

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC
ATTORNEYS AT LAW

127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

July 27, 2022

HAND DELIVERED

Peter Stith, Principal Planner
Portsmouth City Hall
1 Junkins Avenue
Portsmouth, NH 03801

Re: Philip Franciosa, Applicant
John Signorello & Lee Anne Robertson, Owners
22 Maple Street
Tax Map 237/Lot 1

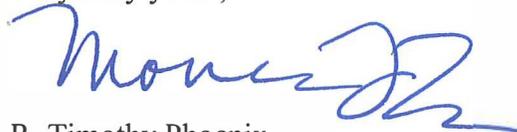
Dear Mr. Stith & Zoning Board Members:

On behalf of Philip Franciosa, Applicant, enclosed please find the following in support of a request for zoning relief:

- Digital Application submitted via Viewpoint earlier today.
- Owner and Applicant Authorizations.
- 7/27/22 – Memorandum and exhibits in support of Variance Application

We look forward to presenting this application to the Zoning Board at its August 16, 2022 meeting.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Encl.

cc: Philip Franciosa
John Signorello & Lee Anne Robertson

DANIEL C. HOEFLE
R. TIMOTHY PHOENIX
LAWRENCE B. GORMLEY
STEPHEN H. ROBERTS

R. PETER TAYLOR
KEVIN M. BAUM
GREGORY D. ROBBINS
MONICA F. KIESER

JACOB J.B. MARVELLEY
DUNCAN A. EDGAR
STEPHANIE J. JOHNSON

OF COUNSEL:
SAMUEL R. REID
JOHN AHLGREN

Michelle Whelan

To: Lee Anne Robertson
Subject: RE: 22 Maple Street-Portsmouth, NH

From: Lee Anne Robertson <leannerobertson03@gmail.com>
Sent: Tuesday, July 26, 2022 12:02 PM
To: Michelle Whelan <MWhelan@hpgrlaw.com>
Subject: Re: 22 Maple Street-Portsmouth, NH

OWNER'S AUTHORIZATION

We, John Signorello and Lee Anne Robertson, Owners of 22 Maple Street, Tax Map237/Lot 1, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC to represent us before any and all Portsmouth Representatives, Boards and Commissions for permitting the project.

Respectfully submitted,

John Signorello

Lee Anne Robertson

Michelle Whelan

Subject: FW: 22 Maple Street-Portsmouth, Nh

From: Phil Franciosa <pfranciosa27@gmail.com>

Sent: Tuesday, July 26, 2022 10:17 AM

To: Michelle Whelan <MWhelan@hpgrlaw.com>

Subject: Re: 22 Maple Street-Portsmouth, Nh

APPLICANT'S AUTHORIZATION

I, Philip Franciosa, Applicant of 22 Maple Street, Tax Map 237/Lot 1, hereby authorize law firm Hoefle, Phoenix, Gormley & Roberts, PLLC to represent me before any and all Portsmouth Representatives, Boards and Commissions for permitting the project.

Respectfully submitted,

Philip Franciosa

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
Monica F. Kieser, Esquire
DATE: July 27, 2022
RE: John A. Signorello & Lee Ann Robertson, Owners
Phil Franciosa, Applicant
22 Maple Street
Tax Map 237/Lot 1
Single Residence B District

Dear Chair Parrott and Zoning Board Members:

On behalf of Owners John A. Signorello and Lee Ann Robertson and Applicant Phil Franciosa, (“Franciosa”) we are pleased to submit this memorandum and attached exhibits in support of Zoning Relief to be considered by the ZBA at its August 16, 2022 meeting.

I. Exhibits

- A. Board of Adjustment Plan – issued by Altus Engineering, Inc.
- B. Site Photographs.
 - Satellite view
 - Street views
- C. Tax Maps 236 and 237 depicting nonconforming lots.
- D. Tax Map 237.

II. Property/Project

22 Maple Street is a 18,930 s.f. lot in the Single Residence B District developed with a single family home on the eastern (right) half of the lot (the Property”). The Property is located between the existing Woodbury Avenue florist/garden business and undeveloped land owned by Betty’s Dream. The Property is partially within the 100 ft. wetland buffer, 85 ft. deep, and 225 ft wide, with approximately 198 ft. of frontage because of a sharp curve from Maple Street to Meadow Road. Franciosa proposes to subdivide the lot into two lots, one lot containing 8,530 s.f., 100 ft. of frontage and the existing home (“the “Remainder Parcel”), and a second lot containing 10,400 s.f. and 98 ft. of frontage (the “New Parcel”) which can accommodate a modest home with yard setback relief (the “Project”). The Project confers the benefit of an additional buildable lot in a thickly settled area of Portsmouth, where housing opportunities are in high demand and most lots are less than the required 15,000 s.f. Many lots also have less than the required 100 feet of frontage and/or 100 ft. of lot depth. **(Exhibits C).** In advance of

Planning Board Applications for Subdivision and Conditional Use Permit, Franciosa seeks approval for creation of one lot with less with less than 100 ft. of frontage and less than 100 ft. lot depth, and for both lots to contain less than the required 15,000 s.f. lot area and lot area per dwelling unit. Relief is also required to accommodate elements of the proposed home/landing within the front and rear setbacks of the New Parcel.

III. Relief Required

<u>Variance Section/Requirement</u>	<u>Existing</u>	<u>Proposed</u>
<u>PZO§10.521: Dimensional Standards</u> 15,000 s.f. Lot area 15,000 s.f. Lot area/dwelling unit	18,930 s.f.	Remainder: 8,530 s.f. New Parcel: 10,400 s.f.
<u>PZO§10.521: Dimensional Standards</u> <u>100' Lot Depth</u>	85'	Remainder: 85' New Parcel: 85'
<u>PZO§10.521: Dimensional Standards</u> <u>100' Continuous Street Frontage</u>	198' ¹	Remainder: 100' (compliant) New: 98'
<u>PZO§10.521: Dimensional Standards</u> <u>30' Front Yard</u>	30' ²	New Parcel 27.6' house 21.6' landing 18' steps
<u>PZO§10.521: Dimensional Standards</u> <u>30' Rear Yard</u>	30' ³	New Parcel 21.3' landing 19' steps

IV. Variance Requirements

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

The first step in the ZBA's analysis is to determine whether granting the variances is not contrary to the public interest and is consistent with the spirit and intent of the ordinance, considered together pursuant to *Malachy Glen Associates, Inc. v. Town of Chichester*, 155 N.H.

¹ While the lot is 225 ft. wide, the road stops short of the end of the lot and curves to connect with Meadow Road.

² PZO §10.516.40 permits 5 ft. projection into yards for terraces, decks, steps, and stoops less than 3 ft. high and less than 100 s.f. in area.

³ See Footnote 2.

102 (2007) and its progeny. Upon examination, it must be determined whether granting a variance “would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives”. *Id.* “Mere conflict with the zoning ordinance is not enough”. *Id.*

Portsmouth Zoning Ordinance (“PZO”) Section 10.121 identifies the general purposes and intent of the ordinance “to promote the health, safety and general welfare of Portsmouth...in accordance with the...Master Plan” This is accomplished by regulating:

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The intended use of the property is and will remain residential. The requested relief will satisfy the need for additional housing with creation of additional building lot on an underutilized area of land in a densely populated area where many similar sized lots exist.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The New Parcel has 98 ft. of frontage where 100 ft. is required, so is just shy of the required frontage; though under the required 15,000 s.f., it can accommodate a modest sized home without increasing the intensity of land use in the area. Many lots in the area are smaller than 15,000 s.f. and lack 100 feet of frontage so the new lot fits in the area. At 85 ft. deep, the New Parcel will match the Remainder Parcel. Both lots will comply with coverage and open space requirements, while the new lot requires modest yard setback relief to accommodate the proposed home and landings.
3. The design of facilities for vehicular access, circulation, parking and loading – Both lots will have sufficient space to accommodate appropriate facilities for these needs.
4. The impact on properties on of outdoor lighting, noise, vibration, stormwater runoff and flooding – The creation of an additional residential lot will not impact surrounding properties.
5. The preservation and enhancement of the visual environment – Allowance of an additional residential building lot in this area of town will not negatively affect the visual environment.
6. The preservation of historic districts and building and structures of historic architectural interest – The Property is not located in the Historic Overlay District.
7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – A 25 ft. no cut buffer will be maintained and a Conditional Use Permit will be obtained for impacts in the 100 ft. wetland buffer.

The intent of Single Residence B District is “[t]o provide areas for single-family dwellings at low to medium densities (approximately 1 to 3 dwellings per acre), and appropriate accessory uses. PZO §10.410. The proposal meets the intentions of the Single Residence B District by providing another residential building lot that is consistent with many in the area.

Given these factors, granting the limited requested variances will not conflict with the basic zoning objectives of the PZO.

In considering whether variances “in a marked degree conflict with the ordinance such that they violate the ordinance’s basic zoning objectives,” *Malachy Glen, supra*, also held:

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

Notably, most lots in the area have less than 15,000 s.f. of lot area and many have insufficient lot area and insufficient lot depth or frontage. (**Exhibit C**). Other properties appear to be nonconforming with respect to yard setbacks. Given the existence of many similar lots in the area, granting the variances for an additional house lot adjacent to commercial property in an established residential area will not alter the essential characteristics of the neighborhood.

Similarly, there will be no threat to the public health, safety or welfare by granting the requested variances when the relief required is for a building lot size comparable to others in the surrounding area, and for an amount of frontage just under the required 100 feet. Allowance of an additional residential building lot in a residential zone satisfies the need for additional housing and affords Franciosa the highest and best use of their land.

Clearly, the requested variances neither alter the essential character of the locality nor threaten the public health safety or welfare. Accordingly, none of the variances are contrary to the public interest and all observe the spirit of the ordinance.

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

Granting the requested variances will not diminish surrounding property values. The proposal will satisfy the need for housing in Portsmouth through creation of an additional building lot between the Woodbury Florist and the undeveloped land associated with Betty’s dream. The yard setback relief requested to accommodate the intended home on the New Parcel is modest, and will not negatively affect abutting properties.

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

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

The Property and its 85 ft. lot depth result from a 1970 subdivision of the florist/garden center lot and was subsequently developed with a home 11.7 ft. from the garden center property. This configuration under-utilizes prospective New Parcel as an additional yard, when a more productive use would be as an additional residential building lot. In addition, although the Property is 225 ft. wide, the available frontage along Maple Street is just shy of 200 ft. due to the way Maple Street is laid out and curves around to Meadow Road. These circumstances combine to create special conditions.

A hardship may be found where similar nonconforming uses exist within the neighborhood and the proposed use will have no adverse effect on the neighborhood. See *Walker v. City of Manchester*, 107 N.H. 382, 386 (1966). In *Walker*, an applicant sought to convert the use of a large building to a dwelling and funeral home in a residential zone. Denied by the Manchester Zoning Board of Adjustment, the Trial Court and Supreme Court found that a hardship existed, thus the variances should have been granted, where numerous other large dwellings in the area had been converted to office or other business use, and numerous funeral homes existed in an otherwise residential district via the issuance of variances. Here, the density resulting from the requested variances is similar to the density in the surrounding area comprised of many homes with similar sized lots and will have no adverse effect on the neighborhood, thus a hardship exists. *Walker*, supra.

Finally, a municipality's ordinance must reflect the current character of the neighborhood, See *Belanger v. City of Nashua*, 121 N.H. 389, 393 (1981). Granting the requested variances allow the subject lot to be in keeping with the character of other residential uses in the vicinity. Thus, the variances in this instance will allow the Ordinance to reflect the character of the area. In light of these conditions and restrictions, special conditions exist at the Property.

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

The purpose of dimensional requirements is to regulate density and prevent overcrowding of land and population. The purpose of frontage requirements is to provide air, light and promote visibility for motorists, cyclists, and pedestrians, while yard requirements exist to

promote adequate air, light, and separation between neighbors as well as afford adequate space for stormwater treatment. The requested variances do not undermine these purposes of the Ordinance, particularly in the context of a surrounding area containing many similar sized properties.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. *Vigeant v. Hudson*, 151 N.H. 747 (2005). Residential use is permitted and the creation of the New Parcel is consistent with the overall intent of the zoning district and similar conditions in the neighborhood. Thus, the improvements and variances required for them are reasonable.

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

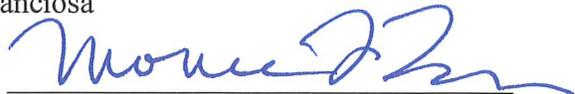
If “there is no benefit to the public that would outweigh the hardship to the applicant” this factor is satisfied. *Harborside Associates, L.P. v. Parade Residence Hotel, L.L.C.*, 162 N.H. 508 (2011). That is, “any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice.” *Malachy Glen, supra* at 109. The variances needed to create a comparably sized building lot for a modestly sized residential home in this residential zone will not impact the general public. Conversely, Owners Signorello and Robertson and Applicant Franciosa, will be greatly harmed by denial of any of the variances, as they will lose the ability to create needed housing in Portsmouth. Without question, substantial justice will be done by granting each variance while a substantial injustice will be done by denying any of them.

V. Conclusion

For all of the reasons stated, Owners John Signorello, Lee Ann Robertson, and Applicant Phil Franciosa respectfully requests that the Portsmouth Zoning Board of Adjustment grant each variance request.

Respectfully submitted,

John Signorello, Lee Ann Robertson &
Phil Franciosa



By: R. Timothy Phoenix
Monica F. Kieser





Image capture: Sep 2011 © 2022 Google

Portsmouth, New Hampshire

Google

Street View - Sep 2011

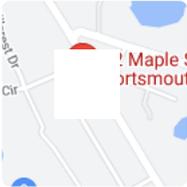


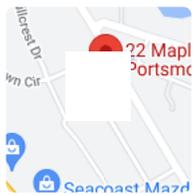


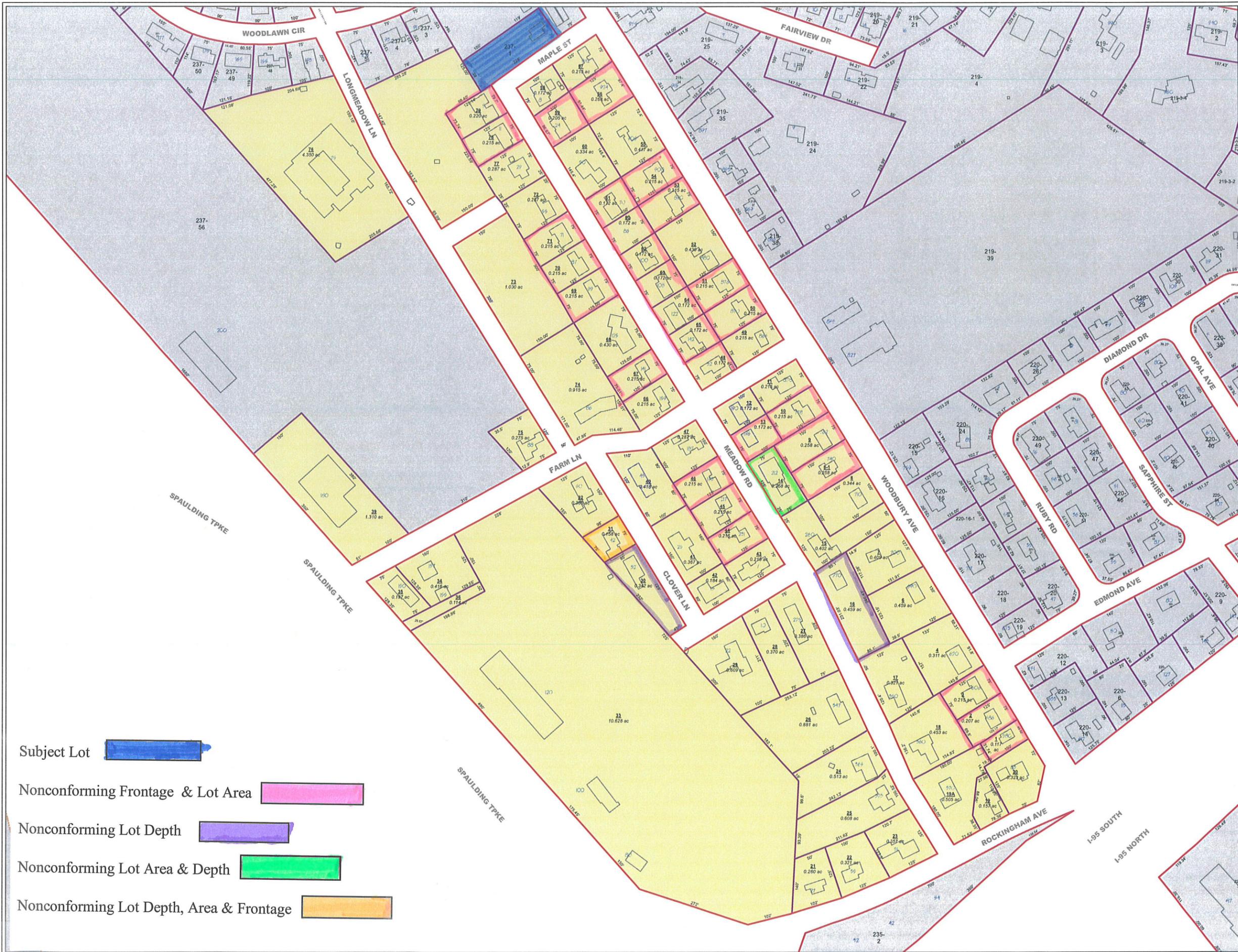
Image capture: Sep 2011 © 2022 Google

Portsmouth, New Hampshire

Google

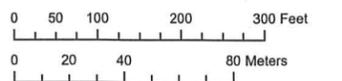
Street View - Sep 2011



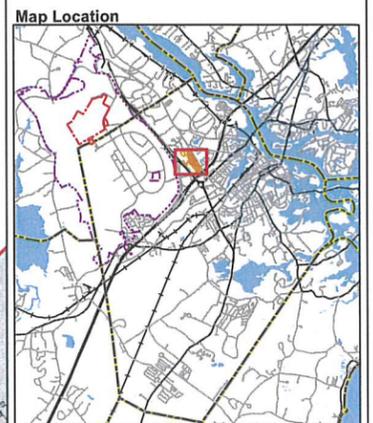
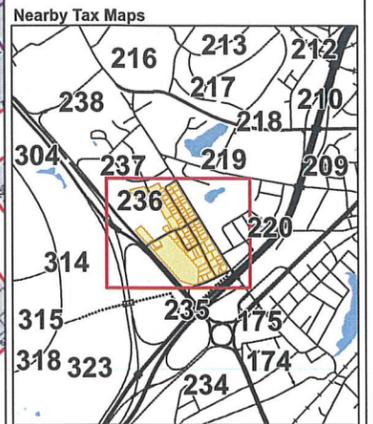


- Partial Legend**
See the cover sheet for the complete legend.
- 7-5A Lot or lot-unit number
 - 2.56 ac Parcel area in acres (ac) or square feet (sf)
 - 23 Address number
 - 233-137 Parcel number from a neighboring map
 - or Parcel line dimension
 - SIMS AVE Street name
 - Parcel/Parcel boundary
 -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

EXHIBIT C



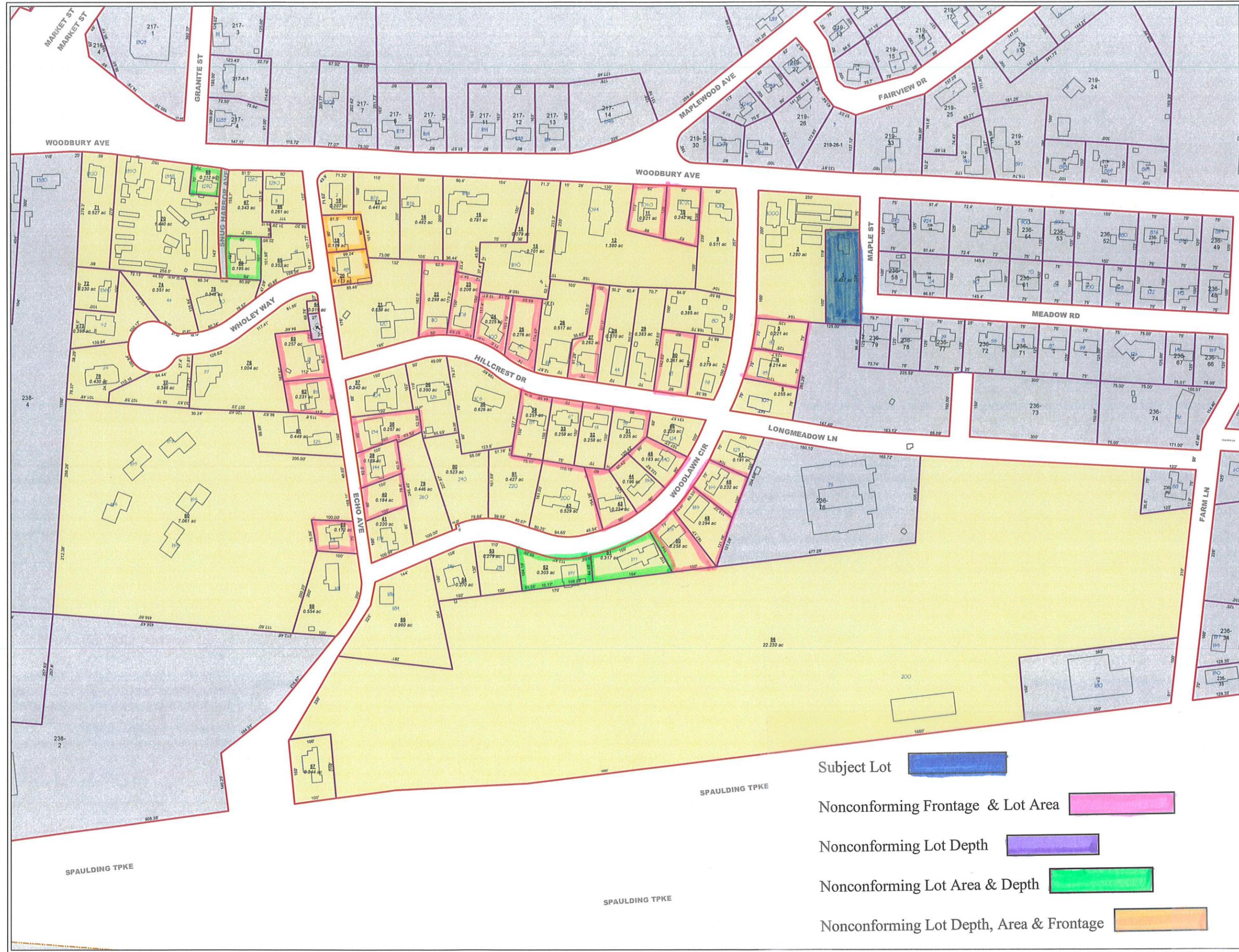
This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over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



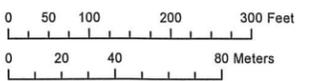
Portsmouth, New Hampshire
2021

Tax Map 236

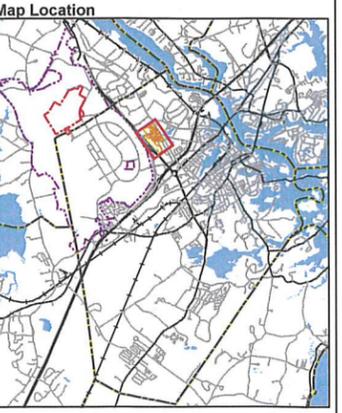
- Subject Lot
- Nonconforming Frontage & Lot Area
- Nonconforming Lot Depth
- Nonconforming Lot Area & Depth
- Nonconforming Lot Depth, Area & Frontage



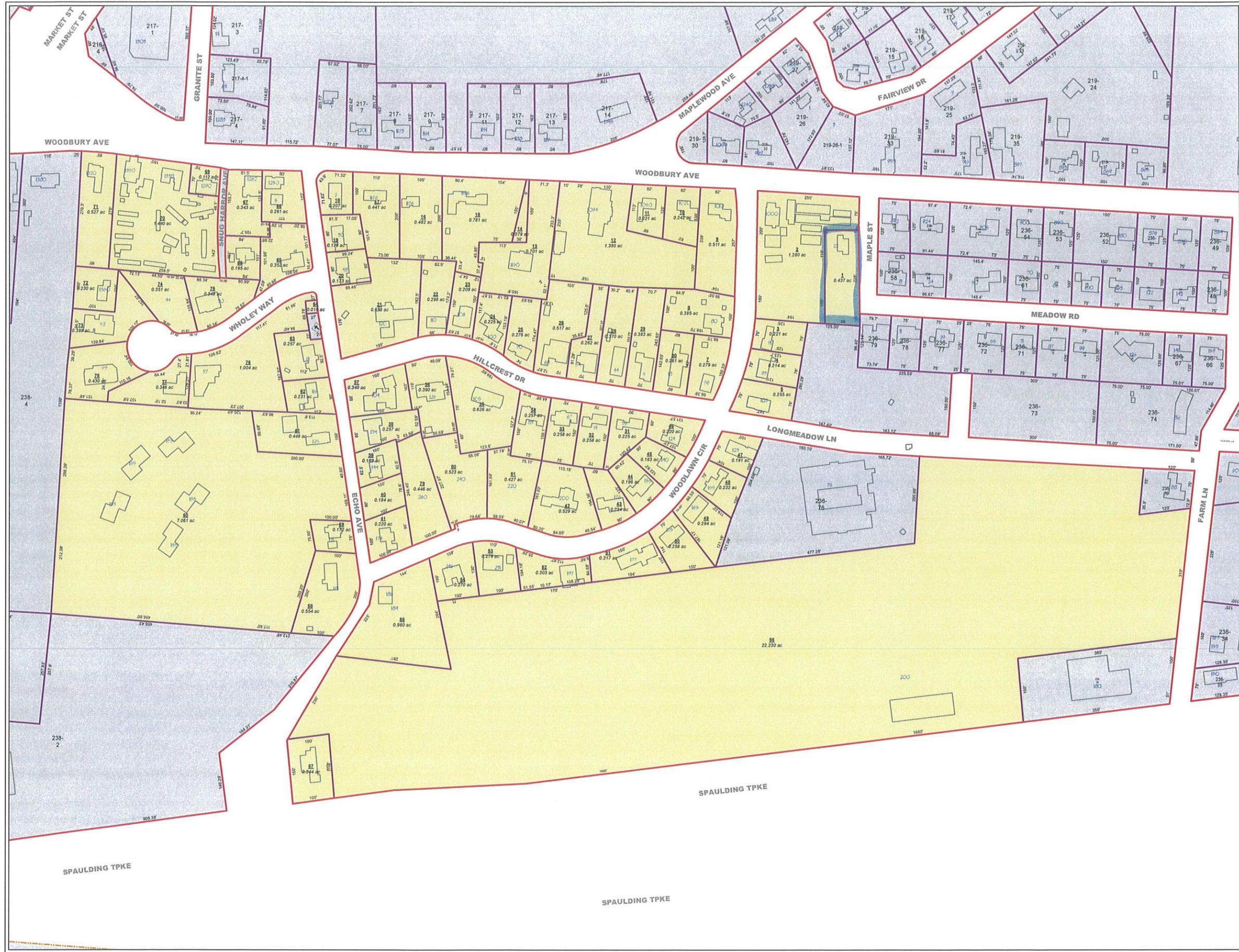
- Partial Legend**
 See the cover sheet for the complete legend.
- 7-5A Lot or lot-unit number
 - 2.56 ac Parcel area in acres (ac) or square feet (sf)
 - 25 Address number
 - 233-137 Parcel number from a neighboring map
 - 68 Parcel line dimension
 - SIMS AVE Street name
 - Parcel/Parcel boundary
 -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



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

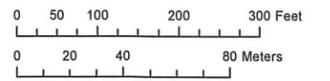


- Subject Lot
- Nonconforming Frontage & Lot Area
- Nonconforming Lot Depth
- Nonconforming Lot Area & Depth
- Nonconforming Lot Depth, Area & Frontage



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

EXHIBIT D



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

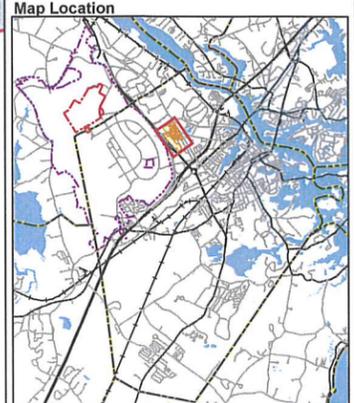
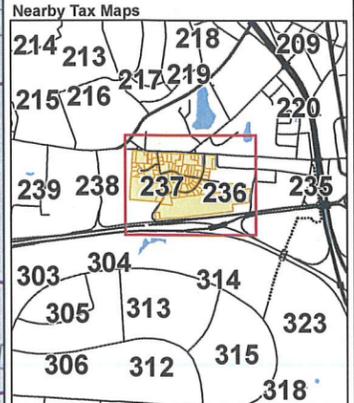
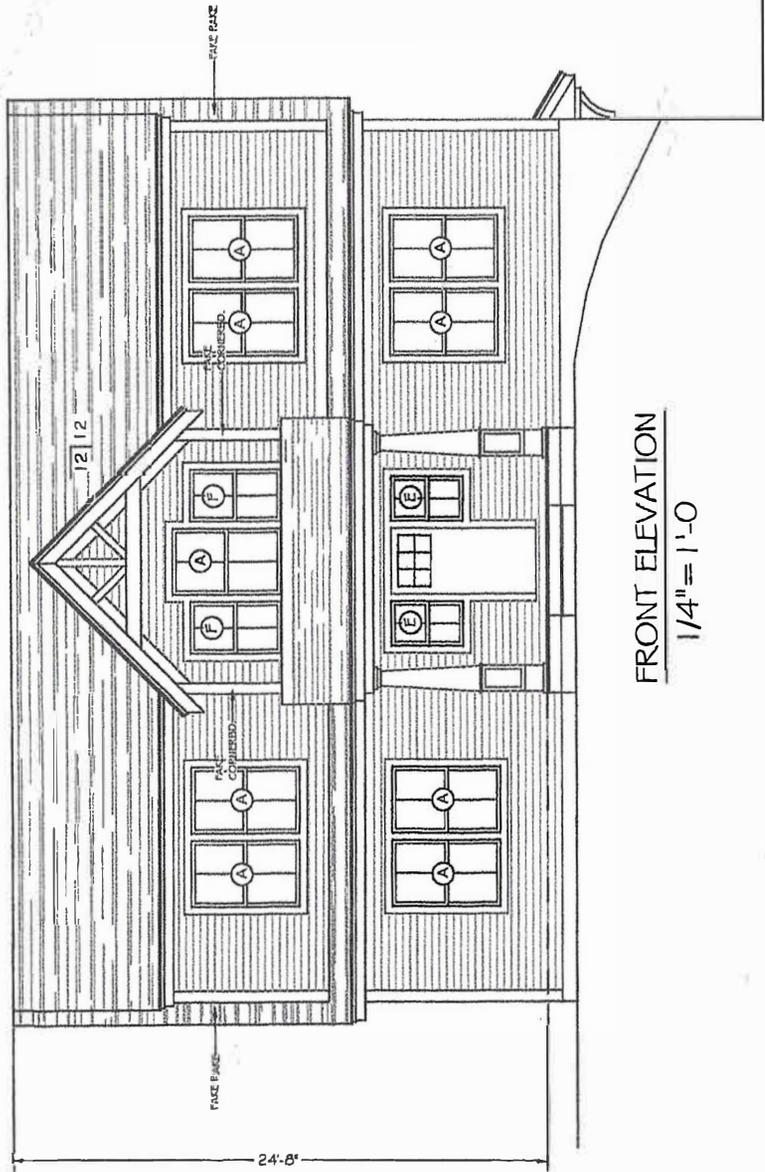
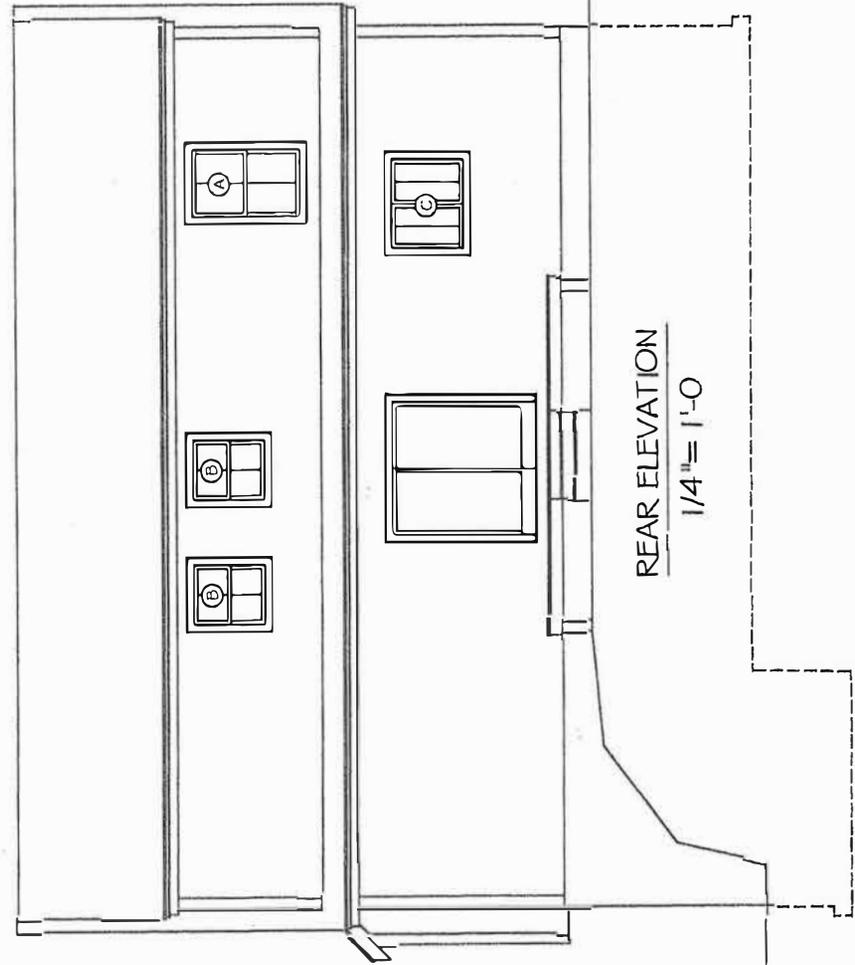


EXHIBIT E



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



REAR ELEVATION
1/4" = 1'-0"

DRAWN BY:
MARTHA MACINNIS
50 REGENT AVE.
BRADFORD, MA. 01835
(978)374-8719

PDF CONSTRUCTION
10 MERRIMAC STREET
SEABROOK, NH

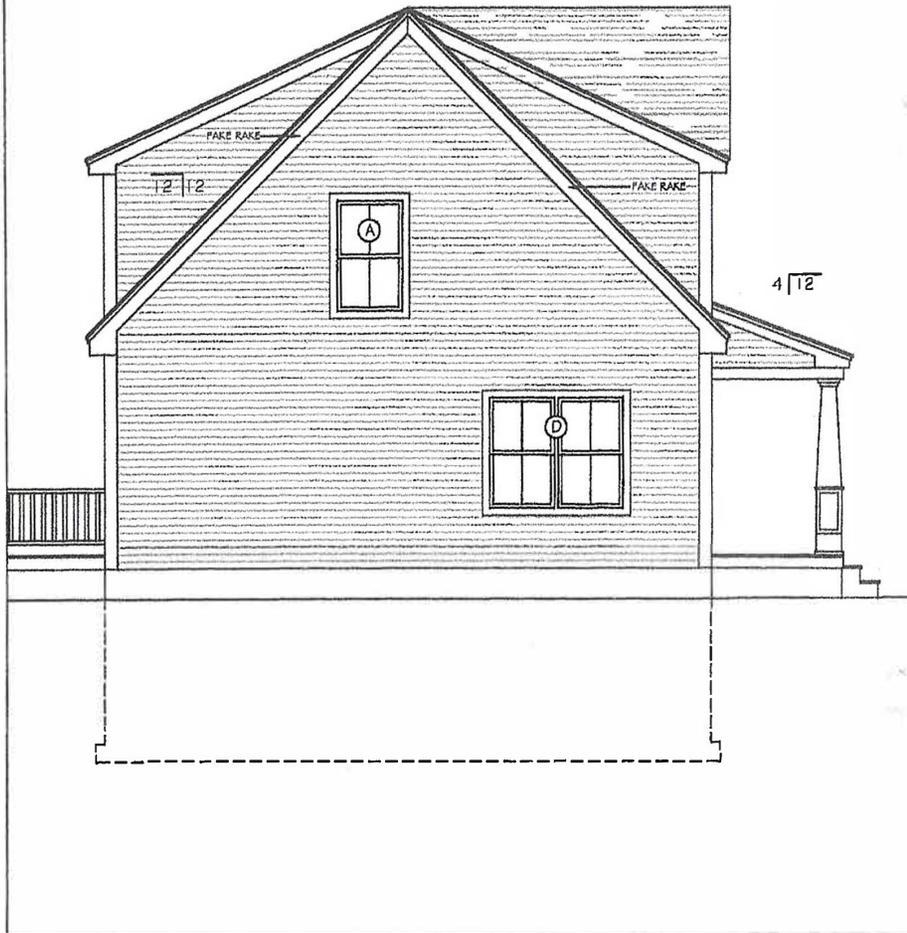
PROPOSED NEW CONSTRUCTION
22 MAPLE STREET
PORTSMOUTH, NH

AUGUST 3, 2022

1

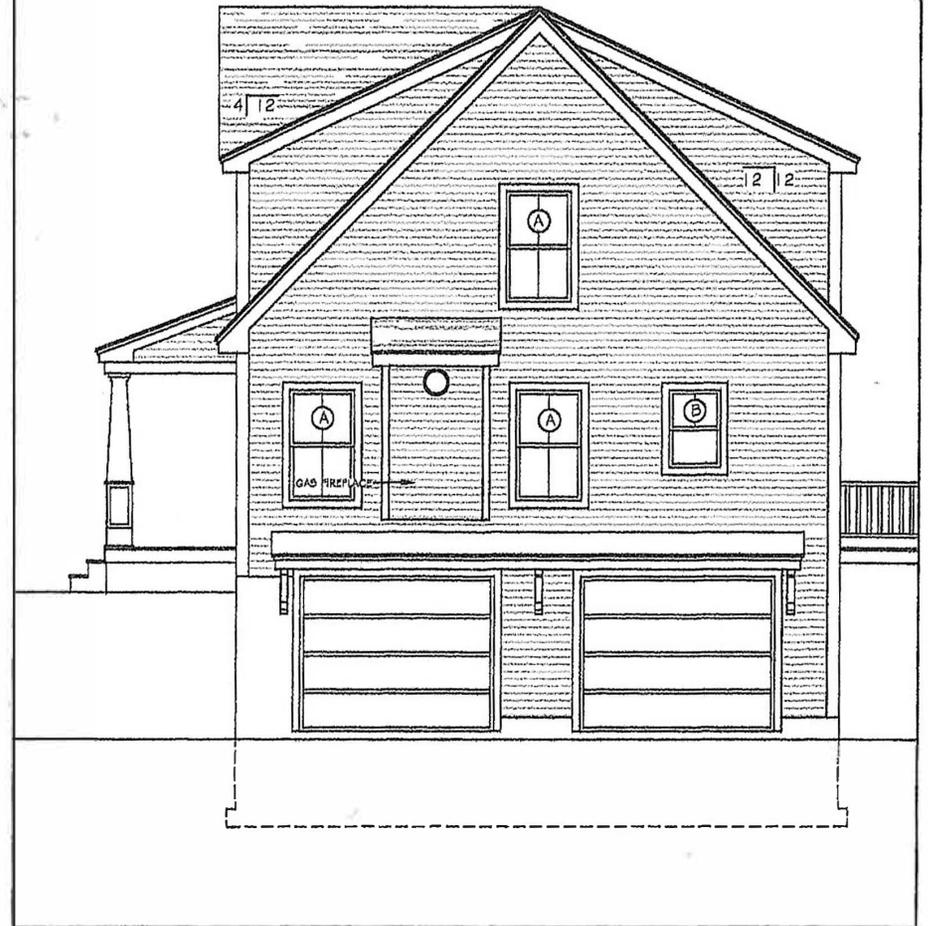
RIGHT SIDE ELEVATION

1/8" = 1'-0"



LEFT SIDE ELEVATION

1/8" = 1'-0"



DRAWN BY:
MARTHA MACINNIS
58 REGENT AVE.
BRADFORD, MA. 01835
(978)374-8719

PDF CONSTRUCTION
10 MERRIMAC STREET
SEABROOK, NH

PROPOSED NEW CONSTRUCTION
22 MAPLE STREET
PORTSMOUTH, NH

AUGUST 3, 2022

2