APPLICATION OF THE DAVENPORT INN, LLC 70 Court Street, Portsmouth, NH Map 116, Lot 49

APPLICANT'S NARRATIVE

I. THE PROPERTY:

The applicant, The Davenport Inn, LLC, acquired the Nathaniel Treadwell House located 70 Court Street after receiving a variance last year to convert the property into an inn. All necessary approvals from the Planning Board and the Historic District were obtained for that purpose. A copy of this Board's decision in February of 2022 is submitted herewith. As the Board may recall, the applicant received approval to convert the existing building to an inn, with eight units and an onsite caretaker's residence.

Renovations, upgrades and improvements to the property have been proceeding since February of last year and the inn is slated to open to the public on or about September 1.

During the course of the renovations, the applicant determined that it was necessary and desirable to replace the existing condenser unit on the east side of the building, as shown on the existing conditions plan submitted herewith, with a bank of newer, more efficient mini-split condenser units in the similar location. HDC approval for six units was obtained in March of this year, and a copy of the approval is submitted herewith.

After receiving the administrative approval from the HDC for the new condensers, which are within the general site of the prior condenser, the applicant's installer informed it that a seventh unit would be necessary to properly service the building, and the applicant submitted again to the HDC for an administrative approval therefor in June. It was then, subsequent to the installation of the units, the applicant was informed that they resided within the side yard setback and a variance would be necessary for the seventh unit. As the property is in the CD4-L1 District, the side yard minimum is 5 feet. However, in consultation with Planning Department staff, it was determined that relief from the 10 foot setback required under Section 10.515.14 should be requested.

Section 10.515.14 specifically contemplates siting mechanical units within setbacks. The neighboring law office has its own condenser units within ten feet of this line as well. There is no realistic use the corridor between the two buildings, which is 12 feet wide in total, could be put to beyond housing mechanical units in this location.

Compliance with the ten foot requirement would require relocated the units to the rear of the building where they would be visible and unsightly to patrons visiting a historic inn.

The applicant is seeking variance relief for all seven units. Because the first six units were installed in reliance on the HDC approval in March, the applicant is alternatively seeking an equitable waiver for those units in the event the variance is denied.

As the Board is aware from last year's application, the Treadwell House has a most colorful history. Originally built in 1758 by the late Charles and Mary Treadwell, it has at various times served as an inn or rooming house, originally at the corner of Fleet and State Streets. It operated as The Davenport Inn for a number of years. It then served as Governor Bradstreet Gilman's headquarters during the War of 1812. It was an inn used primarily by attorneys practicing at the Portsmouth Courthouse during the mid 1800's. It was the home of the Portsmouth YWCA during the mid-twentieth century. Faced with its demolition to make way for what is now the TD Bank on State Street, it was saved and painstakingly moved to its current location in the 1950s.

The property boasts several significant and unique architectural features. Features such as moldings, stairwells, spindles, and pendants that in other historic buildings have been lost forever due to significant fires in Portsmouth's history, neighborhood destruction of the 70's, and today's development are present on this property. The applicant has painstakingly restored and renovated the property at enormous expense to facilitate its next life as an inn of the highest quality for visitors to Portsmouth. The inclusion of modern, efficient HVAC systems is necessary for today's travelers.

II. THE VARIANCE:

The Applicant believes all criteria necessary to grant the requested variance is met.

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

The essential characteristics of the neighborhood would not be altered by this variance. There is a varied mixture of municipal, commercial and residential development in the immediate vicinity, including single and multi-family dwellings, The

Hotel Portsmouth (formerly the Sise Inn), other inns, public housing, retail, law offices, the Middle School, fire station, business and professional offices.

The corridor between the buildings has been the site for HVAC units servicing each for several years and is not suitable space for any other significant use. Were the variance to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. The siting and configuration of the units on the applicant's property has been approved by the HDC, further assuring the public interest is maintained.

Substantial justice would be done by granting the variance. Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property.

In this case, there is no benefit to the public in denying the variance that is not grossly outweighed by the hardship upon the owner. The corridor between the buildings has been the site for HVAC units servicing each for several years and is not suitable space for any other significant use. The siting and configuration of the first six units on the applicant's property has been approved by the HDC, further assuring the public interest is maintained. There is no other reasonable location for the units on the property.

There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship. The property boasts a unique history and architecture that render it particularly well suited for a place of public accommodation, as it was for decades. The proposed inn will assure that this part of historic Portsmouth will be preserved for visitors and the public to experience and enjoy. The 12 foot corridor between buildings is not suitable for any significant use beyond what is proposed here.

<u>The use is a reasonable use</u>. The use of this property as an inn has been approved by this Board. Amenities such as safe and efficient HVAC systems are expected by modern travelers and are a reasonable use of the affected portion of the property.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. Rigid application of the side yard setback in this instance would do nothing to promote purposes of the ordinance as the location has been the site of mechanical units servicing both buildings for many years and the area is not useful for any other significant purpose.

Accordingly, the proposed use requested here would not in any way frustrate the purpose of the ordinance and there is no fair and substantial relationship between the purpose of the ordinance and its application to this property.

III. THE EQUITABLE WAIVER

As noted above, the applicant installed the first six units after receiving HDC administrative approval therefor in March of this year. It was only when the applicant sought administrative approval for the seventh unit from the HDC was the applicant informed that the side yard setback variance was necessary.

Accordingly, should the variance be denied for any reason, the applicant is alternatively seeking an equitable waiver of the setback requirement for the first six units that were installed in reliance on the original HDC approval.

This Board is authorized to grant an equitable waiver of dimensional requirements pursuant to RSA 674:33-a. The applicant maintains all the criteria imposed by the statute apply to this matter.

- a) The setback violation was not noticed or discovered by the owner or city staff until after the six units were installed. RSA 674:33-a, I (a);
- b) The violation is not the result of ignorance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of the applicant, but is instead the result of an error in ordinance interpretation or applicability by the municipal official in issuing the permit for the six units. RSA 674:33-a, I (b);
- c) The setback violation does not constitute a public or private nuisance, nor diminish values of surrounding properties nor interfere with or adversely affect any present or permissible future use of such properties. RSA 674:33-a, I (c);
- d) Due to the degree of past construction and investment made in reliance on the HDC approval, the cost of correction far outweighs any public benefit to be gained, such that it would be inequitable to require the setback to be corrected. RSA 674:33-a, I (d).

IV. <u>Conclusion.</u>

For the foregoing reasons, the applicant respectfully requests the Board grant the variance as requested and advertised. In the event the variance is denied for any reason, the applicant alternatively requests an equitable waiver as to the first six units installed in reliance on the HDC's March 2023 approval.

Respectfully submitted,

Dated: September 6, 2023 By: Christopher P. Mulligan

Christopher P. Mulligan, Esquire

OF PORTSMOU

CITY OF PORTSMOUTH

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

ZONING BOARD OF ADJUSTMENT

February 16, 2022

Treadwell House INC 82 Court Street Portsmouth, NH 03801

RE: Board of Adjustment request for property located at 70 Court Street

Dear Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, February 15, 2022**, considered your application for the conversion of the building into an 8 room inn with caretaker residence which requires the following: 1) A Variance from Section 10.440 Use #10.30 to allow an Inn where the use is not permitted. 2) A Variance from Section 10.114.21 to allow a 13' maneuvering aisle where 24' is required. Said property is shown on Assessor Map 116 Lot 49 and lies within the Character District 4-L1 (CD4-L1). As a result of said consideration, the Board voted to **grant** the request as presented and advertised.

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

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

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

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

Very truly yours,

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Jim Lee, Vice Chairman of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

John K. Bosen, Esquire Erik Saari, Altus Engineering

O PORTSMOUND

CITY OF PORTSMOUTH

Planning Department 1 Junkins Avenue Portsmouth, New Hampshire 03801

(603) 610-7216

HISTORIC DISTRICT COMMISSION

March 8, 2023

Davenport Inn, LLC 266 Middle Street Portsmouth, NH 03801

RE: Administrative Approval for property located at 70 Court Street (LUHD-567)

Dear Owner:

The Historic District Commission, at its regularly scheduled meeting of **Wednesday, March 01, 2023**, considered your request for administrative approval for the installation of HVAC equipment (6) condensers. As a result of said consideration, the Commission voted to **grant** the Administrative Approval with the following stipulations:

- 1. The six proposed units shall be placed horizontally behind the second window from Court Street, toward the rear of the building.
- 2. Landscaping shall be added in front of the frist unit.

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

Very truly yours,

Nicholas J. Cracknell, AICP, Principal Planner for Jonathan Wyckoff, Chairman of the Historic District Commission

CC:

Sarah Hourihane, Applicant



6 NEW CONDENSERS WERE PREVIOUSLY APPROVED TO BE LOCATED IN LOCATION OF EXISTING CONDENSER. WE ARE REQUESTING APPROVAL FOR A 7TH CONDENSER THAT WOULD GO IN LINE WITH THE OTHERS AGAINST THE BUILDING.

VIEW FROM COURT STREET



THE DAVENPORT 70 COURT STREET JULY 2023





CONDENSER:

HDC previously approved 6 condensers to be located on the side of the building. We would like to request 1 additional condenser to be located on the parking lot side of the approved stacks for a total of 7 condensers.

Condensers are located as far back from Court Street as possible.

VIEW FROM COURT STREET

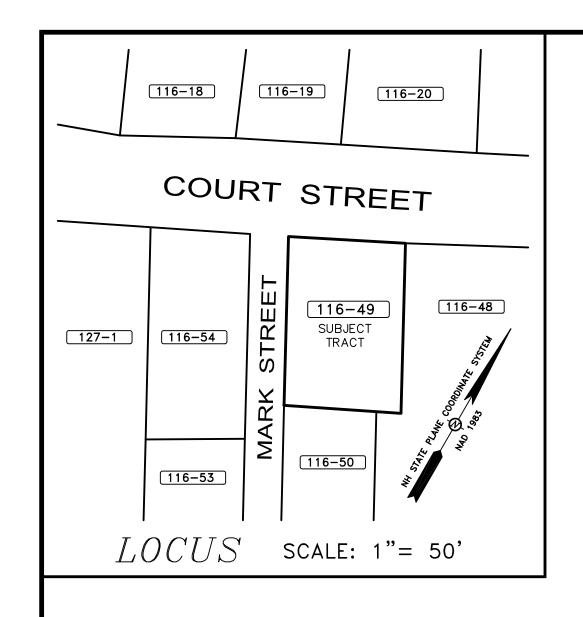


Landscaping will be installed to buffer the condensers from Court Street.

VIEW BETWEEN BUILDINGS AT CONDENSER LOCATION







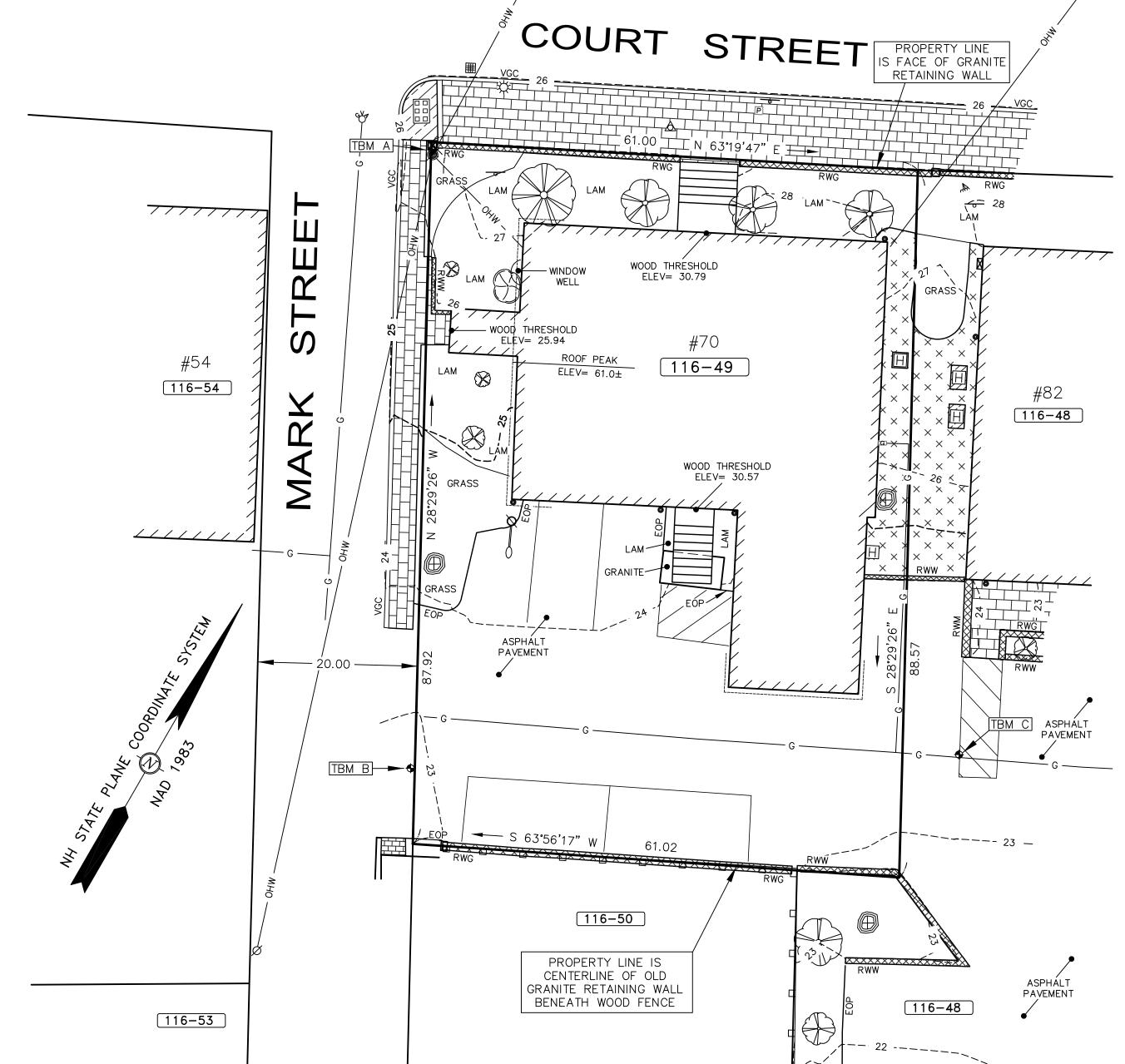
LEGEND: . SURVEY NAIL SET ..WOOD FENCE ..PUBLIC SERVICE CO. OF NH PSNH... 110-5 .TAX SHEET - LOT NUMBER RCRD . ROCKINGHAM COUNTY REGISTRY OF DEEDS EOP.. ..EDGE OF PAVEMENT VGC... VERTICAL FACED GRANITE CURB RWM. ..MORTARED RETAINING WALL RWW... .WOOD RETAINING WALL RWG.. ..GRANITE RETAINING WALL ..PARK METER KIOSK ..SIGN ..UTILITY POLE ...UTILITY POLE W/TRANSFORMER ..LIGHT POLE ..UTILITY POLE WITH ARM & LIGHT ..DIRECTED LIGHT G. ..GAS METER ..GAS VALVE ..CATCH BASIN ..ROOF DOWNSPOUT ...DECIDUOUS TREE ..DECIDUOUS SHRUB . OVERHEAD WIRES *—ОНW*— . CEMENT CONCRETE BRICK PAVERS . CRUSHED STONE \boxtimes . RETAINING WALL

<u>TBM</u>	<u>DESCRIPTION</u>	ELEV.
A	SURVEY NAIL FOUND IN UTILITY POLE PSNH 4 22 A (1.35' ABOVE GROUND)	27.98
В	SURVEY NAIL SET IN ASPHALT	22.84
С	SURVEY NAIL SET IN ASPHALT	23.41

SPOT GRADE STUMP FOUND

×12.5.

..MULCH LANDSCAPED AREA



NOTES:

- 2. SUBJECT TRACT IS ZONED MRB, HD & CD4-L1. SEE CITY OF PORTSMOUTH ZONING ORDINANCE.
- 3. THE RELATIVE ERROR OF CLOSURE WAS LESS THAN 1 FOOT IN 15,000 FEET.
- 4. THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE @ 1-888-DIG-SAFE.
- 5. ON SITE CONTROL ESTABLISHED USING SURVEY GRADE GPS UNITS. HORIZONTAL DATUM: NAD 1983 (2011)(EPOCH 2010.0000)
 VERTICAL DATUM: NAVD 1988
 PRIMARY BM: CITY CONTROL POINT "ROBE"
- 6. CONTRACTOR TO VERIFY SITE BENCHMARKS BY LEVELING BETWEEN 2 BENCHMARKS PRIOR TO THE SETTING OR ESTABLISHMENT OF ANY GRADES/ELEVATIONS.

 DISCREPANCIES ARE TO BE REPORTED TO JAMES VERRA AND ASSOC., INC.
- 7. PARCEL 116-49 IS SUBJECT TO A ROW FOR ALL PURPOSES IN FAVOR OF PARCEL 116-48. SEE RCRD BK 2357, PAGE 1111.

REFERENCE PLANS:

1. PLAN OF WILLIAM P. JONES HOMESTEAD, UNDATED, RCRD PLAN 0099.

	ABUTTERS LIST	
MAP-LOT	OWNER OF RECORD	DEED REF.
119–19	UNITARIAN—UNIVERSALIST CHURCH OF PORTSMOUTH N.H. 73 COURT ST, PORTSMOUTH, NH 03801	N/A
116-20	CITY LIGHTS, LLC PO BOX 1389, PORTSMOUTH, NH 03802—1389	N/A
116-48	82 COURT ST, LLC 82 COURT ST, PORTSMOUTH, NH 03801	5357/2696
116-50	KATIE C. JENKINS & JASON R. JENKINS 35 MARK ST, PORTSMOUTH, NH 03801	4821/202
116-53	BERNARD A. COHEN 28 MARK ST, PORTSMOUTH, NH 03801	2877/2906
116-54	IRENE R. LEBEL REV. TRUST OF 2014 C/O FRANCES D. LEBEL & THOMAS L. LEBEL 457 BROAD ST, PORTSMOUTH, NH 03801	5514/736

SURVEYOR:

James Verra and Associates, Inc.

LAND SURVEYORS

101 SHATTUCK WAY - SUITE 8 NEWINGTON, N.H. 03801- 7876 603-436-3557 JOB NO: 23985 JOB NO: 23985

ENGINEER:

ATTIS

133 COURT STREET PORTSMOUTH, NH 03801 (603) 433-2335 www.ALTUS-ENG.com

ENGINEERING, INC.

ISSUED FOR:

ENGINEERING DESIGN

ISSUE DATE:

JANUARY 18, 2022

REVISIONS
NO. DESCRIPTION BY DATE
1 ENGINEERING DESIGN JV 1/18/22

DRAWN BY: JCS

APPROVED BY: JV

DRAWING FILE: 23985.DWG

SCALE:

 $22" \times 34" - 1" = 10'$ $11" \times 17" - 1" = 20'$

OWNER/APPLICANT:

TREADWELL HOUSE, INC.
C/O CHARLES DOLEAC, ESQ.
82 COURT STREET
PORTSMOUTH, NH 03801
ASSESSOR'S PARCEL 116-49



PROJECT:

PROPOSED SITE DEVELOPMENT PLANS

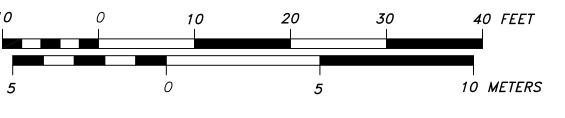
70 COURT STREET & MARK STREET PORTSMOUTH, N.H. ASSESSOR'S PARCEL 116-49

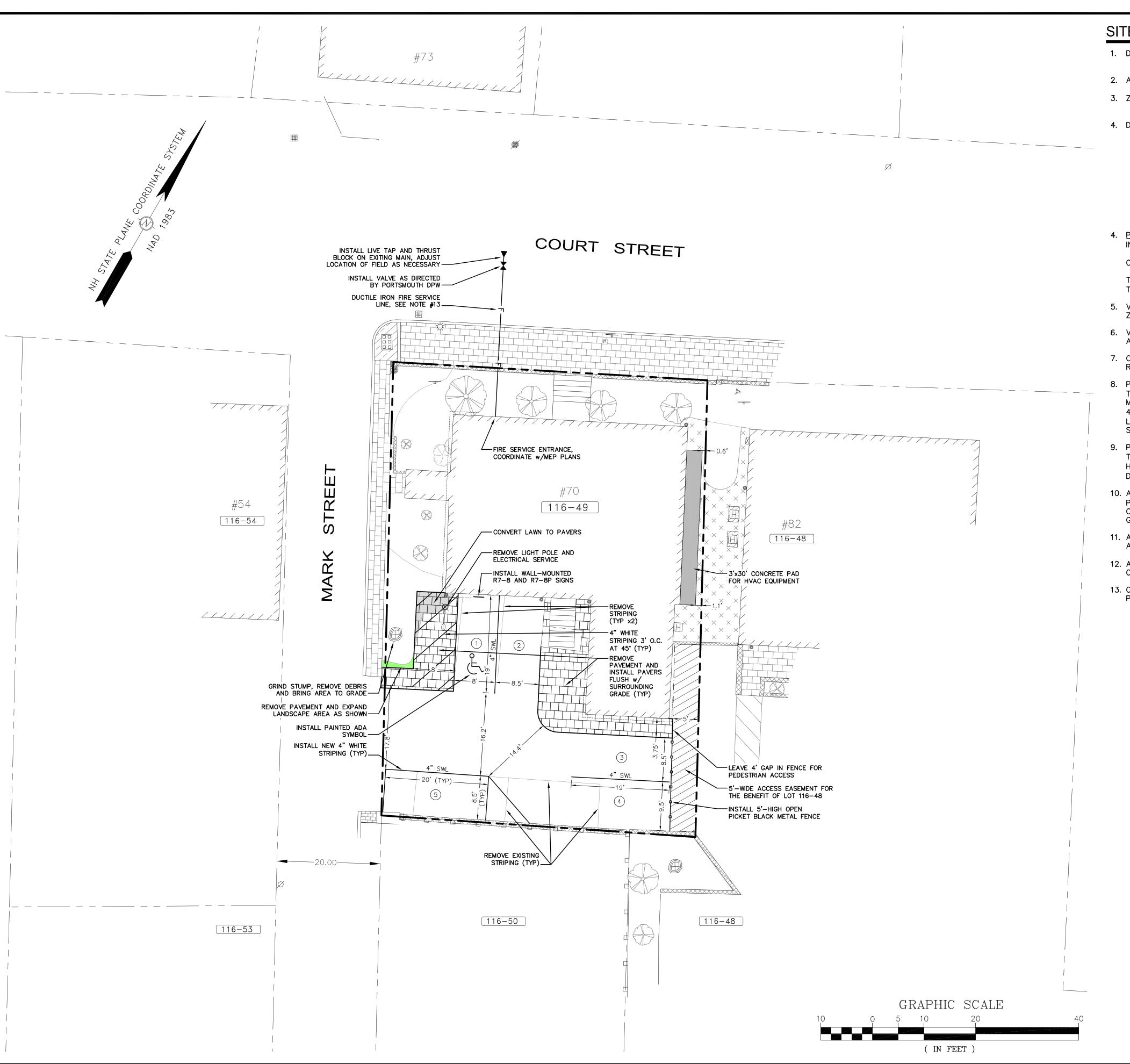
TITLE:

EXISTING CONDITIONS PLAN

SHEET NUMBER:

1 OF 1





SITE NOTES

- 1. DESIGN INTENT THIS PLAN SET IS INTENDED TO DEPICT THE RENOVATION OF THE SITE TO AN INN.
- 2. APPROXIMATE LOT AREA: $\pm 5,380$ S.F. (± 0.12 AC.)
- 3. ZONE: CHARACTER DISTRICT 4-L1 (CD4-L1)
 HISTORIC DISTRICT OVERLAY (HD)
- 4. DIMENSIONAL REQUIREMENTS BUSINESS:
 MIN. LOT AREA: 3,000 S.F.
 MIN. STREET FRONTAGE: 150'
 FRONT SETBACK: 15'

SECONDARY FRONT YARD: 12'

SIDE SETBACK: 5' MIN. TO 20' MAX.
REAR SETBACK: 5'
FRONT LOT LINE BUILDOUT: 60% MIN. TO 80% MAX.
MAX. BUILDING HEIGHT: 35' (2 STORIES, SHORT 3RD)

MAX. BLDG. COVERAGE: 60% MINIMUM OPEN SPACE: 25% (23.3% EXISTING, 26.1% PROPOSED)

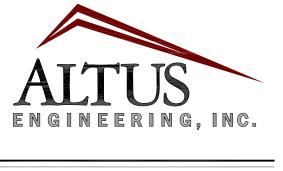
4. PARKING REQUIREMENTS:
INN, HOTEL, MOTEL: 1.25/ROOM
8 ROOMS x 1.25 = 10 SPACES
CARETAKERS RESIDENCE <500 S.F.: 0.5/UNIT
1 CARETAKER x .5 = 0.5 SPACES
TOTAL PARKING REQUIRED = 11 SPACES
TOTAL PARKING PROVIDED = 5 SPACES (6 SPACE DEFICIT)

- 5. VARIANCE FROM SECTION 10.440.10.30 TO ALLOW AN INN IN THE CD4-L1 ZONE GRANTED FEBRUARY 15, 2022.
- 6. VARIANCE FROM SECTION 10.1114.21 REQUIRED FOR REDUCED MANEUVERING AISLE WIDTH GRANTED FEBRUARY 15, 2022.
- 7. CONDITIONAL USE PERMIT UNDER SECTION 10.1112.14 REQUIRED TO ALLOW A REDUCTION IN THE REQUIRED NUMBER OF PARKING SPACES.
- 8. PAVEMENT MARKINGS SHALL BE CONSTRUCTED USING WHITE, YELLOW OR BLUE TRAFFIC PAINT (WHERE SPECIFIED) MEETING THE REQUIREMENTS OF AASHTO M248, TYPE F OR EQUAL. PAINTED ISLANDS AND LOADING ZONES SHALL BE 4"-WIDE DIAGONAL WHITE LINES 3'-0" O.C. BORDERED BY 4"-WIDE WHITE LINES. PARKING STALLS SHALL BE SEPARATED BY 4"-WIDE WHITE LINES. SEE DETAILS FOR HANDICAP SYMBOLS, SIGNS AND SIGN DETAILS.
- 9. PAVEMENT MARKINGS AND SIGNS SHALL CONFORM TO THE REQUIREMENTS OF THE "MANUAL ON UNIFORM TRAFFIC DEVICES," "STANDARD ALPHABETS FOR HIGHWAY SIGNS AND PAVEMENT MARKINGS" AND THE AMERICANS WITH DISABILITIES ACT (ADA), LATEST EDITIONS.
- 10. ALL CONSTRUCTION SHALL MEET THE MINIMUM STANDARDS OF THE CITY OF PORTSMOUTH & NHDOT'S STANDARD SPECIFICATION FOR ROAD & BRIDGE CONSTRUCTION, LATEST EDITIONS. THE MORE STRINGENT SPECIFICATION SHALL GOVERN.
- 11. ALL NEW PAVER SURFACES SHALL BE INSTALLED SO AS TO BE ADA—COMPLIANT.

SITE

LOCUS MAP

- 12. ALL BONDS AND FEES SHALL BE PAID/POSTED PRIOR TO INITIATING CONSTRUCTION.
- 13. COORDINATE FINAL SIZE AND LOCATION OF FIRE SERVICE LINE WITH MEP PLANS.



133 Court Street Portsmouth, NH 03801 (603) 433-2335 www.altus-eng.com

NOT FOR CONSTRUCTION

ISSUED FOR:

ZONING BOARD

ISSUE DATE:

AUGUST 25, 2023

 REVISIONS

 NO. DESCRIPTION
 BY DATE

 0 ZBA
 EBS 01/25/22

 1 TAC
 EBS 02/15/22

 2 TAC
 EBS 02/23/22

 3 REVISED ADA PARKING
 EBS 02/28/22

 4 REVISED PER TAC WS
 EBS 03/09/22

 5 REVISED EASEMENT
 EBS 03/14/22

 6 ADDED HVAC PAD
 EBS 08/25/23

DRAWN BY: ______EBS

APPROVED BY: _____EBS

DRAWING FILE: _____5301-SITE.dwg

 $\frac{\text{SCALE:}}{22\text{"}} \times 34\text{"} - 1\text{"} = 10\text{'}$

11" x 17" - 1" = 20'

OWNER:

TREADWELL HOUSE, INC. c/o CHARLES DOLEAC, ESQ.

82 COURT STREET PORTSMOUTH, NH 03801

APPLICANT:

DAVENPORT, LLC

c/o 266 MIDDLE STREET PORTSMOUTH, NH 03801

PROJECT:

BY-PASS

NOT TO SCALE

DAVENPORT INN

TAX MAP 116, LOT 49

1AX MAI 110, 201 -

70 COURT STREET PORTSMOUTH, NH

TITLE:

SITE PLAN

SHEET NUMBER:

C - 1