

MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment (“ZBA”)
FROM: R. Timothy Phoenix, Esquire
Stephanie J. Johnson, Esquire
DATE: November 18, 2024
RE: New England Marine and Industrial, Inc.
200 Spaulding Turnpike
Tax Map 237, Lot 56
Gateway Corridor/Single Residence B

Dear Chair Eldridge and Zoning Board Members:

On behalf of New England Marine and Industrial, Inc. (“NE Marine”), we are pleased to submit this memorandum and attached exhibits in support of NE Marine’s request for zoning relief to be considered by the Zoning Board of Adjustment (“ZBA”) at its December 17, 2024 meeting.

I. EXHIBITS

1. Zoning Relief Plan – issued by TF Moran.
2. Design Proof – issued by Portsmouth Sign Company
3. Site Photographs.
 - Satellite Views.
 - Street Views.
4. Portsmouth Zoning Map.
5. Tax Map 237.

II. PROPERTY/PROJECT

200 Spaulding Turnpike is a 928,223 s.f. lot within both the commercially-permitted Gateway Corridor and Single Residence District B (“SRB”) (the “Property”). A commercial store and warehouse are situated on the northwestern portion of the lot, within the Gateway Corridor, and close to the Spaulding Turnpike. The building is accessed by a long driveway extending from Farm Lane in the SRB Zone. Due to the location of the building, and its address being 200 Spaulding Turnpike, customers often have difficulty locating and accessing the building. Accordingly, NE Marine proposes to install a 20 s.f. freestanding sign by its Farm Lane entrance identifying its business and phone number with a 10 s.f. changeable track sign below (“the Project”). Because the proposed location for the sign is within the SRB, with no

reasonable alternative location that is close to NE Marine’s Farm Lane driveway and outside the SRB, planning staff have opined that the following relief is required:

III. RELIEF REQUIRED:

<u>Variance Section/Requirement</u>	<u>Existing</u>	<u>Proposed</u>
<u>PZO §10.1241: Freestanding Signs Prohibited in Residential Zones</u>	No Sign	20 s.f. Freestanding Sign with 10 s.f. Track Sign Below

IV. OTHER PERMITS REQUIRED

V. 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.

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 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 Property is in two districts – the large SRB, where the driveway from Farm Lane is located, and the narrow Gateway Corridor, which is where the warehouse and store are located, adjacent to the Spaulding Turnpike and other commercial properties in close proximity. NE Marine’s store and warehouse are separated from most of the Farm Lane residences by several hundred feet of open space containing native plants and powerlines. The sign is proposed within the SRB Zone, adjacent to the existing Farm Lane driveway. The proposed sign is meant to

identify the business and direct its customers to the proper location. The sign identifying the business, placed at the driveway entrance on Farm Lane, directing customers to NE Marine, will likely decrease traffic from vehicles unintentionally driving through the residential area of Farm Lane while looking for the business. A freestanding sign directing motorists to the Port City Nissan dealership is located across the street a short distance away from NE Marine's proposed sign location, and is also within the SRB Zone (Exhibits 3, 4). There are primarily businesses located between NE Marine's driveway and the Spaulding Turnpike, and no known commercial properties between NE Marine's driveway and the residential area of Farm Lane. As a result, NE Marine's driveway and property serve as an informal buffer between the commercial area of the Farm Lane nearest to the Spaulding Turnpike and the residential area of Farm Lane. Because the Property is in this transition area between residential properties within the SRB Zone and commercial properties within the Gateway Corridor, installing a freestanding sign in the proposed location will neither "alter the essential character of the locality nor threaten the public health, safety or welfare."

3. 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. NE Marine is constitutionally entitled to the use of the lot as it sees fit; including adding a relatively small, tasteful sign to identify its business. "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.

The proposed sign is reasonably sized and designed, consistent with the appearance of the surrounding properties and is similar to the sign installed across the street at Port City Nissan (Exhibit 3, 4). The proposed location is the only viable option for an identification sign directing customers to the business as virtually all commercial establishments do. Installation of the sign as proposed will protect the residential area from accidental vehicle traffic caused by NE Marine customers being unable to find the business. Thus, there is no benefit to the public from denying the variance. In comparison, if denied, NE Marine will suffer great harm because they will be unable to install a sign at the Property's entrance, directing their customers to their business. Clearly, there is no benefit to the public outweighing the hardship to the applicant if the variance is denied.

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

NE Marine is located in both the Gateway Corridor and SRB Zone, adjacent to the Spaulding Turnpike. Most if not all of the properties accessed from Farm Lane that are situated between NE Marine and the Spaulding Turnpike are commercial properties (Exhibits 3, 4). The area proposed for the sign is an informal buffer area between the residences situated on Farm Lane and NE Marine and other commercial properties located on the Spaulding Turnpike with access from Farm Lane. Adding a tasteful, freestanding sign of approximately 30 s.f. will not disrupt the residential-to-commercial transition area that already exists on Farm Lane. Under these circumstances, there is no evidence to suggest that granting a variance to allow a reasonably-sized identification sign to be installed at the entrance to NE Marine's driveway will diminish surrounding property values.

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

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

NE Marine is located in two distinct zones with several commercial properties located between its Farm Lane driveway and the Spaulding Turnpike. The store and warehouse building are located on the back portion of the lot, adjacent to the Spaulding Turnpike, within the Gateway Corridor, but the business is accessed by a driveway from Farm Lane, situated within the SRB Zone. Because the Property is accessed from Farm Lane, which is in the SRB Zone, there is no way to comply with the Portsmouth Zoning Ordinance's prohibition on freestanding

signs within the SRB Zone. There is no alternative site available outside of the SRB Zone to install the proposed sign identifying the business and directing its customers. Even though the driveway is located within the SRB Zone, the closest residence is relatively far away from the driveway and the proposed sign location. There is open space separating NE Marine's property from the closest residence, thus the presence of a tasteful, freestanding identification sign will not detract from the residential neighborhood. Customers have difficulty locating the business due to its lack of an identification sign, resulting in more inadvertent traffic being directed into the residential neighborhood. These circumstances combine to create special conditions and drive the request for relief.

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

Sign prohibitions in certain zones are meant to maintain consistency in the use and appearance of property and ensure that the residential character of residential zones is preserved. In this case, however, the Property is uniquely located in both a commercial and residential zone. While the commercial building is within the Gateway Corridor, the access driveway from Farm Lane is located within the SRB Zone. The surrounding properties located on Farm Lane between the driveway and the Spaulding Turnpike are mostly commercial properties. Because the Property bridges these two zones, its driveway is located within a residential zone, and a freestanding sign is located in the same zone across the street from the proposed sign location (Exhibit 3), specific application of the prohibition on freestanding signs in this case does not further the general public purpose of the ordinance.

- c. The proposed use is reasonable.

NE Marine proposes a freestanding sign with changeable track sign underneath installed at the top of their driveway entrance to identify their business. Signs to advertise a business are commonplace. The sign is tasteful in size and design and will not detract from the residential character of the nearby neighborhood. The proposed location of the sign is at the southern portion of the lot, close to Farm Lane, situated on the side of the driveway approaching the Gateway Corridor rather than the side approaching the residential neighborhood. The proposed sign is similar in size to the existing freestanding sign directing Port City Nissan customers to their business (Exhibit 3). The location blends in with the transition area between the residences

on Farm Lane and businesses on Farm Lane closer to the Spaulding Turnpike. Accordingly, the use is reasonable.

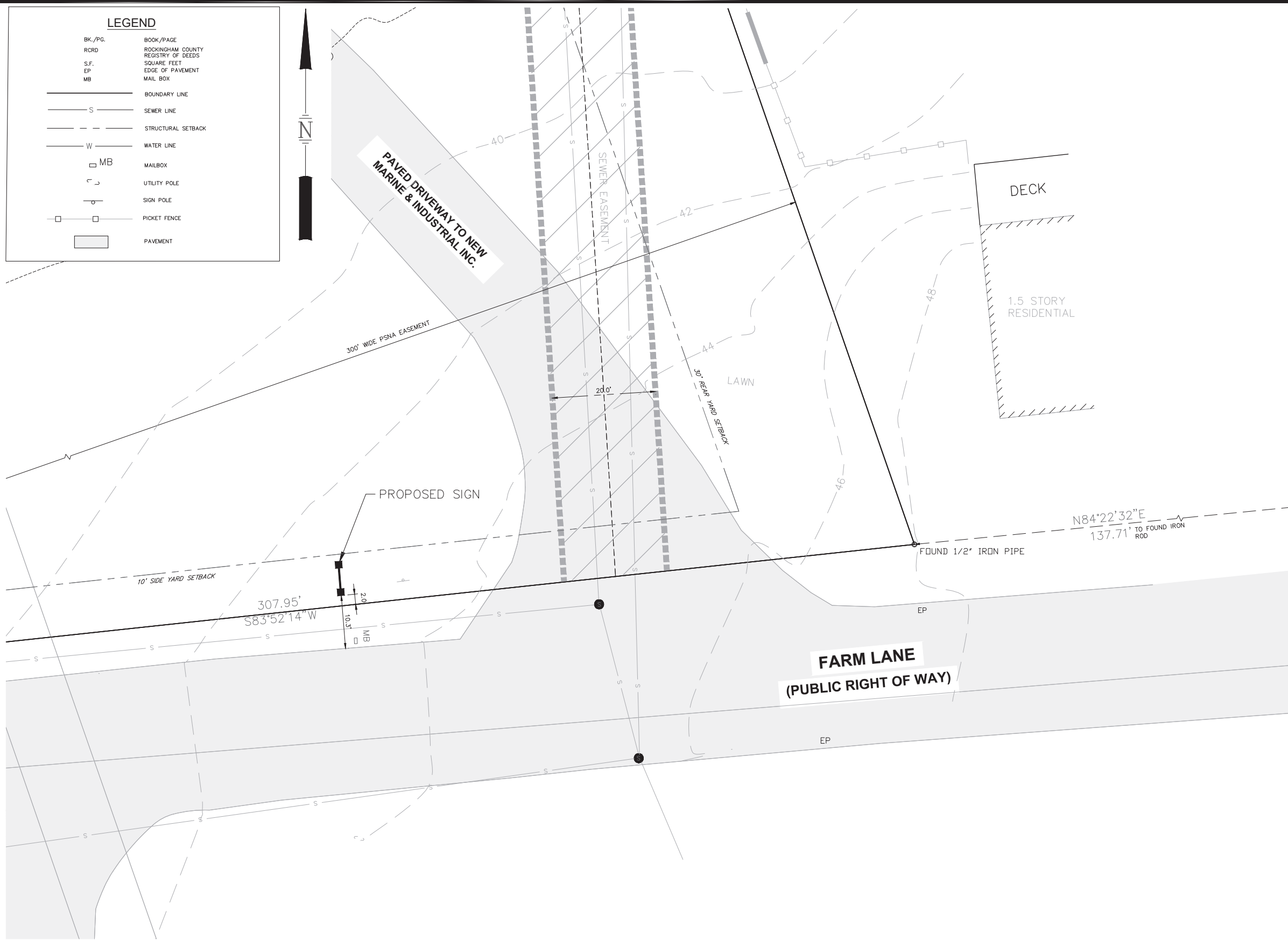
VI. CONCLUSION

For all of the reasons stated, NE Marine respectfully requests that the Portsmouth Zoning Board of Adjustment grant the requested relief.

Respectfully submitted,
New England Marine & Industrial, Inc.

A handwritten signature in blue ink, appearing to be 'R. Timothy Phoenix', is written over a horizontal line.

By: R. Timothy Phoenix
Stephanie J. Johnson



SITE DATA

OWNER OF RECORD OF MAP 237 LOT 56: NE MARINE & INDUSTRIAL, INC.
 DEED REFERENCE TO PARCEL IS BK 3285 PG 2577
 AREA OF PARCEL = 928,223± SF OR 21.3± ACRES

ZONED: G1 + SRB
 EXISTING USE: RETAIL
 PROPOSED USE: RETAIL

THE PURPOSE OF THIS PLAN IS TO DEPICT THE PROPOSAL SIGN LOCATION WHICH REQUIRES A VARIANCE PURSUANT TO ARTICLE 12 SECTION 10.1221.10 OF THE PORTSMOUTH ZONING ORDINANCE.

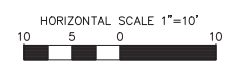
DIMENSIONAL REQUIREMENTS (CURRENT ZONING)

	REQUIRED:	EXISTING/PROVIDED:
MINIMUM LOT DIMENSIONS:		
LOT AREA	G1: 43,560 S.F.	SRB: 15,000 S.F.
LOT FRONTAGE	200'	100'
LOT DEPTH	100'	100'
MINIMUM SETBACKS/BUFFER:		
BUILDING FRONT	30'	30'
BUILDING SIDE	30'	10'
BUILDING REAR	50'	30'
MINIMUM OPEN SPACE	20%	40%

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This plan is not effective unless signed by a duly authorized officer of TFMoran, Inc.



REV	DATE	DESCRIPTION	DR	CK
1	10/24/24	REVISE SIGN LOCATION		

ZONING RELIEF PLAN
 TAX MAP 237 LOT 56

PROPOSED SIGN
200 SPAULDING TURNPIKE
PORTSMOUTH, NH 03801

OWNED BY & PREPARED FOR
NE MARINE AND INDUSTRIAL INC

1"=20' (11"X17')
SCALE: 1"=10' (22"X34') **SEPTEMBER 4, 2024**

TFM	Civil Engineers	170 COMMERCE WAY
	Structural Engineers	PORTSMOUTH, NH 03801
	Traffic Engineers	Phone (603) 432-2222
	Land Surveyors	Fax (603) 431-0910
	Landscape Architects	www.tfmoran.com
	Scientists	

FILE #	47111.05	DR	DKS	FB
REV		CK	JCC	CADFILE



**NEW ENGLAND MARINE
AND INDUSTRIAL**

NAME:

New England Marine & Industrial
Freestanding Sign

ADDRESS:

200 Spaulding Tpke GPS:, 90 Farm Ln,
Portsmouth, NH 03801 United States

SALES PERSON:

Ryan Fischer

DESIGNER:


Junior / SS

DATE:

04.22.2024

CONTACT PRIOR TO ARRIVAL:
Shannon McNally - 603-436-2836
Shannon@newenglandmarine.com

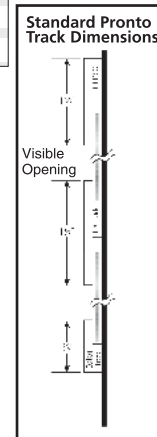
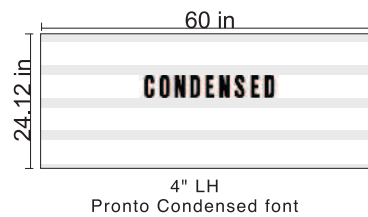
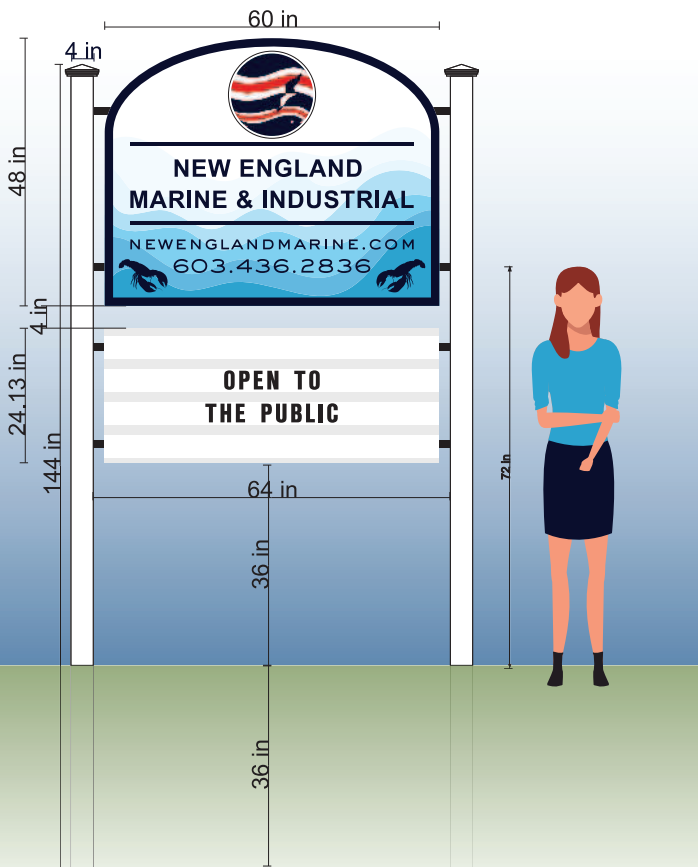
PG	ITEM	REV	DATE
1.0	A	FREESTANDING SIGN	5 11.4.24
1.1	A	PROPOSED PHOTOS	5 11.4.24
1.2	A	SITE MAP	5 11.4.24

 <p>PortsmouthSign.com 603-436-0047</p>	<p>REVISION: All orders under \$250 include 1 revision only. All orders over \$250 include 2 revisions only. Additional revisions will be charged at \$25 per revision.</p> <p>PLEASE NOTE: Designs are NOT actual size and color may vary depending on printer and/or monitor.</p>	<p>RETURN SIGNED TO: service@portsmouthsign.com</p> <p>I understand this design is the final production order and replaces all previous drawings, notes and verbal instructions to this job. Standard vinyl & paint colors will be unless otherwise specified. I have carefully reviewed this proof and verify that it contains all necessary specifications and represents my order. I authorize fabrication according to this approval.</p> <p>SIGNATURE: _____ Date: _____</p>
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A



SEE PAGE 1.1 FOR PROPOSED LOCATION / PHOTOS
SEE PAGE 1.2 FOR SITE MAP / EXACT LOCATIONS

CONTACT PRIOR TO ARRIVAL:
Shannon McNally - 603-436-2836
Shannon@newenglandmarine.com

NEW FREESTANDING SIGN

SIZE (Width x Height x Depth): 60" x 48" \ Logo 0.5" raised

SQUARE FOOTAGE: 20

QUANTITY: 1

SUBSTRATE: 3/4 PVC 1/8 Dibond Backer

Double Sided

CONTENT: Logo New England Marine & Industrial- website phone number lobsters

GRAPHIC/TEXT COLOR: Full color- white lettering

FABRICATION NEEDED: Painting, welding

SIGN MOUNTING: Internal Framing

POSTS & HARDWARE:
(2) 12 ft 4 x 4 Pressure treated posts pvc wrap

Changeable Track Sign:

SIZE: 60" x 24.125"

SQUARE FOOTAGE: 10

4 Lines of copy

DOUBLE SIDED

Letter Height 4"

Substrate: 3/4 pvc outsourced track & letters

Below the Freestanding sign

Content: Hours + store sales

INSTALLATION:

LOCATION DIRECTIONS: Top of the driveway in the grass

MOUNTING SURFACE: between two posts

INSTALL MAX. HEIGHT: 6'

PERMITS NEEDED: NO

SITE SURVEY NEEDED surveyed by Ryan F :

DIG SAFE: YES

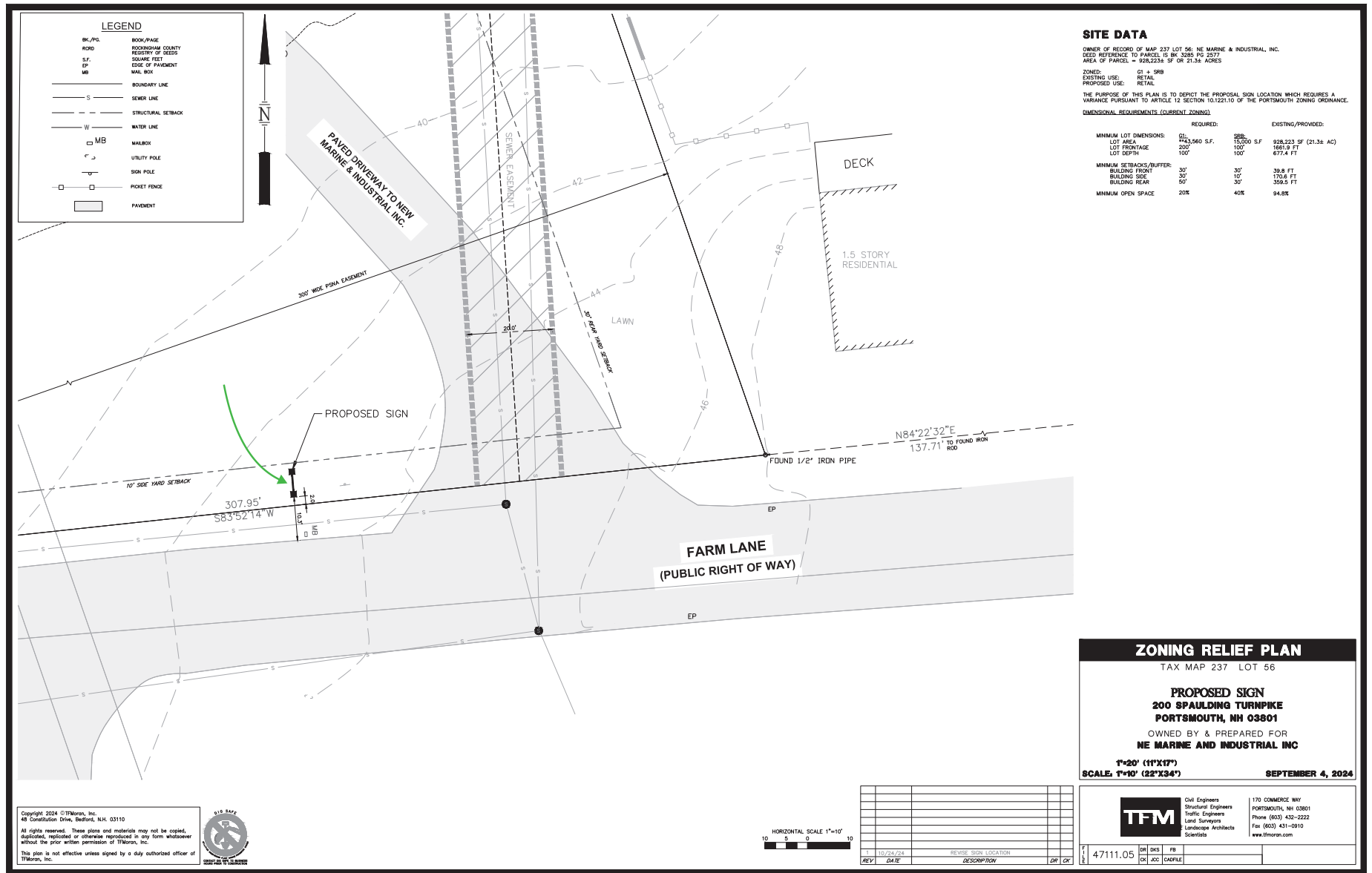
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PROPOSED LOCATION:



SEE PAGE 1.0 FOR DESIGN SPECS
SEE PAGE 1.2 FOR SITE MAP / EXACT LOCATIONS

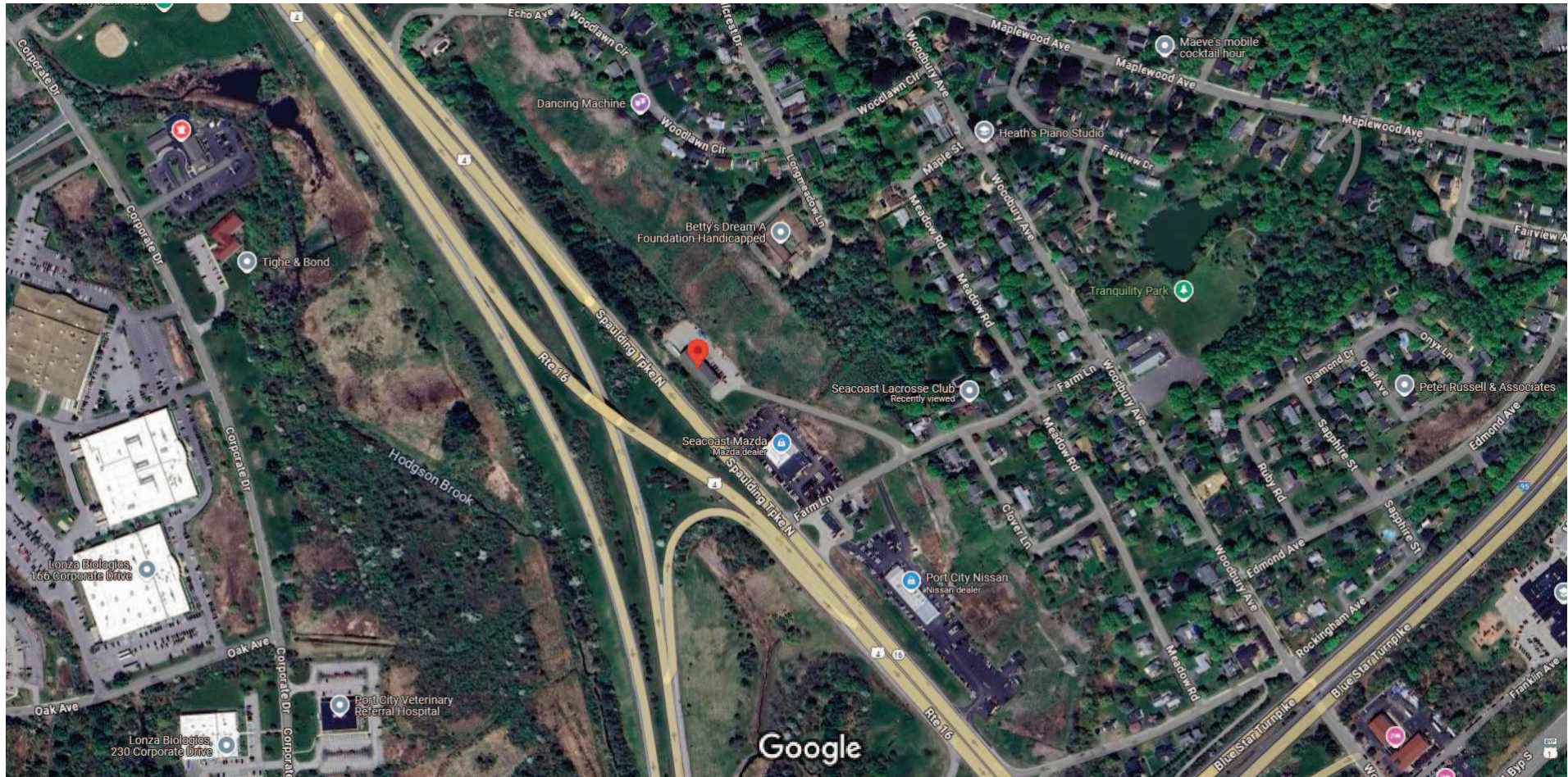
SITE MAP:



SEE PAGE 1.0 FOR DESIGN SPECS
 SEE PAGE 1.1 FOR PROPOSED PHOTOS



200 Spaulding Tpk N



Imagery ©2024 Airbus, Maxar Technologies, USDA/FPAC/GEO, Map data ©2024 200 ft





Google

Image capture: Sep 2011 © 2024 Google





Image capture: Sep 2011 © 2024 Google

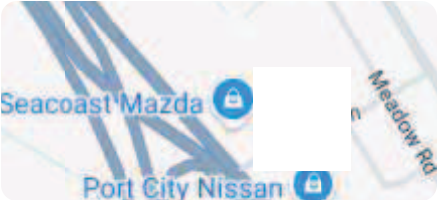




Image capture: Sep 2024 © 2024 Google





Image capture: Sep 2024 © 2024 Google





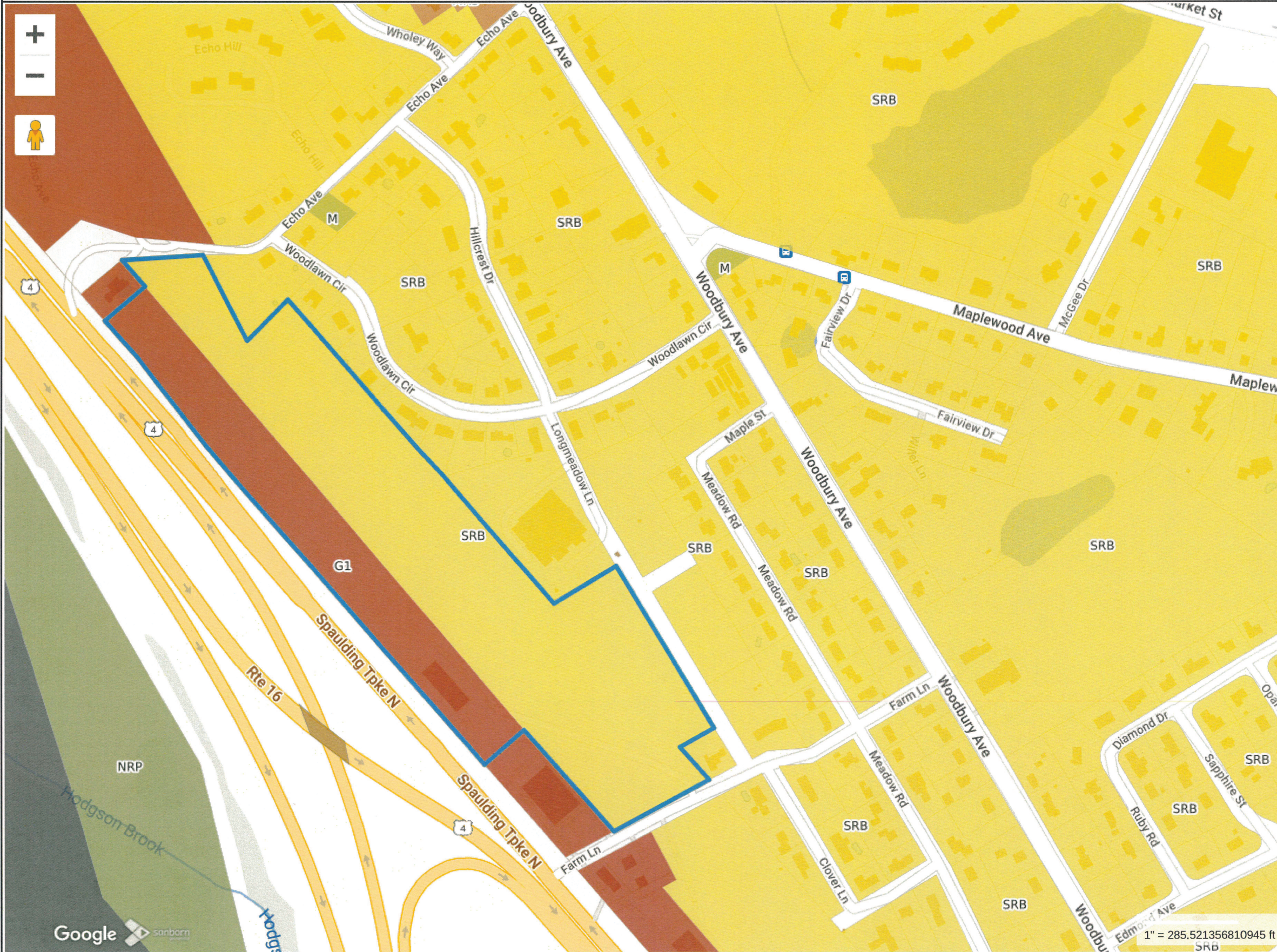








EXHIBIT 4



Property Information
Property ID 0237-0056-0000
Location 200 SPAULDING TPKE
Owner N E MARINE AND INDUSTRIAL INC



**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.

1" = 285.521356810945 ft
 SRB

Map Theme Legends

Zoning

- Residential Districts**
 - R Rural
 - SRA Single Residence A
 - SRB Single Residence B
 - GRA General Residence A
 - GRB General Residence B
 - GRC General Residence C
 - GA/MH Garden Apartment/Mobile Home Park
- Mixed Residential Districts**
 - MRO Mixed Residential Office
 - MRB Mixed Residential Business
 - G1 Gateway Corridor
 - G2 Gateway Center
- Business Districts**
 - GB General Business
 - B Business
 - WB Waterfront Business
- Industrial Districts**
 - OR Office Research
 - I Industrial
 - WI Waterfront Industrial
- Airport Districts**
 - AIR Airport
 - AI Airport Industrial
 - PI Pease Industrial
 - ABC Airport Business Commercial
- Conservation Districts**
 - M Municipal
 - NRP Natural Resource Protection
- Character Districts**
 - CD5 Character District 5
 - CD4 Character District 4
 - CD4W Character District 4-W
 - CD4-L1 Character District 4-L1
 - CD4-L2 Character District 4-L2
- Civic District**
 - Civic District
- Municipal District**
 - Municipal District
- Overlay Districts**
 - OLOD Osprey Landing Overlay District
 - Downtown Overlay District
 - Historic District

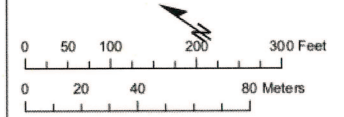
City of Portsmouth

EXHIBIT 5

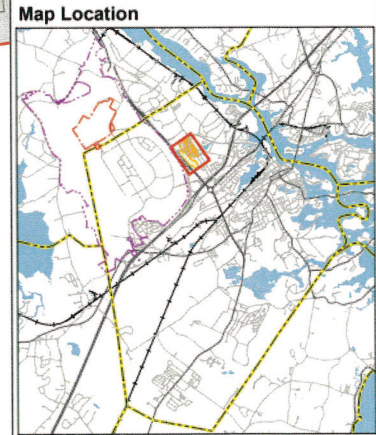
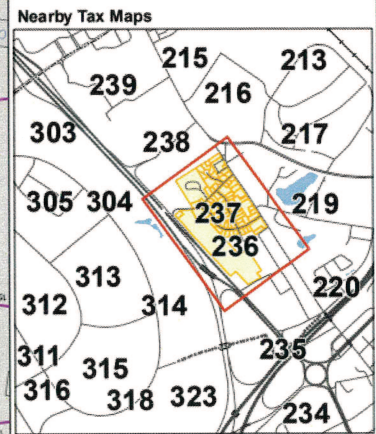
Partial Legend

See the cover sheet for the complete legend.

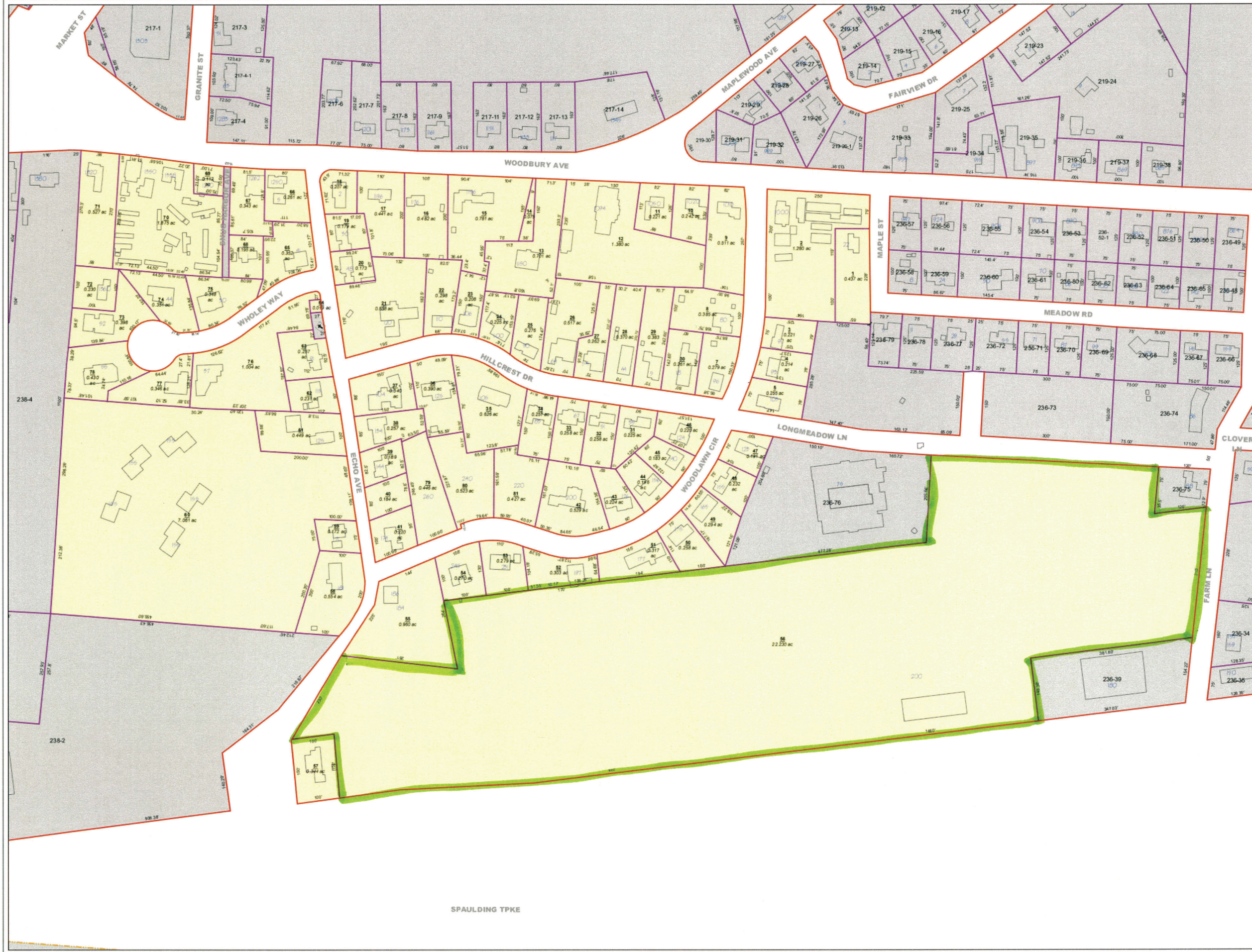
- 7-5A** Lot or lot-unit number
- 2.56 ac** Parcel area in acres (ac) or square feet (sf)
- 1234** Address number
- 233-137** Parcel number from a neighboring map
- 68'** Parcel line dimension
- SIMS AVE** Street name
- Parcel/Parcel boundary
- Parcel/ROW boundary
- Water boundary
- Structure (1994 data)
- Parcel covered by this map
- Parcel from a neighboring map (see other map for current status)

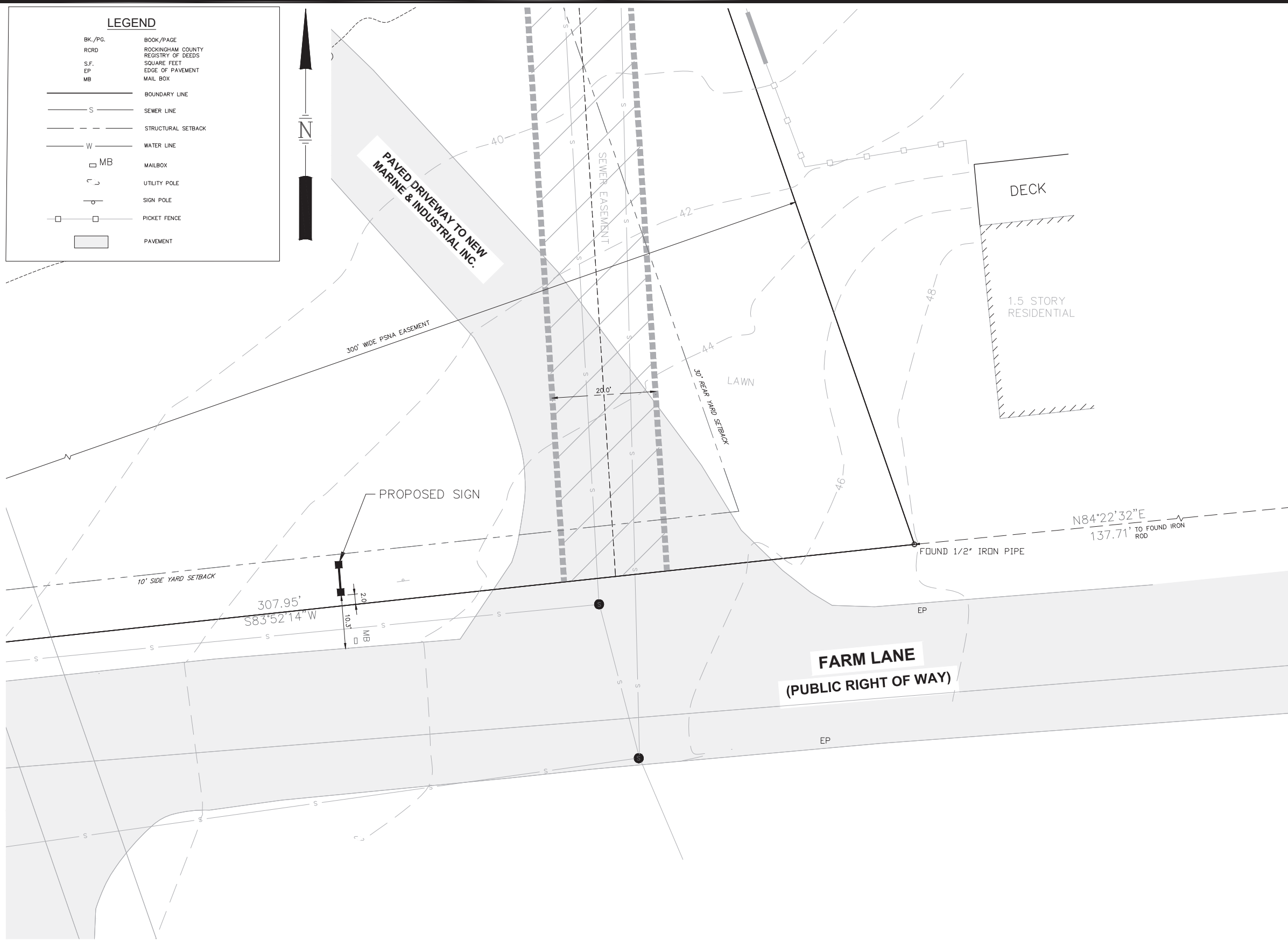


This map is for assessment purposes only. It is not intended for legal description or conveyance. Parcels are mapped as of April 1. Building footprints are 2006 data and may not represent current structures. Streets appearing on this map may be paper (unbuilt) streets. Lot numbers take precedence over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



Portsmouth, New Hampshire
2024
Tax Map 237





SITE DATA

OWNER OF RECORD OF MAP 237 LOT 56: NE MARINE & INDUSTRIAL, INC.
 DEED REFERENCE TO PARCEL IS BK 3285 PG 2577
 AREA OF PARCEL = 928,223± SF OR 21.3± ACRES

ZONED: G1 + SRB
 EXISTING USE: RETAIL
 PROPOSED USE: RETAIL

THE PURPOSE OF THIS PLAN IS TO DEPICT THE PROPOSAL SIGN LOCATION WHICH REQUIRES A VARIANCE PURSUANT TO ARTICLE 12 SECTION 10.1221.10 OF THE PORTSMOUTH ZONING ORDINANCE.

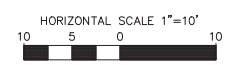
DIMENSIONAL REQUIREMENTS (CURRENT ZONING)

	REQUIRED:	EXISTING/PROVIDED:
MINIMUM LOT DIMENSIONS:	G1: 150'	SRB: 150'
LOT AREA	**43,560 S.F.	15,000 S.F.
LOT FRONTAGE	200'	100'
LOT DEPTH	100'	100'
MINIMUM SETBACKS/BUFFER:		
BUILDING FRONT	30'	30'
BUILDING SIDE	30'	10'
BUILDING REAR	50'	30'
MINIMUM OPEN SPACE	20%	40%

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This plan is not effective unless signed by a duly authorized officer of TFMoran, Inc.



REV	DATE	DESCRIPTION	DR	CK
1	10/24/24	REVISE SIGN LOCATION		

ZONING RELIEF PLAN

TAX MAP 237 LOT 56

PROPOSED SIGN
200 SPAULDING TURNPIKE
PORTSMOUTH, NH 03801

OWNED BY & PREPARED FOR
NE MARINE AND INDUSTRIAL INC

1"=20' (11"X17')
SCALE: 1"=10' (22"X34') **SEPTEMBER 4, 2024**

TFM	Civil Engineers	170 COMMERCE WAY
	Structural Engineers	PORTSMOUTH, NH 03801
	Traffic Engineers	Phone (603) 432-2222
	Land Surveyors	Fax (603) 431-0910
	Landscape Architects	www.tfmoran.com
	Scientists	

File #	47111.05	DR	DKS	FB
REV		CK	JCC	CADFILE