

**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.

September 15, 2026

AGENDA

I. APPROVAL OF MINUTES

- A.** Approval of the August 18, 2026 meeting minutes.
- B.** Approval of the August 25, 2026 meeting minutes.

II. OLD BUSINESS

- A.** 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)
- B.** The request of **Ann Marie Wiley Revocable Trust (Owner)**, for property located at **64 Woodworth Avenue** whereas relief is needed to construct an addition to the existing structure which requires the following: 1) Variance from Section 10.521 to allow a) 8.5 foot left yard where 10 feet are required, and b) 26% building coverage where 20% is the maximum. Said property is located on Assessor Map 243 Lot 42 and lies within the Single Residence B (SRB) District. (LU-26-102)
- C.** The request of **Michael J Ferrelli (Owner)**, for property located at **0 Joffre Avenue and 18 Barberry Lane** whereas relief is needed to construct a single-family home on a vacant lot which requires the following: 1) Variance from Section 10.521 to a) allow for 0 feet of street frontage where 100 feet is required; b) allow for 12,185 square feet of lot area where 15,000 square feet is required; c) allow for 12,185 square feet of lot area per dwelling where 15,000 square feet is required; and 2) Variance from Section 10.1114.31

to allow for two driveways on a single lot where one is permitted. Said properties are located on Assessor Map 233, Lot 135 and Lot 131 and lie within the Single Residence B (SRB) District. (LU-26-92)

- D.** The request of **Kathleen B. and Kent A. Logan, Susan E. Lassen, Scott A. Lupkas, and Guy D. and Elizabeth R. Spiers (Appellants)**, for appeal of decision of administrative officials to classify the art studio attached to the side of the third dwelling unit as an R2 non-transient sleeping unit for property located at **28 Blossom Street**. Said property is located on Assessor Map 111 Lot 40 and lies within the General Residence B (GRB) and Historic Districts. (LU-26-114)

III. NEW BUSINESS

- A.** The request of **Christopher H Daniell (Owner)**, for property located at **50 Whidden Street** whereas relief is needed to construct a rear addition and cantilevered deck which requires the following: 1) Variance from Section 10.521 to allow a 9.5 foot rear yard where 25 feet are required. Said property is located on Assessor Map 102 Lot 66 and lies within the General Residence B (GRB) and Historic Districts. (LU-26-15)

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_nag3y0QOSXilkwdFPUXTqA

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

7:00 P.M.

August 18, 2026

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

MEMBERS EXCUSED: Thomas Rossi

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Margeson called the meeting to order at 7:00 p.m. She read the petitions that were postponed or withdrawn into the record.

I. APPROVAL OF MINUTES

A. Approval of the **July 21, 2026** meeting minutes.

*Mr. Rheaume moved to **approve** the July 21 minutes as submitted, seconded by Mr. Nies. The motion passed with all in favor, 5-0, with Vice-Chair Mattson abstaining.*

II. OLD BUSINESS

A. POSTPONED TO SEPTEMBER 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. **POSTPONED TO SEPTEMBER** (LU-26-41)

The petition was postponed to the September 15 meeting.

B. WITHDRAWN The request of **Madison Commercial Group (Owner)**, for property located at **72 Mirona Road** whereas relief is needed to establish a 5,049 square foot Pilates/exercise studio which requires the following: 1) Special Exception from Section 10.440 Use #4.42 to allow a 5,049 square foot health club, yoga studio, or similar use where more than 2,000 square feet are allowed by Special Exception. Said property is

located on Assessor Map 253 Lot 3 and lies within the Gateway Center (G2) District.
WITHDRAWN (LU-26-76)

The petition was withdrawn by the applicant.

- C. The request of **Jonah Goldblatt and Gabrielle Dell'Aquilo (Owners)**, for property located at **292 Wibird Street** whereas relief is needed to demolish the existing detached garage and construct a new two-story attached garage addition and enlarged rear deck, which requires the following: 1) Variance from Section 10.521 to a) allow a building coverage of 31% where 25% is the maximum; b) allow a left side yard setback of 4.5 feet where 10 feet is required; and c) allow a right side yard setback of 2.5 feet where 10 feet is required. Said property is located on Assessor Map 149 Lot 25 and lies within the General Residence A (GRA) District. (LU-26-88)

SPEAKING TO THE PETITION [Timestamp 4:40]

Attorney Colby Gamester was present on behalf of the applicant, with the owners Jonah Goldblatt and Gabrielle Dell'Aquilo, builder Shawn Peters, and engineer Eric Weinrieb (on Zoom). Attorney Colby reviewed the nonconformities and the history of the lot and structures and said the proposal was to demolish the existing garage and exterior stairs, shorten the driveway, build a 2-car garage with a mudroom, enlarge the rear deck, convert the 2-family home into a single-family one, and install stormwater improvements. He reviewed the criteria. He said he met with some of the abutters and neighbors, who were in favor of the project.

[Timestamp 20:39] Mr. Rheume said the survey identified that the neighboring property on Lot 24 had a shed that was over the property line, but a separate note stated that it was removed after the survey. Attorney Gamester agreed. Mr. Rheume said the double-length garage was an unusual feature and asked if there were examples of it in the neighborhood. Attorney Gamester said he could not think of any but that the garage was the size of the house and the lot was driving the design. Mr. Rheume said there was a sentence in the packet stating that the proposed garage would keep potential pollutants inside and out of the elements. Attorney Gamester said it meant that a car of any age housed inside the garage would remain inside the garage. Mr. Nies said Attorney Gamester had said that the letter in the packet referred to the height of the garage as 16-1/2 feet, but the elevations showed the height at 14 feet. He said he assumed the letter referred to the top of the gable and the architect referred to the height measure in the zoning ordinance. Attorney Gamester agreed and said the actual peak height was 16-1/2 feet. Chair Margeson said there used to be a turning radius in the driveway. Mr. Weinrieb explained that it was 58 feet from the front face of the garage to the street line. He said previously it was much deeper and there was no way to turn around because it was about 120 feet to the front line of the curb line from the existing garage.

Chair Margeson opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION AND DECISION OF THE BOARD [Timestamp 29:04]

Mr. Rheume said it was a reasonable project. He said the setback for 2.8 feet was really to a deck, so it was not impactful, and there was the 4-ft proposed setback for the garage on the opposite side. He said his only concern was the double-length garage that would be very visible. He said the narrowness of the lot was a good argument for needing relief.

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

Vice-Chair Mattson said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed use would not conflict with the explicit or implicit purposes of the ordinance or alter the essential characteristics of the neighborhood, threaten the public's health, safety, or welfare, or otherwise injure public rights. He said it was true that the double-length tandem garage was uncommon, but from Wibird Street it would appear as a single garage in terms of width and height. He said it would do substantial justice because there was no reason to think that any harm would be done to the public or individuals, and the renovations would also benefit the applicant. He said the values of surrounding properties would not be diminished, noting that there was no reason to think that the tastefully-done new construction would do so. He said literal enforcement of the ordinance would result in unnecessary hardship, and due to the special conditions of the property that distinguish it from others, there was no fair and substantial relationship between the purpose of the ordinance and its specific application to the property. He said the proposed use was a reasonable one and it was a modest ask for relief on building coverage. He said it was reasonable and also had the proposed stormwater improvement plan with a drywell and some management that did not currently exist. He said the existing lot and structure were built before zoning and the lot was narrow, so any type of garage aligned with the driveway would need to be somewhat in the setback. He said it was an improvement based on the existing garage, which was a zero foot setback from the side yard, and on the other side, the only portion that was in the side left yard setback was an open deck, which was reasonable. Mr. Sullivan concurred and had nothing to add. Mr. Rheume confirmed that the right yard setback was 2-1/2 feet and that the staff memo stating something different was corrected and no longer applicable.

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

- D.** The request of **Michael J Ferrelli (Owner)**, for property located at **0 Joffre Avenue and 18 Barberry Lane** whereas relief is needed to construct a single-family home on a vacant lot which requires the following: 1) Variance from Section 10.521 to a) allow for 0 feet of street frontage where 100 feet is required; b) allow for 12,185 square feet of lot area where 15,000 square feet is required; c) allow for 12,185 square feet of lot area per dwelling where 15,000 square feet is required; and 2) Variance from Section 10.1114.31 to allow for two driveways on a single lot where one is permitted. Said properties are located on

Assessor Map 233, Lot 135 and Lot 131 and lie within the Single Residence B (SRB) District. (LU-26-92)

SPEAKING TO THE PETITION [Timestamp 38:20]

Attorney Darcy Peyser was present on behalf of the applicant Michael Ferrelli, along with Mr. Ferrelli and project engineer John Chagnon. Attorney Peyser said the applicant wanted to create an access to his lot by building a 15-ft wide driveway across his abutting property at 18 Barberry Lane and connecting it to the back lot. She said the 0 Joffre lot was a legal lot of record on the 1918 subdivision plan and that Lots 37 and 38 were merged before the owner bought the property. She explained why the City considered it a paper street. She said she felt that an easement did exist but the abutters did not want the driveway constructed across their properties, so Mr. Ferrelli wanted to build the driveway across his property, thereby conveying himself an easement. She said letters of support were submitted. She reviewed the criteria.

[Timestamp 48:55] Mr. Rheume asked if there was anything in writing relating to the City regarding the street a paper one. Attorney Peyser said the City said so in a work session meeting between the Planning Staff and the City Deputy Attorney McCourt. Mr. Rheume asked if there was a plan or a deed that included the additional area allowed by the RSA, the half of the paper street, or if there was an intent to create such a deed. Mr. Chagnon said he attended that meeting and that the City felt that it would not make sense to construct that street as a City street because there would not be a nice terminus at the end of it for maintenance. Mr. Rheume asked what would constitute the front yard if the zoning changed in the future. Mr. Chagnon said the applicant's letter noted that the southerly boundary could be used as a street. It was further discussed. Mr. Chagnon said if the driveway were built, it would be an impervious area, so they did a calculation showing that the lot area was 17,295 sf. Mr. Rheume said the additional lot area allowed by the RSA of the paper street would increase it by 14,152 sf, which was more than twice the requirement for lot area for the two lots. He asked if a lot line revision was discussed with the client that would put the driveway property as part of the rear lot and reworking some of the property lines instead of making it an easement across the existing lot. Mr. Chagnon said the applicant's issue was being able to know that he could build on that lot. It was further discussed. Mr. Sullivan asked when and how would the access be created. Attorney Peyser said it would not be until the rear lot was conveyed, and if the relief were granted, it would be maintained in common ownership for some time. It was further discussed. Attorney Peyser said the eventual new owner could just record the variance plan with a declaration of easement. Mr. Nies asked if the driveway would provide adequate access for emergency vehicles. Ms. Casella said the Fire Department said they were comfortable with it.

[Timestamp 1:01:55] Mr. Rheume said the legal notice included two variances, the zero ft street frontage and 12,195 sf that applied to Lot 135, and the two driveways that applied to Lot 131. The easement was further discussed as well as whether the applicant would have to go to the Planning Board for anything other than the wetland CUP. Ms. Casella asked Mr. Chagnon what triggered the Planning Board review. Mr. Chagnon said he believed it was in the driveway permit regulations.

Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

John Whiteman of 26 Foch Avenue said he was the son of the resident who could not make the meeting but wrote a letter in support of allowing access to the proposed new house from the foot of Barberry Lane. He read the letter into the record.

SPEAKING IN OPPOSITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION

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

DISCUSSION OF THE BOARD [Timestamp 1:08:30]

Ms. Casella said the Board could send the petition to the Technical Advisory Commission (TAC) for specific review. Vice-Chair Mattson said he did not recall the Board discussing a separate Planning Board meeting for second driveway petitions from other applicants. He said it seemed like a Catch-22 situation because if the only reason against granting the variance was the access issue, the access could not be created unless the variance were permitted. Mr. Nies said there was an existing lot that had no access to it, so a lot with no access was not being created. He said the applicant proposed to get access to that lot by using an easement across his other lot, which seemed reasonable. He said the Board's purview was to figure out if the easement made sense and if the access across that made sense. Mr. Sullivan said if the relief were granted, a house could be built on that lot tomorrow, and the lot had no access. It was further discussed. Mr. Nies suggested disapproving the application without prejudice so that the applicant could return and explain how legal access would be provided and present a review on whether the driveway access would meet the requirements. Ms. Casella said she heard from the Planning Department Manager who said a second driveway would not go to the Planning Board for a residential single-family home. She said it would be simpler to reopen the public hearing and postpone and ask the applicant to return with more information as to how they would provide access. Chair Margeson agreed.

DECISION OF THE BOARD [Timestamp 1:26:20]

*Mr. Sullivan moved to 1) **postpone** the public hearing and the petition to the September 15 meeting, and request that the applicant return to the Board with answers to how and when the driveway access would be provided to Lot 125, and 2) have the applicant present why it would be more advisable to adopt the approach suggested by Mr. Rheume and utilize the portion of the property that is a part of Joffre Avenue. Mr. Rheume seconded the motion but proposed the following amendment to the second part of the motion by saying that the applicant would present his plan for adopting the portion of the paper street Joffre Avenue to add to the square footage of the applicant's lot.*

Mr. Sullivan accepted Mr. Rheume's amendment.

*The **amended** motion was as follows: Mr. Sullivan moved to 1) **postpone** the public hearing and the petition to the September 15 meeting, and 2) the applicant shall present his plan for adopting the portion of the paper street Joffre Avenue to add to the square footage of the applicant's lot.*

*The motion **passed** by a vote of 5-1, with Chair Margeson voting in opposition.*

- E. The request of **Kaitlyn O and Brendan A West (Owners)**, for property located at **315 Bartlett Street** whereas relief is needed to demolish the existing home and construct a new home on the lot which requires the following: 1) Variance from Section 10.521 to a) allow a 9.5-foot left side yard where 10 feet is required; b) a 7-foot right side yard where 10 feet is required; and c) 60 feet of street frontage where 100 feet is required. Said property is located on Assessor Map 162 Lot 12 and lies within the General Residence A (GRA) District. (LU-26-93)

SPEAKING TO THE PETITION [Timestamp 1:33:32]

Attorney Chris Muligan was present on behalf of the applicant, along with the owners Kaitlyn and Brendan West. He said the existing home was small, dated, and substandard but the foundation was still usable for the new structure. He said they were also asking for a right yard setback that was 7.2 feet and not 7 feet as advertised. He said the lot was narrow and deep and exceeded the required lot line, so it had a large backyard and a lot of unused space. He said there were letters of approval from all the abutters and the neighbor across the street. He said they would replace the existing house with a more modern, functional, and larger dwelling. He reviewed the criteria in detail.

[Timestamp 1:46:04] Mr. Nies said the packet stated that the property may have been held in common ownership before 1966 and that the applicant was not convinced that the relief was necessary. He said he was bothered by the word "may". Attorney Mulligan said the variance was for the frontage, and whether the property was owned in common or not, the applicant could not ameliorate the frontage requirement. Mr. Rheume said a lot of the argument was that the applicant needed the relief for the right yard setback due to the foundation being reused, but additional foundation was proposed to be added, so the home would be taller, longer, and more encroaching.

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 1:49:02]

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

Mr. Nies said there were conditions that could not be changed, one of which was the frontage of the lot. He said there were other lots in the neighborhood that had similar frontage. He said the only real change from existing conditions would be in the right yard setback, which was minor. He said granting the variances would not adversely affect the health, safety, and welfare of the neighborhood, would have no effect on light and air, and would not alter the essential characteristics of the neighborhood. He said all the homes in the neighborhood would be similar and the applicant's home would be a better one. He said substantial justice would be done, noting that he could not see any benefit to the public by denying the small relief being requested that would outweigh the harm to the applicant if the variances were denied. He said granting the variances would not diminish the value of surrounding properties, noting that there was no evidence presented that it would do so and that the issue was not raised in the letters of support from all the abutters. He said the special conditions of the lot was that it predated the development of the ordinance and it was a narrow and long one that exceeded the lot size for the area. He said the frontage could not be corrected but was nearly 2,000 sf larger than the minimum lot size, so lot coverage even with the minor setback relief would not be an issue. He said, due to all those special conditions, there was no fair and substantial relationship between the purpose of the ordinance and its specific application to the property. Mr. Sullivan concurred and had nothing to add. Mr. Rheume said he would support the motion because, even though it was a substantial increase in height and length in the left yard setback, the actual encroachment into the side yard setback was very minor. Chair Margeson said she had similar concerns but it was within all the zoning limits. Mr. Nies said he saw some homes across the street similar in height and structure, so that was why he felt that the essential characteristics of the neighborhood would not be affected.

*The final motion as restated by the Chair is to **postpone** the public hearing and request to the September 15th meeting, so that the applicant can provide information on how and when driveway access will be provided to lot 233-135 and information on adopting the portion of Joffre Avenue to add square footage to the applicant's lot.*

*The motion **passed** with all in favor, 6-0*

- F. The request of **Brian and Martha Ratay (Owners)**, for property located at **475 Broad Street** whereas relief is needed to construct a detached garage which requires the following: 1) Variance from Section 10.521 to a) allow 30% building coverage where 25% is allowed; b) a 5-foot right side yard where 10 feet are required; and c) 5.5-foot rear yard where 14 feet are required. Said property is located on Assessor Map 221 Lot 96 and lies within the General Residence A (GRA) District. (LU-26-95)

SPEAKING TO THE PETITION [Timestamp 2:01:13]

The owners Brian and Martha Ratay were present. Mr. Ratay said they asked for six variances two years ago to build the house and garage that were approved, but they recently discovered that they had to return to the Board to discuss the changes to the garage that they made, not knowing that approval was needed because the garage was smaller. He said the 2-story garage was now a single

garage with a traditional gable roof and no longer had a staircase in the back. He said the height was 18 feet tall and it was 320 square feet. He reviewed the criteria.

The Board had no questions. 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 2:09:33]

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

Mr. Nies said there was discussion about the garage's height two years ago but the variances were still approved. He said the project was now smaller and the relief required was roughly the same. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the changes would not affect the health, safety, and welfare of the neighborhood, would have no effect on light and air, and would not alter the essential characteristics of the neighborhood. He said the garage would be similar to others in the area and would fit in well. He said substantial justice would be done because he could not see any benefit to the public by denial that would outweigh the benefit to the applicant. He said granting the variances would not diminish the values of surrounding properties, noting that no evidence was presented that it would do so. He said it was a small lot and the project would make it similar to other developed properties in the neighborhood, and it was also a better design than the previously-approved one. He said the special conditions were that the lot was undersized for the zone and subject to a bit of a driveway easement on the left side of the lot, and there were not a lot of good places to place a garage other than what the applicant chose. He said, due to those special conditions that distinguish it from others in the area, there was no fair and substantial relationship between the purpose of the ordinance and its specific application to the lot. Mr. Sullivan concurred. Mr. Rheume said he voted against the relief being granted two years before due to the size and configuration of the garage, but he thought the new structure was much more conforming.

*The motion **passed** with all in favor, 6-0.*

III. NEW BUSINESS

- A.** The request of **Boston and Maine Corporation (Owner)** and **OUTFRONT Media (Applicant)**, for property located at **0 Bartlett Street** whereas relief is needed to replace a one-sided static billboard with an animated billboard which requires the following: 1) Variance from 10.1224.10 to allow an animated sign where it is not allowed; 2) Variance from Section 10.1224.90 to allow an off-premise sign where it is not allowed; 3) Variance from Section 10.1234 to allow a sign not specifically allowed in a sign district; 4) Variance

from Section 10.1241 to allow a sign not permitted in a sign district; 5) Variance from Section 10.1251.20 to allow sign area of 378 sq feet where the maximum is not specified; 6) Variance from Section 10.1253 to allow a sign height of 25 feet and sign setback of 1.5 feet where the minimums and maximums are not specified; 7) Variance from Section 10.1262 to allow 24 hours of illumination throughout the day. Said property is located on Assessor Map 165 Lot 14 and lies within the Transportation Corridor. (LU-26-87)

SPEAKING TO THE PETITION [Timestamp 2:15:28]

Attorney Eli Leno was present on behalf of the applicant, along with Jenna Fischer and Jim Norton of OUTFRONT Media. He reviewed the photometric study plan. He said a limited portion of the property was in front of the Pet Medic and near Buffalo Wild Wings and was not a situation where the sign would be visible. Ms. Fischer said OUTFRONT Media wanted to modernize the billboard by replacing it with a modern digital display in the Transportation Corridor and that the height would stay the same. She said the digital display would use an internally illuminated LED screen that would decrease the light significantly. She said the sign would have a static display every 10 seconds and there would be no scrolling, flashing, or video. She said it would provide more affordable advertising opportunities for local businesses. Attorney Leno reviewed the criteria.

[Timestamp 2:30:01] Mr. Sullivan asked if whether the only people who would see the sign would be drivers heading southbound on Route One and Buffalo Wild Wings. Attorney Leno explained that the proposed sign would be more controllable and would be dimmer at night but brighter during the day. He said it would prevent eyestrain in the drivers but would remain visible. Mr. Rheume asked if someone sat at a computer and updated what was shown and what got transmitted through cell towers. Ms. Fischer agreed. Mr. Rheume said the sign would provide public service messages to the New Hampshire Department of Transportation (NHDOT) but that Ms. Fischer said the City could make use of it as well. He asked for more detail. Ms. Fischer said safety content would be provided, e.g. messages that showed “Don’t crowd the plow” and “Get Off Your Phone”. Mr. Rheume asked if the service was for free. Ms. Fischer agreed and said the percentage of the business concentrated on local signage was about 70 percent in New Hampshire. Mr. Nies said the Transportation Corridor was not in any of the existing sign districts, so there were no specific dimensions that applied in that area, but the existing sign was nearly twice the size of any freestanding sign in any sign district, and it was proposed to increase the size 2 1/2 times. He asked why. Ms. Fischer said the proposed LED sign face was 10-1/2 feet tall by 38 feet wide, which was the standard bulletin size used throughout the industry. She said the additional width would allow businesses to display copy that was easy to read along that roadway. She said the sign would still be 25 feet higher because the 2-3’ tall apron underneath it would be removed. Chair Margeson clarified that the sign on the other side of the roadway was not part of the application.

Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION [Timestamp 2:40:00]

Jacob Scarpaci of 50 Cate Street said the applicant was asking for seven variances, which bypassed the intent of the Portsmouth sign ordinance to protect the neighborhood's characteristics. He said the justifications for the variances were not demonstrated. He said the zoning ordinance did not merely regulate animated signs but placed them in a category prohibited in all districts. He said no hardship was demonstrated and that the desire to replace the sign with an animated one was a commercial preference to increase revenue. He said animated dynamic screens were engineered to command a driver's attention. He explained why the petition did not meet the other criteria.

Other people who lived at 50 Cate street who were opposed were: Amy Cadugan, Celine Gribbin, William Clark, Patricia Donaldson, and Michelle and Wayne Ronchetti.

Michael Thiel of 767 Islington Street (via Zoom) verified that it was the sign on the Route One Bypass and not the one at the Islington and Bartlett Street intersection.

SPEAKING TO, FOR, OR AGAINST THE PETITION [Timestamp 2:48:45]

Attorney Leno referred to the Department of Transportation study that stated that between 73 and 85 percent of drivers devoted their visual attention to the road ahead of them.

Wayne Ronchetti of 50 Cate Street asked if it would set a precedent for other locations. Chair Margeson said the Board could speak only to the proposed location. Mr. Sullivan asked why anyone on Cate Street would care about the sign. Mr. Ronchetti said there was a lot of vehicular activity on Cate Street and that the sign would add more distraction.

Patricia Donaldson of 50 Cate Street said the given address was 0 Bartlett Street, and what people saw was not one sign but the entire property. She said since the 1950 signage, the City had declared that illuminated billboards were not allowed. She said the area was not a residential one in 1950.

Attorney Leno said it was a dangerous precedent to say that there could not be a sign because it was now 3-acre lots instead of one.

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

DISCUSSION OF THE BOARD [Timestamp 2:57:04]

Mr. Nies said the applicant was changing an existing sign to an animated one, which was prohibited by the zoning ordinance. He said he found it difficult to reconcile allowing an animated sign just because it was an upgrade, given the length prior discussion and decision by the Planning Board several years before. He said the Planning Board should revise the zoning ordinance if animated signs are now going to be allowed. He said he was also concerned about the size increase because the maximum size for a freestanding sign in any sign district was 150 feet. He said the existing sign

was 288 sf and the applicant wanted to go up to 378 sf just because it was the standard animated sign size. He said the Transportation Corridor did not allow any signs. Vice-Chair Mattson said the sign was technically animated but there were different levels of animation that at some point became motion. He said he understood why the ordinance would be against animated signs that are changing fast enough so that they did not seem static. He said a lot of signs might be considered to be the name of a place as opposed to a billboard advertising to a traffic corridor. He said the applicant's situation was unusual because there was already a grandfathered sign in that location and the parcel was unusually shaped and unprecedented anywhere else in the City. Mr. Rheume said sign technology had changed but that most of the sign applications in the past were for a specific business and the variance requests were reasonable. He said the ordinance was stating that new billboards could not be placed in new places, but the applicant was asking for an intensification of an existing sign and offsite advertising was not something the City wanted because it was promoting something that was remote to the sign's location. He said the intensification request was a big one and that he saw nothing unique about the applicant's situation and did not find that it met any of the Board's criteria. Chair Margeson said the zoning ordinance was very clear and that there was an extensive community discussion. She said the application violated the zoning ordinance in many ways and she did not see any hardship.

DECISION OF THE BOARD [Timestamp 3:08:15]

*Mr. Rheume moved to **deny** the requests as presented and advertised because they fail the following criteria: 10.233.21 granting the variance would not be contrary to the public interest, 10.233.22 granting the variance would observe the spirit of the Ordinance, 10.233.23 granting the variance would do substantial justice, and 10.233.25 the hardship criteria. Mr. Sullivan seconded.*

Mr. Rheume said there was nothing especially compelling in the petition that met the Board's criteria. He said the applicant stated that they were not changing the general characteristics of the neighborhood, but the criteria was broader than that. He said it was argued that the locality had changed over the past 70 or so years since the billboard was put up. He said there were changes in the nature of the community and what the City expected out of signage in that community, and the applicant proposed to intensify the grandfathered use and would alter the essential character of the locality. He said there were multiple things that needed variances because the ordinance stated that they do not want signs that are not related to the property or in the Transportation Corridor. He said the proposed size of the sign was outside of what would be allowed in any district. He said the petition failed the first two criteria. Related to substantial justice, he said the benefits that the applicant discussed did not necessarily need that location because there were several ways to get information out as a society that were separate from saying that this billboard would make a substantial enough improvement in that balancing test. He said part of the hardship criteria might be satisfied, but the petition failed on whether the proposed use is a reasonable one. He said it was outside the scope of the vision for the Transportation Corridor and was not a permitted use in that zone. Mr. Sullivan concurred.

*The motion to deny **passed** by a vote of 4-2, with Vice-Chair Mattson and Mr. Lucas voting in opposition.*

B. POSTPONED TO AUGUST 25, 2026 The request of **Road to the West, LLC (Owner)**, for property located at **140 West Road** whereas relief is needed to establish an indoor recreation space, restaurant, event space, and outdoor dining area which requires the following: 1) Variance from Section 10.440 to allow a) Use #9.43, a restaurant and function room with an occupant load from 250 to 500 where it is not allowed, b) Use #4.30, indoor recreation use where it is not allowed, and c) Use #19.50, outdoor dining as accessory use to a permitted principal use. Said property is located on Assessor Map 252 Lot 2-1301 and lies within the Industrial (I) District. **POSTPONED TO AUGUST 25, 2026 (LU-26-107)**

C. POSTPONED TO SEPTEMBER The request of **Ann Marie Wiley Revocable Trust (Owner)**, for property located at **64 Woodworth Avenue** whereas relief is needed to construct an addition to the existing structure which requires the following: 1) Variance from Section 10.521 to allow a) 8.5 foot left yard where 10 feet are required, and b) 26% building coverage where 20% is the maximum. Said property is located on Assessor Map 243 Lot 42 and lies within the Single Residence B (SRB) District. **POSTPONED TO SEPTEMBER (LU-26-102)**

IV. ADJOURNMENT

The meeting adjourned at 10:15 p.m.

Submitted,
Joann Breault
BOA Meeting 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.

August 25, 2026

MEMBERS PRESENT: Beth Margeson, Chair; Jeffrey Mattson, Vice Chair; David Rheaume; Thomas Nies; and Thomas Rossi

MEMBERS EXCUSED: Mike Lucas, Alternate; Robert Sullivan

ALSO PRESENT: Stefanie Casella, Planning Department

Chair Margeson called the meeting to order at 7:00 p.m. The applicant said they would go forward with the petition even though there were only five Board members present.

I. NEW BUSINESS

- A.** The request of **Road to the West, LLC (Owner)**, for property located at **140 West Road** whereas relief is needed to establish an indoor recreation space, restaurant, event space, and outdoor dining area which requires the following: 1) Variance from Section 10.440 to allow a) Use #9.43, a restaurant and function room with an occupant load from 250 to 500 where it is not allowed, b) Use #4.30, indoor recreation use where it is not allowed, and c) Use #19.50, outdoor dining as accessory use to a permitted principal use; 2) Variance from Section 10.1113.20 to allow parking spaces between the principal building and street; and 3) Variance from Section 10.1113.41 to allow a 2 foot parking space setback where 50 is required. Said property is located on Assessor Map 252 Lot 2-1301 and lies within the Industrial (I) District. (LU-26-107)

SPEAKING TO THE PETITION [Video timestamp 4:33]

Attorney John Bosen was present on behalf of the owner and applicant, along with Alex Choquette, owner of Road to the West and the Black Rock Social Club; project engineer Alex Ross; project architect Mark Gianniny; Black Rock Social Club General Manager Chris Hollis; and Executive Director of Programming Christine Schindler. Attorney Bosen said the Black Rock Social Club is a venue that supports local charities and aims to raises over \$1 million dollars annually for local nonprofit organizations. He said in 2022 they received approval from the Board to convert the prior use at 140 West Road from a trampoline park to the Black Rock Social Club. He said it was currently fit out for live music and had a restaurant and bar for members and guests. He said a variance was also approved to allow parking. He said the 2022 plans included a restaurant and bar

but an oversight occurred because the applicant did not ask permission for them. He said things became complex in November 2022 when the building permit application was filed. He said the amended site plan was approved by the Planning Board and a building permit was issued in June 2023. He said the applicant was informed in November 2023 that the plans to convert the two floors were cost prohibitive, so the applicant sought a refund for some of the fees and a waiver was signed that abandoned the prior approval. He said permits were then received for the kitchen and bar to be installed and the parking lot was repaved. He said the 2022 approval did not anticipate all the activities that Black Rock Social Club has or outdoor dining, and the permit did not specifically reference a fundraiser using a comedy show or a band. He said the applicant was now addressing the fact that they did not ask for the restaurant use and were requesting variances for outdoor dining and parking. He reviewed the variance criteria.

[Timestamp 17:19] Mr. Rheume asked what the outdoor dining would look like. Mr. Gianniny said there were currently 10 picnic tables in front of a container that would be converted to serve drinks and that they wanted to add a patio for additional seating. He said there was a hatched area for crossing the driveway and the seating area would be closed off to regular vehicular traffic by fences. Mr. Rheume asked if the grass area would be made into an impervious surface. Mr. Gianniny said the area with the picnic tables would stay grass and the only impervious would be what exists now. Mr. Rheume asked how the parking was calculated. Mr. Gianniny said the Staff Report had a parking count of 78 spaces based on the requested use, but he had 95 spaces because he broke up the indoor recreation, restaurant, and office space. He said the parking lot was striped for 78 spaces and that more striped spaces could be added. Mr. Rheume ensured that City Staff was confident that the requested relief from Use # 9.43, a restaurant and function room with an occupant load from 250 to 500 where it is not allowed, would cover everything that the applicant described as well as the kinds of events, and that it would be covered by the restaurant use.

[Timestamp 23:30] Mr. Nies said a place of assembly is not called out in the Legal Notice. He said a place of assembly is allowed to have entertainment, comedy, or music but is not listed in the ordinance as an accessory use for a restaurant. He said if the Board granted the restaurant and function room variance as listed in the Legal Notice, he asked if it would cover the applicant's intent to have entertainment as well. Ms. Casella said that, unless the applicant had a different version of a place of assembly, she was confident that it would. Mr. Nies asked how the fence would not affect the parking spaces behind the building. Mr. Gianniny said they those parking spaces would be used by the staff and others. Mr. Nies asked if there would be music and entertainment in the outdoor dining area. Attorney Bosen said there currently wasn't but there was plenty of room inside to do so. Mr. Nies said the application stated that the hours of operation were late afternoon into the evening, and he asked if there was an intent to have daytime conferences or meetings in the function room. Attorney Bosen agreed. Mr. Rheume asked where the fence would go. Mr. Gianniny said it would start at the corner of the building and then go across the property. He said there would be several gates and described what they were and in what locations. Chair Margeson asked Attorney Bosen how the benefit to the applicant would outweigh the loss to the public by granting the variance for substantial justice. Mr. Bosen said there would be no benefit to the public if the variance were denied because it was the Industrial Zone.

Chair Margeson opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION [Timestamp 30:21]

Owner Alex Choquette said their main mission was to raise money for nonprofits.

Kevin Watt of Metropolitan Pipe & Supply Co. said they were the neighbor to the proposed patio seating and that he had 24 parking spaces that the applicant could use.

Michael Blackman of 27 Albany Street said Black Rock raised money for workforce housing.

Shawn Tracy of 24 Johnson Court said Black Rock was community oriented and created a lot of local jobs, and he did not think the variances would inconvenience anyone.

Kevin Dodge of 99 Hanover Street said he met Mr. Choquette in 2017 when he was sponsoring an event for veterans and that he joined Black Rock because they support veterans and other charities.

Larry Vannatta of 5 Wood Road, Durham, said he owned several entertainment venues in the area and knew what it was like to run a business like Black Rock. He said he attended several of Mr. Choquette's fundraisers and thought the place was inviting and a great asset to the community.

Anna Hayes of 1 Cate Street said Black Rock had affordable membership options for everyone.

Attorney Frank Cimler of Dover said he had produced a lot of big Boston acts like Aerosmith and that Black Rock's interior was one of the nicest venues in New England. He said his son was serving in Iraq and asked that the Board support Mr. Choquette because he supports veterans.

Patrick Kane of 213 Gates Street said he was a partner at High Street Insurance and Financial Services and thought Mr. Choquette was one of the finest gentlemen he knew.

SPEAKING IN OPPOSITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke. Chair Margeson closed the public hearing.

DISCUSSION OF THE BOARD [Timestamp 42:24]

Mr. Rheume said it was like dividing the application up into two pieces, dimensional variances related for parking and the parking between the principal building and the street. He said the building had two front yards in the sense that it was on a curve, so parking on both those sides would require variance relief. He said the Board recognized that the desire to have parking behind the structure was an aspirational goal in the zoning ordinance, but at the same time they realized that having the applicant relocate all his parking and doing the building over would be an undue burden on him, with very little public benefit. He said none of the properties along West Road had

all their parking behind them and not many properties complied with the 2 feet where 50 ft is required. He said the applicant had an existing condition and the ask was reasonable. Related to the use variances, he said the neighborhood was zoned Industrial from West Road to Peverly Hill Road but the Gateway 1 District was across the street from the applicant's building and Gateway 2 was just up the street. He said the Eversource building was in the G1 District even though it probably had the most industrial use in the neighborhood, but nothing immediately adjacent to the applicant's parcel was heavily industrial. He said some of the applicant's proposed uses would be allowed by special exception and that dining was a permitted use in the G1 and G2 Districts. He said the area in the future might change to match some of what is between West Road and Lafayette Road. He said those factors weighed in favor of the applicant. He said the Planning Board would consider partitioning some of the parking at the Site Plan review. Chair Margeson said she would not support the application because it was an expansion of uses with respect to the property. She said in 2013, the Board granted the request to convert the industrial building to a health club and then a private indoor recreation facility, and now the applicant was asking for a restaurant, a place of assembly, and an outdoor dining area. She said it just kept going on and on. She said it was up to the City Council to perhaps rezone the area but she did not find that the area supported this kind of use. She said granting the variance would introduce a use of nighttime events, which apparently was already happening on the applicant's parcel. Vice-Chair Mattson said it seemed reasonable to allow the parking to be maintained as it is because it was the Industrial Zone and the neighborhood was not built up like the downtown area. As for the uses, he said they were not allowed in an industrial zone but they were reasonable. He said the Industrial Zone would be more imposing on the applicant's establishment than the establishment's impact on the Industrial Zone. He said the uses were compatible with each other and could be justified. Mr. Nies said he was concerned about expanding the use to an outdoor area. Mr. Rossi said he would support the variance requests. He said sometimes things require a fine-toothed analysis of the pros and cons, but this was not one of those cases and it was largely variances to reflect the current conditions on the ground, which are operating in harmony with the surrounding area, and he did not think there was any rationale for taking it apart further than that. It was further discussed. Mr. Rheume said the variance requests for an outdoor restaurant and recreation use would run with the land. He said the outdoor use was something new from the original application but it was a situation where the applicant was somewhat there and he was more comfortable with it than he normally would be.

DECISION OF THE BOARD [Timestamp1:01:18]

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

Vice-Chair Mattson said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the proposed use was allowed in the ordinance but it was just in this specific industrial zone that it was not allowed. He said however that it is on the edge of that zone near another zone where it is allowed and was only separated by a street, which he thought is a special condition. He said the essential character of the neighborhood would not be altered because the building and use already exist and the neighborhood is somewhat eclectic

from an industrial standpoint. He said it would not threaten the public's health, safety or welfare or otherwise injure public rights. He said the parking already exists and does not have a negative impact. He said granting the variances would do substantial justice because the benefit to the applicant would not be outweighed by harm to other individuals. He said the values of surrounding properties would not be diminished, noting that the Board did not hear expert testimony but had no reason to think the way the property is being utilized would be detrimental to the neighboring properties. He said literal enforcement of the ordinance would result in unnecessary hardship. He said there were special conditions that distinguish it from other properties, including the physical reality of the property being on the sharp bend in West Road that was somewhat unique and the existing structure's location with the parking where it is. He said it would be an unnecessary hardship to demolish the building and move it closer to the street and put the parking in the back. He said the revision to the zoning was more recent and seemed to be more applicable to future builds. He said the area was zoned Industrial but was on the edge of the zone. In terms of the neighborhood, he said it is obviously more or less industrial than perhaps other places where this type of use would be allowed. He said the proposed use is a reasonable one and noted that it has been a reasonable use and should continue to be one.

Mr. Rheume said he agreed with almost everything Vice-Chair Mattson said. He said that Vice-Chair Mattson thought there was nothing de minimis about the requests, but Mr. Rheume thought they were justified. He said the fact that the property is right up to the Gateway Zone would allow most of the uses and it is uniquely situated in the Industrial Zone because the long side of the property is up against the Gateway District. He said the shape and configuration of the lot contributes to the idea that it is not perfectly suited for the Industrial Zone and gives it leeway for being on the edge right up against the Gateway District. He said the Board was not inventing something new but saying that these were things that would essentially be allowed with special exceptions and works in favor of the applicant. He said the outdoor use is an expansion of what was previously reviewed and granted by the Board but he thought it would ultimately be very limited. He said what the applicant was asking for is a small portion of the property and the physical constraints of the property would prevent further expansion. He said the application still had to go through a few more land board reviews, but for the purposes of the Board he thought the application met the five criteria. Mr. Rossi said he appreciated the public who made their statements and tapped into some deep emotions, which the Board did not see often in a positive sense. Vice-Chair Mattson said he accepted Mr. Rheume's comments.

The motion passed by a vote of 4-1, with Chair Margeson voting in opposition.

II. ADJOURNMENT

The meeting adjourned at 8:10 p.m.

Submitted,
Joann Breault
BOA Meeting Minutes Taker

II. OLD BUSINESS

- A. POSTPONED** 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) **POSTPONED**

Planning Department Comments

Applicant has postponed consideration to the October BOA meeting

II. OLD BUSINESS

- B.** The request of **Ann Marie Wiley Revocable Trust (Owner)**, for property located at **64 Woodworth Avenue** whereas relief is needed to construct an addition to the existing structure which requires the following: 1) Variance from Section 10.521 to allow a) 8.5 foot left yard where 10 feet are required, and b) 26% building coverage where 20% is the maximum. Said property is located on Assessor Map 243 Lot 42 and lies within the Single Residence B (SRB) District. (LU-26-102)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Residential	Construct an addition to the existing structure	Primarily Residential
<u>Lot area (sq. ft.):</u>	5,541	5,541	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	5,541	5,541	15,000 min.
<u>Primary Front Yard (ft.):</u>	10.9	Addition: 10.9	7.5 min.
<u>Secondary Front Yard (ft.):</u>	12.5	12.5	10 min.
<u>Left Side Yard (ft.):</u>	20.8	8.5	10 min.
<u>Rear Yard (ft.):</u>	34.6	34.6	30 min.
<u>Building Coverage (%):</u>	20.3	26	20 max.
<u>Open Space Coverage (%):</u>	69.4	62.8	40 min.
<u>Height (ft.):</u>	20	20	35 max.
<u>Estimated Age of Structure:</u>	1932	Variance request(s) shown in red.	

Other Permits/Approvals Required

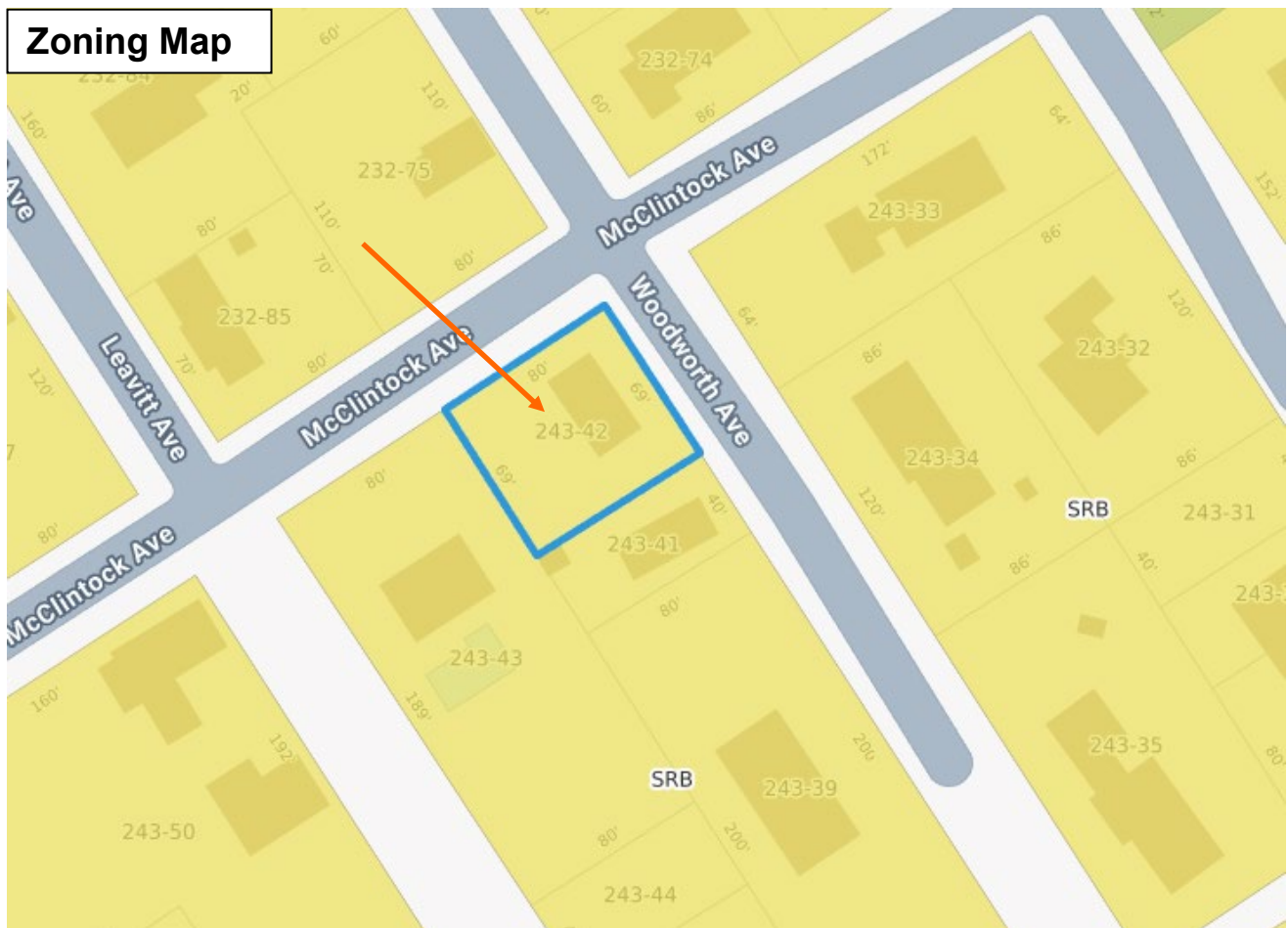
- Building Permit

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

No previous history found

Planning Department Comments

The applicant proposes to construct an addition to the left side of the existing home. Requested variances are left side and building coverage.

Variance Review Criteria

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

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

10.235 Certain Representations Deemed Conditions

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



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JOHN K. BOSEN
ELAINA H. SMITH
WILLIAM K. WARREN
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
ROBERT M. DEROSIER
NICHOLAS R. AESCHLIMAN

August 5, 2026

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

RE: **Ann Wiley (Applicant)**
64 Woodworth Avenue, Tax Map 243, Lot 42

Dear Chair Margeson and Board Members,

Please accept the Applicant's attached BOA Submission with respect to the property located at 64 Woodworth Avenue. Included for your review and consideration are the following:

- Exhibit 1: Narrative
- Exhibit 2: Letter of Authorization
- Exhibit 3: Building Permit Plan
- Exhibit 4: Front Elevation and Floor Plan
- Exhibit 5: Exterior Photographs
- Exhibit 6: Abutter Letters of Support

The Applicant respectfully requests that you include this Submission on the agenda for the Board's August 18, 2026, meeting. Thank you, and please contact our office if you have any questions.

Yours truly,

Courtney P. Vaughan, Esq.
cvaughan@dtclawyers.com

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

Exhibit 1

APPLICATION OF ANN WILEY
64 Woodworth Ave, Portsmouth

Map 243, Lot 42

APPLICANT'S NARRATIVE

PROJECT SUMMARY

Subject property: 64 Woodworth Avenue, Portsmouth, NH

Applicant: Ann Wiley, Owner of 64 Woodworth Avenue

Location: 64 Woodworth Avenue (SRB — Single Residence B District)

Relief Requested: Variance from Section 10.521 — Table of Dimensional Standards to permit a left-side setback of 8.8 feet where 10 feet is required in order to construct a one-bedroom addition (not an accessory dwelling unit); and a variance from that same Section 10.521 to permit a proposed building coverage of 26%, where 20% is required.

Proposal: The Applicant proposes a modest one-bedroom addition to the existing single-family home, increasing gross floor area from 982 square feet to 1,248 square feet (approximately a 20% increase). The addition is intended to allow the homeowner to provide in-home care for her father. The Application includes a site plan, scaled drawings, and four written letters of acknowledgment and support from immediate abutters.

VARIANCE CRITERIA

A. The Variance will not be contrary to public interest

The “public interest” and “spirit and intent” requirements are considered together pursuant to Malachy Glen Associates v. Chichester, 152 N.H. 102 (2007). The test is whether granting the variance would substantially alter the characteristics of the neighborhood or threaten the health, safety, and welfare of the public. Granting the requested variance to permit the one-bedroom addition that results in a left side setback of 8.8 feet and an increase in building coverage from 20% to 26% will not substantially alter the characteristics of the neighborhood nor threaten public health, safety, or welfare. The proposal preserves the existing single-family residential use and scale of the property, does not increase building height or intensity, and will not introduce new traffic, commercial activity, or other impacts that would undermine neighborhood character or municipal services. The addition is modest in footprint and massing and will be constructed in a manner consistent with residential building standards, ensuring continued compliance with safety and health codes.

B. The spirit of the ordinance is observed

Section 10.521's dimensional standards are intended to preserve light, air, privacy, and the residential character of neighborhoods by maintaining reasonable separation between structures. The proposed addition respects those objectives because it produces only a small, incremental change to the property's spatial relationships and does not materially reduce light, air, or privacy for neighboring lots. Increasing the home from 982 square feet to 1,248 square feet (approximately a 20% increase) keeps the structure within the modest scale typical of the SRB district. The addition will match the existing home's scale and architectural character, will not increase the building height, and will not change the property's single-family use. These factors demonstrate that the variance will not undermine the ordinance's purpose and that the spirit of the ordinance is preserved.

C. Substantial justice will be done

Substantial justice requires balancing the applicant's private loss if relief is denied against any public gain from strict enforcement. Denial would impose a significant personal and practical burden on the homeowner by preventing the creation of a safe, accessible living arrangement for her father and likely forcing either a more disruptive, costly alternative on the lot or relocation to institutional care. The public gains no meaningful benefit from denying this modest, well-designed addition because the project does not create measurable harm to public health, safety, or welfare, nor does it undermine the ordinance's objectives in any substantive way. The applicant has proactively engaged all immediate neighbors and obtained four written letters of acknowledgment and support, which are attached to this application; those abutter statements confirm that adjacent property owners do not perceive adverse impacts to privacy, light, or neighborhood character and therefore reinforce that denying the variance would produce a private hardship without corresponding public advantage. On balance, granting the variance advances substantial justice by avoiding an inequitable private loss while producing no detriment to the public.

D. Surrounding property values will not be diminished

There is no credible basis to conclude that surrounding property values will be diminished by the proposed addition. The improvement is modest and sympathetic to the existing neighborhood fabric, enhancing the property's livability without altering its residential character. The SRB neighborhood features a pattern of modest renovations and additions; this project aligns with that pattern and will be executed with attention to design and materials that complement the block. The four abutter support letters further indicate that neighbors do not expect negative effects on the enjoyment or marketability of their properties. Given the limited scale of the addition, its compatibility with surrounding homes, and neighbor support, the evidence supports a finding that the requested relief will not reduce surrounding property values.

E. Literal enforcement of the ordinance results in unnecessary hardship

Literal enforcement of the 10-foot side setback and the 20% building coverage requirement would result in unnecessary hardship under RSA 674:33, I(b), because special conditions of the property distinguish it from others in the district and make strict compliance inequitable. The parcel at 64 Woodworth Avenue is a modest SRB lot with an existing house footprint and site constraints that limit where an addition can be located without creating disproportionate impacts elsewhere on the lot; these physical circumstances are inherent to the lot and are not the product of the applicant's actions. Measured facts in the record, most notably the existing building placement and the modest lot area, demonstrate that the property's configuration materially constrains expansion options. Applying the statutory two-part test, these special conditions support the first element: there is no fair and substantial relationship between the general public purposes of the 10-foot side setback and the 20% building coverage requirements, and the specific application of that provision to this parcel. The ordinance's dimensional rules are intended to prevent overcrowding and to protect light, air, and privacy, but the proposed one-bedroom addition increases gross floor area from 982 to 1,248 square feet (~20%), does not increase building height, does not introduce a new use, and does not materially change the property's relationship to neighboring lots; under these site-specific facts, literal application of the setback does not advance the ordinance's public purposes in any meaningful way. The second element of the primary test, reasonableness of the proposed use, is likewise satisfied: the addition is a customary, single-family residential improvement designed to allow the homeowner to care for her father at home, is proportionate in scale, and is compatible with the SRB neighborhood pattern.

If the Board finds the primary two-part showing incomplete, the statutory fallback also supports relief: owing to the property's special conditions, the parcel cannot be reasonably used in strict conformity with the ordinance, and a variance is therefore necessary to enable a reasonable use. Practical alternatives that would meet the 10-foot side setback and the 20% building coverage standard would require either a substantially larger and more disruptive reconfiguration of the house and yard, a reduction in usable living space that would defeat the family care objective, or relocation of the family member to institutional care; outcomes that are impractical, inequitable, and contrary to the reasonable residential use the ordinance contemplates. The record further includes measured dimensions, scaled drawings, and neighborhood context that corroborate the lot's constrained nature, and the applicant's outreach (including four abutter letters of acknowledgment and support) confirms that the proposed minimal encroachment will not harm neighbors or the neighborhood's character. Because the special conditions of the property render strict enforcement inequitable, because literal application bears no fair and substantial relationship to the ordinance's purpose here, and because the proposed use is reasonable (and, alternatively, because strict conformity prevents reasonable use), literal enforcement would produce unnecessary hardship, and the requested variance is warranted under RSA 674:33, I(b).

CONCLUSION AND RELIEF REQUESTED

For the reasons set forth above, the proposed one-bedroom addition at 64 Woodworth Avenue satisfies the statutory variance criteria. The applicant respectfully requests that the Zoning Board grant a variance from Section 10.521 to permit the left side setback of 8.8 feet and a variance from that same section to allow for 26% building coverage, rather than the 20% required, to allow construction of the described addition. The application package includes a site plan (Exhibit B), scaled architectural drawings (Exhibit C), and four abutter letters of acknowledgment and support demonstrating neighborhood acceptance (Exhibit D).

Respectfully submitted,

August 4, 2026

By: _____



Courtney P. Vaughan, Esq.

Exhibit 2

LETTER OF AUTHORIZATION

I, Ann Marie Wiley, Trustee of the Ann Marie Wiley Revocable Trust, owner of property depicted on Tax Map 243, Lot 42, located at 64 Woodworth Avenue, Portsmouth, New Hampshire, do hereby authorize James Gregoire, Littlewoods, LLC and Donahue, Tucker and Ciandella, PLLC, to execute any land use applications to the City of Portsmouth and to take any action necessary for the application and permitting process, including but not limited to, attendance and presentation at public hearings, of the said property.

Dated: 6/19/26

THE ANN MARIE WILEY REVOCABLE TRUST

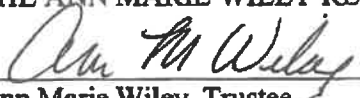
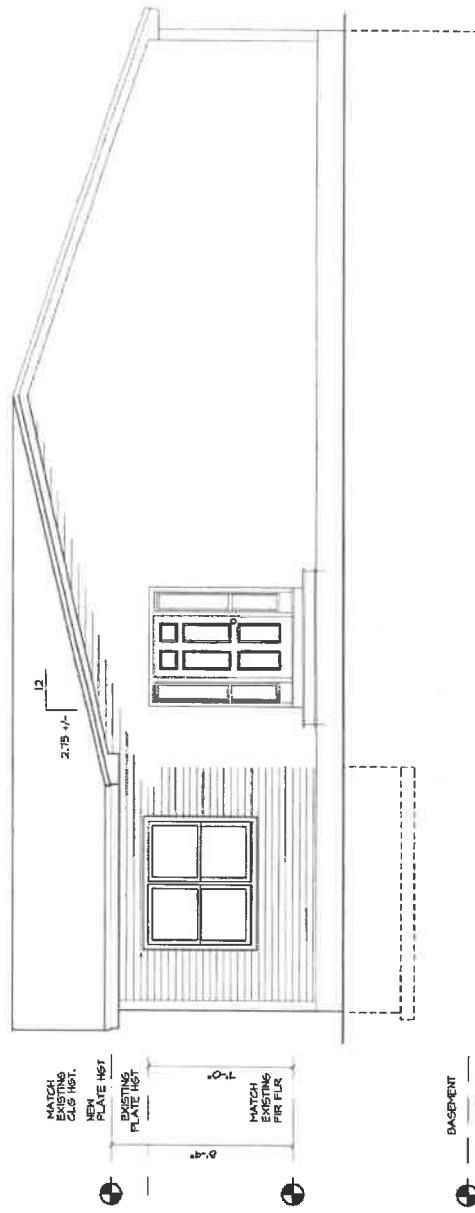
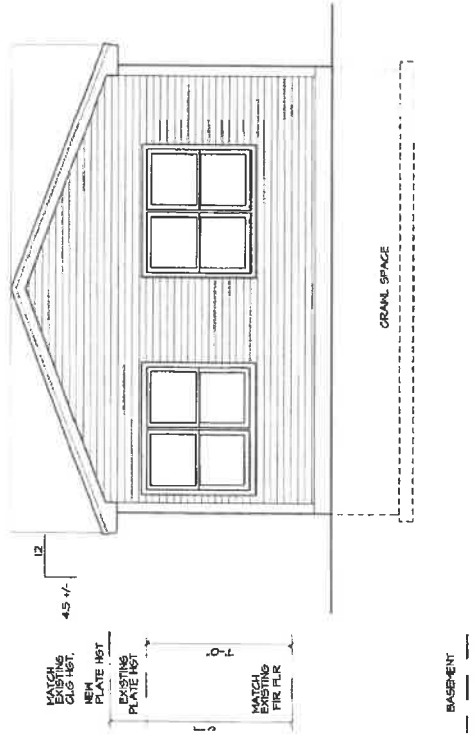

Ann Marie Wiley, Trustee

EXHIBIT 3

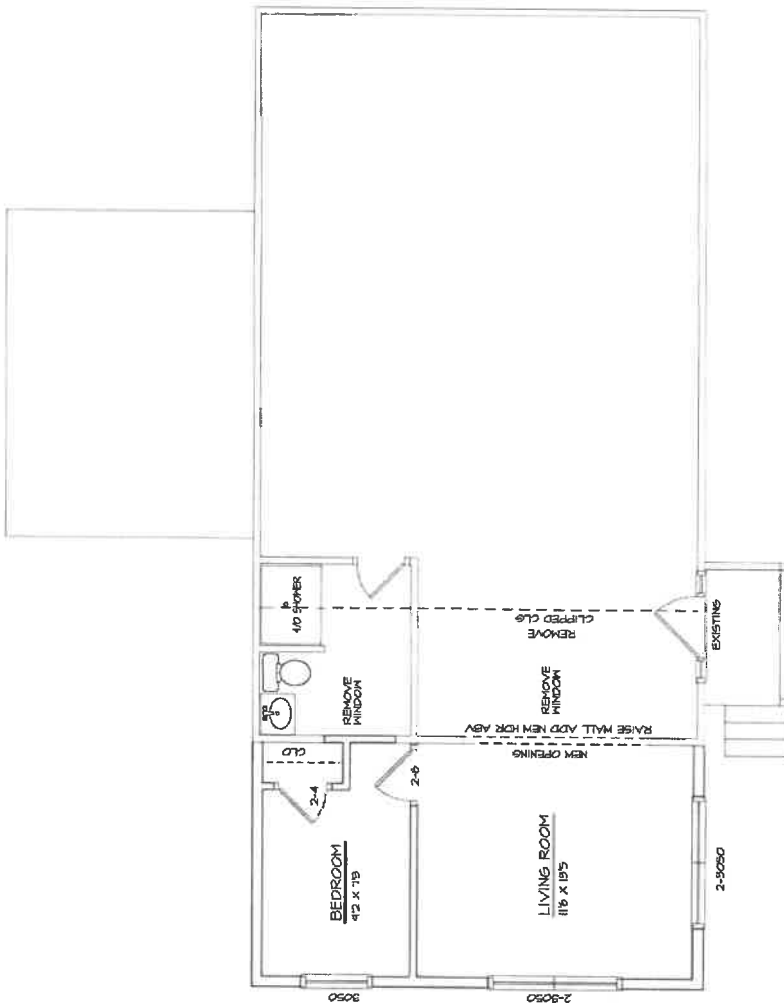


Property Information Property ID 0243-0042-0000 Location 64 WOODWORTH AVE Owner WILEY ANN MARIE REV TR	 MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT City of Portsmouth, NH makes no claims and no warranties, expressed or implied, concerning the validity or accuracy of the GIS data presented on this map. Geometry updated 03/06/2026	Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.
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EXHIBIT 4



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



FIRST FLOOR PLAN

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



Alternative
Designs Inc.

26-229

EXHIBIT 5

6H Woodworth Ave
External View



EXHIBIT 6

NEIGHBOR ACKNOWLEDGMENT OF PROPOSED HOME ADDITION

Date: 6/30/26

To Whom It May Concern:

I, * Tom Gallant, (Neighbor's Name), residing at
72 WOODWORTH AVE. (Neighbor's Address), acknowledge that
I have been informed of the proposed addition to the residence located at:

64 Woodworth Avenue, Portsmouth, NH 03801

owned by **Ann Wiley** _____

After reviewing the information provided regarding the proposed addition, I have no
objection to or contest regarding the construction of the addition as proposed.

This acknowledgment is provided voluntarily and indicates that I do not oppose the
proposed project. I understand that this statement does not waive any legal rights that may
exist under applicable laws or regulations.

Signature: Tom Gallant

Date: 6/30/26

NEIGHBOR ACKNOWLEDGMENT OF PROPOSED HOME ADDITION

Date: 6-15-26

To Whom It May Concern:

I, Danny Hatch (Neighbor's Name), residing at
4 McClintock Ave (Neighbor's Address), acknowledge that
I have been informed of the proposed addition to the residence located at:

64 Woodworth Avenue, Portsmouth, NH 03801

owned by **Ann Wiley** _____.

After reviewing the information provided regarding the proposed addition, I have no
objection to or contest regarding the construction of the addition as proposed.

This acknowledgment is provided voluntarily and indicates that I do not oppose the
proposed project. I understand that this statement does not waive any legal rights that may
exist under applicable laws or regulations.

Signature:



Date: 6-18-26

NEIGHBOR ACKNOWLEDGMENT OF PROPOSED HOME ADDITION

Date: 6/18/2026

To Whom It May Concern:

I, Anne Turner (Neighbor's Name), residing at
10 McClintock Street Ave (Neighbor's Address), acknowledge that
I have been informed of the proposed addition to the residence located at:

64 Woodworth Avenue, Portsmouth, NH 03801

owned by Ann Wiley.

After reviewing the information provided regarding the proposed addition, I have no
objection to or contest regarding the construction of the addition as proposed.

This acknowledgment is provided voluntarily and indicates that I do not oppose the
proposed project. I understand that this statement does not waive any legal rights that may
exist under applicable laws or regulations.

Signature: Anne W. Turner

Date: 6/18/2026

NEIGHBOR ACKNOWLEDGMENT OF PROPOSED HOME ADDITION

Date: 6/19/26

To Whom It May Concern:

I, Eliza Hobson (Neighbor's Name), residing at
5 McClinton St. (Neighbor's Address), acknowledge that
I have been informed of the proposed addition to the residence located at:

64 Woodworth Avenue, Portsmouth, NH 03801

owned by Ann Wiley

After reviewing the information provided regarding the proposed addition, I have no
objection to or contest regarding the construction of the addition as proposed.

This acknowledgment is provided voluntarily and indicates that I do not oppose the
proposed project. I understand that this statement does not waive any legal rights that may
exist under applicable laws or regulations.

Signature: Eliza Hobson

Date: 6/19/26

II. OLD BUSINESS

- D.** The request of **Michael J Ferrelli (Owner)**, for property located at **0 Joffre Avenue and 18 Barberry Lane** whereas relief is needed to construct a single-family home on a vacant lot which requires the following: 1) Variance from Section 10.521 to a) allow for 0 feet of street frontage where 100 feet is required; b) allow for 12,185 square feet of lot area where 15,000 square feet is required; c) allow for 12,185 square feet of lot area per dwelling where 15,000 square feet is required; and 2) Variance from Section 10.1114.31 to allow for two driveways on a single lot where one is permitted. Said properties are located on Assessor Map 233, Lot 135 and Lot 131 and lie within the Single Residence B (SRB) District. (LU-26-92)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Vacant lot	Construct new SFR on vacant lot & driveway access from 18 Barberry Lane*	Primarily Residential
<u>Lot area (0 Joffre) (sq. ft.):</u>	12,185	12,185	15,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	12,185	12,185	15,000 min.
<u>Frontage (ft.):</u>	0	0	100 min.
<u>Depth (ft.):</u>	>100	>100	100 min.
<u>Front Yard (ft.):</u>	N/A	>30	30 min.
<u>Right Side Yard (ft.):</u>	N/A	>10	10 min.
<u>Left Side Yard (ft.):</u>	N/A	>10	10 min.
<u>Rear Yard (ft.):</u>	N/A	>30	30 min.
<u>Building Coverage (%):</u>	N/A	<20	20 max.
<u>Open Space Coverage (%):</u>	100	>40	40 min.
<u>Height (ft.):</u>	N/A	<35	35 max.
<u>Parking</u>	0	1	1
<u>Estimated Age of Structure:</u>	1961	Variance request(s) shown in red.	

***Variance from Section 10.1114.31 to allow for two driveways on a single lot**

Other Permits/Approvals Required

- Wetland CUP / Planning Board
- Building Permit

Neighborhood Context

Zoning Map



Aerial Map



Previous Board of Adjustment Actions

No Previous BOA history was found.

Planning Department Comments

The applicant is proposing to construct a new single-family residential dwelling on a vacant lot that does not conform to the minimum frontage or lot area requirements. The City was unable to find evidence to suggest that Joffre Avenue was formally accepted as a public way and the abutting landowners may have rights to claim to the centerline of the paper street. The applicants plan includes the area of Joffre Avenue to the centerline of the paper street abutting the property. To provide access to the lot, the applicant is proposing a second driveway on 18 Barberry Lane with a 16' driveway easement.

Update for the September 15th meeting:

The applicant has submitted a supplemental memo which outlines a potential solution to the questions raised at the August 18th meeting. In addition, the Deputy City Attorney has provided the following statement.

Message from Deputy City Attorney Trevor McCourt

"I can confirm that, based upon my own extensive research of City records, the City has never, by affirmative act or by implication, accepted the paper street known as Joffre Avenue. Due to the date of dedication, the City has no legal interest in Joffre Avenue at this time."

Additionally, for the Boards reference, I have provided a statement on the proposed driveway width from Assistant Deputy Fire Chief Chad Putney below.

"Given Barberry Lane is not quite 16, a 16 foot wide driveway in this case is not unacceptable. It would be preferred to be 20 feet."

Variance Review Criteria

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

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

AND

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

OR

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

10.235 Certain Representations Deemed Conditions

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

BY: VIEWPOINT & HAND DELIVERY

August 28, 2026

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

**RE: Supplemental Letter
Variance Application - Tax Map 233, Lot 135
LU-26-92**

Dear Zoning Board Members,

At your August 18, 2026 meeting, you voted to postpone consideration of the above referenced variance application to your September 15, 2026, meeting “so that the applicant can provide information on how and when driveway access will be provided to Lot 233-135 and information on adopting the portion of Joffre Avenue to add square footage to the applicant’s lot.” I offer the following response below.

Driveway Access

I attended a meeting with Peter Stith, Stefanie Casella, Jillian Harris and Trevor McCourt, Esq. on August 25, 2026 to discuss the questions and concerns raised by the Board. One the concerns expressed was about ensuring that legal access is provided to the subject property in the future since the property at 18 Barberry (“house lot”) is owned in common with the subject property (“vacant lot”). It is our understanding that the underlying concern relates to the commonality of ownership of the house lot and vacant lot and the legal principle that one cannot grant an easement unto themselves. To address this concern, the Applicant, following consultation with the staff, proposes the following two (2) conditions of approval for consideration:

- 1) That an agreement, deed covenant or other written instrument of similar effect shall be approved by the City Legal Department and recorded with the Registry of Deeds reserving a driveway access easement across Tax Map 233, Lot 131 to Tax Map 233, Lot 135.
- 2) The exact location and configuration of the driveway across Tax Map 233, Lot 131 to Tax Map 233, Lot 135 may be modified by the Department of Public Works prior to issuance of a driveway permit.

I note that there is precedence in this approach, which the City has supported in other similar situations in the past. As an example, in 2022 I had a client subdivide a property on Artwill Avenue into three (3) separate lots. As a condition of the subdivision approval, my client was required to grant several access and utility related easements over the lots since Artwill Avenue is a private street. Because my client owned all 3 lots in common, it entered into an agreement with the City that was subsequently recorded that stipulated that each lot would be conveyed in the future subject to the easements. *See attached.*

Joffre Avenue

My client is likely to seek a release deed from the City for the land underlying Joffre Avenue in the future merely for clarity of title, not to establish rights that he does not already have in it. It is firmly established law in the state of New Hampshire that a conveyance of land bounded by a roadway is presumed to run to the center of the roadway unless a contrary intention is plainly disclosed. Luneau v. MacDonald, 103 N.H. 273, 276, 173 A.2d 44, 46 (1961). Absent fee simple ownership of a roadway, the Supreme Court has made it very clear that the intent that the soil in the street should be owned by someone other than an abutting landowner is so improbable that it would require an express exception in the grant, or some clear and unequivocal declaration, or certain and immemorial usage, to limit the title of the grantee to the edge of the street. Smith v. Furbish, 68 N.H. 123, 126, 44 A. 398, 399 (1894). Conveyances of lots which are now located on paper streets and which were originally sold by reference to a recorded plat or plan showing existing or proposed streets as constituting the boundaries for the lots, have been held to convey to the grantee the fee simple to the land underlying the adjoining streets. Gagnon v. Moreau, 107 N.H. 507, 509, 225 A.2d 924, 925 (1967).

In the case of Joffre Avenue, which is not even identified as a named City street on its maps, the City has determined that it does not have any interest in the paper street and that any rights it may have once had have been extinguished by operation of law. My understanding is that written confirmation of this will be provided either by the Legal or Planning Department or both. This position was reaffirmed in my meeting with the staff on August 25th. Any effort made by the Applicant to seek a formal release and deed to the land underlying the abutting streetway would be solely for the purpose of clarifying his title/record ownership of the land. In other words, it would be done merely to ensure that any title examiner reviewing title to the property has clear evidence of title to the land in question. The Applicant did not include any portion of the paper street in his variance request for lot area out of an abundance of caution but that does not constitute an admission that he does not own it or that he must take some action to acquire it. The question about ownership over the paper street should have no bearing on the Board's decision.

I would respectfully remind the Board that Lot 233-135 is a lawfully existing non-conforming lot of record whether it is 12,185 square feet or 14,152 square feet or has frontage on a public street or not. The Applicant not only has the right to access this lot but also has reasonable development expectations in it. He is not seeking any dimensional relief distinct from the existing conditions of the lot. Part I, Article 12 of the NH Constitution affords a high level of protection to owners of non-conforming lots. I would submit that the Board's review is more limited in this context than it would be if the Applicant was trying to create a new lot and needed lot area or other dimensional relief.

I hope you will grant the relief that is being sought, which is very reasonable under the circumstances. Thank you for your time and thoughtful consideration of the application.

Sincerely,

Derek R. Durbin, Esq.

Carly Ann Tracy

RECORDING
SURCHARGE

26.00
2.00

Return to:
Planning Department
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

(m)



DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into by and between **ARTWILL LLC**, a New Hampshire Limited Liability Corporation, having an address of 437 Lafayette Road, Portsmouth, NH 03801, Portsmouth, NH 03801 (the “Developer” or “Grantor”) and the **CITY OF PORTSMOUTH**, a New Hampshire municipal corporation, having a mailing address of 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (the “City” or “Grantee”), relative to the property located at 437 Lafayette Road, Portsmouth, New Hampshire 03801 (the “Property”).

RECITALS

WHEREAS, this Agreement relates to the subdivision of the Property into three (3) single-family home lots with access off of a *private drive* referred to as “Artwill Avenue”, as more specifically shown on a plan entitled “Tax Map 229, Lot 1 Subdivision Plan Proposed 3-Lot Subdivision 437 Lafayette Road, Portsmouth, New Hampshire County of Rockingham Owned by Artwill LLC”, dated April 19, 2022, as revised through the date hereof, to be recorded in Rockingham County Registry of Deeds herewith (the “Subdivision Plan”); AND

WHEREAS, the Subdivision Plan was approved by the City of Portsmouth Planning Board (the “Planning Board”) on July 21, 2022; AND

WHEREAS, the Developer is the owner of all of the land subject to the Subdivision Plan; AND

WHEREAS, this Development Agreement is being entered into by the Developer and City to ensure that legal access is provided to the subdivided lots shown on the Subdivision Plan in perpetuity and that the City shall have no responsibility or liability for the maintenance of Artwill Avenue; AND

WHEREAS, the parties intend for any violation of the terms and conditions set forth in this Development Agreement shall be subject to enforcement by the City of Portsmouth; AND

WHEREAS, it is intended that this Development Agreement be binding upon the heirs, successors and assigns of the Developer.

NOW THEREFORE, in consideration of the foregoing Recitals and mutual covenants and representations contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Developer and City agree as follows:

1. The Developer agrees to grant and convey perpetual access easements for the benefit of Lots 2 and 3 as shown on the Subdivision Plan to pass and repass by vehicle, foot, and other lawful modes of transportation over Artwill Avenue. The access easements contemplated hereby shall be conveyed with the deeds to the subdivided lots. The Deed to Lot 1 shall be conveyed subject to access easements for the benefit of Lots 2 and 3. The deed to Lot 2 shall be subject to an access easement for the benefit of Lot 3.

2. The City of Portsmouth shall have no responsibility or liability with respect to Artwill Avenue and its continued maintenance. Artwill Avenue shall continue as a private drive unless and until it has been formally accepted by the City of Portsmouth.

3. This Development Agreement may not be modified except by written agreement of the Parties, which shall be recorded as an amendment or restatement hereto or hereof.

3. Should the Developer fail to comply with its obligations hereunder, it shall be subject to enforcement action by the City of Portsmouth.

4. This Development Agreement may be assigned in whole or in part at any time by the Developer so long as written notice has been provided to the Planning and Legal Departments of the City.

5. This Development Agreement shall be binding upon the heirs, successors and assigns of the parties.

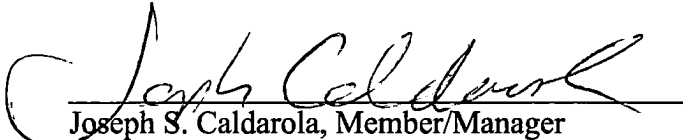
6. It shall be expressly understood by the Parties hereto that a waiver by the City of any breach or default by the Developer of the obligations, terms, or conditions of this Development Agreement shall not be deemed a waiver of any other or future breaches or defaults thereof.

7. If any clause of this Agreement shall be declared invalid in whole or in part and is for any reason rendered null and void, the remaining clauses shall remain in full force and effect.

[SEPARATE SIGNATURE PAGES TO FOLLOW]

Executed this 28 day of October 2022.

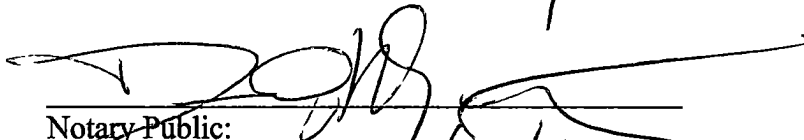
Developer/Grantee: Artwill LLC

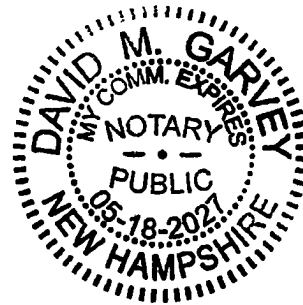

Joseph S. Caldarola, Member/Manager
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

This 28th day of October 2022 personally appeared, Joseph S. Caldarola and Nicola Douglass, in their capacities as members/managers of Artwill LLC, duly authorized, known to me, or satisfactorily proven, to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same for the purposes therein contained.

Before me, DAVID M. GARVEY


Notary Public:
Commission expires: 5/18/27



Executed this 28th day of Oct 2022.

Developer/Grantee: Artwill LLC

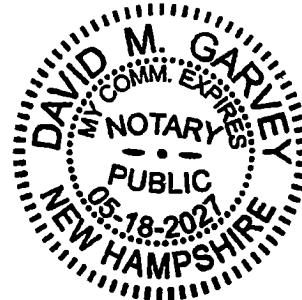
Nicola Douglass
Nicola Douglass, Member/Manager
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

This 28th day of October, 2022 personally appeared, Joseph S. Caldarola and Nicola Douglass, in their capacities as members/managers of Artwill LLC, duly authorized, known to me, or satisfactorily proven, to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same for the purposes therein contained.

Before me, DAVID M. GARVEY

[Signature]
Notary Public:
Commission expires: 5/18/27



Executed this 27th day of October 2022.

City of Portsmouth/Grantor:

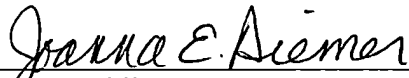


Karen S. Conard, City Manager
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

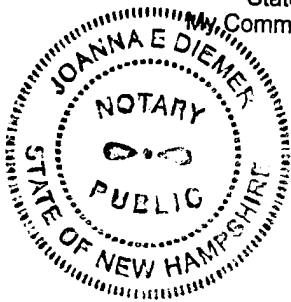
This 27th day of October, 2022 personally appeared, Karen Conard, in her capacity as City Manager of the City of Portsmouth, duly authorized, known to me, or satisfactorily proven, to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed the same for the purposes therein contained.

Before me,



Notary Public:
Commission expires:

Joanna E Diemer
NOTARY PUBLIC
State of New Hampshire
Commission Expires 10/23/2024



Driveway Permit

DRVE-26-6

Your Submission

Attachments

Guests (0)

▶ **DPW: Dave Desfosses**

Planning Dept

DPW Director

Permit Fee

Permit Issuance

DPW: Dave Desfosses

▶ **In progress.** This step is in progress.



Dave Desfosses

Aug 17, 2026 at 3:35 pm

A variance is required before we can approve this.

Message the reviewer

Send Message

BY: VIEWPOINT & HAND DELIVERY

June 30, 2026

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

**RE: Revised Variance Application of J. Michael Ferrelli
Joffre Avenue, Tax Map 233, Lot 135**

Dear Stefanie,

Please find a copy of the revised variance application for the above referenced property. The enclosed materials have also been filed through Viewpoint. Please replace the materials filed on June 24, 2026 with the enclosed, and please do not hesitate to reach out should you have any questions or concerns. Included with this submission is the following:

- 1) Landowner Letter of Authorization
- 2) Narrative (Revised) to Variance Application with Exhibits
- 3) Variance Plan prepared by Ambit Engineering, Inc.
- 4) Photographs of Property
- 5) GIS Map

Sincerely,



Derek R. Durbin, Esq.

LANDOWNER LETTER OF AUTHORIZATION

J. Michael Ferrelli, record owner of property located at **Joffre Avenue, Portsmouth New Hampshire**, identified on **Tax Map 233, Lot 135** (the "Property"), hereby authorizes **Durbin Law Offices PLLC**, to file any building, zoning, planning or other municipal permit applications with the City of Portsmouth for said Property and to appear before its land use boards. This Letter of Authorization shall be valid until expressly revoked in writing.


J. Michael Ferrelli (Jun 24, 2026 08:09:50 GMT+7)

J. Michael Ferrelli

Landowner Authorization Form -Ferrelli

6-23-2026

Final Audit Report

2026-06-24

Created:	2026-06-24
By:	DARCY PEYSER (darcy@durbinlawoffices.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAADMg16RYN1srUiBivNsP4O9IzB0jWIAej

"Landowner Authorization Form -Ferrelli 6-23-2026" History

-  Document created by DARCY PEYSER (darcy@durbinlawoffices.com)
2026-06-24 - 0:24:40 AM GMT
-  Document emailed to J. Michael Ferrelli (mike@ferrellienterprises.com) for signature
2026-06-24 - 0:24:44 AM GMT
-  Email viewed by J. Michael Ferrelli (mike@ferrellienterprises.com)
2026-06-24 - 0:25:17 AM GMT
-  Document e-signed by J. Michael Ferrelli (mike@ferrellienterprises.com)
Signature Date: 2026-06-24 - 1:09:50 AM GMT - Time Source: server - Signature Appearance Selected: MOBILE_DRAW
-  Agreement completed.
2026-06-24 - 1:09:50 AM GMT



Adobe Acrobat Sign

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

**Off Joffre Avenue
Tax Map 233, Lot 135**

**J. Michael Ferrelli
(Owner/Applicant)**

INTRODUCTION

The property shown on Tax Map 233 as Lot 131 (the "Property" or "Applicant's Property") is a 12,185 square foot undeveloped lot of record located in the SRB Zoning District. The Property consists of two merged lots first shown on the "Pershing Terrace" subdivision plan of 1918, recorded in the Rockingham County Registry of Deeds as Plan 082 (the "1918 Plan"). Exhibit A. The original parcels comprising the Property are identified on the 1918 Plan as Lots 37 and 38. It is not clear from the title history exactly when the lots were merged or whether it occurred voluntarily or involuntarily. Regardless of how the merged lot came to be, the Applicant now seeks the zoning relief necessary to construct a single-family home on the Property, which does not conform to the minimum frontage or lot area requirements.

Because the City was unable to find evidence to suggest that Joffre Avenue was formally accepted as a public way, it is the City's opinion that any rights it had in the paper street reverted to the abutting landowners pursuant to RSA 231:51, who each own to the centerline. As a result, the Applicant's Property lacks frontage on a public street. To provide legal access to the Property, the Applicant is proposing a 16' wide driveway easement over abutting land he owns at 18 Barberry Lane.

In addition to lacking frontage, the Property does not conform to the 15,000 square foot minimum lot area requirement applicable to the SRB Zoning District. Based on the most recent surveyed plan of the Property prepared by Ambit Engineering, it has 12,185 square feet of area not counting any portion of the paper street. If you count the land area associated with the paper street, the Property is 14,152 square feet. The Applicant has used the more conservative lot area calculation for purposes of the lot area variances he seeks.

ZONING RELIEF SUMMARY

The Applicant seeks the following variance approvals from the Board:

Section 10.521

To allow for 0' of continuous street frontage where 100' is required and 0' exists.

To allow for 12,185 square feet of lot area where 15,000 square feet is required.

To allow for 12,185 square feet of lot area per dwelling unit where 15,000 square feet is required.

Section 10.1114.31

To allow for two driveways on a single lot where one is permitted per the standards for "General Accessway and Driveway Design" in the Site Plan Review Regulations.

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 requested variances are necessary to allow the Applicant to construct a single family home on the Property. In general, the primary purpose behind minimum frontage and lot area requirements is to ensure sufficient access for emergency vehicles, provide space for utilities, and create a certain level of spacing between homes to promote and preserve consistent neighborhood aesthetics. In the present case, the lot area is an existing condition of the Property. Lot sizes vary in the surrounding neighborhood, but what is proposed, even without considering the land area associated with the paper street, is a minor deviation (18.8%) from what the Ordinance requires. Constructing a home on the Property would not overcrowd or otherwise alter the essential character of the neighborhood. Any home constructed on the Property will meet or exceed all applicable building setback standards and be a considerable distance from the homes on abutting properties. The Property is in a largely wooded area that is bordered to the west by a power line easement and a paper street to the north. The purpose behind the requirement of having one driveway per lot is to preserve sight lines and provide for the safe, efficient and orderly movement

of vehicles. The driveway easement that would be utilized to access the Property provides sufficient access for emergency vehicles and space for utilities, and there will be no impact to sight lines because the home borders public utility land at the end of a dead end street. Because there is nearly no traffic on the street, a second driveway access point does not pose any danger to vehicles or pedestrians on the road. Therefore, no public health, safety or welfare concerns are presented by granting the variances. For the foregoing reasons, the general objectives and public purposes behind the frontage, lot area and driveway requirements are met.

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 that is not outweighed by any gain to the public for the Board to deny the variances necessary to construct a conforming single-family home on an existing lot of record that was created long before current zoning standards. The Applicant acquired the Property as a separately deeded parcel of land with the reasonable expectation that he could build a home upon it, like those surrounding it. There are no public health, safety or welfare concerns implicated by the variances and the lot itself is larger than many other SRB zoned properties throughout the City of Portsmouth. In the present case, the equitable balancing test weighs heavily in favor of the Applicant and the vested rights he has in the Property.

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

The future addition of a new single-family home on the Property will not alter the essential character of the neighborhood or otherwise negatively impact abutting properties. There is sufficient land area to accommodate the use without overcrowding the Property or encroaching upon the light, air and space of abutting properties. As stated above, any house that is built on the Property will meet or exceed all applicable building setback standards and be a considerable distance from the homes on abutting properties. The Applicant has shown a conservative building envelope for the Property by omitting the land area associated with the paper street and by delineating a 30' front yard setback even though the Property technically has no “front yard” by definition. Under the circumstances, granting the variances should only 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. It is a deeded lot of record consisting of two merged parcels that were created long before Portsmouth adopted its first zoning map and ordinance or SRB zoning standards. As a result of the City never formally accepting or constructing Joffre Avenue, the Applicant's Property was left landlocked

where access can only be achieved through abutting land. The only way for the Applicant to make reasonable use of the land under current SRB zoning standards is by obtaining variances from the minimum lot area and frontage requirements, and to add a second driveway across his abutting lot. The Property is not vastly dissimilar in size to many of the properties that surround it and is quite a bit larger than many other SRB-zoned properties in Portsmouth. The Property abuts public utility land to the west and the homes to the north, south and east are a considerable distance away from where any home would be constructed on the Applicant's property. Because the Applicant owns the abutting parcel to the south, he is able to establish sufficient driveway access to the Property without impacting surrounding properties. Owing to these special conditions of the Property, there is no fair and substantial relationship between the purposes of the lot area and frontage requirements and their application to the Property. The proposed use is also a reasonable one. The Property will be used to construct a single-family residence in the future, which is allowed by right in the SRB Zoning District.

CONCLUSION

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

Respectfully Submitted,
J. Michael Ferrelli

June 30, 2026

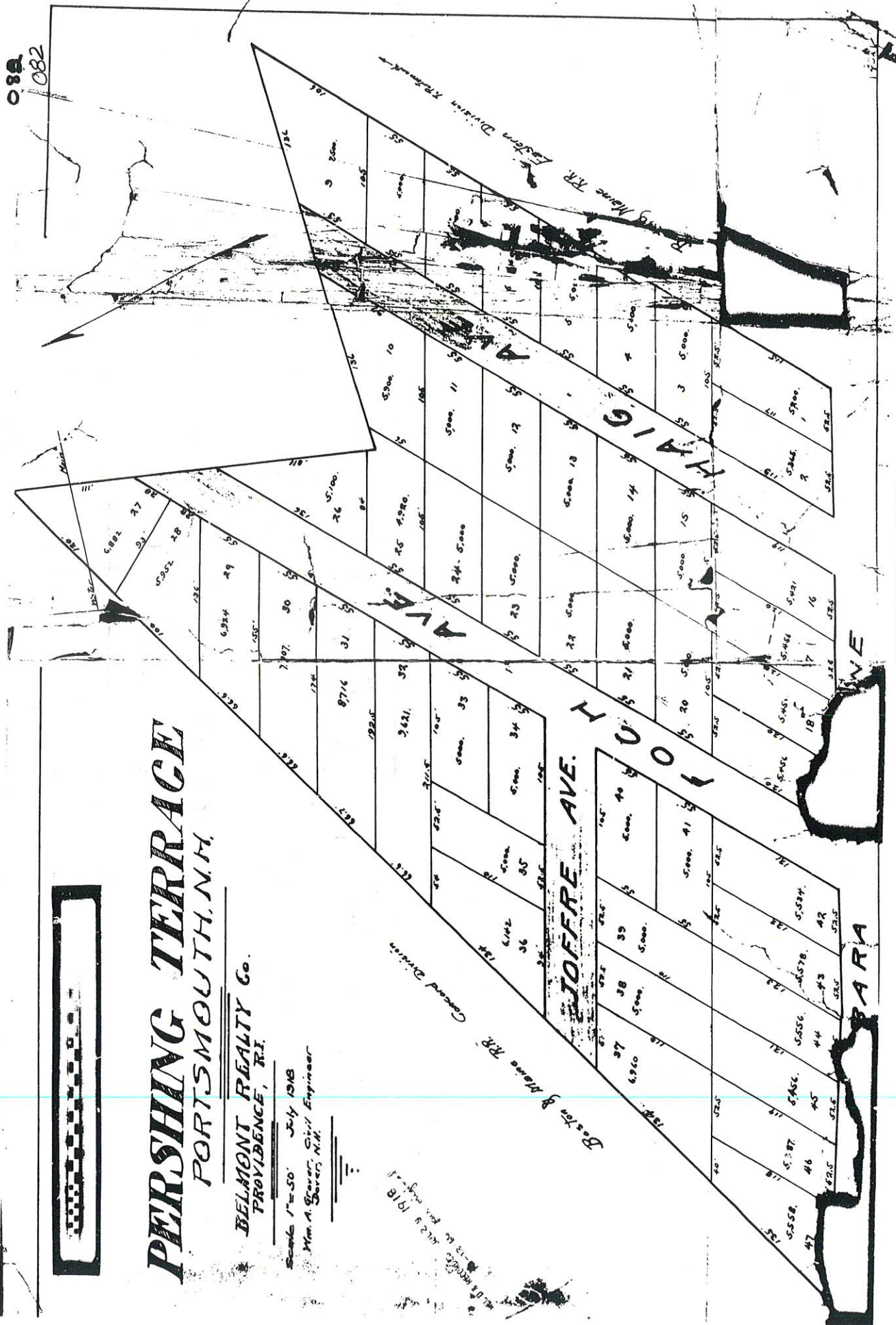
By:



Derek R. Durbin, Esq.
Darcy Pesyer, Esq.
DURBIN LAW OFFICES PLLC
154 Maplewood Avenue
Portsmouth, NH 03801
(603)-287-4764
derek@durbinlawoffices.com

EXHIBIT A

082
082



PERSHING TERRACE PORTSMOUTH, N.H.

BELMONT REALTY Co.
PROVIDENCE, R.I.

Scale 1"=50' July 1918
Miss A. Grover, Civil Engineer
for Belmont Realty Co.

ALL RIGHTS RESERVED JUL 9 1918
Copyright by Miss A. Grover



Area of proposed driveway ROW adjacent to 18 Barberry Lane



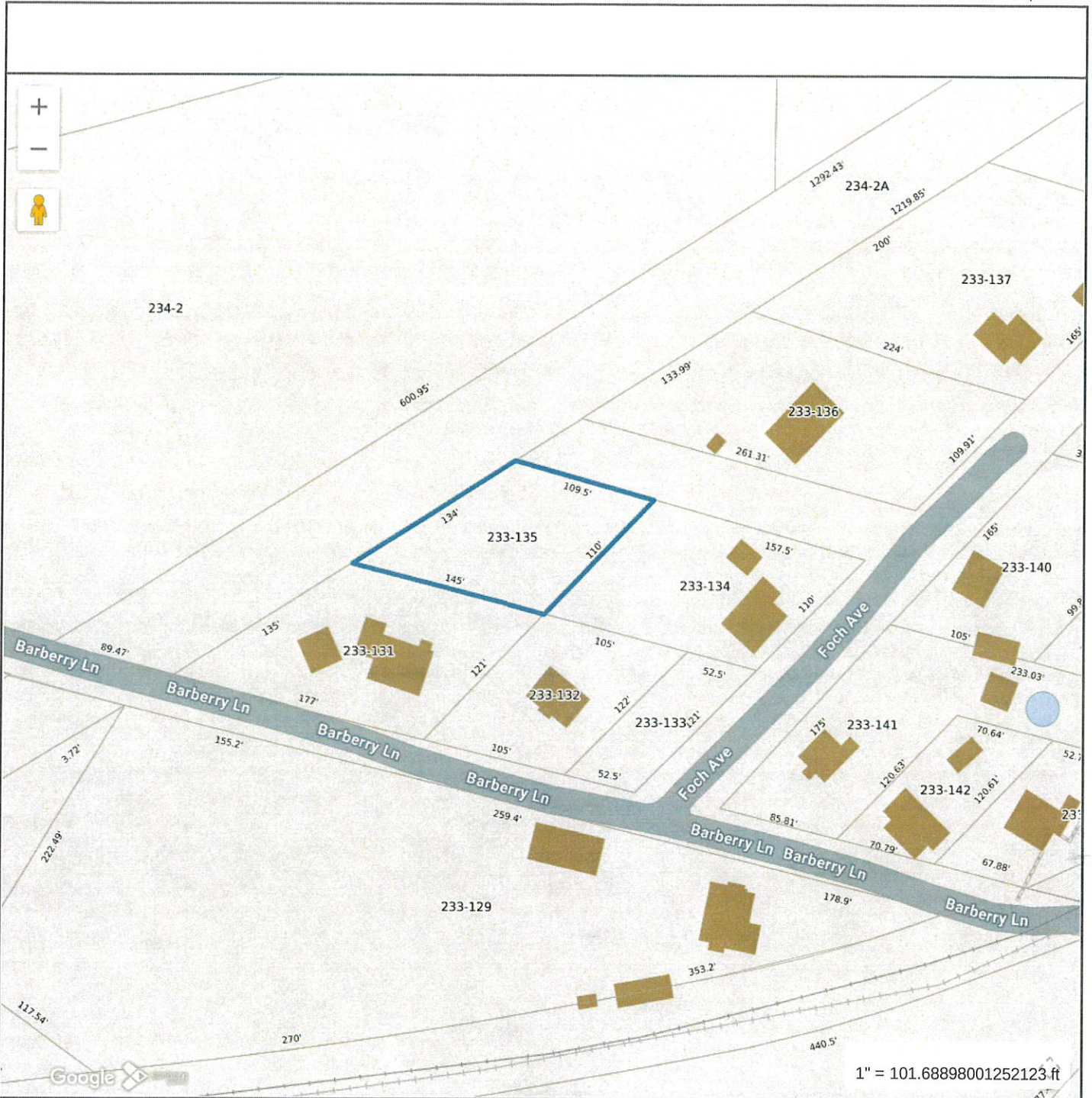
Vacant Lot – Joffre Lane



Vacant Lot – Joffre Lane



Aerial View of Vacant Lot – Google Satellite Image

**Property Information**

Property ID 0233-0135-0000
 Location JOFFRE AVE
 Owner FERRELLI J MICHAEL



**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 03/06/2026

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

II. OLD BUSINESS

- E. The request of **Kathleen B. and Kent A. Logan, Susan E. Lassen, Scott A. Lupkas, and Guy D. and Elizabeth R. Spiers (Appellants)**, for appeal of decision of administrative officials to classify the art studio attached to the side of the third dwelling unit as an R2 non-transient sleeping unit for property located at **28 Blossom Street**. Said property is located on Assessor Map 111 Lot 40 and lies within the General Residence B (GRB) and Historic Districts. (LU-26-114)

Planning Department Comments

The parties listed above are appealing the determination of the Chief Building Inspector in his determination of an R2 non-transient sleeping unit located at 28 Blossom Street. The meeting packet contains the filed appeal, a memo from the Planning Director, and a memo from Deputy City Attorney Trevor McCourt.

**STATE OF NEW HAMPSHIRE
CITY OF PORTSMOUTH
ZONING BOARD OF ADJUSTMENT**

IN RE: Appeal from Determination Letter (July 23, 2026) and
Supplemental Determination Letter (August 6, 2026) of the
Chief Building Inspector, City of Portsmouth

Property: 28 Blossom Street, Portsmouth, NH 03801 (MBLU 0111/0040/0000)

Owners of Record: Burke-Zabarsky Revocable Trust; Hannah & Paul J. Burke, Trustees

NOTICE OF APPEAL AND STATEMENT OF GROUNDS

(Filed pursuant to RSA 674:33; RSA 676:5; and the Portsmouth Zoning Ordinance)

TO: The Zoning Board of Adjustment, City of Portsmouth, New Hampshire

The undersigned, Kathleen B. Logan and Kent A. Logan, Trustees of the Kathleen B. Logan Revocable Trust, of 21 Blossom Street; Susan E. Lassen, Trustee of the Lassen Family Revocable Trust, of 34 Blossom Street; Scott A. Lupkas, of 33 Blossom Street; and Guy D. Spiers and Elizabeth R. Spiers, Trustees of the 3A Trust, of 241 South Street, all of Portsmouth, New Hampshire (collectively, "Appellants"), being abutters within the meaning of RSA 676:5, I, and RSA 672:3, hereby appeal to this Board the determination of the Chief Building Inspector set forth in (1) the Determination Letter dated July 23, 2026, and (2) the Supplemental Determination Letter dated August 6, 2026 (together, the "Determination"), both concerning the property at 28 Blossom Street, Portsmouth, New Hampshire ("the Property"). This appeal is timely filed within thirty (30) days of both the Determination Letter and the Supplemental Determination Letter, as required by RSA 676:5, I.

I. STATEMENT OF STANDING

Appellants own and/or occupy property that abuts, or is within the notice radius of, 28 Blossom Street, and are directly and specially affected by the Determination, which authorizes continued and expanded residential occupancy of a structure historically used as an accessory artist's studio, with attendant impacts on neighborhood character, on-street parking, density, and life

safety in the General Residence B ("GRB") zoning district. Appellants therefore have standing to bring this appeal as abutters under RSA 676:5, I, and RSA 672:3, and as aggrieved parties within the meaning of RSA 674:33, I.

II. RELATIONSHIP TO CONCURRENT BUILDING CODE APPEAL

A separate appeal has also been filed with the New Hampshire Building Code Review Board addressing building-code classification questions under Section 113.1.1 of the New Hampshire State Building Code, including whether the Chief Building Inspector correctly applied the IBC definitions of "sleeping unit" and "dwelling unit" and properly invoked the Section 104.2.4 modification authority. That appeal does not raise, and is not intended to waive, any of the zoning grounds presented here.

III. STATEMENT OF FACTS

- 28 Blossom Street is improved with a two-family dwelling that received a variance in 1987 authorizing a third residential dwelling unit. A barn structure on the Property contains a former hennery converted decades ago into an artist's studio by Melvin and Joyce Zabarsky, the parents of current co-owner Hannah Burke.
- Following the deaths of Mr. and Mrs. Zabarsky in 2019, Hannah Burke acquired an interest in the Property and later conveyed it to the Burke-Zabarsky Revocable Trust, of which she and her husband, Paul Burke, are trustees.
- Beginning in 2023, the Burkes began housing their adult son, Christopher, in the studio. When not confined in jail or committed to a mental health facility, he has been regularly housed in the studio, including to the present day. Neighbors report that, to their knowledge, the studio was never previously used as "overflow space for family and friends," as the owners now represent.
- Blossom Street neighbors have, for approximately three years, repeatedly raised concerns with City officials regarding the nonconforming residential use of the studio and regarding an unpermitted shed constructed by Paul Burke on the southeast side of the barn — a structure that does not appear on the Property's tax card to this day.

- On July 23, 2026, without public notice, hearing, or an opportunity for abutters to be heard, the Chief Building Inspector issued the Determination Letter, classifying the studio as an “R2 non-transient sleeping unit” under the 2024 International Building Code, subject to listed conditions, and citing Section 104.2.4 of the New Hampshire State Building Code (the “modifications” provision) as partial authority.
- On August 6, 2026, the Chief Building Inspector issued a Supplemental Determination Letter purporting to clarify that the July 23 letter effected no zoning reclassification, while nonetheless confirming that the studio “may continue to be used as an R-2 non-transient sleeping unit” and that the Planning Director “concurs” in that conclusion.
- As of the date of this appeal, Christopher Burke continues to be housed in the studio notwithstanding that one or more conditions of the Determination — including installation of a shower and other life-safety items — remain unsatisfied, and notwithstanding that no certificate of occupancy has issued.

IV. GROUNDS FOR APPEAL

A. The Chief Building Inspector Exceeded His Authority and Usurped the Zoning Board's Exclusive Jurisdiction

Under RSA 674:33, I, the Zoning Board of Adjustment holds exclusive authority to grant variances and to hear and decide appeals of determinations that affect the application of the zoning ordinance. The Chief Building Inspector's Section 104.2.4 authority is confined to the State Building Code and permits modification only of building-code requirements upon a finding of “practical difficulties” that does not lessen health, life-safety, or structural protections — it is not, and cannot be, a source of zoning authority.

Although the Supplemental Determination Letter disclaims any zoning reclassification, its practical and stated effect is to authorize a fourth, functionally independent sleeping arrangement in a building previously approved for only three dwelling units, subject only to building-code conditions. A determination that changes what may occupy a structure and how it may be used is a zoning determination in substance, regardless of the label placed on it. By resolving this question administratively — without notice, hearing, or referral to this Board — the Building

Inspector reached a decision reserved exclusively to the Board's variance and appeal jurisdiction under RSA 674:33 and RSA 676:5.

B. The Approved Use Is Not a Permitted Use in the GRB Zoning District

The Portsmouth Zoning Ordinance, consistent with the 2024 IBC definitions relied upon in the Determination itself, distinguishes a “dwelling unit” (which must contain permanent facilities for living, sleeping, eating, cooking, and sanitation) from a “sleeping unit” (which by definition lacks independent cooking facilities). A room or structure that provides only sleeping accommodations without a kitchen, and that operates with its own separate exterior egress, falls within the Ordinance's definition of a rooming, boarding, or co-living use rather than an accessory or incidental use of a dwelling. Rooming and boarding uses of this kind are not permitted by right in the GRB district. The Determination authorizes precisely this configuration — a non-transient sleeping unit with its own egress, prohibited only from containing a kitchen — without any of the zoning relief such a use requires.

C. The Determination Effectively Converts the Approved Three-Unit Building Into an Unauthorized Rooming, Boarding, or Co-Living Arrangement Not Permitted Outside the Downtown District

The City Council's recently adopted Co-Living Zoning Amendment demonstrates that the City itself recognizes independent sleeping units of this type as a distinct land use requiring specific zoning authorization — including tailored parking ratios — and confines that use to higher-intensity mixed-use districts such as CD4. The Council's deliberate choice not to extend that use to low- and medium-density residential districts such as GRB confirms, by clear implication, that a co-living or rooming arrangement may not be piecemealed into an existing three-family structure in the GRB district through an administrative building-code determination. The Determination effectively grants by administrative letter what the Council itself has declined to authorize by ordinance in this district.

D. The Studio Cannot Lawfully Be Treated as an Accessory Use Tied to the Separate Parcel at 161 South Street

Both Determination Letters justify the arrangement, in part, on the premise that Christopher Burke's “primary residence” is 161 South Street — a separate, non-contiguous parcel owned by his parents — where he purportedly eats, bathes, and stores his belongings, while he sleeps at the

Property. An accessory use or structure must be incidental to, and located on the same lot as, the principal use it serves; it cannot be constituted by combining facilities on one lot with sleeping quarters on an entirely different, geographically separated lot under separate ownership and separate tax assessment. The Ordinance recognizes no such cross-lot accessory-use arrangement, and the Determination's reliance on activities occurring at 161 South Street to legitimize residential occupancy at 28 Blossom Street is not a cognizable basis for approval under the Ordinance.

The Determination compounds this defect by describing 161 South Street as being “in proximity” to the Property, as though geographic nearness could substitute for the same-lot requirement that defines an accessory use under the Ordinance. It cannot. 161 South Street and 28 Blossom Street are separate, distinctly deeded and separately assessed parcels, each with its own MBLU designation, and no lot-line consolidation, lot merger, or other action has combined them into a single zoning lot. Proximity between two parcels, however close, does not create the unity of lot required for one parcel's facilities to serve as the accessory support for a use located on another.

Nor is this defect merely academic. The Determination classifies the studio itself — not Christopher Burke personally, and not the current ownership arrangement — as an R2 non-transient sleeping unit, a classification that would run with 28 Blossom Street and remain in effect for any future owner or occupant regardless of any continuing connection to 161 South Street. Nothing in the Determination requires common ownership of the two parcels, requires the sleeping unit's occupant to have any relationship to 161 South Street, or provides for reconsideration if the two properties are ever conveyed separately. Should the Burkes sell 28 Blossom Street alone, sell 161 South Street alone, or sell the two properties to different purchasers — any of which they remain free to do at any time — the entire factual predicate for the Determination would disappear, yet the studio would continue to exist as an approved fourth sleeping unit, permanently detached from the very arrangement used to justify it. That the Determination's central premise cannot survive the ordinary, foreseeable alienation of either parcel confirms that it was never a proper accessory-use analysis in the first place, and illustrates why a permanent change in occupancy classification of this kind must be evaluated by this Board — which can consider the use on a durable, parcel-specific basis — rather than rest on an

administrative letter premised on a currently convenient but legally unenforceable arrangement between two separately alienable properties.

E. The Determination Fails to Address Density, Parking, and Historic District Requirements Triggered by the Use

Even if a sleeping unit of this kind were otherwise permissible, the Determination does not address, and the Building Inspector had no authority to waive, the following additional zoning and land-use requirements implicated by the proposed occupancy:

- **Density:** The GRB district imposes a minimum lot area per dwelling or sleeping unit. Adding a fourth independent living arrangement increases the intensity of use beyond what was approved by the 1987 variance and may require a dimensional variance.
- **Parking:** Off-street parking on Blossom Street is, and has long been, a documented problem. An additional independent sleeping unit triggers additional off-street parking requirements that the Property may be unable to satisfy without a parking variance.
- **Historic District Commission review:** The Property lies within Portsmouth's Historic District. Because the studio has its own separate exterior egress, any exterior modifications required to bring the space into compliance with the R-2 life-safety conditions in the Determination — egress doors, emergency escape openings, exterior lighting — require a Certificate of Approval from the Historic District Commission before such work may proceed.
- **Unresolved nonconforming use and unpermitted construction:** The Determination does not address the unpermitted shed attached to the barn, which does not appear on the Property's tax card, or the multi-year history of unresolved neighbor complaints regarding nonconforming use of the Property, both of which bear directly on whether any further intensification of use should be authorized.

V. RELIEF REQUESTED

For the foregoing reasons, Appellants respectfully request that the Board:

1. Accept jurisdiction over this appeal pursuant to RSA 674:33, I, and RSA 676:5;

2. Reverse and vacate the Determination Letter dated July 23, 2026, and the Supplemental Determination Letter dated August 6, 2026, in their entirety;
3. Declare that the proposed non-transient sleeping unit at 28 Blossom Street constitutes a change of use requiring, at a minimum, a Use Variance, a Dimensional Variance, and a Parking Variance from this Board before any such use may lawfully continue;
4. Direct that no certificate of occupancy or building permit issue for the studio unless and until the owners obtain all required approvals from this Board, the Historic District Commission, and the Planning Board, in that sequence; and
5. Grant such other and further relief as the Board deems just and proper, including referral of the unpermitted shed and ongoing nonconforming occupancy to the City's code enforcement office.

VI. EXHIBITS

- Exhibit A — Determination Letter, City of Portsmouth Building Department, dated July 23, 2026
- Exhibit B — Supplemental Determination Letter, City of Portsmouth Building Department, dated August 6, 2026

Respectfully submitted,

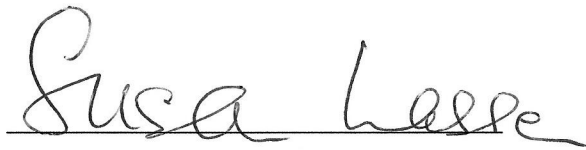
A handwritten signature in black ink, appearing to read "Kathleen B. Logan, E&A" with a stylized flourish at the end.

Kathleen B. Logan and Kent A. Logan, Trustees

Kathleen B. Logan Revocable Trust

21 Blossom Street

Portsmouth, NH 03801



Susan E. Lassen, Trustee

Lassen Family Revocable Trust

34 Blossom Street

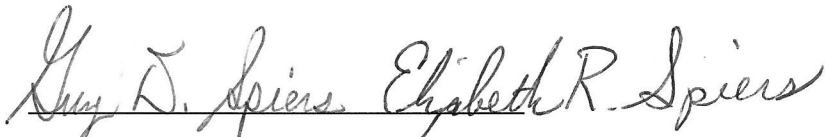
Portsmouth, NH 03801



Scott A. Lupkas

33 Blossom Street

Portsmouth, NH 03801



Guy D. Spiers and Elizabeth R. Spiers, Trustees

3A Trust

241 South Street

Portsmouth, NH 03801

Date: 8-20-2026



Inspection Department
Shanti R. Wolph, Chief Building Inspector

July 23, 2026

To: Hannah and Paul Burke, 161 South St., Portsmouth, NH 03801
Subject: Official Determination Regarding Occupancy Classification
Property Address: 28 Blossom St., Portsmouth, NH MBlu: 0111/ 0040/ 0000/ /

Determination Letter

This letter serves as the official determination of the City of Portsmouth Building Department regarding the occupancy classification and permissible use of the structure/art studio (studio) attached to the end dwelling at 28 Blossom Street, Portsmouth, New Hampshire.

For context, the property is owned by Burke-Zabarsky REV TST and Burke Hannah & Paul J TTES. In 1987, the two-family dwelling located at 28 Blossom Street was granted a variance authorizing a third residential dwelling unit. The studio is attached to the side of the third dwelling unit, and, according to the owners, has historically been used as overflow space for family and friends for more than 50 years. The owners have represented that the studio has not been, and is not currently being, rented, but is instead being used as a safe, quiet space for the Burkes' cognitively impaired adult son. He spends time in the studio primarily in the evening. During the day, he is at his parents' house, where he eats his meals, washes his clothes, and stores his belongings.

The Building Department received a complaint from an abutter asserting that the studio was not being used lawfully because it was being used for sleeping. The complaint also raised safety concerns related to the current occupant. The Department reviewed the matter for purposes of determining whether the existing space may be classified and regulated as a sleeping unit without creating or authorizing a fourth dwelling unit on the property.

As part of this review, Shanti Wolph, Chief Building Inspector for the City of Portsmouth, consulted with Phil Grankowski of the International Code Council (ICC) regarding the appropriate occupancy classification for the existing space. The purpose of the consultation was to determine whether the space could be classified in a manner that permits sleeping while avoiding designation as a separate dwelling unit, which would require separate zoning review and approval.

Upon review, the Building Department determines that the studio may be classified as an **R2 non-transient sleeping unit**, rather than as a dwelling unit, provided that the conditions set forth below are satisfied. This classification recognizes the historical use of the structure as accessory

overflow space for family and friends and avoids authorizing permanent cooking facilities or any independent dwelling use.

While the studio may be able to satisfy the sleeping-unit requirements, it is attached to a rental property. The son's parents reside on a separate property, which is in proximity. Therefore, an alternative code path has also been considered.

Basis for Determination:

1) 2024 IBC:

A) SLEEPING UNIT. A single unit that provides rooms or spaces for one or more persons, includes permanent provisions for sleeping and can include provisions for living, eating and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Commentary to the above definition:

❖ This definition is included to coordinate the Fair Housing Act guidelines with the code. The definition for "Sleeping unit" clarifies the differences between sleeping units and dwelling units. In addition, using the term "sleeping unit" for spaces where people sleep will replace a multitude of other terms (e.g., patient room, cell, guestroom) so that there is consistent application across occupancies. Some examples of sleeping units are hotel guest rooms; bedrooms in different types of congregate living facilities; patient sleeping rooms in hospitals, nursing homes or assisted living facilities; or housing cells in a jail. Another example would be a studio apartment with a kitchenette (i.e., countertop microwave, sink, refrigerator). Since the cooking arrangements are not the traditional permanent appliances (i.e., a range), this configuration would be considered a sleeping unit and not a dwelling unit. As defined in the code, a "Dwelling unit" must contain permanent facilities for living, sleeping, eating, cooking and sanitation.

2) 104.2.4 of the NH State Building Code

In addition, I relied, in part, on the authority provided under 104.2.4 of the NH State Building Code, including amendments, which states as follows:

Modifications. Where there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or the owner's authorized agent, provided that the building official shall first find that special individual reason makes the strict letter of this code impractical, the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, accessibility, life and fire safety or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.

Commentary to the above code section:

❖ *The building official may amend or make exceptions to the code as needed where strict compliance is impractical. Only the building official has authority to grant modifications. Consideration of a particular difficulty is to be based on the application of the owner and a demonstration that the purpose of the code is accomplished. This section is not intended to permit setting aside or ignoring a code provision; rather, it is intended to provide acceptance of equivalent protection. Such modifications do not, however, extend to actions that are necessary to correct violations of the code. In other words, a code violation or the expense of correcting one cannot constitute a practical difficulty.*

Conditions of Approval:

- **Plumbing:** The studio currently contains a water closet and lavatory. A shower shall be installed to satisfy the hygiene requirements applicable to an R2 non-transient sleeping unit. Permanent cooking facilities shall not be installed or maintained in the studio.
- **Life Safety:** The studio shall have compliant means of egress and emergency escape and rescue openings. Smoke and carbon monoxide detectors shall be installed and maintained. The existing two-hour fire separation from the adjacent dwelling, established during a previous renovation, shall be maintained.
- **Building Systems:** The heating, electrical, and insulation systems shall be suitable for the approved use and shall comply with applicable code requirements.
- **Use Limitation:** The studio is approved only as an R2 non-transient sleeping unit and shall not be rented, leased, or otherwise used as an independent dwelling unit.
- **Cooking Facilities:** The studio shall not contain permanent cooking facilities, including a range or other equipment that would establish the space as a dwelling unit.

Conclusion:

Based on the foregoing, the Building Department determines that the studio may continue to be used as an R2 non-transient sleeping unit, provided that all conditions listed above are satisfied and maintained. This determination does not authorize the creation of a fourth dwelling unit, does not authorize rental occupancy of the studio, and does not waive any separate zoning, building, fire, life safety, health, or accessibility requirements that may apply. Any certificate of occupancy issued for the studio shall include a condition stating that the unit is approved for non-transient sleeping use only and shall not be rented or used as an independent dwelling unit.

Appeal Process:

SECTION 113 of the NH State Building Code, including amendments

Means of Appeals: *In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, the local jurisdiction is permitted to create a board of appeals per RSA 155-A:3. The board of appeals shall be appointed by the applicable governing authority and shall hold office at its pleasure. The board*

shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.

Currently, Portsmouth does not have a local board of appeals, therefore, the following applies.

113.1.1. Should the local jurisdiction elect not to create a board of appeals, the Building Code Review Board shall hear appeals of orders, decisions, or determinations made by the local building official relative to the application and interpretation of the state building code and state fire code as defined in RSA 155-A:1 per RSA 155-A:11-b.

113.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equivalent or better form of construction is proposed. The board shall not have authority to waive requirements of this code.

Appeals of a local building official shall be filed within Thirty (30) days of the final determination. The Board typically meets monthly, at 10 a.m. on the second Friday of the month at 33 Hazen Drive, 2nd floor conference room in Concord, NH.

The State Building Code Review Board:

- **Physical Address**
110 Smokey Bear Blvd. Concord, NH
- **Mailing Address**
33 Hazen Drive. Concord, NH 03305
- **Phone** (603) 223-4231
- **Email** bldgcodebrd@dos.nh.gov

Thank you,

Shanti Wolph, Chief Building Inspector, City of Portsmouth

cc: Susan Morrell, City of Portsmouth City Attorney
Trevor P. McCourt, City of Portsmouth Deputy City Attorney
Jason Page, City of Portsmouth Legal Enforcement Officer



Inspection Department
Shanti R. Wolph, Chief Building Inspector

August 6, 2026

To: Hannah and Paul Burke, 161 South St., Portsmouth, NH 03801
Subject: Supplement to Official Determination Regarding Occupancy Classification.
Property Address: 28 Blossom St., Portsmouth, NH MBlu: 0111/ 0040/ 0000/ /

Supplemental Letter

This supplemental letter clarifies the City's prior correspondence regarding the occupancy classification of the existing art studio at 28 Blossom Street. The prior determination was not intended to limit, reclassify, or otherwise change the zoning status of the space. Rather, it identified how the space is currently being used from a building code and life-safety perspective. Because "sleeping unit" is a building code term and is not a separate zoning classification under the Portsmouth Zoning Ordinance, no zoning reclassification has occurred and no zoning variance is required.

Summary Highlights

- **Occupancy Determination:** The existing art studio attached to the three-family apartment building may continue to be used as an R-2 non-transient sleeping unit for building code purposes.
- **Safety Requirements:** Continued use is contingent upon the installation and maintenance of all life-safety items identified in the initial letter.
- **Prohibited Uses:** The studio may not be rented, leased, or used as an independent dwelling unit. Permanent cooking facilities, including ranges or similar equipment, are prohibited to prevent the space from being classified as a dwelling unit.
- **Zoning and Building Code:** From a zoning perspective, the space remains a preexisting residential art studio. The Portsmouth Zoning Ordinance does not prohibit periodic or nightly sleeping by the owner or occupant, provided the space is not used as an independent living unit.
- **Departmental Coordination:** Planning Director Peter Britz concurs with this interpretation and with the distinction between building code life-safety requirements and zoning classification.

Detailed Analysis

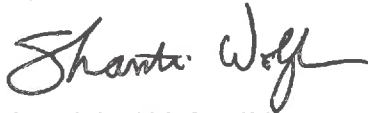
The "Sleeping Unit" Distinction: This clarification is based on the specific use of the studio by the owners' son. Although he may spend nights in the studio, his primary residence remains 161 South Street, where he bathes, eats meals, and keeps his personal belongings. The studio does not contain the facilities necessary to function as an independent dwelling unit, such as

permanent cooking or bathing facilities. However, because the space is used for sleeping, it is treated as a sleeping unit for building code purposes and must comply with applicable life-safety requirements.

Regulatory Rationale

- **Building Code Perspective:** The building code focuses on life safety. If a space is used for sleeping, even periodically, it must satisfy the applicable R-2 safety requirements, including detection and egress.
- **Zoning and Assessing Perspective:** I have been advised that the space has existed for more than 50 years and therefore, it will continue to be recognized, assessed, and treated as a residential art studio. The City's records from their prior Zoning Approval and Assessing records both show it as a barn/art studio.
- **Legal Safeguards:** Prohibiting permanent cooking facilities helps ensure that the space is not converted into an unauthorized fourth dwelling unit under both the Building Code and the Zoning Ordinance.

Thank you,



Shanti Wolph, Chief Building Inspector, City of Portsmouth



Peter Britz, Director of Planning and Sustainability

cc: Karen Conard, City of Portsmouth City Manager
Susan Morrell, City of Portsmouth City Attorney
Trevor P. McCourt, City of Portsmouth Deputy City Attorney
Jason Page, City of Portsmouth Legal Enforcement Officer



Trevor P. McCourt
Deputy City Attorney

CITY OF PORTSMOUTH

Legal Department
Municipal Complex
1 Junkins Avenue
Portsmouth, New Hampshire 03801
tmccourt@portsmouthnh.gov
(603) 610-7234

Date: September 8, 2026

To: Beth Margeson, Chair, Zoning Board of Adjustment

From: Trevor P. McCourt, Deputy City Attorney

Re: Administrative Appeal of the Chief Building Inspector's Occupancy Determination for 28 Blossom Street (Assessor Map 111, Lot 40), General Residence B (GRB) and Historic Districts — Appeal of Kathleen B. & Kent A. Logan, Susan E. Lassen, Scott A. Lupkas, and Guy D. & Elizabeth R. Spiers; ZBA public hearing scheduled September 15, 2026

I. Introduction

The abutters identified above (the “Appellants”) have appealed to this Board two letters issued by the Chief Building Inspector concerning the property located at 28 Blossom Street: a Determination Letter dated July 23, 2026 (Exhibit A), and a Supplemental Determination Letter dated August 6, 2026 (Exhibit B) (together, the “Determination”). This memorandum is intended to orient the Board to the history of the matter and to explain the process applicable to this appeal.

To be clear on the scope, this memorandum addresses only the zoning questions properly before this Board; it does not address, and the Board should not attempt to resolve the building code questions that the Appellants have separately placed before the New Hampshire Building Code Review Board.

II. Background

A. The Property and the Studio

28 Blossom Street is improved with a residential building that, by virtue of a 1987 variance, is authorized for three dwelling units. Attached to the side of the third dwelling unit is a structure that the parties refer to as the “art studio”. This structure was originally a henhouse or barn structure, converted decades ago to studio use by the prior owners (the parents of current co-owner Hannah Burke). The property is owned by the Burke-Zabarsky Revocable Trust (Hannah and Paul

J. Burke, Trustees). The property lies within the General Residence B (GRB) zoning district and the Historic District.

The studio presently contains a water closet and lavatory but no shower and no permanent cooking facilities. It has its own separate exterior means of egress. According to the owners, the studio has historically been used as “overflow space for family and friends.” The Appellants dispute that characterization and represent that, to the neighbors’ knowledge, the studio was not used for residential sleeping until recent years. The owners allege that their adult son resides with them at their single-family home located at 161 Blossom Street, and that he uses the art studio space, and will occasionally sleep on the couch located within the space. The abutters dispute this allegation and claim the owners’ adult son resides in the art studio. The abutters have raised concerns with City officials over an approximately three-year period regarding residential use of the studio and regarding an unpermitted shed constructed on the barn that, they represent, does not appear on the property’s tax card.

B. The Chief Building Inspector’s Determination

Following a complaint from an abutter, on July 23, 2026 the Chief Building Inspector issued the Determination Letter. Relying on the 2024 International Building Code (IBC) definition of “sleeping unit” and on the modifications authority in Section 104.2.4 of the New Hampshire State Building Code, the Inspector determined that the studio may be classified as an “R-2 non-transient sleeping unit”, provided that a series of conditions is satisfied. Those conditions include the following: the installation of a shower; compliant egress and emergency escape and rescue openings; smoke and carbon-monoxide detection; maintenance of the existing two-hour fire separation; and prohibition on permanent cooking facilities and on rental or use as an independent dwelling unit. The letter states that the classification “does not authorize the creation of a fourth dwelling unit” and “does not waive any separate zoning . . . requirements that may apply.”

On August 6, 2026, the Inspector issued the Supplemental Determination Letter, which states that the July 23 letter “was not intended to limit, reclassify, or otherwise change the zoning status of the space,” that “sleeping unit” is a building-code term and “not a separate zoning classification,” and that “no zoning reclassification has occurred and no zoning variance is required.” The Supplemental Letter nevertheless confirms that the studio “may continue to be used as an R-2 non-transient sleeping unit,” states that the Zoning Ordinance “does not prohibit periodic or nightly sleeping by the owner or occupant,” and represents that the Planning Director concurs in that interpretation. It is signed by the Chief Building Inspector and on behalf of the Planning Director.

III. The Question Presented and the Decision Before the Board

The question the Board must answer proceeds in two steps. First, as a threshold matter: **do the physical changes the Determination requires convert the space from an art studio into something else.** Second, if the answer to the first question is yes: **is that new use accessory to a**

permitted principal use on the lot, or a separate use that is not permitted by right in the GRB district and therefore requires a variance?

IV. The Board's Authority and Scope of Review

I would recommend this Board refrain from commenting on the Appellants' appeal under the IBC. "An administrative appeal to the zoning board of adjustment . . . is the proper venue for an abutter who is dissatisfied with a building official's determination concerning a nonconforming use." Loughlin, P. New Hampshire Practice: Land Use Planning and Zoning Ch. 22.02. State law provides that the Board shall "hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance." RSA 674:33 (I).

In the context of an administrative appeal, the Board "may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the powers of the administrative official from whom the appeal is taken." RSA 674:33 (II).

This appeal is therefore *de novo*, meaning that the Board may make any decision the Chief Building Inspector and the Director of Planning and Sustainability could have made in interpreting the zoning ordinance, and owes no deference to the underlying decision. Ouellette v. Town of Kingston, 157 N.H. 604 (2008).

EXHIBITS

- **Exhibit A:** Determination Letter, City of Portsmouth Inspection Department, dated July 23, 2026.
- **Exhibit B:** Supplemental Determination Letter, City of Portsmouth Inspection Department, dated August 6, 2026.

cc: Susan G. Morrell, City Attorney
Shanti Wolph, Chief Building Inspector
Peter Britz, Director of Planning and Sustainability
Stefanie Casella, Planner



Inspection Department
Shanti R. Wolph, Chief Building Inspector

July 23, 2026

To: Hannah and Paul Burke, 161 South St., Portsmouth, NH 03801
Subject: Official Determination Regarding Occupancy Classification
Property Address: 28 Blossom St., Portsmouth, NH MBlu: 0111/ 0040/ 0000/ /

Determination Letter

This letter serves as the official determination of the City of Portsmouth Building Department regarding the occupancy classification and permissible use of the structure/art studio (studio) attached to the end dwelling at 28 Blossom Street, Portsmouth, New Hampshire.

For context, the property is owned by Burke-Zabarsky REV TST and Burke Hannah & Paul J TTES. In 1987, the two-family dwelling located at 28 Blossom Street was granted a variance authorizing a third residential dwelling unit. The studio is attached to the side of the third dwelling unit, and, according to the owners, has historically been used as overflow space for family and friends for more than 50 years. The owners have represented that the studio has not been, and is not currently being, rented, but is instead being used as a safe, quiet space for the Burkes' cognitively impaired adult son. He spends time in the studio primarily in the evening. During the day, he is at his parents' house, where he eats his meals, washes his clothes, and stores his belongings.

The Building Department received a complaint from an abutter asserting that the studio was not being used lawfully because it was being used for sleeping. The complaint also raised safety concerns related to the current occupant. The Department reviewed the matter for purposes of determining whether the existing space may be classified and regulated as a sleeping unit without creating or authorizing a fourth dwelling unit on the property.

As part of this review, Shanti Wolph, Chief Building Inspector for the City of Portsmouth, consulted with Phil Grankowski of the International Code Council (ICC) regarding the appropriate occupancy classification for the existing space. The purpose of the consultation was to determine whether the space could be classified in a manner that permits sleeping while avoiding designation as a separate dwelling unit, which would require separate zoning review and approval.

Upon review, the Building Department determines that the studio may be classified as an **R2 non-transient sleeping unit**, rather than as a dwelling unit, provided that the conditions set forth below are satisfied. This classification recognizes the historical use of the structure as accessory

overflow space for family and friends and avoids authorizing permanent cooking facilities or any independent dwelling use.

While the studio may be able to satisfy the sleeping-unit requirements, it is attached to a rental property. The son's parents reside on a separate property, which is in proximity. Therefore, an alternative code path has also been considered.

Basis for Determination:

1) 2024 IBC:

A) SLEEPING UNIT. A single unit that provides rooms or spaces for one or more persons, includes permanent provisions for sleeping and can include provisions for living, eating and either sanitation or kitchen facilities but not both. Such rooms and spaces that are also part of a dwelling unit are not sleeping units.

Commentary to the above definition:

❖ This definition is included to coordinate the Fair Housing Act guidelines with the code. The definition for "Sleeping unit" clarifies the differences between sleeping units and dwelling units. In addition, using the term "sleeping unit" for spaces where people sleep will replace a multitude of other terms (e.g., patient room, cell, guestroom) so that there is consistent application across occupancies. Some examples of sleeping units are hotel guest rooms; bedrooms in different types of congregate living facilities; patient sleeping rooms in hospitals, nursing homes or assisted living facilities; or housing cells in a jail. Another example would be a studio apartment with a kitchenette (i.e., countertop microwave, sink, refrigerator). Since the cooking arrangements are not the traditional permanent appliances (i.e., a range), this configuration would be considered a sleeping unit and not a dwelling unit. As defined in the code, a "Dwelling unit" must contain permanent facilities for living, sleeping, eating, cooking and sanitation.

2) 104.2.4 of the NH State Building Code

In addition, I relied, in part, on the authority provided under 104.2.4 of the NH State Building Code, including amendments, which states as follows:

Modifications. Where there are practical difficulties involved in carrying out the provisions of this code, the building official shall have the authority to grant modifications for individual cases, upon application of the owner or the owner's authorized agent, provided that the building official shall first find that special individual reason makes the strict letter of this code impractical, the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, accessibility, life and fire safety or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.

Commentary to the above code section:

❖ *The building official may amend or make exceptions to the code as needed where strict compliance is impractical. Only the building official has authority to grant modifications. Consideration of a particular difficulty is to be based on the application of the owner and a demonstration that the purpose of the code is accomplished. This section is not intended to permit setting aside or ignoring a code provision; rather, it is intended to provide acceptance of equivalent protection. Such modifications do not, however, extend to actions that are necessary to correct violations of the code. In other words, a code violation or the expense of correcting one cannot constitute a practical difficulty.*

Conditions of Approval:

- **Plumbing:** The studio currently contains a water closet and lavatory. A shower shall be installed to satisfy the hygiene requirements applicable to an R2 non-transient sleeping unit. Permanent cooking facilities shall not be installed or maintained in the studio.
- **Life Safety:** The studio shall have compliant means of egress and emergency escape and rescue openings. Smoke and carbon monoxide detectors shall be installed and maintained. The existing two-hour fire separation from the adjacent dwelling, established during a previous renovation, shall be maintained.
- **Building Systems:** The heating, electrical, and insulation systems shall be suitable for the approved use and shall comply with applicable code requirements.
- **Use Limitation:** The studio is approved only as an R2 non-transient sleeping unit and shall not be rented, leased, or otherwise used as an independent dwelling unit.
- **Cooking Facilities:** The studio shall not contain permanent cooking facilities, including a range or other equipment that would establish the space as a dwelling unit.

Conclusion:

Based on the foregoing, the Building Department determines that the studio may continue to be used as an R2 non-transient sleeping unit, provided that all conditions listed above are satisfied and maintained. This determination does not authorize the creation of a fourth dwelling unit, does not authorize rental occupancy of the studio, and does not waive any separate zoning, building, fire, life safety, health, or accessibility requirements that may apply. Any certificate of occupancy issued for the studio shall include a condition stating that the unit is approved for non-transient sleeping use only and shall not be rented or used as an independent dwelling unit.

Appeal Process:

SECTION 113 of the NH State Building Code, including amendments

Means of Appeals: *In order to hear and decide appeals of orders, decisions or determinations made by the building official relative to the application and interpretation of this code, the local jurisdiction is permitted to create a board of appeals per RSA 155-A:3. The board of appeals shall be appointed by the applicable governing authority and shall hold office at its pleasure. The board*

shall adopt rules of procedure for conducting its business and shall render all decisions and findings in writing to the appellant with a duplicate copy to the building official.

Currently, Portsmouth does not have a local board of appeals, therefore, the following applies.

113.1.1. Should the local jurisdiction elect not to create a board of appeals, the Building Code Review Board shall hear appeals of orders, decisions, or determinations made by the local building official relative to the application and interpretation of the state building code and state fire code as defined in RSA 155-A:1 per RSA 155-A:11-b.

113.2 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equivalent or better form of construction is proposed. The board shall not have authority to waive requirements of this code.

Appeals of a local building official shall be filed within Thirty (30) days of the final determination. The Board typically meets monthly, at 10 a.m. on the second Friday of the month at 33 Hazen Drive, 2nd floor conference room in Concord, NH.

The State Building Code Review Board:

- **Physical Address**
110 Smokey Bear Blvd. Concord, NH
- **Mailing Address**
33 Hazen Drive. Concord, NH 03305
- **Phone** (603) 223-4231
- **Email** bldgcodebrd@dos.nh.gov

Thank you,

Shanti Wolph, Chief Building Inspector, City of Portsmouth

cc: Susan Morrell, City of Portsmouth City Attorney
Trevor P. McCourt, City of Portsmouth Deputy City Attorney
Jason Page, City of Portsmouth Legal Enforcement Officer



Inspection Department
Shanti R. Wolph, Chief Building Inspector

August 6, 2026

To: Hannah and Paul Burke, 161 South St., Portsmouth, NH 03801
Subject: Supplement to Official Determination Regarding Occupancy Classification.
Property Address: 28 Blossom St., Portsmouth, NH MBlu: 0111/ 0040/ 0000/ /

Supplemental Letter

This supplemental letter clarifies the City's prior correspondence regarding the occupancy classification of the existing art studio at 28 Blossom Street. The prior determination was not intended to limit, reclassify, or otherwise change the zoning status of the space. Rather, it identified how the space is currently being used from a building code and life-safety perspective. Because "sleeping unit" is a building code term and is not a separate zoning classification under the Portsmouth Zoning Ordinance, no zoning reclassification has occurred and no zoning variance is required.

Summary Highlights

- **Occupancy Determination:** The existing art studio attached to the three-family apartment building may continue to be used as an R-2 non-transient sleeping unit for building code purposes.
- **Safety Requirements:** Continued use is contingent upon the installation and maintenance of all life-safety items identified in the initial letter.
- **Prohibited Uses:** The studio may not be rented, leased, or used as an independent dwelling unit. Permanent cooking facilities, including ranges or similar equipment, are prohibited to prevent the space from being classified as a dwelling unit.
- **Zoning and Building Code:** From a zoning perspective, the space remains a preexisting residential art studio. The Portsmouth Zoning Ordinance does not prohibit periodic or nightly sleeping by the owner or occupant, provided the space is not used as an independent living unit.
- **Departmental Coordination:** Planning Director Peter Britz concurs with this interpretation and with the distinction between building code life-safety requirements and zoning classification.

Detailed Analysis

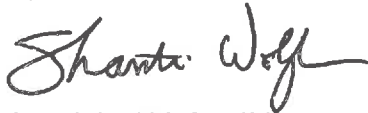
The "Sleeping Unit" Distinction: This clarification is based on the specific use of the studio by the owners' son. Although he may spend nights in the studio, his primary residence remains 161 South Street, where he bathes, eats meals, and keeps his personal belongings. The studio does not contain the facilities necessary to function as an independent dwelling unit, such as

permanent cooking or bathing facilities. However, because the space is used for sleeping, it is treated as a sleeping unit for building code purposes and must comply with applicable life-safety requirements.

Regulatory Rationale

- **Building Code Perspective:** The building code focuses on life safety. If a space is used for sleeping, even periodically, it must satisfy the applicable R-2 safety requirements, including detection and egress.
- **Zoning and Assessing Perspective:** I have been advised that the space has existed for more than 50 years and therefore, it will continue to be recognized, assessed, and treated as a residential art studio. The City's records from their prior Zoning Approval and Assessing records both show it as a barn/art studio.
- **Legal Safeguards:** Prohibiting permanent cooking facilities helps ensure that the space is not converted into an unauthorized fourth dwelling unit under both the Building Code and the Zoning Ordinance.

Thank you,



Shanti Wolph, Chief Building Inspector, City of Portsmouth



Peter Britz, Director of Planning and Sustainability

cc: Karen Conard, City of Portsmouth City Manager
Susan Morrell, City of Portsmouth City Attorney
Trevor P. McCourt, City of Portsmouth Deputy City Attorney
Jason Page, City of Portsmouth Legal Enforcement Officer



CITY OF PORTSMOUTH

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

September 9, 2026

City of Portsmouth
Board of Adjustment

Dear Chair Margeson and Members of the Board of Adjustment:

This letter is in reference to the Administrative Appeal of the Chief Building Inspector's Occupancy Determination for 28 Blossom Street filed by Kathleen B. Logan and Kent A. Logan, Trustees of the Kathleen B. Logan Revocable Trust, of 21 Blossom Street; Susan E. Lassen, Trustee of the Lassen Family Revocable Trust, of 34 Blossom Street; Scott A. Lupkas, of 33 Blossom Street; and Guy D. Spiers and Elizabeth R. Spiers, Trustees of the 3A Trust, of 241 South Street. Specifically, I am providing some background on how this appeal relates to the Portsmouth Zoning Ordinance.

Simply, the art studio located at 28 Blossom exists today as an art studio. We do not treat a property that does not have a kitchen as a residence for the purposes of zoning. This studio attached to the third dwelling unit is used as an art studio and continues to be used in that manner and no change to that use has been made.

The definition of dwelling unit in the City's Zoning Ordinance is: *A building or portion thereof providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. This use shall not be deemed to include such transient occupancies as hotels, motels, rooming or boarding houses.*

While the building inspector recommended a path forward for the space to be considered a sleeping unit there is no definition for a sleeping unit in the Zoning Ordinance. This is a building code definition that is not included in any of the uses classified in the zoning ordinance. Given that there has been no effort to convert this space into an independent living space and there is, in fact, no kitchen, and does not appear to be any place to store personal belongings or bathing facilities, it would not be treated as a residential unit.

Importantly, this artist studio could not be treated as a residence, only as an art studio for this or any future users of the space because the existing use does not meet the definition for a dwelling unit.

Sincerely,

Peter Britz
Director of Planning and Sustainability

Cc: Stefanie Casella, Planner II
Trevor McCourt, Deputy City Attorney

III. NEW BUSINESS

- F. The request of Christopher H Daniell (Owner), for property located at 50 Whidden Street whereas relief is needed to construct a rear addition and cantilevered deck which requires the following: 1) Variance from Section 10.521 to allow a 9.5 foot rear yard where 25 feet are required. Said property is located on Assessor Map 102 Lot 66 and lies within the General Residence B (GRB) and Historic Districts. (LU-26-15)

Existing & Proposed Conditions

	<u>Existing</u>	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	Single-family Residential	Construct addition	Primarily residential
<u>Lot area (sq. ft.):</u>	3,636	3,636	5,000 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,636	3,636	5,000 min.
<u>Front Yard (ft.):</u>	0.5	0.5	5 min.
<u>Right Yard (ft.):</u>	>10	>10	10 min.
<u>Left Yard (ft.):</u>	3.8	3.8	10 min.
<u>Rear Yard (ft.):</u>	10	9.5	25 min.
<u>Height (ft.):</u>	26	26	35 max.
<u>Building Coverage (%)</u>	23.2	24.6	30 max.
<u>Open Space Coverage (%)</u>	61.7	60.6	25 min.
<u>Estimated Age of Structure:</u>	1780	Variance request(s) shown in red.	

Other Permits/Approvals Required

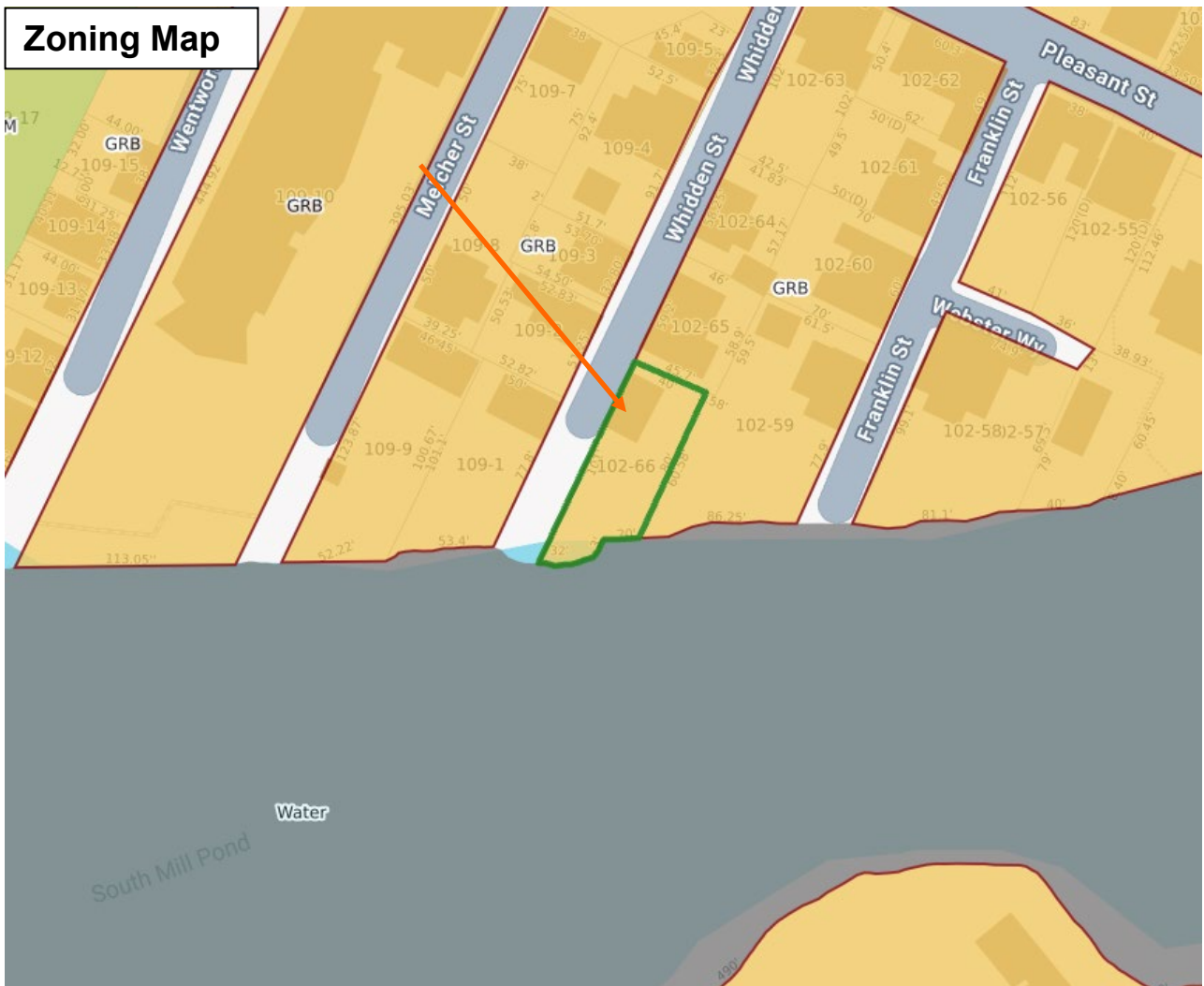
- Wetland Conditional Use Permit – Conservation Commission and Planning Board
- Building Permit
- Historic District Commission

Neighborhood Context

Aerial Map



Zoning Map



Previous Board of Adjustment Actions

September 1, 1987 – The Board **granted** a Variance from Article III, Section 10-302 to construct an 8' x 12' one story kitchen addition with a 10' rear yard where a 25' rear yard is required.

Planning Department Comments

The applicant is proposing an infill addition at the rear of the existing structure and a new cantilevered deck on the right side. This project meets all dimensional requirements except the rear setback.

At the September 9, 2026 Conservation Commission meeting, the commission voted to recommend approval to the Planning Board with the following stipulations:

Prior to submission to the Planning Board:

1. Applicant shall denote on plans where silt soxx will be placed prior to the start of construction.
2. Include a note on the plan set stating that property owner is responsible for scheduling a post-construction inspection with the Department of Public Works for the adjacent stormwater pipe within City property. If found damaged, applicant will be responsible for repair.

Variance Review Criteria

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

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

AND

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

OR

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

10.235 Certain Representations Deemed Conditions

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

COLBY T. GAMESTER

Attorney At Law

154 Maplewood Avenue
Portsmouth, New Hampshire 03801

(603)-427-0000
colby@gamesterlaw.com

August 19, 2026

SUBMITTED VIA VIEWPOINT

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

**Re: Variance Application of Christopher H. Daniell
50 Whidden Street, Portsmouth, NH (Tax Map 102, Lot 66)
LU-26-15**

Dear Chair Margeson:

My office represents Christopher H. Daniell, the owner of property located at 50 Whidden Street, Portsmouth. Enclosed herewith are the following materials for submission to the Zoning Board of Adjustment for consideration at the next regularly scheduled meeting in September:

1. Landowner Letter of Authorization
2. Owner's Source Deed
3. Narrative to Variance Application
4. Exhibit A - Site Plan
5. Exhibit B - Pictures of the Property
6. Exhibit C - Elevation Certificate
7. Exhibit D - Floors Plans and Elevations
8. Exhibit E - HDC Certificate of Approval

One (1) hardcopy of these materials will be delivered this same day to the Planning Department. Should there be any questions, comments or concerns regarding the enclosed application and materials then please do not hesitate to contact me.

Kindest Regards,


Colby T. Gamester, Esq.

Enclosures

Cc: file; Client; Scott Simons; Scott Boudreau; Jason Lajeunesse (all via email only)

LANDOWNER LETTER OF AUTHORIZATION

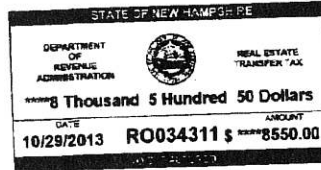
I, the Undersigned, Christopher H. Daniell, the record owner of real property located at 50 Whidden Street, Portsmouth, New Hampshire 03801, identified on Portsmouth Tax Map 102 as Lot 66 (the "Property"), hereby authorize Gamester Law Office, and its attorneys and representatives, to file any document with the City of Portsmouth (the "City"), communicate and correspond with City staff and officials, and submit applications with and appear before the City's land use boards all regarding the Property. This Letter of Authorization shall be valid until expressly revoked in writing.

Christopher H. Daniell
Christopher H. Daniell

8/17/2026
Date

MAIL TO
Return To:

Christopher H. Daniell
50 Whidden Street
Portsmouth, NH 03801



057379

2013 OCT 29 AM 10:40

ROCKINGHAM COUNTY
REGISTRY OF DEEDS

Warranty Deed

KNOW ALL MEN BY THESE PRESENTS, That, Gregory V. White, married, with a mailing address of PO Box 158, Wolfeboro Falls, NH 03896, for consideration paid grant(s) to Christopher H. Daniell, a single person, as sole owner, with a mailing address of 18 Brock Road, Hopkinton, NH 03229, with WARRANTY COVENANTS:

A certain tract of land situate in Portsmouth, County of Rockingham and State of New Hampshire, with the buildings and improvements thereon, bounded and described as follows:

Northwesterly by Whidden Street;

Northeasterly by land formerly of John Leighton;

Southeasterly by land formerly of said Leighton and

Southwesterly by South Mill Pond.

Meaning and intending to describe and convey the same premises as conveyed to Gregory V. White by Warranty Deed dated August 5, 2005 recorded in the Rockingham County Registry of Deeds in Book 4527, Page 54.

This is not the homestead property of the within Grantor nor his spouse.

Executed this 24th day of October, 2013.

Jennifer A. Daniels
Witness

Gregory V. White
Gregory V. White

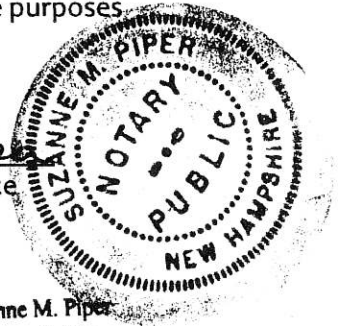
State of New Hampshire
County of Carroll

Personally appeared the above named Gregory V. White , before me this _____ day of October, 2013 known to be the person(s) whose name(s) are subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.

Suzanne M. Piper
Notary Public/Justice of the Peace

My Commission Expires:

Suzanne M. Piper
Notary Public
State Of New Hampshire
My Commission Expires February 18, 2014



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

Christopher H. Daniell
50 Whidden Street
Portsmouth, NH 03801
Owner and Applicant

Introduction and Relevant Property & Historical Information

Christopher H. Daniell (“Owner” or “Applicant”) is the owner of real property located at 50 Whidden Street, identified on Portsmouth Tax Map 102 as Lot 66 (the “Property”). The Property is located in the General Residence B (“GRB”) zoning district, contains 3,636 sq. ft., or 0.08 acres, and is improved with a single-family historic dwelling. The Property has 101.18 feet of frontage solely on Whidden Street and sits on the shoreline of the South Mill Pond.

The entirety of the Property is located within the 100 foot Wetland Buffer. A portion of the Property nearest the South Mill Pond lies within Zone AE (base flood elevation 8), while the grade of the Property steps upward such that the southerly edge of the house sits at approximately elevation 11 feet, with a first-floor elevation of 19.22 feet.

The Property contains the following preexisting nonconformities:

- (1) lot area of 3,636 sq. ft. where 5,000 square feet is required;
- (2) front yard setback of 0.5 foot where 5 feet is required;
- (3) left side yard setback of 3.8 feet where 10 feet is required; and
- (4) rear yard setback of 10 feet where 25 feet is required.

Otherwise, the Property and the dwelling are compliant with the dimensional standards of the Zoning Ordinance. These existing conditions are shown on the plan of land entitled “Site Plan, Land of Christopher H. Daniell” prepared by Boudreau Land Surveying, PLLC, dated August 16, 2026, which is enclosed herewith as Exhibit A. Also, regarding the existing conditions of the Property, are photographs of the house enclosed herewith Exhibit B, as well as the Elevation Certificate prepared by Jones and Beach Engineers, Inc. enclosed herewith as Exhibit C.

The house is a historic structure built in 1780. It is located in the historic South End area of Portsmouth, with native vegetation and gardens bordering South Mill Pond. The house presents as a classic example of the tightly settled, waterfront residential pattern that characterizes this portion of the City. The grade of the Property enables the house to have been built into the land. When viewed from the south elevation, the ground floor comprises the majority of the structure’s perimeter, the first floor consists of the main box of the house with a one story bump out with shed roof over a portion of the ground floor, and the second floor is the original box of the house.

The proposal is deliberately conceived to achieve the greatest gain in living area with the least possible change to the Property, as well as the least possible impact on the surrounding neighborhood, the wetland buffer, and the historic structure itself; in short, to maximize while minimize. Any meaningful improvement on this uniquely constrained parcel inevitably encounters one or more of the preexisting nonconformities or the wetland buffer. The design

therefore concentrates all new living space within and atop the existing footprint in the southeasterly corner of the house.

Specifically, the first floor renovation expands upon the lower shed roof of the ground floor and cuts approximately four feet into the existing first floor bump out, creating roughly eight feet of new horizontal expansion that terminates in line with the existing exterior wall of the south elevation. On the second floor, the renovation adds a new 12 foot by 12 foot living space capped by a traditional peak and roof line that is perpendicular to, consistent with, and subservient to the primary roof line. These changes are shown on the Floor Plans and Elevations prepared by Architect Scott Simons enclosed herewith as Exhibit D.

In addition to the infill expansion, the proposal includes a 48 sq. ft. (4 foot by 12 foot) cantilevered deck at the street-level (first floor) elevation. The deck is considered an impervious structure per the Ordinance, but water will be able to flow through the typical gaps between the mahogany decking and onto the existing garden and brick patio below. From a site plan perspective the only visible change is the addition of this cantilevered deck; whereas, the living area expansion occurs within the structure's existing footprint. As such, the Plan represents both the existing and the proposed conditions.

The proposal results in an increase of 96 sq. ft. of living area on the first floor and 144 sq. ft. of living area on the second floor all of which is within, and up upon the preexisting nonconforming rear-yard setback given the relatively overpowering rear-yard setback as imposed upon this narrow lot given its shape and how its frontage is on Whidden Street. The proposal also results in 48 sq. ft. of new structure and footprint by way of the cantilevered deck. Critically, however, the construction expands no closer than is necessary to any abutter on the west, north, or east. The only new protruding feature from the structure's footprint is directed toward the open shoreland. By focusing the work on the southeasterly portion of the building and remaining within the existing footprint of the structure, the project creates the least amount of impact on abutters and introduces no new permanent foundation or structural disturbance in the wetland buffer in any direction, let alone toward the shoreline.

The goal of the project was to change as little as possible in order to gain additional living area. The design achieves that goal in light of the Zoning Ordinance requirements, the imperative of least impact to the wetland buffer, and respect for the historic structure and the surrounding neighborhood. The upward and inward expansion is carefully scaled and sited and, together with the existing topography of the Property, further reduces any potential effect on neighboring properties.

The proposal has already received a Certificate of Approval from the Historic District Commission on March 4, 2026, which is enclosed herewith as Exhibit E. The project will also require a Conditional Use Permit for work within the wetland buffer and a New Hampshire Department of Environmental Services Shoreland Permit.

Zoning Relief Requested

In order to permit the proposed living area expansion within the existing nonconforming envelope, and the modest cantilevered deck, the Owner seeks the following variances from the Zoning Ordinance:

1. A variance from Article 10.521 – Table of Dimensional Standards in the GRB Zoning District to maintain and allow a rear yard setback of 9.9 feet where 25 feet is required.

The living area expansion occurs within the existing building footprint in the preexisting nonconforming rear-yard area. The only new horizontal projection beyond the existing footprint is the 48 sq. ft. cantilevered deck directed toward the open shoreland. No new horizontal expansion from the structure's existing footprint is created toward any abutter on the west, north, or east sides of the Property.

Variance Criteria

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

“There are two methods of ascertaining whether granting a variance would violate an ordinance's basic zoning objectives: 1) examining whether granting the variance would alter the essential character of the neighborhood or, in the alternative, 2) examining whether granting the variance would threaten the public health, safety, or welfare.” *Harborside Assoc. v. Parade Residence Hotel*, 162 N.H. 508, 514 (2011).

The requested relief will not alter the essential character of the neighborhood, nor will it create any negative impact to public health, safety, or welfare. The Property is a 1780 historic home in the tightly settled South End waterfront neighborhood. The Historic District Commission has already reviewed the architectural design and granted a Certificate of Approval, finding the proposal compatible with the Historic District and the house itself. The work is confined to the southeasterly corner of the existing structure, remains within (or only modestly extends via a cantilevered deck toward open shoreland from) the preexisting nonconforming building footprint, and introduces no new permanent foundation or structural disturbance in the wetland buffer toward the shoreline or toward any abutter.

The purposes of setbacks, including rear-yard setbacks, and the regulation of nonconforming structures include protecting light, air, and privacy, preventing overcrowding, preserving open space, and, in this location, protecting the wetland buffer and shoreland. The proposed design advances those purposes by concentrating new living space inside the existing footprint, directing the only new projection toward the open pond rather than toward neighbors, utilizing the previous disturbed area underneath the cantilevered deck, and avoiding any expansion closer to the west, north, or east lot lines. The essential character of this historic waterfront street is one of modest, carefully scaled homes built close to their lot lines and oriented toward the water; the proposal continues that pattern in the most restrained manner possible.

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

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

If the requested relief is denied, the Owner will be unable to create additional living area on a Property whose every dimension and environmental constraint makes ordinary expansion practically impossible. The loss to the Owner would be the inability to improve and reasonably expand a 245 year old home for reasonable residential use. There is no corresponding gain to the public. The design chosen is the one that produces the least disturbance to the wetland buffer, the least expansion and encroachment toward abutters, and the least alteration of the historic form. Forcing the Owner either to forgo needed living space or to pursue a more aggressive, sprawling alternative that would increase foundation disturbance in the buffer would serve no public purpose. Granting the modest, carefully tailored relief therefore achieves substantial justice.

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

Granting the requested relief will not diminish the value of surrounding properties. The proposal has already been found compatible by the Historic District Commission. It expands living area entirely within (or only modestly outward via a cantilevered deck toward open water from) the existing building footprint and creates no new horizontal expansion toward any residential abutter. The work is focused on the southeasterly corner farthest from the northern and western neighbors; the topography further buffers any visual effect. Improvement of a well maintained historic waterfront home through a restrained, architecturally consistent addition is more likely to support than to diminish neighborhood property values.

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

1. There are special conditions that distinguish the Property from surrounding properties.

The Property possesses multiple special conditions that distinguish it from other properties and that drive the need for the requested relief. It is a small (3,636 sq. ft.) preexisting nonconforming lot of record whose dwelling was constructed in 1780, well before the City's first zoning regulations. The entire parcel lies within the 100-foot wetland buffer and a portion lies within Zone AE. The house is built into a stepped grade that rises from the South Mill Pond creating living area on the ground floor, first floor with the main volume of the house because of the shed roof bump out, and the original second floor box of the house. The existing nonconformities (front, side, and rear setbacks, and lot area) are the direct product of that 1780 home placement on a tiny waterfront lot, and then with the overlay of modern zoning regulations. Because the Property is already nonconforming in many dimensional respects and is entirely constrained by the wetland buffer, virtually any effort to create additional living area collides with the Ordinance. These conditions are the product of the Property's unique history, size, topography, and shoreline location.

2. There is no fair and substantial relationship between the general purposes of the ordinance and their specific application to the Property.

The general purposes of the rear-yard setback and the limitations on nonconforming structures include the creation of uniform building envelopes where possible, the protection of light, air, and privacy, the prevention of overcrowding, the preservation of open space, and the protection of sensitive environmental resources. Strict literal application of the current 25 foot rear-yard standard and the nonconforming-structure rules to this pre-zoning, entirely buffer-constrained, 3,636 sq. ft. waterfront lot would prevent any reasonable modernization or expansion of living area.

The proposed design does not further frustrate those purposes; it advances them. By remaining inside the existing nonconforming footprint to the greatest extent possible, directing the sole new projection toward open water rather than neighbors, utilizing previously disturbed ground underneath the cantilevered deck, and introducing no new foundation disturbance in the buffer, the project respects the spirit of the existing building envelope and minimizes environmental impact. There is no fair and substantial relationship between the Ordinance's general purposes and a rigid application that would forbid this appropriate, least-impact improvement on a Property that predates the standards and is uniquely constrained by them.

3. The Proposed Use is Reasonable.

The Property is and will remain a single-family residential use in the GRB District. Expanding modest living area within the existing footprint of a 1780 historic home, together with a small cantilevered deck, is a reasonable and customary residential improvement. The design is the product of a deliberate effort to maximize usable living space while minimizing dimensional, environmental, and neighborhood impacts. The proposed use and the manner of its expansion are entirely reasonable.

Proposed Stipulations

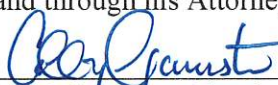
None at this time.

In conclusion, the Owner has demonstrated that the application meets the five criteria for each of the variances sought and respectfully requests that the Board approve this application.

Respectfully submitted,

Christopher H. Daniell
Owner and Applicant

By and through his Attorney,


Colby T. Gamester, Esquire
154 Maplewood Avenue
Portsmouth, NH 03801
603-427-0000
colby@gamesterlaw.com

Dated: August 19, 2026

IMPERVIOUS AREAS (SQ. FT.) WITHIN SHORELAND REFERENCE BUFFER				
	EXISTING		PROPOSED	
DWELLING	845	23.2%	845	23.2%
NORTH WALKWAY	190	5.2%	190	5.2%
BRICK PATIO AND WALKWAY	358	9.8%	350	9.6%
PROPOSED DECK			48	1.3%
TOTAL IMPERVIOUS / PERCENT AREA	1393	38.3%	1433	39.4%
TOTAL AREA WITHIN SHORELAND BUFFER	3636			

BUILDING SETBACKS (FT.) - ZONE GRB			
	REQUIRED	EXISTING	PROPOSED
FRONT	5	0.5	0.5
SIDE	10	3.8	3.8
REAR	25	10	9.9
WETLAND	100	44.2	40.7

LEGEND

- IRON PIPE/ROD FOUND
- UTILITY POLE
- SEWER MANHOLE
- CATCH BASIN
- WATER VALVE
- BOUNDARY LINE
- ABUTTER LINE
- OVERHEAD WIRES
- RIGHT-OF-WAY
- HIGHEST OBSERVABLE TIDE LINE (HOTL)
- EDGE OF GRAVEL
- EDGE OF PAVEMENT
- STONE WALL
- F.E.M.A. BOUNDARY
- BUILDING SETBACKS

TAX MAP 109 LOT 1
THE MEYERKOPF FAMILY
TRUST FUND
53 WHIDDEN STREET
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 5686 PAGE 2427

TAX MAP 109 LOT 2
EVAN FRANCOIS YOUNG
43 WHIDDEN STREET
PORTSMOUTH, NH 03801
R.C.R.D. BOOK 6407 PAGE 2300

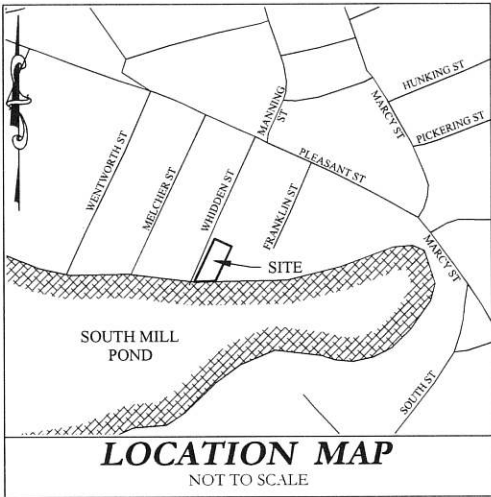
TAX MAP 102 LOT 65
STEPHEN C. ERICKSON
616 E DEVONHURST LN.
PONTE VEDRA, FL 32081
R.C.R.D. BOOK 4112 PAGE 1769

TAX MAP 102 LOT 59
37 FRANKLIN ST LLC
460 STRAWBERRY HILL ROAD
CONCORD, MA 01742
R.C.R.D. BOOK 6569 PAGE 1506

MAP 102 LOT 66
AREA
3,636 SQ. FT.
0.08 ACRES

ZONE AE
(EL 8)

SOUTH MILL POND
(TIDAL)



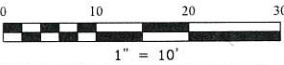
NOTES:

- REFERENCE: TAX MAP 102 LOT 66
R.C.R.D. BOOK 5490 PAGE 2114
- TOTAL PARCEL AREA: 3,636 SQ. FT. OR 0.08 AC.
- OWNER OF RECORD: CHRISTOPHER H. DANIELL
50 WHIDDEN STREET
PORTSMOUTH, NH 03801
- ZONE: GRB DISTRICT
DIMENSIONAL REQUIREMENTS:

MINIMUM LOT AREA	5,000 sq. ft.
MINIMUM FRONTAGE	80 ft.
MINIMUM FRONT SETBACK	5 ft.
MINIMUM SIDE SETBACK	10 ft.
MINIMUM REAR SETBACK	25 ft.
WETLAND BUFFER	100 ft.
BUILDING COVERAGE	30%
MINIMUM OPEN SPACE	25%
- HORIZONTAL DATUM IS NAD83 (NAD '83) BASED ON GPS OBSERVATIONS
- VERTICAL DATUM SHOWN IS NAVD '88 BASED ON GPS OBSERVATIONS
- THE INTENT OF THIS PLAN IS TO SHOW THE EXISTING CONDITIONS AT THE TIME OF THE SURVEY IN RELATION TO THE LEGAL BOUNDARIES OF RECORD
- THE RESULTS OF THIS PLAN ARE BASED ON AN ON THE GROUND SURVEY PREPARED BY SDB ON AUGUST 6, 2026 USING A SPECTRA PRECISION FOCUS 30 ROBOTIC TOTAL STATION AND DATA COLLECTOR, AND A CARLSON BR57 GNSS GPS RTK RECEIVER AND REMOTE BASE STATION
- A PORTION OF TAX MAP 102 LOT 66 FALLS WITHIN "ZONE AE" OF THE SPECIAL FLOOD HAZARD AREAS SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD, AS SHOWN ON F.I.R.M. MAP NUMBER 330150259F, EFFECTIVE JANUARY 29, 2021.
- THE SURVEYED PREMISES FALLS ENTIRELY WITHIN THE 100-FOOT WETLAND BUFFER FROM SOUTH MILL POND.

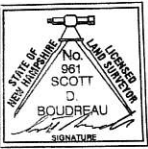
PLAN REFERENCES:

- PLAN TITLED "EASEMENT PLAN, TAX MAP 109 - LOTS 2 & 3 ON LAND OF MAHANNA PROPERTIES, LLC, TO BENEFIT JOHN F. GREEN & ALISON L. ZAEDER, 37 & 43 WHIDDEN STREET, CITY OF PORTSMOUTH, COUNTY OF ROCKINGHAM, STATE OF NEW HAMPSHIRE" DATED FEBRUARY 2016, PREPARED BY AMBIT ENGINEERING, INC., R.C.R.D. PLAN NO. D-39341.



SITE PLAN
LAND OF
CHRISTOPHER H. DANIELL
(TAX MAP 102 LOT 66)
50 WHIDDEN STREET
PORTSMOUTH, NH

DRAWN BY: SDB	DATE: AUGUST 16, 2026
CHECKED BY: ARB	DRAWING NAME: 26031A2
JOB NAME: 26031	SHEET: C1



Boudreau
Land
Surveying PLLC
SCOTT D. BOUDREAU, L.L.S. #961
2 BEATRICE LANE
NEWMARKET, NH 03857
(603) 659-3468



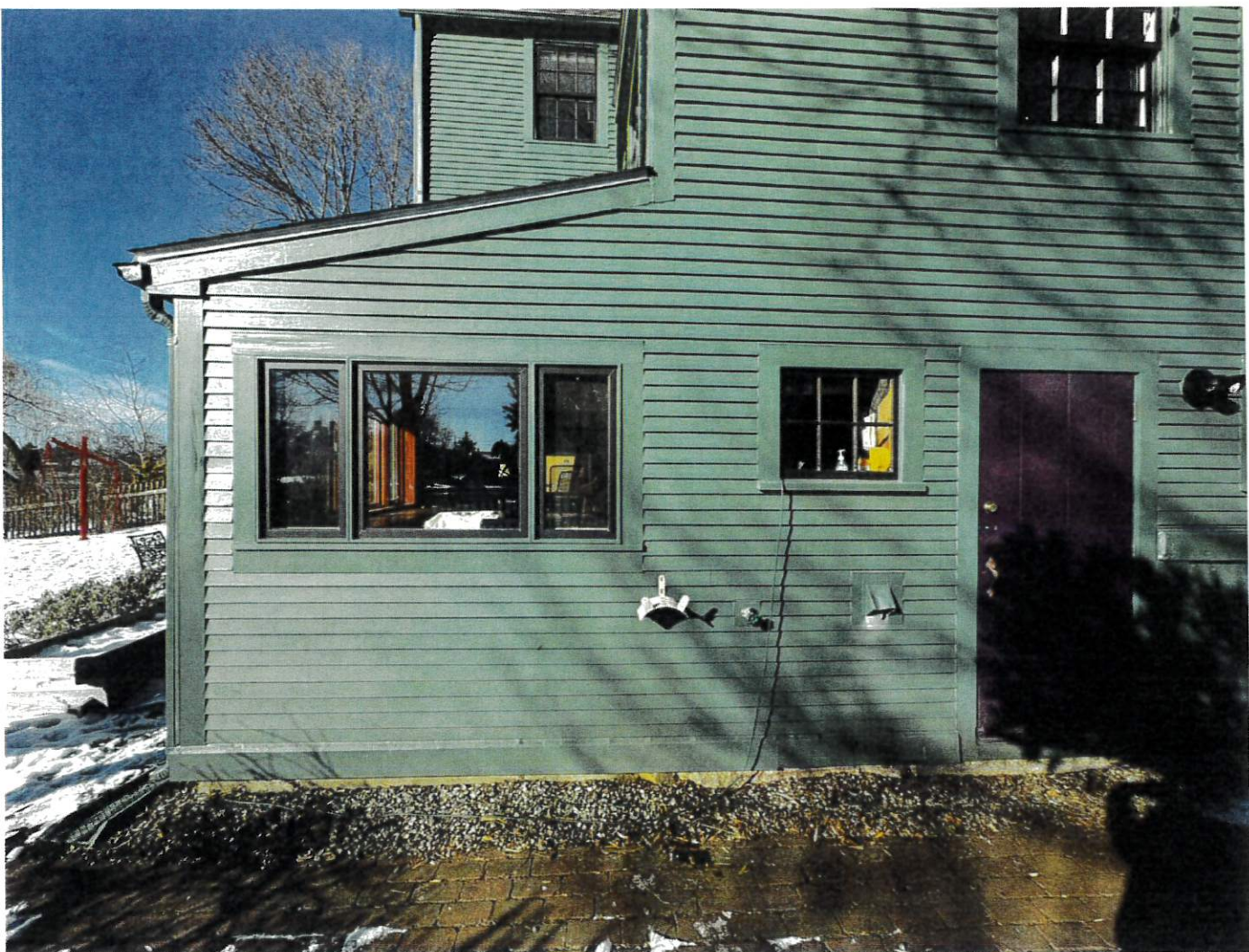
South Elevation



South Elevation: close-up of existing one-story addition



East Elevation



East Elevation: close-up of existing one-story addition



ELEVATION CERTIFICATE

Important: Read the instructions on pages 1-9.

EXHIBIT C

OMB No. 1660-0068

Expiration Date: July 31, 2015

SECTION A - PROPERTY INFORMATION

A1. Building Owner's Name Gregory V. White

FOR INSURANCE COMPANY USE

Policy Number:

A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.
50 Whidden Street

Company NAIC Number:

City Portsmouth

State NH

ZIP Code 03801

COPY

A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.)
Map 102 Lot 66 See Rockingham County Reg of Deeds Book 4527 Page 54

A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.) Residential

A5. Latitude/Longitude: Lat. 43.072966 Long. 70.752722 Horizontal Datum: ☐ NAD 1927 ☒ NAD 1983

A6. Attach at least 2 photographs of the building if the Certificate is being used to obtain flood insurance.

A7. Building Diagram Number 1B

A8. For a building with a crawspace or enclosure(s):

- a) Square footage of crawspace or enclosure(s) 768 sq ft
b) Number of permanent flood openings in the crawspace or enclosure(s) within 1.0 foot above adjacent grade 0
c) Total net area of flood openings in A8.b 0 sq in
d) Engineered flood openings? ☐ Yes ☒ No

A9. For a building with an attached garage:

- a) Square footage of attached garage _____ sq ft
b) Number of permanent flood openings in the attached garage within 1.0 foot above adjacent grade _____
c) Total net area of flood openings in A9.b _____ sq in
d) Engineered flood openings? ☐ Yes ☐ No

SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION

B1. NFIP Community Name & Community Number City of Portsmouth / 330139		B2. County Name Rockingham		B3. State NH	
B4. Map/Panel Number 33015C0259	B5. Suffix E	B6. FIRM Index Date May 17, 2005	B7. FIRM Panel Effective/Revised Date May 17, 2005	B8. Flood Zone(s) AE	B9. Base Flood Elevation(s) (Zone AO, use base flood depth) 9

B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in Item B9.

☐ FIS Profile ☒ FIRM ☐ Community Determined ☐ Other/Source: _____

B11. Indicate elevation datum used for BFE in Item B9: ☒ NGVD 1929 ☐ NAVD 1988 ☐ Other/Source: _____

B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? ☐ Yes ☒ No
Designation Date: _____ ☐ CBRS ☐ OPA

SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

- C1. Building elevations are based on: ☐ Construction Drawings* ☐ Building Under Construction* ☒ Finished Construction
*A new Elevation Certificate will be required when construction of the building is complete.
- C2. Elevations - Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO. Complete Items C2.a-h below according to the building diagram specified in Item A7. In Puerto Rico only, enter meters.
Benchmark Utilized: 379-0340 Vertical Datum: NGVD1929
Indicate elevation datum used for the elevations in items a) through h) below. ☒ NGVD 1929 ☐ NAVD 1988 ☐ Other/Source: _____
Datum used for building elevations must be the same as that used for the BFE.

Check the measurement used.

- | | | |
|--|-------------|--|
| a) Top of bottom floor (including basement, crawspace, or enclosure floor) | <u>12.2</u> | ☒ feet ☐ meters |
| b) Top of the next higher floor | <u>20.1</u> | ☒ feet ☐ meters |
| c) Bottom of the lowest horizontal structural member (V Zones only) | _____ | ☐ feet ☐ meters |
| d) Attached garage (top of slab) | _____ | ☐ feet ☐ meters |
| e) Lowest elevation of machinery or equipment servicing the building (Describe type of equipment and location in Comments) | <u>14.0</u> | ☒ feet ☐ meters |
| f) Lowest adjacent (finished) grade next to building (LAG) | <u>11.1</u> | ☒ feet ☐ meters |
| g) Highest adjacent (finished) grade next to building (HAG) | <u>19.9</u> | ☒ feet ☐ meters |
| h) Lowest adjacent grade at lowest elevation of deck or stairs, including structural support | _____ | ☐ feet ☐ meters |

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information on this Certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

- ☒ Check here if comments are provided on back of form.
☐ Check here if attachments.

Were latitude and longitude in Section A provided by a licensed land surveyor? ☒ Yes ☐ No

Certifier's Name James M O'Neil

License Number 0928

Title Assistant Survey Ma

Company Name Jones and Beach Engineers Inc.

Address 85 Portsmouth Ave

City Stratham

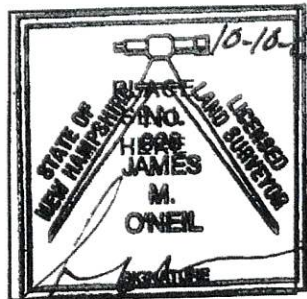
State NH

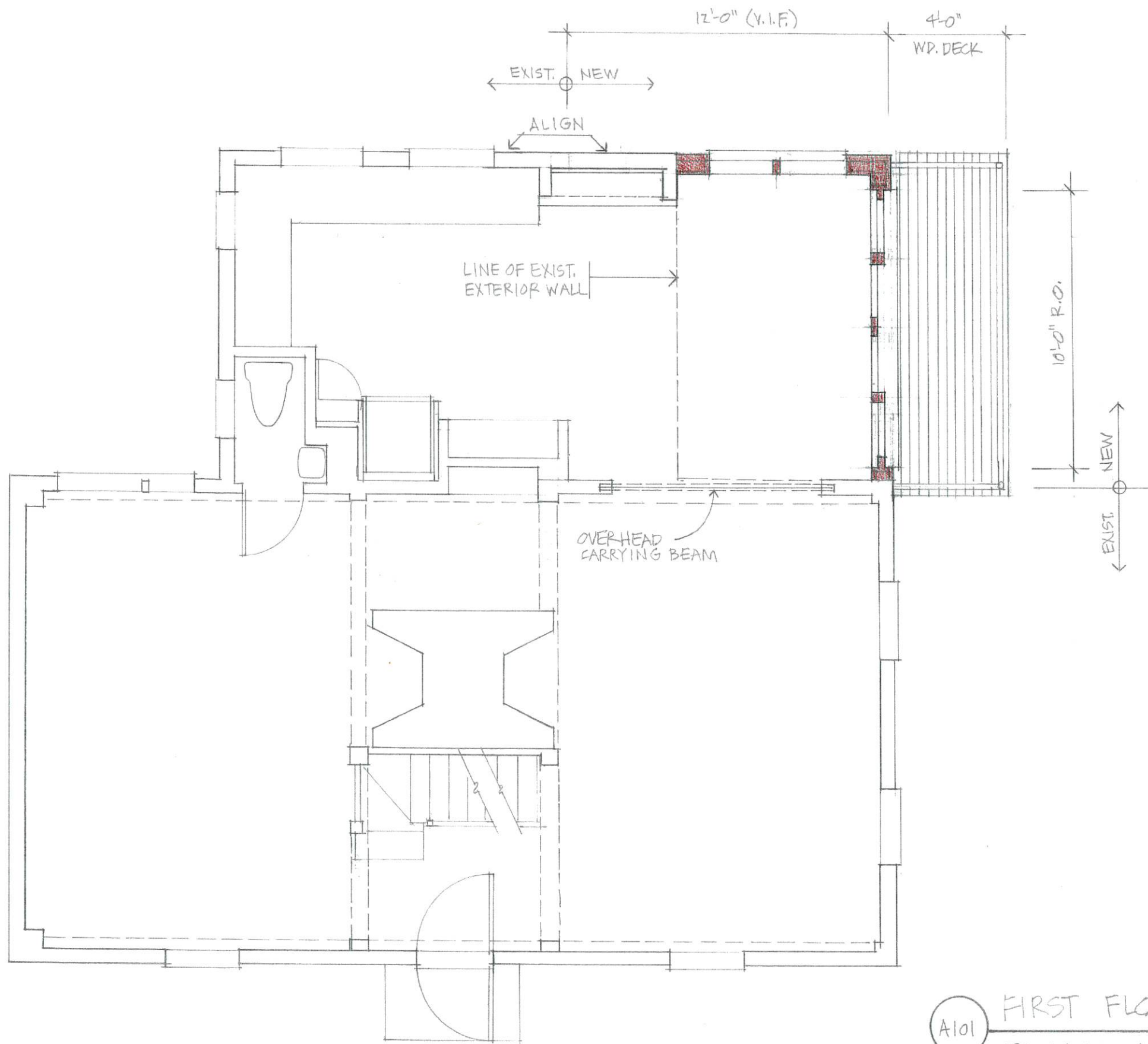
ZIP Code 03885

Signature

Date 10/10/2013

Telephone 603-772-4746





A101

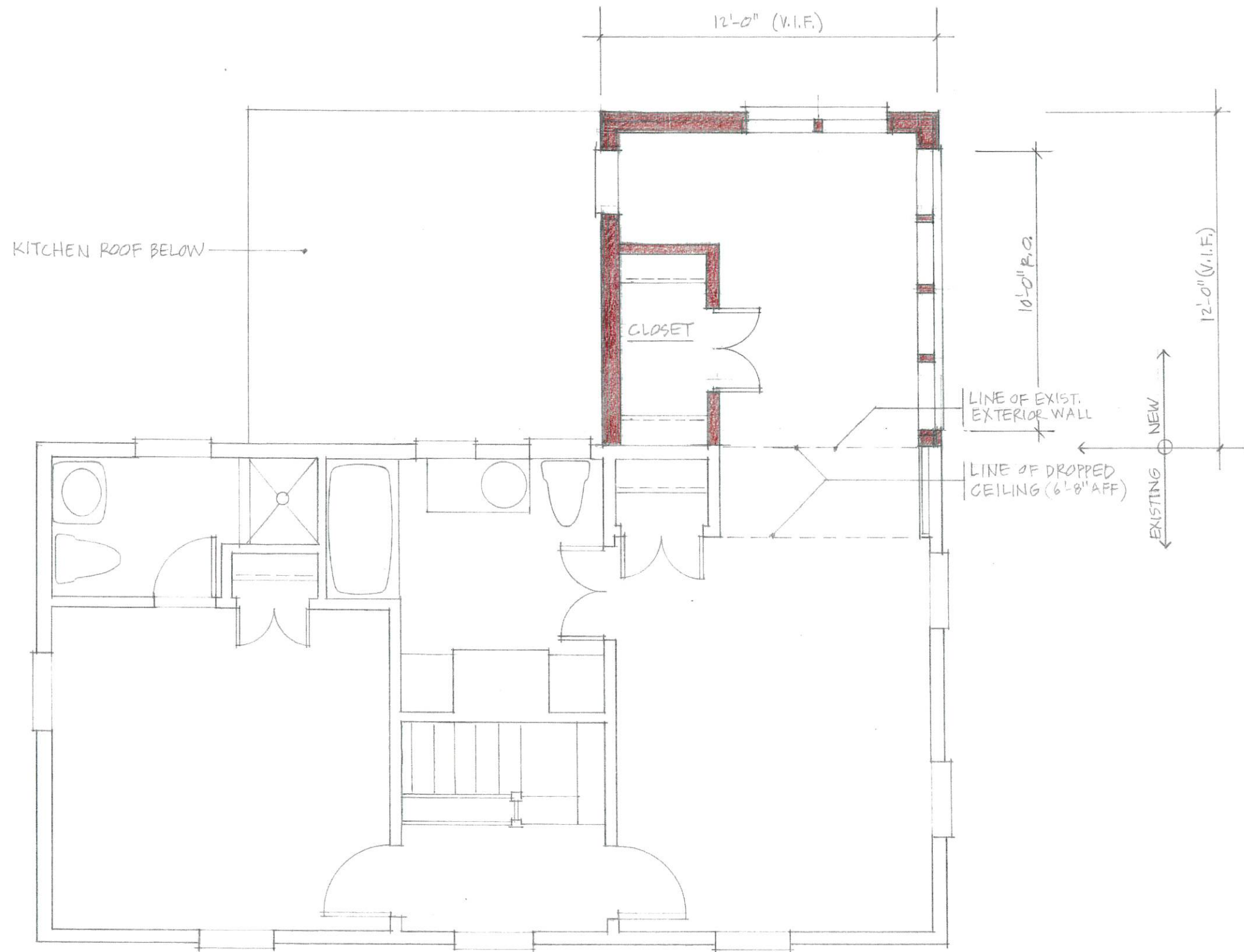
FIRST FLOOR PLAN

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

50 WHIDDEN STREET, PORTSMOUTH, N.H.

SCOTT SIMONS ARCHITECT PORTLAND, ME

01.18.26
02.13.26 REVISED

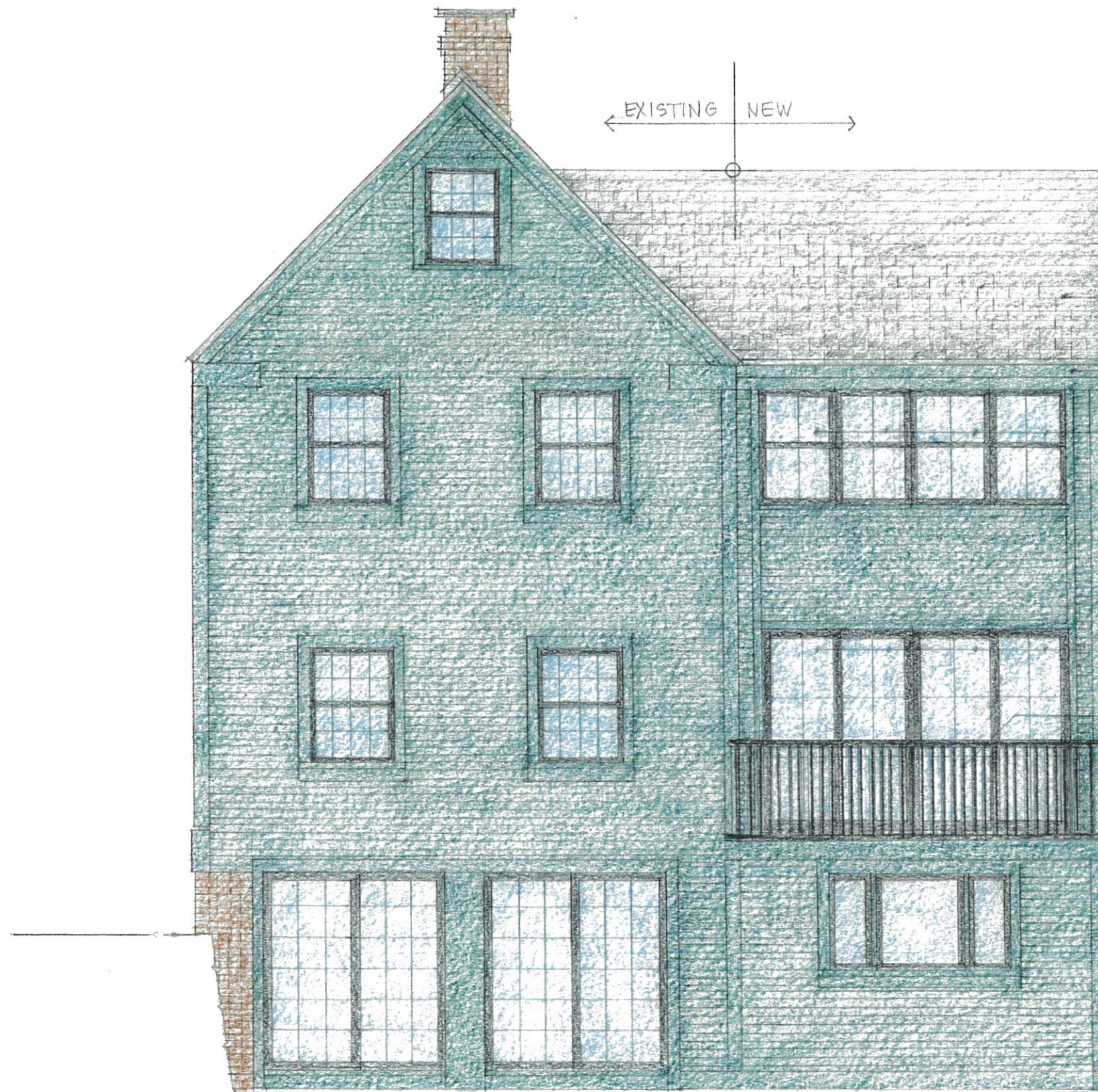


A102 SECOND FLOOR PLAN SCALE: 1/4" = 1'-0"

50 WHIDDON STREET, PORTSMOUTH, N.H.

SCOTT SIMONS ARCHITECT PORTLAND, ME

01.18.26
02.13.26 REVISED



ASPHALT SHINGLES
TO MATCH EXISTING

PTD. WD TRIM TO MATCH EXIST.

ALUM. CLAD WOOD DH WDWS
(ALIGN W/ EXISTING)

PAINTED WOOD CLAPBOARDS + TRIM
TO MATCH EXISTING (3" EXPOSURE)

NATURAL WOOD SIDING + TRIM
W/ CLEAR FINISH

ALUM. CLAD SLDG. WD. DOORS

3/6" H WD HANDRAIL
W/ 1" Ø BLACK WOODEN BALUSTERS @ 4" O.C.

WINDOW / DOOR SCHEDULE

TAG	MFG	MODEL #	R.O.	STYLE	NOTES
	MARVIN	UNDH 2420	2'-6 3/8" W x 4'-1 1/2" H	CLAD DH	ULTIMATE
	MARVIN	10068	10'-0" W x 6'-10 1/2" H	SLDG. PATIO	ULTIMATE
	MARVIN	UPAR 3048E	2'-7" W x 3'-11 5/8" H	CLAD CSMT	ULTIMATE (EGRESS)

A201

SOUTH ELEVATION

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

50 WHIDDON STREET, PORTSMOUTH, N. H.

SCOTT SIMONS ARCHITECT PORTLAND, ME

01.18.26
02.13.26 REVISED



A202 EAST ELEVATION SCALE: 1/4" = 1'-0"
 50 WHIDDEN STREET, PORTSMOUTH, N.H.
 SCOTT SIMONS ARCHITECT PORTLAND, ME 01.18.26
 02.13.26 REVISED



CITY OF PORTSMOUTH

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

HISTORIC DISTRICT COMMISSION

July 10, 2026

Christopher Daniell
50 Whidden Street
Portsmouth, NH 03801

RE: Certificate of Approval for property located at 50 Whidden Street (LU-26-15)

Dear Mr. Daniell:

The Historic District Commission, at its regularly scheduled meeting of **Wednesday, March 04, 2026**, considered your application for new construction to an existing structure (construct new rear multi-story addition) as per plans on file in the Planning & Sustainability Department.

Said property is shown on Assessor Map 102 as Lot 66 and lies within the General Residence B (GRB) and Historic Districts. As a result of said consideration, the Commission voted to **grant** the Certificate of Approval as presented.

Findings of Fact

A. Purpose and Intent

The proposed application meets the following objective(s) of the Historic District (as provided in Section 10.631.20 of the Zoning Ordinance):

-Preserve the integrity of the District.

B. Review Criteria

The proposed application also meets the following review criteria of the Historic District (as provided in Section 10.635.70 of the Zoning Ordinance):

-Compatibility of technologies with surrounding properties.

The Commission's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Commission'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 Committees 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 one (1) year from the date granted by the Historic District Commission unless an extension is granted by the Commission in accordance with Section 10.636.70 of the Zoning Ordinance.

Please note that any changes or modifications to this application require review and approval from the Commission prior to implementation and additional fees may apply.

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, appearing to read "Izak Gilbo".

Izak Gilbo, Planner 1
for Reagan Ruedig, Chair of the Historic District Commission

cc: Shanti Wolph, Chief Building Inspector
Rosann Maurice-Lentz, City Assessor