

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

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August 31, 2022

HAND DELIVERED

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

Re: Neila, LLC, Owner/Applicant
324 Maplewood Avenue
Tax Map 141/Lot 1

Dear Mr. Stith & Zoning Board Members:

On behalf of Neila, LLC, Owner/Applicant, enclosed please find the following in support of a request for zoning relief:

- Digital Application submitted via Viewpoint earlier today.
- Owner Authorization.
- 8/31/2022 – Memorandum and exhibits in support of variance application.

We look forward to presenting this application to the Zoning Board at its September 20, 2022 meeting.

Very truly yours,



R. Timothy Phoenix
Monica F. Kieser

Encl.

cc: Nicole Abshier, Member, Neila, LLC
Altus Engineering, Inc.
Brendan McNamara, Architect


DANIEL C. HOEFLE	R. PETER TAYLOR	MONICA F. KIESER	STEPHANIE J. JOHNSON
R. TIMOTHY PHOENIX	KIMBERLY J.H. MEMMESHEIMER	SAMUEL HARKINSON	OF COUNSEL:
LAWRENCE B. GORMLEY	KEVIN M. BAUM	JACOB J.B. MARVELLEY	SAMUEL R. REID
STEPHEN H. ROBERTS	GREGORY D. ROBBINS	DUNCAN A. EDGAR	JOHN AHLGREN

OWNER'S AUTHORIZATION

I, Nicole L. Abshier, member of NEILA, LLC,
Owner/Applicant of 324 Maplewood Avenue, Tax Map 141/Lot
1, hereby authorize law firm Hoefle, Phoenix, Gormley &
Roberts, PLLC to represent me before any and all City of
Portsmouth Representatives, Boards and Commissions for
permitting the project.

Respectfully submitted,

Date: 7/28/2022



Nicole L. Abshier, Member

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
Monica F. Kieser, Esquire
DATE: August 31, 2022
RE: Owner/Applicant: Neila, LLC (Nicole Abshier)
Property: 324 Maplewood Avenue (Cabinet Concepts)
Tax Map 141, Lot 1
CD4-L2 Zoning District

Dear Chairman Parrott and Members of the Zoning Board of Adjustment (“ZBA”):

On behalf of the applicant, Neila, LLC (“Applicant” or “Abshier”), we are pleased to submit this Memorandum and exhibits in support of the requested variances from the Portsmouth Zoning Ordinance (“PZO” or “Ordinance”).

I. EXHIBITS

- A. Board of Adjustment Site Plan – issued by Altus Engineering, Inc.
- B. Architectural Plan Set – issued by Brendan McNamara.
- C. Site Photographs.
 - Street view & aerial views
- D. Tax Map 141.

II. PROPERTY/PROJECT

324 Maplewood Avenue is a 3,560 s.f. lot located at the corner of Maplewood and Dennett Street in the CD4-L2 and Historic Overlay Districts (the “Property”). The lot contains two structures: a blue two-story structure with a 652 s.f. retail cabinet shop (Cabinet Concepts) on the first floor and a 655 s.f. apartment on the second floor; and a 1,080 s.f. one story garage/accessory structure. The accessory structure is the focus of this application. Nicole Abshier of 31 Dennett Street formed Neila, LLC to purchase the Property this summer to control development of the garage adjacent to her home and intends to convert it to a one bedroom apartment, significantly improving its appearance and functionality (the “Project”). The structure will remain the same size and height, will continue to accommodate interior parking, and the Historic District Commission (“HDC”) will review the exterior façade.

Principal Planner Peter Stith determined dimensional relief is required for lot size per dwelling unit, conversion of a structure in the rear yard setback, and parking space size for the interior space in the garage 1ft. less than the required depth.

III. RELIEF REQUIRED

1. **PZO §10.5A41.10A**

- Lot area per dwelling unit – 1,780 s.f. (3560/2) where 3,000 s.f. is required.
 - Rear yard setback – to permit a dwelling in an existing structure 1 ft. from the rear lot line where 5 ft. is required.
2. **PZO §10.1114.21** – to permit parking space in the garage measuring 8.5 ft. by 18 ft. where 8.5 ft. by 19 ft. is required.

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 a variance 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. 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.*

The purpose of the Portsmouth Zoning Ordinance as set forth in PZO §10.121 is "to promote the health, safety and the general welfare of Portsmouth and its region in accordance with the City of Portsmouth Master Plan... [by] regulating":

1. The use of land, buildings and structures for business, industrial, residential and other purposes – The Project repurposes an existing, underutilized, accessory building to provide a modest apartment and interior parking.
2. The intensity of land use, including lot sizes, building coverage, building height and bulk, yards and open space – The lot is nonconforming as to lot size, coverage and rear yard (from Dennett Street). Accordingly, no increase in footprint is proposed. Instead, the Project utilizes the existing structure, which accommodates the single parking space required for the apartment.
3. The design of facilities for vehicular access, circulation, parking and loading – There are sufficient parking spaces on the lot for the existing uses and the proposed apartment. **(Exhibit A).**
4. The impacts on properties of outdoor lighting, noise, vibration, stormwater runoff and flooding – The structure exists now. The renovation and addition of a single modest dwelling unit in it will not negatively affect abutting properties.
5. The preservation and enhancement of the visual environment – The Project will renovate the existing structure on the Property improving its appearance and

- retaining existing viewsheds, air, light, and space. The HDC will evaluate the façade to ensure it complies with district requirements.
6. The preservation of historic districts, and buildings and structures of historic or architectural interest – The proposal preserves and repurposes the long existing accessory structure. The Property is located in the Historic District and will receive HDC review.
 7. The protection of natural resources, including groundwater, surface water, wetlands, wildlife habitat and air quality – The Property is located on Maplewood Avenue in a densely developed area. Restoring the existing accessory building in place has no impact compared to existing conditions.

Based upon the foregoing, then variances do not “in a marked degree conflict with the ordinance such that they violate the ordinance’s basic zoning objectives.” Malachy Glen, supra, which also held:

One way to ascertain whether granting the variance would violate basic zoning objectives is to examine 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)

The intent of the Character Districts is to promote the development of walkable, mixed-use, human-scaled places by providing standards for building form and placement and related elements of development. The Property is located on Maplewood Avenue in a densely developed area of the City. **(Exhibit A, C, D)**. No additional structures will be constructed on the Property. Through the reuse of the existing accessory building, the Property will be refreshed and will offer a modest downtown apartment. The requested variances further objectives articulated in the City’s 2025 Master Plan which recognized that opportunities to create small dwelling units exist in our urban neighborhoods. Master Plan p. 138, 144-45. In addition, the Master Plan recognized the need for flexibility in parking requirements to accommodate those properties which do not have sufficient dedicated space in neighborhoods where on-street parking is utilized. Master Plan p. 140, 144-45. Accordingly, granting each requested variance will neither “alter the essential character of the locality,” nor “threaten the public health, safety or welfare.”

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

The Project restores and repurposes an existing accessory building located down-gradient from the Maplewood properties behind it. The Project improves the appearance of the existing

structure and results in no change to air, light, and space compared to existing conditions. The small apartment will not be intensely used accommodates the parking required. In addition to Ms. Abshier next door, other abutters have offered their approval of the Project. In light of these factors, granting the requested variance will not diminish surrounding property values.

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

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

The Property is small and oddly shaped with two existing structures at each end up against the lot line opposite Dennett, one of which supports a business and apartment. Any improvement to or change of use in either structure requires relief. The cabinet business and modest apartment above have sufficient space for parking, leaving the existing accessory building under-utilized as storage. These circumstances combine to create special conditions.

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

Density limits prevent overburdening of the land and overcrowding while yard setback requirements promote adequate air, light, space, and separation between neighbors. Parking space requirements ensure sufficient space for vehicles and circulation. The Project adds no new structures and merely repurposes the oversized garage to accommodate a small garden apartment sorely needed downtown. The addition of a small dwelling unit will not overcrowd the lot or conflict with the existing uses on the lot. As the footprint and height of the garage are not expanded, the rear yard setback will remain the same. Adequate parking exists on the lot now to support the uses, and the Project will offer an interior parking space for the garden apartment that, at 18 ft. deep, will accommodate the vast majority of cars. The Project repurposes the existing accessory structure creating a small apartment unit with a slightly undersized parking space furthering Master Plan objectives. Accordingly, there is no fair and substantial relationship between the general public purposes of the PZO and its specific application in this instance.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Residential uses, including duplexes and apartments are permitted in the CD4-L2 Zone as are mixed uses. The proposal creatively readapts an existing under-utilized with a new use compatible with the area and offers a small apartment in an area where one is needed.

Accordingly, the proposed use is reasonable and denial of the requested variances would create an unnecessary hardship.

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, LLC, 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 right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions.” N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that “no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.” Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). “Property” in the constitutional sense has been interpreted to mean not the tangible property itself, but rather the right to possess, use, enjoy and dispose of it. Burrows v. City of Keene, 121 N.H. 590, 597 (1981). (emphasis added). The Supreme Court has held that zoning ordinances must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of the regulation. Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001); Chesterfield at 69.

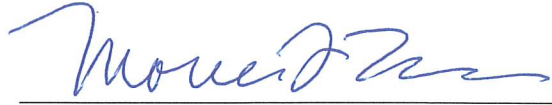
Granting the requested variance allows for the productive reuse of an existing structure on the Property in a manner consistent with walkable, mixed-use purposes of the zoning district and surrounding area. Given that the only change to the Property is the addition of a modest apartment for which a slightly undersized parking space is provided, there is no benefit to the public from denial. Conversely, Abshier will be greatly harmed by denial as she will lose the opportunity to create an additional dwelling unit in an underutilized, existing structure. Accordingly, there is no benefit to the public that outweighs the harm to the owner from denial.

V. CONCLUSION

For all the reasons stated, Abshier respectfully requests that the Portsmouth Zoning Board of Adjustment grant each variance.

Respectfully submitted,
NEILA, LLC

By:

A handwritten signature in blue ink, appearing to read "Monica F. Kieser", written over a horizontal line.

R. Timothy Phoenix, Esquire
Monica F. Kieser, Esquire

ZONING SUMMARY

ZONE: CD4-L2 (CHARACTER DISTRICT 4) - PRINCIPAL BUILDING (RETAIL), OUTBUILDING (GARAGE - TO BE CONVERTED TO RESIDENCE W/INTERIOR PARKING SPACE)
EXISTING LOT AREA: 3,560 S.F.± (0.08 AC.±)

DIMENSIONAL REQUIREMENTS

	REQUIRED	EXISTING	PROPOSED
MIN. LOT AREA:	3,000 S.F.	±3,560 S.F.	±3,560 S.F.
MIN. LOT AREA PER DWELLING UNIT:	3,000 S.F.	±3,560 S.F.	±1,780 S.F. *
MIN. STREET FRONTAGE:	—	±106' (EX.) (DENNETT)	±106' (EXISTING)
MIN. LOT DEPTH:	—	±25'± (EX.) (DENNETT)	±25' (EXISTING)
FRONT SETBACK:	15'/12' MAX.	0'±6.2'(EX.)	0' (EX. RETAIL)/±6.2' (EX. GARAGE)
SIDE SETBACK:	5'	±6.2'/0'(EX.)	±6.2' (EX. GARAGE)/0' (RETAIL)
REAR SETBACK:	5'	±1' (EX.)	±1' (EX. GARAGE)
MAX. HEIGHT:	20'/35'	<20' (EX.)/<35' (EX.)	<20' (EX. GARAGE)/ <35' (EX. RETAIL/APT.)
MAX. BUILDING COVERAGE:	60%	±49% (EX.)(±1,751 SF)	±49% (±1,751 S.F.)
MIN. OPEN SPACE:	25%	±7.7% (±275 SF)	±7.7% (±275 SF)

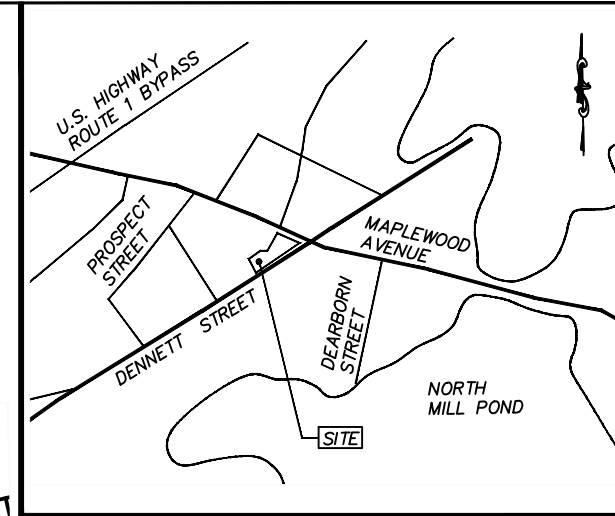
* ZONING RELIEF REQUIRED

PLAN REFERENCES:

1. "STANDARD PROPERTY SURVEY & SITE PLAN" DATED 10/2/09, BY EASTERLY SURVEYING, INC.
2. PORTSMOUTH G.I.S. (MAPGEO) DATA BASE.
3. SITE OBSERVATIONS BY ALTUS ENGINEERING, INC. AUGUST 2022.

NOTE A:

THE TWO EXISTING PARKING SPACES AT RETAIL ARE UNDERSIZED FUNCTIONAL SPACES.



LOCUS

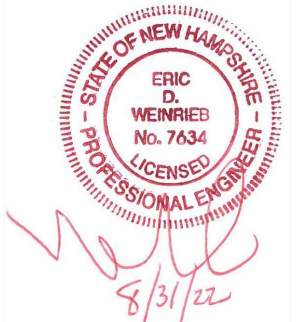
NOT TO SCALE

ALTUS
ENGINEERING, INC.

133 Court Street
(603) 433-2335

Portsmouth, NH 03801
www.altus-eng.com

EXHIBIT A



NOT FOR CONSTRUCTION

ISSUED FOR:

BOARD OF ADJUSTMENT

ISSUE DATE:

AUGUST 31, 2022

REVISIONS

NO.	DESCRIPTION	BY	DATE
0	INITIAL SUBMISSION	EDW	08/31/22

DRAWN BY:

RLH

APPROVED BY:

EDW

DRAWING FILE:

5319.dwg

SCALE:

11" x 17" - 1" = 10'

OWNER/APPLICANT:

NEILA, LLC

31 DENNETT STREET
PORTSMOUTH, NH 03801

PROJECT:

**SITE
IMPROVEMENTS**

TAX MAP 141, LOT 1

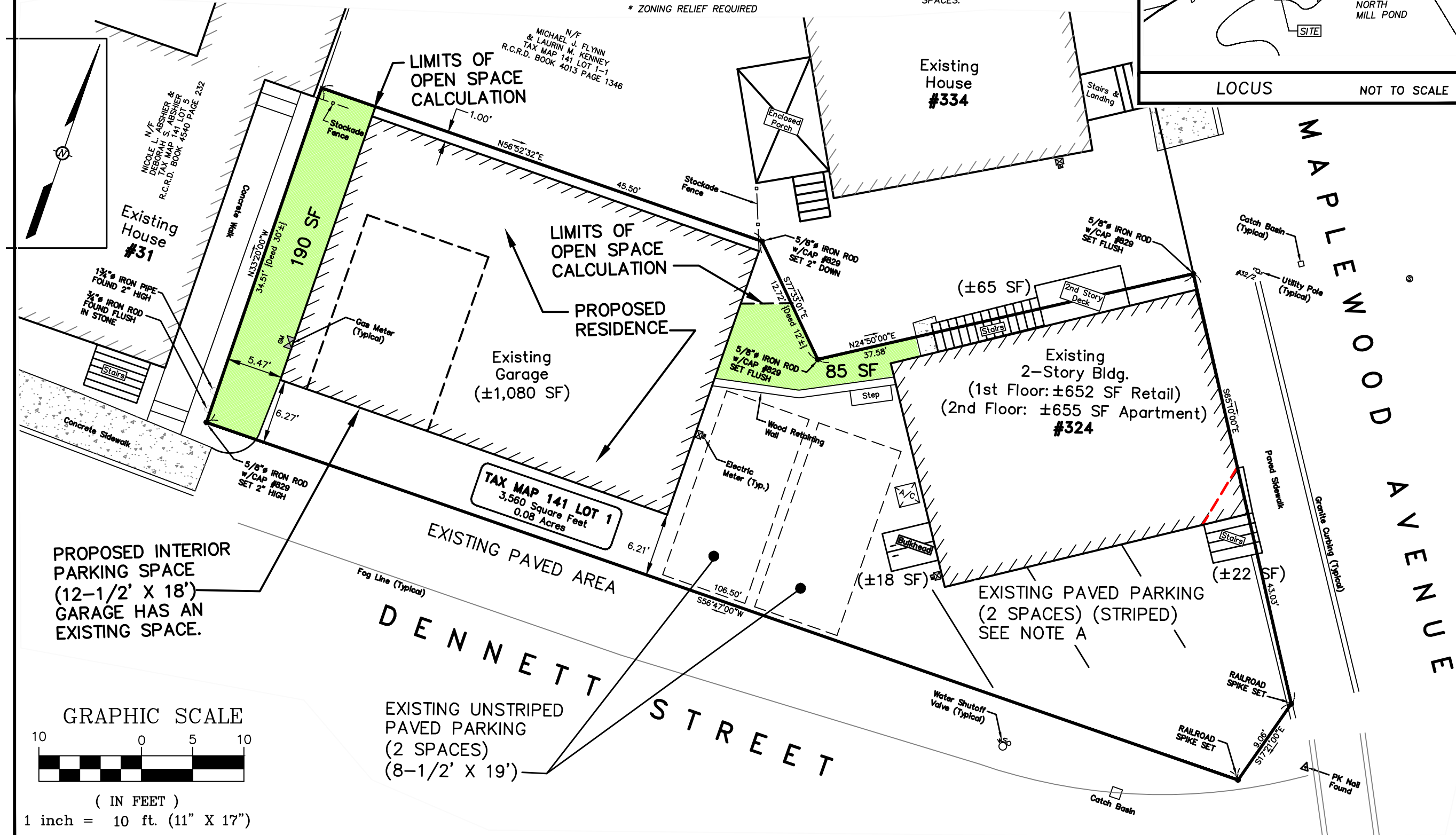
324 MAPLEWOOD AVENUE
PORTSMOUTH, NH

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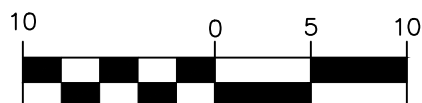
**BOARD OF
ADJUSTMENT
SITE PLAN**

SHEET NUMBER:

1 of 1



GRAPHIC SCALE



(IN FEET)

1 inch = 10 ft. (11" X 17")

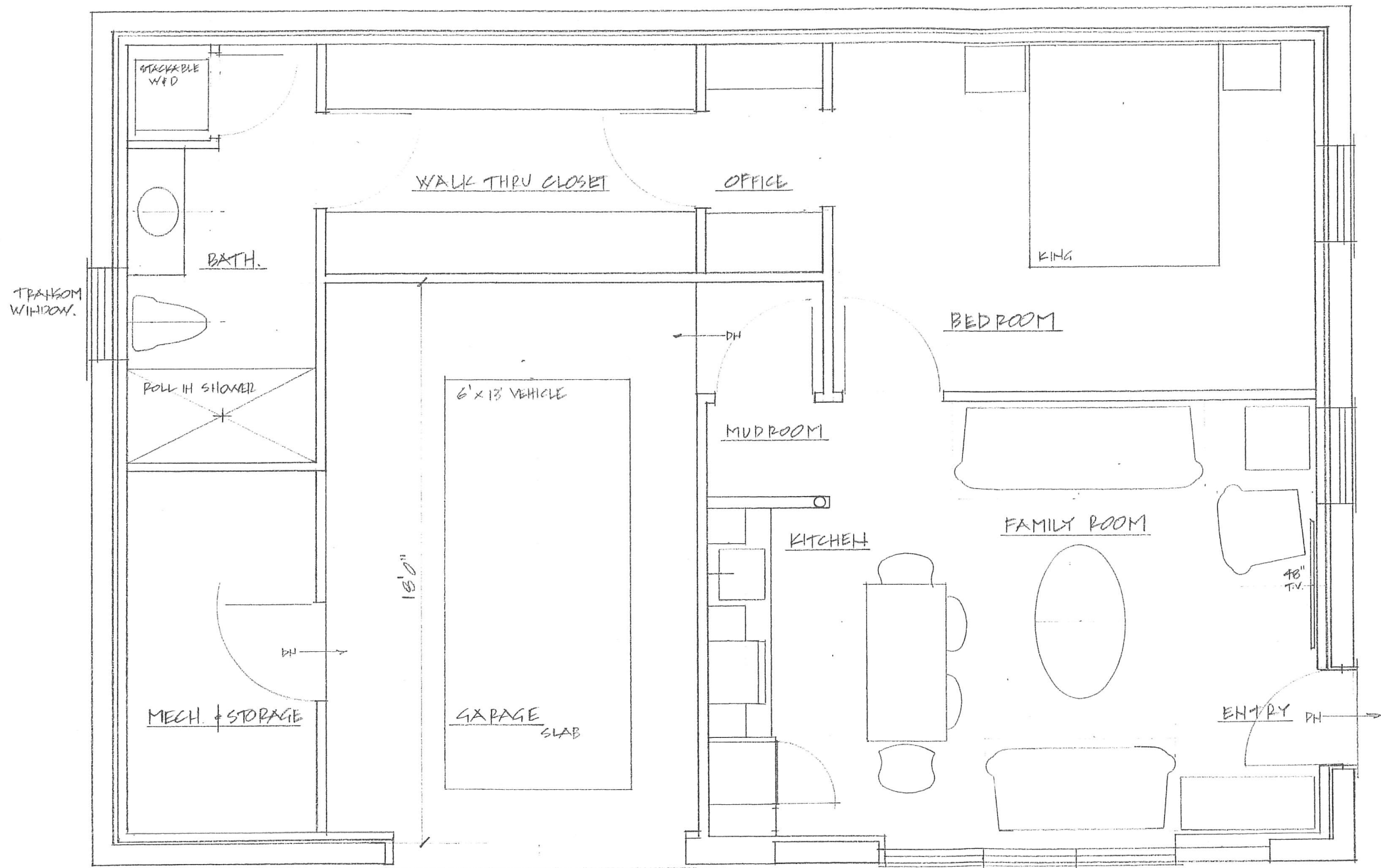


EXISTING FIRST FLOOR PLAN 1/4"=1'0"

PROPOSED REMODEL
TO GARAGE AT
324 MAPLEWOOD AVE.,
PORTSMOUTH, NH.

TITLE: EXISTING CONDITIONS PLAN
SCALE: 1/4"=1'0"
DATE: 8.30.2022
REVISIONS:

X 1.



PROPOSED FIRST FLOOR PLAN

1/4" = 1'0"

637 of.

TITLE: PROPOSED FIRST FLOOR PLAN

SCALE: 1/4" = 1'0"

DATE: 8.30.2022

REVISIONS:

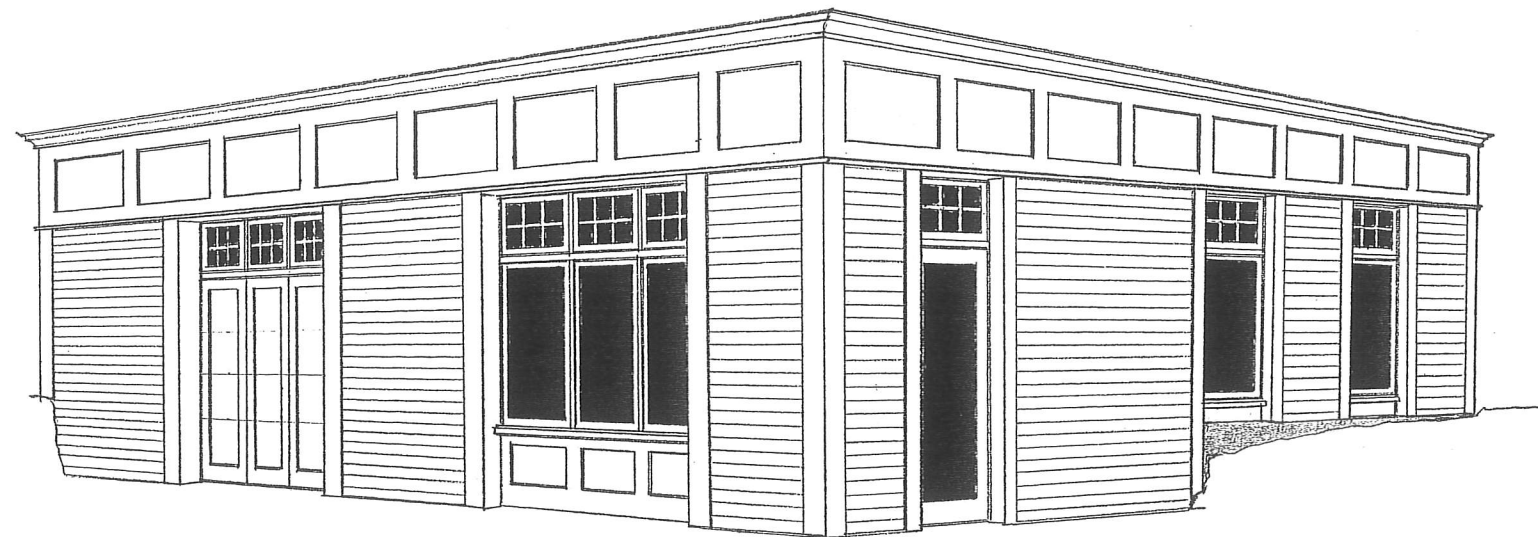
PROPOSED REMODEL

TO GARAGE AT

324 MAPLEWOOD AVE.,

PORTSMOUTH, NH

A2.



PROPOSED VIEW
FROM DENNET ST.



EXISTING CONDITIONS VIEW (FROM DENNETT ST.)

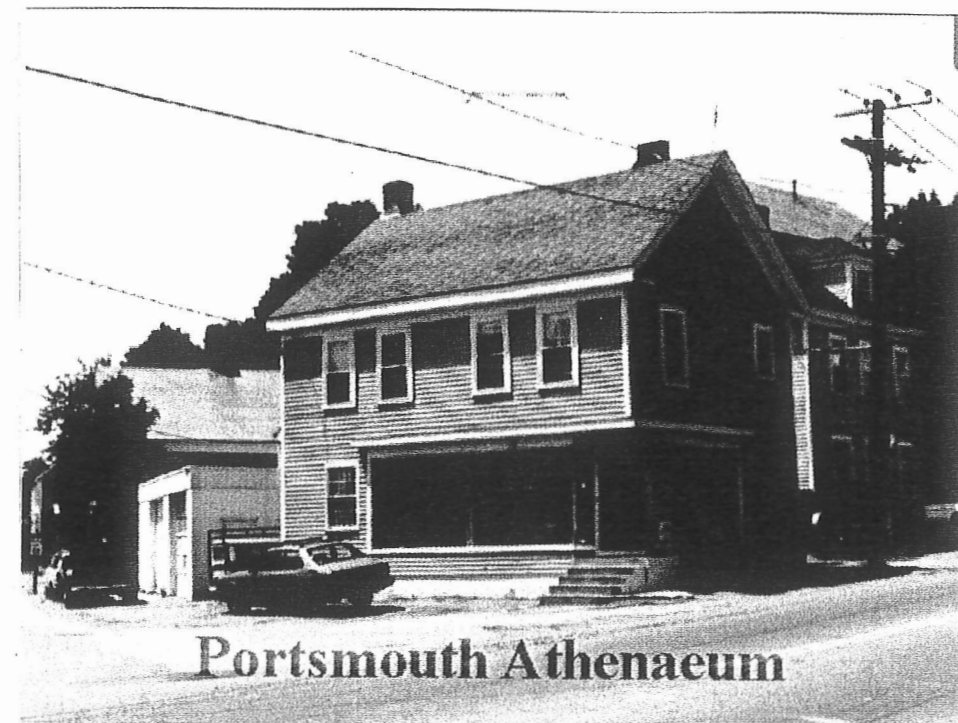


PHOTO FROM 1980'S (FROM
PORTSMOUTH HISTORICAL SURVEY)

324 Maplewood Ave



Imagery ©2022 Google, Imagery ©2022 Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, USDA/FPAC/GEO, Map data ©2022 50 ft

EXHIBIT C



Image capture: Sep 2019 © 2022 Google

Portsmouth, New Hampshire

Google

Street View - Sep 2019

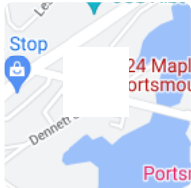


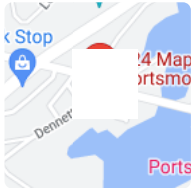


Image capture: Sep 2017 © 2022 Google

Portsmouth, New Hampshire

Google

Street View - Sep 2017



28 Dennett St

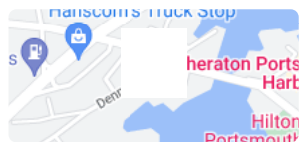


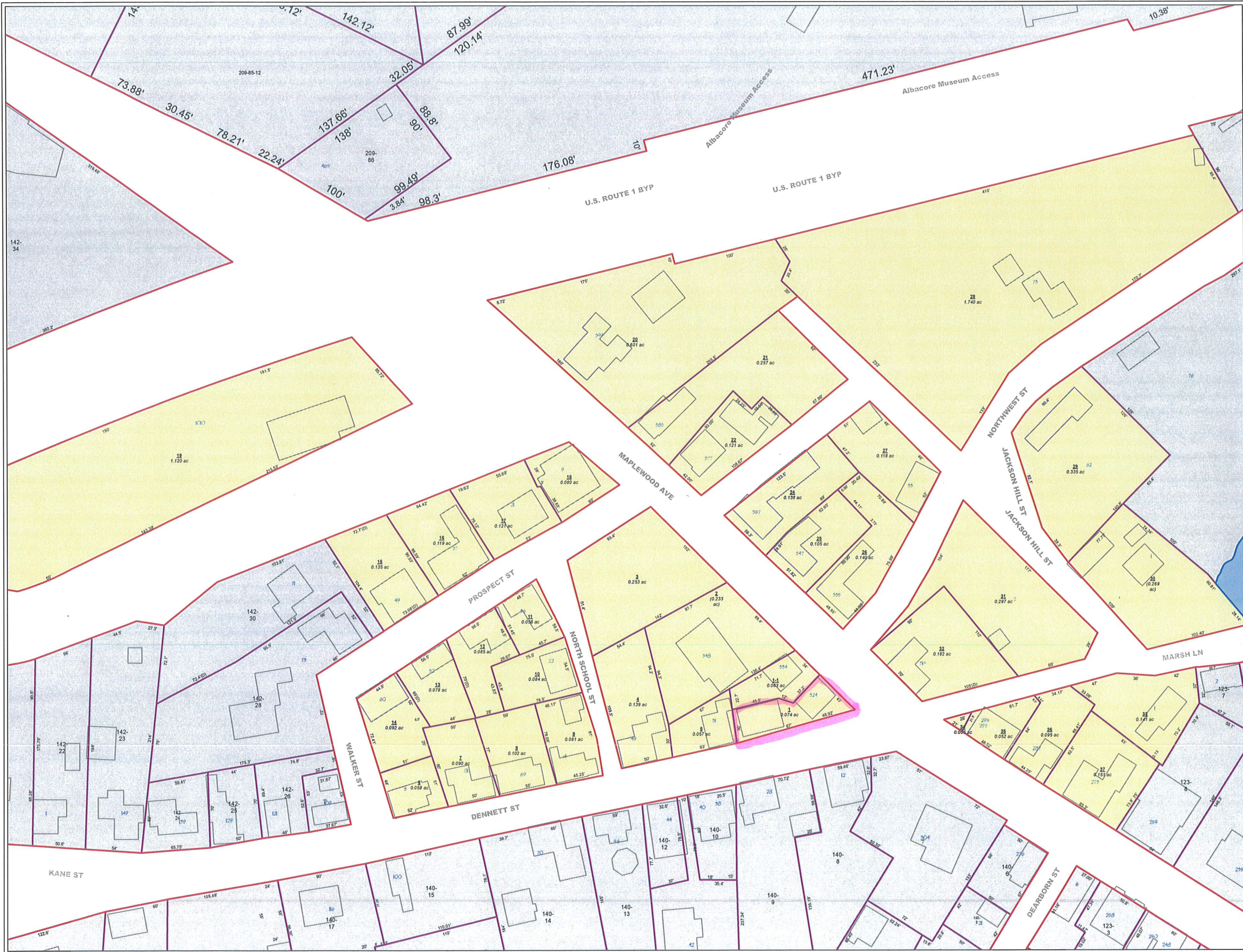
Image capture: Sep 2017 © 2022 Google

Portsmouth, New Hampshire

Google

Street View - Sep 2017





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)

EXHIBIT D

0 50 100 Feet
0 20 40 Meters

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.

