the applicants.


12. The granting of the variances in this case was also contrary to both the letter and spirit of the Zoning Ordinance and contrary to the city's Master Plan. Both the Master Plan and the Zoning Ordinance inveigh against the overcrowding of properties and against undue concentration of population. The area where the subject property is located, and particularly the block bounded by Austin Street, Cabot Street, Union Street, and Coffins Court, in which the property specifically sits, is already congested and overcrowded with buildings, large and small, which are situated close together with little space in between; many of those buildings are multi-unit dwellings; and Coffins Court is an extremely narrow street. The applicants propose to replace the barn and the existing house with two large, three- to four-bedroom residential buildings. The two new buildings will be massive in comparison to many of the buildings in that block, and their presence will merely exacerbate the overcrowding both of properties and of population. It is also to be noted that allowing the existing barn to remain in place on the Coffins Court side of the property, by contrast, would be a much less intensive use of the property than erecting two massive residential buildings on it and packing them with human beings

13. Thus, the relief which the applicants seek is contrary to the spirit of the Zoning Ordinance and contrary to the city's policies. The specific purpose of the provisions of the Zoning Ordinance which are at issue in the applicants' petition--setback requirements, frontage requirements, and a specified minimum of 3,500 square feet of lot area for every residential building that is to be erected thereon--is to implement the city's policy of promoting sufficient space, light, and air between buildings and properties and to enhance the quality of life of those who

reside here. People and properties need elbow room. The relief requested by the applicants is directly contrary to that purpose and that policy. Simply put, the applicants seek to erect two single-family dwellings on a parcel that is only suitable for one.

14. For all of these reasons, the Board should conduct a rehearing on the applicants' petition.

WHEREFORE, the movants respectfully pray that this Board reconsider its decision of February 18, 2026 and that it conduct a rehearing on the applicants' petition for variances.



Duncan J. MacCallum
NHBA #1576
536 State Street
Portsmouth, New Hampshire 03801
(603) 431-1230
madbarrister@aol.com
Attorney for Moving Parties

Dated: March 18, 2026

John and Debora Mayer
68 Cabot St.
Portsmouth, NH 03801
603.969.3913 – mobile
Jmayer.nh@gmail.com

March 3, 2026

Atty. Duncan MacCallum
536 State St.
Portsmouth, NH 03801

Dear. Atty MacCallum –

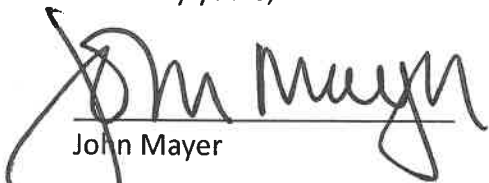
We – John and Debora Mayer - are pleased to authorize you to act on our behalf in matters regarding the request for a rehearing of the application to the Portsmouth ZBA involving the property listed at 238 Austin St., Portsmouth. This application was decided by the ZBA at their meeting on Wednesday, February 18, 2026.

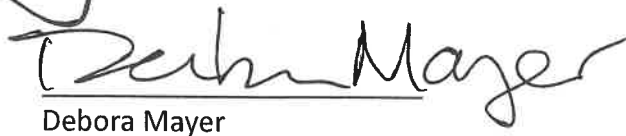
Our authorization includes, but is not limited to drafting the written request for a rehearing, preparing information needed for this request, and speaking on our behalf at a future meeting of the Portsmouth ZBA.

This authorization is effective from 3/3/2026 until further notice.

Please contact me at the above phone or email address if you require verification or have any other questions.

Sincerely yours,


John Mayer


Debora Mayer

Keith and Cynthia Smith
30 Coffins Court
Portsmouth, NH 03801
(603)498-2159
30smith@comcast.net
March 9, 2026

Atty. Duncan MacCallum
536 State St.
Portsmouth, NH 03801

Dear. Atty MacCallum,
We – Keith and Cynthia Smith - are pleased to authorize you to act on our behalf in matters regarding the request for a rehearing of the application to the Portsmouth ZBA involving the property listed at 238 Austin St., Portsmouth NH. This application was decided by the ZBA at their meeting on Wednesday, February 18, 2026.


Our authorization includes but is not limited to drafting the written request for a rehearing, preparing information needed for this request, and speaking on our behalf at a future meeting of the Portsmouth ZBA.

This authorization is effective from 3/9/2026 until further notice.

Please contact me at the above phone or email address if you require verification or have any other questions.

Sincerely yours,


Keith P Smith


Cynthia B Smith

Laura Stewart and Evan Baker
20 Coffins Court, Portsmouth, NH 03801
Evan – mobile - 484-467-5975
evanallenbaker@gmail.com

March 12, 2026

Atty. Duncan MacCallum

536 State St.

Portsmouth, NH 03801

Dear. Atty MacCallum –

We – Laura Stewart and Evan Baker - are pleased to authorize you to act on our behalf in matters regarding the request for a rehearing of the application to the Portsmouth ZBA involving the property listed at 238 Austin St., Portsmouth. This application was decided by the ZBA at their meeting on Wednesday, February 18, 2026.

Our authorization includes, but is not limited to drafting the written request for a rehearing, preparing information needed for this request, and speaking on our behalf at a future meeting of the Portsmouth ZBA.

This authorization is effective from 3/12/2026 until further notice.

Please contact me at the above phone or email address if you require verification or have any other questions.

Sincerely yours,

Laura Stewart

Laura Stewart

Evan Baker

Evan Baker

Representation before the ZBA re: 238 Austin Street

From: John Ragonese (john.ragonese@gmail.com)

To: madbarrister@aol.com

Date: Sunday, March 8, 2026 at 02:05 PM EDT

Dear. Atty MacCallum –

We, John Ragonese and Lynda Schmidt, owners of 74 Cabot Street and as direct abutter to the subject property of 238 Austin Street, are pleased to authorize you to act on our behalf in matters regarding the request for a rehearing of the application to the Portsmouth ZBA involving this property. Variances were granted by the ZBA at their meeting on Wednesday, February 18, 2026.

Our authorization includes, but is not limited to drafting the written request for a rehearing, preparing information needed for this request, and speaking on our behalf at a future meeting of the Portsmouth ZBA.

This authorization is effective from 3/3/2026 until further notice.

Please contact me by phone number or email address if you require verification or have any questions.

Sincerely,

John Ragonese & Lynda Schmidt
john.ragonese@gmail.com
603.828.4215

ATTACHMENT A

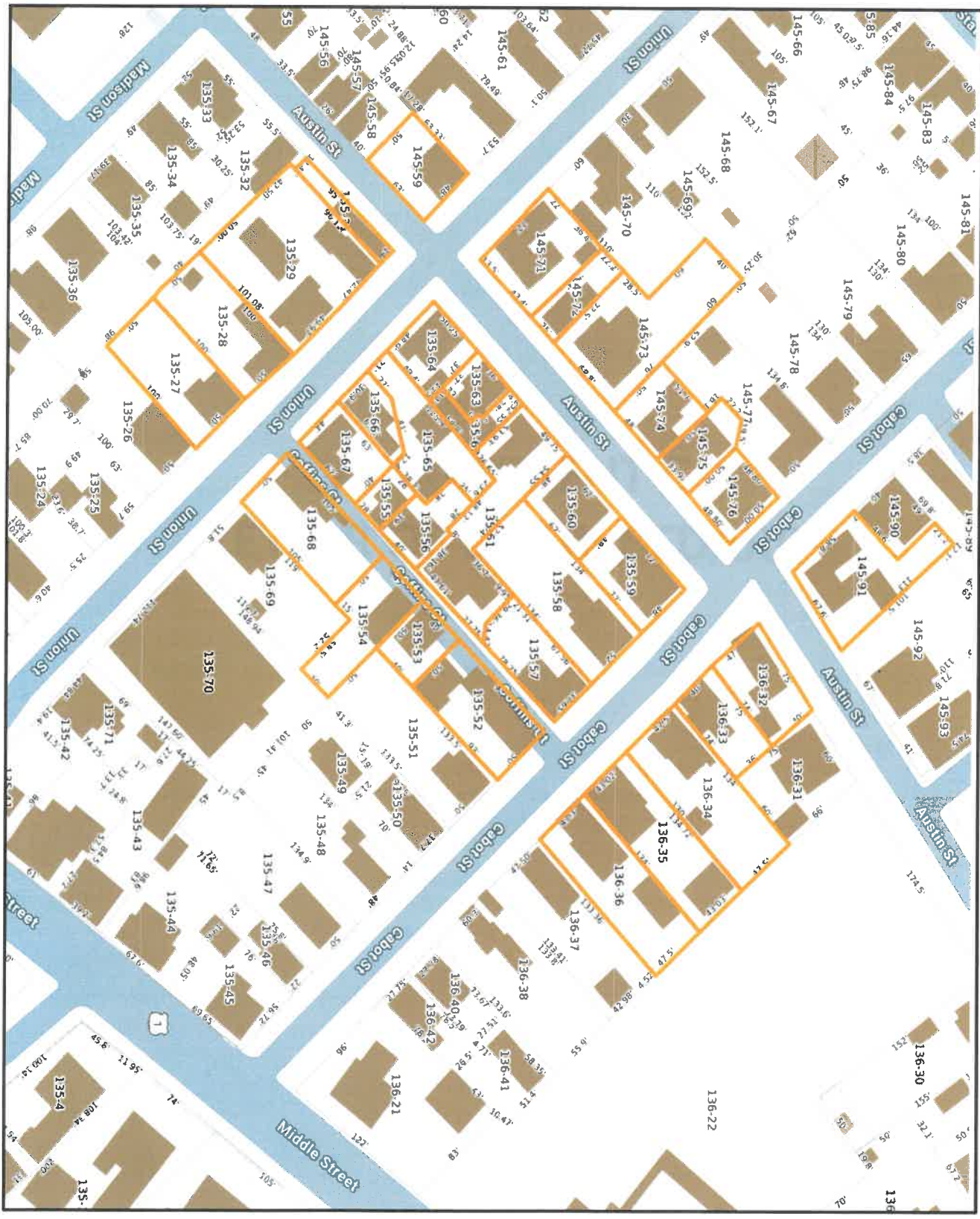
Property ID	Site Address	Acreege	Sq Ft	Dwelling Units
0135-0052-0000	68 CABOT ST	0.11	4791.6	1
0135-0053-0000	20 COFFINS CT	0.05	2178	1
0135-0054-0000	30 COFFINS CT	0.09	3920.4	1
0135-0055-0000	45 COFFINS CT	0.03	1306.8	2
0135-0056-0000	37 COFFINS CT	0.05	2178	1
0135-0057-0000	74 CABOT ST	0.08	3484.8	1
0135-0058-0000	82 CABOT ST	0.16	6969.6	5
0135-0059-0000	96 CABOT ST	0.08	3484.8	4
0135-0060-0000	224 AUSTIN ST	0.07	3049.2	4
0135-0061-0000	238 AUSTIN ST	0.15	6534	1
0135-0062-0000	244 AUSTIN ST	0.03	1306.8	1
0135-0063-0000	246 AUSTIN ST	0.03	1306.8	2
0135-0064-0000	256 AUSTIN ST	0.06	2613.6	3
0135-0065-0000	165 UNION ST	0.1	4356	2
0135-0066-0000	171 UNION ST	0.04	1742.4	3
0135-0067-0000	179 UNION ST	0.06	2613.6	3
0135-0068-0000	187 UNION ST	0.12	5227.2	1
0145-0059-0000	273 AUSTIN ST	0.07	3049.2	1
0145-0071-0000	257 AUSTIN ST	0.09	3920.4	2
0145-0072-0000	245 AUSTIN ST	0.04	1742.4	1
0145-0073-0000	235 AUSTIN ST	0.17	7405.2	4
0145-0074-0000	223 AUSTIN ST	0.06	2613.6	2
0145-0075-0000	217 AUSTIN ST	0.05	2178	2
0145-0076-0000	114 CABOT ST	0.06	2613.6	1
0145-0091-0000	183 AUSTIN ST #'s A-C	0.12	5227.2	3
0135-0027-0000	188 UNION ST	0.11	4791.6	2
0135-0028-0000	180 UNION ST	0.11	4791.6	1
0135-0029-0000	170 UNION ST	0.21	9147.6	4
0136-0032-0000	188 AUSTIN ST	0.07	3049.2	1
0136-0031-0000	274 AUSTIN ST	0.03	1306.8	1
0136-0033-0000	87 CABOT ST	0.06	2613.6	1
0136-0034-0000	83 CABOT ST	0.14	6098.4	2
0136-0036-0000	61 CABOT ST	0.14	6098.4	3
0136-0035-0001	67 CABOT ST #'s 1-5	0.13	5662.8	5

Total Acres/Sq Ft	2.97	129373.2	
Total Number of Dwelling Units			72
Dwelling Units per Acre			24.2
Ave Lot size	0.087	3805.1	



ATTACHMENT B

Portsmouth Property Map – showing lots in Austin, Union, Cabot Streets and Coffins Court area



ATTACHMENT C
LETTER OF DREW BEDARD

HALL & PARLOR



HISTORIC PRESERVATION

Hall & Parlor Historic Preservation LLC
57A Lovell Rd
Stratham, NH 03885

Mar 6, 2026

Mr. John Mayer
68 Cabot St.
Portsmouth, NH 03801

RE: 238 Austin St. - and the barn on Coffins Court, Portsmouth, NH

Dear Mr. Mayer,

It was a pleasure meeting you on January 19th while assessing the Coffin's Court barn. Thank you for your request for a written report and preliminary assessment of this historic structure. I look forward to continuing our conversation about ways to preserve and reuse the barn, and other structures as well, so that future generations may continue to appreciate and enjoy them.

My Qualifications. I am a second-generation preservationist with more than fifteen years of hands-on experience as a carpenter, general contractor, and consultant throughout the greater New Hampshire area. My work focuses primarily on historic structures, including barns, schoolhouses, and homes dating from the 18th, 19th, and early 20th centuries. Over the past decade, I have worked closely with the *New Hampshire Preservation Alliance* on numerous restoration projects and building assessments. I frequently serve as a consultant and advisor, and offer my expertise regarding the preservation of historic structures to organizations such as the NH Preservation Alliance, municipalities, and individual property owners. Historic buildings can feel intimidating to many people without preservation experience. Helping educate and guide individuals through the preservation process is both important and deeply rewarding.

Site visit and review of the Coffins Court Barn. On January 19th, at the request of Beverly Thomas of the NH Preservation Alliance, I conducted an on-site building assessment of the 19th-century barn located on Coffin's Court. During the visit, I toured the structure with you, several local neighbors, Mike Garrepy, representing the applicant, and Cindy Bronzetti, the listing agent. The purpose of my visit was to inspect this historic structure, answer questions regarding the barn's condition, and provide general insight into the feasibility and rough costs that may be involved in stabilizing, restoring, and reusing the structure.

During my interior inspection, it was clear that structural updates had already been completed, including the installation of a new central carrying beam and additional interior posts to support the load of the second-floor framing. Much of the exterior wall and roof sheathing, framing, and flooring appear to remain largely original, with only minor updates and changes made throughout the barn's history. One particularly exciting and uncommon feature was the interior cistern located in the basement of the barn, accessed by a hatch on the first floor. This architectural element further reflects the historic character of the structure.

From the exterior, it is evident that the building envelope has not been maintained or updated in several decades, resulting in areas of deterioration primarily related to deferred maintenance. The small wing located at the northwestern corner of the east elevation has sustained significant damage to its roof and top plate framing, and preservation of that portion of the structure would likely not be realistic. However, the primary structure of the barn itself remains in comparatively good condition, with the majority of its challenges related to exterior maintenance and weather protection rather than fundamental structural failure.

Statement of Significance. Preserving and rehabilitating this barn is vitally important. The building (which is a contributing structure in Portsmouth's *National Register Downtown Historic District*) is an extremely rare example of an urban barn. There simply are few other buildings like this in any other New Hampshire city or town. Notably, the building retains its original features, is in stable condition, and can easily be rehabilitated. Preserving the barn maintains the essential character of the neighborhood, and supports the efforts of many neighbors to maintain their historic homes that abut the property. Rehabilitating the barn would preserve these relationships, increase the value of the adjacent homes, and maintain the unique character of the neighborhood. These are the important and proven benefits from an investment in historic preservation.

Summary. Given the current condition and prominent location of the barn, it is an excellent candidate for preservation and adaptive reuse, *not* demolition. From a professional standpoint, it is entirely feasible to save the primary structure. It represents a worthy building to restore either in its traditional role as a barn or to rehabilitate for an appropriate future use. Preserving the barn would also maintain the historic character of this tightly knit neighborhood and contribute meaningfully to the integrity of the surrounding historic district.

I appreciate the opportunity to assess the property and to share my perspective. Please feel free to reach out if I can provide any additional information or assistance as discussions about the future of the barn continue.

Sincerely,

Drew Bedard
Owner and Preservation Specialist



END

PORTSMOUTH ZONING BOARD OF ADJUSTMENT
238 Austin Street Tax Map 135, Lot 61
LU-25-177

OBJECTION TO REQUEST FOR REHEARING

NOW COMES, Owner Lisa Reyes & Applicant Chris Ward (“Applicant”), by and through Ward’s attorneys, Hoefle, Phoenix, Gormley & Roberts, PLLC, and respectfully request that the Portsmouth Zoning Board of Adjustment (“ZBA”) deny the Motion for Rehearing filed by John & Debora Mayer, John Ragonese & Lynda Smith, Evan Baker & Laura Steward, and Keith & Cindy Smith (collectively “Petitioners”) with respect to the February 18, 2026 decision of the ZBA granting variances from Portsmouth Zoning Ordinance (“PZO”) §10.521 for 238 Austin Street (the “Property”) to permit subdivision of an existing lot containing two structures into two lots each developed with homes (the “Project”).

I. EXHIBITS

1. 2/18/2026 Notice of Decision and Findings of Fact.
2. 2/18/2026 Minutes of the Zoning Board of Adjustment.¹

II. 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.

The New Hampshire Supreme Court has made clear that a “rehearing is not a matter of right” and “in the interest of finality of decisions by zoning boards, rehearings should not lightly be granted.” McDonald v. Town of Effingham Zoning Bd. of Adjustment, 152 N.H. 171 (2005). The ZBA is considered the expert on matters of zoning and local conditions and its decisions are deemed prima facia lawful. See The Board of Adjustment in New Hampshire, a Handbook for Local Officials, 2022 p. IV-5; Daniels v. Londonderry, 157 N.H. 519 (2008). Rehearing is proper only where the affected party can show technical error or produce new evidence that was

¹2/18/2026 Video begins at approximately the 2:32 mark and is available at <https://www.youtube.com/live/juFDQvfIN20?si=9sruxGuMy3Bvt73V&t=9136>

not available at the time of the first hearing. Loughlin, 15 New Hampshire Practice, Land Use Planning and Zoning, Section 21.18 (4th Ed. 2010)(noting that unavailable evidence should not be evidence that was available and not produced due to lack of preparation).

It is assumed that every case will be decided, originally, only after careful consideration of all the evidence on hand and on the best possible judgment of the individual members. Therefore, no purpose is served by granting a rehearing unless the petitioner claims a technical error has been made to his detriment or he can produce new evidence that was not available to him at the time of the first hearing.

New Hampshire Office of Energy and Planning, The Board of Adjustment in New Hampshire: A Handbook for Local Officials, Chapter IV, P. IV-3 (2022).

III. INTRODUCTION

Petitioners' Request for Rehearing fails to provide new evidence which was unavailable to the Petitioners at the time of the initial hearing and fails to demonstrate the ZBA committed any error in its analysis. Instead, Petitioners erroneously rehash the same points previously considered and rejected by the ZBA. Petitioners' untimely "new" evidence is procedurally barred and provides no grounds for rehearing. Such evidence, if even relevant, was previously available as Drew Bedard evaluated the barn well before the hearing. Petitioners wrongly claim the ZBA abdicated its responsibility to adjudicate the demolition of the barn, when the ZBA has no power to regulate demolition of structures owned by private individuals. Petitioner claims, without legal and evidentiary support, that the ZBA erred in finding that granting the variances is not contrary to the public interest, observes the spirit of the Ordinance, and denial would create an unnecessary hardship. In sum, Petitioners merely disagree with the collective judgement of the ZBA. Because Petitioners fail to establish that the ZBA overlooked any evidence or erred in its analysis, the ZBA must deny the Request for Rehearing.

IV. RESPONSE TO PETIONER'S CLAIMS OF ERROR

- A. **Rehearing must be denied where Petitioners have failed to produce evidence unavailable at the time of the initial meeting and their claims that the ZBA must adjudicate the propriety of the barn demolition are wholly without merit.**

Petitioners' efforts to introduce a letter from Drew Bedard to rebut the testimony of Applicant's structural engineer is untimely and procedurally barred. "Rehearing is not a matter of right." McDonald v. Town of Effingham Zoning Bd. of Adjustment, 152 N.H. 171 (2005).

Rehearing is proper only where the affected party can show technical error or produce new evidence that was *not available at the time of the first hearing*. Loughlin, 15 New Hampshire Practice, Land Use Planning and Zoning, Section 21.18 (4th Ed. 2010)(*emphasis added*)(noting that unavailable evidence should not be evidence that was available and not produced due to lack of preparation). Given Mr. Bedard evaluated the barn for one of the Petitioners on January 19, 2026, his opinion was clearly available at the time of the February hearing. Petitioners' failure to present such evidence does not afford a basis for rehearing. Assuming *arguendo*, that Bedard's letter is worthy of substantive consideration, lay opinion about the value of preservation or "adaptive reuse" does not counter the expert evidence by Applicant's licensed structural engineer, Alex Ross, P.E. that the structure does not meet current load requirements and improvement of the foundation, floor, roof, and walls to current code is not financially feasible.

Petitioners' claims about demolition of the existing structures and features of the proposed replacement structures erroneously assume unlimited ZBA jurisdiction, contrary to the Ordinance and state law. RSA 674:16 enables municipalities to enact zoning ordinances that regulate *uses* of property; the height, number of stories, size and location of buildings and structures on a lot; and yard size, lot coverage, and density. The plain language of RSA 674:33 I(a) empowers the ZBA to:

(2) Authorize, upon appeal in specific cases, a variance from the terms of the zoning ordinance if:

(A) The variance will not be contrary to the public interest;

(B) The spirit of the ordinance is observed;

(C) Substantial justice is done;

(D) The values of surrounding properties are not diminished; and

(E) Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(b)(1) For purposes of subparagraph I(a)(2)(E), "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(A) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

(B) The proposed use is a reasonable one.

RSA 674:33, I(a)(2); The Board of Adjustment in NH; PP 11-9, 10 (2022) (*emphasis added*). See also Harborside Associates, L. P. v. The Parade Residence Hotel, LLC. 162 NH 508 (2011).

The variances requested by Applicant (frontage, lot size, lot size/dwelling unit, and targeted setback relief for bulkheads/mechanicals) are the sole matters before the ZBA. While

Petitioner would have the ZBA review demolition of the barn, the plain language of RSA 674:16 and 674:33 do not confer authority upon the ZBA to adjudicate all aspects of a residential site redevelopment. While the general purposes of the Ordinance include historic preservation, Petitioner cites no authority for the proposition that an individual owner of property outside the historic district can be compelled to devote substantial resources to bring an ailing structure up to code. Demolition of the barn, dimensional or design aspects of the proposed home or site improvements *which require no variance* are therefore not subject to review by the ZBA merely because other variances are requested. Accordingly, the ZBA must deny the rehearing request.

B. Because Petitioners are unable to demonstrate that the ZBA erred in determining that granting the variances is not contrary to the public interest and observes the spirit of the Ordinance, the ZBA must deny Petitioners' rehearing request.

Malachy Glen and its progeny have held ZBA findings that a variance is contrary to the public interest and inconsistent with the spirit of the Ordinance requires more than mere conflict. Chester Rod & Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 581 (2005). The purpose of a variance is to authorize the landowner to use his property in a manner not otherwise permitted. Loughlin, 15 New Hampshire Practice, Land Use Planning and Zoning, §24.02. (See also Malachy Glen Associates, Inc. v. Town of Chichester, 152 N.H. 102, 107 (2007) “The mere fact that the project encroaches on the buffer, which is the reason for the variance request, *cannot* be used by the ZBA to deny the variance.”).

Rather, the test is 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. (Emphasis added). Another way to evaluate a variance(s) request is to consider whether granting the variance(s) will “alter the essential character of the locality” or threaten the public health, safety, and welfare. Id. See also Harborside L.P. v. Parade Residence Hotel, LLC 162 N.H. 508 (2011); Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577 (2005).

The New Hampshire Supreme Court has long-articulated the proper analytical framework for determining whether a variance is contrary to the public interest or fails to observe the spirit of the ordinance. This framework includes consideration of whether granting the variance would “alter the essential character of the locality”, an analysis that necessarily examines the requested variance in the context of the neighborhood. See Walker v. City of Manchester, 107 N.H. 382, 386 (1966) (Noting a hardship may be found where similar nonconforming uses exist within the

neighborhood and the proposed use will have no adverse effect on the neighborhood). See also Rancourt v. City of Manchester, 149 N.H. 51 (2003). (noting special conditions include the “property’s unique setting in its environment”).

The ZBA correctly applied the law by considering whether granting variances to allow creation of an additional lot with less than required frontage, lot area, and lot area per dwelling unit. The record shows that the proposal converts an oversized lot with two structures into two lots, each containing one permitted, height-compliant single-family residence. The record reveals that the proposal meets building coverage and open space requirements while rear and side yard setbacks improve over existing conditions.

The ZBA also considered whether the density proposed, sited among other small lots in a thickly settled neighborhood, would alter the essential character of the locality. The record includes exhibits which illustrate the tastefully designed home and demonstrate its compatibility with the neighborhood. A review of the tax map clearly reveals that the proposed yard setbacks are similar to others in the neighborhood. **(Exhibit D)**. The density proposed is similarly compatible given the very small lots on the Union Street end of Coffins Court and the multi-family homes on Austin Street. Because Petitioner has failed to demonstrate any error in the ZBA’s application of law to this application, the ZBA must deny the rehearing request.

C. The ZBA correctly determined denial would result in unnecessary hardship where physical characteristics and location of the Property combine to create special conditions, no fair and substantial relationship exists between the purposes of the ordinance as applied in this instance, and the proposed use is reasonable; accordingly, the ZBA must deny Petitioners’ rehearing request.

RSA 674:33, I(b) articulates a three-part test to establish unnecessary hardship. The first requirement is that the property have “special conditions distinguishing it from other properties in the area”. Contrary to Petitioners’ assertions, in order to find special conditions, it is not necessary for the Property to be the only burdened property, but only that it be burdened distinctly. Garrison v. Town of Henniker, 154 N.H. 26, 32-33 (2006). The evidence established that Property is one of the largest on its block and is the only “through lot” in the area. Its configuration of frontage on two streets connected by a narrower corridor is distinct and prevents it from being utilized more efficiently. Given that the lot size, configuration, and frontage together support the finding of special conditions which uniquely burden the Property, Petitioner’s request for rehearing is without merit and must be denied.

The second prong of the variance criteria examines whether there is a fair and substantial relationship between the purposes of the Ordinance and its 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 record establishes and a majority of the ZBA found that the proposed structures improved over existing conditions. Petitioner may disagree with the ZBA's determination that no fair and substantial relationship exists between the general purposes of the Ordinance and its specific application, but having failed to point to legal or technical error, their Request for Rehearing must be denied.

The final element of the hardship criteria considers whether the proposed use is reasonable. If the proposed use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Residential uses are permitted in the GRA Zone. The Property exists among other small lots, some containing duplexes or multi-unit. The proposal to subdivide this oddly-shaped through lot is entirely reasonable. Because Petitioner has not presented any technical or legal error in the ZBA's analysis, their Request for Rehearing must be denied.

V. CONCLUSION

In summary, each variance request was supported with detailed plans, other exhibits and expert testimony at the hearing where Petitioner's input was presented and considered by the ZBA. The ZBA acted reasonably and the reasoning of the board members in finding the criteria for each variance satisfied is contained in the minutes. Petitioner provides neither any factual nor technical error by the ZBA requiring rehearing nor presents any new evidence that was not available at the time of the first hearing.

For all of the reasons stated herein together with the original submission and presentation by Applicant's team, and the February 18, 2026 Meeting Minutes and video, Lisa Reyes and Chris Ward respectfully request that the ZBA deny the Request for Rehearing.

Respectfully submitted,
Chris Ward



By: R. Timothy Phoenix
Monica F. Kieser



CITY OF PORTSMOUTH

Planning & Sustainability
Department
1 Junkins Avenue
Portsmouth, New
Hampshire 03801
(603) 610-7216

ZONING BOARD OF ADJUSTMENT

EXHIBIT 1

February 25, 2026

Lisa Paige Reyes
238 Austin Street
Portsmouth, New Hampshire 03801

**RE: Board of Adjustment Request for property located at 238 Austin Street,
Portsmouth NH 03801 (LU-25-177)**

Dear Property Owner:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **February 18, 2026**, considered your application for the 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 shown on Assessor Map 113 Lot 28 and lies within the General Residence A (GRA) District. As a result of said consideration, the Board voted to **grant** the request as presented and advertised.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning & Sustainability Department for more details about the appeals process.

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

The Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Zoning Board of Adjustment Meeting website:

<https://www.cityofportsmouth.com/planportsmouth/zoning-board-adjustment/zoning-board-adjustment-archived-meetings-and-material>

The minutes and audio recording of this meeting are available by contacting the Planning & Sustainability Department.

Very truly yours,

A handwritten signature in cursive script that reads "Beth Margeson".

Beth Margeson, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Chris Ward, Applicant

R. Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, PLLC

Monica F. Kieser, Hoefle, Phoenix, Gormley & Roberts, PLLC

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: 02-18-2026

Property Address: 238 Austin St.

Application #: LU-25-177

Decision: **Grant**

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, It now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	YES	<ul style="list-style-type: none"> • The proposal will not violate the general characteristics of the neighborhood in a significant way. Applicants go to the Board to ask for some level of relief, and the zoning ordinance is very broad in its application. The Board recognizes that individual properties may have characteristics that lend themselves to doing something that is not strictly in compliance with the neighborhood. It will be tight but better than what was there now. • The Planning Board and TAC could have significant concerns that could change what would or would not get developed in that location.

<p>10.233.22 Granting the variance would observe the spirit of the Ordinance.</p>	<p>YES</p>	<ul style="list-style-type: none"> • The proposal will not violate the general characteristics of the neighborhood in a significant way. Applicants go to the Board to ask for some level of relief, and the zoning ordinance is very broad in its application. The Board recognizes that individual properties may have characteristics that lend themselves to doing something that is not strictly in compliance with the neighborhood. It will be tight but better than what was there now. • The Planning Board and TAC could have significant concerns that could change what would or would not get developed in that location.
<p>10.233.23 Granting the variance would do substantial justice.</p>	<p>YES</p>	<ul style="list-style-type: none"> • The property is tight and oddly shaped, and the applicant is trying to take advantage of that, which gives the applicant the slight advantage in the balancing test.
<p>10.233.24 Granting the variance would not diminish the values of surrounding properties.</p>	<p>YES</p>	<ul style="list-style-type: none"> • The barn has a unique historic interest and harks back in time, and a new residential use will not negatively impact surrounding property values because the home will be consistent with other things in that area.
<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(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.</p>	<p>YES</p>	<ul style="list-style-type: none"> • The property is unique because it fronts on two streets and has an ell connector that once belonged to two separate parcels. • A lot has changed in the 150-year period, and to say that it should not change one more time does not make sense. • The proposal is to put in a residential use that is consistent with the other residential uses in the immediate neighborhood.

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

7:00 P.M.

February 18, 2026

MEMBERS PRESENT: Beth Margeson, Chair; Jeffrey Mattson, Vice Chair; David Rheaume; Paul Mannle; Thomas Rossi; Robert Sullivan; Mike Lucas, Alternate

MEMBERS EXCUSED: Thomas Nies

EXHIBIT 2

ALSO PRESENT: Jillian Harris, Planning Department

Chair Margeson called the meeting to order at 7:00 p.m. Alternate Mike Lucas took a voting seat for the evening except for two petitions.

*Mr. Mannle moved to suspend the rules in order to take the Old Business, Petition B, 698 Middle Rd out of order. Mr. Sullivan seconded. The motion **passed** unanimously, 7-0.*

*Mr. Sullivan moved to **postpone** the 698 Middle Rd petition to the March 17 meeting, seconded by Mr. Mannle. The motion **passed** unanimously, 6-0, with Chair Margeson abstaining.*

I. APPROVAL OF MINUTES

A. Approval of the January 21, 2026 meeting minutes.

*Vice-Chair Mattson moved to **approve** the January 21 minutes as **amended**, seconded by Mr. Rheaume.*

Mr. Rheaume requested that the word ‘Board’ be changed to ‘zoning ordinance in the following sentence on page 12: “He said there was a big fence back there for several years when it was the back side of a Middle St property, but a 6’ tall batten board fence that follows the contours of the property was exactly what the Board did not want.”

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

B. Approval of the January 27, 2026 meeting minutes.

*Mr. Rossi moved to **approve** the January 27 minutes as presented, seconded by Mr. Rheaume. The motion **passed** unanimously, 7-0.*

II. OLD BUSINESS

- A. The request of **Colbea Enterprises LLC (Owners)**, for property located at **1980 Woodbury Avenue** whereas relief is needed to demolish and redevelop an existing gas station and convenience store which requires the following: 1) Special Exception from Section 10.440, Use #8.122 to allow a convenience goods 2 use with 24 hours per day operation; 2) Variance from Section 10.5B33.20 to allow for a front lot line build out of 0% where a minimum of 75% is required for a commercial building; 3) Variance from Section 10.5B34.60 to allow for a front setback from the lot line of 27 feet on Woodbury Avenue and 36.5 feet on Gosling Road where a maximum of 20 feet is required; 4) Variance from Section 10.5B83.10 to allow for parking spaces to be located between the principal building and the street; and 5) Variance from Section 10.843.33 to allow for pump islands to be located within 37 feet of the lot lines where 40 feet is required. Said property is located on Assessor Map 239 Lot 11 and lies within the Gateway Corridor (G1) District. (LU-25-39)

SPEAKING TO THE PETITION [Video timestamp 9:14]

Attorney Chris Drescher was present on behalf of the applicant Colbea Enterprises. He noted that they were before the Board again because two abutters had not received notification. He also said a change to the petition was made. He reviewed the petition, noting that the drive-thru was previously omitted and that the No. 5 variance requested was now 37 ft instead of the previous 34.7 ft and was an improvement. He said the address was changed to 90 Gosling St to correct the setback issue.

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

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 14:55]

*Mr. Rossi moved to **grant** the variances for the petition as presented and advertised. He said all the variances were approved at the July 15, 2025 meeting and that there were no substantive changes to the project design except for a change in address, so all the prior rationale for approval still applied. Mr. Rheume concurred and said the motion was the reaffirmation of the Board's approval at the July 15 meeting. The motion **passed** unanimously, 7-0.*

- B. **REQUEST TO POSTPONE** The request of **Chase Home for Children C/O Woodman (Owners)**, for property located at **698 Middle Road** whereas relief is needed to construct a new facility on the property which requires the following: 1) Variance from Section 10.334 to allow the residential care facility use to be extended to another part of the remainder of the land, 2) Variance from Section 10.440 to allow for the construction of a new residential

care facility structure. Said property is located on Assessor Map 232 Lot 45 and lies within the Single Residence B (SRB) District. (LU-25-167) **REQUEST TO POSTPONE**

*The petition was **postponed** to the March 17 meeting.*

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

SPEAKING TO THE PETITION [Timestamp 17:05]

Attorney Tim Phoenix was present on behalf of the applicant Christopher Cloutier, who was also present along with Bruce Scamman of Emanuel Engineering. Attorney Phoenix said they would address the concerns of the neighbors regarding stormwater runoff and ponding. He reviewed the history of the lot and past requirements for property merging. He said the applicant wanted to place a modest 946 sf home on the lot and that it would fit within the building envelope and meet setbacks. He explained why the only relief needed was for the lot frontage, lot size, and lot area per dwelling unit and said the lot would be unusable if those variances were not granted, which could result in a taking of the lot. He said most of the lots in the area did not meet the 15,000 sf minimum lot size requirement. He said they addressed the stormwater issue. He reviewed the criteria.

[Timestamp 28:39] Mr. Rheume asked if the existing home on the remaining two-thirds of the lot was not proposed for development and fully met the setback requirements. Attorney Phoenix said he had not run the numbers on that. Mr. Sullivan asked if Attorney Phoenix felt that the City's granting of the unmerging of the lots might somehow constitute a taking. Attorney Phoenix said he did not feel that way and simply meant that the City's unmerging of the lots reflect the rights of the owner and that the City went through the analysis to determine whether the lot was worthy of unmerging, so they approved it, restoring it to its original size and frontage. With respect to the taking, he said the lot would have little or much less value as a buildable lot if the variance were denied. He said the application met all the other dimensional requirements. Mr. Rossi said the Planning Board meeting minutes did not mention the purpose of the unmerging of the lots. Relative to the BOA's criteria for granting a variance, he asked if it was Attorney Phoenix's contention that the fact that those two activities happened at the Planning Board and then the City Council was an implicit statement that making this a buildable lot would not conflict with the ordinance, or an explicit statement, or any kind of statement at all. Attorney Phoenix said he could not say that those decisions implicitly or explicitly meant that the applicant could build on the lot. He said the unmerging of the lots was not dependent on what one may or may not be able to do in the future but was dependent on the fact that the lot pre-existed the zone that now made it nonconforming.

[Timestamp 34:32] Mr. Scamman said the proposed modest home would meet all the setback requirements. He said they designed a drainage basin along the drip edge around the whole house. He said there was natural ponding in the back of the lot on Essex Street but the overflow went across 140 Essex Street and then into the City's drainage system. He said the amount of stormwater would be reduced. It was further discussed. Mr. Rossi asked what the system's durability was and whether it could handle stormwater change as silt built up in it. Mr. Scammon said any drainage structure needed maintenance and that most of the water would just drip off the roof and there would not be a lot of road debris. Mr. Rossi asked if the system came with a guarantee. Mr. Scammon said the system was permitted by the State of NH and that having it in stone would make it a healthier system than open stormwater storage. Vice-Chair Mattson asked if the stormwater would increase or be the same if a home within the building envelope was built without any stormwater management. Mr. Scammon said the stormwater would definitely increase.

Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION [Timestamp 41:43]

Cassy Saltus of 122 Essex Avenue said her property shared the 50-t back lot line with Lot 44 and was downhill from it. She said the house was sold, the trees were cut down, and a new house would be built on a nonconforming lot. She said the stormwater flowed downhill to her lot. She said a structure that covers 26 percent of the wooded lot would require extensive removal of woodlands from Lot 44, which would allow more stormwater to pond into her backyard.

Corey Clark of 152 Essex Ave said no on-site testing was done and that the location likely had bedrock. He said a lot of the surrounding lots were merged and were not as shown on the 1918 map. He said the lot was not currently served by municipal sewer due to the shallow bedrock. He said any connection to the sewer lines would require major utility work and digging.

Whitney Dooley of 140 Essex Ave said the requested variances were major departures from the zoning requirements and the hardship was self-created because the owner chose to unmerge the lot, knowing that it would become unconforming. She said the addition would increase stormwater toward her house. She said the applicant's stormwater study assumed ideal conditions and that there was no maintenance plan, inspection requirements, or enforcement plan.

Bill Dooley of 140 Essex Ave said a hardship was not demonstrated. He said the other nonconforming properties in the neighborhood were built long before the ordinances. He said the current owner chose to unlawfully unmerge the lot to sell the other lot and was maximizing profits.

Brett Whitmarsh of 87 Sims Ave said the trees on the applicant's property protected the neighborhood and she thought the lot was too small to build on.

Lucia Vonletkemann of 87 Sims Ave said it would take a lot of blasting to put sewer on the property. She said the flooding and ponding were egregious. She said the mature trees absorbed a lot of stormwater runoff and should not be torn down.

Steven Parsons of 160 Essex Ave said the application was not complete and had no building plans, which was a red flag. He said the lot was small but had a lot going on, including the slope, stormwater, and ledge. He said it was a self-imposed hardship by the owner.

Harry Revels of 122 Essex Ave said the stormwater study assumptions were not fact. He said his use along the shared back lot line was gone.

Angela Lambert of 65 Benson St said she would get all the stormwater runoff.

SPEAKING TO, FOR OR AGAINST THE PETITION [Timestamp 1:11:27]

Attorney Phoenix said Mr. Scamman was a long-experienced engineer and clearly showed that the runoff would be less. He said the back of the Saltus lot was low but the front was much higher, so water ran from the top of the property to the bottom. He said the applicant's lot legally exists and the owner has the right to recreate it because it was wrongfully merged. He said many of the nearby lots did not meet the 15,000 sf of lot area requirement. He said the proposed house itself would have a separate review by the City for a building permit. He said the lot had special conditions that had existed since 1918 and that the City inappropriately merged it with others.

Mr. Scamman said the sewer would be part of the building permit process and that the applicant's design would improve the stormwater issue.

William Dooley explained why the applicant's estimate of zero waterflow onto other properties was unrealistic. He said if the property were regraded, it would slope down more and the ponding in his yard would not have a way to get out and would flood his basement.

Mr. Sullivan asked Attorney Phoenix if he felt that the Board was obligated as a matter of law to ignore what the neighbors said about drainage. Attorney Phoenix said it was a matter of fact.

Mr. Scamman explained how the project would allow more water to be stored on the lot.

Stephen Parsons of 160 Essex Ave said he was a civil engineer with 28 years of experience and that he found many faults with the applicant's plan.

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

DISCUSSION OF THE BOARD [Timestamp 1:30:18]

Mr. Rossi said it hinged on the approval criterion of impact on the property values of the surrounding properties and that he had to go by what was in the report and what was stated by Mr. Scamman. He said two issues that troubled him with regard to the impact on the surrounding property values was a temporal disconnect that if the Board granted the variance, it would stay with the property forever. He said the Board had also been told that the report contains a description of how the system functions as designed and installed, but in order for it to continue to function properly, it would require maintenance and that there was no guarantee that it would continue to function properly because there was no guarantee about how anyone who owns the property would maintain the system and keep it clear of debris as well as sand or silt seeping into it from below the ground. He noted that Mr. Scamman said that without the drainage system, the installment of a house on the property would increase the runoff on the surrounding properties. He said based on the evidence and testimony by the expert who created the report, he was left to believe that it was not necessarily a durable solution to the main issue that would affect the value of the surrounding properties, so therefore he would not support the application. Mr. Mannle said he could not support it because the property was sold by the Roylos' successor six months before to a trust, so the Roylos' request was wrong and the Board had no documentation that the trust or their representatives approved the application. Mr. Rheume said the lots were now two separate ones per the City Council's decision. He said the project would create some kind of impact to the abutters but the Board was being asked for a dimensional consideration of whether the lot of that square footage and frontage was something that should be considered buildable. He said the owner could choose to cut the trees down. He said there was an area that currently collects water but the property owner could build a larger home than spans across the lots or do more landfill. He said the abutters' concerns were not things that the Board had full cognizance over and that other City groups would review those. He said it came down to the total square footage and the fact that the lot was an established lot of record going back over 100 years. He said there were many different sized lots in the neighborhood and asked if the Board could say that the applicant's lot would not meet the requirements of being a buildable lot. Mr. Sullivan said the neighbors' testimony persuaded him that they have something to be protected from. He said if the Board made the lot eligible to have a home on it, the home would bring impermeable surfaces and the negative effects on the neighborhood. He said it would be contrary to the public interest, would not do substantial justice, and would diminish the values of surrounding properties.

DECISION OF THE BOARD [Timestamp 1:39:17]

*Vice-Chair Mattson moved to **approve** the variances as presented and advertised. No one seconded.*

Vice-Chair Mattson said he empathized with the neighbors and that there was clearly a flooding issue, but denying the variance would not stop that issue, and new construction would improve the stormwater management. He said a new homeowner could neglect it, so it was not a guarantee but it was a guarantee that the stormwater plan would be an improvement. He said it seemed that the water pooled because it was a low point in the neighborhood. He said the lot already exists and had a buildable area of 30'x44'. Chair Margeson said the lot was involuntarily merged and was

unmerged by the City, and if the variance was not granted, there would be no reasonable use of the lot, which could technically be a taking. She said she was not convinced that building a structure on the site would add to the stormwater runoff and flooding issues, given the stormwater infrastructure improvements that were described. She said it would probably help the flooding issue. She said substantial justice may be problematic for the property because substantial justice would be done to the public by not granting the variances.

*Mr. Rossi moved to **deny** the petition, seconded by Mr. Sullivan.* [Timestamp 1:49:37]

Mr. Rossi said the application only had to fail one criterion and that it failed Criterion No 10.233.24, granting the variance will not diminish the values of surrounding properties. He said the Board was being asked to approve a permanent change in the use of the property based on mitigation of stormwater in a system that will function for a finite period of time if the property is maintained, with no obligation of the property owner to maintain the system and no guarantee that it will be maintained or that it would function even if it were properly maintained. He said that was a problem and that a case could be made that there is a loss to the public if the variance is approved, particularly to the neighbors. He said a lot of people would be affected by the stormwater.

Mr. Sullivan concurred and referred to his previous comments. The motion was further discussed.

*The motion **failed** by a vote of 4-3, with Mr. Lucas, Vice-Chair Mattson, Mr. Rheume, and Chair Margeson voting in opposition.*

[Timestamp 1:55:47] *Vice-Chair Mattson moved to **grant** the variances for the petition, seconded by Mr. Rheume.*

Vice-Chair Mattson said granting the variances would not be contrary to the public interest, and the spirit of the ordinance would be observed. He said a few properties across the street were the same size and many other properties in the neighborhood were below the required square footage for the zone. He said the house would be a modest one by nature of the smaller lot and fitting within the yard setbacks. He said the ordinance stated that there was a desire for more affordable homes, and by the nature of the parcel being smaller, it would fall under that. He said substantial justice would be done because the benefit to the applicant should not be outweighed by harm to the general public or others. He said the Board heard comments from the neighbors that were concerning but that he did not know if it applied specifically to the property and the variances being requested. He said it would not change anything about the actual property because it was the same parcel that had been re-established with the same property lines. He said the flooding issues would still remain if the variances were denied. He said denying the variances would prevent an otherwise buildable lot with a decent-sized home, which would be substantial justice. He said that benefit to the applicant would not outweigh any potential harm of a future stormwater mitigation system failing from lack of maintenance. He said granting the variances would not diminish the values of surrounding properties, noting that the expert testimony was not conclusive but also could not be ignored. He said the parcel exists and any new construction of a modest single-family home would not decrease the values of surrounding properties. He said literal enforcement of the ordinance would result in unnecessary hardship due to the property's special conditions that included the legal definition of the merging and unmerging. He said despite the small lot size, there was a buildable envelope that

would meet all the yard setbacks regarding light, air, and privacy. He said the proposed use is a reasonable one, a modest single-family home in a neighborhood of modest single-family homes.

Mr. Rheume said the applicant showed that a 50'x100' lot was a buildable one and would be reviewed and approved by the City's building department and the Department of Public Works. Chair Margeson said the stormwater issues were not created by the lot but that she understood the neighbors' concerns. Mr. Rossi said the Board's purview was to decide whether "the" lot in question was a buildable lot and not whether just "a" lot of that size was a buildable lot. He said the use of the indefinite article was an important distinction.

*The motion **passed** by a vote of 4-3, with Mr. Sullivan, Mr. Rossi, and Mr. Mannle voting in opposition.*

- D.** The request of **Stewart Baker Revocable Trust (Owner)**, for property located at **20 Coffins Court** whereas relief is needed for the construction of a spiral staircase on the left side of the home and dormers on the third floor which requires the following: 1) Variance from Section 10.521 to allow a) 4 foot right side yard and a 5 foot left side yard where 10 feet are required (*approved January 21, 2026*), b) 50.5% building coverage where 35% is allowed; c) 4.5% open space where 20% is required; and d) a 6.5 foot rear yard where 20 feet is required. Said property is located on Assessor Map 135 Lot 53 and lies within the General Residence C (GRC) District. (LU-25-164)

Mr. Lucas recused himself from the petition. Chair Margeson noted that the Board approved Variance 1a at their January meeting and postponed consideration of Variances 1b and 1c until 1D could be noticed. She said therefore only Variances 1b, 1c, and 1d would be addressed.

SPEAKING TO THE PETITION [Timestamp 2:20:05]

Attorney Stephanie Johnson was present on behalf of the applicant, along with the owners, project engineer Alex Ross, and project architect. She reviewed the petition and criteria.

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

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 2:27:16]

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

Mr. Rossi said the Board had heard and considered the application in a previous meeting and that the reason it was before them now was because there was a technical issue regarding the noticing of the application at the prior meeting. On that basis, he said all the facts the Board found in the

previous discussion were still relevant, and he believed that granting the variance would be consistent with Sections 10.233.21 and .22. He said the project would observe the spirit of the ordinance because it was a small change in the footprint of the house and would not conflict with the purposes of the ordinance in terms of preserving open air, light, and space in the surrounding properties. He said substantial justice would be done because there would be no loss to the general public that would outweigh the loss to the applicant should the petition be denied. He said granting the variances would not diminish the values of surrounding properties, noting that the Board heard confirmation from the surrounding property owners that were in support of the project. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said the home was an older one and that nothing could be done about its location on the property. He said the encroachments were preexisting and impractical to change, and that the application did not add to those in a substantial way. Mr. Rheume concurred. He said the application was driven by the desire to create a screened-in porch on the back side and to move the stairs closer to the edge of the property. He said it was an open structure, however, and would not affect light and air.

The motion passed unanimously, 6-0, with Mr. Lucas recused.

Mr. Lucas recused himself from the following petition.

- E. The request of **Lisa Paige Reyes (Owner)** and **Chris Ward (Applicant)**, for property located at **238 Austin Street** whereas relief is needed to demolish the existing structures, subdivide the lot and construct a new home on each lot which requires the following for the proposed Austin Street Lot: 1) Variance from Section 10.521 to allow a) 49.75 feet of frontage where 70 feet is required; and b) an 8.5 foot right side yard where 10 feet is required. The following is required for the proposed Coffins Court Lot: 1) Variance from Section 10.521 to allow a) 2,884 sf of lot area where 3,500 sf is required, b) 2,884 sf of lot area per dwelling unit where 3,500 sf 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)

SPEAKING TO THE PETITION [Timestamp 2:33:53]

Attorney Tim Phoenix was present on behalf of the applicant, with the applicant's representative Mike Garrapy and the project engineer Alex Ross. Attorney Phoenix said the intent was to remove the existing home and barn in favor of a new home. He said the house and barn were not in good shape. He explained why the variances were needed. He noted that a letter from the NH Preservation Alliance about whether the barn could be preserved. He said he did not think that was possible but thought the barn could be moved off the property. He said the barn was not an issue because the house was not in the Historic District. He reviewed the criteria.

[Timestamp 2:48:16] Mr. Rossi asked if where the applicant chose to draw the new dividing line between the lots drove the requirements for the variances for the rear lot line on the Coffins Court lot. Mr. Ross said he prepared the survey plans and that the parcel on Coffins Court was an odd-

shaped one. He said the rear line was the farthest from Coffins Ct, which was shown as 22.92 feet. He said the other rear line was considered a side line. Mr. Rossi said if the line were drawn 1.6 feet farther into the Austin St lot, the variance would not be required. He asked why it was there. Mr. Ross said if they moved that line an inch, the Austin St parcel would not be conforming. He noted that in the 1980s, there was a division line between the two parcels. Mr. Rheume said the driver for the bulkhead was the 5-1/2 ft radius away from the side lot line corner, so he did not think the 18-ft rear yard setback was really needed. Mr. Ross agreed and said they wanted to cover all the bases. Mr. Rheume confirmed that the condensers were allowed to be anywhere but the front yard setback due to the recent zoning ordinance change, so no relief was necessary for that. He asked if the steps were an element that could be a setback for the Coffins Ct property. Mr. Ross agreed. Mr. Rheume asked if Mr. Ross looked at the turning radius needed to get a vehicle into the proposed garage and driveway. Mr. Ross said they went before the Technical Advisory Committee to address the issue and would return to them and the Planning Board for a full review. Vice-Chair Mattson noted that there were companies that paid for post-and-beam structures and made them compliant on a separate property. Chair Margeson said the Board had a letter from the NH Preservation Alliance stating that the barn was historically and architecturally significant, and she asked if the barn's removal would run afoul of that provision. Attorney Phoenix said it was almost impossible to save the barn and financially unfeasible to make it code compliant, but they could agree to preserve it by moving it off the property.

Chair Margeson asked why the current zoning prevented the applicant from putting a single structure on the property. Attorney Phoenix said a garage or ADU could be put on the lot but thought it was a shortsighted analysis of what was permitted under the ordinance. He said they would improve setbacks and do other positive things. It was further discussed. Chair Margeson said she thought it was a hardship problem due to the very tight area and that it was concerning to subdivide a lot and put two houses on it. She asked Attorney Phoenix to address those concerns in terms of light and air and the characteristics of the neighborhood. Attorney Phoenix said the barn would make all those issues worse and that what they planned to do would improve all those issues. Chair Margeson said there was a 'for sale' sign on the lot and asked if the applicant would buy the property. Attorney Phoenix said his client Chris Ward intended to buy all of it. Mr. Garrapy agreed. Attorney Phoenix showed how the existing home was close to the front lot line and one of the side lot lines. It was further discussed.

Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION [Timestamp 3:11:43]

John Ragonese of 74 Cabot Street said his backyard was the barn at one time. He said the request before the Board was from the seller and the buyer. He said the current buyer wanted to buy the

property but it was contingent on the variances being granted. He said it was not the Board's responsibility or objective to ensure that the two parties were made whole with respect to speculative investment decisions, yet the applicants were seeking relief on that basis. He said the memo from the applicant minimized several impacts of the project. He said there were extremely tight houses in that area and that he did not think any analysis was done.

John Mayer of 68 Cabot Street said his house was 70 years older than the barn and that they invested the money to make it livable. He said if the Board approved the variance, permission would be given to the applicant to remove the barn and the house. He said the owner made the house unlivable by her renovations, and now she wanted a remedy in the form of selling the property. He said it was a self-created hardship. He said the two structures were contributing structures to the Historic District due to the National Register nomination.

Laura Stewart of 20 Coffins Ct said the project would block light and air and that the owner would need her driveway for the turning radius.

Barbara Ward of 16 Nixon Park said she was a member of the Portsmouth Advocates. She read a statement written by the Director of the Historical Society that included the following: The preservation and enhancement of historic buildings and structures are reflected citywide and are not limited to the Historic District. The barn is a contributing resource to the Downtown Portsmouth National Historic District, which means that both the NH Division of Historical Resources and the National Park Service determined that it meaningfully contributes to Portsmouth's historic fabric. Urban barns are increasingly rare and help tell an authentic story of how Portsmouth functioned, and once demolished, that story cannot be reconstructed.

Keith Smith of 30 Coffins Ct said his family would lose privacy because their bedrooms would be looking into the proposed house's bedrooms.

SPEAKING TO, FOR, OR AGAINST THE PETITION [Timestamp 3:34:03]

John Ragonese of 74 Cabot Street said the design drawings showed a level grade but that the grade was actually five feet lower on the left side of the house. He said the s-shaped lot had not been in existence for a long time because a property line adjustment was granted that made his lot nonconforming. He said the City was responsible.

Attorney Phoenix said the barn's preservation had to be balanced against people's property rights. He said the barn had been deteriorating for years, likely due to the cost of renovating it. He questioned the vagueness of the NH Preservation Alliance's letter because they did not have hard facts or an expert's opinion. He said the lot next door did not meet the 350-sf lot area requirement but people had been living there for almost 100 years. He said the project met the requirements and that what would go in there would be more dimensionally compliant with zoning.

Barbara Ward recommended that the neighbors and the owner discuss solutions.

Cynthia Smith of 30 Coffins Ct said the applicant should build a smaller home.

Attorney Phoenix said the property was for sale twice in the past few years and that no one from the NH Preservation Alliance offered to buy it.

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

DISCUSSION OF THE BOARD [Timestamp 3:48:58]

Mr. Rossi said it was important to clarify what is and what is not in the Board's purview. He said the Board was not here to facilitate the profit motive of property owners but was not here to thwart it either. He said approving the demolition of structures in town were not within the Board's purview, and preserving historic structures outside of the Historic District were also not within their purview. He suggested that people who live in such neighborhoods participate in the master plan process to make their opinions known. Vice-Chair Mattson said even if the Board denied the variance, the barn could be demolished. He said what was proposed was closer to conforming and more typical to the neighborhood than what was currently there, in terms of setbacks and the building's size and height. Mr. Rheume said the City established a Demolition Committee, which was not really supported by State law. He said there was some talk about the National Historic District but that it was very broad. He said there was a dollar value associated with the applicant's property that truly determined if something could be preserved or not. He said issues of what a rear property line was could actually be a side property line, according to the way the ordinance was written. He said the only thing in the applicant's petition that was a rear property line was the new dividing line that the applicant was creating between the two properties and that everything else was a side property line. He said the main structure was within the envelope that the applicant was allowed to build in, with the exception of a small balcony or a set of stairs.

DECISION OF THE BOARD [Timestamp 4:08:14]

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

Mr. Rheume said the Board was just one step into the process and that there would be more steps that still apply before a home is built on either property. He said currently the property was fully conforming now with a single-family home and an accessory structure. He referenced a similar case on South St where the Board had the same debate and that was also a rectangular property and had the potential to be rebuilt with a two-family structure. He said what was unique about the current applicant's property was that it was ell-shaped, which created a sense that it could have been a two-dwelling property. He said in 1976, there were two separate properties. He said now the property dictates that there is a natural parting point in the connector between the two. He said he was fine with where the property line is and that one of the two lots will have to be smaller than is allowed per the zoning ordinance. He said the fundamental point is that there is a unique hardship associated with the property. As far as historic preservation, he said he loved working with the Portsmouth Advocates but the Board has a legal obligation to uphold the rights of property owners as well, and

there was a balance there. He said the proposed home looked the same as many of the other properties along Coffins Ct, and Coffins Ct was unique and had a very narrow street. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposal would not violate the general characteristics of the neighborhood in a significant way. He said people came to the Board to ask for some level of relief, and the zoning ordinance is very broad in its application. He said the Board recognizes that individual properties may have characteristics that lend themselves to doing something that is not strictly in compliance with the neighborhood. He said it would be tight but better than what was there now. He said the Planning Board and TAC could have significant concerns that could change what would or would not get developed in that location. He said substantial justice would be done. He said the property was tight and oddly shaped, and the applicant was trying to take advantage of that, which he thought gave the applicant the slight advantage in the balancing test. He said granting the variances would not diminish the values of surrounding properties. He said the barn has a unique historic interest and harks back in time, and he did not see that a new residential use would negatively impact surrounding property values because the home would be consistent with other things in that area. He said the property was unique because it fronts on two streets and has an ell connector that once belonged to two separate parcels. He said a lot had changed in the 150-year period, and to say that it should not change one more time did not make sense. He said the proposal was to put in a residential use that is consistent with the other residential uses in the immediate neighborhood. Mr. Sullivan concurred. He said writing a zoning ordinance to regulate everything that happens on every property everywhere in the City was difficult, particularly in Portsmouth's 400-year period. He said people built whatever they wanted during the first 325 years, but for the last 75 years, the City tried to impose regulations over all that. He said there would always be circumstances where some relief had to be afforded. He said the barn was one of the reasons why the property was unique and had to get some kind of relief.

*The motion **passed** by a vote of 4-2, with Mr. Mannle and Chair Margeson voting in opposition and Mr. Lucas recused.*

*At this point in the meeting, Vice-Chair Mattson moved to go past 10:00, seconded by Mr. Rheaume. The motion **passed** unanimously, 7-0.*

III. NEW BUSINESS

- A. The request of **Ahmad and Whitney Hussein (Owners)**, for property located at **9 Willard Avenue** whereas relief is needed to demolish the existing detached garage and shed and construct a new two-story addition with attached garage which requires the following: 1) Variance from Section 10.521 to allow a) a 7.5 foot rear yard where 20 feet is required; and b) 26.5% building coverage where 25% is the maximum. Said property is located on Assessor Map 149 Lot 24 and lies within the General Residence A (GRA) District. (LU-26-1)

SPEAKING TO THE PETITION [Timestamp 4:27:60]

The owner Alex Hussein was present and reviewed the petition. He said there was not much yard space, so he wanted to remove the rotting garage and shed and replace them with a two-story addition and attached garage. He reviewed the criteria.

[Timestamp 4:31:51 Mr. Rheume verified that there would be no windows in the garage and that the four windows at the top would be higher and smaller than normal. He said it was important because the structure would be close to the neighbor's property line. Mr. Sullivan asked Mr. Hussein what the property's special conditions were that created the unnecessary hardship. Mr. Hussein said the lot was a corner lot, so the driveway entered from the back of the property and there was no way to address the existing garage except to keep it there or move it forward. Vice-Chair Mattson asked if the vegetation around the property was maintained by Mr. Hussein. Mr. Hussein agreed and said the vegetation provided a decent amount of privacy.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 4:35:09]

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

Mr. Rossi said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the spirit of the ordinance with regard to setbacks generally pertains to light, space, and air movement between properties. He said the current condition of the property was that there is a structure to be demolished that is more encroaching on the rear yard setback than the proposed new structure, so it is an improvement over current conditions that directly affect achieving the purpose of the ordinance in a positive way. He said substantial justice would be done because there would be no loss to the public by granting the variance. He said granting the variance would not diminish the values of surrounding properties because it would be less encroachment on the rear lot line. He said the design was a pleasant one and looked like it would add to the streetscape and the neighborhood's appearance and have a positive impact on the values of surrounding properties. He said literal enforcement of the provisions of the ordinance will result in an unnecessary hardship. He said what is unique about the property is that the lot itself is somewhat of an irregular-shaped one where the front lot line and rear lot line don't run in a parallel direction and the house itself is not oriented on the same axis as the rear line, so the part of the new structure that intrudes on the rear yard setback is really a point and not the entire broad side of the structure. He said those are special conditions that make the application of the setback standard somewhat inappropriate in this case. Mr. Rheume concurred. He said the hardship criteria was the most significant one because the addition was a substantial one. He said the garage's location did not make a lot of sense, but the second floor had a minimum of glass. He said the neighboring property had their driveway on the same side, which would reduce some of the impact on light and

air. He said the overall 26 percent coverage was less than what was there currently and that the applicant was also adding less structure instead of more structure.

*The motion **passed** by a vote of 5-2, with Chair Margeson and Mr. Sullivan voting in opposition.*

- B.** The request of **Phoebe Hart LLC (Owner)** and **Blush LLC (Applicant)**, for property located at **404 The Hill, Units 8-3** whereas relief is needed for a personal service business which requires the following: 1) Variance from Section 10.440, Use #7.20 to allow a personal services business where it is not allowed. Said property is located on Assessor Map 118 Lot 26-8 and lies within the Character District 4-L1 (CD4-L1). (LU-26-6)

SPEAKING TO THE PETITION [Timestamp 4:41:55]

The owner Phoebe Hart was present and said she wanted to relocate her personal services business to consolidate operations into one location. She said the new location would allow five treatment rooms instead of four. She said the business would stay as an appointment-only one and that parking would not change. She said there would be no exterior changes except for painting the front door. She reviewed the criteria. She said she was also asking for three signs: a small plaque by the main door, a hanging sign for wayfinding, and a wall-mounted sign on the rear for wayfinding. She said they were modest signs and not internally illuminated.

[Timestamp 4:48:10] Mr. Sullivan asked how the applicant's property was different from the others in The Hill. Ms. Hart said she was only familiar with 408 and 404 The Hill and that the new location would be strictly commercial, unlike the previous location. She said the physical features of the property would not be different because it was already an office building. Mr. Rheume said the Board granted permission the previous year to allow 480 The Hill to continue operating contingent upon being on an appointment-only basis. He asked Ms. Hart if she would be willing to keep it as an appointment-only use, and Ms. Hart agreed.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DECISION OF THE BOARD [Timestamp 4:50:21]

*Mr. Rossi moved to **grant** the variance for the petition as presented and advertised, with the following **condition**:*

- 1) The use shall be limited to a by-appointment basis only.*

Mr. Rheume seconded.

Mr. Rossi said the history of the applicant's interaction with the Board was relevant to the current application. He said there was an extensive interrogatory session when the applicant first came before the Board regarding the nature of the business and services offered and whether they fit into the neighborhood, and the applicant satisfied the Board that it was an appropriate operation. He said it was the same operation but was just moving next door and just slightly expanding. He said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said there would be no public interest in preventing the business from operating in the neighborhood because it was already there and there would be no impact in moving it one or two doors down. He said substantial justice would be done because there would be no loss to the public by denying the application, particularly since it is a business currently in operation in almost the same location. He said granting the variance would not diminish the values of surrounding properties because it was inconceivable that continuing to operate the same business that had been successfully operated within ten years would suddenly diminish the values of surrounding properties. He said literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. He said normally the hardship was based on a unique aspect of the property that differentiates it from the surrounding ones, but there was also the consideration of whether or not the strict application of the ordinance achieves any particular purpose of the ordinance, and in this case it does not. He said all the criteria were satisfied. Mr. Rheume concurred and said it was an unusual situation because in general, The Hill was a component of the CD4-L1 district, and that particular building was not different from the other buildings but was in a pocket surrounded by the CD5 district. He said there was generic parking in the area so people would not be demanding nearby parking. He said the stipulation was important and put the business in the same category as other permitted uses in The Hill, which were appointment-based or had limited hours. He said The Hill was a unique property amongst all the properties in the CD4-L1 district in terms of that.

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

- C. The request of **Nathaniel J LeGros (Owner)**, for property located at **140 Summer Street** whereas relief is needed to demolish the existing one-story detached garage and construct a new two-story attached garage which requires the following: 1) Variance from Section 10.521 to allow a) a 4 foot right side yard where 10 feet is required, b) a 4 foot rear yard where 20 feet is required; and c) 39% building coverage where 35% is allowed. Said property is located on Assessor Map 137 Lot 2 and lies within the General Residence C (GRC) District. (LU-26-7)

SPEAKING TO THE PETITION [Timestamp 4:58:15]

The owner Nathaniel LeGros was present along with his designer Chris Kipper and reviewed the petition. He said the new building would be in the same location and would connect to the house. He reviewed the criteria.

[Timestamp 5:04:52] Mr. Rheume asked if the mini wraparound deck over the one-story addition to the back of the house had any connection with the proposed small deck. Mr. LeGros said it did

not. Mr. Rheume asked why the existing garage couldn't be pushed up closer against the house. Mr. Le Gros said he wanted to preserve the garage at that end of the property because it mirrored the property's layout already. Regarding keeping the extension and having the space between the main house and the garage, he said he enjoyed the courtyard aspect of it and that it was consistent with the ones down Chatham Street. Mr. Rheume said it would now be a two-story garage, however. He asked why the proposed garage was longer than the existing one. Mr. LeGros said the additional seven feet was to facilitate the staircase in the back to get to the top floor, as well as a car. He said he also wanted to elaborate on the additional space at the top to have a woodworking woodshop space. Mr. Rossi said Mr. LeGros would not need any of the setback variances if he moved the addition forward a foot or two. Mr. LeGros said he would still need the side yard setbacks. He said the current open space was used as a walkway to get to the funeral home and the church and eliminated his privacy. Mr. Kipper said they worked through the ways to get a woodshop and a garage on the property and preserve the parking and courtyard vibe.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD [Timestamp 5:16:43]

Mr. Rheume said if the applicant had a bigger lot and more room in the back, the design would be great, but his concern was that it would be a two-story structure up against a property line where there was a neighboring structure also up against a property line. Mr. Lucas said he walked by the property every day and believed that the design fit in with the neighborhood's character and preserved the owner's privacy. He said it was a challenging lot because it was exposed in all directions. Mr. Rossi said he did not see the property having a hardship that required building it way outside of the footprint of the building area and being so encroaching. Mr. Sullivan agreed.

DECISION OF THE BOARD

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

Mr. Rossi said the reason for his motion was the hardship and whether there was something special about the property that meant it could not be used within the strict confines of the ordinance. He said it would be possible to avoid encroaching on the rear and side setbacks by adjoining the large garage right next to the existing structure without the breezeway. He said the application failed the hardship criteria. Mr. Sullivan concurred and had nothing to add. Vice-Chair Mattson said he liked the design and thought the property had unique conditions. He said the house's location on the property forced it to one side. He said it was a corner lot and that twenty feet on the side near the funeral home was needed. He said he wanted to support the project but also saw that it could be a

stretch to apply the hardship. Mr. Rheaume said he struggled with going all the way to the far end and being that intrusive into the rear setback requirement with a two-story structure. Chair Margeson said she would vote against the motion because wherever the applicant put the garage, there would be problems with the setbacks. She said it was a substantial addition but the corner lot was very irregularly-shaped and could accommodate the garage.

*The motion **failed** by a vote of 3-4, with Mr. Lucas, Mr. Mannle, Vice-Chair Mattson, and Chair Margeson voting in opposition.*

*Vice-Chair Mattson moved to **grant** the variances for the petition as presented and advertised, seconded by Mr. Lucas.*

Vice-Chair Mattson said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said a good argument was made that the addition would fit in with the character of the neighborhood despite its unique features. He said the Board's concern with the setbacks were about light, air, and privacy. He said granting the variance would not conflict with the purpose of the ordinance because it would be the same residential use but with a single-car garage and workshop addition. He said substantial justice would be done because the benefit to the applicant would not be outweighed by any harm to the general public or others. He said being within the setbacks, the property with its surrounding neighbors and location would not harm the public. He said the values of surrounding properties would not be diminished, noting that the Board heard no testimony to suggest otherwise and that the neighbors were in support. He said literal enforcement of the ordinance would result in an unnecessary hardship due to the special conditions of the property and the combination of factors, including the irregular-shaped corner lot and the existing house on it outside of the typical building envelope. He said the addition would not impose on someone's light, air, and privacy. He said the proposed use was a reasonable one. Mr. Lucas concurred and had nothing to add.

*The motion **passed** by a vote of 4-3, with Mr. Sullivan, Mr. Rossi, and Mr. Rheaume voting in opposition.*

IV. ADJOURNMENT

The meeting adjourned at 12:32 a.m.

Submitted,
Joann Breault
BOA Meeting Minutes Taker

II. OLD BUSINESS

B. The request of **William and Virginia Osborn (Owners)**, for property located at **133 Miller Avenue** whereas relief is needed to demolish the existing one-story garage and construct a new two-story attached garage which requires the following: 1) Variance from Section 10.521 to allow a) a 6-foot rear yard where 20 feet is required; and b) 3-foot left side yard where 10 feet is required. Said property is located on Assessor Map 129 Lot 26 and lies within the General Residence A (GRA) District. (LU-26-21)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Residential	Construct attached garage	Mostly Residential
<u>Lot area (sq. ft.):</u>	14,991	14,991	7,500 min.
<u>Lot area per dwelling unit (sq. ft.)</u>	14,991	14,991	7,500 min
<u>Street Frontage (ft.):</u>	250	250	100 min.
<u>Secondary Front Yard (Rockland) (ft.):</u>	House: 25.8	House: 25.8	15 min.
<u>Left Yard (ft.):</u>	Garage: 3	3	10 min.
<u>Primary Front Yard (Miller) (ft.)</u>	>30	>30	15 min.
<u>Rear Yard (ft.):</u>	Garage: 11.6	6	20 min.
<u>Height (ft.):</u>	31	House: 31 Garage: 18	35 max.
<u>Building Coverage (%):</u>	22.2	22.8 w/ Neighbors Garage: 23	25 max.
<u>Open Space (%):</u>	61.7	63.9 w/Neighbors Garage: 63.6	30 min.
<u>Estimated Age of Structure:</u>	1894	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Previous Board of Adjustment Actions

No previous history found

Planning Department Comments

The applicant is proposing to demolish the existing one story garage and construct a new attached two story garage. There is a portion of the neighbors garage that sits on the applicants property. The portion measures roughly 20 feet by 1.5 feet. Staff have run the calculations and determined that this will not create a non-conforming building coverage or open space condition (see zoning table).

Variance Review Criteria

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

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

AND

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

OR

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

10.235 Certain Representations Deemed Conditions

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

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue | Portsmouth, NH, 03801
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com
February 13, 2026

HAND DELIVERED

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

Re: Owners: William H. Osborn, IV and Virginia W. Osborn
Applicant: Persson Construction
Property: 133 Miller Avenue
Tax Map 129, Lot 26
Single Residence

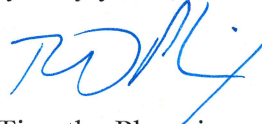
Dear Ms. Casella & Zoning Board Members:

On behalf of the Osborn Family and Persson Construction, enclosed please find the following in support of a request for zoning relief:

- See Viewpoint Land Use Application uploaded today.
- Owner Authorization.
- 2/13/2026 – Memorandum and exhibits in support of Zoning Relief

We look forward to presenting this application to the Zoning Board at its March 17, 2026 meeting.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Encl.

cc: Persson Construction
TFMoran (email)
Willow & Sage Designs (email)

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

We, William & Virginia Osborn, Owners/Applicants of 133 Miller Avenue, Tax Map 129/Lot 26, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC to represent us before any and all City of Portsmouth Representatives, Boards and Commissions for permitting the project.

Respectfully submitted,



Date:

William Osborn



Virginia Osborn

Date:

APPLICANT'S AUTHORIZATION

I, Christian Persson on behalf of Persson Construction, LLC, Applicant of 133 Miller Avenue, Tax Map 129/Lot 26, 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,

Persson Construction, LLC

Date:

1/8/26



Christian Persson, Manager

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
DATE: February 13, 2026
RE: William Henry Osborn IV & Virginia Wedell Osborn
133 Miller Avenue /Tax Map 129, Lot 26
General Residence A (“GRA”) Zone

Dear Chair Margeson and Zoning Board Members:

On behalf of William Henry Osborn IV and Virginia Wedell Osborn (“Osborn”), we are pleased to submit this memorandum and attached exhibits in support of Osborn’s request for zoning relief for consideration by the ZBA at its March 17, 2026 meeting.

I. EXHIBITS

- A. Civil Plan Set – by TFMoran.
- B. Architectural Plan Set – by Willow & Sage Design.
- C. Site Photographs.
 - Satellite View
 - Street View
- D. Tax Map 129.

II. PROPERTY/PROJECT

133 Miller Avenue is a large, 14,991-square foot, corner lot with 100-feet of frontage on Miller Avenue and 150-feet of frontage on Rockland Avenue (“the Property”). The Property is located next to the First United Methodist church and across the street from a large apartment building. The Property is developed with a stately home centered on the lot connected via breezeway to a garage, which encroaches on the left and rear yard setback. Osborn plans to remove the garage and replace it with a slightly wider and larger garage with living space above (“the Project”). Relief is required for expansion in the left and rear yard setbacks.

III. RELIEF REQUIRED

<u>PZO Ordinance Section</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
<u>PZO§10.321</u> Nonconforming Building	No expansion	garage in setbacks	upward expansion in setbacks.
<u>PZO Table §10.521</u> <u>Dimensional Standards</u> Left Side Yard	10’	3.1’ garage 1.6’ overhang	3.1’ garage 2.0’ overhang
Rear Yard	20’	11.6’ garage 10.1’ overhang	6.2’ garage 5.1’ overhang

IV. OTHER PERMITS REQUIRED

- Building Permit

VI. VARIANCE REQUIREMENTS

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

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

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

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The Project continues a permitted residential use on an oversized lot, expanding a garage to accommodate storage space and living space above.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The intensity of use will not change. The Property is a corner lot nearly twice the required lot size. The Project complies with height and building coverage requirements. The garage expansion will remain well-screened from abutters.
3. The design of facilities for vehicular access, circulation, parking and loading – The larger garage improves vehicular circulation, the driveway is slightly widened which also improves vehicular circulation.
4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – The uses proposed are permitted and compatible with the neighborhood.
5. The preservation and enhancement of the visual environment – The Project replaces an older undersized garage with an expanded garage matching the architectural design of the home. The proposed garage will accommodate two cars, ample storage, and additional living space.
6. The preservation of historic districts buildings and structures of historic or architectural interest – The Property is not in the historic district. However, the expansion complements the architecture of the existing home.
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – The property is served by municipal water and sewer. There are no wetlands in the area. Accordingly, these purposes are served by granting the variances.

Variations are required because the Property is a corner lot subject to two front yard setback requirements. The location of the garage is dictated by the driveway, located in the only appropriate location: the lesser traveled street and far from the corner. The proposed garage expansion complies with height and building coverage requirements.

Granting the variations on these facts does not “in a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” Malachy Glen, supra, which also held:

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

The Project is consistent with other garage expansions in the neighborhood which have provided larger garages matching the architectural style of the main home while providing living space above. Continuing single-family use on an oversized lot and expanding a nonconforming garage will neither alter the essential character of the locality nor threaten the public health, safety, or welfare.”

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

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

Osborn is constitutionally entitled to the use of the lot as they see fit; including removal and reconstruction garage with living space above, subject only to the effect of the Project on the dimensional requirements. “The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.” “Property” in the constitutional sense has been interpreted to mean not just 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).

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

Granting the requested relief allows for reasonable removal of a nonconforming garage and reconstruction of a new tastefully designed garage with living space above. The expanded garage is in keeping with other similar expansions in the neighborhood; the Project also complies with height and building coverage restrictions. The proposed garage abuts church property and is well-screened from the closest residence. There is no harm to the general public from granting relief and no benefit to the public from denial. Conversely, Osborn will be greatly harmed by denial as they will lose the opportunity to reconstruct a more functional garage with living space above. Accordingly, there is no benefit to the public from granting the variance that outweighs the harm to the owner from denial.

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

The Project provides a tastefully expanded and architecturally compatible garage with living space above consistent with similar expansions in the neighborhood. It is thus clear that granting the variances will not diminish surrounding property values.

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

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

The Property is a corner lot and much larger than other single-family homes in the neighborhood. It is abutted by a large church lot and large apartment building. It is developed with a driveway off the lesser traveled street as far from the corner as possible. This limits the location of any garage and indeed the current garage encroaches on the left and rear yard setbacks. These conditions combine to create special conditions. Any reconstruction of the garage would require similar relief.

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

Expansion restrictions and yard setback requirements exist to prevent overcrowding and

to ensure adequate air, light, space, and separation between neighbors. The Project replaces a garage with a more functional garage that provides storage as well as two parking spaces along with living space above. The proposed garage is tasteful, matches the architectural style of the home and is well screened from the closest residence. Stormwater will be managed on the lot. The Project does not require any relief from building coverage or height requirements. Accordingly, the purposes of these requirements are met, thus there is no reason to strictly apply the Ordinance.

c. The proposed use is reasonable.

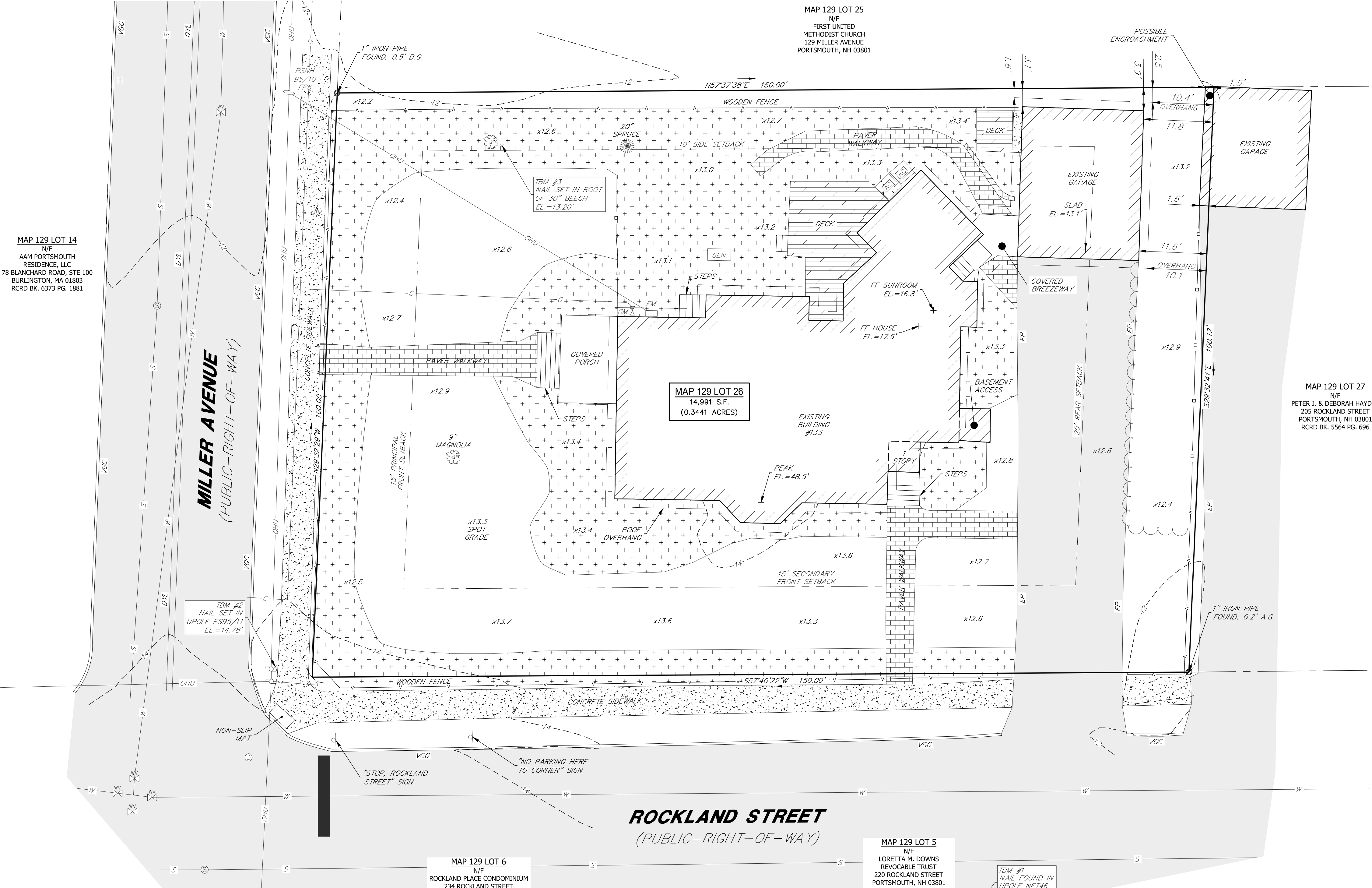
If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). The Project replaces an accessory structure serving a permitted single-family home with a more functional garage accommodating parking, storage, and living space. Accordingly, the use is reasonable.

VI. CONCLUSION

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

Respectfully submitted,
**William Henry Osborn IV & Virginia
Wedell Osborn**


By: R. Timothy Phoenix

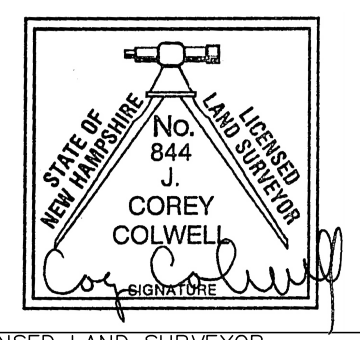


- NOTES:**
- THE PARCEL IS LOCATED IN THE GENERAL RESIDENCE A (GRA) ZONING DISTRICT.
 - THE PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 129 AS LOT 26.
 - THE PARCEL IS LOCATED IN ZONE X, "AREA OF MINIMAL FLOOD HAZARD", AS SHOWN ON NATIONAL FLOOD INSURANCE PROGRAM (NFIP), FLOOD INSURANCE RATE MAP (FIRM) ROCKINGHAM COUNTY NEW HAMPSHIRE, PANEL 259 OF 681, MAP NUMBER 33015C0259F, WITH A MAP REVISED DATE OF JANUARY 29, 2021.
 - | DIMENSIONAL REQUIREMENTS: | REQUIRED: | EXISTING: |
|-------------------------------|------------|-------------|
| MINIMUM LOT SIZE: | 7,500 S.F. | 14,991 S.F. |
| LOT FRONTAGE: | 100FT | 100FT |
| LOT DEPTH: | 70FT | 150FT |
| MINIMUM YARD DIMENSIONS: | | |
| FRONT: | 15FT | >15FT |
| SIDE: | 10FT | 3.1FT |
| REAR: | 20FT | 11.6FT |
| MAXIMUM STRUCTURE DIMENSIONS: | | |
| BUILDING HEIGHT: | 35FT | 35.1FT |
| BUILDING COVERAGE: | 25% | 22.2% |
| MINIMUM OPEN SPACE: | 30% | 61.7% |
 - OWNER OF RECORD:
 MAP 129 LOT 26:
 WILLIAM HENRY OSBORN, IV
 VIRGINIA WEDELL OSBORN
 28 LAUREL COURT
 PORTSMOUTH, NH 03801
 RCRD BK#6618 PG#2307
 - PARCEL AREA:
 MAP 129 LOT 26:
 14,991 S.F.
 (0.3441 ACRES)
 - THE INTENT OF THIS PLAN IS TO SHOW THE LOCATION OF BOUNDARIES IN ACCORDANCE WITH THE CURRENT LEGAL DESCRIPTIONS. IT IS NOT AN ATTEMPT TO DEFINE THE EXTENT OF OWNERSHIP OR DEFINE THE LIMITS OF TITLE.
 - THE PURPOSE OF THIS PLAN IS TO SHOW THE BOUNDARY LINES, TOPOGRAPHY AND CURRENT SITE CONDITIONS OF MAP 129 LOT 26.
 - FIELD SURVEY COMPLETED BY TCE & CR ON SEPTEMBER 24&25, 2025 USING A LEICA TS-16 TOTAL STATION, GS-16 & GS-18 GPS RECEIVERS AND CARLSON DATA COLLECTION SOFTWARE.
 - HORIZONTAL DATUM IS NAD83 (2011) PER REDUNDANT NETWORK RTK GPS OBSERVATIONS. THE VERTICAL DATUM IS NAVD88 PER REDUNDANT NETWORK RTK GPS OBSERVATIONS. THE CONTOUR INTERVAL IS 2 FEET.
 - EASEMENTS, RIGHTS, AND RESTRICTIONS SHOWN OR IDENTIFIED ARE THOSE WHICH WERE FOUND DURING RESEARCH PERFORMED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS. OTHER RIGHTS, EASEMENTS, OR RESTRICTIONS MAY EXIST WHICH A TITLE EXAMINATION OF SUBJECT PARCEL(S) WOULD DETERMINE.
 - THE LOCATION OF ANY UNDERGROUND UTILITY INFORMATION SHOWN ON THIS PLAN IS APPROXIMATE. TFMORAN, INC. MAKES NO CLAIM TO THE ACCURACY OR COMPLETENESS OF UNDERGROUND UTILITIES SHOWN. PRIOR TO ANY EXCAVATION ON SITE THE CONTRACTOR SHALL CONTACT DIG SAFE.

EXHIBIT A

TAX MAP 129 LOT 26
EXISTING CONDITIONS PLAN
OSBORN RESIDENCE
133 MILLER AVENUE
PORTSMOUTH, NEW HAMPSHIRE
COUNTY OF ROCKINGHAM
 OWNED BY
WILLIAM HENRY OSBORN, IV
VIRGINIA WEDELL OSBORN
 SCALE: 1" = 10' (22x34)
 1" = 20' (11x17) NOVEMBER 17, 2025

PURSUANT TO NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES LAN 503.09(24): I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY THOSE UNDER MY DIRECT SUPERVISION AND ARE THE RESULT OF A FIELD SURVEY CONDUCTED ON SEPTEMBER 24&25, 2025. THIS SURVEY CONFORMS TO THE ACCURACY REQUIREMENTS OF AN URBAN SURVEY OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS. THIS SURVEY IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, AND THE FIELD TRAVERSE SURVEY EXCEEDS A PRECISION OF 1:15,000.



LICENSED LAND SURVEYOR NOVEMBER 17, 2025
DATE

REV.	DATE	DESCRIPTION	DR	CK

LEGEND:

MAP 129 LOT 26	ASSESSORS MAP / LOT NUMBER		CONCRETE
A.G.	ABOVE GRADE		PAVEMENT
B.G.	BELOW GRADE		PAVER WALK
BK. PG.	BOOK/PAGE		WOOD DECK
EM	ELECTRIC METER		LANDSCAPED AREA
EP	EDGE OF PAVEMENT		RETAINING WALL
FF	FINISHED FLOOR		
GEN.	GENERATOR		
GM	GAS METER		
N/F	NOW OR FORMERLY ROCKINGHAM COUNTY REGISTRY OF DEEDS		
RCRD	REGISTRY OF DEEDS		
S.F.	SQUARE FEET		
TM	TEMPORARY BENCHMARK		
VCC	VERTICAL GRANITE CURB		
AC	AIR CONDITIONER		
U	UTILITY POLE		
DP	DRAIN MANHOLE		
CB	CATCH BASIN		
	CONFIROUS TREE		
	DECIDUOUS TREE		
	SEWER MANHOLE		
	WATER GATE VALVE		
	SIGN		
	OVERHEAD UTILITY		
	WOODEN FENCE		
	STOCKADE FENCE		
	BOUNDARY LINE		
	SETBACK LINE		
	TREE LINE		
	GAS LINE		
	SEWER LINE		
	WATER LINE		
	EXISTING CONTOUR		



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

Jan 16, 2026 - 3:32pm F:\MSC Projects\47663 Miller Ave., Portsmouth, NH\47663-00 Parsson Construction - 133 Miller Ave\Carlsson Survey\Drawings\47663-00 SURVEY.dwg

SITE DATA

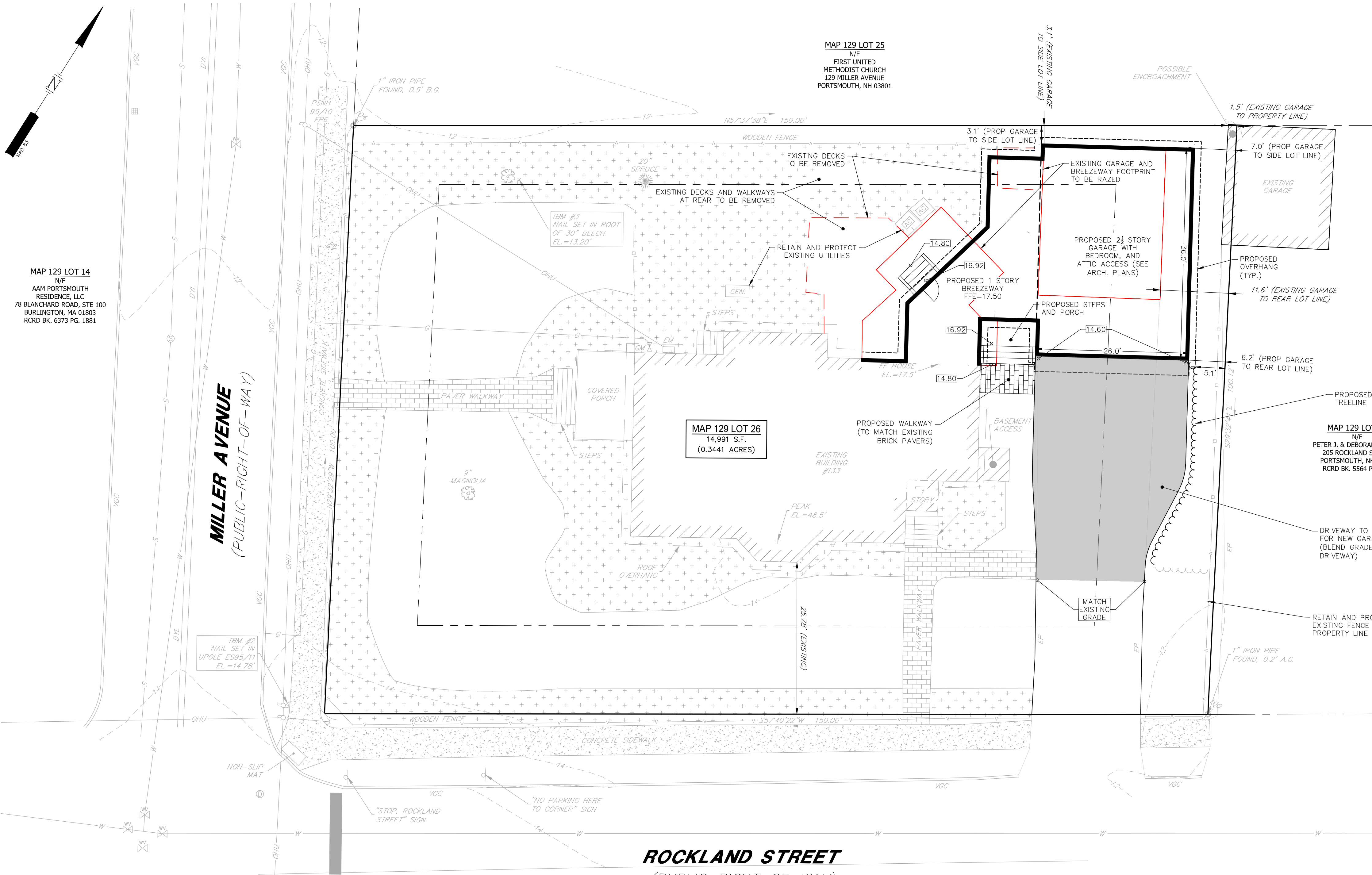
OWNER OF RECORD OF MAP 129 LOT 26: WILLIAM HENRY OSBORN, IV & VIRGINIA WEDELL OSBORN
 28 LAUREL COURT PORTSMOUTH, NH 03801
 DEED REFERENCE TO PARCEL IS BK 6618 PG 2307
 AREA OF PARCEL = 14,991± SF OR 0.3441± ACRES

ZONED: GENERAL RESIDENCE A (GRA)
 EXISTING USE: RESIDENTIAL
 PROPOSED USE: RESIDENTIAL

THE PURPOSE OF THIS PLAN IS TO DEPICT THE LOCATION OF A GARAGE AND BREEZEWAY ADDITION TO THE EXISTING RESIDENCE AT 133 MILLER AVENUE. ASSOCIATED IMPROVEMENTS INCLUDE AND ARE NOT LIMITED TO ACCESS, GRADING, AND LANDSCAPING.

DIMENSIONAL REQUIREMENTS (CURRENT ZONING)

	REQUIRED:	EXISTING:	PROVIDED:
MINIMUM LOT DIMENSIONS:			
LOT AREA	7,500 SF (0.172± AC)	14,991 SF (0.344 AC)	14,991 SF (0.344± AC)
LOT FRONTAGE	100 FT	100 FT	100 FT
DEPTH	70 FT	150 FT	150 FT
MINIMUM YARD DIMENSIONS:			
FRONT	15 FT	25.8 FT	25.8 FT (EXISTING)
SIDE	10 FT	3.1 FT	3.1 FT
REAR	20 FT	11.6 FT	6.2 FT
MAXIMUM STRUCTURE DIMENSIONS:			
BUILDING HEIGHT	35 FT	35.1 FT	35.1 FT (EXISTING)
BUILDING COVERAGE	25%	22.2%	22.8%
MINIMUM OPEN SPACE	30%	61.7%	63.9%



MAP 129 LOT 27

N/F
 PETER I & DEBORAH HAYDEN
 205 ROCKLAND STREET
 PORTSMOUTH, NH 03801
 RCRD BK. 5564 PG. 696

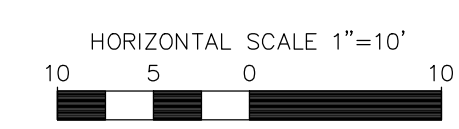
MAP 129 LOT 26
 14,991 S.F.
 (0.3441 ACRES)

MAP 129 LOT 5
 N/F
 LORETTA M. DOWNS
 REVOCABLE TRUST
 220 ROCKLAND STREET
 PORTSMOUTH, NH 03801
 RCRD BK. 4721 PG. 2941

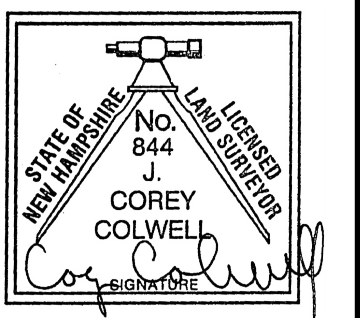
MAP 129 LOT 6
 N/F
 ROCKLAND PLACE CONDOMINIUM
 234 ROCKLAND STREET
 PORTSMOUTH, NH 03801
 RCRD BK. 4577 PG. 1897

LEGEND:

- | | | |
|--|---|---|
| <p>MAP 129 LOT 26</p> <p>A.S. ABOVE GRADE</p> <p>B.C. BELOW GRADE</p> <p>BK. PG. BOOK/PAGE</p> <p>EM ELECTRIC METER</p> <p>EP EDGE OF PAVEMENT</p> <p>FF FINISHED FLOOR</p> <p>GEN. GENERATOR</p> <p>GM GAS METER</p> <p>N/F NOW OR FORMERLY</p> <p>NCRD ROCKINGHAM COUNTY REGISTRY OF DEEDS</p> <p>S.F. SQUARE FEET</p> <p>TBM TEMPORARY BENCHMARK</p> <p>VGC VERTICAL GRANITE CURB</p> <p>IRON PIPE/ROD FOUND</p> <p>AIR CONDITIONER</p> <p>GUY WIRE</p> <p>UTILITY POLE</p> <p>DRAIN MANHOLE</p> <p>CATCH BASIN</p> | <p>CONIFEROUS TREE</p> <p>DECIDUOUS TREE</p> <p>SEWER MANHOLE</p> <p>WATER GATE VALVE</p> <p>SIGN</p> <p>OVERHEAD UTILITY</p> <p>WOODEN FENCE</p> <p>STOCKADE FENCE</p> <p>BOUNDARY LINE</p> <p>SETBACK LINE</p> <p>TREE LINE</p> <p>GAS LINE</p> <p>SEWER LINE</p> <p>WATER LINE</p> <p>EXISTING CONTOUR</p> | <p>CONCRETE</p> <p>PAVEMENT</p> <p>PAVER WALK</p> <p>WOOD DECK</p> <p>LANDSCAPED AREA</p> <p>RETAINING WALL</p> |
|--|---|---|



REV.	DATE	DESCRIPTION	DR	CK



TAX MAP 129 LOT 26
PROPOSED CONDITIONS PLAN
OSBORN RESIDENCE
133 MILLER AVENUE
PORTSMOUTH, NEW HAMPSHIRE
 OWNED BY
WILLIAM HENRY OSBORN, IV
VIRGINIA WEDELL OSBORN
1"=20' (11"x17')
SCALE: 1"=10' (22"x34') **JANUARY 19, 2026**

Seacoast Division
TFM
 Civil Engineers
 Structural Engineers
 Traffic Engineers
 Land Surveyors
 Landscape Architects
 Scientists
 170 Commerce Way, Suite 102
 Portsmouth, NH 03801
 Phone (603) 431-2222
 Fax (603) 431-0910
 www.tfmoran.com

47683.00 DR JKC CADFILE 47683-00_PROPOSED CONDITIONS C-01

Feb 03, 2026 - 8:38am F:\MISC Projects\17683 Miller Ave. Portsmouth, NH\17683-00 Persson Construction - 133 Miller Ave\Design\PRODUCTION DRWG\17683-00_Proposed Conditions.dwg

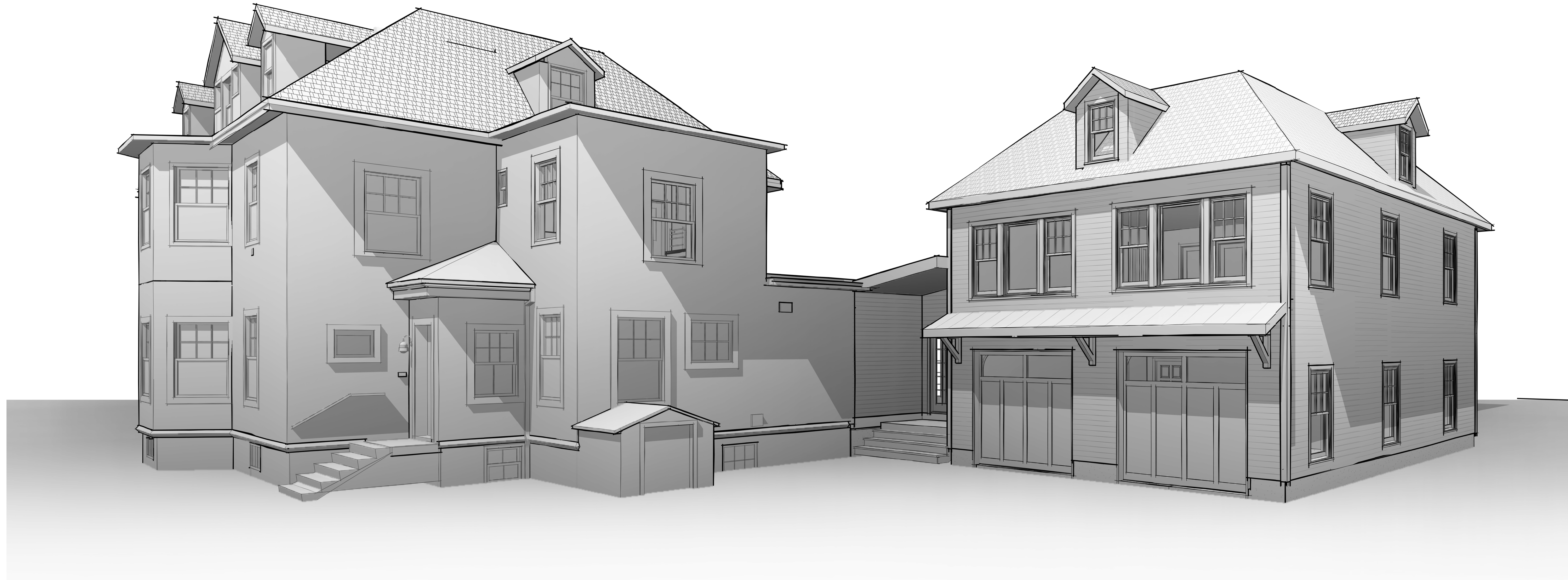
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133 MILLER AVE

OSBORN RESIDENCE

133 MILLER AVE
PORTSMOUTH NH



Scale:
Date: 12-9-25
Project Number: 2024-X

REVISIONS		
NO.	DESCRIPTION	DATE

EXHIBIT B

DESIGN PHASE

COVER SHEET

DESIGN PHASE

12-9-25

T.01

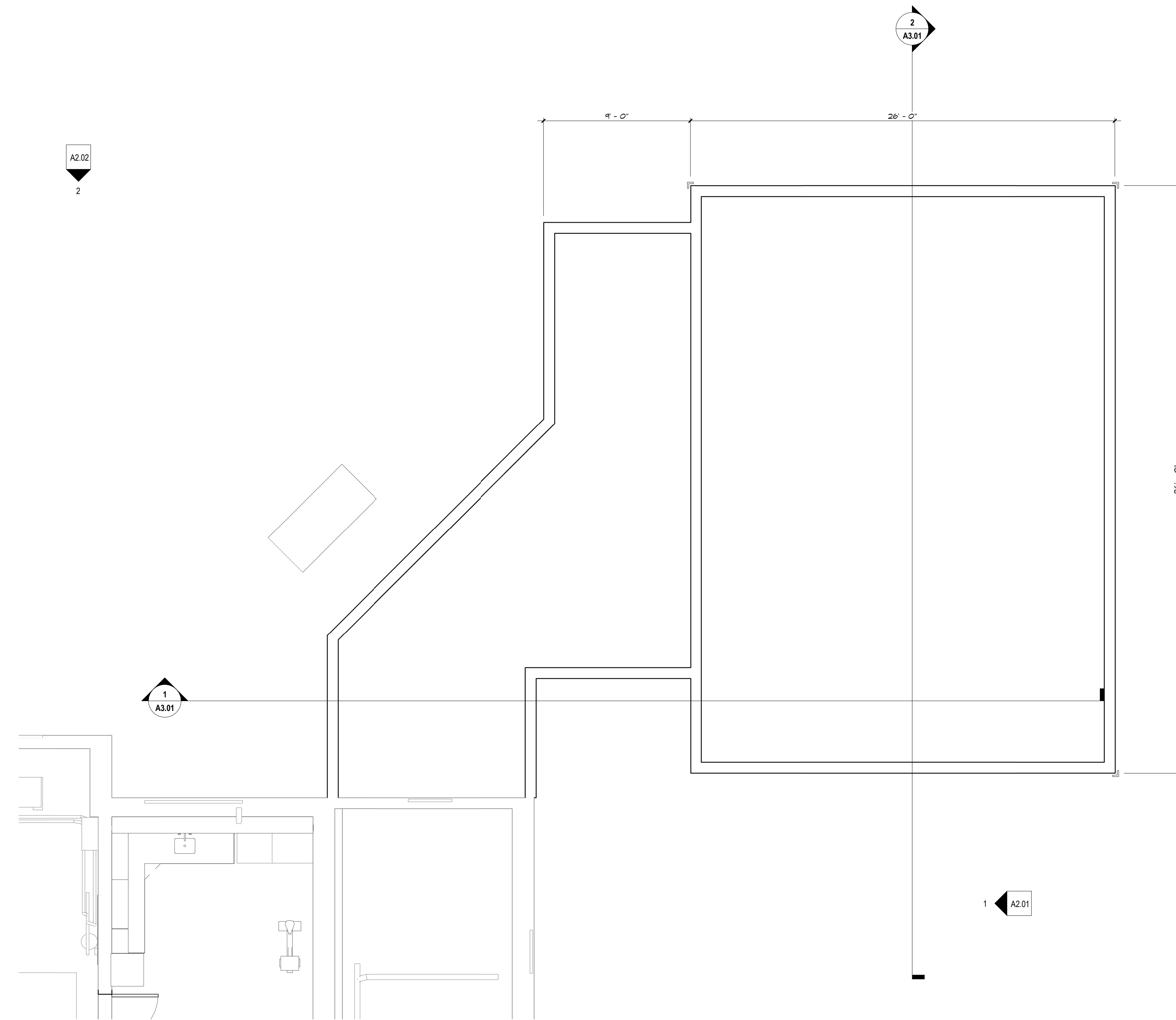
GENERAL PLAN NOTES

1. GENERAL CONTRACTOR SHALL VERIFY ALL FIELD CONDITIONS AND DIMENSIONS. NOTIFY DESIGNER IF FIELD CONDITIONS ARE DIFFERENT THAN SHOWN IN THE DRAWINGS.
2. EXTERIOR DIMENSIONS ARE GIVEN FROM FACE OF STUD TO FACE OF STUD, TYP.
3. INTERIOR DIMENSIONS ARE GIVEN FROM FACE OF FINISH TO FACE OF FINISH.
4. EXTERIOR OPENINGS ARE DIMENSIONED TO CENTER LINE OF OPENING UNLESS NOTED OTHERWISE.
5. ALL WORK SHALL COMPLY WITH APPLICABLE LOCAL CODES AS WELL AS STATE AND FEDERAL GUIDELINES.



www.willowandsagedesign.com
860-716-3902

133 MILLER AVE



① **BASEMENT PLAN**
1/4" = 1'-0"

Scale: 1/4" = 1'-0"
Date: 12-9-25
Project Number: 2024-X

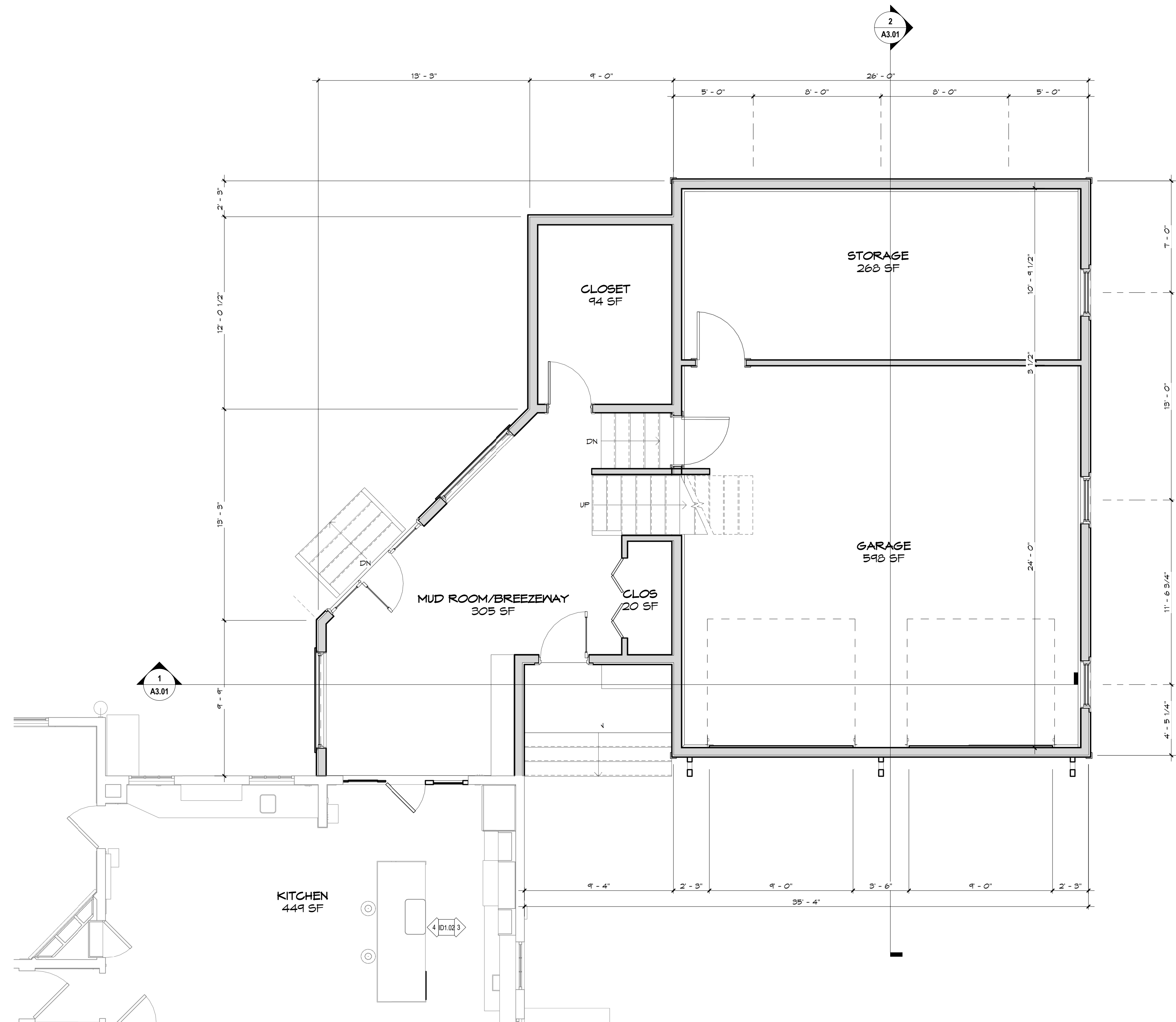
REVISIONS		
NO.	DESCRIPTION	DATE

DESIGN PHASE
BASEMENT FLOOR PLAN

A1.00

GENERAL PLAN NOTES

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① **FIRST FLOOR PLAN**
1/4" = 1'-0"

Scale: 1/4" = 1'-0"
Date: 12-9-25
Project Number: 2024-X

REVISIONS		
NO.	DESCRIPTION	DATE

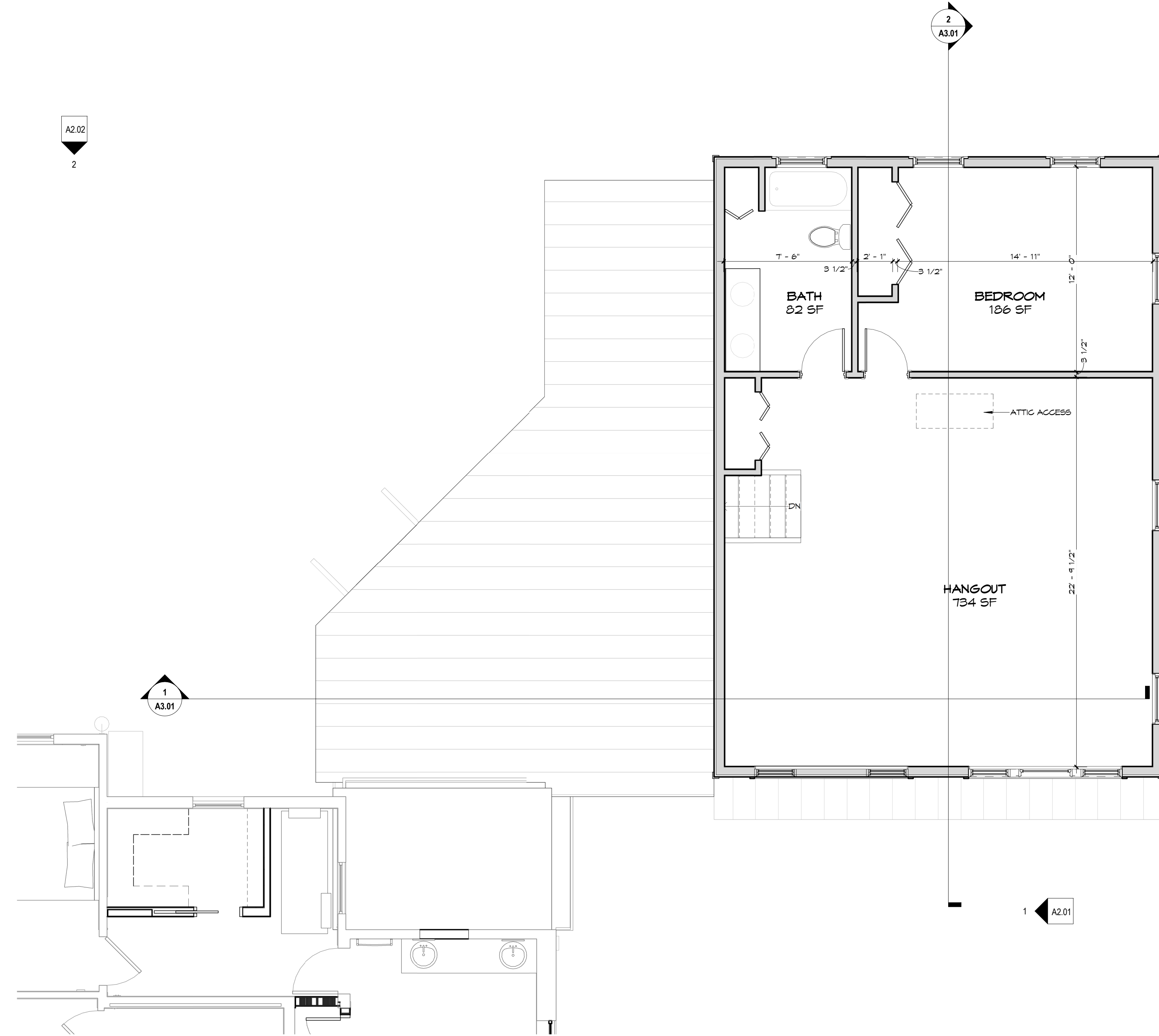
DESIGN PHASE

FIRST FLOOR PLAN

A1.01

GENERAL PLAN NOTES

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3. INTERIOR DIMENSIONS ARE GIVEN FROM FACE OF FINISH TO FACE OF FINISH.
4. EXTERIOR OPENINGS ARE DIMENSIONED TO CENTER LINE OF OPENING UNLESS NOTED OTHERWISE.
5. ALL WORK SHALL COMPLY WITH APPLICABLE LOCAL CODES AS WELL AS STATE AND FEDERAL GUIDELINES.



① **SECOND FLOOR PLAN**
1/4" = 1'-0"

Scale: 1/4" = 1'-0"
Date: 12-9-25
Project Number: 2024-X

REVISIONS		
NO.	DESCRIPTION	DATE

DESIGN PHASE
SECOND FLOOR PLAN

A1.02

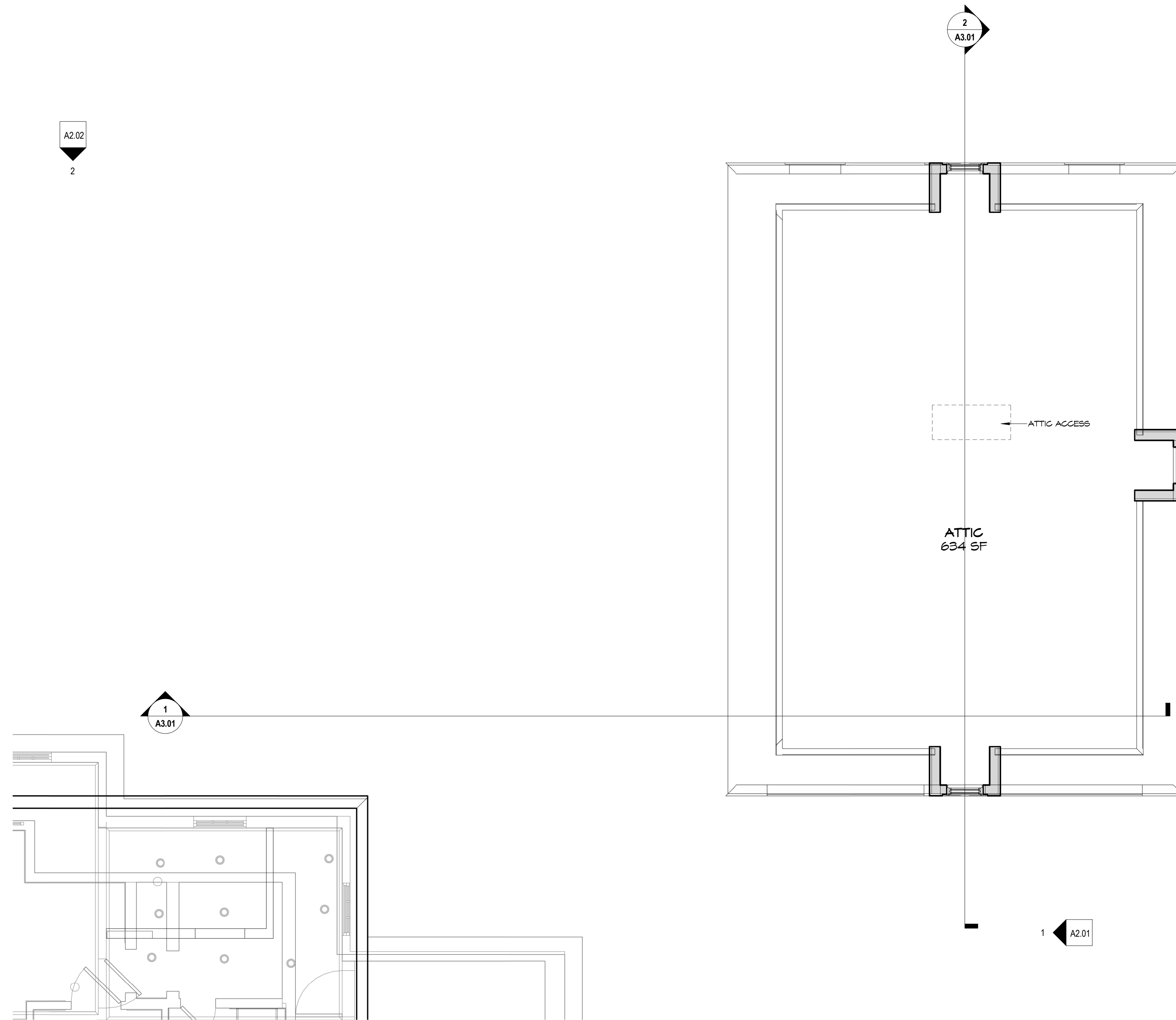
GENERAL PLAN NOTES

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133 MILLER AVE



① ATTIC FLOOR PLAN
1/4" = 1'-0"

Scale: 1/4" = 1'-0"
Date: 12-9-25
Project Number: 2024-X

REVISIONS		
NO.	DESCRIPTION	DATE

DESIGN PHASE
ATTIC FLOOR PLAN

A1.03

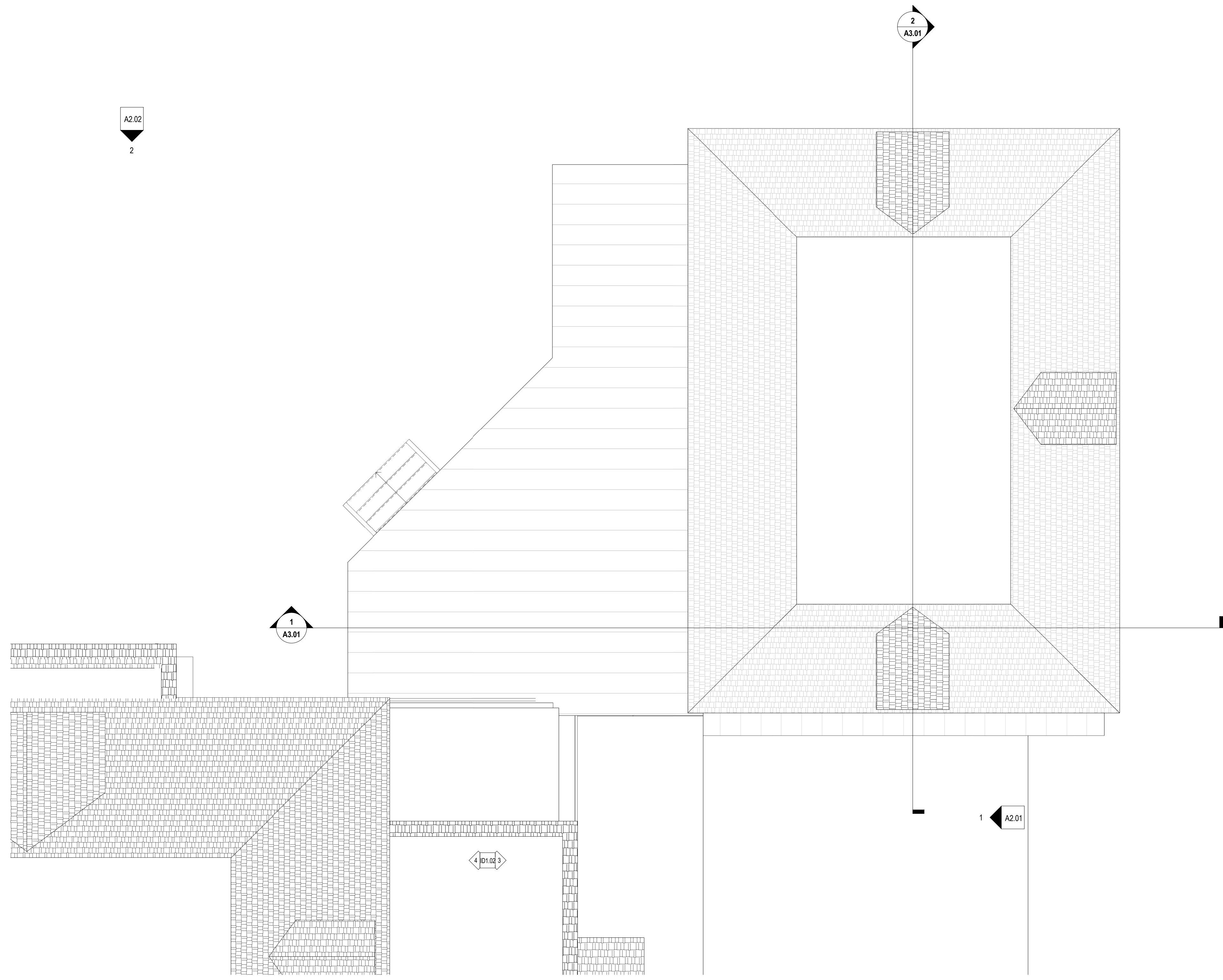
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860-716-3902

133 MILLER AVE



① **ROOF PLAN**
1/4" = 1'-0"

Scale: 1/4" = 1'-0"
Date: 12-9-25
Project Number: 2024-X

REVISIONS		
NO.	DESCRIPTION	DATE

DESIGN PHASE
ROOF PLAN

A1.04



② SOUTH ELEVATION
3/16" = 1'-0"



① EAST ELEVATION
3/16" = 1'-0"

Scale: 3/16" = 1'-0"
Date: 12-9-25
Project Number: 2024-X

REVISIONS		
NO.	DESCRIPTION	DATE

DESIGN PHASE

EXTERIOR ELEVATIONS

A2.01



① WEST ELEVATION
3/16" = 1'-0"



② NORTH ELEVATION
3/16" = 1'-0"

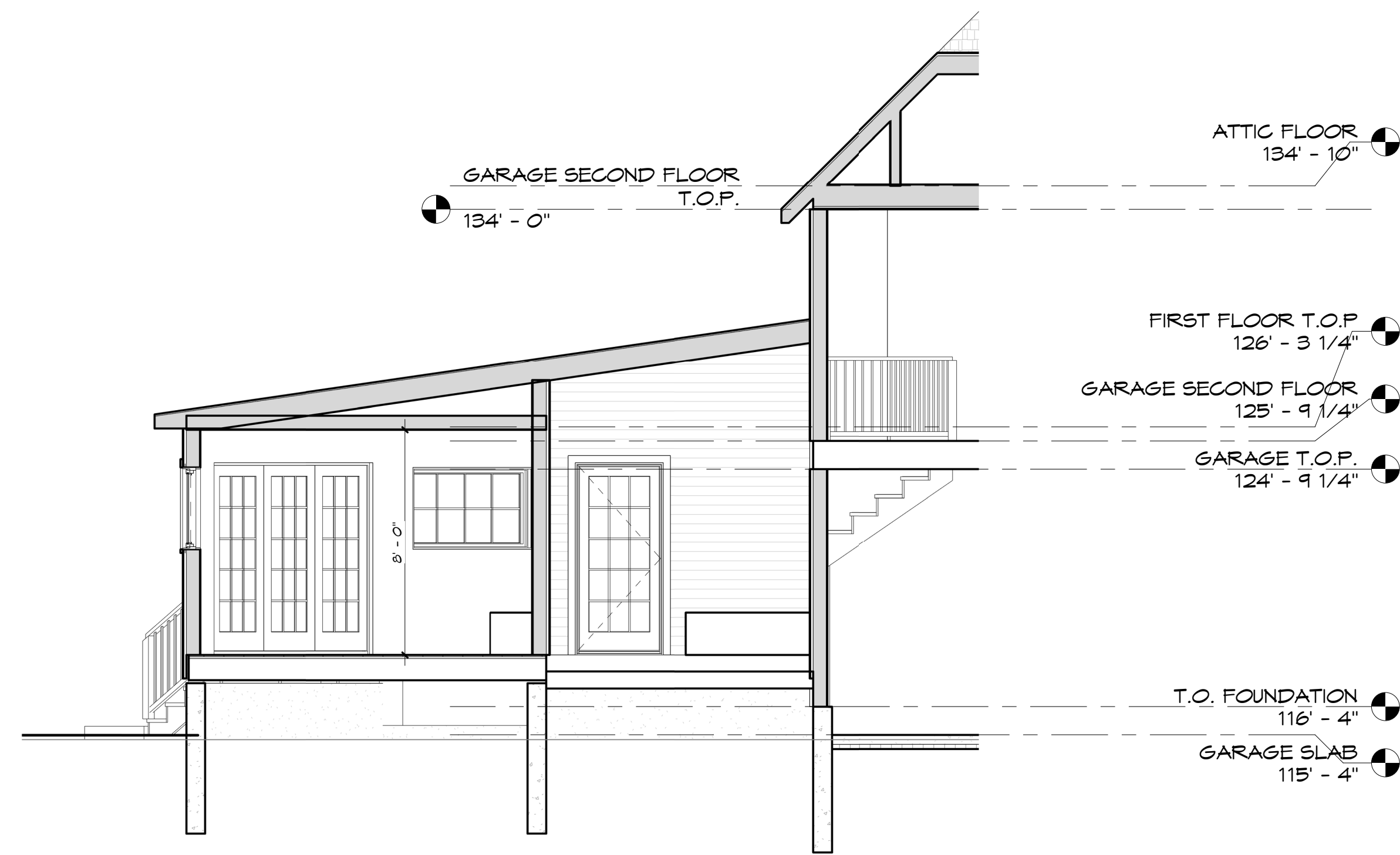
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Date: 12-9-25
Project Number: 2024-X

REVISIONS		
NO.	DESCRIPTION	DATE

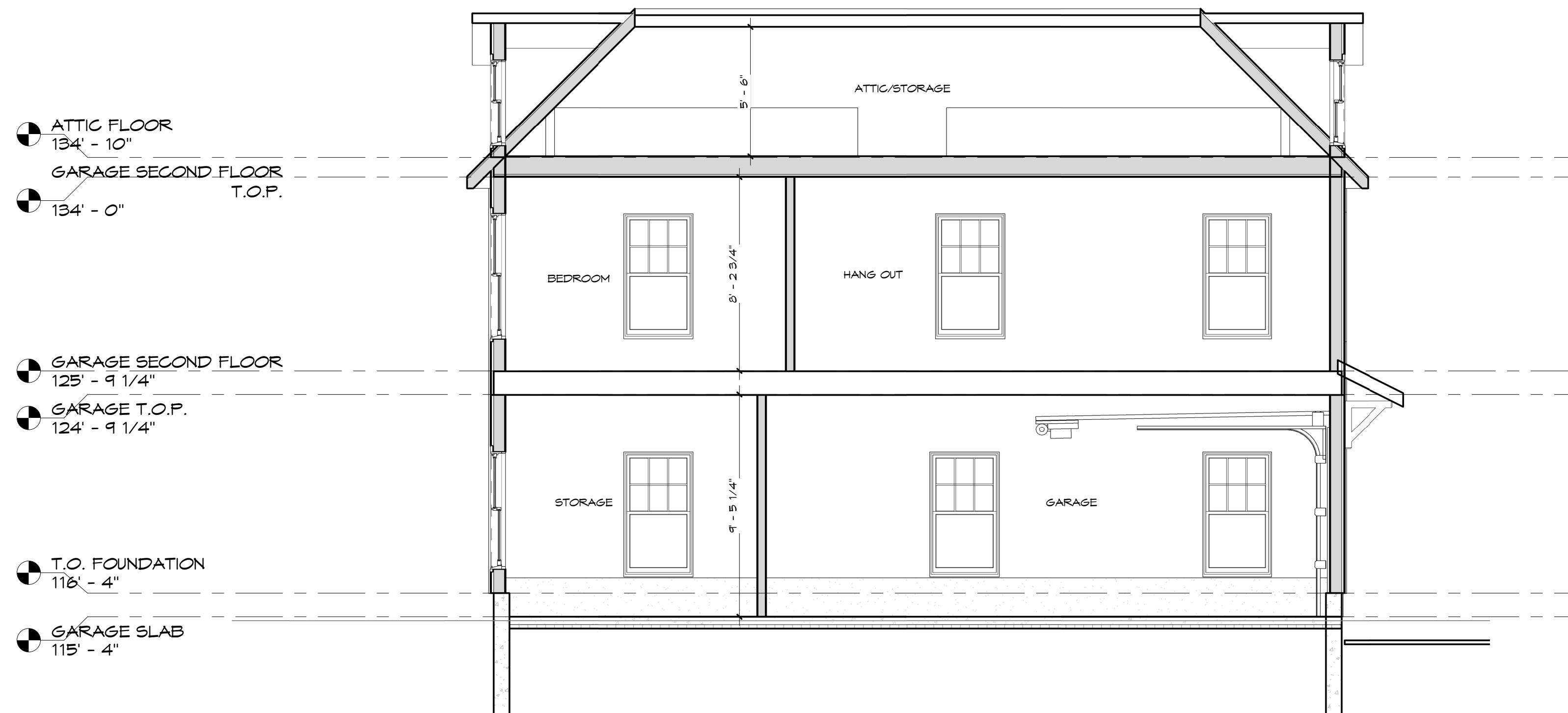
DESIGN PHASE

EXTERIOR
ELEVATIONS

A2.02



① Section 3
1/4" = 1'-0"



② Section 7
1/4" = 1'-0"

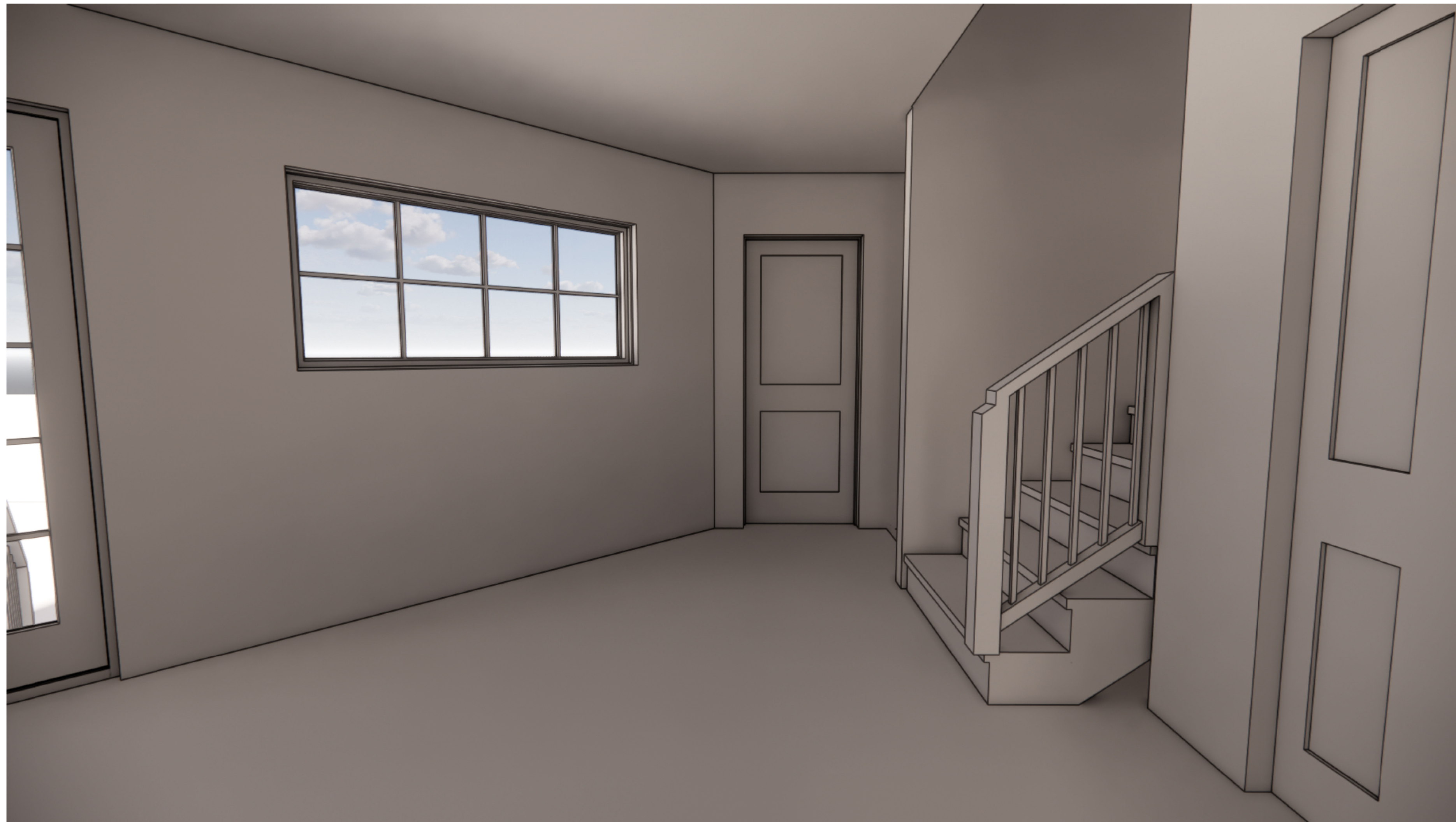
Scale: 1/4" = 1'-0"
Date: 12-9-25
Project Number: 2024-X

REVISIONS		
NO.	DESCRIPTION	DATE

DESIGN PHASE

BUILDING SECTIONS

A3.01



WHEN YOU FIRST WALK IN THE FRONT DOOR



VIEW FROM THE KITCHEN

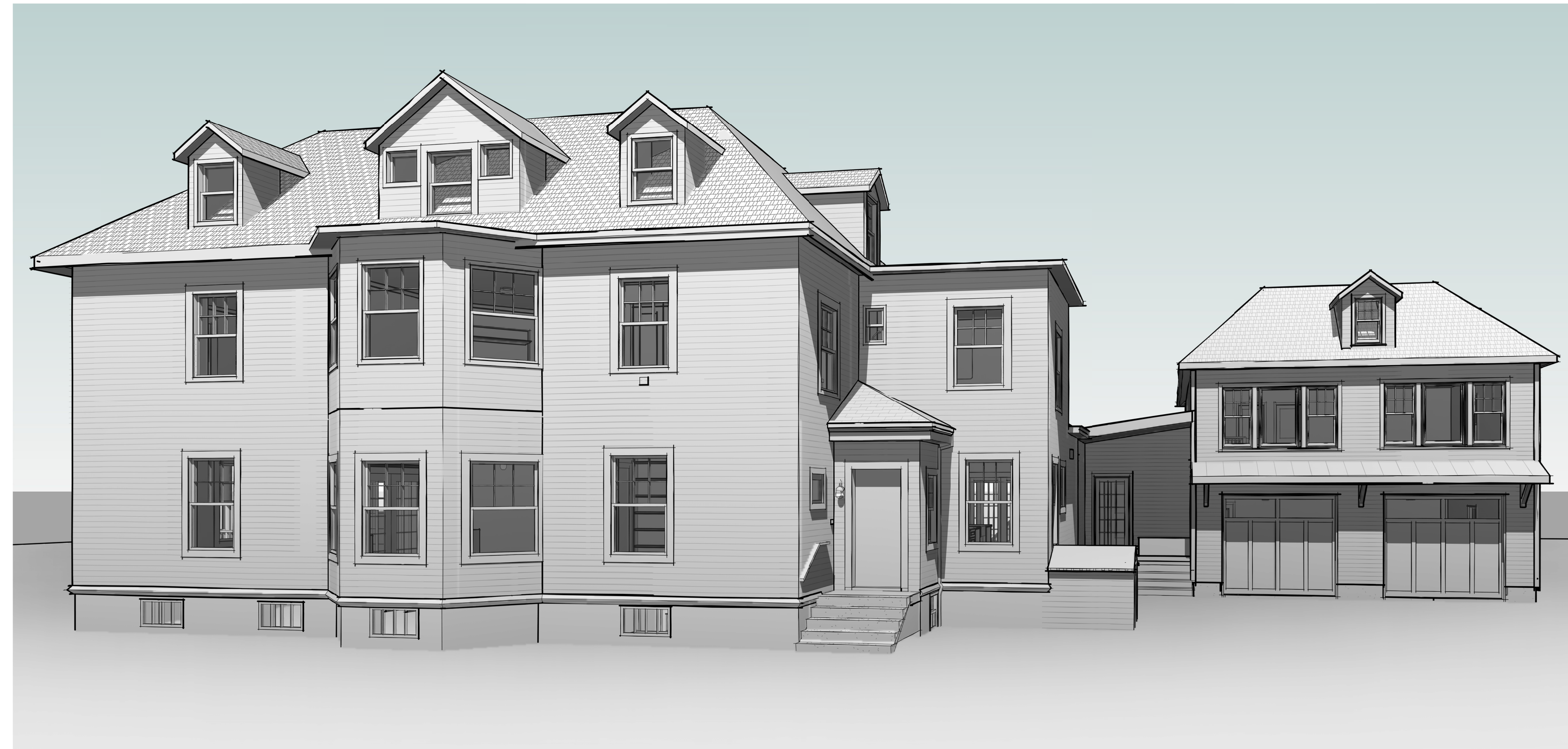
Scale:
 Date: 12-9-25
 Project Number: 2024-X

REVISIONS		
NO.	DESCRIPTION	DATE

DESIGN PHASE

3D VIEWS

A5.01



② SOUTHEAST PERSPECTIVE



① REAR PERSPECTIVE

Scale:
Date: 12-9-25
Project Number: 2024-X

REVISIONS		
NO.	DESCRIPTION	DATE

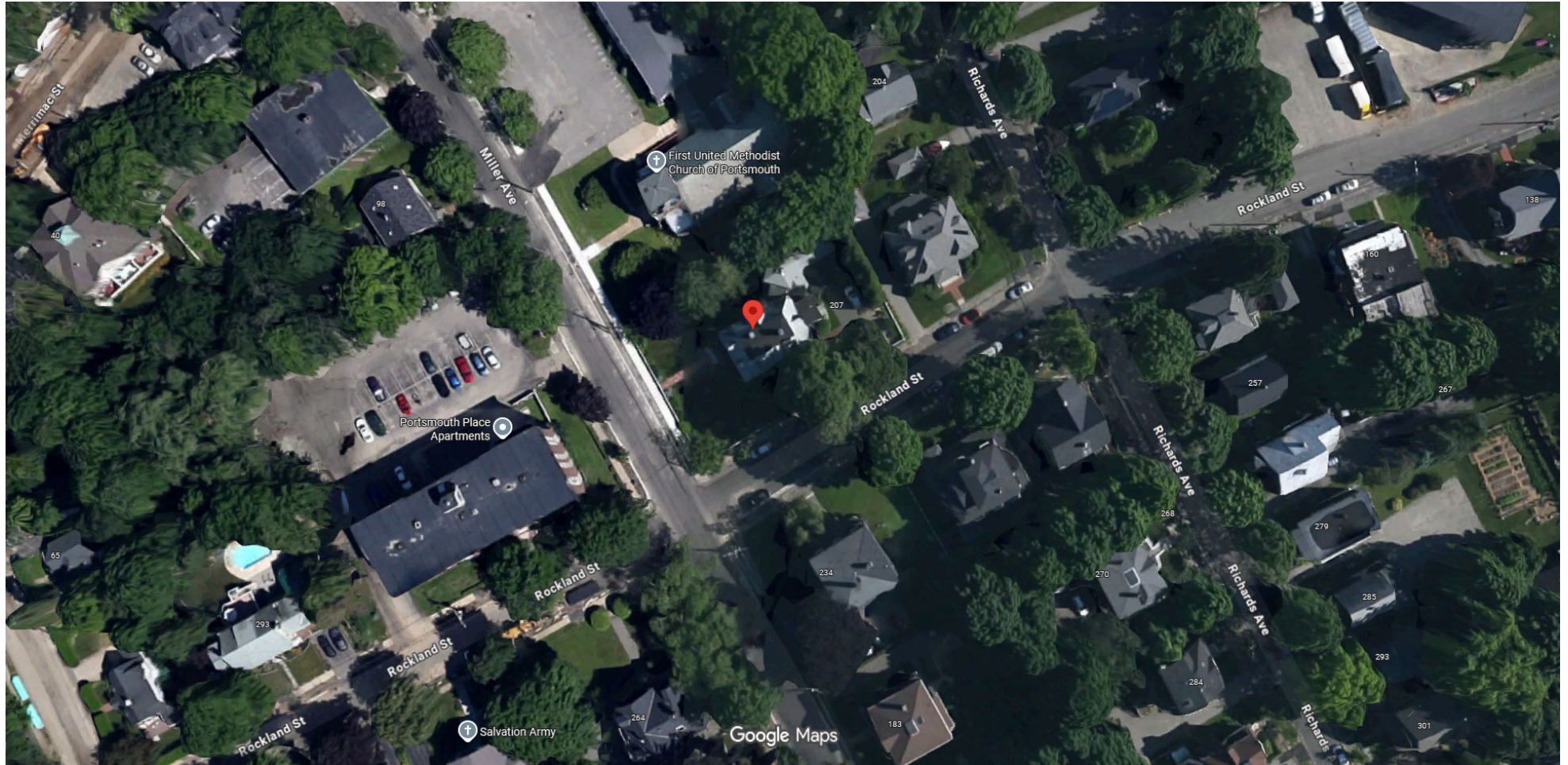
DESIGN PHASE

EXTERIOR 3D
VIEWS

A7.00



133 Miller Ave



Imagery ©2026 Google, Imagery ©2026 Airbus, Maxar Technologies, Map data ©2026 50 ft

EXHIBIT C

Google Maps

133 Miller Ave



Google Maps

Image capture: Aug 2025 © 2026 Google

Google Maps

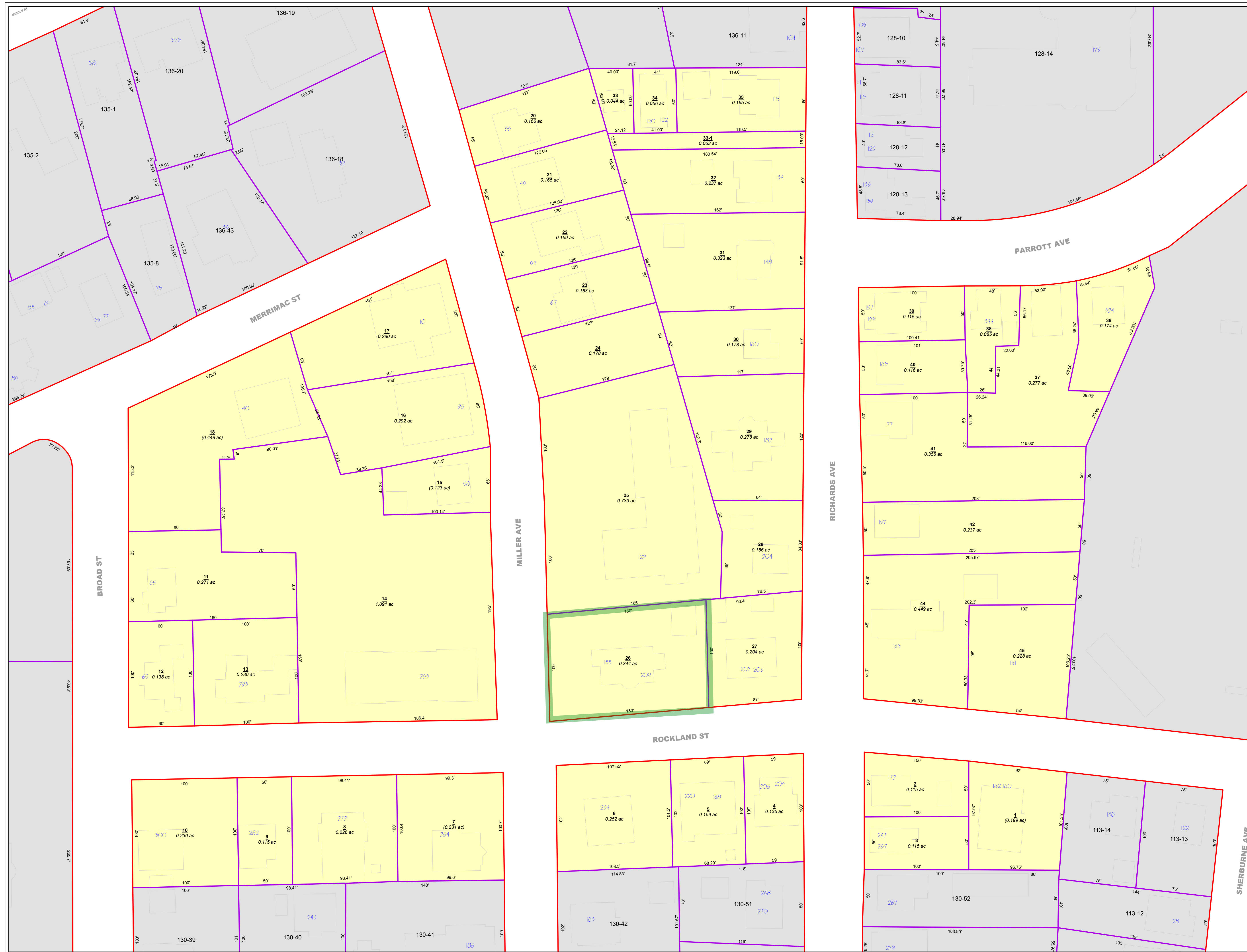
220 Rockland St



Portsmouth, New Hampshire
Google Street View
Nov 2024 [See more dates](#)

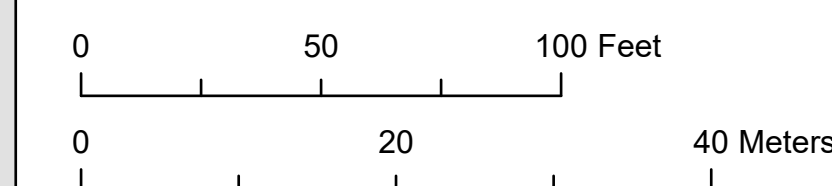
Google Maps

Image capture: Nov 2024 © 2026 Google

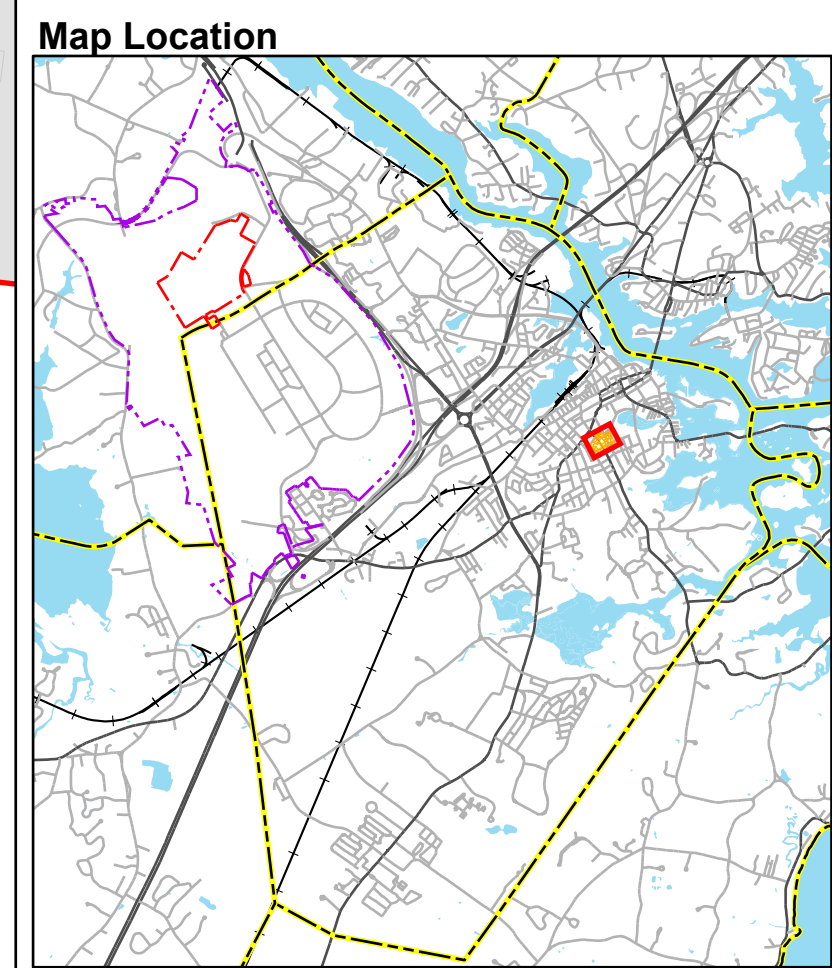
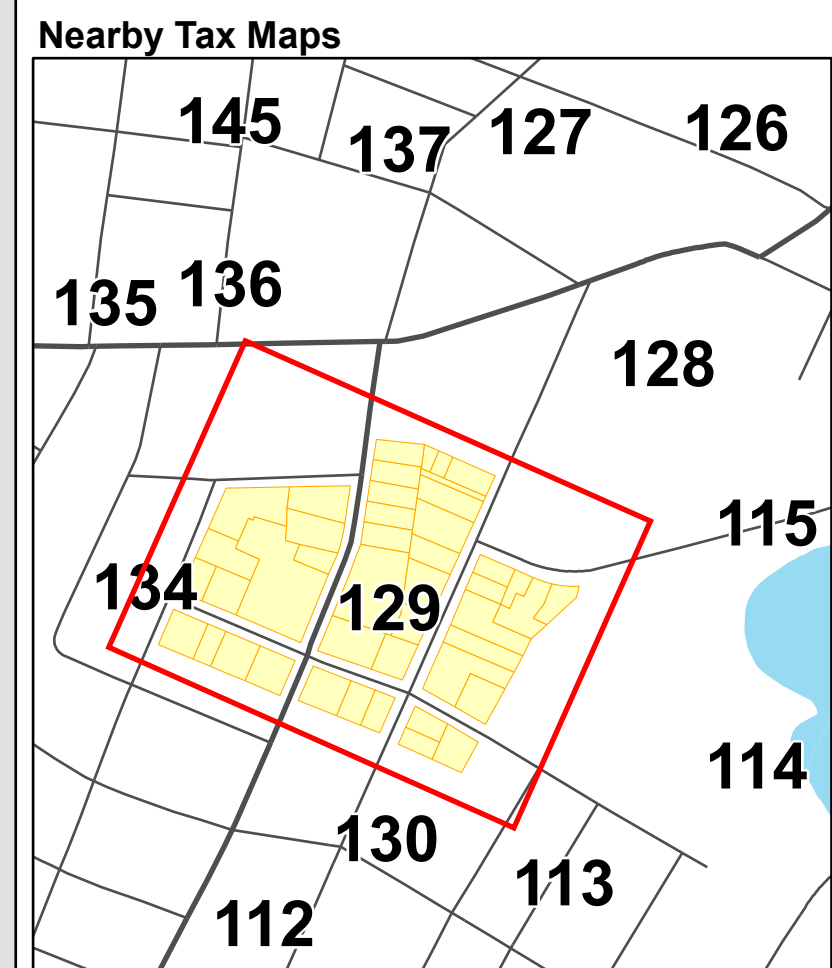


- Partial Legend**
See the cover sheet for the complete legend.
- 7-5A** Lot or lot-unit number
 - 2.56 ac Parcel area in acres (ac) or square feet (sf)
 - Address number
 - 233-137 Parcel number from a neighboring map
 - 68' Parcel line dimension
 - Street name
- SIMS AVE**
Street name
- Parcel/Parcel boundary
 - Parcel/ROW boundary
 - Water boundary
 - Structure (1994 data)
- Parcel covered by this map
 - Parcel from a neighboring map (see other map for current status)

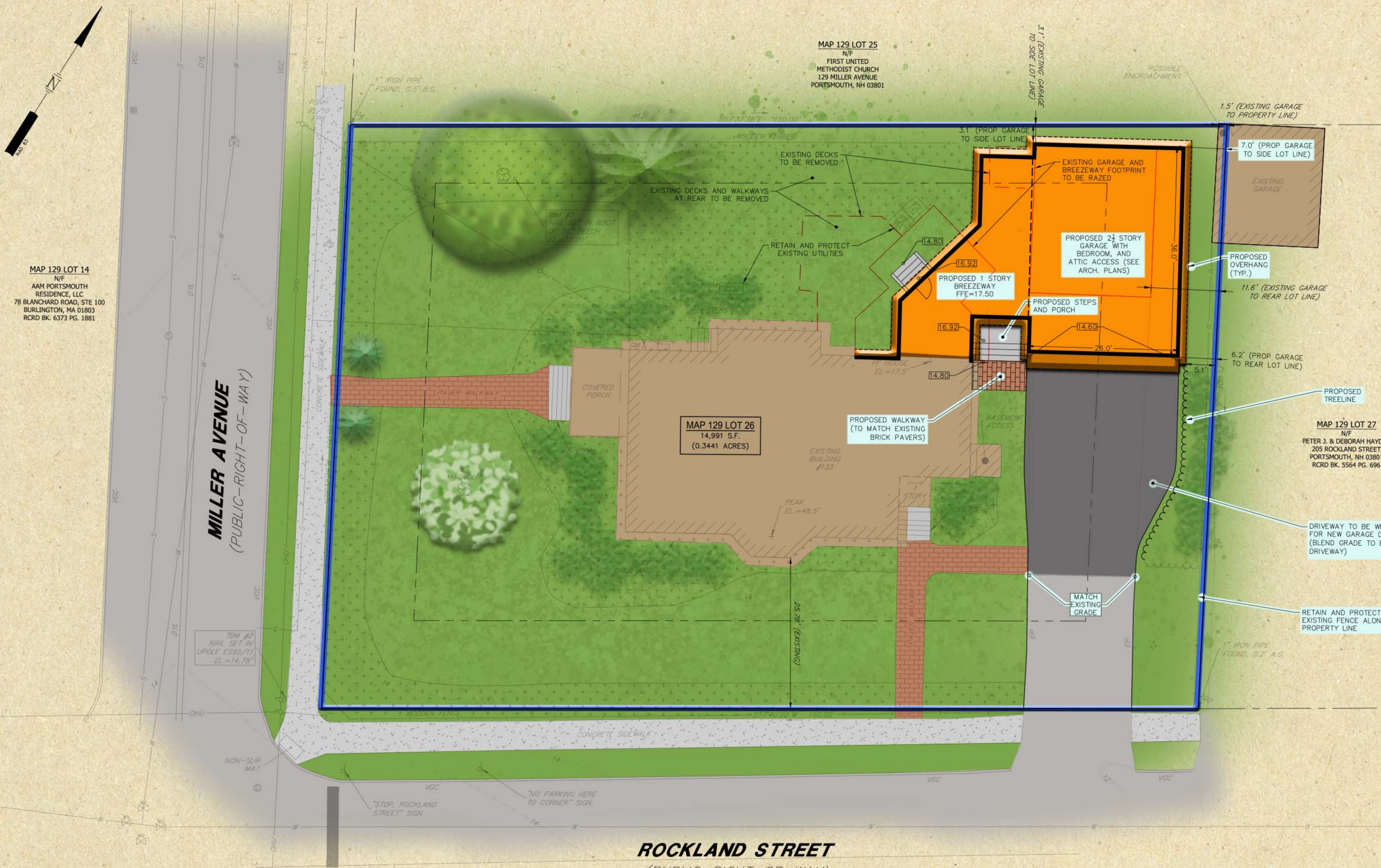
EXHIBIT D



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



Portsmouth, New Hampshire
2025
Tax Map 129



SITE DATA

OWNER OF RECORD OF MAP 129 LOT 26: WILLIAM HENRY OSBORN, IV & VIRGINIA WEDELL OSBORN
 28 LAUREL COURT PORTSMOUTH, NH 03801
 DEED REFERENCE TO PARCEL IS BK 6618 PG 2307
 AREA OF PARCEL = 14,991± SF OR 0.3441± ACRES

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 EXISTING USE: RESIDENTIAL
 PROPOSED USE: RESIDENTIAL

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MINIMUM OPEN SPACE	30%	61.7%	63.9%

MAP 129 LOT 14
 N/F
 AAM PORTSMOUTH RESIDENCE, LLC
 78 BLANCHARD ROAD, STE 100
 BURLINGTON, MA 01883
 RCRD BK. 6373 PG. 1881

MAP 129 LOT 26
 14,991 S.F.
 (0.3441 ACRES)

MAP 129 LOT 27
 N/F
 PETER J. & DEBORAH HAYDEN
 205 ROCKLAND STREET
 PORTSMOUTH, NH 03801
 RCRD BK. 5564 PG. 696

MAP 129 LOT 5
 N/F
 LORETTA M. DOWNS REVOCABLE TRUST
 220 ROCKLAND STREET
 PORTSMOUTH, NH 03801
 RCRD BK. 4721 PG. 2941

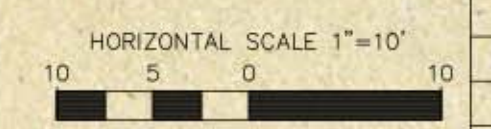
MAP 129 LOT 6
 N/F
 ROCKLAND PLACE CONDOMINIUM
 234 ROCKLAND STREET
 PORTSMOUTH, NH 03801
 RCRD BK. 4577 PG. 1897

LEGEND:

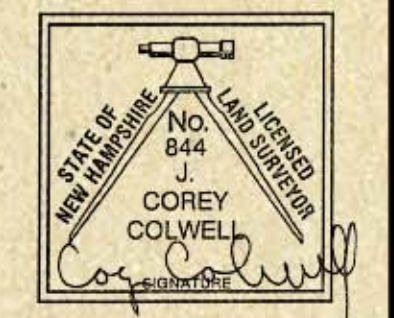
MAP 129 LOT 26	ASSESSORS MAP / LOT NUMBER
A.S.	ABOVE GRADE
B.G.	BELOW GRADE
BK. PG.	BOOK/PAGE
EM.	ELECTRIC METER
EP.	EDGE OF PAVEMENT
FF.	FINISHED FLOOR
GEN.	GENERATOR
GM.	GAS METER
N/F.	NOW OR FORMERLY
RCRD.	ROCKINGHAM COUNTY REGISTRY OF DEEDS
S.F.	SQUARE FEET
TBM.	TEMPORARY BENCHMARK
VGC.	VERTICAL GRANITE CURB
○	IRON PIPE/ROD FOUND
○	AIR CONDITIONER
○	GUY WIRE
○	UTILITY POLE
○	DRAIN MANHOLE
○	CATCH BASIN

- CONIFEROUS TREE
- DECIDUOUS TREE
- SEWER MANHOLE
- WATER GATE VALVE
- SIGN
- OVERHEAD UTILITY
- WOODEN FENCE
- STOCKADE FENCE
- BOUNDARY LINE
- SETBACK LINE
- TREE LINE
- GAS LINE
- SEWER LINE
- WATER LINE
- EXISTING CONTOUR

- CONCRETE
- PAVEMENT
- PAVER WALK
- WOOD DECK
- LANDSCAPED AREA
- RETAINING WALL



REV.	DATE	DESCRIPTION	DR	CK



TAX MAP 129 LOT 26
PROPOSED CONDITIONS PLAN
OSBORN RESIDENCE
133 MILLER AVENUE
PORTSMOUTH, NEW HAMPSHIRE
 OWNED BY
WILLIAM HENRY OSBORN, IV
VIRGINIA WEDELL OSBORN
 1"=20' (11"x17")
 SCALE: 1"=10' (22"x34") **JANUARY 19, 2026**

Seacoast Division
TFM
 Civil Engineers
 Structural Engineers
 Traffic Engineers
 Land Surveyors
 Landscape Architects
 Scientists

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 Portsmouth, NH 03801
 Phone (603) 431-2222
 Fax (603) 431-0910
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47683.00 DR JKC CADFILE 47683-00_PROPOSED CONDITIONS C-01

Feb 03, 2026 - 8:38am F:\MSC Projects\17683 Miller Ave, Portsmouth, NH\17683-00_Person Construction - 133 Miller Ave\Design\PRODUCTION DRWG\17683-00_Proposed Conditions.dwg

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Civil Engineers
 Structural Engineers
 Traffic Engineers
 Land Surveyors
 Landscape Architects
 Scientists



TFM Project Number	47683.00
Project Address	133 Miller Avenue Portsmouth, NH
Subject Lot	Map 129 Lot 26
Total Lot Area (s.f.)	14991

EXISTING			
Structure	Total Area (s.f.)	Description	
Existing Dwelling	3330	Includes garage, bulkhead, and overhangs	
Paved Driveway	1328		
Paver Walkways	598		
Decks	384		
Steps	72		
Utilities	14		
Retaining Wall	10		
Total Impervious Area (s.f.)	Building Coverage	Impervious Coverage	Open Space
5736	22.2%	38.3%	61.7%

PROPOSED			
Structure	Total Area (s.f.)	Description	
Dwelling and Garage	3416		
Paved Driveway	1315		
Paver Walkways	470		
Steps	179		
Misc. Utilities	26		
Total Impervious Area (s.f.)	Building Coverage	Impervious Coverage	Open Space
5406	22.8%	36.1%	63.9%



II. OLD BUSINESS

C. The request of **John C and Janice D Carpenter (Owners)**, for property located at **614 Broad Street** whereas relief is needed to construct a front porch and rear addition to the primary dwelling, to demolish the existing detached garage and construct a new two-story garage with Accessory Dwelling Unit above which requires the following: 1) Variance from Section 10.521 to allow a) a 0.5 foot rear yard where 20 feet is required; b) 2.5 foot left side yard where 10 feet is required; and c) 34% building coverage where 25% is the maximum. Said property is located on Assessor Map 221 Lot 54 and lies within the General Residence A (GRA) District. (LU-26-24)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Residential	construct addition and detached garage/ADU	Mostly Residential
<u>Lot area (sq. ft.):</u>	5,735	5,735	7,500 min.
<u>Lot area per dwelling unit (sq. ft.)</u>	5,735	5,735	7,500 min
<u>Street Frontage (ft.):</u>	59.8	59.8	100 min.
<u>Lot depth (ft.):</u>	105	105	70 min.
<u>Front Yard (ft.):</u>	>15	>15	15 min.
<u>Left Yard (ft.):</u>	Garage: 2.8	2.8	10 min.
<u>Right Yard (ft.)</u>	11	11	10 min.
<u>Rear Yard (ft.):</u>	Garage: 0.7	0.7	20 min.
<u>Height (ft.):</u>	<35	21	35 max.
<u>Building Coverage (%):</u>	24	34	25 max.
<u>Open Space (%):</u>	60	50	30 min.
<u>Estimated Age of Structure:</u>	1950	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Previous Board of Adjustment Actions

- No previous BOA history was found.

Planning Department Comments

The applicant intends to renovate the first floor of the existing house and construct a 462 SF addition to the rear, a 262 SF porch to the front, and demolish the existing 363 SF one-level garage and replace it within the same footprint with a new garage and accessory dwelling unit (ADU) above.

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.

LANDOWNER LETTER OF AUTHORIZATION

John and Janice Carpenter, record owners of property located at **614 Broad Street, Portsmouth, New Hampshire**, identified on **Tax Map 221, Lot 54** (the "Property"), hereby authorizes **Durbin Law Offices PLLC**, to file any building, zoning, planning or other municipal permit applications with the Town of Rye for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.



John Carpenter (Dec 12, 2025 07:14:48 PST)

John Carpenter



Janice Carpenter (Dec 12, 2025 07:14:48 PST)

Janice Carpenter

Signature: John Carpenter

John Carpenter (Dec 11, 2025 16:22:15 PST)

Email: jcarpenter1988@yahoo.com

**NARRATIVE
VARIANCE APPLICATION**

**614 Broad Street
Tax Map 221, Lot 54**

**John C. Carpenter & Janice D. Carpenter
(Owner/Applicant)**

INTRODUCTION

The Property – Existing Conditions

John and Janice Carpenter (the “Applicant”), are the owners of the property located at 614 Broad Street, identified as Portsmouth Tax Map 221, Lot 54 (the “Property”). The Property is located within the General Residence A (“GRA”) Zoning District. It is a 5,735 square foot lot with a 1.5 story single-family residence and 363 square foot detached garage on it. Per the City’s assessing records, the house was constructed in 1950 and has 3 bedrooms and 1.5 bathrooms and a total gross living area of 1,152 square feet.

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

Provision	Requirement	Existing Conditions	Non-Conforming Feature
Lot Area / Lot Area per Dwelling Unit	7,500 sq. ft.	5,735 sq. ft.	Lot
Frontage	100’	59.82’	Lot
Left Yard Setback	10’	2.8’	Garage
Rear Setback	20’	0.7’	Garage

Proposed Conditions

The Applicant intends to renovate the first floor of the existing house and construct a 462 square foot addition to the back, a 262 square foot porch to the front, and demolish the existing 363 square foot one-level garage and replace it within the same footprint with a new garage and accessory dwelling unit (“ADU”) above. The first floor of the structure will serve as garage space and the second floor will serve as accessory living space for guests or family of the Applicant. The Applicant also seeks to remove an existing 263 square foot deck to the rear of the dwelling and replace it with a smaller 92 square foot deck and staircase.

The improvements to the Property will result in 557 square feet of additional building coverage to the Property, a 10% increase over what exists.¹ The rear addition and ADU will not result in any additional encroachment into the building setbacks beyond what exists.

The Applicant had hoped to save a portion of the existing garage and merely refurbish and vertically expand it, but the foundation and exterior walls are severely compromised to the point where you can see into the structure from outside. Had the Applicant found a way to save it, it would have eliminated the need for the variances being sought relative to that structure. Because the existing structure is non-conforming with respect to the side and rear setbacks, any replacement building needs variance relief.

Granting the variances for the additions to the existing home will allow the Applicant to add a single-story primary bedroom, bulkhead access to the basement, a small front porch, and a small rear deck with stairs (where a larger deck presently exists). The existing home is extremely small by modern living standards, so additional living space is necessary to convert it into a full-time family residence.

What is proposed will result in an aesthetic, functional improvement over what exists. The rear addition will be proportionate to the existing house and maintain its original form and character. It is designed to follow the existing roof slopes and wall to window ratio. The existing windows and exterior cladding will be replaced to match the rear addition and create a uniform look that is consistent with other homes and structures in the surrounding neighborhood. The proposed front porch will improve the appearance of the home from the street and provide a natural connection to the streetscape and neighboring properties. Properties with front porches are more common than not in this area of Portsmouth.

ZONING RELIEF SUMMARY

The Applicant seeks the following variance approvals from the Board:

Section 10.521

1. To allow a 2.8' (+/-) left yard setback where 10' is required and 2.8' (+/-) exists.
2. To allow a 0.7' (+/-) rear yard setback where 20' (+/-) is required and 0.7' exists.
3. To allow 34% (+/-) building coverage where 25% is allowed and 24% 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.

¹ 46 Square feet of the additional building coverage being requested is associated with the bulkhead and rear stairs.

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.

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

The requested increase in building coverage and the demolition and reconstruction of the existing non-conforming garage is reasonable when considering the existing conditions on the Property and the character of the neighborhood. The Property is undersized at 5,735 square feet so any expansion of the existing home requires a building coverage variance. The neighborhood is characterized by properties that exceed the 25% building coverage limitation. The proposed 10% increase in building coverage seems like a big increase, but when you consider the size of the lot and undersized home on it, it is not. The Applicant would only gain 462 square feet of additional living space with the rear addition, which will allow them to live more comfortably in the home. The rear addition will be narrower than the existing home, thus breaking up the massing and minimizing any sense of crowding on the lot.

The proposed front porch will be an aesthetic improvement to the existing concrete landing, and will be in keeping with neighboring homes, most of which have covered porches. There would be no gain to the neighbors or public by eliminating this feature, which is ultimately in keeping with the character of the surrounding neighborhood.

Setback Variances & Reconstruction of a Non-Conforming Structure

The replacement of the existing 1-story garage with a 1.5 story garage and ADU in the same footprint will have no additional impact upon abutting properties beyond what exists. Variance relief is only required for the proposed ADU because the existing garage is in such poor structural condition that it does not appear as if it can be saved.

The proposed location of the ADU is the most practical one given where the existing home and driveway are located. While it requires relief, it will not encroach further into the setbacks

than the garage that exists and will not negatively impact the light, air and space of the structures on the nearest abutting properties. The height of the proposed structure will be well below the Ordinance requirement and will have a subordinate function and appearance relative to the primary residence. The only potentially impacted abutting properties are those located at 628 Broad Street (to left) and 188 Jones Avenue (to rear). However, 188 Jones Avenue is the location of Cedar Healthcare, formerly The Clipper Home, an assisted living facility and nursing home. That building sits on a large lot (8.63 acres) and is setback a considerable distance from the common boundary and is well buffered by trees on all sides. The dwelling and garage on 628 Broad Street, which is a corner lot, lies much closer to the left boundary line of that property, along approximately 40' at the closest point to the proposed ADU. Accordingly, granting the setback variances will not alter the essential character of the neighborhood or otherwise threaten public, health, safety or welfare.

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 expand the existing home to create a modest amount of additional living space, and to construct an accessory space where guests or family members can stay. The increase in building coverage and encroachment into the setbacks does not alter the character of the neighborhood, where many lots are undersized, have encroaching structures, or exceed allowable coverage. 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 reasonably expand upon their home and reconstruct the existing garage into a more functional accessory structure.

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

The neighborhood is comprised primarily of single-family residences of varying ages and architectural styles. The proposed addition to the Property will modernize and make the existing home more functional in a manner that is compatible with, and aesthetically consistent with, other homes on the street. In addition, the proposed ADU is comparable in scale, placement, and design to similar structures within the neighborhood. The project will not adversely affect the light, air, or open space available to abutting properties, which are the primary considerations in assessing potential impacts on surrounding property values. As such, the proposed improvements will not diminish and are likely 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 lot (5,735 sf.), its narrow width and angled rear setback line, and the location and orientation of existing features on it and abutting properties are all special conditions that distinguish it from surrounding properties such that literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.

The Property is the smallest lot in this vicinity of Broad Street, as demonstrated by the spreadsheet attached as **Exhibit A**. Even with the exceptionally small house and detached garage, total building coverage on the Property is currently at 24%. Any reasonably sized addition to the home requires building coverage relief.

The existing garage is already non-conforming with respect to the side and rear yard setbacks, a condition which could remain if the variance relief is denied and the Applicant could find a way to shore up the existing structure. Strict compliance with the Ordinance is particularly hard to achieve when you consider the narrow width of the Property and the angled rear setback line, both of which create a unique burden upon the Property.

It would make little sense to locate the proposed ADU in a different area of the Property merely for the purpose of achieving greater compliance with the Ordinance. The proposed ADU will be situated at the end of the existing driveway. If you were to push it further into the Property, it would run right up against the rear of the house and would require removal of an existing deck.

As set forth above, the proposed ADU will be set back a considerable distance from the structures on the only potentially impacted abutting properties, which mitigates the impact of any setback encroachment. Owing to these special conditions of the Property collectively, there is no fair and substantial relationship between the general purposes of the building coverage and setback restrictions and their application to the Property.

The proposed use of the Property is also reasonable. The Property will continue to be used for single-family residential purposes, which is permitted by right within the GRA Zoning District.

CONCLUSION

The Applicants, John and Janice Carpenter, thank you for your time and consideration of the application and respectfully requests your approval of the variances being requested.

February 13, 2026

Respectfully Submitted,
John C. Carpenter & Janice D. Carpenter
By and Through Their Attorneys,

A handwritten signature in black ink, appearing to read "Derek R. Durbin". The signature is fluid and cursive, with a large initial "D" and "R".

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

Address	Tax Lot Zone	Size (AC)	Size (Sq Ft)
614 Broad Street	221-54 GRA	0.13	5662.8
600 Broad Street	221-55 GRA	0.18	7840.8
586 Broad Street	221-56 GRA	0.25	10890
574 Broad Street	221-57 GRA	0.14	6098.4
566 Broad Street	221-58 GRA	0.14	6098.4
585 Broad Street	221-51 GRA	0.15	6534
589 Broad Street	221-52 GRA	0.15	6534
603 Broad Street	221-53 GRA	0.16	6969.6
629 Broad Street	221-13 GRA	0.15	6534
628 Broad Street	221-12 GRA	0.27	11761.2
100 Jones Ave	221-11 GRA	0.16	6969.6
61 Jones Ave	222-31 GRA	0.14	6098.4
65 Jones Ave	222-32 GRA	0.17	7405.2

EXHIBIT A



Property Information

Property ID 0221-0054-0000
Location 614 BROAD ST
Owner CARPENTER JOHN C & JANICE D

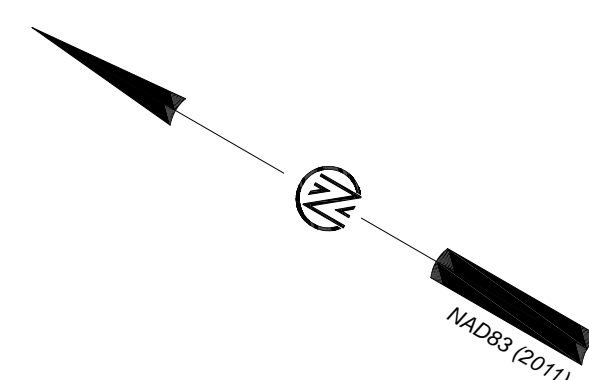


**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**

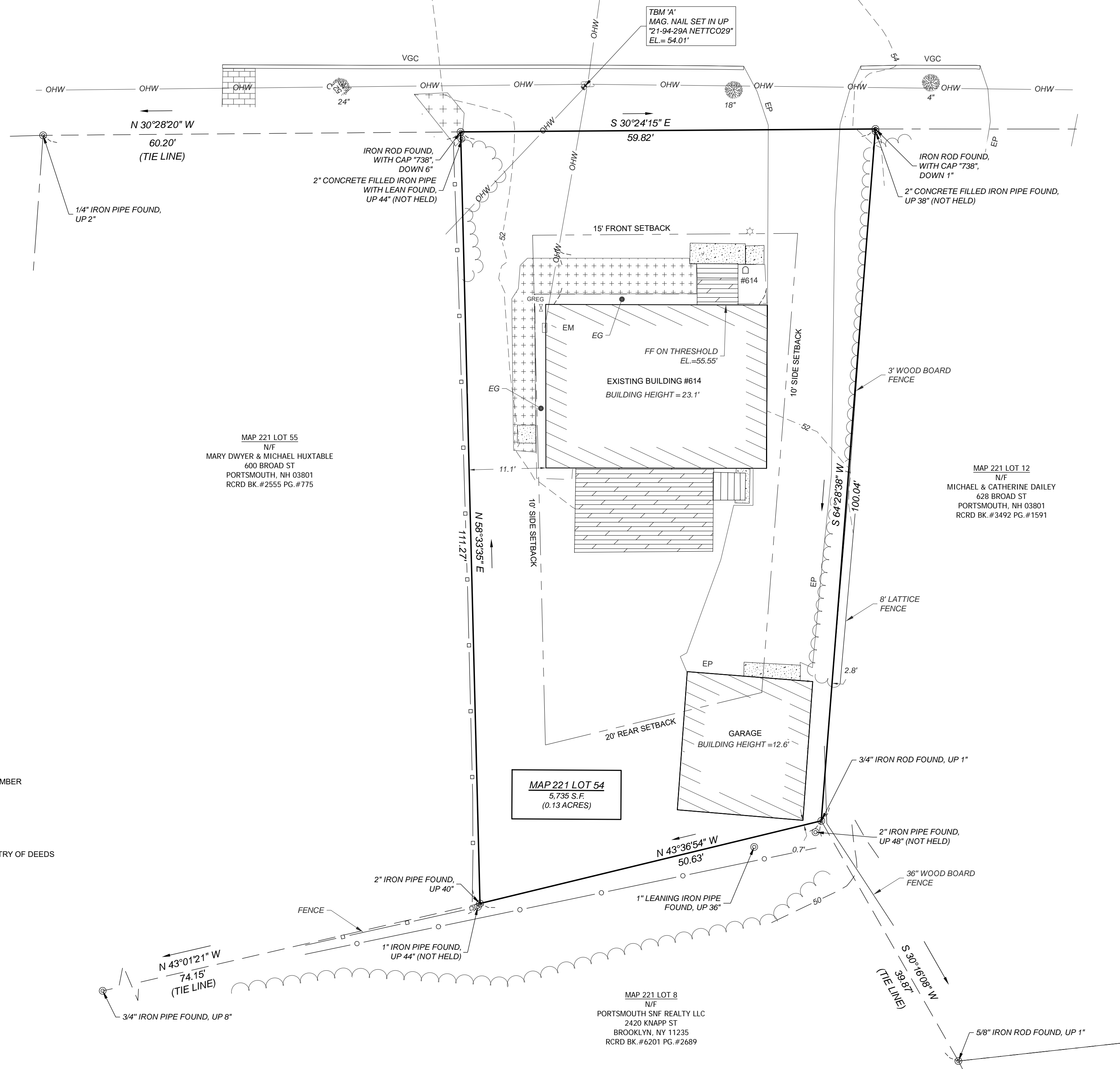
City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map.

Geometry updated 10/23/2025

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



BROAD STREET
(PUBLIC RIGHT-OF-WAY)

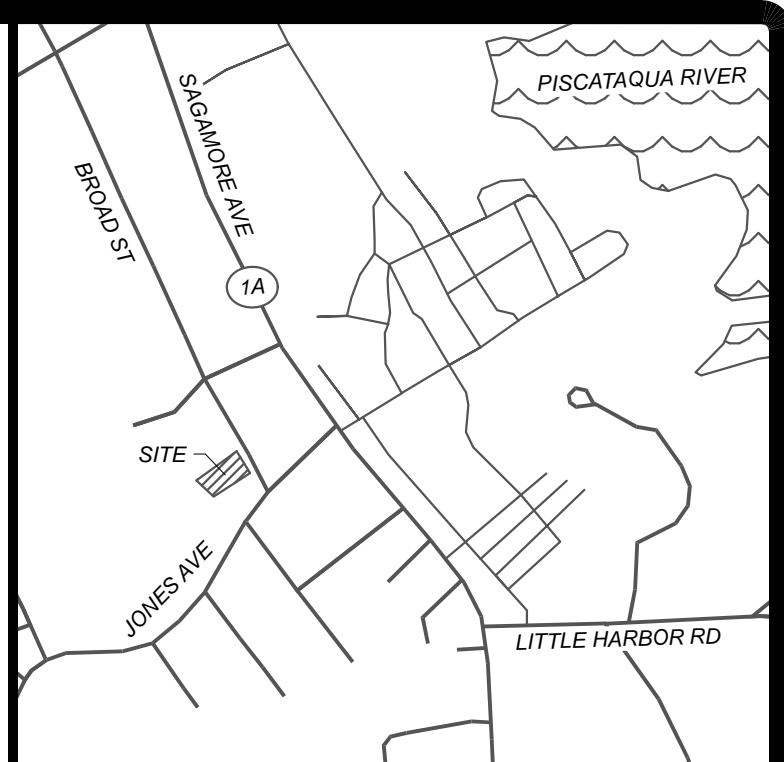


PLAN REFERENCES:

- "PLAN OF LOT 548 BROAD ST." PREPARED BY JOHN W. DURGIN, DATED JULY 1941. RECORDED AT RCRD AS PLAN #1110.
- "PLAN OF LAND OWNED BY SYLVESTER R. & RUTH MARY CARROLL SURVEYED FOR CLIPPER HOME OF PORTSMOUTH" PREPARED BY DAVID E. VARGA, DATED JUNE 15, 1979. RECORDED AT RCRD AS PLAN #D-8794.
- "LOT LINE ELIMINATION PLAN FOR CLIPPER HOME OF PORTSMOUTH" PREPARED BY EMERY ENGINEERING, DATED MAY 21, 1984. RECORDED AT RCRD AS PLAN #D-12665.
- "PLAN OF LAND FOR HENRY F. DEWITT ET AL" PREPARED BY AMBIT SURVEY, DATED SEPTEMBER 18, 1991. RECORDED AT RCRD AS PLAN #B-21258.
- "ALTA/ACSM LAND TITLE SURVEY OF LAND" PREPARED BY CIVILWORKS, DATED 12-4-06. LAST REVISED 12-15-06. RECORDED AT RCRD AS PLAN #D-34401.

NOTES:

- SUBJECT PARCEL: TAX MAP 221 LOT 54
614 BROAD STREET
PORTSMOUTH, NH 03801
NS PROJECT #1679
- OWNER OF RECORD: JOHN C & JANICE D CARPENTER
2606 E BAY DR NW
GIG HARBOR, WA 98355
R.C.R.D. BOOK #6498, PAGE #1501
- PARCEL AREA: 5,735 S.F. OR 0.13 AC
- THE PURPOSE OF THIS PLAN IS TO SHOW EXISTING CONDITIONS OF THE SUBJECT PARCEL.
- DIMENSIONAL REQUIREMENTS:** ZONE: GENERAL RESIDENCE A
MIN LOT AREA: 7,500 S.F.
MIN LOT FRONTAGE: 100'
MIN LOT DEPTH: 70'
MIN FRONT SETBACK: 15'
MIN SIDE SETBACK: 10'
MIN REAR SETBACK: 20'
MAX BUILDING HEIGHT (SLOPED ROOF): 35'
BUILDING COVERAGE: 25%
MIN OPEN SPACE: 30%
- OVERLAY DISTRICTS
- ZONING INFORMATION SHOWN HEREON IS PER THE TOWN OF PORTSMOUTH ZONING ORDINANCE ADOPTED DECEMBER 21, 2009 AS AMENDED THROUGH MAY 5, 2025. ADDITIONAL REGULATIONS APPLY. THE LAND OWNER IS RESPONSIBLE FOR COMPLYING WITH ALL APPLICABLE TOWN, STATE, AND FEDERAL REGULATIONS.
- FLOOD HAZARD ZONE: "X" WITH A BASE FLOOD ELEVATION OF AREAS DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN. PER FIRM MAP #33015C0270F, AND FIRM MAP #33015C0259F, MAP REVISED JANUARY 29, 2021.
- THE INTENT OF THIS PLAN IS TO SHOW THE LOCATION OF BOUNDARIES IN ACCORDANCE WITH THE CURRENT LEGAL DESCRIPTIONS. IT IS NOT AN ATTEMPT TO DEFINE UNWRITTEN RIGHTS, DETERMINE THE EXTENT OF OWNERSHIP, OR DEFINE THE LIMITS OF TITLE.
- FIELD SURVEY COMPLETED BY NORTHAM SURVEY IN JULY 2025 USING A TRIMBLE S5 TOTAL STATION WITH A TRIMBLE TSC3 DATA COLLECTOR, A TRIMBLE R12 GPS RECEIVER AND A SOKKIA B31 AUTO LEVEL.
- HORIZONTAL DATUM IS NAD83(2011) NEW HAMPSHIRE STATE PLANE COORDINATES PER STATIC GPS OBSERVATIONS.
- THE VERTICAL DATUM IS NAVD88 PER STATIC GPS OBSERVATIONS. THE CONTOUR INTERVAL IS 2 FEET.
- EASEMENTS, RIGHTS, AND RESTRICTIONS SHOWN OR IDENTIFIED ARE THOSE WHICH WERE FOUND DURING RESEARCH PERFORMED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS. OTHER RIGHTS, EASEMENTS, OR RESTRICTIONS MAY EXIST WHICH A TITLE EXAMINATION OF SUBJECT PARCEL(S) WOULD DETERMINE.
- THE LOCATION OF UNDERGROUND UTILITY INFORMATION SHOWN ON THIS PLAN IS APPROXIMATE. NORTHAM SURVEY LLC MAKES NO CLAIM TO THE ACCURACY OR COMPLETENESS OF UNDERGROUND UTILITIES SHOWN. PRIOR TO ANY EXCAVATION ON SITE THE CONTRACTOR SHALL CONTACT DIG SAFE.



LOCUS

ABUTTERS ACROSS BROAD STREET

- MAP 221 LOT 52
N/F
LYNN VACCARO & JASON DEMERS
589 BROAD ST
PORTSMOUTH, NH 03801
RCRD BK.#6524 PG.#1296
- MAP 221 LOT 53
N/F
DEAN C RAIZES REVOCABLE TRUST
603 BROAD ST
PORTSMOUTH, NH 03801
RCRD BK.#6057 PG.#936
- MAP 221 LOT 13
N/F
SAVANNAH FODERO & TYLER FORTHOFFER
629 BROAD ST
PORTSMOUTH, NH 03801
RCRD BK.#6278 PG.#1369

- MAP 221 LOT 55
N/F
MARY DWYER & MICHAEL HUXTABLE
600 BROAD ST
PORTSMOUTH, NH 03801
RCRD BK.#2555 PG.#775

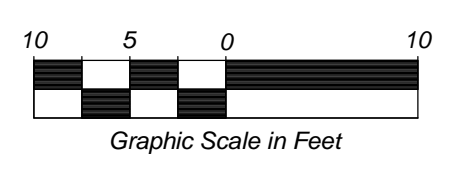
- MAP 221 LOT 12
N/F
MICHAEL & CATHERINE DAILEY
628 BROAD ST
PORTSMOUTH, NH 03801
RCRD BK.#3492 PG.#1591

MAP 221 LOT 54
5,735 S.F.
(0.13 ACRES)

- MAP 221 LOT 8
N/F
PORTSMOUTH SNF REALTY LLC
2420 KNAPP ST
BROOKLYN, NY 11235
RCRD BK.#6201 PG.#2689

LEGEND:

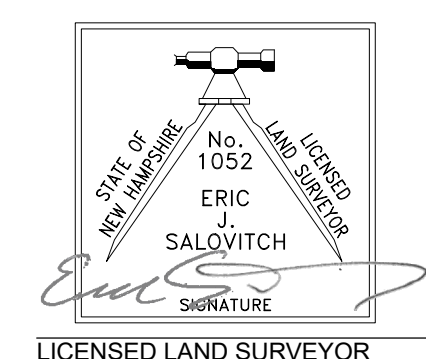
MAP 137 LOT 11	ASSESSORS MAP AND LOT NUMBER
BK. PG.	BOOK / PAGE
EG	EDGE OF GRAVEL
EM	ELECTRIC METER
EP	EDGE OF PAVEMENT
GREG	GAS REGULATOR
N/F	NOW OR FORMERLY
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
S.F.	SQUARE FEET
TBM	TEMPORARY BENCHMARK
TBR	TO BE REMOVED
VGC	VERTICAL GRANITE CURB
⊙	IRON PIPE/ROD FOUND
⊙	LIGHT POLE
⊙	UTILITY POLE
⊙	MAILBOX
⊙	DECIDUOUS TREE
⊙	SEWER MANHOLE
⊙	WATER GATE VALVE
GREG	GAS REGULATOR
⊙	SIGN
—	OVERHEAD WIRE
—	CHAINLINK FENCE
—	STOCKADE FENCE
—	BOUNDARY LINE
—	SETBACK LINE
—	TREE LINE
—	SHRUB LINE
—	CONCRETE
—	BRICK
—	WOODEN DECK
—	LANDSCAPING



PURSUANT TO NEW HAMPSHIRE RSA 678:18 III

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

I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION. THIS SURVEY CONFORMS TO THE ACCURACY REQUIREMENTS OF AN URBAN SURVEY OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS. I FURTHER CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND AND IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE. RANDOM TRAVERSE SURVEY BY TOTAL STATION WITH A PRECISION GREATER THAN 1:15,000.



DECEMBER 17, 2025
DATE

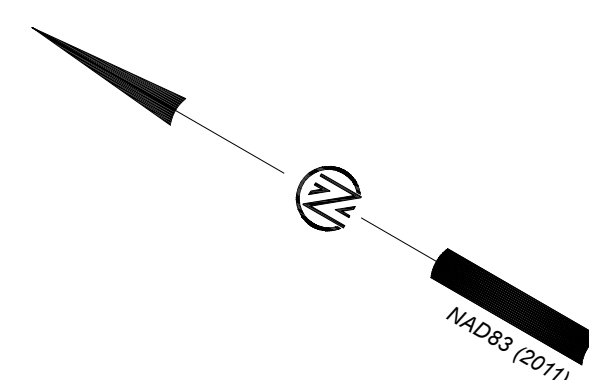
EXISTING CONDITIONS PLAN
FOR
JOHN C. & JANICE D. CARPENTER
OF
TAX MAP 221 LOT 54
BROAD STREET
PORTSMOUTH, NH
COUNTY OF ROCKINGHAM

SCALE: 1"=10' (22x34) 1"=20' (11x17)

JOB NO.	1679	DATE:	2025-07-15
DRAWN BY:	EEC	DRAWING:	1679 SURVEY.DWG
CHECKED BY:	EJS	SHEET:	1 OF 1

NO.	DATE	DESCRIPTION	BY





BROAD STREET

(PUBLIC RIGHT-OF-WAY)

LOT COVERAGE:

EXISTING:
 BUILDINGS/SHEDS: 1,114 SF
 STAIRS/BULKHEADS: 22 SF
 DECKS: 263 SF

TOTAL: 1,399 SF

TOTAL LOT AREA: 5,735 SF

LOT COVERAGE RATIO:
 TOTAL STRUCTURAL COVERAGE/TOTAL LOT AREA = LOT COVERAGE RATIO

EXISTING:
 1,399 SF / 5,735 SF = 0.243 = 24%

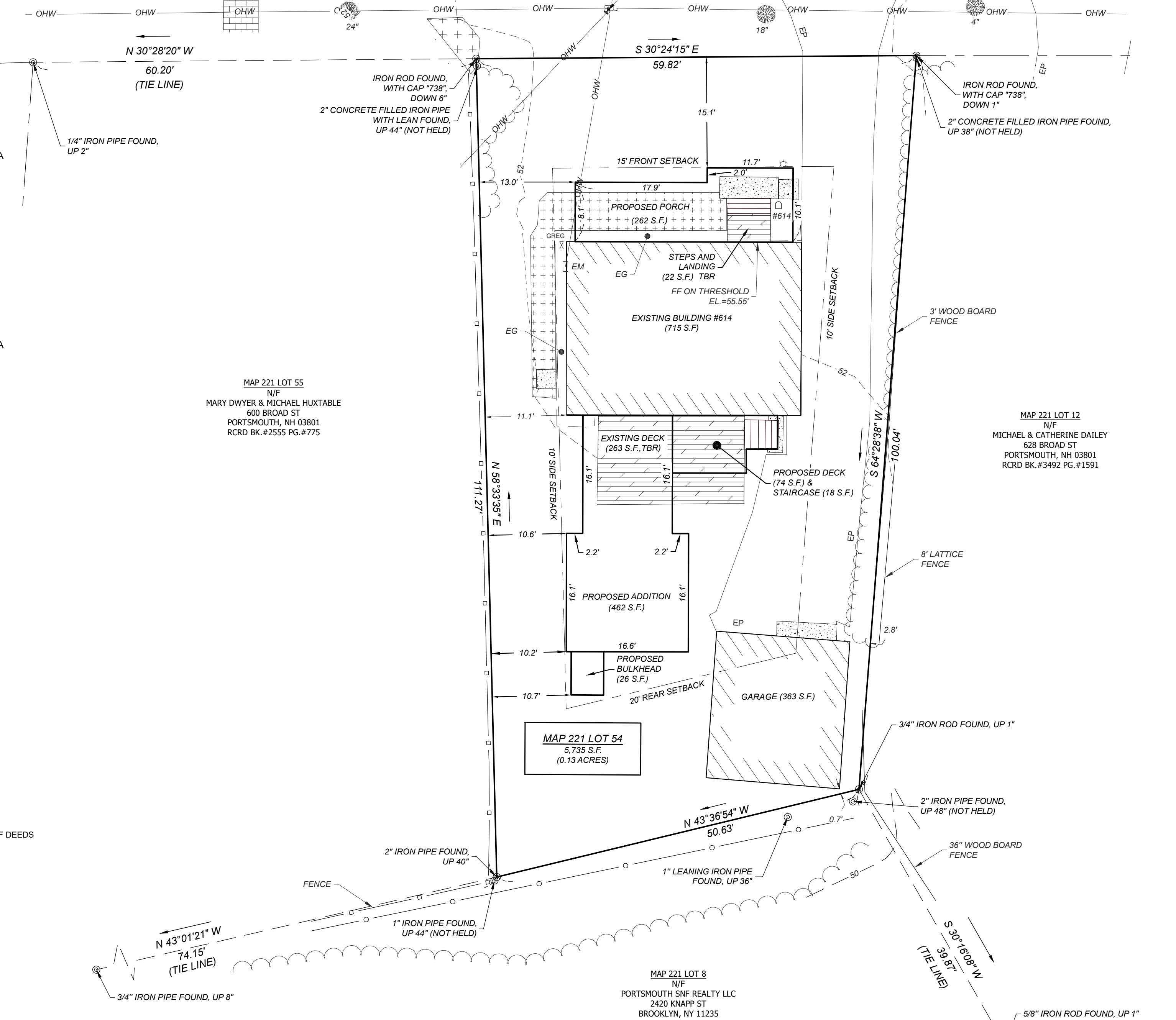
PROPOSED:
 BUILDINGS/SHEDS: 1,838 SF
 STAIRS/BULKHEADS: 44 SF
 DECKS: 74 SF

TOTAL: 1,956 SF

TOTAL LOT AREA: 5,735 SF

LOT COVERAGE RATIO:
 TOTAL STRUCTURAL COVERAGE/TOTAL LOT AREA = LOT COVERAGE RATIO

PROPOSED:
 1,956 SF / 5,735 SF = 0.341 = 34%



MAP 221 LOT 55
 N/F
 MARY DWYER & MICHAEL HUXTABLE
 600 BROAD ST
 PORTSMOUTH, NH 03801
 RCRD BK.#2555 PG.#775

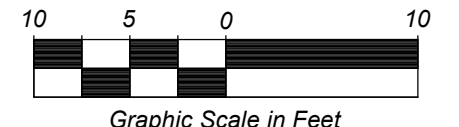
MAP 221 LOT 12
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 MICHAEL & CATHERINE DAILEY
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 RCRD BK.#3492 PG.#1591

MAP 221 LOT 54
 5,735 S.F.
 (0.13 ACRES)

MAP 221 LOT 8
 N/F
 PORTSMOUTH SNF REALTY LLC
 2420 KNAPP ST
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 RCRD BK.#6201 PG.#2689

- ABUTTERS ACROSS BROAD STREET**
- MAP 221 LOT 52
N/F
LYNN VACCARO & JASON DEMERS
589 BROAD ST
PORTSMOUTH, NH 03801
RCRD BK.#6524 PG.#1296
 - MAP 221 LOT 53
N/F
DEAN C RAIZES REVOCABLE TRUST
603 BROAD ST
PORTSMOUTH, NH 03801
RCRD BK.#6057 PG.#936
 - MAP 221 LOT 13
N/F
SAVANNAH FODERO & TYLER FORTHOFFER
629 BROAD ST
PORTSMOUTH, NH 03801
RCRD BK.#6278 PG.#1369

- LEGEND:**
- MAP 137 LOT 11 ASSESSORS MAP AND LOT NUMBER
- BK. PG. BOOK / PAGE
 - EG EDGE OF GRAVEL
 - EM ELECTRIC METER
 - EP EDGE OF PAVEMENT
 - GREG GAS REGULATOR
 - N/F NOW OR FORMERLY
 - RCRD ROCKINGHAM COUNTY REGISTRY OF DEEDS
 - S.F. SQUARE FEET
 - TBM TEMPORARY BENCHMARK
 - TBR TO BE REMOVED
 - VGC VERTICAL GRANITE CURB
 - IRON PIPE/ROD FOUND
 - LIGHT POLE
 - UTILITY POLE
 - MAILBOX
 - DECIDUOUS TREE
 - SEWER MANHOLE
 - WATER GATE VALVE
 - GREG GAS REGULATOR SIGN
 - OHW OVERHEAD WIRE
 - CHAINLINK FENCE
 - STOCKADE FENCE
 - BOUNDARY LINE
 - SETBACK LINE
 - TREE LINE
 - SHRUB LINE
 - CONCRETE
 - BRICK
 - WOODEN DECK
 - LANDSCAPING



PLAN REFERENCES:

- "PLAN OF LOT 548 BROAD ST." PREPARED BY JOHN W. DURGIN, DATED JULY 1941. RECORDED AT RCRD AS PLAN #1110.
- "PLAN OF LAND OWNED BY SYLVESTER R. & RUTH MARY CARROLL SURVEYED FOR CLIPPER HOME OF PORTSMOUTH" PREPARED BY DAVID E. VARGA, DATED JUNE 15, 1979. RECORDED AT RCRD AS PLAN #D-8794.
- "LOT LINE ELIMINATION PLAN FOR CLIPPER HOME OF PORTSMOUTH" PREPARED BY EMERY ENGINEERING, DATED MAY 21, 1984. RECORDED AT RCRD AS PLAN #D-12665.
- "PLAN OF LAND FOR HENRY F. DEWITT ET AL." PREPARED BY AMBIT SURVEY, DATED SEPTEMBER 18, 1991. RECORDED AT RCRD AS PLAN #B-21258.
- "ALTA/ACSM LAND TITLE SURVEY OF LAND" PREPARED BY CIVILWORKS, DATED 12-4-06. LAST REVISED 12-15-06. RECORDED AT RCRD AS PLAN #D-34401.

NOTES:

- SUBJECT PARCEL: TAX MAP 221 LOT 54
614 BROAD STREET
PORTSMOUTH, NH 03801
NS PROJECT #1679
- OWNER OF RECORD: JOHN C & JANICE D CARPENTER
2806 E BAY DR NW
GIG HARBOR, WA 98355
RCRD BOOK #6498, PAGE #1501
- PARCEL AREA: 5,735 S.F. OR 0.13 AC
- THE PURPOSE OF THIS PLAN IS TO SHOW EXISTING CONDITIONS OF THE SUBJECT PARCEL.
- DIMENSIONAL REQUIREMENTS:

	ZONE: GENERAL RESIDENCE A	EXISTING	PROPOSED
MIN LOT AREA:	7,500 S.F.		
MIN LOT FRONTAGE:	100'		
MIN LOT DEPTH:	70'		
MIN FRONT SETBACK:	15'		
MIN SIDE SETBACK:	10'	2.8'	2.8'
MIN REAR SETBACK:	20'	0.7'	0.7'
MAX BUILDING HEIGHT (SLOPED ROOF):	35'		
BUILDING COVERAGE:	25%	24%	34%
MIN OPEN SPACE:	30%	56%	47%
- ZONING INFORMATION SHOWN HEREON IS PER THE TOWN OF PORTSMOUTH ZONING ORDINANCE ADOPTED DECEMBER 21, 2009 AS AMENDED THROUGH MAY 5, 2025. ADDITIONAL REGULATIONS APPLY. THE LAND OWNER IS RESPONSIBLE FOR COMPLYING WITH ALL APPLICABLE TOWN, STATE, AND FEDERAL REGULATIONS.
- FLOOD HAZARD ZONE: "X" WITH A BASE FLOOD ELEVATION OF AREAS DETERMINED TO BE OUTSIDE OF THE 0.2% ANNUAL CHANCE FLOODPLAIN, PER FIRM MAP #33015C0270F, AND FIRM MAP #33015C0259F, MAP REVISED JANUARY 29, 2021.
- THE INTENT OF THIS PLAN IS TO SHOW THE LOCATION OF BOUNDARIES IN ACCORDANCE WITH THE CURRENT LEGAL DESCRIPTIONS. IT IS NOT AN ATTEMPT TO DEFINE UNWRITTEN RIGHTS, DETERMINE THE EXTENT OF OWNERSHIP, OR DEFINE THE LIMITS OF TITLE.
- FIELD SURVEY COMPLETED BY NORTHAM SURVEY IN JULY 2025 USING A TRIMBLE S5 TOTAL STATION WITH A TRIMBLE TSC3 DATA COLLECTOR, A TRIMBLE R12 GPS RECEIVER AND A SOKKIA B31 AUTO LEVEL.
- HORIZONTAL DATUM IS NAD83(2011) NEW HAMPSHIRE STATE PLANE COORDINATES PER STATIC GPS OBSERVATIONS.
- THE VERTICAL DATUM IS NAVD88 PER STATIC GPS OBSERVATIONS. THE CONTOUR INTERVAL IS 2 FEET.
- EASEMENTS, RIGHTS, AND RESTRICTIONS SHOWN OR IDENTIFIED ARE THOSE WHICH WERE FOUND DURING RESEARCH PERFORMED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS. OTHER RIGHTS, EASEMENTS, OR RESTRICTIONS MAY EXIST WHICH A TITLE EXAMINATION OF SUBJECT PARCEL(S) WOULD DETERMINE.
- THE LOCATION OF UNDERGROUND UTILITY INFORMATION SHOWN ON THIS PLAN IS APPROXIMATE. NORTHAM SURVEY LLC MAKES NO CLAIM TO THE ACCURACY OR COMPLETENESS OF UNDERGROUND UTILITIES SHOWN. PRIOR TO ANY EXCAVATION ON SITE THE CONTRACTOR SHALL CONTACT DIG SAFE.

PROPOSED CONDITIONS PLAN

FOR
 JOHN C. & JANICE D. CARPENTER
 OF
 TAX MAP 221 LOT 54
 614 BROAD STREET
 PORTSMOUTH, NH
 COUNTY OF ROCKINGHAM

SCALE: 1"=10' (22x34) 1"=20' (11x17)

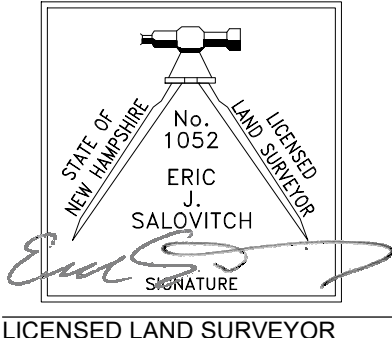
JOB NO.	1679	DATE:	2026-01-20
DRAWN BY:	EJC	DRAWING:	1679 SURVEY.DWG
CHECKED BY:	EJS	SHEET:	1 OF 1

NO.	DATE	DESCRIPTION	BY

PURSUANT TO NEW HAMPSHIRE RSA 678:18 III

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

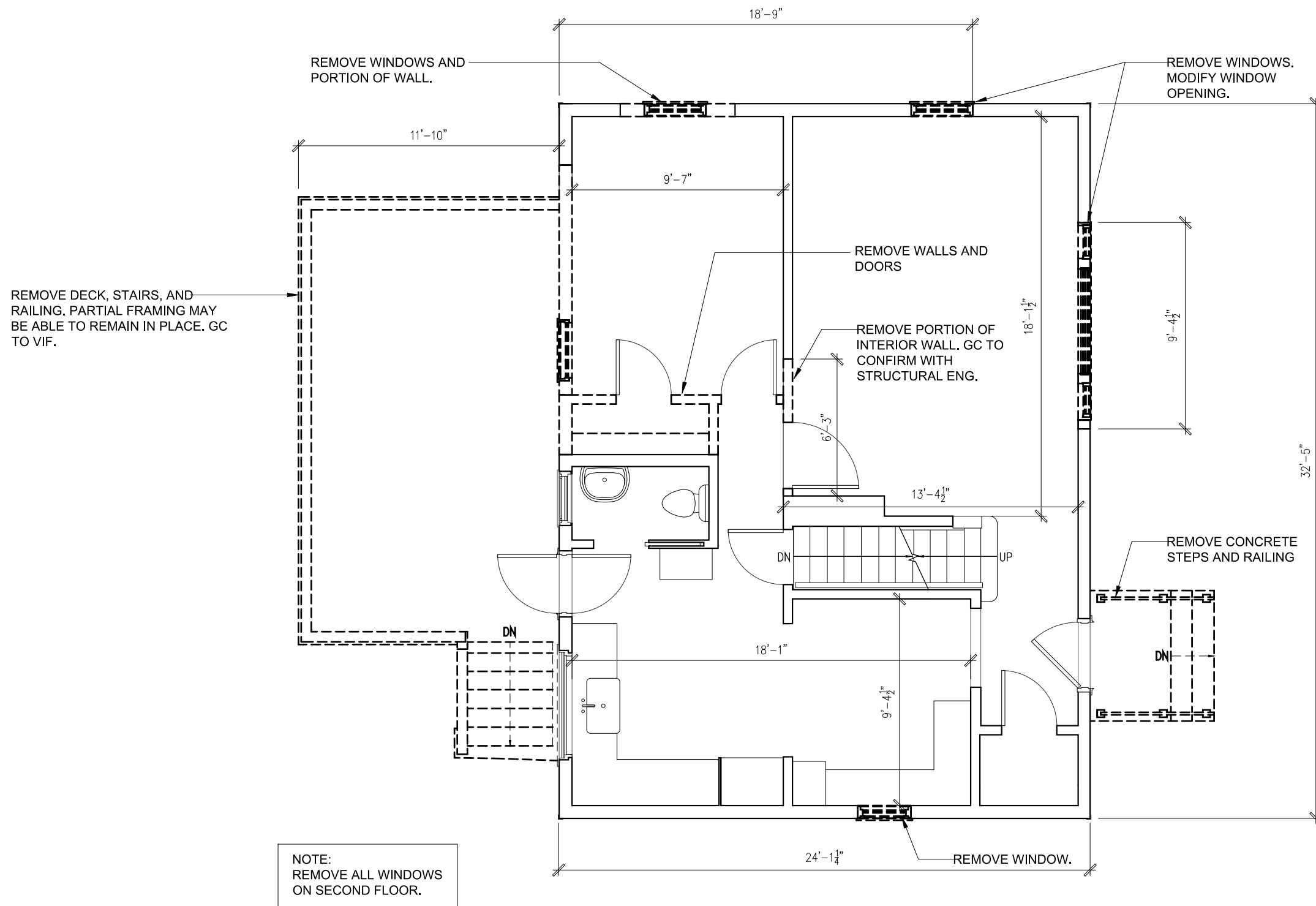
I CERTIFY THAT THIS SURVEY AND PLAN WERE PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION. THIS SURVEY CONFORMS TO THE ACCURACY REQUIREMENTS OF AN URBAN SURVEY OF THE NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES OF THE BOARD OF LICENSURE FOR LAND SURVEYORS. I FURTHER CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND AND IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE. RANDOM TRAVERSE SURVEY BY TOTAL STATION WITH A PRECISION GREATER THAN 1:15,000.

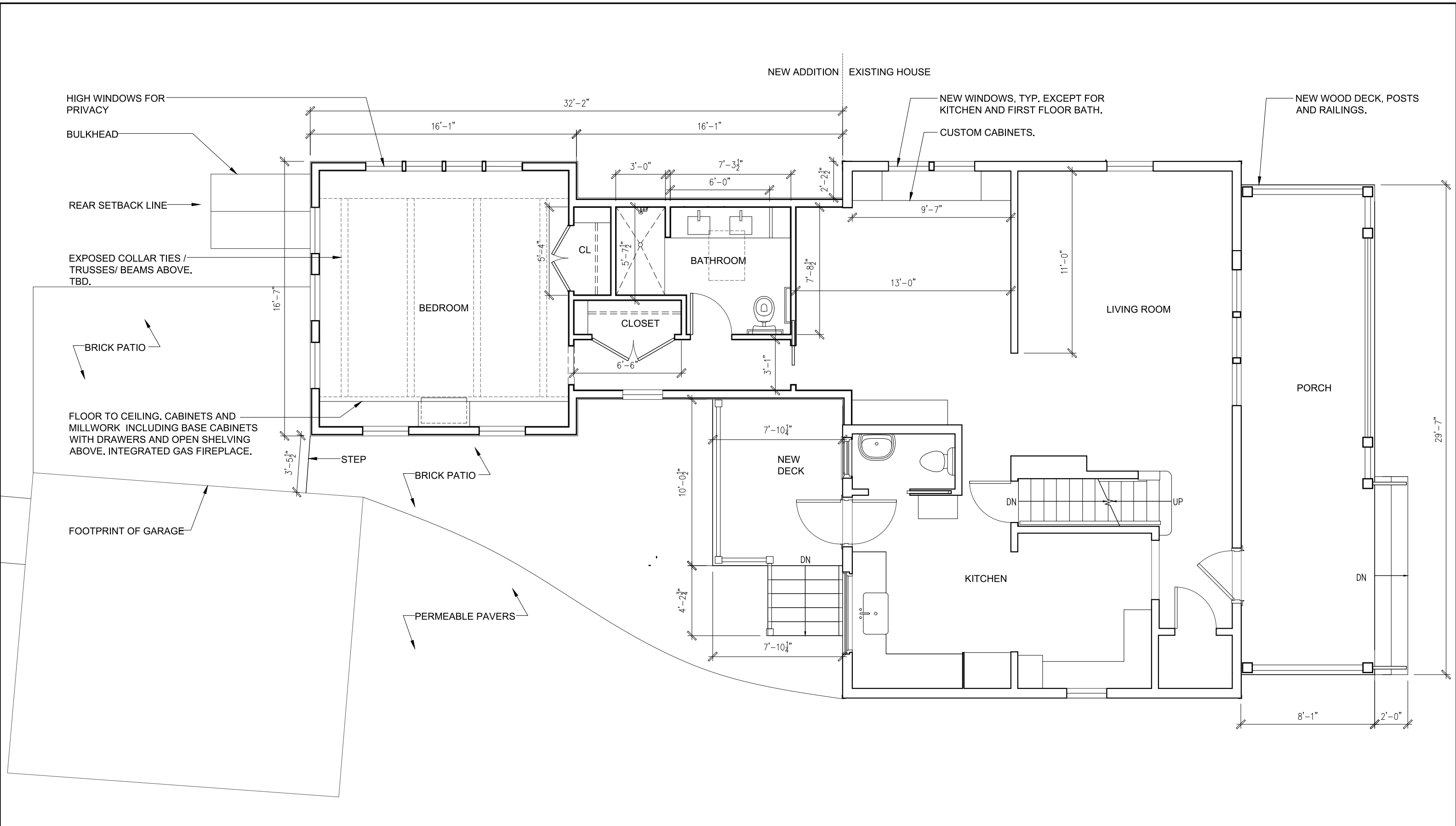


JANUARY 20, 2026
DATE



750 Central Ave, Ste N, Dover, NH 03820 | (603) 953-3164 | www.northamsurvey.com







EAST ELEVATION



WEST ELEVATION



NORTH ELEVATION



SOUTH ELEVATION

GORDON
DESIGN-BUILD
63 CABOT STREET
PORTSMOUTH, NH 03801
(603) 512-1959

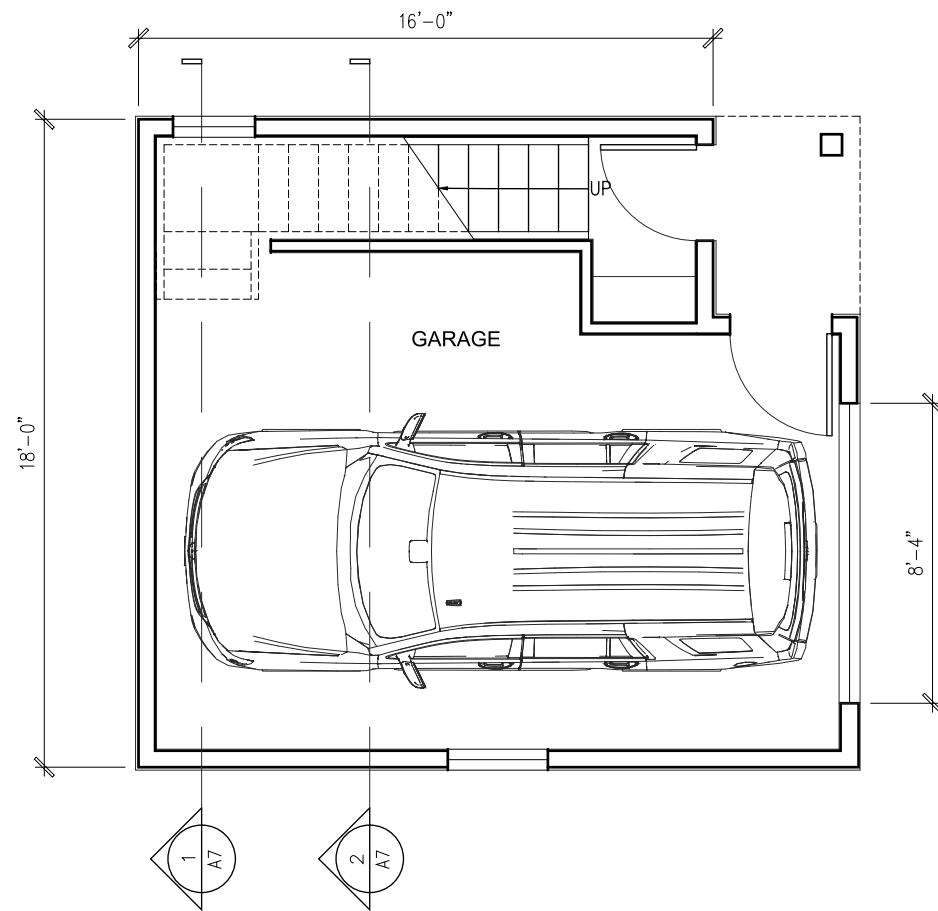
WETHERBEE
ARCHITECTURE
625 GOODWIN ROAD
ELIOT, MAINE 03903
401.308.3940

OWNERS:
JOHN AND JANICE CARPENTER

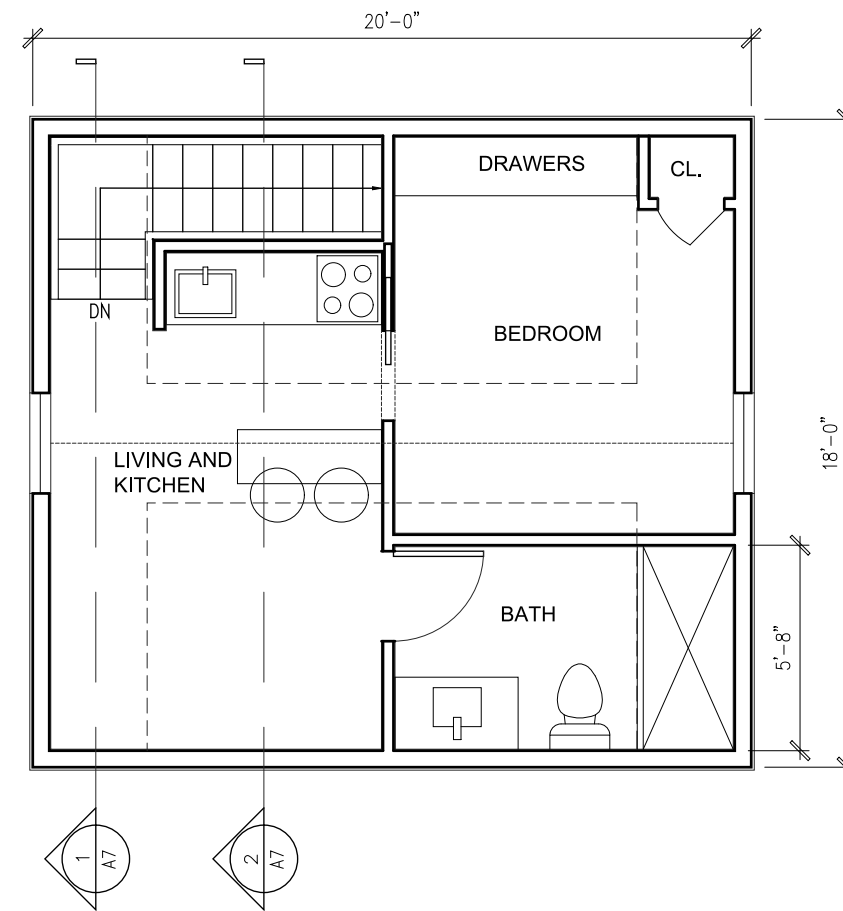
SCHEMATIC DESIGN
12.07.2025
3/16" = 1'-0"
© COPYRIGHT 2025 WETHERBEE ARCHITECTURE, PC

CARPENTER RESIDENCE
614 BROAD STREET
PORTSMOUTH, NH 03801
PROPOSED ELEVATIONS

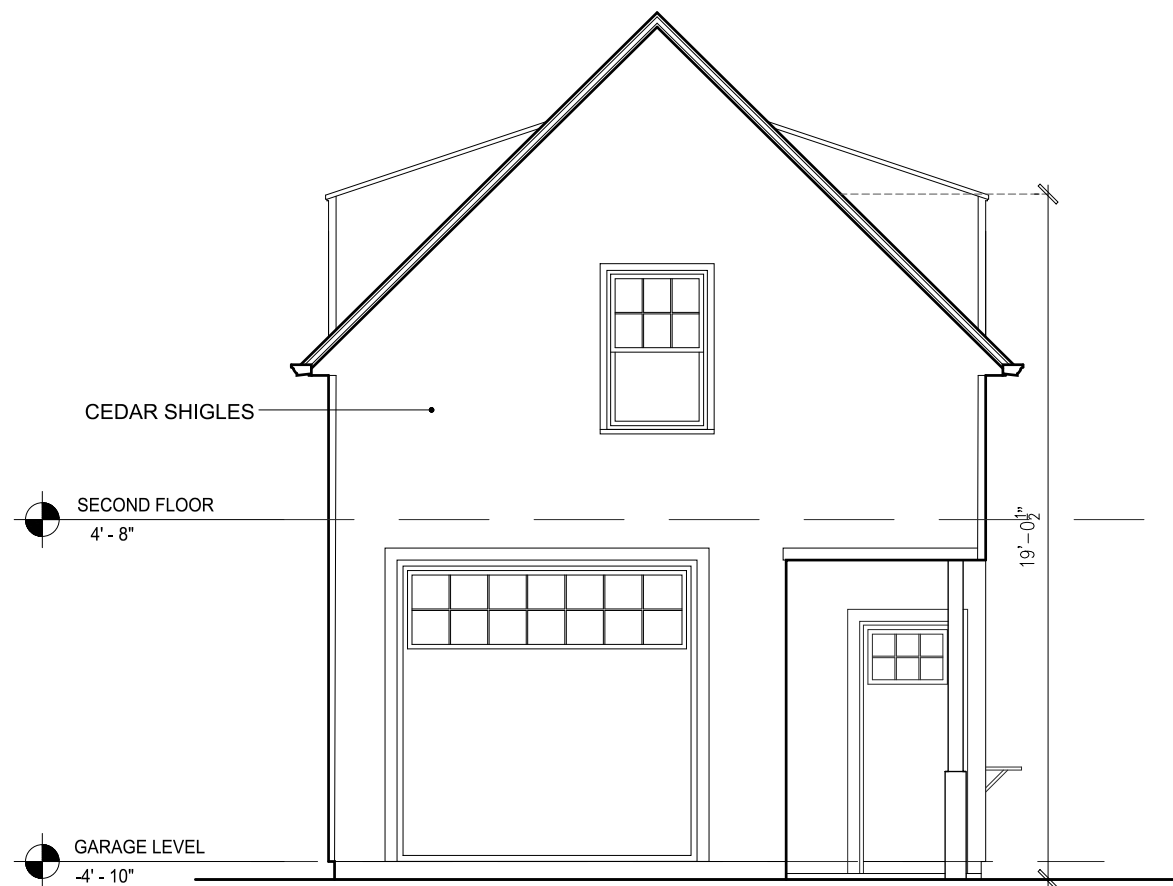
A4
5 OF 14



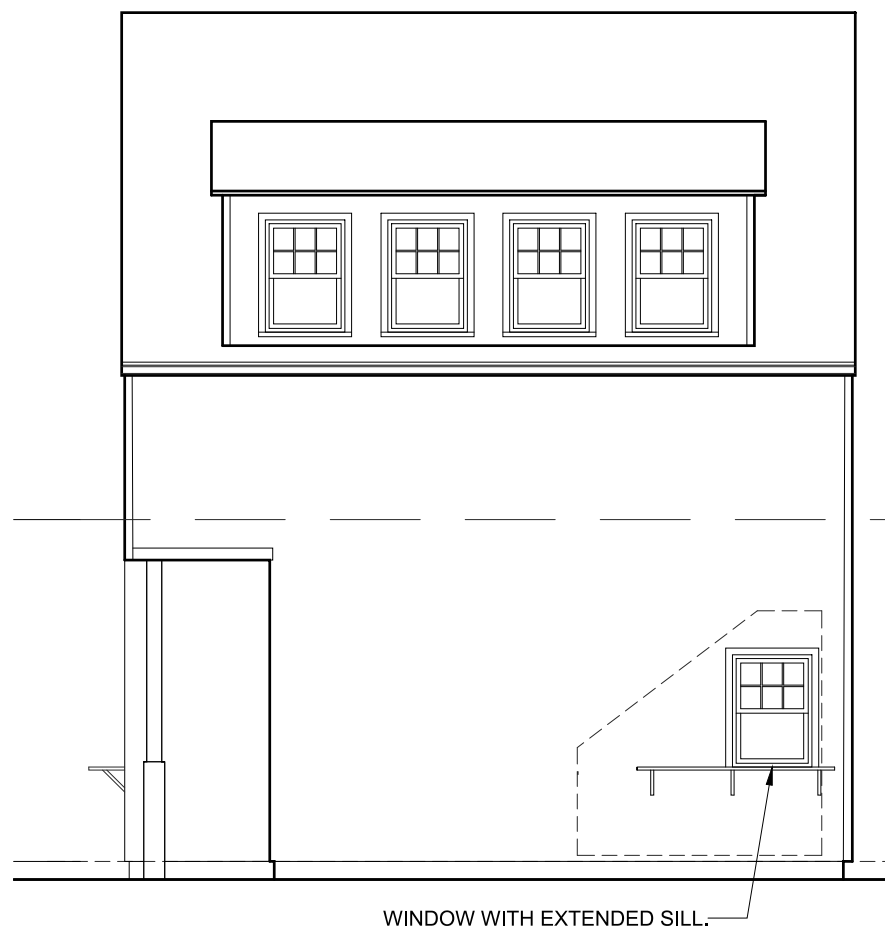
FIRST FLOOR



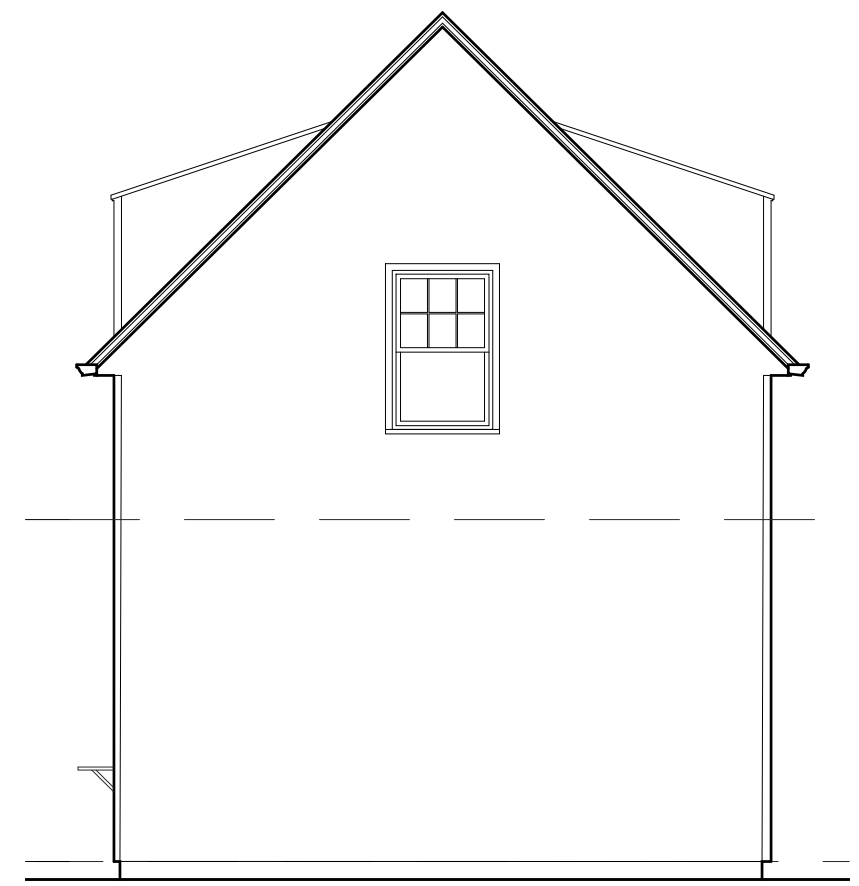
SECOND FLOOR



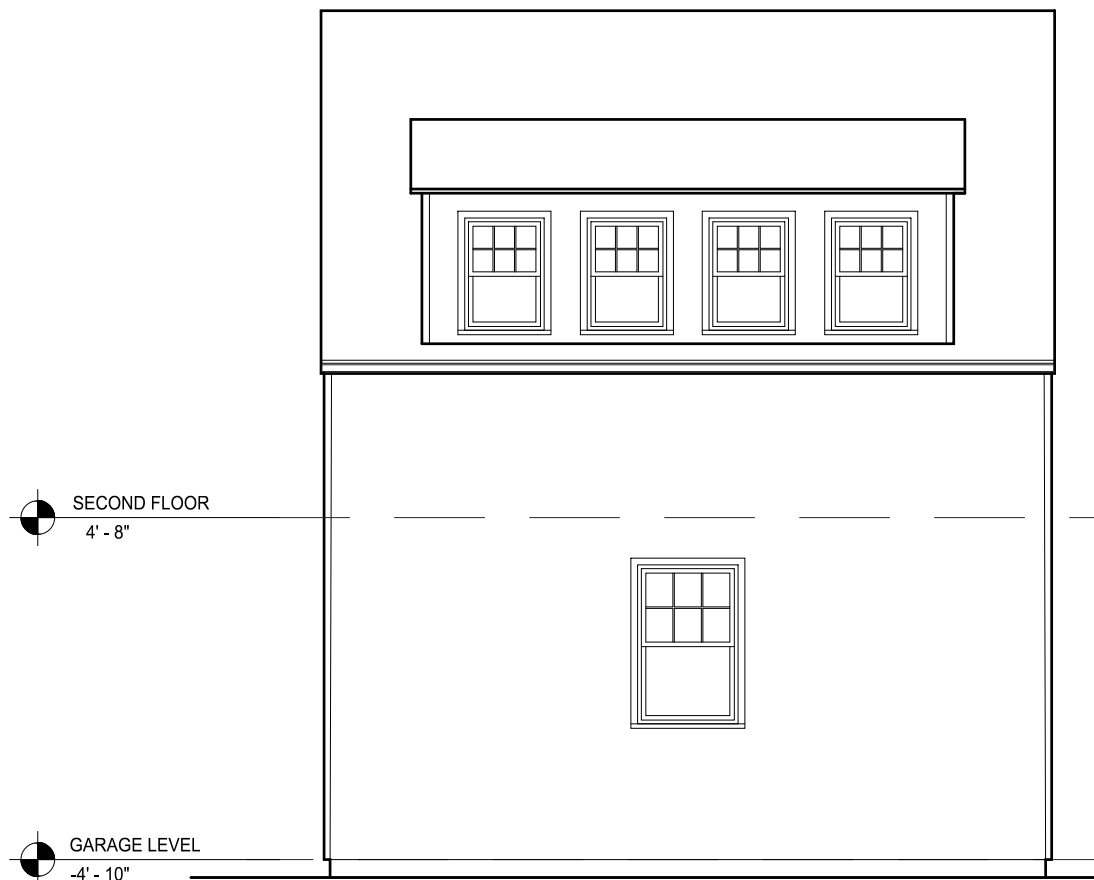
EAST ELEVATION



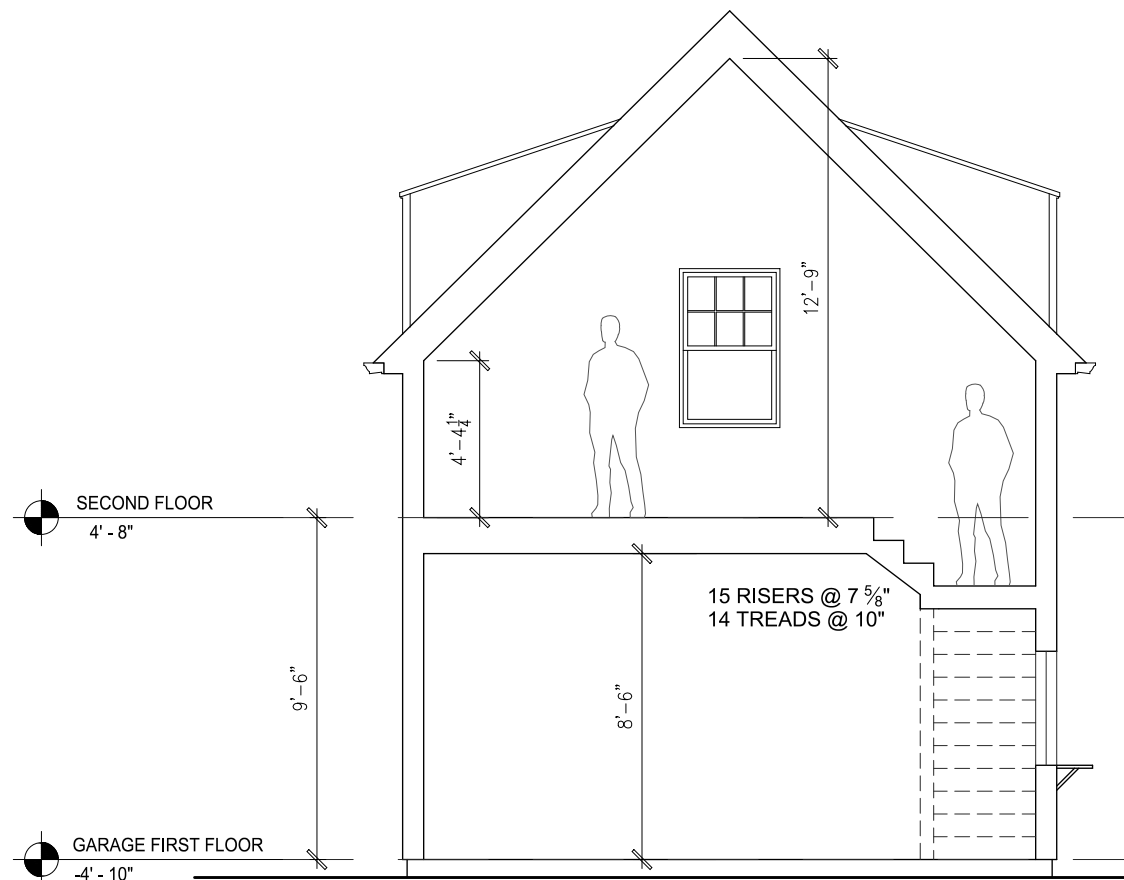
NORTH ELEVATION



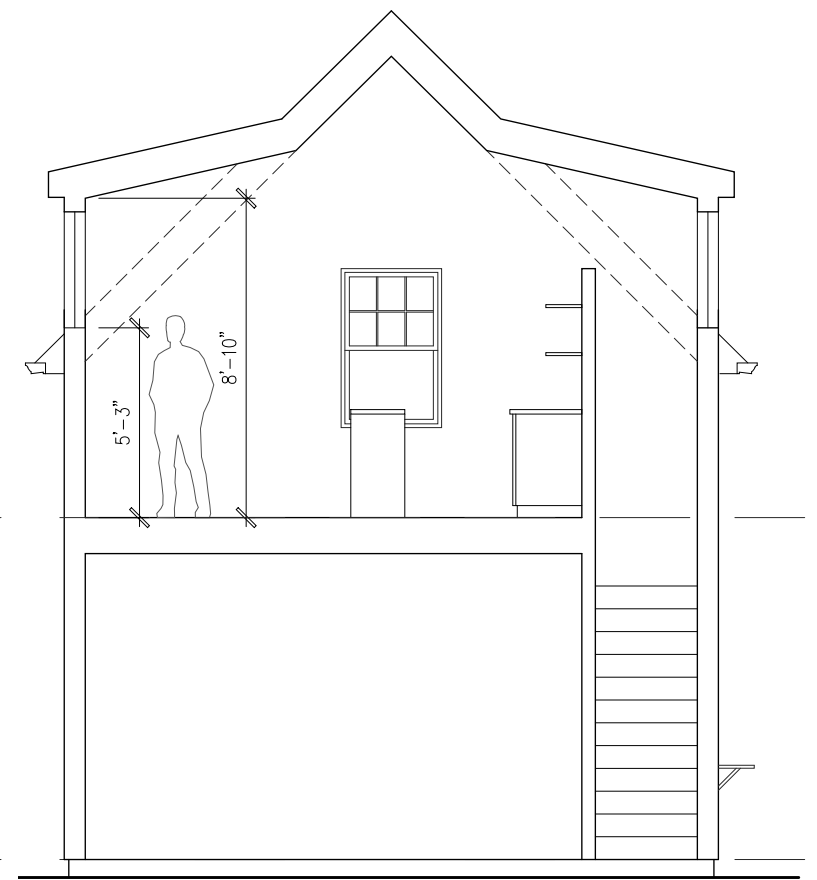
WEST ELEVATION



SOUTH ELEVATION



SECTION 1



SECTION 2

GORDON
DESIGN-BUILD
63 CABOT STREET
PORTSMOUTH, NH 03801
(603) 512-1959

WETHERBEE
ARCHITECTURE
625 GOODWIN ROAD
ELIOT, MAINE 03903
401.308.3940

OWNERS:
JOHN AND JANICE CARPENTER

SCHEMATIC DESIGN
12.07.2025
3/16" = 1'-0"
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WETHERBEE ARCHITECTURE, PC

CARPENTER RESIDENCE
614 BROAD STREET
PORTSMOUTH, NH 03801
PROPOSED ADU-GARAGE ELEVATIONS AND SECTIONS

A7
8 OF 14




GORDON
 DESIGN-BUILD
 63 CABOT STREET
 PORTSMOUTH, NH 03801
 (603) 512-1959

WETHERBEE
 ARCHITECTURE
 625 GOODWIN ROAD
 ELIOT, MAINE 03903
 401.308.3940

OWNERS:
 JOHN AND JANICE CARPENTER

SCHEMATIC DESIGN

12.07.2025

3/16" = 1'-0"

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CARPENTER RESIDENCE

614 BROAD STREET
 PORTSMOUTH, NH 03801

EXTERIOR RENDERINGS

A8

9 OF 14



GORDON
DESIGN-BUILD
63 CABOT STREET
PORTSMOUTH, NH 03801
(603) 512-1959

WETHERBEE
ARCHITECTURE
625 GOODWIN ROAD
ELIOT, MAINE 03903
401.308.3940

OWNERS:
JOHN AND JANICE CARPENTER

SCHEMATIC DESIGN

12.07.2025

3/16" = 1'-0"

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CARPENTER RESIDENCE

614 BROAD STREET
PORTSMOUTH, NH 03801

EXTERIOR RENDERINGS

A9

10 OF 14




GORDON
 DESIGN-BUILD
 63 CABOT STREET
 PORTSMOUTH, NH 03801
 (603) 512-1959

WETHERBEE
 ARCHITECTURE
 625 GOODWIN ROAD
 ELIOT, MAINE 03903
 401.308.3940

OWNERS:
 JOHN AND JANICE CARPENTER

SCHEMATIC DESIGN
12.07.2025
3/16" = 1'-0"
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CARPENTER RESIDENCE
 614 BROAD STREET
 PORTSMOUTH, NH 03801
 EXTERIOR RENDERINGS

A10
 11 OF 14




GORDON
 DESIGN-BUILD
 63 CABOT STREET
 PORTSMOUTH, NH 03801
 (603) 512-1959

WETHERBEE
 ARCHITECTURE
 625 GOODWIN ROAD
 ELIOT, MIANE 03903
 401.308.3940

OWNERS:
 JOHN AND JANICE CARPENTER

SCHMATIC DESIGN PROGRESS

12.07.2025

3/16" = 1'-0"

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 WETHERBEE ARCHITECTURE, PC

CARPENTER RESIDENCE

614 BROAD STREET
 PORTSMOUTH, NH 03801

EXTERIOR RENDERINGS

A11

12 OF 14



GORDON
DESIGN-BUILD
63 CABOT STREET
PORTSMOUTH, NH 03801
(603) 512-1959

WETHERBEE
ARCHITECTURE
625 GOODWIN ROAD
EKIOT, MAINE 03903
401.308.3940

OWNERS:
JOHN AND JANICE CARPENTER

SCHMATIC DESIGN

12.07.2025

3/16" = 1'-0"

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WETHERBEE ARCHITECTURE, PC

CARPENTER RESIDENCE

614 BROAD STREET
PORTSMOUTH, NH 03801

EXTERIOR RENDERINGS

A12

13 OF 14




GORDON
 DESIGN-BUILD
 63 CABOT STREET
 PORTSMOUTH, NH 03801
 (603) 512-1959

WETHERBEE
 ARCHITECTURE
 625 GOODWIN ROAD
 ELIOT, MAINE 03903
 401.308.3940

OWNERS:
 JOHN AND JANICE CARPENTER

SCHEMATIC DESIGN

12.07.2025

3/16" = 1'-0"

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CARPENTER RESIDENCE

614 BROAD STREET
 PORTSMOUTH, NH 03801

EXTERIOR RENDERINGS

A13

14 OF 14



Street View of Property



Front View of Property



Front of Property toward 600 Broad Street



Front of Property Toward 628 Broad Street



Left Side Toward Existing Garage



Existing Garage & Rear Deck



Rear Yard



Rear Yard From Driveway

III. NEW BUSINESS

A. The request of **Anita Koury and Theodore Constantino (Owners)**, for property located at **302 Miller Avenue** whereas relief is needed to construct an addition to the existing garage, which requires the following: 1) Variance from Section 10.520 to allow a) 30% building coverage where 25% is maximum allowed; and 2) Variance from Section 10.573.20 to allow a 4 foot rear yard where 10 feet are required. Said property is located on Assessor Map 130 Lot 11 and lies within the General Residence A (GRA) District. (LU-26-32)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Residential	construct addition to existing garage	Mostly Residential
<u>Lot area (sq. ft.):</u>	4,917	4,917	7,500 min.
<u>Lot area per dwelling unit (sq. ft.)</u>	4,917	4,917	7,500 min
<u>Street Frontage (ft.):</u>	50	50	100 min.
<u>Lot depth (ft.):</u>	100	100	70 min.
<u>Front Yard (ft.):</u>	Garage: >15	Garage: >15	15 min.
<u>Left Yard (ft.):</u>	Garage: 2	Garage: 2	10 min.
<u>Right Yard (ft.):</u>	Garage: >10	Garage: >10	10 min.
<u>Rear Yard (ft.):</u>	Garage: 4	Garage: 4	10 (10.573.20) min.
<u>Height (ft.):</u>	10	10	35 max.
<u>Building Coverage (%):</u>	29.5	30	25 max.
<u>Open Space (%):</u>	>30	>30	30 min.
<u>Estimated Age of Structure:</u>	1916	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Building Permit

Previous Board of Adjustment Actions

No previous history found

Planning Department Comments

The applicant is requesting relief from rear yard and building coverage requirements to build a garden shed addition to the existing garage. The addition will impact 140 square feet and has a 3ft by 8 ft portion that is roofed but not enclosed.

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 Theodore Costantino and Anita Koury. **REVISED 4/9/26**
302 Miller Avenue, Portsmouth, NH 03801
Map Lot 130-0011-0000

1. Property

The Homeowners, Theodore Costantino and Anita Koury, have owned the property located at 302 Miller Avenue since April 2023. It is a single-family dwelling placed at the front of the property and is conforming regarding front, right, left and rear setbacks. The homeowners are not proposing any changes to it.

The Homeowners propose to add a small addition (a garden shed) to the north side of the existing garage. The garage measures 12'8"x18'3" (225 sq. ft.). The garage is 12'6" tall to the top of its roof. The garage will not be altered.

The proposed shed will have a total covered area of 140 sq. ft. It will have an enclosed dimension of 8' x 14'6" (116 sq. ft.) with an open area of 8' x 3' (24 sq. ft.) for storage of the trash and recycling bins. The open area will be covered by the proposed shed roof. The shed roof will conform to the existing garage setback of $\pm 4'$. The shed will be 8' tall plus a 2' roof.

The existing garage is non-conforming in its left and rear setbacks. The left setback of the garage is $\pm 2'$, similar to the non-conforming garage on the adjacent property at 312 Miller Avenue. The rear setback of the garage is $\pm 4'$, similar to the rear setback of a garage on the adjacent property at 290 Miller Avenue. The setback measurements are approximate because none of the structures on the property, nor the adjacent properties, are square with the lot lines.

The lot area of 302 Miller (tax map 130, lot 11) measures 4917 sq. ft.

The dwelling footprint is 1158 sq. ft.

The existing garage footprint is 225 sq. ft.

The enclosed area of the proposed shed will be 116 sq. ft.

The open area of the proposed shed, covered by the shed roof, will be 24 sq. ft.

The covered area of the proposed shed will be 140 sq. ft.

The garage rear setback is $\pm 4'$

The shed roof setback will be $\pm 4'$

2. Criteria

The Homeowners believe their application meets the standard required for the Board to request the Variance.

a. Granting the requested Variance will be conducive to the spirit and intent of the Ordinance and will not be contrary to public interest. There will be no negative effects to the neighborhood, nor public health, safety, or welfare. The proposed addition will match the existing garage structure in materials, finish and design, and will match the style of the dwelling and the neighborhood. It will be largely invisible to the adjacent properties.

b. Substantial Justice would be done by granting the Variance. Upkeep of the property requires numerous garden and maintenance tools, but the existing garage is used for storage of the Homeowners' car and has limited capacity for additional items. At present, some tools are stored outside next to the garage, while others are stored seasonally in the dwelling basement and must be hauled up and down the stairs as needed. We believe the hardship on the Homeowners exceeds any benefit to the public in denying the Variance. It is substantially just to allow a property owner the reasonable use of his or her property.

c. The values of surrounding properties will not be negatively impacted by granting the Variance. The neighboring properties exhibit similar structural additions to their garages and outbuildings, and the proposed addition is similar in spirit and smaller in size than others in the neighborhood. If granted, the Variance would be an improvement upon the home and property value. This will inevitably increase the value of surrounding properties.

d. The use is a reasonable use. The proposed addition is clearly subservient to the existing garage and will only be used for the same purposes as the garage of storage and protection of household equipment from the elements.

e. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. As noted above, the existing garage only has room for the Homeowners' car and we are currently storing some maintenance equipment for the yard outside the garage or in the dwelling basement. The proposed addition will improve the aesthetics of the property and protect the equipment from damage.

The small size of the property does not offer any alternative location for a garden shed. The proposed addition has a minimal footprint and is least intrusive on the neighborhood's character and aesthetics.

In addition, the rear setback for the proposed addition will match the setback of the existing structure. That rear setback is actually slightly greater than the garage on the abutting property, which has a setback of 2 feet. The character of the neighborhood will not be degraded by the proposed addition.

3. Conclusion

For the reasons stated above, the Homeowners respectfully ask the Board to grant the Variance as requested.

With all best regards,

Theodore Costantino and Anita Koury
Homeowners



Existing Garage, east elevation



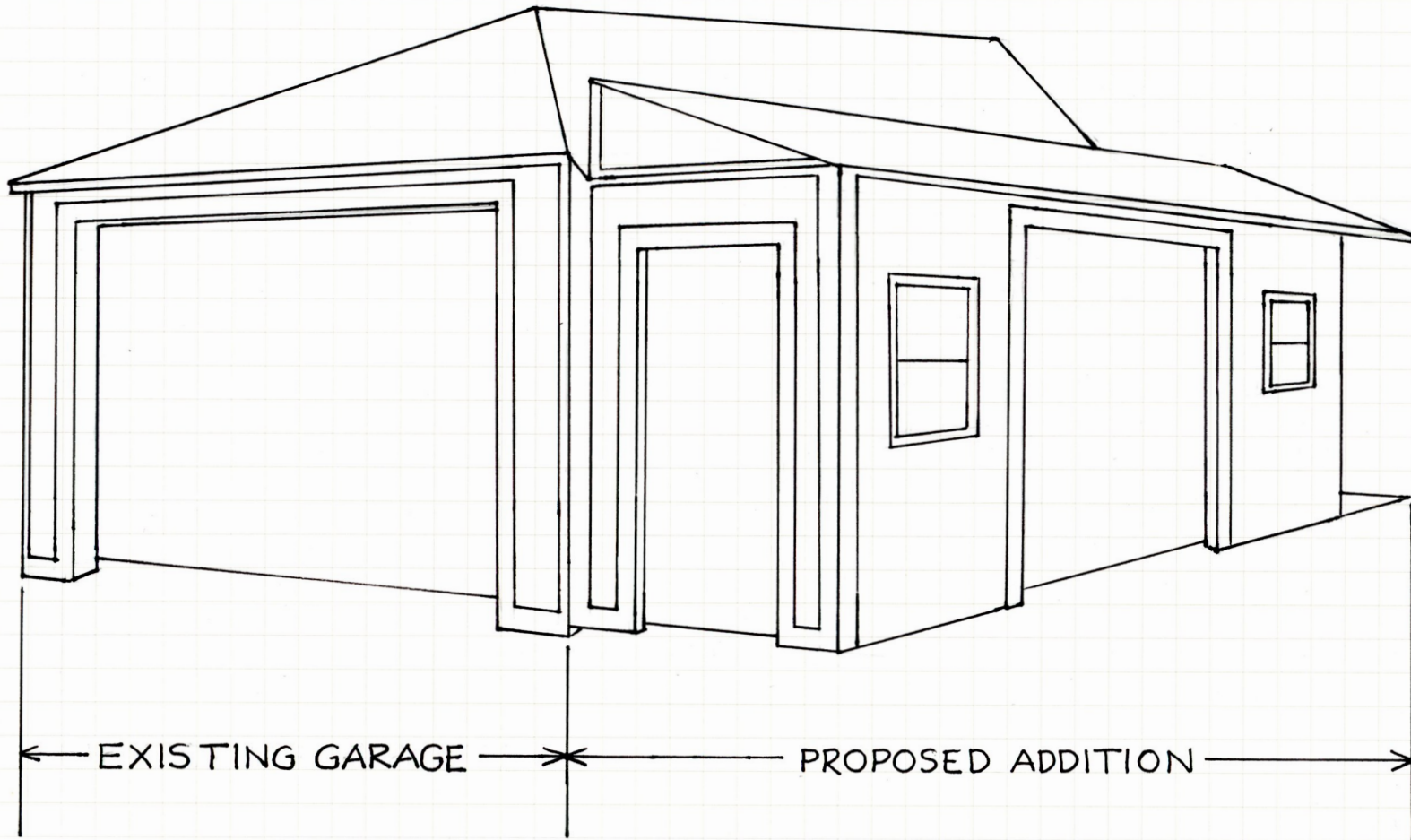
Existing Garage, north elevation



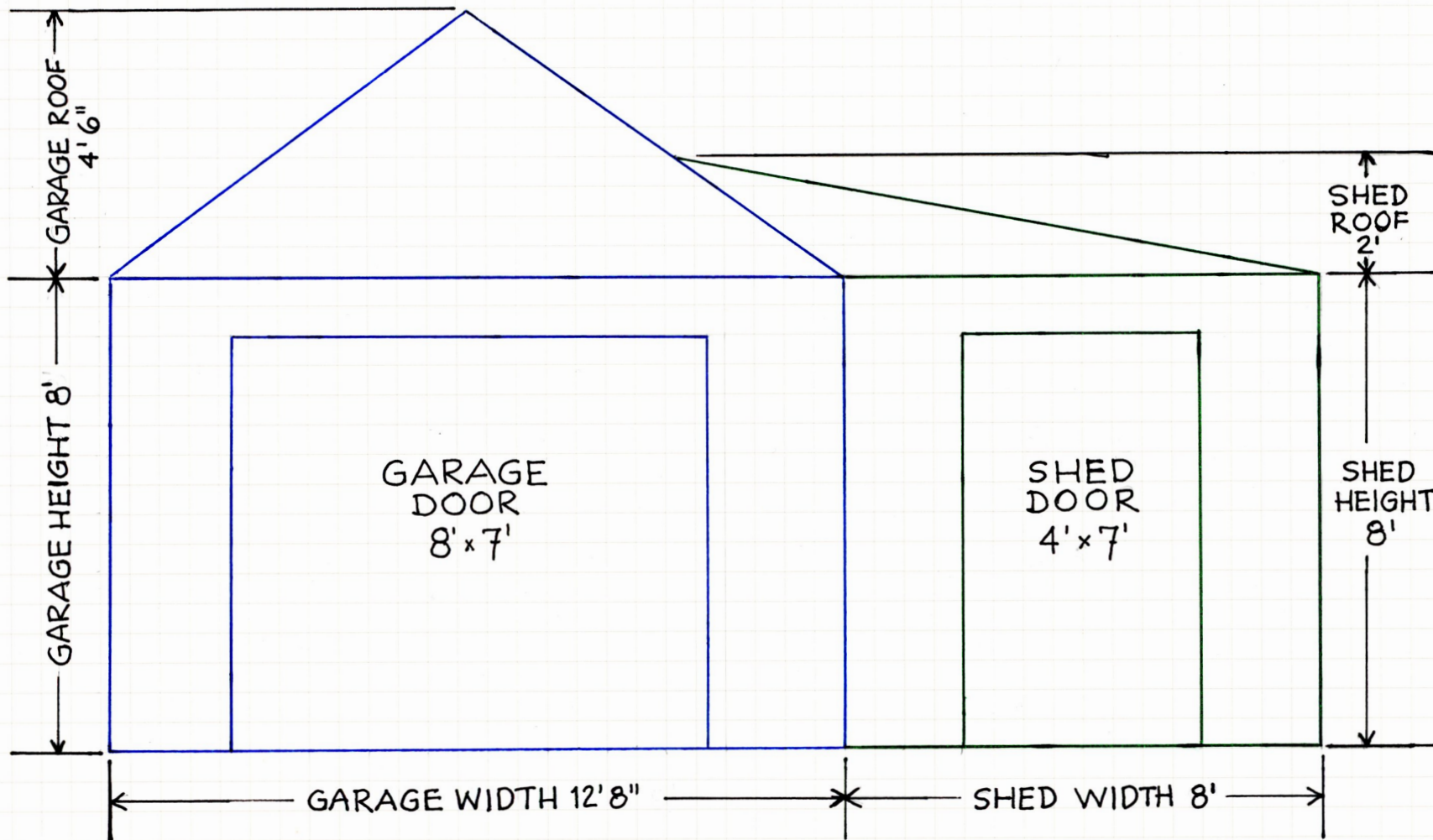
Existing Garage, south elevation



Existing Garage, west side

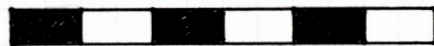


EAST ELEVATION

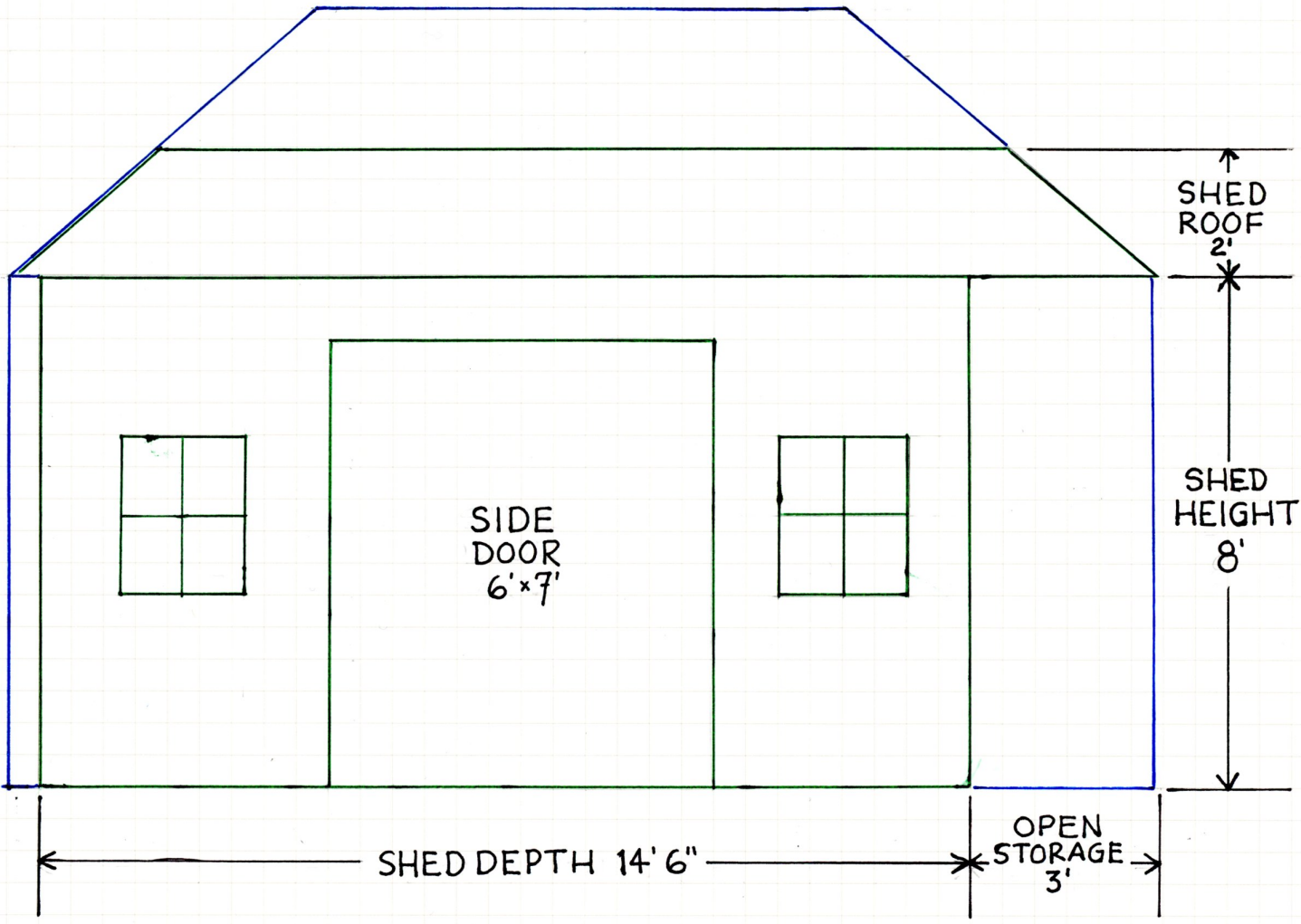


KEY: **EXISTING GARAGE**

PROPOSED ADDITION


SCALE:  = 6 FT.
3/8" = 1'

NORTH ELEVATION



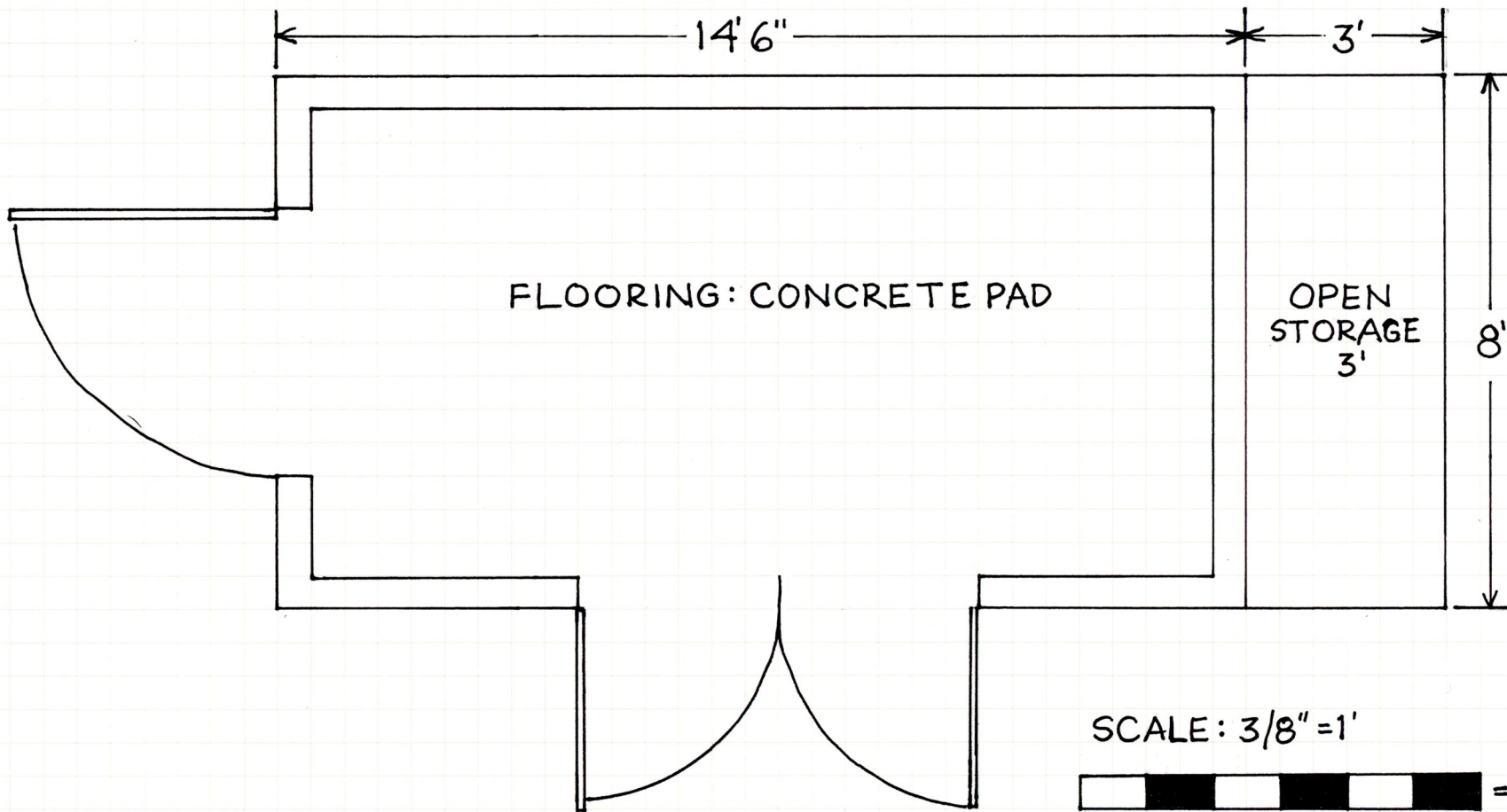
KEY: EXISTING GARAGE

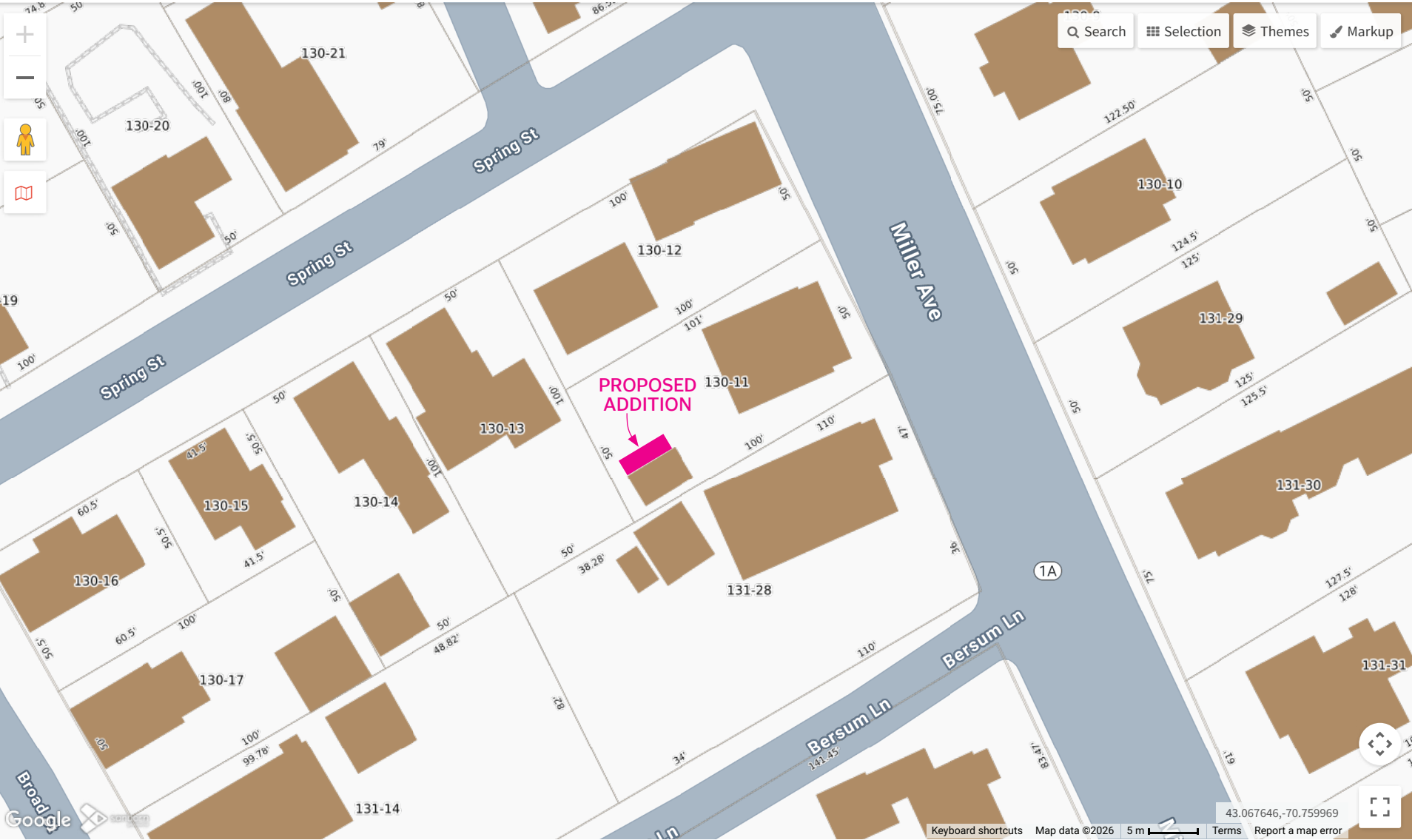
PROPOSED ADDITION

SCALE:  = 6 FT.
3/8" = 1'

PROPOSED ADDITION

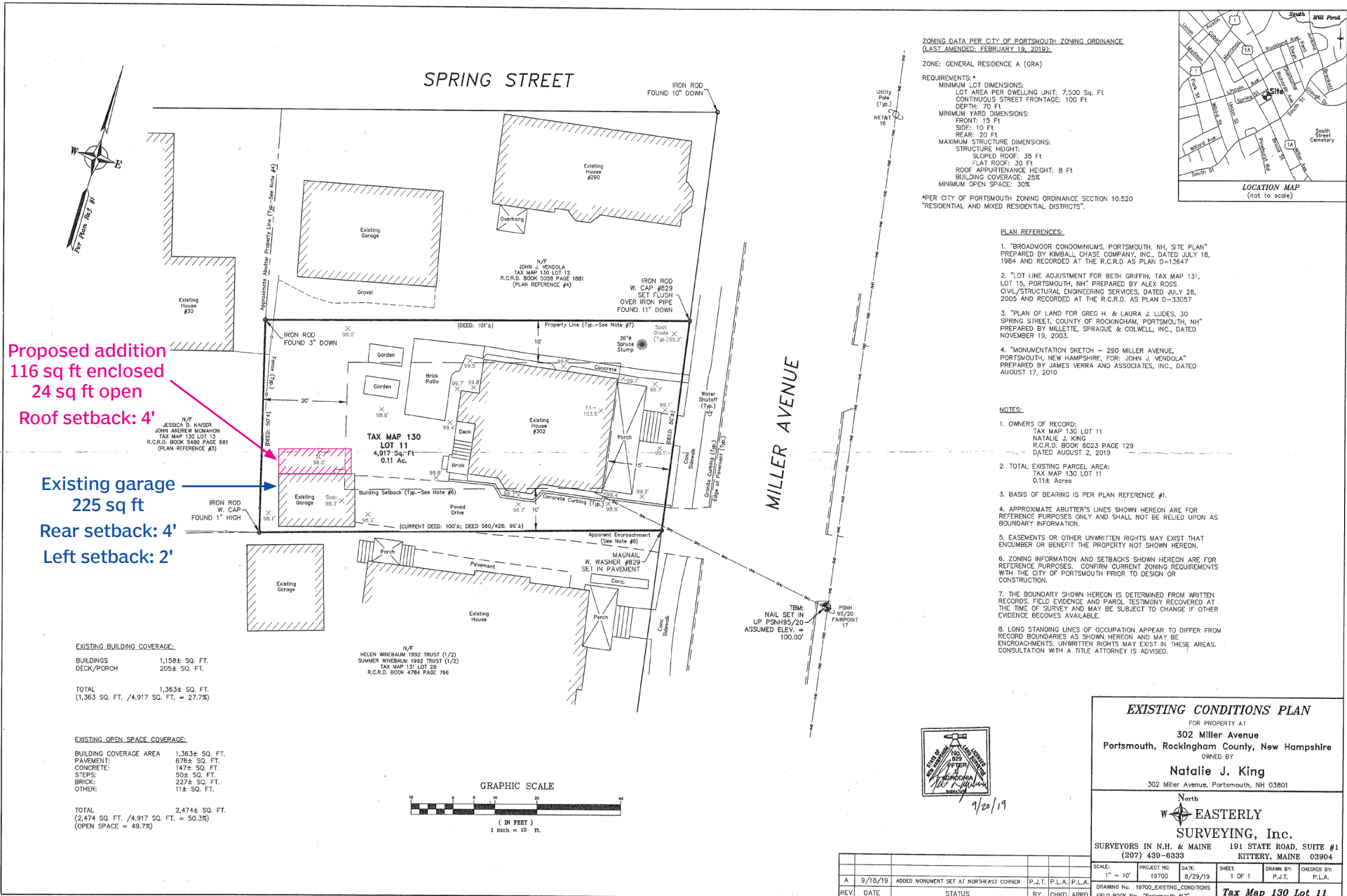
FLOOR LAYOUT





PROPOSED ADDITION

Search Selection Themes Markup



Proposed addition
116 sq ft enclosed
24 sq ft open
Roof setback: 4'

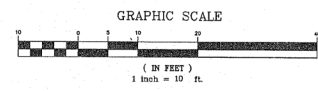
Existing garage
225 sq ft
Rear setback: 4'
Left setback: 2'

EXISTING BUILDING COVERAGE:

BUILDINGS	1,158± SQ. FT.
DECK/PORCH	205± SQ. FT.
TOTAL	1,363± SQ. FT.
	(1,363 SQ. FT. / 4,917 SQ. FT. = 27.7%)

EXISTING OPEN SPACE COVERAGE:

BUILDING COVERAGE AREA	1,363± SQ. FT.
PAVEMENT:	676± SQ. FT.
CONCRETE:	147± SQ. FT.
STEPS:	50± SQ. FT.
BRICK:	227± SQ. FT.
OTHER:	11± SQ. FT.
TOTAL	2,474± SQ. FT.
	(2,474 SQ. FT. / 4,917 SQ. FT. = 50.3%)
	(OPEN SPACE = 49.7%)



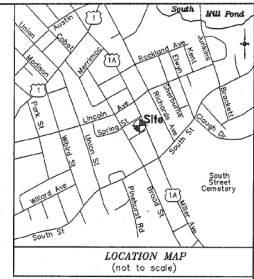
ZONING DATA PER CITY OF PORTSMOUTH ZONING ORDINANCE (LAST AMENDED: FEBRUARY 19, 2019):

ZONE: GENERAL RESIDENCE A (GRA)

REQUIREMENTS:

- MINIMUM LOT DIMENSIONS:
 - LOT AREA PER DWELLING UNIT: 7,500 Sq. Ft.
 - CONTINUOUS STREET FRONTAGE: 100 FT.
 - DEPTH: 70 FT.
- MINIMUM YARD DIMENSIONS:
 - FRONT: 15 FT.
 - SIDE: 10 FT.
 - REAR: 20 FT.
- MAXIMUM STRUCTURE DIMENSIONS:
 - STRUCTURE HEIGHT:
 - SLOPED ROOF: 35 FT.
 - FLAT ROOF: 30 FT.
 - ROOF APPURTENANCE HEIGHT: 8 FT.
 - BUILDING COVERAGE: 25%
 - MINIMUM OPEN SPACE: 30%

*PER CITY OF PORTSMOUTH ZONING ORDINANCE SECTION 10.520 "RESIDENTIAL AND MIXED RESIDENTIAL DISTRICTS".



- PLAN REFERENCES:
- "BROADMOOR CONDOMINIUMS, PORTSMOUTH, NH, SITE PLAN" PREPARED BY KIMBALL CHASE COMPANY, INC., DATED JULY 18, 1984 AND RECORDED AT THE R.C.R.D. AS PLAN D-13447
 - "LOT LINE ADJUSTMENT FOR BETH GRIFFIN, TAX MAP 131, LOT 15, PORTSMOUTH, NH" PREPARED BY ALEX ROSS CIVIL/STRUCTURAL ENGINEERING SERVICES, DATED JULY 28, 2005 AND RECORDED AT THE R.C.R.D. AS PLAN D-33057
 - "PLAN OF LAND FOR GREG H. & LAURA J. LUIDES, 30 SPRING STREET, COUNTY OF ROCKINGHAM, PORTSMOUTH, NH" PREPARED BY MILLETTE, SPRAGUE & COLWELL, INC., DATED NOVEMBER 19, 2003.
 - "MONUMENTATION SKETCH - 280 MILLER AVENUE, PORTSMOUTH, NEW HAMPSHIRE, FOR: JOHN J. VENOLLA" PREPARED BY JAMES VERRA AND ASSOCIATES, INC., DATED AUGUST 17, 2010

- NOTES:
- OWNERS OF RECORD:
 - TAX MAP 130 LOT 11 NATALIE J. KING R.C.R.D. BOOK 6023 PAGE 129 DATED AUGUST 2, 2019
 - TOTAL EXISTING PARCEL AREA:
 - TAX MAP 130 LOT 11 0.11± Acres
 - BASIS OF BEARING IS PER PLAN REFERENCE #1.
 - APPROXIMATE ARBITER'S LINES SHOWN HEREON ARE FOR REFERENCE PURPOSES ONLY AND SHALL NOT BE RELIED UPON AS BOUNDARY INFORMATION.
 - EASEMENTS OR OTHER UNWRITTEN RIGHTS MAY EXIST THAT ENCUMBER OR BENEFIT THE PROPERTY NOT SHOWN HEREON.
 - ZONING INFORMATION AND SETBACKS SHOWN HEREON ARE FOR REFERENCE PURPOSES. CONFIRM CURRENT ZONING REQUIREMENTS WITH THE CITY OF PORTSMOUTH PRIOR TO DESIGN OR CONSTRUCTION.
 - THE BOUNDARY SHOWN HEREON IS DETERMINED FROM WRITTEN RECORDS, FIELD EVIDENCE AND PAROL TESTIMONY RECOVERED AT THE TIME OF SURVEY AND MAY BE SUBJECT TO CHANGE IF OTHER EVIDENCE BECOMES AVAILABLE.
 - LONG STANDING LINES OF OCCUPATION APPEAR TO DIFFER FROM RECORD BOUNDARIES AS SHOWN HEREON AND MAY BE ENCROACHMENTS. UNWRITTEN RIGHTS MAY EXIST IN THESE AREAS. CONSULTATION WITH A TITLE ATTORNEY IS ADVISED.



7/20/19

EXISTING CONDITIONS PLAN
FOR PROPERTY AT
302 Miller Avenue
Portsmouth, Rockingham County, New Hampshire
OWNED BY
Natalie J. King
302 Miller Avenue, Portsmouth, NH 03801

North
W EASTERLY
SURVEYING, Inc.
SURVEYORS IN N.H. & MAINE 191 STATE ROAD, SUITE #1
(207) 439-8333 KITTERY, MAINE 03904

SCALE:	PROJECT NO.:	DATE:	SHEET:	DRAWN BY:	CHECKED BY:
1" = 10'	19700	8/29/19	1 OF 1	P.J.T.	P.L.A.

DRAWING No: 19700-EXISTING_CONDITIONS
FIELD BOOK No: "Portsmouth #17"

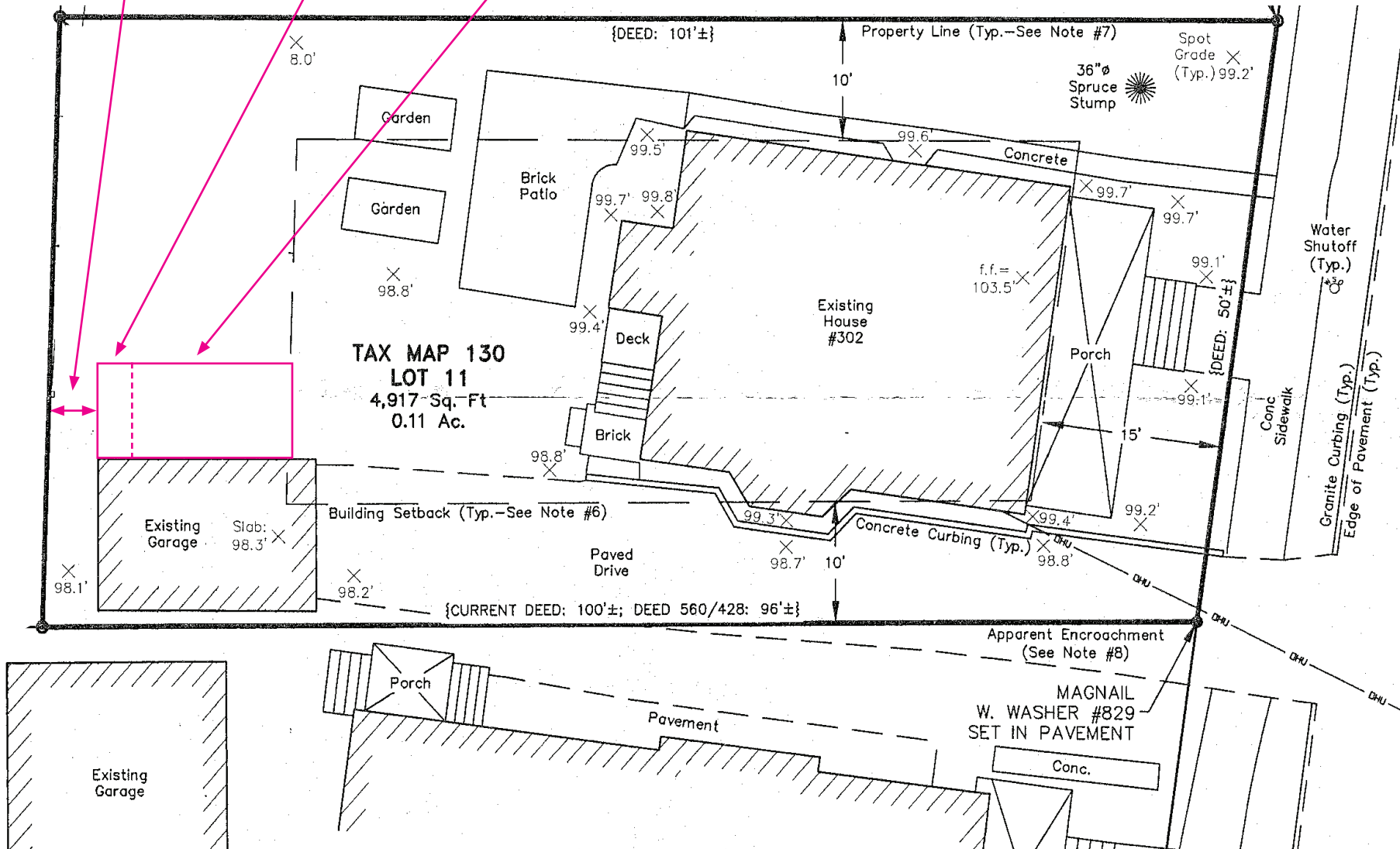
Tax Map 130 Lot 11

See next page for detail

Setback
4'

Roof
overhang

Enclosed
shed



III. NEW BUSINESS

B. The request of **Road to the West, LLC (Owner)**, for property located at **140 West Road** whereas relief is needed to create an outdoor dining area, which requires the following: 1) Variance from Section 10.440 Use #19.50 to allow an outdoor dining or drinking area, as accessory use where it is not allowed. Said property is located on Assessor Map 252 Lot 2-13 and lies within the Industrial (I) District. (LU-26-34)

Existing & Proposed Conditions

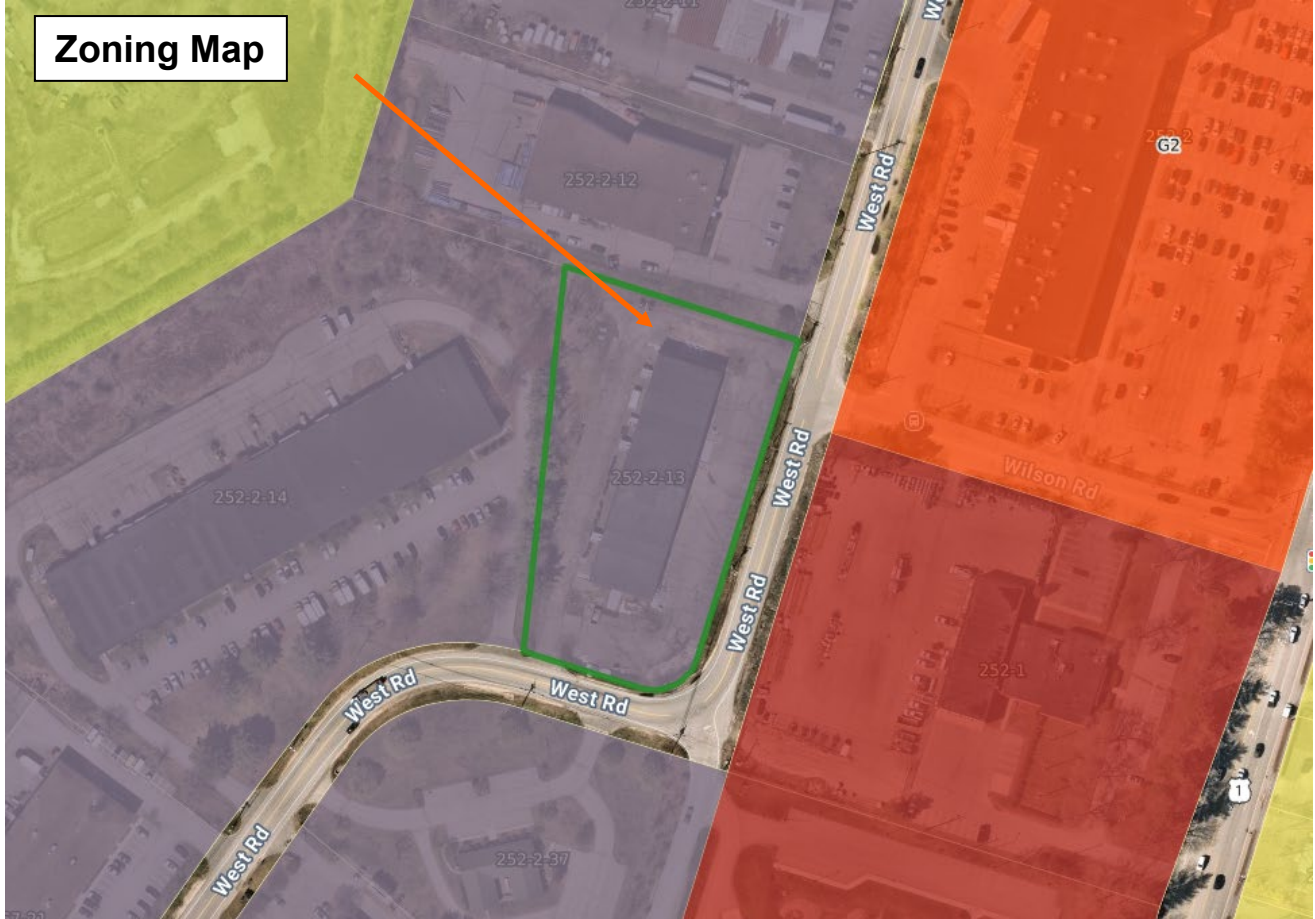
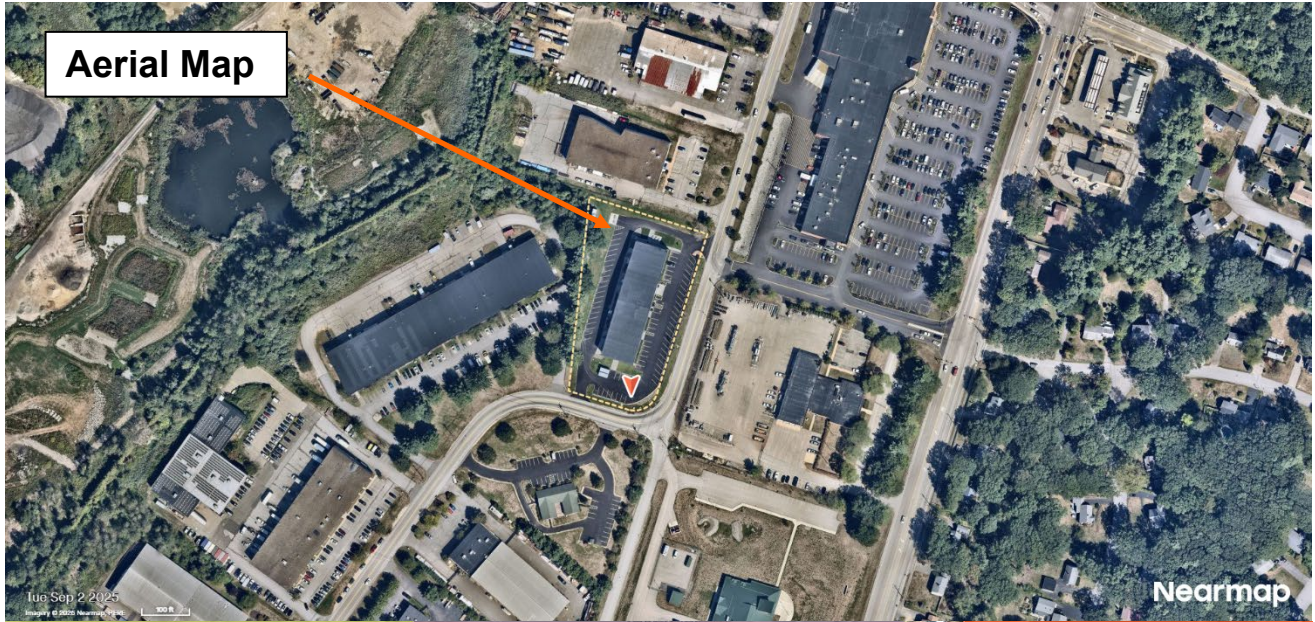
	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Commercial	*Create Outdoor Dining Space	Commercial and Industrial Spaces
<u>Estimated Age of Structure:</u>	1989	Variance request(s) shown in red.	

*Outdoor Dining is not an allowed use in the Industrial District

Other Permits/Approvals Required

- Building Permit
- Site Plan – To Be Determined

Neighborhood Context



Previous Board of Adjustment Actions

October 22, 2013 – The Board **granted** the request to convert an existing industrial building to a health club use which requires the following: A Special Exception under Section 10.440, Use #4.42 to allow a health club in a district where this use is allowed by Special Exception with the following condition:

1) The parking spaces on the property will be laid out to meet the dimensional requirements outlined in Section 10.1114 of the Zoning Ordinance.

November 19, 2013 – The Board **granted** the request for parking for a health club which requires the following: 1) A Variance from Section 10.1112.30 to allow 103 parking spaces where 72 parking spaces exist and 145 parking spaces are required.

May 24, 2022 – The Board **granted** the request to convert an existing structure into a private indoor recreation facility which requires the following: 1) A Variance from Section 10.440 Use #4.30 to allow an indoor recreation use where the use is not permitted; 2) a Variance from Section 10.1113.41 to allow parking to be located 2 feet from the front lot line where 50 feet is required.

Planning Department Comments

The applicant requests to convert outdoor space to outdoor dining facilities. Upon review, staff have the following concerns:

- The site plan and narrative do not indicate any fencing or containment of the outdoor dining areas
- Patrons will be walking through a parking lot with alcoholic beverages with no physical barriers between active traffic and parked vehicles
- The site plan shows 8 tables for the 3,676 square foot area, it would be reasonable to assume that this layout will change overtime without review by the Board.

Due to the above concerns staff recommend this proposal be reviewed by the Technical Advisory Committee (TAC) specifically for code compliance and safety. If the Board wishes to see the proposal in its entirety after TAC review, the Board can postpone the hearing until after the applicant has attended a TAC meeting. Or, if the Board determines they have enough information to make a decision, a condition is recommended below in the event of approval.

- 1) Application is to be reviewed by TAC for safety and code compliance.

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.



CELEBRATING 40 YEARS OF SERVICE TO OUR CLIENTS

LIZABETH M. MACDONALD
ROBERT M. DEROSIER
CHRISTOPHER L. BOLDT
DOUGLAS M. MANSFIELD
KATHERINE B. MILLER
CHRISTOPHER T. HILSON
HEIDI J. BARRETT-KITCHEN
ERIC A. MAHER
CHRISTOPHER D. HAWKINS
JOHN K. BOSEN
ELAINA H. SMITH
WILLIAM K. WARREN
JONATHAN D. SEEM
COURTNEY P. VAUGHAN
KATIE A. MOSHER

OF COUNSEL
MOLLY C. FERRARA
SCOTT S. ANDERS

RETIRED
MICHAEL J. DONAHUE
CHARLES F. TUCKER
ROBERT D. CIANDELLA
JOHN J. RATIGAN
DENISE A. POULOS
SHARON CUDDY SOMERS
NICHOLAS R. AESCHLIMAN

HAND DELIVERED

April 10, 2026

Beth Margeson, Chair
Zoning Board of Adjustment
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

RE: Road to the West, LLC
140 West Road, Tax Map 252, Lot 2-13

Dear Chair Margeson and Board Members:

Enclosed please find the updated supporting materials to accompany the information submitted via the City's on-line permitting system requesting variance relief to allow an outdoor food and beverage area.

We respectfully request that this matter be placed on the Board's April 21, 2026, agenda. In the meantime, if you have any questions or require additional information do not hesitate to contact me.

Yours truly,
DONAHUE TUCKER & CIANDELLA, PLLC

John K. Bosen, Esq.
jbosen@dtclawyers.com
Enclosures

cc: Road to the West, LLC

4907-9558-5431, v. 1

DONAHUE, TUCKER & CIANDELLA, PLLC
16 Acadia Lane, P.O. Box 630, Exeter, NH 03833
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253
83 Clinton Street, Concord, NH 03301

Applicant's Narrative

APPLICATION OF ROAD TO THE WEST, LLC

140 West Road, Portsmouth

Map 252, Lot 2-13

APPLICANT'S NARRATIVE

I. THE PROPERTY:

The Applicant, Road to the West, LLC, owns the property at 140 West Road. In May 2022, this Board approved variances needed to convert the existing industrial building into a private club with indoor recreational uses, which are not allowed in the Industrial zone. Site plan approval was granted by the Planning Board in August 2022. The property is now the Black Rock Social Club.

The Black Rock Social Club is a venue for adults to enjoy recreation, immersive simulators, live music, and food. Black Rock also hosts numerous events to raise money and awareness for local charities, aiming to raise a million dollars annually for nonprofit organizations.

As part of the Club's programming, the Applicant intends to use a designated outside area for outdoor food and beverage services during special Club Member and non-profit events. The proposed dining area is 3,689 square feet per the Site Plan attached hereto. Currently, there are two concrete pads on the property that will accommodate picnic tables and other temporary seating for guests to enjoy the outdoors. Currently, there are a total of eight (8) picnic tables already existing and being by employees for outside breaks, etc. These tables are located in two (2) places. There are four (4) picnic tables sitting on pavers close to the building and another four (4) on the concrete pad in the back. The Applicant is not proposing any changes to the existing as built outdoor environment, with the exception of placing a few trash and recycle cans in each picnic area which will be emptied out in the existing dumpsters on a daily basis. Alcoholic beverages will be offered in the outdoor dining area during designated Club Member and nonprofit events; all alcoholic beverages will be served only in plastic or other non-breakable containers and glass is strictly prohibited outdoors. To ensure patron safety and neighborhood compatibility, the Applicant will implement trained staff and mandatory ID checks at point of sale, limit outdoor seating to the existing picnic tables and temporary seating shown on the Site Plan to avoid overcrowding, provide on-site security or event staff during events to monitor behavior and manage queuing, post and enforce a strict no-glass policy with visible signage and staff reminders, maintain trash and recycling receptacles at each picnic area with daily emptying into the existing dumpsters, and keep first aid supplies on site while training staff in basic emergency response and de-escalation techniques.

Patrons will be allowed to walk across the parking lot on a designed walkway to gain access to the lower picnic area. As this use is not listed on the table of uses, it is not considered permitted in the Industrial zone. Accordingly, relief from Section 10.440 19.50 is required.

The site plan also depicts existing gates that were designed for safety, security & privacy. The gates & fence were designed in such a fashion to deter people from driving through and/or walking through the property. Also, there will be no impact to the existing detention pond that the Applicant lined with large stones and have graded the area with planted grass at the request of the building department and public works. The Applicant also plans to use an 8x20ft portable kiosk/bar (which the Applicant already owns) near the concrete pads to accommodate the outdoor service. The pavers and concrete areas do not cross the drainage easement; the grass area shown in the lower photograph lies over the easement and will remain as landscaping only with no structures or hardscape changes proposed for that easement area beyond routine landscaping and maintenance.

II. THE VARIANCE REQUEST:

The Applicant believes they satisfy all the criteria necessary for approving the requested variance.

Granting the requested variances 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 granting a variance would be contrary to the public interest or the spirit and intent of the ordinance is whether the variance would substantially alter the characteristics of the neighborhood or threaten the health, safety, and welfare of the public.

The essential characteristics of the neighborhood would not be altered by this project. There is a varied mixture of municipal, commercial, and public utility development in the immediate vicinity, including retail, light industrial, self-storage, and the DPW transfer station. An indoor skating rink was approved by this board for 170 West Road in 2018, but was never built. The proposed outdoor food and beverage area will be entirely within the approved private social club and will have no outward effect on abutters. The expected peak hours of operation for a private social club – late afternoons, evenings, and weekends – will not unduly conflict with the surrounding business enterprises.

Were the variance to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety, or welfare of the public be threatened.

Substantial justice would be achieved by granting the variance. Whether substantial justice is served by granting it requires the Board to perform a balancing test. If the hardship to the owner/Applicant outweighs any benefit to the public in denying the variance, then granting it would be considered substantially just. It is fundamentally fair to allow a property owner the reasonable use of their property. The proposed change in use will not require significant exterior modifications to the existing structure and aligns with the approved indoor recreational use.

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

Values of surrounding properties will not be diminished. The mass and scale of the existing building will not be altered. The site is fully developed and has been for many years, and there will be no significant change in the existing built environment.

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 fully developed site for which indoor recreational uses have been approved as part of the Applicant's private social club. The existing built environment and approved uses are a special condition of this property.

The use qualifies as reasonable. The area hosts diverse commercial and municipal establishments, and the property's previous health club use did not cause any undue burden on its surroundings. The applicant intends to set up an 8x20ft portable kiosk/bar—already owned—near the concrete pads for outdoor service. There is no indication that the lounging area, entirely within the private social club's property, will create any issues.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. Accessory uses to a permitted principal use are generally permitted. 10.414.19.10. There is no fair and substantial relationship between the prohibition of an outdoor food and beverage area as an accessory use to a permitted private social club and its application to this property.

Accordingly, the proposed use requested here would not in any way frustrate the purposes of the ordinance.

II. **Conclusion.**

For the foregoing reasons, the Applicant respectfully requests that the Board grant the variance as requested and advertised.

Respectfully resubmitted,

Dated: April 10, 2026

By: *John K. Bosen*
John K. Bosen, Esquire

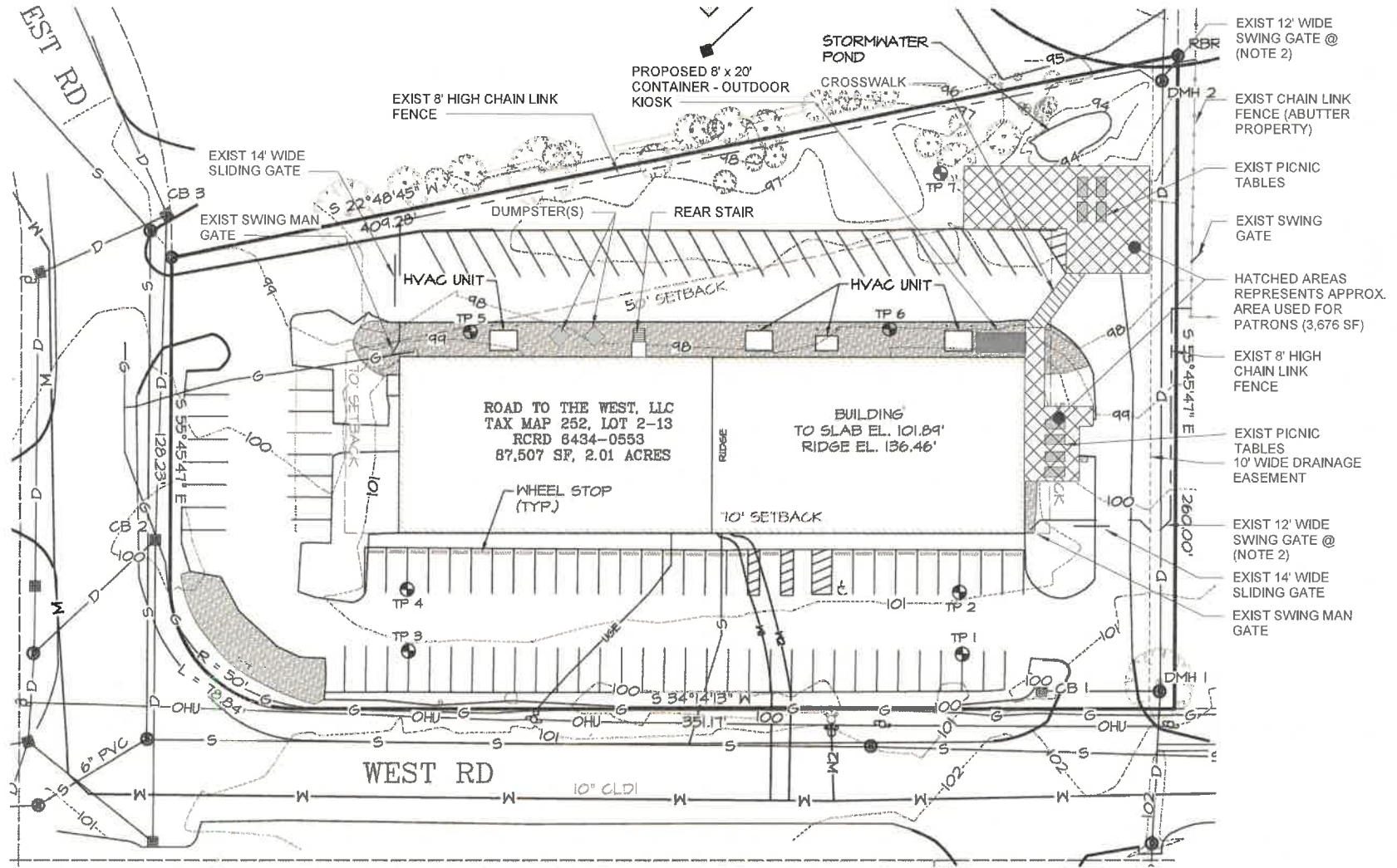
Site Plan

REFERENCE PLANS

1. "EXISTING CONDITIONS" SITE PLAN BY ROSS ENGINEERING, LLC, DATED MAY 12, 2023

NOTES

1. EXIST CHAIN LINK FENCE BLACK VINYL COATED WITH PRIVACY SLATS.
2. SWING GATES ARE 12' AND LOCATED OVER STORM DRAIN TO ALLOW ACCESS TO 10' WIDE DRAINAGE EASEMENT.
3. EXIST SLIDING GATES ARE 14' WIDE UNITS FOR VEHICLE ACCESS.
4. FENCES UNDER 8 FEET IN HEIGHT ARE EXEMPT FROM SIDE AND REAR YARD SETBACKS, 10.515.13



1 PARTIAL SITE PLAN - EXISTING
1" = 40'-0"

© 2026 Portsmouth Architects

BLACK ROCK SOCIAL CLUB
140 WEST ROAD
PORTSMOUTH, NH 03801

SITE SKETCH

4 Market Street
Portsmouth, New Hampshire
603.430.0274
brought to you by
McHENRY ARCHITECTURE



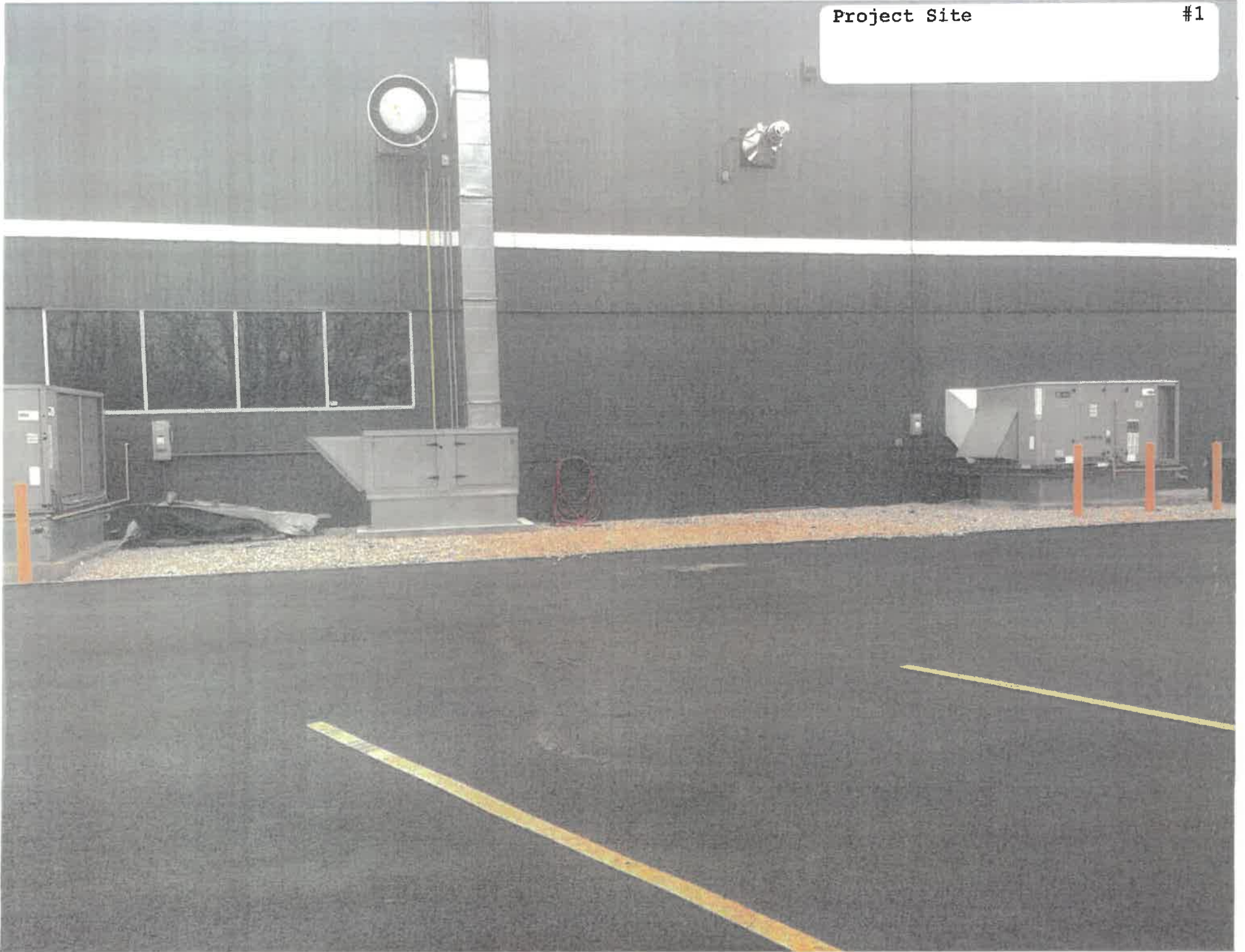
AC1

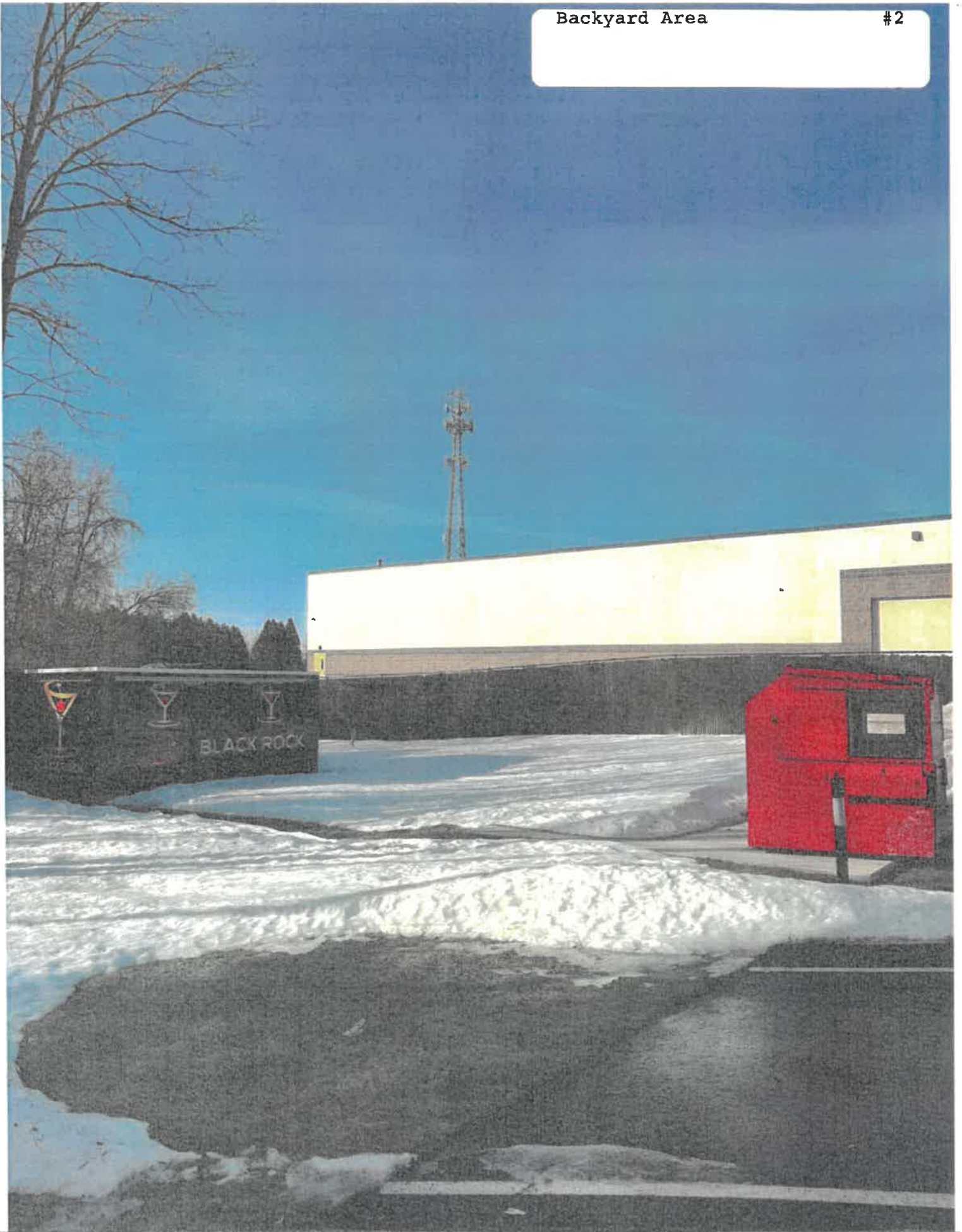
Rev: 04/10/26 03/18/2026
PA: MG
Project Number: 21121
AS INDICATED

Site Photos

Project Site

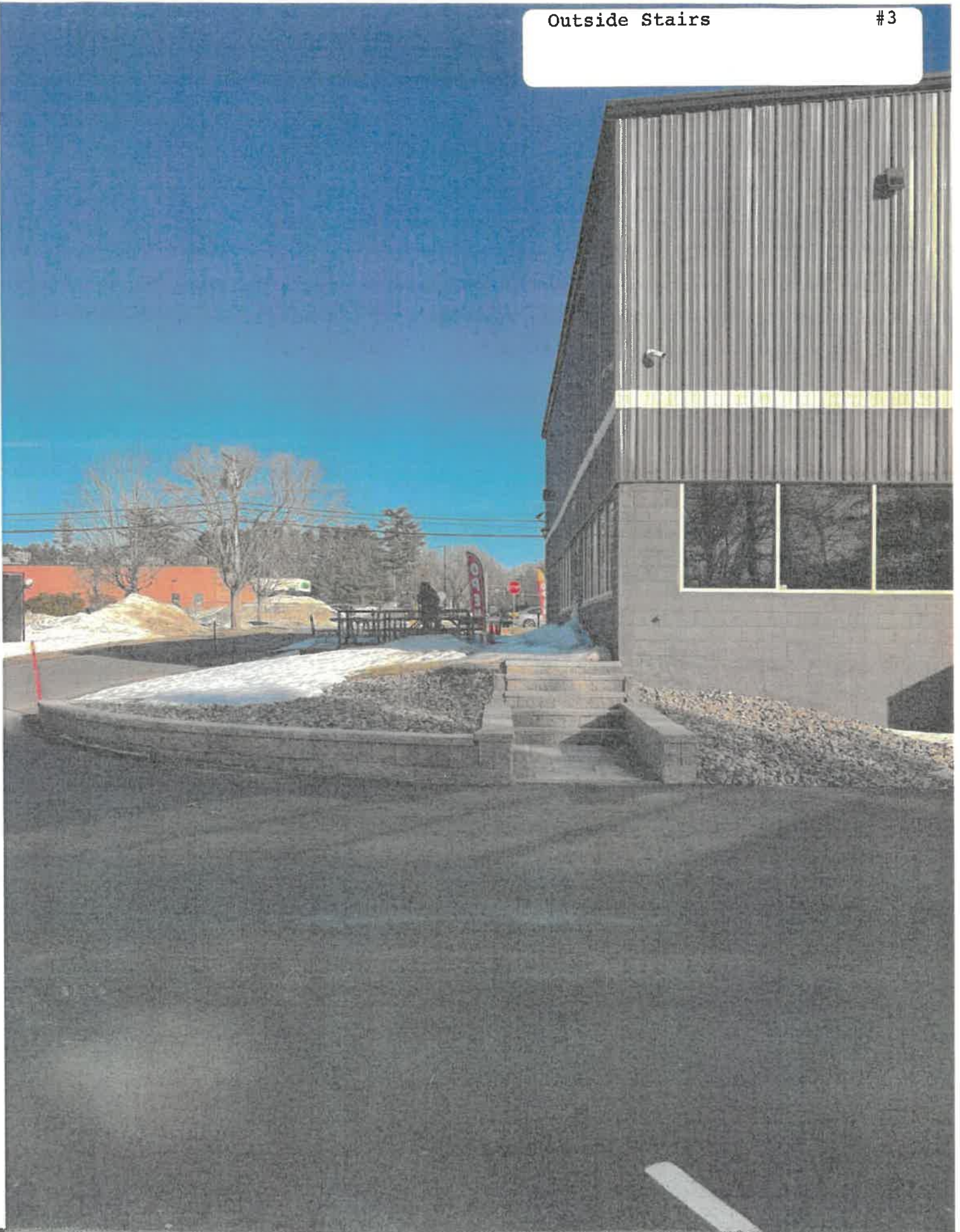
#1





Outside Stairs

#3



From Rear Looking Towards Bldg #4

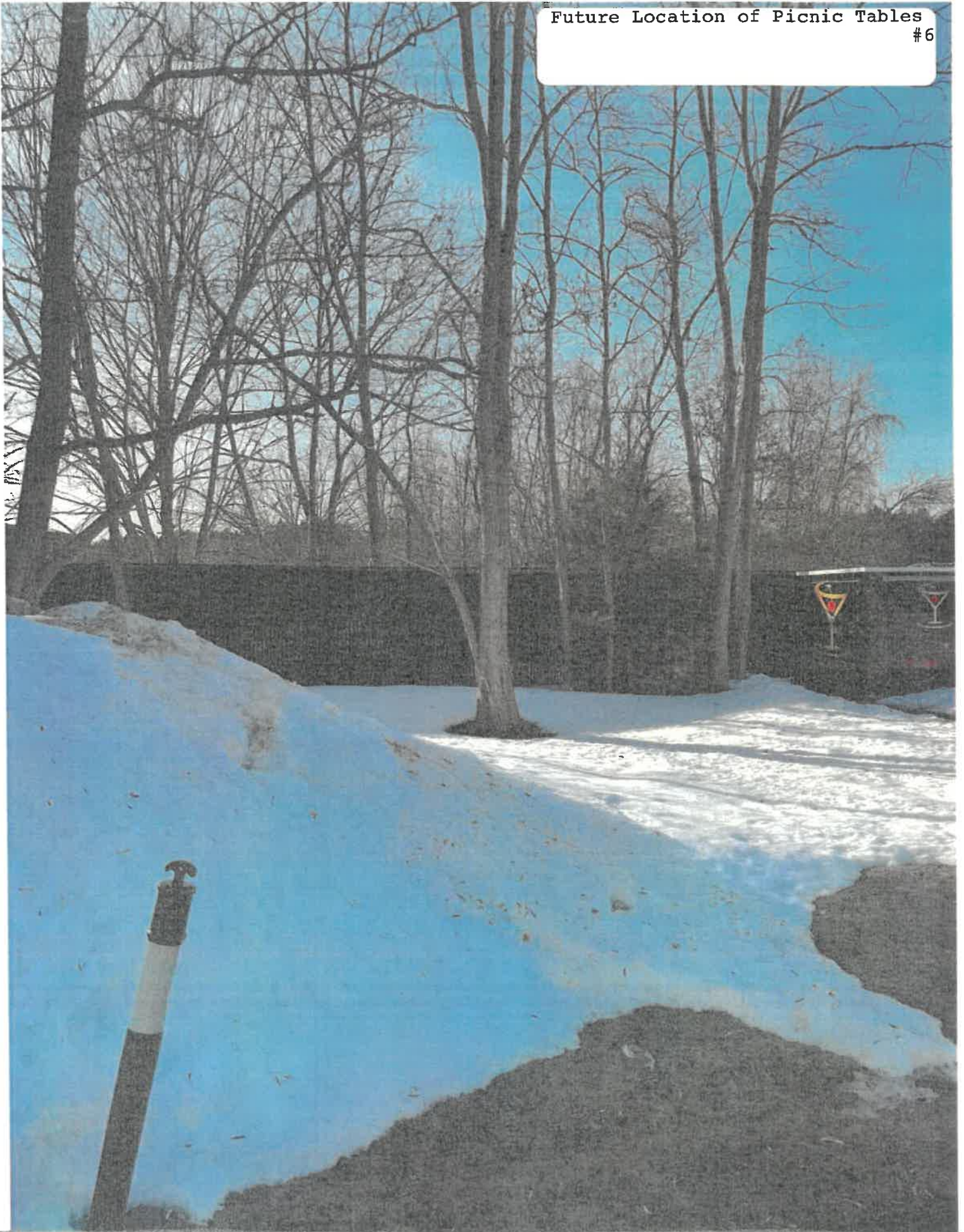


From Rear of Building Looking #5
Toward Rear Entrance Drive



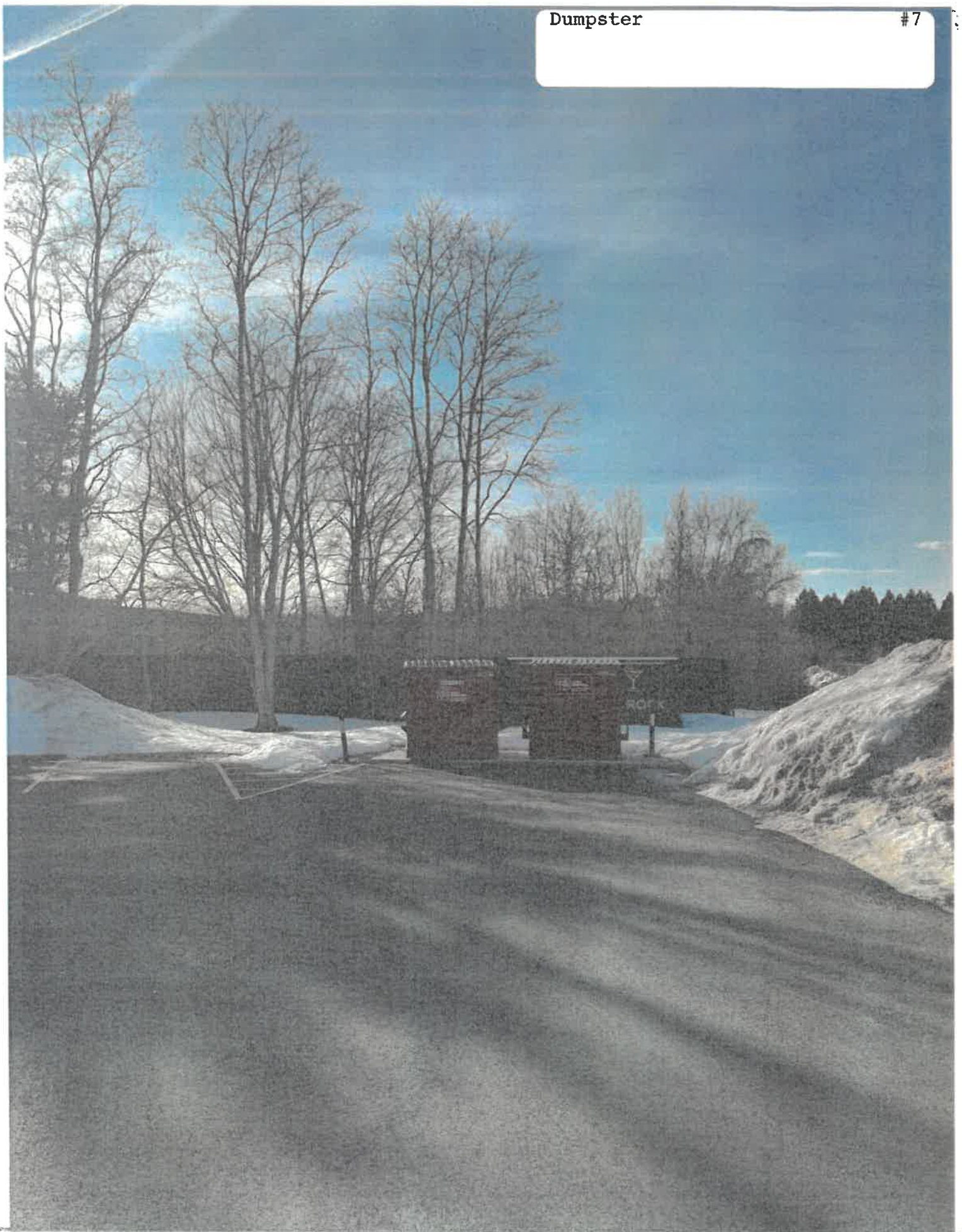
Future Location of Picnic Tables

#6



Dumpster

#7



Outside Walkway to Picnic Area #8
and Proposed Outdoor Area





