

BY: VIEWPOINT & HAND DELIVERY

October 23, 2024

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

**RE: Variance Application of James and Mallory Parkington
592 Dennett Street (Tax Map 161, Lot 18)**

Dear Stefanie,

Please find a copy of the following submission materials in connection with the variance application filed on behalf of James and Mallory Parkington for property located at 592 Dennett Street.

- 1) Landowner Letter of Authorization;
- 2) Narrative to Variance Application;
- 3) Existing and Proposed Conditions Plan;
- 4) Photographs of Property.

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

Sincerely,



Derek R. Durbin, Esq.

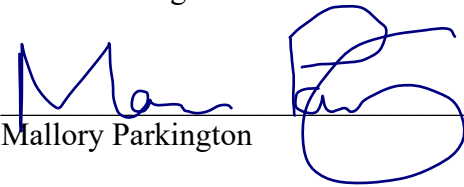
LANDOWNER LETTER OF AUTHORIZATION

James and Mallory Parkington, owners of property located at 592 Dennett Street, Portsmouth, NH, Tax Map 161, Lot 18 (the "Property), hereby authorizes **Durbin Law Offices, PLLC** to file any zoning board, planning board, historic district commission 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.



James Parkington

October 21, 2024



Mallory Parkington

October 21, 2024

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

James and Mallory Parkington
(Owner/Applicant)
Tax Map 161, Lot 18
592 Dennett Street
Portsmouth, NH 03801

INTRODUCTORY STATEMENT

The Property

The Property at 592 Dennett Street is a 7,980 square foot corner lot owned by James and Mallory Parkington that is situated at the intersection of Dennett Street and Whipple Street (the “Property”). The Property is in the GRA Zoning District and contains a single-family residence with attached garage and ADU. There is an 8’ x 8’ shed located in the right side yard of the Property that the Parkingtons would like to demolish and replace with a more functional 10’ x 12’ shed that they would use to store personal belongings, including their outdoor tools and bikes.

To construct the new shed, the Parkingtons need right yard setback and building coverage variances. The existing shed is non-conforming with respect to the right yard setback. The replacement shed is proposed for the same location as the existing shed, which is 3+/- from the rear property boundary. Building coverage on the Property would increase from 25.0% (1,997 sq. ft.) +/- to 25.7% (2,053 sq. ft.).

SUMMARY OF VARIANCE RELIEF

The Applicants seek the following variances from Section 10.521 of the Ordinance for the proposed replacement shed:

1. To allow a 3’ +/- right yard setback where 10’ is the minimum required and 3’ exists.
2. To allow 25.7% building coverage where 25% is the maximum allowed and 25% exists.

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

Aside from being a corner lot, the Property is one of only four properties with frontage on Whipple Street. Whipple Street is a short connector street between Dennett and Thornton Streets. Two of the properties on Whipple Street have Dennett Street addresses while the other two have Thornton Street addresses. Whipple Street is, in a sense, its own micro neighborhood, which makes this area of the larger Dennett/Thornton Street neighborhood(s) unique.

The City's records and older plans depicting the Whipple Street right-of-way ("ROW") show it significantly wider than the pavement suggests. All the property owners on Whipple Street have assimilated substantial portions of the ROW into their side yards. All properties with frontage on Whipple Street have landscaping and portions of their driveways within the ROW. Not unlike the other three (3) properties on Whipple Street, an approximately 21' wide portion of the Parkingtons' left side yard (approx. 2,550 sq. ft.) and most of their existing driveway are within the ROW. If this portion of the ROW counted as part of the total lot area of the Property and reflected reality on the ground, the Parkingtons would not need a variance for building coverage. Building coverage would be 19.5%.

The proposed shed will replace a slightly smaller non-conforming shed in the same location. The footprint of the proposed structure is only marginally larger than what exists and will have no additional impact upon the nearest abutting property. It will also be buffered by an existing 6' high fence that the Parkingtons maintain along the common boundary.

These special conditions of the Property make it such that there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their application to the Property.

The proposed use is inherently reasonable. Accessory uses, such as the shed proposed in this instance, are permitted by right within the GRA Zoning District.

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

In the case of *Chester Rod & Gun Club, Inc. v. Town of Chester*, the Court observed that the requirements that a variance not be "contrary to the public interest" or "injure the public rights of others" are coextensive and are related to the requirement that the variance be consistent with the spirit of the ordinance. 152 N.H. 577 (2005). 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. "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; and (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 primary purpose of the building coverage limitation set forth in the Ordinance is to prevent the overcrowding of structures on land. In the present instance, the Parkingtons are seeking a less than 1% deviation (56 sq. ft.) from what is allowed by the Ordinance. If the approximately 2,550 sq. ft. portion of the ROW that is assimilated into the Property counted towards the lot area requirement, the Parkingtons would be at 19.5% total lot coverage. Even at 25.7%, building coverage on the Property is consistent with other properties immediately surrounding it, as shown on **Exhibit A** attached hereto. The average building coverage on the abutting properties, based on the City’s assessing records, is 27.33%.

The objective behind requiring minimum building setbacks is to preserve the light, air and space of abutting properties. In this case, the objective of the Ordinance is accomplished, as the new shed will be placed in the same location as the existing shed and will only be slightly taller. The existing shed is approximately 9’ in height while the replacement shed would have a roof that slopes from 11’ in the front to 9’ in the rear. It will be buffered by an existing 6’ fence. In addition, because the Property is a corner lot, the shed lines up with the left side yard of the only affected abutting property. This area of the abutter’s property is utilized less often than their rear yard and includes an existing stand-alone 2-car garage adjacent to the shed location.

For the foregoing reasons, granting the variances requested will not alter the essential character of the neighborhood or otherwise threaten the public’s health, safety or welfare.

Substantial justice will be done by granting the variances.

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).

There is no gain to the general public by denying the variance requests. The replacement shed is proposed for the same location as the existing shed which has been on the Property for approximately 30 years. There is only one abutting property (618 Dennett Street) that is potentially impacted by the encroachment of the shed into the right yard setback. However, the proposed shed will be mostly buffered by an existing 6’ high fence. It constitutes a loss to the Applicants to deny them the opportunity to construct a more functional shed of a slightly larger dimension on their property.

The values of surrounding properties will not be diminished by granting the variances.

Aesthetically, the new shed, which will be similar in scale to the existing shed, will improve the conditions of the Property. This can only benefit the abutting property at 618 Dennett Street. It will certainly not affect this property in any negative way.

CONCLUSION

In conclusion, for the reasons set forth herein, the application satisfies the five (5) criteria for each of the variances being requested. Accordingly, the Applicants respectfully request that the Board approve their Variance Application.

Respectfully Submitted,

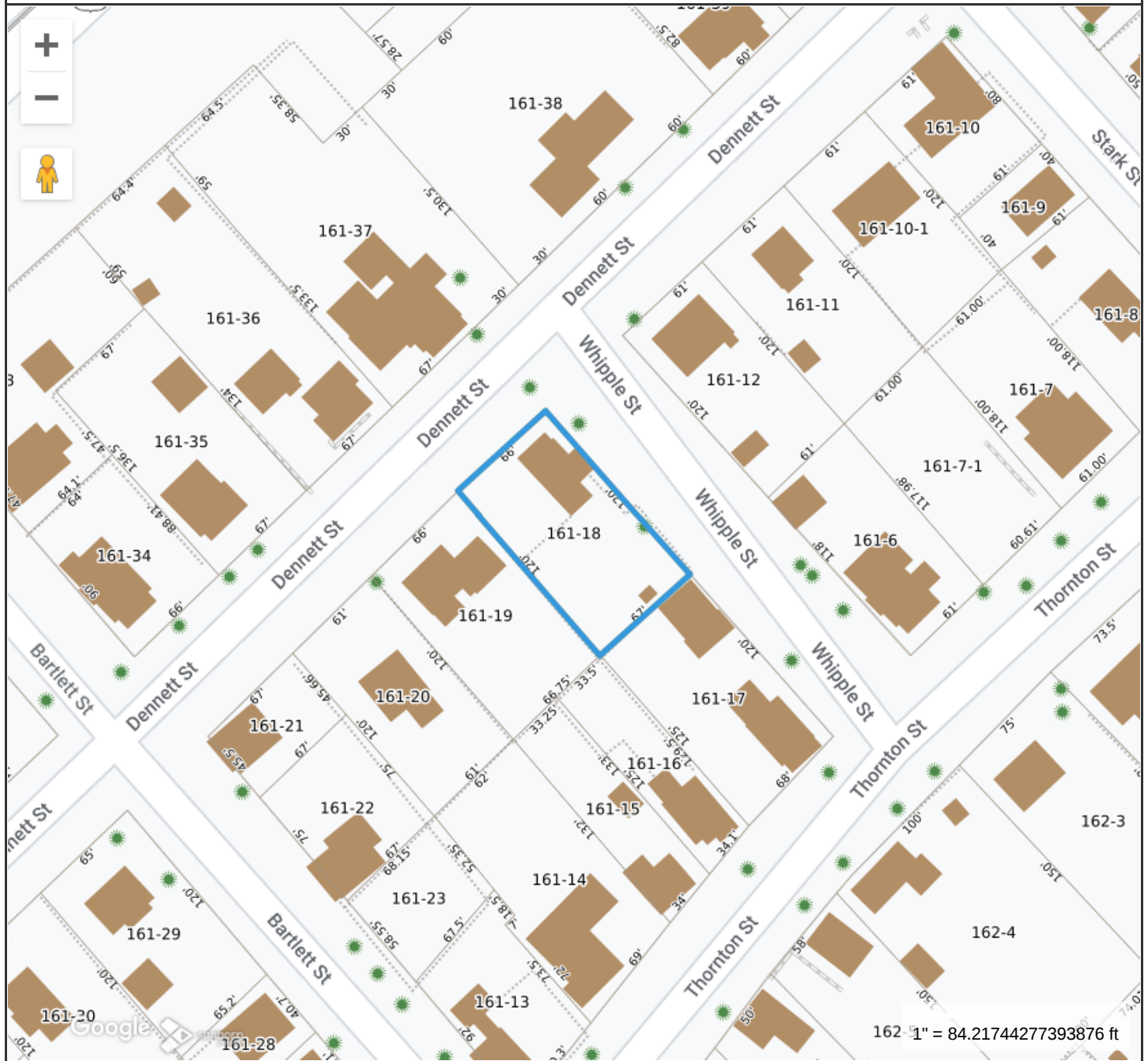
Dated: October 23, 2024

James and Mallory Parkington



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

EXHIBIT A



Property Information

Property ID 0161-0018-0000
 Location 592 DENNETT ST
 Owner PARKINGTON JAMES



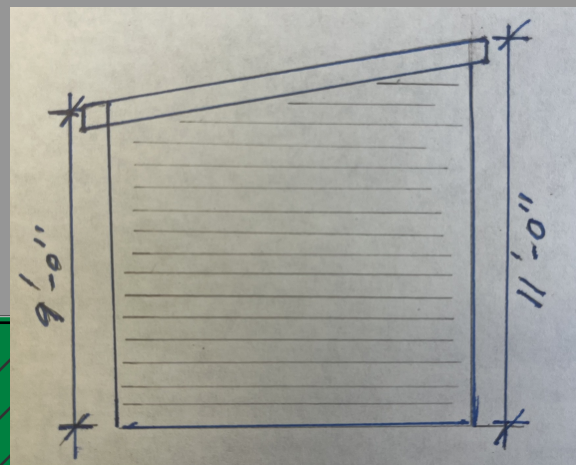
**MAP FOR REFERENCE ONLY
 NOT A LEGAL DOCUMENT**

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

Geometry updated 09/26/2024

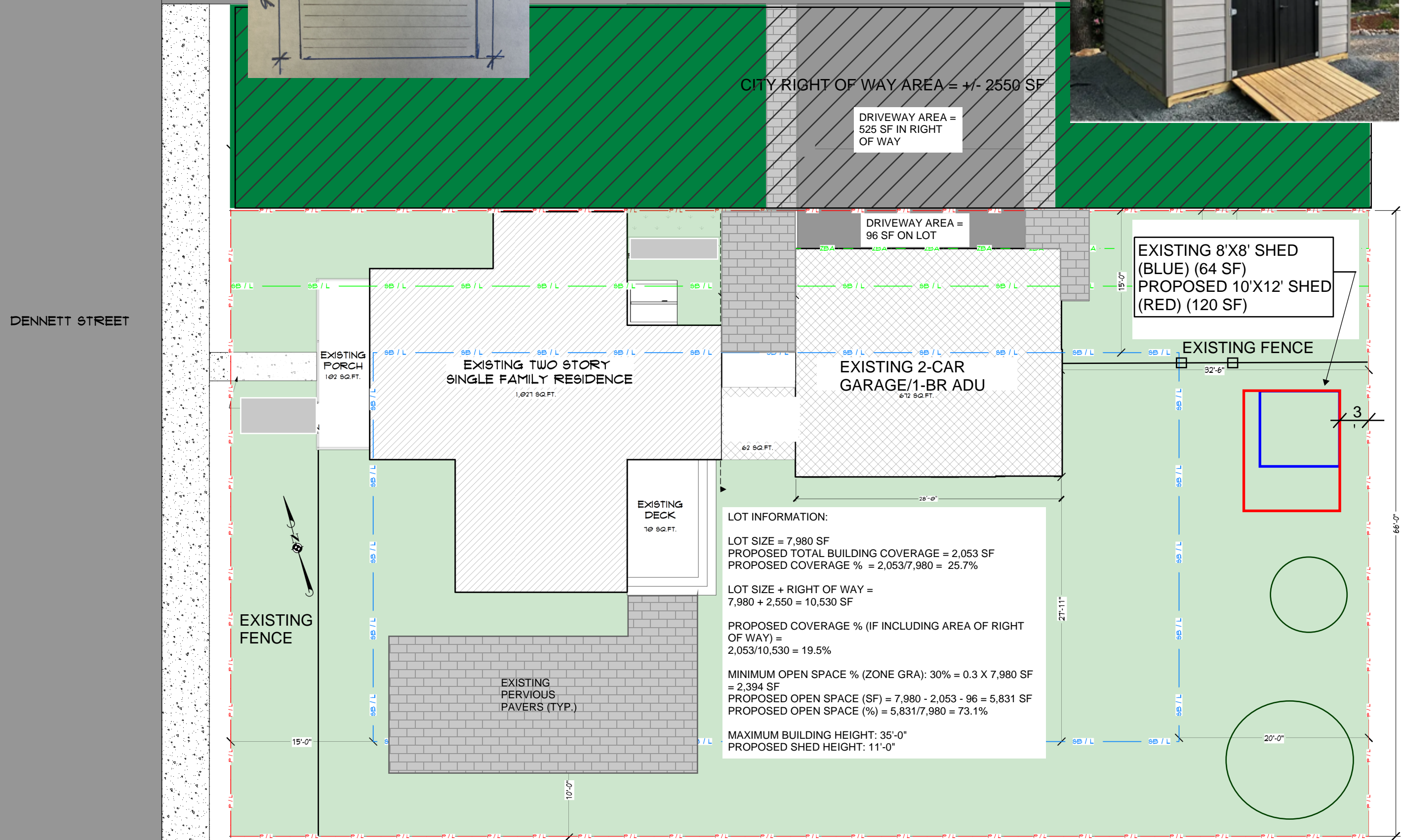
Print map scale is approximate. Critical layout or measurement activities should not be done using this resource.

Address	Lot	Living Area	Lot Size (Acres)	Lot Size (Sq Ft)	Coverage
592 Dennett	161-18	2540	0.18	7840.8	32.4%
589 Dennett	161-37	3200	0.38	16552.8	19.3%
603 Dennett	161-36	2989	0.29	12632.4	23.7%
618 Dennett	161-19	2188	0.18	7840.8	27.9%
570 Dennett	161-12	2081	0.17	7405.2	28.1%
260 Thornton	161-06	2416	0.17	7405.2	32.6%



WHIPPLE STREET
 PROPOSED 10'X12' SHED
 SIDE ELEVATION

PROPOSED
 10'X12' SHED
 GRAPHIC



CITY RIGHT OF WAY AREA = +/- 2550 SF

DRIVEWAY AREA =
 525 SF IN RIGHT
 OF WAY

DRIVEWAY AREA =
 96 SF ON LOT

EXISTING 8'X8' SHED
 (BLUE) (64 SF)
 PROPOSED 10'X12' SHED
 (RED) (120 SF)

EXISTING
 PORCH
 102 SQ.FT.

EXISTING TWO STORY
 SINGLE FAMILY RESIDENCE
 1,021 SQ.FT.

EXISTING 2-CAR
 GARAGE/1-BR ADU
 612 SQ.FT.

EXISTING
 DECK
 10 SQ.FT.

EXISTING
 PAVERS
 (TYP.)

LOT INFORMATION:
 LOT SIZE = 7,980 SF
 PROPOSED TOTAL BUILDING COVERAGE = 2,053 SF
 PROPOSED COVERAGE % = 2,053/7,980 = 25.7%
 LOT SIZE + RIGHT OF WAY =
 7,980 + 2,550 = 10,530 SF
 PROPOSED COVERAGE % (IF INCLUDING AREA OF RIGHT
 OF WAY) =
 2,053/10,530 = 19.5%
 MINIMUM OPEN SPACE % (ZONE GRA): 30% = 0.3 X 7,980 SF
 = 2,394 SF
 PROPOSED OPEN SPACE (SF) = 7,980 - 2,053 - 96 = 5,831 SF
 PROPOSED OPEN SPACE (%) = 5,831/7,980 = 73.1%
 MAXIMUM BUILDING HEIGHT: 35'-0"
 PROPOSED SHED HEIGHT: 11'-0"

GENERAL NOTES:

tuscher
 design
 group
 603.583.6469
 tdgdesign@hotmail.com

PROJECT INFO:
 THE
 PARKINGTON
 RESIDENCE
 592 DENNETT ST
 PORTSMOUTH, NH

SHEET TITLE:
 PROPOSED
 SITE PLAN

PROJECT STATUS:
 PERMITTING

DATE: 09/27/24 - DRAFT
 SCALE: 1"=10'-0"
 SHEET NUMBER:

S1



