# APPLICATION OF SAKUNTALA LLC 235 MARCY STREET, PORTSMOUTH Map 103, Lot 12

#### **APPLICANT'S NARRATIVE**

#### I. **THE PROPERTY**:

The applicant, Sakuntala LLC, owns the property located at 235 Marcy Steet, which consists of a single-family dwelling on an irregularly shaped, non-conforming lot. The property is in the GRB zone and the Historic District. The property is non-conforming as to lot area, lot area per dwelling, frontage, and front and left side yard setbacks. Properties on either side of it have structures that are actually on the lot lines.

The applicant acquired the property last fall and intends to make significant and needed upgrades. The applicant plans to replace the existing asphalt shingles clapboard, replace the roofing, restore and reinstall windows, repair and replace trim and casings, install wood corner boards, and install gutters. As part of the proposed upgrades, the applicant seeks to add additional living space, as the dwelling is relatively modest.

According to city tax records, the main dwelling dates back to 1896. A subsequent small  $\pm 193$  square foot addition was added to the rear of the building. Its provenance is unknown. This addition is bare studs on the interior, has no heat or insulation, and no interior finish. It has no proper foundation, and the wood framed floor sits on the dirt, propped up by a few bricks here and there. There does not appear to be any frost protection whatsoever. The addition appears to have been built on-grade. Needless to say, the addition is substandard as living space.

The applicant proposes to remove this addition and add an approximately  $\pm 395$  square foot, two story attached garage addition as shown in the submitted plans. Because of the narrowness of the lot, the proposed garage bay will be oriented to the rear of the lot. This, and the approximately three foot drop in grade from right to left on the property, requires the installation of a retaining wall. At its closest point, the retaining wall will be three feet from the left lot line. The new addition will be  $\pm 7.1$  feet from the left lot line, which is more compliant than the existing addition to be removed, which is  $\pm 5.1$  feet from the left lot line.

In order to proceed, the applicant needs relief from section 10.321 of the ordinance to permit the extension or enlargement of a lawful nonconforming structure which such extension or enlargement does not conform to the left side yard setback of ten feet (10.521). The existing main dwelling structure, which will not be modified or enlarged, is non-compliant as to lot area, lot area per dwelling, frontage and front and side yard setbacks, as shown on the submitted plans. While the applicant does not believe variances are necessary to "lock in" these existing non-conformities, they are called out on the plans out of an abundance of caution, and, to the extent it is deemed necessary, we are requesting relief from these dimensional requirements as well.

## II. <u>CRITERIA</u>:

The applicants believe the within Application meets the criteria necessary for the Board to grant the requested variance.

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 essentially residential characteristics of the neighborhood would not be altered in any fashion by this project. The existing structure and lot are already non-compliant with the left side yard setback and the new addition will be more compliant than the one it is replacing. The neighborhood is notable for setback encroachments, and the directly abutting properties on either side of this one have zero foot setbacks.

Were the variances to be granted, there would be no change in the essential characteristics of the neighborhood, nor would public health, safety or welfare be threatened in any way. The project requires review and approval from the Historic District Commission, further assuring the public interest will be adequately protected.

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 variances that is not outweighed by the hardship upon the owner. The existing main house already encroaches closer to the left side lot line than the proposed addition, and the proposed addition is more compliant than the existing addition to be removed. The nearest affected neighbor has a garage with a zero foot setback to the applicant's left side yard. The existing addition is such that it has limited utility as living space. Denying the variances would be unjust to the applicant.

<u>The values of surrounding properties will not be diminished by granting the variance</u>. The proposal will result in substantial upgrades to and investment in the existing dwelling. This will increase the value of the applicant's property and those around it. The proposed new addition will be more compliant with the left side yard

setback than the one it will replace. The values of surrounding properties will not be negatively affected in any way.

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 is a narrow, irregularly shaped lot and is non-conforming as to lot area, lot area per dwelling, frontage, and front and left side yard setbacks. Properties on either side of it have structures that are actually sited on the lot lines. The existing addition to be removed is of substandard construction and limited utility.

<u>The use is a reasonable use</u>. The proposal is a residential use in a residential zone.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. The purpose of the side yard setback requirement is to assure adequate light, air and access to and between structures. The existing main dwelling and addition to be replaced already encroach into the required setback to a greater extent than what is here proposed, and have for a long period of time without any negative impacts whatsoever. There is no way for the applicant to comply with the lot area, lot area per dwelling, frontage and front yard setback requirements, should that be deemed necessary.

Accordingly, the relief 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 lot area requirements and their application to this property.

### III. <u>Conclusion.</u>

Dated: April 29, 2024

For the foregoing reasons, the applicants respectfully request the Board grant the variances as requested and advertised.

Respectfully submitted,

John K. Bosen

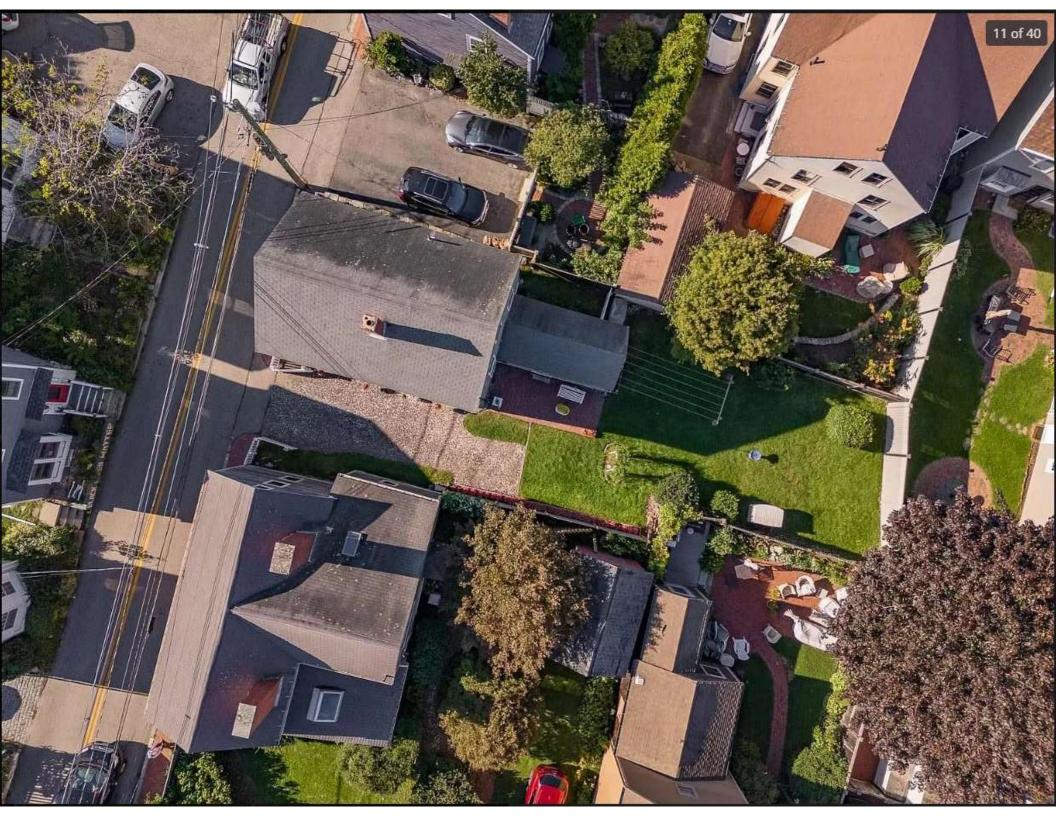
John K. Bosen, Esquire

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1" = 44.12551389069621 ft

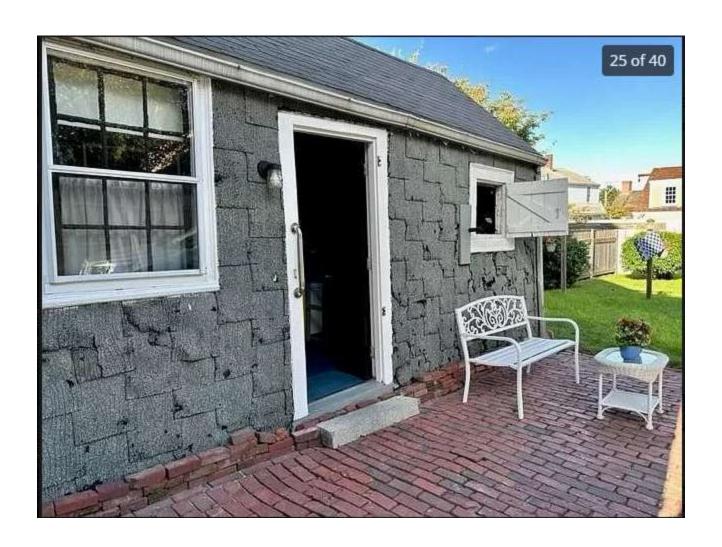














REVISIONS

NANDA RESIDENCE 235 MARCY STREET PORTSMOUTH, NEW HAMPSHIRE



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TE: 5/21/2024 RAWN BY: RLD

SCALE 1/8" = 1'-0"

JOB NJMBER: 22308

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