

BY: VIEWPOINT & HAND DELIVERY

October 23, 2024

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

RE: Variance Application of Stephen and Kathryn Singlar 43 Holmes Court, Tax Map 101, Lot 14

Dear Stefanie,

Our Office represents Stephen and Kathryn Singlar, owners of the property located at 43 Holmes Court. The following materials have been submitted for consideration at the Zoning Board of Adjustment's November 2024 meeting:

- 1) Variance Application (through Viewpoint);
- 2) Landowner Letter of Authorization;
- 3) Narrative to Variance Application;
- 4) Plans (Existing Conditions, Proposed Conditions, NH DES Wetlands, and Floor Plans/Elevations);
- 5) Photographs of the Property.

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

Sincerely,

Derek R. Durbin, Esq.

LANDOWNER LETTER OF AUTHORIZATION

Stephen and Kathryn Singlar, record owners of property located at 43 Holmes Court, Portsmouth, NH 03801, Tax Map 101, Lot 14 (the "Property"), hereby authorizes Durbin Law Offices, PLLC, Altus Engineering, Inc. and Brendan McNamara, and their agents and representatives 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.

Stephen Singlar

Kathryn Singlar

November 14, 2022

November 14, 2022

CITY OF PORTSMOUTH ZONING APPLICATION NARRATIVE

Stephen Singlar and Kathryn Singlar (Owners/Applicants) Tax Map 101, Lot 14 43 Holmes Court Portsmouth, NH 03801

INTRODUCTION

The Zoning Board of Adjustment previously reviewed and approved, on two separate occasions, the variances necessary to construct a new single-family home on the property located at 43 Holmes Court (the "Property"). In addition, the Historic District Commission has issued a Certificate of Approval for the Applicants' house plans. Earlier in the year, the Conservation Commission recommended that the NH DES approve the Wetlands Dredge and Fill Permit (Wetlands Permit') for the Property, and in April the NH DES approved it. Despite this, and the rigorous review and scrutiny the Applicants' redevelopment plans have undergone, it was recently determined by the Inspections Department that a variance was needed from Section 10.628.20 of the Ordinance. Accordingly, the Applicants are submitting this variance request pursuant to that determination.

SUMMARY OF ZONING RELIEF

The Applicants seek a variance from Section 10.628.20 of the Ordinance to allow an unfinished basement to be constructed at a flood elevation of 5.75' where 10' is required and 5.75' exists.

STANDARD 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." *152 N.H. 577 (2005)*.

The primary purpose of Section 10.628.20 is to protect newly constructed buildings from flood damage and the inherent risks associated with it, including life safety risks. The Ordinance imposes a requirement that is 2' above what FEMA requires for the AE Zone, which has a base flood elevation requirement of 8'. It can be fairly assumed that the additional 2' is an additional protective measure that may be intended to account for a potential sea level rise.

The Ordinance does not account for the Property being significantly re-graded as part of the proposed redevelopment. The proposed re-grading of the Property was approved as part of the issuance of the Wetlands Dredge and Fill Permit ("Wetlands Permit") that was issued for the Property by the NH DES in April 2024. The re-grading of the Property will substantially minimize the risk of basement flooding and may ultimately result in the house being removed from the AE Flood Zone altogether. The Applicants intend to submit for a Letter of Map Amendment ("LOMA") from FEMA post-construction to remove the home from the AE Flood Zone, but there is no guarantee or certainty that FEMA will approve it, hence the need for the variance.

In addition to the re-grading of the Property, the basement will be unfinished and will not contain any electrical or mechanical components. The basement has been engineered to handle the load of the home against climate change and other major weather events and will be constructed with state-of-the-art water resistant materials.

It is important to point out that the existing basement is at elevation 5.75' and contains an electrical panel, wires and mechanical equipment, including a furnace, washer and dryer. The existing basement is structurally unsound and is comprised primarily of stone and is porous. The proposed basement would be at the same elevation as the existing basement but will be slightly further from the water and will not include any electricals or mechanicals. It would be purely used for the storage of personal belongings. Therefore, even without a re-grading of the Property, the flood risks that the Ordinance is designed to protect against will be addressed. They can also be reinforced through a condition of approval....that so long it is determined by the City that Section 10.628.20 of the Ordinance applies to the Property, the basement shall not contain any electrical or mechanical equipment other than a sump pump or its equivalent.

The Applicants are improving the conditions of the Property and bringing it into greater overall compliance with the Ordinance. They are also reducing impervious surface coverage from 40.9% to 24% and will be implementing a stormwater management plan to mitigate stormwater runoff.

For the foregoing reasons, granting the requested variance will not result in any threat to public health, safety or welfare nor would it alter the essential character of the neighborhood.

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

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

The Property is significantly constrained and burdened by local, state and federal regulations that apply to it. The plans for the Property do not provide for much storage space, as the Applicant has made a conscious effort to minimize the size, height and overall impact of the home. Allowing an unfinished basement on the Property will provide the Applicants with some much needed storage space. Denying the variance would not result in any gain to the public, as the Property is being re-graded to minimize any risk of flooding, and the proposed basement will be constructed of modern materials designed to prevent water intrusion. Moreover, the basement will remain unfinished and not contain any electrical or mechanical equipment. The loss to the Applicants of denying the variance outweighs any perceived gain that would be realized by the public.

C. Surrounding property values will not be diminished by granting the variance.

The Board has already determined on two prior occasions that the Applicants' redevelopment plans will not negatively impact surrounding property values. It follows that allowing a basement below the first floor of the proposed house, which will be at elevation 13', will not have any impact on surrounding property that may not have been previously contemplated by the Board.

D. Denving the variance would constitute an unnecessary hardship.

The Property has a myriad of special conditions that distinguish it from surrounding properties, all of which have been discussed and considered ad nauseum by the Board in the past two (2) years. The Property is so heavily burdened by local, state and federal regulations that it is an essentially unbuildable lot if it were not for the fact that there is an existing home on it. The existing basement is at flood elevation 5.75'. Because the Property is in the AE Flood Zone, the Ordinance requires that even the basement be located 2' above the base flood elevation (8') despite the fact it will remain unfinished and will only be used as storage space and will not contain any electrical or mechanical equipment. The Ordinance does not account for the fact that the Property will be substantially re-graded and that the proposed will be setback from the water further than the existing basement and will be constructed of materials designed to prevent water intrusion. The Applicants have addressed the risks that the Ordinance is intending to protect against.

As a result of the special conditions of the Property, there is no fair and substantial relationship between the general purposes of the restriction set forth in Section 10.628.20 of the Ordinance and its application to the proposed basement.

ADDITIONAL CRITERIA Section 10.629

In addition to the variance criteria above, the Applicant must satisfy the standards set forth in Section 10.629 of the Ordinance, as more specifically addressed below:

(a) That the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense;

The Property is bordered by the Piscataqua River as opposed to wetlands where there could be a threat of water displacement. Water will not be displaced by placing the proposed basement at the same elevation as the existing basement. The Property will be re-graded as part of the Applicants' redevelopment plans. In addition, the proposed basement will be slightly further from the water and will be designed and constructed of materials that are intended to prevent water intrusion. The proposed basement will be unfinished and used for storage only and will not contain any mechanical or electrical equipment. For the foregoing reasons, the variance will not result in any increased flood heights, additional threats to public safety, or extraordinary public expense.

(b) That if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result; and

As indicated herein, there is an existing basement on the Property at the same elevation as the proposed basement. Notwithstanding The requested variance does not involve any activity within a designated floodway. Therefore, criteria (b) is not applicable.

(c) That the variance is the minimum necessary considering the flood hazard, to afford relief.

There is a lessened risk of flooding at the basement level of the home due to the re-grading of the Property and the design and materials being used to construct the basement, as more specifically discussed above. This condition of the Property is ultimately being improved from what exists

CONCLUSION

In conclusion, the Applicants have demonstrated that their application meets the five (5) criteria for granting the variance and respectfully request the Board's approval.

Respectfully Submitted,

Dated: October 23, 2024

(revised October, 30, 2024)

Stephen and Katheryn Singlar

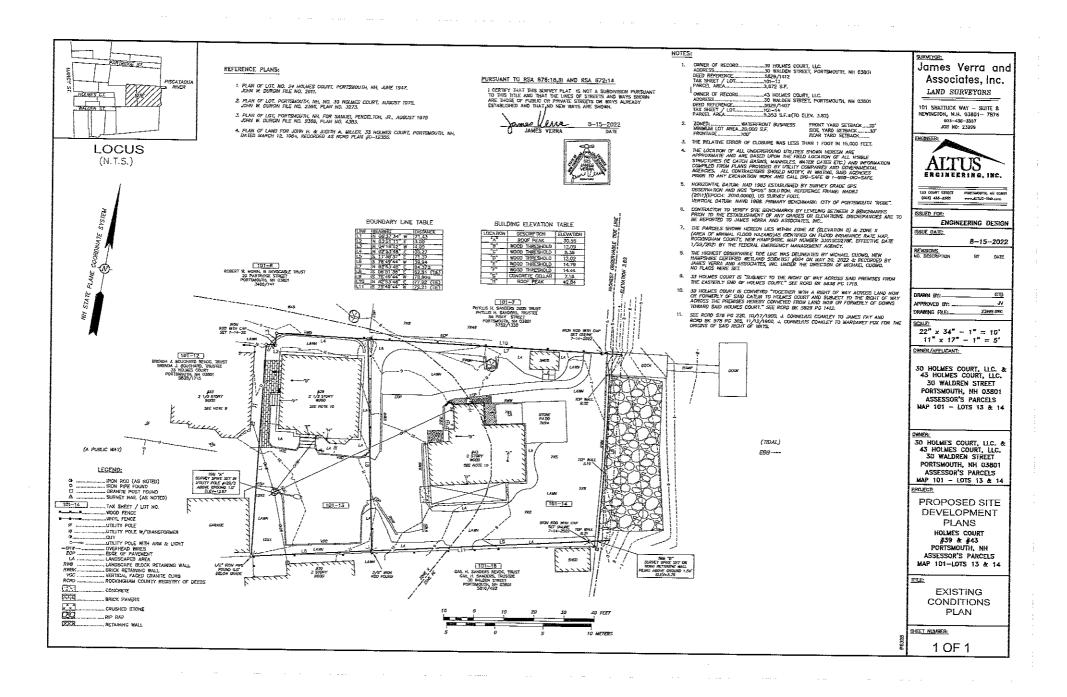
By: Derek R. Durbin, Esq.

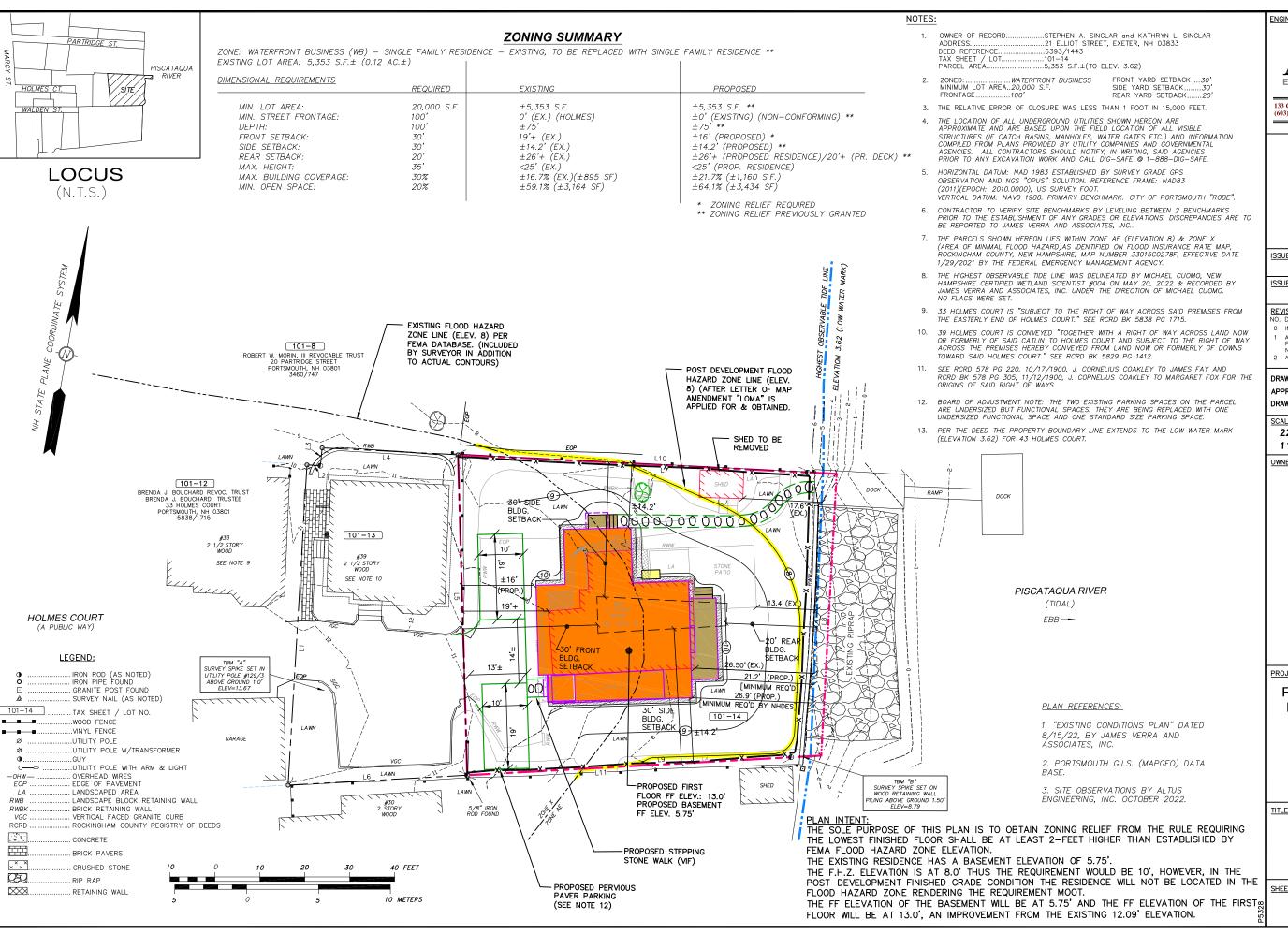
DURBIN LAW OFFICES PLLC

144 Washington Street Portsmouth, NH 03801

(603)-287-4764

derek@durbinlawoffices.com





ENGINEER:

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

ISSUED FOR:

BOARD OF ADJUSTMENT

ISSUE DATE

OCTOBER 23, 2024

REVISIONS NO. DESCRIPTION INITIAL SUBMISSION EBS 10/25/22 ADJUST LOCATION OF EBS 04/25/24

NHDES WETLANDS REQUIREMENTS ADD FG/ELEVS. INFO. EBS 10/23/24

RLH EBS APPROVED BY: DRAWING FILE: 5328-BOA-FOR-BASEMENT

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

OWNER/APPLICANT:

STEPHEN A. & KATHRYN L. SINGLAR 21 ELLIOT STREET EXETER, NH 03833

PROJECT:

PROPOSED SITE DEVELOPMENT **PLANS**

#43 HOLMES COURT PORTSMOUTH, NH

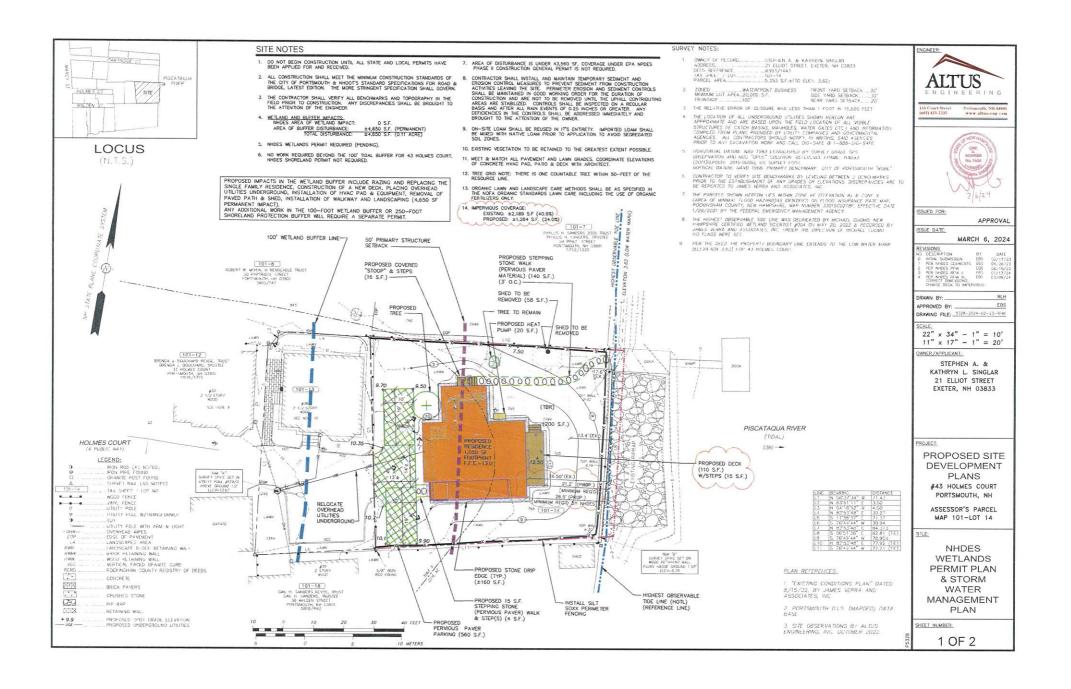
ASSESSOR'S PARCEL MAP 101-LOT 14

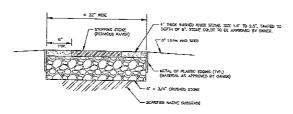
TITLE:

BOARD OF ADJUSTMENT SITE PLAN

SHEET NUMBER:

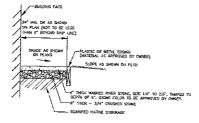
1 OF 1





PERMEASE STEPPING STONES (PANES) CLEANING AND MCINENANCE function = Permedite power stepping shower are designed to copylary relovator most centaining supported solds, nuclearly one power stepping shows the containing supported solds, nuclearly one power to be systemat require periods modificance to insure infatration and stones copocity.

PERMEABLE STEPPING STONE WALKWAY DETAIL NOT TO SCALE

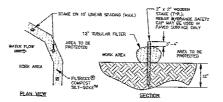


STONE DRIP EDGE CLEANING AND MAINTENANCE Function — Stone thip estyles are designed to capture relative transit containing suspensed softs, nutrients and pollutaria. These systems require periodic maintenance to leasure

Notification or State dojo eggi surfoccis should be observed particidadly during ratin events for proper water fulfillation afto the copient and inspected of best case per year to leafly water. See one distriction. Sopriment, vegetation and copied should be removed from the joint/velid opening to increase infiltration on a sensi-archied basis.

DRIP EDGE DETAIL

NOT TO SCALE



NOTICE:

1. REGION OF APPROVED FOUR. DULL IN UPSET FOR TURNARY STONENT BARBETS.

2. ALL VARIENA, TO MICT MANIFACTURES? SPECTACINGS.

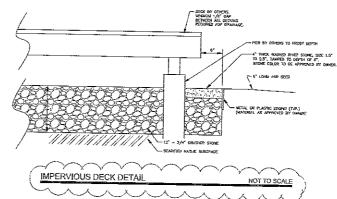
3. ORNORITHATION FOR THE MANIFACTURES? SPECTACINGS.

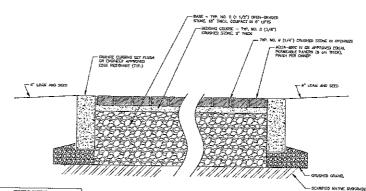
3. ORNORITHATION FOR THE MANIFACTURES? SEARCH SPACES AND ASSETS OF SECRESSION TO MICT. THE THE MANIFACTURES THE MANIFACTURES AND ASSETS OF PROPERTY.

4. ALL STEMMAT PRAYED BY SAFRIED SHALL SE ORDORD DY PROPERTY.

TUBULAR SEDIMENT BARRIER

NOT TO SCALE





SEVE SIE	PERCENT FASSING					
	No. 5 (1/4")	No. B (3/8)	No. 2 (1/27)			
3 in		-	100			
21/2 in	-	- 1	90 - 100			
2 in	-		35 ~ 70			
1 1/2 to	1 -	-	5 - 15			
3/4 z	i -	-	9 - 5			
1/2 to	100	150				
3/8 to	39 - 190 .	M2 - 100	_			
No. 4	36 - 55	10 - 35	_			
alo. B	5 - 30	S - 10	-			
No. 16	0 - 10	0-5	_			
No. 5D	0 - 5					

PERMICABLE PAVER CLEANING AND MAINTMANCE Function — Fower are designed to copiume retirector controlling suspended solids, notification and politiculars. These systems require periodic mointainnesse to insure infiltration and storage capacity.

Mointenance — Permeable pawers should be observed perfectedly curing rate events for proper vater individent into the system and inspected of least cace per your to verify water flow and exhibitions. Settlement and exhibit should be removed from the joint/void opening to increase individual maps fight vaccurating on a termi-anneal set.

PERMEABLE PAVERS DETAIL (DRIVEWAY)

ENGINEER: **ALTUS**



ISSUED FOR:

APPROVAL

MARCH 6, 2024 REVISIONS 40 DESCRIPTION DATE

0 INTRA SUBMITSION ES 04/26/23 1 NESS STE 1 635 04/17/21 2 NHOEL REW D. DECK ELS 02/04/24 CHRISCE TO IMPERIOUS

RUH APPROVED BY: __ ₽B\$ DRAWING FILE 5328.DWG

22" x 34" - NOT TO SCALE 11" x 17" - NOT TO SCALE

OWNER/APPLICANT:

STEPHEN A. & KATHRYN L. SINGLAR 21 ELLIOT STREET EXETER, NH 03833

PROPOSED SITE DEVELOPMENT **PLANS** #43 HOLMES COURT PORTSMOUTH, NH

> ASSESSOR'S PARCEL MAP 101-LOT 14

MLE:

DETAIL SHEET

SHEET NUMBER:

NOT TO SCALE

2 OF 2

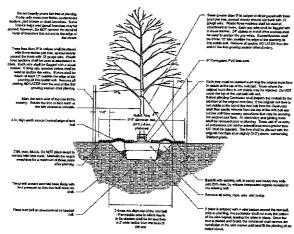
Landscape Notes

- Omigm to based an diswings by Albar Engineering and may require adjustment one to actual field conditions,
 The contractor shall follow best management practices during continuation and shall talks all manns precedure to stabilize and protect the size.

- Checking in based on dismolecy by Alber Explorations give may require assignations due to account into conversion.

 The Commission of Marine before interesting the Commission of the Commission

- is discussed which man impatitively impact the consplexed project. This includes, but in not instead or, unforteness ordinage prostations, subcassion in statement of the institution of

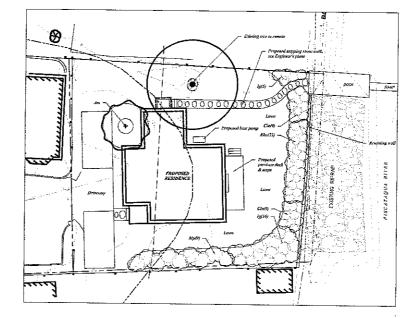


Tree Planting Detail

Plant List

TREES

Symbol	Botanical Name	Gomman Najne	Quantity	Sizo	Contractus
Aff	Amelanohier x grandiflora 'Autumn Britiance'	Autuma Brillance Serviceberry	1	10-12" HE	B&B, Musi Stem
SHRUBS					
Symbol	Bolanical Name	Common Marga	Quantity	Size	Comments
Cle	Clethro alnitolie "Humaingbird"	Hummingblid Compact Summarsweet	18	3 cal	72220000
lg	Bex glabra 'Shamrock'	Sharrock freberry	21	5 orad	kell to ground
Мр	Myrica pensylvanica	Morthern Bayberry		5 (m)	and the disording
Rhu	Rhup prometted 'Growt and'	Growt on Surrac		3 (12)	







esidence × Singlar

Portsmouth, New Hampshire

Court

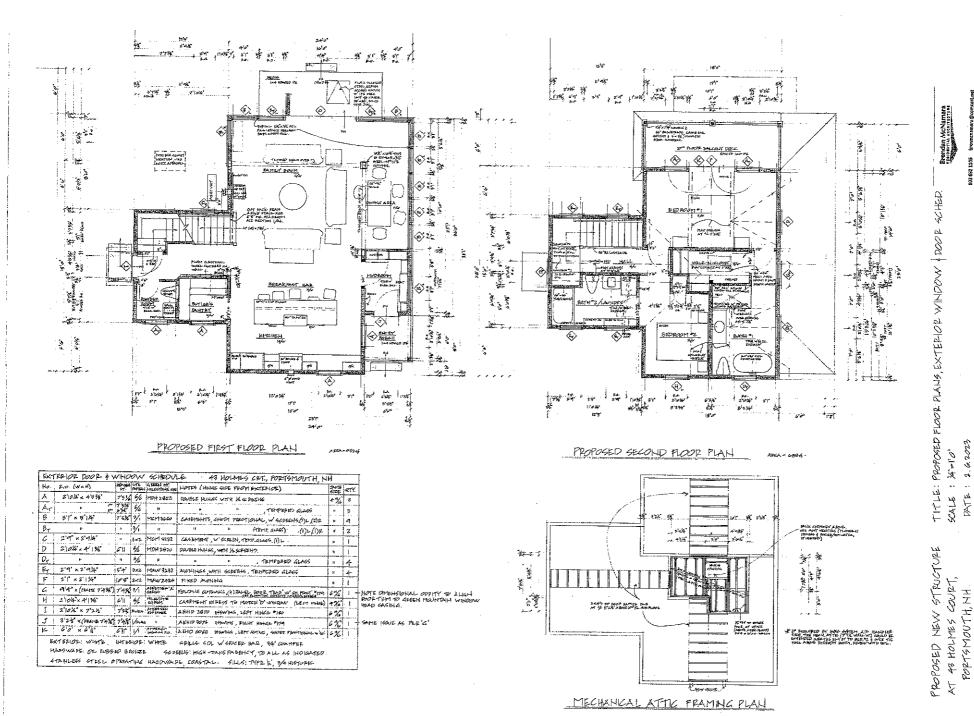
43

PLAN

PLANTING

Этамп Бу: VM $3^{\circ} = 10^{\circ} - 0$



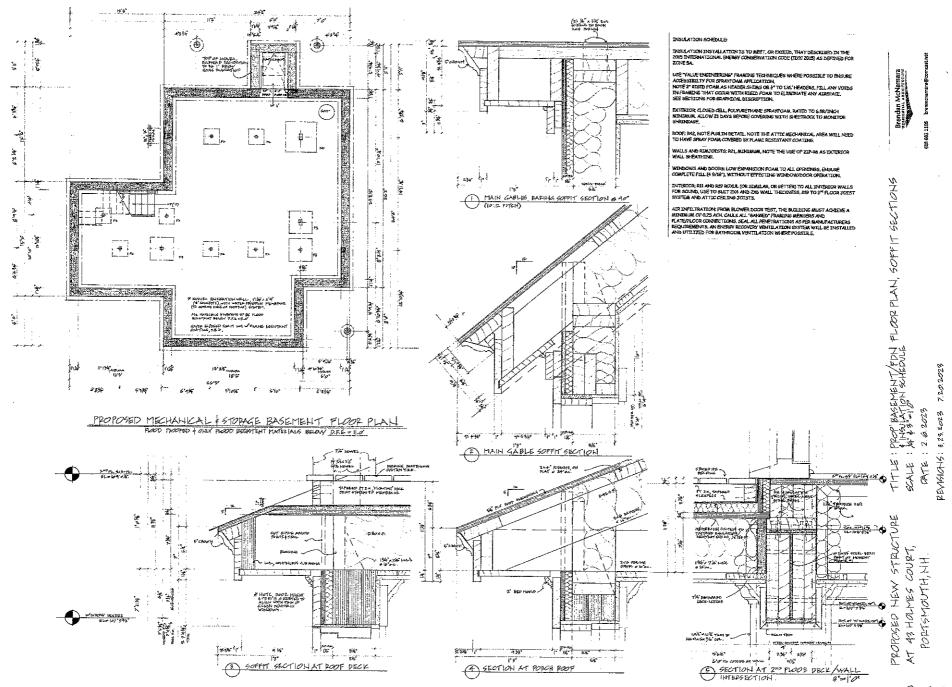


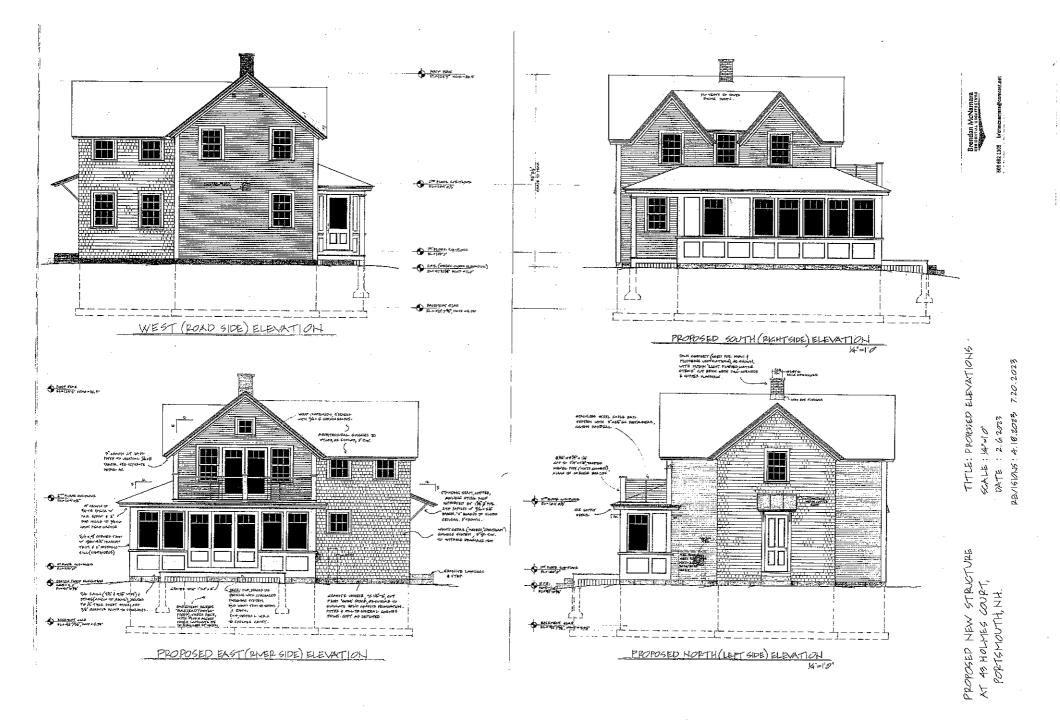
PAGE A1.

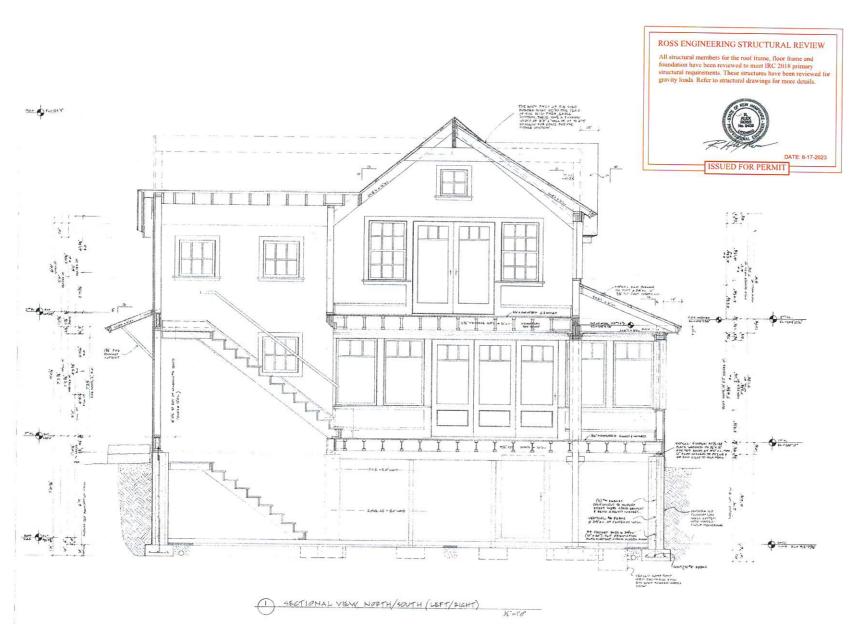
¥

4.18.2023 6.2023

PD/ISIONS:





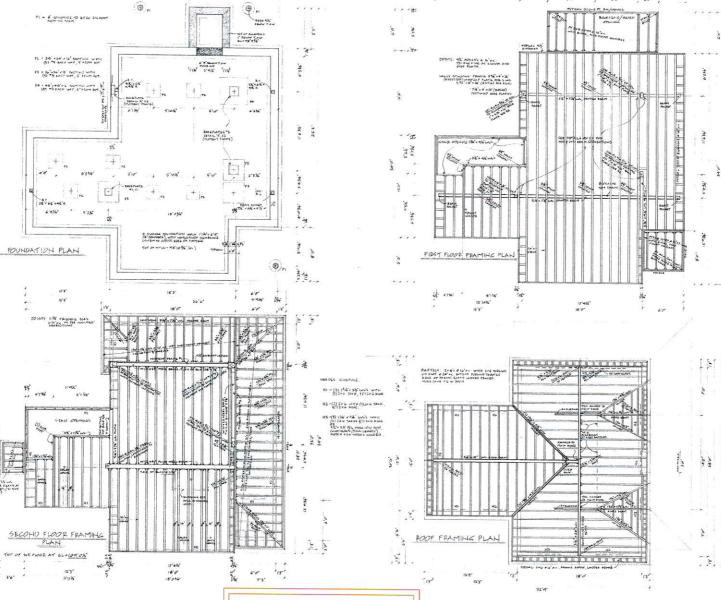


PROPOSED NEW STRUCTURE AT 49 YOLMSS COURT, PORTSMOUTH, NH

TITLE: PROSED SECTIONAL VIEW, NORTH/SOUTH KALE: K""""" WATE: 2 6 2023

Brendan McNamara

PAGEA4



. 176

424

--

. 意,

·*:

...

ROSS ENGINEERING STRUCTURAL REVIEW

All structural members for the roof frame, floor frame and foundation have been reviewed to meet IRC 2018 primary structural requirements. These structures have been reviewed for gravity loads. Refer to structural drawings for more details.



DATE: 8-17-2023

ISSUED FOR PERMIT

PROPOSED NEW STRUCTURE 49 HOLMES COURT, PORTSMOUTH, NH.

PAGE AS.

3.23.2023

7777 8AL 8778



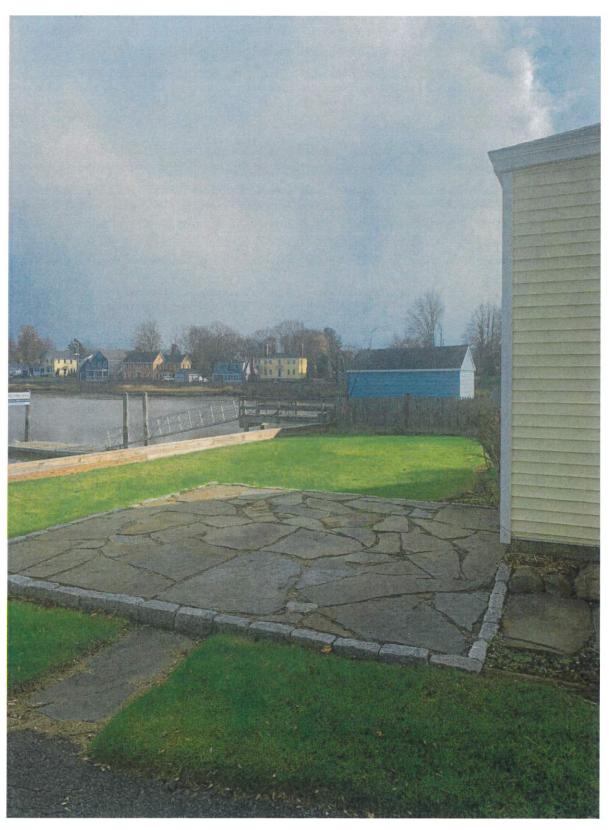
Front Elevation View



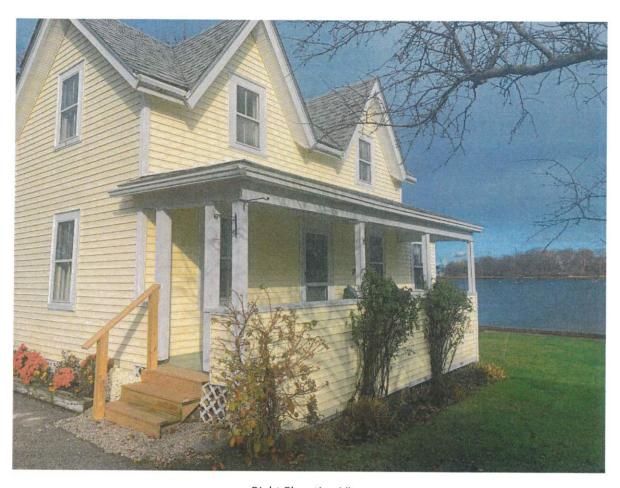
Left Elevation View



Rear Elevation View



View of Rear Yard



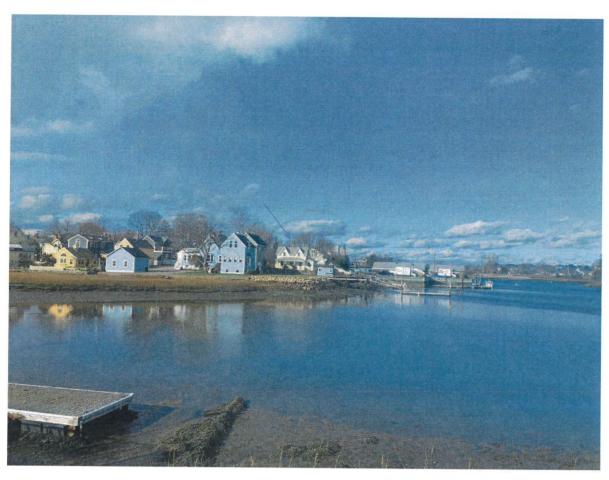
Right Elevation View



View of Parking Area



View of Holmes Court



View of 43 Holmes Court from New Castle Avenue